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INDEX

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988

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Index

INDEX
VOL
53
JA
JE
988
UMI

THIS INDEX is based on a consolidation of contents entries appearing in the January–June issues of the FEDERAL REGISTER together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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TABLE OF CONTENTS

Entries / 1
Guide to Freedom of Information Indexes / 000
Federal Register Pages and Dates / 000

FEDERAL REGISTER INDEX, January—June 1988

ACTION
RULES
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
PROPOSED RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 1496
Regulatory agenda, 14320
NOTICES
Agency information collection activities under OMB review, 7220, 8678, 24108
Foster grandparent and senior companion programs; income eligibility levels, 1502, 23429
Grants; availability, etc.:
Drug Alliance, 2065, 10909
MiniGrant program, 9129
Senior companion program, 12171
Special volunteer programs, 8678
Student community service projects, 1647
VISTA Literacy Corps projects, 9783, 13298
VISTA projects—
Region 2, 20351
Regions 3 and 9, 3408
Meetings:
National Volunteer Advisory Council, 3906

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Administrative Conference of the United States
NOTICES
Government contractors, indemnification, 3766, 12048
Meetings:
Administration Committee, 11692, 15071
Ethics in Government Special Committee, 11892
Financial Services Special Committee, 2610, 10133, 15250
Governmental Processes Committee, 6167, 15580, 20149
Judicial Review Committee, 8793, 12049, 15580
Plenary Session, 19973
Regulation Committee, 5290, 9673, 24752
Rulemaking Committee, 11892
Recommendations:
Courts of Appeals decisions; nonacquiescence, 12444, 24331
Valuation of human life in regulatory decisionmaking; draft, 13299, 16742

Advisory Committee on Federal Pay
See Federal Pay, Advisory Committee

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

African Development Foundation
RULES
Acquisition regulations, 5578
Federal claims collection; administrative offset, 5567
PROPOSED RULES
Privacy Act; implementation, 16153
NOTICES
Meetings:
Advisory Council, 19973
Meetings; Sunshine Act, 2347, 12745, 19855
Privacy Act; systems of records, 16169

Agency for International Development
RULES
Acquisition regulations, 6828, 13410
Amendments, 4979
Debarment and suspension (nonprocurement), 19161
Employee testimony and document production in nonagency proceedings; impartiality policy, 24260
PROPOSED RULES
Housing guaranty standard terms and conditions, 11872
Impartiality policy; private litigation proceedings, 16559
Regulatory agenda, 14324
NOTICES
Agency information collection activities under OMB review, 1416, 9381, 16792, 22739
Committees; establishment, renewal, termination, etc.:
Micro Enterprise Advisory Committee, 7811
Housing guaranty programs:
Botswana, 456
Kenya, 16684
Sri Lanka, 17511
Tunisia, 762
Meetings:
International Food and Agricultural Development Board, 2892, 11568, 19057
Mediterranean fruitfly eradication program in Guatemala, 2892, 3490, 15298
Micro-Enterprise Advisory Committee, 8288, 9152, 15299
Research Advisory Committee, 7811, 20189
Voluntary Foreign Aid Advisory Committee, 9494, 19828

Agency for Toxic Substances and Disease Registry
NOTICES
Grant and cooperative agreement awards:
Minority Health Professions Schools Association, 24149
Grants and cooperative agreements; availability, etc.:
Human exposure to hazardous substances and adverse health outcomes; pilot and epidemiologic studies, 19337
Meetings:
National registry proposal; procedures development, 953, 16320
Scientific Counselors Board, 17763
Superfund program:
Chemicals nominated for toxicological evaluation, 10569
Hazardous substances priority list; toxicological profiles availability, 1845

Agricultural Marketing Service
See also Packers and Stockyards Administration
RULES
Almonds grown in California, 12374
Avocados grown in Florida, 1742, 20599
Beef promotion and research order, 5752
Referendum conduct procedures, 9854
Cotton:
Classification, testing, and standards User fees, 2213, 20089
Cranberries grown in Massachusetts et al., 12373, 24676
Dairy products; grading, inspection, and standards:
User fees and administrative changes, 20275
Dates (domestic) produced or packed in California, 18973, 19879
Egg and egg products inspection and grading:
Egg solids requirement, 23750
Filberts/hazelnuts grown in Oregon and Washington, 8423
Grapes grown in California, 6572, 22126
Grapes, imported, 22126
Honey research, promotion, and consumer information order, 8147
Kiwifruit grown in California, 18073
Lemons grown in California and Arizona, 7, 492, 1333, 1742, 2580, 2669, 3330, 4108, 4956, 5752, 6969, 7490, 7879, 8422, 8866, 9759, 10527, 11636, 12509, 13242, 15360, 16243, 17011, 18072, 19743, 20599, 21792, 22647, 23751
Limes grown in Florida, 402, 1742, 11830, 13217, 22125
Marketing orders; expenses and rates of assessment, 401, 7328, 18973, 21624, 24017, 24250
Melons grown in Texas, 4956, 4957
Milk marketing orders:
Central Illinois, 10059
Great Basin, 4589, 6916
Greater Kansas City, 10357, 11590
Lake Mead, 4589
Memphis, TN, 3734
Nebraska-Western Iowa, 15358, 17685
Ohio Valley et al., 21626
Southern Illinois, 11637
Southern Illinois-Eastern Missouri, 10057

Southwest Plains, 5149, 9853, 15795
Texas, 11638
Upper Midwest, 19744
Nectarines grown in California, 15193, 19226, 22609
Olives grown in California, 2823
Onions grown in Texas, 7329, 18074
Oranges (navel) grown in Arizona and California, 6, 491, 1333, 1741, 2579, 3329, 4107, 4955, 5751, 6968, 7879, 8865, 12371, 14776
Oranges (Valencia) grown in Arizona and California, 12371, 14776
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 860, 17169
Papayas grown in Hawaii, 862
Peanuts, domestically produced, 20290, 22470
Pears, plums, and peaches grown in California, 6128, 11832, 15193, 18817, 19218, 19234
Pork promotion, research, and consumer information, import assessments, etc., 1909
Potatoes (Irish) grown in—
California, 2995
Colorado, 4498, 8145, 22469
Idaho, 3187
Oregon, 2995, 3187
Washington, 8142, 11043, 21793
Practice and procedure; marketing agreements, orders, and information collection, 15658
Raisins produced from grapes grown in California, 4958, 9427, 19880
Spearmint oil produced in Far West, 6129, 18818
Tomatoes grown in Florida, 3189
Walnuts grown in California, 9595
Winter pears grown in Oregon, Washington, and California, 7880

PROPOSED RULES
Almonds grown in California, 414, 15046
Beef promotion and research order:
Referendum conduct procedures, 509
Cotton:
Classification, testing, and standards—
Spot markets and price quotation determinations, 22178
User fees, 9774
Cranberries grown in Massachusetts et al., 3036, 15045
Cucumbers, European seedless, 24070
Dairy products; grading, inspection, and standards:
Fee increases, 4639, 9948
Dates (domestic) produced or packed in California, 15401, 16130
Filberts/hazelnuts grown in Oregon and Washington, 900
Grapes grown in California, 2851, 9450
Grapes, imported, 9450
Kiwifruit grown in California, 15227
Lemons grown in California and Arizona, 255
Livestock; grading, certification, and standards:
Slaughter cattle and carcass beef, 3025, 10545
Marketing orders; expenses and rates of assessment, 15850, 17056, 20121, 23243
Melons grown in Texas, 413
Milk marketing orders:
Central Illinois, 5386
Chicago Regional, 8205, 10894, 24298
Eastern South Dakota, 23405
Georgia, 9635, 15402
Great Basin, 686
Kentucky, 902
Lake Mead, 686
Memphis, TN, 1369
Nebraska-Western Iowa, 9636, 12424
New England et al., 21825
New York-New Jersey, 18844
Ohio Valley, 902
Ohio Valley et al., 14804
Southern Illinois, 5777, 7210
Southern Michigan, 15851
Southwest Plains, 1370, 1790, 6158, 11092, 22499
Texas, 256, 7942, 22003, 22499
Upper Florida et al., 1035
Upper Midwest, 1360, 15690, 16556
Nectarines grown in California, 5776, 12687, 16931
Nuts, mixed, in shells; grade standards, 7531, 22497
Onions grown in Idaho and Oregon, 23404
Onions grown in South Texas, 13413
Oranges (navel) grown in Arizona and California, 412, 2849, 3599, 21651
Oranges (Valencia) grown in Arizona and California, 412, 2849, 3599, 21651
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 898
Peaches grown in Georgia, 11867
Peanuts, domestically produced, 19000, 21666
Pears (winter) grown in Oregon, Washington, and California, 4641
Pears, plums, and peaches grown in California, 2851, 5776, 8460, 9634, 11669, 12691, 13413
Pickles; grade standards, 3403, 3490, 7532
Pork promotion, research, and consumer information, 15700, 21836
Referendum conduct procedures, 21456
Potatoes (Irish) grown in—
Colorado, 3037, 18095
Idaho and Oregon, 18999
Texas-New Mexico High Plains Area, 10887
Washington, 7369, 12423
Potatoes grown in Oregon and California, 18843
Spearmint oil produced in Far West, 15048
Strawberries grown in Florida, 7194
Sweet peppers; grade standards, 22498
Tomatoes, fresh; grade standards, 22497
Watermelon research and promotion plan, 9637

NOTICES
Beef promotion and research order:
Certification and nomination, 14829
Committees; establishment, renewal, termination, etc.:
Flue-Cured Tobacco Advisory Committee, 19973
Tobacco Inspection Services National Advisory Committee, 19973
Meetings:
Cotton Marketing Advisory Committee, 7545
Flue-Cured Tobacco Advisory Committee, 7955, 15864, 24333
Tobacco Inspection Services National Advisory Committee, 8680, 15434, 19809
Oranges (Valencia) grown in Arizona and California; marketing policy, 9955
Tobacco inspection and price supports; market designations:
Carthage and Aberdeen, NC, 9673

Agricultural Research Service

RULES
Freedom of Information; implementation, 17685

NOTICES
Procurement:
Commercial activities, performance; cost comparison studies (OMB A-76 implementation), 5811

Agricultural Stabilization and Conservation Service

RULES
Conservation and environmental programs:
State; definition, 15657
Conservation reserve program, 733
Marketing quotas and acreage allotments:
Farms, allotments, quotas, bases, and acreages; reconstitution, 6119
Feed grain, rice, cotton, and wheat—
Amendments, 3856
CFR Part redesignated to Commodity Credit Corporation, 20280
Peanuts, 15543
Tobacco, 1605, 12675
Payment limitation of married couple with respect to farm operations, 21409
Special programs:
Commodity certificates, in kind payments, and other forms of payments; CFR Part redesignated to Commodity Credit Corporation, 20280
Warehouse regulations:
Federally licensed warehouses; transfer of regulations from Agricultural Marketing Service; correction, 2477

PROPOSED RULES
Marketing quotas and acreage allotments:
Tobacco, 16721
Payment limitation and determination of eligibility of foreign individuals or entities to receive program benefits, 11474, 16131
Special programs:
Appeal regulations, 17054

NOTICES
Commodity futures and options markets trading; pilot educational program, 7220
Marketing quotas and acreage allotments:
Peanuts, 5023
Tobacco, 630, 16175, 18109, 18113
Meetings:
Futures and Options Marketing National Advisory Committee, 17092
Warehouses, licensed; list availability, 9344

Agriculture Department

See also Agricultural Marketing Service; Agricultural Research Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Cooperative State Research Service; Economic Analysis Staff; Economic Research Service; Economics Management Staff; Energy Office, Agriculture Department; Farmers Home Administration; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Food and Nutrition Service; Food Safety and Inspection Service; Foreign Agricultural Service; Forest Service; National Agricultural Library; National Agricultural Statistics Service; Packers and Stockyards Administration; Rural Electrification Administration; Rural Telephone Bank; Soil Conservation Service

RULES
Acquisition regulations, 6062
Correction, 12748
Administrative regulations:
Rules of practice; formal adjudicatory proceedings, 7177
Agricultural Stabilization and Conservation Service; State, county, and community committees; selection and functions, 23749
Correction, 1441
Conservation, highly erodible land and wetland; correction, 3997
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 16540
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Organization, functions, and authority delegations:
Deputy Secretary et al., 15013
Economics, Assistant Secretary, 21977
Correction, 23167
Governmental and Public Affairs, Assistant Secretary, 22466
Science and Education, Assistant Secretary, et al., 6783
Small Community and Rural Development, Under Secretary, et al., 7877
Correction, 11636
Special Services, Assistant Secretary, et al., 18253
World Agricultural Outlook Board, 5357
Practice rules governing formal adjudicatory proceedings under various statutes, 1001
Privacy Act; implementation, 5969

PROPOSED RULES
Acquisition regulations, 749
Equal Access to Justice Act; implementation; awards, 15685
Import and quota fees:
Sugar, free from quota; re-exported in refined form, 11091
Nondiscrimination; Federally assisted programs, 16283
Regulatory agenda, 13606

NOTICES
Agency information collection activities under OMB review, 158, 1651, 2517, 3059, 3906, 4864, 6680, 7545, 8680, 9462, 10263, 11521, 12176, 12966, 15071, 16174, 16742, 17737, 18869, 20149, 21715, 22550, 23430, 24468
Agricultural commodities, overseas donations; types and quantities, 9673
Committees; establishment, renewal, termination, etc.:
Cotton Marketing National Advisory Committee, 3227
Human Nutrition Board of Scientific Counselors, 7382
Microbiological Criteria for Foods National Advisory Committee, 1503
National Arboretum Advisory Council, 2261
National Plant Genetic Resources Board, 12050
Cooperative agreements:
Colorado State University, 8793
Georgia Tech University, 20149
Harlan E. Moore Heart Research Foundation, 12713
Howard University, 8793
Oregon State University, 8794
Rutgers University, 8794
University of Arizona, 8240
University of Rhode Island, 8794
Formal adjudicatory administrative proceedings; consent decisions; index publication, 6999
Import quotas and fees:
Meat import limitations; quarterly estimates, 267, 11323
Meetings:
Agribusiness Promotion Council, 18869
Agriculture Biotechnology Research Advisory Committee, 3906, 16174
Dairy Policy National Commission, 1651, 2517, 3610, 4696
Equal Opportunity Citizens' Advisory Committee, 7382, 22187
Human Nutrition Board of Scientific Counselors, 4438
Microbiological Criteria for Foods National Advisory Committee, 7768, 18591
National Plant Genetic Resources Board, 8240
Rural Development National Advisory Council, 939, 10551, 12176, 22368
Privacy Act:
Computer matching programs, 16742, 16743
Systems of records, 2517, 3610, 4047, 5205, 12175
Program payments; income tax exclusion; primary purpose determination:
Iowa soil erosion control financial incentive program, 12550
New Jersey farmland preservation soil and water conservation cost-share program, 10911

Air Force Department

RULES
Aircraft:
Liability coverage requirements, 19297
Military personnel:
Delivery of Air Force personnel to U.S. civil authorities for trial, 4014
Issuing certificates in lieu of lost or destroyed certificates of separation, 876
Sales and services:
Personal financial responsibility, 24688

PROPOSED RULES
Privacy Act; implementation, 24322
Public relations:
Command contractor performance assessment systems, 9455

NOTICES
Active military service and discharge determinations:
American Merchant Marine in oceangoing service during World War II, 2775
Civilian employees of U.S. Army and U.S. Navy who participated in defense of Bataan and Corregidor during World War II, 10140
Agency information collection activities under OMB review, 4442, 5210
Environmental statements; availability, etc.:
Malmstrom Air Force Base, MT; second KC-135R squadron, 7963
Peacekeeper rail garrison system, 5816
Urunao Beach, GU, 65
Vandenberg Air Force Base, CA; Space Launch Complex 7; construction and operation, 11695
Meetings:
Air Force Academy Board of Visitors, 4200
Air University Board of Visitors, 632, 633
Community College Board of Visitors, 13312
Scientific Advisory Board, 3421, 4200, 4699, 4700, 5032, 5294, 6860, 7003, 8243, 9471, 10556, 11113, 12054, 15106, 16183, 16447, 17239, 17240, 17746, 17970, 18117, 18118, 19325, 21885, 23305, 24775
Special Nevada Report, 15272, 17534
Patent licenses, exclusive:
Massachusetts Institute of Technology, 268
Privacy Act; systems of records, 24354
Procurement:
Contracts—
Activities for possible conversion, 10556

Alcohol, Drug Abuse, and Mental Health Administration

RULES
See entries under Public Health Service.

PROPOSED RULES
See entries under Public Health Service.

NOTICES
Committees; establishment, renewal, termination, etc.:
AIDS Advisory Committee, 22386
Basic Behavioral Processes Research Review Committee, 572
Criminal and Violent Behavior Research Review Committee et al., 3458
Drug Abuse AIDS Research Review Committee, 2889
Extramural Science Advisory Board, 10291
Neurosciences Research Review Committee, 16191
Federal workplace drug testing programs; mandatory guidelines, 11970
Grants and cooperative agreements:
Alcohol and other drug use; sequencing factors, 15599
Alcohol-related behavior that increases risk of AIDS and/or prevention strategies that reduce risk; research grants, 12076, 17978
Meetings; advisory committees:
February, 1516, 3458
March, 4220
May, 12076
June, 16782, 18352, 18609, 21919
Organization, functions, and authority delegations. See entries under Public Health Service.

Alcohol, Tobacco and Firearms Bureau

RULES
Alcohol, tobacco, and other excise taxes:
Commerce in firearms and ammunition—
Armor piercing ammunition and other statutory provisions implementation, 10480
Firearms sales or dispositions by low-volume dealers; recordkeeping simplification, 24686
Distilled spirits plants—
Occupational taxes, 17538
Alcohol; viticultural area designations:
Alexander Valley and Chalk Hill, CA, 17022
Cayuga Lake, NY, 9768
Middle Rio Grande Valley, NM, 2834
Western Connecticut Highlands, CT, 3745
Alcoholic beverages:
Distilled spirits plants—
Occupational taxes, 17538
Operation of tavern at brewery, 8626

PROPOSED RULES
Alcohol; viticultural area designations:
Alexander Valley and Chalk Hill, CA, 1492

Fredericksburg in Texas Hill Country, TX, 4999
Santa Clara Valley, CA, 3214
Alcoholic beverages:
Alcoholic content statements on wine labels and related type size requirements, 9775
Brandy and whisky treated with wood; label disclosure, 18574
Wine, distilled spirits, and malt beverages—Labeling and advertising; use of "light" (lite), 22678
Wine; foreign names of geographical significance and nongeneric designations, 12024
Regulatory agenda, 14184
NOTICES
Alcoholic beverages:
Display and retailer advertising specialties; dollar limitations, 4096

American Battle Monuments Commission

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 120

Animal and Plant Health Inspection Service

RULES
Animal welfare:
Horse protection, 14778, 15640, 24437
Exportation and importation of animals and animal products:
African horse sickness; horses from Spain, 6791
Animals and birds; quarantine space reservation, 2824
Cattle from Canada—Brucellosis certified free territories, 18819
Harry S Truman Animal Import Center; exclusive use suspension, 4842
Horses from countries affected with CEM—Approved States, 11043, 12640
Switzerland, 20306
Sheep from New Zealand; quarantine, 21794
Technical amendments, 22128
Wild pheasant and grouse carcasses, eviscerated, 5758
Interstate transportation of animals and animal products (quarantine):
Brucellosis; CITE test, 16245
Brucellosis in cattle and bison—State and area classifications, 2221, 10358
Tuberculosis in cattle and bison—State and area designations, 1002, 11491, 12913
Validated brucellosis-free states, 4381, 21979
Livestock and poultry disease control:
Brucellosis, 7881
Scrapie-exposed animals, 2580
Overtime services relating to imports and exports:
Commuted traveltime allowances; 1740, 4382, 15656, 17451
Work at border ports, sea ports, and airports, 7489
Work at laboratories, border ports, ocean ports, and airports, 7492
Plant pests:
Genetically engineered organisms and products; interstate movement of microorganisms under specified conditions, exemption, 12910
Plant Protection and Quarantine Treatment Manual; incorporation by reference, 10525
Plant regulations:
Phytosanitary export certification; inspector qualifications, 1332
Plant-related quarantine, domestic:
Citrus canker, 3999, 13241
Hawaiian fruits and vegetables to Alaska; Sharwil avocados, 12909
Mediterranean fruit fly, 3849, 18258
Melon fly, 3850, 17912
Oriental fruit fly, 6783, 6965, 7877, 17911
Peach fruit fly, 17913
Pink bollworm, 733, 4841
Varroa mite (honeybee parasite), 11825, 15654, 16536
Plant-related quarantine, foreign:
Apples, peaches, and citrus from Sonora, 10055
Ethylene dibromide; mangoes, 16538
Fruits and vegetables importation, 15357
PROPOSED RULES
Exportation and importation of animals and animal products:
Brucellosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Sheep from New Zealand; quarantine, 6656
Correction, 8301
Tuberculosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Hawaiian and territorial quarantine notices:
Conveyance, baggage, and cargo moving interstate from Hawaii, Puerto Rico, or the Virgin Islands; inspection, 3028
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Swine identification, 3146
Tuberculosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Livestock and poultry disease control:
Brucellosis, 12019
Brucellosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Brucellosis reactor cattle and bison; Federal indemnity payments, 2759
Tuberculosis in cattle and bison—Hot-iron branding of animals on jaw, 4179
Plant protection and quarantine treatment manual; incorporation by reference, 3896
Plant-related quarantine, domestic:
Citrus canker, 140, 24296
Plant-related quarantine, foreign:
Citrus in buffer zones in Japan, 22330
NOTICES
Animal welfare lists:
Horse protection—Certified designated qualified person (DQP) programs and licensed DQP's, 4438
Environmental statements; availability, etc.:
Boll weevil eradication/suppression program, 18869, 19010
Genetically engineered plants; field test permits—Tobacco, 2610, 2611, 20663, 22039
Tomatoes, 4439, 11521, 12551, 15719, 20664, 20665, 24108–24110
Recombinant derived modified live virus pseudorabies vaccine, 10133
Genetically engineered organisms for release into environment; permit applications, 9130, 20666
Meetings:
Animal Damage Control National Advisory Committee, 22368
Foreign Animal and Poultry Diseases Advisory Committee, 20667
National Poultry Improvement Plan General Conference Committee, 20666
Scrapie eradication program, 13136
Swine Health Protection Advisory Committee, 13425

Antitrust Division

NOTICES
Competitive impact statements and proposed consent judgments:
Agricultural Research & Development Corp., 16919
BNS Inc. et al., 9994
Westinghouse Electric Corp. et al., 1074
International energy program; voluntary agreement and plan of action; amendment, 9382
International operations guidelines, 21584, 22426
National cooperative research notifications:
Bell Communications Research, Inc., 5059, 11352, 20380, 20381
Composite Materials Characterization, Inc., 1074
Computer Aided Manufacturing-International, Inc., 4232
Corporation for Open Systems International, 5060, 7411, 24811
Engine Manufacturers Association, 12202
Industry/University Cooperative Research Center for Microwave/Millimeter-Wave Computer-Aided Design, 19830
Industry-University Center for Glass Research at New York State College of Ceramics, Alfred University, 21742
Institute for Manufacturing & Automation Research, 24811
International Partners in Glass Research, 20194
Microelectronics & Computer Technology Corp., 1859, 10159
NAHB Research Foundation, Inc., 186, 9154, 15750
National Center for Manufacturing Sciences, Inc., 20194
Petroleum Environmental Research Forum, 4233, 20385
Portland Cement Association, 9999
SEMATECH, Inc., 17987
Southwest Research Institute, 1418, 23704
West Agro, Inc., 1074, 4232
West Agro, Inc.-Iodophors Joint Venture, 22059

Architectural and Transportation Barriers Compliance Board

RULES
Nondiscrimination on basis of handicap in federally conducted programs and activities, 24264
Organization, functions, and authority delegations, 19776
PROPOSED RULES
Regulatory agenda, 14328
NOTICES
Meetings, 631, 6856, 15252
Nondiscrimination on basic of handicap in federally conducted programs and activities
Section 504 self evaluation report, 23138

Arctic Research Commission

NOTICES
Meetings, 6857, 13301
Vacancy announcement, 3410, 6999

Arms Control and Disarmament Agency

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 10247, 10529
Organization, functions, and authority delegations:
Inspector General Office, 9614
Privacy Act; implementation, 10247
PROPOSED RULES
Freedom of Information Act; implementation: Confidential commercial information; predisclosure notification procedures, 12430
NOTICES
Meetings:
General Advisory Committee, 2519, 7547, 11109, 19978, 24469
Visiting scholars program, 43

Army Department

See also Engineers Corps
RULES
Freedom of Information Act; implementation, 8901
Military reservations and national cemeteries:
Fort Stewart/Hunter Army Airfield; firearms and weapons, 1752
Personal check cashing control and abuse prevention, 19286
PROPOSED RULES
Environmental quality:
Army actions; environmental effects, 4646
NOTICES
Agency information collection activities under OMB review, 3421
Environmental statements; availability, etc.:
Biological Aerosol Test Facility, Dugway Proving Ground, UT, 3768, 12803
Biological defense research program, 17491
Chemical stockpile disposal program, 168, 5816
Fort Irwin, National Training Center, CA; land acquisition, 5443
Intermediate-Range Nuclear Forces (INF) Treaty; Pershing missiles elimination; site determination, 22207
Kwajalein Atoll, Marshall Islands, 2865
Orchard Training Area, ID; mission expansion/multiple construction, 7003
Presidio of San Francisco, CA—Land-use, facility management, development, and resource management policies, 10271
Meetings:
Armed Forces Epidemiological Board, 1816, 3490
Armed Forces Institute of Pathology Scientific Advisory Board, 5619
Command and General Staff College Advisory Committee, 6860
Military personal property claims symposium, 2775, 20361
Military personal property symposium, 633, 16183
Military/industry mobile homes symposium, 22207
Rifle Practice Promotion National Board, 3617
Science Board, 168, 169, 438, 944, 1056, 1936, 2528, 2529, 3231, 3422, 4442, 4700, 5211, 5294, 5443, 5444, 6189, 7226, 7387, 7787, 8243, 8487, 9471, 9678, 10556, 10921, 12177, 13145, 13313, 14834, 15106, 15590, 15726, 17492, 17970, 18875, 19812, 19985, 21509, 21885, 22691, 23679, 24482, 24774
U.S. Military Academy, Board of Visitors, 10417, 22373
Military traffic management:
Domestic household goods program—Motor carriers seeking approval, 9678
Participation eligibility, 3232
Freight carrier address requirements (MT Form 364-4), 1396
Freight carrier qualification program, 17970
Freight rate acquisition program; rail carrier rates and services, 13436
Household goods and unaccompanied baggage; bill of lading program, 19020
Household goods shipments; evaluation time limit, 4871
International program—Rate solicitation, 9678, 17492
Motor carrier property brokers use; policy statement, 4442
Pulled/turned back shipments; free tonnage, 4871
Trip-leased equipment and drivers, use; prohibitions, 633
Trip-leased equipment with or without drivers to transport DOD freight, 19020
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 2865, 3067
Weiser, Sidney, 9799
Privacy Act; systems of records, 12971, 16575, 21509

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Aviation Safety Commission

NOTICES
Meetings, 10264

Benefits Review Board, Labor Department

RULES
Practice and procedure, 16518

Bicentennial of the United States Constitution Commission

See Commission on the Bicentennial of the United States Constitution

Blind and Other Severely Handicapped, Committee for Purchase From

See Committee for Purchase From the Blind and Other Severely Handicapped

Bonneville Power Administration

NOTICES
Pacific Northwest Electric Power Planning and Conservation Act:
Costs and power losses at non-Federal hydroelectric power projects; proposed policy and procedures, 21888
Pacific Northwest-Pacific Southwest long term intertie access policy:
Administrator's decision; issuance and availability, 24483
Availability, 1660
Lost power revenue mitigation charge, 10866, 17493
Wholesale power rates:
Cost recovery adjustment clause provisions, 10867

Census Bureau

NOTICES
Committees; establishment, renewal, termination, etc.:
Agriculture Statistics Advisory Committee, 3767
Meetings:
Agriculture Statistics Advisory Committee, 15252
American Economic Association Advisory Committee et al., 9463
American Indian and Alaska Native Populations for 1990 Census Advisory Committee et al., 11538
Surveys, determinations, etc.:
Manufacturing area; annual, 940
Motor freight transportation and warehousing; annual, 5206
Service industries; annual, 1809
Voting age population, 1987; estimates, 1931

Centers for Disease Control

NOTICES
Chemical stockpile disposal program:
Agents GA, GB, VX, mustard agent (H, HD, T), and Lewisite (L), low doses; long-term exposure, potential adverse effects; health and safety recommendations, 8504, 11002
Committees; establishment, renewal, termination, etc.:
AIDS Prevention Advisory Committee, 21919
Vessel Sanitation Program Advisory Committee, 4722
Computer-mediated work; stress control strategies; NIOSH meeting, 12822
Grant and cooperative agreement awards:
Association of Schools of Public Health, 17113
Louisiana Health and Human Resources Department, 3458
Massachusetts Department of Public Health/Massachusetts Health Research Institute, Inc., 15140
Minority Health Professions Schools Association, 24149
Morehouse School of Medicine, 3459
Southeastern Occupational and Environmental Health Clinical Examination Center, 17248
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—Epidemiologic research studies and surveillance evaluation of pediatric

AIDS and human immunodeficiency virus (HIV) infection, 19820
Minority information and education program, 15734
Perinatal infections with HIV and AIDS prevention, 18352
Prevention and surveillance projects program, 6034, 3554
Acquired Immunodeficiency Syndrome (AIDS); school health education to prevent spread of AIDS—
National programs, 15881
State and local programs, 15880
Black colleges and universities, 13160
Chronic disease control programs, 20369
Dental caries preventive measures, 20174
Diabetic patients; cardiovascular and renal disease risk identification, 20172
Health programs for refugees, 13164
Health promotion and disease prevention—
Information/education projects, 13162
Research and demonstration centers, 12595
Injury control intervention projects; incentive grants, 22050
Occupational safety and health—
Research and demonstration projects, 20903
Preventive health services—
Immunization program guidelines, 19044
Sexually transmitted diseases prevention and control projects, 9145
Sexually transmitted diseases professional education program, 21726
Tuberculosis control program, 12194
Health and ergonomic problems prevention in VDT/office work; NIOSH meeting, 20371
Human immunodeficiency virus (HIV) antibody detection, R-DNA derived and synthetic peptide antigens use; workshop, 3640
Manual lifting, work practices guide; NIOSH meeting, 1941
Meetings:
AIDS surveillance and prevention projects; minority AIDS initiatives; 1989 FY draft application instructions, 23313
Chronic Disease Prevention and Control; Third National Conference, 16320
Immunization Conference, 17763
Immunization Practices Advisory Committee, 759, 12599
Mine Health Research Advisory Committee (NIOSH), 1519
Quality Control Measures in Gynecologic Cytology Conference, 4075
School water fluoridation, 7051
Scientific Counselors Board (NIOSH), 18355, 21920
Tuberculosis Elimination Advisory Committee, 7802, 17763
Vessel sanitation program (cruise ship industry, etc.), 10565
Vital and Health Statistics National Committee, 645, 808, 6036, 6873, 7575, 10947, 12599, 16375, 16590
Organization, functions, and authority delegations. See entries under Public Health Service.
Reproductive hazards assessment in workplace symposium; NIOSH meeting, 20371

Central Intelligence Agency

NOTICES
Privacy Act; systems of records, 15434
Retirement and disability system; lifetime annuity benefit entitlement for former spouses, 8941

Child Support Enforcement Office

RULES
Program operations standards:
Disregard of child support payments, 21642
State plan requirements:
ADP equipment and services; conditions for Federal financial assistance, 26
Disregard of child support payments, 21642
Interstate IV-D cases; services provision, 5246
Reporting and recordkeeping requirements, 18987
PROPOSED RULES
Program operation standards:
Federal tax refund offset; fees for printing and mailing services, etc., 12041

Christopher Columbus Quincentenary Jubilee Commission

RULES
Organization, recognition, and support of quincentenary projects; and use of logo, 3320
Recognition of commercial sponsors, licenses and use of logo, 3321
NOTICES
Meetings, 9131

Civil Rights Commission

PROPOSED RULES
Nondiscrimination on basis of handicap in federally conducted programs or activities, 22534
Regulatory agenda, 14332
NOTICES
Meetings; State advisory committees:
Alabama, 159, 22188
Alaska, 12966
Arizona, 9462
Arkansas, 2519, 24755
California, 9463, 16572, 22552
Colorado, 7220, 19015
Connecticut, 16745
Florida, 22553
Georgia, 1654, 22188
Hawaii, 23780
Indiana, 2519
Iowa, 1654
Kansas, 16890
Kentucky, 8795, 19015
Louisiana, 939, 4049, 16745
Maine, 19809
Massachusetts, 5027
Michigan, 1654, 6019
Minnesota, 7221
Mississippi, 1654
Missouri, 7221
Montana, 24469
Nebraska, 2261
Nevada, 7221, 15581
New Jersey, 4049
New Mexico, 16745
New York, 11892
North Dakota, 15252, 23676
Ohio, 7547
Oklahoma, 15581
Oregon, 9675, 13431
Pennsylvania, 1655
Rhode Island, 5027, 16890
South Dakota, 14830,19809
Tennessee, 8795
Texas, 7221, 24469
Vermont, 159
Washington, 11892, 19015
Wyoming, 15252
Meetings; Sunshine Act, 652, 3489, 8025, 12495, 16612, 21761
Native Americans civil rights issues; hearing, 6169, 20881
Public health policies and initiatives to control AIDS; civil rights aspects; consultation/hearing, 12445

Coast Guard

RULES
Anchorage regulations:
California, 878, 17027, 20617
New Jersey, 16874
Virginia, 20319
Dangerous cargoes:
Hazardous materials used as ships' stores on board vessels, 7745
Liquid hazardous wastes (bulk) for incineration at sea, 15826
Districts, marine inspection zones, and captain of port zones:
Honolulu and Guam, 21814
Zone changes, etc., 5572
Drawbridge operations:
Alabama, 5164
Florida, 119, 3206, 4018, 4019, 17465
Georgia, 2034, 4394
Kentucky, 23621
Louisiana, 5974, 12416
Maryland, 6984, 8848, 9887, 16547
New Jersey, 406, 16875
New York, 10533
North Carolina, 8751, 12417, 24263
Virginia, 6984, 8848, 20320
Washington, 10534
Washington, DC, 6984, 8848, 9627
Electrical engineering:
Vital system automation, 17820
Correction, 19090, 24269
Horizontal datum reference identification, 7738
Inland navigation rules:
Lights; horizontal positioning and spacing, 10532
Marine engineering:
Vital system automation, 17820
Correction, 19090, 24269
Merchant marine officers and seamen:
Licensing and manning requirements, 18559
Correction, 21822
Manning requirements; assistance vessel towing, 18559
Correction, 21822
Maritime personnel licensing; assistance vessel towing, 18559
Correction, 21822
Outer Continental Shelf activities:
Fixed OCS facilities; self-inspection, 18977
Ports and waterways safety:
Buffalo, NY, Outer Harbor; safety zone, 18555
Carquinez Strait anchorage, CA; safety zone, 16703
Chesapeake Bay and tributaries, MD; ice navigation season regulated navigation area, 616, 12417
Chesapeake Bay, Brewerton Channel Eastern Extension, MD; safety zone, 13119
Chesapeake Bay, Hampton Roads, Elizabeth River, VA; safety zone, 5165
Los Angeles/Long Beach Ports, CA; security zone, 4019, 18981

Mackay River, Mile 675, Atlantic Intracoastal Waterway, GA; safety zone, 13407
New Haven/Bridgeport, CT, and Port Jefferson, NY; safety zone, 10372
Old River and Cuyahoga River, OH; safety zone, 17028
Old River Control Structure, Mississippi River, MS—
Inland waterways navigation regulations, 15555
Safety zone, 15206
Outer Apra Harbor, Guam, Marianas Islands; security zone, 878
Port access routes—
Tampa Bay, FL, 1347
Port of New York; safety zone, 4616
Safety and security zones, etc.; list of temporary rules, 4016, 13118
Tampa Bay, FL; regulated navigation areas and limited access areas, 12679
Virginia Beach, VA; security zone, 21815
West Arm of Grand Traverse Bay, MI; safety zone, 23622
Regattas and marine parades:
Barnegat Bay Classic, 12415, 22484
Base to Base Swim, 21815
Blessing of Fleet, Pascagoula River, 18976
Blue Angels Demonstration, 17933
Budweiser Thunderboat Championship Race, 19906
Chesapeake Bay Bridges Swim Race, 21997, 21998
Choptank River Swim Race; American Diabetes Association, 16255
Connecticut River Raft Race, 22651
Empire State Regatta, 17697, 22484
Fourth of July Celebration, 22484, 22651
Freeport Grand Prix, 18977
Harbor Expo Powerboat Races, 21998
Harborfest 1988; Elizabeth River between Norfolk and Portsmouth, VA, 11502
Harvard-Yale Regatta, 16874
International Bay City River Roar-Saginaw River, 18975
International Freedom Festival Fireworks Display, 22485
Intra-Harbor Power Boat Regatta, 21998
National Sweepstakes Regatta, 18555, 22486
Neches Boat Club Raft Race, 17696
Night in Venice Boat Parade, 18975
Portsmouth Power Boat Regatta, 22651
Sacramento Water Festival, 23233
Reporting and recordkeeping requirements, 22650
Tank vessels, etc.:
Hand held flashlights, 17702
Correction, 18949
Vessel documentation and measurement:
Controlling interest in partnership; definition, 17467
Measurement functions; authority delegation, 20619
Vessels; anchor requirements, 20623
Vessels, commercial and recreational; operation while intoxicated; correction, 13117
Waterfront facilities:
Liquefied natural gas, 3370
PROPOSED RULES
Anchorage regulations:
California, 7949, 8773, 20652
New Jersey, 4422, 11395
New York, 8774
Virginia, 11515, 20339
Boating safety:
State marine casualty reporting; accident report thresholds, 13417, 21856
Drawbridge operations:
Alabama, 12707
California, 22506
Florida, 4423, 5193, 9670, 12708, 16292, 17961
Kentucky, 11516
Louisiana, 15235
Maryland, 8850
New Jersey, 12535
New York, 2769
North Carolina, 12434, 24102, 24323
Virginia, 8850, 11517
Washington, DC, 8850
Dry cargo ship subdivision and damage stability, 11440
Load lines:
Hopper dredge working freeboard, 5200
Marine engineering:
Vessel piping systems, 17868
Merchant marine officers and seamen:
Pilot licensing, 20654
Offshore supply vessels in foreign ports; alternative reinspection provisions, 17477
Outer Continental Shelf activities:
Manual OCS facilities; emergency evacuation plan, 2236
Passenger vessels, etc.:
Anchor requirements, 4435
Pollution:
Liquid hazardous materials, 22118
MARPOL 73/38 Annex V; prevention requirements, 23884
Ports and waterways safety:
Hampton Roads, VA—
Inland waterways navigation regulations, 20339
Regulated navigation and limited access areas, 20339
Old River and Cuyahoga River, OH; safety zone, 3609, 10399
Rhode Island Sound, RI; safety zone, 16883
San Pedro Bay, CA; security zone, 5194
San Pedro Bay et al., CA; regulated navigation areas and limited access areas, 7949
Santa Catalina Island, CA; regulated navigation area, 20653
Regattas and marine parades:
Azalea Festival Airshow, 4421
Barnegat Bay Classic, 14888
Chesapeake Bay Bridges Swim Race, 12706
Clarkston, WA, Limited Hydroplane Races, 18578
Delaware River, Philadelphia, PA; marine events, 22680
Permit application submission requirements; 90 day time limit, 3221
Sacramento Water Festival, 12434
Correction, 14888
Subdivision and stability:
Hopper dredge working freeboard, 5200
Vessel inspection:
United States classification societies; authority delegation, 10406
NOTICES
Aquatic resources trust fund, boat safety account; financial assistance availability, 2140
Bridges, proposed construction:
Fort Madison, IA, 5676
New Rochelle, NY, 11584
Salem and Beverly, MA, 23713
Certificates of adequacy; list of ports or terminals, 18005
Environmental statements; availability, etc.:
New Jersey Turnpike, 944
Great Lakes pilotage review; draft study report availability, 16610
Meetings:
Chemical Transportation Advisory Committee, 1432, 3658, 5240, 9166, 13212, 20060, 22605, 23843
Coast Guard Academy Advisory Committee, 7279
Houston/Galveston Navigation Safety Advisory Committee, 11585, 13212
Lower Mississippi River Waterway Safety Advisory Committee, 8292, 22606
National Boating Safety Advisory Council, 12492, 12493
New York Harbor Traffic Management Advisory Committee, 11586
Rules of Road Advisory Council, 1698
Towing Safety Advisory Committee, 1698, 9166, 16927, 24164, 24165
Vessels; towing assistance policy, 2559
Navigational rules:
Alternative compliance certificates, 6910
Organization and functions:
Coast Guard Marine Safety and Marine Inspection Offices; recreational boating standards duties, 10457
Radio safety services discontinuance; San Juan, PR, 7279
Vessels under optional simplified measurement method; application procedures, 12637

Commerce Department

See also Census Bureau; Economic Analysis Bureau; Economic Development Administration; Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration; Patent and Trademark Office; Travel and Tourism Administration
RULES
Debarment and suspension (nonprocurement), 19161
Equal Access to Justice Act; implementation, 6797
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 6972
Correction, 16057, 16211
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
NOAA Corps Officers involuntary child and spousal support allotments, 15548
Nondiscrimination on basis of handicap in department programs or activities, 19270
PROPOSED RULES
Privacy Act; implementation, 10256
Regulatory agenda, 13662
NOTICES
Advisory committee; report on closed meetings; availability, 15435
Agency information collection activities under OMB review, 545, 782, 1392, 1655, 2519, 2862, 3227, 3767, 4050, 4440, 4441, 5436, 6019, 6169, 8681, 11538, 12051, 13301,

14830, 15072, 15252, 15581, 15723, 16177, 16302, 16572, 16890, 16891, 17236, 17739, 17966, 19318, 20881, 21503, 24113, 24333, 24334, 24469
Committees; establishment, renewal, termination, etc.:
Commercial Space Advisory Committee, 22553
Export Now Advisory Committee, 5614
Foreign research facilities; U.S. scientists access, 13138
Japanese technical resources directory (1988), 6020
Meetings:
Export Now Advisory Committee, 16177
Federal Coal Export Commission, 16891
National Technology Medal Nomination Evaluation Committee, 18116
Private Sector Initiatives Presidential Board of Advisors, 940, 3059, 9675
Organization, functions, and authority delegations:
Assistant Secretary for Administration Office et al., 3410
Export Administration Bureau, 20881
Privacy Act; systems of records, 9344
Productivity, technology, and innovation:
International System of Units metric radiation units, Federal agency use; report availability, 4696
Voting age population, 1987; estimates, 1931

Commercial Space Transportation Office

RULES
Licensing commercial launch activities; policies and procedures, 11004

NOTICES
Environmental statements; availability, etc.:
Commercial expendable launch vehicle programs; Vandenburg Air Force Base, CA, 3479

Commission of Fine Arts

NOTICES
Grants; availability, etc.:
National Capital arts and cultural affairs program, 7783
Meetings, 268, 3420, 7555, 10918, 15723, 20156
Meetings; Sunshine Act, 24549

Commission on Merchant Marine and Defense

NOTICES
Meetings, 1396, 7961, 15865, 18594, 23437

Commission on the Bicentennial of the United States Constitution

RULES
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034

Committee for Purchase From the Blind and Other Severely Handicapped

PROPOSED RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 1379, 8225

NOTICES
Procurement list, 1988:
Additions and deletions, 436, 1055, 2622, 4199, 4200, 5031, 5815, 7003, 7962, 7963, 8945, 9797, 9798, 10554, 10555, 11542, 11694, 12497, 13309, 13310, 16313, 16314, 17238, 18116, 18117, 20358, 21884, 21885, 22040, 22688, 23145, 23782

Committee for the Implementation of Textile Agreements

NOTICES
Bilateral agreement negotiations (1988), 1506
Cotton, wool, and man-made textiles:
Bangladesh, 752, 2523, 3420, 12052
Brazil, 6181, 9133
Bulgaria, 13435
China, 55, 3909, 6683, 8796, 9960, 20356
Colombia, 10267, 10268
Costa Rica, 160, 161, 2775, 6684
Czechoslovakia, 19985
Dominican Republic, 2619, 8242, 8797, 12715, 20357, 22762, 23143
Egypt, 17968, 21964
Hungary, 50, 13435, 17096
India, 58, 2620, 15105, 20358, 23302, 23303
Indonesia, 5814, 5815, 7384, 11327, 16574, 20157, 24476, 24477
Jamaica, 2864, 17095, 20883, 22201, 22202
Japan, 19018
Korea, 161, 16758, 16759
Malaysia, 1506
Mauritius, 7384, 10416
Mexico, 7961, 10330
Northern Mariana Islands, 11692
Pakistan, 51, 18331
Panama, 10554
Peru, 5746, 15724
Philippines, 163, 23144
Poland, 59, 3420
Romania, 7783, 11541, 11542
Singapore, 9470, 21884
Sri Lanka, 52, 53, 4698, 5616, 7225, 8683, 8797, 9726, 10416, 10918, 11693, 11895, 12052, 12053, 13434, 17967, 24476
Taiwan, 62, 20157
Thailand, 60, 7784, 8243, 19321, 23145
Turkey, 165–167, 3420, 7384, 7785, 17744, 17745, 19018
Uruguay, 2524, 11693, 24121, 24478
USSR, 61
Yugoslavia, 15105
Export licensing system:
China, 9961
Export visa requirements; certification, waivers, etc.:
Costa Rica, 7385
Dominican Republic, 8798
Egypt, 16574
Hungary, 17096
India, 3909
Indonesia, 8798
Malaysia, 7785
Pakistan, 3420, 9349
Peru, 17744
Sri Lanka, 12053, 20158
Taiwan, 22202
Thailand et al., 54
Costa Rica, 2620
Uruguay, 15866
Export visa requirements; unit quantity requirements revision, 17746
Textile and apparel categories:
Correlation with U.S. Tariff Schedules, 8484
Harmonized system introduction, 1540
Special Regime under U.S.-Mexico textile agreement; requirements for participation, 15724
Visa arrangements; changes to coincide with onset of new category system, 7385
Textile consultation; review of trade:
Brazil, 7786
Costa Rica, 23304
Hong Kong, 12803
India, 9961
Jamaica, 8798
Thailand, 4699, 22205

Commodity Credit Corporation

RULES
Federal claims collection; tax refund offset, 3330
Loan and purchase programs:
Cooperative Marketing Associations; eligibility requirements, 19882
Correction, 21964
Farms, allotments, quotas, bases, and acreages; reconstitution, 6119
Grain, etc.; warehouse approval standards, 8745, 10060
Grains and similarly handled commodities, 6131, 11239
Grains; uniformity of price support and production adjustment programs, 20280
Milk price support program, 107
Payment limitation of a married couple with respect to farm operations, 21409

PROPOSED RULES
Loan and purchase programs:
Cooperative Marketing Associations; eligibility requirements, 7370
Grain, etc.; warehouse approval standards, 2037, 2759
Peanuts; warehouse storage loans and handler operations, 19923
Correction, 21964
Payment limitation and determination of eligibility of foreign individuals or entities to receive program benefits, 11474, 16131
Special programs:
Appeal regulations, 17054

NOTICES
Contract fees, annual:
Grain and rice storage agreement, uniform, 11323
Loan and purchase programs:
Common programs provisions for wheat, feed grains, cotton, and rice (1989 crops), 12890
Price support levels—
Honey, 8478, 19974
Milk, 543
Peanuts, 5024, 23136
Pulled wool and mohair, 6018
Tobacco, 1652, 16175, 16888, 18113
Wheat, feed grains, cotton, and rice, 17482
Wheat program (1989 crops), 12890
Meetings; Sunshine Act, 18651, 21761
Targeted export assistance program, 19317

Commodity Futures Trading Commission

RULES
Exchange rule enforcement, financial reviews, contract market designation applications, and leverage commodity registration; fee schedule, 7179

Foreign futures and options transactions, 3338, 11491
Futures commission merchants:
Application and closing out of offsetting long and short positions; exceptions, 609
Futures commission merchants and introducing brokers; financial reporting requirements, 4606
Correction, 7178
Leverage transaction merchants; audit fees, 22138
Registration:
Futures commission merchants, introducing brokers, etc.; requirements, 8428
Reparation proceedings:
Double bond filing in Court Appeals; order date, 17691
Self-regulatory organization governing members; nonpublic information disclosure; correction, 615

PROPOSED RULES
Conflict of interests, 13288
Exchange clearing organizations; futures and options transactions reporting requirements, 21490
Federal speculative position limits; exemption, 23411
Hybrid and related instruments, 2510
Leverage transaction merchants; audit fees, 8932
Privacy Act; implementation, 22660
Regulatory agenda, 14580
Speculative position limits; positions with common owners but independently controlled; exemption, 13290

NOTICES
Agency information collection activities under OMB review, 1506, 21885
Committees; establishment, renewal, termination, etc.:
CFTC-State Cooperation Advisory Committee, 11328
Contract market proposals:
Amex Commodities Corp.—
Gold bullion warrants, 2525
Ten-year Treasury notes, 15272
Amex Commodity Corp.—
Ten-year Treasury notes, 8945
Chicago Board of Trade—
30-day interest rate, 8684
CBOE 250 and 50 stock indexes, 3767
Japanese Stock Index, 17969
Medium-term Treasury notes, 8946
Soybean oil, 22206
Chicago Mercantile Exchange—
Morgan Stanley Capital International EAFE (Europe, Australia, and Far East) Stock Index, 64, 9798, 19322
Morgan Stanley Capital International United Kingdom Stock Index, 17969
Nikkei Stock Average, 3063
Citrus Associates of New York Cotton Exchange—
Frozen concentrated orange juice, 19019
Coffee, Sugar & Cocoa Exchange, Inc.—
International Market Index, 3420, 13310
Commodity Exchange, Inc.—
Aluminum, 11111
Copper, 19019
Kansas City Board of Trade—
Value Line Average and Mini Value Line Average Stock Index, 3064
Minneapolis Grain Exchange—
Oats, 15866
Meetings:
Financial Products Advisory Committee, 13436
Meetings; Sunshine Act, 2809, 3290, 5682, 6731, 10033, 11160, 15333, 15771, 16341, 20063, 20213
Privacy Act; systems of records, 22688

Community Services Office

RULES
Emergency community services homeless grant program, 23568

NOTICES
Grants; availability, etc.:
Demonstration partnership program, 11186
Discretionary program, 4556

Comptroller of the Currency

RULES
Adjustable-rate mortgage; real estate lending by national banks, etc., 7885
National banks:
Annual financial disclosures to shareholders, 3863
Corporate activities—
Charter and merger procedures, 18545
Crimes and suspected crimes, reports; filing requirements, 7881
Lending limits—
Agricultural and oil and gas loans, 2997
Loan commitment treatment, 23752
Organization, functions, and authority delegations:
Deputy Chief Counsel (Operations) et al., 20611
Northeastern district office; location change, 6573

PROPOSED RULES
Banking organizations, capital adequacy; risk-based capital guidelines, 8550
Regulatory agenda, 14192

NOTICES
Senior Executive Service:
Performance Review Board; membership, 3805

Conservation and Renewable Energy Office

RULES
Consumer products:
Central air conditioners, including heat pumps; test procedures, 8304
Correction, 10869

PROPOSED RULES
Consumer products:
Dishwashers, and clothes washers and dryers; energy conservation standards, 17712
Energy conservation standards, 7110
Energy efficiency standards; refrigerators, refrigerator-freezers, and freezers, etc., 30

NOTICES
Alternative-fuel vehicles for Federal government fleet; capability/delivery, 16451
Consumer product test procedures; waiver petitions:
Aero Environmental Ltd., 9687
Carrier Corp., 68, 10926
Grants; availability, etc.:
District heating and cooling technology development, 22693
Industrial energy conservation program:
Steel industry; development of advanced process technologies, 21906
Meetings:
National Energy Extension Service Advisory Board, 69, 4711, 8800

Consumer Product Safety Commission

RULES
Freedom of Information Act; implementation; Records disclosed to Congress, 3867
Hazardous substances:
Petroleum distillates; first aid direction; labeling requirements; revocation, 3014
Toys and other articles for children under 3 years; method for identifying hazards; interpretation, 19281
Correction, 21964
Information disclosure and employee testimony in private litigation; policies and procedures, 6593
Organization, functions, and authority delegations:
General regulations, 17453

PROPOSED RULES
Cigarette lighters, child-resistant, 6833
Hazardous substances:
Toys; small parts presenting choking, aspiration, or ingestion hazards, 20865
Regulatory agenda, 14584

NOTICES
Agency information collection activities under OMB review, 4058, 10417, 18874
Complaints issued:
P&M Enterprises, 7385, 13436, 16447
Meetings:
All-terrain vehicles; voluntary safety standard development, 15440, 19810, 23304
Commission priorities for 1990 FY, 11112
Meetings; Sunshine Act, 302, 652, 1538, 1888, 2809, 2810, 3661, 4257, 5682, 6731, 7292, 7828, 8843, 9403, 9847, 11000, 12745, 13461, 16339, 17306, 18371, 20412, 22264
Settlement agreements:
BernzOmatic, 3064
Bright Future Futon Co., Inc., et al. 10918
Futon Designs, Inc., et al., 24479
Miracle Recreation Equipment Co., 4057
Patton Electric Co., Inc., 5616

Cooperative State Research Service

RULES
Freedom of Information Act; implementation, 17914
Small business innovation research grants program, 21966

PROPOSED RULES
Small business innovation research grants program, 13048

NOTICES
Grants; availability, etc.:
Competitive research grants program, 4580, 5962
Food and agricultural sciences national needs graduate fellowships grants program, 1390
Small business innovation research program, 22459
Meetings:
Agricultural Research and Extension Users National Advisory Board, 1931, 15434
Committee of Nine, 10411

Science and Education Research Grants Program Policy Advisory Committee, 1931

Copyright Office, Library of Congress

RULES
Cable systems:
Compulsory license—
Gross receipts reporting, 2493, 3118
Claims registration:
Computer screen displays, 21817
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 8456
Import statements; revocation, 123
Transfers and other documents; recordation, 122

PROPOSED RULES
Cable systems:
Cable royalties, underpaid; interest assessment, 16567, 20347
Compulsory license—
Cable system; definition, 17962
Specialty station and significantly viewed signal determinations, 5591, 7073
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 153

NOTICES
Architecture works; legal and copyright protection, 21536
Compendium of practices, 20392
Motion Picture Agreement; mandatory deposit, 21948
New technology and audiovisual works, 18937
Phonorecord players, coin-operated; recordation and certification, 965

Copyright Royalty Tribunal

NOTICES
Cable royalty fees:
Distribution proceedings, 7132, 11895, 13144, 18372
Jukebox royalty fees:
Distribution proceedings, 12177
Meetings; Sunshine Act, 10583

Council on Environmental Quality

NOTICES
Endangered Species Act exemption; annual report availability, 7960
Meetings; Sunshine Act, 837, 3806, 4930, 8297

Customs Service

RULES
Air commerce:
General revision, 9285
User fee airports establishment, 10370
Country of origin marking:
Fruit juice containers, 20836
Customs brokers:
Permits; user fees, 4134
Duty-free status for products imported from U.S. insular possessions; double substantial transformation concept, 12143
Financial and accounting procedures:
Calculation of interest on overdue accounting and refunds—
Current rates, 615, 9110
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 12937
Merchandise entry:
Liens for freight charges, 4961
Organization and functions; field organization, ports of entry, etc.:
Chicago, IL, et al., 24059
Port Manatee, FL, 8746
Quotas; duplicative procedures elimination by Customs personnel, 19896
Vessels in foreign and domestic trades:
Ecuador; tonnage tax and light money payment exemption list, 9315
Pleasure vessels licensing list—
Turkey, 6143
Small vessels; reporting requirements; correction, 1103

PROPOSED RULES
Air commerce:
Private aircraft arriving from areas south of U.S.—
Miami, FL; international aircraft reporting requirements, 7766
Country of origin marking:
Fruit juice containers, 20869
Express consignment operators or carriers; cargo clearance procedures, 4998
Foreign trade zones:
Exportation interpretation, 6996, 16730
Merchandise entry:
Consolidated shipments; broker designations, 30
Organization and functions; field organization, ports of entry, etc.:
Chicago, IL, et al., 2767
Quota-class merchandise; quantity entry limits, 1376
Regulatory agenda, 14198
Tariff classifications:
Color television picture tubes and chassis; imported, 17226
Motor vehicles as automobile trucks, 19933

NOTICES
Automated manifest system; new information dissemination product, 1097
Republication, 2906, 4258
Automated surety interface; new information dissemination product; availability, 6216
Commercial laboratory accreditations:
ComSource, Inc., 21962
Core Laboratories, 18191
Counterfeit textile visas from China; detection, 463
Customhouse broker license cancellation, suspension, etc.:
Lynch, Michael L., 24827
Petroleum products; approved public gauger:
Amspec, Inc., 9169
Compu-Survey, 16209
Dahl & Co., Inc., 18191
Gulf Coast Independent Marine Surveyors, Inc., 20409
Unimar, Inc., 20409
Senior Executive Service:
Performance Review Boards; membership, 22420
Tariff rate quotas:
Tuna fish, 8540, 9025
Trade name recordation applications:
Better Working Environments, Inc., 193, 839

Defense, Commission on Merchant Marine and

See Commission on Merchant Marine and Defense

Defense Department

See also Air Force Department; Army Department; Defense Intelligence Agency; Defense Logistics Agency; Engineers Corps; Navy Department; Uniformed Services University of the Health Sciences

RULES
Acquisition regulations:
Construction and services contracts; personnel employment restrictions in Alaska and Hawaii, 6155
Contract or subcontract awards in excess of $25,000 to Defense contractors subject to on-site inspection under Intermediate-Range Nuclear Forces Treaty; denial of prohibition, 20631
Contracting with small disadvantaged business concerns, historically black colleges and universities, and minority institutions, 5114, 20626
Correction, 22426, 22609
Contracting with Toshiba Corp. or Kongsberg Vapenfabrikk; restriction, 9118
Correction, 10250
Estimating systems, 8906
Correction, 11073
Information release to cooperative agreement holders, 10249
Patents, data, and copyrights, 10780
Correction, 20632, 22609
Production special tooling and special test equipment, 11073
Prompt payment, 3751
Sources other than central supply system, 1924
Civilian health and medical program of uniformed services (CHAMPUS):
Active duty dependents dental plan, 2018
Adult adoptees; eligibility for medical benefits, 17190
Birthing centers, etc.; definitions, 13258
Mental health counselors, 5370
Contractors receiving contract awards ($10 million or more), 9317
Debarment and suspension (nonprocurement), 19161
Federal Acquisition Regulation (FAR):
Amendments, 17854
Construction contracts; labor standards, 4934
Cost comparison public review period revision, etc. (OMB A-76), 660
Correction, 6219
Extraordinary compensation clarification and certain organization costs incurred with mergers and other business combinations, 10828
Federal public works projects restrictions and American aerospace exports promotion at domestic and international exhibits, 12128
Correction, 13274, 14888
Truth in negotiations provisions, 10828
Unauthorized commitments and prompt payment; ratification, 3688
Correction, 4817
Freedom of Information Act; implementation:
Defense Mapping Agency, 7358
Correction, 8629
Defense Nuclear Agency, 9435
Uniform fee schedule and administrative guidelines, 19905
Correction, 22649
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034

Organization, functions, and authority delegations:
Administration and Management, Director, 22649
Armed Forces Institute of Pathology, 24442
Armed Forces Radiobiology Research Institute, 16254
Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict), 1345
Comptroller, 24441
Strategic Defense Initiative Organization (SDIO); establishment, 10876
Personnel:
Active duty certificate of release or discharge (DD Form 214/5 series), 1341
Employment and volunteer work of spouses, 15205
Jury duty, State and local; Armed Forces active-duty members exemption, 23759
Reserve Components Common Personnel Data System; data standardization, 20843
Voluntary education program in overseas areas, 22648
Voluntary private health insurance conversion program, 1343
State and local government audits, 24066
Veterans:
Educational entitlement transfer to dependents, 1779
Post-Vietnam era veterans educational assistance program, 616

PROPOSED RULES
Acquisition regulations:
Acquisition streamlining, 2514
Antifriction bearings; restriction of procurement to domestic sources, 10129
Contracting by negotiation—
Adequate price competition, 10408
Commercial pricing certificates for spare or repair parts, 19966
Price history data, 21862
Contracting with Toshiba Corp. or Kongsberg Vapenfabrikk; restriction, 4044
Contractor telecommunications; security, 19006
Domestic wools, foreign acquisitions, 626
Foreign acquisitions; balance of payments program; evaluation factors, 18307
Government property; no cost storage agreements, 10409
Government-furnished mapping, charting, and geodesy property, 17233
Long-term contracts; milestone billing arrangements, 931
Nonprofit organizations, 625, 18306
Production special tooling and special test equipment, 6015
Correction, 9726
Safety provisions, 3764
Small purchase and other simplified purchase procedures, 17232
Spares acquisition integrated with production, 6016
Subcontract pricing considerations, 19009
U.S. products and technology sales; nonrecurring costs recoupment, 18307
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system, 20576
Mental health services; per diem based payment method, 20585
Military-civilian health services partnership program, 1926
Prevailing charges; update, 20592
Residential treatment centers; participation requirements, 1378
Contracting:
Commercial activities program (OMB A-76 implementation), 3218
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100
Contract debts; demands for payment, 2577
Contract options; continued performance of services, 3814
Contractor records retention, 23105
Foreign military sales contracts; double recoupment of taxes, 12501
Health care services, nonpersonal services contracts, 2464
Independent price determination certificates use in overseas procurements, 100
Correction, 4437
Mistake in bid procedures, 8734
Negotiation after sealed bidding, 3814
Progress payments, first article, 8734
Regulatory agenda, 14564
Service Contract Act; labor standards for contracts, 5928
Small business subcontracting plans for contracts with options, 5928
Threshold; cost comparison, 11795
Personnel:
Certificates of release or discharge from active duty (DD Form 214/5 series), 12034
Regulatory agenda, 13712
Veterans:
Educational assistance test program rates, etc., 16884
Post-Vietnam era veterans educational assistance program, 4186, 5433, 5684

NOTICES
Acquisition regulations:
Data acquired from contractors under defense contracts, 22690
Agency information collection activities under OMB review, 268, 2265, 2266, 2528, 2622, 3066, 3768, 5031, 6029, 6181, 8485, 8486, 8947, 9350, 9677, 10269, 10920, 11544, 11896, 13311, 16315, 17238, 20360, 20361, 24121, 24350
Civil global positioning service; development, 8485
Civilian health and medical program of uniformed services (CHAMPUS):
Contracted provider arrangement Norfolk demonstration project, 24351
Financing and delivering health care services reform demonstration project, 23783
Fiscal intermediary preferred provider organization demonstration project, 19323
Home health care demonstration, 20359
Medicare Grouper program; DRG-based payment system rates, 6182
Committees; establishment, renewal, termination, etc.:
Advisory committees renewal, 6859
Air Force Reserve Officer Training Corps Advisory Committee, 5209
Commission on Base Realignment and Closure, 16314
Defense Information School Board of Visitors, 19811
Defense Manufacturing Board, 1814
Educational Benefits Board of Actuaries, 1396
Integrated Long-Term Strategy Advisory Committee, 632
Navy Health Care Advisory Committee, 23438
Sizing DOD Medical Treatment Facilities Blue Ribbon Panel, 5293
Special Operations Policy Advisory Group, 1396
DOD directives system annual index; availability, etc., 14832
Environmental statements; availability, etc.:
Camp Ripley Army National Guard Training Site, MN; mission expansion/multiple construction, 8947
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437, 10269, 18875, 19322, 22207
Grants; availability, etc.:
Military family housing pilot program, 11897
Meetings:
Ada Board, 437, 8947, 22041
Base Realignment and Closure Commission, 18875, 23438
Defense Acquisition Regulatory Council, 11113
Defense Policy Board Advisory Committee, 8486
Defense Systems Management College Board of Visitors, 23785
Dependents' Education Advisory Council, 10270
DIA Defense Intelligence College Board of Visitors, 15867
DIA Scientific Advisory Committee, 64, 5032, 5442, 5443, 11545, 15867, 16314, 22041, 22042, 23784
Education Benefits Board of Actuaries, 23438
Education of Handicapped Dependents National Advisory Panel, 5210
Electron Devices Advisory Group, 1814, 2623, 6860, 9963, 10270, 14833, 22372, 22373, 24121
Integrated Long-Term Strategy Advisory Committee, 12715
Military Personnel Testing Advisory Committee, 1055, 10920, 21509
National Defense University Board of Visitors, 22373
Retirement Board of Actuaries, 23438
Science Board, 5293, 6189, 9963, 10921, 13312, 16315
Science Board task forces, 1658, 1659, 1815, 2266, 3067, 4441, 5293, 5294, 6189, 7225, 7387, 9963, 9964, 11545, 12447, 13312, 14833, 16314, 16315, 18595, 19985, 20884
Scientific Advisory Group, 4058
Special Operations Policy Advisory Group, 753, 4441, 8486, 19811
Strategic Defense Initiative Advisory Committee, 2528, 9350, 22690
Wage Committee, 632, 1935, 5618, 9963, 13312, 18332, 22556
Women in Services Advisory Committee, 1815, 9134, 10921
News releases; availability, 10271
Privacy Act; systems of records, 15868
Procurement:
Contracts; data acquisiton reduction from contractors, 17239
Senior Executive Service:
Inspector General Performance Review Board; membership, 15868
Travel per diem rates, civilian personnel; changes, 10555

Defense Intelligence Agency

NOTICES

Senior Executive Service:
- Performance Review Committee; membership, 23438

Defense Logistics Agency

NOTICES

Cooperative agreements; revised procedures, 7787
Privacy Act:
- Computer matching programs, 8948, 9964, 11545, 11898, 16577
- Systems of records, 4442, 9965, 21511

Procurement:
- Commercial activities, performance; program studies (OMB A-76 implementation), 4060, 12054, 19022

Delaware River Basin Commission

RULES

Basin regulations:
- Comprehensive plan and water code; amendments, 1751

PROPOSED RULES

Comprehensive plan and basin regulations:
- Water supply charges, 22501

NOTICES

Hearings, 269, 4873, 8487, 12972, 17746, 22376

Drug Enforcement Administration

RULES

Manufacturers, distributors, and dispensers of controlled substances; registration requirements, etc.:
- Nomenclature changes, etc., 4963
- Researchers; registration applications, 21813

Schedules of controlled substances:
- Beta-hydroxy-3-methylfentanyl, 500, 3744
- Cathine ((+)-norpseudoephedrine), etc., 17459
- Exempt chemical preparations, 10834
- Exempt prescription products table, 10861
- 3,4-Methylenedioxymethamphetamine (MDMA), 2225, 5156
- Propylhexedrine and pyrovalerone, 10869

PROPOSED RULES

Manufacturers, distributors, and dispensers of controlled substances; registration requirements, etc.:
- Researchers; registration applications, 3757

Schedules of controlled substances:
- Carfentanil, 743
- Exempt chemical preparations, 3292
- Exempt prescription products table, 3314
- N,N-Dimethylamphetamine, 21492

NOTICES

Schedules of controlled substances; production quotas:
- Schedules I and II— 1988 proposed aggregate, 6883

Applications, hearings, determinations, etc.:
- Acker, Gordon M., D.M.D., 19059
- Acosta Pharmacy, 3467
- Agustin, Norberto T., M.D., 11352
- A.J. Meyer Pharmacy, 13338
- Applied Science Laboratories, 11918, 21533
- Arenol Chemical Corp., 2301, 11919, 24811
- Bainbridge Pharmacy, 6206
- Bandukwala, Zarina Z., M.D., 18625
- Baum, Eric A., M.D., 6206
- Beale, James, M.D., 15149
- Ben-Eliezer, Carmel, M.D., 1080
- Bennett, John G., M.D., 6206
- Bloomfield Professional Center Pharmacy, 4910
- Boro Pharmacy et al., 15151
- Brender, Elliott, M.D., 9823
- Cambridge Isotope Laboratories, 17988
- Carlson, Raymond A., M.D., 7425
- Chematox Laboratory, Inc., 15607
- Clausing, Vernon D., D.O., 3468
- Clements, Harry Michael, M.D., 13337
- Conley, Richard A., M.D., 9715
- Daniel, George C., M.D., 12087, 20381
- Davis, Irving, MD, 1948
- DuPont Pharmaceuticals, 2301
- First State Chemical Co., Inc., 10160, 10303, 21534
- Ganes Chemicals, Inc., 4233, 17988
- Garfield Prescription Center, 7058
- Great Lakes Wholesale Drugs, Inc., 23462
- Green's Prescription Center, 15153
- Hajje, Roberto, M.D., 6883
- Hanley, Gerald T., M.D., 5658
- Hoffmann-La Roche Inc., 11353
- Holme Drug Store, 11353, 13202
- Hutsko, Joseph P., D.O., 16476
- Hyland Pharmacy, 18625
- Janssen Inc., 1080, 22059
- Jefferson Pharmacy, Inc., 13200
- Johnson Matthey, Inc., 2893
- Kern, Donald F., D.D.S., 21930
- Knoll Pharmaceuticals, 11353, 23704
- Lacue, John J., D.M.D., 6884
- Lenczyk, Theodore N., D.D.S., 4911
- Lopez, Leonardo V., M.D., 11353
- Lyman, Raymond, D.M.D., 21931
- Mallinckrodt, Inc., 5478, 5479, 10573, 23704, 23705
- Marion Laboratories, Inc., 4234, 21534
- Martin, Jeffrey, M.D., 23464
- McCarthy, Thomas H., D.O., 18625
- McIver, Edward L., M.D., 16477
- McNeilab, Inc., 11353, 21534
- M.D. Pharmaceutical, Inc., 1080
- Medical Center Pharmacy, 13202
- Miller, Leo R., M.D., 21931
- Modern Drug Co., 7988
- Murray Pharmacy, 20382
- Nagalla, Ratnam B., M.D., 11354
- Noell, John S., M.D., 18914
- Norac Co., Inc., 2301
- Pablo, Gil E., M.D., 22742
- Pate, James E., D.D.S., 11354
- Penick Corp., 764, 10160, 12831, 22060, 23705
- Peters, Paul E., II, D.D.S., 7057
- Philadelphia Seed Co., 2301
- Pittman, Jerome, M.D., 9823
- Presser, Harvey, M.D., 2098
- Radian Corp., 17988
- Ralph J. Bertolino Pharmacy, 9823
- Rivers, James B., D.M.D., 20382
- Roberts Cape Coral Pharmacy, 11354
- Robinson, Richard T., M.D., 15153
- Rotermund, Kurt H., D.O., 2795
- Schooler, Joe F., M.D., 15300
- Shatz, Richard N., M.D., 18915
- Sigma Chemical Co., 15473
- Smithkline and French Laboratories, 17988
- Smithkline Chemicals, 17989
- Stepan Chemical Co., 5478, 5479, 22060
- Sterling Drug, Inc., 5479
- Suchar, Carl, D.O., 20384
- Sundry, Vincent A., D.O., 17257
- Syncates Associates, Inc., 12087, 21534
- Syncon Pharmaceuticals, Inc., 6206, 15155
- Trawick, David E., D.D.S., 5326
- Upjohn Co., 22060
- Vila-Balzac, Gilberto, M.D., 22743
- Wallace, Scott Pyper, M.D., 18625
- Watts, Bobby, M.D., 11919
- Welch, John R., M.D., 10955
- Western Fher Laboratories, Inc., 17989
- White's Best Buy Drugs, 7251
- Williams, Neveille H. "Trey", D.D.S., 23465
- Willis, Robert E., M.D., 18359
- Woodbridge Pharmacy, Inc., 18360

Drug Free America, White House Conference

See White House Conference for a Drug Free America

Economic Analysis Bureau

RULES

Direct investment surveys:
- Foreign direct investments in United States—
  - BE-12 reporting requirements, 1015
  - Raising exemption levels for BE-605 and 606B surveys, 15197

PROPOSED RULES

Direct investment surveys:
- Foreign direct investments in United States—
  - Raising exemption levels for BE-605 and 606B surveys, 4420

International trade surveys:
- U.S. trade in services with foreign persons—
  - Selected service transactions, 23124

Economic Analysis Staff

RULES

Freedom of Information Act; implementation, 15547

Economic Development Administration

RULES

Financial assistance general requirements:
- Flood hazards and environmental requirements, 13252

Special economic development adjustment assistance grants:
- Revolving loan funds, 12510

NOTICES

Grants; availability, etc.:
- Economic development assistance programs, 1444
- State and urban planning assistance program, 22454

Economic Regulatory Administration

NOTICES

Consent orders:
- Anchor Gasoline Corp. et al., 22694
- Dorchester Master Limited Partnership et al., 12715, 23439
- Enron Corp., 22701
- Meadows Realty Co. et al., 15441, 22705
- Phillips Petroleum Co., 635, 10928, 15773
- Salomon Inc., 3237, 9680
- Stanco Petroleum Inc., 11548, 20676
- Texaco Inc., 15106, 16896, 16931
- Vessels Gas Processing Co. et al., 4446

Energy Supply and Environmental Coordination Act; prohibition orders, rescissions, etc.:
- Iowa Electric Light & Power Co., 11699
- Wisconsin Public Service Corp., 12057

Environmental statements; availability, etc.:
- Washington Water Power Co.; electric transmission facilities at U.S.-Canada international border, 12055

Natural gas exportation and importation:
- Alenco Resources, Inc., 8800
- AMAGAS Resources, Inc., 15591
- Amalgamated Pipeline Co., 15274, 16341, 24123
- Amoco Energy Trading Corp., 7005, 15729
- Amtran Gas Transmission, Inc., 4447, 10557
- ANR Pipeline Co., 2624
- Bishop Pipeline Corp., Inc., 6191
- Bonus Gas Processors, Inc., 10141, 20362
- CanStates Petroleum Marketing, 1397
- Colony Natural Gas Corp., 1823, 10272
- Continental Natural Gas, Inc., 2071
- CU Energy Marketing Inc., 19986
- Czar Gas Corp. Inc., 21891
- DEKALB Petroleum Corp., 13438, 24123
- Development Associates, Inc., 1507, 10141
- Distrigas Corp., 3912, 7965, 15869, 23306
- Dynasty Gas Marketing, Inc., 1508, 10142
- EnTrade Corp., 7560
- G.A.S. Orange Development, Inc., 6863
- Great Lakes Gas Transmission Co., 12976, 24775
- Great Lakes Gas Transmission Co. et al., 639, 784, 16451
- IGI Resources Inc., 12722
- JDS Energy Corp., 3911
- LOUTEX Energy Inc., 5444
- MidCon Sales, Inc., 8801, 19326, 22706
- Mobil Gas Co. Inc., 945, 15729
- National Energy Systems, Inc., 12454
- National Steel Corp., 4061
- Natural Gas Marketing Services Cooperative Association Inc., 12806
- North Canadian Resources, Inc., 2269, 10929
- Northeast Gas, Inc., 13150
- Northern Minnesota Utilities, 6685
- Northridge Petroleum Marketing U.S., Inc., 69
- Northwest Pipeline Corp., 2270
- Ocean State Power, 23148
- Open Flow Gas Supply Corp., 24493
- Pacific Interstate Transmission Co., 15442
- Pentex Petroleum, Inc., 12178
- Pepperell Power Associates, 9476
- Phillips 66 Natural Gas Co. et al., 18119
- Poco Petroleum, Inc., 3240
- Portland General Electric Co., 22706
- Premier Enterprises, Inc., 20677
- Reliance Gas Marketing Co., 15442, 24494
- Salmon Resources Ltd., 2775
- Shell Gas Trading Co., 1509, 8685
- St. Lawrence Gas Co., Inc., 1508
- Standard Gas Marketing Co., 2532, 12058
- Tarpon Gas Marketing Ltd., 22707
- TXG Gas Marketing Co., 3911, 11331
- Unicorp Energy, Inc., 3240, 4448
- Union Gas Ltd., 22707
- Westcoast Resources, Inc., 438, 3914
- Western Gas Marketing U.S.A. Ltd., 20362
- Windward Energy & Marketing Co., 2272
- Woodward Marketing, Inc., 11331, 22709
- Yukon Pacific Corp., 3617

Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
- CNG Energy Co., 19024
- Cogen Energy Technology, Inc., et al., 1936
- Decker Energy International, 10929
- Delmarva Power & Light Co., 12059
- First Energy Associates et al., 3069
- Gas Alternative Systems, Inc., 22709
- Intercontinental Energy Associates, 13439
- Kamine Milford Limited Partnership et al., 6030
- Panda Energy Corp., 20886
- Thermo Michigan, Inc., 7966

Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
- Ft. Pierce Utility Authority, 2776, 20363

Remedial orders:
- Carbonit Houston, Inc., et al., 786
- DeMenno-Kerdoon (Inc.) et al., 4448
- Intercontinental Oil Co., Inc., 8247
- King Petroleum, Inc., et al., 4701
- Oasis Petroleum Corp., 6865
- Tesoro Petroleum Corp., 10557

Violations, interest rates; policy, 1672

Economic Research Service

NOTICES

Meetings:
- National Agricultural Cost of Production Standards Review Board, 5027, 24111

Economics Management Staff

RULES

Freedom of Information Act; implementation, 4108

Organization, functions, and authority delegations, 4108

Education Department

See also National Council on the Handicapped

RULES

Acquisition regulations, 19118
Adverse information, release to news media; CFR Part removed, 4619
Bilingual education and minority language affairs:
- Fellowship program, 21400

Debarment and suspension (nonprocurement), 19161
Educational research and improvement:
- Library career training program, 19138
- Library research and demonstration program, 3020
- Strengthening research library resources program, 17150

Elementary and secondary education:
- Areas affected by Federal activities, etc.— Assistance for local educational agencies impact aid programs, 5552

Family educational rights and privacy, 11942
Correction, 19368
Grant administration:
- Institutions of higher education, hospitals, and nonprofit organizations, 8106

Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Official seal, 4619
Postsecondary education:
- Drug prevention programs in higher education, 24884
- Foreign language and area studies fellowships program, 10820
- National resource centers program for foreign language and area studies or foreign language and international studies, 18228
- Student assistance general provisions— Institutional eligibility under Higher Education Act, 11208

Program Fraud Civil Remedies Act; implementation, 15673
Special education and rehabilitative services:
- Handicapped education program— Architectural barriers removal, 6944 Technology, educational media, and materials, 6952
- National Institutes on Disability and Rehabilitation Research— Field-initiated research projects, 24244 Rehabilitation researchers training projects, 23350
- Regional resource and Federal centers, 3524
- Rehabilitation services for individuals with handicaps; miscellaneous amendments, 17140
- State vocational rehabilitation services program, 16978
- Teachers of handicapped children in areas with shortage, training program; CFR Part removed, 4619

PROPOSED RULES

Bilingual education and minority language affairs:
- Refugee children transition program, 5956

Civil rights:
- Nondiscrimination on basis of handicap in federally conducted programs or activities, 10808

Educational research and improvement:
- College library technology and cooperation grants program, 9246
- Educational research grant program, 9088
- Regional educational laboratories and research and development centers program, 9408

Elementary and secondary education:
- Areas affected by Federal activities, etc.— Assistance for local educational agencies impact aid programs, 5565
- Financial assistance to meet special educational needs under Chapter 1 programs, 16292

Federal claims collection:
- Administrative offset, 5136
- Salary offset, 15336

Postsecondary education:
- Drug prevention programs in higher education, 7312
- Guam et al.; higher education institutions, special treatment, 7953
- Language resource centers program, 2918
- Paul Douglas Teacher scholarship program, 8397
- Special programs staff and leadership personnel; training program, 23724
- Student assistance general provisions— Need analysis methodologies, 6108
- Summer intensive language institutes program, 22072

Regulatory agenda, 13728
Special education and rehabilitative services:
- Captioned films loan service for deaf program, 8608
- Educational media loan service for handicapped program, 8608
- Handicapped children education program; assistance to States, 8390
- Handicapped infants and toddlers; early intervention program, 1461
- Handicapped program; vocational rehabilitation services, State supported

employment services, and technical assistance, 15776
Handicapped special studies program, 4185
National Institute on Disability and Rehabilitation Research, 3832
Field-initiated research projects, 6958
Older blind individuals; independent living services, 2702
State independent living rehabilitation services program, 24175
State vocational rehabilitation services program, 24175

NOTICES

Agency information collection activities under OMB review, 269, 1056, 2070, 3769, 4201, 5817, 9799, 11329, 11695, 13313, 16316, 17241, 19325, 20159, 20884, 21723, 22208, 22450, 24358
Carl D. Perkins Vocational Education Act reauthorization, 19813
Data acquisition activities involving educational agencies and institutions, 4202
Education Appeal Board hearings:
Applications for review, 12804
Claim compromises—
California Education Department, 16184
Western Kentucky University, 14834
Jurisdiction designations—
Glenpool Public Schools, OK, 12054
Electronic bulletin board; availability, 5134
Grantback arrangements; award of funds:
California, 15727
Florida, 11697
Hawaii, 8245
Iowa, 15590
Maryland, 11696
Grants; availability, etc.:
Adult education for homeless program, 4102, 16447
Funding priorities, 17681
Bilingual education—
Educational personnel training program, 2623
Family English literacy program, 2624
Field readers, 5294
Bilingual vocational training program, 6684
College facilities loan program, 7226
College library technology and cooperation grants program, 9250
College work-study program—
Need analysis systems, 22102
Test case resolution and certification systems list publication, 11699
Cooperative demonstration program, 8244
Cooperative education support, supplemental funds program, 22208
Deaf-blind children and youth program—
Funding priorities, 8590
State and multi-State projects, 21724
Disabled individuals, severely; special projects and demonstrations for providing vocational rehabilitation services, 1592, 6190
Disadvantaged students, education; research and development center planning paper, 8245
Discretionary program—
Mathematics, science, computer learning, and critical foreign languages program, 65, 10556
National school volunteer programs, 12448
Dislocated workers retraining program demonstration centers, 23147
Drug prevention programs in higher education, 7316
Drug-free schools and communities program, etc., 66, 1057
Education research and improvement; biennial research priorities, 23192
Educational media research, production, distribution, and training program
Funding priorities, 8590
Educational research grant program
Funding priorities, 2530
Educational research program; field-initiated studies, 9092
Emergency immigrant education program, 5818
Endowment challenge grant program, 7389, 7557
Experimental and innovative training program, 6949
Funding priorities, 6948, 17865
Guaranteed student loan program—
Need analysis systems, 22102
Test case resolution and certification systems list publication, 11699
Handicapped education program—
Technology, educational media, and materials program; funding priorities, 6955
Training personnel, 16759, 20885
Handicapped education research program
Funding priorities, 6490
Handicapped migratory agricultural and seasonal farmworker vocational rehabilitation service projects program, 5819
Handicapped special studies program, 7295
Funding priorities, 7294, 9848
Handicapped children, severely, program
Funding priorities, 8590
Handicapped children's early education program
Funding priorities, 8590
Homeless children and youth education program, 270
Income contingent loan program—
Need analysis systems, 22102
Independent living centers program, 633
Independent living services for older blind individuals program, 3770
Indian education program—
Formula grants, 11330
Jacob K. Javits fellows program, 2532
Law school clinical experience program, 1660
Law-related education program, 17885
Funding priorities, 17885
Leadership in educational administration development program, 3068
National adult education discretionary program, 10804
Funding priorities, 10804
National diffusion network program—
Developer demonstrator awards, 2531
Dissemination process awards, 2532, 10418, 20886
National Institute on Disability and Rehabilitation Research—
Career development/research training, 3835
Field-initiated research projects, 6961
Funding priorities, 2690
Rehabilitation Engineering Centers program, 4060
Rehabilitation research and training centers, 67
Research and demonstration, and knowledge dissemination and utilization programs; funding priorities, 4820
Research and demonstration project, 11330
Research fellowships program, 4061
Patricia Roberts Harris fellowships program, 10140
Pell grant program, etc.—
Need analysis systems, 19876
Perkins loan program—
Need analysis systems, 22102
Test case resolution and certification systems list publication, 11699
Postsecondary education improvement fund—
Lectures program, 6190
Projects with industry, 1592, 6190
Refugee children transition program, 5819
Rehabilitation continuing education program, 3770
Rehabilitation long-term training program, 3828, 4201, 7630
Funding priorities, 3838, 15345
Rehabilitation service projects
Funding priorities, 104, 10800
Research and development centers program, 9417, 16578, 17747, 22042
[illegible] C. Byrd honors scholarship program, [illegible]
School construction in areas affected by Federal activities program, 7226
School dropout demonstration assistance program, 8400, 16666
Special alternative instructional programs, 2624
Special programs staff and leadership personnel training program, 21887
Star schools program, 11176, 16447
State student incentive grant program, 753
State vocational rehabilitation unit in-service training program, 6861
Strengthening institutions program, 3067, 7389
Student support services program, 9472, 10188
Supplemental educational opportunity grant program—
Need analysis systems, 22102
Test case resolution and certification systems list publication, 11699
Technology, educational media, and materials program, 4701
Veterans education outreach program, 6190
Vocational education for Indian and Hawaiian Natives program, 6685
Vocational rehabilitation service projects for American Indians with handicaps program, 10418
Women's Educational Equity Act program, 1506
Workplace literacy partnerships program, 9234, 16447

Meetings:
Accreditation and Institutional Eligibility National Advisory Committee, 6862
Adult Education National Advisory Council, 553, 16317
Bilingual Education National Advisory and Coordinating Council, 3068, 9351, 10140
Education Intergovernmental Advisory Council, 6863, 12582

Education Statistics Advisory Council, 2266, 12178
Educational Research and Improvement National Advisory Council, 2866
Indian Education National Advisory Council, 67, 634, 3236, 4202, 5295, 9967, 17097
International Education Programs National Advisory Board, 12449, 13217
Postsecondary Education Improvement Fund National Board, 5444, 12582
Student Financial Assistance Advisory Committee, 634, 9472
Vocational Education National Council, 5619, 8685, 16896
Women's Educational Programs National Advisory Council, 3771

Postsecondary education:
Federal Student Assistance Report; development, 2573
Guaranteed student loan, SLS, PLUS, or consolidated loan programs; special allowance, 6505, 16849
National need program; field readers for graduate assistance, 14834
Special education and rehabilitative services:
Blind vending facilities; arbitration panel decision under Randolph-Sheppard Act, 5820, 24411, 24415, 24419

Employment and Training Administration

RULES

Employment Service System; special responsibilities:
Labor surplus areas; classification eligibility, exceptional circumstances criteria, 23346
Job Training Partnership Act:
Amendments of 1986; implementation and technical; correction, 4262

NOTICES

Adjustment assistance:
Adirondack Steel Casting Co., Inc., et al., 3274
A.E. Stanley Manufacturing Co. et al., 6207
Airco Carbon et al., 10161
Allegheny Drop Forge, Co., et al., 11145
Allison Abrasive Co., 18180
Allison Abrasive et al., 3796
Altair Int'l et al., 20026
American Silk Mill et al., 16597
Amstar Corp. et al., 12088
Anchor Hocking Industrial Glass Co. et al., 8818, 14863
A.O. Smith Automotive Co. et al., 12832
A.O. Smith Corp. et al., 4748
A.O. Smith Water Products Co. et al., 5328
Apache Corp. et al., 2546
Armco Inc. et al., 3088
Arvin Industries, Inc., et al., 12831
Arvin/Supreme, Inc., et al., 23317
Babcock & Wilcox Co., 3471, 14864
Baumgartner Resources Ltd. et al., 18180
Beaumont Co., 10956, 16598
Bentley Industries, Inc., et al., 21934
Bethlehem Rebar Industries, Inc., 15751
Bethlehem Rebar Industries, Inc., et al., 7431
Bill Hill & Associates et al., 23318
Bogen Communication, Inc., et al., 1866
Budget Dress Co. et al., 15751
Carpenter Technology Corp. et al., 18916
Carpentertown Coal & Coke Co. et al., 22745
Clarksburg Electro-Plating, Inc., 11146
CM Offray & Son, Inc., et al., 18916
Columbia Northwest Corp., 187
CSX Transportation et al., 9382
Dana Engine Products et al., 5842
Doehler Jarvis/Farley Metals, Inc., et al., 24379
Donaldson Coal Co. et al., 187
Donlin Sportswear, Inc., 4234
Elliot Co., 11146
Ethyl Corp. et al., 960
Fairbanks Morse Engine Accessories, 16477
Fletcher Paper Co. et al., 9824
Florsheim Shoe Co., 19347
Flying J., Inc., 2547
General Motors Corp., 1530, 5843
General Motors Corp. et al., 17514
G.H. Bass & Co., 10955
Health-Tex, Inc., 16478, 20386
Hussman/Bastian-Blessing, 17515
Johnny Castleberry, Inc., et al., 188
JPI Transportation Products, Inc., 22233
Kerr-McGee Corp., 1531
Lake Shore, Inc., 13340
Litton Microwave Cooking Products, 24380
Litton Microwave Cooking Products et al., 14865
M&G Convoy, Inc., 10956
MAST Industries, Inc., 8818
Murata Erie North America, Inc., et al., 11920
National Aluminum Corp., 7432, 9383
National Aluminum Corp. et al., 2547
New Castle Piano et al., 11147
Oakwood/Sabine Corp. et al., 16598
Phoenix Steel Corp., 2656
PPG Industries, Inc., 18180
Pressure Cast, Ltd., et al., 15752
Preway, Inc., et al., 5328
Producto Machine Co., 2101
Puna Sugar Co., Ltd., 12833
RTE Corp. et al., 8819
Sealed Power Corp., 11921
Skan-A-Matic Corp. et al., 22233
SKF Industries, Inc., 17515, 21936
Southwestern Sunbelt Cement Co., 15753
Sportswear, Inc., et al., 3797
Sunbury Dress et al., 21935
Suttle Apparatus Corp., 5948
Taylor Lock Co., 7060
Terry Corp., 2656
3M Co., 21936
True Form Foundations Corp., 3471
Universal Wire Products, Inc., 3798, 5329
W.D.H. Co. et al., 20027
Westran Corp. et al., 961, 7432
Wiser Oil Co., 14865
Young Radiator Co., 10956
Young Radiator Co. et al., 3087
Alien temporary employment labor certification process:
Agricultural H-2A program handbook, 22076
Agriculture and logging; adverse effect wage rates and meal charges, 8517
Apprenticeship 2000 initiative research program, 20386
Committees; establishment, renewal, termination, etc.:
Job Training Partnership Act Advisory Committee, 24379
Federal-State unemployment compensation program:
Employment Security Manual; experience rating report revision, 1948
Extended benefit periods—
Alaska, 3799
Unemployment insurance program letters—
Alien status verification system; waiver determination, 14865
Unemployment insurance program; quality control, 17515
Grants; availability, etc.:
Research, evaluation, pilot, and demonstration procurement plan; 1988 FY, 12884
Structurally unemployed workers; self-employment demonstration project, 6508
Job Training Partnership Act:
Indian and Native American and summer youth employment and training programs; allocations, etc., 19347
Indian and Native American employment and training programs—
Designation procedures for grantees; proposed, 22746
Lower living standard income level determination, 17258, 21762
Migrant and seasonal farmworker programs—
State planning estimates and allocation formula, 15302
Native American and summer youth employment and training programs; allocations, etc., 4749
Performance standards (1988 PY), proposed; numerical values, 97
Performance standards (1988-1989 PY), proposed; numerical values, 7252
Policy considerations in administering fixed unit price performance-based contracts, 7989
Research, evaluation, pilot, and demonstration program—
Funds availability (1987 PY), 8991
Workplace literacy (1987 PY), 8987
State allotments and summer youth programs; 1988 P & CY, 4234
Titles II-A and III programs; annual status report, 7256
Training and employment guidance letter; program guidance and planning schedule for Titles II and III grants, 15305
Labor surplus area classifications:
Annual list
Additions, 20387
Meetings:
Apprenticeship 2000 initiative, 961
Jobs Corps Advisory Committee, 3949, 17122
Unemployment compensation:
Ex-servicemembers; remuneration schedule, 8997
Wagner-Peyser Act funds:
Basic labor exchange activities; planning estimates and allotments; 1988 PY, 11715
State public employment services; planning estimates and allotments; 1988 PY, 4234

Employment Policy, National Commission

See National Commission for Employment Policy

Employment Standards Administration

See also Wage and Hour Division

21-980 (9) 0 - 88 - 2

NOTICES
Meetings:
Special Minimum Wages Advisory Committee, 3274
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 579, 1081, 1867, 2656, 3471, 4240, 5060, 5841, 7060, 7993, 8998, 10000, 10574, 11717, 12614, 13340, 15474, 16325, 17121, 18179, 19352, 20388, 21933, 22744, 23809

Energy Department

See also Economic Regulatory Administration; Bonneville Power Administration; Conservation and Renewable Energy Office; Economic Regulatory Administration; Energy Information Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration

RULES
Acquisition regulations:
Management and operating contractors—
Lobbying costs, 21646, 24830
Purchasing activities, 24224
Conflict of interests, 18074
Financial reporting requirement exemptions, 11240
Correction, 12497
Debarment and suspension (nonprocurement), 19161
Federal claims collection, 24624
Financial assistance:
Cooperative agreements; policies and procedures, 5260
Financial assistance awards; restricted eligibility policy revision, 12137
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 15660
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
State energy conservation program and energy extension service grant program; class deviation, 15801
Strategic petroleum reserve petroleum; standard sales provisions, 20508

PROPOSED RULES
Acquisition regulations:
Contractor travel costs; cost principles, 11318
Management and operating contractors—
Lobbying costs, 7318
Radioactive waste program, low-level:
Disposal capacity; unusual or unexpected volumes allocation petition procedures, 1594
Regulatory agenda, 13752

NOTICES
Atomic energy agreements; subsequent arrangements, 68, 635, 1397, 3422, 3423, 3911, 7964, 7965, 8685, 11900, 11901, 12178, 12449, 12975, 14832, 17748, 18118, 19814, 20886, 22691, 22692, 24483
Committees; establishment, renewal, termination, etc.:
National Coal Council, 7794
National Petroleum Council, 2532
Conflict of interests:
Divestiture requirements; supervisory employee waivers, 24482
Post-employment restriction waivers, 10557
Environmental statements; availability, etc.:
Hanford Site, WA, 12449
Idaho National Engineering Laboratory, ID; special isotope separation project, 5032, 7227
Naval Petroleum Reserve No. 1, CA, 10922
Naval Petroleum Reserve Nos. 1 and 3, CA and WY, 10924
Savannah River Plant, Aiken, SC, 4203, 7557
Superconducting super collider, 1821, 22693
Tonawanda and Albany, NY, 11901
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Columbia, SC, 13437
Hennepin, IL, 4875, 16317
Los Alamos National Laboratory, NM, 1820, 7389
University of South Carolina John E. Swearingen Center for Engineering Phase II project, 16578
Uranium Mill Tailing Sites, CO, et al., 5033
Grant and cooperative agreement awards:
Alaska Natural Resources Department, 169
Claflin College, 17492
Energy Education Services, Inc., 22693
National Academy of Sciences, 17973
New Mexico, 9800
Ohio State University, 12453
Savannah State College, 17493
University of Arkansas, 15728
University of California, 17242
University of South Carolina-Aiken, 24482
University of Texas at Austin, 24122
University of Utah, 15728
Grants and cooperative agreements; availability, etc.:
District cooling assessment program, 10926
Glass industry process control sensor; research and development projects, 24359
Idaho—
Comminution equipment; research and development, 13145
Foundry industry technology and development, 13314
Innovative clean coal technology program, 1936
International energy conferences, 10921
Laser fusion research, 9679
Territorial assistance program; special energy projects, 20159
International energy program; emergency international oil sharing; second plan of action implementation, 2866
Inventions available for license, 9473
Meetings:
Innovative Control Technology Advisory Panel, 2885, 12975, 12976, 20361, 23439
International Energy Agency Group of Reporting Companies, 23305
International Energy Agency Industry Advisory Board, 7392, 11113, 16760, 22209
International Energy Agency Industry Supply Advisory Group, 20676, 21888
National Coal Council, 13156, 16450, 17748, 17749
National Petroleum Council, 1937, 3236, 3423, 6030, 7967, 9680, 10271, 15447, 15728, 16450, 17749, 18119, 18332, 23149, 23785, 24775
Nuclear Facility Safety Advisory Committee, 7964, 12453, 18876
Nuclear waste management:
Civilian radioactive waste management—
Dry cask storage at reactor sites; study, 14833
Hecla Mining Co., Naturita, CO; inactive uranium mill tailings site, 7964
Mission plan; 1988 amendment draft availability, 24482
Spent nuclear fuel storage and disposal; nonnuclear weapon states; technical assistance update, 11398
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 13437
Summit Technology Inc., 9476
Privacy Act; systems of records, 2266
Uranium Mill Tailing Radiation Control Act; remedial action program; proposed decision on private property near Naturita, CO, 15273

Energy Information Administration

NOTICES
Agency information collection activities under OMB review, 271, 2777, 3424, 4702, 6865, 7966, 12806, 14835, 15730, 22709, 23306
Forms; availability, etc.:
Electric power system reports; annual, 16760
Oil and gas reserve system forms, 12583
Petroleum supply reporting system, 12723
Meetings:
American Statistical Association's Committee on Energy Statistics, 10272
Natural gas publications; statistical tables, 9967
Reporting and recordkeeping requirements, 3914, 16761

Energy Office, Agriculture Department

RULES
Freedom of Information Act; implementation, 4007
Organization, functions, and authority delegations, 4007

Energy Research Office

NOTICES
Committees; establishment, renewal, termination, etc.:
Magnetic Fusion Advisory Committee, 23307
Grants and cooperative agreements; availability, etc.:
Pre-freshman engineering program (PREP), 24776
Special research program—
Nuclear engineering, 7006
Subsurface science, 12726
Theoretical ecology, 24123
Meetings:
Basic Energy Sciences Advisory Committee, 7560, 18333
Energy Research Advisory Board, 945, 1398, 3069, 3070, 8949, 10142, 17973
Health and Environmental Research Advisory Committee, 3248, 20677
High Energy Physics Advisory Panel, 3915, 22710
Magnetic Fusion Advisory Committee, 4711, 17242

Engineers Corps

RULES
Danger zones and restricted areas:
Anaheim Bay Harbor, CA, 6942
Discharge of dredged or fill material in waters of the United States, etc., 14902
National Environmental Policy Act; implementation, 3120
Natural disaster procedures; Army and other resources emergency employment, 2841

PROPOSED RULES
Danger zones and restricted areas:
Pensacola, FL, 3758
Point Sal and Point Conception, CA, 9671
Water resource development projects; shoreline management, 21495

NOTICES
Environmental statements; availability, etc.:
Alameda County, CA, 7003
Basssett Creek, MN, 11547
Brevard County, FL, 19986
Brunswick, GA, 19812
Cache Creek Basin, CA, 7004
Coal and Dutch Creeks, Henryetta, OK, 8684
Coralville Lake, Iowa River, Johnson County, IA, 12448
Core Creek Atlantic Intracoastal Waterway Bridge, NC, 4059
East Baton Rouge Parish flood study, LA, 4200
Elk Creek Lake project, OR, 2529
Gills Creek, Richland County, SC, 7555
Louisiana—
Coastal area land loss and marsh creation project, 4060
Coastal marsh management, 3910
Ocean dredged material disposal sites, 9975
Lower Granite Reservoir, ID and WA, 12177
McAlpine Locks and Dam, Louisville, KY, 5619
Mill Creek Channel Project/Dam Reservoir, Walla Walla, WA, 6861
Mississippi River, New Orleans, LA, 4058
Mississippi River-Gulf Outlet, New Orleans, LA, 11900
Monmouth County, NJ, 11548
New Jersey Turnpike, 944
Ocean City, NJ, 21722
Pershing Missiles elimination; Pueblo, CO, et al., 6189
Pittsburgh, PA, 24774
Prudhoe Bay, AK, 24357
Richard B. Russell Dam and Lake, GA and SC, 4872
Rossville, KS, 19812
Sacramento-San Joaquin Delta, CA, 2529
San Diego County, CA, 19022
Sandusky River, OH, 12447
Trinity River, TX, 7787
Meetings:
Coastal Engineering Research Board, 10418, 13312
Environmental Advisory Board, 3769
Inland Waterways Users Board, 2866, 16183
Patent licenses, exclusive:
Army Construction Engineering Research Laboratory, 16184
Cor-A-Vent, Inc., 7556
Water Resource Support Center; waterborne commodity movement data, public domain data base; availability, 22373

Environmental Protection Agency

RULES
Air pollution control; new motor vehicles and engines:
Gasoline lead content; certification and test procedures, 470
New nonconforming imported vehicle and engine program, 3892
Nonconformance penalties for heavy-duty engines and vehicles, including light-duty trucks, 19130
Non-domestically produced vehicles at ports of entry for selective enforcement auditing emissions testing at U.S. laboratories, 3893
Air pollution; standards of performance for new stationary sources:
Continuous emission rate monitoring systems; specifications and test procedures, 7514
Industrial surface coating, plastic parts for business machines; VOC emissions, 2672
Correction, 19300
Kraft pulp mills, 12008
Residential wood heaters, 5860
Correction, 12009, 14888
Total gaseous nonmethane organic emissions as carbon determination, 4140
Correction, 11590, 12498
Total reduced sulfur emissions determination; alternative recovery gas certification procedure (Methods 16A and 16B); correction, 2914
Air programs; State authority delegations:
Alaska, 777
Colorado, 12517
Indiana, 18985
Iowa, 17038
Kentucky, 24698
Minnesota, 18985
New Mexico, 3891
North Carolina, 8182, 23390
Ohio, 18985
South Carolina, 22172
South Dakota, 12517
Washington, 24448
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 392
Stack height requirements; emissions balancing policy, 480
Air quality implementation plans; approval and promulgation; various States:
California, 1780
Connecticut, 4621, 11847, 17934
Florida, 10074, 24695
Illinois, 4139, 20321
Indiana, 1354, 12896, 18985
Kansas, 17700
Kentucky, 501, 11655, 23237
Michigan, 4622
Minnesota, 17033, 18985
Missouri, 4620, 12417
New Jersey, 15393
North Carolina, 5974, 11068, 11273, 21638, 22486
Ohio, 4020, 18087, 23850
Oregon, 1019, 1020, 10381
Pennsylvania, 13121
Rhode Island, 3888
Tennessee, 23623-23628
Texas, 16261
Wisconsin, 18983
Air quality implementation plans; delayed compliance orders:
Texas, 4024
Air quality planning purposes; designation of areas:
New Jersey, 8182
Ohio, 9112
Consolidated practice rules for administrative assessment of civil penalties and permit revocation or suspension:
Underground storage tanks; appeals of enforcement actions, 5373
Debarment and suspension (nonprocurement), 19161
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 214
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Grants, State and local assistance:
National priorities list sites (Superfund program); technical assistance grants to groups, 9736
Small purchase procurement procedures, 9443
Wastewater treatment works construction, 15820
Hazardous waste:
Boilers and industrial furnaces; burning of hazardous waste fuel, 7516
Corrective action orders for interim status facilities; issuance and administrative hearings procedures, 12256
Identification and listing—
Chemical Abstracts Service registry numbers and listing corrections, 13382
Exclusions, 4850, 5573, 6822, 7903, 15170, 20103, 21639
Treatment, storage, and disposal facilities—
Definitions, post-closure care, and financial responsibility, 7740
Surface impoundments, etc.; closing and post-closure care, 9944
Surface impoundments, etc.; closure requirements, 24717
Underground storage tanks; appeals of enforcement actions, 5373
Hazardous waste program authorizations:
Florida, 127
Illinois, 126
Indiana, 128, 4850
Maine, 16264
North Carolina, 244, 3894, 20845
Tennessee, 1358
Pesticide programs:
Pesticide and active ingredient producing establishments registration; pesticide report submission—
Notification to Agriculture Secretary, 18839
Pesticide registration activities; fees, 19108
Registration procedures and data requirements, 15952
Technical amendments, 15998
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
AC 222,293 and metabolites, 12943, 17701, 18949
[1 Alpha-(S),3 alpha(Z)]-(+)-cyano-(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, 18558
Avermectin B1, 23107
Benomyl, 9024
Chemicals without current food use registrations; aramite (2-(p-tert-

butylphenoxy)-isopropyl 2-chloroethyl sulfite), etc., 15822
(2-Chloroethyl)trimethylammonium chloride, etc., 9433
2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, 3022, 19907
Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate, 1916, 18836
Cyfluthrin, 1923
Cyhexatin, etc., 23394
Cypermethrin, 5374
Definitions and interpretations, etc.—
Blackberries and caneberries, 21453
Onions and green onions, 15039
Peas, 3022
Diazinon, etc., 23388
3,5,-Dichloro-N-(1,-dimethyl-2-propynyl)benzamide, 5378, 12640
3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, 5378, 11274, 20307, 20322
Ethephon, 5367, 5375, 12640
2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one, 233, 241, 5377, 23387, 23393
Fluazifop-butyl, 5376, 15824
Iprodione, 3021, 15826, 21451
Lactic acid, 15825
Methidathion, 23390
Methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-p-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-m-toluate, 24069
Methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate, 16719
Monocarbamide dihydrogen sulfate, 12151
Myclobutanil, 20, 12942
N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate), 657
N,N-Dimethylpiperidinium chloride, 23385
Oxyfluorfen, 243, 8845
Paper fiber, 12418
Paraquat, 15207
Pendamethalin, 3023
Pentachloronitrobenzene, 9443
Permethrin, 9024, 15040
Petition processing fees increase, 22299
Poly-d-glucosamine (chitosan), 17191
Poly-N-acetyl-D-glucosamine, 10248
Pseudomonas fluorescens EG-1053, 7739
Quizalofop ethyl, 23386, 23391
Regulations recodification, 24666
Regulations transfer, 24666
Revocation of obsolete and expired residue limitations; aldicarb, etc., 8873
Sesame stalk, 5378
Terbufos, 15040
Triflumizole, 15812
Ultramarine blue, 11071
Program Fraud Civil Remedies Act; implementation, 15182
Toxic chemical release reporting; community right-to-know, 4500
Correction, 12748
Solid wastes:
Re-refined oil content in lubricating oils procured by Federal government; guideline, 24699
Superfund program:
Citizen awards for information on criminal violations, 16086
Correction, 23394
Extremely hazardous substances, delisting, 5574
National oil and hazardous substances contingency plan—
National priorities list update, 12680, 23108
Toxic chemical release reporting; community right-to-know
Titanium dioxide, 23108
Toxic substances:
Asbestos abatement projects; worker protection, 1021
Chemical information and preliminary assessment; list additions, 10388, 18211
Health and safety data reporting—
List additions, 18211
Polychlorinated biphenyls (PCBs)—
Exclusions, exemptions, and use authorizations, 24206
Test methods and chemical fate test guidelines; incorporation by reference, 10390, 21641
Significant new uses—
1-Chloro-2-bromoethane, 2842
Technical amendments, 2845, 12522
Testing consent agreements for methyl tert-butyl ether, 10391
Testing requirements—
Diethylene glycol butyl ether and diethylene glycol butyl ether acetate, 5932
Hazardous waste chemicals, 22300
Methylcyclopentane; commercial hexane, 3382
Waste management, solid:
Paper and paper products containing recovered materials; Federal procurement guidelines, 23546
Water pollution control:
National pollutant discharge elimination system—
Groups I and II storm water point sources; permit application deadlines, 4157
National primary drinking water regulations—
Analytical techniques, 5142
Ocean dumping; site designations—
Atlantic Ocean offshore Virginia Beach, VA, 10382
Gulf of Mexico; Calcasieu River and Pass sites, 8183
Gulf of Mexico; Pensacola, FL, Mobile, AL, and Gulfport, MS, 6987, 12944
San Juan Harbor, PR, 9444
State and Federal 404 programs; revisions, definitions, and permit exemptions, 20764
State underground injection control programs—
Illinois, 21450
Water pollution; effluent guidelines for point source categories:
Leather tanning and finishing, 9176
Nonferrous metals manufacturing, 1704
Ore mining and dressing; gold placer mining, 18764

PROPOSED RULES

Acquisition regulations, 11519, 17728
Air pollution control; new motor vehicles and engines:
Emission certification procedures, 7676
Evaporative emissions, 21500
Nonconformance penalties for heavy-duty engines and vehicles, including light-duty trucks, 1716, 4044
Refueling emissions, 21500
Air pollution; standards of performance for new stationary sources:
Nitrogen oxide emission determinations; ion chromatographic method, 20139
State plans for designated facilities; publication requirements, 12962
Test methods and procedures; clarification, 5082
Air programs:
Ambient air quality standards for sulphur oxides, 14926, 17081
Stratospheric ozone protection; apportionment of baseline consumption and production rights, 18800
Correction, 20718
Air programs; fuel and fuel additives:
Gasoline and alcohol blends volatility, 21500
Refueling emissions; gasoline pump dispensing rate, 21500
Air quality implementation plans:
National Ambient Air Quality Standard for ozone or carbon monoxide, nonattainment designations, 20722
Nitrogen oxides; prevention of significant deterioration (PSD), 3698
Particulate matter (PM10) emissions from stationary sources; measurement methods, 11688
Air quality implementation plans; approval and promulgation; various States:
Alabama, 24451
Alaska, 1043
Arizona, 14818, 17378
California, 11314, 16732
Colorado, 3052
Connecticut, 6842, 9334, 12962, 23416
Florida, 15064
Georgia, 20347
Illinois, 11686, 13135
Indiana, 6845, 12906
Kansas, 10399
Louisiana, 12435
Massachusetts, 9335, 9336, 10105
Missouri, 24735
Montana, 3052
North Dakota, 3052
Ohio, 261, 779, 12161, 15703, 24450
Oregon, 23418
South Dakota, 3052
Tennessee, 24734
Utah, 3052
Wisconsin, 19806
Wyoming, 3052
Air quality planning purposes; designation of areas:
Indiana, 6845
Kansas, 10399
Pennsylvania, 3760, 4858, 23127
Tennessee, 7213, 20139
Wisconsin, 24454–24461
Grants, State and local assistance:
National priorities list sites (Superfund program); technical assistance grants to groups; use of Administrative Services Contractors, 9753, 19805
Hazardous waste:
Identification and listing—
Exclusions, 31, 15417, 15422, 15704, 18107, 19090, 22334, 23661
Infectious waste management, 20140
Notification requirements; reportable quantity adjustments, 18024
Petroleum refining industry, 12162, 20350
Solid waste, definition, 519, 5195, 6059
Land disposal facilities; delay of closure period, 20738
Land disposal restrictions, 18792
First third wastes, 11742, 17578
Permit program—
Incinerator permit requirements, 23342
Underground injection restriction of certain hazardous waste, 14892
Underground storage tanks—
Financial responsibility requirements, 10401
Technical requirements, 10403
Motor vehicle fuel economy:
Evaporative emissions test procedures, 21500
Refueling emissions test procedures, 21500
Pesticide programs:
Agricultural pesticides; worker protection standards; notification to Agriculture Secretary, 1494
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
(2-Chloroethyl)trimethylammonium chloride, etc., 4643, 11938
2-(2-Chlorophenyl) methyl-4,4-dimethyl-3-isoxazolidinone, 15237
Definitions and interpretations, etc.—
Blackberries and caneberries, 15238
Marjoram, 15854
Onions and green onions, 7540
Deltamethrin, 2147
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide, 262, 11938
3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, 15407, 15416
Ethephon, 259, 263, 11938
2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, 23420
Fluazifop-butyl, 7543
Mercaptobenzothiazole, etc., 4860
Methidathion, 15855
Montmorillonite-type clay treated with polytetrafluoroethylene, 23421
Paper fiber, 2238
Paraquat, 10895
Pentachloronitrobenzene, 1495
Permethrin, 7539, 20872
Terbufos, 6671
Triflumizole, 11313
Ultramarine blue, 7541
Radiation protection programs:
Inactive uranium processing sites; standards for remedial actions, 1641
Regulatory agenda, 14334
Solid wastes:
Underground storage tanks containing hazardous substances; financial responsibility requirements, 3818
Superfund program:
Federal real property, sale or transfer; hazardous substance activity reporting, 850
Hazardous substances—
Reportable quantity adjustments, 11890
Reportable quantity adjustments and delisting, 6762, 7073, 11889
Reporting continuous releases, 12868
National oil and hazardous substances contingency plan—
National priorities list update, 8223, 17228, 23988
National priorities list; corrective action sites, 23978
Toxic chemical release reporting; community right-to-know, 5004
Acid blue 9 deletion from list, 12035
Melamine, 23128
Toxic substances:
Asbestos; information release, 8636, 10546, 15857, 19945
EDTMPA and its salts; reporting by manufacturers and importers, 15428
Correction, 17534
Polychlorinated biphenyls (PCBs) and chemical fate testing guidelines; incorporation by reference, 11104
Significant new uses—
Diphenyl-2,4,6-trimethylbenzoyl phosphine oxide, 2857
Testing requirements—
Hazardous waste chemicals, 911
Isopropanol, 8638, 12748
Methylcyclopentane; commercial hexane, 19315
Phenylenediamines, unsubstituted, 913
Water treatment chemicals; hexavalent chromium chemicals in comfort cooling towers; prohibition, 10206
Waste management, solid:
Retread tires; procurement guidelines, 15624
Water pollution control:
Hazardous substances; reportable quantity adjustments and delisting, 6762
National pollutant discharge elimination system—
State sewage sludge management program, 7642
National primary drinking water regulations—
Giardia lamblia, viruses, and legionella, maximum contaminant levels, and turbidity and heterotrophic bacteria; and total coliforms, 31, 16348
Ocean dumping; site designations—
Atlantic Ocean offshore Arecibo et al., PR, 18579
Atlantic Ocean offshore New Jersey and Long Island, NY, 19934
State underground injection control programs—
Mississippi, 2238
Nevada, 4859
Water pollution; effluent guidelines for point source categories:
Nonferrous metals forming and metal powders, 21774

NOTICES

Agency information collection activities under OMB review, 78, 754, 1510, 1834, 2534, 3444, 3937, 6871, 7233, 8276, 9976, 10422, 12460, 15731, 15732, 17105, 19025, 19817, 21913, 22382, 23680, 23681
Air pollution control:
Alternative fuels and fuel blends use, motor vehicle emission reductions; estimate guidance; report availability, 3445
Stack height requirements, 2086
Toxic pollutant assessment—
Naphthalene, 9138
Air pollution control; new motor vehicles and engines:
California pollution control standards—
Preemption waiver, 6195, 6197, 7021, 7022, 21523
Federal certification test results; 1988 model year; availability, 20009
Air programs:
Acid aerosols issue paper; availability, 10150
Ambient air monitoring reference and equivalent methods—
Dasibi Model 3008 Gas Filter Correlation CO Analyzer, 12073
Model 8830 CO Analyzer, 2887
Monitor Labs Model 8830 Carbon Monoxide Analyzer, 7233
Sierra-Andersen or General Metal Works Model 1200 PM10 High-Volume Air Sampler System, etc., 1062
Air programs; fuel and fuel additive waivers:
Sun Refining & Marketing Co., 11701
Air programs; fuel and fuel additives:
Gasoline lead content; lead banking penalty and lead usage and reporting policies, 11700
Air quality implementation plans:
Ozone and carbon monoxide nonattainment areas; post 1987 approval, 1677
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 176, 21724
Region VI, 1834, 9700
Region IX, 20684, 23447
Chesapeake Bay program; 1987 agreement, proposals for review, 12586
Committees; establishment, renewal, termination, etc.:
Environmental Technology Transfer National Advisory Council, 23681
Municipal Solid Waste Task Force, 13316
National Air Pollution Control Techniques Advisory Committee, 5828
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 563, 1063, 1835, 2639, 3446, 4208, 5039, 5829, 7022, 7968, 8959, 9806, 10558, 11702, 12587, 13318, 15460, 16319, 17106, 18131, 19333, 20365, 21914, 22726, 23790
Weekly receipts, 564, 1063, 1836, 2639, 3445, 4208, 5039, 5829, 7023, 7968, 8960, 9806, 10559, 11702, 12587, 13317, 15461, 16319, 17107, 18131, 19334, 20366, 21914, 22727, 23791
Monticello-Leesburg Surface Lignite Mine, TX; wastewater discharge, 11703
New Bedford, MA; municipal wastewater treatment facilities, 11336
North Jefferson County, KY; wastewater management, 20892
Ocean disposal sites—
Cape Arundel, ME, 17107
Coquille River, OR, 564
Louisiana, 9975
Massachusetts Bay, 2640
Pensacola, FL, 2640
Port Aransas, TX, 9976
Tampa, FL, 22221
Plymouth, MA; wastewater treatment facilities, 22221
Tallahassee-Leon County, FL; wastewater management, 565
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 79, 1U17
Grants, State and local assistance:
Asbestos inspection and management plan assistance program, 4455
Capitalization awards under Clean Water Act; State water pollution control revolving fund, initial guidance, 2887
Chesapeake Bay program, 12986

Financial assistance program—
Technical assistance grant program; Superfund site cleanups, 9756
Grantee performance evaluation reports—
Georgia, 20162
Iowa, 15281
Kansas, 15281
Mississippi, 20162
Missouri, 15281
Nebraska, 15281
South Carolina, 20162
Tennessee, 20162
Hazardous waste (RCRA); integrated training and technical assistance initiative, 1836, 16466
Municipal wastewater treatment works construction programs; allotments, 19025
Texas Air Control Board; maintenance of effort reduction, 21521
Underground injection control program; water source protection, 5297
Hazardous waste:
Alternate concentration limit guidance; case studies, 22043
Coal combustion by electric utility power plants; report to Congress availability, 9976, 14839
Corrosive hazardous waste land disposal restrictions; effective date extension on case-by-case basis, 3446
Crude oil, natural gas, and geothermal energy exploration, development and production waste; report to Congress availability, 81
Health risk assessment; guidelines, etc.:
Acrylamide, 7024
Female reproductive risk, 24834
Ingested inorganic arsenic; skin cancer/nutritional essentiality, 1835
Integrated risk information system (IRIS); availability, 20162
Male reproductive risk, 24850
Methyl isocyanate, 13318
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), 24141
Thyroid follicular cell carcinogenesis; mechanistic and science policy considerations, 20685
Marine sanitation device standards:
Florida, 1678
Meetings:
Biotechnology Science Advisory Committee, 10150, 12075, 16467, 21915, 23682
Cold temperature carbon monoxide emissions from mobile sources; public workshop, 1407
Construction Grant Program Management Advisory Group, 8276
Environmental management; expert systems technology workshop, 8501
FIFRA Scientific Advisory Panel, 443, 4884
Municipal Pollution Control Office; Indian workgroup, 15461
Municipal Solid Waste Task Force, 13316
National Air Pollution Control Techniques Advisory Committee, 9977
National Drinking Water Advisory Council, 6872
Science Advisory Board, 949, 1678, 2089, 2535, 2887, 3071, 3072, 3450, 6197, 9977, 10559, 10560, 16586, 17909, 18601, 20164, 22566, 24141, 24142
State-FIFRA Issues Research and Evaluation Group, 1837, 3937, 18132, 21725
Toxic sediments management approaches; workshop, 19334
Motor vehicles; fuel and fuel additives; waiver applications:
AM Laboratories, Inc., 2088
Texas Methanol Corp., 3636, 17977
Pesticide applicator certification; Federal and State plans:
Delaware, 6691
District of Columbia, 6691
Maryland, 6692
Pennsylvania, 6692
Texas, 5040, 12986
Virginia, 6692
West Virginia, 6693
Pesticide, food, and feed additive petitions:
BASF Corp., 283
BASF Corp. et al., 10285
Ecogen, Inc., 5458
E.I. du Pont de Nemours & Co., Inc., 15281, 17244, 22426
Elanco Products Co., 18897, 23448
FMC Corp., 10286
Hoechst Celanese Corp. et al., 7569
ICI Americas, Inc., 12188
Rhone-Poulenc Ag. Co. et al., 3074
Pesticide programs:
Confidential business information and data transfer to contractors, 794, 18896, 21518, 21519, 23449
Endangered species protection program, 7716
Pesticide assessment guidelines—
Data reporting addenda, 2535, 12186, 18896, 20011
Proposed revision, 20012
Pesticide monitoring inventory; availability for use by general public, 17755
Registration standards—
Availability, etc., 23449
Evaluation procedures; availability, 9486, 12187
Special review—
2,4-D, 2,4-DB, and 2,4-DP; proposed decision not to initiate, 9590
Alachlor, 11938
Cyanazine, 795
Dichlorvos, 5542, 9024
Strychnine; notification of District Court order, 18952
Pesticide registration, cancellation, etc.:
Aldicarb products, 24630
American Cyanamid Co., 24495
American Cyanamid Co. et al., 4712
Chevron Chemical Co. et al., 5459, 12640
Chlordane and heptachlor termiticides, 11798, 11801, 13379
Cyanazine, 6697
Diazinon, 11119
Ecogen Inc., 4713, 10284
Igene Biotechnology Inc., 4713
Inorganic arsenicals for non-wood preservative use, 24787
McBrayer, Bob, 9485
Miles Laboratories, 16780
Pentachlorophenol, 5524
Safer, Inc., 10287
Zoecon Corp. et al., 10284
Pesticides; emergency exemptions, etc.:
Avermectin B1, 1, 7568, 8276, 11337, 16467
Bifenthrin, 24142, 24785
Clofentezine, 9484, 11337, 16468
Clofentezine and hexythiazox, 10287, 11338
Dinoseb, 3072, 4885, 6693, 6695, 11938
Harmony, 793, 2285
Harmony, etc., 20009
Hydrogen cyanamide, 2284
6-(4-Isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) methyl ester, etc., 10288
Mancozeb, 3938
Metalaxyl, etc., 4714
Metolachlor, 8277, 9485, 20011
Ozyfluorfen, 12987
Pursuit, 5465, 8278
Pyridate, 12988
Sethoxydim, etc., 12186
Strychnine, 12587
Thiophanate-methyl, 4887, 11938
Tricyclazole, 7570
Pesticides; experimental use permits, etc.:
Abbott Laboratories et al., 15128, 24494
American Cyanamid Co. et al., 17756
Ciba-Geigy Corp. et al., 11339
Crop Genetics International, 2641
E.I. duPont deNemours & Co., Inc., et al., 7571
Rohm Haas & Co., 3074
Pesticides; receipts of State registrations, 4888, 11339, 11938, 16211, 21519
Pesticides; temporary tolerances:
Amitraz, 18898
Avermectin, 11341, 22383
Clofentezine, 16780
E.I. du Pont de Nemours & Co., Inc., 10282, 22383
Hoechst Celanese Corp., 10283
Myclobutanil, 17757
Mycogen Corp., 10282
Norflurazon, 17760
Rohm & Haas Co., 5465
Triflumizole, 21522
Privacy Act; systems of records, 4890, 17758
Senior Executive Service:
Performance Review Board; membership, 12074
Superfund programs:
Computerized public data base containing toxic chemical release inventory; meeting, 7567
Federal facilities; hazardous substances priority list, 4280
Hazardous substance research centers, 9358
Hazardous waste treatment; cost-effective methods, application requests, 9358
Mixed funding settlements, 8279
Notice letters, negotiations, and information exchange; guidelines, 5298
Superfund; response and remedial actions, proposed settlements, etc.:
Acme Laundry et al., 4070
Bourdeaudhui and Kapinos case, 15129
Buckhorn Pesticide Site, NC, 24496
Cannons Engineering Corp. et al., 20165
Davidson Interior Trim/Textron et al., 22222
Dellett, Harold, et al., 9807
Electric Equipment Corp. of Virginia, 22566
Southern Lumber Co. et al., 23682
Veterans Administration Medical Center, Canandaigua, NY, et al., 9700
Woodward Property Site, 10560
Toxic and hazardous substances control:
Asbestos-containg materials in schools—
EPA-approved training courses and State accreditation programs, 3982, 20066
Laboratory quality assurance program; interim, 10151
Chemical substances inventory; incorrect listings removed, 949, 9848

Chemical testing—
Conditional exemptions, 1062
Data receipt, 951, 6198, 13319, 17760, 19334, 20685, 23450, 23451
Exclusion or waiver, 3938, 9848, 15282
Confidential business information and data transfer to contractors, 3075, 10422, 15596, 16468, 19335, 21916
Interagency Testing Committee—
Chemicals for review, 5466
Report, 18196
Polychlorinated biphenyls (PCBs); disposal approval, 17761, 18900
Premanufacture exemption applications, 3450, 8972, 12588, 15284, 18341, 22044
Premanufacture exemption approvals, 283, 2642, 3785, 4891, 5213, 10560, 16188, 18132, 20893
Premanufacture notices; monthly status reports, 24402
Premanufacture notices receipts, 5621, 5623, 8960, 9807, 11703, 11939, 14839, 15130, 15282, 15462, 17534, 18899, 19030, 21547, 23149, 23167, 23794, 24143
Premanufacture notices review period extensions, 2888, 9487
Significant adverse reactions; records and reports—
Tri(alkyl/alkoxy) phosphates and dinsocyanates, 1408
Significant new use rules and consent order; availability, 8695
Testing consent agreement development—
Diisodecyl phenyl phosphite, 4072
Octamethylcyclotetrasiloxane (OMCTS), 11341
Trade secret access, 17244
Water pollution control:
Agricultural chemicals in ground water; pesticide strategy; availability, 5830
Clean Water Act—
Class I and II administrative penalty assessments, 3450, 5214, 11701, 17978
Guidance document availability, 8973
Violations; proposed administration penalty assessment, 15284, 17245
Disposal site determinations—
East Everglades area, FL, 1678, 12729
Russo Development Corp. wetlands, Carlstadt, NJ, 16469
Drinking water—
Health advisories, 565
Priority list; contaminant substitutes, 1892
State water quality standards; adoptions and approvals; updated listing; availability, 4209
Underground injection control program—
Maximum allowable injection pressure for rule authorized wells establishment; Montana, 20013
Water pollution control; sole source aquifer designations:
Connecticut, 17108
Indiana, 23682
Louisiana, 20893
Maine, 24496
Massachusetts, 3451
Montana, 20895
New Jersey, 23685, 23791
New York, 22045, 23685
Ohio, 15876
Rhode Island, 17108, 19026
Texas, 20897
Water pollution; discharge of pollutants (NPDES):
Alaska OCS operations, 2631
Water Quality Act of 1987; implementation:
Guidance documents availability, 12989, 19817
Water quality criteria:
Ambient water quality criteria documents; availability, 177, 19028

Environmental Quality Council

See Council on Environmental Quality

Equal Employment Opportunity Commission

RULES
Age discrimination in employment:
Age 70 limit removal, and tenured faculty exemption reenactment, 5971
Correction, 15673
Private rights; supervised waivers and releases; suspension, 3370
Employment discrimination:
Charges; designation of State and local fair employment practices agencies—
New Hanover Human Relations Commission, 3888
Procedural regulations:
Directors, Determinations Review Program, Program Operations Office; authority delegation, 3369
PROPOSED RULES
Regulatory agenda, 14410
NOTICES
Agency information collection activities under OMB review, 16586, 17762
Meetings; Sunshine Act, 194, 1439, 2347, 4497, 5080, 5343, 5853, 6057, 7072, 7464, 8718, 11160, 12864, 13463, 14887, 15492, 15771, 16512, 16612, 17136, 18948, 20213, 20937, 22067, 22608, 24398
Minorities and women in corporate America; hearings, 11907, 18901

Executive Office of the President

See Central Intelligence Agency; Council on Environmental Quality; Management and Budget Office; Presidential Commission on the Human Immunodeficiency Virus Epidemic; Presidential Documents; Science and Technology Policy Office; Trade Representative, Office of United States

Export Administration Bureau

See also International Trade Administration
NOTICES
Export privileges, actions affecting:
Brero, Mario, et al., 15587, 23143
Buccolieri, Andre A., 7547
Buel Electronic Connectors, Inc., 7549
d'Haens, Joseph P.M., 15582
Ensch S.A.R.L., 2520
Forstner, Josef, et al., 21717
Hakanson, Swen Olof, 3059
Lange, Wilfred, et al., 15253, 23294
McLean, Donald, et al., 6999
Marli S.A. et al., 24334
Sappir, Joseph, et al., 428
United Exporters Co., 5811
Wirth, Hans, et al., 16441
Meetings:
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee, 23430
Telecommunications Equipment Technical Advisory Committee, 17236

Export-Import Bank

NOTICES
Meetings:
Advisory Committee, 8285, 22222

Family Support Administration

See also Child Support Enforcement Office; Community Services Office; Refugee Resettlement Office
RULES
Grants:
ADP equipment and services; conditions for Federal financial assistance, 26
State legalization impact assistance (Immigration Reform and Control Act; implementation), 7832
Public assistance programs:
Adult assistance programs—
Aliens; eligibility determination requirements; correction, 467
Aid to families with dependent children (AFDC)—
Aliens; eligibility determination requirements; correction, 467
Replacement checks treatment, 24267
NOTICES
Aid to families with dependent children:
State plan amendments, reconsideration; hearings—
California, 9490
Grants; availability, etc.:
Low income home energy assistance program—
State median income; 1989 FY, 10947
Organization, functions, and authority delegations, 24150

Farm Credit Administration

RULES
Farm credit system:
Accounting and reporting requirements—
Problem loans, etc., 3334, 7340, 16696
Borrower rights, 2825
Disclosure to shareholders—
Problem loans, etc., 3334, 3335, 7340
Farm Credit System Capital Corp.—
Organization and operation, 12140
Funding and fiscal affairs, loan policies and operations, and funding operations—
Farm Credit System Financial Assistance Corp.; securities; book entry procedures, 12140
Loan policies and operations; loss-sharing agreements, 775
Correction, 3191
Merger and reorganization proposals, 16695
Organization—
Receiverships operation, 18810
Personnel administration, 22134
Shareholders disclosure, 16696, 21986
Nondiscrimination on basis of handicap in federally conducted programs and activities, 19884
Organization and functions, 16693
PROPOSED RULES
Farm credit system:
Credit-related forms of insurance; authority to sell to members-borrowers, 20647
Examinations and investigations, 16936

Funding and fiscal affairs—
Borrower rights, etc., 15402, 16937, 16963
Minimum capital adequacy standards, 4642
Minimum permanent capital standards, 16948
Securities issuance, 16963
Funding operations—
Borrower rights, etc., 15402, 16937, 16963
Minimum capital adequacy standards, 4642
Loan policies and operations, 4417, 16937, 16963
Borrower rights, etc., 15402, 16937, 16963
Minimum capital adequacy standards, 4642
Organization, 16936
Conservatorships and receiverships, 16934
Practice and procedure—
Civil money penalties; assessment and collection, etc., 16966
Regulatory accounting practices, 16968
System institutions—
Organization, disclosure to shareholders, etc., 20637
Reorganization authorities, 4416
Regulatory agenda, 14594

NOTICES

Farm credit system:
Farm Credit System Assistance Board et al.; charter, etc., 4072
Farm Credit System Financial Assistance Corp.; charter, 1679
Federal Land Bank of Jackson et al.; receiver appointment, 18812
Meetings; Sunshine Act, 94, 652, 1439, 2667, 6057, 7629, 10034, 13463, 15492, 16612, 18948, 20717, 22264, 22761, 23718

Farmers Home Administration

RULES

Administrative regulations:
Assistant Administrator, Farmer Programs; divisions and staffs reorganization, 20090
Employment—
County committee members; election, 9597
Loan and grant programs:
Construction and repair—
Planning and performing construction and other development; correction, 2147
Rural housing—
Rental housing loan policies, procedures, and authorizations, 2150
Program regulations:
Associations—
Community facility loans, 6784
Community facility projects; correction, 3861
Debt settlement—
Community and business programs, 13098
Form FmHA 1944-3, "Budget and/or Financial Statement"; format change, 17687
Guaranteed farm loan programs—
Account liquidation proceedings; interest rate buydown and eligibility determinations, 8148
Highly erodible land and wetland conservation, 7330
Correction, 14777
Personal property—
Loan assumption processing, 10357
Real property—
Loan assumption processing, 10357
Multiple housing loans; security servicing, 15800
Rental housing displacement prevention, 13244
Rural housing—
Rental housing displacement prevention, 13244
Section 502 loan policies, procedures, and authorizations, 7178, 13243
Servicing and collections—
Account servicing policies, 15797
Community facilities loan and grant programs; interest rate change, 15798
Existing loans deferral, 15799
Grant servicing and monitoring, 3860
Multiple housing loans; security servicing, 15800
Predetermined amortization schedule system (PASS) account servicing, 16243
Set-aside loan indebtedness; farmer program borrowers; rescheduling and reamortization, 5357
Single family housing fund analysis, 10241
Supervised bank accounts, 231
Correction, 24437
Supplemental Appropriations Act; implementation; annual production loan and subordination grants to delinquent borrowers, 8738

PROPOSED RULES

Debt collection; applicant certification statements use, 9318
Employment:
County committee members; election, 3176
Loan and grant programs:
Audits; OMB Circular A-73 implementation, 2852
Program regulations:
Agricultural Credit Act; implementation, 18392
Agricultural loan mediation program, 17198
Appeals procedures; national appeals staff establishment, etc., 12695
Correction, 16615
Associations—
Industrial development grants, 17953
Audits; OMB Circular A-73 implementation, 2852
Business and industrial guaranteed loan appeals program, 4414, 10100
Exceptions list reduction, 15852
Construction and repair—
Planning and performing construction and other developments, 7532
Guaranteed farm loan program, 16416
Lender participation, 22764
Multiple family housing borrowers and grant recipients; management and supervision, 21460
Property management—
Intermediary relending program, 17201
Rural development—
Intermediary relending program, 17201
Rural housing—
Section 502 loan policies, procedures, and authorizations; interest credit, 14810
Section 504 loans and grants, 19924
Servicing and collections—
Credit needs and borrowers graduation; analysis, 10098
Intermediary relending program, 17201
Single family residential property appraisal, 23406

NOTICES

Loan and grant programs:
Housing demonstration program, 3610
Housing preservation program, 2066
Organization, functions, and authority delegations:
State Directors, 2067

Federal Aviation Administration

RULES

Air carrier certification and operations:
Smoking aboard aircraft, 12358
Correction, 14888
Airplane operation and foreign air carrier security; correction, 2223
Airport certification; correction, 4119, 4258
Emergency evacuation systems and components; mandatory reporting, 8726
Air traffic operating and flight rules:
Air defense identification zones (ADIZ); security control, 18216
Correction, 21989
Airplane operation and foreign air carrier security; correction, 2223
Special Federal Aviation Regulation No. 47; noise restricted aircraft, special flight authorization; correction, 233
Special Federal Aviation Regulation No. 50; Grand Canyon National Park; flight rules in vicinity, 20264
Correction, 21986
Special Federal Aviation Regulation No. 51-1; Los Angeles International Airport; flight rules in vicinity, 3810
Correction, 4846
Transponder with automatic altitude reporting capability requirement and controlled airspace common floor, 23356
Aircraft products and parts, certification:
Special conditions—
Boeing Model 767 Series airplanes with Pratt & Whitney PW4000 Series airplanes, 17171
British Aerospace BAe ATP airplanes, 8866
British Aerospace Jetstream Series 3200, Model 3201 airplanes, 15017
Cessna Model 172 Series airplanes with Porsche PFM3200 engines installed, 13113
Dornier 228-200 airplanes, 14182
Petersen Aviation, Inc. (modified Beech), 1745
Petersen Aviation, Inc. (modified Bellanca), 1746
Petersen Aviation, Inc. (modified Cessna), 2721-2730
Petersen Aviation, Inc. (modified Gulfstream), 2733
Aircraft registration:
Conveyances affecting title to or interest in aircraft; recordation, 1911
Correction, 3808
Airport radar service areas, 666, 3008, 3842, 6918, 11020, 15634, 18835, 19740, 24406
Airworthiness directives:
Aerospatiale, 232, 1334, 3579, 15362, 17176
Airbus Industrie, 1608, 7730, 18076
Allison, 9284
Avions Marcel Dassault-Brequet Aviation, 20825
Beech, 2735, 4604, 11837, 16246, 21628
Bell, 3736, 12914, 16697

Boeing, 8-10, 493, 1609, 2005, 3001, 4114, 5152, 6794, 7346, 7729, 8868, 9864, 10188, 10245, 12376, 16248, 16698, 18077-18082, 18834, 20827, 20829
Boeing et al., 19765, 24252
British Aerospace, 11, 2478, 5363, 5364, 7347, 8614, 8869, 17918, 21630, 21809
Bruce Industries, Inc., 18083
CASA, 13252
Cessna, 3581, 5759, 13114, 14784, 19264, 19266, 20826, 23219
DeHavilland, 5153, 7348, 11641, 15363, 16249, 23755
EMBRAER, 19267
Enstrom, 17177
Fairchild, 232
Fokker, 5763
Garrett, 19766
General Electric, 8870, 9431, 18548, 22647
Glaser-Dirks Flugzeugbau GmbH, 494, 24682
Glasflugel, 9432
GQ Security Parachutes, Inc., 19768
Grob, 12511
Grob-Werke GmbH & Co. KG, 20101
Gulfstream, 3578, 3737, 6793
Hamburger Flugzeubau, 1610
Hercules et al., 11246
Lockheed, 15360, 16379, 16381, 17017
Marvel Schebler, 1611, 3807
McDonnell Douglas, 1613, 2736, 2737, 3577, 3580, 3738, 8615, 8730, 16382-16384, 17018, 18084, 21411
Messerschmitt-Bolkow-Blohm GmbH, 495
Mitsubishi, 21412
Partenavia Costruzione Aeronautiche, S.p.A., 20830
Piper, 4383, 5763, 14786
Pratt & Whitney, 3002, 7074
Robinson, 9865
SAAB-Fairchild, 1[illegible]365, 12141, 16250, 16385, 1669[illegible]
SAAB-Scania,
Schweizer Aircraft Corp., 17178, 18085
Short Brothers PLC, 13, 14, 20828
Sikorsky, 5366
SOCATA, 1468
Societe Nationale Industrielle Aerospatiale, 11643, 18086, 19769
Sud Aviation, 5154, 7732
Teledyne Continental Motors, 4115, 9866, 11642, 12914, 12915
TEXTRON Lycoming, 11838, 16386
Wytwornia Sprzetu Komunikacyjnego, 4605
Airworthiness standards:
Special conditions—
Boeing Model 767 Series airplanes with Pratt & Whitney PW4000 Series airplanes, 17171
British Aerospace BAe ATP airplanes, 8866
British Aerospace Jetstream Series 32000, Model 3201 airplanes, 15017
Cessna Model 172 Series airplanes with Porsche PFM3200 engines installed, 13113
Dornier 228-200 airplanes, 14782
Petersen Aviation, Inc. (modified Beech), 1745
Petersen Aviation, Inc. (modified Bellanca), 1746
Petersen Aviation, Inc. (modified Cessna), 2721-2730
Petersen Aviation, Inc. (modified Gulfstream), 2733
Transport category airplanes—
Seat safety standards, 17640
Control zones, 496, 11060, 11839, 12916, 17019, 17690, 23219, 23603
Control zones and transition areas, 4118, 6142, 7349, 8301, 22137, 23604
IFR altitudes, 1005, 6573, 15364, 20103, 23222
Jet routes, 497, 1336-1339, 2014-2017, 14787, 24255
Noise standards:
Aircraft certification; simplification of test requirements, etc., 16360
Correction, 18835, 18949
Helicopters; normal, transport, and restricted categories, 3534
Correction, 4098, 6793, 7728
Heliports; applicability expansion, 8722
Correction, 9726
Prohibited areas, 3010
Restricted areas, 3010, 4845, 6796, 7352, 7353, 8173-8175, 13253, 15021, 23221, 23222, 24254
Standard instrument approach procedures, 499, 3011, 3012, 4846, 6592, 8872, 11062, 12377, 15373, 16388, 19770, 21811, 23227
Terminal control areas, 3714, 6219, 21396
Transition areas, 497, 1335, 1336, 1614, 4117, 4119, 6140, 6141, 6795, 7350, 8616, 9285, 9867, 10528, 11061, 11840, 11841, 12917, 12918, 13115, 13116, 16252, 16253, 17020, 17179, 17535, 17689, 17918, 17919, 17920, 19268, 19269, 20102, 20414, 20832, 20833, 22137, 23220, 23605, 23606, 24253, 24551
VOR Federal airways, 2006-2013, 2479-2482, 3005-3008, 3582, 5155, 5521, 6059, 6219, 7350, 7351, 8172, 16387, 17535, 19268, 21811
VOR Federal airways and jet routes, 9868, 24253

PROPOSED RULES

Air carrier certification and operations:
Anti-drug program for personnel in specified aviation activities, 8368, 18250
Cockpit voice recorders and flight recorders, 4314
Inadvertent water landings; survival equipment, 24890
Rotorcraft; normal and transport category—
Certification requirements, 9190
Transport category airplanes—
Fuel tank access panels; design standards, 18526
Seats; improved crashworthiness standards, 17650
Air traffic operating and flight rules:
Cockpit voice recorders and flight recorders, 4314
Special Federal Aviation Regulation No. 50-1; Grand Canyon National Park; special flight rules in vicinity, 3606, 7096
Correction, 8930
Aircraft:
Turbine engine powered airplanes; fuel venting and exhaust emission requirements, 18530
Aircraft products and parts, certification:
Special conditions—
Boeing Model 767 series airplanes with PW4000 series engines, 3042
British Aerospace BAe ATP airplanes with PW124 series engines, 3040
British Aerospace Jetstream Series 3200, Model 3201 airplanes, 2039
Cessna Model 172 Series airplanes, 2037
Dornier 228-200 airplanes, 2761
Fairchild Models SA227-CC, SA227-DC, and SA228-AE airplanes, 11869
Gates Learjet Model 31 airplanes, 18097
GROB Model 115 Series airplanes, 13283, 19798
Gyroflug Model SC-01 Speed Canard airplanes, 20860
Airmen certification:
Anti-drug program for personnel in specified aviation activities, 8368, 18250
Pilot and flight instructor, pilot school, and ground instructor certification; regulatory review, 24178
Airport radar service areas, 670, 674, 3528, 7374, 7468, 12866
Airport security; access to secured areas, 9094
Airworthiness directives:
Aerospatiale, 2500, 8633, 10252, 15403
Avions Marcel Dassault-Breguet Aviation, 7371
Beech, 514, 19799, 23642
Bell, 11678, 18854, 20414
Boeing, 2502, 3602, 4418, 7372, 7764, 7765, 8634, 8927, 8928, 11676, 12427, 13285, 13286, 15404, 15406, 19800, 19858, 19861, 21669, 22332, 22657, 22659
British Aerospace, 258, 1371, 5801, 10254, 11871, 17956, 23251
Canadair, 16724
CASA, 1372, 16289, 18855
Cessna, 1373, 2227, 2763, 5192, 11674
Davis Aircraft Products Co., Inc., 22181
DeHavilland, 1374, 2228, 3603, 3604
EMBRAER, 17721
Fokker, 3047, 5080, 22018, 22020
Garrett, 23253
General Dynamics, 5428
Hamilton, 14813
Lockheed, 4419
McDonnell Douglas, 515, 2765, 16722, 17077, 21489
Messerschmitt-Bolkow-Blohm, 8220
Mitsubishi, 3044, 3600
MORAVAN, 19801
Piper, 19804
Rolls-Royce plc, 19802
SAAB-Fairchild, 3048, 7373
SAAB-Scania, 23771
Short Brothers, Ltd., 9322
Short Brothers, PLC, 17222, 23250, 23772
SIAI Marchetti S.p.A., 3753, 12947, 23643
Societe Nationale Industrielle Aerospatiale, 11675, 16438
Switlik Parachute Co., Inc., 8926
TEXTRON Lycoming, 5189, 14814, 15057, 23773, 23774
Airworthiness standards:
Cockpit voice recorders and flight recorders, 4314

Rotorcraft; normal and transport category—
Certification requirements, 9190, 11162
Emergency medical services (EMS) configuration airworthiness and operational forum, 7479, 10826
Occupant restraint, 7479, 10826
Special conditions—
Boeing Model 767 series airplanes with PW4000 series engines, 3042
British Aerospace BAe ATP airplanes with PW124 series engines, 3040
British Aerospace Jetstream Series 3200, Model 3201 airplanes, 2039
Cessna Model 172 Series airplanes, 2037
Dornier 228-200 airplanes, 2761
Fairchild Models SA227-CC, SA227-DC, and SA228-AE airplanes, 11869
Gates Learjet Model 31 airplanes, 18097
GROB Model 115 Series airplanes, 13283, 19798
Gyroflug Model SC-01 Speed Canard airplanes, 20860
Transport category airplanes—
Fuel tank access panels; design standards, 18526
Pressurized cabins and compartments, improved structural requirements, 8742, 18022
Control zones, 1375, 2504, 6161, 9948, 13287, 17723, 20864
Jet routes, 10255, 20126, 23258
Restricted areas, 517, 991, 7377, 7378, 9124, 11102, 20125
Rulemaking petitions; summary and disposition, 1038, 6830, 11868, 20124, 22331
Transition areas, 516, 619, 907–910, 2503, 3049, 4179, 6160, 6162, 6830–6832, 7375, 7376, 8635, 8929, 9323, 10546, 11100, 11101, 12947, 14816, 14817, 16290, 16291, 17078–17080, 17223, 17724, 17957, 17958, 19311, 23255–23257
Transponder with automatic altitude reporting capability requirement and controlled airspace common floor, 4306, 9758
VOR Federal airways, 6666, 9949, 17224, 17225, 18857, 22182, 23644
VOR Federal airways and jet routes, 22183
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Design considerations for minimizing hazards caused by uncontained turbine engine and auxiliary power unit rotor and fan blade failures, 17814
Emergency evacuation demonstrations, 3659
Exits; uniform distribution, 3659
Part 23 airplanes certification; flight test guide, 13213
Powerplant fire zone areas; materials and components fire testing, 9401
Production certificates; facilities in foreign countries, 20210
Aircraft, U.S.-registered; foreign maintenance programs, 591
Airplanes, small—
Airworthiness standards publications, 298
Structural substantiation of modifications involving increased engine power, 1880
Emergency medical services/helicopter, 17814
Normal, utility, and acrobatic category airplanes, certification; flight test guide, 1881
Traffic alert and collision avoidance systems and Mode S Transponders; airworthiness and operational approval, 14880
Transport category airplanes—
Airborne windshear warning systems, 5850
Flight management systems, 17133
Wet, grooved, or porous friction course overlayed runways; operational landing distances, 7462
Aircraft:
McDonnell Douglas model MD–11 airplane; type certificate application, 18646
Airport noise compatibility program:
Anchorage International Airport, AK, 15164
Burbank-Glendale-Pasadena Airport, CA, 17814
Cleveland-Hopkins International Airport, OH, 2799
Danbury Municipal Airport, CT, 9166
Gainesville Regional Airport, FL, 591
Great Falls International Airport, MT, 592
Memphis International Airport, TN, 12217
Missoula County Airport, MT, 23714
New Orleans International Airport, LA, 9167
Palm Springs Municipal Airport, CA, 90
Port Columbus International Airport, OH, 2800
Snohomish County Airport, WA, 23715
Artisan liens on aircraft; recordability, 23716
Committees; establishment, renewal, termination, etc.:
Air Traffic Procedures Advisory Committee, 11722
Environmental statements; availability, etc.:
Denver Airport, CO, 15481
DuPage Airport, West Chicago, IL, 5240
Exemption petitions:
British Aerospace Public Limited Co., 1699, 2801
Fairchild Aircraft Corp., 1880, 2804
Exemption petitions; summary and disposition, 91, 593, 2141, 3972, 4492, 4927, 6911, 6912, 8292, 8714, 9168, 10325, 11929, 12092, 14880, 15483, 16332, 16333, 18189, 20211, 20934, 21959, 21960, 22418, 22759, 23716, 24391
Grants; availability, etc.:
Airport improvement program, 3104, 3973
Funds apportionment; guidelines, 4928
Meetings:
Aeronautica Radio Technical Commission, 91, 1088, 1433, 1879, 5851, 6727, 10030, 10031, 12218, 14881, 14882, 16334, 18018, 19369, 21543, 23332
Air Traffic Procedures Advisory Committee, 11722, 19847
Informal airspace meetings—
Arizona, 19364
California, 15164
Florida, 19364
Texas, 19364
National Airspace Review Enhancement Program Advisory Committee, 1433, 2561
Organization, functions, and authority delegations:
Akron, CO, 6913
Baker, OR, 10581
Bellingham, WA, 13045
Chanute, KS, 8714
Freeland, MI, 13045
Jamestown, ND, 13045
LaCrosse, WI, 11929
Lovelock, NV, 9563
Manhattan, KS, 20935
Martha's Vineyard, MA, 9019
Montague, CA, 22258
Russell, KS, 20935
Tonopah, NV, 22258
Traverse City, MI, 19364
Zanesville, OH, 11929
Technical standard orders:
Aircraft turnbuckle assemblies and/or turnbuckle safetying devices, 15483
Life preservers, 6913
Life rafts (twin tube), 3974

Federal Bureau of Investigation

NOTICES
Meetings:
National Crime Information Center Advisory Policy Board, 3470, 16596

Federal Communications Commission

RULES
Common carrier services:
Customer premises equipment and enhanced services; detariffing implementation procedures, 7753
Customer premises equipment furnished by Bell operating companies and independent telephone companies; nonstructural safeguards, 27, 502
Dominant carriers; rate base and net income components, 1027
International carrier circuits distribution policy development among available facilities during post-1988 period, 13270
International telecommunications—
Foreign-owned carrier and annual procurement reports, 12526
Nonstructural safeguards for provisions of enhanced services (Computer III proceeding), 8629, 8630
Private land mobile services—
Rural radio service; basic exchange telecommunications radio service, 3210
Public coast station operator reports, 4624
Public mobile services—
Cellular capitalization plan requirements elimination, 23765
Point-to-multipoint operations, 11855
Rural radio service; basic exchange telecommunications radio service, 3210
Rural service areas, 18091, 18093, 18562
Telephone companies—
Terminal equipment; line power output functions continuity requirements, 1103
Telephone company uniform system of accounts—
Local exchange carriers; amortization of depreciation reserve imbalances, 4978
Communications equipment:
Cable television service; input selector switches, 3894
Radio frequency devices—
Control and security alarm devices, 11861
Cordless telephones; indefinite extension, 1781
Frequency allocations and radio treaty matters:
Land mobile satellite service; spectrum allocations, etc., 4624, 8459
Point-to-multipoint operations, 11855
Radio frequency devices; compliance verification reports, 5980

Rural radio service; basic exchange telecommunications radio service, 3210
Table of frequency allocations; footnote modification, 10878
Organization, functions, and authority delegations:
Reporting and recordkeeping requirements, 5184
Correction, 6916
Practice and procedure:
Common carriers—
Applications; signatures, 17192
Formal complaint procedures, 11851
Terrain shielding in evaluation of television translator, television booster, and low power television applications, 15557
World Administrative Radio Conference on Use of Geostationary-Satellite Orbit and Planning of Space Services Utilizing It (Space-WARC), 17039
Radio broadcasting:
AM daytime-only broadcast stations; unlimited-time operation, etc., 1030
Correction, 5344
Emergency broadcast system; revision and update, 15395
Fairness doctrine; adjudication ruling, 13270
FM booster stations, 4168
FM table of allotments; revision; correction, 4258, 21762
FM translator or radio booster stations; application forms, 15225
Grandfathered short-spaced FM stations and Class A FM stations; reconsideration, 17040
Noncommercial educational broadcasters; public broadcasting licensees; issues programs list, 15224
Noncommercial educational FM broadcast stations; translator and booster stations, 14802
Oversight; clarification and editorial corrections, etc., 2497, 4411, 5684
Public file materials; record retention periods, 17046
Radio services, special:
Amateur service—
Stations operated by aliens holding reciprocal permits; identification procedure, 21822
Aviation services—
Emergency position indicating radio beacons and emergency locator transmitters; continuous wave and voice modulation use, 8904
Maritime services—
Bridge-to-bridge channel on Great Lakes, 17051
Emergency position indicating radio beacons and emergency locator transmitters; continuous wave and voice modulation use, 8904
Private land mobile services—
Advanced Train Control System; six 900 MHz frequencies licensing, 3751
Frequency assignments, 9447
Trunked specialized mobile radio systems, 12154
Private operational-fixed microwave service—
Point-to-multipoint operations, 11855, 21453
Public safety services, national plan; frequencies assignment, regional public safety plans development, etc., 1022, 11849
Radio stations; table of assignments:
Alabama, 1629, 8189, 23632
Alaska, 15221
Arizona, 504
Arkansas, 2496, 17042, 18283, 18987, 23633
California, 1629, 2496, 8904, 10249, 12152, 12528, 12768, 23633
Colorado, 2496, 5185, 19912
Delaware, 12153
Florida, 1629, 5186, 8902, 11668, 12153, 12946, 15222, 17043
Georgia, 5577, 17045
Hawaii, 17043
Idaho, 17043, 17046
Illinois, 20624, 20625, 21645
Indiana, 17044, 18284, 19912, 20625, 23396, 23633
Iowa, 5576, 10094, 13409, 18284, 21646
Kentucky, 23396
Maine, 12946, 14802, 17044
Maryland, 12153
Michigan, 11668, 12946, 15560, 20625
Minnesota, 5184, 15222, 22495
Mississippi, 5185, 6828, 12769, 23396
Missouri, 8904, 12528, 12769, 20626, 22496, 23398
Montana, 12770, 23634
Nebraska, 8902
Nevada, 3024, 11668, 15223, 17193
New Hampshire, 17046, 19913
New Mexico, 15223, 17047
New York, 1629, 5576, 16551, 17048, 17193, 19913, 22496
North Carolina, 1782, 2497, 2600, 5185, 5577, 5981, 8903, 23397
Ohio, 12154
Oklahoma, 5186, 18285, 20626
Oregon, 5578, 8190, 8903
Pennsylvania, 5577, 21645
South Carolina, 10094, 12154, 18988
South Dakota, 5186
Tennessee, 5187, 7754, 15560, 16551
Texas, 1630, 5187, 8904, 16551, 17045, 17047, 23398
Vermont, 28, 12770, 15223
Virginia, 2600, 5187
Wisconsin, 28, 15560
Wyoming, 17047
Television broadcasting:
Cable Communications Policy Act; implementation, 17049
Cable television systems—
Input selector switches, 3212
Emergency broadcast system; revision and update, 15395
Fairness doctrine; adjudication ruling, 13270
Lower power television and television translator filing window, 17048
Oversight; clarification and editorial corrections, etc., 2497, 5684
Television booster stations, 4168
Television translator or booster stations; application forms, 15225
Television stations; table of assignments:
California, 11863
Colorado, 12770
Massachusetts, 13409
New Mexico, 8190
New York, 13409
Ohio, 23397
Pennsylvania, 8903
South Carolina, 29
Texas, 15224
West Virginia, 19913
PROPOSED RULES
Commercial radio operators:
Ship radio officer qualifying service endorsements, 15572
Common carrier services:
Access charges—
Enhanced service providers exemption charges, 16301
Local exchange carriers; 800 service access, 7214, 9459
Dominant carrier rates, 22356
International telecommunications—
Accounting rates and restrictive practices, 12546
Public mobile services—
Alternate cellular technologies and auxiliary services; special provisions, 4862
Alternative type acceptance (ATA) equipment testing and authorization procedure, 10126
Cellular services, 14823
Height and power increases, 18586
Rural cellular service, 5020, 5289, 8472
Satellite communications—
Automatic transmitter identification system for video satellite uplinks, 17230
INMARSAT Telex traffic; unrouted ship-to-overseas allocation method, 20146
RCA American Communications, Inc.; modification of Space Station authorization, 3056
Telecommunications equipment and services; access by hearing impaired and other disabled persons, 12546
Telephone network; connection of simple inside wiring, etc., 9952, 22035
World Administrative Telegraph and Telephone Conference; draft international telecommunications regulations, 5434
Communications equipment:
Radio frequency devices—
Nonlicensed operation provisions, 17083
Frequency allocations and radio treaty matters:
Air-to-ground service; commercial aircraft, 17082
Alternative type acceptance (ATA) equipment testing and authorization procedure, 10126
Frequency allocations; correction, 8225
Practice and procedure:
Filing of proposed revisions to average schedules for 1988; extension, 15432
Radio and television broadcast channel allocation proceedings; abuse prevention, 3761
Remand proceedings—
Brookings City, 10549, 10550
Radio broadcasting:
Broadcast auxiliary and cable relay services; flexible operational and licensing procedures, 529
Expanded AM band, 23426
FM allotment downgrading, 14824
FM broadcast stations—
Domestic intermediate frequency distance separation requirements, 10259, 19005
Standard computer algorithm for propagation prediction, 6677
FM broadcast translator stations and FM booster stations, 21861
FM translator service, 22035
Regional Administrative Radio Conference; report, 15716

Short-spaced FM station assignments by use of directional antennas, 12779, 22036
Radio services, special:
Amateur service—
Frequency allocations; correction, 8225
Modern techniques, technology, and uses, 12780
Experimental, auxiliary, and special broadcast—
Alternative type acceptance (ATA) equipment testing and authorization procedure, 10126
General mobile service; personal use and technology changes, 779
Maritime services—
Digital selective calling equipment; correction, 3058
Ship radio officer qualifying service endorsements, 5596, 15572
Private land mobile services—
Alternative type acceptance (ATA) equipment testing and authorization procedure, 10126
Frequency allocations; correction, 8225
Private operational-fixed microwave service—
Point-to-multipoint services; digital termination systems, 23132
Radio stations; table of assignments:
Alabama, 1386, 2061, 3762, 12167, 15241, 17083, 17084, 22544
Alaska, 5284
Arizona, 8225, 11690, 12547
Arkansas, 1807, 2607, 3762, 9459, 15573
California, 3897, 5287, 5597, 10126, 10127, 12167, 15239, 15240, 17231, 18305, 22544, 22546, 23422, 23428
Colorado, 5284, 7216, 8225, 10127, 17084, 23672
Florida, 2061, 8472, 8935, 8936, 10127, 15241, 19964, 23423
Georgia, 1386, 2510, 7217, 8937, 10128, 20658, 22544, 23423
Hawaii, 12168, 23424
Idaho, 2511
Illinois, 2062, 2511, 2513, 23424
Indiana, 2513, 5285
Iowa, 8473, 11690, 12168, 12548, 15574, 19003, 22545
Kansas, 1386, 1807, 3763, 12963, 15572
Kentucky, 2608, 12168, 19965, 20659
Louisiana, 2062, 2063, 7217, 12548
Maine, 5283, 5287
Michigan, 1387, 5287, 7218, 13419, 13420, 22545, 23672
Minnesota, 3897, 3898, 11690, 12964, 13420, 23672
Mississippi, 3899, 8937, 17084, 18306, 23424
Missouri, 3899, 6163, 22546, 22548
Nebraska, 13421, 19965
New Hampshire, 13421
New Mexico, 2512
New York, 1387, 7216, 8226, 12169, 12549, 15574
North Carolina, 6163, 8937, 13422, 15240, 17084, 18588, 19966
Ohio, 5288, 6164, 8227, 23425
Oklahoma, 1387, 6164, 17231
Oregon, 1388, 2063, 6164, 6165, 8227, 19004, 22546
Pennsylvania, 1388, 8228, 22547
South Carolina, 12964
South Dakota, 3898, 8228, 15574, 19003
Tennessee, 1386, 2063, 5285, 12169, 15575, 16569
Texas, 1808, 2064, 3763, 5285, 5286, 7218, 10128, 13422, 15574, 19004, 19005, 22547, 22548, 23135
Utah, 17085
Vermont, 16569
Virginia, 5288, 15240, 15575
Washington, 3763, 5289, 17085, 23425
West Virginia, 17232
Wisconsin, 5286, 16569, 17232, 23425
Wyoming, 15572, 15573, 16570
Regulatory agenda, 14604
Television broadcasting:
Broadcast and cable television services; equipment authorization procedures relaxation, 8667
Broadcast auxiliary and cable relay services; flexible operational and licensing procedures, 529
Cable Communications Policy Act; implementation—
Signal availability standard, etc., 625
Cable television systems—
Broadcast signals; availability, 18588
Children's television commercialization guidelines, 426, 10905
Deregulatory review of technical and operations regulations, 16165
National spot sales; TV stations network representation, 18305
Standard computer algorithm for propagation prediction, 6677
Television-to-land mobile interference elimination, 3057, 4674
Television stations; table of assignments:
Arkansas, 22548
California, 2513
Florida, 8936
Georgia, 19005
Mississippi, 2512
Nevada, 6165
New York, 5201

NOTICES

Agency information collection activities under OMB review, 284, 2888, 3786, 4211, 4715, 5214, 5632, 6031, 7234, 8501, 8973, 9487, 10943, 11342, 12589, 13320, 15285, 15596, 17109, 20165, 21524, 22046, 22567, 23451, 23794
Common carrier services:
Bell Atlantic; message storage service, 8696
Block 2 cellular RSAs; applications, 20166
Caribbean Region; common carrier facilities, construction and use; policies and guidelines, 1839
Cellular markets applications designated for hearing; Charlottesville, VA, et al., 22046
Cellular rural service areas with component parts; list, 18133
Federal-State Joint Board proceedings; Commissioner appointed, 12990
Multichannel multipoint distribution services; filing period for applications, 15285
North Atlantic Region; common carrier transmission facilities, construction, and use; policies and guidelines, 2285
Pacific and Nevada Bell; voice mail services, 8696
Satellite television signals, scrambling; home satellite dish antennas, 9701
Video satellite uplinks; automatic transmitter identification system (ATIS) proceedings, 20170
Emergency broadcast system:
Closed circuit test, 6031, 20170
Meetings:
Advanced Television Service Advisory Committee, 754, 1680, 1838, 5467, 5632, 9487, 10423, 12589, 15139, 18342, 21917, 23452
Emergency Broadcast System Advisory Committee, 7234
ITU World Administrative Radio Conference Advisory Committee, 2537
Radio Broadcasting Advisory Committee, 566, 6031, 12589, 17109
Meetings; Sunshine Act, 1538, 5519, 9403, 13215, 15168, 15946, 15946, 17136, 18371, 23338
Radio broadcasting:
Carroll doctrine and UHF impact policy; report and policy statement, 5214
Comparative licensing, distress sales, and tax certificate policies premised on racial, ethnic, or gender classifications, 6697
FM vacant channel applications, universal window filing period, 566, 1680, 5040, 5467, 9488, 14852, 15596, 20170, 23150, 23308, 23452
Radio services, special:
Specialized mobile radio services—
Frequencies reassignment, 4716, 6872, 8285
Rulemaking proceedings; petitions filed, granted, denied, etc., 284, 754, 1680, 2537, 4715, 5316, 7235, 10944, 11343, 12590, 15286, 20170, 21917, 23452
Senior Executive Service:
Executive Resources and Performance Review Board; membership, 7235
Television broadcasting:
Carroll doctrine and UHF impact policy; report and policy statement, 5214
Applications, hearings, determinations, etc.:
AGH Communications, Inc., et al., 17110
A.J.T. Broadcasting Services Limited Partnership et al., 82
Axell, Wade, et al., 12590
Bandy, Marshall M., et al., 2643
Barden, Don H., et al., 10423
Barker Broadcasting Co., Inc., et al., 22567
Bayboro Broadcasting et al., 12991
Blair Broadcasting Corp. et al., 10944
Bland, R. Tyler, Jr., et al., 19038
Blue Ridge Broadcasting Co., Inc., et al., 1409
Boudreaux, Jeffrey L., et al., 22567
Brandt, Robin C., et al., 6198
Brimark Broadcasting et al., 18342
Broadcast Data Corp. et al., 3786
Burwell, Roscoe Clifford, Jr., et al., 6032, 10944
Calhoun County Broadcasters, Inc., et al., 2089
Carta Corp. et al., 6032
Catskill Broadcasting Co. et al., 20014
CBS, Inc., et al., 6198
Cedar Rapids Broadcasting et al., 82
Celina Broadcasting et al., 12590
Church of Christ Ministry, Inc., et al., 6199
Clay, George Henry, et al., 1410
Community Broadcasting Co., Inc., et al., 2536
Corydon Broadcasters Ltd. et al., 82
Coyle Communications, Ltd., et al., 6199
Curley, Dennis H., et al., 5314
Daugherty, Jay, et al., 16586
Davis, Roy, et al., 12591
Day Broadcasting et al., 1838
Daystar Radio, Ltd., et al., 20015
Dean-Thomas Communications et al., 12591
Dorsey, Albert L., Jr., et al., 22567
Dove Inc., et al., 2089
Dwight Broadcasting Co. et al., 19038
Eastern Broadcasting et al., 83

Ebenezer Broadcasting Group, Inc., et al., 23687
Eclipse Broadcasting Group, Inc., et al. 23688
Empire Broadcasting, Inc., et al., 18342
Evangel Christian School, Inc., et al., 10152
Evans, James, et al., 6199
Fairmont Community Broadcasters et al., 2643
Faith Broadcasting, Inc., et al., 13445
Family Stations, Inc., et al., 3076, 12591
Fleming, LaQueth, et al., 23688
FPS Broadcasting Group et al., 23688
Franklin Broadcasting et al., 20015
Froggy Bottom Television et al., 12592
Gary, Albert E., et al., 20015
General Broadcasting Corp. et al., 3787
Gnacone, Leonard James, et al., 12592
Gilbert, Mary Faye, et al., 17110
Great Lakes Broadcasting, Inc., et al., 9488
Great Lakes Radio Corp. et al., 18342
Harding, Douglas Gaines, et al., 3941
Hartke Communications Corp. et al., 1681
Harvest Broadcasting et al., 1838
Heartland Communications, Inc., et al., 10944
Hefty Communications, Ltd., et al., 23689
Hi-Band Broadcasting Co. et al., 2643
Hilding, Eric R., et al., 22568
Hilgendorf, Donald E., et al., 5314
Holmes Beach Broadcasting Ltd. et al., 9488
JBD Inc. et al., 10423
John Garber & Associates et al., 19039
Jones, John, Jr., et al., [illegible]
Jonesville FM Group Limited Partnership et al., 8973
J.R. Broadcasting et al., 6200
Knight Communications Corp. et al., 8974
La Crescent Community Broadcasters et al., 15597
Leemay Broadcasting Services, Inc., et al., 10945
Link, William Carlton, et al., 3787
Livingston Communications, Inc., et al., 19039
LOCAL Morgan Hill Radio Associates et al., 17110
Loudon Broadcasters, Inc., et al., 6032
Lundborg, Susan, et al., 755
Magnuson, Larry S., et al., 10945
MarKey Broadcasting Co., Inc., et al., 19039
Markunas, Nanette, et al., 19040
Martz, Timothy D., et al., 18343
Media Investment Corp. et al., 12991
Milford, Ltd., et al., 19040
Miller, Ernest C., et al., 12592
Miller, Worth M., et al., 19040
Modlin, Edward M., Jr., et al., 5314
Moore, W. B., Jr., et al., 18343
Mountain Media, Inc., et al., 10152
National Exchange Carrier Association, Inc., 12594
Neville, Steve P., et al., 1839
O'Conner, David, et al., 10424
Old Eureka Broadcasting, Inc., et al., 10424
Olney Broadcasting Co. et al., 2090
Owens, Dale A., 2536
Panhandle Communications, Inc., et al., 20016
Parrish, Theresa P., et al., 5315
Phillips, Charles E., et al., 17111
Pittsburg Radio et al., 2090
Plessinger, Richard L., et al., 9489
Posey County Broadcasting Co., Inc., et al., 8974
Pueblo Radio Broadcasting Service et al., 12593
Radio Indio Corp. et al., 13445
Rayne Broadcasting Co., Inc., et al., 566
Red Mountain Broadcasting Co. et al., 6200
Rockledge Community Broadcasters, Inc., et al., 5315
Schwartz, Marvin G., et al., 8974
Selectronics Corp. et al., 6033
Sheboygan County Broadcasting Co., Inc., et al., 3787
Sierra-Shingle Springs Broadcasting et al., 10424
Silent Minority Group, Inc., et al., 23689
Southland Broadcasting Co., Inc., et al., 20016
Spanish Aural Services Co. et al., 18343
Spivey, Lloyd, et al., 5315
Spring Arbor College et al., 19040
Sunrise Partners et al., 6033
Surber, Janice Faye, et al., 13445
Swain, Jerome, et al., 6200
Swink, Jerry, et al., 19041
Taylor Broadcasting, Inc., et al., 3941
Telecommunications Network, Inc., et al., 19041
Tele-Communications of Key West, Inc., et al., 2090
Thief River Radio et al., 8975
Thomas, Robin B., et al., 17111
Three States Broadcasting Co., Inc., et al., 10945
Tiab Communications Corp. et al., 23690
Trax Broadcasting et al., 12593
Tropic-Air, Ltd., et al., 19041
Trunkel, Tony J., et al., 10945
Turner Broadcasting & Communications System et al., 12593
Underwood, Sue A., et al., 1839
Valmedia, Inc., et al., 23150
Viacom Broadcasting of Missouri, Inc., et al., 13446
Visalia Broadcast Limited Partnership et al., 19042
Vizcarrondo, Nomar, et al., 17245
W&W Broadcast Service et al., 6033
Wabash Valley Community Radio Corp. et al., 20016
White Eagle Limited Partnership et al., 19042
White Mountain Radio et al., 22568
Wilson, Robert, et al., 17112
Wiregrass Educational Radio, Inc., et al., 10425
WMHT Educational Telecommunications, Inc., et al., 17111
Wolf, Robert J., et al., 755
Woods Communications Group, Inc., et al., 15597
Ying Hua Benns et al., 12991
Younginger, Karen E., et al., 8975
Zawila, William L., et al., 10425
Zozaya, Julia S., et al., 22568

Federal Contract Compliance Programs Office

NOTICES

Affirmative action programs; corporate-level selection decisions, 24380

Federal Crop Insurance Corporation

RULES

Administrative regulations:
Agency sales and service contract; approval standards, 24011
Crop insurance endorsements, etc.:
Beans, corn, etc., 15016
Canning and processing beans, 6559, 7878, 9099
Corn, 4006, 4589
Figs, 15014
Flaxseed, 4379
Malting barley, 15013
Onions, 19217
Soybeans, 1001
Stonefruit, 6561
Texas citrus trees, 6965, 9100
Crop insurance regulations:
General provisions, etc., 9099, 16539
Crop insurance; various commodities:
Apples, 1467, 20278, 24249
Canning and processing tomatoes, 6565
Combined crops, 12759
Cotton, 6563, 6566
Grain sorghum, 9103
Grapes, 24249
Macadamia nuts, 6115, 6568
Potatoes, 4380, 6115
Rice, 6564
Safflowers, 6567
Sunflowers, 6565
Sweet corn, 15016
Texas citrus trees, 9102, 9104, 20279
Federal claims collection; salary offset, 2, 10526

PROPOSED RULES

Administrative regulations:
Agency sales and service contract; approval standards, 4986
Reinsurance agreements; approval standards, 18571
Crop insurance endorsements, etc.:
Certified seed potatoes, 5276, 16554
Figs, 6652
Frost/freeze potatoes, 5276, 20331
Hybrid corn seed, 6653
Malting barley, 20332
Northern potatoes, 4413
Onions, 6654
Quality potatoes, 5276, 20333
Stonefruit, 505
Texas citrus trees, 507
Tobacco, 5277, 19304, 19306
Wheat, 21455
Crop insurance regulations:
General provisions; coverage level, 12774
General provisions, etc., 23770
Crop insurance; various commodities:
Canning and processing peaches, 1640
Fresh market sweet corn, 6655, 11299, 15045
Macadamia trees, 4030
Texas citrus trees, 4413

NOTICES

Meetings:
Board of Directors, 2261

Federal Deposit Insurance Corporation

RULES

Bank Secrecy Act compliance, 17916
Competitive Equality Banking Act; implementation:
Agricultural loan loss amortization, 22130
Foreign banks:
Country exposure concentration, 21986
Privacy Act; implementation, 7339
Unsafe and unsound banking practices:
Insured nonmember banks; subsidiary securities activities; correction, 597, 2223

PROPOSED RULES
Banking organizations, capital adequacy; risk-based capital guidelines, 8550
Practice and procedure rules, 5392
Correction, 9406
Regulatory agenda, 14620
NOTICES
Agency information collection activities under OMB review, 4456, 4716, 7800, 9978, 11131, 12815, 13486, 16189, 16470
Meetings; Sunshine Act, 94, 652, 990, 1101, 1439, 1978, 2667, 2810, 3116, 3978, 4497, 4930, 5079, 5853, 6057, 7292, 7828, 8297, 9022, 9403, 9725, 10034, 10460, 11000, 11730, 11936, 12495, 12745, 13046, 13377, 15333, 15492, 16339, 16512, 16513, 16612, 16930, 17306, 17532, 17817, 18193, 20063, 20412, 20717, 22264, 23166, 23718, 24169
Privacy Act; systems of records, 7396, 7400, 12815, 23309
State nonmember banks, independent external audits; policy statement, 12817

Federal Election Commission

PROPOSED RULES
Contributions and expenditure limitations and prohibitions:
Allocations between Federal and nonfederal accounts, 5277
Correction, 6916
Corporate and labor organization expenditures, 416
Rulemaking petitions:
Ted Haley Congressional Committee, 2500
NOTICES
Meetings; Sunshine Act, 95, 466, 653, 990, 1701, 2565, 3290, 4930, 5682, 6915, 7829, 9022, 10460, 11589, 12495, 13215, 15334, 17136, 18193, 20213, 21761, 22608, 23718, 24828
Special elections; filing dates:
Illinois, 16781
Louisiana, 1510
New Jersey, 12188
Virginia, 7235

Federal Emergency Management Agency

RULES
Debarment and suspension (nonprocurement), 19161
Disaster assistance:
Community disaster loan program, 12681
Individual and family grant program, 3597
Federal crime insurance program:
Residential and commercial rates, commercial burgulary and robbery policy premium discounts, and protective device requirements, 11275
Flood elevation determinations:
Alabama et al., 7915, 19782
Arizona et al., 5181, 22492
Arkansas et al., 5178
California et al., 2743
Florida, 11510, 12152
Florida et al., 5180, 22489, 22491
Flood insurance; communities eligible for sale:
Alabama et al., 3208, 4408, 6148, 6150, 15394
Arkansas et al., 10087
Idaho et al., 24725
Iowa, 19907, 22654
Louisiana et al., 13268, 22172
Minnesota et al., 14795
Mississippi et al., 22174
New York, 15555, 20846
New York et al., 19909, 23762
North Carolina, 8457, 10090, 17945
North Carolina et al., 14798, 22176
Pennsylvania et al., 1485, 2741, 5272, 10091, 17946
Tennessee et al., 5176
Flood insurance program:
Flood plain management standards, 16269
Insurance coverage and rates applied to structures located in communities, 23629
Insurance sales and claims adjustment, 15219
Private sector property insurers assistance (write-your-own program), 15208
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 2739
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Correction, 9317
PROPOSED RULES
Federal crime insurance program:
Residential and commercial rates, commercial burglary and robbery policy premium discounts, and protective device requirements, 621
Flood elevation determinations:
Alabama et al., 4675
Arizona et al., 5195, 22527
Colorado et al., 21705
Georgia et al., 12536
Kansas, 6676
New York, 12536
Pennsylvania, 4425, 15066
Flood insurance program:
Insurance coverage and rates—
Elevated building coverage limitation, 10547
Structures located in communities, 4673
Private sector property insurers assistance (write-your-own program), 419
Nondiscrimination on basis of age in Federal programs and activities, 922
Regulatory agenda, 14416
NOTICES
Agency information collection activities under OMB review, 1510, 3638, 4073, 7969, 9808, 10561, 11908, 12075, 20686, 20899, 21524, 24796
Disaster and emergency areas:
Alaska, 9141
Arkansas, 567, 642, 952
California, 4716, 9978
Guam, 2888
Hawaii, 1841
Marshall Islands, 2091
Micronesia, 2644, 9368
Northern Mariana Islands, 2889, 7800
Puerto Rico, 952, 3638
Environmental statements; availability, etc.:
Radiological Instrumentation Test Facility, VA, 12819
Flood insurance program:
Financial assistance/subsidy arrangement, 18602
Grants and cooperative agreements; availability, etc.:
Anti-arson strategy program, 19042
Hazardous materials training program, 19335, 22223
Meetings:
Advisory Board, 17112
Emergency Management Institute Board of Visitors, 1841, 7046
National Fire Academy Board of Visitors, 12594, 22727
Emergency food and shelter program:
National Board implementation plan, 7024
Radiological emergency; State plans:
Illinois, 12992
Iowa, 12189
North Carolina, 18142
Texas, 12075
Senior Executive Service:
Performance Review Board; membership, 1938

Federal Energy Regulatory Commission

RULES
Annual charges; gas and oil pipelines and electric utilities, 1748, 7354
Electric Consumers Protection Act; interpretations, 15802
Hydroelectric licenses—
Information availability to public, etc., 15804
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 3339, 3342, 11991, 12931
Hydroelectric projects; fish and wildlife agencies reimbursement fees—
Reporting and recordkeeping requirements, 2224
Reactor plant equipment; property list for use in accounting for addition and retirement—
Reporting and recordkeeping requirements, 2593, 5155
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1469
Independent Offices Appropriations Act; filing fees, 15374, 15383, 24057
Correction, 21992
National Environmental Policy Act; implementation, 1750, 3584, 4817, 8176
Natural gas companies (Natural Gas Act):
Anticompetitive practices relating to marketing affiliates of interstate pipelines 22139
Natural gas data collection system, 15023, 16058, 19283
Pipelines; interest rates and undertaking requirements for gas pipelines and produces; correction, 14787
Project cost limits under blanket certificates, 11644
Purchased gas adjustment regulations, 867, 2826
Correction, 11991, 13254
Reporting and recordkeeping requirements, 3364, 12676
Sales and purchases abandonment under expired, terminated, or modified contracts, 4121, 7495, 11845
Correction, 8176
Reporting and recordkeeping requirements, 12677
Natural Gas Policy Act:
Anticompetitive practices relating to marketing affiliates of interstate pipelines, 22139

Ceiling prices—
Compression allowances and protest procedures, 15, 2826, 21415
Maximum lawful prices and inflation adjustment factors, 3019, 16541
Old gas pricing structure; correction, 7503
First sales of pipeline production; rehearing or clarification dismissal and rehearing denied, 3886
Natural gas data collection system, , 15023, 16058, 19283
Outer Continental Shelf Lands Act (Section 5); pipeline transportation of natural gas across OCS; interpretation, 14922, 20835
Pipelines; interstate transportation of gas for others; effects of partial wellhead decontrol, 7893, 8439, 15198
Rehearing denied, 16859
Purchased gas adjustment regulations, 867, 2826
Reporting and recordkeeping requirements, 3364
Oil pipelines; interest rate on amounts held subject to refund and eliminating undertakmg requirements for gas pipelines and procedures, 14787
Organization, functions, and authority delegations:
Miscellaneous amendments, 16058
Practice and procedure:
Contested DOE remedial orders review, 16407
PROPOSED RULES
Annual report forms; statement of cash flows, 21853
Electric utilities (Federal Power Act):
Accounting for phase-in plans, 24096
Hydroelectric power projects; relicensing, 21844
Independent power producers, 9327, 16882
Natural Gas Policy Act:
Interstate natural gas pipeline capacity; brokering, 15061, 18099
Natural gas produced from devonian shale; definition revision, 12704
Outer Continental Shelf Lands Act (Section 5); implementation; pipeline transportation of natural gas across OCS, 14923
Rulemaking proceedings and petitions; termination, 3754
Public Utility Regulatory Policies Act:
Bidding programs, 9324, 16882
Small power production and cogeneration facilities, 9331, 16882, 24099
Regulatory agenda, 14628
NOTICES
Electric rate and corporate regulation filings:
See entries under "Electric rate, small power production, and interlocking directorate filings, etc." after April 1, 1988.
Arizona Public Service Co. et al., 4875, 9351
Bonneville Power Administration et al., 3620
Boston Edison Co. et al., 69, 5034
Bridgeport Resco Co., L.P., et al., 8247
Canal Electric Co. et al., 171
Carolina Power & Light Co. et al., 2074
Central Illinois Light Co. et al., 1674
Central Illinois Public Service Co. et al., 3070
Central Power & Light Co. et al., 1057
Cliffs Electric Service Co. et al., 553
Commonwealth Edison Co. et al., 2625, 4702
Connecticut Light & Power Co. et al., 6686
CP National Corp. et al., 8248
Duke Power Co. et al., 4064
Florida Power Corp. et al., 1824
Gulf Power Co. et al., 9135
Gulf States Utilities Co. et al., 5035
Iowa Electric Light & Power Co. et al., 9800
Iowa Public Service Co. et al., 7227
MSU System Services, Inc., et al., 70
Nevada Power Co. et al., 439
New England Power Co. et al., 3771
Northwestern Public Service Co. et al., 5445
Pennsylvania Power & Light Co. et al., 9352
Public Service Co. of New Mexico et al., 7561, 8686
Southern California Edison Co. et al., 9681
Southwestern Electric Power Co. et al., 7006
Union Electric Co. et al., 5820
Virginia Electric & Power Co. et al., 4448
Electric rate, small power production, and interlocking directorate filings, etc.:
Arizona Public Service Co. et al., 17097, 21892
Arkansas Power & Light Co. et al., 12060
Boston Edison, Inc., et al., 23440
Canal Electric Co. et al., 24123
Duke Power Co. et al., 17243
Duquesne Light Co. et al., 11114
El Paso Electric Co. et al., 21893
Energenics/Glendon, Inc., et al., 13439
Florida Power & Light Co. et al., 11115, 15871
Gulf Power Co. et al., 19987
Gulf States Utilities Co. et al., 12807, 23785
James River Paper Co., 22043
Kansas Gas & Electric Co. et al., 15116, 22710
Kansas Power & Light Co. et al., 21513
Kentucky Utilities Co. et al., 16579
Louisiana Power & Light Co. et al., 19326
Louisville Gas & Electric Co. et al., 12179
M&M/Mars, Inc., et al., 24126
Maine Public Service Co. et al., 13146
Mid-Set Cogeneration Co. et al., 23787
Midway-Sunset Cogeneration Co., 17500
Newbay Corp. et al., 22556
Niagara Mohawk Power Corp. et al., 11332, 11904
Northern States Power Co. et al., 13315
Oakland County, MI, 18595
Ocean State Power et al., 24777
Orange & Rockland Utilities, Inc., et al., 16185
Pacific Gas & Electric Co. et al., 18333
Pacific Power & Light Co. et al., 20887
Panda Energy Corp. et al., 16581
Portland General Electric Co. et al., 12181
Southern California Edison Co. et al., 11553
T.E.S. Filer City Station Limited Partnership et al., 16763
Trafalgar Power, Inc., et al., 23442
Tucson Electric Power Co. et al., 12808
Union Country Utilities Authority et al., 15116
Washington Water Power Co. et al., 15275
Emergency action plan guidelines; availability, 5822
Environmental statements; availability, etc.:
Adirondack Hydro Development Corp., 18121
Alaska Electric Light & Power Co. et al., 16186
Algonquin Gas Transmission Co., 15276
Alternate Energy Resources, Inc., 21897
Bidwell, Floyd N., 12809
D.J. Pitman International Corp. et al., 7562, 8249
Florida Gas Transmission Co., 3924, 17498
Grisdale Hill Co., 6686
Independent power producers, etc., 9682, 11906
Kaukauna, WI, 23148
Keating, Joseph M., 8687
Northeast U.S. Pipeline Projects, 15118, 15870, 18338
Pacific Gas & Electric Co., 16581
Pacific Power & Light Co., 22210
Pelican Utility Co., 14836
PennEast Gas Service Co. et al., 946
PRODEK, Inc., et al., 21515
Rivers Electric Co., Inc., et al., 16582
Saylorville Hydro Partners, 16896
Tennessee Gas Pipeline Co., 7797
Texas Gas Transmission Corp., 271
Toulumne, CA, 22209
Vidalia, LA, et al., 21516
Wyoming-California Pipeline Co. et al., 11335
Hydroelectric applications, 70–72, 272, 2272, 3773, 5445, 5446, 5822, 8497, 10142, 12810, 12976, 15119, 15730, 17098, 18335, 19814, 21897, 22042, 22214, 22712
Interlocking directorate filings:
See entries under "Electric rate, small power production, and interlocking directorate filings, etc." after April 1, 1988.
Browne, C. Thayer, et al., 8949
Daly, Eleanor T., et al., 72
Meetings; Sunshine Act, 653, 2143, 2667, 4497, 5242, 5854, 8297, 9022, 10034, 10184, 11160, 12096, 13461, 16210, 16513, 18651, 19855, 22067, 23338, 24167, 24828
Natural gas certificate filings:
Algonquin Gas Transmission Co. et al., 3621
ANR Pipeline Co. et al., 440
Black Marlin Pipeline Co. et al., 1825
Cabot Energy Marketing Corp. et al., 8687
Carnegie Natural Gas Co. et al., 8690
CNG Transmission Corp. et al., 5450, 17098, 22713
Colorado Interstate Gas Co. et al., 9968
Columbia Gas Transmission Corp. et al., 2275, 3626
Republication, 8249
Columbia Gulf Transmission Co. et al., 9478
El Paso Natural Gas Co. et al., 73, 4876, 7392, 15277, 15443
Energy Development Corp. et al., 7564
Florida Gas Transmission Co. et al., 7798, 8252, 22560, 24125
Gateway Pipeline Co. et al., 19327
Great Lakes Gas Transmission Co. et al., 12061
Ken Gas Companies et al., 24127
Kentucky West Virginia Gas Co. et al., 6687
KN Energy, Inc., et al., 23444
National Fuel Gas Supply Corp. et al., 172
Natural Gas Co. of America et al., 21897
Natural Gas Pipeline Co. of America et al., 12724, 13152
Northern Natural Gas Co. et al., 13440
PennEast Gas Services Co. et al., 3425, 20889
Ringwood Gathering Co. et al., 4704
Sabine Pipe Line Co. et al., 16765
Southern Natural Gas Co. et al., 11332, 11906, 22376
Stingray Pipeline Co. et al., 8950
Tennessee Gas Pipeline Co. et al., 3778, 12455, 15123, 15871, 18336, 18598, 18876, 20678

Texas Eastern Transmission Corp. et al., 4066, 7008, 19988
Texas Gas Transmission Corp. et al., 22210
Transcontinental Gas Pipe Line Corp. et al., 12062, 17493
Transwestern Pipeline Co. et al., 277
Trunkline Gas Co. et al., 9800, 9969, 16452, 16453, 18337, 21516, 22715
United Gas Pipe Line Co. et al., 9353, 12812
Williams Natural Gas Co. et al., 5447, 8253
Natural gas companies:
Certificates of public convenience and necessity, applications, abandonment of service and petitions to amend, 278, 555, 2277, 3241, 4205, 4451, 6191, 6192, 8255, 8689, 11554, 12070, 13151, 14836, 15592, 18128, 19329, 20680, 22712, 23788
Purchased gas adjustment provisions, new docket prefix system, 10272
Small producer certificates, applications, 4062, 6866, 10273, 15593, 20364
Natural Gas Policy Act:
OCS leases; blanket determinations, 7562, 7564, 17495
Self-implementing transactions, 2076, 3916, 8952, 12977, 19991, 24129
Well category determinations, etc., 1060, 7011, 11556, 12182, 13442
Oil pipelines, interstate; tentative valuations, 948
Organization, functions, and authority delegations:
Filing location change, 13316
Preliminary permits surrender:
Adirondack Hydro Development Corp., 786, 1407, 4878
Aero Construction, Inc., et al., 22563
American Hydro Power Co., 11555
American Hydro Power Co. et al., 24134
Big Sky Limited Partnership et al., 19990
Blackfeet Indian Nation et al., 14837
Independence Electric Corp., 786
JDJ Energy Co., 2626
Kittitas Reclamation District, 18129
Lima Hydro Limited Partnership, 786
Mercer Companies, Inc., 4878
Public Utility District No. 1 of Okanogan County, WA, 5620
Santa Clara, CA, 18129
St. Vrain Environmentalists, 787
Summit Hydropower, 16582
West Slope Power Co., 7228
Yuba County Water Agency et al., 5295
Senior Executive Service:
Performance Review Boards; membership, 22717
Small power production and cogeneration facilities; qualifying status:
See entries under "Electric rate, small power production, and interlocking directorate filings, etc." after April 1, 1988.
AES Riverside, Inc., et al., 1058
Alcon Laboratories, Inc., et al., 5449
Archer-Daniels-Midland Co. et al., 76
Brookhaven Cogeneration Corp. et al., 5454
C-E Huntington Limited Partnership et al., 9803
Central Phosphates, Inc., 9683
Cogeneration Partners of America et al., 4878
Ecogen One Partners, Ltd., 3243
Everett Energy Corp. et al., 8256
General Mills, Inc., et al., 2280
Inland Steel Co. et al., 8692
James River Paper Co. et al., 9136
Malacha Hydro Limited Partnership et al., 9482
Mercer County Improvement Authority, 3245
Mid-County Cogeneration Corp. et al., 641
National Steel Corp., 3245
Northwest Arkansas Resource Recovery Authority, 1674
Petrolia Power Co., 1059
Riverhead Cogeneration Corp. et al., 7565
Unicord Power Associates et al., 6030
Applications, hearings, determinations, etc.:
Air Transport Association of America et al., 19330
Alabama-Tennessee Natural Gas Co., 4062, 16767, 22219
Alamito Co. et al., 7012
Algonquin Gas Transmission Co., 2777, 3629, 5036, 5826, 11116, 13154, 17100, 19331, 21898, 22379, 23679
Amalgamated Pipeline Co., 10143
Amoco Energy Trading Corp., 16768
Amoco Production Co. et al., 6866
Anadarko Petroleum Corp. et al., 9136
ANR Pipeline Co., 2777, 3926, 10143, 11334, 12182, 12183, 16768
ANR Pipeline Co. et al., 10273
ANR Production Co., 2626
APX Corp., 1675
APX Western Corp., 10418
ARCO Oil & Gas Co., 3630
ARCO Oil & Gas Co. et al., 10143
Arizona Public Service Co., 1399
Arkla Energy Resources, 947, 1059, 1399, 2778, 6867, 8496, 16768, 22219, 22564
Arkla Exploration Co., 6867
Bayou Interstate Pipeline System, 787, 16768, 21898
Beaver City Corp., 3630
Beck, Eileen M., 15445
BHP Gas Marketing Co. et al., 6868
Blind Canyon Aquaranch, Inc., 3631
Blue Dolphin Pipe Line Co., 8257
Blue Earth & Mountain Lake, MN, 8952
Bonneville Power Administration, 3631
Boston Edison Co. et al., 1675
Brazos River Authority, 18129
Cabot Gas Processing Corp., 9483
Canyon Creek Compression Co., 12065, 21899
Carnegie Natural Gas Co., 4064, 5036, 16457, 24360
Cascade Natural Gas Corp. et al., 9683, 13154, 17243
Cavallo Pipeline Co., 8257
Central Maine Power Co., 280, 281
Central Vermont Public Service Corp., 281
Chandeleur Pipe Line Co., 16458
Cities Service Oil & Gas Corp. et al., 6193
Citizens Energy Corp. et al., 9974
CNG Transmission Corp., 4064, 4710, 15874, 16457, 18600, 22380
Coastal Oil & Gas Corp., 2627
Coastal States Gas Transmission Co., 4449
Colorado Interstate Gas Co., 6688, 8258, 8694, 11116, 16582, 20160, 22564
Colorado Interstate Gas Co. et al., 11555, 23789
Columbia Gas Transmission Corp., 787, 1829, 3242, 3926, 5037, 5211, 11116, 16458, 22219
Columbia Gas Transmission Corp. et al., 1676
Columbia Gulf Transmission Co., 1829
Commercial Pipeline Co., Inc., 11556, 12813, 14838
Commonwealth Electric Co. et al., 788
Connecticut et al., 5826
Conoco Inc., 557, 3631, 10274
Conoco Inc. et al., 9136
Consolidated Oil & Gas, Inc., 8952
Consolidated Oil & Gas, Inc., et al., 9354
Corning Natural Gas Corp. et al., 16459
Creel, George Cameron, 9684
Crosstex Pipeline Co., 5211
Curtis, William A., 1400, 5295
Delhi Gas Pipeline Corp. et al., 8952
Delta Canal Co. et al., 7566
Diamond Shamrock Offshore Partners Limited Partnership, 19990
Distrigas Corp. et al., 4207, 9356, 17496
Distrigas of Massachusetts Corp., 2627, 2628, 6194, 9684
Duke Power Co., 1400
Duquesne Light Co., 281
Dynasty Gas Marketing, Inc., et al., 19990
East Tennessee Natural Gas Co., 2886, 3243, 8692, 15279, 16459, 21899, 23680
East Tennessee Natural Gas Co. et al., 3243
Eastern Shore Natural Gas Co., 15874, 20160
El Paso Electric Co., 2628
El Paso Natural Gas Co., 1400, 3431, 5295, 7228, 8258, 8259, 8693, 13155, 16460, 16582, 17497, 21899-21901
Enogex, Inc., 2071
Enron Oil & Gas Co., 1401
Enron Oil & Gas Co. et al., 788, 9137
Enserch Gas Transmission Co., 169
EnTrade Corp. et al., 5212
EP Operating Co., 10419
Equitable Gas Co., 2282, 7566
Equitrans, Inc., 7567, 9137, 16769
Exxon Corp., 558, 4449, 6689, 7229
Fillmore City Corp., 2072
Fina Oil & Chemical Co., 19991
Fina Oil & Chemical Co. et al., 558
Flambeau Paper Corp., 949, 3632
Florida Gas Transmission Co., 2282, 7794, 16461
Florida Power & Light Co., 1830
Galligan, Thomas J., Jr., 788
Gas Research Institute, 21901
Gasdel Pipeline System, Inc., 788
GasMark, Inc., 558
Glenn-Colusa Irrigation District, 5620
Grand Valley Gas Co., 559
Granite State Gas Transmission, Inc., 2778, 5037, 6868, 14838, 16769, 17100, 22380
Great Lakes Gas Transmission Co., 77, 12183, 16769, 20160, 20681, 22564
Great Northern Paper Co., 282
Greenville, MI, 1402
Gresham, WI, 282
Hadson Gas Systems, Inc., 5295
Helmerich & Payne, Inc., 3244
High Island Offshore System, 11117, 17497, 20682
High Island Offshore System et al., 20682
Holyoke Gas & Electric Department et al., 1402
Howard, James J., 9804
Howell Gas Management Co. et al., 9356
HPC Operating, Inc., 21902
Hudson, Dan D., 5620
Indiana Michigan Power Co., 15445
Inter-City Minnesota Pipelines Ltd., Inc., 1676, 16461
Interstate Power Co., 3633
Iowa Public Service Co., 282
Iowa-Illinois Gas & Electric Co., 1403
Kansas Gas & Electric Co., 23148
Kansas Power & Light Co. et al., 18880
Kenrell Petroleum Resources, Inc., 3633

Kentucky Public Service Commission et al., 13442
Kentucky West Virginia Gas Co., 2628, 12066
KK Appliance Co. et al., 23446
KN Energy, Inc., 16770, 22220
Kentucky West Virginia Gas Co., 16770
Landers, Pat, 3635
Lawrenceburg Gas Transmission Corp., 1403, 3244, 15279, 15280
Leaderbrand, Ralph L., 12184
Lehnertz, G.M., 13155
Linweave, Inc., 789–791
Lion Petroleum Co., 4879
Louisiana-Nevada Transit Co., 16462
Lowry Exploration, Inc., 4452
Lyons, M. Dorothy, 8260
Manchester Pipeline Corp., 24779
Marathon Oil Co., 3633, 8958
Maryland People's Counsel et al., 2282
Massachusetts Bay Power Co., 16896
Maxus Exploration Co. et al., 559
McGillis, Eugene G., 4208
McKay, Horace F., Jr., et al., 5296
Merced Irrigation District, 12814
Mesa Operating Limited Partnership, 9805
Mesa Operating Limited Partnership et al., 9483
Metropolitan Edison Co., 2283
Metropolitan Edison Co. et al., 3633
Mid Louisiana Gas Co., 791, 4065, 17500, 20682
Midwestern Gas Transmission Co., 77, 78, 3245, 4066, 8260, 16771, 21902, 22565
MIGC, Inc., 9684, 16462, 16771
Mississippi River Transmission Corp., 4066, 12066, 16771, 21902, 22717
Mississippi River Transmission Corp. et al., 12184
Moon Lake Electric Association, Inc., 5212
Mountain Fuel Resources, Inc., 3432
Nagasco Marketing, Inc., et al., 8694
National Fuel Gas Supply Corp., 947, 8693, 11334, 12184, 16462, 16463, 21903
National Steel Corp., 5038
Natural Gas Clearinghouse Inc. et al., 3634
Natural Gas Pipeline Co. of America, 1830, 3246, 3634, 7229, 9356, 9357, 9685, 12066, 12185, 15280, 15874, 16583, 20682, 22565
New England Power Co., 1831, 3635
New England Power Pool, 15446
Newman, John A., et al., 8260
N-Gas, Inc., et al., 9805
Niagara Mohawk Power Corp., 18129
Nielson Enterprises Inc., 7230
North Penn Gas Co., 5620, 7567, 16463, 16772, 22565
Northeast U.S. pipeline projects, 22043
Northern Border Pipeline Co., 19331
Northern Natural Gas Co., 560, 948, 1403, 3927, 4208, 7795, 15280, 15446, 16463, 16464, 16583, 16584, 18600, 21903, 21904
Northern States Power Co., 18881
Northwest Alaskan Pipeline Co., 19333
Northwest Pipeline Corp., 1404, 5827, 7230, 8496, 8547, 8693, 9685, 12067, 15874, 16584, 16772, 22220, 22381, 23790
Northwest Pipeline Corp. et al., 6690, 19331
Odeco Oil & Gas Co., 3246
Oklahoma Gas Pipeline Co. et al., 5038
Overthrust Pipeline Co., 3432
OXY NGL Inc., 24781
Ozark Gas Transmission System, 560, 6869
Pacific Gas & Electric Co., 1831
Pacific Gas Transmission Co., 6194
Pacific Interstate Offshore Co., 5038, 7795
Pacific Interstate Transmission Co., 6869
Pacific Offshore Pipeline Co., 791, 4450, 11334, 13443
Paiute Pipeline Co. et al., 2629
Panhandle Eastern Pipe Line Co., 1060, 3635, 3927, 10144, 11557, 16773, 19332
Panhandle Eastern Pipe Line Co. et al., 8261
Panhandle Gas Co., 6869
Panhandle Trading Co., 9805
Parker Gas Transmission, Inc., et al., 7230
PennEast Gas Services Co. et al., 18339
Pennsylvania Power & Light Co. et al., 1833
Penn-York Energy Corp., 22220, 22717
Penzoil Gas Marketing Co. et al., 8958
Phillips 66 Natural Gas Co., 2073, 20364
Phillips Gas Marketing Co., 2072
Phillips Gas Pipeline Co., 24360
Phillips Petroleum Co., 2072
Placid Oil Co., 2283, 16773
Pogo Producing Co., 560, 6690
Questar Pipeline Co., 12067, 16464, 20161, 24134
R&D Power Co., 2629
Raton Gas Transmission Co., 4710, 6870, 8694, 18130, 20683
Red River Pipeline, 6194
Ringwood Gathering Co., 7795, 11334, 17100
Rumford Falls Power Co., 7231
Sabine Corp., 13444
Sabine Pipe Line Co., 1832
Sea Robin Pipeline Co., 17101, 21904
Seagull Marketing Services, Inc., et al., 9138
Sebring Gas System et al., 3927
Shell Oil Co. et al., 2886
Sonat Marketing Co. et al., 6195
South Georgia Natural Gas Co., 282, 2778, 8695, 13156, 14838, 17101, 17498
Southern California Edison Co., 1832
Southern Natural Gas Co., 283, 2779, 7796, 9685, 10145, 11557, 12986, 15875, 16774, 18340, 22566, 23790
Southwest Gas Corp., 7796, 15281, 16774, 18601
Southwestern Electric Power Co., 10145
Stingray Pipeline Co., 8261
Sun Exploration & Production Co., 3246
Sun Gas Transmission Limited Partnership et al., 5213
Sunterra Gas Gathering Co., 170
Swift Creek Power Co., Inc., 15875
System Energy Resources, Inc., 16464
Tarpon Transmission Co., 3433, 6870, 10145
Tekas Corp., 8261
Tenneco Oil Co. et al., 4452
Tennessee Gas Pipeline Co., 1061, 1832, 2629, 3432, 9357, 16775, 21904, 23680
Tenngasco Corp. et al., 4453
Terra Resources, Inc., 948
Texaco Gas Marketing Inc., 561, 3247
Texaco Inc. et al., 561, 562
Texas Eastern Transmission Corp., 1406, 1832, 2629, 2630, 3247, 3248, 6870, 8262, 10420, 10421, 15876, 16776, 17102, 19332, 20161, 24135, 24361
Texas Gas Pipe Line Corp., 18130
Texas Gas Pipeline Corp., 16775
Texas Gas Transmission Corp., 791, 3636, 11557, 12986, 16466, 16584, 20683, 22381
Texas Utilities Fuel Co., 19024
Total Minatome Corp., 20891
Transco Energy Marketing Co. et al., 7231
Transcontinental Gas Pipe Line Corp., 1676, 3433, 4070, 5827, 8262, 9686, 11558, 12068, 12185, 16466, 16776, 18341, 21905, 22382, 24361
Transcontinental Gas Pipe Line Corp. et al., 1677, 2779, 7232
Transwestern Pipeline Co., 792, 1833, 5828, 8262, 9686, 16776, 18130
Trunkline Gas Co., 16777, 20683, 20684, 21905, 22718
Tucker Drilling Co., Inc., 3636
TXG Gas Marketing Co., 2631
TXP Operating Co. et al., 7232
UER Marketing Co. et al., 8263
United Gas Pipe Line Co., 2780, 3434, 3785, 4451, 10146, 12185, 14839, 16777, 17102, 23680
U-T Offshore System, 16585
Valence Operating Co. et al., 12814
Valero Interstate Transmission Co., 16778
Valley Gas Transmission, Inc., 10146, 12068, 16585
Volkswagen of America, Inc., 2073
Webb-DuVal Gatherers, 13444
West Texas Gas, Inc., 16778, 18341, 18601
West Virginia Energy Department, 2533
Western Gas Interstate Co., 792, 8263, 18601, 22221
Western Massachusetts Electric Co., 24781
Western Transmission Corp., 1406, 2780, 16585
Williams Natural Gas Co., 78, 793, 2086, 2780, 5297, 6195, 9358, 11335, 12069, 16778, 24135
Williston Basin Interstate Pipeline Co., 563, 2284, 6870, 7797, 10146, 12069, 16779, 21905, 21906
Wisconsin Electric Power Co., 793
Wisconsin Public Service Corp., 283

Federal Financial Institutions Examination Council

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 7340
NOTICES
Bank call report data submission, 11558

Federal Grain Inspection Service

RULES
Grain standards:
Official U.S. standards; barley protein content, 15016
Inspection and certification standards; agricultural commodities and products, 3721
Correction, 6059
Official inspection, weighing, and appeal inspection services performed in Canada; fee increase, 21791
PROPOSED RULES
Fees for official inspection, weighing, and appeal inspection services performed in Canada; increase, 8921
Grain standards:
Lentils, 20636
Inspection and certification standards:
Rice, 411
Weighing provisions and procedures, 17471
NOTICES
Agency designation actions:
Alabama, 2861
Alaska, 2861, 15720
Arkansas, 2861, 15721, 24753
California, 15721, 24752

21-980 (9) 0 - 88 - 3

Colorado, 6168, 15720
Idaho, 19976
Illinois, 6167, 15721, 24752
Indiana, 6167, 6168, 15720
Iowa, 6167, 19975, 24754
Kansas, 6168, 15720
Kentucky, 10411, 19975
Minnesota, 24753
Mississippi, 24753
Nebraska, 10412
North Dakota, 2862, 10411, 10412, 19975, 24752
Ohio, 10411, 19975
Tennessee, 2861, 15720
Utah, 19976
Wyoming, 6167
Hard Red Winter wheat protein determinations; near infrared reflectance instruments calibration, 21503
Meetings:
Advisory Committee, 9784

Federal Highway Administration

RULES
Engineering and traffic operations:
Bridges; alternate designs, 21637
Construction and maintenance—
Convict labor and materials, 1922
Physical construction authorization, 1920
Environmental impact and related procedures, etc.; correction, 11065
Highways; design standards, 15669
Size and weight enforcement certification; technical amendment, 12766
Truck size and weight—
Automobile transporters, 2593
Designated highway networks, 12145
Grandfathered semitrailer lengths, 2597
Uniform Traffic Control Devices Manual—Amendments, 236, 8620
Utilities accommodation; freeway (interstate) right-of-way; longitudinal utility use, 2829
Highway safety programs; effectiveness determination, 11255
Motor carrier safety standards:
Financial responsibility minimum levels—Environmental restoration, 12158
General provisions, 18042
Organization, functions, and authority delegations, 2035
Technical amendments, 15845
Payment procedures:
Railroad work; reimbursement, 18275
Right-of-way and environment:
Environmental impact and related procedures, etc.; correction, 11065
State education and training programs, 3744

PROPOSED RULES
Engineering and traffic operations:
Construction and maintenance—
Contract procedures; standardized contract clauses, 3897
Highways; pavement policy, 2041, 11875
Roadside design guide; reference material, 3757
Speed limit enforcement certification, 7943
Truck size and weight—
Boat transporters, 2602
Designated highway networks, 18858, 18859
Truck-tractor semitrailer-semitrailer combination with B-train assembly, 2603
Uniform Traffic Control Devices Manual—Amendments, 2233
Motor carrier safety standards:
Commercial driver testing and licensing standards, 265
Commercial driver's license program, 12504
Commercial vehicle operators; blood alcohol concentration, 16656
Correction, 20147
Controlled substances; interstate or foreign commerce drivers, chemical testing for drug use, 22268
Driver's record of duty status; automatic on-board recording devices, 8228
Drivers qualifications; diabetes, 42
Splash/spray suppression devices on truck tractors, trailers, and semitrailers, 18860

NOTICES
Bridge tolls; Brooklyn and Staten Island, NY; restriction removal, 15766
Committees; establishment, renewal, termination, etc.:
National Motor Carrier Advisory Committee, 298
Contract procedures; Buy American requirements; waiver requests, 7462
Environmental statements; notice of intent:
Amherst County, VA, 20406
Bartow County, GA, 2345
Berks County, PA, 1881
Blue Earth County, MN, 20407
Box Elder and Cache Counties, UT, 4814
Butler and Warren Counties, OH, 4814
Dauphin County, PA, 18018
Fairfax and Loudoun Counties, VA, 23332
Fayette County, PA, 12744
Florence, Marion, and Horry Counties, SC, 17134
Graves County, KY, 17527
Hennepin and Dakota Counties, MN, 8294
Hillsborough County, NH, 16927
Lancaster and Chester Counties, PA, 22606
Lewis and Greenup Counties, KY, 15944
Lincoln and Boyle Counties, KY, 15165
Los Angeles and San Bernardino Counties, CA, 4095
Mason County, KY, et al., 15330
Mecklenburg County, NC, 22418
Monterey County, CA, 8840
Multnomah County, OR, 984
New Hanover County, NC, 21757
Oakland County, MI, 11159
Orange County, CA, 8714
Pinellas and Pasco Counties, FL, 20407
Pulaski County, KY, 15165
Richmond, VA, 2901
St. Louis County, MO, 24826
Wake County, NC, 7626
Walker and Catoosa Counties, GA, 5677
Walker County, AL, 3285
Washburn and Douglas Counties, WI, 10457
Washington County, OR, 7826
Worcester/Millbury, MA, 11392
Highway-railroad crossing improvement and maintenance needs study, 11723
Meetings:
Commercial Motor Vehicle Safety Regulatory Review Panel, 13374
National Motor Carrier Advisory Committee, 298, 15767
Motor carrier safety regulations:
Truck driver qualifications, 7280
Motor carrier safety regulations; waiver requests:
Driver qualifications—
Greyhound Lines, Inc., 6054
Relocation assistance and real property acquisition; Surface Transportation and Uniform Relocation Act Amendments of 1987; moving expense schedule, 24392

Federal Home Loan Bank Board

RULES
Competitive Equality Banking Act; implementation:
Federal home loan bank system—
Qualified thrift lender test and Federal home loan bank advances, 312
Federal Savings and Loan Insurance Corporation—
Assets classification, 338
Capital forbearance, 354
Individual insured institutions; minimum regulatory capital requirements, 363
Insured institutions and service corporations; appraisal policies and practices, 372
Regulatory capital; definition, 6792
Troubled debt restructuring, 385
Uniform accounting standards; definition of regulatory capital, etc., 324
Federal savings and loan system—
Regulatory capital; definition, 6792
Savings and loan holding companies—
Qualified thrift lender test and Federal home loan bank advances, 312
Federal home loan bank system:
Stock issuance and form; uncertificated or book entry form, 18261
Federal Savings and Loan Insurance Corporation:
Adjustable-rate mortgage home loan disclosures, 18262
Annual report disclosure requirements, 1004
Conservators and receivers; interim procedures availability, 13105
Insurance settlement—
Joint accounts, 8167
Miscellaneous conforming and technical amendments, 20611
Money laundering crimes; reporting requirements, etc., 11242
Recently converted insured institutions; stock repurchase restrictions, 2477
Regulatory capital—
Definition, 6792
Insured institutions requirements, 11243
Federal savings and loan system:
Adjustable-rate mortgage home loan disclosures, 18262
Conservators and receivers; interim procedures availability, 13105
Regulatory capital—
Definition, 6792
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 16054
Savings and loan holding companies:
Supervisory Agents, 1003

PROPOSED RULES
Federal home loan bank system:
Indemnification of directors, officers, and employees of Federal home loan banks, 13282

Withdrawn, 13133
Federal Savings and Loan Insurance Corporation:
Accounting policy relating to acquisition, development, and construction loans (real estate activities), 13282
Bank Secrecy Act compliance procedures; withdrawn, 13133
Conservators and receivers, 13282
Financial options trading (over-the-counter); accounting, 13282
Investment portfolio policy and accounting guidelines, 23244
Loan to one borrower; withdrawn, 13133
Premiums, additional; assessment and adjustment, 13131
Receivers, 21474
Regulatory capital—
Insured intitutions requirements, 13282
Repurchase and reverse-repurchase agreements; withdrawn, 13133
Transactions with affiliates of subsidiary insured institutions, 15230
Federal savings and loan system:
Adjustable-rate mortgage home loan disclosure, 13282
Corporate governance; reorganization, 13282
Securities brokerage service; preapproved corporation activities, 16147
Proposed rules:
Regulatory review period for board action, extension, 13282
Withdrawn, 13133
Regulatory agenda, 14636
Savings and loan holding companies:
Transactions between insured institutions and affiliates, 21838

NOTICES
Agency information collection activities under OMB review, 22728, 22729, 23690
Committees; establishment, renewal, termination, etc.:
Federal Savings and Loan Advisory Council, 18901
Federal Savings and Loan Insurance Corporation:
Bank bribery law compliance; guidelines, 10561
Insurance premium, 12460
Insured institutions; average return on assets, 18608
Meetings:
Federal Savings and Loan Advisory Council, 18344, 21917
Meetings; Sunshine Act, 22069, 23483
Receiver appointments:
Alliance Savings & Loan Association, 20686
American Federal Savings & Loan Association, 16190
American Savings & Loan Association, 7800, 22729
Bluebonnet Savings Association of Texas, 20687
Briercroft Savings & Loan Association, 20686
Cameron County Savings Association, 20686
Cardinal Savings Bank, Inc., 20686
Citizens Savings & Loan Association, 3076
City Savings & Loan Association, 20686
Colorado County Federal Savings & Loan Association, 20687
First Federal Savings & Loan Association of Paducah, 8976
First Federal Savings & Loan Association of Shawnee, 12729
First Federated Savings Bank, 9489
First Savings Association of East Texas, 1841
Firstbanc Federal, FSB, 285
Investors Savings & Loan Association, 10289
Lamar Savings Association, 20687
LaRue Federal Savings & Loan Association, 21918
Magnet Bank, F.S.B., 4717
Mt. Whitney Savings & Loan Association, 6699
North America Savings & Loan Association, 21918
Ramona Savings & Loan Association, 6698
Security Savings & Loan Association, 20687
Stockton Savings Association, 20687
Tri-Cities Savings & Loan Association, 12729
United Savings, 10289
Universal Savings & Loan Association, 20686
Regulatory review procedures, 13156
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 11908
Midwest Stock Exchange, Inc., 11909
Philadelphia Stock Exchange, Inc., 11909
Applications, hearings, determinations, etc.:
Apollo Savings & Loan Co., 18344
Baltimore American Savings Bank, F.S.B., 18344
Bankers Federal Savings, FSB, 11343
Brehm Federal Savings Bank, 16781
Caribbean Federal Savings & Loan Association of Puerto Rico, 6699
Central Savings & Loan Association, 11910
Cherokee Federal Savings Bank, 11910
Columbian Building Association of Harford County, 22384
Commonwealth Bank, F.S.B., 6699
Community Federal Savings & Loan Association, 10289
Community Federal Savings Bank, 6699
Danielson Federal Savings & Loan Association, 20687
Delaware Savings Bank, F.S.B., 6699
Edgecombe Homestead & Loan Association, 8502
Fajardo Federal Savings Bank, 24147
First Empire Federal Savings & Loan Association, 21918
First Federal Savings & Loan Association of—
De Funiak Springs, 6699
Hopkins County, 18344
Lenawee County, 16781
Livingston County et al., 3266
McNairy County, 18344
Okaloosa County, 18345
Perry, 6700
First Federal Savings Bank of LaFollette, 6699
Hamilton-Reliance Savings Association, 15139
Home Federal Savings & Loan Association of Salisbury, 2781
Mayflower Savings & Loan Co., 9489
Mutual Federal Savings & Loan Association, 6700
Pickens Savings & Loan Association, F.A., 6700
Poinsett Federal Savings & Loan Association of Travelers Rest, 18345
Polifly Savings & Loan Association, 6700
Safety Federal Savings & Loan Association of Kansas City et al., 11343

Federal Home Loan Mortgage Corporation

NOTICES
Meetings; Sunshine Act, 3661, 6915, 8025, 12746, 17136, 20063

Federal Labor Relations Authority

PROPOSED RULES
Attorney fees under Back Pay Act, 10885
Office addresses and geographic locations:
District of Columbia Regional Office, 18843

NOTICES
Senior Executive Service:
Performance Review Board; membership, 2781

Federal Maritime Commission

RULES
Maritime carriers and related activities in domestic offshore commerce:
Tariff publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents, 5770, 9629, 23632
Maritime carriers and related activities in foreign commerce:
Agreements between or among wholly-owned subsidiaries and/or their parent, 11072
Conditions unfavorable to shipping, actions to adjust or meet—
Peru/United States trade, 7361, 20847
Conference service contract authority, 7520
Tariff publication of free time and detention charges applicable to carrier equipment interchanged with shippers or their agents, 5770, 9629, 23632
Practice and procedure:
Petitions for review of final agency orders, receipt; designation of General Counsel et al., 13270
Privacy Act; implementation, 4027

PROPOSED RULES
Maritime carriers and related activities in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
Taiwan/United States trade, 624, 7379
Service contracts—
Correction, 23776
Most-favored-shipper provisions, 8775, 15863
Practice and procedure:
Special docket application filings, 12440
Regulatory agenda, 14648

NOTICES
Agency information collection activities under OMB review, 3452, 14852, 23795
Agreements filed, etc., 83, 84, 179, 285, 444, 755, 756, 952, 1064, 1681, 2091, 2287, 2288, 2538, 2889, 3266, 3453, 3788, 3942, 4211, 4456, 4457, 4717, 4892, 5041, 5316, 5468, 5632, 6034, 6201, 7047, 7572, 7802, 7970, 8502, 8697, 9142, 9368, 9489, 9490, 9702, 10153, 10425, 10946, 11559, 11704, 11910, 12075, 12189, 12819, 12992, 13157, 13447, 15286, 15287, 15598, 15732, 15878, 16190, 16470, 16586, 16781, 16782, 16897, 17246, 17504, 18142, 18345, 18902, 19043, 19336, 20017, 20171, 20366, 20900, 21524, 21725,

22047, 22048, 22223, 22385, 22732, 22733, 23151, 23309, 23690, 24147, 24148, 24796
Automated tariff filing and information system:
Functionality, 13066
Proposals issuance delay request, 22048
Committees; establishment, renewal, termination, etc.:
Section 18 Study Advisory Committee, 5317
Complaints filed:
California Shipping Line, Inc., et al., 18143
Delhi Petroleum Pty. Ltd. et al., 1511, 7572
Direct Container Line, Inc., et al., 17112
Dominican Ferries P.R., Inc., et al., 12820
Hemisphere Navigation Co., Inc., et al., 179
North Carolina State Ports Authority et al., 1511
Port of Ponce, PR, et al., 8502
Freight forwarder licenses:
A.J. Murray & Co., Inc., et al., 1841
Alltransport Inc., 5041
Alomar Transport, Inc., et al., 20687, 21762
Ark International Forwarding, Inc., et al., 11131
Beidl Forwarding Co. et al., 4073
Bernard Lang & Co., Inc., et al., 11910
Challenge Crating & Storage Inc. et al., 13447
Cruz Del Sur Shipping et al., 13447
Delta Shipping & Marketing Corp. et al., 11131
Glodevan Int'l Transport, Inc., et al., 18346
Inter-Continental Corp., 5215
Interport Co., Inc., et al., 1511
Intersped Systems, Inc., et al., 7401
Mendoza International et al., 3453
Pacific Freight, Inc., et al., 7401
Pandair Freight, Inc., et al., 21725
Sesko International, Inc., et al., 23310
Seven Seas Freight Forwarding Services, Inc., et al., 18902
Team International et al., 9808
Transmares et al., 7401
Universal Transport Corp. et al., 1842
Willis, Lana Davault, et al., 11910
World Express Lines, Inc., 23310
Investigations, hearings, petitions, etc.:
Benel International Co., Inc., et al., 11132
International Transportation Services, Inc.; rates, charges, and services provided at marine terminal facilities, 19336
Marine terminal facilities; rates, charges, and services, 2288
Matson Navigation Co., Inc., 21918
Pacific America Line, 8697, 12820, 21524
Puget Sound Tug & Barge Co., 16587
Trans-Atlantic trades—
Possible malpractices, 22385
U.S./Japan trade; high-cube containers use, 24797
U.S./Korea trade, 10426
Villena, Jorge, et al., 8698
Virginia International Terminals, Inc., 12461
Marine terminal facilities; claims settlement list: New York/New Jersey Port District, 4457
Meetings:
Section 18 Study Advisory Committee, 5317
Meetings; Sunshine Act, 1102, 2668, 3489, 4930, 6057, 7072, 8025, 9404, 12639, 13463, 16339, 18654, 21963, 23849
Organization, functions, and authority delegations:
Director, Domestic Regulation Bureau, 9490
Rulemaking petitions:
California Trucking Association; detention charges at California ports, 8976, 12820
Waterfront Rail Truckers Union; truck detention charges at west coast ports, 5041
Shipping Act of 1984:
Controlled carrier listings; update, 20017
North Europe-U.S. Pacific Freight Conference Agreement et al.; loyalty contracts, 803
Transpacific Westbound Rate Agreement et al.; loyalty contracts, 4893
Shipping Act of 1984; section 16 exemption; applications, etc.:
Crowley Maritime Corp., 2537
Tariffs, inactive; cancellation, 1938, 3453, 8976, 18143, 20018

Federal Mediation and Conciliation Service

RULES
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
PROPOSED RULES
Arbitration policy, procedures, services, and roster of arbitrators, 12952
Regulatory agenda, 14426
NOTICES
Grants; availability, etc.:
Labor-management cooperation program, 1512
Senior Executive Service:
Performance Review Board; membership, 4457

Federal Mine Safety and Health Review Commission

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 737
NOTICES
Meetings; Sunshine Act, 596, 1102, 2910, 3489, 4257, 4930, 7464, 8545, 9404, 13046, 15168, 15492, 16339, 16613, 17532, 18948, 20064, 22069, 23338, 24398

Federal Pay, Advisory Committee

NOTICES
Meetings, 22039

Federal Procurement Policy Office

NOTICES
Circulars, policy letters, etc.:
A-131, 3140
Value engineering policy guidance (Circular A-131), 3140

Federal Railroad Administration

PROPOSED RULES
Railroad operating rules:
Alcohol and drug use control—
Random drug testing program, 16640, 18589
NOTICES
Automatic train control; Northwest corridor carriers, 1433
Exemption petitions, etc.:
CSX Transportation Co., 7463, 12862
CSX Transportation, Inc., 5074
Florida Central Railroad, 5074
Florida Midland Railroad, 5075
Indiana Harbor Belt Railroad Co., 8715
Intermodal Concepts, Inc., et al., 10581
Long Island Rail Road, 18190
Metro-North Commuter Railroad Co., 10996
Natchez Trace Railroad et al., 8715
National Railroad Passenger Corp. (Amtrak), 984, 7627, 22258
National Railroad Passenger Corp. (Amtrak) et al., 5075
New Jersey Transit Rail Operations, Inc., 13374
Pend Oreille Valley Railroad et al., 16928
Steamtown Museum et al., 20408
Union Pacific Railroad Co. et al., 986
Wheel test program, 1974

Federal Register Office

NOTICES
Guide to Record Retention Requirements in CFR; supplement, 3492
Libraries announcing availability of Federal Register and Code of Federal Regulations, 12230
List of acts requiring publication in the Federal Register (1987). See Reader Aids section in June 6 Federal Register issue.

Federal Register, Administrative Committee

See Federal Register Office

Federal Reserve System

RULES
Authority delegations:
Banking Supervision and Regulation Division, Staff Director; authority to extend 30-day period for buy-ins of securities not received, 12509
General Counsel, 15801
Availability of funds and collection of checks (Regulation CC):
Expedited Funds Availability Act; implementation, 11832, 19372
Correction, 24251
Collection of checks and other items and wire transfers of funds (Regulation J):
Expedited Funds Availability Act; implementation, 21983
Electronic fund transfers (Regulation E):
Official staff commentary update, 11046
Equal credit opportunity (Regulation B):
Official staff commentary update, 11044
Freedom of Information Act; implementation, 20812
Correction, 23383
International banking operations (Regulation K):
Foreign investments, 5358
Membership of State banking institutions (Regulation H):
Competitive Equality Banking Act; implementation—
Agricultural loan loss amortization, 20808
Filing requirements, use of SEC forms, etc., 492
Organization, functions, and authority delegations:
Banking Supervision and Regulation, Staff Director, 22129
Federal Reserve Banks; final cease and desist orders, stay, modification, termination, or suspension, 5151

General Counsel; authority to administer oaths, etc., 11640
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 2998, 15195, 17689
Securities of State member banks (Regulation F):
Filing requirements, use of SEC forms, etc., 492
Truth in lending (Regulation Z):
Official staff commentary update, 11047, 11055
Correction, 13379
Preemption determination, 3332
Variable-rate disclosure; correction, 467
PROPOSED RULES
Availability of funds and collection of checks (Regulation CC):
Expedited Funds Availability Act; implementation—
Teller's checks; issuance, 24093
Preemption determination; Maine, New York, and Illinois, 24315
Bank holding companies and change in bank control (Regulation Y):
Banking market extension mergers and acquisitions; policy statement, 21462
Banking organizations, capital adequacy; risk-based capital guidelines, 8550
Competitive Equality Banking Act; implementation—
Nonbank banks limitations, 21462
Credit by brokers and dealers (Regulation T):
Foreign sovereign debt securities, 14812
Home mortgage disclosure (Regulation C):
Home Mortgage Disclosure Act; implementation, 17061
Membership of State banking institutions (Regulation H):
Financial condition of State member banks and U.S. branches and agencies of foreign banks (call reports); availability, 19308
Regulatory agenda, 14656
Truth in lending (Regulation Z):
Home equity disclosures; correction, 467
NOTICES
Agency information collection activities under OMB review, 285, 756, 1064, 2781, 3076, 5041, 5318, 7047, 7048, 7573, 7970, 12076, 16587, 16897, 17113, 18608, 19818, 22048, 22734, 24362, 24799, 24800
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council, 20900
Expedited Funds Availability Act; implementation:
Check services; fees and deadlines, 24148
Federal Reserve bank services for check collection and return, 11960, 19490
Federal Open Market Committee:
Domestic open market operations, authorization, 22569
Domestic policy directives, 3788, 5633, 12821, 20171
Federal Reserve Bank services; fee schedules and pricing principles:
Private sector presentment, 11911
Meetings:
Consumer Advisory Council, 5215, 24498
Meetings; Sunshine Act, 194, 466, 837, 1102, 1439, 1538, 1888, 2145, 2565, 2910, 3806, 4097, 4816, 4931, 5343, 5854, 6731, 7464, 7829, 8545, 8718, 8843, 9023, 9171, 9404, 10184, 10328, 10460, 11160, 12098, 12639, 12864, 13377, 15168, 15334, 15492, 15493, 15771, 16210, 16339, 16340, 16515, 16613, 17306, 17817, 18654, 19366, 20214, 20413, 21545, 22069, 22265, 22761, 23338, 23339, 24549
Securities dealers and insuitable investment practices; supervisory policy, 14852
Applications, hearings, determinations, etc.:
Abigail Adams National Bancorp, Inc., et al., 18903
Affiliated Banc Corp. et al., 10429
Algemene Bank Nederland, N.V., et al., 757, 9808
Ameritex Bancshares Corp. Employee Stock Ownership Trust et al., 18159
AmeriTrust Corp. et al., 1938
ANB Corp. et al., 22224
Atlas Towing Co., Inc., et al., 22049
Auckland Pension Funds Ltd. et al., 9809
Austermann, Elmer H., Jr. et al., 9368
Baer Holding Ltd., 9368
Bailey, A.W., Jr., 9142
Baltimore Bancorp, 18346
Banc One Corp., 24363
Banca Commerciale Italiana, S.p.A., 20019
Bancorp New Jersey, Inc., 9811
Bancorp New Jersey, Inc., et al., 4074
Bank Corp. of Georgia, 5216
Bank Maryland Corp. et al., 5832
Bank of Boston Corp., 7970
Bank of Montreal, 12594, 15139, 16898
Bank Shares Inc., 7235
Bank South Corp. et al., 20172
Bankers Advisory Corp. et al., 1682
Bankers Trust New York Corp., 4074
Bankshares Corp. of Niceville et al., 21918
Barnett Banks, Inc., 2538, 6201, 11132
Bateman, Marlyn N., et al., 21918
Bauerle, Donald C., Sr., et al., 10430
Bayerische Vereinsbank AG et al., 15287
Berkely, James E., et al., 757
Beverly Bancorporation, Inc., 9811
Black, James, 18346
Boatner, John A., Jr., 5832
B/W Bancshares, Inc., 5832
Bockelmann, Bruce, et al., 9702
Boemi, A. Andrew, et al., 23691
Boston Bancorp et al., 7971
Bricco, Diane M., et al., 7048
Britton & Koontz Capital Corp. Employee Stock Ownership Stock Bonus Plan et al., 16588
Brooks, Max G., et al., 2091
Bryn Mawr Bank Corp. et al., 1065, 19043
BSB Bancorp, Inc., et al., 23152
Cahoone, Michael W., et al., 7573
Canadian Imperial Bank of Commerce, 16588
Cardinal Bancshares, Inc., et al., 13157
Cascade State Corp. et al., 1410
Cato, R.L., et al., 23910
Cayuga Lake Bank Corp. et al., 444
Center Banks Inc. et al., 13320
Central Bank Shares, Inc., et al., 15732
Century Financial Corp. et al., 3077
Chase Manhattan Corp., 5833, 6201
Chase Manhattan Corp. et al., 15879
Chemical New York Corp., 7236
Chemical New York Corp. et al., 1682
Cheshire Financial Corp. et al., 8285
Chesthill Bancorp, Inc., et al., 22385
Christenson, Jack V., et al., 24363
Citadel Bankshares, Inc., 7049
Citicorp, 3789
Citizens Financial Group, Inc., et al., 3789
City Holding Co., 16190
Clyde Financial Corp. et al., 20367
CNB Bancorp, Inc., et al., 2288
CNBC Bancorp, Inc., et al., 9142
Cobenk Financial Corp., 21525
Collins, Larry, 9143
Colonial BancGroup, Inc., et al., 11560
Columbia Bancorp, 7573
Columbia Bancorp et al., 6202
Community Bancshares of Alva, Inc., et al., 7236
Community National Bancorp, Inc., et al., 1514
CommunityBanc, Inc., et al., 9703
Compagnie Financiere de Suez et al., 11343
Continental Illinois Bancorp, Inc., et al., 2092
CoreStates Financial Corp., 1843, 9703
CoreStates Financial Corp. et al., 9809
County Bancorporation, Inc., 4817
Credit & Commerce American Holdings, N.V., et al., 12190
Credit Lyonnais, 15463
CSB, Inc., 6872
Cutter, John L., 19819
Cutter, John L., et al., 18903
Danville Bank Corp et al., 12821
Delaware Bancshares, Inc., et al., 23691
Delaware National Bancshares Corp. et al., 24498
Delhi Bancshares, Inc., 20367, 22049
DG Bancshares, Inc., 12190
Dortoa, O.T., et al., 13321
Eastcorp, Inc., et al., 5634
Eastern Bancshares, Inc., et al., 20019
Eastern Iowa Bancshares, Ltd., et al., 21726
1889 Bankcorp et al., 9369
ENB Financial Corp. et al., 9810
E.N.B. Holding Co., Inc., et al., 16589
Enterprise Bancorp, Inc., 758
Equimark Managing Partners, 12822
Equimark Managing Partners et al., 7972
Excel Bancorp, Inc., et al., 5634
F&M Bank Corp. et al., 21919
F&M National Corp. et al., 10153
Fait, Richard A., 13321
Family Bancorp et al., 15598
Farmers National Bancorp et al., 7573
FBC Holding Co., Inc., et al., 1065
First Bank System, Inc., 2782
First Chicago Corp., 24499
First Chicago Corp. et al., 15879
First City Acquisition Corp., 3454, 4074
First Commerce Corp. et al., 642
First Commercial Bancshares, Inc., et al., 1939
First Commercial Corp., 3790
First Eastern Corp., 4075
First Eastern Corp. et al., 7049
First Financial Bancorp et al., 17505
First Financial Services of Moose Lake, Inc., 2783
First Florida Banks, Inc., et al., 24363
First Illinois Corp. et al., 11132
First Interstate of Iowa, Inc., 2092
First Jermyn Corp. et al., 18347
First Litchfield Financial Corp. et al., 16898
First National Bancorp, Inc., et al., 11705
First National Holding Co., Inc., 5319
First National Massillon Corp. et al., 286
First Potomac Bancorp, Inc., et al., 3455
First Sun Capital Corp. et al., 8503
First Tennessee National Corp., 642
First Virginia Banks, Inc., et al., 23311
First Wisconsin Corp. et al., 21525
First Wyoming Bancorporation, 2539, 16470

Firstier Financial, Inc., et al., 2538
Fleet/Norstar Financial Group, Inc., et al., 3456, 4717
Florida National Banks of Florida, Inc., et al., 7972
FNW Bancorp, Inc., et al., 17762
Formell, Leslie, et al., 1515
Gay, A., et al., 1410
Ginsburg, Jordan E., et al., 23153
GL & ML, Ltd., 24364
Gleason, John J., et al., 286
Gracemont Bankcorporation, Inc., et al., 6872
Great Bay Bankshares, Inc., et al., 13321
Grenada Sunburst System Corp., 15733
Guaranty Bancshares Corp., 7574
Gulledge, Loretto A., 12729
Haltom, Joe Tom, et al., 4718
Harco Bancshares, Inc., et al., 15288
Harrison Bankshares, Inc., et al., 1842
Haviland Bancshares, Inc., 5834
Heike, James, 10154
Heritage Bancorp, Inc., et al., 18159
Heritage Financial Services, 16589
Hineman, John A., et al., 8503
Home Bancorp, Inc., 10289
Home Bancorp, Inc., et al., 9143
Home Point Bancorp, Inc., et al., 8503
Home Port Bancorp, Inc., 12191
Huiras, Ralph J., et al., 15733
Huntington Bancshares Inc., 6202
Huntington Bancshares Inc. et al., 23692
IntraOklahoma Bancshares, Inc., et al., 445
InvestCo Partnership, 445
Johnson, Alan E., et al., 20020
Johnson Bancshares, Inc., 15598
Johnson, Michael D., et al., 24500
J.P. Morgan & Co., Inc., et al., 19819
Keathley, Terry M., et al., 16898
Keefe, Hazel, et al., 21526
Key Centurion Bancshares, Inc., et al., 5319, 10430
Keycorp et al., 19819
Lafayette Bancorporation, 17978
Landmark Bancorp, 8286
Landmark Financial Corp. et al., 952
Landmark/Community Bancorp, Inc., 8699
Landmark/Community Bancorp, Inc., et al., 2539
Lee, Sam W., 6203
Lenora Bancshares, Inc., et al., 445
Lexington Bancshares, Inc., et al., 5216
Liberty National Bancorp, Inc., 15464, 16471
Liechty, Frederick, et al., 4893
Lifton, Bruce G., et al., 11344
Lilly, David B., Jr., et al., 12191
Lincoln Financial Corp. et al., 8699
Long, Judy, et al., 1066
Long-Term Credit Bank of Japan, 13158
Lowe, R. Wayne, et al., 5633
Marine Midland Banks, Inc., 4457
Maroa Bancshares, Inc. Employee Stock Ownership Trust, 567
McCracken, Thomas J., 643
McNeal, Larry, et al., 3077
McNeil, Don C., 11133
MCorp et al., 11560
Meridian Bancorp., Inc., 11705, 22224
Merrimack Bancorp, Inc., et al., 2783
Meyer, Richard J., et al., 3790
Michigan National Corp. et al., 22049
Middlefield Banc Corp. et al., 11705
Midland Bank, PLC, 9143
Midwest Financial Group, Inc., 5041
Mitsubishi Bank, Ltd., 16899, 18903
Monaghan, Barry Eugene, et al., 2644
Montana Bancsystem, Inc., 1515, 5635
Montclair Bancorp, Inc., et al., 15465
Montgomery Bancorp et al., 7050, 21526
Mutual Series Fund, Inc., et al., 22386
National City Corp., 3638
National City Corp. et al., 10154
NBD Bancorp, Inc., 17505, 20020
NESB Corp. et al., 13322
NewMil Bancorp, Inc., et al., 11344
Northern of Tennessee Corp. et al., 179
Northern Trust Corp., 2093, 12191
Norwest Corp., 11345
Norwich Financial Corp. et al., 18904
Ochs, Peter L., et al., 17506
Old Kent Financial Services Corp. et al., 23311
Olmstead Bancorporation, Inc., 5635
Omdahl, Richard A., 3079
Omnibancorp., 3791, 9369
One Bancorp et al., 567
Otto Bremer Foundation et al., 18347
Oxford Bank Corp. et al., 5042
Parks, Donald J., et al., 1682
Pasco Financial Corp. et al., 19044
Peoples Bancorporation et al., 15288
Peoples Heritage Financial Group, Inc., et al., 6873
Prairieland Bancorp, Inc., 23692
Prairieland Bancorp, Inc., et al., 18904
Pro Group, Inc., et al., 15880
Progressive Bank, Inc., 1515
Progressive Bank, Inc., et al., 12192
Rand, William Anthony, 22058
Renfro, Carl R., et al., 5634
Royal Bank of Canada, 7574
Sabia, Peter A., et al., 7236
Sanwa Bank, Ltd., 9810
Sasser Corp., 287
Security National Corp. et al., 12192
Sheik, Margie A., 1939
Signet Banking Corp., 15733
Society Corp., 24500
Somers Bancorporation et al., 758
Soperton Bancshares, Inc., et al., 24364
Southern Bankshares, Inc., et al., 12729
Southold Bancorp, Inc., 1939
Sovran Financial Corp. et al., 5635
State Bancshares, Inc., et al., 3078
Stuart Family Partnership, 5636
Sturm Investment Co., Inc., 20020
Trust, M. F. Jarvis, et al., 5319
TrustCorp, Inc., 13447
TrustCorp, Inc., et al., 758, 7237
Trustmark National Bank Profit Sharing Plan et al., 3456
Union Bancshares, Inc., et al., 4893
Union Bankshares, Inc., 12730
Union National Corp., 12730
United Jersey Banks et al., 23311
Wainwright Capital Corp. et al., 4718
Warren Bancorp, Inc., et al., 24365
West Bancshares, Inc., 1939
West Coast Bancorp, Inc., et al., 3638
Williams, Claudine, 2289
Workingmens Corp. et al., 3078
Wright Bancgroup Co., 18347
Yale, William, 13158

Federal Retirement Thrift Investment Board

RULES
Conflict of interests, 11815
Thrift savings plan:
Earnings allocation, 15620
Eligibility continuation, 10038, 17685
Employee elections to contribute, 23379
Withdrawing funds methods, 8421
PROPOSED RULES
Sunshine Act; implementation, 11864
NOTICES
Meetings:
Employee Thrift Advisory Council, 10289
Thrift savings plan elections; open season, 9369

Federal Trade Commission

RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Central air conditioners and heat pumps; comparability ranges, 19728
Clothes washers; comparability ranges, 18551
Residential energy sources; representative average unit energy costs, 5970
Credit practices:
Exemption from trade rule; California, 19893
Fair Packaging and Labeling Act; periodic review, 20834
Motor vehicles, used; trade rule for sales:
Maine; exemption, 16390
Staff compliance guidelines, 17658, 17660
Prohibited trade practices:
Albertson's, Inc., 2223
B.F. Goodrich Co. et al., 12379
Commodore Corp., 2224
Florence Multiple Listing Service, Inc., 17453
General Motors Corp. et al., 9104
General Railway Signal Co. et al., 609
Great Earth International, Inc., 11247
Intereo Inc. et al., 9108
Medical Staff of Memorial Medical Center, 24439
Multiple Listing Service-Mid County, Inc., 17452
NEC Home Electronics (U.S.A.), Inc., 19771
Preferred Physicians, Inc., 10367
Prince George's County Doctors' Hospital Medical Staff, 18273
Redman Industries, Inc., et al., 24683
Rochester Anesthesiologists, 10367
Silver Group, Inc., 17022
Sun Industries, Inc., 20834
Supermarket Development Corp. et al., 11247
Volkswagen of America, Inc., et al., 18274
Wyoming State Board of Chiropractic Examiners, 4009
PROPOSED RULES
Appliance labeling; energy costs and consumption, 22022, 22106
Funeral industry practices, 2767, 19864
Prohibited trade practices:
American Stores Co. et al., 20127
Encyclopaedia Britannica, Inc., et al., 3214
General Nutrition, Inc., 9666, 22022
Great Earth International, Inc., 141
Harvey, Robert E., M.D., P.A., et al., 16727
Medical Staff of Doctors' Hospital of Prince George's County, 2506
Medical Staff of Memorial Medical Center, 2508
NEC Home Electronics (U.S.A.), Inc., 6667
O'Halloran, Patrick S., M.D., et al., 19930
Occidental Petroleum Corp. et al., 16725
Reader's Digest Association, Inc., 12534
Redman Industries, Inc., 1039
Silver Group, Inc., 2230

Vons Companies, Inc., et al., 20131, 22022
Regulatory agenda, 14668
Wool, fur, and textile fiber products; reporting and recordkeeping requirements, 5986
NOTICES
Agency information collection activities under OMB review, 180, 13159, 23312
Franchising and business opportunity ventures; disclosure requirements and prohibitions:
Automobile companies; exemption petitions, etc.; franchise rule requirement exemption, 2784
Meetings; Sunshine Act, 1440, 1888, 2145, 3489, 5519, 12639, 12746, 15334, 15493, 15946, 18193
Premerger notification waiting periods; early terminations, 180, 1843, 1844, 1940, 2784, 4718, 6700, 8287, 10289, 12193, 13448, 17246, 18348, 20902, 23153

Financial Management Service

See Fiscal Service

Fine Arts Commission

See Commission of Fine Arts

Fiscal Service

RULES
Bonds and notes, U.S. savings:
Coupons under book-entry safekeeping (CUBES) program, 19776
Investment yields and maturity periods tables, 9615
Book entry Treasury bonds, notes, and bills; transfers, 10073
Competitive Equality Banking Act; implementation:
Checks drawn on U.S. Treasury, endorsement and payment; policy statement, 3584
Treasury direct book entry securities system, 15553
PROPOSED RULES
Regulatory agenda, 14182
NOTICES
Interest rates:
Renegotiation Board and prompt payment rates, 24827
Privacy Act; systems of records, 1885
Surety companies acceptable on Federal bonds:
Acceleration National Insurance Co., 8841
American Indemnity Co., 16336
American Mutual Liability Insurance Co., 16337
American Road Insurance Co., 16337
American Surety Co., 11935
Chilton Insurance Co., 2346
Fairmont Insurance Co., 24827
Fremont Indemnity Co., 16337
General Accident Insurance Co. (Puerto Rico) Ltd., 16337
Heart of America Fire & Casualty Co., 15331
Island Insurance Co., Ltd., 8841
National United Insurance Co., 6913
Regency Insurance Co., 2666
Republic-Franklin Insurance Co., 22066
Rockwood Insurance Co., 24827
St. Paul Guardian Insurance Co., 1099
United Capitol Insurance Co., 8841
Van Tol Surety Co., Inc., 2346
Voyager Guaranty Insurance Co., 21543
Treasury direct book entry securities system, 22066

Fish and Wildlife Service

RULES
Endangered and threatened species:
Aleutian shield-fern, 4626
Barisco, 3565
Black-spored quillwort, etc., 3560
Cumberland sandwort, 23745
Daphnopsis hellerana, 23740
Lakeside daisy, 23742
Louisiana pearlshell, 3567
Palo de Nigua, 11610
Relict trillium, 10879
White-haired goldenrod, 11612
Endangered Species Convention:
Appendix III listing, 19919
Procedural change, 9945, 12497
Bobcat; export, 9631
Importation, exportation, and transportation of wildlife:
Humane and healthful transportation to U.S. of wild animals and birds, 3894, 8765, 15041, 18287
Law-enforcement district offices; address list update, 6649
Marine mammals:
Alaskan natives; marking, tagging, and reporting requirements, 24277
Migratory bird hunting:
Alaska; subsistence harvest regulations, 16877
Hunting and conservation stamp (Duck Stamp) contest, 16344
Waterfowl hunting—
Lead shot zones, 24284
Sport fishing:
Refuge-specific fishing regulations, 1487
PROPOSED RULES
Endangered and threatened species:
Alabama canebrake pitcher-plant, 13230
Chimpanzee and pygmy chimpanzee, 9460
Clover Valley and Independence Valley speckled dace, 5434, 9672
Cooley's meadowrue, 13220
Decurrent false aster, 5598
Dwarf-flowered heartleaf, 13223
Harperella, 5736
Little-wing pearlymussel, 13226
Miami palmetto, 23674
Mountain sweet pitcher plant, 3901
Spreading wild-buckwheat, 1929
Stephen's kangaroo rat, 5022, 17964
Swamp pink, 5740
Tooth cave pseudoscorpion, etc., 12787, 13379
Endangered, threatened, and other depleted marine mammals; incidental takings, 8473, 17964
Hunting:
Open areas list; additions, 16296
Marine mammals:
Commercial fishing operations, incidental taking; small take exemption, 12043, 24330
Migratory bird hunting:
Alaska; subsistence harvest regulations, 6853
Annual regulations; environmental statement, 42
Federal Indian reservations and ceded lands, 1645
Hunting and conservation stamp (Duck Stamp) contest, 6938
Seasons, limits, and shooting hours; establishment, etc., 7702, 20874
Waterfowl hunting—
Lead shot zones, 9781
Migratory bird permits:
Uniform rules and procedures, 4437
Sport fishing:
Open areas list; additions, 16296
NOTICES
Agency information collection activities under OMB review, 185, 761, 11350, 14860, 16200, 20184
Alaska Land Bank agreements, 2296
Alaska National Interest Lands Conservation Act, Title VIII implementation; report availability, 1686, 20185
Comprehensive conservation plan/environmental statements; availability, etc.:
Alaska Maritime National Wildlife Refuge, AK, 4224, 11914
Alaska Peninsula National Wildlife Refuge, AK, 761
Arctic National Wildlife Refuge, AK, 1854
Innoko National Wildlife Refuge, AK, 3464
Kanuti National Wildlife Refuge, AK, 957
Kenai National Wildlife Refuge, AK, 7985, 20376
Kodiak National Wildlife Refuge, AK, 958
Koyukuk and Innoko National Wildlife Refuges, AK, 761
Nowitna National Wildlife Refuge, AK, 958
Selawik National Wildlife Refuge, AK, 3464
Tetlin National Wildlife Refuge, AK, 957
Yukon Delta National Wildlife Refuge, AK, 2891, 15467
Yukon Flats National Wildlife Refuge, AK, 3465
Endangered and threatened species:
Giant pandas imported for temporary exhibition; permit policy development, 23847
Endangered and threatened species permit applications, 1072, 1524, 2794, 3946, 5650, 7405, 7579, 8810, 8984, 10297, 10298, 11915, 12606, 13452, 15746, 16322, 17118, 17509, 20185, 20186, 20693, 22055, 22056
Endangered Species Convention; foreign law notifications:
Burundi, 15468
Environmental statements; availability, etc.:
Alaska national wildlife refuges; proposed acquisition of inholdings, 8984
Alaska Peninsula National Wildlife Refuge, AK, 10298, 13200
Andean condors in Ventura County, CA; experimental release and recapture, 2297
Becharof National Wildlife Refuge, AK, 10298, 13200
Kenai National Wildlife Refuge, AK, 1071
Migratory birds; sport hunting, 22582
Nisqually Indian Reservation; salmon hatchery construction, WA, 15468
Roanoke River National Wildlife Refuge, NC, 4077
Sea lamprey control in Lake Champlain; lampricides, temporary use, 11713
Marine mammal permit applications, 6204, 8810, 13452, 17253, 18357, 20186, 20693
Marine mammals:
Annual report; availability, 9152
Meetings:
Klamath Fishery Management Council, 4470, 16200
Klamath River Basin Fisheries Task Force, 4470, 16200
Migratory Bird Regulations Committee, 21924
Migratory birds:
Migratory nongame bird strategies; draft availability, 16913

National recreational fisheries policy; first public review draft notice, 574

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:
Amoxicillin trihydrate and clavulanate potassium tablets, 234
Bacitracin methylene disalicylate, 4009
Ceftiofur sodium sterile powder, 5369
Chlortetracycline-sulfamethazine tablets, 235
Decoquinate, 22298
Dichlorophene and toluene capsules, 21993
Esmopal; injection, 15812
Fenbendazole, 14788, 18022
Halofuginone and bacitracin methylene disalicylate, 11065, 14888
Halofuginone hydrobromide, bacitracin methylene disalicylate, and roxarsone, 1017
Hyaluronate sodium injection, 19773, 22297
Ivermectin injection, 11064
Kanamycin sulfate, calicum amphomycin, and hydrocortisone acetate, 12512
Lasalocid and oxytetracycline, 11251
Levamisole, 7504, 13217
Levamisole resinate and famphur paste, 23756
Monensin and tylosin, 236
Narasin and roxarsone, 24260
Neomycin sulfate-sulfacetamide sodium ophthalmic ointment, 11064
Neomycin sulfate-sulfacetamide sodium-hydrocortisone acetate ophthalmic ointment, 4615
Oxytetracycline hydrochloride injection, 11493
Pyrantel tartrate, 235
Sponsor name and address changes—
Fort Dodge Laboratories, 23389
Norbrook Laboratories, Ltd., 11492
Pitman-Moore, Inc., 20842, 23340
Trimethoprim and sulfadiazine oral paste, 11063
Xylazine hydrochloride injection, 4848, 23607
Biological products:
Blood and blood products; test for antibody to human immunodeficiency virus (HIV), 111
Blood grouping reagent; additional standards for diagnostic substances for laboratory tests, 12760
Code of Federal Regulations; authority citations, 2827
Color additives:
D&C Red Nos. 33 and 36, 19, 6983
FD&C Red No. 3 and D&C Red Nos. 33 and 36, 15551
Drug labeling:
Aspartame as inactive ingredient, 4135
Oral and rectal aspirin and aspirin-containing drug products (OTC); Reye syndrome warning labeling, 21633
Correction, 24830
Food additives:
Adjuvants, production aids, and sanitizers—
N,N'-1,3-propanediylbis(3,5-di-tert-butyl-4-hydroxyhydrocinnamamide), 15199, 18194
N-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact, 8440
Poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]], 18086
Aspartame, 6595, 20837-20842, 23340
Generally recognized as safe (GRAS) classification eligibility, 16544
Glyceryl tristearate, 21631
Irradiated foods; production, processing, and handling, 12756
Correction, 16615
Paper and paperboard components—
Polyamine-epichlorohydrin, 97, 8618
Polymers—
Nylon 6/69 polymer, 19772
Ultrafiltration membrane, 17925
Secondary direct additives; poly(acrylic acid-co-hypophosphite), sodium salt (4:1 to 16:1 monomer ratio by weight), 15199, 18194
Sucrose fatty acid esters, 22293, 22294
Food for human consumption:
Cheeses, mozzarella; identity standards, 3742
Food labeling:
Dairy products and frozen confections; required label statements on food containers with separate lids; exemption, 16067
GRAS or prior-sanctioned ingredients:
Acacia (gum arabic), 5765
Cocoa butter substitute primarily from palm oil; correction, 4384
Iron and iron salts, 16862, 20939
Nisin preparation, 11247, 16837
Human drugs:
Antibiotic drugs—
Cefixime trihydrate tablets and powder for oral suspension, 24256
Cefmenoxime hydrochloride for injection, 13400, 19368
Erythromycin estolate bulk, 1918
Erythromycin topical gel, 12414, 16837
Neomycin sulfate for compounding oral products, 12644, 16615
Neomycin sulfate in sterile vials, 12658
Updating and technical changes, 18837
Investigational new drug applications; amendments, serial numbering requirements, 1917
Official names list; clarification, 5368
Ophthalmic products (OTC); final monograph, 7076
Correction, 13217
Stimulant products (OTC); final monograph, 6100
Correction, 11731
Medical devices:
Clinical chemistry and toxicology devices—
General provisions and classifications; correction, 11645
Premarket notification exemptions, 21447
General and plastic surgery devices—
General provisions and classifications, 23856
Radiology devices—
General provisions and classifications, 1554, 5080
Medical devices and radiological health regulations; editorial amendments, 11251
Correction, 16837
Organization, functions, and authority delegations:
Animal Feeds Division, Director, et al.; medicated feeds, 17185
Center for Veterinary Medicine, division directors, 2225
Counterfeit drugs; enforcement activities, 22292
Drug Evaluation and Research Center, Director and Deputy Director, 18274
Organizational structure revision and regional offices address updates, 8617
Patent term restoration, 7298
Regulatory hearings before FDA; denial, etc., 4613

PROPOSED RULES

Biological products:
Blood and blood components; current good manufacturing practices, 23414
Drug labeling:
Oral and rectal aspirin and aspirin-containing products (OTC); Reye syndrome warning, 1796
Food additives:
Adjuvants, production aids, and sanitizers—
Tris(triethylene glycol)phosphate as stabilizer, 16558
Irradiated foods; production processing and handling, 4856
Polymers—
Colorants, 11402, 16837, 20335
Food for human consumption:
Aspartame; food chemical codex, 13134
Fruit or vegetable juice beverages other than orange juice, diluted; revocation of common or usual names for nonstandardized food, 1795
Pasteurized process cheese spread; identity standards, 11312
Formal evidentiary public hearing; exceptions and replies to exemptions, filing time periods, 2767
GRAS or prior-sanctioned ingredients:
Sulfiting agents used on "fresh" potatoes, 4184
Correction, 8301
Human drugs:
Anticaries (OTC); tentative final monograph, 22430
Antiflatulent products (OTC); tentative final monograph, 2716, 12778
Correction, 6916
Boil treatment (OTC); tentative final monograph, 2198
Digestive aid products (OTC); tentative final monograph, 2706, 12779
Correction, 7073
Ophthalmic products (OTC); tentative final monograph, 6997
Oral health care products (OTC); tentative final monograph, 2436
Correction, 8845
Over-the-counter drug products; tamper-resistant packaging requirements, 16150
Pediatric dosing information for over-the-counter drugs, 23180
Sunscreen products (OTC); administrative record reopened, 15853
Medical devices:
Breathing frequency monitor (neonatal apnea monitor); performance standard development, 13296

Correction, 17534
General and plastic surgery devices—
Premarket notification exemptions, 23880
Hematology and pathology devices—
Automated blood cell separator intended for routine collection of blood and blood components; premarket approval, 5108, 17227
Hematology and pathology devices, etc.—
Premarket notification exemptions, 1574, 5080
Radiology devices—
Premarket notification exemptions, 1588
Radiological health:
Electronic products performance standards; variances, 20137
Correction, 23167

NOTICES

Advisory committees; annual reports; availability, 2093
Animal drugs, feeds, and related products:
Altana, Inc.—
Neomycin sulfacetamide with hydrocortisone veterinary ophthalmic ointment; approval withdrawn, 4722
Neomycin sulfate-sulfacetamide sodium ophthalmic ointment; approval withdrawn, 11133
American Cyanamid Co.; approval withdrawn, 287
Bacitracin methylene disalicylate for use in quail; data availability, 5217
Chloramphenicol as unapproved new animal drug, direct reference seizure; compliance policy guide availability, 14856
Clinical investigations monitoring; guideline availability, 4723
Export applications—
Baytril (enrofloxacin) tablets, 9812
J&R Specialty Supply Co.; approval withdrawn, 288
Limulus amebocyte lysate test guideline; availability, 5044
Mattox & Moore, Inc.; Esmopal; approval withdrawn, 4214, 8301, 15885
Microbial products fed directly to animals; compliance policy guide availability, 20175
Poisonous or deleterious substances; action levels, 5043
Reid-Powell, Inc.; dichlorophene/toluene capsules; approval withdrawn, 22051
Sulfamethazine in food-producing animals, 15886, 17852, 19369
Sulfamethazine; technical report availability, 9492
Biological product licenses:
Biological Resources, Inc., 23453
Plasma, Inc., 4722
Biological products:
Cell lines used to produce biologicals; points to consider for new technologies; availability, 10948
Clinical investigations monitoring; guideline availability, 4723
Export applications. See entries under Human drugs.
Limulus amebocyte lysate test guideline; availability, 5044
Monoclonal antibody products for human use; new technologies; draft criteria availability, 5468
Color additive petitions:
Wesley-Jessen, 2093
Color additives:
Clinical investigations monitoring; guideline availability, 4723
FD&C Red No. 3; data request for specific uses, 467
Committees; establishment, renewal, termination, etc.:
Anesthetic and Life Support Drugs Advisory Committee, 20021
Arthritis Advisory Committee, 13165
Blood Products Advisory Committee, 20687, 24551
Center for Biologics Evaluation and Research public advisory committees, 1411
Center for Devices and Radiological Health advisory panels and committees, 446, 447, 1890
Center for Drug Evaluation and Research public advisory committees, 1412
Drug Abuse Advisory Committee, 23797
Fertility and Maternal Health Drugs Advisory Committee, 12599
Gastrointestinal Drugs Advisory Committee, 10431
Peripheral and Central Nervous System Drugs Advisory Committee, 24365
Psychopharmacologic Drugs Advisory Committee, 23797
Pulmonary-Allergy Drugs Advisory Committee, 23797
Radiopharmaceutical Drugs Advisory Committee, 10431
Science Advisory Board, 24365
Vaccines and Related Biological Products Advisory Committee, 2289
Veterinary Medicine Advisory Committee, 17250
Compliance policy guides manual; index availability, 13165
Computer products regulation; draft policy guidance availability, 289
Condoms; defects, criteria for direct reference seizure; compliance policy guide availability, 1890
Food additive petitions:
AKZO Chemie America, 21728
American Cyanamid Co., 20688
Bercen, Inc., 23454
Betz Laboratories, Inc., 23454
Biosearch Medical Products, Inc., 8513
CdF Chimie SA., 288
Ciba-Geigy Corp., 289, 643, 19045, 21728
Concentrados Marinos, S.A., 8512
Disogrin Industries, Inc., 23797
Diversey Wyandotte Corp., 19045
Dow Chemical Co., 8805, 23455, 23798
E.I. du Pont de Nemours & Co., 18610, 23455
Insta Cool Inc. of North America, 3942
J.M. Huber Corp., 8512
Kuraray Co., Ltd., 643
Mitsui Petrochemical Industries, Ltd., 21728
Mobil Chemical Co., 3791
Monsanto Chemical Co., 6203, 12822
NutraSweet Co., 4075
Pfizer, Inc., 2093, 3792, 19046, 21729
Riken Vitamin Co., Ltd., 18610, 22426
Schering Animal Health, 289
Shell Oil Co., 6203, 9145
Union Camp Corp., 19046
Velsicol Chemical Corp., 18610, 23455
Waitaki International Marketing, Ltd., 6203
West Agro, Inc., 19046
Food additives:
Clinical investigations monitoring; guideline availability, 4723
Food for human consumption:
Identity standard deviation; market testing permits—
Pacific salmon, canned, 11710
Pineapple, canned, 16471, 23692
Mousse dessert; identity standards, 8512
Poisonous or deleterious substances; action levels, 5043
Wheat flour and macaroni products adulteration; defect action levels; compliance policy guide availability, 1520, 5080
Food protection unicode; model development, 16472
Grants and cooperative agreements; availability, etc.:
Bound drug residues; safety evaluation procedures development studies, 7803
National center for food safety, 15736
GRAS or prior-sanctioned ingredients:
E.I. du Pont de Nemours & Co., 19822
Enzyme Bio-Systems Ltd., 16191
General Bioscience, Inc., 20371
Imperial Biotechnology, Ltd., 5319
Pfizer, Inc., 3792
Human drugs:
Antibiotic drugs—
Neomycin sulfate for compounding oral products, etc., 12662
Neomycin sulfate in sterile vials, 12664
Antibiotic/antifungal products; approval withdrawn, 5044, 11002
Bioequivalence of solid oral dosage forms; task force report availability, 6036
Clinical investigations monitoring; guideline availability, 4723
Current good manufacturing practices—
Investigational new drug products preparation; draft guideline availability, 5835
Drug investigations in humans; anti-inflammatory and antirheumatic drugs; revised clinical guidelines availability, 23456
Export applications—
Antihemophilic factor (human), lyophilized powder, 22051
Cytovene (ganciclovir), 1941
Dilaudid tablets and oral solution, 22052
ENLON (edrophonium chloride injection, USP), 13323
Enoximone for intraveneous injection, 7237
Genetic systems HIV antigen EIA and genetic systems HIV antigen neutralization test kits, 15599
Hepatitis B vaccine (recombinant, yeast), 10155
Intal nebulizer solution (cromolyn sodium inhalation, USP), 8513, 12640
Isoprenaline (isoproterenol) hydrochloride injection, 181
NIMOTOP (nimodipine) capsules, 7052
Nitropflaster Ratiopharm-5 and 10, 20021, 22426
Pneumopent (Pentamidine isethionate for inhalation), 23456
POLYTRIM brand trimethoprim sulfate and polymyxin B sulfate ophthalmic

solution, 8805
Recombigen HIV latex agglutination test kits, 10948
Simvastatin bulk, 7052
Sodium aminosalicylate (4-ASA) bulk, 7053
'CONTAC' C Sustained Release Capsules, 3266
UBI-Olympus HIV-EIA, 17506
Homeopathic drugs marketing conditions; compliance policy guide availability, 21728
International drug scheduling—
Psychotropic substances; delta-9-tetrahydrocannabinol, 10155
Psychotropic substances, narcotic drugs, etc., 22386
Limulus amebocyte lysate test guideline; availability, 5044
New drug applications—
International Medication Systems Ltd., 18905
Tussionex tablets and suspension, 9492
U.S. Products, Inc., et al., 1942
Orphan drug products—
Designations; cumulative listing, 2680, 7073
Patent extension; regulatory review period determinations—
Bactroban, 12462
Cefmax, 12823, 16931
Corotrope, 12600
Deursil, 12463, 16837
Hytrin, 572, 1890
Naftin, 23798
Novantrone, 10291, 13324
Primivil, 12600
Prozac, 12601, 16615
Rimadyl, 16191
Spectamine, 12464, 16837, 18907
Terazol, 10293
Ucephan, 16786, 20718
Tamper-resistant packaging for over-the-counter drugs; compliance policy guides availability, 16192
Imported products, automatic detentions; Regulatory Procedures Manual chapter; availability, 14856
Laser variance approvals, etc.:
Beyond Belief et al., 9983
Laser Fantasy Productions, Inc., et al., 448
Medical devices:
Clinical investigations monitoring; guideline availability, 4723
Computer products regulation; draft policy guidance availability, 289
Condoms; defects, criteria for direct reference seizure; compliance policy guide availability, 573, 1890
Critical devices advisory list; availability, 8854, 14888
Diagnostic ultrasound guidance update; availability, 289
Hip joint metal/ceramic/polymer semi-constrained cemented or uncemented prosthesis; reclassification petition, 19340
In vitro diagnostic products; GMP guidelines for manufacture availability, 11561, 23800
Limulus amebocyte lysate test guideline; availability, 5044
Ophthalmic devices—
Class III daily wear contact lenses, alternate design configurations; premarket approval policy statement, 12077
Patent extension; regulatory review period determinations—
Fibrel, 23457
Radiologic devices—
Magnetic resonance diagnostic device; reclassification petitions; recommendation and report, 7575, 13218
Reconditioners/rebuilders; compliance policy guide availability, 573
Surgical Simplex P Antibiotic Bone Cement; availability of order, 11711
Tripartite biocompatibility (toxicity testing) guidance; availability, 5469
Medical devices; premarket approval:
AIRLens (Arfocon A) Rigid Gas Permeable Contact Lens, 24151
Armstrong Sterile Saline Solution, 12993, 16931
Bausch & Lomb ReNu Lubricant and Rewetting Drops, 20022, 22426
BOSTON EQUALENS (Itafluorofocon A) Contact Lens (clear and tinted with or without ultraviolet light absorber), 1413
Ciba Vision Lens Drops, 23799
Dupen Long Term Epidural Catheter, 15739, 18949
Duraclean Daily Cleaner, 16787
Durasoft 4 (ofilcon A) Hydrophilic Contact Lens (clear and tinted), 10292
Fibrel (gelatin matrix implant), 15739
Fluoro-Cep Estrogen, 16788, 20718
Hydron B (Polymacon) Bifocal Contact Lens, 21527
IVAC Titrator Sodium Nitroprusside Closed Loop Module-Model 10K, 3943
LASERON ND:YAG Ophthalmic Laser, 449
Medstone 1050 ST Lithotripter, 20906
Medtronic Prime Coronary Balloon Dialation Catheter, 20718
Medtronic Prime Coronary Balloon Dilatation Catheter, 16789
Medtronic SynchroMed Infusion System, 16788, 20718
MicroScan Rapid Panels, 11914
Model 304-01 Ultra C-Loop Posterior Chamber Intraocular Lens, 9984, 13166
NIDEK Nd:YAG Ophthalmic Laser Model YC-1000, 4076
Prosorba Column, 5320, 12640
Resonex Rx-4000 Magnetic Resonance Imaging System, 19047
Sensor Model Kelvin 500 Unipolar Cardiac Pulse Generator, etc., 21729
Spherical FluoroPerm (Paflufocon A) Rigid Gas Permeable Contact Lens, 5217
TANDEM-E AFP Immunoenzymetric Assay, 24152
Tresoft and Tresoft Thin (Ocufilcon A) Soft (Hydrophilic) Contact Lenses, 20906
Versaflex Buchbinder Omniflex PTCA Catheter System, 23799
Weck Model BL-12 Nd:YAG Ophthalmic Laser, 11395, 5468
Meetings:
Acquired Immune Deficiency Syndrome (AIDS) vaccine development and testing, 12823
Advisory committees, panels, etc., 1067, 2289, 4724, 5637, 8301, 9146, 9148, 11561, 11711, 13166, 14857, 15170, 17250, 18022, 18162, 19344, 21920, 23458, 24365
Biosafety principles application in blood establishments, 7974
Consumer information exchange, 450, 3943, 5218, 5637, 5836, 11712, 11939, 13325, 17114, 21920
Health professional organizations, 12601
Human immunodeficiency virus (HIV) antibody detection, R-DNA derived and synthetic peptide antigens use; workshop, 3640
Orphan Products Board, 3639
Memorandums of understanding:
Agriculture Department and Food of Ireland; caseins, caseinates, and mixtures; certification requirements establishment, 7974
State Administration of Import and Export Commodity Inspection of China; ceramicware, 17764, 21964
Organization, functions, and authority delegations. See entries under Public Health Service.
Sample analysis results, intermediate or end product portions; compliance policy guide; availability, 10431
Shellfish sanitation and shellfish-growing waters; vibrio vulnificus (bacteria); workshop, 5836, 11731
Sulfamethazine; National Center for Toxicological Research technical report; availability, 17850, 22762

Food and Nutrition Service

RULES
Child nutrition programs:
Commodity supplemental food program—
Elderly persons, eligibility requirements; caseload procedures, etc., 4831
National school lunch program—
Food service management company contracts, 4377
Summer food service program; categorical eligibility, etc., 4827
Women, infants, and children; special supplemental food program—
Reporting participation and priority data, 15651
Special supplemental food program; funding formula, 2213
Food distribution program:
Food donation—
Credit to distributor's accounts and use of value-pass-through systems, 20597
Provisions revised, 20416
Use in United States, territories, and possessions and areas under jurisdiction, 22466
National commodity processing program, 16379
Temporary emergency food assistance program, 15355
Food stamp program:
Charitable donations; income exclusion, 22291
Correction, 23484
Eligible alien status (Immigration Reform and Control Act; implementation), 6556
Homeless food stamp recipient; prepared meals purchase, 24671
Income and eligibility verification systems, 2817
Liabilities and quality control arbitration, administrative review process, 1603
PROPOSED RULES
Child nutrition programs:
School breakfast program—
Nutritional improvements and offer versus serve, 18289, 19368
Food distribution program:
Food donations processing provisions; State processing and National commodity processing program, 2846
Indian reservations; program accountability increase, etc., 5583
National commodity processing program, 7188
Food stamp program:
Employment and training requirements, 23638
NOTICES
Child nutrition programs:
Meals and milk, free and reduced price; income eligility guidelines, 19010
Summer food service program; reimbursement rates, 782
Women, infants, and children; special supplemental food program; poverty income guidelines, 17488
Commodity Distribution Reform Act and WIC Amendments of 1987; implementation, 12794
Food distribution program:
Commodity supplemental food program; elderly poverty income guidelines, 17489
Elderly assistance program (1988 through 1991 FY), 22550
Meetings:
Child Nutrition National Advisory Council, 5

Food Safety and Inspection Service

RULES
Freedom of Information Act; implementation, 24678
Meat and poultry inspection:
Criminal violations; notice of proceedings, 17015
Fee increases, 13396
Frankfurters and similar cooked sausages, 8425
Glucono delta-lactone as acidifier in meat and poultry products, 7493
Imported products; refused entry procedures, sealing requirements, and controlled prestamping provisions, 17011
Montana; designation termination, 20099
Pork products, cured; control of added substances and labeling requirements, 5150
Poultry identification service, 3735
PROPOSED RULES
Meat and poultry inspection:
Exotic animals; voluntary inspection, 5387
Fee increases, 8922
Imported products; movement of product prior to reinspection; prohibition, 17059
Swine identification, 3146
NOTICES
Meat and poultry inspection:
Compound evaluation system; availability, 751
Retail store exemptions; dollar limitations adjustment, 15580
Standards and Labeling Division policy memoranda, 17737
Sulfamethazine residues in swine; laboratory changes in testing procedures, 13137
Sulfa-on-site test for sulfamethazine in swine implementation, 13136

Foreign Agricultural Service

PROPOSED RULES
Foreign market development programs, 13125
Import and quota fees:
Sugar. See entries under Agriculture Department.
Sugar import licensing:
Special export enhancement program, 11098
NOTICES
Agricultural Advisory Committees for Trade; 1987 FY topics, 11324
Import quotas and fees:
Condensed milk from Denmark; country of origin quota adjustment, 24111
Sunflower oil assistance program, 19013

Foreign Assets Control Office

RULES
Foreign assets control:
Vietnam, Cambodia, and North Korea; travel transactions, 7354
Iranian assets control; prepenalty and penalty procedures, 7355
Libyan sanctions, 5571
Prepenalty and penalty procedures, 7355
Nicaraguan trade control; prepenalty and penalty procedures, 7355
Panamanian transactions, 20566
Correction, 23620
South African transactions:
Prepenalty and penalty procedures, 7355

Foreign-Trade Zones Board

NOTICES
Applications, hearings, determinations, etc.:
Alabama, 12798
ADDSCO Industries, Inc., 7955
Arkansas—
Polar Stainless Products, Inc., 16745
California—
Toyota Auto/Truck Parts Plant, 16178, 17138, 24470
Connecticut, 9132
Delaware—
General Foods Processing Plant, 1809
Georgia, 15254
Yamaha Golf Cart and Water Vehicle Plant, 1046
Hawaii—
Chevron Oil Refinery, 783
Illinois—
Diamond-Star Motors Corp., 5812
Lawrenceville-Vincennes Municipal Airport, 5436
Maytag Home Appliance Assembly Plants, 16303, 24114
Indiana—
Allied Steel Auto Body Parts Plant, 45, 5206
Subaru/Isuzu Auto/Truck Plant, 1046
Iowa—
Maytag Home Appliance Assembly Plants, 16303, 24114
Kentucky—
Hitachi Auto Components Plant, 12051, 20150
Toyota Automobile Manufacturing Plant, 45, 12051
Louisiana, 1503
Citgo Oil Refinery, 783
TransAmerican Natural Gas Corp., 11539
Massachusetts—
Codman & Shurtleff, Inc., 9957
Michigan, 6020
Mississippi, 1809
Moss Point Marine, Inc., 7956
New Jersey, 10551
New York—
Robinson Knife Co., 10551
Xerox Plant, 7382
North Carolina, 12446, 12866
Pennsylvania—
Verosol Window Shade Fabric Processing Plant, 7222, 16746
Puerto Rico, 3411
Rhode Island—
Pawtucket Fasteners, Inc., 17739
South Carolina, 4865
Tennessee—
Komatsu Construction/Industrial Equipment Plant, 2261
Tennessee Valley Authority, Phipps Bend site, 15255
Texas, 4865, 7382, 8479, 15255
CMC Steel Fabricators, Inc., 17739
Harvey Industries Television Plant, 3411
Reynolds Metals Alumina Plant, 8681
Valero Oil Refinery, 784
Vermont—
Wyeth Nutritionals, Inc., 3412
Washington, 3907, 4865, 9464
Tacoma Boatbuilding Co., 3907
Wyoming, 10136

Forest Service

RULES
Administration:
Appeal of decisions—
National Forest System, 2490, 13263, 17029
Land uses:
First Amendment rights of assembly and free speech, 16548
Prohibitions:
First Amendment rights of assembly and free speech, 16548
Range management:
National Forests in 16 Western States; grazing fees, 2978
Correction, 4258
Timber sales; national forest:
Buy-out provisions, 15035
PROPOSED RULES
Administration:
Appeal of decisions—
National Forest System, 17310
Mineral materials disposal; petrified wood and common varieties of sand, etc., 15236
Timber sales, national forest:
Periodic payments, downpayments, and market-related contract term additions, 519
NOTICES
Boundary establishment, descriptions, etc.:
Mono Basin National Forest Scenic Areas, CA, 18871

Saline Bayou National Wild and Scenic River, LA, 2067
Tuolumne Wild and Scenic River, CA, 22551
Development and management plans:
Mono Basin National Forest Scenic Area, CA; guidelines, availability, 13425
Environmental statements; availability, etc.:
Angeles National Forest, CA, 11522, 23293
Appalachian Integrated Pest Management Gypsy Moth Demonstration Project, VA and WV, 7768
Bitterroot National Forest, ID and MT, 24468
Bitterroot National Forest, MT, 15072, 20353
Bridger-Teton National Forest, WY, 9674, 21715
Carson National Forest, NM, 23676
Cibola National Forest, NM, 6019
Colville National Forest, WA, 11523
Custer National Forest et al., MT and WY, 4048
Deerlodge National Forest, MT, 158, 428
Deschutes National Forest et al., WA, 8795
Deschutes National Forest, OR, 1390, 8795
Dixie National Forest, UT, 16571
George Washington National Forest, VA, 7545
Humboldt National Forest, NV, 7769, 23780
Inyo National Forest, CA and NV, 19976
Klamath National Forest, CA, 4049, 6855, 18116
Klamath National Forest, CA and OR, 10134
Kootenai National Forest, MT, 939, 21715
Lewis and Clark National Forest, MT, 5290
Lolo National Forest, MT, 10413
Mark Twain National Forest, MO and OR, 23293
Mt. Hood National Forest, OR, 18873
Okanogan National Forest, WA, 16302
Ouachita National Forest, AR and OK, 16744
Pacific Northwest Region, nurseries and tree improvement center; unwanted vegetation, animal, insect, and disease control, 1391
Pacific Region Northwest-Oregon and Washington; western spruce budworm management program, 6855
Payette National Forest, ID, 11523, 15250, 19977
Routt National Forest, CO, 23293
Santa Fe National Forest, NM, 6680
Shasta-Trinity National Forests, CA, 3906, 7770, 22187
Southern region vegetation management program, 21717
Tongass National Forest, AK, 4048
White Mountain National Forest, NH, 8240
Land and jurisdiction transfers, etc.:
Lake Ouachita, AR, 5603
Libby Dam and Lake Koocanusa, MT, 11523
Lucky Peak Lake Project, ID, 24112
Land and resource management planning schedules, 20667
Land and resource management plans:
Arkansas, 16744
California, 10134
Idaho, 23294
Oklahoma, 16744
Oregon, 8795, 10134
Washington, 8795
Lumber base indexes adjustment; certain western timber species, 11527
Meetings:
Mount St. Helens Scientific Advisory Board, 17092
State Foresters Committee, 16440
Timber sales, national forest:
Sale procedures; policy modification, 544
Skewed bidding control; procedures, 544

General Accounting Office

PROPOSED RULES
Personnel relations and services; political activities, 15043

NOTICES
Competitive Equality Banking Act; implementation:
High yield bonds market; hearing, 2785

General Services Administration

RULES
Acquisition regulations:
Contracting officer warrant program and imprest fund transactions; purchase thresholds increase, 132
Correction, 1441
Contractor compliance with subcontracting plans; monitoring, 21823
Contracts—
Single solicitation; additional awards to offeror, 17949
Foreign acquisitions; dollar threshold for applicability of Trade Agreements Act, 1925, 4169
Miscellaneous amendments, 130
Correction, 1540
Non-domestic construction materials; use and approval, etc. (Buy American Act notice), 9629
Prompt payment and ratification of unauthorized commitments, 7365
Retirement costs, comparison under OMB Circular A-76, 10395
Vietnam era and special disabled veterans; employment reports, 17949
Debarment and suspension (nonprocurement), 19161
Federal Acquisition Regulation (FAR):
Amendments, 17854
Construction contracts; labor standards, 4934
Cost comparison public review period revision, etc. (OMB A-76), 660
Correction, 6219
Extraordinary compensation clarification and certain organization costs incurred with mergers and other business combinations, 10828
Federal public works projects restrictions and American aerospace exports promotion at domestic and international exhibits, 12128
Correction, 13274, 14888
Truth in negotiations provisions, 10828
Unauthorized commitments and prompt payment; ratification, 3688
Correction, 4817
Federal Information Resource Management Regulation:
Redundant and nonregulatory provisions removed, 24720
Federal property management:
Federal travel—
Contract airline/rail passenger service use between selected cities/airports, 10076
Federal Travel Regulations handbook, 24449
Public buildings and space—
Buildings and grounds management, 129
Publications distribution procedures, etc., 2738
Supply and procurement—
Miscellaneous amendments, 11847
Transportation and motor vehicles—
Express small package transportation; carrier contractors use, 11849
Motor equipment management; Federal motor vehicle expenditure, 21821
Transportation and traffic management—
Carriers transporting government employee's household goods, liability, 4623
Transportation documentation and audit—
Commercial bills of lading submission under cost reimbursement-type contract, 16876
Utilization and disposal of personal property, 16089
Utilization, donation, and disposal of foreign gifts and decorations; minimal value defined, 12766
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1478
Organization, functions, and authority delegations:
Organizational structure, functional arrangements, and organizational titles, etc., 23760

PROPOSED RULES
Acquisition regulations:
Additional awards to an offeror under a single solicitation use (SF-30), 2515
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100
Contract debts; demands for payment, 2577
Contract options; continued performance of services, 3814
Contractor records retention, 23105
Foreign military sales contracts; double recoupment of taxes, 12501
Health care services, nonpersonal servaces contracts, 2464
Independent price determination certificates use in overseas procurements, 100
Correction, 4437
Mistake in bid procedures, 8734
Negotiation after sealed bidding, 3814
Progress payments, first article, 8734
Regulatory agenda, 14564
Service Contract Act; labor standards for contracts, 5928
Small business subcontracting plans for contracts with options, 5928
Threshold; cost comparison, 11795
Federal Information Resources Management Regulation:
Improvement project, 620
Miscellaneous amendments, 1805
Reutilization of excess and exchange/sale automatic data processing equipment with original cost below $1,000,000, 11518
Federal property management:
Transportation and motor vehicles—
Unused tickets redemption (SF 1170 revised), 19946
Utilization and disposal of real property—
Property containing asbestos; disposal, 4672
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 17963
Regulatory agenda, 14428

NOTICES
Agency information collection activities under OMB review, 1411, 1941, 2789, 4075, 16190, 18609, 23312, 23795
Committees; establishment, renewal, termination, etc.:
Federal Telecommunications Privacy Advisory Committee, 5042
FTS 2000 Procurement Advisory Committee, 5636
Real Estate Development Advisory Commitee, 22224
Environmental statements; availability, etc.:
Chicago Federal Building, 17762
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437, 10269, 18875, 19322, 22207
Meetings:
FTS 2000 Procurement Advisory Committee, 12462, 17113
Privacy Act; systems of records, 23795
Procurement:
Copiers; method of award, 953
Multiple award schedules; requote procedures for orders exceeding maximum order limitation, 1844
Property management:
San Joaquin California Project, Tulare County, CA; property transfer, 11133
Wildlife order conveyance—
Smithland Locks and Dam, Pope County, IL, 18905
Travel regulations:
Relocation allocations; real estate origination fee reimbursement limitation, etc., 1103
Relocation income tax allowance; tax table, 16899

Geological Survey

NOTICES
Agency information collection activities under OMB review, 15144
Digital cartographic data; price revision, 22582
Meetings:
Water Data for Public Use Advisory Committee, 8514

Government Printing Office

NOTICES
Meetings:
Depository Library Council, 1845

Harry S. Truman Scholarship Foundation

RULES
Annual scholarship competition provisions, 23239

NOTICES
Meetings; Sunshine Act, 9023

Health and Human Services Department

See also Agency for Toxic Substances and Disease Registry; Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Child Support Enforcement Office; Community Services Office; Family Support Administration; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Human Development Services Office; Indian Health Service; Inspector General Office, Health and Human Services Department; National Institutes of Health; Public Health Service; Refugee Resettlement Office; Social Security Administration

RULES
Acquisition regulations, 15561
Conflict of interests, 4409
Federal surplus real property; leases for use for facilities to assist the homeless, 7744
Debarment and suspension (nonprocurement), 19161
Employee indemnification, 11279
Grant administration:
ADP equipment and services; conditions for Federal financial assistance, 26
Block grant programs—
Audits and reporting requirements, etc., 11656
Low-income home energy assistance program, 6824
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Program Fraud Civil Remedies Act; implementation, 11656

PROPOSED RULES
Nondiscrimination on basis of handicap in federally-conducted programs and activities, 4425
Physicians and health care practitioners; adverse information national data bank, 9264
Regulatory agenda, 13770

NOTICES
Agency information collection activities under OMB review, 1066, 2644, 3456, 4212, 5834, 7050, 7973, 9811, 10564, 11706, 13322, 15465, 18159, 19336, 20367, 22734, 23796
Automated information systems; management control model framework, 9144
Committees; establishment, renewal, termination, etc.:
Health Promotion and Disease Prevention Council, 10154
Secretary's Commission on Nursing, 84
Federal claims collection; interest rates on overdue debts, 2540, 17763
Grant administration:
Debarment and suspension—
Glueck, Charles J., M.D., 4458
Milanese, Claudio, M.D., 10291, 14856
Grants and cooperative agreements; availability, etc.:
Long term care research, 18349
Welfare dependency policy reasearch, 9978
Meetings:
Secretary's Commission on Nursing, 1845, 4894, 5042, 6701, 8895, 16782, 23452
Organization, functions, and authority delegations:
Administrative Management Services Office et al., 18609
Assistant Secretary for Health, 3457, 3791, 12992, 15140
Assistant Secretary for Personnel Administration Office, 4720
Inspector General Office, 12993
Social Security Administration, 567, 569
Poverty income guidelines; annual revision, 4213
Privacy Act; systems of records, 11707

Health Care Financing Administration

See also Inspector General Office, Health and Human Services Department

RULES
Medicaid:
ADP equipment and services; conditions for Federal financial assistance, 26
Cost of living increases; treatment of individuals who lose SSI eligibility, 16550
Health care facilities (skilled nursing and intermediate care); long-term survey, 22850
Health maintenance organizations and prepaid health plans contract requirements, 12010
Hospitals, skilled nursing facilities, hospices, etc.; fire safety standards, 11504
Intermediate care facilites for mentally retarded—
Correction and reduction plans, 1984 Standards, 20448
Organ procurement organizations and protocols, 6526
Correction, 9172, 18986
Payments to institutions; post-eligibility determinations for institutionalized individuals, 3586
Correction, 5344, 12681
Reporting and recordkeeping requirements, 12010, 16267
Correction, 21762
State agencies entering into Medicare Part B buy-in agreements, etc.; correction, 657
Medicare:
End stage renal disease program; network organizations responsibilities, 1617
Health care facilities (skilled nursing and intermediate care); long-term survey, 22850
Health maintenance organizations and prepaid health plans contract requirements, 12010
Hospital outpatient services; return on equity capital, allowance elimination, 12016
Hospitals, skilled nursing facilities, hospices, etc.; fire safety standards, 11504
Inpatient hospital prospective payments system—
Periodic interim payments, 1621
Organ procurement organizations and protocols, 6526
Correction, 9172, 18986
Payment conditions, 6629
Correction, 12945
Provider-based home health agencies and hospices; assignment and reassignment to designated regional intermediaries, 17936
Reimbursement; lesser of costs or charges provisions, 10077
Correction, 12641
Reporting and recordkeeping requirements, 12010, 16267
Correction, 21762
Supplementary medical insurance premiums; correction, 4158

PROPOSED RULES
Medicaid:
Hospitals, participation conditions; independent laboratories, services coverage conditions; and end-stage renal disease services, suppliers coverage conditions, 22506

Health maintenance organizations; membership requirements waiver and State option for disenrollment restriction, 744
Patient confidentiality for human immunodeficiency virus (HIV) testing, 10404
Peer review organizations regulations (PRO), utilization and quality control—Amendments, 8654
Personal care services coverage, 24103
Qualified severely impaired individuals who work; eligibility, 15857
Respiratory care for ventilator-dependent individuals; home and community-based services, 19950
Medicare:
CHAMPUS and CHAMPVA participation; hospital admissions for veterans, hospital responsibility for emergency care, etc., 22513
Hospitals, participation conditions; independent laboratories, services coverage conditions; and end-stage renal disease services, suppliers coverage conditions, 22506
Health maintenance organizations and competitive medical plans; coordinated open enrollment, 21696
Hospital insurance entitlement and supplementary medical insurance enrollment and entitlement; 5008
Immunosuppressive drugs coverage, 1383
Inpatient hospital prospective payment system—
Hospital-specific rate adjustment; effect of appeals, 22028
Inpatient hospital prospective payment system and 1989 FY rates, 19498
Inpatient hospital services—
Payments, 9337, 12641
Kidneys sent to foreign countries or transplanted in non-Medicare beneficiaries; costs exclusion, 6672
Patient confidentiality for human immunodeficiency virus (HIV) testing, 10404
Peer review organizations regulations (PRO), utilization and quality control—Amendments, 8654
Physician services; prevailing charge differentials for specialists, discontinuation, 12037
Secondary payer and recovery against third parties, 22335
NOTICES
Medicaid:
Capital expenditure review agreements between HHS Secretary and States; termination, 10431
State plan amendments, reconsideration; hearings—
California, 15288
Michigan, 9369
Pennsylvania, 5218, 9985
South Dakota, 8699
Tennessee, 84
Texas, 644
Utah, 8507
Washington, 20022
Medicare:
Ambulatory surgical centers—Covered surgical procedures; list, 2291
Capital expenditure review agreements between HHS Secretary and States; termination, 10431
Claims hearings by administrative law judges, 20023
Inpatient hospital prospective payment system; 1988 FY changes, 11134
Peer review organizations; contract expirations and solicitation of interest from in-State organizations, 7976, 10565
Program issuances; quarterly listing, 21730
Meetings:
International Classification of Diseases, Ninth Revision, Clinical Modification Coordination and Maintenance Committee, 9988
Uniform Needs Assessment Instrument(s) Development Advisory Panel, 17507
Organization, functions, and authority delegations, 7402, 7803, 8508, 8509, 8977, 15740, 24366
Privacy Act; systems of records, 182, 759, 7238, 15740, 18194, 21920

Health Resources and Services Administration

See also Public Health Service
NOTICES
Advisory committees; annual reports; availability, 1414, 3459, 3944, 5045
Committees; establishment, renewal, termination, etc.:
AIDS Advisory Committee, 22225
Community-based elderly; self-care behaviors identification, 22225
Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV); service demonstration projects, 12465
Acquired Immunodeficiency Syndrome (AIDS)—
Regional education and training centers, 18610
Advanced nurse education, etc., 9813, 16590
Centers for Excellence—
Final review criteria (1988 FY), 20175
Minority health education, 9703
Community and migrant health centers activities, 11345
Comprehensive primary health care services; planning and development by statewide organizations, 12602
Family medicine—
Maternal and child health services, 3267
Geriatric education centers, 4894, 11347
Geriatric medicine and dentistry faculty training projects, 9370, 20176
Health care service in home to low-income persons, 15599
Health careers opportunity program, etc. Low income levels, 13325
Homeless population health services, 20177
National Health Service Corps loan repayment program; etc., 23154
Non-acute care intermediate and long term care facilities for patients with AIDS; renovation or construction project grants, 10433
Nursing post-baccalaureate faculty fellowships, 7977, 20178
Nursing special projects, 23459
Organ Procurement Organizations, 15601
Pediatric AIDS; health care demonstration projects, 7978
Perinatal health promotion organizations, 16911
Physician assistants programs, 184, 9149
Preventive health services in Pacific Basin, 22052
Rural health research centers, 12730
Medically underserved populations, designations, 5638, 10434
Meetings; advisory committees:
February, 2789, 3944
March, 4725, 6874
May, 7803, 10294, 16472
June, 12468
July, 23459
August, 22225, 23459
National Disaster Medical System; medical manpower component establishment, 12994
Organ transplantation for foreign nationals and exportation of organs; United Network for Organ Sharing policies, 8977
Organization, functions, and authority delegations. See entries under Public Health Service.

Hearings and Appeals Office, Energy Department

NOTICES
Cases filed, 7013, 9688, 9974, 10147, 10148, 10276, 15124, 15447–15451, 16186, 16187, 17500, 17501, 18881, 18883, 18884, 18886, 18887, 19998, 19999, 21907–21909, 22718
Decisions and orders, 1816, 1818, 3248–3253, 3434, 4879, 4882, 7013, 7560, 8802–8804, 9689, 10276, 10930, 10931, 10935, 12071, 15125, 15452, 15456, 17502, 17503, 18888, 18890, 18893, 20003, 20006, 22719, 22723, 24136, 24781
Remedial orders:
Objections filed, 10279, 10935, 15126, 16188, 17503
Special refund procedures; implementation, 3254, 3437, 3440, 3928, 4453, 5455, 7017, 9691, 9693, 10279, 10936, 10940, 12457, 15126, 15593, 17974, 21910, 22723, 23307, 24782

Hearings and Appeals Office, Interior Department

RULES
Hearings and appeals procedures:
Individual civil penalties, 8752
Correction, 10036
PROPOSED RULES
Hearings and appeals procedures:
Indian estates; probate, 23291

Historic Preservation, Advisory Council

NOTICES
Meetings, 11109

Housing and Urban Development Department

RULES
Acquisition regulations, 7187
Community development block grants:
Community facilities; lead-based paint hazard elimination, 20790
Debarment and suspension (nonprocurement), 19161
Fair housing:
Complaint processing, 24184

Reporting and recordkeeping requirements, 9868
State and local laws; substantially equivalent laws recognition, 6964, 23757
Government National Mortgage Association:
Attorneys-in-fact list, 6601
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation); 8034
Lead-based paint hazard elimination, 20790
Low income housing:
Elderly or handicapped housing—Interest rate loans, 19899
Housing assistance payments (Section 8)—
Aliens; assisted housing use; restrictions, 842, 6600
Existing housing; lead-based paint hazard elimination, 20790
Fair market rent schedules for existing housing, loan management and property disposition, moderate rehabilitation, and housing voucher programs, 8888
Fair market rents for new construction and substantial rehabilitation, 13406, 14954
Preference for families occupying substandard housing, involuntarily displaced, or paying more than fifty percent of income for rent, 1122, 6600
Rent supplements; Federal tenant selection preferences, 15818
Shared housing, 4388, 7734
Single and multifamily mortgage authorities; section 202 per unit cost limits, 8874
Special allocations; lead-based paint hazard elimination, 20790
Tenancy termination, 3366
Manufactured home construction and safety standards:
Lead standards in water piping, 23610
Water, drain, gas, and electric utility connection; reference standards and placement requirements; effective date, 6600
Minimum property standards:
Lead standards in water piping, 11270
Mortgage and loan insurance programs:
Aliens; assisted housing use; restrictions, 842 Effective date, 6600
Allegany Reservation of Seneca Nations of Indians, 3807, 4498, 9869
Correction, 13404
Distributive shares, nonentitlement in event of foreclosure, 10529
Hospital mortgage insurance, 16068
Interest rate changes, 3365, 14789, 19774
Low income housing mortgages; prepayment, 11224
Maximum mortgage limits for high-cost areas, 3364, 6922, 9869, 11997, 13405, 19897
Multifamily housing projects—Rent control, 15813
Mutual mortgage insurance and rehabilitation loans—
Occupied conveyance, 868, 8626
Single-deficiency judgments, 4384
Nursing homes and similar projects; FHA insurance coverage, 15671
Preference for families occupying substandard housing, involuntarily displaced, or paying more than fifty percent of income for rent, 1122
Effective date, 6600
Rent supplements; Federal tenant selection preferences, 15818
Single and multifamily mortgage authorities; section 202 per unit cost limits, 8874
Correction, 10071
Technical amendments, 615
Effective date, 6600
Tenancy termination, 3366
National Housing Act; implementation:
Mutual insurance programs; direct endorsement processing, 3201
Effective date, 6600
Nondiscrimination on basis of handicap in federally assisted programs and activities, 20216
Program Fraud Civil Remedies Act; implementation, 24000
Public and Indian housing:
Aliens; assisted housing use; restrictions, 842 Effective date, 6600
Comprehensive improvement assistance program; multi-stage funding, 15551
Indian preference, 24684
Lead-based paint hazard elimination, 20790
Preference for families occupying substandard housing, involuntarily displaced, or paying more than fifty percent of income for rent, 1122
Effective date, 6600
Relocation assistance and real property acquisition:
Uniform cost-effective policies and procedures, 4964
Slum clearance and urban renewal:
Rehabilitation loan program; lead-based paint hazard elimination, 20790
Rental rehabilitation program; lead-based paint hazard elimination, 20790
Supportive housing demonstration program:
Handicapped homeless persons; transitional and permanent housing, 23898
PROPOSED RULES
Community development block grants:
Community facilities; enterprise zone development, 20556
Housing and Community Development Act of 1987; urban development action grant (UDAG) program, 15566
Lead-based paint hazard elimination, 11164
Urban development action grants for business relocations; prohibitions, 17724
Fair housing:
State and local laws; substantially equivalent laws recognition, 260
Lead-based paint hazard elimination, 11164
Low income housing:
Housing assistance payments (Section 8)—
Existing housing; lead-based paint hazard elimination, 11164
Fair market rent schedules for existing housing, loan management and property disposition, moderate rehabilitation and housing voucher programs, 12278
Fair market rents for new construction and substantial rehabilitation, 9950
Lower income families percentage limits implementation; assisted housing income eligibility, 15412
Special allocations; lead-based paint hazard elimination, 11164
Mortgage and loan insurance programs:
Loan origination fee and mortgagor income requirements deregulation, 15408
Multifamily subsidized projects; certification, recertification, and subsidy billing procedures; computer automation of data, 20649
Single and multifamily programs; appraisals and property inspections, 12431
Public and Indian housing:
Consolidated program; change from loan fundmg to grant funding, 24556
Lead-based paint hazard elimination, 11164
Real Estate Settlement Procedures Act; implementation:
Controlled business provisions, etc., 17424
Regulatory agenda, 13854
Slum clearance and urban renewal:
Rehabilitation loan program; lead-based paint hazard elimination, 11164
Rental rehabilitation program; lead-based paint hazard elimination, 11164
NOTICES
Agency information collection activities under OMB review, 1943, 3461, 5047, 7055, 7241, 7983, 8700, 9989, 12195, 12468, 12824, 18167, 19825, 20692, 21924, 22388, 23313, 23927, 24368, 24370, 24501
Environmental statements; availability, etc.:
Austin, TX, 12825
Grants; availability, etc.:
Community development block grant program—
HUD-administered small cities program, 12469
Community housing resource board program, 17162
Contracts and subcontracts to foreign countries; awards restrictions, 22569
Emergency shelter grants program, 4900
Fair housing assistance program, 2540
Housing assistance payments (Section 8)—
Housing voucher program, 9572
Neighborhood development demonstration program, 16634
Rental rehabilitation program; formula allocations, etc., 11024
Supportive housing demonstration program, 4458, 6705, 23926
Interstate land sales registration:
Administrative proceedmgs, 12469
Low income housing:
Elderly or handicapped housing direct loan program (Section 202); fund availability, 12270
Housing assistance payments (Section 8)—
Lower income families percentage limits implementation; assisted housing income eligibility, 15466
Multifamily subsidized projects; computer automation of data for certification, recertification, and subsidy billing, 645
Manufactured home construction and safety standards:
Private organization; standard development and maintenance, 4463
Mortgage and loan insurance programs:
Debenture interest rates, 1521, 3807
Organization, functions, and authority delegations:
Assistant Secretary for Community Planning and Development et al., 20563
Assistant Secretary for Fair Housing and Equal Opportunity, 20253
General Counsel; E.O.'s 1206 and 12630 implementation, 17766
Regional Administrators et al.; fair housing assistance and community housing resource board programs cooperative agreements and grants, 2647

Regional offices, etc.; order of succession—
Columbia, 22389
Coral Gables, 646
Greensboro, 1944
Minneapolis-St. Paul, 3463
Seattle, 1944
Privacy Act; systems of records, 1942, 7242, 22573
Public and Indian housing:
Federally mandated exclusions from income, 6036

Human Development Services Office

RULES
Grants:
ADP equipment and services; conditions for Federal financial assistance, 26
Head Start program; staff recruitment and selection policies (child abuse and neglect prevention provisions), 5975
Native American programs administration; Native Hawaiians and Native American Pacific Islanders; financial assistance, 23964

PROPOSED RULES
Adoption assistance program; nonrecurring expenses, 12436
Grants:
Aging; State and community programs and supportive and nutrition services for Indian Tribes and older Hawaiians, 10107
Native American programs; Native Hawaiians, 1806

NOTICES
Grants; availability, etc.:
American Indian, Native Hawaiian, and Native American Pacific Islanders social and economic development projects, 21782
Child abuse and neglect—
Prevention activities, 3640
Child development associate scholarship assistance program, 23801
Developmental disabilities—
Basic support, protection, and advocacy programs; Federal allotment to States, 10294
National information and referral system, 5640, 8806
Projects of national significance, 13167, 13169
University affiliated program, 6702
Family violence prevention and services for States, Indian Tribes, and Tribal organizations, 4895
Native Hawaiian revolving loan fund demonstration project, 23974
Runaway and homeless youth basic center and coordinated networking grants program, 7142, 15494
Social services block grant program; Federal allotments to States, 3079, 4221, 4258
Meetings:
Federal Council on Aging, 2645, 13449
President's Committee on Mental Retardation, 645, 10158

Human Immunodeficiency Virus Epidemic Presidential Commission

See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Immigration and Naturalization Service

RULES
Aliens:
Criminal aliens and alien drug traffickers; deportation proceedings; authority extended, etc., 9281
Juveniles; detention and release, 17449
Citizenship and nationalization:
Field office organization, oath of allegiance, and certificates of citizenship, 23603
Executive Office for Immigration Review:
Board of Immigration Appeals; judges and members designation, 15659
Representation and appearances—
Foreign-licensed attorneys, 7727
Immigration:
Beneficiary; automatic conversion of classification; correction, 2824
Commuter aliens, 18259
Employment of aliens, 20086
Northern Mariana Islands; inspection of persons applying for admission, 23379
Immigration Reform and Control Act; implementation:
Aliens; adjustment of status (legalization program), 9274, 23380
Employment of aliens; controls, 8611
Felony and misdemeanor definitions, 9862
Nonimmigrant classification category for certain parents and children of special immigrants, 3331
Special agricultural workers; preliminary application definition, etc., 10062
Visa waiver pilot program, 24898
Immigration user fee, 5756
Organization, functions, and authority delegations:
Camden, NJ; port of entry, 15194

PROPOSED RULES
Aliens:
Asylum and withholding of deportation procedures, 11300
Excludable aliens, custody, and detention; immigration user fee, 1791
Immigration:
Marriage fraud, 2426
Immigration Reform and Control Act; implementation:
Preliminary draft availability, 18096
Visa waiver pilot program, 16972
Nonimmigrant classes:
Visa waiver pilot program, 16972
Nonimmigrants; documentary requirements; waivers, etc.:
Admission of inadmissible aliens; parole—
Mentally retarded aliens accompanied by family member or guardian, 3403

NOTICES
Aliens:
Asylum adjudications procedure change, 2893
Applications and petitions; direct mail to Regional Service Centers:
San Ysidro, CA, 5479, 9382
Cooperative agreements:
Certification of State governments as qualified designated entities, 9716
Immigration Reform and Control Act; implementation:
Legalization; English language/citizenship standard test, 8702, 21535
Meetings:
User Fee Advisory Committee, 9824

Independent Counsel Office

RULES
Freedom of Information Act; implementation, 8895

Indian Affairs Bureau

RULES
Land and water:
Flathead Irrigation and Power Project, MT; power rate schedule, 6145
Reporting and recordkeeping requirements, 21993
Tribal government:
Alaska Natives; enrollment; CFR Part removed, 21995
Cow Creek Band of Umpqua Indians; enrollment, 11271

PROPOSED RULES
Acquisition regulations:
Buy Indian Act; implementation, 24738
Land acquisitions:
Trust restrictions for off reservation lands used in bingo or other gaming enterprises, 1797
Osage judgment funds for education; management, 24732
Tribal government:
Cow Creek Band of Umpqua Indians; enrollment, 20335
Correction, 24551

NOTICES
Buy Indian Act; contracts eligibility, 1522
Claims settlement:
Wampanoag Tribal Council of Gay Head, Inc., 2295
Environmental statements; availability, etc.:
Santa Ana Pueblo Indian Reservation, NM, 3946
Indian tribes, acknowledgment of existence determinations, etc.:
Machis Lower Alabama Creek Indian Tribe, Inc., 23694
Wukchumni Council, 16193
Irrigation projects; operation and maintenance charges:
Blackfeet, Crow, Fort Belknap, Fort Peck, and Wind River Agencies, MT, 1945
Salt River Indian Irrigation Project, AZ, 15895
Judgment funds; plans for use and distribution:
Crow Creek Sioux Tribe, 16193
Lower Brule Sioux Tribe, 16193
Jurisdiction retrocession:
Ely Indian Colony, NV, 5837
Land transfers:
Pueblos in Albuquerque, NM, 2095
Wind River Indian Reservation, WY, 1854
Liquor and tobacco sale or distribution ordinance:
Cheyenne River Sioux Tribe, SD, 20179
Meetings:
Child Protection National Oversight Committee, 11349
White Earth Reservation Land Settlement Act; ratification of questionable land transfers, 9150

Indian Health Service

NOTICES
Grants and cooperative agreements:
Indian health professions preparatory and pregraduate scholarship programs and Indian health scholarship program, 3792
Tribal management program for American Indian/Alaska Native tribal organizations, 10436

Infant Mortality, National Commission to Prevent

See National Commission to Prevent Infant Mortality

Inspector General Office, Health and Human Services Department

PROPOSED RULES
Civil money penalties; medical malpractice payments and breach of confidentiality of information, 9260
Medicare and medicaid programs:
CHAMPUS and CHAMPVA participation; hospital admissions for veterans, hospital responsibility for emergency care, etc., 22513

Inter-American Foundation

NOTICES
Meetings; Sunshine Act, 1888, 15771

Interior Department

See also Fish and Wildlife Service; Geological Survey; Hearings and Appeals Office, Interior Department; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Mines Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

RULES
Conflict of interests, 8186
Debarment and suspension (nonprocurement), 19161
Freedom of Information Act; implementation:
Field offices list; update, 16128
Uniform fee schedule and administrative guidelines, 24
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Hearings and appeals procedures:
Public lands, 13266
Privacy Act; implementation, 3748
Program Fraud Civil Remedies Act; implementation, 4159
Property management:
Government furnished quarters; provision and assignment, 741
Superfund and Clean Water Act:
Natural resource damage assessment, 5166
Correction, 9769
Trans-Alaska pipeline liability fund, 3395
Watch duty-exemption program:
Annual limitation, 17924

PROPOSED RULES
Acquisition regulations:
Aircraft and general liability insurance, 15432
Conflict of interests, 17086
Assistance programs, administrative requirements and cost principles:
Certification of non-delinquency, 16733
Regulatory agenda, 13896
Superfund and Clean Water Act:
Natural resource damage assessments—
Type A procedures, 20143
Type B procedures, 15714
Watch duty-exemption program:
Annual limitation, 13414

NOTICES
Agency information collection activities under OMB review, 20179
Alaska Land Use Council; work program items, 12606
Committees; establishment, renewal, termination, etc.:
Garrison Diversion Unit Federal Advisory Council, 2647
Green River-Hams Fork and Powder River Regional Coal Teams, 16790
San Juan River Regional Coal Team, 16790
Environmental statements; availability, etc.:
Coastal barrier resources system, 2792
Draft statements for period 1980-1982; withdrawal status, 11712
Dunn-Nokota Methanol Project, ND, 6875
Indian youth emergency shelters/halfway houses; ranking of applications, 17980
Meetings:
Alaska Land Use Council, 5470, 15467
National Strategic Materials and Minerals Program Advisory Committee, 1521
National Environmental Policy Act; implementation, 10439
Privacy Act; systems of records, 4465, 4466, 13194, 22575
School facilities; new construction applications, 3080, 12470
Senior Executive Service:
Performance Review Board; membership, 22226
Superfund and Clean Water Act:
Natural resource damage assessments; corrected computer diskettes availability, 9819
Watches and watch movements; allocation of quotas:
Guam, 19015
Virgin Islands, 19015

Internal Revenue Service

RULES
Debarment and suspension (nonprocurement), 19161
Estate and gift taxes:
Generation-skipping transfer tax; effective date rules and return requirements, 8441
Correction, 13464, 18839
Excise taxes:
Crude oil windfall profit tax—
Newly discovered oil; definition, 6626
Foreign-based vehicles; heavy vehicle use tax reduction, 6625
Heavy trucks, truck trailers, semitrailers, and tractors; retail sale, 16867
Manufacturers and retailers; diesel fuel, 6518
Correction, 8302
Real estate investment trust and regulated investment companies, 6146
Retirement plans; excess distributions; correction, 18974
Income taxes:
Charitable contributions of property, etc., 16076
Correction, 18372
Charitable contributions relating to bargain sales, 5568
Correction, 11002
Consent dividends; correction, 1103
Consolidated return regulations; adjustment on disposition of stock of subsidiary, 8747
Correction, 9870
Consolidated return regulations; deferral of gain or loss, 12678
Debt obligations; sanctions on issuers of registration-required obligations not in registered form; registration requirements, 17926, 17927
Foreign corporations; corporate alternative minimum tax book income adjustment, 15200
Foreign governments and international organizations income, 24060
Foreign tax credit; notification and adjustment due to foreign tax redeterminations, 23611
Functional currency definition, 20308
Correction, 23231
Itemized deductions; 2-percent floor, 9870
Correction, 13464
Mortgage interest received in trade or business from individuals, 12000
Movie and television films and tapes; investment credit, 12677
Net worth accounting method use; transition rules for qualified business units, 20614
Nonaccrual-experience method of accounting, 12513
Non-profit organizations; information returns when paying awards of $600 or more to informants; filing exemption, 12149
Nuclear decommissioning costs, 6800
Correction, 9726
Organizations under common control; brother-sister controlled group of corporations, 80% control test, 6603
Correction, 8302, 16408
Partnership returns of income and trust income tax returns; automatic extension of time to file, 11066
Partnerships and S corporations; separate meal, travel, and entertainment expenses requirement, 6602
Partnerships, S corporations, and personal service corporations; taxable year election, 19688
Partnerships; taxable years; correction, 1441
Passive activity losses and credits; limitations, 5686
Correction, 15494
Passive foreign investment companies; shareholders (elections under 1291, 1294, 1295, and 1297), 6770
Correction, 11731
Pension, profit-sharing, stock bonus, and other employee benefit plans; highly compensated employee and compensation, definition, 4965
Property and casualty insurance companies, paid and unpaid losses; salvage and reinsurance treatment, 117
Correction, 3118
Qualified business unit definition, 20612
Qualified employee plans; minimum vesting standards, 238
Qualified progress expenditures; investment credit, 6614
Correction, 11162
Real estate investment trust and regulated investment companies, 6146

Real estate mortgage investment conduit and other administrative matters; election to be taxed, 7504
Correction, 8302
Related person factoring income treatment and U.S. property investments by foreign controlled corporations, 22163
Safe-haven interest rates and rental charges for commonly controlled taxpayers, 18276
Correction, 20718
Transition rules; foreign tax credits, 17461
Correction, 19775
Trusts and estates; estimated tax payment deposits, 12006
Correction, 13464
U.S. real property interests; exchange, distribution, or transfer, 16214
Correction, 18022
Procedure and administration:
Bankruptcy; qualification of trustee or like fiduciary, 2599
Federal tax lien; electronic or magnetic medium filing, 5269
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Resident alien; definition, 4858
Temporary employment; information reporting and backup withholding, 5991
Estate and gift taxes:
Generation-skipping transfer tax; effective date rules and return requirements, 8441, 8469
Correction, 13464
Excise taxes:
Heavy trucks, truck trailers, semitrailers, and tractors; retail sale, 16867, 16882
Manufacturers and retailers; diesel fuel, 6518, 6524
Income taxes:
Charitable contributions of property, 16156
Correction, 18372
Consolidated return regulations—
Adjustment on disposition of stock of subsidiary, 8747, 8773
Deferral of gain or loss, 12678, 12705
Cooperative housing corporations, 19312
Correction, 20719
Debt obligations; sanctions on issuers of registration-required obligations not in registered form; registration requirements, 17927, 17959, 17960
Employee pension benefit plans; continued accruals beyond normal retirement age, 11876
Correction, 18950
Federally-assisted buildings; low income housing credit, 2605
Foreign corporations; corporate alternative minimum tax book income adjustment, 15200, 15234
Foreign governments and international organizations income, 24060, 24100
Foreign tax credit; notification and adjustment due to foreign tax redeterminations, 23611, 23659
FSC and DISC contexts; apportionment of expenses, 17473
Correction, 19369
Functional currency definition, 20308, 20337
Correction, 23658
Itemized deductions; 2-percent floor, 9870, 9951
Net worth accounting method use; transition rules for qualified business units, 20614, 20651
Nonaccrural-experience method of accounting, 12513, 12534
Partnership returns of income and trust income tax returns; automatic extension of time to file, 11062, 11103
Partnerships and S corporations; separate meal, travel, and entertainment expenses requirement, 6602, 6670
Partnerships, S corporations, and personal service corporations; taxable year election, 19688, 19715
Passive activity losses and credits; limitations, 5686, 5733, 10104, 12433
Passive foreign investment companies; shareholders (elections under 1291, 1294, 1295, and 1297), 6770, 6781
Pension, profit-sharing; stock bonus, and other employee benefit plans; highly compensated employee and compensation, definition, 4965, 4999
Property and casualty insurance companies, paid and unpaid losses; salvage and reinsurance treatment, 117, 153
Correction, 3118
Qualified business unit definition, 20612, 20650
Qualified employee plans; minimum vesting standards, 238, 261
Qualified scholarships; gross income exclusion, 21688
Correction, 24830
Related person factoring income treatment and U.S. property investments by foreign controlled corporations, 22163, 22186
Resident alien; definition, 4858
Temporary employment; information reporting and backup withholding, 5991
Correction, 18372, 20719
Transition rules; foreign tax credits, 17461, 17472
U.S. real property interests; exchange, distribution, or transfer, 16214, 16233
Procedure and administration:
Federal tax lien; electronic or magnetic medium filing, 5279
Resident alien; definition, 4858
Regulatory agenda, 14202
NOTICES
Advisory committees; report on closed meetings; availability:
Art Advisory Panel, 7628
Capital construction fund, nonqualified withdrawals; interest rates, 16332
Fuel credit, nonconventional source; inflation adjustment factor and reference prices, 8295
Income taxes:
Electronic filing program (1988); Forms 1040, 1040A, and 1040EZ returns; test transmissions from Panama Canal Zone, 2142
Electronic filing program (1989); Forms 1040, 1040A, and 1040EZ returns, 15331, 16510, 20716
Electronic/magnetic media filing test (1989)—
Form 1040NR, 24397
Meetings:
Art Advisory Panel, 8295, 21760
Commissioner's Advisory Group, 7290, 18370
Exempt Organization Advisory Group, 1099
Organization, functions, and authority delegations:
Assistant Commissioner (International) et al., 9169
Associate Chief Counsel (Technical and International) et al., 5681
Chiefs of Appeals et al., 12863
Deputy Assistant Commissioner (International) et al., 16835
Director, Disclosure Litigation Division, 1886
District Directors of Employee Plans and Exempt Organizations Key Districts, 11728
Division Chiefs, 20719
Regional Commissioners, 23336
Senior Executive Service:
Performance Review Board; membership, 12863

International Boundary and Water Commission, United States and Mexico

NOTICES
Environmental statements; availability, etc.:
Nogales International Wastewater Treatment Plant expansion, AZ, 17770, 23702

International Broadcasting Board

NOTICES
Meetings; Sunshine Act, 2347

International Development Cooperation Agency

See Agency for International Development; Overseas Private Investment Corporation

International Trade Administration

See also Export Administration Bureau
RULES
Export administration regulations:
Austria; export licensing applications, shorter processing times, 6143
Emergency license procedure clarification, 1614
Correction, 16390
India; national security controlled commodities; exports and reexports, 24437
Export Licenses Approved and Reexports Authorized; daily publication list discontinued, 20833
Export licensing:
Commodity control list—
Communications intercepting devices, 18550
Controllable pitch propellers and hub assemblies, 1616
Electric furnaces; export administration regulations based on COCOM review, 17690
Electronic computers; COCOM review, 2582, 3490, 16254
General license for low level dual use items to free world countries, etc.; computers eligibility, 10070
Isopropyl N-(3-chlorophenyl) carbamate, 108
Jig grinders; validated license controls removal, 7733
Metal-working machinery, etc., 18271
Miscellaneous amendments, 17021
Recording and reproducing equipment, 21989
Surgical lasers (Nd:YAG), 16701
Foreign policy-based export controls, 3014

General license GLR and service supply procedure; dollar value limits on exports, 18549
Individual validated licenses; temporary exports, 23229
Nuclear activities in certain free world countries; shipments to facilities, 12668
Permissive reexports; General License GUS, 23607
Return of used or expired licenses; requirement removed, 22474
Watch duty-exemption program:
Annual limitation, 17924
PROPOSED RULES
Export licensing:
Commodities on country group Q, W, Y, or Z vessels and aircraft, 23228
Correction, 24551
Technical data controls; policy forum, 418, 2505, 8221
Watch duty-exemption program:
Annual limitation, 13414
NOTICES
Antidumping:
All-terrain vehicles from Japan, 7222
Anhydrous sodium metasilicate from France, 1392, 4195, 9785
Animal glue and inedible gelatin from—
West Germany, 546
Antifriction bearings (other than tapered roller bearings) and parts from—
France, 15074
Italy, 15075
Japan, 15076
Romania, 15077
Singapore, 15078
Sweden, 15080
Thailand, 15082
United Kingdom, 15081
West Germany, 15073
Barium chloride from China, 13140
Bicycle speedometers from Japan, 7771
Bimetallic cylinders from Japan, 1046, 10552
Brass sheet and strip from—
Japan, 2771, 5207, 23296
Netherlands, 1933, 3612, 7771, 23431
Butadiene acrylonitrile copolymer synthetic rubber from Japan, 4193, 15436, 22553
Carbon steel plate from Japan, 547, 15255
Cell-site transceivers and related subassemblies from Japan, 1048
Cellular mobile telephones and subassemblies from Japan, 19318
Choline chloride from Canada, 548, 9786
Color picture tubes from—
Canada, 429
Japan, 430
Korea, 431
Singapore, 432
Digital readout systems and subassemblies from Japan, 13302
Dried heavy salted codfish from Canada, 15256
Drycleaning machinery from West Germany, 432, 6020
Electrical conductor aluminum redraw rod from Venezuela, 3614, 9675, 24755
Electrolytic manganese dioxide from—
Greece, 24114
Ireland, 24115
Japan, 24116
Elemental sulphur from Canada, 1048, 3062, 15257
Fabric expanded neoprene laminate from Japan, 22369
Fabricated structural steel from Canada, 3412
Fireplace mesh panels from Taiwan, 7772, 16179
Fishnetting of man-made fibers from Japan, 10264
Granite products from—
Italy, 1050, 6021, 8479, 22369
Spain, 6023, 12713, 24335
Granular polytetrafluoroethylene resin from—
Italy, 12967, 17092
Japan, 12968
Headwear from China, 23300
Impression fabric of man-made fiber from Japan, 5437, 15262
Industrial nitrocellulose from France, 7773, 15262, 17740
Internal-combustion, industrial forklift trucks from Japan, 6681, 12552, 13217, 20882
Large power transformers from Italy, 13141
Low-fuming brazing copper rod and wire from New Zealand, 7774, 21504
Malleable cast iron pipe fittings, other than grooved, from—
Taiwan, 784, 1050, 16179
Photo albums and filler pages from Korea, 18222
Portable electric typewriters from Japan, 20353
Potassium chloride (potash) from Canada, 1393
Potassium permanganate from Spain, 1051, 21504
Precipitated barium carbonate from West Germany, 47, 15263
Pressure sensitive plastic tape from Italy, 550, 16444
Red raspberries from Canada, 1934, 20150, 23340
Sodium nitrate from Chile, 15258
Sorbitol from France, 13142, 21506
Spun acrylic yarn from Japan, 21507
Stainless steel butt-weld pipe and tube fittings from Japan, 3227, 9787
Stainless steel wire rods from France, 15260
Steel wire nails from Korea, 2612
Steel wire strand for prestressed concrete from Japan, 551, 9797, 11162, 16180
Sugar and syrups from Canada, 434
Synthetic methionine from Japan, 7775, 15261
Television receivers, monochrome and color, from Japan, 4050, 13143
Thermostatically controlled appliance plugs and internal probe thermostats from—
Canada, 16746
Hong Kong, 16747
Japan, 16748
Malaysia, 16749
Taiwan, 16750
3.5" microdisks and coated media from Japan, 9464
Viscose rayon staple fiber from Finland, 4196
Welded carbon steel pipe and tube products from Turkey, 17741
Antidumping and countervailing duties:
Administrative review requests, 46, 2262, 2771, , 5813, 6681, 7383, 9788, 10188, 11540, 15083, 16178, 17138, 18324, 19978, 24470
Cheese, quota; foreign government subsidies:
Annual list, 434
Quarterly update, 12798
Committees; establishment, renewal, termination, etc.:
Trade Policy Matters Industry Advisory Committees, 2263, 8795
U.S. and Foreign Commercial Service Advisory Council, 941
Countervailing duties:
Antifriction bearings (other than tapered roller bearings) and parts from—
Singapore, 15084, 21882
Thailand, 15086, 21882
Apparel from Argentina, 1053
Bricks from Mexico, 15264
Canned tuna from Philippines, 1504, 9788
Carbon black from Mexico, 15087
Carbon steel wire rod from—
Malaysia, 942, 3413, 9676, 13303
Singapore, 47, 942, 5207, 16304
Ceramic tile from Mexico, 15090, 16572
Circular welded carbon steel pipes and tubes from Iran, 552
Cotton yarn products from Brazil, 9465
Electrical conductor aluminum redraw rod from Venezuela, 9675, 24763
Granite products from—
Italy, 2521, 8479, 22369
Spain, 2521, 12713, 24340
Industrial nitrocellulose from France, 7776, 15267
Iron-metal castings from Mexico, 15093
Lamb meat from New Zealand, 47, 21882
Litharge, red lead, and lead stabilizers from Mexico, 6026
Live swine from Canada, 22189
Non-rubber footwear from Argentina, 15094
Portland hydraulic cement and cement clinker from Mexico, 18325
Refrigeration compressors from Singapore, 7778
Sodium gluconate from European Communities, 2613
Stainless steel products from Brazil, 2521
Stainless steel wire rod from Spain, 9789
Thermostatically controlled appliance plugs and internal probe thermostats from—
Canada, 16752
Malaysia, 16753
Taiwan, 16754
Tool steel products from Brazil, 2522
Welded carbon steel pipe and tube products from—
Argentina, 13431, 22188
Malaysia, 22682
Turkey, 467, 9791
Export Licenses Approved and Reexports Authorized; daily publication list discontinued, 10553
Export trade certificates of review, 751, 1655, 1656, 4867, 4868, 7781, 9793, 10267, 11325, 16306, 16755, 19809, 20355, 20673, 22198, 23781
Foreign availability assessments:
Surgical lasers (Nd:YAG), 16756
Foreign buyer program; domestic trade show support, 8941
Machine tools special issue licenses, 15096, 15589, 16573, 19016
Meetings:
Automated Manufacturing Equipment Technical Advisory Committee, 2522, 15097
Caribbean Basin Business Promotion Council, 5814, 19016, 21720

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee, 5291, 9468, 15268
Computer Systems Technical Advisory Committee, 8480, 8481, 16181, 16182
Electronic Instrumentation Technical Advisory Committee, 2523, 5028, 9676, 12052, 18591
Exporters' Textile Advisory Committee, 5439
Importers and Retailers' Textile Advisory Committee, 2613, 10137, 19320
Management-Labor Textile Advisory Committee, 2614, 10137, 12641, 19320
Materials Technical Advisory Committee, 6170, 20154
Military Critical Technologies List Implementation Technical Advisory Committee, 545, 5028, 17742
President's Export Council, 752, 942, 1505, 3767, 7956, 9132, 10553, 17490, 23435
Semiconductor Technical Advisory Committee, 2523, 9676, 11109, 18874
Telecommunications Equipment Technical Advisory Committee, 2773, 2774, 4050, 8481, 8482
Transportation and Related Equipment Technical Advisory Committee, 546, 12579
National security investigations:
Plastic injection molding machines, 6857
Short supply determinations:
Aluminum-killed cold-rolled steel sheet, 2614
Bonderized cold-rolled steel strip for use in manufacturing needle roller bearing shells, 12799
Carbon semifinished steel slabs, 12800
Carbon and alloy semi-finished steel slabs, 552
Carbon steel billets suitable for rolling into wire rod, 15589
Carbon steel slabs, 4197
Carbon steel special sections, 8682
Carbon steel wire rod and flat-rolled steel, 24471
Continuous-cast steel slabs for use in manufacturing hot-rolled coils and cut-to-length plate, 15097
Flat-rolled steel, 15438, 16446, 22554
Heavy steel special shapes, 12800
Hot-rolled sheet for use in manufacture of ASTM A214 condenser tubing, 16446
Hot-rolled sheet for use of manufacture of welded oil country tubular goods, 15098
Hot-rolled sheet and strip, 9785
Hot-rolled, stainless steel, 15261
Hot-rolled steel sheet, 7780, 18328
Low carbon rimmed steel wire rod, 23301
Low carbon semi-finished steel slabs, 5209
Low carbon steel wire rod, 7780
Manganese bars, 9957
Oil country tubular goods, 631
Seamless hot-finished alloy steel pipe, 15098
Semi-finished steel billets, 7781
Semi-finished steel slabs, 2068, 5439, 12800
Silicon steel, 22370
Stainless steel sheet, 9132
Stainless steel wire rod, 6027
Steel billets, 6027
Steel tubing, 6681
Tin-free steel, 5439
Wide tinplate, 7781
Trade adjustment assistance determination petitions:
Exact Machine Co., Inc., et al., 1932
Kasper Foundry Co. et al., 12970
Trade opportunities program; electronic dissemination of leads, 9468
Watches and watch movements; allocation of quotas:
Guam, 19015
Virgin Islands, 19015
Applications, hearings, determinations, etc.:
Agricultural Research Service, 1810, 10551
Agriculture Department et al., 631
Baylor College of Medicine et al., 1052
Boston University, 19979
California State University et al., 5438
Carnegie-Mellon University, 8482, 17093
Carnegie Mellon University et al., 3061
Commerce Department, 19979
East Orange VA Medical Center et al., 4866, 8483, 12579
Environmental Protection Agency et al., 5291
Geological Survey et al., 22683
Hawaii Institute of Geophysics et al., 12580
Institute of Human Origins et al., 15099, 22683
Iowa State University et al., 6027
Lawrence Berkeley Laboratory, 16892
Massachusetts Eye and Ear Infirmary, 631
Massachusetts Institute of Technology et al., 15101
Masters, Mates & Pilots MATES program, 2069
Mercy Hospital & Medical Center et al., 9794
Michigan State University, 1053
Mount Sinai School of Medicine et al., 19979
National Aeronautics and Space Administration et al., 22684
National Bureau of Standards et al., 24117
Pennsylvania Muscle Institute et al., 22686
Pennsylvania State University et al., 12580
Princeton University et al., 7957
Research Foundation of State University of New York, 22686
Robert Packer Hospital, 16892
Rutgers University et al., 16893, 17093
Scripps Clinic & Research Foundation et al., 9786
Southern Research Institute et al., 19980
Texas A&M University et al., 839
Texas Christian University et al., 19983
University of Alabama at Birmingham, 16891
University of Alaska et al., 8483, 9726, 12446, 17138, 19980, 19981
University of California, 1053
University of California et al., 10136, 11326, 12580, 18329, 19981, 20152
University of Chicago et al., 19981
University of Colorado, 3062, 6682
University of Colorado et al., 21883
University of Delaware et al., 3062
University of Miami et al., 16892
University of Nebraska, 15104
University of Nevada, 19982
University of Nevada et al., 19982
University of Nevada School of Medicine et al., 19982
University of Nevada-Reno et al., 12581
University of North Carolina et al., 9958
University of Oklahoma-Norman, 6682
University of Pittsburgh, 11326
University of Pittsburgh et al., 839
University of Texas et al., 9794, 22687
University of Wisconsin, 7957
Vanderbilt University et al., 19984
Veterans Administration Medical Center et al., 24117
Wake Forest University et al., 5290
Willis-Knighton Medical Center et al., 19984
Woods Hole Oceanographic Institution, 5291
Yale University et al., 23780, 24830

International Trade Commission

NOTICES
Agency information collection activities under OMB review, 11350, 15902
Import investigations:
All terrain vehicles from Japan, 4904, 11351
Ammonium paratungstate, tungstic acid, and tungsten oxide; annual surveys, 4904
Antifriction bearings (other than tapered roller bearings) and parts from West Germany et al., 11917, 18909
Asparagus, broccoli, and cauliflower; U.S. market competitive conditions, 5474, 10301
Bimetallic cylinders from Japan, 3084, 17986
Brass sheet and strip from—
Japan and Netherlands, 5474, 10301
Buoyant metallic balloons, 2299
Calcined bauxite proppants from Australia, 23808
Carribbean Basin Economic Recovery Act; impact on U.S. industries and consumers, 18910
Cellular mobile telephones and subassemblies and component parts, 4905, 8811
Dental prophylaxis methods, equipment, and components, 6709
Digital readout systems and subassemblies from Japan, 10953, 17771
Electrical conductor aluminum redraw rod from Venezuela, 12997
Electrically resistive monocomponent toner and "black powder" preparations, 6710
Electrolytic manganese dioxide from Greece, Ireland, and Japan, 21530
Erasable programmable read only memories, components, products containing memories, and processes for making memories, 291, 6708, 15147, 16792, 18911, 20191, 23703
Fabricated structural steel from Canada, 1527, 6708
Fans with brushless DC motors, 17771
Feathered fur coats and pelts, and manufacture process, 291
Granite from—
Italy and Spain, 9712
Spain, 22230
Granular polytetrafluoroethylene resin from Italy and Japan, 15902
High geometric surface area catalysts and components, 2299, 11351, 15147
High intensity retroreflective sheeting, 2297, 20189
Ink jet printers employing solid ink, 292, 3085
Internal combustion engine forklift trucks from Japan, 21530
Knives, 12197
Laser inscribed diamonds and method of inscription, 20190
Light-walled rectangular pipes and tubes from Argentina and Taiwan, 22231
Mail extraction desks and components, 18911
Marine automatic pilots, 2299, 24808
Men's and boy's woven man-made fiber shirts from China, 22394
Miniature hacksaws, 8812
Minoxidil powder, salts, and compositions for use in hair treatment, 292, 293, 809, 5657, 8812–8813, 12198, 18911

Multi-level touch control lighting switches, 6709
Natural bristle paint brushes from China, 9496, 18912
Nitrile rubber from Japan, 6710, 24154
Noncontact tonometers, 809, 12199
Nonwoven gas filter elements, 12200
Plastic light duty screw anchors, 2298, 20190
Porcelain-on-steel teakettles from Taiwan, 21531
Potassium chloride (potash) from Canada, 1416
Programmable digital clock thermostats, 3947, 7581, 7985, 10302, 11351, 12998, 17772
Reclosable plastic bags and tubing, 293, 2298, 3086, 9495, 15903
Recombinant erythropoietin, 3947, 18912, 20191
Sewn cloth headwear from China, 20378
Small aluminum flashlights and components, 3083, 21532
Stainless steel butt-weld pipe fittings from Japan, 9713
Synthetic organic chemicals; reports, 18912
Thermostatically controlled appliance plugs and probe thermostats from Canada et al., 14861, 21532
3.5" microdisks and media from Japan, 7581, 12999
Toggle clamps for clamping, fixturing, processing, and original equipment manufacturing, 4905, 7582
U.S.-Japan free trade area agreement, 24503
Venetian blind components, 20192, 21533, 22394
Welded carbon steel pipes and tubes from India, 3084
Meetings; Sunshine Act, 2347, 2910, 3978, 6731, 8718, 10328, 13046, 15334, 15946, 16836, 17817, 24398

Interstate Commerce Commission

RULES
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 6155
Uniform fee schedule and administrative guidelines, 23398
Motor carriers:
Agricultural commodities exemption, 17706
Motor property, passenger carriers, etc.; operating rights transfer, 4851
Passenger motor carriers—
Accounting and reporting requirements, 4028
Property broker security, 10395
Organization, functions, and authority delegations:
Proceedings Office, Director; rail abandonments, 3400
Practice and procedure:
Commission proceedings; filings of pleadings, applications, etc.; copies requirement, 10095, 19300
Correction, 15849
Nonrail licensing procedures; operating authority; governmental financial assistance recipients, 10536
Operating authority; how to apply; technical amendments, 15399
Correction, 16552
Petitions for judicial review; General Counsel, 20853
Rail lines acquisition and operation; class exemption, 4625, 5981
Rail carriers:
Electronic bills of lading use, 20853
Tariffs and schedules:
Computer determination of mileages, 5982
Rail, motor, and water common carriers, and regulated freight forwarders; delinquent freight charges, nonpayment penalty, 6990
Railroad transportation contracts, 5379
Water carriers:
Operations exemption; CFR Part removed, 23400
PROPOSED RULES
Accounts, uniform system:
Railroad depreciation studies by independent public accountants review, 15579
Railroads; data integrity principle adoption, 10410
Motor carriers:
Commercial zones and terminal areas, 155, 3058
Household goods shipments; released rates, 4863, 9460
Practice and procedure:
Abandonment proceedings; cost, 17234
Interlocking directorates; exemptions, 12443
Licensing and related services; fees, 19969
Rail abandonments—
Rights-of-way as trails, 19807
Reasonably expected costs, 17234
Rail carriers:
Cost ratio for recyclables; environmental assessment, 16296
Manufactured commodities; exemption, 3900, 9672
Regulatory agenda, 14676
Reports:
Railroad annual report (Form R-1)—
Railroad revenue adequacy; consolidation information, 5807
Tariffs and schedules:
Electronic filing of tariffs, 5022
NOTICES
Agency information collection activities under OMB review, 3086, 3643, 7811, 8701, 10303, 15470
Agreements under sections 5a and 5b; applications for approval, etc.:
LO Shippers Action Committee, 24373
National Motor Freight Traffic Association, 2098
Niagara Frontier Tariff Bureau, Inc., et al., 9991
Western Motor Tariff Bureau, Inc., 22585
Western Railroad Traffic Association, 24374
Environmental statements; availability, etc.:
Motor carriers; commercial zones and terminal areas, 8702
Water carrier operations; exemption, 9713
Meetings; Sunshine Act, 7072, 16613
Motor carrier, water carrier, freight forwarder, and property broker proceedings; case tracking system, 7056, 7812
Motor carriers:
Agricultural cooperative transportation filing notices, 578, 2650, 3466, 7056, 17119, 19346, 21929
Compensated intercorporate hauling operations, 578, 1073, 1859, 2650, 3466, 4231, 5054, 5839, 7056, 7986, 8985, 9822, 10572, 11714, 13333, 15470, 16323, 17119, 19347, 20379, 21929, 22739, 23809
Declaratory order petitions—
National Industrial Transportation League, 13454, 21533
Shuttle Express, 13335
Finance applications, 5657, 19828, 22394, 23461
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
Burlington Northern, Inc., et al., 10954
Carolina Trailways et al., 15147
ConAgra, Inc., 1686, 1687
CPC International, Inc., 763
Florida Crushed Stone Co., 20192
Monfort Food Distributing Co. et al., 16323
Southeastern Trailways, Inc., et al., 15148
Stone Container Corp., 22586
ZEN-NOH Grain Corp. et al., 17512
Practice and procedure:
Federal government payments; credit card acceptance, 7987
Rail carriers:
Annual operating revenues; indexing, 5223
Bangor & Aroostook Railroad Co. et al.; interchange agreements, 3086
Cost of capital; limited revenue adequacy proceeding, 20910
Cost recovery procedures; adjustment factor, 10159, 17513, 23461
Passenger train operation—
Atchison, Topeka & Santa Fe Railway Co., 8985, 23461
Rails-to-Trails Conservancy et al.; declaratory order petition, 24374
State intrastate rail rate authority—
Illinois, 10159
Waybill data; release for use, 6711, 12081, 15748, 20693
Railroad operation, acquisition, construction, etc.:
Abbeville-Grimes Railway Co., 3467
Aberdeen & Rockfish Railroad Co., 86
Abernathy, G. Richard, 958
Amador Central Railroad Co. et al., 18620
Atchison, Topeka & Santa Fe Railway Co., 1417, 22740
Baltimore Belt Railroad Co. et al., 1688
Benton Central Railroad Co., 2300
BlueGrass Railway Museum, Inc., 17256
BPM Rail, Inc., 7057
Burlington Northern Railroad Co., 16324
Cape Cod & Hyannis Railroad, Inc., 9992
Central Montana Rail, Inc., 6881
Chemical Lime, Inc., 809
Chesapeake Western Railway et al., 19829
Chicago, Missouri, & Western Railway Co., 2893
Chicago South Shore & South Bend Railroad, 7812
Chicago West Pullman Corp. et al., 13335
Consolidated Rail Corp., 18620
CSX Corp., 6038
CSX Corp. et al., 19057
CSX Transportation, Inc., 10302, 12480, 18172
Dallas Area Rapid Transit, 18172
Delaware & Hudson Railway Co., 24809
Duluth, Winnipeg & Pacific Railway Co., 8702
Dunn-Erwin Railway Corp., 86
East Portland Traction Co., 5056, 8986
Florida West Coast Railroad, Inc., 87
FRVR Corp., 8986
FRVR Corp. et al., 647
Georgia Woodlands Railroad Co., 24374, 24809

Hampton & Branchville Railroad Co., Inc., et al., 647
Housatonic Railroad Co., Inc., 3467
Indiana Harbor Belt Railroad Co., 2546
Indiana Rail Road Co., 8813
International Paper Co., 21740
Iowa Northern Railway Co., 3795
Itel Rail Corp. et al., 3795, 4906
Kansas City Southern Industries, Inc., et al., 18620
Keokuk Junction Railway, 15472
Lamoille Valley Railroad Co., 8702
Leadville-Climax Shortline Railway Co., 809
Mahoning Valley Railway Co., 1528, 16475
Marino, John H., et al., 11569
McCormick/Ashland City & Nashville Railroad Co., Inc., 8987
Michigan Interstate Railway Co., 5056
Mid-Michigan Railroad, Inc., 457
MidSouth Corp., 4471
Missouri Pacific Railroad Co., 1073
Missouri-Kansas-Texas Railroad Co., 18173
Montana Commerce Department, 6881
New York, Susquehana & Western Railway Corp., 24375
Norfolk & Western Railway Co., 5057
Norfolk & Western Railway Co. et al., 12200
Ohio Central Railroad, 13335
Ohio Railroad Corp., 16324
Ohio Southern Railroad Co., 4747
Pittsburgh & Lake Erie Railroad Co., 15298
Railtex, Inc., 457
Rail-West, Inc., 5057
Rio Grande Industries, Inc., 1417, 9381
Rio Grande Industries, Inc., et al., 959, 7408
Saginaw Valley Railway Co., Inc., 1528
Soo Line Railroad Co., 8702
Southern Pacific Transportation Co., 18177
Southern Railway Co., 16596, 24155
St. Louis & Lake Counties Regional Railroad Authority, 5224
St. Louis Southwestern Railway Co., 18177
Stone Container Corp., 18622
Temperance Yard Corp., 5057
Tennessee Southern Railroad Co., Inc., 959, 11352
Tuscola & Saginaw Bay Railway Co., 15606
Union Pacific Railroad Co., 1073
Union Pacific Railroad Co. et al., 18623
Utah Railway Co., 18624
Virginia & North Carolina Railroad Co., Inc., 5475
Waccamaw Coastline Railroad Co., Inc., 16475
West Shore Railroad Corp., 20025
Willamina & Grand Ronde Railway Co., 5058
Wisconsin Central Ltd., 9992, 16202
Railroad services abandonment:
Atchison, Topeka & Santa Fe Railway Co., 3644, 20379
Baltimore & Ohio Railroad Co. et al., 9991
Buffalo, Rochester & Pittsburgh Railway Co., et al., 1947
Burlington Northern Railroad Co., 4084, 18913
Central of Georgia Railroad Co., 19058
Chesapeake & Ohio Railway Co., 10573
Chicago & North Western Transportation Co., 4231, 6881, 18625, 22586
Claremont & Concord Railway Co., 16595
CSX Transportation, Inc., 810, 1074, 3644, 5058, 7250, 7987, 8288, 9822, 10302, 10572, 11918, 12612, 15606, 17257, 18172, 19829, 20911, 23160, 24155, 24808
Florida East Coast Railway Co., 763
Fonda, Johnstown & Gloversville Railroad Co., 22232
Georgia Midland Railway Co. et al., 22395
Illinois Central Railroad Co., 17772
Indiana Railroad Co., 15298
Iowa Northern Railway Co., 10572
Missouri Pacific Railroad Co., 764, 15149, 18176
Missouri-Kansas-Texas Railroad Co., 18173–18175
Norfolk & Western Railway Co., 4232, 24809
Oklahoma, Kansas & Texas Railroad Co., 18177
Robeson County Railroad Corp., 15749
Soo Line Railroad Co., 12081
Southern Pacific Transportation Co., 7250
Southern Railway Co., 3086, 11918, 15472, 17119, 22741, 23316, 24377
St. Louis Southwestern Railway Co., 15470
Terminal Railroad Association of St. Louis, 17513
Union Pacific Railroad Co., 8289, 10573, 19347
Tariff authorities, special; master tariff increases, expiration date extension, 19829

Joint Board for Enrollment of Actuaries

PROPOSED RULES
Employee Retirement Income Security Act of 1974; implementation:
Enrollment actuaries renewal, 147
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 6882, 19058, 24504

Justice Assistance Bureau

NOTICES
Grants; availability, etc.:
Criminal justice discretionary grant program, 4906, 15172
Incarcerated Mariel-Cubans; State reimbursement program, 578
Narcotics control discretionary grant program, 7411

Justice Department

See also Antitrust Division; Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service; Justice Assistance Bureau; Justice Programs Office; Juvenile Justice and Delinquency Prevention Office; National Institute of Corrections; Parole Commission; Prisons Bureau
RULES
Acquisition regulations:
Unauthorized commitments and prompt payment; ratification, 12421
Correction, 12866
Civil and criminal forfeitures; remission or mitigation, 9614
Contraband drug evidence in custody of Federal law enforcement authorities; destruction procedures, 8452
Criminal justice information systems:
Procedures for States and localities to request indemnification against claims for damages, cost, or other monetary loss, etc., 23619
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Correction, 12099
Immigration Reform and Control Act; implementation:
Unfair immigration-related employment practices, 10338
Nondiscrimination on basis of handicap; uniform Federal accessibility standards, 3203
Correction, 5521
Organization, functions, and authority delegations:
Assistant Attorney General, Criminal Division, 10870, 21996
Assistant Attorney General, Legal Counsel Office; Federalism implementation, 9435
Deputy Assistant Attorneys General, Civil Division, et al., 4010
Deputy Attorney General et al., 5370
Prisons Bureau, Director, 10871
Privacy Act; implementation, 7734
Program Fraud Civil Remedies Act; implementation, 11645
Voting Rights Act; implementation:
Minority language groups, 735
PROPOSED RULES
Acquisition regulations:
Nondiscrimination on basis of handicap in federally-conducted programs or activities performed by contractors, 17729
Federal claims collection:
Tax refund offsets for collection of judgments; procedures, 22026
Formula grants:
Jail removal requirement; de minimis exceptions, 21770
Freedom of Information Act; implementation:
Business information, 9452
Privacy Act; implementation, 2606, 12951, 16730
Program Fraud Civil Remedies Act; implementation, 4034
Regulatory agenda, 13964
NOTICES
Agency information collection activities under OMB review, 1528, 5477, 6205, 7057, 7988, 10954, 13336, 15471, 15607, 16324, 20694, 24155, 24809
Committees; establishment, renewal, termination, etc.:
Department Resources Board, 22059
Personnel Policy Board, 22058
Research and Development Review Board, 22058
Special Issues Coordinating Group, 22058
Strategic Planning Board, 22058
Cooperative agreements:
Mariel Cubans paroled or reparoled from Immigration and Naturalization Service detention facilities; special placement programs, 12081, 15749
Organization, functions, and authority delegations:
Immigration-Related Unfair Employment Practices, Special Counsel, 15904
Pollution control; consent judgments:
Absolute Fire Protection Co. et al., 20379
Air Products & Chemicals et al., 7582
Allied Corp., 12613
Alloy Corp. et al., 20380

Ambler Warehousing Corp. et al., 21741
American Sandblasting & Coating Co., Inc., et al., 5058
Apex Orchards, Inc., 12732
ARCO, Inc., 14862
Arizona et al., 2098
Ashland Chemical Co., 23703
Atlas Powder Co., 16793
Avco Corp., 21741
B&R Insulation, Inc., et al., 6039
Baton Rouge, LA, et al., 8814
Big Apple Wrecking Corp. et al., 12613
Biokyowa, Inc., 9152
Blytheville, AR, et al., 12200
Boise Cascade Corp., 8813
Borden, Inc., et al., 9153
B.R. MacKay & Sons, Inc., et al., 12201
Capuano, Daniel, et al., 3948
Carefree Homes, Inc., 9992
Carlisle, IN, 11144
Carolawn Co., Inc., et al., 12201
Cauffman, John R., et al., 18913
Central Illinois Public Service Co., 9497, 9714
C.F.&I. Steel Corp., 22059
Charleston Properties et al., 7812
Chevron USA, Inc., 3795
Congoleum Corp., 5059
Conoco, Inc., 12732
Continental Steel Corp. et al., 18358
Dietzgen Corp., 18358
Du-Wel Hartford, Inc., 9992
East Chicago Sanitary District et al., 20695
East Rutherford, NJ, et al., 8814
Edward Hines Lumber Co. et al., 9993
Empire Sand & Gravel Co., Inc., 16793
Empresa Lineas Maritimas Argentinas, S.A., et al., 1688
Environmental International Electrical Services, Inc., 6039
Erie Coatings & Chemicals, Inc., et al., 16476
Eunice, LA, 21740
Ford Motor Co., 9153
General Motors Corp. et al., 8814
Geneva City, OH, et al., 12999
Gloversville-Johnstown Joint Sewer Board, NY, et al., 11144
Grace Petroleum Corp., 9153
Harrison, AR, et al., 8815
Hermes Consolidated, Inc., 14862, 16211
Hooker Chemicals & Plastics Corp. et al., 16202
Indiana Department of Mental Health et al., 9714
Inland Steel Co., 9497
Inmar Associates, Inc., 9823
IT Corp., 18359
Jenkins, KY, et al., 1860
Jersey City, NJ, et al., 8815
Johnstown, PA, 1860
Keystone Consolidated Industries, Inc., 17986
Lancaster, KY, et al., 18913
Laskin et al., 10448
LTV Steel Co., Inc., et al., 3273
Manville Sales Corp., Inc., 3644
McIntosh Mining Co. et al., 16793
McKin Co. et al., 17987
Mentor Corp., 5476
Metropolitan District Commission et al., 15749
Mid-Iowa Insulation Corp. et al., 13000
Midwest Asbestos Removal Service, Inc., 16203
Multi-Color Corp., 17987
O'Bryan, George M., et al., 15299
Olson, Richard, 6882
Owenton, KY, et al., 18914
Pasadena, TX, et al., 5059
Paxton Landfill Corp. et al., 3796
Philadelphia, PA, 5658
Pillsbury Co., 8816
Price et al., 17120
Raymark Industries, Inc., 7251
Reichhold Chemicals, Inc., 20193
Roskee Corp., 6882
Sack, Dean, et al., 20380
Salem, NJ, 7812
Schlage Lock Co., 8816
Seibu Railway Co., Ltd., et al., 23703
Semford Construction, Inc., et al., 5476
Sheffield Steel Corp., 22232
Shell Oil Co., 4085
Signal Energy Systems, Inc., 13000
Smith, Harry J., Jr., et al., 9714
Smith International, Inc., et al., 8816
South Carolina Department of Health and Environmental Control et al., 959
Stanley Plating Co., Inc., 7813
Sulphur Springs, TX, et al., 1688
Sun Metal Finishing, Inc., 11569
Sunflower Electric Cooperative, Inc., 22395
Superior Chrome Plating Co., 8987
Susan Bates, Inc., 20193
Texas Eastern Gas Pipeline Co., 21929
Tower Chemical Co. et al., 1860
Trident Seafoods Corp., 16794
Tull, Edward Lunn, 14863
Tyson, Franklin P., et al., 6712
University of Massachusetts, 18178
USX Corp., 5476, 11569, 16918
Van Leer Containers, Inc., et al., 3273
Virginia Electric & Power Co., 12201
Washington et al., 19059
Washington Transportation Department, 21741
Wastecontrol of Florida, Inc., 24810
Wayne County Health Department, MI, et al., 3645
Weiss et al., 9993
Winchester Municipal Utilities, 9154
Wixom, MI, et al., 22233
Youngstown Thermal Corp., 2300
Privacy Act; systems of records, 764, 1861, 1864, 2098, 2650, 2652, 2653, 2654, 7813, 13000–13005, 15494, 16794–16797
Unfair Immigration Employment Practices, Special Counsel:
Declaration of intention filing requirement (Form I-772), 9715
U.S. Trustee System; judicial districts certifications:
Arizona, 13335
Illinois, 1866
Indiana, 1866
Michigan, 12733
Ohio, 12733

Justice Programs Office

RULES
Public safety officers' death benefits, 8451

Juvenile Justice and Delinquency Prevention Office

PROPOSED RULES
Juveniles in adult jails and lockups, nonsecure custody; policy guidance, 2568
NOTICES
Grants and cooperative agreements; availability, etc.:
Juveniles in adult jails and lockups; removal, 21789
Missing children; reunification with families, 23174
Missing Children's Assistance Act; program priorities, 8817, 23170
Program plan for 1988 FY, 20256
Meetings:
Coordinating Council, 458, 3645, 17513
Missing Children's Advisory Board, 15474

Labor Department

See also Benefits Review Board, Labor Department; Employment and Training Administration; Employment Standards Administration; Federal Contract Compliance Programs Office; Labor Statistics Bureau; Labor-Management Standards Office; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration; Veterans Employment and Training, Office of Assistant Secretary; Wage and Hour Division; Workers' Compensation Programs Office
RULES
Acquisition regulations, 3839
Contracts and property management:
Audit requirements; resolution and appeals, 5966
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Walsh-Healey Public Contracts Act:
Small business determination procedures, 7741
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 5346, 22680
Regulatory agenda, 13982
NOTICES
Agency information collection activities under OMB review, 960, 1418, 1529, 2099, 3470, 4747, 5327, 5840, 6207, 7059, 7426, 7989, 11144, 12087, 13339, 15474, 16596, 18178, 20025, 20385, 21933, 24377
Committees; establishment, renewal, termination, etc.:
Employee Welfare and Pension Benefit Plans Advisory Council, 17120
Shipyard Employment Standards Advisory Committee, 24156
Workforce Quality and Labor Market Efficiency Commission, 24155
Consumer price index; U.S. city average, 4748
Internationally recognized worker rights in foreign countries, status; annual report, 11714
Meetings:
President's Committee on International Labor Organization, 22744
Trade Negotiations and Trade Policy Labor Advisory Committee, 1689, 4912, 9382, 13339

Labor Statistics Bureau

NOTICES
Local area unemployment statistics procedures; proposed changes, 22749
Meetings:
Business Research Advisory Council Board and Committees, 10574
Labor Research Advisory Council Committees, 15302

Labor-Management Standards Office

RULES
Union officer elections; candidacy age requirements, 8750
Correction, 23233

Land Management Bureau

RULES
Grazing administration:
Livestock grazing on public lands, 2984, 10224
Correction, 22325
Minerals management:
Oil, gas, and geothermal resources leasing, 17340
Onshore oil and gas and geothermal leasing, 22814
Onshore oil and gas production accounting; responsibility transfer, 16408
Oil and gas leasing:
Onshore operations; oil royalty rates, 1184
Public land orders:
Alaska, 12419, 12420, 18282, 18283, 20846, 22326, 22488, 22489
Arkansas, 10330
Colorado, 22327
Idaho, 9628, 10535
Montana, 7186, 9628, 15041, 22489
Nevada, 1359
New Mexico, 16269
Oregon, 1359, 3750, 7520, 9628
Wyoming, 7187
Recreation management:
Use authorizations; special recreation permits, 10394
Rights-of-way:
Mineral Leasing Act—Appeals provision, 17701

PROPOSED RULES
Forest management:
Forest products sales; contract awards, etc., 6013
Mineral leasing:
Solid minerals (other than coal) exploration and mining operations; streamlining amendments, 2055
Minerals management:
Onshore oil and gas and geothermal leasing, 9214
Onshore oil and gas operations; Federal and Indian oil and gas leases—
Order No. 4, 11318, 3158
Order No. 5, 3168, 11318
Onshore oil and gas production accounting; responsibility transfer, 1039
Service charges establishment and clarifications, 23720
Oil and gas leasing:
Federal Onshore Oil and Gas Leasing Reform Act; implementation; and test oil and gas lease sales, 6013

NOTICES
Agency information collection activities under OMB review, 4469, 6875, 12471, 15143, 15469, 24800
Airport leases:
Nevada, 1415, 17981
Alaska Native claims selection:
Doyon, Ltd., 16914
Klawock-Heenya Corp., 5222
Manokotak Natives Ltd., 23157
Sealaska Corp., 17981
Shaktoolik Native Corp., 20371
Stebbins Native Corp., 20182
Classification of public lands:
Arizona, 19051
Idaho, 7804
Nevada, 13331, 20374
Closure of public lands:
California, 3268, 3463, 19055, 22226
Idaho, 8288, 8701
Nevada, 6875, 15291
Oregon, 5650, 20183
Coal leases, exploration licenses, etc.:
Colorado, 12607
Kentucky, 2792, 5222, 6706
Montana, 13195, 22579
New Mexico, 22577
Utah, 24371
Wyoming, 12607, 13197, 22054, 23806
Coal management program:
Fort Union Federal Coal Production Region decertified and opening counties in North Dakota and Montana to leasing by application process, 13195
Green River-Hams Fork Coal Production Region decertified and opening counties in Colorado and Wyoming to leasing by application process, 13196
Committees; establishment, renewal, termination, etc.:
California Desert District Advisory Council, 16791
Grazing Advisory Boards, 19048
Iditarod National Historic Trail Advisory Council, 6204
National Public Lands Advisory Council, 3081
Conservation and recreation areas:
California Desert Conservation Area Plan, 2648, 4082
Environmental statements; availability, etc.:
Adobe Town and Ferris Mountains wilderness study areas, WY, 2648
Aptus Industrial and Hazardous Waste Treatment Facility, UT, 5324, 24800
Arcata Resource Area, CA, 8983, 9820
Beaver Creek, AK, 12608
Birch Creek National Wild River, AK, 16590
Bridger-Teton National Forest, WY, 12471
Buffalo Resource Area, WY, 16194
Burlington Northern, Inc.; Yellowstone and Musselshell Counties, MT, 17251
Carcass Canyon and Death Ridge wilderness study areas, UT, 5048
Central California section 202; wilderness study area, 2648
Coal preference right lease applications—Colorado, 3080
Coal-fired steam/electric generating plant, NV, 22577
Cody Resource Area, WY, 11140
Death Valley and Joshua Tree National Monuments, CA, 19826
Eastern San Diego County Planning Unit, CA, 18169
Farmington Resource Area, NM, 8806
Federal mineral ownership and public domain lands, FL, 1855
Fortymile River Watershed, AK, 21528
Grand Resource Area, UT, 4084
Green River Resource Area, WY, 19049
Guadalupe County landfill site, NM, 3270
Henry Mountain Coordinated Resource Management Area, UT, 8983
Iceberg Point and Point Colville, Lopez Island, WA, 10442
Idaho wilderness study areas, 3463, 6706
Lakeview District, OR, 19049
Lower Gila South Resource Area, AZ, 12479
Mark Twain National Forest, MO and OR, 23293
Moab District, UT, 7984, 24801
Nevada wilderness study areas, 22736
New Mexico statewide wilderness study areas, 4225
Phoenix District, AZ, 7243
Phoenix Resource Area, AZ, 2296
PLES I geothermal project, CA, 23806
Pony Express Resource Area, UT, 17115
Red Mountain wilderness study area, CA, 3944
Rock Springs District, WY, 12471, 20182
San Bernardino County, CA, 15896
San Pedro River Riparian Area, AZ, 22579
Sleeping Giant and Sheep Creek wilderness study areas, MT, 23695
Trans-Alaska Gas System; Prudhoe Bay, AK, 24357
U.S. Sprint Fiber Optic Cable Network; fiber optic cable right-of-way, ID, MT, ND, and WA, 953
Utility corridor lands, AK, 12731
Vernal District, UT, 10442
Yuma District, AZ, 20025
Fire management; Spokane District, WA, 24154
Fossils, gems, and minerals collection prohibition; Imperial County, CA, 12472
Geothermal resources lease sales:
California, 6204
Jurisdiction transfers:
Oregon, 10443, 12866
Washington, 10443, 12866
Land and resource management planning schedules, 20667
Management framework plans, etc.:
Arizona, 22580
Idaho, 1945, 5651, 13196, 18908
Nevada, 5470
Oregon, 19049, 23697
Utah, 4082
Wyoming, 17253, 19049
Meetings:
Albuquerque District Advisory Council, 3269, 11141, 20372
Albuquerque District Grazing Advisory Board, 12608
Arizona Strip District Advisory Council, 10444
Arizona Strip District Grazing Advisory Board, 10444
Bakersfield District Advisory Council, 12479
Battle Mountain District Advisory Council, 5651, 19050
Battle Mountain District Grazing Advisory Board, 11563
Boise District Grazing Advisory Board, 5048
Burley District Advisory Council, 9706
Burley District Grazing Advisory Board, 17981
Burns District Advisory Council, 21737
Butte District Advisory Council, 5651, 8807

California Desert District Advisory Council, 7244
California Desert District Grazing Advisory Board, 8288
Canon City District Advisory Council, 16914
Canon City Grazing Advisory Board, 1070
Carson City District Advisory Council, 7804
Carson City District Grazing Advisory Board, 22226
Casper District Advisory Council, 23695
Cedar City District Advisory Council, 3270
Cedar City District Grazing Advisory Board, 5048
Coeur d'Alene District Advisory Council, 9706
Coos Bay District Advisory Council, 16194
Craig District Advisory Council, 85, 7804
Dickinson District Advisory Council, 9492
Elko District Advisory Council, 17115
Ely District Advisory Council, 8807, 13197
Eugene District Advisory Council, 2542, 19050
Helicopters and motorized vehicles use in gathering wild horses and burros, 22736
Idaho Falls District Advisory Council, 6706, 16590
Idaho Falls District Grazing Advisory Board, 1070, 16590
Iditarod National Historic Trail Advisory Council, 6204
Kingman Resource Area Grazing Advisory Board, 3944
Lakeview District Advisory Council, 11564
Lakeview District Grazing Advisory Board, 11564, 22227
Lakeview District Multiple Use Advisory Council, 23314
Las Cruces District Advisory Council, 450, 1685, 4078
Las Cruces District Grazing Advisory Board, 6876
Lewistown District Grazing Advisory Board, 18169
Medford District Advisory Council, 7984
Miles City District Advisory Council, 7804
Moab District Advisory Council, 9378
Montrose District Grazing Advisory Board, 4469
National Public Lands Advisory Council, 10950, 22390
North Cascades Scenic Highway Zone, 12825
Northern and Southern Alaska Advisory Councils, 13197
Phoenix District Advisory Council, 4225, 16915
Phoenix/Lower Gila Resource Areas Grazing Advisory Board, 4082
Prineville District Advisory Council, 2793, 21737
Prineville District Grazing Advisory Board, 4080
Rawlins District Advisory Council, 11712
Rawlins District Grazing Advisory Board, 18170
Rock Springs District Advisory Council, 954, 13197
Roseburg District Advisory Council, 2542, 13197, 22578
Safford District Advisory Council, 3945
Safford District Grazing Advisory Board, 20372
Salem District Advisory Council, 13332
Salmon District Advisory Council, 10444
Salmon District Grazing Advisory Board, 22737
Salt Lake District Advisory Council, 5652
Salt Lake District Grazing Advisory Board, 1945
San Juan River Regional Coal Team, 22580
Shoshone District Advisory Council, 17115
Shoshone District Grazing Advisory Board, 5048
Special Nevada Report, 15272, 17534
Susanville District Advisory Council, 12196
Susanville District Grazing Advisory Board, 7805, 24502
Uinta Southwestern Utah Regional Coal Team, 17116
Ukiah District Advisory Council, 12472, 24801
Vale District Grazing Advisory Board, 9706
Vernal District Advisory Council, 17982
Winnemucca District Grazing Advisory Board, 5223
Worland District Advisory Council, 13198
Worland District Grazing Advisory Board, 13198
Yuma District Advisory Council, 11350
Mineral interest applications:
Arizona, 1685, 1686, 3269, 4498, 5049, 8807, 19051
Nevada, 21737
Motor vehicles; off-road vehicle designations:
Oregon, 1856, 3269, 21925
South Dakota, 15295
Wyoming, 7805
Oil and gas leases:
Alabama, 16591
Alaska, 85, 1856, 1857, 10444, 12473, 12995, 23807
California, 15291
Colorado, 15291, 22227, 23157
Montana, 10444, 22578
New Mexico, 4470, 16915
South Dakota, 17982
Utah, 1415, 9706
Wyoming, 1857, 4078, 4080, 6706, 15291, 15292, 16591, 20372, 20374
Oil and gas leasing:
Known geologic structure (KGS) quality assurance; 32 KGS classifications, audit report; availability, 5324
Opening of public lands:
Arizona, 451, 954, 955, 1540, 1685, 4098, 6876, 8301, 9024, 12866
California, 1522, 1523, 12079, 22390, 23698
Montana, 1070, 6707, 13199, 20372
Nevada, 1415, 1946, 19344, 23315
North Dakota, 3080
Oregon, 7805
South Dakota, 15295
Wyoming, 2793, 4082, 4098
Organization, functions, and authority delegations:
Great Falls Resource Areas; address change, 15292
Resource area managers, Albuquerque District, NM; oil and gas management, 454
Realty actions; sales, leases, etc.:
Alaska, 6876, 13198, 13199, 19050, 20376, 21738, 23157
Arizona, 185, 452, 955, 1540, 1685, 2891, 3643, 3945, 4079, 4226, 5049, 6876, 6877, 6916, 7806, 8809, 9024, 9150, 9172, 9707, 9848, 11142, 12078, 12473, 12474, 15292, 16197, 16321, 16473, 16791, 16915, 18355, 18612, 18613, 19052-19054, 19344, 19369, 20373, 20414, 21964, 23695, 24154, 24802, 24803
California, 452, 1071, 1103, 1522, 1523, 3270, 4080, 5050, 6878, 7806, 8807, 9377, 12078, 12079, 12474, 12608, 14859, 15292, 15773, 16195, 16198, 16915, 17510, 17984, 18356, 20373, 21926, 24804
Colorado, 7807, 8808, 9493, 9707, 13199, 20375
Idaho, 5652, 6707, 9708, 11564, 11565, 11915, 13196, 15469, 16198, 17982, 19051, 21738, 22055, 22227, 23314, 23696
Louisiana, 11565, 14888
Minnesota, 4226, 4726, 10445, 16195
Montana, 453, 1070, 1857, 11565, 15293, 15494, 16195, 17984, 22392, 23696
Nevada, 453, 2649, 4470, 4903, 7056, 8809, 9493, 9708, 12641, 12731, 16916, 18612, 19051, 21738, 23315, 24551
New Mexico, 86, 2542, 2793, 5051, 5653, 7403, 7807, 9024, 11349, 22391
North Dakota, 3080, 16916, 23696
Oregon, 2543, 4226, 4817, 7805, 7808, 12476, 12610, 15494, 21926, 22737, 23697
Utah, 4726, 5653, 7984, 10445, 12609, 16199, 21528, 22392, 24805, 24806
Wisconsin, 3271
Wyoming, 956, 1068, 1069, 4082, 5049, 10445, 15293, 15896
Recreation management restrictions, etc.:
Elko District, NV, 22579
Merced River Area, CA, 3464
Senator Wash Rd. and McKinley Rd.; All American Canal, AZ; camping area closed, 10446
Yuma Resource Area, AZ; camping limit revision, 10951
Recreation use permit system:
South Yuba Recreation Area, CA; user fee, 23697
Upper Missouri National Wild and Scenic River, MT; commercial float boating operations, 3945
Resource management plans, etc.:
Alturas Resource Area, CA, 10446
Arcata Resource Area, CA, 15291
Bishop Resource Area, CA, 24153
Box Elder Resource Area, UT, 1946
Carlsbad Resource Area, NM, 3270
Emerald Empire Resource Area, ID, 12826
Lahontan Resource Area, NV, 20375
Lower Gila Resource Area, AZ, 5653
Lower Gila Resource Area et al., AZ, 3080
Salem District, OR, 17116
San Juan Resource Area, UT, 955, 11349
Socorro Resource Area, NM, 1069
West Hi-Line planning area, MT, 22735
Yuma District, AZ, 2095, 4903
Right-of-way applications:
Indiana, 7984
Survey plat filings:
Arizona, 454, 5652, 11565
California, 4079, 4083, 5052, 5053, 6879, 7809
Colorado, 4081, 5471, 7579, 7809, 10446, 11566, 15294, 15746, 21739, 23699
Florida, 12476, 15604, 15605, 17510
Idaho, 954
Illinois, 2544, 12827
Louisiana, 5652
Maine, 18170
Minnesota, 17984
Missouri, 18908
Montana, 1857, 6879, 12827, 15294, 24806, 24807
Nevada, 4083, 16196
New Mexico, 455, 2794, 5050, 12827, 17983, 22581, 23807
North Carolina, 10951-10953, 12866

Oregon, 97, 5050, 12476, 12477, 17117, 20373, 24502
Washington, 97, 5050, 12476, 12477, 17117, 24502
Wyoming, 4081, 17983
Wilderness study areas; characteristics, inventories, etc.:
Arizona, 24807
Mineral survey reports—
Colorado, 11566
Montana, 956, 6880
Nevada, 21926
New Mexico, 23158
Oregon, 20184
Withdrawal and reservation of lands:
Alaska, 839, 22737, 23807
Arizona, 21529
California, 2544, 4078, 5654, 9152, 9708, 9709, 10330, 10447, 19055, 23698, 24171
Colorado, 839, 2890, 7810, 9172, 10297, 12826, 16196, 17534, 18949, 20374, 22581, 23699
Idaho, 9709, 12477, 22582
Montana, 6707, 9024, 13199
Nevada, 11141, 11713, 12641, 19345
New Mexico, 3271, 4083, 6880, 8809, 9710, 16199, 21739, 24807
Oregon, 956, 16917, 19856
South Dakota, 15295, 17983
Utah, 10570
Washington, 956, 12478, 12825, 15170
Wyoming, 2793, 4098, 12478, 15144, 15296, 15297, 17117, 18613, 20718, 22054

Legal Services Corporation

RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 6151
Correction, 9726
Individuals eligible for legal assistance; income levels, 12017
NOTICES
Grant awards:
Fort Apache Legal Aid Society, Inc., 6208
State University of New York at Buffalo et al., 24156
Grants; availability, etc.:
Law school civil clinical programs, 7815
Louisiana (Tri-Parish area) legal services, 17260
Meetings; Sunshine Act, 1701, 5079, 5343, 8843, 8844, 11000, 11394, 23849

Libraries and Information Science, National Commission

NOTICES
Meetings; Sunshine Act, 95, 990, 11937, 20413

Library of Congress

See Copyright Office, Library of Congress
NOTICES
Meetings:
American Folklife Center Board of Trustees, 5330, 17519

Management and Budget Office

See Federal Procurement Policy Office
RULES
Paperwork Reduction Act; implementation, 16618
PROPOSED RULES
Regulatory agenda, 14470
NOTICES
Agency information collection activities under OMB review, 2116
Budget reacissions and deferrals, 6734
Cumulative reports, 1296, 4584, 8126, 12244, 18244, 22247
Circulars, etc.:
A-102, 8028
A-120; revised, 768
A-76; revised, 9835
Commercial activities, performance (Circular A-76); revision, 9835
Consulting services use guidelines (Circular A-120); revised, 768
Debarment and suspension (nonprocurement); guidelines, 19160
Federal statistical activities; guidelines, 1542, 12626
Grants and cooperative agreements to State and local governments, uniform administrative requirements (Circular A-102); revision, 8028

Maritime Administration

RULES
Cargo preferences, U.S. flag vessels:
Dry bulk cargoes; bid evaluation procedures, 24270
Marine hull insurance; underwriters approval, 23112
War risk insurance; eligibility of vessels registered in Bahamas, 8186
PROPOSED RULES
Bulk preference cargoes, carriage; fair and reasonable rates determination, 24324
Subsidized vessels and operators:
Bulk cargo vessels engaged in world-wide services; operating-differential subsidy, 14821
Liner vessels; operating-differential subsidy, 14822
NOTICES
Capital construction fund, nonqualified withdrawals; interest rates, 16332
Operating-differential subsidy (ODS) applications; policy changes, 17134, 21543
Trustees; applicants approved, disapproved, etc.:
Bankers Trust Co. of California, N.A., 16610
Peoples National Bank of Washington, 24393
Shawmut Bank of Boston, N.A., 12744
Terrebonne Bank & Trust Co., 17528
U.S.-flag launch barges; initial inventory, 24165
War risk insurance:
Ship valuation system; revision, 1534
Ship value determinations, 2901
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 6727
Apex Resources, Inc., et al., 16334, 16681
Chestnut Shipping Co. et al., 15166
Falcon Carriers, Inc., et al., 8294
Lykes Bros. Steamship Co., Inc., 13045
Mormac Marine Group, Inc., 24393
Ocean Carriers, Inc., 22759
Puerto Rico Maritime Shipping Authority, 18648
Waterman Steamship Corp., 4929, 6055

Merchant Marine and Defense, Commission on

See Commission on Merchant Marine and Defense

Merit Systems Protection Board

RULES
Organization, functions, and authority delegations:
Board Offices, 22465
Correction, 23850
PROPOSED RULES
Regulatory agenda, 14442
NOTICES
Amicus brief filings:
Contingent fee agreements; market compensation, 585
Performance improvement periods of Chapter 43 actions, 6712, 7466, 10957
Decisions and orders accessibility; questionnaire, 10001
Meetings; Sunshine Act, 466, 1539, 7072
Organization, functions, and authority delegations:
Headquarters library closing; temporary, 19830
Prohibited personnel practices:
Significant OPM actions; review, 16203
Sexual harassment in Federal Government; report availability, 15156
Special Counsel Office:
Hatch Act publications; availability, 17126

Mexico and United States, International Boundary and Water Commission

See International Boundary and Water Commission, United States and Mexico

Mine Safety and Health Administration

RULES
Coal mine safety and health:
Underground coal mining—
Roof, face, and rib support, 2354, 11395
Self-contained self-rescue devices, 10332, 12415
Metal and nonmetal mine safety:
Methane standards, 9615
Testing, evaluation, and approval of mining products:
Underground mining equipment; applicant or third party product testing, 23486
PROPOSED RULES
Coal mine safety and health:
Underground coal mining—
Certified and qualified persons, 12250, 23286
Mobile equipment; backup alarms, 12253, 23286
Rubber-tired, self-propelled electric face equipment; automatic emergency-parking brakes, 6512, 22502
Ventilation standards, escapeways, and drilling of boreholes in advance of mining, 2382, 6162, 10104, 15416, 16872, 18949
Electric mine lamps other than standard cap lamps; testing and approval, 12250, 23286
Hazard communication standard; chemical-related illnesses and injuries, 10257, 19314, 23286
Testing, evaluation, and approval of mining products:
Multiple-shot blasting units, 23506

NOTICES
Committees; establishment, renewal, termination, etc.:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 189, 9383
Meetings:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 87, 189, 2550, 7583, 12202, 15753, 19348
Petitions for mandatory safety standard modifications; summary of affirmative decisions, 10161
Safety standard petitions:
A&G Coal Co., 19348
AMAX Coal Co., 13341, 20028
Arch of Kentucky, Inc., 20028
Arch on North Fork, Inc., 1418, 7432
B&S Coal Co., Inc., 1419
Beckley Coal Mining Co., 2548
Bend Branch Coal Co., 14868-14871
BethEnergy Mines, Inc., 2548, 3089
Bethlehem Mines Corp., 13341
Black Streak Mining, Inc., 19349
C&B Coal Co., Inc., 1419
Camp Bird Venture, 19349
Camp Fork Fuel Co., Inc., 17773
Castle Gate Coal Co., 20029
Cecil & Bob Coal Co., Inc., 18181
Charity Coal Co., Inc., 22750
Christian Energies, Inc., 583
Clinchfield Coal Co., 3799, 4912
Columbia Silica Sand Co., 8999
Consolidation Coal Co., 583, 1868, 8999, 10165
Cougar Coal Co., Inc., 13342
Cripple Creek & Victor Gold Mining Co., 7433
Cross Mountain Coal, Inc., 7433
Cumberland Valley Contractors, Inc., 4788, 4913
Cyprus Empire Corp., 10166
D&F Deep Mine Coal Co., 8999
Davidson Mining, Inc., 7434
Democrat Mine, 18917
Diamond "S" Mining Co., 9000
Dominion Coal Corp., 10166
Drummond Co., Inc., 2101, 21936
Duquesne Light Co., 20029
Eastern Associated Coal Corp., 1868, 20030
Emco Coal Co., Inc., 7434
Emmanuel Coal Co., 13342
Four G. Coal Co., Inc., 2549
Four "L" Coal Co., 13008
Freeman United Coal Mining Co., 10167, 13342, 20030, 22234
Gang Coal Co., 18917
General Chemical Corp., 4788
Great Western Coal (Kentucky) Inc., 3276
Greer Limestone Co., 7061
H.A.R.-M.A.T. Coal Co., Inc., 4913
Hawkeye Services Corp., 20031
Helen Mining Co., 963, 9000, 13343, 18918
Helvetia Coal Co., 7434
Hickory Coal Co., 18918
HICO Coal Co., 12480
H.L.&W. Coal Co., 10167
Homestake Mining Co., 1420
Horse Head Coal Co., 3800
Inferno Coal Co., Inc., 20031
J&W Coal Co., Inc., 4241
Jim Walter Resources, Inc., 3089, 3274–3276, 4241, 4789, 7435
Kelly Energy Co., Inc., 3800, 9825
Kerr-McGee Coal Corp., 4241, 7436, 13343
Krystal Coal Co., 19350
Lakeshore Equipment Co., Inc., 2549
Lamb Construction Co., 5843
LAR Mining, Inc., 20031
Larkk Mining Co., 13344
Lisa Anthony Coal Co., Inc., 19350
Loose Jaw Coal No. 4, Inc., 2101
M&F Coal Co., 3472
M&G Coal Co., Inc., 1869
Manalapan Mining Co., Inc., 4242, 9001
Manor Mining & Contracting Corp., 20032
Marie Enterprises Inc., 7436
Mid-Continent Resources, Inc., 7437
Mount Vernon Coal Co., 3276
Mountain Spur Coals & Energy, Inc., 20032
Mountain View Coal Co., 964
Mullins & Sons Coal Co., Inc., 13344
Oakwood Mining Co., 1420
Pace Energies, Inc., 18919
Paradox Coal Co., Inc., 19350
Peabody Coal Co., 584, 20032, 20033
Perkins Coal Co., Inc., 1869
Poor Boy Coal Co., Inc., 584
Pounding Mill Coal Co., Inc., 17122
Poverty Coal Co., Inc., 7437
Quarto Mining Co., 20033, 20911
Raven Mining Co., 13009
Raven Mining Co., Inc., 585
Riverside Cement Co., 3473
Rockbridge Coal Corp., Inc., 10167
Rough Hill Coal Co., 19351
Rushton Mining Co., 3800
S&J Coal Co., 15475
Saginaw Mining Co., 20034
S&R Coal Co., 20034
Scarlett Coal Co., Inc., 1420
Sandy Fork Mining Co., Inc., 4242
Scotts Branch Mine, 7437, 7438
Sequoyah Resources, Ltd., 4242
Sonora Mining Corp., 18919
Summar Coal Inc., 7438
Sunshine Mining Co., 9001
Sure Fire Coals, Inc., 20034
Tenneco Minerals Co., 7439
Tg Soda Ash, Inc., 19351
Three Power Coal, Inc., 2550
Tunnelton Mining Co., 4789
United Mine Workers of America, 4789, 4790, 18919, 18920
Utah Power & Light Co., 22234
Webster County Coal Corp., 1421, 20035
Weller & Son Mining Co., 4913
West Fork Energy, Inc., 7439
Westmoreland Coal Co., 3801, 10168
Whitaker Coal Corp., 9001
White County Coal Corp., 964, 965
Wolf-Creek Collieries Co., 7439, 7440, 12481
Wormy Coal Co., 1421
Zeigler Coal Co., 9001

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

Minerals Management Service

RULES
Outer Continental Shelf; geological and geophysical explorations:
Proprietary geological and geophysical data and information collected under a permit, protection, 4390
Reporting and recordkeeping requirements, 24688
Outer Continental Shelf; oil, gas, and sulfur operations; revision, 10596
Correction, 12227, 19856
Meetings, 23758
Royalty management:
Gas product valuation, 1230
Training sessions, 4011, 8181
Gas royalty valuation
Reporting and recordkeeping requirements, 4012
Oil product valuation, 1184
Correction, 24688
Training sessions, 4011, 8181
Oil royalty valuation
Reporting and recordkeeping requirements, 4012
Onshore oil and gas production accounting; responsibility transfer, 16408
PROPOSED RULES
Royalty management:
Onshore oil and gas production accounting; responsibility transfer, 1039
NOTICES
Agency information collection activities under OMB review, 2795, 12995, 15746, 22056
Committees; establishment, renewal, termination, etc.:
Outer Continental Shelf Advisory Board, 12996
Environmental statements; availability, etc.:
Alaska OCS—
Lease sale, 2891
Minerals exploration proposals, 16201
Gorda Ridge Area, CA and OR; offshore polymetallic sulfide minerals lease offering, 10447
Gulf of Alaska/Cook Inlet OCS; lease sale, 17902
Gulf of Mexico OCS—
Lease sale, 10299, 13332, 18034
Mineral development and production proposals, 7244
Oil and gas operations, 20186
Mid-Atlantic OCS; lease sale, 1858
North Atlantic OCS—
Lease sale, 5471, 6038
Norton Sound OCS; lease sale, 8134
Pacific OCS—
Lease sale, 2892
Minerals development and production plan, 7245
Oil and gas exploration activities, 11714
St. George Basin OCS; lease sale, 2095
Federal and Indian onshore oil and gas leases; royalty valuation, 5654
Meetings:
Outer Continental Shelf Advisory Board, 290, 455, 3272, 6038, 6880, 22583, 23158, 23699
Outer Continental Shelf; development operations coordination:
Amerada Hess Corp., 12828
Amoco Production Co., 2544, 12828, 17985, 20187, 22738
Anadarko Petroleum Corp., 23700
Apache Corp., 11566
ARCO Oil & Gas Co., 1415, 1524, 8514
Century Offshore Management Corp., 2545
Chevron U.S.A. Inc., 1859, 10447, 11567, 16593, 16918
Cities Service Oil & Gas Corp., 7245
Cliffs Exploration Co., 22583
CNG Producing Co., 16593
Conoco Inc., 8811, 10158, 16593
Corpus Christi Oil & Gas Co., 4903, 17985
CSX Oil & Gas Corp., 19057

Diamond Shamrock Offshore Partners Limited Partnership, 3465, 3643
Exxon Co. U.S.A., 1415, 5654, 12828, 17985, 21927, 21928, 23701
Hall-Houston Oil Co., 1524, 2545, 3272, 8984, 12829
Marathon Oil Co., 5053, 7811
Mark Producing, 20377
McMoRan Oil & Gas Co., 22583
Mobil Exploration & Producing U.S. Inc., 456, 1858, 7245, 9710, 20377, 20908, 24503
ODECO Oil & Gas Co., 12479, 16201, 16594, 22228
Pelto Oil Co., 20187, 22228
Pennzoil Co., 16202
Phillips Petroleum Co., 1525
Samedan Oil Corp., 11567
Sandefer Offshore Operating Co., 18908
Santa Fe International Corp., 9494, 9711
Shell Offshore Inc., 15747, 21928, 22229, 23701, 24808
Sohio Petroleum Co., 18909
Sonat Exploration Co., 9711
Tenneco Oil Co., 11567
Tenneco Oil Exploration & Production, 8985, 9710, 12480, 14860, 16918, 23700
Texaco Inc., 14860
Union Texas Petroleum, 20188
Unocal, 23701
Walter Oil & Gas Corp., 8811, 23700
Outer Continental Shelf; oil, gas, and sulphur operations:
Consolidated offshore operating rules, 17254
Phosphorites deposits; economic feasability in OCS/EEZ offshore North Carolina, 16852
Outer Continental Shelf operations:
Beaufort Sea—
Lease sale, 4356, 6112
Leasing systems, 4371
Blowout and/or fires; accident investigation reports; availability, 17254
Central Gulf of Mexico—
Lease sale, 4334
Leasing systems, 4346
Chukchi Sea—
Lease sale, 13080, 16592
Leasing systems, 13092
Gulf of Alaska/Cook Inlet—
Lease sale, 2208, 17902
Gulf of Mexico—
Lease sale, 597, 8515, 18034, 23159
Norton Sound—
Lease sale, 8134
Official protraction diagrams; availability, 5054
Oil and gas information program—
Accidents associated with oil and gas operations on OCS, 22393
Oil and gas lease sales; restricted joint bidders, 10570
South Atlantic—
Lease sale, 17767
Well-control training; personnel training and qualification, 7482
Royalty management:
Onshore oil and gas production accounting, transfer of responsibility; reporting instructions for lease operators, 13452

Mines Bureau

NOTICES
Agency information collection activities under OMB review, 3272, 4084, 4471, 5054
Helium assets sales, 19056

Minority Business Development Agency

NOTICES
Business development center program applications:
Alaska, 2615
Arkansas, 2863, 8943
California, 942, 2616, 2617, 3417, 8682, 8683
Colorado, 2614
District of Columbia, 6028
Georgia, 18591, 18592
Illinois, 6170
Louisiana, 5028, 8241, 18592, 20674
Nevada, 2618
New Jersey, 17743
North Carolina, 435, 4868
Ohio, 17236, 20154
Oklahoma, 2863, 5292, 10414, 18593
Oregon, 2618
South Carolina, 4869, 4870
Tennessee, 18594
Texas, 9959, 24472–24475
Virginia, 4055, 5029, 10414, 11892, 18116

Mississippi River Commission

NOTICES
Meetings; Sunshine Act, 7829, 7830

National Aeronautics and Space Administration

RULES
Acquisition regulations:
Miscellaneous amendments, 13058
Conflict of interests, 4606, 5764
Debarment and suspension (nonprocurement), 19161
Environmental quality; technical amendments, 9759
Federal Acquisition Regulation (FAR):
Amendments, 17854
Construction contracts; labor standards, 4934
Cost comparison public review period revision, etc. (OMB A-76), 660
Correction, 6219
Extraordinary compensation clarification and certain organization costs incurred with mergers and other business combinations, 10828
Federal public works projects restrictions and American aerospace exports promotion at domestic and international exhibits, 12128
Correction, 13274, 14888
Truth in negotiations provisions, 10828
Unauthorized commitments and prompt payment; ratification, 3688
Correction, 4817
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines; correction, 2738, 5764
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100
Contract debts; demands for payment, 2577
Contract options; continued performance of services, 3814
Contractor records retention, 23105
Foreign military sales contracts; double recoupment of taxes, 12501
Health care services, nonpersonal services contracts, 2464
Independent price determination certificates use in overseas procurements, 100
Correction, 4437
Mistake in bid procedures, 8734
Negotiation after sealed bidding, 3814
Progress payments, first article, 8734
Regulatory agenda, 14564
Service Contract Act; labor standards for contracts, 5928
Small business subcontracting plans for contracts with options, 5928
Threshold; cost comparison, 11795
Regulatory agenda, 14446
NOTICES
Advisory committees; reports on closed meetings; availability, 10575
Agency information collection activities under OMB review, 2109, 3473, 5234, 15156, 15157, 15312, 20695, 20696
Committees; establishment, renewal, termination, etc.:
Wage Committee, 21950
Environmental statements; availability, etc.:
Advanced solid rocket motor, 15157, 16341
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437, 10269, 18875, 19322, 22207
Meetings:
Advisory Council, 4914, 7817, 15754, 21949, 23819
Aeronautics Advisory Committee, 966, 1689, 2109, 2550, 3090, 3949, 5481, 6713, 7267, 7817, 7818, 8706, 8707, 9827, 10175, 11569, 12203, 12733, 12835, 15313, 17519, 18360, 20195, 21949, 22750, 23320
Aerospace Safety Advisory Panel, 3473
History Advisory Committee, 8820
Informal Space Life Sciences Committee, 4914
Life Sciences Advisory Committee, 4914, 16799
Space and Earth Science Advisory Committee, 3090, 10576, 16478
Space Applications Advisory Committee, 3474, 19352
Space Station Advisory Committee, 3090, 17261
Space Systems and Technology Advisory Committee, 1690, 10176, 13202, 24504
Wage Committee, 20696
Patent licenses, exclusive:
Air Products & Chemicals, Inc., 8707
Keystone Helicopter Corp., 17519
Planar Systems, Inc., 10001
Privacy Act; systems of records, 2110

National Agricultural Library

RULES
Freedom of Information Act; implementation, 17914

National Agricultural Statistics Service

RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 11639
NOTICES
Barley production and stocks reports; reinstatement, 2068
Commercial catfish and trout producers survey, 8241, 23294

Hogs and pigs estimating program, 23294
Livestock report; release schedule changes, 20353

National Archives and Records Administration

See also Federal Register Office
RULES
Archival records containing personal information, statistical research; restricted access to records, 6821
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Privacy Act; implementation, 12150
Correction, 16257
Records and donated historical materials:
Self-service copiers use, 1348
Records management:
Federal records disposition, 13407
Reproduction services; fee schedule clarifications, 23760
PROPOSED RULES
Regulatory agenda, 14454
NOTICES
Agency records schedules; availability, 2657, 6885, 7448, 9498, 11148, 12733, 15159, 17773, 19353, 22235, 23319
Committees; establishment, renewal, termination, etc.:
Presidential Libraries Advisory Committee, 10304
Qualifications Review Panel for Position of Director, Gerald R. Ford Library, 10304
Environmental statements; availability, etc.:
College Park, MD; archival facility; construction, 13454
Nixon administration presidential historical materials; preservation, protection, and access procedures; opening of files, 1870

National Bureau of Standards

PROPOSED RULES
Laboratory Accreditation Program, National Voluntary:
Privatization of functions, 12880
NOTICES
Grants; availability, etc.:
Fire research program, 20675
Manufacturing engineering center research program, 10138
Information processing standards, Federal:
Calendar date; representations of local time of day for information interchanges, etc., 2263
Data encryption standard, 1813, 2911
POSIX; portable operating system interface for computer environments, 15268
Programmer's hierarchical interactive graphics system (PHIGS), 7957
Testing conformance to information technology standards symposium, 16307
Laboratory Accreditation Program, National Voluntary:
Bulk asbestos analyses, etc., 12800
Directory of accredited laboratories; supplement, 8796, 13432
Meetings:
Applications portability profile; workshop, 11540
Computer Sciences and Technology Institute workshop, 9794
Electronmagnetic properties of materials consortium workshop, 9347
OSI Implementors workshop, 7553
Visiting Committee, 20154
Weights and Measures National Conference, 23781
National Fire Codes:
Fire safety standards, 5440
Technical committee reports, 5441
Senior Executive Service:
General and Limited Performance Review Board; membership, 13309

National Capital Planning Commission

NOTICES
Memorandums of understanding:
James T. Lewis Enterprises, Ltd.; PortAmerica project, Prince George's County, MD, 6208
Microwave antennas on Federal property in National Capital Region; installation guidelines and submission requirements, 4471
Satellite antennas on Federal property in National Capital Region; installation guidelines and submission requirements, 8820

National Commission for Employment Policy

NOTICES
Meetings, 5330, 10304, 17126

National Commission on Libraries and Information Science

See Libraries and Information Science, National Commission

National Commission to Prevent Infant Mortality

NOTICES
Hearings, 293, 1690, 3949, 12835
Meetings, 293, 12482

National Communications System

NOTICES
Federal telecommunications standards:
Telecommunications; interoperability requirements for encrypted, digitized voice utilized with 25 kHz channel FM radios operating above 30 MHz, 2111
Meetings:
Federal Telecommunications Standards Committee, 7583
National Security Telecommunications Advisory Committee, 4915, 16204, 22751

National Council on the Handicapped

NOTICES
Meetings; Sunshine Act, 3116, 14887

National Credit Union Administration

RULES
Credit unions:
Cash fund establishment; and security measures, embezzlement, 4844
Central Liquidity Facility Act; implementation, 22471
Community development revolving loan program, 1005
Interest refunds, 19746
Investment and deposit activities; selection of securities dealers and unsuitable investment practices, 18268
Investment in mortgage securities, 4843
Loans and lines of credit to members; interest rate increases, risk of loss reduction, 19748
National Credit Union Share Insurance Fund; insurance coverage for accounts, 22472
Share, share draft, and share certificate accounts; operational fees paid, 19747
Surety bond and insurance coverage, 9610
Reporting and recordkeeping requirements, 3000
PROPOSED RULES
Board procedures and issuance of NCUA regulations, 4996
Credit unions:
Compensation of officials, 4992
Corporate credit unions, 20122
Membership field and chartering policy, 22656
Federally-insured state-chartered credit unions; share draft program, operational procedures, 4856
Regulatory agenda, 14682
NOTICES
Agency information collection activities under OMB review, 5659, 23705
Meetings; Sunshine Act, 596, 3489, 7830, 11730, 17136, 19366, 21545

National Economic Commission

NOTICES
Federal budget deficit reduction, 22236
Meetings, 14871, 16204, 18361, 24157

National Foundation on the Arts and the Humanities

RULES
Museum Services Institute:
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
National Endowment for the Arts:
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
National Endowment for the Humanities:
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
PROPOSED RULES
Museum Services Institute:
Professional museum organizations; contracts and cooperative agreements, 3405
Regulatory agenda (National Endowment for the Arts), 14460

Regulatory agenda (National Endowment for the Humanities), 14464

NOTICES

Agency information collection activities under OMB review, 189, 294, 967, 1967, 2111, 2112, 3950, 8519, 10002, 10448, 13363, 16919, 18361, 19830, 20393, 22586, 24505, 24816

Meetings:
- Arts and Artifacts Indemnity Panel, 11922
- Arts in Education Advisory Panel, 15313, 19354
- Arts National Council, 1422, 3277, 13009, 15607
- Arts National Council Ad Hoc Challenge III Artistry Committee, 647
- Arts National Council Ad Hoc Challenge III Committee, 3645, 3949, 3950
- Dance Advisory Panel, 585, 2894, 5659, 17127, 17261, 24817
- Design Arts Advisory Panel, 15313, 17261
- Expansion Arts Advisory Panel, 5330, 6886, 10448, 15607, 17989, 20195, 22236
- Humanities National Council, 2301, 12089
- Humanities Panel, 1422, 1967, 3277, 4472, 6887, 9717, 9828, 12615, 15904, 17127, 17990, 20696, 22587
- Inter-Arts Advisory Panel, 5331, 17990, 23706, 23819
- Literature Advisory Panel, 2551, 6713, 18938, 21538
- Media Arts Advisory Panel, 4243, 6887
- Media Program Advisory Panel, 21539, 22237
- Museum Advisory Panel, 3645, 9384, 17128
- Museum Arts Advisory Panel, 17990
- Music Advisory Panel, 2551, 3949, 4243, 9384, 11360, 11922, 15314, 22237
- Partnership Office Advisory Panel, 17262, 20195
- President's Committee on Arts and Humanities, 7818, 22237
- State of Arts Ad Hoc Review Committee, 22237
- Theater Advisory Panel, 3950, 6887, 17262, 21539
- Visual Arts Advisory Panel, 3950, 5659, 9717, 15314, 18938, 22060

Meetings; Sunshine Act, 9404

National Highway Traffic Safety Administration

RULES

Adjudicative procedures; automotive fuel economy enforcement, 15782
Alcohol traffic safety programs; incentive grant criteria, 17692
Anthropomorphic test dummies; Hybrid III, 8755
Fuel economy standards:
- Light trucks, 11074

Highway safety programs; effectiveness determination, 11255
Manufacturer identification; correction, 20119
Motor vehicle safety standards:
- Air brake systems, 7931
  - Heavy duty vehicles; burnish procedures, 8190
- Brake fluids, 24272
- Child restraint systems—
  - Add-on child (portable) restraints, 1783
- Hydraulic brake systems—
  - Heavy duty vehicles; burnish procedures, 8190
- Lamps, reflective devices, and associated equipment—
  - Bonded lens reflector assembly; petition denied, 9944
  - Center highmounted stop lights, 17053
- Motorcycle helmets, 11280
  - Correction, 12528
- New pneumatic tires, 17950
- Occupant crash protection, 5579
- Power-operated window systems, 23766
- School buses; fuel system integrity, 8202
- Seat belt assemblies, 5579

Motor vehicle theft prevention standards:
- High theft lines; listing, 133, 13274
- Insurer reporting requirements, 1635

Vehicle identification number, content requirements; trailers and incomplete trailers, 1032

PROPOSED RULES

Alcohol traffic safety programs; incentive grant criteria, 11679
Anthropomorphic test dummies; side impact, 2254
- Correction, 8783

Consumer information:
- Uniform tire quality grading, 16167

Fuel economy standards:
- Passenger automobiles, 8668
  - Petition denied, 15241

Motor vehicle safety standards:
- Air brake systems, 1643
- Fuel system integrity—
  - Petition denied, 18318
  - Petition granted, 15578
- Glazing materials; petition denied, 20659
- Hydraulic and air brake systems, 934
- Lamps, reflective devices, and associated equipment—
  - Daytime running lamp; withdrawn, 23673
  - Sealed beam headlamps, external dimensions, etc.; correction, 6998, 7074
  - Type HB3 and HB4 replaceable light sources for headlamps, 5598
- New pneumatic tires, 936
- Occupant crash protection—
  - Automatic restraint requirements; petition denied, 15067
  - Frontal interior impact; evaluation report, 2516
  - Interior impact, 780
  - Seats; separately adjustable in vertical direction test conditions, 15576
  - Side impact protection, 2239, 8782
- Steering control rearward displacement, 780
- Theft protection; inadvertent gear shifting and steering column lock-up, 11105, 17732
- Vehicle classification, 426
- Vehicle identification number; basic requirements, 17088

Motor vehicle theft prevention standard:
- Insurer reporting requirements, 1641

Speed limit enforcement certification, 7943
Splash and spray suppression devices on truck tractors, trailers, and semitrailers, 18861

NOTICES

Fuel economy program, automotive; annual report to Congress, 10194
Fuel economy standards:
- Mercedes-Benz of North America, 16335
- Grants; availability, etc.:
  - Mid-Atlantic trauma registry, 18019
  - Over-the-road trucks; fuel tank safety research study systems, 9019
  - Safety belt use laws; research study to explore impact measures, 17528

Highway safety programs; breath alcohol testing devices:
- Evidential devices; model specifications and conforming products list, 6727, 16610

Meetings:
- International harmonization of safety standards, 14882
- Motor Vehicle Safety Research Advisory Committee, 3285, 17528, 20211, 23164, 23844
- Rulemaking, research, and enforcement programs, 2345, 16611

Motor vehicle defect proceedings; petitions, etc.:
- Bram, Edrice, et al., 987
- Center for Auto Safety et al., 1881
- Shew, Russell J., 18943
- Wirth, Timothy E., 12218

Motor vehicle safety standards:
- Child passenger protection systems, 24394

Motor vehicle safety standards; compliance investigations, etc.:
- Mercedes-Benz Truck Co.; model L1317 trucks, 21757

Motor vehicle safety standards; exemption petitions, etc.:
- Automobiles Peugeot, 594
- General Motors Corp., 771, 987, 12093, 12638, 13375
- Goodyear Tire & Rubber Co., 9844, 20714
- Uniroyal Goodrich Tire Co., 6215

Motor vehicle theft prevention:
- Insurer reporting requirements; report to Congress, 5076
- Passenger theft data, 15610
- Theft rates data, 15484

Motor vehicle theft prevention standard; exemption petitions, etc.:
- Chrysler Corp., 835
- Saab-Scania of America, Inc., 20061
- Volkswagen of America Corp., 4095

New car assessment program:
- Crash test results compared with real-world crash data, studies review, 9844
- Deformable moving barrier crash test results and analysis, 10182, 18369
- Optional crash testing by motor vehicle manufacturers; eligibility criteria, 3479

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Institute of Corrections

NOTICES

Meetings, 20695

National Institutes of Health

NOTICES

Human immunodeficiency virus (HIV) antibody detection, R-DNA derived and synthetic peptide antigens use; workshop, 3640
Meetings:
- Acquired Immunodeficiency Syndrome Program Advisory Committee, 1414, 18355

- Advisory Committee to Director, 2790, 15745, 24500
- Animal Resources Review Committee, 2291, 4899, 12603, 17507
- Biomedical Research Technology Review Committee, 7239
- Cochlear implants; consensus development conference, 7053
- Dental implants consensus development conference, 17978
- Fogarty International Center Advisory Board, 1068, 12604, 15290
- General Clinical Research Centers Committee, 3460, 15602
- General Research Support Review Committee, 4222, 4899
- National Bone Marrow Transplants, 290
- National Cancer Institute, 1683, 2292, 2293, 3460, 4899, 4900, 5645, 7240, 7980, 9149, 9705, 9988, 10437, 10949, 12604, 12824, 13449, 13450, 15603, 15745, 15890, 16321, 16912, 20688, 20907, 21923, 23154
- National Center for Nursing Research, 806, 15603, 19823, 23154
- National Eye Institute, 9150, 16913
- National Heart, Lung, and Blood Institute, 807, 1684, 4222, 9705, 10437, 12195, 12604, 15290, 15893, 15894, 18355, 19823, 20907
- National Institute of Allergy and Infectious Diseases, 2790, 2791, 3460, 15603, 15604, 17507, 21923
- National Institute of Arthritis and Musculoskeletal and Skin Diseases, 4900, 10950, 19823, 19824, 24501
- National Institute of Child Health and Human Development, 2293, 15604, 15890
- National Institute of Dental Research, 2094, 7240, 9705, 13450, 13451
- National Institute of Diabetes and Digestive and Kidney Diseases, 2294, 2295, 4725, 5645, 5646, 10438, 16321, 17508, 19824
- National Institute of Environmental Health Sciences, 808, 3460, 7240, 15891, 19824
- National Institute of General Medical Sciences, 5646, 12605, 17507, 19825
- National Institute of Neurological and Communicative Disorders and Stroke, 7240, 10950, 15745, 20024
- National Institute on Aging, 2293, 12604, 12605, 15891
- National Library of Medicine, 2295, 10438, 12605, 15892, 23693
- Perioperative red cell transfusion consensus development conference, 17979
- President's Cancer Panel, 3079, 9988
- Recombinant DNA Advisory Committee, 808, 7054, 12752, 23805
- Research Grants Division study sections, 805, 10438, 15892, 23693
- Research Resources National Advisory Council, 10439

National Institute of Dental Research; development of long-range research plan for nineties, 16321
Organization, functions, and authority delegations. See entries under Public Health Service.
Recombinant DNA molecules research:
- Actions under guidelines—
  - Proposed, 12752

National Labor Relations Board

RULES

Conflict of interests, 4615
Freedom of Information Act; implementation:
- Uniform fee schedule and administrative guidelines, 10872

Procedural rules:
- Multiple appeals court selection; implementation, 24440

NOTICES

Meetings; Sunshine Act, 1440, 5519, 11730, 13377, 18654, 22265, 22425
Organization, functions, and authority delegations, 10305, 23467
Privacy Act; systems of records, 17262
Senior Executive Service:
- Performance Review Boards; membership, 4792

National Mediation Board

NOTICES

Meetings; Sunshine Act, 2145, 5343, 10034, 13046, 17532, 24549

National Oceanic and Atmospheric Administration

RULES

Antarctic Marine Living Resources Convention Act; implementation, 8766
Endangered and threatened species:
- Hawaiian monk seal; critical habitat, 18988

Financial aid to fisheries:
- Interjurisdictional Fisheries Act; implementation, 20323
  - Correction, 22609

Fishery conservation and management:
- Atlantic mackerel, squid, and butterfish, 6991
- Atlantic salmon, 4982
- Atlantic sea scallop, 23634
- Atlantic surf clam and ocean quahog, 4630, 8632, 20854
- Bering Sea and Aleutian Islands groundfish, 894, 991, 2147, 4178, 7756, 7941, 12772, 16552, 18841, 19303, 21454, 22328, 23402
- Fishing in exclusive economic zone, 24644
- Foreign fishing—
  - Fee schedule, 134, 3401
  - Fishing definition, 13410
  - Northwest Atlantic hake, 741
- Gulf of Alaska groundfish, 890, 991, 6649, 7756, 7938, 9772, 11297, 16129, 19921, 21649, 22327, 23401, 23402, 24295
- Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 3401
- Gulf of Mexico and South Atlantic spiny lobster, 17194
- Gulf of Mexico red drum, 244, 7368, 24662
- Gulf of Mexico shrimp, 18840, 21999
- Northeast multispecies, 5773
- Ocean salmon off coasts of Washington, Oregon, and California, 16002, 16415, 19368, 20119, 22000, 24294
- Pacific Coast groundfish, 246, 248, 20634, 22001, 22655

Marine mammals:
- Commercial fishing operations—
  - Taking and importing; general permit, 1638
- North Pacific fur seals—
  - Pribilof Island population depletion designation, 17888
- Tuna (yellowfin) caught with purse seines in eastern tropical Pacific Ocean; importation, 8910

Pacific Halibut Commission, International:
- Pacific halibut fisheries, 3213, 7528, 10536, 16838, 20327
- Tuna, Atlantic fisheries, 8631, 11510

PROPOSED RULES

Antarctic Marine Living Resources Convention Act; implementation, 8784
Endangered and threatened species:
- Chinese river dolphin, 17735
- Hawaiian monk seal; critical habitat, 530

Endangered, threatened, and other depleted marine mammals; incidental takings, 8473, 17964
Fishery conservation and management:
- Atlantic billfishes, 11321, 15718, 21501, 24462
- Atlantic sea scallop, 10262, 12709
- Atlantic surf clam and ocean quahog, 265
- Domestic fishing vessels, mandatory carriage of observers, 20661
- Foreign fishing—
  - Exclusive Economic Zone of Bering Sea illegal fishing; implementation of options, 13422
- Gulf of Alaska groundfish, 627, 8789
- Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 22036
- Gulf of Mexico red drum, 10131, 12790
- Gulf of Mexico reef fish, 5809
- Gulf of Mexico shrimp, 266, 12046
- Ocean salmon off coasts of Washington, Oregon, and California, 3225, 8234, 10036, 19971
- Pacific coast groundfish, 3225, 22366
- Regional Fishery Managment Council operation, 21863
- Summer flounder, 23292
- Western Pacific bottomfish and seamount groundfish, 12712, 16735
- Western Pacific precious corals, 10131, 14824

Marine mammals:
- North Pacific fur seals; subsistence taking, 17733
- Stellar sea lions in Alaska; status, 16299
- Taking incidental to oil and gas exploratory activities, 12169, 18590

Pacific Halibut Commission, International:
- Pacific halibut fisheries, 156, 8938

NOTICES

Capital construction fund, nonqualified withdrawals; interest rates, 16332
Coastal zone management programs and estuarine sanctuaries:
- State programs—
  - Alaska, 9347
  - California, 16893
  - Evaluation findings availability, 9347, 20155
  - Florida, 6682
  - Intent to evaluate performance, 9348, 20155
  - Mississippi, 7001
  - New Jersey, 12581, 24118
  - New York, 11893, 11894, 22687
  - Puerto Rico, 11893, 14830, 14831
  - South Carolina, 4696, 14831, 14832, 21508

Deep seabed mining; exploration licenses; mine site area revisions:
- Kennecott Consortium, 6857
- Ocean Management, Inc., et al., 6858
- Ocean Minerals Co., 12714, 17966
- Ocean Mining Associates, 17237

Endangered and threatened species:
- Atlantic right whales; critical habitat, 9469, 17095, 19810
- Sea turtles; reconsideration petition, 8483

Winter-run chinook salmon, 20155
Environmental statements; availability, etc.:
Bering Sea and Aleutian Islands groundfish, 4055
Marine mammals, incidental taking during commercial fishing operations, 2069, 9795
Fishery conservation and management:
Operational guidelines availability, 7554
Fishery management councils; hearings:
Gulf of Mexico—
Penaeid shrimp and red drum, 2523
Red drum, 3908
Pacific—
Ocean salmon, 436, 9960
Ocean salmon off coasts of Washington, Oregon, and California, 7001
South Atlantic—
Snapper grouper, 4056
Western Pacific—
Precious corals, 4057
Grants; availability, etc.:
Fishing industry research and development projects—
Marine Fisheries Initiative; Gulf of Mexico fishery resources, 10912
Saltonstall-Kennedy funds, 10044
National estuarine reserve research system, 6171
Marine mammals:
Human/dolphin swim programs; meetings, 7960
Incidental taking; authorization letters, etc.—Geophysical Service Inc., 1935
Meetings:
Caribbean Fishery Management Council, 4199, 4870, 9795, 10917, 14832, 21721
Emergency striped bass research study, 12581
Gulf of Mexico Fishery Management Council, 160, 1395, 2864, 6029, 10917, 11326, 21721
International Whaling Commission, 267
Marine Fisheries Advisory Committee, 1505, 22199
Mid-Atlantic Fishery Management Council, 1657, 4199, 9795, 19017
National Fish and Seafood Promotional Council, 2774, 17743
New England Fishery Management Council, 160, 2774, 9796, 16757, 23143
North Pacific Fishery Management Council, 3231, 4057, 5614, 7002, 7960, 9349, 10917, 13144, 15104, 18330, 22371
Pacific Fishery Management Council, 1395, 1396, 3231, 3908, 5292, 5442, 7554, 9349, 9796, 11327, 13433, 16756, 19017, 21721, 22040, 24119
Regional Fisheries Management Councils, 1506
South Atlantic Fishery Management Council, 3908, 4871, 7554, 7960, 9349, 10917, 11110, 11326, 21721
Western Pacific Fishery Management Council, 3417, 3418, 3908, 16183, 16757, 17966, 21722, 23143
Permits:
Endangered and threatened species, 2070, 5030, 5615, 9469
Experimental fishing, 2265, 11110, 22371, 23436
Foreign fishing, 15439, 24119
Marine mammals, 1657, 1813, 1814, 2070, 3418, 3419, 4198, 5030, 5614, 5615, 5814, 6682, 6683, 6859, 7002, 7223, 7224, 8944, 9348, 9470, 10139, 10140, 10553, 11110, 11692, 11894, 12801-12803, 15864, 16183, 16307, 16894, 17491, 18330, 20156, 21508, 21722, 22200, 22687, 23302, 23437
Proprietary research program; implementation, 7555
Rulemaking petitions:
Atlantic bluefin tuna fisheries, 10415
Bering Sea Fishermen's Association, 22554
GreenWorld; commercial whale watching permit regulations, 11111
Radio-Television News Directors Association et al., 16573
Whaling Commission, International:
Bowhead whales, 16574
Strike quota, 9796
Southern Hemisphere Minke Whales; Soviet Union certification termination, 15104

National Park Service

RULES
Commercial and private operations; nondiscrimination provisions, 739
Special regulations:
Upper Delaware Scenic and Recreational River, NY and PA, fishing, 3747
PROPOSED RULES
Special regulations:
Big Cypress National Preserve, FL; Indian use and occupancy, 16561
Whiskeytown-Shasta-Trinity National Recreation Area, CA; gold panning, 3759, 7466
Tax benefits; historic buildings rehabilitation, 18292
NOTICES
Agency information collection activities under OMB review, 646, 11916, 17510, 19827, 21928
Boundary establishment, descriptions, etc.:
Allegheny Portage Railroad National Historic Site, PA, 7580
Capulin Volcano National Monument, NM, 12610
George Rogers Clark National Historical Park, IN, 5838
Golden Gate National Recreation Area, CA, 12611, 12829
Santa Monica Mountains National Recreation Area, CA, 5838
Concession contract negotiations:
Adventure Bound, Inc., et al., 3083, 9820
Akers Ferry Canoe Rental, Inc., 1946
Belle Haven Marina, Inc., 7405
Best's Studio, Inc., 13332
Charlestown Navy Yard, MA; restaurant services and facilities, 13332
Circle Line-Statue of Liberty Ferry, Inc., 23315
Del Webb Recreational Properties, Inc., 13453
Devil's Mountain Lodge et al., 3793
Ellis Island, Statue of Liberty National Monument, 16791
Golf Course Specialists, Inc., 13332
H.S. Concessions, Inc., 16792
Jamaica Bay Riding Academy, Inc., 1072
Lake Mead Ferry Services, Inc., 646
Log Cabin Resort, Inc., 17118
Rock Creek Park Horse Centre, Inc., 12829
Environmental statements; availability, etc.:
Aniakchak National Monument and Preserve, AK, 18170
Bering Land Bridge National Preserve, AK, 7246, 9990
Bering Land Bridge National Preserve et al., AK, 13453
Big Cypress National Preserve, FL, 15145
Big Thicket National Preserve, TX, 15901
Cape Krusenstern National Monument, AK, 18171
Chickamauga and Chattanooga National Military Park, GA; U.S. 27 relocation, 23460
Congaree Swamp National Monument, SC, 17254
Death Valley National Monument, CA and NV, 15145
Denali National Park and Preserve, AK, 23159
Eugene O'Neill National Historic Site, CA, 9494
Gates of Arctic National Park and Preserve, AK, 11916, 15605
Glacier Bay National Park and Preserve, AK, 17255
Grand Canyon National Park, AZ, 5223
Katmai National Park and Preserve, AK, 22057
Kenai Fjords National Park, AK, 7406, 9990
Kobuk Valley National Park, AK, 22057
Lake Clark National Park and Preserve, AK, 10571, 12996, 15605
Lake Mead National Recreation Area, AZ and NV, 577
National Capital Region; gypsy moth control, 8515
National Park System Units; mineral validity examinations, 16322
Noatak National Preserve, AK, 17255
Padre Island National Seashore, TX, 18358
Potomac Greens development, George Washington Memorial Parkway, VA, 7580
Roanoke River Parkway, VA, 18171
Santa Monica Mountains National Recreation Area, CA, 3794, 12611
Sequoia-Kings Canyon National Parks, CA, 10300
Servicewide integrated pest management program, 3465
Three Sisters Lighthouse, Cape Cod National Seashore, MA, 8984
Wrangell-St. Elias National Park and Preserve, AK, 12996, 15605
Yellowstone National Park, ID, MT, and WY, 12997
Yukon-Charley Rivers National Preserve, AK, 7406, 9990
Land and water conservation fund:
State plan preparation, procedures, and eligibility; policy revision, 15747
Management and land protection plans; availability, etc.:
Middle Fork of Vermilion National Scenic River, IL, 1525
Meetings:
Acadia National Park Advisory Commission, 1947, 23316
Aniakchak National Monument Subsistence Resource Commission, 11143
Blackstone River Valley National Heritage Corridor Commission, 17119
Cape Cod National Seashore Advisory Commission, 6205, 8547, 15606
Chattahoochee River National Recreation Area Advisory Commission, 10299
Delta Region Preservation Commission, 185, 15901

Denali National Park Subsistence Resource Commission, 22738
Gates of the Arctic National Park Subsistence Resource Commission, 7580
Golden Gate National Recreation Area Advisory Commission, 3794, 9990, 20908
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 12732
Gulf Islands National Seashore Advisory Commission, 10301
Katmai National Park and Preserve, AK; fish limit, 18909
Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission, 2096, 9821, 24372
National Capital Memorial Commission, 10571, 17256, 23159
National Park System Advisory Board, 7246
San Antonio Missions Advisory Commission, 2795
Upper Delaware Citizens Advisory Council, 2096, 5838, 12612, 21529
National Historic Preservation Act; implementation:
Federal agency responsibilities; guidelines, 4727
National Park system:
Management policies; availability, 9821, 16475
National Register of Historic Places:
Annual supplement update, 18658
National Historic Landmarks; proposed boundaries, 19345
Pending nominations—
Alabama et al., 2096, 11143, 12080, 16594, 22229
Alaska et al., 5325, 9378, 10158, 12830, 17511, 18615, 24372
Arizona et al., 185, 762, 1526, 6205, 7407
Arkansas et al., 15145, 15747, 19827
California et al., 20909
Colorado et al., 4746, 23316
Florida et al., 3794
Idaho et al., 8515
Kentucky et al., 3083
National Registry of Natural Landmarks:
Annual supplement update, 10190
National Trail system:
Appalachian National Scenic Trail—Right-of-way relocation, 5471, 12830
Organization, functions, and authority delegations:
Superintendents, North Atlantic Region, 10572
Realty actions; sales, leases, etc.:
South Dakota, 16323
Recreation entrance fees; increase, 9379
World heritage properties list:
Nomination process, 1988 CY, 7247
U.S. nominations, 7247

National Railroad Passenger Corporation

RULES
Freedom of Information Act; implementation:
Confidential commercial and financial information; predisclosure notification procedures, 5581

National Science Foundation

RULES
Debarment and suspension (nonprocurement), 19161
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
PROPOSED RULES
Antarctic animals and plants, conservation:
Specially protected areas and sites of special scientific interest, 16886
Tourism guidelines; enforcement and hearing procedures, 19964
Nondiscrimination on basis of handicap in federally conducted programs and activities, 10896
Regulatory agenda, 14466
NOTICES
Agency information collection activities under OMB review, 648, 8821, 22751, 23467
Antarctic Conservation Act of 1978; permit applications, etc., 458, 1967, 4244, 5061, 10449, 23321
Committees; establishment, renewal, termination, etc.:
Advanced Scientific Computing Program Advisory Panel et al., 12482
Alan T. Waterman Award Committee, 13363
Biological, Behavioral, and Social Sciences Committees, et al., 11149
Genetic Biology Advisory Panel, 10449
Plant Science Centers Advisory Panel, 2658
Science and Engineering Education Advisory Committee, 6211
Grants; availability, etc.:
Federal demonstration project; phase II solicitation, 20697
Research experiences for undergraduates program, 21950
Undergraduate curriculum development in engineering, 4244
Young scholars projects, 16599
Meetings:
Alan T. Waterman Award Committee, 5845
Archaeology Advisory Panel, 11570
Archaeometry Advisory Panel, 9828
Astronomical Sciences Advisory Committee, 2112, 10576, 16919
Atmospheric Sciences Advisory Committee, 12482
Biochemistry Advisory Panel, 10576
Biological Facilities Center Program Advisory Panel, 4915, 16920
Biophysics Program Advisory Panel, 10577
Cell Biology Advisory Panel, 2658, 13203
Cellular Physiology Advisory Panel, 12482
Chemistry Advisory Committee, 11570
Computer and Computation Research Advisory Committee, 12484
Critical Engineering Systems Division Advisory Committee, 13203
Cultural Anthropology Advisory Panel, 6887
Decision, Risk, and Management Science Program Advisory Panel, 11570
Developmental Biology Advisory Panel, 2658, 13203
Developmental Neuroscience Program Advisory Panel, 10577
Division of Mechanics, Structures, and Materials Engineering Committee, 9829
Division of Microelectronic Information Processing Systems Advisory Committee, 967
DOE/NSF Nuclear Science Advisory Committee, 967, 13203
Earth Sciences Advisory Committee, 4246
Earth Sciences Proposal Review Panel, 6888
Ecology Advisory Panel, 8822
Economics Advisory Panel, 9828
Ecosystem Studies Advisory Panel, 6888
Electrical, Communications, and Systems Engineering Advisory Committee, 13204
Emerging Engineering Technologies Advisory Committee, 17128
Engineering Advisory Committee, 10576
Equal Opportunities in Science and Engineering Committee, 1531, 18626
Ethics and Values Studies Advisory Panel, 12483
EXPRES and Related Multimedia Electronic Communication and Collaboration Technologies Advisory Panel, 8822
Genetic Biology Advisory Panel, 15314
Geography and Regional Science Advisory Panel, 11571
Graduate Fellowship Program Review Committee, 765, 5844
History and Philosophy of Science Advisory Panel, 10577
Industrial Science and Technological Innovation Advisory Committee, 4085
Instrumentation and Instrument Development Program Advisory Panel, 15314
Integrative Neural Systems Program Advisory Panel, 8822
Interagency Arctic Research Policy Committee, 12734
International Programs Advisory Committee, 12483
Law and Social Science Advisory Panel, 10577
Linguistics Advisory Panel, 10577
Mathematical Sciences Advisory Committee, 2112, 6888
Measurement Methods and Data Improvement Advisory Panel, 17128
Metabolic Biology Panel, 9829
Microelectronic Information Processing Systems Advisory Committee, 18626
Molecular and Cellular Neurobiology Program Advisory Panel, 11571
Networking and Communications Research and Infrastructure Division Advisory Panel, 15315
Ocean Sciences Research Advisory Panel, 10578
Physical Anthropology Advisory Panel, 10578
Physics Advisory Committee, 2112, 4086, 5844, 5845, 6889, 13010
Plant Science Centers Advisory Panel, 8822, 12484, 18626
Polar Programs Advisory Committee, 4915, 23467
Political Science Advisory Panel, 11571
Population Biology and Physiological Ecology Advisory Panel, 10578
Prokaryotic Genetics Program Advisory Panel, 13204
Psychobiology Advisory Panel, 9829
Regulatory Biology Advisory Panel, 967
Science and Engineering Education Advisory Committee, 4086
Science Resources Studies Advisory Committee, 6889
Sensory Physiology and Perception Program Advisory Panel, 10578
Social and Developmental Psychology Advisory Panel, 10578
Sociology Advisory Panel, 11571
Systematic Biology Advisory Panel, 10579

Systematic Collections Advisory Panel, 8823
United States Antarctic Program Safety Review Panel, 4916, 8823, 13204
Women, Minorities, and Handicapped in Science and Technology Task Force, 4086, 8823, 12483, 15754
Meetings; Sunshine Act, 2910, 7292, 15169, 21545
Organizations, functions, and authority delegations, 15754
Presidential Young Investigator Awards; 1989 competition, 22238

National Technical Information Service

NOTICES
Inventions, Government-owned; availability for licensing, 943, 6683, 11540, 13433, 17490, 19320, 24120
Patent licenses, exclusive:
Agdia Inc., 10553
Athena Neurosciences, Inc., 5031
Bison Instruments, Inc., 23302
Bristol-Meyers/Integra Institute, 22372
Bristol-Myers Co. et al., 6180
Cetus Corp., 17744, 18949, 21547, 22372
Coulter Corp., 17491
Dow Corning Corp., 16757
Eagle Crusher Co., 17967
Ecogen, Inc., 19321, 22200
E.I. duPont deNemours & Co., 16307
Embrex Inc., 4697
ENSITE, INC., 4697
Extraction Technology Corp., 12176
Genzyme Corp., 18331
Larimer & Van Liew Associates, 22200
Liposome Co., Inc., 10415
Magainin Sciences Inc., 16757
Michigan State University, 4697
Minco Products, Inc., 18331, 21722
Molecular Oncology Inc., 16894
Molecular Vaccines Inc., 16758, 19984
Novo Laboratories, 24774
Organic Biotechnology, Inc., 24774
Research Corp. Technologies, Inc., 4697
Safe Water, Inc., 15589
Stanford University, 16574
Tri Bio Laboratories, Inc., 22200
Tri Bio Laboratories, Inc., et al., 22201
Warner-Lambert Co., 16758
Weatherford U.S., Inc., 23302
W.R. Grace & Co., 4698
Xoma Corp., 16758

National Telecommunications and Information Administration

NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities program, 10462
Meetings:
Frequency Management Advisory Council, 7224

National Transportation Safety Board

RULES
Accident/incident investigation procedures; practice rules, 15846
PROPOSED RULES
Railroad accidents notification; amendments, 11520

NOTICES
Aircraft accidents; hearings, etc.:
Homer Airport, Homer, AK; Ryan Air Services, Inc., 8824
Stapleton International Airport, Denver, CO; Continental Airlines, Inc./McDonnell Douglas, 1967
Marine accidents; hearings, etc.:
Miami, FL; engineroom fire aboard passenger vessel Scandinavian Star, 19355
Meetings; Sunshine Act, 837, 2347, 3979, 5520, 7629, 8718, 9404, 10328, 11394, 13046, 15772, 17532, 20214, 22425, 24828
Railroad accidents; hearings, etc.:
Chester, PA; Amtrak train 66 collision with on-track maintenance-of-way equipment, 9155

Navy Department

RULES
Acquisition regulations, 16280
Navigation, COLREGS compliance exemptions:
USS Fletcher, 12515
USS Juneau, 16873
PROPOSED RULES
Acquisition regulations, 3225
Privacy Act; implementation, 22027
NOTICES
Environmental statements; availability, etc.:
Electromagnetic pulse radiation environment simulator for ships (EMPRESS II), 20083
Naval Air Station, Patuxent River, MD (EMPRESS I) facility, 24122
Naval Supply Center, Oakland, CA; commercial and maritime industrial development, 7556
Naval Undersea Warfare Engineering Station, Hadlock, WA; physical facilities development program, 3232
Naval Weapons Station, Earle, NJ; family housing, 21886
Naval Weapons Station/Naval Station Treasure Island, San Francisco Bay Area, CA; family housing construction, 4445
Inventions, Government-owned; availability for licensing, 3232, 7387, 15869, 16894
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 1659, 3422, 4445, 4446, 4872, 7387, 7388, 8244, 9472, 12581, 12582, 13145, 19022, 19023
Naval Academy, Academic Advisory Board to Superintendent, 11329
Naval Academy, Board of Visitors, 7388
Naval Postgraduate School, Board of Advisors to Superintendent, 11329
Naval Research Advisory Committee, 1659, 3422, 4873, 6684, 7388, 8244, 9472, 11329, 12804, 13145, 19023, 19986, 21512, 21723, 21887, 23147
Navy Resale System Advisory Committee, 12804
Special Nevada Report, 15272, 17534
Navy affirmative salvage services; per diem rates, 4700
Patent licenses, exclusive:
SOFEC, Inc., 7388
Privacy Act; systems of records, 17240, 21512

Neighborhood Reinvestment Corporation

NOTICES
Meetings; Sunshine Act, 1888, 2910, 9405, 16836, 23166, 23849

Nuclear Regulatory Commission

RULES
Byproduct material; medical use:
Diagnostic misadministration report form, 21627
Environmental protection regulations for domestic licensing, etc.:
Telephone numbers for environmental inquiries; revision, 13399
Fees; access authorization for licensee personnel, 21979
Freedom of Information Act; implementation:
Miscellaneous amendments, 17688
Organization, functions, and authority delegations, 1744, 6137
Nuclear Material Safety and Safeguards Office et al.; relocation, 4109
Personal delivery of communications, additional address, 17915
Region I office; address change, 3861
Plants and materials; physical protection:
Security personnel; physical fitness qualifications, 403
Practice rules:
Domestic licensing proceedings—
Enforcement actions; policy and procedure; policy statement, 9429
Ex parte communications, separation of functions applicable to formal adjudicatory proceedings, etc., 10360
Production and utilization facilities; domestic licensing:
Backfitting process for power reactors; safety requirements, economic costs, etc., 20603
Codes and standards for nuclear power plants; ASME light-water-cooled plant components code, etc., 16051
Commercial nuclear power plants and other nuclear production or utilization facilities; cooperation with States; policy statement, 21981
Nuclear facilities, decommissioning, 24018
Generic environmental statement availability, 24679
Nuclear power plants—
Licensing where State and/or local governments decline to cooperate in offsite emergency planning; correction, 8845
Maintance; policy statement, 9430
Severe reactor accident, 18260
Station blackout, 23203
Retention periods for records regarding future designs and existing plants; policy statement, 19240
Correction, 23382
PROPOSED RULES
Byproduct material; medical use:
GENE-TRAK Systems salmonella and listeria pathogen testing in food products; phosphorus-32 (100 microcuries) exemption, 2853
Training and experience criteria, 18845
Fee schedules revision, 24077

Financial protection requirements and indemnity agreements:
Facility form nuclear liability insurance policy; miscellaneous amendments, 15049
Industrial radiographic equipment; safety requirements, 8460, 18096
National Environmental Policy Act; implementation, 16131
Plant and material; physical protection:
Nuclear power plant access authorization program; policy statement, 7534
Practice rules:
Domestic licensing proceedings—
Geologic repository for disposal of high-level radioactive waste; negotiated rulemaking advisory committee, 415, 3404, 6666, 11310, 14811, 20335
Production and utilization facilities; domestic licensing:
Inspectors, licensee announcements, 8924
Leak-before-break technology, 11311
Light-water-cooled nuclear power plants; leakage rate testing for containments, alternative method, 5985
Nuclear power plants—
Access authorization program; policy statement, 7534
Fuel loading and initial low-power operations; emergency planning and preparedness requirements, 16435, 19930
Maintenance, 20856
Radioactive material; packaging and transportation:
International Atomic Energy Agency compatibility, 21550
Correction, 23484
Radioactive waste, licensing requirements for land disposal:
"Greater-than-Class-C" low-level radioactive wastes, 17709
Radioactive waste, low-level; emergency access to non-Federal and regional disposal facilities; criteria and procedures; correction, 1926
Regulatory agenda, 14692
Quarterly report, 7534
Rulemaking petitions:
Alabama, Public Health Department, 10252
Izaak Walton League of America et al.; Porter County Chapter, 12425
Union Carbide Corp., 13128
University of Missouri, 6159
Uranium enrichment facilities; licensing, 13276
NOTICES
Abnormal occurrence reports:
Periodic reports to Congress, 12616, 12734
Quarterly reports to Congress, 11571, 11575
Agency information collection activities under OMB review, 4792, 6211, 8519, 8520, 17991, 21540, 23160, 24382
Committees; establishment, renewal, termination, etc.:
Nuclear Safety Research Review Committee, 1423
Nuclear Waste Advisory Committee, 14872
Environmental statements; availability, etc.:
All Chemical Isotope Enrichment, Inc., 15315, 15317
Amax, Inc., 8521
Arkansas Power & Light Co., 7268
Atlas Minerals Corp., 7449
Babcock & Wilcox Co., 5481
Boston Edison Co., 12484
Carolina Power & Light Co., 1690, 2551, 11576, 22751
Carolina Power & Light Co. et al., 18627, 24817
Cleveland Electric Illuminating Co. et al., 1871
Commercial light water power reactors; extended burnup fuel use, 6040
Commonwealth Edison Co., 7064, 8520, 8522, 8824, 10579, 11922, 17995, 18361, 20939
Consumers Power Co., 17128
Dairyland Power Cooperative, 7994, 11361, 17280
Detroit Edison Co. et al., 12616
Duke Power Co., 17991
Duke Power Co. et al., 19059, 19355
Florida Power & Light Co., 7065, 12203, 13204
Florida Power & Light Co. et al., 5845
Florida Power Corp., 12836
General Public Utilities Nuclear Corp., 15160, 15608, 20195
General Public Utilities Nuclear Corp. et al., 12617
Georgia Power Co., 4472
Georgia Power Co. et al., 2659, 9829, 16603, 20393
Illinois Power Co. et al., 8825
Iowa Electric Light & Power Co. et al., 22588
Long Island Lighting Co., 17992
Maine Yankee Atomic Power Co., 24383
Malapai Resources Co., 12090
Memphis State University, 2112
Mobil Oil Corp., 4246, 14872
Northeast Nuclear Energy Co. et al., 765, 3801, 7065, 13454
Northern States Power Co., 19831
Pennsylvania Power & Light Co., 10308, 13455, 17993
Philadelphia Electric Co., 970
Public Service Co. of Colorado, 22239
Public Service Co. of New Hampshire, 18362
Public Service Electric & Gas Co. et al., 8289
Sacramento Municipal Utility District, 23322
Sequoyah Fuels Corp., 459
Southern California Edison Co. et al., 21742, 23468
Tennessee Valley Authority, 8521, 23706
Toledo Edison Co. et al., 5061, 18627, 22588
Union Electric Co., 5331
Virginia Electric & Power Co., 5659, 16479
Virginia Electric & Power Co. et al., 10002, 14873
Washington Public Power Supply System, 11577, 18939, 21743
Washington Public Power Supply System et al., 16799
Westinghouse Electric Corp., 2113
Wisconsin Electric Power Co., 11923
Wisconsin Public Service Corp. et al., 11155
Yankee Atomic Electric Co., 17283, 21743, 22752
Export and import license applications for nuclear facilities or materials, 1423, 16800, 20704, 20923
Generic letters arrangements with Government Printing Office for purchasing service, 22753
Meetings:
Nuclear Safety Research Review Committee, 4087, 17995
Nuclear Waste Advisory Committee, 20699, 22239
Proposed schedule, 22241
Reactor Safeguards Advisory Committee, 834, 835, 971, 1082, 1871, 1968, 2114, 2659, 2894, 3475, 5332, 6043, 6211, 6714, 7269, 8290, 9014, 9015, 9717, 10309, 10449, 12734, 13036, 13363, 13364, 14873, 16479, 16800, 16801, 17283, 17774, 17776, 18363, 18628, 19061, 19356, 19831, 20037, 21541, 22753, 24157, 24531
Proposed schedule, 1423, 5482, 9384, 12735, 17774, 22241
Strategic special nuclear material; fuel facilities possessing formula quantities safeguards requirements; guidance, 972
Three Mile Island Unit 2 Decontamination Advisory Panel, 9386, 17129, 24532
Meetings; Sunshine Act, 302, 837, 1701, 2146, 3116, 3979, 4931, 5520, 6731, 7464, 8545, 9405, 10328, 10583, 11160, 12098, 12864, 15168, 15772, 16613, 17532, 18654, 20064, 20937, 22265, 23339, 24398
Nuclear Waste Policy Act:
High-level waste program; toll free telephone recording change, 2302
Spent nuclear fuel storage and disposal; nonnuclear weapon states; technical assistance update, 11398
Nuclear waste transportation:
Notification to Governor's designees; list, 24818
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 817, 2305, 3951, 5484, 7583, 9498, 11361, 13010, 15905, 17776, 20038, 22396, 24505
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
High-Level Waste Geologic Repository Site, TX, 8709
High-Level Waste Geologic Repository Site, Yucca Mountain, NV, 4473
NRC Commission level offices relocation, 13036
NRC Headquarters offices relocation, 10449
Nuclear Material Safety and Safeguards Office et al.; relocation, 1531
Nuclear Reactor Regulation Office; relocation, 2660
Region I office; address change, 972
Petitions; Director's decisions:
Arizona Public Service Co. et al., 9526
Arizona Public Service Corp., 23323
Babcock & Wilcox, 765
Cleveland Electric Illuminating Co., 21954
Cleveland Electric Illuminating Co. et al., 7615
Detroit Edison Co., 13456
Houston Lighting & Power Co., 9830, 23819
Sacramento Municipal Utility District, 10310, 11156
South Texas Project, Unit 1, 7449
Tennessee Valley Authority, 22396
Wolf Creek Nuclear Operating Corp., 22061
Regulatory guides; issuance, availability, and withdrawal, 458, 459, 10957, 17520, 21539, 21540, 23323
Reports; availability, etc.:
Anticipated and unanticipated processes and events, determination guidance; draft generic technical position, 6040
High-level waste geologic repository program; items and activities subject to quality assurance; technical position, 19060

Inactive uranium mill tailings facilities; EPA groundwater protection standards compliance; technical position, 23469
Low-level radioactive waste disposal facility; license applications, 9155
Naturally occurring and accelerator-produced radioactive materials, 11923
Safeguards events reporting, 5483
Safety implications of control in LWR nuclear power plants; evaluation, 19356
Seismic design criteria, 20038
Standard review plan—
Branch technical position, 1968
Uranium mills facilities; alternate concentration limits; draft technical position, 24820
Safety analysis and evaluation reports; availability, etc.:
Tennessee Valley Authority, 19357
Senior Executive Service:
Performance Review Board; membership, 23470
Applications, hearings, determinations, etc.:
Acosta, Maurice P., Jr., 24383
Alabama Power Co., 19061, 20700
All Chemical Isotope Enrichment, Inc., 15315, 15317, 16480, 17804
Arizona Public Service Co. et al., 12736
Arkansas Power & Light Co., 767, 968, 1692, 3278, 4473, 8826
Babcock & Wilcox Co., 7063
Baltimore Gas & Electric Co., 12618, 15476
Beckley Appalachian Regional Hospital, 8523
Boston Edison Co., 13205, 17804, 20702
BP Oil, Inc., 7450
Butcher, Kermit, 4474
Carolina Power & Light Co., 3280, 5062, 5483, 17996, 23324, 24157, 24384
Cleveland Electric Illuminating Co. et al., 2661, 3475, 4475, 5062, 9386, 19068, 19832, 22589, 22590, 24532
Commonwealth Edison Co., 2552, 2553, 3091, 6715, 9830, 12485, 13037, 15319, 15755, 17129, 19357, 21744, 22242
Connecticut Yankee Atomic Power Co., 2895
Consolidated Edison Co. of New York, Inc., 15476, 24533
Consumers Power Co., 11150, 17994, 19834
Dairyland Power Cooperative, 2662, 11150, 11718
Detroit Edison Co. et al., 7818, 9831, 11151, 13364, 15476, 16801, 17130, 17281
Duke Power Co., 1532, 7819, 10957, 13037, 13206, 15478, 20196, 20394, 21954
Duke Power Co. et al., 1531, 4793, 14874, 18181, 20395, 22061, 22396
Duquesne Light Co. et al., 459, 1968, 2896, 5484, 10003
Edward Hines, Jr., Medical Center, 5660, 7821
Finlay Testing Laboratories, Inc., 89, 835, 2895, 6043, 11385, 12738, 16802
Florida Power & Light Co., 5661, 8527, 9156, 12203, 14875, 16920, 17805, 19357, 20197, 24534
Florida Power Corp., 15319
Florida Power Corp. et al., 1082, 9386
Froehling & Robertson, Inc., 12206
Gamma Diagnostic Laboratories, Inc., 23325
General Public Utilities Nuclear Corp., 3475, 15756, 20396, 22062
General Public Utilities Nuclear Corp. et al., 4795, 13456, 15160, 18629, 19069, 20702, 23470
Georgia Institute of Technology, 2663, 9718
Georgia Power Co. et al., 3965, 10450, 10959, 12485, 15930, 17805, 20397, 20398
Gulf States Utilities Co., 1691, 17131
H&G Inspection Co., Inc., 12620, 19835
Hospital Metropolitano, 22244
Houston Lighting & Power Co., 23707
Houston Lighting & Power Co. et al., 10176
Illinois Power Co., 3092, 3966, 4475–4478, 4916–4920, 19359, 22246
Illinois Power Co. et al., 9719, 24385
Indiana Michigan Power Co., 4796, 8528
Iowa Electric Light & Power Co. et al., 15931, 18022
Joslin Diabetes Center, Inc., 24158
Kansas Gas & Electric Co. et al., 20197
Log-Tec, 7064
Long Island Lighting Co., 835, 1870, 12622, 16204, 21955
Maine Yankee Atomic Power Co., 15479
Memphis State University, 3646
Minnesota Mining & Manufacturing Co., 5661–5666, 16480, 19071
Mississippi Power & Light Co. et al., 460, 2302
Nebraska Public Power District, 6212
Niagara Mohawk Power Corp., 12622, 24535
Northeast Nuclear Energy Co., 1692, 10451, 10960
Northeast Nuclear Energy Co. et al., 87, 766, 6715, 7066, 11578, 16326
Northern States Power Co., 6716, 9832, 12209, 21747
Omaha Public Power District, 9015, 19360, 19835
Osage Wireline Service, 21747
Pacific Gas & Electric Co., 586, 8709, 17805, 20199, 23708
Pacific Power & Light Co. et al., 18183
Pennsylvania Power & Light Co., 9387, 12090, 16604, 20400
Pennsylvania Power & Light Co. et al., 2554, 7995, 12625
Philadelphia Electric Co., 16803, 23470
Philadelphia Electric Co. et al., 12210
Portland General Electric Co., 17807
Precision Materials Corp., 4798
Public Service Co. of Colorado, 13457, 16481, 18183, 24160
Public Service Co. of New Hampshire, 18632, 19361
Public Service Co. of New Hampshire et al., 1871, 2664, 13207
Public Service Electric & Gas Co. et al., 972, 3967, 9527
Radiation Sterilizers, Inc., 4479
Radiology & Nuclear Medicine, Inc., 17808
Riverton Memorial Hospital-Health Trust, Inc., 21956
Sacramento Municipal Utility District, 768
Sequoyah Fuels Corp., 4798
Southern California Edison Co. et al., 4247, 10452, 17282, 17809, 23820
St. Louis University, 16482
System Energy Resources, Inc., et al., 15609
Tennessee Valley Authority, 1082, 1970, 9833
Texas Utilities Electric Co. et al., 16484, 19071
Toledo Edison Co. et al., 294, 295, 2303, 7067, 8707, 9527, 9834, 15757–15759, 15932, 16920, 18630, 18631, 19071, 20704, 24535
Union Electric Co., 11386, 18187
University of California, Berkeley, 7823, 17284
University of Virginia, 8528
Vermont Yankee Nuclear Power Corp., 2114, 2115, 6889, 8708, 19361, 19836
Virginia Electric & Power Co., 3093, 5333, 6890, 10003, 10005, 11152, 12210, 15760, 16921, 17520, 18364, 19072, 20038
Washington Public Power Supply System, 7269, 7270, 8291, 11154, 12836, 16204, 16604, 16605, 17810, 20200, 23328
Westinghouse Electric Corp., 3646
Wisconsin Electric Power Co., 19837
Wisconsin Power & Light Co. et al., 1692
Wisconsin Public Service Corp., 4479, 5684, 18365
Wrangler Laboratories et al., 7452
Yankee Atomic Electric Co., 8826–8828, 14876, 15933, 20704

Occupational Safety and Health Administration

RULES
Construction safety and health standards:
Concrete and masonry construction, 22612
Hazard communication—
Reporting and recordkeeping requirements, 15033
Longshoring safety and health standards:
Hazard communication—
Reporting and recordkeeping requirements, 15033
Marine terminals:
Hazard communication—
Reporting and recordkeeping requirements, 15033
Safety and health standards:
Equipment and materials; testing or certification, 12102
Correction, 16838
Ethylene oxide; occupational exposure, 11414
Formaldehyde; occupational exposure, 6628
Grain handling facilities, 17695
Hazard communication—
Reporting and recordkeeping requirements, 15033
Mechanical power presses; presence sensing device initiation, 8322
Testing laboratories accreditation:
Equipment and materials, testing or certification, 12102
Correction, 16838
PROPOSED RULES
Construction safety and health standards:
Excavations, 5280
Fall protection, 2048
Scaffolds, 2048
Stairways and ladders, 2048
Longshoring safety and health standards:
Lead; occupational exposure, 11511, 16731
Marine terminals:
Lead; occupational exposure, 11511, 16731
Safety and health standards:
Air contaminants, 20960
Electrical safety-related work practices, 21694
Correction, 2047
Ethylene oxide; occupational exposure, 1724
Hazardous energy sources control (lockout/tagout), 15496
Lead; occupational exposure, 11511, 16731
Shipyard employment safety and health standards:
Lead; occupational exposure, 11511, 16731
NOTICES
Committees; establishment, renewal, termination, etc.:
Construction Safety and Health Advisory Committee, 4243
Meetings:
Construction Safety and Health Advisory Committee, 8819
Occupational Safety and Health Federal Advisory Council, 23318
Occupational Safety and Health National Advisory Committee, 22750
Safety and health standards:
Voluntary protection programs; Try Program name change to Merit Program, 2101
State plans; standards approval, etc.:
Alaska, 20389
Arizona, 10303
Iowa, 8703, 8704
Maryland, 20390, 21937
Nevada, 12833, 12844
New Mexico, 10168
North Carolina, 21937
Oregon, 8705, 12844, 20391
Virginia, 8706
Washington, 10169
Wyoming, 20392, 21938
Variance applications, etc.:
Doe Run Co., 20912

Occupational Safety and Health Review Commission

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 17929

Office of Independent Counsel

See Independent Counsel Office

Office of Management and Budget

See Management and Budget Office

Office of United States Trade Representative

See Trade Representative, Office of United States

Overseas Private Investment Corporation

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 11992
PROPOSED RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 5583
NOTICES
Agency information collection activities under OMB review, 3947
Meetings; Sunshine Act, 990, 18655

Pacific Northwest Electric Power and Conservation Planning Council

NOTICES
Power plan amendments:
Columbia River Basin fish and wildlife program, 16327, 23472
Northwest conservation and electric power plan, 23472

Packers and Stockyards Administration

PROPOSED RULES
Antibiotic and sulfa residues in slaughter animals; economic responsibility for violative residues from packer to producer, 18572
NOTICES
Central filing system; State certifications:
Idaho, 15722
Louisiana, 15722, 24755
New Mexico, 158
Stockyards; posting and deposting:
Barrett Livestock Barn, CA, et al., 4696
Limestone Co. Feeder Pig Association, Inc., AL, et al., 1931
Louisiana Horse Palace, Inc., LA, et al., 19977
Pacific Livestock Auction, AZ, et al., 19978

Panama Canal Commission

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 16256
National security information program; implementation, 7894
Shipping and navigation:
Preference in transit schedulings and order of transiting vessels, etc., 15384
Vessels, general provisions; maximum overall lengths, 12516
PROPOSED RULES
Regulatory agenda, 14494
Vessels, general provisions; maximum overall lengths, 4424
NOTICES
Agency information collection activities under OMB review, 13365
Privacy Act; system of records, 12498

Parole Commission

NOTICES
Meetings; Sunshine Act, 8718, 8719, 11589, 12495, 24828

Patent and Trademark Office

RULES
Mask works, international protection:
Semiconductor Chip Protection Act; Presidential proclamation implementation, 24444
Patent cases:
Patent interference proceedings, 23728
Patent term extension; technical amendments, 16413
Practice rules; correction, 13120
PROPOSED RULES
Mask works, international protection:
Semiconductor Chip Protection Act; Presidential proclamation implementation, 5588
Patent cases:
Government employees; rules governing admission, 20871
Miscellaneous amendments, 16522
NOTICES
Committees; establishment, renewal, termination, etc.:
Trademark Affairs Public Advisory Committee, 16308
Electronic data dissemination policies and guidelines, 23677, 24830
Mask works; interim protection for nationals, domiciliaries, and sovereign authorities:
Extension of 1985 interim orders, 16308
Meetings:
Patents and Trademarks Advisory Committee, 2619, 15723
Trademark Affairs Public Advisory Committee, 1055, 15439

Peace Corps

RULES
Freedom of Information Act; implementation: Uniform fee schedule and administrative guidelines, 8178
PROPOSED RULES
Regulatory agenda, 14498
NOTICES
Agency information collection activities under OMB review, 3802, 5234, 11924, 23709

Pennsylvania Avenue Development Corporation

RULES
Freedom of Information Act; implementation: Confidential commercial or financial information; predisclosure notification procedures, 10374
PROPOSED RULES
Freedom of Information Act; implementation: Confidential commercial or financial information; predisclosure notification procedures, 6012
Regulatory agenda, 14500
NOTICES
Meetings, 6718, 7630, 19838
Parks and plazas; special use applications, 7271, 17997

Pension and Welfare Benefits Administration

RULES
Employee Retirement Income Security Act: Plan assets defined, 17628
PROPOSED RULES
Employee benefit plans:
Broker-dealers and investment advisors; bonding requirements exemption, 11886
Prohibited transaction exemptions, 24422
Employee Retirement Income Security Act:
Adequate consideration definition, 17632
Loans; plan participants and beneficiaries who are parties in interest, 1798, 11886
Federal Employees' Retirement System Act:
Adequate consideration; definition, 17632
NOTICES
Agency information collection activities under OMB review, 20035
Employee benefit plans; class exemptions:
Individual retirement accounts and authorized purchasers of American Eagle coins; transactions, 10169
Residential mortgage financing arrangements; prohibited transaction exemption amendments, 24811
Employee benefit plans; prohibited transaction exemptions:
Alliance Capital Management Corp., 13344
AmeriTrust Co. et al., 18920

Bell Atlantic Master Trust et al., 23810
Carlisle Motors, Inc., et al., 7062
Carpenters Pension Trust for Southern California et al., 13345
Central States, Southeast, & Southwest Areas Pension Fund, et al., 810
Chattanooga Electrical Joint Apprenticeship & Training Trust Fund et al., 2102
Craig Supply Co., Inc., et al., 5224, 17122
Edgewater Associates et al., 7440
First Atlanta Corp., 18928
Getter Trucking, Inc., et al., 13361
Jim W. Miller Construction, Inc., et al., 815
Modern Display Service, Inc., et al., 11354
Orchard, Hiltz & McCliment, Inc., et al., 9002, 21946
Pension Mortgage Trust Program et al., 23812
Philip Specialty Co. et al., 2104, 9826
Spencecliff Corp. et al., 21939
Telephone Real Estate Equity Trust et al., 20913
Transco Energy Co. et al., 18936
Quevado Properties, Ltd., et al., 18929
Tupelo Anesthesia Group, P.A., et al., 11359
Wake Surgical Consultants, Inc., et al., 20035
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 4791, 5480, 9497, 11921, 15753, , 17126, 18626, 23319, 23705

Pension Benefit Guaranty Corporation

RULES
Multiemployer plans:
Late premium payments and employer liability underpayments and overpayments; interest rates, 10530
Premiums payment, 24906
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 1018, 4137, 8455, 12514, 17026, 22298
Withdrawal liability; notice and collection; interest rates, 10531
Single-employer plans:
Late premium payments and employer liability underpayments and overpayments; interest rates, 10530
Pension Protection Act—
Premium plans (new Form 1-ES), 1904
Single-employer plan terminations, 1904
Premiums payment, 24906
Valuation of plan benefits—
Interest rates and factors, 4135, 8454, 9024, 17025
PROPOSED RULES
Regulatory agenda, 14504
NOTICES
Agency information collection activities under OMB review, 1873, 4481, 6718, 12211
Multiemployer plans:
Premium due dates, 1907
Single-employer plans:
Premium due dates, 1907

Personnel Management Office

RULES
Absence and leave:
Temporary leave transfer program, 7325, 14775
Correction, 8301, 10036
Adverse actions:
Other than full-time career employment, 21619
Combined Federal Campaign; solicitations of Federal civilian and uniformed personnel for contributions to private voluntary organizations, 19146
Conflict of interests, 13097
Employment:
Veterans readjustment appointments; temporary and term employment, 20807
Excepted service:
Cooperative education program students; conversion, etc., 15353
Federal Employees Group Life Insurance:
Coverage continuation during military service, 19743
Health benefits, Federal employees:
Expanded enrollment opportunity, 15354
Impaired patient-provider relationships, I
Medically underserved areas; 1988 list, 860
Pay administration:
Back pay; interest, 18071
Fair Labor Standards Act, exemption criteria, 1331, 1739
Physicians comparability allowances, 8141, 24011
Privacy Act; implementation, 1997
Restoration to duty from military service or compensable injury, 857
Retirement:
Career civilian FAA employees' retirement coverage continuation following airport lease to Metropolitan Washington Airports Authority, etc.; redesignation, 10055
Federal Employees Retirement System—
Basic annuity; alternative forms of annuity, 11633
Death benefits; annual pay computation for less than full-time employees, 16535
Survivor benefits, 6555
PROPOSED RULES
Absence and leave:
Annual leave forfeiture; agency official designation for approval, 16554
Combined Federal Campaign; solicitations of Federal civilian and uniformed personnel for contributions to private voluntary organizations, 4631
Employment:
Agency authority to approve various personnel actions; delegation agreements, 13124
Federal Government employment assessment procedures, 23123
Selective Service System registration; failure to register determination; authority delegation, 15400
Excepted service:
Cooperative education program students; conversion, 1789
Federal Employees Group Life Insurance:
Coverage continuation during retirement, 5984
Health benefits, Federal employees:
Coverage continuation during military service, 7763
cContinuation coverage during retirement, 5984
Medically underserved areas, 898
Medical qualification determinations, 9121
Pay under General Schedule:
Agency authority to approve various personnel actions; delegation agreements, 13124
District of Columbia Government employees; superior qualifications appointments; eligibility, 4986
Qualification requirements:
Cooperative education program students; sons and daughters restriction, 1789
Recruitment, selection, and placement:
Reemployment priority list, 408
Regulatory agenda, 14476
NOTICES
Agency information collection activities under OMB review, 190, 2116, 7454, 10177, 12626, 12837, 15934
Airway science curriculum; demonstration project, 16484
Combined Federal Campaign; timetable for 1988 FY, 19157
Excepted service:
Schedules A, B, and C; positions placed or revoked—
Update, 2116, 5333, 10177, 14877, 18632, 24386
Health benefits, Federal employees:
Program alternatives and reform; hearing, 24821
Meetings:
Federal Prevailing Rate Advisory Committee, 1872, 5063, 17522, 22592
Privacy Act systems of records, 2118
Seal, official agency, 8530
Senior Executive Service:
Career reserved positions; list, 9028
Performance Review Board; membership, 8530

Physician Payment Review Commission

NOTICES
Meetings, 3280, 7067, 24537

Postal Rate Commission

RULES
Practice and procedure rules:
Domestic Mail Classification Schedule—
Rate and fee changes, 15385
Domestic mail classification schedule change; money order sale limitations, 23107
PROPOSED RULES
Practice and procedure rules:
Express mail rates; rulemaking petition, 16885, 23776
NOTICES
Domestic mail classification and rate schedules:
Second-class eligibility, 24388
Meetings; Sunshine Act, 596, 1102, 1889, 2146
Post office closings; petitions for appeal:
Rago, KS, 19838
Willow Island, WV, 23329
Visits to facilities, 23161

Postal Service

RULES
Conduct on postal property:
Authority citation; correction and update, 126
Domestic Mail Manual:
Carrier route presort information mandatory updates, 3585
Mail bearing permit imprints; postage deficiency, 124, 6985
Mailer endorsement specifications for requesting ancillary service, 16258
Miscellaneous amendments, 18556, 21820
Postage meters; unauthorized use, 5270

Rates, fees and classification changes; implementation, 9888
Second-class mail; postage deficiency, 125, 6985
Table of contents update, 19299
International Mail Manual:
Miscellaneous amendments, 24068
Correction, 24830
Organization and administration:
Miscellaneous organizational changes; correction, 2495
Practice and procedure rules:
Disposition of mail withheld from delivery, 4849
Mail withheld from delivery, 1780
Stolen mail matter and property acquired by Postal Inspection Service for use as evidence; disposition, 6986
Procurement Manual establishment; Postal Contracting Manual replacement; incorporation by reference, 24265
PROPOSED RULES
Domestic Mail Manual:
Etiologic nonmailability agents, 23775
Indemnity claims; sampling process use, 19001
Mail disputes, 11685
Mailer endorsement specifications for requesting ancillary services, 5593
Manifest mailing system standardization, 18101
Postage meters; unauthorized use, 5282
Second-class publications; supplements and enclosures, 6837, 9334
Practice and procedure rules:
Stolen mail matter and property acquired by Postal Inspection Service for use as evidence, disposition, 2236
NOTICES
Domestic mail classification and rate schedules:
Postal money orders; imposition of restrictions, 22753
Environmental statements; availability, etc.:
New York City General Mail Facility, NY, 7454
International postal rates and fees:
Final changes, 12627
Proposed changes, 6892, 10007
Inventions, Postal Service-owned; availability for licensing, 9836
Meetings; Sunshine Act, 96, 838, 1889, 2145, 2668, 3661, 5683, 8545, 10034, 10035, 11000, 12746, 13215, 15169, 19366, 22070, 24829
Postal rates, fees, and mail classifications; changes, 10014
Privacy Act:
Computer matching programs, 9016, 10310, 20055, 21542, 21958
Systems of records, 1533, 8530

Presidential Commission on the Human Immunodeficiency Virus Epidemic

NOTICES
Meetings, 2555, 4482, 6213, 7616, 9017, 10579, 12091, 12837, 13208, 15480, 18366

Presidential Documents

PROCLAMATIONS
Generalized System of Preferences:
Amendments (Proc. 5787, 5805), 11031, 15785
Imports and exports:
Cheese imports from Portugal (Proc. 5832), 23199
Panama; U.S. trade sanctions (Proc. 5779), 9850
Panama; suspension of entry of officials of Noriega/Solis Palma regime (Proc. 5829), 22289
Special observances:
Actors' Fund of America Appreciation Month (Proc. 5784), 10519
Afghanistan Day (Proc. 5778), 9425
Agriculture Day, National (Proc. 5777), 9420
American Heart Month (Proc. 5762), 1980
American Red Cross Month (Proc. 5764), 2814
Arbor Day, National (Proc. 5804), 15647
Asian/Pacific American Heritage Week (Proc. 5807), 16235
Baltic Freedom Day (Proc. 5831), 22463
Cancer Control Month (Proc. 5781), 10514
Challenger Center Day, National (Proc. 5763), 2719
Child Abuse Prevention Month, National (Proc. 5802), 15643
Child Care Awareness Week, National (Proc. 5792), 12365
Child Passenger Safety Awareness Week, National (Proc. 5770), 4105
Consumers Week, National (Proc. 5765), 3183
Crime Victims Week (Proc. 5797), 13094
Dairy Goat Awareness Week, National (Proc. 5834), 23377
Defense Transportation Day and Week, National (Proc. 5811), 16377
Dennis Chavez Day (Proc. 5790), 11811
Department of Commerce Day (Proc. 5774), 7323
Digestive Disease Awareness Month, National (Proc. 5808), 16237
Drinking Water Week, National (Proc. 5809), 16239
Education Day, U.S.A. (Proc. 5782), 10516
Fair Housing Month (Proc. 5783), 10517
Father's Day (Proc. 5810), 16241
Fishing Week, National (Proc. 5817), 16857
Flag Day and Flag Week, National (Proc. 5824), 17683
Former Prisoners of War Recognition Day, National (Proc. 5788), 11489
Foster Care Month, National (Proc. 5820), 17007
Freedom of Information Day (Proc. 5776), 8863
Gaucher's Disease Awareness Week (Proc. 5796), 12673
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 5780), 10239
Javits-Wagner-O'Day Act, 50th anniversary (Proc. 5835), 24435
Jewish Heritage Week (Proc. 5798), 13235
John Muir Day (Proc. 5794), 12369
Just Say No Week (Proc. 5818), 17003
Know Your Cholesterol Month, National (Proc. 5785), 10521
Law Day, U.S.A. (Proc. 5799), 13237
Lithuanian Independence Day (Proc. 5772), 4375
Loyalty Day (Proc. 5803), 15645
Maritime Day, National (Proc. 5816), 16856
Martin Luther King, Jr., Day (Proc. 5760), 855
Mother's Day (Proc. 5801), 15347
NHS-NeighborWorks Week, National (Proc. 5828), 19215
Older Americans Abuse Prevention Week, National (Proc. 5812), 16530
Older Americans Month (Proc. 5821), 17009
Organ and Tissue Donor Awareness Week, National (Proc. 5800), 14773
Osteoporosis Prevention Week, National (Proc. 5819), 17005
Pan American Day and Pan American Week (Proc. 5793), 12367
Prayer for Peace, Memorial Day (Proc. 5826), 18814
Prayer, National Day of (Proc. 5767), 3327
Productivity Improvement Week, National (Proc. 5791), 11813
Public Service Recognition Week (Proc. 5813), 16532
Recycling Month, National (Proc. 5830), 22461
Run to Daylight Day (Proc. 5786), 10523
Rural Health Awareness Week, National (Proc. 5825), 18543
Safe Boating Week, National (Proc. 5815), 16689
Safe Kids Week, National (Proc. 5823), 17447
Sanctity of Human Life Day, National (Proc. 5761), 1464
Save Your Vision Week (Proc. 5771), 4373
Scleroderma Awareness Week, National (Proc. 5833), 23201
Small Business Week (Proc. 5766), 3185
Student-Athlete Day, National (Proc. 5789), 11809
Stuttering Awareness Week, National (Proc. 5795), 12671
Take Pride in America Month (Proc. 5827), 19213
Tourism Week, National (Proc. 5768), 3573, 3807
Trauma Awareness Month, National (Proc. 5806), 15793
Tuberous Sclerosis Awareness Week, National (Proc. 5822), 17167
Visiting Nurse Associations Week, National (Proc. 5773), 4953
Women in Sports Day, National (Proc. 5769), 3573
Women's History Month (Proc. 5775), 7723
World Trade Week (Proc. 5814), 16533
EXECUTIVE ORDERS
Central American peace assistance; authority delegation (EO 12634), 11041
Code of Conduct for Members of Armed Forces; amendments (EO 12633), 10355
Committees; establishment, renewal, termination, etc.:
Employment of People With Disabilities, President's Committee (EO 12640), 16996
Foreign Intelligence Advisory Board, President's (EO 12624), 489
President's Commission on Privatization; continuation (EO 12627), 6553
President's Council on Integrity and Efficiency (EO 12625), 2812
Railroad labor dispute; emergency board (EO 12636), 13239
Working Group on Financial Markets (EO 12631), 9421
EURATOM; U.S. cooperation (EO 12629), 7875
Federal Labor-Management Relations Program; exclusions (EO 12632), 9852
Foreign relations, assistance, amendments to Executive Order 12163 (EO 12639), 16691

Government employees:
Pay and allowances; adjustment of certain rates (EO 12622), 222
Productivity improvement program (EO 12637), 15349
Inter-American Convention on Letters Rogatory and Additional Protocol; implementation; authority delegations (EO 12638), 15649
John C. Stennis Space Center; designation (EO 12641), 18816
Nicaraguan democratic resistance; U.S. assistance; authority delegation (EO 12623), 487
Organization, functions, and authority delegations:
National Defense Stockpile Manager (EO 12626), 6114
Panama; prohibition of certain transactions (EO 12635), 12134
Property rights; Federal policymaking criteria (EO 12630), 8859
Public international organizations; designation:
Red Cross International Committee (EO 12643), 24247
United Nations Industrial Development Organization (EO 12628), 7725
Uniformed and Overseas Citizens Absentee Voting Act; Défense Secretary designation (EO 12642), 21975

ADMINISTRATIVE ORDERS

Alaska natural gas; foreign exports (Presidential Finding of January 12, 1988), 999
Anti-Drug Abuse Act; authority delegation (Memorandum of January 27, 1988), 3571
Anti-Drug Abuse Act; certifications (Presidential Determination No. 88-10 of February 29, 1988), 11487
Antigua and Barbuda, U.S. diplomatic consular mission; nonclosure determination (Presidential Determination No. 88-9 of February 9, 1988), 5749
BIGEYE Binary Chemical Bomb; production facilities certification (Presidential Determination No. 88-7 of January 19, 1988), 3845
China; Eximbank credit extension (Presidential Determination No. 88-11 of March 7, 1988), 9423
East Asia; financial assistance under Migration and Refugee Assistance Act of 1962 (Presidential Determination No. 88-2 of October 30, 1987), 399
Generalized System of Preferences:
Worker rights (Memorandum of March 31, 1988), 11039
H.J. Res. 395 and H.R. 3545; certification of printed enrollments (Memorandum of January 28, 1988), 2816
Hungary and China; trade waiver authority continuation (Presidential Determination No. 88-18 of June 3, 1988), 21407
Multilateral development banks; withholding of funds (Presidential Determination No. 88-8 of January 29, 1988), 3847
Nicaraguan Democratic Resistance; U.S. assistance (Presidential Determination No. 88-6 of January 19, 1988), 1601
Nicaraguan emergency; continuation (Notice of April 25, 1988), 15011
Pakistan; nuclear explosive devices; certification (Presidential Determination No. 88-5 of January 15, 1988), 3325
Pakistan; nuclear explosive devices; U.S. assistance certification (Presidential Determination No. 88-4 of December 17, 1987), 773
Refugees from Eastern Europe and Soviet Union; immigration ceilings (Presidential Determination No. 88-16 of May 20, 1988), 21405
Sao Tome and Principe; U.S. military assistance (Presidential Determination No. 88-17 of May 27, 1988), 24434
United Nations Good Offices Mission to Afghanistan and Pakistan; air transport services (Presidential Determination No. 88-15 of May 20, 1988), 20595

President's Commission on Privatization

NOTICES

Meetings, 190, 2346, 3093, 5064

President's Commission on White House Fellowships

NOTICES

Meetings, 16606

Prisons Bureau

RULES

Inmate control, custody, care, etc.:
Adult basic education (ABE) programs, 15539
Education tests; minimum standards for administration, interpretation, and use, 10202
Inmate discipline and special housing units; Discipline Hearing Officer, 196
Law enforcement agencies; information release, 155398
Occupational education programs, 10203

PROPOSED RULES

Inmate control, custody, care, etc.:
Inmate discipline and special housing units; good conduct time credit disallowance, 15540

NOTICES

Meetings:
National Institute of Corrections Advisory Board, 5477

Privatization, President's Commission

See President's Commission on Privatization

Prospective Payment Assessment Commission

NOTICES

Meetings, 1693, 11156, 21541

Public Health Service

See also Agency for Toxic Substances and Disease Registry; Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; Indian Health Service; National Institutes of Health

RULES

Grants:
Family planning services; abortion, prohibition on use of appropriated funds, 2922
Health education assistance loan program, 6094
Health professions student loan program, 6090
Nurse anesthetist traineeships, 9114
Nursing special projects, 14792
Teaching facility construction, educational improvements, scholarships, and student loans, 14789
Health planning and resources development:
Medical facility construction and modernization; services provision for persons unable to pay; correction, 5576

PROPOSED RULES

Clinical laboratories; patient confidentiality for human immunodeficiency (HIV) testing, 10404
Grants:
General internal medicine and pediatrics; residency training, 15710
Correction, 17534
Health professions projects in geriatrics, 16293
Nurse practitioner traineeship programs, 16158
Occupational safety and health research:
Respiratory protective devices used in mines and mining; certification and testing requirements, 5595
Physicians and health care practitioners; adverse information national data bank, 9264

NOTICES

Advisory committees; annual reports; availability, 7241
Childhood vaccines; adverse event reporting, 10565
Grants; availability, etc.:
Family planning nurse practitioner training program, 13328
General family planning training projects, 13325
Minority AIDS education/prevention demonstration projects, 18163
Minority community health coalition demonstration projects, 9371
Health education assistance loan (HEAL) program:
Insurance premium rate and interest rates, 2094, 13331
Home air-fluidized bed (Clinitron) therapy; guidelines assessment, 6874
Inventions:
Developing and marketing; solicitations, 2093
Medical care quality and cost containment:
Capital expenditure review agreements between HHS Secretary and States; termination, 10431
Medical technology scientific evaluations:
Continuous cardiac output monitoring by electrical bioimpedance, 2645
Electroencephalographic (EEG) video monitoring for seizure disorders, 2646
Implantable infusion pumps to administer morphine for treatment of intractable cancer pain, 4077
Meetings:
Committee to Coordinate Environmental and Health Related Programs, 20179, 22054
Health Promotion and Disease Prevention Council, 10439
National Commission on Orphan Diseases, 16472
National Toxicology Program; concept review, 2791

National Toxicology Program; Scientific Counselors Board, 7980, 13451
National Vaccine Advisory Committee, 14859
President's Council on Physical Fitness and Sports, 10568
Vital and Health Statistics National Committee. See Centers for Disease Control.
Meetings; advisory committees:
January, 398
February, 2646
March, 3642, 5837
April, 9144
May, 17509
June, 17979
National toxicology program:
Chemicals nominated for testing, 5221, 23806
Toxicology and carcinogenesis studies—
Acetone, etc., 7054
Boric acid, 11140
Bromodichloromethane, 4222
C.I. acid orange 10, 4223
Dimethyl methylphosphonate, 4223
Ethylene oxide, 4223
Geranyl acetate, 7054
Methyl carbamate, 4224
Wet tissues disposal, 1846
Organization, functions, and authority delegations:
Acquisitions Management Division, 5321
Agency for Toxic Substances and Disease Registry, Administrator, 15141
Alcohol, Drug Abuse, and Mental Health Administration, 1414, 23694
Assistant Secretary for Health, 22054
Centers for Disease Control, 7403
Food and Drug Administration, 2889, 8978
Health Resources and Services Administration—
Administrator, 4077, 5470, 12993
Health Care Delivery and Assistance Bureau, Director, 4076, 19825
Health Professions Bureau, Director, 8514
Indian Health Service, Director, 12993
Management Systems and Policy Division et al., 5321
National AIDS Program Office, 10569
National Institutes of Health, 4456, 15141, 15290, 19048
PHS Agency Heads; Federal Technology Transfer Act, 5046
Resource Management Office et al., 11348
Surgeon General, 5046
Patent licenses, exclusive:
Henkin, Robert J., M.D., 11562
Privacy Act:
Computer matching program, 11562
Systems of records, 6874, 9815, 15141, 22225, 23850

Railroad Retirement Board

RULES

Privacy Act; implementation, 3198
Railroad hiring requirements, etc., 3200
Railroad Retirement Act:
Retirement annuities; reporting and recordkeeping requirements, 17182
Railroad Unemployment Insurance Act:
Unemployment benefits claims processing, adverse decisions appeals, and erroneous payment recovery waiver; initial determinations, 2485

PROPOSED RULES

Federal claims collection; administrative offset, 143
Railroad Retirement Act:
Employee representative, 20136
Transfer, assignment, or waiver of payments, 22184
Regulatory agenda, 14512

NOTICES

Agency information collection activities under OMB review, 462, 3281, 5668, 6898, 7272, 11719, 15319, 15320, 16205, 16923
Meetings:
Actuarial Advisory Committee, 16206
Meetings; Sunshine Act, 838, 6915, 15334, 24169
Supplemental annuity program; determination of quarterly rate of excise tax, 5668, 21958

Reclamation Bureau

PROPOSED RULES

Projects governed by Federal reclamation laws, acreage limitations; audits for compliance, water rates for land held under extended recordable contracts, etc., 21857

NOTICES

Agency information collection activities under OMB review, 16475
Central Valley Project, CA:
Irrigation ratesetting policy approval and availability, 18357
Land transfer to Forest Service, 19056
Colorado-Big Thompson Project, CO; decision not to transfer operation and maintenance to Northern Colorado Water Conservancy District, 15146
Contract negotiations:
Quarterly status tabulation of water service and repayment, 4227, 15897
Environmental statements; availability, etc.:
All-American Canal Project, CA, 3081, 3082
Colorado-Big Thompson, Windy Gap Projects, CO; Green Mountain Reservoir, 9820
Dolores Project, CO, 7404
Lake Berryessa Reservoir Area management plan, CA, 24371
New Melones water supply project, CA, 5837
Seawater Intrusion Project, CA, 11568
Umatilla Basin Project, OR, 5054
Wind-Hydroelectric Project, WY, et al., 17117
Realty actions; sales, leases, etc.:
California, 1523

Refugee Resettlement Office

NOTICES

Grants; availability, etc.:
Social services for refugees and Cuban/Haitian entrants; State allocations, 5646, 20688

Regulatory Information Service Center

PROPOSED RULES

Unified agenda of Federal regulations, 13602

Research and Special Programs Administration

RULES

Aviation proceedings:
See entries under Transportation Department.
Hazardous materials:
Hazardous substances; listing and reportable quantities; CFR correction, 8846
Molten sulfur, 17158
Radioactive materials transportation—
Route plans notification, 16991
State alternative routes designations, 16990
Pipeline safety:
Natural gas transportation, etc.—
Standards and procedures; miscellaneous amendments, 1633

PROPOSED RULES

Aviation proceedings:
See entries under Transportation Department.
Hazardous materials:
Fireworks and novelties, construction standard; transportation approval, 4348
Highway routing standards for transportation of non-radioactive materials, 11618
Performance-oriented packaging standards, 12442
Shippers; tank car tanks with localized thin spots use, 4862
Tank car tanks; cracks, pits, corrosion, lining flaws, thermal protection flaws, etc., detection and repair, 4862
Uranium hexafluoride, 11320
Pipeline safety:
Hazardous liquids transportation—
Damage prevention programs, 24747
Natural gas transportation, etc.—
Compressor station buildings; gas detection and monitoring, 10906
Damage prevention programs, 24747
Maximum allowable operating pressure; alternative method; confirmation or revision, 1043
Non-welded tie-in joints; pressure testing exception, 1045

NOTICES

Global positioning system block II signal testing; availability, 10031
Hazardous materials:
Applications; exemptions, renewals, etc., 1090–1096, 1882, 3974, 3976, 7282, 7826, 8020, 9401, 11930, 12220, 12222, 16492, 16501, 17529, 17530, 19850, 22259, 22261, 23717
Inconsistency rulings, etc.—
Connecticut; Citizens Against Nuclear Trucking, 1089
Maryland Heights, MO, 20736
San Antonio, TX; McGil Specialized Carriers, Inc., 19848
Nevada; Southern Pacific Transportation Co., 11600
New York City, NY, 5538
New York City, NY; National Tank Truck Carriers, Inc., et al., 16840
Meetings:
Aviation, Marine, and Land Radionavigation Users Conference, 2805
Hazardous Materials Advisory Council, 3286
International standards on transport of dangerous goods, 11586, 24826
Pipeline safety; waiver petitions:
Southern Natural Gas Co., 1884

Rural Electrification Administration

RULES

Federal Financing Bank loans, REA guaranteed; prepayment, 2468
Telecommunications contracts; standard forms, 15545

PROPOSED RULES
Electric loan policies and application procedures, 15228
Rural Electrification and Telephone Revolving Fund; cushion of credit payments program and rural economic development subaccount, 11511
Special equipment contracts forms; revision, 10545
Telephone borrowers:
Central office equipment contracts (including and not including installation), 140
Telephone standards and specifications:
Digital lightwave transmission systems, 8219
NOTICES
Environmental statements; availability, etc.:
Alabama Electric Cooperative, Inc., 10263
Dairyland Power Cooperative, 22551
KAMO Electric Cooperative, Inc., 159
Magic Valley Electric Cooperative, Inc., 16440
Midstate Electric Cooperative, Inc., 15250
Southern Maryland Electric Cooperative, Inc., 17738
Tri-State Generation & Transmission Association, Inc., 18222
Western Farmers Electric Cooperative, 544

Rural Telephone Bank
RULES
Loan policies:
Interest rates, 6969
Prepayment premium, temporary waiver, 1743

Saint Lawrence Seaway Development Corporation
RULES
Tariff of tolls, 4395
NOTICES
Meetings:
Advisory Board, 5851, 18020

Science and Technology Policy Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Aeronautical Policy Review Committee, 6891
Meetings:
Biotechnology Science Coordinating Committee, 22384
White House Science Council, 6043, 15161, 24536

Secret Service
NOTICES
Senior Executive Service:
Performance Review Board; membership, 23844

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Allocation of debt issue costs in business combination accounted for as purchase, 7892
De minimis sales, 1341
Mexican Debt Exchange transaction; accounting and disclosure, 865
Push down basis of accounting in separate financial statements of subsidiaries acquired in purchase transactions, 109
Registrant disclosures, 109
Conflict of interests:
Members' and employees' securities transactions, 18552
Interpretative, no-action, and certain exemption letters; expedited publication, 12412
Investment companies:
Advertising, 3868, 15022
Mutual fund expenses; consolidated disclosure, 3192
Organization, functions, and authority delegations:
General Counsel, 17458
Registration requirements exemptions; Regulation D revisions and offers and sales of securities under employee benefit plans and employment contracts, 12918
Reporting and recordkeeping requirements, 9763
Securities:
Disclosure requirements; Regulation S-K, Form 8-K, and Schedule 14A; changes in accountants and opinion shopping, 12924
Government Securities Act; implementation—
Form BD revision, etc., 2484, 23383
Newly registered government securities dealers; examinations schedule, 4120
Investment companies; advertising, 3868, 15022
Correction, 5269
Mutual fund expenses; consolidated disclosure, 3192
Prospectus delivery for aftermarket transactions, 11841
Proxy rules—
Filing requirements, shareholder proposals, etc.; correction, 9767
Registration requirements exemptions; Regulation D revisions and offers and sales of securities under employee benefit plans and employment contracts, 7866
Shareholder communications, facilitation
Employee benefit plan participants exclusion; proxy processing and direct communications provisions, 16399
Transactions exempt from transaction fees, 17180
Securities Investor Protection Corp. rules; claims satisfaction, uniform procedure, 10368
PROPOSED RULES
Interpretative, no-action, and certain exemption letters; expedited publication, 12429
Investment companies:
Fiscal year changes, issuer reporting, and filing requirements, etc., 21670
Registered open-end management investment companies; asset-based sales loads payment, 23258
Regulatory agenda, 14714
Securities:
Disclosure requirements; Regulation S-K and Form 8-K; changes in accountants and resignations of Directors, filing provisions, 12948
Fiscal year changes, issuer reporting, and filing requirements, etc., 21670
Foreign broker-dealers; registration requirements, 23645
Government Securities Act; implementation—
Form BD revision, etc., 2854
Offshore offers and sales, 22661
Registered open-end management investment companies; asset-based sales loads payment, 23258
Registration requirements exemptions; Regulation D revisions and offers and sales of securities under employee benefit plans and employment contracts, 7870
Securities Investor Protection Corp. rules; claims satisfaction, uniform procedure, 1793
NOTICES
Agency information collection activities under OMB review, 973, 3093, 3094, 7874, 8829, 10311, 10323, 11386, 11719, 12740, 16803, 21751, 22753, 23161
Consolidated quotation plan and consolidated transaction plan; amendments, 12837
Meetings; Sunshine Act, 96, 655, 1102, 1440, 1978, 2810, 3979, 4816, 5079, 5683, 6057, 7465, 7830, 9405, 10329, 11001, 11589, 12098, 12495, 12864, 13378, 15618, 15772, 16614, 17817, 18655, 19367, 20937, 21545, 22425, 23849, 24399
Securities:
Uniformity of securities laws; conference, 3647
Self-regulatory organizations:
Clearing agency registration applications—
Government Securities Clearing Corp., 19839
International Securities Clearing Corp., 13210
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 2555, 4252, 4491, 5504, 6044, 6899, 9388, 9528, 9721, 10026, 11386, 11387, 16328, 16606, 16803, 16805, 18634, 19073, 19838, 22592
American Stock Exchange, Inc., et al., 296, 2333, 20201, 20706
Boston Stock Exchange, Inc., 15320
Chicago Board Options Exchange, Inc., 1427, 4253, 5064, 5065, 5235, 10026, 10323, 11720, 12486, 12839, 12840, 13458, 15480, 15934, 15935, 16206, 20204, 22063, 22754, 24160
Chicago Board Options Exchange, Inc., et al., 648
Cincinnati Stock Exchange, Inc., 6722, 15937
Depository Trust Co., 190, 2124, 4249, 6900, 9530, 9531, 12841, 16923, 17522, 20056
MBS Clearing Corp., 5337, 5338, 6045, 7454, 8829, 8830, 10962, 16808–16818, 18641, 19362, 22757, 23162
Midwest Clearing Corp., 5505, 6213, 10027, 16820, 18642, 24537
Midwest Clearing Corp. et al., 19074
Midwest Securities Trust Co., 5337, 5506, 5507, 6214
Midwest Stock Exchange, Inc., 649, 2897, 6723, 9549, 9836, 15937, 16485, 20400
Municipal Securities Rulemaking Board, 2335, 5238, 8533, 8832, 9550, 9837, 21751
National Association of Securities Dealers, Inc., 462, 1430, 4087, 4254, 5668, 5846, 5847, 6045, 6046, 6901, 8534, 8535, 8832, 9156, 9157, 9389–9391, 9551, 10455, 10964, 10965, 11156, 11157, 11578, 13210, 13367, 13370, 14878, 15161, 15327, 16207, 16331, 16486, 16488, 16608, 16820, 17523, 18643, 19076, 19363, 20708, 20923, 22594, 22598, 24389, 24538
National Securities Clearing Corp., 3101, 4250, 4251, 4482, 6902, 9393, 12841, 16488, 18188
New York Stock Exchange, Inc., 191, 192, 3281, 4088, 4089, 4484, 5066, 5067, 7272, 7273, 7458, 8834, 9157, 9159, 9394, 9554, 9558, 9559, 11157, 11579, 13041, 13371, 15322, 16608, 16824, 17284–17287, 17812, 18644, 20401, 20925, 22757, 23474, 23475, 24389, 24539
Options Clearing Corp., 3282, 4485, 7616, 7996, 9160, 10960, 12842, 15323, 24543
Pacific Clearing Corp., 20056
Pacific Securities Deposit Trust Corp., 20057
Pacific Stock Exchange, Inc., 980, 5670, 9396, 12212, 12488, 12844, 15325, 15761, 16826, 23821
Philadelphia Depository Trust Co., 6047
Philadelphia Stock Exchange, Inc., 5068, 5508, 5671–5673, 6725, 6903, 7617, 8709, 8835, 9160–9163, 9397, 9722, 10311, 10323, 11388–11390, 12490, 12740, 15326, 16828, 16829, 17132, 17292, 17524, 17525, 19078, 20206, 20403, 21753, 23709, 23822, 23823, 24390
Philadelphia Stock Exchange, Inc., et al., 9722
Stock Clearing Corp. of Philadelphia, 6049
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 4248, 4249, 5509, 8531, 8532, 15760, 15761, 17522, 17813, 18367
Cincinnati Stock Exchange, Inc., 975, 979, 4800, 6900, 12091, 12214, 12487, 18367, 20930, 24161
Midwest Stock Exchange, Inc., 588, 1084, 2125, 2126, 2557, 5510, 7276, 7616, 7824, 8532, 8533, 9723, 12092, 12215, 12637, 13370, 15327, 16485, 16486, 16924, 19846, 20401, 21752, 24821
Pacific Stock Exchange, Inc., 980, 1429, 8535, 15761, 18368
Philadelphia Stock Exchange, Inc., 980, 1084, 1429, 2126, 2127, 2557, 3102, 4252, 4801, 5510, 5511, 7276, 7277, 8535, 9165, 9724, 10178, 10967, 12489, 12637, 13370, 15328, 15763, 16489, 16924, 16925, 17524, 17813, 18369, 19846, 19847, 20403, 20930, 24162, 24822
Applications, hearings, determinations, etc.:
Adams, Charles D., 4092
Advest Advantage Investment Trust, 20207
Agritronix, Inc., et al., 23824
AIM Convertible Securities, Inc., et al., 9838
Allied Capital Corp. et al., 22253
Allied-Signal Inc., 12491
American Benefit Life Insurance Co. et al., 7067
American Capital California Tax-Exempt Trust et al., 17526
American Charter Funding Corp. et al., 4921
American Express Funds et al., 6904
American Home Acceptance Corp., 20708
American Pam & Stress, Inc., et al., 11719, 12092
American Realty Trust Co., 19079
AMX International, Inc., 19363
Bacardi Corp., 22599
Balboa Development, Inc., 12741
Banco De Vizcaya, S.A., 973
Bank of New England, 13208
Bear Sterns Secured Investors Inc., 15939
Blanchard, James U., III, et al., 18940
Boettcher Venture Capital Partners II, L.P., et al., 1972
BRT Realty Trust, 2127
Canadian Dollar Portfolio L.P. et al., 4485, 7074
Canadian Eagle Exploration, Inc., 24822
Capital Southwest Corp., 20405
Cenvill Investors, Inc., 3651
Chase Manhattan Bank, N.A., 9840
Chemical New York Corp., 8836
Cheval/Alliance U.S. Equity Fund, 20208
Citicorp, 16330, 16489
Citicorp Homeowners, Inc., et al., 8710
College & University Facility Loan Trust Two, 12845
College Retirement Equities Fund et al., 2336
Colonial Value Investing Portfolios-Equity Portfolio et al., 5511
Command Government Fund et al., 5069
Connecticut Mutual Life Insurance Co., 17294
Criterion Asset Backed Income Fund, Inc., 22758
CSW Credit, Inc., et al., 24545
CTC Mansfield Funding Corp., 3094
CU Members Income Fund, Ltd., 24822
Delaware Group of California Tax-Free Fund, Inc., 4093
Dow Corning Corp., 3803
Dreyfus A Bonds Plus, Inc., et al., 23329
Dreyfus Foreign Investors GNMA Fund, L.P., et al., 13038
Drexel Burnham Fund et al., 2897
Drexel Series Trust, 2664
Eastern Air Lines, Inc., 23161
EBI Series Trust et al., 3097
E.F. Hutton & Co. Inc. et al., 17997, 22255
Elana, Inc., 10580
Eli Scientific, Inc., 12742
Enterprise Group of Funds, Inc., et al., 20931
Equitable Capital Partners, L.P., et al., 20059
FB MTP Partners, 9398
Federated Short-Intermediate Corporate Trust, 20933
Fidelty Capital Trust et al., 16830
First Capital Life Insurance Co. et al., 1085
First Fidelity Inc., 23476
Fluid Corp., 16207
Founders Mutual Fund et al., 5335
Freedom Investment Trust et al., 10179
FVL Growth Fund, Inc., 9165
General Defense Corp., 12742
Germany Fund, Inc., 3102
Girozentrale und Bank der Osterreichischen Sparkassen Aktiengesellschaft et al., 976
Goldcor, Inc., 12852
Great Lakes Chemical Corp., 19080
GS Mortgage Securities Corp., 8537
G.T. Global Growth Series et al., 89
Guild Gold Fund, 24163
GW Utilities Ltd., 20710
Hartford Life Insurance Co. et al., 6050
Hiex Development USA, Inc., 23710
Home Group Trust, 23710
Horizon Funds, 977
HT Insight Funds, Inc., 21753
IDS Financial Corp. et al., 18001
Institutional Investors Tax-Advantaged Income Fund, Inc., 2339
Integrated Resources Series Trust, 3654
Interact Portfolio Series et al., 6906
International Cash Portfolios, 16925
International Telecharge, Inc., 8837
Katz, Robert A., 9841
Keystone Provident Life Insurance Co. et al., 22600
Kidder, Peabody Acceptance Corp. I, 16832
Kinesis, Inc., 24823
Leader Funding Corp. I et al., 4488
Leisure Technology, Inc., 16926
Liberty Cash Management Fund, Inc., 24823
Life Insurance Co. of Virginia et al., 8711
MacAndrews & Forbes Holdings Inc. et al., 23477
MacKay-Shields MainStay Tax Free Bond Fund, 1874
Mariner Funds Trust, 23477
MassMutual Equity Investors Trust, 24163
MassMutual Liquid Assets Trust et al., 5848
Medallion Funding Corp., 3968
M.E.S.B.I.C., Inc., 5070
MetLife-State Street Equity Trust et al., 7997
Metropolitan Life Variable Account C, 10028
Metropolitan Variable Account B of Metropolitan Life Insurance Co., 10029
Metropolitan Variable Account D of Metropolitan Life Insurance Co., 10030
Microsoft Corp., 22602
Mississippi Power & Light Co. et al., 8712
ML Convertible Securities, Inc., 7460
Money Market Fund, Inc., 5334
Moto-Photo, Inc., 3282
Mutual Benefit Life Insurance Co. et al., 1425
Mutual Life Insurance Co. of New York et al., 13040
National Integrity Life Insurance Co. et al., 5514
Nationwide Life Insurance Co., 12743
Nationwide Life Insurance Co. et al., 1693
New England Mutual Life Insurance Co. et al., 12852
Norstar Bancorp, Inc., 16491
Oxford Acceptance Corp., 4801
Oxford Acceptance Corp. III, 4805
Oxford Acceptance Corp. IV, 4807, 4811
Piedmont Aviation, Inc., 10968
Presidential Life Insurance Co. et al., 8536
Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., et al., 5674
Public utility holding company filings, 981, 1695, 2342, 3100, 3970, 4925, 5515, 6721, 7824, 9561, 10318, 11391, 12215, 13041, 15162, 15942, 16833, 17811, 18941, 20208, 22603, 22605, 23478
Qualified Housing Partners Limited Partnership et al., 19080
RCS Emerging Growth Fund, 3099
Reliance Financial Services Corp., 1084
Reliance Group Holdings, Inc., 1085
Reliance Group, Inc., 1085
Rodney Square Benchmark U.S. Treasury Fund, Inc., et al., 15942
Royal Bank of Scotland Group plc, 3282
Russell Insurance Funds, Inc., et al., 8713
Security Benefit Life Insurance Co. et al., 10968
Selected Capital Preservation Trust, 6721
Selected Investment Managers Capital Appreciation Equity Fund et al., 3971
Signal Capital Corp., 4490
Smith Barney Mortgage Capital Corp., 23479
Smith Barney Mortgage Capital Trusts et al., 23824
Standard Logic, Inc., 12491
Stuart-James Venture Partners I, L.P., et al., 3656

Sun Life Assurance Co. of Canada (U.S.) et al., 10318, 10320
Sun Life Finance Corp., 23827
Sun Life Insurance & Annuity Co. of New York et al., 10321
System Energy Resources, Inc., et al., 3803
TCI Portfolios Inc. et al., 6718
Thai Fund, Inc., 24824
Transohio Funding, Inc., 15763
Transworld Ventures Corp., 24825
Trident Mortgage Securities Co., 1874
TSC Investment Management, Inc., 20210
UC Corp., 16491
United Services Life Insurance Co. et al., 11925
USAA Mutual Fund, Inc., et al., 9842
USAir, Inc., 10969, 20058
USR Industries, Inc., 9843
Variable Annuity Life Insurance Co. Separate Account One, 1087
Variable Annuity Life Insurance Co. Separate Account Two, 1087
Vestar, Inc., 19082
Victorian Public Authorities Finance Agency, 20712
Wells Fargo Bank, N.A., et al., 8837
Western Life Insurance Co. et al., 7277
World Resources International, Inc., 16207

Selective Service System

PROPOSED RULES

Regulatory agenda, 14520

NOTICES

Agency information collection activities under OMB review, 18644
Privacy Act:
Computer matching program, 21542

Sentencing Commission, United States

See United States Sentencing Commission

Small Business Administration

RULES

Business loan policy:
Secondary market loan or pool certificates; sale privileges suspension or revocation, 7343
Debarment and suspension (nonprocurement), 19161
Federal claims collection:
Income tax refund offset, 4112
Salary offset, 1606
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Loans to State and local development companies, 1468, 10242
Nondiscrimination on basis of handicap in federally conducted programs and activities, 19752
Procurement assistance:
Procurement automated source system; fee schedule, 4008
Reporting and recordkeeping requirements, 9611
Small business size standards:
Research and development on aircraft, parts, engines, etc., 10244
Standard Industrial Classification System; size compatibility, 18821
Travel agencies industry, 18820
Correction, 21547

PROPOSED RULES

Conflict of interests, 24727
Minority small business and capital ownership development:
Eligibility condition for socially and economically disadvantaged, 21482
Procurement assistance:
Certificate of competency program, 22015
Regulatory agenda, 14522
Small business size standards:
Export trading and management companies, 20857
Small business for government procurement, 15232

NOTICES

Agency information collection activities under OMB review, 982, 3804, 12492, 20405
Disaster declaration requests; discontinuance, 21959
Disaster loan areas:
Alabama, 3804
Arkansas, 650, 1534
California, 5339
Florida, 16833
Guam, 2898
Hawaii, 1696
Kentucky, 20934
Marshall Islands, 2344
Mississippi, 1534
New Jersey, 4814
New York, 21543
North Carolina, 982
Northern Mariana Islands, 2899
Pennsylvania, 982
Puerto Rico, 1534, 2345
South Dakota, 1696
Tennessee, 588
Texas, 1534, 13211
Grants and cooperative agreements; availability, etc.:
Minority small business and capital ownership development; management and technical assistance, 10580
Interest rates; quarterly determinations, 11580, 24546
Intergovernmental review of agency programs and activities, 12854, 12856
License surrenders:
Abbott Capital Corp., 589
Bankit Financial Corp., 7461
Beneficial Capital Corp., 21543
Camden Investments, Inc., 1974
Comerica Capital Corp., 1088
Commercial Capital, Inc., 24826
DGC Capital Co., 3104
Holding Capital Management Corp., 22064
Intergroup Venture Capital Corp., 16208
Michigan Capital & Service, Inc., 589
Southwest Venture Capital, Inc., 12858
Loan programs:
Secondary participation guaranty and certification agreement (SBA Form 1086), 7618
Meetings:
National Advisory Council, 15765
National Small Business Development Center Advisory Board, 1974, 18369
Presidential Advisory Committee on Small and Minority Business Ownership, 1696, 11928
Meetings; regional advisory councils:
Arizona, 5339
Arkansas, 6908
California, 5339, 15328, 24546
Connecticut, 5239, 10970, 18369
Georgia, 22064
Hawaii, 6908, 24164
Idaho, 15328
Illinois, 4094, 5239
Indiana, 17294
Iowa, 12859, 22605
Louisiana, 4094
Maine, 9017
Maryland, 12858, 18369, 24164
Michigan, 15765
Minnesota, 23482
Mississippi, 18369
Missouri, 20934, 23841
Montana, 7279
Nebraska, 19084
Nevada, 12859
New Jersey, 17295
North Carolina, 2344, 15765, 17295
Oklahoma, 22064
Oregon, 12859
Pennsylvania, 9563
Puerto Rico, 12858
Rhode Island, 15766
South Carolina, 12637
Texas, 2344, 2796, 17295
Utah, 15328
Vermont, 12858, 15766
Virgin Islands, 12858
Washington, 15766, 17295
West Virginia, 12858
Wisconsin, 9018
Small business innovation research program; policy directive, 23829
Small business investment companies:
Maximum cost of money; debenture rate, 5339, 22256
Applications, hearings, determinations, etc.:
Alabama Small Business Investment Co., Inc., 589, 12492
Ameriway Venture Partners I, 15163
Argonauts MESBIC Corp., 9018
Bridger Capital Corp., 13211
Citicorp Investment Inc., 6052
Continental Investment Groups, Inc., 24546
Diamond Capital Corp., 6052
EAB Venture Corp., 2796
Fidelcor Capital Corp., 6052
First New England Capital L.P., 5071, 11928
Frontenac Capital Corp., 5072
Hidden Oaks Financial Services, Inc., 8839, 18188
IBI Capital Corp., 23842
Jiffy Lube Capital Corp., 590
MCap Corp., 12859
Morgan Investment Corp., 590
Motor Enterprises, Inc., 650
Precapital Corp., 23331
Queneska Capital Corp., 1696, 16208
Raffensperger Hughes Venture Corp., 3102, 17295
Republic SBI Corp., 13211
Revelation Resources, Ltd., 2345, 22064
Rust Capital, Ltd., 23842
San Joaquin Business Investment Group, Inc., 16491
San Joaquin Business Services Group, Inc., 2797
SLK Capital Corp., 6053
Walden Capital Partners, 590

Social Security Administration

RULES

Supplemental security income:
AIDS; impairments listing, 3739
Excess resources; adjustment or recovery waiver, 16542

Correction, 19856
Federal benefit increases; passalong to recipients of State supplementary payments; correction, 4134
Medicaid eligibility determinations, 12938
Correction, 16615
Real property disposition and transfer of assets; eligibility determination, 13254
Resources definition, 23230

PROPOSED RULES

Social security benefits:
Benefits entitlement; reduction, 21687
Disability determinations; vocational factors consideration, 21685
Correction, 23484
Employment, wages, self-employment, and self-employment income, 24727
Supplemental security income:
Direct payment of fees to representatives; prohibition, 18292
Disability determinations; vocational factors consideration, 21685
Resources; accountability and eligibility, 23126
Correction, 24830

NOTICES

Attorney fee payment process; study, 9818
Grants; availability, etc.:
Research demonstration program, 16020, 16931
Research grants, 8980
Medicare claims hearings by administrative law judges, 20023
Organization, functions, and authority delegations, 5322
Privacy Act:
Computer matching program, 18166
Social security benefits:
Disability program demonstration projects, 9374
Social security; foreign insurance or pension systems:
France, 20692
Spain, 16790
Supplemental security income:
United States and West Germany; supplementary agreement, entry into force, 13451

Soil Conservation Service

RULES

Conservation operations:
Reconsideration and appeal procedures, 1605
Support activities:
Archeological and historical properties; protection procedures, 4006

PROPOSED RULES

Support activities:
Surface coal mining and reclamation operations on prime farmland; soil removal, stockpiling, replacement, and reconstruction specifications, 4989, 15566

NOTICES

Environmental statements; availability, etc.:
Ahoa Bellstone, HI, 24113
Avoyelles-St. Landry Watershed, LA, 15251
Beverly City Waterfront, NJ, 19013
Calvary Run, OH, 2518
Carpentersville Road, NJ, 19014
Chandler Mountain Watershed, AL, 22552
City Creek Debris Basin, Warner Draw Watershed, UT, 7770
Cocodrie-Grand Louis, LA, 10413
Colorado River Basin, WY, 3410
Dixon High School, IL, 9674
Friendship Park, NY, 2068
Kenduskeag Stream Watershed, ME, 5613
Madison Canal, MD, 12966
Madison High School, NJ, 19014
McElmo Creek, CO, 5613
Navajo Lake, CO, 6856
North Delaney Butte Lake, CO, 16302
Pamunkey River Watershed, VA, 12050
Pecos Arroyo Watershed, NM, 12445
Ross County, OH, 11537
Shoshone, ID, 9131
Skalkaho Highline Wood Syphon, MT, 3410
Soap Creek Watershed, IA, 24755
South Fork of Little River Watershed, KY, 22368
Tesnatee Creek Watershed, GA, 1503
Upper Choptank River Watershed, DE, 12050
Upper Contentnea Creek Watershed, NC, 15722
Upper Fifteen Mile Creek Watershed, GA, 13301
Upper Stage Gulch Watershed, OR, 17490
Waterfall-Gilford Creek Watershed, OK, 1503
Hydric soils of United States; list availability, 5210
Soil, water, and related resources; appraisal availability, 10135
Watershed projects; deauthorization of funds:
Calapooya Creek Watershed, OR, 9139
Garrison Creek Watershed, OK, 9462
Pott-Sem-Turkey Watershed, OK, 4864

State Department

RULES

Debarment and suspension (nonprocurement), 19161
Defense articles and services; exports, 11494, 19774
Correction, 12099
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
International child abduction, 23608
Personal property disposition at posts abroad, 23188
Visas; immigrant documentation:
Immigration and Nationality Act; implementation
Correction, 9110, 9172
Visas; nonimmigrant documentation:
Immigration and Nationality Act; implementation
Correction, 9110, 9172
Visa waiver pilot program, 24903

PROPOSED RULES

Personnel:
Retirements; former spouses benefits, 21854
Press building passes, 23656
Regulatory agenda, 14034
Visas; nonimmigrant documentation:
Visa waiver pilot program, 16975
Correction, 18022

NOTICES

Agency information collection activities under OMB review, 983, 7626, 9165, 19084, 23332
Fishermen's Protective Act procedures:
Fishermen's Guaranty Fund; fee, 8540
Foreign Assistance Act; Presidential determination, 15163
Gifts to Federal employees from foreign governments; listings, 7998
Grants; availability, etc.:
Discretionary grant programs; Soviet and Eastern European research and training, 21755
Soviet-Eastern European studies program, 4925
Hague International Child Abduction Convention; implementation, 23843
Immigrant visa files; records disposal procedures, 4094
International conferences:
Private-sector representatives on U.S. delegations, 2127
Lebanon; U.S. passport travel restrictions, 3476
Meetings:
Fine Arts Committee, 5676
Inter-American Tropical Tuna Commission, United States National Section Advisory Committee, 3476
International Intellectual Property Advisory Committee, 15610
International Investment, Technology, and Development Advisory Committee, 23712
International Law Advisory Committee, 16208, 20713
International Radio Consultative Committee, 1878
International Telegraph and Telephone Consultative Committee, 983, 2139, 2558, 5339, 5516, 6908, 8540, 10324, 10456, 10457, 15328, 15329, 22257, 24826
Oceans and International Environmental and Scientific Affairs Advisory Committee, 10325
Overseas Schools Advisory Council, 16834
Overseas Security Advisory Council, 10325
Private International Law Advisory Committee, 3476, 10456, 22256
Shipping Coordinating Committee, 1697, 1878, 2558, 2559, 5340, 5517, 5676, 7626, 9400, 9401, 10036, 10456, 11928, 15329, 20210, 22257
UNESCO Reform Observation Panel, 6908
North Korea; acts of international terrorism support determination, 3477
Organization, functions, and authority delegations:
Inter-American Affairs, Assistant Secretary, 5072, 12092
Secretary, 8540
Passports, foreign; validity:
List update—
Poland, 18646
Privacy Act; systems of records, 2798, 16208
Senior Executive Service:
Performance Review Board; membership, 2139

State Justice Institute

NOTICES

Grants, cooperative agreements, and contracts; guidelines, 600, 6494
Meetings; Sunshine Act, 4097, 6915, 18021

Statistical Reporting Service

See National Agricultural Statistics Service

Surface Mining Reclamation and Enforcement Office

RULES
Abandoned mine land reclamation fees; excess moisture content allowance, 19718
Federal surface coal mining programs:
Georgia et al., 4976
Federal/State cooperative agreements:
North Dakota, 11500
Indian lands program:
Abandon mine land reclamation plan submissions—
Navajo Nation, 17186
Initial and permanent regulatory programs:
Abandoned sites; definition, 24872
Individual civil penalties, 3664, 16016
Performance bonds; bond release application, 994
Reinstatement of suspended rules; court order, 21764
Permanent program and abandoned mine land reclamation plan submissions:
Alaska, 5159
Arkansas, 9881, 19903, 21450
Hopi Tribe, 24262
Indiana, 4392, 9316
Kentucky, 7735
Missouri, 5766, 22475
New Mexico, 4013
North Dakota, 2837, 22478
Ohio, 7737, 19283
Utah, 9885
Virginia, 7180, 22479
Permits and coal exploration systems:
Coal mining operations; permits and permit processing requirements, 11606

PROPOSED RULES
Indian lands program:
Coal leases; terms and conditions incorporated, 3992, 15064
Initial and permanent regulatory programs:
Coal extraction incidental to extraction of other minerals; exemption, 5430, 9777, 13415
Coal preparation plants not located within mine permit area; performance standards, 23526
Prime farmland, 9453, 11685
Support facilities; definitions, 23522
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas, 24320
Colorado, 7211, 23660
Indiana, 8469, 16560
Iowa, 10397
Kansas, 9669, 21494
Kentucky, 5802, 7212, 23287
Louisiana, 8222, 20338
Missouri, 5804, 15702
New Mexico, 10398, 23415
North Dakota, 8933
Ohio, 11887, 12705, 22503
Oklahoma, 3050, 19934, 24321
Texas, 4645
Utah, 20338
Virginia, 5002, 18576
West Virginia, 11888
Permits and coal exploration systems:
Application fee collection, etc., 17568, 24101
Coal exploration operations; requirements, etc.; Tennessee, 23532

NOTICES
Agency information collection activities under OMB review, 15146, 17986, 20693, 22058
Environmental statements; availability, etc.:
Dry Fork Mine, WY, 12830
Surface coal mining operations; unsuitable lands; petitions, designations, etc.:
Tennessee, 12196
Unexpended State abandoned mine land reclamation funds transfer; Tennessee, 7407, 22584

Tennessee Valley Authority

RULES
Administrative cost recovery, 2826
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 405

PROPOSED RULES
Regulatory agenda, 14536

NOTICES
Agency information collection activities under OMB review, 462, 12492, 14879
Meetings; Sunshine Act, 655, 3661, 8300, 12746, 17307, 20938, 21546, 24169, 24549
Privacy Act; systems of records, 10970

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States

NOTICES
Committees; establishment, renewal, termination, etc.:
Intergovernmental Policy Advisory Committee, 11924
Investment Policy Advisory Committee, 11924
Services Policy Advisory Committee, 10310
Trade Policy Matters Industry Advisory Committees, 9721
Costa Rica accession to General Agreement on Tariffs and Trade (GATT), 5072
Federal public works procurements prohibitions; compliance determination (P.L. 100-202), 2140
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 5504, 7462, 11580, 11581, 19856
Imports information during first 10 months (1987), 1302
Government procurement agreement:
Amendments, effective date, 3285
Application determination—
Dollar equivalent of special drawing right units, 3284
Import quotas and exclusions, etc.:
Ammonium paratungstate and tungstic acid from China, 13207
Beef, high quality; Korean import restrictions, 10995
India almonds case terminated, 21757
Specialty steel import relief, 1536
Japan:
Fresh oranges and orange juice; restrictions on imports, 20706
Korea:
Cigarette market; access restrictions, 4926
Investigation terminated, 20406
Patent practices; investigation, 22758
Wine market restrictions, 22607
Meetings:
Investment Policy Advisory Committee, 5073, 17997
Services Policy Advisory Committee, 5073
Trade Negotiations Advisory Committee, 297, 14885
Unfair trade practices, petitions, etc.:
European Community; oilseeds case; investigation, 984

Transportation Department

See also Coast Guard; Commercial Space Transportation Office; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Maritime Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration; Saint Lawrence Seaway Development Corporation; Urban Mass Transportation Administration

RULES
Aviation proceedings:
Air carriers names, etc.; use and change, 17921
Debarment and suspension (nonprocurement), 19161
Employee responsibilities and conduct; participation in frequent flyer or similar program, 16414
Federal claims collection; salary offset, 4170
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Minority business enterprises participation in DOT programs; application to FAA airport financial assistance program, 18285
Organization, functions, and authority delegations:
Federal Aviation Administrator; smoking on airline flights, 10250
Federal Highway Administrator et al., 15844
Federal Highway Administrator; uniform relocation assistance and real property acquisition, 10251
National Highway Traffic Safety Administrator, 23121
Practice and procedure:
Documentary Services Division; operating hours, 16700
Program Fraud Civil Remedies Act; implementation, 880
Public works contracts denial to suppliers of goods and services of countries that deny procurement market access to U.S. contractors, 19914
Relocation assistance and real property acquisition:
Uniform cost-effective policies and procedures; correction, 467

PROPOSED RULES
Acquisition regulations, 3222
Aviation proceedings:
Air taxi operations exemptions, 12774
Uniform system of accounts and reports for large certificated air carriers—
Generally accepted accounting principles (GAAP); update, 9653
Federal claims collection; administrative offset, 4180

Nondiscrimination on basis of handicap:
Air travel, 23574
Federally-assisted programs and activities, 23778
Regulatory agenda, 14040

NOTICES
Agency information collection activities under OMB review, 3477, 6908, 13042, 18003
Aviation proceedings:
Agreements filed; weekly receipts, 590, 1088, 2798, 5850, 7068, 8017, 9018, 16492
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 650, 1974, 2799, 3478, 4492, 5239, 5850, 7069, 8018, 9018, 10030, 10995, 12861, 13459, 15610, 16492, 17295, 18943, 19847, 20714, 22258, 23164
Hearings, etc.—
Air LA, 17133
Air North America, Inc., 9019
Air Southeast, Inc., 24546
Airplanes, Inc., 3804
Aleutian markets bush service mail rates, 14879
Blue Bell, Inc., et al., 15481
Brazil cargo charter authorizations, 16609
ChartAir, Inc., 16492
China Airlines, Ltd., 16332
Cohlmia Aviation, 24547
Denham Aircraft Service Corp. II, 16926
Emerald Tours, Ltd., et al., 24164
Enterprise Airlines, Inc., 7069
Executive Air Charter, Inc., 1879
Express Air, Inc., 22417
Galaxy Airlines, Inc., 2899
GCS Air Service, Inc., 590
Holiday Airlines, 14879
International Jet Airlines, 5073
Intra-Alaska bush service mail rates investigation, 12216
Japan charter authorization proceeding, 16610
Laredo Air, Inc., 11392
Qwest Air, 7069
Redwing Airways, Inc., 14880
Renown Aviation, Inc., 24164
Seattle/Portland-Japan service case, 1088
Sunworld International Airways, Inc., 18943
Texas Air Corp. et al., 12859
Texas Air-Eastern acquisition case, 14880
Trans World Express, 24547
Tri Air Freight, Inc., 11392
United Express, 591
U.S.-Japan charter authorization proceeding, 10996, 12861, 12862
U.S.-Venezuela all-cargo exemption proceeding, 6215
Varig, S.A., 16834
Westates Airlines, Inc., 11392
International cargo flexibility level adjustment, 13373
Logan International Airport, Boston, MA; landing fee structure complaints review responsibility, 15943
Standard foreign fare level—
Index adjustment factors, 5073, 12638, 20714
Committees; establishment, renewal, termination, etc.:
Commercial Space Transportation Advisory Committee, 15944
Grants and cooperative agreements; availability, etc.:
University transportation centers program, 297
Meetings:
Commercial Space Transportation Advisory Committee, 15944
Minority Business Resource Center Advisory Committee, 5850
Privacy Act:
Systems of records, 2899, 6053, 8018

Travel and Tourism Administration

NOTICES
Meetings:
Travel and Tourism Advisory Board, 3617, 21884

Treasury Department

See also Alcohol, Tobacco and Firearms Bureau; Comptroller of the Currency; Customs Service; Fiscal Service; Foreign Assets Control Office; Internal Revenue Service; Secret Service

RULES
Acquisition regulations:
Protests; submission and disposition, 12770
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Foreign financial agencies, 10071
Postal money orders exceeding $10,000, 776
Technical amendments, 4137, 5080
Federal claims collection:
Administrative offset, 16702
Foreign military sales loans made by Defense Department and Federal Financing Bank; prepayment provisions, 9728

PROPOSED RULES
Currency and foreign transactions; financial reporting and recordkeeping:
Bank Secrecy Act; implementation—
Domestic currency transactions and structuring definition, 23289
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Anti-structuring provisions by financial institutions, 7948
Cash purchases under $10,000, 6011
Casinos, 11513
Government Securities Act; implementation, 8598, 12428
Practice before Internal Revenue Service; enrolled agent, 9952
Regulatory agenda, 14180

NOTICES
Agency information collection activities under OMB review, 93, 299, 594, 595, 988, 1437, 1885, 1977, 2141, 2665, 2805-2807, 3114, 3115, 3288, 3289, 3805, 3977, 4255, 4256, 4494, 4495, 5077, 5078, 5340, 5851, 6055, 6215, 6216, 7069, 7070, 7290, , 7628, 8023, 8840, 9020, 9021, 9402, 9565, 10031, 10032, 10458, 10997, 10998, 11586, 11587, 11727, 12862, 13376, 13460, 15166, 15167, 15489, 15616, 16336, 16510, 16611, 17815, 17816, 18649, 19085, 19852, 19853, 20409, 20715, 21961, 21962, 22065, 22262, 22420, 23335, 23336, 23482, 23844, 24547, 24548
Bonds, Treasury:
2017 series, 3480
2018 series, 17296, 18190
Boycotts, international:
Countries requiring cooperation; list, 771, 10326
Committees; establishment, renewal, termination, etc.:
Art Advisory Panel (IRS), 2807
Customs Commercial Operations Advisory Committee, 10183
Foreign insurance companies conducting life insurance business in United States; instructions for computing estimated tax and installment payments of estimated 1988 tax, 12493
Fruit and nut trees, assets used in radio and television broadcasting, airplanes and assets used in air transport services, etc.; depreciation analysis; meetings, etc., 5241
Meetings:
Debt Management Advisory Committee, 463, 11727
National Center for State and Local Law Enforcement Training Advisory Committee, 19364
Notes, Treasury:
A-1998 series, 3482, 4815
AB-1990 series, 18944, 20715
AC-1990 series, 23332
AG-1989 series, 463
B-1998 series, 17300, 18191
E-1995 series, 299, 1535
F-1995 series, 12224, 13045
K-1993 series, 5677, 7290
L-1993 series, 18945, 20715
M-1992 series, 9566, 10582
N-1992 series, 23334
Q-1991 series, 463
R-1991 series, 3486, 4815
S-1991 series, 17304, 18190, 18191
W-1990 series, 3289
W-1990 series, 2561
X-1990 series, 5679, 7290
Y-1990 series, 9565, 10582
Z-1990 series, 15489, 16336
Organization, functions, and authority delegations:
Inspector General Office, 21758
Secretary (National Security) et al., 21760
Privacy Act; systems of records, 5340, 6252
Senior Executive Service:
Departmental Offices Performance Review Board; membership, 5680
Tax treaties, income; various countries:
France, 4256
Spain, 2563

Truman, Harry S., Scholarship Foundation

See Harry S. Truman Scholarship Foundation

Uniformed Services University of the Health Sciences

NOTICES
Meetings; Sunshine Act, 11394

United States Information Agency

RULES
Debarment and suspension (nonprocurement), 19161
Exchange visitor program:
Exchange Visitor Waiver Board and Exchange Visitor Program Designation Suspension and Revocation Board; functions, 10528

NOTICES
Agency information collection activities under OMB review, 300, 13213
Art objects, importation for exhibition:
Art in the Old Country, 10032
Art of Paul Gauguin, 7071
Crossroads of Continents: Cultures of Siberia and Alaska, 2142, 6056
Dutch and Flemish Paintings from the Hermitage, 6056
Early Poussin in Rome: The Origins of French Classicism, 989
Faces of Swedish Design, 6914
From the Land of Dragons, 22263
Masterworks from Munich, 12494
New Sweden Colony, 1699
Olga Milles Emerges, 10998
Photographs of Josef Sudek, 8295
Prints and Paintings of Albin Brunovsky, 8296
Russian and Soviet Paintings, 1900-1930: Selections from State Tretyakov Gallery, Moscow, and State Russian Museum, Leningrad, 23165
Soviet Union exhibit, 2807
Sweden: A Royal Treasury 1550-1700, 1099
Tenth Anniversary of East Building, 16511
Cultural property:
Bolivia; ethnological material request, 18191
Grants; availability, etc.:
Educational exchanges with Eastern Europe, 14883
Fulbright teacher exchange program, 301
Private non-profit organizations in support of international educational and cultural activities, 6218, 8541, 10326, 11393, 11587, 12094, 13460, 15769, 18020, 19085, 20062, 21544, 24397
Meetings:
Book and Library Advisory Committee, 1437, 16209
Cultural Property Advisory Committee, 16511, 18191
English Teaching Advisory Panel, 2563
Public Diplomacy, U.S. Advisory Commission, 1099, 3659, 7463, 11935, 17135, 19365
Radio Broadcasting to Cuba Advisory Board, 1535, 15770
Radio Engineering Advisory Committee, 20410
Voice of America Broadcast Advisory Committee, 10327

United States Institute of Peace

NOTICES
Bylaws, 22420
Meetings; Sunshine Act, 596, 1889, 3806, 9569, 13216, 20717

United States Sentencing Commission

NOTICES
Sentencing guidelines and policy statements for Federal courts, 1286, 5104, 15530, 16337

Urban Mass Transportation Administration

RULES
Buy American requirements:
Waivers; technical amendment, 617
PROPOSED RULES
Buy American requirements:
Audio-visual training equipment waiver, 18320
Capital leases, 18222
Correction, 23340
Charter services, , 18964, 20660
NOTICES
Buy American requirements:
Waivers, 12223, 12224, 22418
Environmental statements; availability, etc.:
Atlanta, GA, 9563
Austin, TX, 1976
Massachusetts Bay Transportation Authority, Boston, MA, 10996
Spine Line Corridor, Pittsburgh, PA, 8022
Grants; UMTA sections 3 and 9 obligations:
Formula grant apportionments; 1988 FY, 2948
Los Angeles County Transportation Commission, CA, et al., 3286
Metropolitan Transit Authority, Houston, TX, et al., 9724
Peninsula Transportation District Commission, VA, et al., 15767
Urban mass transportation programs:
Legal opinions summary, 11624

Veterans Administration

RULES
Acquisition regulations, 7755, 9630
Construction contracting procedures, 1630
Correction, 2669
Adjudication; pensions, compensation, dependency, etc.:
Benefits eligibility improvements, 23234
Correction, 24831
Certified active military service, 16875
Forfeiture, 17933
Homeless claimants, 22652
Improved pension; payment frequency, 7902
Miscellaneous amendments, 3206
Debarment and suspension (nonprocurement), 19161
Disabilities rating schedule:
Mental disorders; nomenclature and descriptive terms, 21
Correction, 1441
Fiduciary activities:
Burial arrangement; federally appointed fiduciary authority on behalf of incompetent beneficiary, etc., 20618
Freedom of Information Act; implementation, 9442
Uniform fee schedule and administrative guidelines, 10375
Grants and cooperative agreements to State and local governments; uniform administrative requirements (OMB A-102 implementation), 8034
Life Insurance, National Service:
Interest rate adjustments, 17465
Loan guaranty:
Defaulted loans; termination proceedings, 4977
Interest rates, 3207, 11502, 18982
Loan claims payment, 1349
Medical benefits:
Bereavement counseling, 7185
Claimants and beneficiaries transportation, 1755
Community nursing home care facilities use, 13120
Eligibility categories; evidence of inability to defray necessary medical expenses; correction, 9627
Program Fraud Civil Remedies Act; implementation, 16704
Servicemen's and Veterans' Group Life Insurance, 17698
Vocational rehabilitation and education:
Benefits election, 879
Veterans education—
All volunteer force educational assistance program, 1756, 3207
Delimiting date determination, 19298
Entitlement transfer to dependents, 1779
Job training program; administrative review for employers, 7183
Job training program; deadline extension, 4848, 16257
New pension recipients; vocational training temporary program, 4396
Overpayments; administrative errors, 17466
Post-Vietnam era veterans educational assistance program, 616
Refresher, remedial, and deficiency courses; entitlement charges, 5769
PROPOSED RULES
Acquisition regulations
Cost comparison (OMB Circular A-76 implementation), 5201
Packaging requirements; estimated quantities, 24106
Board of Veterans Appeals:
Legal interns, law students, and paralegals; status; rules of practice, 20653
Disabilities rating schedule:
Systemic diseases (AIDS, ARC, and HIV antibody positive), 18099
Correction, 19856
General Counsel; legal opinions, 8471
Inventions by VA employees as coinventors in research supported by nonprofit organizations and small businesses; contractor obligations, 4858
Loan guaranty:
Legal services incurred in terminating loan; maximum reimbursement increase, 1378
Medical benefits:
Community residential care, 9778
Parking fees at medical facilities, 8934
Correction, 9848
Regulatory agenda, 14540
Servicemen's and Veterans' Group Life Insurance; eligibility, 17476
Vocational rehabilitation and education:
Employment services for eligible veterans, 2855
Independent living services program, 9125
Veterans education—
Course withdrawal under mitigating circumstances; clarification, 5806
Delimiting date determination, 620
Educational assistance test program rates, etc., 16884
Post-Vietnam era veterans educational assistance program, 4186, 5433, 5684
Vocational Rehabilitation and Counseling Officer; discontinuance actions, special review, 1042
NOTICES
Advisory committees; annual reports; availability, 2807, 15616
Special Medical Advisory Group, 8024
Agency information collection activities under OMB review, 650, 989, 1977, 3487, 3659, 8543, 9170, 11728, 14885, 14886, 15945, 16511, 16928, 16929, 17135, 18191, 18649, 20410, 20935, 20936, 22760

Committees; establishment, renewal, termination, etc.:
Automated Data Processing Systems Advisory Committee, 20410
Career Development Committee, 20410
Cooperative Studies Evaluation Committee, 17816
Merit Review Boards, 7071
Special Medical Advisory Group, 989
Meetings:
Career Development Committee, 10458
Cemeteries and Memorials Advisory Committee, 10998
Commission to Assess Veterans' Education Policy, 595, 5851
Cooperative Studies Evaluation Committee, 8841
Environmental Hazards Advisory Committee, 1438, 17001
Former Prisoners of War Advisory Committee, 1535
Geriatrics and Gerontology Advisory Committee, 12863
Health Service Research and Development Scientific Review and Evaluation Board, 20411
Health-Related Effects of Herbicides Advisory Committee, 4495
Medical Research Service Merit Review Boards, 5517
National Vietnam Veterans Readjustment Study Scientific Advisory Committee, 7291
Rehabilitation Advisory Committee, 1535, 20411
Rehabilitation Research and Development Scientific Review and Evaluation Board, 21962
Special Medical Advisory Group, 4815, 23337
Structural Safety of Veterans Administration Facilities Advisory Committee, 10459
Vietnam Veterans Readjustment Problems Advisory Committee, 1536, 14886
Wage Committee, 1536, 9170, 19365
Women Veterans Advisory Committee, 2564
Nondiscrimination in Federally assisted programs; age distinctions review, 6728
Privacy Act:
Computer matching program, 15616, 19853
Systems of records, 19085, 23845
Reports, program evaluation; availability, etc.:
Library service program, 13213
Oral health concerns of aging veteran, 14886
Therapeutic work programs, 18192

Veterans Employment and Training, Office of Assistant Secretary

NOTICES
Grants; availability, etc.:
Homeless veterans reintegration project; preapplication procedures, 12088, 15751
Job Training Partnership Act—
Employment and training programs operation, 2100, 6207
Meetings:
Veterans' Employment Committee, 7427, 12481, 22235

Wage and Hour Division

RULES
Labor standards on projects or productions assisted by grants from National Endowments for the Arts and the Humanities, 23540
Correction, 24171
Walsh-Healey Public Contracts Act:
Small business determination procedures, 7741
PROPOSED RULES
Fair Labor Standards Act:
Workers with disabilities under special certificates; employment, 18234
Homeworkers; employment in industries, 10342, 15063
Correction, 11590, 12497
NOTICES
Fair value or reasonable cost of facilities furnished to employees, 23319
Learners, certificates authorizing employment at special minimum wages, 5844, 15476
Meetings:
Child Labor Advisory Committee, 4788, 15751, 19348, 22235, 24380

Western Area Power Administration

NOTICES
Environmental statements; availability, etc.:
California-Oregon and Los Banos-Gates transmission projects, 7019
California-Oregon Transmission Project, 17749
Sidney-North Yuma 230-kV transmission line project, CO and NE, 12584
Grants and cooperative agreements; availability, etc.:
Irrigation efficiency program, CO, 16779
Power marketing plans, etc.:
Amistad and Falcon projects, 12584
Navajo Generating Station, AZ, 8264, 17102
Power rate adjustments:
Boulder Canyon Project, NV, 23446
Central Valley Project, CA, 8268
Navajo Generating Station, AZ, 8264
Pick-Sloan Missouri Basin Program-Eastern Division, 12727
Transmission rate adjustments:
Central Valley Project, CA, 8268

White House Conference for a Drug Free America

NOTICES
Meetings, 13214

White House Fellowships, President's Commission

See President's Commission on White House Fellowships

Workers' Compensation Programs Office

RULES
Federal employees:
Compensation claims, 11594
War Hazards Compensation Act claims, 3678
PROPOSED RULES
Federal employees:
Compensation claims, 11596

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Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983	Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245 No charge	Division of Management Support, Bureau of Indian Affairs, Room 334–Interior South, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C.(202) 343-3577
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist–July 6, 1978	In accordance with fee schedule in 43 CFR 2, Appendix A	William C. Mackay Chief, Branch of Management Analyst, 2401 E St., NW., Washington, DC 20241 Telephone 634-1336
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Department of Labor, Office of the Secretary, Wage Appeals Board	Davis-Bacon Act Index. The index contains abstracts of final decisions of the Wage Appeals Board from 1969-1984. The index will be updated periodically. The current 127 page index is available in whole, or the 3 page subject matter table of contents and any individual section may be ordered separately	Office of the Solicitor, Division of Fair Labor Standards, Room N-2716, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Price is $.10 per page. Make checks payable to Department of Labor	Executive Secretary, Wage Appeals Board, Room N-6507, (202) 523-9039; or Department of Labor Library, Room N-2439 (202) 523-6992 200 Constitution Ave., NW., Washington, DC 20210
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	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
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FEDERAL REGISTER PAGES AND DATES—JANUARY–JUNE 1988

Pages	Date	(Issue No.)
1-106	Jan. 4	(1)
107-230	5	(2)
231-398	6	(3)
399-486	7	(4)
487-608	8	(5)
609-732	11	(6)
733-772	12	(7)
773-854	13	(8)
855-998	14	(9)
999-1330	15	(10)
1331-1466	19	(11)
1467-1600	20	(12)
1601-1738	21	(13)
1739-1908	22	(14)
1909-1996	25	(15)
1997-2212	26	(16)
2213-2476	27	(17)
2477-2578	28	(18)
2579-2718	29	(19)
2719-2816	Feb. 1	(20)
2817-2994	2	(21)
2995-3182	3	(22)
3183-3324	4	(23)
3325-3570	5	(24)
3571-3720	8	(25)
3721-3844	9	(26)
3845-3996	10	(27)
3997-4104	11	(28)
4105-4372	12	(29)
4373-4588	16	(30)
4589-4826	17	(31)
4827-4952	18	(32)
4953-5148	19	(33)
5149-5268	22	(34)
5269-5356	23	(35)
5357-5566	24	(36)
5567-5748	25	(37)
5749-5968	26	(38)
5969-6114	29	(39)
6115-6552	Mar. 1	(40)
6553-6782	2	(41)
6783-6964	3	(42)
6965-7176	4	(43)
7177-7324	7	(44)
7325-7488	8	(45)
7489-7722	9	(46)
7723-7874	10	(47)
7875-8140	11	(48)
8141-8420	14	(49)
8421-8610	15	(50)
8611-8744	16	(51)
8745-8858	17	(52)
8859-9098	18	(53)
9099-9280	21	(54)
9281-9422	22	(55)
9423-9594	23	(56)
9595-9758	24	(57)
9759-9852	25	(58)
9853-10054	28	(59)
10055-10240	29	(60)
10241-10356	30	(61)
10357-10518	31	(62)
10519-10868	Apr. 1	(63)
10869-11030	4	(64)
11031-11238	5	(65)
11239-11486	6	(66)
11487-11632	7	(67)
11633-11814	8	(68)
11815-11990	11	(69)
11991-12136	12	(70)
12137-12370	13	(71)
12371-12508	14	(72)
12509-12670	15	(73)
12671-12758	18	(74)
12759-12908	19	(75)
12909-13096	20	(76)
13097-13234	21	(77)
13235-13398	22	(78)
13399-14772	25	(79)
14773-15010	26	(80)
15011-15192	27	(81)
15193-15346	28	(82)
15347-15542	29	(83)
15543-15642	May 2	(84)
15643-15784	3	(85)
15785-16050	4	(86)
16051-16234	5	(87)
16235-16376	6	(88)
16377-16534	9	(89)
16535-16692	10	(90)
16693-16858	11	(91)
16859-17002	12	(92)
17003-17166	13	(93)
17167-17446	16	(94)
17447-17682	17	(95)
17683-17910	18	(96)
17911-18070	19	(97)
18071-18252	20	(98)
18253-18544	23	(99)
18545-18816	24	(100)
18817-18972	25	(101)
18973-19212	26	(102)
19213-19742	27	(103)
19743-19878	31	(104)
19879-20088	June 1	(105)
20089-20274	2	(106)
20275-20594	3	(107)
20595-20806	6	(108)
20807-21404	7	(109)
21405-21618	8	(110)
21619-21790	9	(111)
21791-21976	10	(112)
21977-22124	13	(113)
22125-22290	14	(114)
22291-22460	15	(115)
22461-22646	16	(116)
22647-23106	17	(117)
23107-23202	20	(118)
23203-23378	21	(119)
23379-23602	22	(120)
23603-23748	23	(121)
23749-24010	24	(122)
24011-24246	27	(123)
24247-24436	28	(124)
24437-24670	29	(125)
24671-24920	30	(126)

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INDEX

VOL

53

JA

JE

988

UMI

Federal register index

JANUARY-JUNE 1988

VOL. 53—NO. 1-126

VOL
53
ISS
1
JA
4
988
UMI

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4

988

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Pages 1-106

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Problems with Federal agency subscriptions	523–5240

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Contents

Federal Register

Vol. 53, No. 1

Monday, January 4, 1988

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 7
Oranges (navel) grown in Arizona and California, 6

Agriculture Department
See Agricultural Marketing Service; Federal Crop Insurance Corporation

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Urunao Beach, GU, 65

Arms Control and Disarmament Agency
NOTICES
Grants; availability, etc.:
Visiting scholars program, 43

Child Support Enforcement Office
RULES
State plan requirements:
ADP equipment and services; conditions for Federal financial assistance. [For a document on this subject, see entry under Health and Human Services Department.]

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 55
Hungary, 50
India, 58
Pakistan, 51
Poland, 59
Sri Lanka, 52, 53
(2 documents)
Taiwan, 62
Thailand, 60
USSR, 61
Export visa requirements; certification, waivers, etc.:
Thailand et al., 54

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Morgan Stanley Capital International EAFE (Europe, Australia, and Far East) Stock Index, 64

Conservation and Renewable Energy Office
PROPOSED RULES
Consumer products:
Energy efficiency standards; refrigerators, refrigerator-freezers, and freezers, etc.; hearing, 30
NOTICES
Consumer product test procedures; waiver petitions:
Carrier Corp., 68
Meetings:
National Energy Extension Service Advisory Board, 69

Customs Service
PROPOSED RULES
Merchandise entry:
Consolidated shipments; broker designations, 30

Defense Department
See also Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100
Independent price determination certificates use in overseas procurements, 100
NOTICES
Meetings:
DIA Scientific Advisory Committee, 64
(2 documents)

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Northridge Petroleum Marketing U.S., Inc., 69

Education Department
NOTICES
Grants; availability, etc.:
Discretionary grant program, 65
(2 documents)
Drug-free schools and communities program, etc., 66
(2 documents)
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers, 67
Rehabilitation service projects
Funding priorities, 104
Meetings:
Indian Education National Advisory Council, 67

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Performance standards (1988 PY); proposed; numerical values; correction, 97

Energy Department
See also Conservation and Renewable Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 68
(2 documents)

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Myclobutanil, 20
PROPOSED RULES
Hazardous waste:
Identification and listing—
Exclusions, 31

Water pollution control:
National primary drinking water regulations—
Giardia lamblia, viruses, and legionella, maximum contaminant levels, and turbidity and heterotrophic bacteria; and total coliforms, 31
NOTICES
Agency information collection activities under OMB review, 78
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 79
Hazardous waste:
Crude oil, natural gas, and geothermal energy exploration, development and production waste; report to Congress, 81

Family Support Administration
See also Child Support Enforcement Office
RULES
Grants:
ADP equipment and services; conditions for Federal financial assistance. [For a document on this subject, see entry under Health and Human Services Department.]

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 94
(2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 8–10
(4 documents)
British Aerospace, 11
SAAB-Fairchild, 12
Short Brothers PLC, 13
Shorts, 14
NOTICES
Airport noise compatibility program:
Palm Springs Municipal Airport, CA, 90
Meetings:
Aeronautics Radio Technical Commission, 91
Rulemaking petitions; summary and disposition, 91, 92
(2 documents)

Federal Communications Commission
RULES
Common carrier services:
Customer premises equipment; nonstructural safeguards, 27
Radio stations; table of assignments:
Vermont, 28
(2 documents)
Wisconsin, 28
Television stations; table of assignments:
South Carolina; correction, 29
NOTICES
Applications, hearings, determinations, etc.:
A.J.T. Broadcasting Services Limited Partnership et al., 82
Cedar Rapids Broadcasting et al., 82
Corydon Broadcasters Ltd. et al., 82
Eastern Broadcasting et al., 83
Jones, John, Jr., et al., 83

Federal Crop Insurance Corporation
RULES
Federal claims collection; salary offset, 2

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 94
(2 documents)

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 95

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Compression allowances and protest procedures, 15
NOTICES
Electric rate and corporate regulation filings:
Boston Edison Co. et al., 69
MSU System Services, Inc., et al., 70
Hydroelectric applications, 70–72
(3 documents)
Interlocking directorate filings:
Daly, Eleanor T., et al., 72
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 73
Small power production and cogeneration facilities; qualifying status:
Archer-Daniels-Midland Co. et al., 76
Applications, hearings, determinations, etc.:
Great Lakes Gas Transmission Co., 77
Midwestern Gas Transmission Co., 77, 78
(2 documents)
Williams Natural Gas Co., 78

Federal Highway Administration
PROPOSED RULES
Motor carrier safety regulations:
Drivers qualifications; diabetes, 42

Federal Maritime Commission
NOTICES
Agreements filed, etc., 83, 84
(2 documents)

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Annual regulations; environmental statement, 42

Food and Drug Administration
RULES
Color additives:
D&C Red Nos. 33 & 36, 19
Food additives:
Paper and paperboard components—
Polyamine-epichlorohydrin; correction, 97

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Indiana—
Allied Steel Auto Body Parts Plant, 45
Kentucky—
Toyota, 45

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100

Independent price determination certificates use in overseas procurements, 100

Health and Human Services Department
See also Child Support Enforcement Office; Family Support Administration; Food and Drug Administration; Health Care Financing Administration; Human Development Services Office
RULES
Grants, administration:
ADP equipment and services; conditions for Federal financial assistance, 26
NOTICES
Committees; establishment, renewals, terminations, etc.:
Secretary's Commission on Nursing, 84

Health Care Financing Administration
RULES
Medicaid:
ADP equipment and services; conditions for Federal financial assistance. [For a document on this subject, see entry under Health and Human Services Department.]
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Tennessee, 84

Human Development Services Office
RULES
Grants:
ADP equipment and services; conditions for Federal financial assistance. [For a document on this subject, see entry under Health and Human Services Department.]

Interior Department
See also Fish and Wildlife Service; Land Management Bureau
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 24

International Trade Administration
NOTICES
Antidumping:
Precipitated barium carbonate from West Germany, 47
Antidumping and countervailing duties:
Administrative review requests, 46
Countervailing duties:
Carbon steel wire rod from Singapore, 47
Lamb meat from New Zealand, 47

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Aberdeen & Rockfish Railroad Co., 86
Dunn-Erwin Railway Corp., 86
Florida West Coast Railroad, Inc., 87

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Craig District Advisory Council, 85
Oil and gas leases:
Alaska, 85
(2 documents)
Realty actions; sales, leases, etc.:
New Mexico, 86
Survey plat filings:
Oregon and Washington; correction, 97

Libraries and Information Science, National Commission
NOTICES
Meetings; Sunshine Act, 95

Mine Safety and Health Administration
NOTICES
Meetings:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 87

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Acquisition streamlining, 100
Independent price determination certificates use in overseas procurements, 100

National Commission on Libraries and Information Science
See Libraries and Information Science, National Commission

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Finlay Testing Laboratories, Inc., 89
Northeast Nuclear Energy Co. et al., 87

Personnel Management Office
RULES
Health benefits, Federal employees:
Impaired patient-provider relationships, 1

Postal Service
NOTICES
Meetings; Sunshine Act, 96

Public Health Service
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 96
Applications, hearings, determinations, etc.:
G.T. Global Growth Series et al., 89

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; Federal Highway Administration

Treasury Department
See also Customs Service
NOTICES
Agency information collection activities under OMB review, 92

Veterans Administration
RULES
Disabilities rating schedule:
Mental disorders; nomenclature and descriptive terms, 21

Separate Parts In This Issue

Part II
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 100

Part III
Department of Education, 104

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
890.....1
7 CFR
400.....2
907.....6
910.....7
10 CFR
Proposed Rules:
430.....30
14 CFR
39 (8 documents).....8–14
18 CFR
271.....15
19 CFR
Proposed Rules:
141.....30
178.....30
21 CFR
81.....19
176.....97
193.....20
561.....20
38 CFR
4.....21
40 CFR
Proposed Rules:
141.....31
142.....31
261.....31
43 CFR
2.....24
45 CFR
95.....26
47 CFR
64.....27
73 (4 documents).....28, 29
48 CFR
Proposed Rules:
3.....100
7.....100
10.....100
49 CFR
Proposed Rules:
391.....42
50 CFR
Proposed Rules:
20.....42

Rules and Regulations

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program—Impaired Patient-Provider Relationships

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations so that a consideration heretofore reserved for program enrollees in group-practice-type comprehensive medical plans or health maintenance organizations (CMP/HMOs) is also available to enrollees in other types of CMP/HMOs offered for FEHB purposes. As amended, the regulations will permit OPM to order the termination of an employee's or annuitant's enrollment in any CMP/HMO and permit such individual to enroll in another FEHB plan if OPM determines that the relationship between a patient covered by such enrollment and plan-affiliated health care providers is so seriously impaired that it obstructs adequate medical care and jeopardizes the individual's welfare.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Rose, (202) 632–4634.

SUPPLEMENTARY INFORMATION: By definition, group-practice-type CMP/HMOs employ staff physicians to provide most basic health services to plan members in plan-operated facilities. Thus, they inherently provide more limited access to alternative providers than individual-practice-type CMP/HMOs. The latter type plans negotiate services for plan members with physicians in private practice throughout the plan's enrollment area. Accordingly, FEHB regulations have, since 1964, allowed OPM (formerly the Civil Service Commission) to approve a singular opportunity for an FEHB enrollee in a group practice CMP/HMO to terminate such coverage and enroll in another FEHB plan if OPM finds that the group practice plan cannot reasonably accommodate an insured patient's medical needs. Notwithstanding that OPM has to date approved health plan changes under this regulation very infrequently, on June 26, 1987, OPM published a proposed regulation in the **Federal Register** (52 FR 24014) to broaden its application to include enrollees in all CMP/HMOs under the FEHB, as a matter of equity.

Prepaid CMP/HMOs have greatly proliferated and have undergone considerable organizational evolution since the 1960s. Today's CMP/HMOs often exhibit organizational characteristics of both the traditional group-practice and individual-practice models and, in highly competitive CMP/HMO markets, each plan's enrollees may have a relatively limited choice of alternative providers of professional services. A plan's organizational structure has become a less reliable indicator of the likelihood that occasionally the plan's delivery system and a particular patient will be so incompatible that essential medical treatment cannot be conducted. The amended regulation will afford equal protection to all similarly-situated FEHB enrollees. At the same time, OPM anticipates that use of its authority to terminate a CMP/HMO enrollment in the FEHB Program will continue to occur infrequently.

OPM received a total of four comments on the proposed regulation. Three commenters—a national medical specialty society, a trade association for prepaid medical plans, and a Federal agency—agreed that the current regulation should be broadened so that enrollees in all CMP/HMOs under the FEHB Program have protection against a seriously-impaired relationship with the plan-affiliated providers. These commenters also suggested several clarifying amendments which OPM declined to adopt for the following reasons.

The trade association and the Federal agency urged that the regulation specify the evidence necessary to document a seriously-impaired relationship. However, it is not possible to anticipate every individual circumstance which would justify a decision to terminate a CMP/HMO enrollment. Therefore, it would be undesirable for the regulation to limit OPM's consideration to particular kinds of evidence which could be inappropriate in some cases. In nearly 25 years of experience with applying this same regulation to group-practice plan enrollments, OPM has allowed termination of relatively few enrollments and anticipates that use of this authority will continue to be infrequent. In every case, the essential consideration is, as the regulation indicates, whether a plan's health care delivery system and a particular patient are so incompatible that the patient's welfare is at risk.

In addition, the medical specialty society suggested that problems with impaired patient-provider relationships could be prevented if OPM required all plans to have a sufficient number of full time, participating physicians, including psychiatrists. Historically, OPM has required each CMP/HMO to demonstrate the capability to provide reasonable access to, and choice of, quality primary and specialty care throughout the plan's service area; current regulations explicitly state this (5 CFR 890.203(a)(3)(iii)). However, because each CMP/HMO offers a finite number of alternative providers, a patient may occasionally be unable to achieve satisfactory treatment relationships within the plan's delivery system.

An underwriter for several FEHB plans urged deletion rather than expansion of the current regulation concerning termination of CMP/HMO enrollments. This commenter viewed the current regulation as inequitable to enrollees in Governmentwide or employee organization FEHB plans who "are locked into their chosen plan for the duration of the contract term regardless of an 'impaired relationship' which may be attributable to the terms of the policy, claims service, or level of benefits provided." The FEHB law and regulations provide other equally appropriate remedies for these problems.

Enrollees in FEHB plans, other than CMP/HMOs, are entitled to be reimbursed for specified medical expenses and are free to obtain services from any qualified provider. When a

plan denies reimbursement, such enrollee may request OPM to review the claim; if OPM finds that the claim is valid under the terms of the contract, the plan is bound by law to honor the claim (5 U.S.C. 8902(j)). Plans that unduly delay settling claims risk losing approval for continued FEHB participation (5 U.S.C. 8902(e)). And any enrollee who is dissatisfied with the level of benefits may change plans during the annual open enrollment season.

Enrollees in CMP/HMOs for FEHB purposes also enjoy essentially these same protections. But, since CMP/HMOs are both the insurer and the provider of services, their enrollees must generally obtain all covered health services from plan-affiliated providers. If a seriously-impaired patient-provider relationship develops so that the CMP/HMO is unable to dispense appropriate contract services to a particular patient, such patient will in effect become uninsured unless an opportunity to change to another FEHB plan is available. Again, though, only a fundamental incompatibility with a CMP/HMO's providers would warrant a change of health plans and such cases can be expected to occur infrequently with FEHB-approved plans.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will simply ensure that Federal employees and annuitants enjoy the full benefits to which they are entitled under the FEHB law.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—[AMENDED]

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.103, paragraph (c) is revised to read as follows:

§ 890.103 Correction of errors.

* * * * *

(c) OPM may order the termination of an employee's or annuitant's enrollment in any comprehensive medical plan described in section 8903(4) of title 5, United States Code, and permit the individual to enroll in another health benefits plan for purposes of this part, upon a showing satisfactory to OPM that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the comprehensive medical plan's affiliated health care providers.

[FR Doc. 87-30086 Filed 12-31-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 4353S]

General Administrative Regulations; Crop Insurance; Debt Management; Delinquent Debts; Credit Reporting Procedures; Collection Procedures; Salary Offset; IRS Tax Refund Offset

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends its Debt management regulations contained in 7 CFR Part 400, Subpart K, to (1) provide procedures to be followed in complying with 31 U.S.C. 3720A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against Federal income tax refunds owed to named persons; and (2) provide procedures permitting salary offset for the collection of debts as provided in the Debt Collection Act of 1982 (enacted on October 25, 1982), and the regulations issued by the United States Department of Agriculture (USDA) on March 17, 1986 (51 FR 8995) (7 CFR Part 3, Subpart C).

The intended effect of this rule is to: (1) Increase debt collections and reduce delinquencies; and (2) advise the public of the procedures to be used by FCIC.

DATES: Effective Date: December 31, 1987.

Written comments on this rule must be submitted not later than February 3, 1988.

ADDRESS: Written comments on this rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1992.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

In its final rule (51 FR 8995), USDA estimated that the rule implementing salary offset provisions would enable it to increase collection by approximately $5 million, representing money that is already owned and overdue. The portion of this amount recoverable by FCIC's implementation of salary offset provisions cannot be estimated, but this rule will have an impact on only a small number of Federal employees who are delinquent in repaying their debts to USDA. For this reason, it has been determined that this action will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This rule relates to internal agency management and personnel. Therefore, pursuant to 5 U.S.C. 553(a) notice and other public procedure with respect thereto are not necessary. FCIC is implementing this rule immediately. However, notwithstanding the exemption from public comment requirements in 5 U.S.C. 553 with respect to such rules, FCIC is accepting public comments for 30 days following publication of the rule in the **Federal Register.**

Specific and detailed procedures for the collection of debt by referral to the Department of the Treasury, Internal Revenue Service (IRS), for offset against Federal income tax refunds to named persons are contained in 31 U.S.C. Part 3720A under which the IRS may collect by offset against tax refunds payable to named persons after December 31, 1985, and before July 1, 1988, debts referred by Federal agencies (28 U.S.C. 6042(d); Pub. L. 98-396, 2653(c), 98 Stat. 1158).

Specific and detailed requirements to be followed by agencies of USDA for the collection of debt by salary offset against Federal employees are contained in the Debt Collection Act of 1982 (Pub. L. 97-365, 31 U.S.C. 3701, 3711, and 3716-3719), the Attorney General-Comptroller General's joint claims collection standards for agencies (4 CFR Parts 101 through 105), the USDA debt collection regulations (7 CFR Part 3), published in the **Federal Register** on March 17, 1986, at 51 FR 8995, and the Office of Personnel Management (OPM) regulations (5 CFR Part 550, Subpart K).

This amendment to 7 CFR Part 400, Subpart K, neither adds nor detracts from those regulations but merely restates the requirements of the regulations and provides for codification of the regulations in 7 CFR Part 400 for the purposes of implementation by FCIC. No new restriction or requirement is imposed on those already subject to USDA's regulations or those regulations promulgated by IRS.

List of Subjects in 7 CFR Part 400

Crop insurance, General administrative regulations, Debt management, Delinquent debts, Credit reporting procedures, Collection procedures, IRS Tax refund offset, Salary offset, IRS Tax refund offset.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Debt Management Regulations found at 7 CFR Part 400, Subpart K, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The Authority citation for 7 CFR Part 400, Subpart K, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The sections in Subpart L, §§ 400.141 through 400.157 are redesignated as §§ 400.161 through 400.177.

3. New §§ 400.128 through 400.142 are added to Subpart K to read as follows:

Subpart K—Debt Management Regulations

§ 400.128 Definitions.

(a) *"Agency"* means (1) An Executive Agency as defined by 5 U.S.C. 105, the United States Postal Service, and the United States Postal Rate Commission, or (2) A Military Department, as defined by section 102 of Title 5 U.S.C.

(b) *"Debt"* means:

(1) An amount owed to the United States from sources including, but not limited to, insured or guaranteed loans, fees, leases, insurance premiums, interest (except where prohibited by law), rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable because of such employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel reimbursement;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(c) *"Department" or "USDA"* means the United States Department of Agriculture.

(d) *"Disposable salary (pay)"* means any pay due an employee which remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions as may be required by law to be withheld.

(e) *"Employee"* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *"FCIC Official"* means the Manager, or the Manager's designee.

(g) *"Hearing Officer"* means an Administrative Law Judge of the Department of Agriculture or another person not under the control of the USDA, designated by the FCIC Official to review the determination of the alleged debt.

(h) *"Salary Offset"* means a deduction of a debt due the U.S. by deduction from the disposable salary of an employee without the employee's consent.

(i) *"Waiver"* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 400.129 Salary offset.

(a) Debt collection by salary offset is feasible if: the cost to the Government of collection by salary offset does not exceed the amount of the debt; there are no legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court or the expiration of a statute of limitations; or, other such legal restrictions. The Debt Collection Act permits collections of debts by offset for claims that have not been outstanding for more than 10 years.

(b) The salary offset provisions contained herein provide procedures which must be followed before FCIC may request another Federal agency to offset any amount from the debtor's salary. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in Part 400, Subpart J of this title.

(c) These regulations will not apply to any case where collection of a debt by salary offset is explicitly provided for by

another statue as noted by the Comptroller General in 64 Comp. Gen. 142 (1984), including 5 U.S.C. 5512(a), 5 U.S.C. 5513, 5 U.S.C. 5522(a) (1), 5 U.S.C. 5705 (1) and (2), and 5 U.S.C. 5724(f).

(d) Salary offset may be used by FCIC to collect debts which arise from delinquent FCIC premium payments or delinquent repayment plans and other debts arising from, but not limited to, such sources as program theft, embezzlement, fraud, salary overpayments, underwithholding of any amounts due and payable for life and health insurance, advance travel payments, overpaid indemnities, and any amount owed by present or former employees from loss of federal funds through negligence and other matters. The debt does not have to be reduced to judgment and does not have to be covered by a security instrument.

(e) FCIC may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Salary offset will not be initiated until after other servicing options available to the requesting agency have been utilized, and due process has been afforded to the FCIC employee. When salary offset is utilized, payment for the debt will be deducted from the employee's salary and sent directly to the creditor agency. Not more than fifteen percent (15%) of the employee's disposable salary can be offset in any one pay period, unless the employee agrees in writing to the deduction of a larger amount.

(f) When FCIC is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until FCIC provides the agency with a written certification that the debtor owes FCIC a debt (including the amount and basis of the debt and the due date of the payment), and that FCIC has complied with Department regulations. If a repayment schedule is elected by the employee, interest will be charged in accordance with Departmental Regulation 2520–1, Interest Rate on Delinquent Debts; USDA Debt Collection Regulations in 7 CFR Part 3; and 4 CFR 102.13.

(g) For the purposes of this section, the Manager, FCIC, or the Manager's designee, is delegated authority to:

(1) Certify to the debtor's employing agency that the debt exists and the amount of the debt or delinquent balance;

(2) Certify that, with respect to debt collection, the procedures and regulations of FCIC and the Department have been complied with; and

(3) Request that salary offset be initiated by the debtor's employing agency.

§ 400.130 Notice requirements before offset.

Salary offset will not be made unless the employee receives 30 calendar days written notice. The notice of intent to offset salary (notice of intent) will state:

(a) That FCIC has reviewed the records relating to the debt and has determined that the debt is owed, and has verified the amount of the debt, and the facts giving rise to the debt;

(b) That FCIC intends to deduct an amount not to exceed 15% of the employees current disposable salary until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the requirements concerning interest, penalties, and administrative costs, including a statement that these assessments will be made unless waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34;

(e) That FCIC's records concerning the debt are available to the employee for inspection and that the employee may request a copy of such records;

(f) That the employee has a right to voluntarily enter into a written agreement with FCIC for a repayment schedule with FCIC, which may be different from that proposed by FCIC, if the terms of the repayment agreement are agreed to by FCIC;

(g) That the employee has the right to a hearing conducted by an Administrative Law Judge of USDA, or a hearing official not under the control of USDA, concerning the determination of the debt, the amount of the debt, or the percentage of disposable salary to be deducted each pay period, if the petition for a hearing is filed by the employee as prescribed by FCIC;

(h) The method and time period allowable for a petition for a hearing;

(i) That the timely filing of a hearing petition will stay the offset collection proceedings;

(j) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(k) That any knowingly false or frivolous statement, representation, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable Statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(l) Any other rights or remedies available to the employee under any statute or regulations governing the program for which collection is being made;

(m) That the employee may request waiver of salary overpayment under applicable statutory authority (5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C 716, or 5 U.S.C 8346(b)), or may request waiver in the case of general debts and if waiver is available under any statutory provision pertaining to the particular debt being collected. The employee may question the amount or validity of the salary overpayment or general debt by submitting a claim to the Comptroller General in accordance with General Accounting Officer procedure.

(n) That amounts paid on or deducted for the debt which are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(o) The name and address of an official of FCIC to whom the employee should direct any communication with respect to the debt.

§ 400.131 Request for a hearing and result if an employee fails to meet deadlines.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for hearing that is received by the FCIC Official not later than 30 calendar days from the date of the notice of intent to collect a debt by salary offset, if the employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The FCIC Official's proposed offset schedule, including the percentage of deduction.

(b) The petition must be signed by the employee and should clearly identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support the his or her position. If the employee objects to the percentage of disposable salary to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 days provided in paragraph (a) of this section, the FCIC Official may accept the petition if the employee is able to show that the delay caused by conditions beyond his or her control, or because the employee failed to received the notice of the filing deadline (unless the employee has actual notice of the deadline).

(d) An employee will not be granted a hearing and will have his or her disposable salary offset in accordance with the FCIC Official's announced schedule if the employee:

(1) Fails to file a petition for hearing as set forth in this subsection; or

(2) Is scheduled to appear and fails to appear at the hearing.

§ 401.132 Hearings.

(a) If an employee timely files a petition for a hearing, the FCIC Official will select the date, time, and location for the hearing.

(b) The hearing shall be conducted by an appropriately designated Hearing Official.

(c) Rules of evidence shall not be observed, but the hearing officer will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing, and weigh all such evidence accordingly, given all the facts and circumstances surrounding the debt.

(d) The burden of proof with respect to the existence of the debt rests with FCIC.

(e) The employee requesting the hearing shall bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists, or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 401.133 Written decision following a hearing.

(a) At the conclusion of the hearing, a written decision will be provided which will include:

(1) A statement of the facts presented at the hearing supporting the nature and origin of the alleged debt and those presented to refute the debt;

(2) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(3) The amount and validity of the alleged debt determined as a result of the hearing;

(4) The payment schedule (including the percentage of disposable salary), if applicable; and

(5) The determination of the amount of the debt at this hearing is the final agency action on this matter.

§ 400.134 Review of FCIC record related to the debt.

An employee who intends to inspect or copy FCIC records related to the debt must send a letter to the FCIC official (designated in the notice of intent) stating his or her intentions. The letter must be received by the FCIC official within 30 calender days of the date of the notice of intent. In response to the timely notice submitted by the debtor, the FCIC official will notify the employee of the location and time when the employee may inspect and copy FCIC records related to the debt.

§ 400.135 Written agreement to repay debt as an alternative to salary offset.

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of the notice of intent. The FCIC official will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The FCIC official may accept a repayment agreement instead of proceeding by offset. In making this determination, the FCIC official will balance the FCIC interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the FCIC official will accept a repayment agreement, instead of offset, for good cause such as, if the employee establishes that offset would result in undue financial hardship, or would be against equity and good conscience.

§ 400.136 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be made by the method and in the amount outlined in the Notice of Intent to collect from the employee's salary, as provided for in § 400.130.

(b) If the employee files a petition for a hearing before the expiration of the period provided for in § 400.130, then deductions will begin after the hearing officer has provided the employee with a final written decision in favor of FCIC.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected in accordance with procedures for administrative offset.

§ 400.137 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the disposable pay for an ordinary pay period. In these cases, deduction will be by installments as set forth in § 400.138.

§ 400.138 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the hearing official agree to alternative arrangements for repayment under § 400.135.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of the installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25.00 per pay period, or $50.00 per month, will be accepted only in the most unusual circumstances.

§ 400.139 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under the provisions of 5 U.S.C. 5514.

§ 400.140 Refunds.

FCIC will promptly refund to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(b) FCIC is directed by an administrative or judicial order to refund amounts deducted from an employee's current pay.

§ 400.141 Internal Revenue Service (IRS) Tax Refund Offset.

Under the provisions of 31 U.S.C. 3720A, the (IRS) may be requested to collect a legally enforceable debt owing to any Federal agency by offset against a taxpayer's Federal income tax refund. This section provides policies and procedures to implement IRS tax refund offsets in accordance with the provisions set forth in § 301.6402–6T of 26 CFR Chapter I.

(a) Any person who is indebted to the Federal Crop Insurance Corporation (FCIC) is entitled to the extent of FCIC's administrative due process including review and appeal of the debt under the

Appeal Regulations in 7 CFR Part 400, Subpart J.

(b) If, after such administrative due process is exhausted, the debt is still outstanding with no other means of collection, the debtor will be notified by letter of FCIC's intention to refer such debt to the IRS for collection by tax refund offset. The notification letter will inform the debtor that their account is delinquent and that IRS will be requested to reduce the amount of any tax refund check due the debtor by the amount of the deliquency. The debtor will be given 60 days in which to write to the Manager, FCIC, providing written evidence that the debt is not legally enforceable. FCIC will refer the debt to IRS for collection by offset after the 60-day period if no response is received from the debtor. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in 7 CFR Part 400, Subpart J.

(c) If the debtor has requested a review, and has provided written evidence that the debt is not legally enforceable, the Manager, with the assistance of the Office of General Counsel, USDA, will review the debtor's reasons for believing that the debt is not legally enforceable. The debtor will then be notified of the results of the review.

(d) FCIC will notify IRS of those accounts against which offset action is to be taken.

(e) If, during the period of review, the debtor pays the debt in full, the collection of the debt by tax refund offset procedure will be halted. Changes in debtor status that eliminate the debtor from IRS offset will be reported to IRS by FCIC and the debtor's refund will not be offset.

(f) Amounts offset for delinquent debt which are later found to be not owed to FCIC, will be promptly refunded.

(g) Debtors will not be subject to IRS offset for any of the following reasons:

(1) Debtors who are discharged in bankruptcy or who are under the jurisdiction of a bankruptcy court;

(2) Debtors who are employed by the Federal Government;

(3) Debtors whose cases are in suspense because of actions pending by or taken by FCIC;

(4) Debtors who have not provided a Social Security Number (SSN) and no SSN can be obtained;

(5) Debtors whose indebtedness is less than $25;

(6) Debtors whose account is more than ten (10) years delinquent; except in the case of a judgment debt; or

(7) Debtors whose account has not been first reported to a consumer credit reporting agency.

§ 400.142 Past-due legally enforceable debt eligible for refund offset.

For purposes of this section, a past-due, legally enforceable debt which may be referred by FCIC to IRS for offset is a debt which:

(a) Except in the case of a judgement debt, has been delinquent for at least three months but has not been delinquent for more than 10 years at the time the offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(d) With respect to which the agency has given the employee at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such employee, and has determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by FCIC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to IRS after June 30, 1980;

(f) With respect to which that FCIC has notified, or has made a reasonable attempt to notify, the employee that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, will be referred to IRS for offset against any overpayment of tax; and

(3) Which is at least $25.00.

Done in Washington, DC on December 30, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-30171 Filed 12-30-87; 10:33 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 666]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 666 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 1 through January 7, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 666 (§ 907.966) is effective for the period January 1 through January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,085 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on December 29, 1987, in Visalia, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is stable.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.966 is added to read as follows:

§ 907.966 Navel Orange Regulation 666.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 1, 1988, through January 7, 1988, are established as follows:

(a) District 1: 1,160,000 cartons;

(b) District 2: 218,000 cartons;

(c) District 3: 58,000 cartons;

(d) District 4: 14,000 cartons.

Dated: December 30, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-30201 Filed 12-31-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 594]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 594 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period January 3 through January 9, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 594 (§ 910.894) is effective for the period January 3 through January 9, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on December 29, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12–0–1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that, with lessened demand, lemon prices are declining.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.894 is added to read as follows:

§ 910.894 Lemon Regulation 594.

The quantity of lemons grown in California and Arizona which may be handled during the period January 3, 1988, through January 9, 1988, is established at 280,000 cartons.

Dated: December 30, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-30200 Filed 12-31-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-160-AD; Amdt. 39-5823]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires operational testing of fuel boost pump bypass valves. This amendment is prompted by the determination that small amounts of water in the valves may freeze and prevent valve operation. This condition, if not corrected, could result in loss of both engines in the event of an electrical power failure.

EFFECTIVE DATE: January 27, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the course of an investigation into two separate incidents of unexplained engine flameouts on Model 737 airplanes in cruise conditions, it was determined that small accumulations of water in the fuel boost pump bypass valve may freeze, preventing fuel flow to the engine while on suction feed (boost pump off). The present design of the fuel system is such that water in the fuel feed line is able to collect at the bypass valves. Since this water can be loaded as a contaminant in fuel and since both main tanks are normally fueled simultaneously from the same source, both tanks may be expected to be contaminated. This condition is normally undetectable. In the event of an alternating current electrical failure at altitude, power to all boost pumps is lost and both engines would flame out due to fuel starvation resulting from the frozen bypass valves.

This problem is confined to certain Model 737-200 airplanes from line position 1028 to line position 1486, and all Model 737-300 airplanes from line position 1001 to line position 1485. Other Model 737 airplanes have a fuel system design which prevents water accumulation at the valves.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1072, dated August 27, 1987, which describes procedures to operationally test and purge the fuel boost pump bypass line of water on a scheduled basis.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive operational tests of the bypass valves, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes listed in Boeing Alert Service Bulletin 737-28A1072, dated August 27, 1987, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine flame out due to boost pump bypass valve freezing, accomplish the following:

A. Prior to accumulation of 150 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737-28A1072 dated August 27, 1987, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 27, 1988.

Issued in Seattle, Washington, on December 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-30134 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-171-AD; Amdt. 39-5826]

Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737-100 and -200 series airplanes, which requires inspections for cracks in the aft engine mount cone bolt, and, replacement, if necessary. This amendment is prompted by the report of a separation of an engine in flight due to failure of the aft engine mount cone bolt. This condition, if not corrected, could result in separation of other engines.

EFFECTIVE DATE: January 25, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On December 5, 1987, the number 2 engine separated from a Boeing Model 737-200 airplane a few minutes after takeoff. Loss of the engine has been attributed to failure of the aft engine mount cone bolt. Wear patterns on the bolt give indications that bolt preload was below the required installation preload, causing the bolt to develop a fatigue crack and subsequently fail. There have been three other reports of fatigue failure of this bolt due to improper torquing or loss of preload; however, this has been the first time that an engine has separated from the airplane.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive ultrasonic inspection of the aft engine mount cone bolt and replacement, if necessary, in accordance with FAA-approved procedures. This constitutes interim action pending further rulemaking that will address terminating action.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737-100 and -200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent separation of the engine from the airplane, accomplish the following:

A. Within the next 300 landings after the effective date of this AD, and thereafter at intervals not to exceed 600 landings, inspect for cracks in the aft engine mount cone bolt in accordance with Boeing Alert Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing Alert Service Bulletin previously mentioned, using magnetic particle inspection techniques. Replacement cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 600 landings.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 25, 1988.

Issued in Seattle, Washington, on December 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-30130 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-107-AD; Amdt. 39-5818]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which requires replacing the existing Electronic Flight Instrument System (EFIS) symbol generators with updated symbol generators. This amendment is prompted by reports of the EFIS display going blank during certain flight conditions. This condition, if not corrected, could lead to blanking of the primary EFIS display during critical phases of flight.

EFFECTIVE DATE: February 16, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems & Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of the symbol generator on certain Boeing Model 737–300 series airplanes, was published in the **Federal Register** on September 9, 1987 (52 FR 33949).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the proposal.

The commenter supported the proposal.

Paragraph B. of the final rule has been revised to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously discussed.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,880.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737–300 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737–300 series airplanes listed in Boeing Service Bulletin 737–34–1220 dated April 30, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent loss of the primary Electronic Flight Instrument System (EFIS) displays, accomplish the following:

A. Replace the EFIS symbol generators in accordance with Boeing Service Bulletin 737–34–1220 dated April 30, 1987, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 16, 1988.

Issued in Seattle, Washington, on December 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–30136 Filed 12–31–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–118–AD; Amdt. 39–5825]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modification of the hydraulic power auxiliary ram air turbine deploy mode wiring. This amendment is prompted by reports of inadvertent ram air turbine deployment on the ground while parked, due to false actuation of the airspeed switch, and inhibition of deployment during flight at low airspeeds. This condition, if not corrected, could lead to injury of ground personnel or loss of hydraulic flight controls during low speed operations following loss of two engines.

EFFECTIVE DATE: February 19, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the hydraulic power auxiliary ram air turbine deploy mode wiring on Boeing Model 757 series airplanes, was published in the **Federal Register** on October 8, 1987 (52 FR 37620).

Interested persons have been afforded the opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Commenters requested that the compliance period be extended from six months, as proposed, to one year. One commenter stated that, due to the manhours involved, the modification could be accomplished with significantly reduced expense if it were performed during routine extended maintenance, which an extended compliance period would allow. Another commenter noted that its airplanes require additional work when incorporating the required service bulletin, and requested the extension of the compliance time in order to accomplish that work. The FAA has considered this information and has determined that an extension of the compliance time from six months to one year will not result in a significant degradation of safety. The final rule has been revised accordingly.

Paragraph B. of the final rule has been revised to require the concurrence of the FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule with the changes previously noted.

It is estimated that 81 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $97,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 757 series airplanes are operated by small entities. A final evaluation has been prepared for this action and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 757–29A0032, dated July 9, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent inadvertent ram air turbine deployment on the ground while parked, and to ensure proper deployment in flight, accomplish the following:

A. Modify the ram air turbine wiring in accordance with Boeing Alert Service Bulletin 757–29A0032, dated July 9, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 19, 1988.

Issued in Seattle, Washington, on December 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–30125 Filed 12–31–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–83–AD; Amdt. 39–5824]

Airworthiness Directives; British Aerospace (BAe) 125–800 Model Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAe 125–800 series airplanes, which requires inspection of the plumbing near the ventral fuel tank, and repair, if necessary. This amendment is prompted by reports of chafing between fuel, oxygen and hydraulic lines. This condition, if not corrected, could result in a fire hazard due to subsequent system leakage.

EFFECTIVE DATE: February 19, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection, and repair, if necessary, of the fuel, oxygen and hydraulic plumbing near the ventral fuel tank on all BAe 125–800 series airplanes, was published in the **Federal Register** on October 8, 1987 (52 FR 37623).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour

Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $8,400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 125-800 airplanes certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of leakage from fuel, oxygen, and hydraulic systems and the resulting fire and functional risks that such leaks present, accomplish the following:

A. Inspect the plumbing in the area of the ventral fuel tanks, and repair as necessary, in accordance with British Aerospace Service Bulletin 53-60, dated November 8, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 19, 1988.

Issued in Seattle, Washington, on December 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-30126 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-158-AD; Amdt. 39-5822]

Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register**, and makes effective as to all persons, an amendment adopting a new airworthiness directive (AD), which was previously made effective as to all known U.S. owners and operators of SAAB-Fairchild Model SF-340A series airplanes by individual telegrams. This AD requires repetitive inspection and replacement of the engine power control cable attach pins if wear tolerances are exceeded. This amendment also revises the telegraphic AD to include reference to the manufacturer's newly-issued service bulletin for accomplishment of the required inspections. This action is necessary to prevent attach pin failure and subsequent possible propeller/engine overspeed; the overspeed condition may cause a reduction in airplane control or cause engine/propeller failure, or a combination of these conditions.

EFFECTIVE DATE: January 27, 1988.

This AD was effective earlier to all recipients of telegraphic AD T87-24-51, dated November 17, 1987.

ADDRESSES: The applicable service information may be obtained from SAAB Scania, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA recently received reports of two events, involving SAAB-Fairchild Model SF-340A series airplanes, where the propeller RPM increased when the engine power was reduced for descent. In both cases, the affected engine was shut down and a safe landing was made. It was determined that the overspeed condition was caused by sheared pins in the power control cable located between the Hydro Mechanical Engine Control Unit (HMC) and the Propeller Control Unit (PCU). It was further determined that, if the power lever in the control quadrant is retarded to flight idle, the power lever on the PCU may move to the Beta-Range. As a result, propeller overspeed beyond controlled limits may occur. This could result in a reduction of airplane control, or cause propeller/engine overspeed and subsequent propeller/engine failure, or a combination of these failure conditions.

SAAB issued a message, Number 72LAS2718, to all operators on November 11, 1987, informing them of the power control cable failures that had occurred, and recommending repetitive inspection, and replacement if necessary, to commence within 100 hours after receipt of the message. The Swedish Airworthiness Authority issued Swedish Airworthiness Directive Number 1-024, declaring the procedures contained in the SAAB message as mandatory.

On November 17, 1987, the FAA issued Telegraphic AD T87-24-51 to require U.S. operators to conduct repetitive inspections, and replacement, if necessary, of the power control cables, in accordance with the SAAB message.

Subsequent to the issuance of telegraphic AD T87-24-51, the manufacturer issued SAAB-Scania AB Alert Service Bulletin SF340-76A-024, dated November 20, 1987, which contains instructions for the inspection described in SAAB message Number 72LAD2718.

This amendment revises telegraphic AD T87-24-51 to include reference to SAAB Scania Alert Service Bulletin SF340-76A-024 in the inspection requirements, and to add a new paragraph D. which allows the issuance of special flight permits to operators so that airplanes may be ferried to a base in order to comply with the requirements of the AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to all Model SF-340A series airplanes, certificated in any category. Compliance is required within 100 flight hours after receipt of this airworthiness directive, unless previously accomplished.

To prevent a reduction in airplane controllability or propeller/engine overspeed due to sheared engine power control cable pins, accomplish the following:

A. Inspect the engine power control cables, part numbers C82146-1 or C82146-2, located between the hydro mechanical engine control units and the propeller control units for axial play, in accordance with SAAB message to all operators, number 72LAS2718, dated November 11, 1987, or SAAB Service Bulletin SF-340-76A-024, dated November 20, 1987.

B. If the axial play measured in the inspection required by paragraph A., above:

1. Exceeds 0.5 mm (0.02 inches), replace the cable assembly with an airworthy cable assembly before the next flight.

2. Is 0.5 mm (0.02 inches) or less, repeat the control cable inspection required by paragraph A., above, at intervals not to exceed 100 flight hours time in service.

3. Is not detectable, repeat the control cable inspection required by paragraph A., above, at intervals not to exceed 500 flight hours time in service.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA principal maintenance inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspection required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB Scania, Product Support, S-58188, Linkoping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 27, 1988.

This amendment was effective earlier to all recipients of telegraphic AD T87-24-51, dated November 17, 1987.

Issued in Seattle, Washington, on December 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-30127 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-115-AD; Amdt. 39-5820]

Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Short Brothers Model SD3-60 series airplanes, which requires modification of an aileron control lever and bracket. This amendment is necessary to prevent incorrect installation of an aileron control lever and attaching rods. This condition, if not corrected, could result in improper installation of the lever and rods, and subsequent increase in aileron control forces and improper control surface travel.

EFFECTIVE DATE: February 16, 1988.

ADDRESSES: The applicable service information may be obtained from Short Brothers, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modification of an aileron control lever and bracket on Short Brothers Model SD3-60 series airplanes, was published in the **Federal Register** on October 8, 1987 (52 FR 37621).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Estimated cost of parts is $50 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $26,620.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($610). A final evaluation has been prepared for this regulation and has been placed in the docket.

BEST COPY AVAILABLE

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Shorts Brothers PLC: Applies to Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3676, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent incorrect installation of aileron control levers and rods, which would result in increased aileron control forces and improper aileron travel, accomplish the following:

A. Within the next 4,800 flight hours after the effective date of this AD or at the next time the aileron control system is disassembled following 90 days after the effective date of this AD, whichever occurs first, install the guards (plates) in the aileron control system, as described in the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-09, Revision No. 3, dated November 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Short Brothers, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 16, 1988.

Issued in Seattle, Washington, on December 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-30137 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-111-AD; Amdt. 39-5819]

Airworthiness Directives; Shorts Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Shorts Model SD3-60 series airplanes, which requires inspection of interference bushings for looseness in each of four fittings on the rear fuselage used for attachment of the horizontal stabilizer. This amendment is prompted by a report of an interference fit bushing that was found to be loose in its fitting on the forward right stabilizer attachment located on the rear fuselage cant frame. This condition, if not corrected, could lead to failure of the horizontal stabilizer attachment fittings.

EFFECTIVE DATE: February 16, 1988.

ADDRESSES: The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and replacement, if necessary, of the horizontal stabilizer attachment fittings on Shorts Model SD3-60 series airplanes, was published in the **Federal Register** on October 8, 1987 (52 FR 37624).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $10,560.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($160). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers: Applies to Model SD3-60 series airplanes, as listed in Shorts Service Bulletin Number SD360-55-10, dated November 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the horizontal stabilizer attach fittings, accomplish the following:

A. Within the next 3 months after the effective date of this AD, inspect the interference fit bushings in each of the four horizontal stabilizer attach fittings in accordance with Shorts Service Bulletin Number SD360-55-10, dated November 1985.

B. If the bushing is found to be loose in its fitting and the movement exceeds 0.005 inches, replace the fitting before further flight.

C. If the bushing is found to be loose in its fitting and the movement does not exceed 0.005 inches, replace the fitting within the next 60 days.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 16, 1988.

Issued in Seattle, Washington, on December 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-30135 Filed 12-31-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-7-001, et al. Order No. 473-A]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued: December 29, 1987.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Order on rehearing.

SUMMARY: On June 3, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its regulations governing compression allowance and protest procedures under section 110 of the Natural Gas Policy Act of 1978. In that rule, the Commission allowed first sellers to recover under NGPA section 110 the fuel or power costs incurred to drive compressors constructed prior to the enactment of the NGPA. The Commission also provided parties an opportunity to protest allowance of delivery of natural gas previously presumed authorized by area rate clauses natural gas contracts. This order grants rehearing to provide protest procedures for all sellers to obtain compression allowance and to provide several clarifications of the final rule.

EFFECTIVE DATE: This rule is effective March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Order on Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

On June 3, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its regulations governing compression allowances and protest procedures under section 110 of the Natural Gas Policy Act of 1978 [1] (NGPA) in response to the mandate of the United States Court of Appeals for the Fifth Circuit in *Texas Eastern Transmission Corporation v. FERC (Texas Eastern)*.[2] In that rule, the Commission allowed first sellers to recover under NGPA section 110 the fuel or power costs incurred to drive compressors constructed prior to the enactment of the NGPA. The Commission also provided parties an opportunity to protest allowances for delivery of natural gas previously presumed authorized by area rate clauses in natural gas contracts. This order grants rehearing of Order No. 473 to provide protest procedures for all sellers to obtain compression allowances and to provide several clarifications of the final rule.

II. Background

Section 110 of the NGPA allows first sellers of natural gas to recover certain production-related costs (*i.e.*, costs associated with compressing, gathering, processing, treating, liquefying or transporting or other similar costs borne by the first seller) without exceeding the maximum lawful price applicable to those first sales that are subject to Commission regulation. The United States Court of Appeals for the Fifth Circuit substantially affirmed the Commission's implementation of NGPA section 110 in Order No. 94-A [3] in *Texas Eastern*. However, it instructed the Commission to amend these regulations to allow a first seller with a pre-NGPA compressor, that is a compression facility construction of which commenced before enactment of the NGPA, to collect a compression allowance for the cost of fuel or power required to drive the compressor from the same date and to the same extent such costs are recoverable for a post-NGPA compression facility. Additionally, the court directed the Commission to provide a protest procedure, modeled on the procedures established in Order No. 23-B, [4] allowing interested persons an opportunity to show that the intent of the parties with respect to certain area rate clauses is inconsistent with the presumptions of Order No. 94-A. After notice and comment, the Commission issued a final rule responding to the court's mandate.[5]

III. Discussion

No one requested rehearing of that portion of the rule that allowed pre-NGPA compression facilities to recover fuel and power costs to the same extent that post-NGPA compression facilities can recover these costs. The Commission did receive five requests for rehearing and clarification of other portions of Order No. 473.[6] As discussed

[1] 15 U.S.C. 3320 (1982).

[2] 799 F. 2d 1053 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1967 (1986).

[3] Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy under the Natural Gas Act, 48 FR 5152 (Feb. 3, 1983), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,419 (Jan. 24, 1983).

[4] Final Regulations Amending and Clarifying Regulations Under the Natural Gas Policy Act and the Natural Gas Act, Order No. 23, 44 FR 16895 (Mar. 20, 1979); FERC Stats. & Regs. [Regulations Preambles 1971-1981] ¶ 30,040; Order No. 23-A, 44 FR 34472 (June 15, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,058; Order Adopting Final Regulations Establishing Protest Procedures Regarding Blanket Affidavit Filings and Interim and Retroactive Collection Filings, Order No. 23-B, 44 FR 38634 (July 3, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,065 (June 21, 1979), *reh'g denied and modifying*, 44 FR 48174 (Aug. 17, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,073 (1979).

[5] Order No. 473, 52 FR 21660 (June 8, 1987), III FERC Stats. & Regs. ¶ 30,747 (June 3, 1987), and 52 FR 23030 (June 17, 1987), III FERC Stats. & Regs. ¶ 30,749 (June 11, 1987) (codified at 18 CFR 271.1104 (1987)).

[6] Louisiana Intrastate Gas Corporation (LIG); Indicated Producers (Producers); Columbia Gas Transmission Corporation (Columbia Gas); Mountain Fuel Resources, Inc. (Mountain Fuel) and Southern Union Company.

more fully below, the Commission is granting rehearing in part, denying rehearing in part, and providing clarification of Order No. 473.

A. Request for Rehearing

In Order No. 473, the Commission established protest procedures to provide interested persons an opportunity to challenge the presumption that a delivery allowance was intended to be authorized by an area rate clause in a gas contract. The protest procedures for delivery allowances in Order No. 473 apply only to interstate pipelines and to all categories of gas except intrastate gas in NGPA sections 105 and 106(b).[7] Modeled on the protest procedures provided in Order No. 23–B, the Commission's regulations established in the final rule require interstate pipelines to file information on every first seller that sells gas to the pipeline and that asserts contractual authority to collect delivery allowances pursuant to any area rate clause.[8] Under the regulations, the Commission publishes these lists in the Federal Register at which time parties have 90 days to file any protests which will in turn be noticed in the Federal Register. The Commission then transmits the protests to the Chief Administrative Law Judge for a hearing or summary disposition.

Producers seek three modifications to the protest procedures. First, Producers argue that the Commission must permit producers, in appropriate cases, to show that area rate clauses authorize compression, as well as delivery allowances. Second, Producers argue that these protest procedures apply prospectively only and must be limited to gas subject to the Commission's Natural Gas Act jurisdiction. Finally, Producers argue that the Commission must permit the collection of interest on all power and fuel allowances.

The Commission continues to believe that, as a general rule, area rate clauses in gas contracts entered into prior to the NGPA can demonstrate the parties' mutual intent to allow for collecting only delivery costs. As the Commission explained in Order No. 94, and as upheld by the Fifth Circuit in *Texas Eastern*, when the Commission initially established its regulations for recovery of production-related costs pursuant to NGPA section 110, it determined that NGA production-related costs should only be recovered in limited circumstances. Hence, production-related cost should be collected to the extent they were already being recovered in contracts entered into prior to the enactment of the NGPA or, to the extent the parties expressly provided for recovery of these costs, in contracts entered into after the enactment of the NGPA. The Commission historically did not allow sellers to recover compression allowances as a production-related cost under area or national rates in effect prior to the enactment of the NGPA.[9]

While the Commission believes that in light of past Commission practice it will be difficult to show that an area rate clause was intended to authorize compression allowances, the regulations have been revised to allow first sellers and any others the opportunity to make this showing under the protest procedures established in Order No. 473, as sought by Producers.[10] Interested persons will have 30 days from the effective date of this order on rehearing to make their filing. Under these procedures, the protesters must submit information to show that the contracting parties intended an area rate clause to authorize recovery of compression allowances as a production-related cost. The first seller or other party initiating the proceeding has the burden of going forward with evidence of contractual intent that an area rate clause authorizes collection of a compression allowance.[11] In addition, the standard for avoiding summary disposition is similar to the standard established for protests concerning delivery allowances. Specifically, in order to rebut the presumption of noncollectibility and avoid summary dismissal, a protest must be supported by: (1) Contract language which causes a reasonable person to intrepet the contract as intending to provide for the collection of the production-related cost of compression, or (2) reliable and probative extrinsic evidence specifically showing that interpretation and dispositive against the presumption disfavoring that interpretation.

The Commission is not persuaded by Producers' attempts to narrow the categories of gas sales which can be challenged by aggrieved parties pursuant to the protest procedures implemented by the Commission in Order No. 473. In the Producers' view, the Commission can only make the NGPA section 110 protest procedures applicable to gas that is subject to Commission jurisdiction under the Natural Gas Act. Producers note that the primary gas categories sought to be covered by the new protest procedures are no longer subject to the Commission's Natural Gas Act jurisdiction. Producers conclude that, for gas sales from and after the effective date of Order No. 473, the scope of application of the protest procedures is moot, since production-related allowances can apply only to the NGA gas which is still subject to Commission jurisdiction. Moreover, Producers argue that the Commission may not without advance notice lawfully apply a broadened protest procedure retroactively to deliveries of non-NGA gas delivered prior to the effective date of Order No. 473.

The Commission reads the Fifth Circuit's mandate in *Texas Eastern* as requiring the Commission to have procedures available that will permit parties to challenge the presumption that an area rate clause in a gas contract demonstrates the parties' mutual intent that certain costs are recoverable as production-related costs under NGPA section 110. The Commission does not believe that the Fifth Circuit intended these protest procedures to be applied prospectively only to NGA gas as suggested by Producers since to do so would negate the whole purpose of these procedures. In particular, Order No. 94, which established regulations implementing NGPA section 110 production-related costs, permits the recovery of these costs retroactively—from July 25, 1980, or the date the seller filed an application with the Commission to recover the production-related costs, whichever is earlier.[12] It would be anomalous to conclude that producers could recover these production-related cost retroactively but that the purchasers of the gas could not protest these same collections for this past period. To the extent that there is a question about the charges paid for these production-related costs, the Commission believes that all the parties should, consistent with the Fifth Circuit's decision, have an opportunity to show that the intent of the parties with respect to certain area rate clauses is inconsistent with the Commission's general rules about production-related costs. The Commission concludes, therefore, that the Fifth Circuit's mandate in *Texas Eastern* requires the Commission to make these protest procedures applicable to gas categories to the same extent that the Order No. 94 production-related cost procedures have been applicable.

Finally, Producers argue that the Commission must allow the collection of interest on power and fuel allowances even when natural gas contracts are silent on the issue of collection of interest. In Order No. 473, the Commission provided that only those natural gas contracts which specifically allow for the collection of interest can collect this interest in addition to the authorized production-related costs. The Fifth Circuit in *Texas Eastern* mandated that the Commission treat the recovery of fuel and power costs for pre-NGPA compression facilities to the same extent and retroactive to the same date as such compression costs had been treated with respect to post-NGPA compression facilities. When the Commission initially established its regulations for collection of production-related costs in the Order No. 94 series, it specifically provided that interest may be collected only if the contract expressly provides for the collection of interest.[13] The Fifth Circuit explicitly affirmed this in *Texas Eastern*. In implementing the Fifth Circuit's mandate in *Texas Eastern*, the Commission is simply allowing the collection of fuel and power costs and the interest on these amounts for pre-NGPA compression facilities to the same extent as these costs have been allowed for post-NGPA compression facilities. The Commission notes that this policy is not only consistent with Order No. 94, but also consistent with the Commission's policy authorizing collection of interest only if specifically authorized in Commission's regulations or the applicable contract.[14] The Commission, therefore, denies Producers' request for rehearing on interest.

B. Requests for Clarification

Applicants request five clarifications of Order No. 473. First, the Commission provided in Order No. 473 that compression at the pre-NGPA gas compression facility must meet a 3.5 to 1 ratio (of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression) in order to recover power and fuel costs associated with production-related compression.[15]

The Commission agrees with Producers that this provision was unnecessary. As Producers point out, power and fuel costs can be collected by compression facilities with compression less than the 3.5 to 1 ratio. The 3.5 to 1 ratio defines the maximum amounts of compression allowance which can be collected by facilities with multiple stages of compression. Because all compression facilities are allowed to collect power and fuel costs no matter what the compression ratio, the Commission revokes the 3.5 to 1 ratio clarification it provided in Order No. 473.[16]

Second, the Commission agrees with Louisiana Intrastate Gas Corporation that first sellers of intrastate gas under NGPA sections 105 and 106(b) can only receive production-related costs for pre-NGPA compression facilities from March 7, 1983 forward, because prior to March 7, 1983, the effective date of Order Nos. 94–A and B, sellers of gas qualifying under NGPA section 105 and 106(b) were not permitted to collect compression and delivery allowances. The confusion arises because Order No. 473 provided that fuel and power cost amounts owed for pre-NGPA compression facilities may be collected retroactively from August 10, 1987 (the date the Fifth Circuit issued its decision in *Texas Eastern*) to July 25, 1980 (the date the Commission implemented its final regulations for NGPA section 110 production-related costs in Order No. 94), or any earlier date on which the seller filed an application with the Commission to recover NGPA section 110 production-related costs.[17] However, the Commission does not intend this statement to apply to intrastate gas subject to NGPA sections 105 and 106(b), since § 271.1104(e) of the Commission's regulations[18] prohibits retroactive collections for delivery or compression costs for intrastate gas subject to NGPA sections 105 and 106(b) prior to March 7, 1983.

Prior to March 7, 1983, the effective date of the Commission's Order No. 94–B, sellers of intrastate gas subject to NGPA sections 105 and 106(b) were not permitted to collect production-related costs. In Order No. 94–B,[19] the Commission amended its regulations to provide for the first time that those selling natural gas priced under sections 105 and 106(b) of the NGPA may collect production-related costs pursuant to NGPA section 110 prospectively only from March 7, 1983, the effective date of Order No. 94–B. The Commission believes it would be inequitable to permit production-related costs from 1980 forward for intrastate gas subject to NGPA sections 105 and 106(b) processed in a pre-NGPA compression facility, when it has only permitted collection of these costs for intrastate gas processed in a post-NGPA compression facility since March 7, 1983.

In order to be consistent with Order No. 94 and to ensure equal treatment of all pre-NGPA and post-NGPA compression, the Commission is amending § 271.1104(d)(1)(iv)(B)(*2*)(*iii*) of its regulations to provide that fuel and power costs for gas subject to NGPA sections 105 and 106(b) may be collected retroactively from August 10, 1987, to March 7, 1983, with interest only if it is expressly authorized by contract.

Third, Columbia Gas asks the Commission to clarify whether the filing requirements in § 271.1104(h) of the Commission's regulations are limited to currently-active contracts for gas sales with clauses providing for NGPA section 110 production-related costs. Pointing out that certain contracts with producer-suppliers have been either terminated, renegotiated or amended so that the producer is not presently claiming, and Columbia Gas is no longer paying, delivery costs pursuant to an area rate clause, Columbia Gas wants to know whether these prior delivery costs should be included in its filing.

The filing requirements in § 271.1104(h) require pipelines to file affidavits listing both present and past producers claiming delivery costs pursuant to area rate clauses. The Commission believes this requirement is necessary, since past payments of delivery costs can still be subject to the protest procedures established pursuant to the Fifth Circuit's mandate in *Texas Eastern* and promulgated in Order No. 473. Additionally, the Commission notes that, even though certain natural gas NGPA categories are no longer subject to the Commission's jurisdiction, including any production-related costs, pipelines are expected to include a list of the producers from which they purchase that gas in their affidavits.

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[7] If intrastate pipelines and their first sellers are involved in any dispute about the terms of intrastate contracts, the Commission believes these disputes should be resolved in state courts.

[8] *See* 18 CFR 271.1104(h) (1987).

[9] *See* Interim Rules, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,420 at 30,399; Order No. 94–A, FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,419 at 30,368.

[10] The Commission therefore amends § 271.1104 to provide that first sellers and any others can use the protest procedures to show that the parties to a contract with an area rate clause mutually intended to permit collection of compression allowances.

[11] For discussion of the effects of overcoming the presumption *See* Order 473, 52 FR 21663–64 (June 8, 1987).

[12] *See* 18 CFR 271.1104(e) (1987).

[13] *See* Order No. 94–A, 48 FR 5152 (Feb. 3, 1983) FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,419 at 30,368 (Jan. 24, 1983). *See also* Order No. 94–C, 48 FR 24039 (May 31, 1983), FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,454 at 30,477 (May 24, 1983).

[14] *See, e.g.*, retroactive collection after final determination that gas sale qualifies for NGPA maximum lawful price sales category, 18 CFR 273.204(c)(5) (1987).

[15] 52 FR 21682, III FERC Stats. & Regs. at 30,675.

[16] See Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978 and Compression Allowances Under section 110 of the Natural Gas Policy Act of 1978, Interim Rule, 48 FR 5180 (Feb. 3, 1983); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,420 at 30,400–402 (Jan. 24, 1983).

[17] 18 CFR 271.1104(d)(1)(iv)(B)(*2*)(*iii*) (1987).

[18] 18 CFR 271.1104(e) (1987).

[19] 48 FR 5190 (Feb. 3, 1983), FERC Stats. & Regs. ¶ 30,421 (Jan. 24, 1983).

along with the delivery allowances that are claimed pursuant to area rate clauses for past periods. These requirements are necessary in order to provide potential protestors with a comprehensive record of contracts containing area rate clauses and any other production-related provisions which might be the subject of the Order No. 473 protest procedures.

Fourth, Mountain Fuel Resources (Mountain Fuel) seeks clarification of the Commission's filing procedures in § 271.1104(h). When Mountain Fuel submitted its filing on producers and their production-related claims on September 8, 1987, it only included the pricing portions of its contracts, rather than including the contracts in their entirety. Additionally, Mountain Fuel did not include information on producers with production-related claims that have been formally settled. Mountain Fuel requests the Commission to clarify whether pipelines must submit entire contracts with their affidavits filed pursuant to § 271.1104(h) of the Commission's regulations, and whether claims that have been settled should be included also.

The Commission needs only those portions of the pipeline's contracts that specify production-related costs, the categories of gas involved, any other provisions that might affect the collection of production-related costs and any area rate clause provisions. Additionally, the Commission expects pipelines to file information on those producers and contracts if contract settlements contain a specific provision for resolving the amount of production-related costs. If a pipeline's settlement does not include production-related costs as part of the settlement, pipelines need not file the settlement.

Finally, the Commission agrees with Southern Union Company that neither the protest procedures nor the area rate clause presumption applies to intrastate pipelines even if the relevant gas falls under NGPA sections other than sections 105 and 106(b). The Commission believes that intrastate contract disputes are best handled in state or Federal courts, even though the Commission may have concurrent jurisdiction.[20]

The Commission notes that a number of pipelines have already filed affidavits in compliance with the regulations promulgated in Order No. 473. The Commission will grant reasonable requests for extension of time needed to correct these filings to comply with the clarifications provided in this order on rehearing.

IV. Paperwork Reduction Act and Effective Date

The Paperwork Reduction Act[21] and the Office of Management and Budget's (OMB)[22] regulations require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this order on rehearing have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (attention: Ellen Brown, (202) 357-5311). Comments on the provisions of this order on rehearing can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (attention: Desk Officer for the Federal Energy Regulatory Commission).

This order on rehearing is effective March 4, 1988. In the event OMB has not approved this order, the Commission will issue a notice postponing the effective date.

In consideration of the foregoing, the Commission amends Part 271, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES

1. The authority citation for Part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717W (1982); Department of Energy Organization Act, 42 U.S.C. 7171-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., P. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

2. In § 271.1104, paragraph (d)(1)(iv)(B)(*2*)(*iii*) is revised to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(d) *Amounts necessary to recover production-related costs.*

(1) *General rule.* * * *

(iv) * * *

(B) * * *

(*2*) * * *

(*iii*) *Retroactivity.* Except for gas subject to Subparts E and F of this part, amounts owed under this paragraph (§ 271.1104 (d)(1)(iv)(B)) may be collected retroactive from August 10, 1987, to July 25, 1980, or any earlier date on which the seller filed an application with the Commission to recover these costs, with interest computed under §§ 154.102(c)(2)(iii) (A) and (B) of this chapter, if interest is expressly authorized by contract. For gas subject to Subparts E and F of this part, amounts owed under the paragraph (§ 271.1104(d)(1)(iv)(B)) may be collected retroactive from August 10, 1987, to March 7, 1983, with interest computed under §§ 154.102(c)(2)(iii) (A) and (B) of this chapter, if interest is expressly authorized by contract.

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3. In § 271.1104, paragraphs (h)(1), (h)(4), (h)(5), (h)(6), (h)(7) and (h)(8) are revised to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(h) *Pipeline list submissions and protest procedure.*

(1) *Pipeline filings.* The information required by §§ 271.1104(h) (2) and (3) must be filed with the Commission by September 8, 1987. A pipeline may submit the information required under §§ 271.1104(h) (2) and (3) in any original and supplemental evidentiary submission, purchased gas adjustment, or rate filing with the Commission, or by providing specific references sufficient to locate the data in any of these prior filings.

* * * * *

(4) *Protests.*

(i) *Delivery allowances.* A protest to the delivery allowances claimed on the pipeline submissions filed under paragraph (h)(2) of this section must be submitted to the Commission, within 90 days of the publication in the **Federal Register** of the pipeline list, described in paragraph (h)(3) of this section, referencing the contract which governs the filed-for production-related delivery costs to which the protestant objects. Parties may waive the 90-day filing deadline by written mutual agreement, in furtherance of voluntary settlement of protests. The waiver agreement may not extend further than 180 days from the date the protest would otherwise be due, and must be filed with the Commission to be effective.

(ii) *Compression allowances.* First sellers and third-parties may assert contractual authority to collect compression allowances pursuant to an area rate clause. A protest under this section must be filed by May 3, 1988.

(5) *Contents of protests.* A protest filed under paragraph (h)(4) of this section must:

(i) Specifically identify each contract that is protested;

(ii) Set forth the text of the contractual provisions which the protestant believes to be:

(A) Inconsistent with the conclusion that the contract authorizes the seller to collect delivery costs and the specific reasons why the protestant believes such inconsistency exists; or

(B) Consistent with the conclusion that the contract authorizes the seller to collect compression allowances and the specific reasons for reaching this conclusion.

(iii) Provide any other evidence which the protestant believes is relevant to the issue of the existence of contractual authorization to collect the production-related costs.

(6) *Protest procedure.* (i) The Commission will publish in the **Federal Register** a notice of a protest filed under paragraph (h)(4) of this section. Any protest must be served by any interested pipeline-purchasers or first sellers, at the same time the protest is submitted to the Commission. Pipeline-purchasers will provide the names and addresses of effected first sellers to any third parties that must make service under this section upon request.

(ii) The Commission will transmit to the Chief Administrative Law Judge:

(A) In disputes concerning delivery allowances, the pipeline protest filing, the protest filed under paragraph (h)(4) of this section and the list of first sellers identified as *not* having contractual authority to collect production-related costs; or

(B) In disputes concerning compression allowances, the first seller protest filing.

(iii) Protests will be set for hearing, unless summary disposition is made of the protest.

(iv) Upon receipt by the Commission of any third-party staff protest, or pipeline protest of first sellers identified as not having contractual authority to collect production-related costs referred to in this section, the seller in the first sale will be joined as a party.

(v) Upon receipt by the Commission of a first seller protest, the pipeline in the first sale will be joined as a party.

(7) *Authority of Chief Administrative Law Judge.* In the case of any proceeding relating to a third party, staff, pipeline protest or first seller protest filed under this section, the Chief Administrative Law Judge is authorized to issue such procedural orders, including orders setting matters for hearing, severing and consolidating proceedings, and certifying questions to the Commission, as he determines necessary or appropriate for the expeditious consideration of such protests. The Chief Administrative Law Judge may, by such order, authorize the Administrative Law Judge to whom a protest is assigned to issue similar procedural orders relating to that protest.

(8) *Rules of practice and procedure.* Part 385 of this chapter (relating to rules of practice) will apply to such third party, staff, first seller and pipeline protest proceedings except to the extent otherwise provided by a procedural order issued by the Chief or Presiding Administrative Law Judge under paragraph (h)(7) of this section. Section 385.715 of this chapter will apply to any procedural order issued under paragraph (h)(7) of this section.

[FR Doc. 87-30163 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[20] *See e.g.* Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, Order No. 406, 49 FR 46874 (Nov. 29, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,814 at 31,234 (Nov. 16, 1984).

[21] 44 U.S.C. 3501-3520 (1982).

[22] 5 CFR Part 1320 (1987).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date will be March 4, 1988. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective January 4, 1988, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of January 4, 1988, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the **Federal Register** of November 3, 1987 (52 FR 42097). FDA extended the closing date for these color additives until January 4, 1988, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the January 4, 1988, closing date for the provisional listing of these color additives until March 4, 1988.

FDA has nearly completed its review and evaluation of available information relevant to the use of these color additives in drugs and cosmetics. The agency has concluded that drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until March 4, 1988, to provide time for the preparation and publication of appropriate **Federal Register** documents. The agency intends to publish these documents as soon as possible. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

The extension of time will also be used to consider what effect, if any, the recent decision in *Public Citizen* v. *Young* (D.C. Cir. No. 86-1548, October 23, 1987), has on this proceeding.

Because of the shortness of time until the January 4, 1988, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of January 4, 1988. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on January 4, 1988.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" appearing in the table in paragraph (b) to read "March 4, 1988."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in the table, appearing in the introductory text in paragraph (d) to read "March 4, 1988."

Dated: December 18, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–30018 Filed 12–31–87; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5523/R912; FRL 3309–4]

Pesticide Tolerances for Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food and a feed additive regulation to permit the combined residues of the fungicide myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile) and its metabolites containing both the chlorophenyl and triazole rings in or on certain food and feed items. This regulation to establish maximum permissible levels for combined residues of myclobutanil was requested by the Rohm & Haas Co. to permit marketing of feed and food commodities resulting from experimental use of the fungicide on apples and grapes.

EFFECTIVE DATE: Effective on September 11, 1987. These temporary tolerances expire on February 28, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: On October 31, 1986, Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, submitted a food/feed additive petition (FAP 7H5523) proposing to establish food/feed additive regulations for the combined residues of the fungicide myclobutanil and its metabolites in or on apple pomace (wet) at 1.0 part per million (ppm), apple pomace (dry) at 5.0 ppm, grape pomace (wet) at 1.0 ppm, grape pomace (dry) and raisins at 5.0 ppm, and raisin waste at 12.5 ppm. EPA issued a notice of the petition in the **Federal Register** of January 29, 1987 (52 FR 2969). Subsequently, the petitioner amended its petition by withdrawing the proposals for tolerances in apple pomace (wet and dry) and grape pomace (wet and dry) and proposed tolerances in or on apple pomace and grape pomace at 5.0 ppm.

These food/feed additive regulations are being established to permit processing of apples and grapes which have been treated in connection with EPA Experimental Use Permit No. 707–EUP–105, published in the **Federal Register** of April 9, 1986 (51 FR 12200). These temporary tolerances expire on February 28, 1988.

The scientific data reported and other relevant material have been evaluated. The toxicological data considered in support of these regulations include a 13-week dog feeding study with a no-observed effect level (NOEL) of 0.3 mg/kg body weight/day (mg/kg/day); a 1-year dog feeding study with a NOEL of 2.5 mg/kg/day (preliminary results); a 90-day rat feeding study with a NOEL of 50 mg/kg/day; a two-generation reproduction study with a NOEL of 16 mg/kg/day for reproductive effects and a NOEL of 4 mg/kg/day for systemic effects; a rat teratology study with a NOEL for maternal toxicity of 313 mg/kg/day, a NOEL of 469 mg/kg/day (highest dose tested) for teratogenic effects, a NOEL of 94 mg/kg/day for fetotoxic effects, and a NOEL of 31 mg/kg/day for embryotoxic effects (developmental toxicity); a reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, *in vivo* cytogenetic assay and unscheduled DNA synthesis, all of which were negative for mutagenic effects.

Based on the subchronic dog feeding study with a NOEL of 0.3 mg/kg/day and using a 1,000 fold safety factor the provisional acceptable daily intake (PADI) is 0.0003 mg/kg/day and the provisional maximum permissible intake (PMPI) is 0.018 mg/day for a 60-kg person. Presently established temporary tolerances and the currently requested tolerances, factored for the percent of crop treated, result in an anticipated residue contribution (ARC) of 0.000004 mg/kg/day, which is equivalent to 1.18 percent of the PADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography using nitrogen/phosphorous and electron capture detectors, is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling accepted in connection with the experimental use permit issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136 *et seq.*), and the regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.477, to read as follows:

§ 193.477 Myclobutanil.

A food additive regulation is established to permit residues of the fungicide myclobutanil (alpha-butyl-alpha(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile) in or on raisins at 5 parts per million when present therein as a result of application to grapes in connection with an experimental use program which expires February 28, 1988.

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding § 561.443, to read as follows:

§ 561.443 Myclobutanil.

A feed additive regulation is established to permit residues of the fungicide myclobutanil (alpha-butyl-alpha(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile) in or on the following processed feeds when present therein as a result of application to grapes and apples in connection with an experimental use program which expires February 28, 1988:

Feeds	Parts per million
Apple pomace	5.0
Grape pomace	5.0
Raisin waste	12.5

This regulation expires on February 28, 1988.

[FR Doc. 87–29874 Filed 12–31–87; 8:45 am]

BILLING CODE 6560–50–M

VETERANS ADMINISTRATION

38 CFR Part 4

Nomenclature and Descriptive Terms for Mental Disorders

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM–III), changed the terminology for many mental disorders. The Veterans Administration (VA) has amended its regulations to conform with the diagnostic terms in DSM–III.

EFFECTIVE DATE: These rules are effective February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 357–6405.

SUPPLEMENTARY INFORMATION: On pages 16350 through 16353 of the **Federal Register** of May 2, 1986, the VA published proposed amendments to Title 38, Code of Federal Regulations, on the rating of mental disorders. Interested persons were given until June 2, 1986, to submit comments, suggestions or objections to the proposed rules.

The VA received comments on the proposed rules from the Chairman of the House Veterans' Affairs Committee, the American Psychiatric Association, Veterans of Foreign Wars of the United States, and Paralyzed Veterans of America.

The comments and recommendations with respect to each proposed amendment have been summarized and are set forth below together with the actions and/or responses of the VA.

Comments and Recommendations

Section 4.130 Evaluation of psychiatric disability.

One commenter recommended that the proposed revision contain a categoric statement that where psychiatric disability is the cause of unemployability, a 100 percent schedular evaluation will be assigned under the appropriate diagnostic code without resort to § 4.16 (Total disability ratings for compensation based on unemployability of the individual). The commenter stated that this would resolve confusion in decisions on claims for individual unemployability based on psychiatric disability.

We agree that a 100 percent schedular evaluation should be assigned where psychiatric disability evaluated as 70 percent disabling is the cause of unemployability and that has been our stated policy. Furthermore, the criteria for a 100 percent schedular evaluation under any of the categories of mental disorders are and have been total social and industrial inadaptability. Although we agree, we believe it is better to do so in § 4.16 so that the exception is a part of the appropriate regulation. Such a change to § 4.16 is contained in a regulation amendment currently under development. We have, however, added a cross-reference to § 4.16 in this section.

Section 4.132 Schedule of ratings—mental disorders.

Two commenters objected to the proposed changes in the adjectives used to describe the various levels of psychiatric disability on the basis they might be interpreted as establishing more stringent requirements for the levels of disability. Both objected to the term "extensive" to describe a 50 percent disability. One objected to the term "definite" to describe a 30 percent disability. The other objected to changing "complete" to "total," "slight" to "mild," and "considerable" to "definite."

As was explained in the proposed rules, the uniform use of descriptive adjectives is not intended to increase or reduce evaluations of mental disorders, but is designed to reflect consistency in describing social and industrial impairment in each of the categories of mental disorders.

We agree with the objections regarding the term "extensive." Accordingly, we have changed the criteria for the 50 percent evaluation under psychotic disorders, organic mental disorders, and psychoneurotic disorders to use the term "considerable" which is the current descriptive term for that disability level for two of the three categories of mental disorders cited above. We are retaining the term "definite" to describe the 30 percent evaluation as it is the current descriptive term for that level of disability for two of the three categories of mental disorders cited above, and a change is not deemed necessary. We are retaining the proposed term "total" to describe the 100 percent evaluation as that term is well understood and is used in the statute describing the level of disability (38 U.S.C. 314(j)). We are retaining the proposed term "mild" to describe a 10 percent disability as we believe it more adequately describes that level of disability.

One commenter noted that the proposed rules regarding psychological

factors affecting physical conditions failed to include a basis for evaluation. When the proposed rules were printed in the Federal Register, a sentence was omitted. That sentence, which is being printed in the final rule, is part of the current section which provides that such disabilities will be evaluated by the general rating formula for psychoneurotic disorders. This sentence was not changed and is included in the final rule to correct a printing error.

One commenter pointed out that our proposed rule includes major depression without melancholia under diagnostic code 9405 as a psychoneurotic disorder but that it is an affective disorder and classified under psychotic disorders. Following consideration of pertinent sections of DSM–III, DSM–III–R Second Draft, International Classification of Diseases (ICD)–9–CM, several current psychiatric textbooks, discussion with a senior consultant to the DSM–III/DSM–III–R projects and with staff members, the Chief Medical Director concluded that it is appropriate to include major depression without melancholia as a psychoneurotic disorder.

One commenter suggested that the proposed rules are inadequate without a separate listing for substance use disorders (as they are recognized in DSM–III) and that it is important that the VA formally recognize the significant and serious problem of these disorders and adjudicate claims for service connection based on these disabilities.

The VA considers substance abuse in and of itself to be willful misconduct. However, organic diseases and disabilities which are secondary to substance abuse are not considered to be willful misconduct. When substance abuse is a manifestation of a psychiatric disorder, the VA includes it as part of such disorder. As the VA cannot separately rate substance abuse disorders, it would serve no useful purpose to include them in the final rules.

We appreciate the comments and suggestions of those who responded to publication of the proposed rules. The proposed rules are, therefore, adopted with the amendments noted above and minor conforming amendments of a technical nature. The final rules are set forth below.

The Administrator hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this final rule changes certain terminology used in the schedule under which the VA rates or evaluates the disabilities of individual veterans. These final rules are in no way directed toward, and impose no regulatory burdens upon, small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this final rule is nonmajor for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.109 and 64.110)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: December 15, 1987.

Thomas K. Turnage,

Administrator.

PART 4—[AMENDED]

38 CFR Part 4, SCHEDULE FOR RATING DISABILITIES, is amended as follows:

1. Section 4.125 is revised to read as follows:

§ 4.125 General considerations.

The field of mental disorders represents the greatest possible variety of etiology, chronicity and disabling effects, and requires differential consideration in these respects. These sections under mental disorders are concerned with the rating of psychiatric conditions, specifically psychotic and psychoneurotic disorders and psychological factors affecting physical conditions as well as organic mental disorders. Advances in modern psychiatry during and since World War II have been rapid and profound and have extended to the entire medical profession a better understanding of and deeper insight into the etiological factors, psychodynamics, and psychopathological changes which occur in mental disease and emotional disturbances. The psychiatric nomenclature employed is based upon the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM–III), American Psychiatric Association. This nomenclature has been adopted by the Department of Medicine and Surgery of the Veterans Administration. It limits itself to the classification of disturbances of mental functioning. To comply with the fundamental requirements for rating psychiatric conditions, it is imperative that rating personnel familiarize themselves thoroughly with this manual (American Psychiatric Association Manual, 1980 Edition) which will be hereinafter referred to as the APA manual.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

2. Section 4.126 is revised to read as follows:

§ 4.126 Substantiation of diagnosis.

It must be established first that a true mental disorder exists. The disorder will be diagnosed in accordance with the APA manual. A diagnosis not in accord with this manual is not acceptable for rating purposes and will be returned through channels to the examiner. Normal reactions of discouragement, anxiety, depression, and self-concern in the presence of physical disability, dissatisfaction with work environment, difficulties in securing employment, etc., must not be accepted by the rating board as indicative of psychoneurosis. Moreover, mere failure of social or industrial adjustment or the presence of numerous complaints should not, in the absence of definite symptomatology typical of a psychoneurotic or psychological factor affecting physical condition, become the acceptable basis of a diagnosis in this field. It is the responsibility of rating boards to accept or reject diagnoses shown on reports of examination. If a diagnosis is not supported by the findings shown on the examination report, it is incumbent upon the board to return the report for clarification.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

3. Section 4.127 is revised to read as follows:

§ 4.127 Mental deficiency and personality disorders.

Mental deficiency and personality disorders will not be considered as disabilities under the terms of the schedule. Attention is directed to the outline of personality disorders in the APA manual. Formal psychometric tests are essential in the diagnosis of mental deficiency. Brief emotional outbursts or periods of confusion are not unusual in mental deficiency or personality disorders and are not acceptable as the basis for a diagnosis of psychotic disorder. However, properly diagnosed superimposed psychotic disorders developing after enlistment, i.e., mental deficiency with psychotic disorder, or personality disorder with psychotic disorder, are to be considered as disabilities analogous to, and ratable as, schizophrenia, unless otherwise diagnosed.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

4. Section 4.128 is revised to read as follows:

§ 4.128 Change of diagnosis.

Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in a prior diagnosis, or possibly a disease entity independent of the service-connected psychiatric disorder.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

5. Section 4.129 is revised to read as follows:

§ 4.129 Social inadaptability.

Social integration is one of the best evidences of mental health and reflects the ability to establish (together with the desire to establish) healthy and effective interpersonal relationships. Poor contact with other human beings may be an index of emotional illness. However, in evaluating impairment resulting from the ratable psychiatric disorders, social inadaptability is to be evaluated only as it affects industrial adaptability. The principle of social and industrial inadaptability as the basic criterion for rating disability from the mental disorders contemplates those abnormalities of conduct, judgment, and emotional reactions which affect economic adjustment, i.e., which produce impairment of earning capacity.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

6. Section 4.130 is revised to read as follows:

§ 4.130 Evaluation of psychiatric disability.

The severity of disability is based upon actual symptomatology, as it affects social and industrial adaptability. Two of the most important determinants of disability are time lost from gainful work and decrease in work efficiency. The rating board must not underevaluate the emotionally sick veteran with a good work record, nor must it overevaluate his or her condition on the basis of a poor work record not supported by the psychiatric disability picture. It is for this reason that great emphasis is placed upon the full report of the examiner, descriptive of actual symptomatology. The record of the history and complaints is only preliminary to the examination. The objective findings and the examiner's analysis of the symptomatology are the essentials. The examiner's classification of the disease as "mild," "moderate," or "severe" is not determinative of the degree of disability, but the report and the analysis of the symptomatology and the full consideration of the whole history by the rating agency will be. In evaluating disability from psychotic disorders it is necessary to consider, in addition to present symptomatology or its absence, the frequency, severity, and duration of previous psychotic periods, and the veteran's capacity for adjustment during periods of remission. Repeated psychotic periods, without long remissions, may be expected to have a sustained effect upon employability until elapsed time in good remission and with good capacity for adjustment establishes the contrary. Ratings are to be assigned which represent the impairment of social and industrial adaptability based on all of the evidence of record. (See § 4.16 regarding the issue of individual unemployability based on mental disorder.) Evidence of material improvement in psychotic disorders disclosed by field examination or social survey should be utilized in determinations of competency, but the fact will be borne in mind that a person who has regained competency may still be unemployable, depending upon the level of his or her disability as shown by recent examinations and other evidence of record.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

7. Section 4.131 is revised to read as follows:

§ 4.131 Mental disorders due to psychic trauma.

Certain mental disorders having their onset as an incident of battle or enemy action, or following bombing, shipwreck, imprisonment, exhaustion, or prolonged operational fatigue may at the outset be designated as gross stress disorder, "combat fatigue," "exhaustion," or any one of a number of special terms. These conditions may clear up entirely, permitting return to full or limited duty, or they may persist as one of the recognized mental disorders, particularly generalized anxiety disorder, or recur as post-traumatic stress disorder. If the mental disorder is sufficiently severe to warrant discharge from service, a minimum rating of 50 percent will be assigned with an examination to be scheduled within 6 months from discharge.

(Authority: 38 U.S.C. 210(c); 38 U.S.C. 355)

8. The four rating tables contained in § 4.132 are revised to read as follows:

§ 4.132 Schedule of ratings—mental disorders.

PSYCHOTIC DISORDERS

		Rating
9201	Schizophrenia, disorganized type	
9202	Schizophrenia, catatonic type	
9203	Schizophrenia, paranoid type	
9204	Schizophrenia, undifferentiated type	
9205	Schizophrenia, residual type; schizoaffective disorder; other and unspecified types	
9206	Bipolar disorder, manic, depressed, or mixed	
9207	Major depression with psychotic features	
9208	Paranoid disorders (specify type)	
9209	Major depression with melancholia	
9210	Atypical psychoses	
	General Rating Formula for Psychotic Disorders:	
	Active psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce total social and industrial inadaptability	100
	With lesser symptomatology such as to produce severe impairment of social and industrial adaptability	70
	Considerable impairment of social and industrial adaptability	50
	Definite impairment of social and industrial adaptability	30
	Mild impairment of social and industrial adaptability	10
	Psychoses in full remission	0
	Convalescent rating in psychotic disorders: Upon regular discharge or release to non-bed care from a hospital where a beneficiary has been under care and treatment for a continuous period in the hospital of not less than 6 months, an open rating of 100 percent will be continued for 6 months. A VA examination is mandatory at the expiration of the 6-month period, after which the condition will be rated in accordance with the degree of disability shown. Where the beneficiary has been under hospital care and treatment for less than 6 months and is not ratable at 100 percent under the rating formula, consideration should be given to § 4.29	

ORGANIC MENTAL DISORDERS

		Rating
9300	Delirium associated with infection, trauma, circulatory disturbance, etc.	
	NOTE: Acute organic mental disorders with or without accompanying psychotic disorder are temporary and reversible. If psychiatric impairment attributable to such diagnosis continues beyond 6 months, the report of examination is to be returned to the examiner for reconsideration of the diagnosis.	
9301	Dementia associated with central nervous system syphilis	
9302	Dementia associated with intracranial infections other than syphilis	
9303	Dementia associated with alcoholism	
9304	Dementia associated with brain trauma	
9305	Multi-infarct dementia with cerebral arteriosclerosis	
9306	Multi-infarct dementia due to causes other than cerebral arteriosclerosis	
9307	Dementia associated with convulsive disorder (idiopathic epilepsy)	
9308	Dementia associated with disturbances of metabolism	

ORGANIC MENTAL DISORDERS—Continued

	Rating
9309 Dementia associated with brain tumor	
9310 Dementia due to unknown cause	
9311 Dementia due to undiagnosed cause	
9312 Dementia, primary, degenerative	
9315 Dementia associated with epidemic encephalitis	
9322 Dementia associated with endocrine disorder	
9324 Dementia associated with systemic infection	
9325 Dementia associated with drug or poison intoxication (other than alcohol)	
Before attempting to rate organic mental disorders, rating specialists should become thoroughly acquainted with the relevant concepts presented by the current Diagnostic and Statistical Manual of the American Psychiatric Association and the following.	
(1) Under the codes above, the basic syndrome of organic mental disorder may be the only mental disturbance present or it may appear with related "psychotic" manifestations. An organic mental disorder with or without such qualifying phrase will be rated according to the general rating formula for organic mental disorders, assigning a rating which reflects the entire psychiatric picture.	
(2) An organic mental disorder, as defined in the American Psychiatric Association manual, is characterized solely by psychiatric manifestations. However, neurological or other manifestations of etiology common to the mental disorder may be present, and if present, are to be rated separately as distinct entities under the neurological or other appropriate system and combined with the rating for the mental disorder.	
General Rating Formula for Organic Mental Disorders	
Impairment of intellectual functions, orientation, memory and judgment, and liability and shallowness of affect of such extent, severity, depth, and persistence as to produce total social and industrial inadaptability	100
Less than 100 percent, in symptom combinations productive of	
Severe impairment of social and industrial adaptability	70
Considerable impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Mild impairment of social and industrial adaptability	10
No impairment of social and industrial adaptability	0

PSYCHONEUROTIC DISORDERS

	Rating
9400 Generalized anxiety disorder	
9401 Psychogenic amnesia, psychogenic fugue; multiple personality	
9402 Conversion disorder; psychogenic pain disorder	
9403 Phobic disorder	
9404 Obsessive compulsive disorder	
9405 Dysthymic disorder; Adjustment disorder with depressed mood; Major depression without melancholia	
9408 Depersonalization disorder	
9409 Hypochondriasis	
9410 Other and unspecified neurosis	
9411 Post-traumatic stress disorder	
Read well notes (1) to (4) following general rating formula before applying the general rating formula	

PSYCHONEUROTIC DISORDERS—Continued

	Rating
General Rating Formula for Psychoneurotic Disorders:	
The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy, confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment	100
Ability to establish and maintain effective or favorable relationships with people is severely impaired. The psychoneurotic symptoms are of such severity and persistence that there is severe impairment in the ability to obtain or retain employment	70
Ability to establish or maintain effective or favorable relationships with people is considerably impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in considerable industrial impairment	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce definite industrial impairment	30
Less than criteria for the 30 percent, with emotional tension or other evidence of definitely productive of mild social and industrial impairment	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability	0
NOTE (1): Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.	
NOTE (2): The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits, fatigue or anxiety incident to actual situations, minor compulsive acts or phobias, occasional stuttering or stammering, minor habit spasms or tics, minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a mild degree, a 10 percent rating under the general rating formula may be assigned.	
NOTE (3): It is to be emphasized that vague complaints are not to be erected into a concept of conversion disorder. A diagnosis of conversion disorder must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.	
NOTE (4): When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

PSYCHOLOGICAL FACTORS AFFECTING PHYSICAL CONDITION

	Rating
9500 Psychological factors affecting skin condition.	
9501 Psychological factors affecting cardiovascular condition.	
9502 Psychological factors affecting gastrointestinal condition.	
9505 Psychological factors affecting musculoskeletal condition.	
9506 Psychological factors affecting respiratory condition.	
9507 Psychological factors affecting hemic and lymphatic condition.	
9508 Psychological factors affecting genitourinary condition.	
9509 Psychological factors affecting endocrine condition.	
9510 Psychological factors affecting condition of organ of special sense (specify sense organ).	
9511 Psychological factors affecting other type of physical condition.	
Evaluate psychological factors affecting physical condition by the general rating formula for psychoneurotic disorders.	
NOTE (1): It is to be emphasized that vague complaints are not to be erected into a concept of psychological disorder. A diagnosis of a psychological disorder affecting physical condition must be established on specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of a psychological disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned.	
NOTE (2): When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

[FR Doc. 87-30138 Filed 12-31-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act

AGENCY: Department of the Interior.

ACTION: Amendment to preamble of final rule.

SUMMARY: The final rule amending the Freedom of Information Act (FOIA) regulations of the Department of the Interior was published on November 30, 1987, 52 FR 45584. The preamble to the final rule included a discussion of the comments received by the Department of the Interior on the proposed rule and the Department's responses to those comments. Some of the comments and responses pertaining to fee waivers were inadvertently omitted from the preamble. The section in the preamble to the final rule pertaining to fee waivers is reprinted below in its entirety, including the last six paragraphs which were previously omitted from the section.

FOR FURTHER INFORMATION CONTACT: Richard A. Stephan, Division of Directives and Regulatory Management, Office of Management Analysis, (202) 343-6191.

4. *Fee waivers.* Three commenters urged that the Department's rule specifically reject the guidance on fee waivers under the Reform Act issued by the Department of Justice on April 2, 1987. The Department finds this suggestion unhelpful. The Reform Act requires, in 5 U.S.C. 552(a)(4)(A)(i), that agency regulations contain "guidelines for determining when * * * fees should be waived or reduced." Rejection, without more, of the Department of Justice guidance does not meet this affirmative direction. What the Department has attempted to do is to draw on the Department of Justice guidance, as well as the language of the statute, the legislative history, and cases construing the former statutory fee waiver, to develop guidance for members of the public who request fee waivers and for Department employees who must consider these requests.

The Department also finds unhelpful the suggestion of two commenters that it simply adopt the statutory fee waiver language. This approach does not comport with the requirement of the Reform Act that the Department issue guidelines for determining when fees should be waived or reduced.

Three commenters argued that the proposed rule failed to follow the legislative history of the Reform Act and was therefore deficient. As the Department of Justice correctly pointed out in its guidance, the words of the statute control where they and the legislative history diverge. However, the Department has carefully reviewed the legislative history and has incorporated some elements from the legislative history in its rule.

Two commenters suggested that the Department's rule provide a presumptive fee waiver for public interest and media organizations. The Department has not adopted this suggestion. The Department agrees that such organizations will be entitled to a fee waiver in many, if not most, instances. However, other requesters may also make valid claims for fee waivers and the Department sees no principled basis on which to give preference to one group of requesters over another. Additionally, focusing solely on the identity of a requester neglects elements of the statutory standard. Each application for a waiver should be considered individually on its merits taking into account all relevant factors under the statute.

One commenter suggested that the five fee waiver criteria proposed by the Department in § 2.21 be rewritten in declarative sentences. The Department has not adopted this suggestion. The criteria are written as a series of questions to be answered about a fee waiver request. This approach emphasizes that each fee waiver request must be examined individually on a case-by-case basis and that the various factors involved must be weighed and balanced in arriving at a determination.

Addressing the substance of the five criteria, three commenters objected to the criterion concerning whether a requested record relates to the operations and activities of the government. They argued that it inappropriately requires a clear and direct connection between requested records and identifiable government activities and that it does not adequately deal with records submitted to the Department by private parties. On the first point, the Department believes that its formulation is consistent with the language of the statute and the legislative history. The legislative history makes clear that the phrase "operations and activities of the government" should be construed broadly; but it also makes clear that there is to be a connection to "the manner in which a government agency is carrying out its operations or the manner in which an agency program affects the public." 132 Cong. Rec. H9464 (daily ed. October 8, 1986). On the second point, the Department's description of the coverage of third party records is a direct paraphrase of statements in the legislative history, 132 Cong. Rec. H9464 (daily ed. October 8, 1986), 132 Cong. Rec. S14296 (daily ed. September 30, 1986), and accurately reflects the language of the statute and the legislative history.

Three commenters addressed the criterion concerning whether disclosure is likely to contribute to public understanding, stating that the criterion inappropriately introduces subjectivity into fee waiver decisions. The Department agrees that fee waiver decisions are to be decided on an objective basis. The proposed language of § 2.21(a)(2)(ii), which is retained in the final rule, attempts to conform to this understanding by suggesting neutral standards to give meaning to the statutory requirement that disclosure be "likely" to contribute to public understanding.

One commenter suggested that the criterion concerning whether the contribution from disclosure of a record will be "significant" be rewritten to define significance as "having meaning". The Department has not adopted this suggestion. The proposed rule offers an objective standard for significance drawn directly from the legislative history. 132 Cong. Rec. H9464 (daily ed. October 8, 1986).

Two commenters objected to language in § 2.20(a)(2)(iii) indicating that a significant contribution is not likely to arise from disclosure of information that is already in the public domain because it has been published or is available to the general public in a public reading room. The Department has retained the proposed language. As is made clear in *Blakey* v. *Dept. of Justice*, 549 F.Supp. 362 (D.D.C. 1982), *aff'd*, 720 F.2d 215 (D.C. Cir. 1983), the fund of publicly available knowledge on an issue will not ordinarily be increased by disclosure of information routinely available in a library or public reading room.

Finally, two commenters suggested that "public interest" fee waivers routinely be provided for Indian groups. The Department has not adopted this suggestion. As stated earlier, each fee waiver request must be judged on its own merits. Recognizing the special relationship between Indian groups and the Department, however, the Department has added language to the discretionary fee waiver provisions allowing discretionary waivers for Indian tribes on the same basis as for other governmental organizations.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

Date: December 22, 1987.

[FR Doc. 87-30085 Filed 12-31-87; 8:45 am]

BILLING CODE 4310-RK-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Child Support Enforcement

Office of Human Development Services

Health Care Financing Administration

Family Support Administration

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS, Office of Child Support Enforcement, Office of Human Development Services, Health Care Financing Administration, Family Support Administration.

ACTION: Final rule.

SUMMARY: This rule makes the removal of a requirement for prior HHS approval of service agreements retroactive to the original effective date of the requirement.

EFFECTIVE DATE: This rule is effective February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Claire Johnson, (202) 245-0421.

SUPPLEMENTARY INFORMATION: 45 CFR 95.611(b)(2) of the Department's rules, published on September 29, 1978 (43 FR 44853), required prior Departmental approval of a service agreement under which other State or local agencies would provide data processing services to the State agency administering a public assistance program under titles I, IV-A, IV-B, IV-C, IV-D, X, XIV, XVI (AABD), XIX, or XX of the Social Security Act.

Final Rules published on December 18, 1986 (51 FR 45321)—

- Revised § 95.611(b)(2) to remove the service agreement prior approval requirement; and
- Added, to § 95.621, a new paragraph (e), requiring the State agency to keep a copy of the service agreement on file for Federal review.

During the period from September 29, 1978 to January 19, 1987, when the Department required prior HHS approval of service agreements (that is prior to States incurring under them costs for which States would claim HHS financial participation), there were instances where States incurred costs, and claimed and received HHS financial participation in those costs without having first requested and received HHS prior approval. This occurred because some States believed erroneously that prior approval was not a pre-condition for automatic data processing funding, based on the Department's practice of occasionally having retroactively approved automatic data processing acquisitions of merit. Because it believed it should not unfairly penalize these States, the Department sought to rectify this situation on January 27, 1986 by publishing an interim final rule (51 FR 3337), which established the circumstances under which the Department would waive the prior approval requirements contained in § 95.611. The Department intended that action to both reaffirm the principle of prior approval and to correct those situations where States had incurred costs, and claimed and received HHS financial participation for activities undertaken under service agreements for which the Department had not given its prior approval, but which met all other pertinent requirements of 45 CFR 95.601 *et seq.*

However, the Department has since learned that there still exist instances where States have incurred costs, most of which have been claimed and paid through HHS financial participation under unapproved service agreements which are not eligible for waiver of prior approval under the provisions established by the January 27, 1986 interim final regulation (51 FR 3337), and which predate the December 18, 1986 final regulation (51 FR 45321) eliminating the prior approval requirement of service agreements after January 19, 1987.

Recognizing this situation, the Department has decided to permit Federal financial participation (FFP) for service agreements executed under the 1978 rule that would not otherwise be eligible for FFP solely because of the States' failure to obtain Federal approval prior to their execution.

In effect, this rule eliminates the requirement for prior approval of service agreements which meet all other pertinent requirements of 45 CFR 95.601 *et seq.* and other Federal requirements governing State expenditures for service agreements. Thus, this regulation would permit the payment of claims for FFP that would otherwise be subject to a disallowance because of a lack of prior approval.

The Department is taking this action because: (1) Service agreements are a legitimate cost of automatic data processing activities required by States to administer the Social Security Act public assistance programs; (2) the costs incurred under the unapproved service agreements, which are the subject of this final rule, have for the most part been claimed and paid by HHS through the normal process of claiming HHS grant funds; and (3) the justification specified in the December 18, 1986 final regulation (51 FR 45321), that the prior approval requirement of service agreements was duplicative of similar requirements imposed by the Regional Office of Cost Allocation, also applies to the unapproved service agreements which are the subject of this final rule.

Waiver of Proposed Rulemaking

The regulations published on December 18, 1986 removed the prior HHS approval requirement for service agreements. This change was—

- Based on public comments responding to the NPRM that preceded the December 18, 1986 final rules; and
- Justified because, the prior HHS approval requirement for service agreements being duplicative of similar requirements imposed by the Regional Office of Cost Allocation, constituted an unnecessary additional paperwork burden and could delay ADP operations.

We find that publication of this regulation in proposed form would be unnecessary, and contrary to the public interest for the following reasons:

- The provisions of this rule are consistent with those of the December 18, 1986 final regulation (51 FR 45321) which eliminated the prior approval requirement for service agreements, so that the opportunity for public comment on the substance of this rule has already been provided. Additional public comment is therefore unnecessary.
- The justification for eliminating this requirement in the December 18, 1986 final regulation (51 FR 45323, 45325), i.e., that this prior approval requirement duplicates similar requirements of the Department's Regional Office of Cost Allocation, which is responsible for the review and approval of cost allocation proposals submitted by States for use in administration of various programs under the Social Security Act, also applies to the unapproved service agreements which are the subject of this final rule. It is therefore, unnecessary to seek additional public comment.
- In comments received from the public in response to the January 27, 1986 interim final rule (51 FR 3337) establishing circumstances under which the Department would waive the prior approval requirement, no commenters opposed the rule and some requested additional relief from the prior approval requirement. This rule will be consistent with that request. Therefore, we believe it would be unnecessary and contrary to the public interest to require additional comments.

We find, therefore, that good cause exists for dispensing with notice and opportunity for public comment.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or price for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (Pub. L. 96-354), which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not included.

Paperwork Reduction Act

The recordkeeping requirements contained in § 95.621 have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned approval number 0990-0058.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

(Catalog of Federal Domestic Assistance Program Numbers: 13.645, Child Welfare Services—State Grants; 13.658, Foster Care Maintenance; 13.659, Adoption Assistance; 13.783, Child Support Enforcement Program; 13.714, Medical Assistance Program; 13.780, Assistance Payments—Maintenance Assistance; 13.808, Assistance Payments—State and Local Training)

Dated: October 29, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

45 CFR Part 95, Subpart F is amended as set forth below:

PART 95—[AMENDED]

1. The authority citation for Part 95, Subpart F, is revised as follows:

Authority: Section 1102 of the Social Security Act, 42 U.S.C. 1302; 5 U.S.C. 301.

2. Section 95.621 is amended by revising paragraph (e) to read as follows:

§ 95.621 ADP reviews.

* * * * *

(e) *State Agency Maintenance of Service Agreements.* (1) The State agency will maintain a copy of each service agreement in its files for Federal review.

(2) A State agency that did not obtain prior approval of a service agreement, as required by § 95.611(b)(2) as it was in effect from December 28, 1978 (unless a State chose to exercise the option to make it effective as early as September 29, 1978) through January 19, 1987, is eligible for FFP claimed for services furnished by other State or local agencies under that agreement if: (i) The State agency has a copy of it in its files for Federal review; (ii) it meets the definition of a service agreement as it was defined in section 95.605 from December 28, 1978 through January 19, 1987; (iii) the claim conforms to the timely claim provisions of 45 CFR Part 95, Subpart A; and (iv) the service agreement was not previously disapproved by HHS.

[FR Doc. 87-29972 Filed 12-31-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 86-79; FCC 87-389]

Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies; Denial of Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order denying petitions for reconsideration.

SUMMARY: This action generally denies petitions seeking reconsideration of the BOC CPE Relief Order (CC Docket No. 86-79; 52 FR 2226, January 21, 1987) but modifies various aspects of the nondiscrimination and customer proprietary network information (CPNI) safeguards. This action is taken because no additional information was supplied by the concerned parties.

FOR FURTHER INFORMATION CONTACT: Melanie Haratunian, Common Carrier Bureau, (202) 632-6910.

SUPPLEMENTARY INFORMATION: In the matter of furnishing of customer premises equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies. This is a summary of the Commission's Memorandum Opinion and Order, CC Docket 86-79, adopted December 15, 1987, and released December 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

SUMMARY OF MEMORANDUM OPINION AND ORDER

1. In 1986, in the BOC CPE Relief Order (2 FCC Rcd 143 (1987)), the Commission replaced the structural separation requirements established in Computer II for the provision of customer premises equipment (CPE) by the Bell Operating Companies (the BOCs) with five nonstructural safeguards. These safeguards include a network information disclosure obligation, a requirement that the BOCs file quarterly reports on installation and maintenance of basic services, restrictions on the use of CPNI, and a "joint marketing" requirement that provides independent CPE vendors with a meaningful opportunity to market their CPE jointly with Centrex and other BOC network services. The safeguards were not applied to independent telephone companies. Ameritech, ICA and NATA filed petitions seeking reconsideration of various aspects of the BOC CPE Relief Order.

2. In the Memorandum Opinion and Order, the Commission retained the network disclosure safeguard established in the BOC CPE Relief Order, and denied Ameritech's request to modify the twelve month public disclosure period. It concluded that the existing safeguard properly balances the competing interests of manufacturing firms in early disclosure with the interests of the BOCs in maintaining as confidential the technical specifications on new modified network services.

3. In addition, the Commission declined to reconsider the CPNI safeguard, but it directed the Common Carrier Bureau, in its review of the BOCs' plans for complying with the nonstructural safeguard, to take steps to ensure that those plans permit customers to restrict BOC use of their CPNI. Moreover, the Commission clarified two aspects of the CPNI safeguard. First, it concluded that a customer need not annually request that its CPNI be withheld; a customer's assertion of confidentiality remains in effect until the customer explicitly states otherwise. Second, the Commission stated that a customer may request and receive confidential treatment of its CPNI before it receives the first annual

notification of its CPNI rights from the BOC.

4. Based on its conclusion that there is little apparent likelihood that the BOCs can or will discriminate on the basis of the identity of the CPE vendor in the maintenance of network services, the Commission also replaced the mandatory quarterly maintenance reporting requirement with an option for each BOC either to (a) file quarterly maintenance reports as specified in the BOC CPE Relief Order, or (b) submit annually an affidavit attesting that the company has followed the procedures described in its compliance plan and that it has not discriminated in the provision of network maintenance on the basis of a customer's CPE vendor.

5. Finally, the Commission denied petitions to eliminate the joint marketing requirement and to require GTE to establish Centralized Operations Groups.

Ordering Clauses

Accordingly, *It is ordered*, that pursuant to sections 1, 4 (i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act, 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. 553, the Petitions for Reconsideration filed in this proceeding ARE DENIED, except as provided herein.

It is further ordered, that the motion for leave to file a supplement to petition filed by NATA is granted.

It is further ordered, that the motions for leave to file in excess of page limitation filed by NATA and GTE are granted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-29815 Filed 12-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-229; RM-5735]

Radio Broadcasting Services; Danville, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Danville, Vermont, as that community's first FM service, at the request of Peter Morton. We have received concurrence of the Canadian government for the allotment. With this action, this proceeding is terminated.

DATES: *Effective* January 25, 1988. The window period for filing applications will open on January 26, 1988 and close on February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-229, adopted November 25, 1987, and released December 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Danville, Vermont, Channel 239A.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-30076 Filed 12-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-226; RM-5752]

Radio Broadcasting Services; Rupert, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Rupert, Vermont, as that community's first FM service, at the request of Peter Morton. We have obtained concurrence of the Canadian government for the allotment. With this action, this proceeding is terminated.

DATES: *Effective* January 25, 1988. The window period for filing applications will open on January 26, 1988, and close on February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-226, adopted November 25, 1987, and released December 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Rupert, Vermont, Channel 281A.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-30077 Filed 12-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-228; RM-5730]

Radio Broadcasting Services; Elk Mound, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 225A to Elk Mound, Wisconsin, as that community's first FM service at the request of Dri-Five, Incorporated. With this action, this proceeding is terminated.

DATES: *Effective* January 25, 1988. The window period for filing applications will open on January 26, 1988, and close on February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-228, adopted November 25, 1987, and released December 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Elk Mound, Wisconsin, Channel 225A.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-30078 Filed 12-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-125; RM-5653]

Television Broadcasting Services; Columbia, SC

AGENCY: Federal Communications Commission

ACTION: Final rule; correction.

SUMMARY: This document corrects the *Report and Order*, adopted October 30, 1987, which allocated Channel 47 to Columbia, South Carolina, as the community's fifth local commercial channel (52 FR 44988). The summary incorrectly stated that the allotment was not subject to the Commission's freeze on new allotments within 30 metropolitan areas. Columbia is located within 175 miles of Charlotte, North Carolina, which is one of the affected metropolitan areas. See *Order*, 52 FR 28346, July 29, 1987. Therefore, while the allocation of Channel 47 to Columbia is not affected by the freeze since the request for rule making preceded its initiation, applications for use of the channel cannot be accepted until further notice.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Erratum, MM Docket No. 87-125, released December 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-30079 Filed 12-31-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products; Energy Conservation Standards for Three Types of Consumer Products; Public Hearing

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of public hearing.

SUMMARY: In the **Federal Register** of December 7, 1987 (52 FR 46367), DOE issued an advance notice of proposed rulemaking (ANOPR) on energy conservation standards for three types of consumer products, as authorized by the National Appliance Energy Conservation Act of 1987. The purpose of today's notice is to announce a public hearing concerning the matters of the December 7, 1987, ANOPR.

DOE believes that such a public forum is warranted in view of the possible conflict between these appliance energy conservation standards and those regulations recently proposed by the Environmental Protection Agency regarding the restriction of chlorofluorocarbon production.

DATES: *Public Hearing.* A public hearing will be held in Washington, DC, on January 28, 1988, at 9:30 a.m.; requests to speak must be received by the Department no later than 4 p.m., January 26, 1988; ten copies of each speaker's statement are requested.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC 20585.

1. Procedure for Submitting Requests to Speak. Requests to speak should be made to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE-43.1, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585 (Telephone (202) 586-9320). Any person who has an interest in this proceeding, or who is a representative of a group or class of persons having an interest, may submit a written or telephone request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled, both on the letter and the envelope, "Appliances: 3 Product Rulemaking (Docket No. CE-RM-87-102)," should be sent to the proper address and must be received by the time specified above.

The person making the request should briefly describe the interest concerned and give a telephone number where he or she may be contacted.

2. Selection of Speakers. DOE reserves the right to select the persons to be heard at this hearing, and to schedule the respective presentations. DOE will endeavor to afford all persons who request to speak an opportunity to be heard. The length of each presentation will be limited to 20 minutes. Scheduled speakers will be so notified by DOE.

3. Conduct of Hearing. A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. The official conducting the hearing will accept additional comments or questions from those attending, as time permits.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

Issued in Washington, DC, December 23, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 87-30162 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 178

Entry of Consolidated Shipments; Extension of Time for Comments

AGENCY: Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning a proposal to amend the Customs Regulations relating to the entry procedures for consolidated shipments of imported merchandise. On November 4, 1987, Customs published a notice in the **Federal Register** (52 FR 42310), proposing to amend § 141.11, Customs Regulations (19 CFR 141.11), by adding a new paragraph covering consolidated shipments. According to the proposal, in the case of consolidated shipments by common carrier, entry may not be made by a broker appointed by the consignee named in the master bill of lading or master airway bill if a consignee on any one of the individual bills of lading or individual waybills which make up the master bill of lading or master airway bill has designated another broker to make entry, or any one of the individual bills of lading or individual air waybills indicates that entry will be made by the actual owner or purchaser.

Comments on this proposal were to have been received on or before January 4, 1988. Customs has received a request to extend the comment period an additional 45 days. In view of the complexity of the issues involved, the request is being granted to provide additional time so that responsive comments may be prepared.

DATE: Comments are requested on or before February 18, 1988.

ADDRESS: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs

Service, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Commercial Rulings Division (202-566-5856).

Dated: December 24, 1987.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 87-30148 Filed 12-31-87; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3310-5]

National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Total Coliforms

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The public comment period is extended beyond the January 4, 1988, deadline for the proposed surface water treatment requirements and total coliforms proposal, published on November 3, 1987 (52 FR 42178 and 52 FR 42224, respectively). EPA will soon publish a notice of availability describing additional information for comment, and possibly other regulatory options. The notice will announce the date, time and location of at least one additional public hearing which will be conducted on the original proposals as well as the information in the notice of availability. The notice will also set the close of the public comment period. Even though the comment period is extended, EPA encourages submittal of written comments expeditiously in order that technical, scientific, and regulatory issues can be addressed by EPA staff as soon as possible.

DATES: The public comment period is open until EPA announces the closing date.

ADDRESSES: Send written comments on these proposed rules to Surface Water Treatment Requirements Comment Clerk, or Coliforms Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review at the EPA Drinking Water Docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 382-3027 between 9 a.m. and 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline telephone (800) 426-4791, or (202) 382-5533 in the Washington, DC metropolitan area, or Stig Regli (Surface Water Treatment Requirements) or Paul S. Berger, Ph.D. (Total Coliforms), Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (Wh-550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202 382-7379 or 382-3039, respectively).

Date: December 28, 1987.

Larry Jensen,

Assistant Administrator for Water.

[FR Doc. 87-30145 Filed 12-31-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3311-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 the solid wastes generated at the EPA Mobile Incineration System in McDowell, Missouri when incinerating cancelled 2,4,5-T and Silvex pesticide products. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists.

DATES: EPA will accept public comments on this proposed exclusion until February 3, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed exclusion by filing a request with Bruce R. Weddle, whose address appears below, by January 19, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-MIPP FFFFF".

Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Bob Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes

identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a) (2) or (a) (3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must provide sufficient information to allow the Agency to determine (1) that the wastes to be exclude is non-hazardous based upon the criteria for which it was listed, (2) that no other hazardous constituents are present in the waste at levels of regulatory concern, and (3) that the waste does not exhibit any of the hazardous waste characteristics. *See* 40 CFR 260.22(a), 42 U.S.C. 6921(f) and the backgound documents for the listed waste(s).

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. *See* 40 CFR 261.3(c) and (d) (2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste is hazardous based on the factors for which the waste was originally listed. If the Agency believes that, based on the original listing factors, the waste is still hazardous on this basis, it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors (including constituents other than those for which the waste was listed) if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency currently is using a hierarchical approach in evaluating petitions for the other factors (*e.g.*, for constituents listed in Appendix VIII of Part 261). *See* 50 FR 7882 (February 26, 1985). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the volume of waste generated. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste at levels of regulatory concern, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit these data to the Agency. In this case, the petitioner must demonstrate why any additional toxic constituents, for which no testing was done, would not be present in the waste or, if present, why they would not be present at concentrations that would pose a toxicological hazard.

In making a delisting determination, the Agency also evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed and currently is using an analytical approach to evaluate wastes that are landfilled and land treated. *See* 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), 50 FR 48943 (November 27, 1985), and 51 FR 41084 (November 13, 1986). The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance-point concentration determined by the model then is compared directly to a level of regulatory concern . If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous. Other factors may result in the denial of a petition, such as actual ground-water monitoring data or spot-check verification data. The selected approach predicts that the larger the waste volume, the higher the levels of toxicants at the compliance point. The Agency believes this to be a reasonable outcome because a larger quantity of waste (and/or the toxicants in the waste) might not be diluted sufficiently to result in compliance-point concentrations that are less than the levels of regulatory concern. For wastes that are landfilled, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than that level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

Under certain circumstances, a petitioner may request an "upfront" delisting (*i.e.*, for waste that has not yet been generated or that will be subject to further treatment). An upfront delisting (when treatment is planned) allows an exclusion to be granted based on untreated waste characteristics, pilot-scale (*i.e.*, scaled down versions of the proposed treatment system operated in either the laboratory or the field)

treatment data if available, process descriptions and batch testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) to show that, once on-line, a treatment system can meet the Agency's verification testing limitations (*i.e.*, the maximum allowable level of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous) and can demonstrate that the treated waste will not be hazardous.

Requirements for upfront delisting of wastes not requiring treatment are identical to those for treated wastes, except that analytical testing would be performed on the raw (untreated) waste generated by pilot-scale manufacturing processes, and on-line batch testing (one of the conditions of the exclusion) would be performed on the raw waste generated by full-scale manufacturing process.

For upfront delisting of either treated or untreated wastes, a list of constituents is developed for the verification testing and tentative maximum allowable treated waste concentrations for these constituents can be (and are presently) derived by back-calculating from the regulatory standards through the VHS model and organic leachate model (OLM). These levels (*i.e.*, "delisting levels") are made conditions of the delisting.

Upfront delisting has the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating waste, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delisting for existing facilities could be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will guarantee the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

The Agency is using this approach in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment and has used this approach in evaluating the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition for Exclusion Petition

A. Environmental Protection Agency, Releases Control Branch

1. Petition for Exclusion

The Environmental Protection Agency (EPA), Releases Control Branch (RCB), Office of Research and Development (ORD), located in Edison, New Jersey, submitted a petition on December 4, 1987, to exclude wastes generated from the incineration of dioxin-contaminated pesticides, listed as hazardous pursuant to 40 CFR 261.3(c)(2)(i), in the EPA's Mobile Incineration System (MIS) located in McDowell, Missouri. The pesticides, which includes 2,4,5-T and Silvex, are presently listed as EPA Hazardous Waste No. F027—Discarded unused formulations containing tri-, tetra-, or pentachloro-phenol or discarded unused formulations containing compounds derived from these chlorophenols. The listed constituents of concern are tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts. Today's proposal to grant the petition for delisting is the result of the Agency's evaluation of RCB's petition.

The sale, distribution, and proper use of pesticides in the U.S. is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, as administered by the Office of Pesticide Programs of EPA. Each use for each pesticide must be approved and registered by EPA. Under certain conditions, EPA also has the power to suspend or cancel a pesticide's registration. In February 1979, the Administrator issued emergency suspension orders and notices of intent to cancel the registrations for a number of uses of 2,4,5-T and Silvex. Among the products affected by these actions were certain 2,4,5-T and Silvex products registered by Union Carbide Corporation. These Union Carbide 2,4,5-T and Silvex registrations were finally cancelled in November 1984; all other registrations of 2,4,5-T and Silvex were cancelled by February 1985.

At the time that the Union Carbide registrations were cancelled, Union Carbide owned existing stocks of 2,4,5-T and Silvex. When a pesticide registration is suspended and subsequently cancelled pursuant to section 6 of FIFRA, sections 15 and 19 of FIFRA require the Agency to (1) indemnify owners of the pesticide for losses they incurred because of these actions, and (2), if requested, assume responsibility for disposing of the cancelled pesticides. Pursuant to these provisions of FIFRA, EPA assumed responsibility for the proper managment and safe disposal of the 2,4,5-T and Silvex pesticides from Union Carbide.

The cancelled pesticides were stored by Union Carbide, prior to transfer to EPA control, at several facilities. The majority of the materials were held at the Byers Warehouse in St. Joseph, Missouri. Smaller amounts of products and associated wastes were stored in Ambler, Pennsylvania; Williamson, New York; and the Union Carbide plant in St. Joseph, Missouri. As part of the Agency's plan to manage these pesticide wastes, RCB intends to incinerate them in the MIS and to landfill the resulting ash. Approximately 110 tons to liquid pesticide products, 330 tons of solid pesticide products, and 105 tons of pesticide packing materials will be incinerated. In addition, approximately 4 tons of contaminated liquid and 70 tons of contaminated solid materials generated during the incineration and handling process will also be incinerated. RCB may also incinerate these materials concurrently with other materials if these materials are covered by an earlier exclusion granted to the RCB for the MIS (*see* 50 FR 30271, July 25, 1985).

RCB claims that the incineration residues from the treatment of the 2,4,5-T and Silvex should be excluded because they will not meet the criteria for which they were listed. RCB further claims that the petitioned residues will contain insignificant amounts of the constituents of concern for F027 listed wastes, and will not exhibit any of the characteristics of hazardous waste. RCB also claims that the residues will not be hazardous for any other reason.

To support its claims, RCB submitted (1) detailed characterizations of the pesticides that will be incinerated, including product specification sheets,

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material safety data sheets (MSDS), and analyses of constituents in Appendix VIII of Part 261 for the major liquid 2,4,5-T product and the major solid Silvex product; (2) detailed descriptions of the incinerator; and (3) a sampling and analysis plan to verify that the conditional delisting levels (discussed later in this notice) are met.

2. Delisting History of the MIS

On July 25, 1985, EPA granted a final exclusion to RCB for certain wastes generated by the MIS (*see* 50 FR 30272) (hereafter referred to as the "Denney Farm" petition). That exclusion included several conditions requiring monitoring of certain wastestreams from the MIS. Specifically, each waste stream batch had to be analyzed for mercury, selenium, and chromium EP toxicity levels.

On September 3, 1987, EPA proposed to grant another exclusion involving the MIS, this time for residues from the treatment of dioxin-contaminated sludge from the Syntex Agribusiness facility in Springfield, Missouri (*see* 52 FR 33439). The "Syntex proposal" addressed a number of process modifications made to the MIS. In addition, this proposal was for an "upfront exclusion". This allowed Syntex to provide a characterization of the untreated sludge before incineration would be initiated (as opposed to waiting for actual incineration results) and, if the proposal were made final, would grant an exclusion requiring Syntex to sample and analyze the incineration residues for a number of constituents of concern. If the concentrations of any of these constituents were to exceed levels of concern established in the final exclusion, Syntex would be required to retreat that batch or dispose of that batch as a hazardous waste. The levels of concern were established through the application of the groundwater transport model described earlier in today's notice (*see* Section I.B.). Similar levels were not applied during the evaluation of the Denney Farm petition because this model was not available at that time. (The Agency notes that there are some differences between the Syntex proposal and today's notice. These differences reflect the Agency's evolving approach toward the MIS, analytical methods, and comments received on the Syntex proposal. The Agency is looking into these differences.)

3. Information Submitted with Delisting Petition

RCB submitted descriptions of the materials to be burned under their eclusion if their petition is granted. This information included catalogs of the materials as well as analytical data which characterized the hazardous constituents likely to be present in the untreated pesticide stockpiles. The materials to be incinerated are summarized in Tables 1 and 2.

Table 1.—Catalog of Pesticide Materials to be Incinerated

	Weight (lbs)
Liquids (all from the Byers site):	
Envert DT	201,709
Emulsavert 100	4,106
Emulsamine 2,4,5–T	2,820
Emulsavert 248	1,358
Dinoxol	1,000
Weedone BK64	1,071
Amchem 2,4,5–TP	1,669
Weedar Amine BK	492
Emulsamine BK	98
Unknown liquids	2,465
Solids:	
Weedone—granular lawn weed killer (Byers)	664,007
Weedone—granular lawn weed killer (Williamson)	2,100

Table 2.—Catalog of Miscellaneous Materials to be Incinerated

	Weight (lbs)
Liquids:	
Decontamination liquids (generated at Byers, Williamson, and Ambler)	4,200
Contaminated liquids (generated at the MIS site)	3,330
Solids:	
Packing materials (gaylords, trash, pallets, drums, containers from Byers)	208,283
Gaylord boxes of floor sweepings, trash, and packing materials from Williamson	1,135
Gaylord boxes of floor sweepings and packing materials from Ambler	3,300
Packets, drums, floor sweepings from St. Joseph, MO	930
Trash (generated at the MIS site and during transport, including suits, gloves, boots, wipers, etc.)	50,000
Sludge (from wastewater treatment)	20,000
Contaminated solids (including ash, filters, and sweepings)	70,000

Because RCB has requested an "upfront" delisting, there are no analytical data from actual treatment residues, generated from the incineration of the pesticides, available for the Agency's review. In order to characterize the hazardous constituents of the materials listed in Tables 1 and 2, RCB submitted three types of compositional data. The first type of data was the pesticide product formulation statements for each of the commercial products to be incinerated. These statements, developed by the manufacturer, identify each commercial component of the product by name, percent of composition, and purpose. RCB also provided material safety data sheets (MSDS) for a number of the commercial products and for components of the commercial products which potentially contained hazarouds constituents (*e.g.*, as listed in Appendix VIII of Part 261). Finally, RCB provided the results of an Appendix VIII analytical scan (using SW–846 methods) for two samples of Envert DT (which represents almost 95 percent of the liquid product which will be incinerated) and two samples of the Weedone solid product.

The volume of Envert DT and Weedone accounts for approximately 98 percent of the materials listed in Table 1; the remaining 2 percent consist of product formulations with the same active ingredients but varying formulations of inert materials. These two products represent 72 percent of the total volume of materials to be incinerated (*i.e.*, all of the materials listed in Tables 1 and 2). Each of the two samples of Envert DT represent a composite of aliquots taken from 10 different 55-gallon drums. The two samples of the granular Weedone product also each represent a composited sample from 10 randomly selected containers. The majority of the materials listed in Table 2 are materials contaminated with the two major products or are derived from the treatment of these products.

Table 3 summarizes the hazardous constituents identified in the untreated commercial products from the product formulation statements and the MSDS. Tables 4, 5, and 6 summarize the maximum concentrations of hazardous organics, dioxins, and metals, respectively, identified by RCB's analyses of the two Envert DT and two Weedone samples. Table 7 summarizes analytical data collected by EPA Region VII on the average and maximum concentrations of 2,3,7,8–TCDD in the 10 pesticide products to be incinerated.

Table 3.—Maximum Organic Constituent Concentrations (Percent) Identified From Products Formulation Statements and MSDS (Untreated Pesticides)

Products	Hazardous constituent concentrations			
	2,4,5-T	Silvex	2,4-D	Dimethylamine
Envert DT	17.71		18.14	
Emulsavert 100	11.95		11.95	
Emulsamine 2,4,5-T	34.38			
Emulsavert 248	12.28		6.14	
Dinoxol	31.68		32.45	
Weedone BK64	20.23		42.26	
Weedar Amine BK	20.60		20.60	10.70
Amchem 2,4,5-TP		70.07		
Emulsamine Brushkiller	17.28		17.16	
Weedone-granular		1.61	3.22	1.16

Table 4.—Maximum Organic Constituent Concentrations (PPM) Identified From Products Analyses (Untreated Pesticides)

Constituents	Products	
	Envert DT	Weedone
Acetone	250	0.63
Aldrin		1.4
Bis (2-ethyl hexyl) phthalate	250	
Chlordane	2,100	
4-Chloro-3-methylphenol	220	
2,4-D	69,000	17,000
2,4-DB	390,000	
2,4-Dichlorophenol	1,400	480
Dichlorovos	23	
Diethyl phthalate	5,800	
Disulfoton	40	
Endosulfan I	480	
Ethoprop	320	
Ethyl benzene	150	0.11
Fenthion	8	
Fluorene	820	
Isophorone	1,500	
Methyl parathion	220	
Mevinphos	140	
Naphthalene	140	
N-Nitrosodiphenylamine	890	
Pentachloropnenol		84
Phenanthrene	1,200	
Strophos	1,200	
Toluene	130	0.14
2,4,5-T	54,000	2,500
2,4,5-TP	7,400	11,000
2,4,5-Tricholorophenol	7,100	
2,4,6-Tricholorophenol		460
Xylenes, total	650	0.22

Table 5.—Maximum PCDD/PCDF Concentrations (PPB) Identified From Product Analyses (Untreated Pesticides)

Homolog	Products	
	Envert DT	Weedone
2,3,7,8-TCDD	9.70	0.86
2,3,7,8-TCDF	ND	ND
TCDD	8.00	0.95
PeCDD	1.90	ND
HxCDD	8.60	ND
TCDF	10.10	2.20
PeCDF	3.50	0.52
HxCDF	3.80	ND

Table 6.—Maximum Leachate Concentrations of the EP Toxic Metals Identified From Product Analyses (Untreated Pesticides)

Constituents	Products	
	Envert DT	Weedone
	(ug/g)[1]	(mg/l)
Arsenic	<10.3	0.005
Barium	4.0	2.0
Cadmium	0.85	0.01
Chromium	1.9	<0.02
Lead	15.2	<0.066
Mercury	0.91	0.006
Selenium	<11.2	<0.002
Silver	<4.1	<0.004

[1] Per EPA's Toxicity Test (40 CFR Part 261 App. II), the liquid Envert DT sample was filtered and analyzed directly.

Table 7.—Average and Maximum 2,3,7,8,–TCDD Concentrations Detected in Untreated Pesticide Products by EPA Region VII (PPB)

	Average	Maximum
Weedone Granular Weed Killer	0.71	1.52
Envert DT	1.72	7.83
Emulsavert 100	30.9	30.9
Emulsamine 2,4,5-T	4,100	9,760
Emulsavert 248	20.2	20.2
Dinoxol	45.2	45.2
Weedone BK64	20.9	20.9
Amchem 2,4,5–TP	9.16	9.16
Weedar Amine BK	15.9	15.9
Emulsamine Brushkiller	22.6	22.6

RCB also proposed a list of organic constituents (shown in Table 8) that could serve as delisting parameters (*i.e.*, treatment residues would be analyzed for these constituents to verify that the wastes are not hazardous). Table 8 includes constituents expected to be present in the pesticide treatment residues, as well as products of incomplete combustion that are: (a) Commonly seen in incineration of complex waste materials, and (b) anticipated as possible incinceration by-products of the feed materials. Table 8 also lists those parameters previously monitored as part of the MIS Denny Farm petition (*See* 50 *FR* 23721, June 5, 1985).

Table 8.—RCB's Proposed Organic Constituents For Verification Monitoring

Chlorinated dibenzo-p-dioxins
Chlorinated dibenzofurans
Acenaphthalene
Acenapthene
Benz(a)Anthracene
Benz(a)pyrene
Benz(b)fluoranthene
Benzene
Biphenyl
Bis(2-ethylhexyl)phthalate
Chlorobenzene
Chloroform
Chloromethane
2-Chloronaphthalene
Chlorophenol
Chrysene
Dibenzo(a,h)anthracene
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4-Dichlorobenzene
1,2-Dichloroethane
Dichloroethane
2,4-Dichlorophenol
2,5-Dichlorophenol
3,4-Dichlorophenol
2,4-Dichlorophenoxy acetic acid
Diethyl phthalate
Fluorthene
Hexachlorophene
Hydrogen cyanide
Indene
Indeno(1,2,3,-c,d)pyrene
Naphthalene
Phenanthrene
Phenol
Polychlorinated biphenyls (PCBs)
Pyrene
1,2,4,5-Tetrachlorobenzene
1,2,3,5-Tetrachlorobenzene
1,2,3,5-Tetrachlorophenol
1,2,4,5-Tetrachlorophenol.
2,3,4,6-Tetrachlorophenol
Tetrachloroethylene
Toluene
1,2,4-Trichlorobenzene
2,3,4-Trichlorophenol
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
2,4,5,Trichlorophenol
2,4,5-Trichlorophenoxy acetic acid

Based on an evaluation of the volume of pesticides and related materials to be

incinerated and the expected residue generation rates (based on past experience in MIS operation), RCB predicts that maximums of 335 tons of ash, 2,050 tons of wastewater, 35 tons of cyclone ash, and 10 tons of separator solids will be generated.

A detailed description of the MIS prior to modification is presented in the proposed exclusion for the Denney Farm petition (*see* 50 FR 23721, June 5, 1985). A description of the recent modifications to the MIS is included in the proposal for the Syntex petition (*See* 52 FR 33439, September 3, 1987). An additional modification to the MIS since September 1987 includes the addition of sand particulate filters and two Calgon carbon Disorb units for the sequential treatment of wasterwater prior to final disposal. The carbon units, when expended, will be processed through the incinerator as part of the decontamination procedures.

4. Agency Evaluation

Review of this petition included consideration of the original listing criteria as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of the Amendments, 42 U.S.C. 6921(f); 40 CFR 260.22(d)(2)–(4).

The Agency considers the product characterization data supplied by RCB to be sufficient to permit analysis of the petition, and considers the reported analytical data to be representative of the cancelled 2,4,5-T and Silvex and related materials listed in Tables 1 and 2. The volume of the two major products analyzed (*i.e.*, Envert DT and Weedone) consists of over 98 percent of the pesticide products to be incinerated and over 70 percent of the volume of all the materials to be incinerated. These analyses are also representative of the remaining 30 percent of the materials to be incinerated (*see* Table 2) because these materials are inert materials which are either (1) contaminated by the pesticides themselves and thus are effectively dilute versions of the pesticides, or (2) treatment residues derived from the pesticides. In addition, since the sampled pesticides were commercial grade materials which were manufactured under conditions designed to minimize compositional fluctuations, the Agency believes that the two analyses of each product are representative of the products in general. The Agency, therefore, believes that the samples taken from the two major product formulations adequately represent the compositions of the materials to be incinerated.

The Agency will include monitoring and testing requirements in RCB's exclusion in order to ensure that the MIS is capable of generating non-hazardous treatment residues when incinerating the cancelled pesticides. Specifically, RCB will be required to submit analytical testing results on a batch basis for certain metals and organics (identified by the characterization of the untreated pesticides as well as potential products of incomplete combustion) for each petitioned waste stream to demonstrate that the MIS actually performs as expected. The Agency believes that this upfront conditional delisting is appropriate because (1) the composition of the materials to be incinerated is relatively uniform, (2) the MIS has been demonstrated to be effective in the detoxification of dioxin-contaminated hazardous wastes (see regulatory docket for details) and (3) the results of the batch verification testing will provide validation that the MIS is operating effectively.

The Agency, therefore, proposes to grant an exclusion for the solid residues and wastewater generated from EPA's Mobile Incineration System's treatment in McDowell, Missouri, of the 2,4,5–T and Silvex and related materials listed in Tables 1 and 2 with the following conditions:

(1) The incinerator is monitored continuously and is in compliance with permit conditions.

The purpose of this condition is to ensure efficient destruction of the constituents of concern. The MIS's performance will be continuously monitored to ensure that it meets operating parameters specified in its permit for destruction efficiencies, kiln temperature, secondary combustion chamber (SCC) temperature, oxygen and carbon monoxide concentrations in the exhaust gas, combustion gas velocity, scrubber water pH and flow rates, and pressure drops across the system. If the data collected under this condition show that the MIS is not operating properly, the residues must be retreated to achieve the delisting levels or must be disposed in accordance with Subtitle C of RCRA.

(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.44 ppm; barium levels exceed 8.8 ppm; cadmium and selenium levels exceed 0.09 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 4.4 ppm; or cyanide levels exceed 1.8 ppm, the wastewater must be retreated to achieve these levels or disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies.

(3) One grab sample must be taken from each drum of kiln ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample.

One grab sample must be taken from each drum of cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium and selenium levels exceed 0.3 ppm; mercury levels exceed 0.07 ppm; nickel levels exceed 16 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies.

Conditions (2) and (3) have been included to ensure that the residues generated by the MIS when incinerating the cancelled pesticides and related materials are non-hazardous with respect to the EP toxic metals, nickel and cyanide.

(4) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below (Tables 9 and 10) are not exceeded. Samples must be collected as specified in conditions (2) and (3). Analyses must be performed according to SW–846 methodologies. Any solid or liquid residues which exceed any of the levels listed below (in Tables 9 or 10, respectively) must be retreated to achieve these levels or disposed in accordance with Subtitle C of RCRA.

TABLE 9.—MAXIMUM ALLOWABLE SOLID TREATMENT RESIDUE CONCENTRATIONS (PPM)

Constituents	Maximum allowable [1] concentrations
Aldrin	0.015
Benzene	9.7
Benzo(a)pyrene	0.43
Benzo(b)fluoranthene	1.8
Chlordane	0.37
Chloroform	5.4
Chrysene	170
Dibenz(a,h)anthracene	0.083
1,2-Dichloroethane	4.1
Dichloromethane	2.4
2,4-Dichlorophenol	480
Dichlorvos	260
Disulfaton	23
Endosulfan I	310
Fluorene	120
Indeno(1,2,3,cd)pyrene	330
Methyl parathion	210
Nitrosodiphenylamine	130
Phenanthrene	150
Polychlorinated biphenyls	0.31
Tetrachloroethylene	59
2,4,5-TP (silvex)	110
2,4,6-Trichlorophenol	3.9

[1] Assumes solids waste volume of 355 tons.

TABLE 10.—MAXIMUM ALLOWABLE WASTEWATER CONCENTRATIONS (PPM)

Constituents	Maximum allowable [1] concentrations
Acetone	35.3
Aldrin	0.000018
Benzene	0.044
Benzo(a)pyrene	0.000027
Benzo(b)fluoranthene	0.00018
Biphenyl	15.5
Bis-2-ethylhexyl phthalate	6.18
Chlordane	0.00024
Chlorobenzene	8.84
Chloroform	0.052
Chrysene	0.0018
2,4-D	3.5
Dibenz(a,h)anthracene	0.000006
Dichloromethane	0.042
1,3-Dichlorobenzene	34
1,4-Dichlorobenzene	0.66
1,2-Dichlorobenzene	26.5
1,2-Dichloroethane	0.044
2,4-Dichlorophenol	0.88
Dichlorvos	0.78
Diethyl phthalate	4,418
Disulfaton	0.016
Endosulfan I	0.020
Ethyl benzene	35
Fluoranthene	1.77
Fluorene	0.018
Indeno(1,2,3,cd)pyrene	0.0018
Isophorone	61.9
Methyl chloride	35.3
Methyl parathion	0.099
Napthalene	79.5
Nitrosodiphenylamine	0.063
Pentachlorophenol	8.8
Phenanthrene	0.018
Phenol	8.8
Polychlorinated biphenyls	0.000072
Pyrene	35
Tetrachloroethylene	0.059
2,3,4,6-Tetrachlorophenol	8.8
Toluene	88.4
2,4,5-TP (silvex)	0.088
1,2,4-Trichlorobenzene	8.2
2,4,6-Trichlorophenol	0.018
2,4,5-Trichlorophenol	35
2,4,5-Trichlorophenoxyacetic acid	0.88
Xylene	619

[1] Assumes a wastewater volume of 2,050 tons.

The maximum allowable waste concentrations for the metals and cyanide given in conditions (2) and (3) were derived from the regulatory standards for these constituents and the vertical and horizontal spread (VHS) model (*see* 50 FR 48996, Appendix, November 27, 1985). The maximum allowable waste concentrations discussed in condition (4) and listed in Tables 9 and 10 were derived from the Organic Leachate Model (OLM) (*see* 51 FR 41084, November 13, 1986) and the VHS model. The OLM is used to predict leachable concentrations of organic constituents in a waste. The VHS model if used to predict the concentration of a constituent in the ground water at a hypothetical compliance point. The maximum allowable wastewater concentrations were calculated by back-calculating from regulatory standards through the VHS model to predict allowable concentrations. The organic concentrations for the solid residues were back-calculated through the OLM from the predicted VHS model leachate concentrations.

Maximum allowable treatment residue concentrations were not calculated for 18 compounds (*i.e.*, acenaphthalene, acenaphthene, 4-chloro-3-methylphenol, 2-chlorophthalene, 2-chlorophenol, 2,5-dichlorophenol, 3,4-dichlorophenol, dimethyl amine, ethoprop, fenthion, hexachlorophene, indene, mevinphos, stirophos, 1,2,3,5-tetrachlorobenzene, 1,2,3,5-tetrachlorophenol, 2,3,4,5-tetrachlorophenol, 2,3,4-trichlorophenol) which were detected in the untreated pesticides or are potential products of incomplete combustion in the treatment residues, because regulatory standards are not currently available for these compounds due to a lack of toxicity data. If any of these standards become available before this rule is promulgated, they will be added to the lists in Tables 9 and 10.

An additional number of constituents detected in the untreated pesticides or identified as potential products of incomplete combustion were not included in Table 9 (*i.e.*, acetone, biphenyl, bis-2-ethylhexyl phthalate, chlorobenzene, 2,4-D, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,2-dichlorobenzene, diethyl phthalate, ethyl benzene, fluoranthene, isophorone, methyl chloride, naphthalene, pentachlorophenol, phenol, pyrene, 2,3,4,6-tetrachlorophenol, toluene, 1,2,4-trichlorobenzene, 2,4,5-trichlorophenol, 2,4,5-trichlorophenoxyacetic acid, xylene). The results of the OLM and VHS analysis (which are available in the docket to this notice) indicate that these constituents do not present a risk from a groundwater exposure scenario unless present in concentrations greater than 1,000 ppm in the solid treatment residues. The Agency believes that it is highly unlikely that any of these constituents could be present at such high levels following incineration in the MIS. This conclusion is supported by (1) the low or non-existent levels of many of these constituents in the untreated residues (*see* Table 4), (2) analytical test results on residues generated previously by the MIS (*see* Tables 4 and 5, 50 FR 23725, June 5, 1985 and additional data in the docket to this notice), and (3) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency (DRE) as required by 40 CFR 264.343(a)(2).

Condition (4) was added to ensure that the hazardous constituents of concern in the untreated pesticides and the present at non-hazardous levels. As a matter of policy, the Agency will not regulate the residue as hazardous if RCB does not detect a constituent listed in Tables 9 or 10 at or above the lowest practical quantitation limit (using the appropriate SW–86 methodology correctly). If, however, the data collected under condition (4) indicate that the constituents are detected at levels higher than those listed in Table 9 or 10, the waste must be retreated or must be disposed in accordance with Subtitle C of RCRA.

(5) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or

disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. The maximum practical quantitation limit must not exceed 10 ppt for solids and 100 ppg for wastewaters.

This condition has been added to ensure that the dioxin destruction is at least as effective as demonstrated in the original Denney Farm exclusion. The toxicity equivalent levels are calculated by multiplying the factors listed below by any detected levels of tetra-, penta-, or hexachlorodibenzo-p-dioxin or-furan and summing the values for comparison to the equivalent levels set in condition (5). When RCB is able to determine that a detected homolog is not 2,3,7,8-substituted, the factors listed in the third column may be used (*i.e.*, listed under "Non-2,3,7,8-PCDDs and PCDFs"). If RCB determines that either 2,3,7,8-substituted homologs are present or that the analysis cannot differentiate the ring substitution pattern, then the factors listed in the second column must be used.

TOXICITY EQUIVALENCE FACTORS

Homolog	2,3,7,8-PCDDs and PCDFs or unspecified homologs	Non-2,3,7,8-PCDDs and PCDFs
TCDDs	1	0.01
PeCDDs	0.5	0.005
HxCDDs	0.04	0.0004
TCDFs	0.1	0.001
PeCDFs	0.1	0.001
HxCDFs	0.01	0.0001

These factors were developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to a mixture of chlorinated dioxin homologs, and were derived from an evaluation of the structure-activity relationships of the homologs using their carcinogenic, reproductive, and biochemical effects.[1] The levels set in Condition (5) were determined by back-calculating through the OLM and VHS model, as discussed under condition (4).

As a matter of policy, the Agency will not regulate the residue as hazardous if RCB does not detect dioxins or furans at or above the lowest practical quantitation limit (using the appropriate SW-846 methodology correctly).

In anticipation of a planned expansion of SW-846 by the EPA Office of Solid Waste (OSW) and the EPA Environmental Monitoring and Systems Laboratory in Las Vegas (EMSL/LV) to incorporate HRGC/HRMS Method 8290, EPA is requiring that RCB use Method 8290. EPA intends to require this method for all future delisting petitions for dioxin-contaminated wastes, including the exclusion for Syntex if it is made final. Method 8290 has been subjected to a rigorous development and single laboratory validation process by OSW and EMSL/LV. A full description of the method is available in the docket to this notice.

EPA is also specifying in Condition(5) that the petitioner achieve certain practical quantitation limits (PQLs) when analyzing the petitioned residues under this verification condition. EPA currently believes that labs that are performing method 8290 on incineration matrices (which are fairly free of interferences) should be able to achieve PQLs of 10 ppt for solids and 100 ppg for wastewaters. The Agency will require these PQLs as the maximum acceptable PQLs. EPA is specifying that the petitioner provide PQLs rather than minimum detection limits (MDL) for the following reasons:

- PQLs provide a reasonable degree of certainty that true values, rather than false negatives (or false positives), are presented. (If the true sample concentration is equal to the MDL, the analytical results will not be quantitative, *i.e.*, will be reported as "less than the MDL" on about 50 percent of all analyses.)
- The PQL takes into account a number of factors that are generally difficult to control and that contribute to the uncertainty associated with the MDL, such as high background levels, significant matrix interference, and operator and instrument variability. PQLs therefore provide a greater degree of certainty as the the actual constituent concentrations.

Other examples of instances where the Agency suggests or is proposing to establish PQLs (rather than MDLs) include a proposed rulemaking for setting PQLs for volatile organic contaminants in drinking water (*see* 50 FR 46902, November 13, 1985) as well as SW-846 Methods 8240 and 8270 for GC/MS measurements of organic contaminants.

PQLs are usually determined through interlaboratory studies of the analytical methods. In the absence of rigorous interlaboratory studies, the Agency has estimated PQLs to be from approximately 3 to 10 times the MDL. Based on data submitted by a number of EPA laboratories which have routinely conducted Method 8290, the MDL for dioxin is generally below 5 ppt for solids and 40 ppg for wastewaters. Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs of 15 ppt for solids and 10 ppg for wastewaters. EPA believes that for the purposes of delisting dioxin-contaminated wastes, even lower PQLs should be achievable, that is, 10 ppt for solids and 100 ppg for wastewaters. Our basis for the use of these lower PQLs for dioxin is that:

- The petitioned residues to be analyzed will be relatively free of interferences due to the incineration process.
- The petitioner will be using highly qualified and experienced operators and laboratories to conduct the analyses.

If the data collected under condition (5) show higher levels than are acceptable, the wastes must be retreated or must be disposed as acutely hazardous in accordance with Subtitle C of RCRA.

(6) The test data from conditions (1), (2), (3), (4), and (5) must be kept on file by RCB for inspection purposes and must be compiled, summarized, and submitted to the Assistant Administrator for Solid Waste and Emergency Response by certified mail on a monthly basis and when the treatment of the cancelled pesticides is concluded. The testing requirements for conditions (2), (3), (4), and (5) will continue until RCB provides the Assistant Administrator with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the Assistant Administrator notifies RCB that the conditions have been lifted. All data submitted will be placed in the RCRA docket.

This conditional testing requirement will remain in effect until RCB can demonstrate that four consecutive batches of the petitioned residues are non-hazardous, that is, the constituents in the wastes do not exceed any of the delisting levels listed in Conditions 2, 3, 4 or 5, and the wastes do not exhibit any of the characteristics of hazardous waste. The Agency has added the testing termination provisions to this exclusion for the following reasons: (1) Based on the past performance of the MIS, the Agency believes that consistently non-hazardous wastes can be generated and thus testing every batch for the EP toxic metals, nickel, cyanide, dioxins, furans, and the organics listed in Tables 9 and 10 would be excessive (*see* Tables 4 and 5; 50 *FR* 23725, June 5, 1985; and additional data in the docket to this notice); (2) the petitioner will be providing analytical data, on a batch basis, of the treatment residues which will be generated when representative volumes of pesticides and related materials will be burned, eliminating the need for continuous testing since this demonstration will be representative of the residues which will be generated throughout the remainder of the production burns; and (3) the material to be incinerated are not expected to vary significantly on a compositional basis and thus the residues should also be compositionally similar from batch to batch.

Termination of these conditions after four consecutive clean batches is consistent with existing policy that petitioners submit a minimum of four representative samples in support of their petitions for delisting. The data from the four consecutive clean batches must be submitted to the Assistant Administrator for the Office of Solid Waste and Emergency Response for review before any of the testing conditions are terminated; the Agency will notify RCB when the conditions are lifted and will place all relevant data in the public docket.

(7) RCB must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personnally verify its (their) truth and accuracy, I certify as the Agency official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

Condition (7) is a standard condition for all conditional and upfront exclusions.

5. Conclusion

The agency believes that the engineering descriptions of the MIS and the analytical characterization of the untreated cancelled pesticides submitted by RCB, in conjunction with the proposed testing requirements, provide a reasonable basis to grant RCB's petition for an upfront exclusion. The MIS has been demonstrated to be an effective technology for the detoxification of other dioxin-contaminated materials, and the Agency expects that the treatment residues from the incineration of the cancelled pesticides and related materials also will be non-hazardous. The confirmatory data (*e.g.*, conditions (2) through (5)) should demonstrate that the MIS can actually meet the terms of the proposed exclusion.

Although the management of an excluded waste is relieved from RCRA Subtitle C jurisdiction, the generator of a delisted waste must either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is: permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste; or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat its waste as hazardous until a new exclusion is granted.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amemdments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule, if promulgated, will reduce, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect, if promulgated, will be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal Recycling.

Authority: Sec. 3001, RCRA, 42 U.S.C. 6921.

Date: December 24, 1987.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PARTS 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6912, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

[1] Risk Assessment Forum, "Interim Procedures for Estimating Risk Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and-Dibenzofurans (CDDs and CDFs)", October, 1986.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
EPA's Mobile Incineration System (MIS)	McDowell, MO	Kiln ash, cyclone ash, separator sludge, and filtered wastewater (except spent activated carbon) (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5–T and Silvex and related materials by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after [insert date of final rule publication in the Federal Register], so long as: (1) The incinerator is monitored continuously and is in compliance with permit conditions; (2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.44 ppm; barium levels exceed 8.8 ppm; cadmium and selenium levels exceed 0.09 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 4.4 ppm; or cyanide levels exceed 1.8 ppm, the wastewater must be retreated to achieve these levels or disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies. (3) One grab sample must be taken from each drum of kiln ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. One grab sample must be taken from each drum of cyclone ask generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium and selenium levels exceed 0.3 ppm; mercury levels exceed 0.07 ppm; nickel levels exceed 16 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies. (4) RCB must generate, prior to disposal of residues, verification data from each treatment residue (*i.e.*, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in conditions (2) and (3). Analyses must be performed according to SW–846 methodologies. Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or disposed in accordance with Subtitle C of RCRA. Solid and sludge concentrations must not exceed the following levels: Aldrin 0.015 ppm Benzene 9.7 ppm Benzo (a) pyrene 0.43 ppm Benzo (b) fluoranthene 1.8 ppm Chlordane 0.37 ppm Chloroform 5.4 ppm Chrysene 170 ppm Dibenz (a, h) anthracene 0.083 ppm 1,2 Dichloroethane 4.1 ppm Dichloroethane 2.4 ppm 2,4 Dichlorophenol 480 ppm Dichlorvos 260 ppm Disulfaton 23 ppm Endosulfan I 310 ppm Fluroene 120 ppm Indeno (1,2,3,cd) pyrene 330 ppm Methyl parathion 210 ppm Nitrosodiphenylamine 130 ppm Phenanthrene 150 ppm Polychlorinated biphenyls 0.31 ppm Tetrachloroethylene 59 ppm 2,4,5–TP (silvex) 110 ppm 2,4,6–Trichlorophenol 3.9 ppm Detected wastewater concentrations must not exceed the following levels: Acetone 35.3 ppm

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Aldrin 0.000018 ppm Benzene 0.044 ppm Benzo (a) pyrene 0.000027 ppm Benzo (b) fluoranthene 0.00018 ppm Biphenyl 15.5 ppm Bis-2-ethylhexyl phthalate 6.18 ppm Chlordane 0.00024 ppm Chlorobenzene 8.84 ppm Chloroform 0.052 ppm Chrysene 0.0018 ppm 2,4–D 3.5 ppm Dibenz (a,h) anthracene 0.000006 ppm Dichloromethane 0.042 ppm 1,3–Dichlorobenzene 34 ppm 1,4–Dichlorobenzene 0.66 ppm 1,2–Dichlorobenzene 26.5 ppm 1,2–Dichloroethane 0.044 ppm 2,4–Dichlorophenol 0.88 ppm Dichlorvos 0.78 ppm Diethyl phthalate 4,418 ppm Disulfaton 0.016 ppm Endosulfan I 0.020 ppm Ethyl benzene 35 ppm Fluoranthene 1.77 ppm Fluorene 0.018 ppm Indeno (1,2,3,cd) pyrene 0.0018 ppm Isophorone 61.9 ppm Methyl chloride 35.3 ppm Methyl parathion 0.099 ppm Naphthalene 79.5 ppm Nitrosodiphenylamine 0.063 ppm Pentachlorophenol 8.8 ppm Phenanthrene 0.018 ppm Phenol 8.8 ppm Polychlorinated biphenyls 0.000072 ppm Pyrene 35 ppm Tetrachloroethylene 0.059 ppm 2,3,4,6–Tetrachlorophenol 8.8 ppm Toluene 88.4 ppm 2,4,5–TP (silvex) 0.088 ppm 1,2,4–Trichlorobenzene 6.2 ppm 2,4,6–Trichlorophenol 0.018 ppm 2,4,5–Trichlorophenol 35 ppm 2,4,5–Trichlorophenoxyacetic acid 0.88 ppm Xylene 619 ppm; (5) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. The maximum practical quantitation limit must not exceed 10 ppt for solids and 100 ppq for wastewaters; (6) The test data from conditions (1), (2), (3), (4) and (5) must be kept on file by RCB for inspection purposes and must be compiled, summarized, and submitted to the Assistant Administrator for Solid Waste and Emergency Response by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for conditions (2), (3), (4), and (5) will continue until RCB provides the Assistant Administrator with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the Assistant Administrator notifies RCB that the conditions have been lifted. All data submitted will be placed in the RCRA docket.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) RCB must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the Agency official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-87-17]

Qualifications of Drivers; Diabetes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advanced notice of proposed rulemaking (ANPRM) regarding drivers of commercial vehicles with diabetes which was published in the Federal Register on November 25, 1987. The FHWA has received two formal requests for extension of the comment period, and we have been advised that additional requests will be forthcoming. Therefore, the FHWA is extending the comment period. The FHWA will not consider any further requests for extension.

DATES: Written comments must be received on or before February 1, 1988.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981; or Ms. Julie A. White, Office of Chief Counsel, (202) 366-1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The American Trucking Associations, Inc. (ATA) and the International Brotherhood of Teamsters have requested an extension of the comment period for the rulemaking, Qualifications of Drivers; Diabetes. The Teamsters requested a minimum 30-day extension, and the ATA requested an extension of no earlier than February 1, 1988. Both petitioners cited the technical nature of the ANPRM and, that the original comment period coincides with the holiday season. The FHWA agrees with the position of the petitioners and is extending, by this notice, the period of comment to February 1, 1988.

List of Subjects in 49 CFR Part 391

Driver qualifications-diabetic standard, Highways and roads, Highway safety, Motor carriers, Physical standards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

(49 U.S.C. App. 2505; 49 U.S.C. 3102; and 49 CFR 1.48.)

Issued on: December 28, 1987.

R.D. Morgan,

Executive Director.

[FR Doc. 87-30118 Filed 12-31-87; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Draft Supplemental Environmental Impact Statement; Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: In the September 22, 1987, **Federal Register** (at 52 FR 35563) the Fish and Wildlife Service announced the availability of Draft Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds, and set the closing date for public comment at December 31, 1987. Based on comments and inquiries received to date by the Service, an extension of the comment period is warranted. Therefore, the closing date for public comment on the Draft is extended to January 31, 1988. The Fish and Wildlife Service does not expect that the extension will delay issuing its Final Supplemental Statement and publishing its Record of Decision by July 1, 1988.

DATE: Written comments are requested by January 31, 1988.

ADDRESSES: Copies of the Draft can be obtained by writing to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240. Written comments can be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, DC 20240 (202-254-3207).

Date December 28, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-30115 Filed 12-31-87; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARMS CONTROL AND DISARMAMENT AGENCY

Visiting Scholars Program

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1988-89 school year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director [of the U.S. Arms Control and Disarmament Agency] in order to obtain the services of scholars from the faculties of recognized institutions of higher learning."

The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA initially implemented this program by competitively selecting six visiting scholars for the 1984-85 school year to perform specific activities at ACDA for which their services had been identified as being needed. This process was repeated for the 1985-86, 1986-87, and 1987-88 school years and it is intended that the process will be used again this year with one-year assignments beginning at a mutually agreeable time during the period from July 1988 lasting until mid September 1989 for the positions in ACDA's four bureaus described in the Appendix to this announcement. Note that the emphasis is on the expertise and service which the visiting scholars can provide rather than on general interest in arms control and the pursuit of the scholars' own research.

It is planned that the visiting scholars will be assigned by detail and compensated in accordance with the Intergovernmental Personnel Act. In addition to pay based on their regular salary rates, the visiting scholars will receive travel to and from the Washington, DC area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens or nationals of the United States and on the faculty of a recognized institution of higher learning. Prior to appointment they will be subject to full-field background security and loyalty investigation for a top secret security clearance including access to Restricted Data, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars also will be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise which the applicant offers. The letter should be accompanied by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicant believes should be considered in the selection process. (If published materials are submitted, it is requested that they be provided in twelve copies, if possible.)

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Personnel Officer, Room 5722, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1988-89 school year is January 31, 1988, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected early spring 1988.

Dated: December 24, 1987.

William J. Montgomery,

Administrative Director.

Appendix

A. Visiting Scholar Assignments to the Bureau of Multilateral Affairs of ACDA

1. Description of the Bureau of Multilateral Affairs

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt within multilateral fora. The Conference on Disarmament, the Mutual and Balanced Force Reduction negotiations, the Conference on Security and Cooperation in Europe, and the United Nations General Assembly are the most important examples. MA provides both technical backstopping and diplomatic support to these substantive activities as well as to other negotiations which seek to reduce forces in Central Europe, to build confidence, to ban radiological weapons, to study negative security assurances, to limit military expenditures, to research nuclear weapons free zones, and to eliminate chemical and biological weapons.

2. Nature of Assignment (MA/ISP)

The International Security Program Division of the Bureau of Multilateral Affairs (MA/ISP) has responsibility for the Conference on Disarmament (CD) which started life in 1979 as a multilateral arms control negotiating forum in Geneva, although its ancestry dates back to the Ten Nation Disarmament Committee of the late 1950's. The CD now consists of 40 members, including most members of the Warsaw Pact and NATO as well as 21 non-aligned nations. Its annual session is divided into two parts, February-April and June-August. Active items on its agenda include chemical weapons (the U.S. submitted a draft convention to ban all chemical weapons in 1984), radiological weapons, outer space and nuclear testing.

The First Committee of the United Nations General Assembly is the other major forum for which MA/ISP has responsibility. The U.S. delegation coordinates the U.S. position on disarmament resolutions with other Western and non-aligned delegations, as

appropriate, and participates in the general debate. The General Assembly has no direct authority over the CD, but the CD transmits annual reports on its work to the United Nations, and the First Committee may pass resolutions recommending courses of action to the CD.

A visiting scholar assigned to MA/ISP would study the CD and General Assembly forums, in part through the daily responsibilities of interagency coordination and delegation work. The Visiting Scholar would study selected issues on the CD agenda to assess negotiating possibilities for the U.S.

The Conference on Security and Cooperation in Europe (CSCE) will be in session in Vienna during this period, considering, among other things, the outcome of the Conference on Confidence and Security Building Measures and Disarmament in Europe (CDE) which has recently concluded in Stockholm. The future of the CDE will be decided by its parent CSCE conference, with a key issue being the agenda of a follow-on CDE conference.

Closely tied to follow-on CDE conference issue are talks for a mandate on negotiations for the reduction of conventional forces in Europe, also taking place in Vienna, Austria. These negotiations will succeed the Mutual Balance Force Reduction talks, ongoing since 1973 without notable progress.

A visting scholar assigned to this Division of the Bureau of Multilateral Affairs (MA/ISP) would analyze the interrelationships of these various negotiations for the purpose of assessing their future roles within the larger framework of U.S. national security policies. In addition, the scholar would study the more general problems and the possibilities of conventional arms control in Europe.

3. Candidate Qualifications (MA/ISP)

Specific useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

B. Visiting Scholar Assignments to the Bureau of Verification and Intelligence of ACDA

1. Description of the Bureau of Verification and Intelligence

The Bureau of Verification and Intelligence (VI) has responsibility for ACDA's work in verification, compliance, intelligence, operations analysis, and computer support. VI provides the support in these subject areas for the strategic and theater nuclear arms control negotiations; the Standing Consultative Commission; the Anti-Ballistic Missile, SALT I and SALT II Treaties; the Limited Test Ban Treaty and Threshold Test Ban Treaty and the agreements on chemical and biological weapons.

2. Nature of the Assignment

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; conducts operations analysis of relevant arms control issues and Soviet views thereof; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, drafting policy papers, and/or performing analyses both for use within ACDA and for coordination with other agencies. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: verification of a treaty on chemical weapons, verification of limits on space-based weapons and weapons which can attack space-based military assets, compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing, or analysis of Soviet views on stability and their impact on verification.

3. Candidate Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, operations analyst, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: knowledge of basic physics, chemistry, aerospace systems, operations research, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be a value, but is not a requirement.

C. Visiting Scholar Assignments to the Bureau of Strategic Programs of ACDA

1. Description of the Bureau of Strategic Programs

The Bureau of Strategic Programs (SP) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater nuclear offensive forces and defensive and space forces. This includes providing technical and policy guidance to the Director in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SP also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.-USSR arms control negotiations, and other defense related matters including ACDA participation in US decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for the periodic Anti-Ballistic Missile (ABM) Treaty reviews. SP also has interagency responsibility for backstopping of the NST negotiations, the SCC, and ABM Treaty reviews. SP has three divisions: Strategic Affairs, Theater Affairs, and Defense and Space.

2. Nature of the Assignment

A visiting scholar assigned to SP would assist in policy formation in one or more of the areas cited above. Because of the high technical content in these areas, SP seeks a physical scientist with a broad theoretical or applied background.

The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency Groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of ACDA/SP.

3. Candidate Qualifications

Specific useful background for a candidate would include: knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SP responsibility would be of value but is not a requirement.

D. Visiting Scholar Assignment to the Bureau of Nuclear and Weapons Control of ACDA

1. Description of the Bureau of Nuclear and Weapons Control

The Bureau of Nuclear and Weapons Control (NWC) has responsibility for nuclear non-proliferation issues, including the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlatelolco. NWC also assesses the arms control implications of proposed arms transfers and technology transfers, and prepares Arms Control Impact Statements on U.S. programs and guides them through the interagency review process. In addition, NWC is responsible for ACDA's economic analysis work and coordinates publication of *World Military Expenditures and Arms Transfers*.

2. Nature of the Assignment

A visiting scholar assigned to NWC would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear non-proliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issues and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Departments of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

3. Candidate Qualifications

Desirable attributes for a candidate would include an understanding of the role of arms control in national security planning, familiarity with weapons characteristics and capabilities, knowledge of political-military conditions in developing regions, a highly-developed analytical ability, and facility in written and oral communications. Because of the complex political-military issues involved, the individual should have a strong background in national security studies or international relations.

[FR Doc. 87-30101 Filed 12-31-87; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 46-87]

Application for Subzone, Allied Steel Auto Body Parts Plant, South Bend, IN; Foreign-Trade Zone 125—South Bend

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for the steel automobile body parts production facility of Allied Products Corporation, South Bend, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zone Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 18, 1987.

The plant (55 acres) is located at 601 W. Broadway Street in South Bend. The facility employs 600 persons and is used to produce steel body parts for automobiles. Some 30 percent of the plant's steel requirements are sourced abroad, primarily electroplated galvanized steel sheet. Over 30 percent of the finished body parts are exported.

Zone procedures would exempt Allied from duty payments on steel used in its exports. On the company's domestic shipments duties would be paid either at the rate applicable to auto body parts or, in the case of shipments to auto subzones, the rate applicable to finished autos. The duty rates on steel range from 4.9 to 6.5 percent, whereas the rate for body parts is 3.1 percent, and the rate for autos is 2.5 percent. The applicant indicates that zone procedures will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 S. Carol Street, Chicago, Illinois 60607; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 15, 1988.

A copy of the application is available for public inspection at each of the following locations:

St. Joseph County Airport Authority, Michiana Regional Airport, 4535 Terminal Drive, 2nd Floor, South Bend, Indiana 46628

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 1529, Washington, DC 20230.

Dated: December 23, 1987.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 87-30109 Filed 12-31-87; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 369]

Resolution and Order Approving the Application of the Louisville and Jefferson County Riverport Authority, for a Subzone for Toyota in Scott County, KY; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, filed with the Foreign-Trade Zones Board (the Board) on June 4, 1986, requesting special-purpose subzone status for the automobile manufacturing plant of Toyota Motor Manufacturing, U.S.C. Inc., in Scott County, Kentucky, adjacent to the Louisville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish A Foreign-Trade Subzone in Scott County, Kentucky

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act). The Foreign-Trade Zones Board (the

Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone No. 29, has made application (filed June 4, 1986, Docket 19–86, 51 FR 21946) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc. (Toyota), in Scott County, Kentucky, adjacent to the Louisville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now therefore, in accordance with the application filed June 4, 1986, the Board hereby authorizes the establishment of a subzone at the Toyota plant in Scott County, Kentucky, designated on the records of the Board as Foreign-Trade Subzone No. 29E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 18th day of December, 1987, pursuant to Order of the Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-30110 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than January 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceeding:	
Cell-Site Transceivers from Japan	01/01/87-12/31/87
Anhydrous Sodium Metasilicate from France	01/01/87-12/31/87
Expanded Metal from Japan	01/01/87-12/31/87
Brass Sheet and Strip from Brazil	06/22/86-12/31/87
Brass Sheet and Strip from Canada	06/22/86-12/31/87
Brass Sheet and Strip from the Republic of Korea	06/22/86-12/31/87
Calcium Pantothenate from Japan	01/01/87-12/31/87
Potassium Permanganate from Spain	01/01/87-12/31/87
Low-Fuming Brazing Copper Wire and Rod from South Africa	01/01/87-12/31/87
Certain Stainless Steel Cooking Ware from Taiwan:	
Song Fair Industry & Lyo Mean Industrial	04/08/86-12/31/87
All Others	07/07/86-12/31/87
Certain Stainless Steel Cooking Ware from the Republic of Korea	07/07/86-12/31/87
Potassium Permanganate from the People's Republic of China	01/01/87-12/31/87
Countervailing Duty Proceeding:	
Stainless Steel Wire Rod from Spain	01/01/87-12/31/87
Semi-Finished Forged Undercarriage Components from Italy	01/01/87-12/31/87
Brass Sheet and Strip from Brazil	11/10/86-12/31/87
Fresh Cut Flowers from Ecuador	10/27/86-12/31/87
Fabricated Automotive Glass from Mexico	01/01/87-12/31/87
Non-rubber Footwear from Argentina	01/01/87-12/31/87
Stainless Steel Cooking Ware from the Republic of Korea	11/26/86-12/31/87
Stainless Steel Cooking Ware from Taiwan	11/26/86-12/31/87
Suspended Investigation	
Certain Red Raspberries from Canada	01/01/87-12/31/87
Roses and Other Cut Flowers from Colombia	01/01/87-12/31/87
Fresh Cut Flowers from Costa Rica	01/13/87-12/31/87
Miniature Carnations from Colombia	01/13/87-12/31/87
Truck Trailer Axle-and-Brake Assemblies from Hungary	01/01/87-12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by January 31, 1988.

If the Department does not receive by January 31, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawl from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Dated: December 17, 1987.

[FR Doc. 87-30164 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

Precipitated Barium Carbonate From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 16, 1987, the Department of Commerce published the preliminary results of its administrative review on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise and the period July 1, 1985 through June 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 34972) the preliminary results of its administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated and under item 2836.60.00 of the Harmonized System. The review covers one manufacturer/exporter, Kali–Chemie AG, and the period July 1, 1985 through June 30, 1986.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review, and we determine that no margin exists for the period July 1, 1985 through June 30, 1986. The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, since there was no margin, the Department shall not require a cash deposit of estimated antidumping duties for Kali–Chemie AG. For any shipments from the one remaining known manufacturer/exporter not covered by this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: December 24, 1987.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 87-30111 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod from Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Singapore. The preliminary determination will be made on or before February 1, 1988.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Amministration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202/377–0189 (Morrison) or 202/377–0161 (Taverman).

SUPPLEMENTARY INFORMATION: On November 12, 1987, the Department initiated a countervailing duty investigation on carbon steel wire rod from Singapore. In our notice of initiation we stated that we would issue our preliminary determination on or before January 15, 1988 (52 FR 44197, November 18, 1987).

On December 17, 1987, the petitioner filed a request that the preliminary determination in this investigation to be postponed for 17 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in this investigation, the Department is postponing its preliminary determination to no later than February 1, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

December 24, 1987.

[FR Doc. 87-30112 Filed 12-31-87; 8:45 am]

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[C-614-503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of preliminary results of countervailing duty adminstrative review

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zealand. We preliminarily determine the total bounty or grant to be 24.71 percent *ad valorem* for the period June 25, 1985 through March 31, 1986.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 37708) the final affirmative countervailing duty determination and countervailing duty order on lamb meat from New Zealand. On September 24, 1986, the respondents, the New Zealand Meat Producers Board, the Meat Export Development Company and the New Zealand Lamb Company, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on October 24, 1986 (51 FR 37770). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of lamb meat from New Zealand. Such merchandise is currently classifiable under TSUSA item number 106.3000. These products are currently classifiable under HS item numbers 0204.1000—0, 0204.2220—0, 0204.2320—0, 0204.3000—0, 0204.4220—2 and 0204.4320—0. We invite comments from all interested parties on these HS classifications.

The review covers the period June 25, 1985 through March 31, 1986 and 10 programs. The New Zealand Lamb Company ("NZLC") was the only known exporter during the period of review.

Analysis of Programs

(1) Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. During the period of review, the tax credit was 67.5 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 45 percent. Because the program is limited to exporters, we preliminarily determine that it confers an export bounty or grant. The NZLC claimed EMDTI tax credits for lamb meat exports to the United States on its tax returns filed during the review period.

Since exporters may claim a tax credit equal to 67.5 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 45 percent, the net benefit to the exporters is 22.5 percent of the qualifying expenditures. To calculate the benefit, we took 22.5 percent of NZLC's qualifying expenditures relating to lamb meat exports to the United States and allocated that amount over the total value of lamb meat exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 3.39 percent *ad valorem* for the period of review.

For the fiscal year ending March 31, 1987, the New Zealand Government increased the corporate tax rate to 48 percent and the tax credit to 69 percent. Consequently, the net benefit to exporters is 21 percent of qualifying expenditures relating to lamb meat exports. Since we verified this decrease in the differential between the rates for the tax credit and taxable income prior to this preliminary determination, we are taking into account the change in the benefit from this program. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be 3.19 pecent *ad valorem*.

(2) Export Performance Taxation Incentive (EPTI)

Under the EPTI, exporters were entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under Section 156A of the Income Tax Act of 1976. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the differences in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. Lamb meat falls under category D, for which the corresponding rate was 3.85 percent for NZLC's fiscal year ending December 1985, 1.925 percent for the fiscal year ending December 1986 and zero thereafter. NZLC claimed EPTI credits on its tax returns filed for fiscal years 1985 and 1986. Because this program is limited to exporters, we preliminarily determine that it confers an export bounty or grant.

We calculated the benefit from this program on a credit-as-earned basis, using the applicable EPTI rates on exports made during the review period. *See, Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from New Zealand* (52 FR 37198, October 5, 1987). Because NZLC's fiscal year ends in December, two different EPTI rates were applicable during the review period. We multiplied these rates by the corresponding export sales of lamb meat to the United States and divided that result by the total of lamb meat exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 3.14 percent *ad valorem* for the review period.

During this review, we verified that the phase-out of EPTI benefits is proceeding on the schedule set forth in sections 156A(3A)–(3B) of the Income Tax Act. The EPTI rate earned on NZLC's exports shipped since April 1, 1987 is zero. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

(3) Livestock Incentive Scheme

The Livestock Incentive Scheme was introduced in 1978 and is administered by the Rural Banking and Finance Corporation. The program was set up to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, may opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried, or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three after completion of the development program.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore confers a bounty or grant.

To calculate the benefit received from the loan option portion of the program, we treated the loan amounts forgiven as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate chosen was the average interest rate on overdrafts between March 1985 and March 1986. For the loans that have not yet been forgiven, we treated the loan amounts as one-year, interest-free loans and measured the benefit using the interest rate described above as our benchmark. The benefit from the tax option was determined by multiplying the amount of the tax deduction used during the review period by the corporate tax rate. We added the value of the benefits from the loan and tax portions of the program and multiplied the result by a factor determined at verification to represent the value of lamb as a percentage of total sheep production. We then divided that result by the total value of lamb products sold during the review period. On this basis, we preliminarily determine the benefit from this program to be 1.36 percent *ad valorem* for the period of review.

(4) Meat Producers Board Price Support Scheme

The Meat Producers Board Price Support Scheme was established to insulate meat producers from fluctuations in market prices and to guarantee them a minimum return on export sales of their products. The scheme is administered by the Meat Producers Board ("the Board") and the Meat Export Prices Committee. It is financed through the Meat Income Stabilization Account ("MISA"), an overdraft account maintained by the Board at the Reserve Bank of New Zealand.

The Board has four primary sources of funds: (1) A levy set by the Board and collected by processors from lamb, sheep, and cattle growers at the time of slaughter; (2) return on investments; (3) short-term borrowings from commercial lenders in New Zealand and overseas; and (4) advances from the Meat Industry Reserve Account ("MIRA"). However, during the review period, disbursements from the MISA account were funded by advances from the government's MIRA account.

The Board has two methods for supporting the price of meat if the market price falls below the schedule price: (1) The Board purchases meat at the schedule price; or (2) the farmer sells lamb meat at the market price and then receives a deficiency payment equal to the difference between the market price and the schedule price. In both cases, the funds used to support the price are drawn from the MISA.

We would not consider minimum price support payments funded completely by producer levies to constitute a bounty or grant within the meaning of the countervailing duty law. However, this program operates to guarantee producers a minimum return on export sales and provides government funds to the Board on terms that are not available from commercial sources. Therefore, we preliminarily determine that the portion of the payments represented by government funds confers an export bounty or grant within the meaning of the countervailing duty law.

We calculated the benefit from this program by dividing the value of the government's contributions to the MISA account attributable to lamb meat during the period of review by the total value of lamb exported. On this basis, we preliminarily determine the benefit from this program to be 13.49 percent *ad valorem* during the period of review.

During verification, we found that the Meat Producers Board Price Support Scheme was terminated effective March 30, 1987. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

(5) Supplementary Minimum Prices Scheme (SMP)

The SMP was established to augment the support payments provided under the Meat Producers Board Price Support Scheme. Each year the government established a supplementary minimum price support level that was set above the Board's schedule price. If the market price fell below the Board's schedule price, payments were then made through both the price support scheme and the SMP scheme.

In September 1984, the SMP was terminated and replaced with a lump-sum payment estimated to equal the value of payments that would have been provided under the SMP. The government guaranteed an interim lump-sum payment for one year after termination of the SMP. In July 1985, the Ministry of Agriculture and Fisheries provided an additional and final payment under the lump-sum scheme for the remainder of the 1984/85 season. Because price support payments provided under the lump-sum scheme were direct government payments limited to exporters, we preliminarily determine that they conferred an export bounty or grant.

To calculate the benefit from this program, we allocated the portion of the lump-sum payment attributable to lamb meat exports for the period June 25, 1985 through September 30, 1985 and divided that amount by the total value of lamb meat exported during the period of review. On this basis, we preliminarily determine the benefit from this program to be 3.33 percent *ad valorem* during the period of review.

During verification we found that the SMP scheme was terminated in September 1984, and that the lump-sum scheme was terminated in September 1985. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

(6) Other Programs

We also examined the following programs and preliminarily determine that lamb meat exporters did not use them:

(a) Export Programme Grant Scheme
(b) Export Programme Suspensory Loan Scheme.
(c) Export Suspensory Loan Scheme.
(d) Regional Development Investigation Grants Scheme.
(e) Regional Development Suspensory Loan Scheme.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 24.71 percent *ad valorem* for the period June 25, 1985 through March 31, 1986.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final assessed duty under a countervailing duty order shall be

disregarded to the extent that the estimated duty is less than the final assessed duty and refunded to the extent that the estimated duty is higher than the final assessed duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of a final affirmative countervailing duty determination, which is this case was September 17, 1985 (50 FR 37708).

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of NZ$0.25/lb. on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 25, 1985 and before September 17, 1985 and to assess countervailing duties of 24.71 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 17, 1985 and exported on or before March 31, 1986.

Because of the termination of the EPTI, the Meat Producers Board Price Support Scheme and the SMP and changes to the EMDTI program, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.55 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: December 24, 1987.

[FR Doc. 87-30113 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products from the Hungarian People's Republic effective on January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal for consumption, of wool and man-made fiber textile products in Categories 433, 434, 435, 443, 444, 445/446, 448 and 645/646, in excess of the designated restraint limits.

Background

The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, and as translated to the new category system, establishes specific limits for wool and man-made fiber textile products in Categories 433, 434, 435, 443, 444, 445/446, 448 and 645/646, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-mo. restraint limit
433	7,725 dozen.
434	7,500 dozen.
435	10,145 dozen.
443	86,186 numbers.
444	62,652 numbers.
445/446	41,212 dozen of which not more than 30,909 dozen shall be in Category 445 and not more than 30,909 shall be in Category 446.
448	19,772 dozen.
645/646	90,100 dozen.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, which provide, in part, that: (1) the levels of restraint may be exceeded by not more than five percent during an agreement year provided the increase is compensated for by an equal decrease in equivalent square yards in another specific limit, (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30186 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products from Pakistan Effective on January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6490. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated limits.

Background

Under the authority of section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, and as translated to the new category system, the Committee for the Implementation of Textile Agreements will establish for Pakistan, among other things, individual limits for certain cotton and man-made fiber textiles and textile products in Group I Categories 226, 313, 315, 331, 334, 335, 336, 338, 339, 340, 341, 342, 347/348, 351, 352, 363, 369-D; a group limit for Categories 200, 201, 218-225, 227, 229, 239, 300, 301, 314, 317, 326, 330, 332, 333, 337, 345, 349, 350, 353, 354, 359, 360-362, 369-S and 369-O, as a group (Group II), and within Group II individual limits for Categories 218, 219, 220, 224, 314, 317, 337, 350 and 369-S; individual limits in Group III for Categories 613/614, 615, 631, 634, 635, 638, 638/639, 640, 641, 647/648, 659 and 666; and an individual limit for Category 369-R, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

Deferred overshipments of 1,441,025 square yards for Categories 613/614, and of 2,000,000 square yards for Category 615, are being charged in accordance with a July 1987 amendment to the agreement with Pakistan.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1988 and extends through December 31, 1988, in excess of the following restraint limits:

Category	12-mo. restraint limit
Group I:	
226	20,360,249 square yards.
313	55,123,898 square yards.
315	52,125,535 square yards.
331	695,000 dozen pairs.
334	42,373 dozen.
335	52,322 dozen.
336	140,255 dozen.
338	2,878,578 dozen.
339	645,422 dozen.
340	150,073 dozen.
341	259,489 dozen.
342	85,600 dozen.
347/348	337,664 dozen.
351	42,800 dozen.
352	214,000 dozen.
363	26,775,000 numbers.
369-D [1]	2,140,000 pounds of which not more than 802,500 pounds shall be in piled dish towels—TSUSA 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, and 366.2440.
Group II:	
200, 201, 218-225, 227, 229, 239, 300, 301, 314, 317, 326, 330, 332, 333, 337, 345, 349, 350, 353, 354, 359, 360-362, 369-S [2], and 369-O [3], as a group.	65,102,983 square yards equivalent.

Category	12-mo. restraint limit
Sublevels within Group II:	
218	2,693,651 square yards.
219	3,344,722 square yards.
220	990,085 square yards.
224	782,267 square yards.
314	1,197,014 square yards.
317	4,384,420 square yards.
337	30,000 dozen.
350	25,000 dozen.
369-S	850,000 pounds.
Group III:	
600	285,714 pounds.
613/614	14,946,000 square yards.
615	15,900,000 square yards.
631	477,000 dozen pairs.
634	41,946 dozen.
635	16,949 dozen.
636	84,800 dozen.
638/639	212,000 dozen.
640	76,628 dozen.
641	85,022 dozen.
647/648	450,533 dozen.
659	150,000 pounds.
666	2,500,000 pounds.
Individual limit not in a Group:	
369-R [1]	15,000,000 pounds.

[1] In Category 369-D, dish towels in TSUSA number 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 369-S, only TSUSA number 366.2840.

[3] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Charge 1,441,025 square yards to Categories 613/614 and charge 2,000,000 square yards to Category 615.

The 1988 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral textile agreement, effected by exchange of noted dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, which provide, in part, that: (1) specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30191 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Restraint Limits and Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commisioner of Customs to amend the import limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported to the United States during the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

Background

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton, Wool and Man-Made Textile Agreement of May 10, 1983, as amended, CITA is amending the restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 331, 333/633, 334-342, 345/845, 347, 348, 350, 351, 359-C/659-C, 363, 369pt., 442, 445/446, 631, 634, 635, 636/836, 638/639/838, 640, 641, 642/842, 644, 645/646, 647 and 648, produced or manufactured in Sri Lanka and exported to the United States during the new restraint period which began on June 1, 1987 and extends through December 31, 1987. Carryforward and carryover of 100 percent will be available in the foregoing categories between this and the next restraint periods.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 1987, as amended, which directed you to prohibit entry of certain categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988, in excess of the designated restraint limits.

Effective on January 1, 1988, the directive of May 12, 1987, as amended, is amended further to include the following restraint limits for the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

Category	Amended Restraint Limit [1] June 1, 1987—December 31, 1987
331	633,931 dozen pairs.
333/633	21,313 dozen.
334	146,313 dozen.
335	85,110 dozen.
336	39,326 dozen.
337	69,595 dozen.
338	153,726 dozen.
339	262,175 dozen of which not more than 195,417 dozen shall be in category 339pt.[2]
340	306,241 dozen.
341	306,399 dozen.
342	117,978 dozen.
345/845	55,650 dozen.
347	243,347 dozen.
348	180,436 dozen.
350	33,072 dozen.
351	73,492 dozen.
359-C/659-C [3]	816,667 pounds.
363	4,417,670 numbers.
369-S [4]	555,113 pounds.
442	8,403 dozen.
445/446	65,175 dozen.
631	227,583 dozen pairs.
634	87,532 dozen.
635	121,514 dozen.
636/836	100,533 dozen.
638/639/838	282,917 dozen.
640	64,257 dozen.
641	306,399 dozen.
642/842	81,667 dozen.
644	16,168 dozen.
645/646	66,280 dozen of which not more than 44,187 dozen shall be in Category 646.
647	232,679 dozen.
648	104,214 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987.

[2] In Category 339pt., all TSUSA numbers except 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

[3] In Category 359-C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222. In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[4] In Category 369-S, only TSUSA number 366.2840.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period June 1, 1986, through May 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30189 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Levels for Certain Cotton, Wool, Man-Made Fiber Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka Effective on January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textiles and textile products, produced or manufactured in Sri Lanka and exported during the five-month period beginning on January 1, 1988 and extending through May 31, 1988, in excess of the designated levels of restraint.

Background

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, The Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, and as translated to the new category system, CITA will establish specific restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 331, 333/633, 334, 335, 336, 337, 338, 340, 341, 342, 345/845, 347, 348, 350, 351, 359-C/659-C, 363, 369-S, 442, 445/446, 631, 634, 635, 636/836, 638/639/838, 640, 641, 642/842, 644, 645/646, 647 and 648, produced or manufactured in Sri Lanka and exported to the United States during the five-month period beginning on January 1, 1988 and extending through May 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Made-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1982, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the five-month period beginning on January 1, 1988 and extending through May 31, 1988, in excess of the indicated restraint limits:

Category	Five-month limit
331	451,088 dozen pairs.
333/633	12,808 dozen.
334	89,178 dozen.
335	59,543 dozen.
336	28,090 dozen.
337	49,626 dozen.

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Category	Five-month limit
338	121,129 dozen.
339	174,753 dozen of which not more than 131,065 dozen shall be in other than tank tops and T-shirts.[1]
340	218,743 dozen.
341	218,857 dozen.
342	84,270 dozen.
345/845	39,750 dozen.
347	181,569 dozen.
348	121,103 dozen.
350	19,875 dozen.
351	46,375 dozen.
359–C/659–C[2]	583,333 pounds.
363	2,809,000 numbers.
369–S[3]	396,508 pounds.
442	5,050 dozen.
445/446	39,168 dozen.
631	136,768 dozen pairs.
634	59,648 dozen.
635	79,751 dozen.
636/836	60,417 dozen.
638/639/838	202,083 dozen.
640	48,301 dozen.
641	215,777 dozen.
642/842	58,333 dozen.
644	116,604 numbers.
645/646	47,343 dozen of which not more than 31,158 dozen shall be in Category 646.
647	177,546 dozen.
648	63,092 dozen.

[1] In Category 339pt., all TSUSA numbers except 384.0205, 384.0207, 384.0212, 384.0220, 384.0221, 384.2806, 384.2810, 384.2814, 384.2914 and 384.2915.

[2] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222; in Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[3] In Category 369–S, only TSUSA number 366.2840.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period June 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, which provide, in part, that: (1) specific limits may be exceeded by designated percentages of square yard equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit, of which not more than 6 percent can be used for carryforward; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustments referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30180 Filed 12–31–87; 8:45 am]

BILLING CODE 3510–DR–M

Amendment to Directive Changing VISA Systems for Thailand, Hong Kong, China, and All Other Countries Currently Under VISA Systems December 30, 1987.

The chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 4, 1988. For further information concerning Thailand, Hong Kong, or China, contact Ross Arnold, Janet Heinzen, or Diana Solkoff, respectively, International Trade Specialists, Office of Textiles & Apparel, United States Department of Commerce, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the visa requirements for certain cotton, wool, man-made fiber, silk blend, and vegetable fiber other than cotton textiles and textile products.

Background

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, CITA is amending the visa requirements for imports to the United States of certain cotton, wool, man-made fiber, silk blend, and vegetable fiber other than cotton textiles and textile products.

These changes will become effective on January 4, 1988, for products exported to the United States on and after January 1, 1988. In a previously published directive to the Commissioner of Customs dated December 24, 1987, changes were made to the visa systems for Thailand, Hong Kong, China, and for other countries.

Inadvertently left out of that directive, in the Country Specific section on Thailand, were instructions to Customs that the following combined category visas would be acceptable for Thailand.

226/613/614/615
317/326

Instructions on the above categories are included in the letter to the Commissioner published below.

For clarification, the paragraph in the Country Specific section of the above mentioned directive, concerning exemptions from visa requirements, and visa requirements for made-to-measure suits, for Hong Kong, is restated in the letter to the Commissioner published below.

The Country Specific section of the above mentioned directive for China is being corrected in the letter to the Commissioner published below, to say that part category 359–O shall become all TSUSA numbers in category 359 except those in part categories 359–C, 359–D and 359–V. In addition, this section is being amended to require a 670–O visa for all products in category 670, other than those in part category 670–L.

Also shown in the letter to the Commissioner below, an addition is being made to the General Section of the above mentioned directive, making it clear that inked ribbon film strips in TSUSA numbers 389.6260 and 389.6265, which were exempt from quota and visa requirements for all countries under category 627, shall remain exempt under new category 821 beginning with exports on and after January 1, 1988.

Interested persons are advised to take all necessary steps to ensure that cotton and man-made fiber textiles and textile products that are affected by the changes in the accompanying letter to the Commissioner of Customs, that are exported on and after January 1, 1988, and are to be entered or withdrawn from warehouse for consumption in the United States, will meet the requirements set forth in this notice.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987, which amended the visa requirements for Thailand, Hong Kong, China, and all other countries for which visa systems were in place. The changes in this directive are to be effective on January 4, 1988, for good exported to the United States from the respective countries on and after January 1, 1988.

General Section

By way of clarification, the following shall be added to the General section of the Directive of December 24, 1987, concerning exports made on and after January 1, 1988.

All products in TSUSA numbers 389.6260 and 389.6265, currently exempt from quota and visa requirements for all countries under category 627, shall remain exempt under new category 821.

Country Specific Section

Thailand: In addition to the changes shown for Thailand in the Country Specific section of the above mentioned directive, the following combined category visas shall be valid for exports to the United States on and after January 1, 1988.

226/613/614/615
317/326

Hong Kong: By way of clarification, the following paragraph shall replace the paragraph concerning exemptions from visa requirement, and made-to-measure suits, for Hong Kong, in the Country Specific section of the above mentioned directive.

For Hong Kong, with the exception of made-to-measure suits of wool, man-made fiber, silk blend and vegetable fibers other than cotton, not accompanying the traveller, all textile and apparel products including bona fide gifts valued at U.S.$50 or less; shipments for the personal use of the importer, and not for resale, regardless of value; and properly marked commercial sample shipments valued at U.S.$250 or less, shall not be subject to visa requirements. Made-to-measure suits of wool, man-made fiber, silk blend and vegetable fibers other than cotton, regardless of value, not accompanying the traveller, will require the following visas: 443/643/843(1) or 444/644/844(1)

China: The paragraph dealing with part category 359–O, in the Country Specific section for China in the above mentioned directive, shall be replaced with the following paragraph.

Because part category 359–I will no longer be valid, part category 359–O [4] becomes all TSUSA numbers in category 359 except those in part categories 359–C and 359–D and 359–V.

Also, footnote number six in the China Country Specific section of the above mentioned directive shall be amended to include TSUSA number 384.5214 (359–D) in the list of TSUSA numbers in Category 359 that are excluded from part Category 359–O.

The Country Specific section for China of the above mentioned directive is being further amended to include a visa requirement for part category 670–O [5].

Also, footnote number eight shall be added to the China Specific section of the above mentioned directive, as shown below.

[4] In Category 670–O, all Category 670 TSUSA numbers except 706.3415, 706.4130 and 706.4135 in part category 670–L.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Customs territory of the United States (i.e., the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico).

The actions taken with respect to the Governments of the exporting countries affected by this directive have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

A description of the textile categories in terms of T.S.U.S.A. numbers is provided in the 1988 TSUSA CORRELATION, available, at a cost of $30.00, from the Office of Textiles and Apparel, Room 3110, U.S. Department of Commerce, Washington, D.C. 20230.

[FR Doc. 87–30188 Filed 12–30–87; 2:11 pm]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the indicated restraint limits.

Background

CITA directives dated March 12, 1987 (52 FR 8496), May 20, 1987 (52 FR 19752), August 19, 1987 (52 FR 31600) and August 21, 1987 (52 FR 32160) established import restraint limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 369–D, among others; Categories 359–D and 644, among others; Category 642; Categories 300/301 and 845pt./846pt., respectively, produced or manufactured in the People's Republic of China and exported during the periods which began, in the case of Category 369–D, on February 23, 1987 and extends through February 22, 1988; in the case of Categories 359–D and 644, on May 28, 1987 and extends through May 27, 1988; in the case of Category 642, on July 24, 1987 and extends through July 23, 1988; in the case of Categories 300/301, on August 28, 1987 and extends through August 27, 1988; and, in the case of Categories 845pt./846pt., on August 29, 1987 and extends through August 28, 1988.

Subsequent directives dated September 4, 1987 (52 FR 33983), September 21, 1987 (52 FR 36084), October 21, 1987 (52 FR 39962) and November 23, 1987 (52 FR 45370) established import restraint limits for cotton wool and man-made fiber textile products in Categories 600pt., 659–C, 442 and 369–H, respectively, produced or manufactured in the People's Republic of China and exported during the periods which began, in the case of Category 600pt., on September 10, 1987 and extends through September 9, 1988; in the case of Category 659–C, on September 25, 1987 and extends through September 24, 1988; in the case of Category 442, on October 27, 1987 and extends through October 26, 1988; and, in the case of Category 369–H, on November 27, 1987 and extends through November 26, 1988.

During consultations held between the Governments of the United States and the People's Republic of China, agreement was reached to establish a new bilateral textile agreement concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products. Under the terms of Section 204 of the Agricultural Act of 1956, as amended, and the Memorandum of Understanding of December 18, 1987, between the Governments of the United States and the People's Republic of China, the

agreement establishes, among other things, specific limits for Categories 200, 218, 219, 226, 239, 300/301, 313, 314, 315, 317/326, 331, 333–337, 338/339, 340–345, 347/348, 350–352, 359–C, 359–V, 360, 361, 363, parts of 369, 410, 433–438, 440–444, 445/446, 447, 448, 607, 613–617, 631, 634–637, 638/639, 640–642, 645/646, 647–652, parts of 659, 669–P, 670–L, 831, 833, 835, 840, 842 and 845pt., 846pt. and 847; group limits for Categories 330, 332, 349, 353, 354, 359–O, 431, 432, 459, 630, 632, 633, 643, 644, 653, 654 and 659–O, as a group (Group II); and Categories 201, 220, 222–225, 227, 229, 362, 369–O, 400, 414, 464–469, 600, 603, 606, 618–620, 621, 622, 624–627, 628, 629, 665, 666, 669–O and 670–O, as a group (Group III); and Categories 832, 834, 836–838, 843, 844, 850–852, 858 and 859, as a group (Group IV), produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25388), July 28, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels the directives of August 19, 1987, August 21, 1987, September 4, 1987, September 21, 1987, October 21, 1987 and November 23, 1987, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 642, 300/301, 845pt./846pt., 600pt., 659–C, 442, and 368–H, respectively, produced or manufactured in the People's Republic of China and exported during the periods which began, in the case of Category 642, on July 24, 1987 and extends through July 23, 1988; in the case of Categories 300/301, on August 28, 1987 and extends through August 27, 1988; in the case of Categories 845pt./846pt., on August 29, 1987 and extends through August 28, 1988; and, in the case of Category 600pt., on September 10, 1987 and extends through September 9, 1988; in the case of Category 659–C, on September 25, 1987 and extends through September 24, 1988; in the case of Category 442, on October 27, 1987 and extends through October 26, 1988; and in the case of Category 369–H, on November 27, 1987 and extends through November 26, 1988.

This directive also cancels only those portions of the directives of March 12, 1987 and May 20, 1987 concerning cotton and man-made fiber textile products in Categories 369–D, 359–D and 644, produced or manufactured in China and exported during the period which began, in the case of Category 369–D, on February 23, 1987 and extends through February 22, 1988; and, in the case of Categories 359–D and 644, on May 28, 1987 and extends through May 27, 1988.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding of December 18, 1987 between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
200	1,120,000 pounds.
218	10,444,000 square yards.
219	2,214,500 square yards.
226	9,185,193 square yards.
239	5,050,000 pounds.
300/301	7,000,000 pounds.
313	51,432,610 square yards.
314	28,888,847 square yards.
315	177,250,000 square yards.
317/326	18,163,282 square yards of which not more than 3,500,000 square yards shall be in Category 326.
331	4,070,893 dozen pairs.
333	67,000 dozen.
334	243,700 dozen.
335	325,000 dozen.
336	130,000 dozen.
337	1,059,090 dozen.
338/339	1,976,800 dozen of which not more than 1,500,000 dozen shall be in knit shirts other than T-shirts and tank tops.[1]
340	718,000 dozen of which not more than 200,000 dozen shall be in dress shirts with two or more colors in the warp and/or the filling in Category 340–Y.[2]
341	560,800 dozen of which not more than 336,000 dozen shall be in blouses of two or more colors in the warp and/or filling in Category 341–Y.[3]
342	222,000 dozen.
345	105,000 dozen.
347/348	2,086,000 dozen.
350	114,000 dozen.
351	370,000 dozen.
352	1,431,000 dozen.
359–C [4]	920,000 pounds.
359–V [5]	1,490,000 pounds.
360	5,834,950 numbers of which not more than 3,980,000 numbers shall be in bed pillowcases in TSUSA numbers 363.0108, 363.0112, 363.3020, 363.3025, 363.3960 and 363.3965.
361	3,216,000 numbers.
363	24,500,000 numbers.
369–D [6]	9,600,000 pounds.
369–H [7]	8,500,000 pounds.
369–L [8]	5,000,000 pounds.
410	2,185,000 square yards of which not more than 1,751,512 square yards shall be in woolens [9] and not more than 1,751,512 square yards shall be in worsteds.[10]
433	21,500 dozen.
434	12,250 dozen.
435	22,500 dozen.
436	14,000 dozen.
438	24,500 dozen.

Category	Twelve-month restraint limit
440	35,000 dozen with not more than 20,000 dozen in boys' and men's shirts in TSUSA numbers 381.1730, 381.3532, 381.6942, 381.7830, 381.8340, 381.8646, 381.9948, 384.1515, 384.6505 and 384.7010.
442	39,000 dozen.
443	126,000 numbers.
444	187,320 numbers.
445/446	270,000 dozen.
447	72,745 dozen.
448	20,000 dozen.
607	5,500,000 pounds.
613	7,000,000 square yards.
614	11,000,000 square yards.
615	21,000,000 square yards.
617	16,000,000 square yards.
631	862,570 dozen pair.
634	471,000 dozen.
635	492,000 dozen.
636	400,000 dozen.
637	276,210 dozen.
638/639	2,100,000 dozen.
640	1,240,000 dozen.
641	1,053,060 dozen.
642	280,000 dozen.
645/646	722,000 dozen.
647	1,069,919 dozen.
648	1,035,081 dozen.
649	679,000 dozen.
650	90,464 dozen.
651	568,000 dozen of which not more than 100,000 dozen shall be in blanket sleepers in TSUSA numbers 384.2222 and 384.8632.
652	1,947,000 dozen.
659–C [11]	719,600 pounds.
659–H [12]	4,650,880 pounds.
659–S [13]	1,076,250 pounds.
669–P [14]	2,970,000 pounds.
670–L [15]	26,000,000 pounds.
831	379,965 dozen pairs.
833	20,700 dozen.
835	95,000 dozen.
840	369,555 dozen.
842	207,000 dozen.
845pt [16]	2,100,000 dozen.
846pt [17]	140,000 dozen.
847	1,009,125 dozen.
Group II: 330, 332, 349, 353, 354, 359–O [18], 431, 432, 459, 630, 632, 633, 643, 644, 653, 654, 659–O [19], as a group.	121,800,000 square yards equivalent.
Group III: 201, 220, 222–225, 227, 229, 362, 369–O [20], 400, 414, 464–469, 600, 603, 604–O [21], 606, 618–622, 624–627, 628, 629, 665, 666, 669–O [22] and 670–O [23], as a group.	330,750,000 square yards equivalent.
Group IV: 832, 834, 836–838, 843, 844, 850–852, 858, and 859, as a group.	24,000,000 square yards equivalent.

[1] In Category 338pt./339pt., only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970 and 384.3434 in Category 338; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339.

[2] In Category 340–Y, only TSUSA number 381.5610.

[3] In Category 341–Y, only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4612 and 384.4788.

[4] In Category 359–C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[5] In Category 359–V, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, 384.4422 and 384.0451.

[6] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[7] In Category 369–H, only TSUSA numbers 706.3640 and 706.4106.

[8] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[9] In Category 410, (woolens) only TSUSA numbers 335.5500, 336.1505, 336.1540, 336.5000, 336.6210, 336.6270, 336.6275, 336.6410, 336.6470, 336.6475, 337.5030, 337.5055, 337.5090, 337.5500, 339.0500, 363.1500 and 363.7000.

[10] In Category 410, (worsteds) only TSUSA numbers 336.1000, 336.1510, 336.2000, 336.2500, 336.3000, 336.3500, 336.4000, 336.5500, 336.6205, 336.6260, 336.6265, 336.6405, 336.6460, 336.6465 and 337.5080.

[11] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9318.

[12] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[13] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

[14] In Category 669–P, only TSUSA number 385.5300.

[15] In Category 670–L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[16] In Category 845pt., only TSUSA numbers 381.3583, 381.6688, 381.9987, 384.2736, 384.5317 and 384.9895.

[17] In Category 846pt., only TSUSA numbers 381.3576, 381.8567, 384.2734 and 384.7782.

[18] In Category 359–O, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359–C and 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, 384.4422 and 384.0451 in Category 359–V.

[19] In Category 659–O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 659–C, 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659–H; and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659–S.

[20] In Category 369–O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in Category 369–D; 706.3640 and 706.4106 in Category 369–H; 706.3210 and 706.3650 in Category 369–L and 366.2840 in Category 369–S.

[21] In Category 604–O, all TSUSA numbers except 310.5049 and 310.6045.

[22] In Category 669–O, all TSUSA numbers except 385.5300 in Category 669–P.

[23] In Category 670–O, all TSUSA numbers except 706.3415, 706.4130 and 706.4135 in Category 670–L.

To the extent that trade which now falls in the foregoing categories is within a category limit for the periods January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restaint established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30185 Filed 12-30-87; 2:41 pm]

BILLING CODE 3510-DR-M

Announcing Import Levels for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India Effective on January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton and man-made fiber textile products, produced or manufactured in India and exported during 1988, in excess of the designated restraint limits.

Background

Under the terms of section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and India, as translated to the new category system, CITA establishes, among other things, specific limits for Group I Categories 218, 313, 315, 335, 336/636, 337, 338/339/340, 341, 342, 347/348 and 363; and a group limit for Categories 200, 201, 219–229, 239, 300, 301, 314, 317, 326, 330–334, 345, 349–359, 360–362, 369–S, 369–0, 600–607, 611–635, 637–659, 665pt., 666–670, 800 810 and 831–859, as a group (Group II), and within the specific limits for categories 369–S, 640, 641 and 642, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988. Carryforward used of 7.25 million square yards equivalent is being deducted from Group II.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987.

Comissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint levels:

Category	Twelve-month restraint level
Group I:	
218	7,800,000 yards.
313	20,869,911 square yards.
315	8,397,997 square yards.
335	175,610 dozen.
336/636	436,650 dozen.
337	91,625 dozen.
338/339/340	1,259,639 dozen.
341	2,756,879 dozen of which not more than 1,654,127 dozen shall be in shirts and blouses made from fabrics with two or more colors in the warp and/or the filling in Category 341–Y (TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788).
342	402,800 dozen.
347/348	280,511 dozen.
363	21,400,000 numbers.
Group II:	
200, 201, 219–229, 239, 300, 301, 314, 317, 326, 330–334, 345, 349–359, 360–362, 369–S,[1] 369–0,[2] 600–607, 611–635, 637–659, 665pt.,[3] 666–670, 800, 810 and 831–859, as a group	147,542,145 square yards equivalent.
Sublevels within Group II:	
369–S	637,400 pounds.
640	132,572 dozen.
641	784,328 dozen.
642	238,346 dozen.

[1] In Category 369–S, only TSUSA number 366.2840.

[2] In Category 369–0, all TSUSA numbers except 366.2840, 360.7600, 361.5420 and 360.2000.

[3] In Category 665pt., all TSUSA numbers except 360.7800 and 361.5426.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 and December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The 1988 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of February 6, 1987, between the Government of the United States and India which provide, in part, that: (1) group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30187 Filed 12–31–87; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic Effective of January 1, 1988

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984, between the Governments of the United States and the Polish People's Republic, as translated to the new category system, establishes an aggregate limit and within the aggregate, group limits for Categories 200–229, 300–326, 360–369, 400–414, 464–469, 600–629 and 665–670, as a group (Group I), and within the group Categories 363, 410 and 620, among others; Categories 239, 300–359, 630–642 and 645–659, as a group (Group II), and within the group Categories 239, 333, 334, 335, 338, 339, 340, 347, 359, 634, 635, 638, 639, 645/646, 647, 648 and 659 among others; Categories 431–442 and 444–459, as a group (Group III), and within the group Categories 433, 434, 435, 440, 442, 444, 445, 446, 447, 448 and 459, among others; and Categories 443/643/644, as a group (Group IV), produced or manufactured in Poland and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 5 and 31, 1984 between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-mo. restraint limit
Group I:	
200–239, 300–369, 400–469, and 600–670, as a group.	83,532,618 square yards equivalent.
Limits not subject to a Group:	
363	3,000,000 numbers.
410	2,358,697 square yards.
620	2,000,000 square yards.
Group II:	
239, 330–359, 630–642 and 645–659, as a group.	62,679,670 square yards equivalent.
Sublevels within Group II:	
239	218,669 pounds.
333	111,269 dozen.
334	272,950 dozen of which not more than 16,949 dozen shall be in Category 334pt.[1].
335	53,769 dozen.
338	1,141,188 dozen of which not more than 456,475 dozen shall be in Category 338pt. (TSUSA number 381.4130).
339	97,222 dozen.
340	62,500 dozen.
347	72,734 dozen.
359	330,000 pounds.
634	182,120 dozen of which not more than 135,072 dozen shall be in Category 634pt. (knit—TSUSA numbers 381.2315, 381.3551, 381.2835, 381.2857, 381.3551, 381.3554, 381.6671, 381.6673, 381.8523, 381.8706, 381.8808, 381.8811, 381.9222, 381.9223, 381.9232, 381.1902, 381.1906, 381.1911 and 791.7460) and not more than 75,888 dozen shall be in Category 634pt (not knit)—TSUSA numbers 376.5609, 376.5635, 381.3120, 381.3323, 381.9836, 381.3331, 381.3341, 381.6968, 381.8664, 381.9505, 381.9520, 381.9525, 381.9530, 381.9836, 381.9842, 381.9962, 381.2321, 381.9132 and 791.7471).

Category	12-mo. restraint limit
635	95,396 dozen of which not more than 43,362 dozen shall be in Category 635pt. (not knit—TSUSA numbers 376.5612, 384.2316, 384.2318, 384.2323, 384.2554, 384.2556, 384.2565, 384.2604, 384.2605, 384.2770, 384.2771, 384.5565, 384.5566, 384.7859, 384.7860, 384.8805, 384.9135, 384.9136, 384.9138, 384.9140, 384.9141, 384.9144, 384.9145, 384.9146, 384.9152, 384.9153, 384.9154, 384.9401, 384.9402, 384.9464, 384.9465, 384.9475, 384.9664, 384.9666 and 791.7473).
638	238,918 dozen.
639	179,189 dozen.
645/646	136,554 dozen.
647	181,097 dozen of which not more than 70,427 dozen shall be in Category 647pt. (not knit—TSUSA numbers 376.5618, 381.3180, 381.3190, 381.3335, 381.3549, 381.6984, 381.8672, 381.9310, 381.9575, 381.9580, 381.9585, 381.9846, 381.9974, 381.2341, 381.2351, 381.9168, 381.9174 and 791.7480).
648	100,609 dozen of which not more than 40,244 dozen shall be in Category 648 (not knit—TSUSA numbers 376.5623, 384.2342, 384.2344, 384.2345, 384.2348, 384.2355, 384.2667, 384.2783, 384.5684, 384.7858, 384.8820, 384.9000, 384.9170, 384.9171, 384.9172, 384.9176, 384.9372, 384.9678 and 791.7481).
659	89,744 pounds.
Group III: 431–442 and 444–459, as a group.	2,374,937 square yards equivalent.
Sublevels within Group III:	
433	7,671 dozen.
434	3,704 dozen.
435	6,137 dozen.
440	7,818 dozen.
442	5,556 dozen.
444	61,368 numbers.
445	16,777 dozen.
446	11,062 dozen.
447	12,274 dozen.
448	5,556 dozen.
459	116,462 pounds.
Group IV: 443/643/644, as a group.	191,076 numbers.

[1] In Category 334pt., all TSUSA numbers except 381.3905 and 381.0211.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987 such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for the period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 5 and 31, 1984, between the Governments of the United States and the Polish People's Republic, which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) these same specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementations of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30174 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand Effective January 1, 1988

December 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during 1988, in excess of the designated restraint limits.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, and as translated to the new category system, establishes, among other things, restraint limits for certain cotton and man-made fiber textile products within Group I—Categories 200, 219, 226/613/614/615, 300, 301, 313–315, 317/326, 369–L, 604, 611 and 669pt.; cotton and man-made fiber apparel in Categories 239, 330–354, 359, 630–654 and 659, as a group (Group II), and within the group individual Categories 331, 334/335, 336, 337, 338/339, 340, 341, 342/642, 347/348, 631, 634/635, 638, 639, 640, 641, 645/646, 647/648 and 651; wool fabric and apparel in Categories 410, 414, 431–448 and 459, as a group (Group III), and within the group individual Categories 434, 438, 442, 445/446 and 448, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988.

A limit for Category 219, within Group I, is also being established based on the migration of trade in cotton and man-made fiber duck fabric. This limit, as well as the limit for categories 342/642, 634/635 and 647/648 are subject to adjustment after further consultations between the Governments of Thailand and the United States.

The January 1, 1988 through December 31, 1988 limit for Categories 239, 330–354, 359, 630–654 and 659, as a group, has been reduced by 14,595,561 square yards equivalent according to the amendment of November 25, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the indicated restraint limits:

Category	12-Mo. restraint limit
200	875,000 pounds.
219	8,059,851 square yards.
226/613/614/615	19,000,000 square yards.
300	5,618,000 pounds.
301pt.[1]	5,618,000 pounds.
301pt.[2]	1,123,600 pounds.
313	14,008,404 square yards.
314	29,369,789 square yards.
315	18,388,888 square yards.
317/326	7,763,049 square yards.
369–L [3]	2,300,000 pounds.
604	936,758 pounds of which not more than 543,994 pounds shall be in Category 604–A (TSUSA number 310.5049).
611	4,430,195 square yards.
669pt.[4]	2,471,920 pounds.
Group II: 239, 330–354, 359, 630–654 and 659, as a group.	85,346,860 square yards equivalent.
Sublevels within Group II:	
331	587,137 dozen pairs.
334/335	76,897 dozen.
336	68,694 dozen.
337	74,419 dozen.
338/339	832,888 dozen.
340	146,895 dozen.
341	155,090 dozen.
342/642	290,000 dozen.
347/348	262,382 dozen.
631	246,081 dozen pairs.
634/635	537,010 dozen.
638	450,000 dozen.
639	1,272,290 dozen.
640	325,767 dozen.
641	220,991 dozen.
645/646	105,772 dozen.
647/648	598,792 dozen.
651	36,064 dozen.
Group III: 410, 414, 431–448 and 459, as a group.	3,091,122 square yards equivalent.
Sublevels within Group III:	
434	11,615 dozen.
438	15,302 dozen.
442	15,500 dozen.
445/446	15,765 dozen.
448	10,500 dozen.

[1] In Category 301pt., not wholly cotton in TSUSA numbers 300.6025, 300.6027 and 300.6028.

[2] In Category 301pt., wholly cotton in TSUSA numbers 302.—26 and 302.—28.

[3] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[4] In Category 669pt., only TSUSA number 385.5300.

To the extent that trade which now falls in the foregoing categories is within a category limit for the periods January 1, 1987 and August 19, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The 1988 levels are subject to adjustments according to the terms of the bilateral agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand, which provide, in part, that: (1) under certain specified conditions any non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equivalent decrease in another specific limit in the same group; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30175 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics Effective on January 1, 1988

December 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Categories 313/315, produced or manufactured in the Union of the Soviet Socialist Republics and

exported during 1988, in excess of the designated limit.

Background

The Bilateral Textile Agreement of December 4, 1987 between the Governments of the United States and the Union of the Soviet Socialist Republics establishes a specific limit for cotton sheeting and printcloth in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988. The United States Government has decided to control imports of Categories 313/315 at the designated level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of December 4, 1987 between the Governments of the United States and the Union of the Soviet Socialist Republics, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption, of certain cotton textile products in Categories 313/315, produced or manufactured in the Union of the Soviet Socialist Republics and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of 23,500,000 square yards.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period August 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balance, shall be charged against the levels of restraint established for such goods during that restraint period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this directive.

The limit set forth above is subject to adjustment in the future according to the provisions of the Bilateral Textile Agreement of December 4, 1987 between the Governments of the United States and the Union of the Soviet Socialist Republics, which provide, in part that any specific limit may be exceeded in any agreement period by carry forward and/or carryover of 11 percent, of which carryover shall not exceed 11 percent and carry forward shall not constitute more than 6 percent. No carryforward shall be available in the final agreement period.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Commitee for the Implementation of Textile Agreements.

[FR Doc. 87-30176 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products from Taiwan Effective on January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated levels of restraint.

Background

The bilateral agreement of November 18, 1982, as amended and extended, and as translated to the new category system, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan, establishes specific limits for cotton, wool and man-made fiber non-apparel Categories 200-227, 229, 300-317 326, 360-369, 400, 410, 414, 464-469, 600-629 and 665-670, as a group (Group I), and within the group individual Categories 200, 218, 219, 220, 225/317/326, 229-F, 301, 313, 314, 315, 360, 361, 363, 369-L, 604, 611, 613/614/615/617, 619/620, 625/626/627/628/629, parts of 669 and parts of 670; cotton, wool and man-made fiber apparel Categories 239, 330-354, 359, 431-448, 459, 630-645 and 659, as a group (Group II), and within the group individual Categories 239, 331, 333/334, 335, 336, 337, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 353, 353/354/653/654, 359-H, 433, 434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447/448, 631, 632, 633/634/635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645/646, 647, 648, 649, 650, 651, 652, parts of 659; silk blend and other vegetable fiber apparel Categories 831-844 and 846-859, as a group (Group III); and individual limits for Categories 845 and 870, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 30, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of November 18, 1982, as amended and extended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the following levels of restraint:

Category	Twelve-Month Restraint Limit
Group I:	
200-227, 229, 300-317,326, 360-369, 400, 410, 414, 464-469, 600-629 and 665-670, as a group.	654,921,334 square yards equivalent.
Sublevels Within Group I:	
200	1,176,000 pounds.
218	23,806,654 square yards.
219	20,263,934 square yards.
220	12,965,686 square yards.
225/317/326	20,545,309 square yards.
226	11,096,491 square yards.
229-F [1]	1,126,201 pounds.
301	449,072 pounds.
313	71,226,483 square yards.
314	50,729,389 square yards.
315	25,690,765 square yards.
360	850,297 numbers.
361	1,071,533 numbers.
363	12,730,497 numbers.
369-L [2]	2,376,653 pounds.
604	500,080 pounds.
611	1,266,599 square yards.
613/614/615/617	11,850,000 square yards.
619/620	10,182,675 square yards.
625/626/627/628/629	14,893,610 square yards.
669-P [3]	585,795 pounds.
669-T [4]	1,836,656 pounds.
670-F [5]	3,994,449 pounds.
670-H [6]	40,789,586 pounds.
670-L [7]	71,732,319 pounds.
Group II:	
239,330-354, 359, 431-448, 459, 630-654, and 656, as a group.	982,216,203, square yards equivalent.
Sublevels within Group II:	
239	5,082,931 pounds.
331	484,951 dozen pairs.
333/334	78,711 dozen.
335	93,282 dozen.
336	98,793 dozen.
337	148,313 dozen.
338/339	662,909 dozen.
340	560,823 dozen.
341	382,795 dozen.
342	198,077 dozen.
345	92,776 dozen.
347/348	1,008,574 dozen of which not more than 497,334 dozen shall be in Category 347 and not more than 797,675 dozen shall be in Category 348.
350	101,954 dozen.
351	329,533 dozen.
352	920,766 dozen.
353/354/653/654	236,364 dozen.
359-H [8]	4,307,583 pounds.
433	13,660 dozen.
434	9,493 dozen.
435	30,958 dozen.
436	4,483 dozen.
438	36,279 dozen.
440	10,303 dozen.
442	48,770 dozen.
443	38,244 numbers.
444	54,468 numbers.
445/446	129,476 dozen.
447/448	18,853 dozen.
631	4,073,166 dozen pairs.
632	4,415,252 dozen pairs.
633/634/635	1,684,852 dozen of which not more than 1,045,046 dozen shall be in Category 633/634 and not more than 872,681 dozen shall be in Category 635.
636	333,765 dozen.
637	372,848 dozen.
638	1,760,049 dozen.
639	4,823,270 dozen.
640	3,337,749 dozen of which not more than 1,668,875 dozen shall be in Category 640-Y. [9]
641	720,208 dozen of which not more than 252,073 dozen shall be in Cagegory 641-Y. [10]
642	757,427 dozen.
643	475,248 numbers.
644	579,516 numbers.
645/646	4,066,920 dozen.
647	2,612,624 dozen.
648	3,066,853 dozen.
649	892,441 dozen.
650	47,478 dozen.
651	413,258 dozen.
652	1,434,958 dozen.
659-B [11]	1,598,589 pounds.
659-C [12]	1,176,146 pounds.
659-H [13]	5,370,091 pounds.
659-S [14]	4,514,001 pounds.
Group III:	
831-844 and 846-859, as a group.	9,248,636 square yards equivalent.
Individual limits not in a Group:	
845	845,965 dozen.
870	5,365,749 pounds.

[1] In Category 229-F, only TSUSA numbers 355.4520 and 355.4530.

[2] In Category 369-L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[3] In Category 669-P, only TSUSA number 385.5300.

[4] In Category 669-T, only TSUSA numbers 386.1105 and 389.6210.

[5] In Category 670-F, only TSUSA numbers 706.3900 and 706.3425.

[6] In Category 670-H, only TSUSA numbers 706-4125 and 706.3405.

[7] In Category 670-L, only TSUSA numbers 706.3415, 760.4130 and 706.4135.

[8] In Category 359-H, only TSUSA numbers 702.0600 and 702.1200.

[9] In Category 640-Y, only TSUSA numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.

[10] In Category 641-Y, only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110, and 384.9120.

[11] In Category 659-B, only TSUSA numbers 384.1815 and 384.8022.

[12] In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8608, 384.8607 and 384.9310.

[13] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0551, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[14] In Category 659-S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 331.9570, 384.1700, 384.2330, 384.8300, 384.8400 and 384.8353.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged

against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended, which provide, in part, that: (1) group and specific limits and sublimits within the groups may be exceeded by designated percentages except for Categories 645/646, 659–H and 845, whose limits already include swing adjustments for the duration of the agreement; (2) Categories 338/339, 340, 369–L, 638 and 670–L or 670–, may be increased by up to ten percent for special shift during the agreement year; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under these provisions of the bilateral agreement will be made to you by letter. Some category limits already include adjustments to the base level.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30198 Filed 12–30–87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Morgan Stanley Capital International EAFE (Europe, Australia and Far East) stock index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before February 3, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME EAFE Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On September 11, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the EAFE Stock Index futures contract (52 FR 34404). In a December 18, 1987, letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 52) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on December 28, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–30108 Filed 12–31–87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 28 January 1988, 8:30 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 29, 1987.

[FR Doc. 87–30165 Filed 12–31–87; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 26 January 1988, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 29, 1987.

[FR Doc. 87–30166 Filed 12–31–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Extended Review Period for EIS No. 870404, Draft, Cleanup of Uruno (Urunao) Beach, GU

The review period for the Draft Environmental Impact Statement for cleanup of Uruno Beach (also known as Urunao Beach), Guam is extended to January 22, 1988. (Published in the **Federal Register** on November 13, 1987 (52 FR 43663).

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 87–30102 Filed 12–31–87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.168A]

Notice Inviting Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1988

Purpose: To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics, science, and computer learning.

Deadline for Transmittal of Applications: February 26, 1988.

Applications Available: January 15, 1988.

Available Funds: $3,900,000.

Estimated Range of Awards: $75,000–$200,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 31.

Project Period: 12–24 months.

Applicable Regulations: (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages Regulations, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Absolute Priority: In accordance with § 755.13 (a) and (c) and 34 CFR 75.105(c)(3), the Secretary has chosen as an absolute priority projects that provide special services to historically underserved and underrepresented populations in the fields of mathematics, science and computer learning at the elementary and secondary school levels.

Only applications proposing activities under this priority will be considered.

Within this absolute priority, the Secretary is particularly interested in applications that assist disadvantaged students from grade five through grade nine through projects that will:

- Upgrade or expand existing enrichment programs in mathematics, science or computer learning which provide alternative or supplementary instruction such as, afterschool and summer programs, college or university summer institutes, and cooperative programs with industry;
- Extend access to successful mathematics, science or computer learning programs to disadvantaged students, particularly gifted and talented minority youth; and
- Develop creative instructional approaches to improve student knowledge of and interest in mathematics, science or computer learning including, but not limited to, those instructional approaches involving parents, the community and the private sector.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit applications that expand upon or combine these activities, or propose activities other than these examples.

Selection Criteria: The program regulations at § 755.30 (b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Evaluation plan. (§ 755.32(d)) Five (5) additional points will be added for a possible total of 10 points for this criterion.

Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. (§ 755.32(f)) Five (5) additional points will be added for a possible total of 30 points for the criterion.

Applicant's commitment and capacity. (§ 755.32(h)) Five (5) additional points will be added for a possible total of 15 points for this criterion.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 3972

Dated: December 29, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–30123 Filed 12–31–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.168F]

Notice Inviting Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages (Critical Foreign Languages Program) for Fiscal Year 1988

Purpose: To provide assistance to institutions of higher education for projects designed to improve or expand instruction in critical foreign languages.

Deadline for Transmittal of Applications: February 26, 1988.

Applications Available: January 15, 1988.

Available Funds: $2,250,000.

Estimated Range of Awards: $75,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 22.

Project Period: 12–24 months.

Applicable Regulations: (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages Regulations, 34 CFR Part 755, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (c) the List of Critical Foreign Languages published in the **Federal Register** on August 2, 1985 (50 FR 31412).

Absolute Priority: In accordance with § 755.13(c) and 34 CFR 75.105(c)(3), the

Secretary has chosen as an absolute priority projects that improve or expand critical foreign language instruction to students in kindergarten through eighth grade. Only applications proposing activities under this priority will be considered.

Within this absolute priority, the Secretary is particulary interested in applications proposing projects that assist students for kindergarten through eighth grade through projects that will:

- Establish collaborative efforts among State and local educational agencies, communities, and institutions of higher education to increase student interest in foreign language study;
- Enable LEAs to extend instruction in foreign languages and cultures to disadvantaged students, particularly gifted and talented minority youth;
- Enable LEAs to strengthen existing foreign language programs for students in kindergarten through eighth grade to improve and increase language proficiency;
- Enable LEAs to Add to the curriculum in kindergarten through eighth grade languages not currently offered; or
- Provide opportunities to upgrade and strengthen the knowledge and proficiency of foreign language teachers currently teaching kindergarten through the eighth grade.

For Fiscal Year 1988 the Secretary invites applications for projects in any of the languages on the List of Critical Foreign Languages.

The above examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit applications that expand upon, or combine the suggested activities, and to propose other activities to improve and expand instruction in critical foreign languages.

Selection Criteria: The program regulations at §§ 755.30 (b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in § 755.33 to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Quality of key personnel. (§ 755.33(b)) Ten (10) additional points will be added for a possible total of 20 points.

Improvement or expansion of instruction in critical foreign languages. (§ 755.33(f)) Five (5) additional points will be added for a possible total of 35 points.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 3972.

Dated: December 29, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–30124 Filed 12–31–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.184A]

Notice Inviting Applications for New Awards under the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education for Fiscal Year 1988

Purpose: To provide assistance to institutions of higher education for projects that provide preservice or inservice personnel training or curriculum demonstration in drug and alcohol abuse education and prevention for use in elementary and secondary schools.

Deadline for Transmittal of Applications: February 28, 1988.

Applications Available: January 15, 1988.

Available Funds: $8,000,000.

Estimated Range of Awards: $75,000–$250,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 44.

Project Period: 12–24 months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, 34 CFR Parts 764 and 765, published in the Federal Register July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Absolute Priority: In accordance with § 765.4 (b) and (c) and 34 CFR 75.105(c)(3), the Secretary has chosen as an absolute priority projects that provide training for law enforcement officials, judicial officials, community leaders, parents, and government officials in drug abuse education and prevention.

Within this absolute priority the Secretary is particularly interested in projects that implement cooperative programs with local law-enforcement agencies, the courts, and other community resources. However, applications meeting this invitational priority will not be given an absolute or competitive preference over other applications that meet the absolute priority established above.

Selection Criteria: The program regulations at § 765.20 authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 765.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 765.21(a)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

Budget and cost-effectiveness. (§ 765.21(c)) Five (5) additional points will be added for a possible total of 10 points for this criterion; and

Contribution to improving the quality of drug and alcohol abuse education and prevention activities. (§ 765.21(f)) Five (5) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 4641.

Dated: December 29, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–30121 Filed 12–31–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.184B]

Notice Inviting Applications for New Awards Under the Drug-Free Schools and Communities Program—Federal Activities Grants Program for Fiscal Year 1988

Purpose: To provide assistance to State educational agencies, local educational agencies, institutions of higher education and other nonprofit agencies, organizations, and institutions to support drug and alcohol abuse education and prevention activities.

Deadline for Transmittal of Applications: February 26, 1988.

Applications Available: January 15, 1988.

Available Funds: $1,500,000.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 10

Project Period: 12–18 months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program—Federal Activities Grants Program, 34 CFR Parts 764 and 766, published in the Federal Register on July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Absolute Priorities: In accordance with § 766.4 and 34 CFR 75.105(c)(3), the Secretary chooses two absolute priorities for this competition. Applications for this competition must propose projects that either:

(1) Implement cooperative programs with local law-enforcement officials, judicial officials, community leaders, and government officials; or

(2) Involve parents and school personnel in preventing drug and alcohol abuse by students through activities such as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated.

Selection Criteria: The program regulations at § 766.20 authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 766.21 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 766.21(a)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

Budget and cost-effectiveness. (§ 766.21(c)) Five (5) additional points will be added for a possible total of 10 points for this criterion.

Contribution to improving the quality of drug and alcohol abuse education and prevention activities. (§ 765.21(f)) Five (5) additional points will be added for a possible total of 30 points for this criterion.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone: (202) 732–3566.

Program Authority: 20 U.S.C. 4642.

Dated: December 29, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–30122 Filed 12–31–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.133B]

Notice Reopening the Closing Date for Transmittal of Applications for New Awards Under the National Institute on Disability and Rehabilitation Research (NIDRR) in Certain Priority Areas of the Rehabilitation Research and Training Centers Program for Fiscal Year 1988

Purpose: Provides funding through grants or cooperative agreements to institutions of higher education or to public or private agencies or organizations, including Indian tribes or tribal organizations, in affiliation with institutions of higher education, to conduct programs that meet the specifications for funding in certain priorities published in the Federal Register on September 18, 1987 (52 FR 35380). NIDRR did not receive sufficient fundable applications in response to that notice, and thus is reopening the closing date in order to encourage the submission of additional applications or the resubmission of amended applications to two priority areas. The two areas in which applications will be accepted are Arthritis and Related Musculoskeletal Disabilities, and Rehabilitation of Traumatic Brain Injury (TBI) and Stroke.

Deadline for Transmittal of Applications: February 29, 1988.

Applications Available: January 4, 1988 *Available Funds:* $1,300,000.

Estimated Range of Awards: $600,000–$700,000.

Estimated Average Award: $650,000 per year.

Estimated Number of Awards: Two.

Project Period: Up to 60 months.

Applicable Regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) NIDRR regulations at 34 CFR 350 and 352, and (c) the annual funding priorities for this program.

For Applications or Information Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732–1207, or (202) 732–1198 for TDD service.

Program Authority: 29 U.S.C. 762(b)(1).

Dated: December 28, 1987

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–30120 Filed 12–31–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Indian Education; Closed Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

DATES: January 21–22, 1988, 9:00 a.m. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 202/732–1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., Room 4072, Switzer Building, Washington, DC 20202 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education on carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92–318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business each day, approximately 5:00 p.m. The agenda includes reviewing applications submitted under the (1) Indian Controlled Schools authorized by Part A of the Indian Education Act; (2) planning, Pilot and Demonstration Projects and Educational Personnel Development (section 1005 and 422) authorized by Part B of the Indian Education Act; and, (3) planning, Pilot and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under this program and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Date: December 9, 1987. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council of Indian Education.

[FR Doc. 87-30172 Filed 12-31-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

European Atomic Energy Community and International Atomic Energy Agency; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy as amended, and the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/IAEA(EU)-17, for the transfer to the IAEA Safeguards Analytical Laboratory, Siebersdorf, Austria of 2,030 grams of uranium enriched to 19.75 percent in the isotope uranium-235, 2,030 grams of uranium enriched to 3.1 percent in the isotope uranium-235, 2,030 grams of natural uranium, and 2,030 grams of uranium containing 0.7 percent uranium-235 for safeguards inspection equipment calibration.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 28, 1987.

George J. Bradley, Jr.

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-30099 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

Nuclear Energy Commission; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" pursuant to general license issued by the U.S. Nuclear Regulatory Commission.

The Subsequent arrangement to be carried out under the above-mentioned general license involves approval of the following sale:

Contract Number S-EU-930, for the sale of 635.8 grams of natural uranium to the Compagnie Generale des Matieres Nucleaires (COGEMA) in France for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy

Date: December 28, 1987.

George J. Bradley, Jr.

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-30100 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program For Consumer Products; Granting of Interim Waiver of Furnace Test Procedures to Carrier Corporation (F-015I)

AGENCY: Conservation and Renewable Energy Office, Energy.

ACTION: Granting of interim waiver.

SUMMARY: Today's notice publishes the granting of an "Interim Waiver" to Carrier Corporation (Carrier). Carrier in its application for interim waiver, asks for variance from the existing DOE test procedures for furnaces when testing its gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands).

In accordance with paragraph (e) of § 430.27 of Title 10 of the Code of Federal Regulations, the following letter was issued to the Carrier Corporation.

Issued in Washington, DC, December 23, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

December 23, 1987.

Mr. Edward A. Baily,

Director, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, New York 13221

Dear Mr. Baily: This is in response to Carrier Corporation's Application for Interim Waiver, dated December 4, 1987, from the Department of Energy (DOE) test procedures for furnaces when testing its gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands).

Carrier submitted an Application for Interim Waiver, dated August 3, 1987, for the same furnace models. The Application was denied on the basis that the company did not provide sufficient information for the Department to evaluate what, if any, economic hardship Carrier will experience absent a favorable determination on the application. 52 FR 45233, Nov. 25, 1987.

In this subsequent Application for Interim Waiver, Carrier has provided additional information which DOE believes demonstrates the economic hardship Carrier will experience absent a favorable determination on the application. Specifically, Carrier states that since the existing procedures underrate the AFUE, Carrier is unable to market at an appropriate price the 58SXB and 398B models which currently are being produced. Consequently, Carrier's options are immediate inventory costs if it decides to wait for a possible favorable determination on the petition for waiver, or a reduced market price for the furnace. In either case, DOE believes Carrier will experience economic hardship.

In addition, in view of the technical merits of the Petition for Waiver, filed by Carrier, 52 FR 45233, Nov. 25, 1987, it appears likely the petition will be granted.

Accordingly, Carrier's Application for Interim Waiver dated December 4, 1987, is granted.

Carrier is allowed to test its series 58SXB and 398B furnaces using the nominal temperature rise rather than the maximum temperature rise. Specifically, Carrier is allowed to test said furnaces without regard to section 8.4.2.1.7 of Standard 103 of the American Society of Heating, Refrigerating and Air Conditioning Engineers.

This Interim Waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination of Carrier's Petition for Waiver or a final test procedure amendment addressing this issue, whichever occurs first.

This Interim Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Yours truly,

John R. Berg,

for Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 87-30160 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time:

Thursday, January 21, 1988, 8:00 a.m.—5:00 p.m.

Friday, January 22, 1988, 8:00 a.m.—12:00 noon

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington DC 20037.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—CA081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-586-8290.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementaing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda:

Thursday, January 21, 1988

- Preparation of a draft of the Board's Ninth Annual Report
- Public comment (10 minute rule)

Friday January 22, 1988

- Preparation of a draft of the Board's Ninth Annual Report
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-586-8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 A.M. and 4 P.M., Monday thru Friday, except Federal holidays.

Issued at Washington, DC on December 29, 1987.

Howard H. Raikes,

Advisory Committee Management Officer.

[FR Doc. 87-30159 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-57-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Northridge Petroleum Marketing U.S., Inc. (Northridge), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-57-NG authorizes Northridge to increase its import from 100 Bcf to 200 Bcf over an additional two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 24, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-30161 Filed 12-31-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-146-000, et al.]

Boston Edison Co., et al.; Electric Rate and Corporate Regulation Filings

December 28, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER88-146-000]

Take notice that on December 21, 1987, Boston Edison Company (Edison) tendered for filing a supplemental Exhibits A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibits A to become effective as of the commencement date of the transaction to which it relates, November 1, 1987.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: January 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER88-47-000]

Take notice that on December 18, 1987, Southwestern Public Service Company (Southwestern) tendered for filing an amendment to its original filing of an Experimental Sales Benefit Credit Rider to flow through to wholesale customers, on a current basis, seventy-

five percent of the benefits from Western Systems Power Pool (WSPP) transactions.

Copies of the Supplemental Filing were served upon each affected wholesale customers, the service list designees, the Public Utility Commission of Texas, the New Mexico Public Service Commission, and the Corporation Commission of the State of Oklahoma

Comment date: January 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30087 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-483-029, et al.]

MSU System Services, Inc., et al; Electric Rate and Corporate Regulation Filings

December 24, 1987.

Take notice that the following filings have been made with the Commission:

1. MSU System Service, Inc.

[Docket No. ER82-483-029]

Take notice that on February 24, 1987, MSU System Services, Inc. (MSSI) tendered for filing pursuant to Commission letter dated January 20, 1987 and in compliance with the Commission's Opinion Nos. 248 and 246-A, a refund report in which the resale rate in the MSSI power pool of energy purchased from qualifying facilities that has not been in excess of the compliance rate accepted; therefore, no refunds are due.

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER88-75-000]

Take notice that on December 17, 1987, Northern States Power Company (NSP-Minn.) tendered for filing pursuant to Commission deficiency letter dated December 9, 1987, a volume of supplemental workpapers. The workpapers provide detail on how the Average Rate Method is used to develop NSP-Minn.'s provision for deferred taxes.

NSP-Minn. requests waiver of the 60-day notice requirement to allow the rate increase filed in this docket to become effective on January 1, 1988.

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Company

[Docket No. ER88-145-000]

Take notice that on December 18, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to O'Brien Energy Systems, Inc. (O'Brien). The Rate Schedule provides for a monthly transmission service charge of $.75 per kilowatt plus $.00029 per kilowatthour for the delivery of the net electric power output of O'Brien's qualifying facility to be located in the City of Newark, Essex County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customer and the New Jersey Board of Public Utilities.

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER88-83-000]

Take notice that on December 17, 1987, Wisconsin Public Service Corporation (Company) tendered for filing a new Original Sheet 22 to its W-3 tariff which was tendered for filing on October 30, 1987 for service to Consolidated Water Power Company (Customer). The new Sheet 22 adds to Service Schedule B a cap on the weekly price quotes for sales under the Service Schedule which is equal to the Company's estimated variable costs of providing Service Schedule B energy during the week plus 1.27¢ per kWh as applied to the Service schedule B energy sold during a week. The Company states that the 1.27¢ per kWh component of the cap equals the Company's annual generation and transmission fixed costs, divided by its peak load, less transmission losses and Company use, and converted to cents per kWh using a 100% load factor.

The Company has requested a waiver of the Commission's regulations so that the W-3 tariff, as revised by the new Original Sheet No. 22, may become effective on January 1, 1988. The Customer supports this request.

The Company states that copies of the filing were sent to the customer, to Manitowoc Public Utilities and Marshfield Electric and Water Department, which take partial requirements service from the Company under its W-2 tariff, and to the Public Service Commission of Wisconsin.

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell

Acting Secretary.

[FR Doc. 87-30088 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission.

[P-3023-001]

Hydroelectric Applications

December 24, 1987.

Take notice that the following hydroelectric filing has been made with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 3023-001.

c. *Date Filed:* November 23, 1987.

d. *Applicant:*

The Tupperware Company (licensee)
Blackstone Hydro, Inc. (transferee)

e. *Name of Project:* Tupperware Hydroelectric.

f. *Location:* Providence County, Rhode Island and Worchester County, Massachusetts on the Blackstone River.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Charles K. Greenwald, Director-Corporate Real Estate, Premark International, Inc., 1717 Deerfield Road, Deerfield, IL 60015, (312) 405-6223

Donald A. Shindler, Attorney, Rudnick & Wolfe, 30 North LaSalle Street, Suite 2500, Chicago, IL 60602

Wayne L. Rogers, President, Blackstone Hydro, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268-8820

i. *FERC Contact:* Dawna Leitzke, (202) 376-9820.

j. *Comment Date:* January 11, 1988.

k. *Description of Project:* November 23, 1987, the Tupperware Company (licensee), and Blackstone Hydro, Inc. (transferee), filed a joint application for transfer of a major license for the Tupperware Hydroelectric Project No. 3023.

The purpose of the proposed transfer of the license is to ensure the continued operation of the facility. The proposed transfer would be in the public interest.

The proposed transfer will not result in any changes in the proposed development. The transferee will comply with all terms and conditions of the license.

Tupperware is currently in the process of selling the hydroelectric facility to Blackstone Hydro, Inc. and the manufacturing facility and other lands to Blackstone Smithfield Corporation.

The project boundary as drawn in the area of the powerhouse, Exhibit G-7 contained lands beyond the minimum feasible distance from project works required by 18 CFR 4.61(4)(i). The revised project boundary is necessary in order to finalize the subdivision of property and allow the transfer of property to Blackstone Smithfield Corporation and Blackstone Hydro, Inc.

Project operations, water levels and project works constructed pursuant to the license remain unchanged in the revised Exhibit G-7. The tennis courts, swimming pool, outdoor play area, picnic area, baseball field and indoor meeting area with kitchen facilities which were constructed by Tupperware in connection with the original manufacturing facility, prior to the FERC license, are to be transfered with the manufacturing property to Blackstone Smithfield Corporation, a party unrelated to Blackstone Hydro, Inc. The plant purchaser, Blackstone Smithfield Corporation, intends that the recreation area remain open to the public. Should a change in recreation use occur in the future the Commission, pursuant to Article 17 of the license, may provide that the licensee construct recreational facilities.

l. This notice also consists of the following standard paragraphs: B & C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATIONS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30089 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[P-2725-016]

Hydroelectric Applications

December 28, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of License and Extension of Completion Request.

b. *Project No.:* 2725-016.

c. *Date Filed:* December 2, 1987.

d. *Applicant:* Georgia Power Company and Oglethorpe Power Corporation.

e. *Name of Project:* Rocky Mountain Project.

f. *Location:* On Heath Creek in Big Texas Valley, in Floyd County, Georgia.

g. *Filed Pursuant to:* Section 9 of the Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* For Georgia Power (transferor)

William H. Watson, General Manager, Fossil and Hydro Projects, Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, GA 30308

John R. Molm, Esq., Troutman, Sanders, Lockerman & Ashmore, 127 Peachtree Street, NE., Atlanta, GA 30043

For Oglethorpe Power (transferee)

Tom D. Kilgore, Senior Vice President, Power Supply Division, Oglethorpe Power Corporation, 2100 East Exchange Place, P.O. Box 1349, Tucker, GA 30085-1349.

i. *FERC Contact:* Ed Lee on (202) 376-9828.

j. *Comment Date:* January 13, 1988.

k. *Description of Project:* On January 21, 1977, a license was issued to the transferor for the 760-MW Rocky Mountain Project No. 2725. The transferor and transferee, as joint applicants, request that the Commission approve the following:

(1) A transfer of license to the transferor and transferee as joint licensees, and a transfer of project properties, including partially constructed project works.

(2) An amendment of license extending the completion date for construction of the project works until June 1, 1996; and

(3) A waiver of the 60-day requirement of section 9.3(b) of the Commissions regulations to submit instruments of conveyance of transfer.

l. This notice also consists of the following standard paragraphs: B and C

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–30090 Filed 12–31–87; 8:45 am]

BILLING CODE 6717–01–M

[P–9074–017]

Hydroelectric Applications

December 28, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 9074–017.

c. *Date filed:* December 18, 1987.

d. *Applicant:* Adirondack Hydro Development Corporation & Warrensburg Hydro Power Limited Partnership.

e. *Name of Project:* Warrensburg Project.

f. *Location:* On the Schroon River, Warren County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 a—825(r).

h. *Applicant Contact:* Mr. Louis Rosenman LeBoeuf, Lamb, Leiby, & MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036, (202) 457–7500.

i. *FERC Contact:* Robert Bell, (202) 376–5706.

j. *Comment Date:* January 11, 1988.

k. *Description of Project:* On January 30, 1987, a license was issued to Adirondock Hydro Development Corporation (licensee), to construct, operate, and maintain the Warrensburg Project No. 9074. The Licensee intends to transfer the license to Warrensburg Hydro Power Limited Partnership (transferee) to facilitate the long term financing of the project.

l. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS" NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–30091 Filed 12–31–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ID–2315–000, et al.]

Eleanor T. Daly, et al.; Interlocking Directorate Applications

December 28, 1987.

Take notice that the following filings have been made with the Commission:

1. Eleanor T. Daly

[Docket No. ID–2315–000]

Take notice that on November 16, 1987, Eleanor T. Daly filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation	Classification
Officer	Boston Edison Company	Public Utility
Director	Phoenix Mutual Life Insurance Company	Mutual Life Insurance Company

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Herbert Roth, Jr.

[Docket No. ID–2317–000]

Take notice that on November 16, 1987, Herbert Roth, Jr. filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation	Classification
Director	Boston Edison Company	Public Utility
Director	Phoenix Mutual Life Insurance Company	Mutual Life Insurance Company

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Kenneth I. Guscott

[Docket No. ID–2316–000]

Take notice that on November 16, 1987, Kenneth I. Guscott filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of Corporation	Classification
Director	Boston Edison Company	Public Utility
Director	Phoenix Mutual Life Insurance Company	Mutual Life Insurance Company

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–30092 Filed 12–31–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–109–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

December 28, 1987.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88–109–000]

Take notice that on December 4, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–109–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to transport gas on behalf of the City of Willcox, Arizona (Willcox), pursuant to agreements dated September 11, 1985, and June 18, 1987, both as amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the proposed transportation service was initiated for Willcox under Part 284, Subpart B of the Commission's Regulations and resulted from a request to transport for Willcox certain natural gas supplies either obtained by Willcox's own spot market purchase arrangements or obtained from other marketing arrangements. El Paso advises that this self-help effort has provided Willcox with varying quantities of natural gas which are: (i) Incremental to the volumes of natural gas sold by El Paso to Willcox; and (ii) less costly than El Paso's commodity sales volumes. El Paso states that the proposed transportation arrangement generally provides for El Paso to receive volumes of natural gas purchased by Willcox from various sources in the States of New Mexico and Texas at designated existing receipt points on El Paso's system and for El Paso concurrently to transport and deliver equivalent quantities, on a dekatherm (dth) basis, less appropriate reductions, to Willcox at the existing delivery points in Cochise County, Arizona.

Further, El Paso states that with respect to past and current transportation services mentioned above and rendered by El Paso for Willcox, Willcox has specifically requested that El Paso seek permanent section 7(c) authority for the transportation and delivery of up to 59,100 Mcf per day of natural gas which amount represents the aggregate volume of natural gas service under contract by El Paso for Willcox. Accordingly El Paso has agreed to: (1) Seek section 7(c) authority to transport and deliver a maximum volume of up to 59,100 Mcf of natural gas per day; and (2) maintain Willcox's present priorities of transportation service with respect to the two existing transportation arrangements. El Paso states that it believes this is appropriate because neither of Willcox's requests for transportation service exceeds existing maximum levels of service (either as sales or transportation service). El Paso further states that the currently effective Service Agreement dated October 1, 1985, between El Paso and Willcox provides for the sale by El Paso of the full requirements of Willcox subject to El Paso's capacity at the existing delivery point(s). El Paso explains that the priority or queue for the later transportation arrangement will continue to be the June 18, 1987, date of Willcox's request to El Paso to transport the additional 37,800 Mcf per day.

El Paso states that Willcox has requested that El Paso provide section 7(c) certificated transportation service thereby providing Willcox with a greater assurance of the transportation of its supply to meet Willcox's demand associated with certain new facilities that would require additional natural gas service. It is stated that Willcox and El Paso, therefore, have executed two Letter Agreements dated November 15, 1987, that evidence the parties' written agreement to convert the existing Gas Transportation Agreement dated September 11, 1985, as amended, and the Transportation Service Agreement dated June 18, 1987, from Part 284 transactions to a permanent section 7(c) arrangement that will allow Willcox to have assured long-term and permanent transportation service. Moreover, it is further stated that El Paso understands that the volumes of natural gas obtained by Willcox will be utilized predominantly as a source of fuel to displace coal and/or fuel oil, thereby regaining a lost market of El Paso for future sales of natural gas.

El Paso further states that El Paso understands that Willcox requires the assurance of the supply of natural gas provided by the transportation service under a permanent section 7(c) arrangement to facilitate the financing of new facilities scheduled to be constructed and in-service next year. Specifically, it is stated that El Paso is advised that Willcox's customer, Arizona Electric Power Cooperative, Inc., projects expenditures, for retrofitting its Steam Unit #3 to burn gas as base load fuel, of $2,063,000 for such new facilities and has scheduled its existing facilities to be offline in November of 1988, with construction of the new facilities to commence shortly thereafter, restart and check-out with subsequent and commercial operation in December of 1988.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP88–110–000]

Take notice that on December 4, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–110–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas services and facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests permission and approval for Northwest to abandon its currently authorized sale for resale to Colorado Intestate Gas Company (CIG), transportation for CIG, and exchange

to hold concurrently the following positions:

Position	Name of corporation	Classification
Director	Boston Edison Company	Public Utility
Director	Phoenix Mutual Life Insurance Company	Mutual Life Insurance Company

Comment date: January 7, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–30092 Filed 12–31–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–109–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

December 28, 1987.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88–109–000]

Take notice that on December 4, 1987, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–109–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to transport gas on behalf of the City of Willcox, Arizona (Willcox), pursuant to agreements dated September 11, 1985, and June 18, 1987, both as amended, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the proposed transportation service was initiated for Willcox under Part 284, Subpart B of the Commission's Regulations and resulted from a request to transport for Willcox certain natural gas supplies either obtained by Willcox's own spot market purchase arrangements or obtained from other marketing arrangements. El Paso advises that this self-help effort has provided Willcox with varying quantities of natural gas which are: (i) Incremental to the volumes of natural gas sold by El Paso to Willcox; and (ii) less costly than El Paso's commodity sales volumes. El Paso states that the proposed transportation arrangement generally provides for El Paso to receive volumes of natural gas purchased by Willcox from various sources in the States of New Mexico and Texas at designated existing receipt points on El Paso's system and for El Paso concurrently to transport and deliver equivalent quantities, on a dekatherm (dth) basis, less appropriate reductions, to Willcox at the existing delivery points in Cochise County, Arizona.

Further, El Paso states that with respect to past and current transportation services mentioned above and rendered by El Paso for Willcox, Willcox has specifically requested that El Paso seek permanent section 7(c) authority for the transportation and delivery of up to 59,100 Mcf per day of natural gas which amount represents the aggregate volume of natural gas service under contract by El Paso for Willcox. Accordingly El Paso has agreed to: (1) Seek section 7(c) authority to transport and deliver a maximum volume of up to 59,100 Mcf of natural gas per day; and (2) maintain Willcox's present priorities of transportation service with respect to the two existing transportation arrangements. El Paso states that it believes this is appropriate because neither of Willcox's requests for transportation service exceeds existing maximum levels of service (either as sales or transportation service). El Paso further states that the currently effective Service Agreement dated October 1, 1985, between El Paso and Willcox provides for the sale by El Paso of the full requirements of Willcox subject to El Paso's capacity at the existing delivery point(s). El Paso explains that the priority or queue for the later transportation arrangement will continue to be the June 18, 1987, date of Willcox's request to El Paso to transport the additional 37,800 Mcf per day.

El Paso states that Willcox has requested that El Paso provide section 7(c) certificated transportation service thereby providing Willcox with a greater assurance of the transportation of its supply to meet Willcox's demand associated with certain new facilities that would require additional natural gas service. It is stated that Willcox and El Paso, therefore, have executed two Letter Agreements dated November 15, 1987, that evidence the parties' written agreement to convert the existing Gas Transportation Agreement dated September 11, 1985, as amended, and the Transportation Service Agreement dated June 18, 1987, from Part 284 transactions to a permanent section 7(c) arrangement that will allow Willcox to have assured long-term and permanent transportation service. Moreover, it is further stated that El Paso understands that the volumes of natural gas obtained by Willcox will be utilized predominantly as a source of fuel to displace coal and/or fuel oil, thereby regaining a lost market of El Paso for future sales of natural gas.

El Paso further states that El Paso understands that Willcox requires the assurance of the supply of natural gas provided by the transportation service under a permanent section 7(c) arrangement to facilitate the financing of new facilities scheduled to be constructed and in-service next year. Specifically, it is stated that El Paso is advised that Willcox's customer, Arizona Electric Power Cooperative, Inc., projects expenditures, for retrofitting its Steam Unit #3 to burn gas as base load fuel, of $2,063,000 for such new facilities and has scheduled its existing facilities to be offline in November of 1988, with construction of the new facilities to commence shortly thereafter, restart and check-out with subsequent and commercial operation in December of 1988.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP88–110–000]

Take notice that on December 4, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–110–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas services and facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests permission and approval for Northwest to abandon its currently authorized sale for resale to Colorado Intestate Gas Company (CIG), transportation for CIG, and exchange

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with CIG of natural gas produced from the Barrel Springs area of Carbon County, Wyoming. Further, Northwest requests abandonment authorization for its presently certificated facilities in the Barrel Springs gathering system so that these facilities can be leased to Washakie Gathering Company (Washakie) without the need for any subsequent certificate authorization to Washakie.

It is stated that on April 7, 1976, Northwest and CIG entered into a gas purchase, transportatin and exchange agreement (Rate Schedule X–26) in order to make available to Northwest's transmission system volumes of gas to be purchased by Northwest in the Barrel Springs area of Carbon County, Wyoming. It is stated that under Rate Schedule X–26 Northwest agreed to construct gathering facilities and deliver its Barrel Springs gas to a meter station to be installed by CIG adjacent to the pipeline of Western Transmission Corporation (Western). It is stated that CIG agreed to arrange for transportation of the gas through Western's system and to redeliver thermally equivalent volumes to Northwest, less fuel and purchases, by reducing its system supply purchases from Northwest at the existing Green River, Wyoming, mainline interconnection between CIG and Northwest. CIG has the option to purchase up to 25 percent of the volumes tendered by Northwest for transportation and exchange and Northwest agreed to gather and deliver such purchased gas to CIG's meter station in Western's system, it is stated.

On August 31, 1976, the Commission issued certificates of public convenience and necessity to Northwest in Docket No. CP75–294, to CIG in Docket No. CP76–331, and to Western in Docket No. CP76–352 authorizing the above-described transportation, sales and exchange of natural gas, it is stated.

Northwest states that the Barrel Springs reserves originally were dedicated to Northwest under gas purchase contracts with American Resources Inc. (ARI) dated November 13, 1974, and Kemmerer Coal Company (KCC) dated November 13, 1974. It is stated that Barrel Springs Development Corporation (BSDC), a subsidiary of Energetics Corporation, subsequently acquired the Barrel Springs reserves and entered into a gas purchase contract with Northwest dated April 1, 1983, and, in late 1986, Snyder Oil Company (Snyder) acquired the Barrel Springs reserves.

Northwest stated that by order issued July 23, 1987, in Docket No. CI87–494–000, the Commission authorized Snyder to permanently abandon the sale to Northwest of the Barrel Springs gas previously dedicated to Northwest and approved pregranted abandonment of subsequent sales of this gas by Snyder under its small producer certificate for a term of three years.

It is stated that Northwest no longer had any gas purchase commitments in the Barrel Springs area, and Northwest and Washakie, an operating affiliate of Snyder, entered into a precedent agreement dated December 19, 1986, and, subsequently, a lease agreement dated September 1, 1987, providing for the lease of the Barrel Springs gathering system by Northwest to Washakie for a term of 20 years commencing on the first day of the month following Northwest's acceptance of a Commission order approving the facilty abandonments requested herein.

Northwest states that, in order to move the Barrel Springs production and other supplies of gas acquired by Snyder to CIG and/or Western for subsequent transportation to Washakie's markets prior to the effective date of the above-described lease agreement, Northwest and Washakie entered into the gathering and operating arrangement set forth below.

Pursuant to a December 1, 1986, gathering agreement, as amended, Northwest agreed to gather up to 30,000 MMBtu of natural gas per day produced from the Barrel Springs and adjacent areas and to deliver such gas to existing delivery points to Western and CIG for the account of Washakie, it is stated, and that Washakie agreed to pay Northwest for all volumes gathered for its account at the monthly discounted Green River area gathering rate. Washakie pays Northwest for gathering fuel attributable to the Barrel Springs gas at the fuel rate set forth on Sheet No. 2–B of Volume No. 2 of its Tariff, currently 3.02 percent, valued at Northwest's monthly average purchased gas cost component, as defined on Sheet No. 10 in Northwest's FERC Gas Tariff, First Revised Volume No. 1, it is stated.

Northwest states that on April 1, 1987, Washakie and Northwest entered into an operating agreement whereby Northwest agreed to assign the operation and maintenance responsibility of the Barrel Spring gathering system to Washakie with Northwest retaining title to and ownership of the Barrel Springs facilities. Under the terms of the operating agreement, Northwest agreed to pay Washakie an operating fee equal to Northwest's monthly discounted Green River gathering rate, less 7 cents per MMBtu, it is stated.

Northwest further states that this partial abandonment of service, effectively, will ensure that Northwest's certificate authorization for service under Rate Schedule X–26 will reflect the changed terms set forth in the February 17, 1987, amendment to Rate Schedule X–26 for the movement of gas from the Creston Nose area of Sweetwater County, Wyoming.

Northwest proposes to reclassify the current net book value, approximately $3.8 million dollars, of the Barrel Springs gathering system from FERC Account 101, gas plant in service, to FERC Account 121, nonutility plant, effective upon the date when the lease agreement with Washakie becomes effective.

Northwest states that the proposed transfer of the Barrel Springs facilities from their current classification in FERC Account 101 to FERC Account 121 will remove the investment associated with the Barrel Springs gathering system from Northwest's calculation of its jurisdictional cost-of-service, thus relieving Northwest's customers from any cost responsibility related to the subject facilities.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP88–111–000]

Take notice that on December 4, 1987, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108, filed in Docket No. CP88–111–000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon the interruptible transportation of natural gas for Oregon Steel Mills (Oregon Steel), Development Associates, Inc. (Development) and Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the Commission order dated April 30, 1987, issued in Docket Nos. CP86–345–002, CP86–707–001 and CP87–53–000, Northwest was authorized to transport on an interruptible basis up to 3,500 MMBtu per day for Oregon Steel, up to 50,000 MMBtu per day for Development and up to 150,000 MMBtu per day for Cascade.

Northwest states that certain conditions were attached to the certificate including a condition requiring the use of the Rate Schedule T–6 rate for transportation in place of the proposed rates set forth in Volume No. 2 of its FERC Gas Tariff for incremental (T–4) and replacement (T–5) on-system transportation.

It is stated that on May 31, 1987, services under the certificates were commenced under the Rate Schedule T–6 rate. Northwest further states that the Rate Schedule T–6 rate is inconsistent with the applicable Rate Schedule T–4 and T–5 rates established in the Docket No. RP85–13–000 rate case settlement.

Northwest proposes to abandon these services effective immediately in light of the complaint filed by James River Corporation of Nevada (James River) in Docket No. RP88–13–000. Northwest states that James River has alleged competitive injury resulting from Northwest's rendering of transportation service pursuant to the April 30, 1987, certificates.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88–126–000]

Take notice that on December 10, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon the following described facilities:

(1) The Carthage Extension (Line No. 706A–100) consisting of facilities located in Panola County, Texas and described as follows: Approximately 8.58 miles of 16-inch pipeline beginning at the weld upstream of Tennessee's Valve No. 706A–101.1 located at the Champlin East Texas processing plant in the W. C. Gray Survey A–245 as detailed on Drawing No. TO–F1–706A–100–1, and running in a westerly direction to a point of termination known as Valve No. 706A–102 located at the Carthage Compressor Site situated in the J. A. Powers Suvey A–544 and depicted on Drawing No. TO–F1–706A–100–2.

(2) The Carthage Compressor Plant, consisting of a 2.028 acre tract of land being located in Panola County, Texas, together with all buildings, machinery, gas pipe lines, compressors, equipment and appliances situated on said land, and also including all equipment, appliances and appurtenances of every kind or nature whatsoever used or for use as a part of said properties, including 2 Clark 1320 h.p. compressor engines.

It is stated that these facilities were installed for the receipt and transportation of gas produced in the Carthage field and purchased by Tennessee under a gas purchase and sales agreement between Tennessee as Buyer and Union Pacific Resources Company (UPRC, formerly Champlin Petroleum Company) as Seller (the Purchase Agreement). It is further stated that the Carthage Compression Plant is located at the western end of the Carthage Extension and is utilized to enable gas produced at low wellhead pressures to enter the Carthage Extension at Valve No. 706A–102. It is asserted that the gas then flows to the eastern end of the Carthage Extension where, immediately upstream of Valve 760A–101.1, it is routed out of the Carthage extension and into a gas processing plant owned by UPRC (known as the Champlin East Texas Plant). On the discharge side of the Chaplin East Texas Plant it is indicated that the gas is measured and delivered into Tennessee's 20" Carthage lateral immediately downstream of Valve 706A–101.1. It is stated that this point of entry into Tennessee's system is the delivery point under the Purchase Agreement. Tennessee has no other obligation to receive gas into or deliver gas from the Carthage Extension, it is stated.

Tennessee states that all of the facilities to be abandoned have been fully depreciated and have a book valve of zero and that said facilities are not necessary for the operation of Tennessee's retained facilities connecting the Carthage Extension or for Tennessee's continued purchase of gas under the Purchase Agreement.

Tennessee further states that upon reciept of the requested abandonment authorization it will convey such facilities to UPRC as part of a settlement agreement between Tennessee and UPRC to resolve any and all take-or-pay disputes arising from the Purchase Agreement. Upon conveyance, UPRC will continue to operate the facilities in order to enable gas to enter the Champlin East Texas processing plant.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Williston Basin Interstate Pipeline Company

[Docket No. CP88–118–000]

Take notice that on December 9, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed in Docket No. CP88–118–000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon authority to transport natural gas for Ecological Engineering Systems, Inc. (EES) on behalf of Hebron Brick Company (Hebron), which authority was granted to Williston Basin in Docket No. CP85–877–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that by order issued in this proceeding, Williston Basin was granted authority for the transportation of natural gas for EES. Williston Basin further states that as noted in the order, the underlying gas transportation agreement dated August 1, 1985, specified a term of two years from the date of initial deliveries. Williston Basin further states that it is unclear whether the Commission meant to limit the authorized transportation certificate authority to the initial two year term of the agreement, with pregranted abandonment, or issued permanent certificate authority.

Williston Basin requests an order permitting and approving the abandonment of the authority to transport natural gas for EES on behalf of Hebron, or in the alternative, a determination that pregranted abandonment authority has already been authorized.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Williston Basin Interstate Pipeline Company

[Docket No. CP88–119–000]

Take notice that on December 9, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed in Docket No. CP88–119–000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of the authority to transport natural gas for Ladd Petroleum Corporation (Ladd), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that by Commisison order issued February 4, 1987, in Docket No. CP85–534–000, Williston Basin was granted authority for the transportation of natural gas for Ladd. Williston Basin further states that upon receipt of such order, Williston Basin sought to execute a transportation service agreement with Ladd covering the transportation arrangement. However, it is stated, Ladd informed Williston Basin that it no longer requires the transportation service and therefore, the transportation authority is no longer necessary and should be abandoned.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Williams Natural Gas Company

[Docket No. CP88-108-000]

Take notice that on December 4, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-108-000 an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point in Lawrence County, Missouri, for the sale and delivery of gas to The Kansas Power and Light Company (KPL Gas Service), under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that KPL Gas Service has requested an additional delivery point in order to serve the Hudson Turkey Farm in Monett, Missouri. It is also stated that the projected volume of delivery through these facilities would be 4,445 Mcf per year with a maximum peak load of 30 Mcf per day and the volume is anticipated to remain constant year to year. WNG estimates the cost of construction to be $6,240, which would be paid from treasury cash.

In addition, WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: February 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn, within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30093 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-118-000, et al.]

Archer-Daniels-Midland Co., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

December 28, 1987.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Archer-Daniels-Midland Company

[Docket No. QF88-118-000]

On November 30, 1987, Archer-Daniels-Midland Company (Applicant) of 4666 Faries Parkway, Decatur, Illinois 62526, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Mankato, Minnesota. The facility will consist of a multi-bed fluidized bed steam generator and a back-pressure steam turbine generator. Thermal energy recovered from the facility will be used in the plant for process purposes. The net electric power production capacity of the facility will be 5000 kW. The primary source of the energy will be coal. Construction of the facility began in April 1986.

2. Dravo Operations of Montgomery County, Inc.

[Docket No. QF88-142-000]

On December 8, 1987, Dravo Operations of Montgomery County, Inc., c/o Gibbs & Hill, Inc., 11 Penn Plaza, New York, New York 10001 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Montgomery County, Pennsylvania. The net electric power production capacity will be 23 megawatts. The primary energy source will be biomass in the form of municipal solid waste. No. 2 fuel oil will be used for start-up and control purposes, however, such fossil fuel uses will not exceed 25% of the total energy input to the facility during any calendar year period.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30094 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff

December 24, 1987.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on December 15, 1987, tendered for filing Ninth-A Revised Sheet Nos. 57(i) and 57(ii) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective December 1, 1987.

Great Lakes states that Ninth-A Revised Sheet Nos. 57(i) and 57(ii) reflect changes in the price of gas purchased by Great Lakes from TransCanada Pipelines Limited ("TransCanada") for resale to certain customers of Great Lakes. The changes in Natural Gas Pipeline Company ("Natural") prices are in accordance with revised gas pricing provisions that have been negotiated between Natural and TransCanada. The gas purchase prices applicable for ANR Pipeline Company, Michigan Gas Company and Peoples Natural Gas Company changed pursuant to a pricing index previously approved by the Commission.

Great Lakes is requesting an effective date of December 1, 1987 for Ninth-A Revised Sheet Nos. 57(i) and 57(ii). In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing changes in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30095 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-33-000 and RP86-91-007]

Midwestern Gas Transmission Co.; Notice of Filing of Changes in Rates

December 24, 1987.

Take notice that on December 14, 1987, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to its FERC Gas Tariff to be effective November 1, 1987, except as noted:

Original Volume No. 1

Substitute Twenty-eighth Revised Sheet No. 5
Substitute Twenty-ninth Revised Sheet No. 5 (effective January 1, 1988)
Substitute Twenty-sixth Revised Sheet No. 6
Substitute Twenty-seventh Revised Sheet No. 6 (effective January 1, 1988)
Original Sheet Nos. 23A, 84A, 94A, 164A, 165B, 91B, 191C, 293, 294
Substitute Original Sheet No. 27
First Revised Sheet Nos. 156A, 174, 176
Substitute First Revised Sheet Nos. 23, 86, 90, 92, 94
Second Substitute First Revised Sheet No. 86A
Second Revised Sheet Nos. 161, 162, 166, 170, 169A
Second Substitute Third Revised Sheet No. 21
Third Revised Sheet No. 164
Fourth Revised Sheet No. 163
Fifth Revised Sheet No. 168
Seventh Revised Sheet No. 84

Original Volume No. 2

Original Sheet No. 68F]
First Revised Sheet No. 62]
Second Revised Sheet Nos. 37A, 38, 62M
Third Revised Sheet Nos. 68B, 68C, 68E, 68F
Fourth Revised Sheet Nos. 39, 68D
Sixth Revised Sheet No. 64F
Seventh Revised Sheet No. 62I.
Eighth Revised Sheet No. 62K
Fourteenth Revised Sheet No. 37

Midwestern states that the purpose of this filing is to place into effect as of November 1, 1987, reduced rates, new D_1-D_3 billing procedures and other tariff changes for Midwestern's Northern System and Southern System consistent with agreements which Midwestern believes it has reached with all active participants and the Commission Staff in Docket Nos. RP86-33 and RP63-91.

Midwestern states that it has filed simultaneously herewith a Southern System Stipulation and Agreement (the Southern System Stipulation) which resolves or establishes procedures to resolve all issues in Docket Nos. RP86-33 and RP86-91 relative to the Southern System, and it expects to file shortly a definitive Northern System Stipulation and Agreement to resolve or establish procedures to resolve all issues relating to the Northern System which have been raised to Docket Nos. RP86-33 and RP86-91. Midwestern avers that an essential element of the Southern System Stipulation is a commitment by Midwestern to make the Southern System Settlement Rates and other tariff changes effective as of November 1, 1987 in advance of Commission approval of that document. Midwestern states that the Northern System Stipulation will include the same commitment. Midwestern explains that implementation of the Settlement Rates and other tariff changes in advance of the Commission's expected approval of Southern System and Northern System Stipulations will provide Midwestern's customers with the benefit (retroactive to November 1, 1987) of a new revenue decrease from its current non-gas rates of $3.1 million annually of the Southern System and $2.8 million annual Northern System, based on the settlement billing determinants.

Midwestern requests that the Commission grant all waivers of its regulations necessary to permit the acceptance of this filing. In particular, pursuant to § 154.51 of the Commission's Rules, Midwestern requests waiver of the notice requirements of § 154.22 so that Midwestern's customers may obtain the benefits of immediate rate reductions as of November 1, 1987.

Midwestern states that copies of this filing have been served on all parties to the referenced proceeding, all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30096 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-5-000]

Midwestern Gas Transmission Co.; Rate Filing

December 24, 1987.

Take notice that on December 21, 1987, Midwestern Gas Transmission Company (Midwestern) tendered for filing ten copies of Substitute Twenty-seventh Revised Sheet No. 6 of its FERC Gas Tariff, to be effective January 1, 1988. Midwestern states that this filing implements an out of cycle Current Purchased Gas Cost Adjustment in order to reflect in the rates for Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2 the newly negotiated gas supply rates from TransCanada PipeLines Ltd. (TransCanada), the sole supplier to gas to Midwestern's Northern System.

Midwestern states that the Current Purchased Gas Cost Adjustment reflected on Substitute Twenty-seventh Revised Sheet No. 6 consists of Unit Demand Rate Changes of negative $0.54 per Dkt for Rate Schedules CR-2 and CRL-2, negative $0.0444 per Dkt for Rate Schedule SR-2, and negative $0.0178 per Dkt for Rate Schedule I-2 and a Unit Gas Rate Change of $0.5694 per Dkt. Midwestern states further that the unit rate changes are based upon the demand and commodity gas rates under Midwestern's gas contract with TransCanada allocated in accordance with Midwestern's modified fixed variable rate design. Midwestern states that this adjustment is required to avoid substantial underrecoveries of our costs.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30097 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-004]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 24, 1987.

Take notice that on December 18, 1987, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Original Volume No. 1

Original Sheet Nos. 40-50, 67A-67H, 127A and 129-138
First Revised Sheet Nos. 1, 3, 5, 12, 13, 15-39, 57, 58, 60, 62-67, 70-75, 81-89, 92-96, 116-127 and 128
Second Revised Sheet Nos. 2, 11, 14, 59, 61, 68, 69, 76-80, 90 and 91
Third Revised Sheet No. 7
Substitute Fourth Revised Sheet No. 6
Alternate Second Revised Sheet Nos. 11, 14 and 29

WNG states that these tariff sheets, along with supporting schedules as workpapers, are being filed in compliance with the Ordering Paragraphs (B), (C), (D), (E), (F), (G), (H), (I) and (K) of the Commission's Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedures issued February 20, 1987, in this proceeding 38 FERC Para. 61,171 (1987). WNG originally made a compliance filing on March 23, 1987 which was subsequently rejected by a Letter Order from the Director, Office of Pipeline and Producer Regulations, dated April 21, 1987.

This filing complies to the Director's order as well as the February 20, 1987 Commission order. The proposed effective date for these tariff sheets is January 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-30098 Filed 12-31-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3310-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Registration of Fuels and Fuel Additives. (This is a renewal of two existing OMB clearances). (EPA ICR #0309).

Abstract: This program provides an inventory of the composition of automotive fuels and fuel additives. This information is necessary in order to monitor the level of public exposure to the air pollutants from such fuels and additives. Fuel manufacturers are required to register their products and provide quarterly reports on volume produced and annual reports on fuel properties.

Additive manufacturers must register and provide annual volume reports. Quarterly and annual fuel and fuel additive reports have been changed from voluntary to a mandatory requirement.

Respondents: Fuel and fuel additive manufacturers.

Estimated Burden: 10,892 hours.

Frequency of Collection: Quarterly and annually.

Comments on the abstracts on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standard and Regulation (PM-223), Information and Regulatory Systems Division, 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503.

Date: December 16, 1987.

Daniel Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 87-30146 Filed 12-31-87; 8:45 am]

BILLING CODE 6560-50-M

[AAA-FRL-3308-5]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administation Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquires concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office of grants administration that normally serves you.

DATE: This short list is current as of December 18, 1987..

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Branch, Grants Administration Division, at (202) 475-8025.

Dated: December 21, 1987.

Corinne S. Wellish,

Acting Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name & jurisdiction	File No	Status [1]	From	To	Grounds
A. F. Bell Electric Company, Inc. (Youngstown, OH)	85-0014-00	D	06-27-85	06-26-88	§ 32.200(a)
Alle-Catt Asphalt Inc. (Allegany, NY)	86-0072-02	D	07-29-87	07-28-90	§ 32.200(a)(3)
Altman, Larry L. (Charleston, SC)	85-0063-03	S	07-29-85	OPEN	§ 32.300(b)
American Recovery Co., Inc. (Glen Burnie, MD)	86-0011-00	D	08-20-86	08-19-89	§ 32.200(f)(i)
Applied Science Distributors (Pensacola, FL)	87-0013-00	D	02-05-87	04-02-90	§ 32.200(a)(i)
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	D	12-02-83	10-29-88	§ 32.200(b)
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b)
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a)
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052-00	D	03-07-86	08-05-90	§ 32.200(a)
Batzer, Bruce (St. Cloud, MN)	85-0052-01	D	03-07-86	08-05-90	§ 32.200(a)
Batzer, Robert (St. Cloud, MN)	85-0052-02	D	03-07-86	08-05-90	§ 32.200(a)
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-86	07-30-89	§ 32.200(a)(b)
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b)
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b)
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	06-27-85	06-26-88	§ 32.200(a)
Bortugno, Frank (Bronx, NY)	86-0082-30	D	11-09-87	11-08-90	§ 32.200(a)
Bortugno, Ralph (Bronx, NY)	86-0082-29	D	11-13-87	11-12-90	§ 32.200(a)
Bowers, Darralyn (Detroit, MI)	84-0030-01	D	02-24-86	05-11-89	§ 32.200(a)(b)
Bridges, William D., Jr. (Wilmington, NC)	85-0069-01	D	04-09-86	04-08-89	§ 32.200(a)
Bryan, Charles B. (Tempe, AZ)	87-0010-03	D	07-28-87	07-27-90	§ 32.200(a)(c)(i)
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i)
Careccia, Vincent (Farmingdale, NY)	86-0082-26	D	11-09-87	11-08-90	§ 32.200(a)
Carson, Charles (Grosse Point Woods, MI)	85-0066-00	D	03-18-86	04-25-89	§ 32.200(b)
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a)
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1)
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	§ 32.200(a)(1)
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	OPEN	§ 32.200(a)(1)
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	OPEN	§ 32.300(b)
Crolich, Peter V. (Mobile, AL)	87-0017-02	D	06-18-87	06-17-90	§ 32.200(a)(i)
Crossgrove, Richard (Pensacola, FL)	87-0013-01	III	02-05-87	04-02-90	§ 32.200(a)(i)
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	07-29-85	OPEN	§ 32.300(b)
Cummins, Robert (Enid, OK)	88-0005-00	D	12-02-87	06-03-88	§ 32.200.
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b)
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	04-30-85	04-29-88	§ 32.200(a)
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	03-12-85	03-11-88	§ 32.200(a).
DeLuca, Nick (Staten Island, NY)	86-0082-25	D	11-09-87	11-08-90	§ 32.200(a).
Denson, David A. (Wilmington, NC)	86-0043-01	D	01-12-87	01-11-88	§ 32.200(a).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name & jurisdiction	File No.	Status [1]	From	To	Grounds
Diliberto, Joseph L. (Fairless Hills, PA)	86-107-01	D	12-12-87	07-15-88	§ 32.200(a)(1).
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a).
Driscoll, John William (Dundalk, MD)	86-0011-02	D	10-15-86	10-14-89	§ 32.200(f)(i).
Duisen, Darrell A. (San Diego, CA)	86-0105-01	D	10-16-87	10-15-90	§ 32.200(a)(i).
Dykes, Lamar D. (Nederland, TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b).
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Technology of America, Inc. (Wilbraham, MA)	86-0071-00	D	02-05-87	02-04-90	§ 32.200(a).
Federal Chandros, Inc. (Brooklyn, NY)	87-0040-00	S	07-02-87	OPEN	§ 32.300(b).
Fields, Leroy (Pensacola, FL)	87-0013-02	D	02-05-87	04-02-90	§ 32.200(a).
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Foley, Bancroft T. Washington, DC	86-0004-03	S	03-07-86	03-06-89	§ 32.200(a).
Franklin Winng Co. (Youngstown, OH)	85-0044-00	D	09-04-85	09-03-88	§ 32.200(a)(3).
FSA Engineering Consultants (Winsfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Gametronics Corp. (Atlanta, GA)	87-0082-06	D	11-02-87	OPEN	§ 32.200.
Gates and Fox, Ltd. (Tempe, AZ)	87-0010-00	S	07-28-87	OPEN	§ 32.200(a)(c)(i).
Gelb, Michael (Brooklyn, NY)	87-0040-01	S	07-02-87	OPEN	§ 32.300(b).
Gelb, Thomas (Brooklyn, NY)	87-0040-02	S	07-02-87	OPEN	§ 32.300(b).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a).
Goodloe, George M. (Jacksonville, FL)	86-0099-01	D	08-05-87	02-04-89	§ 32.200(a)(3)(i).
Grant, Alan Blane (Atlanta, GA)	87-0082-05	D	11-02-87	OPEN	§ 32.200.
Graves, George William (Wilmington, NC)	85-0069-02	D	03-05-86	03-04-89	§ 32.200(a).
Gredig Industries Inc. (Atlanta, GA)	87-0082-04	D	11-02-87	OPEN	§ 32.200.
Greer, Arthur (Maitland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200.
Gross, William R. (Big Springs, TX)	86-0002-01	D	10-06-86	10-05-89	§ 32.200(a).
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	09-26-85	09-25-88	§ 32.200(a)(3).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3).
Hochreiter, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a).
Hugo Schutz, Inc. (Lakefield, MN)	85-0047-00	D	05-01-86	04-30-89	§ 32.200(a).
Ingber, Brian (S. Fallsburg, NY)	86-0096-01	S	04-24-87	02-23-90	§ 32.200(a).
J.A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	08-29-86	08-28-89	§ 32.200(a)(3).
James Electric Co., Inc. (Huntington, WV)	87-0046-00	D	12-12-87	12-11-90	§ 32.200(a)(3).
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a).
Jerpbak, Daniel R. (Owatonna, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(i).
Jethani, Nandlal (Williston Park, NY)	86-0082-27	D	11-09-87	11-08-90	§ 32.200(a).
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(f)
Jordan, William F. (Tempe, AZ)	87-0010-02	D	07-28-87	07-27-90	§ 32.200(a)(c)(i).
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	09-26-85	09-25-88	§ 32.200(a)(3).
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3).
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.200(a).
Kruse, William B. (Tempe, AZ)	87-0010-01	S	07-28-87	OPEN	§ 32.300(b).
L&J Waste Service, Inc. (Hialeah, FL)	85-0079-02	D	12-19-86	12-18-89	§ 32.200(a)(i).
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	07-29-85	OPEN	§ 32.300(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	07-29-85	OPEN	§ 32.300(b).
Lee, Herbert P., III. (Sumter, SC)	84-0013-01	VE	02-14-85	12-31-87	§ 32.200(a).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a).
Levendecker Highway Contractors, Inc. (Laredo, TX)	86-0014-00	D	07-17-86	03-25-88	§ 32.200(a).
Lizza Industries, Inc. (Roslyn, NY)	85-0008-00	D	09-11-86	09-10-89	§ 32.200(a)(b).
Lofgren, Sven (Lincoln, NE)	87-0014-01	S	11-12-86	OPEN	§ 32.200(i).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a).
Meyer-Rohlin, Inc. (Buffalo, MN)	86-0081-00	S	04-01-87	OPEN	§ 32.200(a)(i).
Meyer, Thore P. (Buffalo, MN)	86-0081-01	S	04-01-87	OPEN	§ 32.200(a)(1).
Midhampton Asphalt	85-0008-03	D	09-11-86	09-10-89	§ 32.200(a)(b).
Millspaugh, Michael J. (Mobile, AL)	86-0107-02	D	06-18-87	06-17-90	§ 32.200(a).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a).
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	08-19-86	08-18-89	§ 32.200.
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	01-11-85	01-10-88	§ 32.200(a).
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3).
Morales, Rene (Bronx, NY)	86-0082-32	D	11-09-87	11-08-90	§ 32.200(a).
Neal, George D. (Hamden, CT)	86-0040-01	VE	01-09-87	01-08-88	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(e)(i).
O'Mara, Lawrence (Chicksville, NY)	86-0082-24	D	11-09-87	11-08-90	§ 32.200(a).
Owens, Jerry B. (Southfield, MI)	85-0085-00	D	02-24-86	03-26-89	§ 32.200(b).
Parkhill-Goodloe Co., Inc. (Jacksonville, FL)	86-0099-00	VE	04-16-87	10-15-88	§ 32.200(a).
Payne, James (Enid OK)	88-0005-01	D	12-02-87	10-14-88	§ 32.200.
Piccinonna, Julio (Hollywood, FL)	85-0079-01	D	05-11-87	05-10-90	§ 32.200(e).
Pinney, J.A. Bruce (Bala Cynwyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(f).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name & jurisdiction	File No.	Status [1]	From	To	Grounds
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	08-07-89	§ 32.200(c)(i)
Pirnos, Wayne (Woodbridge, NY)	86-0096-03	D	04-24-87	04-23-90	§ 32.200(a).
Polymer Chemicals, Inc. (Atlanta, GA)	87-0082-00	D	11-02-87	OPEN	§ 32.200.
Polymer Group, Ltd. (Atlanta, GA)	87-0082-03	D	11-02-87	OPEN	§ 32.200.
Polymer Industries, Inc. (Atlanta, GA)	87-0082-02	D	11-02-87	OPEN	§ 32.200.
Resource Conservation & Recovery of America, Inc. (Orlando, FL)	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(i).
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	S	07-29-85	OPEN	§ 32.300(b).
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a).
Rol-Away Systems, Inc. (Hollywood, FL)	85-0079-00	D	12-19-86	12-18-89	§ 32.200(a)(i)
Rupp Construction Company, Inc. (Slayton, MN)	85-0048-00	D	07-17-86	07-16-89	§ 32.200(a).
Rupp, Douglas (Slayton, MN)	85-0048-01	D	07-17-86	07-16-89	§ 32.200(a).
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, George (Tacoma, WA)	86-0078-03	D	07-02-86	08-07-89	§ 32.200(c)(i).
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Sauseda, Roy (Bunkie, LA)	85-0063-02	D	07-29-85	10-13-89	§ 32.200(a)(i).
Schillizzi, Jack (Bronx, NY)	86-0082-32	D	11-09-87	11-08-90	§ 32.200(a).
Schorr, Paul C. (III) (Lincoln, NE)	87-0014-00	S	11-12-86	OPEN	§ 32.200(i).
Service Scaffold, Inc. (S. Fallsburg, NY)	86-0096-00	D	04-24-87	04-23-90	§ 32.200(a)
Seymour Sealing Service, Inc. (Hamden, CT)	86-0040-00	VE	01-09-87	01-08-88	§ 32.200(a)
Sheldon, Cynthia A. (Atlanta, GA)	87-0082-08	D	11-02-87	OPEN	§ 32.200.
Smith, Norman F. (Wilbraham, FL)	86-0071-01	D	02-05-87	02-04-90	§ 32.200(a).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	08-26-85	08-26-88	§ 32.200(a).
Tow Brothers Const., Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	12-10-85	12-09-88	§ 32.200(a)
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	OPEN	§ 32.300(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	OPEN	§ 32.300(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	OPEN	§ 32.300(b).
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	07-29-85	OPEN	§ 32.300(b).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b).
Valentine, Joseph (Ypsilanti, MI)	86-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b).
Watson Electrical Construction Co. (Wilson, NC)	86-0109-00	D	12-19-86	12-18-89	§ 32.200(i).
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-86	07-15-89	§ 32.200(i).
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b)
X Chem, Inc. (Atlanta, GA)	87-0082-01	D	11-02-87	OPEN	§ 32.200.
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01	D	08-20-86	08-19-89	§ 32.200(f)(i).

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 87-30147 Filed 12-31-87; 8:45 am]
BILLING CODE 6560-50-M

[FRL 3307-6]

Availability of Report to Congress on Crude Oil, Natural Gas, and Geothermal Energy, Exploration, Development and Production Waste; Announcement of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of report to Congress and announcement of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) recently submitted to the Congress its report entitled "Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy." The report was compiled in response to Section 8002(m) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(m). In the report, EPA provides information on: (1) The scope of the exemption for oil and gas and geothermal energy waste, (2) sources and volumes of waste, (3) current waste management practices, (4) cases of documented damage, (5) assessment of risk to human health and the environment, (6) potential costs of alternative waste management practices, (7) economic impact on industry of these alternative waste management practices, and (8) existing State and Federal regulatory programs. The report includes conclusions and recommendations. The purpose of this notice is to solicit public comment on the accuracy of the information and findings and the appropriateness of the recommendations. Public comment is especially invited on: 1. the scope of the exemption and 2. whether produced water injected for enhanced oil recovery is a waste.

DATES: Public comments on this report must be received on or before March 15, 1988. EPA will conduct five public hearings on this report: February 23, 1988 in Washington, DC; February 25, 1988 in Denver, Colorado; March 1, 1988 in San Francisco, California; March 3, 1988 in Anchorage, Alaska; and March 8, 1988 in Dallas, Texas. Registration for all hearings will start at 8:00 a.m. The hearings will begin at 9:00 a.m. and will end at approximately 5:00 p.m.

ADDRESSES: The locations of the public hearings are:

Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC 20005
Holiday Inn Denver Downtown, 1450 Glenarm Place, Denver, CO 80202
Ramada Renaissance, 55 Cyril Magnin St., San Francisco, CA 94102
Hotel Captain Cook, 5th and K Streets, Anchorage, AK 98501
Grand Kempinski, 15201 Dallas Parkway, Dallas, TX 75248.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline (800) 424–9346 or (202) 382–3000. For technical information, contact Mr. Bob Hall at (202) 475–8814.

SUPPLEMENTARY INFORMATION: A block of hotel rooms for public hearing attendants will be set aside up to two weeks prior to the hearings. Attendants should make their hotel reservations in advance.

Requests for additional details on the hearings or to preregister to present testimony at a hearing should be addressed in writing to Mr. William Richardson, Public Participation Officer, Office of Solid Waste, WH–565, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Preregistration is not required to speak at a hearing, but it is strongly recommended.

The public must send an original and two copies of their comments on the report to: Docket Clerk, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F–88–OGRA–FFFFF on your comments.

Copies of the full report to Congress will be available for purchase through the National Technical Information Service (NTIS). Information on how to purchase this report is available from: U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA. 22161; (703) 487–4650. Please use the full title of the document when ordering. Limited copies of the executive summary can be obtained free by contacting Mr. Dan Chadwick at (202) 382–4825. The report to Congress is available for viewing at all EPA Regional libraries and in the EPA RCRA Docket. Also, major supporting documents cited in the oil, gas and geothermal report to Congress are available for public review beginning February 1, 1988 in the RCRA Docket (sub-basement), Office of Solid Waste, WH–565–E, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, from 9:00 to 4:00, Monday through Friday, except Federal holidays, by appointment only. Appointments can be made by calling (202) 475–9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 87–29733 Filed 12–31–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; A.J.T. Broadcasting Services Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city and State	File No.	MM Docket No.
A. A.J.T. Broadcasting Services Limited Partnership LaGrande, OR	BPH-850712OK	87-557
B. Blue Mountain Broadcasting Co. LaGrande, OR	BPH-850712OL	
C. Carol M. Hodgins, LaGrande, OR	BPH-850712RJ	
D. Non-Profit Concepts, Inc., LaGrande, OR	BPH-850712QH (DISMISSED)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicants

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–30080 Filed 12–31–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Cedar Rapids Broadcasting,et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city, and State	File No.	MM Docket No.
A. Denny Workman d/b/a Cedar Rapids Broadcasting, Cedar Rapids, IA	BPCT-870331PW	87-495
B. Family Broadcasting Company, Inc., Cedar Rapids, IA	BPCT-870331OH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Air Hazard, A, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contract, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–30081 Filed 12–31–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Corydon, Broadcasters, Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for the new FM station:

Applicant city and State	File No.	MM Docket No.
A. Corydon Broadcasters Limited, Corydon, IN	BPH-860221MN	87-556
B. Harrison County Broadcasting Co. Corydon, IN	BPH-860227MT	
C. Pruett and Owen, Corydon, IN	BPH-860218MQ (DISMISSED)	
D. Lopaz Radio, Inc., Corydon, IN	BPH-860221MO (DISMISSED)	
E. Corydon Broadcasting Limited Partnership, Corydon, IN	BPH-860221MP (DISMISSED)	
F. Jesse L. Carter and Sheridan Broadcasting Corp. d/b/a Corydon Commissioners Limited Partnership, Corydon, IN	BPH-860221MQ (DISMISSED)	
G. Angel I. Date d/b/a Minority Communications, Corydon, IN	BPH-860221MV (DISMISSED)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–30082 Filed 12–31–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Eastern Broadcasting, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Eastern Broadcasting, Harlan, KY	BPH-860317MR	87-558
B. Charles W. Berger, Harlan, KY	BPH-860317MS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–30083 Filed 12–31–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; John Jones Jr., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant City and State	File No.	MM Docket No.
A. John Jones, Jr., Minden, LA	BPCT-871105KE	87-560
B. Carl W. Fisher, Minden, LA	BPCT-870121HL	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Air Hazard, A
Minimum Separations, A
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–30089 Filed 12–31–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011161.

Title: Space Charter Agreement Between Sea-Land Service, Inc. and United Arab Shipping Company (SAG).

Parties:

Sea-Land Service, Inc.

United Arab Shipping Company (SAG)

Synopsis: The proposed space charter arrangement would permit Sea-Land guaranteed use of 125 TEU spaces per vessel sailing in each direction aboard the vessels of United Arab Shipping Company for Sea-Land's cargoes moving between the United States and the Middle East, India and Pakistan directly or via Mediterranean ports.

Agreement No.: 203–011162.
Title: PANAM Discussion Agreement.
Parties:
Lykes Lines
Ecuadorian Line, Inc.
Transnave, Inc.
United States Atlantic & Gulf/Central America Freight Association

Synopsis: To permit the parties to meet, exchange information and concertedly establish rates, rules and charges. Adherence to any such rates, rules and charges is voluntary. A common tariff is not authorized.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: December 29, 1987.

[FR Doc. 87–30105 Filed 12–31–87; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200078.
Title: Maryland Port Administration Lease Agreement.
Parties:
Maryland Port Administration (MPA)
Clark Maryland Terminals, Inc. (CMTI)

Synopsis: The proposed agreement (1) authorizes the lease of certain premises at the Dundalk Marine Terminal in Baltimore by CMTI for a period of three years and (2) provides that MPA will furnish terminal facilities and services to CMTI pursuant to its Terminal Services Tariff No. 10.

Agreement No.: 224–003695–003.
Title: Port Everglades Authority Terminal Agreement.
Parties:
Port Everglades Authority
Sea-Land Service, Inc.

Synopsis: The proposed agreement amends the wharfage charges, tonnage levels, crane rental rates, rental discount percentages and discount hours for the period January 1, 1988, through December 31, 1988. The agreement provides that for the period from January 1, 1989, through the remaining term of the basic agreement, revised wharfage rates, tonnage levels, crane rental rates, rental discount percentages and discount hours shall be for successive terms as agreed upon between the parties and which shall be filed with the Commission as agreement amendments.

By Order of the Federal Maritime Commission.
Date: December 29, 1987.

Joseph C. Polking,
Secretary.

[FR Doc. 87–30106 Filed 12–31–87; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Commission on Nursing; Establishment

Pursuant to Pub. L. 92–463, the Federal Advisory Committee Act, the Office of the Secretary, Department of Health and Human Services announces the establishment by the Secretary of the Secretary's Commission on Nursing.

The Commission shall advise the Secretary and develop recommendations as to how private and public sectors can work together to address problems and implement immediate and long-range solutions regarding the supply of active registered nurses. The Commission shall also give consideration to the recruitment and rentention of nurses in the Public Health Service, the Veterans Administration, and the Department of Defense. The Commission shall also evaluate and synthesize findings relevant to the development of a multi-year action plan implementing a private/public commitment for resolution of the issues.

The Commission shall terminate on December 31, 1988.

Dated: December 29, 1987.

Richard M. Loughery,
Director, Secretary's Advisory Committee Office.

[FR Doc. 87–30167 Filed 12–31–87; 8:45 am]
BILLING CODE 4150–04–M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Tennessee State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 3, 1988 in Atlanta, Georgia to reconsider our decision to disapprove Tennessee State Plan Amendment 87–2.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State Plan Amendment 87–2.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(4). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Tennessee's request to incorporate a reference to 42 CFR 433.45 and indicate that the State interprets local participation in medical assistance and administration to mean donated funds under the administrative control of the Single State Agency, is consistent with section 1902 of the Social Security Act. The amendment would allow the State to receive donated funds almost exclusively from public hospitals. These donated funds would provide a part of the State's share of funds which would be matched by Federal Medicaid funds. HCFA believes that plan amendments which implement provisions of section 1902 of the Social Security Act may be included in a State's plan. Tennessee State Plan Amendment 87–2 does not implement a State plan provision of section 1902 of the Act. Therefore, HCFA has determined Tennessee 87–2 is not appropriate for inclusion in the States plan because it is not a section 1902 plan amendment.

The notice to Tennessee announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. James E. Word,
Commissioner, Tennessee Department of Health and Environment, 344 Cordell Hull Building, Nashville, Tennessee 37219.

Dear Mr. Word: This is to advise you that your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment 87–2 was received on December 2, 1987.

Tennessee State plan amendment 87–2 incorporates a reference to 42 CFR 433.45 and indicates that the State interprets local participation in medical assistance and administration to mean donated funds under the administrative control of the Single State Agency. The amendment would allow the State to receive donated funds almost exclusively from public hospitals. These donated funds would provide a part of the State's share of funds which would be matched by Federal Medicaid funds. The issue to be considered at the hearing is whether Tennessee's proposed plan implements a provision of Section 1902 of the Social Security Act and, if not, whether it is nevertheless appropriate to include it in the State plan.

I am scheduling a hearing on your request to be held on February 3, 1988 at 10:00 a.m. in Room 1904 B, 101 Marietta Tower, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 22, 1987.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 87–30173 Filed 12–31–87; 8:45 am]
BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–08–4121–02]

Craig, Colorado Advisory Council Meeting

Time and Date: February 17, 1988, at 10:00 a.m.
Place: Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado.
Matters To Be Considered:
1. Status of Little Snake Resource Management Plan Protests
2. High Desert 300 Race Monitoring Results
3. 1988 Motorcross EA
4. Potential Land Exchange in Piceance Basin
5. Status of Oilshale Tract Ca. Cb. and Wolf Ridge Corporation's Nahcolite EIS
6. Election of Officers

Contact Person For More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: December 10, 1987.

Mary Pressley,
Acting Associate District Manager.

[FR Doc. 87–30179 Filed 12–31–87; 8:45 am]
BILLING CODE 4310–JB–M

[Alaska AA–48664–AA]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48664–AA has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 10 W.,
Sec. 24, SW¼NW¼, N½NW¼.
(120 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48664–AA as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1987, subject to the terms and conditions cited above.

Kay F. Kletka,
Chief, Branch of Mineral Adjudication.

[FR Doc. 87–30103 Filed 12–31–87; 8:45 am]
BILLING CODE 4310–JA–M

[Alaska AA–48634–BL]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48634–BL has been received covering the following lands:

Copper River Meridian, Alaska

T. 12 N., R. 4 W.,
Sec. 8, SW¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48634–BL as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1987, subject to the terms and conditions cited above.

Dated: December 21, 1987.

Kay F. Kletka,
Chief, Branch of Mineral Adjudication.

[FR Doc. 87–30104 Filed 12–31–87; 8:45 am]
BILLING CODE 4310–JA–M

[NM-010-4212-20-RGRP]

Realty Action; Disposal of Public Lands of Cedar Crest Disposal Block; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Cedar Crest Disposal Block.

SUMMARY: The following public lands have been examined and found suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53 U.S.C. 178), the Recreation and Public Purposes Act (45 U.S.C. 869 et. seq.), and under the sales authority contained in section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976). The lands will not be offered for sale until 60 days after the date of this notice.

New Mexico Principal Meridian

T. 11N., R. 6E.
Secs. 11 & 14 (portions thereof);
Sec. 19, Lots 29, 30, 31, 32, 33;
Sec. 20, Lot 13.
Sec. 34, Lots 1, 2, 3.
T. 11N., R. 5E.
Secs. 34 & 35 (portions thereof).
T. 10N., R. 5E.
Sec. 11, Lot 17.

Comprising approximately 75.00 acres.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority.

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualifies under the Color-of-Tile Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who have occupied the parcels before June 11, 1979 (the date land use plans were approved for the area) but who do not qualify under one of the Color-of-Title Acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the Recreation and Public Purposes Act.

4. *Competitive Sale.* All remaining tracts will be sold competitively if they are not needed for public purposes and if they were not occupied as of June 11, 1979 (the date land use plans were approved for the area).

A location map and information pertaining to this disposal block is available for review at the Rio Puerco Resource Area Office, 435 Montano Rd., NE., Albuquerque, New Mexico 87107, or telephone 505-761-4504. For a period of 45 days from the date of this Notice, interested parties may submit written comments to the Rio Puerco Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

For further information contact Rick Hanks, Area Manager at (505) 761-4504 or FTS 474-4504.

Michael F. Raitz,

Associate District Manager.

[FR Doc. 87-30141 Filed 12-31-87; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31182]

Exemption; Aberdeen and Rockfish Railroad Co., Continuance in Control Exemption; Dunn-Erwin Railway Corp.

Aberdeen and Rockfish Railroad Company (Aberdeen and Rockfish), a rail common carrier, has filed a notice of exemption under 49 CFR 1180.4(g) to continue in control of Dunn-Erwin Railroad Corporation (D-E) after D-E becomes a nonconnecting railroad under the provisions of 49 CFR 1180.2(d). D-E, a wholly owned non-carrier subsidiary of Abderdeen and Rockfish, had filed concurrently a notice of exemption in Finance Docket No. 31181, *Dunn-Erwin Railway Corporation—Acquisition and Operation Exemption—CSX Transportation, Inc.*, where it seeks (1) to acquire through purchase for CSX Transportation, Inc. (CSX) and operate 5.488 miles of rail line between Erwin and Dunn, in Harnett County, NC; and (2) to acquire through lease and operate 3.093 feet of rail line and spur track in Dunn, including two spur tracks.

Aberdeen and Rockfish has priorities in North Carolina and controls Pee Dee River Railway Coporation, which has properties in South Carolina. Aberdeen and Rockfish indicates that: (1) Its line will not connect with D-E's line; (2) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their coporate family; and (3) the acquisition does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 11, 1987.
By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 30011 Filed 12-31-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31181]

Exemption; Dunn-Erwin Railway Corp., Acquisition and Operation Exemption, CSX Transportation, Inc.

Dunn-Erwin Railway Corporation (D-E), a wholly owned noncarrier subsidiary of Aberdeen and Rockfish Railroad Company (Aberdeen and Rockfish), has filed a notice of exemption: (1) To acquire through purchase from CSX Transportation, Inc. (CSX) and operate 5.488 miles of rail line in Harnett County, NC, from (a) Milepost SDS 53.00, near Erwin, NC, to Milepost SDS 56.66, at Dunn, NC, and (b) Milepost SDE 0.00, near Erwin, and Milepost SDE 2.02, at Erwin;[1] and (2) to acquire through lease from CSC and operate 3.093 feet of track in Dunn, consisting of 1,700 feet of track between Mileposts SDS 56.66 and 57.01, and two adjoining spur tracks, D&S Tracks No. 3 and 11, 800 and 793 feet long, respectively. Consummation is scheduled on December 14, 1987.

Aberdeen & Rockfish, a rail common carrier, concurrently has filed a notice of exemption in Finance Docket No. 31182, *Aberdeen and Rockfish Railroad Company—Continuance in Control Exemption—Dunn-Erwin Railway Corporation*, to continue in control of D-E upon its becoming a rail carrier. Any comments must be filed with the Commission and served on William C. Evans, Suite 1000, 1660 L St., NW., Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ad initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 11, 1987.
By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-30013 Filed 12-31-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31178]

Exemption; Florida West Coast Railroad, Inc., Acquisition and Operation Exemption; Certain Rail Lines of CSX Transportation, Inc.

Florida West Coast Railroad, Inc. (FWC) has filed a notice of exemption to acquire and operate approximately 44.7 miles of railroad of CSX Transportation, Inc. (CSX) located in Florida. The lines consist of: (1) 21.3 miles of railroad extending from milepost ASG 720.6 at Newberry, FL, to milepost ASG 741.9 at Wilcox, FL, and (2) 23.4 miles of railroad extending from milepost AND 793.0 at Shamrock, FL, to milepost AND 816.4 at Ipco, FL. The agreement for the transfer of the lines between FWC and CSX was to be consummated on December 11, 1987. Any comments must be filed with the Commission and served on Mary Todd Foldes, Esq., Gerst, Heffner, & Foldes, Suite 1107, 1700 K St., NW., Washington, DC 20006, and David W. Hemphill, CSX Transportaiton, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ad initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 10, 1987.
By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-30012 Filed 12-31-87; 8:45 am]

BILLING CODE 7035-01-M

[1] According to milepost measurements, D-E would be acquiring through purchase 5.68 miles of track. However, CSX indicates that the mileposts are not accurately placed, resulting in D-E's actual acquisition of 5.488 miles.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting and response to comments.

SUMMARY: This notice provides the date, time and place for the first meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines, and it responds to comments made by interested parties.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act), a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 9:30 a.m. and 5:00 p.m. on January 19, 20 and 21, 1988 at 1000 N. Glebe Road, Arlington, Virginia.

This nine member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

Comments were received from several interested parties regarding the formation of the Advisory Committee. One commenter supported the committee's objectives, and another commenter felt that the committee's scope would be unduly limited by not addressing the appropriateness of use of diesel equipment in underground coal mines.

The Advisory Committee's Charter reflects a broad mandate to assess the safety and health aspects of diesel equipment. The committee will be unhampered in discussing a wide variety of issues which relate to necessary protections for assuring a safe and healthful mining environment.

The purpose of the meeting is to organize an agenda for the committee to follow during its six-month tenure. It is expected that the committee will focus on work practices using diesel equipment, approval criteria, and other factors relating to safety and health aspects of diesel equipment use in underground coal mines. The public is invited to attend.

Official records of the meeting will be available for public inspection at the above address.

Signed at Arlington, Virginia, this 29th day of December, 1987.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-30170 Filed 12-31-87; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65 issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

On June 2, 1987, the NRC staff issued Amendment No. 117 to Facility Operating License No. DPR-65 which permitted storage of consolidated spent fuel at Millstone Unit No. 2 in partial response to the licensee's application dated May 21, 1986. Amendment No. 117 expanded the number of storage locations from 1128 to 1346 by permitting the storage of consolidated spent fuel boxes in locations required to be blocked with cell blocking devices when surrounding locations are used for the storage of unconsolidated assemblies. Amendment No. 117 allowed the storage of 1865 assemblies in 1346 locations, taking into account the mix of locations needed for intact fuel assemblies and locations used for storage of consolidated fuel boxes (each equivalent to 2 intact fuel assemblies).

However, Amendment No. 117 contained a footnote that limited the storage of consolidated spent fuel storage boxes to five (5).

The NRC staff is now considering a change to the Technical Specifications to remove the footnote to TS 3.2.20, "Spent Fuel Pool." The change would remove the limitation restricting the

storage of consolidated spent fuel boxes to five (5).

In response to the NRC staff's questions on the licensee's amendment request dated May 21, 1986, the licensee provided answers in a letter of April 30, 1987. Attached to the letter was a document entitled "Fuel Consolidation Demonstration Program." The licensee, with the NRC staff's knowledge, undertook the consolidation of ten (10) assemblies pursuant to the provisions of 10 CFR 50.59. The staff will review the consolidation process in connection with authorizing the use of the expanded capacity of the spent fuel pool that results from the use of the consolidation process.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 3, 1988, the licensee may file a request for a hearing with respect to the issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2 Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985)). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continue to govern the filing of request for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure of file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a requests for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 324–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1986, as supplemented by the letter of April 30, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06103.

Dated at Bethesda, Maryland, this 28th day of December, 1987.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 87-30180 Filed 12-31-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30–33435; ASLBP No. 88–556–01–SC]

Finlay Testing Laboratories, Inc.; Prehearing Conference

Atomic Safety and Licensing Board Panel
Before Administrative Judge: Dr. Robert M. Lazo
December 23, 1987.

The Presiding Officer in the above-identified proceeding will conduct a prehearing conference at the following location at 1:00 p.m. (local time) on Wednesday, January 13, 1988:
Courtroom 10, First Circuit Court Building, 777 Punchbowl Street, Honolulu, Hawaii 96813.

Counsel for the Licensee, Finlay Testing Laboratories, Inc., and the NRC Staff are directed to appear.

The purpose of the prehearing conference is to:

(1) Hear oral argument on the "NRC Staff Motion For Stay of Proceeding" filed on December 17, 1987;

(2) Permit identification of the key issues in the proceeding;

(3) Take any steps necessary for further identification of the issues and the need for discovery; and

(4) Establish a schedule for further actions in the proceeding.

The prehearing conference is open to the public.

Dated at Bethesda, Maryland this 23rd day of December, 1987.

It is so ordered.

Presiding Officer,

Robert M. Lazo,

Administrative Judge.

[FR Doc. 87–30180 Filed 12–31–87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16104; 812–7089]

G.T. Global Growth Series, et al.; Application

December 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: G.T. Global Growth Series ("Growth Series") and Advisors Cash Reserves, Inc. ("Cash Reserves") (collectively, the "Funds"), and Advisors Asset Management Group ("Advisors"), G.T. Capital Management, Inc. ("G.T. Capital") and G.T. Global Financial Services, Inc. ("Distributor").

Relevant 1940 Act Section: Approval of exchange offer requested under section 11(a).

Summary of Application: Applicants seek an order permitting the exchange of shares of any series of one Fund for that of any other series of such Fund or for shares of any series of the other Fund in the manner described herein, and the imposition of a $7.50 service fee to shareholders effecting more than four exchanges between Funds or between series of a Fund during a 12-month period. Applicants further request that the order be applicable equally to the Funds and to any other investment companies established in the future for which Advisors or G.T. Capital (or any of their subsidiaries or affiliates) acts as investment manager or for which the Distributor (or any of its subsidiaries or affiliates) acts as principal underwriter.

Filing Date: The application was filed on October 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 601 Montgomery Street, San Francisco, California 94711.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analysis (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Fund is registered under the 1940 Act as an open-end, management investment company. Cash Reserves currently has a single series of shares outstanding and the Growth Series currently has six series of shares outstanding. Cash Reserves has entered into an investment management agreement with Advisors, a Maryland limited partnership, one of the two general partners of which is G.T. Capital, for investment advice and management services. Applicants represent that this arrangement is expected to be modified in the near future and that G.T. Capital will directly assume the role of investment adviser to Cash Reserves. The Growth Series has entered into an investment management contract directly with G.T. Capital. The Growth Series has also entered into a distribution agreement with the Distributor for the Distributor to act as principal underwriter for such Fund.

2. Cash Reserves maintains a continuous public offering of its shares at net asset value, without a sales charge. The Distributor, as principal underwriter for the Growth Series, maintains a continuous public offering of the Growth Series shares at a public offering price that includes a maximum sales charge of 4.5%. Applicants propose to permit shares of any series of the Growth Series to be exchanged for shares of any the other series or for Cash Reserves shares on the basis of the relative net asset value per share at the time of the exchange, without any additional sales charge being levied. Applicants also propose to permit Cash Reserves shares to be redeemed, and the proceeds applied to purchase shares of any series of the Growth Series on the basis of the relative net asset value per share at the time of the exchange plus the applicable sales charge. The applicable sales charge will be determined by reference to the amount of proceeds that are reinvested. Also, a shareholder who acquired Cash Reserves shares by exchange from the Growth Series will be given credit for

any sales charge previously paid. In any such re-exchange, those shares that can be exchanged at net asset value without a sales charge will be exchanged first.

3. In addition to the sales charge, shareholders effecting more than four exchanges between Funds or between series of a Fund during a 12-month period may be required to bear the transfer agent's administrative charge for processing each additional transaction, currently $7.50.

4. Applicants further request that the order be aplicable equally to the Funds and to any other investment companies established in the future for which Advisors or G.T. Capital (or any of their subsidiaries or affiliates) acts as principal underwriter.

Applicant's Legal Conclusions

1. Applicants submit that the proposed service charge is fair and will not harm shareholders or discriminate among shareholders of any Fund. The issuance of the order is necessary and appropriate in the public interest and for the protection of investors. Further, the Applicants undertake that the Funds will comply in all respects with the disclosure and other requirements of proposed Rule 11a–3 (or any similar rule) when and if such Rule is adopted.

2. The purpose of the proposed exchange offers is to permit a shareholder of any Fund who changes his investment objective to transfer his investment to a different Fund or a different series of the same Fund. Applicants submit that shareholders of Cash Reserve cannot fairly be permitted to reinvest redemption proceeds in shares of the Growth Series at the net value of the series of the Growth Series to be acquired. Such shareholders would have paid no sales load on their investment, in contrast to original purchasers of shares of Growth Series. Applicants also contend that an exchange of Cash Reserve shares for Growth Series shares at net asset value would disrupt the distribution of Growth Series shares since an investor thereby would be able to acquire shares of the Growth Series with no sales charge merely by purchasing shares of Cash Reserve, immediately redeeming them and reinvesting the proceeds in shares of the Growth Series.

3. Applicants contend that the nominal service charge (currently $7.50 per exchange) that may be imposed on an investor who has made four or more exchanges in a 12-month period by the entity from which the investor is exchanging shares is fair and will not harm shareholders or discriminate among shareholders of any Fund. Applicants contend that the service charge is merely an administrative fee to compensate the transfer agents of the Funds for the costs of exchange between the Funds.

Applicants' Condition

If the requested order is granted, Applicants agree to comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–30114 Filed 12–31–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Receipt of Noise Compatibility Program Request for Review; Palm Springs Municipal Airport, Palm Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces formal receipt of the proposed Palm Springs Municipal Airport noise compatibility program under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. The proposed noise compatibility program was submitted by the city of Palm Springs California to the Director, Western-Pacific Region, on August 18, 1987, for review and approval under Part 150 in conjunction with noise exposure maps which were found acceptable by the FAA on August 24, 1984. The noise compatibility program will be approved or disapproved by the Administrator on or before May 29, 1988.

EFFECTIVE DATE: The effective date of the start of the formal 180-day review period for the Palm Springs Municipal Airport noise compatibility program is November 30, 1987. The public comment period ends January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP–611.3, Federal Aviation Administration, Western-Pacific Region, Box 92007, Worldway Postal Center, Los Angeles, California 90009, (213) 297–1621.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before May 29, 1988. This notice announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR Part 150 (hereinafter referred to as "Part 150"), promulgated pursuant to Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and of the prevention of the introduction of additional noncompatible uses.

City of Palm Springs submitted to the FAA on August 18, 1987, a proposed noise compatibility program conducted at Palm Springs Municipal Airport. It was requested that the FAA review this material and that the noise mitigation measures to be implemented jointly by the airport and surrounding communities, be approved as noise compatibility program under section 104(b) of the Act.

Upon the August 24, 1987, acceptance of the Palm Springs Municipal Airport noise exposure maps and completion of the preliminary review of the submitted material for a noise compatibility program, the FAA has formally received the noise compatibility program for Palm Springs Municipal Airport. Preliminary review indicates that the submittal conforms to the requirements of Part 150 for noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 29, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed noise compatibility program

are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Western-Pacific Region, Federal Aviation Administration, Airports Division, AWP–600, Box 92007, Worldway Postal Center, Los Angeles, California 90009

Mr. Allen F. Smoot, Director of Transportation & Energy, City of Palm Springs, P.O. Box 1786, Palm Springs, California 92263–1786.

Questions may be directed to the individual names above under the heading, "FOR FURTHER INFORMATION CONTACT".

Issued in Hawthorne, California, on November 30, 1987.

Herman C. Bliss,

Manager, Airports Division.

[FR Doc. 87–30128 Filed 12–31–87; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 159—(56th Meeting) Minimum Aviation System Performance Standards for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for Global Positioning System to be held on January 21–22, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of minutes of the seventh meeting of August 31–September 1–2, 1987; (3) Review of DOD/FAA activity on GPS selective availability; (4) Discussion of DOD/ASD letter concerning 24 satellites; (5) Discussion of Magnapulse, Inc. letter regarding GPS; (6) Report of GPS Integrity Channel working group; (7) Review of EUROCAE WG–28 activities; (8) Review of draft documents submitted for inclusion in the committee report; (9) Assignment of tasks; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87–30133 Filed 12–31–87; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–87–34]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 25, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 28, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25439	Helicopter Association International	14 CFR 21.197, 43.11, 91.27(a), and 91.29	To allow petitioner's members engaged in Part 135 operation of single-engine helicopters to conduct those operations with inoperative equipment and/or systems.
25446	Columbia Helicopters, Inc.	14 CFR 91.165(a)	To allow petitioner to operate Boeing, helicopter models 234LR, S-N M7-60F, R234CH, under the operating rules of Parts 91 and 133 to fight forest fires, and for heavy lift operations, instead of the operating rules of Part 135.
11012	Goodyear Tire	14 CFR 91.121(a)	To permit petitioner to conduct airship operations: (1) over congested areas at altitudes as low as 700 feet above obstacles, (2) in instrument meteorological conditions in controlled airspace under VFR (without having to obtain an ATC IFR clearance); (3) in instrument meteorological conditions below 1,200 feet above the surface in uncongested airspace under VFR (without having to comply with the IFR cruising altitude requirements of Part 91.121(b)), and (4), under special VFR when the visibility is less than one mile.
25449	Channel Flying, Inc.	14 CFR 43.3(g)	To allow pilots of petitioner to remove seats in petitioner's single-engine aircraft so that medevacs can be conducted from remote locations as well as providing delivery of mail, groceries, and freight.
25482	Acme School of Aeronautics	14 CFR 141.65	To allow petitioner to exercise examining authority for flight instructor and airline transport pilot written tests.
18114	Flying Tiger Line, Inc.	14 CFR 121.547 and 121.583	To allow petitioner to carry a reporter, photographer, or journalist aboard its B–747 and DC–8 aircraft without complying with the passenger-carrying provisions of 14 CFR Part 121. *Grant, December 7, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No	Petitioner	Regulations affected	Description of relief sought
25450	Air Specialties Corporation d/b/a Air America	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize Hong Kong Aircraft Engineering Company (HAECO) for the performance of certain FAA-required alterations on three Rolls-Royce RB211-22B engines that are utilized on the Lockheed L-1011 aircraft and listed in the petitioner's operation specifications. *Grant, December 8, 1987*
25492 and 25495	Air Specialties Corporation d/b/a Air America, and Tempelhof Airways USA, Inc.	14 CFR 25.853(c) and 121.312(b)	To allow petitioners to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. *Grant, December 10, 1987*

[FR Doc. 87-30131 Filed 12-31-87; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-87-33]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 25, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 28, 1987.

Denise D. Hall,
Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
20549	Boeing Commercial Airplane Co.	14 CFR portions of Parts 21 and 25	To amend Exemption No. 3035 to remove the reference to specific air carriers, thereby permitting operation of certain Boeing 747 airplanes by any foreign air carrier with the flap position indicator in the lower left-hand corner of the pilot's center instrument panel and with the servo altimeter configured with dial markings at 50-foot increments rather than at 20 feet.
25489	University of Alaska	14 CFR 141.91(a), 141.93(a), and 141.93(b)	To allow petitioner to conduct conduct instruction at satellite bases located more than 25 nautical miles from its main operations base. Additionally, to allow petitioner to issue a condensed version of the course outline on the first day of class rather than at the time of enrollment and allow a class roster to be submitted during the third week of the semester rather than submit individual certificates within 5 days of enrollment.
20853	United Airlines, Inc.	14 CFR 121.99 and 121.351(a)	To allow petitioner to operate its airplanes in extended overwater operations over any airway or other approved route over the Western Atlantic, Caribbean Sea, and the Gulf of Mexico with one High Frequency (HF) Communication Radio System and one Long Range Navigation System (LRNS). This exemption would extend Exemption No. 3122B, as amended. *Grant, December 15, 1987*
24836	United Airlines, Inc.	14 CFR 121.371(a) and 121.378	To extend Exemption No. 4615B, which allows petitioner to contract with Hong Kong Aircraft Engineering Company for the maintenance, preventive maintenance, alterations, and required inspections on the United Airlines-operated Lockheed L1011-385-3 aircraft, engines, and components of such aircraft. *Grant, December 16, 1987*
25344	General Electric	14 CFR 145.73	To allow petitioner to perform maintenance, preventive maintenance, and alterations on components of CF6-6, CF6-50, CF6-80, and CFM56 engines utilized in U.S.-registered aircraft without regard to the geographic scope of their operations. *Grant, December 17, 1987*
25362	Mesaba Aviation, Inc., dba Northwest Airlink	14 CFR 25.853(c) and 121.312(b)	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. *Grant, December 14, 1987*

[FR Doc. 87-30132 Filed 12-31-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 28, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0034
Form Number: 942 and 942PR
Type of Review: Resubmission
Title: Employer's Quarterly Tax Return for Household Employees

Description: Household employers must prepare and file Form 942 or Form 942PR (Puerto Rico only) to report and pay social security tax and (942 only) income tax voluntarily withheld. The information is used to verify that the correct tax has been paid.

Respondents: Individuals or households
Estimated Burden: 699,789 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.

[FR Doc. 87-30116 Filed 12-31-87; 8:45 am]
BILLING CODE 4810-25-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552(b)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 5, 1988, has been cancelled. The next regular meeting of the Board is scheduled for January 12, 1988. An agenda for this meeting will be forthcoming.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703–883–4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: December 29, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–30195 Filed 12–30–87; 1:24 pm]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 8, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703–883–4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matters to be considered at the meeting are:

*1. Examination and Enforcement.

Dated: December 29, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–30196 Filed 12–30–87; 1:24 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, January 5, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Rescission of conditions imposed in granting Federal deposit insurance and consent to exercise trust powers:

The Massachusettes Company, Inc., Boston, Massachusetts.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,157-L (Amendment)
The Hamilton Bank and Trust Company, Atlanta, Georgia

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum re: Independent Audits of Banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: December 29, 1987.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–30183 Filed 12–30–87; 12:40 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, January 5, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Independent National Bank, Covina, California (5757) (Memo dated November 25, 1987)
Audit Report re:
The First National Bank of Marlboro, Marlborough, Massachusetts (5795) (Memo dated November 25, 1987)
Audit Report re:
Citizens National Bank & Trust Co., Oklahoma City, Oklahoma, Oklahoma City, Oklahoma (5737) (Memo dated December 4, 1987)
Audit Report re:
Panhandle Bank & Trust Company, Borger, Texas (2622) (Memo dated December 1, 1987)
Audit Report re:
Texana National Bank of College Station, College Station, Texas (2617) (Memo dated November 18, 1987)
Audit Report re:
Bossier City Consolidated Office, Cost Center—105 (Memo dated November 10, 1987)
Audit Report re:
Houston Consolidated Office, Cost Center—405 (Memo dated December 2, 1987)
Audit Report re:
Knoxville Consolidated Office, Cost Center—503 (Memo dated November 25, 1987)
Audit Report re:
Midland Consolidated Office, Cost Center—402 (Memo dated November 25, 1987)
Audit Report re:
San Francisco Regional Office, Cost Center—600 (Memo dated November 10, 1987)
Audit Report re:
Tulsa Consolidated Office, Cost Center—406 (Memo dated December 2, 1987)
Audit Report re:
Audit of Loan Management and Liquidation—DOL Denver Consolidated Office (Memo dated December 3, 1987)
Audit Report re:
Payroll/Personnel Processing (Memo dated November 12, 1987)

Report regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Applications for Federal deposit insurance:

The Glen Burnie Mutual Savings Bank, an operating non-FDIC-insured savings bank located at 1 Crain Highway, SE., Glen Burnie, Maryland.

Columbian Savings Bank, an operating non-FDIC-insured savings bank located at 305 St. John Street, Havre de Grace, Maryland.

Applications for consent to merge and establish one branch:

Enterprise Bank—Houston, Houston, Texas, an insured State nonmember bank, for consent to merge, under its charter and title, with Enterprise Bank-West, National Association, Houston, Texas, and for consent to establish the existing office of Enterprise Bank-West, National Association as a branch of the resultant bank.

Security Bank, Houston, Texas, an insured State nonmember bank, for consent to merge, under its charter and title, with Security Bank, National Association—Bay Area, Webster, Texas, and for consent to establish the existing office of Security Bank, National Association—Bay Area as a branch of the resultant bank.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Trend Analysis Report re:
Analysis of Regional/Consolidated Office Audit Results (Memo dated November 25, 1987)
Audit Report re:
Kansas City Consolidated Office, Cost Center—301 (Memo dated November 27, 1987)
Audit Report re:
LAMIS Audit Report (Memo dated November 20, 1987)

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: December 29, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–30184 Filed 12–30–87; 12:40 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, January 6, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 7, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility of Lyndon H. LaRouche, Jr. to Receive Presidential Primary Matching Funds.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87–30182 Filed 12–30–87; 11:43 am]

BILLING CODE 6715–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Commission Meeting

DATE AND TIME: January 14–15, 1988.

PLACE:

San Antonio Public Library, 203 South St. Mary's Street, San Antonio, Texas 78205 (January 14, 1988)
Lyndon Baines Johnson Library and Museum, 2313 Red River Street, Austin, Texas 78705 (January 15, 1988)

STATUS:

January 14, 1988, 9:00 a.m.–10:00 a.m.—Closed Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
January 14, 1988, 10:00 a.m.–4:15 p.m.—Open
January 15, 1988, 1:15 p.m.–4:30 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of October 28–29, 1977 Minutes
Executive Director's Report
—FY 88 Quarterly Program Report
—Administrative Report
Guest Speaker, William Gooch, Director, Texas State Library
—COSLA Report
—Texas State Library Activities
National Library Card Campaign Report, Update and Follow Up
NCLIS Budget and Finance Committee Report
NCLIS International Committee Report
Guest Speaker, Tom Galvin, Executive Director, American Library Association
—ALA Update
Library Standards: A White Paper: Panel
—"School Library Guidelines", Karen Whitney, President, American Association of School Librarians and

Library Director, Aqua High School, Avondale, Arizona
—"Implications of Library Standards for Libraries", Blane Dessy, Director, Alabama Public Library Services
NCLIS Public Affairs Committee Report
White House Conference I Film
White House Conference II Report
NCLIS Bicentennial Committee Report
NCLIS/NCES Statistics Project
Report, Guatemala Conference on Textbooks and Translations Standards in Latin America, November 22–24, 1987
NCLIS Recognition Awards Committee Report
NCLIS Program Review Committee Report

Special provisions will be made for handicapped individuals. Call Jane McDuffie (202) 254–3100 no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Vivian J. Arterbery, NCLIS Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: December 28, 1987.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 87–30192 Filed 12–30–87; 1:22 pm]

BILLING CODE 7527-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Notice of Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 48621, December 23, 1987.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 5, 1988.

CHANGE: Add the following:

8. Briefing on Budget Legislation.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 87–30197 Filed 12–30–87; 3:30 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 4, 1988:

A closed meeting will be held on Tuesday, January 5, 1988, at 2:30 p.m. An open meeting will be held on Wednesday, January 6, 1988, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8) (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 5, 1988, at 2:30, p.m., will be:

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceeding.
Litigation matter.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, January 6, 1988, at 10:00 a.m., will be:

The Commission is hosting a roundtable on broker-dealer sales practices. The agenda will include topics such as suitability rules and their relevance and purpose in today's global markets, fiduciary duties, the scope and nature of training of sales personnel, effective use of the Central Registration Depository ("CRD") system, arbitration and supervision. The participants will include representatives from the securities industry and various securities markets including the New York, American, and Chicago Board Options Exchanges, the National Association of Securities Dealers, representatives of the securities bar, investment firms, the North American Securities Administrators Association and SEC personnel. For further information, please contact Jacqueline P. Higgs at (202) 272–2149 or Andrew E. Feldman at (202) 272–2091.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272–2468.

Jonathan G. Katz,

Secretary.

December 30, 1987.

[FR Doc. 87–30198 Filed 12–30–87; 3:48 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 83F-0064]

Indirect Food Additives; Paper and Paperboard Components

Correction

In rule document 87-28292 beginning on page 46744 in the issue of Thursday, December 10, 1987, make the following correction:

§ 176.170 [Corrected]

On page 46747, in the first column, in the table for § 176.170(a)(5), in the seventh line, "C_4 to $_6$" should read "C_6 to C_6".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-08-4520-12; GP8-026]

Filing of Plats of Survey; Oregon/Washington

Correction

In notice document 87-27232 appearing on page 45387 in the issue of Friday, November 27, 1987, make the following correction:

In the second column, under T. 17 S., R. 31 E., in the paragraph, the first date should read "July 31, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Proposed Performance Standards for Program Year (PY) 1988

Correction

In notice document 87-28915 beginning on page 47771 in the issue of Wednesday, December 16, 1987, make the following corrections:

1. On page 47772, in the third column, in the second paragraph of item 4, the last line should read "long-term employability of youth by assessing a program's effectiveness in helping youth obtain competencies in basic education and job specific skills and other employability enhancements."

2. On page 47773, in the third column, under **Definitions for Performance Standards**, disregard item 3 and insert the following text:

3. *Average Wage at Placement*--Average hourly wage for all adults who entered employment at the time of termination.

4. *Welfare Entered Employment Rate*--Number of adult welfare recipients who entered employment at termination as a percentage of the total number of adult welfare recipients who terminated.

BILLING CODE 1505-01-D

VOL
53

ISS
1

JA
4

988

MI

federal register

Monday
January 4, 1988

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 3, 7, and 10
Federal Acquisition Regulation (FAR); Independent Price Determination Certificate Outside the United States and Acquisition Streamlining; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

Federal Acquisition Regulation (FAR); Independent Price Determination Certificate Outside the United States

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to Federal Acquisition Regulation (FAR) 3.103–2 to require the use of a certificate of independent price determination in certain overseas procurements. Prior to this proposed revision, the certificate was specifically excluded from use in those procurements.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 4, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–46 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. because it has no cost or administrative impact on U.S. contractors or offerors. It affects only contractors and offerors outside the United States, its possessions, and Puerto Rico. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed revision does not affect U.S. contractors or offerors and does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The proposed revision merely makes the Certificate of Independent Price Determination found at FAR 52.203–2 applicable to overseas contractors and offerors.

List of Subjects in 48 CFR Part 3

Government procurement.

Dated: December 18, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 3 be amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for Part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 3.103–2 is amended by revising paragraph (b)(3) to read as follows:

3.103–2 Evaluating the certification.

* * * * *

(b) * * *

(3) Whenever an offer is rejected under subparagraphs (b)(1) or (b)(2) of this subsection, or the certification is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with 3.303 for domestic requirements or in accordance with overseas contracting activity instructions for offers from foreign suppliers for overseas requirements.

* * * * *

[FR Doc. 87–30074 Filed 12–31–87; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 7 and 10

Federal Acquisition Regulation (FAR); Acquisition streamlining

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Parts 7 and 10 to institutionalize the implementation of acquisition streamlining.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 4, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–50 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The proppsed amendments to FAR 7.101, 7.105(a)(8), 10.000, and 10.002 include Governmentwide policies and procedures regarding the use of acquisition streamlining efforts to more efficiently and effectively use resources to develop, produce, or display quality systems. Acquisition streamlining is any effort related to ensuring that only necessary and cost-effective requirements are included in solicitations and contracts. It applies not only to the design, development, and production of new systems, but also to modifications of existing systems that involve the redesign of systems or subsystems.

B. Regulatory Flexibility Act

The proposed changes to FAR Parts 7 and 10 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.* because the program primarily involves the engineering and design of systems and equipment which, ordinarily, is not accomplished by small businesses. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 7 and 10

Government procurement.

Dated: December 22, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 7 and 10 be amended as set forth below:

1. The authority citation for Parts 7 and 10 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.101 is amended by adding alphabetically the definition "Acquisition streamlining" to read as follows:

7.101 Definitions.

* * * * *

"Acquisition streamlining," as used in this subpart means any effort that results in more efficient and effective use of resources to develop, produce, or deploy quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

* * * * *

3. Section 7.105 is amended by adding paragraph (a)(8) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(8) *Acquisition streamlining.* If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to (i) encourage industry participation by using draft solicitations, pre-solicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements; (ii) select and tailor only the necessary and cost-effective requirements; and (iii) state the time frame for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

4. Section 10.000 is revised to read as follows:

10.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions, and related considerations of acquisition streamlining (see 7.101).

5. Section 10.002 is amended by adding paragraph (c) as follows:

10.002 Policy.

* * * * *

(c) Requiring agencies, for programs which they have designated as subject to acquisition streamlining, should apply specifications standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary specifications, standards, and related documents which have been tailed for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should be involved in recommending application and tailoring of such specifications, standards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle.

[FR Doc. 87–30075 Filed 12–31–87; 8:45 am]

BILLING CODE 6820–61–M

VOL
53

ISS
1

JA
4

988

MI

federal register

Monday
January 4, 1988

Part III

Department of Education

Rehabilitation Service Projects for 1988; Proposed Funding Priorities; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Service Projects for 1988; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Combined notice of proposed funding priorities—Rehabilitation Service Projects for 1988.

SUMMARY: The Secretary of Education proposes funding priorities in fiscal year 1988 for service activities to be supported under the following programs of the Rehabilitation Services Administration (RSA):

- Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals; and
- Projects With Industry.

DATE: Interested persons are invited to submit comments or suggestions regarding these proposed priorities on or before February 3, 1988.

ADDRESS: All written comments and suggestions should be sent to Ed Sontag, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., Room 3042, Switzer Building, Mailstop 2312, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: The contact person listed below under each of the two programs.

SUPPLEMENTARY INFORMATION: The authorities for these service programs of RSA that are included in this notice are contained in the Rehabilitation Act of 1973, as amended, as follows:

Section 311(a)(1): Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals; and

Section 621: Projects With Industry. Under the Special Projects program, awards are made to State and other public and nonprofit agencies and organizations. Under the Projects with Industry program, awards are made to individual employers, State vocational rehabilitation agencies, and other profit-making and nonprofit organizations. Awards will be made for up to 36 months.

The purposes of these awards are to expand or otherwise improve rehabilitation services to individuals with the most severe handicaps and to work cooperatively with industry and organized labor to provide individuals with handicaps with training, employment, and supportive services in order to prepare them for and place them in competitive employment.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference to applications that respond to the three proposed priorities under the two programs included in this notice for fiscal year 1988; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities. RSA invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise that would be needed for independent experts to review and evaluate applications under these proposed priorities.

The final priorities will be announced in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other Departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these service areas, unless otherwise specified in statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

The following three proposed priorities represent areas in which RSA proposes to support service activities through grants in two programs: Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals, and Projects With Industry. Brief descriptions of these two programs follow.

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals support projects that expand or otherwise improve vocational rehabilitation and other rehabilitation services for individuals with severe handicaps. This is accomplished through the support of projects that will demonstrate new procedures and desirable employment outcomes. It is expected that successful project results will be replicated, in whole or in part, to resolve or alleviate rehabilitation problems that are nationally significant or common to several States.

Projects With Industry support the provision of training, employment and supportive services within a business, industry, or other realistic work setting to prepare individuals with handicaps for competitive employment and to secure and maintain employment. The projects focus on the establishment of a partnership arrangement between the rehabilitation community and the private sector in order to expand vocational training and job opportunities for individuals with handicaps. A major objective of the program is to enlist the support of business, industry, and organized labor and utilize their management, leadership and technical expertise to expand employment opportunities for individuals with handicaps.

Proposed Priorities for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (2)

Traumatic Head Injury

Persons who suffer traumatic head injuries often have severe problems obtaining and maintaining employment. According to information released by the National Institute on Disability and Rehabilitation Research, 400,000 to 682,000 persons suffer severe traumatic head injury each year. Of these, from 30,000 to 50,000 are left with disabilities so severe as to preclude return to a normal life. Although these individuals may vary significantly in the manifestation of their disability, they frequently have severe learning impairments coupled with loss of short-term memory and limited attention span. This proposed priority is intended to solicit applications for projects that would demonstrate the best practices known today to overcome these barriers to employment, and, in so doing, would document those approaches that appear to work best with individuals with various behavioral characteristics, and disseminate this information to other rehabilitation agencies and personnel. Because some individuals who have been traumatically brain-injured also have residual motor impairments, applicants must consider ways in which they will utilize rehabilitation engineering methods and techniques if these services are needed by an individual in order to secure and maintain employment.

Chronically Mentally Ill

There is increasing awareness that in order for chronically mentally ill persons to live independently in the community, there must be adequate job opportunities and service procedures that will lead to competitive employment. The purpose of this proposed priority is to solicit applications that will demonstrate innovative job development and placement services for chronically mentally ill persons that result in or lead to competitive, permanent employment. A primary concern is that the applicant provide or arrange for the necessary job development and placement services in the community. Projects funded under this priority must actively identify and utilize permanent, competitive placement opportunities, or transitional employment leading to permanent placement, with local public and private enterprise employers. Special emphasis must be given to the provision of project services to the chronically mentally ill who are at risk of being unserved, institutionalized, or reinstitutionalized.

Contact Person: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., Room 3322, Switzer Building, Mailstop 2312, Washington, DC 20202. (Telephone: (202) 732-1349).

Proposed Priority for Projects With Industry

Many individuals having the most severe disabilities either have not been considered for, or have not had, competitive employment opportunities in an integrated work setting, or have had interrupted or intermittent employment as a result of a severe disability. Currently, however, entry-level employment opportunities for these individuals are increasing in many areas of the private sector in order to meet critical employer needs that are shared by similar or related industries. This proposed priority is intended to solicit applications that will develop employment opportunities for and place individuals with severe disabilities in the private sector, through the establishment of partnership arrangements between the rehabilitation community and the private sector. Projects also must enlist the support of business, industry, and organized labor and utilize their management, leadership and technical expertise in order to expand or develop new models of vocational training and job opportunities for individuals with servere disabilities.

Project resources must be directed to the placement of these individuals in a number of different major or smaller businesses, industries, or coalitions of independent industries with formal agreements to provide training and job placement, labor unions having agreements with a number of different industries, or single industries with one or multiple work sites. Since projects approved under this proposed priority will be assisting individuals with the most severe disabilities to secure employment, the following services must be provided or arranged through linkages with cooperating public or private agencies: (1) On-site job coaches or trainers; (2) job skill training; (3) necessary support service; (4) time-limited post-employment services; and (5) on-going support services required to sustain employment of these individuals. Appropriate consideration also must be given to the utilization of rehabilitation engineering techniques in developing employment opportunities for specific individuals needing this assistance.

Projects funded under this authority are approved for specific periods of time; therefore, it is crucial that each project establish linkages with public or private agencies, or other resources, which can assure that on-going services will in fact be provided both during the approved project period and after completion of Federal assistance.

Contact Person: Leo J. Eger, Office of Development Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., Room 3330, Switzer Building, Mailstop 2312, Washington, DC 20202. (Telephone: (202) 732-1344).

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3042 Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(29 U.S.C. 777a(a)(1) and 795g)

(Catalog of Federal Domestic Assistance No. 84.128A and 84.128B, Rehabilitation Services Administration)

Dated: November 10, 1987.

Williamm J. Bennett,
Secretary of Education.

[FR Doc. 87-30177 Filed 12-31-87; 8:45 am]

BILLING CODE 4000-01-M

VOL
53
ISS
1
JA
4
988
UMI

Reader Aids

Federal Register
Vol. 53, No. 1
Monday, January 4, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106.....4

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List December 30, 1987

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, CHOICE, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1–1199	25.00	Jan. 1, 1987
1200–End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0–45	25.00	Jan. 1, 1987
46–51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53–209	18.00	Jan. 1, 1987
210–299	22.00	Jan. 1, 1987
300–399	10.00	Jan. 1, 1987
400–699	15.00	Jan. 1, 1987
700–899	22.00	Jan. 1, 1987
900–999	26.00	Jan. 1, 1987
1000–1059	15.00	Jan. 1, 1987
1060–1119	13.00	Jan. 1, 1987
1120–1199	11.00	Jan. 1, 1987
1200–1499	18.00	Jan. 1, 1987
1500–1899	9.50	Jan. 1, 1987
1900–1944	25.00	Jan. 1, 1987
1945–End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1–199	18.00	Jan. 1, 1987
200–End	16.00	Jan. 1, 1987
10 Parts:		
0–199	29.00	Jan. 1, 1987
200–399	13.00	Jan. 1, 1987
400–499	14.00	Jan. 1, 1987
500–End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
12 Parts:		
1–199	11.00	Jan. 1, 1987
200–299	27.00	Jan. 1, 1987
300–499	13.00	Jan. 1, 1987
500–End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1–59	21.00	Jan. 1, 1987
60–139	19.00	Jan. 1, 1987
140–199	9.50	Jan. 1, 1987
200–1199	19.00	Jan. 1, 1987
1200–End	11.00	Jan. 1, 1987
15 Parts:		
0–299	10.00	Jan. 1, 1987
300–399	20.00	Jan. 1, 1987
400–End	14.00	Jan. 1, 1987
16 Parts:		
0–149	12.00	Jan. 1, 1987
150–999	13.00	Jan. 1, 1987
1000–End	19.00	Jan. 1, 1987
17 Parts:		
1–199	14.00	Apr. 1, 1987
200–239	14.00	Apr. 1, 1987
240–End	19.00	Apr. 1, 1987
18 Parts:		
1–149	15.00	Apr. 1, 1987
150–279	14.00	Apr. 1, 1987
280–399	13.00	Apr. 1, 1987
400–End	8.50	Apr. 1, 1987
19 Parts:		
1–199	27.00	Apr. 1, 1987
200–End	5.50	Apr. 1, 1987
20 Parts:		
1–399	12.00	Apr. 1, 1987
400–499	23.00	Apr. 1, 1987
500–End	24.00	Apr. 1, 1987
21 Parts:		
1–99	12.00	Apr. 1, 1987
100–169	14.00	Apr. 1, 1987
170–199	16.00	Apr. 1, 1987
200–299	5.50	Apr. 1, 1987
300–499	26.00	Apr. 1, 1987
500–599	21.00	Apr. 1, 1987
600–799	7.00	Apr. 1, 1987
800–1299	13.00	Apr. 1, 1987
1300–End	6.00	Apr. 1, 1987
22 Parts:		
1–299	19.00	Apr. 1, 1987
300–End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0–199	14.00	Apr. 1, 1987
200–499	26.00	Apr. 1, 1987
500–699	9.00	Apr. 1, 1987
700–1699	18.00	Apr. 1, 1987
1700–End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0–1.60	12.00	Apr. 1, 1987
§§ 1.61–1.169	22.00	Apr. 1, 1987
§§ 1.170–1.300	17.00	Apr. 1, 1987
§§ 1.301–1.400	14.00	Apr. 1, 1987
§§ 1.401–1.500	21.00	Apr. 1, 1987
§§ 1.501–1.640	15.00	Apr. 1, 1987
§§ 1.641–1.850	17.00	Apr. 1, 1987
§§ 1.851–1.1000	27.00	Apr. 1, 1987
§§ 1.1001–1.1400	16.00	Apr. 1, 1987
§§ 1.1401–End	20.00	Apr. 1, 1987
2–29	20.00	Apr. 1, 1987
30–39	13.00	Apr. 1, 1987
40–49	12.00	Apr. 1, 1987
50–299	14.00	Apr. 1, 1987
300–499	15.00	Apr. 1, 1987
500–599	8.00	[2] Apr. 1, 1980
600–End	6.00	Apr. 1, 1987
27 Parts:		
1–199	21.00	Apr. 1, 1987
200–End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
0–99	16.00	July 1, 1987
100–499	7.00	July 1, 1987
500–899	24.00	July 1, 1987
900–1899	10.00	July 1, 1987
*1900–1910	28.00	July 1, 1987
1911–1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
*0–199	20.00	July 1, 1987
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[3] July 1, 1984
1–39, Vol. II	19.00	[3] July 1, 1984
1–39, Vol. III	18.00	[3] July 1, 1984
*1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1986
33 Parts:		
*1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
*0–17	21.00	July 1, 1987
*18–End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
*190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
1–100	10.00	July 1, 1987
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987
42 Parts:		
1–60	15.00	Oct. 1, 1986
*61–399	5.50	Oct. 1, 1987
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
*1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
*1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1986
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1986
41–69	13.00	Oct. 1, 1986
*70–89	7.00	Oct. 1, 1987
90–139	11.00	Oct. 1, 1986
140–155	8.50	[5] Oct. 1, 1985
156–165	14.00	Oct. 1, 1986
166–199	13.00	Oct. 1, 1986
200–499	19.00	Oct. 1, 1986
500–End	9.50	Oct. 1, 1986
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	11.00	Oct. 1, 1986
70–79	17.00	Oct. 1, 1986
80–End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1–51)	21.00	Oct. 1, 1986
1 (Parts 52–99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3–6	17.00	Oct. 1, 1986
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1986
100–177	24.00	Oct. 1, 1986
*178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1986
400–999	21.00	Oct. 1, 1986
1000–1199	17.00	Oct. 1, 1986
1200–End	17.00	Oct. 1, 1986
50 Parts:		
1–199	15.00	Oct. 1, 1986
200–End	25.00	Oct. 1, 1986
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 4	January 19	February 3	February 18	March 4	April 4
January 5	January 20	February 4	February 19	March 7	April 4
January 6	January 21	February 5	February 22	March 7	April 5
January 7	January 22	February 8	February 22	March 7	April 6
January 8	January 25	February 8	February 22	March 8	April 7
January 11	January 26	February 10	February 25	March 11	April 11
January 12	January 27	February 11	February 26	March 14	April 11
January 13	January 28	February 12	February 29	March 14	April 12
January 14	January 29	February 16	February 29	March 14	April 13
January 15	February 1	February 16	February 29	March 15	April 14
January 19	February 3	February 18	March 4	March 21	April 18
January 20	February 4	February 19	March 7	March 21	April 19
January 21	February 5	February 22	March 7	March 21	April 20
January 22	February 8	February 22	March 7	March 22	April 21
January 25	February 9	February 24	March 10	March 25	April 25
January 26	February 10	February 25	March 11	March 28	April 25
January 27	February 11	February 26	March 14	March 28	April 26
January 28	February 12	February 29	March 14	March 28	April 27
January 29	February 16	February 29	March 14	March 29	April 28

CFR ISSUANCES 1988
Complete Listing of 1987 Editions and Projected January, 1988 Editions

This list sets out the CFR issuances for the 1987 editions and projects the publication plans for the **January, 1988** quarter. A projected schedule that will include the **April, 1988** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1987-1988 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1987:

Title
CFR Index
1-2
3 (Compilation)
4
5 Parts:
1-1199
1200-End
6 [Reserved]
7 Parts:
0-45
46-51
52
53-209
210-299
300-399
400-699
700-899
900-999
1000-1059
1060-1119
1120-1199
1200-1499
1500-1899
1900-1944
1945-End
8
9 Parts:
1-199
200-End
10 Parts:
0-199
200-399
400-499
500-End
11
12 Parts:
1-199
200-299
300-499
500-End
13
14 Parts:
1-59
60-139
140-199
200-1199
1200-End
15 Parts:
0-299
300-399
400-End
16 Parts:
0-149
150-999
1000-End

Titles revised as of April 1, 1987:

Title
17 Parts:
1-199
200-239
240-End
18 Parts:
1-149
150-279
280-399
400-End
19 Parts:
1-199
200-End
20 Parts:
1-399
400-499
500-End
21 Parts:
1-99
100-169
170-199
200-299
300-499
500-599
600-799
800-1299
1300-End
22 Parts:
1-299
300-End
23
24 Parts:
0-199
200-499
500-699
700-1699
1700-End
25
26 Parts:
1 (§§ 1.0-1-1.60)
1 (§§ 1.61-1.169)
1 (§§ 1.170-1.300)
1 (§§ 1.301-1.400)
1 (§§ 1.401-1.500)
1 (§§ 1.501-1.640)
1 (§§ 1.641-1.850)
1 (§§ 1.851-1.1000)
1 (§§ 1.1001-1.1400)
1 (§ 1.1401-End)
2-29
30-39
40-49
50-299
300-499
500-599 (Cover only)
600-End
27 Parts:
1-199
200-End

Titles revised as of July 1, 1987:

Title
28
29 Parts:
0-99
100-499
500-899
900-1899
1900-1910
1911-1925
1926
1927-End
30 Parts:
0-199
200-699
700-End
31 Parts:
0-199
200-End
32 Parts:
1-189
190-399
400-629
630-699 (Cover only)
700-799
800-End
33 Parts:
1-199
200-End
34 Parts:
1-299
300-399
400-End
35
36 Parts:
1-199
200-End
37
38 Parts:
0-17
18-End
39
40 Parts:
1-51
52
53-60
61-80
81-99
100-149
150-189
190-399
400-424
425-699
700-End
41 Parts:
Chs. 1-100
Ch. 101
Chs. 102-200
Ch. 201-End

Titles revised as of October 1, 1987:

Title

42 Parts:
1–60*
61–399
400–429*
430–End*

43 Parts:
1–999
1000–3999
4000–End

44

45 Parts:
1–199
200–499
500–1199*
1200–End*

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165
166–199
200–499
500–End

47 Parts:
0–19*
20–39
40–69
70–79*
80–End*

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
Chs. 3–6
Chs. 7–14
Chs. 15–End*

49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199*
200–599
600–End*

Projected January 1, 1988 editions:

Title

CFR Index

1–2

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–399
400–End

16 Parts:
0–149
150–999
1000–End

VOL
53
ISS
1
JA
4
988
UMI

VOL
53

ISS
2

JA

5

988

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Contents

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See also Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service; Packers and Stockyards Administration; Rural Electrification Administration
NOTICES
Agency information collection activities under OMB review, 158

American Battle Monuments Commission
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 120

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Citrus canker, 140

Antitrust Division
NOTICES
National cooperative research notifications:
NAHB Research Foundation, Inc., 186

Army Department
NOTICES
Environmental statements; availability, etc.:
Chemical stockpile disposal program, 168
Meetings:
Science Board, 168, 169
(4 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alabama, 159
Vermont, 159

Coast Guard
RULES
Drawbridge operations:
Florida, 119

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 160, 161
(2 documents)
Korea, 161
Philippines, 163
Turkey, 165–167
(3 documents)

Commodity Credit Corporation
RULES
Loan and purchase programs:
Milk price support program, 107

Copyright Office, Library of Congress
RULES
Import statements; revocation, 123
Transfers and other documents; recordation, 122
PROPOSED RULES
Freedom of Information Act:
Uniform fee schedule and administrative guidelines, 153

Customs Service
NOTICES
Trade name recordation applications:
Better Working Environments, Inc., 193

Defense Department
See Army Department

Employment and Training Administration
NOTICES
Adjustment assistance:
Columbia Northwest Corp., 187
Donaldson Coal Co. et al., 187
Johnny Castleberry, Inc., et al., 188

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Morgantown Energy Technology Center, 189

Environmental Protection Agency
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 214
Hazardous waste program authorizations:
Florida; correction, 127
Illinois, 126
Indiana, 128
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 176
Water quality criteria:
Ambient water quality criteria documents; availability, 177

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 194

Executive Office of the President
See Presidential Documents

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Canal Electric Co. et al., 171
Natural gas certificate filings:
National Fuel Gas Supply Corp. et al., 172
Applications, hearings, determinations, etc.:
Enserch Gas Transmission Co., 169
Sunterra Gas Gathering Co., 170

Federal Maritime Commission
NOTICES
Agreements filed, etc., 179
Complaints filed:
Hemisphere Navigation Co., Inc., et al., 179

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 194
Applications, hearings, determinations, etc.:
Northern of Tennessee Corp. et al., 179

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Great Earth International, Inc., 141
NOTICES
Agency information collection activities under OMB review, 180
Premerger notification waiting periods, early terminations, 180

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 185

Food and Drug Administration
RULES
Biological products:
Blood and blood products; test for antibody to human immunodeficiency virus (HIV), 111
NOTICES
Human drugs:
Export applications—
Isoprenaline (isoproterenol) hydrochloride injection, 181

Forest Service
NOTICES
Environmental statements; availability, etc.:
Deerlodge National Forest, MT, 158

General Services Administration
RULES
Acquisition regulations:
Contracting officer warrant program and imprest fund transactions; purchase thresholds increase, 132
Miscellaneous amendments, 130
Federal property management:
Public buildings and space—
Buildings and grounds management, 129

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration

Health Care Financing Administration
NOTICES
Privacy Act; systems of records, 182

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Physician assistants programs, 184

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service

Internal Revenue Service
RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance, 117
PROPOSED RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance; cross reference, 153

International Trade Administration
RULES
Export licensing:
Commodity control list—
Isopropyl N-(3-chlorophenyl)carbamate, 108

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
Commercial zones and terminal areas, 155

Joint Board for Enrollment of Actuaries
PROPOSED RULES
Employee Retirement Income Security Act of 1974; implementation:
Enrollment actuaries renewal, 147

Justice Department
See Antitrust Division; Prisons Bureau

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 185

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 189
Meetings:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 189

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 189

National Highway Traffic Safety Administration
RULES
Motor vehicle theft prevention standards:
High theft lines; listing, 133

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and managment:
Foreign fishing—
Fee schedule, 134
PROPOSED RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 156
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 160
New England Fishery Management Council, 160

National Park Service
NOTICES
Meetings:
Delta Region Preservation Commission, 185
National Register of Historic Places:
Pending nominations—
Arizona et al., 185

Packers and Stockyards Administration
NOTICES
Central filing system; State certifications:
New Mexico, 158

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 190

Postal Service
RULES
Conduct on postal property:
Authority citation; correction and update, 126
Domestic Mail Manual:
Mail bearing permit imprints; postage deficiency, 124
Second-class mail; postage deficiency, 125

Presidential Documents
EXECUTIVE ORDERS
Government employees:
Pay and allowances; adjustment of certain rates, 222

President's Commission on Privatization
NOTICES
Meetings, 190

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Inmate discipline and special housing units; Discipline Hearing Officer, 198

Privatization, President's Commission
See President's Commission on Privatization

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Railroad Retirement Board
PROPOSED RULES
Federal Government employees; debt recovery, 143

Rural Electrification Administration
PROPOSED RULES
Telephone borrowers:
Central office equipment contracts (including and not including installation), 140
NOTICES
Environmental statements; availability, etc.:
KAMO Electric Cooperative, Inc., 159

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Push down basis of accounting in separate financial statements of subsidiaries acquired in purchase transactions, 109
Registrant disclosures, 109
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 190
New York Stock Exchange, Inc., 191, 192
(2 documents)

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; National Highway Traffic Safety Administration

Treasury Department
See Customs Service; Internal Revenue Service

Separate Parts In This Issue

Part II
Joint Board for Enrollment of Actuaries, 196

Part III
Environmental Protection Agency, 214

Part IV
The President, 222

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12578 (Superseded by EO12622)..... 222
12622..... 222

7 CFR
1430..... 107
Proposed Rules:
301..... 140
1701..... 140

15 CFR
399..... 108

16 CFR
Proposed Rules:
13..... 141

17 CFR
211 (2 documents)..... 109

20 CFR
Proposed Rules:
361..... 143
901..... 147

21 CFR
606..... 111
610..... 111
640..... 111

26 CFR
1..... 117
Proposed Rules:
1..... 153

28 CFR
541..... 196

33 CFR
117..... 119

36 CFR
404..... 120

37 CFR
201 (2 documents)..... 122, 123
Proposed Rules:
203..... 153

39 CFR
111 (2 documents)..... 124, 125
232..... 126

40 CFR
2..... 214
271 (3 documents)..... 126–128

41 CFR
101–20..... 129

46 CFR
501 (2 documents)..... 130, 132
513..... 132

49 CFR
541..... 133
Proposed Rules:
1041..... 155
1048..... 155
1049..... 155

50 CFR
611..... 134
Proposed Rules:
301..... 156

Rules and Regulations

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

Milk Price Support Program

AGENCY: Commodity Credit Corporation.
ACTION: Interim rule.

SUMMARY: This interim rule amends the provisions of 7 CFR Part 1430 to implement a 2½ cents per hundredweight reduction in the price received by producers for all milk produced within the forty-eight contingous states of the continental United States and marketed for commercial use in calendar year 1988, as required by amendments made to the Agricultural Act of 1949 by the Omnibus Budget Reconciliation Act of 1987.

DATES: The effective date of the interim rule is January 1, 1988. Comments must be received by March 7, 1988 to be assured of consideration.

ADDRESS: Mail comments to Joseph E. Chervenic, Fiscal Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chervenic at the above address, (202) 447–3679.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor". It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

A final regulatory impact analysis of this regulation is available from Joseph E. Chervenic.

Section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) was amended in 1985 to provide for a reduction to be made in the price of all milk produced within the forty-eight continguous states of the continental United States and marketed by producers for commercial use during the period from April 1, 1986 through September 30, 1987.

The recently enacted Omnibus Budget Reconciliation Act of 1987 provides that, subject to the same conditions that were applicable to the April 1, 1986 through September 30, 1987 reductions, the Secretary shall provide during the calendar year 1988, for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced within the forty-eight contiguous states of the continental United States and marketed by producers for commercial use. The regulations found at 7 CFR 1430.340–1430.351 are amended to implement that reduction.

Since these reductions in the price received by producers for milk marketed for commercial use are required to be implemented effective for calendar year 1988, this interim rule is effective January 1, 1988. However, comments are requested and must be received by March 7, 1988 to be assured of consideration.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Interim Rule

Accordingly, 7 CFR Part 1430, Dairy Products, is amended as follows:

PART 1430—[AMENDED]

1. The reference in the table of Contents for Part 1430 to "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, April 1, 1986 to September 30, 1987" is revised to read: "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1988 to December 31, 1988".

2. The authority citation for Part 1430 is revised to read as follows:

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*), unless otherwise noted.

3. The heading of the Subpart (consisting of §§ 1430.340 through 1430.351) in Part 1430 entitled "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, April 1, 1986 to September 30, 1987", is revised to read: "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1988 to December 31, 1988".

4. The authority citation for the subpart the heading of which is revised by paragraph 3 shall continue to read as follows:

Authority: Section 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)), Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

5. Section 1430.340 is revised to read as follows:

§ 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 201(d) of the Agricultural Act of 1949, as amended, under which the Secretary of Agriculture is required to provide with respect to milk marketed during calendar year 1988, for reductions in the price received by producers for all milk produced in the

United States and marketed by producers for commerical use.

(b) *Applicability.* The provision of this subpart shall apply to all milk produced in the United States that is marketed for commerical use by producers during the period beginning on January 1, 1988 and ending December 31, 1988.

6. Section 1430.343(a) is revised to read in its entirety as follows:

§ 1430.343 Required reductions and remittances.

(a) *Required reductions.* A reduction of two and one half (2½) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1988, and ending December 31, 1988.

* * * * *

Signed at Washington, DC, on December 31, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-30218 Filed 12-31-87; 3:31 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71144-7244]

Amendment of Validated License Controls on Isopropyl N-(3-chlorophenyl)carbamate

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on alkyl aryl carbamates described in paragraph (b)(1) of the "List of Chemicals Controlled by ECCN 4707B" in ECCN 4707B on the CCL (Supplement No. 1 to § 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Isopropyl N-(3-chlorophenyl)carbamate, an alkyl aryl carbamate, no longer requires a validated license for export to all destinations, except Country Groups S and Z for which exports of the chemical will be controlled for foreign policy reasons under ECCN 6799G on the CCL.

Notice of the foreign availability determination on this chemical has been published previously (52 FR 49183, Dec. 30, 1987).

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5801 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7—Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4707B is amended by revising paragraph (b)(1) under the "List of Chemicals Controlled by ECCN 4707B" to read as follows:

4707B (a) Chemicals, as described in this entry; (b) Synthetic organic agriculture chemicals, as described in this entry.

Controls for ECCN 4707B

* * * * *

List of Chemicals Controlled by ECCN 4707B

* * * * *

(b) * * *

(1) Alkyl Aryl carbamates (including isopropyl N-phenylcarbamate), *except isopropyl N-(3-chlorophenyl) carbamate, 2,2-dimethyl 1,3-benzodioxol-4-ol methylcarbamate, and 1-naphthyl N-methylcarbamate,*

* * * * *

§ 399.2 [Amended]

3. In Supplement No. 1 to § 399.2 Commodity Interpretations, in Interpretation 24 (Chemicals), the "Organic Chemicals" list is amended by inserting "Isopropyl N-(3-chlorophenyl) carbamate" between "Isopropyl chloride" and "Isopropyl ether".

Dated: December 28, 1987.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-62 Filed 1-4-88; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-73]

Staff Accounting Bulletin No. 73

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 54 (SAB 54), which was released on November 3, 1983, expressed the staff's views regarding the application of the "push down" basis of accounting in the separate financial statements of subsidiaries acquired in purchase transactions. Since the issuance of SAB 54, the staff has received inquiries about its views with respect to recording (or "pushing down") parent company debt in the separate financial statements of the subsidiary when such debt is incurred in connection with or otherwise related to the acquisition of the subsidiary in a purchase transaction. This staff accounting bulletin addresses these issues.

DATE: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Bradow, Office of the Chief Accountant (202/272-2130) or Howard P. Hodges, Jr., Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

December 30, 1987.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 73 to the table found in Subpart B.

Staff Accounting Bulletin No. 73

The staff hereby adds Questions 3 to Topic 5.J. of the Staff Accounting Bulletin Series. Topic 5.J. discusses the staff's position on the appropriateness of applying the "push down" method of accounting in the separate financial statements of subsidiaries acquired in purchase transactions.

Topic 5: Miscellaneous Accounting

* * * * *

J. Push Down Basis of Accounting Required in Certain Limited Circumstances

* * * * *

Question 3: Company A borrows funds to acquire substantially all of the common stock of Company B. Company B subsequently files a registration statement in connection with a public offering of its stock or debt.[1] Should Company B's new basis ("push down") financial statements include Company A's debt related to its purchase of Company B?

Interpretive Response: The staff believes that Company A's debt,[2] related interest expense, and allocable debt issue costs shuld be reflected in Company B's financial statements included in the public offering (or an initial registration under the Exchange Act) if: (1) Company B is to assume the debt of Company A, either presently or in a planned transaction in the future; (2) the proceeds of a debt or equity offering of Company B will be used to retire all or a part of Company A's debt; or (3) Company B guarantees or pledges its assets as collateral for Company A's debt.

Other relationships may exist between Company A and Company B, such as the pledge of Company B's stock as collateral for Company A's debt.[3] While in this latter situation, it may be clear that Company B's cash flows will service all or part of Company A's debt, the staff does not insist that the debt be reflected in Company B's financial statements providing there is full and prominent disclosure of the relationship between Companies A and B and the actual or potential cash flow commitment. In this regard, the staff believes that Statements of Financial Accounting Standards Nos. 5 and 57 require sufficient disclosure to allow users of Company B's financial statements to fully understand the impact of the relationship on Company B's present and future cash flows. Rule 4-08(e) of Regulation S-X (17 CFR 210.4-08(e)) also requires disclosure of restrictions which limit the payment of dividends. Therefore, the staff believes that the equity section of Company B's balance sheet and any pro forma financial information and capitalization tables should clearly disclose that this arrangement exists.[4]

Regardless of whether the debt is reflected in Company B's financial statements, the notes to Company B's financial statements should generally disclose, at a minimum: (1) The relationship between Company A and Company B; (2) a descripton of any arrangements that result in Company B's guarantee, pledge of assets [5] or stock, etc. that provides security for Company A's debt; (3) the extent (in the aggregate and for each of the five years subsequent to the date of the latest balance sheet presented) to which Company A is dependent on Company B's cash flows to service its debt and the method by which this will occur; and (4) the impact of such cash flows on Company B's ability to pay dividends or other amounts to holders of its securities.

Additionally, the staff believes Company B's Management's Discussion and Analysis of Financial Condition and Results of Operations should discuss any material impact of the servicing of Company A's debt on its own liquidity pursuant to Item 303(a)(1) of Regulations S-K (17 CFR 228.303(a)(1)).

[FR Doc. 88-74 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The guidance in this Staff Accounting Bulletin should also be considered by Company B's separate financial statements included in its public offering following Company B's spin-off or carve-out from Company A.

[2] The guidance in this Staff Accounting Bulletin should also be considered where Company A has financed the acquisition of Company B through the issuance of mandatory redeemable preferred stock.

[3] The staff does not believe Company B's financial statements must reflect the debt in this situation because in the event of default on the debt by Company A, the debt holder(s) would only be entitled to B's stock held by Company A. Other equity or debt holders of Company B would retain their priority with respect to the net assets of Company B.

[4] For example, the staff has noted that certain registrants have indicated on the face of such financial statements (as part of the stockholders' equity section) the actual or potential financing arrangement and the registrant's intent to pay dividends to satisfy its parent's debt service requirements. The staff believes such disclosures are useful to highlight the existence of arrangements that could result in the use of Company B's cash to service Company A's debt.

[5] A material asset pledge should be clearly indicated on the face of the balance sheet. For example, if all or substantially all of the assets are pledged, the "assets" and "total assets" captions should include parenthetically: "pledged for parent company debt—See Note X."

17 CFR Part 211

[Release No. SAB—74]

Staff Accounting Bulletin No. 74

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views concerning disclosures that generally should be provided by a registrant when an accounting standard has been issued but not yet adopted.

DATE: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Parsons, Office of the Chief Accountant (202/272–2130); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272–2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

December 30, 1987.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 74 to the table found in Subpart B.

Staff Accounting Bulletin No. 74

The staff hereby adds Section M to Topic 11. Topic 11–M expresses the staff's views concerning disclosure of the impact that recently issued accounting standards will have on the financial statements of the registrant when adopted in a future period.

Topic 11: Miscellaneous Disclosure

* * * * *

M. *Disclosure of the Impact that Recently Issued Accounting Standards will have on the Financial Statements of the Registrant when Adopted in a Future Period.*

Facts: An accounting standard has been issued [1] that does not require adoption until some future date. A registrant is required to include financial statements in filings with the Commission after the issuance of the standard but before it is adopted by the registrant.

Question 1: Does the staff believe that these filings should include disclosure of the impact that the recently issued accounting standard will have on the financial position and results of operations of the registrant when such standard is adopted in a future period?

Interpretive Response: Yes. The Commission addressed a similar issue with respect to SFAS No. 52 and concluded that "The Commission also believes that registrants that have not yet adopted SFAS No. 52 should discuss the potential effects of adoption in registration statements and reports filed with the Commission."[2] The staff believes that this disclosure guidance applies to all accounting standards which have been issued but not yet adopted by the registrant unless the impact on its financial position and results of operations is not expected to be material.[3] Management's Discussion and Analysis ("MD&A") [4] requires registrants to provide information with respect to liquidity, capital resources and results of operations and such other information that the registrant believes to be necessary to understand to its financial condition and results of operations. In addition, MD&A requires disclosure of presently known material changes, trends and uncertainties that have had or that the registrant reasonably expects will have a material impact on future sales, revenues or income from continuing operations. The staff believes that disclosure of impending accounting changes is necessary to inform the reader about expected impacts on financial information to be reported in the future and, therefore, should be disclosed in accordance with the existing MD&A requirements.

With respect to financial statement disclosure, generally accepted auditing standards [5] specifically address the need for the auditor to consider the adequacy of the disclosure of impending changes in accounting principles if (a) the financial statements have been prepared on the basis of accounting principles that were acceptable at the financial statement date but that will not be acceptable in the future and (b) the financial statements will be restated in the future as a result of the change. The staff believes that recently issued accounting standards may constitute material matters and, therefore, disclosure in the financial statements should also be considered in situations where the change to the new accounting standard will be accounted for in financial statements of future periods, prospectively or with a cumulative catch-up adjustment.

Question 2: Does the staff have a view on the types of disclosure that would be meaningful and appropriate when a new accounting standard has been issued but not yet adopted by the registrant?

Interpretive Response: The staff believes that the registrant should evaluate each new accounting standard to determine the appropriate disclosure and recognizes that the level of information available to the registrant will differ with respect to various standards and from one registrant to another. The objectives of the disclosure should be to (1) notify the reader of the disclosure documents that a standard has been issued which the registrant will be required to adopt in the future and (2) assist the reader in assessing the significance of the impact that the standard will have on the financial statements of the registrant when adopted. The staff understands that the registrant will only be able to disclose information that is known.

The following disclosures should generally be considered by the registrant:

- A brief description of the new standard, the date that adoption is required and the date that the registrant plans to adopt, if earlier.
- A discussion of the methods of adoption allowed by the standard and the method expected to be utilized by the registrant, if determined.
- A discussion of the impact that adoption of the standard is expected to have on the financial statements of the registrant, unless not known or reasonably estimable. In the case, a statement to that effect may be made.
- Disclosure of the potential impact of other significant matters that the registrant believes might result from the adoption of the standard (such as technical violations of debt covenant agreements, planned or intended changes in business practices, etc.) is encouraged.

[FR Doc. 88–73 Filed 1–4–88; 8:45 am]

BILLING CODE 8010–01–M

[1] Some registrants may want to disclose the potential effects of proposed accounting standards not yet issued, e.g., exposure drafts. Such disclosures, which are generally not required because the final standard may differ from the exposure draft, are not addressed by this SAB. [See also Financial Reporting Release No. 26, "Interpretive Release About Disclosure of the Effects of the Tax Reform Act of 1986," October 23, 1986.]

[2] Financial Reporting Release No. 8, "Interpretive Release About Disclosure Considerations Relating to Foreign Operations and Foreign Currency Translation Effects," Section No. 2 "Disclosures During the Transition Period".

[3] In those instances where a recently issued standard will impact the preparation of, but not materially affect, the financial statements, the registrant is encouraged to disclose that a standard has been issued and that its adoption will not have a material effect on its financial position or results of operations.

[4] Item 303 of Regulation S–K (17 CFR 229.303).

[5] As interpreted in Auditing Standards Division staff interpretation AU 9410 No. 3, "The Impact on an Auditor's Report of an FASB Statement Prior to the Statement's Effective Date," paragraphs .13–.19

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N–0032]

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Test for Antibody to Human Immunodeficiency Virus (HIV)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to require that each unit of human blood and blood components intended for use in preparing a product be tested and found negative by an approved test for antibody to human immunodeficiency virus (HIV). HIV, also known as human immunodeficiency virus type (HIV–1), lymphadenopathy-associated virus (LAV), or human T-lymphotropic virus type III (HTLV–III), is the etiologic agent of acquired immunodeficiency syndrome (AIDS). FDA believes that the voluntary routine testing of blood by an approved test for antibody to HIV is already decreasing the risk of transmitting HIV through the transfusion of blood and blood components and by the parenteral use of certain plasma derivatives.

DATES: Effective February 4, 1988. For human blood and blood component products collected on or after January 5, 1989, the product shall be labeled and instruction circulars shall be provided consistent with this final rule. Licensed establishments should submit draft revised labeling by March 7, 1988.

ADDRESS: Draft revised labeling should be sent to the Director, Office of Biologics Research and Review (HFN–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steve F. Falter, Center for Biologics Evaluation and Research (HFN–382), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of February 21, 1986 (51 FR 6362), FDA proposed to amend the biologics regulations to require that each donation of human blood or blood components intended for use in a product be tested by a serologic test for HTLV–III, approved for such use by the Director, Office of Biologics Research and Review. (As discussed elsewhere in this preamble, FDA has decided that the virus should be identified as "Human Immunodeficiency Virus" or "HIV" and the required test should be identified as "a test for antibody to HIV." This nomenclature is used throughout the remainder of this preamble and in the final regulations.) The proposed requirements would apply to all human blood and blood components intended for use for any product, including products not subject to licensure as a biological product, such as human blood source material used in the manufacture of in vitro diagnostic reagents. In the February 21, 1986, proposal, FDA also proposed requirements concerning the proper labeling of human blood and blood components found nonreactive to a test for antibody to HIV, the qualifications of facilities that may conduct the testing, and restrictions on use of human blood and blood components that are repeatably reactive to a test for antibody to HIV or were collected from a donor whose blood is known to be repeatably reactive to a test for antibody to HIV.

In the preamble to the proposed rule, FDA also discussed the effect of the proposed rule on certain existing regulations, recommendations, and regulatory policies. FDA discussed its requirements and policies concerning the proper storage and disposition of human blood and blood components that are initially reactive or repeatably reactive, the maintenance of written standard operating procedures and records concerning the test, and the recommended procedures for notifying donors of repeatably reactive test results.

Blood establishments began testing human blood and blood components for antibody to HIV consistent with FDA recommendations in early 1985. Through routine inspections and special surveys, FDA has determined that blood establishments have instituted testing programs consistent with these regulations. In accordance with FDA recommendations, blood establishments are also conducting donor screening procedures designed to assure that persons at increased risk of HIV infection do not donate blood or blood components for transfusions or further manufacture. FDA issued the most recent recommendations on donor screening procedures to all registered blood establishments by a letter dated October 30, 1986. By a letter of April 29, 1987, FDA also issued to all registered blood establishments recommendations concerning a test protocol to clarify the status of donors with a reactive test for antibody to HIV. The agency is considering revising the donor suitability regulations in connection with HIV infection to codify existing policies. The purpose of this rulemaking is to establish in the regulations policies already in effect for assuring the continued safety of the blood supply by testing for antibody to HIV. The regulations thus reflect accepted procedures related to the test for antibody to HIV necessary for assuring the continued safety of the blood supply. The regulations will also provide FDA clear enforcement authority in the event that deviations from the accepted testing procedures are discovered.

II. Comments

FDA provided interested persons 30 days to submit written comments on the proposed rule. FDA received 31 letters of comment in response to the proposal. All of the letters supported, in general, FDA's proposed actions. A summary of the comments and FDA's responses follow.

A. Legal Issues

1. Three comments requested that FDA indicate clearly in the final regulations that the Federal requirements for determining donor suitability, product labeling, and the conduct and interpretation of HIV antibody testing are intended to preempt State and local regulation in those specific areas.

FDA believes that the actions requested by the comments are beyond the scope of this rulemaking. In the proposed rule, FDA did not discuss the possible preemptive effect of any of the regulations in this final rule. Nor did FDA propose to revise existing regulations concerning donor suitability or product labeling other than in connection with HIV antibody testing. The comments requested Federal preemption of donor suitability and blood product labeling requirements in general, as well as requirements related to HIV antibody testing. To assure an adequate opportunity for all interested persons, including State and local authorities as well as the blood industry, to consider the issues concerning preemption raised by these comments,

FDA intends to publish in the **Federal Register** a notice that will discuss these issues and provide an opportunity for public comment on them.

2. One comment requested further information on the authority of FDA's Office of Biologics Research and Review (OBRR) to place restrictions on the sale of certain in vitro diagnostic products that are regulated as medical devices and are manufactured from blood components that are reactive for a test for antibody to HIV.

The regulations in this final rule do not apply directly to the sale of in vitro diagnostic products. The regulations apply to blood establishments that collect blood and blood components and place restrictions on the uses of human blood materials that test repeatably reactive for antibody to HIV. The sections of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act (the act) authorizing promulgation of these regulations are listed in the authority citations in paragraphs 1 and 3 on page 6367 and in paragraph 5 on page 6368 of the proposal in the **Federal Register** of February 21, 1986, and are repeated in the authority citations listed below. The regulations require that all human blood intended for further manufacturing be tested and found negative for antibody to HIV; therefore, source blood or plasma that is untested or that tests repeatably reactive would be unavailable for use in manufacturing in vitro diagnostic products without an exception approved by OBRR under § 610.45(c)(1) of the final rule.

FDA is amending the final rule by removing specific references to the Director, Office of Biologics Research and Review. FDA is amending the regulations so that they will not have to be amended again in the event that the title of the organizations or the delegation of authority is changed in the future.

Finished products determined by FDA to be appropriately regulated as medical devices would be regulated under the provisions of the 1976 Medical Device Amendments of the act and implementing regulations in 21 CFR Part 800. Implementation of the requirements concerning medical devices would be by FDA's Center for Devices and Radiological Health or OBRR, in accordance with the delegations of authority in 21 CFR 5.47 through 5.59.

B. Terms and Definitions

3. Five comments recommended that the viral agent be identified as "Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus (HTLV-III/LAV)" wherever the term appears in the regulations. Several other comments recommended that the viral agent be identified as "Lymphadenopathy-Associated Virus/Human T-Lymphotropic Virus Type III (LAV/HTLV-III)." One of these comments, from a manufacturer of test kits, stated that the current term discriminates unfairly against its serologic test product, which identifies the virus as LAV.

FDA has decided to identify the virus as human immunodeficiency virus (HIV) in the regulations. FDA used the term "HTLV-III" in the proposed rule because it was the term used most widely in the United States at the time. HIV is now used most widely in scientific literature and is the term recommended by the international body charged with assigning nomenclature.

In May 1986, a subcommittee of the International Committee on the Taxonomy of Viruses (ICTV) proposed that the term "Human Immunodeficiency Virus (HIV)" be recognized as the name for the AIDS virus. The term "Human Immunodeficiency Virus" and the acronym "HIV" are used increasingly in scientific literature and are now accepted widely. Accordingly, FDA is amending the regulations by using the terms "Human Immunodeficiency Virus" and "HIV" to identify the virus. The term "HIV," as used in this regulation, is intended to encompass the terms "LAV" (now "LAV-I"), "HTLV-III," and "HIV-1," which have also been used to describe the AIDS virus.

FDA has already notified manufacturers of test kits that the proper name of the licensed reagent will be changed to "Human Immunodeficiency Virus." The new proper name should appear on product labeling shortly. Manufacturers of test kits may continue to identify the virus as an HTLV-III or LAV isolate in the product labeling and to incorporate either term in the trade name of the product.

Similarly, FDA is requiring that blood establishments revise their product labeling consistent with 21 CFR 606.122(e) and 640.70(a)(11) of the final rule. FDA discusses the procedures and schedule for these labeling revisions in the response to the following comment.

4. One comment asked that for clarity and accuracy the regulations refer to "a serologic test for antibody to HIV" rather than "a serologic test for HIV."

FDA agrees with the comment. In the proposed rule, FDA omitted the word "antibody" to provide flexibility in the regulations in case tests other than tests for antibody become available in the future. However, on review, FDA finds it important to emphasize in the regulations and product labeling that the current test is a test for antibody to HIV and does not detect directly the virus that causes AIDS. In addition, FDA finds that by specifying that the test is for the detection of antibody, the term "serologic" is no longer necessary for adequately identifying the test and is omitting the term in the final rule. Finally, in the proposed rule, FDA used the term "nonreactive" in certain proposed testing and labeling requirements. Upon review, FDA believes the term "negative" is more appropriate to designate blood samples in which antibody to HIV is not detected. "Negative" is a more general term that will be applicable regardless of the types of tests for detecting the presence of antibody to HIV that may be used in the future. Furthermore, the term "negative" more directly relates to the interpretation of the test results that antibody is not present in the test sample. See also FDA's response to the next comment. Accordingly, FDA is amending the final rule, including the product labeling requirements in §§ 606.122(e) and 640.70(a)(11), to refer to "a test for antibody to HIV" or "Negative by a test for antibody to HIV," as appropriate.

FDA is requiring that human blood and blood components collected on or after January 5, 1989 be labeled and revised instruction circulars be made available consistent with the final regulations. Blood establishments are currently labeling these blood products consistent with the proposed rule. Blood and blood components collected before the effective date need not be relabeled to reflect the change in terminology. Licensed blood establishments should submit draft revised labeling to the Director, Office of Biologics Research and Review, by March 7, 1988, to assure the timely review and approval of the labeling.

FDA continues to believe that the regulations should provide adequate flexibility to allow the immediate use of newly approved tests, other than a test for antibody, for the screening of blood and blood components for evidence of HIV. Accordingly, FDA is amending § 610.45(a) in the final rule by redesignating proposed § 610.45(a) as § 610.45(a)(1) and adding new § 610.45(a)(2) to provide for the use of other tests approved by FDA in place of a test for antibody to HIV, as specified by FDA. FDA emphasizes that tests alternative to a test for antibody to HIV are not currently in use for screening blood, nor may they be used without FDA approval. However, these amendments will provide for immediate use of an alternative test upon FDA approval without requiring concurrent amendment of the regulations.

5. One comment on proposed §§ 606.122(e) and 640.70(a)(11) requested that the term "nonreactive" be defined in the regulations to include "nonrepeatably reactive" as well as "initially nonreactive" test results.

As discussed in response to the previous comment, FDA has decided to use the term "negative" in place of the term "nonreactive" in the regulations. FDA believes it is inappropriate to define "negative" in the regulations. For currently approved test systems, a blood sample that tests reactive upon initial testing but does not react in successive repeat tests, i.e., is not repeatably reactive, is considered negative for antibody. The labeling accompanying licensed test kits describes the criteria for determining that a blood sample is negative. (Some test kit labeling may still use the term "nonreactive," but manufacturers of these test kits are now revising the labeling to use the term "negative.") As current tests are improved or new tests become available, the definition of "negative," as defined in the test kit labeling, may be changed. Because the term negative is adequately defined in test kit labeling and the definition is subject to change, FDA believes it is inappropriate to define the term in the regulations.

6. Two comments on § 610.45(c)(1) and the preamble to the proposed rule contended that the terms "positive" and "repeatedly positive" should not be used with regard to HIV antibody test results because of the frequency of inconsistent and discrepant results using currently available test kits. One of the comments recommended that the terms "repeatably reactive" and "confirmed" should be used in place of "positive" and "repeatably positive," respectively.

FDA agrees that the term "repeatably reactive" should be used in place of "positive" in the regulations. The term "repeatably positive" was used only in the preamble of the proposed rule and not in the regulations; therefore, no further action is necessary with respect to that phrase. The agency is requiring that blood reacting by two independent tests, i.e., that is repeatably reactive, shall not be used for transfusion or the manufacture of a product except upon specific FDA approval. Accordingly, FDA is amending § 610.45(c)(1) to require that blood, plasma, or other blood components that are repeatably reactive to a test for antibody to HIV shall not be shipped or used in the manufacture of any product, except as provided in the regulations. (See also FDA's response to the next comment.)

C. Testing Requirements and Procedures

7. Twelve comments on proposed § 610.45(c) asked that the regulations provide for use of a means of determining false-positive tests for antibody to HIV so that persons testing false-positive are not deferred permanently from donating blood. Many of the comments cited cases of blood samples that initially were repeatably reactive and then did not react by other licensed tests, Western blot, or tests using blood samples obtained subsequent to the first, repeatably reactive, sample. In other cases, the repeatably reactive test results were shown to be false-positive because of human leukocyte locus A (HLA) antibody cross-reactivity. Some comments stated that the responsible physician at the blood establishment should have the discretion of deciding whether such donors could be reinstated in the donor pool. Some comments recommended that blood be considered positive for antibody to HIV only when confirmed by Western blot or other appropriate, more specific tests. Other comments recommended that the deferral for donors testing positive should not be permanent because methods may soon be developed to identify false positive tests and those donors whose blood sample tested false-positive should be allowed to return to routine blood donation.

FDA agrees in part with the comments. As demonstrated by the comments, blood establishments have studied a variety of methods for identifying those blood samples that test repeatably reactive for reasons other than exposure to the HIV virus, i.e., blood samples testing falsely-positive. To be considered for use in assuring the safety of blood products, any such test system must be shown by appropriate trials to identify only falsely-positive tests while assuring that blood containing antibody to HIV is removed from the blood supply.

FDA has now approved for licensure a standardized test system that is appropriate for use as a more specific test for identifying falsely-positive test results. By a letter of April 29, 1987, to all registered blood establishments, FDA issued recommendations for the use of the newly licensed Western blot test as part of a testing protocol to clarify the status of donors with a reactive test for antibody to HIV. Other test systems may be approved for similar purposes in the future, and FDA will continue to advise blood establishments of the conditions under which these test systems may be used. FDA agrees that the regulations should provide for the use of such test systems upon FDA approval. Accordingly, FDA is adding under § 610.45(c)(2)(i) a provision that the restrictions on use of blood and blood components that test repeatably reactive or from a donor known to be repeatably reactive do not apply when the blood or donor is shown to be negative for antibody to HIV or otherwise free from HIV infection by a method or process approved for such purpose by FDA. As FDA approves an appropriate test or process, FDA will advise blood establishments of the circumstances and conditions under which the newly approved method or process may be used. This amendment will allow blood establishments to adopt immediately newly approved methodologies for detecting false-positive reactions to the test for antibody to HIV while assuring the continued safety of the blood supply. Proposed § 610.45(c)(2)(i), (ii), and (iii) are redesignated in the final rule as § 610.45(c)(2)(ii), (iii), and (iv), respectively.

8. One comment from the New York State Department of Health urged that donor notification be made only if the initial screening tests have been confirmed by a more specific assay, such as the Western blot technique. The comment advised that New York State regulations prohibit donor notification without such verification. Another comment asked that FDA strongly endorse the use of Western blot as a confirmatory test before notification of a donor whose blood was repeatably reactive to the test for antibody to HIV.

Currently, blood establishments are using any of several donor notification procedures. For example, many establishments perform additional testing, including testing by the Western blot technique, before notifying a donor. Other establishments notify a donor when the blood sample tests repeatably reactive upon initial testing for antibody for HIV; however, these establishments inform the donor that the test results do not mean that the person will get AIDS and, indeed, that additional testing will be necessary to determine whether the person has even been exposed to the viral agent of AIDS. Such notification also provides the donor guidance for further medical evaluation and counseling.

The requirements in this rulemaking are to assure that blood and blood components containing antibody to HIV are not used for purposes that may be hazardous to the public health. FDA

does not believe it necessary to include requirements at this time concerning the notification of donors testing repeatably reactive for antibody to HIV. The Public Health Service has issued recommendations regarding appropriate procedures for notification of any person testing repeatably reactive to a test for antibody to HIV (*Morbidity and Mortality Weekly Report*, March 14, 1986: 35:152–155). As additional information becomes available, the Public Health Service will issue revised notification recommendations, if appropriate.

9. One comment on proposed § 610.45(a) asked that the regulations clearly prohibit the human use of blood and blood components before the completion of testing for antibody to HIV.

FDA does not agree that the use of incompletely tested blood should be prohibited in all circumstances. Blood and blood components are frequently life-saving products. On occasion, a physician may determine it necessary in a life-threatening situation to transfuse blood and blood components for which testing has not been completed because adequate supplies of completely tested blood of suitable blood type are not immediately available. Except in such emergency situations or in other specific circumstances subject to the approval of FDA, the regulations will effectively prohibit the use of blood and blood products until testing is completed.

10. One comment on proposed § 610.45 (a) and (c) asked that blood labeled "For Autologous Use Only" be specifically exempted from testing requirements and restrictions on use because the testing of an autologous unit for antibody to HIV does not increase the safety of that unit for the donor/recipient.

At many blood establishments, blood may be collected from a person for later infusion into the same person, i.e., for autologous use. In some cases, a blood establishment may elect to use for other purposes blood originally intended for autologous use, but found to be unnecessary for the treatment of the donor/patient. The blood establishment may use such blood or components for other purposes only if the donor was found to meet all suitability requirements related to product safety and the blood has been tested and found suitable by all required tests, including a test for antibody to HIV. When a blood establishment collects blood exclusively for autologous use, the blood or any components of the blood must be prominently and permanently labeled in place of the blood group label as being for autologous use only as required by 21 CFR 606.121(i)(4) of the blood labeling regulations. Blood so labeled is not suitable for homologous use.

FDA agrees that under certain conditions it would be unnecessary to test blood used exclusively for autologous infusion for antibody to HIV because there is no risk of disease transmission to the donor/recipient through such infusion. In the proposed regulations, § 610.45(a) provided that human blood and blood components may be issued before the results of the test for antibody to HIV are available only in dire emergencies or as otherwise approved in writing by FDA. FDA has decided that the proposed regulation should be revised to allow as well for exceptions from the requirement to test each donation. Accordingly, FDA is amending § 610.45(a)(1) (proposed § 610.45(a)) in the final rule to provide that each donation of human blood or blood components intended for use in preparing a product shall be tested for antibody to HIV, except as otherwise approved in writing by FDA. The final regulations will continue to provide that, when the test is required, human blood and blood components may be issued before the results of the test for antibody to HIV are available only in dire emergencies or as otherwise approved by FDA.

The Director, Office of Biologics Research and Review intends to send a written memorandum to blood establishments setting forth the conditions for an exception to the HIV testing requirement for blood or blood components for autologous use only. Therefore, individual establishments need not write to the agency requesting specific exceptions from the HIV testing requirement for products for autologous use at this time. FDA emphasizes that it is the responsibility of each blood establishment to assure that its procedures regarding blood for autologous use protect the health of the patient and to assure that the blood or its components are not later accidentally or otherwise diverted for other uses. For example, blood establishments should take particular care to have adequate procedures to assure that plasma from blood intended for autologous use that does not meet FDA requirements is not separated, labeled, and sold for use in further manufacturing.

11. One comment requested that special provisions be made for cytapheresis products collected from persons who donate frequently. The comment noted that FDA's current policy concerning the collection of Platelets, Pheresis by automated apheresis methods provides for testing of donor blood for syphilis and hepatitis B surface antigen at the beginning of a 30-day period and to require more frequent testing for antibody to HIV would increase costs unnecessarily and delay delivery of the products to the patient.

FDA agrees with the comment. FDA is approving special programs of intensive plateletapheresis by which platelets are collected repeatedly from a single donor, such as a family member of the intended recipient, for transfusion into a single recipient. Platelets, Pheresis may be collected in this manner as often as every 48 hours for a period not to exceed 30 days. The donor's health is evaluated carefully at each visit; however, FDA requires that the donor's blood be tested for syphilis and hepatitis B surface antigen only at the beginning of the 30-day donation period. Likewise, FDA agrees that the donor's blood needs to be tested for antibody to HIV only at the beginning of the 30-day donation period. FDA believes this policy will eliminate unnecessary testing without jeopardizing the safety of the platelets administered to the recipient.

As discussed in comment 10, proposed § 610.45(a) is now being revised to allow for exceptions from the requirement to test each donation. As with the exception regarding products for autologous use only, the exception regarding single donor intensive plateletpheresis will be described in more detail in a memorandum from the Director, Office of Biologics Research and Review to blood establishments.

D. Product Labeling, Storage, and Restrictions on Use

12. One comment asked whether the requirements of current § 606.40(a)(4) would be fulfilled by storing blood that tests initially reactive for HIV antibody in the general quarantine area for untested blood until the completion of repeat testing. The comment agreed, however, that repeatably reactive units should be stored in a separate quarantine area reserved for biohazardous materials.

FDA finds that the storage conditions described in the comment, i.e., storage conditions in a general quarantine area for untested blood do not fulfill the requirements of current § 606.40(a)(4). Section 606.40(a)(4) requires that adequate space be available to provide for the quarantine storage of blood components in a designated location pending repetition of those tests that initially give questionable serological results. In compliance with § 606.40(a)(4), many small blood establishments designate a shelf or secondary storage container in a blood storage refrigerator as being reserved for quarantine of blood and blood components with questionable test results. Blood with questionable test results must be isolated from untested blood at the time of labeling to assure that potentially hazardous units are not released inadvertently for transfusion when the testing of the other blood units is completed.

13. One comment on proposed § 610.45(a) asked that the regulations be amended to require that the labeling of blood and blood components indicate when testing for antibody to HIV has not been completed.

FDA agrees with the comment. In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA issued a final rule revising the labeling requirements for blood and blood components intended for transfusion. The regulations became effective on September 2, 1986. Included in 21 CFR 606.121(h) is a requirement that the labels of blood or blood components shipped in an emergency, prior to the completion of testing, identify which required tests have been completed and which have not been completed before shipment. As provided in § 610.45(a)(1) (proposed § 610.45(a)), blood may be issued in a dire emergency before testing for antibody to HIV is completed. FDA is amending § 606.121(h) in this final rule to include reference to the test for antibody to HIV as one of the required tests for which the label of blood shipped in an emergency must identify the testing status.

14. Two comments asked that an exception be provided in § 610.45(c)(2) to permit the use in certain biological products of blood components known or suspected to be repeatably reactive for antibody to HIV. Specifically, the comments asked that the regulations provide for the use of such blood components in manufacturing Hepatitis B Vaccine or for manufacturing various in vitro diagnostic reagents derived from the plasma of persons with hemophilia A or B.

Under § 610.45(c)(1) of the proposed rule, blood and blood components testing repeatably reactive for antibody to HIV could be shipped or used, with limited exceptions, only for purposes and under conditions approved in writing by FDA. FDA continues to believe that this restriction on the use of such blood and blood components is necessary to assure that the agency can adequately monitor the handling, labeling, and use of these potentially hazardous materials. Accordingly, FDA does not believe that the regulations should be amended to specify the products for which repeatably reactive human blood source materials may be used in their manufacture. As provided in § 610.45(c)(1), manufacturers of products such as those mentioned in the comments may apply individually to FDA for permission to ship and use for manufacture blood and blood components that are repeatably reactive for antibody to HIV.

15. One comment by a manufacturer of blood derivatives asked whether plasma collected before the test for antibody to HIV became available (April 1985) could be used for the manufacture of albumin and immunoglobulin products. The comment expressed the belief that the manufacturing process renders these products safe for parenteral use. The comment estimated that it would take 4 years to completely dispose of all in-process lots of its products that are prepared from source materials that were not tested for antibody to HIV.

FDA advises that upon the effective date of this rule, untested plasma may not be used routinely for the manufacture of any product, including albumin and immunoglobulin products. Blood establishments have been testing blood and plasma for antibody to HIV since early 1985; therefore, supplies of untested plasma are largely depleted and supplies of tested plasma are adequate to meet routine needs. FDA recognizes that some untested plasma intended for special purposes, such as plasma containing a rare antibody that is used in the manufacture of in vitro diagnostic reagents, may still be stockpiled awaiting further manufacture. FDA also recognizes that untested plasma may be used safely in the manufacture of some biological products, provided the manufacturer takes appropriate precautions and the agency monitors the handling, labeling, and use of these potentially hazardous materials. As provided under § 610.45(a) of the final rule, a manufacturer may apply to FDA for permission to use untested plasma for further manufacture.

III. Economic, Environmental, and Paperwork Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354).

FDA concludes that a little over 2,000 establishments, about half of which are small businesses, will be affected by the final rule. FDA estimated that the final rule will require the performance of about 24 million serologic tests for HIV antibody each year: 14 million tests on units of blood and 10 million tests on units of Source Plasma. The nation's blood banks and plasmapheresis centers, large and small, are now performing the HIV antibody test voluntarily.

FDA cannot at this time quantify the benefits of the rule, which are related primarily to the decrease in the risk of transmitting AIDS by transfusion. Much of this benefit would take place even in the absence of these regulations, because the blood industry has instituted HIV antibody testing without the regulations. The main benefits of the regulations are to standardize industry practices, thereby providing a more complete and timely assurance of the continued safety of the nation's blood supply.

The anticipated costs are insufficient to warrant designation of this final rule as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

Sections 640.2(f) and 640.72(a)(2) of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0227.

In addition, the final rule continues current collection of information requirements already submitted to OMB under section 3507 of the Paperwork Reduction Act (21 CFR 606.100 and 606.160, OMB control number 0910–0116).

List of Subjects

21 CFR Part 606

Blood, Laboratories.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, 21 CFR Parts 606, 610, and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. In § 606.121 by revising paragraph (h) to read as follows:

§ 606.121 Container label.

* * * * *

(h) The following additional information shall appear on the label for blood or blood components shipped in an emergency, prior to completion of required tests, in accordance with § 640.2(f) of this chapter:

(1) The statement: "FOR EMERGENCY USE ONLY BY _____."

(2) Results of any tests prescribed under §§ 610.40, 610.45, and 640.5 (a), (b), or (c) of this chapter completed before shipment.

(3) Indication of any tests prescribed under §§ 610.40, 610.45, and 640.5 (a), (b), or (c) of this chapter and not completed before shipment.

* * * * *

3. In § 606.122 by revising paragraph (e) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(e) Statements that the product was prepared from blood that was negative when tested for antibody to Human Immunodeficiency Virus (HIV) and nonreactive for hepatitis B surface antigen by FDA required tests and nonreactive when tested for syphilis by a serologic test for syphilis (STS).

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

4. The authority citation for 21 CFR Part 610 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

5. By adding § 610.45, to read as follows:

§ 610.45 Human immunodeficiency Virus (HIV) requirements.

(a) *Testing requirements.* (1) Each donation of human blood or blood components intended for use in preparing a product shall be tested for antibody to HIV by a test approved for such use by FDA, except as otherwise approved in writing by FDA. When the test for antibody to HIV is required, blood and blood products may be issued before the results of the test for antibody to HIV are available only in dire emergency situations or as otherwise approved in writing by FDA and, provided the test required by this paragraph is performed as soon as possible after issuance of the blood or blood product.

(2) Tests approved by FDA for the screening of blood and blood components for evidence of HIV may only be used in place of a test for antibody to HIV to satisfy the requirements of this section and related sections if so specified by FDA.

(b) *Testing responsibility.* The test for antibody to HIV shall be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or by a clinical laboratory which meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided the establishment or clinical laboratory is qualified to perform the test.

(c) *Restrictions on use.* (1) Blood, plasma, or other blood components that are repeatably reactive to a test for antibody to HIV or that were collected from a donor whose blood is known to be repeatably reactive to a test for antibody to HIV, shall not be shipped or used to prepare any product, including products not subject to licensure; except that such blood and blood components shall be shipped or used only for purposes and under conditions specifically approved in writing by FDA.

(2) The restrictions on use contained in this paragraph shall not apply in the following cases:

(i) Blood and blood components testing repeatably reactive or from a donor whose blood is known to be repeatably reactive that are shown to be negative for evidence of HIV infection by a method or process approved for such use by FDA;

(ii) The distribution of blood, plasma, or serum samples, except when intended for use in the manufacture of a product;

(iii) The in-house use of blood and blood components for research purposes; or

(iv) The distribution of blood and blood components for research purposes, if not distributed by sale, barter, or exchange.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

6. The authority citation for 21 CFR Part 640 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948, 76 Stat. 794–795 as amended (21 U.S.C. 321, 351, 352, 355, 360, 371) and the Public Health Service Act (sec. 351, 361, 58 Stat. 702 as amended (42 U.S.C. 262, 264)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

7. In § 640.2 by revising paragraph (f) and by adding a parenthetical statement at the end of the section, to read as follows:

§ 640.2 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued by the manufacturer on the request of a physician, hospital, or other medical facility before results of all tests prescribed in § 640.5, the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter, and a test for antibody to Human Immunodeficiency Virus (HIV) prescribed in § 610.45(a) of this chapter have been completed, where such issue is essential to allow time for transportation to ensure arrival of the blood by the time it is needed for transfusion: *Provided,* That (1) the blood is shipped directly to such physician or medical facility, (2) the records of the manufacturer contain a full explanation of the need for such issue, and (3) the label on each container of such blood bears the information required by § 606.121(h) of this chapter.

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0227.)

8. In § 640.5 by adding paragraph (f), to read as follows:

§ 640.5 Testing the blood.

* * * * *

(f) *Test for antibody to HIV.* Whole Blood shall be tested for antibody to HIV as prescribed in § 610.45 of this chapter.

9. By revising § 640.14, to read as follows:

§ 640.14 Testing the blood.

Blood from which Red Blood Cells are prepared shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

10. In § 640.23 by revising paragraph (a), to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

11. In § 640.33 by revising paragraph (a), to read as follows:

§ 640.33 Testing the blood.

(a) Blood from which plasma is separated shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

12. In § 640.53 by revising paragraph (a), to read as follows:

§ 640.53 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Cryoprecipitated AHF shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

13. By revising § 640.67, to read as follows:

§ 640.67 Laboratory tests.

(a) *Hepatitis B surface antigen.* Each unit of Source Plasma shall be nonreactive to a test for hepatitis B surface antigen as prescribed in §§ 610.40 and 610.41 of this chapter, except insofar as permitted in § 610.40(d) (2) and (3) of this chapter.

(b) *Antibody to HIV.* Each unit of Source Plasma shall be negative by a test for antibody to HIV as prescribed in § 610.45 of this chapter, except as provided in § 610.45(c) of this chapter.

14. In § 640.70 by adding paragraph (a)(11), to read as follows:

§ 640.70 Labeling.

(a) * * *

(11) The statement "Negative by a test for antibody to HIV", or equivalent statement.

* * * * *

15. In § 640.71 by adding paragraph (a)(4), to read as follows:

§ 640.71 Manufacturing responsibility.

(a) * * *

(4) A test for antibody to HIV.

* * * * *

16. In § 640.72 by revising paragraph (a)(2) and by adding a parenthetical statement at the end of the section, to read as follows:

§ 640.72 Records.

(a) * * *

(2) For each donor, a separate and complete record of all initial and periodic examinations, tests, laboratory data, interviews, etc., undertaken pursuant to §§ 640.63, 640.65, 640.66, and 640.67, except that negative test results for hepatitis B surface antigen, negative test results for antibody to HIV, and the volume or weight of plasma withdrawn from a donor need not be kept on the individual donor record: *Provided,* That such information is maintained on the premises of the plasmapheresis center where the donor's plasma has been collected.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0227.)

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary for Health and Human Services.

Dated: December 7, 1987.

[FR Doc. 88–60 Filed 1–4–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8171]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832 (b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register. The temporary regulations are issued because the current treatment of salvage and reinsurance does not result in an accurate reflection of income for federal tax purposes. The regulations affect insurance companies taxable under section 831 (a). The Service will issue guidance making it clear that the principles of these regulations also apply to the treatment of salvage and reinsurance in determining a life insurance company's paid and unpaid losses on contracts other than life insurance contracts. See sections 811 (a), 807 (c), and 816 (c) of the Internal Revenue Code of 1986 and the regulations thereunder.

DATES: The regulations are effective as of January 1, 1988, and apply to taxable years beginning after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:LR:T, (202) 566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 832 (b)(5) of the Internal Revenue Code of 1986.

Explanation of Provisions

Under section 832 (b) the gross income of a property and casualty insurance company includes its underwriting income. Underwriting income means premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred. Section 832 (b) (5) provides that losses incurred are generally computed by deducting any increase in salvage and reinsurance recoverable from paid losses, and to that result adding any increase in unpaid losses. (The Tax Reform Act of 1986 provides for the discounting of unpaid losses to reflect the time value of money. The discounting of unpaid losses is expected to be the subject of another regulation project. That project is expected to address the proper treatment, under section 846 (g)(2), of salvage and reinsurance attributable to unpaid losses, where such amounts are not taken into account in determining the unpaid losses shown in the annual statement filed by the taxpayer, and

hence are not reflected in the taxpayer's "undiscounted unpaid losses," as defined in section 846 (b) (1)).

Although the statute clearly requires that paid losses be adjusted to take into account salvage recoverable (i.e., salvage not reduced to cash or cash equivalents), this adjustment generally has not been made. In 1947, the Internal Revenue Service promulgated regulations under section 832 that provided for the exclusion from salvage recoverable of an item if any state in which the taxpayer transacted business prohibited the taxpayer from reporting such an item for annual statement purposes. Several states have rules prohibiting the reporting of any salvage recoverable. These rules reflect the generally conservative nature of state reporting measures, which are designed primarily to ensure the solvency of insurance companies. After the 1947 regulations were issued, many insurance companies began transacting business in states that prohibited the reporting of salvage recoverable. There remained, however, certain regional companies which did not transact business in such states. These companies were required to take salvage recoverable into account. Despite this disparity in treatment, the exclusion of salvage recoverable was upheld in *Continental Insurance Co. v. United States*, 474 F.2d 661 (Ct. C1. 1973).

The exclusion of salvage recoverable, while consistent with state regulatory ends, does not result in an accurate reflection of income for federal tax purposes. Those purposes are best served by a close matching of income and expenses. The temporary regulations, therefore, amend § 1.832–4 (c) to require that paid losses be adjusted by all salvage recoverable attributable to such paid losses, regardless of how the salvage recoverable is reported for annual statement purposes.

Section 1.832–4 (b) of the regulations provides that the taxpayer must establish "that the part of the deduction for 'losses incurred' which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similar cases, can be said to represent a fair and reasonable estimate of the amount the company will be required to pay." The temporary regulations amend § 1.832–4 (b) of the regulations to clarify that, in making a "fair and reasonable estimate of the amount the company will be required to pay," estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account.

Thus, the temporary regulations provide that salvage and reinsurance recoverable attributable to paid losses must be taken into account under section 832 (b) (5) (A) (i) as an adjustment to paid losses. Estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account in calculating the reserve for unpaid losses under section 832 (b) (5) (A) (ii).

In addition, the temporary regulations address the adjustments that must be made if the temporary regulations require an insurance company to change its method of accounting for salvage and reinsurance. The temporary regulations provide that the fresh start of section 1023 (e) of the Tax Reform Act of 1986 is not applicable to such a change in accounting method.

Finally, the temporary regulations make explicit that the term "salvage" includes subrogation claims. The temporary regulations do not thereby change the law concerning the meaning of salvage (as illustrated by *Continental Insurance Co. v. United States*, 474 F.2d 661 (Ct. C1. 1973)), and no inference should be drawn with respect to any section of the Internal Revenue Code or the regulations thereunder that any change is intended.

Special Analyses

The Commissioner of Internal Revenue has determined that the temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these temporary regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.801–1 Through 1.832–6

Income taxes, Insurance companies.

Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as set forth below:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.832–4 is redesignated as § 1.832–4T and amended by revising the heading, adding a new sentence at the end of paragraph (a)(5), revising paragraphs (b) and (c), and adding paragraphs (d) and (e) to read as follows:

§ 1.832–4T Gross income (temporary).

(a) * * *

(5) * * * See paragraph (b) of this section for rules relating to the treatment of salvage and reinsurance in determining unpaid losses.

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similiar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account in the computation of unpaid losses. The amounts of such expected recoveries should be estimated based upon the facts in each case and the company's experience with similar cases. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of the actual liability determined as provided in the preceding sentences will be disallowed as a deduction. The district director may require any such insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) That part of the deduction for "losses incurred" which represents an adjustment to losses paid for salvage and reinsurance recoverable shall include all salvage in course of liquidation, and all reinsurance in process of collection not otherwise taken into account as a reduction of losses paid, outstanding at the end of the taxable year. Salvage in course of liquidation includes all property (other than cash or cash equivalents), real or personal, tangible or intangible. Such salvage in course of liquidation shall be taken into account to the extent of the value thereof at the end of the taxable year as determined from a fair and reasonable estimate based upon either the facts in each case or the company's experience with similar cases. Cash or cash equivalents received during the taxable year with respect to items of salvage or reinsurance shall reduce losses paid during such taxable year. For purposes of this section the term "salvage" includes subrogation claims.

(d)(1) The treatment of salvage and reinsurance is a method of accounting. Every insurance company to which this section applies that did not treat salvage and reinsurance as provided in this section for the last taxable year beginning before January 1, 1988, must change its method of accounting with respect to salvage and reinsurance in the first taxable year beginning after December 31, 1987. The change in method of accounting will result in a section 481(a) adjustment. The fresh start provision of section 1023(e) of the Tax Reform Act of 1986 does not apply to the change in method of accounting required by this paragraph (d)(1).

(2) In the case of any insurance company required by paragraph (d)(1) of this section to change its method of accounting for any taxable year, such change shall be treated as initiated by the taxpayer and made with the consent of the Commissioner.

(3) Any insurance company required to change its method of accounting under paragraph (d)(1) of this section shall take the required adjustment into account as provided in applicable administrative procedures.

(e) This section is effective for taxable years beginning after December 31, 1987. In computing unpaid losses for taxable years beginning before January 1, 1988, an insurance company to which this section applies is not required to take into account estimated recoveries on account of salvage attributable to unpaid losses. In addition, in computing paid losses for such taxable years, an insurance company to which this section applies is not required to take into account salvage recoverable if during such taxable years the inclusion of such salvage was prohibited by the laws of a state in which the company transacted business.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 22, 1987.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87–30193 Filed 12–30–87; 1:51 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–37]

Drawbridge Operation Regulations; Okeechobee Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Martin County, the Coast Guard is changing regulations governing the Evans Crary drawbridge in Martin County by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On October 2, 1987, the Coast Guard published proposed rule (52 FR 36961) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated October 16, 1987. In each notice, interested persons were given until November 16, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

The Coast Guard's notice of proposed rulemaking solicited comments on a proposal to change the operating regulations of the Evans Crary bridge and the Roosevelt bridge. Over 100 comments were received concerning the proposed rule change for the Roosevelt bridge and that matter is being witheld for further study. 60 of these comments were generally in support of the proposed regulations for both bridges including 2 petitions with 61 signatures. Many commenters complained about vessels which request openings merely to clear outriggers and antennae. The requirement to lower these appurtenances is contained in 33 CFR 117.11. Several commenters asked that signs stating the bridge opening times be placed along both the waterway and the highway. Waterway signs are addressed by 33 CFR 117.55. Posting of highway signs is not within the Coast Guard's jurisdiction, but the suggestion will be passed to the Florida Department of Transportation. One commentor expressed concern for movement of emergency vehicles when the bridge is open for navigation. This is addressed in 33 CFR 117.31. Some commenters suggested that a limit be placed on the number of vessels allowed to pass through an open bridge to avoid extended openings. This is not considered a safe navigational practice. 33 CFR 117.9 addresses unnecessary delays in the opening and closure of the draw. Several commenters asked that the regulations be implemented year-round. Available highway traffic and bridge opening data do not support the need for year-round regulations. No objections were received from navigation interests; however 1 commenter stated the regulations should be temporary, contingent on replacement of the drawbridge by a high level fixed bridge within 2 years. The Coast Guard offers no comment on this proposal since replacement of the bridge goes beyond the scope of these regulations. After careful consideration of all comments, the Coast Guard has determined the final rule for the Evans Crary bridge will be unchanged from the proposed rule published on October 2, 1987.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant

economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.317(b) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(b) *Evans Crary (SR A1A) bridge, mile 3.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays, and federal holidays, December 1 through May 1, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

* * * * *

Dated: December 22, 1987.

M.J. O'Brien,

Acting Captain, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 88–69 Filed 1–4–88; 8:45 am]

BILLING CODE 4910-14-M

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Regulation Implementing the Freedom of Information Act; Uniform Fee Schedule and Administrative Guidelines

AGENCY: American Battle Monuments Commission.

ACTION: Final rule.

SUMMARY: The American Battle Monuments Commission has changed its procedures for responding to public requests for access to records or information maintained by the Commission. These regulations implement and reflect recent amendments to the Freedom of Information Act.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Colonel William E. Ryan, Jr., Freedom of Information Officer, American Battle Monuments Commission or Martha Sell, Freedom of Information Act Representative, Room 5127, Casimir Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC 20314 (202) 272–0537.

SUPPLEMENTARY INFORMATION: The American Battle Monuments Commission has revised 36 CFR Part 404, its regulations for responding to public requests for access to records or information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations implement and reflect recent amendments to the FOIA made by the Freedom of Information Act of 1986, Pub. L. 99–570, 1801–1804. They also reflect guidelines issued by the Office of Management and Budget by 52 FR 10012, March 27, 1987. The regulations also update and amplify the Commission's current regulations.

List of Subjects in 36 CFR Part 404

Freedom of Information.

36 CFR Part 404 is revised to read as follows:

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

404.1 Purpose.
404.2 General policy.
404.3 Response to requests.
404.4 Denial of access.
404.5 Appeals.
404.6 Fees to be charged.
404.7 Assessment and collection of fees.
404.8 Categories of requesters.
404.9 Waiver of fees.
404.10 Maintenance of statistics.

Authority: 5 U.S.C. 552.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i). This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the addresses listed below:

(a) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(b) Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(c) Superintendent, Manila American Cemetery, FPO San Francisco 96528.

(d) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU–AG–CRB, Drawer #38, APO Miami, FL 34004–5000.

(e) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044–3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office.

(2) Officer-in-Charge, ABMC Mediterranean Office.

(3) Directors, ABMC Washington Office.

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial,

(2) Inform the requester of his or her right to appeal the denial within 30 days,

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) Manual searches of records. $9.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel.

(b) Computer searches for records. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(c) Copying fee. The machine copy fee for each page up to 8½ x 14 shall be $.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) $2.00 for each 8 x 10 inch black and white photograph.

(e) $3.00 for each 8 x 10 inch color photograph.

(f) $1.75 per cemetery booklet.

(g) $1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed $10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed $25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraphs (a)(4)(i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

There are four categories of FOIA requesters: Commercial; educational

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and noncommerical scientific institutions; representatives of the news media; and all others. The fees to be charges each of these categories of requesters are as follows:

(a) *Commerical.* When ABMC [4] receives a request for documents for commerical use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(b) *Educational and non-commerical scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought.

(c) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commerical use. Requesters must provide a reasonable description of the records sought.

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: Disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Representative shall afford the requester the opportunity to show that he satisfies these two conditions. Under the above standards should ABMC refuse to waive a request for information and the requester petition for a waiver, the senior Freedom of Information Representative will make the determination.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain record of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

William E. Ryan, Jr.,

Colonel, AD, Freedom of Information Officer.

[FR Doc. 88-11 Filed 1-4-88; 8:45 am]

BILLING CODE 5120-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM-86-5A]

Recordation of Transfers and Other Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a final regulation amending its regulations (37 CFR 201.4) implementing section 205 of the Copyright Act of 1976, title 17 U.S.C. The Office has decided to revise its requirement that, to be recordable, a reproduction of a signed document must be accompanied by a sworn certification signed by at least one of the persons who executed the document, or by an authorized representative of that person. Under the amended regulation, the required sworn certification need only be signed by a party to a document, or by an authorized representative of that person, regardless of whether the person actually signed the original document.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 205(a) of title 17 U.S.C. provides for the recordation in the Copyright Office of any transfer of copyright ownership or other document pertaining to a copyright "if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document." In implementing this provision, the Copyright Office adopted a regulation [37 CFR 201.4(c)(1)] requiring that "[a]ny sworn certification accompanying a reproduction shall be signed by at least one of the persons who executed the document, or by an authorized representative of that person." On October 2, 1986 (51 FR 35244), the Office published a notice of proposed rulemaking to advise the public that it was considering the adoption of an amendment to its regulations to permit the required sworn certification to be signed by a party to a document, regardless of whether that person actually signed the original document. Interested parties were given until November 3, 1986, to comment on the proposed amendment. Comments were received from a representative of the Association of American Publishers, Inc. (AAP) and the law firm of Brylawski, Cleary & Leeds.

Both parties commenting on the proposed amendment supported the direction taken by the Copyright Office, but suggested that the proposed change did not go far enough. The law firm asserted that, where the original, signed document is unavailable, there are many people capable of certifying a reproduction as a true copy of the original. These persons would include an assignee or other successor in interest. The commentator urged that at least the successor in interest to one of the parties to the original signed document be permitted to sign the required certification. The AAP also suggested that the proposed amendment be expanded to cover successors in interest to one of the original parties. The AAP observed that the proposal, while an improvement on the existing requirement, could lead to difficulties "where recordation is sought by a successor to the publisher (e.g., in the case of a license, assignment, or business transfer of all or part of the subject matter covered by the document." The AAP noted that it is not uncommon that a party to the original document may no longer exist or be unavailable.

The Copyright Office, after reviewing the comments in light of the statutory purpose of recordation concludes that it should not record documents on the basis of copies attested to merely by a successor in interest. The Office is concerned about the authenticity of the recordations made pursuant to section 205, and has a responsibility to the public and the judicial system to guard against fraud. In cases where several transfers are interposed between the initial transaction and the point at which recordation is sought, the reliability of any bare assertion by a successor in interest is diminished. Finally since a successor in interest may submit for recordation the actual signed document under which such person is claiming an interest in the copyright, the Copyright Office is not persuaded of the need to revise its proposal.

The Office has been operating under its current regulation on recordation of transfers and other documents for nearly ten years. During this period, the Office has received few complaints concerning its certification requirement. The rule as proposed last year is an important departure from the existing procedure. The Office will closely monitor the experience under this new certification requirement to determine whether further amendment is required.

The Copyright Office is also making a minor technical amendment to 37 CFR 201.4(c)(1). The words "full-size" before facsimile reproductions are being deleted. The phrase is amended to read: "a legible photocopy or other legible facsimile reproduction of the signed document." This change is made in order to clarify the meaning of this requirement. "Full-size" refers to the Copyright Office policy of refusing to accept microform copies of documents for recordation, not whether a particular reproduction is the same size as the document reproduced. The Copyright Office is not in a position to make such a determination. It is sufficient for a reproduction of a document to be capable of being read for purposes of examining and cataloging and being reproduced in legible microform copies. As provided in subparagraph (3) of § 201.4(c), to be recordable, a document "must be legible and capable of being reproduced in legible microform copies." Reproductions of documents must also meet this requirement.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. This position is explained fully in the "Supplementary Information" accompanying the proposed rule. See 51 FR 35244. In the event it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to that Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses. In fact the amendment makes it easier to record documents.

List of Subjects in 37 CFR Part 201

Copyright, Recordation of copyright documents.

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act, Pub. L. 94-553; 90 Stat. 2541; 17 U.S.C. 702.

2. Section 201.4(c)(1) is revised to read as follows. The introduction to paragraph (c) is republished.

§ 201.4 Recordation of transfers and certain other documents.

* * * * * *

(c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other legible facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the parties to the signed document, or by an authorized representative of that person.

* * * * * *

Dated: December 14, 1987.

Ralph Oman,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 88-45 Filed 1-4-88; 8:45 am]

BILLING CODE 1410-07-M

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37 CFR Part 201

[Docket No. RM 87-8]

Revocation of Import Statements

AGENCY: Copyright Office, Library of Congress.

ACTION: Revocation.

SUMMARY: The Copyright Office of the Library of Congress hereby revokes § 201.8 of 37 CFR. Section 201.8 was issued to implement section 601(b)(2) of the Copyright Act of 1976 which permitted importation into the United States of two thousand copies of certain copyrighted works not manufactured in the United States or Canada. In order to import the copies, the importer was required to present to the United States Customs Service an import statement issued by the Copyright Office. Regulation 201.8 established the requirements governing the issuance of such import statements. The

manufacturing clause of the copyright law expired on July 1, 1986, making § 201.8 obsolete.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559; (202) 287–8380.

SUPPLEMENTARY INFORMATION: The manufacturing clause of the Copyright Act of 1976, title 17 of the United States Code, section 601, prohibited the importation into the United States of certain copyrighted works not manufactured in the United States or Canada. As an exception to that prohibition, an importer could import up to 2000 otherwise prohibited copies upon presentation to the United States Customs Service of an import statement issued by the Copyright Office. The 1976 version of the manufacturing clause, was originally scheduled to expire July 1, 1982. Public Law 97–215 extended the prohibition against importation of certain copyrighted works until July 1, 1986. The manufacturing clause has now expired making § 201.8 of Title 37 CFR obsolete and requiring its revocation.

PART 201—[AMENDED]

1. The authority citation for 37 CFR Part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2461, 17 U.S.C. 702. § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

§ 201.8 [Removed]

2. Section 201.8 is removed and the section number is reserved.

Dated: December 14, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 88–47 Filed 1–4–88; 8:45 am]

BILLING CODE 1410-07-M

POSTAL SERVICE

39 CFR PART 111

Postage Deficiency; Mail Bearing Permit Imprints

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to provide that, after a final agency decision has been made regarding a postage deficiency for a permit imprint mailing, the Postal Service will apply subsequent postage deposits to the postage deficiency. Postage on subsequent mailings bearing permit imprints will not be applied to the mailing, and these mailings would not be accepted as fully prepaid, until both the postage deficiency and the postage for the mailings have been paid in full.

EFFECTIVE DATE: March 20, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268–5321.

SUPPLEMENTARY INFORMATION: On January 23, 1987, the Postal Service published for comment in the **Federal Register** a proposed amendment to the Domestic Mail Manual (DMM) as described above (52 FR 2560–2561). Interested persons were invited to submit written comments concerning the proposed amendment by February 23, 1987.

The Postal Service received 5 written comments in response to its January 23 notice. One commenter saw no problem with the proposal as written. Another commenter saw no problem with the proposal, provided that the application of postage payments to satisfy revenue deficiencies would be used as a last resort and only after publishers exercised their rights to appeal adverse determinations to a higher and final administrative level in accordance with DMM 148. Nothing in the proposed rule would affect the right of a publisher to appeal the assessment of a revenue deficiency, in accordance with DMM 148.2.

Another commenter urged that the mailer should be given a grace period of 30 days, rather then 15 days, to pay the deficiency following a final agency decision under DMM 148.2. This would allow more time to determine the source of funds, prepare the necessary paperwork, and obtain all required signatures.

The Postal Service agrees that this is a reasonable suggestion consistent with the proposal, and it is included in the final version of 148.2, which appears in a companion rulemaking on second-class mail in this issue of the Federal Register.

Another commenter indicated that, in planning their operations, mailers might have entered into various contractual agreements that might become unprofitable if they had to pay a legitimate deficiency, and that a "statute of limitations" should be placed on revenue deficiencies. In practice, the Postal Service attempts to notify a mailer immediately when a revenue deficiency is discovered. This procedure is specifically intended to ensure that deficiency claims do not become stale, and is consistent with the practical fact that revenue deficiencies are typically discovered as a result of a subsequent audit of the records at a postal facility. If a deficiency is appealed, the official considering the appeal considers all issues raised by the mailer. In appropriate cases, the age of the deficiency or the financial hardship imposed by its payment may provide grounds for reducing or canceling the deficiency claim. In other cases, a mailer may arrange to pay an assessed deficiency in installments over a period as long as three years. For these reasons, the Postal Service believes it is not necessary to create a formal "statute of limitations" for deficiency claims.

Another commenter suggested that the proposal would truncate administrative due process at a relatively low level whenever an initial deficiency is found by the local post office, and that the final agency decision should be reviewed at a higher level. A mailer, however, may appeal any postmaster's revenue deficiency ruling within fifteen (15) days of its receipt by filing a written appeal to the General Manager of the Rates and Classification Center for the post office of mailing. Each Rates and Classification Center is a unit of the Office of Classification and Rates Administration, Postal Service Headquarters, Washington, DC 20260–5360. If the deficiency was initially assessed by the General Manager of a Rates and Classification Center, that ruling may be appealed directly to the Director of the Office of Classification and Rates Administration.

For the above reasons, and after consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, with certain modifications as discussed above:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 145—PERMIT IMPRINTS

2. In part 145, add new .67 to read as follows:

145.6 Mailings with Permit Imprints.

.67 Payment of Revenue Deficiencies. After a final agency decision has been made regarding a revenue deficiency (see 148.2), the mailer will be given a grace period of 30 days in which to pay the deficiency. If any deficiency remains unpaid at the end of 30 days, subsequent postage payments by or on behalf of the mailer will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent mailings will not be considered to be prepaid in full, and permit imprint mailings by or on behalf of the mailer will not be accepted as fully prepaid, until the deficiency has been paid in full.

These changes will be published in an issue of the Domestic Mail Manual and transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–7 Filed 1–4–88; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 111

Postage Deficiency; Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to provide that, after a final agency decision has been made regarding a postage deficiency on a mailing of a second-class publication, the Postal Service will apply subsequent postage deposits to the postage deficiency. Postage deposits for subsequent second-class mailings will not be applied to the mailings, and these mailings would not be accepted as fully prepaid, until both the postage deficiency and the postage for the mailings have been paid in full.

EFFECTIVE DATE: March 20, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268–5321.

SUPPLEMENTARY INFORMATION: On January 23, 1987, the Postal Service published for comment in the **Federal Register** a proposed amendment to the Domestic Mail Manual (DMM) as described above (52 FR 2561–2562). Interested persons were invited to submit written comments concerning the proposed amendment by February 23, 1987.

The Postal Service received 6 written comments in response to its January 23 notice. One commenter saw no problem with the proposal as written. Another commenter saw no problem with the proposal, provided that the application of postage payments to satisfy revenue deficiencies was to be used as a last resort and only after publishers exercised their rights to appeal adverse determinations to a higher and final administrative level in accordance with DMM 148. Nothing in the proposed rule would affect the right of a publisher to appeal the assessment of a revenue deficiency, in accordance with DMM 148.2.

Another commenter urged that after a final agency decision has been made regarding a revenue deficiency (see DMM 148.2), the publisher should be given a grace period of thirty (30) days rather than fifteen (15) days to pay the deficiency because it would take time to determine the source of funds, prepare the necessary paperwork, and obtain all required signatures.

The Postal Service believes that a 30-day period is reasonable, and that suggestion is adopted in the final rule.

Another commenter indicated that, in planning their operations, mailers might have entered into various contractual agreements that might become unprofitable if they had to pay a legitimate deficiency, and that a "statute of limitations" should be placed on revenue deficiencies. In practice, the Postal Service attempts to notify a mailer immediately when a revenue deficiency is discovered. This procedure is specifically intended to ensure that deficiency claims do not become stale, and is consistent with the practical fact that revenue deficiencies are typically discovered as a result of a subsequent audit of the records at a postal facility. If a deficiency is appealed, the official considering the appeal considers all issues raised by the mailer. In appropriate cases, the age of the deficiency or the financial hardship imposed by its payment may provide grounds for reducing or canceling the deficiency claim. In other cases, a mailer may arrange to pay an assessed deficiency in installments over a period as long as three years. For these reasons, the Postal Service believes it is not necessary to create a formal "statute of limitations" for deficiency claims.

Another commenter suggested that the proposal would truncate administrative due process at a relatively low level whenever an initial deficiency is found by the local post office, and that the final agency decision should be reviewed at a higher level. Similarly, another commenter who opposed the change argued that the proposal would empower subordinate postal officials to make final decisions on revenue deficiencies and authorize a postmaster on that basis to deny entry to newspapers and other periodicals at the second-class rates of postage. A mailer, however, may appeal any postmaster's revenue deficiency ruling within fifteen (15) days of its receipt by filing a written appeal to the General Manager of the Rates and Classification Center for the post office of mailing. Each Rates and Classification Center is a unit of the Office of Classification and Rates Administration, Postal Service Headquarters, Washington, DC 20260–5360. If the deficiency was initially assessed by the General Manager of a Rates and Classification Center, that ruling may be appealed directly to the Director of the Office of Classification and Rates Administration.

For the above reasons, and after consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, with certain modifications as discussed above:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 148—REVENUE DEFICIENCY

2. In part 148, revise .2 to read as follows:

148.2 Appeal of Ruling.

A mailer may appeal any ruling assessing a revenue deficiency, within 15 days of its receipt, by filing a written appeal to the postmaster. The postmaster will forward all customer appeal letters to the General Manager of the Rates and Classification Center for the post office of mailing. If the dificiency was assessed initially by the General Manager, Rates and Classification Center, the mailer may appeal the ruling, within 15 days of its receipt, by filing a written appeal to the Director, Office of Classification and Rates Administration, Washington, DC 20260–5360. The mailer may be asked to furnish additional information or documents to support the appeal. Failure to furnish information or documents within 30 days of such a request will be grounds for denying an appeal. A final agency decision will be made as soon as practicable after receipt of the appeal and any necessary supporting documents.

PART 480—PAYMENT OF POSTAGE

3. In Part 480, revise 481 to read as follows:

481 Payment in Advance and Revenue Deficiencies.

481.1 Payments in Advance of Dispatch. Postage must be fully prepaid before second-class mailings are dispatched. Payment must be made

through an advance deposit account established at the post office of mailing. The post office will issue receipts for advance deposit account payments. The third- or fourth-class rate may be paid only by adhesive or meter stamps, or by permit imprints. (See 411.4)

481.2 Payment of Revenue Deficiencies. After a final agency decision has been made regarding a revenue dificiency (see 148.2), the publisher of the publication will be given a grace period of 30 days in which to pay the deficiency. If any deficiency remains unpaid at the end of 30 days, subsequent postage deposits for mailings of the publication will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent mailings of the publication will not be considered to be prepaid in full, and subsequent mailings of the publication will not be accepted as fully prepaid, until the deficiency has been paid in full.

These changes will be published in an issue of the Domestic Mail Manual and transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-8 Filed 1-4-88; 8:45 am]

BILLING CODE 7710-12-M

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39 CFR Part 232

Correction and Updating of Authority Line

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to revise the authority line of Part 232, correcting citation errors and adding newly enacted authority.

EFFECTIVE DATE: December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—[AMENDED]

The authority citation for Part 232 is revised to read as set forth below and the authority citations following § 232.1 are removed.

Authority: 39 U.S.C. 401, 403(b)(3); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1988, Pub. L. 100-202; 18 U.S.C. 3061.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-57 Filed 1-4-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3311-6]

Illinois; Immediate Final Decision on the Revision to the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking on the revisions to Illinois authorized Hazardous Waste Management Program.

SUMMARY: Illinois has appled for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The United States Environmental Protection Agency (U.S. EPA) has reviewed Illinois' revision application and has made a decision, subject to public review and comment, that Illinois' Hazardous Waste Program Revision Application, satisfies all of the requirements necessary to qualify for final authorization. Thus, U.S. EPA intends to approve Illinois' Hazardous Waste Program Revision Application. Illinois' application is available for public review and comment at the location indicated in the "ADDRESSES" section of this notice.

DATES: Final authorization for Illinois' program revision shall become effective March 5, 1988 unless U.S. EPA publishes a prior FR action withdrawing this action. Comments on Illinois program revision must be received by the close of business on February 4, 1988.

ADDRESSES: Copies of Illinois' program revision are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Illinois Environmental Protection Agency, Division of Land Pollution Control 2200 Churchill Road, Springfield, Illinois 62706, Contact Phillip Van Ness (217) 782-7836; U.S. EPA Headquarters Library, PM 211A, 401 M Streets, SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, Chicago, Illinois 60640, Contact Gary Westefer (312) 886-7450.

Written comments should be sent to Mr. Gary Westefer, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Westefer, Illinois Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, 5HS-JCK-13, Chicago, Illinois, 60604, (312) 886-7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Management Program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(e), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. Illinois

Illinois initially received authorization on January 31, 1986. Today, Illinois is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(4). On August 7, 1986, EPA received an application from Illinois that concerned State regulatory revisions for equivalence with the following provisions of the RCRA program.

- May 10, 1984, FR—Warfarin and Zinc Phosphide (49 FR 19923);
- June 5, 1984, FR—Lime Stabilized Pickle Liquor Sludge (49 FR 23287);
- November 13, 1984, FR—Exclusion of Household Waste. (49 FR 44980);
- November 21, 1984, FR—Interim Status Standards Applicability; (40 FR 46095);

- December 4, 1984, FR—Corrections to Tests Methods Manual, (40 FR 47391);
- December 20, 1984, FR—Satellite Accumulation, (49 FR 49571);
- January 4, 1985, FR—Redefinition of Solid Waste, (50 FR 614);
- January 14, 1985, FR—Dioxin, (50 FR 1978);
- April 23, 1985, FR—Interim Status Standards Landfill Cover Design Standards (50 FR 16044);
- April 30, 1985, FR—Paint Filter Test, (50 FR 18370);
- 3006(f) Availability of Information

On May 22, 1987, July 14, 1987, and September 2, 1987, Illinois submitted supplementary information. EPA has reviewed Illinois' revision application and supplementary information and has made a decision, subject to public review and comment, that Illinois' Hazardous Waste Management program revision meets all of the statutory and regulatory requirements established by RCRA and does reflect the State's equivalency with the Federal program. Consequently, U.S. EPA intends to grant Illinois authorization for this program modification. The public may submit written comments on U.S. EPA's proposed approval of this revision, up until February 4, 1988. Copies of Illinois' program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Illinois' program revision shall become effective 60 days after the date of publication in the **Federal Register** (FR) unless an adverse comment pertaining to the State's revisions, discussed in this notice, is received. If comments pertaining to the revision application or this decision are received, U.S. EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Any RCRA hazardous waste permits, or portions of permits, issued by U.S. EPA under the provisions for which the State is applying for authorization, prior to the effective date of authorization, shall be administered by U.S. EPA. U.S. EPA will suspend issuance of any further permits under the provisions for which the State is authorized on the effective date of authorization. U.S. EPA had previously suspended issuance of permits for other provisions on January 31, 1986, the effective date of Illinois' authorization for the RCRA program. Illinois is not authorized nor seeking to be authorized to operate the Federal program on Indian lands. This authority shall remain with U.S. EPA.

C. Effect of HSWA on Illinois' Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Illinois. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Illinois until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's immediate final determination includes authorization of Illinois' program for one requirement implementing the HSWA: Dioxin, which is found in 50 FR 1978, dated January 14, 1985. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a) 6926, 6974(b).

Dated: December 10, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88-50 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3311-8]

Florida; Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of correction of date.

SUMMARY: This notice corrects the date previously published in the **Federal Register** dated December 1, 1987 (52 FR 45634) for the deadline for receipt of public comments and the effective date for final authorization of Florida's hazardous waste program. The public comment period is extended until the close of business February 1, 1988. Final authorization for the federal requirements listed at 52 FR 45635 shall be effective March 1, 1988.

The addresses remain unchanged.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr. (404) 347-3016.

Date: December 23, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88-49 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3311-5]

Indiana; Final Determination on a Revision to the State's Authorized Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final agency determination on a revision to Indiana's Authorized Hazardous Waste Management Program.

SUMMARY: On June 29, 1987, Indiana submitted to the United States Environmental Protection Agency (U.S. EPA), a revision to its authorized Hazardous Waste Management Program under the Resource Conservation and Recovery Act, as amended (RCRA).

U.S. EPA published a notice in the **Federal Register** on September 29, 1987, announcing its tentative determination, subject to public review and comment, to grant Indiana authorization for the program modifications contained in its June 29, 1987 program revision. Today, U.S. EPA is announcing its final agency determination to grant Indiana authorization for the program modifications contained in its June 29, 1987 program revision. Today's action is being taken because by the close of business of October 29, 1987, U.S. EPA had received no adverse comment pertaining to the State's revisions discussed in the September 29, 1987, **Federal Register** notice.

EFFECTIVE DATE: Authorization for Indiana's program revision, which was discussed in the September 29, 1987, **Federal Register**, shall become effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George Woods, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, Program Management Section, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois 60604, (312) 886-6134.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA or "the Act") 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Management program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21 (a) and (e), revisions to State hazardous waste management programs are necessary when Federal or State statutory or regulatory authority is modified or upon certain other changes to EPA's regulations in 40 CFR Parts 260-268, 124 and 270.

B. Indiana

Indiana initially received final authorization on January 31, 1986. On June 29, 1987, Indiana submitted a program revision for additional program approval. EPA has reviewed Indiana's revision application and has made a final decision that Indiana's Hazardous Waste Management program revisions does reflect the State's equivalency with the Federal program. Consequently, EPA intends to grant Indiana final authorization for this program modification.

On September 29, 1987, the notice of proposed rulemaking appeared in the **Federal Register** (52 FR 36444-36446). That **Federal Register** notice summarized all issues raised in U.S. EPA's review of the State's complete application; also, the notice listed the Non-HSWA provisions for which Indiana is being authorized. Along with the notice of tentative determination, U.S. EPA announced the availability of Indiana's application for public inspection and copying, the date of the public comment period, and U.S. EPA's tentative determination to grant Indiana final authorization. The public notice ran in 11 newspapers in Indiana and was mailed to all individuals and oraganizations on the Region V Indiana mailing lists. That September 29, 1987, **Federal Register** Notice appeared in the proposed rules section. Today's action is required so that notice of the Agency's final determination is published in the final rules section of the **Federal Register**.

C. Decision

I conclude that Indiana's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Indiana is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous Waste Amendments of 1984, (Pub. L. 98-616, November 8, 1984) (HSWA). Indiana now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program subject to the HSWA. Indiana also has primary enforcement responsibility, although U.S. retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Indiana is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S. EPA.

As stated above, Indiana's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984, HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While the States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program.

Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Indiana until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Indiana.

Indiana is not being authorized now for any requirements implementing HSWA. Once the State is authorized to implement an HSWA requirement or prohibition the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

Compliance With Executive Order 12291

The Office of Management and Budget has examined this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovermental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act a amended 42 U.S.C. 6912(a), 6926, 6974(b).

Frank M. Covington

Acting Regional Administrator.

[FR Doc. 88-51 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[F PMR Amendment D-87]

Management of Buildings and Grounds

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: These changes to FPMR Subchapter D reflect changes in GSA organization and policy and clarify penalties for violations of the GSA Building Rules and Regulations. This revision is designed to clarify the content and update references to reflect correct publications and remove obstacles to effective buildings management.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: James Steele (202-566-1563).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

PART 101-20—[AMENDED]

1. The authority citation for Part 101-20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 101-20.302 is revised to read as follows:

§ 101-20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency program after consultation with the buildings manager and the ranking representative of the Law Enforcement Branch responsible for protection of the facility or the area. The designated official is defined in § 101-20.003(g) as the highest ranking official of the primary occupant agency, or the alternate highest ranking offical or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

3. Section 101-20.307 is revised to read as follows:

§ 101-20.307 Alcoholic beverages and narcotics.

Operations of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings manager and the Chief, Law Enforcement Branch, or other authorized

officials, reponsible for the security of the property.

4. Section 101–20.308 is revised to read as follows:

§ 101–20.308 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR, Parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations issued by the U.S. Office of Personnel Management under Executive Order 12353 of March 23, 1982, as amended, and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454); and

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 [40 U.S.C. 490(a)(16)].

Note: Public areas of GSA-controlled property may be used for other activities permitted in accordance with subpart 101–20.4.

5. Section 101– 20.315 is revised to read as follows:

§ 101–20.315 Penalties and other laws.

Whoever shall be found guilty of violating any rule or regulations in this subpart 101–20.3 while on any property under the charge and control of the U.S. General Services Administration is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both (See Title 40 U.S. Code 318c.) Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (Sec 205(c), 63 U.S. Statutes, 390; 40 U.S. Code 486(c)).

Dated: October 26, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–15 Filed 1–4–88; 8:45 am]

BILLING CODE 6820–23–M

48 CFR Part 501

[APD 2800.12 CHGE 51]

Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 501 to update the listing of Office of Management and Budget (OMB) Control Numbers, to change the time period for incorporation of Acquisition Circulars into the regulation from six months to one year, to eliminate the requirement for the Associate Administrator or a designee to sign Acquisition Letters, to add a clarification to explain that contracting activities may not deviate from a regulation that implements a statutory requirement in a manner that would violate the underlying statute, to make other minor editorial changes and to update General Services Administration (GSA) organizational titles. The intended effect is to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION: This rule will not have a significant impact on contractors and/or offerors. Therefore, it was not published for public comment in the **Federal Register**. However, comments received from various GSA offices have been reconciled and incorporated, when appropriate, in the final rule. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291.

The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 501

Government procurement

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 501 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.102 is revised to read as follows:

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR 5) is prescribed by the Associate Administrator for Acquisition Policy in Chapter 5, Title 48, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

3. Section 501.103 is amended by revising paragraph (b) to read as follows:

501.103 Applicability.

* * * * *

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, and Subparts 504.70, 507.1, 509.4, 515.1, 519.6, 519.7, 532.8 and 543.1 include policies and procedures which generally apply to all contracts including leases of read property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

* * * * *

4. Section 501.105 is amended by revising and removing the following OMB numbers (the introductory text is republished for the convenience of the user) to read as follows:

501.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. The following OMB control numbers apply:

GSA segments	OMB Control Number
507.305	3090–0104
514.202–4(b) [Removed]	3090–0167
525.105–70(b)	3090–0198
528.202–71(a)	3090–0189
GSA–1142	3090–0060

5. Sections 501.107–3 and 501.170–4(a) are revised to read as follows:

501.170–3 Amendments.

The GSAR may be amended from time to time by the Associate Administrator for Acquisition Policy, with appropriate concurrences from other GSA officials (e.g., counsel and any other appropriate offices).

501.170–4 Acquisition circulars.

(a) Acquisition Circulars (AC) may be issued by the Associate Administrator for Acquisition Policy as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in this regulation by amendment. The use of Acquisition Circulars to supplement the GSA is appropriate when speed of issuance is essential, numerous changes are required and all necessary changes cannot be made promptly. Acquisition Circulars will be considered canceled after one year and therefore must be incorporated in the GSAR within this time period.

* * * * *

6. Section 501.171–1 is revised to read as follows:

501.171–1 GSA orders and handbooks.

Internal agency guidance, as described in the FAR, should be issued in the form of a GSA order or handbook. "Internal agency guidance" is defined as designations and delegations of authority, assignments of delegations of authority, assignments of responsibility, work-flow procedures, internal reporting requirements, detailed operating procedures, etc. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. GSA orders and handbooks dealing with acquisition may be issued by the heads of contracing activities or their designees. Policies and procedures for drafting, formatting, and numbering GSA Orders and handbooks are contained in the handbook, Writing GSA Internal Directives (OAD P 1832.3).

7. Section 501.171–2 is revised to read as follows:

501.171–2 Acquisition letters (AL).

(a) Acquisition Letters may be issued as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in GSA orders or handbooks. The use of Acquisition Letters to amend GSA Orders or handbooks is appropriate when speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly. Acquisition Letters will be considered canceled after one year and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The Associate Administrator for Acquisition Policy, and heads of contracting activities or their designees may issue Acquisition Letters. No more than two officials within a contracting activity, as appropriate, may be designated to issue Acquisition Letters.

(c) The Associate Administrator for Acquisition Policy or a designee must coordinate ALs with the heads of central office contracting activities, counsel, and the Inspector General. The heads of central office contracting activities or their designees must coordinate ALs with the Office of Acquisition Policy, counsel and the Inspector General. Regional offices must coordinate ALs with the regional counsel, and the regional Acquisition Management Staff (RAMS). When time permits, regional offices should also coordinate ALs with their Central Office counterpart and the Office of Acquisition Policy.

(d) ALs must be identified by a number that is to be assigned by the issuing activity. The number must begin with the correspondence symbol of the issuing office, must be followed by the last two digits of the calendar year in which it is issued and must be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service, in calendar year 1984 will be P–84–1. If the Commissioner, PBS, authorized the Assistant Commissioner for the Office of Procurement (PP) and the Assistant Commissioner for the Office of Real Property Development (PQ) to issue ALs on his behalf, the ALs would be numbered PP–84–1 and PQ–84–1 respectively. If the Commissioner authorizes the Assistant Commissioners to issue ALs on his behalf, but elects to sign a particular letter, the AL letter should be numbered using the correspondence symbol of the office that prepared the AL. Regional numbers will be preceded by the region number.

(e) ALs must conform to the format for instructional letters outlined in Appendix D of the Writing GSA Internal Directives Handbook (OAD P 1832.3). In addition, each AL must be numbered, dated, and include a subject line that cites the order or handbook reference. The body of the AL should contain the following paragraphs, as appropriate:

(1) Purpose.

(2) Background.

(3) Effective date.

(4) Termination date.

(5) Cancellation.

(6) Applicability (offices to which AL is applicable).

(7) Reference to regulations (FAR or GSAR), handbooks or orders.

(8) Instructions/procedures.

(f) ALs issued by the heads of Central Office contracting activities must be signed by the head of the contracting activity or a designee.

(g) ALs may be printed on colored paper in accordance with the following color designations:

Blue—Office of Acquisition Policy
Salmon—Federal Supply Service
Yellow—Information Resources Management Service
Pink—Federal Property Resources Service
Green—Public Buildings Service
White—Regional Offices and other Central Office contracting activities not listed above.

(h) The issuing office is responsible for distributing its ALs in accordance with the guidelines outlined below:

Issuing office	Distribution
Office of Acquisition Policy	All GSA contracting activities, regional Acquisition Management Staff (RAMS), Associate General Counsels and regional counsels, the Directives and Reports Management Branch (CAID)
Central Office Heads of Services and Staff Offices	Office of Acquisition Policy, Service/office contracting activities or segment thereof, RAM'S, Associate General Counsels and regional counsels, and the Directives and Reports Management Branch
Regional Offices	Office of Acquisition Policy, appropriate Central Office contracting activities, RAM'S, regional counsel, regional contracting activities or segment thereof and the Directives and Reports Management Branch

(i) Each issuing office must submit a report of ALs issued and canceled to the Office of GSA Acquisition Policy and Regulations (VP) on a quarterly basis. The Office of Acquisition Policy will issue a consolidated index of all AL's issued or canceled on a quarterly basis. This index will be distributed to all GSA contracting activities.

8. Section 501.402 is revised to read as follows:

501.402 Policy.

(a) In order to maintain maximum uniformity, deviations from the GSAR and the FAR must be kept to a minimum.

(b) A contracting activity must not deviate from a regulatory provision that implements a statutory requirement in a manner that would violate the underlying statute.

9. Sections 501.403 and 501.404 are revised to read as follows:

501.403 Individual deviations.

(a) Deviations by GSA activities from the GSAR or the FAR in individual cases must be approved by the head of the contracting activity. The file must disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval must be furnished to the Office of Acquisition Policy (V).

(b) The deviation procedure must not be used to defeat the approval requirements contained in the FAR and GSAR.

501.404 Class deviations.

(a) Deviations by GSA activities from the FAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V).

(b) Deviations by GSA activities from the GSAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests must be supported by statements that fully disclose the need for and the nature of the deviation.

Dated: December 23, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-14 Filed 1-4-88; 8:45 am]

BILLING CODE 6820-61-M

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48 CFR Parts 501 and 513

[Acquisition Circular AC-87-4]

Increase in Thresholds for Contracting Office Warrant Program and Imprest Fund Transactions

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends Parts 501 and 513 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to increase the threshold for purchases which require a contracting officer warrant and to increase the threshold for purchases paid through the imprest fund. The intended effect is to provide guidance to GSA offices responsible for certain small purchasing pending a revision to the GSAR.

DATES: Effective Date: January 23, 1988.

Expiration Date: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations. (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION: This regulation was not published for public comment because it will not have a significant impact on offerors or contractors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The increase in the imprest fund threshold will have a minimal but beneficial impact on contractors when the imprest fund is used. The increases in the threshold for the contracting officer warrant program will have no impact outside of the agency. Therefore, a Regulatory Flexibility analysis was not prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501 and 513

Government procurement.

1. The authority citation for 48 CFR Parts 501 and 513 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 501 and 513 are amended by the following Acquisition Circular:

Acquisition Circular (AC-87-4)

To: All GSA contracting activities.

Subject: Increase in thresholds for Contracting Officer Warrant Program and Imprest Fund transactions.

1. *Purpose.* The Acquisition Circular is issued to increase the threshold for purchases which requires a contracting officer warrant and to increase the threshold for purchases paid through the imprest fund.

2. *Background.*

a. The Office of Finance has requested this office revise the General Services Administration Acquisition Regulation (GSAR) to raise the imprest fund threshold for all GSA activities to $500 per transaction. In addition, the Office of Finance requested the regulation reflect the authority of imprest fund cashiers in Alaska to make routine disbursements to $500 and emergency disbursements to $800.

b. Since its establishment, the contracting officer warrant program has excluded purchases under $150 from the requirements of the program. The $150 threshold was established to coincide with the imprest fund threshold applicable at the time. Since the imprest fund threshold is being increased for all GSA activities, the threshold for the contracting officer warrant program is also being increased to maintain consistency.

3. *Effective date.* January 23, 1988.

4. *Expiration date.* July 22, 1988 unless canceled earlier or extended.

5. *Reference to regulation.* GSAR 501.603, 512.203-1, 513.404, 513.503-3 and 513.7001.

6. *Explanation of changes.*

a. Section 501.603 is amended to revise paragraph (b)(2)(i) and (ii) to read as follows:

501.603 Selection, appointment and termination of appointment.

* * * * *

(b) *Applicability.*

* * * * *

(2) A warrant is not required for:

(i) Individual purchases under $500, regardless of the method of procurement;

(ii) Any imprest fund transaction;

* * * * *

b. Section 513.203-1 is amended to revise the first two sentences of paragraph (b) to read as follows:

513.203-1 General.

* * * * *

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA are permitted to request deliveries. Employees designated in the BPA to place orders, who are not warranted contracting officers, may not place orders of $500 or more without first obtaining the approval of a warranted contracting officer.

* * * * *

c. Section 513-404 is revised to read as follows:

513.404 Conditions for use.

The per transaction spending limitation for cash payment made through imprest funds is $500 ($800 for emergency disbursements by imprest fund cashiers in Alaska). In addition, the conditions for use of imprest funds outlined in FAR 13.404 (b) and (c) apply.

d. Section 513.505-3 is amended to revise paragraph (b) to read as follows:

513.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

* * * * *

(b) *Authorization for using the form.* When necessary, designated employees may be authorized to make small purchases under $500 using Standard Form 44 in accordance with this subpart. Purchases of $500 or more using SF 44 may be made only by contracting officers.

* * * * *

e. Section 513.7001 is amended to revise paragraph (e) to read as follows:

513.7001 Certified invoice procedures.

* * * * *

(e) The solicitation of quotations may be performed by authorized personnel without contracting officer warrants; however, the placement of any orders of $500 or more must be approved in advance by a warranted contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation in which case telephonic approval may be obtained and a notation of the approval recorded.

* * * * *

Dated: December 23, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition policy.

[FR Doc. 88-13 Filed 1-4-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84-01; Notice 13]

Final Listing of High Theft Lines for 1988 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This agency has completed all of its actions for determining which car lines will be subject to the marking requirements of the motor vehicle theft prevention standard for the 1988 model year. NHTSA has previously published a listing of those car lines that were selected as high theft car lines beginning with the 1987 model year. This listing includes all of those car lines, as well as the new lines introduced in the 1988 model year that have been selected as likely high theft lines. In addition, this listing shows the three lines that have received exemptions from complying with the requirements of the theft prevention standard beginning with the 1988 model year, because they have standard equipment anti-theft devices. This final listing for the 1988 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1988 model year.

EFFECTIVE DATE: This listing becomes effective January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4807).

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard;* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines with the agreement of the manufacturer, if possible. NHTSA has published the procedures that it follows in selecting lines as high theft lines at 49 CFR Part 542. In accordance with those procedures, NHTSA has selected five new 1988 car lines that are likely to be high theft lines. The newly selected lines are set forth in this listing, along with all those lines that had been previously selected as high theft lines. A listing of the previously selected lines was published at 51 FR 42577; November 25, 1986. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to all lines that have been selected as high theft lines, unless those previously selected lines receive an exemption under section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. Pursuant to this statutory provision, NHTSA has exempted one of the newly selected high theft lines from the requirements of Part 541. Additionally, two car lines that were formerly subject to Part 541 have been exempted for the 1988 model year.

This revised listing is intended to inform the public, particularly law enforcement groups, of which car lines are subject to the marking requirements of the theft prevention standard for the 1988 model year, and of which car lines are exempted from the theft prevention standard for the 1988 model year because of standard equipment anti-theft devices. The agency has already selected those new lines that are likely to be high theft lines, in accordance with Part 542 and section 603 of the Cost Savings Act. NHTSA has already exempted car lines with qualifying standard equipment anti-theft devices, in accordance with Part 543 and section 605 of the Cost Savings Act. Therefore, since this revised listing only informs the public of previous agency actions and agreements, and does not impose any additional obligations on any party, NHTSA finds for good cause that this notice should be effective as soon as it is published in the Federal Register.

NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. All of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Further, all of the lines exempted from Part 541 were exempted in accordance with Title VI. Public comment on the selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

Regulatory Impacts

NHTSA has determined that this rule listing the high theft car lines subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the selections have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of Part 541 for the 1988 model year. This listing does not actually exempt lines from the

requirements of Part 541; it only informs the general public of all such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1988 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this notice is simply to inform the public of those lines that will be subject to the requirements of Part 541 for the 1988 model year. The agency believes this information will not have any economic impact on small entities.

Finally, the agency has considered the environmental impacts of this rule, in accordance with the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Appendix A of Part 541 is revised, Appendix A–I is removed, and Appendix A–II is redesignated as Appendix A–I and revised, to read as follows:

APPENDIX A.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Alfa Romeo	Milano 161
BMW	3-Car line 5 Car line 6-Car line
Chrysler	Chrysler Executive Sedan/Limousine Chrysler Fifth Avenue/Newport Chrysler Laser Chrysler LeBaron/Town & Country Chrysler LeBaron GTS Dodge Aries Dodge Daytona Dodge Diplomat Dodge Lancer Dodge 600 Plymouth Caravelle Plymouth Gran Fury Plymouth Reliant "O" Car
Ferrari	Mondial 8 308 328
Ford	Ford Mustang Ford Thunderbird Mercury Capri Mercury Cougar Lincoln Continental Lincoln Mark Lincoln Town Car Merkur Scorpio Merkur XR4Ti
General Motors	Buick Electra Buick LeSabre Buick Regal Buick Riviera Cadillac Deville Cadillac Eldorado Cadillac Seville Chevrolet Camaro Chevrolet Nova Oldsmobile Cutlass Supreme Oldsmobile Delta 88 Oldsmobile 98 Oldsmobile Toronado Pontiac Bonneville Pontiac Fiero Pontiac Firebird Pontiac Grand Prix
Honda	Acura Legend
Jaguar	XJ XJ-6 XJ-40
Maserati	Biturbo Quattroporte
Mazda	GLC 626 MX-6
Mercedes-Benz	190 D/E 260 E 300 CE 300 D/E 300 SE 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia Tredia
Porsche	911 924S 928
Reliant	SS1
Saab	900 9000
Subaru	XT
Toyota	Camry Celica Corolla/Corolla Sport MR2 Starlet
Volkswagen	Audi Quattro Volkswagen Cabriolet Volkswagen Rabbit Volkswagen Scirocco

APPENDIX A–I.—LINES EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines
Austin Rover	Sterling
BMW	7 Car line
Chrysler	Chrysler Conquest
General Motors	Cadillac Allante Chevrolet Corvette
Isuzu	Impulse
Mazda	929 RX-7
Mitsubishi	Galant Stanion
Nissan	Maxima 300 ZX
Toyota	Supra Cressida
Volkswagen	Audi 5000S

Issued on December 30, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 88–79 Filed 1–4–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 71030–7277]

Foreign Fishing; Foreign Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA amends the fee schedule for foreign vessels fishing in the exclusive economic zone (EEZ). Under the amended schedule, foreign vessels owners will pay fees, at 44.4 percent of the exvessel value, for fish they directly harvest from the EEZ, and $354 per vessel permit application. The amended fee schedule is designed to recover $13.467 of government costs incurred under the Magnuson Fishery Conservation and Management Act (Magnuson Act). No additional fees are assessed on receipt of fish from U.S. harvesting vessels beyond the vessel application fees. This rule is needed to comply with section 204(b)(10) of the Magnuson Act.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Copies of the final regulatory impact review for this action may be obtained from the Fees and Permits Branch, F/TS21 at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Pelsh, 202–673–5319, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: NOAA amends the schedule of fees for fishing by foreign vessels in the exclusive economic zone (EEZ). The amended schedule sets a target for an annual fee collection of $13.467 million, of which $13.272 million are to be collected in poundage fees, and the balance by 1988 application fees of $354 per vessel. The schedule also requires that vessels of a nation falling under "higher fee" criteria must pay an additional incremental amount of 42.2 percent of their poundage fees.

Background

On November 4, 1987, NOAA published a Notice of Proposed Rulemaking (NPR) for a 30-day public comment period at 50 FR 42408. The proposed would amend the foreign fee schedule by revising § 611.22 of 50 CFR Part 611 according to provisions of section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 et seq.)

Section 204(b)(10) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1987) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during (1988) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1988)." [16 U.S.C. 1824(b)(10)(B)]. The fiscal and calendar years proposed to be used in this fee schedule are shown above.

Section 204(b)(10) also states that if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", in other words, meeting a "higher fee" criterion, subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which are based on the ration of the fish harvested by foreign vessels in the EEZ to the aggregate quantity of fish harvested by both foreign and domestic vessels in the EEZ only. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

The NPR proposed to revise § 611.22 to set a fee schedule to recover 10.95 percent of the Federal FY87 costs of carrying out the purposes of the Magnuson Act (hereafter referred to as Magnuson Act costs.) By applying the above ratio of the published catches in 1986 to the total FY87 Magnuson Act costs of $186.889 million, NOAA calculated a proposed fee target of $20.5 million of which $0.1948 million would be collected in permit application fees and $20.3 million in poundage fees for the foreign catch. The total poundage fees would amount to about 88 percent of the exvessel values of the fish estimated to be taken in 1988. NOAA also proposed to apply a surcharge of 15 percent of the fees for the Fishing Vessel and Gear Damage Compensation Fund.

The minimum level of foreign fishing fees is related to total Magnuson Act costs in the same proportion as the ratio of the catches taken by foreign vessels relates to the total U.S. and foreign catches in the EEZ and territorial waters. In 1988 (which is the most recent calendar year for which NOAA has accurate statistics) foreign vessels harvested 10.96 percent of the total catch. NOAA's proposed amendment therefore used that percentage to set the minimum fee target.

Changes are made by this final rule as the result of public comment. The principal change is to use projected estimates of the 1987 foreign and domestic catches instead of the actual figures from 1986. After applying the newly estimated harvests, NOAA recalculates $7.467 million as "at least" the minimum amount that should to be recovered from foreign fishing fees. Beyond that amount an additional $6.0 million will be collected to correct for shortfalls in actual collections.

NOAA estimates that about $0.1948 million will be received for 550 permit application fees and therefore proposed that the balance be recovered from poundage fees. The proposed foreign permit application fees were based on estimated costs of processing the applications. A fee of $354 was proposed for each vessel application. No change is made as the result of public comments.

The amount proposed to be collected from the lower poundage fees was apportioned in relation to current estimated exvessel values and tonnages of the respective species expected to be harvested by foreign vessels in 1988.

The 1988 foreign catch of each species was projected and values of the catches of all species were summed to establish a total exvessel value for the foreign catch in the EEZ in 1988. The ratio of the amount proposed to be recovered from poundage fees to the total exvessel value of the projected 1988 foreign catch in the EEZ determined the proposed fee assessment rate. No change is made as a result of the comments on the proposed exvessel values or on the estimated 1988 foreign harvest. However, the fee assessment rate has been reduced from the proposed rate of 47.83 percent to a final rate of 44.4 percent of the adopted exvessel values. This change results from the reduction in the fee revenue target and is less than the 47.83 percent rate adopted in 1987. Due to changes in the catch composition and increases in exvessel values the poundage fees are slightly higher by this amendment but are substantially lower than originally proposed.

Summary of Comments

Eighteen comments were received. These were from the Governments of Japan and the German Democratic Republic, and also from the European Economic Community on behalf of member states; from Senator Bill Bradley and Congressman William Hughes; from the New England Fishery Management Council; from the Japan Fisheries Association, and the Polish Commercial counselor; from five U.S. and foreign companies and agents, and from three representatives of U.S. fishermen and their associations.

The comments tended to focus less on specific provisions of the proposed schedule than in former years, but several did address NOAA's methods for compiling Magnuson Act costs and for determining the exvessel value for Atlantic mackerel. Overall a common thread was the perceived detrimental effect of NOAA's use of published 1986 statistics to determine the foreign fee schedule target, and a consensus that the resulting fees would undermine U.S. efforts to develop the domestic industry which needs the cooperation of foreign vessel owners.

The second general issue addressed in the comments was the rationale and need for a surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDC). These comments centered on the policy of applying a surcharge to capitalize the Fishing Vessel and Gear Damage Compensation Fund beyond the expected duration of foreign fishing in the EEZ.

At least three foreign fishing representatives indicated that their

vessels would fish in other waters rather than the EEZ if fishing costs were kept at the level proposed. Another said his vessels probably would not fish in the EEZ. The assertions made in the foreign comments were supported by U.S. fishing companies, and representatives of U.S. fishermen and their associations. NOAA's conclusion is that the proposed fees could work against U.S. fishery development and trade interests, and in some cases the conservation and management of fully developed U.S. fisheries. The changes described under the section entitled *The Revised Fees* result from this conclusion.

Certain other comments were specific to NOAA's methods for calculating the Magnuson Act costs. Views that NOAA has overstated costs are not well founded. An extensive record exists which sets out NOAA's position on comments directed at the cost compilations, for example item 3 of 52 FR 417, dated January 6, 1987. Variations in Department of Commerce cost elements for carrying out the purposes of the Magnuson Act may occur from year to year. The variations are a reflection of the judgment of regional and other program leaders when weighing the contributions of each program for the year in question to purposes of the Magnuson Act. An earlier review by the General Accounting Office (GAO) concluded that certain costs previously not considered by NOAA are related to the purposes of the Magnuson Act. The large increase in FY 85 Magnuson Act costs reflects NOAA's agreement with that conclusion. One such cost identified by the GAO was Coast Guard's indirect costs. Although the Coast Guard did not agree, it does provide both direct and indirect costs for fishery enforcement operations but only after removing 10 percent of the costs which are not related to the Magnuson Act. In its entirety, the Coast Guard position is that the costs of foreign fishing enforcement are the direct costs of the hours logged for foreign at-sea enforcement. These hours are clearly identified in the Coast Guard accounting system. If its position were accepted, Coast Guard's FY 87 costs for foreign enforcement would be $37.2 million which is greater than the $10.3 million proposed as a result of application of the 1986 foreign fishing ratio to both direct and indirect costs. NOAA has elected to keep the cost methodology as consistent as possible between agencies. Therefore, it believes the combined direct and indirect costs for Coast Guard fisheries enforcement represent an appropriate total Magnuson Act cost basis for the fees.

Another series of comments objected to the fee for Atlantic mackerel. Some comments indicated that the proposed exvessel value was too high because mackerel taken in the EEZ are less desirable than European mackerel owing to the low fat content and smaller size of Atlantic mackerel, the recovery of North Sea herring stocks, and the high cost of transporting the product from the EEZ to European markets. In addition, some comments objected to adopting a price taken from the European Fish Price Report for fee purposes.

NOAA does not agree. Each nation was requested on June 16, 1987, to provide information on prices. No information was provided by nations whose vessels fish Atlantic mackerel. Therefore, NOAA used the only independent information available and adopted a price which represented, at least for that sale, a price for Atlantic mackerel taken in the North Atlantic. The price was then reduced to take into account processing and transportation costs. Since the Atlantic mackerel sold presumably were also less desirable in comparison to European mackerel, the selected value should inherently reflect market considerations cited by the commenter. Therefore, NOAA believes the exvessel value used for Atlantic mackerel is correct.

Lastly, there were comments on the estimated foreign catch in 1988 presented in the proposed rule. The estimated catch is based on a survey which the agency believes is the most accurate projection available. NOAA acknowleges that TALFF in some fisheries may change during the year as the result of Council actions or the enhanced harvesting ability of one or more foreign nations in the mackerel fishery where increased TALFF could be made available to qualified foreign nations that wished to increase their harvest. In view of the uncertainty that changes in foreign harvest will actually occur, the effect changes in the estimated foreign harvest would have on fees, and the potential disruption of the continued development of the domestic industry that could result from significant fee adjustments, NOAA has not changed its estimates contained in the proposed rule.

The Revised Fees

NOAA takes the following action as a result of its conclusion that fees at the levels proposed would seriously undermine U.S. fisheries development and trade. It has balanced the benefits of fisheries development and trade against the need to recover high fees from foreign fishing vessel owners and operators for carrying out the purposes of the Magnuson Act.

Many comments stated that data used to construct the ratio of the foreign catch to the total catch are inappropriate indicators of the proportionate federal cost of foreign fishing. They suggested alternative methods or data that NOAA should consider. The methods could not be adopted as suggested, but NOAA has agreed that data used to estimate the U.S. cost of foreign fishing should be changed to reduce the adverse effects of NOAA's proposed fees on U.S. development and trade. The change should take into account recent large scale reductions in foreign fishing. These reductions have affected both foreign fishermen and the U.S. recovery of fishery management costs. A twofold purpose of this action would be to reduce the species fees below the levels proposed but also recover accumulated shortfalls to the U.S. Treasury since 1986.

Although the statistics are not yet available, NOAA estimates that foreign vessels will harvest no more than four (4) percent of the total catch in the EEZ and territorial waters in 1987 and no more than seven (7) percent in the EEZ alone. This is based on an estimate that foreign vessels will take 87 percent of the 228,461 mt allocated to date for foreign fishing and an assumption that the U.S. catch in 1987 will be at least as great as in 1986—4,772,261 mt in the EEZ and territorial waters and 2,787,505 mt in the EEZ only. When these ratios are applied to the $186.668 million Magnuson Act costs in FY 87, NOAA should collect "at least" $7.5 million under the lower fees provision of the Magnuson Act and $13.1 million under the higher fees provision. Any fees actually recovered in excess of these levels should ensure that the objectives of the Magnuson Act have been met. By using these estimates, however, a windfall benefit accrues to foreign vessel owners or operators because of the difference between the 1986 and the 1987 foreign catches. That is, the fee assessment rate drops from the 68 percent rate proposed to 25 percent of the ex-vessel values, which is well below the final 48 percent assessment rate in 1987.

While steep annual reductions in foreign fishing have caused fees to increase over the past few years, they have also led to shortfalls between the total amounts which should have been recovered by NOAA and the fees actually collected each year. Actual receipts since 1986 have fallen significantly below the minimum amounts which should have been collected under the Magnuson Act, and total fee collections since 1981 are about $6 million under the amounts which, in retrospect, the agency calculates should have been collected for the period. In view of the likely fee shortfall and the consequent windfall benefit that would accrue to foreign fishermen if the 1988 rate were pegged at 25 percent of ex-vessel value, it is prudent to set fees at a rate calculated to recover the accumulated six million dollar shortfall during 1988. Therefore, NOAA adopts $13.5 million as the amount to be collected under the revised schedule and assesses fees at 44.4 percent of the ex-vessel values. This is less than the percentage of fees collected in 1987 and responds to comments that the very large fee increases for 1988 contained in the proposed rule would be detrimental to both the domestic and foreign industry.

No change is made in the permit application fee of $354. NOAA believes that $0.1948 million will be recovered from 1988 permit applications and therefore sets $13.3 million as the total to be recovered from the poundage fees.

Calculations of poundage fees which are to be paid by vessel owners and operators of nations which fall under the high fee criteria indicate that the "high fees" are to be 142.2 percent of the poundage fees.

In addition to the change in the fee target, NOAA has also concurred with comments on the surcharge for the Fishing Vessel and Gear Damage Compensation Fund. The agency has decided that, as a policy matter, the surcharge will not be used to continue capitalization of the fund beyond the projected duration of foreign fishing in the EEZ. Since the current balance in the fund is sufficient for that purpose, the surcharge will be maintained at its current zero level and effectively waived.

The following table revises Table 5 as published at 42 FR 42408 to include changes made by this action and summarizes the final ex-vessel values and the final species fees.

TABLE 5.—ESTIMATED 1988 FOREIGN CATCH/VALUE WITH RECOVERED COSTS OF $13,300,000

Species	Fishery	Exvessel value ($/MT)	Estimated foreign catch (MT)	Estimated foreign catch value ($)	Species fee ($/MT)	Recovered costs ($)
Alaska Pollock	BSA/GOA	214	540	115,560	95.09	51,349
Atka Mackerel	BSA/GOA	267	1	267	118.64	119
Pacific Cod	BSA/GOA	324	30,000	9,720,000	143.97	4,319,079
Flatfish	BSA/GOA	187	105	19,635	83.09	8,725
Pacific Ocean Perch	BSA/GOA	441	1	441	195.96	196
Other Rockfish	BSA/GOA	734	1	734	326.15	326
Pacific Squid	BSA/GOA	169	1	169	75.10	75
Other Species	BSA/GOA	240	1,200	288,000	106.64	127,973
Sablefish	BSA	473	3	1,419	210.18	631
Snails	BSA	289	600	173,400	128.42	77,050
Sablefish	GOA	898	0	0	399.03	■
Jack Mackerel	WOC	573	1,500	859,500	254.61	381,919
Flatfish	WOC	713	50	35,650	316.82	15,841
Pacific Ocean Perch	WOC	721	31	22,351	320.38	9,932
Other Rockfish	WOC	756	369	278,964	335.93	123,958
Sablefish	WOC	935	86	80,410	415.47	35,730
Pacific Whiting	WOC	176	50,000	8,800,000	78.21	3,910,278
Other Species	WOC	915	250	228,750	406.58	101,645
Butterfish	NWA	618	8	4,944	274.61	2,197
Red Hake	NWA	369	0	0	163.97	0
Silver Hake	NWA	393	26	10,218	174.63	4,540
River Herring	NWA	139	96	13,344	61.76	5,929
Atlantic Mackerel	NWA	154	60,000	9,240,000	68.43	4,105,792
Squid, Illex	NWA	234	0	0	103.98	0
Squid, Loligo	NWA	553	6	3,318	245.73	1,474
Other Species	NWA	268	128	34,304	119.09	15,243
Atlantic Sharks	ABS	423	0	0	187.96	0
Pacific Billfish	PBS	1,985	0	0	882.03	0
Dolphin Fish	PBS	5,515	0	■	2,450.59	0
Striped Marlin	PBS	1,854	0	0	823.82	0
Pacific Sharks	PBS	1,103	0	0	490.12	0
Pacific Swordfish	PBS	2,337	0	0	1,038.45	0
Wahoo	PBS	2,206	■	0	980.24	0
Seamount Groundfish	SMT	397	0	0	176.41	0
Coral ($/kilogram)	WPC	206	0	0	91.54	0
TOTALS			145,002	29,931,378		13,300,000

Summary

The foregoing describes the relevant issues raised by respondents during the public comment period and NOAA's responses. NOAA has considered all comments, responded to them, and made appropriate changes prior to adopting this revision of 50 CFR 611.22. The following changes have been made:

1. A foreign catch of four (4) percent of the total catch in the EEZ and territorial waters and seven (7) percent of the total catch in the EEZ only is used in this revision of the foreign fishing fee schedule.

2. A foreign fishing fee target of $13.5 million is adopted of which $13.3 million is to be recovered by poundage fees for

the 1988 foreign catch and the balance through vessel application fees of $354/vessel.

3. Owners and operators of vessels of nations meeting one or both "high fee" criteria must pay an additional 42.2 percent of their poundage fees for the catch by these vessels.

4. Poundage fees will be paid at an assessed rate of 44.4 percent of the exvessel values adopted in this rule.

5. The surcharge for the Fishing Vessel and Gear Damage Compensation fund will be maintained at zero percent.

Classification

NOAA prepared a draft RIR that discussed the economic consequences and impacts of the proposed fee schedule and its alternatives. There were no comments specific to the draft RIR but appropriate changes have been made in the final RIR which discuss the revisions made in the final rule. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

The proposed fee schedule has no direct impact on the fishery resources in the EEZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however, the schedule as set out in the final rule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1988 fees are directly related to exvessel values and were revised to minimize effects on U.S. fishery development and trade. Since this fee schedule will not prevent the harvesting of the available total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure Act is waived so that the fee schedule can be in place on January 1, 1988. If a schedule is not in place on that date, foreign fishing vessels will not be allowed to harvest fish, and the U.S. Treasury consequently will lose revenues. Furthermore, an interruption in fishing for foreign vessels already in the EEZ would be costly to the foreign fishing companies, since their vessels would be incurring fixed operating costs while sitting idle until the 30-day period elapsed.

The final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: December 30, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq., and 16 U.S.C. 1361 et seq.

2. Section 611.22 (a), (b)(1), (c) and (d) are revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $354 per vessel, plus the surcharge, if required under paragraph (d) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, illex	103.98
8. Squid, Loligo	245.73
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	187.96
10. Shrimp, royal red	(1)
Alaska fisheries:	
11. Pollock, Alaska	95.09
12. Cod, Pacific	143.97
13. Pacific ocean perch	195.96
14. Rockfish, other	326.15
15. Mackerel, Atka	118.64
16. Squid, Pacific	75.10
17. Flounders	83.09
18. Sablefish (Gulf of Alaska)	399.03
19. Sablefish (Bering Sea and Aleutian Islands)	210.18
20. Groundfish, other	106.64
21. Snails	126.42
Pacific fisheries:	
22. Whiting, Pacific	78.21
23. Sablefish	415.47
24. Pacific ocean perch	320.38
25. Rockfish, other	335.93
26. Flounders	316.82
27. Mackerel, jack	254.61
28. Groundfish, other	406.58
Western Pacific fisheries:	
29. Coral [2]	91.54
30. Dolphin fish	2,450.58
31. Wahoo	980.24
32. Sharks	490.12
33. Marlin, striped	823.82
34. Billfish	882.03
35. Swordfish	1,038.45

[1] Reserved.
[2] Dollars per kilogram.

. . . . .

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b)(10)(C). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1988 will be 42.2 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge at this time.

. . . . .

[FR Doc. 87-30204 Filed 12-30-87; 5:12 p.m.]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-156]

7 CFR Part 301

Movement of Citrus Fruit From Florida; Withdrawal of Proposed Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: In response to comments, we are withdrawing a proposal that would have allowed certain fruit to be moved interstate from areas quarantined because of citrus canker to areas that produce commercial citrus. We are currently studing alternative protocols to allow this interstate movement and expect to publish a new proposal in the near future.

FOR FURTHER INFORMATION CONTACT: Ed Elder (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.75 (the regulations) prohibit or restrict the interstate movement of certain plants and plant parts, including fruit, to prevent the spread of citrus canker.

The regulations currently allow certain fruit, primarily citrus, to be moved interstate from areas quarantined because of citrus canker, but only to areas of the United States that are not commercial citrus-producing areas. In the **Federal Register** of September 19, 1987 (52 FR 35105-35111, Docket No. 86-347), we proposed to amend the regulations to allow this fruit to be moved interstate to any destination in the United States, including commercial citrus-producing areas, if certain conditions were met. We also proposed to revise the conditions under which fruit can be moved to areas that are not commercial citrus-producing areas.

We held public hearings in Los Angeles, California; McAllen, Texas; and Lake Alfred, Florida, on October 5, 7, and 9, 1987. We also solicited written comments and considered all that were postmarked or received on or before November 2, 1987.

Between the time the proposed rule was published and the close of the comment period, there were several new finds of the nursery strain of citrus canker in Florida. These finds could not be traced to previous infestations in other nurseries. As a result, a number of commenters asserted that we should not implement our proposed rule at this time.

In response to these comments, we are withdrawing our proposed rule. We are currently studying alternative protocols that will address the concerns of commenters and expect to publish a new proposal in the near future.

Done at Washington, DC, this 30th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-46 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

7 CFR Part 1701

REA Form 525, Central Office Equipment Contract (Including Installation); REA Form 545, Central Office Equipment Contract (Not Including Installation); Revision of Existing Contract Forms

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) is proposing to revise REA Form 525, Central Office Equipment Contract (Including Installation) and REA Form 545, Central Office Equipment Contract (Not Including Installation) to update the terms and conditions to reflect the current technological and market environment. REA Forms 525 and 545 are used by REA telephone borrowers to purchase central office switching equipment. Forms 525 and 545 were last revised in September 1966. Public comments or suggested changes are invited.

DATE: Public comments must be received by REA no later than February 4, 1988.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500.

FOR FURTHER INFORMATION CONTACT: Dean Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2832, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone (202) 382-8671.

SUPPLEMENTARY INFORMATION: REA Forms 525 and 545 have become outdated due to technological advancements and other market changes. Advanced technology and equipment concepts have introduced new legal issues that need to be addressed. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues that need to be addressed in updating these contracts are: Expansion of patent infringement protection to include copyrights, trade marks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provision; and support of discontinued product. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Further public comment will be solicited when the proposed rule is published.

List of Subjects in 7 CFR Part 1701

Loan Programs—communications, Telecommunications, Telephone.

Dated: December 30, 1987

Harold V. Hunter,

Administrator.

[FR Doc. 88-42 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3212]

Great Earth International, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Santa Ana, Calif.-based food supplements franchisor from making certain claims about the supplements' effectiveness. Respondent would be prohibited from using the name "Growth Hormone Releaser," "GHR," or any similar name unless it has substantiation that the product stimulates the body or pituitary gland to release significantly greater amounts of human growth hormone in users than in non-users.

DATE: Comments must be received on or before March 7, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Golden, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603 (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Earth International, Inc., a corporation, and it now appearing that Great Earth International, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Great Earth International, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Great Earth International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1801 Parkcourt Place, Suite A, Santa Ana, California 92702.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, offering for sale, selling, advertising or distributing of the nutrient supplements known from 1983 to 1987 as "GHR Formula-PM (presently known as "Tri-Amino Plus P.M."), "L-Arginine," "L-Ornithine," or any other food of substantially similar composition, or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane, glycine, or any combination thereof, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will:

A. Stimulate greater production or release of human growth hormone in users of such product than in non-users.

B. Alter human metabolism in such a way that the metabolism of users of such product will function in a manner similar to the metabolism of youth.

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C. Help users achieve results similar to or superior to the results these users generally believe are achievable through use of anabolic steroids, e.g., rapid or substantial muscular development.

D. Promote greater weight loss during sleep in users of such product than in non-users of such product, when consumed before sleep.

E. Promote greater burning of fat or building, firming, toning or shaping of muscle in users of such product than in non-users.

F. Promote more rapid healing and greater protection against physical and mental fatigue in users of such product than in non-users.

G. Promote greater stimulation of the immune system and greater protection against fatigue in users of such product than in non-users.

II

It is further ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, offering for sale, selling, advertising or distributing of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will:

A. Beneficially affect, cure, prevent or reduce the risk of any disease or any other undesirable physical, mental or emotional state or condition;

B. Improve or strengthen any bodily part, organ, system, function or ability;

C. Eliminate, inhibit, reduce or otherwise neutralize or render harmless any harmful substance or organism that may be found in the body or environment; or

D. Assist or enable a user to lose or control weight or fat, or suppress appetite

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable" shall mean for purposes of this Order tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in that profession or science to yield accurate and reliable results.

III

It is further ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from using the name "Growth Hormone Releaser," "GHR" or any other name of similar meaning as a brand name or description for any product, unless such products stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such name, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation inherent in use of such name.

IV

It is further ordered that respondent, its successors and assigns, shall, for at least three (3) years after the last dissemination of the representation, maintain and upon reasonable request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

A. All materials that respondent relied upon in making any representation covered by this Order.

B. All tests reports, studies, surveys, or demonstrations in its possession or control that contradict any such representation.

V

It is further ordered that respondent shall notify the Commission within thirty (30) days before any changes in the respondent such as dissolution, assignment, or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Great Earth International, Inc., a California corporation (the "respondent"). Under this agreement the respondent will cease and desist from making certain specific claims for three food supplements. The agreement also prohibits the respondent from making other specified claims for any product, unless it possesses competent and reliable scientific evidence that substantiates such claims.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comment by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for "GHR Formula-P.M.," "L-Ornithine" and "L-Arginine," three food supplements. The Complaint accompanying the proposed consent order alleges that in connection with promoting these products the respondent engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act and that the respondent disseminated false advertisements in violation of section 12 of the Federal Trade Commission Act. According to the Complaint, the respondent represented that these products would enable users to lose weight, build muscle, burn fat, promote healing, protect against mental and physical fatigue and strengthen the immune system.

The Compaint also alleges that the advertisements were deceptive because the respondent represented to consumers that it had a reasonable basis for the representations challenged in the Complaint when in fact it had no reasonable basis for these representations.

The consent order contains provisions designed to prevent the respondent from engaging in similar allegedly unlawful acts and practices in the future.

Part I of the order prohibits the respondent from representing that any of the three food supplements will:

1. Stimulate greater production or release of human growth hormone in users of such product than in non-users.

2. Alter human metabolism in such a way that the metabolism of users of such product will function in a manner similar to the metabolism of youth.

3. Help users achieve results similar to or superior to the results these users generally believe are achievable through use of anabolic steriods, e.g., rapid or substantial muscular development.

4. Promote greater weight loss during sleep in users of such product than in non-users of such product, when consumed before sleeping.

5. Promote greater burning of fat or building, firming, toning or shaping of muscle in users of such product than in non-users.

6. Promote rapid healing and greater protection against physical and mental fatigue in users of such product than in non-users; or

7. Promote greater stimulation of the immune system and greater protection against fatigue in users of such product than in non-users.

Part II of the order prohibits the respondent from representing that any product will:

1. Beneficially affect, cure, prevent or reduce the risk of any disease or any other undesirable physical, mental or emotional state or condition;

2. Improve or strengthen any bodily part, organ, system, function or ability;

3. Eliminate, inhibit, reduce or otherwise neutralize or render harmless any harmful substance or organism that may be found in the body or environment; or

4. Assist or enable a user to lose or control weight or fat, or suppress appetite,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III of the order prohibits the respondent from using the name "Growth Hormone Releaser," "GHR" or any other name of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce or the pituitary gland to release significantly greater amounts of human growth hormone in users of the product than in non-users of the product and that at the time of using such name respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation inherent in use of such name.

Part IV of the order requires the respondent to:

1. Retain records that respondent contends support any future advertising representation covered by the consent order; and

2. Retain records that contradict any such representation.

Finally, Part V of the order requires the respondent to give the Federal Trade Commission prior notification of any changes in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect its compliance obligations under the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-21 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

Railroad Retirement Board

20 CFR Part 361

Recovery of Debts Owed to the United States Government by Employees

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) is proposing regulations to provide for the administration of its authority under 5 U.S.C. 5514 to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

DATES: To be assured of consideration, comments must be in writing and must be received on or before May 4, 1988. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Beatrice Ezerski, Secretary to the Board, 844 Rush Street, Chicago, Illinois 60611. Comments received will be available for public inspection in Room 814, 844 Rush Street, Chicago, Illinois, from 9:00 a.m. to 3:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4944).

SUPPLEMENTARY INFORMATION: The purpose of this proposal is to provide guidelines for the administration of the Board's authority under 5 U.S.C. 5514 for recovering debts owed to the United States by installment collections from the current pay accounts of its employees.

The Debt Collection Act of 1982, Pub. L. 97-365, amended section 5514 to permit interagency recovery of general debts due the United States. However, before agencies may use this new recovery procedure, certain due process rights must be extended to the debtor. The specific procedures in this proposed regulation conform with the statutory provisions added to 5 U.S.C. 5514 by the Debt Collection Act and court decisions emphasizing the debtor's right to due process protection prior to the initiation of an action to recover for a debt (*Califano* v. *Yamasaki*, 442 U.S. 682 (1979)).

On March 9, 1984, the Government Accounting Office and the Department of Justice adopted final regulations amending the Federal Claims Collection Standards (FCCS). Although the installment collection from the current pay account of an employee described in these proposed regulations is authorized by 5 U.S.C. 5514, such a collection is still an administrative offset as defined in 31 U.S.C. 3701(a)(1). Consequently, any collection matters involving salary offset not addressed in these regulations are governed by the FCCS.

In essence the proposed regulations provide that the Board shall not deduct moneys from the current pay of one of its employees in order to satisfy a debt owed by that employee to the United States until it has afforded the employee a pre-offset hearing before an impartial adjudicator. However, there are three types of collections against pay which are not subject to the full procedural rights provided by these proposed regulations.

The first is a collection which has resulted from an overpayment caused by an employee's election of coverage or a change in coverage under a federal benefit program. An employee who makes such an election is aware, or reasonably should be aware, that the election would cause a change in the amount withheld from his or her salary. Accordingly, it is appropriate to exclude from the scope of the salary offset due process procedures routine "catch-up" retroactive collections which are necessary solely because of brief, necessary, and inevitable processing delays.

A similar situation exists with regard to ministerial adjustments of pay rates or allowances, *e.g.*, credit union allotment, union dues deduction, etc., which cannot be placed into effect immediately because of normal processing delays. The debt in this case does not arise from any error committed by either the employee or the agency. The validity of the obligation is beyond reasonable dispute and the amount due is readily ascertainable.

For these two types of collections the proposed regulations provide for a limited procedure whereby the employee is notified in advance of the amount of the retroactive collection and may dispute the retroactive collection by notifying a specified official. Furthermore, it should be noted that in collections by salary offset made for reasons other than normal processing

delays or, even if made by reason of normal processing delays but where the period for which retroactive deduction must be made will exceed four pay periods, the full due process procedures set out in the proposed regulations shall apply.

Finally, where there is no question regarding credibility and veracity, no pre-offset hearing will be granted. In these cases the Board will make its pre-offset determination under this part based upon a review of the written record. Such a provision in the regulation is consistent with the FCCS (4 CFR 102.3(c)).

In addition, these proposed regulations also cover the situation in which the Board is not the creditor agency but merely the paying agency of the debtor. In such situations, the proposed regulations provide that this agency will commence deductions from the current pay account of an employee upon receipt of a properly certified debt claim as provided by 5 CFR 550.1108.

This regulation is consistent with the Office of Personnel Management's regulation. (5 CFR 550.1101, *et seq.*).

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. In addition, any information required to be furnished under this rule is information to be provided by a government employee or agency and, therefore, is not covered by the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 361

Administrative practice and procedure, Government employees, Wages, Debt collection.

1. For the reasons set forth in the preamble, Title 20 Chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new Part 361 as follows:

PART 361—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY GOVERNMENT EMPLOYEES

Sec.

361.1 Purpose.
361.2 Scope.
361.3 Definitions.
361.4 Determination of indebtedness.
361.5 Notice requirements before offset.
361.6 Requests for waiver or hearing.
361.7 Written decision following a hearing.
361.8 Limitations on notice and hearing requirements.
361.9 Exceptions to requirement that a hearing be offered.
361.10 Written agreement to repay debt as alternative to salary offset.
361.11 Procedures for salary offset: When deductions may begin.
361.12 Procedures for salary offset: Types of collection.
361.13 Procedures for salary offset: Methods of collection.
361.14 Procedures for salary offset: Imposition of Interest, Penalties and Administrative Costs.
361.15 Non-waiver of rights.
361.16 Refunds.
361.17 Coordination with other government agencies.

Authority: 5 U.S.C. 5514(b)(1).

§ 361.1 Purpose.

These regulations, which implement 5 U.S.C. 5514, provide the standards and procedures which the Board will utilize to collect debts owed to the United States from the current pay accounts of its employees, including the current pay accounts of employees who owe debts to agencies other than the Board.

§ 361.2 Scope.

(a) *Coverage.* This part applies to agencies and employees as defined by § 361.3 of this part.

(b) *Applicability.* This part and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations shall be consistent with the provisions of the Federal Claims Collection Standards (FCCS).

(1) *Excluded debts or claims.* The procedures contained in this part do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1, *et seq.*), the Social Security Act (42 U.S.C. 301, *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the General Accounting Office.* This part does not preclude an employee from requesting waiver of recovery of an overpayment under 5 U.S.C. 5584 or any other similar provision of law, or from questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(3) *Compromise, suspension, or termination under the Federal Claims Collection Standards (4 CFR 101.1, et seq.).* Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under the standards implementing 31 U.S.C. 3711, *et seq.* (4 CFR 101.1, *et seq.*).

§ 361.3 Definitions.

For purposes of this part, terms are defined as follows:

"Agency" means—

(a) An Executive Agency as defined by section 105 of Title 5, United States Code; including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in section 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal Government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Delinquent debt" means a debt which has not been paid by the date specified in the creditor agency's initial written notification, unless satisfactory arrangements for payment have been made by that date, or where, at any time thereafter, the employee fails to satisfy his or her obligations under a payment agreement with the creditor agency.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1, *et seq.*

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual and disbursing his or her current pay account.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other similar law.

§ 361.4 Determination of indebtedness.

In determining that an employee is indebted, the Board will review the debt to make sure it is valid and past due.

§ 361.5 Notice requirements before offset.

The Board shall provide an employee written Notice of Intent to Offset Salary (Notice of Intent). The employee will be provided the notice at least thirty calendar days before the intended deduction is to begin. In addition, the notice must provide the following:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, and the origin, nature, and amount of that debt;

(b) The Board's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's requirements concerning interest, penalties, and administrative costs; and notification that such assessment must be made unless such payments are excused in accordance with the FCCS;

(e) Advice as to the employee's or his or her respresentative's right to inspect and copy or to be provided copies of government records relating to the debt;

(f) If not previously provided, notification of the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt and the percentage of dispensable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

(k) Advice that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(l) Advice as to the method and time period for requesting a hearing as provided for in § 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5 Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority;

(n) Advice as to other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

§ 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately

because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) Limited procedures. If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this section shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee; the employee may dispute the amount of the retroactive collection by notifying a specified office or official.

(c) Limitation on exceptions. The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under § 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within 30 calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Board before the expiration of the period provided for in § 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be effected in one lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment [of all or a portion of a debt] collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* [1] If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin prospectively at the next officially

established pay interval. The employee will receive written notice that the Board has received a certified debt claim from a creditor agency. The notice will contain the amount of the debt and the date deductions from salary will commence and the amount of such deductions.

(2) If the Board receives a claim which does not meet the requirements of 5 CFR 550.1108, then the Board will return the claim to the creditor agency and inform the creditor agency that before any action is taken to collect the debt from the employee's current pay account, the procedures under 5 U.S.C. 5514 and 5 CFR Part 550 must be followed and a claim which meets the requirements of 5 CFR 550.1108 must be received.

(b) *Board is creditor agency.* When the Board is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Board provides the agency with a written certification that the procedures under this part have been followed and the Board has provided the other agency with a claim which meets the requirement of 5 CFR 550.1108.

Dated: December 22, 1987.
By Authority of the Board.
For the Board,
Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 88-55 Filed 1-4-88; 8:45 am]
BILLING CODE 7905-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 901

Enrolled Actuaries Under Employee Retirement Income Security Act of 1974

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes modification of the regulations governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) by requiring that those enrolled to perform actuarial services under ERISA (enrolled actuaries) renew their enrollment every three years. A condition of eligibility for renewal would be the satisfaction of continuing professional education as delineated in the proposal. A "start up" renewal period is contemplated in which all enrolled actuaries would be required to renew their enrollment in the year 1989. Enrollment then would be placed in three year cycles, with renewal of enrollment required in the year 1992 and every third year thereafter.

DATE: Comments must be submitted in writing on or before April 4, 1988.

ADDRESS: Comments should be sent to the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220, (202) 535-6787.

SUPPLEMENTARY INFORMATION:

Background

The Joint Board for the Enrollment of Actuaries (Joint Board) was formed under authority of section 3041 of ERISA, Title 29 U.S. Code, section 1241. The duties of the Joint Board include the enrollment of individuals who wish to perform actuarial services under ERISA. In addition, the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual if it is found the individual has failed to discharge his or her duties under ERISA or who does not satisfy the requirements of enrollment as in effect at the time of enrollment.

Consistent with that authorization, the Joint Board promulgated regulations governing the enrollment of individuals who wish to perform actuarial services under ERISA, the standards for the performance of such services, bases for disciplinary actions and the procedures to be followed in taking those actions. Those regulations are found at 20 CFR Part 901. Regulations contained in 31 CFR Part 10 govern practice before the Internal Revenue Service. On January 24, 1979, those regulations were amended to authorize enrolled actuaries to practice before the Internal Revenue Service (44 FR 4940). Their eligibility for practice is limited to matters concerning ERISA and the regulations thereunder.

On January 22, 1986, an amendment to 31 CFR Part 10 was adopted as a final rule (51 FR 2875). Such amendment mandated continuing professional education for those enrolled to practice before the Internal Revenue Service (enrolled agents). The regulations contained in the amendment do not apply to enrolled actuaries because it was recognized that a viable continuing professional education program for enrolled actuaries, due to the unique nature of actuarial services, should differ from a program for enrolled agents. Further, enrolled actuaries' authorization to practice before the Internal Revenue Service is an adjunct to their eligibility to perform actuarial services under ERISA. It therefore is more appropriate for continuing professional education of enrolled actuaries to be addressed by Joint Board regulations. The start-up program relating to continuing professional education for enrolled agents has been concluded and its success has been recognized by both the Department of the Treasury and the enrolled agent community. It is now appropriate to give attention to a parallel continuing education program for enrolled actuaries.

Continuing education is of paramount importance in view of the basic fact that we are a country with a strong belief in the worth of education. That belief is grounded on the realization that competence is dependent on acquiring knowledge through education. The public supports this by its great faith in the ability of our eduction system to impart knowledge to those on whom it relies for professional services. Continuing professional education is a logical part, or extension, of these fundamental values.

For actuaries, continuing education provides a measure of assurance to the public that they have kept abreast of current standards and developments impacting on their practice. Because of the complex technical nature of actuarial science, members of the public typically are not in a position to judge the quality of services actuaries perform. In this regard, enrolled actuaries stand in a unique position. Their work products, while prepared for clients, are performed in behalf of plan participants. Other third parties also rely on actuarial reports. In fact, professional services provided by enrolled actuaries affect a large majority of Americans to some degree. The knowledge and expertise required of actuaries are constantly evolving and expanding. Changing economic conditions, new forms of business organizations, new financing methods, evolving computer technology, and always changing legal conditions create extreme demands for required knowledge on the part of enrolled actuaries.

To help assure that a successful program could be proposed for enrolled actuaries, the Joint Board elicited comments from enrolled actuaries in actuarial publications and entered into dialogues on the subject with enrolled actuaries at meetings and conventions of actuaries. Further, a task force to study the subject was established by the American Academy of Actuaries, the

American Society of Pension Actuaries, the Conference of Actuaries in Public Practice and the Society of Actuaries. A full report was furnished the Joint Board. The suggestions, comments and positions received through these vehicles have been fully considered and to great extent are blended into the proposal.

Summary of Requirements

The requirements of the program set forth in the proposed regulations, are highlighted in the following summary.

(A) *Enrollment Renewal Requirements.* All enrolled actuaries would be required to renew their enrollment every three years in order to maintain their good standing as such. This modifies the five year renewal period contained in the current regulations. It is believed that a three-year renewal cycle is a more manageable time period to administer a renewal/continuing professional education program and for enrolled actuaries to retain records and monitor their programs. In addition, the proposal would place all enrolled actuaries on a uniform renewal cycle. This also differs from the current regulations, which require renewal on the anniversary date of enrollment. This modification also will achieve efficiency in the administration of the renewal/continuing professional education program.

The proposal envisions a "start-up" renewal period. The start-up renewal would be a condition for active enrollment beginning in the year 1989. In this connection, the initial cycle would be for the period July 1, 1988 through June 30, 1989. All enrolled actuaries would be required to apply for renewal during the period between July 1, 1989 and August 15, 1989. The first effective date of renewal would be October 1, 1989. Thereafter, the three-year enrollment cycle would begin. It would encompass the period July 1, 1989 through June 30, 1992 and the period July 1 through June 30 for every three year period thereafter. Applications for renewal would be required during the period between July 1, 1992 and August 15, 1992 and between July 1 and August 15 every third year subsequent thereto. Renewal would be effective on October 1, 1992 and on October 1 every third year thereafter.

A condition of eligibility for renewal of enrollment would be the satisfaction of continuing education requirements in accordance with the proposed regulations. While the proposal provides for waiver of the mandatory continuing education requirements under certain circumstances, those individuals who receive waivers would be required to make application for renewal of enrollment.

(B) *Qualifying Programs.* It is important that qualifying educational programs be responsive to the needs of enrolled actuaries. Since such individuals have established a level of knowledge with regard to the ERISA law and regulations, the overriding consideration in determining whether a specific program qualifies as acceptable continuing education would be that it contain current subject matter which will enhance the professional knowledge of an enrolled actuary. Repeated taking of a particular course would not qualify unless it can be demonstrated that the subject matter of the course has changed sufficiently to provide additional information which would improve professional competence.

The services performed by an enrolled actuary are unique in character. Consequently, a meaningful continuing professional education program must include courses directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. The content of such courses have been termed "core subject matter." The proposal specifies that core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, Title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualifications of pension plans, maximum deductible contributions, and standards of performance related to the performance of actuarial services. Other topics may be determined by the Joint Board on a case-by-case basis.

The Joint Board also recognizes the diverse nature of a pension actuary's work. It believes that limiting continuing education to ERISA and Internal Revenue Code courses of learning would be constraining in view of that diversity. An enrolled actuary therefore may complete courses of learning of a non-core nature designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. The publication of a complete listing of applicable educational courses or subject matter is not contemplated. However, professional knowledge of an enrolled actuary in the non-core area is considered to include pension accounting, economics, computer programs, investment and finance, communication skills, and business and non-ERISA tax law. Generally, a particular course would qualify if it can be demonstrated that the subject matter would provide substantive improvement of the professional knowledge or methods of the enrolled actuary.

To help assure the soundness of a qualifying program, it must be conducted by a sponsor who has met the requirements of the proposal. In this connection, a sponsor would be required to demonstrate that a program:

(1) Be comprised of qualifying core or non-core subject matter,

(2) Require attendance by the enrolled actuary,

(3) Be at least one class hour in length,

(4) Be conducted by a qualified instructor or discussion leader,

(5) Require a maintained record of attendance, and

(6) Require a written outline to be retained.

Correspondence or individual study programs that contribute to the professional competence of an enrolled actuary and which provide evidence of satisfactory completion by the enrolled actuary would qualify, with the amount of credit to be determined by the Joint Board. Any programs of learning that does not offer sufficient evidence that the work has actually been accomplished would not be accepted. The objective in determining the amount of credit to be allowed for specific correspondence and individual study programs (including taped study programs) would be to determine the equivalency of each such program to a comparable seminar or a comparable course for credit in an accredited educational institution. Credit would be allowed in the renewal period in which the course is completed.

It also is recognized that instructing relevant courses, writing articles and successfully completing the Joint Board's examinations in pension law are ways of demonstrating continuing education. Consequently, such activities could be used to help satisfy the continuing education requirements of the regulations.

(C) *Hours.* Each individual making application for renewal of enrollment to perform actuarial services under ERISA would be required to complete 36 hours of qualifying continuing education during each three year enrollment cycle. A minimum of 8 hours of qualifying continuing education would be required to be completed each twelve-month period of an enrollment cycle (the three year period). Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature. An individual granted initial enrollment during an enrollment cycle must begin the continuing education requirements for the July 1 to June 30 period that follows the date of enrollment. For those beginning the second year of an enrollment cycle, 24 hours of continuing professional education must be completed; for those beginning the third year of an enrollment cycle, 12 hours of continuing professional education must be completed. At least one-half of the applicable hours must be comprised of core subject matter.

In order to effectively implement renewed enrollment for October 1, 1989, all enrolled actuaries would be required to complete 12 hours of qualifying continuing education during the period between July 1, 1988 and June 30, 1989. At least 6 hours must be comprised of core subject matter; the remainder may be of a non-core nature. Individuals granted initial enrollment during the period between July 1, 1988 and June 30, 1989 would be exempt from the continuing education requirements, but would be required to file a timely application for renewal of enrollment.

(D) *Sponsors.* Sponsors are those responsible for providing qualifying programs. To qualify, a sponsor must (1) be an accredited educational institution; (2) be recognized for continuing education purposes by a licensing body of any State, possession, territory or the District of Columbia responsible for the issuance of a license in the field of actuarial science, accounting, law or insurance; (3) be a professional organization whose programs include offering continuing professional education as contemplated in the proposal; or (4) be a sponsor who has filed a sponsor agreement with the Executive Director, Joint Board for the Enrollment of Actuaries, and has obtained approval of the program as being qualified. Organizations contemplated in No. (3) above also are required to request sponsor status of the Executive Director and furnish requested information. The proposal sets forth requirements to help assure that qualifying programs are of a quality nature and that records be retained.

(E) *Measurement of Continuing Professional Education Programs.* All programs would be measured in terms of 50-minute contact hours. The shortest recognized program would be one contact hour. The purpose of this standard is to develop a uniform system of measurement and to help assure the activity has substance. A contact hour is defined as 50 minutes of continuous participation in a program. Under this standard, credit would be granted only for full contact hours. A program lasting more than 50 minutes but less than 100 minutes would count only for one hour. For example, a program lasting 100 minutes would be considered two contact hours and a program lasting 90 minutes would be considered one contact hour. When individual segments are fewer than 50 minutes at continuous conferences, conventions and the like, the sum of the segments would be considered one total program, but would be assessed on the basis of a 50-minute contact hour and multiples thereof. For example, two 90-minute segments (180 minutes) at a continuous program would be counted as three contact hours.

For university or college courses, each semester hour credit would equal 15 credit hours. A quarter hour credit would equal 10 contact hours.

(F) *Recordkeeping Requirements.* In order to evidence the completion of continuing education programs, an enrolled actuary would be required to maintain records relative thereto for a period of three years following the date of renewal. Recordkeeping also is required of those who satisfy continuing education by serving as an instructor or preparing publications.

(G) *Waiver.* The proposal contemplates waiver of the mandatory continuing education requirement under circumstances warranting it. For example, the waiver would be available in those instances where physical circumstances preclude an enrolled actuary from meeting the requirements of the proposal, e.g., prolonged debilitating illness or extended absence from the country of his or her residence. In all instances, a request for waiver would be required to be accompanied by such documentation and/or explanation as the Executive Director deems necessary. The granting of a waiver would not obviate the requirement of filing a timely application for renewal of enrollment.

(H) *Fees.* A reasonable renewal fee may be charged each enrolled actuary who submits a renewal application. The purpose of the fee is to provide funding for administration of the renewal of enrollment program. The amount of the fee would be established by the Joint Board and would be nonrefundable. Fee information would be published in the renewal material furnished enrolled actuaries.

(I) *Failure to Renew and/or Satisfy Continuing Professional Education Requirements.* An enrolled actuary who fails to make application for renewal or who fails to meet the continuing education requirements would have his or her enrollment placed in an inactive status until such time that an application for renewal of enrollment is filed and/or evidence of compliance with the regulations is provided. During inactive status, the individual would be ineligible to perform actuarial services under ERISA.

An individual in an inactive status who has not filed an application for renewal of enrollment or who has not satisfied the requirements for renewal within three years from the expiration date of his or her last active enrollment, would considered to have abandoned such enrollment and the enrollment would be terminate. Enrollment must then be reestablished by meeting the requirements of eligibility for enrollment in effect at the time such reestablishment is requested.

(J) *Verification.* Under the proposal, the Joint Board could review the continuing education records of enrolled actuaries and/or program sponsors in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided. Failure to comply with a request for the appropriate documentation could result in a disqualification of the continuing education hours claimed.

Special Analyses

This rule relates solely to professional services in connection with government matters and is not expected to have any significant economic consequences.

Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The collection of information in the proposed rule is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the information collection should be sent to: Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, ATTN: Desk Officer for the Department of the Treasury, with copies to the Joint Board at the address previously specified.

Drafting Information

The author of these regulations is Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries. Other personnel in the Treasury Department and the Joint Board participated in the development of the regulations, both as to substance and style.

List of Subjects in 20 CFR Part 901

Administrative rules and procedures, Lawyers, Accountants, Enrolled Agents, Enrolled Actuaries, Appraisers.

Authority

These proposed rules are issued under authority of 88 Stat. 1002; 29 U.S.C. 1241, 1242. See also 5 U.S.C. 301; 31 U.S.C. 330; and 31 U.S.C. 321.

Proposed Amendments to Regulations

PART 901—[AMENDED]

Accordingly, 20 CFR Part 901 is proposed to be amended as follows:

§ 901.11 [Amended]

1. Section 901.11 of Subpart B is proposed for amendment by removing the last two sentences and inserting after the first sentence the following: "Subject to the provisions of Subpart D of this part, an individual must renew his or her enrollement in the manner described in subsection (d) of this section."

2. Section 901.11 of Subpart B is to be amended by inserting new paragraph (d) through (n) to read as follows:

§ 901.11 [Amended]

* * * * *

(d) *Renewal of enrollment.* To maintain active enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974, each enrolled actuary is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification of the renewal requirement from the Executive Director of the Joint Board will not be justification for circumvention of such requirement.

(1) All individuals enrolled before July 1, 1989 shall apply for renewal of enrollment during the period between July 1, 1989 and August 15, 1989. The effective date of renewal of such individuals is October 1, 1989.

(2) Thereafter, applications for renewal will be required of all enrolled actuaries between July 1, 1992 and August 15, 1992, and between July 1 and August 15 of every third year subsequent thereto.

(3) Individuals who receive initial enrollment during a renewal application period are not required to file an application for renewal of enrollment during that period. However, they are required to file an application for renewal of enrollment during the next renewal application period and all those following.

(4) The Executive Director of the Joint Board will notify the individual of renewal of enrollment at his/her address of record with the Joint Board.

(5) A reasonable non-refundable fee may be charged for each application for renewal of enrollment filed.

(6) Forms required for renewal may be obtained from the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220.

(e) *Condition for Renewal: Continuing Professional Education.* To qualify for renewal of enrollment, an enrolled actuary must certify, on the form prescribed by the Executive Director, that he/she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective October 1, 1989.*

(i) A minimum of 12 hours of continuing education credit must be completed between July 1, 1988 and June 30, 1989. Of the 12 hours, at least 6 hours must be comprised of core subject matters; the remainder may be comprised of non-core subject matter.

(ii) An individual who receives initial enrollment between July 1, 1988 and June 30, 1989 is exempt from the continuing education requirement for the renewal of enrollment effective October 1, 1989, but is required to file a timely application for renewal of enrollment.

(2) *For renewed enrollment effective October 1, 1992 and every third year thereafter.*

(i) A minimum of 36 hours of continuing education credit must be completed between July 1, 1989 and June 30, 1992, and during each three year period subsequent thereto. Each such three year period is known as an enrollment cycle. Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature.

(ii) A minimum of 8 hours of continuing education credit must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must begin the continuing education requirements for the July 1 and June 30 period following the date of enrollment. For those beginning the second year of an enrollment cycle, 24 hours of continuing professional education must be completed; for those beginning the third year of an enrollment cycle, 12 hours of continuing professional education must be completed. At least one-half of the applicable hours must be comprised of core subject matter; the remainder may be comprised of non-core subject matter.

(f) *Qualifying continuing education—*(1) *In General.* To qualify for continuing education credit consistent with the requirements of the above subsections, a course of learning must be a qualifying program comprised of core and non-core subject matter conducted by a qualifying sponsor.

(i) Core subject matter is a qualifying program designed to enhance the knowledge of an enrolled actuary with respect to matters directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, Title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, and standards of performance for actuarial services. Other topics may be determined by the Joint Board on a case-by-case basis to comprise core subject matter. The Joint Board also may publish from time to time additional topics that will satisfy the requirements of core subject matter.

(ii) Non-core subject matter is a qualifying program designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. Examples include economics, computer programs, pension accounting, investment and finance, communication skills and business and general tax law.

(2) *Qualifying Programs—*(i) *Formal programs.* Formal programs qualify as continuing education programs if they:

(A) Require attendance;

(B) Require that the program be conducted by a qualified instructor, discussion leader or speaker, i.e. a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline and/or textbook and certificate of attendance provided by the sponsor, all of which must be retained by the attendee for a three-year period following renewal of enrollment.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs completed on an individual basis by the enrolled actuary and conducted by qualifying sponsors. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they:

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., written examination); and

(C) Require a written outline and/or textbook and certificate of completion provided by the sponsor which must be retained by the participant for a three-year period following renewal of enfollment.

(iii) *Serving as an instructor, discussion leader or speaker.*

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing education requirements of this part.

(B) One hour of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader or speaker at such programs. It will be the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50% of the continuing education requirement for an enrollment cycle.

(D) Presentation of the same material in an instructor, discussion leader or speaker capacity beyond more than one time will not qualify for continuing education credit.

(E) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(iv) *Credit for published articles, books, etc.*

(A) Continuing education credit will be awarded for publication with respect to matters directly related to the continuing professional education requirements of this section.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It will be the responsibility of the person claiming the credit to maintain records to verfiy preparation time.

(C) The maximum credit for publications may not exceed 25% of the continuing education requirement of any enrollment cycle.

(D) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(3) *Periodic examination.* Individuals may establish eligibility for renewal or enrollment for any enrollment cycle by:

(i) Achieving a passing score on the pension law actuarial examination offered by the Joint Board and administered under this part during the three-year period prior to renewal; and

(ii) Completing a minimum of 8 hours of qualifying continuing education in core subject matter during the last year of an enrollment cycle.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must:

(i) By an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of actuarial science, insurance, accounting or law;

(iii) Be recognized by the Executive Director of the Joint Board as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter within the scope of this part; or

(iv) File a sponsor agreement with the Executive Director of the Joint Board to obtain approval of the program as a qualifying continuing education program.

(3) Professional organizations or societies and others wishing to be considered as qualifying sponsors shall request such status of the Executive Director of the Joint Board and furnish information in support of the request together with any further information deemed necessary by the Executive Director.

(4) A qualifying sponsor must ensure the program complies with the following requirements.

(i) Programs must be developed by individual(s) qualified in the subject matter.

(ii) Program subject matter must be current.

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content.

(iv) Programs must include some means for evaluation of technical content and presentation.

(v) Certificates of completion must be provided those who have successfully completed the program.

(vi) Records must be maintained by the sponsor to verify completion of the program and attendance by each participant. Such records must be retained for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(5) Sponsor agreements and qualified professional organization or society sponsors approved by the Executive Director shall remain in effect for one enrollment cycle. The names of such sponsors will be published on a periodic basis.

(h) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, i.e. 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) *Recordkeeping requirements.* (1) Each individual applying for renewal shall retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information shall include:

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content, e.g. course syllibi and/or textbook;

(iv) The dates attended;

(v) The credit hours claimed and whether core or non-core subject matter;

(vi) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate;

(vii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor; and

(viii) The total core and non-core subject matter.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment;

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program;

(v) The credit hours claimed and whether core or non-core subject matter; and

(vi) The total core and non-core hours

(3) To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment:

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication;

(iv) The date of publication;

(v) The credit hours claimed; and

(vi) Whether core or non-core subject matter.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director of the Joint Board for the following reasons:

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the individual's country of residence for an extended period of time due to employment or other reasons, provided the individual does not perform services as an enrolled actuary during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Executive Director of the Joint Board. Examples of appropriate documentation could be a medical certificate, military orders, etc.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be so notified by the Executive Director of the Joint Board and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be so notified.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director of the Joint Board. An individual who applies for renewal of enrollment but fails to meet the requirements of eligibility for renewal will be notified by the Executive Director at his/her last known address by first class mail. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing, within 60 days of the date of the notice, information relating to the matter. Such information will be considered by the Executive Direcor in making a final determination as to eligibility for renewal of enrollment.

(2) The Executive Director of the Joint Board may require any individual, by first class mail to his/her last known mailing address, to provide copies of any records required to be maintained under this part. The executive Director may disallow any continuing professional education hours claimed if the individual concerned fails to comply with such requirements.

(3) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisified the requirements of eligibility for renewal will be placed on a roster or inactive enrolled actuaries for a period of three years. During this time, the individual will be ineligible to perform services as an enrolled actuary.

(4) During inactive enrollment status or at any other time an individual is ineligible to perform services as an enrolled actuary, the individual shall not in any manner, directly or indirectly, indicate he or she is so enrolled, or use the term "enrolled actuary," the designation "E.A.," or other form of reference to eligibility to perform services as an enrolled actuary.

(5) An individual placed in an inactive status may satisfy the requirements for renewal of enrollment during his/her period of inactive enrollment. If such satisfaction includes completing the continuing education requirements, a minimum of 8 hours of qualifying continuing education hours must be completed in the 12 month period preceding the date on which the renewal application is filed. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roaster.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of the Executive Director of the Joint Board.

(l) *Inactive retirement status.* An individual who no longer performs services as an enrolled actuary may request placement in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to perform services as an enrolled actuary. Such individual must file a timely application for renewal of enrollment at each applicable renewal cycle as provided in this part. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status upon filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional educational hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject to a disciplinary matter in the Office of the Executive Director of the Joint Board.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to perform actuarial services and/or to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the period of ineligibility.

(n) *Verification.* The Executive Director of the Joint Board may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in this part.

Date: December 15, 1987.

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

Approved:

Robert B. Zollick,

Executive Secretary, Department of the Treasury.

Morton Klevan,

Director of Policy Development and Evaluation, Pension Welfare Benefits Administration.

[FR Doc. 88-3 Filed 1-4-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-65-87]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1988. The reglations are proposed to be effective as of January 1, 1988, and apply to taxable years beginning after December 31, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-65-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:LR:T), (202) 566-2338 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations to provide rules relating to section 832(b)(5) of the Internal Revenue Code of 1986. This document proposes to adopt those temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. 87-30193 (T.D. 8171) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both style and substance.

List of Subjects in 26 CFR 1.501-1 through 1.832-8

Income taxes, Insurance companies.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-30194 Filed 12-30-87; 1:51 pm]

BILLING CODE 4830-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket No. RM 87-6]

Freedom of Information Act; Schedule of Fees and Methods of Payment For Services Rendered

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rules.

SUMMARY: The Copyright Office's proposed fee schedule and fee waiver regulations comply with appropriate provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), the Office of Management and Budget (OMB) Administrative Guidelines published in the **Federal Register** on March 27, 1987, Vol 52, No. 50, pages 10017-10020, and the Justice Department fee waiver policy guide dated April 2, 1987. The Freedom of Information Reform Act of 1986 permits agencies to charge for direct costs of providing FOIA services such as search, duplication, and in certain cases, review. It also requires that agencies promulgate "procedures and guidelines for determining when such fees should be reduced of waived." The Copyright Office invites interested parties to comment on its proposed regulation to implement the Freedom of Information Reform Act of 1986.

DATE: Comments must be received on or before February 4, 1988.

ADDRESS: Interested parties should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540, or if by hand to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorthy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) requires agencies to adopt regulations that conform to the Act regarding procedures and fees for obtaining copies of agency records. It also provides that the fees established pursuant to the FOIA Reform Act do not supercede fees the agency is required to charge by another statute. The Copyright Act (Pub. L. 94-553) either establishes a fee schedule for copies and other services, or requires the Register of Copyright to establish fees for most copies or services, requested from this Office. Fees for requests for copies or service made under the Privacy Act (Pub. L. 93-579) will be assessed according to the fee schedule established pursuant to the administration of that Act and found in

37 CFR 204.6. Fees for searching and making copies of all other categories of records will be assessed according to the fees stated in the proposed rule or if not specifically stated, the Office will assess the direct costs incurred in filling the request. Part 203.6 of 37 CFR, Chapter II would be substantially revised to conform to the requirements of the FOIA Reform Act.

List of Subjects in 37 CFR Part 203

Freedom of Information Act.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend Part 203 of 37 CFR, Chapter II.

PART 203—[AMENDED]

1. The authority citation for Part 203 would continue to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 203.6 would be revised to read as follows:

§ 203.6 Schedule of fees and methods of payment for services rendered.

(a) *General.* The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, title 17 of the United States Code (Pub. L. 94–553] requires a fee to be charged. The fees required to be charged are contained in section 708 of title 17 U.S.C., or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themselves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) *FOIA requests.* In responding to requests under this part, the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, $4.

(2) For Copies of all other Copyright Office records not otherwise provided for in this section $.45 per page.

(3) For each hour or fraction of an hour spent in searching for a requested record, $10, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For certification of each document, $4.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programming, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no more than $10.00 per hour or fraction thereof so spent).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) *Fee limitations.* The following liminations or fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 USC 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not parimarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to "public understanding."

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the indentified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregation of requests.* Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) *Advance payments.* (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billings, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraph (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing.

Dated: December 17, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 88–44 Filed 1–4–88; 8:45 am]

BILLING CODE 1410–07–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC–37 (Sub-No. 40)]

Commercial Zones and Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rule.

SUMMARY: After a review of the comments received in response to our advance notice of proposed rulemaking (ANPR) (52 FR 15357, April 28, 1987), we propose to expand commercial zones of municipalities (49 CFR 1048) and terminal areas of motor carriers (49 CFR 1049) by revising the existing population-mileage formula (49 CFR 1048.101). We also propose to revise our rule of construction for operating authority of motor carriers (49 CFR 1041.21) to comport with the proposed revision of commercial zone and terminal area regualtions.

DATE: Comments are due by February 4, 1988.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC–37 (Sub–No. 40) should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry (202) 275–7540 and Mark S. Shaffer (202) 275–7292 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: In our ANPR we announced our intention to consider amending regulations to redescribe and expand commercial zones of municipalities and terminal areas.[1] They were last expanded in 1976. We requested comments in light of economic and demographic changes that have occurred since then.

After reviewing the comments received, we now propose to amend the population-mileage formula by reducing the number of population categories into which cities are grouped (see 49 CFR 1048.101(c)(1)–(7)), and by increasing the mileage measurement for each population category, so that all municipalities will have larger zones than under the existing formula. In the ANPR, we proposed the following formula:

Population	Miles
Under 100,000	15
100,000–499,999	25
500,000–1,000,000	40
Over 1,000,000	50

Commentors favoring zone expansion state that this formula is reasonable, while interests opposed to zone expansion believe it describes zones that are too broad. We propose to adopt a formula that is at least as broad as that proposed in the ANPR. We request comments on whether the ANPR formula is too narrow, and whether there should be fewer or more categories of cities by population. Commentors are invited to submit any suggestions they might have as to what the formula should be, giving specific reasons. Commentors should specifically address the criteria traditionally used to determine commercial zones, and any other factors they believe to be relevant.

We also propose to replace the formula at 49 CFR 1049.2 for terminal areas at unincorporated communities with a rule that provides that terminal areas at unincorporated communities shall extend 15 miles from their central post offices. For the sake of uniformity, we propose to revise the rule of construction for motor carrier operating authority to serve a particular

[1] A commercial zone is the georgraphic area around a municipality within which motor carrier operations may be performed exempt from regulation by the Commission. *See* 49 U.S.C. 10526(b)(1). A terminal area is the geographic area within which exempt pickup and delivery operations may be performed in connection with a motor carrier's regulated line-haul movement. See 49 U.S.C. 10523. Terminal areas are coextensive with commercial zones of municipalities carriers may serve in their line-haul operations. *See* 49 CFR 1049.1. Terminal areas for unincorporated communities are defined by the formula at 49 CFR 1049.2. A similar formula is used to construe the scope of motor carrier operating authority to serve unincorporated areas. See 49 CFR 1041.21.

unincorporated area (49 CFR 1041.21) to comport with the terminal area regulations by adopting a similar 15-mile rule instead of the current formula. Commentors are invited to address these aspects of our proposal.

Adoption of a revised population-mileage formula may eliminate the need for the specifically defined zones now set forth in 49 CFR 1048.1 *et seq.* However, it is not our intention to reduce the size of any existing zones. We request interested parties to advise us if areas within any of the current specifically defined zones would not be included within the commercial zone of the base municipality if its zone were defined by the formula proposed above. We will specifically define such zones to ensure that all areas within current zones are in the new zones. Of course, we will continue to permit interested parties to petition the Commission for redefinition of any commercial zone that is not adequately defined by the population-mileage formula.

The proposed expansion of the commercial zones and terminal area exemptions would apply to both motor carriers of property and motor carriers of passengers, except that passenger operations at Mexican border municipalities would be excluded from the expanded zones for the reasons stated in *Petition to Estab.—Commercial Zone Certain Counties in TX.*, 133 M.C.C. 530, 540 (1988).

Finally, we propose to simplify and streamline the commercial zone and terminal area regulations by eliminating surplusage, updating all statutory citations, eliminating unnecessary sections (*e.g.*, 49 CFR 1048.13), and rearranging and renumbering the sections.

Additional information is contained in the Commission's decision. A copy may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, (202) 275-7428. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Environmental and Energy Considerations

We reiterate our preliminary conclusion in the ANPR that this action will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Adoption of the proposed rules will not have a significant economic impact on a substantial number of small entities. While the proposed amendments expand exemptions from economic regulations, the impact will not be significant.

List of Subjects

49 CFR 1041

Motor Carriers.

49 CFR 1048

Motor Carriers.

49 CFR 1049

Motor Carriers and Freight Forwarders.

Authority: 49 U.S.C. 10101, 10321, 10523, and 10526, and 5 U.S.C.553.

Decided: December 22, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-4 Filed 1-4-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 71276-7276]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMPS), NOAA, Commerce.

ACTION: Notice of proposed Pacific Halibut Catch Sharing Plan and request for comments.

SUMMARY: NOAA announces and requests comments on a proposed Catch Sharing Plan developed by the Pacific Fishery Management Council (PFMC) to allocate the catch of Pacific halibut in International Pacific Halibut Commission statistical catch Area 2A. This allocation plan pertains to distribution of catch between Indian and non Indian fisheries for 1988 only, and between non-Indian commercial and recreational fisheries for 1988 and 1989, only.

This proposed plan establishes a distribution of harvest of the poundage of halibut determined by the International Pacific Halibut Commission to be available for harvest in Area 2A. The intended effect of this action is to obtain public comments on the plan which will be considered by the Pacific Fishery Management Council before forwarding to the Secretary of Commerce for approval and to the International Pacific Halibut Commission for implementation.

DATE: Comments on the proposed plan must be received by January 13, 1988.

ADDRESS: Send comments to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Ave., Portland, OR 97201, or Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six at 503-221-6352 or William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (The Act), Pub. L. 97-176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the United States-Canada border including Puget Sound, known as statistical Area 2A.

Historically, the halibut harvest in Area 2A has been almost entirely a commercial longline fishery. In recent years, the treaty Indian tribes have sought to develop a commercial halibut fishery. The treaty Indian commercial catch has risen from 17,000 lbs. in 1986 to nearly 50,000 lbs. in 1987. Additionally, the non-Indian recreational harvest has undergone a dramatic increase in the past five years, taking an estimated 461,000 lbs (44% of total halibut catch in Area 2A) in 1987. Together, the treaty Indian catch and the recreational catch are now at least equal in weight to the non-Indian commercial catch. In 1987, for the first time, the fishing power of the commercial, recreational, and Indian fisheries combined to substantially exceed the maximum sustainable yield of 800,000 pounds (lbs) set by the IPHC. A rapidly growing recreational catch, especially in the state of Washington, more than doubled the pre-season projections resulting in a total catch for all three groups of 1,050,700 lbs. Thus, the total catch must be reduced to meet conservation goals established by the IPHC. To do this it has become necessary to allocate the halibut catch among the three user groups.

The Under Secretary of Commerce, in compliance with the Northern Pacific Halibut Act, has directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary. In compliance with this directive, the PFMC has initiated development of a catch sharing plan for Area 2A. The process for developing the allocation plan has involved State, Federal, and treaty Indian fishery managers and technicians, user group representatives and the general public.

Three public workshops were held at Newport, OR, and Olympia and Port Angeles, WA, seeking input from user groups and the public. Several meetings were held by State, Federal, and tribal fishery managers to develop a consensus plan for consideration by the PFMC.

Establishment of the total allowable catch (TAC) is the responsibility of the IPHC. The TAC for Area 2A will not be finally established until the IPHC annual meeting in late January, 1988. The IPHC is expected to develop a range for the TAC. The proposed plan specifies that the harvest management goal for the combined tribal and non-tribal catch proposed by the PFMC is the midpoint of the IPHC's TAC range. The proposed plan distributes the TAC between Indian and non-Indian fisheries for 1988 only. It distributes the TAC between non-Indian commercial and recreational fisheries for 1988 and 1989, only. Beyond these dates the proposed plan sets no precedent for management goals and actions in subsequent years. Additional specifics of the proposed plan are as follows:

1. Treaty Indian commercial fishing will commence April 1, 1988 and terminate October 31, 1988, using hook and line gear only, with a 32-inch minimum size limit. Ceremonial and subsistance fishing may commence on February 1, 1988, or as soon afterward as regulations can be promulgated, and will terminate December 31, 1988, with no minimum size limit. A daily ceremonial and subsistence catch limit of two fish per fisherman will apply only from February 1 through March 31, 1988 and November 1 through December 31, 1988. Under the PFMC plan, a reserve will be established which is equal to the difference between the midpoint and the upper limit of the TAC range. This reserve may be taken by the treaty Indian fisheries, if necessary, to permit them to continue fishing throughout their season.

2. Non-Indian fisheries will be allowed to harvest poundage equal to the midpoint of the IPHC TAC range minus the estimated treaty Indian catch. This amount will be divided 55 percent for the commercial catch and 45 percent for the recreational fishery. If the TAC midpoint minus the estimated treaty Indian catch equals more than 600,000 lbs., the amount in excess will be divided 60 percent for the commercial harvest and 40 percent for the recreational. The commercial quota will apply to all of Area 2A with no subarea quotas; however, the Oregon share of the recreational catch quota shall not be less than 60,000 lbs.

After receiving and considering public comment, the PFMC will again review its proposed catch sharing plan and will recommend a final plan to the Secretary of Commerce to be forwarded to the IPHC for implementation. Specific regulations to implement the final plan will be developed by IPHC consistent with its responsibilities under the international convention.

Classification

This proposed catch sharing plan is published with a request for public comments as a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedures Act at 5 U.S.C. 553(b)(A). As such, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared for this proposed action to fulfill the requirements of E.O. 12291 concludes that actions taken under the proposed plan are not "major" and a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) prepared for this proposed action in accordance with the National Environmental Policy Act analyzes the biological and physical impacts of the proposal catch sharing plan. On the basis of this EA, the PFMC concluded that action taken under the plan will not have any significant impact on the human environment. Copies of the environmental assessment and regulatory impact review are available at the address above. The PFMC has determined that this action is consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773-773K.

Dated: December 30, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-30205 Filed 12-30-87; 5:06 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by the Office of Management and Budget

January 1, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

Animal and Plant Health Inspection Service

Gypsy Moth—Outdoor Household Articles

On occasion

Individuals or households; Businesses or other for-profit; 27,221 hours; 163,000 responses; not applicable under section 3504(h)

Cheryl Jenkins (301) 436-5030

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-70 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Herbicide Use for Weed Control; Deerlodge National Forest; Butte, MT; Intent To Prepare Supplement to Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare a supplement to the 1987 Deerlodge National Forest Noxious Weed Control Program Environmental Impact Statement. The supplement will document the analysis of proposals to use herbicides for noxious weed control within the Rock Creek drainage on the Philipsburg District, and on other new project areas scattered across the Forest.

A range of alternatives will be considered including alternate methods of weed control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Montana is the responsible official.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by February 1988. The final environmental impact statement is scheduled to be completed by April, 1988.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by January 31, 1988.

Questions about the proposed action and environmental impact statement supplement should be directed to Dave Ruppert, Soil Scientist, Deerlodge National Forest, phone (406) 496-3368, or Howard Challinor, Supervisory Forester, Philipsburg District, phone (406) 859-3211.

Date: December 16, 1987.

Frank E. Salomonsen,

Forest Supervisor

[FR Doc. 88-71 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Certification of Central Filing System

The Statewide central filing system of New Mexico is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Honorable Rebecca Vigil-Giron, Secretary of State, for farm products produced in that State as follows:

Cattle—beef	Cherries
Cattle—dairy	Grapes
Sheep	Raspberries
Goats	Plums
Hogs	Peaches
Horses	Pears
Llamas	Melons
Poultry	Nectarines
Bees	Apricots
Fish	Peanuts
Milk	Pecans
Eggs	Pistachios
Honey	Pinon
Manure	Lettuce
Wool	Onions
Mohair	Chile
Pelts	Squash
Hides	Sweet Corn
Wheat	Asparagus
Sorghum	Spinach
Corn	Tomatoes
Cotton	Turnips
Sugar Beets	Cabbage
Oats	Cucumbers
Barley	Green Beans
Triticale	Pimento
Alfalfa Hay	Sweet Bell Peppers
Rye	Broccoli
Soybeans	Cauliflower
Millet	Peas
Grass Hay	Potatoes
Sunflower	Pinto Beans
Apples	Sweet Potatoes
Okra	Seeds
Carrots	Flowers
Leaf Lettuce (red and green)	Nursery Crops
Blue Corn	Sod
Pop Corn	Crambe
Pumpkins	Herbs
Christmas Trees	Spices

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), P.L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.178(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 29, 1987.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88-72 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

KAMO Electric Cooperative, Inc.; Finding of No Significant Environmental Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to proposed financing assistance to KAMO Electric Cooperative, Inc. (KAMO), of Vinita, Oklahoma, for the construction of 161 kV transmission facilities in Cedar and Vernon Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and KAMO's Borrower's Environmental Report (BER) may be reviewed in the office of Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8434, or at the office of KAMO Electric Cooperative, Inc., (Mr. Dean Sanger, Manager), P.O. Box 577, Vinita, Oklahoma 74301, telephone (918) 256-5551, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for financing assistance from KAMO, has reviewed the BER submitted by KAMO and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The project consists of a 161 kV transmission line from the existing 161 kV Stockton Substation in Cedar County, Missouri, to the proposed 161/69 kV Camp Clerk Substation which is approximately 30 miles west of Stockton, Missouri in Vernon County, Missouri. Missouri Public Service Company (MO PUB) will intertie with KAMO at the Camp Clark Substation and contruct 15 miles of 161 kV transmission line into Nevada in Vernon County, Missouri. Since the MO PUB's line is dependent on the KAMO project, it has been covered in REA's environmental assessment. Based upon KAMO's BER, REA prepared an Environmental Assessment concerning the proposed project and its impacts.

The BER and EA adequately consider potential impacts of the proposed project on resources, including threatened and endangered species, prime farmlands, cultural resources, wetlands, floodplains, water quality, air quality and the health and safety of humans and livestock. The transmission line may cross floodplain, wetland and prime farmland areas. The Camp Clerk Substation will not be located in any of these areas. No practicable transmission line alternative that completely avoids floodplains, wetlands, or prime farmland could be found.

Alternatives considered include no action, and engineering alternatives to meet the needs of KAMO's consumers. After reviewing these alternatives, REA determined that the proposed project is an environmentally acceptable alternative because it best meets KAMO's needs with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Date: December 30, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 88-43 Filed 1-4-88; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 on January 20, 1988, at the Ramada Inn Civic Center Plaza, 901 21st Street North, Birmingham, Alabama. The purpose of the meeting is to discuss current civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 23, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-36 Filed 1-4-88; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 10:30 a.m. on January 18, 1988, in the Governor's Conference Room on the fifth floor of the Pavilion Office Buiding, 109 State Street, Montpelier, Vermont, recess at 12:00, and reconvene at 12:15 in the Pavilion Office Buiding Lobby for ceremonies commemorating Dr. Martin Luther King, Jr.

The purposes of the meeting are to plan activities for a meeting in March 1988 and to discuss the Advisory Committee's report entitled Civil Rights Enforcement in Vermont. The report is based upon information on civil rights statutes and enforcement mechanisms obtained during a September 1986 meeting which was addressed by Governor Madeline M. Kunin, State Supreme Court Chief Justice Frederick Allen, and other representatives of State and local governments and the private sector.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Members Samuel B. Hand (802/656-3180) or Eloise Hedbor (802/

372-6917) in Vermont or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117) in Washington, D.C. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Dvision at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, December 18, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-37 Filed 1-4-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings at the Ramada Hotel, 53203 West Kennedy Boulevard, Tampa, FL, of its Shrimp Advisory Panel, its Shrimp Scientific and Statistical Committee, and its Standing Scientific and Statistical Committee, to review the 1987 Texas closure, social and economic surveys of the impacts of the closure, and a shrimp stock assessment. The public meeting of the Shrimp Advisory Panel will convene January 12, 1988, from 8:30 a.m. to 5 p.m.; the public meeting of the Shrimp Scientific and Statistical Committee and Standing Scientific and Statistical Committee will convene January 13, 1988, from 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Date: December 30, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-77 Filed 1-4-88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Route 128, Danvers, MA, to discuss reports of the scallop, large pelagics, bluefish, groundfish, and environmental affairs committees, and an ad hoc committee report on saltwater licenses and user fees. The public meeting will convene January 13, 1988, at 1:30 p.m., and will adjourn in the afternoon of January 14 after agenda items have been completed. Also on January 14 the Council will convene a brief closed session (not open to the public) to discuss the Council's personnel policy.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: December 29, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-35 Filed 1-4-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit and Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the current import restraint limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated July 6, 1987 was published in the **Federal Register** (52 FR 25900) which announced the establishment of an import restraint limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported to the United States during the period which began on May 3, 1987 and extends through December 31, 1987.

A further directive dated December 11, 1987 (52 FR 47744) amended the July 6, 1987 directive to establish a twelve-month limit for Categories 340/640 for the period which began on May 3, 1987 and extends through May 2, 1988.

During consultations held between the Governments of the United States and Costa Rica, agreement was reached on a new Bilateral Textile Agreement, effected by exchange of notes dated November 25 and December 19, 1987, to establish a specific limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30210 Filed 12-31-87; 12:40 pm]

BILLING CODE 3510-DR-M

Announcement of an Import Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 11, 1987), has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish an import restraint limit and guaranteed access level for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

Background

During consultations held between the Governments of the United States and Costa Rica, agreement was reached to establish a new Bilateral Textile Agreement, effected by exchange of notes dated November 25 and December 19, 1987, concerning cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988. Under the terms of section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Textile Agreement, as translated to the new category system, CITA will establish a specific limit for cotton and man-made fiber textile products in Categories 340/640 for the period beginning on January 1, 1988 and extending through December 31, 1988.

The new agreement also establishes a guaranteed access level, under the Special Access Program, for certain properly certified textile products in Categories 340/640 which are assembled in Costa Rica from fabric formed and cut in the United States and exported from Costa Rica during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988 (see 52 FR 43930).

A description of the textile categories in terms of T.S.U.S.A. numbers was published n the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 31, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated Novemer 25 and December 17, 1987, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of 450,000 dozen.

To the extent that trade which now falls in Categories 340/640 is within a category limit for the period June 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the level of restraint established for that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The import level set forth above is subject to adjustment in the future according to the provisions of the new bilateral agreement on cotton and man-made fiber shirts in Categories 340/640 between the Governments of the United States and Costa Rica which provide, in part, that: (1) carryover and carryforward of 11 percent, with carryover of not more than 6 percent, is available; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

Additionally, under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 10, 1986) and 52 FR 26057 (July 11, 1987), has been established, effective on January 1, 1988, a guaranteed access level of 450,000 dozen for properly certified textile products assembled in Costa Rica from fabric formed and cut in the United States in Categories 340/640 which are exported from Costa Rica during the same twelve-month period.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct CBI Export Declaration shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program may be denied entry into the United States. In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30209 Filed 12-31-87; 2:02 pm]

BILLING CODE 3510-DR-M

Establishing Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products From Republic of Korea Effective January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade

BEST COPY AVAILABLE

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman, of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the agreement period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated amounts.

Background

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea, has been translated to the new category system to establish restraint limits for Categories 200–201, 218–220, 222–229, 300–326, 360–363, 369–O, 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–O, as a group (Group I), and within the group individual Categories 200, 218, 219, 220, 229–F, 300/301, 313, 314, 315, 317/326, 320, 363, 410, 604, 611, 613/614, 617, 619/620, 624, 625–629 and parts of 669; Categories 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group (Group II), and within the group individual Categories 331, 333/334, 335, 336, 337/637, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 352, 353/354/653/654, 359–H, 433/434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459–W, 631, 632, 633/634/635, 636, 638/639, parts of 640, 641, 642, 643, 644, 645/646, 647/648, 649, 650 and parts of 659; Categories 831–844 and 847–859, as a group (Group III), and within the group individual Categories 835, 836 and 840; individual Categories 845 and 846 in Group IV; and Categories 369–L, 670–L/870, as a group (Group VI), and within the group individual Categories 369–L, 670–L/870, 670–L and 870, produced or manufactured in Korea and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 18924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25398), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
200–201, 218–220, 222–229, 300–326, 360–363, 369–O [1], 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669, and 670–O [2], as a group.	434,304,105 square yards equivalent.
Sublevels within Group I:	
201	2,837,036 pounds.
218	12,450,627 square yards.
219	8,522,676 square yards.
220	4,547,173 square yards.
229–F [3]	715,046 pounds.
300/301	5,485,837 pounds.
313	51,918,802 square yards.
314	26,022,687 square yards.
315	23,665,033 square yards.
317/326	17,344,818 square yards.
363	1,742,235 numbers.
410	4,659,336 square yards.
604	626,760 pounds.
611	2,432,004 square yards.
613/614	7,707,634 square yards.
617	5,666,564 square yards.
619/620	99,663,263 square yards.
624	9,445,292 square yards.
669–C [4]	2,127,778 pounds.
669–P [5]	3,959,930 pounds.
669–T [6]	7,815,231 pounds.
Subgroup within Group I:	
625–629, as a group.	12,693,848 square yards.
Group II:	
239, 330–354, 359, 431–448, 459, 630–654, and 659, as a group.	687,274,998 square yards equivalent.
Sublevels within Group II:	
331	513,338 dozen pairs.
333/334	73,162 dozen.
335	74,311 dozen.
336	45,258 dozen.
337/637	68,291 dozen of which not more than 44,389 dozen shall be in Category 337 and not more than 44,389 dozen shall be in Category 637.
338/339	769,653 dozen.
340	280,936 dozen.
341	187,775 dozen.
342	76,458 dozen.
345	93,053 dozen.
347/348	337,475 dozen.
350	13,162 dozen.
351	115,718 dozen.
352	140,716 dozen.
353/354/653/654.	229,637 dozen.
359–H [7]	4,489,096 pounds.
433/434	17,284 dozen of which not more than 13,196 dozen shall be in Category 433 and not more than 6,768 dozen shall be in Category 434.
435	31,600 dozen.
436	13,377 dozen.
438	63,437 dozen.
440	213,380 dozen.
442	45,208 dozen.
443	322,056 numbers.
444	49,260 numbers.
445/446	52,204 dozen.
447	84,458 dozen.
448	31,803 dozen.
459–W [8]	189,668 pounds.
631	237,596 dozen pairs.
632	1,803,792 dozen pairs.
633/634/635.	1,433,459 dozen of which not more than 181,068 dozen shall be in Category 633, not more than 834,111 dozen shall be in Category 634 and not more than 633,297 dozen shall be in Category 635.
636	226,281 dozen.
638/639	5,611,915 dozen.
640–D [9]	3,809,916 dozen of which not more than 1,306,500 dozen shall be in Category 640–DY [10].
640–O [11]	2,571,834 dozen of which not more than 2,170,869 dozen shall be in Category 640–OY [12].
641	976,845 dozen of which not more than 37,505 dozen shall be in Category 641–Y [13].
642	82,285 dozen.
643	737,064 numbers.
644	1,086,144 numbers.
645/646	3,402,457 dozen.
647/648	1,191,223 dozen.
649	526,102 dozen.
650	19,260 dozen.
659–C [14]	460,168 pounds.
659–H [15]	2,511,648 pounds.
659–S [16]	312,298 pounds.
Group III:	
831–844 and 847–859, as a group.	21,564,565 square yards equivalent.
Sublevels with Group III:	
835	27,271 dozen.
836	75,487 dozen.
840	116,153 dozen.
Group IV:	
845	2,312,744 dozen.
846	809,847 dozen.
Group VI:	
369–L [17], 670–L/870 [18], as a group.	62,934,658 square yards equivalent.
Sublevels within Group VI:	
369–L	525,313 pounds.
670–L/870	32,320,800 pounds of which not more than 27,316,250 pounds shall be in Category 670–L and not more than 6,060,150 pounds shall be in Category 870.

[1] In Category 369–O, all TSUSA numbers except 706.3210, 706.4130 and 706.4135.

[2] In Category 670–O, all TSUSA numbers except 706.3415, 706.3650 and 706.4111.

[3] In Category 229–F, only TSUSA numbers 355.4520 and 355.4530.

[4] In Category 669–C, only TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[5] In Category 669–P, only TSUSA number 385.5300.

[6] In Category 669–T, only TSUSA numbers 386.1105 and 389.6210.

[7] In Category 359–H, only TSUSA numbers 702.0600 and 702.1200.

[8] In Category 459–W, only TSUSA numbers 702.7500 and 702.8000.

[9] In Category 640–D, only TSUSA numbers 381.3132, 381.3134, 381.3558, 381.6972, 381.8666, 381.9535, 381.9540 and 381.9968.

[10] In Category 640–DY, only TSUSA numbers 381.3132 and 381.9535.

[11] In Category 640–O, only TSUSA numbers 381.3142, 381.3144, 381.3152, 381.3154, 381.3333, 381.9305, 381.9400, 381.9547, 381.9549, 381.9550, 381.9844, 384.2306, 384.2313 and 384.9127.

[12] In Category 640–OY, only TSUSA numbers 381.3142, 381.3152, 381.9547, 381.9550 and 384.2306.

[13] In Category 641–Y, only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110 and 384.9120.

[14] In Category 659–C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[15] In Category 659–H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[16] In Category 659–S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

[17] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

[18] In Category 670–L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1988 levels are subject to adjustment according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, which provide, in part, that: (1) Group limits, specific limits and sublimits may be exceeded by designated percentages for swing, carryforward and/or carryover. No carryforward will be available in the final agreement year, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 87-30202 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Philippines Effective January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Reports which are posted on the bulletin boards of each Customs port of call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile and apparel products in Groups I and II, produced or manufactured in the

Philiphines and exported during 1988, which are in excess of the specific limits.

Background

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, as translated to the new category system, the Committee for the Implementation of Textile Agreements will establish limits for cotton, wool and man-made fiber apparel and non-apparel products in Categories 239, 331, 333/334, 335, 336, 337/637, 338/339, 340/640, 341/641, 342/642, 345, 347/348, 351/651, 352/652, 369-S (shoptowels), 431, 433, 443, 445/446, 447, 604, 631, 633, 634, 635, 636, 638/639, 643, 645/646, 647/648, 649, 650, 659-H (headwear) (Group I); and a limit for cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products in Categories 200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369-O (other), 400–429, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659-O (other, 665–670 and 831–859, as a group (Group II), produced or manufactured in the Philippines and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist on in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
239	12,540,000 pounds.
331	795,000 dozen pairs.
333/334	147,877 dozen of which not more than 21,200 dozen shall be in Category 333.
335	96,123 dozen.
336	340,800 dozen.
337/637	1,080,000 dozen.
338/339	1,166,000 dozen.
340/640	651,026 dozen of which not more than 358,065 dozen shall be in shirts made with two or more colors in the warp and/or filling in Category 340-YD/640-YD [1].
341/641	576,172 dozen.
342/642	291,500 dozen.
345	90,100 dozen.
347/348	1,060,000 dozen.
351/651	318,000 dozen.
352/652	1,272,000 dozen.
369-S [2]	1,007,000 pounds.
431	153,015 dozen pairs.
433	3,013 dozen.
443	36,432 numbers.
445/446	24,864 dozen.
447	6,919 dozen.
604	2,354,946 pounds.
631	2,597,000 dozen pairs.
633	15,900 dozen.
634	233,088 dozen.
635	269,130 dozen.
636	911,600 dozen.
638/639	1,197,600 dozen.
643	508,800 numbers.
645/646	525,000 dozen.
647/648	836,000 dozen.
649	4,474,433 dozen.
650	55,014 dozen.
659-H [3]	1,272,000 pounds.
Group II	
200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369-O [4], 400–429, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659-O [5], 665–670 and 831–858, as a group.	73,252,179 square yards equivalent.

[1] In Category 340-YD/640-YD, only TSUSA numbers 381.0522, 381.5937, 381.5610, 381.5625, 381.5660, 381.5500, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.

[2] In Category 369-S, only TSUSA number 366.2840.

[3] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[4] In Category 369-O, all TSUSA numbers except 366.2840.

[5] In Category 659-O, all TSUSA numbers except 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30203 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey Effective on January 1, 1988

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during 1988, in excess of the designated limits.

Background

Under the terms of section 204 of the Agricutural Act of 1956, as amended, and the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, between the Governments of the United States and the Republic of Turkey, and as translated to the new category system, CITA establishes import limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported in the case of Category 200, 219, 300/301, 313, 317/326, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369 and 604 during the periods beginning of January 1, 1988 and extending through June 30, 1988. Category 342/642, currently filled, shall remain embargoed through May 26, 1988, unless a different solution is agreed upon in consultations with the Government of Turkey.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, between the Governments of the United States and Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the indicated periods, in excess of the following restraint limits:

Category	Import restraint limit—January 1, 1988–June 30, 1988
200	519,400 pounds.
219	5,654,643 square yards.
300/301	3,445,000 pounds.
313	7,860,408 square yards.
317/326	6,625,000 square yards of which not more than 1,060,000 square yards shall be in Category 326.
335	38,750 dozen.
337	37,500 dozen.
339	227,386 dozen.
340/640	234,000 dozen of which not more than 117,000 dozen shall be in Categories 340-Y/640-Y. [1]
341	226,200 dozen of which not more than 93,600 dozen shall be in Category 341-Y [2].
347	302,155 dozen of which not more than 135,000 dozen shall be in Category 347-T [3]
348	289,346 dozen of which not more than 144,673 dozen shall be in Category 348-T [4]
350	43,890 dozen.
361	201,400 numbers.
369-S [5]	768,500 pounds.
604	613,915 pounds.

[1] In Categories 240-Y/640-Y, only TSUSA numbers 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

[2] In Category 341-Y, only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788.

[3] In Category 347-T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3930, 381.3940, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6611, 381.6924, 381.8510, 381.8634, 381.9930 and 791.7418.

[4] In Category 348-T, only TSUSA numbers 376.5440, 384.0015, 384.0262, 384.0263, 384.0265, 384.0266, 384.0267, 384.0269, 384.0350, 384.0606, 384.0612, 384.0614, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0726, 384.0729, 384.0731, 384.0733, 384.0734, 384.0736, 384.0965, 384.2706, 384.2751, 384.3026, 384.3027, 384.3029, 384.3035, 384.3038, 384.3042, 384.3044, 384.3466, 384.4520, 384.4647, 384.4648, 384.4651, 384.4652, 384.4735, 384.4740, 384.4746, 384.4747, 384.4750, 384.4755, 384.4763, 384.4764, 384.4765, 384.4770, 384.4774, 384.4776, 384.5275, 384.5422, 384.5526, 384.7716, 384.7815, 384.9527 and 791.7420.

[5] In Category 369-S, only TSUSA number 366.2840.

To the extent that trade which now falls in the foregoing categories is within a category limit for the periods beginning January 1, 1987 and July 1, 1987, and extending through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restaint established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustments pursuant to the provisions of the bilateral agreement of October 18, 1985, as amended, between the Governments of the United States and the Republic of Turkey, which provide, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward, however, carryforward will not be available in the final twelve-month agreement period.

The limit for Categories 342/642 for the period of January 1, 1988 through May 26, 1988 shall be zero.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30214 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

Amendment of Import Limits and Restraint Periods for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the current restraint limits and restraint periods for certain cotton and man-made fiber textile products, produced or manufactured in Turkey.

Background

CITA directives dated June 22, 1987, as amended, and November 3, and December 30, 1987, were published in the **Federal Register** (52 FR 23882 and 52 FR 43097) which established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began, in the case of Categories 300/301, 317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, on July 1, 1987 and extends through June 30, 1988 and in the case of Categories 342/642, on May 27, 1987 and extends through May 26, 1988.

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, CITA will amend the current import limits for certain cotton and man-made fiber textile products in Categories 300/301, 317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, produced or manufactured in the Republic of Turkey and exported during the new restraint period which began on July 1, 1987 and extends through December 31, 1987. There will be 100 percent carryover and 100 percent carryforward between this restraint period and the one which begins on Janaury 1, 1988. The limit for Categories 342/642 has been amended for the new restraint period which began on May 27, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of June 22, 1987, as amended, November 3, 1987 and December 3, 1987 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported to the United States during the periods which began, in the case of Categories 300/301,317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, on July 1, 1987 and extends through June 30, 1988; and, in the case of Categories 342/642, on May 27, 1987 and extends through May 26, 1988.

Effective on January 1, 1988, the directives of June 22, 1987, as amended, November 3, 1987 and December 3, 1987 are amended to include amended restraint limits for the following categories, produced or manufactured in Turkey and exported during the new restraint periods as indicated below.

Category	Import restraint limit—July 1, 1987–December 31, 1987
300/301	3,445,000 pounds.
317	6,625,000 square yards of which not more than 1,060,000 square yards shall be in Category 371-S [1].
319	5,830,000 square yards.
335	38,955 dozen.
337	37,500 dozen.
339	230,000 dozen.
340/640	234,000 dozen of which not more than 117,000 dozen shall be in Categories 340-Y/740-Y [2].
341	226,200 dozen of which not more than 93,600 dozen shall be in Category 341-Y [3].
347	302,155 dozen of which not more than 135,000 dozen shall be in Category 347-T [4].
348	291,500 dozen of which not more than 145,750 dozen shall be in Category 348-T [5].
350	43,990 dozen.
361	201,400 numbers.
369-S [6]	768,500 pounds.
604	613,915 pounds.
605-H [7]	519,400 pounds.

[1] In Category 317-S, TSUSA items 320._____ through 331._____, with statistical suffixes 50, 87 and 93.

[2] In Category 340-Y/640-Y, 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

[3] In Category 341-Y, only TSUSA numbers 384.4608, 384.4610, 384.4612 and 384.4788.

[4] In Category 347-T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3930, 381.3940, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6611, 381.6924, 381.6510, 381.8634, 381.9930 and 791.7418.

[5] In Category 348-T, only TSUSA numbers 376.5440, 384.0015, 384.0262, 384.0263, 384.0265, 384.0266, 384.0267, 384.0269, 384.0350, 384.0608, 384.0612, 384.0614, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0726, 384.0729, 384.0731, 384.0733, 384.0734, 384.0736, 384.0965, 384.2706, 384.2751, 384.3026, 384.3027, 384.3029, 384.3035, 384.3038, 384.3042, 384.3044, 384.3466, 384.4520, 384.4647, 384.4648, 384.4651, 384.4652, 384.4735, 384.4740, 384.4746, 384.4747, 384.4750, 384.4755, 384.4763, 384.4764, 384.4765, 384.4770, 384.4774, 384.4776, 384.5275, 384.5422, 384.5526, 384.7716, 384.7815, 384.9527 and 791.7420.

[6] In Category 369-S, only TSUSA number 366.2840.

[7] In Category 605-H, TSUSA numbers 310.9310 and 310.9320.

Category	Import restraint limit—May 27, 1987–December 31, 1987
342/642	119,550 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30213 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

Establishment and Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish new import limits for cotton and man-made fiber textile products in Categories 337, 347 and 604 and to adjust the current limit for cotton textile products in Category 300/301, produced or manufactured in Turkey and exported to the United States during the period July 1, 1987 through June 30, 1988.

This letter will be superseded, on January 1, 1988 by two other letters which subdivide these July 1, 1987–June 30, 1988 restraints into two periods, one under the current category system, and one under the new category system.

Background

A CITA directive dated December 10, 1986 was published in the **Federal Register** (51 FR 45031) which established import restraint limits for man-made textile products in Category 604-A, among others, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further CITA directive dated June 22, 1987 (52 FR 23882) established import restraint limits for cotton and man-made fiber textile products, including Categories 300/301 and 604-O, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

During consultations held October 14-16, 1987 between the Governments of the United States and the Republic of Turkey, agreement was reached to further amend their Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, to include specific limits for Categories 300/301, 337, 347, with a sublimit for trousers and slacks in 347-T, and 604, currently 604-A and 604-O, for the period July 1, 1987 through June 30, 1990.

The United States Government has decided to control imports of Categories 300/301, 337, 347, 347-T, and 604 at the agreed levels for the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements

December 31, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes only that portion of the directive of December 10, 1986 issued by the Chairman, Committee for the Implementation of Textile Agreements,

concerning imports of man-made fiber textile products in Category 604-A,[1] produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

This directive amends, but does not cancel, the directive of June 22, 1987 concerning imports of cotton textile products in Categories 300/301, produced or manufactured in Turkey and exported during the period July 1, 1987 through June 30, 1988.

This directive also cancels and supersedes only that portion of the June 22, 1987 directive which concerns imports of man-made fiber textile products in Category 604-O [2] exported during the twelve-month period which began on July 1, 1987 and extending through June 30, 1988.

Effective on January 1, 1987, the directive of June 22, 1987 is hereby amended to include the following adjusted limit for category 300/301 and new limits for Categories 337, 347 and 604 for the period July 1, 1987 through June 30, 1988.

Category	12-month restraint limit [1]
300/301	6,890,000 pounds.
337	75,000 dozen.
347	604,309 dozen of which not more than 270,000 dozen shall be in category 347-T.[2]
604	1,227,830 pounds.

[1] These limits have not been adjusted to account for any imports exported after June 30, 1987.

[2] In Category 347-T, all TSUSA's in Category 347 except 381.0530 and 381.6210.

Textile products in Categories 337 and 347 which have been exported to the United States prior to July 1, 1987 shall not be subject to this directive.

Textile products in Category 337 and 347 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The import charges already made to the restraint limit for Category 300/301 are to be retained. There are no charges to be made to the restraint limit for Category 604 for the import period July 1, 1987 through December 31, 1987. Charges for Categories 337 and 347 will be provided in a separate directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] In Category 604-A, only TSUSA number 310.5049.

[2] In Category 604-O, all TSUSA numbers except 310.5049.

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30212 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Programmatic Environmental Impact Statement for the Chemical Stockpile Disposal Program

AGENCY: Department of the Army, Department of Defense.

Background

The U.S. Congress, Title 14, Part B, section 1412, 1986 Defense Authorization Act (Pub. L. 99-145), directed the Secretary of Defense to carry out the destruction of the U.S. stockpile of lethal chemical agents and munitions by September 30, 1994, in conjunction with the acquisition of binary chemical weapons. The Department of the Army, as Executive Agent for the Department of Defense, is responsible for the disposal of these lethal munitions in a manner which provides protection of public health and safety and which is environmentally acceptable.

On January 28, 1986, the Army published a Supplemental Notice of Intent to prepare a Programmatic Environmental Impact Statement and other appropriate site-specific environmental documents on the potential impacts resulting from the disposal of the entire stockpile of chemical agents/munitions currently in storage within the continental United States (CONUS) as referenced in Pub. L. 99-145.

On July 1, 1986, the Army issued a Draft Programmatic Environmental Impact Statement (DPEIS) for the Chemical Stockpile Disposal Program. The DPEIS included an analysis of the impacts of disposal of the agents and munitions at incineration facilities at eight separate sites, or rail transport to either two regional disposal sites or the national disposal site and subsequent disposal of the agents. The DPEIS also considered the impacts of "no action"; i.e., continue to store the agents and munitions at their current locations.

Action

The Department of the Army announces that the Final Programmatic Environmental Impact Statement (FPEIS) for the disposal of the entire lethal chemical agent stockpile within the continental United States is available for public review and comment. The stockpile to be destroyed is located at eight Army installations: Aberdeen Proving Ground, Maryland; Anniston Army Depot, Alabama; Lexington-Blue Grass Army Depot, Kentucky; Newport Army Ammunition Plant, Indiana; Pine Bluff Arsenal, Arkansas; Pueblo Army Depot Activity, Colorado; Tooele Army Depot, Utah; and Umatilla Army Depot Activity, Oregon.

Five alternatives were assessed in the FPEIS:

(1) On-site disposal by incineration at each of the eight storage installations.

(2) Rail transportation of the stocks to a national disposal center to be established at Tooele Army Depot.

(4) Air transportation of the stocks from Lexington-Blue Grass Army Depot and Aberdeen Proving Ground to Tooele Army Depot for disposal; the remaining stocks would be destroyed at their current storage sites.

(5) Continued storage of the stocks at their current locations, or the "no action" alternative.

Based on a comparative analysis of human health, ecosystem and environmental impacts, and the feasibility and effectiveness of emergency response measures, the on-site disposal alternative is identified as the environmentally preferred alternative. The Army also selects the on-site disposal alternative as its preferred alternative.

The selection of a preferred alternative in the FPEIS does not constitute a final decision. The final programmatic Record of Decision cannot be made for at least 30 days after publication of the FPEIS to allow public review and comment. The FPEIS, as well as comments submitted on the document, will be used by the Army to reach a final programmatic decision.

Following the Record of Decision, site specific environmental documentation will be prepared for each of the eight sites, further detailing the potential impacts of implementing the decision.

Comments on the FPEIS should be submitted to: Program Executive Officer-Program Manager for Chemical Demilitarization, ATTN: AMCPEO-CID, Aberdeen Proving Ground, Maryland 21010-5401. These comments should be received no later than February 8, 1988, for consideration in the Record of Decision. Copies of the document may be obtained by writing to the above address or by calling 301-671-2583.

The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this Final Programmatic Environmental Impact Statement in the **Federal Register**.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(IH&L).

[FR Doc. 88-63 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 26 January 1988.

Times of Meeting: 0800-1600 hours.

Place: Huntsville, AL.

Agenda: The ASB Effectiveness Review of the US Army Missile Command, Research, Development and Engineering Center will meet to discuss actions taken in response to the review findings. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for futher information at (202) 695-3039 or 695-7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88-12 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closing Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 14-15 January 1988.

Time of Meeting: 0800-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to work on the finalization of the written and oral reports. This will include completing the executive summary and making final recommendations. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 87-17 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19-20 January 1988.

Time of Meetings: 0800-1700 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issue of the study effort. The Subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for futher information at (202) 695-3039 or 695-7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88-18 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19-21 January 1988.

Time of Meeting: 0900-1700 hours, 19 January 1988; 0800-1030 hours, 20 January 1988; 0800-1600 hours, 21 January 1988.

Place: Ft Lee, VA and Ft Eustis, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by analytic agencies and government laboratories to discuss analysis organization and support to the acquisition process. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88-19 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Grant Award to the State of Alaska

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 5-year grant to the State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys, in the amount of $1,000,000 on a 50/50 cost share basis. Funding will be for 12-month periods beginning on the first anniversary of award.

The DOE has determined that restriction to the State of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns.

This project will focus upon the exploration, study, and compilation of data and related research materials on the geometry and physical properties of ice islands and multiyear ice, the conditions and manner under which ice island are formed and released, and the global forces with which multiyear pack ice and ice island interact with offshore structures.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the State of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that it is appropriate to award this grant to the State of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: James H. Urbati, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-88MC25027.000.

Date: December 22, 1987.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88-9 Filed 1-4-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. SA88-2-000]

Enserch Gas Transmission Co., Petition for Adjustment

Issued: December 29, 1987.

On November 27, 1987, Enserch Gas Transmission Company (Enserch) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Enserch seeks relief from the Commission's regulations governing transportation rates charged by intrastate pipelines as set forth in 18 CFR 284.123(b)(1)(ii), which allows such charges to equal the effective intrastate transportation rate if the services are comparable. Comparable service has been interpreted to refer to city-gate service.

Enserch requests adjustment from the regulation because it does not render city-gate service. Enserch proposes to charge a maximum rate equal to the rate in its intrastate transportation tariff (Rate Schedule No. 100) on file with the Texas Railroad Commission (TRC) as the applicable rate for transportation under section 311(a)(2) of the NGPA. Enserch states that it is concurrently filing with the TRC a petition seeking approval of the filed tariff as a cost-based rate.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-24 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-119-000 and CI88-140-000]

Sunterra Gas Gathering Co.; Applications for Permanent Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

December 29, 1987.

Take notice that on November 16, 1987, Sunterra Gas Gathering Company (Sunterra or Applicant), 2444 Louisiana, NE., Albuquerque, New Mexico 87125, a natural gas gathering and successor to Southern Union Gathering Company (Southern Union), filed applications pursuant to section 7 of the Natural Gas Act and § 2.77 of the Commission's Regulations thereunder for authorization to abandon sales to El Paso Natural Gas Company (El Paso) which were originally authorized in Docket Nos. G-7670 and G-7671, and for a blanket limited-term certificate with pregranted abandonment for a period of three years. Sunterra states that effective March 5, 1987, it succeeded to the interests of Southern Union which had been determined to be an independent producer under the Commission's regulations. Applicant states that the contract dated August 31, 1953, which is for sale of gas which is surplus to the needs of Applicant and its affiliates, will terminate December 31, 1987. Applicant states that El Paso has not purchased any gas from Applicant under the contract since February 1985 and has indicated that it does not intend to purchase such gas.

Applicant states that it utilizes its gathering system in the sale of gas to El Paso, and that from the gathering system, Sunterra purchases gas under long-term, take-or-pay contracts from 1,073 wells in the San Juan Basin. Applicant indicates that approximately 38% of the gas covered by the contract is classified under sections 102 and 103 of the NGPA; abandonment authorization is not required for such gas. The remaining gas is classified under various vintages of section 104 post-1974 (23%), large producer 1973-1974 biennium (1%), small producer 1973-1974 biennium (<1%) large producer replacement (13%), small producer replacement (<1%), large producer flowing (18%), small producer flowing (1%), section 106 large producer rollover (1%) and section 108 (4%). The deliverability subject to the abandonment is approximately 93 MMcf/d.

Applicant states that in order to fulfill the purpose of the Sunterra-El Paso contract, El Paso was entitled to purchase all of Sunterra's gas surplus to the needs of Sunterra and its affiliates but was obligated to purchase a volume of gas which, when combined with the needs of Sunterra and its affiliates, would permit Sunterra to purchase from producers ratably with El Paso's purchases from producers in the same fields. Applicant states that El Paso, however, has not purchased any gas from Sunterra under the contract since February 1985, but El Paso has continued to purchase gas from producer in the San Juan Basin, though at reduced levels. Through its actions and numerous verbal communications, Applicant states that El Paso has made clear that it does not intend to purchase gas from Sunterra.

Applicant believes that the portion of the gas which constitutes 'surplus' not purchased by El Paso is not 'dedicated or committed' to interstate commerce and that Sunterra is free to sell such gas to others, including sales in interstate commerce for resale. Acting on that belief, Sunterra states it filed a petition for an order declaring such result in Docket No. GP84-55-000 on September 21, 1984. However, no order has been issued in Docket No. GP84-55-000. While Sunterra states that it does not believe the authorization sought herein is legally required for the reasons described in the petition for declaratory order, the continued uncertainty requires action of some type to resolve this matter.

Sunterra states for nearly three years, El Paso has not purchased any gas from Sunterra, yet according to Sunterra, during this time El Paso has retained a first call on Sunterra's excess gas. Sunterra states it has not been compensated either for the gas not taken or for El Paso's continuing unexercised right to purchase that gas.

Applicant states that approval of the applications will assure that all competitively-priced excess gas on Sunterra's system can be marketed. Sunterra avers the sale of that gas will benefit customers, who will buy it only if it is cheaper than other alternatives, will benefit producers, who will be able to maximize their production and revenues, and will benefit Sunterra, which will be better able to manage its own take-or-pay exposure. Sunterra further asserts that El Paso itself will benefit from the assurance that, after abandonment, it can incur no future liability for failure to take gas from Sunterra.

Applicant also requests a blanket limited-term certificate with pregranted abandonment authorizing Sunterra to sell the gas for resale in interstate commerce. Sunterra requests that such a certificate be effective for a period of three years from the date of its issuance. Sunterra anticipates that its sales will be made at the wellhead, at the inlet or tailgate of the Kutz Processing Plants attached to Sunterra's gathering system or at other points on Sunterra's gathering system. Sunterra states that the sales price will vary with market conditions but will never exceed the maximum lawful price applicable to resellers under § 270.202 of the Commission's Regulations. However, Sunterra states that in Docket No. SA82-16, the Commission approved a gathering allowance of 31.81¢ per MMBtu for sales by Sunterra to El Paso, and other customrs. *Southern Union Gathering Co.*, 21 FERC ¶ 61,305 (1982). Therefore, Sunterra states that under § 270.202(c), if sales are made at the Kutz Processing Plants or other points on Sunterra's gathering system, other than the wellhead, the sales price for such sales may exceed the maximum lawful price otherwise applicable under § 270.202(c) by up to 31.81¢.

Sunterra states that because its sales of gas are likely to be made initially in the spot market, they will be subject to rapid changes with regard to volumes, purchasers, delivery points and other considerations. Therefore, Sunterra requests that the Commission waive its Regulations under Parts 154 and 271 concerning maintenance of rate schedules in order to permit Sunterra to implement sales without constantly filing and changing rate schedules and blanket affidavits to conform to the conditions of each individual sale.

Additionally, Sunterra requests waiver of the separate billing requirements of § 272.105 of the Commission's Regulations so long as the sales price it charges is less than the alternative maximum lawful price provided in § 271.402(c)(7)(i) of the Regulations plus an amount up to the authorized 31.81¢ gathering allowance, if applicable. Sunterra states that since Section 272.105 of the Regulations is designed to prevent circumvention of the maximum price limitations of the NGPA, and since all contracts under which Sunterra will sell gas under the requested blanket limited-term certificate will necessarily have been executed subsequent to July 18, 1986, the applicable maximum lawful price for gas sold by Sunterra can never be less than the alternative maximum lawful price provided in § 271.402(c)(7)(i) of the Regulations. As long as the total price charged by Sunterra does not exceed the alternative maximum lawful price by more than 31.81¢, Sunterra states that the sale could not possible circumvent the maximum price limitations of the NGPA. In such circumstances, the separate billing required by § 272.105 is, according to Sunterra, an unnecessary and onerous burden which should be eliminated.

Sunterra also requests a waiver of any and all otherwise currently applicable orders, rules, regulations, and reporting requirements, or those which may be promulgated or issued by the Commission, to the extent that such orders, rules, regulations, or reporting requirements are, or may be, inconsistent with the authority sought in these applications.

Finally, Sunterra requests cancellation of its FERC Gas Rate Schedule No. 1 which covers its sales to El Paso.

Since Sunterra states that when El Paso does not take gas from Sunterra, its revenues are reduced and its producers suffer severely reduced takes and resultant reduced cash flow, and Sunterra has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, andy person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-25 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-151-000, et al.]

Canal Electric Co., et al.; Electric Rate and Corporate Regulation Filings

December 29, 1987.

Take notice that the following filings have been made with the Commission:

1. Canal Electric Company

[Docket No. ER88-151-000]

Take notice that on December 21, 1987, Canal Electric Company (Canal) tendered for filing a Power Contract which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the NU Units Capacity Acquisition Commitment (FERC Rate Schedule No. 21, Supplement No. 7). Such Power Contract recognizes that Canal has incurred costs associated with the purchase of demand and energy on behalf of Cambridge Electric Light Company and Commonwealth Electric Company. The estimated revenues to Canal under this Power Contract are approximately $7,925,980 for Period I (twelve months ending December 31, 1988). Canal has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of May 1, 1987. Further, Canal proposes that its filing be suspended for no more than one day.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of the notice.

2. Central Hudson Gas & Electric Corporation

[Docket No. ER88-152-000]

Take notice that on December 22, 1987, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a rate schedule an executed agreement dated November 3, 1987 between Central Hudson and the New York Power Authority (NYPA). The proposed rate schedule provides for Electric Transmission Service and Standby Electric Service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.49 per kilowatt and a standby charge of $8.06 per kilowatt per month during the summer and winter peak periods.

Central Hudson states that a copy of this filing was served on NYPA.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER88-113-000]

Take notice that on December 21, 1987, Kansas City Power & Light Company (KCPL) tendered for filing an Amendment to its earlier filing in this Docket.

KCPL states that the purpose of this supplement is to respond to a question regarding Schedule A of the Agreement. The Amendment accepts a cap for percentage adders on purchase and resale transactions under Schedule A. The cap is the same as the adder for purchase and resale transactions which the Commission has accepted for other similar transactions by KCPL.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER88-147-000]

Take notice that on December 21, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Nine to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and Florida Power Corporation (Rate Schedule FERC No. 61).

FPL states that under Amendment Number Nine, FPL will transmit power and energy for Florida Power Corporation as is required in the implementation of its interchange agreements with the Utility Board of the City of Key West, the Utilities Commission, City of New Smyrna Beach, Florida, the City of Starke, the Fort Pierce Utilities Authority, the City of Homestead, the City of Lake Worth and the City of Vero Beach.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number Nine.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately.

FPL states that copies of the filing were served on Florida Power Corporation.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Wisconsin Electric Power Company

[Docket No. ER88-149-000]

Take notice that on December 21, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a Joint Use of Transmission Agreement and a Dispatch Agreement between Wisconsin Electric and Upper Peninsula Power Company (UPPCO). The Joint Use of Transmission Agreement provides for terms, conditions, and procedures under which UPPCO and Wisconsin Electric will mutually employ certain interconnected transmission facilities after Wisconsin Electric's purchase of the Presque Isle Power Plant. The Dispatch Agreement is intended to establish procedures under which UPPCO will provide Wisconsin Electric with dispatching service associated with the generation of the Presque Isle Power Plant. The instant submittal is occasioned by the pending purchase of Presque Isle Power Plant from its owner, Upper Peninsula Generating Company.

Wisconsin Electric requests an effective date concurrent with its closing on the Presque Isle Power Plant scheduled for 11:59 p.m. e.s.t. on December 31, 1987 or as promptly therafter as required regulatory approvals can be obtained. The Company states that UPPCO joins in the requested effective date.

Wisconsin Electric states that UPPCO has filed Certificate of Concurrence to the Joint Use of the Transmission Agreement and Dispatch Agreement between Wisconsin Electric and UPPCO.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER88-150-000]

Take notice that on December 21, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amendment to the Interconnection Agreement between Wisconsin Electric and Upper Peninsula Power Company (UPPCO). The amendment provides for a new Service Schedule G, under which Wisconsin Electric will sell to UPPCO energy associated with power from the Presque Isle Power Plant. The instant submittal is occasioned by the pending purchase of Presque Isle Power Plant from its owner, Upper Peninsula Generating Company.

Wisconsin Electric requests an effective date concurrent with its closing on the Presque Isle Power Plant which is scheduled for 11:59 p.m. e.s.t. on December 31, 1987 or as promptly thereafter as required regulatory approvals can be obtained. The Company states that UPPCO joins in the requested effective date.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Wisconsin Electric states that Upper Peninsula Power Company has filed a Certificate of Concurrence to the Amendment to the Interconnection Agreement between Wisconsin Electric and Upper Peninsula.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER88-148-000]

Take notice that on December 21, 1987, Duke Power Company (Duke) tendered for filing a revision in its wheeling rate under the Agreement between Duke Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1966 (designated Rate Schedule FERC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.51 per kilowatt month to $1.44 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hartwell, Clarks Hill, and Richard B. Russell Projects to preference customers of SEPA in Duke's service area in North Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1988.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-65 Filed 1-4-88, 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-94-000, et al.]

National Fuel Gas Supply Corp. et al.; Natural Gas Certificate Filings

December 29, 1987.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP88-94-000]

Take notice that on November 24, 1987, National Fuel Gas Supply Corporation (Applicant), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP88-94-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and firm transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authority to provide firm transportation service for up to 75,000 Mcf of natural gas per day for Transco Energy Marketing Company (TEMCO). Applicant states that the natural gas would be exported from Canada by TransCanada Pipelines, Ltd. and would come into the United States at the Niagara River Border Crossing of Tennessee Gas Pipeline Company (Tennessee) in New York. Applicant would receive the natural gas at a new point of interconnection with Tennessee at Lewiston, New York and would transport the natural gas to an existing point of interconnection between Applicant's Y-M 52 line and the facilities of Transcontinental Gas Pipe Line Corporation (Transco) near Wharton, Pennsylvania, where it would deliver the gas for the account of TEMCO, it is stated.

It is stated that the gas to be transported is sold to TEMCO by Sulpetro Limited under assignment by Transco of a long term purchase contract. It is indicated that TEMCO would ultimately deliver the gas to three local distribution companies: Baltimore Gas and Electric Company, Long Island Lighting Company, and Public Service and Gas Company. In addition, Applicant states that Transco has also applied for a certificate of public convenience and necessity in Docket No. CP88-92-000 to authorize firm downstream transportation and associated facilities.

Applicant requests authorization to construct and operate the following facilities which would cost approximately $20,800,000:

1. Approximately 20 miles of 24-inch diameter pipeline extending from Tennessee's Niagara River crossing at Lewiston, New York to Applicant's existing Nash Road Station in Niagara County, New York.

2. Approximately 6,000 horsepower of incremental compression at Applicant's existing Ellisburg, Pennsylvania compressor station.

3. Approximately 1,000 horsepower of incremental compression at Applicant's existing East Fork Compressor station.

Applicant states that it would charge TEMCO an initial monthly demand rate of $2.3979 per Mcf of natural gas and an initial commodity rate of $0.0876 per Mcf of natural gas actually transported. Applicant also states that it believes this application is distinguished from open season proposals that may be filed in response to the Commission's Northeast open-season proceeding in Docket No. CP87-451-000.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-122-000]

Take notice that on December 9, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-122-000 a request pursuant to § 284.223 of the Commission Regulations under the Natural Gas Act, for authorization to provide a transportation service for Tenneco Oil Company (TOC), a producer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 22, 1987, it proposes to transport natural gas for TOC from various receipt points in Texas and Louisiana, both onshore and offshore, and to deliver equivalent volumes of gas to various delivery points in Texas and Louisiana.

Tennessee further states that the peak day quantity would be 103,400 dekatherm (dt) equivalent of natural gas, the average daily quantity would be 2,143 dt equivalent, and that the annual quantity would be 782,195 dt equivalent. Tennessee indicates that service under Section 284.223 (a) commenced November 4, 1987, as filed in Docket No. ST88-920 on November 25, 1987.

Comment date: February 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Katy Interchange Service

[Docket No. CP88-123-000]

Take notice that on December 9, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, Coronado Transmission Company (Coronado), P.O. Box 165, Corpus Christi, Texas 78403, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, and Yankee Pipeline Company (Yankee or Operator), 2000 RepublicBank Center, 700 Louisiana Street, Houston, Texas 77002 (collectively referred to as Participants) [1] as Participants in the Katy Interchange Service (KIS) filed in Docket No. CP88-123-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) a gas interchange service to be rendered by the Interstate Pipeline Participants in the vicinity of Katy, Texas (Katy); [2] (2) a petition for declaratory order declaring that participation in KIS would not, in and of itself, subject the Participants to the open-access requirements of Order No. 436, *et seq.* and Order No. 500 *et seq.*; (3) a petition for declaratory order declaring that the gas interchange service to be rendered by the Intrastate Pipeline Participants would be pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and declaring that the transportation of gas to and from Katy by the Intrastate Pipeline Participants would be pursuant to section 311(a)(2); (4) a request that the Commission approve as "fair and equitable" the rate to be charged by the Interstate Pipeline Participants for the gas interchange service; and (5) a request by the Intrastate Pipeline Participants for waivers of certain Regulations of the Commission with respect to rate approval and reporting requirements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the background for the subject application is as follows: The New York Mercantile Exchange (NYMEX) is planning to establish a market for natural gas futures contracts. In connection with establishing such a market, NYMEX has advised that a specific location must be designated where futures contracts can be closed, *i.e.*, where sellers of gas can deliver such gas for the account of buyers, for further transportation to the buyers. NYMEX has advised that the Katy area appears to be a desirable location for such closing because of the multiplicity of pipelines and related facilities in such area. The application states that all of the Participants own pipelines and related facilities in the area covered by KIS, and therefore are capable of receiving and/or delivering gas within the Katy area.

It is stated that the interchange service to be provided by the Participants in the Katy area would consist of (1) the delivery of gas from one pipeline to another (in certain cases the gas may have to move through several pipelines in the Katy area), and (2) the measurement of such gas (this service is referred to as the Service). The interconnection points of the participants which would be used in providing the Service is referred to as the Interchange. KIS would not cover transportation to or from the Interchange but only the service to be

[1] Currently, Transco and Trunkline are the Interstate Pipeline Participants and Coronado and Yankee are the Intrastate Pipeline Participants. Additional interstate, intrastate, and Hinshaw pipelines are expected to participate in KIS.

[2] A map of the Katy interchange area is attached. The map is not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch.

rendered by the Participants at the Interchange.

In an operating agreement executed by the Participants, Yankee is designated to serve as operator/dispatcher to coordinate the Service. The Operator, on behalf of itself and as agent for the other Participants, would execute a service agreement with the shippers for rendition of the Service.

The Participants state that the Service would be rendered on an interruptible basis, and would not interfere with Participants' use of their respective systems to provide sales and transportation services. It is stated that, as a practical matter, the variety of flow options within the area of the Interchange would make it exceedingly unlikely that a particular futures or spot transaction would be frustrated by blockage within the Interchange.

The Interstate Pipelines request that the Commission issue to them a common certificate of public convenience and necessity authorizing their part of rendition of the Service as described above. It is further requested that this certificate include any other interstate pipelines that subsequently elect to participate in the Service.

As previously stated, future interconnection points of the Participants in the Katy area would also be utilized in rendering the Service. Accordingly, the Interstate Pipelines request that the Commission authorize them to establish future interconnections in the Katy area for the *sole* purpose of utilizing such interconnections for Service. If an Interstate Pipeline Participant wants to utilize such a future interconnection for any other purpose, separate authority would have to be sought from the Commission.

It is stated that, if in the future any Hinshaw pipeline (as defined in section 1(c) of the Natural Gas Act) elects to participate in KIS, such Hinshaw pipeline would require certificate authorization to perform its share of the jurisdictional Service. In order to ensure that the authorizations granted by the Commission in response to the application are sufficiently comprehensive to deal with this possibility, Participants request in the application that the Commission order include certification for the Service rendered in the future by any Hinshaw pipeline.

The Participants state that the rendition of the Service would be nondiscriminatory. The Interstate Pipeline Participants request that they be permitted to perform this service on a self-implementing basis, without triggering the "open access" provisions of Order No. 436, *et seq.* and Order No. 500, *et seq.* (such as the contract reduction/conversion provisions) with respect to their systems at large. Otherwise, those Interstate Pipelines, if any, which have not elected open access would be unable to accept the certificate.

The Participants state NYMEX has advised that, in order for the natural gas futures market to function properly, KIS must be authorized to render its service in connection with both (1) gas delivered pursuant to the closing of futures contracts, and (2) gas delivered pursuant to transactions on the "spot" market. For purposes of the application, Participants state that spot market transactions are considered to be those of one month or less and include long-term contract arrangements which provide for prices and takes of gas to be determined on a month-by-month basis.

The application states that NYMEX has also advised that it is essential to the functioning of a natural gas futures market that a single uniform rate be changed by KIS for each MMBtu handled by the Service. (NYMEX has advised that 10,000 MMBtu's is the quantity that would be covered by each gas futures contract.) As explained by NYMEX, a single rate is needed so that the purchaser of a futures contract—at the time of the purchase—would know exactly the cost of the delivery of gas from seller to buyer at the Interchange. The Participants have concluded that, with the exception of Coronado, no Participant should assign any fixed system costs to the Service because such a small portion of each Participant's overall pipeline system is involved, and, thus, as a practical matter, it would be impossible to assign, on any meaningful basis, fixed costs to the Service. Coronado, by contrast, has invested considerable capital in pipeline and compression facilities which would be devoted to the Service, and the Participants have accordingly agreed that the uniform rate to be developed for the Service should reflect a component for Coronado which recognizes such investment. Other than the Coronado investment, the costs which would be incurred by all Participants include: (1) The fee charged by the operator for its services; (2) the filing fee paid to the Commission for filing the application and petition for declaratory order; (3) compressor fuel consumed by a Participant within the Interchange in order to deliver gas to another Participant within the Interchange; and (4) administrative expenses.

The Participants propose that a rate of 3.18 cents per MMBtu be charged for all gas handled at the Interchange during the period from the first handling of gas at the Interchange until twelve (12) months after the end of the first calendar month in which trading of natural gas futures contracts commences on the NYMEX. KIS would file with the Commission for a revised rate to be effective after such initial period, and such revised rate would be based on experienced gained by the Service during such period.

It is stated that, in order to participate in the Service and the transportation of gas to and from the Interchange, the Interstate Pipeline Participants must be assured that all of their activities with regard to same are authorized by section 311(a)(2) of the NGPA. Section 311(a)(2) of the NGPA and the Regulations promulgated thereunder authorize an intrastate pipeline to transport gas "on behalf of" an interstate pipeline or a local distribution company served by an interstate pipeline. One test of whether section 311(a)(2) transportation meets the "on behalf of" test is whether an interstate pipeline or local distribution company derives a substantial benefit from the transaction. *See Mississippi Fuel Company*, 32 FERC ¶ 61, 396 (1985). It is stated that the Interstate Pipeline Participants would derive substantial benefits from the exchange of gas at the Interchange and from the transportation of gas to and from the Interchange by the Intrastate Pipeline Participants because, without such services by the Intrastate Pipeline Participants, the versatility of the Interchange would be severely—perhaps fatally—impaired, and utilization of the Interstate Pipeline Participants would be less efficient. Therefore, the Intrastate Pipeline Participants request a declaratory order declaring that all of the activities in connection with (1) transportation service occurring within the Interchange, and (2) transportation of gas to and from the Interchange would be "on behalf of" the Interstate Pipelines and thus would be rendered pursuant to section 311(a)(2) of the NGPA.

For rendition, of the transportation services to and from the Interchange, the application states that the Intrastate Pipeline Participants would charge their existing rates for such services. However, since the rate to be charged for the Service (initially 3.18 cents per MMBtu) would be a new rate, the Intrastate Pipeline Participants need approval by the Commission that such rate is "fair and equitable" as required by section 311(a)(2)(B) of the NGPA.

It is stated that, since the rate to be charged by KIS would reflect a melding of the costs incurred by each of the Participants in rendering service though the Interchange and that since the rate component for each of the Participants would be cost-based and, with the exception of Coronado, determined under a uniform methodology, it follows that the requirements of § 311(a)(2) would be met for each Intrastate Pipeline Participant. Accordingly, pursuant to ¶ 284.123(b)(2) of the Regulations, the Intrastate Pipeline Participants request approval that the rate to be charged for the Service would constitute a "fair and equitable" rate insofar as the Intrastate Pipeline Participants are concerned.

It is stated that numerous transactions are expected to be rendered annually by KIS and that it would be unreasonably burdensome for the Intrastate Pipeline Participants to file § 284.123(b)(2) rate approval petitions and/or § 284.126 reports for every transaction at the Interchange in which an Intrastate Pipeline Participant engages. Moreover, if the Intrastate Pipeline Participants had to pay a $4,900 filing fee with each rate approval petition and/or a $600 filing fee with each report, the transactions would in all likelihood be unprofitable because many of these transactions are expected to involve small quantities of gas, and would earn revenues which do no more than recover out-of-pocket expenses.

Accordingly, the Intrastate Pipeline Participants request that the Commission waive the rate approval petition requirements of § 284.123(b)(2) and the reporting requirements of § 284.126 of the Regulations. The application states that such waiver is sought only in connection with service within the Interchange.

The Intrastate Pipeline Participants also request that the Commission waive the open access requirements of §§ 284.8 and 284.9 of the Regulations with respect to transactions at the Interchange because, otherwise, the Intrastate Pipeline Participants, if any, that have not elected generally to provide new section 311(a)(2) transportation service under Order No. 436 *et seq.* and Order No. 500, *et seq.* would be unable to participate in the Service. It is the intent of the Intrastate Pipeline Participants that all service within the Interchange would be rendered on a nondiscriminatory basis and that the above requests by the Intrastate Pipeline Participants are intended to extend to other intrastate pipelines that subsequently elect to participate in the Service.

With respect to reporting requirements, the Participants propose that the operator of the Interchange would file a combined annual report that contains certain information for the preceding year with respect to service rendered by KIS. The Participant propose that such annual report would be the only report required of the Participants with respect to the Interchange Service.

It is stated that the emergence of a futures market for a particular commodity is a clear sign that the value of such commodity can be fairly and effectively determined by market forces. As explained by NYMEX, the competitive environment, which gives rise to a futures trade in the first place, is itself well-served by such futures trade. Accordingly, the participants state that for actual sellers and buyers of gas, a futures trade should mean greater price predictability. Furthermore, for the industry in general, a gas futures trade should serve a useful price finding function by helping establish the nationwide production area value of gas at any point in time. The Participants consider the purposes and effects of a gas futures trade to be entirely consistent with the procompetitive objectives underlying Commission Order No. 436, *et seq.* and Order No. 500, *et seq.* It is stated that in order for a natural gas market to be viable, deliver must be achievable with a minimum amount of regulatory oversight. The authorizations and clarifications requested in this application, although modest in scope, are essential to the timely performance of natural gas futures contracts to be traded on the NYMEX. For these reasons, the Participants submit that the public convenience and necessity require authorization of the services described herein and granting of the declaratory orders and waivers requested herein.

It is stated that no new facilities are proposed in connection with the subject application and that the Participants would utilize existing capacity to handle the quantities of gas covered by such application. It is estimated that 67,200,000 MMBtus would be handled by KIS during the first year of operation.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Company

[Docket No. CP88-134-000]

Take notice that on December 17, 1987, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed an application in Docket No. CP88-134-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rearrangement of the maximum daily quantities by delivery point and to increase the contract demand authorization by 1,500 Mcf of its customer, Middle Tennessee Utility District of Cannon, Chamberland, Dekalb, Hamilton, Putnam, Rhea, Rutherford, Smith, Warren, White, and Wilson Counties, Tennessee (MTUD), all as more fully set forth in the application on file with the Commission and open to public inspection.

East Tennessee indicates that to implement the requested increase in contract demand and rearrangement of maximum daily quantities it would be necessary to construct and operate 6.27 miles of six-inch loop on its Carthage Lateral. East Tennessee estimates a cost of $1,420,800, which would be financed from funds on hand.

Applicant states that it proposes to utilize system supplies to meet the increase in contract demand of 1,500 Mcf.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Lone Star Gas Company, a Division of ENSERCH Corporation)

Docket No. CP88-130-000

Take notice that on December 16, 1987, Lone Star Gas Company a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP88-130-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain sales taps, lateral lines and appurtenant facilities, under the authorization issued in Docket Nos. CP83-59-000, CP83-59-001 and CP83-59-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following customers:

Customer and Location	Line
W. C. Davis, Wichita County, Tx	A16 (portion)
S&J Operating Co., Wichita County, TX	A16-6 (all)
Two-State Cattle Feeders, Wilbarger County, TX	A26 (all)

Lone Star states that it has received letters from Davis and S&J Operating Company consenting to termination of service. It is further stated that Lone Star has not obtained a letter of consent from Two-State Cattle Feeders (Two-State). However, Two-State's alfalfa mill is no longer in operation and no gas has been delivered to Two-State since 1980,

it is asserted. It is stated that no other customers are served from these facilities. Lone Star proposes to remove these sales taps, lateral lines and appurtenant facilities, which are located in Wichita and Wilbarger Counties, Texas. Lone Star states that sales to these customers have heretofore been made at the appropriate rate as provided by state authorities.

Comment date: February 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-66 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRI-3310-9]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions:

SUMMARY: The purpose of this notice is to announce that between July 1, 1987 and October 31, 1987, the United States Environmental Protection Agency (EPA) Region II Office, issued three final determinations and the New York State Department of Environmental Conservation (NYSDEC) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**)

FOR FURTHER INFORMATION CONTACT: Mr. Karl Mangels, Acting Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4333.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II Office has made three final determinations and the NYSDEC has made one final determination relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Hydraco Enterprises (Salt City Energy Venture).	(Old Allied Power House) Solway, New York.	Rehabilitation of six boilers and replacement of two turbine/generators capable of producing 79.9 MW of electricity.	NYSDEC	PSD-non-applicability determination.	Aug. 6, 1987.
Squibb Manufacturing, Inc.	Humacao, Puerto Rico.	Converting the use of an 800 Hp boiler from standby mode to full time mode.	EPA Region II	PSD non-applicability determination.	Sept. 3, 1987.
Virgin Islands Water and Power Authority.	St. Croix, U.S. Virgin Islands.	Construction of a 23 MW stationary gas turbine.	EPA Region II	Amended PSD applicability determination for NO_x only.	Sept. 14, 1987.
Virgin Islands Water and Power Authority.	St. Thomas, U.S. Virgin Islands.	Cconstruction of a 23 MW stationary gas turbine.	EPA Region II	Amended PSD applicability determination for NO_x only.	Sept. 14, 1987.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices.

EPA Region II Actions

United States Environmental Protection Agency, Permits Administration Branch, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany New York 12233-0001.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations were published in the **Federal Register**. Under Section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: December 17, 1987.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-52 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3311-4]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of final ambient water quality criteria document.

SUMMARY: EPA announces the availability and provides a summary of the final ambient water quality criteria document for selenium. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Document

This notice contains: (1) A summary of the selenium document containing final ambient water quality criteria for the protection of aquatic organisms and their uses, (2) responses to public comments. Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (phone number (703) 487-4650). The NTIS publication order number for the document is published below. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M St., SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries. Copies of the document are *not* available from the EPA office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Selenium—EPA-440/5-87-006; NTIS Number PB 88-142 237.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-7321.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) (1) of the Clean Water Act (33 U.S.C. 1314(a) (1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a) (1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (49 FR 5831), completing the coverage of the 65 priority pollutants listed under section 307(a) (1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Updates to the Quality Criteria for Water, 1986 are published annually. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA issued a final water quality criteria document for zinc.

Today EPA is announcing the availability of a final water quality criteria document for selenium which updates and revises criteria previously published in the 1980 ambient water quality criteria document. A draft criteria document for selenium was made available for public comment on May 1, 1986 (51 FR 16205). These final criteria have been derived after consideration of all comments received.

Dated: December 22, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Selenium

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of selenium does not exceed 5 ug/L more than once every three years on the average and if the one-hour average concentration does not exceed 20 ug/L more than once every three years on the average.

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of selenium does not exceed 71 ug/L more than once every three years on the average and if the one-hour average concentration does not exceed 300 ug/L more than once every three years on the average. If selenium is an toxic to saltwater fishes in the field as it to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5 ug/L in salt water.

Implementation

Because of the variety of forms of selenium in ambient water and the lack

of definitive information about their relative toxicities to aquatic species, no available analytical measurement is known to be ideal for expressing aquatic life criteria for selenium. Previous aquatic life criteria for metals and metalloids were expressed in terms of the total recoverable measurement, but newer criteria for metals and metalloids were expressed in terms of the acid-soluble measurement. Acid-soluble selenium (operationally defined as the selenium that passes through a 0.45 um membrane filter after the sample has been acidified to a pH between 1.5 and 2.0 with nitric acid) is probably the best measurement at the present for the following reasons:

1. This measurement is compatible with nearly all available data concerning toxicity of selenium to, and bioaccumulation of selenium by, aquatic organisms. It is expected that the results of tests used in the derivation of the criteria would not have changed substantially if they had been reported in terms of acid-soluble selenium.

2. On samples of ambient water, measurement of acid-soluble selenium will probably measure all forms of selenium that are toxic to aquatic life or can be readily converted to toxic forms under natural conditions. In addition, this measurment probably will not measure several forms, such as selenium that is occluded in minerals, clays, and sand or is strongly sorbed to particulate matter, that are not toxic and are not likely to become toxic under natural conditions.

3. Although water quality criteria apply to ambient water, the measurement used to express criteria is likely to be used to measure selenium in aqueous effluents. Measuement of acid-soluble selenium is expected to be applicable to effluents. If desired, dilution of effluent with receiving water before measurement of acid-soluble selenium might be used to determine whether the receiving water can decrease the concentration of acid-soluble selenium because of sorption.

4. The acid-soluble measurement is expected to be useful for most metals and metalloids, thus minimizing the number of samples and procedures that are necessary.

5. The acid-soluble measurement does not require filtration of the sample at the time of collection, as does the dissolved measurement.

6. For the measurement of total acid-soluble selenium the only treatment required at the time of collection is preservation by acidification to a pH between 1.5 and 2.0, similar to that required for the total recoverable measurement.

7. Durations of 10 minutes to 24 hours between acidification and filtration of most samples of ambient water probably will not substantially affect the rest of the measurement of total acid-soluble selenium. However, acidification might not prevent oxidation or reduction of selenium (-II), selenium (VI), or selenium (IV). Therefore measurement of acid-soluble selenium (IV) and/or acid-soluble selenium (VI) might require separation or measurement at the time of collection of the sample or special preservation to prevent conversion of one oxidation state of selenium to the other.

8. Ambient waters have much higher buffer intensities at a pH between 1.5 and 2.0 than they do at a pH between 4 and 9.

9. Differences in pH within the range of 1.5 to 2.0 probably will not affect the result substantially.

10. The acid-soluble measurement does not require a digestion step, as does the total recoverable measurement.

11. After acidification and filtration of the sample to isolate the acid-soluble selenium, the analysis for total acid-soluble selenium can be performed using either furnace or hydride atomic absorption spectrophotometric or ICP-atomic emission spectrometric analysis, as with the total recoverable measurement. It might be possible to separately measure acid-soluble selenium (IV) and acid-soluble selenium (VI).

Thus, expressing aquatic life criteria for selenium in terms of the acid-soluble measurement has both toxicological and practical advantages. The U.S. EPA is considering development and approval of a method for a measurement such as acid-soluble.

Metals and metalloids might be measured using the total recoverable method. This would have two major impacts because this method includes a digestion procedure. First, certain species of some metals and metalloids cannot distinguish between individual oxidation states. Second, in some cases these criteria would be overly protective when based on the total recoverable method because the digestion procedure will dissolve selenium that is not toxic and cannot be converted to a toxic form under natural conditions. Because no measurement is known to be ideal for expressing aquatic life criteria for selenium or for measuring selenium in ambient water or aqueous effluents, measurement of both acid-soluble selenium and total recoverable selenium in ambient water or effluent or both might be useful. For example, there might be cause for concern when total recoverable selenium is much above an applicable limit, even though acid-soluble selenium is below the limit.

In addition, metals and metalloids might be measured using the dissolved method, but this would also have several impacts. First, whatever analytical method is specified for measuring selenium in ambient surface water will probably also be used to monitor effluents. It effluents are monitored by measuring only the dissolved metals and metalloids, the effluents might contain some selenium that would not be measured but might dissolve, due to dilution or change in pH or both, when the effluent is mixed with receiving water. Second, measurement of dissolved selenium requires filtration of the sample at the time of collection. Third, the dissolved measurement is especially inappropriate for use with such metals as aluminum that can exist as hydroxide and carbonate precipitates in toxicity tests and in effluents. Use of different methods for different metals and metalloids would be unnecessarily complicated. For these reasons, it is recommended that aquatic life criteria for selenium not be expressed as dissolved selenium.

As discussed in the Water Quality Standards Regulation and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site-specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possible pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in State water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available.

[FR Doc. 88-53 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010636-030.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V. Dart-ML Limited Hapag-Lloyd AG Sea-Land Service, Inc. Gulf Container (GCL), B.V. P&O Containers (TFL) Limited Compagnie Generale Maritime Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification clarifies Article 5, Conference Authority, by specifically stating that the cargo moved by member lines includes cargo not subject to tariff filing under section 8(a)(1) of the Shipping Act of 1984.

Agreement No.: 232-011163.

Title: Hong Kong Islands Line America S.S./Gearbulk Container Service Space Charter and Sailing Agreement.

Parties:

Hong Kong Islands Line America S.A. ("HKIL")

Gearbulk Ltd. DBA Gearbulk Container Services ("GBCS")

Synopsis: The proposed space charter and sailing arrangement would permit GBCS to charter space on its vessels to HKIL in connection with service between the Far East and the U.S. West Coast.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 30, 1987.

[FR Doc. 88-88 Filed 1-4-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-29]

Hemisphere Navigation Co., Inc. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Hemisphere Navigation Co., Inc. ("Hemisphere") against Sea-Land Service, Inc. ("Sea-Land") was served December 29, 1987. Hemisphere alleges that Sea-Land has violated various sections of the Intercoastal Shipping Act of 1933, 46 U.S.C. app. 843, the Shipping Act, 1916, 46 U.S.C. app. 801, and the Shipping Act of 1984, 46 U.S.C. app. 1701, by wrongfully charging and demanding, collecting and receiving ocean freight and terminal charges in excess of what was properly applicable pursuant to Sea-Land's Tariff FMC-F-No. 61, in effect between San Juan, Puerto Rico and U.S. Atlantic and Gulf ports.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 29, 1988, and the final decision of the Commission shall be issued by May 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-87 Filed 1-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northern of Tennessee Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 21, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Northern of Tennessee Corp.*, Clarksville, Tennessee; to merge with Stewart County Bancorp, Inc., Dover, Tennessee, and thereby indirectly acquire Peoples Bank, Dover, Tennessee.

2. *SunTrust Banks, Inc.*, Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire 100 percent of the voting shares of Commerical Bank in Panama City, Panama City, Florida.

3. *TSB Bancorp, Inc.*, Woodland, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Talbot State Bank, Woodland, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *First Farmers Financial Corporation*, Converse, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Farmers National Bank, Converse, Indiana. Comments on this application must be received by January 15, 1988.

2. *Market Place Bancshares, Inc.*, Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Market Place National Bank, Champaign, Illinois.

3. *South Holland Bancorp, Inc.*, South Holland, Illinois; to acquire 100 percent of the voting shares of First Dolton Corp., Dolton, Illinois, and thereby indirectly acquire First National Bank in Dolton, Dolton, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *T & C Bancorp, Inc.*, Lewistown, Missouri; to merge with LaBelle Bancshares, Inc., Lewistown, Missouri, and thereby indirectly acquire The Bank of LaBelle, LaBelle, Missouri; North Missouri Bancorp, Inc., Edina, Missouri, and thereby indirectly acquire The Citizens Bank of Edina, Edina, Missouri; and Great River Bancshares, Inc., Lewistown, Missouri, and thereby indirectly acquire Farmers & Merchants Bank, La Grange, Missouri.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *El Camino Bancorp*, Anaheim, California; to merge with Citizens Holdings, Newport Beach, California, and thereby indirectly acquire Citizens Bank of Costa Mesa, Costa Mesa, California.

Board of Governors of the Federal Reserve System, December 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20 Filed 1-4-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Trade Regulation; Funeral Industry Practices; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501-3518, for clearance of the information collection requirements contained in the Funeral Industry Practices Rule.

SUMMARY: The Federal Trade Commission is requesting a three year extension of existing OMB approval of information collection requirements (as defined in 5 CFR Part 1320) contained in its Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453.

On July 22, 1981, the Commission submitted the information collection requirements contained in the Funeral Rule to OMB for review. OMB approved that request and assigned control number 3084-0025 to those requirements. On reapplication, OMB approval was extended for a three-year period until December 31, 1987. The FTC now requests another extension of OMB's approval of the disclosure, reporting, and recordkeeping requirements contained in the Rule.

The Supporting Statement previously submitted to OMB for the Funeral Rule estimated its paperwork burden to be not more than 177,000 hours per year. All but 1,000 hours of that effort is made by funeral providers ensuring compliance with the rule's disclosure and recordkeeping requirements. The remainder accounts for the effort of states that elect to seek exemptions from the rule's coverage as provided in 16 CFR 453.9.

On December 9, 1987, the FTC gave advance notice of proposed rulemaking to address whether the Funeral Rule should remain in effect without changes, or should be amended or repealed. That notice also requested public input on the burden issue. Pending the development of more or better data, the existing burden estimates should remain in force.

DATES: Comments on this application may be submitted on or before February 4, 1988.

ADDRESS: Send comments on this request for OMB Review to Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326-2476.

Robert D. Paul,

General Counsel.

[FR Doc. 88-2 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules; Mobile Metro CTS et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney general advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12/14/87 AND 12/24/87

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
(1) Metro Mobile CTS, Cantel Corporation, Cantel Corporation	88-0357	12/14/87
(2) Glenn R. Jones, Maryland Cable Limited Partnership, Maryland Cable Limited Partnership	88-0448	12/14/87
(3) Amoco Corporation, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0451	12/14/87
(4) Fireman's Fund Corporation, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0454	12/14/87
(5) West Timbers Limited Partnership, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0455	12/14/87
(6) Ciba-Geigy Limited, Leader National Corporation, B.S.B. Diversified Co., Inc.	88-0446	12/15/87
(7) Dr. Arend Oetker, General Mills, Inc., Pioneer Products, Inc.	88-0490	12/15/87
(8) Roxboro Investments (1976) Ltd., Textron Inc., Textron Inc.	88-0435	12/16/87
(9) WGHP Limited Partnership, Voting Trust of the Providence Journal Company, WPHL-TV, Inc.	88-0233	12/17/87
(10) Procordia AB, FSLIC as receiver for Vernon Savings & Loan Assoc., FSA, Dondi Group, Inc.	88-0335	12/17/87
(11) Chicago Pacific Corporation, Brown Jordan Company Limited Partnership, Brown Jordan Company Limited Partnership	88-0354	12/17/87
(12) Keystone Coca-Cola Bottling and Distribution Corp., Coca-Cola Bottling Company of Rochester, Inc., Coca-Cola Bottling Company of Rochester, Inc.	88-0374	12/17/87
(13) Coca-Cola Bottling Company of Rochester, Inc., Keystone Coca-Cola Bottling and Distribution Corp., Keystone Coca-Cola Bottling and Distribution Corp.	88-0375	12/17/87
(14) Sony Corporation, CBS, Inc., CBS Records and CBS/Sony Group Inc.	88-0376	12/17/87
(15) Warburg, Pincus Capital Company, L.P., United HealthCare Corporation, United HealthCare Corporation	88-0400	12/17/87
(16) Hotel Investors Trust, Las Vegas Investors, Ltd., Las Vegas Investors, Ltd.	88-0424	12/17/87
(17) VEBA AG, Feldmuhle Nobel AG, Dynamit Nobel AG	88-0440	12/17/87
(18) First Financial Management Corporation, First Data Management Holding Company, First Data Management Holding Company	88-0460	12/17/87
(19) High Equity Partners, L.P. Series 86, Crow Charlotte Retail #2, Ltd., Crow Charlotte Retail #2, Ltd.	88-0483	12/17/87
(20) Aoki Corporation, Allegis Corporation, Westin Hotel Corporation	88-0487	12/17/87
(21) Peko-Wallsend Ltd., Richard Leven, Richard Leven	88-0495	12/17/87
(22) The British Petroleum Company p.l.c., Lundy Holding Company, Lundy Holding Company	88-0498	12/17/87
(23) Western Savings and Loan Association, Finalco Group, Inc., Finalco Incorporated and Finalco Telemanagement, Inc.	88-0538	12/17/87
(24) ITT Corporation, Triad Hotel Associates, Ltd., Triad Hotel Associates, Ltd.	88-0562	12/17/87
(25) Springs Industries, Inc., United Merchants and Manufacturers, Inc., United Merchants and Manufacturers, Inc.	88-0404	12/18/87
(26) Kotobuki Fudosan Ltd., The Prudential Insurance Company of America, BMI Acquisition Corporation	88-0418	12/18/87
(27) Unisys Corporation, Timplex, Inc., Timplex, Inc.	88-0426	12/18/87
(28) Unisys Corporation, Timplex, Inc., Timplex, Inc.	88-0427	12/18/87
(29) Amoco Corporation, Premark International, Inc., Dantoo Manufacturing Inc.	88-0430	12/18/87
(30) Edward Bottenwick, Unisys Corporation, Unisys Corporation	88-0436	12/18/87
(31) Northwestern National Life Insurance Company, Provident Life and Accident Insurance Company, Provident General Insurance Company	88-0444	12/18/87
(32) Robert M. Bass, Prime Cable of Georgia, Ltd., Prime Cable of Georgia, Ltd.	88-0479	12/18/87
(33) Robert M. Bass, Prime Cable of Georgia, Ltd., Cable Atlanta Limited	88-0486	12/18/87
(34) Federal Signal Corporation, Manchester Tool Company, Manchester Tool Copany	88-0512	12/18/87
(35) Ben Weider, Highland Associates, Westo, Inc.	88-0536	12/18/87
(36) RLAC Corporation, ITT Corporation, The Sheraton Corporation	88-0555	12/18/87
(37) Hargro Enterprises, Inc., Frye Acquisition Partners, Computer Supplies, Inc., Frye Computer Supplies, Inc.	88-0482	12/21/87
(38) Rock-Tenn Company, The Mead Corporation, The Mead Corporation	88-0511	12/21/87
(39) RPM, Inc., Craft House Corporation, Craft House Corporation	88-0533	12/21/87
(40) Basf Aktiengesellschaft, Amax Inc., Amax Petroleum Company	88-0554	12/21/87
(41) Societe Nationale Elf Aquitaine, Amax Inc., Amax Petroleum Company	88-0561	12/21/87
(42) Burns, Philp & Company Limited, RJR Nabisco, Inc., Dromedary business operations of Nabisco	88-0450	12/22/87
(43) Continental Information Systems Corporation, Amoco Corporation, Amoco Tax Leasing I Corporation	88-0467	12/22/87
(44) Wertheim Incorporated, William M. Moran, Jr., The Moran Group Inc.	88-0476	12/22/87
(45) Sears Roebuck & Co., Illinois Tool Works Inc., ITW Truewell Corporation	88-0496	12/22/87
(46) Dashowa Paper Mfg. Co., Ltd., James River Corporation of Virginia, James River's directory paper mill and related	88-0506	12/22/87
(47) Seibu Railway Company, Ltd., Aoki Corporation, Mauna Kea Properties, Inc.	88-0518	12/22/87
(48) Richard M. Connor, Jr., Primerica Corporation, Timberlands and related assets	88-0524	12/22/87
(49) Huhtamaki, Oy, RJR Nabisco, Inc., Nabisco Brands, Inc./Nabisco, Inc.	88-0530	12/22/87
(50) Bunzl plc, Joseph Behr & Sons Inc., The Paper Group, Inc.	88-0543	12/22/87
(51) Mobile Communications Corp. of America, Harry L. Brock, Jr., Bakersfield Cellular Telephone Company	88-0437	12/23/87
(52) Henry L. Hillman, Genius, Inc., Genius, Inc.	88-0445	12/23/87
(53) Bamos Hospital, Healthtrust, Inc.—The Hospital Company, St. Peters Community Hospital	88-0468	12/23/87
(54) BellSouth Corporation, Harry L. Brock, Jr., Bakersfield Cellular Telephone Company	88-0475	12/23/87
(55) Alex Hackel, AMAX, Inc., Alumax of South Carolina, Inc.	88-0492	12/23/87
(56) Norman M. Lear, Henry Posner, Jr., Meriden Communications Corp./West VA Telecasting Inc.	88-0531	12/23/87
(57) System Industries, Inc., First Mississippi Corporation, Imperial Technology, Inc.	88-0580	12/23/87
(58) Joslyn Corporation, Roy Coats Family Trust, Burnbank Family of Companies, Inc.	88-0348	12/24/87
(59) Southmark Corporation, Mercury Savings Association of Texas, Mercury Savings Association of Texas	88-0478	12/24/87
(60) Eastman Kodak Company, Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0513	12/24/87
(61) Fuqua Industries Inc., Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0514	12/24/87
(62) Donald G. Jones, First Carolina Cable TV, L.P., Big River Cablevision, Inc. and Denmark Cablevision	88-0515	12/24/87
(63) FPL Group, Inc., Citrus World, Inc., Citrus World, Inc.	88-0532	12/24/87
(64) MAI Basic Four, Inc., Bell Atlantic Corporation, Sorbus Inc.	88-0563	12/24/87
(65) Citicorp, Santa Fe Southern Pacific Corporation, Bankers Leasing and Financial Corporation	88-0582	12/24/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-23 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0419]

Drug Export; Isoprenaline (Isoproterenol) Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that International Medication Systems Limited (IMS) has filed an application requesting approval for the export of the human drug Isoprenaline (Isoproterenol) Hydrochloride Injection to Australia, Ireland, Switzerland, the United Kingdom, and the Federal Republic of West Germany.

ADDRESS: Relevant information on this application may be directed to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drug Evaluation and Research (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that International Medication System Limited (IMS), 1886 Santa Anita Avenue, South El Monte, California 91733, has

BEST COPY AVAILABLE

filed an application requesting approval for the export of the drug isoprenaline (Isoproterenol) Hydrochloride Injection to Australia, Ireland, Switzerland, the United Kingdom, and the Federal Republic of West Germany. This drug is indicated in the treatment of cardiac standstill or arrest; carotid sinus hypersensitivity; the temporary control of Adams-Stokes syndrome; and ventricular tachycardia and ventricular arrhythmias when due to A-V heart block.

The application was received and filed in the Center for Drug Evaluation and Research on December 15, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 15, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated 21 CFR 5.44.

Dated: December 22, 1987.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research/Center for Biologics Evaluation and Research.

[FR Doc. 88–61 Filed 1–4–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; New System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program," HHS/HCFA/ORD No. 09–70–0038. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, and the Executive Office of Management and Budget (EOMB) on December 30, 1987. The new system of records, including routine uses, will become effective February 29, 1988, unless HCFA receives comments which would convince us to make a contrary determination. Please note that comments must be received on or before February 4, 1988.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: James Hadley, Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301)–594–1968.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1875 of the Social Security Act. The purpose of this system of records is to provide data necessary to evaluate the TEFRA HMO and CMP program. The introduction of this major new program has raised numerous issues relating to the payment methodology, the use and cost of services, the quality of care, and the effects upon competition in the marketplace. The TEFRA program evaluation will extend for 48 months and will include a sample of 50 to 60 plans from a variety of market areas representing the current distribution of TEFRA plans and market area characteristics. This design will allow analyses to determine whether TEFRA HMOs and CMPs are responding appropriately in providing adequate and efficient health care to the Medicare population, as well as to define the modifications necessary for the program to effectively meet its goals.

The system of records will include data collected from the Health Insurance Master Files, data from the participating HMOs Medicare Statistical Systems, and a beneficiary survey. The sites that are scheduled to participate in the demonstration are to be determined.

In order to fulfill the objective and complete tasks in this project, the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09–70–0038

SYSTEM NAME:

Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contact system manager for location of contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries residing in approximately 30 market areas who receive medical services as enrollees in Medicare HMOs and CMPs or through the FFS sector.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic characteristics (e.g., age, education, income), measures of health and functional status, cost and utilization of health services, and satisfaction with services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Social Security Amendments of 1967, Public Law 90–248, as amended by section 223(b) of the Social Security Amendments of 1972, Public Law 92–603, (42 U.S.C. 1395ll).

PURPOSE OF THE SYSTEM:

To provide data necessary to evaluate the impact of the TEFRA HMO and CMP Program on the cost, utilization, and quality of medical services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To the evaluation contractor, to be selected by HCFA, who will use this information to evaluate the TEFRA HMO and CMP Program. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To other contractors for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To an individual or organization for research, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and

(3) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit; or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the DHHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers wil be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in December 1992. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelvant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained from surveys to be conducted of Medicare beneficiaries by HCFA's evaluation contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-10 Filed 1-4-88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Public Health Service; Proposed Funding Priority and Program Announcement for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces that applications for Fiscal Year 1988, Grants for Programs for Physician Assistants are being accepted under the authority of section 783(a) of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the Administration's proposed funding priority for AIDS curriculum content in Physician Assistants Programs.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

Each application must contain or be supported by assurances that the applicant institution has appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

The Health Professions Training Assistance Act of 1985, Pub. L. 99-129, requires that the regulations for section 701(8) of the PHS Act be amended to (1) limit eligibility to programs that have as their objective the training of graduates who are capable of providing primary health care and (2) require as a condition of approval that applicant programs provide training in the areas of primary care, disease prevention, health promotion, geriatric medicine and home health care. An amendment to the regulations 42 CFR Part 57, Subparts H-I, was published on June 29, 1987, (52 FR 24158) defining these terms.

In determining the priority for funding of applications recommended for approval, consideration will be given to the following factors:

1. The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students;

2. Conducting substantial portions of the programs in a health manpower shortage area(s) or in an area health education center, funded under section 781 of the PHS Act;

3. Establishment of a program in a State which does not have a program; and

4. Conducting a program in conjuction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in 42 CFR 57.705 and 42 CFR 57.803;

2. The potential effectiveness of the project in carrying out the purposes of section 783 of the PHS Act and 42 CFR, Subparts H;

3. The capability of the applicant to carry out the proposed project;

4. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

5. The soundness of the fiscal plan for assuring effective use of grant funds;

6. The potential of the project to continue on a self-sustaining basis after the period of grant support; and

7. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Proposed Funding Priority

In addition, a new funding priority is being proposed for projects to expand or develop and implement new curriculum concerning the care of HIV-infected persons, including AIDS patients.

Physician Assistants are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients, in both inpatient and outpatient settings. However, organized formal curricular offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-6817.

To receive consideration, applications must meet the deadline of February 9, 1988, which means they must be either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance number is 0915-0060.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented through 45 CFR Part 100.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 4, 1988, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published indicating whether the funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: December 11, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-59 Filed 1-4-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-14; A-22634]

Sale of Public Land; Arizona

December 22, 1987.

AGENCY: Bureau of Land Management, Interior.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of sale of public land in Graham County.

SUMMARY: Notice is hereby given that a five acre parcel of public land near Safford has been sold pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976. The direct sale was made to Lowell H. Hively for the following described land:

Gila and Salt River Meridian, Arizona

T. 8 S., R. 27 E.,
Sec. 35, S½SE¼NW¼SW¼.

The purpose of this notice is to inform the public and interested State and local governmental officials of the transfer of public land into private ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-16 Filed 1-4-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Office and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Incidental Take Applications.

Abstract: Data will be used by the Service to determine whether to allow an incidental taking of marine mammals incidental to specified activities (other than commercial fishing) and to monitor any authorized taking.

Service Form Number: N/A.

Frequency: On occasion.

Description of Respondents: U.S. citizens (defined as including corporations and governmental units controlled by American citizens).

Annual Responses: 21.

Annual Burden Hours: 200.

Service Clearance Officer: James E. Pinkerton, 202-653-7500.

Gary Edwards,

Assistant Director—Fisheries.

[FR Doc. 88-54 Filed 1-4-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., c.s.t., on January 28, 1988, at the Jefferson Parish East Bank Council Chamber, 1221 Elmwood Park Boulevard, Harahan, Louisiana.

The Delta Region Preservation Commission was established pursuant to Public Law 92-265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program for the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan
—Hunting and trapping program
—General update of cooperative agreements
—Status of Environmental Education Center at Barataria
—Land acquisition and priorities for development of each park unit (Barataria, French Quarter, Chalmette)
—Park programs; i.e., interpretive, Acadian Culture Centers, exhibits, etc.
—German Heritage Cultural and Genealogical Society
—New Issues

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any members of the public may file a written statement concerning the members to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: December 21, 1987.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 88-26 Filed 1-4-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 26, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by January 20, 1988.

Beth G. Boland,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott, *Kenwill Apartments*, 119–127 E. Goodwin St.

Garland County

Hot Springs, *Hot Springs High School*, Oak St. between Orange and Olive Sts.

ARKANSAS

Lincoln County

Relfs Bluff, *Mt. Zion Presbyterian Church*, AR 81

Phillips County

Helena, *Altman House*, 1202 Perry St.

ILLINOIS

Christian County

Taylorville, *Taylorville Chautauqua Auditorium*, Manners Park

Cook County

Chicago, *Tri-Taylor Historic District (Boundary Increase)*, Roughly bounded on the N by Oakley, Harrison, and Claremont Sts. and on the SE by Taylor and Oakley Sts.

Oak Park, *Marshall Field and Company Store*, 1144 W. Lake St.

Tinley Park, *Vogt, Karl, Building*, 6811 Hickory St.

Madison County

Troy, *Jarvis, William W., House*, 317 E. Center St.

Peoria County

Peoria, *Peace and Harvest*, Jefferson and Hamilton Sts.

Pike County

Barry vicinity, *McWorter, Free Frank, Grave Site*, Off US 36, 4 mi. E of Barry

KENTUCKY

Grayson County

Caneyville vicinity, *Walnut Grove School*, Walnut Grove Rd.

LOUISIANA

Catahoula Parish

Trinity, *Kirby House*, Spencer and Pearl Sts.

St. John the Baptist Parish

LaPlace, *Montegut Plantation House*, 402 E. Fifth St.

MAINE

Hancock County

Sargentville vicinity, *Pumpkin Island Light Station (Light Stations of Maine MPS)* Pumpkin Island, Eggemoggin Reach

Winter Harbor vicinity, *Winter Harbor Light Station (Light Stations of Maine MPS)*, Mark Island, Winter Harbor

Knox County

Rockport vicinity, *Indian Island Light Station (Light Stations of Maine MPS)*, Indian Island, Rockport Harbor

MISSOURI

Carter County

Phillips Bay Mill (23CT235)
Isaac Kelly Site (23CT111 and 23CT1)

Shannon County

Culpepper—Pummil Site (23SH14/55)
Owl's Bend Site (23SH10)
Pulltite Site (23SH94)
Old Eminence Site (23SH104)

MONTANA

Dawson County

Glendive, *Bell Street Bridge (Glendive MRA)*, W. Bell St.

Glendive, *Blackstock Residence (Glendive MRA)*, 217 W. Towne

Glendive, *First Methodist Episcopal Church and Parsonage (Glendive MRA)*, 209 N. Kendrick

Glendive, *Glendive City Water Filtration Plant (Glendive MRA)*, 420 W. Bell St.

Glendive, *Glendive Heat, Light and Power Company Power Plant (Glendive MRA)*, Clough St.

Glendive, *McCone Residence (Glendive MRA)*, *218 W. Towne*

Glendive, *Merrill Avenue Historic District (Glendive MRA)*, W side of Merrill Ave. between S. Douglas St. and W. Clement St., E side of Merrill Ave. between W. Towne and W. Clement

Glendive, *Northern Pacific Railroad Setuling Tanks (Glendive MRA)*, Towne and Clough Sts.

Glendive, *Sacred Heart Church (Glendive MRA)*, 316 W. Benham

Glendive, *US Post Office (Glendive MRA)*, 221 N. Kendrick

OHIO

Columbiana County

East Liverpool, *Cowood, Richard L., Residence*, 2800 St. Clair Ave.

Erie County

Sandusky, *Cable Park Historic District*, 1103—1234 Wayne St.

Miami County

Alcony vicinity, *Sheets, Andrew, House*, 8880 Lafevre Rd.

SOUTH CAROLINA

Greenville County

Travelers Rest vicinity, *Salmon, George, House*, SC 414, 1.8 mi. W of US 25

York County

Rock Hill, *US Post Office and Courthouse*, 102 Main St.

WEST VIRGINIA

Greenbrier County

Lewisburg, *Confederate Cemetery at Lewisburg*, Maple St. and US 60, Library Park

Lewisburg, *Maple Street Historic District*, 107–121 Maple St.

Lewisburg, *South Church Street Historic Distict*, South Church St.

Hampshire County

Three Churches, *Scanlon Farm*, Three Churches Run Rd.

Jefferson County

Harpers Ferry vicinity, *Strider Farm*, WV 27

Kanawha County

Charleston, *Starks, Samuel, House*, 413 Shrewsbury St.

St. Albans, *Bank of St. Albans Building*, 80 Olde Main Plaza

Monongalia County

Westover, *St. Mary's Orthodox Church*, W. Park and Holland Aves.

WISCONSIN

Dane County

Stoughton, *Iverson—Johnson House*, 327 E. Washington St.

[FR Doc. 88–27 Filed 1–4–88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; NAHB Research Foundation; Smart House Project

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on December 4, 1987 disclosing (1) the identities of additional parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identitites of current and additional parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.
Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E. I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Gas Association
Baltimore Gas & Electric Company
Bell Canada
Bell Communications Research, Inc.
Bell South Services
The Bell Telephone Company of Pennsylvania
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Copper Development Association Inc.
The Dayton Power and Light Company
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydro Quebec
Illinois Consolidated Telephone Co.
National Association of Home Builders
National Cable Television Association
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to Section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, April 3, 1987, June 30, 1987 and August 25, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494) and on September 22, 1987 (52 FR 35596), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–56 Filed 1–4–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,207]

Columbia Northwest Corp., Anchorage Terminal, Anchorage, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a petition received on October 26, 1987 which was filed by the United Cement, Lime and Gypsum Allied Union and Boilermakers Union on behalf of workers at Columbia Northwest Corporation, Anchorage, Alaska.

All workers were separated from the Anchorage facility more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of December 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 88–34 Filed 1–04–88; 8:45 am]

BILLING CODE 4510-30-M

Donaldson Coal Co. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 15, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 15, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of December 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/ workers/ firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Donaldson Coal Co. (UMWA)	Mammoth, WV	12/28/87	12/11/87	20,353	Steam coal.
Donaldson Mining Co (UMWA)	Cedar Grove, WV	12/28/87	12/10/87	20,354	Coal.
Elkay Coal Co. (UMWA)	Rumcreek, WV	12/28/87	12/15/87	20,355	Coal.
International Paper Co. (workers)	Jay, ME	12/28/87	12/14/87	20,356	Paper.
Kaiser Cement & Longhorn Plant and Quarry (IWWA)	San Antonio, TX	12/28/87	12/11/87	20,357	Cement.
Peabody Coal Co (UMWA)	Monticial, WV	12/28/87	12/11/87	20,358	Coal.
Peabody Coal Co. (UMWA)	Twilight, WV	12/28/87	12/15/87	20,359	Coal.
Pirmeline Industries (URW)	Cuyanoga Falls,OH	12/28/87	12/17/87	20,360	Rubber latex tubing.
United Auto Workers, Local 2055 (Teamsters)	Mt. Pleasant, PA	12/28/87	12/14/87	20,361	Union office.

[FR Doc. 88-33 Filed 1-4-88; 8:45 am]

BILLING CODE 4510-30-M

Johnny Castleberry, Inc. et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 21, 1987 to December 25, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,249; Johnny Castleberry, Inc., Pearland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,302; King Knob Coal Co., Christopher Div., Morgantown, WV

U.S. imports of steam coal are negligible.

TA-W-20,206; Double A Products Co., Manchester, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,222; E.I. Du Pont De Nemours & Co., Inc., Belle, WV

U.S. imports of herbicides declined absolutely and relative to domestic shipment in 1982 compared to 1985 and in first half of 1987 compared to the same period in 1986.

TA-W-20,243; Allied Signal, Inc., Engineered Materials Sector, Fluorine Products Div., Metropolis, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,246; Bridgton Knitting Mill, Bridgton, ME

U.S. imports of knit fabrics are negligible.

Affirmative Determinations

TA-W-20,258; Britoil Ventures, Inc.

A certification was issued covering all workers of the firm separated on or after November 10, 1986.

TA-W-20,299; Cartex Corp., Doylestown, PA

A certification was issued covering all workers of the firm separated on or after November 3, 1986.

TA-W-20,202; Columbia Northwest Corp., Bellingham Cement Plant, Bellingham, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,203; Columbia Northwest Corp., Seattle Terminal, Seattle, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,204; Columbia Northwest Corp., Pasco Terminal, Pasco, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,205; Columbia Northwest Corp., Portland Terminal, Portland, OR

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,206; Columbia Northwest Corp., Kendall Quarry, Sumas, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,238; Henson & Henson Oil, Inc., Headquartered in Okmulgee, OK

A certification was issued covering all workers of the firm separated on or after October 23, 1986.

TA-W-20,238A; Henson & Henson Oil, Inc., Headquartered in Okmulgee, OK and Operating at Various Locations in the State of OK

A certification was issued covering all workers of the firm separated on or after October 23, 1986.

I hereby certify that the aforementioned determinations were issued during the period December 21, 1987–December 25, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-32 Filed 1-4-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Appointment of Members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Appointment of Members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

This notice announces the appointment of members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines, established pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act).

The membership of the committee and the categories of interest which are represented are as follows:

Mr. J.W. Brantner—Industry
Dr. Mary Jo Jacobs—Neutral
Dr. John H. Johnson—Neutral
Dr. Roger O. McClellan—Neutral
Mr. Gordon M. Miner—Neutral
Mr. Thomas J. Rabbit—Labor
Dr. James L. Weeks—Labor
Dr. Robert Keith Wilson—Neutral
Mr. Glenn Allen Zumwalt—Industry

The members were selected on the basis of their experience and knowledge in the fields of health and mine safety. They will serve on the committee until June 1988. Mr. Gordon M. Miner will serve as chairman of the committee.

Signed at Washington, DC, this 29th day of December, 1987.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-30 Filed 1-4-88; 8:45 am]

BILLING CODE 4510-43-M

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting and response to comments.

SUMMARY: This notice provides the date, time and place for the first meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations or Diesel-Powered Equipment in Underground Coal Mines, and it responds to comments made by interested parties.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone (703) 235-1910

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act), a public meeting of the advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 9:30 a.m. and 5:00 p.m. on January 19, 20 and 21, 1988 at 1000 N. Glebe Road, Arlington, Virginia.

This nine member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

Comments were received from several interested parties regarding the formation of the Advisory Committee. One commenter supported the committee's objectives, and another commenter felt that the committee's scope would be unduly limited by not addressing the appropriateness of use of diesel equipment in underground coal mines.

The Advisory Committee's Charter reflects a broad mandate to assess the safety and health aspects of diesel equipment. The committee will be unhampered in discussing a wide variety of issues which relate to necessary protections for assuring a safe healthful minig environment.

The purpose of the meeting is to organize an agenda for the committee to follow during its six-month tenure. It is expected that the committee will focus on work practices using diesel equipment, approval criteria, and other factors relating to safety and health aspects of diesel equipment use in underground coal mines. The public is invited to attend.

Official records of the meeting will be available for public inspection at the above address.

Signed at Arlington, Virginia, this 29 day of December, 1987.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-31 Filed 1-4-88; 8:45 am]

BILLING CODE 4501-43-M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under the Office of Management and Budget Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before March 1, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202-786-0233), or Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3201, Washington, DC 20503, (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202-786-0233), from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the numbers of responses; (7) an estimate of the total number of hours needed to fill out the

form. None of these entries are subject to 44 U.S.C. 3504(h).

Category New

Title: Information Survey Form and Instructions for Panelists and Reviewers.

Form Number: _____

Frequency of Collection: Ad Hoc.

Respondents: Individuals: Academic scholars, writers, teachers, and other experts in the humanities.

Use: Peer review process and application evaluation.

Estimated Number of Respondents: 10,000.

Estimated Hours of Respondents To Provide Information: 2,500.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-58 Filed 1-4-88; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for the Office of Management and Budget Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the "Paperwork Reduction Act of 1980" (Title 44 U.S. Code Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. It extends OPM Form 1495, Financial Eligiblity Statement for Student and Summer Aid Programs, which is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applicants meet the financial needs criteria required by these programs. There are 10,000 invididuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal call, William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before January 15, 1988.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Marsha Frost, (202) 632-0498, Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 88-39 Filed 1-4-88; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Business Meeting and Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: January 7, and 8, 1988. Business Meeting—January 7, beginning at 10:00 a.m. Hearings—January 7, beginning at 2:00 p.m. and January 8, beginning at 9:30 a.m..

ADDRESS: Room 2255 of the Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in education, military commissaries, prisons, urban mass transit and other matters. The purpose of the hearings is to hear witness testimony relating to contracting out, Agency for International Development programs, health delivery and other areas. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87-30208 Filed 12-31-87; 10:42 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25230; File No. SR-DTC-87-18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Depository Trust Co.

The Depository Trust Company ("DTC"), on December 21, 1987, filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act ("Act") and Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

DTC has stated in its filing that the proposal would extend the termination date of its Same-Day Settlement ("SDFS") Service pilot program from January 31, 1988 to June 30, 1988.[1] The SDFS Service provides depository and transaction settlement services for securities that settle in same-day funds.[2] Previously, same-day funds securities transctions settled outside the depository environment.

DTC states that the proposal is consistent with the Act, particularly section 17A of the Act, in that it would promote the prompt and accurate clearance and settlement of securities that settle in same-day funds. DTC further states that the proposed rule change would be implemented in a manner designed to safeguard the funds and securities in DTC's custody or control.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments by January 28, 1988. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-87-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

[1] On June 8, 1987, the Commission issued an order approving implementation of the SDFS Service on a temporary basis until January 31, 1988. *See* Securities Exchange Act Rel. No. 24669 (July 9, 1987), 52 FR 26813. If the requested extension to June 30, 1988 is approved, DTC expects to request permanent approval of its SDFS Service at the end of that period.

[2] Same-day funds (also known as "Fed funds") are immediately available for re-delivery on the day of receipt.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 28, 1987.

[FR Doc. 88-48 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25232; File No.-NYSE-87-50]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Bond Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is revising listing fees for bonds. These new fees will be charged commencing January 1, 1988. These revisions fall into three categories: Initial listings, outstanding issues, and relisting or change in obligor. The new fee schedules are as follows.

INITIAL FEES (RATES PER $ MILLION) ISSUE SIZE ($ MILLION PAR VALUE)

Maturity range	Base $0-$500	Additive [1]		
		$501-$750	$751-$1,000	$1,000 +
1 to 5	$100	$75	$50	$25
6 to 14	225	150	100	75
15 to 25	250	175	125	100
26 plus	275	200	150	125

[1] To determine the listing fee, begin with the maturity range and multiply the appropriate fee for the first $0-$500MM per value. Remaining par values at each level are charged at the next par value range rate. To illustrate the, assume that a $1,250,000,000 seven year note is listed on the Exchange. The issuer would be billed $193,750 the first $500MM par value at $225 per million, the next $250MM at $150 per million, the next $250MM at $100 per million, and the final $250MM at $75 per million.

Outstanding Issues

The Exchange has established a new fee structure for listing the currently outstanding, unlisted debt of NYSE issues. This structure, based on the initial fee schedule above, utilizes the remaining life and size of an issue and assesses half of the calculated fee.[1]

To be eligible for this reduced listing fee, the bond issue must be outstanding at least one year. This program is open to all eligible debt for 18 months from the effective date of these fees but will, in addition, be extended for eighteen months to all equity issuers listing on the Exchange for the first time after that date.

Relisting/Change in Obligor

$2500 flat fee (per issue)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The current fee structure, which was last addressed in January 1985, provides for two ranges of initial listing fees based on maturity (greater than five years, and five years or less). The schedule also includes fees for relisting and for change in obligor.[2]

Effective January 1, 1988, the Exchange is restructuring its bond listing fees to provide new initial fees based on maturity and size. The restructured rates will more equitably allocate listing fees. The new schedule for initial listing fees will represent an overall 6% increase in listing fee revenues. In addition, the new schedule implements a reduced fee structure for NYSE issuers for listing outstanding, unlisted debt and a flat fee for a relisting or change in obligor.

[1] An example of a fee calculation—
30 year issue, $500MM, 4 year remaining:
Initial Unit Fee, $275 (26+ range)
New Unit Fee, 100 (1-5 range, $500 size)
Less 50%, 50
Fee Due, $25,000 ($50 x $500)
% Reduction (this example), 82%.

[2] In its filing the Exchange included copies of the current listing and miscellaneous fee schedule. Copies of the fee schedule are available from the Commission at the address provided in section IV below and from the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW Washington, DC

The statutory basis under the Act is section 6(b)(4) and its requirement that a national securities exchange promulgate rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its services.

20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 29, 1987.

[FR Doc. 88-75 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25231; File No. SR-NYSE-87-42]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

The Exchange is instituting rate increases affecting initial and continuing listing fees. These new fees will be charged commencing January 1, 1988. The new fees are as follows.

EQUITY LISTING FEES

	1987 price	Proposed price
Initial fees:		
Original listings-charge per company	$33,200	$34,700
Initial listing fees-applies to original listings and to the listing of additional shares [1], new issues to stock, warrants or similar securities which are the subject of subsequent applications:		
Minimum fee	1,330	1,400
Rates per million shares:		
0 to 2 million shares	13,300	13,900
2 to 4 million shares	6,700	7,000
4 to 300 millions shares	3,200	3,300
300 plus million shares	1,700	1,800
Amalgamations [2]	[3]	[3]
Reincorporation and holding company formations	5,000	5,000
Continuing annual fees:		
Fee equal to the greater of the per share fee calculation or the range minimums:		
Per share fee-rate per million shares		
0 to 2 million shares	1,320	1,400
2 plus million shares	665	700
Range minimums:		
1 to 10 million shares	13,200	13,800
10 to 20 million shares	19,760	20,700
20 to 50 million shares	26,410	27,600
50 to 100 million shares	39,520	41,300
100 to 200 million shares	52,730	55,100
200 plus million shares	65,940	68,700
Supplements-minor information changes to previous applications, rate per each	335	400

[1] Fees on shares issued in conjunction with stock splits are capped at $500,000.
[2] Merger of two or more listed companies and the formation of a new company. (One-time original listings charge of $33,200 is not applicable to this type of listing.)
[3] 25% of basic initial fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) The purpose of this change is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, systems, and utilities associated with providing market place services.

(2) The basis under the Act for the proposed rule change is Section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not formally solicited written comments regarding proposed change, and no unsolicited written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 29, 1987.

[FR Doc. 88-76 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-1]

Recordation of Trade Name; "Better Working Environments, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On September 23, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Better Working Environments, Inc." was published in the **Federal Register** (52 FR 36129). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation and received no later than November 24, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the trade name used by Better Working Environments, Inc., a corporation organized under the laws of the State of Nevada, located at 3716 Scripps Way, Las Vegas, Nevada 89103. The trade name is used in connection with asbestos treatment chemicals including an asbestos penetrating encapsulant and an asbestos removal encapsulant, manufactured in the United States.

DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-5765.

Dated: December 28, 1987.

John F. Atwood,

Acting Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88-64 Filed 1-4-88; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, January 12, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Section 614 of Volume II of EEOC's Compliance Manual, Retaliation
4. Recommendation for Certification of a 706 Agency

Closed Session

Litigation Authorizations; General Counsel Recommendations

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive Officer on (202) 634–6748.

Date: December 30, 1987.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued December 30, 1987.

[FR Doc. 87–30207 Filed 12–31–87; 10:26 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 11, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

Date: December 31, 1987.

[FR Doc. 87–30215 Filed 12–31–87; 3:06 pm]

BILLING CODE 6210–01–M

federal register

Tuesday
January 5, 1988

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are primarily intended to replace the existing three member "Institution Discipline Committee" with a single person "Discipline Hearing Officer" (DHO).

EFFECTIVE DATE: January 4, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on Inmate Discipline and Special Housing Units. Proposed amendments to this rule were published in the **Federal Register** August 27, 1987 (at 52 FR 32478 *et seq.*).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

In addition to the previously published proposed amendments, other changes are being made to the final rule. These changes are meant to clarify the scope or intent of the existing rule, or reflect management decisions. Based on the nature of the amendments, the Bureau finds good cause under the Administrative Procedure Act (5 U.S.C. 553) to include these amendments within the final rule without a notice of proposed rulemaking, and an opportunity for public comment. Similarly, because these amendments do not change the general intent or substance of the existing rule, and because no public comment was received on the proposed amendments, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d) to publish these amendments without a delay in the effective date. In recognition of these revisions, and for ease of reading, the Bureau is republishing its entire rule on Inmate Discipline

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons had determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 541.2*—In § 541.2(a), the word "directly" is deleted, as the investigating officer ordinarily should not be involved in the incident. From § 541.2(b), the sentence, "In institutions with unit management, these staff members will ordinarily be members of the Unit Team", is deleted. The Bureau's implementing instructions to staff states that in institutions with unit management, the authority to hold initial hearings and impose minor sanctions is ordinarily delegated to the staff members of the inmate's unit. Where the institution does not have unit management, the Warden shall delegate those responsibilities to one or more institution staff. Paragraph (c) is reworded, but its intent is unchanged.

2. *Section 541.11*—In § 541.11, Table 1, Item 6, the phrase "The appropriate reviewing official" is added for clarity. Also in this section, in Table 2, the note section is revised to read that staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is "undertaken and accomplished". This change is made because the Bureau believes that in those situations where informal resolution is a viable alternative, it should be accomplished by the end of the two week period, not merely attempted.

3. *Section 541.13*—In Table 3, and in § 541.13(a)(1), "Item G, Loss of privileges" is added to the list of sanctions the DHO may, in addition to the execution of one or more of Sanctions A through E, impose or suspend for prohibited acts in the greatest severity category. While sanction "G" is new to the greatest severity category, it is not a new sanction in the inmate discipline process. Its use is deemed to be a good tool in certain disciplinary situations, even for high risk offenses. Section 541.13(a)(2), (3), and (4) is reworded, although the intent is unchanged, to clearly define the specific sanctions which may be imposed, executed, or suspended by the Discipline Hearing Officer or the Unit Discipline Committee.

In § 541.13—Table 3, Code 208, the phrase "or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure" is added to clarify the scope of the existing language, "tampering with or blocking any lock device". In Code 224, the cited example, "pushing an officer", is deleted because the Bureau believes that the DHO will be able in the fact-finding process to determine the seriousness of an assault. Also in Table 3, immediately below Code 499, the statement, "*Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, shall be considered the same as a commission of the offense itself" is added to reiterate the language and scope of § 541.13(b).

Table 4, "Sanctions of the Discipline Hearing Officer", is revised to delete the reference to the "receiving" Regional Director where a present or impending emergency situation requires the immediate transfer of an inmate prior to either a UDC or DHO hearing. The word "receiving" is deleted because a transfer from one region to another will require the approval of both the sending and receiving Regional Directors.

Although not included in the final rule, two of the existing sanctions, pertaining to good time, are greatly restricted for inmates convicted for offenses committed on or after November 1, 1987, the effective date of the Comprehensive Crime Control Act. These inmates are only eligible to receive 54 days of "good conduct time credit" (18 U.S.C. 3624(b)). Because this credit is only given at the end of each year of time served and, once given, is vested, the Bureau's internal staff implementing instructions advise the DHO that the DHO's authority is limited to *recommending* to the Warden or designee that the inmate be denied all or part of the maximum of 54 days good conduct time credit for that year.

In Table 5, "Sanctions for Repetition of Prohibited Acts Within the Same Category", the phrase "additional sanctions are authorized according to the following chart" is clarified to read "increased sanctions are authorized to be imposed by the DHO according to the following chart". The UDC is not authorized to impose those sanctions under the sole purview of the DHO. While the wording in this section has changed, the intent remains the same.

4. *Section 541.15*—In § 541.15(e), the phrase "may drop" is added to indicate the intent of this section and § 541.11.

5. *Section 541.16*—The title of this section is changed to read "Establishment and Functioning of the Discipline Hearing Officer".

6. *Section 541.17*—In § 541.17(f)(2), the word "committee" is deleted because this reference is no longer appropriate when describing a decision by the Discipline Hearing Officer. Except for this change, the intent of this section remains the same.

7. *Section 541.19*—The wording in § 541.19 is revised to state, "An inmate's initial appeal of a decision of the DHO should be filed directly to the appropriate Regional Office". This section also adds a sentence which states, "The inmate should forward a copy of the DHO report or, if not available at the time of filing, should state in his appeal the date of the DHO hearing and the nature of the charges against the inmate". While this requirement is new to the rule, it is consistent with the Bureau's requirement that inmates include appropriate documentation (to establish a date for timely filing) with their appeals. The last sentence of the introductory paragraph to § 541.19 is revised to read, "On appeals, the appropriate reviewing authority shall consider * * *"

While the Region is the initial level of appeal for a DHO decision, the Bureau's internal staff instructions allow Wardens to review DHO hearings and appeals, as the Warden considers necessary, to assure substantial compliance with the provisions of the discipline policy. The Bureau's internal staff instructions also allow the DHO to receive informal complaints abut the procedure, and the correct mistakes locally before the Regional review.

8. *Section 541.21*—The wording in § 541.21(c)(6) is revised to delete the requirement that recommendations for withholding an inmate's exercise periods be from the "DHO or Captain". This section now reads that exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, following a hearing, and recommendation, before a person "certified in the discipline hearing officer procedures". This section continues by stating that withholding of exercise periods can only be recommended upon a finding by the "person conducting the hearing" that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit. After careful review of this section, the Bureau has determined that it is not always feasible for the DHO or Captain to hold such a hearing. For example, a DHO assigned to conduct hearings at more than one institution may not be at a given institution when the actions of a segregated inmate are perceived by staff to pose a threat to the safety or health conditions of the unit. In such a situation, another staff member, trained and certified in discipline hearing officer procedures, would conduct the fact-finding hearing, and would be authorized to recommend the withholding of an inmate's exercise periods. The ultimate decision to withhold these exercise periods, however, remains with the Warden.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as follows: In Subchapter C, Part 541, Subpart A is added and Subpart B is revised.

Dated: December 29, 1987.

J. Michael Quinlan

Director, Federal Bureau of Prisons.

In Subchapter C, Part 541, add Subpart A and revise Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A—General

Sec.

541.2 Definitions.

Subpart B—Inmate Discipline and Special Housing Units

541.10 Purpose and scope.
541.11 Notice to inmate of Bureau of Prisons rules.
541.12 Inmate rights and responsibilities.
541.13 Prohibited acts and disciplinary severity scale.
541.14 Incident report and investigation.
541.15 Initial hearing.
541.16 Establishment and functioning of the Discipline Hearing Officer.
541.17 Procedures before the Discipline Hearing Officer.
541.18 Dispositions of the Discipline Hearing Officer.
541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.
541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
541.21 Conditions of disciplinary segregation.
541.22 Administrative detention.
541.23 Protection cases.

* * * * *

Subpart A—General

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.2 Definitions

(a) *Investigating Officer.* The term Investigating Officer refers to an employee of supervisory level who conducts the investigation concerning alleged charge(s) of inmate misconduct. The Investigating Officer may not be the employee reporting the incident, or one who was involved in the incident in question.

(b) *Unit Discipline Committee (UDC).* The term Unit Disciplinary Committee (UDC) refers to one or more institution staff members delegated by the Warden the authority and duty to hold an initial hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct. The Warden shall authorize these staff members to impose minor sanctions (C through P) for violation of prohibited act(s).

(c) *Discipline Hearing Officer (DHO).* This term refers to a one-person, independent, discipline hearing officer who is responsible for conducting Institution Discipline Hearings and who imposes appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by § 541.15 before the UDC.

(d) *Segregation Review Official (SRO).* The term Segregation Review Official refers to the individual at each Bureau of Prisons institution assigned to review the status of each inmate housed in disciplinary segregation and administrative detention, as required in §§ 541.20 and 541.22 of this rule.

Subpart B—Inmate Discipline and Special Housing Units

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prisons rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see § 541.12);

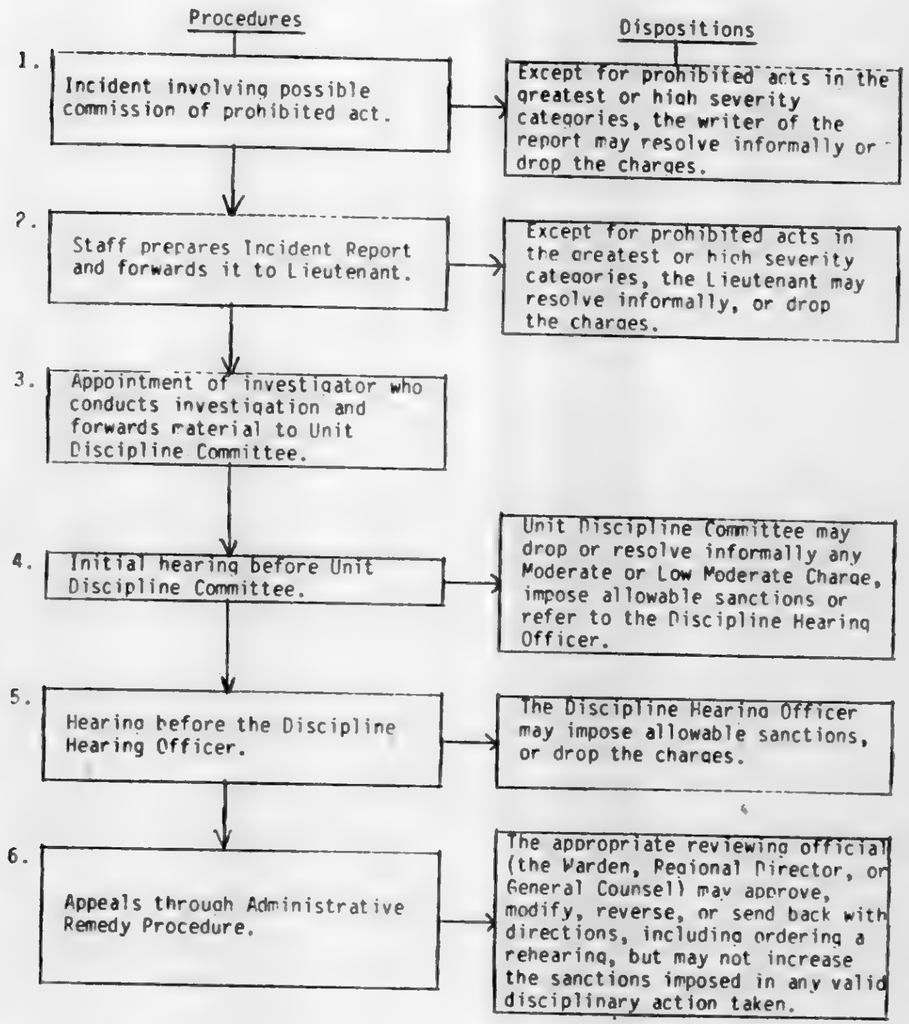
(d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

BILLING CODE 4410-05-M

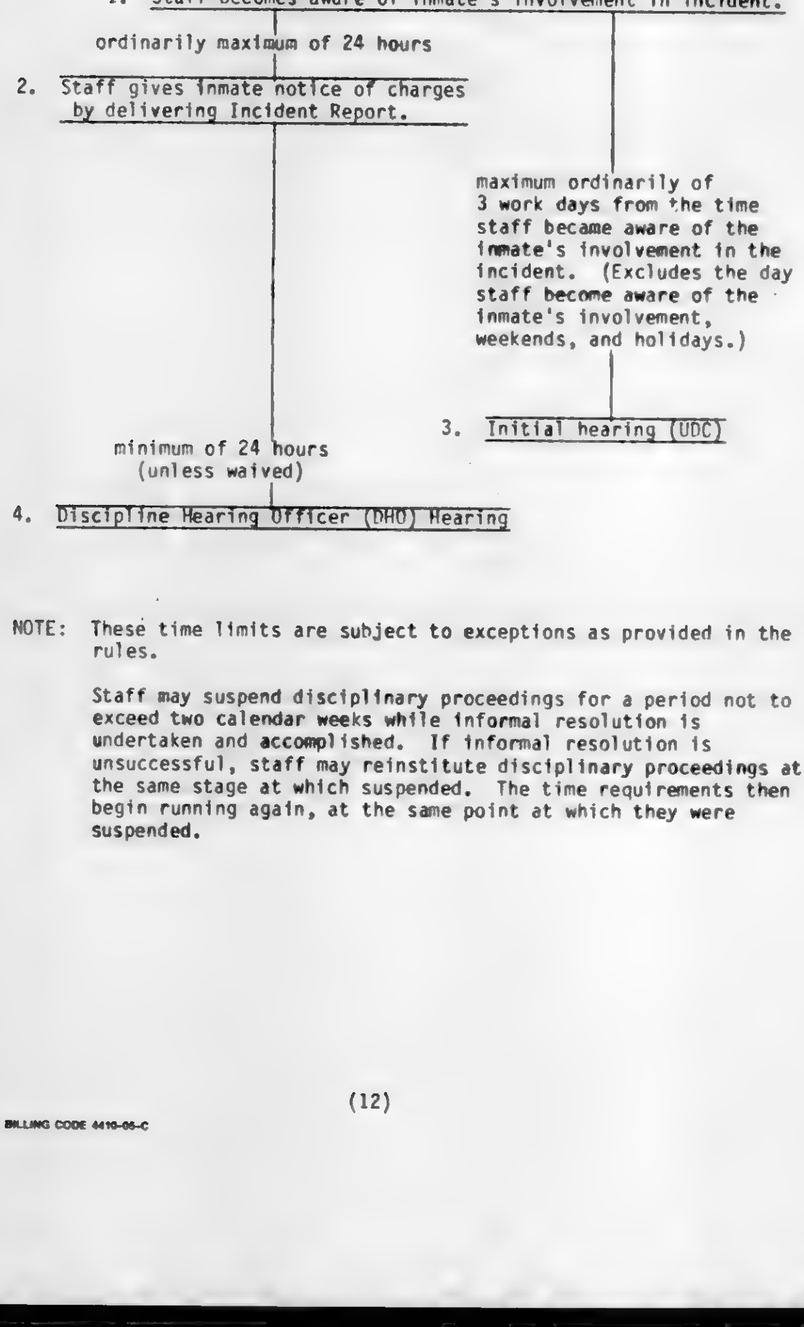
SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1



TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2



NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is undertaken and accomplished. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

BILLING CODE 4410-05-C

§ 541.12 Inmate rights and responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibilty to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibilty to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) *Greatest category offenses:* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through E. The DHO may also suspend one or more additional sanctions A through G. The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E.

(2) *High category offenses:* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and may also suspend one or more additional sanctions A through M. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M and may also suspend one or more additional sanctions G through M.

(3) *Moderate category offenses:* The Discipline Hearing Officer shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed. The Unit Discipline Committee shall impose at least one sanction G through N, but may suspend any sanction or sanctions imposed.

(4) *Low moderate category offenses:* The Discipline Hearing officer shall impose at least on sanction E through P, but may suspend any sanction or sanctions imposed. The Unit Discipline Committee shall impose at least one

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sanction G through P, but may suspend any sanction or sanctions imposed

(b) *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Discipline Hearing Officer (DHO) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (DHO or UDC) which originally imposed the sanction. The DHO now has that authority for suspensions which were earlier imposed by the Inmate Discipline Committee (IDC).

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Discipline Hearing Officer, the referral shall include an advisement to the DHO of any intent to revoke that suspension if the DHO finds that the prohibited act was committed. If the DHO then finds that the prohibited act was committed, the DHO shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) The Unit Discipline Committee or Discipline Hearing Officer may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
	GREATEST CATEGORY	
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or carried out by an inmate).	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
102	Escape from escort; escape from a secure institution (Security level 2 through 6 and administrative institutions); or escape from a Security level 1 institution *with* violence.	C. Disciplinary Transfer (recommend).
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).	D. Disciplinary segregation (up to 60 days).
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition.	E. Make monetary restitution.
105	Rioting	F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed)
106	Encouraging others to riot	G. Loss of privileges (Note—can be in addition to A through E—cannot be the only sanction executed).
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade).	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff.	
110	Refusing to provide a urine sample or to take part in other drug-abuse testing.	
198	Interfering with a staff member in the performance of duties. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
	HIGH CATEGORY	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence.	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
202	(Not to be used)	C. Disciplinary transfer (recommend).

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
203	Threatening another with bodily harm or any other offense	D. Disciplinary segregation (up to 30 days).
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.	E. Make monetary restitution.
205	Engaging in sexual acts	F. Withhold statutory good time.
206	Making sexual proposals or threats to another	G. Loss of privileges: commissary, movies, recreation, etc.
207	Wearing a disguise or a mask	H. Change housing (quarters).
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.	I. Remove from program and/or group activity.
209	Adulteration of any food or drink	J. Loss of job.
210	(Not to be used)	K. Impound inmate's personal property.
211	Possessing any officer's or staff clothing	L. Confiscate contraband.
212	Engaging in, or encouraging a group demonstration	M. Restrict to quarters.
213	Encouraging others to refuse to work, or to participate in a work stoppage	
214	(Not to be used)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes.	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value.	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.).	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill.	
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other testing for use of alcohol.	
224	Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate).	
298	Interfering with a staff member in the performance of duties. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
	MODERATE CATEGORY	
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
302	Misuse of authorized medication	C. Disciplinary transfer (recommend).
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	D. Disciplinary segregation (up to 15 days).
304	Loaning of property or anything of value for profit or increased return	E. Make monetary restitution.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110.	H. Change housing (quarters).
308	Violating a condition of a furlough	I. Remove from program and/or group activity.
309	Violating a condition of a community program	J. Loss of job.

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
310	Unexcused absence from work or any assignment	K. Impound inmate's personal property
311	Failing to perform work as instructed by the supervisor	L. Confiscate contraband.
312	Insolence towards a staff member	M. Restrict to quarters.
313	Lying or providing a false statement to a staff member	N. Extra duty.
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200).	
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand count	
321	Interfering with the taking of count	
322	(Not to be used)	
323	(Not to be used)	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from another inmate, or any other person without staff authorization.	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less.	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards.	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics).	
398	Interfering with a staff member in the performance of duties. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable.	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable.	
	LOW MODERATE CATEGORY	
400	Possession of property belong to another person	E. Make monetary restitution.
401	Possessing unauthorized amount of otherwise authorized clothing	F. Withhold statutory good time.
402	Malingering, feigning illness	G. Loss of privileges: commissary, movies, recreation, etc.
403	Smoking where prohibited	H. Change housing (quarters).
404	Using abusive or obscene language	I. Remove from program and/or group activity.
405	Tattooing or self-mutilation	J. Loss of job.
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault).	K. Impound inmate's personal property.
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G).	L. Confiscate contraband.
408	Conducting a business	M. Restrict to quarters.
409	Unauthorized physical contact (e.g., kissing, embracing)	N. Extra duty.
498	Interfering with a staff member in the performance of duties. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	O. Reprimand.
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	P. Warning.

NOTE: *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, shall be considered the same as a commission of the offense itself.

Table 4—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

(a) *Recommend parole date rescission or retardation.* The DHO may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., section 4166 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden Level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(c) *Recommend disciplinary transfer.* The DHO may recommend that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the Regional Director the transfer of an inmate prior to either a UDC or DHO hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or DHO may be used only in emergency situations and only with approval of the Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Discipline Hearing Officer. The inmate shall receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC or DHO hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

(d) *Disciplinary segregation.* The DHO may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

(e) *Make monetary restitution.* The DHO may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

(f) *Withholding statutory good time.* The DHO may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs. Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the DHO, consecutive withholding actions. When this is the intent, the DHO shall specify at the time of the initial DHO hearing that good time may be withheld until the inmate elects to return to work. During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing (UDC). The DHO shall provide the inmate an opportunity to appear in person and to present a statement orally or in writing. The DHO shall document its action on, or by an attachment to, the initial Institution Discipline report. If further withholding is ordered, the DHO shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542). Only the Warden may restore withheld statutory good time. This decision may not be delegated lower than the Associate Warden level. Restoration of withheld statutory good time is based on the severity scale. (See Table 6)

2. *Sanctions of the Discipline Hearing Officer/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

(g) *Loss of privileges: Commissary, movies, recreation, etc.* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions in some cases for misconduct which is not related to the privilege.

(h) *Change housing (quarters).* The DHO or UDC may direct that an inmate be removed from current housing and placed in other housing.

(i) *Remove from program and/or group activity.* The DHO or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

(j) *Loss of job.* The DHO or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

(k) *Impound inmate's personal property.* The DHO or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

(l) *Confiscate contraband.* The DHO or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

(m) *Restrict quarters.* The DHO or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

(n) *Extra duty.* The DHO or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

(o) *Reprimand.* The DHO or UDC may reprimand an inmate either verbally or in writing.

(p) *Warning.* The DHO or UDC may verbally warn an inmate regarding committing prohibited act(s)

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

[When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), increased sanctions are authorized to be imposed by the DHO according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)]

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low moderate (400 series)	6 months	2d offense	Low Moderate Sanctions, plus 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY—Continued

[When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), increased sanctions are authorized to be imposed by the DHO according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)]

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
		3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series.
Moderate (300 series)	12 months	2d offense	Moderate Sanctions (A,C,E–N), plus 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
High (200 series)	18 months	2d offense	High Sanctions (A,C,E-M), plus 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. SGT	Max. amt. W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/ SGT	Max. dis seg.
Greatest	A–F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24 mos	18 mos	60 days.
High	A–M	50% or 60 days, whichever is less.		18 mos	12 mos	30 days.
Moderate	A–N	25% or 30 days, whichever is less.		12 mos	6 mos	15 days.
Low Moderate	E–P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos	N/A (1st offense). 7 days (2nd offense). 15 days (3rd offense).

Note.—Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident Report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest or High Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Discipline Hearing Officer, the DHO shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Discipline Hearing Officer for further hearing. The UDC must refer all greatest category charges to the DHO. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the inmate, ordinarily within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within three work days from the time staff became aware of the inmate's involvement in the incident. This three work day period excludes the day staff became aware of the inmate's involvement in the incident, weekends, and holidays.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may drop or informally resolve any Moderate or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the DHO for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administration Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Discipline Hearing Officer (DHO) for hearing and disposition. The UDC shall forward copies of all relevant documents to the DHO with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the DHO finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Discipline Hearing Officer may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the DHO.

(i) When charges are to be referred to the Discipline Hearing Officer, the UDC shall advise the inmate of the rights afforded at a hearing before the DHO. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses

the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the Institution Discipline hearing, but still elect to have witnesses and/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Discipline Hearing Officer all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Establishment and functioning of the Discipline Hearing Officer.

(a) Each Bureau of Prison institution shall have an independent hearing officer (DHO) assigned to conduct administrative fact-finding hearings covering alleged acts of misconduct and violations of prohibited acts, including those acts which could result in criminal charges. In the event of a serious disturbance or other emergency, of if an inmate commits an offense in the presence of the DHO, an alternate Discipline Hearing Officer will be appointed to conduct hearings with approval of the appropriate Regional Director. If the institution's DHO is not able to conduct hearings, the Warden shall arrange for another DHO to conduct the hearings. This person must be trained and certified as a DHO, and meet the other requirements for DHO.

(b) In order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred to the DHO.

(c) The Discipline Hearing Officer shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate miscounduct referred for disposition following the hearing required by § 541.15 before the UDC. The DHO may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Discipline Hearing Officer shall have the authority to impose or suspend sanctions A through F.

(d) The Warden at each institution shall designate a staff member, hereinafter called the Segregation Review Official (SRO), to conduct reviews of inmates placed in disciplinary segregation and administrative detention in accordance with the requirements of § 541.20 and § 541.22.

§ 541.17 Procedures before the Discipline Hearing Officer.

The Discipline Hearing Officer shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Discipline Hearing Officer unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Discipline Hearing Officer should the inmate so desire. The Warden, the DHO or alternate DHO, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the DHO on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The DHO shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The DHO shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Discipline Hearing Officer. When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for the inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The DHO shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of an outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The DHO need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the DHO. The DHO shall request submission of written statements from unavailable witnesses who have information directly relevant to the charge(s). The DHO shall document reasons for declining to call requested witnesses in the DHO report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation, the DHO, shall question witnesses requested by the inmate who are called before the DHO. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the DHO. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the DHO hearing except during a period of deliberation or when institutional security would be jeopardized. The DHO must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the DHO. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The DHO may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Discipline Hearing Officer shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the DHO (or the predecessor Institution Discipline Committee (IDC)), the Warden shall have the charges reheard before the Discipline Hearing Officer ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance before the Discipline Hearing Officer, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised before the Discipline Hearing Officer. All the applicable procedural requirements for hearings before the Discipline Hearing Officer apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The DHO upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original DHO as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The DHO may refer the case back to the UDC for further information or disposition. The DHO may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the DHO) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The DHO shall consider all evidence presented at the hearing. The decision of the DHO shall be based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The DHO shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report; or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary decision is based on confidential informant information, the UDC or DHO shall document, ordinarily in the hearing report, the finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the UDC chairman or DHO, not available to the inmate.

(g) The Discipline Hearing Officer shall prepare a record of the proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the DHO's findings, the DHO's decision and the specific evidence relied on by the DHO, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The DHO shall give the inmate a written copy of the decisions and disposition, ordinarily within 10 days of the DHO's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Discipline Hearing Officer shall expunge an inmate's file of the Incident Report and related documents following a DHO finding that the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the use of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the DHO finds the inmate has not committed every prohibited act charged, or if the DHO finds that the inmate has committed a prohibited act(s) other than the act(s) charged, then the DHO shall record those findings clearly and shall change the Incident Report to show only the incident and code references to charges which were proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Discipline Hearing Officer.

The Discipline Hearing Officer has available a broad range of sanctions and dispositions following completion of the hearing. The Discipline Hearing Officer may do any of the following:

(a) Dismiss any charge(s) upon a finding that the inmate did not commit the prohibited act(s). The DHO shall order the record of charge(s) expunged upon such finding.

(b) Impose any of sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer Actions.

At the time the Unit Discipline Committee or Discipline Hearing Officer gives an inmate written notice of its decision, the UDC or DHO shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this Chapter). An inmate's initial appeal of a decision of the DHO should be filed directly to the appropriate Regional Office. The inmate should forward a copy of the DHO report or, if not available at the time of filing, should state in his appeal the date of the DHO hearing and the nature of the charges against the inmate. On appeals, the appropriate reviewing official (the Warden, Regional Director, or General Counsel) may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Discipline Hearing Officer but may not increase any valid sanction imposed. On appeals, the appropriate reviewing authority shall consider:

(a) Whether the Unit Discipline Committee or the Discipline Hearing Officer substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Discipline Hearing Officer based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the prohibited act, and other relevant circumstances.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only

by order of the Discipline Hearing Officer following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The DHO may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the DHO can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Segregation Review Official (SRO) (see § 541.16(d)) shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the SRO at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Segregation Review Official may release an inmate from disciplinary segregation earlier than the sanction initially imposed upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The SRO may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated. Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation Conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell Occupancy.* The number of inmates confined to each cell or room in segregation should not exceed the number for which the space was designated. The Warden may approve excess occupancy if the Warden finds there is a pressing need for this action, and that other basic living standards of this subsection can still be maintained.

(3) *Clothing and Bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. An exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal Hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eyeglasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff shall permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, following a hearing, and recommendation, before a person certified in the discipline hearing officer procedures. This hearing must be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these

circumstances, and only upon a finding by the person conducting the hearing that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal Property.* Institution staff shall ordinarily impound personal property.

(8) *Reading Material.* Staff shall provide a reasonable amount of non-legal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

(10) *Correspondence and Visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for corresondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative Detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by self or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in Administrative Detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of Bureau regulations;

(2) Is pending an investigation of a violation of Bureau regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Segregation Review Official is to advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and in Administrative type institutions, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pre-trial inmates, either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (a)(6)(i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum Detailing Reasons For Placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of Inmates Housed in Administrative Detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Segregation Review Official will review the status of inmates housed in administrative detention. The SRO shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the SRO at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the SRO. Provided institutional security is not

compromised, the inmate shall receive at each formal review a written copy of the SRO's decision and the basis for this finding. The SRO shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmate's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of Administrative Detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

(1) Victims of inmate assaults;
(2) Inmate informants;
(3) Inmates who have received inmate pressure to participate in sexual activity;
(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;
(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;
(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;
(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population; and
(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this rule relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

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Part III

Environmental Protection Agency

40 CFR Part 2

Public Information; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL 3291-4]

Public Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule amends the Environmental Protection Agency's regulations implementing the Freedom of Information Act to conform to the law enforcement provisions and the fee and fee waiver provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570, sections 1801-1803).

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Marlyne Lipfert or Mary Adler, Office of General Counsel, Contracts and Information Law Branch (LE-132G), 401 M Street, SW., Washington, DC 20460, Telephone: 202/382-5460.

SUPPLEMENTARY INFORMATION:

Comments were postmarked or received within the comment period from the following:

1. Auburn University.
2. Public Citizen and Freedom of Information Clearing House.
3. Reporters Committee for Freedom of the Press.
4. Hunton and Williams, counsel for Utility Air Regulatory Group.
5. National Wildlife Federation.

Comments are addressed in the analysis that follows. In addition to changes brought about by comments received, several minor changes have been made pursuant to internal agency review.

Section 2.100 Definitions: (b) "EPA Record"

One commenter objected to the amendment of the definition of "EPA Record" which provides that a record must be in EPA's "possession or control" in order to be considered an "EPA Record." The commenter disagreed that case law warrants changing the existing language which provides that a record that "is, was, or is alleged to be possessed by EPA" is an EPA record. The existing language inaccurately implies that records that are no longer in EPA's possession, or perhaps never were but are merely alleged to be in EPA's possession, are nonetheless EPA records. In order to correct this inaccuracy, a change to this definition is necessary.

This commentor also suggested that "records that are generated at agency expense, or that are used for any form in the conduct of agency business, without regard to ownership, are agency records" and that EPA's final rules should so acknowledge. Because the precise language used in case law to describe "agency records" varies depending on the type of record referred to, EPA has used the terms "possession or control" to characterize the general approach taken by the courts. See *Kissinger v. Reporter's Committee for Freedom of the Press*, 445 U.S. 139 (1980). See also *Forsham v. Harris*, 445 U.S. 169 (1980); *Wolfe v. HHS*, 771 F.2d 1077 (D.C. Cir. 1983); *Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1978).

The commentor objected further to the language that exempts "materials which are legally owned by an EPA officer or employee in his or her purely personal capacity" from being "agency records". See *Bureau of National Affairs, Inc. v. United States Department of Justice*, 742 F.2d 1484 (D.C. Cir. 1984).

Section 2.100(e) " 'Commercial Use' Request," "Educational Institution" and "Representatives of the News Media"

Two commenters objected to the definitions of "commercial use request" and "educational institution"; three objected to "representatives of the news media".

These definitions, which categorize requesters for the purpose of establishing fees to be charged, were taken directly from the OMB Fee Guidance which was published subject to notice and comment. See OMB Guidelines, 52 FR 10012 (March 27, 1987). EPA not only believes that the Freedom of Information Reform Act of 1986 mandates that EPA adopt the guidance established by OMB, but also that OMB's definitions correctly implement the statutory terms as set forth in the Act.

Section 2.100(j) "Review"

A parenthetical note was added to this definition to explain that review of documents must be done for all responses to FOIA requests, but that review time may only be charged to commercial use requesters.

Section 2.113(d)(2) Circumstances Under Which an Initial Determination Shall Not Reveal the Existence or Non-existence of Records

Four commentors expressed concern over the language contained in the revision to this section. Some believed this to be the implementation of the provision of subsection (c) of the Act.

This section was amended only to clarify the language in the existing regulation relating to so-called "glomar" responses, first articulated in *Phillippi v. CIA*, 546 F.2d 1009, and not to implement any provisions in the Reform Act. Apparently, this attempt to clarify was not successful. Accordingly, EPA will retain the existing language, with two exceptions: (1) "Confidential investigation" will no longer be included in this section and (2) "classified national security information" will be added. The Agency does not believe that "glomar" responses are appropriate for records exempt under exemption (7)(A) "confidential investigation" (5 U.S.C. 552(b)(7)(A)). Under limited circumstances, a "glomar" response is appropriate in cases involving "classified national security information", withholdable under exemption 1 (5 U.S.C. 552(b)(1)).

Section 2.116 Contents of Determination Denying Appeal

This section was changed only to conform to the change in § 2.113(d)(2). Likewise, EPA will retain the existing language of this section with the above-noted exceptions, making this section consistent with § 2.113(d)(2).

Section 2.120 Fees, Payment, Waiver

Some of the subsections of this section have been renumbered for organizational purposes. All substantive changes are noted below.

Section 2.120(a)(1)(i) and (iv) (previously § 2.120(a)(4)) Charges for Search and Review When No Records are Located or Released

One commentor objected to the provision by which the Agency may assess search and review charges even though no records are found or the records are determined to be exempt from disclosure. This provision is adopted from the OMB Guidelines, with which the Agency is bound to comply. Since the Agency will incur the cost of search and review regardless of whether records are found and/or released, it is appropriate that a requestor who has not requested or has not been granted a fee waiver be held liable for such cost rather than the Agency and, ultimately, the taxpayer. The final rule differs from the proposal, but only to clarify that only two categories of requests may be subject to these charges: "Commercial use requests", with regard to both search and review costs; and the "all other requests" category, with regard to search costs (but not cost of review time).

Section 2.120(a)(5)(iv) No Charges for the First Two Hours of Search Time

One commentor raised a question concerning calculations of the cost of computer search time in regard to the waiver of the first two hours of search time. In response to this query, the Agency has added the language "or its cost equivalent" to this section, indicating that when a computer search is undertaken, the two hours not chargeable will be calculated as the dollar equivalent of a two hour manual search, in keeping with the OMB Guidelines on this point. See OMB Fee Guideline section 7.f, 52 FR 10012, 10019 (March 27, 1987). The statute makes no distinction concerning computer search time and the "two free hours." Because few computer searches would reach two hours and because the cost of computer search time is far greater per unit of time than the cost of manual search, it is unreasonable to conclude that Congress intended the "two free hours" to extend literally to computer search time. It is far more reasonable to extend the two hour cost equivalent of a manual search.

Section 2.120(c)(1) Assurance of Payment of Fees

One commentor expressed concern that to require a requestor to agree to pay all fees (over $25.00) before the time deadline begins to run is not in accordance with law. This subsection was changed to eliminate reference to "prepayment", in accordance with the amended statute. This subsection was not otherwise substantively changed, rather its language was simplified. The time-tolling section, (§ 2.112(d)) to which this subsection previously cross referenced, has not been changed. The time-tolling FOIA fee provisions, which are based upon sound principles of responsible cost recovery and are aimed at providing the government with some assurance of reimbursement before it expends the cost and effort to process a request, have been upheld by the courts. See e.g., *Frons v. FBI*, 571 F. Supp. 1241, 1243, D. Mass. 1983). Reference to § 2.112(d) was inadvertently omitted and will again be included for clarity.

Section 2.120(c)(2) Advance Payment of Fees

One commentor objected to the language "i.e., payment before work is commenced or continued" contained in this section. This language is taken directly from the OMB Guidelines and is intended to define "advance payment", not to imply that payment will be required before records are actually released. Although the Agency does not believe it is proscribed from requiring payment prior to release of records, it is not the Agency's general policy to require payment prior to the release of records.

Section 2.120(d) Fee Waivers or Reductions

Three commentors objected to EPA's incorporation of the Fee Waiver Guidelines issued by the Department of Justice. Although not adopted verbatim, EPA has incorporated the criteria set out in the DOJ guidelines. After careful consideration of commentors' objections to the fee waiver guidelines, the Agency has determined to keep the guidelines as set out in the proposed rule. The factors set forth in the guidelines address each word of the statutory standard, and merely give guidance in the application of the statutory standard.

In response to the concerns expressed by some commentors, EPA believes that requestors seeking a fee waiver will qualify if they provide adequate information to satisfy each of the fee waiver factors. Each request will be determined on a case-by-case basis since the statute provides no basis for any fee waiver "presumptions".

One commentor claimed that the requirement of submitting supporting information with a request for a fee waiver is subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Contrary to that claim, the Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that such a requirement is not an "information collection request" within the meaning of that Act.

One commentor suggested the Agency simply restate the statutory language regarding waiver of fees. To do so would not satisfy the statutory requirement which directs that the Agency "promulgate regulations . . . establishing procedures and guidelines for determining when such fees should be waived or reduced."

Section 2.120(d)(6) Appeal of Fee Waiver Requests

This section has been amended to reflect a revised delegation signed by the Administrator, delegating the authority to decide fee waiver appeals to the General Counsel. This authority had previously been delegated to the Assistant Administrator for External Affairs.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have a $100 million annual effect on the economy, will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic or export markets. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have significant economic impact on a substantial number of small entities. These changes to EPA's regulations will not impose significant additional costs on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Public information.

Dated: December 24, 1987.

Lee M. Thomas,

Administrator.

Therefore, EPA amends 40 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 208, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j-4, 300j-9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6905); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide and Rodenticide Act,

as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 104, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.100 is amended by revising paragraph (b) and by adding paragraphs (e) through (k) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA Record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are the personal records of an EPA officer or employee. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

* * * * *

(e) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution or professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.

(i) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requestor. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section). Searches may be done manually or by computer using existing programming.

(j) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions. (Documents must be reviewed in responding to all requests; however, review time may only be charged to Commercial Use Requesters.)

(k) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

3. Section 2.101 is amended by adding paragraph (d) to read as follows:

§ 2.101 Policy on disclosure of EPA records.

* * * * *

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from the sources.

4. Section 2.113 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 2.113 Initial denials of requests.

* * * * *

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See § 2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in § 2.113(d)(2) of this section) shall state that the requester may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

* * * * *

5. Section 2.116 is revised to read as follows:

§ 2.116 Contents of determination denying appeal.

(a) Except as provided in paragraph (b) of this section, each determination denying an appeal from an initial denial shall be in writing, shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record, and shall state the reason(s) for denial of the appeal. A denial determination shall also state the name and position of each EPA officer or employee who directed that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(b) No determination denying an appeal shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the determination shall state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b).

6. Section 2.118 is amended by revising paragraph (a)(7) to read as follows:

§ 2.118 Exemption categories.

(a) * * *

(7)(i) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) [Reserved]

* * * * *

7. Section 2.120 is revised to read as follows:

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Requesters shall be charged the full allowable direct costs incurred by the Agency in responding to a FOIA request. However, if EPA uses a contractor to search for, reproduce or disseminate records responsive to a request, the cost to the requester shall not exceed the cost of the Agency itself performing the service.

(1) There are four categories of requests. Fees for each of the categories will be charged as follows:

(i) Commercial use requests. If the request seeks disclosure of records for a commercial use, the requester shall be charged for the time spent searching for the requested record, reviewing the record to determine whether it should be disclosed and for the cost of each page of duplication. Commercial use requesters should note that EPA also may charge fees to them for time spent searching for and/or reviewing records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(ii) Requests from an educational or non-commercial scientific institution whose purpose is scholarly or scientific research, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iii) Requests from a representative of the news media, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iv) All other requests. If the request seeks disclosure of records other than as described in paragraphs (a)(1) (i), (ii), and (iii) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time (or its cost equivalent) and the first 100 pages of duplication (or their cost equivalent) shall be furnished without charge. Requestors in the "all other requests" category should note that EPA also may charge fees to them for time spent searching for records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(2) The determination of a requester's fee category will be based on the following:

(i) Commercial use requesters: The use to which the requester will put the documents requested;

(ii) Educational and non-commercial scientific institution requesters: Identity of the requester and the use to which the requester will put the documents requested;

(iii) Representatives of the news media requesters: The identity of the requester and the use to which the

requester will put the documents requested.

(3) Fees will be charged to requesters, as appropriate, for search, duplication and review of requested records in accordance with the following schedule:

(i) Manual search for records.

(A) EPA Employees: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00.

(B) Contractor employees: The requester will be charged for actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search.

(ii) Computer search for records charges will consist of:

(A) EPA employee operators: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00, plus.

(B) Contractor operators: Requestors will be charged for the actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search (see paragraph (a)(3)(i)(A) of this section), plus.

(C) Actual computer resource usage charges for this search.

(iii) Review of records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00.

(B) GS–9 and above: $10.00.

(iv) Duplication or reproduction of records.

(A) Duplication or reproduction of documents by EPA employees (paper copy of paper original): $.15 per page.

(B) Computer printouts (other than those calculated in a direct-cost billing—see paragraph (a)(3)(ii) of this section "Computer search for records") $.15 per page.

(C) Other methods of duplication or reproduction, including, but not limited to, duplication of photographs, microfilm and magnetic tape, will be charged at the actual direct cost to EPA.

(4) Other charges.

(i) Other charges incurred in responding to a request including but not limited to, special handling or transportation of records, will be charged at the actual direct cost to EPA.

(ii) Certification or authentication of records: $25.00 per certification or authentication.

(5) No charge shall be made—

(i) For the cost of preparing or reviewing letters of response to a request or appeal;

(ii) For time spent resolving legal or policy issues concerning the application of exemptions;

(iii) For search time and the first 100 pages of duplication for requests described in § 2.120(a)(1) (ii) and (iii) of this section;

(iv) For the first two hours of search time (or its cost equivalent) and for the first 100 pages of duplication for requests described in § 2.120(a)(1)(iv) of this section;

(v) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee. However, when EPA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, EPA will aggregate such requests to determine the total fee, and will charge accordingly;

(vi) For responding to a request by an individual for one copy of a record retrievable by the requesting individual's name or personal identifier from a Privacy Act system of records;

(vii) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(viii) For furnishing records requested by and for the official use of other Federal agencies; or

(ix) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Office lock box address:

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;

(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;

(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;

(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;

(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA. 30384;

(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;

(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;

(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;

(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;

(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;

(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251;

Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days after the date of billing. If payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days after the due date for payment. By the authority of the Debt Collection Act of 1982, delinquent amounts due may be collected through administrative offset or referred to private collection agencies. Information related to delinquent accounts may also be reported to the appropriate credit agencies.

(c) *Assurance of payment.* (1) If an EPA office estimates that the fees for processing a request (or aggregated requests as described in § 2.120(a)(5)(vi) of this section) will exceed $25.00, that office need not search for, duplicate or disclose records in response to the request(s) until the requester assures payment of the total amount of fees estimated to become due under this section. In such cases, the EPA office will promptly inform the requester (by telephone it practicable) of the need to make assurance of payment.

(2) An EPA office may not require a requester to make an advance payment, i.e. payment before work is commenced or continued on a request, unless:

(i) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days after the date of the billing), or

(ii) The EPA office estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed $250.00. Then the EPA office will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment. If such advance payment is not received within 30 days after EPA's billing, the request will not be processed and the request will be closed. See also §2.112(d).

(d) *Reduction or waiver of fee.* (1) The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that disclosure of the information:

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(2) Both of these requirements must be satisfied before fees properly assessable can be waived or reduced.

(3) The Agency will employ the following four factors in determining whether the first requirement has been met:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute to an understanding of government operations or activities";

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(5) In all cases, the burden shall be on the requester to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requester shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Officer. The General Counsel shall decide such appeals. The General Counsel may redelegate this authority only to the Deputy General Counsel or the Associate General Counsel for Grants, Contracts and General Law.

(e) The Financial Management Office shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requester has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requester's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requester whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requester that EPA will not process the request until the requester submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requester shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

8. Section 2.121 is added to read as follows:

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(i)(A), and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[FR Doc. 88–29 Filed 1–4–88; 8:45 am]

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Tuesday
January 5, 1988

Part IV

The President

Executive Order 12622—Adjustments of Certain Rates of Pay and Allowances

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Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

Presidential Documents

Title 3—

The President

Executive Order 12622 of December 31, 1987

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 108 and 110 of Public Law 100–202, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay and salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Salaries for justices and judges (28 U.S.C. 5, 44(d), 135, 252) and for other judicial officers (28 U.S.C. 153(a), 172(b)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 100–180, as amended by section 110(b) of Public Law 100–202, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for herein are effective on January 1, 1988. All other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1988.

Sec. 6. Executive Order No. 12578 of December 31, 1986, is superseded.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1987.

Billing code 3195–01–M

SCHEDULE 1—GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,811	$10,139	$10,465	$10,791	$11,117	$11,309	$11,631	$11,955	$11,970	$12,275
2	11,032	11,294	11,659	11,970	12,103	12,459	12,815	13,171	13,527	13,883
3	12,038	12,439	12,840	13,241	13,642	14,043	14,444	14,845	15,246	15,647
4	13,513	13,963	14,413	14,863	15,313	15,763	16,213	16,663	17,113	17,563
5	15,118	15,622	16,126	16,630	17,134	17,638	18,142	18,646	19,150	19,654
6	16,851	17,413	17,975	18,537	19,099	19,661	20,223	20,785	21,347	21,909
7	18,726	19,350	19,974	20,598	21,222	21,846	22,470	23,094	23,718	24,342
8	20,739	21,430	22,121	22,812	23,503	24,194	24,885	25,576	26,267	26,958
9	22,907	23,671	24,435	25,199	25,963	26,727	27,491	28,255	29,019	29,783
10	25,226	26,067	26,908	27,749	28,590	29,431	30,272	31,113	31,954	32,795
11	27,716	28,640	29,564	30,488	31,412	32,336	33,260	34,184	35,108	36,032
12	33,218	34,325	35,432	36,539	37,646	38,753	39,860	40,967	42,074	43,181
13	39,501	40,818	42,135	43,452	44,769	46,086	47,403	48,720	50,037	51,354
14	46,679	48,235	49,791	51,347	52,903	54,459	56,015	57,571	59,127	60,683
15	54,907	56,737	58,567	60,397	62,227	64,057	65,887	67,717	69,547	71,377
16	64,397	66,544	68,691	70,838	72,500	73,660*	75,765*	77,870*	79,975*	
17	73,958*	76,423*	78,888*	81,353*	83,818*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $72,500.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$54,907	$44,491	$36,051	$29,213	$23,671	$21,161	$18,917	$16,911	$15,118
2	56,554	45,826	37,133	30,089	24,381	21,796	19,485	17,418	15,572
3	58,251	47,201	38,247	30,992	25,113	22,450	20,069	17,941	16,039
4	59,998	48,617	39,394	31,922	25,866	23,123	20,671	18,479	16,520
5	61,798	50,075	40,576	32,879	26,642	23,817	21,291	19,033	17,015
6	63,652	51,577	41,793	33,866	27,441	24,531	21,930	19,604	17,526
7	65,562	53,125	43,047	34,882	28,264	25,267	22,588	20,193	18,052
8	67,529	54,718	44,338	35,928	29,112	26,025	23,266	20,798	18,593
9	69,555	56,360	45,668	37,006	29,986	26,806	23,963	21,422	19,151
10	71,377	58,051	47,038	38,116	30,885	27,610	24,682	22,065	19,726
11	71,377	59,792	48,450	39,260	31,812	28,439	25,423	22,727	20,317
12	71,377	61,586	49,903	40,438	32,766	29,292	26,186	23,409	20,927
13	71,377	63,434	51,400	41,651	33,749	30,171	26,971	24,111	21,555
14	71,377	65,337	52,942	42,900	34,762	31,076	27,780	24,834	22,201

SCHEDULE 3--DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES VETERANS ADMINISTRATION

Section 4103 Schedule

Chief Medical Director	$97,206***
Deputy Chief Medical Director	93,248**
Associate Deputy Chief Medical Director	89,314*
Assistant Chief Medical Director	86,682*

	Minimum	Maximum
Medical Director	$73,958*	$83,818*
Director of Nursing Service	73,958*	83,818*
Director of Podiatric Service	64,397	79,975*
Director of Chaplain Service	64,397	79,975*
Director of Pharmacy Service	64,397	79,975*
Director of Dietetic Service	64,397	79,975*
Director of Optometric Service	64,397	79,975*

Physician and Dentist Schedule

Director Grade	$64,397	$79,975*
Executive Grade	59,462	75,784*
Chief Grade	54,907	71,377
Senior Grade	46,679	60,683
Intermediate Grade	39,501	51,354
Full Grade	33,218	43,181
Associate Grade	27,716	36,032

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$54,907	$71,377
Senior Grade	46,679	60,683
Intermediate Grade	39,501	51,354
Full Grade	33,218	43,181
Associate Grade	27,716	36,032

Nurse Schedule

Director Grade	$54,907	$71,377
Assistant Director Grade	46,679	60,683
Chief Grade	39,501	51,354
Senior Grade	33,218	43,181
Intermediate Grade	27,716	36,032
Full Grade	22,907	29,783
Associate Grade	19,713	25,626
Junior Grade	16,851	21,909

*** The rate of basic pay is limited to the rate for level III of the Executive Schedule, which is $82,500.

** The rate of basic pay is limited to the rate for level IV of the Executive Schedule, which is $77,500.

* The rate of basic pay is limited to the rate for level V of the Executive Schedule, which is $72,500.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

ES-1	$65,994
ES-2	68,952
ES-3	71,910
ES-4	73,400
ES-5	75,500
ES-6	77,500

SCHEDULE 5--EXECUTIVE SCHEDULE

level I	$99,500
level II	89,500
level III	82,500
level IV	77,500
level V	72,500

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

Vice President	$115,000
Senators	89,500
Members of the House of Representatives	89,500
Delegates to the House of Representatives	89,500
Resident Commissioner from Puerto Rico	89,500
President pro tempore of the Senate	99,500
Majority leader and minority leader of the Senate	99,500
Majority leader and minority leader of the House of Representatives	99,500
Speaker of the House of Representatives	115,000

SCHEDULE 7--JUDICIAL SALARIES

Chief Justice of the United States	$115,000
Associate Justices of the Supreme Court	110,000
Circuit Judges	95,000
District Judges	89,500
Judges of the Court of International Trade	89,500
Judges of the United States Claims Court	82,500
Bankruptcy Judges	72,500

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I--MONTHLY BASIC PAY TABLE

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10**	$5485.80	$5679.00	$5679.00	$5679.00	$5679.00	$5896.50	$5896.50	$6223.50*	$6223.50*	$6668.70*	$6668.70*	$7115.10*	$7115.10*	$7558.50*
O-9	4862.10	4989.30	5095.50	5095.50	5095.50	5225.10	5225.10	5442.60	5442.60	5896.50	5896.50	6223.50*	6223.50*	6668.70*
O-8	4403.70	4535.40	4643.10	4643.10	4643.10	4989.30	4989.30	5225.10	5225.10	5442.60	5679.00	5896.50	6041.70	6041.70
O-7	3659.10	3907.80	3907.80	3907.80	4083.00	4083.00	4319.70	4319.70	4535.40	4989.30	5332.50	5332.50	5332.50	5332.50
O-6	2712.00	2979.90	3174.90	3174.90	3174.90	3174.90	3174.90	3174.90	3282.60	3801.60	3996.00	4083.00	4319.70	4685.10
O-5	2169.00	2547.00	2723.10	2723.10	2723.10	2723.10	2805.60	2956.20	3154.50	3390.60	3585.00	3693.60	3822.60	3822.60
O-4	1828.50	2226.60	2374.80	2374.80	2418.90	2525.70	2697.90	2849.70	2979.90	3110.40	3196.50	3196.50	3196.50	3196.50
O-3***	1699.20	1899.60	2030.70	2247.00	2354.40	2439.00	2571.00	2697.90	2764.50	2764.50	2764.50	2764.50	2764.50	2764.50
O-2***	1481.70	1618.20	1943.70	2009.10	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40
O-1***	1286.10	1339.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER														
O-3	----	----	----	$2247.00	$2354.40	$2439.00	$2571.00	$2697.90	$2805.60	$2805.60	$2805.60	$2805.60	$2805.60	$2805.60
O-2	----	----	----	2009.10	2051.40	2116.20	2226.60	2311.50	2374.80	2374.80	2374.80	2374.80	2374.80	2374.80
O-1	----	----	----	1618.20	1728.60	1792.20	1857.00	1921.80	2009.10	2009.10	2009.10	2009.10	2009.10	2009.10

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* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $6,041.70 per month.

** While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
						WARRANT OFFICERS								
W-4	$1731.00	$1857.00	$1857.00	$1899.60	$1986.00	$2073.60	$2160.60	$2311.50	$2418.90	$2503.80	$2571.00	$2653.80	$2742.60	$2956.20
W-3	1573.20	1706.70	1706.70	1728.60	1748.70	1876.80	1986.00	2051.40	2116.20	2179.20	2247.00	2334.30	2418.90	2503.80
W-2	1377.90	1490.70	1490.70	1534.20	1618.20	1706.70	1771.50	1836.30	1899.60	1966.20	2030.70	2094.90	2179.20	2179.20
W-1	1148.10	1316.40	1316.40	1426.20	1490.70	1554.90	1618.20	1685.10	1748.70	1813.80	1876.80	1943.70	1943.70	1943.70
						ENLISTED MEMBERS								
E-9*	----	----	----	----	----	----	$2013.60	$2059.20	$2105.70	$2154.00	$2202.00	$2244.90	$2362.80	$2592.60
E-8	----	----	----	----	----	$1688.70	1737.00	1782.60	1829.10	1877.10	1920.60	1967.70	2083.20	2315.40
E-7	$1179.00	$1272.60	$1320.00	$1365.00	$1412.70	1457.70	1504.20	1551.00	1621.20	1667.40	1713.90	1736.10	1852.80	2083.20
E-6	1014.30	1105.50	1151.70	1200.60	1245.30	1290.60	1338.00	1407.00	1451.10	1497.90	1520.70	1520.70	1520.70	1520.70
E-5	890.10	969.00	1015.80	1060.80	1129.80	1178.70	1223.80	1267.80	1290.60	1290.60	1290.60	1290.60	1290.60	1290.60
E-4	830.40	876.60	938.20	1000.20	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80
E-3	783.10	825.00	858.30	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20
E-2	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70
E-1**	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40
E-1***	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,131.20 regardless of cumulative years of service computed under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$581.40	$50.70	$715.20
O-9	581.40	50.70	715.20
O-8	581.40	50.70	715.20
O-7	581.40	50.70	715.20
O-6	533.70	39.60	648.60
O-5	503.70	33.00	597.60
O-4	461.70	26.70	546.30
O-3	373.80	22.20	455.40
O-2	301.20	17.70	390.60
O-1	258.30	13.20	350.10
WARRANT OFFICERS			
W-4	$423.30	$25.20	$491.10
W-3	357.30	20.70	439.50
W-2	321.60	15.90	410.70
W-1	272.10	13.80	357.90
ENLISTED MEMBERS			
E-9	$341.10	$18.60	$465.00
E-8	316.20	15.30	433.20
E-7	270.00	12.00	402.90
E-6	239.70	9.90	365.70
E-5	221.40	8.70	324.90
E-4	192.30	8.10	280.80
E-3	186.60	7.80	258.30
E-2	158.40	7.20	258.30
E-1	144.30	6.90	258.30

---

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed service without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed service without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

Part III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$114.90

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.06	$5.48
When rations-in-kind are not available	5.72	6.19
When assigned to duty under emergency conditions where no messing facilities of the United States are available	7.58	8.19

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $504.30.

[FR Doc. 88-203
Filed 1-4-88; 11:02 am]
Billing code 3195-01-C

Reader Aids

Federal Register

Vol. 53, No. 2

Tuesday, January 5, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106 4
107-230 5

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12578 (Superseded by EO12622) 222
12622 222

5 CFR

890 1

7 CFR

400 2
907 6
910 7
1430 107
Proposed Rules:
301 140
1701 140

10 CFR

Proposed Rules:
430 30

14 CFR

39 8-14

15 CFR

399 108

16 CFR

Proposed Rules:
13 141

17 CFR

211 109

18 CFR

271 15

19 CFR

Proposed Rules:
141 30
178 30

20 CFR

Proposed Rules:
361 143
901 147

21 CFR

81 19
176 97
193 20
561 20
606 111
610 111
640 111

26 CFR

1 117
Proposed Rules:
1 153

28 CFR

541 196

33 CFR

117 119

36 CFR

404 120

37 CFR

201 ..... 122, 123
Proposed Rules:
203 153

38 CFR

4 21

39 CFR

111 ..... 124, 125
232 126

40 CFR

2 214
271 126-128

41 CFR

101-20 129
Proposed Rules:
141 31
142 31
261 31

43 CFR

2 24

45 CFR

95 26

47 CFR

64 27
73 ..... 28, 29

48 CFR

501 ..... 130, 132
513 132

49 CFR

541 133
Proposed Rules:
3 100
7 100
10 100
1041 155

1048.....155
1049.....155
391.....42

50 CFR

611.....134
Proposed Rules:
20.....42
301.....156

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List December 30, 1987



Just Released

Code of Federal Regulations

Revised as of July 1, 1987

Quantity	Volume	Price	Amount
_____	Title 33—Navigation and Navigable Waters (Parts 1–199) (Stock No. 869–001–00116–0)	$27.00	$_____
_____	Title 40—Protection of Environment (Parts 190–399) (Stock No. 869–001–00135–6)	29.00	_____
		Total Order	$_____

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Pages 231-398

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Contents

Federal Register

Vol. 53, No. 3

Wednesday, January 6, 1988

Agricultural Marketing Service
PROPOSED RULES
Lemons grown in California and Arizona, 255
Milk marketing orders:
Texas, 256

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration
NOTICES
Import quotas and fees:
Meat import limitations; quarterly estimates, 267

Air Force Department
NOTICES
Patent licenses, exclusive:
Massachusetts Institute of Technology, 268

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 268

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 302

Defense Department
See also Air Force Department
NOTICES
Agency information collection activities under OMB review, 268

Delaware River Basin Commission
NOTICES
Hearings, 269

Education Department
NOTICES
Agency information collection activities under OMB review, 269
Grants; availability, etc.:
Education for homeless children and youth program, 270

Energy Department
See Energy Information Administration; Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 271

Environmental Protection Agency
RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 392
Hazardous waste program authorizations:
North Carolina, 244
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-[1-(ethoxyimino)butyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one, 233, 241
(2 documents)
Oxyfluorfen, 243
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 261
(2 documents)
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
3,5-dichloro-N-(1,1-dimethyl-2-propynyl) benzamide, 262
Ethephon, 259, 263
(2 documents)
NOTICES
Pesticide, food, and feed additive petitions:
BASF Corp., 283
Toxic and hazardous substances control:
Premanufacture exemption approvals, 283

Executive Office of the President
See Trade Representative, Office of United States

Farmers Home Administration
RULES
Program regulations:
Supervised bank accounts, 231

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Special Federal Aviation Regulation No. 47; noise restricted aircraft, special flight authorization
Correction, 233
Airworthiness directives:
Aerospatiale; correction, 232
Fairchild, 232
PROPOSED RULES
Airworthiness directives:
British Aerospace, 258
NOTICES
Advisory circulars; availibility, etc.:
Airplanes, small—
Airworthiness standards publications, 298

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 284
Rulemaking proceedings; petitions filed, granted, denied, etc., 284

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Texas Gas Transmission Corp., 271
Hydroelectric applications, 272
Natural gas certificate filings:
Transwestern Pipeline Co. et al., 277

Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 278
Applications, hearings, determinations, etc.:
Central Maine Power Co., 280, 281 (3 documents)
Central Vermont Public Service Corp., 281
Duquesne Light Co., 281
Great Northern Paper Co., 282
Gresham, WI., 282
Iowa Public Service Co., 282
South Georgia Natural Gas Co., 282
Southern Natural Gas Co., 283
Wisconsin Public Service Corp., 283

Federal Highway Administration
RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—Amendments, 236
PROPOSED RULES
Motor carrier safety regulations:
Commercial driver testing and licensing standards; public forums, 265
NOTICES
Meetings, etc.:
National Motor Carrier Advisory Committee, 298

Federal Home Loan Bank Board
RULES
Competitive Equality Banking Act; implementation:
Federal Savings and Loan Insurance Corporation—
Assets classification, 338
Capital forbearance, 354
Insured institutions and service corporations; appraisal policies and practices, 372
Minimum regulatory capital requirements, 363
Troubled debt restructuring, 365
Uniform accounting standards; definition of regulatory capital, etc., 324
Savings and loan holding companies, etc.—
Qualified thrift lender test and Federal home loan bank advances, 312
NOTICES
Receiver appointments:
Firstbanc Federal, FSB, 285

Federal Maritime Commission
NOTICES
Agreements filed, etc., 285

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 285
Applications, hearings, determinations, etc.:
First National Massillon Corp. et al., 286
Gleason, John J., et al., 286
Sasser Corp., 287

Fine Arts Commission
See Commission of Fine Arts

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Amoxicillin trihydrate and clavulanate potassium tablets, 234
Chlortetracycline-sulfamethazine tablets, 235
Monensin and tylosin, 236
Pyrantel tartrate, 235
NOTICES
Animal drugs, feeds, and related products:
American Cyanamid Co.; approval withdrawn, 287
J&R Specialty Supply Co.; approval withdrawn, 288
Food additive petitions:
CdF Chimie SA., 288
Ciba-Geigy Corp., 289
Schering Animal Health, 289
Medical devices:
Computer products regulation; draft policy guidance availability, 289
Diagnostic ultrasound guidance update; availability, 289

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health; Public Health Service

Housing and Urban Development Department
PROPOSED RULES
Fair housing:
State and local laws; substantially equivalent laws recognition, 260

Infant Mortality, National Commission to Prevent
See National Commission to Prevent Infant Mortality

Interior Department
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Qualified employee plans; minimum vesting standards, 238
PROPOSED RULES
Income taxes:
Qualified employee plans; minimum vesting standards; cross reference, 261

International Trade Commission
NOTICES
Import investigations:
Erasable programmable read only memories, components, products containing same and processes for making memories, 291
Feathered fur coats and pelts, and manufacture process, 291
Ink jet printers employing solid ink, 292
Minoxidil powder, salts and compositions for use in hair treatment, 292, 293 (2 documents)
Reclosable plastic bags and tubing, 293

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 290

National Commission to Prevent Infant Mortality
NOTICES
Hearings, 293
Meetings, 293

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 294

National Institutes of Health
NOTICES
Meetings:
National Bone Marrow Transplants, 290

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico red drum, 244
Pacific Coast groundfish, 246, 248 (2 documents)
PROPOSED RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 265
Gulf of Mexico Shrimp, 266
NOTICES
Meetings:
International Whaling Commission, 267

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 302
Applications, hearings, determinations, etc.:
Toledo Edison Co. et al., 294, 295 (2 documents)

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Health Service
See also Food and Drug Administration; National Institutes of Health
NOTICES
Meetings; advisory committees:
January, 398

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., et al., 296

Trade Representative, Office of United States
NOTICES
Meetings:
Trade Negotiations Advisory Committee, 297

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
University transportation centers program, 297

Treasury Department
See also Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 299
Notes, Treasury:
E-1995 series, 299

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 300
Grants; availability, etc.:
Fulbright teacher exchange program, 301

Separate Parts In This Issue

Part II
Federal Home Loan Bank Board, 312

Part III
Environmental Protection Agency, 392

Part IV
Department of Health and Human Services, Public Health Service, 398

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1902 231
Proposed Rules:
910 255
1126 256

12 CFR
525 312
561 (2 documents) 324, 338
563 (6 documents) 324, 338, 354, 363, 372, 385
563c 324
571 (3 documents) 338, 372, 385
583 312
584 312

14 CFR
39 (2 documents) 232
91 233
Proposed Rules:
39 258

21 CFR
193 233
540 234
546 235
558 (2 documents) 235, 236
561 233
Proposed Rules:
193 259
561 259

23 CFR
655 236

24 CFR
Proposed Rules:
115 260

26 CFR
1 238
Proposed Rules:
1 261

40 CFR
51 392
52 392
180 (2 documents) 241, 243
271 244
Proposed Rules:
52 (2 documents) 261
180 (2 documents) 262, 263

49 CFR
Proposed Rules:
383 265

50 CFR
653 244
663 (2 documents) 246, 248
Proposed Rules:
652 265
658 266

Rules and Regulations

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1902

Supervised Bank Accounts; Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding Supervised Bank Accounts. This action is taken for more efficient administration of the program. The intended effect is to ensure that depositary's post collateral for excess over $100,000 before deposits are made.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Debt Management Specialist, Financial and Management Analysis Staff, Financial Analysis Branch, Farmers Home Administration, USDA, Room 5507, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone: (202) 475-4425.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

This final action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

This action requires no increase in cost to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements of the public. The Agency has determined that this regulation maximizes net benefit to society at the lowest net cost.

For the reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects in 7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and Community development, Loan programs—Agriculture, Loan programs—Housing and Community development.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for Part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

2. In § 1902.6, paragraph (d) is revised to read as follows:

§ 1902.6 Establishing supervised bank accounts.

• • • • •

(d) For each borrower, if the amounts of any loan and grant funds, plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $100,000, the financial institution will be required to pledge collateral for the excess over $100,000, before the deposit is made (see § 1902.7).

• • • • •

§ 1902.7 [Amended]

3. Section 1902.7(e) is amended in the last sentence by changing the words "Financial Support Division" to read "Budget Staff, Revolving Fund Analysis Branch."

4. In § 1902.7, paragraphs (a), (c), and (f) are revised to read as follows:

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000 deposited for borrowers in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank (FRB) in an amount not less than the excess.

• • • • •

(c) If the financial institution is agreeable to pledging collateral, the District Director or County Supervisor should complete FmHA Form Letter 1901-A-2 "Designated Financial Institution—Collateral Pledge" in an original and two copies, the original for the National Office, the first copy for the State Office, and the second copy for the District or County Office. The FmHA Form Letter 1902-A-2 should be forwarded to the National Office at least 30 days before the date of loan closing.

• • • • •

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the financial institution desires part or all of its collateral released, it should write the local FmHA office requesting the release and stating the balance in the supervised bank account. The FmHA office upon receipt of this written request will send that request to the Department of Treasury, FMS Funds Flow Division, Collaterial Section, Room 802, Premier Bldg., Treasury Annex, Washington, DC 20226.

5. In § 1902.15, the introductory text and paragraph (b) and (c) are revised to read as follows:

§1902.15 Closing accounts.

When FmHA loan or grant funds and those of any other lender or grantor have all been properly expended or

withdrawn. Form FmHA 402–6 may be used to give FmHA's consent (and of another lender or grantor, if involved) to close the supervised bank account in the following situations:

* * * * *

(b) For all loans accounts, except loans listed in § 1902.15(c) of this section, after completion of authorized loan funds expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For Community Facility, Water and Waste Disposal, Grazing Association, Irrigation and Drainage, Indian Land Acquisition, Watershed (WS), Organizational Rural Rental Housing (RRH), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan and grant accounts, when the funds have been expended in accordance with the requirements of Part 1942 Subpart A and Part 1823, Subpart I (FmHA Instruction 442.9), the supervised bank account will be closed within 90 days following completion of development, unless an extension of time is authorized in writing by the District Director. If the borrower will not agree to close the account, the District Director or County Supervisor will request the State Director to make demand upon the financial institution in accordance with § 1902.16.

* * * * *

Exhibit A [Removed and reserved]

6. Exhibit A of Subpart A is removed and reserved.

Date: December 31, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–154 Filed 1–5–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 86–ASW–35; Amdt. 39–5796]

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model AS355 Series; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Correction.

SUMMARY: This action corrects the issuance date of the priority letter as published in the **Federal Register** of Friday, December 11, 1987. In FR document 87–28447, published Friday, December 11, 1987, on page 46986, in the last paragraph of the document; "November 21, 1987" is changed to read "November 21, 1986."

FOR FURTHER INFORMATION CONTACT: Wilbur F. Wells, (817) 624–5123.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88–83 Filed 1–5–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 80–ASW–16–AD; Amdt. 39–5821]

Airworthiness Directives; Fairchild (Swearingen) Models SA226–TC and SA226–AT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), 80–09–08R1 Amendment 39–3883 for Fairchild (Swearingen) Models SA226–TC and SA226–AT airplanes, which required a repetitive 250-hour inspection and adjustment, as required, of the cargo door latches. This revision provides for installation of an improved bottom latch as an alternate means of compliance that when installed will relax the inspection interval from 250 hours to 1,200 hours. This revision also clarifies the serial number effectivity for this AD.

EFFECTIVE DATE: February 5, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation Service Bulletins (SB's) 226–52–009 (revised June 12, 1987) and 226–52–008 (revised April 6, 1984) applicable to this AD may be obtained from Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490, or this information may be examined at the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michele Owsley, Airplane Certification Branch, ASW–150, Aircraft Certification Division, FAA, Forth Worth, Texas 76193–0150, Telephone (817) 624–5160.

SUPPLEMENTARY INFORMATION: A proposal to revise AD 80–09–08R1 applicable to certain Fairchild (Swearingen) Models SA226–TC and SA226–AT airplanes, to provide an alternate means of compliance, was published in the **Federal Register** on October 29, 1987 (52 FR 41586). The proposal resulted from a statistical analysis of service experience since the original AD was issued which indicates that the AD repetitive inspection interval can safely be relaxed from 250 hours to 1,200 hours providing an improved bottom latch for the cargo door has been installed.

Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. A commuter airline and the Air Line Pilots Association (ALPA) both support the proposed amendment. ALPA further emphasizes that inspection data should continue to be reviewed to ensure that the 1,200-hour interval is not excessive. The FAA continuously monitors reports submitted under their service difficulty program and this interval can be further adjusted if warranted. ALPA also questioned whether the improved bottom latch should be incorporated on Model SA227 airplanes. The FAA has determined that this change was made in production for all Model SA227 airplanes so they are not included in the applicability of this AD.

Accordingly, the proposal is being adopted without change except that the entire AD will be written below instead of just a listing of the changes as was done in the NPRM.

The FAA has determined there are approximately 293 airplanes affected by this AD. The cost of each repetitive inspection is $34. The total estimated inspections performed annually are 1,500 at a total cost of $51,000. Adoption of the amendment will reduce these annual values to 300 total inspections at a total cost of $10,200. Requiring the estimated, remaining 30 percent of the fleet (approximately 90 aircraft) to comply with SB 228–52–008 (improved bottom latch assembly) will have a nonrecurring cost of $36,720 which is offset by the recurring annual inspection savings of $40,800. Because the cost reduction applies directly to the operational cost of the airplane owners and operators, there is an economic benefit (instead of impact) as a result of this proposal. No economic impact to small entities is foreseen as a result of this amendment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 80–09–08R1, in its entirety as follows:

Fairchild Aircraft Corp. (Swearingen):

Applies to Models SA226–TC (S/N TC 201 through TC419) and SA226–AT (S/N AT001 through AT074) certificated in any category. Compliance required before pressurized flight or prior to obtaining 250 unpressurized flight hours after compliance with emergency telegraphic AD T80SW14 dated March 15, 1980, amended.

To assure proper adjustment, operation, and structural integrity of the cargo door latching mechanism, accomplish the following:

(a) With the cargo door open, conduct the following inspection to assure full expansion of the click-clack latch jaws. Move the door handle to the door closed position. Using a "go, no-go" type of gage, determine that the distance from the inside of the click-clack plunger face to the edge of the click-clack jaws is not less than 0.34 inches. Adjust each latch as necessary to gain a minimum of 0.34 inches by varying the length of its connecting push-pull rod.

(b) To assure proper engagement of the click-clack jaws into the door frame receptacle, three measurements are necessary. The first measurement (door open) is the dimension from the door face plate surface to the undercut on the click-clack jaws. The second measurement (door open) is the dimension from the door frame receptacle face plate surface to the jaws seating surface. The third measurement (door closed) is the gap (taken with a feeler gage) between the surface of the door frame receptacle and the door face plate surface. The first dimension must be at least the sum of the second and third dimensions to assure proper engagement of the click-clack jaws in the door frame receptacle. Adjust each latch as necessary to gain the proper click-clack engagement by varying the length of its connecting push-pull rod.

(c) Inspect each door face plate and receptacle face plate for evidence of deformation. If deformed, also inspect door frame and door latch assembly for evidence of cracks or deformation. If such defects are detected, replace with airworthy part.

(d) Using an inside micrometer, or equivalent, measure the inside diameter of each receptacle. Measure across the hole in at least three directions to check for roundness. The widest dimension must be used to compare with the following allowables.

(1) Receptacles on side of cargo door, one piece type, limit .690 inches.

(2) Receptacles on side of cargo door, eccentric type, limit .700 inches.

(3) Receptacles on bottom of cargo door, one piece type, limit .870 inches.

(4) If any receptacle is oversized, replace with an airworthy part.

(e) Check the cargo door warning system as follows:

(1) With the door in the open position, manually depress all door warning switches. Check to see that the cargo door warning light in the annunciator panel is extinguished.

(2) Selectively release and depress each warning switch. Check that with all other switches depressed, releasing any individual switch causes illumination of the cargo door warning light. Actuate each switch several times while checking for any tendency for the switch to stick in the depressed position.

(3) Any switches that show any tendency to stick in the depressed position should be replaced.

(f) After the inspections and adjustments required by paragraphs (a) through (e) have been satisfactorily completed, open and close the cargo door a minimum of three cycles.

(1) Operate the door handle to the closed position during each door closed cycle.

(2) Door open light on annunciator panel must be out when door is closed. (Reference Swearingen SA226 series maintenance manual for proper switch adjustment.)

(3) If the door mechanism or warning light system does not function properly during the three open and close cycles, reconduct inspections and adjustments as described above.

(g) Repeat the steps as necessary until the cargo door operates properly.

(h) Repeat the inspections and adjustments required by paragraph (a) through (g) of this AD as follows:

(1) Each 1,200 flight hours for airplanes which have been modified per Fairchild SB 226–52–008 revised April 6, 1984, or

(2) Each 250 flight hours for airplanes that have not been modified per the above SB.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base where the inspections and adjustments can be accomplished.

(j) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, Southwest Regional Office, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 624–5150.

All persons affected by this AD may obtain copies of the document(s) referred to herein upon request to Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 80–09–08R1, Amendment 39–3883 (45 FR 58333; August 25, 1980).

This amendment becomes effective on February 5,1988.

Issued in Kansas City, Missouri, on December 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88–80 Filed 1–5–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

[Docket 24394]

Special Flight Authorization for Noise Restricted Aircraft; Special Federal Aviation Administration Regulation No. 47–2; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, (202) 267–3561.

SUMMARY: FAA is deleting errors in an amendment and a Special Federal Aviation Regulation number.

In the document headings of FR Document number 87–28710, published Tuesday, December 15, 1987, on page 47672, please delete Amendment number 91–203, and please add 47–2 in place of 47 to Special Federal Aviation Regulation.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88–82 Filed 1–5–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 9H5475/R328; FRL–3312–4]

Tolerances for 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a regulation to permit the combined residues of the herbicide 2-[1-

(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the food commodity tomato products, concentrate, and the feed commodity dried tomato pomace. This regulation to establish a maximum permissible level for the combined residues of the herbicide on these commodities was requested pursuant to a petition by BASF Corp.

EFFECTIVE DATE: January 6, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of December 4, 1985 (50 FR 49760), which announced that BASF Corp., P.O. Box 181, 100 Cherry Hill Road, Parsippany, NJ 07054, had filed food/feed additive petition 5H5475 proposing to amend 21 CFR Part 193 (food commodity) and 21 CFR 561.430 (feed commodity) by establishing a regulation permitting the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the commodities as follows:

Petition No	CFR affected	Commodities	Parts per million (ppm)
FAP 5H5475	21 CFR Part 193.	Tomato paste	24.00
		Tomato puree	8.00
FAP 5H5475	21 CFR 561.430.	Dried tomato pomace.	12.00

There were no comments received in response to the notices of filing.

The petitioner subsequently amended petition FAP 5H5475 by submitting a revised section F proposing to amend 21 CFR Part 193 by proposing a tolerance for the combined residues of the herbicide and its metabolites on the food commodity tomato products, concentrated, at 24.0 ppm. Because there is no potential increase in risk to humans from the revised proposal, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related final rule document (PP 5F3824 and 6F3383) establishing tolerances on fruiting vegetables, strawberries, and raspberries appearing elsewhere in this issue of the **Federal Register**.

The pesticide is considered useful for the purpose for which the regulation is sought. The nature of the residue is adequately understood for the purpose of establishing the food and feed additive regulations. Adequate analytical methodology is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II (gas chromatography using a sulfur-specific flame photometric detector). It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[AMENDED]

1. Part 193 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 193.479, to read as follows:

§ 193.479 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

A food additive regulation is established to permit the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites on the food commodity tomato products, concentrated, at 24.0 parts per million.

PART 561—[AMENDED]

2. Part 561 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 561.430 by adding and alphabetically inserting in the list of commodities the following entry, to read as follows:

§ 561.430 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one.

* * * * * *

Commodities	Parts per million
* * * * *	
Tomato pomace, dried	12.00

[FR Doc. 88-159 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories. The supplement provides for use of a higher strength amoxicillin trihydrate and clavulanate potassium tablet in treating larger dogs for certain skin and soft tissue infections.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., 501 Fifth St., Bristol, TN 37620, is sponsor of approved NADA 55-099 which provides for use in dogs of amoxicillin trihydrate and clavulanate potassium (Clavamox®) tablets to treat skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., and *Escherichia coli*. The supplement provides for use of a 375-milligram (mg) film-coated tablet in addition to previously approved 62.5-mg, 125-mg, and 250-mg tablets. The new size is for treating larger dogs. There is no change in dosage of drug per unit of body weight. The supplement is approved and 21 CFR 540.103g is amended in paragraph (a)(1) in the second sentence by adding the phrase "or 300 milligrams amoxicillin and 75 milligrams clavulanic acid" at the end of the sentence. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director and Deputy Director, Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 583.

§ 540.103g [Amended]

2. Section 540.103g *Amoxicillin trihydrate and clavulanate potassium film-coated tablets* is amended in paragraph (a)(1) in the second sentence by adding the phrase "or 300 milligrams amoxicillin and 75 milligrams clavulanic acid" at the end of the sentence.

Dated: December 28, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-98 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 546

[Docket No. 78N-0248]

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline-Sulfamethazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflects approval of a new animal drug application (NADA) sponsored by American Cyanamid Co. The NADA provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA is being withdrawn.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: As explained in a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 55-025 sponsored by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. The NADA covers use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. This final rule removes 21 CFR 546.110e, which reflects approval of the NADA.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 546 is amended as follows:

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 546 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 546.110e [Removed]

2. Section 546.110e *Chlortetracycline-sulfamethazine tablets* is removed.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88-103 Filed 1-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove the provision of the regulations reflecting approval of a new animal drug application (NADA) sponsored by J&R Specialty Supply Co. FDA is also reserving the provision for future use. The NADA provides for use of Type A medicated articles containing 9.6 or 19.2 grams of pyrantel tartrate per pound to make Type C swine feeds. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of J&R Specialty Supply Co.'s NADA 138–609. The NADA provides for use of Country Mixer Swine Guard-BN Banminth® Premixes containing 9.6 or 19.2 grams of pyrantel tartrate per pound (Type A medicated articles) for making Type C medicated swine feeds for their anthelmintic effect. This document removes 21 CFR 558.485(a)(26), which reflects approval of the NADA, and reserves it for future use.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.485 [Amended]

2. Section 558.485 *Pyrantel tartrate* is amended by removing paragraph (a)(26) and reserving it for future use.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88–95 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co., providing for revisions in the currently approved concentration range for monensin and providing a range for tylosin (currently a fixed concentration) in Type C beef cattle feeds when the drugs are used in combination. These amendments will make combination use of the drugs fully consistent with currently approved individual drug use. The drugs are currently approved for combination use in beef cattle for improved feed efficiency and reduction of incidence of liver abscesses.

EFFECTIVE DATE: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is sponsor of NADA 104–646. The NADA currently provides for combination administration via Type C feeds of monensin at a range of 10 to 30 grams (g) per ton plus tylosin at the fixed concentration of 10 g per ton to beef cattle. The feed is fed at a consumption rate that provides a dosage of 100 to 360 milligrams (mg) of monensin and 90 mg of tylosin per head per day. However, monensin alone is approved for administration to cattle at the broader concentration range of 5 to 30 g per ton at a rate that provides 50 to 360 mg per head per day. Also, tylosin alone is approved for administration at a range of 8 to 10 g per ton.

The indications for use in beef cattle of monensin and tylosin, improved feed efficiency and reduction of the incidence of liver abscesses, respectively, are the same alone and in combination. Elanco has requested that the conditions of use for the combination be modified so that they are consistent with those for separate drug use. The firm has submitted a supplement to NADA 104–646 that contains information supporting its request. Therefore, the supplement is approved and 21 CFR 558.355(f)(3)(ii) introductory text and (f)(3)(ii)(*b*) are amended to reflect the approval. The basis for approval is further discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by revising paragraphs (f)(3)(ii) introductory text and (f)(3)(ii)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(ii) *Amount per ton.* Monensin, 5 to 30 grams, plus tylosin, 8 to 10 grams.

(*a*) * * *

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously as sole ration at the rate of 50 to 360 milligrams of monensin and 90 milligrams of tylosin per head per day; as monensin sodium; as tylosin phosphate.

* * * * *

Dated: December 23, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88–104 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86–12, Notice No. 3]

National Standards for Traffic Control Devices; Restructure of Manual on Uniform Traffic Control Devices; Closing of Docket

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of rulemaking; closing of docket.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting the MUTCD with the objective of improving the application of effective traffic control devices and systems. The application of the concepts presented in the two previously published advance notices would have affected all parts of the MUTCD and were intended to improve the effectiveness and efficiency of the MUTCD. As a result of the evaluation, including a review of the responses to the two advance notices, the FHWA had determined that it will not make major changes to the MUTCD at this time. Also, the FHWA has determined that there is a need to print a new MUTCD containing all revisions through the end of 1988.

DATE: The docket is closed as of January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366–2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366–1383, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Present Regulations

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950–036–00000–1. The purchase of a MUTCD includes a subscription service for adopted revisions. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices (TCDs) standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Current Rulemaking

This rulemaking was initiated by the issuance of an Advance Notice of Proposed Rulemaking (ANPRM) on June 9, 1986 (51 FR 20840). In this ANPRM, the FHWA expressed its concern that the changes that have been made to the 1978 MUTCD have had negative impacts on the integrity and continuity of the Manual. Many copies of the MUTCD are not being kept up-to-date. In this ANPRM, the FHWA formulated a number of questions relating to improving the application of standards, and invited responses concerning the need for reformatting or revising the MUTCD.

The major thrust of the rulemaking was to explore short- and long-range needs to improve the MUTCD standards. In addition, the FHWA asked ". . . should the FHWA continue to be responsible for maintaining the MUTCD?"

Since the first ANPRM did not provide enough time for commenters to prepare information on the structure and format of the MUTCD, a second ANPRM was issued on April 9, 1987 (52 FR 11502). This ANPRM (1) extended the comment period from July 20, 1987, to September 1, 1987, and (2) provided an opportunity to more fully explore needed changes to Part VI of the MUTCD, as they relate to the state-of-the-practice of construction and maintenance work zone traffic control device standards and management.

Summary of Comments

The FHWA analyzed the comments received from 45 commenters in response to both the first and second ANPRM's. All of these comments are included in the public docket in this proceeding.

A large majority of comments received (1) stated that there was a need for a current version of 1978 MUTCD, (2) stated that a new manual is necessary in the next three to five years, although many would not suggest substantial changes to the present structure, format, or substance of the MUTCD, (3) supported additional traffic control devices standards and applications for Part VI, and (4) stated that the FHWA should continue to administer the MUTCD.

With regard to the need for a current version of the MUTCD, nearly all commenters favored the reissuance of the 1978 MUTCD complete with all the revisions that have been made since 1978, including all final rules that have not been included in a previous revision, rather than issue Revision 5 as a separate document. Most of the commenters requested that a current manual (the 1978 MUTCD, with the superseded pages replaced with the appropriate pages from the five revisions), be published and released to the public as soon as possible. It was felt that a current MUTCD would better assure that users will have a complete manual than would the continued distribution of revisions of the 1978 MUTCD, and that a current MUTCD would better serve as a base or benchmark document upon which future needs could be determined.

Conclusions

The FHWA will publish a revised edition of the MUTCD in early 1989. This 1988 MUTCD will contain a consolidation of all revisions promulgated and issued since publication of the 1978 MUTCD including those yet to be finalized toward the end of 1987 and 1988.

The FHWA published its "Procedures to Amend the Manual on Uniform Traffic Control Devices" in a June 30, 1983, notice of availability of staff study and proposed procedural changes, and request for comments, at 48 FR 30145, Docket No. 83–18. The notice predicted that under these procedures, substantial or significant changes (those requiring notice and comment rulemaking procedures) would be relatively few in number. Through application of these procedures, the FHWA reduced a backlog of requests to change standards and kept the number of requests for changes to the MUTCD that go to rulemaking to a minimum.

The FHWA does not intend to make routine incremental amendments to the 1988 MUTCD once it is published and made available. Proposals for revisions will be considered, as in the past, but only those standard changes or additions which are felt to directly impact the safety of the motoring public and-or pedestrians will be advanced to rulemaking. Due to the time schedule, the currently ongoing evaluation and revision of Part VI of the MUTCD will not be incorporated into the 1988 Manual. However, work on this manual improvement will continue with the possible incorporation of an updated Part VI into some future issuance of the MUTCD beyond 1988.

The FHWA will look to the National Committee on Traffic Control Devices, the Institute of Transportation Engineers, the American Association of State Highway and Transportation Officials, and others in the transportation community, to assume the leadership in determining future MUTCD needs.

Accordingly, all rulemaking actions regarding Docket No. 86–12 are terminated.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation. Due to the nature of this termination action, a regulatory evaluation is not required since any economic impacts that occur are negligible. Under the criteria of the Regulatory Flexibility Act, the FHWA

hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 109(d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: December 31, 1987.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 88-155 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8170]

Minimum Vesting Standards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding the minimum vesting standards for qualified employee plans. These temporary regulations conform to changes in the law made by the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with the minimum vesting standards and affect all employers maintaining qualified plans. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are generally effective for plan years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: V. Moore of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations regarding the minimum vesting standards for qualified employee plans under sections 410 and 411 of the Internal Revenue Code of 1986. These temporary regulations conform to the changes made by sections 1113 (a), (c), and (d) of the Tax Reform Act of 1986 (Pub. L. 99-514) and are required by section 1141 of that Act. These temporary regulations do not reflect amendments to the Internal Revenue Code made by the Retirement Equity Act of 1984 (Pub. L. 98-397, 98 Stat. 1436, *et seq.*), the technical corrections to the Retirement Equity Act of 1984 (section 1898 of the Tax Reform Act of 1986), the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), or section 1113(b) of the Tax Reform Act 1986 (repealing section 411(d)(4), pertaining to class year vesting), and no inferences should be drawn by reason of the fact that an issue relating to these amendments is not addressed in these temporary regulations. There is a need for immediate guidance so that employers maintaining qualified plans can comply by making the necessary plan amendments to conform the plans to the new minimum vesting standards. These regulations will remain in effect until superseded by final regulations on this subject.

Prior Law

An employee plan does not qualify under section 401(a) unless it satisfies the minimum participation standards of section 410(a) and the minimum vesting standards of section 411(a). In general, section 410(a) provides that a plan will not qualify if it requires, as a condition of participation in the plan, that an employee complete a period of service with the employer beyond the later of the date on which the employee attains age 21 or the date on which the employee completes a year of service. An exception, however, is provided for plans providing that after not more than 3 years of service each participant has a right to 100 percent of his or her accrued benefit under the plan. In such a plan, participation may be conditioned on not more than 3 years of service. Section 411(a) provides that a plan will not qualify unless an employee's right to his or her accrued benefits derived from employer's contributions becomes nonforfeitable (1) upon the attainment of normal retirement age; and (2) at least as rapidly as under one of three alternative minimum vesting schedules. Section 411(a)(2) sets out the schedules as follows: (A) 10-year cliff vesting (100 percent vesting after 10 years of service); (B) 5- to 15-year graded vesting (25 percent vesting after 5 years of service, increasing gradually to 100 percent after 15 years of service); and (C) Rule of 45 (taking both age and service into account so that an employee who has completed at least 5 years of service, and the sum of whose age and years of service equals or exceeds 45, vests according to a table, but, in any event, in 50 percent after 10 years of service and an additional 10 percent for each additional year of service).

Section 411(a)(10)(B) provides that a plan amendment changing the plan's vesting schedule must permit all employees with at least 5 years of service to elect to remain under the vesting schedule in effect prior to the amendment.

Explanation of Provisions

Sections 1113 (a), (c), and (d) of the Tax Reform Act of 1986 amended sections 410(a) and 411(a). Section 410(a) was amended to provide that a plan may require no more than 2 years of service with the employer as a condition of participation in the plan if the plan provides for 100 percent vesting after no more than 2 years. Section 411(a) was amended to provide that an employee's right to all accrued benefits derived from employer contributions must become nonforfeitable at least as rapidly as under one of two alternative schedules, changing 10-year cliff vesting to 5-year cliff vesting and changing the 5- to 15-year graded schedule to a 3- to 7-year graded schedule. Ten-year cliff vesting is still allowed in the case of certain employees covered pursuant to a collective bargaining agreement and participating in a multiemployer plan. Employees who are not covered by the collective bargaining agreement are not eligible for the 10-year cliff vesting schedule, even if such employees are in the multiemployer plan pursuant to a participation agreement that relates to the collective bargaining agreement. Further, section 411(a)(10)(B) was amended to provide that a plan amendment changing the plan's vesting schedule must permit employees with 3, rather than 5, years of service to elect to remain under the prior vesting schedule. These changes apply to all accrued benefits derived from employer contributions whether accrued before or after the effective date of the changes. This Treasury decision provides temporary regulations in conformity with these changes.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these temporary regulations is V. Moore of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plans, Pension, Stock options, Individual Retirement Accounts, Employee stock ownership plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. New § 1.410(a)-3T is added immediately after § 1.410(a)-3 to read as follows:

§ 1.410(a)-3T Minimum age and service conditions (temporary).

(a) [Reserved]

(b) *Special rule for plan with 2-year 100 percent vesting.* A plan which provides that after not more than 2 years of service each participant's right to his or her accured benefit under the plan is completely nonforeitable (within the meaning of section 411 and the regulations thereunder) at the time such benefit accrues satisfies the requirements of paragraph (a) of this section if the period of service required by the plan as a condition of participation does not extend beyond the later of—

(1) [Reserved]

(2) *Two years of service.* The date on which the employee competes 2 years of service. For employees not described in § 1.411(a)-3T(e)(1), which describes employees with one hour of service in any plan year beginning after December 31, 1988, or later in the case of certain collectively bargained plans, the preceding sentence shall be applied by substituting "3 years of service" for "2 years of service".

Par. 3. New § 1.410 (a)-6T is added immediately after § 1.410(a)-7T to read as follows:

§ 1.410(a)-6T Year of service; break in service (temporary).

(a) [Reserved]

(b) [Reserved]

(c) *Breaks in service*—

(1) [Reserved]

(2) *Employees under 2-year 100 percent vesting schedule*—(i) *General rule.* In the case of an employee who incurs a 1-year break in service under a plan which provides that after not more than 2 years of service each participant's right to his accrued benefit under the plan is completely nonforfeitable (within the meaning of section 411 and the regulations thereunder) at the time such benefit accrues, the employee's service before the break in service is not required to be taken into account after the break in service in determining the employee's years of service under section 410(a)(1) and § 1.410(a)-3 if such employee has not satisfied such service requirement.

(ii) *Example.* The rules of this subparagraph are illustrated by the following example:

Example. A qualified plan computing service by the actual counting of hours provides full and immediate vesting. The plan can not require as a condition of participation that an employee complete 2 consecutive years of service with the employer because the requirement as to consecutive years is not permitted under section 410(a)(5). However, such a plan can require 2 years without a break in service, i.e., 2 years with no intervening years in which the employee fails to complete more than 500 hours of service. Under a plan containing such a participation requirement, the following example illustrates when employees would become eligible to participate.

Year	Hours of service completed		
	Employee A	Employee B	Employee C
1	1,000	1,000	1,000
2	1,000	700	500
3	1,000	1,000	1,000
4	1,000	1,000	700
5	1,000	1,000	1,000

Note.—Employee A will have satisfied the plan's service requirement at the end of year 2, Employee B at the end of year 3, and Employee C at the end of year 5.

(3) *One-year break in service*—

(i) [Reserved]

(ii) *Examples.* The rules provided by this subparagraph are illustrated by the following examples:

Example (1). Employee A completes a year of service under a plan computing service by the actual counting of hours for the 12-month period ending December 31, 1989, and incurs a 1-year break in service for the 12-month period ending December 31, 1990. The plan does not contain the provisions permitted by section 410(a)(5)(B) (relating to 2-year 100 percent vesting) and section 410(a)(5)(D) (relating to nonvested participants). Thereafter, he does not complete a year of service. As of January 1, 1991, in computing his period of service under the plan his service prior to December 31, 1990, is not required to be taken into account for purposes of section 410(a)(1) and § 1.410(a)-3.

Example (2). [Reserved]

Par. 4. New § 1.410 (a)-9T is added immediately after § 1.410(a)-8T to read as follows:

§ 1.410(a)-9T Elapsed time (temporary).

(a) [Reserved]

(b) [Reserved]

(c) *Eligibility to participate*—

(1) [Reserved]

(2) *Determination of one-year period of service.*

(i) [Reserved]

(ii) For purposes of section 410(a)(1)(B)(i), a "2-year period of service" shall be deemed to be "2 years of service."

(d) *Vesting*—(1) *General rule.*

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) For purposes of determining an employee's nonforfeitable percentage of accrued benefits derived from employer contributions, a plan, after calculating an employee's period of service in the manner prescribed in this paragraph, may disregard any remaining less than whole year, 12-month or 365-day period of service. Thus, for example, if a plan provides for the statutory three to seven year graded vesting, an employee with a period (or periods) of service which yields 3 whole year periods of service and an additional 321-day period of service is twenty percent vested in his or her employer-derived accrued benefits (based solely on the 3 whole year periods of service).

(2) [Reserved]

Par. 5. New § 1.411(a)-3T is added immediately after § 1.411(a)-3 to read as follows:

§ 1.411(a)–3T Vesting in employer-derived benefits (temporary).

(a) *In general.*

(1) [Reserved]

(2) *Composite arrangements.* A plan will not be considered to satisfy the requirements of paragraph (b), (c), or (d) of this section unless it satisfies all requirements of a particular one of such paragraphs with respect to all of an employee's years of service. A plan which, for example, satisfies the requirements of paragraph (b) (but not (c) or (d)) for an employee's first 4 years of service and satisfies the requirements of paragraph (c) (but not (b)) for all of his remaining years of service does not satisfy the requirements of this section. A plan is not precluded from satisfying the requirements of one such paragraph with respect to one group of employees and another such paragraph with respect to another group provided that the groups are not so structured as to evade the requirements of this paragraph.

(3) [Reserved]

(b) *5-year vesting.* A plan satisfies the requirements of section 411(a)(2)(A) and this paragraph if an employee who has completed 5 years of service has a nonforfeitable right to 100 percent of his or her accrued benefits derived from employer contributions.

(c) *3- to 7-year vesting.* A plan satisfies the requirements of section 411(a)(2)(B) and this paragraph if an employee who has completed at least 3 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions, which percentage is not less than the nonforfeitable percentage determined under the following table:

Completed years of service	Nonforfeitable percentage
3	20
4	40
5	60
6	80
7 or more	100

(d) *Multiemployer plans.* A plan satisfies the requirements of section 411(a)(2)(C) and this paragraph if—

(1) The plan is a multiemployer plan (within the meaning of section 414(f)), and

(2) Under the plan—

(i) An employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions not later than upon completion of 10 years of service, and

(ii) The requirements of paragraph (b) or (c) of this section are met with respect to employees who are not covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B).

(iii) For purposes of this provision, an employee is not covered pursuant to a collective bargaining agreement unless the employee is represented by a bona fide employee representative that is a party to the collective bargaining agreement pursuant to which the multiemployer plan is maintained. Thus, for example, an employee of either the multiemployer plan or the employee representative is not covered pursuant to the collective bargaining agreement under which the plan is maintained even if the employee is covered pursuant to an agreement entered into by the multiemployer plan or employee representative on behalf of the employee and even if all such employees covered under the plan constitute only a de minimis percentage of the total employees covered under the plan.

(e) *Effective date.* (1) The provisions of this section apply to all employees who have one hour of service in any plan year beginning after—

(i) December 31, 1988, or

(ii) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, for employees covered by any such agreement, the earlier of—

(A) The later of—

(*1*) January 1, 1989, or

(*2*) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

(2) For employees not described in paragraph (e)(1), above, the regulations in effect prior to January 1, 1989, shall be applied to determine the requirements of this section.

(f) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). Plan B provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable as follows:

Completed years of service	Nonforfeitable percentage
1	0
2	10
3	25
4	45
5	65
6	75
7	100

Plan B does not satisfy the requirements of paragraph (c) of this section (relating to 3- to 7-year vesting) because the nonforfeitable percentage provided by the plan after completion of 6 years of service (75 percent) is less than the percentage required by paragraph (c) of this section at that time (80 percent). The fact that the nonforfeitable percentage provided by the plan for years prior to the 6th year of service is greater than the percentage required under paragraph (c) of this section is immaterial. The plan fails to satisfy the requirements of paragraph (c) of this section even if it is demonstrated that the value of the vesting provided by the plan to the employees is at least equal to the value of the vesting rate required by this paragraph.

Example (2). Plan C provides for plan participation after the completion of 1 year of service. The plan provides that each employee's rights to his employer-derived accrued benefits are 100 percent nonforfeitable after 5 years of plan participation rather than service. The plan does not satisfy the requirements of paragraph (b) of this section because, under the plan, an employee obtains a 100 percent nonforfeitable right to his or her employer-derived accrued benefit only after completion of more than 5 years of service.

Example (3). Plan D provides that each employee's rights to his employer-derived accrued benefits are nonforfeitable in accordance with the following schedule:

Completed years of service	Nonforfeitable percentage
0 to 4	0
5	60
6	80
7	100

The plan does not satisfy the requirements of paragraph (b) of this section after the 4th year of service. It does not satisfy the requirements of paragraph (c) of this section for years prior to the 5th year of service. The plan does not satisfy the requirements of this section because it does not satisfy the requirements of a particular one of the two paragraphs for each of an employee's years of service.

Example (4). Plan G provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable upon completion of 3 years of service. The plan satisfies the requirements of paragraphs (b) and (c) of this section and, because it satisfies the requirements of at least one of such paragraphs for all of an employee's years of service, it satisfies the requirements of this section.

Par. 6. New § 1.411(a)–4T is added immediately after § 1.411(a)–4 to read as follows:

§ 1.411(a)–4T Forfeitures, suspensions, etc. (temporary).

(a) *Nonforfeitability.* Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time. Certain adjustments to plan benefits, such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable. Rights which are conditioned upon a sufficiency of plan assets in the event of a termination or partial termination are considered to be forfeitable because of such condition. However, a plan does not violate the nonforfeitability requirements merely because in the event of a termination an employee does not have any recourse toward satisfaction of his nonforfeitable benefits from other than the plan assets, the Pension Benefit Guaranty Corporation, or a trust established and maintained pursuant to sections 4041(c)(3)(B) (ii) or (iii) and section 4049 of ERISA with respect to the plan. Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced as allowed under sections 401(a)(5) and 401(l). To the extent that rights are not required to be nonforfeitable to satisfy the minimum vesting standards, or the nondiscrimination requirements of section 401(a)(4), they may be forfeited without regard to the limitations on forfeitability required by this section. The right of an employee to repurchase his accrued benefit for example under section 411(a)(3)(D), is an example of a right which is required to satisfy such standards. Accordingly, such a right is subject to the limitations on forfeitability. Rights which are required to be prospectively nonforfeitable under the vesting standards are nonforfeitable and may not be forfeited until it is determined that such rights are, in fact, in excess of the vesting standards. Thus, employees have a right to vest in the accrued benefits if they continue in employment of employers maintaining the plan unless a forfeitable event recognized by section 411 occurs. For example, if a plan covered employees in Division A of Corporation X under a plan utilizing a 5-year 100 percent vesting schedule, the plan could not forfeit employees' rights on account of their moving to service in Division B of Corporation X prior to completion of 5 years of service even though employees are not vested at that time.

(b) [Reserved]

(c) *Examples.* The rules of this section ae illustrated by the following examples:

Example (1). Corporation A's plan provides that an employee is fully vested in his employer-derived accrued benefit after completion of 3 years of service. The plan also provides that if the employee works for a competitor he forfeits his rights in the plan. Such provision could result in the forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and therefore the plan would not satisfy the requirements of section 411. If the plan limited the forfeiture to employees who completed less than 5 years of service, the plan would not fail to satisfy the requirements of section 411 because the forfeitures under this provision are limited to rights which are in excess of the minimum required to be nonforfeitable under section 411(a)(2)(A).

Example (2). [Reserved]

Par. 7. New § 1.411(a)–8T is added immediately after § 1.411(a)–8 to read as follows:

§ 1.411(a)–8T. Changes in vesting schedule (temporary).

(a) [Reserved]

(b) *Election of former schedule*—(1) *In general.* Under section 411(a)(10)(B), for plan years for which section 411 applies, if the vesting schedule of a plan is amended, the plan will not be treated as meeting the minimum vesting standards of section 411(a)(2) unless the plan as amended provides that each participant whose nonforfeitable percentage of his accrued benefit derived from employer contributions is determined under such schedule, and who has completed at least 3 years of service with the employer, may elect, during the election period, to have the nonforfeitable percentage of his accrued benefit derived from employer contributions determined without regard to such amendment. Notwithstanding the preceding sentence, no election need be provided for any participant whose nonforfeitable percentage under the plan, as amended, at any time cannot be less than such percentage determined without regard to such amendment. For employees not described in § 1.411(a)–3T(e)(1), this section shall be applied by substituting "5 years of service" for "3 years of service" where such language appears.

(2) *Election period.* For purposes of subparagraph (1) of this paragraph, the election period under the plan must begin no later than the date the plan amendment is adopted and end no earlier than the latest of the following dates:

(i) The date which is 60 days after the day the plan amendment is adopted,

(ii) The date which is 60 days after the day the plan amendment becomes effective, or

(iii) The date which is 60 days after the day the participant is issued written notice of the plan amendment by the employer or plan administrator.

(3) *Service requirement.* For purposes of subparagraph (1) of this paragraph, a participant shall be considered to have completed 3 years of service if such participant has completed 3 years of service, whether or not consecutive, without regard to the exceptions of section 411(a)(4) prior to the expiration of the election period described in subparagraph (2) of this paragraph. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it would be impractical to issue it first under the notice and comment procedure provided in 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Lawrence B. Gibbs,

Commission of Internal Revenue.

Approved: November 23, 1987.

O. Donaldson Chapoton,

Assistant Secretary of The Treasury.

[FR Doc. 88–113 Filed 1–5–88; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3284, 6F3383/R929; FRL-3312-3]

Tolerances for 2-[1-(ethoxyimino) butyl]-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohexene-1-one

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) fruiting vegetables at 4.0 parts per million (ppm), strawberries at 5.0 ppm, and raspberries at 5.0 ppm. This regulation was requested by BASF Corp. and establishes the maximum permissible level for residues of the herbicide in or on these RACs.

EFFECTIVE DATE: January 6, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued notices published in the **Federal Register** that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposed amending 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as parent) in or on the following RACs:

Pesticide petition No.	Crops	Parts per million (ppm)	Federal Register citation
5F3264	Fruiting vegetables	4.0	December 4, 1985 (50 FR 49760)
6F3383	Strawberries	10.0	June 11, 1986 (51 FR 21232)

No comments were received in response to the notices of filing.

The petitioner subsequently amended Pesticide Petition No. 6F3383 by submitting a revised section F proposing tolerances for strawberries at 5.0 ppm and raspberries at 5.0 ppm. Because there is no potential increase to humans from the revised proposal, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerances include several acute studies; a 6-month feeding study with dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with no-observed-effect level (NOEL) of 2 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested (HDT)) and a systemic NOEL of 18 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day (HDT); a two-generation reproduction study with rats fed 0, 2, 6, 18, and 54 mg/kg/day with no reproductive effects observed at 54 mg/kg/day (HDT) and a NOEL of 18 mg/kg/day; a teratology study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT) and a maternal NOEL of 40 mg/kg/day; a teratology study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a teratogenic NOEL of 160 mg/kg/day and a maternal NOEL of 160 mg/kg/day; and mutagenic studies including recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (negative at concentrations of chemical to 100 percent) and host-mediated assays (mouse) with *S. typhimurium* (negative at concentrations of chemical to 100 percent) and a host-mediated assay (mouse) with *S. typhimurium* negative at 2.5 grams (g/kg/day) of chemical.

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 2.0 mg/kg/day) and using a hundred-fold safety factor, is calculated to be 0.02 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.0190 mg/kg/day. The current action will contribute 0.00019 mg/kg/day to the TMRC and will utilize 0.94 percent of the ADI. Published tolerances and unpublished but approved tolerances utilize 95.69 percent of the ADI.

A related final rule (FAP 5H5475/R928) appears elsewhere in this issue of the **Federal Register** and establishes tolerances on the feed commodity dried tomato pomace and the food commodity tomato products, concentrated.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this dificiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any seconday residues occurring in meat, milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health, and the tolerances are therefore set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180-[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.412, by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Fruiting vegetables	4.0
* * * * *	
Raspberries	5.0
* * * * *	
Strawberries	5.0

[FR Doc. 88-160 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3119/R927; FRL-3312-2]

Oxyfluorfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide oxyfluorfen in or on the raw agricultural commodities (RACs) almond hulls and tree nuts group. This regulation to establish a maximum permissible level for residues of oxyfluorfen in or on the RACs was requested by Rohm & Haas Co.

EFFECTIVE DATE: Effective on January 6, 1988.

ADDRESS: Written objections, identified by the document control number [PP 4F3119/R927], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 8, 1984 (49 FR 31757), which announced that Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted a pesticide petition (PP 4F3119) to EPA proposing to amend 40 CFR 180.381 by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the RACs tree nuts group (except almond hulls) at 0.05 part per million (ppm), and almond hulls at 0.1 ppm.

Rohm & Haas subsequently amended the petitions to specify the total residues of the herbicide oxyfluorfen and its metabolites containing the diphenyl ether linkage.

No comments were received in response to the notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include:

1. A 20-month mouse feeding study (chronic feeding/oncogenicity) with a no-observed-effect level (NOEL) of 2 ppm (equivalent to 0.3 milligram (mg) per kilogram (kg) of body weight (bw) per day) and a lowest effect level of 20 ppm (increased absolute liver weight and nonneoplastic histological lesions). The Cancer Assessment Group (CAG) was asked to evaluate the oncogenic potential of oxyfluorfen. CAG stated that both the rat and the mouse oncogenic studies did not use the maximum tolerated dose (MTD). The Agency requested that 90-day mouse and rat studies be performed as an estimate to determine the MTD. Subsequently, it was determined that toxicological concerns were not considered sufficient to regulate oxyfluorfen as an oncogen, and oxyfluorfen received unconditional registration by the Agency.

2. A 2-year dog feeding study with a NOEL of 100 ppm (equivalent to 2.5 mg/kg/day).

3. A rat oral lethal dose LD_{50} greater than 5.0 grams/kg.

4. A rat cytogenetic test (purified oxyfluorfen), negative; two Ames assays (technical), positive; an Ames assay (purified oxyfluorfen), negative; an Ames assay (polar fraction), positive; and Unscheduled DNA Synthesis Assays (technical and polar fraction), both negative.

5. A rabbit teratology study with no observed teratogenic effect at 30 mg/kg of bw and a developmental toxicity NOEL of 10 mg/kg.

6. A rat teratology study with no observed terata at 1,000 mg/kg of bw (highest dose tested) and a developmental toxicity NOEL of 100 mg/kg.

7. A three-generation rat reproduction study with a NOEL of 10 ppm (equivalent to 0.5 mg/kg of bw per day)

8. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (equivalent to 2.0 mg/kg of bw per day) and no oncogenic potential observed at the levels tested (2, 40, and 800 ppm, raised to 1,600 ppm at week 57 of the test).

The acceptable daily intake (ADI), based on the chronic mouse feeding study NOEL of 0.3 mg/kg/day and using a hundred-fold safety factor, is calculated to be 0.003 mg/kg of bw/day. The maximum permitted intake for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.04162 mg/day; the current action will increase the TMRC by 0.0008 mg/day (0.19 percent). Published tolerances utilize 23.13 percent of the ADI; the current action will utilize an additional 0.04 percent to total 23.13 percent.

There are no regulatory actions pending against this pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration process and a Notice of Determination that was published in the **Federal Register** of June 23, 1982 (47 FR 27118).

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. The Agency has concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contained a maximum of 200 ppm PCE.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood for the proposed uses, and an adequate analytical method, gas chromotography, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement method in the Pesticide Analytical Manual, Vol. II, the

analytical method is being made available in the interim to anyone interested in pesticide enforcement when requested from: William Grosse, Chief, Information Service Branch (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 223, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2613.

Established tolerances are adequate to cover any secondary residue in meat, milk, and eggs.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the RACs will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.381(a) is amended by adding, and alphabetically inserting, the raw agricultural commodities tree nuts group (except almond hulls), increasing the tolerance of almond hulls to 0.1 ppm, and removing the raw agricultural commodities almonds and walnuts, to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Almond hulls	0.1
* * * * *	
Tree nuts group (except almond hulls)	0.05

[FR Doc. 88-161 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3312-5]

North Carolina; Order To Commence Proceedings To Determine Whether To Withdraw Hazardous Waste Program Approval; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of Correction of Hearing Date and Location.

SUMMARY: This notice corrects the date and location previously published in the **Federal Register** (52 FR 43903) on November 17, 1987, establishing the dates and location for the North Carolina withdrawal proceeding hearing. The hearing will be held on February 23-25, 1988, at the Velvet Cloak Inn, 1505 Hillsborough Street, Raleigh, NC 27605.

The addresses and the contact for further information remain unchanged.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr. at (404) 347-3016.

Dated: December 29, 1987.

Bruce R. Barrett,

Acting Regional Administrator.

[FR Doc. 88-158 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

[Docket No. 71279-7279]

Red Drum Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues this emergency rule to reduce the current annual recreational and commerical catch allowances of red drum from the primary area of the exclusive economic zone (EEZ) of the Gulf of Mexico from 625,000 pounds to zero. This rule provides interim protection to the spawning stock of red drum in the EEZ while the Gulf of Mexico Fishery Management Council (Council) prepares an amendment to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) that would achieve the same result. The intended effect of this rule is to protect the depleted red drum spawning stock from overfishing.

EFFECTIVE DATE: This rule is effective 0001 hours, local time, January 1, 1988, through 2400 hours, local time, March 30, 1988.

ADDRESS: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The red drum fishery is managed under the FMP and its implementing regulations (51 FR 46675, December 24, 1986), as provided by the Magnuson Fishery Conservation and Management Act. Amendment 1 to the FMP, prepared by this Council, and its implementing regulations (52 FR 34918, September 16, 1987), divided the EZZ into primary and secondary areas; prohibited the harvest or possession of red drum from the secondary areas (waters off Texas and Florida); and established an annual total allowable catch (TAC) in the primary area (waters off Louisiana, Mississippi, and Alabama). Under the TAC, the annual quotas were zero for the directed commercial fishery, 200,000 pounds as incidental catch in the shrimp fishery, 100,000 pounds as incidental catch in other commercial fisheries, and 325,000 pounds for the recreational fishery. The regulations also imposed a recreational bag limit of one red drum per person per trip in or from the primary area. Amendment 1 specified that adjustments to TAC and user group allocations be implemented by an FMP amendment. Amendment 1 also provided for annual monitoring and assessment of the condition of the resource, using the best scientific information available, by the Red Drum Scientific Assessment Group (Group), whose members are appointed by the Council. The Group is composed of qualified fishery scientists from throughout the Gulf region.

Management actions taken to date have been perceived as conservative, however, they may not have been conservative enough. Although scientists were previously aware that the rate of juvenile escapement from nearshore waters was extremely low, less than 2 percent, they did not know how long these low levels of escapement had persisted. Recent research suggests that these low escapement levels, owing to high inshore mortality rates, have been the trend for some time. The most recent scientific assessment of the condition of the red drum resource indicates that the spawning stock has been damaged to an extent that was heretofore unrealized. Continued removal of adult red drum from offshore waters would only contribute to further reduction of the already depleted spawning stock and increase the risk of this fishery collapsing. It would hasten the disappearance of older, more productive spawners and further deplete the younger age classes (ages 4 to 7) that are already poorly represented in the population. Even at present fishing mortality rates, the reproductive capacity of the spawning stock has been greatly reduced. This reduced spawning capacity will become increasingly apparent as older fish (ages 7 and older) disappear from the population.

Present Situation

The Group presented its first report under Amendment 1 procedures to the Council on December 2, 1987. Reviewing the most recent information available, including the information determined from red drum schools sampled by purse seine during mark-recapture studies, the Group observed low recruitment of almost all recent age classes in the spawning stock; fish younger than 12 years of age where poorly represented in the samples. Further, the Group noted that fishing mortality rates on juveniles are sufficiently high as to cause the offshore spawning stock to fall below the FMP's goal that it remain at or above 20 percent of the virgin biomass of the unexploited spawning stock. The Group also observed that 1986 exploitation rates were greatly in excess of rates that would allow realization of the management goal of escapement from nearshore waters of 20 percent of the unexploited juvenile red drum population into the offshore spawning stock. Finally, the Group judged that the fishing mortality rate for adult red drum (recreational and commercial) is between 3 and 5 percent, even with no allowable harvest in the EEZ, because there is a limited harvest of adults from nearshore waters and a limited incidental catch in other fisheries.

Based upon this information, the Group concluded: "The most liberal interpretations of the data available suggest that, at present, escapement of juveniles to the adult stock is less than 2 percent, because inshore fishing mortality remains high in all states. Limited observations on the age composition of the offshore stock also support the contention that few fish have reached breeding age during recent years. This possible major decline in recruitment to the adult stock underscores the importance of maintaining and protecting all remaining breeding fish."

Recommendations

The Group recommended that the Council: (1) Set the acceptable biological catch (ABC) for the EEZ at zero until necessary escapement levels are achieved; (2) maintian the management goal for the size of the offshore spawning stock of 20 percent of the virgin spawning stock; and (3) increase the juvenile escapement goal rate from 20 to 30 percent. The Group's report indicates that a serious situation exists in the red drum fishery for which a reduction in TAC is necessary immediately, much sooner than would be possible through an FMP amendment, particularly since, under current regulations, the 650,000-pound annual incidental catch allowance becomes available to the fisheries on January 1, 1988. The report also recommends that the Gulf States consider appropriate action for waters under their jurisdiction in order to achieve a 30 percent escapement rate of inshore juveniles to the offshore spawning stock.

The Council accepted the results of the stock assessment report and the Group's recommendations, determined that an emergency exists in the red drum fishery, and requested the Secretary of Commerce to take immediate emergency action under the Magnuson Act to implement the zero TAC for the primary area. In addition, the Council is proceeding as rapidly as possible with an amendment to the FMP to reduce TAC for the primary area to zero, which would be implemented at the end of the emergency period.

The Council directed the Regional Director to contact the States and request that they institute fishery closure in their waters similar to that in the EEZ. The Council also has requested that all Gulf States strive to achieve a goal of 30 percent escapement of juveniles to assure an adequate spawning stock size. The Group's report recommended specific actions which the States might take to attain this goal.

Regulatory Response

The Secretary concurs with the Council's determination that a serious situation exists involving the red drum fishery and that emergency action is warranted. This rule, therefore, is implemented under section 305(e)(2)(B) of the Magnuson Act to provide immediate protection to the red drum resource. This rule, for its duration, reduces the total allowable harvest of red drum in the EEZ to zero. In the meantime, an FMP amendment will be prepared by the Council to continue this zero harvest level until such time as a surplus exists in the offshore stock in the EEZ which can be removed with a minimum of risk to the resource.

Since production of eggs and larval fish available to migrate to nearshore waters for their growth into juveniles cannot be sustained by the current offshore spawning stock, it is incumbent upon the States to strengthen their management programs to increase levels of juvenile escapement. Cooperative and effective State action is essential to meet the goals and objectives of the FMP. Short of formal preemption under section 306(b)(1) of the Magnuson Act, closing the EEZ to all harvest of red drum is the most restrictive Federal action that can be taken to protect the stock from collapse.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds for good cause (i.e., to prevent further depletion of the red drum spawning stock in the EEZ) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public

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interest to provide prior notice and opportunity for public comment upon this rule, or to delay for 30 days it effective date, under the provisions of section 553(b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Mississippi, and Louisiana. Texas does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA may be obtained from address above.

This rule does not contain a collection of information requirement and therefore it is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 653

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—RED DRUM FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 653 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 653.7, paragraphs (a)(8), (17), (18), (19), (21), and (22) are suspended, January 1 through March 30, 1988, and a new paragraph (c) is added to be effective from January 1 through March 30, 1988, to read as follows:

§ 653.7 Prohibitions.

* * * * *

(c) It is unlawful for any person to retain on board a vessel or possess red drum in or from the primary or secondary areas as specified in § 653.22(f).

§ 653.21 [Amended]

3. Section 653.21 is suspended, January 1 through March 30, 1988.

4. In § 653.22, paragraphs (b), (d), and (e) are suspended, January 1 through March 30, 1988, and a new paragraph (f) is added to be effective January 1 through March 30, 1988, to read as follows:

§ 653.22 Harvest and landing limitations.

* * * * *

(f) *Harvest from the primary area.* No red drum may be harvested or prossessed in or from the primary area. Red drum caught in the primary area must be released immediately with a minimum of harm to the fish.

§ 653.23 [Amended]

5. Section 653.23 is suspended, January 1 through March 30, 1988.

[FR Doc. 87-30211 Filed 12-31-87; 1:28 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 71158-7288]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final 1988 fishery specifications.

SUMMARY: NOAA announces the final 1988 specifications for Pacific coast groundfish taken in the ocean off the coasts of Washington, Oregon, and California. The specifications include the acceptable biological catch, the optimum yield (quotas), and the distribution of the optimum yield between domestic and foreign fishing operations as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to establish allowable harvests of Pacific coast groundfish from the U.S. exclusive economic zone and territorial waters in 1988.

EFFECTIVE DATE: January 1, 1988, until modified, superseded, or rescinded.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140, or Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR Part 663 require that management specifications for groundfish be evaluated each calendar year, that preliminary specifications for the upcoming year be published in the **Federal Register** inviting public comment, and that final specifications be published in the **Federal Register** following public comment as described at 50 CFR 663.24. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), and the distribution of OY between domestic and foreign fishermen. The ABC is an estimate of the annual catch that can be taken of the more than 80 groundfish species managed by the FMP without jeopardizing the stock's productivity. The OY, which is specified for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), is based on socio-economic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be retained or landed each year from the exclusive economic zone (EEZ) (3–200 nautical miles) and the territorial sea (0–3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is apportioned into specifications of the amounts available for domestic and foreign fishing. The domestic annual harvest (DAH) consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), which are verified by surveys of the domestic industry in September and June. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than initially was estimated.

The other groundfish species managed under the FMP do not have numerical OYs. They may be regulated by gear, area, and catch restrictions. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization of some species in this multispecies complex by domestic processors precludes joint venture or foreign targeting on underexploited species in the complex because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing may not be directed on these "other" groundfish species in the multispecies complex. However, ABCs are specified for the major species or species groups.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22.

The Pacific Fishery Management Council (Council) reviewed and recommended preliminary specifications for the 1988 ABCs and received public comment at its September 1987 meeting. Because better scientific information became available in October, the Regional Director, NMFS, at the request of the Council, revised the ABCs for some species. The preliminary ABCs that were announced at 52 FR 45668 (December 1, 1987) were based upon the best available scientific information and surveys of the industry to estimate planned utilization.

Written public comments on the preliminary specifications were requested through December 16, 1987; none were received. The Council received public comment at its November 17–19, 1987 Council meeting, the last opportunity in 1987 for the Council to recommend final specifications for 1988. The Council considered public comments at that meeting in addition to advice from members of the council's Groundfish Advisory Subpanel (industry and consumer representatives) and Groundfish Management Team (state and federal fishery biologists and an economist) in recommending final specifications to NMFS. The Council recommended the following revisions to the preliminary specifications for sablefish in 1988.

Sablefish. Based on the best available information, the Groundfish Management Team determined that the 1988 ABC for sablefish should be significantly lower than recent landings, which averaged 13,600 metric tons (mt) between 1980 and 1986, because signs of biological stress were evident. Therefore, the ABC for sablefish remains as proposed at 10,000 mt, a 17 percent decrease from the 1987 ABC of 12,000 mt and about 25 percent lower than the 1980–1986 average. However, given the variabilities associated with the data and analytical methods used to estimate sablefish stock size and the difficulties in projecting landings, the Council recommended an OY range of 10,000 mt ± 8 percent (9,200 mt to 10,800 mt), with the intent of managing the fishery at the ABC, the midpoint of the range (10,000 mt). If total landings reach the upper end of the OY range (10,800 mt), all further landings will be prohibited. This strategy, in conjunction with management measures taken to slow the rate of landings, is intended to reduce the probability of a fishery closure early in the year. This will minimize the waste of incidentally caught sablefish which must be discarded after the quota is reached. Because domestic processors intend to process all available sablefish, DAP and DAH equal OY. No sablefish are available for joint venture or foreign fishing except for small incidental catches.

Pacific Whiting

The reserve for Pacific whiting (which equals 20 percent of OY) inadvertently was rounded to the nearest thousand metric tons in the preliminary specifications. It is more appropriately designated to the nearest hundred metric tons, consistent with the other specifications of OY and its components. Accordingly, the reserve is increased from 46,000 mt to 46,400 mt and TALFF is reduced from 20,000 mt to 19,600 mt.

All other ABC and OY designations for final specifications for groundfish in 1988 remain as proposed in the preliminary specifications. After considering this information, the Secretary of Commerce concurs with the Council's recommendations including the revisions stated above, and in the absence of other public comment announces the final specifications for 1988 as shown in Tables 1 and 2.

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1988 IN METRIC TONS FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	[2]	[2]	[2]	3,100
Pacific Whiting						[3] 232,000
Sablefish						[3] 10,000
Rockfish:						
Pacific Ocean Perch	0	0	[2]	[2]	[2]	0
Shortbelly						[3] 10,000
Widow						[3] 12,100
Other Rockfish: [4]						
Bocaccio	[2]	[2]	[2]	4,100	2,000	6,100
Canary	800	[5] 2,100	600	[2]	[2]	3,500
Chilipepper						[3] 3,600
Yellowtail	1,100	[5] 2,600	300	[2]	[2]	4,000
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,900
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish	700	3,000	1,700	1,800	500	7,700
Other fish: [6]						
Jack Mackerel [7]						12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "Other fish" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.
[3] Total all areas.
[4] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.
[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°21'34" N. latitude), and ABCs for the Columbia area are prorated as follows:

	Columbia area (total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining Rockfish	3,700	3,300	400

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.
[7] North of 39° N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1988

[In thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	232.0	16.0	150.0	166.0	46.4	19.6
Sablefish	[2] 9.2–10.8	9.2–10.8	0.0	9.2–10.8	0.0	0.0
Pacific ocean perch	[3] 1.3	[3] 1.3	0.0	[3] 1.3	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	12.1	12.1	0.0	12.1	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other species	[4]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: Sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.
[2] The Pacific Fishery Management Council has expressed its intent to manage for the midpoint of this range, 10,000 metric tons. However, all further landings will be prohibited if landings reach the upper end of the OY range (10,800 metric tons).
[3] Of this 1,300 metric tons, 500 metric tons is for the Vancouver subarea and 800 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).
[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Classification

This action is taken under the authority of 50 CFR 663.24 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the regulations implementing the original FMP.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30219 Filed 12-31-87; 3:30 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 71158-7288]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions on fishing in 1988 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, reduce or prevent biological stress, allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed in 1987 for these species.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) January 1, 1988, until modified, superseded, or rescinded. Comments will be accepted through January 21, 1988.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: This action supersedes fishing restrictions imposed in 1987 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and also adjusts the management measures at § 663.27(b)(3) for sablefish.

The FMP provides the means for managing over 80 species of groundfish caught in ocean waters off Washington, Oregon, and California. The FMP differentiates between species with numerical and non-numerical optimum yields (OYs). A species that may be harvested fairly selectively has a numerical OY, which is the maximum amount of that species that may be landed in a year (except for small incidental allowances in the foreign and joint venture fisheries). Landings in excess of OY are prohibited. Widow rockfish (*Sebastes entomelas*), Pacific ocean perch (*S. alutus*), and sablefish (*Anoplopoma fimbria*) have numerical OYs. When landing rates have become too high, trip limits have been imposed on these species to extend the fishery as long as possible throughout the year, but allow incidental catches to be landed to minimize waste of fish which must be discarded once an OY quota is reached.

Species which are not harvested selectively, or for which there is very little commercial interest or scientific data, are part of the non-numerical OY group and are managed most commonly by gear, area, and landing restrictions. An estimate of the acceptable biological catch (ABC), the annual catch that can be taken without jeopardizing the resource's productivity, has been made for most species in this group. (ABC estimates also are made for all species with numerical OYs.) Some species may be fished above the ABC. However, if one or more species in the group is biologically stressed, or is expected to become stressed if no limits on fishing are set, the Secretary of Commerce (Secretary) may determine that the harvest of species that are caught together should be reduced, even though some of those species are not stressed. Reduction usually has been accomplished by establishing a "harvest guideline" for the group as a whole and setting trip limits to achieve this harvest level. The harvest guideline may be, but is not necessarily, designated as a quota.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) has endorsed the determination of its Groundfish Management Team that if landings of widow rockfish, yellowtail rockfish (included in the *Sebastes* complex of rockfish), Pacific ocean perch, and sablefish are unrestricted, the likelihood or intensity of biological stress on these stocks is increased. Pacific ocean perch, in particular, is considered to be under long-term stress and is managed under a rebuilding schedule. Recent information on sablefish indicates the stock has declined much more than previously thought and currently is stressed. Landings of widow rockfish, Pacific ocean perch, and sablefish have been limited since the FMP was implemented in 1982 to minimize stress, or its likelihood, on these stocks; similarly, landings of the *Sebastes* complex have been restricted since 1983.

In its deliberations for 1988 management, the Council considered advice from its Groundfish Management Team (state and federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), the concerned public, and a Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, the Scientific and Statistical Committee, and the Groundfish Management Team. At its November 17–19, 1987 meeting in Portland, Oregon, the Council reviewed the latest data and developed management measures intended to limit landings of groundfish in 1988, thereby minimizing the likelihood and intensity of biological stress on groundfish stocks, and reducing the chances of having to close a fishery before the end of the year. In each case, the Council recommended a trip limit. As in 1987, the Council also recommended allocation of the sablefish resource between the trawl and nontrawl (fixed gear) user groups. The Council's recommendations for 1988 and actions taken by the Secretary on those recommendations are presented below.

Because the vast majority of groundfish landed off Washington, Oregon, and California is taken from the exclusive economic zone (EEZ) which extends from 3 to 200 nautical miles offshore, all groundfish taken and retained, possessed, or landed under these restrictions will be treated as though they were taken in the EEZ as in 1984–1987.

Widow Rockfish

Council Recommendation

The Council recommended a coastwide weekly trip limit of 30,000 pounds of widow rockfish, with only one landing above 3,000 pounds per vessel per week.

Rationale

The widow rockfish resource appears to be in about the same condition as was indicated by analyses in 1986. The stock is believed to be close to levels which produce the maximum sustainable yield (MSY), an average of the largest catch which can be taken continuously over time without depleting the stock. Evidence of a high proportion of young fish in the catch still is apparent, but it is not clear whether this indicates stress. It is difficult to determine whether the catch of large, mature fish, large incoming year classes, of fishing down a virgin stock accounts for the high proportion of young fish landed. Although biomass estimates show an encouraging degree of stability between 1986 and 1987, if the 1983 year class is as weak as expected, ABC may be reduced about 20 percent by 1990.

Trip limits have been used to limit landings of widow rockfish since 1982. In 1987, the year started with a 30,000-pound weekly trip limit and the OY was set at 12,500 metric tons (mt); the ABC was raised in-season to equal OY. At its September meeting, the Council recommended that, when 95 percent of OY is reached, the weekly trip limit should be lowered to 5,000 pounds to discourage target fishing while allowing incidental catches to be landed (52 FR 37466, October 7, 1987). This reduced trip limit was imposed on October 14 (52 FR 38429, October 16, 1987). Landings were not slowed, however, and OY was reached on November 7. The fishery was closed on November 25, the earliest date practicable (52 FR 45455, November 30, 1987).

The widow rockfish OY in 1988 is 12,100 mt, 3 percent lower than in 1987, and the rate of landings will be restricted in 1988 to minimize the probability of biological stress on the stock and to extend the fishery longer than otherwise would be possible. If this were not done, the OY quota could be reached early in the year, possibly by May or June, resulting in incidental catch and discards that would exceed OY. Accordingly, in 1988, the year will start with a 30,000-pound weekly trip limit as in 1987.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces:

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) One landing above 3,000 pounds of widow rockfish may be made during the period January 1–5, 1988.

These restrictions apply to all widow rockfish taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All widow rockfish possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sebastes Complex

Council Recommendation

The Council recommended that the 10,200 mt harvest guideline used for the *Sebastes* complex in 1987 be maintained in 1988. To achieve this, the Council recommended that trip limits be the same as at the beginning of 1987: A 25,000 pound weekly trip limit for the *Sebastes* complex taken north of Coos Bay, Oregon (containing no more than 10,000 pounds of yellowtail rockfish), with only one landing above 3,000 pounds allowed per vessel per week. The Wednesday–Tuesday definition of "week" remains in effect. Trip limit options are continued so that fishermen may choose a biweekly limit that allows landing up to 50,000 pounds (containing no more than 20,000 pounds of yellowtail rockfish) in one trip in a two-week period, or a twice-weekly limit that allows two landings up to 12,500 pounds each (containing no more than 5,000 pounds of yellowtail rockfish each) in a one-week period. These options apply only if proper notification is given to the appropriate state authority. As in the past, the number of landings less than 3,000 pounds is not restricted. The Council also recommended maintaining the 40,000-pound trip limit for landings of the *Sebastes* complex caught south of Coos Bay, Oregon, with no limit on the number of landings allowed per week.

Rationale

The harvest guideline for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon (43°21'34" N. latitude) is the sum of the ABCs of the species in the complex, and, at 10,200 mt, has been relatively stable since 1984. Landings are not necessarily prohibited when the harvest guideline is reached, although the Council could consider doing so.

Yellowtail rockfish, a dominant component in the *Sebastes* complex in the Vancouver and Columbia subareas, was documented as biologically stressed in March 1983 (48 FR 8283, February 28, 1983). Trip limits have been imposed since that time in an attempt to reduce the harvest of this species, which had been landed at rates exceeding the annual ABC estimates for the previous six years. Because yellowtail rockfish frequently are caught with other species in the multispecies *Sebastes* complex, limits were placed on the complex as a whole.

In 1987, weekly trip limits for the *Sebastes* complex caught north of Coos Bay were maintained at 25,000 pounds all year, but landing limits for yellowtail rockfish were reduced from 10,000 pounds in January to 7,500 pounds in July (52 FR 27818, July 24, 1987). Biweekly and twice-weekly landing options were available. Landings of the *Sebastes* complex in 1987 will exceed the 10,200 mt harvest guideline, and landings of yellowtail rockfish also will exceed the 1987 ABC of 3,600 mt for the same area. The Council did not consider these overages to be significant and did not recommend further reductions in the trip limits in 1987.

The stock biomass of yellowtail rockfish has been declining for the past two decades, although it appears to have stabilized in recent years. A comprehensive assessment of this species is expected in 1988; no new information currently is available. It is clear from historical data that unrestricted landings would exceed ABC significantly, thereby increasing the likelihood of biological stress on yellowtail rockfish. Accordingly, trip limits in 1988 are the same as those initially in effect in 1987, and may be adjusted during the year to keep landings close to the 1988 harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish.

As in past years, landings south of Coos Bay are limited to discourage large effort shifts into that area, but not to impede traditional operations. Accordingly, the 40,000-pound trip limit for the *Sebastes* complex caught south of Coos Bay is maintained as in 1987.

Secretarial Action

The Secretary concurs with the Council's recommendations and herein announces—

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads or idiot rockfish).

(b) "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish in the *Sebastes* complex taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All fish in the *Sebastes* complex possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) Coos Bay means 43°21'34" N. latitude, which is the latitude of the north jetty at Coos Bay, Oregon.

(d) It is unlawful to take and retain, possess, or land fish in excess of the 1987 trip limits until the new trip limit becomes effective on January 1, 1988.

(3) Restrictions on the *Sebastes* Complex Caught North of Coos Bay

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

Note: If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 30, 1987–January 5, 1988.

(b) *Biweekly trip limit.* If the state where the fish will be landed is notified as required by this paragraph, up to 50,000 pounds of the *Sebastes* complex, including no more than 20,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period.

Note: If fishing under the biweekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made December 23, 1987–January 5, 1988, or December 30, 1987–January 12, 1988. Biweekly trip limit options in effect on December 30, 1987 will continue until revoked as provided in this paragraph.

The state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate state agency, prior to the two-week period in which the rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206–753–6823; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone 707–445–6499.

(c) *Twice-weekly trip limit.* If the state where the fish will be landed is notified as required by this paragraph, up to 12,500 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period.

Note: If fishing under the twice-weekly trip limit, only two landings above 3,000 pounds of the *Sebastes* complex may be made during the week of December 30, 1987–January 5, 1988. Twice-weekly trip limit options in effect on December 30, 1987 will continue until revoked as provided in this paragraph.

The state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate state agency, prior to the week in which the rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the *Sebastes* Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless the owner or operator of the fishing vessel has notified the State of Oregon as required by paragraph (5)(b), no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Bay, or fish in one area and possess or land fish in the other area, if more than 3,300 pounds of the *Sebastes* complex is landed from that fishing trip. If fishing is conducted both north and south of Coos Bay, or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply. If fishing is conducted south of Coos Bay only, and fish are possessed or landed north of Coos Bay, then the restrictions on the *Sebastes* complex caught south of Coos Bay apply.

(b) Except as provided in paragraph (5)(c), notification must be submitted to one of the following offices of the Oregon Department of Fish and Wildlife, by telephone or in writing, prior to leaving port on a fishing trip: Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radio telephone. (The radio telephone message must be confirmed in writing by the vessel owner or operator to the address in subparagraph (b) above immediately on return to port; corrections and confirmations must be sent to the same address as the original message.) In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch

Council Recommendation

The Council recommended continuation in 1988 of the coastwide management measures that were in place for Pacific ocean perch POP in 1987. If more than 1,000 pounds of POP are on board, the trip limit for that species is 20 percent (by weight) of all legal fish on board or 5,000 pounds, whichever is less. Landings of POP less than 1,000 pounds per trip are unrestricted, regardless of the percentage on board.

Rationale

Pacific ocean perch is considered to be under long-term stress and has been managed for 8 years under a 20-year rebuilding schedule intended to increase the stock to levels that will produce the MSY. Trip limits have been imposed since the FMP became effective in 1982. Recruitment appears to be improving but at relatively low levels. Recent analysis of length data from the commercial fishery did not indicate any particularly strong year classes entering the fishery. Significant rebuilding of this species probably will not occur until one or more strong year classes recruit to the stock. Even if no POP were harvested in 1988, the desired 20-year rebuilding rate probably would not be met. However, incidental catches of this species in other fisheries are unavoidable, and the trip limit (and OY estimates) is designed to accommodate only these small incidental catches.

Landings of POP in 1987 are expected to be below the 500 mt OY for the Vancouver subarea (47°30' N. latitude to the Canadian border) and below the 800 mt OY for the Columbia subarea (43° to 47°30' N. latitude). By maintaining the same OYs and trip limits in 1988 as in 1987, the maximum opportunity for rebuilding will occur, short of

prohibiting fishing for all species in the Vancouver and Columbia subareas.

The trip limit is designed to eliminate target fishing for POP in these two northern subareas, and is applied coastwide to discourage those who would exceed the limit and allege the fish were caught legally elsewhere. Because Pacific ocean perch are not abundant south of the Columbia subarea, this trip limit is not expected to restrict fisheries there.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces—

(1) For POP coastwide (Washington, Oregon, and California), no more than 5,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less, may be taken and retained, possessed, or landed, per vessel per fishing trip. This provision applies only when more than 1,000 pounds (round weight) of POP are on board.

(2) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under Subpart B of Part 663, or any regulation or permit promulgated under the Magnuson Act.

(3) This restriction applies to all POP taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All POP possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sablefish

Council Recommendation

The Council recommended that the 1988 fishery be managed for the sablefish ABC of 10,000 mt, the midpoint of the OY range of 10,000 mt plus or minus 8 percent (9,200 mt to 10,800), and that sablefish be allocated 5,200 mt for trawl gear and 4,800 mt for non-trawl gear (predominantly pot and longline fixed gears). The non-trawl allocation is a quota beyond which landings are prohibited. A trip limit was recommended for trawl-caught sablefish of 6,000 pounds of 20 percent (by weight) of all legal fish on board, including sablefish, whichever is greater, with only two landings above 1,000 pounds allowed per vessel per week. This limit will be applied coastwide and is subject to in-season adjustments with the intent of keeping trawl landings at 5,200 mt in 1988. If it appears that trawl landings will exceed 5,200 mt before the end of the year, up to 800 mt may be added to the trawl allocation for incidental catches of sablefish taken unavoidably in fisheries for other species. Should any part of the 800 mt supplement be needed, management measures may be imposed to assure that only incidental catches are landed. This 800 mt could bring landings up to 10,800 mt, the upper limit of the OY range. Landings in excess of 10,800 mt will be prohibited.

The Council also recommended continuation of the coastwide trip limits for sablefish smaller than 22 inches: 5,000 pounds for trawl vessels and 1,500 pounds for non-trawl vessels.

Rationale

Two major gear groups harvest sablefish off Washington, Oregon and California. The non-trawl or fixed gear fleet generally targets on this species with little bycatch. The trawl fleet catches sablefish jointly with other species in its multispecies operations, sometimes encountering 25–30 percent sablefish, but the extent of targeting is not known. As catch and effort by both sectors have increased and OY has declined, the Council has tried several allocation schemes to manage this fishery.

Current regulations at § 663.27(b)(3) require that the last 10 percent of the sablefish OY be allocated equally between trawl and fixed gears, designate these allocations as quotas beyond which landings are prohibited, and place a percentage trip limit on trawl landings to slow that fishery while enabling incidental catches to be landed. This regulation was not successful in 1985 and was not applied in 1986 or 1987. In 1986, an emergency rule was used to allocate a larger proportion of OY, and in 1987, pursuant to § 663.22(a)(3), the entire OY was allocated. The Council is considering an FMP amendment which will delete the obsolete regulation and provide a long-term management strategy for sablefish. In the interim, again pursuant to § 663.22(a)(3), this action adjusts the management measures at § 663.27(b)(3).

In 1987, the OY was lowered from 13,600 (1986) mt to 12,000 mt and allocated 52 percent to trawl gear and 48 percent to fixed gear, approximately the distribution of landings by the two gear types over the previous ten years. This management strategy was based on the concerns expressed by the Council's Groundfish Management Team (Team) that the ABC for sablefish had been exceeded for five consecutive years, and that if landings continued to exceed ABC, the likelihood of biological stress on the stock would be greatly increased. A trip limit on trawl-caught sablefish of 6,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is greater, was imposed on October 2 to lower landings (52 FR 37466, October 7, 1987). The fixed gear quota was reached and that fishery was closed on October 22 (52 FR 41304, October 27, 1987), so when the trawl quota was reached on November 4, landings by all gear types were prohibited (52 FR 42445, November 5, 1987).

Signs of biological stress have become more evident for sablefish. Although a revised stock assessment is not yet complete, trends were noted that suggest that recent landings (averaging 13,600 mt per year from 1980 to 1986) cannot be sustained. Washington-Oregon pot index surveys show a 66 percent decline in catch per unit of effort from 1983 to 1987, which may be due to reduced abundance. Also, the average size of sablefish has declined in the surveys.

The 1987 ABC/OY of 12,000 mt was 12 percent lower than the 13,600 mt average landings in 1980–1986. This decrease is considered to be insufficient to stop the decline in abundance. Therefore, the Council recommended lowering the ABC in 1988 to 10,000 mt, 17 percent below the 1987 ABC and 26 percent below the 1980–1986 average landings, which may be a sufficient decrease to reduce biological stress on the stock. Given the variabilities associated with the data and analyses used to estimate stock size and the difficulties in projecting landings, the Council recommended an OY range of ABC plus or minus 8 percent (9,200 mt to 10,800 mt).

The Council intends to manage the fishery for ABC (10,000 mt), the midpoint of the range, allocating 5,200 mt for trawl gear and 4,800 mt for non-trawl gear. This allocation is based on proportions negotiated by industry representatives for 1987 (52 percent trawl gear; 48 percent non-trawl gear), but applied to the 1988 OY target of 10,000 mt. An allocation scheme for the 1988 fishing year was not agreed upon by the industry groups. The Council recommended that the 1987 proportions be used in 1988 to provide the non-trawl fishermen an opportunity to plan their harvest for their maximum benefit and to allow the trawl fishermen to conduct their mixed-species fishery without having to discard sablefish.

The trip limit on trawl landings of sablefish is intended to manage the trawl fleet so that its allocation of 5,200 mt will not be exceeded, discards will be minimized, and the fishery will last as long as possible during the year. The Team estimated that the trip limit of 6,000 pounds or 20 percent, whichever is greater, would not enable year-round trawl operations; therefore, the Council added a frequency limit of two landings over 1,000 pounds per week to discourage day trips directed on sablefish. The Team will monitor the trawl landings and recommend trip limit changes necessary to meet the trawl allocation. Should these trip limits fail to limit the landings to 5,200 mt for the year, as much as 800 mt may be added to the trawl allocation to minimize the discards of incidentally caught sablefish. Additional fishing restrictions may be imposed if needed to avoid reaching the trawl allocation.

Because the non-trawl fishery is primarily a target fishery for sablefish, incidental catches of that species are not a problem for most fixed gear fishermen. However, the California set net fishery takes minimal amounts of sablefish which must be discarded after the allocation is reached. Also, most fixed gear-caught sablefish are frozen and maintenance of a year-long supply can be achieved even if the fishery is not active. Therefore, the non-trawl allocation will not be adjusted during the year, and non-trawl landings will be prohibited when its allocation is reached. Further landings by all gear types will be prohibited if 10,800 mt is reached.

Trip limits on sablefish smaller than 22 inches (total length) have been imposed since 1983 to reduce the likelihood of biological stress, which is expected if landings of juvenile sablefish are not curtailed. Markets for small sablefish have been strong and the overharvest of juvenile fish which become the future brood stock could occur if no size limit were imposed. Therefore, the trip limits in effect since April 27, 1987 (52 FR 15728) for sablefish smaller than 22 inches are continued in 1988. These limits (5,000 pounds for trawl landings and 1,500 pounds for non-trawl landings) are designed to minimize discards and the likelihood of biological stress. For the trawl fishery, the limit on small sablefish is included in the overall trip limit so that, of the 6,000 pounds or 20 percent (whichever is greater) of sablefish that are landed, no more than 5,000 pounds may be fish smaller than 22 inches.

Secretarial Action

The Secretary concurs with the Council's recommendation and hereby announces:

(1) Gear Allocations

(a) The sablefish fishery will be managed to achieve the ABC of 10,000 mt, the midpoint of the OY range of 9,200 mt to 10,800 mt, which is allocated 5,200 mt to trawl and 4,800 mt to nontrawl landings in 1988.

(b) The non-trawl gear allocation is a quota. If this quota is reached, retention or landings of sablefish by nontrawl gear will be prohibited as provided for in § 663.23.

(c) The trawl allocation may be increased during the year by as much as 800 mt to allow for incidental catches.

(d) If 10,800 mt (the upper end of the OY range) is reached, further landings of sablefish by all gear types will be prohibited until January 1, 1989.

(2) Trip and Size Limits

(a) *Trawl gear.* (i) For trawl-caught sablefish, no more than 6,000 pounds or 20 percent of all legal fish on board including sablefish, whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip. Only two landings of sablefish above 1,000 pounds may be made per vessel in a one-week period. These limits may be modified in-season to achieve the trawl allocation of 5,200 mt.

(A) "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuseday, local time.

(B) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under Subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) Of those sablefish taken with trawl gear under paragraph (2)(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed, per vessel per fishing trip.

(b) *Non-trawl gear.* No more than 1,500 pounds of sablefish smaller than 22 inches (total length) caught with non-trawl gear may be taken and retained, possessed, or landed, per vessel per fishing trip.

(c) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(d) For processed ("headed") sablefish,

(i) The minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and

(ii) The product recovery ratio (PRR) established by the State where the fish is or will be landed is used to convert the processed weight to round weight for purposes of applying the trip limit.

Note: The Federal trip limit for processed ("headed") sablefish is based on the product recovery ratios (PRRs) used by Washington, Oregon, or California, as in the past. It should be noted that the State PRRs may differ and fishermen should contact fishery enforcement officials in the State where the fish will be landed to determine that state's offical PRR.

(e) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(3) This restriction applies to all sablefish taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California. All sablefish possessed 0–200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained 0–200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(4) Pursuant to § 663.22(a)(3), the regulations at § 663.27(b)(3) are adjusted until further notice.

(5) Non-trawl (fixed) gear inlcudes set nets, traps or pots, longlines, commerical vertical hook-and-line gear, troll gear, and trammel nets.

(6) Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(7) All weights and percentages of fish on board are based on round weights. If sablefish are processed, refer to paragraph (2)(d) for conversion to round weight.

In-season Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

These limits for widow rockfish, Pacific ocean perch, the *Sebastes* complex, and sablefish apply to vessels of the United States, inlcuding those vessels delivering groundfish to foreign processors. Retention of these species

by foreign fishing or processing vessels is limited by incidental percentage limits established under § 611.70.

U.S. vessels operating under an experimental fishing permit issued under § 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot prawn, and ridgeback prawn fisheries are governed by regulations at § 663.28. If fishing for groundfish and pink shrimp, spot prawn or prawn ridgeback prawn in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If unrestricted, landings unquestionably will result in several ABCs being exceeded in 1988, increasing the likelihood of biological stress of those stocks. Prompt action to limit these fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, Pacific ocean perch, and sablefish stocks and alleviate the necessity for fishery closures before the end of 1988. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective January 1, 1988.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in October and November 1987 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Suspension of the Compensation Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on suspending, for an indefinite period, a provision of the marketing order for lemons produced in California and Arizona, relating to compensation rates for Lemon Administrative Committee (LAC) members. This action would allow the LAC to recommend an increase in the daily compensation which LAC members or alternates acting as members may receive. Presently, such compensation is limited to $25 per day.

DATES: Comments must be received by February 5, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 910 (7 CFR Part 910), as amended, regulating the handling of lemons grown in California and Arizona. The order is in effect pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS), has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons subject to regulation under the lemon marketing order, and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers and producers of lemons may be classified as small entities.

This action would not have a significant economic impact on small producers or handlers. The compensation rate paid to LAC members is derived from the administrative budget which consists of uniform assessments collected from handlers in order for the LAC to operate and carry out its functions each crop year. The LAC does not anticipate that it would be necessary to increase the current assessment rate to cover the additional expense. The compensation rate paid to LAC members is not a substantial portion of the LAC's budget, therefore, we do not expect it to become a substantial item in the budget now or in the future. Thus, there is no significant impact anticipated.

The LAC is responsible for locally administering the marketing order for California-Arizona lemons. The LAC consists of 13 members from three grower districts. Each member has an alternate member and an additional alternate member to act as a member when such member is absent. The LAC meets once a week to consider supply and demand conditions for lemons.

Section 910.29 of the lemon marketing order currently provides that members of the LAC, and their respective alternates when acting as members, be reimbursed for expenses necessarily incurred by them in the performance of their duties. Section 910.29 states that these members and alternates shall receive compensation at a rate to be determined by the LAC, which shall not exceed $25 for each day, or portion thereof, spent in attending meetings of the LAC. This rate has been in effect since 1971.

The LAC believes that this rate is too low under current economic conditions. Many LAC members and alternates commute long distances and spend time away from their own or their employers' businesses in order to fulfill their obligations as LAC members. Therefore, the LAC has recommended that the provision of the order limiting compensation to $25 be suspended indefinitely in order to allow the LAC to recommend to the U.S. Department of Agriculture an increase in the rate. The LAC intends to recommend an increase in compensation consistent with compensation rates paid to members of the Navel and Valencia Orange Administrative Committees. That rate is $50 per day for members or alternates acting as members and $100 per day for the non-industry member or alternate acting as a non-industry member. Any increase in the compensation rate would be subject to approval by the Secretary in the annual LAC budget approval process.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

For the reasons set forth in the preamble, 7 CFR Part 910 is proposed to be amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.29 is amended as follows:

§ 910.29 [Amended]

In § 910.29 remove the phrase ". . . at a rate to be determined by the committee which rate shall not exceed $25 . . .".

Dated: December 30, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–118 Filed 1–5–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1126

[Docket No. AO–231–A55]

Milk in the Texas Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider industry proposals to amend the Texas milk order. The hearing was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial number of diary farmers who supply milk for the market. Others proposals have been submitted by handlers who operate plants in the Texas and other southern Federal milk marketing areas. Under the proposals, handlers would receive transportation credits from pool funds to offset some of the cost incurred in hauling excess milk supplies to distant nonpool plants for surplus disposal. The proposals would establish transportation credits at rates of 2.2 to 3.6 cents per hundredweight per 10 miles on such milk movements during the months of March-June and all or part of December. In addition, alternative pricing points have been proposed for milk produced in certain areas of Texas or southern Oklahoma that is diverted to nonpool plants located outside Texas or southern Oklahoma. Also, because of recent increases in Texas milk production, AMPI has requested that the proposed changes be considered on an expedited basis. Proponents claim that the amendments will promote the orderly marketing of milk that exceeds local manufacturing capacity and offset the cost incurred by handlers for providing services of marketwide benefit.

DATE: The hearing will convene at 9:00 a.m., local time, on February 2, 1988.

ADDRESS: The hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061, (214) 399–1010.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061, beginning at 9:00 a.m., local time, on February 2, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

PART 1126—[AMENDED]

The authority citation for Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc.

Proposal No. 1

Amend § 1126.13 by revising paragraph (e)(6) and adding paragraphs (e) (7) and (8) to read as follows:

§ 1126.13 Producer milk.

* * * * *

(e) * * *

(6) Except as provided in paragraphs (e) (7) and (8) of this section, diverted milk shall be priced at the location of the plant to which diverted:

(7) For milk diverted from farms of producers located in Zone 1 or Zone 3 of Order 126 to nonpool plants located outside the State of Texas, such milk shall be priced as if such was received at Dallas, Texas.

(8) For milk diverted from farms of producers located in Zone 1–A of Order 126 or in the following Southern Oklahoma counties in Zone 2 of Order 106: Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, and Tillman to nonpool plants located outside the State of Texas and outside of Zone 2 of Order 106, such milk shall be priced as if received at a plant located in Zone 2 of Order 106.

Proposal No. 2

Amend § 1126.60 by revising paragraph (h) and adding a new paragraph (i) to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed on and after the effective date hereof during the months of March, April, May, June, and December subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred from a pool plant or diverted from farms of producers located in Zone 1 or Zone 3 in this order to nonpool plants located outside Texas and which is classified as Class II or Class III milk pursuant to § 1126.42(b) or § 1126.42(d) by the rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 90 miles from the City Hall in Dallas, Texas, as determined by the market administrator.

(i) With respect to milk marketed on and after the effective date hereof during the months of March, April, May, June, and December subtract the amount obtained by multiplying the pounds of producer milk that is diverted from farms located in Zone 1–A of this order and the following Southern Oklahoma counties in Zone 2 of Order 106: Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, and Tillman to nonpool plants located outside Texas and outside Zone 2 of Order 106 and which is classified as Class II or Class III milk pursuant to § 1126.42(b) or § 1126.42(d) by the rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 75 miles from the nearest of the following locations: The City Hall in Burkburnett, Texas, or the City Hall in Sulphur, Oklahoma, as determined by the market administrator.

Proposed by the Southland Corpocation; Baker and Sons Dairy, Inc.; Borden, Inc.; Blue Bell Creameries, Inc.; Dairy Fresh, Inc.; Dean Foods Company; Hygeia Dairy Company; Kinnett Dairies, Inc.; Malone & Hyde Dairy; and Southern Belle Dairy, Inc.

Proposal No. 3

Amend § 1126.13 by revising paragraph (e)(6) and adding paragraphs (e) (7) and (8) to read as follows:

§ 1126.13 Producer milk.

* * * * *

(e) * * *

(6) Except as provided in paragraphs (e) (7) and (8) of this section, diverted milk shall be priced at the location of the plant to which diverted:

(7) During the months of March, April, May, and June and December 16 through 31, milk diverted from farms of producers located in Zone 1 or 3 of Order 126 to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area shall be priced as if such was received at the plant located in Zone 1.

(8) During the months of March, April, May, and June, and December 16 through 31, milk diverted from farms of producers located in Zone 1–A of Order 126 to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area shall be priced as if such was received at a plant located in Zone 1–A of Order 126.

Proposal No. 4

Amend § 1126.60 by revising paragraph (h) and adding a new paragraph (i) to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

* * * * *

(h) With respect to milk marketed during the months of March, April, May, and June, and December 16, through 31, subtract the amount obtained by the following sentence. Multiply the pounds of bulk fluid milk products classified as Class III milk pursuant to § 1126.42(b) or § 1126.42(d), that were transferred from a pool plant located in Zone 1 or Zone 3 of Order 126, or diverted from farms of producers located in Zone 1 or 3 of Order 126, to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area by the rate for each truck load of milk so moved that is equal to 2.2 cents per hundredweight for each ten miles or fraction thereof that the nonpool plant is located more than 100 miles from the nearer of the Courthouse in Gainesville, Sherman, Paris or Mt. Pleasant, Texas, as determined by the market administrator.

(i) With respect to milk marketed during the months of March, April, May, and June, and December 16 through 31, subtract the amount obtained by the following sentence. Multiply the pounds of bulk fluid milk products classified as Class III milk pursuant to § 1126.42(b) or § 1126.42(d), that are transferred from a pool plant located in Zone 1–A or Order 126 or diverted from farms of producers located in Zone 1–A of Order 126, to nonpool plants (except distributing plants regulated under other Federal orders) located north of the Order 126 marketing area by the rate for each truckload of milk so moved that is equal to 2.2 cents per hundredweight for each ten miles or fraction thereof that the nonpool plant is located more than 100 miles from the City Hall in Burkburnett, Texas as determined by the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Chapman E. Dunham, P.O. Box 110939, Carrollton, Texas 75011–0939, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Texas Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: December 30, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–117 Filed 1–5–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-61-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of Comment Period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to Model BAC 1-11 200 series airplanes, that would have required inspections of the main landing gear (MLG) support structure. This proposal revises the proposed rule by changing certain proposed repetitive inspection procedures, and changes certain actions to be taken if cracks are discovered. This action is taken as a result of recent a investigation of the damage tolerance of the beam, supported by in-service experience, which revealed that the frequency of inspections after crack repair must be increased.

DATE: Comments must be received no later than February 8, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspections of the MLG on British Aerospace Model BAC 1-11 200 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 14, 1987 (52 FR 30380). That action was prompted by reports of cracks in the MLG rear pintle support beam. This condition, if not corrected, could lead to the collapse of the MLG.

In its comments to the proposal, British Aerospace, stated that BAe Alert Service Bulletin 57-A-PM5896, Issue 2, as referenced in the proposed rule, has been superseded by Issue 3, dated April 13, 1987. British Aerospace suggested that this least issue be referenced in the rule because of a significant increase in the recommended frequency of inspections after crack repair.

The FAA concurs and has determined it is necessary to revise the NPRM to propose periodic inspections for cracks in the MLG rear pintle support beam, and repair or replacement, if necessary, in accordance with Service Bulletin 57-A-PM5896, Issue 3, dated April 13, 1987. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment.

Paragraph C. of the proposed rule has also been revised to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the proposed AD.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising Notice of Proposed Rulemaking, Docket No. 87-NM-61-AD, as published in the **Federal Register** on August 14, 1987 (52 FR 30380), to read as follows:

British Aerospace: Applies to Model BAC 1-11 200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the collapse of the main landing gear due to cracks in the rear pintle support beam, accomplish the following:

A. Prior to the accumulation of 50,000 landings or within the next 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 3, dated April 13, 1987. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

B. If cracks are discovered during the inspections required by paragraph A., above, accomplish the following:

1. If cracks are less than 0.8 inches on pre-modification PM3070 airplanes, or less than 0.2 inches on post-modification PM3070 airplanes, repair or replace the cracked part prior to further flight, in accordance with paragraph 2.2.1 of the Accomplishment Instructions of British Aerospace BAC1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 3, dated April 13, 1987. If cracks are repaired in accordance with the service bulletin, continue to perform eddy current or dye penetrant inspections at intervals not to exceed 800 landings, providing that, in the case of pre-modification PM3070 airplanes, no cracks are present in the aft half-beam.

2. If cracks exceed 0.8 inches on pre-modification PM3070 airplanes, or exceed 0.2 inches on post-modification PM3070 airplanes, replace the cracked part with an airworthy part prior to further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 29, 1987.

Wayne J. Barlow, Director, *Northwest Mountain Region.*

[FR Doc. 88-75 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 5H5467/P441; FRL-3311-8]

Pesticide Tolerances for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a food and a feed additive regulation to permit the plant growth regulator ethephon in molasses (from sugarcane). These regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by Union Carbide Agricultural Products Co.

DATE: Comments must be received on or before February 5, 1988.

ADDRESS: Submit written comments, bearing the identification number [FAP 5H5467/P441], by mail to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Rm. 245, CM#2, Arlington, VA, (703)-577-1800.

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, has submitted a food additive petition (FAP 5H5467) proposing to amend 21 CFR 193.186 and 21 CFR 561.225 by establishing regulations permitting residues of the plant growth regulatory ethephon [(2-chloroethyl)phosphonic acid] in the food commodity and feed item sugarcane molasses at 1.5 parts per million (ppm). Because this food/feed additive request was submitted during the review process of the raw agricultural commodity, these tolerances are being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 4F3142/P442) published elsewhere in this issue of the **Federal Register**.

The pesticide in considered useful for the purpose for which the tolerances are sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). It is proposed, therefore, that 21 CFR Parts 193 and 561 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [FAP 5H5467/P441]. All written comments filed in response to this proposed rule will be available in the product manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or

establishing exemptions from tolerance requirement do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subject in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Chapter I be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.186(a) by adding and alphabetically inserting in the table therein the food commodity sugarcane, molasses, to read as follows:

§ 193.186 Ethephon.

* * * * *

Foods	Parts per million
* * * * *	
Sugarcane, molasses	1.5
* * * * *	

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.225(a) by adding and alphabetically inserting in the table therein the feed item sugarcane, molasses, to read as follows:

§ 561.225 Ethephon.

(a) * * *

Feeds	Parts per million
* * * * *	
Sugarcane, molasses	1.5
* * * * *	

[FR Doc. 88-165 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-87-1761; FR-2432]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Determination; request for comments.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies, for alleged discriminatory housing practices, that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) ("the Act"). This notice advises that a determination has been made that the fair housing law of the State of Ohio, on its face, is substantially equivalent to the Act. The notice seeks public comment on this determination and on present or past performance of the agency administering and enforcing the State law. The Department will consider all comments submitted in making its determination as to whether the State law provides rights and remedies which are substantially equivalent to the Act.

DATES: Comments due: February 6, 1988.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wagner D. Jackson, Acting Deputy Assistant Secretary for Enforcement and Compliance, Room 5206, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6836. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or withdraw recognition of substantially equivalent laws through publication of a notice in the **Federal Register**. The purpose of this notice is to advise the public, in accordance with 24 CFR 115.6(b), that the fair housing law of the State of Ohio has, on its face, been determined to be substantially equivalent.

The evaluation of the Ohio law has been conducted in accordance with 24 CFR 115.3 Under § 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State or local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State of local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the local agency charged with administration and enforcement of the fair housing law of the State of Ohio demonstrates that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

In accordance with 24 CFR 50.20(k), this notice is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Accordingly, public comment is solicited in accordance with 24 CFR 115.6(b) with respect to the fair housing law of the State of Ohio.

Dated: December 22, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-139 Filed 1-5-88; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-167-86]

Minimum Vesting Standards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the minimum vesting standards for qualified employee plans. Changes to the applicable laws were made by the Tax Reform Act of 1986. These proposed regulations amend the current regulations to reflect the changes. In the Rules and Regulations portion of this issue of the **Federal Register** the Internal Revenue Service is issuing temporary regulations relating to the minimum vesting standards. The text of these temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1988. The amendments are proposed to be generally effective for plan years beginning after December 31, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-167-86), 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: V. Moore of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3938, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of the Code of Federal Regulations. New §§ 1.410 (a)-3T, 1.410 (a)-8T, 1.410 (a)-9T, 1.411 (a)-3T, 1.411 (a)-4T, and 1.411 (a)-8T are added to Part 1 of Title 26 of the Code of Federal Regulations. When these temporary regulations are promulgated as final regulations, §§ 1.410 (a)-3, 1.410 (a)-5, 1.410 (a)-7, 1.411 (a)-3, 1.411 (a)-4, and 1.411 (a)-8 will be revised to reflect the new provisions. For the text of the temporary regulations, see T.D. 8170 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the amendments to the Income Tax Regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is V. Moore of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel. Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-112 Filed 1-5-88; 8:45 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3312-6]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published November 2, 1987 (52 FR 42019), has been extended to February 5, 1988. This notice proposed to disapprove a revision to the Ohio State Implementation Plan, which would relax the existing emission limits for volatile organic compounds from the Morgan Adhesives Company for 12 paper coating lines (K001-K012) and one vinyl casting line (K013). This source is located in Summit County, Ohio. USEPA is taking this action based on an extension request by a Commentor.

DATE: Comments are now due on or before February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Specialist Air and Radiation Branch (5AR-26) U.S. Environmental Protection Agency, Region V 230 South Dearborn St., Chicago, Illinois 60604 (312) 886-6031

Dated: December 24, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-163 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3312-7]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for the notice of proposed rulemaking published October 27, 1987 (52 FR 41310), proposing disapproval of a revision to the Ohio State Implementation Plan for monthly averaging for volatile organic compound emissions for an architectural aluminum extrusion coating line (K001)

at J&S Aluminum Corporation, in Mahoning County, Ohio, has been extended to February 5, 1988. USEPA is taking this action based on extension requests by J&S Aluminum Incorporation and the State of Ohio.

DATES: Comments are now due on or before February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Regulatory Specialist, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Dated: December 24, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-182 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6E3457/P440; FRL-3312-9]

Pesticide Tolerance for 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (referred to in this document as "pronamide") in or on the raw agricultural commodity winter peas. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3457/P440], must be received on or before February 5, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm: 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3457 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Oregon.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide pronamide (3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) and its metabolites (calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the raw agricultural commodity winter peas at 0.05 part per million (ppm). The petitioner proposed that use of pronamide on winter peas be limited to Idaho, Oregon, and Washington based on the geographical representation of the residue submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

EPA issued a notice of Rebuttable Presumption Against Registration (RPAR) on the herbicide pronamide, published in the **Federal Register** of May 20, 1977 (42 FR 25906), on the basis that pronamide had been shown to be oncogenic in male (not female) mice at dosages of 150 milligrams (mg)/kilogram (kg) and 300 mg/kg in the diet. After analyzing the comments and information received in response to the RPAR notice, the Agency evaluated the risks and benefits of use of pronamide and determined that certain modifications must be made to the terms and conditions of registration to achieve a reduction in the risk level. With these label changes, the Agency concluded that the benefits of use of pronamide exceeded the risks of use. (See 44 FR 3083; January 15, 1979—Determination of the Availability of Position Document-Pronamide, and the Final Notice of Determination, published in the **Federal Register** of October 26, 1979 (44 FR 61640).)

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day rat feeding study with a (NOEL) of 1,350 ppm (equivalent to 67.5 mg/kg/day, core supplementary data).
2. A 90-day dog feeding study with a NOEL of 450 ppm (equivalent to 33.75 mg/kg/day).
3. A 2-year dog feeding study with a no-observed-effect level (NOEL) greater than 300 ppm (equivalent to 7.5 mg/kg/day).
4. A 2-year rat feeding/oncogenic study with a NOEL greater than 300 ppm (equivalent to 15 mg/kg/day) and no oncogenic effects observed at feeding levels of 30, 100, and 300 ppm (core supplementary data).
5. An 18-month oncogenicity study using $B_6C_6F_1$ mice (core supplementary data) which indicated that hepatocellular carcinomas were present in male mice tested at the 1,000 (150 mg/kg/day) and 2,000 ppm (300 mg/kg/day) dose levels.
6. A 2-year mouse oncogenicity study (core supplementary data) using $B_6C_6F_1$ mice which indicated an increased incidence of liver tumors (including hepatocellular carcinomas) at feeding levels of 500 (75 mg/kg/day) and 2,500 ppm (375 mg/kg/day).
8. A rabbit teratology study with a maternal NOEL of 5 mg/kg/day and a developmental NOEL of 20 mg/kg/day.
7. A three-generation rat reproduction study with a NOEL of greater than 300 ppm (highest level tested) for systemic and reproductive effects (core supplementary data).

Data considered desirable but lacking include: teratogenicity (rat), chronic feeding oncogenicity study (rat); reproduction; mutagenicity and metabolism.

Pronamide is tentatively classified a Group C carcinogen based on the effects observed in the mouse studies. Data requested by the Agency must be submitted and evaluated before a final classification can be made. An oncogenic risk assessment has been conducted, however, by the Agency based on available information. The potential oncogenic risk from dietary exposure resulting from existing uses of pronamide is calculated to the 10^{-6}. The dietary risk assessment is based on a potency estimator (Q^*_1) of 1.63×10^{-3} $(mg/kg/day)^{-1}$ and dietary exposure to the theoretical maximum residue contribution (TMRC) for established tolerances for pronamide. The potential oncogenic risk associated with the proposed tolerance for winter peas poses a negligible increase in risk (1.5×10^{-7}). In addition, oncogenic risk to applicators is not likely to exceed risks associated with existing uses of pronamide.

The provisional acceptable daily intake (PADI), based on the 2-year dog feeding study (NOEL of 7.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.075 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 4.5 mg/day. The theoretical maximum residue contribution (TMRC) from published tolerances for a 1.5-kg daily diet is calculated to be 0.000660 mg/kg/day; the current action will increase the TMRC by 0.000009 mg/kg/day (1 percent). Published tolerances and the proposed tolerance for winter peas utilize less than 1 percent of the PADI.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas liquid chromatography, is available in the Pesticide Analytical Manual (PAM), Volume II, for enforcement purposes. There is no reasonable expectation of secondary residues since the feeding of treated vines or grazing of livestock in treated areas is prohibited. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.317 will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3457/P440]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerances requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, is is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.317 is amended by adding and alphabetically inserting the raw agricultural commodity winter peas in paragraph (b), to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Peas, dried (winter)	0.05

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[FR Doc. 88-184 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4F3142/P442; FLR-3312-1]

Pesticide Tolerance for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the plant growth regulator ethephon in or on the commodity sugarcane at 0.1 part per million (ppm). This regulation was requested by Union Carbide Agricultural Products Co., Inc., and proposes to establish the maximum permissible level for residues of the growth regulator in or on sugarcane.

DATE: Comments must be received on or before February 5, 1988.

ADDRESS: Submit written comments, bearing the identification number [PP 4F3142/P442], by mail to:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Rm. 245, CM#2, Arlington, VA, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 14, 1984 (49 FR

47556), which announced that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 4F3142) to EPA proposing to amend 40 CFR 180.300 by establishing a tolerance for residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity (RAC) sugarcane at 0.02 part per million (ppm).

The use of this commodity is limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition to propose the establishment of a tolerance for residues of the plant growth regulator ethephon on the RAC sugarcane at 0.1 ppm. Because there is a potential increase in risk to humans from the revision, the tolerance of 0.1 ppm is being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include several acute studies, a 2-year chronic feeding/oncogenicity study in rats fed dosages of 0, 1.5, 15, and 150 milligrams/kilogram/day (mg/kg/day) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 150 mg/kg/day [highest dose test (HDT)] and a systemic no-observed-effect level (NOEL) of 1.5 mg/kg/day; a chronic feeding study in dogs fed levels of 0, 0.75, and 7.5 and high-dose levels of 75 mg/kg/day [week (wk) 0–3], 50 mg/kg/day [wk 4, 5], 25 mg/kg/day (2w 6–24), and 37.5 mg/kg/day (wk 25–104) with a histopathologic NOEL of 7.5 mg/kg/day and an RBC cholinesterase NOEL of 0.75 mg/kg/day; a teratology study in rats fed dosage levels of 0, 200, 600, and 1,800 mg/kg/day with no teratogenic effects up to and including 600 mg/kg/day (there were no treatment-related teratogenic effects at 1,800 mg/kg/day (HDT), but poor survival in maternal animals limited the usefulness of this group for teratogenic evaluation) with a maternal NOEL of 600 mg/kg/day and a fetotoxic NOEL > 1,800 mg/kg/day (HDT); and a teratology study in rabbits fed dosages of 0, 50, 100, and 250 mg/kg/day with no teratogenic effects at 50 mg/kg/day (number of litters at termination were insufficient to determine teratogenic effects at 100 and 250 mg/kg); an embryotoxic NOEL of 50 mg/kg/day and a maternal toxic NOEL of 100 mg/kg. There were noticeable signs of systemic toxicity and significant maternal mortality at 250 mg/kg/day. There were fewer live fetuses per litter in the mid- and high-dose groups. Other studies considered include a three-generation reproduction study in rats fed dosage levels of 0, 10, 37.5, and 75 mg/kg/day with a NOEL greater than (>) 75 mg/kg/day; a mutagenicity (Ames) test (technical)—not mutagenic; a mutagenicity (Ames) test (technical)—not mutagenic; a mutagenicity (Ames) test (formulation)—negative; a mutagenicity test—micronucleus (technical)—negative; a mutagenicity test with *Saccharomyces cerevisiae* (formulation), which produced significant increase in the frequency of mitotic conversion at 42 and 45 mg/milliliter (mL); a mutagenicity test with *Saccharomyces cerevisiae* (formulation), which produced an increase in reverse mutation at 42 and 45 mg/mL without metabolic activation; a mutagenic test with *Escherichia coli* (formulation), which did not produce DNA damage; and a dominant lethal mutagenicity test in rats (negative).

The acceptable daily intake (ADI), based on the 2-year chronic feeding study in rats (NOEL of 1.5 mg/kg/day) and using a hundredfold safety factor, is calculated to be 0.015 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.7437 mg/day (1.5 kg diet). The current action of 0.1 ppm on sugarcane will contribute 0.00546 mg/day and the accompanying food/feed additive tolerance of 1.5 ppm on molasses (see FAP 5H5467/P441, which appears elsewhere in this issue of the **Federal Register**) will contribute 0.00069 mg/day or a total of 0.00615 mg/day, or 0.68 percent of the 0.9 mg/day maximum permissible intake (MPI). Published tolerances utilize 82.63 percent [1] of the ADI. These actions would increase the total percentage of ADI utilized to 83.31 percent.[2]

Data lacking are a repeat of the chronic feeding/oncogenicity study in mice. The company has been notified of this deficiency and has agreed to repeat the study. These tolerances are toxicologically supported because the total increase in utilized ADI is less than 1 percent (0.68 percent).

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. This method is listed in the *Pesticide Analytical Manual*, Vol. II. Secondary residues are not expected to increase significantly in meat, milk, poultry, or eggs from this use.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 4F3142/P442]. All written comments filed in response to this proposed rule will be available in the product manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: December 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

[1] If a tolerance on carrots of 7 ppm has been published, this value is 88.23 percent.

[2] With the 7 ppm tolerance on carrots this would be 88.92 percent.

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.300, by designating the existing text and table therein as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.300 Ethephon; tolerances for residues

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n), of 0.1 part per million is established for residues of the plant regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the raw agricultural commodity sugarcane.

[FR Doc 88-166 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

Commercial Driver Testing and Licensing Standards; Public Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FHWA's Office of Motor Carriers announces four public forums to solicit comments from interested persons on its proposal to establish minimum standards for State testing and licensing of commercial motor vehicle drivers. (See 52 FR 47328, December 11, 1987, Docket MC-87-18.) According to the Commercial Motor Vehicle Safety Act of 1986, the proposed standards must be established by the FHWA no later than July 15, 1988. These standards will impact drivers of vehicles in both interstate and intrastate commerce if the vehicle is greater than 26,000 pounds gross vehicle weight rating, designed to carry 15 or more passengers, including the driver, or is placarded for hazardous materials.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350.

SUPPLEMENTATY INFORMATION: The proposed standards include:

(1) Commercial driver licensing and testing procedures to be used by States;

(2) Knowledge, skills, and abilities which drivers of commercial vehicles must possess; and

(3) Information to be recorded on the commercial driver's license.

The standards will also require that drivers of commercial motor vehicles take and pass appropriate knowledge and skills tests by April 1, 1992, in order to be qualified to operate commercial motor vehicles.

The public forums will be held between 1:00 p.m. and 5:00 p.m. (local time) in the following locations.

January 19—Federal Aviation Administration Auditorium, 800 Independence Avenue, SW., Washington, DC 20591

January 21—Georgia International Covention & Trade Center, Holiday Inn Crowne Plaza (at the airport), 1902 Sullivan Road, College Park, Georgia 30337, (Atlanta Georgia)

January 26—Sheraton St. Louis Hotel (near the airport), 910 North 7th Street, St. Louis, Missouri 63101

January 28—Sheraton Plaza La Reina Hotel (at the airport), 6101 West Century Boulevard, Los Angeles, California 90045

Anyone interested in discussing the proposal at the public forums should contact Mr. Stanley Hamilton at the Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., Room 3103, Washington, DC 20590 (telephone 202-366-0985).

Issued on: December 31, 1987.

Ray Barnhart,

Federal Highway Administrator.

[FR Doc. 88-171 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 71280-7280]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1988 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1988. These quotas were selected from a range defined as optimum yield (OY) for each fishery, as adjusted to reflect fishing activity at the end of 1987. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1988.

DATE: Comments will be accepted until February 1, 1988.

ADDRESS: Send comments on the proposed 1988 fishing quotas to Jack Terrill, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930. The information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst), 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values proposed in this notice, the Regional Director, Northeast Region, NMFS, considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

As of December 4, 1987, surf clam landings from the Mid-Atlantic Area were 2,333,000 bushels, out of an adjusted quota of 2,600,000 bushels. Surf clam landings from the Georges Bank Area were 114,000 bushels from an adjusted quota of 330,000 bushels. Surf clam landings from the Nantucket Shoals Area were 148,000 bushels from an adjusted quota of 190,000 bushels. Ocean quahog landings were 4,390,000 bushels from a quota of 6,000,000 bushels. Initially, surf clam quotas for 1987 were set at 2,650,000 bushels for the Mid-Atlantic Area, 300,000 bushels for Georges Bank Area, and 200,000 bushels for the Nantucket Shoals Area, and subsequently all three quotas were adjusted for over/under harvests in 1986.

The following quotas are proposed for the surf clam and ocean quahog fisheries for 1988:

BEST COPY AVAILABLE

Fishery areas	1988 quota (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	6,000,000

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas in the **Federal Register.**

Other Matters

This action is taken under § 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 31, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30218 Filed 12-31-87; 3:30 pm]

BILLING CODE 3510-22-M

50 CFR Part 658

Shrimp Fishery, Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of notice of availability of an amendment to a fishery management plan.

SUMMARY: NOAA announces that Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) has been returned by the Secretary of Commerce to the Gulf of Mexico Fishery Management Council (Council) because it did not meet the requirements of the Magnuson Fishery Conservation and Management Act.

DATE: Amendment 4 was returned on December 31, 1987. The Council may resubmit this amendment.

ADDRESS: A copy of Amendment 4 and its proposed regulations may be requested from Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813-228-2815.

SUPPLEMENTARY INFORMATION: The Council transmitted Amendment 4 to the Secretary on December 4, 1987. It was returned because its analysis of socioeconomic effects of the amendment, if implemented, was inadequate to meet all legal requirements of the Magnuson Act, the Regulatory Flexibility Act, and Executive Order 12291. The Council may revise and resubmit this amendment.

NOAA published a notice of availability (52 FR 47615, December 15, 1987) outlining the purpose of the amendment, which would make the minimum size landing and possession limits of the State where landed apply to white shrimp taken in the exclusive economic zone. The Council may supply adequate documentation for the measure and resubmit the amendment. The public is invited to comment to the Council while it is revising the amendment. When the amendment is resubmitted, another notice of availability will be published, followed within two weeks by the proposed implementing regulations. Under section 304(b)(3)(B)(ii) of the Magnuson Act, the public will then have only 30 days to obtain and comment on the resubmitted amendment.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-136 Filed 1-5-88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations, First Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Pub. L. 96-177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1988 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made by the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1988 is 1,386.8 million pounds.

2. The first quarterly estimate of the aggregate of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1988 is 1,475 million pounds.

Done at Washington, DC this 30th day of December, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-114 Filed 1-5-88; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of meetings.

SUMMARY: NOAA makes use of an Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See "SUPPLEMENTARY INFORMATION" for dates of scheduled meeting.

ADDRESS: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: The United States Commissioner to the International Whaling Commission, c/o NMFS, Room 1011, Universal South Building, 1825 Connecticut Ave., NW, Washington, DC. 20235.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, Office of International Affairs, National Marine Fisheries Service, Department of Commerce, Washington, DC 20235. Phone: (202) 673-5281.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary of State for the preparation and negotiations of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is held in the summer. The major purpose of the preparatory meetings is to provide for participation in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling, and such participation is and shall continue to be a prerequisite to the establishment of U.S. negotiating positions for IWC meetings.

Because the meetings discuss U.S. negotiating positions, the substance of the meetings must be kept confidential. For example, proposed position papers that may be circulated at a meeting for discussion cannot be removed from the meeting site and must be collected at the close of each meeting.

Any U.S. citizen with an indentifiable interest in United States whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation. Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of positions papers during 1988 is as follows:

January 21, 1988—Interagency Committee Meeting to continue preparations for the 1988 IWC meetings. Interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, at the above address.

February 1, 1988—Nominations for the U.S. Delegation to the June IWC meetings are due to the U.S. Commissioner, with a copy to Becky Rootes at the above address. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations received by this date.

Prospective Congressional advisors to the Delegation should contact the Department of State directly.

February 29, 1988—(approximate date) Anticipated Interagency Committee meeting following receipt of the preliminary agenda for the June IWC meetings which is due to be circulated by the IWC Secretariat on or before March 15. The meeting will review the preliminary agenda and proposed additions to this agenda, all of which will be available at the meeting. The date and location for this meeting will be confirmed as soon as the preliminary agenda is received.

March 7, 1988—Forward United States agenda changes to the IWC Secretariat.

March 30, 1988—Publish in the **Federal Register** the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

April 1, 1988—Due date for circulation of the provisional agenda by the IWC Secretariat. This "second draft" of the agenda reflects any additions submitted by member countries and stands until considered by the Commission at the opening session of its Annual Meeting.

April 10, 1988—Draft position papers to the U.S. Commissioner.

May 2, 1988—Revised position papers due to the U.S. Commissioner.

May 6, 1988—Final Interagency Committee Meeting to consider U.S. position papers and discuss arrangements for the Delegation's work.

May 6–19, 1988—Annual Meeting of the Scientific Committee, San Diego, California.

May 23–27, 1988—Technical Committee subcommittee and working group meetings (on aboriginal/subsistence need for whaling, format of statistics, infractions, humane killings, comprehensive assessment, and such other meetings as may be scheduled), and preliminary meetings of the Finance and Administration Committee, Auckland, New Zealand.

May 29, 1988—Meeting of the U.S. Delegation, Auckland, New Zealand.

May 30–June 3—40th Annual Meeting of the IWC, Auckland, New Zealand.

Persons who would like to be included in IWC Interagency Committee meetings may contact Becky Rootes at the address or telephone number provided above to obtain meeting times and location.

(16 U.S.C. 1801 *et seq.*)

Dated: December 31, 1987.

Henry R. Beasley,

Director, Office of International Affairs.

[FR Doc. 88–135 Filed 1–5–88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, January 21, 1988 at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, December 23, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 88–170 Filed 1–5–88; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Under OMB Review

Reason for this notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: Application and Authorization for Access to Confidential Information (Industrial); DD Form 48–2; OMB Control No. 0704–0031

Type of Request: Extension.

Annual Burden Hours: 66,600.

Annual Responses: 200,000.

Needs and Uses: The Defense Investigative Service uses this form for those contractors participating in the Defense Industrial Security Program to obtain personal data from a United States citizen being considered for a CONFIDENTIAL personnel security clearance granted by a contractor. The form is prepared jointly by the person being considered for the clearance and by the contractor. Completion of this form is a prerequisite to the granting of a CONFIDENTIAL clearance by a contractor. The form helps save Government resources by decreasing the time it takes to grant a personnel security clearance at the CONFIDENTIAL level.

Affected Public: Individual/Contractor.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

December 31, 1987.

[FR Doc. 88–115 Filed 1–5–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Massachusetts Institute of Technology; Intent To Grant Exclusive Patent License

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces its intention to grant to the Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Massachusetts, a corporation of the Commonwealth of Massachusetts, an exclusive royalty-bearing license under United States Patent Application Serial No. 852,587 filed 16 April 1986 in the names of Wilfrid B. Veldkamp and Gary J. Swanson for "Method of Fabricating High Efficiency Binary Planar Optical Elements".

The license will be granted unless any objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the publication of this notice. Copies of the patent application may be obtained from the same addressee.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–109 Filed 1–5–88; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 13, 1988 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Blue Mountain Consolidated Water Company D–77–47 CP

An application to increase ground and surface water withdrawal to augment public water supplies in the Boroughs of Nazareth, Pen Argyl, Wind Gap, Stockerton, and Tatamy and the Townships of Forks, Palmer, Bushkill, Upper Nazareth and Plainfield in Northampton County, and Ross Township in Monroe County, Pennsylvania. The Pennsylvania Department of Environmental Resources has proposed that the increase be limited to 3.0 million gallons per day (mgd) total from Pen Argyl Run, Ross Common Creek, Cherry Creek, plus three springs in Cherry Valley, and nine interspersed wells. The applicant's existing water supply allocation is 2.0 mgd.

2. Upper Hanover Authority D–82–8 CP Renewal.

An application for the renewal of a ground water withdrawal project to supply up to 3.75 million gallons (mg)/30 days of water from Well No. 3. Commission approval on November 23, 1982 was limited to five years and has expired. The applicant requests that the total withdrawal from Well No. 2 remains limited to 3.75 mg/30 days. The project is located in Upper Hanover Township, Montgomery County and is in the Southeastern Pennsylvania Ground Water Protected Area.

3. SES Gloucester Company, LPO D–87–38.

An application to withdraw up to 17.28 mgd of Delaware River water for use as noncontact cooling water in a proposed refuse-to-energy project. The applicant also plans to consumptively use an average of approximately 0.06 mgd of treatment plant effluent from the adjacent oil refinery's ground water decontamination project. Alternate process water supply will be available from the once-through cooling system. The 15-acre project site is adjacent to the Coastal Refinery tank farm, in West Deptford Township, Gloucester County, New Jersey. The proposed facility will have the capacity to process 575 tons/day of municipal and commercial refuse, while generating up to 13.3 MW of electricity. The proposed facility is designed to serve the Gloucester County area through the year 2010. The noncontact cooling water will be returned to the Delaware River through a proposed diffuser.

4. Borough of Catasauqua D–87–60 CP

An application for approval of a ground water withdrawal project to supply up to 23.7 mg/30 days of water to the applicant's distribution system from new Well No. 5, and to limit the withdrawal from all wells to 40 mg/30 days. The project is located in North Catasauqua Borough, Northampton County, Pennsylvania.

5. Mid-Atlantic Shipping and Stevedoring, Inc. D–87–67

An application to dredge at the Salem River Cutoff in order to provide adequate depth of water for vessel access to a proposed cargo relieving facility. The applicant plans to mechanically dredge approximately 8,500 cubic yards of materials to a depth of 15 feet below mean low water. The 20,000-square foot dredged area will not extend beyond 70 feet from the shoreline. The proposed marine terminal will include a ship dock, a dock apron, a warehouse, and a truck loading and unloading facility. The project site is immediately west of the existing port in Salem City, Salem County, New Jersey.

6. Schwenksville Borough Authority D–87–71 CP

An application for a new ground water withdrawal from Well No. 7 to augment existing ground water supplies for the Schwenksville Borough Authority. Approval is requested to pump 6.5 mg/30 days from Well No. 7. The well is located 1500 feet northeast of the intersection of Zieglerville Road and Route 29 in Lower Frederick Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

7. Texaco Refining and Marketing, Inc. D–87–91

An application for approval of a ground water withdrawal of up to 17.28 mg/30 days of water from an interceptor trench as part of the applicant's oil recovery/ground water decontamination project. The project is located in New Castle County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

December 29, 1987.

[FR Doc. 88–55 Filed 1–5–88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 5, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should

be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirements for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 31, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Extension
Title: Demonstration and Compliance with Terms and Conditions of the Bilingual Fellowship Contract
Agency Form Number: ED 4561–3
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 500
Burden Hours: 1000
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by any person who has received a Bilingual Education Fellowship to demonstrate compliance with the program regulations. The Department uses this information to determine the recipients' compliance with the terms and conditions of the Bilingual Education Fellowship Agreement.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Case Service Report
Agency Form Number: RSA 911
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 83
Burden Hours: 3464
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Vocational Rehabilitative agencies report client and program data. The Department uses the information collected to assess the accomplishments of program goals and objectives, and prepare the Annual Report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application for the Preschool Grants Program under the Education of the Handicapped Act
Agency Form Number: B20–24P
Frequency: Biennually
Affected Public: State and local governments
Reporting Burden:
Responses: 59
Burden Hours: 354
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to apply for funding under the Preschool Grants Program. The Department uses the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application for Client Assistance Program
Agency Form Number: B20–1P
Frequency: Triennially
Affected Public: State and local governments
Reporting Burden:
Responses: 59
Burden Hours: 9.8
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by States to apply for funds under the Client Assistance Program. The Department uses the information to make grant awards.

Office of Vocational and Adult Education

Type of Review: Extension
Title: Reporting Requirements under the Carl D. Perkins Vocational Education Act of 1984
Agency Form Number: C30–1P
Frequency: Biennially
Affected Public: State and local governments
Reporting Burden:
Responses: 4212
Burden Hours: 1,638,712
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: States are required to report on organizations and local educational agencies that participate in the State-administered programs under the Carl D. Perkins Vocational Education Act of 1984, as amended. The Department uses the information to determine compliance with the Act and effectiveness of vocational education programs.

Office of Postsecondary Education

Type of Review: New
Title: Guaranteed Student Loan Pilot Debt Collection Study
Agency Form Number: G477
Frequency: Monthly
Affected Public: State and local governments, non-profit institutions
Reporting Burden:
Responses: 240
Burden Hours: 2280
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect information on defaulted Guaranteed Student Loans from guarantee agencies. The information will be used to determine whether to assign defaulted Guaranteed Student Loans to the Department of Education for collections.

[FR Doc. 88–133 Filed 1–5–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.146]

Notice Inviting Applications for New Awards Under Section 722 of Stewart B. McKinney Homeless Assistance Act; Education for Homeless Children and Youth Program

Purpose: To provide assistance under section 722 of the Stewart B. McKinney Homeless Assistance Act to enable State educational agencies to plan and implement programs for the education of homeless children and youth.

Deadline for Transmittal of Applications: April 30, 1988.

Applications will be processed as they are received. For applications that are not submitted by the April 30, 1988 deadline, the Secretary may lack sufficient time to review them and may allocate the remaining funds under this program to participating States.

Applications Available: January 6, 1988.

Available Funds Anticipated: $4,600,000 for use in Fiscal Year 1988.

Estimated Range of Awards: $50,000–$406,371, based on the formula distribution of funds mandated by the McKinney Act.

Estimate Number of Awards: 52.

Project Period: 12 months.

Applicable Regulations: The U.S. Department of Education is not issuing regulations under section 722 of the Stewart B. McKinney Homeless Assistance Act. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, and 78 apply to this program. Furthermore, "Nonregulatory Guidance for Implementing Title VII, Subtitle B, Section 722 of the Stewart B. McKinney Homeless Assistance Act: Education of Homeless Children and Youth" has been provided to each State educational agency and may be relied on by those agencies in administering the program.

For Application for Information Contact: Dr. Richard LaPointe, Deputy Assistant Secretary for Elementary and Secondary Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (RM 2198–6257), Washington, DC 20202.

Telephone (202) 732–5113.

Program Authority: 42 U.S.C. 11431–11435

Dated: December 30, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–134 Filed 1–5–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden; i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before February 5, 1988.

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–539.
3. 1902–0062.
4. Gas Pipeline Certificate; Import/Export.
5. Extension.
6. On occasion.
7. Required to obtain or retain a benefit.
8. Businesses or other for profit.
9. 44 respondents.
10. 44 responses.
11. 84,480 hours.
12. Section 3 of the Natural Gas Act requires importers and exporters of natural gas to receive authorization. Under the DOE Act this authority rests with the Secretary of Energy and can be delegated in part to the Commission.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, December 30, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–140 Filed 1–5–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87–205–000 and CP87–205–001]

Texas Gas Transmission Corp.; Notice To Include Additional Facilities in the FERC Staff's Environmental Assessment and Request for Comments

December 30, 1987.

The staff of the Federal Energy Regulatory Commission (FERC) announced on November 5, 1987, that it was reviewing the potential environmental impact associated with a proposal by Texas Gas Transmission Corporation (Texas Gas) for construction and operation of approximately 131 miles of 16- and 20-inch diameter natural gas pipeline extending between Breckinridge County in northern Kentucky and Johnson County, Indiana. The purpose of this new pipeline would be to transport and sell up to 30 billion cubic feet of natural gas annually to Citizens Gas & Coke Utility (Citizens Gas) of Indianapolis.

In order to accept the new supply of natural gas from Texas Gas, Citizens Gas would also need to construct and operate about 9.5 miles of nonjurisdictional 20-inch diameter pipeline and related facilities extending between the receipt point 1 mile south of the Johnson-Marion County border (west of State Route 37 and south of county road 1000 N) and the corner of Raymond and Harding Streets in Marion County. The proposed route would

essentially run parallel with and on the west side of State Route 37. Most of the route would be adjacent to existing overhead electrical transmission power lines. Detailed maps of the proposed route are included as an appendix to this notice.[1]

The facilities which would be needed by Citizens Gas to implement the Texas Gas proposal will be included in the FERC staff's environmental review of the Texas Gas Project. This review will culminate in the preparation of an environmental assessment. Those who wish to provide environmental comments on the facilities proposed by Citizens Gas may send such comments to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should be as specific as possible and should contain supporting documentation or rationale, as appropriate. A copy of the comments should also be sent to Laurence J. Sauter, Jr., Project Manager, Environmental Analysis Branch, Room 7312, Office of Pipeline and Producer Regulation, at the same address. All correspondence must reference Docket Nos. CP87-205-000 and CP87-205-001, and be filed within 30 days of the date of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-144 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Applications (Union Electric Co. et al.); Filed With the Commission

[Project No. 459-000 et al.]

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 459-022.

c. *Date Filed:* December 16, 1986.

d. *Applicant:* Union Electric Company.

e. *Name of Project:* Osage.

f. *Location:* Osage River in Benton, Camden, Miller and Morgan Counties, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. *Contact Person:* Mr. James J. Cook, Attorney, Union Electric Company, P.O. Box 149, St. Louis, MO 63166, (314) 554-2237.

i. *FERC Contact:* Peter K. Lyse (202) 376-9479.

j. *Comment Date:* February 5, 1988.

k. *Description of Proposed Amendment:* The project license would be amended to revise the prescribed flood control regulation of the project reservoir (Lake of the Ozarks) to reflect changes in the hydrological conditions in the Osage basin due to the construction and operation of the U.S. Army Corps of Engineers' Harry S. Truman Project, located upstream of the Osage Project. (A copy of the amendment application may be obtained by interested parties directly from Union Electric Company).

l. *This notice also consists of the following standard paragraphs:* B & C.

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2854-014.

c. *Date Filed:* November 17, 1987.

d. *Applicant:* Town of Vidalia, Louisiana & Catalyst Old River Hydroelectric Limited Partnership.

e. *Name of Project:* Old River Project.

f. *Location:* On the Mississippi & Old Rivers, in Concordia Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mayor Sam Randazzo, City of Vidalia, P.O. Box 2010, Vidalia, Louisiana 71373, (318) 336-5206.

i. *FERC Contact:* Nanzo T. Coley, (202) 376-9416.

j. *Comment Date:* February 3, 1988.

k. *Amendment of License:* The amendment of license would consist of realigning the transmission line route to lessen the impacts on private lands and to avoid traversing environmentally sensitive wildlife management areas as requested by the State of Louisiana, Department of Wildlife and Fisheries. The approved and revised transmission line routes are both approximately 40-miles long. The revised transmission line would run west of the approved line at variable distances from 200 to 1,500 feet.

l. *This notice is also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Preliminary Permit.

b. *Project No:* 8635-000.

c. *Date Filed:* October 2, 1984, and reinstated on November 6, 1987.

d. *Applicant:* Independence Electric Corporation.

e. *Name of Project:* Cave Run Hydro Project.

f. *Location:* On the Licking River near Farmers, Bath and Rowan Counties, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. G. William Miller, President, Independence Electric Corporation, 1215 19th Street, NW., Washington, DC (202) 783-4141.

i. *FERC Contact:* Ed Lee, (202) 376-9828.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Cave Run Dam and reservoir, and would consist of: (1) The existing outlet works consisting of a trashrack, an enclosed intake structure, a 15-foot-diameter circular tunnel and two service and emergency control gates: (2) a new powerhouse, to be constructed adjacent to and on the south side of the existing spillway basin, and housing two 5-MW generating units for a total installed capacity of 10 MW; (3) a proposed tailrace; (4) a new 69-kV transmission line approximately 1.5-mile-long interconnecting with an existing 69-kV line, owned by Kentucky Utilities Company; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 30,200 MWh, and the cost of the work to be performed under the permit would be $50,000.

l. *Purpose of the Project:* The Applicant anticipates that the power generated will be sold to a nearby utility company.

m. This preliminary permit application was reinstated by Commission Order Denying Appeal, 41 FERC ¶ 61,144, issued November 6, 1987, that also provides no further opportunity for completion by any interested party.

n. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4a. *Type of Application:* Exemption (5MW or Less).

b. *Project No.:* 10442-000.

c. *Date Filed:* July 10, 1987.

d. *Applicant:* The Azure Mountain Power Company.

e. *Name of Project:* St. Regis.

f. *Location:* St. Regis River in Franklin County, New York.

g. *Filed Pursuant to:* Section 408, Energy Security Act of 1980, 16 U.S.C. 2708-2709.

h. *Applicant Contact:* Mr. Matthew W. Foley, P.O. Box 593, Wadhams, NY 12990, (518) 962-4514.

i. *FERC Contact:* Thomas O. Murphy, (202) 376-9829.

j. *Comment Date:* February 3, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing 10-foot-high, 115-foot-long dam; (2) replacement of the existing fixed flashboards with hinged boards creating a spillway crest elevation of 1242.25 feet msl; (3) an existing reservoir with a surface area of 225 acres, and a storage capacity of 800 acre-feet; (4) two proposed generating units with a total rated capacity of 700-kW; (5) a proposed 8-foot-deep, 25-foot-wide, and 125-foot-long tailrace; (6) a proposed 160-foot-long, 480-V transmission line tying into the existing Niagara Mohawk system; and (7) appurtenant facilities. The applicant estimates the average annual energy production will be 3 GWh.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D3a.

5. a. *Type of Application:* Preliminary Permit.

b. *Project No:* 10476-000.

c. *Dated Filed:* September 21, 1987.

d. *Applicant:* White Oak Hydroelectric Corporation.

e. *Name of Project:* White Oak Hydroelectric.

f. *Location:* On the Winnipesaukee River, in the towns of Tilton and Northfield, in Belknap and Merrimack Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act. 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Irvin Tolles, Hydro Dynamics Corporation, 36B Bay Street, P.O. Box 240, Manchester, NH 03105, (603) 669-3822.

i. *FERC Contact:* Thomas O. Murphy (202) 376-9829.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A new dam and spillway with an overall length of 180 feet and a height of 14 feet, to be located at the site of a destroyed dam; (2) a proposed reservoir which will have a surface area of 9 acres and 30 acre-feet of storage capacity at its normal maximum surface elevation of 456.25 feet msl; (3) a proposed powerhouse with an installed generating capacity of 900-kW; (4) a proposed 100-foot-long, 4.16kV transmission line; and (5) appurtenant facilities.

l. *This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.*

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10496-000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* Big Creek.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on Big Creek, in King County, Washington. Township (T) 24 N Range (R) 8 E. T 24 N R 9 E, T 25 N R 8 E. T 25 N R 9 E, and T 25 N R 10 E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885-3986.

i. *FERC Contact:* Thomas Dean, (202) 376-9275.

j. *Comment Date:* February 24, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,400 feet msl; (2) a 4,000-foot-long, 12-inch-diameter penstock leading to; (3) a powerhouse at elevation 1,420 feet msl containing a single generating unit with a capacity of 1,183 kW operating at 980 feet of hydraulic head; and (4) an 8-mile-long, 115-kV transmission line.

The applicant estimates the average annual energy production to be 5.18 GWh. The approximate cost of the studies under the permit would be $40,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Surrender of License.

b. *Project No.:* 4856-005.

c. *Date Filed:* October 26, 1987.

d. *Applicant:* Utah Board of Water Resources.

e. *Name of Project:* Long Park Hydropower Project.

f. *Location:* On Sheep Creek in Daggett County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* D. Larry Anderson, Director, 1636 West North Temple, Suite 310, Salt Lake City, Utah 84116-3156.

i. *FERC Contact:* Jesse W. Short, (202) 376-9818.

j. *Comment Date:* February 5, 1988.

k. *Description of the Proposed Surrender:* The licensee requests the surrender of the license for Project No. 4856 stating that the project is uneconomical at the present time. Construction of the project has not begun. The project would have consisted of: (1) The applicant's existing earth-filled dam, 110 feet high and 790 feet long; (2) the existing reservoir covering approximately 400 acres with a storage of 13,700 acre-feet; (3) a new 42-inch diameter steel and concrete penstock 9,600 feet long; (4) a new 50- by 42-foot concrete powerhouse containing one 7.0-MW turbine/generator unit operating under a head of 1,025 feet; (5) a new 69-kV transmission line 9.3 miles long; and (6) appurtenant facilities.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10440-000.

c. *Date Filed:* July 6, 1987.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Black Bear Lake.

f. *Location:* On Black Bear Lake in the First Judicial District on Prince of Wales Island, Alaska near the towns of Klawock and Craig. The project will be located within the Tongass National Forest.

T 72 S, R 81 E.,
Sec. 29, 31, 32
T 73 S, R 82 E.,
Sec. 12, 13
T 74 S, R 83 E.,
Sec. 7, 18

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*

Mr. Robert Grimm, President, Alaska Power & Telephone Company, P.O. Box 222, Port Townsend, WA 98368, (206) 385-1733.

Vernon J. Neitzer, Vice President, Alaska Power & Telephone Company, P.O. Box 459, Skagway, AK 99840.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376-9527.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A screened intake structure consisting of four header pipes, approximately 200 feet above the dam at elevation 1,683 feet; (2) a 3-foot-diameter penstock extending from the intake to the dam; (3) a 15-foot-high, 85-foot-long gravity-type dam located at the outlet of the existing Black Bear Lake; (4) the existing 226 acre Black Bear Lake reservoir with a storage capacity of 1,900 acre-feet at a normal surface elevation of 1,696 feet; (5) a 36-inch-diameter diversion bypass conduit; (6) a 30-foot-long spillway crest at elevation 1,696 feet; (7) a concrete valve house containing a 36-inch butterfly valve to be located behind the dam; (8) a 3,400-foot-long penstock transiting from a 36-inch to 24-inch diameter; (9) a powerhouse containing two generating units with a total rated capacity of 3,000 kW, producing approximately 20,900 MWh of energy annually with a provision for an additional unit; (10) a 15-foot-wide tailrace discharging project flows into Black Bear Creek; (11) an aerial tramway to traverse the penstock route; (12) a 14-mile-long, 34.5-kV transmission line tying into the existing Klawock distribution system. No new roads will be constructed for the purpose of conducting these studies.

[1] These maps have not been printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $100,000.

l. *Purpose of Project:* Project power would be sold to the City of Klawock.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10494–000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* Lennox Creek.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on Lennox Creek, in King County, Washington. Township (T) 24 N Range (R) 8 E, T 24 N R 9 E, and T 25 N R 10 E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885–3986.

i. *FERC Contact:* Thomas Dean, (202) 376–9275.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,000 feet msl; (2) a 1,200-foot-long, 60-inch-diameter penstock leading to; (3) a powerplant at elevation 1,600 feet msl containing a single generating unit with a capacity of 1,879 kW operating at 400 feet of hydraulic head; and (4) a 13-mile-long, 115–kV transmission line.

The applicant estimates the average annual energy production to be 8.23 GWh. The approximate cost of the studies under the permit would be $40,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10400–000.

c. *Date Filed:* April 27, 1987.

d. *Applicant:* Soldier Canyon Water Company.

e. *Name of Project:* Soldier Canyon Hydroelectric Project.

f. *Location:* On an existing irrigation pipeline in Section 32, T 4 S, R 4 W, SLB&M, near the town of Stockton, in Tooele County, Utah.

g. *Filed Pursuant to:* Section 30 of the Federal Power Act, 16 U.S.C. 823(a)

h. *Applicant Contract:* Mr. Kirk Watkins, P.O. Box E, Stockton, UT 84071 (801) 882–0779.

i. *FERC Contact:* Mr. Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* February 5, 1988.

k. *Description of Project:* The proposed project would utilize the flows of the applicant's existing 21,000-foot-long, 18-inch-diameter pressurized irrigation pipeline (to be rehabilitated). The project would consist of a powerhouse with a total installed generating capacity of 1,675 kW operating under a head of 1,820 feet. A 2-mile-long, 12.5–kV transmission line is to connect the project with an existing transmission line owned by a local utility. The applicant estimated average annual energy generation of 7.98 kWh will be sold to the local utility.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3b.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10460–000.

c. *Date Filed:* August 25, 1987.

d. *Applicant:* D.S. Pyle, L.E. Bell, B.G. Butler.

e. *None of Project:* Little Tallapoosa River.

f. *Location:* On the Little Tallapoosa River near Graham, Randolph County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r)

h. *Applicant Contact:* Mr. D.S. Pyle, 2605 Regency Drive, East, Tucker, GA 30084, (404) 493–6101.

i. *FERC Contact:* Michael Dees (202) 376–9830.

j. *Comment Date:* February 24, 1988.

k. Description of Projects: The proposed project would consist of: An existing concrete dam 155 feet long and approximately 10 feet high; (2) an existing reservoir; (3) an existing intake trash rack; (4) an existing powerhouse 24 feet by 18 feet; (5) two or three proposed turbine-generators of 300-kW combined capacity; (6) a proposed tailrace 12 feet wide and six feet deep; (7) a proposed 12–kV transmission line one or two miles long; and (8) appurtenant facilities. The estimated annual energy production is 1.7 GWh. Project power would be sold to Alabama Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000. The dam is owned by B.G. Butler.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. *Type of Filing:* Petition Alleging Commitment of Substantial Monetary Resources.

b. *Project No.:* 10490–000.

c. *Date Filed:* October 1, 1987.

d. *Applicant:* Reeds Creek Hydro, Inc.

e. *Name of Project:* Reeds Creek Hydroelectric Project.

f. *Location:* In Clearwater National Forest, on Reeds and Snake Creeks, in Clearwater County, Idaho. Township 38N and Range 4E.

g. *Filed Pursuant to:* Electric Consumers Protection Act (ECPA), Pub. L. 99–495, section 8(b) (1986).

h. *Applicant Contact:* Mr. James R. Morris, Vice President, Reeds Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501, (208) 799–1352.

i. *Comment Date:* February 5, 1988.

j. *FERC Contact:* Thomas Dean, (202) 376–9275.

k. *Description of Project:* The applicant has filed a Petition Alleging Commitment of Substantial Monetary Resources (Petition) for the Reeds Creek Hydroelectric Project, which would consist of two new 8-foot-high diversion structures, two penstocks 31,050 feet long, a powerhouse with a total capacity of 4.8 MW, and a 47,000-foot-long transmission line.

1. *Description of Petition:* On October 16, 1986, Congress enacted ECPA, amending section 210 of the Public Utility Regulatory Policies Act (PURPA) by imposing three environmental conditions that license applicants for hydroelectric projects located at new dams or diversions must meet in order to qualify for PURPA benefits. These conditions are contained in § 292.203(c)(1)(ii) through (iv) of the Commission's regulations which implement section 8(a) of ECPA. A new diversion is a qualifying facility if:

(ii) The Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality, when it issues the license for the project;

(iii) The Commission finds, when it accepts the application for license for the project for filing under section 4.32(e) of this chapter, that the project is not located on any segment of a natural watercourse that:

(A) Is included in (or designated for potential inclusion in) a State or National Wild and Scenic River System, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development; and

(iv) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

Section 292.208(c) of the Commission's regulations provides for exception of a licensed project from the fish and wildlife agency conditions requirement of § 292.203(c)(1)(iv) and also from the payment of fees to reimburse fish and wildlife agencies for setting those conditions, upon the Commission's granting of a Petition Alleging Substantial Commitment of Monetary Resources. The petition must demonstrate that the applicant expended, or committed to spend, at least 50% of the cost of preparing the license application before October 16, 1986.

Section 8(b)(4)(B) of ECPA established a rebuttable presumption that the applicant has made the required showing of monetary commitment if it held a preliminary permit for the project and had completed all of the environmental consultations required by the Commission's regulations before October 16, 1986. The applicant held a permit for Project No. 7851, issued on October 25, 1984. Staff has not yet concluded whether applicant has completed consultations in accordance with § 4.38.

In section 8(e) of ECPA, implementing by § 292.203(c)(2) of the Commission's regulations, Congress imposed a moratorium on the availability, of PURPA benefits to hydroelectric projects located at new dams or diversions. In accordance with § 292.208(d), any project excepted from one or more of the three new environmental requirements is also excepted from the moratorium imposed by section 8(e) of ECPA.

The applicant states that it has made a substantial commitment of monetary resources before October 16, 1986, as shown below:

Total Cost of License Application—$81,243

Cost Expended before 10/16/86—$63,647

The license application has not been accepted for filing. All additional costs incurred or committed up to the acceptance date of the application will be included in the total cost of preparing the license application and will be used in evaluating the petition. No finding on this petition will be made prior to acceptance of the application.

If this petition is granted, the applicant would be eligible to petition the Commission to make an initial finding on whether Project No. 10490 would have substantial adverse effects on the environment pursuant to § 292.203 (c)(ii) of the Commission's regulations above.

The petition will be available for inspection and copying during regular business hours in the public reference room maintained by the Division of Public Information, 825 North Capitol Street NW., Washington, DC.

m. This notice also consists of the following standard paragraphs: B, and C.

13a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10501–000.

c. *Date Filed:* November 4, 1987.

d. *Applicant:* North American Hydro, Inc.

e. *Name of Project:* Delhi Milldam Hydro Project.

f. *Location:* On the Maquoketa River near Delhi, Delaware County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Charles Alsberg, P.O. Box 167, Neshkoro, WI 54960, (414) 293–4628.

i. *FERC Contact:* Ed Lee on (202) 376–9828.

j. *Comment Date:* February 29, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing earth filled dam approximately 58.5 feet high and 700 feet long; (2) an existing reservoir with a surface area of 50 acres and a storage capacity of 880 acre-feet at normal pool elevation of 896 feet m.s.l.; (3) an existing powerhouse containing two 650-kW generating units for a total installed capacity of 1,300 kW; (4) a proposed 1.5-kV or equivalent transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,280 MWh, and the cost of the work to be performed under the preliminary permit would be $30,000. All project structures are owned by the Lake Delhi Recreation Association, R.R.2, Delhi, Iowa 52223.

l. *Purpose of Project:* All energy produced would be sold to a local utility company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10503–000.

c. *Date Filed:* November 9, 1987.

d. *Applicant:* Dover Diversion Hydro Associates.

e. *Name of Project:* Dover Diversion Project.

f. *Location:* On the Sevier River, near Gunnison, in Sanpete County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Michael Graham, Dover Diversion Hydro Associates, P.O. Box N, Manti, Utah 84642.

i. *FERC Contact:* Mr. Don Wilt, (202) 376–9807.

j. *Comment Date:* February 26, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing 5-foot-high, 16-foot-long, wood plank and concrete diversion dam owned by Dover Canal Company; (2) a 60-inch-diameter, 100-foot-long penstock; (3) a powerhouse containing one turbine-generator unit with a rated capacity of 100 kW under a head of 12 feet and a design flow of 150 cfs, and producing an estimated annual generation of 860,000 kWh; and (4) a 5000-foot-long, 12.5-kV transmission line interconnecting the project to an existing Utah Power and Light Company line. The proposed project would be located in Section 24, Township 19 South, Range 1 West, SLB&M, Sanpete County, Utah.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

m. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10495–000.

c. *Date Filed:* October 29, 1987.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* North Fork Snoqualmie.

f. *Location:* In Snoqualmie—Mt. Baker National Forest, on the North Fork Snoqualmie River and the Illinois Creek, in King County, Washington. Township (T) 24N Range (R) 8E, T24N R9E, T25N R8E, T25N R9E, and T25N R10E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98053, (206) 885–3986.

i. *FERC Contact:* Thomas Dean, (202) 376–9275.

j. *Comment Date:* March 3, 1988.

k. *Description of Project:* The proposed project would consist of: (1) Two diversion structures with inlet elevations of 2,000 feet msl; (2) a bifurcated penstock 6,000 feet long and 48 inches in diameter leading to: (3) a powerplant at elevation 1,600 feet msl containing a single generating unit with a capacity of 1,580 kW operating at 400 feet of hydraulic head; and (4) a 13-mile-long, 115–kV transmission line.

The applicant estimates the average annual energy production to be 6.9 GWh. The approximate cost of the studies under the permit would be $40,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs:

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8257 (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 31, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-111 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-127-000 et al.]

Transwestern Pipeline Co. et al.; Natural Gas Certificate Filings

December 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP88-127-000]

Take notice that on December 11, 1987, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77001, filed in Docket No. CP88-127-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of an interconnection with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that a number of producers in the production areas serviced by Transwestern's pipeline system have expressed a desire to have their gas transported and to have a choice of transporters with whom they may deal. Transwestern proposes to construct and operate a tap and two ten-inch meters and related facilities at the discharge side to its Red Bluff Compressor Station No. 1, located in Chaves County, New Mexico. Transwestern avers that the authorization requested would provide producers in the production area access to both Transwestern's and El Paso's systems and to the markets these pipelines reach.

It is stated that the facilities would have the capacity to handle deliveries of 125 MMcf per day to El Paso. Transwestern estimates that the facilities would cost $159,800 to construct. The cost of the proposed construction would be financed from funds generated internally, it is explained.

Comment date: January 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP88-129-000]

Take notice that on December 15, 1987, Columbia Gas Transmission (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-129-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and a resale service to a new resale customer, all as more fully set in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm sales service to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (Dth) per day under Applicant's Rate Schedule (CDS). Applicant further states that Elizabethtown Gas Company (Elizabethtown) has requested firm transportation service under Applicant's Rate Schedule FTS of up to 20,000 Dth per day and interruptible transportation service under its Rate Schedule ITS of up to 2,200 MDth on an annual basis. Applicant notes that the transportation services would be performed pursuant to Part 284 of the Commission's Regulations and the blanket certificate issued in its Docket No. CP86-240-000. In order to implement the above resale and transportation services, Applicant proposes to construct approximately 37.9 miles of 12-inch pipeline which would be located in Northampton County, Pennsylvania and Warren, Hunterdon, and Morris Counties, New

Jersey. Applicant also proposes to construct two measuring facilities for Elizabethtown to be located in Warren and Morris Counties, New Jersey; and a measuring facility for NJN to be located in Morris County, New Jersey. Applicant estimates that the total cost of construction would be approximately $20,233,000. It is noted that both letter agreements underlying the proposed sale and contemplated transportation services would include provisions for "deferred aid-in-construction" contribution mechanisms which are keyed to benchmark volumes for both customers and the respective non-gas commodity portions of Applicant's Rate Schedules CDS and FTS which are currently effective and on file with the Commission.

Comment date: January 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-131-000]

Take notice that on December 16, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-131-000, a request pursuant to §§ 157.216(b), and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.216 and 157.212) for permission and approval to abandon and remove the Minneapolis TBS No. 1 located in Dakota County, Minnesota and to establish the St. Paul TBS No. 1-Q as a interruptible delivery point to Minnegasco to be located in the same county under its authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the Minneapolis, Minnesota TBS No. 1 measuring station is utilized to deliver natural gas to Minnegasco for resale in Minneapolis, Minnesota. It is stated that Minnegasco is in the process of upgrading its system operating pressure to improve efficiency and, consequently, has requested that Northern abandon the Minneapolis TBS No. 1 as a delivery point and establish the St. Paul TBS No. 1-Q as an interruptible delivery point.

Comment date: February 1, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-141 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-535-000, et al.]

Hamon Operating Co. et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

December 31, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interestate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-145 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-535-000 B, Apr. 27, 1987.	Hamon Operating Company, Republic Bank Tower, 325 North St Paul, Suite 3900, Dallas Texas 75201-3902.	Natural Gas Pipeline Company of America, Balko South Field, Beaver County, Oklahoma.	(1)	
CI77-618-001 D, Dec. 11, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Sun Exploration & Production Co., Amonta Field, Alfalfa County, Oklahoma.	(2)	
CI67-374-000 D, Dec. 11, 1987.	....do	Panhandle Eastern Pipe Line Company, Gage N.E. Field, Ellis County, Oklahoma.	(3)	
CI67-324-002 D, Dec. 14, 1987.	....do	ANR Pipeline Company, Lovedale and Lookout Fields, Harper and Woods Counties, Oklahoma.	(3)	
G-11174-001 D, Dec. 14, 1987.	....do	Colorado Interstate Gas Company, Laverne Field, Harper County, Oklahoma.	(3)	
CI62-322-000 Dec. 11, 1987.	....do	Williams Natural Gas Company, Waynoka N.E. Field, Woods County, Oklahoma.	(3)	
CI67-270-000 D, Dec. 11, 1987.	....do	ANR Pipeline Company, Luther Hill Field, Ellis County, Oklahoma.	(3)	
G-16139-013 D, Dec. 17, 1987.	....do	Transwestern Pipeline Company, Spearman Park & Washita Creek Fields, Hansford & Hemphill Counties, Texas.	(4)	
CI67-851-001 D, Dec. 11, 1987.	Amoco Production Company, P.O. Box 3092 Houston, Texas 77253.	El Paso Natural Gas Company, Gomez Field, Pecos County, Texas.	(5)	
CI88-181-000 (CI67-851) B, Dec. 11, 1987.	....do	....do	(6)	
CI88-182-000 (CI64-1429) B, Dec. 11, 1987.	....do	....do	(7)	
CI88-171-000 (CI81-37-000) B, Dec. 7, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Eugene Island Blocks 301 and 322, Offshore Louisiana.	(8)	
CI88-187-000 (CI67-526) B, Dec. 18, 1987.	Amoco Production Company, P.O. Box 800, Room 1754, Denver, Colorado 80201.	Natural Gas Pipeline Company of America, Patterson Unit No. 4, Sec. 45-Block A-5 H&GN RR Survey, Mobeetie Field, Wheeler County, Texas.	(9)	
G-12234-001 D, Dec. 14, 1987.	Kerr-McGee Corporation, P.O. Box 25861 Oklahoma City, Okla. 73125.	Southern Natural Gas Company, S.L. 1268 #6 and S.L. 1268 #8 Wells, Main Pass Block 47, Offshore Louisiana.	(10)	
CI88-183-000 (CI81-63-000) B, Dec. 14, 1987.	....do	Transcontinental Gas Pipe Line Corporation, Vermilion Block 37 Field, Offshore, Lousiana.	(11)	
CI88-184-000 (CI77-258) B, Dec. 14, 1987.	....do	Phillips 66 Natural Gas Company, Southwest Lipscomb Field, Lipscomb County, Texas.	(12)	
CI62-470-001 D, Dec. 14, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas-Louisiana Gas Company, Manziel Field, Wood County, Texas.	(13)	
CI70-654-001 D, Dec. 14, 1987.	....do	Transcontinental Gas Pipe Line Corp., Frost Field, Starr & Jim Hogg Counties, Texas.	(14)	
G-8591-000 D, Dec. 14, 1987.	....do	El Paso Natural Gas Company, Noelke, N.E. Field, Crockett County, Texas.	(15)	
G-6649-000 D, Dec. 14, 1987.	....do	El Paso Natural Gas Company, Payton Field, Ward County, Texas.	(17)	
CI75-864-000 D, Dec. 21, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, West Winchester Field, Eddy County, New Mexico.	(18)	
CI88-165-000 (CI79-359) B, Dec. 9, 1987.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, Texas 77001.	Williams Natural Gas Company & Zenith Natural Gas Company, Aetna Field, Barber County, Kansas.	(19)	
CI88-169-000 (CI64-1063) B, Dec. 7, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Williams Natural Gas Company, Wakita Trend Field, Grant and Alfafa Counties, Oklahoma.	(20)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI88-168-000 B, Dec. 7, 1987.	Bogert Oil Company, 2601 N.W. Expressway, Suite 1000W, Oklahoma City, Okla. 73112.	Arkla Energy Resources, a division of Arkla Inc., Sec. 4-18N-12W, Carleton N.E. Field, Blaine County, Oklahoma.	[21]	
CI88-163-000 A, Dec. 14, 1987.	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	Texas Gas Transmission Corporation, Blocks 158, 159, 160 and 161, East Breaks Area, Offshore Texas.	[22]	
CI88-180-000 (CI67-1222) B, Dec. 10, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Panhandle Eastern Pipe Line Company, South Bishop Field, Ellis County, Oklahoma.	[23]	
CI80-30-002 D, Nov. 30, 1987.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046-0957.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Bell City Field, Calcasieu Parish, Louisiana.	[24]	
G-11049-000 D, Dec. 18, 1987.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., East Cameron and West Cameron Areas, Offshore Louisiana.	[25]	

[1] This application was noticed on May 20, 1987 (52 Fed. Reg. 18942). However, that notice did not include Applicant's additional request received December 22, 1987, to grant Applicant pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

[2] Not used.

[3] Certain acreage has been assigned to Cross Timbers Oil Company, effective 7-1-87.

[4] Certain acreage has been assigned to Atlantic Energy (USA) Corporation, effective 7-1-87.

[5] Applicant requests partial termination of its certificate in Docket No. CI67-851 and partial cancellation of its FERC Gas Rate Schedule No. 494. Effective 11-15-87, the contract term expired for all gas dedicated to El Paso under the Gas Sales Contract dated 12-5-66, *except* for gas produced from the Price Estate, Moore and Blalock Well No. 1-A. Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[6] Applicant requests complete termination of its certificate in Docket No. CI67-851 and complete cancellation of its FERC Gas Rate Schedule No. 494. The contract term for gas produced from the Price Estate, Moore and Blalock Well No. 1-A expires 7-31-92. Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[7] Applicant requests complete termination of its certificate in Docket No. CI64-1429 and cancellation of its FERC Gas Rate Schedule No. 646. The contract term expired 9-26-86. Amoco and El Paso have been unable to agree on terms and provisions of a "Rollover Contract." Amoco has been experiencing limited takes by the gas purchaser which has put Amoco in the position of being under-balanced with other working interest owners.

[8] Applicant requests complete termination of its certificate in Docket No. CI81-37-000 and cancellation of its FERC Gas Rate Schedule No. 829. The purchaser desires to discontinue purchasing Amoco's gas at Eugene Island Blocks 301 and 322.

[9] Only well under contract dated 7-15-66 was plugged and abandoned in 1973 due to lack of production.

[10] Wells were plugged and abandoned.

[11] This dual well is now depleted. No recompletion possibilities exist and well was plugged and abandoned.

[12] Applicant wishes to cancel its rate schedule and terminate its certificate. The new contract with Phillips dated 7-30-87, is a percentage-of-proceeds type contract.

[13] Sun assigned its interest in Property No. 671743, Lease No. 33156, Mrs. B. Rogers, *et al* Gas Unit to Clemco, Inc., effective 5-1-84.

[14] Sun assigned its interest in Property No. 508330, Garcia L&L Co. -C-, Lease No. 27068; and Property No. 644720, Orwe A, Lease No. 33771 (B.P. No. 84150) to Cameron Equipment & Salvage Company, effective 6-1-84.

[15] Not used.

[16] Sun assigned its interest in Property No. 690490, Shannon Estate "C", Lease No. 21573 to Edwards Exploration Company, effective 9-1-84.

[17] Sun assigned its interest in Operating Agreement and Blair A Well to William J. Green, effective 12-1-83.

[18] By Assignment effective 1-1-87, ARCO assigned certain acreage to Hondo Oil & Gas Company.

[19] Multistate Oil Properties, N.V. assigned certain acreage to Citation Investment Limited Partnership, effective 8-1-87.

[20] Tenneco assigned certain acreage to Vernon E. Falconer, effective 5-1-84, other leases were surrendered and gas can no longer be delivered from other leases because the compressor has been removed.

[21] Bogert Oil Company recently purchased the Schoonover #1-4 Well and the rights to Sec. 4-18N-12W, Blaine County, Oklahoma, from Arkla. Arkla has released this acreage from its 2-6-74 Gas Contract. The Schoonover #1-4 Well would not produce into Arkla's high pressure line anymore. Bogert Oil Company is going to enter into a low pressure contract concerning the Schoonover #1-4 Well and a new well that is going to be drilled in this section in early 1988. Bogert Oil Company is seeking abandonment of this Arkla gas contract so that they can rework the Schoonover #1-4 Well and drill a new well in this section that will need a low pressure gathering system.

[22] Applicant is filing under Gas Purchase Contract dated 7-23-87.

[23] Union Oil Company of California assigned certain leases under Docket No. CI67-1222 to Vance Production Company, effective 9-1-87.

[24] MOEPSI assigned certain acreage to Sohio Petroleum Company aka Standard Oil Production Company, effective 5-1-87.

[25] Texaco Producing Inc. assigned certain acreage to Koch Exploration Co., effective 6-1-87.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-145 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2335-002]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the Williams Project No. 2335, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2335 is located on the Kennebec River in the towns of Bingham, Concord, Emden, Solon, and Somerset County, Maine.

The license for Project No. 2335 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2335, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-147 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2531-005]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the West Buxton Project No. 2531, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2531 is located on the Saco River in York County, Maine.

The license for Project No. 2531 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2531, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-148 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2528-002]

Central Maine Power Co.; Issuance of Annual License

December 31, 1987.

On December 27, 1984, Central Maine Power Company, licensee for the Cataract Project No. 2528, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2528 is located on the Saco River, in the cities of Biddeford and Saco, and the Towns of Dayton and Buxton, York County, Maine.

The license for Project No. 2528 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Central Maine Power Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2528, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-149 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2205-006]

Central Vermont Public Service Corp.; Issuance of Annual License

December 31, 1987.

On May 27, 1987, Central Vermont Public Service Corporation, licensee for the Lamoille River Project No. 2205, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2205 is located on the Lamoille River, in Franklin and Chittenden Counties, Vermont.

The license for Project No. 2205 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Vermont Public Service Corporation.

Take notice that an annual license is issued to Central Vermont Public Service Corporation under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2205, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-150 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-15-000]

Duquesne Light Co.; Filing

December 30, 1987.

Take notice that on December 14, 1987, Duquesne Light Company tendered for filing pursuant to Deficiency Letter dated November 9, 1987, the following:

a. A complete copy of the 1983 Cost of Service Study.

b. A copy of the original rate filing and a copy of the Settlement Agreement, which includes revised Statement D.

c. A copy of the rate increase application for ER85-264 that includes the revenue requirement of $632,641,

including the $159,110.75 proposed increase, on Statement D, page III, 5.

d. A copy of the billing determinants used in developing the proposed change are from the enclosed rate application and appear on Schedule D, Page III, 5.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-110 Filed 1-5-88; 8:45 am]

BILLING CODE 1-5-M

[Project No. 2520-000]

Great Northern Paper Co.; Issuance of Annual License

December 31, 1987.

On December 29, 1984, Great Northern Paper Company, licensee for the Mattaceunk Project No. 2520, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2520 is located on the Penobscot River, in the vicinity of Medway and Mattawamkeag, in Penobscot and Aroostook Counties, Maine.

The license for Project No. 2520 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Central Maine Power Company.

Take notice that an annual license is issued to Great Northern Paper Company under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2520, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-151 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2484-001]

Village of Gresham, Wisconsin; Issuance of Annual License

December 31, 1987.

On July 28, 1986, the Village of Gresham, Wisconsin, licensee for the Upper Gresham Dam Project No. 2484, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2484 in located on the Red River, in the Village of Gresham, Shawano County, Wisconsin.

The license for Project No. 2484 was issued for a period ending December 31, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Village of Gresham, Wisconsin.

Take notice that an annual license is issued to the Village of Gresham, Wisconsin, under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 2484, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-152 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-155-000]

Iowa Public Service Co.; Filing

December 31, 1987.

Take notice that on December 22, 1987, Iowa Public Service Company tendered for filing an executed Letter Agreement dated August 3, 1987, whereby Iowa Public Service Company (Iowa) will supply the Northern States Power Company (NSP) with firm electric capacity and associated energy, commencing May 1, 1987 and continuing through October 31, 1987. Iowa requests that the negotiated Agreement be made effective as of May 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-146 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-25-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 31, 1987.

Take notice that on December 23, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing Original Sheet Nos. 4A and 4B to its FERC Gas Tariff, First Revised Volume No. 1 with an effective date of December 1, 1987. South Georgia states that the proposed tariff sheets are being submitted in compliance with Ordering Paragraph (A) of the Commission's December 16, 1987 order in Docket No. RP88-25-000 and reflect the implementation of the interim settlement rates from Docket No. RP87-13-000 as to the transportation services performed by South Georgia pursuant to Section 311 of the NGPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-142 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-000]

Southern Natural Gas Co.; Technical Conference

December 31, 1987.

Pursuant to the Commission order which issued on November 27, 1987 in this docket, a technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Monday, January 11, 1988, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-143 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1966-001]

Wisconsin Public Service Corp.; Issuance of Annual License

December 31, 1987.

On December 20, 1984, Wisconsin Public Service Corporation, Licensee for the Grandfather Falls Project No. 1966, filed an application for a new license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1966 is located on the Wisconsin River, in Lincoln County, Wisconsin.

The license for Project No. 1966 was issued for a period ending December 21, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to Wisconsin Public Service Corporation.

Take notice that an annual license is issued to Wisconsin Public Service Corporation under section 15 of the FPA for a period effective January 1, 1988, to December 31, 1988, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1966, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before December 31, 1988, an annual license will be issued each year thereafter, effective January 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-153 Filed 1-5-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-489; FRL-3312-8]

BASF Corp.; Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by the BASF Corp. proposing to establish tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodities celery; lettuce, head and lettuce, leaf; and spinach.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM=2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 253, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 557-1800.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 8F3577 from BASF Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposing to amend 40 CFR 180.412 by establishing tolerances for the combined residues of the herbicide 2-[1-(ethyoximino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the parent) in or on the raw agricultural commodities celery at 1.0 part per million (ppm); lettuce, head and lettuce, leaf at 1.0 ppm; and spinach at 3.0 ppm.

The proposed analytical method for determining residues is gas chromatography using a sulfur-specific flame photometric detector.

Authority: 21 U.S.C. 346a.

Dated: December 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-167 Filed 1-5-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59251; FRL-3313-1]

Toxic Substances; Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test

marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). TME–88–1. The test marketing conditions are described below:

EFFECTIVE DATE: December 21, 1987. Written comments will be received until January 21, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–59251]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Susan Hutcherson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–613, 401 M Street, SW., Washington, DC 20460, (202–382–2259).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–88–1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently notice of receipt of the application was not published; therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME–88–1. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–88–1.

Date of Receipt: October 30, 1987.

Close of Review Period: December 21, 1987. The extended comment period will close January 21, 1988.

Applicant/Importers: Confidential.

Chemical: (G) acrylated polymer.

Use: (G) A solder masking.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six Months. *Commencing on:* December 21, 1987.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 21, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–168 Filed 1–5–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 24, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 634–1535. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0094.

Title: Section 22.501(l)(10)(ii), Common carrier land mobile channel loading measurement.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: Quarterly.

Estimated Annual Burden: 44 Responses; 88 Hours.

Needs and Uses: The Commission has allocated additional spectrum space in 13 urban areas for mobile telephone common carrier use. In these areas authorized carriers share the frequencies. The information collected by the Commission is used to determine whether the authorized number of mobile stations reflects optimum frequency usage. The affected public are radio common carriers licensed to the UHF TV channels for land mobile use.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 88–107 Filed 1–5–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1701]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

December 28, 1987.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions and applications must be filed by January 22, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: FCC Regulations Concerning RF Lighting Devices. (Gen Docket No. 83–806) Number of petitions received: 1.

Subject: Investigation of Special Access Tariffs of Local Exchange Carriers. (CC Docket No. 85–166, Phase I). Number of petitions received: 6. Number of applications received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bolivar and Lebanon, Missouri) (MM Docket No. 86–278, RM's 5098 & 5549). Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 88–108 Filed 1–5–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Firstbanc Federal, FSB Gonzales, LA

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Firstbanc Federal, FSB, Gonzales, Louisiana, on December 30, 1987.

Dated: December 30, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–91 Filed 1–5–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200079.

Title: Port of Orange County Texas Service Agreement.

Parties: Orange County Navigation and Port District, Ryan-Walsh Gulf, Inc. (Contractor).

Synopsis: The proposed agreement authorizes the Contractor to unload and load all cargo from and into railroad cars and automobile trucks at the Port of Orange, furnishing all labor relating thereto. All services rendered by the Contractor are to be on the terms and conditions set forth in this agreement. The term of the agreement shall be three years.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 31, 1987.

[FR Doc. 88–120 Filed 1–5–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 30, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Reports

1. *Report title:* Report of Condition for Foreign Subsidiaries

Agency form number: FR 2314

OMB Docket number: 7100–0073

Frequency: Annual

Reporters: Foreign subsidiaries of U.S. member banks, bank holding companies, and Edge or Agreement corporations

Annual reporting hours: 6606

Small businesses are not affected.

General description of report:

BEST COPY AVAILABLE

This report is required by law [12 U.S.C. 324, 1844(c), 602, and 605] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)].

This report provides the only source of comprehensive and systematic data on the assets and liabilities of foreign subsidiaries of U.S. banking organizations. The data are used to monitor the growth and activities of the subsidiaries and to supervise the overall operations of the parent institution. Its extension is proposed with minor revisions to tailor the forms to each company's reporting requirements, and to request identification of subsidiaries on consolidated reports.

2. *Report title:* Annual Report of Foreign Banking Organizations; Foreign Banking Organization Confidential Report of Operations.
Agency form number: FR Y-7; FR 2068
OMB Docket number: 7100-0125
Frequency: Annual
Reporters: Foreign banking organizations
Annual reporting hours: 10,858
Small businesses are not affected.
General description of reports:

These reports are required by law [12 U.S.C. 1844(c), 3106 and 3108(a)] and are given confidential treatment [5 U.S.C. 552(b)(8)].

These reports request financial and structural information on foreign banking organizations and their U.S. activities in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the Bank Holding Company Act and International Banking Act. They are proposed to be extended with minor technical changes and instructional clarifications, including the incorporation into the forms of items approved in 1986 and currently collected on supplementary sheets.

Board of Governors of the Federal Reserve System, December 30, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-90 Filed 1-5-88; 8:45 am]
BILLING CODE 6210-01-M

First National Massillon Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Massillon Corporation*, Massillon, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Massillon, Massillon, Ohio.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Farmers State Holding Company*, Marion, South Dakota; to become a bank holding company by acquiring 81.1 percent of the voting shares of Farmers State Bank of Marion, Marion, South Dakota.

2. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of PB Bancorp of Cedar Rapids, Inc., Cedar Rapids, Iowa, and thereby indirectly acquire Peoples Bank and Trust Company, Cedar Rapids, Iowa. Comments on this application must be received by January 23, 1988.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Logan Bancshares, Inc.*, Logan, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Logan, Logan, Kansas.

2. *Peoples, Inc.*, Ottawa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Savings, Inc., Ottawa, Kansas, and thereby indirectly acquire Peoples National Bank of Ottawa, Ottawa, Kansas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Greater Pacific Bancshares*, Whittier, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Whittier, N.A., Whittier, California.

Board of Governors of the Federal Reserve System, December 30, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-88 Filed 1-5-88; 8:45 am]
BILLING CODE 6210-01-M

John J. Gleason et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 21, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *John J. Gleason*, Oak Brook, Illinois; to acquire an additional 5 percent of the voting shares of First Cicero Banc Corporation, Oak Brook, Illinois.

2. *Mahaska Investment Company Employee Stock Ownership Trust*, Oskaloosa, Iowa; to acquire 22.12 percent of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa, and First National Bank of Sumner, Sumner, Iowa.

3. *John I. Salk*, Flossmoor, Illinois; to acquire 95.6 percent of cumulative convertible preferred shares of Exchange International Corporation, Chicago, Illinois, and thereby indirectly acquire Exchange National Bank of Chicago, Chicago, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mary Anne Stephens*, Warren Amerine Stephens Trust No. 2, and Wilton R. Stephens Family Trust, all of Little Rock, Arkansas; to collectively acquire an additional 13.7 percent of the voting shares of Worthen Banking Corporation, Little Rock, Arkansas; and thereby indirectly acquire Worthen Bank and Trust Company, N.A., Little Rock, Arkansas; First National Bank, Batesville, Arkansas; First National Bank of Camden, Camden, Arkansas; First State Bank & Trust Company, Conway, Arkansas; First National Bank in Harrison, Harrison, Arkansas; First National Bank of Hot Springs, Hot Springs, Arkansas; Bank of Newark, Newark, Arkansas; National Bank of Commerce of Pine Bluff; Pine Bluff, Arkansas; Peoples Bank & Trust Company, Russellville, Arkansas; and First State Bank, Springdale, Arkansas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dr. William D. Angle*, Omaha, Nebraska; to acquire an additional 1.94 percent of the voting shares of Pathfinder Bancshares, Inc., Fremont, Nebraska, and thereby indirectly acquire Fremont National Bank and Trust, Fremont, Nebraska.

2. *Lonnie M. Jarmon*, Oklahoma City, Oklahoma; to acquire 68.75 percent of the voting shares of Mustang Community Ban Corporation, Mustang, Oklahoma, and thereby indirectly acquire Mustang Community Bank, Mustang, Oklahoma.

3. *David L. and Rebecca S. Moritz*, Beloit, Kansas; to acquire 27.17 percent of the voting shares of Guaranty, Inc., Beloit, Kansas, and thereby indirectly acquire Guaranty State Bank and Trust Company, Beloit, Kansas, and The State Bank of Delphos, Delphos, Kansas.

4. *Billy J. Stringer*, Ardmore, Oklahoma, to acquire 2.56 percent; Ardmore Institute of Health, Ardmore, Oklahoma, to acquire 19.23 percent; Keith F. Walker, Ardmore, Oklahoma, to acquire 17.28 percent; Richard L. Howell, Ardmore, Oklahoma, to acquire 2.57 percent; Teresa J. Brown, Ardmore, Oklahoma, to acquire 1.28 percent; Thomas Frederick Dunlap, Trustee, Ardmore, Oklahoma, to acquire 3.33 percent; and Leta M. Brown, Ardmore, Oklahoma, to acquire 1.29 percent of the voting shares of First National Corporation of Ardmore, Inc., Ardmore, Oklahoma, and thereby indirectly acquire First National Bank and Trust Company of Ardmore, Ardmore, Oklahoma.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thomas J. Sively*, Artesia, New Mexico, to acquire 14.49 percent; Harvey E. Yates Company, Roswell, New Mexico, to acquire 6.37 percent; Gilbert Gomez, Hagerman, New Mexico, to acquire 6.39 percent; James B. Runyan, Hope, New Mexico, to acquire 7.26 percent; Brooks E. Holladay, Hobbs, New Mexico, to acquire 6.37 percent; Loyd Hackler, Hope, New Mexico, to acquire 6.37 percent; Marbob Energy Corporation, Artesia, New Mexico, to acquire 6.37 percent; Myco Industries, Inc., Artesia, New Mexico, to acquire 9.55 percent; Charles K. Johnson, Artesia, New Mexico, to acquire 18.85 percent of the voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia.

Board of Governors of the Federal Reserve System, December 30, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-87 Filed 1-5-88; 8:45 am]
BILLING CODE 6210-01-M

The Sasser Corp., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *The Sasser Corp.*, Carthage, Mississippi, through its subsidiary, First Carthage Corporation, Carthage, Mississippi; to engage in providing credit insurance as principal, agent or broker related to extensions of credit by Carthage and any of its subsidiaries and affiliates and any other extensions of credit by Carthage and any of its subsidiaries and affiliates and any other incidental activities, limited to assuring the repayment of the outstanding balance due on the extensions of credit in the event of death, disability or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Leake County, Mississippi.

Board of Governors of the Federal Reserve System, December 30, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-89 Filed 1-5-88; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

American Cyanamid Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by American Cyanamid Co. The NADA provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. The NADA was the subject of a notice of opportunity for hearing proposing that its approval be withdrawn. The sponsor originally requested but later withdrew its request for a hearing, thus waiving the

opportunity for hearing. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the regulation reflecting approval of the NADA in question.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, is the sponsor of NADA 55–025, which provides for the use of Aureomycin Sulmet (chlortetracycline-sulfamethazine) Oblets for the treatment of bacterial scours in calves. The NADA was originally approved on September 13, 1963.

In the **Federal Register** of September 22, 1978 (43 FR 43070), FDA's Center for Veterinary Medicine (CVM) published a notice of opportunity for hearing on a proposal to withdraw approval of the NADA (Docket No. 78N–0248). CVM based the proposed action on section 512(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(e)(1)(C) on the ground that, on the basis of new information with respect to the drug, evaluated together with the evidence available when the NADA was approved, there is a lack of substantial evidence that the drug will have the effect it is purported or represented to have under the conditions of use prescribed, recommended, or suggested in its labeling. The sponsor filed a written appearance requesting a hearing but later withdrew it, thus waiving the opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55–025 and all supplements thereto is hereby withdrawn, effective January 19, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 546.110e, which reflects this approval.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88–102 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

J&R Specialty Supply Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by J&R Specialty Supply Co. The NADA provides for the use of pyrantel tartrate Type A medicated articles for making Type C swine feeds. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing and reserving the regulation reflecting approval of the NADA in question.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: J&R Specialty Supply Co., 310 Second Avenue SW., P.O. Box 506, Waseca, MN 56093, is the sponsor of NADA 138–609, which provides for the use of Country Mixer Swine Guard–BN Banminth • Premixes containing 9.6 or 19.2 grams of pyrantel tartrate per pound. These products are Type A medicated articles used to make Type C medicated swine feeds for use as an aid in the prevention of the migration and establishment of infections of and for the removal and control of certain large roundworm and nodular worm infections. The NADA was approved on December 18, 1985 (50 FR 51518). In a letter dated July 9, 1987, the firm requested withdrawal of approval because the products are no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat., 345–347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 138–609 and all supplements thereto is hereby withdrawn, effective January 19, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing and reserving 21 CFR 558.485(a)(26) which reflects this approval.

Dated: December 29, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88–103 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0393]

CdF Chimie SA.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that CdF Chimie SA. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or n-butyl acrylate for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B4034) has been filed by CdF Chimie SA., Tour Aurore, Cedex 5 92080, Paris la Defense, France, proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or n-butyl acrylate for food-contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–99 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0397]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the increased use of 1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in propylene copolymers.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20404, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B4047) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of 1,3,5-Tris(3,5-di-*tert*-butyl-4-hydroxybenzyl-*s*-triazine-2,4,6(1*H*,3*H*,5*H*)trione as an antioxidant in propylene copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–100 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0408]

Schering Animal Health; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Scherling Animal Health has filed a petition proposing that the food additive regulations be amended to provide for using a 4-month controlled release sodium selenite (Dura Se) bolus for cattle as a nutritional selenium supplement.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2210) has been filed by Schering Animal Health, Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.

The petition proposes that 21 CFR 573.920 *Selenium* be amended to provide for the safe use of a 4-month controlled release sodium selenite (Dura Se) bolus which is designed to provide cattle 3.0 milligrams of selenium per head per day as nutritional selenium supplement.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments from the public are invited. Those comments received within 60 days of this notice will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the rule in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 30, 1987.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 88–101 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86D–0380]

Draft FDA Policy for the Regulation of Computer Products; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the time for submission of comments on the notice of availability of its "Draft FDA Policy for the Regulation of Computer Products." FDA is taking this action in reponse to requests for an extension of the comment period.

DATE: The period for submission of written comments is extended until January 29, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the draft policy should be sent to Charles S. Furfine (address below).

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1987 (52 FR 36104), FDA published for public comment a notice of availability of its "Draft FDA Policy for the Regulation of Computer Products." The notice provided a 60-day comment period to close November 24, 1987. FDA received requests for an extension of the comment period because of the complexity of issues involved and the potential impact on industry. FDA agrees that the issues are complex and potentially far reaching and believes that additional time for the preparation and submission of meaningful and carefully prepared comments is in the public interest. The agency, therefore, finds in accordance with section 520(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(d)(2)) that good cause exists to grant, and is granting, an extension of the comment period to January 29, 1988.

Dated: December 28, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–30208 Filed 12–31–87; 11:19 am]

BILLING CODE 4160–01–M

[Docket No. 87D–0208]

Medical Devices; Diagnostic Ultrasound Guidance Update; Postponement of Applicability Date

AGENCY: Food and Drug Administration.

ACTION: Notice; postponement of applicability date.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the agency is postponing indefinitely the applicability of its guidance on the prescription labeling of transducers intended for use in or with diagnostic ultrasound devices contained in a document entitled "Diagnostic Ultrasound Guidance Update—January 30, 1987." In the **Federal Register** of

August 13, 1987 (52 FR 30252), FDA announced that it would apply such labeling guidance beginning on November 1, 1987, for devices manufactured on or after that date. However, in response to comments received on the August 13, 1987, notice, FDA is postponing the November 1, 1987, date for application of the guidance insofar as it would affect the labeling of transducers to allow the agency to work with affected parties to develop an appropriate policy. The dates for application of other guidance contained in the document remain as announced in the August 13, 1987, notice.

DATE: Comments by March 7, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: On January 30, 1987, FDA's Center for Devices and Radiological Health (CDRH) sent a letter to certain trade associations and to all known manufacturers and distributors of diagnostic ultrasound devices. This letter updated CDRH's guidance on such devices regarding: (1) Premarket notification submissions to the agency to determine where a new or modified device is substantially equivalent to preamendments devices in commercial distribution; and (2) guidance on prescription labeling for ultrasound devices, both systems and transducers. The letter stated that the guidance on labeling was to become effective on August 1, 1987. FDA received several comments on this guidance letter, some of which requested that the effective date of the labeling guidance be delayed.

In a notice published in the **Federal Register** of August 13, 1987 (52 FR 30252), FDA made the document entitled "Diagnostic Ultrasound Guidance Update—January 30, 1987" generally available under the docket number appearing in the heading of this notice, and invited comments on the guidance from interested persons. In that notice, FDA announced that it would delay application of the prescription labeling guidance until November 1, 1987. FDA also announced that its guidance on premarket notification submissions became effective August 1, 1987.

Following the August 13, 1987, **Federal Register** notice, FDA received many comments on the labeling guidance. These comments raised substantial issues regarding its appropriateness, especially with respect to the guidance concerning the labeling of transducers.

Based on a review of these comments, FDA has decided to postpone indefinitely application of its guidance in Section III.B. of the document "Diagnostic Ultrasound Guidance Update—January 30, 1987." Concurrently, the agency is discussing with health professional organizations associated with use of diagnostic ultrasound, and certain industry trade associations a proposal that FDA conduct a joint educational program to make diagnostic ultrasound equipment users aware of potential risks and benefits. The emphasis of such an FDA initiative would be to modify the behavior of diagnostic ultrasound users to reduce unnecessary fetal exposure to ultrasonic energy.

Following development, implementation, and evaluation of the effectiveness of such an educational program, FDA may still issue guidance or promulgate requirements pertaining to presciption labeling of diagnostic ultrasound transducers.

FDA advises that this notice applies only to the agency's guidance respecting labeling of transducers for a diagnostic ultrasound system. The dates for application of the guidance respecting operator manual labeling, on-screen or on-console labeling, and premarket notification submissions remain as announced in the August 13, 1987, notice.

Interested persons may, on or before March 7, 1988, submit to the Dockets Management Branch, written comments on this notice. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–97 Filed 1–5–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting To Evaluate the National Bone Marrow Registry

Notice is hereby given that the National Institutes of Health (NIH) will hold a meeting of an evaluation panel on Sunday, January 24, 1988, beginning at 7:30 p.m. until 10:30 p.m. and continuing on Monday, January 25, 1988, beginning at 8:30 a.m. until 5:00 p.m. The meeting will be open only to individuals invited by the Office of Program Planning and Evaluation, Office of the Director, NIH.

The purpose of the meeting is to evaluate the National Bone Marrow Registry and to gather information in order to provide the Senate Appropriations Committee with information "* * * about the usefulness of such an informational resource in addressing the need for access to appropriate donors for bone marrow transplants and the possibility of continued Federal support and expansion of such a registry" (p. 188, Senate Report 100–189). The evaluation is required by the Senate Appropriations Committee in Senate Report 100–189.

Additional information may be obtained by calling Dr. Jay Moskowitz at (301) 496–3152 or Dr. Norman Braveman at (301) 496–4418.

Date: December 30, 1987.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 88–94 Filed 1–5–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Plenary Session Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Sheraton Santa Barbara Hotel and Spa, 1111 East Cabrillo Boulevard, Santa Barbara, California 93103 (telephone 805–963–0744), from 8 a.m. to 5 p.m. on February 4, 1988, and from 8 a.m. to 1 p.m. on February 5, 1988.

The agenda for the meeting will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program;
- Discussions with Representatives of California, Washington, and Oregon;
- Discussion on Information Management;
- Hard Minerals Mining in the Hawaiian/Johnston Island EEZ area; and
- Proposals for additional National Academy of Sciences panel.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230 (MS–644), Minerals Management Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; telephone (202) 343–7744.

Date: December 30, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–109 Filed 1–5–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–276]

Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Decision Not To Review Initial Determination Allowing Intervention

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) granting intervention to Seeq Technology, Inc.

SUMMARY: The Commission has determined not to review the ID of the presiding administrative law judge granting the motion to intervene of Seeq Technology, Inc. for the limited purpose of protecting Seeq's trade secrets. The Commission expects that Seeq will adequately identify the trade secrets it seeks to protect, and that the ALJ will grant Seeq access to the record only to the extent necessary for Seeq to protect its trade secrets.

FOR FURTHER INFORMATION CONTACT: Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1626.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 10, 1987, Seeq Technology, Inc., filed a motion to intervene as a nonparty for the limited purpose of protecting its trade secrets (Motion No. 276–13). The motion was opposed by respondents Atmel Corporation, Hyundai Electronics America, Inc., Hyundai Electronics Industries Co., Ltd., Cypress Electronics, Inc., All-American Semiconductor, Inc., and Pacesetter Electronics, Inc. It was also opposed in part by the Commission investigative attorney. Complainant did not oppose the motion "so long as the intervention can be structured to avoid interruption and delay in the discovery and procedural schedules."

On December 4, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 13) permitting Seeq to intervene for the limited purpose of protecting its trade secrets. On December 8, 1987, she issued an order (Order No. 14) setting forth the procedure under which Seeq will be allowed to protect its trade secrets during the investigation. No petitions for review of the ID or comments from government agencies were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 31, 1987.

[FR Doc. 88–122 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–260]

Certain Feathered Fur Coats and Pelts, and Process for Manufacture Thereof; Issuance of General Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq. or Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261, 202–523–3395, respectively.

SUMMARY: On September 24, 1987, the Administrative Law Judge (ALJ) issued an initial determination (ID) in this investigation, finding that there is a violation of section 337 in the importation and sale of certain feathered fur coats and pelts. On November 9, 1987, the Commission determined not to review the ID. 52 FR 44231 (November 18, 1987). The Commission requested briefs on the issues of remedy, the public interest, and bonding. Submissions were received from complainants David Leinoff and David Leinoff, Inc., and the Commission investigative attorney. A submission on the matter of infringement, which is no longer at issue, was received from settled respondent Hong Kong Tientsin Fur Co. Ltd., defaulting respondent Peking Fur Store Ltd., and defaulting respondent Asia Fur Company. It was subsequently stricken. No submissions from the public or government agencies have been received.

The exclusion order contains the following substantive provisions:

1. Feathered fur coats that infringe claim 1 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;

2. Feathered fur coats manufactured abroad in accordance with the process set forth in claim 5 of U.S. Letters Patent 3,760,424 are excluded from entry into the United States for the remaining term of that patent, except where such importation is licensed by the patent owner;

3. The articles ordered to be excluded from entry into the United States shall be entitled to entry under bond in the amount of 200 percent of the entered value of the imported articles from the day after this Order is received by the President pursuant to subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(g)) until such time as the President notifies the Commission that he approves or disapproves this action, but in any event, not later than 60 days after the date of receipt.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.54–.58 of the Commission's Rules of Practice and Procedure (19 CFR 210.54–.58).

Notice of this investigation was published in the **Federal Register** on December 29, 1986 (51 FR 46944).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of

the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88–123 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–261]

Certain Ink Jet Printers Employing Solid Ink; Initial Determination Terminating Respondents on Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Tokyo Juki Industrial Co., Ltd. ("Juki") and Howteck Corporation ("Howteck").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 28, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88–124 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–267]

Certain Minoxidil Powder, Salts and Compositions for Use In Hair Treatment; Decision To Review Initial Determination Terminating One Respondent on Basis of Consent Order

AGENCY: International Trade Commission.

ACTION: Review of initial determination terminating respondent ACIC Canada, Inc. in the above-captioned investigation on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 35) issued by the presiding administrative law judge (ALJ) terminating respondent ACIC Canada, Inc. in the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 523–3395.

SUPPLEMENTARY INFORMATION: On November 27, 1987, the presiding ALJ issued an ID terminating the investigation with respect to ACIC Canada, Inc. The ID granted the joint motion of complainant The Upjohn Company and ACIC Canada, Inc. to terminate the investigation with respect to ACIC on the basis of a consent order and settlement agreement. No petitions for review of the ID or government agency or public comments were received.

The Commission has determined that there is a question that merits review. The specific question the Commission wishes to address on review is the appropriateness of requiring certifications in consent orders, such as that set out in paragraph 1 of the proposed consent order.

Written Submissions: The Commission encourages written submissions on the question on review from the parties, the Commission investigative attorney, and interested Government agencies. Such submissions must be received by January 19, 1988. Reply submissions are due by January 28, 1988.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53–.56

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 30, 1987.

[FR Doc. 88–125 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–267]

Certain Minoxidil Powder, Salts and Compositions for Use In Hair Treatment; Commission Decision Not To Review Initial Determination Terminating One Respondent

AGENCY: International Trade Commission.

ACTION: Termination of investigation with prejudice as to respondent S.S.T. Corporation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued in the above-captioned investigation terminating the investigation with prejudice as to respondent S.S.T. Corporation.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–3395.

SUPPLEMENTARY INFORMATION: On December 2, 1987 the presiding administrative law judge issued an ID (Order No. 36) granting the motion of complainant The Upjohn Company to withdraw the complaint with prejudice and to terminate the investigation as to respondent S.S.T. Corporation. No petitions for review of the ID and no government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 28, 1987.

[FR Doc. 88–126 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–266]

Certain Reclosable Plastic Bags and Tubing; Commission Decision Not To Review Initial Determination Terminating Eight Respondents on Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating eight respondents in the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: The Commission has determined not to review an ID (Order No. 49) terminating respondents Meditech International Co., Polycraft Corp., Chung Kong Industrial Co., Ltd., Daewang International Co., Keron Industrial Co., Ltd., Gideons Plastic Industrial Co., Ltd., Lien Bin Plastics Co., Ltd., and Euroweld Distributing Inc. from this investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Paul R. Badros, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 12, 1987, complainant and the eight aforementioned respondents filed a joint motion (Motion No. 263–39) to terminate the investigation as to the eight respondents on the basis of a settlement agreement. The Commission investigative attorney filed a public interest statement supporting the motion. On November 25, 1987, the presiding administrative law judge issued an ID granting the joint motion to terminate the investigation as to the eight respondents on the basis of the settlement agreement. No petitions for review or Government agency comments were received. One public comment and the eight respondents' reply thereto were received.

The Commission notes that the settlement agreement makes reference to certain exclusive import agreements which are not at issue in this investigation. The Commission has treated those import agreements as distinct from the settlement agreement and makes no determination concerning their validity or legality.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 29, 1987.

[FR Doc. 88–127 Filed 1–5–88; 8:45 am]

BILLING CODE 7020–02–M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

[BAC: 6820–SK]

Hearing

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of open hearing.

SUMMARY: In accordance with Pub. L. 99–660, notice is given of the first hearing of the National Commission to Prevent Infant Mortality. The title of the hearing is "the role of the private sector in reducing infant mortality".

Date: January, 1988.

Time: 9:30 a.m.–12:30 p.m.

ADDRESS: Vail Auditorium, Southern Bell Center, 975 Peachtree Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Ann D. Mayhew, 202/472–1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88–173 Filed 1–5–88; 8:45 am]

BILLING CODE 6820–SK–M

[BAC: 6820–SK]

Meeting

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Pub. L. 99–660, notice is given of the second meeting of the National Commission to Prevent Infant Mortality. The purpose of the meeting is to begin discussion of Commission recommendations.

Date: January 11, 1988.

Time: 2:00 p.m.–4:00 p.m.

ADDRESS: Conference Room, Southern Bell Center, 975 Peachtree Street, NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rae K. Grad, 202–472–1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88–174 Filed 1–5–88; 8:45 am]

BILLING CODE 6820–SX–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by Feburary 5, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401)

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Arts Administration Fellows Program Guidelines FY 1989.

Frequency of Collection: Possible 3 times per year.

Respondents: Individuals or households.

Use: Guideline instructions and applications elicit relevant information from arts administrators, individual artists, and graduate students who apply for funding under a specific program category. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 350.

Estimated Hours for Respondents to Provide Information: 1,350.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88–132 Filed 1–5–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company and Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Safety System Instrumentation and Containment Isolation Valves in accordance with Toledo Edison Company's application dated August 7, 1987. Specifically, the proposed amendment would:

(1) Revise TS section 3/4.3.2, Table 3.3–5, to delete reference to the atmospheric vent values, main steam warmup drain valves, main steam line valves, main feedwater stop valves, and main steam line warmup valves receiving a manual Safety Features Actuation Signal (SFAS).

(2) Revise TS section 3/4.3.2, Table 3.3–5, to delete reference to the atmospheric vent valves and main steam warmup drain valves receiving a high containment pressure SFAS automatic signal.

(3) Revise TS section 3/4.3.2, Table 3.3–5, to delete reference to the main steam line valves, main feedwater stop valves, and main steam warmup valves receiving a high-high containment pressure SFAS automatic signal.

(4) Revise TS section 3/4.3.2, Table 3.3–5, to delete reference to the atmospheric vent valves and main steam warmup drain valves receiving a low reactor coolant system pressure SFAS automatic signal.

(5) Revise TS section 3/4.6.2, Table 3.6–2, to delete from section A, valves FW601 (penetration 37), FW612 (penetration 38), MS100, ICS11A, MS375, and MS100–1 (penetration 39), MS101, ICS11B, MS394, and MS101–1 (penetration 40), MS603 (penetration 57) and MS611 (penetration 60).

(6) Revise TS section 3/4.6.3, Table 3.6–2, to add to section C, valves FW601 (penetration 37), FW612 (penetration 38), MS100, ICS11A, MS375, and MS100–1 (penetration 39), and MS101, ICS11B, MS394, and MS101–1 (penetration 40).

The licensees maintain that the proposed modifications will improve the reliability and availability of the main feedwater system, and minimize challenges to the auxiliary feedwater system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 5, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be effected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date Petitioner was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 29th day of December 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–137 Filed 1–5–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Company and Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs) relating to Auxiliary Feedwater System Surveillance Requirements in accordance with Toledo Edison Company's application dated May 4, 1987. Specifically, the proposed amendment would revise paragraph d of TS § 4.7.1.2 to delete the Surveillance Requirement for periodic channel functional tests and channel calibrations for the Auxiliary Feedpump Turbine Inlet Steam Pressure Interlocks.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 5, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 29th day of December, 1987.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-138 Filed 1-5-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25233; File Nos. SR-Amex-87-28; SR-CBOE-87-52; SR-NYSE-87-36; SR-PSE-87-26; SR-Phlx-87-29 and SR-NASD-87-45]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the American ("Amex"), New York ("NYSE"), Pacific ("PSE"), and Philadelphia Stock Exchanges ("Phlx"), the Chicago Board Options Exchange ("CBOE"), and the National Association of Securities Dealers ("NASD") (collectively, the self-regulatory organizations ["SROs"] or "Exchanges") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described herein.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The SROs have filed with the Commission their enforcement policies regarding certain practices generally referred to as "frontrunning of block transactions." These policies are contained in information circulars that describe the kind of conduct involving the frontrunning of blocks that would be considered to be in violation of Exchange rules. These circulars are distributed to Exchange members.

Generally, the SROs define frontrunning as the practice of trading a security while in possession of material, non-public information regarding an imminent block transaction[2] in the same or a related security. The SROs' circulars state that the use by an Exchange member of such material, non-public information to trade for his own benefit and to the detriment of members of the public as well as other Exchange members is activity inconsistent with just and equitable principles of trade and a violation of Exchange rules.

In 1980, in response to a recommendation in the Report of the Special Study of the Options Market,[3] all of the SROs adopted policies stating that trading in options or in underlying securities while in possession of material, non-public information concerning block transactions in these securities is conduct inconsistent with just and equitable principles of trade in violation of Exchange rules.[4] An explanation of the policies was contained in information circulars that were distributed to Exchange members.[5]

In 1985, the SROs disseminated circulars clarifying that the above frontrunning prohibition applied to trading in index options and options on over-the-counter stocks.[6] In May 1986, the Chairmen of the Federal Regulation and the Derivative Products Committees of the Securities Industry Association ("SIA") submitted a letter to the Interim Chairman of the Intermarket Surveillance Group ("ISG"), addressing certain concerns they believed were raised by the recently-issued frontrunning circulars.[7] Among other things, the letter stated the writers' belief that the circulars constituted rulemaking which must be filed with the Commission, published for public comment, and ultimately approved or

[1] The proposed rule changes were filed on the following dates: Amex, October 29, 1987; CBOE, October 30, 1987; NYSE, October 23, 1987; PSE, October 29, 1987; Phlx, October 26, 1987; and NASD, October 30, 1987.

[2] A transaction involving 10,000 or more shares of an underlying security or options covering such number of shares is conclusively deemed to be a block transaction; a transaction of less than 10,000 shares may also be a block transaction in appropriate cases.

[3] H.R. Rep. No. 1FC-3, 96th Cong., 1st Sess. at 186 (Comm. Print 1978).

[4] The SROs' rules that prohibit conduct by members that is inconsistent with just and equitable principles of trade are: Amex: Article V, Section 4(h); CBOE: Rule 4.1; NASD: Article III, Section 1 of the Rules of Fair Practice; NYSE: Rule 407; PSE: Rule 1, Section 12(k); Phlx: Rule 707.

[5] *See, e.g.*, Amex Information Circulars 79–12 and 80–36; CBOE Educational Circular No. 23; and NYSE Information Memo No. 80–38.

[6] *See, e.g.*, Amex Information Circular 85–115; NYSE Information Memo No. 85–36; and Phlx Circular 85–82.

[7] Letter from William R. Harman, Chairman, Federal Regulation Committee and Allan H. Pessin, Chairman, Options and Derivative Products Committee, SIA, to Bertram Riley, Interim Chairman, ISG, dated May 16, 1986. The ISG is a group of SRO surveillance heads that meet to discuss joint surveillance concerns and devise methods to improve intermarket surveillance.

disapproved by the Commission. In its letter responding to the SIA's comments, the ISG stated that the SROs were considering the possibility of filing their frontrunning circulars with the Commission.[8]

In response to the SIA-ISG correspondence, the SROs filed their frontrunning circulars with the Commission pursuant to section 19 of the Act. The SROs stated that the proposals are stated policies, practices and interpretations with respect to the meaning and enforcement of existing Exchange rules. The SROs, accordingly, requested that the proposed rule changes take effect immediately pursuant to section 19(b)(3)(A) of the Act.

The proposed rule changes are stated policies, practices, or interpretations of the SROs with respect to the meaning and enforcement of existing rules. As such they have become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by January 27, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 30, 1987.

[FR Doc. 88-119 Filed 1-5-88; 8:45 am]

BILLING CODE 8010-01-M

[8] Letter from Donald J. Solodar, Chairman, ISG, to John C. Harris, Chairman, Options and Derivative Products Committee, SIA, dated April 16, 1987.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Negotiations to be held Friday, January 29, 1988, from 1:00 p.m. to 4:00 p.m. in Geneva, Switzerland, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Michael B. Smith,

Deputy United States Trade Representative.

[FR Doc. 88-84 Filed 1-5-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

University Transportation Centers Program; List of Universities Eligible for Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice lists the universities that are eligible to apply for grants under the University Transportation Centers Program.

FOR FURTHER INFORMATION CONTACT: Gracie Carter, University Transportation Centers Program, P–34, (202) 366–5442, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation will be making grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions. Because only ten centers will be funded it may be useful for the universities to consider forming consortia. The grants will be administered by the University Transportation Centers Program, which is located in the Office of the Assistant Secretary for Policy and International Affairs.

DOT announced the solicitation for pre-applications in the August 14, 1987, **Federal Register**. The Department reviewed the submissions on September 18, 1987, and determined that 68 universities are eligible to apply to participate in the program. The universities that may submit applications are:

Alaska, University of, Fairbanks
Arizona State University
Arkansas, University of, Fayetteville
California, University of, Berkeley
California, University of, Irvine
California Polytechnic State University
Carnegie Mellon University
Central Missouri State University
City University of New York
Colorado, University of, Denver
Colorado State University
Connecticut, University of, Storrs
Cornell University
Duke University
Eastern Illinois University
Florida, University of, Gainesville
Georgia Institute of Technology
Harvard University
Illinois, University of, Chicago
Indiana University, Bloomington
Iowa, University of, Iowa City
Iowa State University
Kansas, University of, Lawrence
Kansas State University
Kentucky, University of, Lexington
Louisiana State University
Maryland, University of, College Park
Massachusetts Institute of Technology
Michigan, University of, Ann Arbor
Michigan State University
Minnesota, University of, Twin Cities
Missouri, University of, Columbia
Morgan State University
Nebraska, University of, Lincoln
Nevada, University of, Reno
North Alabama, University of, Florence
North Carolina, University of, Chapel Hill
North Carolina Agricultural and Technical State University
North Dakota, University of, Grand Forks
North Dakota State University
Northwestern University
Ohio State University
Oregon State University
Pennsylvania, University of, Philadelphia
Pennsylvania State University
Pittsburgh, University of

Polytechnic University (New York)
Portland, University of
Portland State University
Purdue University
Rensselaer Polytechnic Institute
Rice University
Southern California, University of, Los Angeles
Southern University at New Orleans
St. Cloud State University
Syracuse University
Tennessee, University of, Knoxville
Texas, University of, Austin
Texas A&M University
Texas Southern University
Utah State University
Virginia, University of, Charlottesville
Virginia Polytechnic Institute and State University
Washington University in St. Louis
Washington, University of, Seattle
West Virginia University, Morgantown
Wisconsin, University of, Milwaukee
Wyoming, University of, Laramie

A detailed discussion of the program and the application form will be mailed to the eligible universities about the end of December. The Department will only review applications from institutions that have been determined to be eligible in the pre-application process. If consortia are formed the university responsible for each consortium must be eligible to submit an application. The final application will be the sole basis for any grant award.

Issued in Washington, DC, on December 30, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-82 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circulars; Small Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Publication of advisory circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued by the Small Airplane Directorate since January 1987. These AC's, listed below, relate to Part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Snitkoff, Manager, Policy & Guidance Section, ACE-111, Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed in response to the needs identified by industry during the FAA Airframe Policy and Program Review Public Meeting held in Wichita, Kansas, on June 8-9, 1983; and to update existing policy information for Small Airplane Certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments to each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Subsequent Distribution Unit, M-443.2, Washington, DC 20598.

Advisory Circulars Published:

AC Number	Subject	Date signed
AC 23.841-1 [1]	Cabin Pressurization Systems in Small Airplanes.	12/30/86
AC 23.961-1	Procedures for Conducting Fuel System Hot Weather Operation Tests.	01/14/87
AC 20-118A	Emergency Evacuation Demonstration.	03/09/87
AC 23-7	Substantiation for an Increase in Maximum Weight, Maximum Landing Weight, or Maximum Zero Fuel Weight.	07/01/87
AC 23-8	Flight Test Guide for Certification of Normal, Utility, and Acrobatic Category Airplanes.	10/20/87
AC 23.807-1A	Emergency Exit Shape and Size.	10/29/87

[1] This AC was signed after the Notice of Advisory Circulars issued by the Small Airplane Certification Directorate for the year 1986 was published in the **Federal Register**, therefore, this AC is listed in the year 1987.

Barry D. Clements,

Manager, Aircraft Certification Division

[FR Doc. 88-81 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Reestablishment and Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public meeting; reestablishment of the Committee.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on January 21 and 22, 1988, in Atlanta, Georgia, at the Holiday Inn Crowne Plaza, 1900 Sullivan Road, near the airport. The meeting will begin at 9:00 a.m. on both days and it is open to the public.

The agenda will include: Various motor carrier safety issues, a report on the status of the National Governors' Association Working Groups' recommendations on Uniform State Motor Carrier Procedures, coordination with State motor carrier advisory committees, the Commercial Drivers' Licensing program, plans for a National Motor Carrier Safety Conference, the image of the industry, the issue of "reasonable access", and the status of various legislative proposals which may affect the motor carrier industry.

This meeting also coincides with a public forum on the FHWA's proposed standards for the testing and licensing of commercial motor vehicle operators. The forum will begin at 1:00 p.m. in the Georgia International Convention and Trade Center, which is adjacent to the Holiday Inn Crowne Plaza. The Committee will adjourn to attend the forum.

The FHWA also announces the reestablishment of the National Motor Carrier Advisory Committee. The Committee consults with the makes recommendations to the Federal Highway Administrator on matters relating to the activities of the FHWA in areas affecting commercial motor vehicles and operators. Copies of the Committee charter are available on request.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: December 31, 1987.

Ray Barnhart,

Federal Highway Administrator.

[FR Doc. 88-172 Filed 1-5-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 30, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8716.
Type of Review: New.
Title: Election To Have a Tax Year That is Not a Required Tax Year as Defined in section 444(e).
Description: Filed by partnerships, S corporations, and personal service corporations under section 444(a), to retain, to change, or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign master-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 58,300 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
Clearance Officer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-93 Filed 1-5-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 37-87]

Treasury Notes of January 15, 1995, Series E-1995

Washington, December 30, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of January 15, 1995, Series E-1995 (CUSIP No. 912827 VT 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 15, 1988, and will accrue interest from that date, payable on a semiannual basis on July 15, 1988, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 6, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 5, 1988, and received no later than Friday, January 15, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue

prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secreatry of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, January 15, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, January 13, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, January 15, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-229 Filed 1-4-88; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: U.S. Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. USIA is required to conduct public opinion surveys abroad in accordance with Executive Order 12048 (dated March 27, 1978). USIA is requesting approval of the extension of OMB 3116-0163, which provides a generic clearance of its public opinion surveys which are conducted abroad.

DATE: Comments must be received by January 15, 1988.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Margaret G. Pape, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-1408. OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title "USIA Surveys". Form Number: No form used for this information collection.

Abstract: Executive Order 12048 of March 27, 1978, requires the Director of the U.S. Information Agency to be the principal advisor within the U.S. Government on international educational, informational, and cultural matters. The scope of the USIA Director's advice includes assessments of the impact and conducts public opinion surveys overseas as a means of obtaining such informations. The agency seeks clearance from OMB for these foreign opinion surveys.

Proposed Frequency of Responses:
No. of Respondents—40,000
No. of Responses Per Respondent—20
Recordkeeping Hours—.4
Total Annual Burden—320,000

Dated: December 29, 1987

Thomas H. Connor,

Deputy Chief, Domestic Support Division

[FR Doc. 88-128 Filed 1-5-88; 8:45 am]

BILLING CODE 8230-01-M

Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of an institution of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC., with schools or colleges of education or graduate programs in international studies, located within reasonable proximity of Washington, DC's international gateway airports, are invited to submit project proposals for a cooperative agreement award from the Agency. For application information, please contact Mr. David N. Levin no later than January 15 at the following address: Teacher Exchange Brach (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street SW., Washington, DC. 20547. Phone: (202) 485-2555.

Dated: December 30, 1987

Robert R. Gosende,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 88-129 Filed 1-5-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 3
Wednesday, January 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 7, 1988

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. FY88 Budget/Operating Plan

The staff will brief the Commission on issues related to the FY88 Budget/Operating Plan.

Closed to the Public

2. Enforcement Matter OS#3393

The staff will brief the Commission on issues related to Enforcement Matter OS#3393.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

December 31, 1987.

[FR Doc. 88-176 Filed 1-4-88; 9:22 am]

BILLING CODE 6355-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 4, 11, 18, and 25, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 4

Wednesday, January 6

10:00 a.m.
Briefing on status of NRC Internal Drug Program (Public Meeting)

Thursday, January 7

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on Status of Maintenance Program and Policy Statement/Advanced Notice of Proposed Rulemaking (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

No Commission Meetings

Week of January 18—Tentative

Wednesday, January 20

10:00 a.m.
Briefing on Status of Sequoyah Restart (Public Meeting)

2:00 p.m.
Briefing on NRC Technical Training Program (Public Meeting)

Thursday, January 21

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting) (Tentative)

2:00 p.m.
Briefing on Regulation of Transportation of Radioisotopes and Results of the Modal Study (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sesssions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

January 4, 1988.

[FR Doc. 88-241 Filed 1-4-88; 3:25 pm]

BILLING CODE 7590-01-M

Wednesday
January 6, 1988

Part II

Federal Home Loan Bank Board

12 CFR Parts 525, 561, 563, 563c, 571, 583, and 584

Implementation of the Competitive Equality Banking Act of 1987; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 525, 583, and 584

[No. 87-1298]

Qualified Thrift Lender Test; Savings and Loan Holding Company Amendments; Federal Home Loan Bank Advances

Date: December 22, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("the Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is amending its regulations governing savings and loan holding companies to implement the qualified thrift lender test enacted in the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"). The CEBA amends section 408 of the National Housing Act, 12 U.S.C. 1730a, also commonly known as the Savings and Loan Holding Company Act ("the SLHC Act"), to provide that the current exemption from the nonthrift activity restrictions for unitary savings and loan holding companies will be available only where the subsidiary institution meets the new qualified thrift lender test. The CEBA also amends section 10 of the Federal Home Loan Bank Act ("FHLBank Act"), 12 U.S.C. 1430, to reduce the eligibility for advances from the Federal Home Loan Banks ("FHLBanks") of member institutions that do not meet the qualified thrift lender test.

This regulation sets forth the new qualified thrift lender test, which requires that an insured institution must maintain 60 percent of its tangible assets in housing and housing-related investments in order for the institution to have Qualified Thrift Lender ("QTL") status. The regulation also implements the new statutory limitations on eligibility for advances and permissible holding company activities where an institution fails to maintain its QTL status.

EFFECTIVE DATE: January 1, 1988.

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SUPPLEMENTARY INFORMATION:

I. Introduction; Statutory Authority

Section 104(c)(1) of the CEBA amends section 408 of the National Housing Act (12 U.S.C. 1730a) by adding a new subsection (o) entitled "Qualified Thrift Lender Requirements." CEBA, tit. I, sec. 104(c)(1), section 408(o). This provision sets forth a QTL test for all insured institutions, including both state-chartered institutions and Federal associations.[1]

As stated in the legislative history of the CEBA, Congress' objective in promulgating the QTL provisions was one of "committing insured institutions to the unique, congressionally defined role of providing housing-related finance." H.R. Rep. No. 261, 100th Cong., 1st Sess. 137 (1987). The key component of the QTL test is whether the institution's "actual thrift investment percentage" equals or exceeds 60 per cent of its tangible assets on an average basis over time; that is, whether the institution consistently invests the stated majority of its tangible assets in certain "qualified thrift investments." Generally, these qualified investments are related to domestic real estate or manufactured housing, but they include other assets that are incidental to the thrift's housing-related investments.

In addition to setting forth the QTL test and defining necessary terms, section 104(c) of CEBA provides a special transition period for state-chartered savings banks and a five-year disqualification for any insured institution that fails to maintain its QTL status. Moreover, certain exceptions and exemptions may be granted by the FSLIC. Finally, the CEBA requires the FSLIC to adopt regulations implementing the requirements of the QTL test that must be effective on or before January 1, 1988.

The CEBA provides that an insured institution's ability to qualify as a thrift lender may affect its ability to obtain advances from its FHLBank as well as the ability of any holding company parent and nonthrift affiliates of the institution to engage in certain nontraditional thrift activities. In particular, section 105 of the CEBA provides that member institutions that do not have QTL status will be eligible for advances only to the extent that they hold qualified thrift investments. Moreover, section 104(b) of the CEBA provides that the current exemption for unitary thrift holding companies from the activities restrictions in the Act will now be available only if the subsidiary thrift institution meets the QTL test.

II. Description of the Proposal

On October 2, 1987, the Board proposed a rule to implement the QTL Test. *See* Board Res. No. 87-1041, 52 FR 39076 (Oct. 20, 1987). First, the proposal added to the Board's regulations a new § 583.27 setting forth the QTL test and enumerating a list of investments considered to be "related to domestic residential real estate or manufactured housing" for purposes of the test. Second, the proposal amended the Board's regulations governing permissible activities of savings and loan holding companies to reflect the new limitations under the CEBA on nonthrift activities for such companies. Finally, the proposal amended the Board's regulations governing FHLBank advances to reflect the effect of failure to meet the QTL test on an institution's ability to receive FHLBank advances. The comment period on the proposal expired on November 19, 1987.

In connection with its proposed rulemaking, the Board held two days of public hearings on November 3 and 4, 1987 on the proposed QTL regulation and six other regulations it proposed to implement the CEBA. Twenty-three industry representatives participated in these hearings. The number of witnesses addressing the QTL proposal included four members of an overview panel and four members of the panel specifically concerned with the QTL test. Of these eight witnesses, six represented trade associations, one an insured institution, and one a law firm. Remarks by participants in the hearing are summarized below as part of the public comment summary.

III. Discussion of Comments

The Board received a total of 53 public comments in response to the proposal. Thirty-two commenters supported the proposal, twenty of whom suggested modifications. Only seven commenters opposed the proposal, of whom five suggested modifications. Fourteen commenters suggested modifications but took no apparent position on the proposal. The majority of comments (31) were submitted by insured institutions. Of the remainder, seventeen were submitted by industry trade associations, three by law firms, one by an individual, and one by a securities firm. Commenters suggested both technical and substantive modifications to the proposal. Although the comment period ended on November 19, 1987, the Board has considered late-filed and late-received letters in its efforts to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are more fully discussed below, the Board has determined to adopt the amendments substantially as proposed with certain modifications and clarifications.

A. Definition of Qualified Thrift Lender

Section 104(c)(1) of the CEBA provides that an insured institution shall have QTL status if its qualified thrift investments equal or exceed 60 percent of its assets "on an average basis in 3 out of every 4 quarters and 2 out of every 3 years." Section 104(c) defines the term "qualified thrift investments" as the sum of: (1) The aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary thereof) that are "related to domestic residential real estate or manufactured housing;" (2) the value of property used by the institution or its subsidiary in the conduct of the business of the institution or its subsidiary; (3) the types of liquid assets required to be maintained under section 5A of the FHLBank Act, 12 U.S.C. 1425a; and (4) 50 percent of the dollar amount of residential mortgages originated by the institution or its subsidiary and sold within 90 days of origination. CEBA, tit. I, sec. 104(c), section 408(o)(5)(B). The aggregate amount of the assets described in the latter two categories may not exceed 10 per cent of the institution's tangible assets.

As the Board noted in the proposal, Congress left to the Board fairly broad discretion to implement the requirements of the QTL test. The majority of commenters supported the approach taken by the Board in the proposal; however, many suggested various modifications or additions to the list of items that would count as qualified thrift investments.

1. Housing Related Investments

In the proposal, the Board took a very flexible approach in determining which assets would qualify as housing related investments. The Board attempted to make the list of housing related investments as comprehensive as possible by including all types of investments related to insured institutions' traditional role of encouraging thrift and facilitating private home ownership. Accordingly, the proposal included all forms of home mortgages, home improvement loans, and loans made on the security of residential real estate or manufactured housing (including home equity loans). Similarly, the proposal included all investments acquired by the institution through foreclosure and liquidation of any of the aforementioned investments, as well as any other equity interests held by the institution and its subsidiaries in residential real estate. The proposed list also included stocks, bonds, and other securities issued or guaranteed by the FHLBanks, the newly established Financing Corporation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and obligations issued by the FSLIC.

Further, the Board proposed that all forms of residential mortgage-related securities be included as housing-related investments under the proposal. For example, these securities include pass-through participation type certificates as well as pay-through bonds. Mortgage-related securities also include, but are not limited to, any portion or tranche of a collateralized mortgage obligation or REMIC. They also include any type of derivative product currently existing or hereafter created, such as so-called residual or stripped securities (assuming such instruments are an authorized and permissible part of the institution's portfolio.) This list of securities is meant to be illustrative and not exhaustive of the types of qualifying investments in the continually evolving mortgage-related securities marketplace.

The proposed list also included any investment in a corporation, partnership, or trust whose primary activities include servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other housing-related activities such as domestic residential loan origination or the sale of residential loans. A company is considered to have its primary activity in such activities if it derives more than half its annual gross revenues from such activities. Similarly, the proposal would permit institutions to count land loans, as defined in 12 CFR 561.18, as a housing related investment once actual construction of residential housing begins.

Moreover, as proposed, the regulation would allow an institution to count any investments in state housing corporations and community development projects. Also included in the proposal would be investments in obligations of any state or political subdivision that are issued for the purpose of providing financing for residential housing or incidental services. The term incidental services is intended to include municipal projects that are related to the public financing and maintenance of housing—for example, municipal bonds floated for the purpose of constructing or repairing a neighborhood sewage system.

Finally, the proposal contemplated that the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") could issue T-Memoranda that list particular investments that qualify as housing-related investments under paragraph (c) but are not specifically listed in the regulation. This approach is similar to the approach taken in ORPOS Memorandum No. T-2-3h (April 25, 1985) with respect to liquid assets and permissible investments for Federal associations.

A majority of commenters expressed support for the flexible approach taken by the Board in defining what assets may count as housing-related investments; while a few commenters believed that the list of housing-related investments was too broad. Several commenters suggested various additional investments that they contended should be included as housing-related investments.

A few commenters suggested that FHLBank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the FHLBank System be counted as housing-related investments. Similarly, some commenters suggested that investments in other federally insured thrifts should be included in the list. In response to these commenters, the Board has determined to include all obligations of the FHLBank System as housing-related investments and also to include a thrift's investments and deposits in other insured institutions. In the Board's view, these items promote economical home financing because they strengthen the FHLBank System by encouraging the placement and maintenance of funds in that System. Therefore, they are

[1] For purposes of the QTL test, an insured institution is defined as a Federal savings and loan association, a Federal savings bank, a building and loan, savings and loan or homestead association or a cooperative bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and includes a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation and a savings bank which is deemed by the Corporation to be an insured institution under 12 U.S.C. 1730a(n). *See* 12 U.S.C. 1730a(n)(1)(A).

properly includable as housing-related investments.

Two commenters suggested that institution's shares in the FSLIC secondary reserve should be included as a housing-related investment arguing that the secondary reserve was established to benefit the FSLIC and thus is clearly housing related. While an institution's share in the secondary reserve could arguably be incidentally related to housing, the Board declines to include this item as a housing-related investment.

Several commenters contended that direct obligations of the United States, such as Treasury Bonds, should be included as housing-related investments because they are inherently intertwined with housing-related investments. These commenters argued that such instruments influence the national interest rate and thereby control the availability of affordable home financing. It is, of course, correct that certain obligations of the United States affect interest rates and are therefore related to housing. The CEBA, however, prescribes that they be included as qualified thrift investments not under the housing- related investment category but under the liquid asset category. Direct obligations of the United States, such as Treasury Bills or Bonds, are included as liquid assets in § 523.10 and therefore may be counted, subject to the overall 10 percent limitation, as qualified thrift investments. The Board does not believe it was the intent of Congress to include such obligations as housing-related investments and consequently declines to include them.

A few commenters suggested that commercial loans, consumer loans, savings account loans, overdraft loans, and credit card loans be included as housing related investments. Such commenters advocated counting either the entire amount of these loans or the portion of them that can be statistically linked to housing-related activities such as home improvement or construction. Similarly, one commenter asserted that any home equity loans that are classified as consumer loans should be included. Another commenter suggested including the value of property and materials necessary to successful housing development, *e.g.*, basic infrastructure such as utility and transportation, local shopping areas, local medical facilities, nursing facilities, playgrounds, parks, dedicated school property, and recreational property subject to a test that they are reasonably related to and primarily for the benefit of a specific identifiable project, or subject to a percentage limit.

In response to these suggestions the Board first notes that the regulation as proposed includes home equity loans as housing related investments. Such loans would be included under the category of "loans made on the security of residential real estate or manufactured housing." After careful consideration, the Board has determined not to include specifically in the regulation the other suggestions offered by commenters as housing related investments. The Board notes that the purpose of the QTL test is to commit institutions to the unique, congressionally defined role of providing housing-related finance. The items suggested by commenters are related to housing only in an incidental way, and the Board believes that their relationship to housing is too attenuated to justify inclusion in this prong of the QTL test. Moreover, although the Board recognizes that certain commercial loans, credit card loans, overdraft loans, and other types of consumer loans may be used for home improvement purposes, in the Board's view, the difficulty of calculating and documenting which portion of such loans are in fact used for such purposes outweighs any potential advantage of including them in the rule as housing related investments.

Moreover, the Board does not believe it necessary to add items that are housing related only in a questionable way in order to assist insured institutions in meeting the QTL test. The list of housing related investments is already very broad and flexible; consequently, most institutions should be able to meet the QTL test without great difficulty.

For these reasons, the Board declines to include the loans described above in the regulatory list of housing related investments. If, however, an institution does not have 60 per cent of its assets in qualified thrift investments for any reporting quarter and if it can show with adequate documentation that certain consumer loans or commercial loans in its portfolio are in fact housing related, it may include such loans for purposes of meeting the QTL test pursuant to the guidelines set forth in a Supervisory Memorandum to be issued by the ORPOS.

One commenter, representing the Association of Savings Banks of Puerto Rico, urged the Board to include various investments peculiar to Puerto Rican thrifts as housing-related investments. These investments included Government Development Bank deposits, rates and debentures; Social Housing Mortgage Trust Funds, Puerto Rico Housing Bank obligations; and various other obligations of the Puerto Rican government and its agencies. In the Board's view, several of these investments are already included within the scope of the regulation. The ORPOS will issue a Memorandum that will enumerate those Puerto Rico investments that qualify as housing related investments.

In response to the Board's specific request for comment on the extent to which investments in entities whose primary activities include residential real estate activities should be included as housing related investments, several commenters advocated including proportional amounts of investments in a real estate servicing entity that derives less than 50 per cent of its primary revenue from housing-related investments. For example, if such an entity derives 30 per cent of its primary revenues from housing related investments, then 30 per cent of a thrift's investment in the entity should be includable. One commenter suggested that the entity's "holdings" as well as its revenues should count toward the fifty per cent test. Another commenter asserted that the test should measure a *majority of assets* in housing related investments regardless of the sources of revenues. Failure to include investments on a proportional basis, according to one commenter, would only encourage the formation of additional subsidiaries to separate out nonqualifying revenues. In contrast, one commenter asserted that the 50 per cent threshold was reasonable and investments in an entity that derives less than that from housing-related activities should not be counted.

In response to these commenters, the Board has determined to allow an institution to include as a housing related investment its investment in a corporation, partnership or trust whose activities include servicing residential real estate loan portfolios, developing residential domestic real estate, or any other housing related activities such as domestic residential loan origination or the sale of domestic residential loans. Institutions may include the amount of their investment in such an entity in proportion to the amount of primary revenue the entity derives from housing related investments. For example, if such an entity derives 70 per cent of its primary revenue from housing related investments, an institution may include 70 per cent of its investment in such an entity as a housing related investment. Similarly, if an entity derives 20 per cent of its primary revenue from housing related investments, an institution may include 20 per cent of its investment in such an entity as a housing related

investment. The Board cautions, however, that institutions must have adequate documentation to support the inclusion of any such investment.

Accordingly, the Board today is revising the proposal to permit institutions to include the amount of their investment in real estate servicing entities in proportion to the amount of primary revenue the entity derives from housing related activities. Additionally, the Board has amended the proposal to clarify that institutions may only include investments under this subsection in real estate servicing entities that are not subsidiaries of such institutions. As discussed more fully below, the Board has made this amendment in order to eliminate the "double counting" problem that arises where an institution counts its subsidiary's investments as housing related investments and also counts its investment in its subsidiary as a housing related investment.

Many commenters addressed the issue of whether acquisition, development and construction loans ("ADC loans") should be counted as housing related investments before actual construction begins if an insured institution can document the residential purpose of the loan. One commenter recommended that the final regulation clarify that ADC loans for raw land to be improved by construction of the type of structures enumerated in section 5(c)(5) of the Home Owners' Loan Act of 1933 ("HOLA"), as amended (12 U.S.C. 1464(c)(5)), are included within the scope of the regulation. With the exception of one institution that totally opposed including ADC loans as qualified housing-related investments, a large number of commenters favored including preconstruction land loans where sufficient documentation is provided to attest to their residential purpose.

Commenters offered several suggestions with respect to the type of documentation that could be used to show the residential nature of a particular ADC loan. Three commenters recommended that the definition of qualified ADC loans used in the tax code test for a building and loan association be used: "Loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if * * * there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of the land." Internal Revenue Code 7701(a)(19)(c) (1982 & Supp. III 1985). Other commenters suggested the following documentation: (1) Evidence certified by appropriate local or county authorities that the land that is serving as collateral for the loan is in fact zoned for residential purposes at the time the financing is extended; (2) an appraisal used during the loan underwriting process and prepared in accordance with Board regulations that establishes the market value of the property based on its development for residential purposes; (3) a proposed development plan setting forth the nature of the residential development and the budget and schedule for the development; (4) a certification by the institution's management that the land loan was funded on the basis that it would be used for the acquisition and/or development of residential property; and (5) appropriate documentation verifying the availability of utilities, sufficient to service the property once developed for residential purposes.

The Board is persuaded by the arguments offered by the commenters and has determined that land loans that are properly documented to show the residential nature of the loan may be included as housing related investments whether the institution or its subsidiary holds such loans directly or invests in them indirectly through a nonsubsidiary real estate servicing entity. The ORPOS will issue a Supervisory Memorandum before January 1, 1988, that will set forth the documentation needed to support inclusion of residential purpose land loans as a housing related investment.

Several commenters contended that the value of institutions' purchased mortgage loan servicing rights [2] should be included as housing related investments because they are an integral part of the secondary mortgage market. One commenter asserted that including these rights as qualified thrift investments would encourage thrifts to shift their dependence away from interest rate-sensitive investments to fee-based income from mortgage servicing.

One commenter, who favored including the mortgage servicing rights, took issue with the manner in which such servicing rights are treated for purposes of calculating the actual thrift investment percentage ("ATIP"). According to this commenter, the current formulation would include in the numerator purchased servicing rights held by a real estate servicing entity but exclude those rights held directly by the insured institution, thereby discouraging institutions from acquiring such rights directly.

The Board agrees with the commenters and has included in today's final rule purchased residential mortgage servicing rights held by the institution or its subsidiary as a housing related investment. Purchased mortgage servicing rights clearly are an integral part of the secondary market and therefore are properly includable as a housing related investment. Moreover, the final rule also includes excess servicing rights as a housing related investment. Such servicing rights are created when an institution sells a group of loans and retains the right to service those loans. In the Board's view, these excess servicing rights are identical in nature with purchased servicing rights and are therefore also properly includable as housing related investments.

Several commenters urged the Board to clarify that multifamily residential property assets are included in the scope of housing related investments. The Board notes that the list of housing related investments includes home mortgages, which are defined in 12 CFR 521.6 as "a mortgage on real estate * * * which comprises one or more homes or other dwelling units." In the Board's view, this reference clearly includes multifamily residential assets. Similarly, loans made on the security of liens upon domestic residential real estate also include multifamily housing.

Another commenter sought clarification as to whether loans made upon the security of university dormitories, nursing or convalescent homes, and real property on which a mobile home park is situated are considered to be residential real estate for purposes of the QTL test. The Board notes that the purpose of § 583.27(c) is to enumerate those broad categories of investments that, in the Board's view, are housing related. Clearly, there are many items that may not be specifically listed in paragraph (c) that fall within the board categories listed therein. It is the Board's intent that the supervisory memoranda issued by ORPOS will enumerate specific items that fall within the scope of the regulation, similar to the current treatment of liquid assets in Memorandum No. T 2-3h. In response to the specific issues raised by the commenter, the Board historically has considered loans made upon the security of university dormitories, nursing or convalescent homes and real property on which a mobile home park is located as residential real property. *See, e.g.*, ORPOS Memorandum No. T-7 (Aug. 31, 1983) (dormitories generally

[2] A purchased mortgage loan servicing right may be defined as a contractual right to receive fees for servicing mortgage loans or securities backed by mortgage loans held by investors.

classified as residential real estate); 48 FR 23032, 23036 (May 23, 1983) (the term "residential real estate" includes multifamily structures such as dormitories and nursing or convalescent homes). Accordingly, the Board believes that the items mentioned by the commenter clearly fall within the definition of housing related investments.

Additionally, commenters raised several questions with regard to whether certain contra assets are deducted in determining the amount of an institutions qualified thrift investments. The Board takes this opportunity to clarify that the calculation of the aggregate amount of qualified thrift investment is based on the aggregate *net* amount of such investments as reported on an institution's monthly and quarterly reports to the Board. Thus, any such investment would not include contra assets such as valuation allowances or discounts. Accrued interest on an eligible investment, however, would be included.

Although not specifically raised by commenters, the Board wishes to take this opportunity to clarify that investments in housing related assets that are subject to repurchase agreements are included as housing related investments. The Board has amended the proposal to specifically include such investments as housing related investments.

Finally, to assure continued flexibility to take account of the changing marketplace, several commenters proposed establishing a procedure whereby an institution could request qualification of particular assets on a case-by-case basis through a supervisory memoranda. An alternative recommendation was to give the ORPOS the authority to approve new investments without having to resort to the T-memo process, but permit denials only with the concurrence of the Office of General Counsel.

As the Board noted in the proposal, the ORPOS may issue Supervisory Memoranda that list particular investments that qualify as housing related investments under paragraph (c) but are not specifically enumerated therein. The Board has directed the ORPOS to issue the first such Memorandum prior to January 1, 1988, the effective date of this rule. The Board anticipates that the Memorandum will be updated by the ORPOS as is necessary. The Board notes, however, that institutions may request a legal opinion from the Office of General Counsel ("OGC") as to whether a particular investment that is not specifically listed in paragraph (c) or the Memorandum may be included as a housing related investment. The OGC's decision on such opinion requests subsequently would be incorporated into the Supervisory Memorandum. The Board wishes to emphasize that the intent of the Supervisory Memorandum is to clarify whether certain investments not specifically listed fall within the scope of the investments listed in paragraph (c). Similarly, the Board envisions that requests for legal opinions will not be seeking an expansion of the list but instead a clarification as to whether a particular investment fits within the scope of the regulation or the Memoranda issued pursuant thereto. The Board does not view either of those vehicles as routes to expand the scope of housing related investments beyond that of the regulation.

Finally, the Board wishes to emphasize that neither § 583.27(c) nor any Supervisory Memorandum issued pursuant thereto is intended to expand, contract, or otherwise affect an institution's investment authority under relevant statutes and regulations. Specifically, insured institutions may only invest in those assets listed in paragraph (c) to the extent they have independent legal authority, under either law or regulation, to make such investments. To the extent an institution has independent legal authority to make an investment, § 583.27(c) sets forth those investments that may be counted as qualified thrift investments for purposes of meeting the QTL test.

2. Other Types of Qualified Thrift Investments

In addition to the housing related investment component discussed above, the proposal incorporated the other statutory components of qualified thrift investments. First, the book value of business property used by the institution or its subsidiary in the conduct of business was included as a qualified thrift investment. One commenter contended that business property should be interpreted to include furniture, fixtures and equipment. Another commenter, however, believed that investments in business property should be limited, in order to reduce the ability of thrifts to invest in high-risk investments. Another commenter asked whether business property includes appraised equity capital.

The Board takes this opportunity to clarify that business property includes fixed personality and real property assets at book value. Institutions may *not*, however, include appraised equity capital in calculating the value of its business property. Business property may only be included at book value, *i.e.*, the actual amount paid for the asset at acquisition, less depreciation.

Consistent with the CEBA, the proposal also included as qualified thrift investments: (1) Liquid assets held by the institution (not its subsidiaries) of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a); and (2) 50 per cent of the dollar amount of mortgages originated by the institution or its subsidiary and sold within 90 days of origination. Under the statute, as implemented by today's final rule, the latter two categorizes of investments may be counted as qualified investments only up to a combined aggregate amount not to exceed ten per cent of the institution's tangible assets.

Several commenters expressed concern about the 10 per cent cap applied to the combined amount of liquid assets and mortgage sold within 90 days. Some commenters advocated removing the cap altogether or applying a separate 20 per cent cap to liquid investments, or a separate 10 per cent cap to each subcategory. The 10 per cent cap is mandated by the CEBA, however, and the Board is therefore without the statutory authority to revise it.

3. Calculation of Actual Thrift Investment Percentage

As set forth in the CEBA, the "actual thrift investment percentage" ("ATIP"), which must equal 60% for an institution to qualify as a QTL, consists of a numerator comprised of the sum of an institution's qualified thrift investments (including investments of subsidiaries except in the case of liquid assets) and a denominator comprised of the institution's (but not its subsidiaries') tangible assets.

The Board received several comments on various aspects of the calculation of the ATIP. With respect to the calculation of the numerator, one problem identified is a "double counting" effect that the Board did not intend. As drafted, the proposal could be interpreted to permit an insured institution to count both its own investment in a subsidiary as well as the subsidiary's investment in qualified assets. Thus, the Board wishes to clarify that an institution may count the percentage of its investment in its subsidiaries that is housing related or count its subsidiaries' housing related investments, but not both. The same holds true with respect to the investments of subsidiaries in other subsidiaries ("second tier subsidiaries").

As proposed, the tangible assets denominator would be calculated on an unconsolidated basis, that is, it would include only the assets of the institution itself. The Board has encountered no substantial disagreement with this interpretation of the CEBA and therefore adopts in final form the unconsolidated calculation. Based on its review of comments, however, the Board has decided to alter its proposed definition of tangible assets in one respect. Whereas the proposed definition of tangible assets excluded purchased mortgage loan servicing rights, the Board has decided to include purchased mortgage servicing rights in the tangible assets base for the following reasons. Although there is not a clear consensus in the accounting community as to whether these assets are tangible or intangible, these assets do possess some important characteristics of tangible assets because: (1) An active market exists for the purchase and sale of servicing rights; (2) they are priced according to well-accepted valuation and appraisal techniques; and (3) they generate a measurable yield on investment.

Consequently, the Board believes that purchased mortgage servicing rights should be included in the denominator as tangible assets. The Board notes that its action today in no way affects the definition of "tangible capital" set forth in the Board's equity risk investment regulation, 12 CFR 563.9–6. For purposes of that regulation, purchased mortgage servicing rights are specifically excluded from the definition of tangible capital and will continue to be excluded. Moreover, for purposes of that regulation, tangible capital means equity capital as determined in accordance with generally accepted accounting principles ("GAAP") less intangibles. The Board wishes to take this opportunity to make clear that the tangible assets component of the QTL test is not currently based on GAAP, but instead is defined as the total assets of the institution less intangibles.

The Board wishes to note, however, that on December 21, 1987, as part of its mandate under the CEBA, it adopted a final rule setting forth uniform accounting standards for insured institutions. *See* Board Res. No. 87–1293. That regulation requires that institutions file all financial statements and reports in accordance with GAAP, with the exception of deferred loan losses and gains, for all reporting periods beginning on or after January 1, 1989. This reporting requirement may affect the amount of assets reported by an institution as qualified thrift investments as well as the institution's tangible asset base. Specifically, prior to January 1, 1989, institutions will be reporting some assets on their monthly and quarterly reports to the Board in accordance with regulatory accounting practices, which represent deviations from GAAP. As of January 1, 1989, however, all assets will be reported in accordance with GAAP. Institutions should be aware of this fact and should take into account what effect, if any, GAAP reporting will have on an institution's ability to continue to meet the QTL test.

A few commenters suggested that the calculation of the tangible assets base should include any housing related investments of subsidiaries that are counted in the numerator. The Board has determined not to adopt this recommendation. In the Board's view, the CEBA does not mandate such an approach. Rather, as explained in the proposal, it specifically provides that investments of both the institution and its subsidiaries are included in the numerator as qualified thrift investments (with the exception of liquid assets) and that the tangible assets base is to be calculated on an unconsolidated basis using only the institution's assets and not those of its subsidiaries. Moreover, as noted above, commenters expressed strong support for the Board's interpretation, remarking that it accurately reflects the intent of the statute. The Board therefore is satisfied that the purpose of the QTL test will not be subverted by failure to adopt this change.

4. Effective Date and Implementation

The Board is adopting in substantially the same form as proposed § 583.27(a)(1) and (2) which implements the QTL test and deems all insured institutions to have QTL status as of January 1, 1988.[3] This is the effective date of the QTL regulation and the date from which all relevant data can now be compiled and compliance calculated. As explained in the proposal, the Board believes that as a practical matter, and as a matter of prudent regulation, this approach represents the most fair implementation given the more severe burdens imposed by the "snapshot approach" that the Board has specifically rejected.

As of the January 1, 1988, effective date, then, insured institutions are responsible for tracking data according to new reporting schedules now being prepared by Board staff. The first reports for the new QTL investment schedule will be made for the calendar quarter ending March 31, 1988. Under § 583.27(a)(1) an institution would lose its QTL status at the close of any calendar quarter during which the institution had failed to maintain its actual thrift investment percentage at or above 60 percent, which failure made it mathematically impossible for the institution to meet the 60 per cent test during three out of every four calendar quarters *for each of* two out of every three calendar years. Thus, the earliest point at which an institution would lose its QTL status is June 30, 1989, assuming the institution fails the 60 per cent test in at least two of the four quarters of the first year (1988) and in the first two quarters of the second year (1989).[4]

a. *Averaging Requirement.* In order to prevent evasions of the QTL test, the regulation directs that compliance be monitored on a quarterly reporting basis measured over a calendar year period. Calculation of the ATIP is to be made on an *average basis* by taking the sum of an institution's qualifying thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the institution's total tangible assets at the end of these same four months.

The Board received several suggestions of alternative ways to implement the averaging requirement to calculate compliance with the QTL test.[5] Two commenters suggested using a less burdensome quarter-end snapshot, specifically objecting to including the last month of the previous quarter. Two commenters recommended irrevocable election procedures to permit institutions to use daily or weekly totals instead of the monthly totals and to make their calculations on a fiscal instead of a calendar year basis. A final alternative, suggested as the best technique for preventing evasion of the test, would require calculations based on weekly or bimonthly levels, provided such data is available, or if unavailable, require an annual reconciliation. The Board is not persuaded that these alternative methods will significantly increase the effectiveness of the test. The Board chose to require data from

[3] The Board is also taking the opportunity to revise the definition of insured institution in § 563.6 to conform with the definition in section 408 of the National Housing Act.

[4] In effect, the proposal contemplates a phase-in of the QTL test. In the Board's view, such a phase-in is consistent with the letter and spirit of the CEBA. *See* S. Rep. No. 19, 100th Cong., 1st Sess. 39 (1987).

[5] Section 104(c)(1) of the CEBA provides that an insured institution shall have QTL status if its actual thrift investment percentage continues to equal or exceed 60 percent on an average basis in 3 out of every 4 quarters and 2 out of every 3 years. CEBA, tit. I, sec. 104(c)(1), section 408(o)(1)(B).

the last month of the previous quarter specifically to prevent evasions and last minute manipulation of assets. Moreover, the Board has determined not to give institutions the irrevocable election suggested by the commenters. In the Board's view, such an election would defeat its overall goal of seeking uniformity of reporting QTL data by all insured institutions.

b. *Principal Supervisory Agent ("PSA") Calculation of QTL Status.* Commenters disagreed on whether, as discussed in the proposal, the PSA should be permitted to calculate QTL compliance on dates other than those set forth in the proposal, if he determines that the institution is engaging in transactions to remove certain assets from its books temporarily for purposes of meeting the QTL test. Two commenters approved of such authority, with one calling for 90 days notice before allowing such a calculation. In contrast, four commenters vigorously opposed giving the PSA such authority on the grounds that it would tend to reinforce current perceptions of supervisory arbitrariness, perceptions that have allegedly discouraged investment in the industry; or that it could unduly interfere with business and investment decisions.

After carefully weighing the pros and cons of this issue, the Board has determined not to give specific authorization to the PSA to calculate QTL compliance on dates other than those listed in the regulation. The legislative history of CEBA explicitly states that, in promulgating the QTL regulations, the Board must, to the extent possible, ensure that institutions not attempt to evade the requirements of the test. The Board believes the calculation dates specified in the regulation implement this statutory intent. It notes however, that manipulation of portfolio composition for purposes of attempting to evade the test could give rise to a number of remedial actions by the PSA ranging from a request that the institution recalculate its QTL compliance to invocation of the Board's available enforcement remedies.

c. *De Novo Institutions.* As stated in the proposal, the Board has determined to give *de novo* institutions the same "phase-in" opportunity to meet the QTL test as is afforded to existing institutions. Thus, a *de novo* institution will be required to meet the test in three out of four quarters and two out of three years beginning in the quarter following the point at which such institution becomes an insured institution. For example, if an institution obtains its charter on June 21, 1990, the institution would have the same 6-quarter phase-in provided for existing institutions. That is, the institution would begin reporting its QTL data for the quarter beginning July 1, 1990 and the first point at which the institution could fail the test is the end of the fourth quarter of 1991 (December 31, 1991).

d. *Data Collection and Reporting.* After carefully considering several different ways to collect the necessary data from insured institutions to determine compliance with the QTL test, the Board today is adopting a "Proxy Test" approach that should minimize the reporting burden on institutions. Under this approach, institutions will be screened on the basis of certain line items reported on their end-of-quarter Thrift Financial Report ("TFR") which correspond to the most important components of the QTL test. These component items reported on the current TFR (any future changes to the TFR may change some of these line items) for the QTL numerator are:

1. Residential mortgages (Lines A022 + A024 + A032 + A034)
2. Mortgage-backed pass-though securities (Lines A072 through A084)
3. Home improvement loans (Line A180)
4. Retail mobile home loans (Line A230)
5. Residential property held for development/investment/sale (Line A342)
6. Collateralized mortgage obligations, including REMICs (Line A385)
7. Fixed assets (Lines A410 + A420 + A440)
8. Liquid assets (Line A900) and one-half of residential mortgages sold during the quarter (Lines F122 + F123) up to 10 percent of tangible assets.

An approximation of the denominator, tangible assets, can also be determined from existing line items on the TFR (Lines A800 – A544). Using this data, the Board will then calculate the ratio each quarter for each institution. Any institution that has a 70 percent ratio will be considered qualified for the quarter without further reporting. Only those institutions with a snapshot ratio below 70 percent would be required to complete a more detailed QTL reporting form and will be so notified by the Board. (See Appendix for a preliminary draft of the form). The Board notes, however, that all institutions should maintain the necessary records to complete the QTL form in the event that they fail the Proxy Test.

In the Board's view, a 70 percent threshold is reasonable and appropriate for the Proxy Test because such a test is based on approximations and not precise data. Specifically, the Proxy Test includes all qualified assets in the numerator at gross, rather than net. Consequently, because the numerator would include contra asset accounts such as valuation allowances and unearned discounts, the numerator could tend to be somewhat exaggerated. Moreover, the Proxy Test is a point-of-time snapshot, not an average of month end data as is the detailed QTL test. Thus, the Board believes that the 10 percent margin sufficiently compensates for any margin of error caused by the use of the Proxy Test. The Board notes that the purpose of the Proxy Test is to minimize to the extent possible the additional reporting requirements which result from implementation of the QTL test. It is not the Board's intent to require institutions to have more than 60 percent of its assets in qualified thrift investments; the Proxy Test is solely for the convenience of institutions.

e. *Disqualification and Requalification.* The CEBA specifies that an institution that fails to maintain its QTL status is disqualified and may not thereafter be a QTL for a period of five years from the close of the quarter in which the institution lost its QTL status. This provision is incorporated into § 583.27(a)(3).

At least one commenter deemed the five year disqualification penalty to be harsh enough to call for some relief such as delaying termination of QTL status until the end of the third year of a measuring cycle, even though failure is mathematically unavoidable at an earlier date. Although the penalty may appear harsh, the Board believes that the penalty comports with the goal the QTL test is intended to promote: assuring the continued commitment of insured institutions to the unique, congressionally defined role of providing housing-related finance. In this regard, the Board is bound by the mandate of the CEBA.

The Board notes, however, that the CEBA does not specify how an institution should be able to regain its QTL status after a 5-year disqualification. The Board believes that a reasonable approach is to require any "disqualified" institution to meet the QTL test at the point it is eligible to regain its QTL status (*i.e.* at the earliest, 5 years after the date of the disqualification). In the Board's view, this approach comports with the spirit of CEBA by requiring a thrift to demonstrate its commitment to home financing by meeting the QTL test during the standard measuring cycle of three years prior to its requalification. Thus, if the disqualified thrift meets the QTL test during two of the last three years of its five-year disqualification period, it would be eligible to requalify at the end of such period. However, if the institution cannot pass the test at that point, it may not regain QTL status until such time as it demonstrates that it has met the QTL test based on the standard measuring cycle, *i.e.*, three out of four quarters in two out of three years.

5. FSLIC Exceptions; Special Phase-In For Certain Institutions

The CEBA authorizes the FSLIC to grant temporary exceptions from the QTL test due to extraordinary circumstances or to facilitate acquisition or merger of troubled institutions. One commenter requested a temporary exception, subject to periodic review, for Puerto Rican savings banks that, it is asserted, cannot meet the QTL test due to the lack of sufficient housing related investments within Puerto Rico and certain Federal tax benefits limiting their U.S. mainland investment options. Without in any way expressing any opinion on the merits of the recommended exceptions, the Board does not find it necessary to address this request in today's final regulation because the CEBA provides adequate authority to grant limited and temporary exceptions on a case-by-case basis. CEBA, tit. I, sec. 104(c)(1), section 408(o)(3). Thus, the Board will take this issue under advisement.

Two issues were raised with respect to the ten year phase-in to QTL status provided for FSLIC-insured savings banks. One party objected to the benchmark date of August 10, 1987, and suggested substituting an average computed over the period from August 10 to December 31, 1987. The August 10 date, however, is statutorily mandated and thus cannot be altered. The second suggestion is to permit savings banks the same formula for failing the test, *i.e.*, three out of four quarters, in two out of three years. This appears to be simply a matter of properly interpreting the CEBA. In the first place, this is not necessary during the ten-year phase-in period, which sets particular targets for particular dates. Once the ten-year phase-in period ends, of course, savings banks covered by the transition rule would have to meet the QTL test on the same terms as all other insured institutions, *i.e.*, on a measuring cycle of 3 out of 4 quarters in 2 out of every 3 years.

Several commenters asked the Board to provide more guidance on how to utilize the conversion option set forth in CEBA section 104(f) permitting Federal Deposit Insurance Corporation ("FDIC")-insured state savings banks to apply to be treated as insured institutions so that their parent holding companies may be regulated as savings and loan holding companies. The Board intends to address this issue in a separate proposed regulation in the near future which will be published in the Federal Register.

B. Holding Company Activities

Section 104(b) of the CEBA completely revises section 408 of the SLHC Act, 12 U.S.C. 1730a(c), which governs the activities of savings and loan ("S&L") holding companies, to account for the effect of the new qualified thrift lender test on S&L holding company activities. The CEBA preserves the current exemption from the nonthrift activity restrictions in the SLHC Act for unitary holding companies (or subsidiaries thereof) if the subsidiary insured institution meets the QTL test. CEBA, tit. I, sec. 104(b), section 408(c)(3). The CEBA also exempts from the nonthrift activity restrictions those S&L holding companies (or subsidiaries thereof) that control more than one insured institution if all, or all but one, of such institutions were acquired pursuant to a supervisory acquisition and all the subsidiary insured institutions meet the QTL test. *Id.* Additionally, the CEBA grandfathers the activities of S&L holding companies that received approval to acquire an insured institution prior to March 5, 1987. Finally, section 104(b) of the CEBA restricts multiple S&L holding companies to those activities that were permissible for multiple S&L holding companies as of March 5, 1987, but permits them to also engage in activities determined by the Federal Reserve Board ("FRB") to be permissible for bank holding companies under section 4(c)(8) of the Bank Holding Company Act ("BHC Act"), subject to any Board limitations and restrictions.

Only four parties commented on the holding company provisions; three were industry trade associations and one was an insured institution. All commenters generally endorsed the Board's interpretation of the CEBA provisions relating to activities of savings and loan holding companies.

While commenters generally agreed with the proposal's interpretation of the scope of the new bank holding company activities permissible for S&L holding companies, one commenter urged the Board to take a more expansive approach by including, in addition to those activities approved by the FRB under section 4(c)(8), those activities approved under other provisions of section 4(c) of the BHC Act.

After carefully considering this commenter's suggestion, the Board has nevertheless determined to adopt in final its proposal. Thus, today's final rule authorizes as permissible nonbanking activities, those activities approved by the FRB under section 4(c)(8) of the BHC Act, which includes those nonbanking activities set forth in 12 CFR 225.25 as well as those activities approved by order of the FRB under 12 CFR 225.23(d)(2). As noted in the proposal, however, based on its experience in implementing this provision, the Board reserves the right to limit or restrict such activities. Similarly, the Board may, at some later date determine to expand the list of permissible nonbanking activities for S&L holding companies to include those activities approved by the FRB under other provisions of section 4(c) of the BHC Act.

One commenter urged the Board to designate as preapproved all activities identified in § 584.2–1, those previously approved by the Board pursuant to former § 584.2(b)(6), as well as the newly permissible nonbanking activities approved by the FRB. As noted above, under the final rule those nonbanking activities approved by the FRB pursuant to the authority under section 4(c)(8) of the BHC Act are deemed permissible activities for S&L holding companies. The CEBA, however, mandates that the authority for a S&L holding company to engage in such activities is subject to prior approval by the FSLIC. CEBA, tit. I, sec. 104(b), section 408(c)(2)(F)(i). Accordingly, the Board today is implementing the prior approval requirement by adopting the approach outlined in the proposal to grant the PSA's authority to make initial determinations on applications to engage in these activities. The specific procedures and timeframes for this application process are governed by the new guidelines for application processing published on October 2, 1987. *See* 52 FR 39064 (October 2, 1987) (to be codified at 12 CFR 571.12). Furthermore, the Board has determined that the multiple holding company activities identified in § 584.2–1 will remain subject to the existing notice procedures set forth therein.

One commenter sought clarification that any activities in which a multiple S&L holding company was engaged in prior to March 5, 1987 that were specifically authorized by § 584.2–1 or approved pursuant to the regulatory approval process under § 584.2(b)(6) are not subject to termination pursuant to

the CEBA. Section 104(b) of the CEBA provides that the FSLIC may require a grandfathered S&L holding company to terminate any activity prohibited by section 408(c)(1)(C) of the SLHC Act if the FSLIC determines that such action is necessary to prevent conflicts of interest or unsafe or unsound practices. *See id.*, sec. 104(b), section 408(c)(6) (B) and (D). In the Board's view, the termination authority granted to the FSLIC under the CEBA does not apply to those activities that continue to be permissible under the CEBA, *i.e.*, those activities in which multiples were authorized, by regulation, to directly engage in on March 5, 1987, as well as those activities deemed permissible by the FRB for bank holding companies under section 4(c)(8) of the Bank Holding Company Act. The Board wishes to note, however, that pursuant to its authority under 12 U.S.C. 1730a(h)(5)(A), the FSLIC may, "whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary insured institution and is inconsistent with the sound operation of an insured savings and loan institution or with the purposes of (section 1730a) or with the Financial Institutions Supervisory Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities * * *." Thus, although the termination authority granted to the FSLIC in the CEBA applies only to those nonthrift activities engaged in by S&L holding companies, the Board clearly has the authority under the SLHC Act to order an S&L holding company to terminate *any* activities such company is engaged in where good cause exists.

Finally, one commenter sought clarification that any activities previously approved by the Board on a case-by-case basis would be deemed permissible for multiple holding companies. Accordingly, the final regulation is amended at § 584.2-1(b)(12) to clarify that all activities previously approved by the Board prior to March 5, 1987, pursuant to its authority under former section 408(c)(2)(F) of the SLHC Act, are permissible activities for multiple S&L holding companies.

C. Advances Eligibility

Although few parties commented on the limitation on eligibility for advances from the FHLBanks imposed on thrifts failing the QTL test, those who did comment, with one exception, argued that the penalty was too severe. One commenter saw no need for the penalty where an institution is in full compliance with all regulations, particularly the Direct Investment and Regulatory Capital Regulations. Several commenters recommended more lenient alternatives for determining the reduction in advances eligibility. One suggestion was to use a fraction with 60 per cent (the required ATIP to qualify as a QTL) as the denominator and the institution's actual ATIP as the numerator, *e.g.* 50/60, or similarly to reduce eligibility by the amount by which the association faces the test. Unfortunately, the Board cannot adopt the proportional reduction approach because CEBA expressly provides that a non-QTL institution's advances are reduced to the level of its actual ATIP, admittedly a much larger reduction.

Although not addressed by commenters, the Board wishes to take this opportunity to clarify that all FDIC-insured state-chartered savings banks and all savings banks subject to the 10-year phase-in rule for QTL status are specifically exempted by the CEBA from the limitations on advances imposed on non-QTL thrifts under new section 525.1. *See id.*, sec. 105, section 10(e)(2); *see also* 12 U.S.C. 1813(g).

IV. Effective Date

The Board is adopting this regulation effective January 1, 1988. While the Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than thirty days before its effective date, the delayed effective date requirement may be waived for "good cause," such as where Congress has prescribed an effective date. *Cf.* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 888 (3d Cir. 1982) (relating to notice and comment procedures). The provisions of the CEBA require that the QTL regulation take effect on January 1, 1988. CEBA, tit. I, sec. 104(c) (2), (3). Accordingly, the Board finds that the statutorily prescribed effective date constitutes "good cause" for dispensing with the APA delayed effective date requirement.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and Objectives of the Rule.* These elements are incorporated above in the "**SUPPLEMENTARY INFORMATION**" regarding the proposal.

2. *Issues Raised by Comments and Agency Assessment and Response.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION.**"

3. *Significant Alternatives Minimizing Small-Entity Impact and Agency Response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

The final rule treats all institutions in the same manner and this would not have a substantial impact on small entities.

Lists of Subjects in 12 CFR Parts 525, 583, and 584

Credit, Federal home loan banks, Government securities, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 525, Subchapter B, Parts 583 and 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. The authority citation for Part 525 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Revise § 525.1 to read as follows:

§ 525.1 Limitation on advances.

(a) *General.* Unless otherwise authorized by the Board, a Bank shall not make advances to any member in excess of the limits set forth in § 563.8(b) of this chapter.

(b) *Reduced eligibility for advances for certain members that are not qualified thrift lenders.* Except as provided in paragraph (c) of this section, a member that is not a qualified thrift lender, as defined in § 583.27 of this chapter, may not receive advances in excess of the amount that is the product of:

(1) The total amount of advances that such member would be eligible to receive without reference to the qualified thrift lender test contained in § 583.27 of this chapter, and

(2) The member's actual thrift investment percentage, as defined in § 583.27 of this chapter.

(c) *Exceptions.* Paragraph (b) of this section does not apply to:

(1) A savings bank as defined in section 3(g) of the Federal Deposit Insurance Act; or

(2) An insured institution that was chartered as a savings bank under State law before October 15, 1982; or

(3) An insured institution that acquired its principal assets from an institution that was chartered before as a savings bank under State law before October 15, 1982; or

(4) Any insured institution whose financial stability the Board finds to be threatened by severe financial conditions.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

3. The authority citation for Part 583 is revised to read as follows, and the authority citations located at the ends of the sections are removed.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Revise § 583.6 to read as follows:

§ 583.6 Insured institution.

The term "insured institution" means a Federal association, or interim Federal association, a building and loan, savings and loan, or homestead association or cooperative bank, or an interim state savings and loan association, the accounts of which are insured by the Corporation; any Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings bank which is deemed by the Corporation to be an insured institution under section 408(n) of the National Housing Act (12 U.S.C. 1730a(n)); and an institution that retains insurance accounts by the Corporation pursuant to § 563.29–1 of this chapter.

5. Add a new § 583.27 to read as follows:

§ 583.27 Qualified thrift lender status.

(a) *General test.* For purposes of Parts 525 and 584 of this Chapter an insured institution shall be a qualified thrift lender ("QTL") if the institution's actual thrift investment percentage (as defined in paragraph (b)(1) of this section) equals or exceeds 60 per cent.

(1) As of January 1, 1988, an insured institution shall be deemed to have QTL status and shall maintain its status as a QTL so long as the institution's actual thrift investment percentage continues to equal or exceed 60 per cent during three out of every four calendar quarters in each of two out of every three calendar years. For purposes of this paragraph (a)(1), calculations of the actual thrift investment percentage shall be made on an average basis by taking the sum of an institution's qualified thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the institution's total tangible assets at the end of each of these same four months.

(2) An institution shall lose its QTL status at the close of the quarter during which the institution has failed to maintain its actual thrift investment percentage at or above 60 per cent, which failure makes it mathematically impossible for the institution to meet the 60 per cent actual thrift investment percentage test during three out of every four calendar quarters for each of two out of every three calendar years on a continuous basis.

(3) For purposes of paragraph (a)(1) of this section, a *de novo* institution shall begin a QTL measuring cycle (3 out of every 4 calendar quarters in 2 out of every 3 calendar years) at the beginning of the quarter following the date on which its charter was granted.

(4) An insured institution that fails to maintain its status as a qualified thrift lender may not thereafter be a qualified thrift lender for a period of five (5) years from the close of the quarter on which the institution lost its QTL status.

(b) *Definitions:* For purposes of determining whether an insured institution is a qualified thrift lender, the following terms are defined as stated:

(1) "Actual thrift investment percentage" means the percentage determined by dividing the amount of an insured institution's qualified thrift investments (as defined in paragraph (b)(3) of this section) by the total amount of the institution's tangible assets (as defined in paragraph (b)(2) of this section)

(2) "Total tangible assets" of an institution means the total assets of the insured institution minus goodwill and any other intangible assets, including, but not limited to, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

(3) Subject to paragraph (b)(3)(iv) of this section, "Qualified thrift investments" means, with respect to any insured institution, the sum of:

(i) The aggregate net amount of all investments (including loans, equity positions, or securities) held by such institution (or any subsidiary of such institution) that are related to domestic residential real estate or manufactured housing as defined in paragraph (c) of this section;

(ii) The book value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary; and

(iii) An aggregate amount not to exceed 10 per cent of such institution's tangible assets of: (A) The liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a) and set forth in 12 CFR 523.10 of this Chapter, and (B) 50 per cent of the dollar amount of residential mortgage loans originated by the insured institution or its subsidiary and sold within 90 days of origination, provided that these mortgage loans were sold during the calendar quarter for which the actual thrift investment percentage is being measured.

(iv) In calculating the amount of qualified thrift investments held by an institution and its subsidiaries under paragraph (b)(3) of this section, an institution or its subsidiary may not count their investment in subsidiaries as a qualified thrift investment if they are also including their subsidiaries' investments as qualified thrift investments.

(c) *Housing related investments.* For purposes of the definition contained in paragraph (b)(3)(i) of this section, investments (including such investments held subject to repurchase agreement) that are "related to domestic residential real estate or manufactured housing" including the following:

(1) Any home mortgage, as defined in 12 CFR 521.6, provided that the home or other dwelling unit is located in any State;

(2) Any loan made on the security of liens upon residential real estate located in any State, or any loan made for the repair, equipping, alteration, or improvement of any residential real property located in any State;

(3) Any investment in manufactured home chattel paper and interests therein, where the underlying security is either manufactured, sold, or used in any State. "Manufactured home and "manufactured home chattel paper" shall have the same definitions as contained in § 545.45 (a) and (b) of this chapter;

(4) Any investment in any property acquired through the liquidation or in foreclosure of investments described in paragraphs (c) (1), (2) and (3) of this section; and any other equity interest

investment in residential real estate or residential real property:

(5) Any investment in any state housing corporation as defined in § 571.8 of this chapter; in any obligations of or issued by any State or any political subdivision thereof that is issued for the purpose of providing financing for residential housing or incidental services; and in any community development loans or investments of the type described in § 545.41 of this chapter;

(6) Investments in the stock of a Federal Home Loan Bank, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or obligations issued by the Corporation, the Federal Home Loan Bank System, or the Financing Corporation;

(7) Investments in Federal Home Loan Bank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the Federal Home Loan Bank System.

(8) Investments in the deposits of a Federal association, an interim Federal association, a building and loan, savings and loan, or homestead association, or a cooperative bank, or an interim state savings and loan association, the accounts of which are insured by the Corporation; or in the deposits of a Federal association the accounts of which are insured by the Federal Deposit Insurance Corporation;

(9) Investments in mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454–55);

(10) Investments in obligations, participations, securities, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association;

(11) Investments in any other mortgage-backed securities, including mortgage pass-through certificates, mortgage-backed bonds, and mortgage pay-through bonds, as well as any derivative mortgage-related security that is created by disaggregating and repackaging the cash flows to be received as payments on mortgages and traditional mortgage-backed securities provided that the underlying assets of such securities or bonds are domestic residential real estate assets;

(12) Excess servicing rights resulting from the sale of residential mortgage loans as well as investments in the purchased rights to perform the servicing function for a specific group of residential mortgage loans that are owned by others;

(13) Any investment in a corporation, partnership, or trust in proportion to the amount of gross revenues derived by such entity from servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other domestic housing related activities such as residential loan origination or selling residential real estate loans.

(14) Any investment that the Office of Regulatory Policy Oversight and Supervision hereafter identifies in Supervisory Memoranda as a housing related investment for purposes of this regulation.

For the purposes of this paragraph (c), the terms "State," "residential real estate," and "residential real property" shall have the same definitions that are stated for these terms in section 5(c)(5) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(c)(5). The inclusion of any investment as a "qualified thrift investment" under this regulation is not intended to expand, contract, or otherwise affect the permissibility of investments as determined for any institution under other relevant state and federal statutes or regulations.

(d) *Special phase-in for certain institutions.* (1) Any insured institution that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a state savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have the status of a qualified thrift lender through December 31, 1997, *provided that*:

(i) The institution's actual thrift investment percentage does not decrease below the actual thrift investment percentage calculated for the institution on August 10, 1987; and

(ii) The amount by which—

(A) The actual thrift investment percentage of such institution on the dates indicated in paragraph (d)(2) of this section exceeds

(B) The actual thrift investment percentage of such institution on August 10, 1987,

is equal to or greater than the applicable percentage (as indicated in paragraph (d)(2) of this section) of the amount by which 60 per cent exceeds the actual thrift investment percentage of such institution on August 10, 1987:

(2) The applicable percentages referenced in paragraph (d)(1) of this section are 25 per cent on February 10, 1990; 50 per cent on August 10, 1992 and 75 per cent on February 10, 1995.

(e) *Exceptions.* Notwithstanding paragraph (a) of this section, the Corporation may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in paragraph (a) of this section as the Corporation deems necessary if—

(1) The Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements; or

(2) The Corporation determines that—

(i) The grant of any such exception will facilitate an acquisition under section 406(f) or 408(m) of the National Housing Act, as amended, and

(ii) The acquired institution will comply with the transition requirementsof paragraph (d) of this section.

PART 584—REGULATED ACTIVITIES

5. The authority section for Part 584 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Amend § 584.2 by revising the heading of the section; and by revising paragraphs (b) and (c) to read as follows:

§ 584.2 Prohibited activities.

* * * * *

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not an insured institution shall commence, or continue for more than 2 years after August 10, 1987, or the date on which such company becomes a savings and loan holding company, whichever is later, any business activity other than—

(1) Furnishing or performing management services for a subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary insured institution;

(4) Holding or managing properties used or occupied by a subsidiary insured institution;

(5) Acting as trustee under deed of trust; or

(6) Any other activity—

(i) That is permissible for bank holding companies pursuant to 12 CFR 225.23 and 225.25, subject to the limitations and requirements of § 584.2–2 of this subchapter; or

(ii) Is set forth in § 584.2–1, subject to the limitations therein.

Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e) to acquire control of an insured institution shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Service corporation subsidiaries of insured institutions.* Until further notice by order or regulation, the Corporation hereby approves without application the furnishing or performing of such services or engaging in such activities as are specified in § 545.74 of this chapter, as now or hereafter in effect, if such service or activity is conducted by a service corporation subsidiary of a subsidiary insured institution of a savings and loan holding company and if such service corporation has legal power to do so.

* * * * *

7. Amend Part 584 by adding a new § 584.2a to read as follows:

§ 584.2a Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b) of this part:

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one insured institution, if the insured institution subsidiary of such company is a qualified thrift lender as defined in § 583.27 of this subchapter.

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one insured institution if all, or all but one of the insured institution subsidiaries of such company were acquired pursuant to an acquisition under section 408(m) or 406(f) of the National Housing Act *and* all of the insured institution subsidiaries of such company are qualified thrift lenders as defined in § 583.27 of this subchapter.

(2) Any savings and loan holding company referred to in paragraph (a)(1) of this section whose subsidiary insured institution(s) fails to qualify as a qualified thrift lender pursuant to § 583.27 of this subchapter may not commence, or continue, any service or activity other than those permitted under § 584.2(b) of this part, *except that*, the Corporation may allow, for good cause shown, such company (or subsidiary thereof) up to 3 years to comply with the limitations set forth in § 584.2(b) of this part.

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding § 584.2(b) of this part and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 under 12 U.S.C. 1730a(e) to acquire control of an insured institution may engage, directly or indirectly or through any subsidiary (other than a subsidiary insured institution of such company) in any activity in which it was lawfully engaged on March 5, 1987, *Provided that:*

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional insured institution, other than an insured institution acquired pursuant to section 408(m) or 406(f) of the National Housing Act;

(2) Any insured institution subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those enumerated in § 584.2(b) of this part and in which it was engaged on March 5, 1987;

(4) Any insured institution subsidiary of the holding company does not increase the number of locations from which such insured institution conducts business after March 5, 1987, other than an increase due to a transaction under section 408(m) or 406(f) of the National Housing Act; and

(5) Any insured institution subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the insured institution subsidiary and the affiliate.

(c) *Termination by the corporation of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Corporation may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary—

(1) To prevent conflicts of interest;

(2) To prevent unsafe or unsound practices; or

(3) Is in the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof that is not an insured institution) that controls a single insured institution on August 10, 1987, shall not be subject to the restrictions set forth in § 584.2 of this Part with respect to any activities of such holding company that are conducted exclusively in a foreign country.

8. Amend § 584.2–1 by revising the heading of the section; by revising paragraph (a); and by adding a new paragraph (b)(12) to read as follows:

§ 584.2–1 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 584.2(b)(6)(ii), the activities set forth in paragraph (b) of this section are permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary insured institutions are prescribed by § 584.2(c) of this Part. Notwithstanding and without regard to any other provision of this section other than this sentence, a savings and loan holding company and any noninsured subsidiary thereof, other than a service corporation, may invest in the types of securities specified in §§ 523.10 and 545.71 of this Chapter without regard to any limitation therein as to amount or maturity.

(b) *Prescribed services and activities.*

* * *

(12) Any services or activities approved by order of the Corporation prior to March 5, 1987 pursuant to its authority under former § 408(c)(2)(F) of the National Housing Act.

* * * * *

9. Revise the heading and the text of § 584.2–2 to read as follows:

§ 584.2–2 Permissible nonbanking activities of savings and loan holding companies.

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the nonbanking services and activities permissible for bank holding companies pursuant to 12 CFR 225.23 or 225.25 are deemed to be permissible for savings and loan holding companies, or

subsidiaries thereof that are neither insured institutions nor service corporation subsidiaries of subsidiary insured institutions: *Provided however*, that no such savings and loan holding company or subsidiary thereof shall commence, either *de novo* or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Corporation pursuant to paragraph (b) of this section.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the Principal Supervisory Agent ("PSA") of the Federal Home Loan Bank District in which the insured institution subsidiary is located. Applications shall be addressed to the Office of Regulatory Policy, Oversight and Supervision and to the Supervisory Agent of the district in which the principal office of a subsidiary insured institution is located. The Principal Supervisory Agent (or his designee) shall act upon such application pursuant to the guidelines set forth in § 571.12 of this chapter unless, the PSA, upon notice to the applicant, refers the application to the Corporation because it raises issues of law or policy inappropriate for resolution by the PSA. Where the PSA has referred an application to the Corporation, the Corporation will act on such application pursuant to the guidelines set forth at § 571.12 of the chapter.

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the PSA and the Corporation shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix

Data Required for Qualified Thrift Lender Test

Report in Thousands of Dollars

Average Book Value of Balances Held at the End of the Calendar Quarter and at the End of Each of the Preceding Three Calendar Months

Total Tangible Assets
1. On Books of Reporting Insured Institution.....

Loans, Equity Positions or Securities Related to Domestic Real Estate
2. On Books of Reporting Insured Institution.....
3. On Books of Subsidiaries of Reporting Insured Institution (net of consolidating adjustments).....

Fixed Assets Used in Business (net of depreciation)
4. On Books of Reporting Institution.....
5. On Books of Subsidiaries of Reporting Insured Institution (net of consolidating adjustments).....

Liquid Assets of the Type Specified in Regulation 523.10(g)
6. On Books of Reporting Insured Institution.....

Residential Mortgage Loans Sold During Quarter Originated by the Seller Within 90 Days of Sale
7. Sold by Reporting Insured Institution (exclusive of sales to subsidiaries).....
8. Sold by Subsidiaries or Reporting Insured Institution (exclusive of sales to reporting institutions or to another of its subsidiaries).....

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12 CFR Parts 561, 563 and 563c

[No. 87-1293]

Uniform Accounting Standards

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") is amending its regulations applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions") pertaining to the definition of regulatory capital. First, the final rule delays the effective date of the Definition of Regulatory Capital Regulation, Board Res. No. 87-259, 52 FR 18340 (May 5, 1987) ("DRC Regulation"), from January 1, 1988 to January 1, 1989 in order to implement a phase-in of uniform accounting standards. Second, the rule revises the DRC regulation by eliminating treatment of certain items under risk analysis reporting ("RAR") and substituting treatment under generally accepted accounting principles ("GAAP"). The DRC regulation, as amended by this rule, would begin the phase-in to GAAP on January 1, 1989; such phase-in would end on December 31, 1993, at which time insured institutions would be required to report virtually all components of regulatory capital in accordance with GAAP or the regulatory accounting practices employed by commercial banks.

This rule is part of the revision of the Board's regulations required by the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552. On December 21, 1987, the Board adopted a final rule and a policy statement on the accounting treatment of troubled debt restructurings. *See* Board Res. No. 87-1294, to be published in the final rules section of the **Federal Register**. Additionally, the Board also adopted final amendments to its regulations pertaining to the classification of assets and appraisal standards of insured institutions. *See* Board Res. Nos. 87-1296, 87-1295, also to be published in the final rules section of the **Federal Register.**

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649, Jerilyn Rogin, Attorney, (202) 377-7018, Deborah Dakin, Assistant Director, (202) 377-6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The CEBA requires the Board and the FSLIC to issue regulations prescribing "uniformly applicable accounting standards to be used by all insured institutions for the purpose of measuring compliance with any rule or regulation" promulgated by the FSLIC or the Board "to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies." [1] CEBA, tit. IV, secs. 402(b), 415(b)(1).[2] The Board may suspend the application of any such standard with respect to any insured institution or transaction if the standard would result in an institution or its parent being treated differently than a bank and its parent on a consolidated basis and if the transaction was consistent with GAAP when completed. *Id.* The CEBA requires that these regulations "shall take effect on December 31, 1987." *Id.* sec. 402(d). An insured institution that demonstrates to the satisfaction of the Board or the FSLIC that it is not feasible for it to comply with those accounting regulations by that date may submit a plan for compliance at a later date to the Board for its approval. That date would be the earlier of the date the Board determined it would be feasible for the institution to comply with the regulation or December 31, 1993. *Id.* sec. 402(d)(2)(B).

Before the enactment of the CEBA, the Board issued a final regulation that was intended to achieve an objective similar to that set forth by the Congress in the CEBA. This rule, the Definition of Regulatory Capital regulation, was to have taken effect on January 1, 1988. Board Res. No. 87-529, 52 FR 18340 (May 15, 1987).

The DRC Regulation required, first, that for all periods beginning on or after January 1, 1988, all financial statements issued by insured institutions, including statements of condition required pursuant to 12 CFR 545.115, and all financial reports filed with the Board be prepared in accordance with GAAP. Second, the term "regulatory capital" was defined to mean the sum of equity capital as determined in accordance with GAAP plus certain other items based on RAR. Third, the rule eliminated prospectively certain regulatory accounting practices previously permitted by the Board.

In light of the passage of CEBA, the Board reviewed the DRC Regulation and proposed to amend it in certain ways that would cause it to conform with the directives and purposes of that legislation. The final rule adopted today achieves that objective. The Board is aware, however, that today's amendment of a rule that had not yet taken effect may give rise to some uncertainty about when insured institutions are required to implement each of the affected accounting rules. Accordingly, the Board is attaching, as an Appendix to this preamble, a chart that is intended to serve as a guide to implementation dates. Readers of the chart will note that January 1, 1989, is the first date on which insured institutions will be required to alter the accounting rules that are currently in effect.[3]

[1] For purposes of section 402 of the CEBA, the term "Federal banking agency" is defined to mean the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. *See id.* secs. 402(b), 415(f).

[2] Section 402(a) of the CEBA amended the Home Owners' Loan Act of 1933, 12 U.S.C. 1461 *et seq.*, which governs federally chartered and insured thrifts. Section 402(b) amended the National Housing Act, 12 U.S.C. 1724 *et seq.*, by which the FSLIC regulates state-chartered, federally insured thrifts. Today's rule amends the Board's regulations governing all insured institutions. Thus, these uniform accounting standards apply to both federally and state chartered insured institutions.

I. Description of the Proposal

On October 5, 1987, the Board proposed to revise its DRC Regulation in order to implement a phase-in of uniform accounting standards as required by the CEBA. Board Res. No. 87-1047, 52 FR 39145 (Oct. 20, 1987). As discussed in detail in the preamble to that proposal, the Board believes that the legislative history of the CEBA shows a clear congressional intent that the Board promulgate a final regulation by December 31, 1987, but phase in GAAP compliance over a period not to extend beyond 1993. *See* 52 FR at 39147. Further, the legislative history of section 402 of the CEBA makes clear that, in cases where the banking agencies deviate from GAAP in their regulatory requirments,[4] it was Congress' intent to allow the Board discretion to choose either to adopt those same deviations or to adopt GAAP. *Id.*

Accordingly, the Board proposed to delay the effective date of the DRC Regulation from January 1, 1988, to January 1, 1989, in order to phase in uniform accounting standards based on GAAP or Bank RAP as required by the CEBA. The Board also proposed to modify the DRC regulation to comport with the CEBA-mandated treatment of certain items as regulatory capital and to grandfather certain RAR transactions to phase-in the effects of GAAP on thrifts. Finally, the Board proposed procedures whereby an institution that cannot meet the timetable for phase-in of GAAP may file a plan for delayed compliance to a date no later than December 31, 1993. In the Board's view, the phase-in to GAAP with the grandfathering provisions make it feasible for most thrift institutions to comply with both the reporting requirements and those regulations that measure compliance with Board regulations that govern an institution's regulatory capital requirement.

In connection with its proposed rulemaking, the Board held public hearings on November 3 and 4, 1987, during which the public was invited to testify concerning all aspects of the proposed regulations issued pursuant to CEBA. Eight hearing participants addressed accounting issues raised in the proposal by way either of formal prepared oral and written statements or in response to questions and comments by members of the panel. Remarks by participants in the hearing are summarized below as part of the public comment summary.

II. Discussion of Comments

The Board received 70 public comments in response to the proposal. Of these comments, the majority, 32, were submitted by insured institutions; 15 were submitted by industry trade associations; 15 were from members of Congress; 4 were from law firms; 1 was from an individual; 1 was from an investment banking firm; 1 was from a consulting company; and 1 was from the Financial Accounting Standards Board ("FASB").

Thirty-one commenters expressed general support for the proposal, while seven commenters opposed the proposal. The remaining commenters, without expressing support or opposition to the proposal, suggested specific modifications to the proposal. In addition, both supporters and opponents suggested various technical and substantive modifications to the proposal. Although the comment period ended on November 19, 1987, the Board has considered late-filed letters in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are discussed more fully below, the Board has determined to adopt the proposal with certain modifications and clarifications.

A. Delay of Effective Date of DRC Regulation

In light of the enactment of CEBA the Board proposed to delay the effective date of the DRC Regulation until January 1, 1989, for two reasons. First, because amendments to the DRC Regulation were necessary to implement the

[3] The Board notes, however, that effective December 31, 1987, institutions are required to provide for loan loss allowances in accordance with the final classification of assets regulation adopted by the Board today. See Board Res. No. 87-1296, to be published elsewhere in the final rules section of the **Federal Register**.

[4] Deviations from GAAP permitted by the Federal banking agencies are referred to herein as Bank regulatory accounting practices or "Bank RAP."

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CEBA's accounting provisions, the Board determined that it would be less burdensome for insured institutions to alter their reporting requirements and the manner in which they calculate regulatory capital once, rather than twice, within a fairly short period of time. Second, the Board believed that a more gradual application of new GAAP-based accounting standards comported with the Congressional mandate to minimize the impact of the new requirements on insured institutions' regulatory capital levels.

The majority of commenters were appreciative of the delay of the effective date of the DRC Regulation, noting that it will be helpful in accomplishing the changes in information systems required by the accounting rules, especially for small institutions for which the transition could be more onerous. One commenter suggested that a more appropriate effective date would be December 31, 1993, the end of the overall phase-in period. Two commenters urged that institutions be allowed, at their election, to institute early adoption of components of the regulation in the event they have already expended time and expense preparing to comply with the original January 1, 1988, effective date.

After consideration of the comments, the Board has determined that January 1, 1989, is the most equitable compliance date for the GAAP-based accounting standards embodied in the DRC Regulation about which insured institutions have been on notice since April of 1986 when the DRC was proposed. Board Res. No. 86-427, 51 FR 16542 (May 5, 1986). Accordingly, insured institutions must prepare all financial statements and reports to the Board on a GAAP basis by that date, with the exception for deferred loan losses and gains and shares in open-end mutual funds, discussed more fully below. In this way, the Board is convinced, congressional intent that GAAP accounting standards be phased in as quickly as feasible is best fulfilled. The Board also notes that all insured institutions subject to the Securities Exchange Act of 1934 ("34 Act") (15 U.S.C. 78a *et. seq.*) have already been reporting on a GAAP basis.

In response to the comments requesting that compliance with the DRC Regulation be allowed prior to the January 1, 1989 effective date, the Board notes that it does not object to such early compliance and has amended the rule as proposed to reflect the permissibility of that option. Indeed, the Board emphasizes that compliance by individual insured institutions with the GAAP-based accounting standards as early as feasible only serves to enhance the Board's goal to move toward GAAP, consistent with the accounting system already required by the federal banking agencies.

B. Reporting in Accordance with GAAP

The Board proposed to require insured institutions to prepare their financial statements and reports in accordance with GAAP, with a footnote reconciliation to regulatory capital, effective for all periods ending after January 1, 1989.

Although most commenters expressed support for the eventual implementation of GAAP reporting, the majority of commenters opposed the January 1, 1989, effective date for GAAP reporting. Those commenters who expressed strong support for the 1989 effective date noted that implementation of the GAAP reporting system encourages consistency at the same time as it permits an accurate depiction of the risk to the FSLIC fund. Moreover, those commenters noted that converting to a widely recognized GAAP standard, similar to that required by the federal banking agencies, will foster much needed public confidence in the thrift industry and improve the current regulatory structure. Additionally, these commenters commended the Board for issuing proposals consistent with the CEBA and congressional intent. A few commenters noted that the January 1, 1989 phase-in date would give institutions adequate time to adjust their systems to the new reporting requirements. Many commenters, however, asserted that the 1989 date was too soon for institutions feasibly to implement the new reporting system and to avoid the damage to public confidence in the thrift industry that GAAP capital figures may engender. Several of these commenters urged the Board to phase-in the GAAP reporting requirement over a range of one to five years.

Several commenters expressed deep concerns that GAAP reporting, even with the footnote reconciliation to regulatory capital will reveal poor or negative GAAP capital positions for institutions that were previously reporting positive net worth. Therefore, they feared that GAAP reporting would cause public confusion and damage to individual institutions and the industry. One of these commenters suggested that the public may erroneously interpret the new GAAP figures to mean that a particular association is poorly managed or is engaging in illegal activities. Another commenter suggested that for most reports, a footnote reconciliation serves no useful purpose and may even be confusing to the average reader. Along these lines, a few commenters who supported the proposal asserted that the GAAP-to-regulatory capital reconciliation should not be mandatory since such a reconciliation is unnecessary for those institutions that do not rely on non-GAAP items of capital. Four commenters suggested that an RAR reporting system with a GAAP reconciliation would be more appropriate.

The Board has considered and understands the concerns raised by the commenters. The Board emphasizes, however, that the CEBA mandates the adoption of GAAP-based accounting standards by 1993 and that Congress intended that all financial institutions achieve uniform GAAP-based reporting. *See, e.g.*, S. Rep. No. 19, 100th Cong., 1st Sess. 20, 55 (1987). Moreover, the Board continues to believe, as it has since it proposed the DRC Regulation in April of 1986, that a GAAP call report that includes a footnote reconciliation to regulatory capital is in the best interest of the Board's supervisory efforts, the thrift industry, and the public. Specifically, GAAP reports from all insured institutions will provide the Board with a consistent and comprehensive basis for analyzing and comparing the financial performance and soundness of all insured institutions. The Board also believes that the GAAP reports will not confuse the public or cause damage to the industry, as suggested by some commenters, but will instead provide the public with a uniform basis for analyzing individual institutions. In the Board's view, since insured institutions subject to the 34 Act already report on a GAAP basis, GAAP reporting by all insured institutions will result in less public confusion among reports of insured institutions.

The uniform reporting system also will promote confidence in the thrift industry by dispelling the criticism that certain regulatory accounting practices have permitted misrepresentation of the true financial condition of insured institutions. Further, in response to those commenters concerned that particular institutions may, after January 1, 1989, appear poorly capitalized, the Board reiterates that an approximation of GAAP equity capital can be currently derived from the RAR reports filed with the Board and is available to the public under the Freedom of Information Act.

Moreover, with respect to commenters who objected to the inclusion of a footnote reconciliation to regulatory capital in the reports, or suggested that reports could appropriately be filed on an RAR basis with a GAAP reconciliation, the Board has chosen to resolve these concerns in favor of the overriding principle of uniformity. An overall requirement of GAAP reports with footnote reconciliations to regulatory capital will provide the Board and the public with a standard that can be applied universally. Moreover, the footnote reconciliation provides the Board a measure by which to judge an insured institution's compliance with the Board's regulations—most significantly, its compliance with the Board's minimum regulatory capital requirements.

The Board notes, however, that it has amended the proposal to change the effective date from "all periods ending after January 1, 1989" to "all periods beginning on or after January 1, 1989." As the Board stated in the proposal, it believes that a one year delay of the effective date of the DRC Regulation is appropriate in order to minimize the impact of the requirements on insured institutions. The Board realizes that, given the wording of the proposed effective date, the only institutions that effectively received the benefit of the delay were calendar year filers. Thus, the Board believes this change is appropriate in order to give all insured institutions the benefit of the delay.

The strongest opposition to the effective date for GAAP reporting centered on the treatment of deferred loan losses and gains ("DLL") under a GAAP reporting system. Many commenters asserted that it is inequitable for the Board to suddenly "change the rules of the game," after previous Boards and the Federal Home Loan Banks have actively encouraged institutions to use the DLL regulation, 12 CFR 563c.14 (1987), as a method of ridding themselves of low yielding loans and amortizing the resulting losses into expense over the remaining contractual term of the asset sold. Some of these commenters asserted that the proposed treatment of DLL would cause many institutions to report negative GAAP capital positions which would, thereby, facilitate deterioration of public confidence in the thrift industry. One commenter asserted that insured institutions should, under the CEBA, be allowed to continue to include DLL on their financial statements indefinitely. Many of these commenters urged the Board to permit institutions to continue to report DLL on their balance sheets through 1993, or, in the alternative, to gradually phase-out the amount of DLL reported on the balance sheet through 1993. A few of these commenters contended that including DLL on the balance sheet is clearly within the intent of the CEBA.

The Board has seriously considered the issue of the reporting of DLL and has taken into account the concerns expressed by commenters. It has weighed the benefits of having pure GAAP-based reports by January 1, 1989, against the reliance on previous Board policies that many commenters described. The Board is also cognizant that many insured institutions utilized the device of DLL to restructure their portfolios in the early 1980s and that, assuming an average loan term of 12 to 15 years, much of this accounting treatment, if allowed to continue, will expire in any event in the mid-1990s.

The Board notes that the CEBA provides that insured institutions may continue indefinitely, for purposes of determining regulatory capital, to include the amount of deferred loan gains and losses as a component of regulatory capital. The Board also believes, however, that the CEBA requires it, at least by 1993, to phase out the reporting of DLL on financial statements and reports as part of the general mandate to move toward GAAP reporting. Mindful of reliance by many institutions on the previous Board position with respect to DLL, as well as the fears expressed by many institutions that, absent the ability to report DLL, they will exhibit negative GAAP capital positions, the Board has determined to alter the rule as proposed in the following way. Institutions that had utilized the DLL regulation prior to January 1, 1988, its sunset date,[5] may report on their unaudited financial statements and reports 100 per cent of their DLL for all quarters through the last quarter of 1993. In this way, beginning in January 1, 1994, insured institutions will no longer be permitted to report DLL on their unaudited financial statements. The Board emphasizes, however, that the reporting of DLL until the end of 1993 is permissible only on counterstatements and call reports. Audited financial statements must be prepared on a pure GAAP basis with no deviations.

On a similar issue, a few commenters urged that institutions be permitted to report appraised equity capital ("AEC") on their balance sheets, at least until 1993. In contrast to the rationale surrounding the reporting treatment of DLL, no such argument exists with respect to the reporting of AEC. Insured institutions have known since at least April of 1986, when the DRC Regulation was proposed, that the Board intended to do away with the specialized reporting treatment of AEC. Moreover, the ability of institutions to elect to report AEC expired on December 31, 1986. Additionally, the treatment of AEC is not explicitly singled out in the CEBA legislation as is the treatment of DLL, and no previous Board position existed that encouraged the use of AEC to increase regulatory capital levels. Accordingly, in the interest of the move toward GAAP reporting, the Board has determined that institutions may no longer report AEC on their financial statements and reports effective for all periods beginning on or after January 1, 1989.

The proposal also required insured institutions to file their monthly and quarterly reports with the Board on a consolidated basis, consistent with GAAP and Bank RAP, beginning on January 1, 1989. That proposed provision would have required that, for reporting purposes and as an aid to the Board's supervisory efforts, insured institutions were to consolidate all of their majority-owned subsidiaries, including, but not limited to, service corporations, finance subsidiaries and operating subsidiaries.

Concerning this issue, fifteen commenters responded. Of these commenters, two were in favor of the concept, suggesting that consolidated reports better reflect the true financial condition of the total insured entity than unconsolidated reports. Nine commenters expressed general opposition to the concept, and another described it as the first step toward the undesired result of calculating regulatory capital requirements on a consolidated basis. Five commenters strongly disagreed with the proposed requirement that monthly reports be filed on a consolidated basis, claiming that it would be too burdensome for most institutions. Another four commenters requested the Board provide for extensions of time, ranging from 20 to 45 days, for filing monthly and quarterly reports in order to compensate for the extra burden presented by consolidated reporting. one of these warning that consolidated reports produced on the current time frame may prove inaccurate.

Finally, five commenters addressed an issue that does not arise under these proposals but is suggested by one of the accounting issues—that of the possibility of eventual consolidation for purposes of determining requisite levels of regulatory capital. Four of these commenters argued against such consolidated calculation, asserting, for

[5] The DLL regulation, § 563c.14, provides at subparagraph (f) that authority to utilize DLL ceases as of January 1, 1988. 12 CFR 563c.14(f).

example, that capital positions cannot be monitored on a consolidated basis and that consolidation would inhibit parent institutions from investing in finance subsidiaries engaging in certain activities. One commenter suggested that different sorts of subsidiaries could be treated either on a consolidated or on an unconsolidated basis, depending upon the nature and degree of risk to the FSLIC of the subsidiary's activities.

The Board believes that consolidated reporting is clearly required by the CEBA because it is consistent with GAAP and Bank RAP. However, after consideration of the concerns raised by commenters about the increased burden on institutions due to consolidated reporting, the Board has determined to alter the proposal in the following way. In order to afford sufficient time for insured institutions to develop systems for producing consolidated reports for submission to the Board, the Board has extended for one year the time for compliance with this requirement, so that quarterly consolidated reports must be filed for all periods beginning on or after January 1, 1990. At this time, the Board has decided to take under advisement the issues of whether monthly reports should be filed on a consolidated basis, and whether extensions of the normal filing periods should be granted for consolidated reports. The Board's determinations on these questions will be set forth in the instructions to the Thrift Financial Report.[6]

With respect to those comments that addressed the possibility of eventual consolidation for purposes of the Board's minimum regulatory capital requirement regulation, 12 CFR 563.13 (1987), the Board declines to respond to those comments at this time. As was noted in the proposal, any changes in the way an institution calculates its minimum capital requirements would be implemented in conjunction with any proposed changes to section 563.13, and commenters will have ample opportunity to address that issue at that time.

C. The Components of Regulatory Capital

The majority of commenters supported the proposed amendments to the definition of regulatory capital but suggested several modifications to the proposal.

1. Equity Capital

Under the proposal and the DRC regulation, equity capital would be determined in accordance with GAAP and would represent the difference between the recorded values of an institution's assets and its liabilities, as determined under GAAP. *See* FASB *Statement of Financial Accounting Concepts ("SFAS") No. 6* (Dec. 1985).

In light of the Board's decision today to permit institutions to include deferred loan losses and gains on their unaudited financial statements and reports and to include the difference between investments in shares of open-end management companies accounted for pursuant to GAAP and their historical cost, as discussed more fully below, through 1993, the resulting capital figure would no longer be considered GAAP equity capital. Consequently, today's final rule amends this component of regulatory capital to reflect the inclusion of deferred loan losses and gains on the unaudited financial statements of insured institutions and the specialized treatment of investments in mutual funds. Specifically, this category of regulatory capital is referred to as "modified equity capital" and represents GAAP equity capital plus loan losses and gains deferred pursuant to 12 CFR 563c.14 provided that an institution has elected to defer such losses or gains prior to January 1, 1988, and the difference between investments in shares of open-end management companies accounted for pursuant to GAAP and their historical cost. The Board notes that institutions must refer to this component as "modified equity capital" on their unaudited financial statements and reports, including counter statements, so as not to mislead the public with respect to the institution's financial presentation. The Board emphasizes that beginning on January 1, 1994, equity capital will be determined in accordance with GAAP with no deviations.

2. Definitional Capital

Several commenters addressed the subject of subordinated debt. Four commenters noted that the CEBA's inclusion of subordinated debt in regulatory capital will assist institutions in raising needed additional capital and at the same time protect the FSLIC. One commenter strenuously urged the Board to include subordinated debt in regulatory capital without phasing down its value as it approaches maturity, asserting that Congress never intended such a reductional phase-down and quoting Congressman Hubbard's remarks of August 3, 1987 in support of that proposition.

Section 402 of the CEBA provides that "[n]o provision of this section [404] shall affect the authority of the Corporation to authorize insured institutions to utilize subordinated debt * * * in meeting reserve and other regulatory requirements." CEBA, tit. IV, secs. 402(b), 415(d). Notwithstanding Congressman Hubbard's remarks, the Senate Report accompanying S. 790, which contained the uniform accounting standards provision that was adopted without substantive amendment in the CEBA, explicitly states that the Board has flexibility in determining whether subordinated debt may be included as regulatory capital. While the Board recognizes that subordinated debt affords protection to the FSLIC in the event of insolvency of an insured institution, the Board does not believe that such debt should be treated as the equivalent of retained earnings or capital stock for purposes of complying with the Board's regulatory capital requirements. Accordingly, the Board's current treatment of subordinated debt reflects its views that the use of an amortization schedule that reduces the amount of subordinated debt includable as regulatory capital as that approaches maturity appropriately recognizes that subordinated debt is a liability that must be repaid upon maturity. The Board continues to believe that the amortization schedule takes into account the value of subordinated debt to institutions and the FSLIC and, consequently, the final rule permits institutions to include subordinated debt in regulatory capital pursuant to the current amortization schedule set forth in § 561.13(b)(2).

Also as part of definitional capital, the CEBA authorizes general loss allowances to be included as regulatory capital in the same manner as the federal banking agencies permit. Two commenters supported the Board's proposed treatment of this item, but one maintained that loss allowances should not be treated as a capital item because it would contradict GAAP.

The Board recognizes that general loss allowances are not included as capital under GAAP. However, the CEBA explicitly authorizes such loss allowances to be included as regulatory capital in the same manner permitted by the federal banking agencies. Since the federal banking agencies currently permit general loss allowances to be included as a component of a bank's primary capital, the Board is required by the CEBA to permit insured institutions to include such allowances as regulatory capital at least until the Financing Corporation issues the last obligations under its borrowing authority. *See* CEBA, tit. IV, secs. 402, 415(a)(5); sec. 416(a). As discussed in the proposal, however, the federal banking agencies are currently reconsidering whether general loss allowances should be included as capital.[7] Consequently, the Board may revisit this issue at a later date. For the present, however, the final rule permits institutions to include general loss allowances as a component of regulatory capital.

In the proposal, the Board announced its preliminary decision consistent with Bank RAP to allow limited life preferred stock (also called nonpermanent preferred stock or redeemable preferred stock) with an original maturity of 25 years to be included as a component of definitional capital, discounting such stock as it approaches maturity. Eight commenters addressed this item. Two commenters objected to the minimum maturity term of 25 years, claiming that it would alter the character of the stock and make accessing capital markets extremely difficult. Three commenters requested the Board to consider altering the amortization schedule for these items to conform with that of subordinated debt to which, it is claimed, it is nearly identical. One commenter suggested retaining the current regulatory treatment of limited life preferred stock, and another recommended retaining the current treatment until 1993.

After carefully considering the issues raised by the commenters, the Board has determined not to adopt the treatment of preferred stock outlined in the proposal. As discussed in the proposal, the Board had preliminarily determined to track the treatment of limited life preferred stock that is currently proposed by the federal banking agencies in order to be consistent with Bank RAP. After reconsidering this issue, in light of the comments and fact that the federal banking agencies have not yet adopted their capital proposals as final rules, the Board has determined to retain its current treatment of limited life preferred stock. In the Board's view, its action today is consistent with the intent of the CEBA in that the legislative history makes clear that Congress did not intend for the Board and the federal banking agencies to adopt identical regulatory frameworks; rather it left the Board the discretion and authority to determine the components of capital for insured institutions. *See* S. Rep. No. 19 at 55. Thus, the final rule provides that insured institutions may continue to include as regulatory capital limited life preferred stock pursuant to the requirements set forth in § 561.13(b)(3)(i) and (ii). The Board notes that because it is retaining its current treatment of this item, there is no need to provide for grandfather or sunset provisions.

In response to the Board's specific request for comments concerning whether and to what degree mandatorily convertible securities should be included as a component of definitional capital, four commenters responded. One commenter suggested they be included on the same basis as that permitted by the banking agencies, two others urged that they be included in regulatory capital in the same way that subordinated debt is included. One commenter noted that since this item converts to forms of permanent equity, it should be counted fully as regulatory capital.

One commenter, an investment banking firm that raises capital for thrifts and banks, submitted an extensive comment, arguing that the mandatory convertible debt instruments it manages should be included in regulatory capital even though they carry a maturity of 10 years. This commenter also urged that these instruments should not be discounted as they approach maturity. The rationale presented by this commenter is that these instruments are issued along with mandatory stock purchase contracts. This combination, the commenter asserted, serves as the functional equivalent of capital, a buffer against loss to the FSLIC and a permanent addition to the issuer's capital base.

After carefully considering the commenters' remarks, the Board has determined to permit institutions to include mandatory convertible securities as regulatory capital. Mandatory convertible securities are subordinated debt instruments that are eventually transformed into common or perpetual preferred stock within a specified period of time. Generally, there are two types of mandatory convertible securities: "equity contract notes"— securities that oblige the holder to take common or perpetual preferred stock of the issuer in lieu of cash for repayment of principal, and "equity commitment notes"— securities that are redeemable only with the proceeds from the sale of common or preferred stock.

Under the capital adequacy guidelines of the federal banking agencies, bank holding companies are permitted to include both equity contract notes and equity commitment notes as primary capital, whereas banks are only permitted to include equity contract notes as primary capital but may include equity commitment notes as secondary capital. *See* 12 CFR 225.42 App. A (1987). After carefully considering this issue, the Board has determined to permit insured institutions to include both equity contract notes and equity commitment notes as regulatory capital. In the Board's view, these securities provide the FSLIC and insured institutions the same degree of protection from loss as do other types of subordinated debt. Specifically, they are subordinated to other obligations of the insured institution and their medium-to-long term nature makes them a reliable buffer against loss. Moreover, the Board believes that mandatory convertible securities are an important vehicle for increasing capital and thereby provide greater flexibility to thrifts in meeting capital requirements. The Board also believes, however, that for supervisory purposes it is necessary to provide guidelines by which institutions may issue such securities and include such securities as regulatory capital. Accordingly, the Board has directed the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") to issue a supervisory memorandum that will set forth the criteria which must be met in order for institutions to include mandatory convertible securities as capital. The Board wishes to note that such criteria may include percentage limitations and/or other types of limitations for these types of securities.

Thus, under today's final rule, insured institutions may include mandatory convertible securities as regulatory capital as of January 1, 1989, provided that such instruments meet the criteria set forth by the ORPOS in a supervisory memorandum. The Board notes, however, that institutions may not include mandatory convertible securities as regulatory capital prior to such time as ORPOS issues a supervisory memorandum setting forth the criteria for including such securities as capital or January 1, 1989, whichever is earlier.

The Board also proposed that pledged certificates and other nonwithdrawable accounts be eliminated as a component of regulatory capital as of January 1, 1989, because they are not included as capital under either GAAP or Bank RAP. Three commenters endorsed the Board's proposal to eliminate these items, while affording grandfathering treatment to

[6] As discussed in the preamble to the final rule on classification of assets, it should be noted that the consolidated reporting requirement is not meant to foreclose an institution from limiting losses attributable to a subsidiary to its equity investment therein, where the institution establishes that it is legally insulated from the subsidiary under applicable corporation law. *See* Board Res. No. 87-1196 to be published in the final rules section of the Federal Register.

[7] *See* 52 FR 5138 (Feb. 19, 1987) (Federal Reserve Board, "FRB"); 52 FR 23045 (June 17, 1987) (Comptroller of the Currency); 52 FR 11470 (Apr. 9, 1987) (Federal Deposit Insurance Corporation).

those included in capital prior to January 1, 1989. One commenter, however, urged that these items not be eliminated because they are buffers against loss and that they should be included, at least partially, in regulatory capital, and another suggested that pledged certificates temporarily be retained as a component of regulatory capital for *de novo* institutions in order to facilitate new services.

After reconsidering this issue, the Board has determined to continue to permit institutions to include pledged certificates and other nonwithdrawable accounts in regulatory capital, without a sunset date. The Board's decision is based, in part, on the fact that these instruments are very similar to subordinated debt and limited life preferred stock in the degree to which they provide a buffer against loss for insured institutions and the FSLIC. Moreover, in the Board's view, inclusion of these instruments in regulatory capital is especially important to mutual institutions whose ability to access the capital markets, short of converting to stock form or issuing subordinated debt at prohibitive costs, is limited. While the Board acknowledges that there have been very few mutual institutions chartered in the past few years, pledged deposits are important to and provide a buffer from loss for newly chartered mutual institutions. Thus, the Board believes that retaining pledged deposits as a component of capital, without requiring that such instruments be eliminated from capital as of 1993, is in the best interests of the FSLIC and the thrift industry as a whole.

3. RAR Components of Regulatory Capital

In the proposal, the Board proposed to eliminate prospectively RAR for loan origination and commitment fees, options transactions, valuation allowances, and uncollectible interest, and to provide grandfathering treatment for certain of these items. Additionally, in the DRC Regulation, the Board eliminated RAR for the sale of real estate by the institution or its subsidiary, for futures transactions, and for the accretion of discounts and the amortization of premiums on securities; it also provided grandfathering treatment for these items. Under the DRC regulation, as modified by the proposal, institutions are permitted to include in regulatory capital the amount representing the cumulative RAR/GAAP differential for those grandfathered items calculated under RAR prior to January 1, 1989. However, institutions would not be permitted to use RAR in calculating these items after January 1, 1989.

Several commenters contended that the inclusion of the RAR/GAAP differential in regulatory capital is unduly burdensome on institutions because the computation of the differential would require institutions to maintain separate RAR and GAAP accounting systems. One commenter asserted that in most cases the differential will be inconsequential and thus urged the Board to require that all transactions after January 1, 1989, be handled on a GAAP basis and all transactions before that date be allowed to run their course under RAR.

The Board continues to believe that all financial statements and reports by insured institutions should be prepared in accordance with GAAP (with the exception for deferred loan losses and gains noted above) on January 1, 1989. While in some cases the RAR/GAAP differentials may in fact be inconsequential, the Board is reluctant to continue to permit institutions to report transactions in accordance with RAR. Moreover, because institutions are currently required to reconcile their RAR capital to GAAP capital, institutions already must keep two sets of books; consequently, this regulation does not impose any additional burden on institutions.

Under the final rule adopted today, institutions are required, effective January 1, 1989, to account for the above-referenced items in accordance with GAAP and to report such items in accordance with GAAP on their financial statements. For purposes of computing regulatory capital, the final rule permits institutions to include the RAR/GAAP differential for those grandfathered items as a component of regulatory capital. The Board notes, however, that institutions are not required to include the RAR/GAAP differential as a component of regulatory capital. Thus, an institution may, prior to January 1, 1989, make an irrevocable election to report all pre-January 1, 1989, transactions in accordance with GAAP and not to compute or add to regulatory capital the RAR/GAAP differential for those transactions. Institutions must make their election with the filing of their first quarterly report for the first quarter of 1989 and will be bound by such election for all reporting periods thereafter. The Board wishes to emphasize, however, that regardless of which option it chooses, an institution may not, after January 1, 1989, report any of these grandfathered items on its financial statements or reports in accordance with RAR.

a. *Loan Origination and Commitment Fees.* With respect to the Board's proposal to require insured institutions to account for loan origination and commitment fees in accordance with GAAP and Statement of Financial Accounting Standards ("SFAS") No. 91 as of January 1, 1989, nine commenters responded. Two commenters urged that, because SFAS No. 91 has an effective date of December 15, 1987, either the Board should give insured institutions the option to account for loan origination and commitment fees in accordance with SFAS No. 91 by that date or it should adopt SFAS No. 91 simultaneously with the FASB. Another commenter stressed the well-conceived basis of SFAS No. 91 and its importance to the industry. However, five commenters strenuously objected to the Board's adoption of a standard that is in accordance with SFAS No. 91, contending, for example, that it will necessitate time-consuming and expensive accounting procedures that will require extra time to implement beyond the January 1, 1989 projected date and that it is a misguided and logically flawed standard that should be resisted by the Board. One commenter suggested that RAR accounting for loan fees be permitted to continue until January 1, 1989, without the elimination of the differential between RAR and GAAP in 1993, because in most cases the differential amount will be inconsequential. Another commenter expressed strong opposition to the inclusion of the RAR/GAAP differential because the computation of that differential would require institutions to maintain separate RAR and GAAP accounting systems, which would be unduly burdensome. This commenter suggested that the Board require that all transactions after January 1, 1989, be handled on a GAAP basis and all transactions before that date be allowed to run their course under RAR. Under this scenario, it is claimed, most RAR loan fees will have run their course by 1993.

While the Board understands the concerns raised by the commenters, it has nevertheless determined to require insured institutions to account for all loan origination and commitment fees incurred after January 1, 1989 in accordance with SFAS No. 91. As the Board discussed in the proposal, it believes that its current regulation for loan fees does not result in as conservative a measure of capital as produced under SFAS No. 91. Moreover, the Board believes its approach today is consistent with that of the other federal banking agencies, who currently require banks to account for loan fees under Pre-SFAS No. 91 GAAP, but who have indicated, based on informal discussions, that they intend to follow SFAS No. 91. Accordingly, the Board believes that its decision is consistent with the intent of the CEBA, which mandates that the Board's accounting requirements follow either GAAP or Bank RAP.

In response to several commenters' concerns, however, the Board will permit institutions to begin to account for loan fees under SFAS No. 91 at a date earlier than January 1, 1989, if they so desire. Moreover, institutions may elect to account for all loan fees transactions currently on their books in accordance with GAAP and not include the RAR/GAAP differential as a component of regulatory capital. The Board wishes to emphasize, however, that regardless of which election an institution makes, it may not, as of January 1, 1989, continue to report loan fees on its financial statements or reports in accordance with RAR.

Finally, the Board notes that it is amending § 563.23–3 to delete paragraphs rendered unnecessary in light of the Board's decision today to require institutions to account for loan fees in accordance with GAAP. Specifically, since SFAS No. 91 defines and prescribes accounting treatment for charges, credits, and sales or payoffs of loans, the current definitions and procedures set forth in § 563.23–3 are no longer necessary.

b. *Options Transactions.* With respect to the Board's proposal to require insured institutions to account for options transactions in accordance with GAAP, six commenters submitted their views. In the proposal, the Board acknowledged that GAAP is still evolving in this area and has not yet been defined by a specific FASB Statement of Financial Accounting Standards. All six commenters suggested that the Board continue its current treatment of options transactions or provide further guidance in this area, until some authoritative pronouncements are issued by the FASB.

In response to the concerns raised by the commenters, the Board has determined to continue to provide guidance to institutions with respect to accounting for options transactions. Thus, institutions may continue to account for options transactions in accordance with the guidelines set forth in 12 CFR 563.17–5(g)(1987). It should be noted that the Board currently has outstanding a proposed rule on accounting for options and that a final rule may change existing accounting procedures in this area. *See* 50 FR 53336 (Dec. 31, 1985). This proposed options rule, if adopted in final form, would effectively eliminate any differences that exist between RAR and GAAP as it is currently evolving. Any final action taken on that proposal would be published in the **Federal Register**. While the Board has determined to continue to provide guidance in this area for the present, it should be noted that, at such time as GAAP is defined by an authoritative body such as the FASB or the American Institute of Certified Public Accountants, the Board will revisit this issue.

The Board notes that because GAAP is undefined for options transactions, the Board, by its action today, is not creating a RAR deviation from GAAP. In fact, as noted above, the treatment of options transactions under the Board's current regulations and the outstanding proposal is very similar to the treatment of such transactions under GAAP, as it is currently evolving. Thus, the Board is not providing for an RAR/GAAP differential for this item since institutions may account for options transactions in accordance with RAR on their financial statements and reports.

c. *Valuation Allowances and Uncollectible Interest.* The Board proposed to eliminate RAR treatment for accounting for uncollectible interest and to delete the RAR/GAAP differential component of regulatory capital for both uncollectible interest and valuation allowances. While no comments address this aspect of the proposal, the Board wishes to take this opportunity to clarify the final rule.

The Board today also is adopting final rules governing classification of assets and appraisal standards consistent with the practices of the other federal banking agencies. *See* Board Res. Nos. 87–1296, 87–1295, to be published in the final rules section of the **Federal Register**. As described in those final rules, there should not be significant RAR/GAAP differentials for establishing loss allowances. Thus, under today's final rule, this component is no longer appropriately included in regulatory capital. Accordingly, institutions will be required to report loan loss allowances on their financial statements and reports in accordance with 12 CFR 561.16c; 563.17–2; and 571.1a, as amended today by Board Res. No. 87–1296. The Board notes that the asset classification regulation also applies to the accrual of interest on delinquent loans which must, in accordance with SFAS No. 5, be reserved when it is probable that the interest will not be received.

4. Accounting Forbearances

On the issue of the continued inclusion of accounting forbearances as a component of regulatory capital, three commenters responded. One commenter approved of the Board's treatment of this item, and the other commenter opposed continued inclusion, claiming that, in order to promote uniformity in accounting, specifically granted forbearances from enforcement should be utilized instead. One commenter suggested that, rather than bind institutions to a 1993 date, the original terms of an accounting forbearance should govern and should be afforded grandfathering treatment.

The Board continues to believe that accounting forbearances should be included as a component of regulatory capital. As the Board noted in the DRC Regulation, the Board believes that such forbearances have often been required to facilitate the acquisition of a troubled institution and consequently are directly relevant to effective supervision and monitoring of risk to the FSLIC. *See* 52 FR at 18347. Thus, the Board believes that its decision to continue to include accounting forbearances as a component of regulatory capital will benefit both the thrift industry and the FSLIC.

The Board wishes to emphasize again that this category of regulatory capital includes only accounting forbearances, *i.e.*, deviations from RAR or GAAP for specific accounting transactions that were previously authorized or that may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Institutions may not include as regulatory capital those forbearances granted by the Board or its designee with respect to an institution's minimum regulatory capital requirement, whether granted under the capital forbearance regulation, pursuant to a merger or acquisition, or by some other means.

Finally, it should be noted that this category of regulatory capital is not subject to a sunset date. Therefore, it is the Board's intent that any accounting forbearances granted by the Board or its designee may continue to be included in regulatory capital until the term of the specific accounting forbearance expires.

5. Sunset Date

The Board proposed that, consistent with the CEBA, permission to include certain items as components of regulatory capital would sunset on December 31, 1993. The Board specifically solicited comment concerning whether, instead of a sudden

elimination of these items in 1993, it should gradually phase out these items by a percentage reduction each year until 1993.

Eight commenters responded on this point. Two commenters suggested that a phase-down schedule, implemented at the irrevocable option of each insured institution, would be the most appropriate and the least disruptive alternative. Six commenters expressed general support for the idea of a gradual phase-in of GAAP accounting. Three commenters disagreed with a phase-in, advocating a simple elimination of these items in 1993, one advocating special supervisory oversight of certain institutions to ensure that proper steps to institute GAAP accounting procedures are taken during the 5-year period.

After carefully considering the comments, the Board has determined to permit institutions to make an irrevocable election on January 1, 1989, as to whether they wish to phase-down the amount of grandfathered items includable in regulatory capital through 1993 or whether they wish to include 100 percent of grandfathered items as regulatory capital until 1993. Institutions must make their election with the filing of the quarterly report for the first quarter of 1989 and will be bound by such election for all reporting periods thereafter. Institutions that elect the phase-down approach will be permitted to include 100 percent of grandfathered items in regulatory capital during 1989, 80 percent in 1990, 60 percent in 1991, 40 percent in 1992, 20 percent in 1993 and 0 percent in 1994. In the Board's view, its action today gives management the flexibility to determine which option is most appropriate for a particular institution.

D. Plans for Delayed Compliance

The Board proposed to amend 12 CFR 563.23–3 (1987) to permit institutions to file plans for delayed compliance with the uniform accounting standards that fully explain why compliance will not be feasible within the prescribed timetable. In the preamble to the proposal, the Board cautioned that such plans would be authorized only with respect to particular aspects of the accounting requirements and only on an infrequent basis. Although one commenter acknowledged that the proposed rule sufficiently recognized that institutions may need to request delayed compliance if the imposed time schedule is not feasible, four other commenters urged the Board to adopt a much more liberal and flexible stance in the granting of such plans.

The Board has considered these comments and determined that the final rule in respect of plans for compliance should remain as proposed. The Board does not intend to demonstrate inflexibility in this regard and has indeed liberalized other aspects of the proposed rule by, for example, allowing a reporting of deferred loan losses on unaudited financial statements until the end of 1993. The Board remains convinced, however, that the better course is a requirement of demonstration by an institution of persuasive reasons and genuine need for delayed compliance with respect to specific aspects of the rule. In this way the Board believes, the mandate of CEBA with respect to the adoption of uniform GAAP-based accounting standards is most faithfully fulfilled.

As the Board stated in the proposal, institutions that file plans seeking delayed compliance not because of an inability to meet the Board requirements but because of an unwillingness to prepare financial statements and reports and to report capital components as required by Board regulations should be aware that such plans will not be approved by the Board. The Board continues to believe that achieving uniform accounting based on GAAP at the earliest possible date is in the best interest of the thrift industry and the public.

E. Miscellaneous Issues

The DRC Regulation provides that insured institutions must record marketable equity securities in accordance with GAAP and SFAS No. 12. Although not actually a part of this proposal, three commenters submitted remarks on this issue. One commenter suggested that the Board clarify that GAAP treatment under SFAS No. 12 for all non-34 Act companies is triggered on January 1, 1989, and not before. Two commenters requested that the Board consider granting a regulatory capital exception for mutual funds, permitting institutions to carry such items at historical cost.

One commenter addressed the treatment of "liquid asset mutual funds." The portfolios of these funds consist entirely of debt obligations, such as U.S. government securities that would qualify as liquid assets pursuant to 12 CFR 523.10(g). An investment in this type of mutual fund also qualifies as a liquid asset under that section. The commenter noted that GAAP permits debt obligations of the United States to be carried at cost if the entity has the intent and the ability to hold the securities to maturity. SFAS No. 12 requires marketable equity securities, such as mutual funds, to be carried at the lesser of cost or market. Thus, while a thrift could invest directly in U.S. government securities and carry that investment at cost, if the thrift were to invest in a mutual fund the portfolio of which consisted entirely of the same U.S. government securities, the investment, under SFAS No. 12, would have to be carried at the lower of cost or market. The commenter argued that this different accounting treatment would cause thrifts to invest directly in U.S. government securities for liquidity purposes rather than diversifying into investments in mutual funds holding U.S. government securities. The commenter asserted that SFAS No. 12 should not apply to such liquid assets mutual funds. The commenter urged the Board either to (1) value investments in such open-end management investment companies at cost instead of in accordance with GAAP, as set forth in SFAS No. 12 or (2) to add the difference, if any, between cost and market value (if lower than original cost) of such investments as a component of regulatory capital.

The Board has thoroughly considered the arguments proferred by these commenters and has determined that all marketable equity securities, except for investments in the shares of open-end management investment companies, as defined in § 523.10 ("liquid asset mutual funds"), shall be accounted for in accordance with GAAP, as set forth in SFAS No. 12.

The Board recognizes that the CEBA mandates that the Board follow GAAP or Bank RAP in determining uniform accounting standards for thrifts. In this regard, both GAAP and Bank RAP require that investments in marketable equity securities, including mutual funds, be accounted for in accordance with SFAS No. 12. However, the CEBA also grants the Board the discretion to phase in GAAP requirements over a period of time ending no later than 1993. After giving careful consideration to the issues raised by these commenters, the Board has amended the final rule in the following way. The Board has determined, as part of the gradual phase-in to GAAP, to permit institutions to include on their unaudited financial reports and statements investments in shares of liquid asset mutual funds recorded at historical cost through year end 1993. This exception applies only to those liquid asset mutual funds that meet the requirements of § 523.10(g)(8); all marketable equity securities, including other types of mutual funds, must be reported in accordance with SFAS No. 12 for all periods beginning on or after January 1, 1989. The Board wishes to emphasize, however, that as of January 1, 1994 institutions must account for shares in these liquid asset mutual funds in accordance with SFAS No. 12.

Three commenters voiced concerns concerning the impact of the Regulatory Flexibility Act on the proposals. One commenter asserted that the CEBA was not intended to grant forbearance from compliance with the Act and that a 30-day comment period was insufficient for small institutions without access to the Federal Register. On this point, the Board wishes to clarify that since the enactment of the CEBA on August 10, 1987, all insured institutions have been on notice that the Board had been ordered by Congress to promulgate regulations that would move the industry toward uniform GAAP-based accounting standards and that notice to the industry was reiterated when the Board issued an advance notice of proposed rulemaking, Board Res. No. 87–941, 52 FR 33595 (Sept. 4, 1987). Moreover, the Board was admonished by Congress that these regulations would have an effective date December 31, 1987. Thus, the timetable set by Congress gave the Board no choice but to allow a maximum comment period of 30 days. Two other commenters suggested that the uniform accounting standards pose particular burdens for small institutions, one commenter noting that the standards will be overly taxing of a small institution's limited personnel. The Board's regulatory flexibility analysis responding to this concern appears below.

One commenter asserted that one issue of RAP/GAAP inconsistency was left out of the proposals—that of the conflict between SFAS No. 34 and the Board's memorandum T–59–3a's six-month rule; this commenter advocated the elimination of the T-Memorandum's position. After considering this commenter's remarks, the Board has determined that GAAP as set forth in SFAS No. 34, will apply to capitalization of interest on construction projects.

III. Description of the Final Rule

The final rule requires that all unaudited financial statements issued by insured institutions, including counter-statements, and all financial reports filed with the Board, for all periods beginning on or after January 1, 1989, shall be prepared in accordance with GAAP except that insured institutions may report loan losses and gains deferred pursuant to § 563.14c and liquid asset mutual fund investments at cost in the body of such statements and reports. Audited financial statements must be prepared in accordance with GAAP with no deviations. All financial statements and reports filed on or after January 1, 1989, shall include, in a footnote, a full and fair reconciliation of modified equity capital (or GAAP capital if an audited statement) with regulatory capital.

For all periods beginning on or after January 1, 1990, institutions must file financial statements and reports to the Board on a consolidated basis. The Thrift Financial Report will contain instructions for the format for such consolidated reports.

The final rule defines regulatory capital as the sum of (1) modified equity capital; (2) definitional capital, (3) grandfathered RAR components of capital, and (4) accounting forbearances.

A. Modified Equity Capital

Modified equity capital represents the difference between the recorded values of an institution's assets and liabilities, as determined in accordance with GAAP, plus the amount of loan losses and gains deferred pursuant to § 563c.14, and the difference between investments in liquid asset mutual funds under GAAP and their historical cost.

In computing modified equity capital, institutions may rely on the procedures set forth in 12 CFR 563.17–5 (1987) for options transactions and those set forth at 12 CFR 561.16c, 563.17–2, and 571.1a for establishing loss allowances.

B. Definitional Capital

Definitional capital includes qualifying subordinated debt, qualifying redeemable preferred stock, qualifying mandatory convertible securities, income capital certificates, mutual capital certificates, net worth certificates, accumulated income payments on capital certificates not due and payable, allowances for losses except specific allowances, and pledged deposits and other nonwithdrawable accounts (excluding any treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in modified equity capital.

C. Grandfathered RAR Components of Capital

This component of regulatory capital includes only the components of RAR permitted prior to January 1, 1989, for which further elections cannot be made. Thus, the final rule permits an insured institution to include in regulatory capital the amount representing the cumulative RAR/GAAP differential for specific grandfathered items, provided that the insured institution calculated and reported such items under RAR prior to January 1, 1989. An insured institution may include in its regulatory capital the amount representing the RAR/GAAP differential for the following items: accounting for the sales of real estate by the institution or its subsidiary, futures transactions, appraised equity capital, loan origination and commitment fees, and accretion of discounts and amortization of premiums on securities.

The Board notes that under the final rule an institution may elect not to include the RAR/GAAP differential as a component of regulatory capital if it so desires. Such an election must be made by the filing of the first quarterly report of 1989 and is irrevocable. The Board emphasizes, however, that institutions may not, after January 1, 1989, report these grandfathered items on their financial statements pursuant to RAR. The RAR/GAAP differential is only computed for purposes of regulatory capital.

Finally, the final rule provides that the ability of insured institutions to include the RAR/GAAP differential for these items as a component of regulatory capital sunsets on December 31, 1993. The sunset provisions are described in more detail below.

D. Accounting Forbearances

Insured institutions may also include in their regulatory capital accounting forbearances previously authorized, or that may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Institutions may not include as regulatory capital those forbearances granted by the Board or its designee with respect to an institution's minimum regulatory capital requirements.

E. Sunset Date

The final rule provides that, as of December 31, 1993, insured institutions may no longer include as regulatory capital the RAR/GAAP differential for appraised equity capital, sales of real estate by the institution or subsidiary, futures transactions, loan origination and commitment fees, and amortization of premiums and accretion of discounts on securities. Additionally, the ability to report investments in liquid asset mutual funds at cost sunsets. Under the final rule, an institution must make an irrevocable election upon the filing of its first quarterly report of 1989 as to whether it opts for immediate elimination of these items from regulatory capital on December 31, 1993 or pro rata elimination of these items pursuant to the following schedule: 100 percent includable as regulatory capital

in 1989; 80 per cent in 1990; 60 per cent in 1991; 40 per cent in 1992; 20 per cent in 1993; and 0 per cent for 1994 and all years thereafter.

F. Elimination of Certain RAP Procedures

The final rule eliminates altogether prospective authority for insured institutions to rely on the following accounting procedures heretofore permitted by the Board and representing departures from GAAP.

First, the Board's accounting regulations, 12 CFR 563.23–1(f) (1987), are eliminated, and insured institutions and their service corporations must account for the sales of real estate developed by the institution or its service corporation in accordance with GAAP. *See* SFAS No. 66. Second, insured institutions must record marketable equity securities in accordance with GAAP, except that investments in liquid asset mutual funds may be carried at cost through year end 1993. *See* SFAS No. 12. Third, the final rule amends 12 CFR 563.17–4(g) (1987) to require institutions to determine gains or losses arising from futures transactions in accordance with GAAP. See SFAS No. 80. Fourth, 12 CFR 563–23–1 (1987) is amended to require that premiums on securities be amortized and that discounts on securities be accreted in accordance with GAAP. See SFAS No. 65.

Fifth, the final rule eliminates the Board's regulations governing accounting for loan origination and commitment fees, 12 CFR 563.23–1(g), (1987) and requires insured institutions to account for such transactions in accordance with GAAP. *See* SFAS No. 91.

Sixth, the rule eliminates 12 CFR 563c.11 (1987) with respect to accounting for uncollectible interest and requires insured institutions to account for this item in accordance with GAAP. *See* SFAS. No. 5.

G. Plans for Delayed Compliance

The final rule provides that plans for delayed compliance may be filed by insured institutions with their Principal Supervisory Agents. Such plans must be detailed and explicit, and include the specific components of the uniform accounting standards with which it is unable to comply; the date and the method by which it proposes to comply with that component prior to December 31, 1993; and any other information the institution deems relevant. In the event a plan for compliance is disapproved in whole or part, the final rule provides for an appeal to the Corporation within 30 days of the disapproval, which will be acted upon in accordance with the guidelines set forth at 12 CFR 571.12 (1987).

IV. Effective Date of Final Rule

The final rule becomes effective on January 1, 1989, as of which date all insured institutions shall compute their regulatory capital pursuant to § 561.13. With respect to the GAAP reporting requirement, all unaudited financial statements issued by insured institutions, all financial reports required to be filed with the Board, and all counter statements prepared by insured institutions for all periods beginning on or after January 1, 1989 shall be prepared in accordance with GAAP, except that loan losses and gains deferred pursuant to 12 CFR 563c.14 prior to January 1, 1988, may be reported in the body of such financial statements and reports, and investments in liquid asset mutual funds may be carried at cost through year end 1993. Effective for all periods beginning on or after January 1, 1990, institutions shall prepare financial statements and reports on a consolidated basis pursuant to the instructions that will be set forth in the Thrift Financial Report. Additionally, all such financial statements and reports must include a footnote reconciliation of modified equity capital to regulatory capital.

Although the effective date of this final rule is January 1, 1989, insured institutions may if they so desire begin accounting for and reporting all transactions in accordance with GAAP anytime prior thereto. However, such an election is irrevocable.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and Objectives of the Rule.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

2. *Issues Raised by Comments and Agency Assessment and Response.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

3. *Significant Alternatives Minimizing Small-Entity Impact and Agency Response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

Because uniformity of accounting practices is the fundamental principle underlying both this rule and the relevant provisions of the CEBA that it implements, to treat small institutions differently would be thoroughly inconsistent with this objective. Therefore, the final rule treats all institutions identically regardless of their size. The final rule incorporates several elements intended to grant flexibility to all institutions as explained more fully in **SUPPLEMENTARY INFORMATION**.

List of Subjects in 12 CFR Parts 561, 563, and 563c

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Parts 561, 563, and 563c Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for 12 CFR Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Section 561.13 is revised to read as follows:

§ 561.13 Regulatory capital.

Regulatory Capital is the sum of:

(a) Modified equity capital, which is defined as the sum of:

(1) Equity capital as determined in accordance with generally accepted accounting principles;

(2) The amount of unamortized loan gains and losses which were deferred pursuant to § 563c.14 of this subchapter; and

(3) The difference between investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter, accounted for under generally accepted accounting principles and their historical cost;

(b) Definitional capital, which is the sum of:

(1) Income capital certificates, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), outstanding net worth certificates issued in accordance with Part 572 of this subchapter or that the Corporation is committed to purchase by virtue of § 572.1(c), accumulated annual income payments on capital certificates not due and payable, allowances for losses except specific allowances, pledged certificates and any other nonwithdrawable accounts (excluding any Treasury shares held by the institution) to the extent such nonwithdrawable accounts are not included in modified equity capital: *Provided*, that for any nonpermanent instrument qualifying as regulatory capital under paragraph (b)(1) of this § 561.13, either (i) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is not less than one year, or (ii) the redemption or prepayment is only at the option of the issuing insured institution and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter; *Provided further*, that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation when the issuing institution is not the survivor, or a provision permitting a redemption when the funds for redemption are raised by the issuance of permanent stock;

(2) Subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided*, that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year; *Provided further*, that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year, or is compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984: *Provided further*, that, except as otherwise provided in paragraph (b)(2) of this § 561.13 and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory capital only in accordance with the following schedule:

Years to maturity of outstanding subordinated debt	Percent included in regulatory capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to 6	86
Less than 6 but greater than or equal to 5	71
Less than 5 but greater than or equal to 4	57
Less than 4 but greater than or equal to 3	43
Less than 3 but greater than or equal to 2	29
Less than 2 but greater than or equal to 1	14
Less than 1	0

For purposes of determining the principal amount outstanding of an obligation issued at a discount that exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument sold at a discount that exceeds 10 percent and that bears no stated rate of interest, the amount that can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method. For purposes of computing the amount of subordinated debt includable as regulatory capital pursuant to paragraph (b)(2) of this § 561.13, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt that is subject to required sinking fund payments, other required prepayments, and required reserve allocations and calculate the percentage amount of each portion of the principal amount outstanding that may be included pursuant to the schedule set forth in paragraph (b)(2) of this § 561.13;

(3)(i) Preferred stock that is redeemable at the option of the issuer (A) that was issued prior to July 23, 1985, or (B) that was issued on or after July 23, 1985, was approved prior to issuance pursuant to § 563.1 of this subchapter and states that no redemption may be made by the issuing insured institution if, after giving effect to such redemption, the insured institution would fail to meet its regulatory capital requirement under § 563.13 of this subchapter;

(ii) Mandatorily redeemable preferred stock that (A) was issued prior to July 23, 1985 or (B) was issued pursuant to § 563.7–5 of this subchapter on or after July 23, 1985, was approved as to its form prior to issuance pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital, before or after its issuance, pursuant to § 563.7–5: *Provided*, that unless otherwise approved by the Corporation in writing, mandatorily redeemable preferred stock issued on or after July 23, 1985, may be included as regulatory capital only in accordance with the schedule set forth in paragraph (b)(2) of this § 561.13; and

(4) Mandatory convertible securities to the extent not included in modified equity capital, *provided that* such securities meet the criteria set forth by the Office of Regulatory Policy, Oversight and Supervision in Supervisory Memoranda.

(c) The sum of the following items determined in accordance with risk analysis reporting in effect prior to January 1, 1989 that an insured institution has included in computing and reporting its regulatory capital to the Corporation prior to January 1, 1989:

(1) Appraised equity capital (as defined in § 563.13(c) of this subchapter);

(2) The amount of unamortized loan gains and losses which were deferred pursuant to § 563c.14 of this subchapter to the extent such deferred gains and losses are not included in modified equity capital;

(3) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1989, and included in its financial statements prior to January 1, 1989. An institution may include an amount that represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting prior to January 1, 1989:

(i) Sales of real estate developed by the institution or its subsidiary;

(ii) Futures transactions;

(iii) Accretion of discounts and amortization of premiums on securities;

(iv) Loan origination and commitment fees; and

(d) Accounting forbearances permitted under risk analysis reporting, which shall include all accounting forbearances and other accounting practices authorized by the Corporation, the Board, or its Principal Supervisory Agents.

(e) Notwithstanding paragraphs (a), (b), (c), and (d) of this § 561.13, the term "regulatory capital" does not include any capital instrument or security that may be included as regulatory capital pursuant to any of those paragraphs of § 561.13 if such capital instrument or security is held by a service corporation or other subsidiary, regardless of the organizational form of that entity, in which the insured institution directly or indirectly (1) owns, controls, or holds with power to vote, or holds proxies representing 10 percent or more of the voting shares or rights in such entity, or (2) invested in or contributed to such entity more than 10 percent of such entity's capital, unless inclusion of regulatory capital is specifically approved by the Corporation in writing.

(f) *"Sunset"* provisions. Authority to include items listed in paragraphs (a)(2), (a)(3), (c)(1) and (c)(3) of this § 561.13 as a component of regulatory capital will cease as of December 31, 1993. Institutions may make an irrevocable election upon the filing of their first quarterly report for 1989 to phase-out these items over the period beginning January 1, 1989, and ending December 31, 1993, pursuant to the following schedule: 100 percent of these items are includable in regulatory capital for 1989; 80 percent in 1990; 60 percent in 1991; 40 percent in 1992; 20 percent in 1993; and 0 percent in 1994 and all years thereafter.

PART 563—OPERATIONS

3. The authority citation for 12 CFR Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Section 563.23–1 is amended by revising the heading of the section to read as follows; by revising paragraph (b); and by removing paragraphs (c) through (f); to read as follows:

§ 563.23–1 Premiums and discounts with respect to loans.

* * * * *

(b) *Purchase at a discount.* If an insured institution purchases a loan at discount, the discount shall be differed by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles.

5. Section 563.23–3 is amended by revising paragraphs (c) and (d); and by adding a new paragraph (e) to read as follows:

§ 563.23–3 Accounting principles and procedures.

* * * * *

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the Corporation shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such financial statements and reports, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this chapter, may be carried at historical cost in such statements and reports. All such financial statements and reports shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 561.13(a) of this subchapter, to regulatory capital, as defined in § 561.13 of this subchapter. Loan losses and gains deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management investment companies, as defined in § 523.10(g)(8) of this chapter, accounted for at historical cost, may be reported on such financial statements and reports only for and until the last reporting period of 1993.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such Statements of Condition, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this chapter, may be carried at historical cost on such Statements of Condition. All such Statements of Condition shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 561.13(a) of this subchapter with regulatory capital, as defined in § 561.13 of this chapter. Loan gains and losses deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management companies, as defined in § 523.10(g)(8) of this Chapter, accounted for at historical cost, may be reported only for and until the last period of 1993. Each Statement of Condition shall include in bold type in the body of the statement the following language: "Federal Savings and Loan Insurance Corporation ("FSLIC"), an agency of the U.S. government, insures all depositors' savings up to $100,000 in accordance with the rules and the regulations of the FSLIC." In addition, the footnote reconciliation of equity capital to regulatory capital continued in such statements shall include the following language: "Regulatory capital is the basis by which the Federal Home Loan Bank Board determines whether an institution is insolvent and whether an institution is meeting its regulatory capital requirement."

(e)(1) An insured institution seeking to delay its compliance with the uniform accounting standards set forth in this § 563.23–3 or § 561.13 of this subchapter shall file a plan with its Principal Supervisory Agent ("PSA").

(2) The plan shall set forth the following:

(i) The specific components of the uniform accounting standards with which the insured institution is unable to comply ("excepted components");

(ii) A timetable setting forth the date, in no event later than December 31, 1993, by which the insured institution proposes to comply with each excepted component; and

(iii) Any other information that the insured institution believes is relevant to its determination that it is not feasible for the institution to comply with each excepted component.

(3)(i) The Principal Supervisory Agent shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.

(ii) In reviewing a plan, the PSA shall consider all relevant information, including, but not limited to,

(A) The institution's plan submitted pursuant to this section;

(B) Other information available to the PSA regarding the insured institution;

(C) The ability of other institutions in the region to comply with the uniform accounting standards; and

(D) The extent to which any relevant grandfathering or phase-in of the uniform accounting standards affects any excepted component in the institution's plan.

(4) In the event that the PSA disapproves a plan for delayed compliance in whole or in part, the institution may appeal the disapproval to the Corporation within thirty days of the disapproval. The Corporation shall act on such appeal in accordance with the guidelines set forth at § 571.12 of this subchapter. The Corporation, in reviewing the disapproval, shall take into consideration all relevant factors, including those listed in paragraph (e) of this section.

PART 563c—ACCOUNTING REQUIREMENTS

6. The authority citation for Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 822, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943—48 Comp., p. 1071.

§ 563c.11 [Removed and Reserved].

7. Section 563c.11 is removed and reserved.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[Editorial Note: This appendix will not appear in the Code of Federal Regulations.]

Appendix.—Uniform Accounting Standards Guide to Implementation Dates [6]

I. Reporting Requirements	
A. *General:* insured institutions must prepare all financial statements and reports in accordance with GAAP, except that deferred loan losses and gains may be included in the body of unaudited statements and reports and investments in mutual funds, as defined in § 523.10(g)(8) may be carried at historical cost; must include footnote reconciliation of modified equity capital with regulatory capital.	All periods beginning on or after January 1, 1989.
B. *Deferred Loan Losses and Gains* ("DLL"): insured institutions may continue to report DLL on their unaudited financial statements and reports, through year end 1993.	Insured institutions may report: 100% of DLL for 1989 through year end 1993; 0% of DLL thereafter.
C. *Mutual Funds:* insured institutions may report their investments in shares of open-end management investment companies, as defined in 12 CFR 523.10(g)(8), at historical cost through year end 1993 on unaudited financial statements and reports.	Insured institutions may report investments in liquid asset mutual funds at cost through year end 1993; in accordance with SFAS No. 12 for all years thereafter.
D. *Appraised Equity Capital* ("AEC"): insured institutions may *not* report AEC on their financial statements and reports.	All periods beginning on or after January 1, 1989.
E. *Consolidated Reporting:* insured institutions must file financial statements 1, and reports on a consolidated basis.	All periods beginning on or after January 1, 1990.
II. Components of Regulatory Capital	
A. Modified Equity Capital: equals GAAP capital plus DLL plus the difference between investments in liquid asset mutual funds accounted for under GAAP and their historical cost.	Must be computed for all periods beginning on or after January 1, 1989. For periods beginning on or after January 1, 1994, equity capital must be determined in accordance with GAAP with no deviations.
B. Definitional Capital	
Subordinated debt	May be included now in amounts specified in 12 CFR § 561.13(c); unchanged by amendment to DRC Regulation.
Qualifying redeemable preferred stock	May be included now in amounts specified in 12 CFR § 561.13(d); unchanged by amendment to DRC Regulation.
Qualifying mandatory convertible securities	May be included for all periods beginning on or after January 1, 1989, subject to guidelines to be issued by ORPOS.
Income capital certificates	May be included now; unchanged by amendment to DRC Regulation.
Mutual capital certificates	May be included now; unchanged by amendment to DRC Regulation.
Allowances for losses, except for specific allowances	May be included now; unchanged by amendment to DRC Regulation.
Pledged Deposits and other nonwithdrawable accounts [8]	May be included now; unchanged by amendment to DRC Regulation.
C. RAR Components of Regulatory Capital	
Cumulative RAR/GAAP differential *may be* included for:	Differential *may be* included as a component of regulatory capital from January 1, 1989 through December 31, 1993. Institutions may elect immediate exclusion of differential from regulatory capital on January 1, 1989; must file election to exclude immediately or phase-out by January 1, 1994. Institutions that elect to phase-out the differential must do so in accordance with the following schedule: 100% of differential-1989 80% of differential-1990 60% of differential-1991 40% of differential-1992 20% of differential-1993 0% of differential-1994.

Sales of real estate (by institutions or their subsidiaries)	Institutions may not report all items on their financial statements in accordance with RAR for any period beginning on or after January 1, 1989.
Futures transaction	
Appraised equity capital	
Loan origination and commitment fees	
Accretion of discounts/amortization of premiums on securities	
D. Accounting forbearances	May be included now; unchanged by amendment to DRC Regulation.

[1]This chart is intended as a summary guide for ease of reference. In case of any inconsistency between it and the regulatory language, the regulatory language will control.

[2]Does not include treasury shares held by the institution or nonwithdrawable accounts included as modified equity capital.

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12 CFR Parts 561, 563, and 571

[No. 87-1296]

Classification of Assets

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations governing the classification of assets of insured institutions pursuant to the mandate of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA requires the Board to establish an asset classification system consistent with the asset classification practices of the Federal banking agencies. This final rule broadens the scope of the existing rule and ensures the use of broader, but judicious, examiner discretion in the classification of assets, consistent with the asset classification practices of the bank regulatory agencies.

Specifically, this final rule employs the existing classification categories of Substandard, Doubtful, and Loss, but alters the consequences of these classifications with respect to valuation allowance requirements and their effect on capital.[1] Assets classified Substandard are no longer to be treated as scheduled items. Moreover, under this final rule, the Board no longer requires institutions to establish specific valuation allowances for assets classified Doubtful. With respect to assets classified Substandard or Doubtful, if the examiner concludes that the existing aggregate valuation allowances established by the institution are inadequate, the examiner will determine the need for, and extent of, any increase necessary in the insured institution's general valuation allowances, subject to review by the Principal Supervisory Agent ("PSA") or his designee. For the portion of assets classified Loss, the Board will continue to require institutions either to establish specific allowances for losses of 100 percent of the amount classified, or charge off such amount. Consistent with CEBA, today's final rule deletes the Board's scheduled item regulation, thus broadening the scope of the classification of assets regulation to encompass those assets formerly deemed scheduled items. Today's final rule also requires insured institutions to classify their own assets and to establish prudent general valuation allowances.

EFFECTIVE DATE: December 31, 1987.

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SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is authorized pursuant to section 403(b) of the National Housing Act ("NHA"), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). 12 U.S.C. 1726(b). *See also* 12 U.S.C. 1730(m); 12 CFR 563.17-1. Pursuant to this authority, the Board has the responsibility to examine and evaluate the assets of insured institutions and their affiliates, to require reporting, and to prescribe the treatment of such assets for regulatory evaluation purposes. In addition, the NHA requires insured institutions to establish and maintain reserves in accordance with Board regulations. 12 U.S.C. 1726(b).

The Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, was signed into law on August 10, 1987. Section 402 of CEBA requires the Board to establish an asset classification scheme consistent with the classification practices of the Federal banking agencies.[2] On May 5, 1987, the Board proposed for public comment a revision of the classification of assets regulation "to encourage greater exercise of discretion, judgment, and flexibility by both supervisory and examination staff, to integrate the classification system with other regulations prescribing treatment of problem assets, * * * and to achieve greater conformity with the classification practices of the bank regulators." 52 FR 18369, 18371 (May 15, 1987) ("May proposal"). The Board originally set a 60-day comment period for the May proposal, but extended this comment period until September 1, 1987. *See* 52 FR 27218 (July 20, 1987). Because CEBA became law during that comment period, the Board proposed a Supplemental Notice of Proposed Rulemaking on October 2, 1987, in order to incorporate revisions consistent with CEBA's mandate that the Board adopt a classification scheme consistent with the classification practices of the Federal banking agencies. 52 FR 39087 (Oct. 20, 1987) ("October proposal").

A. Description of the Proposals

In the October proposal, the Board proposed an asset classification scheme consistent with both the requirements of CEBA and the Board's intent to move toward an asset classification scheme more consistent with the classification practices of the Federal banking regulators. This goal was previously stated in the May proposal. Like the May and October proposals, today's final rule reflects the Board's recognition that methods of evaluating asset quality should be modified in light of significant changes in the investment authority of thrift institutions during the last five years.

Section 325 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469, amended section 5(c)(1)(R) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(c)(1)(R), to authorize federally chartered savings and loan associations and mutual savings banks to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes within specified limits. The Board promptly promulgated regulations in 1983 to implement this new commercial lending authority for federal institutions. *See* 12 CFR 545.46. Moreover, many states subsequently granted to state-chartered institutions the authority to engage in commercial lending activity.

At that time, the Board's existing asset classification system had been designed primarily to address the requirements of home lending, and therefore emphasized the timely receipt of periodic payments and other features inherent in loans secured by residential real estate. Due to Board concern that this system of asset classification was not attuned to the characteristics of these newly authorized types of lending, and thus was not appropriately suited to evaluate the condition of a given asset, the Board sought a better method of analyzing the condition of these loans.

On June 21, 1985, the Board proposed for public comment a new method of classifying certain commercial loans and a revision of its regulation governing examiners' reevaluation of real estate. Board Res. No. 85-504, 50 FR 27290 (July 2, 1985). This June 1985 proposal adopted the basic asset classification concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), which had been issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Conference of State Bank Supervisors. The Board's proposed scheme classified problem assets as Substandard, Doubtful, or Loss, consistent with the Federal banking agencies, and prescribed treatment of each problem asset depending on the category to which it was assigned.[3] The proposal also sought to revise the appraisal provisions in the Board's examinations and audit regulation to provide for the "automatic" classification of assets with no appraisal or a non-conforming one. *See* 12 CFR 563.17-2(b).

On December 9, 1985, the Board adopted as a final rule the proposed classification of assets scheme with some modifications. This regulation employs the classification categories of the Uniform Agreement, *i.e.*, Substandard, Doubtful, and Loss. Assets classified Substandard are treated as scheduled items, thus increasing the contingency component of an institution's minimum regulatory capital requirement under § 563.13 by an amount equal to 20 percent of the dollar amount of the Substandard assets. *See* 12 CFR 563.13(b)(4)(ii)(B). *See also* 12 CFR 561.16c(c)(1). In effect, this classification serves to increase an insured institution's capital requirement by 20 percent of the value of assets classified Substandard, since the contingency component is added to an institution's liability component (minus the maturity matching credit) to determine the minimum regulatory capital requirement. 12 CFR 563.13(b).

Assets classified Doubtful require the establishment of specific allowances for loan losses of up to 50 percent of the amount of the asset so classified. *See* Office of Regulatory Policy, Oversight and Supervision ("ORPOS") Memorandum No. SP 68 (Aug. 14, 1986). Assets classified Loss require the establishment of specific allowances for loan losses of 100 percent of the book value of assets or portions of assets classified Loss. This scheme permits assets to be "split" for classification purposes; different portions of the same asset may be classified under different categories or may remain unclassified. 12 CFR 571.1a.

The Board's December 1985 rule also authorized examiners to reevaluate assets in accordance with the newly adopted classification system, as reflected in 12 CFR 563.17-2(b). Section 563.17-2(b) was amended to provide that a reevaluation of real estate must be based on an appraisal, except in the following instances: (1) If a loan or investment required an appraisal under the Board's rules, but the institution had no appraisal in its files, the asset was to be classified Doubtful; (2) if there was an appraisal in the institution's files that did not conform with the Board's appraisal standards, or if the examiner determined that the assumptions underlying an appraisal (even one that was in compliance when made) were demonstrably incorrect, such asset was to be classified Substandard; and (3) if the examiner and the District Appraiser determined that the assumptions underlying an appraisal were demonstrably incorrect, rendering the appraisal inaccurate, and the asset had an additional weakness inherent in an asset classified Substandard, the asset was to be classified Doubtful. In promulgating the December 1985 final rule, the Board emphasized that in light of supervisory experience, a continued reliance on reappraisals as the sole means for classifying problem real estate assets was not advisable.

The Board also amended § 563.17-2(c) to require adjustments to the book value of assets deemed to be overvalued on the institution's books as a result of asset reevaluation. At the direction of its supervisory agent, an institution must make such an adjustment to the book value by establishing a specific valuation allowance in an amount equal to the overvaluation.

Although the Board adopted the above classification of assets scheme as a final rule, the Board also provided an additional 60-day comment period to solicit further public comment on the general scope of the classification system that, in its final form, encompassed all assets except consumer loans, loans secured by one-to-four family, owner-occupied homes, and securities. These comments are summarized *infra*. *See* "B. Discussion of the Comments."

After over a year of experience with the classification regulation promulgated December 9, 1985, the Board concluded that further revision of the classification regulation was necessary. Thus, on May 15, 1987, the Board proposed revisions to the asset classification scheme that would afford examiners and supervisory staff greater flexibility and discretion and would generally achieve greater conformity with the classification practices of the Federal banking agencies. Specifically, this proposal would have broadened the scope of the regulation to encompass debt and equity securities, and would

[1] This proposal refers to specific and general "valuation allowances," instead of "reserves," since the former designation is more consistent with accepted accounting terminology.

[2] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[3] These categories are defined in detail in the existing regulation and policy statement. *See* 12 CFR 561.16c(b), 571.1a(a). Generally, assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, and have a well-defined weakness or weaknesses. Assets classified Doubtful have all of the weaknesses inherent in those classified Substandard, with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific allowance for loan losses is not warranted.

have imposed an affirmative duty upon insured institutions to classify their own assets and establish appropriate valuation allowances. Furthermore, the proposal provided that Substandard assets would no longer receive scheduled item treatment, and Doubtful assets would no longer require the establishment of specific reserves. Under this proposal, if assets were classified Substandard or Doubtful and the examiner concluded that the general valuation allowances established by the institution were inadequate, the examiner would determine the need for, and extent of, any increase necessary in the insured institution's general valuation allowances. Under the May proposal, assets or portions of assets classified Loss would require the establishment of specific valuation allowances of 100 percent of the value of such asset, or, alternatively, such assets would be charged off.

Because CEBA was enacted during the comment period of the May proposal, the Board had to repropose the classification of assets regulation and incorporate modifications mandated by this recently enacted statute. Because one of the Board's goals in issuing the May proposal was to establish an asset classification system that more closely conformed with the classification practices of the Federal banking agencies, many elements of the May proposal were retained in the October proposal.

The October proposal reiterated the Board's goal of fostering the exercise of greater flexibility and discretion by examiners and supervisory personnel in classifying assets and in establishing valuation allowances, as well as the Board's concern that the existing classification scheme placed undue reliance on the role of appraisals. The October proposal also contained several important revisions to the May proposal. First, in October the Board proposed to delete the scheduled item regulation consistent with the requirements of Section 407 of CEBA. CEBA, tit. iv, section 407(b)(4). Thus, the types of assets deemed scheduled items would be classifiable under 12 CFR 561.16c, to include loans secured by one-to-four family, owner-occupied dwellings, consumer credit, real estate owned ("REO"), and other assets. The Board proposed to require that assets classified Loss be charged off, with no option for an institution to establish a 100 percent specific valuation allowance as an alternative. The Board also clarified that valuation allowances for assets are to be established in accordance with Generally Accepted Accounting Principles ("GAAP"). Moreover, the Board proposed to require that REO be appraised annually, and that losses on such REO be recognized if the subsequent Net Realizable Value ("NRV") of the property fell below the fair market value at acquisition. The October proposal also introduced a Special Mention category for those assets not evidencing sufficient risk of nonpayment to warrant classification, but evidencing potential risk requiring close monitoring by an institution's management.

B. Discussion of the Comments

In promulgating the existing regulation in December 1985, the Board specifically solicited comment on issues related to the scope of the existing rule. In the May and October proposals, the Board indicated that these comments would be considered in issuing today's final rule. In response to this 1985 solicitation, the Board received fifty-six comment letters, of which only thirty addressed the scope of the classification of assets regulation. Forty-four letters were received from insured institutions. Of the remainder, seven letters were received from industry trade associations, two were received from state agencies, one was received from a law firm representing twenty insured institutions, one was received from a mortgage insurance company, and one letter was received from a private citizen. Although these comments were generally supportive, several criticisms and suggestions were offered, which are discussed in greater detail *infra*.

In response to the May proposal, the Board received seventy-four comments, most of which offered qualified support for the proposed revisions. Fifty-four comments were received from insured institutions; nine comments were received from industry trade associations; one comment was received from a securities broker; three comments were received from mortgage insurers; and six other comments were received from interested societies representing financial managers, economists, executives, home builders, and others.

In response to the October proposal, the Board received sixty-five comments, including late-filed comments. The majority of these comments offered qualified support for the October proposal, while offering particular revisions and suggestions. Forty-two comments were received from insured institutions, thirteen were received from trade associations, two were received from law firms, and two were received from consultants. In addition, three comments were received from professional societies, one was received from a securities broker, one was received from a state regulator, and one comment was received from a private citizen. Approximately one-third of the October commenters had submitted comments on the May proposal, although the October comments often differed from the earlier comments given the differences in the two proposals. All comments submitted on the December 1985 final rule, the May 1987 proposal, and the October 1987 proposal have been carefully considered by the Board staff and have been considered in drafting today's final rule.

C. Response to Comments

1. Scope: Securities

In both the May and October proposals, the Board proposed to broaden the scope of the classification of assets regulation to encompass securities (both debt and equity) as defined in § 561.41 of the Board's regulations. Thirty-three May commenters addressed this issue, including five trade associations. An additional sixteen comments addressing this issue were submitted in response to the October proposal. Twenty-seven commenters offered general or qualified support for this proposal.

Twenty-three commenters opposed the inclusion of securities within the scope of the asset classification regulation. These commenters argued that the classification system was designed for an asset-by-asset analysis of loan transactions and is simply not suited for the classification of any and all securities that may be held in an institution's investment portfolio. Some contended that the classification of securities is an unnecessary addition to existing regulatory protections such as rating and marketability requirements, as well as per-issuer and diversification limitations. Moreover, they argued that GAAP already provides sufficient accounting guidance for valuation and loss allowance determinations with regard to securities.

Commenters also argued that the classification of securities would not be feasible since many securities are not actively traded and thus have values that cannot be easily ascertained. Moreover, market price at any given examination may not accurately reflect market value and credit risk. Several commenters asserted that the classification of securities would be an extremely complex matter beyond the expertise of the examination staff, and that an unwise classification in one instance could cause widespread "dumping" of that security nationwide. These commenters believed that classification would inappropriately deter thrifts from investing in so-called "junk bonds" and thus deprive these institutions of higher returns. These commenters noted that junk bonds also provide institutions with enhanced access to commercial loan markets, an area traditionally closed to thrifts.

Thus, these adverse May and October commenters urged the Board to delay the classification of debt and equity securities pending specific study of the issue, the development of examination experience, and the articulation of specific system-wide objectives in this complex area. Some commenters noted that delaying classification would be especially appropriate in the high-yield bond area given the Congressional mandate for a study of high-yield bonds under section 1201 of CEBA. Commenters suggested that, in the meantime, the classification of securities might be limited to the "Special Mention" category with no valuation allowances required. Additionally, commenters suggested that securities already in an institution's portfolio be "grandfathered," regardless of the direction the Board takes in its final rule.

After careful consideration of all the comments on both the May and October proposals, the Board has determined that it is necessary and appropriate at this time to include securities within the scope of the asset classification regulation. The Board first considered the desirability of classifying securities at the time it promulgated the existing classification rule. However, such an expansion of coverage was deferred pending further review. *See* 50 FR 53275, 53279 (Dec. 31, 1985). The Board is of the view that further delay of this proposal, as suggested by the opposing commenters, is not warranted in light of further staff consideration of the issue and the requirements of CEBA. CEBA clearly mandates that the Board prescribe an asset classification system that is consistent with the classification practices of the Federal banking agencies. Through discussions with representatives of these agencies, the Board staff has learned that securities of all types are treated as classifiable assets within each of their respective classification schemes. Thus, consistent with these agencies, the Board is broadening the scope of the existing classification regulation to encompass all types of securities as potentially classifiable assets.

As is the case with all other types of classifiable assets, the Board intends that these assets be classified in accordance with the classification categories Substandard, Doubtful, and Loss, as established under the Uniform Agreement and as set forth under 12 CFR 561.16c. This will include rated and unrated debt securities as well as equity securities. In this regard, the Board once again notes its position that noninvestment grade securities, including so-called "junk bonds," should not automatically be classified merely because the security is unrated or has not been rated within the top four investment grades. *See* 52 FR 39091.

As has been demonstrated by the past experience of both the Board and banking agencies, the classification of securities should be no less feasible than the classification of other assets in an institution's portfolio. Moreover, such classification serves safety and soundness goals that reinforce, and are in addition to, other existing regulatory and accounting measures.

The Board expects that institutions exercising their discretionary authority to invest in various types of securities will also have the ability and expertise to continue monitoring their investments and to apply the classification measures wherever appropriate. Similarly, the Board's commitment to specialized education and training of its examination and supervisory staff is ongoing. In addition, ORPOS is now formulating training and examination guidelines and, as necessary, will issue other supervisory memoranda directed to examiners, supervisory personnel, and insured institutions addressing issues arising in connection with classification of these assets. In this regard, many of the comments supporting the Board's proposal raised a number of specific issues and offered various suggestions for classifying securities.

These supporting commenters generally argued that debt securities are the substantive equivalent of commercial loans (except that a different financial vehicle is used) and should thus be classified on that basis using identical criteria. Thus, no classification should be mandated simply because of market price fluctuations or interest-rate risk. Rather, as is the case with loans generally, classification should be based on the credit risk and collectability of the return of interest and principal for which the investor has contracted and which the institution has booked as an asset. Hence, these commenters argued that classification should be based on a review of underlying asset value and the creditworthiness of any obligated party or guarantor, including credit quality and liquidity, performance and collectibility, underwriting standards and internal control documentation, collateral sufficiency and disposibility, as well as the paying capability of the issuer.

One commenter suggested that it would be useful to focus on the "events of default" that are specified in the bond indentures since these accurately reflect what the market considers to be significant credit impairment. In any case, to avoid confusion and misunderstanding, examiners should be directed to use GAAP valuation principles since these focus on whether an asset has been impaired or a liability incurred and the amount of loss that can be reasonably estimated. Finally, several commenters argued that on-site review by examiners should be limited to closely-held, locally issued securities. These commenters request that widely-held issues be reviewed by a centralized, specially qualified examination group. Similar to the Federal bank regulators' "shared credit" review team, this group would promote and ensure uniform treatment for a security throughout the system.

The Board has referred all of these comments to ORPOS for consideration in its ongoing efforts to train examiners on a system-wide basis and address classification issues in guidelines and supervisory memoranda.

2. Scope: Scheduled Items

Section 407 of CEBA, which requires the Board to issue guidelines providing improvements and flexibility in the supervisory process, specifically requires the elimination of the scheduled item system "except as such system relates to 1-to-4 family residences." CEBA, tit. iv, section 407(b)(4). Consistent with this statutory mandate, the Board first proposed in October to delete the scheduled item regulation, contained in 12 CFR 561.15, and to treat those assets generally deemed scheduled items as assets classifiable under § 561.16c. A large number of October commenters expressed agreement with the proposed deletion of scheduled items, with some expressly supporting the Board's stated rationale. Although not proposed in May, a small number of May commenters recommended the deletion of this regulation. No commenters opposed this proposal, although several commenters addressed the classification treatment for individual assets currently falling within the scheduled item regulation.

The Board also proposed to treat loans on one-to-four family, owner

occupied dwellings as classifiable assets under § 561.16c. Although the deletion of scheduled items—which would render loans on the security of one-to-four family, owner occupied dwellings "classifiable"—was not proposed until October, the Board had sought specific comment in its May proposal as to whether such one-to-four family loans should be classifiable. Many May commenters preferred scheduled item treatment for such loans, as did a single October commenter.

Those commenters favoring scheduled item treatment reasoned that due to the high concentration of one-to-fours in most institutions' portfolios, the classification of each such loans would impose significant economic and administrative costs. Furthermore, these commenters asserted that appraisal requirements, underwriting standards, loan-to-value ratios, downpayment requirements, and portfolio diversification adequately protect against the risk of nonpayment for these assets, which historically have posed less risk than most other assets. One commenter urged the Board to exclude all loans secured by one-to-four family properties, not merely those that are owner-occupied. Another commenter suggested that even if such loans are excluded from classification, an institution should nevertheless establish a general "basket" reserve as a matter of prudent practice.

A significant number of October and May commenters urged the Board to classify one-to-fours. These commenters argued that a separate classification system (*i.e.*, scheduled items) is unnecessary, is not consistent with the classification practices of the Federal banking agencies, and discourages home financing by requiring a 20 percent minimum regulatory capital increase when such loans constitute scheduled items. One commenter stated that although such loans should be classifiable, classification should only occur in exceptional circumstances. Several other commenters argued that the Board should only require reserves for classified one-to-fours in exceptional circumstances (*e.g.*, where the portfolio presents a risk to the safety and soundness of the institution). Finally, one commenter suggested that examiners be given discretion to either classify one-to-four family loans or treat them as scheduled items, while a second commenter urged that the slow loan regulation's deliquency-based formula be retained if such assets are classified. *See* 12 CFR 561.16.

Consistent with the deletion of scheduled items and the Board's October proposal, the final rule provides that loans on one-to-fours are classifiable under 12 CFR 561.16c. Prior to 1985, the Board's classification scheme evolved primarily to classify owner-occupied home loans and was thus keyed to the timely receipt of periodic payments. Due to industry experience with such loans and other regulatory protections applicable to an institution's mortgage lending, an objective, timeliness-of-payments classification scheme was determined to be well-suited to loans for one-to-four family, owner-occupied homes, traditional consumer loans, and other specified types of lending. The Board drew a distinction, however, between one-to-four family, owner-occupied dwellings and non-owner occupied dwellings, because the source of payments received on a mortgage from an owner-occupant is derived primarily from earnings of a family member. The risk of nonpayment on owner-occupied dwellings was perceived to be diminished because of the substantial costs, both monetary and psychological, imposed by eviction. Non-owner occupied loans, however, were thought to be more risky since cash flows to service these mortgages could be derived from sources that are less reliable over time. 50 FR 53278 (Dec. 31, 1985). Thus, only one-to-four family, owner-occupied home loans were "classified" under the slow loan-scheduled item treatment of §§ 561.15 and 561.16.[4] In the October proposal, the Board proposed to retain the slow loan regulation despite the deletion of scheduled items. Several October commenters expressed support for the Board's retention of this regulation, with one commenter suggesting that the Board reiterate that one-to-fours constituting slow loans are not automatically classified. One commenter recommended that the Board delete the slow loan regulation.

As the Board noted in its October proposal, discussions with representatives of the Federal banking agencies led the Board staff to conclude that these agencies do not classify home mortgage loans in a manner differing appreciably from either the banking agencies' classification policies for assets generally, or from the slow loan-scheduled item treatment set forth in the Board's regulations. Both the Board and the Federal banking agencies look primarily to payment delinquency and cash flow in examining such assets, although the Board's slow loan regulation is arguably the more specific approach. The Board recognized that the greater specificity of its regulations is explained in large measure by the historically large role played by the savings and loan industry with respect to this type of lending, when contrasted with the more limited role the commercial banking industry has played in the home mortgage area.

As the Board also noted in its October proposal, the specific contractual delinquency standards and other factors set forth in the slow loan regulation have proven to be a rational and effective approach to gauging the risk of nonpayment with respect to the savings and loan industry's high volume of home mortgage loans. Moreover, these standards have been employed with relatively minor revision for many years and are understood by the industry and supervisory personnel.

Cognizant of the Congressional intent in CEBA, that the Board establish classification practices consistent with those of the Federal banking agencies that discourage "automatic" classifications and encourage case-by-case discretion when appropriate, the Board is retaining the slow loan regulation (despite the deletion of scheduled items). The Board wishes to reiterate, however, that although it is not requiring an automatic or mandatory classification approach for those assets constituting slow loans, such loans will obviously require close institution and examiner review with a presumption that they should be classified, at a minimum, Substandard unless a different approach is clearly indicated for the particular assets. Thus, in addition to other factors, examiners will continue to apply the slow loan regulation in examining the 1-to-4 family, owner-occupied home loan portfolio in light of the long-recognized value of the regulation's delinquency-based approach, and assets constituting slow loans will be classifiable under § 563.16c.

For reasons stated in the October proposal, the Board is of the view that the complete deletion of scheduled items—including one-to-four family, owner-occupied home loans—is consistent with section 407 of CEBA. Under the existing classification regulation, Substandard assets and scheduled items receive identical treatment: Both *increase* the minimum regulatory capital requirement by 20 percent of the value of such assets. Under today's final rule, and consistent with CEBA, Substandard assets may require general valuation allowances, which count *toward* regulatory capital. Many assets that were formerly scheduled items will likely be classified Substandard under this final rule. To continue to require one-to-four family, owner-occupied home loans to be treated as scheduled items under a cursory reading of section 407 would actually penalize those institutions engaging in such home lending, in light of the stricter, capital-based treatment for scheduled items relative to the final rule's more flexible general allowance treatment for Substandard assets. In the Board's view, such a penalty could discourage home lending and would be inconsistent with the important and long recognized role of this industry to provide home mortgage lending. The Board believes that this could not have been the intent of Congress. Furthermore, a partial retention of the scheduled item regulation would result in a more fragmented classification scheme. Thus, the Board is deleting its scheduled items regulation completely.

Consistent with the deletion of scheduled items, the Board's October proposal broadened the scope of the classification regulation to encompass "slow consumer credit" (currently a scheduled item under § 561.16a), as well as "slow consumer credit classified as a loss," addressed under § 561.16b. This issue elicited no specific comment. Therefore, the scope of the regulation has been broadened as proposed. As the Board stated in October, the Federal banking agencies adopted a uniform policy for the classification of installment credit based on delinquency status in 1980, pursuant to the recommendation of the Federal Financial Institution's Examination Council ("FFIEC"). On November 18, 1980, the Board promulgated §§ 561.16a and 561.16b for the express purpose of implementing this FFIEC-recommended uniform policy. 45 FR 76104 (Nov. 18, 1980). Consequently, there is no inconsistency between the practices of the Board and those of the Federal banking agencies with respect to the classification of consumer credit; all classify consumer credit on the basis of the same delinquency formula.

Thus, §§ 561.16a and 561.16b have been retained in the final rule, notwithstanding the elimination of scheduled items. Through its discussions with representatives of the Federal banking agencies, the Board staff has learned that, in applying delinquency standards identical to those contained in the §§ 561.16a and 561.16b slow consumer credit regulations, the Federal banking agencies often classify assets exceeding such limits Substandard or Loss, respectively. However, the banking examiners do make exceptions to this practice where the bank being examined can clearly demonstrate that repayment will occur irrespective of delinquency status (*e.g.*, loans well secured by collateral and in the process of collection, or loans supported by valid guaranties or insurance). Because § 561.16a and § 561.16b already expressly provide for consideration of such mitigating factors, this same level of discretion in classifying slow consumer credit is assured.

Real property acquired by an insured institution by foreclosure or deed in lieu of foreclosure (REO) is presently treated as a scheduled item under § 561.15(c). Consistent with the elimination of the scheduled item regulation, the Board proposed in October to treat REO as a classifiable asset under 12 CFR 561.16c.[5] In light of the October proposal's deletion of scheduled items, no October commenters opposed the possible classification of REO. Clearly, such treatment of REO will make the Board's classification scheme more consistent with the practices of the Federal banking agencies.[6] Therefore, the Board adopts this proposal to treat REO as a classifiable asset under the § 561.16c classification scheme.

Under existing § 563.17–2, institutions must appraise REO when it is treated as a scheduled item under § 561.15. Given the deletion of the scheduled items regulation, the Board is amending § 563.17–2 to remove the scheduled item reference and to require an appraisal of each parcel of REO at the time of an institution's acquisition of such property. The fair market value of the REO at the date of acquisition then becomes the carrying value of the property on the books of the institution. As stated in the October proposal, the institution or examiner must recognize additional losses if, subsequent to the date of acquisition, the NRV is less than the fair market value at acquisition of such properties.[7] Such an approach will ensure that losses are appropriately and consistently recognized as required by Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, as issued by the Financial Accounting Standards Board (SFAS No. 5).

In addition to this technical amendment to § 563.17–2, the Board also proposed to require that REO be appraised annually in order to ascertain whether the property declined in value. This requirement was proposed by the Board in the interest of further consistency with the banking agencies.[8]

A significant number of commenters opposed the October proposal's requirement that REO be appraised on an annual basis. These commenters were particularly troubled by the anticipated expense of the requirement, as well as its implicit emphasis on the value and importance of an appraisal. One commenter urged the Board to require an appraisal only every two years, while another urged the Board to permit such appraisals to be conducted by an in-house appraiser. One commenter believed that the frequency of appraisals should be left to the prudent management discretion of each institution. Finally, several October commenters expressly supported the proposed annual appraisal requirement for REO.

Following consideration of the comments, and upon further reflection, the Board has decided to delete from the final regulation an express requirement that REO be formally reappraised on an annual basis. A subsequent reappraisal is not required in order for an institution to conduct its NRV analysis of the property under GAAP and SFAS No. 5, although it could facilitate such an analysis. Thus, the Board will leave such matters to the prudent discretion of the institution's management, subject to review by the examiner and the PSA. However, consistent with the classification practices of some Federal banking agencies, the Board will leave to its examination and supervisory staff the flexibility to require subsequent

[4] Owner-occupied home loans are "classified" under a two-step process under Board regulation. Section 561.15 defines "scheduled item" to include slow loans. Section 561.16 defines slow loans, specifically setting forth at what point a loan secured by an owner-occupied home is deemed "slow."

[5] In its May proposal, the Board solicited comment on whether REO, which was one-to-four family, owner-occupied real estate at the time it served as collateral for a loan, should continue to be treated as a scheduled item and excluded from classification. While a significant number of May commenters supported continued scheduled item treatment for such loans, a few May commenters urged the Board to classify these assets.

[6] Through discussions with representatives of the Federal banking agencies, Board staff has learned that the banking agencies generally classify REO as Substandard, absent mitigating circumstances such as the fact that the property is subject to an agreement of sale or is generating sufficient income to carry the asset.

[7] "Net Realizable Value" is defined in the American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Savings and Loan Associations.

[8] As proposed, a letter from a qualified appraiser certifying that the property had not declined in value from the value stated in the previous appraisal would satisfy the annual appraisal requirement, subject to examiner review and acceptance. If the examiner, however, determined that the letter was not adequate, he or she could require an appraisal prepared in accordance with the appraisal requirements set out at §§ 563.17–1 and 563.17–2. *See* 52 FR 36993.

appraisals of REO on a case-by-case basis at whatever frequency is appropriate under the particular circumstances.

Today's elimination of scheduled items pursuant to section 407 of CEBA also requires that other assets currently encompassed by § 561.15 be classifiable under § 561.16c. Paragraphs (f) through (i) of § 561.15 pertain to deposits in, or loans to, a bank or savings and loan under the control (or in the possession) of supervisory authorities; assets acquired in an exchange for a scheduled item; assets transferred to a service corporation or other corporation in which the insured institution has an investment; amounts invested in personal property; and the unpaid balances of loans secured by, and any contract for the sale of, personal property, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value. Under the proposal, such assets will be classifiable under the § 561.16c classification scheme. As discussed *infra*, ORPOS is developing, and will soon issue, examination and training guidelines addressing the appropriate classification procedures for these assets.

In discussing these other assets currently encompassed by the scheduled item regulation, the Board's October proposal addressed the issue of risk posed by an affiliate. In May and October, the Board proposed that insured institutions must, incident to their self-classification procedures, examine the assets of affiliates in which the thrift has an investment and establish valuation allowances to adequately protect the institution against the risk posed by the affiliate's assets. Several May commenters addressed this issue, of which a majority opposed the proposal. Two of these commenters reiterated their opposition in additional letters submitted on the October proposal.

Commenters argued that it would be inappropriate to apply the classification system to assets of affiliates since the risk to the insured institution, and to the FSLIC, is limited to the institution's equity investment in, and loans to, the affiliate. Moreover, it was argued that the proposal might undermine the purpose of service corporations and operating subsidiaries, which is to allow thrifts to engage in somewhat riskier investments, subject to strict direct investment limitations, but through the protective device of a legally separate corporation. Thus, commenters believed that it is sufficient to review the investments of the insured institutions themselves, classifying those assets where appropriate. They contended that it was not necessary to scrutinize further and possibly reserve against assets of the affiliate, especially since the equity risk investment and service corporation regulations already adequately address this risk to the insured institution.

A few of the commenters offered qualified support for the proposal. Since assets of majority-owned subsidiaries are consolidated with the parent's assets under GAAP, these commenters acknowledged the propriety of subjecting assets of majority-owned subsidiaries to the same classification review applied to assets of the parent. For other affiliates, however, only the carrying value of the thrift's debt and equity investment in the company should be classifiable, along with possibly other off-ledger liabilities accruing to the thrift as a result. These commenters requested that the Board expressly limit the examiner's ability to classify assets of affiliates such that allowances are limited to the aggregate equity, debt, and guaranty investment obligations of the institution to the subsidiary.

Following consideration of the comments submitted on this issue, the Board continues to believe that in order to protect both insured parent institutions and the FSLIC against risk, institutions must, incident to their self-classification procedure, set aside adequate valuation allowances to the extent an affiliate possesses assets posing a risk to such institution. The Board's statutory authority to make examinations of insured institutions includes the power to make necessary examinations of all affiliates, including service corporations and operating subsidiaries.[9] To protect against such risk of loss, the parent thrift should consider assets of affiliates for the purpose of classifying its own aggregate debt and equity investment in an affiliate, and adequate valuation allowances should be established by the insured institution which appropriately reflect the level of risk posed to the parent institution by investments in an affiliate.[10] The Board recognizes that there may be circumstances where an affiliate may pose risk to an insured institution beyond that represented by a parent institution's aggregate investment in an affiliate. The Board contemplates that it and its supervisory staff may issue future directives and guidelines that more specifically address the issue as to when it is necessary to classify the assets of affiliates in addition to the investments by the insured institution itself.

3. Deletion of Scheduled Items: Transitional Capital Rule

Section 407 of CEBA clearly evidences congressional intent that the Board delete the scheduled item regulation, but it is not clear that Congress intended such deletion to lower significantly the minimum regulatory capital requirements for a relatively large number of insured institutions. To the contrary, an analysis of the legislative history of CEBA, to the extent it sheds any light on the purpose of the scheduled item deletion, suggests that the purposes of the Thrift Industry Recovery Guidelines of Title IV were: (a) To ensure that institutions are treated fairly; (b) to reduce regulatory uncertainty; (c) to maximize the long-term viability of the thrift industry; and (d) to maximize such viability at the lowest possible cost to the FSLIC.

As is clear from both the May and October proposals, the Board was concerned with the interaction of both the classification regulation and institutions' overall asset quality with the supervisory need to ensure that adequate capital levels are maintained, and specifically solicited comment on this issue. *See* 52 FR 18369, 18372, 18375 (May 15, 1987); 52 FR 39087, 39094 (Oct. 20, 1987). This concern of the Board to ensure that required capital levels reflect asset quality is consistent with the Board's broader and more comprehensive attempts to promulgate and revise capital-related regulations and generally raise the industry's capital levels. *See, e.g.*, Board Res. No. 86–857, 51 FR 33565 (Sept. 22, 1986) (minimum regulatory capital requirement).

[9] Section 407 of the NHA provides that examiners appointed by the Board and acting on behalf of FSLIC, have the authority to make such examinations of the affairs of all affiliates of insured institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates, and the effect of such relations upon insured institutions. 12 U.S.C. 1730(m)(1). *See also* 12 CFR 545.75(b)(4).

[10] Other modes of investments taking the form of contingent liabilities of the parent, such as guarantees by the parent of an affiliate's obligations, should be dealt with on the same basis as other other off-balance-sheet items. Thus, consistent with the practices of the Federal banking agencies and the broadened scope of the proposal, insured institutions must establish liabilities for off-balance-sheet items in accordance with GAAP as described in SFAS No. 5. SFAS No. 5 provides that an estimated loss shall be accrued when it is probable that an asset has been impaired or a liability incurred, and the amount of loss can be reasonably estimated. Generally, while valuation allowances are established for assets, liabilities are established for off-balance-sheet items. Institutions shall record liabilities for such items when the off-balance-sheet loss becomes probable and estimable.

Research conducted by Board staff indicates that the deletion of scheduled items from the contingency component of the § 563.13 minimum regulatory capital formula, coupled with the final rule's requirement that only general allowances (which are treated as capital) be required for Doubtful assets, would have a significant impact on both the minimum regulatory capital requirements and capital levels of many institutions. In short, minimum regulatory capital requirements for many institutions would decrease while capital levels would increase. Without some further adjustment to the capital requirement, therefore, today's regulation would enhance the apparent capital position of insured institutions even though the quality of their asset portfolios remained unchanged. The Board wishes to avoid such an artificial inflation of capital position.

As discussed in detail below, the Board will permit institutions to reconsider existing specific allowances for Doubtful assets and redesignate such allowances as general allowances in specified instances. This reconsideration, which can potentially increase many institutions' capital levels, is being permitted in light of the statutory mandate that classification practices be consistent with those of the Federal banking agencies. Neither the statute nor its legislative history, however, indicates that it was the intent of Congress to radically affect the required minimum capital levels of insured institutions through the deletion of the scheduled item regulation. Instead, the apparent legislative intent was to ensure that the Board eliminate its bifurcated classification scheme (§§ 561.16c and 561.15) and adopt a unified classification system consistent with the Federal banking agencies.

The scheduled item system was a means of factoring into the minimum capital calculation those assets whose value may not be fully realizable. Although the Federal banking agencies do not maintain a bifurcated classification of assets scheme, these agencies do consider overall asset quality in setting minimum capital levels. Therefore, it would not be consistent with the Federal banking agencies, nor intended by the statute, to permit minimum regulatory capital levels to drop "overnight" as a result of the deletion of scheduled items. In light of the great amount of industry capital posted solely on account of scheduled items, it is inconceivable that Congress could have intended such an effect without any mention in the statute or its legislative history.

For this reason, the Board intends—on an interim basis—to require institutions to continue to include a factor of their reported scheduled items as of September 30, 1987, in calculating their minimum regulatory capital requirement under § 563.13. Specifically, although scheduled items are being deleted, the § 563.13(b)(4) contingency component will include the "scheduled item factor" which is defined under new paragraph (b)(4)(i) of § 563.13 as 20 percent of an insured institution's reported scheduled items as of September 30, 1987.[11] This in effect will freeze the scheduled item element of each institution's contingency component as of September 30, 1987. If any item scheduled as of September 30, 1987, however, has since been classified Loss under § 561.16c and the institution has charged off, or maintains a 100 percent specific allowance for, such an asset, it need not be included in the scheduled item factor. This latter exception is to ensure that Loss assets for which the institution has established a 100 percent specific reserve (or has charged off) are not "double counted."[12]

The Board wishes to emphasize that this continued inclusion of a scheduled item factor in the calculation of minimum regulatory capital is incorporated in the final rule to prevent any sudden, significant reductions in required minimum capital that were not intended by Congress' elimination of scheduled items. It must also be emphasized that the "scheduled item factor" in the final rule is an interim, transitional device to be implemented until the Board completes its review, analysis and consideration of an appropriate revision of the § 563.13 minimum regulatory capital regulation, as well as its review of the seventeen other Board regulations which employ the value currently represented by the term "scheduled items."

The Board believes that the inclusion of a scheduled item factor in the capital regulation is the least restrictive solution to a potentially detrimental complication generated by the statute. The implementation of the scheduled item factor will ensure that all institutions receive uniform treatment that takes into consideration the differing levels of scheduled items in each institution's portfolio. Moreover, as drafted, this factor will not include those scheduled items for which the institution has subsequently established a specific allowance (or has charged off), and thus prevents "double-counting." In ensuring that required capital levels do not experience a sudden, unintended decrease, the Board is ensuring the continued viability of the industry and is reducing the potential risk and cost to the FSLIC. Thus, this transitional measure is consistent with the intent of Title IV of CEBA. ORPOS will issue more detailed instructions on the implementation of the scheduled item factor within 120 days. Interested persons are invited to submit written comments on the scope and substance of these instructions within 60 days following publication of today's final rule in the Federal Register.

4. Effect of Classification

Consistent with the October proposal's deletion of scheduled items, as well as the objectives of the May proposal, the Board proposed in May and October no longer to afford scheduled item treatment to Substandard assets. Thus, Substandard assets will only necessitate, in appropriate circumstances, the establishment of general valuation allowances which can be treated as capital.

Many commenters on both the October and May proposals expressed unqualified support for requiring (when appropriate) only general valuation allowances for Substandard assets. A few May commenters recommended that the Board provide institutions with the option either to treat Substandard assets as scheduled items or to apply the general allowance treatment set forth in the proposal. One commenter urged, however, that if the former option is chosen, no additional general or specific valuation allowances should be required. Another May commenter expressed serious reservations about the proposal, specifically expressing concern that the overall effect of the change in treatment for Substandard assets, coupled with the changed treatment for Doubtful assets and the proposed ability of the PSA to increase capital requirements on a case-by-case basis, could have the effect of increasing the capital requirements of many institutions. This commenter favored the retention of the existing treatment of Substandard assets and recommended that these assets be excluded from

[11] This rule becomes effective on December 31, 1987. Therefore, scheduled items are deleted as of that date and an insured institution would not report scheduled items for the fourth quarter of this year. For that reason, the scheduled item factor incorporates scheduled items as of the last quarter for which they were required to be reported, the third quarter of 1987.

[12] Although some of the September 30, 1987, scheduled items will undoubtedly be subsequently classified Substandard or Doubtful under today's final rule in light of the deletion of scheduled items, such assets will only require the establishment of general allowances, which can be treated as capital.

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consideration in an examiner's or PSA's establishment of additional general loss allowances.

The Board has determined that it is appropriate at this time to treat Substandard assets as proposed in October, and thus require institutions to establish general valuation allowances for such assets in appropriate circumstances. The Board believes that it would not be prudent to continue to afford scheduled item treatment to such assets in light of the mandated deletion of the latter regulation. Moreover, the proposed treatment of Substandard assets is consistent with the practices of the Federal banking agencies and was broadly supported by commenters to both proposals.

In addition to the proposed general allowance treatment for Substandard assets, the Board proposed, in May and October to require general allowances (not specific valuation allowances as presently required) for Doubtful assets. Thus, general valuation allowances would be required for both Substandard and Doubtful assets where appropriate. A large number of commenters on both proposals expressed support for the Board's overall shift to general allowances. Some believed the proposed approach to be more realistic than the allegedly arbitrary allowance percentages required under the current rule. Another commenter favoring the proposed shift to general allowances noted that requiring institutions to establish specific allowances can result in their unwillingness to take immediate steps to deal with a problem asset due to the adverse effect on capital levels. One commenter suggested that the proposal is an important step in stabilizing the earnings streams of institutions. Another commenter recommended that in setting allowance requirements, examiners and supervisory personnel consider the trend of classified assets over a series of exams, the track record of management in recognizing and addressing asset problems with timely and appropriate action, the quality and stability of earnings, and the presence of factors artificially inflating the institution's balance sheet.

One commenter believed the shift to general allowances to be appropriate, provided guidelines for allowance determinations are implemented. A few May commenters recommended that the Board place limits of 20 percent and 50 percent for Substandard and Doubtful assets, respectively, on the amount of general allowances that can be required, while another commenter suggested that institutions be given the option to established specific or general allowances for assets classified Doubtful. One October commenter expressed serious doubts regarding the overall shift to general allowances, arguing that if this change is implemented quickly, it might lead to a substantial increase in institutions' allowances and have a negative impact on earnings.

Again, the Board has determined to require in appropriate circumstances the establishment of general valuation allowances for assets classified Doubtful, as proposed in May and October. The Board agrees that a more discretionary, general allowance treatment is preferable to a more rigid, specific allowance treatment. More importantly, the proposed general allowance treatment is consistent with the classification practices of the Federal banking agencies, and thus meets the requirements of CEBA. The Board does not believe it prudent at this time to establish maximum general allowance limits of 20 and 50 percent for assets classified Substandard and Doubtful, respectively.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. The examiner will also examine those assets classified and the allowances for loan losses established pursuant to the institution's self-classification. This review, in addition to other factors, will assist the examiner in determining the effectiveness of, and the institution's adherence to, its classification procedures and methods of evaluation and determine the need to require additional valuation allowances.

As was noted in both proposals, the significance of the shift from specific to general valuation allowances is reflected in the minimum capital requirements. In short, specific allowances do not count as regulatory capital, whereas general allowances are included in regulatory capital, consistent with the practices of the Federal banking agencies (although inconsistent with GAAP). *See* 12 CFR 561.13 (definition of regulatory capital). A significant number of commenters on both proposals expressly supported the treatment of general allowances established for Substandard and Doubtful assets as capital, with one October commenter arguing that specific allowances should also be treated as capital. A few commenters strongly opposed treating any valuation allowances as regulatory capital, arguing that allowances represent definite losses of value and possess no more future value than any other type of loss incurred by an institution. These commenters believed that treating such allowances as capital is inconsistent with GAAP and artificially inflates an institution's capital position while masking the deterioration of net worth caused by deteriorating asset quality and poor underwriting.

Although the Board recognizes that treating general allowances as capital is not consistent with GAAP (technically, GAAP does not differentiate valuation allowances in terms of "general" or "specific"), CEBA specifically provides that such allowances shall be included in regulatory capital. *See* CEBA, tit. iv, section 402(a). Currently, the Federal banking agencies treat general allowances as capital for purposes of determining minimum regulatory capital. Accordingly, the Board will continue to permit insured institutions to treat general valuation allowances as regulatory capital.

Commenters also addressed the Board's proposed treatment of Loss assets. The May proposal provided that assets classified Loss would require either a specific allowance in the amount of 100 percent of the portion of the asset so classified, or a charge off of such amount, at the institution's option. The October proposal deleted the option of establishing a 100 percent specific allowance, and instead required that institutions charge off all Loss assets.

A large number of May commenters supported the provision of the May proposal granting institutions the option to either charge off or establish specific allowances, while only two May commenters urged the Board to permit only a charge-off. One May commenter urged the Board to require only general allowances for Loss assets, arguing that GAAP does not require that there be a specific allowance for these assets. Although one October commenter expressly supported the requirement to charge off Loss assets, a small number of other October commenters supported the May approach of giving institutions an option. One trade association commenter recommended that a specific allowance be required when an asset is initially classified Loss, with a charge-off to be required subsequently if the asset has not improved by the next examination. One commenter completely opposed any charge-off requirement.

Upon further consideration, and in light of commenters' suggestions, the Board has decided to incorporate in today's final rule the May proposal's approach of permitting institutions either to charge off Loss assets or to establish a 100 percent specific valuation allowance. Although the Federal banking agencies charge off Loss assets, the establishment of a 100 percent specific allowance has the same net effect on an institution's balance sheet. Thus, providing institutions with an option of treatments is not inconsistent with the classification practices of the Federal banking agencies. Moreover, the establishment of a 100 percent specific reserve will enable an institution to adjust an asset if, in the future, the quality of that asset should improve.

The October proposal provided that valuation allowances for assets are to be established in accordance with GAAP. Several May commenters and a significant number of October commenters favored the use of GAAP in establishing loss allowances. One such commenter urged the Board to require the use of "Bank GAAP," which would not require the discounting of future cash flows in its NRV calculation. A few October commenters urged the Board to emphasize in the final rule that GAAP is to be used in valuing and establishing loss allowances for classified assets.

The Board notes that it has implemented the CEBA's directives by incorporating GAAP into the classification system adopted today. Moreover, as it has noted in a separate final rule governing troubled debt restructuring, institutions will be required to apply "Thrift GAAP," as set forth in the *AICPA's Audit and Accounting Guide for Savings and Loan Associations*. *See* Board Res. No. 87–1294, to be published in the final rules section of the **Federal Register**.

5. Examiner/PSA Discretion.

The issue of greatest concern to commenters was the nature and degree of examiner/PSA discretion in classifying assets and in the setting of requisite valuation allowances. Approximately half of the commenters on each of the two proposals expressed serious concerns and reservations about the nature and degree of discretion afforded examiners and supervisory personnel. Generally, commenters felt this need to be particularly acute in view of what they alleged to be past inconsistency, arbitrariness, negligence, and system-wide nonuniformity in the asset classification process. These commenters agreed that although the Federal banking agencies' asset classification practices rely in large measure on the informed exercise of discretion, the Board's examination and supervisory staff lack the necessary level of skill and experience, and evidence a clear need for further training before a comparable level of informed discretion can realistically be expected. Thus, many commenters suggested that the Board adopt written classification and allowance guidelines to address these concerns.

Many commenters also suggested that the Board provide a procedure establishing an appeal from the classification and allowance determinations of examiners and PSAs. One commenter suggested that merely providing PSA review of examiner determinations is not an adequate review mechanism since it is perceived that the PSA will be reluctant to reverse an examiner's determination. This appropriate appeal process, it is recommended, should provide for personal or written input from the affected institution and could provide for an independent panel to review such determinations. More importantly, many May and October commenters stressed the need for uniformity and the need for the Board to reiterate that an examiner's determinations are not effective until reviewed by the PSA or his designee.

A few commenters offered other, more varied recommendations. Several commenters recommended that examiners place greater emphasis on an institution's internal controls, while another recommended that the Board not permit PSAs or examiners to modify the classifications or allowance levels approved by an institution's independent auditors. One trade association commenter requested that the final rule provide for a right of appeal to the Board for disputed classification and allowance determinations. A significant number of October commenters suggested that the Board require examiners to discuss classification and allowance determinations with the institution's management. Two commenters recommended that examiners should consult with appropriate state regulators regarding classification matters. Finally, a small number of May and October commenters praised the proposals' objectives of encouraging the use of broader discretion, judgment, and flexibility without stating objections or suggested revisions.

The Board clearly recognizes that in order for a more discretionary classification system to succeed, both examination and supervisory personnel must be adequately trained to ensure the application of informed discretion and sound judgment. Although the Board does not believe that the existing classification scheme encourages arbitrariness and negligence as alleged by some commenters, the Board recognizes that nonuniform treatment must be eliminated if discovered, and that its classification scheme cannot be implemented successfully absent system-wide training and uniform guidance as to both asset classification and the establishment of appropriate valuation allowances.

For this reason, the Board and ORPOS have begun development of an ambitious training program incorporating uniform instructional materials, field training, and examination guidelines. Specifically, ORPOS and the Federal Home Loan Bank System ("Bank System") Office of Education are developing Training Seminars for all Bank System supervisory and examination personnel regarding major CEBA regulations. This training, which will commence in each of the twelve Federal Home Loan Bank districts during the first quarter of 1988, will focus on describing the major provisions of the CEBA regulations, comparing the new regulations with the previous requirements, describing key issues, and providing answers to critical questions arising from the application of the new regulations. At the completion of this training, ORPOS anticipates that participants will have gained a good working understanding of the new requirements that can be applied on a consistent, uniform basis throughout the system.

Moreover, ORPOS is developing a Regulatory Handbook setting forth programs and procedures addressing major issues affecting the safety and soundness of thrift institutions. This handbook is being designed to promote system-wide consistency and to address the general level of risk in an institution. ORPOS anticipates that this handbook will be completed during 1988.

The Board wishes to reiterate that, under today's final rule, an examiner's classification or valuation allowance determinations will *not* be effective until reviewed and approved by the PSA or a designee. Moreover, section 407 of CEBA has mandated that the Board establish an informal review procedure under which an insured institution may obtain a review by the PSA (and an independent arbiter appointed by the PSA) of any decision by an examiner or supervisory agent with respect to the classification of any loan or any allowance requirement. *See* CEBA, tit. iv, section 407(d). The Board intends to implement this section of the CEBA in the near future. The Board believes that its implementation, in conjunction with the aforementioned review before an examiner's determination becomes effective, will provide institutions with a

meaningful and appropriate appeal procedure. The Board does not believe that a right of appeal to the Board itself is either necessary or feasible. Moreover, CEBA expressly provides that the appeal process outlined under section 407 *cannot* be subject to review by the Board. *Id.* The Board wishes to reiterate that under either "appeal" process, institutions have the opportunity to submit any and all relevant information to the examiner, the PSA, the PSA's designee, or an appointed independent arbiter.

6. Case-by-Case Capital Requirement

In the May proposal, the Board proposed to provide the PSA with the ability to increase an institution's minimum regulatory capital requirement on a case-by-case basis based upon its overall asset quality. Because section 406 of CEBA authorized the Board to propose a case-by-case minimum capital regulation, which the Board did in October (Board Res. No. 87–1045), this provision was dropped from the October classification proposal since any reference in the classification proposal would appear duplicative.

Twenty-six comments addressed the additional capital proposal. None of the commenters expressed support for this provision as set forth in the May proposal. Much of the opposition was quite strenuous and focused on the lack of guidance, standards, and procedures to be used in such determinations by the PSA based upon his or her subjective evaluation of an institution's portfolio.

Given that this particular proposal was deleted from the October classification of assets proposal, these aforementioned capital comments have been considered by the Board in its consideration of comments submitted in response to the case-by-case regulatory capital regulation. The Board is issuing a final rule on that proposal, which addresses these comments, as part of its package of regulations implementing CEBA.

7. Special Mention Category

In an effort to ensure that the Board's asset classification scheme is consistent with those of the Federal banking agencies, the October proposal sought to introduce a new "Special Mention" designation to identify assets that do not yet warrant adverse classification but nonetheless possess credit deficiencies or potential weakness deserving management's close attention. As described in new § 561.16c, Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

A significant number of May and October commenters supported this proposal, noting that this category could serve as a reference point for examiners and management and could serve to prevent institutions from delaying action until a serious risk of nonpayment or asset weakness develops. Two commenters requested clarification as to whether the Board would require quarterly reporting of these assets and whether such reports would be confidential, as is the case with classified assets.

Given the overwhelming support, the Board has decided to implement the Special Mention category as proposed in October. As proposed and now finally adopted, new § 561.16c(c)(3) does not require quarterly reporting of Special Mention assets. Should the Board, based on further supervisory experience, subsequently decide to require reporting of these assets in addition to the aggregate totals of assets classified by the institution in each of the three asset classification categories, the Board will direct that this be included in the same confidential section of Schedule K of the quarterly report as the entries for Substandard, Doubtful, and Loss assets. In the meantime, examiners will have access to this information and supporting internal documentation in the course of any examination.

8. Between-Examination Reclassifications

A significant number of commenters on both proposals noted that neither proposal delineated a provision or policy for the removal of an asset from classified status between examinations or for the upgrading of an asset from one classification category to another. One commenter recommended that the final rule set forth specific guidelines providing institutions with guidance on reclassifications between examinations. A few commenters suggested that such an upgrading procedure be incorporated into the quarterly reporting requirement. It was suggested that the institution indicate any newly classified loans and any modifications to loans already classified in the confidential section of the quarterly report. Any upgrading or removal would be accompanied by an explanation to be included in the report. The regulation would provide that, absent supervisory objection within 30 to 60 days, the revised classification would be effective. If there was supervisory objection, the institution's management would be given the opportunity to provide input.

In response to these comments, the Board wishes to clarify that an integral element of the final rule's self-classification requirement under § 561.16c(c)(2) is the responsibility of an institution to modify classification and allowance determinations as appropriate between examinations, if circumstances warrant (both "downgrades" and "upgrades"). In exercising this responsibility, it is incumbent upon institutions to ensure that any and all modifications are reasonable and conducted in good faith. If at the next examination the examiner and PSA determine that an institution has engaged in a pattern or practice of unreasonable or bad faith modifications, the PSA may suspend an institution's ability to upgrade classifications between examinations (without relieving an institution of its continuing duty to self classify). This authority under § 561.16c to suspend an institution's ability to upgrade a classification between examinations is in addition to any other existing supervisory or formal enforcement actions that the Board or its agents may use to address any regulatory violation or unsafe and unsound practice in connection with the institution's conduct in modifying classifications between examinations. Consistent with this clarification, the Board has amended the proposed § 561.16c(c)(3) reporting requirement to promote effective supervisory monitoring.

9. Classifying Restructured Loans

In the October proposal, the Board stated its specific intention that restructured loans be classifiable, consistent with section 402 of CEBA and with the practices of the Federal banking agencies. Section 402 of CEBA amends the HOLA and the NHA to provide that, in establishing an asset classification system consistent with the classification practices of the Federal banking agencies, the Board shall provide that the PSA may determine whether to classify a restructured loan that is nonperforming, or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms. It must be noted that in a separate resolution the Board is implementing CEBA's requirement that the Board prescribe uniform accounting standards, and is also adopting a detailed policy statement that, pursuant to the statute, authorizes and discusses the use of SFAS No. 5 and SFAS No. 15 in the restructuring of troubled debt ("TDR"). These relevant resolutions were adopted by the Board and are to

be published in the final rules section of the **Federal Register.**

A small number of commenters addressed the October proposal's discussion of the classification of restructured loans. One commenter suggested that the Board not permit classification of a restructured loan unless such loan is not in compliance with the modified terms, while another recommended that the Board ensure that a policy of routinely classifying restructured loans is not adopted. One commenter believed that the proposal contained an inference that restructured loans are more classifiable. Finally, one commenter urged the Board to address more clearly how an asset classified prior to restructuring is to be treated after restructuring.

In response to the comments, the Board wishes to dispel any misunderstanding regarding the classification of loans that have been restructured. The Board does not intend that loans be routinely classified simply because they have been restructured. Nor are restructured loans exempt from the classification system. Once loans have been restructured in accordance with the detailed TDR policy statement separately adopted today by the Board they are classifiable on the same basis as other types of loans. As stated in the October proposal, the Board recognizes that some risk of nonpayment may remain after a troubled debt restructuring. To the extent that a risk of nonpayment or collectibility questions remain after restructuring or become manifest during the pendency of the loan, examiners will conduct a credit analysis to determine whether the restructured loan should be classified and whether any valuation allowances should be established. Such restructured loans will be classifiable under § 561.16c after consideration has been given to the existence of other types of collateral or other reliable means of repayment. The Board believes this approach to be consistent with the Federal banking agencies' classification approach to restructured loans.

10. Technical Questions

Currently, Doubtful assets require the establishment of specific loss allowances. Under today's rule, Doubtful assets will instead require establishment of general allowances. A specific issue on which the Board solicited particular comment was whether the Board should deem existing specific allowances for such assets as general valuation allowances after the effective date of the final rule. (In May, the Board proposed to treat such allowances as general allowances; in October the Board took no position but solicited comment.) A large number of commenters on both the May and October proposals supported treating existing specific allowances established for Doubtful assets as general allowances, arguing that such treatment would avoid "grandfathering" of specific valuation allowances and the inherent problems created by dual treatment. One commenter noted that these "new" general allowances could always be reconsidered at the institution's next exam. A few commenters favored permitting each institution to decide how such existing allowances should be treated, while another urged that these existing reserves not be redesignated until each institution's next examination. Additionally, one commenter who generally favored the redesignation recommended that institutions not currently meeting their minimum regulatory capital requirement be required to obtain PSA approval prior to any redesignation.

The Board has determined to permit insured institutions discretion to review existing Doubtful assets, to evaluate carefully the continuing need for existing specific allowances (that is, to determine whether all or some portion of all assets previously classified Doubtful should be reclassified as Loss), and to redesignate any existing specific allowances for Doubtful assets as general allowances if prudent. This possible reconsideration and redesignation of existing specific allowances as general allowances is permissible if, pursuant to its next examination, the assets for which these allowances were established are reviewed, any additional losses under GAAP are recognized, and specific or general allowances have been established under § 561.16c, as appropriate.

If this reevaluation and additional loss recognition under GAAP is conducted by the institution itself or is done as part of an institution's independent annual audit, however, the insured institution will be required to provide the PSA with a written notification of its plan to redesignate some or all of these existing specific allowances as general allowances. In this notification, an institution must clearly identify the effect on regulatory capital, aggregate classifications, and aggregate general and specific valuation allowances resulting from its redesignation of some or all of the existing specific allowances for Doubtful assets. Institutions conducting their own reevaluation of assets and existing specific allowances must also maintain, for examiner review, complete files evidencing that an appropriate reevaluation procedure has been conducted on an asset-by-asset basis. This notification and possible redesignation may receive close PSA review where an institution is currently not meeting its regulatory capital requirement or is currently subject to formal enforcement action.

In both the May and October proposals, the Board sought to delete the existing rule's provision requiring automatic classification of assets with deficient appraisals. The Board received many comments in response to the May proposal supporting the Board's intention to eliminate the mandatory classification of an asset where a required appraisal is absent or not in conformance with appraisal requirements. This support for the deletion of automatic classifications was reiterated by an additional seven October commenters. No comments were received in opposition to the proposal.

Commenters also generally praised the Board's recognition that gauging the risk of nonpayment of an asset can depend on a variety of factors other than appraisals. The experience of these commenters confirmed that the present system, which may conflict with GAAP principles, can sometimes result in arbitrary classifications of assets that are in fact still performing and adequately underwritten.

A number of commenters on both proposals expressed other appraisal-related concerns. Although a few commenters urged the Board to reiterate that appraisals are only one factor to consider in classification, one trade association commenter believed that the Board was mistakenly de-emphasizing the value of an appraisal. Another commenter urged the Board to provide additional examples of non-appraisal factors for examiner consideration. Other commenters recommended that the Board generally restrict the conditions under which reappraisals of real estate are required, and stress the importance of the borrower's ability to repay (as opposed to an over-reliance on collateral value).

In light of broad commenter support, and for reasons stated in both the May and October proposals, the Board is deleting the existing rule's requirement that certain assets be automatically classified on the basis of nonexistent, deficient, or nonconforming appraisals. Moreover, the Board wishes to reiterate that, while a properly conducted appraisal is an important factor in an examiner's evaluation of an asset, risk

of nonpayment is dependent upon several factors, as discussed *infra* under "Description of the Final Rule."

D. Description of the Final Rule

As stated in both the May and October proposals, the Board believes that the existing classification system could be construed to constrain unduly the exercise of judgment, flexibility, and discretion by both supervisory agents and examiners. As written, certain portions of the provisions bearing on asset classification rely heavily on appraisals of collateral.

In issuing today's final rule, the Board wishes to reiterate that it continues to believe that an appraisal of collateral that follows accepted appraisal methodology is an important factor in an examiner's evaluation of assets in an insured institution's portfolio. In assessing the risk of nonpayment, however, other factors are important. These factors include the overall risk involved in the project or business being financed; the nature and degree of the collateral security; the character, capacity, financial responsibility, and record of the borrower; and the feasibility and probability of orderly liquidation of the asset. Of necessity, the institution's or the examiner's arrival at a valuation based on all the relevant factors will involve the exercise of some subjective judgment. Although the Board recognizes the importance of an appraisal, it believes the value of the collateral should not be the sole determinant of asset valuation where, for example, the borrower has other resources for repayment against which the lender has legal recourse. This approach is consistent with the classification practices of the Federal banking agencies.

The approach implicit in today's final rule—*i.e.*, the introduction of greater flexibility into the classification process—is consistent with the practices of the Federal banking agencies. For reasons outlined in the October proposal, the Board does not believe that the examiner's exercise of discretion and judgment will result in arbitrary valuation.

Today's final rule continues to employ the existing classification categories Substandard, Doubtful, and Loss, as outlined under § 561.16c(b). As under the existing rule, a portion of an asset may remain unclassified, or may be classified under a different category than the remainder of the asset. The final rule also retains the factors used to determine the proper category or categories to which an asset should be classified, except in cases of certain "automatic" classifications related to appraisal deficiencies. 12 CFR 571.1a. However, the final rule amends both the classification rule and policy statement to change the effect of classification for the three asset classification categories as outlined below.

Today's rule amends §§ 561.16c(d), 571.1a(d), and 561.13 to provide that assets classified Substandard will no longer receive scheduled item treatment, in light of the final rule's deletion of the § 561.15 scheduled item regulation. Moreover, assets classified Doubtful will no longer require the establishment of specific reserves. The final rule provides that, for assets classified Substandard or Doubtful, the examiner is authorized to direct the establishment of general allowances for loan losses based on the assets classified and the overall quality of the asset portfolio. These valuation allowances must be established in accordance with GAAP. Moreover, today's final rule amends §§ 561.16c(d) and 571.1a(d) to provide that, in cases where an examiner has classified an asset or a portion of an asset loss, the institution is required either to establish specific allowances of 100 percent of the amount so classified, or to charge off such amount. These specific allowances or charge-offs must be established in accordance with GAAP.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. The examiner will also examine those assets classified and the allowances for loan losses established pursuant to the institution's self-classification. This, in addition to consideration of other factors, will assist the examiner in determining the effectiveness of, and the institution's adherence to, its classification procedures and methods of loan evaluation and determine the need, if any, to require additional valuation allowances.

This classification and valuation allowance scheme is consistent with both the requirements of CEBA and the classification practices of the Federal banking agencies. Under today's final rule, once assets have been classified Substandard or Doubtful, the thrift examiner will review the adequacy of the insured institution's aggregate general valuation allowances and, if necessary, direct the institution to increase these aggregate allowances. Although the establishment of these allowances would reduce GAAP capital, the institution can include general valuation allowances in determining its regulatory capital, as is permitted by the Federal banking regulators and as is required under section 402 of CEBA. Thus, under today's final rule, an increase in general allowances will lead to a different capital result than would the current allocation of specific allowances for Doubtful items, since specific valuation allowances for loan losses do not qualify as regulatory capital. *See* 12 CFR 561.13(a).[13]

As discussed under the Response to Comments, the Board sought in its May proposal to amend § 563.13, governing regulatory capital, to provide for the imposition of an increased minimum capital requirement on the basis of the quality of an institution's overall portfolio, consistent with the practices of the Federal banking agencies. For reasons stated *supra*, the Board has deleted this provision from the final rule, consistent with the October proposal. The Board is revising § 563.13, however, to incorporate a "scheduled item factor" as described under "C. Response to Comments."

The amendments contained in today's final rule indicate that GAAP is to be applied in setting the amount of valuation allowances for loan losses. The Board believes that such an approach is consistent with the requirements of CEBA and the Board's goal of achieving flexibility in the administration of its classification system.[14]

In order to comply with CEBA's mandate that the Board implement an asset classification scheme that is consistent with the classification practices of the Federal banking agencies, today's final rule amends § 561.16c to incorporate the "Special Mention" category proposed in October. This category is meant to include those assets that do not justify a classification of Substandard, but do constitute undue and unwarranted credit risks to the institution.

The Board believes that the adoption of this Special Mention category under § 561.16c(e) will promote, through self-classification, the identification and monitoring of those assets that have potential weaknesses that may, if not checked or corrected, weaken the asset or inadequately protect the institution's financial position at some future date.

[13] The Board is also revising § 571.1a(a) to clarify that the eight Substandard characteristics set forth in this paragraph do not constitute an exclusive listing of such possible characteristics.

[14] It should be noted that the Board continues to believe that factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate allowances for loan losses when the probability of a full insurance payment is substantial. See 12 CFR 571.1a(b)(2).

Today's final rule also amends § 561.16c to require that insured institutions independently review their asset portfolios, classify their assets, and set aside appropriate valuation allowances on the basis of such self-classification. This amendment merely sets forth as a regulatory requirement what is commonly regarded as a prudent institutional management policy. This process of self-classification is already widely observed throughout the banking industry and is thus consistent with CEBA.[15]

Pursuant to the Board's authority, as operating head of the FSLIC, to prescribe the manner in which an insured institution reports its affairs to the FSLIC, 12 CFR 563.18, the Board is requiring that an institution reflect its self-classification of assets in its quarterly reports to the Board, in the form of aggregate totals of assets in each of the three asset classification categories. This information is to remain confidential. As reflected in § 561.16c(c)(2), an institution's failure to classify its assets reasonably and in good faith, and to establish appropriate valuation allowances, will be a factor considered by the examiner and supervisory personnel in determining any necessary valuation allowances. Such reports will be reviewed by supervisory personnel to ensure that they accurately reflect an institution's self-classification and reflect a self-classification procedure performed reasonably and in good faith. Although these reports are subject to § 563.18, and may be reviewed to ensure consistency with safe and sound practice, the Board again emphasizes that it is not its intention to penalize an institution for good faith efforts to self-classify.

Under today's final rule, the Principal Supervisory Agent retains primary authority over the examiner's classification of an asset, the examiner's directives with respect to the appropriate amount of valuation allowances to be established, and the acceptability of an appraisal made in connection with the re-evaluation of an asset. As set forth in § 561.16c(f)(4), this authority may be delegated to a Supervisory Agent. It should also be noted that the final rule substitutes a delegation to ORPOS for the previous delegation to the Board's former Office of Examination and Supervision ("OES"), although this amendment is not intended to circumscribe the Office of General Counsel's authority to issue legal interpretations with respect to the classification regulations. *See* Board Res. No. 86–755, 51 FR 27165, 27167 (July 24, 1986) (codified at 12 CFR 522.90) (ORPOS succeeds to all delegations of authority from Board to OES).

Today's final rule also amends § 563.17–2 pertaining to the re-evaluation of assets. This amendment deletes those provisions of § 563.17–2(b) requiring "automatic" or mandatory classification where the appraisal is absent or does not conform with the Board's appraisal requirements, or where the assumptions underlying the appraisal are demonstrably incorrect. The Board is deleting this automatic classification mechanism to provide examiners with sufficient flexibility and discretion to consider other factors relevant to assessing risk of nonpayment, and to promote consistency between the Board's classification of assets scheme and the classification practices of the Federal banking agencies. This is also consistent with GAAP and the Board's intention to afford examiners adequate discretion to determine the necessity of, and appropriate reliance on, a reappraisal, subject to review by the PSA.

Section 402 of CEBA amends the HOLA and the NHA to provide that, in establishing an asset classification system consistent with the classification practices of the Federal banking agencies, the Board shall provide that the PSA may determine whether to classify a restructured loan that is nonperforming, or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms. In broadening the scope of the § 561.16c classification regulation to encompass all assets or portions thereof held by an insured institution, the Board has concluded that restructured loans are classifiable, consistent with section 402 of CEBA and with the practices of the Federal banking agencies. The Board recognizes that some risk of nonpayment may remain after a troubled debt restructuring. To the extent that a risk of nonpayment or collectibility questions remain after restructuring or become manifest during the pendency of the loan, examiners will conduct a credit analysis to determine whether the restructured loan should be classified and whether any valuation allowances should be established. Such restructured loans are classifiable under § 561.16c after consideration has been given to the existence of other types of collateral or other reliable means of repayment. As a result of staff discussions with Federal banking agency representatives, the Board believes this approach to be consistent with the Federal banking agencies' classification approach to restructured loans.

[15] This self-classification and reporting requirement should not pose a particular problem for insured institutions using GAAP financial reporting, since the proposed method of setting aside allowances for loan losses is generally consistent with GAAP.

E. Technical Questions

In light of the proposal's deletion of the requirement of specific valuation allowances for assets classified Doubtful, questions arise as to the appropriate treatment of existing specific valuation allowances for assets classified Doubtful under the current regulation. The Board has resolved this issue by permitting insured institutions to redesignate existing specific allowances as general allowances in one of three ways: (1) After review by all examiner as part of its next examination after the effective date of this rule; (2) in connection with its annual independent audit; (3) after appropriate self-classification. If the institution redesignates loan loss allowances after either independent audit or self-classification, however, it is required to notify its PSA of the redesignation and its effect of regulatory capital as described in Section C, above.

In conclusion, the Board believes that today's final rule will be instrumental in reducing the risk exposure of both insured institutions and the FSLIC insurance fund. Identification of problem assets enables the FSLIC, through the examination process, to require institutions to maintain adequate allowances for loan losses to help insulate the FSLIC from loss. The classification process can serve a second, invaluable function. It can reveal lending patterns or deficiencies in portfolio administration that are consistently causing collectibility problems for an institution. Once the examiner identifies such patterns or deficiencies, his or her discussions with management can focus on avoiding practices that have resulted in the necessity for classifying existing assets. In this way, the classification process can serve a preventative, as well as a protective, function.

Effective Date

The Board is adopting this regulation effective December 31, 1987. Thus, these final rules will apply to any evaluation or examination of assets done for any report due on or after December 31, 1987. This would encompass evaluations of assets that are part of the 1987 annual or fourth-quarterly reports, even though asset evaluations necessary for these reports may have commenced and are currently ongoing. While the

Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than 30 days before its effective date, this delayed effective date does not apply when "otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3) (1987). The "good cause" exception to the APA's requirement has been found to apply when Congress prescribes an effective date by statute. CEBA requires finalization of this regulation no later than 150 days following enactment of the CEBA. CEBA, Title IV, section 402(d). The Board therefore finds that good cause exists for dispensing with the delayed effective date provision of the APA.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These issues and the agency's response are set forth above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions.

The Board believes that this final rule on classification of assets will not have a disparate effect on small entities. This final rule establishes an asset classification scheme consistent with the practices of the Federal banking agencies, consistent with the clear mandate of CEBA. The legislative history of the statute evidences Congressional intent that in adopting such a system, uniform, consistent classification practices would result for all institutions. To the extent that small entities engage to a greater degree than larger insured institutions in one-to-four family, owner-occupied mortgage lending, the impact of the final rule will be liberalizing since the classification scheme will no longer provide for an automatic "classification" of such assets as scheduled items.

List of Subjects in 12 CFR Parts 561, 563, and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561, 563, and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 1, 48 Stat. 128, as amended (12 U.S.C. 1461 *et seq.*); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 561.15 [Removed and Reserved]

2. Remove and reserve § 561.15.

3. Amend § 561.16c by revising paragraphs (a), (c), and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 561.16c. Classification of assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution.

* * * * *

(c) *Implementation of classification system.* (1) In connection with examinations of an insured institution or its affiliates, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each insured institution shall classify its own assets on a regular basis. In addition to any other remedies available to the Board under applicable statutes and regulations, an institution's failure to set aside prudent valuation allowances, or to monitor portfolio risk with an effective self-classification procedure, will be considered by the examiner or the Principal Supervisory Agent in determining the amount of valuation allowances to be established by such institution.

(3) In its quarterly reports to the Corporation, each insured institution shall include aggregate totals of assets that the institution has classified in each of the three asset classification categories, and the aggregate general and specific valuation allowances established. To the extent an insured institution's specific valuation allowances have decreased from the previous reporting period, such institution shall identify the amount of the decrease attributable to an institution's between-examination upgrading of classifications.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c, an examiner has classified one or more assets or portions thereof Substandard or Doubtful and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner, subject to approval of the Principal Supervisory Agent.

(2) When, pursuant to § 561.16c, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall either establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Adequate valuation allowances consistent with generally accepted accounting principles shall be established for classified assets. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

(e) *Assets deserving "Special Mention".* Assets that do not currently expose an insured institution to a sufficient degree of risk to warrant classification under paragraph (b) of this section but do possess credit deficiencies or potential weaknesses deserving management's close attention shall be designated "Special Mention" by either the institution or the examiner. Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

(f) *Delegations and interpretations.* (1) The Principal Supervisory Agent may approve, disapprove, or modify any classifications of assets made pursuant to § 561.16c and any amounts of allowances for loan losses established by insured institutions or required by examiners pursuant to § 561.16c.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent may approve or reject the appraisal and any valuation related to it.

(3) The Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System shall, from time to time, issue supervisory interpretations and other informational material regarding classification of assets. *See* § 571.1a of this subchapter containing the Corporation's statement of policy on the classification of assets.

(4) The Principal Supervisory Agent may delegate functions assigned under § 561.16c to a Supervisory Agent in the same Federal Home Loan Bank district.

PART 563—OPERATIONS

4. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. Amend § 563.13 by revising paragraph (b)(4)(i)(D) to read as follows; by adding new paragraph (b)(4)(i)(F) to read as follows; and by revising paragraph (b)(4)(ii)(B) to read as follows:

§ 563.13 Regulatory capital requirement.

* * * * *

(b) *Minimum required amount.* * * *

(4) *Calculation of contingency component.*—(i) *Definitions.* * * *

(D) "Fixed reserve elements" means scheduled item factor, recourse liabilities, and standby letters of credit.

* * * * *

(F) "Scheduled item factor" means twenty (20) percent of an insured institution's reported scheduled items as of September 30, 1987. This factor does not include scheduled items as of the above date that have since been classified Loss under § 561.16c and which the institution has charged off or for which it maintains a one hundred (100) percent specific valuation allowance.

(ii) *Calculation method.* * * *

(B) An insured institution's scheduled item factor:

* * * * *

6. Amend § 563.17–2 by revising paragraphs (a) and (b) to read as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* An insured institution shall appraise each parcel of real estate owned at the time of the institution's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The Principal Supervisory Agent or his designee may require subsequent appraisals if, in his discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph. A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph shall be retained in the institution's records.

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate may be based on an appraisal as provided by § 563.17–1, and re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. When an appraisal is required, it shall conform with § 563.17–1a of the Board's regulations.

* * * * *

PART 571—STATEMENTS OF POLICY

7. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1258–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

8. Amend § 571.1a by revising the last sentence of the introductory text of paragraph (a); and by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 571.1a Classification of assets.

* * * * *

(a) *Substandard.* * * * Assets classified Substandard may exhibit one or more of the following characteristics:

* * * * *

(b) *Doubtful.* * * *

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors that may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. An entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, if there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the institution is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off or reserving all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c of this subchapter, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 561.16c of this subchapter, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Allowances provided on classified assets should be established consistent with Generally Accepted Accounting Principles. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-30073 Filed 12-31-87; 8:45 am]
BILLING CODE 6720-01-M

12 CFR Part 563

[No. 87-1297]

Capital Forbearance

Date: December 22, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting regulations to implement section 404 of the Competitive Equality Banking Act of 1987, which provides that the Board shall establish a program of capital forbearance for well-managed, viable Federal associations and FSLIC-insured institutions if certain requirements are met. The regulation sets forth the requirements that institutions must meet to obtain forbearance under this program, the procedures for requesting forbearance, the procedures under which an applicant's Principal Supervisory Agent ("PSA") will consider such requests, the effect of forbearance, and the termination of a grant of forbearance.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael P. Scott, 202-778-2516, Policy Analyst, or Kevin O'Connell, 202-778-2615, Supervision, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System; Catherine McFadden, 202-377-6639, Attorney, or Jerome L. Edelstein, 202-377-7057, Acting Deputy Director, Regulations and Legislation Division, Office of General Counsel; C. Dawn Causey, 202-653-2624, Attorney, or Marianne E. Roche, 202-653-2609, Deputy Director, Office of Enforcement; Richard Brown, 202-377-6795, Economist, or Joseph A. McKenzie, 202-377-6763, Director, Policy Analysis Division, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552 ("CEBA"), provides that the Board, as operating head of the FSLIC, adopt capital recovery regulations for regulating and supervising troubled but well-managed and viable Federal associations and insured institutions in a manner that will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation.

CEBA describes certain circumstances under which the Board is to extend capital forbearance. The Board is to consider whether a well-managed institution's weak capital condition is primarily the result of losses on loans or participations in loans and whether: (1) The value of the collateral for such loans has been adversely affected by economic conditions in an economically depressed region; or (2) the institution is a minority institution having 50 percent or more of its loan assets as minority loans and 50 percent or more of its originated loans as construction or permanent loans for one-to-four family residences. In addition, the Board is to determine whether an institution's weak capital condition is the result of imprudent operating practices. Furthermore, when granting capital forbearance, the Board must approve a capital recovery plan submitted by the institution, and the institution must adhere to that plan and submit regular and complete reports on its progress in meeting the goals set forth in the plan.

Generally, CEBA requires that the capital recovery regulations apply to institutions with regulatory capital of at least 0.5 percent. CEBA also provides the Board with discretionary authority to extend capital forbearance to institutions with regulatory capital of less than 0.5 percent. In making capital forbearance available to such an institution, the Board is to determine whether the institution satisfies the same capital forbearance requirements that pertain to institutions with regulatory capital of 0.5 percent or more and, in addition, whether the institution has reasonable and demonstrable prospects for returning to a satisfactory capital level.

Pursuant to section 416 of CEBA, capital forbearance authority under the statute expires when the financing corporation established under section 302 completes all net new borrowing authority.

On October 5, 1987, the Board proposed a capital forbearance regulation to implement its statutory authority under CEBA. *See* 52 FR 39098 (Oct. 20, 1987). Public hearings on the proposal were held on November 3 and 4, 1987, and written comments were solicited by the Board. The comment period ended on November 19, 1987.

The Board invited commenters and participants in the hearing to address all aspects of the proposal and, in addition, specifically solicited comment with regard to several issues including: (1) The method of identifying economically depressed regions; (2) the advisability of defining more specifically the statutory standards that an institution must meet in order to qualify for forbearance and how such standards should be defined; (3) whether forbearance should be terminated when economic conditions in the relevant geographical region improve; and (4) whether a process should be established for review or appeal of forbearance determinations made by PSAs.

The Board received a total of 31 comments in response to the proposal including written comments and comments expressed at the public hearings. Eighteen expressed general support for the proposal; two expressed opposition; and eleven indicated no position about the proposal generally. Many of the commenters suggested various modifications to the proposal.

Of the comments received, fifteen came from thrift institutions, eleven from trade organizations, which for the most part were national and state thrift organizations, four from law firms that represent thrift institutions, and one from a government agency.

Although the comment period expired on November 19, the Board considered late-filed comments in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, the Board has determined to adopt the proposal with certain modifications and clarifications.

A. Appeal/Review Process

Many commenters urged the Board to adopt a process for review or appeal of the PSA's decision on a forbearance application. These commenters included five thrifts, eight trade groups, and four law firms. Five of these commenters also suggested adoption of more specific standards for PSAs to apply in passing on forbearance applications. Three commenters expressed the view that more specific guidelines were necessary but did not address the question of a review or appeal procedure.

Virtually all of the commenters advocating an appeal or review process felt that one was necessary to assure fair and uniform application of the regulation. As one commenter said, "while one alternative might be to place limitations on the PSA's authority, we believe that a flexible approach, consistent with the Bank Board's intentions can be effected by providing an appeals process."

One commenter argued that a review of PSA forbearance decisions is essential prior to the appointment of a conservator or receiver for the institution. The institution "just wants somebody to review what the PSA has done * * * the 11:59 review before a final determination is reached," the commenter told the Board.

Commenters supporting adoption of guidelines without addressing the need for a review or appeals procedure felt, as one commenter said, that this "would ensure that all affected institutions are treated fairly and in a uniform manner."

The Board has reviewed all of the comments and weighed all of the arguments made on behalf of adoption of a review or appeal procedure. However, after giving the matter due consideration, the Board does not believe that an appeal or review procedure is necessary or appropriate.

As the Board indicated in the preamble to the proposed regulation, it does not anticipate that a denial of a request for capital forbearance necessarily will be followed by supervisory or enforcement action or the appointment of a conservator or receiver. Rather, the Board expects that an institution denied forbearance will be subject to the same treatment as it would have had it not filed a request for forbearance. *See* 52 FR 39898, 39103 (1987).

In other words, while an institution granted forbearance will not, absent termination of forbearance, be subjected to adverse actions based on the insured institution's inadequate capital, denial of the application does not and will not automatically trigger adverse action. Consequently, denial by the PSA does not adversely affect the institution, which will continue to be regulated and supervised in the same manner as if it had not filed an application for forbearance.

In response to the commenter who was concerned that the PSA's denial of forbearance would sound the death knell for an institution, the Board emphasizes that denial of an institution's capital forbearance application does not automatically result in the appointment of a conservator or receiver. The denial decision only means that the PSA has determined that the institution does not meet the prescribed factors for forbearance under the regulation. Appointment of a conservator or receiver, as appropriate, for a Federal association or insured institution is made by the Board. 12 U.S.C. 1464(d)(6), 1729(c) (1982).

The Board does, however, believe that to promote uniformity of forbearance decisions by different PSAs, while preserving the flexibility of PSAs to address the unique circumstances of each institution applying for forbearance, it is appropriate to develop guidelines that PSAs should consider in making the determinations governing whether a grant of forbearance to a particular institution is appropriate. Consequently, pursuant to the Board's direction, the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") is developing guidelines for the implementation of the capital forbearance regulation. All aspects of the regulation will be considered in the development of these guidelines, and the views of those commenting on the proposed capital forbearance regulation will be considered with respect to specific factors.

B. "Economically Depressed Region"

1. Method of Designation

Commenters expressed a diversity of opinion on the method of designating economically depressed regions.

One commenter supported the method set forth in the proposed regulation, that each PSA determine economically depressed regions on a case-by-case basis. The commenter explained that, because of his knowledge of the local economies in his district, the PSA could identify such regions more accurately than could the Board.

Eight commenters supported designation by the Board or the PSA of economically depressed regions coupled with flexibility to recognize other areas that applicants demonstrate are economically depressed. Three of these commenters explained that the PSA, because of his knowledge of the local economies in his district, would provide the most accurate determinations. Another commenter believed that identification of economically depressed regions will free the PSAs from the burden of analyzing data submitted by all institutions within such regions. Two of the commenters believed that identification would remove the burden from institutions of proving that they operate in an economically depressed region. One commenter noted that small institutions may not have the economic resources and expertise to make findings as to what constitutes an economically depressed region.

Three commenters suggested that the Board identify a list of economically depressed regions. Two commenters explained that this method of designation would lessen the burden on institutions and supervisory staff, and believed it would provide a measure of uniformity to the determinations that is lacking if left to the discretion of each PSA.

The Board has carefully considered these comments, particularly the emphasis that several commenters placed on the expertise of PSAs to make such determinations, the need to reduce the burden on institutions of demonstrating that a particular region is economically depressed, and the need to take steps to assure uniformity among decisions of various PSAs.

The Board believes that these concerns can be alleviated without identifying and constantly updating pre-established lists of economically depressed regions. As a result the Board is adopting in its final regulation revised procedures to help address these concerns. First, an institution applying for capital forbearance will identify in its application the region or regions in which it has suffered losses due to loans with declining collateral values. At this stage, the applicant need not present evidence that such region or regions are economically depressed within the meaning of the regulation. Rather, this determination may be made by the PSA upon consideration of the factors set forth in the regulation and other appropriate factors. In the event that the identified region is in a Federal Home Loan Bank District ("Bank District") other than that to which the application is directed, the PSA to whom the application has been directed will consult the PSA of the Bank District in which the identified region is located. The latter PSA will make the determination as to whether the region is economically depressed. Only if the appropriate PSA is unable to determine the issue will it be necessary for the applicant to submit documentation in support of its request. The PSA to whom the application was directed, following consultation with the PSA of the Bank District in which the region is located, must make the request for such additional information within the time frames set forth in the application guidelines adopted by the Board on October 2, 1987, 52 FR 39064 (Oct. 20, 1987), *to be codified at* 12 CFR 571.12. The PSA in the Bank District where the region is located will then determine whether the region is economically depressed based on the evidence submitted.[1] The Board believes that this

[1] In this regard, the Board expects that if a PSA would reject an application, whether or not the identified region is economically depressed (for example, the institution's capital condition has been impaired by imprudent operating practices or its capital plan is unacceptable), no additional evidence on the question of whether the region is economically depressed would be requested because it would be irrelevant to the determination.

method of identifying economically depressed regions reduces the burden on institutions seeking forbearance and promotes uniformity by assuring that different PSAs will not reach different conclusions on the same facts regarding whether a particular region is economically depressed.

2. Form and Type of Documentation

Two commenters requested that the Board and the PSAs consider a broad range of data in identifying economically depressed regions. One added that the Board should do so only so long as such data were relevant and credible and that the Board should allow the PSA to determine the weight to be accorded to each type of information submitted. The other commenter explained that economic data are scarcer in areas outside Metropolitan Statistical Areas ("MSAs") and the accuracy of the factors used to identify economic problems varies according to the type of economic problem.

The Board wishes to emphasize that if a PSA requests that an institution submit evidence that it is operating in an economically depressed region, the regulation provides significant flexibility with respect to the form and type of data that the institution may submit to the PSA, so long as the data is relevant and reliable. The factors set forth in the regulation are examples and do not constitute a definitive list.

3. "Geographical Region"

Five commenters responded to the Board's request for comment on the definition of "geographical region." The proposal had suggested that regions be identified based on political boundaries. One commenter requested clarification of the term "established political boundaries" and suggested that, at a minimum, it should include counties. Three commenters suggested that "geographical region" be identified by the institution seeking forbearance, without the requirement that it be identified on the basis of "established political boundaries." One commenter suggested that the PSA determine the appropriate geographical region because of his familiarity with the economic affairs of his district.

After considering these suggestions, and in light of the approach that the Board is adopting to identify economically depressed regions, the final regulation provides that any geographical region identified by the applicant can be recognized as economically depressed if such recognition is appropriate. The Board believes this approach will enable applicants to identify the region most pertinent to demonstrating their case for forbearance.

C. "Well-Managed" and "Imprudent Operating Practices" Tests

CEBA requires that the Board adopt regulations to provide forbearance to well-managed and viable institutions whose weak capital condition is not the result of imprudent operating practices.

One commenter suggested that Congress did not intend that a well-managed test be separate from the imprudent operating practices test. The commenter supported this position by directing attention to the statutory enumeration of five specific imprudent operating practices, while the term "well-managed" is not similarly defined or clarified.

The Board, however, interprets the statutory language and legislative history as evidence that Congress intended that institutions that are not well-managed be disqualified from capital forbearance. The introductory statutory language to section 404 instructs the Board to promulgate regulations to permit "troubled but well-managed" institutions to apply for capital forbearance. Likewise, Congress reiterated the statement that well-managed institutions with capital below 0.5 percent may be granted forbearance. Also, a statement made by Senator Garn in a colloquy with Senator Proxmire during the Senate debate on CEBA stressed that the capital forbearance provisions were not intended to provide a safe harbor for:

> [the] small minority of the industry, [which] has operated in an unsafe and unsound condition—often engaging in fraudulent and reckless investment strategies, self dealing, conflicts of interest and a whole host of otherwise repugnant business practices in violation of statutes, regulations, ethics, their fiduciary duties and plain decent business standards.

133 Cong. Rec. S11209–10 (daily ed. August 4, 1987) (statement by Senator Garn during colloquy with Senator Proxmire).

Because the Board believes that Congress intended that only well-managed institutions be granted forbearance and that it is possible that an institution may not be well-managed, even if imprudent operating practices did not contribute to its impaired capital, the well-managed test is retained.

Two commenters suggested that the well-managed test is unduly subjective and several commenters requested clarification of the factors to be considered in applying the well-managed test and the imprudent operating practices test. These factors will be described in the memorandum being prepared by ORPOS setting forth guidelines for the implementation of the capital forbearance program.

Another commenter asked the Board to clarify that institutions that are located outside economically depressed regions not be judged *per se* imprudent because they have lent in economically depressed regions; rather, that the underwriting of such loans, loss experience, and economic conditions in the area at the time the loan was made or acquired by the institution be examined in determining whether management engaged in "imprudent operating practices." The Board concurs with this comment.

One commenter was concerned as to how the well-managed and imprudent operating practices tests would be applied. This commenter believed that Congress intended that institutions not engaged in fraud, self-dealing, or other business practices violative of law and ethics be eligible, not excluded, from forbearance if their capital losses resulted from "bad" business decisions. This commenter asked the Board to clarify that imprudent operating practices criteria (such as "speculative" practices, payment of "excessive" dividends, "substandard" underwriting practices) and well-managed criteria (such as management's record of operating the institution, its ability to operate the institution in changing economic conditions, and ability to develop and implement a capital plan) be viewed in the context of management's intent to violate Board rules and policies, rather than viewing errors in management's business decisions as imprudent operating practices or as an indication that the institution is not well-managed. With respect to imprudent operating practices, the Board intends that only those business decisions that constitute imprudent operating practices be considered in disqualifying an institution from capital forbearance. With respect to a well-managed determination, the Board does not intend that the well-managed test be used to judge business decisions on the basis of hindsight; however, it does intend that the PSA determine that an institution's management is capable of overseeing its capital recovery. To the extent that an institution's management has a history of "bad" business decisions, this is a relevant consideration for the PSA to weigh in determining whether the institution qualifies for capital forbearance. According to the Joint Explanatory Statement of the Conference Committee:

> The capital recovery program is not intended to restrict any authority of the Bank Board to correct any fraud, criminal activity, imprudent operating practices or managerial incompetence.

H. Rep. No. 100–261, 100th Cong., 1st Sess. 165 (1987).

Therefore, given Congressional intent, the Board believes that it is not precluded from considering managerial incompetence in making the forbearance determination.

D. Capital Plan

Several commenters addressed various aspects of the proposed regulation concerning the capital plan to be submitted by forbearance applicants.

Three commenters specifically addressed the preamble discussion of plans submitted by institutions whose capital is less than 0.5 percent. The preamble to the proposed regulation stated that such institutions should not rely "on generalized hopes or expectations of economic improvements and other uncertain future events." One commenter said that the regulation should not be read as permitting unrealistic future economic scenarios, but that reasonable positive economic assumptions be allowed. Two other commenters likewise suggested that institutions be allowed to project reasonable recovery rates for the local economy.

Several commenters misunderstood the "demonstrable" portion of the "reasonable and demonstrable" standard, fearing that the standard may be interpreted to mean that an institution may not base its capital plan on predictions of economic improvement.

With respect to the proposal's requirement that the "reasonable and demonstrable prospects" standard apply to institutions with regulatory capital below 0.5 percent, one commenter was concerned that this implies that institutions with regulatory capital greater than 0.5 percent would not be required to have reasonable prospects of meeting capital goals within the required time frame. This commenter believed that all forbearance applicants should be required to meet this standard. Moreover, two commenters urged the Board to impose rigorous review standards on capital plans submitted by all applicants. Both suggested that the business plans demonstrate that an institution has a genuine and reasonable prospect of returning to financial health in the near term. One commenter also suggested that if the assumptions underlying a business plan are unrealistic or the business plan projections are unrealistic, such application should be rejected. Another commenter urged the Board to impose minimal operating restrictions on an institution as part of the capital plan.

In response to these comments, the Board notes that the "reasonable and demonstrable" test, as interpreted by the Board in its proposed regulation, requires that the capital plan "not rely upon unrealistic predictions of economic improvements or other uncertain future events." The Board believes that adoption of this standard, which clearly contemplates reliance on realistic projections concerning future occurrences, addresses the concerns of several of the commenters. To the extent that preamble language accompanying the proposed regulation suggested that the Board was proposing a standard other than that contained in the regulatory language itself, the preamble language was insufficiently precise. Consequently, the Board is adopting in the final regulation the standard set forth in the proposed regulatory language.

The Board also emphasizes that while CEBA specifically applies the "reasonable and demonstrable" standard to institutions with capital under 0.5 percent, in evaluating a forbearance application PSAs must consider the applicant's prospects for recovery in granting or denying the application and determine whether the goals set forth in the applicant's capital plan are reasonably achievable. Of necessity, this determination must be made on a case-by-case basis; however, as noted previously, ORPOS is in the process of developing guidelines for the implementation of the capital forbearance program.

Three commenters addressed the content of the capital plan. Two commenters asked that the regulation state that revised business plans may be acceptable as capital plans and urged the Board to discourage use of new, boilerplate, computer-generated business plans. Instead, they suggested that capital plans be generated by management with an emphasis on quality, not quantity. Another commenter stated that requiring sophisticated business plans would unfairly burden small institutions and urged that concise, well-considered plans, without reams of computer printouts, be considered.

The Board agrees fully with these commenters and emphasizes that the acceptability of a plan must be based on its quality and achievability. The Board encourages management-generated plans and, in fact, expects an institution's management to have a significant involvement in the preparation of the capital plan and not to rely entirely on outside consultants. Further, each capital plan of necessity will be individualized because it will be developed by each institution to reflect its unique situation. Moreover, the precise content of the capital plan is initially to be devised by the applicant, although the PSA may request additional information and provide for restrictions or requirements before approving the plan.

With respect to the grounds for terminating forbearance, one commenter requested clarification of an institution's failure to comply with its capital plan. For example, if an institution does all that it is able under its capital plan, but unfavorable market conditions preclude it from taking certain actions set forth in the plan, such as issuance of subordinated debt, the commenter was uncertain as to whether the applicant would be viewed as in compliance with the plan under such circumstances. As stated in the proposal, institutions must submit regular reports describing and explaining any deviations from the schedule, methods, operations, or goals set forth in the plan. This would include, for instance, failure or inability to issue subordinated debt. The PSA is to evaluate the information submitted to aid him in determining whether modification of the plan or termination of forbearance is appropriate.

Seven commenters discussed the capital instruments program, which is provided for in section 405 of CEBA, and its interrelationship with the capital forbearance program. Six commenters urged that the capital forbearance regulation be revised to include the sale of capital instruments pursuant to section 405 as an important tool in helping institutions meet their capital requirements.

A capital instruments program pursuant to section 405 is being developed by the Corporation. The Board will permit the inclusion of capital instruments as part of a capital plan. However, PSA approval of forbearance in such case does not, in any respect, commit the Corporation to purchase the capital instruments provided in the plan. A decision by the Corporation not to purchase the instruments could lead to a reevaluation of the plan and the grant of forbearance by the PSA.

One commenter thought that five years was too short a time in which to require an institution to increase its capital to minimum required levels pursuant to its plan. This commenter suggested that the purchase of capital

instruments as provided for by section 405 of CEBA would help alleviate his concerns. In addition to providing for capital instruments, the Board, in response to these concerns, is extending the capital recovery period to January 1, 1995. This is consistent with the time period provided in the forbearance policy statements of the Federal Deposit Insurance Corporation ("FDIC") and the Comptroller of the Currency. *See* 52 FR 28182 (July 13, 1987); Comptroller of the Currency Banking Issuance BC-212 (July 7, 1987).

As an alternative, this commenter suggested that the Board expressly deem acceptable any capital plan indicating that the institution will have break-even profit levels by the end of the five-year time frame. This suggestion departed from the proposal which required that an acceptable capital plan must provide for the institution to meet its minimum capital requirement. The Board rejects this suggestion on the basis that capital forbearance was provided by Congress to permit institutions to regain appropriate capital levels, not to achieve break-even profit levels.

E. Federal Savings Banks Insured by the FDIC

Three commenters asked that the Board explicitly state that Federal savings banks insured by the FDIC are eligible to apply for forbearance under section 404. The FDIC, however, took the position that such institutions should not be covered by the Board's capital forbearance program.

The Board believes that CEBA's language requires that such institutions be eligible to apply under the Board's capital forbearance program. Section 404(a) of CEBA, which amends the Home Owners' Loan Act of 1933 ("HOLA"), provides that the Board "shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable *associations* * * *" (emphasis added). The HOLA defines "association" as including a "Federal savings bank chartered by the Board under section 1464 of this title * * *." 12 U.S.C. 1462(d) (1982). FDIC-insured Federal savings banks are chartered pursuant to paragraph (o) of section 1464. *Id.*, 1464(o)(1), (3).

Moreover, Congress has given the Board the authority to provide for the "organization, incorporation, operation, examination, and regulation" of such institutions. *Id.* 1464(o)(1). Decisions to close these FDIC-insured institutions and appoint the FDIC as receiver are made by the Federal Home Loan Bank Board. 12 U.S.C. 1821(c) (1982). Consequently, the Board believes that Congress intended that its forbearance policy apply to these FDIC-insured institutions.

The Board also notes, however, that the FDIC deems an FDIC-insured institution to be operating in an unsafe and unsound condition if its capital level falls below three percent, unless the FDIC is party to an agreement between the institution and the Board to increase the institution's capital ratio to a level deemed appropriate by the FDIC. 12 CFR 325.4(c) (1987). Absent such agreement, the FDIC contends that it is empowered by statute to terminate insurance coverage if the institution is "engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an [FDIC] insured bank." 12 U.S.C. 1818(a). The statute provides that this finding be made by the FDIC Board of Directors. *Id.* In providing forbearance for FDIC-insured Federal associations, Congress did not amend the statutory provision providing for termination by the FDIC of insurance coverage. Thus, if forbearance were granted by the Bank Board, the institution could still face termination of insurance by the FDIC due to capital inadequacy and, if insurance coverage were terminated, this likely would provide grounds for the PSA to terminate forbearance.

Consequently, to reconcile the authority of both the Board and the FDIC with regard to FDIC-insured Federal savings banks, the final regulation provides that FDIC-insured institutions may apply for forbearance and that such forbearance may be granted upon the concurrence of the PSA and the FDIC.

F. Termination of Forbearance

Six commenters addressing the issue believed that forbearance should not be terminated on the grounds that economic conditions in the relevant designated economically depressed region have improved. As one commenter said, "it would be unrealistic to assume that there would be no delay between improvement in local economic conditions and the recovery of capital deficiencies caused by the formerly depressed economy." The Board agrees and is not providing in the regulation that recovery of a depressed economy alone will trigger termination of forbearance.

One commenter suggested that the regulation provide that prior to termination by the PSA of a grant of forbearance the institution be given an opportunity to address and rebut the PSA's reasons for termination. As stated in the preamble to the proposed regulation the Board prefers that, when circumstances allow, the PSA provide the institution with an opportunity to address the reasons for termination before finally terminating forbearance.

G. Policy Statement Impact

The preamble to the proposal states that, when effective, the proposed regulation will supersede the Board policy statement on capital forbearance, but that the policy statement will continue to govern applications filed on or before December 31, 1987. One commenter asked whether institutions that have timely filed an application pursuant to the policy statement will be afforded the same benefits, such as participation in the section 405 capital instruments program, as institutions granted capital forbearance under the final regulation. The commenter suggested the final rule be clarified to permit the PSA, upon request, to deem the approval of an application under the policy statement to be an effective approval under the capital forbearance regulation. The Board agrees with this suggestion. Where an application granted under the capital forbearance policy statement meets the requirements of today's final rule, and upon written request by the institution, the PSA may deem the grant of forbearance as a grant under the final rule. If the application does not meet the requirements of the final regulation, the PSA may ask the applicant to provide any additional information the PSA believes is necessary for the application to meet the requirements of the final rule. In the event that an applicant does request that a forbearance application that was approved under the policy statement be approved under the regulation, the timetable for such determination will be that governing forbearance requests made initially under this proposal and set forth in § 563.47(i)(3)(i).

H. Effect of Forbearance

The proposed regulation stated that following a grant of forbearance an institution would not be subject to supervisory or enforcement action to enforce its minimum capital requirement or termination of insurance or placement in conservatorship or receivership on the basis of inadequate capital.

One commenter suggested that, where forbearance has been granted, the Board should also forbear from removing existing management, merging the institution out of existence, or instituting any fundamental change in corporate structure.

The forbearance provisions of CEBA were adopted by Congress to provide a mechanism whereby institutions with weak capital condition related to economic conditions would, with improving economic conditions, develop adequate capital. Consequently, the Board is establishing a program of forbearance from adverse actions against institutions based solely on inadequate capital. As stated in the preamble to the proposed regulation, however, such institutions may suffer from problems other than inadequate capital that may need to be addressed by supervisory or enforcement actions. Forbearance does not apply to such problems, and the Board and the Corporation will not refrain from taking any appropriate action against a participating institution for matters other than inadequate capital.

Likewise, CEBA provides that Federal associations and insured institutions, if meeting the requirements of the statute and this regulation, may be allowed to continue to operate and be eligible for capital forbearance. The statute does not provide for forbearance against members of management of such institutions, and the Board and Corporation may, in certain instances, find it appropriate to grant forbearance or continue a grant of forbearance to a Federal association or insured institution even though it may be necessary to take action against members of management. The Board believes such an approach is the most consistent with the direction of Congress that a program of forbearance be established "in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation."

I. Miscellaneous Issues

Several miscellaneous comments were raised by one commenter each. One commenter asked that the program being proposed encompass institutions with weak capital conditions caused by other than economic conditions. As discussed, however, Congress has explicitly linked the grant of forbearance in CEBA to institutions adversely affected by economic conditions.

Another commenter asked that the Board specifically state that institutions with negative regulatory capital be permitted to apply for forbearance. The Board notes that CEBA requires adoption of a forbearance program for institutions with regulatory capital of 0.5 percent or more. CEBA leaves it to the discretion of the Board, however, to apply those regulations to institutions with regulatory capital of less than 0.5 percent. The Board's proposed regulations did not distinguish between institutions above and below the 0.5 percent threshold, except to the extent required by CEBA, which provides that institutions with less than 0.5 regulatory capital have "reasonable and demonstrable" prospects of returning to satisfactory capital levels. Consequently, at this time the Board is not precluding any Federal association or insured institution from applying for forbearance. Depending on the Board's experience under this regulation, however, the Board may reevaluate this position in the future.

Description of Final Capital Forbearance Regulation

To a large extent, the final capital forbearance regulation being adopted today reflects the proposed regulation adopted by the Board on October 5, 1987. An explanation of those provisions can be found in the preamble to the notice of proposed rulemaking. See 52 FR 39098 (Oct. 20, 1987). The following modifications and clarifications, however, have been made.

A. Definitions

The Board has added two definitions to the regulation and modified one other definition.

The definition of "economically depressed region" has been changed to state that any geographical region, whether or not it has established political boundaries or is an MSA, can be recognized as economically depressed if such a designation is warranted by a consideration of factors set forth in the regulation and any other relevant data submitted by the applicant. The Board believes this change will enable applicants to identify the geographical area most pertinent to demonstrating their case for forbearance. The definition also has been changed to state that determinations about whether a particular region is economically depressed are to be made by the PSA of the Bank District in which the region is located, even if the forbearance application is filed with the PSA of another Bank District.

The Board also has defined "weak capital condition" to mean that an institution's regulatory capital does not meet its regulatory capital requirement as calculated in accordance with §§ 561.13 and 563.13, and any special requirement imposed under § 563.14, or other capital level imposed by the Board or Corporation. This definition is necessary to clarify the level at which institutions may apply for forbearance and to determine the level at which forbearance, once granted, is terminated because the institution has satisfied its capital plan and met its goals.

The Board also has added definitions of "minority," "minority insured institution," and "minority loan" that incorporate by reference relevant statutory definitions set forth in CEBA.

B. The Capital Plan

The Board has made one change in the provision of the regulation relating to requirements that must be met for a capital plan to be deemed acceptable. The proposed regulation had required that an institution seeking forbearance be given five years to bring its capital up to required minimum levels. For the reason previously discussed, this period has been extended until January 1, 1995. A corresponding change has been made in connection with the requirements that must be met by institutions with regulatory capital under 0.5 percent.

C. Termination of Capital Forbearance

The Board has added two grounds for termination of a grant of capital forbearance. The first provides that forbearance may be terminated if it was granted by the PSA based on an assumption about the occurrence of future events that subsequently do not occur. Alternatively, in appropriate circumstances, the PSA may seek modification of the capital plan, or permit the grant of forbearance to continue without any change to the plan.

Second, a provision has been added to require a grant of forbearance to be terminated when an institution satisfies its capital requirement. Once that standard is met, the Board believes there is no reason to continue the grant of forbearance.

D. Procedures

As discussed in connection with other comments, the Board has made several changes to the procedures involved in the consideration of requests for forbearance.

The proposed rule had required that an applicant for forbearance include in its application, among other things, a showing that the region or regions in which its collateral with declining values is located are economically depressed. For the reasons discussed in response to the comments, the final regulation states that the applicant must supply such information only upon the request of the PSA. Thus, institutions need not undertake the burden of compiling such information where the PSA already has determined, or already has the facts available, to show whether such region is economically depressed. The final regulation also provides that

determinations about whether a particular region is economically depressed are to be made by the PSA of the Bank District in which the region is located, even if the forbearance application is filed with the PSA of another Bank District.

The Board also added a provision to paragraph (c) which states that FDIC-insured Federal associations can be granted forbearance with the concurrence of the FDIC.

E. Waiver of Loans-to-one-Borrower Limitation

The Board is clarifying the existing waiver provision of the loans-to-one-borrower regulation at 12 CFR 563.9–3(b)(4)(1987) to give the Board and the PSA or their designee the authority to grant flexibility to insured institutions to engage in loan restructurings and facilitate disposition of real estate owned. This waiver enables the Board or the PSA, in accordance with guidelines approved by the Board, to waive the aggregate loans-to-one-borrower limits in connection with resolving or managing institutions of supervisory concern which have deficit or deteriorating regulatory capital. Resolution or management of such cases would include assisted or non-assisted acquisitions approved by the Board or PSA and the daily supervisory oversight of the PSA over such institutions. Any institution of supervisory concern with deficit or deteriorating regulatory capital is eligible to apply for this waiver, including those institutions that have been granted capital forbearance under section 563.47 of this rule. The PSA has the discretion to tailor the terms of the granting of the waiver on a case-by-case basis.

However, with respect to the commercial loans-to-one-borrower limitation, 12 CFR 563.9–3(b)(2) (1987), the Board emphasizes that any waiver of this limitation cannot exceed any statutory investment restriction. For example, Federal associations cannot exceed the limitation imposed by section 5(c) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(c)(1)(R) (1982) (which includes limitations on commercial loans to one borrower and on aggregate commercial loans). Likewise, this waiver does not permit state-chartered institutions to exceed any investment restriction imposed by state law. This modified waiver of the loans-to-one-borrower regulation supersedes Board Resolution 86–579 that was adopted on June 9, 1986, and granted a different waiver authority to the PSAs.

F. Effect of Forbearance

Although the Board is making no changes in the regulatory language regarding the effect of a grant of forbearance, it wishes to reiterate and clarify language contained in the preamble to the proposed regulation regarding this issue.

A grant of forbearance pursuant to this regulation operates prospectively only. Any existing agreements with, or orders against, the institution and all regulations that address, relate to, include a reference to, or otherwise concern regulatory capital are not changed or voided by an institution's capital forbearance status. The institution may request a modification or termination of any capital-related order or agreement or a waiver or modified application of any capital-related regulation, in connection with, or subsequent to, qualifying for forbearance. For instance, an institution not meeting its minimum capital requirement may not make equity risk investments without approval of its PSA. 12 CFR 563.9–8(c)(2)(iii) (1987). The grant of forbearance alone would not constitute approval to make such investments unless such investments were expressly included in the capital plan or the PSA otherwise expressly gives such approval.

Modification or termination of some of these actions, such as cease-and-desist orders, may be carried out only by the Board, not the PSA. This may or may not be done in conjunction with the granting of forbearance.

Effective Date

The Board is adopting this regulation effective January 1, 1988. While the Administrative Procedure Act ("APA") requires publication of a substantive regulation not less than thirty days before its effective date, this delayed effective date does not apply to rules that grant or recognize an exemption or relieve a restriction. 12 U.S.C. 553(d)(1) (1982). Because this regulation provides a process whereby the Board may exempt Federal associations and insured institutions from capital requirements, the Board is causing the rule to become effective prior to the passage of thirty days from publication. Moreover, the APA's delayed effective date requirement may be waived for "good cause" such as where Congress has prescribed an effective date. *Cf. Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 888 (3d Cir. 1982) (relating to notice and comment procedures). The provisions of CEBA require finalization of this regulation no later than January 7, 1988. The Board finds that the statutorily prescribed effective date constitutes "good cause" for dispensing with the APA delayed effective date requirement.

While the Board believes it could adopt the regulation effective immediately, an effective date of January 1, 1988, has been chosen because the Board's forbearance policy statement, 52 FR 6876 (March 5, 1987), lapses on December 31, 1987. Consequently, the January 1, 1988, effective date eliminates an overlap between the policy statement and the regulation and any lapse of time between the expiration of the policy statement and the effectiveness of this rule.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. *Significant alternatives minimizing small-entity impact and agency response.* All institutions, regardless of size, would be permitted to obtain capital forbearance as long as they are well-managed, viable institutions meeting the various requirements set forth in section 404 of CEBA as implemented by this rule. Such institutions would be permitted to operate and not be subject to supervisory action as a result of failure to comply with capital requirements as long as they remain in compliance with their capital plan.

In response to several commenters who suggested that small institutions may lack the resources and expertise to demonstrate that a particular region is economically depressed, the Board is not requiring that institutions make such a showing in their application for forbearance. Further, only if a PSA is unable to determine that a particular region is economically depressed based on the factors included in the regulation and others that the PSA determines are pertinent, would an institution be required to make such showing.

List of Subjects in 12 CFR Part 563

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.9–3 by revising paragraph (b)(4) to read as follows:

§ 563.9–3 Loans to one borrower.

* * * * *

(b) *Limitations*—(1) *Aggregate loans*

* * *

(4) *Waiver.* In accordance with guidelines approved by the Board, the Board or the PSA or the designee of either may waive the application of the limitations in this paragraph (b) to any loan in connection with the resolution or management of an insured institution that is of supervisory concern and has deficit or deteriorating regulatory capital.

* * * * *

3. Amend Part 563 by adding a new § 563.47 to read as follows:

§ 563.47 Capital forbearance.

(a) *Purpose.* This section implements section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, which requires that the Board and the Corporation adopt regulations for regulating and supervising troubled but well-managed and viable insured institutions so as to maximize the long-term viability of the thrift industry at the lowest cost to the Corporation by permitting qualifying institutions to continue to operate and be eligible for capital forbearance. This section sets forth the procedures and the conditions under which an insured institution may qualify for capital forbearance. This section provides that institutions granted capital forbearance will not be subject to supervisory or enforcement action to enforce minimum capital requirements or to terminate insurance nor will they be placed in conservatorship or receivership based on inadequate regulatory capital. This section also indicates the circumstances under which capital forbearance may be terminated.

(b) *Definitions.* When used in this section:

(1) *"Economically depressed region"* means any geographical region, identified by an applicant for forbearance, that has suffered severe economic conditions, as determined by the Principal Supervisory Agent of the Federal Home Loan Bank District in which the region is located. The Principal Supervisory Agent's determination may be based on consideration of any or all of the following factors and any other data that are presented by an institution in support of a claim that a region is economically depressed:

(i) The economic base of the region is largely dependent on one particular employer or industry, and that employer or industry is experiencing decline;

(ii) Unemployment in the region has increased;

(iii) Real estate values have declined in the region as evidenced by a sampling of recognized indices or surveys measuring such values in that region;

(iv) Personal income levels in the region have declined; or

(v) Substandard loan ratios of insured institutions in the region have increased.

(2) *"Minority,"* and *"minority loan"* have the meanings set forth in 12 U.S.C. 1467a(d) and 12 U.S.C. 1730i(d); and *"minority insured institution"* has the meanings set forth for "minority institution" and "minority association" in 12 U.S.C. 1467a(d) and 12 U.S.C. 1730i(d).

(3) *"Principal Supervisory Agent"* has the same meaning as set forth in § 541.18 of this chapter.

(4) *"Reasonable and demonstrable prospects"* means that the plan to meet specified capital levels sets forth in detail a precise and readily attainable schedule for increasing regulatory capital through realistically achievable methods and does not rely upon unrealistic predictions of economic improvements or other uncertain future events.

(5) *"Weak capital condition"* means that the insured institution has regulatory capital that does not meet its regulatory capital requirement as calculated in accordance with §§ 561.13, 563.13, and 563.14 of this title, or other capital level imposed by the Board or Corporation.

(c) *Qualifying for capital forbearance.* The Principal Supervisory Agent may permit insured institutions to continue to operate and obtain capital forbearance, except as provided in paragraphs (f) and (g) of this section, if

(1) The insured institution, at the time it submits its request for forbearance, has a weak capital condition;

(2) The insured institution's weak capital condition is primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of loans or participations in loans that are:

(i) secured by collateral whose value is determined, in the discretion of the Principal Supervisory Agent, to have been adversely affected by economic conditions in an economically depressed region; or

(ii) Made by a minority insured institution that has

(A) 50 percent or more of its loans qualifying as minority loans or participations in minority loans; and

(B) 50 percent or more of its originated loans secured by one-to-four family residences;

(3) The insured institution submits and the Principal Supervisory Agent approves a capital plan that meets the requirements of paragraph (d) of this section for increasing the insured institution's regulatory capital to the required level;

(4) The insured institution, if its regulatory capital as calculated in accordance with § 561.13 at the time it requests forbearance is less than 0.5 percent, demonstrates and the Principal Supervisory Agent determines, in his discretion, that the institution has evidenced in its plan reasonable and demonstrable prospects for achieving its required level of regulatory capital thereafter, but not later than January 1, 1995; and

(5) In the case of a Federal association whose deposits are insured by the Federal Deposit Insurance Corporation ("FDIC"), the FDIC concurs in the PSA's determination.

(d) *The capital plan.* The plan referred to in paragraph (c)(3) of this section should contain a detailed description of the steps the insured institution will take to meet its minimum capital requirements, including capital infusions, mergers, and operating changes to increase regulatory capital or decrease asset size; address the insured institution's operations during the time it has capital forbearance, including lending and investment strategies, asset-liability growth, dividend levels, and compensation of directors and officers; and include forecasts and pro forma financial statements and set forth a reasonable time frame for achieving its minimum capital requirement that is not later than January 1, 1995. The Principal Supervisory Agent may require that the

plan include other restrictions or requirements before approving the plan.

(e) *Reporting.* Any insured institution determined by the Principal Supervisory Agent to qualify for capital forbearance shall submit thorough and complete reports on such insured institution's progress in meeting the goals set forth in its capital plan. Such reports must provide the Principal Supervisory Agent with a detailed ongoing evaluation of capital recovery progress and explain any deviations from the schedule, methods, operations, or goals set forth in the plan. These reports shall be submitted as frequently as required by the Principal Supervisory Agent, but not less often than semiannually.

(f) *Management and operating practices.* The Principal Supervisory Agent must review the past and present management structure and operating practices of any insured institution that has submitted a request for capital forbearance and shall not approve that request if the Principal Supervisory Agent determines that the institution is not well-managed or that the institution's weak capital condition is the result of imprudent operating practices.

(1) In determining whether an insured institution is not well-managed, the Principal Supervisory Agent may consider, among other things, the management's —

(i) Record of operating the insured institution, including those operating practices not reviewed under paragraph (f)(2) of this section;

(ii) Compliance with laws, regulations, directives, orders, and agreements;

(iii) Timely recognition and correction of regulatory violations, unsafe or unsound practices, or other weaknesses identified through the examination or supervisory process;

(iv) Ability to operate the insured institution in changing economic conditions; and

(v) Ability to develop and implement the capital plan.

These factors may be considered with regard to service by any member of management at other insured institutions, commercial banks, or other financial institutions. The Principal Supervisory Agent also may take into account whether management has taken actions solely to qualify for capital forbearance.

(2) In determining whether the insured institution's weak capital condition is the result of imprudent operating practices, the Principal Supervisory Agent shall review the circumstances resulting in the institution's weak capital condition and determine whether they involve imprudent operating practices including, but not limited to:

(i) Practices that were speculative at the time they were undertaken;

(ii) Insider abuse and conflicts of interest;

(iii) The payment of excessive dividends;

(iv) Substandard underwriting of loans and investments;

(v) Unsafe or unsound practices within the meaning of 12 U.S.C. 1464(d)(2), 1730(e);

(vi) Excessive operating expenses; and

(vii) Actions taken solely to qualify for capital forbearance.

(3) Any determinations made pursuant to this paragraph (f) are solely for purposes of determining whether an insured institution qualifies for capital forbearance and are not binding or in any way dispositive of any pending or future supervisory, enforcement, or other legal actions.

(g) *Termination of capital forbearance status.* (1) The Principal Supervisory Agent may determine that an institution does not qualify for capital forbearance or no longer qualifies for capital forbearance status, if:

(i) The institution fails to comply with its capital plan;

(ii) Forbearance was granted contingent upon the occurrence of events that do not subsequently occur;

(iii) The institution undergoes a change in control or a material change in management that was not approved by the Principal Supervisory Agent;

(iv) The institution engages in practices inconsistent with achieving its minimum capital requirement;

(v) Information is discovered that was not made available to the Principal Supervisory Agent at the time the institution qualified for capital forbearance and that indicates that forbearance should not have been granted;

(vi) The institution's regulatory capital at the time of requesting forbearance was reported to be at least 0.5 percent, but is later found to have been below 0.5 percent;

(vii) The institution engages in abusive, unsafe or unsound, or other imprudent practices;

(viii) The institution violates an agreement with, or order issued by, the Board or Corporation; or

(ix) The institution fails to submit the reports required by paragraph (e) of this section.

(2) The Principal Supervisory Agent shall terminate a grant of forbearance when an institution is no longer operating in a weak capital condition.

(3) The Principal Supervisory Agent shall notify an insured institution in writing if it no longer qualifies for capital forbearance stating the reasons for the termination. Such termination shall take effect upon receipt of such notification by the insured institution.

(4) Except if termination is contemplated for the reason set forth in paragraph (g)(2) of this section, as an alternative to denying or terminating capital forbearance, the Principal Supervisory Agent may permit the insured institution to revise its plan, and if such revision is approved by the Principal Supervisory Agent, capital forbearance may be granted or continued.

(5) Any action by the Principal Supervisory Agent to terminate capital forbearance is deemed to be final action of the Board or Corporation.

(h) *Status of supervisory, enforcement, and other actions during capital forbearance participation.* (1) While an insured institution qualifies for capital forbearance, the Board and the Corporation shall not issue a capital directive pursuant to 12 CFR 563.14–1, institute supervisory or enforcement action to enforce the institution's capital requirement, or take action to terminate the institution's insurance, or place the insured institution in conservatorship or receivership based on the insured institution's inadequate capital.

(2) Notwithstanding paragraph (h)(1) of this section, the Board and the Corporation will not forbear from taking any appropriate action against—

(i) The insured institution for matters other than inadequate capital, or

(ii) Any individual or entity other than the institution for any matter, including inadequate capital.

(3) All existing supervisory or enforcement actions remain in effect unless lawfully modified or terminated.

(4) All regulations that address, relate to, or include a reference to regulatory capital or net worth remain in effect as before forbearance was granted, unless lawfully modified as applied to a particular institution.

(i) *Procedures.* (1) An insured institution seeking capital forbearance must submit a written request to the Principal Supervisory Agent. Except as provided in paragraph (i)(2) of this section, the request must consist of:

(i) A detailed showing, including documentation, by the insured institution that it is eligible for capital forbearance because it meets the requirements of paragraphs (c) (1) through (4) and (f) of this section; and

(ii) A plan meeting the requirements of paragraph (d) of this section.

(2) The written request for capital forbearance need not include a showing that the region or regions in which the insured institution's collateral value was adversely affected, within the meaning of paragraph (c)(2)(i) of this section, are "economically depressed" unless, within the time frames permitted for requests for additional information under § 571.12(c)(1) of this subchapter, the Principal Supervisory Agent to whom the application was directed, following consultation, where appropriate, with the Principal Supervisory Agent of the Federal Home Loan Bank District in which the region is located, requests such a showing.

(3)(i) Requests for capital forbearance will be processed in accordance with § 571.12 of this subchapter unless within thirty days of the receipt of a properly filed request, the Principal Supervisory Agent notifies an institution that an examination is necessary in conjunction with its request, in which case the request will not be deemed complete until the examination is completed.

(ii) If the request is denied, the Principal Supervisory Agent shall notify the institution in writing and state the reasons for the denial.

(4) Any action by the Principal Supervisory Agent to grant or deny a request for forbearance is deemed to be final action of the Board or Corporation.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29806 Filed 12-31-87; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Part 563

[No. 87-1298]

Individual Regulatory Capital Requirements; Capital Directives

Date: December 22, 1987.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting rules to implement its authority to set and enforce regulatory capital requirements for all institutions the accounts of which are insured by the FSLIC ("insured institution(s)" or "institution(s)"). The Board is adopting these regulations pursuant to the authority granted it by section 406 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 ("CEBA") and pursuant to the Board's general authority to promulgate regulations under 12 U.S.C 1437(a), 1725(a), and 1730.

These regulations implement the authority granted the Board and the FSLIC by section 406 of CEBA to vary the minimum regulatory capital requirements of an individual insured institution as may be necessary or appropriate in light of the particular circumstances of the insured institution. They also establish procedures for implementing the authority granted by section 406 to issue a directive and enforce a plan for increasing an individual insured institution's capital level.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Deputy Director for Capital and Finance, (202) 377–6465, Regulations and Legislation Division, Office of General Counsel; Marianne Roche, Deputy Director, Office of Enforcement, (202) 653–2609; Donald G. Edwards, Director, Financial and Quantitative Analysis, (202) 377–6914, Edward A. Hjerpe III, Financial Economist, (202) 377–6976, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 778–2519, Carol Larson, Professional Accounting Fellow, (202) 778–2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board today is adopting rules to implement the express authority granted to it by section 406 of CEBA to set minimum capital requirements for insured institutions on a case-by-case basis and to issue capital directives mandating capital compliance. These regulations strengthen the Board's ability to require insured institutions to achieve and maintain an amount of capital consistent with sound financial practice and commensurate with the financial risk of loss to which such institutions expose themselves, depositors, and the FSLIC. In August 1986 when the Board adopted its general capital regulation, § 563.13, the Board set forth its analysis of the policy reasons that make adequate capital of critical importance to the safety and soundness of insured institutions and the FSLIC deposit insurance fund.[1]

Those same policies support the adoption of these regulations explicitly giving the Board authority to establish individual capital requirements and to enforce the Board's capital regulations by issuing capital directives. Individually established capital requirements are crucial to ensuring that insured institutions have adequate capital to absorb the risk of loss from their selected business strategies and decisions. Although §563.13 sets forth a type of objective, risk-based capital scheme, no uniform formula can take into account sufficiently the continuously changing financial positions and risk postures of the more than three thousand insured institutions under the Board's supervision.

With the enactment of section 406 of CEBA, which amends both section 5 of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464, and section 407 of the National Housing Act, ("NHA"), 12 U.S.C. 1730, Congress has explicitly empowered the Board and the Corporation to exercise much more discretion with respect to the required capital levels of individual insured institutions.[2] Sections 406(a) and 406(b) provide, in part, that the Board and the Corporation may set the required capital level of an insured institution on a case-by-case basis as it "determines to be necessary or appropriate for such insured institution in light of the particular circumstances of the insured institution." [3]

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determined that it was essential for insured institutions to reach 6 percent capitalization before risk adjustment (increased for concentration of higher credit risk assets and decreased for reductions in interest rate risk) as quickly as feasible, thereby more closely approximating the minimum capital requirements imposed by Federal banking regulators.

On June 10, 1987, the Board proposed to amend the capital regulation to compute industry profitability by using the median return on assets of all insured institutions that are solvent under generally accepted accounting principles instead of using the average return on assets of all insured institutions. 52 FR 23845 (June 25, 1987). The Board wishes to advise all insured institutions and other interested parties that it may adopt this proposal after consideration of comments received either in conjunction with other changes to § 563.13 or by separate Board action.

[2] Section 403(b) of the NHA, 12 U.S.C. 1726(b), provides the FSLIC with express authority to require an institution to provide adequate reserves in a form satisfactory to the FSLIC. This statutory provision gave the Board broad discretion in prescribing such reserves, which could have been set on a case-by-case basis. Section 406 of CEBA, however, provides express authority to do so.

[3] All Federal savings and loan associations and Federal savings banks are chartered and regulated under the HOLA and the regulations promulgated pursuant thereto. Most of these same institutions are also insured by the FSLIC and required to comply with the NHA and its implementing

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[1] On August 15, 1986, the Board adopted its revised regulatory capital regulation (hereinafter, "capital regulation") establishing the levels of capital required for all insured institutions. *See* Board Res. No. 86-857, 51 FR 33565-88 (September 22, 1986), *codified at* 12 CFR 563.13. The Board

Since the passage of section 908 of the International Lending Supervision Act of 1983 ("ILSA"), Pub. L. No. 98-181, 97 Stat. 1278, *codified at*, 12 U.S.C. 3907, the Federal banking regulators have had the explicit authority to set the minimum capital requirements of individual banks on a case-by-case basis. Pursuant to section 908 of ILSA, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Federal Reserve Board ("FRB") have promulgated regulations requiring banking institutions generally to achieve and maintain a minimum acceptable ratio of total capital to total assets of six per cent. and a minimum primary capital ratio of five and one-half per cent of adjusted total assets.[4]

Section 908 of ILSA specifically provides, however, that the bank regulators may "establish such minimum levels of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution." ILSA at 908(a)(2).[5] In accordance with that statutory provision, the implementing regulations adopted by the Federal banking agencies authorize the discretionary exercise of broad power to require different capital ratios for banks. For example, the relevant OCC regulations, 12 CFR 3.1 *et seq.*, set forth examples of instances in which capital ratios higher than the generally applicable ratios may be appropriate; these include the capital ratios for a newly chartered bank, a bank receiving special supervisory attention, or a bank having a high proportion of off-balance sheet risks. 12 CFR 3.10 (1987).[6]

With section 406 of CEBA, which is closely patterned after section 908 of ILSA, Congress has expressly provided the Board and the Corporation with the authority to vary insured institutions' minimum capital requirements on a case-by-case basis. Therefore, in accordance with the authority Congress explicitly conferred in the new legislation and in the interest of the safety and soundness of all insured institutions and the integrity of the FSLIC insurance fund, the Board today is adopting these regulations establishing procedures for increasing the required capital level of any given insured institution as its particular circumstances may warrant.

The Board believes that these rules comport with the congressional mandate, set forth in section 406 of CEBA, that the Board establish minimum capital requirements for insured institutions consistent with the other banking agencies' capital requirements. This new express statutory authority is supported by lengthy congressional hearings and extensive testimony on the public need for effective supervision of FSLIC-insured institutions. In enacting section 406 of CEBA, Congress granted the Board supplemental authority to strengthen its supervisory efforts. Moreover, Congress views this authority as a critical component of the effective supervision of a Federal system of deposit insurance where "capital is the touchstone of financial integrity and guardian of the guarantee of Federal insurance."[7]

The Board notes that the rules it is adopting today are substantially similar to the rules adopted by the OCC, the FDIC, and the FRB to implement their authority to set case-by-case capital requirements and to issue capital directives. The Board has carefully considered those rules, which were adopted in final form after full consideration of public comment, and believes that those rules and their supporting evidentiary records serve as appropriate models for, and provide additional support for, the rules the Board is adopting today.

I. Summary of the Proposed Rule

On October 5, 1987, the Board proposed rules pursuant to section 406 of CEBA to help protect the FSLIC insurance fund and insured institutions' depositors in the wake of the serious financial situation that currently besets the depository insurance system.[8] The Board requested comments on all aspects of the proposal. Furthermore, on November 3-4, 1987, it held a public hearing relating to these and other regulations that it proposed in order to implement CEBA.

The Board is setting forth below a summary of its proposed regulation together with a discussion of the comments received and the Board's modifications made to the proposal in adopting these final rules.

A. Case-by-Case Capital Requirements for Individual Insured Institutions

The Board is adopting § 563.14 pursuant to its authority under section 406 of CEBA to set the capital requirement of Federal associations, or acting as operating head of FSLIC, to set the capital requirements of insured institutions at whatever amounts or capital-to-asset ratios the Board determines to be necessary or appropriate in light of the particular circumstances of the association or insured institution. The power to set such requirements is crucial to the safety and soundness of insured institutions.

The Board's proposed regulation described the proposed procedure for setting individual minimum capital requirements higher than those set forth in § 563.13. It provided for notification to institutions by their Principal Supervisory Agents ("PSA(s)") of their proposed individual minimum capital requirements, subsequent response by insured institutions, and the establishment of individual minimum capital requirements for institutions by their PSAs with the concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS").

The Board proposed to delegate the authority to determine appropriate individual minimum capital requirements for insured institutions to the PSAs because they and their staffs generally are most familiar with the specific financial, economic, and operational characteristics of insured institutions within their districts that may demonstrate a need for increased capital. Under the proposed regulation, the concurrence of ORPOS would be necessary before a higher minimum individual capital requirement could be set because that Office is responsible on the national level for matters relating to the examination and supervision of insured institutions and, through involvement in this process, can promote uniform national application of this authority to set individual minimum capital requirements. In the further interest of consistent national use of this power, the Board stated that it would establish guidelines through ORPOS to control the PSAs' exercise of their delegated authority under proposed § 563.14(b).

The proposed rule also set out examples of situations where higher minimum capital levels may be necessary or appropriate and examples of the factors that the PSAs might consider in deciding upon an appropriate individual minimum capital requirement for an insured institution. The proposed regulation established individual minimum capital requirements and provided that an insured institution would have reasonable opportunity to respond to its notification of a proposed individual minimum capital requirement and to submit any supporting documentation supporting its response.

B. Capital Directives

Also pursuant to section 406 of CEBA, the Board proposed a process for the issuance of capital directives and capital plans enforceable under section 5(d)(8) of the HOLA, 12 U.S.C. 1464(d)(8), or section 407(k) of the NHA, 12 U.S.C. 1464(d)(8), or section 407(k) of the NHA, 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as final cease-and-desist orders issued by the Board or Corporation.[9] These capital directives and capital plans, similar to cease-and-desist orders, may be enforced through petition to the appropriate United States district court or through the imposition of civil money penalties of up to $1,000 a day against the institution or against any officer, director, or employee/agent or other person participating in the conduct of the affairs of an institution that violates the directive or the plan. *See* 12 U.S.C. 1464(d)(8) and 1730(k).

Because of the powerful and sensitive nature of formal enforcement powers, the Board wanted to ensure that its capital directive authority was used in a uniform manner nationwide and with adequate and appropriate attention to the rights of the institutions involved. In order to ensure judicious use of this authority, the Board proposed to establish a written hearing process, which would begin after referral of a case by a PSA. Then, the Office of Enforcement would initiate the process of issuing a capital directive by notifying an insured institution of the Board's intent to issue a directive, would provide an opportunity for the institution to respond, would review the institution's response to that notification, and in coordination with ORPOS would make a recommendation for final Board action. The Board explained the involvement of these two offices by stating that the Office of Enforcement has specialized knowledge and unique expertise in the use of the Board's formal enforcement powers and that ORPOS has parallel experience and expertise concerning the examination and supervision of insured institutions. The Board proposed to reserve for itself the final decision to issue a capital directive in proposed or modified form.

II. Summary of Comments; Response To Comments

The Board received 54 comments on its proposed regulation to implement its authority to set capital requirements on an institution-by-institution basis and to issue capital directives. These comments were received by letter and through testimony at the Board's hearing on the proposed regulations under CEBA held on November 3–4, 1987. Comments were received from 33 insured institutions, 14 trade associations, 1 economic consulting firm, and 3 law firms. Of these comments, 8 supported the proposed regulation and 9 opposed the proposal. The other 37 addressed specific problems with the proposal or made specific recommendations. The Board has also considered as part of this rulemaking the 26 comments received in response to the Board's proposal in May 1987 to impose individual capital requirements as part of the classification of assets regulation,[10] a provision that was deleted from the classification of assets regulation under CEBA that the Board adopted yesterday.[11]

A. Individual Minimum Capital Requirements

Delegation, Guidelines, and Appeals

A large number of commenters expressed their views on the appropriate roles of the Board, ORPOS, and the PSAs in setting individual capital requirements for insured institutions. Some strongly urged the Board to retain its responsibility to review PSAs' actions to ensure that the power to set individual minimum capital requirements is used uniformly across the country under a fair, national policy. Some of these commenters opposed any delegation to the PSAs because it would allow them to act unfairly, excessively, and arbitrarily without Board oversight for consistency and abuse of discretion. Other commenters felt that the capital scheme under § 563.13 established objective national criteria and that the power to set individual capital requirements was unnecessary because the PSAs already have adequate authority to control institutions' capital levels.

A substantial number of commenters stated that this Board review should be provided by establishing a process for institutions to appeal to the Board decisions by the PSAs setting individual minimum capital requirements or ruling that changed circumstances justifying modification do not exist. Several commenters specifically endorsed the concept of an appeal to the Board if the individual capital requirement imposed by a PSA would increase an institution's capital requirement by some threshold amount, usually 100 basis points. Some said that ORPOS involvement was not adequate retention of Board review authority and did not substitute for an appeal. Other commenters exhorted the Board to continue its efforts to increase the level and quality of the field examination and supervisory staff because that is the best way to ensure that the system of individual capital requirements for institutions is fairly and effectively utilized.

On the other hand, a substantial number of commenters supported the Board's delegation to the PSAs of the authority to set individual minimum capital requirements with the concurrence of ORPOS, as a national oversight authority, in individual determinations. Others objected to ORPOS involvement on the national level in individual decisions that should be made by the PSAs at the Federal Home Loan Bank level. A number of commenters holding either of these opinions expressed strong views that the power to set individual capital requirements must be a flexible, effective tool for the PSAs to use in conjunction with their other examination and supervisory efforts. These commenters said that Congress intended this new power to be used in an efficient, flexible manner in dealing with the myriad problems facing the Board and the FSLIC that must be addressed promptly and effectively in

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regulations. Federal savings banks that are insured by the Federal Deposit Insurance Corporation are encompassed within the definition of insured institution in § 561.1, unless expressly exempted by a specific regulation. The Board as the regulatory authority under the HOLA and as the operating head of the FSLIC under the NHA is implementing identical provisions of section 406 of CEBA regarding Federal associations and insured institutions, as with its current capital regulation, by adopting these regulations for all insured institutions (including Federal associations) under its insurance regulations.

[4] The Board is aware that these banking regulators have recently proposed to revise their minimum capital requirements to include risk-based capital guidelines. The Board intends to monitor closely the progress of these regulatory initiatives, consistent with the intent of section 406 of CEBA.

[5] The legislative history of section 908 of ILSA demonstrates that it was a specific legislative response to a judicial decision that brought into question the authority of a Federal bank regulator to establish an individualized minimum capital requirement for a particular bank. *See First National Bank of Bellaire v. Comptroller of the Currency*, 697 F.2d 674 (5th Cir. 1983).

[6] *See also* the regulations of the FDIC at 12 CFR 325.1 *et seq.* and the guidelines of the FRB at Appendix A to 12 CFR Part 225.

[7] 133 Cong. Rec. S11,208; S11,210 (daily ed. August 4, 1987).

[8] Board Res. No. 87-1045, 52 FR 39105 (October 5, 1987).

[9] A major difference between these capital directives and plans and cease-and-desist orders is that cease-and-desist orders may be issued only by consent or after notice and a hearing on the record. Capital directives may be issued by consent or in accordance with § 563.14a, which establishes a written hearing process which is not required by statute.

[10] Board Res. No. 87-527, 52 FR 18368 (May 15, 1987).

[11] Board Res. No. 87-1298 (December 21, 1987).

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the interest of safety and soundness. Many of these commenters recognized that such individually established capital requirements can effectively supplement the general capital scheme established under § 563.13 by tailoring capital requirements to deal with the risk exposure from the tremendously diverse financial and operational situations of over three thousand institutions.

A large majority of commenters, including both those supporting the proposed regulation and those addressing specific problems with the proposal, stressed that fair and effective implementation and use of the authority to set individual minimum capital requirements depends on the Board's development of specific guidelines to be applied by the PSAs in setting such individual minimum capital requirements. Some commenters also expressed detailed objections to the use of certain terms and criteria, particularly criteria appearing to overlap with the components of § 563.13. Many of these commenters said that the Board must develop such guidelines to define terms, quantify criteria, and give specific details to implement the general standards contained in the proposed regulation. They said that such guidelines are essential for the Board to ensure fair, uniform use of the power to set such capital requirements by the PSAs under ORPOS and Board oversight. This was the major criticism of the regulation by many commenters, who appeared to favor, or at least not to oppose, the proposal if such guidelines were adopted. One commenter said that Congress contemplated that the Board would adopt such specific standards through this rulemaking and that the Board should not adopt a final rule until it had been reproposed with specific criteria. Some said that demanding additional capital would be unnecessary and redundant because of the capital required by § 563.13 and the valuation allowances reserved against assets requiring classification.

After carefully considering these comments, the Board has decided to fulfill its oversight responsibilities and to promote system-wide uniformity by developing, through ORPOS, comprehensive guidelines for the setting of individual minimum capital requirements and by requiring ORPOS concurrence in the setting of such requirements until guidelines have been developed and implemented to the Board's satisfaction. The Board also will closely monitor PSAs' use of this authority through the ORPOS oversight function.

Exercise of the Board's oversight authority in this way insures a fair process while enabling the PSAs to use the power to set individual capital requirements as the strong, flexible tool able to deal with the varied and unique circumstances of insured institutions, thereby supplementing PSAs' other examination and supervisory efforts, as Congress intended in adopting section 406 of CEBA. Furthermore, this regulation, including the list of criteria justifying imposition of such a capital requirement and the factors for consideration, is closely patterned after those adopted by the Federal banking regulators in implementing virtually identical statutory authority under ILSA.

The guidelines written by ORPOS will provide more specific details and definitions of the criteria so as to allow enhanced business planning by insured institutions with reasonable certainty of the regulatory capital ramifications of alternative business decisions. Section 563.14 has been modified to eliminate certain provisions expressly overlapping components of § 563.13. The guidelines, moreover, will also clarify that additional capital will not be required under § 563.14 for the risks adequately addressed by § 563.13.[12] Establishment of these guidelines together with the Board's monitoring of PSA use of the power to set individual capital requirements will constitute the key method by which the Board will oversee fair, uniform use of this authority in conformance with sound national policies. These guidelines must be flexible and be continuously updated to deal effectively with the many changing problems confronting insured institutions and the FSLIC.

Commenters devoted substantial discussion to the question of who should have the power to set individual capital requirements and why the Board's involvement is needed either through making the initial decisions or by reviewing such decisions upon appeal. In response, the Board notes that Congress gave it the explicit authority to set individual capital requirements for use in a flexible and efficient manner in conjunction with the Board's other supervisory tools in addressing the varied problems presented by diverse institutions posing serious threats to the safety and soundness of themselves, depositors, and the FSLIC deposit insurance system. In 1985, the Board transferred its examination staff to the Federal Home Loan Banks under the authority of the PSAs, which traditionally performed the Board's supervisory function. As recognized by commenters, since this transfer the Board has devoted great attention to increasing the size and improving the quality and training of these staffs. The Board undertook this major staff enhancement effort because it has vested the PSAs and their examination and supervisory staffs with primary responsibility for the crucial mission of conducting the Board's examination and supervisory efforts in order to ensure the safety and soundness of insured institutions, depositors, and the FSLIC insurance fund. Therefore, the Board strongly believes that the PSAs and their staffs must be authorized within the Board's guidelines and under Board oversight to use the power to establish individual capital requirements in conjunction with other examination and supervisory actions in furtherance of this mission.

This process fulfills the Board's legal responsibilities without providing for appeals to the Board because it ensures that the power to set individual capital requirements will not be used in an arbitrary and capricious manner and that there is no abuse of agency discretion. Contrary to the assertions of some commenters, a formal appeal mechanism (which, according to some comments should involve an adjudicatory administrative hearing on the record) is not needed to prevent arbitrary and capricious action or an abuse of agency discretion. Accordingly, the Board has decided that an appeal to the Board would not increase insured institutions' protection from unfair, unequal treatment in exercise of this authority but could deter PSA use of this important supervisory tool.

Furthermore, the Board is legally empowered to delegate the exercise of this power and this decision is a logical, reasonable decision in light of the Board's delegation of its other examination and supervisory efforts to the PSAs with the full knowledge of Congress. Moreover, although the Board has carefully reviewed and considered comments received on its proposed delegation of authority, such delegation generally is within agency discretion and is not subject to the notice and comment requirements of section 553 of the Administrative Procedures Act, 5 U.S.C. 553.

[12] For example, interest rate risk is dealt with in § 563.13 through the maturity matching credit for relatively low interest-rate risk exposure as measured by the one-year and three-year cumulative hedged gaps. The granting of such a credit to institutions with relatively low exposure to interest rate risk should not preclude imposition of an increased individual capital requirement on an institution exposing itself and the FSLIC to a high degree of interest-rate risk.

Finally, the Board has determined that the current rulemaking has satisfied the intent of CEBA and that it is consistent with the law and appropriate agency process for the Board to adopt this final regulation and then to develop guidelines providing more specific details. Such guidelines are being developed in part in response to comments received in this rulemaking and will continuously be reviewed and updated to deal with problems facing the Board and the FSLIC. The proposal and adoption of such detailed, supplemental guidelines before final adoption is not legally necessary, is not feasible in light of the guidelines evolving nature, and would add undue rigidity to the process.

State Involvement

Several commenters stated that the proposed regulation violates the dual banking system by establishing minimum capital requirements for state-chartered institutions and issuing directives to such institutions without the solicitation of comments from state thrift supervisors. One commenter asserted that if a state-chartered institution is involved, a PSA must be required to notify and consult with the appropriate state supervisor concerning the issuance of a proposed individual minimum capital requirement (proposed § 563.14(d)(1)), the ultimate decision on the proposed requirement (proposed§ 563.14(d)(3)), the determination of whether there are changed circumstances justifying modification of a proposed requirement, and other decisions throughout the capital directive process. Commenters asserted that such involvement of state supervisors is consistent with section 406 of CEBA because state thrift supervisors already have such a relationship with other federal banking agencies in exercising their identical authority under ILSA.

In response to these comments and consistent with the Board's initial intent, § 563.14 has been revised to provide expressly for solicitation of comments from, and consideration of comments made by, state thrift supervisors when a PSA establishes individual minimum capital requirements for state-chartered, FSLIC-insured institutions. The revised rules also provide that the state thrift supervisors will be advised of final action taken with regard to such institutions.

Reasonable Use of Authority

A number of commenters made recommendations with which the Board agrees in general principle for appropriate use of the authority to set individual capital requirements. The Board is setting forth these recommendations to reflect the Board's general intent for use of this authority. A number of commenters stated that the PSAs must be aware of the current state of the capital markets and the prices for thrifts debt and equity securities when establishing a schedule for thrifts to raise additional external capital. PSAs must also be aware that raising capital through retained earnings of the capital markets takes time and that the feasibility of raising capital and the cost of such capital depends on market demand. Of course, an institution's need for adequate capital is not affected by the feasibility of raising such capital.

Other commenters said that a PSA should base his judgment as to the capital necessitated by a particular type and extent of investment on his evaluation of the institution's overall portfolio, operations, loss record, management, and regulatory compliance record. Some commenters said that institutions should be able to work informally with their PSAs to reach a voluntary agreement before initiation of the formal process to set an individual minimum capital requirement or to issue a capital directive. Commenters said that PSAs should not substitute their determinations for the business judgment of insured institutions. Other commenters said that the PSAs should be cognizant of the effect of regulatory actions on an institution's ability to attract investors and acquirors, particularly the effects on required disclosure under the securities laws.

A number of commenters said that PSAs should inform institutions of the specific causes for setting higher individual capital requirements and that such requirements should "sunset" when the specific causes have been remedied. In response to these comments and to clarify the Board's initial intention, § 563.14 has been revised to require a PSA to notify an institution of the specific cause for imposition of an individual minimum capital requirement and of the remedial action the institution could take to eliminate the need for continued applicability of such a requirement. The Board expects PSAs to terminate individual minimum requirements if an institution has remedied the initial cause for the individual requirement and if no other cause exists justifying the increased capital requirement. The Board will monitor these practices through ORPOS in its oversight role.

Notice and Response Procedures

A number of commenters raised issues regarding the notice-and-response procedure involved when a PSA seeks to issue an individual minimum capital requirement. Some asserted that institutions should have 30 days for response from receipt of the notice of a proposed individual minimum capital requirement, rather than from the date the notice is sent by the PSA. This is consistent with the capital directive process and has been incorporated in the final regulation.

Other commenters stated that the PSA must respond to comments and alternative suggestions made by the insured institution. Commenters recommended that when notice of a proposed increase capital requirement and the documentation supporting the need for that higher capital requirement is sent to ORPOS, it should simultaneously be forwarded to the insured institution along with the notifying letter. The Board has clarified in this regulation its initial intention that the PSAs' decisions address issues raised in the responses received within the response period from the insured institution and the appropriate state thrift supervisor, if a state-chartered institution is involved. The Board believes, however, that providing to institutions the internal memoranda and documentation forwarded by the PSA to ORPOS would be inadvisable, as reflected by the Board's established procedures and disclosure practices for other supervisory or enforcement actions, and also would inhibit to the public's detriment the communication between the PSAs and ORPOS in setting individual capital requirements or between PSAs and the Office of Enforcement and ORPOS in dealing with capital directives.

Some comments made regarding the timeframe and procedures were that 30 days is too short a response period and that this period should only be shortened for sufficient cause. The Board believes 30 days is an appropriate response period for an institution to respond, but has modified § 563.14 to permit the PSA to extend the response period for good cause. The Board also agrees with a number of commenters who said that the response period should not be shortened to less than 30 days without good cause, language actually included in the regulation. The Board, however, disagrees with commenters who stated that the PSA should only be able to set an individual requirement within a certain number of days of an examination or must make a final decision on establishment of an individual capital requirement within a designated number of days (generally 60 days) from receipt of an institution's

response. Both of these suggestions would impose unnecessary rigidity into the process and would not make adequate allowance for the varied circumstances that may be involved in instances where an individual requirement is proposed. Furthermore, it would not provide material benefit to institutions because even if the period for final decision passed, it would only take 30 days to initiate and finalize a new capital requirement. The Board through ORPOS, however, will monitor PSAs' practices in this regard.

B. Capital Directives

A number of commenters stated that by granting capital directives the same force and effect as cease and desist orders, but not providing for an adjudicatory hearing on the record before an administrative law judge, as with cease and desist proceedings, the Board is denying institutions' due process rights in violation of the Constitution.

The Board strongly disagrees with these commenters because they ignore the written hearing process that the Board has established, a process that is not required by CEBA and which is consistent with due process and the administrative procedures of the other Federal banking agencies for issuance of capital directives. This written hearing process has been adopted by the Board specifically for the purpose of giving insured institutions and their state supervisors full notice of the basis for proposed capital directives, the opportunity to respond by presenting their views and supporting documentation contradicting the need for issuance of a capital directive, and a final Board decision addressing the institution's response and setting forth the Board's reasons for issuing the capital directive. Institutions may also submit an alternative plan for increasing their capital. Section 563.14–1 also allows for extension of the response period for good cause. Finally, the rule provides that issuance of a capital directive is a final agency action. In short, by adopting § 563.14–1 the Board is establishing a written hearing process carefully guarding insured institutions' due process rights.

Some commenters expressed concern that because of the drastic effect of capital directives, there should be an intermediate process through which remedial action could be decided upon without formal issuance of a capital directive. In light of this comment, the Board wishes to clarify that the capital directive process is intended to be used in conjunction with other supervisory and enforcement actions by the PSA and the Board. The Board does not anticipate that capital directives will replace existing supervisory and enforcement actions that can be used to achieve the same capital increase. This is particularly true if an institution will consent to such an increase whether through a voluntary supervisory agreement or otherwise.

Other commenters stated their concern about the large number of insured institutions that currently are failing to meet their capital requirements (§ 563.13) and, therefore, could immediately be subject to capital directives. In light of regional economic problems and the Board's forbearance regulation, these commenters asserted and the Board generally concurs that capital directives should be used consistently with the Board's capital forbearance policies.

A few commenters concurred with the simplified procedure for reducing a capital requirement based on positive changes in circumstances but said that the capital directive process should commence again to make the terms of a previously issued directive more severe. This is consistent with the regulation as proposed in that it contemplated an institution's claiming changed circumstances and that would undoubtedly only occur if the institution felt circumstances warranted a lower requirement.

A commenter recommended changing the proposed regulation so that fines for violation of an order may be levied only against the institution and not against individual officers and directors, or alternatively, eliminate such fines altogether. This comment reflects a misunderstanding of the proposal because this rule is not creating the power to assess civil money penalties; rather, this power is derived from the Board's existing enforcement powers under the National Housing Act. This regulation only recognizes that this power exists and would be supported by a violation of a capital directive.

C. Relationship Between This Rule and Other Regulations

The regulation adopted today gives the Board the authority to establish and enforce individual minimum capital requirements and to treat capital noncompliance as an unsafe and unsound practice. In section 404 of CEBA, however, the Congress also mandated a capital forbearance policy. Pursuant to that statutory mandate, the Board is adopting a regulation pursuant to which it will forbear from enforcing its capital requirements if insured institutions that are otherwise financially sound are temporarily unable to meet such requirements for certain statutorily specified reasons.[13] Such institutions' capital requirements under § 563.13 or under § 563.14 would be unaffected by the Board's temporary forbearance from enforcing such capital requirements. It is enforcement of noncompliance with an institution's capital requirement, and not the level of an institution's capital requirement, to which the capital forbearance policy applies.

Pursuant to section 406 of CEBA, the Board is under a statutory requirement to establish minimum levels of capital for insured institutions consistent with the purposes of Section 908 of ILSA and the federal banking agencies' capital requirements. The Board has reviewed the comments submitted on what action the Board should take to implement this statutory mandate and will consider them further in deciding upon any further action to implement section 406 of CEBA.

Pending further Board action regarding § 563.13 the Board intends that this rule will function in tandem with the existing capital regulation, § 563.13. The Board wishes to clarify that all insured institutions are currently required to comply with the Board's capital regulation set forth in § 563.13. Only those insured institutions for which an individual minimum capital requirement has been established, however, would be required to comply with § 563.14.

The Board also wishes to clarify that the arbiter process, which is applicable to the classification of assets, does not apply to the setting of individual minimum capital requirements under § 563.14. This is the case even if the individual minimum capital requirement is based upon an evaluation of the underwriting standards and general overall credit risk of an insured institution's portfolio, or even on the classification of certain assets or results of the adoption or use of the classification-of-assets system. Section 407 of CEBA explicitly states that the arbiter process applies only to subsequent PSA review of individual determinations made by the PSA's staff members regarding appraisals of underwriting collateral, loan classifications, and loan loss reserves or allowances.

As stated above, however, the Board in adopting these regulations has considered the comments made concerning the Board's proposal to establish a process for setting case-by-case capital requirements, which was included in the May 1987 proposed

[13] Board Res. No. 87–1297 (December 22, 1987).

classification of assets regulation, but which has been eliminated from the final classification of assets regulation adopted under CEBA in part because of the authority granted to the PSAs by this regulation.

In addition, as stated in the Board's proposal, the Board is amending the capital regulation, § 563.13, to make clear that references throughout Chapter V of Title 12 to regulatory capital levels or requirements should be deemed to require compliance with §§ 563.14 and 563.14–1, as well as requirements under § 563.13. The Board, however, will carefully examine such references to regulatory capital in numerous regulations and may decide to make technical changes to such requirements to prevent unwarranted burdens on insured institutions effects contrary to the Board's intent and sound public policy.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1987). Therefore, the approximate number of small entities to which the rule would apply are the 1,851 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

The rule would not impose any unnecessary financial, recordkeeping or administrative burden on small insured institutions. The rule would authorize the Board and the Corporation to vary any insured institution's capital requirement on a case-by-case basis, require a plan from any insured institution for capital compliance, treat a failure to comply with a capital requirement as an unsafe and unsound practice, and issue a directive to enforce capital compliance. The rule would treat small institutions in a manner similar to large ones. The safety and soundness of both small and large institutions necessitates adequate capital appropriately adjusted for risk. The amount of capital required, however, is generally proportionate to an institution's level of liabilities and investments. There would be no disproportionate economic or regulatory impact on small institutions.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1256–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.13 by revising paragraph (a) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) *Scope.* This section sets forth the requirement for the maintenance by insured institutions, as defined in § 561.1 of this subchapter, of regulatory capital, as defined in § 561.13 of this subchapter. An insured institution's regulatory capital requirement under this section may be superseded or modified by an individual capital requirement established under § 563.14. Any reference in this chapter of Title 12 to compliance with the capital requirements of § 563.13 shall be deemed to require compliance with this section as superseded or modified by an individual minimum capital requirement established under § 563.14 or by a capital directive issued pursuant to § 563.14–1. Compliance with the requirements of this section and § 563.14, if applicable, shall be deemed to constitute compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

* * * * *

3. Amend Part 563 by adding a new § 563.14 and § 563.14–1 to read as follows:

§ 563.14 Individual minimum capital requirements.

(a) *Purpose and scope.* (1) The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for an insured institution that varies from the requirement that would otherwise apply to the insured institution under § 563.13. Pursuant to 12 U.S.C. 1464(s) and 1730(f), the Board, as operating head of the Corporation, delegates authority to the Principal Supervisory Agents ("PSA(s)") to establish, with the prior written concurrence of the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), such individual minimum capital requirements for insured institutions as are necessary or appropriate on a case-by-case basis in light of the particular circumstances of each insured institution. Under the Board's oversight, ORPOS shall establish guidelines for the exercise by the PSAs of the authority granted by this section to set individual minimum capital requirements in a fair, uniform manner consistent with the Board's national policies.

(2) Upon adoption and satisfactory implementation of such guidelines under the oversight of the Board, the Board may delegate, in all or in part, exclusively to the PSAs the authority to set individual minimum capital requirements in conformance with the guidelines without the requirement for case-by-case concurrence by ORPOS, and the Board subsequently may terminate such delegation. Under such delegation, a PSA's decision would constitute final agency action. After such delegation, ORPOS under the Board's oversight would retain control over the guidelines for PSA action and would oversee implementation of and compliance with the guidelines. ORPOS would continue to be notified of individual minimum capital requirements set by the PSAs.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than those required under § 563.13 may be appropriate for individual insured institutions. Increased individual minimum capital requirements may be established upon a determination that the insured institution's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) An insured institution receiving special supervisory attention;

(2) An insured institution that has or is expected to have losses resulting in capital inadequacy;

(3) An insured institution that has a high degree of exposure to interest-rate risk, prepayment risk, credit risk, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

(4) An insured institution that has poor liquidity or cash flow;

(5) An insured institution growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by § 563.13–1 of this part or other Board regulations;

(6) An insured institution that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or institutions with which it has significant business relationships, including concentrations of credit;

(7) An insured institution with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) An insured institution that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) An insured institution that has a record of operational losses that exceeds the average of other, similarly situated, insured institutions; has management deficiencies; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual insured institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the insured institution;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the insured institution and, if applicable, its holding company, subsidiaries, and affiliates;

(4) The insured institution's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated insured institutions; and

(5) The policies and practices of the insured institution's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) *Procedures*—(1) *Notification.* When a PSA determines that a minimum capital requirement different from that set forth in § 563.13 is necessary or appropriate for a particular insured institution and is in accordance with any guidelines, the PSA shall notify the insured institution in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the insured institution. At the same time, the PSA shall forward to ORPOS a copy of the notifying letter, along with the documentation supporting the need for such a higher capital requirement. The PSA shall also forward the notifying letter to the appropriate state supervisor if a state-chartered insured institution would be subject to an individual minimum capital requirement.

(2) *Response.* (i) The response shall include any information that the insured institution wants the PSA to consider in deciding whether to establish or to amend an individual minimum capital requirement for the insured institution, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The responses of the insured institution and appropriate state supervisor must be in writing and must be delivered to the PSA within 30 days after the date on which the notification was received. The PSA shall then forward a copy of these responses to ORPOS. The PSA may extend the time period for good cause. The time period for response by the insured institution may be shortened for good cause:

(A) When, in the opinion of the PSA, the condition of the insured institution so requires, and the PSA informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the PSA that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the PSA, may constitute a waiver of any objections to the proposed individual minimum capital requirement or to the schedule for complying with it, unless the PSA has provided an extension of the response period for good cause.

(3) *Decision.* After expiration of the response period, the PSA shall decide whether or not he believes the proposed individual minimum capital requirement should be established for the insured institution, or whether that proposed requirement should be adopted in modified form, based on a review of the insured institution's response and other relevant information. The PSA's decision shall address comments received within the response period from the insured institution and the appropriate state supervisor (if a state-chartered institution is involved) and shall state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the institution could take to eliminate the need for continued applicability of the individual minimum capital requirement. The PSA shall send a copy of the recommended final determination to ORPOS, which must concur before the decision becomes effective and is communicated to the insured institution and to the appropriate state supervisor (if a state-chartered institution is involved). The PSA shall provide the insured institution with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the insured institution and setting forth the decision and the basis for that decision. Upon receipt of this decision, the individual minimum capital requirement becomes effective and binding upon the insured institution. This decision represents final agency action.

(4) *Failure to comply.* Failure to satisfy an individual minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individual minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 563.14-1.

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the insured institution's capital adequacy or its ability to reach its required minimum capital level by the specified date, the PSA may, with the concurrence of ORPOS, amend the individual minimum capital requirement or the insured institution's schedule for such compliance. As set forth in paragraph (a)(1) of this section with regard to the initial setting of an individual capital requirement, this authority may also be delegated exclusively to the PSAs without the need for ORPOS concurrence in individual determinations. The PSA may decline to consider an insured institution's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. The PSA shall notify ORPOS of the request and his decision. Pending the PSA's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

§ 563.14-1 Capital directives.

(a) *Issuance of a Capital Directive*—(1) *Purpose.* In addition to any other action authorized by law, the Board, as operating head of the Corporation, after referral of an appropriate case by a Principal Supervisory Agent ("PSA") and based on a recommendation of the Board's Office of Enforcement developed in coordination with the Federal Home Loan Bank System's Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), may issue a capital directive to an insured institution that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on an institution's noncompliance with a capital requirement established under § 563.13, § 563.14, by a written agreement under 12 U.S.C. 1730(e) or 1464(d)(2), or as a condition for approval of an application. A capital directive may order an insured institution to:

(i) Achieve its minimum capital requirement by a specified date;

(ii) Adhere to the compliance schedule for achieving its individual minimum capital requirement;

(iii) Submit and adhere to a capital plan acceptable to the Board describing the means and a time schedule by which the institution shall reach its required capital level;

(iv) Take other action, including but not limited to, reducing the institution's assets or its rate of liability growth, or imposing restrictions on the institution's payment of dividends, in order to cause the institution to reach its required capital level;

(v) Take any action authorized under § 563.13(d); or

(vi) Take a combination of any of these actions.

A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1464(d)(6) and 12 U.S.C. 1730(k), as appropriate, in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final under 12 U.S.C. 1464(d)(2) or 1730(e).

(2) *Notice of intent to issue capital directive.* Upon referral of a case by a PSA, the Office of Enforcement, in coordination with ORPOS, will determine whether to initiate the process of issuing a capital directive. The Office of Enforcement will notify an insured institution in writing by registered mail of its intention to issue a capital directive. If a state-chartered institution is involved, the Office of Enforcement will also notify and solicit comment from the appropriate state supervisor. The notice will state:

(i) The reasons for issuance of the capital directive and

(ii) The proposed contents of the capital directive.

(3) *Response to notice of intent.* (i) An insured institution may respond to the notice of intent by submitting its own compliance plan, or may propose an alternative plan. The response should also include any information that the insured institution wishes the Office of Enforcement to consider and ORPOS to review in deciding whether to recommend that the Board issue a capital directive. The appropriate state supervisor may also submit a response to the Office of Enforcement. These responses must be in writing and be delivered to the Office of Enforcement within 30 days after receipt of the notices. In its discretion, the Office of Enforcement may extend the time period for the response for good cause. The Office of Enforcement may, for good cause, shorten the 30-day time period for response by the insured institution:

(A) When, in the opinion of the Office of Enforcement, the condition of the insured institution so requires, and the Office of Enforcement informs the insured institution of the shortened response period in the notice;

(B) With the consent of the insured institution; or

(C) When the insured institution already has advised the Office of Enforcement that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the Office of Enforcement, may constitute a waiver of any objections to the capital directive unless the Office of Enforcement grants an extension of the time period for good cause.

(4) *Decision.* After the closing date of the insured institution's response period, or upon receipt of the insured institution's response, if earlier, the Office of Enforcement shall consider the insured institution's response and may seek additional information or clarification of the response. Thereafter, the Board, based on a recommendation from the Office of Enforcement developed in coordination with ORPOS, will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified form.

(5) *Service and effectiveness.* (i) Upon issuance, a capital directive will be served upon the insured institution. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the insured institution, unless the Office of Enforcement determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the insured institution has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Board.

(6) *Change in circumstances.* Upon a change in circumstances, an insured institution may submit a request to its PSA for the Board to reconsider the terms of the capital directive or consider changes in the insured institution's capital plan issued under a directive for the insured institution to achieve its minimum capital requirement. If the PSA believes such a change is warranted, the PSA shall forward the request to the Office of Enforcement, which may recommend that the Board modify the institution's capital requirement or may refuse to recommend such action if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

(b) *Relation to other administrative actions.* The Board—

(1) May consider an insured institution's progress in adhering to any capital plan required under this section whenever such insured institution or any affiliate of such insured institution (including any company which controls such insured institution) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such insured institution's progress in meeting its minimum capital requirement (such

as an application under § 563.13–1, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.9–8(g)); and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the Board determines that the proposal would adversely affect the ability of the insured institution on a current or *pro forma* basis to satisfy its capital requirement.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–29867 Filed 12–31–87; 8:45 am]

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12 CFR Parts 563 and 571

[No. 87–1295]

Appraisal Policies and Practices of Insured Institutions and Service Corporations

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a final rule and a statement of policy pertaining to appraisal policies and practices of institutions insured by the FSLIC ("insured institutions") and their service corporations consistent with the requirements of the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. 552. This rule requires the management of insured institutions and service corporations to develop and implement prudent appraisal policies and procedures.

The Board is also adopting a statement of policy to accompany the rule. The statement of policy sets forth certain appraisal standards that the Board recommends to management for consideration in the development of the appraisal policies and procedures required by the rule.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Joan S. van Berg, Attorney, (202) 377–7023, Thomas J. Delaney, Attorney, (202) 377–6417, or Karen O'Konski Solomon, Director, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel; Patricia Rudolph, Visiting Scholar, (202) 377–6766, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Diana Garmus, Policy Analyst, (202) 778–2515, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The soundness of mortgage loans and real estate investments made by insured institutions and their service corporations depends upon the adequacy of the loan underwriting used to support these transactions. An appraisal report is one of several essential components of the loan underwriting process. Accordingly, section 563.17–1 of the Board's regulations requires that the records of a loan secured by real estate include "[o]ne or more written appraisal reports, prepared at the request of the lender or its agent * * * by a person or persons duly appointed and qualified as appraisers by the board of directors of such lender, disclosing the market value of the security offered by the borrower and containing sufficient information and data concerning the appraised property to substantiate the market value of the security described in such report * * *." 12 CFR 563.17–1(c)(1)(iv). To date, standards for compliance with 12 CFR 563.17–1 have been issued in the form of "R" Memoranda by the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") of the Federal Home Loan Bank System. *See e.g.*, ORPOS Memorandum No. R41c (Sept. 11, 1986). In the preamble to its October 2, 1987 proposal on appraisal policies, the Board discussed the history of these appraisal standards. *See* Board Res. No. 87–1040, 52 FR 39070 (Oct. 20, 1987).

On May 5, 1987, the Board proposed to adopt a rule and a statement of policy to incorporate in its regulations appraisal standards to be used by insured institutions and service corporations in complying with regulatory requirements. 52 FR 18386 (May 15, 1987) (the "May proposal"). The May proposal was published with a 60-day comment period that was scheduled to expire on July 14, 1987. On July 14, 1987, however, the Board extended the comment period to September 1, 1987, in order to ascertain the effect of final recapitalization legislation on the proposed rule and policy statement. 52 FR 27219 (July 20, 1987). The Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, was signed into law on August 10, 1987.

Pursuant to section 402(a) of CEBA, the Board is required to establish, by regulation, an appraisal standard for Federal associations "which is consistent with the appraisal standard established by the Federal banking agencies." [1] CEBA, tit. iv, sec. 402(a). Section 402(b) requires that the Board promulgate a regulation establishing an identical appraisal standard for state-chartered, FSLIC-insured institutions.[2] CEBA, tit. iv, sec. 402(b).

CEBA's specific directive that the Board establish appraisal standards by regulation is consistent with the Board's existing statutory mandate to promote home financing according to principles of safety and soundness. Among the paramount purposes of Title IV of the National Housing Act ("NHA") (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29) is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is protection of the FSLIC insurance fund from exposure to undue risk.[3] The appraisal standards rule and policy statement are designed to enable the Board to carry out both statutory objectives.

Moreover, the Board is authorized by sections 403(b) and 407(m) of the NHA to conduct examinations of insured institutions and their service corporations. 12 U.S.C. 1726(b), 1730(m). The Board believes that carefully documented appraisals are essential to an accurate evaluation of the asset portfolio of an insured institution or service corporation. The rule pertaining to appraisal policies and practices of insured institutions and their service corporations therefore comports with the Board's statutory authority to examine and evaluate the asset portfolios of insured institutions and their service corporations.

In light of CEBA's mandate, the Board reviewed its May proposal and concluded that significant modifications to both its structure and content were necessary in order to comply with CEBA's directive in the most effective way. Therefore, on October 2, 1987, the Board withdrew its May proposal. Board

[1] Section 402 of CEBA defines "Federal banking agencies" to include the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

[2] Pursuant to 12 CFR 561.1, the term "insured institution" is defined as a Federal association or a state-chartered, FSLIC-insured savings and loan association. Therefore, an amendment to the Board's regulations governing all insured institutions will implement the statutory amendments to the HOLA and the NHA made by CEBA.

[3] The concern of risk to the FSLIC was also echoed in the Conference Report to CEBA. *See* Joint Explanatory Statement of the Conference Committee, H. Rep. No. 261, 100th Cong., 1st Sess. 164 (1987).

Res. No. 87–1039, 52 FR 39070 (Oct. 20, 1987).

A. Description of the Proposal

On October 2, 1987, the Board proposed to adopt a rule and statement of policy pertaining to appraisal policies and practices of insured institutions and their service corporations consistent with the requirements of CEBA. *See* Board Res. No. 87–1040, 52 FR 39070 (Oct. 20, 1987). When CEBA was enacted, the Federal banking agencies had not adopted any regulations or written standards on appraisals. At that time, the Board's staff learned, through discussions with representatives of those agencies, that the hallmark of the Federal banking agencies' appraisal practices is the placement of responsibility for developing and maintaining adequate appraisals with the management of the regulated institutions.[4] Therefore, in order to comply with the mandate of CEBA, the Board proposed a rule that instructs management to develop, implement, and maintain appraisal policies and practices that are best suited to the needs of the particular institution. With the exception of certain provisions that, at a minimum, must be included in all appraisals, the proposed rule did not set forth the specific indicia of an acceptable appraisal. These provisions required every appraisal to: (1) Be based upon the definition of market value as set forth in the rule; (2) be presented in a narrative format; and (3) contain a prior sales history of the property appraised. With respect to all other aspects of an appraisal, the proposal simply required management to develop and adopt guidelines and to institute procedures pertaining to the hiring and review of appraisers.

Moreover, the proposal provided for certain exemptions to the rule's requirements. It exempted appraisals of existing and proposed one-to-four family properties and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), in compliance with their respective appraisal standards. The proposal also exempted appraisals on commercial and industrial loans that are prepared on the form report approved by the Board.

The proposed statement of policy offered guidance to management concerning relevant and accepted appraisal standards to be considered in developing an institution's appraisal policies and practices.

On October 5, 1987, the Board also voted to hold a public hearing; the hearing was held on November 3 and November 4, 1987. *See* Board Res. No. 87–1048, 52 FR 39154 (Oct. 20, 1987). At the hearing, the Board received oral comments and written submissions on all regulations required under CEBA, including the proposed appraisal rule. With regard to the appraisal rule, ten written submissions were received from participants at the hearing. The written submissions and oral testimony have been considered with the other written comments the Board has received and are summarized below.

B. Discussion of Comments

The Board received a total of 89 comments in response to the proposal, including written statements submitted at the public hearing. The majority of comments (47) were submitted by insured institutions. Of the remainder, 23 were submitted by industry trade associations, 11 by appraisers, 2 by law firms representing insured institutions, 1 by a bank holding company, 1 by an investment banking firm, 1 by a real estate company, 1 by a government-chartered corporation, and 2 by private individuals.

Seven commenters expressed unqualified support for the October proposal. The vast majority of commenters, 49, generally expressed support for the proposal, but suggested various substantive and technical modifications. Only five commenters opposed the proposal, two of whom disagreed that there was any necessity to issue the rule and policy statement. The 26 remaining commenters expressed neither support nor opposition for the proposal, but suggested modifications or clarifications. Although the comment period ended on November 19, 1987, the Board has considered late-filed letters in its efforts to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are discussed more fully below, the Board has determined to adopt the proposal with certain modifications and clarifications.

1. The Appraisal Rule

Compliance With the Mandate of CEBA

Most of the commenters generally supported the proposed rule's shift of responsibility to management to develop and implement prudent appraisal policies and practices. Several commenters noted that the new rule provides management with the necessary discretion and flexibility to enable thrift institutions to be in competitive equality with banks.

Three commenters urged, however, that in order to be consistent with the banks, the Board should not impose any standards on institutions. Two of those commenters argued that to require all appraisals to conform with the standards enunciated in the proposed rule would put thrifts at a competitive disadvantage, which they contended would be inconsistent with CEBA. Three commenters urged the Board to join with the banking agencies to develop common appraisal standards to achieve competitive equality.

Several commenters were pleased that the Board deviated from the R–41c standards that were applicable to all appraisals irrespective of the property type or loan amount. One commenter noted that the R–41c standards are crippling to thrifts and that in fact under such guidelines many institutions delegate the underwriting decision to appraisers. A few commenters were concerned that the new rule is a retreat from the Board's current appraisal standards, the guidelines issued by ORPOS as R–41c. One commenter argued that if a single standard, such as R–41c, does not prevail throughout the thrift industry, institutions will be on an unequal footing with each other. Another commenter argued that in order to take enforcement or supervisory action against an institution, the Board must promulgate specific appraisal guidelines and/or standards.

In light of CEBA's mandate to adopt appraisal standards that are consistent with those of the Federal banking agencies, the Board has determined that it is necessary to revise and restructure its appraisal standards. It is the Board's opinion that the delegation to management of the responsibility to adopt appraisal policies for insured institutions affords flexibility in achieving compliance with this rule. The Board is also of the opinion that its new approach, consistent with the appraisal principles endorsed by the Federal banking agencies, will foster both cost efficiency in the appraisal process and competitive equality with the banking industry.

The shift to management of the burden to develop, implement, and maintain adequate appraisal standards does not signal a retreat from the Board's strong policy in favor of encouraging sound underwriting practices, including appraisal standards. Consistent with this policy and the Board's statutory enforcement

[4] In December, 1987, after the Board issued its proposed rule and policy statement on appraisals, the Federal banking agencies issued guidelines pertaining to real estate appraisal policies and review procedures.

authority,[5] an institution may be subject to enforcement action if it violates any final appraisal regulation or if its appraisal standards do not comport with principles of safety and soundness.

The Board believes that those commenters who argued that the standards enunciated in the proposed rule would be inconsistent with CEBA take an unduly restrictive view of the statute. Although the Federal banking agencies have no regulation on appraisals, in December, 1987, these agencies issued guidelines pertaining to real estate appraisal policies and review procedures. After carefully reviewing these guidelines, the Board is of the opinion that its rule and policy statement adopted today are not inconsistent with the appraisal policies of the banking agencies. In fact, the banking agencies' guidelines contain many of the same components that are included in the Board's rule and/or policy statement. Similar to the practices of banks, in its rule, the Board places the responsibility on management to develop and implement appraisal policies and practices. The Board's rule prescribes specific requirements for appraisals which are clearly permissible under the banking agencies' guidelines. Therefore, the Board's rule is fully consistent with the guidelines issued by the Federal banking agencies. As opposed to banks, the Board is requiring a specific definition of market value and that unless exempted, appraisals be contained in a narrative format. In their guidelines, the banking agencies recommend that banks also utilize a definition of market value. However, while the Board requires a specific definition, the banking agencies allow a market value definition as defined by the major appraisal associations, a definition which may not be uniform. Moreover, the banking agencies do not necessarily require that appraisals be contained within a narrative format. Similar to the standard recommended by the banking agencies that appraisals contain a sales history, the Board's rule includes this requirement.

Adoption of certain specific minimal standards for appraisals will contribute to sound loan underwriting practices and will protect the FSLIC from undue risk. Further, the Board notes that historically, unlike banks, thrift institutions have primarily been involved in real estate lending. On the other hand, banks have traditionally been involved in commercial lending activities, generally with less emphasis on home mortgages, which require different underwriting standards. Therefore, the need for minimal standards for real estate valuations are more critical for thrift institutions than for banks. While the Board leaves to each institution the responsibility to develop its own appraisal policies, for the above-mentioned reasons, the rule sets forth the minimal elements of what in the Board's view would constitute an adequate and fair appraisal.

[5] The NHA provides that the FSLIC may take enforcement action if an institution violates a regulation or if it commits an unsafe or unsound practice. 12 U.S.C. 1730(e). The statute provides a more specific list of items that may justify enforcement action. *Id.*

Responsibilities of an Institution's Directors

The rule specifically solicited comment on whether the board of directors of an institution must formally adopt the appraisal standards and policies developed and implemented by the institution's management. Several commenters supported the directors' involvement in this process, and particularly supported the directors' adoption of the institution's appraisal standards. A few commenters noted that inasmuch as the board has fiduciary responsibilities for the establishment of an institution's policies and overall responsibility for supervising the management of the thrift institution, the board has the obligation to review and approve such policies and procedures of the institution. Three commenters opposed such a requirement; two of these commenters argued that internal auditing by the institution should be sufficient. A few commenters expressed concern as to whether the directors would be involved in the selection, approval, and review of each appraiser hired by the institution. They argued that such a requirement would be burdensome. Moreover, two commenters questioned whether the rule permits the board to delegate to management or a committee of the board the selection, approval, and review of appraisers.

Although the rule explicitly directs the management of an institution to develop appraisal policies, the rule also specifically includes directors and officers within the definition of management. It is the Board's belief that it is incumbent upon an institution's board of directors to ensure that the institution has proper policies and procedures in place, which must include the maintenance of prudent loan underwriting policies. Moreover, the directors have fiduciary responsibilities and are responsible for supervising the overall management of the institution. It is the Board's view, therefore, that in order to fulfill the responsibilities attendant to the position of a director of an institution, the board of directors should consider the appraisal policies developed by management and formally adopt an appraisal policy for the institution. In this regard, the Board has modified the rule and included a provision requiring the board of directors to adopt an institution's appraisal policies.

Further, it is not the Board's intention that the board of directors individually approve each appraiser recommended by management. Rather, the board may delegate such functions to management and remain in compliance with the requirements of the rule. Alternatively, a blanket approval, indicating that the board of directors has approved the hiring of one or more appraisers would also satisfy the requirements of the rule.

Definition of Market Value

The rule includes a definition of market value as adopted by Fannie Mae and Freddie Mac. Six commenters, including two trade associations, argued in support of the definition of market value as set forth in the regulation. They argued that the definition is widely accepted. One commenter contended that the definitions utilized by Fannie Mae and Freddie Mac or by major appraisal organizations would be appropriate.

One commenter, however, questioned whether one market value definition is appropriate for appraisals on all loans and investments. This commenter contended that the definition does not contemplate the variety of property types. In addition, this commenter argued that appraisers should have the flexibility to use other standards so that borrowers are not ultimately denied access to mortgage loans. Moreover, one commenter argued that the Board should permit the use of other opinions of value or sources of information relating to the value of collateral. Specifically, this commenter urged the Board to utilize tax values instead of market value. Further, two commenters recommended that the Board delete the term "probable" from the definition because it makes the definition ambiguous.

As it stated in the proposal, the Board believes that the definition of market value, as adopted by Fannie Mae and Freddie Mac, is an accurate and reliable measure of the economic potential of security property. Moreover, the definition is widely accepted and utilized, and the Board strongly believes that a uniform standard of market value will provide consistency to appraisal reports in the loan underwriting process.

The Board also specifically solicited comment on whether to continue to use the term "market value" in the rule. Two commenters urged the Board to adopt one term for market value to be applicable to all regulations. A few commenters supported the term "market value," inasmuch as this is an appraisal concept; the other suggested term, "fair value," it was argued, is an accounting concept.

With regard to the continuation of the use of market value in this rule, the Board prescribes within this rule the use of the term "market value" as opposed to "fair value." [6] Although the terms "market value" and "fair value" are somewhat similar, the term "market value" is a term that is generally accepted and utilized by the professional appraiser community. On the other hand, "fair value" is a term that is more widely accepted by the accounting profession. To resolve the question of terminology, the Board, therefore, has determined to continue the use of the term "market value" in the rule and policy statement.

Narrative Format

A few commenters supported the concept of the new rule providing for shorter, less detailed appraisal reports for uncomplicated properties. Several commenters suggested that the extent of the appraisal should bear some relationship to the size of the loan. For smaller loans where the lending decision is based on the creditworthiness of the borrower, it was argued that less detail should be required than that which is required when the loan is larger and the real estate is the primary source of repayment. Another suggested that leeway should be provided in the appraisal requirements where the value of the property clearly exceeds the loan amount. One commenter suggested that the Board apply different requirements for institutions with proven experience in land development than those that have experienced problems. A few commenters, however, contended that it should be left to management to ensure that quality appraisal reports, which include complete, well-documented materials, have been performed by the appraiser without also requiring that the report be in a narrative format as set out in the rule.

At the outset, the Board notes that its purpose in requiring the narrative format for appraisals is to ensure that appraisals be sufficiently descriptive to enable a reviewer to ascertain the estimated value reported and the rationale for that estimate. Moreover, to require the appraiser to present the opinions, analyses, and conclusions pertaining to the appraisal of the subject property in such a format should not require the reviewer to go beyond the report or supporting documentation. This format also will enable the reviewer to determine whether the appraisal conforms with the institution's appraisal guidelines and practices and should make any such deficiencies in the report readily apparent to the reader. Further, consistent with the Board's objective to ensure that an institution's lending policies comport with safety and soundness principles, the narrative format will require an institution to be circumspect in its review of appraisals and will provide the institution with documentary evidence as to whether the appraisal conforms with the rule's requirements and the institution's policies and procedures.

The Board also notes that the extent of detail and analysis of the appraisal should be commensurate with the complexity of the real estate appraised. The Board believes that this requirement affords management the discretion to determine the adequacy of an appraisal based upon the characteristics of the collateral appraised. This requirement promotes cost efficiency in the preparation of appraisal reports by permitting management to accept shorter, less detailed, and less costly reports on uncomplicated properties.

Many commenters expressed support for the use of certain form reports in lieu of the provision requiring that all appraisal reports be presented in a narrative format. Under the rule, Fannie Mae or Freddie Mac forms are permitted for existing or proposed one-to-four family and existing multi-family properties, in compliance with the appraisal standards established by those agencies; Board-approved forms are permitted for appraisals on certain non-residential properties. Two commenters noted that the use of Fannie Mae or Freddie Mac reports and Board-approved reports for small commercial and less complicated properties will reduce costs and be more competitive with banks.

Several commenters advocated the use of the Uniform Residential Appraisal Report ("URAR"), a form report prepared by Fannie Mae and Freddie Mac, if completed in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP") either as an alternative to the underwriting standards utilized by Fannie Mae and Freddie Mac, or as a replacement. They contend that the URAR, if completed in compliance with USPAP standards, satisfies professional appraisal standards and is flexible for various uses. One trade association suggested that, for routine properties, if the USPAP standards are incorporated on the URAR form, such an appraisal should be adequate and reliable. Moreover, this commenter noted that Fannie Mae or Freddie Mac appraisal standards are not static and, therefore, additional requirements may be imposed that would be time-consuming and costly. One commenter argued that institutions should not have to conform with the requirements of those organizations that are involved in the secondary mortgage market. Three commenters argued that the Fannie Mae or Freddie Mac standards are far more comprehensive than those required under USPAP. Further, with regard to proposed multi-family properties, one commenter urged that Federal Housing Authority appraisal forms and documentation be included within the scope of the exemption.

For small commercial loans, of approximately $500,000 or less, one commenter contended that the provisions of the rule pertaining to the narrative format required on appraisals are too stringent. This commenter argued that appraisers may require an institution to prepare a "full-blown" report irrespective of the loan amount or use of the property. Such a report, it was argued, is costly and time-consuming for thrifts. Moreover, one commenter contended that for non-residential loans, the regulation should allow appraisers more latitude to follow accepted professional standards if the particular form is not adaptable to the given assignment.

The Board is of the opinion that narrative appraisal reports are unnecessary for certain types of properties. The Board, therefore, continues to encourage the development and use of form reports under certain circumstances. It is the Board's view that this exemption to the narrative format requirement permits the appraiser to exercise discretion in

[6] The Board does not mean to imply that an institution should base its allowances for loan losses on fair value if the appropriate basis for loan loss allowances is net realizable value in accordance with Statement No. 5 of the Financial Accounting Standards Board. Market value as estimated in an appraisal may differ from net realizable value under generally accepted accounting principles. When net realizable value is required, as for example in loan loss allowances on existing credits, certain elements underlying market value must be adjusted, *e.g.*, the discount rate used.

providing reasonable supporting documentation for all value estimates and conclusions. For one-to-four family and existing multi-family properties, with regard to the forms prepared and approved by Fannie Mae and Freddie Mac in compliance with their appraisal standards, the Board has determined that either the Fannie Mae or Freddie Mac appraisal and loan underwriting standards are sufficient, will produce an acceptable and reasonable appraisal, albeit on a form report, and will satisfy concerns of safety and soundness. Although the form report does not include the type of detail and reasoning required in the narrative format, the Board believes that the appraisal standards of either Fannie Mae or Freddie Mac will satisfy the Board's concern that an appraisal contain a reasonable estimate of the value reported and the rationale supporting such estimate.

Similarly, for commercial and industrial loans, the use of a Board-approved form should prove less costly and enable institutions to be more competitive with banks. This is consistent with the Board's intent to promote the use of less detailed reports that are commensurate with the complexity of the property appraised. Moreover, although not subject to a formal rule-making procedure, a Board-approved form will be open to comment by the industry.

With regard to the use of Fannie Mae or Freddie Mac forms for one-to-four family residential properties, the rule states that such forms are not to be used for "proposed tract developments." Two commenters, including a trade association, were unclear as to what constituted a tract development and suggested that the Board clarify or define the term. The Board has carefully reviewed these comments and has agreed, for the purposes of clarification, to include such a definition within the rule and modified the rule accordingly.

Prior Sales History

One commenter strongly endorsed the rule's requirement that an appraisal contain a prior sales history of the property appraised. This commenter argued that this provision will prevent abuse by developers and speculators, and also will provide institutions with the necessary information to be on guard against rapidly escalating values of properties through the use of land flips. One commenter noted that a three-year sales history may be unavailable on the property, and if so, it was urged that a signed statement of the appraiser attesting that such a sales history could not be obtained would be sufficient. A few commenters expressed concern about whether the prior sales history requirement would need to be satisfied if the appraisal was completed on a Fannie Mae or Freddie Mac form report. Moreover, although one commenter questioned whether the prior sales history requirement is consistent with CEBA, in that banks do not have such a requirement, he acknowledged that the requirement is warranted due to the Board's experience with land flip situations and the attendant risk to the FSLIC.

For purposes of clarification, the section of the rule pertaining to exemptions applies to the three components of the rule. Therefore, if a Freddie Mac or Fannie Mae form report is used, the rule's three requirements need not be satisfied. However, the Board recognizes that if such a report is used, the Fannie Mae/Freddie Mac definition of market value would, of course, be required inasmuch as their appraisal guidelines use this definition.[7] The Board notes, however, that neither the Fannie Mae nor Freddie Mac guidelines require a prior sales history. The Board is convinced that the failure to include this one requirement in the Fannie Mae or Freddie Mac guidelines should not make the report less acceptable. It is the Board's view that their guidelines are comprehensive and result in adequate and quality appraisal reports.

The Board notes that in the recently issued guidelines by the Federal banking agencies, banks are recommended to include a sales history within an appraisal. Therefore, consistent with the banking agencies' guidelines and the comments received on this provision, the Board has determined to retain this requirement.

Moreover, if a prior sales history is unavailable, and the appraiser has made reasonable attempts to procure it, the Board is of the opinion that a statement in the appraisal report attesting to that would be sufficient.

Selection of Appraisers

On the hiring of appraisers, one commenter strongly endorsed the proposed rule's advocacy of the use of appraisal companies for one-to-four family residential properties. One commenter, however, contended that it would be a poor industry practice for institutions to hire appraisal companies, in that such companies would likely use students or "legmen," as opposed to professional appraisers, for conducting appraisals.

The Board continues to believe that for one-to-four family residential properties, management may approve an appraisal company in lieu of individual appraisers. It is, however, incumbent upon management to determine that the appraisal company's standards for hiring appraisers are fully satisfactory to the institution. On the approval of appraisal companies, the board of directors or management, if such functions are so delegated, should procure a listing of the hiring qualifications required by the appraisal company and a representative sampling of appraisers' resumes. This sampling should be obtained periodically. Moreover, for clarification, the term appraisal company is only intended to include companies engaged in the business of appraising, with appraisers or staff whose resumes show the company as their primary employer. The rule would not include, however, an occasional source for free lance work or a company that does not use staff appraisers. Further, the Board recognizes that mortgage bankers often provide thrifts with substantial loan business. The Board also notes that mortgage bankers employ appraisers. For one-to-four family residential properties, the Board does not object to the use of appraisals performed by appraisers employed by mortgage bankers provided that the brokerage firm's standards for hiring appraisers are satisfactory to the institution and that the institution is fully satisfied that the brokerage firm's appraisal standards will be in conformance with the institution's appraisal standards.

A few commenters asserted that the rule fails to state that an appraiser be independent from and not have any allegiance to the institution. They argued that such a clarification is necessary inasmuch as it would ensure fair and accurate appraisals. Certainly for those institutions that utilize staff appraisers, this requirement would be onerous and costly. Moreover, the Board would encourage institutions to include in the appraisal a certification that the appraiser has no interest in the property and that compensation for the services performed is not based upon a percentage of the valuation of the property. Similarly, for these same reasons, staff appraisers should be independent from the underwriting staff. These would, in the Board's view, be prudent appraisal practices.

With regard to an appraiser's membership in a professional organization, one commenter contended that such a requirement would be unreasonable for appraisers located in a rural area. Another commenter, however, indicated that the regulation only requires institutions to consider whether an appraiser is a member of a professional organization. The Board also wishes to reiterate that the rule does not require that management only approve appraisers holding any specific appraisal designation or membership in any specific appraisal organization. Instead, management may consider these factors in assessing whether to hire appraisers.

The rule provides management with the responsibility for the selection and approval of appraisers. The responsibility is, therefore, placed on management to hire competent appraisers who will be capable of performing the appraisals for the institution. The appraiser, of course, should be qualified to perform the particular appraisal assignments for which he or she has been engaged. Moreover, an appraiser's experience should be commensurate with the complexity of the assignment.

Institution's Review of Appraiser's Performance

Many commenters expressed concern with the rule's requirement that institutions periodically review all approved appraisers at least semi-annually. Rather than requiring a separate semi-annual review, a few commenters suggested that an institution's review of appraisers should be conducted in conjunction with each appraisal at the time it is submitted. Four commenters, however, noted that banks do not impose such appraisal review requirements. These commenters generally argued that such a requirement is burdensome on management, costly, and duplicative. Moreover, a few commenters noted that an institution may not use all approved appraisers within a six month period, particularly if an institution is involved in nationwide lending. One commenter noted that Fannie Mae only reviews appraisers on a random basis. Another commenter was concerned with the impact of this requirement on small institutions. This commenter asserted that it would be a particular hardship for small institutions.

Several commenters offered alternatives to the six-month review period. One trade association recommended that the six-month requirement be limited to those actively working for an institution. One commenter suggested that only for new appraisers should such a requirement be mandatory. Several commenters suggested that an annual review would be adequate; two commenters recommended that an annual certification that an appraiser complied with the institution's requirements would be satisfactory. Another commenter recommended a two year review for accredited appraisers who are members of a professional association and a six-month or annual review for nonaccredited appraisers.

Two commenters expressed concern as to whether the rule's requirements for appraiser review would be retroactive. These commenters urged that the requirement not be retroactive so that an institution would not be subject to sanctions for unsafe and unsound practices with respect to actions taken before the effective date of the rule. One commenter contended that an adequate appraisal review system will contribute to the soundness of loans and investments.

The Board believes that management is responsible not only for establishing an institution's appraisal policies and hiring appraisers but also for continual oversight of the provision of appraisal services to the institution by fee or staff appraisers. In this regard, it is incumbent upon management to ensure that appraisals consistently report estimates of market value of collateral that adequately support an institution's lending decisions.

After carefully reviewing the comments received and after thorough consideration of the effect a semi-annual review of approved appraisers would have on individual institutions, the Board has decided to continue the requirement of a periodic review, but will require that such review be performed on an annual basis for those appraisers used within the preceding twelve-month period, and has modified the rule accordingly. Of overriding concern to the Board is the fact that such reviews be performed in order to ensure that the institution employs qualified and competent appraisers. The Board leaves to the discretion of management, however, the frequency and type of review to be performed. Further, with regard to the commenters' concern regarding the retroactive effect of the review requirement, the Board emphasizes that all aspects of the rule are effective as of the rule's effective date. An institution, therefore, is not bound by the review requirement until such date.

2. The Appraisal Policy Statement

Impact of Policy Statement on Institutions' Appraisal Policies

The largest number of comments received on any aspect of the proposed rule and policy statement were those that addressed the intended purpose of the policy statement. Twenty-four commenters expressed concern about the role the policy statement would play in future examinations. Many noted that the rule places responsibility on management for the development, implementation, and maintenance of appraisal standards and questioned whether the effect of the policy statement would nullify the intent of the rule. Moreover, although many of these commenters recognized that the policy statement is only intended as guidance, is not prescriptive, and does not carry the force and effect of law, many were concerned that it would be viewed as the standard against which an institution's appraisal policy would be measured. In particular, commenters were concerned that examiners would use the standards contained in the policy statement when reviewing the adequacy of an institution's appraisal policies and practices inasmuch as those standards include many components of R-41c, a standard with which examiners are very familiar. Since examiners tended to support the specific requirements of the R-41c memorandum, a few commenters argued that the examiners would be less receptive to other policies that did not mirror the R-41c approach. Two commenters objected to the inclusion of R-41 standards in the policy statement arguing such standards are not competitive with banks.

Many commenters who questioned the intended purpose of the policy statement recommended the adoption of USPAP. Of the twenty-four commenters that expressed concern about the intent of the policy statement, twenty suggested the adoption of USPAP. A few commenters asserted that USPAP is relied on and in general use in the appraisal industry and that to adopt those standards would promote consistency in the profession. One commenter noted that USPAP promotes clarity and standardization in appraisals, facilitates sound underwriting standards, and comports with principles of safety and soundness. One commenter argued, however, against the adoption of USPAP stating that those standards are too vague, too broadly based, and do not deal with specifics on appraisals.

Other commenters, while not specifically calling for inclusion of

[7] The Board also notes that for the Board-approved form report, the definition of market value as set out in the rule will be required.

USPAP in the policy statement, did suggest changes to insure that the criteria contained in the policy statement would not be considered the only acceptable appraisal policy that an institution could adopt. Two commenters suggested that the Board designate alternative appraisal policies, in addition to those standards included in the policy statement, that would be appropriate. Another commenter suggested that the Board list appraisal policies or practices that were not acceptable to the Board. This commenter also recommended that in order to avoid confusion over the impact of a Board-adopted policy statement, the Board merely should issue guidance on appraisal policies, as for example, in the form of R memoranda. Alternatively, in order to eliminate concern about examiners, two commenters suggested that the Board, the Principal Supervisory Agents, or ORPOS approve or disapprove alternative policies that are adopted by institutions. Several commenters contended that the policy statement should explicitly state that its requirements are not mandatory and adherence is not necessary if an institution's appraisal policies produce accurate appraisals. Moreover, one commenter suggested that the Board include language that the absence of certain elements of the policy statement in an institution's appraisal policy will not be sufficient to sustain an enforcement action. Further, another commenter proposed that when an institution adopts what it believes are reasonable appraisal guidelines and appraisals are performed in conformance with those guidelines, the Board should indicate to that institution that supervisory actions will not be initiated because of its appraisal policy.

To those commenters who expressed concern over the intent of the policy statement, the Board reiterates that the rule sets forth the minimal elements necessary for sound appraisal practices. The responsibility for developing, implementing, and maintaining appraisal policies and practices that are consistent with prudent loan underwriting and that comport with the principles of safety and soundness is expressly left to the management of each insured institution. Moreover, the policy statement is intended merely as guidance to assist institutions in developing their appraisal policies and practices in accordance with the requirements of 12 CFR 563.17–1. The Board recognizes that factors such as the number and types of loans that an institution makes will dictate the complexity of the appraisal policies and practices that an institution adopts. The policy statement is not intended to be the only approach viewed by the Board as consistent with sound underwriting principles. Insured institutions may also consider the appraisal guidelines recently issued by the Federal banking agencies in developing appraisal policies. Each institution must consider its individual lending activities, and within that context, adopt the components of an appraisal policy that are best suited to the needs of that institution and that also comport with principles of safety and soundness. The Board does not anticipate that every institution's appraisal policy must incorporate every aspect of the policy statement. Some institutions may determine that alternative approaches to appraisal policies and practices are better suited to their lending practices, contribute to sound loan underwriting, and comport with principles of safety and soundness. On the other hand, as the comments indicated, others will find the elements of the policy statement well-suited to their needs. Adherence to the policy statement is not intended by the Board to be the measuring rod against which an institution's appraisal policies and practices are evaluated. The touchstone for evaluating an institution's appraisal policies and practices will be the extent to which those policies and practices comport with principles of safety and soundness.

The Board recognizes the concern expressed by various commenters that examiners will utilize the standards contained in the policy statement when reviewing the adequacy of an institution's appraisal policies and practices. Examiners will be trained to evaluate each institution's appraisal practices and policies in the context of safe and sound loan underwriting. ORPOS is currently developing a training program to educate examiners on all regulatory changes necessitated by CEBA. This process should be in place soon after the promulgation of the regulations required by CEBA.

With regard to the final appraisal rule, examiners will be trained to understand that the requirements regarding appraisals are those contained in the rule itself and that appraisal standards previously issued by the Board or ORPOS are no longer applicable. Because the proposed rule does not contain the specific indicia of an acceptable appraisal, with the exception of certain requirements, examiners will be advised that there is no specific standard to be used in evaluating an institution's appraisal policies and practices. As opposed to applying the elements of the policy statement, examiners will be trained to analyze management's performance in developing, implementing, and maintaining appraisal policies and practices in accordance with principles of safe and sound loan underwriting.

The Board does not believe it is necessary or appropriate to incorporate within the policy statement additional standards that would constitute acceptable appraisal practices. To the extent that the rule sets forth minimal appraisal requirements, leaving responsibility for the development, implementation, and maintenance of appraisal policies and practices to an institution's management, in adopting an appraisal policy, management should not be constrained by any particular approach to appraisal practice. The policy that an institution adopts should be tailored to the particular lending practices of that institution. Furthermore, the Board strongly believes that in developing and implementing an appraisal policy, the underlying goal of management should be the production of appraisals that will support prudent loan underwriting.

Unlike the accounting profession, the practices of which are governed by the standards of one nationally recognized organization, the appraisal profession lacks a similar governing body. As a result, there are no national standards of appraisal practice that are recognized by the entire professional appraiser community. Lacking the ability to make reference to governing standards, the Board is not disposed at this time to include in the policy statement a set of standards of appraisal practice that are not adhered to by the entire appraiser profession. After carefully considering the concerns raised by commenters, the Board has determined that the policy statement will provide the management of insured institutions with sufficient guidance as to the type of considerations that should be addressed when developing and implementing an appraisal policy. The standards followed by any of the representative appraisal organizations can be similarly considered by an institution's management, and if management determines that those standards would ensure safe and sound loan underwriting practices, they can be incorporated as part of an institution's appraisal policy.[8] The Board is also

[8] During the public hearing on November 4, 1987 the panel testifying on the proposed appraisal rule was asked by Board Member White how many professional appraisal organizations exist nationally. In response to that question, William J. Schilling of the law firm of Jones, Day, Reavis & Pogue, responded by citing to an article in *National Thrift News* that there are 73 appraisal organizations in the country. These figures were not disputed by other members of the panel.

Continued

compelled to point out that CEBA requires the adoption of appraisal standards that are consistent with those of the Federal banking agencies, and such agencies have not to date formally approved any standards of the appraiser profession.

Finally, the Board notes that, in discussing below the comments received on the policy statement, the Board has attempted to clarify what the language means so that the statement will be as useful as possible. These clarifications should be interpreted in light of the policy statement's purpose of providing guidance rather than prescribing specific standards.

Various Definitions of Market Value

Commenters also made recommendations for changes to specific aspects of the policy statement. Eleven commenters noted concerns with the various definitions of "market value" in the policy statement. Despite the general support expressed for "market value" as defined in the rule, many commenters were troubled by the hypothetical valuations required by several of the market value definitions included in the policy statement. In particular, concerns were expressed over the definitions of "market value upon completion of construction" and "market value upon reaching stabilized occupancy." According to these commenters, such definitions would require an appraiser to fix a current value estimate to property, the ultimate value of which will be determined by future occurrences or trends. Such values, it was argued, are speculative, hypothetical, unsupported by the market place, and misleading to the reader of an appraisal report. As one commenter explained, market value is an objective value that cannot be supported until market support has been demonstrated at the future date. One commenter stated that in his opinion, the misuse of "market value" data has been one of the basic causes for faulty appraisals. Another commenter pointed out that an appraiser's errors-and-omissions insurance does not provide coverage for future valuations, making appraisers hesitant to perform such estimates. One commenter noted that certain professional organizations prohibit members from estimating hypothetical values. To correct the problems identified with the proposed definitions of market value, a few commenters suggested use of the term "prospective future value;" others suggested deleting those definitions other than "market value as is on appraisal date."

The Board appreciates and agrees with the concerns raised by commenters regarding the various definitions of market value included in the policy statement. To avoid difficulty differentiating between value estimates that require hypothetical valuations and those that reflect value at a certain point in time, the Board has determined that the use of terms other than "market value" would be appropriate to reflect the value of property upon completion of construction and value upon reaching stabilized occupancy. As a result, the definitional section of the policy statement (§ 571.lb(b)) has been modified to include terms that call for appraisals to contain estimates of "prospective future value upon completion of construction" and "prospective future value upon reaching stabilized occupancy." In addition, conforming changes have been made to § 571.lb(c) of the policy statement.

Appraisal Management

A few commenters took issue with the provision calling for a letter of engagement. Two commenters interpreted the policy statement as encouraging a separate engagement letter for each appraisal assignment. They pointed out that such a requirement would be too costly, time-consuming, and cumbersome. One of these commenters suggested that appraisers used frequently could be accommodated via a master engagement letter with separate notification of individual subject property assignments. Additionally, two commenters stated that it should not be necessary to include FSLIC requirements in an institution's engagement letter because under the regulation those requirements should be incorporated within an institution's appraisal policy. For this reason, they recommended the deletion of this provision from the policy statement. Finally, one commenter pointed out that the legal description of property might not be available for a letter of engagement.

It is the Board's opinion that the use of master engagement letters is not inconsistent with the intent of the policy statement. The Board recognizes that master engagement letters may be more efficient for some insured institutions and is, therefore, not opposed to their use so long as institutions take steps to ensure that the engagement letters contribute to sound underwriting practices. Additionally, the Board agrees with those commenters who suggested that it is not necessary to include copies of the rule with the letter of engagement when an institution incorporates the requirements of the rule within their appraisal policy. To the extent that insured institutions are obligated to adopt appraisal policies and practices that are consistent with the requirements of the rule, the Board believes that it is only necessary that appraisers be informed of the requirements of the rule when an insured institution does not reiterate those requirements within their appraisal policy. The policy statement has been amended accordingly.

With regard to the requirement that appraisals be sufficiently current, one commenter questioned whether letter reports could be used to update recent appraisals. The policy statement recommends that appraisals be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made. Addressing this point, one commenter suggested that appraisal reports that are one to two years old may be updated by a letter report as long as conditions affecting the property have not significantly changed. That individual stated that this was a fairly common practice in the appraisal industry.

The Board notes that the policy statement indicates that appraisals should be sufficiently current. In the Board's judgment, it would not be inconsistent with the policy statement for institutions to use letter certifications of value to update appraisals when there have been no material changes in actual market conditions from the time the original appraisal was performed. It is the Board's view that the appropriateness of certifications of value is a matter to be determined by the management of an insured institution in accordance with the circumstances of each loan.

One commenter suggested that appraisals reflect the market value of the rights in "real property" offered as security rather than "realty" as stated in the policy statement. The Board believes the suggested terminology would be more consistent with that employed in the rule and has incorporated this amendment into the policy statement.

A trade association contended that the requirement that appraisals contain a reasonably detailed history of comparable sales used for properties in markets where the sale prices of comparable properties have been increasing or decreasing at a rate faster

than that of the local economy was unnecessary. Although this commenter recognized that this portion of the policy statement was intended to address problems that arise due to non-arms-length transactions, such as land flips, it was pointed out that the definition of market value in the rule should encompass such artificial incentives. The Board appreciates the concerns expressed by this commenter but does not believe that it is necessary to amend this portion of the policy statement. While the definition of market value in the rule is intended to address situations where the price of property has been inflated by artificial incentives, the Board feels strongly that the rule also obligates the management of insured institutions to determine the extent to which a history of comparable sales would enhance their institution's loan underwriting procedures by providing a more accurate indication of the value of the subject property.

One commenter believed that the requirement for reasonable documentation of "highest and best use" was appropriate. Another commenter, however, indicated that such a requirement could prove burdensome because highest and best use studies are not always available on properties. After considering these comments, the Board does not believe that a modification of the policy statement is necessary. The policy statement is merely intended as guidance and the rule leaves to management the responsibility of determining whether for a particular property type, a properly supported estimate of the highest and best use of the property would provide a more accurate estimate of its market value.

Appraisal Content

The policy statement provides that the content of each appraisal accepted by an institution should follow generally accepted and established appraisal practices as reflected in the appraisal standards of the nationally recognized professional appraisal organizations. There was some question, however, on the part of one commenter, as to which organizations would qualify as nationally recognized professional appraisal organizations. That individual suggested that the Board list the nationally recognized appraisal organizations that would be acceptable. As mentioned earlier, the Board has been advised that there are approximately seventy known appraisal organizations and no nationally recognized, uniform standards to which the entire industry adheres. Reflecting the nature of the appraisal profession, and in accordance with the comments received by the Board, the reference to appraisal standards of nationally recognized professional appraisal organizations have been deleted from the policy statement.

Three commenters took exception to the standard in the policy statement that appraisals be self-contained. Two commenters stated that this standard was inappropriate for income-producing properties. Another was concerned that it would be interpreted differently in the various Federal Home Loan Bank districts. A few commenters suggested that the term "totally self-contained" be replaced by a provision requiring that the appraisal "contain reasonable supporting documentation."

After considering the views of commenters on this point, the Board appreciates the concerns expressed by those who fear that this standard may be interpreted in such a manner as to make the production of the appraisal report unnecessarily burdensome. The Board believes it is consistent with the overall thrust of the rule that the policy statement be modified to recommend that appraisals contain "reasonable supporting documentation." What constitutes reasonable supporting documentation is to be determined by management in the context of the property and loan under consideration. The Board would suggest, however, that in order for an appraisal report to be properly reviewed, supporting documentation should be readily available to the reviewer.

Another aspect of the policy statement that was the subject of some comment was the section that a market comparable data analysis of an appraisal include a presentation and explanation of adjustments used in the analysis "together with appropriate market support." Three commenters indicated that this provision would be interpreted in some Federal Home Loan Bank districts as requiring the inclusion of "paired sales," whereby comparable sales having identical factors, with the exception of the one item in question, are compared to show the basis for the market adjustment of that specific item. The commenters asserted that if a paired sales approach is required in order to make a market basis justification for all adjustments from the comparable to the subject property, the demands on submission of supporting data would be impossible. They maintain that an appraiser would be required to document comparable market data to support each adjustment in the sales comparison approach. Furthermore, one commenter concluded that a full history of comparable sales is not always appropriate. Rather than requiring market support for each comparable data adjustment used in the market analysis, the commenters suggested that an explanation in the appraisal report of the adjustments made should be sufficient.

The Board wishes to allay the concerns of those who fear that the suggestion in the policy statement that explanations of adjustments include appropriate market support is intended to encourage the use of "matched pair" analyses. This portion of the policy statement should not be construed as a reference to the use of "matched pair" analyses. Rather, an explanation of the adjustment in conjunction with reasonably available market support is all that would be called for by this provision.

Under the policy statement, appraisals are to contain a summary of actual annual operating statements for existing income-producing properties. If the appraiser is apprised that such information is unavailable, the appraiser should identify this source of information. Two commenters advocated the elimination of this requirement. After further consideration, the Board has determined that as opposed to identifying the source of such information regarding the unavailability of operating statements, appraisers merely should indicate in the report that this information is unavailable. The policy statement has been so amended.

3. Procedural and Technical Comments

Two commenters expressed concern as to the impact of the new rule on the secondary market. These commenters questioned whether the rule might be interpreted to require an institution to obtain new appraisals for each of the properties underlying loan pools in which a purchased mortgage-backed security represents a beneficial interest.

The Board wishes to reiterate that the rule was not intended to apply to participation interests in a mortgage pool. With regard to such interests, the Board notes that 12 CFR 571.13 (1987) specifically exempts institutions purchasing mortgage-backed securities from the record-keeping requirements of the Board's appraisal requirements. Although the Board acknowledges that each purchaser or participant must make its own underwriting decision, reviewing a copy of the originator's underwriting standards should be a necessary part of that decision in order to determine whether the originator's standards are acceptable to the purchaser or participant. Furthermore, an institution also may wish to obtain copies of the underlying appraisals.

One commenter suggested including service corporations within the rule's definition of management. After carefully reviewing this comment, the Board has made a technical revision to the rule to include service corporations within the definition of management.

C. Description of the Final Rule

The final rule begins with the Board's statement of the purpose of the rule. In the interest of safety and soundness, it is incumbent upon management to maintain prudent loan underwriting policies. Appraisals are an essential component of the loan underwriting process because appraisal reports contain the estimates of the value of collateral held or assets owned that lending decisions are based upon. Therefore, under the rule, management would be responsible for the development, implementation, and maintenance of appraisal practices and procedures in accordance with the Board's regulation.

1. Definitions

The definitional section of the rule includes definitions of the few terms that are crucial to the comprehension and application of the appraisal regulation. "Management" is defined as the directors and officers of an institution, or service corporation, as those terms are defined in existing Board regulations. *See* 12 CFR 561.31 and 561.32. This section also includes the definition of "market value," upon which the Board proposes to base estimates of value in an appraisal report. This definition is identical to the definition of market value adopted by Fannie Mae and Freddie Mac.

2. Responsibilities of Management

The rule contains a section entitled Responsibilities of Management that addresses the obligations of management to develop, adopt, and implement appraisal policies. Moreover, the rule has been modified to require the board of directors formally to adopt the institution's appraisal standards. This section emphasizes the Board's view that management should have discretion in establishing appraisal policies; these policies must be designed, however, to ensure that appraisals accepted by the institution reflect professional competence and report estimates of market value upon which the institution's lending decisions can be based. To achieve these results, the rule sets forth three appraisal standards that, at a minimum, must be included in the appraisal policies of every insured institution and service corporation. The accompanying statement of policy also recommends one set of appraisal standards acceptable to the Board that management may consider in fulfilling this responsibility. Institutions are not required, however, to adopt any or all of these standards in developing their appraisal policies.

First, the rule provides that management must require every appraisal to be based upon the definition of market value as set forth in the regulation. As noted above, this market value definition is identical to the definition of market value adopted by both Fannie Mae and Freddie Mac. It contemplates the consummation of a sale as of a specified date and the passing of title from buyer and seller under open and competitive market conditions requisite to a fair sale.

Second, the rule provides that management must require an appraisal to be presented in a narrative format. In this regard, the rule requires an appraisal report to be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value reported and the rationale for that estimate. The analysis of the value estimate reported must be commensurate in its detail and depth with the complexity of the real estate appraised.

Third, the Board believes that the reasonableness of an estimate of the market value of collateral in an appraisal report must be considered in the context of prior sales of the property that occurred in a recent time frame. Therefore, the rule provides that management must require that an appraisal contain a sales history of the real estate appraised. Specifically, an appraisal on a one-to-four family residential property that is not prepared on a form approved by Fannie Mae or Freddie Mac must disclose and analyze prior sales that occurred within one year of the date that the appraisal report was prepared. With respect to all other types of property, the appraisal must disclose and analyze any prior sales of the property that occurred within three years of the date the appraisal was prepared.

The rule also requires management to develop and adopt guidelines and to institute procedures pertaining to the hiring of appraisers. In this regard, it instructs management to consider factors including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in formulating hiring guidelines and determining whether to employ an appraiser.

Moreover, the rule provides that management must annually review the performances of all appraisers used within the preceding 12-month period for accuracy and compliance with the institution's appraisal policies. Additionally, the Board is aware that an institution's underwriting policies and procedures will invariably change over time. Therefore, the Board strongly recommends that management periodically review an institution's appraisal practices to ensure consistency with current underwriting standards.

3. Exemptions

The rule exempts from the appraisal requirements, to be established by management, appraisals on existing or proposed one-to-four family and existing multi-family properties, prepared on the forms approved by Fannie Mae and Freddie Mac, in compliance with their appraisal standards. Although the Fannie Mae appraisal standards are more comprehensive than those of Freddie Mac, the Board has determined that compliance with either set of appraisal standards, in conjunction with the use of approved forms, will satisfy the requirements of the rule.

This section of the rule also exempts from the appraisal requirements to be established by management any appraisals on commercial and industrial loans that are prepared on a form report approved by the Board and completed in accordance with accompanying instructions.

D. Description of the Statement of Policy

The Board believes that the management of insured institutions and service corporations is best qualified to develop appraisal policies that meet the needs of their institutions. Management's policies will be measured according to whether they comport with principles of safety and soundness. The policy statement is intended to serve as guidance as to what constitutes adequate appraisal standards. The Board is not suggesting, however, that only these standards would be acceptable. An institution could adopt appraisal policies different from those set forth in the policy statement and still be consistent with principles of safety and soundness, so long as such policies are designed consistently to produce fair and accurate appraisals.

It is the Board's opinion that compliance with the appraisal standards contained in the policy statement will result in appraisals that report reliable

estimates of collateral value upon which institutions can base lending decisions. The Board may periodically update or modify the appraisal standards contained in the policy statement to ensure that such standards remain current.[9]

E. Effective Date

The Board is adopting this regulation and policy statement effective January 7, 1988. The Administrative Procedure Act ("APA") prescribes publication of a substantive regulation not less than 30 days before its effective date. This delayed effective date does not apply when an agency otherwise prescribes "for good cause found and published with the rule." 5 U.S.C. 553(d)(3) (1987). CEBA requires implementation of this regulation no later than January 7, 1988. CEBA, tit. iv, sec. 402(d). Moreover, the provisions of the APA pertaining to notice and comment do not apply to statements of policy. 5 U.S.C. 553(b)(A). Therefore, the Board finds that "good cause" exists to dispense with a delayed effective date for both this regulation and the accompanying policy statement.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions. The final rule treats all institutions identically regardless of their size for the reasons discussed fully in **SUPPLEMENTARY INFORMATION.** To do otherwise would be fundamentally inconsistent with the objectives of the rule. Moreover, all institutions, including small ones, should benefit from the safety and soundness resulting from investments in loans secured by property that has been valued in compliance with the revised appraisal standards set forth in the final rule. Further, inasmuch as the intent of the final rule is to require all institutions to adopt and maintain sound underwriting standards, including adequate appraisal standards, there is no disproportionate or adverse impact on small institutions. Small institutions are expected to benefit from this rule, due to the latitude provided to the management of insured institutions to develop standards consistent with their institution's actual lending operations.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.17–1a to read as follows:

§ 563.17–1a Appraisal policies and practices of insured institutions and service corporations.

(a) *Introduction.* The soundness of an insured institution's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§ 563.17–1 and 563.17–2 of this subchapter.

(b) *Definitions.* For purposes of this section:

(1) "Management" means: The directors and officers of an insured institution, or service corporation of such institution, as those terms are defined in §§ 561.31 and 561.32 of this chapter, respectively;

(2) "Market value" means: (i) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (A) Buyer and seller are typically motivated; (B) both parties are well informed or well advised, and each acting in what he considers his own best interest; (C) a reasonable time is allowed for exposure in the open market; (D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(ii) Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institution lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

(3) "Proposed tract development" means a project of five units or more that is planned and constructed as a single development.

(c) *Responsibilities of management.* An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which institutions may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the institution's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall include, but are not limited to, all of the following requirements.

(i) Appraisals shall be based upon the definition of market value as set forth in paragraph (b)(2) of this section.

(ii) Appraisals shall be presented in a narrative format. An appraisal shall be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate. The analysis of the market value estimate reported shall be commensurate in its detail and complexity with the complexity of the real estate appraised.

(iii) Appraisals shall disclose, analyze, and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(A) For one-to-four family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property, three years preceding the date when the appraisal was prepared.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the insured institution. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in determining whether to employ an appraiser.

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the institution's appraisal policies and procedures; and (ii) the reasonableness of the value estimates reported.

(d) *Exemptions.* The requirements of paragraph (c)(1) of this section shall not apply with respect to:

(1) Appraisals on existing or proposed one-to-four family and existing multi-family properties prepared on forms approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in compliance with the appraisal standards approved by those agencies. This exemption does not apply to proposed tract developments; or

(2) Appraisals on nonresidential properties prepared on form reports approved by the Board and completed in accordance with the applicable instructional booklet.

PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.1b to read as follows:

§ 571.1b Appraisal policies and practices of insured institutions and service corporations.

(a) *Purpose.* The purpose of this section is to offer to the management of insured institutions and service corporations the Board's views on appraisal policies and practices that comport with principles of safety and soundness. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law. Therefore, insured institutions and service corporations may adopt appraisal standards different from those set forth in this section and still be consistent with the principles of safety and soundness required by § 563.17–1.

(b) *Definitions.* For purposes of this section:

(1) "Management" shall have the meaning given in § 563.17–1a(b)(1) of this subchapter.

(2) "Market value" shall have the meaning given in § 563.17–1a(b)(2) of this subchapter.

(3) "Market value as is on appraisal date" means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date the appraisal is prepared;

(4) "Market value as if complete on appraisal date" means the market value of a property with all proposed construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants;

(5) "Prospective future value upon completion of construction" means the prospective future value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date;

(6) "Prospective future value upon reaching stabilized occupancy" means the prospective future value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

(c) *Appraisal management.* Management is obligated by regulation to take reasonable steps to ensure that all appraisals used to support credit and investment decisions report accurate values upon which to base lending decisions. Acceptable appraisals may include the following features:

(1) Management should provide appraisers with a letter of engagement that contains a legal description of the property, the interest to be appraised, the different value estimates requested, copies of the institution's written guidelines, and a copy of the Corporation's rule, if the rule's requirements are not specifically included within the institution's appraisal policies. Management should attach to the letter of engagement information pertinent to the property that is necessary to comply with these requirements to the extent that this information is available. Such information should include, but is not limited to, financing data, leases, purchase agreements, and profit and loss statements of the security property;

(2) Appraisals should be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made;

(3) Appraisals should reflect the market value of the rights in real property offered as security or as part of the transaction. All other values or interests appraised should be clearly labeled and segregated, *e.g.*, value of chattels, value of financing terms.

[9] The Board notes that section 407 of CEBA requires it to issue supervisory guidelines "establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent with reflecting underlying values." Section 407 also requires the Board to create an informal procedure for review of certain appraisal decisions. The Board is studying how best to implement these requirements, and expects to issue the necessary guidelines and establish appropriate procedures shortly. It plans, however, to accomplish these objectives through action separate from this rulemaking.

business value, furnishings, fixtures, and equipment value;

(4) Appraisals should report the cost, income, and sales comparison approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more approaches to such value;

(5) Appraisers should analyze and report in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised if such information is available to the appraiser in the normal course of business;

(ii) A history of comparable sales used when the comparable sales properties have been sold several times during a brief period of time or when prices of comparable properties have been increasing or decreasing at a rate that is not typical for the local real estate market.

Such sales analysis should cover the time period of the multiple transactions and address artificially altered sales prices;

(6) An appraisal of a proposed project, improvement, or change in use should be based upon the most recent plans and specifications. If material changes in the plans and specifications could significantly reduce the estimated collateral value after a loan or investment decision has been made, management should take steps to ensure that a current estimate of value is established based on the final plans and specifications for the project. This may be satisfied by having the original appraiser recertify his value or by obtaining a new appraisal based on the final plans and specifications;

(7) Appraisal reports should contain a properly supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (b)(2) of this section. Such estimate should be prepared whether or not the proposed use of the property is in fact the highest and best use. This highest and best use estimate should consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal should consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser should specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses should be presented in sufficient detail to support the appraiser's forecast of the probable success of the proposed use and should indicate whether this is in fact the highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone other than the appraiser, the appraiser should set forth the reasoning and rationale for accepting or rejecting that study, or any portion thereof;

(8) Appraisals on all properties should report an estimate of "market value as is on appraisal date" as that term is defined in paragraph (b)(3) of this section.

(9) Appraisals on all properties wherein a portion of the overall real property rights or physical assets would typically be sold to their ultimate users over a future time period should report the following estimates of value: (i) "market value as is on appraisal date" as defined in paragraph (b)(3) of this section; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; and (iii) "prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section. Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those that reflect all expenses associated with the disposition of the real property as well as the cost of capital and entrepreneurial profit;

(10) Appraisals on all properties for which anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion should report the following estimates of value: (i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section; (ii) "market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section; (iii) "prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section; and (iv) "prospective future value upon reaching stabilized occupancy on the date of stabilization" as defined in paragraph (b)(6) of this section. Such valuations should fully reflect the anticipated pattern of income and pertinent operating expenses during the absorption period as well as the impact upon the value estimates of rental and other concessions;

(11) Appraisals should reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All analyses involving fractional interests in the real estate, where the combined value of all interests on estates is not reported, should establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.

(d) *Appraisal content.* The content of each appraisal accepted by an institution should follow generally accepted and established appraisal practices. Specifically, each appraisal should:

(1) Contain reasonable supporting documentation, with no pertinent information withheld, and not misleading so that when read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported;

(2) Unequivocally identify, by legal description or otherwise, the real estate being appraised as this information is provided to the appraiser by management (management is obliged to ensure, prior to funding, that the appraised real estate is described in a manner consistent with the description found in the institution's evidence of debt or encumbrance);

(3) Identify the property rights being appraised;

(4) Describe all salient features of the property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (b)(2) of this section;

(6) Set forth the effective date(s) of the value conclusion(s) and the date of the report;

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to sales comparable data analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with appropriate market support.

(9) Contain a summary of actual annual operating statements for existing income-producing properties made available to the appraiser by the lender and/or borrower, together with a supported forecast of the most likely future financial performance. If the appraiser is told that actual operating statements are unavailable, the appraiser should so indicate. The appraiser should report current rents and current vacancies;

(10) Set forth all material assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's certification (i) a statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved; (ii) a statement indicating whether or not the appraiser made a personal inspection of the subject property; and (iii) a statement indicating that to the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the appraisal standards of the institution.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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12 CFR Parts 563 and 571

[No. 87-1294]

Troubled Debt Restructuring

Date: December 21, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and statement of policy.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") is amending its regulations governing institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") by adopting a rule and statement of policy to clarify that insured institutions have been permitted and may continue to account for troubled debt restructurings ("TDRs") in accordance with generally accepted accounting principles ("GAAP"). The rule states that the Bank Board permits institutions to restructure troubled loans in compliance with Statements 5 and 15 of the Financial Accounting Standards Board ("FASB-5" and "FASB-15") and to account for the effects of such restructurings as provided in those statements. The policy statement summarizes the accounting principles applicable to TDRs and sets forth reporting requirements for institutions that engage in such restructuring.

EFFECTIVE DATE: December 31, 1987. Insured institutions should apply the rule and policy statement on all reports filed with the Board for periods ending on or after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director, (202) 377-6445, or Christina M. Gattuso, Acting Regulatory Counsel, (202) 377-6649, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or W. Barefoot Bankhead, Professional Accounting Fellow, (202) 778-2538, or Carol Larson, Professional Accounting Fellow, (202) 778-2535, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In recent years, a number of borrowers have been unable to meet the original terms of loans they have received from thrift institutions. As a result, in order to obtain any recovery from such a borrower, a thrift may have to renegotiate the terms of the loan. In some instances, this renegotiation may result in the thrift's accepting terms it normally would not accept for similar loans with similar risks. These may include a lower interest rate or even no interest, a reduction in principal, a lengthier term to maturity, a transfer of assets from the borrower, the substitution or addition of a new borrower, or some combination of these terms. This renegotiation is known as troubled debt restructuring. FASB-15 defines TDR as a situation in which a "creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor which it would not otherwise consider."

In the past, the Bank Board has permitted institutions to use TDR. *See* Federal Home Loan Bank Board, Capital Forbearance Policy For Insured Institutions, 52 FR 6876 (March 5, 1987). In the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat. 552, Congress instructed the Bank Board to allow an institution that used TDR in accordance with FASB-15 for any of its loans to account for those loans in accordance with FASB-5 and FASB-15. CEBA, secs. 402(a), (b). FASB-5 discusses loss contingencies and sets forth guidance concerning the point at which a loss must be recognized because an asset has been impaired or a liability has been incurred. FASB-15 governs the accounting treatment of a TDR. Using TDR, an institution may be able to restructure its loan portfolio to maximize its possible recovery on troubled loans.

On October 5, 1987, the Bank Board adopted and published for public notice and comment a proposed rule and statement of policy on "Accounting for Troubled Debt Restructuring" to be codified as 12 CFR 563.23-4 and 12 CFR 571.18, respectively. Board Res. No. 87-1046, 52 FR 39112 (Oct. 20, 1987). The proposed rule reaffirmed that the Bank Board permits institutions to use TDR in order to maximize their possible recovery on troubled loans and to account for those transactions in accordance with FASB-5 and FASB-15. The accompanying proposed statement of policy further clarified what constitutes a TDR and when, how, and where a TDR should be reported.

Summary of Comments

The Board received a total of twenty-six written comments on its proposed rule and policy statement on troubled debt restructuring. Several of these commenters also discussed the issue at the Board's public hearings,[1] as did

[1] The Board's TDR proposals were part of a package of proposals issued in accordance with the CEBA. When it adopted these proposals, the Board announced its intention to hold public hearings on the issues the proposals raised. *See* 52 FR 39154 (Oct. 20, 1987). These hearings were held on November 3 and 4, 1987.

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other participants at those hearings. Written comments were received from fourteen thrift institutions, ten trade associations, the staff of the FASB, and one law firm. The commenters generally supported the Board's efforts to increase awareness that thrift institutions can use troubled debt restructuring. Two commenters suggested, however, that the Board delay any action on TDR pending FASB resolution of ambiguities in the interaction of FASB–5 and FASB–15 and the establishment of a uniform method of determining net realizable value ("NRV") of assets. One commenter supporting the proposal urged that the Board specify that FASB–15 takes precedence over FASB–5 in accounting for restructured loans.

Bank/Thrift GAAP

Commenters discussed several specific issues raised by troubled debt restructuring. First, the Board requested comments on whether thrift institutions should be able to account for TDRs on unaudited financial statements and monthly and quarterly reports to the Board using generally accepted accounting principles as set forth in the American Institute of Certified Public Accountants ("AICPA") Industry Guide for Banks ("Bank GAAP"). The proposal noted that, in contrast to the general accepted accounting principles set forth in the AICPA Industry Guide for Savings and Loan Associations ("Thrift GAAP"), Bank GAAP does not require consideration of an institution's cost of capital (debt and equity) as a holding cost in determining an asset's net realizable value. The Board noted that the portion of the CEBA that instructs the Board to allow thrift institutions to use TDRs in accordance with FASB–5 and 15 does not address this discrepancy although the statutes overall intent was to provide for similar treatment of thrifts and banks. The Board further noted, however, that regardless of what the Board required in unaudited financial statements and reports to the Board, auditors preparing a thrift's annual audited financial statements would use Thrift GAAP in calculating an asset's net realizable value.

Seventeen commenters addressed this issue. Regardless of their position on Bank GAAP or Thrift GAAP, all viewed uniform treatment of banks and thrifts as a desirable goal and urged the Board to work towards such uniformity. Three commenters urged uniformity between banks and thrifts on the issue but did not express a clear preference for Bank GAAP or Thrift GAAP. Approximately two-thirds of the commenters expressing a preference favored the use of Bank GAAP. These commenters focussed on the congressional intent expressed in the CEBA that banks and thrifts be treated similarly for accounting purposes. One commenter argued that use of the more conservative Thrift GAAP could adversely affect thrifts' ability to raise capital because it would result in less favorable accounting numbers than Bank GAAP. Commenters supporting the use of Thrift GAAP argued that discounting the cash flow of an asset held by a thrift at the institution's cost of capital would result in a more accurate economic depiction of an asset's value. One trade association commenter based its support for Thrift GAAP in part on the current interest in this issue on the part of accounting standards setters and the likelihood that the accounting community is likely to move in the near future to bring Bank GAAP into line with Thrift GAAP rather than the reverse. The FASB staff comment noted that the different NRV treatment reflected "longstanding industry practice" and that the AICPA is considering a "comprehensive review of the Industry Audit Guides for financial institutions."

Disclosure

A number of commenters discussed which, if any, financial statements should disclose an institution's TDRs. The proposed regulation provided that counter statements and monthly and quarterly reports to the Board should contain line items disclosing both TDRs in compliance with their modified terms and TDRs not in compliance with their modified terms. Disclosures on annual audited financial statements were to be made in accordance within FASB–15.

All eight of the commenters addressing this issue argued that these disclosure requirements were too broad. Six commenters argued that thrifts should not be required to disclose TDRs on their counter statements. They stated that counter statements did not contain sufficient space for accurate and complete information about an institution's TDRs and thus the disclosure of TDRs would be confusing to the public. Several commenters indicated that disclosures on counter statements would add to an institution's administrative burdens. All of these commenters urged that the Board only require disclosure of TDRs in reports to the Board and annual audited financial statements. One commenter suggested that if the Board believed that disclosure of TDRs on counter statements served a useful purpose, that a "materiality" standard be used and that only TDRs above a certain threshold of total capital or assets be disclosed. This commenter also urged clarification of the scope of required disclosures to carve out items excludable under footnote 25 of FASB–15. Another commenter urged that levels of TDRs be given "confidential" or "non-public" treatment on reports filed with the Board. One commenter urged the Board not to require disclosure of TDRs on any financial reports. One commenter believed that disclosure of TDRs was only appropriate on reports filed for capital market transactions.

Classification

Four commenters addressed the issue of classification of restructured loans. The proposed statement of policy indicated that restructured loans would neither be automatically classified nor automatically exempt from classification. Each loan would be reviewed on its own merits. Two commenters supported this approach. Two commenters expressed the view that only restructured loans not in compliance with their modified terms should be classified and that loans that had previously been classified should be removed from classification upon restructuring so long as they remained in compliance with their modified terms.

Miscellaneous

Several other issues were also raised. One commenter suggested that thrifts be required to negotiate in good faith with borrowers in restructuring loans and be required to provide a report three months after reaching an informal agreement on restructuring. One commenter suggested that the Board incorporate additional explanatory language from the Securities and Exchange Commission ("SEC") release on in-substance foreclosure to clarify the factors to be taken into account in determining when such a foreclosure had occurred.

Discussion

After reviewing the comments submitted, the Board has determined to adopt the rule and policy statement in substantially the form proposed, with the modifications noted below.

First, the Board has determined that thrift institutions should continue to follow the AICPA Guide for Savings and Loan Associations in accounting for TDRs, specifically in determining the net realizable value of assets. The Board notes that regardless of the Board's position on the standard to be followed in preparing unaudited financial statements, accountants preparing a thrift's annual audited statements would follow Thrift GAAP. The Board does not believe that under those circumstances the Bank GAAP numbers in unaudited reports would be useful. The availability of two sets of financial reports showing different calculations could lead to unnecessary confusion about a thrift's condition. The Board notes that even a number of commenters favoring the use of Bank GAAP agreed that Thrift GAAP would provide a more accurate reflection of an asset's net realizable value.

Although the CEBA generally indicates that similar accounting standards, *i.e.*, GAAP, should apply to banks and thrifts, the statute does not deal with areas such as this, where GAAP itself differs between the industries. As noted above, the FASB staff, in its comment to the Board, noted that this difference was the result of "longstanding industry practice." A number of commenters, including some favoring the use of Bank GAAP, noted that it was more likely that the accounting profession would resolve the discrepancy by using Thrift GAAP than Bank GAAP. The Board also notes that the Conference Report accompanying the CEBA expressly contemplates the use of Thrift GAAP in determining an asset's net realizable value. "The use of GAAP allows a loan to be carried at the lesser of cost or either (1) net realizable value (discounted value based on cash flow), or (2) a carrying value in accordance with FASB–15 debt restructuring where the original obligor has remained in place." H.R. Rep. No. 261, 100th Cong., 1st Sess., at 165. Under these circumstances, the Board has determined to require that thrifts follow Thrift GAAP in determining the net realizable value of assets. The Board may revisit this question, however, if the accounting profession does not act to resolve the inconsistent treatment of thrifts and banks.

Second, the Board has determined to remove the requirement that levels of TDRs must be disclosed on an institution's counter statements. The Board agrees with the commenters that such disclosures on the abbreviated counter statements may prove more confusing than helpful to the public audience reading those statements. Such information may prove useful to the Board in reviewing a thrift's financial statements and loan portfolio, however. Therefore, the Board has determined to retain the requirement that levels of TDRs must be reported in a thrift's unaudited monthly and quarterly reports to the Board. The Board notes that banks must report TDRs in the call reports filed with their regulators. The disclosures set forth in FASB–15 must be made on annual audited financial statements as provided in FASB–15.

Third, the Board has determined that loans that have been restructured will continue to be reviewed for credit quality and classified where appropriate pursuant to the Board's classification of assets regulation. A borrower's compliance with restructured terms standing alone may not in and of itself raise the quality of a troubled loan and collateral above a classifiable level. The Board reiterates that TDRs will be reviewed under the same criteria as all other loans in an institution's portfolio and should be neither automatically classified nor automatically exempt from classification. As noted in the proposal, this is consistent with the practice of other financial regulatory agencies.

In response to the suggestion that the Board incorporate additional language from SEC Interpretive Rule 33–6679 on in-substance foreclosure, the Board has added additional language to the policy statement. This additional language is designed to clarify the circumstances of such in-substance foreclosures.

Under FASB–15, a TDR may be reported as such in an institution's reports and financial statements when "consummated." The Board emphasizes, therefore, as it did in its proposal, that it expects that an institution and borrower will arrive at a formal agreement within a reasonable period of time following the start of negotiations. Normally, formal written agreements for restructuring should result within six months from the start of negotiations. Negotiations that continue for a significantly longer period without a final written agreement between the thrift and the borrower may give rise to doubt about whether the loan has actually been restructured. The Board assumes that institutions and borrowers will negotiate TDRs in good faith.

To summarize, the policy statement is intended to clarify: (1) When an institution may account for a loan as a TDR; (2) what constitutes a TDR; (3) that the Bank Board expects thrift institutions to account for all losses that must be recognized under FASB–5 both before and after reporting any loan balance under FASB–15; (4) that FASB–5 must be followed not only in accruing losses that have occurred but also in making adequate disclosure of loss contingencies; (5) that, in accordance with FASB–15, any property received by the thrift institution in full or partial payment of a loan, including repossessions in substance, must be accounted for at fair value; (6) that TDRs must be reported in a thrift's monthly and quarterly financial reports, and in these reports and in audited financial statements disclosures must be in accordance with FASB–15; and (7) that TDRs will neither be automatically classified, nor automatically exempt from classification, but will be reviewed under the same criteria as all other loans in an institution's portfolio.

Pursuant to 12 CFR 508.14, the Board finds that a thirty-day delay in the effective date would be unnecessary and contrary to the public interest. The CEBA mandates that regulations be promulgated no later than January 7, 1988. Although the reports for the current reporting period do not contain instructions for TDRs, in order for insured institution.. to use TDR in accordance with this rule and policy statement at the earliest possible time the Board has determined that institutions should apply the rule and policy statement in accounting for TDRs for periods ending on or after December 31, 1987. Instructions for reporting TDRs should be available in time for the March, 1988 reports to the Board.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* The comments have been summarized and addressed in the **SUPPLEMENTARY INFORMATION** section of this rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The regulation and policy statement will not have a negative impact on small entities.

List of Subjects in 12 CFR Parts 563 and 571

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Parts 563 and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended

(12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.23–4 to read as follows:

§ 563.23–4 Accounting for troubled debt restructuring.

(a) If an insured institution engages in troubled debt restructuring with respect to any loan by the insured institution and the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), the insured institution shall account for the effects of the troubled debt restructuring and its investment in the original debt instrument (or other agreement that is subject to such restructuring) in the manner provided in those statements and in a manner consistent with the AICPA Industry Guide for Savings and Loan Associations. Guidelines for use by insured institutions in accounting for troubled debt restructurings are set forth in § 571.18 of this subchapter.

(b) Insured institutions shall report restructured loans in all monthly and quarterly reports to the Board or the Corporation.

PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.18 to read as follows:

§ 571.18 Accounting for troubled debt restructuring.

(a) The purpose of this § 571.18 is to offer to the management of insured institutions the Board's views on troubled debt restructuring. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law.

(b) All insured institutions should use the accounting treatment for troubled debt restructuring ("TDR") described in this section when preparing all financial reports for filing with the Board or the Corporation. All insured institutions may use TDR for any loans, in compliance with Statement No. 5 and Statement No. 15 of the Financial Accounting Standards Board ("FASB–5" and "FASB–15"). If a thrift chooses to use TDR, it should account for the transaction as specified in FASB–5 and FASB–15. Allowances for losses on those loans should be determined as set forth in the AICPA Industry Guide for Savings and Loan Associations. This statement of policy sets forth the policy and general criteria for determining what may be included in TDR, when an insured institution must report a TDR, treatment of any transfer of assets as part of a TDR, including treatment of repossessions in substance, and how TDRs should be reported. This statement also sets forth the criteria under FASB–5 for when a loss must be recognized because an asset has been impaired, regardless of TDR, and when loss contingencies must be disclosed.

(c) The accounting standards for TDR are set forth in FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," which is summarized in this and following paragraphs. Further specific information may be found by referring to FASB–15. A TDR is a restructuring in which a creditor, such as a thrift, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Extending or renewing a loan with no change in principal at a stated interest rate equal to the current interest rate for new loans at a similar level of risk is not considered a restructured loan and should not be reported as such. A restructuring may involve a transfer of assets from the borrower to the thrift in full or partial satisfaction of the loan, a modification of the loan's terms, or both of the above. A restructuring may also involve the substitution or addition of a new debtor for the original borrower.

(d) FASB Statement No. 5, "Accounting for Contingencies," also plays a significant role in the reporting of TDRs. FASB–5 governs when certain losses must be recognized because a loss contingency is both probable and estimable and an asset has therefore been impaired or a liability has been incurred. Further specific information may be found by referring to FASB–5.

(e) TDR may not be used to avoid recognizing losses that FASB–5 requires to be accrued. Estimated losses must be accrued by a charge to income if two conditions are met. First, available information indicates that it is probable that an asset had been impaired or a liability incurred at the date of the financial statements. Second, the amount of the loss must be reasonably estimable. If both of these conditions are met for a loan, the institution must, both before and after restructuring, establish loss allowances for the difference between the carrying value of the loan and its net realizable value as determined in accordance with the AICPA Industry Guide for Savings and Loan Associations. The FASB–15 criteria are then applied to the net realizable value of the loan.

(f) FASB–5 also requires adequate disclosure of loss contingencies not meeting both of the above criteria under certain circumstances. Disclosure is required, for example, where there is at least a reasonable possibility that a loss, or an additional loss, may have been incurred or where an asset has probably been impaired but the amount of loss cannot reasonably be estimated. Such disclosure should include a description of the loss or excess or additional loss contingency and either a range of possible loss or a statement that no estimate of the loss can be made.

(g) Under paragraph 6 of FASB–15, the date of consummation of the restructuring is the time of the restructuring. A TDR exists as soon as there is agreement between the institution and the borrower(s) (either prospective or existing) to consummate the restructuring. Thus, a TDR would clearly exist when a formal letter of intent or mutual agreement is signed. It would also be presumed to exist, however, if the senior management of both the institution and the borrower reach an oral agreement memorialized in written documentation, such as a memorandum to the files, setting forth the terms of the TDR. Institutions that report such informal or incomplete restructurings assume the burden of formally completing the transaction, however. Failure to do so may result in reconsideration of any conclusions drawn as a result of the anticipated restructuring and may require refilings of financial statements. Normally a TDR should be finalized within six months from the start of negotiations. The institution's history in finalizing expected restructurings will be reviewed by the Board's examiners. If an institution's reported expected restructurings frequently do not result in formal consummation within a reasonable time, the examiner may decide to permit only formally completed TDRs to be reported as such.

(h) A restructuring may involve the transfer of assets from the borrower to the creditor institution in full or partial satisfaction of the loan. The proper treatment of assets received in partial satisfaction of the loan is set forth in paragraph (j) of this section. Assets transferred may include, but are not limited to, receivables from third parties, real estate, or an equity interest in the borrower. Pursuant to paragraph 28 of FASB–15, such assets must be accounted for at their fair value at the time of the restructuring. Paragraph 13 of FASB–15 defines the "fair value of the assets transferred" as the amount the borrower could reasonably expect to receive for them in a current sale between a willing buyer and a willing seller, *i.e.*, other than a forced or liquidation sale. Paragraph 13 provides that market value shall be used if an active market exists. If no market price is available for the asset or similar assets that could be used in estimating fair market value, a forecast of expected cash flows from the asset, discounted at a rate commensurate with any risk involved, may be used to arrive at fair value.

(1) Such fair value accounting is required by FASB–15 when collateral is repossessed by the institution. This fair value accounting treatment cannot be avoided merely by delaying formal repossession. Under paragraph 34 of FASB–15, a repossession in substance must be accounted for at fair value in accordance with paragraph 28. Paragraph 84 of FASB–15 requires such accounting "if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt." The Board and the Corporation will use the guidelines established by the Securities and Exchange Commission ("SEC") as set forth in its Interpretive Release Number 33–6679 to determine when a repossession in substance has occurred. Under these guidelines, a repossession in substance will be deemed to have occurred when:

(i) The borrower has little or no equity in the collateral, considering the current fair value of the collateral; and

(ii) The creditor can only expect proceeds for the repayment of the loan to come from the operation or sale of the collateral; and

(iii) The borrower has either—

(A) Formally or effectively abandoned control of the collateral to the creditor; or

(B) Retained control of the collateral but, because of its current financial condition or economic prospects, it is unlikely that the borrower will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

These determinations will be made on a case-by-case basis. A number of factors will be considered in determining whether a repossession in substance has occurred because it is unlikely that the borrower can rebuild equity in the "foreseeable future." Among these are the institution's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout agreement. As the SEC noted in its Interpretive Rule:

> [O]ngoing debtor commitment is a factor in assessing whether collateral has in substance been repossessed * * * [R]epossession accounting may not be necessary when the debtor continues good faith efforts toward successful operation of the collateral and eventual repayment of the loan; provided, however, that the creditor can demonstrate a reasonable basis for concluding that the loan will be ultimately collectible.

(2) Assets received in full satisfaction of a loan must be recorded at their fair value. Any excess of the carrying value of the loan over the fair value of assets received in satisfaction of the loan must be recognized as a loss. The carrying value of the loan is the loan balance, adjusted for any unamortized premium or discount, less any allowance provided or any amount previously charged off, plus recorded accrued interest.

(i) TDR may involve a modification of the terms of the loan. This modification may include, but is not limited to, a reduction in the stated interest rate, an extension of maturity at a favorable interest rate, a reduction in the face amount of the debt (principal), a reduction in accrued interest, or a combination of the above. The proper treatment of a TDR involving a combination of a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the loan is set forth in paragraph (j) of this section. Both before and after a TDR is implemented, an adequate allowance for loss must be provided in accordance with FASB–5. Under GAAP, this allowance must be based on net realizable value to determine the appropriate carrying value of the loan being restructured.

(1) If the total expected future cash receipts (including both principal and interest) reasonably expected to be collected under the modified repayment terms are less than the carrying value of the loan on the institution's books, after any necessary FASB–5 adjustment, then a loss on restructuring must be recognized to the extent of that deficiency. Under these circumstances, no interest income will be recognized over the life of the restructured loan.

(2) If the total expected future cash receipts are equal to or exceed the carrying value of the loan, after any necessary FASB–5 adjustment, no loss on restructuring need be reported. Interest income will be recognized over the life of the loan to the extent that future receipts exceed the carrying value of the loan. Institutions should recognize this income using an effective interest rate that will yield a constant rate of interest over the remaining life of the loan.

(3) Some restructurings may involve indeterminate future cash receipts. To the extent that the minimum future cash receipts are less than the carrying value of the loan, the institution must recognize a loss. This loss must be recognized under paragraph 32 of FASB–15, unless under the modified terms the contingent future cash receipts needed to make the total future cash receipts under the modified terms equal to the carrying value of the loan, after any necessary FASB–5 adjustment, are both probable and are reasonably estimable.

(j) Some TDRs may involve both a transfer of assets from the borrower to the institution in partial satisfaction of the loan and a modification of the terms of the remaining loan. In these circumstances, the restructuring must be accounted for by a two-stage process under paragraph 33 of FASB–15. First, the carrying value of the loan is reduced by the fair value of the property received, as calculated pursuant to paragraph 13 of FASB–15. Second, the total amount of the expected future cash receipts is compared to the remaining carrying value of the loan. Any loss recognized is limited to the excess of the remaining carrying value of the loan over such total future cash receipts. If the total expected cash receipts exceed the remaining recorded amount of the loan, no loss need be recognized, and any future interest income should be recognized at a constant effective interest rate over the life of the loan.

(k) Some TDRs may involve the substitution or addition of a new debtor for the original borrower. Pursuant to paragraph 42 of FASB–15, such a restructuring should be accounted for according to its substance. If under the restructuring the substitute or additional debtor controls, is controlled by, or is under common control with the original borrower, or performs the custodial function of collecting certain of the original borrower's funds, FASB–15

provides that the restructuring should be accounted for as a modification of terms. If the substitute or additional debtor does not have such a control or custodial relationship with the original borrower, the restructuring should be accounted for as a new loan in full or partial satisfaction of the original borrower's loan. The new loan should be recorded at its fair value.

(l) As provided in § 563.23–4 of this subchapter, restructured loans are to be reported in all monthly and quarterly reports to the Board or the Corporation. In these reports and annual audited reports filed with the Board, all disclosures and information required by FASB–5 and FASB–15 should be provided. The carrying value of an asset received in full or partial satisfaction of the loan is not reportable as a restructured loan.

(m) Examiners will continue to monitor institutions' loan portfolios, including restructured loans. Loans will not automatically be classified merely because they have been restructured. Conversely, loans will not be exempt from classification merely because they have been restructured. Where appropriate under the criteria set forth in § 561.16c, a restructured loan may be classified.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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Part III

Environmental Protection Agency

40 CFR Parts 51 and 52

Requirements for Preparation, Adoption and Submittal of Air Quality Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3238-4, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The "Guideline on Air Quality Models (Revised)" (1986), EPA 450/2-78-027R lists the air quality models required to estimate air quality impact for sources of air pollutants which appear at 40 CFR 51.166 and 52.21 (51 FR 32176). On September 9, 1986 (51 FR 32180), EPA issued a supplemental notice proposing to include four new modeling techniques to augment the guideline in response to requests urging the Agency to do so. Today's action establishes those additions to the guideline as Supplement A, incorporates changes as a result of public comment, and amends 40 CFR 51.166 and 52.21 to incorporate Supplement A.

DATES: These rules are effective on February 5, 1988. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; Telephone (919) 541-5562 or Jawad S. Touma, (919) 541-5381.

ADDRESSES:

Docket Statement: All documents relevant to development of this rule have been placed in Docket A-80-46, located in the Central Docket Section (South Conference Center, Room 4), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This Docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying documents.

Document Availability: The four new modeling techniques are incorporated as Supplement A (1987) to the "Guildeline on Air Quality Models (Revised)" (1986), Publication No. EPA 450/2-78-027R. Supplement A may be obtained upon written request from Source Receptor Analysis Branch, U.S. Environmental Protection Agency, MD-14, Research Triangle Park, NC 27711. Supplement A and the guideline are for sale from U.S. Department of Commerce, National Technical Information Service (NTIS), 5825 Port Royal Road, Springfield, VA 22161. Supplement A and the guideline are also available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 165(e)(3)(D) of the Clean Air Act (CAA) requires the Administrator to adopt regulations specifying with reasonable particularity models to be used to comply with the Act's prevention of significant deterioration (PSD) requirements. To carry out these requirements, the "Guideline on Air Quality Models (Revised)" (1986), EPA 450/2-78-027R was incorporated by reference (51 FR 32176) in regulations promulgated for PSD (40 CFR Parts 51.166 (formerly 51.24)[1] and 52.21). Because of this incorporation, revisions to the guideline must satisfy the rulemaking requirements of section 307(d) of the CAA. On September 9, 1986 (51 FR 32180), EPA proposed to include four changes to this guideline: (1) Addition of a specific version of the Rough Terrain Diffusion Model (RTDM) as a screening model, (2) modification of the downwash algorithm in the Industrial Source Complex (ISC) model, (3) addition of the Offshore and Coastal Dispersion (OCD) model to EPA's list of preferred models, and (4) addition of the **AVACTA II** model as an alternative model in the guideline. Written public comments were sought by October 9, 1986. However, due to requests from several groups, the comment period was extended until December 9, 1986 (51 FR 37418).

The following is a brief background with respect to some of the issues addressed in this rule. The "Guideline on Air Quality Models (Revised)" (1986) describes two levels of model sophistication: Screening and refined. Screening models provide a conservative estimate of the air quality impact of a source. The purpose of screening models is to eliminate from further consideration those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS) or the allowable prevention of significant deterioration (PSD) concentration increments. Refined models consist of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result, they provide a more accurate estimate of source impact and the effectiveness of control strategies. This rule addresses both screening and refined models.

With respect to RTDM, due to a present lack of scientifically sound and proven techniques for modeling in complex terrain (where the height of terrain exceeds the height of the source being modeled), EPA does not yet recommend a refined modeling technique, but relies on screening models. The need for refined air quality models to determine pollutant concentrations from sources in a complex terrain area is recognized. Thus, EPA/ORD has been working on model improvements; however, a refined model is unlikely to be proposed for regulatory use for another 12-18 months. The Utility Air Regulatory Group (UARG) and others, in a previous rulemaking, urged EPA to adopt the RTDM model as a refined model because RTDM is scientifically better than the existing EPA screening models and because these screening models are very conservative. EPA agreed that RTDM is scientifically better, but found that the model proposed by them underpredicts ambient concentrations by a wide margin. After several discussions with EPA, UARG agreed to a conservative version of RTDM, that is classified as a screening model, but is more accurate than other available models. EPA proposed this version of RTDM and sought public comment.

With respect to ISC, this model is presently an EPA refined model. EPA had been urged by the American Petroleum Institute (API) to approve a modified version of the building downwash algorithm in this model. API's evaluations had shown that the modified version was more accurate. It corrected underpredictions by the existing model when aerodynamic downwash occurs during certain meteorological conditions for stacks lower than Good Engineering Practice (GEP). However, EPA found that most of the data relied upon by API were collected at sources with small stack-to-building height ratios. For sources with larger stack-to-building height ratios, the use of the API approach would result in substantially lower concentration estimates, but there were no data to verify the accuracy of these lower estimates. Thus, EPA proposed a modified version of the API approach in order to avoid arbitrarily selecting lower

[1] EPA restructured 40 CFR Part 51 on November 7, 1986 at 51 FR 40656

concentrations during downwash conditions for some stack configurations and sought public comment on this approach.

With respect to OCD, EPA had been asked by the Department of the Interior Minerals Management Service (MMS) to include the OCD model as a refined model, for application to sources located over water near the coastline. This model has been approved for use by the MMS in 50 FR 12248. EPA findings had shown that this model meets the criteria necessary to be included in the guideline as a refined model and represents an improvement in the state of knowledge relative to the existing model for application to sources over water. EPA Regions with many offshore sources have an interest in such a model. Thus, EPA proposed the OCD model for addition to the modeling guideline.

With respect to **AVACTA II**, EPA proposed adding this model to the guideline for use on a case-by-case basis. No explicit recommendation on its use is made. This model was submitted by the model developer in response to a solicitation of new refined models which are based on sound scientific principles (45 FR 20157).

For additional information on these four models, please refer to 51 FR 32180.

Response to Comments

Specific comments received can be found in Docket A-80-46, items V-D and V-H. All comments were consolidated according to the issues raised and are discussed along with full EPA responses in more detail in the "Summary of Comments and Responses on the September 1986 Supplemental Proposal to Revise the Guideline on Air Quality Models, April 1987," (Docket Item VI-G-1). Only the major issues raised by the commenters, along with EPA responses, are summarized below. Guidance and editorial changes associated with the resolution of these issues are incorporated in the appropriate sections of the guideline and are published as Supplement A (1987) to the "Guideline on Air Quality Models (Revised)" (1986). See Document Availability statement above.

A. Rough Terrain Diffusion Model (RTDM)—Model Status

Comment Summary (Approved RTDM): The majority of commenters urged EPA to adopt its proposal on the use of RTDM as a third-level screening model for use in rural complex terrain applications. Some also generally requested that EPA adopt RTDM as a refined model (i.e., can be used on a generic basis with site-specific data) because of technical merits.

Response: Based on the comments, EPA maintains its proposal to recommend RTDM with specified default options as a third-level screening model for estimating air quality impact from stationary point sources in rural complex terrain. However, EPA's review of available studies demonstrates that RTDM, as a refined model, can substantially underpredict concentrations. Since no new analysis was presented by the commenters to alter this conclusion, EPA does not agree with the commenter's proposal to adopt RTDM as a refined model in Appendix A of the guideline at this time. RTDM with full on-site data may be used as a refined model on a case-by-case basis by following the demonstration criteria described in § 3.2.2 of the guideline.

Comment Summary (Do Not Approve RTDM): One commenter opposed EPA's proposal to even adopt RTDM as a screening model because: (1) The highly conservative nature of the currently approved complex terrain screening models compensates to some extent for not addressing other meteorological phenomena where high concentrations can occur and for which RTDM does not provide an estimate (e.g., on the lee side of hills, or during fumigation and stagnation conditions in deep valleys); (2) both the Westvaco and Widows Creek data bases show a substantial number of instances in which the concentrations at specific monitoring stations were underpredicted by RTDM.

Response: From the information presented to EPA through the public comment and review process, it is apparent that RTDM as proposed by EPA, with assigned pre-determined values irrespective of site-specific conditions, is more accurate, while still providing conservative estimates. It is also based on better scientific theory than existing complex terrain screening models. The commenter did not provide credible scientific data to sustain the argument that a model must be highly conservative to encompass concentrations produced by all meteorological phenomena. The commenter appears to be arguing for disallowing the use of RTDM because it is less conservative and may result in less stringent emission limits than those provided by current models. EPA has anticipated the need for improved complex terrain models and has conducted over the last five years the Complex Terrain Model Development program. The goal of this research program is to develop reliable atmospheric dispersion models that are applicable to large pollutant sources located in complex terrain. RTDM, which deals with stable plume impaction, is a step in this direction. Research programs to consider other phenomena such as lee side effects and stagnation are underway or are being considered by EPA's Office of Research and Development and by others. Once this research fully addresses how to model these phenomena, there will be a need for a reasonably accurate, yet simple screening model that yields conservative estimates, which is the role filled by the RTDM model.

The various tests of the RTDM model have been summarized and referenced in the EPA proposal (51 FR 32180). EPA believes that these tests provide an adequate demonstration of this model's ability, with specified default parameters, to provide sufficiently accurate but consistently conservative concentration estimates. Rather than limit the issue of accuracy to a receptor-by-receptor basis as suggested by the commenter, EPA's position has always been that the performance of any model, whether for complex terrain or some other application, should be based on the ability to predict highest concentrations on a network-wide basis. EPA has found that under- and overprediction varies from site to site. This has been demonstrated for even the widely used flat terrain model MPTER. In applying models to evaluate attainment of short-term deterministic ambient standards or PSD increments, EPA has always examined whether the highest, second-highest value in the network, and not the value at a specific monitoring site, is within the NAAQS limits. For this type of application RTDM is conservative.

Comment Summary (Impact Assessment): One commenter stated that the proper basis for assessment of the impact of RTDM's approval is not current emission limits but rather the alternative emission limits that would result from applying currently approved EPA rough terrain models to sources whose limits are not now based on approved models. The commenter claims that there would be a greater total increase in emissions than calculated by EPA.

Response: EPA does not agree with the commenter's statement that emission limits based on currently approved EPA complex terrain screening models should have been used for all sources in evaluating the impact of the RTDM model. In its analysis, EPA considered all existing sources in complex terrain that have emission limits based on the Valley and COMPLEX I screening models. For these sources current emission limits were

compared with those that would be derived from RTDM, as the commenter desired. However, many sources in complex terrain have emission limits set on some basis other than the currently approved models. EPA also compared these emission limits with those emission limits that would be based on RTDM. Since EPA does not plan to impose retroactively the revised modeling guideline to change the emission limits for these latter sources, the comparison with RTDM is appropriate. It would be wholly inappropriate to base a comparison on emission limits derived from Valley or COMPLEX I where these models were not actually used. Contrary to the commenter's claim, the thorough analysis by EPA, placed in the Docket, showed that the magnitude of the potential increase in national emissions associated with the use of RTDM will not be appreciable.

Miscelloneous Items: To correct programming errors identified by the model developer during the comment period, EPA is substituting Version 3.2 of RTDM for Version 3.1 in this rulemaking. EPA has tested Version 3.2 of RTDM that was submitted by this developer and has found the changes to be correct, necessary and with little impact on maximum estimated concentrations.

EPA agrees with another commenter's views to make readily available to the public all EPA-recommended models. EPA has notified the RTDM model developer of EPA's intent to release RTDM through NTIS for public distribution in a manner similar to other models recommended for regulatory applications. (Docket Items VI–I–1, VI–D–1).

Conclusion

EPA reaffirms its proposal to modify the guideline to list RTDM as a third level screening model for estimating air quality impact from stationary point sources in rural complex terrain. Users who may wish not to commit the additional resources necessary to use RTDM as a third-level screening model are not required to do so; the existing initial or second-level screening techniques remain available for use. The RTDM model is available as part of Change 3 to UNAMAP Version 6.

B. Rough Terrain Diffusion Model (RTDM)—Data Input

Comment Summary (Use of Remote Sensing Devices): Commenters stated that specifying stack top wind measurements precludes the use of SODAR which can provide reliable wind measurements at heights typical of plume transport.

Response: EPA does not intend to preclude the use of remote sensing devices (e.g., SODAR) to directly measure wind speed and direction at plume transport height, provided that the necessary data quality assurance and recovery rate requirements are met. Section 5.2.1.4 of the guideline is being revised to explicitly state that SODAR may be used to measure winds as indicated here.

Comment Summary (Wind Input): Commenters stated that EPA should not require the use of on-site, stack top level wind measurements. While use of stack top winds may be preferable, and while it may be appropriate for EPA to ask RTDM users to gather such data, other wind data can be used if necessary without having a significant adverse effect on the model's performance. They further added that, as a minimum, the use of on-site surface level data should be allowed on a 2-year interim basis until upper level on-site wind data are available. Other commenters, however, supported EPA's position to require stack top wind data.

Response: EPA's recommendation to use measurements representative of wind flow at stack top is consistent with the prevailing scientific opinion that use of stack top winds is superior in complex terrain, as the commenters acknowledge, and that in complex terrain these winds cannot be estimated accurately from surface level measurements. The use of stack top winds is also consistent with present modeling guidance given in section 9.3.3.2 of the guideline which was subject to an earlier rulemaking.

Based on the limited analysis presented by the commenters, EPA does not agree that more conservative estimates are always obtained when lower level winds (than at stack top height) are used as input to RTDM. EPA's rationale for its recommendations is that the scientific integrity of this model is enhanced with the input of these winds. EPA has made known its position on wind data since July 1985 and thus there has been ample time to plan for, if not complete much of, the data collection process. For these reasons, the need for an interim period, during which the best scientific data are exempt from use in RTDM, is not technically justified.

Nevertheless, the Agency does not wish arbitrarily to preclude any source from using RTDM for lack of necessary data input. Thus, the Agency encourages source owners to allow for time necessary to (1) gather input data needed for new models, (2) execute the model to determine the emission limit; and (3) submit the documentation for rulemaking action. Since EPA is interested in the most scientifically credible analysis, the Agency will work with the source to develop reasonable schedules for collecting and using these data in RTDM.

Conclusion

EPA reaffirms its recommendation that, for input to RTDM as a third-level screening model, winds should be measured at stack top height. For stacks greater than 100m, the measurement height may be limited to 100m in height relative to stack base. Appropriate allowance for the use of measurement from remote sensing devices is also provided. EPA's rationale is that the best data from the scientific point of view (i.e., winds representative of conditions at stack top height) should be input to this model to improve confidence in the predicted concentrations.

C. Industrial Source Complex (ISC) Model

Comment Summary (Do Not Support EPA's Proposal): For a variety of reasons, several commenters did not support the modification to the building downwash algorithm in the ISC model as exactly proposed by EPA. Some claimed that the EPA proposal to select the worst of two estimates (from the API version and the original ISC model) was inconsistent with the API approach. Some claimed that the proposed approach has no physical basis and is based on model-to-model comparisons. In addition, the version of the ISC model proposed by EPA contained some features that were not included in the version of ISC proposed by API. Another claimed that the API approach to treat downwash was not sufficiently tested by EPA before being proposed.

Response: In the present ISC model, the effect of building wakes on plume spread occurs abruptly for effective stack heights less than Good Engineering Practice (GEP) formula height. Wind tunnel studies have suggested as a refinement that it is important to compute plume enhancement (the vertical and crosswind spreading of the plume due to building wakes) as a continuous function of stack height. Based on this information, API proposed a linear "decay" function. Although there is uncertainty about the correct shape of this "decay" factor, EPA felt that the API approach was reasonable and proposed it.

After further analysis of the data provided by API, EPA found that most of these data were collected at sources with small stack height to building height ratios (H_s/H_B) of approximately 1.5. A change in the shape of the linear decay factor could have a modest effect on concentrations for these sources, but a substantial effect on sources with $H_s/H_B > 1.5$. Since it was uncertain how accurately the API linear treatment works for these latter cases, EPA originally proposed to select the highest of two estimates (from the API version and the original ISC model) in order to avoid arbitrarily selecting lower concentrations. EPA's concern about the potential underprediction of the proposed API version stems from the apparent systematic tendency for the present ISC model to underestimate downwash concentrations. Thus, for large sources, which usually have $H_s/H_B > 1.5$, the misapplication of the API results would result in a further, more serious, underestimation of potential impact during downwash conditions. The intent of EPA's original proposal can be accomplished by limiting the use of the API modifications to sources with $H_s/H_B < 1.5$ while requiring sources with $H_s/H_B > 1.5$ to use the ISC model in UNAMAP Version 6.

The API modifications were adapted in a different version of the ISC model than that originally proposed by API because of timing. API explored the possibility of making these refinements during the Third Conference on Air Quality Modeling in January 1985. However, documentation of these refinements was not submitted to EPA until early 1986. By that time, the ISC model was already in the process of being changed, from UNAMAP Version 5 to Version 6, also a result of public comment at the third modeling conference. Thus, EPA could only propose the API downwash algorithm in conjunction with the new UNAMAP Version 6 of ISC.

Comment Summary (Alternative Approach: ISC–6MOD): The model developer submitted an alternative approach which incorporates in principle the ideas contained in the original API proposal to modify the downwash algorithm but minimizes the differences with the ISC UNAMAP Version 6 by incorporating many of the new features of the ISC model, except for stack tip downwash and buoyancy-induced dispersion. The commenter stated that two features not included are implicitly accounted for in the API scheme to treat downwash. The commenter referred to this proposed version as ISC-6MOD which is most similar in concept to the model originally proposed by API and does not result in significantly different maximum concentrations.

Response: EPA believes that the data and rationale presented by the commenter support the ISC–6MOD approach, which is based on the ISC model in UNAMAP Version 6. However, data presented in support of applying ISC–6MOD show that use of these modifications is limited to H_s/H_B less than 1.5, especially in terms of the higher observed concentrations which are of regulatory concern. Where the H_s/H_B ratio is greater than 1.5, EPA believes that the data presented to date do not support the ISC–6MOD approach; the basic downwash approach in ISC UNAMAP Version 6 should continue to be used.

Conclusion

EPA agrees with the alternative approach presented by the model developer and believes that it represents the best scientific method available at this time. EPA has revised its modeling guidance and modified the ISC model in UNAMAP Version 6 to include the ISC–6MOD downwash algorithm in the regulatory default option for sources with $H_s/H_B < 1.5$. However, for sources with $H_s/H_B > 1.5$, there is no scientific basis to change the ISC model. Since the basic building downwash algorithm proposed by API and the performance improvements remain essentially intact with ISC–6MOD approach, and since the existing ISC model will continue to be used when these modifications are inapplicable, EPA believes that the alternative approach effectively accomplishes the same goal as the original proposal and does not constitute a significant change. Thus, a re-proposal of the modified downwash algorithm (ISC–6MOD) is not necessary. The modified ISC model is available as part of Change 3 to UNAMAP Version 6.

D. Offshore and Coastal Dispersion (OCD) Model

Comment Summary: Comments were generally favorable on the proposal to adopt the OCD model as a refined model in the guideline. However, one stated that the OCD model should remain in Appendix B and not be designated as an EPA preferred model until the following technical issues are resolved: (1) The OCD model appears to be continually undergoing substantial revisions and it is uncertain whether current model evaluation summaries are applicable for the version of OCD currently in use; (2) detailed model evaluations of OCD using tracer data demonstrate significant underpredictions of peak measured concentrations.

Response: The OCD model was proposed as a preferred or Appendix A model because it is a unique approach needed to fill a void in the existing regulatory program. The version of the OCD model recommended by EPA is designated by the Department of the Interior, Minerals Management Service (MMS) as Version 3.0 (Rev 85329). EPA has asked and received confirmation from the MMS that the recommended version of this model was indeed used in the evaluation studies. (Docket Item VI–D–2). From the list of corrections shown by the commenter (Docket Item V–D–17, attachment E–1), it appears that these minor changes were needed to eliminate minor coding inconsistencies in the program.

The OCD model as recommended by EPA was evaluated by the MMS using three data bases (Docket Item V–D–9). A review of the model evaluation results shows no consistent tendency for underpredictions for the ten highest ranked concentrations. From a regulatory point of view, these are among the most important statistics since model estimates should demonstrate compliance with the national standards, which are not to be exceeded more than once per year. Naturally, EPA has some concern about the ability of the OCD to predict the highest concentration. However, here also, the underprediction of about 16–30% for two of the data bases are in contrast with the overprediction of about 85% in the third data base. EPA examined the example underprediction referred to by the commenter, and it appears that the commenter is referring to examples where a hybrid OCD model, not proposed, is used. This should not be confused with the version of OCD addressed in this rulemaking. Even so, the underprediction cited does not appear to be significant (i.e., 10–20 percent) and is within the error margin associated with other Gaussian models.

Conclusion

EPA has concluded to adopt OCD as a preferred model to be listed in Appendix A of the guideline because this model has met the solicitation requirements outlined in 45 FR 20157 including the practicality of the model, based on technical merit, for use in ongoing regulatory programs. The OCD model is available as PB85–246106 from the National Technical Information Service.

E. AVACTA II Model

There was no comment on the proposal to include this model as an

alternative model in Appendix B of the "Guideline on Air Quality Models (Revised)" (1986). Models listed in that category may be considered for use on a case-by-case basis as described on page 3–8 of the modeling guideline. Thus, EPA adopts this model as proposed. The AVACTA II model is available from the model developer.

Classification

This rule does not change the conclusions regarding Executive Order (E.O.) 12291, Regulatory Flexibility Act, Economic Impact Assessment, or the need for any information collection requirements under the Paperwork Reduction Act which were previously stated in 51 FR 32176. Consequently this action is not considered major under E.O. 12291. EPA has submitted this regulation to OMB for review under E.O. 12291. EPA has submitted this regulation to OMB for review under E.O. 12291 and their written comments on the revisions and any responses have been placed in Docket A–80–46.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide, Incorporation by reference.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons, Incorporation by reference.

Date: December 24, 1987.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51, Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7601(a), 7620.

2. Section 51.166 is amended by revising paragraph (l) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(l) *Air Quality Models.* The plan shall provide for procedures which specify that—

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) which are incorporated by reference. The guideline (EPA Publication No. 450/2–78–027R) and Supplement A (1987) are for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia 22161. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) are inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52, Chapter I of Title 40 of the Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7601(a), 7620.

2. Section 52.21 is amended by revising paragraphs (l)(1) and (l)(2) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) * * *

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) which are incorporated by reference. The guideline (EPA publication No. 450/2–78–027R) and Supplement A (1987) are for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia 22161. They are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on February 5, 1988. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) and Supplement A (1987) are inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

* * * * *

[FR Doc. 88–177 Filed 1–5–88; 8:45 am]

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federal register

Wednesday
January 6, 1987

Part IV

Department of Health and Human Services

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Advisory Council on Health Care Technology Assessment Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of January 1988:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: January 7, 1988—1:30 p.m. to 5:30 p.m.; January 8, 1988—8:30 a.m. to 2:00 p.m.

Place: Dupont Plaza Hotel, Embassy A Room, 1500 New Hampshire Avenue, Northwest, Washington, DC.

Open for entirety of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda will include an expert panel presentation and discussion on the Federal technology assessment process, separate meetings of the Criteria and the Medicare Coverage Process Subcommittees and status reports to the full Council on the activities of these two Subcommittees.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Kelly Fennington, National Center for Health Services Research and Health Care Technology Assessment, Room 1905, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-5650.

Agenda items are subject to change as priorities dictate.

Date: December 21, 1987.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-246 Filed 1-5-88; 9:30 am]

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Reader Aids

Federal Register

Vol. 53, No. 3

Wednesday, January 6, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:

12578 (Superseded by EO12622) ... 222

12622 ... 222

5 CFR

890 ... 1

7 CFR

400 ... 2

907 ... 6

910 ... 7

1430 ... 107

1902 ... 231

Proposed Rules:

301 ... 140

910 ... 255

1126 ... 256

1701 ... 140

10 CFR

Proposed Rules:

430 ... 30

12 CFR

525 ... 312

561 ... 324, 338

563 ... 324, 338, 354, 363, 372, 385

563c ... 324

571 ... 338, 372, 385

583 ... 312

584 ... 312

14 CFR

39 ... 8-14, 232

91 ... 233

Proposed Rules:

39 ... 258

15 CFR

399 ... 108

16 CFR

Proposed Rules:

13 ... 141

17 CFR

211 ... 109

18 CFR

271 ... 15

19 CFR

Proposed Rules:

141 ... 30

178 ... 30

20 CFR

Proposed Rules:

361 ... 143

901 ... 147

21 CFR

81 ... 19

176 ... 97

193 ... 20, 233

540 ... 234

546 ... 235

558 ... 235, 236

561 ... 20, 233

606 ... 111

610 ... 111

640 ... 111

Proposed Rules:

193 ... 259

561 ... 259

23 CFR

655 ... 236

24 CFR

Proposed Rules:

115 ... 260

26 CFR

1 ... 117, 238

Proposed Rules:

1 ... 153, 261

28 CFR

541 ... 196

33 CFR

117 ... 119

36 CFR

404 ... 120

37 CFR

201 ... 122, 123

Proposed Rules:

203 ... 153

38 CFR

4 ... 21

39 CFR

111 ... 124, 125

232 ... 126

40 CFR

2 ... 214

51 ... 392

52 ... 392

180 ... 241, 243

271 ... 126-128, 244

Proposed Rules:

52 ... 261

180 ... 262, 263

41 CFR

101-20 ... 129

Proposed Rules:
141.....31
142.....31
261.....31

43 CFR
2.....24

45 CFR
95.....26

47 CFR
64.....27
73.....28, 29

48 CFR
501.....130, 132
513.....132

49 CFR
541.....133

Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
1041.....155
1048.....155
1049.....155

50 CFR
611.....134
653.....244
663.....246, 248

Proposed Rules:
20.....42
301.....156
652.....265
658.....266

LIST OF PUBLIC LAWS

Last List December 30, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 519/Pub. L. 100-216
To direct the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000. (Dec. 29, 1987; 101 Stat. 1450; 4 pages) Price: $1.00

H.R. 3289/Pub. L. 100-217
To amend the Export-Import Bank Act of 1945. (Dec. 29, 1987; 101 Stat. 1454; 1 page) Price: $1.00

H.R. 3427/Pub. L. 100-218
To allow the obsolete submarine United States ship Blenny to be transferred to the State of Maryland before the expiration of the otherwise applicable 60-day congressional review period. (Dec. 29, 1987; 101 Stat. 1455; 1 page) Price: $1.00

H.R. 3492/Pub. L. 100-219
Rural Crisis Recovery Program Act of 1987. (Dec. 29, 1987; 101 Stat. 1456; 2 pages) Price: $1.00

H.R. 3674/Pub. L. 100-220
United States-Japan Fishery Agreement Approval Act of 1987. (Dec. 29, 1987; 101 Stat. 1458; 24 pages) Price: $1.00

H.R. 3734/Pub. L. 100-221
To recognize the significance of the administration of the Federal-Aid Highway System and to express appreciation to Ray A. Barnhart for his dedicated efforts in improving the Federal-Aid Highway System (Dec. 29, 1987; 101 Stat. 1482; 2 pages) Price: $1.00

H.J. Res. 430/Pub. L. 100-222
Calling upon the Soviet Union to immediately grant permission to emigrate to all those who wish to join spouses or fiances in the United States. (Dec. 29, 1987; 101 Stat. 1484; 2 pages) Price: $1.00

H.R. 2310/Pub. L. 100-223
Airport and Airway Safety and Capacity Expansion Act of 1987. (Dec. 30, 1987; 101 Stat. 1486; 50 pages) Price: $1.50

H.R. 2974/Pub. L. 100-224
To amend title 10, United States Code, to make technical corrections in provisions of law enacted by the Military Retirement Reform Act of 1986. (Dec. 30, 1987; 101 Stat. 1536; 3 page) Price: $1.00

H.R. 403/Pub. L. 100-225
To establish the El Malpais National Monument and the El Malpais National Conservation Area in the State of New Mexico, to authorize the Masau Trail, and for other purposes. (Dec. 31, 1987; 101 Stat. 1539; 11 pages) Price: $1.00

H.R. 2583/Pub. L. 100-226
To authorize additional appropriations for the San Francisco Bay National Wildlife Refuge. (Dec. 31, 1987; 101 Stat. 1550; 2 pages) Price: $1.00

H.R. 2945/Pub. L. 100-227
Veterans' Compensation Cost-of-living Adjustment Act of 1987. (Dec. 31, 1987; 101 Stat. 1552; 4 pages) Price: $1.00

S. 1684/Pub. L. 100-228
Seminole Indian Land Claims Settlement Act of 1987. (Dec. 31, 1987; 101 Stat. 1556; 6 pages) Price: $1.00

H.J. Res. 436/Pub. L. 100-229
Providing for the convening of the second session of the One Hundredth Congress. (Jan. 2, 1988; 101 Stat. 1562; 1 page) Price: $1.00

VOL
53.
ISS
3
JA
6
988
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53
ISS
4
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Pages 399-486

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

Agency for International Development
NOTICES
Housing guaranty programs:
Botswana, 456

Agricultural Marketing Service
RULES
Limes grown in Florida, 402
Marketing orders; expenses and rates of assessment, 401
PROPOSED RULES
Almonds grown in California, 414
Melons grown in Texas, 413
Oranges (navel and Valencia) grown in Arizona and California, 412

Agriculture Department
See Agricultural Marketing Service; Federal Grain Inspection Service; Forest Service

Army Department
NOTICES
Meetings:
Science Board, 438

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
RULES
Drawbridge operations:
New Jersey, 406

Commerce Department
See Export Administration; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 436
(2 documents)

Customs Service
NOTICES
Counterfeit textile visas from China; detection, 463

Defense Department
See also Army Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437
Meetings:
Ada Board, 437

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Westcoast Resources, Inc., 438

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Gasoline lead content; certification and test procedures, 470
Air quality implementation plans:
Preparation, adoption, and submittal—
Stack height requirements; emissions balancing policy, 480
NOTICES
Meetings:
FIFRA Scientific Advisory Panel, 443

Executive Office of the President
See Presidential Documents

Export Administration
NOTICES
Export privileges, actions affecting:
Sappir, Joseph, et al., 428

Family Support Administration
RULES
Public assistance programs:
Aid to families with dependent children (AFDC), and adult assistance programs—
Aliens; eligibility determination requirements; correction, 467

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Children's television commercialization guidelines, 428

Federal Election Commission
PROPOSED RULES
Corporate and labor organization expenditures, 416
NOTICES
Meetings; Sunshine Act, 466

Federal Emergency Management Agency
PROPOSED RULES
Flood insurance program:
Private sector property insurers assistance (write-your-own program), 419

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Nevada Power Co. et al., 439
Natural gas certificate filings:
ANR Pipeline Co. et al., 440

Federal Grain Inspection Service
PROPOSED RULES
Inspection and certification standards:
Rice, 411

Federal Maritime Commission
NOTICES
Agreements filed, etc., 444

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Variable-rate disclosure
Correction, 467
PROPOSED RULES
Truth in lending (Regulation Z):
Home equity disclosures
Correction, 467
NOTICES
Meetings; Sunshine Act, 466
Applications, hearings, determinations, etc.:
Cayuga Lake Bank Corp. et al., 444
IntraOklahoma Bancshares, Inc., et al., 445
InvestCo Partnership, 445
Lenora Bancshares, Inc., et al., 445

Food and Drug Administration
NOTICES
Color additives:
FD&C Red No. 3; data request for specific uses; correction, 467
Committees; establishment, renewals, terminations, etc.:
Center for Devices and Radiological Health advisory panels and committees; nomination requests for consumer and industry representatives, 446
Center for Devices and Radiological Health advisory panels and committees; nomination requests for voting members, 447
Laser variance approvals, etc.:
Laser Fantasy Productions, Inc., et al., 448
Medical devices; premarket approval:
LASERON ND:YAG Ophthalmic Laser, 449
Meetings:
Consumer information exchange, 450

Forest Service
NOTICES
Environmental statements; availability, etc.:
Deerlodge National Forest, MT, 428

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437

Health and Human Services Department
See Family Support Administration; Food and Drug Administration

Interior Department
See Land Management Bureau; Minerals Management Service

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
See also Export Administration
PROPOSED RULES
Export licensing:
Technical data controls; policy forum, 418
NOTICES
Antidumping:
Color picture tubes from—
Canada, 429
Japan, 430
Korea, 431
Singapore, 432
Drycleaning machinery from West Germany, 432
Sugar and syrups from Canada, 434
Cheese, quota; foreign government subsidies:
Annual list, 434
Countervailing duties:
Welded carbon steel pipe and tube products from Turkey; correction, 467

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Mid-Michigan Railroad, Inc., 457
Railtex, Inc., 457

Justice Department
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
Coordinating Council, 458

Land Management Bureau
NOTICES
Meetings:
Las Cruces District Advisory Council, 450
Opening of public lands:
Arizona, 451
Organization, functions, and authority delegations:
Resource area managers, Albuquerque District, NM; oil and gas management, 454
Realty actions; sales, leases, etc.:
Arizona, 452
(2 documents)
California, 452
(2 documents)
Montana; correction, 453
Nevada, 453
Survey plat filings:
Arizona, 454
New Mexico, 455

Merit Systems Protection Board
NOTICES
Meetings; Sunshine Act, 466

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 455
Outer Continental Shelf; development operations coordination:
Mobil Exploration & Producing U.S. Inc., 456

Minority Business Development Agency
NOTICES
Business development center program applications:
North Carolina, 435

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 437

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Vehicle classification, 426

National Oceanic and Atmospheric Administration
NOTICES
Fishery management councils; hearings:
Pacific—
Ocean salmon, 436

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 458
(2 documents)

Nuclear Regulatory Commission
RULES
Plants and materials; physical protection:
Security personnel; physical fitness qualifications, 403
PROPOSED RULES
Practice rules:
Domestic licensing proceedings—
Geologic repository for disposal of high-level radioactive waste; negotiated rulemaking advisory committee, 415
NOTICES
Environmental statements; availability, etc.:
Sequoyah Fuels Corp., 459
Regulatory guides:
Issuance, availability, and withdrawal, 458, 459
(2 documents)
Applications, hearings, determinations, etc.:
Duquesne Light Co. et al., 459
Mississippi Power & Light Co. et al., 460

Personnel Management Office
PROPOSED RULES
Recruitment, selection, and placement:
Reemployment priority list, 408

Presidential Documents
ADMINISTRATIVE ORDERS
East Asia; financial assistance under Migration and Refugee Assistance Act of 1962 (Presidential Determination No. 88-2 of October 30, 1987), 399

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 462

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 462

Tennessee Valley Authority
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 405
NOTICES
Agency information collection activities under OMB review, 462

Transportation Department
See also Coast Guard; National Highway Traffic Safety Administration
RULES
Relocation assistance and real property acquisition:
Uniform cost-effective policies and procedures
Correction, 467

Treasury Department
See also Customs Service
NOTICES
Meetings:
Debt Management Advisory Committee, 463
Notes, Treasury:
AG-1989 series, 463
Q-1991 series, 463

Separate Parts in This Issue

Part II
Environmental Protection Agency, 470

Part III
Environmental Protection Agency, 480

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 88–2 of Oct. 30, 1987 399

5 CFR
Proposed Rules:
330 408
351 408

7 CFR
905 401
911 402
959 401
971 401
987 401
Proposed Rules:
68 411
907 412
908 412
979 413
981 414

10 CFR
73 403
Proposed Rules:
2 415

11 CFR
Proposed Rules:
109 416
114 416

12 CFR
226 467
Proposed Rules:
226 467

15 CFR
Proposed Rules:
379 418

18 CFR
1301 405

33 CFR
117 406

40 CFR
51 480
86 470

44 CFR
Proposed Rules:
61 419
62 419

45 CFR
233 467

47 CFR
Proposed Rules:
73 426

49 CFR
24 467
Proposed Rules:
571 426

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–2 of October 30, 1987

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, I hereby designate refugees in Indochina and other countries in East Asia, including such persons who may be authorized pursuant to Section 101(a)(42) of the Immigration and Nationality Act to be considered for admission to the United States as refugees while still within their countries of nationality or habitual residence, as persons qualifying for assistance under Section 2(b)(2), having determined that such assistance will contribute to the foreign policy interests of the United States.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 30, 1987.

[FR Doc. 88–282
Filed 1–5–88; 12:22 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905, 959, 971, and 987

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 905, 959, 971, and 987 for the 1987–88 fiscal year established for each order. Funds to administer these programs are derived from assessment on handlers.

EFFECTIVE DATES: August 1, 1987, through July 31, 1988 (§§ 905.228, 959.228, and 971.227), and October 1, 1987, through September 30, 1988 (§ 987.332).

FOR FURTHER INFORMATION CONTACT: Gary Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: 202–475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; 959 (7 CFR Part 959) regulating the handling of onions grown in South Texas; 971 (7 CFR Part 971) regulating the handling of lettuce grown in The Lower Rio Grande Valley in South Texas; and 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was issued on November 30, 1987, and published in the Federal Register (52 FR 46366, December 7, 1987). That document contained a proposal to add §§ 905.228, 959.228, 971.227, and 987.332 to establish expenses and assessments for the Citrus Administrative Committee, South Texas Onion Committee, South Texas Lettuce Committee, and California Date Administrative Committee, respectively. That rule provided that interested persons could file comments through December 17, 1987. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

These budgets and assessment rates should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 905, 959, 971, and 987

Marketing agreements and orders, Oranges, Grapefruit, Tangerines, Tangelos (Florida), Onions (Texas) Lettuce (Texas), Dates (California).

For the reasons set forth in the preamble, §§ 905.228, 959.228, 971.227, and 987.332 are added as follows:

1. The authority citation for 7 CFR Parts 905, 959, 971, and 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 905.228, 959.228, 971.227, and 987.332 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.228 Expenses and assessment rate.

Expenses of $239,375 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.00375 per 4/5 bushel carton of assessable fruit is established for the fiscal period ending July 31, 1988. Unexpended funds from the 1986–87 fiscal period may be carried over as a reserve.

PART 959—ONIONS GROWN IN SOUTH TEXAS

§ 959.228 Expenses and assessment rate.

Expenses of $312,380 by the South Texas Onion Committee are authorized, and an assessment rate of $0.055 per 50-pound container or equivalent quantity of assessable onions is established for the fiscal period ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

§ 971.227 Expenses and assessment rate.

Expenses of $33,363 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of assessable lettuce is established for the fiscal period ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.332 Expenses and assessment rate.

Expenses of $386,267 by the California Date Administrative Committee are authorized and an assessment rate of $1.30 per hundredweight of assessable dates is established for the fiscal period ending September 30, 1988. Unexpended funds from the 1986–87 fiscal period may be carried over as a reserve.

Dated: December 31, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–221 Filed 1–6–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 911

Limes Grown in Florida; Amendments to Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This action relaxes container requirements for limes grown in Florida. The minimum net weight of limes which must be packed in a currently authorized master container is being reduced from 38 to 35 pounds when that container is used for bagged limes and the container is marked "Master Container." The current minimum of 38 pounds requires more limes to be packed in the container than it can comfortably hold, resulting in damaged fruit and deformed containers. The lower minimum net weight is expected to correct this problem. The rule also adds a container to the list of containers currently authorized for shipment of Florida limes. Such action will make available to handlers an additional container which they need to ship limes to market. This action was recommended by the Florida Lime Administrative Committee, which works with the Department in administering the Florida lime marketing order.

DATES: This interim final rule becomes effective January 7, 1988. Comments which are received by February 8, 1988 will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–2491.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 263 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

This action temporarily relaxes through March 31, 1988, container requirements for Florida limes by reducing the net weight contents of a shipping container used for bagged limes. The rule also permanently adds a container to the list of containers currently authorized for shipment of Florida limes.

Container requirements for Florida limes are prescribed in § 911.329 in terms of inside dimensions and net weight capacity which handlers must meet when they ship limes grown within the production area outside that area. Paragraph (a)(2)(v) of that section prescribes the specifications of one of the containers handlers may use for such shipments. That container has inside dimensions of 12¾ x 15¾ x 10¾ inches and is required to contain not less than 38 pounds nor more than 42 pounds net weight of limes.

The committee reported that handlers have been using this container as a master shipping container for bagged limes, but that the container is too small to comfortably hold the 38 pound minimum net weight. This has resulted in damaged fruit. Reducing the minimum net weight of the contents of this container to 35 pounds when it is used for bagged limes is expected to ensure that limes free from damage due to packing reach the consumer. Requiring such containers to be marked "Master Container" when they contain bagged limes is designed to differentiate such containers from containers containing loose limes for which the minimum weight will continue to be 38 pounds. A conforming change is made to § 911.311. This should help foster better sales and have a positive effect on the industry.

The committee indicated that if the reduced net weight proved successful, it would consider making the 35 pound minimum net weight a permanent part of the lime container requirements.

The committee also recommended adding a container with inside dimensions of 11 x 16¾ x 10 inches, containing between 38 and 42 pounds net weight of limes, to the list of currently authorized containers. This container was removed from the list of authorized containers effective August 1, 1986 (51 FR 27517). A survey of handlers conducted by the committee prior to the removal of the container from the list indicated that the container was no longer used. However, recent information indicates that some handlers desire to use this large capacity container.

Therefore, the Department's view is that the impact of the relaxed container requirements upon producers and handlers will be beneficial and have a positive effect on industry operations. The application of a less restrictive minimum weight for the specified container will help ensure that limes free from packing damage reach the consumer. The addition of a new container will benefit handlers by providing them with a container needed to ship fresh Florida limes to market.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1987–88 shipping season is in progress, and to maximize benefits to the industry this action should apply to as many shipments as possible; (2) this action is based upon the unanimous recommendation of the committee considered at public meetings; and (3) handlers are prepared to conduct their operations in accordance with this rule and do not require any additional time for preparation.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—LIMES GROWN IN FLORIDA

1. The authority for citation 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.329 (7 CFR Part 911; 52 FR 1314, 4598) is amended by revising paragraph (a)(1) by deleting the words "On and after October 8, 1982,"; revising paragraph (a)(2) by deleting the words "On and after the effective date hereof"; adding a proviso paragraph to (a)(2)(v); redesignating paragraphs (a)(2)(viii) as (a)(2)(x) and (a)(2)(ix) as (a)(2)(viii); and adding a new paragraph (a)(2)(ix) to read as follows:

§ 911.329 Lime Regulation 27.

(a)(1) No handler shall between the production area and any point outside thereof any variety of limes, grown in the production area, in individual bags having a capacity of more than four pounds net weight of limes.

(2) No handler shall handle between the production area and any point outside thereof any variety of limes, grown in the production area, in containers having a capacity of more than 4 pounds of limes unless such limes are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

* * * * *

(v) * * *

Provided further, That until March 31, 1988, when this container is used as a master container for bagged limes, the minimum net weight of limes shall be 35 pounds, provided the container is marked "Master Container."

* * * * *

(ix) Containers with inside dimensions of 11 x 16¾ x 10 inches: *Provided,* That any such containers shall contain not less than 38 pounds nor more than 42 pounds net weight of limes.

* * * * *

3. Section 911.311 is amended by revising paragraph (a)(4) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of limes not exceeding 4 pounds, net weight, that are with master containers except that if such packages are individual bags either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a)(2) of this section and master containers shall be marked or labeled in accordance with the requirements of paragraph (a)(3) of this section, and until March 31, 1988, § 911.329 (a)(2)(v).

* * * * *

Dated: December 31, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–220 Filed 1–6–88; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

General Criteria for Security Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding physical fitness qualifications for security personnel. The regulation continues to require annual medical examinations and annual physical fitness testing for guards, armed response personnel, and armed escorts, but the amendment deletes the scheduling requirement that the medical examination be conducted within the 30 days preceding the physical fitness test. The amendment is supported by Commission findings made in response to a petition for rulemaking (PRM–73–6), which was recently partially denied.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Lahs, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–3774.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking (PRM–73–6) dated December 2, 1981, filed by Shaw, Pittman, Potts and Trowbridge on behalf of the Wisconsin Electric Power Company, the Public Service Electric and Gas Company, the Commonwealth Edison Company, the Yankee Atomic Electric Company, the Northern States Power Company, and the Sacramento Municipal Utility District. The petition requested changes in the qualifications for armed security personnel, set out in 10 CFR Part 73, Appendix B, entitled "General Criteria for Security Personnel." Although the petition was denied in part, as documented in the September 3, 1987 edition of the **Federal Register** (52 FR 33428), the Commission indicated that it intended to grant that part of the petition that requested deletion of an existing requirement that armed security personnel undergo a medical examination within the 30 days preceding their individual annual physical fitness test. This final rule completes Commission action on PRM–73–6.

Responses to Public Comments on the Petition for Rulemaking

The petition was published for comment in the **Federal Register** on February 16, 1982 (47 FR 6659). The NRC received 13 comment letters on PRM–73–6. The sources were as follows:

Congress—1
General Public—1
Nuclear Industry—11

The industry comments and the single "general public" comment supported the petition position that the link between the medical examination and the physical fitness test be deleted. These

comments typically noted that the requirement for an annual medical examination within the 30 days preceding the physical fitness test is unrelated to the effectiveness of the security force and presents a scheduling nightmare. Rotating shifts, adverse weather conditions, and the availability of trainers/instructors to administer the physical fitness test complicate the scheduling problem. The Congressional commenter cautioned against doing away with security requirements based only on the claim that the regulations are cumbersome.

The changes in Appendix B being implemented through this amendment have taken into account the concerns of all commenters. The amendment leaves in place the requirement that all armed security personnel undergo both annual medical examinations and physical fitness testing. The existing requirements are intended to ensure that guard force personnel are physically able to perform their duties. The Commission also recognizes that to protect the well-being of the security force personnel, prudent practice would dictate that a medical examination be given at some appropriate time prior to physical testing. However, the Commission believes that the exact timing between the medical examination and the physical fitness is primarily a scheduling matter in which the licensee requires discretion for efficient management. The Commission agrees with the petitioners that there is no necessary relationship between this schedule interval and the level of protection being provided. The revised 10 CFR Part 73, Appendix B, paragraph I.C., retitled, "Medical examination and physical fitness qualifications," continues to require a physical fitness test to be preceded by a medical examination as a criteria for establishing employment suitability and qualification. Only the 30-day link between the medical examination and the physical testing has been deleted. In addition, 10 CFR Part 73, Appendix B, paragraph I.E., has been retitled "Physical and medical requalification," and has been modified to clearly specify that, at least every 12 months, guards, armed response personnel, armed escorts, and other armed security force members shall be required to meet the referenced physical requirements and shall be subject to a physical fitness test and a medical examination.

The provisions of this amendment may be adopted through appropriate modifications in the licensee's training and qualifications plan made under the authority of this rule.

Notice and public procedure (i.e., public comment) are unnecessary in view of the public comments already received on the precise issue raised in the petition to which this rulemaking is responding. Accordingly, this amendment is being promulgated as a final rule subject to codification.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0002.

Regulatory Analysis

This final rule amends 10 CFR Part 73 by deleting a requirement which specifies a scheduling link between the medical examination and the physical fitness test to which all armed security personnel are subjected at least every 12 months. The amendment was initiated as a response to a petition for rulemaking (PRM–73–6) dated December 2, 1981, filed by Shaw, Pittman, Potts and Trowbridge on behalf of six utilities operating nuclear power reactors. The amendment is directed at relieving a scheduling problem which has no impact on the effectiveness of the security force. The requirement that, at least every 12 months, all armed security personnel be subjected to both a medical examination and a physical fitness test remains unchanged. Only the requirement that the medical examination precede the physical fitness test by 30 days or less is being deleted.

The amendment results in no impact on NRC resources and a cost savings to those licensees adversely impacted by the current requirement that all armed security personnel be subjected to an annual physical fitness test which must be preceded within 30 days by a medical examination.

There are no apparent conflicts or overlaps with other NRC regulations or policies nor with other agencies' regulations or policies. The amendment is intended to ensure effective security force performance without imposing an unnecessary burden on licensees.

Backfit Analysis

This final rule pertains to the training and qualifications plan associated with the operation of a nuclear power reactor. The objective of the modification is to eliminate a requirement which specifies a scheduling link between the medical examination and the physical fitness test to which all armed security personnel are subjected. The current requirement that both the medical examination and physical fitness test be administered at least every 12 months remains unchanged. As a result, the effectiveness of the security force is unaffected and no change is involved in the risk to the public or facility employees. No action by licensees is needed in order to comply with the rule. However, if the current link between the medical examination and physical fitness test presents an unnecessary scheduling problem, appropriate changes may be made to the licensee's training and qualifications plan under the authority of this rule.

The final rule involves no installation or continuing costs to the licensee, potentially relieves an unnecessary scheduling burden, and imposes no new resource burden on the NRC.

List of Subjects in 10 CFR Part 73

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the supplementary information and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is amending Appendix B to 10 CFR Part 73 as follows.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399 and sec. 1631, 68 Stat. 949 (42 U.S.C. 2201(i)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)(2) and (4)(iii)(B), 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In Appendix B, the Table of Contents is amended by revising the introductory entries and the entries under Section I to read as follows:

Appendix B—General Criteria for Security Personnel

Table of Contents

Introduction.
Definitions.
Criteria.
I. Employment suitability and qualification.
A. Suitability.
B. Physical and mental qualifications.
C. Medical examination and physical fitness qualifications.
D. Contract security personnel.
E. Physical and medical requalification.
F. Documentation.
• • • • • •

3. In Appendix B, paragraphs I.C. and I.E. are revised to read as follows:

Appendix B—General Criteria for Security Personnel

• • • • •

Criteria

• • • • •

C. Medical examinations and physical fitness qualifications—Guards, armed response personnel, armed escorts and other armed security force members shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications as disclosed by the medical examination to participation by the individual in physical fitness tests. Subsequent to this medical examination, guards, armed response personnel, armed escorts and other armed security force members shall demonstrate physical fitness for assigned security job duties by performing a practical physical exercise program within a specific time period. The exercise program performance objectives shall be described in the licensee training and qualifications plan, and shall consider job-related functions such as strenuous activity, physical exertion, levels of stress, and exposure to the elements as they pertain to each individual's assigned security job duties for both normal and emergency operations. The physical fitness qualification of each guard, armed response person, armed escort, and other security force member shall be documented and attested to by a licensee security supervisor.

• • • • •

E. Physical and medical requalification—at least every 12 months, central alarm station operators shall be required to meet the physical requirements of B.1.b. of this section and guards, armed response personnel, armed escorts and other armed security force members shall be required to meet the physical requirements of paragraphs B.1.b. (1) and (2) and shall be subject to medical examination and physical fitness qualification requirements of paragraph C of this section.

• • • • •

Dated at Bethesda, MD, this 24th day of December, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–240 Filed 1–6–88; 8:45 am]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revisions to Freedom of Information Act (FOIA) Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule revises one exemption from disclosure under the FOIA set out in TVA's regulations in order to conform that exemption with changes made by the Freedom of Information Reform Act of 1986. This rule also redesignates the positions responsible for handling and determining initial requests and administrative appeals under the FOIA to reflect TVA organizational changes.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Gilbert D. Francis, Jr., (615) 632–6000.

SUPPLEMENTARY INFORMATION: TVA published a proposed rule in the **Federal Register** on August 28, 1987 (52 FR 32573) on revisions to its regulations implementing the FOIA. No comments were received.

This rule is not a major rule for the purpose of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for Part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831–831dd, unless otherwise noted.

2. Section 1301.1 is amended by revising paragraph (a)(7), the first sentence of paragraph (b) introductory text, the second sentence of paragraph (c)(1)(i), the first sentence of paragraph (c)(1)(ii), the third sentence of paragraph (c)(2)(ii), the second sentence of paragraph (c)(3)(i), the fourth sentence of paragraph (c)(3)(ii), and the third sentence of paragraph (e) as follows:

§ 1301.1 Records.

(a) • • •

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

• • • • • •

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Manager, Office of Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902.

• • •

• • • • • •

(c) • • •

(1) • • •

(i) • • • Initial determinations shall be made by the Manager, Office of Governmental and Public Affairs, or the Director of Information. • • •

(ii) For purposes of this paragraph, a request is deemed to be received by TVA only when it is physically

delivered to the Office of Governmental and Public Affairs and meets all the requirements of paragraph (b) of this section. * * *

(2) * * *

(ii) * * * Determinations of appeals under this section shall be made by the General Manager or the General Manager's designee. * * *

(3) * * *

(i) * * * Such extension may not exceed 10 working days, and a decision to make such extension shall be made by the Manager, Office of Governmental and Public Affairs, or the Director of Information.

(ii) * * * A decision to make an extension under this paragraph shall be made by the General Manager or the General Manager's designee.

* * * * *

(e) * * * A pricelist and order form for some of the most frequently asked for TVA publications and reports is contained in TVA Form 3077, which may be obtained by writing the Manager, Office of Governmental and Public Affairs, Tennessee Valley Authority, Knoxville, Tennessee 37902. * * *

W. F. Willis,

General Manager.

[FR Doc. 88-193 Filed 1-6-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5 87-065]

Drawbridge Operation Regulations; Mullica River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Burlington County Board of Chosen Freeholders, and with the concurrence of Atlantic County, the Coast Guard is changing the regulations governing the Lower Bank and Green Bank bridges, at mile 15.0 and 18.0, respectively, over the Mullica River at Lower Bank and Green Bank, New Jersey by requiring that advance notice of openings be given from 11 p.m. to 7 a.m., from 1 April through 30 November, and at specified time periods for each bridge during the winter months. This change is being made because of the relative infrequent requests for bridge openings at night during the boating season and the limited use of the waterway during the winter. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on February 8, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: On 1 October 1987, the Coast Guard published proposed rules (52 FR 36800) concerning this amendment. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice 5-850 dated 16 October 1987. In each notice, interested persons were given until 16 November 1987 to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, First Coast Guard District Bridge Branch, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments

Three responses were received in response to the public notice. All three objected to the proposed regulations. One respondent was a recreational boater, who requested that both bridges be manned during the winter months so he could have free access and use of the waterway. Since the four hours advance notice during low usage periods permits relatively free access to the waterway, the Coast Guard believes that continuing the requirement that the bridges open on signal throughout the year for the convenience of one recreational boater imposes an unreasonable burden on the bridge owners. This is especially true when one considers the historical information regarding the use of the waterway and that the waterway freezes over during various periods of the winter. The other two objections related to the impact on a major year round yacht building facility located between the Lower Bank and Green Bank bridges. During the winter, the facility operates on a Monday to Friday basis, from 8 a.m. until 4:30 p.m., and during the rest of the year from 7 a.m. to 5:30 p.m. Monday to Thursday and 7 a.m. to noon on Friday. At present, the facility is building 13 boats per month. Each boat must transit the bridge approximately six times (three round trips for testing propulsion systems). Current expansion is increasing their production to 16 boats per month, with plans to further increase production to 20 boats per month. This would increase the number of openings to 120 per month. The Green Bank bridge is not used by this facility. In light of these two responses, the Coast Guard after consultation with Burlington County, has revised regulations for the Lower Bank bridge. They offered to staff the bridge between the hours of 8 a.m. and 4:30 p.m. from 1 December until 31 March.

Economic Assessment And Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Since this waterway is used primarily by recreational vessels and the needs of the commercial boat building facility will be accommodated by the Lower Bank bridge.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.731a is added to read as follows:

§ 117.731a Mullica River.

The draws of the bridges listed in this section shall open on signal, except as follows:

(a) The draw of the Lower Bank bridge, mile 15.0, need not open unless at least four hours notice is given during the following periods:

(1) April 1 through November 30, from 11 p.m. to 7 a.m.

(2) December 1 through March 31, from 4:30 p.m. to 8 a.m.

(b) The draw of the Green Bank bridge, mile 18.0, need not open unless at least four hours notice is given during the following periods:

(1) April 1 through November 30, from 11 p.m. to 7 a.m.

(2) December 1 through March 31, at all times.

(c) The draws shall open as soon as possible during the periods when four hours notice is required for vessels in distress, public vessels of the United States, and state and local vessels used for public safety purposes.

Dated: December 17, 1987.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-247 Filed 1-6-88; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

Recruitment, Selection, and Placement (General); Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations on the Reemployment Priority List (RPL). The RPL is the mechanism agencies use to give reemployment consideration to employees who have been separated by reduction in force or because of compensable injury and whose recovery takes more than 1 year. These changes are intended to improve the operation of the RPL and clarify requirements.

DATES: Written comments will be considered if received no later than March 7, 1988.

ADDRESS: Send or deliver written comments to Chief, Staffing Policy Division, Career Entry Group, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Veterans' Preference Act of 1944 provided a reemployment priority right to preference eligible furloughed or separated without delinquency or misconduct. This right, now at 5 U.S.A. 3315, is the basis for the Reemployment Priority List (RPL) in 5 CFR Parts 330 and 351 for employees separated by reduction in force. Coverage under 5 CFR Part 330 for employees who have fully recovered from a compensable injury after more than 1 year is based on section 8151(b)(2) of title 5, United States Code.

Under current regulations, career and career-conditional employees in the competitive service are eligible for the RPL when they have received a notice of separation by reduction in force (RIF) or have fully recovered from a compensable injury after more than 1 year. The RPL regulations generally restrict hiring from outside the agency of anyone other than a qualified RPL eligible.

The Personnel Directors' Productivity Task Force recommended changes in placement programs to eliminate duplication. As a result of this recommendation, we reviewed the placement programs OPM operates as well as the ones agencies are required to operate. We concluded that each program serves a district purpose and, in total, these programs strike an acceptable balance between the commitment of the Government to assist employees who are involuntarily separated from their jobs and the needs of an agency for flexibility in filling positions. We need to retain the programs we have.

OPM operates the Interagency Placement Assistance Program (IPAP), a pre-RIF Program to help place employees who may be but are not yet separated. Once an employee receives a specific notice of separation, he or she is moved to the Displaced Employee Program (DEP), another OPM-run program (see 5 CFR Part 330, Subpart C). During the period of enrollment in the DEP, the employee may also be enrolled in the RPL. The RPL assures reemployment consideration in the *former* agency, and the IPAP/DEP provide reemployment consideration in *other* agencies. If the former agency office no longer exists or is not hiring, the only reemployment consideration the former employee receives is through the IPAP/DEP.

Although we believe these programs should be retained, we think changes in the regulations are possible to make the RPL work better for agencies and employees. Agencies gave us suggestions for improvements when we surveyed them in 1986 regarding several placement proposals, and we have taken those into account in developing these proposals. Following are the more important changes and clarifications that we propose to achieve greater efficiency.

a. Proposed § 330.201 would require each agency to maintain an RPL but would permit an exception to this requirement when an agency operates a placement program meeting the basic requirements of the RPL regulations. This option was recommended by the Personnel Directors' Productivity Task Force. As proposed, however, the exception would not relieve an agency of fundamental provisions such as preference for veterans and 2-year eligibility for career employees.

b. Proposed § 330.202 would require an employee separated by RIF to complete an application specifying the conditions under which he or she would accept a job offer. An application is not required under current regulations. The requirement is being proposed because availability of a job application would enable an agency to more efficiently operate the RPL and give proper job consideration. Furthermore, the application process would permit an individual to indicate the conditions under which he or she would accept a job offer, e.g., the grades and occupational series. Unlike current policy, an individual would not be restricted to positions with the same work schedule he or she held when separated.

This section would require eligibles to submit applications within 30 days and agencies to enroll them on the RPL within 10 days.

c. Proposed § 330.203 covers eligibility based on RIF separation and includes several changes. It would deny RPL eligibility if the employee's last rating of record for RIF purposes was unacceptable. The period of enrollment would run from the date the eligible is entered on the RPL, rather than from the date of separation. In addition, the criteria for subsequent removal from the RPL is revised:

—Reference to the work schedule of any subsequent employment is dropped.

—The reference to acceptance of "nontemporary" employment is dropped. (This means that upon acceptance of career or career-conditional appointment, but not term appointment, an individual would be removed from the RPL.)

—Permanent excepted employment is added to the types of appointments that will result in removal from the RPL.

—Declination of a lower grade job would result in removal from the RPL for all jobs at and below that grade, but eligibility would be retained for higher grades up to the last grade held.

d. Proposed § 330.204 would clarify the RPL eligibility of employees separated because of a compensable injury or disability.

e. Proposed § 330.205 would clarify actions subject to the RPL. This section incorporates the current interpretation that individuals on the RPL are to be considered for permanent and temporary positions. Also, certain actions involving employees on the agency's rolls are not subject to the RPL. These will be spelled out later in the Federal Personnel Manual and will include such actions as promotions, reassignments, and conversion to the competitive service of employees serving under Schedule B appointments in professional and administrative career (PAC) positions.

f. Proposed § 330.206 would extend RPL consideration (for employees separated by RIF) to positions at grades no higher than the position from which separated, or to a higher grade from which the employee previously was demoted or separated for reasons other than performance or conduct. The current provision, which allows consideration for higher grade positions, has provoked concern by both employees and managers who feel it unfairly allows RPL eligibles to receive a noncompetitive promotion while other employees must compete for higher grade jobs. Thus, the unrestricted higher grade eligibility would be dropped as inequitable.

This section also would clarify consideration given to employees separated because of a compensable injury or disability.

g. Proposed § 330.207 would give agencies two options for the order in which individuals are listed on the RPL: RIF subgroup order or rating and ranking procedures similar to those used in competitive examinations. The current regulations specify subgroup order. Providing two optional methods, however, would give agencies greater flexibility in considering persons for reemployment. The use of RIF subgroup order provides reemployment priority in the opposite order of that used to RIF employees, so essentially is an extension of the RIF process. The second method, rating and ranking, would enable an agency to recognize qualitative differences among individuals. Both methods provide equitable procedures and are fully consistent with veteran preference provisions.

h. Proposed § 330.208 would establish the qualification standard to be used for selections from the RPL. The current standard, which is in the Federal Personnel Manual but not in regulation, is the same as that used for RIF actions. Because the RPL is used to fill vacancies rather than assign employees to occupied positions as in a RIF, the proposed standard is similar to that normally used in filling vacancies.

i. Proposed § 330.209 contains a revised standard for filing appeals with the Merit Systems Protection Board. Currently, an individual filing an appeal must present "factual information" that reemployment rights were denied because of the employment of another person. This requirement can be a very difficult standard to meet because individuals have no access to reports of an agency's hiring activities. Also, the Merit Systems Protection Board (in *Hogg v. U.S.P.S.*, 29 MSPR 153, September 24, 1985), found it would be unreasonable to require an individual to present factual information before the Board's jurisdiction could be established.

j. The establishment of an RPL and employee eligibility are now covered in Subpart J of 5 CFR Part 351; other operations of the RPL are in Subpart B of 5 CFR Part 330. This proposal consolidates all RPL provisions under Part 330 to improve ease of use.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and agencies.

List of Subjects in 5 CFR Parts 330 and 351

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Parts 330 and 351 of Title 5, CFR, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for Part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

2. Subpart B and its heading are revised to read as follows:

Subpart B—Reemployment Priority List (RPL)

Sec.

330.201 Establishment and maintenance of RPL.
330.202 Application.
330.203 Eligibility due to reduction in force.
330.204 Eligibility due to compensable injury.
330.205 Employment restrictions.
330.206 Job consideration.
330.207 Selection from RPL.
330.208 Qualification requirements.
330.209 Appeals.

Subpart B—Reemployment Priority List (RPL)

§ 330.201 Establishment and maintenance of RPL.

(a) Each agency is required to establish and maintain a reemployment priority list (RPL) for each commuting area in which it separates eligible employees due to reduction in force or compensable injury, except as provided in paragraph (b) of this section. For purposes of this subpart, "agency" means an executive department, a military department, or an independent establishment. All components of an agency within the commuting area utilize a single RPL.

(b) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees that satisfies the requirements of this subpart.

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 of this part must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, work schedule, and minimum hours of work per week, in addition to positions at the same representative rate and work schedule as the position from which the employee was or will be separated. The employee must submit the application within 30 calendar days of the RIF separation date.

(2) An eligible employee under § 330.204 must request reemployment within 30 calendar days of the date compensation ceases or resolution is reached on an appeal for continuation of compensation. No specific format is required.

(b) After receipt of the application or request, the agency must enroll the

individual on the RPL within a reasonable period of time but no later than 10 calendar days after receipt.

§ 330.203 Eligibility due to reduction in force.

(a) To apply for the RPL, an employee must meet all the following conditions:

(1) Be serving under an appointment in the competitive service in tenure group I or II;

(2) Have received a rating above unacceptable (level 1) as the last annual performance rating of record for Part 351 purposes;

(3) Have received a specific notice of separation under Part 351 of this chapter; and

(4) Have not declined an offer under Subpart G of Part 351 of this chapter of a position that has a representative rate at least as high as that of the position from which the employee was or will be separated.

(b) At the time it gives a specific RIF notice of separation, the agency must give each eligible employee information about the RPL, including appeal rights.

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL. An individual loses RPL consideration for all positions with a representative rate at and below that of any position for which the individuals has declined an offer or failed to reply to an inquiry, under this subpart, when the position meets the acceptable conditions shown in his or her application. Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without limitation in any agency;

(3) Declines an offer or fails to replay to an inquiry, under this subpart, concerning a specific position having a representative rare at least as high, and with the same work schedule, as that of the position from which the person was or will be separated; or

(4) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area convered by that list or becomes disqualified for overseas employment because of previous service or residence.

§ 330.204 Eligibility due to compensable injury.

(a) A former competitive service employee in tenure group I or II separated because of a compensable injury or disability (as defined in Part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL. Part 353 of this chapter contains complete information on eligibility.

(b) A former tenure group I employee is eligible for the RPL for 2 years, and a former tenure group II employee is eligible for 1 year, from the date the indivudial is entered on the RPL. An individual is taken off the RPL before the period of eligibility expires when the individual:

(1) Requests removal;

(2) Receives a career, career-conditional, or excepted appointment without limitation in any agency; or

(3) Declines an offer or fails to respond to an inquiry about a specific position that is equivalent to the position from which separated.

§ 330.205 Employment restrictions.

(a) When a qualified individual is available on the agency's RPL, the agency may not fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible;

(2) Transfer; or

(3) Reemployment of an individual not on the RPL unless the individual is a preference eligible or is exercising restoration rights under Part 353 of this chapter.

(b) Paragraph (a) of this section does not apply when all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an inquiry about the position. Furthermore, it does not prevent position changes or other actions involving employees on the agency's rolls, as explained in chapter 330 of the Federal Personnel Manual.

(c) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d) of this part.

§ 330.206 Job consideration.

(a)(1) An eligible employee under § 330.203 of this part is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent) and that have no greater promotion potential than the position from which the employee was or will be separted. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service if the employee was not separated or demoted for reasons related to performance or conduct.

(2) An eligible employee may be entered on the RPL only for the commuting area in which separated and may not apply for the RPL in any other location, except as provided in paragraph (a)(3) of this section.

(3) Each eligible employee in a position in Alaska or overseas is entitled to apply for the RPL for the commuting area in which separated, unless:

(i) The employee leaves that area and makes a written request for entry on the RPL for the commuting area from which he or she was employed for Alaskan or overseas service, or in another area within the United States outside of Alaska that is mutually acceptable to the individual and the agency; or

(ii) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas service or residence, combined with prospective overseas service under available appointments, would exceed the maximum duration of an overseas duty tour in the agency rotation program. In this case, the employee may apply in one other commuting area within the United States that is mutually acceptable to the individual and the agency.

(b) An eligible employee under § 330.204 of this part is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency.

§ 330.207 Selection from RPL.

(a) *Options.* Individuals may be listed on the RPL and selection made in accordance with paragraph (b) or (c) of this section. An agency must adopt one of these methods for use in operating a single RPL but need not adopt the same method for each RPL.

(b) *Retention standing order.* Qualified individuals on the RPL shall be listed in group and subgroup order in accordance with Part 351 of this chapter. An agency may not pass over an individual in group I to select from group II and, within a group, it may not pass over an individual in a higher subgroup to select from a lower subgroup. An agency may select an individual within a subgroup without regard to order of retention standing within the subgroup.

(c) *Rating and ranking.*

(1) Qualified individuals shall be assigned a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

(2) Individuals with an eligible numerical score shall be listed in the following order:

(i) Preference eligibles having a compensable service-connected disability of 10 percent or more in the order of their augmented ratings, unless the list will be used to fill professional positions at the GS–9 level and above, or equivalent; and

(ii) All other qualified candidates in the order of their augmented ratings. At each score, qualified candidates eligible for 10-point preference will be entered ahead of those eligible for 5-point preference, and those eligible for 5-point preference will be entered ahead of those not eligible for veteran preference.

(3) An agency must make its selection from not more than the highest three candidates available and may pass over a preference eligible to select a nonpreference eligible only as a exception under paragraph (d) of this section.

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL only when necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

§ 330.208 Qualification requirements.

(a) Subject to applicable requirements of law and this chapter, an individual is considered qualified for a position if he or she:

(1) Meets the qualification standard and requirements for the position, including any minimum educational requirements, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position; and

(3) Meets any special qualifying condition which OPM has approved for the position.

(b) An agency may make an exception to the qualification standard if:

(1) The exception is applied consistently and equitably in filling a position;

(2) The individual meets any minimum educational requirement for the position; and

(3) The agency determines that the individual has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

(c) The sex of an individual may not be considered in determining qualifications for a position, except positions for which OPM has determined certification of eligibles by sex is justified.

§ 330.209 Appeals.

An individual may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations by showing that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly.

PART 351—REDUCTION IN FORCE

3. The authority citation for Part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

Subpart J—[Removed]

4. In Part 351, Subpart J is removed.

[FR Doc. 88–249 Filed 1–6–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is hereby given that the Federal Grain Inspection Service (Service) is reviewing the United States Standards for Rice according to the requirements of Executive Order 12291 and Department Regulation 1512–1. The Service plans to review the heat-damaged kernels factor limits for rough rice and brown rice for processing. The Service, also, plans to review the mathematical rounding procedure.

Public comments are being requested to determine if additional sections of the rice standards should be reviewed.

DATE: Comments must be submitted on or before February 22, 1988.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, P.O. Box 96454, Washington, DC, 20090–6454.

Telemail users may resond to [IRSTAFF/GFIS/USDA] telemail. Telex users may respond as follows: to Lewis Lebakken Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC, 20250 during regular business hours [7 CFR 1.27(b)].

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The review of the U.S. Standards for Rice, found at 7 CFR 68.201 through 68.316, is being conducted according to the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

During this review scheduled to be completed by June 1988, the Service will be assessing the Rice Miller's Association's (RMA) request to revise the heat-damaged kernels limits for rough rice. The RMA stated that it is difficult to purchase one grade of rough rice and obtain an equivalent grade of milled rice if there is a high amount of heat-damaged kernels. The suggestion was to include separate heat-damaged kernels factor limits as a subcategory to the existing heat-damages kernels and objectionable seeds factor limits. In addition, the service plans to review the heat-damaged limits for brown rice for processing.

The Service, also, plans to review the mathematical rounding procedure with the intent to change the procedure to be consistent with rounding performed by calculators and in computer applications.

Public comments are requested on the above planned review and to determine if additional changes should be made to the rice standards. Any data, views, or arguments are welcomed.

Dated: December 30, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 88–116 Filed 1–6–88; 8:45 am]

BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended [7 U.S.C. 1621–1627], concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the administrator, Federal Grain Inspection Service [7 U.S.C. 75a; 7CFR 68.2(e)].

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action invites written comments on a proposal to amend the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders to establish procedures to be used by handlers when exercising the marketing incentive allotment option. The proposed action was unanimously recommended by the Navel and Valencia Orange Administrative Committees.

DATE: Comments due February 8, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION:

This rule is proposed under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three fiscal years of less than $100,000, and small agricultural service firms are defined as those whose gross annual revenues are less than $3,500,000. The great majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders were amended on January 11, 1985, (50 FR 1429), to provide for marketing incentive allotments (MIA's). The Navel and Valencia Orange Administrative Committees (NOAC/VOAC) have recommended amendments to the respective rules and regulations to supplement the applicable provisions.

Sections 907.54(a) and 908.54(a) of the regulations authorize general maturity allotments. For each prorate week, the NOAC/VOAC calculates the quantity of oranges (allotment) which may be handled by each handler during such week. Sections 907.54(b) and 908.54(b) of the respective orders authorize the use of MIA's. Under these sections, MIA's may be used by handlers during three separate prorate weeks, and are limited to 10 percent of each handler's weekly allotment. The intent of an MIA is to provide handlers additional allotment for market development programs and to allow handlers to take advantage of special marketing opportunities. As stated in the order, MIA's may be used by handlers upon prior notification to the applicable committee. The orders do not specify how such notification should be made or the time limits or date requirements for such notification. Currently, handlers notify the NOAC/VOAC management of their intention to use MIA's by telephone prior to the beginning of the week in which the MIA would be used. However, there is no official documentation submitted by the handler confirming this intention. Hence, the opportunity exists for misunderstandings and later factual disputes regarding these phone conversations. For purposes of compliance, therefore, it is imperative that the election to use the marketing incentive allotment be documented before any shipments are made in a specific prorate week. The proposed amendments would establish procedures to aid the marketing order committees in monitoring the use of MIA's by adding new §§ 907.109 and 908.109 to the administrative rules and regulations issued under the respective orders. These sections would specify that handlers notify their respective committees prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used, on a form prescribed by the NOAC/VOAC. Requiring this notice immediately prior to the beginning of a prorate week in which the MIA would be used would allow the NOAC/VOAC to adequately monitor the use of such allotments and prevent possible abuses.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provision that is included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). It will not be made effective until OMB approval has been obtained.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges, Navel, Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Sections 907.109 is added to read as follows:

Subpart—Rules and Regulations

§ 907.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. This notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred. Once this notice is submitted, the week specified therein shall constitute one of the three weeks per season during which the handler may use marketing incentive allotments.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.109 is added to read as follows:

Subpart—Rules and Regulations

§ 908.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. This notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred. Once the notice is submitted, the week specified therein shall constitute one of the three weeks per season during which the handler may use marketing incentive allotments.

Dated: December 31, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–223 Filed 1–6–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 979

Melons Grown in South Texas; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 979 for the 1987–88 fiscal year for melons grown in South Texas. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by January 19, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2536–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 979 (7 CFR Part 979) regulating the handling of melons grown in South Texas. This order is effective under the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 72 Texas melon producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable melons handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of melons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Melon Committee met on November 10, 1987, and unanimously recommended a 1987–88 budget of $251,811.06 and an assessment rate of $0.05 per carton. This compares to the 1986–87 budget of $197,695.96 and an assessment rate of $0.02 per carton. There is an additional $54,115.10 over last year's budget, reflecting an increase in the promotional program allotment of $12,231.90 and $31,100.00 for a new production research project. The recommended assessment rate, when applied to anticipated shipments of 9.2 million cartons, would yield $460,000 in assessment revenue. The revenues collected in excess of expenses would be used to increase the operating reserve. A larger reserve fund has been deemed necessary to allow the committee to function in times of shortfalls in production. Last season, for example, excessive rainfalls reduced shipments to less than half the volume anticipated, resulting in insufficient assessment income to cover operating expenses. The $206,188.94 surplus, when added to the current reserve, would result in a yearend reserve of $316,508.27. This total is within the limit of two fiscal periods' expenses allowed by the order.

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While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, Melons (Texas).

For the reasons set forth in the preamble, it is proposed that § 979.210 be added as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 979.210 is added to read as follows:

§ 979.210 Expenses and assessment rate.

Expenses of $251,871.06 by the South Texas Melon Committee are authorized, and an assessment rate of $0.06 per carton of melons is established for the fiscal period ending September 30, 1988. Unexpended funds may be carried over as a reserve.

Dated: December 31, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–224 Filed 1–6–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 981

Expenses and Assessment Rate for California Almond Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule invites written comments on a proposal to authorize expenditures and establish an assessment rate for the 1987–88 marketing year under Marketing Order No. 981 for California almonds. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by January 19, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 105 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed action would revise § 981.36 under Marketing Agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. Section 981.336 was established by a final rule published in the Federal Register December 1, 1987, (52 FR 45611). Section 981.336 currently states that an assessment rate for the crop year ending June 30, 1988, payable by each handler, shall be established in accordance with § 981.81 of the order, less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Section 981.41 provides that the Almond Board of California (Board) may give handlers credit against their assessment obligations for their own direct expenditures for authorized marketing promotion, including paid advertising activities. Thus, § 981.336 has already established the maximum amount of 1987–88 crop year handler assessments that may be credited at 2.5 cents per pound of almonds (kernelweight basis).

This proposed action would revise § 981.336 to authorize Board expenses for the crop year ending June 30, 1988, of $15,995,334 and establish an assessment rate for that crop year of 2.8 cents per pound (kernelweight basis), while retaining the 2.5 cents per pound creditable rate.

The proposed 2.8 cent per pound 1987–88 assessment rate compares with a 1986–87 assessment rate of 2.6 cents per pound. While the 2.5 cent per pound creditable rate is the same as the 1986–87 rate, the .3 cent per pound non-creditable portion of the proposed assessment, which handlers must pay to the Board, is higher than the .1 cent per pound 1986–87 rate. The 1986–87 rate was exceptionally low due to an accumulation of reserve funds.

Proposed 1987–88 expenses of $15,995,334 compare with 1986–87 budgeted expenses of $7,400,068. Proposed 1987–88 budget categories are $676,087 for administrative expenses, $256,837 for production research, $758,300 for public relations, and $54,100 for the 1988 crop estimate. Comparable actual expenditures for the 1986–87 crop year were $411,597, $185,734, $349,835, and $51,600, respectively. The remaining $14,250,000 of proposed 1987–88 expenses is the estimated amount which handlers will spend in their own marketing promotion activities based on a projected 1987–88 marketable production of 570,000,000 kernelweight pounds and assumes that all handlers receive full credit against the 2.5 cent per pound creditable assessment obligation. For the 1986–87 crop year, $6,100,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 244,000,000 kernelweight pounds. An actual figure is not yet available because handlers have until December 31, 1987, to complete market promotion activities for which they may receive credit toward their 1986–87 crop year creditable assessment obligation. The Board believes that the much larger 1987–88 crop will result in proportionately higher handler expenditures for marketing promotion. These additional expenditures are deemed appropriate in view of the estimated size of the 1987–88 crop.

Income for 1987–88 is expected to total $1,606,500, including assessments of $1,551,500, debt collection of $50,000, and interest income of $5,000. The remainder of the $15,995,334 is expected to be offset by handlers' creditable promotion activities.

Marketing Order No. 981 requires that the assessment rate for a particular marketing year shall apply to all almonds received by handlers for their own accounts from the beginnning of such year. An annual budget of expenses is prepared by the Board, which was established under the order for the purpose of administering the program, and submitted to the Department of Agriculture for approval. Members of the Board are handlers and producers of California almonds. This is appropriate because they are familiar with the Board's needs and with the costs for goods, services, and personnel in their area and are, thus, in a position to formulate and appropriate budget. The budget is formulated and discussed in public meetings; thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by the number of kernelweight pounds of almonds expected to be received by handlers for their own accounts. That rate is applied to actual receipts to produce income sufficient to pay the Board's expected expenses.

While this proposed action may impose some additional costs on handlers, including small entities, the costs would be in the form of uniform assessments on all handlers which would not have a significant economic impact on the entities involved. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

The Board does not recommend its annual budget and rate of assessment until shortly after the season starts because information on which to estimate receipts is not available until that time. Expenses are incurred on a continuous basis. The budget and assessment rate approval should be expedited in order that the Board will have funds to pay its expenses. Accordingly, it is found that a comment period of less than 30 days is appropriate.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, Part 981 is proposed to be amended as follows:

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.336 is revised to read as follows (the following section would prescribe the annual expenses and assessment rate and would not be published in the Code of Federal Regulations):

Almonds Grown in California

§ 981.336 Expenses and assessment rate.

Expenses of $15,995,334 by the Almond Board of California are authorized for the crop year ending June 30, 1988. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.8 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Dated: December 31, 1987.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–222 Filed 1–6–88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Cancellation of January, 1988 Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Cancellation of January 1988 Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is cancelling the fifth meeting of the High-Level Waste Licensing Support System Advisory Committee previously scheduled for January 25–26, 1988. The NRC is taking this action to allow time to assess the impact of recently enacted legislation that amends the Nuclear Waste Policy Act. This legislation may require changes in the direction given to the Licensing Support System Advisory Committee. The NRC is not making any change at this time in the date for the February 11–12, 1988 meeting.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The NRC is cancelling the fifth meeting of the High-Level Waste Licensing Support System Advisory Committee ("negotiating committee") that was scheduled for January 25–28, 1988, in Denver, Colorado. This meeting was previously noticed in the Federal Register on December 22, 1987 (52 FR 48447). The Committee, established under the authority of the Federal Advisory Committee Act, is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of license for a geologic respository for the disposal of high-level waste (HLW).

Recently enacted legislation amended the Nuclear Waste Policy Act to change the respository site selection process. These changes may require changes in the directions given to the negotiating committee. The NRC is, therefore, cancelling the previously scheduled January 25–28, 1988 meeting to allow the Commission to assess the impact of this legislation on the operation of the Committee. The Commission does not presently intend to terminate the negotiated rulemaking on the

implementation of the licensing support system. No change in the meeting of the committee scheduled for February 11–12, 1988, is being made at this time.

Dated at Bethesda, Maryland, this 4th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-239 Filed 1-6-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Election Commission announces its decision to initiate a rulemaking to determine what changes in its regulations are warranted following the Supreme Court opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, ____ U.S. ____, 107 S. Ct. 616 (1986) ("*MCFL*"). This rulemaking will include, but not be limited to, the issue raised by the National Right to Work Committee in a Petition for Rulemaking filed with the Commission on February 24, 1987.

DATE: Comments must be received on or before March 7, 1988.

ADDRESS: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC, 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 15, 1986, the Supreme Court issued its decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, ____ U.S. ____, 107 S. Ct. 616 ("*MCFL*"). This decision marked the first time the Supreme Court has distinguished between types of corporations when considering the constitutionality of 2 U.S.C. 441b. In *MCFL*, the Supreme Court found that certain kinds of nonprofit corporations do not exhibit the characteristics which Congress legitimately perceived as exerting an undesirable influence on the electoral process. Consequently, an application of the broad prohibitions of section 441b to independent expenditures by these nonprofit corporations was held unconstitutional.

The Court's decision contains many qualifications and suggestions for determining which nonprofit corporations fit into this exempt category and how the activities of these corporations fit into the overall structure of the Federal Election Campaign Act (2 U.S.C. 431 *et seq.*). A petition for rulemaking filed by the National Right to Work Committee ("NRWC") has asked the Commission to focus on one particular aspect of the opinion. This latter point concerns whether the standard for determining if a corporate or union expenditure is in violation of section 441b should be a determination that the expenditure involves "express advocacy." NRWC has asked the Commission to revise its regulations to incorporate the "express advocacy" test as the standard for judging such expenditures, specifically with reference to 11 CFR 114.3 and 114.4.

The Commission today is initiating a rulemaking to address the various questions raised by the *MCFL* case and to determine to what extent new or revised regulations may be needed in light of the Court's decision. Since the express advocacy issue is one of the points that will be examined in the course of this rulemaking, the Commission considers this Advance Notice of Proposed Rulemaking to be, in part, a response to the NRWC petition.

A. NRWC Petition for Rulemaking

On February 24, 1987, the National Right to Work Committee filed a petition for rulemaking with the Commission. The petition requested that the Commission initiate a rulemaking to modify 11 CFR 114.3 and 114.4 which in the view of the petitioner are now unconstitutional under the *MCFL* case. Specifically, the petitioner argued that, based on the Supreme Court's opinion in *MCFL*, section 441b of the Federal Election Campaign Act (2 U.S.C. 431 *et seq.*) no longer prohibits independent expenditures made by corporations unless they "expressly advocate" the election or defeat of a candidate. The NRWC petition requested a revision of §§ 114.3 and 114.4 to substitute the express advocacy standard for the terms "partisan" and "nonpartisan" currently used. The terms partisan and nonpartisan communications are general standards used by the Commission in these sections to determine whether communications by corporations and labor organizations made with their treasury funds constitute permissible activity under the statute.

The Commission published a Notice of Availability on May 4, 1987, to invite public comment on the petition and received comments from one interested person. See, 52 FR 16275. The Commission also sought comments from the Internal Revenue Service pursuant to 2 U.S.C. 438(f). The IRS, after reviewing the NRWC petition, found no conflicts with the provisions of the Internal Revenue Code or regulations promulgated thereunder.

Several important questions are raised by the Court's discussion of "express advocacy" in *MCFL*. Perhaps the most significant of these concerns the status of this portion of the opinion. Since the Court found that the MCFL communications at issue contained express advocacy, the discussion of that point is *dicta*—that is, it is unnecessary to the holding of the Court and thus does not represent a final resolution of this issue. See *MCFL*, 107 S. Ct. at 623. Because express advocacy is not a necessary part of the decision in the *MCFL* case, the Court's brief treatment of this point leaves open some critical questions that would have to be resolved before a rulemaking could be finalized in this area. For example, an express advocacy test is more logically applied to independent expenditures that solely involve communication. However, the concept of expenditures under section 441b is much broader, including election activities that involve some communication (such as voter drives, covered under 11 CFR 114.3(c)(4) and 114.4(c)), and election-related activities that have no direct communication component (such as the use of corporate or labor organization facilities, covered under 11 CFR 114.9).

Thus, the Commission welcomes comment initially on the issue of whether it should engage in rulemaking on the application of express advocacy to expenditures under section 441b. Given the status of the Court's statement as *dicta*, should the Commission revise its regulations before the Court has an opportunity to clarify its position in a case that directly presents this question?

If the Commission does go forward on this point, to what extent should the application of the express advocacy test be limited? While it may be argued that express advocacy should be the standard for judging independent expenditures by corporations and labor organizations that solely involve communications, should the Commission draw a line between those activities and others in which communication plays little or no part?

How would a line of this nature be delineated in a regulatory context?

The Commission notes, in this regard, that the NRWC petition itself only relates to §§ 114.3 and 114.4 of the regulations, which govern partisan and nonpartisan communications by corporations and labor organizations. It may be that the petition should truly be confined to § 114.4, as § 114.3 deals with communications to a corporation's or union's restricted class and is based on the statutory provision allowing these organizations to communicate with this class of persons "on any subject." See 2 U.S.C. 441b(b)(2)(A). Thus, under § 114.3 of the regulations, it is unnecessary to determine whether a communication constitutes express advocacy as all communications are permitted. The Commission welcomes comments on this point.

Another point for consideration is whether the nonpartisan standard in § 114.4 can be interpreted by the Commission in a manner consistent with the express advocacy test. If the Commission determines to accept express advocacy as the new standard for these communications, is any regulatory revision necessary?

Finally, if the Commission does draft rules on express advocacy, to what extent should the rules attempt to further define this term? Current 11 CFR 109.1(b)(2) contains a definition of "expressly advocating." Two cases issued subsequent to the promulgation of that regulation have offered additional views on the meaning of this phrase. See, *MCFL, supra*; *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), cert. denied, Oct. 5, 1987. The Commission seeks comments on whether the current definition of "express advocacy" warrants revision in light of the recent case law and, if so, how this definition should be revised.

B. Other Issues Addressed by MCFL Decision

The central holding in *MCFL* concerned the constitutionality of 2 U.S.C. 441b as applied to independent expenditures by certain non-profit corporations. The Court held that non-profit corporations exhibiting characteristics similar to MCFL should be permitted to make independent expenditures without violating section 441b, although the Court preserved the prohibition against contributions by all corporations. In so holding, the Court delineated several factors that a corporation must meet to qualify for this exemption, and also noted some reporting and other requirements these organizations would have to satisfy if they engage in this activity. The Commission is considering whether to draft regulations that would spell out the qualifying process for this exemption and the other requirements discussed by the Court.

First, the Court focussed on MCFL's small size and lack of formal organization, noting that these factors made the requirements of forming a political committee overly burdensome for these corporations. The Commission is therefore considering these factors as possible threshold questions and welcomes comments on how these points could be incorporated into any new regulations in this area. In particular, what should be considered when determining that a non-profit corporation is "small" and "lacks formal organization?" Alternatively, are these terms sufficiently descriptive that greater specificity should be left to case by case analysis?

Assuming a non-profit corporation meets these basic requirements, the Court then set out a three-part test for determining which corporations qualify for an exemption as "MCFL-type" corporations. As stated in the opinion, an organization must:

(1) Be formed for the express purpose of promoting political ideas, and cannot engage in business activities;

(2) Have no shareholders or other persons affiliated who would have a claim on its assets or earnings; and

(3) Not be established by a business corporation [or labor organization], nor may it accept contributions from such entities.

See, *MCFL supra* at 631.

The implementation of this three-part test raises additional questions that may need to be addressed. For example, how should the Commission determine whether a non-profit corporation is "formed for the express purpose of promoting political ideas?" Must its articles of incorporation be so limited? What is included in the concept of "business activities?" On this latter point, the Commission notes that the Court distinguished business activities from "political fundraising events [that are] expressly denominated as requests for contributions that will be used for political purposes." *Id.*

With respect to the second criterion, relating to the absence of shareholders, the Court indicated its intention that "persons connected with the organization * * * have no economic disincentive for disassociating with it if they disagree with its political activity." *Id.* The Commission welcomes comments on how to incorporate this standard into the regulations.

The third criterion, as described by the Court, requires that the organization not be formed by a business corporation of accept contributions from such entities. This focus on corporations presumably derives from the facts presented in *MCFL*, which solely concerned corporations. The Commission assumes, given the coverage of section 441b, that this criterion would apply equally to labor organizations. Comments are welcomed on this point.

If a non-profit corporation qualifies under this test, it may then use its treasury funds to make independent expenditures without violating section 441b. However, the Court contemplated that these organizations would have to comply with certain disclosure and solicitation requirements. The Court noted that MCFL-type corporations which make independent expenditures of $250 or more will trigger the reporting provisions of 2 U.S.C. 434(c). If so, they must disclose the identity of "all contributors who annually provide in the aggregate $200 in funds intended to influence elections, will have to specify all recipients of independent spending amounting to more than $200, and will be bound to identify all persons making contributions over $200 who request that the money be used for independent expenditures." *Id.* at 630. In addition, to avoid the problem of contributors who do not want the organization to use their contributions for electoral, as opposed to more general, political purposes, the Court suggested that these organizations might be required to inform their contributors that their funds may be used for electoral purposes. *Id.*

These two points raise some interrelated questions. Should organizations be required to inform contributors of a right to designate their contributions for use in elections or that their contributions not be used for electoral purposes? If contributions are undesignated, are they then presumed for use in elections and, thus, reportable? Conversely, can these organizations only make independent expenditures from funds designated for use in elections? Are there any limits on who can be solicited for contributions (apart from the corporate prohibition) and is there any limit on the amount any one individual may contribute?

The Court's opinion also envisions some limit on the ability of a non-profit corporation to use treasury funds for independent expenditures. If the level of political spending "become[s] so extensive that the organization's major purpose may be regarded as campaign activity," the opinion provides that the corporation may be classified as a political committee. *Id.* This limit on the

use of the corporate form also generates some implementation questions. For example, at what point does campaign activity become an organization's "major purpose?" What factors should be considered in making this determination? Should this consideration include the percentage of funds used for campaign activity? If so, how would the Commission monitor this percentage?

How should a "major purpose" test interact with the Court's requirement that a corporation be "formed for the express purpose of promoting political ideas" in order to qualify, in the first instance, as an MCFL-type corporation? What distinguishes "campaign activity" from other political spending? Apart from recordkeeping and reporting, what other consequences should result from reclassification as a political committee?

C. Conclusion

The Commission welcomes comments and suggestions on whether a rulemaking in this area is warranted at this time. In addition, the Commission seeks comments and suggestions on the issues raised in this Notice and any other issues that could be addressed if the Commission determines to engage in rulemaking on these points.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

Dated: January 4, 1988.

[FR Doc. 88-205 Filed 1-6-88; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 71283-7283]

Export Control Policy Forum on Technical Data Export Controls

AGENCY: Export Administration, Commerce.

ACTION: Notice of forum on technical data controls, request for comments.

SUMMARY: Consistent with the U.S. Department of Commerce's commitment to solicit industry comment and involve industry in the implementation of export control programs, Export Administration is sponsoring a public forum on technical data export controls.

DATE: February 11, 1988, from 8:30 a.m. to 1:00 p.m. Registration for the Forum will start at 8:00 a.m.

ADDRESS: The Forum will be held in Washington, DC at the Commerce Department's, Herbert C. Hoover Building, 14th Street and Pennsylvania Avenue NW., Room 4830.

FOR FURTHER INFORMATION CONTACT: Kenneth Cutshaw, Office of the Deputy Assistant Secretary for Export Administration, Room 3888, U.S. Department of Commerce, P.O. Box 273, Washington, DC (Telephone: (202) 377-5711).

SUPPLEMENTARY INFORMATION:

Commerce is currently reviewing the purpose, basis, impact, and effectiveness of the licensing requirements for exports of technical data (Part 379 of the Export Administration Regulations). The scope of the study is outlined below in this Supplementary Information section. The Department is especially interested in soliciting suggestions from industry that may improve the technical data controls and yet continue to address national security and foreign policy concerns.

Interested industry members are encouraged to present their views orally at this Forum. Each speaker will be limited to 10 minutes, and comments must be directly related to the technical data export controls. Prospective speakers must submit their position papers (10 copies) to the listed information contact before February 4; the Department will then contact speakers to arrange presentation times. Speakers and attendees will be seated on a first-come, first-served basis. Any speaker who wishes to distribute copies of a presentation to the attendees should bring extra copies to the Forum on February 11.

Anyone expecting to attend this Forum is asked to inform Ms. Toni Jackson ((202) 377-8760) at the earliest opportunity so that the Department can determine whether Room 4830 will be large enough to accommodate those wishing to attend.

A. Statement of Purpose of Forum

The presentations at the Forum will assist the Department of Commerce in learning more about industry perspectives on the administration of technical data export controls. The Department requests the speakers to provide suggestions on revising Part 379 ("Technical Data") of the Export Administration Regulations (EAR) in order to clarify the regulatory provisions, further U.S. export control objectives, and better serve the needs of the U.S. business community.

Points of view should address, but are not limited to, the following:

1. The effectiveness of technical data controls in preventing diversion of U.S. technology;

2. The compatibility of the application of technical data controls with international agreements and existing business practices;

3. Alternative definitions of "operation" technical data, "sales" technical data, "direct products" of technical data, and "software";

4. The application of technical data controls to COCOM countries, non-COCOM free world countries, the People's Republic of China, and Eastern European countries;

5. Revisions of the licensing requirements (general and validated) covering technical data;

6. Licensing requirements related to training materials and servicing of controlled commodities;

7. Written assurance requirements outlined in § 379.4(f) of the EAR;

8. Technical data reexport provisions outlined in § 379.8 of the EAR;

9. Licensing requirements for "direct products" of technical data;

10. Exports by disclosure to foreign nationals;

11. The treatment of know-how as retaining its U.S.-origin even though commingled with foreign know-how;

12. Application of the technical data controls to plant tours by foreign nationals;

13. The limitation of the "sales" technical data provisions in GTDR to only "sales" technical data that is not related to a commodity identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List;

14. Application of the technical data controls to exports of software sold in retail stores;

15. The availability of GTDA for know-how on the public record in the form of a patent, copyright, or other intellectual property;

16. The control of all software for computer-aided design, manufacture, inspection or test of an "A" item on the Commodity Control List;

17. Control of technical data exported via satellite;

18. Control of technical data sold by software banks and data utility banks;

19. The appropriate terms and conditions for a comprehensive operations license for technical data;

20. Additions or deletions of critically controlled items that are subject to Part 379 controls; and

21. Other suggestions or options for amending the technical data controls.

The Militarily Critical Technologies List Implementation Technical Advisory Committee (MITAC) has proposed a revision of the technical data controls. Commerce requests comments on the MITAC proposal. A copy of the MITAC proposal may be obtained from Ms. Toni Jackson, Department of Commerce, Room 3886A, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 377-8760. The Forum will begin with a presentation on the MITAC proposal.

B. Purpose of Controls

The Department of Commerce requires specific authorization for any export of technical data controlled for national security or foreign policy reasons. As defined by § 379.1 of the EAR, "technical data" is information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials. The data may take a tangible form such as a blueprint, prototype, model, or an operating manual; or they may take an intangible form, such as technical service. All software is considered technical data.

The Department of Commerce imposes controls only when such controls are necessary to further fundamental national security, foreign policy, or short supply objectives. The Department intends that any review of controls on commodities or technology will be conducted in consultation with representatives of appropriate U.S. Government agencies and private industry. To this end, the Forum on technical data controls will provide industry an opportunity to contribute toward regulatory revisions and clarifications. This effort will better serve the interests of both the U.S. Government and exporters.

C. Basis for Controls

Pursuant to Part 379 of the EAR, exports of technical data must be made under either a Department of Commerce general license or an individual validated export license. General Licenses GTDA and GTDR apply to specific types of exports of technical data. A validated license is required for any export of technical data where these general licenses do not apply, except in the case of certain exports to Canada. Section 379.3 and 379.4 outline the requirements for shipments of technical data under GTDA and GTDR; § 379.5 outlines the requirement for export of technical data under a validated license.

D. Notes on Current Implementation

Generally, applications for the export or reexport of technical data to most free world destinations are considered favorably on a case-by-case basis, unless there is a significant risk that such technical data will be used or diverted contrary to the objectives of specific export controls.

Section 379.4(a) of the EAR prohibits the export of technical data to Country Groups S and Z under General License GTDR. Section 379.4(b) provides for certain restrictions on the export of technical data under GTDR to Country Groups Q, T, V, W and Y, Afghanistan and the People's Republic of China. Exports and reexports of technical data that do not fall within the requirements of either General License GTDA or GTDR are subject to a validated license requirement.

Dated: January 5, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-291 Filed 1-5-88; 2:30 pm]

BILLING CODE 3510-DT-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 62

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations for the "Write-Your-Own" (WYO) Program under which private sector insurers may issue and service policies of flood insurance backed by the Government. The proposed amendments involve the investing of income and details of cash management; reimbursement of state or municipal tax; damages arising outside the scope of the Arrangement; revision of the commission allowance provisions; responsibility for including mortgagees in claim payments; the right of a WYO Company to reject flood insurance applications, which would then be referred to the NFIP Servicing Agent (and the waiting period rule for the effective date of coverage in these cases); and various kinds of audits: Audits for cause, triennial financial audits and triennial reviews of claims operations and of underwriting/policy administration operations.

DATE: All comments must be received on or before March 7, 1988.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations dealing with the underwriting, claims adjustment, and financial control operational procedures established by the Federal Insurance Administrator in connection with the "Write-Your-Own" (WYO) Program authorized pursuant to Subpart C, Part 62 of the NFIP regulations and section 1310 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001, *et seq.*).

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the Administrator) may be issued by insurers signatory to Financial Assistance/Subsidy Arrangements (the Arrangement) in their own names. Insurers then are responsible for all aspects of service, including policy issuance to new policyholders and to policyholders insured by them under other lines of property insurance; endorsement and renewal of policies; and the adjustment of claims brought under the policies. The insurers retain a specified amount of the premium for their expenses, including the commissions of agents. Under the Arrangement (Appendix A to Part 62 of the NFIP regulations), the Government provides such additional funds as may be required, over and above the net premium income, for the payment of claims.

The revisions to Articles II.E, IV.A, and VII.A of the Arrangement reflect the elimination of the provision for WYO Companies to invest excess funds (which could only be invested in U.S. Treasury obligations). Due to cash management procedures being used, there is no longer a need for an investment provision.

A revision to Article III.B of the Arrangement eliminates the option for a WYO Company to pay 3% of its written premium on the policies covered by the Arrangement for the right to receive a dollar for dollar reimbursement for actual state or municipal taxes paid on the policies covered by the Arrangement. No company has exercised this option since the WYO Program was initiated in 1983. A number of WYO Companies are members of

rating organizations and as such can employ services of those organizations that would be of benefit to the NFIP, specifically studies and investigations regarding flood insurance risk premium rates on a community or individual basis. Another revision to Article III.B would provide for a WYO Company to employ such services and be reimbursed for them.

The revision to Article VII.B of the Arrangement removes cash management details and replaces them with a reference to the WYO Accounting Procedures Manual, where all such requirements are provided in more detail.

The revision to Article III.D clarifies reimbursement of a WYO Company for awards or judgments for damages arising outside the scope of the claims processing standards and guides of the Arrangement or other provisions of the Arrangement.

A proposed rule published in the **Federal Register** on May 20, 1987 (52 FR 18929) would revise the flood insurance commission allowances paid to property insurance agents and brokers for the procurement of new flood insurance policies, and renewals thereof, on behalf of policyholders insured by the NFIP through its Servicing Agent. At that time, it was indicated that commission arrangements under the WYO Program would be addressed in Fiscal Year 1988. This proposed rule does that, in that it would revise the current commission allowance in the Arrangement from 15% to 13%. To further the WYO Program goal of increasing the NFIP policy-in-force base, this proposed rule would also provide for a WYO commission allowance for each WYO Company, in addition to the proposed 13%. The additional commission allowance would be one-tenth of a percent for each 1% increase in the NFIP policies-in-force for that WYO Company during each Arrangement Year, subject to a cap of 3% for this additional commission allowance.

The revision to Article IX of the Arrangement reflects an industry practice which some WYO companies have indicated that they may follow of issuing policies, especially in the case of condominium coverage, without listing names of mortgagees, and assures that if this practice is followed, it will not impose additional costs upon the United States in the event that a mortgagee, of which a WYO Company had actual notice prior to making a claim payment without including that mortgagee, seeks payment.

The right of a WYO Company under the WYO Program to reject flood insurance applications, which would then be referred to the NFIP Servicing Agent, has been clarified, and the rule governing the effective date of coverage in these cases has also been clarified.

The changes in the Statistical Plan Reconciliation Procedures in the Financial Control Plan are proposed for three reasons. First, some of the wording is being clarified. Second, because the Financial Control Plan was initially written prior to development of some of the computer systems used to process the statistical submissions, the language needs to be updated to conform with controls and reports that are possible and appropriate within the constraints of the systems as implemented. Third, program experience has necessitated the implementation of an expanded front-end balancing procedure for the statistical tape submissions and this is appropriately included in the Financial Control Plan.

Based on the experience thus far in the WYO Program in conducting operation reviews of WYO Companies for claims and for underwriting/policy administration, clarification and change to these provisions of the WYO Financial Control Plan are being proposed. For example, for underwriting/policy administration operation reviews, one exhibit has been revised, other exhibits have been specified as optional, the examples of critical errors have been expanded, and the error percentage standard has been made more flexible. For both kinds of operation reviews, the standard for the number of files examined has been made more flexible to take into account the wide variation in the number of policies or claims from one WYO Company to another.

Provisions are being proposed in the WYO Financial Control Plan for triennial financial audits and audits for cause of WYO Companies. The triennial financial audits, which would be in addition to the triennial operation reviews for claims and for underwriting/policy administration, would provide FEMA with independent assessment of the integrity of financial data reported by WYO Companies to FEMA and generally of the quality of financial controls over activities relating to a WYO Company's participation in the WYO Program. The provisions on audits for cause would provide criteria for when such audits would be concluded.

A few other changes of an editorial or clarifying nature are contained in this proposed rule.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule will not have significant economic impact on a substantial number of small entities and therefore has not undergone regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 61 and 62

Flood insurance, Claims.

Accordingly, it is proposed to amend 44 CFR Chapter I, Subchapter B, as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.11 [Amended]

2. Section 61.11 is amended by adding to the end of the first sentence of paragraph (e) the following:

• • • • • •

(e) • • •, except where a WYO Company receives an application and premium payment from one of its agents which is referred to the NFIP Servicing Agent because the WYO Company does not wish to write the business, in which case any applicable waiting period under this section shall be calculated in accordance with the first sentence of paragraph (f) of this section.

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

3. The authority citation for Part 62 is revised to read as set forth below, and the authority citations following all the sections in Part 62 are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 62.23 [Amended]

4. Section 62.23 is amended as follows:

a. By removing in paragraph (c) the word "will" and adding in its place the words "is authorized to".

b. By removing in paragraph (h)(5) the words "a producer, the producer" and adding in their place the words "an agent or a producer, the agent or producer".

c. By revising paragraph (j)(4) to read as follows:

• • • • • •

(j) • • •

(4) Participate in WYO Company/FIA Operation Reviews. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company flood insurance activities at least once every three (3) years. A report of the Operation Review will be filed with the Standards Committee.

• • • • • •

d. In paragraph (j)(5) by adding after the phrase "WYO Statistical Plan" both times it appears the phrase "and the WYO Accounting Procedures Manual", by removing in the last sentence the word "total" and adding in its place the word "totals", and by adding in the last sentence after the word "Company" and before the word "reports" the word "reconciliation".

e. In paragraph (j) (7) and (8), by removing the word "Cooperation" and adding in its place the word "Cooperate".

Appendix A to Part 62—[Amended]

5. Appendix A to Part 62, *Financial Assistance/Subsidy Arrangement*, is amended as follows:

a. Article II—Undertakings of the Company, is amended by removing in section E all sentences after the first sentence and adding in their place the following sentence:

• • • All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

b. Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds, is amended by adding "marketing," in the first sentence of the first paragraph of section B after the word "Company's" and before the word "operating".

c. Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds, is amended by removing the second and third paragraphs of section B and adding in their place the following three paragraphs:

The Company shall be entitled to withhold 13.0% of the Company's written premium on the policies covered by this Arrangement as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses. Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangement for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced by 80% of the number of policies scheduled for transfer to the Company during this Arrangement Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the Commission allowance.

Nothing in Article III, Section B can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of the additional commission allowance will be in accordance with the WYO Accounting Procedures Manual.

With the agreement of the Company and for the benefit of the WYO Companies and the National Flood Insurance Program, in general, the Administrator may designate the Company to employ the services of a national rating organization licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis for the purpose of determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under section 1307 of the National Flood Insurance Act of 1968, as amended. Charges or fees for such services agreed to by the Administrator shall be reimbursed to the Company in accordance with the provisions of the WYO Accounting Procedures Manual.

d. Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds, is amended in section D by adding "1." after "D." and by removing the second paragraph and adding in its place the following:

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). If the recommendation is that the claim does not arise under the provisions of this section (D)(2), the Chief, Property Claims Division, OIPATS, will review the matter and, if he concurs in the recommendation, will advise the Company that any award or judgment for damages arising out of such actions may not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. The Company shall be so notified, in writing, within thirty (30) days of the General Counsel's recommendation. In the event that the Company wishes to appeal the notification that it may not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written notice of appeal to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the appeal at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

e. In Article IV—Undertakings of the Government, section A is amended by revising the third sentence to read as follows:

• • • Request for funds shall be made only when net premium income has been depleted.

f. In Article V—Commencement and Termination, paragraph "a" of section C is amended by adding after the word "Program" and before the semicolon the words ", including certain data, as determined by FIA, in a standard format and medium".

g. In Article VII—Cash Management and Accounting, section A is amended by removing the words "and interest income".

h. Article VII—Cash Management and Accounting, is amended by revising section B to read as follows:

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

i. Article IX—Errors and Omissions, is amended by adding a second paragraph to read as follows:

• • • • • •

However, in the event that the company has made a claim payment to an insured without including a mortgagee (or trustee) of which the company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Appendix B to Part 62—[Amended]

6. Appendix B to Part 62, *A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program*, is amended as follows:

a. The introductory section at the beginning of Appendix B is amended by removing in numbered paragraph 4 the words "actual files (up to fifty [50])" and adding in their place the words "specific files".

b. The introductory section at the beginning of Appendix B is amended by adding, following numbered paragraph 4, a new numbered paragraph 5 to read as set forth below and by renumbering existing numbered paragraphs 5 through 9 as numbered paragraphs 6 through 10, respectively:

5. Have a triennial audit of the flood insurance financial statements conducted by an independent accounting firm at the company's expense to ensure that the financial data reported to FIA accurately represents the flood insurance activities of the company.

c. Part 2—Statistical Plan Reconciliation Procedures, is amended as follows:

(1) By revising the second and third sentences of the *Statistical Plan Reconciliation Objectives* section to read as follows:

* * * The reliance on computer processing to perform the review of transaction and financial data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by the NFIP Servicing Facility.

(2) By renumbering paragraphs 2 and 3 as 3 and 4, respectively, and by adding a new paragraph 2 to read as follows:

* * * * * *

2. WYO Companies are required to submit, on a form approved by the Administrator, a tape transmittal document with the submission of the statistical tape containing transaction detail. This will be used to validate record counts and dollar amounts.

* * * * *

(3) In renumbered paragraph 4 of the *Financial Control* section, by adding after the word "maintained" the words "whenever possible".

(4) In paragraph 4 of the *Quality Review of Submitted Data* section, by removing the last two sentences and adding in their place the following:

* * * Critical errors include those made in required data elements. Required data elements:

(1) identify the policyholder, the policy, the loss, and the property location;

(2) provide information necessary to rate the policy;

(3) provide information used in financial control;

(4) provide information used for actuarial review of NFIP experience.

Non-critical errors are those made in data elements reported by the WYO Companies at their opinion.

(5) In the second paragraph of the *Timeliness of Reporting* section, by removing the words "receipt date" and adding in their place the words "the first processing cycle subsequent to the receipt".

(6) Numbered paragraph 2 of the *Monthly Reports* section is revised to read as follows:

* * * * *

2. Summary statistics will be generated for each monthly submission of transaction date. These will include:

a. Absolute numbers of transactions read and transactions rejected by transaction type.

b. Other amounts associated with transactions read and transactions rejected.

(7) Numbered paragraph 4 of the *Monthly Reports* section is revised to read as follows:

* * * * *

4. Control totals will be generated for tapes submitted to and processed by the NFIP. This front-end balancing procedure will include:

a. Numbers of records submitted according the NFIP compared with numbers of records submitted according to the WYO Company transmittal document.

b. Dollar amounts submitted according to the NFIP compared with dollar amounts submitted according to the WYO Company transmittal document.

If there is any discrepancy between the NFIP reading of dollar amounts from the tape and the WYO Company tape transmittal document, then the monthly statistical tape submission will be rejected and returned to the Company. The rejected tape must be corrected and resubmitted by the next monthly submission due date.

(8) By revising Exhibit "A" to read as follows:

Exhibit "A"

WYO Statistical Tape Transmittal Document

Date sent: _____
WYO prefix code: _____
WYO company name: _____
Address: _____
Reel number (s) of enclosed tapes: _____
Density _____
LRECL _____
Blocksize _____
File name (DSN) _____
Contact person _____
Contact number _____
IBU number _____
(WYO use only)

Monthly Reconciliation—Net Written Premiums

Company name _____
Co. NAIC number _____
Month/year ending _____
Date submitted _____
Preparer's name _____
Telephone No. _____

Monthly Financial Report		Monthly Statistical Transaction Report			
		Trans. code	Record count		Premium amount
Net written premiums	$ (Income statement = line 100)	11			$
		15			
		17			
		20			
Unprocessed statistical:					
(+) Prior month's		23			
(-) Current month's		26		(-)	
Other-explain:		29		(-)	
(+) Current month's		14 and 61		(+)	
(-) Prior month's					

Monthly Financial Report		Monthly Statistical Transaction Report		
		Trans. code	Record count	Premium amount
Total		Total. (Add 11 through 23 less 26 and 29).		
Comments:				

Monthly Reconciliation—Losses

Company name _____
Co. NAIC number _____
Month/year _____
Date submitted _____

		Trans. code	Record count	Loss/paid recoveries
100 Net paid losses (Income statement line 115)	$			
Unprocessed statistical:				
140 (+) Prior month's		31		$
		34		
150 (-) Current month		37		
160 Salvage not to be reported by transaction (Explain)		40		
170 Other-explain:		43		
		46 and 61		
		49		
		64		
		84 and 87		
		52 Recovery	Salvage	Subrogation
		67 Recovery	Salvage	Subrogation
Total. (Sum of lines 100, 140, 160, and 170 less 150)		Total. (Add 31, 34, 40 through 64 less 52 and 67).		
Comments:				

Monthly Reconciliation—Special Allocated LAE

Company name _____
Co. NAIC number _____
Month/year ending _____
Date submitted _____

Monthly Financial Report		Monthly Statistical Transaction Report		
		Trans. code	Record count	Amounts
Special allocated loss adjustment expenses	(Other loss and LAE Calc. = line 655) 74	71		$
Unprocessed statistical:				
(+) Prior Month				
(-) Current Month				
Other—Explain:				
(1)				
(2)				
Total		Total		
Comments:				

d. PART 3—Underwriting/Policy Administration Operation Review Procedures, is amended as follows:

(1) By removing in the second sentence of paragraph number 2 of the *Notice* section the words "Up to 50 policy" and adding in their place the word "Policy".

(2) By adding to the end of paragraph number 2 of the *Notice* section the following:

The number of policy files reviewed shall be determined by the following schedule:

Policies in force	Policy files reviewed
Under 25,000	50
25,000 to 74,999	75
75,000 to 99,999	100
100,000 and over	125"

(3) By adding in paragraph 1 *WYO Company Summary Report*, of the *Underwriting/Policy Administration Operation Review Outline* section after the word "underwriter" and before the word "prior" the words", if requested,".

(4) By removing in paragraph 2, *Administrative Review*, of the *Underwriting/Policy Administration Operation Review Outline* section the words "See Exhibit 'B'." and adding in their place the following: "Exhibit B, whose use is optional, provides a format for this review."

(5) By removing in paragraph 4, *File Review*, the words "would be compiled" and adding in their place the words",

whose use is optional, provides a format".

(6) By removing in the note appearing just before Exhibit "A"—WYO Company *Summary Report* the words "of 20% of higher" and adding in their place the words "equal to or greater than, depending on the nature of the files selected for review, 10% to 20%".

(7) By adding in item number (1) of the note appearing just before Exhibit "A"—WYO Company *Summary Report* after "zone)" and before the period the words", or an endorsement."

(8) By adding after item number 2 at the end of the note appearing just before Exhibit "A"—WYO Company *Summary Report* items (3) through (6) to read as follows:

(3) The failure to obtain the information necessary to properly identify and underwrite a risk.

(4) The issuance of a policy with an incorrect policy term.

(5) Any error which impacts the correct return premium on a cancellation or nullification.

(6) The processing of a cancellation or nullification for an invalid reason.

(9) By revising Exhibit "C"—Specific Risk Review Checklist, to read as follows:

Exhibit "C"—Specific Risk Review Checklist

Date: _____

Occupancy

( ) Single Family
( ) 2–4 Family
( ) Other Residential
( ) Non Residential

Number of Floors _____

Condominium

( ) Yes ( ) No

Basement

( ) Yes ( ) No

Elevated Building

( ) Yes ( ) No

Policy No. _____

Amount of Insurance

Building _____
Contents _____

Zone

Complete when appropriate

Elevation Difference _____
Base Floor Elevation _____
Lowest Floor Elevation _____
Grade Elevation _____

Obstruction below elevated building

( ) Yes ( ) No

	Policy Number		
	Yes	No	Comment if checked "No"
Application:			
Properly Completed?			
Met Eligibility-Location Requirements			
Policy:			
Properly Issued?			
Required Premium Received? (If coverage was reduced to the amount that could be purchased with the premium submitted, check yes.)			
Are Coverage Limits within NFIP Statutory Allowances?			
Waiting Period Observed?			
Endorsements, Renewals, Cancellations:			
Properly Issued?			
Required Premium Received or Returned?			
Waiting Period Observed?			
Additional Documentation:			
Is Elevation Certificate Information Valid and Complete?			
If Specifically Rated, has Company Obtained the Required Information?			
File Satisfactory For Service Within Guidelines?			
Recertification?			

Comments—FIA Examiner

Comments—WYO Company Underwriter

Resolution

e. Part 4—Claims Operation Review Procedures, is amended as follows:

(1) By removing in the second sentence of numbered paragraph 2 of the *Claims Operation Review Objectives* the words "50 policy files" and adding in their place the words "5% of the claim files opened during the period covered by the Review."

(2) By adding in Exhibit "B"—Administrative Review Checklist, just before 1. *Investigation and Adjustments*, the following:

Policy #
Insureds Name:
State:
Date of Loss:
Date Paid:
Date Reported:
Amt. of Loss: $
Bldg. $
Contents $
Adjusting Firm:
Examiners Name:
Comments:

(3) By adding at the end of section "f" of Exhibit "B"—Administrative Review Checklist, item 9 as follows:

	Policy Number		
	Yes	No	Comment if checked "No"
(9) Is the statistical reporting correction file being properly managed?	( )	( )	( )

f. By revising Part 6—Financial Audits and State Insurance Department Examinations, to read as follows:

Part 6—Financial Audits, Audits for Cause, and State Insurance Department Audits

A. Triennial Financial Audits

I. *Objectives of WYO Triennial Financial Audit*—The triennial financial audit is intended to provide the Federal Emergency Management Agency with independent assessment of the quality of financial controls over activities relating to the Company's participation in the National Flood Insurance Program as well as the integrity of the financial data reported to FEMA. Participating WYO Companies are responsible for selecting and funding independent Certified Public Accounting firms to conduct the triennial audits. Such costs are considered part of the normal administrative costs of operating the WYO Program and as such are included in the WYO expense allowance.

It is also intended that the triennial audit will reduce if not eliminate the need for FEMA auditors or their designees to conduct on-site visits to WYO Companies in their review of financial activity. However, the requirement may still exist for such visits to occur as determined by the auditors. In addition, nothing in this section should be construed as limiting the ability of the General Accounting Office to review the activities of the WYO Program.

The objective of the triennial audit is to ensure that financial data reported to FEMA for the Arrangement Year (Government Fiscal Year) is fairly and accurately presented in order to determine that:

A. Policy and claim related financial data as reported to the NFIP are proper and adequately supported by underlying documentation.

B. Reported cash amounts are properly reconciled to the bank account balance.

C. Reported accounts receivable, premium suspense and accounts payable balances are properly stated.

D. Cash management is in accordance with the requirement of the WYO Accounting Procedures Manual and consistent with the Company's procedures as updated to FEMA.

II. *Internal Controls and Suggested Procedures.*

A. The nature, timing and extent of audit tests to be applied are to be determined by the independent Certified Public Accounting firm based on its study and evaluation of the WYO Company's accounting procedures and system of internal control. Adequate evaluation requires knowledge and understanding of the WYO accounting and financial reporting procedures prescribed by the Arrangement and a reasonable degree of assurance that they are in use and are operating effectively.

B. The audit tests described below are suggested tests and are to be modified as considered necessary by the independent Certified Public Accounting firm, based on its study and evaluation of the WYO Company's accounting procedures, system of internal control and results of company WYO self audits. Based on such study and evaluation, the independent Certified Public Accounting firm may consider additional steps to be necessary, may consider certain of the audit tests described below to be unnecessary, or may consider additions to or reductions in the extent of such audit tests to be appropriate. Each elimination and/or reduction shall be described in the independent Certified Public Accounting firm's report. See Part IV below.

III. *Audit Tests.*

A. Tie total written premium from policy master file to the monthly financial reports.

1. Trace reconciling items to the subsequent month's financial report; and

2. Obtain evidence that items included with the second monthly financial report dated on or before the date of the reconciliation were included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

B. Select a representative sample of policies which were in-force during all or part of the Arrangement Year under audit for detail testing.

1. Confirm policy detail with policyholder (e.g., policy number, effective date, policy term, premium, insured property address, deductible amounts).

2. Determine that policy detail from policy file agrees with statistical data from the master file submitted to the NFIP.

3. Select a sample of policy cancellations and endorsements from throughout the fiscal year and determine the propriety of the financial reporting associated with such transactions (e.g., return premium, additional premium and appropriate application of the expense allowance).

C. Tie total paid losses and outstanding loss reserves, allocated and special allocated adjustment expenses, including outstanding reserves, from policy master file to monthly financial reports.

1. Trace reconciling items to the subsequent month's financial reports, and;

2. Obtain evidence that items included with the second statement dated on or before the date of the reconciliation are included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

D. Select a representative sample of claims activity during the Arrangement Year for detail testing.

1. Confirm policy number, claim number, loss payment, loss date, and date-of-loss payment with policyholder.

2. Determine whether special allocated LAE payment, as applicable has been properly approved prior to incurring any expenses.

3. Determine that claim status in the claim file agrees with data submitted to the NFIP, and that the policy was in-force on the date of loss.

4. Verify that unallocated loss adjustment expense was appropriately determined and reported.

5. Review IBNR reserve calculation to determine whether it is consistent with the methodology reported to FEMA.

6. Determine whether adjustments to the outstanding case reserves are proper and made on a timely basis.

7. If salvage or subrogation is significant in relation to the company's claims activity, select a sample of recoveries to determine that they were properly recorded (data from claims file agrees with submission to the NFIP).

E. Determine whether cash receipts are being promptly deposited to the Restricted Account and that excess cash is being swept from the account in accordance with the WYO Accounting Procedures Manual.

F. Determine whether reimbursements from the Restricted Account or drawdowns on the Treasury Letter-of-Credit are made in accordance with the WYO Accounting Procedures Manual.

G. Obtain bank reconciliations for the restricted account and any other flood-related account(s) as of the end of the Arrangement Year. Review bank reconciliations for old and/or unusual reconciling items. Reconcile restricted account activity to premium and claim data reported in monthly financial reports on a sample basis.

H. Reconcile accounts receivable, accounts payable, premium suspense and other miscellaneous trial balances to reported amounts. Test the propriety of the detail on a sample basis.

I. Make inquiries of management and review available reports relating to activity subsequent to year-end for items that should have been included in Arrangement Year results.

B. Audits for Cause

In accordance with the terms of the WYO Arrangement, FIA reserves the right to conduct for cause audits of participating companies. The criteria for initiating include the following, which in combination or independently may initiate such an audit:

1. Self-Audit

—Adequate reporting was not received from a company, even after follow-up requests.
—Review of the reported self-audit results indicates problem areas which require further explanation or follow-up.
—Reports of self-audit results do not adequately respond to problems or deficiencies raised through other aspects of the Financial Control plan (i.e., errors/rejects from statistical reporting, financial reporting discrepancies, financial/statistical reconciliation problems, etc.).
—Triennial audit results indicate that the self-audits were not adequately performed and that the reported results cannot be relied upon.

2. Underwriting

—Excessively high frequency of errors in underwriting:
a. Issuing policies in for ineligible risks.
b. Issuing policies ineligible communities.
c. Consistent premium rating errors.
d. Missing or insufficient documentation for submit for rate policies.
e. Other patterns of consistent errors.
—Abnormally high rate of policy cancellations or non-renewals.
—Policies not processed in a timely fashion.
—Duplication of policy coverage noted.
—Problems with Rollover from National Flood Insurance Program (NFIP) to WYO (duplicaton of coverage, timeliness of changeover).
—Relational type edits indicate an unusually high or low premium amount per policy for the geographical area.
—Structural characteristics are significantly different from the norm for the geographical area.
—Self-audit or triennial audit results indicate unusual volume of errors in underwriting.

3. Claims

—Reinspections indicate consistent patterns of:
a. Losses being paid when not covered.
b. Statistical information being reported on original loss adjustment found to be incorrect on reinspection.
c. Salvage/subrogation not being adequately addressed.
d. Consistent overpayments of claims.
—Unusually high count of erroneous assignments and/or claims closed without payment (CWP). (WYO Company is paid a flat fee for CWP cases where little or no work is done—risk is fraudulent CWP cases).
—Unusually low count of CWP (May indicate inadequate follow-up of claims submitted).
—Higher than Program average (over allowable parameters) of average claim payments.
—Lack of (adequate) documentation for paid claims.
—Claims not processed in a timely fashion.
—Consistent failure of WYO Company to receive authorization for special allocated loss adjustment expenses prior to incurring them.
—High/consistent policyholder complaint level.
—Low/high count of salvage/subrogation.
—High submission of Special Allocated Loss Adjustment Expenses (SALAE).
—Inability to adequately verify (confirm) validity of claim payments.
—Triennial audit indicates significant problems.

4. Financial Reporting/Accounting

—Consistently high reconciliation variations and/or errors in statistical information.
—Financial and/or statistical information not received in a timely fashion.
—Letter of Credit violations are found.
—WYO Company is not submitting timely deposits of funds to the Federal Insurance Administration (FIA) through the automatic clearinghouse (ACH).
—WYO Company is not depositing funds to the Restricted Account in a timely manner.
—Premium suspense is consistently unusually large and/or cannot be detailed sufficiently.
—Large/unusual balance in Cash-Other (Receivable and/or Payable).
—Large, unexplained differences in cash reconciliation.

—Large/unusual balances or variations between months noted for key data ("Summary of Key Data").
—Financial statement to statistical data reconciliation sheets improperly completed indicating proper review of information is not being performed prior to signing certification statement.
—Repeated failure to respond fully in a timely manner to questions raised by FIA or its servicing agent concerning monthly financial reporting.
—Significant dollar amount of suspense items 60 days and older.

C. State Insurance Department Examination

It is expected that audits of WYO Companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and providing a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition, when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided to the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.

The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusions.

Dated: December 31, 1987.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 88-217 Filed 1-6-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-670]

Children's Television Commercialization Guidelines

AGENCY: Federal Communications Commission.

ACTION: Order extending time for filing of comments.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in response to the *Further Notice of Proposed Rule Making/Notice of Inquiry* in MM Docket No. 83-670 (52 FR 44616). This *Further Notice* requests comments regarding the issue of commercialization guidelines for children's television. This extension of time was requested by the National Association of Broadcasters.

DATES: Comments are due February 19, 1988 and reply comments are due April 4, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugenia R. Hull, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

[FR Doc. 88-106 Filed 1-6-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-15; Notice 2]

Federal Motor Vehicle Safety Standards; Vehicle Classification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period on an advance notice of proposed rulemaking published October 28, 1987, on possible new definitions for basic motor vehicle types. The Comment period originally was scheduled to close on December 28, 1987. The new comment closing date is Monday, January 25, 1988. On November 17, 1987, the Motor Vehicle Manufacturers Association petitioned the agency to extend the comment period for days. MVMA requested an extension to allow an adequate time for analysis of the eight options presented in the advance notice, as well as for possible development of other alternative vehicle type definitions. The agency received a request for a 90-day extension from the Recreation Vehicle Industry Association on November 20, 1987, stating the same reasons as those contained in MVMA's request. The agency has conidered these petitions, and has decided that a new comment due date of January 25, 1988, would be in the public interest.

DATE: The comment period for Docket No. 87-15: Notice 1 is reopened. The new closing date for this advance Notice of Proposed Rulemaking is January 25, 1988.

ADDRESS: Comments should refer to Docket No. 87-15 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 am to 4:00 pm, Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Parker, NRM-011, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW., Washington, DC 20590, (202 366-4931).

SUPPLEMENTARY INFORMATION: On October 28, 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM) in response to a petition filed by the Insurance Institute for Highway Safety to redefine basic motor vehicle types, so that vehicles used primarily to transport passengers are not classified together with vehicles used primarily to transport cargo. (See 52 FR 41475) the agency published the ANPRM to request public comment on possible new approaches to motor vehicle classification for purposes of the Federal motor vehicle safety standards.

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA) petitioned the agency on November 17, 1987, to extend this ANPRM's comment period for 60 days. On November 20, 1987, the Recreation Vehicle Industry Association (RVIA) requested that the agency extend the comment period for 90 days. The reasons Cited in the two requests are the same. The principal reason is to provide adequate time to allow complete analysis of the eight unique alternatives contained in the proposal. MVMA states that each manufactuer must determine the effects of the proposed alternatives on current and future passenger cars, vans, wagons, on/off road utility vehicles, incomplete vehicles, light trucks, multipurpose passenger vehicles, etc. In addition, manufacturers then must conduct evaluations of the potential effects of each of the alternatives on vehicle design and manufacturing facility allocations. Moreover, manufacturers may find it necessary to develop and propose additional alternatives.

NHTSA has considered carefully the MVMA and RVIA requests. As a general matter, the agency will not grant a petition to extend the comment period unless the peition demonstrates good cause for the extension and the agency determines that the extension is consistent with the public interest. In this case, while there will be an additional opportunity for public comment if the agency determines to issue a proposed rule, the agency believes that it may help to provide some additional time to analyze fully the different options presented in the ANPRM. We also agree that some commenters may wish to develop alternative definitions or proposals. The agency further recognizes that a comment due date in the middle of a traditional holiday season may cause some difficulty in providing commenters adequate time to provide the most cogent comments possible.

Accordingly, some additional time is warranted. However, because of the intense interest in this rulemaking, including the many issues related to the practical effects of any new definition of vehicle types (such as the extension of a new Federal motor vehicle safety standard to a vehicle type for the first time), the agency has determined that it is not appropriate to extend the time to comment for the length of time requested in the petitions. Accordingly, The comment period for Docket No. 87-15 is reopened for comment until Monday, January 25, 1988.

Authority: Sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 501.

Issued on January 5, 1988.

Barry Felrice

Associate Administrator for Rulemaking.

[FR Doc. 88-267 Filed 1-5-88; 10:43 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pesticide Use for Mountain Pine Bettle Control; Deerlodge National Forest, Butte, MT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to use pesticides in late May or June in 1988 and in 1990 to control mountain pine beetle in the Homestake, Delmoe Lake, Elder Creek, and Thompson Park campgrounds and picnic areas on the Deerlodge National Forest.

A range of alternatives will be considered including alternate methods of mountain pine beetle control and a no action alternative.

Federal, State, and local agencies: Other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Montana is the responsible official.

The analysis is expected to take about four months. The draft environmental impact statement should be available for public review by February 1988. The final environmental impact statement is scheduled to be completed by May 1988.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by January 25, 1988.

Questions about the proposed action and envronmental impact statement should be directed to Merrill Davis, Butte District Ranger, Deerlodge National Forest, phone 406-494-2147.

Frank E. Salomonsen,

Forest Supervisor.

Date: December 29, 1987.

[FR Doc. 88-225 Filed 1-6-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Export Administration

Order Affecting Export Privileges; Joseph Sappir et al.

In the matter of Joseph Sappir, individually and doing business as Establishment Noon International, Inc., 35 Rokach Str. (Apt. 5), P.O. Box 37183, Tel Aviv 61370, Israel, Respondents.

The Office of Export Enforcement, United States Export Administration,[1] United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Joseph Sappir, individually and doing business as Establishment Noon International, Inc. (hereinafter collectively referred to as Establishment Noon), pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. sections 2401–2420 (1982 and Supp. III 1985)) and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1987)) (the Regulations), based on allegations that Establishment Noon violated §§ 387.5 and 387.6 of the Regulations in that, between December 1983 and April 1984, Establishment Noon reexported, from Israel to Switzerland, U.S.-origin goods originally shipped from the United States to Israel, without obtaining the reexport authorization required and that, in connection with these shipments, Establishment Noon failed to notify the Department of changes in material facts;

The Department and Establishment Noon having entered into a Consent Agreement whereby the parties have agreed to settle this matter by denying Establishment Noon all U.S. export privileges for a period ending five years from the date of this Order; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, that all outstanding validated export licenses in which Joseph Sappir, individually and doing business as Establishment Noon International, Inc., appears or participates, in any manner or capacity, are hereby revoked and shall be returned to the Office of Export Licensing for cancellation. Further, all of Establishment Noon's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Joseph Sappir, individually and doing business as Establishment Noon International, Inc. (hereafter collectively referred to as Establishment Noon), for a period of five years from the date of entry of this Order, is denied all privileges of participating, directly or indirectly, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. Such denial of export privileges shall extend not only to Establishment Noon but also to its agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Establishment Noon is now or hereafter be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

C. No person, firm, corporation, or business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to denial of export privileges as set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Establishment Noon or anyone who is now or may be subsequently named as a related party, or whereby Establishment Noon or any related party may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Establishment Noon or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Enforcement.

Entered this 24th day of November, 1987.

[FR Doc. 88-202 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-25-M

[1] On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration of the United States Department of Commerce to the United States Export Administration of the United States Department of Commerce.

International Trade Administration

[A-122-605]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada

ACTION: Notice.

SUMMARY: In separate investigations concerning color picture tubes (CPTs) from Canada, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that CPTs from Canada are being sold at less than fair value and that sales of CPTs from Canada are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of CPTs from Canada made on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: John Kenkel or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3530 or 377-3965.

SUPPLEMENTARY INFORMATION: The products covered by this order are CPTs which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.0030, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receiver or other color entertainment display devices intended for television viewing.

CPTs which are imported as incomplete television assemblies that contain a CPT as well as additional components are also included within the scope of this order unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. Incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660.

We have, however, determined that CPTs which are shipped and imported together with other parts as television receiver kits (which contain all parts necessary for assembly into complete television receivers) are excluded from the scope of this order.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on November 12, 1987, the Department made its final determination that color picture tubes from Canada were being sold at less than fair value (52 FR 44161, November 18, 1987). On December 22, 1987, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Also, subsequent to the publication of the final determination, we were notified by Counsel for Mitsubishi Electronics Industries Canada, Inc. that certain clerical errors were found in our calculations. The Department conducted a review based on these comments and made the following corrections:

1. We corrected the exporter's sales price computer program by excluding inventory carrying cost on the CPT in the calculation of "Final Added Value Amount."

2. We corrected the purchase price computer program by including revised credit expenses in the purchase price calculation of FMV.

We hereby amend our final determination to correct these errors and change the weighted-average dumping margin from .65 percent to .63 percent.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CPTs from Canada. These antidumping will be assessed on all unliquidated entries of CPTs entered, or withdrawn from warehouse, for consumption on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (52 FR 24316).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/Producers/Exporters	Weighted-average margin (percent)
Mitsubishi Electronics Industries Canada, Inc.	63
All Other Manufacturers/Producers/Exporters	63

This determination constitutes an amendment to the final determination and an antidumping duty order with respect to CPTs from Canada, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 29, 1987.

[FR Doc. 88-214 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-609]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan

ACTION: Notice.

SUMMARY: In separate investigations concerning color picture tubes (CPTs) from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that CPTs from Japan are being sold at less than fair value and that sales of CPTs from Japan are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of CPTs from Japan made on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Jess Bratton or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 377-3963 or 377-3965.

SUPPLEMENTARY INFORMATION: The products covered by this order are CPTs which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

CPTs which are imported as incomplete television assemblies that contain a CPT as well as additional components are also included within the scope of this order unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. CPTs which are imported together with other parts as incomplete television assemblies whether shipped directly from Japan or through Mexico should be included in the scope of this order. Incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660.

We have also determined that CPTs which are shipped directly from Japan and imported together with other parts as television receiver kits (which contain all parts necessary for assembly into complete television receivers) are excluded from the scope of this order. However, CPTs which are shipped through Mexico and imported together with other parts as television receiver kits should be included in the scope of this order.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on November 12, 1987, the Department made its final determination that color picture tubes from Japan were being sold at less than fair value (52 FR 44171, November 18, 1987). On December 22, 1987, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Also, subsequent to the publication of the final determination, each respondent made allegations that clerical errors were made in calculating the final dumping margins. The Department conducted a review based on these comments and made the following corrections:

1. For Hitachi, Ltd. no amendment to the final determination was made.
2. For Mitsubishi Electric Corporation, we recalculated adjustments for physical differences in the merchandise for both 14 and 20 inch models by deducting yields from the material costs for U.S. models.
3. For Matsushita Electric Corporation, we recalculated the adjustment for physical differences in merchandise for the 13 inch model by adding the cost of the deflection yoke.

We hereby amend our final determination to correct these errors and change the weighted-average dumping margin from 1.34% to 1.05% for Mitsubishi Electric Corporation, and from 32.91% to 27.46% for Matsushita Electric Corporation.

Therefore, in accordance with section 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CPTs from Japan. These antidumping duties will be assessed on all unliquidated entries of CPTs entered, or withdrawn from warehouse, for consumption on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (52 FR 24320).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/Producers	Weighted-average margin (percent)
Exporters	
Mitsubishi Electric Corporation	1.05
Hitachi, Ltd.	32.29
Matsushita Electronics Corporation	27.46
Toshiba Corporation	33.50
All Others	27.93

This determination constitutes an amendment to the final determination and an antidumping duty order with respect to CPTs from Japan, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 29, 1987.

[FR Doc. 88-211 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-605]

Antidumping Duty Order; Color Picture Tubes From Korea

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning color picture tubes (CPTs) from Korea, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that CPTs from Korea are being sold at less than fair value and that sales of CPTs from Korea are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of CPTs from Korea made on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3464 or 377-3965.

SUPPLEMENTARY INFORMATION: The products covered by this order are CPTs which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

CPTs imported as part of color television receiver kits or as part of incomplete television receiver assemblies that are subsequently assembled into a completed color television (CTV) by a related party are included within the scope of the existing order on complete and incomplete color television receivers from Korea ("CTV order") (40 FR 16338, April 30, 1984). Therefore, these CPTs are not included within the scope of this order.

In addition, we have determined that CPTs, which are not covered by the CTV order, are covered by this investigation unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on November 12, 1987, the Department made its final determination that color picture tubes from Korea were being sold at less than fair value (52 FR 44186, November 18, 1987). On December 22, 1987, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CPTs from Korea. These antidumping duties will be assessed on all unliquidated entries of CPTs entered, or withdrawn from warehouse, for consumption on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (52 FR 24318).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a case deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/Producers/Exporters	Weighted-average margin (per cent)
Samsung Electron Devices, Co., Ltd	1.91
All Other Manufacturers/Producers/Exporters	1.91

This determination constitutes an antidumping duty order with respect to CPTs from Korea, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 29, 1987.

[FR Doc. 88-213 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-601]

Antidumping Duty Order; Color Picture Tubes From Singapore

AGENCY: International Trade Administration, Commerce.
ACTION: Notice.

SUMMARY: In separate investigations concerning color picture tubes (CPTs) from Singapore, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that CPTs from Singapore are being sold at less than fair value and that sales of CPTs from Singapore are materially injuring a U.S. industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption, of CPTs from Singapore made on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Jess Bratton or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 377-3963 or 377-3965.

SUPPLEMENTARY INFORMATION: The products covered by this order are CPTs which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520. The corresponding Harmonized System (HS) numbers are 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60.

CPTs are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing.

CPTs which are imported as incomplete television assemblies that contain a CPT as well as additional components are also include within the scope of this order unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam; and, (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. Incomplete television receiver assemblies are provided for in TSUSA items 684.9656, 684.9658 and 684.9660.

We have, however, determined that CPTs which are shipped and imported together with other parts as television receiver kits (which contain all parts necessary for assembly into complete television receivers) are excluded from the scope of this order.

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on November 12, 1987, the Department made its final determination that color picture tubes from Singapore were being sold at less than fair value (52 FR 44190, November 18, 1987). On December 22, 1987, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1765), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CPTs from Singapore. These antidumping duties will be assessed on all unliquidated entries of CPTs entered, or withdrawn from warehouse, for consumption on or after June 30, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (52 FR 243180).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below:

Manufacturers/Producers/Exporters	Weighted-average margin percent
Hitachi Electronic Devices, Pte., Ltd.	5.39
All Other Manufacturers/Producers/Exporters	5.39

This determination constitutes an antidumping duty order with respect to CPTs from Singapore, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 U.S.C. 353.48). We have deleted from the Commerce regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.
Dated: December 29, 1987
[FR Doc. 88-212 Filed 1-6-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From West Germany; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

SUMMARY: In response to a request by Seco Maschinenbau and Co. ("Seco"), the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1985 through October 31, 1986. We found no dumping margins during the period.

As a result of the review, the Department has tentatively determined to revoke the antidumping finding with respect to that firm.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43753) the final results of its last administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972). Seco requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on December 16, 1986 (51 FR 45364). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialists at their local Customs offices to consult the schedule.

Imports covered by the review are shipments of West German drycleaning machinery, currently classifiable under TSUSA item 670.4100 and HS item number 8451.10.00.

The review covers one manufacturer/exporter of West German drycleaning machinery to the United States and the period November 1, 1985 through October 31, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act. Purchase price and ESP were based on the delivered packed price to unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, ocean freight, marine insurance, U.S. customs duties, brokerage charges, discounts, warranty expense and the U.S. subsidiary's indirect selling expenses. Where applicable, we made an adjustment for any increased value resulting from further assembly performed on the imported merchandise after importion and before its delivery to an unrelated purchaser in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price, or constructed value, all as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price. When insufficient quantities of such or similar merchandise were sold in either the home market or to third countries, we used constructed value.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers in the home market. Third-country price was based on the packed ex-factory price to unrelated purchasers in various third-countries.

We made adjustments, where applicable, for freight, cash discounts, warranties, service expenses, direct advertising, technical service (start-up) expenses and indirect selling expenses to offset U.S. indirect selling expenses for ESP calculations. We made further adjustments, where applicable, for differences in credit expenses, commissions to unrelated parties, packing costs, and differences in the physicial characteristics of the merchandise. No other adjustments were claimed or allowed.

Constructed value was calculated as the sum of materials, fabrication, general expenses, profit, and U.S. packing. We used actual general expenses since they exceeded the statutory minimum of ten percent of materials and fabrication cost. We added eight percent profit since the actual profit was below the statutory minimum.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that no dumping margins exist for Seco Maschinenbau & Co. GmbH for the period November 1, 1985 through October 31, 1986.

Seco requested partial revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreement. Seco has made no sales at less than fair value for two years.

Therefore, we tentatively determine to revoke in part the finding on drycleaning machinery from West Germany with respect to Seco. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Seco and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall not require any cash deposit of estimated antidumping duties for Seco. For any shipments from the other known manufacturers/exporters not covered by this review, the cash deposit shall continue to be at the rate published in the final results of the last administrative review (51 FR 43753, December 4, 1986) for each of those firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1986 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and

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353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Date: January 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-245 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-085]

Sugar and Syrups From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On November 16, 1987, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part the antidumping duty order on sugar and syrups from Canada. The review covers one manufacturer/exporter of this merchandise to the United States and the period from April 1, 1986 through February 10, 1987.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results and we revoke the antidumping duty order with respect to Lantic Sugar, Ltd.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 43782) the preliminary results of its administrative review and intent to revoke in part the antidumping duty order on sugar and syrups from Canada (45 FR 24126, April 9, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated and under item numbers 1701.11.0025, 1701.11.0045, and 1702.90.3000 of the Harmonized System.

The review covers one manufacturer/exporter of Canadian sugar and syrups and the period April 1, 1986 through February 10, 1987.

Final Results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results and intent to revoke in part. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that no dumping margins exist for Lantic Sugar, Ltd. for the period April 1, 1986 through February 10, 1987.

For the reasons set forth in the preliminary results of review and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Lantic Sugar, Ltd. Accordingly, we revoke the antidumping duty order on sugar and syrups from Canada with respect to Lantic Sugar, Ltd.

This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Lantic Sugar, Ltd., and entered, or withdrawn from warehouse, for consumption on or after February 10, 1987, the date of our tentative determination to revoke with respect to Lantic Sugar, Ltd.

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

For any future shipments from the remaining known exporter not covered in this review, a cash deposit shall be required at the rate published in the final results of the last administrative review for that firm (52 FR 9322, March 24, 1987).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after February 10, 1987, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian sugar and syrups entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Date: January 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-244 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Publication of Annual List of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: December 30, 1987.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Cents per pound	
		Gross [1] subsidy	Net [2] subsidy
Belgium	European community (EC) restitution payments	21.3	21.3
Canada	Export assistance on certain types of cheese	26.7	26.7
Denmark	EC restitution payments	24.2	24.2
Finland	Export subsidy	90.8	90.8
	Indirect subsidies	19.8	19.8
		110.6	110.6
France	EC restitution payments	20.2	20.2
Ireland	EC restitution payments	52.1	52.1
Italy	EC restitution payments	45.1	45.1
Luxembourg	EC restitution payments	21.3	21.3
Netherlands	EC restitution payments	15.0	15.0
Norway	Indirect (Milk) subsidy	18.1	18.1
	Consumer subsidy	40.0	40.0
		58.1	58.1
Spain	EC restitution payments	18.5	18.5
Switzerland	Deficiency payments	94.8	94.8
U.K.	EC restitution payments	17.9	17.9
W. Germany	EC restitution payments	18.3	18.3

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 88-215 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Program Applications; North Carolina

December 31, 1987.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

Project Number 04-10-88003-01 (52 FR 28181, 7-28-87 and 52 FR 29353, 8-6-87) has been cancelled due to the restrictive eligibility criteria.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (MBDC) Program to operate an IBDC for a 3-year period, subject to available funds and satisfactory performance. The cost of performance for the first *12* months is estimated at *$165,000* for the budget period *04/01/88* to *03/31/89*. The IBDC will operate in the *Cherokee/Asheville, North Carolina* Metropolitan Statistical Area (SMSA). The Project Number is *04-10-88010-01* for the *Cherokee/Asheville, North Carolina SMSA*.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for profit organizations, local and state governments, American Indian tribes and educational institutes.

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: Coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing assistance.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is *February 6, 1988*. Applications must be postmarked on or before *February 6, 1988*.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia 30309, (404) 347-3438.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION:
Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance—11.801 Minority Business Development)

William Brewster,

Business Development Specialist, Atlanta Regional Office.

Date: December 31, 1987.

[FR Doc. 88-178 Filed 1-6-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings to receive comments on several proposed harvest allocation alternatives for the non-Indian commercial and recreational ocean salmon fisheries north of Cape Falcon, Oregon, to the U.S.-Canada border.

DATES: Hearings will be held January 6, 1988, in Seattle, Washington, and January 7, 1988, in Astoria, Oregon. Hearings will begin at 7:00 p.m.

Written comments concerning the Council's allocation proposals will be accepted through January 8, 1988. The next Council meeting is January 13–14, 1988.

ADDRESSES: The meeting on January 6 will be at the Seattle Airport Hilton Hotel, 17620 Pacific Highway, South, Seattle, Washington. The meeting on January 7 will be at the Astoria Middle School, 1100 Klaskanine Avenue, Astoria, Oregon.

Send written comments to the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201. A report detailing the allocation alternatives is available from the Council.

The harvest allocation proposals and public comments will be reviewed by the Council at its January 13–14 meeting at the Red Lion-Columbia River, 1401 North Hayden Drive, Portland, Oregon.

SUPPLEMENTARY INFORMATION: Proposed harvest alternatives for ocean salmon north of Cape Falcon were presented to the Council at its November 1987 meeting in a report resulting from the work of user, Council advisory, and agency groups which began in October 1987. At its January 13–14 meeting, the Council could decide to recommend implementation of one new allocation option on an emergency basis for the 1988 ocean salmon season. The Council could select any of the specific options displayed in the report or an entirely new option from the range or alternatives discussed within the report of suggested by public comment. If no action is taken by the Council prior to the 1988 season, the current framework allocation schedule (status quo) will be used again in 1988.

(16 U.S.C. 1801 *et seq.*)

Dated: January 5, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-280 Filed 1-5-88; 1:37 pm]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before February 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Slacks, Utility, Woman's
8410-01-0974-6193
8410-01-0974-6194
8410-01-0974-6195
8410-01-0974-6196
8410-01-0974-6197
8410-01-0974-6198
8410-01-0974-6199
8410-01-0974-6200
8410-01-0974-7868
8410-01-0974-7869
8410-01-0974-7870
8410-01-0974-7871
8410-01-0974-7872
8410-01-0974-7873
8410-01-0974-7874
8410-01-0974-7003
8410-01-0974-7004

Service

Rehabilitation of Recorder Covers (Requirements of U.S. Geological Survey Bay St. Louis, Mississippi only).

C.W. Fletcher,

Executive Director.

[FR Doc. 88-130 Filed 1-6-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1988 commodities produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 23, 1987 and November 6, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 39678 and 42704) of additions and deletion to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

Comments on the proposed addition of the side rack, vehicle were received from the current contractor for the side rack and another firm which produces side racks. The major issues raised concerned the workshop's capability to produce the side racks employing blind or severely handicapped, the impact on the current contractor, and the fair market price for the side rack.

Both commenters questioned the workshop's capability to manufacture the side rack. Both the National Industries for the Severely Handicapped and the procuring activity have conducted on-site inspections of the workshop and have confirmed its capability to produce the side rack. In addition, the procuring activity verified that the workshop would meet the definition of a "manufacturer" under the Walsh-Healey Public Contracts Act. The workshop plans to employ blind or other severely handicapped to perform 88% of the direct labor required in production of the side racks.

The estimated impact on the sales of the current contractor of the addition of the side rack to the Procurement List, based on that firm's sales over the past two years and its projected sales for the year ending June 1988, is less than 4% of total sales. This is not considered to be severe impact. The other commenter was not the successful bidder on either the current contract or the prior contract which was awarded in February 1984. Thus, while adding the side rack will eliminate that firm's opportunity to bid on future procurements of this side rack, it has managed to survive without this business for over four years.

The firm which produces side racks commented that the Committee sets aside items for which the prices "could not be within forty percent of the current bid prices". In accordance with the Committee's pricing policy, the fair market price of $82.43 for this side rack was based on the median of the bids on the most recent solicitation for this item. The commenting firm's bid for the side rack on that solicitation was $63.22. Where bids are available, the prices approved by the Committee are governed by those bids, and the middle of the competitive bids or the award price plus 5 percent, whichever is greater, is used as the basis for establishing those prices.

This side rack meets the definition of suitability contained in 42 CFR 51-2.6.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 7 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to provide the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988.

Commodities

Side Rack, Vehicle 2510-00-860-0517

Panel Marker, Aerial Liaison 8345-00-174-6865

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from the Procurement List 1987.

Headband, Ground Troop, Helmet Liner 8470-00-153-6671 (Requirements for Mechanicsburg, Pennsylvania and Richmond, Virginia depots only)

C.W. Fletcher,

Executive Director.

[FR Doc. 88-131 Filed 1-6-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board will be held 20-22 January 1988 from 9:00 a.m. to 5:00 p.m. each day, at the National Clarion Hotel at 300 Army/Navy Drive in Arlington, Virginia.

Purpose: The purpose of this Ada Board meeting is to prepare an Ada Board Report that addresses the September 1987 Report of the Defense Science Board Task Force on Military Software.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694-0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

January 4, 1988.

[FR Doc. 88-242 Filed 1-6-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost or Pricing Data.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3225, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy, (202) 523-3781.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Prime contractors or any subcontractors on certain Federal contractual actions are required to submit certified cost or pricing data to assure the negotiation of a fair and reasonable price. The threshold for submission of such data was reduced from $500,000 to $100,000 by Pub. L. 98-369.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *14,781;* responses per respondent, *10;* total annual responses, *147,814;* preparation hours per response, *4;* and total response burden hours, *591,256.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0013, Cost or Pricing Data.

Dated: December 24, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-179 Filed 1-6-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 22 January 1988.

Time: 1400 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Electronic Technology and Devices Laboratory effectiveness review will meet for the initial organizational and planning session. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-233 Filed 1-6-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-66-NG]

Westcoast Resources, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 25, 1987, of an application filed by Westcoast Resources, Inc. (Westcoast Resources), to extend its existing blanket import authorization from February 4, 1988, the current expiration date, to February 4, 1990, and to increase its volumes from the currently authorized 100 Bcf for the two-year period, to 200 Bcf over a two-year period beginning February 5, 1988.

Westcoast Resources was authorized on September 27, 1985, by DOE/ERA Opinion and Order No. 89, to import up to 100 Bcf of Canadian natural gas for a two-year period for spot market sales in the U.S. The blanket authorization was for a two-year term beginning on the date of first delivery which occurred on February 5, 1986. Under the requested extension, the imported gas would continue to be supplied by Westoast Resources' parent corporation, Westcoast Transmission Company Limited, and other reliable Canadian suppliers from British Columbia and Alberta, as well as the Yukon and Northwest Territories. Westcoast Resources intends to continue importing natural gas for direct sale to U.S. customers or as an agent for gas owned by others. The import would be sold on a spot-market basis to U.S. purchasers, including gas distributors, pipelines, electrical utilities, and industrial and agricultural end-users. All transactions would be freely negotiated at arms-length to ensure the import is competitive and market responsive. Westcoast Resources states that no new pipeline facilities will be required in order to import the gas. The point of importation will continue primarily to be Sumas, Washington. Transportation will continue to be provided by Northwest Pipeline Corporation and other pipeline and distribution systems.

Westcoast Resources states that it will continue to file reports with ERA within 30 days after the end of each calendar quarter. Quarterly reports filed with ERA under Order No. 89 indicate Westcoast Resources has imported 40.7 Bcf of natural gas through September 30, 1987.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than January 28, 1988.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 23, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions or intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., January 28, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Westcoast Resources' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-250 Filed 1-6-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-10-000 et al.]

Nevada Power Company et al.; Electric Rate and Corporate Regulation Filings

December 31, 1987.

Take notice that the following filings have been made with the Commission:

1. Nevada Power Company

[Docket No. ER88-10-000]

Take notice that on December 4, 1987, Nevada Power Company tendered an amendment for filing a proposed change in its FPC Electric Service Tariff No. 41. The change reduces the demand charge on this tariff from 12.48 dollars per KW to 11.75 dollars per KW.

The change to this tariff is a result of Nevada Power Company's compliance with Docket No. RM87-4-000; Order No. 475, issued June 26, 1987. This Order allows electric utilities to make an abbreviated filing to file for certain rate decreases under section 205 of the Federal Power Act (FPA) to reflect a decrease in the Federal income tax rate from 46 percent to 34 percent.

Copies of the amended filing were served upon the City of Needles, California, the Public Service Commission of Nevada, the Nevada Office of Consumer Advocate, the California Public Utilities Commission and the Federal Energy Regulatory Commission, San Francisco Office.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Electric Light and Power Company

[Docket No. ER88-153-000]

Take notice that on December 22, 1987, Iowa Electric Light and Power Company (Iowa Electric) tendered for filing an interchange agreement (Agreement), between the Board of Municipal Utilities of Sikeston, Missouri (Sikeston) and itself.

The Agreement sets forth the terms and conditions for the interchange of energy between Iowa Electric and Sikeston.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power Company

[Docket No. ER88-156-000]

Take notice that on December 18, 1987, Mississippi Power Company tendered for filing a change in use fees pursuant to a Transmission Facilities Agreement between Gulf States Utilities Company and Mississippi Power Company. The proposed change would reduce the return on common equity component of the formula described in Exhibit B thereto from 16% to 14%.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Power & Light Company, an assumed business name of Pacificorp

[Docket No. ER88-158-000]

Take notice that on December 22, 1987, Pacific Power & Light Company, an assumed business name of PacifiCorp tendered for filing, in accordance with section 35 of the Commission's Regulation's Revision No. 1 to Exhibit B of Contract No. DE-MS79-83BP90909 (Two-Way O&M Agreement) between Pacific and the Bonneville Power Administration (Bonneville). Pacific's Rate Schedule FERC No. 239, Exhibit B specifies equipment owned by Bonneville that is operated and maintained by Pacific at Bonneville's expense (O&M Services) and sets forth the annual charges for such O&M Services.

Pacific requests waiver of the Commission's Notice requirements to permit Revision No. 1 to Exhibit B to become effective March 14, 1988, this date being the date on which service commenced.

Copies of this filing were supplied to the Public Utility Commission of Oregon and Bonneville.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc. d/b/a Missouri Public Service

[Docket No. ER88-89-000]

Take notice that on December 22, 1987, UtiliCorp United Inc. d/b/a Missouri Public Service (MPS) tendered for filing an amended filing to a previously noticed filing for proposed changes in its FERC Electric Service Tariffs for wholesale firm power service to supersede and replace those rate provisions of contract rate schedules presently in effect and on file with the Commission which relate to eight wholesale customers located in the state of Missouri as follows:

Wholesale Customers	Superseding and Replacing
1. City of El Dorado Springs	Supplement No. 1 to FERC Rate Schedule No. 46
2. City of Gelt	Supplement No. 14 to FERC Rate Schedule No. 36
3. City of Gilman City	Supplement No. 5 to FERC Rate Schedule No. 48
4. City of Harrisonville	Supplement No. 14 to FERC Rate Schedule No. 38
5. City of Liberal	Supplement No. 14 to FERC Rate Schedule No. 35
6. City of Odessa	Supplement No. 5 to FERC Rate Schedule No. 47
7. City of Pleasant Hill	Supplement No. 14 to FERC Rate Schedule No. 34
8. City of Rich Hill	Supplement No. 1 to FERC Rate Schedule No. 49

The proposed changes would decrease revenues from jurisdictional sales and service by $219,118 based on the adjusted twelve month period ended September 30, 1983. The purpose of filing the proposed Municipalities-Resale Rate Schedules is to voluntarily reduce rates under section 205 of the Federal Power Act, including particularly § 35.27 of the Commission's regulations thereunder, to reflect the reduction in the Federal corporate income tax rate from 46% to 34% pursuant to the Tax Reform Act of 1986. The amended filing reflects changes in "A" and "C" of the formula for determining the rate adjustment to reflect the change in the Federal corporate income tax rate. MPS requests that waiver of § 35.3 of the Commission Regulations be granted and that the proposed rate schedule changes be made effective July 1, 1987.

Copies of the filing were served upon the eight Municipalities-Resale customers whose rates and charges

would be affected thereby, and upon the Public Service Commission of Missouri.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. APS Group-PJM Group Interconnection Agreement; West Penn Power Company The Potomac Edison Company Monongahela Power Company (APS Group); Pennsylvania-New Jersey-Maryland Interconnection (PJM Group)

[Docket No. ER88-157-000]

Take notice that on December 22, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing on behalf of the above listed parties to the APS-PJM Agreement, Schedule 9.04 superseding Schedule 9.03 currently in effect.

Proposed Schedule 9.04 modifies the rates charged by either Group for Non-Replacement Energy. Fixed adders are replaced by ceiling rates and provision is made for ceiling services charges. The parties have requested an effective date of January 1, 1988 for proposed Schedule 9.04.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Iowa Public Service Company

[Docket No. ER88-154-000]

Take notice that on December 22, 1987, Iowa Public Service Company (IPS) tendered for filing, pursuant to Part 35 of Federal Energy Regulatory Commission regulation, an agreement for the sale of short term firm power associated energy executed by IPS and St. Joseph Light & Power Company (SJLP), whereby IPS agrees to sell and SJLP agrees to purchase 6 megawatts (MW) of firm electric capacity associated energy equal to or less than a 30% monthly load factor beginning June 1, 1987 and continuing through November 30, 1987.

IPS states that it has also filed a schedule of data including estimated revenues to the Company resulting from the transaction provided pursuant to Commission Rule 35.12(b)(1). In accordance with Commission Rule 35.12(b)(2)(i) and 35.12(b)(2)(ii), a statement of the basis of the rate associated with these agreements is provided in a summary schedule of the cost computation involved in deriving rates in these agreements.

IPS requests that the Commission waive the notice requirements of § 35.11 of its rules and permit the Agreement to become effective as a filed rate schedule as of June 1, 1987.

Comment date: January 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-227 Filed 1-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-137-000 et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

January 4, 1987.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP88-137-000]

Take notice that on December 21, 1987, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-137-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing new storage services pursuant to two new rate schedules, Rate Schedules FSS (Firm Storage Service) and DDS (Deferred Delivery Service) to be incorporated in a new ANR Original Volume No. 1-B FERC Gas Tariff.

ANR states that the proposed Rate Schedule FSS provides for a firm winter storage service. It is stated that under such rate schedule, one option is storage service only. It is further stated that the other option under such schedule is a combined storage and transportation service option, under which both storage and firm transportation to and from storage is included. ANR states that for the period November 1 through March 31 (winter period), the maximum daily withdrawal quantity cannot be greater than 1/50 of the maximum storage quantity, nor less than 1/150 of the maximum storage quantity. The maximum daily withdrawal quantity and maximum storage quantity, it is indicated, would be specified in the FSS service agreement. ANR states that requests for withdrawals above the maximum daily withdrawal quantity would be accepted on a best efforts basis. It is stated that for the period April 1 through October 31 (summer period), the maximum daily injection quantity is 1/200 of the maximum storage quantity. ANR further states that requests for injection quantities above the maximum daily injection quantity would be accepted on a best efforts basis.

It is explained that on an annual basis, a FSS customer which is an existing sales customer of ANR may elect to purchase injection gas from ANR or others. ANR states that if a FSS customer purchases injection gas from ANR under resale Rate Schedules CD-1, MC-1 or SGS-1 of Original Volume No. 1 of ANR's FERC Gas Tariff, the transportation components of the FSS rate would be waived for such quantities that a FSS customer purchases under said resale rate schedules. To effectuate this provision, ANR requests such certificate authority as is necessary to add to all of its existing CD-1, MC-1 and SGS-1 service agreements the Injection/Withdrawal Point as a point of delivery under such service agreements.

ANR states that the charge for FSS service would consist of a FSS deliverability reservation charge of $2.05 per dth per month, a FSS capacity reservation charge of $.2520 per dth, a FSS injection-withdrawal commodity charge of $.0011 per dth, plus applicable transportation reservation and commodity charges if the combined storage and transportation service option is chosen. It is stated that such transportation charges are equal to the maximum and minimum FTS-1 rates under ANR's Original Volume No. 1-A FERC Gas Tariff. It is also stated that fuel shall consist of 1 percent for storage and up to 3 percent for transportation, which shipper, at its option, may provide in kind or reimburse ANR for at ANR's cost of gas. It is explained that if transportation from the point(s) of receipt to storage and from storage to the point(s) of delivery is provided under separate FTS-1, FTS-2 or ITS agreements, the mainline area access reservation and mainline area access commodity charges under Rate Schedules FTS-1, FTS-2 or ITS covering transportation to and from storage will be charged only on injection. It is stated that Rate Schedule FSS would be available to all shippers on a first-come, first-served basis.

It is stated that Rate Schedule DDS (Deferred Delivery Service) is an interruptible storage service that ANR would make available from time to time if it has storage capacity available after providing for firm resale, firm storage and firm transportation obligations. It is stated that under the DDS storage service option, only storage service is provided. It is also stated that under the DDS combined storage and transportation service option, interruptible transportation to and from storage is also included. It is explained that subject to ANR's best efforts to withdraw gas, the maximum daily withdrawal quantity is 1/30 of the customer's working storage gas as of the last day of the prior month. It is also explained that subject to ANR's best efforts to inject gas, the maximum daily injection quantity is 1/30 of the customer's maximum storage quantity. It is stated that ANR may, if storage capacity is needed to meet its firm obligations, require shipper, upon forty-eight hours notice to withdraw all DDS working storage gas within forty-five days. It is indicated that any working storage gas remaining at the end of such forty-five day period would be retained by ANR.

ANR states that, on a monthly basis, a DDS customer which is an existing sales customer of ANR may elect to purchase injection gas from ANR or others. It is stated that if a DDS customer purchases injection gas from ANR under resale Rate Schedules CD-1, MC-1 or SGS-1 of Original Volume No. 1 of ANR's FERC Gas Tariff, the transportation components of the DDS rate would be waived for such quantities that a DDS customer purchases under said resale rate schedules. It is stated that DDS charges would consist of a monthly storage commodity charge of 6.22¢ per dth of monthly average working storage gas, plus applicable transportation charges if the combined storage and transportation service option is chosen. ANR states that such transportation charges are equal to the maximum and minimum ITS rates under ANR's Original Volume No. 1-A FERC Gas Tariff. It is further stated that fuel would consist of 1 percent for storage and up to 3 percent for transportation, which shipper, at its option, may provide in kind or reimburse ANR for at its cost of gas. ANR avers that if transportation from the point(s) of receipt to storage and from storage to the point(s) of delivery is provided under separate FTS-1, FTS-2 or ITS agreements, the mainline area access reservation and mainline area access commodity charges under Rate Schedules FTS-1, FTS-2 or ITS covering transportation to and from storage would be charged only on injection. Rate Schedule DDS is available to all shippers on a first-come, first-served basis, it is explained.

ANR requests authority to provide service under the above described rate schedules for interested customers, without further authorization by the Commission. ANR also requests authority to discount rates between the maximum and minimum rates requested. ANR states that it is willing to condition such self-implementing and discounting authority on its being an open access transporter.

ANR also requests authority to modify Section 6 of the General Terms and Conditions of its Original Volume No. 1-A FERC Gas Tariff to permit ANR to add the Point of Injection/Withdrawal to existing FTS-1, FTS-2 or ITS agreements without changing a shipper's priority for service.

It is stated that no facilities would be required to provide the services proposed. It is further indicated that existing storage capacity, presently devoted to providing sales peaking capability, would be utilized to the extent capacity is made available by ANR's sales customers' contract demand conversions or reductions, if any, and changes in operating requirements.

Comment date: January 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP88-141-000]

Take notice that on December 21, 1987, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP88-141-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an offshore lateral under its certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate approximately 18.5 miles of 16-inch diameter pipeline which would extend from Garden Banks area block 236, offshore Louisiana, to an interconnection with the existing Blue Water System in West Cameron area block 624, offshore Louisiana. It is anticipated that the facilities would be constructed during the summer of 1988 at an estimated cost of $9,931,000.

Columbia Gulf states that the proposed facilities would be used to attach gas reserves in Garden Banks area blocks 192, 193, 236, and 237. It is estimated that the proven reserves in these blocks is approximately 100 Bcf with an initial deliverability of 92,000 Mcf per day. Columbia Gulf expects to transport approximately one third of the total reserves from the area on behalf of its affiliate, Columbia Gas Transmission Corporation (Columbia Gas), which would purchase such reserves for its system supply. Columbia Gulf states that the remainder of the gas reserves would be transported for third parties under its Order No. 436 blanket certificate in Docket No. CP86-239-000. It is indicated that somewhat less than half of the reserves not purchased by Columbia Gas would be transported on behalf of Chevron for ultimate delivery to Texas Eastern Transmission Corporation in partial satisfaction of the Gulf warranty obligation (CI64-26). The balance of the reserves, it is explained, would likely be sold on the spot market.

Comment date: February 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP85-447-006]

Take notice that on December 16, 1987, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-447-005, a petition pursuant to section 7 of the Natural Gas Act to amend the Commission's order issued on September 30, 1985 in Docket No. CP85-447-000 as amended December 12, 1985, in CP85-447-001 and December 29, 1985, in Docket No. CP85-447-003, in order to add receipt points, add and delete end users, increase the maximum daily quantity of gas subject to transportation, and extend the term of the certificate authorization, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to amendments to its gas transportation agreement with Western Natural Gas and Transmission Corporation (Western) executed August 13, 1987, CIG requests that the Commission further amend its order issued in Docket No. CP85-447-000 to authorize:

1. The addition of eight receipt points,

to be located in the states of Kansas, Oklahoma, and Wyoming;

2. The addition and deletion of certain end users specified in its petition;

3. An increase in the maximum volume of natural gas authorized to be transported, on an interruptible basis, from 15,000 Mcf to 20,000 Mcf per day; and

4. The extension of the term of the certificate authorization to June 1, 1989.

In all other respects, the Commission's authorization shall remain unchanged.

CIG states that all new receipt points are existing interconnections and, therefore, no new facilities are required to effectuate its proposal. CIG further states that certain of the deliveries to the new receipt points would be made by interstate pipelines and that such pipelines either have authorization to transport gas to the receipt points or would obtain it. Finally, CIG advises that upon receipt of the authorization, the subject amendments would be filed as part of CIG's Rate Schedule X-58 and included in its FERC Gas Tariff, Original Volume No. 2.

Comment date: January 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Appendix

Customer	Location	Volume (MCF)		End use	Estimated cost
		peak day	annual		
Terry Legleiter	Ellis County, KS	2	120	Domestic	$650
Stramel Farms, Inc.	Thomas County, KS	24	800	Irrigation	650
Wesbach Energy Co., Inc.	Barton County, KS	36	2,200	Commercial	1,150
Greg A. Jones	Yuma County, CO	10	600	Commercial	650
Harry D. Retzlaff	Hamilton County, NE	36	1,200	Irrigation	1,150
Glenn Stramel	Ellis County, KS	2	120	Domestic	650
CAM & N Farms	Franklins County, NE	24	800	Irrigation	650

Comment date: February 18, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Transwestern Pipeline Company

[Docket No. CP88-133-000]

Take notice that on December 17, 1987, Transwestern Pipeline Company (Transwestern), P. O. Box 1188, Houston, Texas 77001, filed in Docket No. CP88-133-000 an application pursuant to section 7(c) of the Natural Gas Act, and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436 and Order No. 500, in accordance with the terms and conditions set forth in a Stipulation and Agreement filed by Transwestern in Docket Nos. RP85-175-000 and CP86-276-000. Transwestern states that, subject to the terms and conditions of, and rights and obligations under such Stipulation and Agreement, it is willing to accept and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

Comment date: January 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Yukon Pacific Corporation

[Docket No. CP88-105-000]

Take notice that on December 3, 1987, Yukon Pacific Corporation (Yukon Pacific, P. O. Box 101700, Anchorage, Alaska 99510) filed in Docket No. CP88-105-000 an application pursuant to Department of Energy Delegation Order No. 0204-112 (49 FR 6684), as interpreted by the Federal Energy Regulatory Commission's (Commission) Declaratory Order issued May 27, 1987, *(Yukon Pacific Corporation,* 39 FERC ¶61,216 (1987)) for authorization to utilize a site certain at Anderson Bay, Alaska located at the Port of Valdez, Alaska, for the exportation from the United States of liquefied natural gas (LNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Yukon Pacific, an investor-corporation organized under the laws of the state of Alaska, states that it was formed to, among other things, construct, operate and maintain the Trans-Alaska Gas System (TAGS) and to market natural gas transported through TAGS in the Pacific Rim countries of the Republic of China (Taiwan), Japan, and the Republic of Korea. Currently, no facilities exist in the state of Alaska ot transport Alaskan North Slope natural gas to any market, either domestic or foreign, it is indicated.

It is stated that the TAGS Project includes the construction of a wholly intrastate 796.5 mile, 36-inch diameter, buried and chilled natural gas pipeline originating at Prudhoe Bay, Alaska Bay, Alaska. Yukon Pacific avers that the pipeline is designed to transport up to 2.3 Bcf of natural gas per day. It is explained that the TAGS Project also includes (1) The construction of an LNG plant designed to remove any impurities from the incoming gas and to reduce the temperature of the transported gas to minus 259° F, thereby condensing the gas to a liquid state for storage and shipping; (2) the construction of four LNG storage tanks, each with an individual capacity of 800,000 barrels (bbls); (3) the construction of a marine terminal designed to berth and load two LNG tankers; and (4) LNG ocean transport vessels having individual cargo capacities of a nominal 125,000 cubic meters. The natural gas production wells and gathering systems necessary for, but apart from the TAGS project, are already in place to produce and gather the gas from the North Slope reservoirs, it is stated.

Yukon Pacific proposes to export up to 14 million metric tons of LNG annually from the proposed Anderson Bay export site, via LNG ocean transport vessels, for a term of at least 25 years, commencing some time in 1996.

It is stated that on December 18, 1986, Yukon Pacific filed a Petition for Declaratory Order with the Commission in Docket No. GP87-16-000, requesting the Commission to declare the extent of its jurisdiction over the construction, maintenance, and operation of Yukon Pacific's proposed intrastate natural gas transportation and liquefaction facilities. Applicant states that on May 27, 1987, the Commission issued a Declaratory Order in response to Yukon Pacific's petition seeking a jurisdictional determination as to the applicability, if any, of the Natural Gas Act to the TAGS Project. In that Order, states Yukon Pacific, the Commission (1) determined that the the construction and operation of the TAGS Project falls beyond the jurisdictional purview of section 7 of the Natural Gas Act, (2) declined "to exercise any discretionary authority it may have under section 3 of the Natural Gas Act to regulate the siting, construction and operation of the TAGS pipeline" (39 FERC (CCH) at p. 61,759), but (3) determined that pursuant to the "allocation of authority in the Secretary's delegation orders" it has limited jurisdiction to approve or disapprove (to the extent not previously disapproved by the Administrator) the place of export of the natural gas" (*Id.* at ¶61,758). Yukon Pacific, therefore, states that its filing is being made in response to the Commission's own interpretation of the authority delegated to the Commission by the Secretary of Energy, as set fourth in Part (3) above. According to Yukon Pacific, the factual predicates upon which the Commission's Declaratory Order is based have not changed. Yukon Pacific states that its application is being submitted for the sole purpose of obtaining authorization to utilize the place of export proposed by it.

Yukon Pacific indicates that the Department of Interior and the Army Corps of Engineers have prepared a Draft Environmental Impact Statement (DEIS), issued in Septemer 1987, which includes a study of the entire project from Prudhoe Bay to Anderson Bay. The FERC environmental staff participated as a cooperating agency in preparation of the DEIS, it is stated. As a cooperations agency, the FERC staff provided comments on the DEIS on November 20, 1987, and is working with the Bureau of Land Management on completion of the Final Environmental Impact Statement, it is indicated.

Yukon Pacific states that its filing is not in conformance with, nor is being submitted pursuant to, the Commission's import/export regulations set forth at 18 CFR Part 153. It is stated that none of the Commission's regulations directly contemplate Yukon Pacific's Application as required by the Commission's Declaratory Order. Therefore, it has prepared its application using portions of the Part 153 regulations as a general guideline, it is explained.

The application incorporates by reference the TAGS Project Environmental Impact Statement for primary consideration by the Commission in determining the place of export and, further, requests the Commission to act upon the application expeditiously. A delay in making the requested determination would possibly cause Yukon Pacific and the United States to forfeit an $80 billion LNG market to Indonesian and other competing foreign suppliers, it is indicated.

Comment date: January 25, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-228 Filed 1-6-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00252; FRL-3313-3]

FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel, which will be convened by EPA to review the Agency's revisions to the guidelines for testing of microbial pest control agents (MPCAs), Subdivision M of the Pesticide Assessment Guidelines. The Subpanel will be chaired by Dr. James Tiedje of the SAP.

DATES: The meeting will be held Friday, January 22, 1988, from 9 a.m. to 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail:

Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-757C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION: A Subpanel of the FIFRA Scientific Advisory Panel will meet to consider the Agency's scientific issues on its proposed revisions to Subdivision M Guidelines for testing of microbial pest control agents (MPCAs). Subdivision M also contains guidelines for testing biochemical pesticides (e.g., pheromones, hormones, natural insect and plant growth regulators, and enzymes), but they are not included in the scope of this meeting. The unique characteristics of MPCAs require that they be tested differently from chemical pesticides. For example, unlike chemical pesticides, MPCAs may survive and reproduce in the environment, and may infect or cause disease in other living organisms. Thus, testing protocols must be designed specifically to allow for evaluation of these end points.

In 1983, the Agency published separate guidelines for MPCAs in order to address these special testing needs. Since Subdivision M was published in 1983, the Agency has obtained results from its research in MPCA protocol development and has gained considerable experience with risk assessment of these agents. Accordingly, there is a need to revise and update portions of the guidelines dealing with microorganisms in order to incorporate this new information.

Experts in the following areas have been selected to serve on the Subpanel: Environmental microbiology, plant pathology, human pathology, veterinary medicine, virology, ecology, entomology and soil microbiology.

Copies of documents relating to this review process may be obtained by contacting: By mail:

Program Management and Support Division (TS-757C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 240, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into considereation by the Subpanel in formulating comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than January 14, 1988, in order to ensure appropriate consideration by the Subpanel.

Dated: December 31, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-216 Filed 1-6-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009236-017.

Title: Greece/United States Atlantic and Gulf Conference.

Parties: Farrell Lines, Inc.; Sea-Land Services, Inc.; Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would expand the agreement's geographic scope to include U.S. Pacific coast ports and Canadian Atlantic, Pacific and Great Lakes ports, and U.S. and Canadian coastal and interior points via such new U.S. and Canadian ports.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: January 4, 1988.

[FR Doc. 88-232 Filed 1-6-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cayuga Lake Bank Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 22, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Cayuga Lake Bank Corporation,* Union Springs, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Cayuga Lake National Bank, Union Springs, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CNB, Inc.,* Lake City, Florida; to acquire 100 percent of the voting shares of Citizens Bank of Live Oak, Live Oak, Floria, a *de novo* bank. Comments on this application must be received by January 28, 1988.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bancorporation,* Indiana, Kalamazoo, Michigan; to merge with Rensselaer Financial Corporation, Rensselaer, Indiana, and thereby indirectly acquire State Bank of Rensselaer, Rensselaer, Indiana.

2. *First of America Bank Corporation,* Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Rensselaer Financial Corporation, Rensselaer, Indiana, and thereby indirectly acquire State Bank of Rensselaer, Rensselaer, Indiana.

3. *First United Bancorp, Inc.,* Middletown, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First United Bank, Middletown, Indiana. Comments on this application must be received by January 28, 1988.

4. *Truer Shares, Inc.,* Traer, Iowa; to acquire 82.83 percent of the voting shares of Brenton Bank & Trust Company of Vinton, Vinton, Iowa.

Board of Governors of the Federal Reserve System, December 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-197 Filed 1-6-88; 8:45 am]

BILLING CODE 6210-01-M

IntraOklahoma Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *IntraOklahoma Bancshares, Inc.,* Ponca City, Oklahoma; to engage *de novo* through its subsidiary, Strategic Data Services, Ltd., a limited partnership, and Strategic Data Services, Inc., general partner, in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gulf Southwest Bancorp, Inc.,* Houston, Texas; to engage *de novo* through its subsidiary, G.S.W. Data Processing, Inc., Houston, Texas, in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Texas. Comments on this application must be received by January 22, 1988.

Board of Governors of the Federal Reserve System, December 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-198 Filed 1-6-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; InvestCo Partnership

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must ne received not later than January 22, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *InvestoCo Partnership,* Tacoma, Washington; to acquire 15.82 percent of the voting shares of Valley Bank Corporation, Sumner, Washington, and thereby indirectly acquire Bank of Sumner, Sumner, Washington.

Board of Governors of the Federal Reserve System, December 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-199 Filed 1-6-88; 8:45 am]

BILLING CODE 6210-01-M

Lenora Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 27, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lenora Bancshares, Inc.*, Lenora, Kansas; to acquire Lenora Insurance Agency, Inc., Lenora, Kansas, and thereby engage in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activitives will be conducted within a 15 mile radius of Lenora, Kansas.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sanwa Bank, Limited*, Osaka, Japan; to acquire Lake Leasing Corporation, Rochester, Michigan, and thereby engage in leasing and related extensions of credit pursuant to § 225.25(b)(5) of the Board's Regulations Y.

Board of Governors of the Federal Reserve System, December 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-200 Filed 1-6-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations For Representatives of Consumer and Industry Interests on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain public advisory committees or panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur during the next 17 months.

FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATE: Nominations should be received by March 7, 1988 for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives shall be submitted in writing to Naomi Kulakow (address below). All nominations and curricula vitae, which includes nominee's office address and telephone number, for industry representatives shall be submitted in writing to Kay Levin (address below).

FOR FURTHER INFORMATION CONTACT:

For Consumer Interests: Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

For Industry Interests: Kay Levin, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-3516.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the following:

Committee or panel	Approximate date representative is needed	
	Consumer	Industry
1. Circulatory system devices panel	NV	June 30, 1988.
2. Hematology and pathology devices panel	NV	Immediately
3. Microbiology devices panel	NV	Feb. 28, 1989.
4. Obstetrics-Gynecology devices panel	Jan. 31, 1989	NV

NV = No vacancy

Function

The functions of the medical devices panels are to: (1) Review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness to devices.

Consumer and Industry Representation

Section 513 of the act (21 U.S.C. 360c) provides that each medical devices panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the device manufacturing industry.

Nomination Procedure

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, applicants' experience and/or education will be evaluated against Federal civil service criteria for the position to which they will be appointed.

Any organization in the medical device manufacturing industry wishing to participate in the selection of an appropriate member of a particular committee or panel may nominate one or more qualified persons to represent the medical device manufacturing industry. Persons who nominate themselves as industrial representatives will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization or firm who is willing to participate in the selection process.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and, in the case of consumer representative, appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is between 3 and 4 years, depending on the appointment date.

Selection Procedure

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates to the agency for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Regarding nominations for members representing the interests of the device manufacturing industry, a letter will be sent to each organization that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each organization to consult with the others in selecting a single member representing the device manufacturing industry for that particular committee within 60 days after receipt of the letter.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: December 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-208 Filed 1-6-88; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members on Public Advisory Committees or Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees or panels in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur during the next 17 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the medical devices panels should be sent to J. Thomas Lowe, Center for Devices and Radiological Health (HFZ-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

All nominations and curricula vitae for the Device Good Manufacturing Practice Advisory Committee should be sent to Sharon Kalokerions, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

All nominations and curricula vitae for the Technical Electronic Product Radiation Safety Standards Committee should be sent to: Arlene Underdonk, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kay Levin, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-3516.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below. If specific expertise is not indicated, individuals should have expertise relevant to the field of activity of the panel or committee.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* Four vacancies occurring immediately; clinicians/researchers with demonstrated experience in the treatment of respiratory disorders with an emphasis on neonatal/pediatric problems and some working experience with new (experimental) therapies including high frequency ventilation and/or extracorporeal membrane oxygenation.

2. *Circulatory System Devices Panel:* Two vacancies occurring June 30, 1988, one vacancy occurring Jun 30, 1989; cardiologists or cardiac surgeons.

3. *Clinical Chemistry and Clinical Toxicology Devices Panel:* Three vacancies occurring immediately, two vacancies occurring February 28, 1988; doctors of medicine or philosophy experienced with clinical chemistry, clinical toxicology, and therapeutic drug monitoring devices.

4. *Dental Devices Panel:* Two vacancies occurring immediately, three vacancies occurring October 31, 1988; individuals with expertise in dental devices and materials.

5. *Device Good Manufacturing Practice Advisory Committee:* Two vacancies occurring May 31, 1989; one representative from State, local, or Federal government and one health professional employed in the human health care area. Areas of committee interest include quality assurance in manufacturing of medical devices to include good manufacturing practice application to the manufacture of computerized devices and in vitro diagnostics and problems associated with the use of medical devices.

6. *Ear, Nose, and Throat Devices Panel:* One vacancy occurring immediately; otolaryngologist with experience in pediatrics.

7. *Gastroenterology-Urology Devices Panel:* Two vacancies occurring December 31, 1987, one vacancy occurring December 31, 1988; interventional radiologist; urologist; clinician/biomedical engineer with experience in membrane transport and hemodialysis or other extracorporeal therapy.

8. *General and Plastic Surgery Devices Panel:* Four vacancies occurring August 31, 1988; dermatologist; pathologist; immunologist; general surgeon; gerontologist; medical statistician/epidemiologist; surgeons of various subspecialties of general and plastic surgery, i.e., maxillofacial, cardiothoracic, and/or microvascular surgery.

9. *General Hospital and Personal Use Devices Panel:* Two vacancies occurring immediately, two vacancies occurring December 31, 1988; surgical oncologist; general surgeon; internist; diabetologist; immunologist; general practitioner.

10. *Hematology and Pathology Devices Panel:* One vacancy occurring immediately, one vacancy occurring February 28, 1989; individuals involved in the practice of medicine or clinical laboratory science familiar with clinical hematology and biotechnology.

11. *Immunology Devices Panel:* One vacancy occurring immediately, one vacancy occurring February 28, 1988, three vacancies occurring February 28, 1989; immunologists with experience in allergies; medical oncologists with experience in tumor diagnosis and treatment.

12. *Microbiology Devices Panel:* Four vacancies occurring February 28, 1989; infectious disease clinicians; individuals with expertise in antimicrobial susceptibility testing devices, and/or virology testing devices and/or biotechnology.

13. *Neurological Devices Panel:* Four vacancies occurring immediately, one vacancy occurring November 30, 1988; neurologists and neurosurgeons.

14. *Obstetrics-Gynecology Devices Panel:* One vacancy occurring January 31, 1988, two vacancies occurring

January 31, 1989; gynecologic laser surgeons; gynecologists with strong background in laparoscopy and/or hysteroscopy.

15. *Ophthalmic Devices Panel*: One vacancy occurring immediately, two vacancies occurring October 31, 1988; ophthalmologists and optometrists.

16. *Orthopedic and Rehabilitation Devices Panel*: One vacancy occurring August 31, 1988, four vacancies occurring August 31, 1989; orthopedic surgeons with expertise in joint structure and function, prosthetic ligament devices, or joint biomechanics and implants, or biomaterials engineers.

17. *Radiologic Devices Panel*: One vacancy occurring immediately, two vacancies occurring January 31, 1988, one vacancy occurring January 31, 1989; radiologist; radiation oncologist; oncologist expert in hyperthermia.

18. *Technical Electronic Product Radiation Safety Standards Committee*: Five vacancies occurring December 31, 1988; three members from affected industries; one member from the general public; and one member from a government agency, including State or Federal government (however, see paragraph below regarding qualifications).

Functions

Medical Devices Panels

The functions of the medical devices panels are to: (1) Review and evaluate available data concerning the safety and effectiveness of medical devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Device Good Manufacturing Practice Advisory Committee

The function of the Device Good Manufacturing Practice Advisory Committee is to review regulations for promulgation regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., Guideline on General Principles of Process Validation) developed to assist the medical device industry in meeting the good manufacture practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consulation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Qualifications

Medical Devices Panel

Persons nominated for membership on the medical devices panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medial practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Device Good Manufacturing Practice advisory Committee

Persons nominated for membership on the Device Good Manufacturing Practice Advisory Committee should have expertise in any one or more of the following areas: Quality assurance concerning manufacturing of medical devices and/or sterilization of medical devices during the manufacturing process. In addition, nominees should have experience with the use and application of medical devices. The particular needs for this committee are shown above. The term of office is between 3 and 4 years depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated for the Technical Electronic Product Radiation Safety Standards Committee must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs for this committee are shown above. The term of office is between 3 and 4 years, depending on the appointment date.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees or panels. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: December 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-206 Filed 1-6-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0100 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/ termination date
80P-0100 (amendment)	Laser Fantasy Productions, Incorporated, 2799 152nd Avenue, NE., Redmond, WA 98052.	Laser Fantasy Productions, Incorporated (formerly Coherent Innovations) Class IV "Rainbow" projectors and for the laser light shows manufactured, assembled, and produced by Laser Fantasy Productions, Incorporated, incorporating these projectors.	Oct 20, 1987 June 6, 1988
80P-0201 (renewal)	Rockne Krebs, 1428 "U" Street, NW., Washington, DC 20009	Laser light sculpture displays and the incorporated Class IV ion gas laser projectors manufactured and produced by Rockne Krebs.	Aug. 21, 1987, June 2, 1988
83V-0228 (renewal)	The Space Center Tombaugh Planetarium, P.O. Box 53, Alamogordo, NM 88310.	The Space Center's Tombaugh Planetarium laser light show incorporating the Laser Systems Development corporation Laser Projector Model C-3(a).	August 21, 1987 Aug. 5, 1988
83V-0307 (renewal)	Foursight Visual Systems, Incorporated, d.b.a. Foresight Visuals, Incorporated, P.O. Box 5312, North Hollywood, CA 91616	Foursight Visual Systems Model 118 and Model 4 laser projection systems and devices and for laser light shows assembled, produced, and performed by the firm.	Oct 20, 1987 Sept. 15, 1988
85V-0340 (renewal)	Peachtree Laser, Incorporated, 185C Howell Mill Road, Atlanta, GA 30318	Peachtree Laser, Incorporated, laser light shows incorporating the Laser Media LMS and/or Science Faction SFC-2000 projectors.	Sept. 15, 1987 Sept. 13, 1988
86V-0327	Rarefield Media Productions, 337 West 76th Street, New York City, NY 10023.	Class IV Laser-Graph Series I and II laser projectors manufactured by Rarefield Media Productions and for laser light shows assembled and produced by Rarefield Media Productions.	Oct. 9, 1987 Oct. 9, 1988
87V-0209 (amendment)	Laser FX, 1554 Kingston Drive, Escondido, CA 92027.	Model FX-1 Class IV laser projector with argon laser systems manufactured by Laser FX and for laser light shows assembled and produced by Laser FX incorporating these projectors or the Sea World Model SW-1 Class IV ion laser projectors.	Aug. 24, 1987 June 28, 1988
87V-0222	Matthew Tanlen Studios, 10-63 Jackson Avenue, Long Island City, NY 11101.	Laser light shows assembled and produced by Matthew Tanlen Studio incorporating the firm's MTS series laser projectors.	Sept. 9, 1987 Sept. 9, 1988
87V-0272	Charles Hayden Planetarium, The Museum of Science, Science Park, Boston, MA 02114.	The Museum of Science Cahners Theater Laser Light Show incorporating a Model CS-1 Class IV laser projector manufactured by Laser Images, Incorporated.	Sept 28, 1987 Sept 28, 1988
87V-0310	Chinese American Family Entertainment, Incorporated, 1003 Arch Street, Philadelphia, PA 19107.	Tracadero Club laser light shows using the LaserMedia, Incorporated Class IV LMS laser projection system with argon, krypton, and/or or helium-neon lasers.	Sept. 25, 1987 Sept. 25, 1988
87V-0311	Coherent Productions, Box 82023, Lincoln, NE 68501.	Coherent Productions laser light shows incorporating the Laser Systems Development Corp. Model C-3 laser projector with Class IIIb argon and helium-neon laser systems.	Sept. 29, 1987 Sept. 29, 1988
87V-0352	Pace Sound and Lighting, Incorporated, 2504 Bayou Road, New Orleans, LA 70119	Pace Sound and Lighting, Incorporated laser light shows which incorporate the LaserMedia Model LMS laser projection system.	Nov. 25, 1987 Nov. 25, 1988

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: December 23, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-209 Filed 1-6-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0386]

Marco Equipment, Inc.; Premarket Approval of Laseron ND:YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Health Products Research, Inc., North Branch, NJ, for premarket approval, under the

Medical Device Amendments of 1976, of the LASERON ND:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application. After approval of the application, Health Products Research, Inc., was purchased by Marco Equipment, Inc., Jacksonville, FL.

DATE: Petitions for administrative review by February 8, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7320.

SUPPLEMENTARY INFORMATION: On June 22, 1987, Health Products Research, Inc., North Branch, NJ 08876-5178, submitted to CDRH an application for premarket approval of the LASERON ND:YAG Ophthalmic Laser. The LASERON ND:YAG Ophthalmic Laser is a neodymium: yttrium aluminum garnet (ND:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy) and discission of pupillary membranes (pupillary membranectomy) in aphakic and pseudophakic eyes.

On July 23, 1987, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the applicatiaon. On October 29, 1987, CDRH approved the application by letter to the applicant from the Director, Office of Device Evaluation, CDRH.

On November 2, 1987, Health Products Research, Inc., was purchased by Marco Equipment, Inc., Jacksonville, FL 32245.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 8, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 21, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-210 Filed 1-6-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Detroit District Office, chaired by Alan L. Hasting, District Director. The topics to be discussed are proposed changes in the criteria for prescription and over-the-counter classification of veterinary drugs to ensure that animal food products remain free of unsafe drug residues, and items of current concern.

DATE: Tuesday, January 12, 1988, 10 a.m.

ADDRESS: George Potter Larrick Bldg. Conference Room, 1560 East Jefferson St., Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson St., Detroit, MI 48207, 313-226-6260.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 28, 1987

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-207 Filed 1-6-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MM-030-08-4212-12]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A meeting of the Las Cruces District Advisory Council will be held February 9, 1988, in the conference room of the District Office. The meeting will begin at 10:00 a.m., and there will be an opportunity for public comment at 1:00 p.m. It is expected that the meeting will adjourn by 3:00 p.m. The following topics are on the agenda: Wilderness Update; Draft Socorro Resource Management Plan (RMP); White Sands RMP Amendment for McGregor Range; Update on State and Private Land Exchanges; Coordinated Resource Management Plan for the Organ Mountains; and Annual Workplan Update.

ADDRESS: The Las Cruces District Office is located at 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Jim Fox, District Manager, (505) 525-8228.

SUPPLEMENTARY INFORMATION: The Council is authorized by the Federal Land Management Policy Act and chartered by the Secretary of the Interior to provide citizen advice to the District Manager on matters relating to the management of public lands and resources.

H. James Fox,

District Manager.

December 30, 1987.

[FR Doc. 88-182 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-940-08-4212-12; A-20347(B)]

Reconveyed Land Opened to Entry; Cochise, Graham and Pinal Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 89,464.37 acres of reconveyed land in Cochise, Graham and Pinal Counties to the Public Land laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241-5534.

SUPPLEMENTARY INFORMATION: On April 17, 1986, as authorized under section 208 of the Federal Land Policy and Management Act of October 21, 1976, the United States acquired the following land:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 18 E.,
Sec. 23, SE¼, except that portion in San Carlos Indian Reservation (SCIR);
Sec. 24, all south of SCIR;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all, except that portion in SCIR;
Sec. 28, all south of SCIR;
Sec. 32, all south of SCIR;
Sec. 33, all south of SCIR;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 5 S., R. 19 E.,
Sec. 32, lots 1-16, incl.
T. 6 S., R. 17 E.,
Sec. 1, S½;
Sec. 2, all south of SCIR;
Sec. 8, SE¼;
Sec. 9, SW¼, SE¼NW¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, lots 1-4, incl., W½E½, W½;
Sec. 14, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 15, all;
Sec. 16, all;
Sec. 17, NE¼, SW¼, N½SE¼, SW¼SE¼;
Sec. 20, N½NW¼, SE¼SW¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, lots 1-8, incl.;
Sec. 24, lots 1-8, incl.;
Sec. 25, lots 1-3, incl., E½W½, E½;
Sec. 28, N½;
Sec. 36, E½NE¼, NW¼NE¼.
T. 6 S., R. 18 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, S½;
Sec. 6, lots 1, 2, 5-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-4, incl., E½W½, NE¼;
Sec. 8, N½;
Sec. 9, E½, NW¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 19, lots 1-4, incl., E½W½, E½;
Sec. 20, E½NE¼, W½NW¼, SW¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, W½, S½SE¼;
Sec. 30, lots 1-3, incl., E½, E½NW¼, NE¼SW¼;
Sec. 31, W½NE¼;
Sec. 32, N½NE¼, SE¼NE¼, NW¼SW¼, S½S½;
Sec. 33, N½, E½SW¼, SE¼;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 6 S., R. 19 E.,
Sec. 4, lots 1-4, incl., S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 6, lots 1-8, incl., S½NE¼, SE¼;
Sec. 7, lots 1-8, incl., NE¼, N½SE¼;
Sec. 8, lots 1-4, incl., N½S½, NE¼, E½NW¼, SW¼NW¼;
Sec. 9, lots 1-4, incl., N½, N½S½;
Sec. 10, lots 1-4, incl., N½, N½S½;
Sec. 15, all;
Sec. 16, lots 1-10, incl., W½NW¼; SE¼;
Sec. 17, all;
Sec. 18, lots 1-4, incl., E½;
Sec. 20, N½N½, S½S½;
Sec. 21, NW¼, SW¼SW¼;
Sec. 22, all;
Sec. 27, NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Sec. 28, lots 2-10, incl., S½SW¼;
Sec. 29, lots 1-4, incl., S½N½, S½;
Sec. 31, lots 1-4, incl., E½;
Sec. 32, all;
Sec. 33, lots 1-4, incl., S½N½, S½;
Sec. 34, lots 1, 2, 3, 6, 7.
T. 7 S., R. 18 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 3, lots 1-4, incl., S½N½, S½;
Sec. 4, lot 1, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 5, lots 1-4, incl., S½N½;
Sec. 6, lot 1, SE¼NE¼, SE¼SW¼;
Sec. 7, S½SE¼;
Sec. 8, N½NE¼;
Sec. 9, NE¼, E½NW¼, S½;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, NW¼;
Sec. 15, SW¼.
T. 7 S., R. 19 E.,
Sec. 3, lot 4;
Sec. 4, lots 1-4, incl.;
Sec. 5, lots 1-4, incl., SW¼, S½NW¼;
Sec. 6, lots 1-6, incl., S½NE¼, SE¼;
Sec. 7, lots 1-4, incl., W½E½, E½SE¼;
Sec. 18, SE¼NE¼.
T. 11 S., R. 20 E.,
Sec. 26, NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, E½W½, W½SW¼;
Sec. 33, all;
Sec. 34, W½;
Sec. 36, all.
T. 12 S., R. 19 E.,
Sec. 36, all.
T. 12 S., R. 20 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 4, lots 1-4, incl., S½N½, SW¼;
Sec. 10, E½, SW¼;
Sec. 11, W½, N½NE¼;
Sec. 12, N½NW¼, E½E½;
Sec. 15, E½, E½W½, NW¼NW¼, W½SW¼;
Sec. 19, E½SE¼;
Sec. 20, N½, SW¼;
Sec. 21, N½, SE¼;
Sec. 22, SE¼, N½NE¼, SE¼NE¼, W½;
Sec. 23, all;
Sec. 24, all;
Sec. 25, N½N½, S½NE¼, SW¼SE¼, E½SE¼;
Sec. 26, S½NW¼, N½S½, S½SW¼;
Sec. 27, S½NE¼, S½;
Sec. 28, N½N½, S½S½;
Sec. 29, N½N½, S½;
Sec. 30, lots 3,4, SE¼;
Sec. 31, lots 1-4, incl., E½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, NW¼, S½.
T. 12 S., R. 21 E.,
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1-4, incl., E½W½, E½;
Sec. 8, SW¼NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 17, all;
Sec. 18, lots 1-4, incl., E½W½, E½;
Sec. 19, E½;
Sec. 20, W½;
Sec. 29, N½NE¼, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 30, lots 1-4, incl., E½W½, W½SE¼;
Sec. 31, lots 4, SE¼NW¼;
Sec. 32, NE¼, E½NW¼, NE¼SW¼, SE¼.
T. 13 S., R. 20 E.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 13 S., R. 21 E.,
Sec. 6, lots 4-7, incl., SE¼NW¼, E½SW¼, SE¼;
Sec. 7, NE¼.

Comprising 69,464.37 acres in Cochise, Graham and Pinal Counties.

At 9:00 a.m. on February 8, 1988, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisons of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on February 8, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-195 Filed 1-6-88 8:45 am]

BILLING CODE 4310-32-M

[AZ-940-08-4212-14; A-21343]

Realty Action: Conveyance of Public Land; Yavapai County, AZ

December 24, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the conveyance of public land to Bullwhacker Associates, a limited partnership.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Bullwhacker Associates, a limited partnership, has purchased by non-competitive direct sale, at the fair market value of $850.00, plus $50.00 for the purchase of the mineral estate, the following described land:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 1 W.,
Sec. 31, lot 24.

Containing 0.52 acre of land in Yavapai County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-180 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-08-4212-13; A-23149]

Realty Action; Exchange of Public Lands, Maricopa, Pinal and Pima Counties, AZ

All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 8 W.,
Sections 1, 2, 7, 10, 11, 12, 13, 14, 15, 16, 22 and 24.
T. 3 N., R. 6 W.,
Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36.
T. 5 N., R. 1 W.,
Section 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 22.
T. 6 N., R. 1 W.,
Sections 25, 26, 27, 29, 30, 31, 33, 34 and 35.
T. 2 N., R. 5 W.,
Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 18 and 19.
T. 3 N., R. 5 W.,
Sections 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.
T. 7 S., R. 11 E.,
Sections 34 and 35.
T. 8 S., R. 11 E.,
Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34 and 35.
T. 9 S., R. 11 E.,
Sections 1, 5, 6, 7, 8, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34 and 35.
T. 10 S., R. 11 E.,
Sections 4, 5, 6, 7, 9, 10, 11, 13, 14, 20, 21, 28, 33 and 34.
T. 18 S., R. 15 E.,
Sections 10, 11, 14, 15, 22, and 23.

Comprising 95,495.56 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

Date: December 30, 1987.

[FR Doc. 88-184 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-5410-10-ZBHE-CA 8883; CA-940-07-5410-10-ZBFG-CA 17684]

Realty Action; Conveyance of Mineral Interests in California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: This notice will correct errors in the land descriptions in two conveyance of mineral interests applications.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

The land description for serial No. CA 8883 52 FR 3175, February 2, 1987, is hereby corrected as follows:

The township and range as listed for the legal description as "T. 27 S., R. 15 E., MD Mer." is hereby corrected to read "T. 27 S., R. 32 E., MD Mer." The land description for serial No. CA 17684 52 FR 3175, February 2, 1987, is hereby corrected as follows:

The sections and aliquot parts as listed for the legal description as "Sec. 25, lots 1-3, within; Sec. 25, NE1/4NW1/4, within" is hereby corrected to read "Sec. 23, SE1/4SW1/4, within; SEc. 25, lots 1-3, within; Sec. 25, NE1/4NW1/4 and SE1/4NW1/4, within."

Date: December 29, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication & Records.

[FR Doc. 88-181 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-08-7122-10-1018; CA-20339]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action-exchange of public and private lands, CA 20339.

SUMMARY: The following described public lands in San Diego County, California, have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

San Bernardino Meridian, California

T. 16S., R. 7E.
Sec. 15: Lots 5 & 6

Containing 78.87 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 7E.
Sec. 17: E½NE¼, SW¼NE¼, E½NE¼NW¼NE¼.

Containing 125.00 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to:

1. A reservation to the United States of a Right-of-Way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All the Geothermal Steam and associated Geothermal Resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. A reservation of those rights for a road granted to the Lakeside Sportsman's Club under the Act of October 21, 1976 (43 U.S.C. 1761); Grant No. CA-13205.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the planning documents, environmental assessment and land report, contact John Sullivan, BLM Indio Resource Area Office, (619) 323-4421.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: December 30, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 88-185 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-40-M

[MT-070-4212-13; M74131]

Realty Action; Montana; Correction

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Correction of notice of realty action.

SUMMARY: This notice corrects the Notice of Realty Action for M74131, published on December 17, 1987 (52 FR 47978). In the listing of additional segregated lands, the portion reading

T. 12 N., R. 16 W.,
Sec. 6, Lots 1,2,3,6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼.

should read

T. 11 N., R. 16 W.,
Sec. 6, Lots 1,2,3,6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼.

FOR FURTHER INFORMATION CONTACT: Darrell Sall, Area Manager, Garnet Resource Area, Bureau of Land Management, 3255 Fort Missoula Road, Missoula, Montana 59806.

December 30, 1987.

J.A. Moorhouse,

District Manager.

[FR Doc. 88-186 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-07-4212-14; N-45097]

Realty Action; Non-Competitive Sale; Elko County, NV

The following land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than the appraised fair market value of $9,500.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian, Nevada

T. 35 N., R. 57 E.,
Sec. 8, S½NE¼NE¼NW¼, NE¼SE¼NE¼NW¼.

Containing approximately 7.5 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Carrol J. Barton and Sons. A direct sale of the parcel to Mr. Barton will resolve an inadvertent unauthorized use and occupancy of the lands on which substantial and valuable structural improvements have been construced. The sale is consistent with the Elko Resource Management Plan. The lands are not needed for any resource program and no conflicts with state or local plans are present.

It has been determined that the subject parcel contains no known mineral values except for oil and gas. Therefore, mineral interests, excluding oil and gas, will be conveyed simultaneously with the sale of the Lands. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known mineral value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

BEST COPY AVAILABLE

1. A reservation for ditches and canals will be made to the United States.

2. An oil and gas reservation will be made to the United States.

Further information regarding this sale is available for review at the Elko District Office, Bureau of Land Management, 3900 E. Idaho, Elko, Nevada 89801. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District at the above address. All objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Date: December 29, 1987.

Rodney Harris,

District Manager.

[FR Doc. 88-228 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-08-4111-16; NM-010-01000]

Albuquerque District, NM; Oil & Gas Management; Delegation of Authority

AGENCY: Bureau of Land Management (BLM), Albuquerque District, New Mexico, Interior.

ACTION: Notice of change of delegation of authority for Oil and Gas Field Operations in Albuquerque District.

SUMMARY: For the purpose of consolidating authority and responsibility for oil and gas field operations within each Resource Area of Albuquerque District, each Resource Area Manager will have the delegated authority to approve Applications for Permit to Drill (APD) and all related actions and to ensure compliance with all such approvals within their respective Resource Area except as noted below. Oil and gas operators and lessees are hereby notified that as of February 1, 1988, all APDs, Sundry Notices, Disposal of Produced Water requests, Gas Flaring requests, Abandonment Notices, Production Reports and all other correspondence or applications related to oil and gas well actions or operations are to be provided to the appropriate Resource Area Manager with exceptions noted below.

For the purposes of this notice, the review and approval authority of the three Resource Area Managers of Albuquerque District, as of February 1, 1988 is defined as follows:

1. Farmington Resource Area (FRA) consists of San Juan County, McKinley County, western Rio Arriba County, a portion of north-western Sandoval County, and those Navajo and Hopi lands located in Arizona and Utah. FRA is responsible for all field operations work within its defined Area boundary except for engineering technician compliance and production accountability for that portion of FRA in Sandoval County which is accomplished by Rio Puerco Resource Area.

2. Rio Puerco Resource Area (RPRA) consists of Cibola County, Valencia County, the remainder of Sandoval County and Torrance Counties. RPRA has the same field operations responsibilities as FRA within their own Resources Area. Additionally, this Resource Area Manager ensures engineering technician compliance and production accountability for that portion of FRA in Sandoval County and for the entire Taos Resource Area. Petroleum Engineer support for RPRA is provided by the Albuquerque District Office.

3. Taos Resource Area consists of the eastern portion of Rio Arriba County and Taos, Colfax, Union, Mora, Harding, Santa Fe, San Miguel and Los Alamos Counties. Taos Resource Area is responsible for all field operations work within its defined boundaries except that engineering technician compliance and production accountability is performed by RPRA. Petroleum Engineer support is provided by the Albuquerque District Office.

Oil and gas lessee operators with producing or shut-in leases in Rio Puerco or Taos Resource Area are being provided a letter and map which further details this change. In the event where producing or shut-in leases are split by Resource Area lines, the lessee/operator will be notified as to which Resource Area will manage each particular lease. A map indicating the boundaries of the three Resource Areas is available from the contact person listed below.

Those oil and gas applications, correspondences and notices previously filed with the Albuquerque District Office, i.e., NGPA applications, drainage determinations, deligent development and unit and communitization agreements, will continue to be properly filed with the Albuquerque District Office and will be approved by that office. Additionally, the function of establishing Known Geologic Structures remains at the District Office.

Addresses and phone numbers for the District and Resource Areas are as follows:

Bureau of Land Management,
Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87107, Telephone (505) 761-4503
Bureau of Land Management, Taos Resource Area, Box 6158, Taos, NM 87571-6158, Telephone (505) 758-8851
Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, Telephone (505) 761-4606
Bureau of Land Management, Farmington Resource Area, Caller Service 4104, Farmington, NM 87499, Telephone (505) 325-4572

FOR FURTHER INFORMATION CONTACT:
Sid Vogelpohl, Bureau of Land Management, Albuquerque District, 435 Montano NE, Albuquerque, NM 87107 (Telephone No. 505-761-4503).

Michael F. Reitz,

Acting District Manager.

[FR Doc. 88-183 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-942-08-4520-12]

Arizona; Filing of Plats of Survey

December 28, 1987.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat (in 4 sheets) representing a dependent resurvey of a portion of the south boundary, a portion of the east boundary, portions of the subdivisional lines and the resurveys of Homestead Entry Surveys Nos. 87 and 375, and a survey of the subdivisions of sections 13, 14, 23, 24, 25, 26, 35 and 36, in Township 22 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted December 8, 1987, and was officially filed December 10, 1987.

This plat was prepared at the request of the U.S. Forest Service, Conconino National Forest.

A plat representing a dependent resurvey of a portion of the south boundaries of Townships 12 North, Ranges 8 and 9 East, the dependent resurvey of H.E.S. No. 427, the east boundary of Tract 37, and a metes-and-bounds survey of Tracts 38 and 39, in unsurveyed Township 11½ North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted November 23, 1987, and was officially filed November 25, 1987.

This plat was prepared at the request of the U.S. Forest Service, Region Three.

A plat (in two sheets) representing a dependent resurvey of a portion of the south boundary and subdivisional lines, and a portion of Homestead Entry Surveys Nos. 181 and 248, a survey of subdivisions in sections 32 and 34, and a survey of lot 13, section 32, and a metes-and-bounds survey in section 34, Township 12 North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted November 3, 1987, and was officially filed November 5, 1987.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest.

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a survey of the subdivision of section 27, Township 19 North, Range 24 East, Gila and Salt River Meridian, Arizona, was accepted October 1, 1987, and was officially filed October 5, 1987.

This plat was prepared at the request of the Petrified Forest National Park.

A plat (in two sheets) representing a dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 24, and a meets-and-bounds survey of the Zuni Pilgrimage Route in Township 14 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted October 27, 1987, and was officially filed October 29, 1987.

A plat representing a dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, and a metes-and-bounds survey of the Zuni Pilgrimage Route (Koyemshi Trail) in Township 15 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted October 27, 1987, and was officially filed October 29, 1987.

A plat (in three sheets) representing a dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a portion of the subdivision of sections 4, 6, and 20, and a metes-and-bounds survey of the center line of the Zuni Pilgrimage Route in Township 14 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted October 27, 1987, and was officially filed October 29, 1987.

A plat (in two sheets) representing a dependent resurvey of the south boundary, a portion of the east boundary, and a portion of the subdivisional lines, and a metes-and-bounds survey of the center line of the Zuni Pilgrimage Route in Township 15 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted October 27, 1987, and was officially filed October 29, 1987.

A plat (in two sheets) representing a dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, and a metes-and-bounds survey of the center line of the Zuni Pilgrimage Route in Township 15 North, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted October 27, 1987, and was officially filed October 29, 1987.

These plats were prepared at the request of the U.S. Department of Justice.

A plat representing a dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and a survey of subdivisions in sections 2 and 11, and a metes-and-bounds survey in Township 22 North, Range 17 West, Gila and Salt River Meridian, Arizona, was accepted November 3, 1987, and was officially filed November 5, 1987.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing the areas for lots 10 and 11, (inadvertently omitted from the plat accepted November 3, 1987) section 2, Township 22 North, Range 17 West, Gila and Salt River Meridian, Arizona, was accepted November 24, 1987, and was officially filed November 25, 1987.

This plat was prepared at the request of the Bureau of Land Management, Cadastral Survey Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Jerrold E. Knight,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88-187 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-32-M

[NM-940-084520-1]

New Mexico; Filing of Plat of Survey

December 30, 1987.

The plat of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

A survey representing the dependent resurvey of certain small holding claim boundaries, and the survey of lots in section 31, Township 3 South, Range 1 East, New Mexico Principal Meridian, New Mexico, executed under Group 768, New Mexico, filed December 30, 1987.

This survey was requested by the District Manager, Socorro, New Mexico.

A survey representing the dependent resurvey of a portion of the east boundary of the Navajo Indian Reservation, a portion of the subdivisional lines, the subdivision of section 19 and the survey of lot 9, section 19, Township 29 North, Range 13 West, New Mexico Principal Meridian, New Mexico, executed under Group 839, New Mexico filed December 30, 1987.

This survey was requested by the District Manager, Albuquerque, New Mexico.

A survey representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, the subdivision of sections 3, 4, 9 and 10, Township 9 South, Range 25 East, New Mexico Principal Meridian, New Mexico, executed under group 861, New Mexico, filed December 30, 1987.

This survey was requested by the District Manager, Roswell District Office, Roswell, New Mexico.

A survey representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section lines, the subdivision of section 14, and the survey of lot 3, section 14, Township 11 South, Range 13 West, New Mexico Principal Meridian, New Mexico, executed under Group 863, New Mexico, filed December 30, 1987.

This survey was requested by the Regional Land Surveyor, Region 3, U.S. Forest Service.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88-188 Filed 1-6-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Outer Continental Shelf Advisory Board, Mid-Atlantic Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting of Mid-Atlantic Regional Technical Working Group.

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region has scheduled a meeting of its Mid-Atlantic Regional Technical Working Group (MARTWG). The MARTWG will provide input to the Regional Director, Atlantic OCS Region, on the scoping process and other topics relevant to proposed Oil and Gas Lease Sale 121 (Mid Atlantic) which is tentatively scheduled for October 1989.

DATE: February 5, 1988.

ADDRESSES: The meeting will begin at 9 a.m. at the following location:

Renaissance Ballroom,
Washington/Dulles Ramada Renaissance,
13869 Park Center Road (off Route 28),
Chantilly, Virginia 22021

The Atlantic OCS Region is at the following location:

Minerals Management Service,
Atlantic OCS Region,
1951Kidwell Drive, Suite 601,
Vienna, Virginia 22180

FOR FURTHER INFORMATION CONTACT: Marsha Polk, RTWG Coordinator, Atlantic OCS Region, at the Minerals Management Service (MMS) address above; telephone 703/285–2165, (FTS) 285–2165.

SUPPLEMENTARY INFORMATION: The MARTWG is part of the OCS Advisory Board and was established to advise the MMS Director on technical matters of Regional concern regarding offshore prelease and postlease activities in the Mid-Atlantic. MARTWG membership consists of representatives from Federal Agencies, the Coastal States of New York through North Carolina, the petroleum industry, and other private interests.

(Federal Advisory Committee Act (Public Law No. 92–463)

Dated: December 30, 1987.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 88–169 Filed 1–6–88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Exploration & Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4767, Block 369, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on December 29, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–180 Filed 1–6–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Botswana as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Botswana. The Government of Botswana has authorized A.I.D. to request proposals from eligible investors. The name and address of representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Botswana

Project: 633–HG–003(A)—$8,500,000,
Attention: Mr. B. Gaolathe, Permanent Secretary, Ministry of Finance and Development Planning, Private Bag 008, Gaborone, Botswana, Telex: 2401 FIN BD

Interested investors should telegram their bids to the Borrower's representative on January 13, 1988 but no later than 5:00 p.m. New York time. Bids should be open until 5:00 p.m. New York time on January 15, 1988. Copies of all bids should be simultaneously sent to the following addresses:

Mr. Fredrik A. Hansen, Assistant Director, East & Southern Africa, RHUDO/Nairobi, USAID/Nairobi, Box 241, APO New York, NY 09675, Telex: 22964 AMEMB, Telephone: 331–160

USAID/Botswana, Telephone: 353382 or 52401, Telex: 2336 BD

Michael G. Kitay, Herbert T. McDevitt, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647–1805 (preferred communication)

Each proposal should consider the following terms:

(a) *Amount:* U.S. $8.5 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of fixed or variable rate with Borrowers option to convert to fixed rate.

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC 20523, Telephone: (202) 647–9062.

Dated: January 5, 1988.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 88–345 Filed 1–6–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31189]

Mid-Michigan Railroad, Inc.; Acquisition and Operation Exemption; CSX Transportation, Inc.

Mid-Michigan Railroad, Inc. (MMR) has filed a notice to acquire by both purchase and lease and operate approximately 67.36 route miles of railroad of CSX Transportation, Inc. (CSX) located in Michigan. The lines consist of: (1) 31.95 miles of railroad extending from milepost 110.45 at Elsdale, MI, to milepost 78.50 at Greenville, MI, (2) 29.78 miles of railroad extending from milepost 10.09 at Paines, MI, to milepost 39.87 at Alma, MI, and (3) 5.63 miles of railroad extending from milepost 39.87 at Alma, MI, to milepost 45.50 at Elwell, MI. The agreement for the transfer of the lines between MMR and CSX was to be consummated approximately on or before December 19, 1987.

This transaction will also involve the issuance of securities by MMR, which will be a class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

A transaction relating to the continuance in control of MMR by Railtex, Inc. is the subject of a notice of exemption filed concurrently in Finance Docket No. 31190, *Railtex, Inc.—Continuance in Control Exemption—Mid-Michigan Railroad, Inc.* Any comments must be filed with the Commission and served on Mark M. Levin, Esq., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005–4797, and David Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6 Filed 1–6–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31190]

Railtex, Inc.; Continuance in Control Exemption; Mid-Michigan Railroad, Inc.

Railtex, Inc. (Railtex) has filed a notice of exemption under 49 CFR 1180.4(g) regarding its continuance in control of the Mid-Michigan Railroad, Inc. (MMR) under the provisions of 49 CFR 1180.2(d)(2). At present, Railtex commonly controls the Virginia and North Carolina Railroad Company, Inc., the South Carolina Central Railroad Company, Inc., the North Carolina & Virginia Railroad Company, the Austin Railroad Company, Inc., and the San Diego & Imperial Valley Railroad Company. MMR, a wholly-owned non-carrier subsidiary of Railtex, has filed concurrently a notice of exemption in Finance Docket No. 31189, *Mid-Michigan Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.* There, MMR seeks an exemption to acquire by purchase and lease and operate approximately 67.36 route miles of railroad located in Michigan. The lines will be acquired from CSX Transportation, Inc.

Railtex indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6 Filed 1–6–88; 8:45 am]

BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association has filed a request for the imposition of labor protective conditions. Because this notice involves an exemption of a transaction that would otherwise be subject to 49 U.S.C. 11343. Such conditions have been imposed routinely.

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meeting

ACTION: Notice of meeting.

The first quarterly meeting for the 1988 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on February 18, 1988, from 10:00 a.m. until 12:00 p.m. The meeting will take place at the Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530. The agenda will focus on matters related to drug abuse prevention and intervention programs for youth.

The public is welcome to attend; however, seating for this meeting is very limited and must be reserved in advance. All persons wishing to attend this meeting must contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655 to request reserved seating. Requests will be received until space is filled or until 4:00 p.m. on February 1, 1988. Those persons wishing to attend will be notified of seating availability as soon as possible following the February 1st reservation deadline.

Date: January 4, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–248 Filed 1–6–88; 8:45 am]

BILLING CODE 4410–18

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the National Science Foundation published notice in the **Federal Register** of permit applications, received. A permit was issued to the following individual on December 9, 1987: John Bengtson.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88–191 Filed 1–6–88; 8:45 am]

BILLING CODE 7555–01–M

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by January 22, 1988. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The applications received are as follows:

1. Applicant

David F. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455

Activity for Which Permit Requested

Export from U.S.A. The applicant requests a permit to export bird specimens currently housed in the Bell Museum. Specimens are to be exported to the National Museum of Natural Science in Ottawa, Ontario, Canada for scientific study.

Dates

February—April 1988

2. Applicant

David F. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455

Activity for Which Permit Requested

Export from USA. The applicant requests a permit to export a bird specimen from the Bell Museum. The specimen, a South Polar Skua, is to be exported to the Icelandic Museum of Natural History in Reykjavik, Iceland for scientific study.

Dates

February—April 1988.

Charles E. Myers,

Permit Office.

[FR Doc. 88–192 Filed 1–6–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluation specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 8.13, "Instruction Concerning Prenatal Radiation Exposure," describes the instructions an employer should provide to workers and supervisors concerning biological risks to the embryo/fetus exposed to radiation in relation to other risks encountered during pregnancy.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

[5 U.S.C. 552(a)]

Dated at Rockville, Maryland this 31st day of December 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–234 Filed 1–6–88; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 10.4, "Guide for the Preparation of Applications for Licenses To Process Source Material," provides guidance and assistance to applicants on preparing applications for licenses to process source material.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

[5 U.S.C. 552(a)]

Dated at Rockville, Maryland, this 31st day of December 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–235 Filed 1–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8678]

Sequoyah Fuels Corp.; Final Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

(1) Proposed Action

The proposed administrative action is to renew Source and Byproduct Material License SUA–1387 authorizing Sequoyah Fuels Corporation (SFC) to continue operation of their Q-Sand/O-Sand Research and Development In-Situ Leach Operation in Converse County, Wyoming.

(2) Reasons for Final Finding of No Significant Impact

An Environmental Assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the operation. Documents used in preparing the assessment included operational data from the licensee's prior solution mining activities, the licensee's renewal application dated May 27, 1986 as supplemented by submittals dated June 15, 1987, September 17, 1987, and December 14, 1987; and the Environmental Impact Appraisals for the Q-Sand and the O-Sand prepared by the Commission staff and dated June, 1981, and July, 1984, respectively. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action.

The public was informed of the availability of this document by way of a November 27, 1987, **Federal Register** publication. The subsequent 30-day comment period expired on December 27, 1987. Comments were received from the State of Wyoming. The State concurs with the NRC's finding of no significant impact.

In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, the staff will renew Source and Byproduct Material License SUA–1387 authorizing operation of Sequoyah Fuels Corporation's Q–Sand/O-Sand R&D in-situ leach uranium recovery operation located in Converse County, Wyoming.

This finding, together with the Environmental Assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 29th day of December, 1987.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 88–236 Filed 1–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Ohio Edison Co. and Pennsylvania Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company, et al. (the licensees), for operation of the Beaver Valley Power Station Unit 1 located in Shippingport, Beaver County, Pennsylvania.

The proposed amendment would revise the provisions in the Technical Specifications relating to engineered safety feature response times to include

the time required for the sequential operation of the volume control tank and refueling water storage tank.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 8, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to be petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., J.E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will be not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 29th day of December 1987.

For The Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-238 Filed 1-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co., System Energy Resources, Inc., and South Mississippi Electric Power Association; Grand Gulf Nuclear Station, Unit 1

Exemption

I.

Mississippi Power & Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association (the licensee) are the holders of Facility Operating License No. NPF-29, issued November 1, 1984, which authorized operation of the Grand Gulf Nuclear Station, Unit 1 (the facility). This license provides, among other things, that the licensees are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission). The facility is a boiling water reactor located in Claiborne Country, Mississippi.

II.

The Commission's rules at 10 CFR 50.55a(c)(1) state that components which are a part of the reactor coolant pressure boundary (RCPB) must meet the requirements for Class 1 components in Section III of the ASME Boiler and Pressure Vessel Code (ASME Code). As defined in 10 CFR 50.2, and General Design Criterion 55, the RCPB for piping connected to the reactor coolant system, such as the reactor water cleanup (RWCU) system, must extend to and include the outboard containment isolation valve. The ASME Code, Class 1, piping of a branch line in the as-built RWCU system, however, terminates at the inboard isolation valve (F252) located inside the drywell. For the BWR Mark III containment, the drywell is considered to be the primary reactor containment for the purpose of isolating the reactor coolant system. This as-built condition also conflicts with the Updated Final Safety Analysis Report (UFSAR), Table 3.2-1, which indicates

that ASME Code, Class 1, piping entends to the outer-most isolating valve (F253). GDC 55 indicates that the outer-most isolation valve should be located outside the containment. Although 10 CFR 50.55a(c)(2) states that RCPB piping is not required to meet ASME Code, Class 1, requirements provided certain conditions are met, the licensee chose not to provide the supporting analysis to attempt to justify these conditions, and instead, by letter dated November 25, 1987, requested an Exemption to 10 CFR 50.55a(c)(1) for the section of RWCU piping from valve F252 up to and including valve F253.

The licensee's design review of the RWCU system also disclosed that the inboard containment isolation valve (F252) for this branch line had the same power supply as the outboard containment isolation valve, which does not meet the UFSAR and single failure criterion for containment isolation. By a separate letter dated November 25, 1987, the licensee has requested an amendment to the license to change the Technical Specifications to reflect modifications to the power supplies of valves F252 and F253 to be made during the second refueling outage. This outage began November 6, 1987, and is scheduled to end January 1, 1988. This license amendment request is being addressed separately.

III.

The exemption request under consideration involves an exemption from the ASME Code, Class 1, requirements of 10 CFR 50.55a(c)(1) for the section of RWCU piping between value F252 and valve F253. This section of pipling is now clasified as ASME Code, Class 2.

By its letter dated November 25, 1987, the licensee provided information relevant to the "special circumstances" finding required by 10 CFR 50.12(a). The licensee stated that paragraphs 50.12(a)(2)(ii) and 50.12(a)(2)(iii) are applicable to its requested exemption. The licensee stated that application of the regulation is not necessary to achieve the underlying purpose of the rule because proposed alternative augmented inservice inspection and stress analysis will result in requirements that are essentially equivalent to ASME Code, Class 1, requirements. By letter dated December 23, 1987, the licensee provided results of its stress analysis and concluded that the subject section of piping meets the criteria for Class 1 piping in Section III of the ASME Code. The above alternative measures proposed by the licensee would not result in the system piping being re-stamped as ASME Code, Class 1, since the subject piping was not procured to ASME Code, Class 1, requirements. The chemical and physical properties of the ASME Code, Class 2, piping between valves F252 and F253, however, meet the requirements for ASME Code, Class 1, piping; and the outboard isolation valve F253 is an ASME Code, Class 1, component. Further, all welds were performed by ASME Code, Seciton IX, qualified welders with welding rods that met ASME Code, Class 1, requirements. The licensee also stated that compliance with the rule would result in undue hardships. For achieving full ASME Code, Class 1, compliance, the licensee stated that a significant hardship would be incurred in terms of delay to plant restart and system modification costs. This hardship would involve the physical replacement of the existing piping between valves F252 and F253 with piping procured to ASME Code, Class 1, requirements.

The staff agrees with the licensee's determination that special circumstances as described in paragraph 50.12(a)(2)(ii) exist for the requested exemption in that application of the regulation is not necessary to achieve the underlying purpose of 10 CFR 50.55a(c)(1). The purpose of the requirement for all portions of the RCPB to be ASME Code, Class 1, are to assure that this vital system is designed and inspected to the most rigorous standards to assure a very high degree of integrity of RCPB piping. In the present case, the very small portion of one of the ancillary systems that is part of the RCPB has been designed and inspected to ASME Code, Class 2, requirements. ASME Code, Class 2, systems are also very high quality systems. The basic difference between Class 1 and Class 2 designs is that Class 1 designs require a fatigue analysis. The basic difference between Class 1 and Class 2 inservice inspections (ISI) is that Class 1 ISI requires a more rigorous inspection of pipe supports, inspection of a greater portion of pipe welds and more frequent hydrostatic tests. In the present case, the licensee has performed an ASME Code, Class 1, piping stress analysis and concluded that stresses within this piping satisfy Class 1 piping stress criteria. The licensee has agreed to include this portion of the piping in the licensee's Class 1 ISI program, before the third refueling outage, to provide a more rigorous inspection of principal features of this system. Although these compensating inspection features will not be carried out for a few years, they will be adequate to detect defects in this portion of the system should they occur. Accordingly, with these compensating features, this portion of the piping system will be assured of a very high degree of integrity thus satisfying the underlying purpose of the rule.

The staff has evaluated information provided by the licensee to justify the exemption. As an alternative to the requirement for ASME Code, Class 1, RWCU system piping between valves F252 and F253, the licensee proposed the following in its exemption request:

A. Augmenting the ASME Code, Section XI, Inservice Inspection (ISI) program by including the RWCU system piping through valve F253 in the Class 1 portion of the ASME Section XI ISI program, specifically by:

(1) Adding supports for this section of RWCU system piping to the Class 1 support inspection.

(2) Adding welds to the Class 1 program for volumetric and surface examination.

(3) Including the system pressure boundary through valve F253 in the Class 1 hydrostatic test boundary, and

B. Performing an ASME Code, Section III, Class 1 stress analysis for piping through valve F253.

The licensee is required to have documentation prior to the third refueling outage to support its November 25, 1987, commitments regarding an augmented inservice inspection. This is a reasonable length of time to complete this documentation because inservice inspection of these components would only be performed during a refueling outage. With regard to the ASME Code, Class 1, stress analysis, by letter dated December 23, 1987, the licensee provided the results of the stress analysis and concluded that the section of piping through valve F253 meets ASME Code, Section III, Class 1, allowable stress values.

The staff concludes that the licensee's proposed, augmented inservice inspection and ASME Code, Class 1, stress analysis are an acceptable alternative to full Class 1 compliance for the section of RWCU piping between valves F252 and F253, considering the burden that would result if the full ASME Code, Section III, Class 1, requirements were imposed. Accordingly, the staff finds an exemption from the requirements of paragraph 50.55a(c)(1) for this section of RWCU piping is proper.

V.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not result in undue risk to the public health and safety and is

consistent with the common defense and security. The Commission further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances is not necessary to serve the underlying purpose of the rule—to ensure integrity of the reactor coolant pressure boundary. Reactor coolant pressure boundary integrity is ensured by an analysis which demonstrated conformance to Section III of the ASME Code, Class 1, stress criteria and by inservice inspections meeting the requirements of Section XI of the ASME Code, Class 1, inservice requirements.

The Commission hereby grants an exemption from the requirements of 10 CFR 50.55a(c)(1) for the section of RWCU system piping between valves F252 and F253 at the Grant Gulf Nuclear Station, Unit 1, provided that prior to the third refueling outage, Systems Energy Resources, Inc., incorporates the inservice inspection for this section of piping into the Class 1 portion of the GGNS, Unit 1, Inservice Inspection Program.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant effect on the environment (52 FR 49217).

This exemption is effective as of its date of issuance.

Dated at Bethesda, Maryland, this 30th day of December 1987.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-237 Filed 1-6-88; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection Title: Vocational Report.

(2) Form(s) Submitted: G-251.

(3) Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of Use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual Responses: 7,850.

(7) Annual Reporting Hours: 3,990.

(8) Collection Description: Section 2 of the Railroad Retirement Act provides for payment of disability annuities to qualified employees and widow(er)s. The collection obtains the information needed to determine ability to work.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-204 Filed 1-6-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25005; File No. SR-NASD-87-26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On June 24, 1987, the National Association of Securities Dealers, Inc. ("NASD") submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend section (c)(1)(B) of the Rules of Practice and Procedures governing the NASD's Small Order Execution System ("SOES"). The purpose of the amendment is to clarify that no NASDAQ market shall execute agency orders through SOES unless the NASDAQ marker maker is also a registered SOES market maker in that security.[1]

Notice of the proposed rule change, together with the terms of substance of the proposed change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24854, August 27, 1987) and by publication in the **Federal Register** (52 FR 33487, September 3, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Assistant Secretary.

Dated: October 8, 1987.

[FR Doc. 88-243 Filed 1-6-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The NASD submitted a technical amendment (Amendment No. 1) to the proposed rule change dated August 11, 1987.

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: TVA Energy Saver Home Inspection Sheet.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 5,000.

Estimated Total Annual Burden Hours: 2,200.

Need For and Use of Information: This information collection is an integral part of the TVA Energy Saver Home Program which promotes energy-efficiency standards for new homes and provides for builders to certify those new homes which meet the standards.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 88-194 Filed 1-6-88; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on January 26 and 27, 1988 of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on January 26 and the preparation of a written report to the Secretary of the Treasury on January 27, 1988.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: December 30, 1987.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

[FR Doc. 88-201 Filed 1-6-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 35-87]

Treasury Notes; Series AG-1989

Washington, December 23, 1987.

The Secretary announced on December 22, 1987, that the interest rate on the notes designated Series AG-1989, described in Department Circular—Public Debt Series—No. 35-87 dated December 17, 1987, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-230 Filed 1-6-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 36-87]

Treasury Notes; Series Q-1991

Washington, December 24, 1987.

The Secretary announced on December 23, 1987, that the interest rate on the notes designated Series Q-1991, described in Department Circular—Public Debt Series—No. 36-87 dated December 17, 1987, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-231 Filed 1-6-88; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Detection of Counterfeit PRC Textile Visas

AGENCY: Customs Service, Treasury.

ACTION: Notice of means to detect counterfeit textile visas from People's Republic of China.

SUMMARY: Any shipment of merchandise found to be covered by a counterfeit visa is considered introduced into the U.S. contrary to law and is subject to seizure by Customs. In 1987, Customs detected almost 200 counterfeit People's Republic of China (PRC) visas. Seizures of nearly $20 million in merchandise resulted, creating a enforcement and administrative burden on Customs. In order to educate the importing public about the considerable amount of fraudulent activity involving the importation of PRC merchandise and to put importers on the alert for illegal importations of PRC merchandise, Customs is notifying the public in this document of the characteristics of counterfeit PRC visas.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Esau, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, (202-566-6188).

SUPPLEMENTARY INFORMATION: Customs has the authority pursuant to 19 U.S.C. 1595a(c), to seize any shipment of merchandise that is determined to be

contrary to law. Importations of textiles covered under a counterfeit visa from the People's Republic of China (PRC) are contrary to the textile agreement between the PRC and the U.S. entered into in accordance with 7 U.S.C. 1854.

A serious situation has developed with regard to the importation of textile products from the PRC. In 1987, Customs detected almost 200 counterfeit visas (textile export license(s)/commercial invoice(s). Seizures of nearly $20 million in merchandise resulted.

The considerable amount of fraudulent activity involving the importation of PRC merchandise has created an enforcement and administrative burden on Customs. Customs anticipates that when the calendar year quotas reopen in January 1988, the ensuing volume of Chinese imports will include a significant number accompanied by counterfeit visas.

Customs wishes to alert the importing public of this problem. Because merchandise covered by a counterfeit visa is subject to seizure, the importing public should be aware of how to recognize a counterfeit visa. Accordingly, Customs is setting forth in this document the characteristics of genuine and counterfeit PRC visas.

Detection of Counterfeit Visas

The genuine visa is printed in two colors. There is background in either blue or green of wavy *continuous* lines. Over this, there is imprinted in black, an assortment of letters, lines, and Chinese characters. Finally, the serial number is stamped in its appropriate box. The calendar-year prefix is typed in later.

Counterfeit visas are frequently distinguished by the following characteristics:

Detail Loss

In photo-offsetting, some detail loss is inevitable. This phenomenon results in lost apostrophes, lost dots on "i's", and other details in the black printed portion of the visa. In addition, it results in breaks in the continuous "brush strokes" in the delicate Chinese characters. This loss of detail also affects the colored background when it is photo-offset. In some of the poorer counterfeits, this loss of detail causes the entire pattern to "look different."

Specific Problem Areas: (One or more areas can be present)

—Background is very faint and color is uneven. Color and detail are best at bottom but washed out in the center of the document.

—There are light spots in the background pattern in several places, most notably in block nos. 10 and 12.

—Block 14 "issuing authorities' stamp and signature" is missing the plural possessive apostrophe and "i's" are *not* dotted.

—In block 14, there is a dot immediately preceding the "I" in 'Issuing", slightly above the center of the "I". This dot is a consistent idiosyncrasy for authentic GREEN PRC visas. However, it has not been observed on any legitimate BLUE visas or specimens. We believe that this counterfeiter has photo offset the black detail from a green visa and is using the plate to fabricate blue visas.

If a specimen or known authentic vias is available, the following indicators can be used:

—Background color too gray.

—Background color too gray and has a flatter appearance than the background of an authentic visa.

—Length of colored background is approximately ⅛-inch shorter than specimen.

Relationship Between Colored Background Line and Blank "Boxes"

The authentic documents exhibit a precise relationship between the wavy background lines and the overprinted black lines. *Some* of the counterfeits can be discerned due to changes in these relationships, i.e., background lines ascending instead of descending, as they cross certain black lines. This has apparently been caused by two factors:

1. Some of the counterfeiters have cut-up pieces of background, then photo-offset it, thereby rearranging the relationships.

2. At least one counterfeiter has obtained his own background plate which is not identical to the authentic plate.

Specific Problem Areas: (One or more areas can be present)

—While viewing the vertical line between blocks 13 and 14, the wavy lines ascend from left to right as they cross the black line. In the authentic specimen and genuine visas examined to date these background lines descend from left to right as they cross the vertical black line.

—The background pattern should peak at the point where the line dividing block 13 and 14 meets the horizontal line above the boxes; instead, it dips.

Discontinuances in the Background Pattern

Because some counterfeiters have reassembled background plates from "pieces" of background, some counterfeits have horizontal lines in their backgrounds and/or sudden changes in pattern.

Specific Problem Areas: (One or more areas can be present)

—Background color uneven.

—Background pattern is discontinuous with horizontal lines 2⅜ inches from bottom of pattern (in box 13), 4⅝ inches from bottom of pattern (in box 9) and 8½ inches from bottom of pattern (in box 6).

—In block 9, ¾ inches from the left border of the background and 4 ½ inches from the bottom border of the background, there is an oval "o" in the background contained within a small area of interrupted background lines.

—Background has horizontal breaks in the pattern 3 ⅛ inches from the bottom of background area and 7 ⅞ inches from bottom of background area.

—There are pattern breaks 2 ¾ inches from the bottom of the background area and 7 inches from the bottom of the background area. However, these pattern breaks are very difficult to discern due to the poor detail of the pattern.

—The only readily apparent flaw in the background pattern is a small circle in the upper right-hand corner of block 1.

Serial Numbers

The genuine visas have serial numbers pressed into the paper and this can be detected by lightly touching the back of the form. So far, most counterfeits examined by Customs have *not* had serial numbers pressed in to the document.

Specific Problem Areas: (One of more areas can be present)

—Serial numbers not impressed as in legitimate visas-cannot be felt with fingertips from back of visa.

—Serial numbers are not stylized as in specimen—tops of 7's and 5's and bottoms of 2's are straight rather than curved as in legitimate visas.

—Serial numbers are not impressed and cannot be felt from back of visa; however, numrals are in similar style to specimen.

—The first few numerals of the serial number can be felt very faintly from the back of the visa.

Acting Commissioner of Customs.

Michael H. Lane,

Approved: December 29, 1987.

Acting Assistant Secretary of the Treasury.

John P. Simpson,

[FR Doc. 88-266 Filed 1-6-88; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 12, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987-32—Jack Polster.
Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-312 Filed 1-5-88; 3:47 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, Januray 13, 1988.

PLACE. Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 5, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-333 Filed 1-5-88 3:57 pm]
BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Thursday, January 14, 1988.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTER TO BE CONSIDERED: The adjudication of cases dealing with jurisdictional questions or the timeliness of the petitions for review or petitions for appeal.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: January 4, 1988.

Shannon McCarthy,
Deputy Clerk of the Board.
[FR Doc. 88-301 Filed 1-5-88; 3:47 pm]
BILLING CODE 7400-01-M

Corrections

Federal Register
Vol. 53, No. 4
Thursday, January 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-502]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Preliminary Results of Countervailing Duty Administrative Review

Correction

In notice document 87-28778 beginning on page 47621 in the issue of Tuesday, December 15, 1987, make the following correction:

On page 47621, in the second column, in the third paragraph, in the fifth line, "6" should read "16".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0545]

Truth in Lending; Variable-Rate Disclosure Under Regulation Z

Correction

In rule document 87-29555 beginning on page 48665 in the issue of Thursday, December 24, 1987, make the following corrections:

§ 226.19 [Corrected]

1. On page 48671, in the second column, in § 226.19(b)(2)(viii), in the sixth line from the top of the column, "interest rate payment" should read "interest rate and payment".

Appendix H—[Amended]

2. On page 48673, in the first column, in the second line, "Term...80 years" should read "Term...30 years."

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0625]

Truth in Lending; Home Equity Disclosures Under Regulation Z

Correction

In proposed rule document 87-29556 beginning on page 48702 in the issue of Thursday, December 24, 1987, make the following corrections:

1. On page 48705, in the second column, in item (6)(i), in the 17th line, "of method" should read "or method".

2. In the same paragraph, in the 22nd line, remove the words "footnote 36. The proposed" and insert "§ 226.6(e) for home equity".

§ 226.6 [Corrected]

3. On page 48706, in the first column, in § 226.6(e)(4) introductory text, in the last line, remove the period and insert ", including:".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Alien Legalization; Application, Determination of Eligibility and Furnishing Assistance—Public Assistance Programs, Coverage and Conditions of Eligibility in Financial Assistance Programs Alien Legalization

Correction

In rule document 87-29536 beginning on page 48687 in the issue of Thursday, December 24, 1987, make the following correction:

On page 48689, in the second column, in amendatory instruction 2, in the fourth line, "(q)(3)(vi)(B)" should read "(a)(3)(vi)(B)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 76N-0386]

Provisionally and Permanently Listed Uses of FD&C Red No. 3 and its Lakes; Postponement of Final Date for Submission of Data for Specific Uses; Request for Use Data in Pet and Animal Food

Correction

In notice document 87-29032 beginning on page 48326 in the issue of Monday, December 21, 1987, make the following correction:

On page 48327, in the second column, in the first complete paragraph, in the 10th line, "FDA" should read "FD&C".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

Correction

In rule document 87-28855 beginning on page 47994 in the issue of Thursday, December 17, 1987, make the following correction:

On page 47995, at the top of the first column, a heading should be inserted and the first sentence of the paragraph should read as follows:

Explanation of Changes in Interim Final Rule

The changes contained in the interim final rule are primarily dictated by changes in the statutory payment limits made by the 1987 Amendments.***

BILLING CODE 1505-01-D

VOL
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federal register

Thursday
January 7, 1988

Part II

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification and Test Procedures; Gasoline Lead Content; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3279-3]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Certification and Test Procedures; Gasoline Lead Content

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice announces EPA's decision on the use of unleaded gasoline in emissions testing and service accumulation. Effective with the 1990 model year, emissions testing for Certification, Selective Enforcement Audit and Recall and service accumulation for Certification of gasoline-fueled light-duty vehicles, gasoline-fueled light-duty trucks, motorcycles and heavy-duty gasoline engines shall be performed using unleaded gasoline only.

DATE: These regulations take effect February 8, 1988.

Note.—Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

ADDRESSES: Material relevant to this final rule is contained in Public Docket No. A–85–28. The docket is located at the U.S. EPA Central Docket Section, in the Room 4 South Conference Center, 401 M Street SW, Washington, DC 20460; phone (202) 382–7548. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. F. Peter Hutchins, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4340.

SUPPLEMENTARY INFORMATION:

I. Public Participation

On July 7, 1986 (51 FR 24614) EPA published a Notice of Proposed Rulemaking (NPRM) in which it was proposed that all emission testing and service accumulation of new gasoline fueled light-duty vehicles, gasoline fueled light-duty trucks, motorcycles and heavy-duty gasoline engines be performed using unleaded gasoline only. The effective date of the proposed prohibition against the use of leaded gasoline in emission testing of new vehicles and engines was the 1988 model year. (In fact, the only vehicles that are currently certified using leaded gasoline as a test fuel are certain heavy-duty vehicles and some motorcycles.)

In response to the NPRM, EPA received comments from seven interested parties. Three of the commenters (Department of Environmental Protection, City of New York; Ford Motor Company; and General Motors Corporation) provided comments on the proposed ban on the use of leaded gasoline in emissions testing. None of these commenters provided any comments opposing the exclusive use of unleaded gasoline for emissions testing and service accumulation. In fact, each of these commenters supported the proposed elimination of leaded gasoline as a test and service accumulation fuel for new motor vehicles and engines. None of the other commenters provided comments on the elimination of leaded gasoline as a test fuel. Since there was no disagreement in the comments with the proposed ban on the use of leaded gasoline as a test and service accumulation fuel for new motor vehicles and engines, EPA is today prohibiting the use of leaded gasoline in emission tests and service accumulation on new motor vehicles and engines.

Section 80.24 of 40 CFR Part 80 requires the installation of fillneck restrictors and labels when unleaded gasoline is used in certification testing. None of the commenters raised leadtime for the installation of the required fillneck restrictors and labels as an issue. However, two of the commenters (General Motors and Ford) have subsequently advised EPA that the installation of this equipment on their heavy-duty vehicles was not planned for and is not possible in time for the proposed 1988 model year. Evaluation of the time required to perform the design tasks, safety and performance testing, and procurement of necessary manufacturing equipment for fillneck restrictors has persuaded EPA that between 18 and 20 months of leadtime would be required. Based upon this, the earliest effective date of the rule would be the 1990 model year. The effective date of this rule will, therefore, be the 1990 model year rather than the 1988 model year as proposed.

Comments on three other topics were provided in response to the NPRM. These topics were: (1) An error in the cetane specification of Type 2–D grade diesel fuel for use in exhaust emission testing; (2) requests for clarification on the acceptability of carrying over data collected prior to the proposed ban on the use of leaded gasoline for heavy-duty gasoline engines and; (3) a recommendation that Selective Enforcement Audit test programs and in-use compliance test programs be performed using fuel which meets the same fuel specifications as that used for certification employing carryover data.

Comments on the cetane specification of Type 2–D grade diesel fuel used in exhaust emission testing were provided by Cummins Engine Company, Inc.; Caterpillar Inc.; Ford Motor Company; General Motors Corporation and U.S. Technical Research Company (representing Peugeot). These comments resulted from an inadvertent typographical error in the proposed regulatory language which incorrectly indicated a cetane specification of 40–45 instead of the existing value (42–50). The commenters opposed that they thought was a proposed change in the cetane value. However, EPA had no intention of proposing a change in the cetane specification for any grade of diesel fuel. There was, therefore, as noted in the comments, no mention of such a change in the preamble. In the final rules published today the correct values, *i.e.*, 42–50, for the cetane specification of Type 2–D grade diesel fuel for use in exhaust emissions tests are restored.

With respect to the request by Ford Motor Company and General Motors Corporation for clarification on EPA's intent in the proposal regarding the use of carryover data involving leaded gasoline, it was and is EPA's intent that all *new* data required for certification will be collected using unleaded gasoline. While it appears highly improbable that data carryover would be possible beyond the 1989 model year, (since new, more stringent standards for heavy-duty engines will begin in that year) EPA wishes to avoid any unnecessary retesting solely because of the change in test fuel. Since EPA anticipates that there would be no significant upward impact on emissions due to the use of unleaded gasoline in certification (a very small downward, but probably not significant, impact on the deterioration factor can reasonably be expected), manufacturers may choose to use otherwise applicable carryover data previously collected on an existing engine design using leaded gasoline. The carryover data would be, however, only a substitute for data collected on test engines or vehicles using unleaded gasoline and complying with the maintenance regulations applicable to unleaded gasoline. Therefore, the maintenance regulations appropriate to the use of unleaded gasoline shall apply to production vehicles and the requirements (fuel tank fill neck restrictors and labels) for the use of unleaded gasoline in production vehicles will be applicable, even if carryover data is used for certification.

The third topic raised in the comments was the recommendation by Ford Motor Company that Selective Enforcement Audit (SEA) and in-use compliance testing programs on heavy-duty gasoline engines certified with carryover data be performed using leaded gasoline which conforms to the specification previously employed for certification. As indicated previously, the different test fuels are not anticipated to cause any significant emission impact, and the use of carryover data is being allowed only as a substitute in certification for data collected using unleaded gasoline. Furthermore, in-use vehicles and engines will be operated on unleaded gasoline. Therefore, EPA does not believe that there is a valid basis for adopting this recommendation. All SEA and in-use compliance testing of 1990 and later model year vehicles and engines will be performed using unleaded gasoline whether or not the vehicles or engines were certified using carryover data based on leaded gasoline results.

Finally, one commenter, Intereurope Regulations Limited, brought to EPA's attention the existence of a typographical error (a negative sign is omitted in an equation) in an existing section of the regulations (86.118–78(c)). This typographical error is corrected today.

II. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; will not result in significantly increased costs or prices for consumers, industries or others [1]; and will not have adverse effects on competition, employment, investment or productivity. Thus, no Regulatory Impact Analysis has been prepared.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments by OMB and EPA's response to such comments will be placed in the public docket for this rulemaking.

III. Statutory Authority

EPA's authority to determine the specifications of gasoline used in emissions test procedures is provided in the Clean Air Act. Section 206(a)(1) of the Act confers broad authority on the Administrator to "test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under Section 202 of this Act."

IV. Reporting and Recordkeeping Requirements

The information collection requirements contained in the rules which this action amends have been approved by OMB and assigned OMB Control Number 2060–0104. The amendments contained in this final rule have no impact on the reporting or recordkeeping burden.

V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory flexibility analysis. The amendments of this rulemaking will not significantly increase the burden or cost of compliance for the industry or any other group. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 24, 1987.

Lee M. Thomas,

Administrator.

[1] The rule is structured so that there will be no new testing costs. Some small costs will be incurred for labeling and the use of fuel tank filler neck restrictors plus incremental cost differences between unleaded and leaded commercial gasoline for those operators not already using unleaded fuel. These costs will be partially offset by savings in maintenance due to the use of unleaded gasoline.

APPENDIX—TABLE OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 86 Authority	None	
2. 86.090–25	Add § 86.090–25	Align maintenance provisions with test fuel provisions.
3. 86.118–78(c)	Addition of a minus sign	Typographical error
4. 86.113–90	Add § 86.113–90	Specify that unleaded gasoline be the only gasoline used in all test vehicles and test engines.
5. 86.513–90	Add § 86.513–90	Same as 4 above
6. 86.1213–90	Add § 86.1213–90	Same as 4
7. 86.1313–90	Add § 86.1313–90	Same as 4
8. 86.1513–90	Add § 86.1513–90	Same as 4

For the reasons set forth in the preamble, 40 CFR Part 86 is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation of Part 86 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7525, 7541, 7542 and 7601.

2. A new § 86.090–25 is added to Subpart A, to read as follows:

§ 86.090–25 Maintenance.

(a) *Applicability.* This section applies to light-duty vehicles, light-duty trucks, and heavy-duty engines.

(1) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust or evaporative emission deterioration factors is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenace.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and new motor vehicles engines under § 86.087–38.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under § 86.088–35. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to assure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to purchasers under § 86.087–38. As provided below, EPA has determined that emission-related maintenance at shorter intervals than that outlined in paragraphs (b)(3) and (b)(4) of this section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (*e.g.*, longer intervals) than that listed in paragraphs (b)(3) and (b)(4) of this section is also not technologically necessary.

(3) For gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs at 30,000 miles of use and at 30,000-mile intervals thereafter.

(B) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 25,000 miles (or 750 hours) or use and at 25,000-mile intervals (or 750-hour) intervals thereafter.

(ii) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Carburetors (including idle mixture).

(E) Catalytic converter.

(F) Exhaust gas recirculation system (including all related filters and control valves).

(G) Air injection system components.

(H) Fuel injectors.

(I) Electronic engine control unit and its associated sensors (including oxygen sensor) and actuators.

(J) Evaporative emission canister.

(K) Turbochargers.

(iii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(iv) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter:

(A) Oxygen sensor.

(v) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative emission canister.

(F) Turbochargers.

(G) Carburetor(s).

(vi) (A) For light-duty trucks, and for heavy-duty engines the adjustment, cleaning, repair, or replacement the EGR system (including all related filters and control valves) at 50,000 miles (or 1,500 hours) or use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(4) For diesel powered light-duty vehicles, light-duty trucks, and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injectors.

(D) Turbocharger.

(E) Electronic engine control unit and its associated sensors and actuators.

(F) Particulate trap or trap-oxidizer system (including related components).

(ii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injector tips (cleaning *only*).

(iii) The following maintenance at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light-duty trucks and light heavy-duty engines, or, at 150,000 miles (or 4,500 hours) of use and at 150,000-mile (or 4,500-hour) intervals thereafter for medium and heavy-duty engines: The adjustment, cleaning, repair, or replacement of

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(5) [Reserved]

(6) (i) The Following components are currently defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters and control valves).

(E) Positive crankcase ventilation valve.

(F) Evaporative emission control system components (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the following conditions will be accepted as having a reasonable likelihood of the maintenance item being performed in-use:

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation, and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(6)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.087–38.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under section 203(a)(3) of the Clean Air Act, as amended in August 1977 (42 U.S.C. 7522(a)(3)).

(7) *Changes to scheduled maintenance.* (i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (b)(4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcement in a Federal Register Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (*i.e.*, emission-related or non-emission-related, critical or non-critical) of the subject maintenace and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission-related. For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items, along with their identification as critical or non-critical, and establishment of technologically necessary maintenance intervals, will be announced in the Federal Register.

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(7) of this section. The request shall be in writing, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(d) *Unscheduled maintenance on light-duty durability data vehicles.* (1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraphs (d)(2) and (d)(3) of this section, only under the following provisions:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

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(ii) Readjustment of a gasoline-fueled vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator. Such approval will be given if the Administrator:

(i) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in-use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(ii) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss. The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle/engine malfunction (*e.g.*, misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability-data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(B) The malfunction will not occur in production vehicles or engines in-use, *and*

(C) The deterioration factor generated by the durability-data vehicle or engine will remain unaffected by the malfunction or by the corrective action (*e.g.*, the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle or engine.

(4) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle/engine unrepresentative of vehicles in-use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) *Maintenance on emission data vehicles and engines.* (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on light-duty truck emission-data vehicles selected under § 86.085–24(b)(1) (v) or (vii), and permitted to be tested for purposes of § 86.088–23(c)(1)(ii) under the provisions of § 86.085–24(b)(2), may be performed in conjunction with emission control system modifications at the low-mileage test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.087–38.

(3) Maintenance on those light-duty truck emission-data vehicles selected under § 86.085–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than that intended by the original design, may be performed in conjunction with the emission control system modifications at the low-mileage test point, and shall be approved in advance by the Administrator.

(4) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components, or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission-data vehicles, or

(3) Unless specifically authorized by the Administrator.

(g)(1) Paragraph (g) of this section applies to light-duty vehicles.

(2) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.088–23.

3. Section 86.116–78 of Subpart B is amended by revising paragraph (c) to read as follows:

§ 86.116–78 Dynamometer Calibration.

* * * * *

(c) *Calculations.* The road load power actually absorbed by the dynamometer is calculated from the following equation:

$HP_d = (1/2)\,(W/32.2)\,(V_1^3 - V_2^3)/(550t)$

where:

HP_d = Power, horsepower (kilowatts)
W = Equivalent inertia, lb (kg)
V_1 = Initial Velocity, ft/s (m/s) (55 mph = 88.5 km/h = 80.67 ft/s = 24.58 m/s)
V_2 = Final Velocity, ft/s (m/s) (45 mph = 72.4 km/h = 66 ft/s = 20.11 m/s)
t = elapsed time for rolls to coast from 55 mph to 45 mph (88.5 to 72.4 km/h)

(Expressions in parenthesis are for SI units.) When the coastdown is from 56 to 45 mph (88.5 to 72.4 km/h) the above equation reduces to:

$HP_d = 0.08073\,(W/t)$ for SI units,
$HP_d = 0.09864\,(W/t)$

4. A new § 86.113–90 is added to Subpart B, to read as follows:

§ 86.113–90 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply.

Item	ASTM	Value
Octane, research, minimum	D2699	93
Sensitivity, minimum		7.5
Lead (organic):		
g/U.S. gal	D3237	[1] 0.050
(g/liter)		[2] (0.013)
Distillation range:		
IBP [3]:		
°F	D86	75–95
(°C)		(23.9–35)
10 pct. point:		
°F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point:		
°F	D86	200–230
(°C)		(93.3–110)
90 pct. point:		
°F	D86	300–325
(°C)		(148.9–162.8)
EP, (max.):		
°F	D86	415
(°C)		(212.8)
Sulfur, weight, percent, maximum	D1266	0.10
Phosphorus:		
g/U.S. gal., maximum	D3231	0.005
g/liter)		(0.0013)
RVP [3 4]:		
psi	D323	8.7–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, percent, maximum	D1319	10
Aromatics, percent, maximum	D1319	35
Saturates	D1319	[5]

[1] Maximum.
[2] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105°F (23.9–40.6°C).
[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2 psi (56.2–63.4 kPa).
[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.9–9.2 psi (54.5–63.4 kPa).
[5] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.088–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item	ASTM Test Method No.	Type 2–D
Cetane Number	D613	42–50
Distillation range:		
IBP:		
°F	D86	340–400
(°C)		(171.1–204.4)
10 pct. point:		
°F	D86	400–460
(°C)		(204.4–237.8)
50 pct. point:		
°F	D86	470–540
(°C)		(243.3–282.2)
90 pct. point:		
°F	D86	550–610
(°C)		(287.8–321.1)
EP:		
°F	D86	580–660
(°C)		(304.4–348.9)
Gravity, °API	D287	33–37
Total sulfur, percent	D129 or D2622	0.2–0.5
Hydrocarbon composition:	D1319	
Aromatics, percent, minimum		27
Paraffins, Naphthenes, Olefins		[1]
Flashpoint, minimum:		
°F	D93	130
(°C)		(54.4)
Viscosity, centistokes	D445	2.0–3.2

[1] Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM Test Method No.	Type 2–D
Cetane number	D613	38–58
Distillation range:		
90 pct. point:		
°F	D86	436–630
(°C)		(221.1–332.2)
Gravity, °API	D287	30–42
Total sulfur, percent, minimum	D129 or D2622	0.20
Flashpoint, minimum:		
°F	D93	130
(°C)		(54.4)
Viscosity, centistokes	D455	1.5–4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided:

(i) They are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.088–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

5. A new § 86.513–90 is added to Subpart F, to read as follows:

§ 86.513–90 Fuel and engine lubricant specifications.

(a) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer for emission testing except that the octane specifications do not apply.

Item	ASTM	Value
Octane, research, minimum	D2699	96
Lead (organic):		
g/liter	D3237	[1] 0.013
(g/U.S. gal)		[1] (0.050)
Distillation range:		
IBP:		
°C	D86	23.9–35
(°F)		(75–95)
10 pct. point:		
°C	D86	48.9–57.2
(°F)		(120–135)
50 pct. point:		
°C	D86	93.3–110
(°F)		(200–230)
90 pct. point:		
°C	D86	148.9–162.8
(°F)		(300–325)
EP:		
°C max	D86	212.8
(°F)		(415)
Sulfur, weight percent, maximum	D1266	0.10
Phosphorus:		
g/liter, max	D3231	0.0013
(g/U.S. gal)		(0.005)
RVP, kPa (psi)	D323	55.2–63.4 (8.0–9.2)
Hydrocarbon composition:		
Olefins, percent, maximum	D1319	10
Aromatics, percent, maximum	D1319	35
Saturates	D1319	Remainder

[1] Maximum.

(b)(1) Unleaded gasoline and engine lubricants representative of commercial fuels and engine lubricants which will be generally available through retail outlets shall be used in service accumulation.

(2) The octane rating of the gasoline used shall be no higher than 4.0 Research octane numbers above the minimum recommended by the manufacturer.

(3) The Reid Vapor Pressure of the fuel used shall be characteristic of the motor fuel during the season in which the service accumulation takes place.

(4) If the manufacturer specifies several lubricants to be used by the ultimate purchaser, the Administrator will select one to be used during service accumulation.

(c) The specification range of the fuels and engine lubricants to be used under paragraph (b) of this section shall be reported in accordance with § 86.416.

(d) The same lubricant(s) shall be used for both service accumulation and emission testing.

(e) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

6. A new § 86.1213–90 is added to Subpart M, to read as follows:

§ 86.1213–90 Fuel specifications.

(a) Gasoline having the following specifications will be used in emissions testing.

Item	ASTM	Value
Octane, research, minimum	D2699	93
Sensitivity, minimum		7.5
Lead (organic):		
g/U.S. gal	D3237	[1] 0.050
(g/liter)		[1] (0.013)
Distillation range:		
IBP:		
°F	D86	75–95
(°C)		(23.9–35)
10 pct. point:		
°F	DS86	120–135
(°C)		(48.9–57.2)
50 pct. point:		
°F	D86	200–230
(°C)		(93.3–110)
90 pct. point:		
°F	D86	300–325
(°C)		(148.9–162.8)
EP, maximum:		
°F	D86	415
(°C)		(212.8)
Sulphyr, weight percent, maximum.	D1266	0.10
Phosphorous:		
g/U.S. gal., maximum.	D3231	0.005
(g/liter)		(0.0013)
RVP:		
psi	D323	8.7–9.2
(kPa)		(60.0–63.4)
Hydrocarbon composition:		
Olefins, percent, maximum.	D1319	10
Aromatics, percent, maximum.	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder.

(b)(1) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation.

(2) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(3) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(c) The specification range of the gasoline to be used under paragraph (b) of this section shall be recorded.

7. A new § 86.1313–90 is added to Subpart N, to read as follows:

§ 86.1313–90 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the specifications listed in Table N90–1 will be used by the Administrator in exhaust emission testing. Gasoline having these specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust emission testing, except that the octane specifications do not apply.

TABLE N90–1

Item	ASTM	Value
Octane, research, minimum	D2699	93
Sensitivity, minimum		7.5
Lead (organic):		
g/U.S. gal	D3237	[1] 0.050
(g/liter)		[1] (0.013)
Distillation range:		
IBP:		
°F	D86	75–95
(°C)		(23.9–35)
10 pct. point:		
°F	D86	120–135
(°C)		(48.9–57.2)
50 pct. point		
(°F)	D86	200–230
°C		(93.3–110)
90 pct. point		
(°F)	D86	300–325
°C		(148.9–162.8)
EP, maximum:		
(°F)	D86	415
°C		(212.8)
Sulphur, weight percent, maximum.	D1266	0.10
Phosphorus:		
g/U.S. gal. maximum.	D3231	0.005
(g/liter)		(0.0013)
RVP:		
psi	D323	8.7–9.2
(kPa)		(60.0–63.4)

Item	ASTM	Value
Hydrocarbon composition:		
Olefins, percent, maximum.	D1319	10
Aromatics, percent, maximum.	D1319	35
Saturates	D1319	[2]

[1] Maximum.
[2] Remainder

(2) Unleaded gasoline representative of commercial gasoline which is generally available through retail outlets shall be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than one Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.088–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, meal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the specifications in Table N90–2, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of diesel fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

TABLE N90–2

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	48–54	42–50
Distillation range:			
IBP:			
°F	D86	330–390	340–400
(°C)		(165.6–198.9)	(171.1–204.4)
10 pct. point:			
°F	D86	370–430	400–460
(°C)		(187.8–221.1)	(204.4–237.8)
50 pct. point:			
°F	D86	410–480	470–540
(°C)		(210.0–248.9)	(243.3–282.2)
90 pct. point:			
°F	D86	460–520	550–610
(°C)		(237.8–271.1)	(287.8–321.1)
EP:			
°F	D86	500–560	580–660
(°C)		(260.0–293.3)	(304.4–348.9)
Gravity, °API	D287	40–44	33–37
Total sulfur, percent	D129 or D2622.	0.05–0.20	0.20–0.50
Hydrocarbon composition:			
Aromatics, percent	D1319	[1] 8	[1] 27
Paraffins, Naphthenes, Olefins	D1319	[2]	[2]
Flashpoint:			
°F	D93	120	130
(minimum)			
(°C)		(48.9)	(54.4)
Viscosity, Centistokes	D445	1.6–2.0	2.0–3.2

[1] Minimum.
[2] Remainder.

(3) Diesel fuel meeting the specifications in Table N90–3, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used:

TABLE N90–3

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	42–56	30–58
Distillation range:			
90 pct. point:			
°F	D86	440–530	540–630
(°C)		(226.7–7–276.7)	(282.2–332.2)
Gravity, °API	D287	39–45	30–42

TABLE N90-3—Continued

Item	ASTM	Type 1-D	Type 2-D
Total sulfur, percent, minimum	D129 or D2622.	0.05	0.20
Flashpoint:			
°F, minimum	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D455	1.2-2.2	1.5-4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided that:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service;

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability;

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.088-21(b)(3).

8. A new § 86.1513-90 is added to Subpart P, to read as follows:

§ 86.1513-90 Fuel specifications.

The requirements of this section are set forth in § 86.1313-90(a) for heavy-duty engines, and in § 86.113-90(a) for light-duty trucks.

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Part III

Environmental Protection Agency

40 CFR Part 51

Stack Height Emissions Balancing; Final Policy Statement

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-3215-9]

Stack Height Emissions Balancing; Final Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final policy statement.

SUMMARY: Reproduced below is a memorandum which sets forth EPA's national policy authorizing use of "emissions balancing" (EB) for compliance with the Agency's revised stack height regulation promulgated July 8, 1985 (50 FR 27892). This policy provides an alternative compliance option which can result in substantial cost savings to electric utility or other sources affected by these regulations or to their customers, while assuring equivalent or greater environmental benefits. It makes final and responds to major comments on a policy proposed December 23, 1985 (50 FR 52418).

EFFECTIVE DATE: This policy is effective on January 7, 1988.

FOR FURTHER INFORMATION CONTACT: For information concerning the policy issues addressed herein, contact J. David Foster, Office of Air and Radiation, (202) 475–8590. For information concerning implementation and processing of emissions balancing state implementation plan revisions, contact G.T. Helms, Office of Air Quality Planning and Standards, (919) 541–5527.

SUPPLEMENTARY INFORMATION:

Docket Statement

Pertinent information concerning this policy is included in Docket Number A–85–05 which has been established as the record of these proceedings. This Docket is maintained in EPA's Central Docket Section, South Conference Center, Room #4, 401 M Street SW., Washington, DC, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying materials in this Docket.

I. Introduction and Summary

The stack height regulation revisions promulgated on July 8, 1985 (50 FR 27892) implement the provisions of section 123 of the Clean Air Act, which requires that the degree of emission limitation required for control of any air pollutant under an applicable state implementation plan (SIP) shall not be affected by (1) stack heights in excess of good engineering practice (GEP), or (2) any other dispersion technique. For more detailed discussion, see the July 8, 1985 notice.

Stationary sources of air pollution are subject to emission limitations to assure attainment of the national ambient air quality standards (NAAQS) and to protect prevention of significant deterioration (PSD) increments. These limitations are derived from predictions of ground-level pollutant concentrations that will occur in the area of maximum impact as a result of pollutant emissions from one or more sources. Dispersion-enhancing practices, including excessively tall stacks, lower the predicted ground-level concentrations and may result in emission limitations which allow sources to emit greater total amounts of pollution than if such practices were not employed.

Under the revised stack height regulation, some sources may be subject to emission limitations which are more stringent than those which currently apply. Today's final policy has been developed in consideration of the fact that emission reductions mandated by the stack height regulation may be obtained more cost-effectively by allowing such a source to secure these reductions at (an)other source(s), in lieu of reducing emissions at its own facility. For purposes of this policy, the source which is subject to more stringent emission limits is called the "affected source"; the source which provides the emission reductions needed to satisfy such limits is called the "providing source". This joint satisfaction of an emission reduction obligation is referred to as an "emissions balance."

Under Clean Air Act section 110 and 40 CFR Part 51, a SIP revision establishing emission limits for affected sources must provide for full implementation of (i.e., ultimate compliance with) any required emission reduction as expeditiously as practicable but not later than 3 years from the date EPA approves the SIP revision.

Emissions balances will also be approved through this SIP revision process. To allow sufficient time for arranging balances while assuring prompt ultimate compliance, the final policy requires EB SIP revisions to be submitted to EPA within 9 months after EPA final approval of the stack height SIP revision for the relevant affected source. Use of an emission balance will not be permitted to delay compliance beyond 3 years from the date EPA approves the relevant stack height sip revision.

The EPA is limiting the period during which emission balances can be submitted to avoid delays in compliance with GEP emission limitations. Depending on the extent of required emission reductions, significant lead time may be necessary before actual compliance can be achieved. If a source sought to apply for an emission balance later than 9 months after receiving a revised emission limitation, it might not be possible for the balance SIP revision to be approved and for the providing source to reduce its emissions within the time required for ultimate compliance with the GEP emission limitation.

To ensure that balances will have environmental effects equivalent to stack-by-stack compliance with the July 8 regulation, EPA has concluded that, in light of potential complexities involved in the stack height regulation, the emission reductions from the providing source must be greater than the reductions required of the affected source by the stack height regulation. In order to facilitate prompt approval of sound applications for emission balances, without the potential delay that might otherwise result from intensive verification of baseline and other factors bearing on equivalent emission reductions, the final policy requires 20 percent more emission reductions from the providing source than would have been required from the originally affected source (i.e. a "balancing ratio" of 1 to 1.2), on an annual average basis.

The proposal would have barred balance credit from shutdowns or production curtailments. The final policy similarly does not allow general use in balances of emission reductions from plant shutdowns or operation curtailments, but authorizes their consideration in individual cases employing "lower emissions dispatch" (LED) where stated criteria are met. The concept of LED, which explicitly couples the curtailment of operations at high emitting facilities with the increased use of well-controlled facilities, is currently being analyzed by various states under EPA's State Acid Rain (STAR) grant program, in part to determine whether that approach could be generally authorized in future Agency actions. However, because EPA does not yet know how reductions from LED could be adequately calculated, monitored, and enforced, this approach can only be considered on a case-by-case basis in which applicants fully demonstrate that these concerns will be satisfactorily addressed. As stated at C.3 in the final policy, sources must submit a contingency plan that could take effect if the LED proposal is disapproved. Applicants who elect to pursue this case-by-case approach should be aware that inquiries needed to satisfy such concerns may add delays to an already tight timetable, and that in no case will these delays be considered a justification for extending the 3-year ultimate compliance deadline.

EPA's December 23, 1985 proposal considered placing limits on the relative difference in stack heights of the providing and affected sources. The Agency has subsequently determined that any such limit would both unnecessarily increase the policy's complexity and decrease the effectiveness of the program. The final policy therefore imposes no constraints based on actual or effective stack height differences.

Because of potential administrative and enforcement difficulties with balances that transcend a single state's jurisdiction, today's policy generally limits balances to facilities within state boundaries. However, this policy recognizes a specific exception in the case of interstate air quality control regions (AQCR's). In such interstate areas, states have already developed enforceable interstate processes for attaining and maintaining ambient air quality standards. Therefore, this policy also allows the balancing of emission reductions among sources within an interstate air quality control region.

In brief, today's policy allows an affected source to meet more stringent emission limitations required by the revised stack height regulation by securing emission reductions from another source or sources within the same state or interstate AQCR, subject to a "balancing ratio" of 1 to 1.2 and other safeguards (see sections A and B of the policy) designed to assure that reductions at least equivalent to those expected from stack-by-stack compliance will be obtained.

Analyses of the likely effects of such emissions balancing have consistently indicated that it will produce equal or greater emission reductions at substantially less cost than conventional compliance without balancing.[1]

II. Response to Comments on December 23, 1985 Proposal

EPA received 24 comments addressing the proposed policy. Minor comments have been consolidated according to the issues raised and are summarized along with EPA's responses in a detailed response to comments document included in the docket. Comments which addressed issues fundamental to development of the final policy are briefly summarized and responded to below.

A. Legality

Three commenters asserted that use of emissions balancing would not square with the statute, claiming that section 123's bar on crediting "excess" stack height (i.e., stack height exceeding GEP) when developing applicable SIP emission limits also requires compliance with those limits at the specific stack. They additionally cited *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983), which did not address the issues here but generally cautioned EPA to interpret section 123 in a manner which errs on the side of protecting public health.

EPA disagrees with these commenters. It is quite true that excess stack height may not be taken into account when developing SIP emission limits; these limits must treat such stacks exactly as though they were not excessively "tall." However, these comments ignore the fact that once such limits are properly developed, the requirements of section 123 are fulfilled. Resulting emission limits are thereafter no different than any other SIP emission limitation under Clean Air Act section 110, and may generally be satisfied in the same broad range of ways.[2] That is particularly true where, as here, balances may only be used in areas which have either attained and are maintaining the relevant NAAQS and PSD increments, or are implementing EPA-approved plans for doing so (see today's policy section A.5). Section 123 was not written or intended to physically eliminate all dispersion of pollutants, but rather to eliminate reliance on undue dispersion when calculating necessary levels of emission control. Thus, beyond the need to assure the protection of public health and welfare from actual air quality levels in excess of the NAAQS or PSD increments, there is no need to require site-specific control since, in conjunction with the stack height regulation, the policy assures that no undue reliance on dispersion exists.

No different result is required by some commenters' reliance on statutory and regulatory language prohibiting emission limitations that are "affected in any manner" by "so much of the stack height of any source" that exceeds GEP. Section 123 itself refers to "the degree of emission limitations required for control of any air pollutant under an applicable implementation plan," not for control of any air pollutant emitted by a specific source under such a plan. Moreover, the cited passages uniformly refer to the process by which initial SIP limitations must be developed under section 123—a process which is necessarily source-specific, since it turns on such factors as the individual source's stack height, plume rise, and interplay with emissions from other nearby sources. See, e.g., 40 CFR 51.12(j) (1985). These provisions simply do not reach the question of how such limits, once properly set, may be satisfied. Once those limits are properly set, emission balances change neither the overall degree of emission limitation nor the amount of total reduction required under the applicable plan, other than to provide greater reduction.

Nor is a different result required by comments that "grandfathered" stacks not subject to section 123 should not be allowed to provide reductions for emissions balances. That Congress refused to mandate further restrictions on stacks constructed before 1971 says nothing about their ability to voluntarily reduce emissions further as part of an emission balance. Indeed, securing further, cost-effective reductions from exempted stacks constitutes an additional justification for allowing these sources to be providing sources in an emissions balance.

B. Emissions Balancing Ratio

The proposed policy requested comment on a range of ratios between 1 to 1.2 and 1 to 2, noting without explanation that EPA "preferred" the higher ratio. Two comments supported this 1 to 2 ratio. Ten comments supported a 1 to 1 ratio, asserting that EPA lacked authority to require more than equivalent emission reductions. Three commenters supported 1 to 1.2, stating that this ratio should provide more than adequate environmental equivalence and that any higher ratio would discourage balances and could therefore result in less overall environmental benefit. Seven commenters suggested other ratios or ratioing techniques.

Providing source(s) must reduce emissions of the same pollutant, calculated on an annual average basis, to an extent 1.2 times (i.e., twenty percent more than) the emission reduction required of the affected source (or 1.2 times that portion of the required reduction for which the affected source is seeking an emissions balance). Because of the extremely short time available to develop, approve, and implement emission balances under the three-year deadline, and the potential delays produced by the detailed examination needed to assure equivalence, EPA believes that the 1 to

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[1] *Analysis of the Promulgated Stack-Height Regulations With and Without Emissions Trading*, ICF, Inc., August 1986, Docket Item #IV–A–1.

[2] Compare, e.g., Final Emissions Trading Policy, 51 FR 43814 (Dec. 4, 1986).

1.2 ratio is needed to help ensure overall environmental results at least equivalent to those which would result if all emission reductions had occurred at the affected source. Given that NAAQS and PSD increments are required to be attained, that real reductions from a lower-of-actuals-or-SIP-allowables (or remodeled SIP allowables, if remodeling is required) emissions baseline are required from each providing source, and that the policy contains other safeguards, EPA believes that a 1 to 1.2 ratio provides adequate assurance of equivalence and that no higher ratio is required. The 1 to 1.2 ratio would also yield the least costly reductions from the range of ratios evaluated.

C. Credit for Shutdowns, Curtailments or Lower Emissions Dispatch (LED)

The proposed policy would have barred balancing credit for these possible emission-reducing actions at providing sources, noting potential monitoring and enforcement problems. It further noted that, assuming constant demand, reduced electricity production at one providing facility could result in parallel increases elsewhere.

Eleven of thirteen commenters of this issue recommended that emissions balance credit be given for reductions derived from lower emissions dispatch or some other form of enforceable curtailment of operations at high emitting facilities. One commenter suggested that such credit be given on a case-by-case basis, and one commenter supported the proposed policy.

"Lower emissions dispatch" is the term used in this policy to describe a utility company, holding company, or powerpool management strategy to control emissions by decreasing electricity production at higher emitting (e.g., higher lbs/10^6 Btu) power plants, and increasing electricity production at lower emitting (cleaner) power plants, rather than distributing (dispatching) electricity production solely on the basis of least cost.

Creditable emission reductions in this section 123 context depend not so much on the production level at a given facility as on a detailed analysis of the change in emissions resulting from the transfer of production from one facility with one set of controls to another facility with another set of controls. Without detailed enforceable provisions relating not only to the curtailment of production at a high emitting facility, but also to the transfer of production to and emission limits at an identified second facility, reductions claimed from LED would not, in general, be sufficiently reliable.

None of the commenters demonstrated how these emission reductions could be reliably enforced. Without assurance that emission reductions derived from curtailments at high emitting facilities would be enforceably coupled with increased production at low emitting facilities, or would otherwise assure equivalent or lower emissions, EPA cannot generally authorize emissions balances relying upon curtailment. EPA presently does not know how to calculate reductions from or how to adequately enforce LED. However, EPA will review such proposed methods of achieving reductions for an emissions balance on a case-by-case basis, where applicants fully document and commit to use enforceable, easily monitored procedures for assuring equivalent emission reductions. Applicants should be aware that they bear the burden of proof on such showings, which will not constitute grounds for extending the three-year ultimate compliance date described above and in more detail at subsections F and G below.

D. Relative Stack Height Limits

The proposed policy requested comments on four possible options for relative stack height limitations, ranging from no additional restrictions to a requirement that the effective height (i.e., physical stack height plus plume rise) of the providing source be at least equal to that of the affected source. Eighteen comments supported no stack height restriction. One commenter advocated the most stringent option requiring equal or greater effective stack height, citing concerns that balancing might otherwise increase long range transport.

The final policy does not restrict the relative stack heights of affected and providing sources. The thrust of section 123 is to limit reliance on undue dispersion when calculating appropriate levels of emissions control. No restriction on relative stack height appears necessary to effectuate that purpose, and such restrictions would likely result in fewer and more costly emission reductions that balances could otherwise secure. EPA analyses suggest that emissions balancing without additional stack height restrictions could secure up to 30,000 tpy more SO_2 reduction (with savings up to $50 million per year more) than balancing with additional stack height restrictions.[1]

EPA concludes that balances with no restrictions on relative stack height are likely to provide greater emission reductions and cost savings, as well as being easiest to implement and enforce compared to the other alternatives evaluated.

E. Geographical Boundaries

The proposed policy would have limited balances to sources within the same state or same interstate AQCR. Twelve comments were received discussing the geographical boundaries appropriate for emissions balancing. Five urged interstate balances with few, if any restrictions. Three favored allowing balances in bordering states as well as within the same state. One favored the EPA proposal. Others suggested limiting balances to a single state, or to a geographic area defined to assure that benefits were obtained in the airshed of the affected source. Several of these comments were based on assumptions regarding localized ambient concerns or specialized transport concerns which are not relevant here.

The final policy allows balancing as proposed. The language of section 123 refers to "[t]he degree of emission limitation required * * * under an applicable implementation plan * * *." (underlining added). EPA believes that authorizing emissions balancing within a single state or within a single interstate AQCR will appropriately maintain the policy's environmental and compliance usefulness without sacrificing administrative feasibility. More than half the potentially affected sources are located within interstate AQCR's and many others offer potential balances within single states. Allowing full interstate balancing with no restrictions as to state lines could result in undue administrative and enforcement problems because many states may not be able to enforce and implement an interstate balance in a timely manner. Conversely, limiting balances to a single AQCR or part of a state could severely limit the use and environmental benefits of the policy. That approach would sharply reduce the number of potential providing sources, and could therefore limit the speed and ease with which an affected source could meet the conditions of this policy and of the revised stack height regulation.

F. Emissions Balancing SIP Revision Deadline

The proposal requested comment on the appropriateness of an October 6, 1988 proposed deadline for submittal of emission balancing (EB) SIP revisions as well as alternative approaches. Eleven comments were received on this topic. Ten asserted that the October 6, 1988 deadline for submittal to EPA of EB SIP revisions was too short to be met in light of past experience with the SIP revision process. One commenter supported the proposed deadline. Several of these comments supported a deadline of nine months after final policy promulgation. They further requested clarification that balances need not be submitted with the initial stack height SIP revisions and that this deadline was not for actual source compliance, but only for SIP submittal.

EPA has concluded that sufficient time for development of balances can be accommodated without delaying compliance, in a manner different than that suggested in the proposal. To provide adequate time for development, approval and implementation of emission balances, states will be allowed nine months from the date of EPA final approval of the relevant stack height SIP revision to submit the emissions balancing SIP revision. EB SIP revisions need not be submitted with the stack height SIP revisions. However, in order to assure that required emission reductions are known, a stack height SIP revision for an affected source must be submitted prior to or coincident with an EB SIP revision for that source. EPA agrees that the nine month deadline only applies to submittal of an EB SIP revision, not to actual source compliance, which is not later than three years from the date that EPA approves the affected source's stack height SIP revision.

This approach will not delay ultimate compliance, since the date by which an affected source must meet its revised emission limits will not change as a result of emissions balancing. EPA encourages states to submit EB SIP revisions expeditiously, to provide affected sources sufficient time to comply with these requirements.

G. Source Compliance Date

Two commenters generally stated that the compliance deadline for a source should be determined on a case-by-case basis. One also indicated that case-by-case compliance date determinations were especially appropriate for sources proposing to use innovative technologies as part of balances.

Under the final policy, the compliance date for an emissions balance is the same as provided by 40 CFR 51.110(b)—as expeditious as practicable, but not more than three years from EPA approval of the relevant stack height SIP revision.

Date: December 23, 1987.

Lee M. Thomas,

Administrator.

Memorandum

Subject: Stack Height Emissions Balancing Policy

From: The Administrator (A–100)

To: Regional Administrator, Regions I–X

I. Background

On July 8, 1985 the Environmental Protection Agency (EPA) promulgated the revised stack height regulation required to implement section 123 of the Clean Air Act, 50 FR 27892. The regulation principally affects sources emitting SO_2 and limits the credit these and certain other sources can receive for the height of their stacks and the use of other dispersion techniques in calculating emission limits. Consequently, some of these sources will be required to secure emission reductions in order to comply with the stack height regulation.

The likelihood that some required emission reductions could be obtained in a more cost-effective manner from other sources has given rise to the concept known as "emissions balancing" (EB). This concept would allow sources subject to the stack height regulation to comply in a more cost-effective manner while achieving an equal or greater overall environmental result.

II. Policy Discussion

This policy authorizes a source directly affected by the stack height regulation ("affected source") to obtain any required emission reduction from another source or sources ("providing source"). However, any source which must reduce its emissions because of reliance on a prohibited supplemental or intermittent control strategy cannot meet its requirements by obtaining reductions from (an) other source(s).

Providing source(s) must reduce emissions of the same pollutant, calculated on an annual average basis, to an extent 1.2 times (i.e., twenty percent more than) the emission reduction required of the affected source (or 1.2 times that portion of the required reduction for which the affected source is seeking an emissions balance). This balance factor has been chosen because of the difficulty of ensuring equivalent emission reductions, given the very short time available for affected sources to submit, receive approval of, and implement indivdiual balances.

Partial balancing and balancing with more than one source are also authorized. This means that an affected source may combine emission reductions at its own facilities with emission reductions from (a) providing source(s) to secure the total reductions required. For example, if an affected source is required to reduce its emissions by 10,000 tons per year, it may reduce its own emissions by 5,000 tons per year and develop an emissions balance providing for an additional 6,000 (5,000 times 1.2) tons per year from another source, or it may establish a balance with more than one source to secure the entire reduction.

This policy applies to sources affected by the revised stack height regulation promulgated at 50 FR 27892 (July 8, 1985), which sources were in operation as of that date or for which permits to construct or operate had been issued as of that date.

III. Details of Policy

A. General Conditions for Approvable Emissions Balances

1. Emissions balancing may be permanent or may be used to comply with the regulations temporarily until permanent compliance can be achieved. With respect to temporary balancing, the requirements of this policy would apply for the duration of the temporary balance.

2. An approvable emissions balance must require that the providing source(s) reduce emissions of the same pollutant, calculated on an annual average basis, to an extent 1.2 times the emission reduction required of the affected source by application of the stack height regulation (or 1.2 times that portion of the required reduction for which the affected source is seeking an emissions balance).

3. An emissions balance must take place entirely within the boundaries of a single state or single interstate AQCR. With respect to the latter, interstate balances within the same air quality control region will be acceptable if an enforceable interagency agreement or equivalent provision is incorporated into the SIP's of both States and is approved by EPA. However, the appropriate Regional Office may limit balances to smaller areas on a case-by-case basis if necessary to assure protection of the national ambient air quality standards (NAAQS) or the prevention of significant deterioration (PSD) increments.

4. Emission reductions from the providing source(s) must be stack emissions, not fugitive emissions.

5. Other conditions of an approvable emissions balance are:

• Both the affected and providing sources must be in compliance or on an

enforceable schedule for compliance with all applicable federally-approved SIP requirements;

- All NAAQS for the pollutants involved in the balance must either be attained and maintained within the area of the emissions balance, or that area must be implementing an EPA-approved SIP providing for such attainment and maintenance;
- PSD increments must be protected;
- Any applicable SIP requirements for visibility protection must be met; and
- States and/or EPA must assure the adequacy of emission limitations for the affected and/or providing source(s). This may necessitate case-by-case re-evaluation of emission limitations to protect NAAQS or PSD increments. If any remodeling is required to ensure protection of NAAQS or PSD increments, as part of this re-evaluation, it must conform with EPA's current modeling guidelines [1], except that the affected source shall be remodeled using its actual stack height and current SIP (not new GEP) limits. This remodeling is not intended to allow relaxation of the affected source's allowable SIP limits.

6. In addition to any emissions limits needed to ensure protection of NAAQS and PSD increments, sources must demonstrate the following. If the providing source is used to cover the full emission reduction required by application of the stack height regulation to the affected source, that reduction must equal 1.2 times the tons per year of reduction required at the affected source absent the emissions balance.[2] Possible ways to achieve this are by placing an enforceable annual "cap" on the production level of the affected source, together with a "floor" on the production level (i.e., a minimum production level) on the providing source; or by use of a weighted rolling annual average emission limit for the affected and providing sources combined, etc. Because of the long averaging time (annual) involved in emissions balancing, special care should be taken to assure that enforceable means of monitoring compliance are included in the EB SIP revision.

7. The emissions balance must not cause or contribute to adverse impacts on the air quality-related values of any class I area. The Federal Land Manager of the class I area shall receive timely formal notification of any emissions change that may affect management of such lands.

8. Sources involved in an emissions balance, like all other sources, may later be required to make further emission reductions as a result of future SIP revisions determined necessary to attain or maintain NAAQS or PSD increments.

B. Calculation of Emissions Balances

1. The baseline from which emission reductions may be credited at the providing source must be the lowest of actual, current SIP allowable or remodeled SIP allowable emissions, if remodeling is needed, and shall be determined using procedures consistent with those in the EPA Emissions Trading Policy (51 FR 43814, Dec. 4, 1986). Actual emissions are determined by averaging the emissions of the providing source over the most recent representative two calendar years [3] unless circumstances (e.g., the recent installation of a permanent control device) warrant a different period of record. Allowable emissions are those emissions allowed by a federally enforceable SIP limit, preconstruction permit, or other equivalent document which is currently approved by EPA as sufficient to provide for attainment and maintenance of NAAQS and PSD increments.

2. Reductions from the providing source(s) must be obtained through use of control equipment, lower-emitting process changes, or cleaner fuels. Emission reductions from intermittent or supplemental control strategies, or any other strategy inconsistent with the stack height regulation are not acceptable for emissions balances.

3. If at some later date, (a) providing source(s) shuts down or curtails its operations in ways which breach the terms of an emissions balance, the emissions balance will be totally or partially negated, and the affected source must make up the difference by reducing its own emissions and/or by arranging an emissions balance with another source, as explained in C.3 below.

4. The emission reductions from (a) providing source(s) in an emissions balance may not be derived from a control measure: (1) Which is already an approved part of a SIP, (2) for which a commitment for reductions has been approved as a part of a SIP, (3) which has been proposed and is currently under consideration for adoption as a part of a SIP, or (4) which has been adopted at the state or local level as a necessary SIP control measure. As explained in item C.2. below, however, any new emission limitations needed to ensure protection of NAAQS and PSD increments or limitations needed to ensure that the required tons/year emission reduction is achieved by the source(s) as a result of an approved balance will become an enforceable part of the SIP. These provisions are necessary to assure that an emission reduction made for and credited in an emissions balance is not used for other purposes (i.e., is not double-counted).

5. Because of concerns related to potential delay in processing applications and the possibility that emissions might increase elsewhere within the same utility system, emission reductions from shutdowns or load shifting (including lower emissions dispatch (LED), by which utility sources enforceably direct production to better controlled facilities rather than dispatching solely on the basis of least cost) cannot generally be authorized for balance credit at this time (see Preamble Section II.C above). EPA will consider proposed emissions balances involving credit for LED or other load shifting techniques only on a case-by-case basis in which individual applicants demonstrate how and by what procedures these concerns will be satisfied or do not apply. The burden of justifying such proposals by complete, adequate and coherent documentation rests on individual applicants, who should be aware that additional delays in processing balances may result from such proposals and will not be considered grounds for extending the 3-year compliance deadline. Because of this, and other reasons stated at C.3, any affected source must submit a contingency plan that would take effect and be enforceable if the LED proposal is disapproved.

C. Procedural Requirements

1. An emissions balance must be approved through the SIP revision process. Any new emission limitations needed to ensure protection of NAAQS and PSD increments, or limitations needed to ensure that the required tons/year emission reduction is achieved by the sources in an emission balance must be submitted to EPA as a SIP revision within 9 months of approval of the SIP revision required by the revised stack height regulation. This provision in no way extends the requirement to comply with the stack height regulation not later than 3 years after approval of the stack height SIP revision. Emissions balancing proposals must be open to public scrutiny, and the process must provide for full public participation as part of normal SIP revision procedures. To expedite EB SIP approval, states are encouraged to use the SIP parallel processing procedures explained at page 27073 of the June 23, 1982 **Federal Register**.

2. Any new emission limitations needed to ensure protection of NAAQS and PSD increments or limitations needed to ensure that the required tons/year emission reduction is achieved by the source in an emissions balance will be enforceable SIP limits. The balance must be incorporated into the SIP with an explanation of the interrelationship of these emission limitations. The providing source may not be relieved of its obligations under the emission balance except through the process of a subsequent SIP revision.[4]

3. The SIP emission limits required by application of the stack height regulation for an affected source will remain in the SIP as contingent emission limits that will become automatically effective and enforceable against the affected source if the providing source shuts down or the balance is terminated by the sources or by the state. Consequently, the SIP must contain a contingency plan for an affected source to reduce its emissions to the limits required by the stack height SIP revision unless and until another emissions balance can be arranged and approved. The contingency plan could consist of a measure such as the substitution of lower sulfur fuel.

4. Emission reductions by a providing source which are currently used to meet any other requirements of the Act shall not be creditable for an emissions balance.

5. Emission reductions from a providing source will not be creditable against PSD increments or PSD baseline concentrations.

6. Neither this policy nor individual applications under it shall in any way delay compliance with the revised stack height SIP limitations. In particular, this policy shall not create independent grounds for postponing the ultimate compliance date by which the emission reductions required by the stack height SIP revision are to be achieved. Temporary balances may be used to comply with the deadline for emission reductions at the affected source until permanent means of compliance can be achieved; however, the temporary balance would have to be fully approved and implemented by the original compliance date for the affected source.

D. Effect of This Policy

The emissions balancing policy sets out general principles for approving individual balances affording affected source more flexible, cost-effective ways to meet the requirements of EPA's revised stack height regulation. As a policy statement, it neither alters applicable legal requirements nor establishes conclusively how EPA will determine individual applications or cases. EPA will process any EB SIP revision submitted by a state as a SIP revision under the provisions of Section 110 of the CAA, and 40 CFR Part 51. Interested parties will have full public opportunity to scrutinize application of these principles in specific cases and to seek subsequent judicial review if and when EPA takes final action on a particular EB SIP revision.

[FR Doc. 88-156 Filed 1-6-88; 8:45 am]

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[1] *Guideline on Air Quality Models (Revised)*, EPA/450/2-78-027R, U.S. EPA, Research Triangle Park, North Carolina, July 1986 (or later editions).

[2] These are reductions over and beyond any required for the purpose of protecting NAAQS or PSD increments. See Section II Policy Discussion in the final EB policy memorandum for the required tons per year emission reduction for a partial balance. Guidance which addresses detailed calculation of emission reductions and "caps" will be provided subsequent to publication of this policy.

[3] The final policy changes the actual emissions averaging period from three years to two years to be consistent with the EPA Modeling Guidelines, and the Emissions Trading Policy, 51 FR 43814, Dec. 4, 1986.

[4] However, a subsequent SIP revision is not needed if the EB SIP revision was structured to allow the providing source's previous emission limits to become effective upon proper notice to the state and EPA if the affected source later shuts down, or the balance is terminated. For the previous emission limits to again become effective, an acceptable demonstration must be submitted to the state and EPA showing that no NAAQS or PSD increment will be jeopardized.

Reader Aids

Federal Register

Vol. 53, No. 4

Thursday, January 7, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106.....4
107-230.....5
231-398.....6
399-486.....7

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987.....399
Executive Orders:
12578 (Superseded by EO12622).....222
12622.....222

5 CFR

890.....1
Proposed Rules:
330.....408
351.....408

7 CFR

400.....2
905.....401
907.....6
910.....7
911.....402
959.....401
971.....401
987.....401
1430.....107
1902.....231
Proposed Rules:
68.....411
301.....140
907.....412
908.....412
910.....255
979.....413
981.....414
1126.....256
1701.....140

10 CFR

73.....403
Proposed Rules:
2.....415
430.....30

11 CFR

Proposed Rules:
109.....416
114.....416

12 CFR

226.....467
525.....312
561.....324, 338
563.....324, 338, 354, 363, 372, 385
563c.....324
571.....338, 372, 385
583.....312
584.....312
Proposed Rules:
226.....467

14 CFR

39.....8-14, 232
91.....233
Proposed Rules:
39.....258

15 CFR

399.....108
Proposed Rules:
379.....418

16 CFR

Proposed Rules:
13.....141

17 CFR

211.....109

18 CFR

271.....15
1301.....405

19 CFR

Proposed Rules:
141.....30
178.....30

20 CFR

Proposed Rules:
361.....143
901.....147

21 CFR

81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236
561.....20, 233
606.....111
610.....111
640.....111
Proposed Rules:
193.....259
561.....259

23 CFR

655.....236

24 CFR

Proposed Rules:
115.....260

26 CFR

1.....117, 238
Proposed Rules:
1.....153, 261

28 CFR

541.....196

33 CFR
117.....119, 406

36 CFR
404.....120

37 CFR
201.....122, 123
Proposed Rules:
203.....153

38 CFR
4.....21

39 CFR
111.....124, 125
232.....126

40 CFR
2.....214
51.....392, 480
52.....392
86.....470
180.....241, 243
271.....126–128, 244
Proposed Rules:
52.....261
180.....262, 263

41 CFR
101–20.....129
Proposed Rules:
141.....31
142.....31
261.....31

43 CFR
2.....24

44 CFR
Proposed Rules:
61.....419
62.....419

45 CFR
95.....26
233.....467

47 CFR
64.....27
73.....28, 29
Proposed Rules:
73.....426

48 CFR
501.....130, 132
513.....132

49 CFR
24.....467
541.....133
Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426
1041.....155
1048.....155
1049.....155

50 CFR
611.....134
653.....244
663.....246, 248
Proposed Rules:
20.....42
301.....156
652.....265
658.....266

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 6, 1988

VOL
53
ISS
4
JA
7
988
MI

VOL
53

ISS
5

JA
8

988

MI

1-8-88
Vol. 53 No. 5

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VOL
53
ISS
5
JA
8
988
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1-8-88
Vol. 53 No. 5
Pages 487-608

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Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 492
Oranges (navel) grown in Arizona and California, 491
PROPOSED RULES
Beef promotion and research order:
Referendum conduct procedures, 509

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Forest Service; Rural Electrification Administration

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewals, terminations, etc.:
Basic Behavioral Processes Research Review Committee, 572

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 545

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Milk, 543

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Beta-hydroxy-3-methylfentanyl, 500

Education Department
NOTICES
Meetings:
Adult Education National Advisory Council, 553

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 579

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 501
PROPOSED RULES
Hazardous waste:
Identification and listing—
Solid waste, definition, 519
NOTICES
Environmental statements: availability, etc.:
Agency statements—
Comment availability, 563
Weekly receipts, 564
Coquille River, OR; ocean dredged material disposal site, 564
Tallahassee-Leon County, FL; wastewater management, 565
Water pollution control:
Drinking water health advisories, 565

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 493
Glaser-Dirks, 494
Messerschmitt-Bolkow-Blohm GmbH, 495
Control zones, 496
Jet routes, 497
Standard instrument approach procedures, 499
Transition areas, 497
PROPOSED RULES
Airworthiness directives:
Beech, 514
McDonnell Douglas, 515
Restricted areas, 517
Transition areas, 516
NOTICES
Advisory circulars; availability, etc.:
Aircraft, U.S.-registered; foreign maintenance programs, 591
Airport noise compatibility program:
Gainesville Regional Airport, FL, 591
Great Falls International Airport, MT, 592
Exemption petitions; summary and disposition, 593

Federal Communications Commission
RULES
Common carriers services:
Customer premises equipment furnished by Bell operating companies and independent telephone companies, 502
Radio stations; table of assignments:
Arizona, 504
PROPOSED RULES
Radio and television broadcasting:
Broadcast auxiliary and cable relay services; operational and licensing procedures, 529
NOTICES
Meetings:
Radio Broadcasting Advisory Committee, 586
Radio broadcasting:
FM vacant channel applications; universal window filing period, 586
Applications, hearings, determinations, etc.:
Rayne Broadcasting Co., Inc., et al., 586

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance endorsements, etc.:
Stonefruit, 505
Texas citrus trees, 507

Federal Deposit Insurance Corporation
RULES
Unsafe and unsound banking practices:
Insured nonmember banks; subsidiary securities activities Correction, 597

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Arkansas, 567

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cliffs Electric Service Co. et al., 553
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend (ARCO Oil & Gas Co. et al.), 555
Applications, hearings, determinations, etc.:
Conoco Inc., 557
Exxon Corp., 558
Fina Oil & Chemical Co. et al., 558
GasMark, Inc., 558
Grand Valley Gas Co., 559
Maxus Exploration Co. et al., 559
(2 documents)
Northern Natural Gas Co., 560
Ozark Gas Transmission System, 560
Pogo Producing Co., 560
Texaco Gas Marketing Inc., 561
Texaco Inc. et al., 561, 562
(2 documents)
Williston Basin Interstate Pipeline Co., 563

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 596

Federal Reserve System
RULES
Securities of State member banks (Regulation F) and membership of State banking institutions (Regulation H):
Filing requirements, use of SEC forms, etc., 492
NOTICES
Applications, hearings, determinations, etc.:
Maroa Bancshares, Inc., 567
One Bancorp et al., 567

Fish and Wildlife Service
NOTICES
National recreational fisheries policy; notice of first draft, 574

Food and Drug Administration
NOTICES
Human drugs:
Patent extension; regulatory review period determinations—
Hytrin, 572
Medical devices:
Condoms; defects, criteria for direct reference seizure; compliance policy guide availability, 573
Reconditioners/rebuilders; compliance policy guide availability, 573

Forest Service
PROPOSED RULES
Timber sales, national forest:
Periodic payments, downpayments, and market-related contract term additions, 519
NOTICES
Timber sales, national forest:
Sale procedures; policy modification, 544
Skewed bidding control; procedures, 544

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Social Security Administration, 567, 569
(2 documents)

Interior Department
See Fish and Wildlife Service; Minerals Management Service; National Park Service

International Trade Administration
NOTICES
Antidumping:
Animal glue and inedible gelatin from—
West Germany, 546
Carbon steel plate from Japan, 547
Choline chloride from Canada, 548
Pressure sensitive plastic tape from Italy, 550
Steel wire strand for prestressed concrete from Japan, 551
Countervailing duties:
Circular welded carbon steel pipes and tubes from Iran, 552
Meetings:
Military Critical Technologies List Implementation Technical Advisory Committee, 545
Transportation and Related Equipment Technical Advisory Committee, 546
Short supply determinations:
Semi-finished steel slabs, 552

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 578
Compensated intercorporate hauling operations, 578

Justice Assistance Bureau
NOTICES
Grants; availability, etc.:
Incarcerated Mariel-Cubans; State reimbursement program, 578

Justice Department
See Drug Enforcement Administration; Justice Assistance Bureau

Labor Department
See Employment Standards Administration; Mine Safety and Health Administration

Merit Systems Protection Board
NOTICES
Amicus brief filings:
Contingent fee agreements; market compensation, 585

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Christian Energies, Inc., 583
Consolidation Coal Co., 583
Peabody Coal Co., 584
Poor Boy Coal Co., Inc., 584
Raven Mining Co., Inc., 585

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Gulf of Mexico—
Lease sale; correction, 597

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 596

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 585

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Automobiles Peugeot, 594

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine mammals:
Hawaiian monk seal; critical habitat, 530

National Park Service
NOTICES
Environmental statements; availability, etc.:
Lake Mead National Recreation Area, AZ and NV, 577

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Pacific Gas & Electric Co., 586

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 596

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Foreign Intelligence Advisory Board, President's (EO 12624), 489
Nicaraguan democratic resistance; U.S. assistance; authority delegation (EO 12623), 487

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Western Farmers Electric Cooperative, 544

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 588
(2 documents)

Small Business Administration
NOTICES
Disaster loan areas:
Tennessee, 588
License surrenders:
Abbott Capital Corp., 589
Michigan Capital & Service, Inc., 589
Applications, hearings, determinations, etc.:
Alabama Small Business Investment Co., Inc., 589
Jiffy Lube Capital Corp., 590
Morgan Investment Corp., 590
Walden Capital Partners, 590

State Justice Institute
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 600

Transportation Department
See also Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 590
Hearings, etc.—
GCS Air Service, Inc., 590
United Express, 591

Treasury Department
NOTICES
Agency information collection activities under OMB review, 594, 595
(2 documents)

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 596

Veterans Administration
NOTICES
Meetings:
Commission to Assess Veterans' Education Policy, 595

Separate Parts In This Issue

Part II
State Justice Institute, 600

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12537 Amended by EO 12624.....489
12623.....487
12624.....489
7 CFR
907.....491
910.....492
Proposed Rules:
401 (2 documents).....505, 507
1260.....509
12 CFR
206.....492
208.....492
337.....597
14 CFR
39 (3 documents).....493–495
71 (2 documents).....496, 497
75.....497
97.....499
Proposed Rules:
39 (2 documents).....514, 515
71 (2 documents).....516, 517
73.....517
21 CFR
1308.....500
36 CFR
Proposed Rules:
223.....519
40 CFR
52.....501
Proposed Rules:
261.....519
47 CFR
Ch. I.....502
73.....504
Proposed Rules:
74.....529
78.....529
50 CFR
Proposed Rules:
226.....530

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

Presidential Documents

Title 3—

The President

Executive Order 12623 of January 6, 1988

Delegating Authority To Implement Assistance to the Nicaraguan Democratic Resistance

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 111 of the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1988 (Public Law 100–202) ("the Act"), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), and Section 301 of title 3 of the United States Code, and in order to delegate certain functions concerning the designation of funds to be transferred, the transfer of funds and operation of accounts, it is hereby ordered as follows:

Section 1. The Secretary of State is authorized to perform the functions vested in the President by Section 111 of the Act, except the determination and certification pursuant to Section 111(b)(2), except any request for additional assistance pursuant to Section 111(j)(1), and except as provided in Sections 2 and 3 of this Order.

Sec. 2. The Secretary of Defense is authorized to perform the function, vested in the President by Section 111(a) of the Act, of designating the accounts from which unobligated funds, made available by the Department of Defense appropriations acts for the Fiscal Year 1987 or prior fiscal years, are transferred.

Sec. 3. The Secretary of Defense is authorized to perform the functions, vested in the President by Section 111(b)(1) and (d)(1) of the Act, of designating and transferring unobligated funds made available by the Department of Defense appropriations acts for the Fiscal Year 1987 or prior fiscal years.

Sec. 4. The funds described in Sections 2 and 3 of this Order will be transferred to the account for Assistance for the Nicaraguan Democratic Resistance.

Ronald Reagan

THE WHITE HOUSE,
January 6, 1988.

[FR Doc. 88–444
Filed 1–6–88; 4:47 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12624 of January 6, 1988

Increasing the Number of Members on the President's Foreign Intelligence Advisory Board

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that Executive Order No. 12537 of October 28, 1985, is amended by deleting the word "fourteen" from the second sentence of Section 1 and inserting in its place the word "sixteen."

Ronald Reagan

THE WHITE HOUSE,
January 6, 1988.

[FR Doc. 88-445
Filed 1-6-88; 4:48 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 667]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 667 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 8 through January 14, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 667 (§ 907.967) is effective for the period January 8 through January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456. telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 5, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 6 to 4 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is stable.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674.

2. Section 907.967 is added to read as follows:

§ 907.967 Navel Orange Regulation 667.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 8, 1988, through January 14, 1988, are established as follows:

(a) District 1: 1,435,000 cartons;
(b) District 2: 280,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: 35,000 cartons.

Dated: January 6, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–433 Filed 1–7–88; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 595]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 595 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period January 10 through January 16, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 595 (§ 910.895) is effective for the period January 10 through January 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on January 5, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a unanimous 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.895 is added to read as follows:

§ 910.895 Lemon Regulation 595.

The quantity of lemons grown in California and Arizona which may be handled during the period January 10, 1988, through January 16, 1988, is established at 275,000 cartons.

Dated: January 6, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-434 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 206 and 208

[Docket No. R-0609]

Securities of State Member Banks (Regulation F) and Membership of State Banking Institutions in the Federal Reserve System (Regulation H)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Supplemental Notice; agency forms under review.

SUMMARY: Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System ("Board") under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public). The Board has amended its regulations issued pursuant to section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78*l*(i)) (the "1934 Act") to provide that State member banks required by sections 12(b) and 12(g) of the 1934 Act (15 U.S.C. 78*l*(b) and (g)) ("State member banks") to file certain information with the Board must do so on the forms prescribed by the Securities and Exchange Commission (the "SEC") for other entities subject to reporting requirements under the 1934 Act. The amendment also rescinded the Board's present regulation dealing with disclosures by registered State member banks under the 1934 Act, Regulation F (12 CFR 206), and adds the new securities disclosure requirement to Regulation H (12 CFR 208), which governs the activities of State member banks generally. The amendments were previously published as a final rule, 52 FR 49374 (December 31, 1987). This notice provides supplementary information not included in the previously published notice of the final rule, and is published pursuant to the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act.

DATE: The final rule is effective for all filings submitted after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walter R. McEwen, Attorney, Legal Division (202/452-3321), Kenneth M. Kinoshita, Attorney, Legal Division (202/452-3721), Rhoger H. Pugh, Manager, Policy Development Section, Division of Banking Supervision and Regulation (202/452-5883) or Gerald A. Edwards, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2741); Nancy Steele, Federal Reserve Paperwork Clearance Officer, Division of Research and Statistics (202/452-3822); and for the hearing impaired *only*: Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Interested parties may also contact Robert Fishman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202/395-7340).

SUPPLEMENTARY INFORMATION: *Approval Under OMB Delegated Authority for the Following Information Collection*

Report Title: Membership of State Banking Institutions in the Federal Reserve System; Securities of State Member Banks.

Agency Form Numbers: The following forms required by the SEC will replace the forms previously required by the Board under Regulation F:

Board Forms	Equivalent SEC Forms
F-1 (12 CFR 206.41)	Form 10.
F-2 (12 CFR 206.42)	Form 10-K.
F-3 (12 CFR 206.43)	Form 8-K.
F-4 (12 CFR 206.44)	Form 10-Q
F-5 (12 CFR 206.51)	Schedule 14A.
F-6 (12 CFR 206.52)	Schedule 14A.
F-7 (12 CFR 206.61)	Form 3.
F-8 (12 CFR 206.62)	Form 4.
F-9 (12 CFR 206.71)	Regulation S-X.
F-10 (12 CFR 206.65)	Form 8B.
F-11 (12 CFR 206.47)	Schedule 13D.
F-11A (12 CFR 206.48)	Schedule 13G
F-12 (12 CFR 206.81)	Schedule 14D-9.
F-13 (12 CFR 206.82)	Schedule 14D-1.
F-20 (12 CFR 206.45)	Form 8.
F-10 (12 CFR 206.46)	Form 8.

OMB Docket Numbers: 7100-0091 and 7100-0196, respectively.

Frequency: On occasion, quarterly, and annually.

Reporters: State member banks subject to the 1934 Act.

Annual Reporting Hours: 5,711 hours.

Significant Effect on Small Businesses: None expected.

General Description of the Reports: Forms and reports previously required under the Board's Regulation F are now required pursuant to Regulation H. The forms required by the SEC for entities under its jurisdiction are to be used by State member banks to satisfy the requirements under Regulation H, as amended.

Board of Governors of the Federal Reserve System, December 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-196 Filed 1-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-168-AD; Amdt. 39-5827]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 757 series airplanes, which requires repetitive functional testing of the wing and engine anti-ice control system. This amendment is prompted by reports of problems associated with the switches used in anti-ice control panels, and of the inadequacy of the anti-ice circuit logic that can result in the flight crew not being warned that the anti-ice system has not been activated. An undetected failure of the anti-ice system could result in unacceptable ice build-up on the wings or the engine inlets.

EFFECTIVE DATE: February 4, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recent investigation and service experience has shown that the wing and engine anti-ice control system of the Boeing Model 757 series airplane has deficiencies which may result in failure of the anti-ice system to be activated and a false system annunciation being provided to the flight crew. This condition could occur as a result of incomplete latching of the switch and/or switch contamination. Failure of an anti-ice system to activate when needed may result in unacceptable build-up of ice on the wing and/or engine inlets.

There have been no reported failures of the switches used in other anti-ice systems; however, these same switches used in other applications on other airplanes have a history of failure.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that, to ensure proper operation of the system, repetitive functional tests of the wing and engine anti-ice control system must be conducted.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (41 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 757 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure wing and engine anti-ice system integrity, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 300

hours time-in-service, perform the following functional test of the wing and engine anti-ice control system:

1. Apply electrical power in accordance with the Boeing Model 757 Maintenance Manual.
2. Ensure that no pressure is applied to the pneumatic system.
3. Actuate the wing anti-ice switch.
4. Verify that the wing anti-ice switch indicates "ON".
5. Verify that both amber "VALVE" lights located below the wing anti-ice switch illuminate.
6. Turn off the wing anti-ice switch.
7. Actuate both left and right engine anti-ice switches.
8. Verify that both engine anti-ice switches indicate "ON".
9. Verify that both amber "VALVE" lights located one each engine anti-ice switch illuminate.
10. Turn off both engine anti-ice switches. The test is complete.

B. Any switch or circuit malfunction, identified by a negative verification during the functional test required by paragraph A., above, must be corrected prior to further flight, in accordance with the Boeing Model 757 Maintenance Manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the tests required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 4, 1988.

Issued in Seattle, Washington, on December 30, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-258 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-33; Amdt. 39-5814]

Airworthiness Directives; Glaser-Dirks Model DG-400 Motor Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Glaser-Dirks Model DG-400 motor gliders which requires a check and replacement of the engine extension/retraction gas strut, if necessary, and the modification of the spindle motor drive of that system. This action was prompted by a discovery that damage has occurred to the pinion gears on the spindle motor which operates the engine extension/retraction mechanism. The cause of this damage was found to be a defective gas strut not capable of maintaining sufficient pressure. This condition, if not corrected, could result in the inability to obtain power in flight with the possible consequences of a forced landing.

DATES: *Effective:* January 22, 1988.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of January 22, 1988.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Glaser-Dirks Flugzeugbau GmbH, Im Schollongarton 19-20, 7520 Bruchsal 4, Federal Republic of Germany; telephone 07257-1071.

A copy of the technical note is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium; telephone 513.38.30 Ext. 2710, or Mr. Raymond J. O'Neill, Federal Aviation Administration, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Glaser-Dirks has determined that damage may occur to the drive pinion gears on the spindle motor which operates the engine extension/retraction mechanism. This type of damage has been caused in at least one instance by a defective gas strut which, because of insufficient operating pressure, has resulted in increased loads on these pinion gears. The manufacturer has issued Technical Note TN 826/18, dated March 10, 1987, which specifies a check to determine the need to replace the engine extension/retraction gas strut, a modification of the spindle motor drive, and the incorporation of certain changes in the aircraft handbook Flight and Maintenance Manuals. The Luftfahrt-Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these motor gliders in the Federal Republic of Germany, has issued Airworthiness Directive No. 87-108 on motor gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Glaser-Dirks Technical Note TN 826/18 and the issuance of Airworthiness Directive No. 87-108 Glaser-Dirks by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Glaser-Dirks Technical Note TN 826/18 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued to require a check and replacement of the engine extension/retraction gas strut, if necessary, and the modification of the spindle motor drive on Glaser-Dirks Model DG-400 motor gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to Part 39 the following new airworthiness directive (AD):

Glaser-Dirks Flugzeugbau GmbH: Applies to Model DG-400 motor gliders, work numbers 4-1 thru 4-188, certificated in any category.

Compliance is required as indicated unless already accomplished. To prevent damage to the drive penion gears on the spindle motor that operates the engine extension/retraction mechanism, which could result in the inability to obtain power in flight, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD accomplish the following in accordance with the procedures specified in Glaser-Dirks Technical Note TN 826/18; dated March 10, 1987:

(1) Replace pages in the aircraft handbook Flight and Maintenance Manuals in accordance with Procedure 1.

(2) Check the engine extension time in accordance with Procedures 2 and 3. If this extension time exceeds 13 seconds: Within 25 hours' time in service after the effective date of this AD, or 90 days, whichever comes first, replace the gas strut with Type 10-02-250-600/1200-N in accordance with Procedure 3 (procedures described on Page 41 of the Maintenance Manual). If extension time is 13 seconds or less, proceed to paragraph (b).

NOTE: Replacement of pages in the aircraft handbook Flight and Maintenance Manuals and the check of the engine extension time may be accomplished by the pilot.

(b) Within 25 hours' time in service after the effective date of this AD, or 90 days, whichever comes first, modify the spindle drive in accordance with Procedure 4 of Glaser-Dirks Technical Note TN 826/18 (detailed procedures are described in Glaser-Dirks Service Instruction 1/10/86 dated March 10, 1987). This action must be accomplished regardless of whether the gas strut requires replacement.

(c) Aircraft may be ferried in accordance with FAR Section 21.197 and Section 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium; telephone 513.38.30 ext. 2710, or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6660.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Glaser-Dirks Technical Note TN 826/18, and Service Instruction 1/10/86, each dated March 10, 1987, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Glaser-Dirks Flugzeugbau GmbH, Im Schollongarton 19-20, D-7520 Bruchsal 4, Federal Republic of Germany. These documents may also be examined at the Office of the Regional Counsel, Rules Docket No. 87-ANE-33, Room 311, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on January 22, 1988.

Issued in Burlington, Massachusetts, on December 11, 1987.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88-259 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ASW-1; Amdt. 39-5783]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) GmbH Model BK-117A-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which required installation of a revised V_{NE} (never exceed speed) placard for certain portions of the approved altitude and temperature flight envelope where the MBB BK-117A-1 helicopter has exhibited unstable static longitudinal control characteristics. This amendment is needed to permit removal of the V_{NE} restrictions imposed by that AD when the manufacturer's stick position augmentation system (SPAS) is installed in affected aircraft. The SPAS eliminates the static longitudinal control position instability.

EFFECTIVE DATES: January 8, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 1988.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Abt. Drehflugler, Postfach 801140, D-8000 Munchen 80, Federal Republic of Germany.

A copy of the applicable service information is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Wayne J. Barbini, Aerospace Engineer, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Southwest Region, FAA, Fort Worth, Texas 76193-0110, telephone (817) 624-5114, or John Varoli, Manager, Brussels Aircraft Certification Office, Federal Aviation Administration, c/o American Embassy, APO New York 09667-1011.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39-4989 (50 FR 4198), AD 85-02-04, which currently requires installation of a revised V_{NE} placard to reduce V_{NE} in those portions of the MBB Model BK-117A-1 helicopter flight envelope where the aircraft has exhibited static longitudinal instability was published in the Federal Register on December 1, 1986 (51 FR 43216). This amendment permits removal of the existing V_{NE} reduction placard after installation of the SPAS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly the proposal is adopted without change.

This amendment provides an optional means of compliance and imposes no additional burden. Good cause exists for

making this amendment effective in less than 30 days. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-4989, AD 85-02-04, by adding the following new paragraph:

* * * * *

(d) The requirements of this AD do not apply when the MBB stick position augmentation system (SPAS) is installed in accordance with MBB Helicopter Service Bulletin No. SB-MBB-BK-117-40-7, dated April 14, 1986.

This procedure shall be accomplished in accordance with MBB Helicopter Service Bulletin No. SB-MBB-BK-117-40-7, dated April 14, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MBB, GmbH, Abt. Drehflugler, Postfach 801140, D-8000 Munchen 80, Federal Republic of Germany. Copies may be inspected at the Office of the Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment amends Amendment 39-4989, AD 85-02-04 (50 FR 4198).

This amendment becomes effective January 8, 1988.

Issued in Forth Worth, Texas, on November 20, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-261 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-25]

Revision of Control Zone; Oklahoma City Wiley Post Airport, OK and Oklahoma City Will Rogers World Airport, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the control zones located at Oklahoma City Wiley Post Airport, OK, and Oklahoma City Will Rogers World Airport, OK. This revision is necessary since a review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC and the subsequent cancellation and/or modification of several standard instrument approach procedures (SIAP) utilizing the Oklahoma City VORTAC in its old location, more controlled airspace than is necessary exists. The intended effect of this multiple revision is to release that controlled airspace no longer required.

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the control zones located at Oklahoma City Wiley Post Airport, OK, and Oklahoma City Will Rogers World Airport, OK, (52-FR-38786).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the control zones located at Oklahoma City Wiley Post Airport, OK, and Oklahoma City Will Rogers World Airport, OK. A review of the existing control zone airspace revealed that, due to the relocation of the Oklahoma City VORTAC, there exists more controlled airspace than is required, thus necessitating this multiple revision. Since the Oklahoma City VORTAC has been relocated and the SIAP's utilizing the VORTAC in its old location have either been canceled or modified, existing control zone extensions to the southwest of the Wiley Post Airport and to the northwest of the Will Rogers World Airport are no longer necessary. The intended effect of this multiple revision is to release that controlled airspace no longer required due to the cancellation and/or modification of these SIAP's. This revision will alter the control zone at the Wiley Post Airport to a 5-mile radius of the airport with one short extension to the north and will alter the control zone at the Will Rogers World Airport to a 5-mile radius of the airport with one short extension to the south.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Oklahoma City Wiley Post Airport, OK [Revised]

Within a 5-mile radius of the Wiley Post Airport (latitude 35°32'03"N., longitude 97°38'48"W.); within 2 miles each side of the Wiley Post ILS Localizer north course extending from the 5-mile radius zone to the OM (latitude 35°37'33"N., longitude 97°38'50"W.).

Oklahoma City Will Rogers World Airport, OK [Revised]

Within a 5-mile radius of the Will Rogers World Airport (latitude 35°23'35"N., longitude 97°36'02"W.); within 3 miles each side of the Oklahoma City Runway 35R ILS Localizer south course extending from the 5-mile radius zone to the LOM (latitude 35°17'42"N., longitude 97°35'18"W.).

Issued in Fort Worth, TX, on December 18, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-260 Filed 1-7-88 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-31]

Removal of Transition Area; Crockett, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will remove the transition area located at Crockett, TX. A standard instrument approach procedure (SIAP) utilizing a nondirectional radio beacon (NDB) located at the Houston County Airport, Crockett, TX, has been canceled, making this revision necessary. The intended effect of this revision will be to return that controlled airspace no longer required to execute the SIAP. Coincident with this revision, the status of the Houston County Airport will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 UTC, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 19, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Crockett, TX (52 FR 36587).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the 700-foot transition area located at Crockett, TX. The SIAP to the Houston County Airport was based on an NDB located at the airport. The NDB has since been removed with the associated SIAP being canceled, thus necessitating this revision. The intended effect of this revision will return that controlled airspace no longer required by aircraft executing the SIAP. Coincident with this revision, the status of the Houston County Airport will change from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Crockett, TX [Removed]

Issued in Fort Worth, TX, on December 18, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-255 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-AWA-2]

Alteration of Jet Routes; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of several jet routes located

in the vicinity of New York (52 FR 25244). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact those jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J–6, J–8, J–14, J–22, J–24, J–30 and J–34 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 21248 and 35235) is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–6 [Amended]

By removing the words "Shawnee, VA; Westminster, MD; INT of Westminster 080° and Robbinsville, NJ, 239° radials; to Robbinsville." and substituting the words "INT Charleston 078° and Martinsburg, WV, 243° radials; Martinsburg; to Lancaster, PA."

J–8 [Amended]

By removing the words "Casanova, VA; INT Casanova 051° and Westminster, MD, 060° radials; INT Westminster 060° and Robbinsville, NJ, 239° radials; to Robbinsville." and substituting the words "INT Charleston 085° and Casanova VA, 262° radials; to Casanova."

J–14 [Amended]

By removing the words "to Kenton, DE." and substituting the words "INT Richmond 039° and Patuxent, MD, 228° radials; to Patuxent."

J–22 [Amended]

By removing the words "to Gordonsville, VA." and substituting the words "to Montebello, VA."

J–24 [Amended]

By removing the words ", INT Charleston 101° and Richmond, VA, 286° radials; to Richmond," and substituting the words "; Montebello, VA; Flat Rock, VA; to Harcum, VA."

J–30 [Amended]

By removing the words "to Shawnee, VA." and substituting the words "INT Appleton 111° and Kessel, WV, 276° radials; Kessel; to INT Kessel 097° and Armel, VA, 292° radials."

J–34 [Amended]

By removing the words "to Martinsburg, WV." and substituting the words "INT Bellaire 133° and Kessel, WV, 276° radials; Kessel; to INT Kessel 097° and Armel, VA, 292° radials."

Issued in Washington, DC, on December 14, 1987.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–256 Filed 1–7–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25603; Amdt. No. 1364]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

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regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on December 25, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective March 10, 1988

Santa Ana, CA—John Wayne Airport-Orange County, LOC BC RWY 1L, Amdt. 10
Santa Ana, CA—John Wayne Airport-Orange County, NDB RWY 1L, Amdt. 1
Santa Ana, CA—John Wayne Airport-Orange County, ILS RWY 19R, Amdt. 11
Charles City, IA—Charles City Muni, NDB RWY 12, Amdt. 9
Charles City, IA—Charles City Muni, NDB RWY 30, Amdt. 1
Elmira, NY—Elmira/Corning Regional, NDB RWY 24, Amdt. 12
Elmira, NY—Elmira/Corning Regional, ILS RWY 24, Amdt. 14
Newburgh, NY—Stewart Intl, VOR or TACAN RWY 27, Amdt. 3
Newburgh, NY—Stewart Intl, NDB RWY 9, Amdt. 6
Newburgh, NY—Stewart Intl, ILS RWY 9, Amdt. 4
Newburgh, NY—Stewart Intl, RNAV RWY 16, Amdt. 2
Newburgh, NY—Stewart Intl, RNAV RWY 27, Amdt. 1
Poughkeepsie, NY—Dutchess County, ILS RWY 6, Amdt. 5
Poughkeepsie, NY—Dutchess County, RNAV RWY 6, Amdt. 5
Wurtsboro, NY—Wurtsboro-Sullivan County, VOR-A, Amdt. 2
Brady, TX—Curtis Field, NDB RWY 17, Orig.
Levelland, TX—Levelland Muni, NDB RWY 17, Amdt. 1
Levelland, TX—Levelland Muni, NDB RWY 35, Orig.
Pinedale, WY—Ralph Wenz Field, NDB RWY 29, Orig.

. . . Effective February 11, 1988

Flagstaff, AZ—Pulliam, NDB/DME RWY 21, Orig.
Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Orig.
Philadelphia, PA—Philadelphia Intl, VOR/DME-A, Orig.

. . . Effective December 18, 1987

Baton Rouge, LA—Baton Rouge Metropolitan Ryan Field, LOC BC RWY 4L, Amdt. 3
Baton Rouge, LA—Baton Rouge Metropolitan Ryan Field, ILS RWY 22R, Amdt. 7

. . . Effective December 17, 1987

Richmond, IN—Richmond Muni, VOR RWY 24, Amdt. 11
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 28, Amdt. 21
New York, NY—LaGuardia, ILS/DME RWY 13, Amdt. 2

The FAA published an Amendment in Docket No. 25416, Amdt. No. 1369 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 205 Page 39627; dated Friday, October 23, 1987) under Section 97.33 effective 14 JAN 88 which is hereby amended as follows:

Laporte, IN—Laporte Muni, RNAV RWY 20, Amdt. 20 should read Laporte, IN—Laporte Muni, RNAV RWY 20, Amdt. 2.

[FR Doc. 88-257 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Beta-Hydroxy-3-Methylfentanyl into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substance, beta-hydroxy-3-methylfentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is based on findings made by the DEA Administrator, after a review and evaluation of the relevant data by both DEA and the Assistant Secretary for Health, that beta-hydroxy-3-methylfentanyl meets the statutory criteria for inclusion in Schedule I of the CSA. As a result of this final rule, the regulatory controls and criminal sanctions of Schedule I are applicable to the manufacture, distribution, importation, exportation and possession of beta-hydroxy-3-methylfentanyl.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On November 28, 1986, in a notice of proposed rulemaking published in the **Federal Register** (51 FR 43025), after a review of relevant data, the DEA Administrator proposed to place acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). This proposed rule provided the opportunity for interested parties to submit comments or objections regarding the proposed scheduling actions. DEA received no comments or objections nor were there any requests for hearings.

After receiving and taking into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services regarding acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl and thiofentanyl, the DEA Administrator issued a final rule on May 29, 1987 placing these substances into Schedule I of the CSA (52 FR 20070). The temporary control of these substances plus beta-hydroxy-3-methylfentanyl in Schedule I of the CSA pursuant to 21 U.S.C. 811(h) expired on May 29, 1987. By letter dated October 27, 1987 the DEA Administrator received the scientific and medical evaluation and scheduling recommendation for beta-hydroxy-3-methylfentanyl from the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services. He recommended that beta-hydroxy-3-methylfentanyl be placed into Schedule I of the CSA.

Beta-hydroxy-3-methylfentanyl is an extremely potent analog of the Schedule II synthetic narcotic analgesic fentanyl. It behaves as a morphine-like substance in rodent antinociceptive tests. Further this fentanyl analog substitutes completely for morphine when administered to morphine dependent withdrawn monkeys. The primate single-dose suppression potency is 6000 times that of morphine. Beta-hydroxy-3-methylfentanyl has been produced in clandestine laboratories and identified in drug evidence submissions to forensic laboratories. It is likely that some of the more than 100 overdose deaths associated with fentanyl analog use involved beta-hydroxy-3-methylfentanyl.

Based upon the investigation and review conducted by DEA and upon the scientific and medical evaluation and recommendation of the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services, received in accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) Beta-hydroxy-3-methylfentanyl has a high potential for abuse;

(2) Beta-hydroxy-3-methylfentanyl has no currently accepted medical use in treatment in the United States, and

(3) Beta-hydroxy-3-methylfentanyl lacks accepted safety for use under medical supervision.

The above findings are consistent with the placement of beta-hydroxy-3-methylfentanyl into Schedule I of the CSA. The Administrator further finds that beta-hydroxy-3-methylfentanyl is an opiate as defined in 21 U.S.C. 802(18) since it has an addiction-forming and an addiction-sustaining liability similar to that of morphine. Consequently, beta-hydroxy-3-methylfentanyl is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

All regulations applicable to Schedule I narcotic substances are effective as of January 8, 1988, with respect to beta-hydroxy-3-methylfentanyl. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports beta-hydroxy-3-methylfentanyl or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Beta-hydroxy-3-methylfentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and packaging.* All labels and labeling for commercial containers of beta-hydroxy-3-methylfentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for beta-hydroxy-3-methylfentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of beta-hydroxy-3-methylfentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on beta-hydroxy-3-methylfentanyl.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding beta-hydroxy-3-methylfentanyl.

8. *Order forms.* All registrants involved in the distribution of beta-hydroxy-3-methylfentanyl must comply with the order form requirements of §§1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and exportation.* All importation and exportation of beta-hydroxy-3-methylfentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to beta-hydroxy-3-methylfentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of beta-hydroxy-3-methylfentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354).

This action involves the control of a substance with no legitimate medical use or manufacture in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.11 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by redesignating existing paragraphs (b)(12) through (b)(54) as (b)(13) through (b)(55) and adding a new paragraph (b)(12) as follows:

§ 1308.11 Schedule I

* * * * *

(b) * * *

(12) Beta-hydroxy-3-methylfentanyl (other name: *N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*phenylpropanamide)..... 9830

* * * * *

§ 1308.11 [AMENDED]

3. Section 1308.11 is further amended by removing paragraph (g)(2) and redesignating existing paragraphs (g)(3) through (g)(6) as (g)(2) through (g)(5).

Dated: January 4, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-279 Filed 1-7-88; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3313-5; KY-047]

Approval and Promulgation of Implementation Plans; Kentucky: 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a revision to 401 KAR 61:140, Existing by-product coke manufacturing plants, submitted by Kentucky on September 19, 1986. This revision changes the test method for measuring total dissolved

solids (TDS) in quench water used in by-product coke manufacturing operations from ASTM Method 209B to Method 209C. EPA previously requested this change in test methods. At the present time, there is only one source in Kentucky subject to this amendment, and that source is currently in compliance with its provisions. This revision to 401 KAR 61:140 was proposed on May 6, 1987 (52 FR 16877).

EFFECTIVE DATE: This rule will become effective on February 8, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams of the EPA Air Programs Branch at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On December 1, 1982, Kentucky promulgated revisions to its regulation for the control of emissions from existing by-product coke manufacturing plants, 401 KAR 61:140. Upon submittal of these revisions to EPA for approval, EPA stated that the revised regulation would be entirely approvable if the Kentucky Natural Resources and Environmental Protection Cabinet changed the test method for measuring total dissolved solids (TDS) in the makeup water from Method 209B to Method 209C of the *Standard Methods For the Evaluation of Water and Wastewater*, ASTM 15th Edition, 1980. On August 28, 1986, a public hearing was held in Frankfort, Kentucky to receive comments on a revised version of 401 KAR 61:140, Existing by-product coke manufacturing plants, which incorporated the new test method. This version of the regulation was submitted to EPA on September 19, 1986. EPA proposed to approve the regulation on May 6, 1987 (52 FR 16877). EPA received no comments in response to that proposal. Method 209B and Method 209C are both test methods for determining total filtrable residue. Method 209C differs from Method 209B only in that the temperature of the drying oven is maintained at 103 °C–105 °C than 180 °C. The only source affected by this amendment, Armco Inc.-Coke Plant, I.D. No. 103–0340–0027, is already in compliance with the provisions of this amendment (letter dated April 12, 1985, from D.E. Davisson, Environmental Engineer, Armco, Inc.). Requiring Method 209C for testing will cause no economic disadvantages to Kentucky.

Final Action

EPA is today finalizing approval of the revision to 401 KAR 61:140, Existing by-product coke manufacturing plants, which changes the test method for measuring TDS is quench water used in by-product coke manufacturing operations from Method 209B to Method 209C. The only difference in these two test methods is in the temperature of the drying oven.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 4, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.920 is amended by adding paragraph (c)(50) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(50) A revision in Kentucky regulation 401 KAR 61:140, Existing by-product coke manufacturing plants, submitted on September 19, 1986, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) A revision to Division of Air Pollution regulation 401 Kentucky Administrative Regulations (KAR) 61:140, Existing by-product coke manufacturing plants, which became effective on September 4, 1986.

(B) Letter of September 19, 1986 from the Commonwealth of Kentucky to EPA.

[FR Doc. 88-369 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 86-79]

Common Carrier Services; Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In the BOC CPE Order, the FCC adopted nonstructural safeguards to govern BOC provision of CPE and directed the BOCs to file plans specifying the means by which they proposed to comply with certain of these safeguards. This Order addresses these plans. Specifically, this action approves the plans filed with the FCC by Ameritech, BellSouth, Bell Atlantic, NYNEX, Southwestern Bell, and USWest for complying with the CPNI, nondiscrimination, and joint marketing regulatory requirements of the BOC CPE Order (CC Docket No. 86–79). However, each of these BOCs is required to amend its compliance plans in certain respects. This action also approves the CPNI and nondiscrimination proposals in PacTel's compliance plan, while requiring some amendments to these proposals, but rejects PacTel's joint marketing proposal.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Order in CC Docket 86–79, adopted December 29, 1987, and released December 30, 1987. The full text of this Bureau decision is available for inspection and copying during normal business hours in FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. In the BOC CPE Order (2 FCC Rcd 143 (1987), recon., FCC 87–389 (released Dec. 17, 1987)), the Commission relieved the Bell Operating Companies (BOCs) of the structural separation requirements governing their provision of customer premises equipment (CPE) and replaced those requirements with five nonstructural safeguards. These safeguards covered five areas: cost allocation, network information disclosure, use and availability of customer proprietary network information (CPNI), nondiscrimination in the installation and maintenance of network services, and provision of joint marketing opportunities to independent CPE vendors. The Commission required each BOC to file a compliance plan specifying the procedures by which it would satisfy the CPNI, nondiscrimination, and joint marketing requirements. It delegated authority to the Chief of the Common Carrier Bureau (the Bureau) to review these plans. On April 13, 1987, the BOCs filed their compliance plans. In the Order, the Bureau addresses these plans.

2. Under the CPNI requirements, each BOC must honor customers' requests that it restrict its CPE personnel from accessing the customers' CPNI, as well as requests that it make such CPNI available to independent CPE vendors. Each BOC must also provide annual notice to multiline business customers of the Commission's CPNI rules and make nonproprietary, aggregate CPNI available to independent CPE vendors to the extent that, and on the same terms as, it is made available to the BOC's own CPE operations.

3. In the Order, the Bureau approves the CPNI proposal of each BOC but requires each BOC to correct minor deficiencies in its proposal by filing with the Commission certain plan amendments within 14 days of publication of this summary of the Order in the Federal Register. Bell Atlantic, Southwestern Bell, US West, and PacTel must amend their plans to state that the procedures they describe for releasing and restricting customers' CPNI apply to all customers. NYNEX must amend its plan to state that it will notify all multiline business customers of their right to authorize release of their CPNI to independent CPE vendors, as well as of the other CPNI rights of such customers. All BOCs, except NYNEX and Bell Atlantic, must amend their plans to state that they will provide the required CPNI notice within 60 days after publication of this summary of the Order in the Federal Register. If Bell Atlantic does not provide the required CPNI notice by January 1, 1988, as it states in its CPNI proposal, it must also amend its plan as summarized in the preceding sentence. All BOCs, except NYNEX, must amend their plans to state that they will include with their CPNI notices response forms that customers can use to restrict CPNI and must file proposed response forms with their plan amendments. Bell Atlantic and Ameritech must state that they will make nonproprietary aggregate CPNI available to independent CPE vendors to the extent that, and on the same terms and conditions as, it is made available to their own CPE operations. Finally, all BOCs, except NYNEX, must amend their plans to indicate that customers will receive at least 30 days to respond to the CPNI notice, during which time BOC CPE operations may not access the customer's CPNI, and that customers will be informed of this response period in the CPNI notice. All BOCs must file sample CPNI notices and response forms with their plan amendments.

4. Under the nondiscrimination rules, the BOCs must retain their Centralized Operations Groups (COGs) as optional points of contact for the CPE vendor community and customers with non-BOC CPE and may not discriminate in their provision of installation and maintenance of network services in favor of their own CPE customers. In addition, they must file quarterly reports on network service installation intervals experienced by their own CPE customers and by customers of their CPE competitors. The BOCs must describe in their complaince plans their installation and maintenance procedures and their proposed reporting mechanism and report format for their installation reports. The Order notes that the BOCs have elected to file with th Commission annual affidavits attesting that they follow the maintenance procedures described in their compliance plan and have not, in fact discriminated in their provision of maintenance service.

5. In the Order, the Bureau approves the installation and maintenance procedures described by the BOCs in their compliance plans. However, it requires Ameritech, Bell Atlantic, and US West to amend their plans to describe the training they provide their installation personnel on the Commission's nondiscrimination rules. Ameritech and US West must also describe the training provided to maintenance personnel in their plan amendments. The Bureau rejects the reporting categories proposed by the BOCs in their compliance plans but approves revised categories proposed by the BOCs in recent ex parte filings. Southwestern Bell, however, must modify its ex parte proposal to include a separate WATS/800 category and a category for analog private line service. Southwestern Bell must also amend its plan to state that it will provide quarterly installation reports for all of its business customers. Finally, the Order clarifies that BOCs may not provide CPE on an unseparated basis until their reporting mechanism is operational. All of the BOCs must file with the Commission the amendments summarized in this paragraph within 14 days of publication of this summary in the Federal Register.

6. Under the joint marketing requirement, the BOCs must provide independent CPE vendors with a meaningful opportunity, through sales agency programs or other functionally equivalent means, to market their CPE jointly with Centrex and other network services. In the Order, the Bureau approves the joint marketing plans of the five BOCs that propose to continue existing sales agency programs—NYNEX, Ameritech, BellSouth, Southwestern Bell, and US West. It also approves Bell Atlantic's Vendor Support and trial sales agency program. Recognizing certain limitations of existing sales agency programs, however, the Bureau states that it will reassess these proposals in two years to determine whether modifications to them should be required. During this two-year period, these BOCs are required to file the sales agency reports required by the Sales Agency Reconsideration Order (FCC 85–582 (released Nov. 15, 1985)), and Bell Atlantic is also required to report its activities under its Vendor Support program. The Bureau does not approve PacTel's Intermediary Marketing and Joint Marketing proposals for satisfying the joint marketing requirement. PacTel is required to establish a sales agency program or its functional equivalent in conjunction with or in lieu of these programs, and to file with the Commission an amendment to its compliance plan by February 15, 1988, that describes its revised program.

Ordering Clause

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act, 47 U.S.C. 4(i), 4(j), 201–205, 218, 220, 403, and 404, §§ 0.91(h) and 0.291 of the Commission's Rules, 47 CFR 0.91(h) and 0.291, and the BOC CPE Order, 2 FCC Rcd 143 (1987), the Compliance Plans of NYNEX, Bell Atlantic, Southwestern Bell, Ameritech, US West, and BellSouth described above are approved, subject to the modifications set forth herein. The Compliance Plan of PacTel, as described above, is rejected to the extent set forth herein.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-340 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-76; RM-5686]

Radio Broadcasting Services; Sedona, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C for Channel 261A at Sedona, AZ, and modifies the Class A license of Station KQST(FM), accordingly, in response to a petition filed by American Aircasting Corp. Additionally, Channel 261C2 is substituted for Channel 275C2 at Flagstaff, AZ, for which seven applications are pending, to accommodate the modification of Station KQST(FM). With this action, the proceeding is terminated.

DATE: Effective January 29, 1988. The window period for filing applications on Channel 261C2 at Flagstaff, AZ has closed.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530, concerning the Sedona, AZ modification. Questions related to the pending Flagstaff, AZ applications should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–76, adopted November 25, 1987, and released December 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arizona by adding Channel 261C2, removing Channel 275C2 at Flagstaff, adding Channel 275C and removing Channel 261A at Sedona.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-342 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 53, No. 5

Friday, January 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 12; Doc. No. 4744S]

General Crop Insurance Regulations; Stonefruit Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.122, to be known as the Stonefruit Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on stonefruit in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than February 8, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as December 1, 1992.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that his action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for invidviduals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.122, the Stonefruit Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring stonefruit, including clingstone peaches and apricots.

Upon publication of 7 CFR 401.122 as a final rule, the provisions for insuring stonefruit contained therein will parallel those provisions contained in 7 CFR Part 451, the Canning and Processing Peach Crop Insurance Regulations, for the 1988 crop year. The policy contained in 7 CFR Part 451 will be terminated at the end of the 1988 crop year and later removed and reserved.

1987 crop year insureds under the Canning and Processing Peach Crop Insurance Policy may transfer coverage to the Stonefruit Endorsement, at the insured's option, before the sales closing date. Insureds under the Stonefruit Endorsement will not be allowed to transfer to the Canning and Processing Peach Policy. No new policies under 7 CFR Part 451 will be issued.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washigton, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Stonefruit endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.122 Stonefruit Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.122 Stonefruit Endorsement

The provisions of the Stonefruit Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Stonefruit Endorsement

1. Causes of loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Earthquake;
(3) Fire;
(4) Wildlife;
(5) Volcanic eruption;

(6) An insufficient number of chilling hours to effectively break dormancy; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

Unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under Section 1.b. of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard;

(2) Insect infestation;

(3) Split pits regardless of cause; or

(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. Insured Crop and Acreage

a. The crop insured will be any of the following stonefruit types you elect in writing prior to the sales closing date and grown for fresh market fruit or processing (whichever is applicable) for which we provide a guarantee and premium rate:

Type I—Apricots—Fresh
Type II—Apricots—Processing
Type III—Nectarines—Fresh
Type IV—Peaches, Cling—Processing
Type V—Peaches, Freestone—Processing
Type VI—Peaches, Freestone—Fresh

b. You may insure any fresh market Stonefruit to Type I Apricots or Type VI Freestone Peaches as processing Type II Apricots or Type V Freestone Peaches respectively by converting fresh market lugs, harvested or appraised, to equivalent processing tons using the weight equivalents provided in paragraph 12.d.

c. In lieu of the provisions of paragraph 2. e. of the general crop insurance policy, we do not insure any stonefruit acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production per acre (at least 2.2 tons per acre for processing types);

(4) For which acceptable production records for the type elected for at least the previous crop year are not provided;

(5) Which we inspect and consider not acceptable;

(6) Which is interplanted with another crop;

(7) On which is grown a type or variety: not established as adapted to the area; excluded by the actuarial table; or not regulated by the California Tree Fruit agreement or a related crop advisory board for the State (for applicable types);

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. Report of acreage, share, type and practice (acreage report)

The acreage report must be filed on or before January 31. You must report the crop type in addition to the information required by the general crop insurance policy for the acreage report.

4. Production reporting and production guarantees

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Known tree damage or use of production practices which have or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year. (The production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election per type for the crop year.

c. The processing price elections will be applied to any applicable type (except type III—Nectarines) where an election:

(1) Has not been made by the insured; or

(2) Is not available in accordance with the provisions of the actuarial table.

5. Annual premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance period

In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1; except that for the first crop year coverage begins on March 1 following our inspection and acceptance. Insurance ends on each acre at the earliest of:

a. Total destruction of the insured crop by type;

b. Harvest;

c. The date harvest would normally start for the type;

d. Final adjustment of a loss; or

e. In all counties, the calendar date immediately following February 1 as follows:

(1) All apricots—July 31

(2) All nectarines and peaches—September 30

7. Units

Stonefruit acreage of each type, grown on non-contiguous land, that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause the production from those units to be combined for the purpose of calculating an indemnity.

8. Notice of damage or loss

In lieu of the notices required in subsections 8.a (2), (3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If notice is given under this paragraph, we must be notified of the time of harvest at least 72 hours before harvest begins.

9. Claim for indemnity

In addition to Section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of types I, III, and VI by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of fresh stonefruit by type to be counted (see section 9.b. or c.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalents) (see section 12.d.) to be counted for a unit will include all production harvested, by type and all appraised production. For fresh apricots (Type I), such production must meet the California Department of Food and Agriculture minimum standards. For fresh nectarines (Type III) and fresh freestone peaches (Type VI), such production must meet U.S. #1 standards as modified by the latest California Tree Fruit Agreement Publication.

(1) Production of fresh stonefruit damaged by insurable causes within the insurance period, that could be marketed for any use as other than fresh packed stonefruit, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the higher price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned, destroyed by you without our prior written consent, or not inspected by us prior to the completion of harvest;

(c) Any unharvested production where good stonefruit cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of stonefruit becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested type may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discontinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. The total production in tons to be counted for a processing unit will include all production harvested and all appraised production:

(1) For processing apricots (Type II), such production must meet California Department of Food and Agriculture minimum standards;

(2) For processing clingstone peaches (Type IV), such production must be graded by the California State Inspection Service as #2 or better;

(3) For processing freestone peaches (Type V), such production must meet California Department of Food and Agriculture minimum standards and will include all production harvested and appraised which is acceptable to the processor;

(4) Appraised production to be counted for Types II, IV, and V will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good stonefruit production practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(5) Any appraisal for processing fruit types will be conducted based on procedure stated in subsection 9.b.(2), (3), and (4).

d. In the absence of acceptable records to determine the disposition of harvested stonefruit, we may elect to determine such disposition and the amount of such production to be counted for the unit.

e. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of the insured fruit under this contract from the broker, shipper, canner, advisory board, marketing order or any other source we deem necessary.

10. The Cancellation and Termination Dates

The cancellation and termination dates are January 31.

11. Contract Changes

The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. Meaning of Terms

For the purpose of Stonefruit crop insurance:

a. "Appraisal" means an estimate of the potential production determined by our representative using our prescribed procedures.

b. "Crop Year" means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the insured type is normally harvested.

c. "Harvest" means the picking of mature fruit from the trees by hand or machine.

d. "Lug" means a container of fresh fruit of the weights shown below. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

Type:	Pounds/Lug
I Apricots	24
III Nectarines	25
VI Freestone Peaches	22

e. "Ton" means a volume of apricots or processing peaches of type II, IV, or V marketable through processing channels and equaling 2000 pounds.

Done in Washington, DC, on December 30, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-288 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 26; Doc. No. 4980S]

General Crop Insurance Regulations; Texas Citrus Tree Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a new section, 7 CFR 401.134, be known as the Texas Citrus Tree Endorsement. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on citrus trees in Texas in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than February 8, 1988, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as November 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.134, the Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring citrus trees in Texas.

Upon publication of 7 CFR 401.134 as a final rule, the provisions for insuring citrus trees contained in 7 CFR 401.134 will supersede those provisions contained in 7 CFR Part 440, the ELS

Cotton Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 440 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 440 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve capability with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Texas Citrus Tree Endorsement to 7 CFR Part 401, FCIC proposes other changes in the provisions for insuring Texas citrus trees as follows:

1. Section 1—Rio Red grapefruit trees have been added to the Star Ruby (Type IV) designation and Ruby Red grapefruit trees have been designated type V. These changes place tree insurance units on the same basis as the citrus fruit insurance units.

2. Section 2—Cyclone was replaced by excess wind as an insured cause of loss. This change provides insurance against damage from shear wind of defined force as well as cyclonic winds.

3. Section 4—Language has been added to clarify that trees less than one year old on June 1 are limited to 33% of then normal amount of insurance.

4. Section 7—Add unit division to include language indicating that additional premium may be required for unit division by non-contiguous land.

5. Section 12—Add definitions of excess moisture, excess wind, and non-contiguous land.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register. Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Texas citrus tree endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 508, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1508, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.134 Texas Citrus Tree Endorsement, effective for the 1989 and succeeding crop years, to read as follows:

§ 401.134 Texas Citrus Tree Endorsement.

The provisions of the Texas Citrus Tree Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Texas Citrus Tree Endorsement

1. Insured Crop.

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I Early and mid-season orange trees;
Type II Late orange (including Temples) trees;
Type III Grapefruit trees except types IV and V;
Type IV Rio Red and Star Ruby grapefruit trees; or
Type V Ruby Red grapefruit trees; which are set out for the purpose of harvesting citrus as fresh fruit or juice.

b. In addition to the citrus trees not insurable in section 2 of the general crop insurance policy, we do not insure any citrus trees:

(1) Which are not irrigated;

(2) For the crop year the application for insurance is filed unless we inspect the acreage and consider it acceptable;

(3) Which have been grafted onto existing root stock within the one year period prior to the date insurance attaches; or

(4) In any established grove which do not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure such trees;

c. We may exclude from insurance or limit the amount of insurance on any acreage which was not insured by us the previous crop year.

2. Causes of loss

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

(1) Freeze;
(2) Excess Moisture;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Excess wind; or
(7) Failure of the irrigation water supply;

unless those causes are excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any damage to trees due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove.

3. Report of acreage, share, number, type, age of trees, and practice (acreage report)

a. In addition to the information required in section 3 of the general crop insurance policy, you must report:

(1) The number and type(s) of trees;
(2) The date of original set out; and
(3) The date of replacement and/or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years.

b. If any insurable acreage of trees is set out after June 1 of the insured crop year, and you elect to insure such acreage during that crop year, you must report to us within 72 hours of the completion of set out the acreage, practice, type, number of trees, date set out is completed, and your share.

c. The date by which you must annually submit the acreage report is June 30 of the calendar year in which insurance attaches.

4. Amounts of insurance

a. The amount of insurance shown on the actuarial table will be reduced for any acreage which has not reached the fourth growing season after being set out or the fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance on the actuarial table by:

(1) 33 percent the year of set out or the year following dehorning (insurance will be limited to this amount until trees that are set out are one year of age or older on June 1);

(2) 66 percent the first growing season after being set out or the second year following dehorning;

(3) 80 percent the second growing season after being set out or the third year following dehorning; or

(4) 90 percent the third growing season after being set out or the fourth year following dehorning.

b. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual premium

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance period

a. In lieu of section 7 of the general crop insurance policy, insurance attaches on June 1 for each crop year except that for the first crop year insured and notwithstanding subsection 1.b.(2):

(1) If the application is accepted by us after June 1, the insurance against cyclone and freeze will attach the tenth day after the application is signed by you; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion, except insurance against cyclone and freeze will attach the tenth day after you report such acreage.

b. The insurance period ends at the earlier of:

(1) May 31 following the beginning of the crop year; or

(2) Total destruction of the insured trees.

7. Unit division

a. Citrus tree acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus tree acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and the insured trees are located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of damage or loss

a. In lieu of section 8 of the general crop insurance policy and in case of damage or probable loss, you must give us written notice of:

(1) The dates of damage; and

(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we will have the right to inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

9. Claim for indemnity

a. In addition to the requirements in section 9 of the general crop insurance policy you must furnish records to us concerning all trees on the unit.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with subsection 9.c., the following applicable amount:

(a) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(b) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(c) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) multiplying this result by your share.

c. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The actual percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred. Any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out;

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union. However, no damage will be considered if more than 12 inches of wood above the bud union is alive.

(2) Any percentage of damage by uninsured causes, will not be included in the actual percent of damage.

d. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

10. Cancellation and Termination Dates

The cancellation and termination dates are May 31 prior to the date insurance attaches.

11. Contract Changes

The date by which contract changes will be available in your service office is February 28 preceding the cancellation date.

12. Meaning of terms

a. "Crop year" means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

b. "Dehorning" means the cutting back of each scaffold limb to a length that is no longer than ¼ the height of the tree.

c. "Destroyed" means trees which are damaged to the extent that removal is required.

d. "Excess wind" means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

f. "Non-contiguous land" means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

g. "Set out" means transplanting the citrus tree from the nursery to the grove.

h. "Total destruction" means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

Done in Washington, DC, on December 31, 1987.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-289 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research Program; Procedures for Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Beef Promotion and Research Order was implemented July 18, 1986, as authorized by the Beef Promotion and Research Act of 1985. The Act requires that the Secretary conduct a referendum among eligible cattle producers and cattle and beef importers not later than 22 months after the issuance of an order to determine whether the order should be continued. Accordingly, the referendum must be held on or before May 18, 1988. This proposed rule sets forth the procedures for conducting the required initial referendum.

DATE: Comments must be received by February 8, 1988.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified as a non-major rule under the criteria contained therein.

This action has also been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule, would establish procedures for the conduct of a referendum to determine whether the Beef Promotion and Research Order (Order) should be continued. It permits all eligible cattle producers and importers of cattle, beef, and beef products to register and to vote. Participation in the referendum is voluntary. The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not

have a significant economic impact on a substantial number of small entities.

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. The program is financed by a $1-per-head assessment on domestic and imported cattle and an equivalent amount on imported beef and beef products. Pursuant to the Act, an order was made effective July 18, 1986, and the collection of assessments began on October 1, 1986.

The Act requires that a referendum be conducted not later than 22 months after the issuance of the order to determine whether the order should be continued. The initial referendum is to be conducted among persons who were producers of cattle or importers of cattle, beef, or beef products during a representative period specified by the Secretary for the purpose of determining whether the initial order should be continued. The order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that the continuance of the order is not favored by a majority of those persons voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

The Act specifies that the referendum shall be held on a date determined by the Secretary and that eligible persons must register and vote on the same day. The Act also provides that the referendum shall be conducted at county offices of the U.S. Department of Agriculture's Extension Service.

The proposed rule sets forth procedures to be followed in conducting the initial referendum. The proposed rule includes provisions concerning definitions, supervision of the referendum, registration, voting procedures, reporting the referendum results, and disposition of the ballots and records. It is proposed that the Agricultural Stabilization and Conservation Service (ASCS) of the Department, will assist in the conduct of the referendum by (1) counting ballots, (2) determining the eligibility of challenged voters, and (3) reporting referendum results.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Marketing agreements, Meat and meat products, Beef and beef products.

For the reasons set forth in the preamble, it is proposed that Title 7 of the CFR, Part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 et seq.

2. Subpart C, consisting of §§ 1260.500 through 1260.640 is redesignated as Subpart D.

3. Add a new "Subpart C" to read as follows:

Subpart C—Procedure for the Conduct of Referendum

Definitions

Sec.

1260.401 Act.
1260.402 Administrator.
1260.403 Agricultural Stabilization and Conservation County Committee.
1260.404 Agricultural Stabilization and Conservation Service.
1260.405 Agricultural Stabilization and Conservation Service County Executive Director.
1260.406 Beef.
1260.407 Beef products.
1260.408 Cattle.
1260.409 Department.
1260.410 Deputy Administrator.
1260.411 Extension Service.
1260.412 Extension Service Agent.
1260.413 Imported beef and beef products.
1260.414 Importer.
1260.415 Order.
1260.416 Person.
1260.417 Producer.
1260.418 Public notice.
1260.419 Referendum.
1260.420 Registration period.
1260.421 Representative period.
1260.422 Secretary.
1260.423 State.
1260.424 United States.
1260.425 Voting period.
1260.426 General.
1260.427 Supervision of referendum.
1260.428 Eligibility.
1260.429 Time and place of registration and voting.
1260.430 Facilities for registering and voting.
1260.431 Registration form and ballot.
1260.432 Registration and voting procedure.
1260.433 List of registered producers and importers.
1260.434 Challenge of eligibility.
1260.435 Receiving ballots.
1260.436 Canvassing ballots.
1260.437 ASCS County office report.
1260.438 ASCS State office report.
1260.439 Results of the referendum.
1260.440 Disposition of ballots and records.
1260.441 Instructions and forms.

Subpart C—Procedure for the Conduct of Referendum

Definitions

§ 1260.401 Act.

"Act" means the Beef Promotion and Research Act of 1985 set forth in Title XVI, Subtitle A of the Food Security Act of 1985 (Pub. L. 99-198) and any amendments thereto.

§ 1260.402 Administrator.

"Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated, the authority to act in the Administrator's stead.

§ 1260.403 Agricultural Stabilization and Conservation County Committee.

"Agricultural Stabilization and Conservation County Committee," also referred to as "ASC County Committee" means the group of persons within a county elected to act as the county Agricultural Stabilization and Conservation Committee.

§ 1260.404 Agricultural Stabilization and Conservation Service.

"Agricultural Stabilization and Conservation Service," also referred to as "ASCS" means the Agricultural Stabilization and Conservation Service of the Department.

§ 1260.405 Agricultural Stabilization and Conservation Service County Executive Director.

"Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS Executive Director" means the person employed by the ASC county committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office, or the person acting in such capacity.

§ 1260.406 Beef.

"Beef" means flesh of cattle.

§ 1260.407 Beef products.

"Beef Products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

§ 1260.408 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

§ 1260.409 Department.

"Department" means the United States Department of Agriculture.

§ 1260.410 Deputy Administrator.

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1260.411 Extension Service

"Extension Service" also referred to as "ES" means the Extension Service of the Department.

§ 1260.412 Extension Agent.

"Extension Service Agent" also referred to as "ES Agent" or designee means an employee of the Extension Service of the Department.

§ 1260.413 Imported beef and beef products.

"Imported Beef and Beef Products" means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.414 Importer.

"Importer" means any person who imports cattle, beef or beef products from outside the United States.

§ 1260.415 Order.

"Order" means the Beef Promotion and Research Order.

§ 1260.416 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.417 Producer.

"Producer" means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.418 Public notice.

"Public Notice" means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county ES offices and county ASCS offices, by means of newspapers, television, radio, county newsletters, and the like. Such notice shall contain the referendum date, registration and voting requirements, and other pertinent information.

§ 1260.419 Referendum.

"Referendum" means the initial referendum to be conducted pursuant to the Act by the Secretary not later than 22 months after issuance of an order whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of the order is favored by a majority of producers and importers voting.

§ 1260.420 Registration period.

"Registration period" means a 1-day period to be announced by the Secretary for registration of producers and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1260.421 Representative period.

"Representative period" means the period designated by the Secretary pursuant to section 7(a) of the Act.

§ 1260.422 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1260.423 State.

"State" means each of the 50 States.

§ 1260.424 United States.

"United States" means the 50 States and the District of Columbia.

§ 1260.425 Voting period.

"Voting period" means a 1-day period to be announced by the Secretary for voting in a referendum.

Referendum

§ 1260.426 General.

(a) A referendum to determine whether eligible producers and importers favor the continuance of the order shall be conducted in accordance with this subpart.

(b) The order shall continue only if the Secretary determines that the order is approved or favored by a majority of the producers and importers casting valid ballots in a referendum.

(c) The referendum shall be conducted at the county offices of the Extension Service of the Department.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of the referendum.

§ 1260.427 Supervision of referendum.

The Administrator (AMS) shall be responsible for conducting the referendum in accordance with this subpart.

§ 1260.428 Eligibility.

(a) *Eligible Producers:* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Eligible Importers:* Each person who was an importer during the representative period is entitled to register and vote in the referendum. Each importer entity shall be entitled to cast only one ballot in the referendum.

(c) *Proxy registration and voting:* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer or corporate importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer entity or eligible importer entity (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer or importer entity shall certify that he or she is authorized by such entity to take such action.

(d) *Joint and group interest:* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of cattle as a producer entity or in the importation of cattle, beef, or beef products into the U.S. as an importer entity shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer or importer if he or she is an eligible producer or importer separate from the group.

§ 1260.429 Time and place of registration and voting.

The referendum shall be held for 1 day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1260.432. Except for absentee ballots, the registration and voting shall take place during the normal business hours of each county ES office.

§ 1260.430 Facilities for registering and voting.

Each county ES office shall provide adequate facilities and space to permit producers and importers to register and to mark their ballots in secret and a sealed box or other suitable receptable for registration forms and ballots which shall be kept under observation during office hours and secured at all times. Copies of the order shall be available for review.

§ 1260.431 Registration form and ballot.

A registration form/envelope marked "Beef Referendum" (Form LS–40–2) and ballot (Form LS–40) shall be used for voting in person. The information required on the registration form, which is printed on an envelope, includes name, address, phone number, and voter status (producer or importer). The registration form/envelope also contains a certification statement, referenced in § 1260.432(a)(1). The ballot requires producers and importers to check a "yes" or a "no." A similar registration form and ballot (Form LS–39) shall be used for absentee voting.

§ 1260.432 Registration and voting procedure.

(a) *Registering and voting in person.* (1) Each producer and importer desiring to vote in the referendum shall register on the day of voting at the county ES office in which the producer's or importer's residence is located or at the county ES office serving the county in which the producer's or importer's residence is located. Producer or importer entities other than individuals shall register at the county ES office in the county in which their headquarters office or business is located or at the county ES office serving the county in which the entities' headquarters office or business is located. Producers and importers will be required to list their names on the voter registration list (Form LS–40–3) prior to receiving a registration form and ballot. To register, each producer or importer shall complete the registration form/envelope and certify that (i) they or the entity they represent were producers or importers during the specified representative period and (ii) if voting on behalf of an entity referred to in § 1260.428 they are authorized to do so.

(2) Each eligible producer or importer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1260.429 and on a date to be announced by the Secretary. Eligible persons who enter their names on the voter registration list (Form LS–40–3) will receive a registration form/envelope (Form LS–40–2) and a ballot (Form LS–40). Voting shall be by secret ballot under the supervision of the local county ES agent or his designeee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in an envelope marked "Beef Ballot", seal it and place it in the completed and signed registration form/envelope, seal that envelope and personally place it in a box marked "Ballot Box" or other suitable receptacle.

(b) *Absentee voting.* (1) Eligible producers or importers unable to vote in person may request and obtain a combined absentee registration form and absentee ballot (Form LS–39) and two envelopes—one marked "BEEF BALLOT" and the other marked "BEEF REFERENDUM" by mail from the State ES office of the State in which they reside. Only one absentee registration form and absentee ballot will be provided to each eligible producer or importer. Form LS–39 must be requested in writing during a specified time period which will be announced by the Secretary. The State ES office shall enter on the absentee voter request list (Form LS–39–3) the name and address of each person or entity requesting an absentee ballot and the date the Form LS–39 was mailed. A copy of the applicable absentee voter request list (Form LS–39–3) prepared by the State ES office shall be provided to each ASCS county office for absentee voter verification.

(2) To register, eligible producers or importers must complete and sign the registration form (Form LS–39), and certify that (i) they or the entity they represent were producers or importers during the specified representative period and (ii) if voting on behalf of an entity referred to in subsection 1260.428, they are authorized to do so.

(3) A producer or importer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–39 and seal the completed ballot in a separate envelope marked "BEEF BALLOT" and place it in a second envelope marked "BEEF REFERENDUM" along with the signed registration form. Producers and importers shall print and sign their names on the envelope marked "BEEF REFERENDUM" and mail it to the local county ES office of the county in which they reside or the county ES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed to the county ES office in the county in which its main office is located or the county ES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county ES office by the close of business, 5 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "BEEF REFERENDUM" envelope containing the registration form and ballot, the county ES agent or his designee shall place it, unopened in a secure ballot box. The county ES agent or his designee shall enter the names of absentee voters on the voter registration list (Form LS–40–3).

§ 1260.433 List of registered producers and importers.

The voter registration list (From LS–40–3) shall be available for inspection on the day of the referendum at the country ES office and subseqently at the ASCS county office. It shall be posted during regular office hours in conspicuous public location at the ASCS county office on the second business day following the date of the referendum.

§ 1260.434 Challenge of eligibility.

(a) *Challenge period.* On the day of the referendum, the names of challenged voters may be reported to the ES county agent who will refer them to the ASCS county office. After that, the names of challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business on the second business day after the date of the referendum.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer or importer who has been challenged and notify challenged producers and importers as soon as practicable, but not later than 5 business days after the date of the referendum. If the ASC county committee or its representative is unable to determine whether a person was a producer or importer during the representative period, it may require the person to submit records such as tax returns, sales documents, purchase documents, or other similar documents to prove that the person was a producer or importer during the representative period.

(d) *Challenged ballot.* The registration form/envelopes (Form LS–40–2) containing the ballots cast by producers and importers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes containing absentee voter registration forms and absentee ballots (Form LS–39) of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers and importers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notfiction of such decision. Such person may be required to provide documentation such as tax returns, sales documents, or purchase documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable, but in all cases not later than the 9th business day after the date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1260.435 Receiving ballots.

A ballot shall be considered to have been received during the voting period if (a) it was cast in the county ES office prior to the close of business on the day of the referendum or (b) an absentee ballot was received in the county ES office not later than close of business 5 business days before the date of the referendum.

§ 1260.436 Canvassing ballots.

(a) *Counting the ballots.* The county ES agent or designee shall deliver the sealed ballot box, the voter registration list (Form LS–40–3) and the absentee voter request list (Form LS–39–3) to the ASCS county office by the close of business on the first business day following the date of the referendum. ASCS county employees and the county ES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–40–3) and the absentee voter request list (Form LS–39–3) to determine properly registered voters. The ballots of producers or importers voting in person whose names are not on the voter registration list (Form LS–40–3) shall be declared invalid. Likewise, the ballots of producers or importers voting absentee, whose names are not on the absentee voter request list (Form LS–39–3) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on the 10th business day after the referendum date. ASCS county office employees shall remove the sealed "Beef Ballot" envelops from the registration form/envelopes or absentee ballot envelops of all eligible voters and all challenged voters determined to be eligible. When removing the "Beef Ballot" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "Beef Ballot" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows: (1) Number of eligible producers and importers casting valid ballots, (2) number of producers and importers favoring the order, (3) number of producers and importers not favoring the order, (4) the number of challenged ballots, (5) the number of challenged ballots deemed ineligible, (6) number of invalid ballots, and (7) the number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer or importer voting in person has failed to sign the voter registration list (Form LS–40–3), or an absentee voter's name is not on the absentee voter request list (Form LS–39–3), or the registration form or ballot was imcomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or a "no" vote. Spoiled ballots shall not be considered as approving or disapproving the order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1260.437 ASCS county office report.

The ASCS county office shall notify the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1260.436(a). The results of the referendum in each county may be made available to the public. A copy of the report of results shall be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1260.438 ASCS State office report.

Each ASCS State office shall transmit to the Deputy Administrator, ASCS, a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1260.439 Results of the referendum.

(a) The Deputy Administrator, ASCS, shall submit to the Administrator, AMS the results of the referendum. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports, and related papers shall be available for public inspection in the office of the Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, Room 2610 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons that may be designated by the Deputy Administrator, ASCS, or the Secretary.

§ 1260.440 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such

records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Deputy Administrator, ASCS, by the end of such time, the records shall be destroyed.

§ 1260.441 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Done at Washington, DC on: January 4, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-283 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-37-AD]

Airworthiness Directives; Beech Models A23-24, A24, A24R, B24R and C24R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech Models A23-24, A24, A24R, B24R and C24R airplanes. This AD would require the replacement of the electric fuel boost pump with a pump with improved vane material. Reports have been received of engine power loss which resulted from loss of fuel pressure, caused by broken electric fuel boost pump vane material obstructing fuel flow in the engine driven fuel pump. Incorporation of the replacement fuel pump will preclude breakage of the electric boost pump vanes and thereby eliminate the resultant engine failures.

DATE: Comments must be received on or before March 7, 1988.

ADDRESSES: Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-37-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone 316-946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 87-CE-37-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been six reports of electric boost pump vane failure on Beech Models A23-24, A24, A24R, B24R and C24R airplanes which have resulted in partial or complete loss of engine power. The engine power losses were attributed to blockage of the fuel flow path by broken vane pieces. In all reported cases the pilots were able to either abort take-off or safely make an emergency landing.

These airplanes are prone to fuel system blockage, because they do not employ a screen or filter between the boost pump and the engine driven pump, and because the engine driven pump utilizes reed valves which are susceptible to blockage by contaminants. Installation of an in-line filter between the boost pump and engine driven pump was considered but dropped because of difficulties associated with plumbing changes, pressure drop and possible water entrapment. Also, adding a filter would not resolve the original problem of vane breakage. As a result, Beech has introduced a new fuel boost pump with improved vane material, less susceptible to breakage. The new pump is being incorporated into Beech production type design data.

The FAA has examined the above reports and has determined that an unsafe condition exists or may develop in certain Beech Models A23-24, A24, A24R, B24R and C24R airplanes. The proposed AD would require the replacement of the electric fuel boost pump.

The FAA is conducting a further examination of other possible installations of this particular pump design. Additional separate airworthiness actions may be proposed should this examination uncover other unsafe conditions.

The FAA has determined that there are approximately 1163 airplanes affected by this proposed AD. The cost of modifying these airplanes as required by the proposed AD is estimated to be $220 per airplane. The total cost is estimated to be $255,860 to the private sector. The FAA has determined that this Ad will not have a significant economic impact on a substantial number of small entities.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Models A23-24 and A24 (Serial Numbers (S/Ns) MA-1 through MA-368); Model A24R (S/Ns MC-2 through MC-95); and Models A24R, B24R and C24R (S/Ns MC-96 through MC-795) airplanes, certified in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent reduction or loss of engine power due to fuel flow blockage resulting from broken electric fuel boost pump vanes in the engine driven fuel pump, accomplish the following:

(a) For airplanes with 14 volt electrical systems, replace the existing electric fuel boost pump with Beech P/N 1816-00-1 pump, as described in paragraph (c) below.

(b) For airplanes with 28 volt electrical systems, replace the existing electric fuel boost pump with Beech P-N 1817-00-1 pump, as described in paragraph (c) below.

(c) To replace the electric fuel boost pump as referenced in paragraphs (a) or (b) of this AD, accomplish the following:

(1) Gain access to the electric fuel boost pump which is located beneath the forward cabin floorboards.

(2) Remove the existing fuel boost pump and install the applicable new fuel boost pump as referenced in either paragraph (a) or (b) of this AD.

(3) Disconnect the inlet fuel line to the engine driven fuel pump and flush out the fuel line between the boost pump and the engine driven fuel pump.

(4) Reconnect the inlet fuel line to the engine driven fuel pump.

(5) Start the engine and check the operation of the new pump.

(6) Shut the engine off and check for fuel leaks.

(7) Replace any equipment which was removed to facilitate the fuel boost pump replacement.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Issued in Kansas City, Missouri, on December 23, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-251 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-159-AD]

Airworthiness Directives; McDonnell Douglas Models DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 Series Airplanes, Equipped With Hydro-Aire Auto Brake Control Units Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809, or 42-839

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes, which would require modification of the Auto Brake Control Unit. This proposal is prompted by reports of the Auto Brake System (ABS) being inadvertently disarmed due to electrical power interruptions or transients. This condition, if not corrected, could lead to the loss of automatic braking capability and cause the airplane to overrun the runway during a rejected takeoff.

DATE: Comments must be received no later than March 8, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of a McDonnell Douglas Model DC-9-80 series airplane reported that, after arming the Auto Brake System (ABS) prior to takeoff, the ABS disconnected while performing the AC CROSSTIE preflight check. McDonnell Douglas has confirmed that the ABS may not remain armed after some short duration electrical power interruptions or transients.

The electrical power source for the ABS is the left AC bus; consequently, a failure of the left engine or left engine-driven generator, which would require a crosstie of the electrical system, may cause the ABS to inadvertently disarm. Failure of the left engine during takeoff could result in a high-speed rejected takeoff where rapid and full brake application by the ABS would be expected automatically and immediately after the decision to abort takeoff, but due to the bus transfer, the ABS could disarm and could cause the airplane to overrun the runway. Timely application of manual brakes after ABS disarm would ensure stopping the airplane on the runway.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 32-216, dated September 24, 1987, which describes the modification instructions to correct a power interruption anomaly existing within the Auto Brake Control Units installed on certain Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes.

BEST COPY AVAILABLE

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the Auto Brake Control Units installed on certain McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 340 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,200.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend §39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 108(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-30, DC-9-41, DC-9-51, DC-9-81, DC-9-82, and DC-9-83 series airplanes, equipped with Hydro-Aire Auto Brake Control Units, Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809, or 42-839, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate inadvertent disarming of the Auto Brake System following exposure to momentary electrical power interruptions or transients, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), modify the Hydro-Aire Auto Brake Control Units, Part Numbers 42-409, 42-409-1, 42-639, 42-639-1, 42-809 or 42-839, in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 32-216, dated September 24, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65) (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on December 30, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-253 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-36]

Proposed Revision of Transition Area; Big Sandy, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Big Sandy, TX. The development of a new standard instrument approach procedure (SIAP) to the Ambassador Field Airport, Big Sandy, TX, utilizing the Quitman Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC) has made the proposal of this revision necessary. In addition, a review of the controlled airspace revealed that the SIAP to the Holly Lake Ranch Airport has been canceled, also making this proposed revision to the existing transition area necessary. The intended effect of this proposed revision would provide adequate controlled airspace for aircraft executing the new SIAP to the Ambassador Field Airport, and return that airspace no longer required due to the cancellation of the SIAP to the Holly Lake Ranch Airport. Coincident with this proposed revision would be the changing of the status of the Ambassador Field Airport from visual flight rules (VFR) to instrument flight rules (IFR), and the changing of the status of the Holly Lake Ranch Airport from IFR to VFR.

DATE: Comments must be received on or before February 5, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-36, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-36."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Big Sandy, TX. The development of a new SIAP to the Ambassador Field Airport, utilizing the Quitman VORTAC, and the cancellation of the SIAP serving the Holly Lake Ranch Airport have made this proposed revision necessary. The intended effect of this proposed revision would provide adequate controlled airspace for aircraft executing the new SIAP to the Ambassador Field Airport and would return that controlled airspace no longer required due to the cancellation of the SIAP serving the Holly Lake Ranch Airport. Coincident with this proposed revision, the status of the Ambassador Field Airport would change from VFR to IFR, and the status of the Holly Lake Ranch Airport would change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Big Sandy, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ambassador Field Airport (latitude 32°35'03"N., longitude 95°04'03"W.), and within 4.5 miles each side of the 139° radial of the Quitman VORTAC (latitude 32°52'49"N., longitude 95°22'00"W.), extending from the 6.5-mile radius to 15 miles northwest of the Ambassador Field Airport; and within a 5-mile radius of the Gilmer Upshur County Airport (latitude 32°41'47"N., longitude 94°56'55inW.); and within a 5-mile radius of the Gladewater Municipal Airport (latitude 32°31'44"N., longitude 94°58'18"W.).

Issued in Fort Worth, TX, on December 18, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-254 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 87-ASO-1]

Proposed Alteration of Restricted Areas, Valparaiso, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the restricted airspace in the Eglin AFB, Valparaiso, FL, area to improve the management of these areas and increase the availability of airspace for civil users, while continuing to meet Air Force requirements.

In a sparate but related action, the FAA is considering a petition to expand the Federal Aviation Regulations (FAR) 93.81 Special Air Traffic Rules for the Valparaiso, FL, Terminal Area to include the airspace encompassed by Restricted Areas R-2915B, R-2915C, R-2918, R-2919A, R-2919B, and R-2919C when these areas are not active and are released to the controlling agency.

DATE: Comments must be received on or before February 19, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 87-ASO-1, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Send comments on evironmental and land use aspects to: Headquarters, AFSC/DEMV, Andrews AFB, MD 20334-5000; telephone: (301) 981-2863. Communications should identify the airspace docket and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the restricted airspace in the Eglin AFB, Valparaiso, FL, area to enhance traffic flow and more accurately depict actual airspace usage. The proposals contained in this notice were submitted to resolve problems regarding utilization of these restricted areas and aerial access to public use airports in the vicinity. These issues were identified during an FAA conducted on-site review of special use airspace in the Eglin AFB, Valparaiso, FL, area. Under the proposals, the internal boundary between the existing Restricted Areas R-2914A and R-2919A would be realigned to better accommodate TACAN/ILS approaches to Eglin AFB Runway 30 and to better align the boundary for activities conducted within the area. The proposals would also delete the southwest corner of R-2919A from the restricted area to enhance traffic flows to and around the Destin-Fort Walton Beach Airport. Further, the proposals would redesignate portions of the existing R-2914A and R-2919A as Restricted Area R-2914. The remaining sections of the present R-2914A and R-2919A would be incorporated into R-2919A. The existing R-2914B would be redesignated as R-2919C. These changes would enhance charting clarity. In addition, the proposals would reduce the time of designation for all but three restricted areas in Eglin AFB complex from "continuous" to "intermittent" use. Only R-2917, R-2915A and that part of R-2914A to be redesignated as R-2914 would remain designated for "continuous" use. Finally, the using agency title would be updated for all areas and the Continental Control Area would be amended to reflect the appropriate changes. Sections 71.151 and 73.29 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation Safety, Continental control area, Restricted Areas.

The Proposed Amendments

Accordingly pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-2914A Valparaiso, FL [Remove]

R-2914B Valparaiso, FL [Remove]

R-2914 Valparaiso, FL [New]

R-2919C Valparaiso, FL [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

4. Section 73.29 is amended as follows:

R-2914A Valparaiso, FL [Remove]

R-2914B Valparaiso, FL [Remove]

R-2914 Valparaiso, FL [New]

Boundaries. Beginning at lat. 30°43'15" N., long. 86°25'00" W.; to lat. 30°43'45" N., long. 86°10'30" W.; to lat. 30°41'00" N., long. 86°05'10" W.; to lat. 30°28'00" N., long. 85°58'00" W.; to lat. 30°28'00" N., long. 86°23'00" W.; to lat. 30°29'00" N., long. 86°25'00" W.; to the point of beginning.

Designated altitudes. Surface to unlimited, excluding that airspace within R-2917.

Time of designation. Continuous.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2915A Valparaiso, FL [Amended]

By removing the present using agency and substituting the following:

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2915B Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2915C Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2917 DeFuniak Springs, FL [Amended]

By removing the present using agency and substituting the following:

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2918 Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2919A Valparaiso, FL [Amended]

By removing the current boundaries, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 30°28'00" N., long. 86°23'00" W.; to lat. 30°28'00" N., long. 85°58'00" W.; to lat. 30°24'00" N., long. 85°56'00" W.; to lat. 30°19'15" N., long. 85°56'00" W.; to lat. 30°22'00" N., long. 86°08'00" W.; to lat. 30°25'00" N., long. 86°22'26" W.; to the point of beginning.

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2919B Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

R-2919C Valparaiso, FL [New]

Boundaries. Beginning at lat. 30°22'00" N., long. 86°08'00" W.; to lat. 30°19'15" N., long. 85°56'00" W.; to lat. 30°11'00" N., long. 85°56'00" W.; thence 3 nautical miles from and parallel to the shoreline to lat. 30°15'06" N., long. 86°06'15" W.; to the point of beginning.

Designated altitudes. 8,500 feet MSL to unlimited.

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

Issued in Washington, DC, on December 22, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-252 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest Timber; Periodic Payments, Downpayments, and Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: On November 6, 1987, at 52 FR 43020, the Forest Service published a notice of proposed rulemaking to implement periodic payments required by the Federal Timber Contract Payment Modification Act. Many timber sale purchasers and trade associations have requested additional time to prepare comments on this proposed rule, primarily because of ongoing efforts by the Forest Service and timber industry to develop an updated standard timber sale contract to submit for public comment. Another reason is that they may need additional time to analyze the several other proposed changes to policy and regulations governing Forest Service timber sales open for comment concurrently. The original comment period ended January 5, 1988. To permit these purchasers and the general public a reasonable opportunity to submit their comments, the public comment period is hereby extended by 45 days to February 19, 1988.

DATE: Comments now must be received on or before February 19, 1988.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447-4051.

Dated: December 30, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 88-204 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3283-4]

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposal Rule and request for comment.

SUMMARY: On July 31, 1987, a panel of the District of Columbia Circuit Court of Appeals ruled 2-1 that the Environmental Protection Agency (EPA) had exceeded its statutory authority by regulating, or claiming authority to regulate, certain recycled hazardous secondary materials. *American Mining Congress* v. *EPA*, 824 F.2d 1177. This notice provides the Agency's interpretation of the court's opinion, and describes the portions of the rules unaffected by the opinion and remaining in force. This notice also proposes amendments to the rules required by the court's opinion. In general, the Agency is proposing to exclude from regulation certain in-process recycled secondary materials in the petroleum refining industry, and certain other sludges, by-products, and spent materials that are reclaimed as part of continuous, on-going manufacturing processes.

DATES: EPA will accept public comments on the proposal until February 22, 1988.

ADDRESSES: The public docket for this rulemaking is located at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket number assigned to this notice is F-87-SWRP-FFFFF. Persons who wish to comment on the notice should place the docket number on their comments, and provide an original and 2 copies. The EPA RCRA docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346 (in Washington, DC, call (202) 382-3000). For information on specific aspects of today's notice, contact Michael Petruska, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
II. Analysis of the Court's Opinion
A. The Agency's Interpretation of the Court's Opinion—General
B. Portions of the Existing Rules Affected by the Court's Opinion
C. Other Regulations Dealing With Recycling Activities
1. Use Constituting Disposal
2. Burning for Energy Recovery and Use of Hazardous Secondary Materials to Produce Fuels
3. Reclamation
4. Speculative Accumulation
5. Inherently Waste-like Materials
D. The Opinion's Effect on Specific Issues
1. Secondary Materials Discarded by Means Other than Final Commitment to a RCRA Disposal Unit

2. On-Site Recycling Activities Involving Solid Wastes
3. Precious Metals Reclamation
4. Scope of the Closed-Loop Exclusion
III. Amendments to Conform to the Court's Decision
A. Amendments Concerning Petroleum Refining
1. Use of Oil-Bearing Residuals from Petroleum Refining in the Refining Process
2. Petroleum Coke Produced with Oil-Bearing Hazardous Secondary Materials From Refining
3. Changes in Regulations
B. Proposed changes in Scope of Reclamation Provision
C. Exclusion of Spent Materials Reclaimed in Closed Systems and Returned to the Original Process
IV. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorization
V. Executive Order No. 12291—Regulatory Impacts
VI. Paperwork Reduction Act
VII. Regulatory Flexibility Act
VIII. Supporting Documents

I. Background

On July 31, 1987, a panel of the United States Court of Appeals for the District of Columbia Circuit held in a 2–1 decision that the RCRA statutory definition of solid waste contained in section 1004(27) of RCRA limited the Agency's authority over hazardous secondary materials destined for recycling to materials that are "discarded". *American Mining Congress v. EPA*, 824 F. 2d 1177 (D.C. Cir. 1987). More specifically, the court held that the Agency has exceeded its authority insofar as it classified certain in-process streams in the petroleum refining and primary smelting industries as RCRA solid wastes. Today's notice sets out the Agency's interpretation of the portions of its existing rules requiring modification in light of the court's opinion. The Agency is proposing the changes that are necessary to conform the existing rules to the court's mandate, and is seeking public comment on those changes.

II. Analysis of the Court's Opinion

A. The Agency's Interpretation of the Court's Opinion—General

The Agency views the court's opinion as applying to the "agency's authority to regulate secondary materials reused within an industry's ongoing production process" as solid waste. 824 F. 2d at 1178. *See also id.* at n.3, describing as "the central issue—whether EPA's interpretation that the term 'discarded material' encompasses materials destined for recycling in an on-going production process is contrary to the statute".

The facts described in the opinion involved two particular types of in-house recycling practices in the petroleum refining and mining (primary smelting) industries. Petroleum refineries often take oil-bearing byproducts and sludges from the refining process, and return these materials, either by direct reinsertion into the petroleum refining process or (more normally) return to an oil recovery system ("slop oil") after which recovered oils are returned to the petroleum refining process. These byproducts and sludges are sometimes hazardous (for example, API separator sludge and DAF Float from petroleum refining, both listed hazardous wastes, are sometimes recycled in this way), and, if so, would be classified as hazardous waste under the Agency's existing rules because they are used to produce fuels. The primary smelting industries also frequently recover additional metal values from sludges and byproducts generated in the primary smelting process. This recovery can involve direct return to the smelting process, or recovery in other unit operations. 824 F. 2d at 1181. To the extent these activities involve sludges and byproducts on the lists of hazardous wastes from non-specific and specific sources (§§ 261.31 and 261.32) and the activity occurs outside of a closed-loop reclamation system, they are classified as solid wastes under the existing EPA rules the court considered in its decision.

The court held that "by regulating in-process secondary materials, EPA has acted in contravention of Congress' intent." 824 F. 2d at 1193. *See also id.* at n.26 ("we decide that EPA exceeded its statutory authority in regulating in-process secondary materials"). The court reasoned that by defining solid waste by using the phrase "other discarded material", Congress intended that only secondary materials that were in some sense thrown away, abandoned, or disposed of could be solid wastes. The court acknowledged that certain types of recycling activities remain within the Agency's authority, because they involve a form of discarding. *E.g., Id.* at n.14 (describing used oil recycling activities). *Id.* at 1191 and n.20 (describing a metal reclamation operation storing metal-bearing materials in open piles, and a pesticide drum reused as a trash container).

Consequently, the Agency intends to amend its existing rules to state clearly that the rules do not extend to on-going manufacturing operations, particularly those like the refining and smelting processes that were before the court which are characterized by continuous extraction of material values from an original raw material. 824 F. 2d at 1181. The court's opinion also compels exclusion of certain types of reclamation processes that closely resemble on-going production activities, and the Agency proposes to amend its rules to exclude these activities as well. As will be explained more fully below, secondary materials being recycled in these ways are not being "discarded" under the court's interpretation of the term.

The court's decision does not affect the Agency's authority to regulate as hazardous wastes those secondary materials recycled in ways where the recycling activity itself is characterized by discarding as defined by the court. That is, manufacturing processes (or other types of recycling) involving an element of discard which do not involve secondary materials passing through a continuous, on-going manufacturing process remain within the Agency's jurisdiction. We explain below more specifically how we view these concepts as applying to the present rules.

B. Portions of the Existing Rules Affected by the Court's Opinion

For the most part, EPA's existing rules already distinguish between on-going, in-house types of manufacturing activities and waste management. Indeed, this was the Agency's avowed purpose throughout the involved and protracted series of rulemakings leading to the current solid waste definition. *See, e.g.*, 50 FR at 617 (January 4, 1985). Accordingly, the existing rules specifically exclude the following secondary materials from jurisdiction: hazardous secondary materials that are used directly as ingredients in manufacturing processes to make new products (provided the secondary materials aren't being reclaimed); hazardous secondary materials that are used directly as effective substitutes for commercial products; hazardous secondary materials reclaimed in closed-loop processes; and particular individual types of hazardous secondary materials involved in on-going types of recycling activities—black liquor from the paper industry, spent sulfuric acid used to produce virgin sulfuric acid, and certain closed processes characterized by reclamation followed by return of the reclaimed feedstock to a manufacturing process. See 40 CFR 261.2(e) and 261.4(a)(6)–(8).

In addition, and significantly, the current rules state that byproducts and sludges being reclaimed are not solid wastes unless specifically listed. The

listing process designates these secondary materials as solid wastes after considering specific factors bearing expressly on the question of whether the reclamation activity involves a continuous, on-going process. See § 261.2[c][3] and 50 FR a 640–41 (January 4, 1985).

The Agency's current rules, however, state that when hazardous secondary materials are used to produce fuels or are contained in fuels, both the secondary materials and the resulting fuels are solid wastes. The court held that true in-process oil-bearing materials in the petroleum refining industry were not solid wastes when continuously reused in the refining process. Such activity, in the court's view, involves continued recovery of hydrocarbon values from crude oil, and the oil-bearing residuals, therefore, are not discarded materials. Consequently, the Agency proposes to change its existing rules to state that oil-bearing secondary materials from the petroleum refining process so recycled are not solid wastes, provided there is no other element of discard or disposal characterizing the recycling activity.

The opinion also dealt with recycling operations in the primary smelting industry. The existing rules classify these recycling activities as reclamation processes because they involve recovery of material values contained in the secondary materials as end products (for example, the recovery of lead from primary lead emission control dusts). These reclamation processes may or may not involve solid waste. Thus, in promulgating the existing rules, the Agency noted that many of these reclamation operations would not involve RCRA solid wastes as they could be considered on-going processing of the original ore concentrate. 50 FR at 640–41. Yet the Agency also indicated that certain other reclamation operations involving sludges and byproducts are not part of an on-going production process and involve elements of discard. Such operations could involve, for example, discontinuous and unrelated processes, infrequent reclamation, or disposal through storage on the land. *Id.*

Because the Agency was unable to develop a self-implementing narrative standard accounting for all of these relevant factors, the final rules state that hazardous sludges and byproducts are solid wastes when they are to be reclaimed *only* if the sludges and byproducts are listed by the Agency in 40 CFR 261.31 and 261.32 on a case-by-case basis. See § 261.2(c)[3]. The existing rules direct the listing determination to be based on a consideration of the factors contained in the preamble to the final rules relating to whether the sludges and byproducts are utilized in on-going, continuous manufacturing processes. *Id.*

To bring the Agency's rules on reclamation into conformance with the court's opinion, EPA is proposing to amend the rules to indicate with more particularity the bases for designating sludges and byproducts as solid wastes, and to ensure that materials reclaimed in true on-going manufacturing processes without any element of discard are not considered to be solid wastes. To make this change, the Agency is proposing to list by rule rather than by explanatory preamble the relevant factors for determining whether to designate these materials as solid wastes when they are to be reclaimed, and to indicate in the rule that the ultimate jurisdictional test is whether these materials are being utilized in an on-going continuous manufacturing process.

The court did not overturn the Agency's jurisdiction over material recovery when not characterized by on-going, continuous production processes. For example, the Agency believes that the following recovery situations could involve the disposal of byproducts and sludges in operations that are not on-going, continuous production processes. In such circumstances, the Agency could retain jurisdiction under the court's opinion:

1. Spent potliners, containing high concentrations of cyanide, could be disposed of through storage prior to potential recovery of cryolite values (as fluoride) but not for any recycling of the cyanide. This reclamation step is ancillary to the main process (aluminum production), since fluoride is not returned to the process to be recovered as a product (rather, it is a component in the potliner), and the potliners themselves are dissimilar to raw materials used originally. The lack of cyanide recycling indicates a waste treatment objective.

2. A wastewater treatment sludge is generated in an impoundment. It is unfit for recovery until it is dewatered. It can be eventually recycled to the smelting process. The sludge must be reclaimed before it can be returned to the process, and is accumulated initially in a manner unlike normal raw materials (raw materials are not customarily stored underwater), and in a manner tantamount to land disposal (see RCRA section 3004(k)). The court's opinion indicates such circumstances may involve RCRA solid wastes. The court specifically refers to similar recovery scenarios as involving solid wastes at 824 F.2d n. 20.

3. Wastewater treatment sludges from a non-smelting process, containing high concentrations of toxic constituents that are not found in ore concentrates and that are not destined for recovery, are disposed of by transfer to a primary smelter for metal recovery. It is possible for such circumstances to give EPA jurisdiction given the element of discard and the lack of an on-going, continuous production process. Moreover, toxic constituents would be discarded because they are not recycled.

C. Other Regulations Dealing With Recycling Activities

EPA's remaining regulations dealing with recycling activities clearly involve elements of discard as construed by the court. None of these activities consist of on-going manufacturing involving continuous extraction of material values. The court's opinion, therefore, does not require modification of these provisions in the solid waste rules. Thus, the Agency expects the regulated community to continue to comply with the applicable regulations. We explain below the relationship of the court's decision to each class of activity.

1. *Use Constituting Disposal.* Current EPA regulations state that secondary materials applied to the land or used to produce products that are placed on the land are solid wastes (products produced therefrom are also solid wastes). If the solid wastes are listed, or exhibit a hazardous waste characteristic, they are hazardous wastes. See 40 CFR 261.2(c)[1]. Examples of uses that constitute disposal include the use of hazardous sludges as road-base material or as dust suppressants and the use of a waste-derived fertilizer placed on the land. These recycling activities meet the court's definition of discard because the use activity is also land disposal.

Hazardous wastes disposed of through uses constituting disposal invariably contain toxic constituents which do not further the use and which are discarded by disposal when the wastes are placed on the land. For example, the dioxin found in Times Beach, Missouri was from used oil mixed with a dioxin-containing byproduct disposed of on the land through use as a dust suppressant. Another example is the disposal of cadmium through the use of the waste-derived fertilizers produced from waste K061.

These recycling activities are not on-going manufacturing processes. When

solid wastes are placed on the land, there is no continuous stream of manufacturing process, but rather there is final disposal of the wastes. Accordingly, the Agency believes that this class of activity is properly within its authority and is unaffected by the court's opinion. Therefore, no rule change is necessary, and the Agency is not reopening this portion of the rule to public comment.

2. *Burning for Energy Recovery and Use of Hazardous Secondary Materials to Produce Fuels.* Current EPA rules state that when hazardous secondary materials are used directly as fuels or used to produce fuels, both the hazardous secondary material and any fuel produced from these materials are solid wastes, and, if hazardous, hazardous wastes. See 40 CFR 261.2(c)(2). As indicated above, the court held that these provisions could not lawfully apply to conventional in-process petroleum refining activities occurring at petroleum refineries characterized by continued extraction of material values from crude oil. Thus, secondary hazardous materials from petroleum refining that are used to produce fuels by introducing them into the petroleum refining process would no longer be classified as solid wastes (assuming there is no element of discard relating to this type of recycling as explained in section III.A. below).

The Agency does not view the opinion as affecting any other aspect of the rules relating to burning. As with the use constituting disposal provisions, burning processes for energy recovery often involve disposal of waste through incineration, a classic form of waste management activity. In these processes, hazardous secondary materials are disposed of by burning and releasing the constituents (potentially indiscriminately) into the air. Congress equated burning for energy recovery and incineration when promulgating section 3004(q) of RCRA as part of the 1984 amendments. (See H.R. Rep. No. 198, 98th Cong. 1st Sess. 39–40.) The court did not overturn regulation of such burning activities but only on-going manufacturing activities. When a generator takes its spent sovient from a degreasing operation and burns it in its boiler, for example, it is not engaged in an on-going manufacturing process, but rather is disposing of a waste from one process (e.g., solvent from degreasing) by burning it in a second unrelated process. Similarly, when a plant takes hazardous still bottoms that are unsuitable for direct use as a chemical intermediate and burns them to recover residual energy, the hazardous constitutents are disposed of as wastes by destruction, just as if they were incinerated. Moreover, the manufacturing utility of the material has come to an end, and the manufacturing activity has concluded. In sum, an energy recovery step is not typically an integral part of the basic manufacturing process, but rather is ancillary and involves disposal of solid waste.

Accordingly, with the exception of in-house recycling activities in petroleum refining, the Agency does not view any of its rules related to burning for energy recovery and the use of hazardous secondary materials to produce fuels as being affected by the court's opinion. The Agency therefore only proposes to amend the rules insofar as they affect the petroleum refining industry.

One further issue involving burning merits discussion. Under the Agency's current rules, some forms of burning do not involve recycling at all. When burning occurs in a boiler or industrial furnace for the dominant purpose of destruction, the activity is classified as incineration. Not only are these incinerated materials solid wastes, but the act of incineration is presently subject to regulation under Subpart O of Parts 264 and 265. See 40 CFR 264.340(a)(2) and 265.340(a)(2). Obvious factors bearing on whether burning is for the purpose of destruction, and so is presently subject to regulation as incineration are: (a) Whether the operator of the device is paid to burn wastes and the percentage of income derived from burning wastes as opposed to producing a product; (b) whether the wastes are selected to meet specifications related to a recycling purpose or rather are simply solicited and accepted indiscriminately; (c) the energy value of the wastes (if burning is for energy recovery); (d) how much energy or material value each waste contributes to the recycling purpose; (e) whether each waste burned is as effective for the claimed recycling purpose as the raw materials normally processed in the device; and (f) whether the toxic constituents in the waste contribute to the recycling objective or are simply being destroyed. Other factors are discussed at 50 FR 638 (January 4, 1985) and 52 FR 17013 (May 6, 1987). Persons burning the waste have the burden of showing that each waste burned is burned for a legitimate recycling purpose and not for destruction. 40 CFR 261.2(f).

3. *Reclamation.* (a) Reclamation Involving Spent Materials. Reclamation activities under the Agency's rules are of two types: regeneration of materials or materials recovery therefrom. See 40 CFR 261.1(c)(4) and 261.2(c)(3). As discussed earlier, this has always been the area of recycling most difficult to classify because certain reclamation activities involve on-going production activities, while others are forms of waste management.

The Agency's rules deal with the problem of classification by differentiating among the types of materials being reclaimed. (See Table 1 in § 261.2(c)(3).) The exact classification is between secondary materials which are previously used, and are used up and no longer usable ("spent materials"), and previously unused residual materials ("sludges and byproducts"). As explained in section II.B. above, sludges and byproducts are more likely than spent materials to be involved in on-going manufacturing operations. The existing rules thus classify sludges and byproducts as solid wastes on a case-by-case basis based on factors which distinguish on-going manufacturing from waste management. Spent materials requiring reclamation, on the other hand, are not directly usable in on-going manufacturing processes, because, by definition, they are no longer usable and must first be restored to a usable condition. There is no continued utilization of material values, though there may be potential for recovery of something usable from a used up or spent material. Thus by definition, these materials are no longer available for use in continuous, on-going manufacturing processes, and as such, are disposed of from these processes even if the reclamation activity occurs at the site of generation (with one exception discussed below).

Of course, when a generator actually disposes of a spent material by sending it to an unrelated reclaimer, the spent material is a solid waste. See 824 F. 2d at n. 14. Examples of waste disposal activities for spent materials include spent solvent reclamation, used oil re-refining, or recovery of spent catalyst.

The only exception to this principle is where the reclamation operation involves closed, continuous processes where reclaimed materials are returned directly to the initial manufacturing process and the entire operation is connected with pipes or other comparable means of conveyance, and there is no element of disposal involved (such as storage in an impoundment). The Court's opinion requires exclusion from regulation in this situation because there is no removal from an on-going process and the court's decision holds that no materials can be considered to be discarded. The Agency proposes to change its existing rules to exclude such situations.

(b) Reclamation Involving Sludges and Byproducts. As discussed in section II.B. above, the current EPA rules indicate that listed sludges and byproducts are solid wastes when they are reclaimed (in other than closed-loop systems as defined in the rules). This listing determination is based on consideration of a range of factors which evaluate the question of whether the materials remain in an on-going, continuous manufacturing process.

As noted previously the Agency proposes to amend these rules to indicate that the Agency lacks authority to regulate secondary materials reclaimed in this manner, and to indicate explicitly what the relevant factors are in making this determination.

4. *Speculative Accumulation.* The Agency's rules state that hazardous secondary materials that are not solid wastes for any other reason become solid wastes when they are accumulated without being recycled for one year without 75 percent of the material being recycled during the one year period. See 40 CFR 261.2(c)(4). Petitioners did not challenge this provision in the *American Mining Congress* litigation. The Agency has concluded that situations satisfying the speculative accumulation criteria involve elements of discard since the materials have been disposed of, are not part of an on-going production process, and are not being (and are unlikely to be) recycled. Secondary materials disposed of through storage for this length of time without recycling simply cannot be characterized as in-process materials. The Agency does not believe this provision requires alteration, but requests comment on this interpretation.

It should be noted that the rules provide a variance allowing persons accumulating speculatively to demonstrate that they are not storing solid waste. 40 CFR 260.31(a). This provision accommodates those unusual situations where there is prolonged storage without recycling but the material being stored might legitimately be considered not a solid waste. 50 FR 652–54 (January 4, 1985). There have been no applications for a variance under this provision since the rule was adopted, supporting the soundness of the existing one year 75 percent test.

5. *Inherently Waste-like Materials.* Section 261.2(d) states that those types of secondary materials listed by EPA after consideration of specified criteria are solid wastes regardless of how they are recycled. The only wastes that the Agency has so designated are the listed dioxin-containing wastes (F020–F023, F026, and F028). The factors the Agency is required to consider in designating secondary materials as solid wastes under this section address the element of discard necessarily involved in recycling these materials (*e.g.*, whether the material is typically discarded, or whether it contains unusual hazardous constituents not found in corresponding virgin material for which the secondary material substitutes which do not contribute to the recycling process, and whether the recycling process may pose a hazard to human health and the environment).

The court's opinion does not affect this provision. The factors upon which the Agency would base a decision are directly related to whether materials are being disposed of, thrown away or abandoned, *i.e.*, discarded. Materials must either be typically disposed of, or contain hazardous constituents which are disposed of by virtue of not contributing to the recycling process. The dioxins in the dioxin-containing wastes serve as an example. Accordingly, the Agency is not proposing to amend this provision and is not soliciting any comment on it.

D. The Opinion's Effect on Specific Issues

1. *Secondary Materials Discarded by Means Other Than Final Commitment to a RCRA Disposal Unit.* The court did not equate discard with final disposition in a RCRA disposal unit. Rather, the court held the term "discarded materials" includes materials abandoned, thrown away, or disposed of, and does not include secondary materials recycled in on-going, continuous manufacturing operations. Indeed, some of the court's definitional examples of discarded materials are secondary materials disposed of by means other than final commitment to RCRA disposal units—namely, used oil destined for recycling, waste piles involved in reclamation placed directly on the land, and recycled pesticide drums placed on the land. 824 F.2d n. 14 & 20.

Equating discard with final disposition in a RCRA disposal unit would not accord with industrial disposal practices and would be contrary to RCRA's purposes. Hazardous secondary materials are rarely, if ever, committed for final disposition to a RCRA disposal unit and then retrieved for recycling. Thus, to the extent the court identified specific discarded materials in certain recycling processes and uses, the court could not have intended discard to mean final disposition in a RCRA disposal unit.

RCRA's definition of the term "disposal" includes a broader range of activities with the potential for environmental releases than final commitment to RCRA disposal units. RCRA section 1004(3). Moreover, RCRA emphasizes the Agency's duty to regulate solid wastes involved in recycling activities by requiring the Agency to control the burning of hazardous wastes, the recycling of used oil, the use of waste as dust suppressants, the recycling and reuse of wastes by small quantity generators, and generally, any recycling involving placement of hazardous waste on the land. *Id.* at section 3004(g), 3014, 3004(l), 3001(d), and H. Rept. No. 198, 98th Cong. 2d Sess. 46.[1] Equating discard with final disposition in an RCRA disposal unit would render these specific congressional directives meaningless.[2]

[1] The estimated volume of such hazardous wastes underscores the importance of distinguishing between discard and final disposition in a RCRA disposal unit. For example, EPA has estimated that over 2.5 million tons of used oil are recycled annually of which virtually none was previously committed for final disposal. (A few Superfund remedial actions resulted in small volumes of previously disposed used oil being recycled.) The Agency has also estimated that 440 million gallons of spent solvents are reclaimed annually (52 FR at 3756 (February 5, 1987)) none of which, to the Agency's knowledge, was previously thrown away in RCRA disposal units. An estimated one million tons of hazardous secondary material residues are burned annually or incorporated into fuels. 52 FR. 17,023 (May 6, 1987). EPA is unaware that any of this material was previously committed for final disposal in RCRA disposal units. In addition, the Fertilizer Institute indicated in public comments to the Agency's 1985 rulemaking on recycling that its members use upwards of 41,000 tons of byproducts and sludges as ingredients in fertilizers annually, many of which are hazardous wastes and none of which are first landfilled or otherwise committed for final disposition in RCRA disposal units.

[2] More specifically, the statute and its legislative history mandate regulation of secondary materials not first committed for final disposal. Section 3004(q) commands explicitly that the Agency regulate burning of commercial chemical products which are not themselves fuels and which are not previously used, much less used and committed for final disposition. Section 3014(c) requires EPA to create an elaborate regulatory structure to prevent used oil which is a hazardous waste from being thrown away and to regulate recycled used oil, including in-house generator recycling. See section 3014(c)(B)(i)(II) ("recycles such used oil at one or more facilities of the generator * * * "). Section 3004(h)(2) indicates that the Agency may establish a different effective date for a prohibition from land disposal of a hazardous waste on the date when alternative protective *recovery* technology is available. This land ban applies to hazardous wastes not yet committed to final disposition in RCRA disposal units.

The legislative history to the waste as fuel provisions (section 3004 (q)) also states Congress intended to close "a major deficiency in the present Subtitle C regulations" which allows "10 to 20 million tons of * * * hazardous waste" to be burned annually. S. Rep. No. 284 at 38, H.R. Rep. No. 198 at 39 (using the figure 10 to 15 million tons). These directives, volume estimates, and enunciations of determination to close off regulatory loopholes would have no meaning if applied solely to the

Continued

Accordingly, EPA does not read the opinion to indicate that secondary materials must first be committed for final disposition in RCRA disposal units before they can be solid wastes. Thus, aside from the types of closed processes discussed below, recycling activities involving the discarding of secondary materials may remain within the Agency's RCRA Subtitle C jurisdiction.

2. *On-Site Recycling Activities Involving Solid Wastes.* The court's opinion does not materially distinguish off-site from on-site recycling. As noted previously, on-site recycling activities may involve solid wastes under certain circumstances. The court found that materials remaining in a continuous on-going manufacturing operation are not discarded. The mere fact that recycling occurs on-site, however, or for that matter is conducted by the initial generator of a secondary material, does not necessarily mean that the activity is part of one on-going manufacturing operation. On-site or single generator recycling activities can continue to be characterized by elements of discard and so remain within the Agency's Subtitle C jurisdiction. The following examples make this point:

a. A degreasing operation disposes of a spent degreasing solvent, which is removed from the production process [*i.e.*, not in a closed process], taken to an on-site distillation unit, and regenerated. Here, not only is the spent solvent being disposed from the operation in which it is generated, but it is not part of a manufacturing process at all. There is no continued extraction of material values from a raw material, but rather it is a useless waste until restored through treatment to a usable condition.

b. A generator generates an ignitable byproduct which it blends with fuel oil and disposes of through burning in an on-site boiler. This activity does not involve materials passing through a continuous on-going manufacturing process. Rather, a byproduct of a waste generating process is being disposed of by burning.

c. A generator generates a hazardous wastewater treatment sludge which is eventually returned to the manufacturing process for metal recovery. The sludge is disposed of through storage in a surface impoundment prior to its return. The storage in a surface impoundment is disposal of solid waste because it involves placement on land with potential entry into the environment. Processes where such materials are generated and stored in underwater ponds or lagoons are not part of continuous on-going manufacturing processes and may involve disposal. Such sludges also must normally be reclaimed before they are reusable, a further indication of lack of process continuity. Impoundments, moreover, are not process devices, but rather function as wastewater treatment units.

The court's decision allowing for regulation of on-site recycling processes that involve discarding accords with the statute and its legislative history which likewise make clear that Congress contemplated and directly commanded the Agency to regulate many on-site recycling activities. For instance, the legislative history with respect to burning hazardous waste-derived fuels indicates that Congress intended that "the Administrator, in controlling the burning of waste and the emissions from facilities that burn such wastes, may not make distinctions solely on the basis of whether the facility is on the site of the generator or is an off-site facility." S. Rep. No. 284 at 38; the same language is in H.R. Rep. No. 198 at 41–42. The text of the statute itself refers (in the context of authorizing certain exemptions for facilities burning de minimis quantities of hazardous waste fuels) to regulation of "wastes * * * burned at the same facility at which such wastes are generated." RCRA section 3004(q)(2)(B).

The following provisions likewise indicate specifically that on-site recycling activities can involve hazardous wastes: section 3004(r)(2) (A) and (C) (generation and reinsertion on-site of oil-bearing wastes into the petroleum refining process at petroleum refineries classified as SIC 2911: a facility that refines crude oil); section 3014(c)(2)(B)(i)(II) (controlling used oil recycling activities at a used oil generator's facility); section 3004(q)(2)(A) (use of oil-bearing wastes "at petroleum facility at which such wastes were generated").

The Agency believes these provisions make clear that there is no automatic on-site/off-site distinction. The Agency notes, however, that the existence of on-site recycling is a relevant element in assessing whether a recycling process is really an on-going manufacturing activity or otherwise involves discarded materials. The Agency accordingly does not propose incorporating any such automatic distinction in its rules.

3. *Precious Metal Reclamation.* Under the Agency's rules, secondary materials being reclaimed for their precious metal content are classified as solid wastes in the same way as other secondary materials being reclaimed: spent materials so reclaimed are always wastes, and sludges and byproducts so reclaimed must be specifically designated as such (by listing) to be wastes. The court's ruling does not change this classification system. The opinion did not refer specifically to precious metal reclamation, and normal precious metal recycling operations are not characterized by continuous on-going manufacturing processes, but rather involve elements of discard in the sense that materials are disposed of from an industrial process. These operations involve an independent reclaimer procuring waste materials generated by another person from another industry and recovering metal values therefrom. An example is recovery of precious metals from electroplating wastes. This is not one continuous process, but two unrelated ones, with the electroplater disposing of his wastes. This type of operation is analogous to used oil recycling operations described in n.14 of the court's opinion. Specifically, the court noted that when a generator sends used oil to be recycled at a different facility, the generator is discarding the oil by sending it to be recycled by a different party. The generator was disposing of the material by giving up control over it. Similarly, when precious metals in wastes from one industry are eventually recovered by another industry's process, the generator is also discarding these materials.

Accordingly, the Agency does not propose to amend the existing rules relating to classification of secondary materials destined for precious metal reclamation. The Agency notes that precious metals reclamation is subject to a set of special, reduced standards at 40 CFR Part 266, Subpart F. Further, EPA has received a petition from the International Precious Metals Institute (IPMI) requesting an exemption from the manifest requirements. EPA requests comment on this petition from any interested party.

4. *Scope of Closed-Loop Exclusion.* The Agency's existing rules provide that hazardous secondary materials that are reclaimed in closed-loop systems are excluded from being solid wastes. (See 40 CFR 261.2(e)(1)(iii).) A closed-loop system is one where secondary materials are returned for reclamation (i.e., for contained material values to be recovered from them) as feestock to the primary process which generated them without first being reclaimed. Secondary materials reclaimed in tanks and then returned to the original process as feedstock are also excluded when the system is connected entirely by pipe.

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nearly non-existent practice of burning hazardous secondary materials that are committed to final disposition in RCRA disposal units.

(See 40 CFR 261.4(a)(8).) The court's opinion does not affect these provisions. Accordingly the Agency proposes no changes to this Section.

III. Amendments to Conform to the Court Decision

A. Amendments Concerning Petroleum Refining

1. *Use of Oil-Bearing Residuals from Petroleum Refining in the Refining Process.* The court held that the Agency had exceeded its authority in regulating on-going fuel production activities in the petroleum refining industry. These activities involve situations where crude oil is refined, and oil-bearing residues from that refining process are returned for further refining as part of one continuous and on-going process. The oil-bearing residues are sometimes reinserted directly into the petroleum refining process, but more often are placed in a centralized recovery system ("slop oil system") where oil is recovered and returned to the petroleum refining process. Materials so recycled, the court held, are not discarded and so cannot be solid wastes.

In light of this holding, EPA is proposing to exclude from jurisdiction petroleum refining residues that are recycled in this manner. The salient elements of the exclusion are:

- The oil-bearing residue must be generated and reinserted onsite;
- It must be inserted into the petroleum refining process; and
- The process must be on-going and continuous, and not be characterized by any elements of discard.

We believe these conditions accurately reflect the Court's holding for the following reasons.

a. *On-site.* The Agency is proposing to limit this amendment to situations where the oil-bearing residue is generated and reinserted onsite because interpreting the court's holding as excluding from the solid waste definition all hazardous oil-bearing secondary materials brought to a petroleum refinery from off-site would have the unintended and improper effect of rendering a statutory provision, RCRA section 3004(r)(3), without meaning. This provision exempts from the hazardous waste fuel warning label requirement "fuels produced from oily materials resulting from normal petroleum refining, production, and transportation practices" where the oily materials are reintroduced into the petroleum refining process under enumerated circumstances. This provision differs from section 3004(r)(2) as it applies to oily materials brought to a refinery from off-site. 50 FR 28715 (July 15, 1985). Since Congress refers, in section 3004(r)(1), to such materials as potential "hazardous wastes identified or listed under section 3001" (*i.e.*, a subset of solid waste), the Agency must include such materials within the solid waste definition. The Agency also notes this reading does not suffer from the problem of circularity that concerned the court in that the provision applies to "oily materials", not to wastes. Applying the court's reasoning, these materials are not part of an on-going, continuous petroleum manufacturing process, but rather have been disposed of, 824 F.2d at n.14. These materials are, therefore, solid wastes.

Finally, with respect to section 3004(r)(3), under the Agency's current rules, solid wastes that are indigenous to a manufacturing process cease to be solid wastes when they are returned to that process for recycling. 50 FR 600 (January 4, 1985); 50 FR 49167 (Nov. 29, 1985); 52 FR 16989–99 (May 6, 1987). This would also be the case for the oil-bearing materials mentioned in section 3004(r)(3). Consequently, when such materials are reinserted into the petroleum refining process, they would cease to be solid wastes.

b. *Reinsertion Must be Into a Refining Process.* The court directed the Agency to exclude from the solid waste definition those secondary materials passing through a continuous petroleum refining process. Petroleum refining processes are those primarily producing gasoline, kerosene, lubricants and fuel oils from crude petroleum through distillation of crude oil or intermediates (gas oils, naptha, etc.), cracking and other processes (this description paraphrases the SIC 2911 definition). Accordingly, the Agency proposes to exclude secondary materials reinserted into these ongoing refining processes.

However, use of oil-bearing hazardous residues in a non-refining process does not fit the court's description of an on-going manufacturing process. Rather, such operations resemble the activities involving used oil mentioned in footnote 14 of the opinion, which the court indicated were examples of discarding. There, used oils were taken, reclaimed (i.e., some contaminants were removed) in a process different than the one that generated them, and used as fuels. Similarly, when oil-bearing hazardous residues are taken to a non-refining process—for example a process that uses simple settling to remove bulk solids and water—the process is exactly analogous to the one involving used oil except that a different type of oil-bearing material is involved.

c. *There Must Be No Element of Discard Involved.* The Agency also proposes that to be excluded from jurisdiction, hazardous secondary materials from petroleum refining must be returned to the refining process in a way that involves no element of discard as the court construed the term. For example, secondary materials stored in a surface impoundment would be within the solid waste definition because they have been disposed of. By placing the material on the land in a way that contaminants can be released into the environment, the practice meets the definitions of disposal in RCRA sections 1004 and 3004(k). The court also characterized such recycling practices involving placement on the land (whether for storage or end disposition) as disposal and indicated that the materials so managed were solid wastes. 824 F.2d at n.20. And as discussed earlier, recycling activities may involve disposal through storage. Thus, if secondary materials are stored underwater in lagoons or ponds, such materials have been disposed of and are RCRA solid wastes. Indeed, the impoundments themselves are wastewater treatment units, not steps in a manufacturing process. Under today's proposal, petroleum refining oil-bearing hazardous secondary materials are solid wastes if they are disposed of through storage before recycling. Units in which the materials are stored consequently would continue to be regulated units. However, as stated earlier, when such materials are removed from such units and reinserted into the petroleum refining process, they would cease to be solid wastes.

2. *Petroleum Coke Produced With Oil-Bearing Hazardous Secondary Materials From Refining.* The Agency proposes to exclude from the solid waste definition oil-bearing secondary materials from petroleum refining used to produce petroleum coke at a refinery, provided there is no element of discard involved in the recycling practice as explained above. This activity is also characterized by on-going utilization of hydrocarbons contained in the original crude oil and so comes within the scope of the court's opinion.

Such secondary materials are not excluded if they are disposed of through storage preceding reintroduction to the coking process. The Agency also notes that failure to exclude secondary materials so disposed of would render RCRA section 3004(q)(2)(A) meaningless. This provision applies only when petroleum refinery wastes are converted into coke at the facility at which they are generated, i.e., a petroleum refinery. If the Agency were to exclude from jurisdiction secondary

materials disposed of through storage, there would be no materials to which this provision would apply. In addition, the legislative history to this provision indicates special concern for, and directs regulation of petroleum refining wastes stored in impoundments before being used in the coking process. S. Rep. No. 284 at 39.

3. *Changes in Regulations.* The Agency is thus proposing two regulatory exclusions from the solid waste definition. The first exclusion is for secondary materials which are generated on-site and reinserted into the petroleum refining process (which language should be understood to include initial reinsertion to the slop oil system followed by reinsertion into actual refining processes) at conventional petroleum refineries provided the materials are not disposed of through storage in a manner involving placement on the land before being so recycled (or are not disposed by being accumulated speculatively before eventually being recycled). As noted previously, such storage is disposal (a type of discard), and the impoundment is a regulated unit. Indigenous oil-bearing sludges removed from the impoundment and reinserted in the process would, however, cease being solid wastes upon reinsertion.

The second proposed regulatory change involves oil-bearing hazardous secondary materials from petroleum refining which are used to produce petroleum coke at the refinery generating the material. This exclusion likewise would not apply when disposal through storage (involving placement on the land), precedes recycling or when the secondary materials are accumulated speculatively.

B. Proposed Changes in Scope of Reclamation Provisions

As previously discussed, the Agency's existing rules indicate that hazardous spent materials being reclaimed are always solid wastes. But sludges and byproducts are only solid wastes if they are specifically and affirmatively designated as solid and hazardous wastes through the listing process. 40 CFR 261.2(c)(3). The factors used by EPA to justify listing a sludge or byproduct destined for reclamation as solid wastes are currently not set forth in the rule, but rather in the explanatory preamble. These factors are:

How frequently the material is recycled on an industry-wide basis, whether the material is replacing a raw material and the degree to which it is similar in composition to the raw material, the relation of the recovery practice to the principal activity of the facility, and whether the secondary material is managed in a way designed to minimize loss—all of which show that the material is handled as a commodity. (See 50 FR at 641; January 4, 1985.)

Consideration of the factors is for the purpose of determining whether the normal means of reclaiming the sludge or byproduct resembles a continuous, on-going production process. *Id.*

The rules for spent materials, in the Agency's view, are for the most part unaffected by the opinion because spent materials are no longer useful, and so, by definition, are not involved in a continous production process and are disposed of. These discarded wastes must be treated before they can be put back to use. (section III. C. of this preamble describes one exception to this general principle.)

With regard to sludges and byproducts, the Agency's existing rules for reclaimed sludges and byproducts already resemble the standard set out in the court's opinion. Yet to make the rules more clearly consistent with the court's opinion, the Agency proposes to amend the rules to indicate that the object in designating sludges and byproducts as solid wastes via listing is to distinguish true on-going manufacturing processes from discontinous waste management activities characterized by elements of discard.

To do so, we are proposing to make two changes in the existing rules. The proposal makes explicit in the regulation itself the factors used to designate reclaimed sludges and byproducts as solid wastes, and the proposal indicates that the ultimate standard in making a decision is whether reclamation of the material is part of a continous on-going manufacturing process. The factors the Agency would consider in making this determination are the same as those described in the preamble to the final regulation.

Since the Agency fully explained its rationale for this choice of factors when it promulgated the final rule in 1985, only a short additional explanation is required here. These factors all bear on a regulatory determination of whether a particular material is discarded. The fact that the sludge or byproduct at issue is typically disposed of rather than recycled bears on whether a material is discarded or intended for discard. The second factor—whether the material is replacing a raw material—indicates that the material would be utilized further in a primary process, an indication of process continuity.

The third factor, the relation of the recovery practice to the principal activity of the facility, is also relevant. Where sludges and byproducts are returned not to the principal manufacturing process at a facility, but rather to an ancillary recovery step, there is a potential element of discard about the activity. The material is no longer suitable for continued use in the manufacturing process, but must set aside for some other purpose. As previously discussed, an example is cryolite recovery from spent potliners in the primary aluminum industry, an activity similar to the recycling activities described as involving waste management in footnote 14 of the court's opinion in that a material taken from a process is no longer used in the process, and so is discarded when sent to a different recovery operation. (Other factors, perhaps more important, also indicate that this activity could involve a solid waste. That is, spent potliners contain high concentrations of cyanide which is not recycled—indicating a waste treatment objective—and potliners are typically piled in the open before being recycled.)

The final factor involves the means of handling sludges and byproducts before they are to be reclaimed. If these materials are stored securely so that hazardous constituents are not likely to be released to land, air or water, their status as valuable, in-process materials is confirmed in an objective way. On the other hand, if the manner if storage meets the RCRA definition of disposal (*i.e.*, placed on the land as in an impoundment or an unenclosed pile—the activity involves discard (see RCRA section 3004(k)). Consequently, this factor is certainly relevant in determining whether sludges and by-products are wastes when reclaimed. As noted earlier, the opinion supports this position. 824 F.2d at n.20.

In addition to the factors discussed above relating to whether reclamation occurs as part of a continuous manufacturing process, the proposed rule also contains an important consideration to be used to distinguish reclamation activities from waste treatment. This is the secondary material's similarity to the raw material it is replacing, both in terms of material value to be recovered and concentration of toxic constituents. For example, an emission control dust from primary lead production sent to a different lead smelter but containing as much lead, and the same toxic constituents, as ore concentrate, is much more likely to be involved in a single, continuous production process than a sludge from an unrelated industry (for example, electroplating) which contains less recoverable metal than the virgin ore concentrate and (more importantly)

significant concentrations of toxic constituents not normally found in the ore concentrate. Most importantly, these other hazardous constituents are normally not recovered, and so are typically discarded by the process. These materials are not only discarded, but their presence often indicates that the recycling activity is largely a waste treatment process.

Finally, there may be situations where the Agency has designated a sludge or byproduct as a solid waste via listing but the material at a particular facility is acutally being reclaimed in a manner resembling on-going production without discard. For example, if the Agency were to list a particular slag from primary lead smelting because it is typically disposed of, is normally stored in open piles for long periods before recovery, and contains low amounts of lead compared to normal ore concentrate, but at a particular facility the slag is stored in storage bins, is typically shipped to another lead smelter within a short time of generation, and is unusually lead rich, the particular slag would not be deemed to be discarded. This possibility is remote, given that the existing closed-loop exclusion will already exclude most or all of the situations where listed sludges and byproducts are truly involved in on-going production. To allow for the possibility, however, we are also proposing to amend the rules today to indicate that any person with a listed sludge or byproduct destined for reclamation in a primary process not already excluded under the closed-loop provision can show that the sludge or byproduct is not discarded because it is involved in a continuous manufacturing process. This provision would be self-executing, and so does not require prior petition to the Agency. However, the burden of proof is on the person making this claim (§ 261.2(f)), and the demonstration would have to be based on the same factors the Agency would consider. In this regard, we note that the factor to be given principal weight in evaluating such a claim is how the materials are stored before being reclaimed. If the manner of storage involves disposal (i.e., involving placement on the land) it would be ineligible for exclusion under this provision. Only in unusual circumstances (storage in an enclosed pile for example) might the Agency accept such a claim. A demonstration would also have to address whether there are toxic constituents present which are not normally found in the corresponding virgin material and whether such toxic constituents are reclaimed or are discarded.

C. Exclusion of Spent Materials Reclaimed in Closed Systems and Returned to the Original Process

The final exclusion we are proposing in today's rules is for hazardous secondary materials that are reclaimed in closed systems followed by return of the reclaimed material to the original process. An example would be spent solvents that are stored and reclaimed in devices that are connected by pipes followed by return of the reclaimed solvent to the original process for further use. Another example is the regeneration of spent acid at steel plants which is sent to the original process for further use, where the entire operation occurs in tanks and/or industrial furnaces and the operation is connected by pipes. Under these circumstances, the spent material is not discarded. There is no element of discard perceptible when materials are reclaimed in these closed systems; there is just one continuous process.

The Agency indeed has already excluded a subset of these situations. See § 261.4(a)(8) (July 14, 1986), excluding from jurisdiction secondary materials which are reclaimed and returned for reuse in a production process and the reclamation system is closed in the sense of only tank storage being involved, the system is connected with pipes or other enclosed means of conveyance, the reclamation does not involve controlled flame combustion, accumulation time never exceeds 12 months, and the reclaimed material is not used to produce a fuel or a material that is recycled by being placed on the land. The exclusion proposed today would slightly extend this principle to cover situations where the reclaimed material is returned to the original process not as a feedstock but for some other purpose such as a degreasing agent. (The Agency suggested that such a change might be appropriate in the rulemaking on hazardous waste tanks. 51 FR 25442 (July 14, 1986).)

Although the court's opinion did not deal explicitly with this type of reclamation, we have concluded that the court's rationale applies to these closed reclamation systems. The reclamation of spent materials is not precisely like the petroleum refining and mining (smelting) processes discussed in the opinion because the latter processes involve continued extraction of hydrocarbon or metal values from secondary materials as part of on-going manufacturing processes, while reclamation of spent materials involves recovery of the same material (e.g., a solvent). However, EPA notes that in some cases, spent materials (or other hazardous secondary materials) are reclaimed continuously (or nearly so), and the reclamation process is an integral part of the manufacturing process. In these cases, provided there is no element of discard, EPA has concluded that the secondary material being so reclaimed is not a solid waste. We are therefore proposing to amend § 261.4 to exclude spent materials being reclaimed in closed systems, subject to certain conditions specifying the nature of the closed system.

Today's rule thus proposes to exclude from jurisdiction hazardous secondary materials that are reclaimed and returned to the original process (as these terms are explained in 51 FR 25442 and 50 FR 640 (July 14, 1986 and January 4, 1985) provided that only tank storage is involved and the entire process through completion of reclamation is closed by being entirely connected with pipes or similar enclosed conveying devices. Like the existing exclusion in § 261.4(a)(8), today's proposal does not apply when there are elements of discard involved in the recycling process. Thus, if secondary materials accumulate for extended periods without being reclaimed, the process is not continuous because recycling is not occurring and the materials have been disposed of through storage. The 12-month period specified in existing rules, which proved non-controversial when adopted for other types of tank systems, appears to be an appropriate time period to gauge overlong accumulation. (Note that an owner or operator claiming this exclusion must keep sufficient documentation to show that his operation meets the conditions of the exclusion—in this case that his storage does not exceed 12 months.) See § 261.2(f)

Second, the rule proposed today would not exclude situations when the reclaimed material is to be burned for energy recovery or placed on the land. Processes where secondary materials are burned for energy recovery or are used to produce fuels, or materials that are applied directly to the land are not within the court's view of in-process, on-going manufacturing. (The condition in existing § 261.4(a)(8)(ii) likewise is intended to retain jurisdiction over recycling activities involving burning for energy recovery. 51 FR 25442 Col. 3.) These provisions would have little meaning if they could be avoided by the simple expedient of connecting a unit burning wastes for energy recovery to a tank via piping. Not only are these

burning or land placement activities themselves disposal, but the statute specifically addresses on-site waste burning activities and commands their regulation. See section 3004(q)(2)(B); see also sections 3004(q)(2)(A), 3004(r)(2), and 3014(2)(B)(i)(II). Similarly, if the materials are being incinerated, they are not being recycled at all and so would be disposed of via destruction. The proposed rule consequently also indicates that the exclusion does not apply when hazardous secondary materials are piped to incinerators.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's proposed amendments are *not* imposed pursuant to HSWA. The rule changes, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on State authorization is discussed next.

B. Effect on State Authorizations

Today's rule, if adopted as final, will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State laws.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. However, it should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). The amendments proposed today reduce the scope of the existing Federal requirements. Those provisions appear in 40 CFR 261.2 and 261.4. Therefore, authorized States will not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions proposed today.

However, as noted above, States are required by § 271.21 (51 FR 33722) to revise their programs to reflect Federal program changes. A number of States qualified for final authorization prior to being required to adopt the redefinition of solid waste rulemaking of January 4, 1985 (50 FR 614). Since the January 4, 1985 rule is more stringent than the rule under which such States were authorized, such States were required to revise their programs in accordance with § 271.21. Today's proposed changes, if promulgated, will not preclude EPA's ability to authorize States which have subsequently adopted the January 4 rule since it would reduce the scope of the Federal requirements. However, certain aspects of the State's regulation will be broader in scope than the Federal program and therefore not part of the authorized State program. This means that while they are enforceable under State law, they are not subject to Federal enforcement.

40 CFR 271.21(e) (51 FR 33722, September 22, 1986) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to change in the Federal program. The question arises, however, of whether States which have not yet adopted the January 4 rule must adhere to EPA's published compliance schedules for such adoption. Where States have delayed rulemaking pending today's proposal clarifying the impact of the court's decision, the Regional Administrators may be flexible in further extending the modification deadlines. The Regional Administrators should take into account the States' regulatory and/or legislative procedures in deciding what further extensions may be warranted. However, any States which have delayed rulemaking should now proceed to expeditiously adopt the January 4, 1985, rules as amended by today's notice, when rule changes resulting from today's proposal are finalized.

V. Executive Order No. 12291—Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will: (1) Have an effect on the economy of $100 million or more; (2) significantly increase costs or prices to industry; or (3) diminish the ability of the U.S.-based companies to compete in domestic or export markets. The Administrator has determined that today's proposed amendments do not constitute a major rule because the amendments will decrease the scope of the Subtitle C regulatory program. This proposed rule has been submitted to OMB for review under E.O. No. 12291.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because today's proposed amendments reduce the scope of the Subtitle C regulatory program.

VIII. Supporting Documents

The documents used in developing this notice are available in the EPA RCRA Docket at Room LG–100, 401 M Street SW., Washington, DC 20460. Persons who wish to view docket materials must make an appointment by calling (202) 475–9327. The docket code number is F–87–SWRP–FFFFF.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: December 31, 1987.

Lee M. Thomas

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LIST OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. Section 261.2 is amended by revising paragraph (c)(3) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) *Reclaimed.* (i) Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed. Sludges and byproducts will be designated by EPA as solid wastes by listing in § 261.31 or § 261.32 of this part based on consideration of the following factors, no one of which shall be determinative:

(A) Whether the sludge or byproduct, on an industry-wide basis, is typically recycled rather than disposed of;

(B) Whether the sludge or byproduct is replacing a raw material when it is reclaimed (i.e., whether it is reclaimed in a primary rather than a secondary process);

(C) Whether the reclamation practice is closely related to the principal activity of the reclamation facility;

(D) Whether the sludge or byproduct is stored before being reclaimed in a manner designed to minimize loss (for example, by utilizing storage practices that do not involve placement on the land); and

(E) Other appropriate factors.

(ii) The ultimate object in applying these factors is to determine whether the sludges or byproducts are being utilized in on-going, continuous manufacturing processes. However, when the sludges or byproducts contain significant concentrations of toxic constituents not normally found in the raw materials they are replacing, which toxic constituents are not reclaimed by the process, the process may be waste treatment rather than reclamation. In addition, if a byproduct or sludge actually has been designated as a solid waste pursuant to this provision, an individual generator may nevertheless demonstrate that his sludge or byproduct is being reclaimed in an on-going continuous manufacturing process based on the factors used by the Agency. This demonstration is self-implementing; but under paragraph (f) of this section, the burden of proof is on the generator making the demonstration. The Agency will not accept demonstrations where there is storage involving placement on the land.

* * * * *

2. Section 261.4 is amended by revising paragraph (a)(8) and by adding paragraphs (a)(9) and (a)(10) to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not also involve controlled flame combustion for energy recovery (such as could occur in boilers or industrial furnaces) or incineration (by burning in an incinerator);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9) Oil-bearing hazardous secondary materials from petroleum refining which are converted into petroleum coke at the same facility at which such materials are generated, provided the materials are not stored in a manner involving placement on the land, or accumulated speculatively, before being so recycled. (However, coke produced from such recycling is not a solid waste.)

(10) Oil-bearing hazardous secondary materials from petroleum refining that are generated onsite and reinserted into the petroleum refining process along with normal process, streams, provided that the materials are not stored in a manner involving placement on the land, or accumulated speculatively, before being so recycled. (Fuels produced from such recycling activities are not solid wastes.)

* * * * *

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[MM Docket No. 86–405; FCC 87–390]

Broadcast Services; Flexible Operational and Licensing Procedures for the Broadcast Auxiliary Services and the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action terminates a proceeding that was initiated by a *Notice of Inquiry* (*NOI*), FCC 86–453, released November 4, 1986 (51 FR 40990, November 12, 1986) to gather information related to frequency coordination and the feasibility of relaxing licensing for portable and mobile stations in the broadcast auxiliary and the cable television relay services. The record lacks specific proposals and suggestions that could provide guidance to implement required participation in local frequency coordination, a necessary prerequisite to relaxing present licensing procedures.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 86–405, adopted December 15, 1987, and released December 30, 1987.

This full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The NOI suggested that broadcast and cable entities might be granted blanket authorization to operate portable and mobile stations on any frequencies in bands that they are permitted to use rather than being licensed for specific frequencies. This blanket license concept is predicated and critically dependent upon the existence of highly developed local frequency coordination and a minimum of Commission involvement. The proceeding, therefore, focuses on frequency coordination issues.

2. The comments received raised concerns about issues such as uniform quality of coordination service, limited time and resources available to coordinators, and the authority and selection of coordinators. Although most commenters urged required local coordination by all licensees, the concerns raised in the NOI were not addressed and no guidance was offered to aid in formulating a proposal in this area. However, comments indicate that there is an active effort by an industry-wide group, the National Frequency Coordinating Council, which is making progress toward formulating mutually beneficial solutions to frequency coordination problems.

3. Therefore, the Commission will not now propose rule changes to mandate aspects of the coordination program. The industry is invited to develop a viable, comprehensive plan that resolves the concerns uncovered in this proceeding and to submit its proposal in an appropriate petition for rulemaking. This will afford industry the opportunity to set its own priorities and timetable in this matter.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-341 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 70639-7206]

Critical Habitat for Hawaiian Monk Seals; Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NMFS proposes to extend critical habitat for Hawaiian monk seals beyond 10 fathoms in areas designated as critical on April 30, 1986. NMFS believes the designation of critical habitat to 20 fathoms would benefit the species because it will include additional areas that may require special management consideration or protection. Also, NMFS proposes to add Maro Reef to the areas designated as critical in the Northwestern Hawaiian Islands (NWHI).

DATE: Comments should be received by February 8, 1988.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213-548-2518; or Margaret Lorenz, Protected Species Management Division, NMFS, Washington, DC 20235, 202-673-5349. Copies of the final environmental impact statement are also available from these offices.

SUPPLEMENTARY INFORMATION:

Background

Since the final rule designating critical habitat out to 10 fathoms was issued (April 30, 1986, 51 FR 16047), NMFS has continued to examine the basis for its decision. Of particular concern is whether areas beyond 10 fathoms may be in need of special management considerations or protection either now or in the reasonably forseeable future. To provide the agency with the best available information on this issue and to assist it in determining whether a reconsideration of the current designation is appropriate, NMFS solicited public comments on this matter.

Comments were invited on whether the areas between 10 to 20 fathoms around the islands that are included in the current designation of critical habitat "may require special management considerations or protection." The phrase "special management considerations or protection" has been defined by regulation at 50 CFR 424.02(j) as "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." Commenters were asked to address activities that may occur within the range of the Hawaiian monk seal which would require special management measures. Also, comments were requested on whether Maro Reef should be included in any revision to the designation of critical habitat that may result from this consideration.

Comments were received from the State of Hawaii, Marine Mammal Commission, Greenpeace, Sierra Club Legal Defense Fund, American Cetacean Society, New England aquarium, Conservation Council for Hawaii, American Society of Mammalogists, Humane Society of the U.S. and eight individuals during the public comment period on the advance notice of proposed rulemaking.

All commenters, except the State of Hawaii, favored extending critical habitat out to 20 fathoms and including Maro Reef in the areas designated as critical. The State believes there is insufficient evidence to show that waters from 10 to 20 fathoms deep, or around Maro Reef, are particularly critical, and they believe there is no legal basis for the proposed rulemaking. The State did not agree with the original designation of critical habitat in the NWHI. In this case, the State believes that NMFS does not have data on what proportion of their time monk seals spend in this range, how much food or other requirements they derive from it, and how the designation of critical habitat out to 20 fathoms would provide significantly greater protection for the seals than existing critical habitat.

The comments submitted by the Marine Mammal Commission were representative of the other commenters. Their recommendations are based on the conclusion that available data and information clearly indicate that essential feeding occurs out to and beyond the 20 fathom contour. Depth-of-dive studies, indicating that monk seals spend a substantial amount of time diving and presumably feeding in waters deeper than 10 fathoms, suggest that monk seals cannot sustain themselves exclusively in depths of less than 10 fathoms and that waters deeper than 10 fathoms provide necessary space for normal behavior. The Commission believes that areas within and beyond the 20 fathom isobath need special management considerations or protection because of commercial fishing, marine debris, and increasing ship traffic associated with fishing operations, potential offshore mining, research and management activities and other activities. Entanglement has occured in active fishing gear and recently caused the death of one Hawaiian monk seal. In the Hawaiian Island National Wildlife Refuge, the Fish and Wildlife Service has identified provisions in its Master Plan/Environmental Impact Statement for the Refuge to prohibit the transit of vessels in waters shallower than 100 fathoms around Refuge Islands and to regulate and monitor nearshore vessel traffic.

The Commission believes that areas leased off the NWHI for deep seabed mining could threaten monk seals by disrupting behavioral patterns, by introducting contaminants that could adversely affect monk seals or their prey, or by modifying habitat features that support essential prey species.

Also, the Commission states that Maro Reef should be included in the designation of critical habitat because monk seals are frequently observed around the reef even though the nearest regularly used hauling ground is located at Laysan Island, about 70 nautical miles away. The fact that seals are sighted frequently at this reef confirms regular use of the area, and it is reasonable to conclude that Maro Reef constitutes important feeding habitat and/or space for at least part of the population.

After reviewing the comments of the Marine Mammal Commission and others as well as our earlier decision regarding critical habitat for the Hawaiian monk seal, NMFS believes it is prudent to extend the designation of critical habitat out to 20 fathoms in all areas currently designated as critical habitat and to include Maro Reef. This action is described in Alternative One of the Final Environmental Impact Statement—Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands (May 1986). NMFS especially focused on the extensive comments regarding the areas that may need special management consideration or protection. The designation of critical habitat to 20 fathoms affords substantial protection for the Hawaiian monk seal and includes areas that are both essential and in need of special management consideration or protection. The additional areas incorporated in this designation consist primarily of foraging habitat.

Critical Habitat

The Endangered Species Act defines critical habitat as "* * * (i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretary that such areas are essential for the conservation of the species" [16 U.S.C. 1532(5)(A)). "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied" by the species (16 U.S.C. 1532(5)(C).

The criteria to be considered in making a critical habitat designation are included in 50 CFR 424.12. The following biological requirements must be considered in designating critical habitat:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offshpring, germination, or seed dispersal; and generally,

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of listed species.

Regulations designating critical habitat must be based on the best available scientific data and must be accompanied by a brief description and evaluation of those activities that may adversely modify the habitat or may be affected by designation. Economic and other relevant impacts of specifying critical habitat must also be considered when designating habitat, and any area may be excluded from a critical habitat designation if a determination is made that the benefits of the exclusion outweigh the benefits of designation. The only exception to this provision is if the failure to designate critical habitat will result in the extinction of the species.

To determine what portion of the monk seal's range contains habitat that is consistent with the definition of "critical habitat," NMFS reviewed the available biological information, comments on the Supplemental Environmental Impact Statement, the management recommendations made by the Recovery Team and the Marine Mammal Commission, the comments received in response to the advance notice and the record of Endangered Species Act Section 7 consultations on Federal activities in the NWHI.

There are no inherent restrictions on human activities in an area designated as critical habitat. A critical habitat designation directly applies to those actions authorized, funded, or carried out by Federal agencies. It notifies Federal agencies that a listed species depends on a particular area for its continued existence and that any Federal action that may affect that area is subject to the consultation requirements of section 7 of the ESA. Any Federally regulated activities may be conducted in an area designated as critical habitat if the authorizing Federal agency determines through the Section 7 consultation process that the activity is not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. Activities that are conducted by state agencies or the private sector without Federal involvement may be carried out without regard to Section 7 although other provisions of the ESA and other Federal and State laws may impose prohibitions on activities resulting in the taking of endangered or threatened species.

Hawaiian Monk Seal Biology

The biology of the Hawaiian monk seal is discussed in the Supplemental and Final Environmental Impact Statements. The discussion includes the history of exploitation, trends in population size, current status of the population, life history parameters, habitat requirements, and biological problems confronting the species. Further information is available from the Draft Environmental Statement, the Recovery Plan, and the 5-year Status Review for the Hawaiian monk seal.

Habitat Requirements

A summary of research studies concerning habitat requirements of the Hawaiian Monk Seal is provided here. References to the original studies are provided in the FEIS.

Existing data indicate that all beach areas used by the Hawaiian monk seal for pupping, nursing, and rearing pups and some haul-out areas where pupping is imminent (e.g. Tern Island, French Frigate Shoals) are essential for the continued existence of the species. Because of the limited terrestrial habitat available to the Hawaiian monk seal, any loss of pupping, nursing, and major haul-out areas could affect the conservation of the species adversely. Shallow, protected water immediately adjacent to beaches is also an important factor for a successful pupping area.

Observations show that adult female monk seals leave the islands for about two to three weeks after weaning their pups. They leave in an emaciated condition, return in relatively good condition, remain for a few days on the islands, then depart for an additional period of a few weeks before reappearing well nourished. Since they apparently do not haul out during these protracted periods away, it is assumed that they are feeding at least beyond the

inner reef and probably at a considerable distance from shore.

Information on foraging habitat is available from studies on food habits and surveys of nearshore fish resources. Hard parts recovered from scats and spewings were analyzed to identify the prey base exploited by monk seals. The analyses indicate that monk seals feed on octopus, squid, and a variety of fishes. Lobster was not reported as a prey species although it has been reported elsewhere.

Information on foraging behavior is also available from observations of monk seals and depth of dive studies. Researchers observed 301 dives in the channel off the western end of Tern Island, French Frigate Shoals. They did not observe consumption of prey but concluded from the regularity of the dives that the seals were foraging. Water depths in the area of observation varied from less than one fathom to five fathoms. Studies of depth of dives for the seals were conducted at Lisianski Island in 1980 and 1982 to provide additional information on habitat use. In 1980, depth-of-dive recorders were attached to seven adult male monk seals. Over 4,800 dives by six animals (one recorder failed) were recorded. Fifty-nine percent of the dives were in the range of 5.5 to 21.9 fathoms (10-40 meters). No information was collected on diving in water less than 5.5 fathoms, and maximum dives ranged beyond 66.2 fathoms (121 meters). In 1982, recorders were placed on five adult males, one subadult female, one juvenile male, and one juvenile female. The dive recorders malfunctioned, so that the dive profiles recorded may not be a true reflection of habitat use. However, the data generally are consistent with those collected earlier for adult males. The subadult and juvenile females made dives in excess of 80 fathoms (150 meters) extending the known diving depth of monk seals.

Thus, the biological information shows that monk seals forage from near shore waters (<0.5 fathoms) to depths down the reef slope beyond 80 fathoms.

Based on available information, habitat requirements for the health, well being, and continued viability of the Hawaiian monk seal population, listed in decreasing order of probable importance, include the following:

1. Pupping and major hauling beaches including the vegetation immediately backing the beaches (coral sand beaches and lava benches).

2. Shallow protected water adjacent to the above (tide pools, inner reef waters, shoal areas, and near shore shallows).

3. Deeper inner reef areas and lagoon waters.

4. Other waters surrounding the NWHI to at least 80 fathoms.

5. Banks and shoals without emergent lands and pelagic waters.

The recommended management measures in the Recovery Plan and the biological opinions resulting from formal section 7 consultations, and information on trends in abundance indicate that the habitat which may be in need of special management considerations or protection is that habitat used by monk seals for pupping and nursing, where weaned pups learn to swim and forage, and major hauling out areas where growth has been substantial and pupping is imminent and a substantial portion of the forage area around feeding islands. A precise boundary to the area in need of special management considerations or protection is difficult to draw, but extending the designation of critical habitat out to 20 fathoms is expected to include essential areas.

Therefore, NMFS proposes to designate as critical habitat for the Hawaiian monk seal all beach areas, including all beach crest vegetation to its deepest extent inland, lagoon waters, and ocean waters out to a depth of 20 fathoms, around Kure Atoll, Midway Islands (except Sand Island and its harbor), Pearl and Hermes Reef, Maro Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island. References to beaches or beach areas include all sand spits and islets.

Effect of the Rulemaking

This action would directly affect only Federal agencies and those acting under Federal authority. It would not affect State and local government activities or private actions which are not dependent on or limited by Federal authority, permits, or funds. However, many of the activities in the NWHI are subject to some Federal control and could be affected. Section 7 of the ESA requires Federal agencies to consult with NMFS to ensure that any activity funded, authorized, or undertaken by them is not likely to jeopardize the continued existence of endangered species or result in the destruction of adverse modification of critical habitat.

Currently, Federal agencies are required to consult on actions that may affect Hawaiian monk seals. The extension of designated critical habitat would require Federal agencies to evaluate their activities with respect to critical habitat and consult with NMFS on any action that may affect critical habitat to ensure that it is not likely to result in the destruction or adverse modification of the critical habitat. In most situations, consultation would be required even without a critical habitat designation because actions that affect critical habitat are also likely to affect the monk seal. Therefore, expanding the designation of critical habitat would not substantially add to the Federal agencies' responsibilities and thus would not have any significant adverse economic impacts on State or private entities including small businesses. Extending the designation of critical habitat would assist Federal agencies in evaluating the potential effects of their activities on monk seals and in determining when consultation with NMFS would be appropriate. The Federal agencies most likely to be affected by this designation include the U.S. Coast Guard, U.S. Navy, U.S. Fish and Wildlife Service, Minerals Management Service, Western Pacific Regional Fishery Management Council, and NMFS.

The proposed rule is not expected to have any direct impact on fisheries in the NWHI. The only direct economic costs would be those associated with more extensive monitoring of Federal activities by NMFS and those from administrative actions by Federal activities resulting from reviews of thier activities in the NWHI. Since Federal agencies are already required to conduct section 7 consultations for activities that may affect Hawaiian monk seals or conform to National Environmental Policy Act (NEPA) requirements for actions that significantly affect the quality of the human environment, any additional costs are expected to be minimal.

Classification

For reasons discussed in *Effects of the Rulemaking*, the NOAA Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980.

National Environmental Policy Act

Draft, supplemental, and final environmental impact statements were prepared on the action to designate critical habitat out to 10 fathoms. This proposed action to extend critical habitat to 20 fathoms is analyzed as Alternative One in the FEIS. Copies of the FEIS are available on request. (see "For Further Information Contact" section for address).

List of Subjects in 50 CFR Part 226

Endangered and threatened wildlife, Marine mammals.

Dated: December 30, 1987.

William E. Evans,

Assistant Administrator for Fisheries.

Accordingly, Part 226 of Chapter II of Title 50 of the Code of Federal Regulations is proposed to be amended as follows.

PART 226—[AMENDED]

1. The authority citation for Part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 226.11 under Subpart B is revised to read as follows:

§ 226.11 Northwestern Hawaiian Islands.

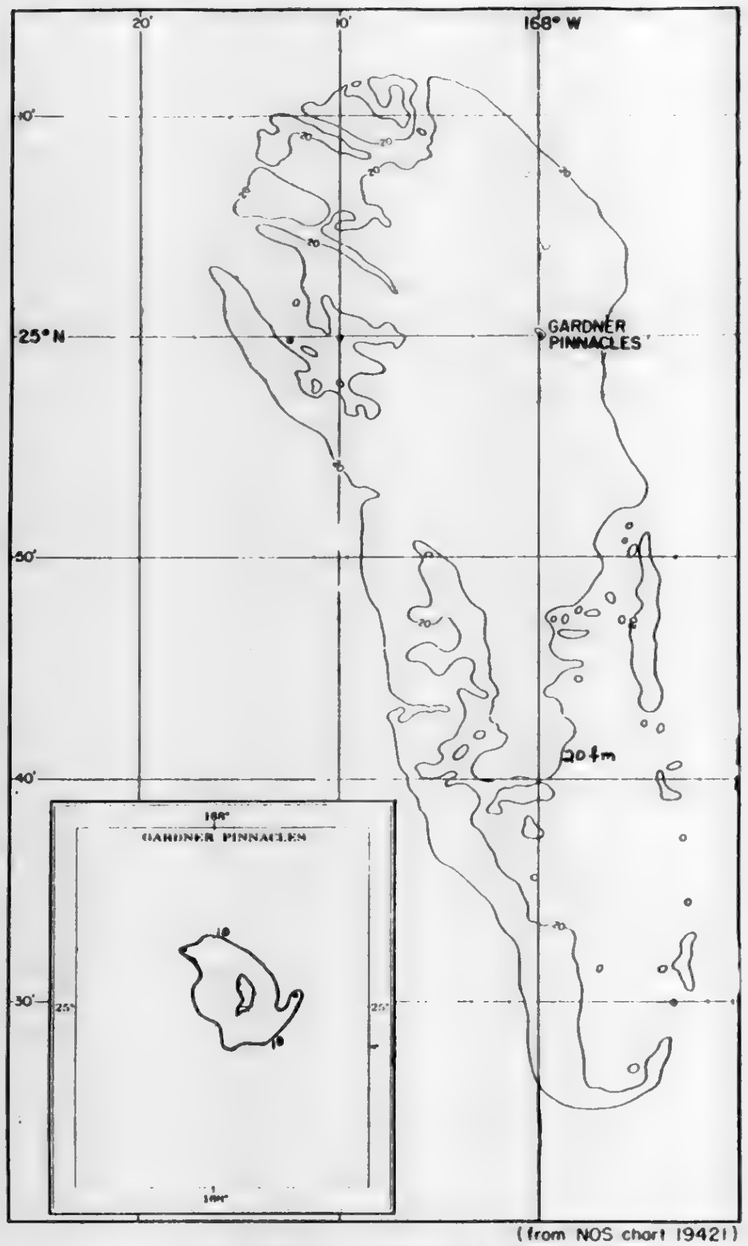
Hawaiian Monk Seal

(Monachus schauinslandi)

All beach areas, sand spits and islets, including all beach crest vegetation to its deepest extend inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following:

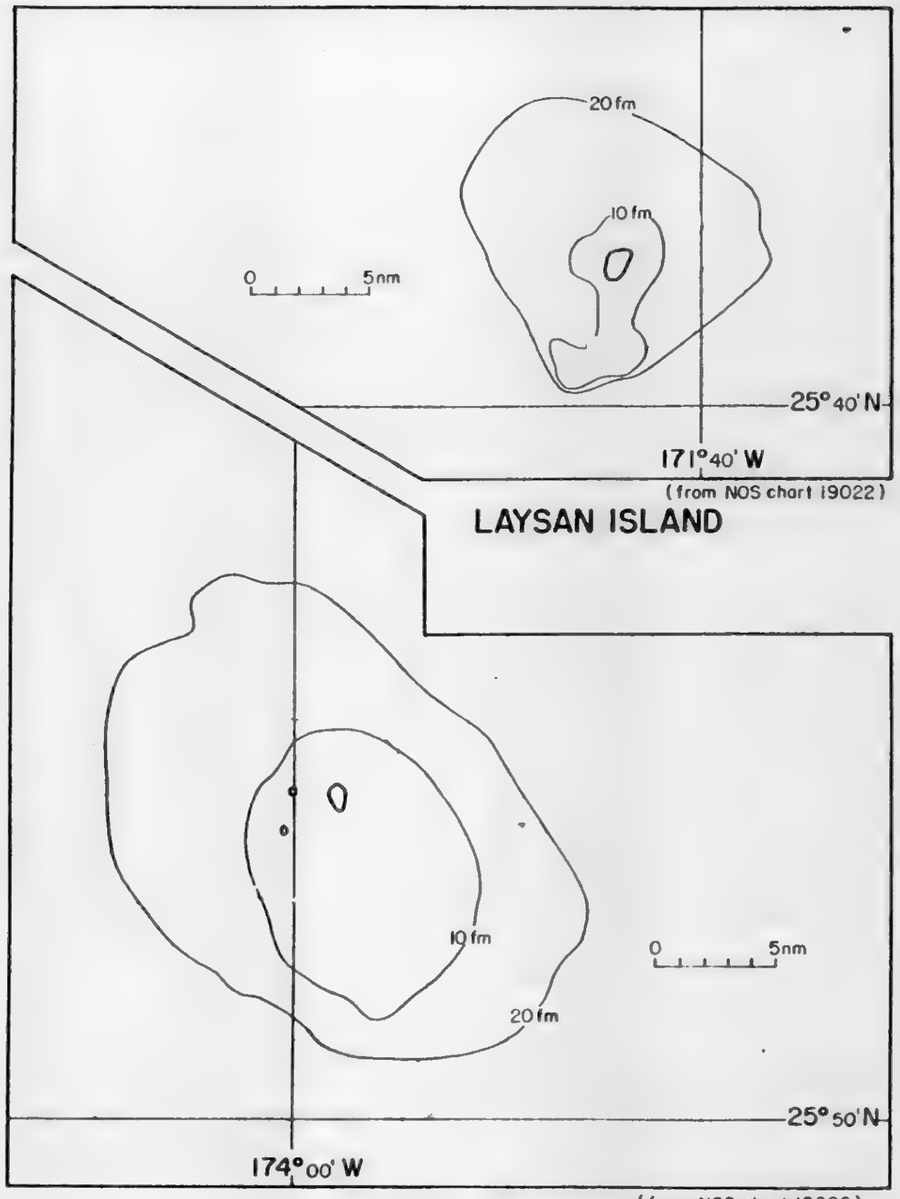
Kure Atoll (28°24' N, 178°20' W)
Midway Islands, except Sand Island and its harbor (28°14' N, 177°22' W)
Pearl and Hermes Reef (27°55' N, 175° W)
Maro Reef (25°25' N, 170°35' W)
Lisianski Island (26°46' N, 173°58' W)
Laysan Island (25°46' N, 171°44' W) Gardner Pinnacles (25°00' N, 168°00' W)
French Frigate Shoals (23°45' N, 166°00' W)
Necker Island (23°34' N, 164°42' W)
Nihoa Island (23°03.5' N, 161°55.5' W)

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(from NOS chart 19421)

GARDNER PINNACLES

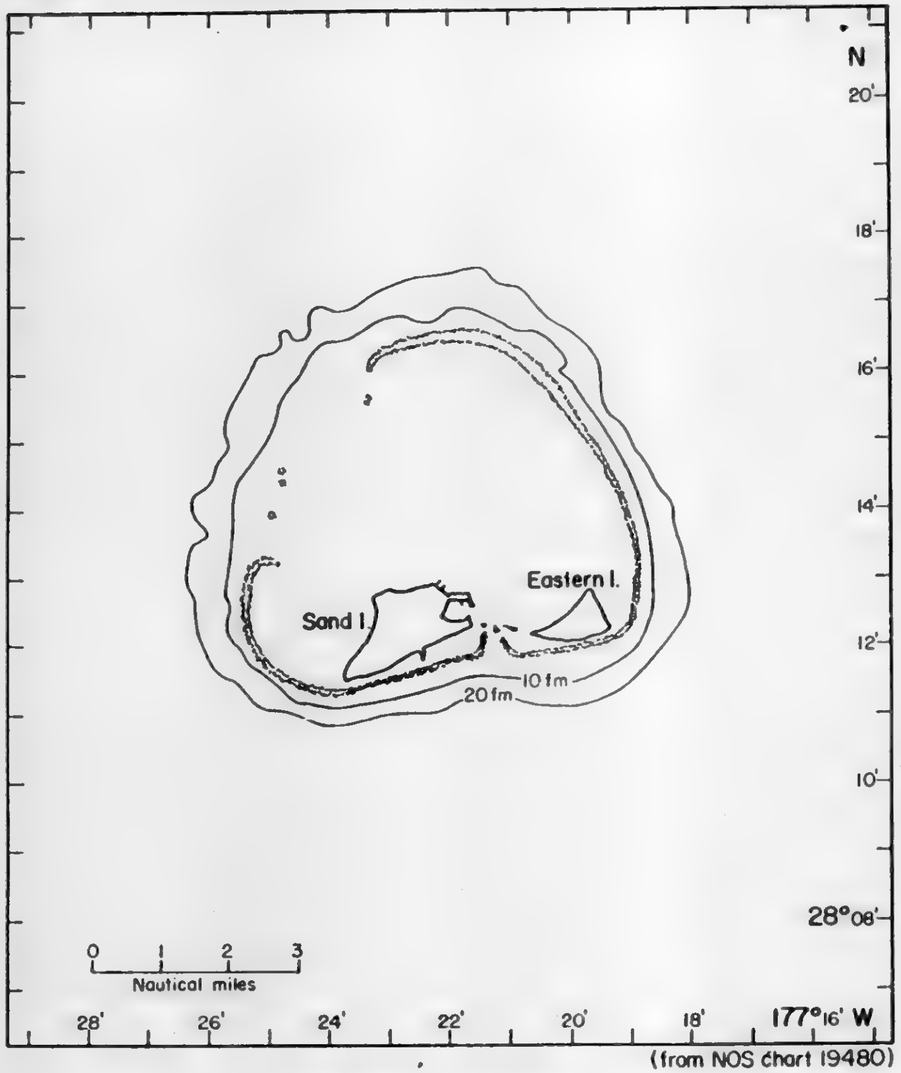


(from NOS chart 19022)

LAYSAN ISLAND

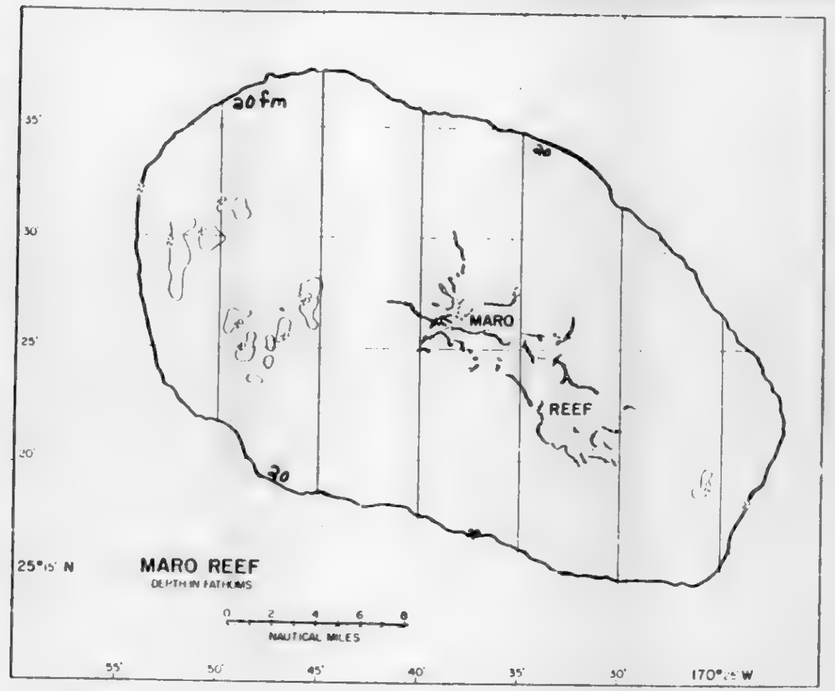
(from NOS chart 19022)

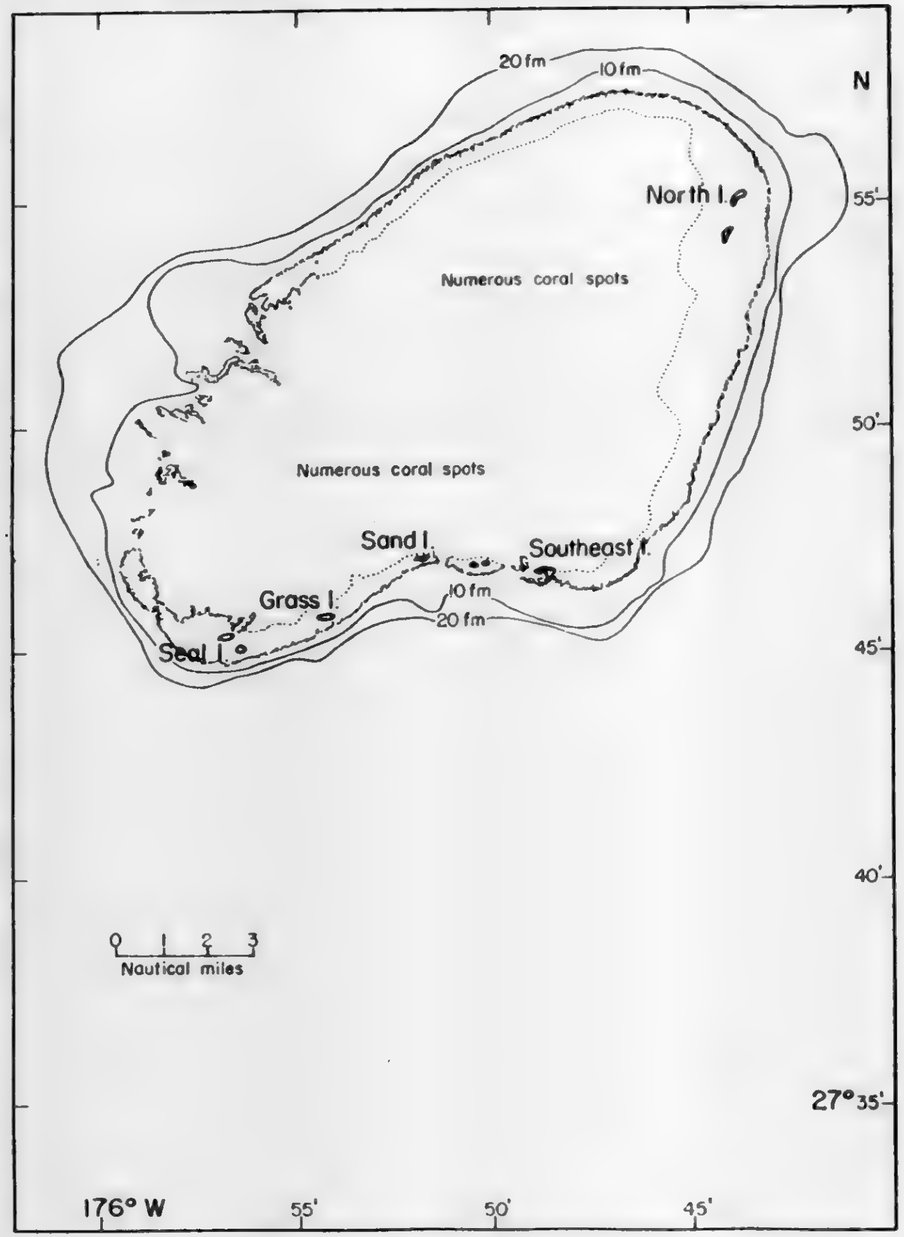
LISIANSKI ISLAND



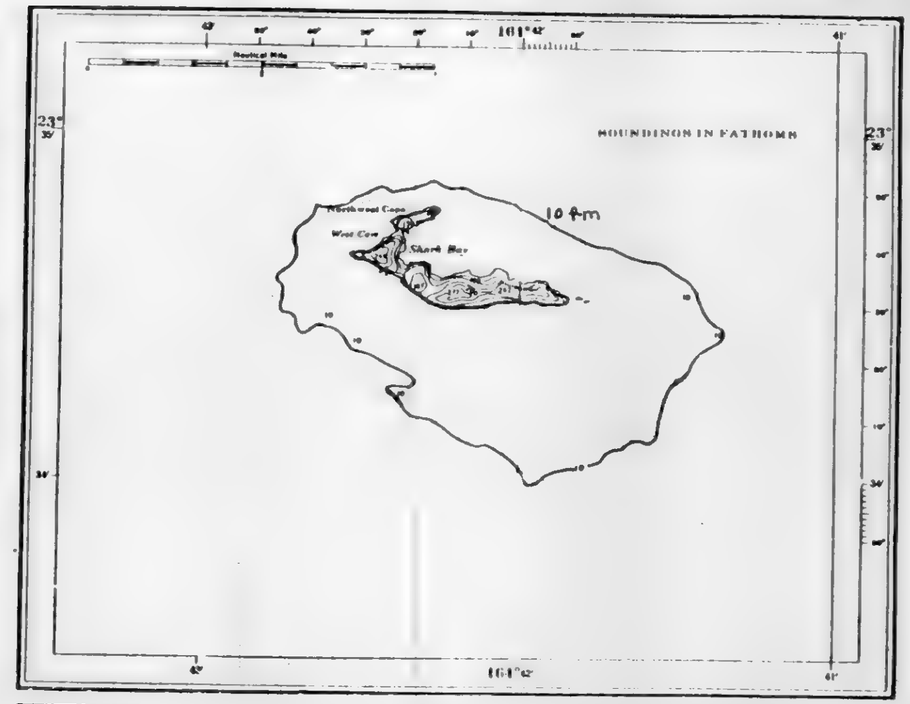
(from NOS chart 19480)

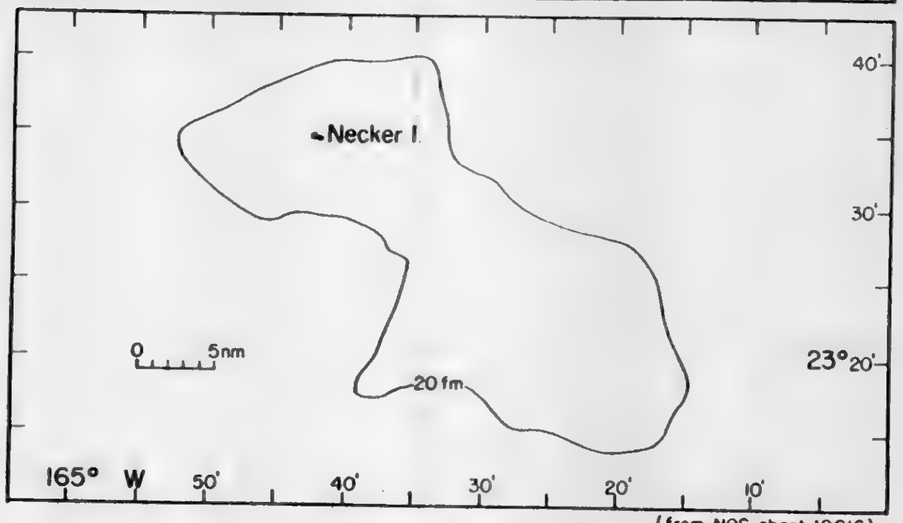
MIDWAY ISLANDS





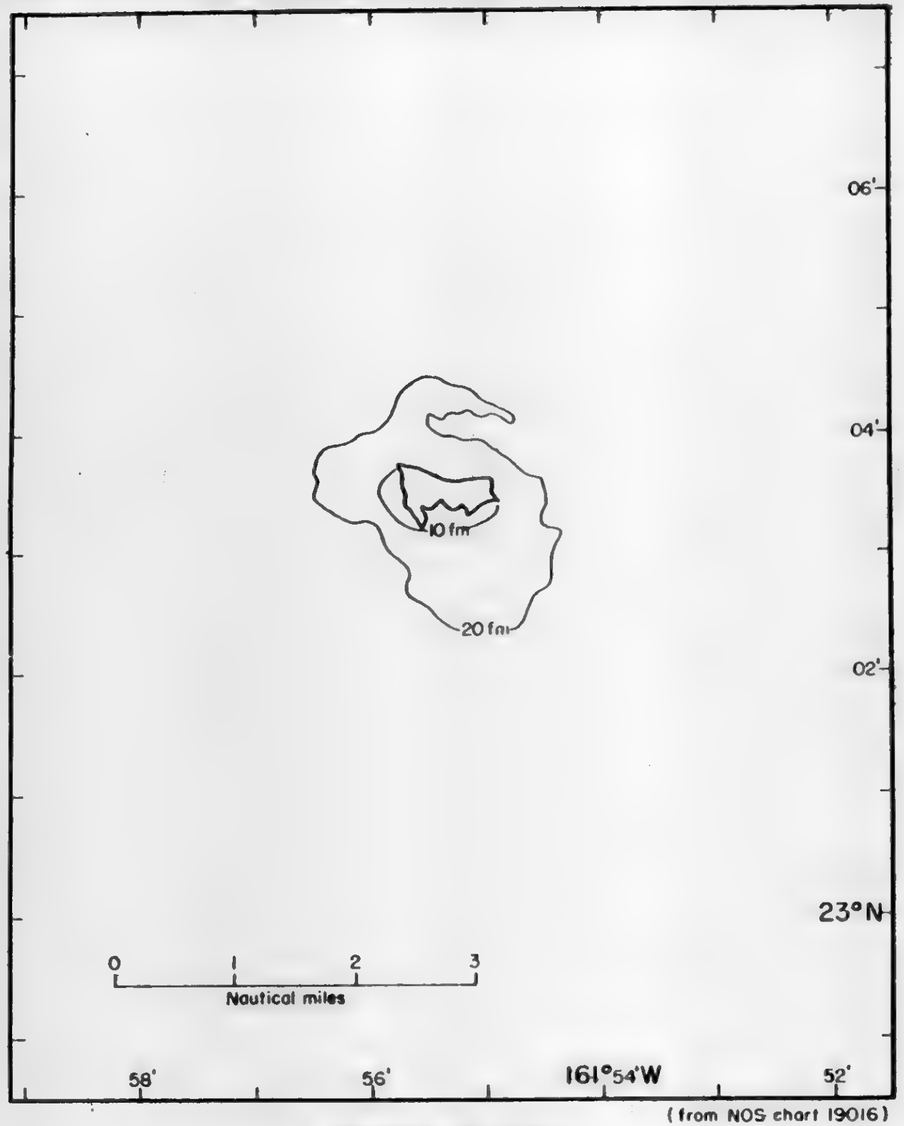
PEARL and HERMES REEF





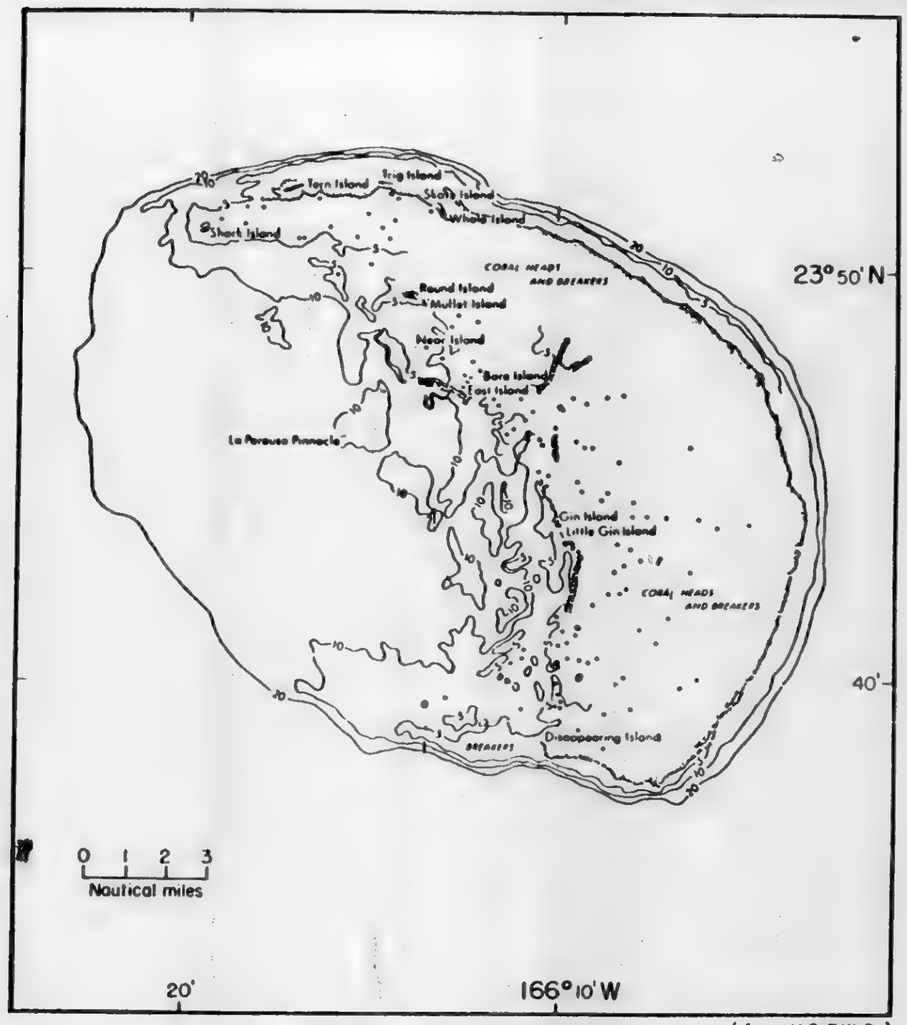
NECKER ISLAND

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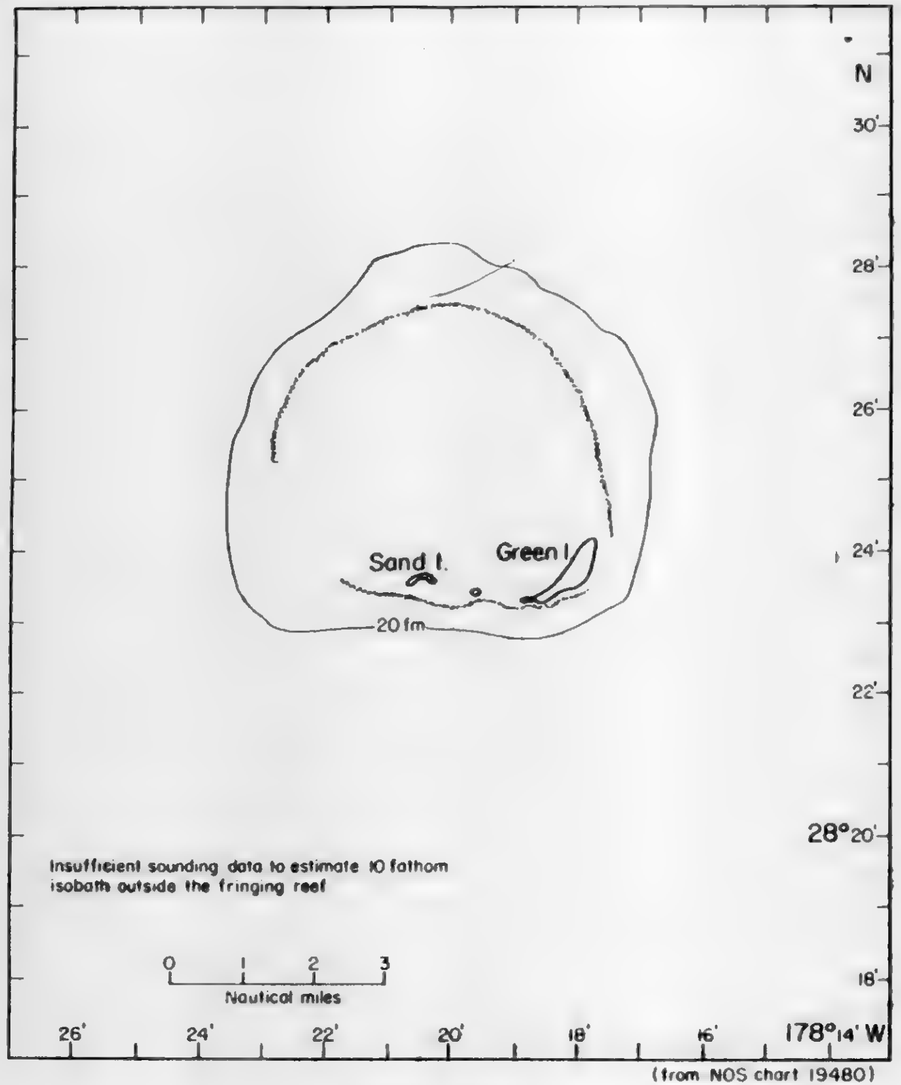
(from NOS chart 19016)

NIHOA ISLAND



(from U.S.F.W.S.)

FRENCH FRIGATE SHOALS



KURE ATOLL

[FR Doc. 88-86 Filed 1-7-88; 8:45 am]
BILLING CODE 3410-22-C

Notices

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Milk Price Support Program Through December 31, 1988

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This notice affirms the determination of the Secretary of Agriculture that the support price for milk containing 3.67 percent milkfat shall be $10.60 per hundredweight (cwt.) for the period January 1 through December 31, 1988. The prices at which butter, cheese and nonfat dry milk will be purchased by the Commodity Credit Corporation (CCC) in order to support the price of milk at that level are also set forth in this notice.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5747 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-3385.

The Final Regulatory Impact Analysis regarding this Notice of Determination is available from Charles N. Shaw, Dairy/Sweetners Group, ASCS-USDA, P.O. Box 2415, Washington, DC 20013: (202)-447-7601.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to level of price support and prices paid to producers of milk. Pursuant to sections 102 and 1017 of the Food Security Act of 1985 (Pub. L. 99-198) (the "1985 Act") the provisions of section 201(d) of the Agricultural Act of 1949, as amended (the "1949 Act"), may be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553 or in any directive of the Secretary of Agriculture.

It has been determined by an Environmental Evaluation that the determination set forth in this notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with section 201 of the 1949 Act, the Secretary of Agriculture, through CCC, supports the price of milk through purchases of milk and milk products.

Section 201 provides, generally, that the price support level for the period October 1, 1987, through December 31, 1990, shall be $11.10 per cwt. for milk having 3.67 percent milkfat. However, Section 201 provides that the level of price support shall be reduced by 50 cents per cwt. if, as of January 1, 1988, the Secretary estimates that, for calendar year 1988, CCC milk price support purchases (less CCC sales for unrestricted use pursuant to section 407 of the 1949 Act) will exceed 5 billion pounds milk equivalent. Such a reduction is contingent upon the Secretary having achieved, or made reasonable offers to achieve, a 12-billion pound reduction in milk production by participants in the Dairy Termination Program (DTP) during the 18 months in which participants were required to dispose of their dairy herds.

The DTP achieved a reduction in the production of milk by participants in the program of at least 12 billion pounds during the 18 months of the program. CCC entered into contracts with DTP participants, having a total 1985 production of 12.3 billion pounds, under which participants agreed to dispose of their dairy herds during the 18-month DTP herd disposal period and discontinue the production of milk for a period of five years.

Based on January 1, 1988, data, it is estimated that net CCC purchases of milk and milk products for calendar year 1988 would be 7.3 billion pounds without the 50 cents per cwt. reduction in the level of price support and 6.0 billion with the 50 cents per cwt. reduction in the level of price support. Both estimates take into account the 2.5 cents-per cwt. reduction in producers milk proceeds required by the 1949 Act, as amended by the Omnibus Budget Reconciliation Act of 1987.

In accordance with section 201 of the 1949 Act, it has been determined that, effective January 1, 1988, the price support level for milk containing 3.67 percent milkfat shall be $10.60 per cwt. It has also been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after January 1, 1988, at the prices set forth in this notice, will support the price of milk at a rate equivalent to $10.60 per cwt. for milk containing 3.67 percent milkfat.

Determinations

Accordingly, it has been determined that:

(1) Estimated CCC support purchases of milk and milk products for calendar year 1988 (less sales of milk and milk products for unrestricted use by the CCC for that period in accordance with section 407 of the 1949 Act) will exceed 5 billion pounds milk equivalent.

(2) The level of price support for the period January 1 through December 31, 1988, shall be $10.60 per cwt. for milk containing 3.67 percent milkfat.

(3) The purchase of butter, cheese and nonfat dry milk produced on or after January 1, 1988, at the prices set forth below will support the price of milk at a rate equivalent to $10.60 per cwt. for milk containing 3.67 percent milkfat. Therefore, effective January 1 through

December 31, 1988, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Dollars per pound	
	Products produced before Jan. 1, 1988, *and* graded and offered by Jan. 15, 1988	Products produced on or after Jan. 1, 1988, or not graded and offered by Jan. 15, 1988
Butter, 64- & 68-lb. blocks (U.S. Grade A or higher)	1.3575	1.3200
Nonfat dry milk (spray), 50-lb. bags (U.S. Extra Grade, but not more than 3.5 percent moisture):		
Nonfortified	0.7675	0.7275
Fortified (Vitamins A and D)	0.7775	0.7375
Cheddar cheese, standard moisture basis: [1]		
40- & 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 38.5 percent moisture)	1.2000	1.1525
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 38.5 percent moisture)	1.1575	1.1125

[1] The cheese price will be adjusted for moisture content as shown in the Moisture Adjustment Cheese Price Chart (Form ASCS-150)

(4) Further terms and conditions for CCC price-support purchases of butter, cheese, and nonfat dry milk will be set forth in CCC purchase announcements for such purchases.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended, 63 Stat. 1042, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 62 Stat. 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on December 31, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-359 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Modification of Timber Sale Policy

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: On November 6, 1987, at 52 FR 43028, the Forest Service published a notice of proposed policy to modify or eliminate certain downpayment and periodic payment requirements made superfluous by the implementation of the Federal Timber Contract Payment Modification Act. Many timber sale purchasers and trade associations have requested additional time to prepare comments on this proposed policy, primarily because of ongoing efforts by the Forest Service and timber industry to develop an undated standard timber sale contract to submit for public comment. Another reason is that they may need additional time to analyze the several other proposed changes to policy and regulations governing Forest Service timber sales open for comment concurrently. The original comment period ended January 5, 1987. To permit these purchasers and the general public a reasonable opportunity to submit their comments, the public comment period is hereby extended by 45 days to February 19, 1988.

DATE: Comments now must be received on or before February 19, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447-4051.

Date: December 30, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 88-285 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-11-M

National Forest Timber Sales; Control of Skewed Bidding

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: On November 6, 1987, at 52 FR 43028, the Forest Service published a notice of proposed policy to modify to control skewed bidding on National Forest System timber sales. Many timber sale purchasers and trade associations have requested additional time to prepare comments on this proposed policy, primarily because of ongoing efforts by the Forest Service and timber industry to develop an updated standard timber sale contract to submit for public comment. Another reason is that they may need additional time to analyze the several other proposed changes to policy and regulations governing Forest Service timber sales open for comment concurrently. The original comment period ended January 5, 1987. To permit these purchasers and the general public a reasonable opportunity to submit their comments, the public comment period is hereby extended by 45 days to February 19, 1988.

DATE: Comments now must be received on or before February 19, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff (202) 447-4051.

Date: December 30, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 88-286 Filed 1-7-88; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Western Farmers Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of 138 kV transmission facilities in Pottawatomie, Lincoln and Seminole Counties, Oklahoma.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONIS) with respect to construction of a 69 mile, 138 kV transmission line on wood H-frame support structures and a new 138 kV switching station. Western Farmers Electric Cooperative (Western Farmers), of Anadarko, Oklahoma, has requested approval of financing assistance from REA.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Director, Southeast Area—Electric, Room 0256, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8434.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from Western Farmers of approval of financing assistance to enable Western Farmers to construct the project, required that Western Farmers develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow Western Farmers to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 69 miles. It originates at an existing substation near Shawnee in Pottawatomie County, crosses Lincoln County, and terminates at the proposed switching station near Nobletown in Seminole County. The single circuit 138 kV line will require new right-of-way, 100 feet in width. The Wewoka Switching Station will require less than 5 acres of area that will be cleared and fenced to accommodate the facility.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains of numerous streams, wetlands, and prime farmlands are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, neither the substation expansion or new substation construction will be located in the 100-year floodplain, wetlands or prime farmland. There is no practicable alternative action that would eliminate crossing the 100-year floodplain, wetlands or prime farmland. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action and alternative line routes. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW will have no significant impact to the environment.

REA has reviewed the BER and believes it represents a fair and accurate evaluation of the proposed project and its potential impacts. As a result of its independent evaluation, REA has adopted Western Farmers' BER as its Environmental Assessment (EA) and has concluded that REA approval of financing assistance to Western Farmers to enable it to construct the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0256, 14th Street and Independence Avenue SW., Washington, DC 20250 or at the office of Western Farmers, P.O. Box 429, Anadarko, Oklahoma 73005.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, Western Farmers had notices published in newspapers with a general circulation in the 3 counties where the project will be located. The notices described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The public was given at least 30 days to respond to the notice. No responses to the notices were received by Western Farmers or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8509-Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: December 31, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 88-287 Filed 1-7-88 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: National Oceanic and Atomspheric Administration

Title: Application for Fishing Vessel Guarantee

Form Number: Agency—NOAA 88-1; OMB—0648-0012

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1,510 respondents; 12,080 reporting hours

Needs and Uses: Title XI of the Merchant Marine Act authorizes the Fisheries Obligation Guarantee program to assist small businessmen in financing commercial fishing vessels and shoreside facilities. The information provided is used to determine the risk to the Federal government of guaranteeing a loan to the applicant, and to determine eligibility for the program.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion; annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffen 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 4, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-272 Filed 1-7-88 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held January 27, 1988, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provides for continuing review to update the Regulations as needed.

Agenda

Open Session

1. Opening remarks by the Chairman.
2. Introduction of Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Review of EAR section 379 Technical Data Regulations.
6. Application of EAR section 379 on security controls to University Research.
7. Election of Chairman.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Ruth D. Fitts, 202-377-2583.

Date: January 4, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-273 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-07-M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 2, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. New Business.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Ruth D. Fitts, 202-377-4959.

Date: January 4, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-274 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-07-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

On July 16, 1987, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping findings on animal glue and inedible gelatin from West Germany. The review covers one exporter of this merchandise and the period December 1, 1985 through November 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results and tentative determinations to revoke in part. We received no comments. The final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 26711) the preliminary results of its antidumping duty administrative review and a tentative determination to revoke in part the antidumping finding on animal glue and unedible gelatin from West Germany (42 FR 64115, December 22, 1977). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under item numbers 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 3503.00.20 and 3506.10.10

The review covers one exporter of West German animal glue and inedible gelatin, G. Conradt & Sohn ("Conradt"), and the period December 1, 1985 through November 30, 1986. There were no known shipments of this merchandise by Conradt to the United States during the period and there are no known unliquidated entries.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same a those presented in the preliminary results of review, and we determined that the following margin exists during the period:

Manufacturer/ exporter	Time period	Margin (percent)
Conradt	12/85 to 11/86.	[1]67.0

[1] No shipments during the period.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 67 percent shall be required for Conradt. For any shipments from the six remaining known manufacturers and/or exporters and the one known third-country reseller not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last adminstrative review for each of these firms (49 FR 13565, April 5, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required.

These cash deposit requirements are effective for all shipments of West German animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: January 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-349 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-067]

Carbon Steel Plant From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to requests by two importers and three respondents, the Department of Commerce has conducted an adminstrative review of the antidumping finding on carbon steel plate from Japan. The review covers one manufacturer and five third-country resellers of this merchandise to the United States and various periods from July 1977 through September 1984. The review indicates the existence of dumping margins for certain firms during certain periods.

Where we received no company-supplied information or that information was inadequate, we used the best information available for assessment purposes.

On April 17, 1986, the Department of Commerce published in the **Federal Register** (51 FR 13039) the revocation of the antidumping finding on carbon steel plate from Japan, effective October 1, 1984. Therefore, no antidumping duties case deposits are required on this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. However, as a result of the review, the Department intends to revoke in part the antidumping finding with respect to A.J. Forsyth effective September 15, 1983.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 47804) the final results of the last administrative review of the antidumping finding on carbon steel plate from Japan (43 FR 22937, May 30, 1978). On April 17, 1986, the Department published a revocation of the antidumping finding effective October 1, 1984 (51 FR 13939). We began this review under our old regulations.

On September 15, 1983, the Department published the preliminary results of administrative review and tentative determinations to revoke in part (48 FR 41472); this notice confirms the results of that review. After the promulgation of our interim final regulations, one importer of carbon steel plate in coil, one importer of carbon steel plate, and three respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete an administrative review. We published a notice of initiation of the review on October 3, 1986 (51 FR 35384). The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980. The provisions of the Tariff Act of 1930, as amended, and the current Commerce regulations apply to all subsequent entries.

One respondent, Kansai Steel Ltd., withdrew its request for an administrative review after the notice of initiation. We have now determined that Coeur d'Alenes, an importer of carbon steel plate in coil, which requested a review of certain companies, does not have standing to request a review. The reason is that Coeur d'Alenes is not a manufacturer or an importer of the merchandise subject to review, nor do we have any evidence that it is a wholesaler of this merchandise. Therefore, we are not completing the review insofar as three exporters, Drummond McCall, Kobe Steel Ltd., and Nippon Steel Corporation are concerned, because only Coeur d'Alenes requested that we review these companies.

Three other firms failed to respond to our questionnaire or provided inadequate responses for various periods. For the non-responsive firms we used the best information available. Since there are no previous rates for these firms, the best information available is the highest rate determined

during the original fair value investigation.

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate, 0.1875 inch or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad and not pressed or stamped to non-rectangular shape. Carbon steel plate is currently classifiable under items 607.8620 and 607.8625 of the Tariff Schedules of the United States Annotated.

This review covers one manufacturer and five third-country (Canada) resellers of Japanese carbon steel plate and various periods from July 1, 1977 through September 30, 1984.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act") or section 203 of the 1921 Act, as appropriate.

For sales made by the Japanese manufacturer, Sumitomo Metal Industries, to an unrelated trading company in Japan for export to the United States, purchase price was based on the packed, f.o.b. price to the trading company, because the manufacturer knew at the time of the sale the merchandise was destined for the United States. As for the third-country resellers, there is no evidence that the Japanese manufacturers were aware that the merchandise was destined for the United States. Therefore, for these sales, purchase price was based on the Canadian ex-factory, f.o.b., or delivered price to the first unreleted customer in the United States. We made adjustments, where applicable, for foreign inland and U.S. freight, insurance, U.S. duty, brokerage and handling, and duty drawback. No other adjustment were claimed or allowed.

Foreign Market Value

We investigated allegations of sales below the cost of production for Sumitomo Metal Industries. We found no such sales.

In calculating foreign market value for sales made by the Japanese manufacturer through the unrelated trading company in Japan, the Department used home market price, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

For sales made by third-country (Canada) resellers, foreign market value was based on the resellers' home market prices for such or similar merchandise. Home market price was based on the packed, delivered or f.o.b. price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, insurance, and discounts. We also adjusted for differences in commissions to unrelated parties, credit expenses, and packing between the home and U.S. markets. No other adjustments where claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following weighted-average margins exists:

Manufacturer/third-country resellers	Period	Margin (percent)
A.J. Forsyth & Co., Ltd.	7/77 to 9/15/83	0
Balfour Guthrie (Canada), Ltd.	7/77 to 3/81	13.0
Cabana & Burke Ltd.	7/77 to 3/83	13.0
Lambton Steel Ltd.	7/77 to 9/84	0
Sumitomo Metal Industries	4/81 to 6/82	0
Tideco Industries	7/77 to 3/82	13.0
	4/82 to 9/84	0.29

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure and/or release of business proprietary information under administrative protective order within five days of the date of publication, and may request a hearing within eight working days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

A.J. Forsyth requested revocation of the finding and, as provided for in § 353.54(e) of the Commerce Regulations, agreed in writing to an immediate suspension of liquidation and reinstatement of the finding, under circumstances as specified in the written agreement. If this partial revocation is made final, it will apply to all entries of this merchandise exported by A.J. Forsyth and entered, or withdrawn from warehouse, for consumption on or after September 15, 1983, the date of our tentative determination to revoke.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each manufacturer or third-country reseller directly to the Customs Service.

The Department revoked the antidumping finding on carbon steel plate from Japan, effective October 1, 1984 (51 FR 13038, April 17, 1986). This administrative review, covering various periods from July 1977 through September 1984, does not affect the revocation of the antidumping finding. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise entered, or withdrawn for consumption on or after October 1, 1984, without regard to antidumping duties.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: December 2, 1987.

[FR Doc. 88-350 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-016]

Choline Chloride From Canada; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke.

SUMMARY: In response to requests by the petitioner and Chinook Chemicals Co., Ltd., the Department of Commerce has conducted an administrative review of the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States, and the period November 1, 1985 through November 16, 1986. The review indicates the existence of *de minimis* dumping margins during the period

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 46888) the final results of its last administrative review of the antidumping duty order on choline chloride from Canada (49 FR 45489, November 16, 1984).

On November 20 and November 26, 1986, the petitioner and Chinook Chemicals Co., Ltd, respectively, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of review on December 18, 1986 (51 FR 45364). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS").

In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs offices to consult the schedule.

Imports covered by the review are shipments of choline chloride, currently classifiable under TSUSA item 439.5055 and HS item number 2923.10.00. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier.

The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States and the period November 1, 1985 through November 16, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed or unpacked, duty-paid, delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, import duties, brokerage and handling charges, discounts, and rebates. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed or unpacked, ex-factory or delivered price to unrelated purchasers in Canada. We made adjustments, where applicable, for inland freight, credit, and indirect selling expenses when a commission was paid in one market and not the other. In accordance with § 353.14(a) of the Commerce Regulations, we did not include sales of small quantities of aqueous choline chloride in drums in calculating home market price. No other adjustments were claimed or allowed.

Preliminary Results of Review and Tentative Determination to Revoke

As a result of our comparison of United States price to foreign market value we preliminarily determine that a weighted-average margin of 0.06 percent exists for Chinook Chemicals Co., Ltd. for the period November 1, 1985 through November 16, 1986.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for Chinook is 0.06 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Chinook. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 16, 1986 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of Canadian choline chloride entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Chinook has requested revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement. Chinook has had no sales at less than fair value for two years and is the only known manufacturer and/or exporter of Canadian choline chloride to the United States. Therefore, we tentatively determine to revoke the finding on choline chloride from Canada. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54

of the Commerce Regulations (19 CFR 353.53a and 353.54).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 4, 1988.

[FR Doc. 88-351 Filed 1-7-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-475-059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period October 1, 1985 through September 30, 1986. The review indicates the existence of dumping margins for one firm during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. We also intend to revoke one firm, Autoadesivitalia.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1982 the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 43993) a tentative determination to revoke in part the antidumping finding on pressure sensitive plastic tape from Italy (42 FR 56110, October 21, 1977) for one firm, Autoadesivitalia. On December 5, 1986, the Department published in the **Federal Register** (51 FR 43955) the final results of its last administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on November 18, 1986 (51 FR 41649). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Consitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, currently classifiable under TSUSA items 790.5530, 790.5545, and 790.5555 and HS item numbers 3919.90.20, 3919.90.50, 4811.21.00, 4821.90.20, 4823.11.00, and 5906.10.00.

The review covers three manufacturers and/or exporters of Italian pressure sensitive plastic tape and the period October 1, 1985 through September 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, ocean freight, foreign inland freight, marine insurance, and discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, rebates, differences in credit expenses, discounts, and differences in packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
NAR	10/85 to 9/86	2.06
Manul	10/85 to 9/86	[1]0

[1] No shipments during the period; margin from last review in which there were shipments.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request an administrative protective order, disclosure, and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms (51 FR 43955, December 5, 1986).

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after September 30, 1986 and who is unrelated to either reviewed firm or any previously reviewed firm, a cash deposit of 2.06 percent shall be required. These deposit requirements are effective for all shipments of Italian pressure sensitive plastic tape entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We intend to revoke the antidumping finding with respect to Italian pressure sensitive plastic tape manufactured by Autoadesivitalia. Autoadesivitalia had *de minimis* dumping margins (52 FR 7288) during the period October 1, 1980 through October 5, 1982, the date of our tentative determination to revoke in part. We are not reviewing Autoadesivitalia for more recent periods because no one requested such a review. As provided for in § 353.54(e) of the Commerce Regulations, Autoadesivitalia has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding under circumstances specified in the written agreement. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise by Autoadesivitalia entered, or withdrawn from warehouse, from consumption on or after October 5, 1982.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a and 353.54.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 4, 1988.

[FR Doc. 88-352 Filed 1-7-88; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-068]

Steel Wire Strand for Prestressed Concrete From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two petitioners, the Department of Commerce has conducted an administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers seven manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1985 through November 30, 1986. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 4373) the final results of its last administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan (43 FR 57599, December 8, 1978). We published a correction of that notice on October 13, 1987 (52 FR 37997). On December 11, 1986 and December 30, 1986, two petitioners requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on January 20, 1987 (52 FR 2123). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel wire strand, other than alloy steel, not galvanized, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under TSUSA item 642.1120 and HS item number 7312.10.30.15.

The review covers seven manufacturers and/or exporters of Japanese steel wire strand for prestressed concrete to the United States and the period December 1, 1985 through November 30, 1986. We are deferring review of Mitsui & Co., Ltd. We will cover that firm in a separate review. We could not locate Freyssinet International, and we have no record of shipments from that firm; therefore, we have not included Freyssinet in this administrative review. This is not a proposal to revoke the finding with respect to this firm. Should Freyssinet begin exporting the covered merchandise to the United States we shall treat that company as a new exporter.

There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1985 through November 30, 1986:

Manufacturer/exporter	Margin (percent)
Kokoku Steel Wire, Ltd.	[1]0
Mitsubishi Corp.	[1]0
Nissho Iwai Co., Ltd.	[1]0
Shinko Wire Co., Ltd.	[1]0
Suzuki Metal Industry Co., Ltd.	[1]0
Tokoku Sangyo Co., Ltd.	[1]0
Tokyo Rope Mfg. Co., Ltd.	[1]4.5

[1] No shipments during the period—Margins were obtained from the last review where there were shipments.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearing.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future shipments from the remaining known manufactures and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any entries of this merchandise from a new exporter, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm or previously reviewed firm, the Department waives the cash deposit requirement. These deposit requirements and waiver are effective for all shipments of Japanese steel wire strand for prestressed concrete entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: January 4, 1988.

[FR Doc. 88-353 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-701]

Termination of Countervailing Duty Investigation; Certain Circular Welded Carbon Steel Pipes and Tubes From Iran

AGENCY: International Trade Administration, Import Administration, Commerce.

SUMMARY: In a letter dated December 15, 1987, petitioners withdrew their countervailing duty petition filed on July 29, 1987, on certain circular welded carbon steel pipes and tubes (hereinafter referred to as "standard pipe") from Iran. Based on the withdrawl, we are terminating this investigation.

EFFECTIVE DATE: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Mary Martin, or Jessica Wasserman of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438, 377-2830, or 377-1442.

SUPPLEMENTARY INFORMATION:

Scope of Investigation

The products covered by this investigation are certain circular welded carbon steel pipes and tubes, 0.375 inch or more, but not over 16 inches in outside diameter, as currently classifiable in the *Tariff Schedules of the United States (TSUSA)* under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These prducts, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120, A-53, and A-153. These products are currently classifiable under the Harmonized System (HS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

Withdrawal of Petition

In a letter dated December 15, 1987, petitioners, the Subcommittee on Standard Pipe of the Committee on Pipe and Tube Imports and each of the individual manufacturers of standard pipe that are members of the subcommittee, notified the Department that they are withdrawing their July 29, 1987 petition. Under section 704(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest. We have determined that termination would be in the public interest.

We have notified all parties to the investigation of petitioners' withdrawal and our intention to terminate. For these reasons, we are terminating our investigation.

This notice is published pursuant to section 704(a) of the Act (19 U.S.C. 1671c(a)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 29, 1987.

[FR Doc. 88-354 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain carbon and alloy semi-finished steel slabs.

DATE: Comments must be submitted no later than January 19, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC and the U.S.-Brazil steel arrangements, and Paragraph 8 of the U.S.-Japan steel arrangement provide that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product.

We have received a short-supply request for continuously cast carbon and alloy steel slabs, in widths of 24.0, 33.5, 36.5, 45.0 and 53.5 inches, with a carbon content ranging between 0.24 and 0.36 percent and a manganese content ranging between 1.25 and 1.50 percent, calcium treated, which will be used in the manufacture of oil country tubular goods.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than January 19, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 4, 1988.

[FR Doc. 88-355 Filed 1-7-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 25-26, 1988, 8:30 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: TradeWinds, 5500 Gulf Boulevard, St. Petersburg Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Karen S. Saunders, National Advisory Council on Adult Education, 330 C Street SW., Room 4060, Mary E. Switzer Building, Washington, DC 20202-2421, (202) 732-3890.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1209). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council is open to the public. The proposed agenda includes:

Fiscal Year 1987 Annual Report
U.S. Department of Education Library
Grant Program
Program Visitations
Standing Committee Meetings and Reports
Proposed Publication

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 330 C Street SW., Room 4060, Mary E. Switzer Building, Washington, DC 20202-2421, from the hours of 8:30 a.m. to 5:30 p.m.

Signed at Washington, DC, on January 5, 1988.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 88-362 Filed 1-7-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-163-000 et al.]

Cliffs Electric Service Co., et al.; Electric Rate and Corporate Regulation Filings

January 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Cliffs Electric Service Company

[Docket No. ER88-163-000]

Take notice that on December 24, 1987, Cliffs Electric Service Company (CESCO) tendered for filing a letter agreement dated December 8, 1987, between CESCO and Upper Peninsula Power Company (UPPCO) which sets forth the terms and conditions pursuant to which it will sell for an approximate three-month period power and energy to UPPCO from CESCO's four hydroelectric plants. The rate for the sale of the power during this period will be 21 mils per kilowatt hour.

CESCO requests an effective date concurrent with the closing of a related transaction between Upper Peninsula Generating Company and Wisconsin Electric Power Company which is now expected to occur on December 31, 1988. CESCO and UPPCO have entered into an agreement pursuant to which UPPCO will acquire the four hydroelectric plants of CESCO on or before March 31, 1988.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this document.

2. American Electric Power Service Corporation

[Docket No. ER88-164-000]

Take notice that on December 24, 1987, American Electric Power Service Corporation (AEP) tendered for filing on behalf of Indiana Michigan Power Company (I&M), which formerly has been known as Indiana & Michigan Electric Company, a contract change on I&M's Interconnection Agreement with Northern Indiana Public Service Company (NIPSCO).

The contract change adds "Service Schedule I—Power Transfer and Reactive Supply Service". This service schedule provides for the transfer of power from NIPSCO's main service area to its northeastern service area. AEP has requested an effective date of January 1, 1988.

AEP states that Northern Indiana Public Service Company has filed a Certificate of Concurrence.

Copies of this filing were served upon the Public Service Commission of Indiana, Michigan Public Service Commission, and Northern Indiana Public Service Company.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER88-159-000]

Take notice that on December 23, 1987, Commonwealth Edison Company (Edison) tendered for filing on behalf of itself, Illinois Power Company, Iowa-Illinois Gas and Electric Company, Commonwealth Edison Company of Indiana, Northern Indiana Public Service Company and Wisconsin Power and Light Company, Addenda to the Interconnection Agreements between Edison and the five other electric utility companies. In addition, Edison filed Addenda to Interconnection Agreements between Edison and Central Illinois Light Company and Interstate Power Company, respectively. The Addenda amend Short-Term Power Schedules and General Purpose Energy Schedules (or other similar excess energy rate schedules) in various Agreements.

The filing utilities request expedited consideration of the filing and an effective date coincident with the Commission's order accepting the rate for filing. Accordingly, the filing utilities request waiver of the Commission's

notice requirements, to the extent necessary.

Edison states that Illinois Power Company, Interstate Power Company, Iowa-Illinois Gas and Electric Company, Northern Indiana Public Service Company, Commonwealth Edison Company of Indiana and Wisconsin Power and Light Company have filed Certificates of Concurrence.

Copies of this filing were served upon the Illinois Commerce Commission, the Public Service Commission of Indiana, the Michigan Public Service Commission, the Public Service Commission of Wisconsin, the Iowa State Commerce Commission, the Minnesota Public Utilities Commission and all parties to the six Interconnection Agreements.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER88-166-000]

Take notice that on December 28, 1987, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after May 1, 1987. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commission of Oregon.

PGE states that the filing shows that the second quarter PCA adjustment to the current base ASC is 1.53 mills/kWh credit, which when added with the base ASC results in a net ASC rate effective for this period.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Cliffs Electric Service Company, Upper Peninsula Power Company, Upper Peninsula Generating Company

[Docket No. ER88-162-000]

Take notice that on December 24, 1987, Cliffs Electric Service Company (CESCO), Upper Peninsula Power Company (UPPCO), and Upper Peninsula Generating Company (GENCO) tendered for filing Notices of Cancellation with respect to the following FERC Rate Schedules:

Cliffs Electric Service Company—No. 15 (Nordic/Plains-Forsyth Transmission Agreement)
Cliffs Electric Service Company—No. 13 (Short Term Agreement/Upper Peninsula Power Co.)
Cliffs Electric Service Company—No. 7 (Interconnection Agreement/ Wisconsin Electric Power Co.)
Upper Peninsula Generating Company—No. 6 (1982 Transmission Line Agreement)
Upper Peninsula Generating Company—No. 22 (1978 Basic Agreement)
Upper Peninsula Generating Company—No. 4 (1978 Power Contract)

These schedules provide for the sale of power generated by GENCO, and transmitted over various facilities owned or controlled by UPPCO, CESCO, and GENCO.

These Schedules are being cancelled to reflect the fact that GENCO is selling its generating station and transmission facilities to Wisconsin Electric Power Company (WEPCO) and that WEPCO has entered into various agreements pursuant to which it will, for all practical purposes, provide the same services which were being provided under the rate schedules being cancelled.

The parties request that the cancellations become effective as of the end of the day (expected to be December 31, 1987) on which the sale of the facilities in question has been completed.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER88-168-000]

Take notice that on December 29, 1987, Pacific Gas and Electric Company (PG&E) tendered for filing, a negotiated four-party, three-month extension (Extension Agreement) of Rate Schedule FERC No. 53 and the Interim Rate Schedule that extended FERC No. 53 until midnight, December 31, 1987. The Parties, City and County of San Francisco (CCSF), Turlock Irrigation District (Turlock), Modesto Irrigation District (Modesto) and Pacific Gas and Electric Company (PG&E) have agreed to continue the current arrangement where PG&E provides certain services to CCSF which then provides, under separate agreement, certain services to Modesto and Turlock.

PG&E has negotiated separate interconnection agreements with CCSF and Turlock, each of which is fully executed and will be filed with the Commission in January, 1988. However, PG&E's negotiations with Modesto and CCSF's separate agreements with both Turlock and Modesto have yet to be concluded. All Parties anticipate such completion before March 31, 1988, and PG&E intends to file its new interconnection agreement with Modesto (assuming the Parties actually have executed such an agreement) on or before that date.

The purpose of the proposed Extension Agreement is to continue the current arrangement, especially the accounting for power sales, and rates under the Interim Rate Schedule until March 31, 1988, only, to be superseded by the separate agreements discussed above. Each of PG&E's new agreements will supersede the services and rates provided for in this Extension Agreement. The Extension Agreement also contains provisions which would provide Turlock with transmission service for Turlock's coordination purchases from the California Department of Water Resources (CDWR). PG&E requests that any cost support requirement of Section 35 be waived and that transmission rate calculations based on previously filed rate and cost information be used to determine acceptance of the transmission rates for interim service to Turlock. Changes in revenues during the Extension Agreement are not possible to forecast, but the proposed extension could result in a revenue decrease to PG&E. CCSF purchases from PG&E may decrease because CCSF is selling less power to Turlock as a result to Turlock's coordination purchases from CDWR. PG&E has also included a Notice of Cancellation pursuant to § 131.53 of the Commission's regulations.

The Parties have agreed to an effective date of January 1, 1988.

Copies of this filing were served upon CCSF, Modesto, Turlock and the Public Utilities Commission of the State of California.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER88-165-000]

Take notice that on December 28, 1987, Southern California Edison Company (Edison) tendered for filing a notice of extension of rates for the purchase of Replacement Capacity by the cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California (Cities) from Edison under the provision of the following rate schedules:

Entity	Rate schedule FERC No
1. City of Anaheim	95
2. City of Azusa	144
3. City of Banning	145
4. City of Colton	146
5. City of Riverside	94
6. City of Vernon	154

Copies of this filing were served upon the Public Utilities Commission of the State of California and the cities of Anaheim, Azusa, Banning, Colton, Riverside, and Vernon, California.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER88-161-000]

Take notice that on December 23, 1987, Tucson Electric Power Company (Tucson) tendered for filing a Short-term Energy Sale and Purchase Agreement (Agreement) between Tucson and Southern California Edison Company. The primary purpose of the Agreement is to provide the terms and conditions relating to the sale of energy by Tucson and the purchase of energy by Edison between November 10, 1987 and December 31, 1987 inclusive.

Tucson requests an effective date of November 10, 1987, and therefore requests waiver of the Commission's notice requirements.

Tucson states that copies of the filing were served upon Edison.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER88-160-000]

Take notice that on December 23, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an assignment of, and an agreement that supersedes, a Power Sales Agreement between Cliffs Electric Service Company (CESCO) and Wisconsin Public Power Inc. SYSTEM (WPPI SYSTEM). Under the assignment, CESCO assigns its rights and duties to Wisconsin Electric.

Wisconsin Electric requests an effective date concurrent with its closing on the purchase of the Presque Isle Power Plant which is scheduled for 11:59 p.m. E.S.T. on December 31, 1987, or as promptly thereafter as required regulatory approvals can be obtained. The Company states that WPPI SYSTEM joins in the requested effective date.

Copies of the filing have been served on WPPI SYSTEM, the Public Service Commission of Wisconsin, the Michigan Public Service Commission.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER88-167-000]

Take notice that on December 28, 1987, Washington Water Power Company (Washington), the Seller, tendered for filing its revised Index of Purchasers under Washington's FERC Electric Tariff Original Volume No. 3 (Tariff 3). The revision incorporates the addition of new nonfirm Service Agreements with Colockum Transmission Company, Inc.; City of Seattle, Public Utility District No. 1 of Snohomish County; and City of Tacoma.

Washington requests that the effective date as indicated on each of the Service Agreements and the Index of Purchasers be assigned by the Commission.

Washington states that copies of the filing have been sent to parties to Washington's Tariff 3 Service Agreements.

Comment date: January 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-317 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. C178-613-003 et al.]

ARCO Oil and Gas Co. Division of Atlantic Richfield Co. et al.

Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

January 5, 1988

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C178-613-003, D, Dec. 23, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, Millman Field, Eddy County, New Mexico.	(1)	
C178-606-001, D, Dec. 23, 1987.	....do	....do	(1)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C168-672-000, D, Dec. 23, 1987.	....do....	Northwest Pipeline Corporation, Piceance Creek Field, Rio Blanco County, Colorado.	(1)	
C188-170-000, B, Dec. 7, 1987.	Magnatex Corporation	Delhi Gas Pipeline Corporation, Pecos Valley (Lower Permian) Unit, Pecos County, Texas.	(2)	
C188-189-000, F, Dec. 21, 1987.	Mobil Oil Exploration & Producing Southeast Inc., *et al*., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Transcontinental Gas Pipe Line Corp., Eugene Island Block 116, Offshore Louisiana.	(3)	
C162-191-000, D, Dec. 23, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Natural Gas Pipeline Company of America Chester, W. Field, Woodward County, Oklahoma.	(4)	
C161-715-000, D, Dec. 21, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Transwestern Pipeline Company, Red Deer Field, Roberts and Hemphill Counties, Texas.	(5)	
C176-242-001, D, Dec. 21, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Natural Gas Pipeline Company of America, Hansford Field, Hansford County, Texas.	(6)	
C176-240-001, D, Dec. 21, 1987.	....do....	Twin Field, Hansford County, Texas	(6)	
C164-1089-000, D, Dec. 21, 1987.	....do....	Arkla Energy Resources, a division of Arkla, Inc., Zion S.E. Field, Garfield County, Oklahoma.	(7)	
C166-294-000, D, Dec. 28, 1987.	....do....	Panhandle Eastern Pipe Line Company, Perryton Field, Ochiltree County, Texas.	(8)	
C176-409-001, D, Dec. 21, 1987.	....do....	Northern Natural Gas Company, Division of Enron Corp., Farnsworth Field, Ochiltree County, Texas.	(6)	
C164-386-001, D, Dec. 21, 1987.	....do....	Bechthold Field, Lipscomb County, Texas.	(6)	
C165-738-000, D, Dec. 21, 1987.	....do....	Clementine Field, Hansford County, Texas.	(6)	
C167-381-001, D, Dec. 22, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Fargo, N.W. Field, Woodward and Ellis Counties, Oklahoma.	(8)	
C185-262-001, F, Dec. 28, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, Division of Enron Corp., Barnes "A" Gas Unit (Topeka Formation), Morton County, Kansas.	(11)	
C169-179-000, D, Dec. 28, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Lone Star Gas Company, Fox-Graham, et al Field, Stephens and Carter Counties, Oklahoma.	(12)	
C161-1102-004, D, Dec. 28, 1987.	.....	ANR Pipeline Company, N.E. Seiling Field, Major County, Oklahoma.	(13)	
C162-1111-004, D, Dec. 28, 1987.	.....	Laverne Field, Harper County, Oklahoma.	(14)	
C167-172-000, D, Dec. 28, 1987.	.....	Southern Natural Gas Company, Mercer Field, Adams County, Mississippi.	(15)	
G-3653-007, D, Dec. 28, 1987.	.....	Columbia Gas Transmission Corporation, Ellis Field, Acadia Parish, Louisiana.	(16)	
G-8592-001, D, Dec. 28, 1987.	.....	United States Pipe Line Company, Piston Ridge Field, Forrest County, Mississippi.	(17)	

[1] By Assignment effective 1-1-87, ARCO assigned certain acreage to Hondo Oil & Gas Company.
[2] Applicant requests permanent abandonment of its sale of gas to Delhi. Contract has reached the end of its primary term. Applicant requests limited-term pregranted abandonment for a period of one-year for sales of the abandoned gas under its small producer certificate.
[3] MOEPSI acquired certain interest from Pennzoil Company by Assignment dated 2-4-87, effective 12-3-86.
[4] Tenneco assigned certain acreage to Unit Corporation effective 1-1-87 and Prentice, Napier & Green, Inc., effective 12-31-86 and certain leases expired.
[5] Union Oil Company of California assigned a certain lease dedicated under Docket No. CI61-715 to Wallace Oil and Gas, Inc., effective 11-1-87.
[6] Chevron assigned certain acreage to Atlantic Energy (USA) Corporation, effective 7-1-87.
[7] Chevron assigned certain acreage to Cross Timbers Oil Company, effective 7-1-87.
[8] Tenneco assigned certain acreage to Bell and Kinley Company, effective 12-1-86.
[9] Not used.
[10] Not used.
[11] By Assignment effective 5-1-87, Cities Service Oil and Gas Corporation acquired certain acreage from Shell Western E&P, Inc.
[12] Sun assigned its interest in Lease Numbers 14801-000 et seq., 14802-000 et seq., 14803-000 et seq., 14804-000 et seq., but only to depth down to 6,975 feet subsurface, to Moran Pipe & Supply Company Inc., effective 6-1-78.

[13] Sun assigned its interest in Property No. 419912, Harry Bensch Unit to Combined Resources Corporation, effective 12-1-83.
[14] Sun has assigned its interest in Property No. 686586, Nellie Scott Unit to Kaiser-Frances Oil Company, effective 11-1-83.
[15] Sun assigned its interest in Lease No. 105310, to Serio Oil Corporation, effective 11-1-Z-83.
[16] Sun sold Property No. 434660—BM SUA, Jabusch, Property No. 649005—NS SUF, E.J. Rollins; and Property No. 563801—N.C. Hensgens to Triumph Energy, Inc., effective 8-1-84.
[17] Sun assigned its interest in Property No. 718780, S.W. 32 Gas Unit to Raymac Petroleum Company, effective 12-1-83.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage, D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-318 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI88-193-000]

Conoco Inc.; Application

January 5, 1988.

Take notice that on December 23, 1987, Conoco Inc. (Conoco), of P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717) and §§ 157.23 through 157.27 of the Federal Energy Regulatory Commission's Regulations issued thereunder, section 2(18)(A) (i) & (ii) of the Natural Gas Policy Act of 1978 and Part 271 of the Commission's Regulations for a Certificate of Public Convenience and Necessity as partial successor-in-interest to American Royalty Producing Company (American) to continue sales to El Paso Natural Gas Company previously covered by American in Docket Nos. CI87-1-000 through CI87-27-000 and under the related rate schedules, all as more fully shown on the attached Appendix. This application is on file with the Commission and open to public inspection.

Effective January 1, 1987, Conoco acquired a portion of the interest previously held by American in various properties in the San Juan Field, San Juan & Rio Arriba Counties, New Mexico.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

APPENDIX.—APPLICATION FOR SUCCESSOR CERTIFICATE

Certificate docket No.	American Royalty Producing Company FERC gas rate schedule No.	Contracts and amendments dated	Related supplement No.
CI87-1-000	1	1-30-54	—
		9-22-54	1
		9-1-59	2
		11-12-68	3
		3-28-72	4
		6-19-80	5
		7-1-80	6
CI87-2-000	2	6-3-54	—
		2-2-55	1
		11-12-68	2
		3-28-72	3
		6-19-80	4
		7-1-80	5
CI87-3-000	3	1-27-61	—
		11-12-68	1
		3-28-72	2
		6-19-80	3
		7-1-80	4
CI87-4-000	4	4-9-57	—
		4-9-57	1
		4-23-59	2
		6-18-58	3
		7-5-60	4
		8-15-67	5
		11-12-68	6
		11-12-68	7
		7-22-69	8
		3-28-72	9
		6-19-80	10
		7-1-80	11
CI87-5-000	5	7-1-58	—
		7-5-60	1
		3-28-72	2
		6-19-80	3
		7-1-80	4
CI87-6-000	6	9-28-59	—
		11-12-68	1
		3-28-72	2
		6-19-80	3
		7-1-80	4
CI87-7-000	7	12-16-59	—
		5-8-69	1
		1-9-78	2
		12-31-79	3
		6-19-80	4
		7-1-80	5
CI87-8-000	8	8-19-53	—
		11-12-68	1
		3-28-72	2
		6-19-80	3
		7-1-80	4
CI87-9-000	9	10-7-53	—
		8-31-54	1
		1-18-55	2
		4-1-59	3
		7-5-60	4
		11-12-68	5
		3-28-72	6
		6-19-80	7
		7-1-80	8
CI87-10-000	10	6-26-59	—
		9-24-59	1
		11-2-61	2

APPENDIX.—APPLICATION FOR SUCCESSOR CERTIFICATE—Continued

Certificate docket No.	American Royalty Producing Company FERC gas rate schedule No.	Contracts and amendments dated	Related supplement No.
[4]		11-11-63	3
		11-12-68	4
		3-28-72	5
		6-19-80	6
		7-1-80	7
CI87-11-000	11	8-3-64	—
		11-1-64	1
		11-4-64	2
		11-12-68	3
		3-28-72	4
CI87-12-000	12	3-27-61	—
		11-12-68	1
		3-28-72	2
		6-19-80	3
		7-1-80	4
CI87-13-000	13	3-19-65	—
		3-31-65	1
		5-14-65	2
		8-23-65	3
		12-20-65	4
		1-26-61	5
		4-29-66	6
		11-7-66	7
		10-28-66	8
		2-17-67	9
		2-2-68	10
		11-12-68	11
		3-28-72	12
		12-1-72	13
		6-19-80	14
		7-1-80	15
CI87-14-000	14	7-31-67	—
		3-4-68	1
		11-12-68	2
		3-28-72	3
		6-19-80	4
		7-1-80	5
CI87-15-000	15	8-21-67	—
		12-5-67	1
		10-16-69	2
		3-28-72	3
		6-19-80	4
		7-1-80	5
CI87-16-000	16	2-23-68	—
		10-16-69	1
		3-28-72	2
		10-31-72	3
		5-15-73	4
		6-19-80	5
		7-1-80	6
CI87-17-000	17	4-3-68	—
		6-17-68	1
		11-7-68	2
		10-16-69	3
		3-28-72	4
		6-13-73	5
		3-1-77	6
		6-19-80	7
		7-1-80	8
CI87-18-000	18	4-25-68	—
		6-18-68	1
		10-16-69	2
		3-28-72	3
		6-19-80	4
		7-1-80	5
CI87-19-000	19	2-26-69	—
		8-3-69	1
		10-16-69	2
		3-28-72	3
		4-24-75	4

APPENDIX.—APPLICATION FOR SUCCESSOR CERTIFICATE—Continued

Certificate docket No	American Royalty Producing Company FERC gas rate schedule No.	Contracts and amendments dated	Related supplement No.
		6-19-80	5
		7-1-80	6
CI87-20-000	20	[1] 8-24-59	—
		(undated)	1
		11-12-68	2
		3-28-72	3
		6-19-80	4
		7-1-80	5
CI87-21-000	21	[2] 2-13-57	—
		(undated)	1
		10-9-67	2
		4-12-68	3
		5-25-77	4
		6-19-80	5
		7-1-80	6
CI87-22-000	22	5-17-83	—
		8-14-73	1
		5-13-74	2
		7-21-75	3
		9-24-75	4
		3-1-77	5
		6-19-80	6
		7-1-80	7
CI87-23-000	23	7-17-75	—
		6-19-80	1
		7-1-80	2
CI87-24-000	24	7-18-77	—
		6-19-80	1
		7-1-80	2
CI87-25-000	25	1-9-78	—
		8-28-78	1
		11-6-78	2
		12-7-79	3
		6-19-80	4
		7-1-80	5
		5-13-82	6
CI87-26-000	26	2-21-78	—
		6-19-80	1
		7-1-80	2
CI87-27-000	27	2-10-78	—
		6-19-80	1
		7-1-80	2

[1] Supplemental Gas Purchase Agreement.
[2] Letter agreement.

[FR Doc. 88-320 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-685-003]

Exxon Corp., Application for Extension

January 6, 1988.

Take notice that on December 21, 1987, Exxon Corporation (Exxon), P.O. Box 2180, Houston, TX 77252-2180, filed an application requesting that the Federal Energy Regulatory Commission (Commission) grant, until March 31, 1991, authority (a) to abandon temporarily sales for resale of Natural Gas Act (NGA) gas (including sections 102(d), 104, 106(a), 107(c)(5), 108, and 109) which were previously certificated by the Commission, to the extent that such gas is released by purchasers pursuant to such conditions as may be imposed by the Commission, (b) to make sales for resale in interstate commerce of NGA gas (including sections 102(d), 104, 106(a), 107(c)(5), 108, and 109), for pregranted abandonment of certificated gas named in items (b) and (d) to waive filing requirements of § 154.94 of the Commission's Regulations as to the gas sold under certificates granted in item (b).

On March 31, 1987, the Commission in Odeco Oil & Gas Company, *et al.*, Docket Nos. CI85-29-007, *et al.*, granted Exxon in Docket No. CI85-685-002 limited-term partial abandonment and blanket limited-term certificate authorization through March 31, 1988.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-321 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-22-003]

Fina Oil and Chemical Co. et al., Application for Extension

January 6, 1988.

Take notice that on November 17, 1987, Fina Oil and Chemical Company, Petrofina Delaware, Incorporated, Fina Oil & Gas, Inc. and Fina Exploration, Inc. (jointly referred to as Fina), 8350 N. Central Expressway #1866, Dallas, TX 75206, filed an application for extension of the limited-term abandonment and sales authorization (LTA) granted by the Commission in Docket No. CI86-22-000 on November 1, 1985, and extended by the Commission in Docket No. CI86-22-002 on March 31, 1987, for a period ending March 31, 1988. Fina requests an extension of its LTA through March 31, 1991. Fina requests such authorization on its own behalf and on behalf of its working interest co-owners in the same reserves.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-322 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI88-188-000]

GasMark, Inc.; Application

January 6, 1988.

Take notice that on December 18, 1987, GasMark, Inc. (GasMark), 4828 Loop Central Drive, Suite 840, Houston, Texas 77081, filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting blanket certificate authorization for (1) self-implementing sales for resale of certain natural gas in interstate commerce, without market restriction, by GasMark; (2) self-implementing sales of certain natural gas by others to GasMark for resale in interstate commerce, without market restriction; and (3) self-implementing sales for resale of certain natural gas in interestate commerce, without market restriction, by producers through GasMark acting as their agent. GasMark also seeks pregranted abandonment of all sales for resale for which sales certificate authority is sought. GasMark requests that such authorizations be for an unlimited term or at least until March 1989, or a longer duration equal to any extensions the Commission may grant to existing authorizations.

Finally, GasMark requests that the Commission declare in its order issuing the authorizations that the Commission's NGA jurisdiction over the activities and operations of GasMark is limited to the transactions for which authorization is sought in the application.

Any person desiring to be heard or to make any protest with reference to said

filing should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-323 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI88-162-000]

Grand Valley Gas Co.; Application

January 6, 1988.

Take notice that on December 14, 1987, Grand Valley Gas Company (Grand Valley), American Plaza III, 47 West 200 South, Suite 800, Salt Lake City, Utah 84101, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a blanket certificate authorizing sales for resale of certain natural gas in interstate commerce, without market restriction, by Grand Valley. Grand Valley also seeks pregranted abandonment of all sales for resale for which sales certificate authority is sought therein. Grand Valley requests that such authority be granted for a one-year term plus any extensions which may be awarded to other applicants with similar authority.

Grand Valley states that it is seeking authority to purchase and resell all NGPA categories of gas subject to the Commission's NGA jurisdiction including gas previously certificated for which abandonment authority has been issued, gas never previously sold but which would require a certificate if sold and NGA gas not committed to a contract. Finally, Grand Valley requests that the Commission declare that it will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-324 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-747-001]

Maxus Exploration Co. and Diamond Shamrock Offshore Partners Limited Partnership; Application for Extension

January 6, 1988.

Take notice that on December 18, 1987, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership (jointly referred to as "Maxus-Diamond"), LTV Center, Suite 1400, 2001 Ross Avenue, Dallas, TX 75201-2916, filed an application to extend its authorization in Docket No. CI87-747-000 for a term through March 31, 1988. In Docket No. CI87-747-000 Maxus-Diamond was granted blanket sales certificate authorization with pregranted abandonment approval to make certain sales in interstate commerce for a term expiring March 31, 1988.

Maxus-Diamond is seeking to extend the following authorizations: Blanket sales certificate authorization for certain interstate sales with pregranted abandonment for gas which remains subject to the Commission's NGA jurisdiction for which producers have received abandonment authority from the Commission through other proceedings, gas never previously sold but which would require a certificate if sold, and NGA gas which is not committed to a contract.

Maxus-Diamond also requests a waiver of any Commission orders, rules, regulations or reporting requirements which may be inconsistent with the authority sought, including the requirement for maintenance of rate schedules under Part 154 of the Commission's regulations and the filing for blanket affidavits pursuant to § 154.94 (h) and (k), and Part 271 of the regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-325 Filed 1-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-240-001]

Maxus Exploration Co. and Diamond Shamrock Offshore Partners Limited Partnership Application for Extension

January 6, 1988.

Take notice that on December 17, 1987, Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership (jointly referred to as "Maxus-Diamond"), LTV Center, Suite 1400, 2001 Ross Avenue, Dallas, TX 75201-2916, filed an application to extend its authorization in Docket No. CI87-240-000 for a term through March 31, 1988. In Docket No. CI87-240-000 Maxus-Diamond was granted limited-term abandonment authorization and certificate authorization with pregranted abandonment approval to make certain sales in interstate commerce for a term expiring March 31, 1988.

Maxus-Diamond is seeking to extend the following authorizations: (1) Limited-term partial abandonment of certain certificate sales; (2) limited-term certificate authorization for certain interstate sales with pregranted abandonment for gas that is produced from various interests owned by Maxus-Diamond; and (3) limited-term certificate authorization for certain interstate sales with pregranted abandonment for gas that is produced from various interests and attributable to other owners having

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interests in the same wells as Maxus-Diamond to the extent that such co-owners agree to same.

Maxus-Diamond also requests a waiver of any Commission orders, rules, regulations or reporting requirements which may be inconsistent with the authority sought, including the requirement for maintenance of rate schedules under Part 154 of the Commission's regulations and the filing of blanket affidavits pursuant to § 154.94(h) and (k), and Part 271 of the regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-326 Filed 1-7-88; 8:45 am]

BILLING CODE 6710-01-M

[Docket No. CP85-710-008]

Northern Natural Gas Co.; Petition To Amend Order

January 6, 1988.

Take notice that on December 21, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-710-008 a Petition to Amend the Commission's Order of July 24, 1986, as modified by its January 28, 1987, order on rehearing and as further modified by its March 31, 1987, and September 30, 1987, orders to extend the term of the existing limited-term abandonment (LTA) and sales authorization for Northern's producer-suppliers granted by said orders for a period ending March 31, 1988.

Northern requests that the term of its LTA, as set by the Commission in its Order in Docket No. CP85-710 *et al.* on July 24, 1986, its January 28, 1987 order on rehearing, its March 31, 1987 order in *Odeco Oil and Gas Company, et al.*, Docket Nos. CI85-29-007, *et al.*, 38 FERC ¶ 61, 343 (1987), and its September 30, 1987 order, be extended for a two year period ending March 31, 1990.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-327 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-53-006 and RP84-53-007]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

January 6, 1988.

Take notice that on December 28, 1987, Ozark Gas Transmission System (Ozark) tendered for filing Substitute Fourth Revised Sheet No. 5 (effective March 1, 1984); Fifth Revised sheet No. 5 (effective July 1, 1987); and Sixth Revised Sheet No. 5 (effective October 1, 1987); to be a part of its FERC Gas Tariff, Original Volume No. 1.

Ozark states that the tariff sheets are submitted in compliance with Commission Opinion No. 273-A, issued November 24, 1987. The proposed tariff sheets return excess accruals for deferred taxes to Ozark's firm shippers using a tax normalization accounting methodology. Ozark plans to credit its present firm shippers with respect to excess deferred taxes at the time that the amount of tax depreciation first is less than the amount of regulatory depreciation which will occur in 1992.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions or protests should be filed on or before January 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-328 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-195-000 and CI88-196-000]

Pogo Producing Co.; Applications for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

January 5, 1988.

Take notice that on December 23, 1987, as supplemented on December 30, 1987, Pogo Producing Company (Pogo), P.O. Box 61289, Houston, TX 77208-1289 filed an application in Docket No. CI88-196-000 requesting permanent abandonment of sales of gas to Texas Eastern Transmission Corporation (Texas Eastern) from South Pass Blocks 33 and 49 and Mississippi Canyon Block 63, Offshore Louisiana, and an application in Docket No. CI88-195-000 requesting a three-year blanket limited-term certificate with pregranted abandonment for sales for resale in interstate commerce of the released gas to other purchasers on the spot market.

Pogo states expedited relief is sought under § 2.77 of the Commission's Regulations for the reason that gas sales under the terms of the gas purchase contract dated October 25, 1983, have never been made and no payments have been received in the form of take-or-pay payments. The sale was authorized under a certificate issued January 23, 1984, to Pogo in Docket No. CI84-78-000 and covered under Pogo's FERC Gas Rate Schedule No. 66. Pogo states it exercised its contractual right under section II.4 of the October 25, 1983, contract to terminate the contract effective December 1, 1987, because Texas Eastern was unable to complete the necessary transportation arrangements and, as a result, did not make any purchases under the contract. Pogo states that as a result of Texas Eastern's failure to purchase gas for almost four years, Pogo has gone into serious imbalance with respect to its gas production. As of September 1987, Pogo states it was underproduced to the extent of 2.058 Bcf on South Pass Blocks 33 and 49 and .334 Bcf on Mississippi Canyon Block 63. Pogo states that if it is unable to make up this imbalance, it will have to settle for cash reimbursement at a rate far below the current market value of the gas. Deliverability is approximately 1,500 Mcf per day. The gas is NGPA section 102(d) gas. Pogo requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1] Pogo requests the Commission waive reporting requirements of Parts 154 and 271 of the Commission's regulations.

Since Pogo has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Pogo to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-329 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (46 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

[Docket No. CI87-433-001]

Texaco Gas Marketing Inc.; Petition To Amend

January 6, 1988.

Take notice that on December 18, 1987, Texaco Gas Marketing Inc. (TGMI), P.O. Box 52332, Houston, TX 77052, filed in this proceeding a Petition pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.207), requesting the Commission to amend its Order Issuing Blanket Sales Certificate With Pregranted Abandonment issued in Docket No. CI87-386-000, *et al.* on July 29, 1987, to authorize a three-year extension of the sales authorization which is currently due to expire on March 31, 1988.

The Order authorized TGMI in Docket No. CI87-433-000 to make sales for resale in interstate commerce of natural gas subject to the Commission's Natural Gas Act jurisdiction and gas not previously sold in interstate commerce but which, if sold, would require a certificate and pregranted abandonment under section 7(b) of the NGA of any sales for resale made under the requested blanket certificate.

TGMI also request waiver of Part 154 of the Commission's regulations requiring the establishment of rate schedules, including the filing of blanket affidavits pursuant to § 154.94 (h) and (k).

Any person desiring to be heard or to make any protests with reference to said Petition should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Petitioners to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-330 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-161-000]

Texaco Inc., et al.; Petition To Amend

January 6, 1988.

Take notice that on December 7, 1987, Texaco Inc. (TI), Texaco Producing Inc. (TPI), and Getty Oil Company (GOC), P.O. Box 52332, Houston, TX 77052, filed in this proceeding a Petition pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.207), requesting the Commission to amend its Order Approving Limited-Term Blanket Abandonment and Issuing Limited-Term Blanket Certificate with Pregranted Abandonment (Order), issued in Docket No. CI87-686-000 on September 30, 1987. In their Petition, TI, TPI, and GOC request that the Commission authorize a three-year extension of the limited-term abandonment and sales authorization ("LTA") granted to petitioners, which is currently due to expire on March 31, 1988.

The Order granted TI, TPI, and GOC *inter alia*: (i) Authorization pursuant to section 7(b) of the NGA to abandon sales for resale in interstate commerce previously certificated by the Commission pursuant to section 7(c) of the Natural Gas Act of gas released by the purchaser for a term extending through March 31, 1988; (ii) blanket certificates of public convenience and necessity pursuant to section 7(c) of the NGA authorizing the sale for resale in interstate commerce of the natural gas authorized to be abandoned; and (iii) pregranted abandonment under section 7(b) of the NGA of any sales for resale made under the requested blanket certificate. The foregoing authorizations applied to all categories of gas subject to the Commission's Natural Gas Act jurisdiction.

TI, TPI, and GOC request that their petition be considered on an expedited basis consistent with the Commission's policy on expedited producer abandonments adopted in Docket No. RM85-1-000. TI, TPI and GOC also request waiver of Part 154 of the Commission's Regulations requiring the establishment of rate schedules, including the filing of blanket affidavits pursuant to § 154.94 (h) and (k).

Any person desiring to be heard or to make any protests with reference to said Petition should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.211, 385.214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Petitioners to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-331 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-916-000 and CI87-931-000]

Texaco Inc. and Texaco Producing Inc.; Applications for Permanent Abandonment and Certificate of Public Convenience and Necessity

January 5, 1988.

Take notice that on September 22, 1987, as supplemented on November 6 and 16, 1987, Texaco Inc. and Texaco Producing Inc. (jointly referred to as Applicant) 1111 Rusk Street, Houston, Texas 77002, filed applications pursuant to section 7 of the Natural Gas Act requesting (1) permanent abandonment in Docket No. CI87-931-000 of certain sales to Arkla Energy Resources, a division of Arkla Inc. (AER), which have been certificated by the Commission and (2) a permanent certificate of public convenience and necessity in Docket No. CI87-916-000 authorizing sales from the subject acreage to Bridgeline Gas Distribution Company (Bridgeline), Neches Gas Distribution Company (Neches), and Texaco Gas Marketing Inc. (TGMI). Acreage for which certificate authorization is sought is in Arkansas, Louisiana, Oklahoma and Texas. Applicant also seeks authorization to include sales by other co-interest owners in the same wells, to the extent such joint owners agree.

Applicant states that the abandonment authorization and sales certificate authorization are being sought as a result of a comprehensive settlement agreement between Applicant and AER, dated September 28, 1986, and executed by Applicant on February 26, 1987. Under the terms of the settlement agreement, Applicant states that it and AER agree to terminate all contracts effective on the date abandonment authorization is received from the Commission and all conditions for termination have been met. Effective on the date of termination of the contracts, Applicants states it agrees to waive and release AER from any and all obligations and liabilities AER has, or may have, arising out of any failure to take gas, or to pay for gas not taken, under such contracts between AER and Texaco for all contract years during which any of the contracts have been in effect. Applicant states it is not required to accept any abandonment authorization which is other than complete and permanent or which contains any conditions unacceptable to Applicant.

Applicant states that the following is an estimate of aggregate current daily deliverability of certificated gas under the gas rate schedules involved herein:

NGPA category	Deliverability (MCFD)	Percent
Section 104 (maximum rate)	1,962	4.5
Section 104 (flowing rate)	491	1.1
Section 106(a)	40,892	94.1
Section 108	117	.3
Total	43,462	100

In addition, Applicant states that AER has agreed to transport the gas released by termination of the contract utilizing existing facilities for delivery at any existing interconnection on its system for subsequent transportation by others. Such transportation is to be performed by AER in accordance with and subject to AER's transportation tariffs in effect, from time to time, and applicable to similar transportation services.

Applicant states that AER also has agreed to provide through January 1, 1990, a backhaul transportation service for Texaco on an interruptible basis with partial or limited balancing rights on AER's Western Oklahoma pipeline system at a rate equal to fifty (50%) percent of AER's maximum tariff rate applicable to Partial Interruptible Transportation Service, as in effect and on file with the FERC from time to time. Additionally, Applicant avers that through January 1, 1990, AER has agreed not to charge Applicant a transportation rate that exceeds the rate a third party is obligated to pay under its comparable transportation agreement for the same service.

Pending the receipt and acceptance by Applicant of abandonment authorization, and as part of the settlement agreement, Applicant states that it and AER agreed to temporarily release all gas for sale to third parties. Gas subject to Natural Gas Act jurisdiction was released and resold pursuant to AER's blanket limited-term abandonment authorization in Docket No. CI86-736-000, and blanket limited-term certificate with pregranted abandonment authorization in Docket No. CI86-737-000. Any gas so released and transported by AER was deemed to be gas 'taken' by AER under the contract from which the gas was released for purposes of determining any obligation or liability AER may have under such contract for failure to take gas, or to pay for gas not taken.

Applicant states that upon receipt of certificate authorization, and for so long as market forces and demand indicate, Applicant anticipates selling most of the gas, if not 100%, to TGMI. As market changes occur, and demand increases, Applicant states it anticipates gas volumes being sold to Bridgeline and Neches.

Applicant states it has been informed that TGMI will serve as representative for the purpose of determining what volumes of gas will be allocated to and subsequently purchased by each buyer. Applicant states it has been informed by TGMI that any gas volumes allocated to it will be resold to end users or to purchasers in the spot market under TGMI's blanket limited-term sales certificate with pregranted abandonment in Docket No. CI87-433-000. Applicant asserts it has been informed by Bridgeline, a local distribution company located in the state of Louisiana, that gas volumes allocated to it will be used in its system supply. Applicant states it has been informed by Neches, a local distribution company located in the state of Texas, that gas volumes allocated to it will be used in its system supply. Applicant also states that the points of delivery for gas delivered under the requested certificate are those delivery points previously authorized in the certificates and any amendments thereto and any other mutually agreeable points. Applicant further states that title and control of the gas shall pass from Applicant to buyers at the delivery points.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before January 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-319 Filed 1-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-120-000]

Williston Basin Interstate Pipeline Co.; Application

January 6, 1988.

Take notice that on December 9, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota, 58501, filed in Docket No. CP88-120-000 an application pursuant to section 7 (b) of the Natural Gas Act for permission and approval to abandon a sales tap and appurtenant facilities on its Elk Basin-Billings Red Line in Yellowstone County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to abandon a sales tap which provided gas service to a utilities' customer, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resource Group, Inc. because the retail customer previously receiving the gas is no longer in business, it is asserted. Williston Basin states that since the sales tap will be abandoned in place on the existing transmission right-of-way, there will be no significant adverse impact on the environment.

It is explained that Williston Basin will bear no cost for retiring the sales tap, as such cost was borne by the customer. It is further explained that if gas is needed in the area in the future, there are existing taps nearby that could be used.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-332 Filed 1-7-88; 8:45am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3313-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 21, 1987, through December 24, 1987, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-L65110-00, Rating EC2, Siskiyou National Forest, Land and Resource Management Plan, Implementation.

Summary

EPA feels that the process for managing forest activities was not sufficiently explained to assure that adverse environmental effects, particularly to water quality, will be prevented. Standards and Guidelines and a monitoring plan for water quality need to be more fully developed in this document.

ERP No. D-FHW-D40228-VA, Rating EC2, VA-664 Construction, US 58 Interchange at Bowers Hill in the City of Chesapeake to US 17 in the City of Suffolk, Funding, Section 10 and 404 Permit, VA.

Summary

EPA has concerns regarding the effects of secondary development, especially the impacts to wildlife and the natural environment. Noise impacts are also of concern, although mitigation measures may not be feasible.

ERP No. D-FHW-E40710-NC, Rating EC2, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC-3180 to I-85 near the US 29 Connector, Funding, Mecklenburg County, NC.

Summary

EPA expressed concern about project noise and wetland impacts. Intersection analysis for carbon dioxide and a finalized wetland delineation have been requested prior to the issuance of the final EIS. EPA also would like to see a stronger commitment to implementation of feasible noise abatement in the final EIS.

Final EISs

ERP No. FS-BLM-K03012-TX, All American Crude Oil Pipeline Project, Construction and Operation, Texas Extension, McCarney to Webster and Texas City, 404 and 10 Permits, Fort Bend, Galveston, Harris, Hays, Travis and Caldwell Counties, TX.

Summary

EPA has not identified any new issues of concern with regard to the selection of BLM's preferred route (the Northern Route).

ERP No. F1-BLM-L65092-ID, Medicine Lodge Resource Area, Wilderness Study Areas Recommendations, Wilderness Designation or Nondesignation, Sand Mountain and Snake River Islands WSAs, Bonneville, Fremont and Jefferson Counties, ID.

Summary

EPA has no objection to the project as proposed.

ERP No. F-COE-E35061-FL, Port Everglades Expansion, Construction and Fill Placement in the U.S. and Contiguous Wetlands, Section 10 and 404 Permit Application, Broward County, FL.

Summary

EPA continues to have environmental concerns about construction of the proposed turning notch within a well developed mangrove forest. EPA believes that the subject application does not satisfy the specific stipulations of § 230.10 (a) and (c) and of the Clean Water Act section 404(b)(1) Guidelines available to meet the sponsors goal. It is EPA's opinion that environmental losses associated with proposal are too significant to recommend the permit to be issued.

ERP No. F-FHW-D40217-MD, MD-36 Construction, Seldom Seen Road to Buskirk Hollow Road, 404 Permit, Funding, Allegany County, MD.

Summary

EPA had requested that this document discuss the potential impacts to groundwater for each alignment. EPA will accept a preconstruction study on the selected alternate, but recommends a general study on each alignment in future projects.

ERP No. F-FHW-D40218-MD, MD-100 Construction, I-95 in Howard County to MD-3/I-97 in Anne Arundel County and MD-176 Improvements, US 1 to MD-295/Gladys Noon Spellman Parkway, Right-of-Way Acquisition, 404 Permit and Funding, Howard and Anne Arundel Counties, MD.

Summary

EPA has requested the State Highway Administration to perform a hydrogeologic study on the selected alternative and forward a copy to them along with a statement regarding how the results of the study will be incorporated in the design. This document satisfactorily addresses EPA's comments from the draft EIS with the exception of potential groundwater impacts.

(Note.—The above summary should have appeared in the 12-24-87 FR Notice)

ERP No. F-SFW-L64032-AK, Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan, Wilderness Review, Implementation, AK.

Summary

EPA is concerned that necessary monitoring activities may not occur without the additional funding that has also been identified as necessary. EPA has suggested that implementation of activities which require monitoring be delayed until funding can also be assured, and recommended that the Record of Decision include a statement of this effect.

Dated: January 5, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-363 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3313-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 28, 1987 Through January 1, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 870458, Draft, AFS, CA, Shasta and Trinity Units, Revised Operation and Development Plan, Whiskeytown-Shasta-Trinity National Recreation Area, Implementation, Shasta and Trinity National Forests, Shasta and Trinity Counties, CA, Due: March 4, 1988, Contact: Pam Gardiner (916) 275-1587.

EIS No. 870459, Final, AFH, ID, ADOPTION—City of Post Falls Wastewater Treatment Facilities, Sewage Treatment Plant Improvements and Interceptor and Collection Sewers Extension, Funding, Kootenai County, ID, Due: February 8, 1988, Contact: F. Gary Hayne (208) 334-1608. Farmers Home Administration has adopted the Environmental Protection Agency's Final EIS, #810612, filed 8-3-81.

EIS No. 870460, Final, FHW, IA, Central Business District Loop Arterial Construction, Harding Road and I-235 to US 65 at Scott Avenue, Funding and 404 Permit, Polk County, IA, Due: February 8, 1988, Contact: Mr. H. A. Willard (515) 233-1664.

EIS No. 870461, Final, USA, PRO, AL, AR, MD, CO, OR, IN, UT, KY, Continental United States Unitary Lethal Chemical Agents and Munitions Stockpile Disposal Program, Destruction and Implementation, Due: February 8, 1988, Contact: Marilyn Tischbin (301) 671-2583.

EIS No. 870462, Draft, AFS, WA, Mount Baker-Snoqualime National Forest, Land and Resource Management Plan, Implementation, King, Pierce, Skagit, Snohomish and Whatcom Counties, WA, Due: April 15, 1988, Contact: Lyle E. Jack (206) 442-4888.

EIS No. 870463, Final, DOE, SC, Savannah River Plant Hazardous/Low-Level Radioactive and Mixed Waste Management Activities for Groundwater Protection, Modifications and Implementation, Aiken, Barnwell and Allendale Counties, SC, Due: February 8, 1988, Contact: Mr. S. R. Wright (803) 725-3957.

EIS No. 870464, Action, COE, KS, Halstead Local Flood Protection Project, Additional Mitigation Studies, Implementation, Harvey County, KS, Contact: Richard Makinen (202) 272-0166.

Amended Notices

EIS No. 870290, Draft, AFS, Siskiyou National Forest, Land and Resource Management Plan, Implementation, Due: January 25, 1988, Contact: Ronald McCormick (503) 479-5301. Published FR 10-9-87—Review period extended.

EIS No. 870359, DSuppl, SFW, Sport Hunting of Migratory Birds, Issuance of Annual Regulations, Updated Information, Due: January 31, 1988, Contact: Rollin Sparrowe (202) 254-3207. Published FR 10-23-87—Review period extended.

EIS No. 870415, FSuppl, COE, Corte Madera Creek Flood Control Project, Unit No. 4, Updated Modifications, Implementation, Town of Ross, Marin County, CA, Due: January 20, 1988, Contact: Richard Meredith (916) 551-1855. Published FR 11-20-87—Review period extended.

Dated: January 5, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-364 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3314-1]

Coquille River, OR; Ocean Dredged Material Disposal Site; Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA), Region X.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the final designation of an adjusted ODMDS off Coquille River, Oregon.

Purpose: The U.S. EPA, Region X, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), and with the cooperation of the U.S. Army Corps of Engineers, Portland District, will prepare a draft EIS on the designation of an ODMDS off Coquille River, Oregon. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and to be Placed on the Project Mailing List Contact: Mr. John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue WD-138, Seattle, Washington 98101-3188. Phone (206) 442-1286. Questions regarding disposal site studies may also be directed to: Mr. Rudd Turner, U.S. Army Engineer District, Planning Division, P.O. Box 2946, Portland, Oregon 97208-2946, Phone (503) 221-6401.

Summary: The Coquille River navigation channel requires periodic maintenance dredging to ensure safe navigation. Disposal of dredged sediments at an interim designated ODMDS has occurred in the past. Based on studies conducted by the Corps of Engineers, Portland District, an adjusted site location is proposed. Designation of a final Coquille River ODMDS provides a feasible and environmentally acceptable disposal site for anticipated future work in the area.

Need for Action: The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore the Coquille River Oregon, for disposal of sediments dredged to maintain the federally authorized navigation project and for disposal of materials during other actions authorized in accordance with section 103 of the MPRSA. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. This EIS will provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal at Coquille.

2. Alternative disposal in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands.

Scoping: A scoping meeting is not contemplated. Scoping will be accomplished with affected federal, state, and local agencies, and with interested parties by correspondence.

Estimated Date of Release: The draft EIS will be available in Spring 1988.

Responsible Official: Robie Russell, Regional Administrator, Region X.

Dated: December 31, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-365 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3314-2]

City of Tallahassee-Leon County, Florida Wastewater Management; Intent To Prepare an Environmental Impact Statement Supplement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare a supplement to the Tallahassee-Leon County, Florida Wastewater Management Environmental Impact Statement (1983) to reevaluate wastewater management alternatives and their impacts.

Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS supplement and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

For Further Information and to be Placed on the Project Mailing List Contact: Robert B. Howard, Chief, NEPA Compliance Section, Environmental Assessment Branch, EAB-4, US EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365. Telephone: (404) 347-3776 or (FTS) 257-3776.

Need for Action: The EPA, the City of Tallahassee, and the Leon County Board of County Commissioners have determined the need to reevaluate the selected alternative in the Tallahassee-Leon County Wastewater Management EIS (1983). The selected action in the original EIS was that "no further Federal grants be made for expansion of the wastewater system beyond that already approved under Phase I of the 201 Plan." Since issuance of the EIS, investigations into septic failures within the study area have revealed that new information relating to soil types, water tables, and development density is available which was not available during the original EIS study period. The results of the EIS supplement will be used in determining EPA 201 Construction Grant funding eligibility for the proposed facilities in the study area.

Alternatives: The EIS will examine the feasible long term alternatives for wastewater management in the study area.

Scoping: Participation in the EIS process is invited from individuals, organizations, and government agencies. Preliminary project scoping is underway. EPA will prepare and circulate a draft scoping report for the EIS supplement prior to the public scoping meeting. Input to the EIS supplement may also be addressed to the contact person listed above. Persons wishing to be included on the mailing list to receive a copy of the draft EIS supplement should write to the same address.

Estimated Date of Draft EIS Release: November 1, 1988.

Responsible Official: Lee A. DeHihns, III, Acting Regional Administrator.

Dated: December 31, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-366 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-01-M

[WH-FRL-3313-6]

Drinking Water Health Advisories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of drinking water health advisories for National Pesticide Survey analytes.

SUMMARY: This notice announces the availability of 50 EPA Drinking Water Health Advisories (HAs). These HAs were developed in conjunction with the National Pesticide Survey sponsored by the EPA Office of Drinking Water and Office of Pesticide Programs. Health Advisories are available for the following contaminants:

Acifluorfen
Ametryn
Ammonium sulfamate
Atrazine
Baygon
Bentazon
Bromacil
Butylate
Carbaryl
Carboxin
Chloramben
Chlorothalonil
Cyanazine
Dacthal
Dalapon
Diazinon
Dicamba
1,3-Dichloropropene
Dieldrin
Dimethrin
Dinoseb
Diphenamid
Disulfoton
Diuron
Endothall
Ethylene thiourea
Fenamiphos
Fluometuron
Fonofos
Glyphosate
Hexazinone
MCPA
Maleic hydrazide
Methomyl
Methyl parathion

Metolachlor
Metribuzin
Paraquat
Picloram
Prometon
Pronamide
Propachlor
Propazine
Propham
Simazine
Tebuthiuron
Terbacil
Terbufos
2,4,5-Trichlorophenoxyacetic acid
Trifluralin

Health Advisories are developed by the Office of Drinking Water. These documents provide information on the health effects, analytical methodology and treatment technology that would be useful to public health officials in dealing with emergency spills or contamination situations involving drinking water. The HAs describe nonregulatory concentrations of drinking water contaminants that are considered protective of adverse health effects over specific exposure durations. A margin of safety is incorporated to protect sensitive members of the population. Health Advisories are updated as new information becomes available.

DATES: These HAs are available for public comment on their technical merit. Written comments should be submitted by March 8, 1988.

ADDRESSES: To obtain copies of the set of 50 HAs, interested parties should contact the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (800) 356-4700. Please refer to accession number PB88-113543/AS. For copies of individual HAs on particular pesticides, contact the EPA Safe Drinking Water Hotline, (800) 426-4791, or send a written request to the Health Advisory Program Coordinator, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jennifer Orme, Health Advisory Program Coordinator, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call (202) 382-7571.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88-311 Filed 1-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. W-30]

Window Notice for the Filing of FM Broadcast Applications

Released: December 16, 1987.

Notice is hereby given that applications for vacant FM broadcast allotments listed below may be submitted for filing during the period beginning December 16, 1987, and ending January 26, 1988, inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—283 A

E. Porterville, CA
Rohnerville, CA
Henry, IL
Carrollton, MI
Walker, MI
Willard, MO [1]
Lebanon, NH
Warrensburg, NH
Elizabethville, PA
Marion, SC
Columbus, WI

Channel—283 C2

Louisville, KY

Channel—254 A

Winton, CA
East Lyme, CT
Anderson, IN
Somersworth, NH
Winchester, NH
Villas, NJ
Crestline, OH
Nyssa, OR
Spencer, TN

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 88-347 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

Technical and Allocations Subgroups of Radio Advisory Committee; Meeting

The Technical and Allocations Subgroups of the Advisory Committee on Radio Broadcasting will meet in joint session on Wednesday, January 27, 1988, in the McCollough Room of the National Association of Broadcasters, 1771 N Street NW., Washington DC. The meeting will convene at 10:30 a.m. Please note that this is a half hour later than the customary meeting time.

At this joint meeting, the Subgroups will continue their consideration of:

—Improvement of the AM radio broadcast service, including, in particular, proposed methodology for the conduct of a listener study;
—Nighttime skywave propagation characteristics; and
—Other business.

The Subgroups' meetings are continuing ones, and may be resumed after each session at such times and places as may be decided by the participants at publicly announced meetings. All meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824-5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254-3394.

Federal Communications Commission

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-346 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Rayne Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Rayne Broadcasting Company, Inc., Rayne, LA	BPH-861125ME	87-560
B. Carl Broadcasting Company, Inc., Rayne, LA	BPH-861125MI	87-560
C. Simla B Ellis, d/b/a Simla Broadcasting, Rayne, LA	BPH-861125MK	87-560
D. Rayne FM, Ltd., Rayne, LA	BPH-861126MI	87-560
E. Cal Enterprises, Inc., Rayne, LA	BPH-861126MV	87-560
F. Southwest Louisiana Broadcasting Company, Inc., Rayne, LA	BPH-861126MY	87-560
G. Benjamin Mecwan, Rayne, LA	BPH-861126MB (Dismissed)	87-560

2. Pursuant to 47 U.S.C. 309(e), the above aplications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A-F
2. Ultimate, A-F

[1] A proposal is pending under Docket 87-476 to change channel and class to 286 C2.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contrator, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-348 Filed 1-7-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-806-DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-806-DR), dated December 17, 1987, and related determinations.

DATED: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Arkansas, dated December 17, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 17, 1987: Crittenden County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-281 Filed 1-7-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 22, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Maroa Bancshares, Inc. Employee Stock Ownership Trust*, Maroa, Illinois; to acquire 24.9 percent of the voting shares of Maroa Bancshares, Inc., Maroa, Illinois, and thereby indirectly acquire Bank of Maroa, Maroa, Illinois.

Board of Governors of the Federal Reserve System, January 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-275 Filed 1-7-88; 8:45 am]

BILLING CODE 6210-01-M

The One Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The One Bancorp*, Portland, Maine; to acquire 100 percent of the voting shares of Southstate Bank for Savings, Brockton, Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Public National Bank Corporation*, Key Largo, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Monroe County, Key Largo, Florida, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-276 Filed 1-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given of the establishment of the Office of the SSA Chief Financial Officer (S6) at the first level below the Commissioner and the establishment of the Office of Program and Integrity Reviews, the Office of Financial Policy and Operations, and the Information Technology Systems Review Staff and their respective subordinate offices in that Office. The changes are as follows:

Chapter S6

Office of the SSA Chief Financial Officer

S6.00 Mission
S6.10 Organization

S6.20 Functions

Section S8.00 The Office of the SSA Chief Financial Officer—(Mission):

The Office of the SSA Chief Financial Officer (OSSACFO) directs the development of Agency financial policies and procedures as well as the management of the Agency financial management systems. It directs the activities of the Systems Review Board (SRB) and the systems procurement review function. It directs the evaluation of program operations quality and the management of Agency quality assurance, internal controls and systems security programs.

Section S6.10 The Office of the SSA Chief Financial Officer—(Organization): The Office of the SSA Chief Financial Officer under the leadership of the SSA Chief Financial Office includes:

A. The SSA Chief Financial Officer (S6).

B. The Immediate Office of the SSA Chief Financial Officer (S6A).

C. The Office of Program and Integrity Reviews (S6B).

D. The Office of Financial Policy and Operations (S6C).

E. The Information Technology Systems Review Staff (S6E).

Section S6.20 The Office of the SSA Chief Financial Officer— (Functions):

A. The SSA Chief Financial Officer (SSACFO) is directly responsible to the Commissioner for carrying out the OSSACFO mission and providing general supervision to the major components of OSSACFO.

B. The Immediate Office of the SSA Chief Financial Officer (S6A) provides the SSACFO with staff assistance on the full range of his/her responsibilities.

C. The Office of Program and Integrity Reviews (S6B) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency.

D. The Office of Financial Policy and Operations (S6C) defines the requirements for all SSA financial systems and processes to ensure Agency compliance with statutory requirements for administrative control of funds prescribed by the Comptroller General and the Federal Managers' Financial Integrity Act.

E. The Information Technology Systems Review Staff (S6E) serves as the principal independent source of advice to the SRB, the SSACFO and the Commissioner on the feasibility, suitability and conformance to regulations of proposed systems plans and acquisitions; on proposed systems design and requirement specifications; and on other systems strategies and related issues. It reviews major Automated Data Processing (ADP) Agency Procurement Requests for adequacy, clarity, cost-effectiveness, achievability, consistency with strategic plans, and to ensure that project objectives are realistic and complete. It conducts technical reviews of the functional requirements and design specifications of all Information Technology Systems and other ADP systems and software to ensure their sufficiency and compliance with applicable policies, procedures and strategic plans. The Staff analyzes ongoing systems, planned strategies, contracts, interagency agreements and other ongoing work in the systems area to determine appropriateness of ADP plans and monitors significant ADP projects to ensure that Agency objectives and timeframes are met.

Subchapter S6B

The Office of Program and Integrity Reviews

Section S6B.00 The Office of Program and Integrity Reviews—(Mission): The Office Program and Integrity Reviews (OPIR) reviews, evaluates and assesses the integrity and quality of the administration of Social Security programs in headquarters and in the field. It recommends corrective changes in programs, policies, procedures or legislation aimed at productivity improvement and/or program simplification. It evaluates the quality of SSA operations with emphasis on the prevention of program and systems abuse, the elimination of waste and the increase of efficiency.

Section S6B.10 The Office of Program and Integrity Reviews—(Organization): The Office of Program and Integrity Reviews, under the leadership of the Associate Commissioner for Program and Integrity Reviews, includes:

A. The Associate Commissioner for Program and Integrity Reviews (S6B).

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S6B).

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S6B).

D. The Office of Insurance Program Quality (S6BA).

E. The Office of Assistance Program Quality (S6BB).

F. The Office of Disability Program Quality (S6BC).

G. The Program and Integrity Field Office (S6B–F1–S6B–FX).

Section S6B.20 The Office of Program and Integrity Reviews—(Function):

A. The Associate Commissioner for Program and integrity Reviews (S6B) is directly responsible to the SSACFO for carrying out OPIR's mission and provides general supervision to the major components of OPIR.

B. The Deputy Associate Commissioner for Program and Integrity Reviews (S6B) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program and Integrity Reviews (S6B) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Insurance Program Quality (S6BA) plans, designs and maintains a quality review system for the Retirement and Survivors Insurance (RSI) program to ensure quality in adjudication and payment error reduction. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action changes in RSI program policies, procedures or computer systems routines reporting on RSI payments and workloads or legislation. The Office plans and designs special reviews of problem areas, and plans and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the management of the RSI program. The Office provides technical support and guidance to program and integrity field staff in the RSI Quality Review program, and conducts reviews of the Program and Integrity Field Offices' (PIFO) adherence to OPIR review policies and procedures.

E. The Office of Assistance Program Quality (S6BB) plans, designs and maintains a quality review system for the Supplemental Security Income (SSI) program to ensure quality in adjudication and payment. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action changes in SSI program policies, procedures or legislation. The Office plans and designs special reviews of problem areas, and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the operation of the SSI program. The Office provides technical support and guidance to program and integrity field staff in the SSI Quality Review Program, and conducts reviews of PIFO's adherence to POIR review policies and procedures. It compiles quality review data for determining Federal fiscal liability to States for Federally-administered State supplementary payments.

F. The Office of Disability Program Quality (S6BC) plans, designs and maintains a quality review system for the Title II and Title XVI disability programs to ensure quality in adjudication and payment. It designs sampling methods and techniques, and issues policies and procedures for reviews. It analyzes review data and prepares reports on findings, including recommendations for corrective action or changes in disability program policies, procedures or legislation. The Office plans and designs special reviews of problem areas, and plans and utilizes an automated data base of findings in current and longitudinal analyses so that policy and operational managers can improve the operation of the disability program. The Office provides technical support and guidance to program and integrity field staff in the disability quality review program, and conducts reviews of PIFO's adherence to OPIR review policies and procedures.

G. The Program and Integrity Field Office (PIFO) (S6B–FI–S6B–FX) manages quality assurance and evaluation activities in the field. It conducts independent reviews to determine payment and eligibility error rates in Social Security programs, including errors in Federally-administered state supplementary payments. The PIFO conducts independent reviews to determine the quality of adjudication processes of Social Security programs. The PIFO implements study reviews as formulated by OPIR and provides reports, data and analyses: it assists in identifying error trends and sources and recommends corrective actions. It also performs special assessment surveys and analyses.

Subchapter S6C

The Office of Financial Policy and Operations

Section S6C.00 The Office of Financial Policy and Operations—(Mission): The Office of Financial Policy and Operations (OFPO) defines the requirements for all SSA financial systems and processes to ensure Agency compliance with statutory requirements for administrative control of funds as prescribed by the Comptroller General and the Federal Managers' Financial Integrity Act.

Section S6C.10 The Office of Financial Policy and Operations—(Organization): The Office of Financial Policy and Operations, under the leadership of the Associate Commissioner for Financial Policy and Operations, includes:

A. The Associate Commissioner for Financial Policy and Operations (S6C).

B. The Deputy Associate Commissioner for Financial Policy and Operations (S6C).

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S6C).

D. The Office of Financial Policy and Systems Design (S6CA).

E. The Office of Financial Operations (S6CB).

Section S6C.20 The Office of Financial Policy and Operations—(Functions):

A. The Associate Commissioner for Financial Policy and Operations (S6C) is directly responsible to the SSACFO for carrying out the OFPO's mission and provides general supervision to the major components of OFPO.

B. The Deputy Associate Commissioner for Financial Policy and Operations (S6C) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Financial Policy and Operations (S6C) provides for Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Financial Policy and Systems Design (S6CA) develops financial accounting policies and procedures for all SSA financial systems. It plans and directs SSA financial cost analysis programs. It plans and directs the analyses of SSA's integrated financial and administrative systems; and develops and executes Agency policies and procedures for systems security and internal controls.

E. The Office of Financial Operations (S6CB) prepares financial statements for SSA and the trust funds, and accounts for program revenues, benefits and related administrative expenses. It reports on the state agencies' financial position and the results of operations.

The following revisions and deletions in Chapter 2 should be made:

Section S2.00 The Office of the Deputy Commissioner, Operations—(Mission):

Delete:

In line 6, omit the words "technical assessment."

Section S2.20 The Office of the Deputy Commissioner, Operations—(Functions):

Delete:

E. Lines 14 and 15—Omit "and the field assessment program." Insert "and" before "the SSI program" in line 14 and a period after "program."

Subchapter S2D Office of the Regional Commissioner

Section S2D.00 The Office of the Regional Commissioner—(Mission):

Delete:

In lines 16 and 17, omit the words "and the field assessment program." Insert "and" before "the supplemental * * *" in line 15 and a period after "program" in line 16.

Add:

In line 40 insert "* * * Program and Integrity Field Offices * * *"

Section S2D.10 The Office of the Regional Commissioner—(Organization):

Delete G.

Section S2D.20 The Office of the Regional Commissioner—(Functions):

Delete G. in its entirety.

Dated: December 29, 1987

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 88-336 Filed 1-7-88; 8:45 am]

BILLING CODE 4190-11-M

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given of the establishment of the Office of the Deputy Commissioner for Management (S1) at the first level below the Commissioner and to reflect some internal realignments of subordinate offices in that Office. The changes are as follows:

Chapter S1

Office of the Deputy Commissioner, Management

S1.00 Mission
S1.00 Organization

S1.20 Functions

Section S1.00 The Office of the Deputy Commissioner, Management—(Mission):

The Office of the Deputy Commissioner, Management (ODCM) directs the administration of comprehensive SSA management programs including: budget, human resources, civil rights and equal opportunity, training, acquisition and grants, management analysis, information management and materiel resources.

Section S1.10 The Office of the Deputy Commissioner, Management—(Organization):

The Office of the Deputy Commissioner, Management, under the leadership of the Deputy Commissioner, Management includes:

A. The Deputy Commissioner, Management (S1).

B. The Assistant Deputy Commissioner, Management (S1).

C. The Immediate Office of the Deputy Commissioner, Management (S1A).

D. The Office of Human Resources, Training and Management Analysis (S1E).

E. The Office of Budget (S1B).

F. The Office of Civil Rights and Equal Opportunity (S1C).

G. The Office of Information Management, Acquisition and Logistics (S1G).

Section S1.20 The Office of the Deputy Commissioner, Management—(Functions):

A. The Deputy Commissioner, Management (S1) is directly responsible to the Commissioner for carrying out the ODCM mission and providing general supervision to the major components of ODCM.

B. The Assistant Deputy Commissioner, Management (S1) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Management (S1A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Human Resources, Training and Management Analysis (S1E) directs comprehensive SSA management analysis, training and human resources programs. It implements and manages an Agencywide workforce effectiveness program; manages a comprehensive organizational management and analysis program and develops, recommends and publishes all delegations of authority in SSA. Develops and implements a program to evaluate Agency operations in light of Office of Management and Budget (OMB) Instruction A–76. Develops, implements and maintains a fully integrated and coordinated human resources program responsive to the needs of SSA. The Office manages personnel programs in the following areas: personnel policy and research, position classification, labor and employee relations, recruitment and placement, personnel operations and personnel management evaluation. The Office of Human Resources, Training and Management Analysis is also responsible for the management and administration of national training and employee development programs. It develops and issues Agencywide policy, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training activities.

E. The Office of Budget (S1B) directs the development and implementation of SSA budget management objectives, policies, standards and procedures, and plans, prepares, justifies, presents and executes the SSA budget. The Office furnishes advisory services concerning budget management to the Deputy Commissioner and other top-level SSA executives and provides SSA liaison on Agency budgetary matters with the Office of Management and Budget (OMB), the Department of the Treasury, the General Accounting Office, HHS, other Federal agencies and various private and public organizations.

F. The Office of Civil Rights and Equal Opportunity (S1C) directs, coordinates, develops, appraises and administers SSA-wide civil rights and equal opportunity programs. It provides counsel, advice and recommendations to the Deputy Commissioner and the SSA Executive Staff on civil rights and equal opportunity concerns and responsibilities and represents SSA with Federal and non-Federal agencies and organizations on a wide range of civil rights and equal opportunity activities.

G. The Office of Information Management, Acquisition and Logistics (S1G) directs, develops and coordinates SSA-wide administrative management and statistical information (AMSI) systems throughout SSA. Is responsible for long-range planning and analysis to define new and improved systems processes to support SSA's long-term AMSI needs. It directs the materiel management programs of SSA including logistics management programs and facilities planning and develops objectives, polices, standards and procedures for these programs. It directs SSA's activities in real and personal property management and supply operations. Directs the printing and publications management activities of SSA as well as communications and security management. The Office directs the business management aspects of SSA's procurement program and grants management program by awarding and administering contracts, preparing purchase orders or other contractural instruments. It develops and implements policies, procedures and directives for SSA procurement activities.

Section (S1E).00 The Office of Human Resources, Training and Management Analysis—(Mission):

The Office of Human Resources, Training and Management Analysis (OHRTMA) directs a comprehensive management analysis, training and human resources program. The Office develops policy and guidelines for the exercise of SSA-wide management responsibilities for those areas, and evaluates and appraises the manner in which those activities are carried out. It administers the following SSA-wide management programs:

1. Management analysis, delegations of authority, administrative appraisal and workforce effectiveness.

2. A comprehensive nationwide program designed to assure that all levels of SSA employees receive the training necessary to provide effective and efficient service to the public.

3. The full range of SSA's human resources programs, including personnel evaluation, labor and employee relations and recruitment and placement of personnel.

Section (S1E).10 The Office of Human Resources, Training and Management Analysis—(Organization):

The Office of Human Resources, Training and Management Analysis, under the leadership of the Associate Commissioner for Human Resources, Training and Management Analysis, includes:

A. The Associate Commissioner for Human Resources, Training and Management Analysis (S1E).

B. The Immediate Office of the Associate Commissioner for Human Resources, Training and Management Analysis (S1E).

C. The Office of Human Resources (S1EA).

D. The Office of Training (S1EB).

E. The Office of Management Analysis (S1EC).

Section (S1E).20 The Office of Human Resources, Training and Management Analysis—(Functions):

A. The Associate Commissioner for Human Resources, Training and Management Analysis (S1E) is directly responsible to the Deputy Commissioner, Management for carrying out OHRTMA's mission and provides general supervision to the major components of OHRTMA.

B. The Immediate Office of the Associate Commissioner for Human Resources, Training and Management Analysis (S1E) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

C. The Office of Human Resources (S1EA) directs, develops, implements and maintains a fully integrated and coordinated human resources program to meet SSA needs. The Office manages personnel programs in the following areas: personnel policy and research, position classification, labor and employee relations, recruitment and placement, personnel operations and personnel management evaluation. The Office represents SSA with HHS, other Federal agencies and sources outside the Federal Government on areas within its responsibility.

D. The Office of Training (S1EB) is responsible for the management and administration of an SSA national training program. It develops and issues Agency-wide policy, procedures and operational guidelines for the design, development, implementation, maintenance and evaluation of all SSA training and employee development activities. It provides managerial oversight of training conducted by technical training staffs throughout SSA, the SSA instructor training cadre, other government agencies and outside contractors to insure that Agency training needs are met. It directs the management of training resources to insure accountability of expenditures to train and develop Agency employees throghout the nation.

E. The Office of Management Analysis (S1EC) develops, implements and directs a comprehensive program of management studies, research and analysis. Develops, recommends and publishes delegations of authority in SSA and manages SSA's delegations of authority program. It implements and manages a comprehensive workforce effectiveness system and conducts studies of work processes and procedures, as well as evaluates Agency operations through A–76 studies. It provides SSA liaison with HHS, other Federal agencies and outside sources on these matters.

Section (S1B).00 The Office of Budget—(Mission):

The Office of Budget (OB) provides overall management of the planning, development and execution of the SSA budget. The Office develops policies and guidelines for the exercise of SSA–wide budget responsibility and evaluates and appraises the manner in which this responsibility is carried out.

Section (S1B).10 The Office of Budget—(Organization):

The Office of Budget under the Director, Office of Budget, includes:

A. The Director, Office of Budget (S1B).

B. The Deputy Director, Office of Budget (S1B).

C. The Immediate Office of the Director, Office of Budget (S1B).

Section (S1B).20 The Office of Budget—(Functions):

A. The Director, Office of Budget (S1B) is directly responsible to the Deputy Commissioner, Management for carrying out OB's mission and provides general supervision to the Major components of OB.

B. The Deputy Director, Office of Budget (S1B) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Budget (S1B) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

Section (S1C).00 The Office of Civil Rights and Equal Opportunity—(Mission):

The Office of Civil Rights and Equal Opportunity (OCREO) provides overall management of the SSA-wide programs of civil rights and equal opportunity.

Section (S1C).10 The Office of Civil Right and Equal Opportunity—(Organization):

The Office of Civil Rights and Equal Opportunity, under the leadership of the Director, Office of Civil Rights and Equal Opportunity includes:

A. The Director, Office of Civil Rights and Equal Opportunity (S1C).

B. The Deputy Director, Office of Civil Rights and Equal Opportunity (S1C).

C. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S1C).

Section (S1C).20 The Office of Civil Rights and Equal Opportunity—(Functions):

A. The Director, Office of Civil Rights and Equal Opportunity (S1C) is directly responsible to the Deputy Commissioner for Management for carrying out OCREO's mission and provides general supervision to the major components of OCREO.

B. The Deputy Director, Office of Civil Rights and Equal Opportunity (S1C) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Civil Rights and Equal Opportunity (S1C) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

Section (S1G).00 The Office of Information Management, Acquisition and Logistics—(Mission):

The Office of Information Management, Acquisition and Logistics (OIMAL) provides overall management of the SSA-wide administrative, management and statistical information systems. It manages SSA-wide materiel management and facilities management programs. The Office develops and implements policies, procedures and guidelines for SSA acquisition and grants programs.

Section (S1G).10 The Office of Information Management, Acquisition and Logistics—(Organization):

The Office of Information Management, Acquisition and Logistics includes:

A. The Associate Commissioner for Information Management, Acquisition and Logistics (S1G)

B. The Immediate Office of the Associate Commissioner for Information Management, Acquisition and Logistics (S1G)

C. The Office of Information Management (S1GA).

D. The Office of Materiel Resources (S1GB).

E. The Office of Acquisition and Grants (S1GC).

Section (S1G).20 The Office of Information Management, Acquisition and Logistics—(Functions):

A. The Associate Commissioner for Information Management, Acquisition and Logistics (S1G) is directly responsible to the Deputy Commissioner for Management for carrying out OIMAL's mission and provides general supervision to the major components of OIMAL.

B. The Immediate Office of the Associate Commissioner for Information Management, Acquisition and Logistics (S1G) provides the Associate Commission with staff assistance on the full range of his/her responsibilities.

C. The Office of Information Management (S1GA) directs, develops and coordinates SSA-wide administrative, management and statistical information (AMSI) systems. The Office of Information Management (OIM) is responsible for long-range planning and analyses to define new and improved systems processes to support SSA's long-term AMSI needs. Directs the coordination of user requirements with private contractors, the SSA user community and the State Disability Determination Services to

ensure efficient and effective administration of management information needs and related systems support. Directs a comprehensive data base administration program for the control of SSA's AMSI data bases. Develops technical specifications for the acquisition, implementation and operation of AMSI ADP and telecommunications resources.

D. The Office of Materiel Resources (S1GB) directs the materiel management programs of SSA and develops objectives, policies, standards and procedures for these programs. The Office provides SSA materiel services including supply management, space acquisition, utilization and management, telephone systems, mail and distribution operations, publications and records management, forms, printing and reprographics. It directs facilities planning and maintenance, protective security, civil defense, library services and historical research programs. The Office provides services to SSA headquarters personnel, including employee health and occupational safety, transportation, parking and commuter information. It provides SSA liaison with the General Services Administration, HHS, other Federal agencies and various public and private organizations on matters relating to its mission.

E. The Office of Acquisition and Grants (S1GC) directs the business management aspects of SSA's procurement program for research, demonstration projects, automatic data processing and telecommunications equipment acquisition and procurement of supplies, material and services. The Office performs a continuous surveillance, review and evaluation of SSA procurement actions. It develops and implements policies, procedures and directives for SSA procurement activities. It performs the cost/price analysis and evaluation required to award and administer SSA contracts. The Office directs the business management aspects of SSA's discretionary grants management program.

Delete:

Existing Chapter S1, The Office of the Deputy Commissioner, Management and Assessment, in its entirety.

Dated: December 29, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 88-337 Filed 1-7-88; 8:45 am]

BILLING CODE 4190-11-M

Alcohol, Drug Abuse, and Mental Health Administration

Basic Behavioral Processes Research Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, on December 31, 1987 of the following committee: Basic Behavioral Processes Research Review Committee, NIMH

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: December 31, 1987.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-268 Filed 1-7-88; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 87E-0365]

Determination of Regulatory Review Period for Purposes of Patent Extension; Hytrin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Hytrin and is published this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under the act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occured before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Hytrin (terazosin hydrocholoride), which is indicated in the treatment of hypertension alone or in combination with other antihypertensive agents such as diuretics or beta adrenergic agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Hytrin (U.S. Patent No. 4,251,532) from Abbott Laboratories, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated October 29, 1987, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, terazosin hydrochloride, represented the first permit commercial marketing or use of the active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Hytrin is 3,256 days. Of this time, 1,851 days occurred during the testing phase of the regulatory review period, while 1,405 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 9, 1978. The applicant claims September 10, 1978, as the date the notice of claim investigational exemption (IND) for the drug became effective. However, FDA records indicate that the IND became effective on September 9, 1978.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 3, 1983. The applicant claims September 30, 1983, as the date the new drug application for the drug (NDA 19-057) was initially submitted. However, FDA records indicate that the NDA was received on October 3, 1983.

3. *The date the application was approved:* August 7, 1987. FDA has verified the applicant's claim that NDA 19-057 was approved on August 7, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published in incorrect may, on or before March 8, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 6, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and indentified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs

[FR Doc. 88-269 Filed 1-7-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87D-0110]

Medical Devices; Revision of Compliance Policy Guide Regarding Condoms; Defects—Criteria for Direct Reference Seizure; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised sampling inspection plan for condoms found in Attachment A—Sampling Inspection Plan, CPG 7124.21, "Condoms; Defects—Criteria for Direct Reference Seizure" (dated December 30, 1987). The purpose for revising the sampling inspection plan is to provide instructions for sampling and examining those small and very large lots of condoms that were not addressed in the original sampling inspection plan. These additions and revisions do not affect the acceptable quality level for condoms as established in the original CPG 7124.21, dated April 10, 1987. FDA's revision of the sampling inspection plan is extracted verbatim from MIL-STD-105D (the military standard for "Sampling Procedures and Tables for Inspection Attributes") and is based on an acceptable quality level of 0.4 percent, and inspection level II and normal inspection, as referenced in MIL-STD-105D. This guidance does not limit the agency's enforcement discretion on whether to initiate regulatory action after an evaluation of all the relevant facts.

ADDRESS: Written requests for single copies of the guide to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Frank J. Pipari, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 8727 Georgia Avenue, Silver Spring, MD 20910, 301-427-8040.

SUPPLEMENTARY INFORMATION: Compliance Policy Guide 7124.21 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy Guide 7124.21 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: December 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-271 Filed 1-7-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87D-0028]

Compliance Policy Guide for Reconditioners/Rebuilders of Medical Devices; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7124.28 (guide) entitled "Reconditioners/Rebuilders of Medical Devices" (dated December 29, 1987). This guide addresses the application to reconditioners and rebuilders of medical devices of the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act (the act) and its implementing regulations. This guidance assures that device reconditioners and rebuilders understand that the agency may in the exercise of its discretion enforce the act for violations committed by them.

ADDRESS: Requests for single copies of the guide to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the branch in processing your requests.).

FOR FURTHER INFORMATION CONTACT: William F. Hooten, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-427-7984.

SUPPLEMENTARY INFORMATION: This policy guide defines a medical device reconditioner or rebuilder as a person or firm that acquires ownership of used medical devices and restores and/or refurbishes these devices to the manufacturer's original or current specifications, or new specifications, for purposes of resale or commercial distribution. The guide also addresses the agency's position that reconditioners/rebuilders are considered to be medical device manufacturers and are, therefore, subject to the same regulatory followup under the act and regulations as are other device manufacturers.

Compliance Policy Guide, 7124.28 is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m.,

Monday through Friday. Requests for single copies of Compliance Policy Guide 7124.28 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

This notice is issued under 21 CFR 10.85.

Dated: December 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-270 Filed 1-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Recreational Fisheries Policy; First Public Review Draft

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for public comments on proposed National Recreational Fisheries Policy.

SUMMARY: The Fish and Wildlife Service (Service) is coordinating the development of a National Recreational Fisheries Policy (Policy) in a public forum in which members of the general public, and Federal, State, tribal, and local governments are participating. The Policy document published with this notice is the first draft for review and comment by the general public. Comments will be accepted by the U.S. Fish and Wildlife Service until February 15, 1988.

The draft was written by representatives of the following organizations: the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Forest Service, the U.S. Army Corps of Engineers, the American Fisheries Society, the Sport Fishing Institute, the National Wildlife Federation, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission. This is not an inclusive list of organizations involved in the Policy drafting effort. Over 65 Federal, State, and tribal governments, and sport fishing constituency and industry groups participated in developing an outline of the Policy statement of purpose, guiding principles, goals, and objectives. This outline guided the previously mentioned groups in drafting the Policy.

The purpose of the Policy is to provide a unified set of national guiding principles, goals, and objectives for the conservation, management, and wise use of recreational fisheries and the resources on which they depend. The principles, goals, and objectives of the Policy are intended to provide uniform guidance for governmental (Federal, State, tribal, and local) and private sector entities in fulfilling their recreational fisheries responsibilities.

FOR FURTHER INFORMATION AND SUBMISSION OF POLICY COMMENTS CONTACT: Gary Edwards, Assistant Director—Fisheries, U.S. Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC, 20240, (202) 343-6394.

SUPPLEMENTARY INFORMATION: The policy applies to recreational fisheries on a national scale and is being developed within a broad forum of national participation, hence the term "*National Policy*". The Policy represents the collective efforts of Federal, State, and tribal governments, and representatives from private sector fishery resource constituency groups and industry. *It is not a Federal policy.*

The Policy development effort was initiated April 29, 1987, in a discussion held by the Service with representatives from the aforementioned participating groups. The Service offered to coordinate and lead the development effort emphasizing it was to be a national policy as defined above. Since then, an outline of the Policy was drafted by the Service and distributed to over 65 agencies, groups, and individuals for review (including the International Association of Fish and Wildlife Agencies who distributed it to the 50 States). Comments on the outline were received, a revised outline developed, and a final outline produced by participants at an October 13, 1987, meeting. The final outline was used to write a preliminary draft policy. This draft was used by a working group of Policy participants to develop the first public review draft presented here.

As a policy level document, the Policy is not a strategic plan or action plan. Actions to implement the goals and objectives of the Policy are the individual responsibility of the diverse interests involved in recreational fisheries management. Its guiding principles, goals, and objectives provide a conceptual foundation for each interest to build upon either individually or cooperatively an within the context of their objective roles and responsibilities.

The Policy is an umbrella document that provides long-term common goals for conserving and enhancing the Nation's recreational fisheries. The Policy suggests that this is most effectively accomplished through a cooperative process of government-to-public sector cooperation and coordination.

A final Policy will be written from comments received on this draft. The Policy will then be adopted by participating groups at a National Recreational Fisheries Conference to be held during the first week of June (National Fishing Week) of 1988. It will then be advanced for national recognition as the statement of common national goals and objectives for the conservation and enhancement of the Nation's recreational fisheries.

Date: January 5, 1988.

Frank Dunkle,

Director.

National Recreational Fisheries Policy

Along its coastlines, bays, and estuaries, throughout its great lakes, reservoirs, and inland rivers, in small ponds, and in upland brooks, the United States enjoys the blessings of abundant and diverse fisheries. Thousands of species of finfish and shellfish can be found in the many habitats our waters afford. From the earliest days of our Nation, fish have provided us food and wholesome recreation. With each passing decade, the values of our recreational fisheries have become more important. Today, nearly 60 million Americans—one in four of our citizens—fish recreationally. In the past 30 years, the number of anglers has more than doubled. And the total expenditures anglers contribute to the economy now approach $30 billion annually.

"Recreational fishing" is a phrase as expansive and complex as the bounty of our waters and the impacts of fishing on our society. It includes the Nation's bass and trout anglers who have given voice to conservation concerns and have recognized the need for protection and replenishment of our waters. The phrase also embraces the big game anglers, who, in specially designed craft replete with sophisticated gear, roam the blue waters for marlin, tuna, sailfish, and other potential trophies of the deep. So too, the phrase enfolds the aging angler quietly watching baited line along the bank of a slow moving river or the eager child swiftly hoisting the first bluegill or yellow perch from an urban pond. But, as the number of meanings grows, so likewise does a need to acknowledge the deepening value of this Nation's recreational fisheries.

Why, each year, do more and more of our citizens heed the call of the waters? Anglers have many reasons to fish. Historically, and at present, many fish to catch quality food. Moreover they fish for relaxation and for excitement, for the thrill of capture and for the joy of release, for the fellowship and for the solitude, for the enjoyment of nature's tranquillity and for the challenge of encountering the raw elements, for escape from the daily routine, and for involvement in the complexity of the natural world. Most, perhaps, respond to an ancient human trait—anticipation—the expectation of catching fish.

But will high quality fish and fishing opportunities remain available? Fish have been among our most valuable natural resources. We have learned—as the fish themselves have demonstrated—their renewable nature. But their resiliency is limited. Overharvest, pollution, and loss of habitat all contribute to their depletion.

The potential for fishery loss has grown apace with our population. Fortunately, this depletion has been recognized as a national problem and protection of our fishery resources has been assured—significantly—through local, State, and Federal laws. Important as these statutes and regulations may be, however, it is also appropriate for the citizens of the United States, by themselves and through the various government entities that serve them, to make a national statement proclaiming the worth attached to recreational fisheries and to the abiding need for conserving fishery resources. Such a need can be fulfilled through a National Recreational Fisheries Policy.

This National Recreational Fisheries Policy (Policy) signals a nationwide commitment by governments, the private sector, and all interested citizens to overcome adversities to recreational fisheries, serves as a statement of common national goals for the conservation and improvement of the Nation's recreational fishery resources, and calls for a strengthened partnership between government and the private sector to attain these goals.

This Policy constitutes a foundation and forward step in ensuring abundant, healthy recreational fishery resources. In turn, these resources will provide an enduring source of pleasure for all Americans and ensure a continuing flow of social and economic benefits to the Nation.

Policy Statement

The National Recreational Fisheries Policy declares that the Nation's recreational fisheries provide significant benefits to our families, individuals, society, and the national economy. These benefits depend upon achieving and maintaining healthy fish populations and their habitats. This Policy further declares that governments recognize they are vested by the citizens with stewardship responsibility and that an active government effort, in partnership with the private sector, is needed to maintain and promote the conservation and enhancement of recreational fisheries for the continuing benefit of the Nation.

Statement of Purpose

The National Recreational Fisheries Policy establishes guiding principles, goals, and objectives for the conservation and enhancement of the Nation's fish populations, the habitats they depend on, and the recreational fisheries they support. The objectives will be achieved within the framework of respective government and private sector responsibilities.

Guiding Principles

The guiding principles of the National Recreational Fisheries Policy are:

Recreational Fisheries Contribute Significant Social and Economic Benefits to the Nation

Recreational fishing is a cherished American tradition and an important activity contributing to the economic well-being of the Nation. The recreational fishing industry annually makes a multi-billion dollar contribution to the Nation's economy.

Recreational Fisheries Depend on Abundant Fishery Resources

Healthy fisheries are maintained through sound scientific management of fish populations and their habitats. Fisheries can be restored and improved by taking advantage of opportunities to improve the quality and quantity of the habitats upon which they depend.

Governments and the Private Sector Must Work in Partnership to Advance Stewardship of Recreational Fisheries

Governments are vested with respective stewardship responsibilities to protect, conserve, and enhance fishery resources for the public benefit. Partnerships between governments and the private sector provide greater opportunities for maintaining and improving fisheries. The Federal Government should encourage such partnerships and be an active participant where consistent with its responsibilities.

Existing Authorities and Responsibilities of Governments Will Be Recognized

This Policy recognizes that States and tribes have proprietary rights and responsibilities for management, policy making, and licensing of the fishery resources and anglers under their purview. Additionally, tribes have a unique status and are dealt with on a government-to-government basis, under self-determination policies. The Policy further confirms the Federal Government's strong support for the continued rights of states and tribes in fishery resource matters and for its own commitment to carry out its responsibilities and role for fishery resource management and conservation.

Goals

I. Increase the Productivity of Fishery Resources

Fish populations and their habitats continue to decline while numbers of anglers and total days of fishing increase. The U.S. Fish and Wildlife Service's 1985 National Survery of Hunting, Fishing, and Wildlife Associated Recreation reports that the increase in the number of anglers exceeds the rate of national population growth. Providing abundant fishery resources for future anglers will require more than just stemming habitat and fish population declines. It will require concerted and diligent efforts by all parties to maintain, restore, and increase the productivity of existing populations and their habitats, including creation of new fishing opportunities, and efforts to increase the utility of the information base from which management decisions are made.

Objectives—A. *Promote the conservation and enhancement of fish stocks and their habitats.* Healthy and productive habitat is the foundation for maintaining vigorous fish populations. Accordingly, there must be concerted efforts to conserve remaining habitats, restore degraded habitats, and improve habitat productivity. Critical habitat issues include maintenance of water quality and suitable flows for fish, control of toxic contaminants, and the protection and restoration of riparian areas, watersheds, wetlands, estuaries, and offshore waters.

With a productive habitat base, effective conservation depends on development of biologically sound management plans that strive to provide fishing opportunities while maintaining productive capabilities, prevention of overharvest through appropriate education, regulatory and law enforcement measures, incorporation of conservation and enhancement considerations for fishery resources into Federal land and water development activities, and, most importantly, responsive action from the public to uphold and support wise management activities.

Fish stocks and habitat can be enhanced and created through activities such as carefully considered fish stocking programs, instream and riparian habitat improvement efforts, and artificial reefs.

B. *Promote, support, and conduct research and development in support of fisheries management.* Sustained high quality fishing depends on healthy fishery resources maintained through sound scientific management supported by research. Research must continue to provide the tools for protecting, restoring, and enhancing fishery resources as well as for a greater understanding of the resources themselves. Research by the private sector is encouraged.

Techniques must be improved and refined to monitor accurately the status of fish populations and improve population trend forecasting. Improved fish culture and health care techniques must be developed. Quantitative population genetics must be improved for predicting the effects of wild stock/hatchery stock interbreeding, hatchery breeding practices, and reductions in gene pools. Habitat evaluation procedures must be standardized, habitat restoration and enhancement techniques refined, and habitat productivity better understood.

C. *Develop and maintain biological, social, and economic data bases on recreational fisheries.* Existing data bases and surveys, such as the National Marine Fisheries Service's Recreational Fisheries Statistics Survey and the U.S. Fish and Wildlife Service's National Survey of Hunting, Fishing, and Wildlife-Associated Recreation should be evaluated on a continuing basis to improve their utility for decision making in recreational fisheries management. In addition to providing data on catch and effort, surveys should include social and economic data such as angler preferences, demographics, and trip expenditures. Management agencies should strive for comprehensiveness, timeliness, accuracy, and comparability of recreational fisheries surveys.

II. Increase the Quality and Diversity of Recreational Fishing Opportunities

A primary purpose of maintaining healthy fishery resources is to provide public fishing opportunities. These should include different kinds of fishing experiences in a variety of aquatic habitats. Public preferences are important in determining the opportunities fisheries managers should seek to provide. Decision makers should provide leadership and creativity in defining the range of potential opportunities and be responsible for ensuring wise use of the fishery resources.

Objectives—A. *Enhance and diversify recreational experiences.* Recreational fisheries can be enhanced by creating new fisheries in underused areas such as cities and suburbs, privately owned waters, and government lands. Redirection of fishing to new areas and underused species can help alleviate pressure on other crowded fisheries. Fishing opportunities can also be enhanced through habitat management such as constructing artificial reefs, construction of new lakes, and management of instream flows.

Recreational fishing preferences and methods change. Recognizing this fact underscores the need to protect and conserve all potential recreational fisheries, lest a valuable future resource be lost or depleted needlessly. Management entities should work to promote the concept that quality fishing can be maintained under circumstances where quantity of fishing is not feasible. Providing diversity in fishing opportunities is one means to promote quality fishing and is key to providing satisfaction for the tremendous variations in angler preferences. Diversity can be maintained and enhanced through options such as put-and-take fishing, catch-and-release fishing, equipment limitations, trophy fishing areas, and various length and creel limits.

More people are beginning to enjoy fish without fishing. Increasing numbers of non-consumptive users enjoy watching, studying, and photographing fish, sightseeing at fish ladders, and visiting hatcheries. Additional opportunities for such activities should be encouraged and created.

B. *Increase access to recreational fisheries.* Governments and the private sector should seek opportunities to increase public fishing access with appropriate recognition of private property rights. Boat ramps, fishing sites, and shore access should be considered in mitigation and enhancement activities. The unique needs of children, senior citizens, and the handicapped should be addressed so that they may participate more fully in fishing.

III. Enhance Partnerships Between Governments and the Private Sector for Conserving and Managing Recreational Fisheries

In addition to biological factors, effective fishery management must deal with social, economic, and political issues. There is an expanding array of government agencies, councils, committees, and commissions that address these issues. However, in order to develop coherent national programs for recreational fisheries, these entities should strive to define and coordinate their roles and responsibilities better. Efforts to improve should also extend to the thousands of local and national private-sector constituency groups, clubs, and industry organizations. Governments and private sector cooperation is crucial to develop and manage recreational fisheries effectively.

Objectives—A. *Develop structured forms for exchange of information and program coordination between government agencies and private groups.* Governments, constituency groups, and industries should improve the quality and increase the quantity of their informational materials, and should strive for better distribution. Recreational fisheries would be well served by conferences co-sponsored by government agencies, constituency groups, and the recreational fishing industry.

There should be more government representation at meetings of constituency groups. Likewise, public policymaking groups should encourage early involvement of anglers and the private sector in making decisions that affect them.

Issues and programs of common concern should be identified and cooperative strategies between involved entities developed to reduce overlaps in effort, increase efficiencies, and reduce the potential for fragmentation.

B. *Develop and promote mechanisms for the private sector to participate in fisheries programs and projects.* Cooperation between citizens and the government provides a sense of shared pride and ownership in the Nation's fishery resources. Participation by the private sector in recreational fisheries programs should be encouraged by such mechanisms as government challenge grants, technical assistance, and cost sharing. Governments should increase opportunities for private involvement on public lands for surveys, habitat improvement, access development, and other fisheries conservation and enhancement projects.

C. *Increase public concern for and participation in fisheries conservation, and improve angler ethics.* An informed, concerned, and involved public is essential to maintaining and enhancing recreational fisheries. Governments, industry, and constituency groups should continue their informational and educational programs designed to build concern and support for fishery resources conservation efforts. For more than a century, anglers have demonstrated their willingness to conserve and replenish recreational fisheries through licenses, excise taxes, and user fees. This tradition of public support must continue.

Anglers can further share responsibility for fishery resources conservation by adopting and promoting an angling code of ethics that respects the rights and interests of other anglers and property owners and demonstrates concern for wise use of the resource.

IV. Promote a Healthy Recreational Fisheries Industry

The well-being of the recreational fishing industry depends on maintaining and enhancing fishery resources. If the Nation's fisheries are sound, then the industry can prosper and, in the process, provide jobs to millions of our citizens. This industry also stands to prosper not just by providing appropriate goods and services to anglers, but by supporting public education in aquatic resource issues.

Objectives—A. *Maintain and enhance fishery resources.* Just as government has a responsibility for maintaining health recreational fisheries, so too, industry and its constituency groups need to support effective fisheries conservation policies and projects to ensure stability and benefits they seek for industry.

B. *Provide goods and services, and information on fishing opportunities.* Anglers require a wide variety of high quality goods and services. The recreational fishing industry should provide these for the broad range of economic and physical abilities and angler preferences. With healthy fisheries and appropriate data, the industry should stimulate recreational fishing through marketing research promotion.

Governments, industry, and constituency groups can further fisheries conservation by increasing outreach efforts to beginning anglers, providing fishing instruction, and distributing information on fishing opportunities and fishery resources conservation.

Conclusion

This Policy is a first step toward developing a comprehensive national effort to improve the health and abundance of the Nation's fishery resources. Achieving Policy goals will provide improved fishing, more responsive and capable management, and a more informed and participatory private sector.

Local, State, tribal, and Federal governments have individual and common responsibilities for recreational fisheries. Constituency groups and industry have their own organizational mandates to guide them. This Policy provides a framework of common goals and objectives that each entity can advance individually or cooperatively.

All of these groups must commit to translating the goals of the National Recreational Fisheries Policy into productive actions so that all Americans can continue to enjoy this Nation's recreational fisheries.

Glossary

Fish. Finfish and aquatic invertebrates including shellfish and crustaceans.

Angler. One who takes or attempts to take fish for recreational purposes.

Recreational fisheries. A population or populations of fish, their habitat, and the activities associated with their use by man for recreation and/or personal use.

Recreational fishing industry. Collectively, the businesses providing goods and services to recreational anglers.

Habitat. The sum of the biological, physical, and chemical components that constitute the fish's environment.

Fishery resources. Fish and the habitats on which they depend.

Stewardship. Responsibility to protect, conserve, enhance, and manage fishery resources for public benefit.

Conservation. Wise use.

Restoration. Treatment to recover lost production.

Enhancement. Treatment to increase production.

Governments. State, Federal, Tribal, and local governments.

Private. Non-government.

Constituency groups. Organizations representing the interests of members in matters pertaining to fishery resources.

Mitigation. Appropriate avoidance, minimization, rectification, reduction by maintenance, and/or compensation of adverse impacts.

[FR Doc. 88-357 Filed 1-7-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Minerals Management Plan, Lake Mead National Recreation Area, Nevada and Arizona; Termination of the Environmental Impact Statement Process

SUMMARY: In Volume 51, Number 240, page 44952 of the Federal Register dated December 15, 1986, the National Park Service announced the intent to prepare an environmental impact statement (EIS) in conjunction with a Minerals Management Plan for the Lake Mead National Recreation Area, Arizona and Nevada. The Minerals Management Plan (MMP) is to be based on the decisions and recommendations contained in the recently completed General Management Plan (GMP) for Lake Mead. The Record of Decision for the General Management Plan and associated EIS was issued on December 4, 1986.

In scoping the proposed MMP, it was determined that the plan, in itself, will propose no new actions. The major federal action, establishment of resource development zones, was set forth and analyzed in the GMP and associated EIS for Lake Mead. The MMP will document approved management actions, regulatory guidelines, and subzone resource information. Also, it will provide cumulative impact information of all past mining activities upon existing conditions. Mining plans of operation submitted for lands within Lake Mead in the future will each require specific environmental assessments for the particular proposal. The MMP will guide such assessments. In view of the fact that a determination of the number of future mining proposals in Lake Mead would be purely speculative and that the MMP itself proposes no new action, there are no issues ripe for environmental analysis in conjunction with preparation of the MMP. Therefore, neither an EIS nor an environmental assessment will be prepared. This rationale and conclusion on the need for an EIS or environmental assessment in conjunction with the MMP is identical to that utilized for the Glen Canyon National Recreation Area.

A mining excepted areas map for Lake Mead, which reflects the zoning decisions made in the recently completed GMP, has been prepared and is available for inspection at the following addresses:

Headquarters, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City Nevada 89005

Copies of the GMP/EIS and Record of Decision can also be obtained from the Superintendent, Lake Mead at the above address or from the Western Regional Office, National Park Service, P.O. Box 36063, 450 Golden Gate Avenue, San Francisco, California 94102.

Date: December 23, 1987.

W. Lowell White,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 88-358 Filed 1-7-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: January 5, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the proprietary of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Western Dairymen Cooperative, Inc.

(2) 175 South West Temple G.L. #30, P.O. Box 2730, Salt Lake City, UT 84110–2730.

(3) 175 South West Temple G.L. #30, Salt Lake City, UT 84101.

(4) Scott Brown, P.O. Box 2730, Salt Lake City, UT 84110–2730.

Noreta R. McGee,

Secretary.

[FR Doc. 88–313 Filed 1–7–88; 8:45 am]

BILLING CODE 7035–01–M

Intention To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

H.E. Butt Grocery Company, 646 South Main Avenue, San Antonio, Texas 78204

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

Parkway Distributors, Inc., 5600 Business Park, San Antonio, Texas 78218, a Texas corporation

Parkway Transport, Inc., 5600 Business Park, San Antonio, Texas 78218; a Texas corporation

Noreta R. McGee,

Secretary.

[FR Doc. 88–314 Filed 1–7–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise Lucas, (202) 724–8374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1988 (Pub. L. 100–202) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory authority: The statutory authority is the Department of Justice Appropriations Act for 1988, Pub. L. 100–202.

Submission date: The submission date for state applications is no later than February 1, 1988.

Eligible applicants: All states are eligible to apply for and receive grants. *State* means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating states: It is expected that the 32 states that participated last year will participate again this year, specifically, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Virginia, Washington, and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Use of Funds

Fund availability: The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, will not exceed $12,000.

Fund use: The intent of the public law is to reimburse the states for their expenses by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All state applicants *must* submit Standard Form 424 (Application for Federal Assistance), along with a *certified listing* of incarcerated Mariel-Cuban prisoners. We request that inmates previously verified be *separated* from newly submitted inmates. For those previously verified, there is no need to resubmit Items 13 & 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first);

(2) AKA (also known as);

(3) Alien Identification Number (e.g., A24456789);

(4) Inmate Number;

(5) Date of Birth;

(6) Incarceration Date;

(7) Probable earliest release date;

(8) Conviction Offense (Criminal Offense Code No. not acceptable);

(9) Conviction date;

(10) Last known address;

(11) State facility housing the prisoner;

(12) State facility address;

(13) I–247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy);

(14) Fingerprint card.

Submission of Mariel-Cuban data in an alternative format *must* be approved by the BJA prior to submission of an application. Please contact Louise Lucas, BJA, 202/724–8374.

(b) The certified listing *MUST* be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1987 to September 30, 1988. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the state will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1988, and grants will be immediately made to states.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the state's *Single Point of Contact*, if there is a *Single Point of Contact*, and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 809(c) of Justic Assistance Act of 1984;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

George A. Luciano,

Director, Bureau of Justice Assistance.

[FR Doc. 88–292 Filed 1–7–88; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 267a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor.

BEST COPY AVAILABLE

Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Alabama:
- AL87-1(AL88-1) ..... Jan. 2, 1987.
- AL87-2(AL88-2) ..... Jan. 2, 1987.
- AL87-3(AL88-3) ..... Jan. 2, 1987.
- AL87-4(AL88-4) ..... Jan. 2, 1987.
- AL87-5(AL88-5) ..... Jan. 2, 1987.
- AL87-6(AL88-6) ..... Jan. 2, 1987.
- AL87-7(AL88-7) ..... Jan. 2, 1987.
- AL87-8(AL88-8) ..... Jan. 2, 1987.
- AL87-9(AL88-9) ..... Jan. 2, 1987.
- AL87-10(AL88-10) ..... Jan. 2, 1987.
- AL87-11(AL88-11) ..... Jan. 2, 1987.
- AL87-12(AL88-12) ..... Jan. 2, 1987.
- AL87-13(AL88-13) ..... Jan. 2, 1987.
- AL87-14(AL88-14) ..... Jan. 2, 1987.
- AL87-15(AL88-15) ..... Jan. 2, 1987.
- AL87-16(AL88-16) ..... Jan. 2, 1987.
- AL87-17(AL88-17) ..... Jan. 2, 1987.
- AL87-18(AL88-18) ..... Jan. 2, 1987.
- AL87-19(AL88-19) ..... Jan. 2, 1987.
- AL87-20(AL88-20) ..... Jan. 2, 1987.
- AL87-21(AL88-21) ..... Jan. 2, 1987.
- AL87-22(AL88-22) ..... Jan. 2, 1987.
- AL87-23(AL88-23) ..... Jan. 2, 1987.
- AL87-24(AL88-24) ..... Jan. 2, 1987.
- AL87-25(AL88-25) ..... Jan. 2, 1987.
- AL87-26(AL88-26) ..... Jan. 2, 1987.
- AL87-27(AL88-27) ..... Jan. 2, 1987.
- AL87-28(AL88-28) ..... Mar. 6, 1987.
- AL87-29(AL88-29) ..... Mar. 6, 1987.

Alaska:
- AL87-1(AK88-1) ..... Jan. 2, 1987.

Arizona:
- AZ87-1(AZ88-1) ..... Jan. 2, 1987.
- AZ87-2(AZ88-2) ..... Jan. 2, 1987.
- AZ87-3(AZ88-3) ..... Jan. 2, 1987.
- AZ87-4(AZ88-4) ..... Feb. 6, 1987.

Arkansas:
- AR87-1(AR88-1) ..... Jan. 2, 1987.
- AR87-2(AR88-2) ..... Jan. 2, 1987.
- AR87-3(AR88-3) ..... Jan. 2, 1987.
- AR87-4(AR88-4) ..... Jan. 2, 1987.
- AR87-5(AR88-5) ..... Jan. 2, 1987.
- AR87-6(AR88-6) ..... Jan. 2, 1987.
- AR87-7(AR88-7) ..... Jan. 2, 1987.

California:
- CA87-1(CA88-1) ..... Jan. 2, 1987.
- CA87-2(CA88-2) ..... Jan. 2, 1987.
- CA87-3(CA88-3) ..... Jan. 2, 1987.
- CA87-4(CA88-4) ..... Jan. 2, 1987.

Colorado:
- CO87-1(C088-1) ..... Jan. 2, 1987.
- CO87-2(C088-2) ..... Jan. 2, 1987.
- CO87-3(C088-3) ..... Jan. 2, 1987.
- CO87-4(C088-4) ..... Jan. 2, 1987.

Connecticut:
- CT87-1(CT88-1) ..... Jan. 2, 1987.
- CT87-2(CT88-2) ..... Jan. 2, 1987.

Delaware:
- DE87-1(DE88-1) ..... Jan. 2, 1987.
- DE87-2(DE88-2) ..... Jan. 2, 1987.

District of Columbus:
- DC87-1(DC88-1) ..... Jan. 2, 1987.
- DC87-2(DC88-2) ..... Jan. 2, 1987.

Florida:
- FL87-1(FL88-1) ..... Jan. 2, 1987.
- FL87-2(FL88-2) ..... Jan. 2, 1987.
- FL87-3(FL88-3) ..... Jan. 2, 1987.
- FL87-4(FL88-4) ..... Jan. 2, 1987.
- FL87-5(FL88-5) ..... Jan. 2, 1987.
- FL87-6(FL88-6) ..... Jan. 2, 1987.
- FL87-7(FL88-7) ..... Jan. 2, 1987.
- FL87-8(FL88-8) ..... Jan. 2, 1987.
- FL87-9(FL88-9) ..... Jan. 2, 1987.
- FL87-10(FL88-10) ..... Jan. 2, 1987.
- FL87-11(FL88-11) ..... Jan. 2, 1987.
- FL87-12(FL88-12) ..... Jan. 2, 1987.
- FL87-13(FL88-13) ..... Jan. 2, 1987.
- FL87-14(FL88-14) ..... Jan. 2, 1987.
- FL87-15(FL88-15) ..... Jan. 2, 1987.
- FL87-16(FL88-16) ..... Jan. 2, 1987.
- FL87-17(FL88-17) ..... Jan. 2, 1987.
- FL87-18(FL88-18) ..... Jan. 2, 1987.
- FL87-19(FL88-19) ..... Jan. 2, 1987.
- FL87-20(FL88-20) ..... Jan. 2, 1987.
- FL87-21(FL88-21) ..... Jan. 2, 1987.
- FL87-22(FL88-22) ..... Jan. 2, 1987.
- FL87-23(FL88-23) ..... Jan. 2, 1987.
- FL87-24(FL88-24) ..... Jan. 2, 1987.
- FL87-25(FL88-25) ..... Jan. 2, 1987.
- FL87-26(FL88-26) ..... Jan. 2, 1987.
- FL87-27(FL88-27) ..... Jan. 2, 1987.
- FL87-28(FL88-28) ..... Jan. 2, 1987.
- FL87-29(FL88-29) ..... Jan. 2, 1987.
- FL87-30(FL88-30) ..... Jan. 2, 1987.
- FL87-31(FL88-31) ..... Jan. 2, 1987.
- FL87-32(FL88-32) ..... Jan. 2, 1987.
- FL87-33(FL88-33) ..... Jan. 2, 1987.
- FL87-34(FL88-34) ..... Jan. 2, 1987.
- FL87-35(FL88-35) ..... Jan. 2, 1987.
- FL87-36(FL88-36) ..... Jan. 2, 1987.
- FL87-37(FL88-37) ..... Jan. 2, 1987.
- FL87-38(FL88-38) ..... Jan. 2, 1987.
- FL87-39(FL88-39) ..... Jan. 2, 1987.
- FL87-40(FL88-40) ..... Jan. 2, 1987.
- FL87-42(FL88-42) ..... Jan. 2, 1987.
- FL87-43(FL88-43) ..... Jan. 2, 1987.
- FL87-44(FL88-44) ..... Jan. 2, 1987.

Georgia:
- GA87-1(GA88-1) ..... Jan. 2, 1987.
- GA87-2(GA88-2) ..... Jan. 2, 1987.
- GA87-3(GA88-3) ..... Jan. 2, 1987.
- GA87-4(GA88-4) ..... Jan. 2, 1987.
- GA87-5(GA88-5) ..... Jan. 2, 1987.
- GA87-6(GA88-6) ..... Jan. 2, 1987.
- GA87-7(GA88-7) ..... Jan. 2, 1987.
- GA87-8(GA88-8) ..... Jan. 2, 1987.
- GA87-9(GA88-9) ..... Jan. 2, 1987.
- GA87-10(GA88-10) ..... Jan. 2, 1987.
- GA87-11(GA88-11) ..... Jan. 2, 1987.
- GA87-12(GA88-12) ..... Jan. 2, 1987.
- GA87-13(GA88-13) ..... Jan. 2, 1987.
- GA87-14(GA88-14) ..... Jan. 2, 1987.
- GA87-15(GA88-15) ..... Jan. 2, 1987.
- GA87-16(GA88-16) ..... Jan. 2, 1987.
- GA87-17(GA88-17) ..... Jan. 2, 1987.
- GA87-18(GA88-18) ..... Jan. 2, 1987.
- GA87-19(GA88-19) ..... Jan. 2, 1987.
- GA87-20(GA88-20) ..... Jan. 2, 1987.
- GA87-21(GA88-21) ..... Jan. 2, 1987.
- GA87-22(GA88-22) ..... Jan. 2, 1987.
- GA87-23(GA88-23) ..... May 8, 1987.
- GA87-24(GA88-24) ..... Sept. 25, 1987.
- GA87-25(GA88-25) ..... Sept. 25, 1987.
- GA87-26(GA88-26) ..... Sept. 25, 1987.
- GA87-27(GA88-27) ..... Sept. 25, 1987.
- GA87-28(GA88-28) ..... Sept. 25, 1987.
- GA87-29(GA88-29) ..... Sept. 25, 1987.
- GA87-30(GA88-30) ..... Sept. 25, 1987.

Guam:
- GU87-1(GU88-1) ..... Jan. 2, 1987.

Hawaii:
- HI87-1(HI88-1) ..... Jan. 2, 1987.

Idaho:
- ID87-1(ID88-1) ..... Jan. 2, 1987.
- ID87-2(ID88-2) ..... Jan. 2, 1987.
- ID87-3(ID88-3) ..... Jan. 2, 1987.
- ID87-4(ID88-4) ..... Jan. 2, 1987.
- ID87-5(ID88-5) ..... Jan. 2, 1987.

Illinois:
- IL87-1(IL88-1) ..... Jan. 2, 1987.
- IL87-2(IL88-2) ..... Jan. 2, 1987.
- IL87-3(IL88-3) ..... Jan. 2, 1987.
- IL87-4(IL88-4) ..... Jan. 2, 1987.
- IL87-5 (IL88-5) ..... Jan. 2, 1987.
- IL87-6 (IL88-6) ..... Jan. 2, 1987.
- IL87-7 (IL88-7) ..... Jan. 2, 1987.
- IL87-8 (IL88-8) ..... Jan. 2, 1987.
- IL87-9 (IL88-9) ..... Jan. 2, 1987.
- IL87-10 (IL88-10) ..... Jan. 2, 1987.
- IL87-11 (IL88-11) ..... Jan. 2, 1987.
- IL87-12 (IL88-12) ..... Jan. 2, 1987.
- IL87-13 (IL88-13) ..... Jan. 2, 1987.
- IL87-14 (IL88-14) ..... Jan. 2, 1987.
- IL87-15 (IL88-15) ..... Jan. 2, 1987.
- IL87-16 (IL88-16) ..... Jan. 2, 1987.
- IL87-17 (IL88-17) ..... Jan. 2, 1987.
- IL87-18 (IL88-18) ..... Jan. 2, 1987.
- IL87-19 (IL88-19) ..... Jan. 2, 1987.

Indiana:
- IN87-1 (IN88-1) ..... Jan. 2, 1987.
- IN87-2 (IN88-2) ..... Jan. 2, 1987.
- IN87-3 (IN88-3) ..... Jan. 2, 1987.
- IN87-4 (IN88-4) ..... Jan. 2, 1987.
- IN87-5 (IN88-5) ..... Jan. 2, 1987.
- IN87-6 (IN88-6) ..... Jan. 2, 1987.
- IN87-7 (IN88-7) ..... Jan. 2, 1987.
- IN87-8 (IN88-8) ..... Jan. 2, 1987.
- IN87-9 (IN88-9) ..... Jan. 2, 1987.
- IN87-10 (IN88-10) ..... Jan. 2, 1987.
- IN87-11 (IN88-11) ..... Jan. 2, 1987.
- IN87-12 (IN88-12) ..... Jan. 2, 1987.
- IN87-13 (IN88-13) ..... Jan. 2, 1987.
- IN87-14 (IN88-14) ..... Jan. 2, 1987.
- IN87-15 (IN88-15) ..... Mar. 7, 1987.

Iowa:
- IA87-1 (IA88-1) ..... Jan. 2, 1987.
- IA87-2 (IA88-2) ..... Jan. 2, 1987.
- IA87-3 (IA88-3) ..... Jan. 2, 1987.
- IA87-4 (IA88-4) ..... Jan. 2, 1987.
- IA87-5 (IA88-5) ..... Jan. 2, 1987.
- IA87-6 (IA88-6) ..... Jan. 2, 1987.
- IA87-7 (IA88-7) ..... Jan. 2, 1987.
- IA87-8 (IA88-8) ..... Jan. 2, 1987.
- IA87-9 (IA88-9) ..... Jan. 2, 1987.
- IA87-10 (IA88-10) ..... Apr. 11, 1987.
- IA87-11 (IA88-11) ..... May 2, 1987.
- IA87-12 (IA88-12) ..... July 25, 1987.

Kansas:
- KS87-1 (KS88-1) ..... Jan. 2, 1987
- KS87-2 (KS88-2) ..... Jan. 2, 1987.
- KS87-3 (KS88-3) ..... Jan. 2, 1987.
- KS87-4 (KS88-4) ..... Jan. 2, 1987.
- KS87-5 (KS88-5) ..... Jan. 2, 1987.
- KS87-6 (KS88-6) ..... Jan. 2, 1987.
- KS87-7 (KS88-7) ..... Jan. 2, 1987.
- KS87-8 (KS88-8) ..... Jan. 2, 1987.
- KS87-9 (KS88-9) ..... Jan. 2, 1987.

Kentucky:
- KY87-1 (KY88-1) ..... Jan. 2, 1987.
- KY87-2 (KY88-2) ..... Jan. 2, 1987.
- KY87-83 (KY88-3) ..... Jan. 2, 1987.
- KY87-4 (KY88-4) ..... Jan. 2, 1987.
- KY87-5 (KY88-5) ..... Jan. 2, 1987.
- KY87-6 (KY88-6) ..... Jan. 2, 1987.
- KY87-7 (KY88-7) ..... Jan. 2, 1987.
- KY87-8 (KY88-8) ..... Jan. 2, 1987.
- KY87-9 (KY88-9) ..... Jan. 2, 1987.
- KY87-10 (KY88-10) ..... Jan. 2, 1987.
- KY87-11 (KY88-11) ..... Jan. 2, 1987.
- KY87-12 (KY88-12) ..... Jan. 2, 1987.
- KY87-13 (KY88-13) ..... Jan. 2, 1987.
- KY87-14 (KY88-14) ..... Jan. 2, 1987.
- KY87-15 (KY88-15) ..... Jan. 2, 1987.
- KY87-16 (KY88-16) ..... Jan. 2, 1987.
- KY87-17 (KY88-17) ..... Jan. 2, 1987.
- KY87-18 (KY88-18) ..... Jan. 2, 1987.
- KY87-19 (KY88-19) ..... Jan. 2, 1987.
- KY87-20 (KY88-20) ..... Jan. 2, 1987.
- KY87-21 (KY88-21) ..... Jan. 2, 1987.
- KY87-22 (KY88-22) ..... Jan. 2, 1987.
- KY87-23 (KY88-23) ..... Jan. 2, 1987.
- KY87-24 (KY88-24) ..... Jan. 2, 1987.
- KY87-25 (KY88-25) ..... Jan. 2, 1987.
- KY87-26 (KY88-26) ..... Jan. 2, 1987.
- KY87-27 (KY88-27) ..... Jan. 2, 1987.
- KY87-28 (KY88-28) ..... Jan. 2, 1987.

Louisiana:
- LA87-1 (LA88-1) ..... Jan. 2, 1987.
- LA87-2 (LA88-2) ..... Jan. 2, 1987.
- LA87-3 (LA88-3) ..... Jan. 2, 1987.
- LA87-4 (LA88-4) ..... Jan. 2, 1987.
- LA87-5 (LA88-5) ..... Jan. 2, 1987.
- LA87-6 (LA88-6) ..... Oct. 16, 1987.

Maine:
- ME87-1 (ME88-1) ..... Jan. 2, 1987.
- ME87-2 (ME88-2) ..... Jan. 2, 1987.
- ME87-3 (ME88-3) ..... Jan. 2, 1987.

Maryland:
- MD87-1 (MD88-1 ..... Jan. 2, 1987.
- MD87-2 (MD88-2 ..... Jan. 2, 1987.
- MD87-3 (MD88-3 ..... Jan. 2, 1987.
- MD87-4 (MD88-4 ..... Jan. 2, 1987.
- MD87-5 (MD88-5 ..... Jan. 2, 1987.
- MD87-6 (MD88-6 ..... Jan. 2, 1987.
- MD87-7 (MD88-7 ..... Jan. 2, 1987.
- MD87-8 (MD88-8 ..... Jan. 2, 1987.
- MD87-9 (MD88-9 ..... Jan. 2, 1987.
- MD87-10 (MD88-10 ..... Jan. 2, 1987.
- MD87-11 (MD88-11 ..... Jan. 2, 1987.
- MD87-12 (MD88-12 ..... Jan. 2, 1987.
- MD87-13 (MD88-13 ..... Jan. 2, 1987.
- MD87-14 (MD88-14 ..... Jan. 2, 1987.
- MD87-15 (MD88-15 ..... Jan. 2, 1987.

Massachusetts:
- MA87-1 (MA88-1) ..... Jan. 2, 1987.
- MA87-2 (MA88-2) ..... Jan. 2, 1987.
- MA87-3 (MA88-3) ..... Jan. 2, 1987.

Michigan:
- MI87-1 (MI88-1) ..... Jan 2, 1987.
- MI87-2 (MI88-2) ..... Jan 2, 1987.
- MI87-3 (MI88-3) ..... Jan 2, 1987.
- MI87-4 (MI88-4) ..... Jan 2, 1987.
- MI87-5 (MI88-5) ..... Jan 2, 1987.
- MI87-6 (MI88-6) ..... Jan 2, 1987.
- MI87-7 (MI88-7) ..... Jan 2, 1987.
- MI87-8 (MI88-8) ..... Jan 2, 1987.
- MI87-9 (MI88-9) ..... Jan 2, 1987.
- MI87-10 (MI88-10) ..... Jan 2, 1987.
- MI87-11 (MI88-11) ..... Jan 2, 1987.
- MI87-12 (MI88-12) ..... Jan 2, 1987.
- MI87-13 (MI88-13) ..... Jan 2, 1987.
- MI87-14 (MI88-14) ..... Jan 2, 1987.
- MI87-15 (MI88-15) ..... Jan 2, 1987.
- MI87-16 (MI88-16) ..... Jan 2, 1987.
- MI87-17 (MI88-17) ..... Jan 2, 1987.

Minnesota:
- MN87-1 (MN88-1) ..... Jan. 2, 1987.
- MN87-2 (MN88-2) ..... Jan. 2, 1987.
- MN87-3 (MN88-3) ..... Jan. 2, 1987.
- MN87-4 (MN88-4) ..... Jan. 2, 1987.
- MN87-5 (MN88-5) ..... Jan. 2, 1987.
- MN87-6 (MN88-6) ..... Jan. 2, 1987.
- MN87-7 (MN88-7) ..... Jan. 2, 1987.
- MN87-8 (MN88-8) ..... Jan. 2, 1987.

Mississppi:
- MS87-1 (MN88-1) ..... Jan. 2, 1987.
- MS87-2 (MN88-2) ..... Jan. 2, 1987.
- MS87-3 (MN88-3) ..... Jan. 2, 1987.
- MS87-4 (MN88-4) ..... Jan. 2, 1987.
- MS87-5 (MN88-5) ..... Jan. 2, 1987.
- MS87-6 (MN88-6) ..... Jan. 2, 1987.
- MS87-7 (MN88-7) ..... Jan. 2, 1987.
- MS87-8 (MN88-8) ..... Jan. 2, 1987.
- MS87-9 (MN88-9) ..... Jan. 2, 1987.
- MS87-10 (MN88-10) ..... Jan. 2, 1987.
- MS87-11 (MN88-11) ..... Jan. 2, 1987.
- MS87-12 (MN88-12) ..... Jan. 2, 1987.
- MS87-13 (MN88-13) ..... Jan. 2, 1987.
- MS87-14 (MN88-14) ..... Jan. 2, 1987.
- MS87-15 (MN88-15) ..... Jan. 2, 1987.
- MS87-16 (MN88-16) ..... Jan. 2, 1987.
- MS87-17 (MN88-17) ..... Jan. 2, 1987.
- MS87-18(MS88-18) ..... Jan. 2, 1987.
- MS87-19(MS88-19) ..... Jan. 2, 1987.
- MS87-20(MS88-20) ..... Jan. 2, 1987.
- MS87-21(MS88-21) ..... Jan. 2, 1987.
- MS87-22(MS88-22) ..... Jan. 2, 1987.
- MS87-23(MS88-23) ..... Jan. 2, 1987.
- MS87-24(MS88-24) ..... Jan. 2, 1987.

Missouri:
- MO87-1(MO88-1) ..... Jan. 2, 1987.
- MO87-2(MO88-2) ..... Jan. 2, 1987.
- MO87-3(MO88-3) ..... Jan. 2, 1987.
- MO87-4(MO88-4) ..... Jan. 2, 1987.
- MO87-5(MO88-5) ..... Jan. 2, 1987.
- MO87-6(MO88-6) ..... Jan. 2, 1987.
- MO87-7(MO88-7) ..... Jan. 2, 1987.
- MO87-8(MO88-8) ..... Jan. 2, 1987.
- MO87-9(MO88-9) ..... Jan. 2, 1987.
- MO87-10(MO88-10) ..... Jan. 2, 1987.
- MO87-11(MO88-11) ..... Jan. 2, 1987.

Montana:
- MT87-1(MT88-1) ..... Jan. 2, 1987.
- MT87-2(MT88-2) ..... Jan. 2, 1987.
- MT87-3(MT88-3) ..... Jan. 2, 1987.

Nebraska:
- NE87-1(NE88-1) ..... Jan. 2, 1987.
- NE87-2(NE88-2) ..... Jan. 2, 1987.
- NE87-3(NE88-3) ..... Jan. 2, 1987.
- NE87-4(NE88-4) ..... Jan. 2, 1987.
- NE87-5(NE88-5) ..... Jan. 2, 1987.
- NE87-6(NE88-6) ..... Jan. 2, 1987.
- NE87-7(NE88-7) ..... Jan. 2, 1987.
- NE87-8(NE88-8) ..... Jan. 2, 1987.
- NE87-9(NE88-9) ..... Jan. 2, 1987.

Nevada:
- NV87-1(NV88-1) ..... Jan. 2, 1987
- NV87-2(NV88-2) ..... Jan. 2, 1987
- NV87-3(NV88-3) ..... Jan. 2, 1987
- NV87-4(NV88-4) ..... Jan. 2, 1987
- NV87-5(NV88-5) ..... July 10, 1987

New Hamsphire:
- NH87-1(NH88-1) ..... Jan. 2, 1987.
- NH87-2(NH88-2) ..... Jan. 2, 1987.
- NH87-3(NH88-3) ..... Jan. 2, 1987.
- NH87-4(NH88-4) ..... Jan. 2, 1987.

New Jersey:
- NJ87-1(NJ88-1) ..... Jan. 2, 1987.
- NJ87-2(NJ88-2) ..... Jan. 2, 1987.
- NJ87-3(NJ88-3) ..... Jan. 2, 1987.
- NJ87-4(NJ88-4) ..... Jan. 2, 1987.
- NJ87-5(NJ88-5) ..... Jan. 2, 1987.
- NJ87-6(NJ88-6) ..... Jan. 2, 1987.

New Mexico:
- NM87-1(NM88-1) ..... Jan. 2, 1987.
- NM87-2(NM88-2) ..... Jan. 2, 1987.
- NM87-3(NM88-3) ..... May 30, 1987.

New York:
- NY87-1(NY88-1) ..... Jan. 2, 1987.
- NY87-2(NY88-2) ..... Jan. 2, 1987.
- NY87-3(NY88-3) ..... Jan. 2, 1987.
- NY87-4(NY88-4) ..... Jan. 2, 1987.
- NY87-5(NY88-5) ..... Jan. 2, 1987.
- NY87-6(NY88-6) ..... Jan. 2, 1987.
- NY87-7(NY88-7) ..... Jan. 2, 1987.
- NY87-8(NY88-8) ..... Jan. 2, 1987.
- NY87-9(NY88-9) ..... Jan. 2, 1987.
- NY87-10(NY88-10) ..... Jan. 2, 1987.
- NY87-11(NY88-11) ..... Jan. 2, 1987.
- NY87-12(NY88-12) ..... Jan. 2, 1987.
- NY87-13(NY88-13) ..... Jan. 2, 1987.
- NY87-14(NY88-14) ..... Jan. 2, 1987.
- NY87-15(NY88-15) ..... Jan. 2, 1987.
- NY87-16(NY88-16) ..... Jan. 2, 1987.
- NY87-17(NY88-17) ..... Jan. 2, 1987.
- NY87-18(NY88-18) ..... Jan. 2, 1987.

North Caroline:
- NC87-1(NC88-1) ..... Jan. 2, 1987.
- NC87-2(NC88-2) ..... Jan. 2, 1987.
- NC87-3(NC88-3) ..... Jan. 2, 1987.
- NC87-4(NC88-4) ..... Jan. 2, 1987.
- NC87-5(NC88-5) ..... Jan. 2, 1987.
- NC87-6(NC88-6) ..... Jan. 2, 1987.
- NC87-7(NC88-7) ..... Jan. 2, 1987.
- NC87-8(NC88-8) ..... Jan. 2, 1987.
- NC87-9(NC88-9) ..... Jan. 2, 1987.
- NC87-10(NC88-10) ..... Jan. 2, 1987.
- NC87-11(NC88-11) ..... Jan. 2, 1987.
- NC87-12(NC88-12) ..... Jan. 2, 1987.
- NC87-13(NC88-13) ..... Jan. 2, 1987.
- NC87-14(NC88-14) ..... Jan. 2, 1987.
- NC87-15(NC88-15) ..... Jan. 2, 1987.
- NC87-15(NC88-16) ..... Jan. 2, 1987.
- NC87-17(NC88-17) ..... Jan. 2, 1987.
- NC87-18(NC88-18) ..... Jan. 2, 1987.
- NC87-19(NC88-19) ..... Jan. 2, 1987.
- NC87-20(NC88-20) ..... Jan. 2, 1987.
- NC87-21(NC88-21) ..... Jan. 2, 1987.
- NC87-22(NC88-22) ..... Jan. 2, 1987.
- NC87-23(NC88-23) ..... Jan. 2, 1987.
- NC87-24(NC88-24) ..... Jan. 2, 1987.
- NC87-25(NC88-25) ..... Jan. 2, 1987.
- NC87-26(NC88-26) ..... Jan. 2, 1987.
- NC87-27(NC88-27) ..... Jan. 2, 1987.
- NC87-28(NC88-28) ..... Jan. 2, 1987.
- NC87-29(NC88-29) ..... Jan. 2, 1987.
- NC87-30(NC88-30) ..... Jan. 2, 1987.
- NC87-31(NC88-31) ..... Jan. 2, 1987.

North Dakota:
- ND87-1(ND88-1) ..... Jan. 2, 1987.
- ND87-2(ND88-2) ..... Jan. 2, 1987.
- ND87-3(ND88-3) ..... Mar. 14, 1987.
- ND87-4(ND88-4) ..... Mar. 14, 1987.

Ohio:
- OH87-1(OH88-1) ..... Jan. 2, 1987.
- OH87-2(OH88-2) ..... Jan. 2, 1987.
- OH87-3(OH88-3) ..... Jan. 2, 1987.
- OH87-4(OH88-4) ..... Jan. 2, 1987.
- OH87-5(OH88-5) ..... Jan. 2, 1987.
- OH87-6(OH88-6) ..... Jan. 2, 1987.
- OH87-7(OH88-7) ..... Jan. 2, 1987.

OH87-8(OH88-8)	Jan. 2, 1987.
OH87-9(OH88-9)	Jan. 2, 1987.
OH87-10(OH88-10)	Jan. 2, 1987.
OH87-11(OH88-11)	Jan. 2, 1987.
OH87-12(OH88-12)	Jan. 2, 1987.
OH87-13(OH88-13)	Jan. 2, 1987.
OH87-14(OH88-14)	Jan. 2, 1987.
OH87-15(OH88-15)	Jan. 2, 1987.
OH87-16(OH88-16)	Jan. 2, 1987.
OH87-17(OH88-17)	Jan. 2, 1987.
OH87-18(OH88-18)	Jan. 2, 1987.
OH87-19(OH88-19)	Jan. 2, 1987.
OH87-20(OH88-20)	Jan. 2, 1987.
OH87-21(OH88-21)	Jan. 2, 1987.
OH87-22(OH88-22)	Jan. 2, 1987.
OH87-23(OH88-23)	Jan. 2, 1987.
OH87-24(OH88-24)	Jan. 2, 1987.
OH87-25(OH88-25)	Jan. 2, 1987.
OH87-26(OH88-26)	Jan. 2, 1987.
OH87-27(OH88-27)	Jan. 2, 1987.
OH87-28(OH88-28)	Jan. 2, 1987.
OH87-29(OH88-29)	Jan. 2, 1987.
OH87-30(OH88-30)	Jan. 2, 1987.
OH87-31(OH88-31)	Jan. 2, 1987.
OH87-32(OH88-32)	June 19, 1987.
OH87-33(OH88-33)	June 19, 1987.
Oklahoma:	
OK87-1(OK88-1)	Jan. 2, 1987.
OK87-2(OK88-2)	Jan. 2, 1987.
OK87-3(OK88-3)	Jan. 2, 1987.
OK87-4(OK88-4)	Jan. 2, 1987.
OK87-5(OK88-5)	Jan. 2, 1987.
OK87-6(OK88-6)	Jan. 2, 1987.
OK87-7(OK88-7)	Jan. 2, 1987.
OK87-8(OK88-8)	Jan. 2, 1987.
OK87-9(OK88-9)	Jan. 2, 1987.
OK87-10(OK88-10)	Jan. 2, 1987.
OK87-11(OK88-11)	Jan. 2, 1987.
OK87-12(OK88-12)	Jan. 2, 1987.
OK87-13(OK88-13)	Jan. 2, 1987.
OK87-14(OK88-14)	Jan. 2, 1987.
OK87-15(OK88-15)	Jan. 2, 1987.
OK87-16(OK88-16)	Feb. 6, 1987.
OK87-17(OK88-17)	Feb. 6, 1987.
OK87-18 (OK88-18)	May 1, 1987.
OK87-19 (OK88-19)	May 1, 1987.
OK87-20(OK88-20)	July 17, 1987.
Oregon:	
OR87-1 (OR88-1)	Jan. 2, 1987.
OR87-2 (OR88-2)	Jan. 2, 1987.
OR87-3 (OR88-3)	Jan. 2, 1987.
Pennsylvania:	
PA87-1 (PA88-1)	Jan. 2, 1987.
PA87-2 (PA88-2)	Jan. 2, 1987.
PA87-3 (PA88-3)	Jan. 2, 1987.
PA87-4 (PA88-4)	Jan. 2, 1987.
PA87-5 (PA88-5)	Jan. 2, 1987.
PA87-6 (PA88-6)	Jan. 2, 1987.
PA87-7 (PA88-7)	Jan. 2, 1987.
PA87-8 (PA88-8)	Jan. 2, 1987.
PA87-9 (PA88-9)	Jan. 2, 1987.
PA87-10 (PA88-10)	Jan. 2, 1987.
PA87-11 (PA88-11)	Jan. 2, 1987.
PA87-12 (PA88-12)	Jan. 2, 1987.
PA87-13 (PA88-13)	Jan. 2, 1987.
PA87-14 (PA88-14)	Jan. 2, 1987.
PA87-15 (PA88-15)	Jan. 2, 1987.
PA87-16 (PA88-16)	Jan. 2, 1987.
PA87-17 (PA88-17)	Jan. 2, 1987.
PA87-18 (PA88-18)	Jan. 2, 1987.
PA87-19 (PA88-19)	Jan. 2, 1987.
PA87-20 (PA88-20)	Jan. 2, 1987.
PA87-21 (PA88-21)	Jan. 2, 1987.
PA87-22 (PA88-22)	Jan. 2, 1987.
PA87-23 (PA88-23)	Jan. 2, 1987.
PA87-24 (PA88-24)	Jan. 2, 1987.
Puerto Rico:	
PR87-1 (PR88-1)	Jan. 2, 1987.
PR87-2 (PR88-2)	Jan. 2, 1987.
PR87-3 (PR88-3)	Jan. 2, 1987.
Rhode Island:	
RI87-1 (RI88-1)	Jan. 2, 1987.
South Carolina:	
SC87-1 (SC88-1)	Jan. 2, 1987.
SC87-2 (SC88-2)	Jan. 2, 1987.
SC87-3 (SC88-3)	Jan. 2, 1987.
SC87-4 (SC88-4)	Jan. 2, 1987.
SC87-5 (SC88-5)	Jan. 2, 1987.
SC87-6 (SC88-6)	Jan. 2, 1987.
SC87-7 (SC88-7)	Jan. 2, 1987.
SC87-8 (SC88-8)	Jan. 2, 1987.
SC87-9 (SC88-9)	Jan. 2, 1987.
SC87-10 (SC88-10)	Jan. 2, 1987.
SC87-11 (SC88-11)	Jan. 2, 1987.
SC87-12 (SC88-12)	Jan. 2, 1987.
SC87-13 (SC88-13)	Jan. 2, 1987.
SC87-14 (SC88-14)	Jan. 2, 1987.
SC87-15 (SC88-15)	Jan. 2, 1987.
SC87-16 (SC88-16)	Jan. 2, 1987.
SC87-17 (SC88-17)	Jan. 2, 1987.
SC87-18 (SC88-18)	Jan. 2, 1987.
SC87-19 (SC88-19)	Jan. 2, 1987.
SC87-20 (SC88-20)	Jan. 2, 1987.
SC87-21 (SC88-21)	Jan. 2, 1987.
South Dakota:	
SD87-1 (SD88-1)	Jan. 2, 1987.
SD87-2 (SD88-2)	Jan. 2, 1987.
SD87-3 (SD88-3)	Feb. 27, 1987.
SD87-4 (SD88-4)	Oct. 9, 1987.
Tennessee:	
TN87-1 (TN88-1)	Jan. 2, 1987.
TN87-2 (TN88-2)	Jan. 2, 1987.
TN87-3 (TN88-3)	Jan. 2, 1987.
TN87-4 (TN88-4)	Jan. 2, 1987.
TN87-5 (TN88-5)	Jan. 2, 1987.
TN87-6 (TN88-6)	Jan. 2, 1987.
TN87-7 (TN88-7)	Jan. 2, 1987.
TN87-8 (TN88-8)	Jan. 2, 1987.
TN87-9 (TN88-9)	Jan. 2, 1987.
TN87-10 (TN88-10)	Jan. 2, 1987.
TN87-11 (TN88-11)	Jan. 2, 1987.
TN87-12 (TN88-12)	Jan. 2, 1987.
TN87-13 (TN88-13)	Jan. 2, 1987.
TN87-14 (TN88-14)	Jan. 2, 1987.
TN87-15 (TN88-15)	Jan. 2, 1987.
TN87-16 (TN88-16)	Jan. 2, 1987.
Texas:	
TX87-1 (TX88-1)	Jan. 2, 1987.
TX87-2 (TX88-2)	Jan. 2, 1987.
TX87-3 (TX88-3)	Jan. 2, 1987.
TX87-4 (TX88-4)	Jan. 2, 1987.
TX87-5 (TX88-5)	Jan. 2, 1987.
TX87-6 (TX88-6)	Jan. 2, 1987.
TX87-7 (TX88-7)	Jan. 2, 1987.
TX87-8 (TX88-8)	Jan. 2, 1987.
TX87-9 (TX88-9)	Jan. 2, 1987.
TX87-10 (TX88-10)	Jan. 2, 1987.
TX87-11 (TX88-11)	Jan. 2, 1987.
TX87-12 (TX88-12)	Jan. 2, 1987.
TX87-13 (TX88-13)	Jan. 2, 1987.
TX87-14 (TX88-14)	Jan. 2, 1987.
TX87-15 (TX88-15)	Jan. 2, 1987.
TX87-16 (TX88-16)	Jan. 2, 1987.
TX87-17 (TX88-17)	Jan. 2, 1987.
TX87-18 (TX88-18)	Jan. 2, 1987.
TX87-19 (TX88-19)	Jan. 2, 1987.
TX87-20 (TX88-20)	Jan. 2, 1987.
TX87-21 (TX88-21)	Jan. 2, 1987.
TX87-22 (TX88-22)	Jan. 2, 1987.
TX87-23 (TX88-23)	Jan. 2, 1987.
TX87-24 (TX88-24)	Jan. 2, 1987.
TX87-25 (TX88-25)	Jan. 2, 1987.
TX87-26 (TX88-26)	Jan. 2, 1987.
TX87-27 (TX88-27)	Jan. 2, 1987.
TX87-28 (TX88-28)	Jan. 2, 1987.
TX87-29 (TX88-29)	Jan. 2, 1987.
TX87-30 (TX88-30)	Jan. 2, 1987.
TX87-31 (TX88-31)	Jan. 2, 1987.
TX87-32 (TX88-32)	Jan. 2, 1987.
TX87-33 (TX88-33)	Jan. 2, 1987.
TX87-34 (TX88-34)	Jan. 2, 1987.
TX87-35 (TX88-35)	Jan. 2, 1987.
TX87-36 (TX88-36)	Jan. 2, 1987.
TX87-37 (TX88-37)	Jan. 2, 1987.
TX87-38 (TX88-38)	Jan. 2, 1987.
TX87-39 (TX88-39)	Nov. 7, 1987.
TX87-40 (TX88-40)	Nov. 7, 1987.
TX87-41 (TX88-41)	Nov. 7, 1987.
TX87-42 (TX88-42)	Nov. 7, 1987.
TX87-43 (TX88-43)	Nov. 7, 1987.
TX87-44 (TX88-44)	Nov. 7, 1987.
TX87-45 (TX88-45)	Nov. 7, 1987.
TX87-46 (TX88-46)	Nov. 2, 1987.
TX87-47 (TX88-47)	Nov. 7, 1987.
TX87-48 (TX88-48)	Nov. 7, 1987.
TX87-49 (TX88-49)	Nov. 7, 1987.
Utah:	
UT87-1 (UT88-1)	Jan. 2, 1987.
UT87-2 (UT88-2)	Jan. 2, 1987.
UT87-3 (UT88-3)	July 7, 1987.
Vermont:	
VT87-1 (VT88-1)	Jan. 2, 1987.
VT87-2 (VT88-2)	Jan. 2, 1987.
Virginia:	
VA87-1 (VA88-1)	Jan. 2, 1987.
VA87-2 (VA88-2)	Jan. 2, 1987.
VA87-3 (VA88-3)	Jan. 2, 1987.
VA87-4 (VA88-4)	Jan. 2, 1987.
VA87-5 (VA88-5)	Jan. 2, 1987.
VA87-6 (VA88-6)	Jan. 2, 1987.
VA87-7 (VA88-7)	Jan. 2, 1987.
VA87-8 (VA88-8)	Jan. 2, 1987.
VA87-9 (VA88-9)	Jan. 2, 1987.
VA87-10 (VA88-10)	Jan. 2, 1987.
VA87-11 (VA88-11)	Jan. 2, 1987.
VA87-12 (VA88-12)	Jan. 2, 1987.
VA87-13 (VA88-13)	Jan. 2, 1987.
VA87-14 (VA88-14)	Jan. 2, 1987.
VA87-15 (VA88-15)	Jan. 2, 1987.
VA87-16 (VA88-16)	Jan. 2, 1987.
Virgin Islands:	
VI87-1 (VI88-1)	Jan. 2, 1987.
VI87-2 (VI88-2)	Jan. 2, 1987.
Washington:	
WA87-1 (WA88-1)	Jan. 2, 1987.
WA87-2 (WA88-2)	Jan. 2, 1987.
WA87-3 (WA88-3)	Jan. 2, 1987.
WA87-4 (WA88-4)	Jan. 2, 1987.
WA87-5 (WA88-5)	Jan. 2, 1987.
WA87-6 (WA88-6)	Jan. 2, 1987.
WA87-7 (WA88-7)	Jan. 2, 1987.
WA87-8 (WA88-8)	Jan. 2, 1987.
WA87-9 (WA88-9)	Jan. 2, 1987.
West Virginia:	
WV87-1 (WV88-1)	Jan. 2, 1987.
WV87-2 (WV88-2)	Jan. 2, 1987.
WV87-3 (WV88-3)	Jan. 2, 1987.
Wisconsin:	
WI87-1 (WI88-1)	Jan. 2, 1987.
WI87-2 (WI88-2)	Jan. 2, 1987.
WI87-3 (WI88-3)	Jan. 2, 1987.
WI87-4 (WI88-4)	Jan. 2, 1987.
WI87-5 (WI88-5)	Jan. 2, 1987.
WI87-6 (WI88-6)	Jan. 2, 1987.
WI87-7 (WI88-7)	Jan. 2, 1987.
WI87-8 (WI88-8)	Jan. 2, 1987.
WI87-9 (WI88-9)	Jan. 2, 1987.
WI87-10 (WI88-10)	Jan. 2, 1987.
WI87-11 (WI88-11)	Jan. 2, 1987.
WI87-12 (WI88-12)	Jan. 2, 1987.
WI87-13 (WI88-13)	Jan. 2, 1987.
WI87-14 (WI88-14)	Jan. 2, 1987.
WI87-15 (WI88-15)	Jan. 2, 1987.
WI87-16 (WI88-16)	Jan. 2, 1987.
Wyoming:	
WY87-1 (WY88-1)	Jan. 2, 1987.
WY87-2 (WY88-2)	June 12, 1987.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $280.00 for Volume I, $312.00 for Volume II, and $250.00 for Volume III. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 29th day of December 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-38 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-281-C]

Christian Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Christian Energies, Inc., Route 1, Box 16, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15763) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 8, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 29, 1987.

[FR Doc. 88-304 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-277-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidated Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Buchanan Mine (I.D. No. 44-04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to seal the Pocahontas No. 3 Coal Seam from the surrounding strata at the affected wells using specific techniques and specific procedures as outlined in the petition.

3. In addition, petitioner states that before the well is plugged to the Pocahontas No. 3 coalbed, a directional survey will be run on the well to determine the exact location of the wellbore in the coalbed; but if it does not penetrate athe wellbore in mining, petitioner will continue mining until the well is located. Gamma ray and caliper logs will, if physically possible, be run in the well to determine the exact depth of the coalbed;

(a) Petitioner will, during its normal mining cycle, mine through and remove that segment of the plug existing between the mine pavement and roof. A Federal Mine Inspector will be notified and have the opportunity to be present during the mining through operation;

(b) All personnel in the affected area will be instructed to proceed with caution when mining into and through

the well-support pillar; and to maintain a gas-free atmosphere; and

(c) Methane examinations will be made by qualified personnel using approved methane detection equipment at least once during each shift during development and retreat mining and the date and time of such examinations will be recorded on a fireboss date board which will be placed in the area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 8, 1988. Copies of the petition are available for inspection at that address.

Date: December 29, 1987.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-305 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-260-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 1951 Barrett Court, Henderson, Kentucky 42420-1990 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Martwick Underground Mine (I.D. No. 15-14074) located in Muhlenberg County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, shops, and permanent pumps be housed in fireproof structures or areas.

2. As an alternate method, petitioner proposes to enclose the battery-charging station in metal housings.

3. In support of this request, petitioner states that—

(a) The charging station is located at the mechanic's work area and is attended by the mechanic;

(b) The brattice person will be working in this immediate area as brattices are advanced; and

(c) The scoop operator will be in this immediate area while cleaning up and distributing supplies.

4. The power is deenergized to the charging station when miners leave the area for more than 30 minutes.

5. The charging station is vented to the return air.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 8, 1988. Copies of the petition are available for inspection at that address.

Date: December 29, 1987.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-306 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-269-C]

Poor Boy Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Poor Boy Coal Company, Inc., Route 1, Box 211, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15696) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 8, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 29, 1987.

[FR Doc. 88-307 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-269-C]

Raven Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Raven Mining Company, Inc., Route 2, Box 327B, Rockhold, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15126) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractors in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 8, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 29, 1987.

[FR Doc. 88-308 Filed 1-7-88; 8:45 am]

BILLING CODE 4510-43-M

MERIT SYSTEMS PROTECTION BOARD

Market Compensation for Contingent Fee Agreements

AGENCY: Merit Systems Protection Board.

ACTION: Notice of opportunity to file amicus briefs.

SUMMARY: The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues concerning the degree to which the relevant market compensates contingent fee agreements differently from other fee agreements.

DATE: Amicus briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before February 8, 1988.

ADDRESS: All briefs shall be captioned "Market Compensation for Contingent Fee Agreements," and entitled "Amicus Brief." All briefs shall also contain separate, numbered headings for each issue discussed. The original and seven (7) copies of each amicus brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, Attn: Market Compensation for Contingency Fee Agreements, 1120 Vermont Ave. NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk, Merit Systems Protection Board, (202) 653-7262.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board has before it a remand from the United States Court of Appeals for the Federal Circuit, *Crumbaker* v. *Merit Systems Protection Board*, 827 F.2d 761 (Fed. Cir. 1987). This case raises several significant legal and factual issues related to making a determination of whether particular relevant markets compensate contingent fee cases as a class differently, and, if so, whether an enhancement of counsel's requested fee is appropriate.

This notice represents the Board's offer to receive and consider amicus briefs from interested parties on the following issues:

1. What legal issues, if any, must the Board resolve in order to determine whether the relevant market compensates contingent fee agreements differently from other fee agreements;

2. What subsidiary factual issues must the Board resolve in order to determine whether the relevant market compensates contingent fee agreements differently from other fee agreements;

3. What kinds of evidence must the appellant submit in order to prevail; and

4. If the appellant establishes that the relevant market compensates contingent fee agreements differently, what legal and factual issues must the Board resolve in order to determine whether an enhancement is warranted in a particular case and, if so, to calculate the appropriate amount of the enhancement.

Dated: January 5, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88-356 Filed 1-7-88; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Choreographers Fellowship Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers Fellowship Section) to the National Council on the Arts will be held on January 11, 1988, from 9:00 a.m.-5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

If time permits a portion of this meeting will be open to the public on January 11, 1988 from 4:00 p.m.–5:00 p.m. The topic for discussion will be policy issues.

The remaining session of this meeting on January 11, 1988, from 9:00 a.m.–4:00 p.m. is for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Date: January 4, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–378 Filed 1–7–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275/50–323]

Pacific Gas & Electric Co.; Exemption

I.

Pacific Gas & Electric Company holds Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2. The two units collectively are called the facilities. The licenses provide, among other things, that the facilities are subject to all rules, regulations and orders of the Nuclear Regulatory Commisison (the Commission) now or hereafter in effect. These facilities are pressurized water reactors located in San Luis Obispo County, California.

II.

Appendix A of 10 CFR Part 20, "Standards for Protection Against Radiation," defines protection factors for respirators. Footnote d–2(c) of this Appendix states that "No allowance is to be made for the use of sorbents against radioactive gases or vapors."

By letters dated April 18, 1986, as supplemented July 15, 1986, Pacific Gas and Electric Company (PG&E or licensee) requested an exemption to 10 CFR Part 20, Appendix A, footnote d–2(c). The licensee submitted this request in accordance with 10 CFR Part 20.103(e) and provided further justification for the exemption in response to our request for additional information.

Test data and canister qualification information have been provided by PG&E by reference to Mine Safety Appliances Company (MSA) data submitted in conjunction with similar exemption requests for Farley 1 & 2 by Alabama Power Company dated January 13, 1984, and for San Onofre 1, 2, and 3 by Southern California Edison Company dated March 20, 1985. PG&E has provided a detailed response to all NRC staff concerns relating to the request for exemption to 10 CFR Part 20, Appendix A, footnote d–2(c). The exemption would allow the use of a radioiodine protection factor of 50 for MSA GMR–I canisters to be used at the Diablo Canyon 1 & 2 power reactor facilities. Criteria and background information used for the evaluation includes 10 CFR Part 20.103, 10 CFR Part 19.12, Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection," Regulatory Guide 8.20, "Applications of Bioassay for I–125 and I–131," NUREG/CR–3403, "Criteria and Test Methods for Certifying Air Purifying Respirator Cartridges and Canisters Against Radioiodine," and Regulatory Guide 8.8, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable." The NRC staff's discussion and evaluation of the request for exemption follows.

Since a NIOSH/MSHA testing and certification schedule for sorbents for use for protection against radioiodine gases and vapors has not been developed, the NRC staff has evaluated PG&E's request and verified, as required by 10 CFR Part 20.103(e), that the licensee has demonstrated through reliable test data and adequate quality assurance measures that the material and performance characteristics of the MSA GMR–I canister can provide the proposed degree of protection (i.e., a protection factor of 50) under the anticipated conditions of use, for 8 hours. Canister efficiency and service life, and the effects of temperature, poisons, relative humidity, challenge concentration and breathing rates on canister efficiency and service life were considered in the staff's technical evaluation. The staff's programmatic evaluations considered quality control/quality assurance, administrative controls, and radiation protection/ALARA, including task preparation and planning, on-the-job and post-task evaluations, use of engineering controls, radiological surveillance, and radiological training.

The licensee has provided reliable test information which verifies that the MSA GMR–I canister will provide a protection factor of 50 over a period of 8 hours of continuous use, provided that the total challenge of radioactive and nonradioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 110°F, or up to 120°F provided the dewpoint does not exceed 107°F. The data provided by MSA showed the breakthrough point to be well beyond 8 hours.

Testing has been conducted under acceptable conditions of cyclic flow, and under worst case conditions for those environmental factors affecting service life: temperature, relative humidity, and challenge concentration of CH_3I (methyliodide/methyl radioiodide), which is the most penetrating of the challenge forms. Data provided from MSA indicate that the MSA GMR–I canisters perform adequately under the accepted test conditions. These conditions—the criteria and test methods—are consistent with those derived for the canisters by the staff from NUREG/CR–3403, and are acceptable.

The licensee, through a planned verification and acceptance of MSA QA controls, has provided commitments that the MSA GMR–I canisters used with a protection factor at Diablo Canyon will meet standards for quality assurance and quality control which are recognized by NIOSH, compatible with NRC staff positions, and are therefore acceptable. This includes a commitment by MSA to establish a 1% AQL (Acceptable Quality Limit) in a 5 to 10 ppm challenge concentration of CH_3I, 90% relative humidity, 110°F, 64 LPM cyclic flow, for a service life of 8 hours or more at penetration equal to 1% of the challenge concentration. Testing data referenced by the licensee demonstrated the performance (i.e., service life) of canisters at 100% relative humidity is acceptable.

Coupled with the use of a full facepiece with the capability of providing a protection factor of greater than 100, to be determined by fit test, the protection factor of 50 is conservative under these conditions. Canister efficiency will be retained for the radioiodine gas or vapors of interest (CH_3I, I_2, HOI) for this time period. To preclude aging, service life will be calculated from unsealing time, including periods of non-use, and the canister will not be used in the presence of organic solvents or in temperatures in excess of 110°F. Canisters will be stored in sealed humidity-barrier packaging in a cool, dry environment, and discarded after the 8-hour use period to prevent reuse. Through usage restrictions and air sampling, the licensee will preclude exposures to organic vapors and chemicals (such as hexane, toluene, xylene and their derivatives, trichloroethane, methylenechloride, trichlorofloroethane, and Stoddard Solvent) which could cause aging, poisoning or desorption of the absorbed radioiodines. Plant procedures describing air sampling and administrative controls for detecting and precluding the presence of organic vapors and chemicals will be developed.

Certain limitations and precautions based on NUREG/CR–3403 guidance are necessary for utilization of the sorbent canisters. The staff agrees with the following such limitations and usage restrictions as proposed by the licensee:

1. Protection factor equal to 50 as a maximum value.
2. The maximum permissible continuous use time is eight hours after which the canister will be discarded.
3. Canisters are not to be used in the presence of organic solvent vapors.
4. Canisters are to be stored in sealed, humidity-barrier packaging in a cool, dry environment.[1]
5. The allowable service life for sorbent canisters is to be calculated from the time of unsealing the canister, including periods of non-exposure.
6. The canister is to be used with a full facepiece capable of providing protection factors greater than 100.
7. Canisters are not to be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1 ppm, including nonradioactive compounds.
8. Canisters are not to be used in environments where temperatures are greater than 110°F.

In addition to the limitations and usage restrictions noted above, administrative and procedural controls will be utilized by the licensee as follows:

1. Temperatures will be measured prior to and/or coincidently with the use of GMR–I canisters to assure that work temperatures do not exceed 110°F.

[1] Sorbent canisters will be stored in Class A storage conditions with temperatures controlled between 60°F and 90°F, and relative humidity between 30% and 60%, in accordance with Nuclear Power Administrative Procedure (NPAP) D–838, "Control of Materials at DCPP."

2. In the initial implementation of sorbent canister use, the following program verification measures will be used:

a. Weekly whole body counts for individuals using the sorbent canister for radioiodine protection;

b. For individuals who exceed 30 MPC hours in seven consecutive days, a whole body count will be required prior to their next entry into a radioiodine atmosphere (i.e., effectively a 30 MPC hour stay time);

c. If an individual measures 35 nCi or greater iodine uptake to the thyroid during a whole body count, the individual's entry into radioiodine atmospheres will be restricted pending health physics evaluation;

d. A whole body count/survey database will be compiled to evaluate the results of the program.

3. Certain air contaminants which could affect GMR–I performance will be controlled under procedures governing performance of plant charcoal and HEPA air filtration systems. These procedures, Specifications for Supplier Quality Assurance Program (SPD–0), Surveillance Test Procedures M–4, M–5, and M–6A, and AP D–360, effect controls similar to those needed for GMR–I use.

4. Specific plant procedures will be modified to incorporate the limitations and usage restrictions, listed as 1 through 8 above, prior to GMR–I canister use.

5. Existing respiratory protection program requirements and restrictions (e.g., physicals, fit tests, Part 20 requirements, Appendices A and B) still apply.

The primary bases for PG&E's request for exemption are the potentials for both work effort reduction and dose reduction. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 30% for tasks requiring radioiodine protection, and up to 50% for some major tasks. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job. The licensee has provided a task analysis which shows that the use of sorbent canisters at Diablo Canyon result in significant dose savings and should be an effective ALARA measure.

Other actions taken by PG&E to assure that exposures to radioiodine are as low as is reasonably achievable (ALARA) are: radioiodine air sampling before and during activities involving the use of sorbent canisters for radioiodine protection; engineering controls such as portable HEPA ventilation and temporary containments to control leakage and reduce airborne levels to ALARA levels; purification and degasification of the primary coolant conducted prior to refueling resulting in reduced radioiodine levels; and area decontamination to control contamination levels. Whole body counts will be conducted routinely (e.g., weekly and at 30 MPC hours) and radioiodine data will be trended to detect problems; and investigation level for radioiodine uptakes has been established (at 35 nCi); training of workers and health physics technicians in the use and restrictions for use or sorbent canisters for radioiodine protection will be conducted prior to their use; and procedures iterating the controls, restrictions, and requirements have been developed and will be implemented. The licensee's efforts to keep exposure ALARA are consistent with positions in Regulatory Guide 8.8 and are acceptable.

In summary, the NRC staff's review of the licensee's proposal indicates that the actions proposed by PG&E can result in significant dose savings over alternative methods while still providing effective protection. This exemption would enable the licensee to use a protection factor for air purifying radioiodine gas and vapor respirators in estimating worker exposures from radioiodine gases and vapors. The licensee has provided usage restrictions and controls which can assure an effective radioiodine protection program. The proposed criteria and test methods for verifying the effectiveness and quality of GMR–I canisters are consistent with NRC criteria. The licensee's proposed exemption, with the controls and limitations, meets the positions in NUREG/CR–3403 and Regulatory Guide 8.8, and is acceptable. The actions proposed by the licensee are consistent with the requirements of 10 CFR 20.103(e), and form an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 20.103(e) and 20.501.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, the exemption is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the requirements of Footnote d–2(c) of Appendix A to 10 CFR Part 20.

The Commission has prepared an Environmental Assessment and Finding

of No Significant Impact related to this action which was published in the **Federal Register** on December 28, 1987 (52 FR 48887). The Environmental Assessment concluded that this action will not have a significant effect on the quality of the human environment, and therefore the Commission has determined not to prepare an environmental impact statement for this exemption.

For further details with respect to this action, see the application for exemption dated April 18, 1986 and supplemental information provided by letter dated July 15, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Bethesda, Maryland, this 4th day of January, 1988.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-316 Filed 1-7-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Digital Communications Associates, Inc.
Common Stock, $.10 Par Value (File No. 7-0961)
Lands' End
Common Stock, $.01 Par Value (File No. 7-0962)
American Land Cruisers, Inc.
Common Stock, $.01 Par Value (File No. 7-0963)
Saatchi/& Saatchi Company PLC
American Depository Shares (File No. 7-0964)
CLC of American, Inc.
Common Stock, $.01 Par Value (File No. 7-0965)
Flowers Industries, Inc. (Delaware)
Common Stock, $.625 Par Value (File No. 7-0966)
PHM Corporation
Common Stock, $.01 Par Value (File No. 7-0967)
Tenneco Inc.
$7.40 Cumulative Preference Stock, No Par Value (File No. 7-0968)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-338 Filed 1-7-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading, Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 4, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Newmark & Lewis
Common Stock, $.05 Par Value (File No. 7-0969)
Putnam Master Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7-0970)
Triton Group Ltd.
Common Stock, $1.00 Par Value (File No. 7-0971)
U.S. Surgical Corp.
Common Stock, $.10 Par Value (File No. 7-0972)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 25, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-339 Filed 1-7-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area #2302]

Tennessee; Declaration of Disaster Loan Area

Shelby County and the adjacent Counties of Tipton and Fayette in the State of Tennessee constitute a disaster area because of damages from severe storms and flooding which occurred December 24-27, 1987. Applications for loans for physical damage may be filed until the close of business on March 3, 1988, and for economic injury until the close of business on October 4, 1988, at the address listed: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 230208 for physical damage and for economic injury the number is 658800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-300 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/07-0082]

Abbott Capital Corp.; Surrender of License

Notice is hereby given that Abbott Capital Corporation, 9933 Lawler Avenue, Evanston, Illinois 60077, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Abbott Capital Corporation was licensed by the Small Business Administration on January 11, 1971.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 11, 1987 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: December 23, 1987.

[FR Doc. 88-294 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/15-002]

Michigan Capital & Service, Inc.; Surrender of License

Notice is hereby given that Michigan Capital & Service, Inc. (MCS), 201 South Main Street, Ann Arbor, Michigan 48104, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). MCS was licensed by the Small Business Administration on August 30, 1966.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on October 15, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Progran No. 59.011, Small Business Investment Companies)

Dated: January 4, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc 88-295 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License Application No. 04/04-5243]

Alabama Small Business Investment Company, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Alabama Small Business Investment Company, Inc., 500 First National—Southern Natural Building, 5th Avenue North and 20th Street, Birmingham, Alabama 35203, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1987).

The officers, directors and principal shareholder of the Applicant are as follows:

Name and address	Title or relationship	Percent of ownership
William J. Billingsley 3304 Pembroke Lane, Hoover, Alabama 35226	President, Director	
William H. Caughran, Jr., 1517 Valley Avenue, Birmingham, Alabama 35226	Secretary	
Gelchrist & Company, Inc. (GCI), 206 North 24th Street, Birmingham, Alabama 35203	Manager	
Herold Gelchrist, 1457 Miami Drive, Birmingham, Alabama 35214	President, CEO, Director Majority owner of GCI	
Eddie L. Blankenship, 1928 Center Street, South Birmingham, Alabama 35205	Director	
Barry Copeland, 397 East Glenwood Drive, Birmingham, Alabama 35209	Director	
Fred C. Crum, 1375 Anglewood Drive, Vestavia, Alabama 35216	Director	
William B. Hutchins, III, 1820 Canterbury Circle, Birmingham, Alabama 35226	Director	
Myrta Y. Myles, 1201 Pike Road, Birmingham, Alabama 35218	Employee of GCI	
Doyal L. Reed, 739 East Forestwood Drive, Birmingham, Alabama 35214	Employee of GCI	
Sunny Stokes, Jr., 1423 Monican Drive, Birmingham, Alabama 35214	Director	
Alexander S. Williams, III, 3340 Fairing Road, Birmingham, Alabama 35223	Director	
Randall R. Williams, Route 2, Box 18A, Columbiana, Alabama 35051	Director	
Gary C. Youngblood, 1225 Lincoya Drive, Vestavia Hills, Alabama 35216	Director	
AmSouth Bank, N.A., P.O. Box 11007, Birmingham, Alabama 35288.		19.9

AmSouth Bank, N.A., the only more-than-10 percent shareholder of the Applicant, is a wholly-owned subsidiary of AmSouth Bancorporation, a bank holding company registered under the Bank Holding Company Act of 1956, as amended. At November 3, 1987, AmSouth Bancorporation had approximately 9,600 owners of record.

The Applicant, an Alabama corporation, will begin operations with a capitalization of $1.0 million and will conduct its operations principally in the State of Alabama.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and managerial assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Birmingham, Alabama.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-296 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0182]

Jiffy Lube Capital Corp.; Issuance of a Small Business Investment Company License

On October 9, 1987, a notice was published in the **Federal Register** (52 FR 37866) stating that an application has been filed by Jiffy Lube Capital Corporation, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business November 9, 1987 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0182 on December 9, 1987, the Jiffy Lube Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-296 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-0185]

Morgan Investment Corp.; Issuance of a Small Business Investment Company License

On October 6, 1987, a notice was published in the **Federal Register** (52 FR 37391) stating that an application has been filed by Morgan Investment Corporation, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business November 6, 1987 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-0185 on December 10, 1987, to Morgan Investment Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 23, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-299 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0175]

Walden Capital Partners; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Walden Capital Partners (WCP), 750 Battery Street, San Francisco, California 94111, a Federal Licensee under the Small Business Investment Act of 1958 (Act), as amended, has filed an application with the Small Business Administration (SBA), pursuant to § 107.903(b) of the SBA Regulations, governing small business investment companies (13 CFR 107.903 (1987)), for approval of a conflict of interest transaction.

Subject to such approval, WCP proposes to provide a second round of financing in the amount of $50,000 to Simborg Systems Corporation (Simborg), 100 Drakes Landing, Greenbrae, California 94904. At the same time, other affiliated non-SBIC Walden partnerships will provide $350,000 in financing to Simborg.

The proposed financing is brought within the preview of § 107.903 since WCP and the affiliated non-SBIC Walden partnerships had participated in a first round of financing of Simborg on June 18, 1986, whereby WCP owned 1.5 percent and the affiliated non-SBIC Walden partnerships owned 18.5 percent of Simborg's Series A and B preferred stock. The proposed financing will be used to purchase a portion of Simborg's Series C preferred stock. After the Series C financing, the combined Walden funds will own approximately 17 percent of Simborg including WCP's ownership of 1.5 percent. Accordingly, the non-SBIC Walden partnerships are considered by SBA to be Associates of WCP.

Notice is hereby given that any interested person may, not later than ten (10) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 4, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-297 Filed 1-7-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending December 31, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed by close of business, Monday, January 11, 1988.

Docket No. 45933

Parties: Air Transport Association.

Date Filed: December 31, 1987.

Subject: Application of Air Transport Association pursuant to sections 412 and 414 of the Act, and Parts 302 and 303 of the DOT Rules of Practice, requests prior DOT approval with full antitrust immunity of the agreement which sets forth the planned operations for Los Angeles International Airport reached during air carrier discussions authorized by DOT Order 87-12-32.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-302 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of GCS Air Service, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 88-1-8, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that GCS Air Service, Inc., is fit, willing and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Service Analysis Division, P-53, Room 5100, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Appendix A of the order. Responses shall be filed no later than January 15, 1988.

FOR FURTHER INFORMATION: John R. McCamant, Service Analysis Division, P-53, Room 5100, Department of Transportation, 400 7th Street SW., Washington, DC 20590 (202) 366-1060.

Dated: January 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-278 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-62-M

Application of WestAir Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause, (Order 88-1-4) Docket 45254.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding WestAir Airlines, Inc. d/b/a United Express fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property and mail for a period of 181 days.

DATES: Persons wishing to file objections should do so no later than January 11, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 45254 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: January 4, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-277 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[AC No. 129-XX]

Proposed Advisory Circular—Maintenance Programs For U.S.-Registered Aircraft Under FAR Part 129

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed AC 129-XX, maintenance programs for U.S.-registered aircraft under Part 129.

SUMMARY: The proposed AC provides information to be used by the foreign aviation community as guidance for preparation of maintenance programs for U.S.-registered aircraft used in common carriage by foreign air carriers and other foreign persons.

Comments Invited: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 129-XX.

DATE: Comments must be received on or before February 8, 1988.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS-300, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Wayne Dixon, AFS-300, at the above address, telephone (202) 267-3781 (8:30 a.m. to 5:00 p.m. EST).

SUPPLEMENTARY INFORMATION: The maintenance programs discussed in this AC are required to be approved by Amendment 14 to FAR Part 129 on or before February 25, 1988, to the standards of ICAO Annex 6. Prior to this date, these airplanes are required to comply with the inspection program requirements of FAR Sections 91.169 and 125.247. The preamble for Amendment 14 to FAR Part 129 committed the FAA to publish an AC identifying requirements for a suitable maintenance program. This AC intends to fulfill that commitment.

Issued in Washington, DC on December 11, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 88-265 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

Gainesville Regional Airport, Gainesville, FL; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Gainesville, Florida under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On April 30, 1987, the FAA determined that the noise exposure maps submitted by The City of Gainesville, Florida, under Part 150 were in compliance with applicable requirements. On October 19, 1987, the Administrator approved the Gainesville Regional Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator

EFFECTIVE DATE: The effective date of the FAA's approval of the Gainesville Regional Airport noise compatibility program is October 19, 1987.

FOR FURTHER INFORMATION CONTACT: C. Ed Howard, Airports Planning and Development Specialist, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (305) 648-6583. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Gainesville Regional Airport, effective October 19, 1987. Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (hereinafter Referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150; Program measures are reasonably consistent with achieving the goals of

reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely effecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida. The City of Gainesville, Florida, submitted to the FAA on January 27, 1986, in conjunction with the September 29, 1988 supplement, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 18, 1984 through January 27, 1986. The Gainesville Regional Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on April 30, 1987. Notice of this determination was published in the Federal Register on May 11, 1987.

The Gainesville Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 30, 1987 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 19, 1987.

Outright approval was granted for all of the specific program elements. The approval action was for the following program elements:

A—Measure No. 1, City of Gainesville—Acquire land in areas east and south of the Airport as shown in the Plan and relocate several residences.

B—Measure No. 1, Alachua County—Revise its land use regulations and regulatory development standards to incorporate the recommendations presented in the FAR Part 150 report.

C—Measure No. 2, Alachua County—Revise section 13 of the Zoning Regulations as it relates to the definition of noise sensitive district and noise attenuation area, permitted land uses, and the enforcement of the disclosure statement practices.

D—Measure No. 3, Alachua County—Revise its land use policies as identified in its Comprehensive Plan to incorporate the recommendations in the FAR Part 150 Study.

E—Measure No. 4, Alachua County—Conduct necessary public hearing to effect the above action items.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 19, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Gainesville, Florida.

Issued in Orlando, Florida on November 18, 1987.

W. Robert Billingsley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 88-352 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program; Great Falls International Airport, Great Falls, MT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Great Falls International Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On June 9, 1987, the FAA determined that the noise exposure maps submitted by the Airport Authority under Part 150 were in compliance with applicable requirements. On November 30, 1987, the Administrator approved the Great Falls International Airport noise compatibility program. Most of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Great Falls International Airport noise compatibility program is November 30, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop: Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM-611; 17900 Pacific Highway South; C-68966; Seattle, Washington 98168. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Great Falls International Airport, effective November 30, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures which can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Helena, Montana.

The Airport Authority submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Great Falls International Airport. The Great Falls International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 9, 1987. Notice of this determination was published in the **Federal Register** on June 24, 1987.

The Great Falls International Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 9, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 15 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 30, 1987.

Outright approval was granted for 13 specific program elements. No action was taken on Program Element A.2(a) as the condition that prompted the proposed action no longer exists. No action was taken at this time on Program Element A.3 as it relates to flight procedures which require additional information and analysis.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 30, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Great Falls International Airport.

Issued in Seattle, Washington on December 15, 1987.

Frederick M. Isaac,

Deputy Director, Northwest Mountain Region.

[FR Doc. 88-283 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-88-1]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 28, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 4, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought
25231	Ameriflight, Inc	14 CFR 23.1381(a) and 135.143(a)	To allow petitioner to operate its aircraft with inoperative equipment within a framework of a controlled and sound program of repairs and parts replacement while maintaining compliance with applicable regulations.
25497	Donald E. Lyle	14 CFR 61.158(b)(2) and (b)(2)(i)	To allow petitioner to substitute for the total time and cross country time requirements for the airline transport pilot certificate petitioner's aeronautical experience gained as a Mixed Flight Officer and aircrew member of U.S. Army aircraft.
21998	United Airlines	14 CFR 63.39(b)(3) and 63.43 and 121.463(a)(2)(i) and (a)(2)(ii).	To allow petitioner, its flight engineers and flight engineer applicants to use an FAA approved pictorial means and an approved simulator, in lieu of an actual static airplane, for demonstrating the satisfactory performance of a preflight inspection and assigned flight engineer duties. GRANT, December 22, 1987.
25498	TPI International Airways, Inc	14 CFR 25.853(c) and 121.312(b)	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. GRANT, December 18, 1987
25500	Gull Air, Inc	14 CFR 25.853(c) and 121.312(b)	To allow petitioner to operate certain aircraft without complying with the seat cushion flammability standards of § 25.853 beyond the implementation date of November 26, 1987. GRANT, December 18, 1987

[FR Doc. 88-284 Filed 1-7-88; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP-87-16; Notice 2]

Motor Vehicle Safety Standards; Petition by Automobiles Peugeot of Paris; France

This notice grants the petition by Automobiles Peugeot of Paris, France, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.208, Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection." The basis of the petition is that the noncompliance is inconsistent as it relates to motor vehicle safety.

Notice of the petition was published on August 19, 1987, and an opportunity afforded for comment (52 FR 31119).

Paragraph S7.3 of Standard No. 208 requires that a manual seat belt assembly installed in a passenger car be equipped with a warning system that activates for a period of not less than 4 seconds and not more than 8 seconds a continuous or flashing warning light, visible to the driver, and a continuous or intermittent audible signal. A passenger car equipped with an automatic seat belt assembly is required by paragraph S4.5.3.3.(b) of Standard No. 208 to have a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continuous or flashing warning light visible to the driver for not less than 60 seconds (beginning when the vehicle ignition switch is move to the "on" or "start" position).

Automobiles Peugeot determined that 3,186, 1987 model year and 1,109 early 1988 model year Peugeot 505's manufactured between April 1986 and March 1987 do not comply with Standard No. 208. These vehicles are equipped with manual 3-point seat belts, however, the seat belt warning system is wired according to the requirements for automatic seat belts. The warning lights on these vehicles are illuminated for as long as the ignition switch is in the "on" or "start" position and the driver's belt is not fastened. Peugeot believes the noncompliance is inconsequential as it relates to motor vehicle safety, since the extended illumination of the seat belt warning light may encourage seat belt usage.

One comment was received on the petition, from Robert F. Schlegel, P.E., who recommended denial of it. Mr. Schlegel believes that drivers will take extraordinary measures to turn off red lamps in instrument clusters which stay on indefinitely, and, in his opinion, adverse driver reaction and annoyance, will cause a negative impact on safety.

The agency does not agree with Mr. Schlegel's assessment. The lamp in question may be extinguished at any time by the act of buckling up, and in this manner provide an additional impetus to safety. Thus Peugeot may be correct in its argument that extended illumination of the seat belt warning light may promote seat belt usage. To date the agency has received no complaints concerning extended illumination of seat belt warning lamps.

Accordingly, in consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 4, 1988.

Barry Felrice,
Associate Administrator for Rulemaking.

FR Doc. 88-334 Filed 1-7-88; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Review

Date: December 31, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0023
Form Number: 720
Type of Review: Resubmission
Title: Quarterly Federal Excise Tax Return
Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and windfall profit taxes, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code section 6011)
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 473,421 hours
Clearance Officer: Gerrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-302 Filed 1-7-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 5, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0139
Form Number: None
Type of Review: Reinstatement
Title: Withdrawal for Consumption or Withdrawal for Exportation of Articles Manufactured In-Bond
Description: Warehouse proprietors must submit a statement to Customs for each transaction or period of manufacture as proof of manufacture and exportation
Respondents: Businesses or other for-profit
Estimated Burden: 90 hours
OMB Number: 1515-0026
Form Number: 3078
Type of Review: Reinstatement
Title: Application for Identification Card
Description: Customs Form 3078 is used by licensed cartmen, lightermen, warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to Customs security areas to apply for an identification card so that they may legally handle merchandise which is in Customs custody .
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 5,250 hours
Clearance Officer: B.J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-303 Filed 1-7-88; 8:45 a.m.]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Commission to Assess Veterans' Education Policy; Meeting

The Veterans Administration gives notice that a meeting of the Commission to Assess Veteran's Education Policy, authorized by section 320 of Pub. L. 99-576, will be held in Suite 300 of the Postal Rate Commission, 1333 H Street, NW., Washington, DC 20268, on January 25, 1988, at 9 a.m. The purpose of this meeting will be to review various aspects of the administration of veterans' education programs for the purposes of making recommendations to the Administrator and the Congress as the Commission determines appropriate.

The meeting will be open to the public. Those wishing to attend should contact Ms. Babette V. Polzer, Executive Director, Commission to Assess Veterans' Education Policy (phone: (202) 233-2886) prior to January 20, 1988.

Interested persons may attend or submit prepared statements for the Commission. Statements may be filed with the Executive Director for the Commission, c/o the Veterans Administration (226D), 810 Vermont Avenue, NW., Room 427-D, Washington, DC 20420.

Dated: January 5, 1988.
By direction of the Administrator.

Dennis R. Beix,
Deputy Associate Deputy, Administrator for Public Affairs.

[FR Doc. 88-471 Filed 1-8-88; 10:53 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 5, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Rushton Mining Company*, Docket No. PENN 86-44-R, etc. (Issues include whether Rushton violated 30 CFR 75.1434(a)(2), and, if so, whether the violation was the result of Rushton's unwarrantable failure.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rushton Mining Company*, Docket No. PENN 86-44-R, etc. (see oral argument listing).
2. *Harlan L. Thurman v. Queen Ann Coal Company*, Docket No. SE 86-121-D. (Issues include whether the judge erred in finding that the operator did not discriminate against the complainant miner under Section 105(c)(1) of the Mine Act. 30 U.S.C. 815(c)(1).)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88-397 Filed 1-6-88; 12:58 pm]

BILLING CODE 6735-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, January 13, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Request by Columbia Community Federal Credit Union to Expand its Community Field of Membership.
6. Request by Peninsula Community Federal Credit Union to Expand its Community Field of Membership.
7. Request by State for Exemption from NCUA Lending Rules.
8. Update on the Personnel Computer Program for State Credit Union Regulatory Agencies.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Wednesday, January 13, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Request for Exemption from Part 701.21(h), NCUA Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Mergers. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Delegations of Authority. Closed pursuant to exemptions (2), (8), and (9)(B).
6. Budget Modification. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-405 Filed 1-6-88, 2:06 pm]

BILLING CODE 7535-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m. and 2:00 p.m. on January 14, 15, 20, 26, 27, 28 and February 1, 2, 3, and 4; and 9:30 a.m. on January 21, 1988.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: A series of 21 closed meetings to discuss evidence in Docket No. R87-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

[FR Doc. 88-399 Filed 1-6-88; 1:08 pm]

BILLING CODE 7715-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.—5:00 p.m., Thursday and Friday, January 14 and 15, 1988.

PLACE: American Chemical Society, 1155 16th Street, NW., Washington, DC 20036. Conference Rooms A and B, First Floor.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the nineteenth meeting. Consideration of individual grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 457-1700.

Dated: January 5, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88-361 Filed 1-5-88; 4:58 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

Correction

In rule document 87-28627 beginning on page 47379 in the issue of Monday, December 14, 1987, make the following corrections:

1. On page 47380, in the second column, in the third paragraph, in the 14th line, after most, insert "cost".
2. On the same page, in the third column, in the 28th line, after "sold"insert "and".
3. On page 47381, in the third column, in paragraph 19, in the second line from the bottom, "log" should read "logo".
4. On the same page and column, in paragraph 20, in the second line, "aid" should read "ad"
5. On the same page and column, in paragraph 21, in the third line, after "instrument" insert "is denominated with a name similar to the bank's".
6. On page 47384, in the second column, in the last line of the first incomplete paragraph, "of" should read "for".
7. On page 47386, in the second column, in the first complete paragraph, in the ninth line, "of" should read "or".

§ 337.4 [Corrected]

8. On page 47387, in the first column, in paragraph 3, in the fourth line, remove the second "(v)", and in the sixth line insert "(v)" after "(iv)".
9. On the same column, in the paragraph (3), in the 26th line, "by" should read "be".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Proposed Oil and Gas Lease Sale 113 (March 1988)

Correction

In clarification notice document 87-29683 appearing on page 48883 in the issue of Monday, December 28, 1987, make the following correction:

In the first column, in the table, in entry 8, in the block column, "337" should read "377".

BILLING CODE 1505-01-D

VOL
53

ISS
5

JA
8

988

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federal register

Friday
January 8, 1988

Part II

State Justice Institute

Program Guideline; Proposed Rule

BEST COPY AVAILABLE

STATE JUSTICE INSTITUTE

Program Guideline

AGENCY: State Justice Institute.

ACTION: Proposed Program Guideline.

SUMMARY: This guideline presents the Institute's funding program for FY 1988, including a description of Special Interest categories and the procedures for requesting Institute funds.

DATES: The Institute invites public comment on the guideline until February 8, 1988.

ADDRESS: Comments should be sent to: State Justice Institute, 120 S. Fairfax St., Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the above address, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, Pub. L. 98–620, 42 U.S.C. 10701, *et seq.*, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration and quality of justice in the State courts of the United States. Approximately $10 million will be available for award in FY 1988. The Institute's funding program is governed by the SJI Grant Guideline published in the **Federal Register** at 52 FR 26208 (July 13, 1987). Copies are available from the Institute.

The program guideline proposed for comment below is primarily intended to set forth the Institute's Special Interest Program Areas for FY 1988. The proposed guideline would revise all or a portion of the following sections of the Grant Guideline: "Summary"; section I ("Background"); section II ("Special Interest Program Areas"); section V ("Types of Projects/Amounts of Award"); section VI ("Concept Paper Submission Requirements"); section VII ("Application Review Procedures"); section VIII ("Compliance Requirements"); section IX ("Application Requirements"); section XI ("Financial Requirements"); and section XIII ("Grant Adjustments").

For the sake of clarity, the Summary and sections II, V, VI, VII, and IX B., C., D. and E. are published in full below. Only the proposed changes in the other sections are set forth. Unless expressly changed below, all provisions of the Grant Guideline apply to the FY 1988 award process.

The proposed FY 1988 SJI grant program will be substantially similar to the FY 1987 program. All parties seeking financial assistance from the Institute will be required to submit concept papers. The Institute's Board of Directors will invite formal applications from those parties submitting the most promising concept papers. Awards will be made on the basis of a competitive review of the applications received.

Proposed Changes for FY 1988

Three major changes are proposed in the Program Guideline: (1) Institute funds will be awarded in one round of funding rather than the two conducted in FY 1987; (2) several new Special Interest categories will be added and others revised or eliminated; and (3) a portion of available funds will be allocated for projects that address a critical need in a locality, but have little or no replicability nationally.

Under the proposed timetable for FY 1988 grants, concept papers would be due on April 11, 1988. Following the Board's review of the papers in early June, applications would be due in mid-July. Funding decisions are expected to be made by the Board in late August.

The most significant changes to be made in the list of Special Interest areas are as follows:

The "judicial career enhancement" program area would be eliminated;

The "domestic violence" and "victim/witness" special interest areas would be combined into one area, with greater emphasis on child sexual abuse;

The "alternative dispute resolution" (ADR) area would be focused on evaluation of the impact of ADR programs on court workload and the quality of justice; and

The impact of AIDS on the courts, courthouse security, the future of the courts, and the unique problems of the nation's largest urban trial courts would be added as new Special Interest categories.

In addition, the Board proposes to set aside a portion of the grant funds to support projects that address a critical need of a single State or local court but that may not be transferable to other jurisdictions. Comment is specifically invited on this proposal and on how large a portion of available funds should be set aside for such projects.

Other changes in emphasis have been made, and illustrative examples of possible topics have been added in some areas. The guideline has also been revised to set forth criteria for continuation funding, to explain the roles of the Board and the staff in the review process, to clarify that materials and services developed under Institute grants should be disseminated as widely and at as low a cost as possible, and to require prior Institute approval of changes in key project staff.

In addition to these changes in the guideline, the Institute is publishing: (1) Its plans to define more specifically its role in the area of judicial education, and (2) grantwriting recommendations to potential applicants.

Judicial Education

During FY 1988, the Institute plans to conduct an in-depth assessment of what its role should be in the area of judicial education and training. The Board of Directors believes that the Institute is uniquely situated to assure that existing national and State judicial educators deliver, in the most effective manner possible, education and training that addresses the topics of greatest concern to judges, court managers and other court personnel around the country. In seeking to meet that objective in its first year of activity, the Board found that many judicial educators presented similar ideas for meeting a variety of needs, but had not actively coordinated with each other to minimize unnecessary duplication or cost. In an effort to increase coordination among education providers, the Institute awarded grants to establish a Judicial Education Network and a judicial education newsletter, and funded several joint projects proposed by judicial educators.

Judicial education proposals accounted for over one-third of the concept papers received by the Institute in FY 1987. The volume of these proposals, and their diversity, have led the Board to consider a number of possible alternatives to the funding approach used in FY 1987. Should, for example, a fixed, or a maximum or minimum percentage of grant funds be allocated to judicial education and training? Should a certain share of that allocation go to national providers and a certain share to State providers? Should funds be awarded to sustain the operations of major educational organizations, or should those organizations be required to develop innovative specific projects for funding consideration every year? Should a share of the Institute's funds be awarded on a formula basis to State judicial educators for the purpose of sending court personnel to out-of-State training they would otherwise be unable to attend?

In order to determine how the Institute can most effectively use its funds in this important area, the Board has developed an approach that would draw on the expertise of objective, independent experts and the views of the judicial educators themselves. The Institute plans to contract with three persons who will provide the Board independent assessments of the "state of judicial education" and the needs of educators, judges, and court personnel. They will address their task from three perspectives: one will be a judge with substantial experience as a "consumer" of judicial education; one will have substantial experience as a judicial educator; and one will be well-versed in adult education techniques.

The Institute envisions entering into these contracts in early 1988, with the expectation that, during the summer, each contractor will provide a "white paper" for the Board's consideration. Every major judicial education provider will have an opportunity to provide each contractor with a complete statement of its history, mission, activities, and goals, as well as its views about SJI's role. The Board will consider these papers at a meeting in the fall of 1988, and will formulate its policies in the judicial education area for inclusion in the FY 1989 Program Guideline. Public comment is specifically invited on the Board's proposed approach to defining the Institute's role in judicial education.

In the interim, no major revisions are being made in the education and training section of the FY 1988 Program Guideline. The section has been modified, however, to emphasize that judicial education and training programs "should apply innovative approaches to training which employ well-defined adult education techniques; sound methods for evaluating the effectiveness of the training; and new or revised curricula on key topics of concern to the judiciary."

Public comment is invited on all the special interest categories proposed for FY 1988 as well as the focus and scope of the issues presented.

Recommendations to Grantwriters

In Fiscal Year 1987, Institute staff reviewed over 325 concept papers. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute would like to offer recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this guideline. The Institute suggests that applicants consider the following questions in developing concept papers:

1. *What is the problem you wish to address?* Describe the problem and how it affects the courts and the public; discuss how your approach will rectify the situation or advance the state-of-the-art or knowledge; and explain why it is the most appropriate approach to take.

2. *What do you want to do?* The purpose of a project should be stated in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary which is not readily understood by the general public. Technical or academic jargon does not enhance a paper.

3. *How will you do it?* All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to accomplishment of the project's goals. When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described.

4. *How will you know it works?* Many concept papers did not present a defined plan for determining whether the proposed training, procedure, service, or technology accomplished the objective it was designed to meet. Every project design should include an evaluation component which describes the specific measures that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what the evaluation criteria will be. In most instances, the evaluation should be conducted by persons not connected with the performance or administration of the project.

5. *How will others find out about it?* Every project design should include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. It is not sufficient to say that a report or research findings "will be made available to" the field. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget for the project should be clearly presented and well justified. As presented in 3. above, the budgeted figures should relate directly to the various tasks of the project. Major budget categories such as personnel, benefits, travel, supplies, and equipment should be clearly identified. If indirect costs are to be applied to the project, a brief description of the proposed indirect cost rate should be included. Generally, an outline of costs involved and the basis used for determining those costs is sufficient for a concept paper.

Charges for Grant-Related Products

The development of some type of product is a requirement of every Institute grant. Although some projects include dissemination of key materials or products in their design, this is not currently an Institute requirement. It would be a heavy financial burden for the Institute to bear the costs of reproduction and dissemination of all key materials developed with the assistance of Institute funds; however, the Institute encourages grantees to make grant-related products easily accessible to the courts community and other interested parties. Consequently, the Institute has adopted the following policy governing charges for products developed in connection with Institute grants:

1. When Institute funds fully cover the cost of developing, producing, and disseminating a product, the document or software should be distributed to the field without charge.

2. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its out-of-pocket expenses from those requesting the material.

In addition, consistent with the standard government policy adopted in the SJI Grant Guideline, grantees are permitted to copyright materials and retain royalties subject to reservation by the Institute of a royalty-free, nonexclusive and irrevocable right to reproduce, publish, use, and authorize others to use the materials for purposes consistent with the legislation under which the grant was authorized.

Contact Persons for State Agencies Administering Institute Grants to State and Local Courts.

The Institute would appreciate receiving updated information regarding the name, title, address and telephone number of the person designated by the State Supreme Court to be responsible for overseeing the administration of Institute grants awarded to the courts of the State.

Proposed State Justice Institute Program Guideline

The following FY 1988 Program Guideline is proposed for public comment:

Summary

This guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative and cooperative agreements from FY 1988 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1988 funds, with a concept paper submission deadline of April 11, 1988. This guideline applies to concept papers and formal applications submitted for FY 1988 funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98-620, Title II, 42 U.S.C. 10701, *et seq.*

I. Background

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The Institute's program budget for Fiscal Year 1988 is approximately $10 million.

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II. Scope of the Program

During FY 1988, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board has, however, designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Others programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Areas

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1988, the Institute is especially interested in funding those projects that:

(a) Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

(b) Address aspects of the State judicial systems that are in special need of serious attention;

(c) Have national significance in terms of their impact or replicability; and

(d) Either develop products that are easily available to and transferable among State and local courts, or provide technical assistance to transfer effective programs and procedures in any of the "special interest" categories to other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Education and Training for Judges and Other Key Court Personnel.* This category includes the improvement of existing court education programs; the preparation of State court education plans to ensure a comprehensive training program and the effective allocation of limited court education resources; and the development of quality in-service and pre-service training programs and materials that transform ideas and communicate content in such a way that the performance of judges and/or court personnel is substantively improved.

Court education programs should apply innovative approaches to training which employ well-defined adult education techniques; sound methods for evaluating the effectiveness of the training; and new or revised curricula on key topics of concern to the judiciary, such as those identified in the SJI Special Interest categories and other topics that judges and court personnel themselves have identified as important.

b. *Alternative Dispute Resolution.* This category includes the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving disputes more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided and on court workload and case processing.

c. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances.

d. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trail and appellate court levels, including, e.g., the publication of a court technology bulletin to assist judges and court managers in selecting technology appropriate to a court's needs; assessment of the usefulness of on-bench computer terminals; establishment and assessment of electronic bulletin boards for judges and other court personnel; and local experiments with promising but untested applications of technology in the courts (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

e. *Jury System Management.* This catgegory includes the development, implement and evaluation of legal and administrative procedures relating to jurors to ensure the representativeness of the juror pool, clarify jury instructions, expedite the jury selection and empanelment process without affecting fairness, and otherwise reduce the cost and enhance the fairness of the jury process.

f. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile, and other types of litigation at the trial or appellate level or both, and the collection, compilation, and analysis of statistical data necessary for determining the causes of unnecessary expense and delay, isolating areas of concern, and evaluating the efficacy of solutions.

g. *Enforcement of Fines and Orders to Pay.* This category includes the implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, assessments, the cost of appointed or assigned counsel, and other obligations.

h. *Implications of AIDS for the Courts.* This category includes research regarding the implications of Acquired Immune Deficiency Syndrome for court decisions, procedures, and policies, including but not limited to such matters as pretrial release, sentencing, child custody, termination of parental rights, and the right to and termination of medical treatment.

i. *Programs and Procedures for Victims and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fairer treatment for victims of crimes and witnesses in civil, criminal, domestic relations, juvenile and other types of cases, including procedures for the fair, effective, and efficient handling of domestic violence and child sexual abuse cases, the issuance and enforcement of protective orders, and the obtaining of testimony from children.

j. *Courthouse Security and Operation.* This category includes the implementation and evaluation of innovative techniques for improving courthouse security including methods for ensuring the safety of litigants, witnesses, counsel, court personnel and judges, other than through the hiring of additional security personnel or the purchase of alarm or other security systems.

k. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
- Handling civil, criminal, domestic relations or other types of cases in which a party is also subject to a Federal bankruptcy proceeding;
- Processing complex multistate litigation in the State courts;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other areas of research would include studies examining the likely impact of the elimination or restriction of Federal diversity jurisdiction on the State courts and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

l. *Special Needs of the Largest Urban Courts.* The Board is particularly interested in receiving concept papers from State or local court systems

regarding the implementation and evaluation of innovative programs and procedures to address critical areas of need in the limited and general jurisdiction trial courts serving the nation's largest cities (those with a population of at least 1,000,000 persons). Such programs might include the development and testing of improved methods to assist those courts in selecting, retaining and removing judges, or projects to relieve acute problems in the courts' ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category.

Concept papers and applications which address a "Special Interest" area will be accorded a preference in the rating process. (See the selection criteria listed in section VI—"Concept Paper Review Procedures" and VII—"Application Review Procedures".)

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board has set aside a portion of available grant funds to support State and local projects that do not meet the criteria regarding innovativeness, national significance, and transferability set forth in sections II.B.1.(a), (c), and (d). In Fiscal Year 1988, the Board will consider supporting a limited number of projects that fall within one of the "Special Interest" categories set forth above, but that relate only to a single State or local jurisdiction.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements") and VII ("Application Review Procedures") of the Grant Guideline, respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met with State and local resources.

V. Types of Projects and Amounts of Awards

The Institute has placed no limitation on the overall number of awards or the number of awards in each area of interest. The general types of projects are:

A. Education and training;
B. Research and evaluation;
C. Demonstration; and
D. Technical assistance.

Except as specified below, concept papers and applications may request funding in amounts up to $300,000. Awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally. A project addressing the needs of the largest urban courts under Special Interest category 1. may, however, receive support of up to $500,000.

Proposed grant periods for all projects should not exceed 24 months.

VI. Concept Paper Submission Requirements

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute to submit concept papers prior to submitting a formal grant application. This requirement may be waived by the Board only if it determines that extraordinary circumstances exist to justify the waiver.

A. Format and Content

Concept papers must be no more than 10 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The papers should contain:

1. A title describing the proposed project;

2. A brief indication of the statutory program area(s), and "special interest" category(ies), if any, addressed by the paper;

3. An explanation of the need for the project;

4. A summary description of the approach to be taken;

5. A summary description of how the project will be evaluated including the evaluation criteria;

6. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

7. An explanation of the expected benefits to be derived from the project;

8. The identity of the key staff (if known) and a summary description of their qualifications;

9. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

10. The amount, nature (cash or non-cash), and source of match to be provided (see section VIII.C. below); and

11. A statement of whether financial assistance for the project has been or will be sought from other sources.

The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

B. Special Requirements for Continuation Projects

Concept papers requesting continued funding of SJI-supported projects may summarize the needs to be addressed, statement of the approach, anticipated products and benefits, and key staff descriptions if these elements are unchanged from those presented in the approved application. However, changes in any of these elements, the scope or focus or the project, or the intended audience must be fully explained. In addition, concept papers describing continuation projects must address the following:

1. Key findings or recommendations contained in the most recent evaluation of the project, if any, with an explanation of how the project will address them during the next project period;

2. The degree to which the courts community is using the service, training, or project, e.g., the number and types of court personnel trained, the number and types of requests for information, etc.; and

3. The reasons why other sources of support are inadequate, inappropriate or unavailable.

C. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B, and on the special requirements listed in section II.C.2.

4. "Continuation" concept papers will also be rated on the following criteria:

a. The uniqueness of the training, service, or project;

b. The key findings or recommendations set forth in the most recent evaluation of the project, if any, and how they will be addressed during the next project period;

c. The credibility of the training, project, or service within the courts community;

d. The effect of termination of the training, project, or service on the range of services needed by the State courts; and

e. Significant changes in the scope or focus of the project, or key elements of the project design.

5. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project, the amount and nature (cash or in-kind) of the submitter's anticipated match, and whether the submitter is a "priority applicant under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above).

D. Review Process

Concept papers will be competitively reviewed by the Board of Directors. Institute staff will prepare a narrative summary of each paper, and a rating sheet assigning points for each relevant selection criterion. Committees of the Board will review concept papers within assigned program areas and prepare recommendations to the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

E. Submission Requirements

An original and six copies of all concept papers submitted for consideration in Fiscal Year 1988 must be RECEIVED by the Institute on or before 5:30 p.m. Eastern Daylight Time on April 11, 1988. All concept papers should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for receipt of concept papers will not be granted.

The Board expects to meet in early June, 1988, to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers. Applications invited by the Board will be due approximately 45 days after the Board meeting. The Institute anticipates that Fiscal Year 1988 funding decisions will be made by the Board in late August 1988.

VII. Application Review Procedures

Except in extraordinary circumstances as specified in section VI, a formal application is to be submitted only upon invitation of the Board following review of a concept paper.

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology including the evaluation design;

b. The qualifications of the project's staff;

c. The applicant's management plan and organizational capabilities;

d. The reasonableness of the proposed budget;

e. The demonstration of need for the project;

f. The products and benefits resulting from the project; and

g. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.2.

4. "Continuation" applications will also be rated on the following criteria:

a. The uniqueness of the training, service, or project;

b. The key findings or recommendations set forth in the most recent evaluation of the project, if any, and how they will be addressed during the next project period;

c. The credibility of the training, project, or service within the courts community;

d. The effect of termination of the training, project, or service on the range of services needed by the State courts; and

e. Significant changes in the scope or focus of the project, or key elements of the project design.

5. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV above; the availability of financial assistance from other sources for the project; and the amount and nature (cash or in-kind) of the applicant's match.

C. Review and Approval Process

Applications will be competitively reviewed by the Board of Directors of the Institute. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Intention to Award

The State Justice Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications.

VIII. Compliance Requirements

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P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and

disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff

If the qualifications of a person assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary of that person and associated costs may be paid or reimbursed from grant funds.

IX. Application Requirements

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B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish.

2. *Program Areas to be Covered.* A discussion of the relationship of the proposed work to the program areas listed in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources are not adequately resolving those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks and Methods.* A delineation of the tasks to be performed and the methods to be used for accomplishing each task. For example:

- *For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results.
- *For education and training projects,* the instructional methods to be used; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; the audience anticipated and how it will be obtained; the cost to participants; and the methods to be used for evaluating the usefulness and effectiveness of the training.
- *For demonstration projects,* how the sites will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.
- *For technical assistance projects,* the types of assistance that will be provided; the particular program area(s) for which assistance will be provided, how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix.

5. *Project Management.* A detailed management plan including the starting and completion date for each task, the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter.

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services develped or provided under the grant will be offered to the courts community and the public at large.

7. *Applicant Status.* A statement demonstrating whether the applicant (if the applicant is not a State or local court) qualifies as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the eduction and training of State court judges and support personnel. See section IV (52 FR 26208, July 13, 1987). An applicant other than a State or local court that may qualify as a priority recipient pursuant to 42 U.S.C. 10705(b) (1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither such an organization nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Applicants that are non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* A statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), documentation of the applicant's 501(c) tax exempt status as determined by the Internal Revenue Service, and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly

assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged. The budget narrative should address the following items.

1. *Justification of Personnel Compensation.* The applicant should address the basis for personnel compensation and explain any deviations from current rates or established written organization policies.

2. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. *Consultant/Contractual Services.* The applicant should describe the type of each service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2 of this guideline.

4. *Travel.* Transportation amounts and per diem rates must be in accordance with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include a description of the rate method used and address per diem rates separate from transportation expenses. The purpose for travel should also be included in the narrative.

5. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased.

The method of procurement should also be described. Purchases for automatic data processing equipment must be in accordance with section XI.H.2. of this Guideline.

6. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant.

7. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in Section VIII.G.2 of this guideline. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative.

9. *Postage.* Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings such as for a survey or for announcing a workshop should be distinguished from routine operational mailing costs.

10. *Printing/Photocopying.* Anticipated costs for printing or photocopying should be included in the budget narrative.

11. *Indirect Costs.* Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with Section XI.H.3 of this guideline.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well.

E. Special Requirements for Continuation Projects

Applications requesting continuation funding may summarize the descriptions of the needs to be addressed, the tasks and methods, anticipated products, staff capability, and organizational capacity if these elements are unchanged from those presented in the previous application. However, changes to any of these elements, the scope or focus of the project, or the intended audience must be fully explained. In addition, applications requesting continuation funding include the following:

1. A description of how the training, service, or project uniquely meets an important need of its intended audience.

Uniqueness encompasses specific aspects of the training, service, or project itself as well as the specific audience (e.g., appellate court judges) for whom it is intended.

2. A discussion of the degree to which the courts community is using the training, service, or project during the previous project period.

Use should be measured in terms of the length of time the project or service has been offered and the frequency with which the courts took advantage of the project or service.

3. A discussion of the key findings or recommendations set forth in the most recent evaluation, if any, of the project, and an explanation of how they will be addressed during the next project period.

Enhancements to the original project design in response to evaluation findings should be described or, conversely, the reasons why improvements are not required should be presented.

4. A discussion of the effects of termination of this project or service on the State courts.

To what extent would the efficient administration of the courts or the quality of justice suffer if this research, training, or service were not available?

5. An explanation of why other sources of support are inadequate, inappropriate or unavailable.

An explanation should be provided of steps taken to obtain other support, e.g., from State legislatures, existing operating funds, or those served by the program.

6. An explanation of any increase or decrease in the amount of funds requested from that previously requested.

Changes in funding levels should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The Institute may also request applicants to develop a plan for phasing out Institute support.

XI. Financial Requirements

* * * * * *

G. Payments and Financial Reporting Requirements

* * * * * *

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/

subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. This report is due within thirty days after the close of the calendar quarter. It is designed to reflect financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

H. Allowability of Costs

* * * * *

2. Costs Requiring Prior Approval

* * * * *

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

* * * * *

J. Audit Requirements

* * * * *

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

* * * * *

XII. Grant Adjustments

A. Grant Adjustments Requiring Prior Written Approval

* * * * *

7. The assignment of a person to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VIII.Q).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H. (52 FR 26208, July 13, 1987)).

10. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2 (52 FR 26208, July 13, 1987).

* * * * *

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Reader Aids

Federal Register
Vol. 53, No. 5
Friday, January 8, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12537 Amended by EO 12624 489
12578 (Superseded by EO12622) 222
12622 222
12623 487
12624 489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 399

5 CFR
890 1

Proposed Rules:
330 408
351 408

7 CFR
400 2
905 401
907 ..... 6, 491
910 ..... 7, 492
911 402
959 401
971 401
987 401
1430 107
1902 231

Proposed Rules:
68 411
301 140
401 ..... 505, 507
907 412
908 412
910 255
979 413
981 414
1126 256
1280 509
1701 140

10 CFR
73 403

Proposed Rules:
2 415
430 30

11 CFR

Proposed Rules:
109 416
114 416

12 CFR
208 492
208 492
226 487
337 597
525 312
561 ..... 324, 338
563 ..... 324, 338, 354, 363, 372, 385
563c 324
571 ..... 338, 372, 385
583 312
584 312

Proposed Rules:
226 467

14 CFR
39 ..... 8-14, 232, 493-495
71 ..... 496, 497
75 497
91 233
97 499

Proposed Rules:
39 ..... 258, 514, 515
71 ..... 516, 517
73 517

15 CFR
399 108

Proposed Rules:
379 418

16 CFR

Proposed Rules:
13 141

17 CFR
211 109

18 CFR
271 15
1301 405

19 CFR

Proposed Rules:
141 30
178 30

20 CFR

Proposed Rules:
361 143
901 147

21 CFR
81 19
176 97
193 ..... 20, 233
540 234
546 235
558 ..... 235, 236
561 ..... 20, 233
606 111
610 111
640 111
1308 500

Proposed Rules:
193 259

561.....259

23 CFR

655.....236

24 CFR

Proposed Rules:
115.....260

26 CFR

1.....117, 238

Proposed Rules:
1.....153, 261

28 CFR

541.....196

33 CFR

117.....119, 406

36 CFR

404.....120

Proposed Rules:
223.....519

37 CFR

201.....122, 123

Proposed Rules:
203.....153

38 CFR

4.....21

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501
86.....470
180.....241, 243
271.....126–128, 244

Proposed Rules:
52.....261
180.....262, 263
261.....519

41 CFR

101–20.....129

Proposed Rules:
141.....31
142.....31
261.....31

43 CFR

2.....24

44 CFR

Proposed Rules:
61.....419
62.....419

45 CFR

95.....26
233.....467

47 CFR

Ch. I.....502
64.....27
73.....28, 29, 504

Proposed Rules:
73.....426
74.....529
78.....529

48 CFR

501.....130, 132
513.....132

49 CFR

24.....467
541.....133

Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426
1041.....155
1048.....155
1049.....155

50 CFR

611.....134
653.....244
663.....246, 248

Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266

LIST OF PUBLIC LAWS

Last List January 6, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1454/Pub. L. 100-230

To permit certain private contributions for construction of the Korean War Veterans Memorial to be invested temporarily in Government securities until such contributed amounts are required for disbursement for the memorial. (Jan. 5, 1988; 101 Stat. 1563; 2 pages) Price: $1.00

H.R. 2401/Pub. L. 100-231

Renewable Resources Extension Act Amendments of 1987. (Jan. 5, 1988; 101 Stat. 1565; 1 page) Price: $1.00

H.R. 3435/Pub. L. 100-232

Charitable Assistance and Food Bank Act of 1987. (Jan. 5, 1988; 101 Stat. 1566; 2 pages) Price: $1.00



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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 6

Monday, January 11, 1988

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Great Basin and Lake Mead, 686

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
Tobacco, 630

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service

Air Force Department
NOTICES
Meetings:
Air University Board of Visitors, 632, 633
(2 documents)

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings, 631

Army Department
NOTICES
Meetings:
Military personal property symposium, 633
Military traffic management:
Trip-leased equipment and drivers, use; prohibitions, 633

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 652

Coast Guard
RULES
Ports and waterways safety:
Chesapeake Bay and tributaries, MD; ice navigation season regulated navigation area, 636

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Futures commission merchants:
Application and closing out of offsetting long and short positions; exceptions, 609
Self-regulatory organization governing members; nonpublic information disclosure
Correction, 615

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 652
(2 documents)

Customs Service
RULES
Financial and accounting procedures:
Calculation of interest on overdue accounting and refunds—
Current rates, 675

Defense Department
See also Air Force Department; Army Department
RULES
Federal Acquisition Regulation (FAR):
A-76 cost comparison public review period revision, etc., 660
Veterans:
Post-Vietnam era veterans educational assistance program, 616
PROPOSED RULES
Acquisition regulations:
Domestic wools, foreign acquisitions, 626
Nonprofit organizations, 625
NOTICES
Committees; establishment, renewals, terminations, etc.:
Integrated Long-Term Strategy Advisory Committee, 632
Meetings:
Wage Committee, 632

Economic Regulatory Administration
NOTICES
Consent orders:
Phillips Petroleum Co., 635
Natural gas exportation and importation:
Great Lakes Gas Transmission Co. et al., 639

Education Department
NOTICES
Grants; availability, etc.:
Independent living centers program, 633
Meetings:
Indian Education National Advisory Council, 634
Student Financial Assistance Advisory Committee, 634

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 635
(3 documents)

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate); correction, 657

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 652

Federal Aviation Administration
RULES
Airport radar service areas, 666

PROPOSED RULES
Airport radar service areas, 670, 674
(2 documents)
Transition areas, 619

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Cable Communications Policy Act; implementation—
Signal availability standard, etc., 625

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 652

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 653

Federal Emergency Management Agency
PROPOSED RULES
Federal crime insurance program:
Residential and commercial rates, commercial burglary and robbery policy premium discounts, and protective device requirements, 621
NOTICES
Disaster and emergency areas:
Arkansas, 642

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 653
Small power production and cogeneration facilities; qualifying status:
Mid-County Cogeneration Corp. et al., 641

Federal Maritime Commission
PROPOSED RULES
Maritime carriers and related activities in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
Taiwan/United States trade, 624

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
First Commerce Corp. et al., 642
First Tennessee National Corp., 642
McCracken, Thomas J., 643

Federal Trade Commission
RULES
Prohibited trade practices:
General Railway Signal Co. et al., 609

Food and Drug Administration
NOTICES
Food additive petitions:
Ciba-Geigy Corp., 643
Kuraray Co., Ltd., 643

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
A-76 cost comparison public review period revision, etc., 660

PROPOSED RULES
Federal Information Resources Management Regulation:
Improvement project, 620

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Human Development Services Office; Public Health Service

Health Care Financing Administration
RULES
Medicaid:
State agencies entering into Medicare Part B buy-in agreements, etc.
Correction, 657
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Texas, 644

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Technical amendments, 615
NOTICES
Low income housing:
Multifamily subsidized projects; computer automation of data for certification, recertification, and subsidy billing, 645
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Coral Gables, 646

Human Development Services Office
NOTICES
Meetings:
President's Committee on Mental Retardation, 645

Interior Department
See National Park Service

International Trade Administration
NOTICES
Short supply determinations:
Tubular products, 631
Applications, hearings, determinations, etc.:
Agriculture Department et al.; correction, 631
Massachusetts Eye and Ear Infirmary, 631

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
FRVR Corp. et al., 647
Hampton & Branchville Railroad Co., Inc., et al., 647

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
A-76 cost comparison public review period revision, etc., 660

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council Ad Hoc Challenge III Artistry Committee, 647

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 627

National Park Service
NOTICES
Agency information collection activities under OMB review, 646
Concession contract negotiations:
Lake Mead Ferry Services, Inc., 646

National Science Foundation
NOTICES
Agency information collection activities under OMB review, 648

Public Health Service
See also Food and Drug Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 645

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 655
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., et al., 648
Midwest Stock Exchange, Inc., 649

Small Business Administration
NOTICES
Disaster loan areas:
Arkansas, 650
Applications, hearings, determinations, etc.:
Motor Enterprises, Inc., 650

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 655

Transportation Department
See also Coast Guard; Federal Aviation Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 650

Treasury Department
See Customs Service

Urban Mass Transportation Administration
RULES
Buy American requirements:
Waivers; technical amendment, 617

Veterans Administration
RULES
Vocational rehabilitation and education:
Veterans education—
Post-Vietnam era veterans educational assistance program, 616
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Determination of delimiting date, 620

NOTICES
Agency information collection activities under OMB review, 650

Separate Parts In This Issue

Part II
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 660

Part III
Department of Transportation, Federal Aviation Administration, 666

Part IV
Department of Transportation, Federal Aviation Administration, 670

Part V
Department of Transportation, Federal Aviation Administration, 674

Part VI
Department of Agriculture, Agricultural Marketing Service, 686

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
1136.....686
1139.....686

14 CFR
71.....619
Proposed Rules:
71 (3 documents).....666, 670, 674

16 CFR
13.....609

17 CFR
1 (2 documents).....609, 615

19 CFR
24.....615

24 CFR
221.....615
236.....615

33 CFR
165.....616

38 CFR
21.....616
Proposed Rules:
21.....620

40 CFR
180.....657

41 CFR
Proposed Rules:
Ch. 201.....620

42 CFR
431.....657
435.....657
440.....657
441.....657

44 CFR
Proposed Rules:
80.....621
82.....621
83.....621

46 CFR
Proposed Rules:
588.....624

47 CFR
Proposed Rules:
1.....625
63.....625
76.....625

48 CFR
7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
Proposed Rules:
215.....625
225.....626
252.....626

49 CFR
661.....617

50 CFR
Proposed Rules:
672.....627

Rules and Regulations

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-837]

General Railway Signal Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1964 consent order (29 FR 10471, *correction* 29 FR 14492) by permitting General Railway Signal Co., et al. to engage in any conduct or enter any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

DATES: Consent Order issued September 24, 1964. Modified Order issued December 10, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-2115, Daniel Ducore, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of General Railway Signal Co., et al. The prohibited trade practices and/or corrective actions, as set forth at 29 FR 14071, remain unchanged.

List of Subjects in 16 CFR Part 13

Railroad signaling equipment, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Order Modifying Consent—Issued September 24, 1964

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

On August 12, 1987, General Railway Signal Company ("General Railway"), filed a "Request to Reopen Proceeding and Modify Order" ("Request"), pursuant to § 2.51 of the Commission's Rules of Practice. The Request asks the Commission to reopen the proceeding and modify the consent order issued September 24, 1964, ("the Order") to permit General Railway to engage in any conduct or enter any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

The Commission has previously considered the petition of American Standard Inc. ("American Standard"), successor to respondent Westinghouse Air Brake Co. ("WABCO"), which requested, among other things, that the Commission modify the order in Docket No. C-837 to permit American Standard to engage in lawful joint venture activity. On November 13, 1986, the Commission granted that request in the public interest, finding that American Standard had made an adequate showing that currently evolving technological and economic factors in the railroad signaling equipment and systems industry have created a competitive need for American Standard to participate in joint ventures to research, develop and produce integrated railroad systems and to bid for turnkey railroad projects.

After reviewing General Railway's Request and other relevant information, the Commission has concluded that it is in the public interest to modify the Order to permit General Railway to engage in conduct that is ancillary to and reasonably necessary for the formation or operation of any joint venture that is lawful under the antitrust laws. General Railway has made an adequate showing that the same industry conditions that warranted modification of the order to permit American Standard to engage in lawful joint venture activity also warrant modification of the order to extend General Railway the same relief. The currently evolving technological and economic factors in the railroad signaling equipment and systems industry cited by General Railway, and previously cited by American Standard, have created a competitive need for General Railway to also participate in joint ventures to research, develop and produce integrated railroad systems and to bid for turnkey railroad projects. The Order's present language, designed to restrain conduct that might facilitate collusive agreements, could be interpreted to prohibit otherwise lawful joint venture activity. It is in the public interest to modify the Order to enable General Railway to participate in otherwise lawful joint venture activity because the competitive injury that General Railway will likely suffer if it cannot engage in such lawful activity is not outweighed by any need to retain the Order in its current form.[1]

Accordingly, it is ordered that this matter be and it hereby is reopened and that the Commission's Order issued on September 24, 1964, be and it hereby is modified to make the new subparagraph (4), which was previously added by the Commission on November 13, 1986, read as follows:

(4) Nothing contained in the foregoing paragraphs of the Order shall be construed to prohibit respondents WABCO and General Railway Signal Company from engaging in any conduct or entering into any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws.

By direction of the Commission.

Emily H. Rock,
Secretary.

Issued: December 10, 1987.

[FR Doc. 88-388 Filed 1-8-88; 8:45 am]
BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted an amendment to § 1.46 of its regulations, 17 CFR 1.46 (1987), to provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. The additional exception applies to purchases and sales of commodity futures or option contracts made in

[1] The Order's provisions are aimed at horizontal conduct and agreements. The Order language prohibiting agreements with "any other person, persons or business entity not a party hereto" is limited by the existing exemption for any "bona fide offer, agreement or transaction with any other person, persons or business entity to purchase or sell railroad signaling and control systems or railroad signaling equipment at prices, terms or conditions of sale independently determined and offered and independently accepted." The new modification for lawful joint venture activities will be a further limitation. The "any other person not a party hereto" language will, in practical effect, mean only vendors of signaling equipment or systems.

separate accounts owned by one customer, provided that, among other things, the trading for such accounts is directed by two or more persons acting independently, each of which is directing the trading of a separate account.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1986 (51 FR 37196), the Commission published in the Federal Register, in response to a petition for rulemaking, a proposed amendment to § 1.46 of its regulations, 17 CFR 1.46 (1987). The proposed amendment would provide an additional exception to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in a customer account or option customer account. 51 FR 37196.

Section 1.46(a) of the Commission's regulations generally requires that an FCM close out a customer's or option customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made for such customer's or option customer's account, and that an FCM furnish promptly to such customer or option customer a purchase-and-sale statement showing the financial result of the transactions involved. Section 1.46(b) generally provides that if the short or long position in the account of such customer or option customer immediately prior to the offsetting purchase or sale is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise. There are five other exceptions to § 1.46.[1]

The petition for rulemaking requested that the Commission establish an additional exception to the requirements of paragraphs (a) and (b) of § 1.46 for purchases or sales of commodity futures or option contracts made in separate accounts owned by one customer, provided that, among other things, (1) the trading for such accounts is directed either by two or more persons acting independently, each of which is directing the trading of a separate account, or (2) the trading is directed pursuant to two or more separate and distinct trading systems, each of which determines the trading of a separate account. The petitioner stated that an exception to the mandatory offset requirement would (1) be consistent with the purposes of § 1.46, (2) afford customers necessary flexibility in selecting and implementing diversified trading strategies, and (3) benefit FCMs by reducing the burden of identifying and offsetting customer positions in multiple accounts. The Commission stated its belief that any exception to § 1.46 for accounts of individuals should be similar to the exception set forth in § 1.46(d)(4), adopted two years earlier, concerning separate accounts of commodity pools. 51 FR 37196, 37198. The new amendment, adopted herein, is intended generally to provide that symmetrical treatment.

In its release setting forth the proposed amendment, the Commission specifically requested commenters to address the following five issues. First, what standards should determine whether different trading decisions, made by the same person for different accounts, have been arrived at independently? Second, should two associated persons ("APs") of the same FCM be deemed nonaffiliated and thus able to qualify for this exemption? Third, if an FCM or one of its APs directs trading for at least one of the separate accounts, should an FCM furnish the customer quarterly a consolidated account statement for all separate accounts carried by the FCM that states essentially the same information required under § 4.22(a) (1) and (2) to be furnished by a commodity pool operator? Fourth, should the FCM provide a separate disclosure advising that a customer may experience a net loss on offsetting positions maintained in the customer's separate accounts because of extra fees, commissions and margin requirements? Finally, can the Commission achieve its regulatory purposes by adopting only the proposed reporting requirement or only the proposed disclosure requirement discussed above?

The Commission received five comment letters, one from each of the following: Brokerage Systems, Incorporated ("BSI") (December 17, 1986), which provides bookkeeping systems to FCMs and other commodity clients; the Coffee, Sugar & Cocoa Exchange ("CSCE") (December 19, 1986); B.W. Dyer & Company ("Dyer") (December 12, 1986), an FCM primarily engaged inclearing trades for brokers and commercial interests; the Futures Industry Association ("FIA") (January 21, 1987), the national trade association of the futures trading industry; and Shearson Lehman Brothers Inc. ("Shearson") (January 14, 1987), also an FCM. All of the commenters expressed support for the proposed amendment, and certain commenters suggested further amendments to rule § 1.46. The Commission has reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting the new amendment to rule § 1.46 essentially as proposed.

Furthermore, based upon its experience with § 1.46(d)(4) regarding separate accounts of commodity pools, which was adopted approximately three years ago, the Commission believes that any exception to rule § 1.46 for accounts of individuals should be similar to that already adopted for accounts of commodity pools. In this connection, the Commission has adopted slight modifications to the petitioner's suggested amendment intended to provide that symmetrical treatment.

II. Modifications to Petitioner's Suggested Amendment

A. Independence of Trading Strategies

The principal modification which the Commission has made to the petitioner's suggested amendment is to limit the new exception to situations where trading decisions are being made by two or more unaffiliated persons. The new exception, therefore, is not applicable to situations where either the account owner himself, or a person directing trading for an account owner, establishes separate accounts to be traded according to "different systems".

The petitioner presented no standards by which an FCM could determine whether trading decisions made by the same person for different accounts had been arrived at independently of all trading decisions made for the other separate account or accounts. The Commission specifically requested that interested commenters set forth with particularity standards to determine whether different trading decisions made by the same person for different accounts have been arrived at independently. However, the commenters who addressed this issue only stated generally that the carrying FCM should be able to rely upon a representation from the person trading the separate accounts, either the account owner or the trading manager, that the trading strategies employed are independent. As the Commission noted when it published the proposed amendment for comment, it disagrees with that view.

B. Nonaffiliation Requirement

The petition for rulemaking stated that "the affiliation of a trading manager is irrelevant if he is acting independently of those with whom he is affiliated. Therefore, we think the requirement of nonaffiliation is unnecessary." The Commission stated in its proposal that it believes that an essential element of independent action is nonaffiliation. Accordingly, § 1.46(d)(6)(i) contains a nonaffiliation requirement, essentially similar to the nonaffiliation requirement for different commodity trading advisors ("CTAs"), each of which directs the trading of a separate account of a commodity pool, set forth in § 1.46(d)(4). As the Commission stated when it adopted § 1.46(d)(4), to meet the nonaffiliation requirement neither trader can control the other directly or indirectly, nor can both traders be under the common control, either direct or indirect, of another entity. *See, e.g.*, 17 CFR 1.3(y)(2) (vii) and (viii) (1987).[2] In this connection, the Commission specifically requested comment concerning its view that two APs of the same FCM could not be deemed to be unaffiliated.

Two commenters addressed this issue. One commenter stated that, like the Commission, it believes that independence of the trading strategy should be the governing factor. However, in the commenter's view, control, not affiliation, determines independence. The Commission, in the commenter's view, has failed to articulate why affiliation is such a critical factor in determining independence, a position inconsistent with the Commission's Statement on Aggregation Policy [3] which, for speculative position limit purposes, uses control as the determinative factor.

Concerning whether APs of the same FCM could be deemed nonaffiliated, the commenter stated that if affiliation continues to be a factor in determining whether relief is available, then the APs of the same FCM should be deemed unaffiliated if the following circumstances are present: (1) Each AP has control over one of the accounts (and not the other); (2) each trading decision by one AP is determined wholly independently of the trading decision of the other AP and without consultation with the other AP; and (3) the FCM maintains only such control as is necessary to fulfill its duty to supervise diligently the account under Commission rule § 166.3.[4]

Another commenter stated that the Commission must qualify the reference to "unaffiliated persons" to recognize that a customer may want to participate in an FCM-sponsored trading program in one account and also give trading authority to an AP of that FCM in connection with another account carried at the same FCM. Although the trading decisions would be made independently of each other, the parties with control are "affiliated." The commenter argued that this situation complies with the spirit of the proposal but would be prohibited under the proposed nonaffiliation requirement. This, in the commenter's view, appears to present an unnecessary and unreasonable obstacle to clients who wish to employ the different services offered by an FCM.

The Commission emphasizes that relief under the new exemption is available only where the persons directing the trading of each separate account owned by a customer act independently and such persons are also unaffiliated. As noted above, to qualify as unaffiliated persons neither person can control the other directly or indirectly, nor can both persons be under the common control, either direct or indirect, of another entity. Therefore, two APs of the same FCM who each direct, according to any trading program(s) sponsored by that FCM, the trading of a separate account owned by a customer could not be deemed to be unaffiliated. However, the Commission recognizes that, for the purposes of this exemption, an associated person of an FCM may be deemed an unaffiliated person provided that such associated person (1) is separately registered as a CTA, (2) separately promotes and holds himself out to the public as an independent CTA, (3) directs the trading of a customer account based upon the AP's own independent trading system, and (4) provides a separate disclosure document to the customer as required under § 4.31 of the Commission's regulations.[5] Therefore, and as illustrated by one commenter, a customer may participate in an FCM-sponsored trading program in one account and also give trading authority over a separate account to another AP of the FCM who is also separately registered as a CTA and satisfies the conditions stated above. The dually registered AP/CTA would be deemed, for the purposes of this new amendment, an unaffiliated person. The Commission further notes that a customer may not participate in an FCM-sponsored trading program in more than one account and claim relief under the new amendment adopted herein. For example, a customer may wish to maintain two separate accounts at an FCM each of which is traded according to a separate FCM-sponsored trading program. Although the trading decisions concerning each account would be made independently of each other, the persons directing the trading of each account would be "affiliated" with the carrying FCM.

C. Consolidated Account Statement

The Commission originally proposed to require an FCM to furnish the customer on a quarterly basis with a consolidated account statement for all separate accounts of the customer carried by that FCM if the FCM or one or its APs directs trading for one of the separate accounts.[6] As proposed, the account statement, in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset

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[1] Five types of transactions are also exempt from the requirements of paragraphs (a) and (b) of § 1.46, generally: (1) Purchases or sales of commodity options held by commercial interests in the underlying commodity, where such purchases or sales are determined by the contract market to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to the rules of the contract market which have been adopted in accordance with the requirements of § 1.61(b) (17 CFR 1.61(b) (1987)) and approved by the Commission pursuant to section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982); (2) purchases or sales constituting "bona fide hedging transactions" as defined in § 1.3(z) of the Commission's regulations (17 CFR 1.3(z) (1987)); (3) sales during the delivery period of a futures contract for the purpose of making delivery on the contract during such delivery period if such sales are accompanied by appropriate documentation (*see* § 1.46(d)(3)); (4) purchases or sales made in separate accounts of a commodity pool, provided that the trading for such pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate trading account (*see* § 1.46(d)(4)); and (5) purchases or sales made by a leverage transaction merchant constituting cover of its obligations to leverage customers and made in accordance with §§ 31.5(a) and 31.12(b) of the Commission's regulations (17 CFR 31.5(a) and 31.12(b) (1987)) (*see* § 1.46(d)(5)). Purchases or sales closed out during the same day (commonly known as "in-and-out trades" or "day trades") are exempt from the requirements of § 1.46(b) concerning application of an offsetting purchase or sale to the oldest portion of the previously-held short or long position (*see* § 1.46(c)).

[2] *See* 49 FR 19988 n.5 (May 11, 1984).

[3] Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 FR 33639 (June 13, 1979).

[4] 17 CFR 166.3 (1987).

[5] 17 CFR 4.31 (1987). This rule generally requires, among other things, that a CTA deliver to a prospective client a disclosure document containing the information specified in that rule. The CTA must provide a disclosure document to a prospective client at or before the time it engages in the solicitation or enters into an agreement with a prospective client to direct the client's commodity interest account.

[6] *See* Proposed rule 1.46(e)(3), 51 FR 37198, 37200.

Value, would set forth essentially the same information required to be furnished by a commodity pool operator ("CPO") under Commission rule § 4.22(a) (1) and (2).[7]

Two commenters, citing operational burdens imposed upon FCMs, objected to this proposed requirement. A third commenter requested that the proposed requirement be amended to allow for monthly consolidated statements. This commenter argued that virtually all FCM accounting systems provide for a monthly processing cycle and could readily be modified to provide for consolidated monthly statements. To provide a quarterly consolidated statement, however, would require considerable additional programming effort. The commenter suggested that the Commission modify its regulation to provide for either quarterly *or* monthly consolidated statements. This commenter also recommended that the Statement of Income (Loss) be amended to specify that consolidated statements be prepared consistent with § 1.33(a). The information required by proposed rule § 1.46(e)(3) is essentially similar to that already required by § 1.33(a). In addition, it would seem adequate and appropriate to provide consistency between the regular monthly statement under § 1.33(a) and the consolidated statement under proposed rule § 1.46(e)(3). Finally, the commenter concluded that to prepare two different statements with different information would unduly burden carrying FCMs.

The Commission, upon further review, has substantially modified this proposal to reflect generally the comments stated above. Section 1.46(e)(2) now provides that if the FCM or one of its APs directs trading for one of the separate accounts, the FCM must furnish the customer a quarterly consolidated statement containing the same information required to be provided under § 1.33(a).[8] Section 1.33 currently requires an FCM promptly to furnish a customer with both a confirmation statement and a monthly statement which shows clearly, *inter alia*, the unrealized net gain or loss on open positions in each separate customer account. In addition, where the trading of an account is directed by a person other than the customer, the customer must still receive a confirmation of each trade, each purchase-and-sale statement and a monthly statement from the FCM, and the FCM also must promptly furnish such statements to the person directing the trading of the account.[9] The Commission wishes to emphasize that an FCM may instead elect to provide such consolidated statements on a monthly basis rather than quarterly if the FCM finds that approach less burdensome.

D. Disclosure Requirements

As the Commission noted in its release, a customer may experience a net loss with respect to such offsetting positions held in separate accounts because of extra fees, commissions and margin requirements. The Commission believes that a customer should be so advised before authorizing an FCM or an AP thereof to direct trading in a separate account. Therefore, the Commission proposed and has adopted a separate disclosure requirement to this effect. Accordingly, § 1.46(e)(1) provides that if an FCM carries the separate accounts of a customer, or if an associated person of such FCM directs trading for one of the separate accounts, the FCM must furnish the customer with a separate written statement. Such written statement must disclose that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. For current customers, the FCM should attach the separate disclosure to the next monthly statement sent to the customer. For new customers, the FCM may comply with this new requirement merely by attaching this separate disclosure to the risk disclosure statement required to be provided to a customer under § 1.55.[10] The customer's signature on the risk disclosure statement will acknowledge the customer's receipt of the separate disclosure.

Commenters addressing this issue generally were opposed to this additional disclosure requirement. Commenters argued, among other things, that the additional disclosure would neither provide the customer with useful information nor result in increased customer protection. The Commission disagrees with these views and maintains the customers must be fully informed concerning the extra costs which may be incurred from the trading of separate accounts under this new exception which, in turn, may result in no net gain.

III. Other Issues Addressed by Commenters

A. Aggregation of Accounts and Speculative Position Limits

Certain commenters on the proposed amendment to § 1.46 referred to the issue of aggregation of positions, for purposes of the Commission's reporting requirements and speculative limit rules, where the trading of separate accounts owned by a customer is directed by two or more persons acting independently, each of which directs the trading of a separate account. The Commission wishes to note and to remind FCMs that because all of the separate accounts carried by a FCM are owned by single customer, the positions in each separate account must be combined for both reporting and speculative limit purposes. This requirement is consistent with the position adopted by the Commission concerning the aggregation of positions held in the separate, independently managed accounts of a commodity pool.[11] Reports on such separate accounts owned by a customer should be filed by FCMs according to the provisions of Commission rule § 17.00(b),[12] which provides in pertinent part that:

Interest in or control of several accounts. If any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member of foreign broker as a single account for the purpose of determining Special Account status and for reporting purposes. *Provided That:* If combining accounts for the purposes of this paragraph would result in reporting the same position more than once, such accounts shall be combined and reported as instructed by the Commission.

The proviso cited above would be applicable where, for example, one of the persons directing trading for a separate account also directs trading for accounts of individual traders carried by the FCM. If such is the case, the FCM should contact the regional office of the Market Surveillance Unit of the Commission's Division of Economic Analysis for instructions on reporting such positions.[13]

[7] 17 CFR 4.22(a) (1) and (2) (1987).

[8] 17 CFR 1.33(a)(1987).

[9] 17 CFR 1.33(d)(1987). Rule 1.33(d)(3) further provides that the duplicate statements requirements shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

[10] *See* 17 CFR 1.55 (1987).

[11] *See* 49 FR 19988, 19971. The Commission also notes that the overall issue of aggregation is under reconsideration.

[12] 17 CFR 17.00(b)(1987). *See also* 17 CFR 18.01(a)(1987).

[13] Concerning the positions to be attributed to an individual trader for reporting and speculative limit purposes, the Commission believes that positions initiated by one trader should not be attributed to another trader provided the traders are acting independently, are not affiliated, and are not trading in concert with each other. *See* 17 CFR 18.01 (b) and (c)(1987).

Continued

B. Reporting Open Interest

Certain commenters stated views addressing the reporting of open interest. One commenter noted that rule § 1.46 initially was adopted to prevent persons controlling customer accounts from concealing losses from those customers and to insure accurate reporting of open interest. In this commenter's view, proposed rule § 1.46(d)(6)(i, ii, iv, v, and vi) addresses the problems that rule § 1.46 was designed to prevent. Because long and short positions held in separate accounts controlled by one advisor would be offset, the initial purpose of the rule, to prevent advisors from concealing losses, would still be met. Moreover, where control is held by separate individuals, the requirements of § 1.33 would provide the customer with the protection and information needed concerning the activity in each of those accounts. Finally, this commenter indicated that subparagraph (d)(6)(v) sufficiently addresses issues concerning the accurate reporting and maintenance of open interest because that provision prohibits the transfer of open positions from one account to another when such transfer will result in a liquidation.

Another commenter noted that holding open speculative positions need not distort open interest or large trader statistics. For large trader and open interest reporting purposes, an FCM readily can program its accounting system to net offsetting speculative positions held for the same customer. This result, this commenter argued, is merely an extension of the accounting requirements applicable to hedge accounts carried on an instruct basis under the current regulations.

The Commission previously expressed its concern regarding the accuracy of published open interest calculations in connection with the adoption of an amendment to § 1.46 to provide an additional exception for purchases and sales of commodity futures and commodity option contracts made in separate accounts of a commodity pool where the trading for the commodity pool is directed by two or more unaffiliated CTAs acting independently, each of which is directing the trading of a separate account.[14] Under that exception, trades entered into by separate CTAs acting independently for the account of a commodity pool are offset in an open and competitive manner on or subject to the rules of a contract market and not by means of a "transfer trade," *i.e.*, simply by means of an entry on the books of an FCM for the purpose of transferring existing trades from one account to another carried by the FCM where no change in ownership is involved. Similarly, the Commission believes that to permit the transfer of trades between the separate accounts owned by a customer would cast doubt upon the "independence" of such separate accounts. The Commission also believes that the safeguards contained in this new amendment will ensure that each separate account will accurately reflect the results of trading with respect to such separate account. Furthermore, the Commission recognizes that because each account will be traded separately and offset separately, the amount of open interest reported for any commodity futures contract or commodity option contract traded by two or more separate accounts will be greater than if all open positions in all separate accounts owned by a customer or option customer were offset against each other. However, the Commission believes that any increase in reported open interest will have no adverse impact since all open positions in each separate account must be offset, on or subject to the rules of a contract market, prior to the delivery date of a futures contract or the exercise date of a commodity option contract.[15]

C. Application of Proposed Amendment to New Positions

One commenter noted that neither the Federal Register release nor the related rule amendments specifically state that the provision to carry long and short positions for the same customer in the same commodity will apply only to new positions entered into after the effective date of the rule amendment. The commenter noted that, without clarification of this issue, FCMs inadvertently might violate § 1.46 by carrying journal entries on their books identifying the trading of each individual advisor for any particular customer. In this connection, the Commission emphasizes that this new exemption shall apply only to new positions entered into after this amendment becomes effective. This new exemption, when effective, will permit offsetting positions that formerly were required to be closed out, to be held open. Therefore, all offsetting positions entered into prior to the effective date of this new amendment must be closed out according to the requirements of § 1.46.

[14] *See* 17 CFR 1.46 (d)(4) (iv) and (v) (1987); *see also* 49 FR 19988, 19970 (May 11, 1984).

[15] The Commission wishes to note, however, that if the FCM carrying the separate accounts sought the protection of the bankruptcy laws, the Commission might, in appropriate cases and upon application by the trustee or the affected clearing organization, permit offsetting open contracts to be liquidated, or settlement on such contracts to be made, by transfer trades. 17 CFR 190.06(d) (1987).

IV. Suggested Additional Exemptions to Rule 1.46

Several commenters suggested that the proposed amendment to rule § 1.46 be expanded to encompass other situations not addressed in the Commission's proposal. One commenter referred to the liquidation of open offsetting positions held in separate accounts owned by a customer. This commenter stated that because § 1.46 generally prescribes that the oldest open position be offset, this sequence of offset is not necessarily the most favorable to the customer. Because FCMs frequently charge a lower commission on positions which are established and closed out on a spread basis, it is often in the customer's interest to close out a spread position against another spread position which is not the oldest position in the account. In this connection, the commenter recommended that the Commission further amend § 1.46 to require that positions be offset "systematically." It should be sufficient, the commenter contended, to prohibit a systematic offsetting algorithm which intentionally offsets the most profitable trades first without disclosing that fact to the customer. FCMs would then be free to apply spread commission rates to customers regardless of whether the positions to be offset are the oldest positions.

Another commenter suggested that the Commission require that offsetting positions be liquidated prior to the notice period. This commenter noted that for commodities like cocoa and coffee that have multiple notice and delivery days, the potential for abuse of the proposed rule amendment is higher than in normal trading times. As the notice period approaches, many traders watch open interest closely and compare it to evident supply to gauge market conditions. For example, the commenter argued, assume that two offsetting accounts claimed independence and were reporting on a gross basis under the proposed amendment. It is possible that the offsetting positions may have been established to inflate open interest without bearing risk. If notices were stopped by the long side and reissued by the short, this presumably would be

strong evidence that a violation of the rule had occurred. However, severe disruption to the market may have already occurred. The commenter further stated that all such offsetting positions should be liquidated prior to the notice period. There are already exemptions for bona fide hedging positions in § 1.46 to protect the interests of commercial parties participating in the delivery. There is no reason to expand those exemptions to non-commercials in the notice period. The potential for abuse is strong and the cost in terms of disruption is high.

On the basis of the comments received, and upon its own reconsideration of the matter, the Commission is not prepared to make any further exemptions to § 1.46 at this time. As stated above, the Commission will monitor carefully those taking advantage of the new exemptions to the general requirements of § 1.46. If the Commission believes that any adjustments to the new exemption are necessary, or if it believes that additional exemptions are appropriate, further rulemaking proceedings will be initiated.

V. Related Matters

A. Paperwork Reduction Act

There are no information collection requirements under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) contained in § 1.46. The Commission has notified the Office of Management and Budget of the amendments contained in this release.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The direct impact of this amendment to rule § 1.46 affects FCMs, which have the obligation generally to close out offsetting positions and issue a purchase-and-sale statement. The Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FMC/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FMCs should be excluded from the definition of a small entity.[16] Accordingly, the requirements of the RFA do not apply to FCMs. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Futures commission merchants, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 8, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a, 13a–1, 13a–2, 16, 19, 21, 23 and 24; 5 U.S.C. 552 and 552b, unless otherwise noted.

2. Section 1.46 is amended by adding a new paragraph (d)(6) and a new paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

* * * * *

(d) *Exceptions.* The provisions of this section shall not apply to:

* * * * *

(6) Purchases or sales made in separate accounts owned by a customer or option customer, *Provided that:*

(i) Each person directing trading for one of the separate accounts is unaffiliated with and acts independently from each other person directing trading for a separate account;

(ii) Each person directing trading for one of the separate accounts, unless he is the account owner himself, does so pursuant to a power of attorney signed and dated by the customer, and which includes, at a minimum, the name, address and telephone number of the person directing trading and the account number over which such power is granted;

(iii) Each trading decision made for each separate account is determined independently of all trading decisions made for the other separate account or accounts;

(iv) The purchases and sales for such accounts are executed by open and competitive means on or subject to the rules of a contract market;

(v) No position held for or on behalf of separate accounts traded in accordance with paragraphs (d)(6)(i), (d)(6)(ii), (d)(6)(iii) and (d)(6)(iv) of this section may be closed out by transferring such an open position from one of the separate accounts to another of such accounts; and

(vi) The customer or option customer and each person directing trading for the customer or option customer provides the futures commission merchant with written confirmation that the trading and the operation of the customer's or option customer's accounts will be in accordance with paragraphs (d)(6)(i), (d)(6)(ii), (d)(6)(iii), (d)(6)(iv) and (d)(6)(v) of this section. The written confirmation must be signed and dated, and received by the futures commission merchant before it can avail itself of the exception provided by this paragraph.

(e) With respect to the exception from the provisions of this section set forth in paragraph (d)(6) of this section, if a futures commission merchant that carries the separate accounts of a customer or option customer, or if an associated person of such futures commission merchant, directs trading for one of the separate accounts:

(1) The futures commission merchant must first furnish the customer or option customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. Such written statement shall be attached to the risk disclosure statement required to be provided to a customer or option customer under § 1.55 on this part; and

(2) The futures commission merchant must prepare and furnish to the customer or option customer quarterly, a consolidated account statement for all separate accounts of the customer or option customer carried by the futures commission merchant. The consolidated account statement shall contain the same information required to be furnished to a customer or option customer under § 1.33(a) of this part.

[16] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

Issued in Washington, DC, on January 5, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-380 Filed 1-8-88; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Non-Public Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; Correction.

SUMMARY: This notice corrects three errors which appeared in the **Federal Register** on December 29, 1987 (52 FR 48974).

FOR FURTHER INFORMATION CONTACT: De'Ana Hamilton-Brown, Division of Trading and Markets, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

The corrections to be made are as follows:

1. On page 48974, third column, line 37, the cite should read 51 FR 44866, 44868 (December 12, 1986).

2. On page 48974, third column, line 63, the cite should read 51 FR at 44868.

3. On page 48977, first column, under the List of Subjects, change SROS to Self-Regulatory Organizations.

Dated: January 5, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-381 Filed 1-8-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Calculation of Interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 11 percent for underpayments and 10 percent for overpayments for the quarter beginning January 1, 1988. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298–1245.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99–514), amended 26 U.S.C. 6621, mandating a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term Federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayment will be the short-term Federal rate plus 2 percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus 3 percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

Determination

It has been determined that the rates of interest for the period of January 1, 1988–March 31, 1988 are 11 percent for underpayments and 10 percent for overpayments. These rates will remain in effect through March 31, 1988, and are subject to change on April 1, 1988. They will remain in effect until changed by another notice in the **Federal Register.**

Dated: January 5, 1988.

Michael H. Lane,

(Acting) Commissioner of Customs.

[FR Doc. 88-396 Filed 1-8-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 221 and 236

[Docket No. R–88–1368; FR–2418]

Low Cost and Moderate Income Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes a technical correction in 24 CFR 221.524(a)(1)(ii) and 24 CFR 236.30(a)(1)(i).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The phrase "the provisions of § 5.1 *et seq.* of this title" is an erroneous citation contained in §§ 221.524(a)(1)(ii) and 236.30(a)(1)(i). The correct reference is to 24 CFR Part 215.

Since this final rule only corrects the erroneous citation, the Department believes it is unnecessary to solicit public comment before publication of this rule for effect.

The technical correction is an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this technical rule would have no economic impact on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 221

Condominiums, low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 236

Low and Moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities Project.

Accordingly, the Department amends 24 CFR Part 221 and 24 CFR Part 236 as follows:

PART 221—LOW COST AND MODERATE MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 221 continues to read as follows:

Authority: Secs. 211 and 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 221.524 [Amended]

2. In § 221.524(a)(1)(ii), the phrase "the provisions of § 5.1 *et seq.* of this title" is removed and the phrase "Part 215 of this title" is substituted in its place.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

3. The authority citation for 24 CFR Part 236 continues to read as follows:

Authority: Secs. 211 and 236 of the National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 236.30 [Amended]

4. In § 236.30(a)(1)(i), the phrase "the provisions of § 5.1 *et seq.* of this title" is removed and the phrase "Part 215 of this title" is substituted in its place.

Dated: December 17, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-400 Filed 1-8-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 88-001]

Ice Navigation Season

AGENCY: Coast Guard, DOT.

ACTION: Notice of ice navigation season.

SUMMARY: The Ice Navigation Season Regulated Navigation Area (RNA) on the Northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, will be placed in effect on 6 January 1988. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the **Federal Register** May 19, 1983 (48 FR 22543), state that they are placed in effect and terminated at the direction of the Captain of the Port Baltimore, MD by notice in the **Federal Register**. The purpose of this Regulated Navigation Area is to enhance the safety of navigation in the affected waters. It requires operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore, Maryland.

EFFECTIVE DATE: 9 a.m., 6 January 1988.

FOR FURTHER INFORMATION CONTRACT: Commander Lane I. McClelland, Chief, Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

Dated: January 5, 1988.

J. H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 88-442 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Effective Date of VEAP Disenrollment and Other Technical Changes

AGENCIES: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: This regulatory amendment permits a veteran who has received a refund of his or her contributions to the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) fund to retain his or her eligibility if the refund check is returned to the Veterans Administration (VA). The regulation previously stated that such a person is disenrolled from VEAP on the date the VA received his or her request for a refund. Hence, he or she had lost eligibility by the time of receipt of the refund check. This amendment is the result of many attempts by veterans to return their refund checks, and will result in the VA's treating these veterans in a manner similar to veterans in other programs administered by the VA.

Besides the substantive proposal, the VA and the Department of Defense have made several technical amendments which are necessary to correct erroneous cross-references.

EFFECTIVE DATE: November 3, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 18399 and 18400 of the **Federal Register** of May 15, 1987, there was published a notice of proposed rulemaking to 38 CFR Part 21 which would permit a veteran to retain eligibility for benefits under VEAP if he or she returned the refund check. Interested persons were given 30 days to submit comments, suggestions or objections. The VA and the Department of Defense received one letter from a university official containing two suggestions.

The first suggestion was that the regulation should state that the veteran would retain eligibility even if he or she had negotiated the refund check provided that the veteran returned the amount of the check. In essence, this suggestion, if adopted, would have permitted an individual, not on active duty, to reenroll in VEAP, and to make a contribution to the fund. The VA and the Department of Defense after a careful review of the pertinent statute have concluded that they do not have the legal authority to accept this suggestion.

The law does not contain a specific statement concerning the suggestion. The agencies reached their conclusion in the following manner:

First, it is clear that a participant who has received a refund check representing the amount of his or her contributions to the fund, and has negotiated that check, has disenrolled from VEAP. That money is the participant's to do with what he or she wills.

Second, it is equally clear that the law (38 U.S.C. 1621(e)) permits a participant to reenroll following a disenrollment. However, once the participant has done so, the law requires either that the participant authorize a monthly deduction from his or her military pay to be contributed to the fund (38 U.S.C. 1622(a)), or that the participant, while still on active duty, make a lump-sum payment to the fund (38 U.S.C. 1622(d)). Since a veteran does not receive military pay and is not on active duty, it is impossible for him or her to make the legally required contribution. Hence, the suggestion cannot be accepted.

The second suggestion was that the final regulation should make clear that a veteran who returns a refund check should remain continuously eligible for benefits under VEAP. The VA and the Department of Defense have always intended that this be so. Since it is apparently not clear to the readers of the regulation, the final regulation has been changed slightly from the proposal so that there can be no mistake.

The VA and the Department of Defense have determined that these final regulatory amendments do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The final regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs and the Secretary of Defense have certified that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the final regulatory amendments, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 503 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 3, 1987.

Thomas K. Turnage,

Administrator.

Approved: December 2, 1987.

A. Lukeman,

Lieutenant General, USMC Deputy Assistant Secretary (Military Manpower & Personnel Policy).

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5001, paragraph (c) is revised to read as follows:

§ 21.5001 Administration of benefits program; Chapter 32.

* * * * *

(c) Section 21.4003 (except paragraphs (d) and (e))—Revision of Decisions.

(Authority: 38 U.S.C. 1641)

* * * * *

2. In § 21.5052, paragraph (e) is revised to read as follows:

§ 21.5052 Contribution requirements.

* * * * *

(e) *Prohibition against contributing.* An individual may not make contributions to the fund after the date of his or her discharge. The VA does not consider the return of an unnegotiated refund check to be a contribution. A person who returns a refund check remains continuously eligible for benefits.

(Authority: 38 U.S.C. 1622)

* * * * *

3. In § 21.5062, paragraph (b) is revised to read as follows:

§ 21.5062 Date of disenrollment.

* * * * *

(b) The date the individual negotiates the check which represents a refund of his or her remaining contributions to the fund, whichever is earlier.

(Authority: 38 U.S.C. 1621(d))

4. In § 21.5130, paragraphs (a), (b), and (d) are revised and paragraph (h) is added to read as follows:

§ 21.5130 Payments—educational assistance allowance.

* * * * *

(a) Section 21.4131 (except paragraphs (c)(3), (e) and (h))—Commencing dates.

(b) Section 21.4133—Notification of suspension or discontinuance.

(Authority: 38 U.S.C. 1641)

* * * * *

(d) Section 21.4135 (except paragraphs (b), (c), (d), (m), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * * * *

(h) Section 21.4136(k) (except paragraph (k)(3))—Mitigating circumstances.

(Authority: 38 U.S.C. 1641, 1780(e))

5. In § 21.5131, the introductory text is revised to read as follows:

§ 21.5131 Educational assistance allowance.

The Veterans Administration will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 while the individual is pursuing a course of education. The Veterans Administration will make no payment for training in any course if the training is not part of the veteran's program of education. The Veterans Administration may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account.

* * * * *

(Authority: 38 U.S.C. 1641)

[FR Doc. 88-420 Filed 1-8-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 661

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the regulations implementing the "Buy America" provision of the Surface Transportation Assistance Act of 1982 by amending the reference for general waivers to the requirements set forth in Appendix A of § 661.7. The amendment is necessary because the existing referenced listing has been republished in a new part in the Code of Federal Regulations.

EFFECTIVE DATE: This amendment is effective January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9316, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4063.

SUPPLEMENTARY INFORMATION: Section 165(b)(2) of the Surface Transportation Assistance Act of 1982 provides that the general domestic preference requirements set forth in section 165(a) will not apply if the item or material that is being procured utilizing UMTA funds is not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The regulations which implement section 165(b)(2) (49 CFR 661.7) contain an Appendix which sets out General Exceptions granted under section 165(b)(2). One of the general exceptions incorporates all waivers which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d). These waivers had previously been published in Title 41 of the Code of Federal Regulations. They are now published in Title 48 of the Code of Federal Regulations.

The purpose of this amendment is to revise Appendix A to reflect the correct reference to Title 48.

Pursuant to an exception under the Administrative Procedure Act, 5 U.S.C. 553(b), UMTA finds that notice and public comment are unnecessary to the public interest in this instance. The general waiver that was granted in 1983 is not being revised. The only action that UMTA is taking is to substitute the correct citation to the waivers in question.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

This amendment does not impose any requirements that are subject to the Paperwork Reduction Act, Pub. L. 96–511.

List of Subjects in 49 CFR Part 661

Buy America, Domestic preference, Contracts, Grant programs, Transportation, Mass transportation.

Accordingly, Part 661 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 is revised to read as follows:

Authority: Section 165, Pub. L. 97–424; section 337, Pub. L. 100–17; 49 CFR 1.51.

2. Appendix A to § 661.7 is revised to read as follows:

Appendix A—General Exceptions

(a) All waivers published in 48 CFR 25.108 which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d), as the waivers may be amended from time to time, are applicable to this part under the provisions of § 661.7 (b) and (c).

Dated: January 6, 1988.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 88–441 Filed 1–8–88; 8:45 am]

BILLING CODE 4910–57–M

Proposed Rules

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ASW–37]

Proposed Revision of Transition Area; Dalhart, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Dalhart, TX. The development of a new standard instrument approach procedure (SIAP) to Runway 35 at the Dalhart Municipal Airport utilizing the Dalhart Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC) has made this proposed revision necessary. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP.

DATE: Comments must be received on or before February 5, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–37, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASW–37." The postcard will be date/time stamped and returned to the commenter. All commmunications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Region Counsel, 4400 Blue Mound Road, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Dalhart, TX. The development of a new SIAP to Runway 35 at the Dalhart Municipal Airport has necessitated this proposed revision. This proposed revision would increase the existing transition area by one-half mile and would add a 4-mile wide arrival extenstion south of the airport. The existing 4-mile wide arrival extension north of the airport would remain unchanged. This intended effect of this revision is to provide adquate controlled airspace for aircraft executing this new SIAP. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, is it certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexability act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Dalhart, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Dalhart Muncipal Airport (latitude 36°01'18"n., longtitude 102°32'52" W.), within 2 miles each side of the 002° radial of the Dalhart VORTAC (latitude 36°05'39"N., longitude 102°32'39"W.) extending from the 9.5-mile radius area to 12 miles north of the airport; and within 2 miles

each side of the 181° radial of the Dalhart VORTAC extending from the 9.5-mile radius area to 14.5 miles south of the airport.

Issued in Fort Worth, TX on December 18, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-372 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Determination of Delimiting Date

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: On December 31, 1979, the Veterans Administration (VA) liberalized the regulation containing the criteria used by the VA in determining whether the character of service of a veteran who received an other than honorable discharge was under other than dishonorable conditions. Before this liberalization the regulation (38 CFR 3.12(d)) held that a discharge or release from active service because of homosexual acts will be considered to have been issued under dishonorable conditions. The liberalized regulation now provides that a discharge issued because of homosexual acts involving aggravated circumstances or other factors affecting performance of duty must be considered to have been issued under dishonorable conditions. Hence, discharges of many veterans which would have been considered to have been issued under dishonorable conditions before December 31, 1979, are now not considered to have been issued under dishonorable conditions. This proposal would amend the regulation used to determine the ending date of a veteran's eligibility under the Vietnam Era GI Bill to state how to determine the ending date of eligibility for a veteran who is favorably affected by the liberalization.

DATES: Comments must be received on or before February 10, 1988. Comments will be available for public inspection until February 22, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 22, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: This proposal contains an amendment to 38 CFR 21.1042 which will help the users of regulations determine the ending date of eligibility (delimiting date) for a veteran who was favorably affected by the liberalization of 38 CFR 3.12(d) concerning the commission of homosexual acts while the veteran was on active duty. It has been the VA's administrative experience that relying upon the users of regulations to apply 38 CFR 3.12(d) to education claims results in widely varying calculations of veterans' delimiting dates even when the circumstances of the veterans' active duty service are the same. The amendment to 38 CFR 21.1042 will assure uniform administration of this education program.

The VA has determined that this proposed regulatory amendment does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposed regulatory amendment will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Administrator of Veterans Affairs has certified that this proposed regulatory amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulatory amendment, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the proposed regulatory amendment affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdications.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed regulatory amendment is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 14, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.1042 is amended by adding paragraph (e)(4) to read as follows:

§ 21.1042 Ending dates of eligibility.

* * * * *

(e) *Eligibility established after the VA determines the character of the discharge.*

* * * * *

(4) If the veteran was discharged before December 31, 1979, and due to the veteran's commission of homosexual acts while on active duty, his or her discharge is considered to have been under dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted on the date of his or her discharge, but is considered to have been under other than dishonorable conditions pursuant to § 3.12 of this chapter as that section was written and interpreted after December 30, 1979, educational assistance may be afforded the veteran through December 31, 1989.

(Authority: 38 U.S.C. 1662, 3103)

* * * * *

[FR Doc. 88-421 Filed 1-8-88; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

FIRMR Improvement Project

AGENCY: Information Resources Management Service, GSA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits comments regarding a major GSA initiative to reorganize and rewrite the Federal Information Resources Management Regulation (FIRMR). Known as the FIRMR Improvement Project (FIP), this initiative began in response to user community recommendations to make the FIRMR more useful and readable. Planned changes to the FIRMR include: the separation of policies and procedures, the separation of contracting provisions from management and use provisions, the reorganization of FIRMR contracting provisions for consistency with the Federal Acquisition Regulation (FAR) structure, and the reorganization of the FIRMR's management and use provisions into a logical life-cycle format.

DATE: Comments must be submitted on or before March 11, 1988.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project KMP-88-30, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David Mullins, Patricia Phillips, John Stewart or Paul Whitson, Policy Branch (KMPP), Office of Information Resources Management Policy, telephone 202 535-7462 or FTS 535-7462.

SUPPLEMENTARY INFORMATION: The revised FIRMR will address Federal Information Resources Management issues only to the extent that GSA has authority in those areas. Its text will be as concise, understandable and easy to use as possible. Cross references and redundancies will be kept to a minimum.

The proposed FIRMR organizational structure is as follows:

Preface—How to Use the FIRMR
Subchapter A—General (e.g., overview, definitions, goals, and policies)
Subchapter B—Management and Use of Information (Records)
Subchapter C—Management and Use of Federal Information Processing and Related Resources
Subchapter D—Management and Use of non-Automated Information Processing Resources
Subchapter E—Acquisition of Federal Information Processing Resources
Appendix A—Temporary Regulations
Appendix B—Bulletins
Appendix C—List of Current Issuances
Appendix E—Illustration of Forms
Appendix I—Index

Bulletins will contain detailed procedures about GSA policies and programs in the FIRMR, whereas the Index will contain the location in the FIRMR of key terms and phrases.

As the final draft of each subchapter is completed, GSA will seek public comment on the subchapter through a notice of proposed rulemaking in the **Federal Register**. Because there is a pressing need for Subchapter E by the contracting community, it will be completed first and issued for public comment in July 1988. Subchapter C should be issued in January 1989. The remaining subchapters should be issued for comment in June 1989 along with the revised Subchapters E and C. This approach will provide agencies the opportunity to review the FIRMR in its entirety. GSA may deviate from this plan and issue Subchapter E as a final FIRMR amendment as soon as public comments on it are reconciled. The attempt to issue Subchapter E in advance of the remainder of the revised FIRMR is driven by need but may be restricted by its overlap with the current FIRMR.

List of Subjects in 41 CFR Ch. 201

Information resources.

Authority: The Administrator of GSA's authority to prescribe regulations is found in 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

Dated: December 16, 1987.

Fred L. Sims,

Assistant Commissioner for Information Resources Management Policy.

[FR Doc. 88-377 Filed 1-8-88; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 80, 82 and 83

Federal Crime Insurance Program; Residential and Commercial Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule increases the Federal Crime Insurance Program (FCIP) rates which apply to both residential and commercial properties located in eligible states. It also authorizes a premium discount on commercial burglary and robbery insurance policies in the form of credits for installation of hold up buttons and alarms protecting safes, and for commercial policies covering robbery away from the premises when the insured has demonstrated that he has entered into a contract with a bonded armored car service for transporting cash from the insured premises to a bank.

DATE: All comments received on or before March 11, 1988, will be considered before final action is taken.

ADDRESS: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Telephone number: (202) 646-4107.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, DC 20472, Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: These amendments to the Federal Crime Insurance Program Regulations are the result of the experience gained over the past 17 years the Program has been in operation and the Federal Insurance Administration's continued desire to improve service to policyholders and to more closely align the Program with the underwriting and rating methods used by the private insurance sector, while reducing the general taxpayers' burden with more equitable sharing of the cost of crime losses between the general taxpayers and the program insureds.

In order to achieve these goals, the Federal Insurance Administration began in 1981 a 5 year program to reduce the taxpayer subsidy by instituting changes such as rate increases, coverage changes, higher deductibles, and increasing the extent of protective device requirements with which an insured would be required to comply as a condition of new or continued eligibility for crime insurance.

More specifically, the following changes in the Program operation were implemented: (1) In 1982: raised the premiums and deductibles for both residential and commercial policies; discontinued the use of geographical territories for determining premiums; (2) 1983-1984: revised the definitions under the residential policy to clarify Program intent in recognition of the improving residential loss ratio by increasing the limit of the insurer's liability for loss of money from $100 to $200, and modified provisions dealing with the loss of jewelry, including, without limitation, watches, necklaces, bracelets of gold, silver or platinum, and with the losses of flatware and holloware, gold, fine arts, antiques, coin or stamp collections to increase coverage from $500 to $1,500 in the aggregate per occurrence; (3) 1985: revised the method by which commercial crime insurance policies were rated, making the rating of policies easier for producers to understand and reducing rating errors. The new plan also provided for an overall increase in the commercial crime insurance rates and for a premium discount (credit) by offering loss prevention incentives to businesses that utilize preventive measures such as central station alarms with guard response at the time of loss.

The overall rate impact on the Program was less than 10%; (4) 1987: revised the classification of risk and alarm requirements of the commercial rating plan.

This change in 1987 was promulgated by the Administrator following an analysis of both the frequency and severity of losses, especially as to particular types of business, and will result in an overall revenue increase of approximately 10% of the inforce business over a 12 month period.

In spite of the above revisions, the Federal Crime Insurance Program is sustaining underwriting losses and program expenses that will require an approximate subsidy of 13 million dollars. In order to achieve a self-sustaining status, the Federal Insurance Administration would, therefore, need to impose an overall rate increase of approximately 145% to offset the higher-than-average industry expenses associated with administering the Program. However, inasmuch as the enabling legislation that authorized the Program requires that crime insurance be made available at affordable rates, the Federal Insurance Administration has maintained an ongoing study of the rating of crime insurance coverages provided by the voluntary insurance market.

In this regard, recent rating values analysis for the Federal Insurance Administration performed by the actuarial firm of Tillinghast, Nelson & Warren, Inc., indicates that an overall commercial burglary rate increase for federal crime insurance is appropriate, based upon the rate increases that have occurred in the private market. The Tillinghast report notes that since their last rate comparison in 1983, Insurance Services Office (ISO) has had five rounds of rate level increases on a country-wide basis, and that while the upward moves in ISO advisory rates have not been dramatic, the FCIP rate increases have generally fallen behind those of the voluntary marketplace. For example, using a hypothetical FCIP average risk of $12,000 burglary coverage, $7,500 robbery coverage and $250,000 gross receipts, the rate relatively between FCIP rates and ISO rates in Los Angeles, California, Miami, Florida, and Brooklyn, New York are as follows:

Class	FCIP rates	ISO rate	Relativity
Los Angeles: Burglary—Drug Store	$782	$1,244.59	1.592
Los Angeles: Robbery	895	1,510.59	1.69
Miami: Burglary—Drug Store	782	1,259.03	1.610
Miami: Robbery	895	813.24	0.91
Brooklyn: Burglary—Drug Store	782	2,757.63	3.526
Brooklyn: Robbery	895	2,188.64	2.45

While it is the Administration's goal, within the statutory limitations prescribed by the Congress, to make the Federal Crime Insurance Program self-sustaining, and recent studies comparing FCIP and ISO rates indicate a substantial rate increase is appropriate, only a 5% increase is being proposed for Fiscal Year 1988. This action is in keeping with Congressional intent that rate increases be limited. However, in order to continue the Federal Insurance Administration's successful efforts to help insureds protect themselves more effectively, the FIA is proposing additional economic incentives to businesses by providing premium credits for the installation of safe burglary alarm systems; holdup alarm systems; and contracts with a bonded armored car service for transporting cash receipts from the insured premises to a bank.

FEMA has determined that an environmental impact statement is not needed for this proposed rule. A copy of the finding of no significant impact and an environmental assessment is available at the above address.

FEMA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared. FEMA has determined that this final rule does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 80, 82 and 83

Federal Crime Insurance Program.

Accordingly, 44 CFR Parts 80, 82 and 83 are amended as follows:

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

1. The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bbb-17 et seq; Reorganization Plan No. 3. of 1978; EO 12127.

2. Section 80.1(a)(6) is revised to read as follows:

§ 80.1 Definitions.

(a) * * *

(6) "Discounts" The premium credit issued to a residential or business insured protected by a burglar alarm system, or other protective devices or methods used to mitigate losses and considered adequate by the Administration for the type of risk involved, such as protective armored car services.

* * * * *

PART 82—PROTECTIVE DEVICE REQUIREMENTS

1. The authority citation for Part 82 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq; Reorganization Plan No. 3 of 1978; EO 12127.

2. Section 82.1 is amended by redesignating paragraphs (h), (i), (j) and (k) as paragraphs (i), (j), (k) and (l), and adding new paragraphs (h) and (m) to read as follows:

§ 82.1 Definitions.

* * * * *

(h) "Holdup alarm" means a holdup alarm system that is constantly in operation and signals at an office of law enforcement authorities or at an office of an independent agency located away from the protected property. Accessible, but inconspicuous, buttons at hand or foot or knee levels are placed throughout the premises. An insured may, at his option, cause the alarm to sound on the premises, in addition to the remote location.

* * * * *

(m) "Safe or vault alarm" means a safe or vault protected by a central station or silent alarm supervised system.

PART 83—COVERAGE RATES AND PRESCRIBED POLICY FORMS

1. The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 83.4 is revised to read as follows:

§ 83.4 Residential crime insurance rates.

The specific limits of coverage for applicable annual premiums for residential crime insurance coverage are revised to read as follows:

Policy limits	Annual premium
$1,000	$32
2,000	42
3,000	52
4,000	62
5,000	74
6,000	84
7,000	94
8,000	104
9,000	116
10,000	126

3. Section 83.25 (e) and (f) are revised to read as follows:

§ 83.25 Commercial crime insurance rates.

* * * * *

(e) The following tables shall be used to determine rates for commercial risks.

Amount of insurance	Gross Receipts: Less than $100,000		$100,000 to $199,999		$200,000 to $299,999		$300,000 to $499,999		$500,000 to $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
Class 1												
$1,000	$82	$112	$124	$168	$124	$168	$164	$222	$204	$276	$326	$442
$2,000	156	200	234	298	234	298	310	396	386	496	618	794
$3,000	228	288	342	430	342	430	456	574	570	716	912	1144
$4,000	298	366	446	548	446	548	594	730	742	912	1184	1458
$5,000	350	414	526	622	526	622	702	826	876	1034	1402	1852
$6,000	370	454	564	680	564	680	740	908	924	1132	1478	1810
$7,000	384	484	576	724	576	724	768	966	958	1206	1534	1928
$8,000	400	512	596	768	596	768	796	1022	994	1278	1590	2046
$9,000	404	522	604	784	604	784	804	1044	1004	1302	1606	2084
$10,000	412	542	616	812	616	812	824	1082	1026	1350	1644	2160
$11,000	434	580	654	866	654	866	870	1180	1086	1474	1738	2358
$12,000	454	630	680	946	680	946	908	1258	1132	1570	1812	2514
$13,000	464	648	696	974	696	974	926	1298	1156	1620	1850	2592
$14,000	468	660	702	990	702	990	934	1316	1168	1644	1870	2632
$15,000	472	668	710	1004	710	1004	948	1336	1180	1670	1886	2672
Class 2												
$1,000	98	140	150	210	150	210	198	280	246	346	392	554
$2,000	186	252	280	376	280	376	372	500	464	624	742	998
$3,000	274	362	410	542	410	542	546	722	680	900	1090	1440
$4,000	354	460	532	690	532	690	708	920	884	1146	1416	1836
$5,000	418	520	628	784	628	784	836	1042	1044	1300	1670	2082
$6,000	442	572	664	856	664	856	882	1140	1102	1424	1764	2278
$7,000	460	606	688	912	688	912	916	1214	1146	1516	1834	2426
$8,000	476	644	716	966	716	966	954	1288	1190	1608	1904	2572
$9,000	484	658	724	984	724	984	966	1312	1206	1638	1928	2622
$10,000	496	682	744	1022	744	1022	990	1362	1234	1702	1976	2722
$11,000	526	744	788	1116	786	1116	1048	1484	1308	1854	2094	2988
$12,000	548	792	822	1188	822	1188	1096	1584	1368	1978	2188	3164
$13,000	560	816	840	1226	840	1226	1120	1634	1398	2040	2234	3262
$14,000	564	830	846	1244	846	1244	1130	1656	1412	2070	2256	3312
$15,000	572	842	856	1262	856	1262	1142	1682	1426	2100	2282	3360
Class 3												
1,000	112	148	168	218	168	218	222	290	276	362	442	578
2,000	208	280	312	392	312	392	416	520	518	643	830	1040
3,000	306	376	460	564	460	564	612	752	782	936	1220	1500
4,000	396	478	596	718	596	718	794	956	990	1194	1584	1912
5,000	468	544	702	814	702	814	934	1086	1166	1354	1864	2188
6,000	484	594	742	892	742	892	988	1186	1232	1482	1972	2370
7,000	514	632	772	950	772	950	1030	1264	1284	1580	2054	2524
8,000	536	672	802	1008	802	1006	1068	1342	1334	1674	2134	2680
9,000	542	684	812	1026	812	1026	1082	1368	1350	1708	2160	2730
10,000	554	710	832	1064	832	1064	1008	1418	1384	1770	2216	2832
11,000	588	772	882	1162	882	1162	1076	1546	1468	1930	2350	3090
12,000	616	826	924	1236	924	1236	1230	1648	1536	2058	2458	3292
13,000	628	850	942	1278	942	1276	1256	1698	1568	2124	2512	3398
14,000	636	864	954	1298	954	1296	1270	1726	1586	2154	2536	3448
15,000	642	876	964	1316	964	1314	1284	1752	1602	2186	2564	3498
Class 4												
$1,000	124	152	186	226	186	226	248	302	308	376	494	600
$2,000	234	270	350	408	350	408	466	542	582	674	930	1080
$3,000	342	390	514	586	514	508	684	782	852	974	1366	1560
$4,000	446	498	666	748	666	748	886	996	1106	1242	1772	1986
$5,000	522	564	786	846	786	846	1046	1128	1304	1408	2088	2252
$6,000	554	616	830	926	830	926	1106	1234	1380	1542	2208	2466
$7,000	576	658	864	988	864	988	1150	1314	1436	1640	2300	2626
$8,000	598	698	896	1046	896	1046	1198	1394	1494	1740	2390	2784
$9,000	606	712	910	1066	910	1066	1212	1422	1512	1774	2420	2838
$10,000	622	738	932	1108	932	1106	1242	1474	1550	1840	2480	2944
$11,000	660	804	990	1206	990	1206	1316	1606	1644	2006	2632	3210
$12,000	688	856	1034	1286	1034	1286	1378	1714	1720	2140	2752	3424
$13,000	704	864	1056	1326	1056	1323	1408	1796	1758	2208	2812	3530
$14,000	712	898	1068	1346	1068	1346	1424	1794	1776	2240	2844	3582
$15,000	720	912	1080	1366	1080	1366	1438	1820	1796	2272	2872	3638
Class 5												
$1,000	118	134	178	202	178	202	236	286	294	332	468	534
$2,000	218	242	330	362	330	362	436	480	544	598	872	958
$3,000	320	346	478	520	478	520	638	694	798	864	1274	1382
$4,000	412	442	620	662	620	662	824	882	1026	1100	1644	1760
$5,000	480	500	720	750	720	750	960	1000	1198	1248	1918	1998

BEST COPY AVAILABLE

Amount of insurance	Gross Receipts											
	Less than $100,000		$100,000 to $199,999		$200,000 to $299,999		$300,000 to $499,999		$500,000 to $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
6,000	512	548	768	822	768	822	1024	1094	1278	1366	2048	2184
7,000	538	584	806	874	806	874	1074	1166	1340	1454	2144	2326
8,000	560	618	842	928	842	928	1122	1234	1400	1542	2240	2468
9,000	570	630	854	946	854	946	1138	1260	1422	1570	2274	2514
10,000	586	654	880	980	880	980	1172	1306	1462	1632	2340	2608
11,000	626	712	940	1068	940	1068	1252	1424	1562	1778	2502	2846
12,000	660	760	990	1140	990	1140	1316	1518	1644	1896	2632	3034
13,000	676	784	1012	1176	1012	1176	1350	1566	1684	1956	2696	3130
14,000	682	796	1024	1192	1024	1192	1366	1590	1706	1984	2726	3176
15,000	690	806	1038	1210	1038	1210	1382	1612	1726	2014	2762	3224
Class 6												
$1,000	120	120	178	180	178	180	238	240	294	298	472	476
$2,000	220	216	330	324	330	324	438	430	546	538	874	858
$3,000	320	310	478	466	478	466	638	622	796	774	1274	1240
$4,000	412	398	618	594	618	594	822	792	1024	988	1640	1580
$5,000	476	458	716	674	716	674	954	896	1190	1120	1904	1792
$6,000	512	492	768	738	768	738	1022	980	1278	1224	2042	1958
$7,000	538	522	808	786	808	786	1074	1046	1340	1304	2144	2086
$8,000	562	554	844	832	844	832	1126	1108	1402	1384	2248	2214
$9,000	572	564	858	848	858	848	1142	1130	1426	1410	2280	2256
$10,000	588	586	882	880	882	880	1176	1172	1468	1464	2348	2342
$11,000	632	636	948	960	948	960	1262	1276	1576	1596	2520	2552
$12,000	666	682	998	1022	998	1022	1330	1362	1660	1702	2656	2722
$13,000	682	704	1022	1054	1022	1054	1362	1404	1704	1754	2724	2806
$14,000	690	714	1036	1072	1036	1072	1380	1428	1724	1780	2758	2850
$15,000	700	724	1050	1086	1050	1086	1398	1446	1748	1808	2794	2892

(1) Option 1: Burglary only.
Option 2: Robbery only.
Option 3: A combination of options 1 and 2 in uniform or varying amounts.
(2) See discount page for applicable multipliers and discounts.

(f) If the premises are protected by an acceptable burglar alarm system, class E safe, supervised safe alarm system, holdup alarm or armored car service, premium discounts shall be permitted as follows (Note: Multiply the burglary or robbery premium by the appropriate factor.):

(1) *Burglary credits.*

Premises, alarm system	Safe Alarmed		Safe Not Alarmed	
	Class E or better	Other safe	Class E or better	Other/ none
None	.80	.95	.85	1.00
Local	.70	.75	.75	.90
Silent	.65	.75	.70	.80
Central				
—Without guard	.60	.70	.65	.75
—With guard	.55	.65	.60	.70

(2) *Robbery credits.*

Protective service		
Holdup buttons	Armored car	None
Yes	.85	.90
No	.95	1.00

(3) *Package discount.* Apply a factor of .90 to the total premium if both burglary and robbery are purchased.

These amendments are issued under 12 U.S.C. 1249bbb-17.

Harold T. Duryee,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 88-216 Filed 1-8-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 87-25]

Actions To Adjust or Meet Conditions Unfavorable To Shipping in the United States/Taiwan Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; enlargement of time to comment.

SUMMARY: The Commission initiated this proposed rulemaking by Federal Register Notice of December 8, 1987 (52 FR 46505), and established January 7, 1988 as the date comments were due. Orient Overseas Container Line (OOCL) and Yang Ming Marine Transport Corporation (Yang Ming) have now filed separate requests to extend the time for comments for 60 days until March 7, 1988. Both OOCL and Yang Ming cite the complexity of legal and factual issues in the proceeding and the progress of ongoing discussions to resolve these issues. The Departments of State and Transportation have informally advised that they support the requests. The Department of Transportation reports that the Coordination Council for North American Affairs in Taipei has agreed to confirm in writing that they have accepted the position of the American Institute in Taiwan on dockside equipment and port container terminal licenses, the subjects of the Commission's proposed rulemaking. Similarly, and because of the substantial progress which has been and continues to be made on these issues, two U.S.-flag carriers American President Lines, Inc. and Sea-Land Service, Inc., have also informally indicated that they do not oppose a reasonable extension of time. Therefore, for good cause shown, the request for an enlargement of time will be granted.

DATE: Comments due on or before March 7, 1988.

ADDRESS: Joseph C. Polking, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-402 Filed 1-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, and 76

[MM Docket No. 84-1296]

Implement the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing reply comments in response to the *Further Notice of Proposed Rule Making* in MM Docket No. 84-1296. This Notice requests comments regarding the signal availability measures used in the effective competition standard for cable rate regulation. The City of Dubuque, Iowa, requested the extension of time.

DATES: Reply comments are due January 4, 1988.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Extension of Time to File Comments

Adopted: December 17, 1987.

Released: December 18, 1987.

By the Chief, Mass Media Bureau:

1. On April 11, 1985, the Commission adopted a *Report and Order (Order)* in MM Docket No. 84-1296, 50 FR 18637 May 2, 1985, amending its rules to implement certain provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, Section 1 *et seq.*, 98 Stat. 2779 (1984)). In this *Order*, the Commission, *inter alia*, defined the circumstances and conditions under which cable franchising authorities may regulate the rates charged by cable operators for "basic cable service." As part of this action, the Commission permitted local rate regulation in those circumstances where cable systems do not face "effective competition." The Commission determined that effective competition for a cable system exists where any three off-the-air television signals were available in the cable community.

2. In *American Civil Liberties Union v. FCC*, Slip op. No. 85-1666 (D.C. Cir., July 17, 1987), the U.S. Court of Appeals ruled that the standard for signal availability in the effective competition test was arbitrary and capricious and remanded the issue to the Commission for a reasoned explanation of the chosen standard or the development of a new standard. As a result of that ruling, the Commission issued a *Further Notice of Proposed Rule Making (Notice)* 52 FR 36802, October 1, 1987, to reexamine the signal availability standard currently embodied in the rules. Comment due dates for this *Notice* were set at November 4, 1987, for initial comments and November 19, 1987, for reply comments.

3. On October 22, 1987, (52 FR 44997, Nov. 24, 1987) the Bureau granted an extension of time in which to file comments that were requested by the Association of Independent Television Stations, Inc., the National League of Cities, the Motion Picture Association of America, the Satellite Broadcasting and Communications Association, and the Massachusetts Community Antenna Television Commission. The period for filing comments was extended to December 4, 1987, for comments and December 21, 1987, for reply comments.

4. On December 16, 1987, the City of Dubuque, Iowa ("City"), filed a motion for further extension of time in which to file reply comments in this proceeding. Petitioner seeks additional time to study the record in order to prepare reply comments on the various issues raised and coordinate them with City officials. Petitioner specifically requests that the due date for reply comments be extended to January 4, 1988.

5. We recognize the significance of the effective competition standard in the regulation of the cable industry. Indeed, the standard is central to the determination of whether or not cable rates are regulated by local franchising authorities. Given the importance of this issue to cable operators, cable franchising authorities and the public, and in the interest of obtaining a more complete record in this matter, we believe it would be beneficial to provide the additional time sought by the petitioner. Thus, we will extend the filing dates for reply comments as requested.

6. Accordingly, it is ordered that the date for filing reply comments in response to the above-referenced *Further Notice of Proposed Rule Making* are extended to January 4, 1988. This action is taken pursuant to authority provided in Section 4(i) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's rules.

7. For further information concerning this proceeding, contact Judith Herman, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-344 Filed 1-8-88 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; Nonprofit Organizations

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to DFARS 215.972 to increase the Government's protection on contracts with nonprofit organizations.

DATE: Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before March 11, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87-121 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Owen Green, Acting Executive Secretary, DAR Council, ODASD (P) DARS, c/o OASD (A&L) (MR&S), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Acting Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

A DoD Inspector General report (No. 86-062, February 4, 1986), disclosed a number of problems in regard to contracting with nonprofit organizations. It was found that some nonprofit organizations had built up reserves that were in excess of current operating requirements or future investment plans. Furthermore, the Government's right to assets had not been adequately protected. To correct these problems, revisions are being proposed DoD policies on profit and sponsorship agreements.

B. Regulatory Flexibility Act Information

The proposed change to DFARS 215.972 should not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it applies only to nonprofit organizations. An Initial Regulatory Flexibility Analysis has been prepared and has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from that office. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any new information collection requirements.

List of Subjects in 48 CFR Part 215

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

January 6, 1988.

Therefore, it is proposed that 48 CFR Part 215 be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 215.972-1 is amended by revising paragraph (b) to read as follows:

215.972-1 Procedures for establishing fee objectives.

* * * * *

(b) The contracting officer shall consider the contractor's need for fee in assigning a profit value for the performance risk factor. Such consideration shall include the contractor's retained earnings, as established under generally accepted accounting methods, that are relatable to earnings on previous work performed for DoD. The contractor's need for fee may be based on facilities capital plans, working capital requirements, contingency funding, and for funding unreimbursed costs deemed ordinary and necessary. The contracting officer should also take into account income earned on investments made from the retained earnings.

[FR Doc. 88-450 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Parts 225 and 252

Department of Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering revisions to the DoD Federal Acquisition Regulation Supplement (DFARS) at 225.7002 and 252.225-7010 to provide a method for determining the current incentive reflective price for representative types and grades of domestic wools, and to update the terminology and categories to reflect current wool availability, marketing practices and industry techniques. The proposed changes will ensure that the incentive price is kept current without any need for an annual review for possible change to the DFARS, and with current categories and terminology in use, comparison will be facilitated as obsolete distinctions and categories are eliminated.

DATE: Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before March 11, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 85-276 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Owen Green, Acting Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Acting Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 225.7002(c)(6) and DFARS 252.225-7010 need to be updated. In each solicitation for supplies containing wool, an evaluation factor must be inserted in DFARS 252.225-7010, the required clause, which is based on the current incentive price established by the Secretary of Agriculture as set forth in DFARS 225.7002(c)(6). If the low offer involves an item containing foreign wool, the offer may be accepted if the current domestic market price of wool is more than 10 percent higher than the incentive reflective price in DFARS 225.7002(c)(6) and, if after adding the evaluation factor in the clause to the foreign item, the foreign offer is still low.

The incentive reflective prices in DFARS 225.7002(c)(6) are not based on the current incentive price established by the Secretary of Agriculture. Further, the types and grades of wool reported in the "Market News," the publication cited in the Domestic Wool Preference Clause for determining the current market price, are not the same as those used for incentive reflective prices in DFARS 225.7002(c)(6). Also, there are now less than half the number of wool types and grades in the current Market News as there were when the DFARS coverage was written. As such, it is necessary to change these sections to reflect the current categories of wool.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the proposed revisions do not change the basic requirement for applying an evaluation factor. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

January 6, 1988.

Therefore, it is proposed that 48 CFR Parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002 is amended by revising paragraph (c)(6) to read as follows:

225.7002 Restriction on food, clothing, fabrics, and specialty metals.

* * * * *

(c) *Preference for domestic wool.*

* * * * *

(6) The evaluation factor to be used under paragraph (c)(5) of this section will be 10% of the average of the following prices of representative grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price [1] per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News".)

[1] Use the current incentive (support) price as established by the Secretary of Agriculture.

REPRESENTATIVE GRADE

	Price clean basis per pound dollars
Category 1—Grades 60's and finer	
The average of the following grades:	
64's	(1)
62's	(1)
60's	(1)
Category 2—Grades 58's and below	
The average of the following grades:	
58's	(1)
56's	(1)

REPRESENTATIVE GRADE—Continued

	Price clean basis per pound dollars
54's	(1)

[1] The price clean basis for each grade is derived by dividing the current incentive price by the first of the two grease percentages for the applicable grades (for which prices are reported) listed in the 4 issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals. For solicitation purposes, the evaluation factor shall be computed on the basis of the 4 issues of the "Market News" immediately preceding the issuance of bids or proposals, and adjusted at the time of the opening/closing date of the solicitation if the incentive reflective prices change during the interim.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225-7010 is revised to read as follows:

252.225-7010 Domestic wool preference.

As prescribed at 225.7002(c)(3), insert the following provision:

Domestic Wool Preference (Date)

(a) It is Congressional policy that, in Department of Defense procurement, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or the closing date of requests for proposals, the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals) is not more than ten percent (10%) above the average of the prices (for usable grades) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is one hundred percent (100%) domestic wool: *Provided*, That such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or the closing date of requests for proposals, the average market price of domestic wool of usable grades (as reported by grade in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of the closing date of requests for proposals) is more than ten percent (10%) above the average of the prices (for usable grades) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) of this clause, there will be added to each bid or proposal offering articles of which the wool component is one hundred percent (100%) foreign wool, an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For these purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative grades set forth in DOD FAR Supplement 225.7002(c)(6) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in 225.7002(c)(6) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuring manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) of this clause, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

The evaluation factor is subject to adjustment at the opening/closing date for receipt of bids/proposals in accordance with DOD Federal Acquisition Regulation Supplement 225.7002(c)(6).

(End of provision)

[FR Doc. 88-451 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 72171-7271]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that U.S. fishermen who wish to fish with pot gear

to groundfish other than sablefish, in the Gulf of Alaska are being unnecessarily constrained. NOAA proposes that current regulations restricting fishing with pot gear for all groundfish species be amended to only restrict fishing for sablefish with pot gear. This amendment is necessary to relieve an overly burdensome gear restriction on U.S. fishermen, while maintaining the Council's groundfish management regime. It is a conservation and management measure intended to facilitate an orderly fishery while carrying out the Council's recommended allocation objectives in the sablefish fishery.

DATE: Comments are invited until January 26, 1988.

ADDRESS: Comments may be sent to Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic anf foreign groundfish fisheries in the exclusive economic zone (EEZ or 3–200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

On September 26, 1985, the Secretary approved Amendment 14 to the FMP, which the Council had adopted at its May 21–24, 1985, meeting. One of the parts of Amendment 14 concerned allocation of sablefish among hook-and-line, trawl, and pot gear types. Specific language in the FMP (section 8.3.1.1), as recommended by the Council and approved by the Secretary in Amendment 14, reads as follows:

(E) Sablefish Gears and Allocations

(1) *Eastern Area* (a) Legal Gear. Legal gear for the taking of sablefish are trawls and hook and lines; (b) Allocation of Sablefish Between Gears. From 1986 forward, vessels using hook-and-line gear shall be permitted to take up to 95 percent of the OY for sablefish. Vessels using trawl gear shall be permitted to harvest up to 5 percent of the optimum yield for sablefish.

(2) *Central Area* (a) Legal Gear. In 1986, legal gears for the taking of sablefish are trawls, hook and lines, and pots. In 1987, and thereafter, legal gears shall be trawls and hook and lines. (b) Allocation of sablefish between gears. In 1986, vessels using hook-and-line gear shall be permitted to take up to 55 percent of the sablefish OY; vessels using pot gear shall be permitted to take up to 25 percent of the OY; and trawl vessels shall be permitted to take up to 20 percent of the OY. In 1987 and thereafter, vessels using hook-and-line gear shall be permitted to take up to 80 percent of the sablefish OY; and vessels using trawl gear shall be permitted to take up to 20 percent of the OY.

(3) *Western Area* (a) Legal Gear. In 1986, 1987, and 1988, legal gears for the taking of sablefish are hook and lines, pots, and trawls. In 1989 and thereafter, legal gears shall be trawls and hook and lines. (b) Allocation of sablefish between gears. In 1986, 1987, and 1988, vessels using hook-and-line gear shall be permitted to take up to 55 percent of the OY for sablefish; vessels using pot gear shall be permitted to take up to 25 percent of the OY; and vessels using trawls may take up to 20 percent of the OY. In 1989 and thereafter, vessels using hook and lines may take up to 80 percent of the OY, and vessels using trawls may take up to 20 percent of the OY.

The above text from the FMP clearly shows that the Council intended Amendment 14 to restrict gear in the sablefish fishery, only. However, the regulation adopted by the Council at its May 21–24, 1985, meeting varied from the FMP text. This regulation was approved by the Secretary and implemented with Amendment 14 (see 50 FR 43193, October 24, 1985). That final rule modified § 672.24(b) (1) and (2) and was subsequently changed by the final rule that implemented Amendment 15 (52 FR 7868, March 13, 1987; corrected at 52 FR 12183, April 15, 1987). Section 672.24(b) currently prohibits the use of gear other than hook-and-line and trawl gear when fishing for groundfish in the Eastern and Central Regulatory Areas. In the Western Regulatory Area, no person may use any gear other than hook-and-line, pot, or trawl gear in fishing for groundfish during 1987 and 1988.

The use of the word "groundfish" instead of "sablefish" in § 672.24(b)(1) and (2) is more restrictive than the FMP text adopted by the Council and approved by the Secretary. The effect of the current regulation at § 672.24(b)(1) and (2) is to limit legal gear types in the Eastern and Central areas of the Gulf of Alaska to hook and lines and trawls, when fishing for any groundfish species, and to completely prohibit pot gear after 1988 when fishing for all groundfish, not just sablefish.

The current gear prohibition for groundfish other than sablefish is a cost to fishermen. One vessel operator was cited by NMFS when he was found using pots in the Central Regulatory Area in violation of the current regulation. As a result, the discrepancy between the FMP and current regulations has come to light. The Regional Director, Council members, and other interested individuals and organizations have received complaints from fishermen who want to use pots when fishing for certain groundfish species other than sablefish, especially Pacific cod. Council staff has reviewed the administrative record, including recorded oral testimony underlying Amendment 14, and affirms that nothing in the record requires the Secretary to interpret the FMP to prohibit the use of pot gear for fishing for any groundfish species except sablefish.

To review options for resolving this issue, the Council's Interim Action Committee conducted a teleconference on November 16, 1987. Participating Council and Advisory Panel members and fishing industry representatives in Kodiak, Sitka, and Seattle reviewed the current regulation during the teleconference and confirmed their understanding that the Council meant to adopt a regulation to prohibit the use of gear other than hook-and-line and trawl gear in the Eastern Regulatory Area, and hook-and-line, trawl, and pot gear in the Central and Western Regulatory Areas, when fishing for sablefish, phasing out the remaining use of pots for sablefish in the Gulf of Alaska after 1988. It meant to continue to allow these three gear types when fishing for other groundfish species. In the teleconference, the Council members present voted unanimously with one abstention to recommend that the Secretary correct the situation as expeditiously as possible by amending the regulation. At its meeting on December 8–11, 1987, the Council voted unanmiously that it intended to allow the use of pot gear for groundfish other than sablefish.

The Secretary, through his designee, has reviewed this issue. He concurs that the regulation as it now reads is not required by the FMP text and is overly burdensome on fishermen who might wish to fish with pots for groundfish other than sablefish. It is especially burdensome to fishermen who fish for crabs with pots in the Central Regulatory Area. About 20 fishermen have expressed an interest to fish for groundfish with pots in the EEZ, as they have for crab, rather than refit their vessels for hook-and-line fishing. The cost of outfitting their boats with hook-and-line gear is about $12,000 per vessel. Since these fishermen already own pots, their incremental expenses would relate to maintenance only. Many of them have stated that they will commence pot fishing as soon as it becomes legal. To maintain the current prohibition against pot fishing for fish other than sablefish would be an unnecessary cost of these fishermen. This rule proposes to amend § 672.24(b)(1) and (2) to allow fishermen to use pots in the Gulf of Alaska while fishing for groundfish other than sablefish.

Since pots are not a legal gear type for sablefish in the Eastern and Central Regulatory Areas, bycatches of sablefish can not be retained. Pots will not be a legal gear type in the Western Regulatory Area after 1988, and bycatches of sablefish can not be retained in that area after that year. The Secretary is not proposing a retainable bycatch of sablefish for pot gear as is provided for trawl gear. Sablefish are in good physical condition when caught in pots and, therefore, the survival rate of discarded sablefish is expected to be high. Sablefish caught in trawl gear do not survive well, due to the stress of compression in a moving trawl. The Secretary finds that a retainable sablefish bycatch in the pot fishery is not necessary, because little incidental mortality occurs during pot fishing.

Fishermen have expressed an interest in using pot gear when fishing for Pacific cod, which is a groundfish species especially abundant in the Central and Western Regulatory Areas, where the continental shelf is broad and affords good habitat for Pacific cod. Due to the narrowness of the continental shelf in the Eastern Regulatory Area, Pacific cod stocks are not abundant. Potential conflicts between pot and hook-and-line gears in the sablefish fishery, which occurs over a narrow continental slope area, were part of the problem addressed in Amendment 14. No gear conflict is likely as a result of this rule because of: (1) The intensive nature of the sablefish hook-and-line fishery, which usually attains its apportionment in only 5–6 weeks; (2) the wide area of continental shelf that pot fishermen may use in the Gulf of Alaska to fish for other species, and (3) the small number of pot gear fishermen who have expressed the desire to participate. In particular, gear conflicts between pot and hook-and-line gears are not expected to be a problem in the Pacific cod fishery in the Western and Central Regulatory Areas, because fishermen using pot gear will be able to fish over a larger area and avoid gear conflicts with those fishing hook and line gear.

Other species groups that may be harvested by pot gear are rockfish, including Pacific ocean perch, and thornyhead rockfish. These occur in deeper water than Pacific cod. In theory, pots could be used to fish for these species and could create gear conflicts with hook-and-line fishermen fishing for sablefish. As a practical matter, the Secretary believes that the likelihood of actual gear conflict is small, because few fishermen have expressed an interest in fishing for rockfish species with pots. In addition, the sablefish hook-and-line fishery is executed over a short time period, which would reduce the chances for gear conflicts should interest in pot fishing for rockfish species increase in the future.

Classification

This rule is proposed under authority of section 305(c)(3) of the Magnuson Act. For reasons stated above, the Administrator of NOAA has determined that this proposed rule appears to be necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and consistent with the Magnuson Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Administrator of NOAA has determined that this is not a major action requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities, because the action relieves a regulatory burden on them. Fishermen already possessing pot gear will be able to use that gear to fish for groundfish species other than sablefish, rather than having to refit their vessels with hook-and-line gear at an estimated cost of $12,000. Any sablefish caught in pots in a restricted regulatory area of the Gulf of Alaska must be returned to the sea. No biological effect on the sablefish resource is anticipated because of the nearly 100 percent survival of sablefish released from pots.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: January 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.24, paragraphs (b)(1) and (2) are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) * * *

(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (b)(3)(ii) of this section. Vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) Central and Western Areas. During 1987 and 1988 in the Western Area, hook-and-line gear may be used to take up to 55 percent of the TAC for sablefish; pot gear may be used to take up to 25 percent of that TAC; and trawl gear may be used to take up to 20 percent of that TAC. Beginning with 1987 in the Central Area and 1989 in the Western Area, hook-and-line gear may be used to take up to 80 percent of the sablefish TAC in each area and trawl gear may be used to take up to 20 percent of that TAC. Vessels using gear types other than hook and line and trawl in the Central Regulatory Area, and vessels using gear types other than hook and line and trawl gear in the Western Regulatory Area after 1988, must treat any catch of sablefish in these areas as a prohibited species.

* * * * *

[FR Doc. 88-436 Filed 1-8-88; 4:32 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 6
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Marketing Quotas for Fire-cured (Type 21), Fire-cured (Types 22–23), Dark Air-cured (Types 35–36), Virginia Sun-cured (Type 37), and Cigar-filler and Cigar-binder (Types 42–44; 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: the Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1988, national marketing quotas for fire-cured (types 21–23) and dark air-cured (types 35–360 tobaccos for the 1988–89, 1989–90, and 1990–91 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42–44; 53–55) kinds of tobacco for the 1988–89 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATE: Comments must be received on or before February 10, 1988, in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736, South Building, P.O. Box 2415, Washington, DC 20013 (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that the implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to fire-cured (types 21–23) and dark air-cured (types 35–36) tobaccos, the Secretary of Agriculture must proclaim by March 1, 1988, the respective national marketing quotas for the 1988–90, and 1990–91 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, referenda of farmers engaged in the 1987 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For fire-cured and dark air-cured tobacco the 1987–88 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and cigar-binder (types 42–44, 53–55) tobaccos for the 1988–89 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for approximately 3 percent of the total U.S. tobacco production.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of March 1988, with respect to kinds of tobacco specified in this notice of proposed determination, the amount of the national marketing quota which will be in effect for the 1988–89 marketing year in terms of the total quantity to tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1988–89 national marketing quota may, not later than March 1, 1988, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting

the total supply to the reserve supply level.

The aggregate reserve supply level for the 1987–88 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 245 million pounds (52 FR 33453). The proposed reserve supply level for the 1988–89 marketing year will range between 210 million and 270 million pounds. The aggregate total supply for the 1987–88 marketing year is 251 million pounds based on carryover of 210 million and production of 41 million pounds.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kinds of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of a national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion through county committees the national acreage allotment to tobacco producing farms (less a reserve not to exceed 1 percent thereof for new farms, and for making corrections and adjusting inequities in old farm allotments) among old farms.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1988–89 marketing

1. With respect to fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured, and cigar-filler and binder (types 42–44; 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 210 and 270 million pounds;

b. The amount of the national marketing quota for each kind of tobacco for the 1988–89 marketing year, within an aggregate range of 40 million-70 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 100 and 500 acres.

2. With respect to fire-cured and dark air-cured tobaccos:

a. The date(s) or period(s) of the referenda for determining whether quotas will be in effect for the 1988–89, 1989–90, and 1990–91 marketing years for such kinds of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Authority: Secs. 301, 312 and 313, 52 Stat. 38, as amended, 46, as amended, and 47, as amended (7 U.S.C. 1301, 1312 and 1313).

Signed at Washington, DC on January 5, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–386 Filed 1–8–88; 8:45 am]

BILLING CODE 3410–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 2:00 to 5:00, on Wednesday, January 20, 1988, to take place in the Hilton Hotel, 255 Courtland Street NE., Atlanta, Georgia 30043.

Item on the Agenda:
Recommendations from the ATBCB Organization and Management Study.

DATE: Wednesday, January 20, 1988, 2:00 to 5:00 p.m.

ADDRESS: Hilton Hotel, 255 Courtland Street NE., Atlanta, Georgia 30043.

FOR FURTHER INFORMATION CONTACT: Barbara Gilley, Administrative Officer, (202) 245–1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 88–418 Filed 1–8–88; 8:45 am]

BILLING CODE 8820–BP–M

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Agriculture et al.; Application for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 87–28239 page 46638 in the **Federal Register** of December 9, 1987, the date of March 14, 1987 appearing in column 3 lines 32, 41 and 50 should read May 14, 1987.

On page 46639, column 2 lines 4 and 5 are corrected to read: *Application Received by Commissioner of Customs:* November 3, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–436 Filed 1–8–88; 8:45 am]

BILLING CODE 3510–DS–M

Withdrawal of Application for Duty-Free Entry of Scientific Instruments; The Massachusetts Eye and Ear Infirmary

The Massachusetts Eye and Ear Infirmary has withdrawn Docket Number 87–158, an application for duty-free entry of an electron microscope. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–437 Filed 1–8–88; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review on Certain Tubular Products; Request for Comments

January 4, 1988

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.–EC Pipe and Tube Arrangement, Article 8 of the U.S.-Mexico Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel

Products, with respect to certain oil country tubular goods.

EFFECTIVE DATE: Comments must be submitted no later then January 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Pipe and Tube Arrangement, Article 8 of the U.S.-Mexico Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the United States determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain seamless oil country tubular goods, with heavy upsets, in A.P.I. grades L-80 and P-110, ranging from 7.0 to 9.625 inches in diameter and weighing 29.0 to 53.5 pounds per foot.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than January 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 4, 1988.

[FR Doc. 88-435 Filed 1-8-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Charter for Advisory Committee on Integrated Long-Term Strategy

ACTION: Extension of charter for Advisory Committee on Integrated Long-Term Strategy.

SUMMARY: Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the charter for the Advisory Committee on Integrated Long-Term Strategy has been amended to extend the life of the Committee from 18 to 24 months, until October 24, 1988, as allowed under the Act.

The Advisory Committee on Integrated Long-Term Strategy serves the public interest by providing the Secretary of Defense and the President's National Security Advisor with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense, and theater warfare, including conventional war.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 5, 1988.

[FR Doc. 88-401 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 5, 1988; Tuesday, January 12, 1988; Tuesday, January 19, 1988; and Tuesday, January 26, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meeting have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D284, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

January 6, 1988.

[FR Doc. 88-452 Filed 1-8-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Institute of Technology Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting at 9 a.m. on 2 March 1988, in the Commandant's Conference Room (ten seats available), building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the subcommittee the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Major Ann Lisa Piercy-Pont, Chief, Evaluation and Technology, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255-5760 or 5480.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 88-373 Filed 1-8-88; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors

21 December 1987.

The Air University Board of Visitors will hold an open meeting on 10-13 April 1988 at Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 293-5157.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

FR Doc. 88-374 Filed 1-8-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 28 January 1988 at the Sheraton Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 14 January 1988.

Date: December 28, 1987.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-375 Filed 1-8-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Policy Change Concerning Trip Leasing

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense (DOD).

ACTION: The Department of Defense is proposing to prohibit the use of trip-leased equipment and drivers to transport DOD freight.

SUMMARY: Current DOD policy prohibits the use of trip-leased equipment for transporting shipments requiring a Transportation Protective Service. The DOD proposes to prohibit short-term trip leases for all shipments. It is essential that DOD have control over all shipments and will no longer tender shipments to carriers on trip leases without specific authorization by MTMC. The vehicles used must be owned or leased under a valid agreement by the company transporting the shipment, and the vehicle drivers must be full-time employees or under the direct control and responsibility of that company. The lease must be for a minimum of 30 days.

DATE: Comments must be received on or before 22 February 1988.

ADDRESS: Comments should be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT-INFF, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Kuhn, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041-5050, (202) 756-1887.

SUPPLEMENTARY INFORMATION: Service is the primary concern when shipping Government freight. The Freight Carrier Performance Program was established by MTMC to ensure a satisfactory level of service is provided by carriers transporting DOD freight. Since the Interstate Commerce Commission has allowed for the expanded use of trip leasing, the majority of serious service complaints concerned trip-leased loads. Among the major concerns are the loss of control by the authorized carrier, the susceptibility for payment disputes between the lessor and the lessee leading to delay or loss of DOD freight, and the carrier's lack of adequate screening of trip-leased drivers.

Leasing of equipment is only acceptable when it is on a long term basis. To be considered a long-term lease, the lease must be in writing, signed by the lessor and lessee, and must not contain a provision authorizing cancellation by either party on less than 30 days notice. In addition, the lease must provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of liability. The leased equipment may not be further leased or subject to any other carrier for the duration of the lease. Any exceptions to this rule must be approved by MTMC and will only be approved on a movement-by-movement basis.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88-376 Filed 1-8-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132]

Notice Inviting Applications for New Awards Under the Centers for Independent Living Program for Fiscal Year 1988

Purpose: Provides grants to State vocational rehabilitation agencies, local public agencies, or private nonprofit organizations for the support of centers for independent living.

Deadline for Transmittal of Applications: April 1, 1988 for designated State units, and May 2, 1988 for local public agencies or private nonprofit organizations.

Deadline for Intergovernmental Review Comments: July 6, 1988.

Applications Available: February 1, 1988.

Available Funds: $1,180,000.

Estimated Range of Awards: $150,000-$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 6.

Project Period: 36 months.

Applicable Regulations: (a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and (b) the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(1), the Secretary especially urges the submission of fiscal year 1988 applications for new projects that respond to one or both of the following

invitational priorities: (1) to provide services which assist individuals with severe handicaps to make the transition from school or institution to work and community living; and (2) to serve a broad range of disability groups. However, an application submitted under this notice that meets an invitational priority will not be given preference over other applications. The principal eligible applicants under this program are designated State vocational rehabilitation units. Awards may also be made to local public agencies or private nonprofit organizations within a State, if the designated State unit has not submitted an application within three months after the Secretary begins accepting new applications in any fiscal year. In addition, pursuant to 29 U.S.C. 711(h) and 34 CFR 75.105(c)(2)(i), a competitive preference will be given those applications that demonstrate that the proposed project will serve geographic areas which are currently not served or are underserved by independent living centers. This competitive preference will be implemented by awarding those applications that meet this priority in a particularly effective way up to 20 additional points to those earned by the applicant under 34 CFR 366.31.

For Applications or Information Contact: Deidre A. Davis, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3328 Mary E. Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1326.

Program Authority: 29 U.S.C. 796e.

Dated: December 23, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 88–419 Filed 1–8–88; 8:45 am]

BILLING CODE 4000-10-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Amendment to Notice.

SUMMARY: This document is intended to notify the general public of a change to the notice of a meeting of the National Advisory Council on Indian Education as published on December 15, 1987, on Page 47827, Vol. 52, No. 240 of the **Federal Register.**

The location and agenda remain the same, except that the full council will meet in closed session on January 19, 1988, from approximately 6:30 a.m. until approximately 9:30 a.m.

The Council will meet in closed session to discuss personnel matters. These discussions will relate solely to the internal personnel rules and practices of the Department and will touch upon matters that would disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Date: December 28, 1987.

Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88–443 Filed 1–8–88; 8:45 am]

BILLING CODE 4000-01-M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee of Student Financial Assistance. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 25, 1988 beginning at 9:00 a.m. and ending 9:00 p.m.; and January 26, 1988 beginning at 9:00 a.m. and ending at 5:00 p.m. A portion of the meeting will be closed on January 25, 1988 from 5:00 until 9:00 p.m.

ADDRESSES: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Robert E. Jamros, Special Assistant to the Assistant Secretary for Postsecondary Education, Office of Postsecondary Education, U.S. Department of Education, Room 4062, ROB3, 400 Maryland Avenue SE., Washington, DC 20202 (202) 732–3547.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The meeting of the Advisory Committee will be closed to the pubic from 5:00 p.m. until 9:00 p.m. on January 25, 1988 to review applications and interview canditates for the position of Staff Director of the Committee. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(6). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Briefings on the Advisory Committee's role by Majority and Ranking Minority members of the Senate Subcommittee on Education, Arts, and Humanities and of the House of Representatives Subcommittee on Postsecondary Education;

—Review and selection of applicants for the position of Staff Director;

—Briefings on the need analysis formulae by the U.S. Department of Education, the Need Analysis Committee of the National Association of Student Financial Aid Administrators, the College Scholarship Service, the American College Testing Program, the Pennsylvania Higher Education Assistance Agency, and the Illinois State Scholarship Commission.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4062, 7th and D Streets SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

Dated: January 5, 1988

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88403 Filed 1–8–88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer:

RTD/SD (EU)–61, for the retransfer of 17 irradiated fuel rods from Kraftwerk Union, Karlstein, the Federal Republic of Germany to Switzerland for storage with irradiated power reactor fuel assemblies at the Gosgen reactor site. The fuel rods contain 30,706 grams of uranium enriched to 1.88 percent in the isotope uranium-235 and 287 grams of plutonium.

In the accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–426 Filed 1–8–88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Switzerland to the United Kingdom (British Nuclear Fuels, Ltd.) for the purpose of reprocessing, 20 irradiated fuel assemblies, containing approximately 8,785 kilograms of uranium, enriched to approximately 1.03% in U–235 and 83 kilograms of plutonium, from the Beznau nuclear power station. This subsequent arrangement is designated as RTD/EU (SD)–66. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee of Foreign Affairs of the House of Representatives and the Committee of Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–427 Filed 1–8–88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–143, for the transfer of fuel elements containing 281 grams of uranium, enriched to approximately 92.53 percent in the isotope uranium-235 from Hanau, the Republic of Germany to Sweden, for use as fuel for the R–2 reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–428 Filed 1–8–88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order with Phillips Petroleum Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order with opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Phillips Petroleum Company (Phillips) for $30,000,000. This agreement proposes to settle matters not previously resolved in the Consent Order with Phillips dated November 9, 1979, (44 FR 66984), and does not revoke or supersede the 1979 Consent Order for the period relating to Phillips' compliance with the federal petroleum price and allocation regulations prior to November 1, 1979.

DATE: February 10, 1988.

ADDRESS: Send comments to: Phillips Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8900.

SUPPLEMENTARY INFORMATION: On December 18, 1987, the ERA executed a proposed Consent Order with Phillips. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice.

Comments should be addressed to: Phillips Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant comments, as well as any other considerations that were relevant to the decision.

I. Background

Phillips is a petroleum refiner and a producer subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order, Phillips engaged in, among other things, the production, sale, and refining of crude oil. On November 9, 1979, Phillips and DOE entered into a Consent Order (hereinafter 1979 Consent Order) which settled all claims and disputes against Phillips by DOE for the period March 5, 1973, through October 31, 1979, with respect to the statutory and regulatory petroleum programs administered and enforced by DOE and its predecessor agencies. The 1979 Consent Order also addressed certain aspects of Phillips' compliance with ongoing DOE programs following the period covered by the 1979 Consent Order.

Following the 1979 Consent Order, DOE conducted an audit of Phillips' compliance with the federal petroleum price and allocation regulations for the period after October 31, 1979. As a result of this audit, DOE raised issues with respect to the sale of lower or upper tier crude oil in transactions which were related to transactions involving Phillips' acquisition of price-exempt crude oil. Specifically, on January 16, 1987, DOE issued a Proposed Remedial Order, Case No. RPHE00601, which alleged that during the audit period from November 1, 1979, through January 27, 1981, Phillips entered into contingent contracts with two crude oil resellers to sell certain quantities of price-controlled crude oil, certified as lower and upper tier, and the crude resellers agreed to sell Phillips equal volumes of entitlements-exempt foreign and domestic crude oil at prices substantially below market prices. The PRO alleges that, as a result, Phillips received prices in excess of those permitted in its sales of the controlled crude oil. The total excess consideration, or premiums, alleged in the PRO to have been unlawfully received by Phillips from the two resellers for the barrels of domestic price-controlled crude oil was $50,849,950, plus interest through November 30, 1986, of approximately $68 million. Phillips maintains, however, that its conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations, and with the terms of the 1979 Consent Order.

Moreover, Phillips argued that the potential liability for these transactions had been resolved by the 1979 Consent Order. DOE and Phillips disagree concerning the lawfulness of these transactions and the applicability of the 1979 Consent Order concerning these transactions, and each party believes that its respective position is meritorious. In order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions Phillips has agreed to enter into this Consent Order.

II. Consent Order

ERA has preliminarily agreed to the $30,000,000 settlement amount after assessing the litigation risks, including issues concerning the scope of the 1979 Consent Order provisions, and the time and expense required for the government to fully litigate every issue. Based on these factors, DOE has tentatively concluded that this Consent Order constitutes a satisfactory resolution of the matters covered therein and is in the public interest. Following execution of the proposed Consent Order, ERA has withdrawn the January 16, 1987 Proposed Remedial Order, but without prejudice unless the proposed Consent Order is not made final.

Except as specifically excluded, all pending and potential civil and administrative claims, or other proceedings by DOE allocation regulations for the period covered by this Consent Order, November 1, 1979, through the date of execution, would be resolved and extinguished by this proposed Consent Order.

DOE and Phillips have not resolved the pending litigation in *Aminoil USA, Inc.* v. *Department of Energy*, C.A. No. H–78–1702 (S.D. Texas), consolidated in *In Re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan). Therefore, the claims, counterclaims or defenses that are or may be asserted by DOE or Phillips with respect to the properties at issue in the Aminoil Stripper Well Litigation are excluded from the matters covered by this Consent Order.

Under the terms of the Consent Order Phillips is required to pay the sum of $30,000,000 within thirty (30) days of the effective date of the Consent Order and shall maintain records as are necessary to demonstrate compliance with the terms of this Consent Order. In addition, Phillips shall maintain certain records related to the transactions at issue in the January 16, 1987 Proposed Remedial Order to assist DOE in the distribution of the Consent Order proceeds.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures set forth in 10 CFR 205.9(f).

The Consent Order shall become effective as a final Order of the DOE upon notice of that effect being published in the **Federal Register**.

Issued in Washington, DC on this 5th day of January 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

Phillips Petroleum Company; Consent Order

I. Introduction

101. This Consent Order is entered into between Phillips Petroleum Company and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Phillips, as hereinafter defined, relating to Phillips' compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period November 1, 1979, through the date of execution hereof (hereinafter "the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order.") An earlier Consent Order (the "1979 Consent Order.") An earlier Consent Order (the "1979 Consent Order") was entered into between Phillips and DOE on November 9, 1979. This Consent Order does not revoke or supersede the 1979 Consent Order for the period relating to Phillips' compliance with the federal petroleum price and allocation regulations prior to November 1, 1979.

II. Jurisdiction, Regulatory Authority, and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 208 of the DOE Act, 42 U.S.C. 7138. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. The following definitions apply for purposes of this Consent Order:

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders, including the 1979 Consent Order, regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, ERA, the Office of Special Counsel ("OSC") and all predecessor and successor agencies.

c. "Phillips" includes (without limitation) Phillips Petroleum Company, and all of its subsidiaries, affiliates (including the acts of such companies before they were subsidiaries or affiliates), predecessors, successors in interest, and their petroleum–related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for paragraph 401, *infra*, officers, directors and employees of Phillips.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. Phillips is a "refiner" and a "producer" as those terms are defined in the federal petroleum price and allocation regulations and is subject to the jurisdiction of the DOE. During the period covered by the Consent Order, Phillips engaged in, among other things, the production, sale, and refining of crude oil.

302. On November 9, 1979, Phillips and DOE entered into a Consent Order which settled all claims and disputes against Phillips by DOE for the period March 5, 1973, through October 31, 1979, with respect to the statutory and regulatory petroleum programs administered and enforced by DOE and its predecessor agencies. The 1979 Consent Order also addressed certain aspects of Phillips' compliance with ongoing DOE programs following the period covered by the 1979 Consent Order.

303. Following the 1979 Consent Order, DOE conducted an audit of Phillips' compliance with the federal petroleum price and allocation regulations for the period after October 31, 1979. DOE has found no evidence that Phillips has committed any willful or intentional violations of the federal petroleum price and allocation regulations.

304. As a result of this audit, DOE has raised issues with respect to certain related purchases and sales of crude oil in which Phillips sold price-controlled crude oil to two resellers and purchased exempt crude oil from those resellers. On January 16, 1987, DOE issued a Proposed Remedial Order alleging that these transactions violated certain federal petroleum price and allocation regulations. Phillips maintains, however, that its conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations and with the terms of the 1979 Consent Order. DOE and Phillips disagree in several respects concerning the lawfulness of these transactions, and each party believes that its respective position is meritorious. However, in order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions, Phillips has agreed to enter into this Consent Order. The DOE believes that this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest. In consideration of the execution of this Consent Order, ERA agrees to withdraw the January 16, 1987 Proposed Remedial Order within five days of execution of this Consent Order, without prejudice to refiling in the event this Consent Order is not made final.

IV Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order an lieu of all other remedies which have been or might have been sought by the

DOE against Phillips for such matters under 10 CFR 205.199I or otherwise, Phillips shall pay a total of exactly thirty million dollars ($30,000,000.00) to DOE within 30 days of the effective date of the Consent Order. Payment shall be by wire transfer, pursuant to directions provided to Phillips by DOE.

V. Issues Resolved

501. Except as specifically excluded herein, all pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by DOE regarding Phillips' compliance with all federal petroleum price and allocation regulations for the period covered by this Consent Order, November 1, 1979, through the date of execution hereof, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Phillips by this Consent Order.

502. As of the date of execution of this Consent Order, the DOE and Phillips had not resolved the pending litigation in *Aminoil USA, Inc.* v. *Department of Energy*, C.A. No. H–78–1702 (S.D. Texas), consolidated in *In re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) (hereinafter the "Aminoil Stripper Well Litigation"). Accordingly, the claims, counterclaims or defenses that are or may be asserted by DOE or Phillips with respect to the properties at issue in the Aminoil Stripper Well Litigation are excluded from the matters covered by this Consent Order.

503(a). Except as otherwise provided herein, compliance by Phillips with this Consent Order shall be deemed by the DOE to constitute full compliance for all civil and adminstrative purposes with all federal petroleum price and allocation regulations for the matters covered by this Consent Order. In consideration of Phillips' performance as required under this Consent Order, DOE hereby releases Phillips completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including without limitation, claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Phillips for alleged violation of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Phillips or cause ¼or refer any such matter to be initiated or prosecuted, nor will DOE or any successor directly or indirectly aid in the initiation of any such administrative or civil matter against Phillips or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or judicial proceeding that Phillips has violated the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order or otherwise take any action with respect to Phillips in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

503(b). Except as otherwise provided, this Consent Order settles and finally resolves all aspects of Phillips' liability to the DOE under the federal petroleum price and allocation regulations for the matters covered by this Consent Order, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, where Phillips was the operator of a property that produced crude oil, the DOE shall not initiate or prosecute any efforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. However, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Phillips for noncompliance with the federal petroleum price and allocation regulations, including, for example, suits against operators for overchargers for crude oil when Phillips was or is a working interest or royalty interest owner in such crude oil production. Phillips and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Phillips' activities as a working interest or royalty interest owner on properties on which it was not or is not the operator. Futhermore, Phillips and DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Phillips was or is a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Phillips and the operator or any other working interest or royalty interest owner.

503(c). The DOE will not seek or recommend any criminal fines or penalties based on the information and evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal action, or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statue or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Phillips in any private action, including an action for contribution by or against Phillips.

503(d). With respect to the matters covered by this Consent Order, Phillips releases DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Phillips has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not cover or affect Philips' rights in all regards concerning claims under 10 CFR Part 205, Subpart V or its claims arising from alleged violations or settlements of alleged violations of federal petroleum price and allocation regulations by third parties. This release, moreover, does not preclude Phillips from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

505. Execution of this Consent Order constitutes neither an admission by Phillips nor a finding by the DOE of any violation by Phillips of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. The payment made by Philips pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, or forfeiture or as a payment in lieu of penalties, fines or forfeitures.

506. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Phillips but only if Phillips has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Phillips shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist the DOE in the distribution of the funds paid pursuant to this Consent Order, Phillips also shall maintain, until thirty (30) days after the DOE's final distribution of these funds, sales volume data and customers' names and addresses for the transactions at issue in the January 16, 1987 Proposed Remedial Order. If requested, Phillips shall make such information available to DOE. Except as otherwise provided in this paragraph, upon payment to DOE of the amount set forth in paragraph 404 of this Consent Order, Phillips is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relation to matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Phillips will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE regarding the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Phillips or obtained by DOE in its audit of Phillips as confidential and proprietary and will not disclose such information unless required to do so by law including a request by a duly authorized committee or subcommittee of Congress. If a request or damand for relese of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Phillips with ten (10) days' actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Phillips' compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice (DOJ) in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Phillips may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Phillips and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Phillips (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Phillips agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Phillips hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final Order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Phillips in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Phillips, Phillips may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of Phillips Petroleum Company.

Jay F. Lapin,

Counsel for Phillips Petroleum Company.

Dated: December 18, 1987.

I, the undersigned, a duly authorized representative of the Department of Energy, hereby agree to and accept the foregoing Consent Order on its behalf.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration, United States Department of Energy.

Dated: December 18, 1987.

[FR Doc. 88–425 Filed 1–8–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–61–NG]

Natural Gas Imports; Great Lakes Gas Transmission Co. and Peoples Natural Gas Co.; Joint Application to Reassign an Import Authorization Without Increasing the Volumes of Natural Gas Imported From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 28, 1987, of a joint application from Great Lakes Gas Transmission Company (Great Lakes) and Peoples Natural Gas Company Division of Utilicorp United, Inc. (Peoples) requesting that the volumes of natural gas that Great Lakes is

authorized to import from Canada be reduced by the amount it resells to Peoples, and that Peoples be authorized to import the gas directly. TransCanada PipeLines Limited (TransCanada) would remain the supplier of the gas and Great Lakes would transport it for Peoples. The authorized volumes of natural gas which the applicants seek to transfer from Great Lakes to Peoples is up to 4,052 mcf per day on a firm basis through October 31, 1990. In addition to the volumes transferred from Great Lakes, Peoples seeks authorization to import up to 2,900 Mcf per day of TransCanada overrun volumes over the same term on an interruptible basis for a total in import deliveries of up to 6,052 Mcf per day.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOD Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are to be filed no later than February 10, 1988.

FOR FURTHER INFORMATION CONTACT:

Stanly C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–9482

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) in FERC Docket No. CP–70–100 by order issued April 30, 1970 (43 FPC 653), authorized Great Lakes to import up to 5,000 Mcf per day of Canadian natural gas through October 31, 1990, of which up to 4,052 Mcf per day was authorized for resale to Peoples. For approximately the last two years, Great Lakes has encouraged Peoples and its other resale customers to negotiate pricing arrangements directly with TransCanada. This has resulted in signficantly lower prices and arrangements that include indices which adjust prices in accordance with market conditions. The lower prices have been incorporated into the gas purchase contract between Great Lakes and TransCanada dated October 9, 1970, as amended, under which Great Lakes purchases up to 4,052 mcf per day of natural gas from TransCanda for resale to Peoples. The applicants believe it is in their mutual interest for Peoples to purchase these volumes directly from TransCanada, and for Great Lakes to only provide transportation for these volumes to Peoples. This would allow Peoples more flexibility in future price negotiations and will provide better communication of market signals between Peoples and TransCanada. The authorizations issued to Great Lakes would be modified to eliminate the volumes that Great Lakes is authorized to import from TransCanada for resale to Peoples, and Peoples would be authorized to import the identical volumes directly from TransCanada. In addition to the volumes transferred from Great Lakes, Peoples would import up to 2,900 Mcf per day of natural gas directly from TransCanada on an interruptible basis.

The application included a September 15, 1987, precedent agreement between Great Lakes, Peoples and TransCanada, a proposed gas purchase contract between Peoples and TransCanada, and a proposed transportation service agreement between Great Lakes and Peoples. Effective as of the first day of the month following the receipt of all regulatory and governmental approvals acceptable to the parties, Peoples will import the volumes of gas directly from TransCanada; Great Lakes and Peoples will terminate their existing service agreement; and Great Lakes will transport the Peoples volumes from a point of interconnection between the pipeline systems of TransCanada and Great Lakes to an existing interconnection between the pipeline systems of Great Lakes and Peoples in accordance with a FERC gas tariff. The proposed gas purchase contract has identical pricing provisions to those currently in effect and the contract terms remains the same, ending November 1, 1990. The pricing provisions include a monthly demand charge equal to the sum of the demand tolls of TransCanada and Nova, an Alberta Corporation, except that during the 1987/88 contract year, the monthly demand charge rate shall be equal to $12.9093. The pricing provisions also provide for a commodity charge calculated by subtracting the average daily demand charge for the imported gas from the price charged by Northern Natural Gas Company at a 100 percent load factor for Zone 2, CD–1 firm gas service, in effect on the 15th day of the immediately proceeding month.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 10, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of this joint application is available for inspection and copying in the Natural Gas Division Docket Room GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–429 Filed 1–8–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF88–161–000, et al.]

Mid-County Cogeneration Corp., et al. Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment Date: February 10, 1988 in accordance with Standard Paragraph E at the end of this notice.

January 6, 1987.

Take notice that the following filings have been made with the Commission.

1. Mid-County Cogeneration Corporation

[Docket No. QF88–161–000]

On December 18, 1987, Mid-County Cogeneration Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York 10170, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Suffolk County, New York. The facility will consist of two combustion turbine generators, two heat recovery steam generators, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used for space heating and cooling at the Smith Haven Mall. The net electric power production capacity of the facility will be 54,500 KW. The primary source of energy will be natural gas.

2. Freeport Geothermal Resources Company

[Docket No.QF87–586–001]

On December 15, 1987, Freeport Geothermal Resources Company (Applicant), of 1160 N. Dutton, Suite 200, Santa Rosa, California 95401–4606 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small geothermal power production facility will be located in Lake County, California. The facility will consist of two steam turbine generators, steam wells and other appurtenant facilities. The electric power production capacity will be approximately 20 megawatts. The primary energy source will be geothermal steam. Fuel oil will be used for start-up and unanticipated equipment outage, however, such fossil fuel uses will not exceed 3% of the total energy input to the facility during any calendar year period.

3.Freeport-McMoRan Resource Partners

[Docket No. QF87–587–001]

On December 15, 1987, Freeport-McMoRan Resource Partners, c/o Geysers Geothermal Company, 1160 N. Dutton, Suite 200, Santa Rosa, California 95401–4606 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small geothermal power production facility will be located in Lake County, California. The facility will consist of two steam turbine generators, steam wells and other appurtenant facilities. The electric power production capacity will be approximately 27 megawatts. The primary energy source will be geothermal steam. Fuel oil will be used for start-up and unanticipated equipment outage, however, such fossil fuel uses will not exceed 3% of the total energy input to the facility during any calendar year period.

4. General Electric Credit Corp. (Roxboro Facility)

[Docket No. QF85–147–001]

On December 17, 1987, General Electric Credit Corporation, Cogentrix Carolina Leasing Corporation, Cogentrix Inc., and United States Trust Company of New York, Owner Trustee (Applicants) of 1600 Summer Street, Stamford, Connecticut 06904; Two Parkway Plaza, Suite 290, 4828 Parkway Plaza Boulevard, Charlotte, North Carolina 28217; and 45 Wall Street, New York, New York 10005, respectively submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Roxboro, North Carolina. The facility consists of three stoker-fired steam generators and an extraction/condensing steam turbine generator. The net electric power production capacity is 53 MW. The primary energy source is coal. Installation of the facility began during the second calendar quarter of 1986.

By order issued on March 11, 1985, the Commission granted certification of the facility as a cogeneration facility (30 FERC ¶ 62,261).

The recertification is requested due to change of ownership from Cogentrix Carolina Leasing Corporation to General Electric Credit Corporation. All other facility's characteristics remain the same.

5. General Electric Credit Corp. (Southport Facility)

[Docket No. QF85–145–002]

On December 17, 1987, General Electric Credit Corporation, Cogentrix Carolina Leasing Corporation, Cogentrix, Inc., and United States Trust Company of New York, Owner Trustee (Applicants) of 1600 Summer Street, Stamford, Connecticut 06904; Two Parkway Plaza, Suite 290, 4828 Parkway Plaza Boulevard, Charlotte, North Carolina 28217; and 45 Wall Street, New York, New York 10005, respectively submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Southport, North Carolina. The facility consists of six stoker-fired steam generators and two extraction/condensing turbine generators. The net electric power production capacity is 93.9 MW. The primary energy source is coal. Installation of the facility began during the second calendar quarter of 1986.

By orders issued on March 11 and July 26, 1985, the Commission granted certification and recertification of the facility as a qualifying cogeneration

facility (30 FERC ¶ 62,263 and 32 FERC ¶ 62,233).

The recertification is requested due to change of ownership from Cogentrix Carolina Leasing Corporation, to General Electric Credit Corporation. All other facility characteristics remain the same.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-385 Filed 1-8-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-807-DR]

Major Disaster and Related Determinations; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-807-DR), dated December 31, 1987, and related determinations.

DATED: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated December 31, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Arkansas from severe storms and flooding beginning December 24, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Arkansas to have been affected adversely by this declared major disaster:

Crittenden County for Individual Assistance.

Robert H. Morris,

Deputy Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 88-386 Filed 1-8-88; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

First Commerce Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commerce Corporation*, New Orleans, Louisiana; to merge with First Commercial Bancshares, Inc., Chalmette, Louisiana, and thereby indirectly acquire First National Bank of St. Bernard Parish, Arabi, Louisiana, and Commercial Bank & Trust Company, Metairie, Louisiana.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Bancshares, Inc.*, Valmeyer, Illinois; to acquire at least 80.4 percent of the voting shares of State Bank of Breese, Breese, Illinois.

2. *Homestate Bancorp, Inc.*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bancorp, Inc., Salem, Indiana, and thereby indirectly acquire The State Bank of Salem, Salem, Indiana.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-389 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

First Tennessee National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to acquire 11.1 percent of GulfNet, Inc., New Orleans, Louisiana, a joint venture engaged in data processing and data transmission activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. GulfNet, Inc. conducts such activities within the Southern United States.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-390 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

Thomas J. McCracken; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 26, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Thomas J. McCracken*, Hinsdale, Illinois; to acquire 20.9 percent of the voting shares of Frankford Financial Corp., Chicago, Illinois, and thereby indirectly acquire DuPage National Bank, West Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-391 Filed 1-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0390]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,4'-diamino-[1,1'-bianthracene]-9,9',10,10'-tetrone as a colorant in food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4024) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 4, 4'-diamino-[1,1'-bianthracene]-9,9',10,10'-tetrone as a colorant in food-contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-382 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0384]

Kuraray Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Kuraray Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of bis[benzoate-0](2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended to contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4035) has been filed by Kuraray Co., Ltd., 12-39 Umeda, 1-Chome, Kita-ku, Osaka, 530, Japan, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of bis(benzoate-0)(2-propanolato)aluminum as a component of adhesives used in the manufacture of multilayer containers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

BEST COPY AVAILABLE

Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 29, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-383 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Texas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 17, 1988 in Dallas, Texas to reconsider our decision to disapprove Texas State Plan Amendment 86-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 26, 1988.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Texas State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Texas SPA 86-14 violates section 1902(a)(4) and 1902(a)(19) of the Social Security Act and implementing regulations at 42 CFR Part 434, Subpart C and Part 447, Subpart D.

Texas SPA 86-14 would allow coverage of personal care services in a personal care home/institution by removing the existing exclusion of such coverage from the State plan. The purpose of removing this exclusion is to allow Medicaid funding of personal care services furnished under a prepaid health plan (PHP) to Medicaid recipients in residential care facilities, under Texas' Residential Care Program (RCP).

Federal regulations at 45 CFR 201.2 require a State plan to include all information necessary to determine whether the plan can be approved. Although the amendment material submitted simply proposes to delete the existing reference to personal care home/institutions as an excluded setting for personal care coverage, the actual purpose of this amendment is to permit Medicaid coverage of personal care services under Texas' RCP, as described in the Texas Register. Thus, in order to approve the amendment, it is necessary to establish that the RCP is consistent with Medicaid statutory and regulatory requirements. In those areas where the RCP's provisions create doubt as to whether they meet these Medicaid requirements, HCFA does not believe that the State plan preprint's general assurances about meeting these requirements can be accepted as sufficient in themselves. Rather, HCFA believes the State in this situation must specifically establish that the questionable provisions of the RCP satisfy Medicaid requirements before the amendment can be approved.

Section 1902(a)(4) of the Act provides, in part, that a State plan must provide such methods of administration as the Secretary finds are necessary for the proper and efficient operation of the plan. Implementing regulations at 42 CFR Part 434 describe requirements for PHPs, including the requirement that the contract be on either a risk or a nonrisk basis. HCFA is unable to determine whether the proposed PHPs would operate on a risk or a nonrisk basis, and whether the applicable upper payment limit requirements (42 CFR 447.361 for risk-based contracts and 42 CFR 447.362 for nonrisk-based contracts) would be satisfied.

HCFA also believes that the Texas RCP raises a serious question about the appropriateness of Medicaid funding for personal care services when furnished in an institutional setting that is not subject to the Medicaid health and safety standards for institutional care, prescribed at 42 CFR Part 442, Subpart E. As described in the RCP, the room and board furnished to Medicaid recipients by the facility, along with the personal care services that would be funded by Medicaid, would add up to a level of institutional care which meets that of intermediate care facility (ICF) services; i.e., institutional care "above the level of room and board" to individuals who do not require the care of a hospital or skilled nursing facility (section 1905(c) of the Act and regulations at 42 CFR 440.150(a)). Thus, the State's proposal would enable it, in effect, to provide ICF-level institutional care that is not subject to the Medicaid ICF health and safety requirements. HCFA has determined this is inconsistent with section 1902(a)(19) of the Act, which requires care and services to be provided in a manner consistent with the best interests of the recipients.

The notice to Texas announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Marlin W. Johnston,
Commissioner, Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769.

Dear Mr. Johnston: This is to advise you that your request for reconsideration of the decision to disapprove Texas State Plan Amendment 86-14 was received on December 3, 1987.

Texas SPA 86-14 would allow coverage of personal care services in personal care homes/institutions by removing the existing exclusion of such coverage from the State plan. The purpose of removing this exclusion is to allow Medicaid funding of personal care services furnished under a prepaid health plan (PHP) to Medicaid recipients in residential care facilities, under Texas' Residential Care Program.

You have requested a reconsideration of whether the plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. There are three issues to be considered at the hearing. The first issue is whether the plan violates section 1902(a)(4) of the Social Security Act which provides, in part, that a State plan must provide such methods of administration as the Secretary finds are necessary for the proper and efficient operation of the plan. The second issue is whether the State has established that the proposed PHPs would operate on a risk or a nonrisk basis as required by 42 CFR Part 434 and whether the applicable upper payment limit requirements at 42 CFR 447.361 for risk-based contracts, and 42 CFR 447.362 for nonrisk-based contracts, would be satisfied. The third issue is whether the State's proposal would enable it to provide ICF-level institutional care that is not subject to the Medicaid ICF health and safety requirements thereby violating section 1902(a)(19) of the Act, which requires care and services to be provided in a manner consistent with the best interest of the recipient.

I am scheduling a hearing on your request to be held on February 17, 1988 at 10:00 a.m., in Room 1950, 12 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Kroetar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116, Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 29, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-432 Filed 1-8-88; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee—Sunday, January 31, 1988; 1:00 p.m.-5:00 p.m., Full Committee, February 1-2, 1988; 9:00 a.m.-5:00 p.m., February 1, 1988; 9:00 a.m.-5:00 p.m., February 2, 1988.

Presidential Forum: Citizens with Mental Retardation and Community Integration—February 3-5, 1988, 9:00 a.m.-5:00 p.m., Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Vivian B. Levin, 330 Independence Avenue SW., Room 4725—North Building, Washington, DC 20201, (202) 245-7634.

Date: January 5, 1988.

Vivian B. Levin,

Executive Director, PCMR.

[FR Doc. 88-431 Filed 1-8-88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics (formerly the Subcommittee on Statistical Aspects of Physician Payment Systems) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Monday, January 11, 1988 from 1:00 p.m. to 5:00 p.m. and on Tuesday, January 12, 1988 from 9:00 a.m. to 5:00 p.m. in Room 703A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Subcommittee will receive updates from the Health Care Financing Administration on Monday afternoon and will discuss and receive testimony on the Uniform Ambulatory Medical Care Minimum Data Set on Tuesday.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7142.

Date: December 17, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 88-473 Filed 1-8-88; 8:45 am]

BILLING CODE 4160-17

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1765; FR-2439]

Computer Automation of Data for Certification, Recertification and Subsidy Billing for Multifamily Subsidized Projects

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD), has developed, and is making available, specifications and formats for use by software vendors and project owners in automating the following forms: (1) Forms HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; (2) Form HUD-52670, Housing Owner's Certification and Application for Housing Assistance Payments; and (3) Form HUD-52670A, Schedule of Tenant Assistance Payments Due. These forms are used in the following subsidy programs: Section 8 Housing Assistance Payments Programs, Section 236 Rental Assistance Payments, Section 221(d)(5) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance, and Section 101 Rent Supplements.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW., Room 6182, Washington, DC 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In 1983 and 1985, legislative changes were made which significantly changed and complicated tenant rent calculations. Therefore, HUD has encouraged automation of the Form HUD-50059, the Form HUD-52670, and the Form HUD-52670A. Automation is necessary because these forms have become a burden both to HUD and to project owners and managers. The burden results from the time-consuming task of completing the calculations and computations and of reviewing the forms to verify the accuracy and completeness of the information.

The Department has now completed the development of the minimum standards for automating the Form

HUD–50059, the Form HUD–52670, and Form HUD–52670A. Software vendors or individuals interested in receiving a copy of these standards may request a copy by writing to James J. Tahash, Director, Planning and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6182, Washington, DC 20410.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act 1969, contain a categorical exclusion from their requirements for the actions, activities and programs specified in § 50.20. Since the minimum standards made available through this Notice are within the exclusion set forth in § 50.20(K)(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Dated: December 31, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88–448 Filed 1–8–88; 8:45 am]

BILLING CODE 4210–27–M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D–88–869]

Designation for Coral Gables Office; Acting Manager, Region IV (Atlanta)

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Valuation Branch
3. Chief, Loan Management Branch
4. Chief, Property Disposition Branch
5. Chief, Mortgage Credit Branch

This designation supersedes the designation effective March 30, 1987 (52 FR 17480, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970) (36 FR 3389, February 23, 1971)).

This designation shall be effective as of December 31, 1987.

Ledford L. Austin,

Acting Manager, Coral Gables Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88–449 Filed 1–8–88; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC 20503, telephone 202–395–7340.

Title: Park Use Surveys.

Abstract: Surveys will be used for operational, planning and management activities designed to respond to actual public use activities and needs.

Bureau Form Number: 10–157B.

Frequency: Seasonal (4 Times A Year).

Description of Respondents: Individuals or households.

Annual Responses: 9000.

Annual Burden Hours: 2750.

Bureau Clearance Officer: Russell K. Olsen, 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 88–423 Filed 1–8–88; 8:45 am]

BILLING CODE 4310–70–M

Intention to Negotiate Concession Contract; Lake Mead Ferry Services, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Lake Mead Ferry Services, Inc. authorizing it to continue to provide scheduled and unscheduled sightseeing or tourboat and group charter facilities and services for the public at Lake Mead National Recreation Area, for a period of fifteen (15) years from the date of execution through September 30, 2003.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Stanley T. Albright,

Regional Director, Western Region.

Date: October 29, 1987.

[FR Doc. 88–424 Filed 1–8–88; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31205]

FRVR Corp.; Exemption To Acquire and Operate Certain Lines of the Chicago and North Western Transportation Co.

FRVR Corporation (FRVR) and Chicago and North Western Transportation Company (CNW) have filed a notice of exemption for FRVR, a non-carrier, to acquire and operate CNW's so-called "Duck Creek South" lines between Green Bay and Milwaukee, WI. FRVR will also acquire certain incidental trackage rights from CNW lines between Granville, WI, and CNW's Butler Yard in Milwaukee for purposes of interchanging traffic. The actual lines to be acquired and the lines subject to the trackage rights agreement are described as follows:[1]

Segment	Mileposts	Miles
Mainline		
Lines to be acquired by FRVR:		
Duck Creek to Green Bay	4.00 to 0.00	4.00
Green Bay to Tavil	243.05 to 241.95	1.10
Tavil to a point south of Cleveland	113.60 to 62.285	51.315
Tavil to Fond du Lac	241.95 to 176.70	65.25
Fond du Lac to Granville	146.40 to 99.50	46.90
Oshkosh to N. Oshkosh	22.30 to 20.10	2.20
Total Mainline		170.765
Branch Lines		
Kimberly	121.60 to 112.30	9.30
New London	121.40 to 140.85	19.25
Two River Spur	76.30 to 78.53	2.23
	A1.08 to A7.50	6.42
Total Branch Lines		37.20
Total of Mainline and Branch Lines to be Acquired		207.965
Lines over which FRVR will have trackage rights:		
Granville to Butler Yard	99.48 to 92.34	7.14
	17.90 to 14.50	3.40
	13.39 to 8.64	4.75
Total Trackage Rights to be Acquired		15.29

CNW will retain the right to move locomotives and empty equipment over the above-described lines. Upon consummation, FRVR will become a carrier; a transaction relating to the control of FRVR is the subject of a petition for exemption filed December 24, 1987, in Finance Docket No. 31206. Any comments must be filed with the Commission and served on:

Thomas J. Byrne, Carl V. Lyon, 1101 30th Street NW., Suite 302, Washington, DC 20007

Fritz R. Kahn, L. John Osborn, William C. Evans, Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 1660 L Street NW., Suite 1000, Washington, DC 20036

FRVR and CNW have included in their notice of exemption a request that the Commission clarify its jurisdiction over labor issues arising out of transactions such as that involved here. FRVR and CNW have stipulated that they will not consummate the transaction until the Commission has had an opportunity to receive and review any comments filed in response to their request for clarification. FRVR and CNW state that they have served copies of their notice, including their request for clarification, on labor representatives and that they have asked for comments within the 20-day period permitted by 49 CFR 1104.13(a), which in this case expires January 12, 1988. If a decision on their request for clarification is not expeditiously issued, FRVR and CNW will consummate the transaction on not less than 7 days' notice. A subsequent decision on the merits of the request for clarification will be issued as expeditiously as possible.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 31, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–406 Filed 1–8–88; 8:45 am]

BILLING CODE 7035–01–M

[1] Some of the lines and trackage right being acquired are located in different subdivisions of the railroad. Thus, the same point will have two milepost designations, as shown below:

(1) Milepost 178.70 on the Tavil-Fond du Lac segment is the same as Milepost 146.40 on the Fond du Lac-Granville segment.

(2) Milepost 78.53 is the same as Milepost A1.08.

(3) Milepost 92.34 is the same as Milepost 17.90, and Milepost 14.50 is the same as Milepost 13.30.

[Finance Docket No. 31193]

Hampton & Branchville Railroad Co., Inc., and Colleton County Railroad Co., Inc.; Merger Exemption

Hampton & Branchville Railroad Company, Inc. (H&B), and Colleton County Railroad Company, Inc. (CCR) have filed a notice of exemption for the merger of CCR into H&B. The merger will be effective on or about January 1, 1988. H&B and CCR are under the common control of W. Norris Lightsey (Lightsey) and the South Carolina National Bank, the Trustee of the Estate of E. Oswald Lightsey (the Estate). Lightsey and the Estate own 100 percent of the stock of H&B and CCR in equal percentages.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The merger of the two separate carrier entities into a single carrier entity will permit the carriers to improve present efficiency of operations and services, as well as to simplify H&B's corporate structure.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kimberly A. Madigan; Weiner, McCaffrey, Brodsky & Kaplan, P.C.; 1350 New York Avenue, NW., Suite 800; Washington, DC 20005–4797.

Decided: December 30, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–407 Filed 1–8–88; 8:45 am]

BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Ad Hoc Challenge III Artistry Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Artistry Committee to the National Council on the Arts, will be held on January 27, 1988, from 9:00 a.m.–5:30 p.m. in room MO–7 of the Nancy

Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 4, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–399 Filed 1–8–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for the Office of Management and Budget Approval

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G., Fleming (202) 357–9520.

OMB Desk Officer: Jim Houser, (202) 395–3084.

Title: Survey of 1977–1982 NSF Small Business Innovation Research Program Grantees.

Affected Public: Small businesses or organizations.

Number of Responses: 300 responses; total of 90 hours.

Abstract: The cohort of the 1977–1982 NSF/SBIR grantees to be sampled is unique to the Foundation, predating the 1982 SBIR Act, with 5 to 10 years of experience with the Foundation's private sector follow-on commitment requirement. NSF needs the data on private sector leverage, financing, employment, and commercial products for program assessment.

Dated: January 6, 1988.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 88–387 Filed 1–8–88; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25242; File Nos. SR–CBOE–87–55; SR–Amex 87–09]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; American Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On December 9 and 10, 1987, the Chicago Board Options Exchange, Inc. ("CBOE") and the American Stock Exchange, Inc. ("AMEX"), submitted, respectively, to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] proposed rule changes to extend the market index option escrow receipt pilot program until June 30, 1988.

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[3] The pilot was to end on August 19, 1986 but was initially extended until February 20, 1987 to provide sufficient time for the CBOE to review the data compiled during the original pilot period.[4] On February 6, 1987 the CBOE submitted a report to the Commission and requested that the pilot be extended until June 30, 1987 in order to give the Commission sufficient time to review and evaluate the report. The pilot was subsequently extended until December 31, 1987 to allow additional time for Commission review of the CBOE report.[5]

The proposed rule changes are designed to amend the previously filed rule changes respecting extension of the pilot program and to provide a workable mechanism through which index call options could be written in a cash account.

The Commission finds that the proposed rule changes to extend the operation of the index option escrow receipt program through June 30, 1988, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The pilot program extension is consistent with the Act because it will enable confirmation of a program designed to reduce operational difficulties of banks and trust companies while the Commission evaluates the program's effectiveness. In addition, the Commission will have the opportunity to assess the program's operation during the October market events before determining whether to make the program permanent.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** because the pilot was previously approved by the Commission, no adverse comments have been received regarding its operation, and the extension will allow for uninterrupted continuation of the program.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by February 1, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [6] that the proposal to extend the operation of the pilot through June 30, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

Dated: January 5, 1988.

[FR Doc. 88–430 Filed 1–8–88; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] *See* Securities Exchange Act Release No. 22333 (August 22, 1985) 50 FR 33429 for a description of the pilot.

[4] *See* Securities Exchange Act Release No. 23652 (August 25, 1986) 51 FR 31248.

[5] *See* Securities Exchange Act Release No. 24708 (July 15, 1987) 52 FR 27604.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1988).

[Release No. 34–25241; File No. SR–MSE–87–14]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated relating to the withdrawal of the Mandatory Posting Rule.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1987 the Midwest Stock Exchange, Incorporated ("MSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XXX, Rule 1.01(I)(6)(c) of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions Underscored—[Deletions Bracketed].

6. Unsatisfactory Performance Action.

(a) No change in text.

(b) No change in text.

[(c) Mandatory Posting Semi-annually the Exchange's market share for the previous six-month period (calculated as a percentage of the number of trades reported to the consolidated tape) in each security for which there is a registered specialist shall be compared with the market shares of the other market centers trading that security. If during any such period the Exchange's market share in any such security is less than the third largest and also less than the Exchange's average market share for all issues for which there is a registered specialist, that security shall be promptly posted for applications in accordance with the provisions of Article XXX, Rule 1.01.II, provided, however, that no security shall be posted unless the specialist in that security has been registered as such for six months or more; and provided further, that, although all qualified co-specialists, including the current co-specialist, may apply, when considering the factors specified in Article XXX, Rule 1.01.III, the Committee will give preference to a designated co-specialist, who, during the period, was not a co-specialist in any security that is being posted at that time pursuant to this Rule. Until such time as greater experience is gained in evaluating performance of specialists effecting transactions in NASDAQ/NMS Securities, such securities will not be subject to the requirements of this subsection (c).]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article XXX, Rule 1.01(I)(6)(c) (Mandatory Posting) of the Exchange Rules requires the Exchange to post, for applications, any security for which the Exchange's market share (determined as a percentage of number of trades reported to the consolidated tape) is less than the third largest and is also less than the Exchange's average market share for all specialist-assigned issues for the previous six-month period. The Exchange has determined to withdraw this rule in its entirety.

In previous filings, SR–MSE–87–1 and SR–MSE–87–9,[1] the Exchange requested the ability to suspend the application of the Mandatory Posting Rule for the periods 1/1/86 through 12/31/86 and 1/1/87 through 6/30/87 respectively. Such suspensions were deemed appropriate in order to allow the Exchange adequate time to develop a set of alternative co-specialist evaluation criteria due, in part, to structural changes taking place in the industry after 1985 with the growth of large retail firms functioning as specialists on other exchanges. The Exchange's Floor Procedure Committee and Committee on Specialist Assignment and Evaluation have labored over this project for many months and it is now near completion. This progress can be seen, in part, with the filing of the revised Co-Specialist Evaluation Questionnaire.[2] The new Questionnaire represents an integral portion of a package of new criteria to evaluate co-specialist performance which will soon be submitted for Commission approval.

The proposed rule change is consistent with Section 6 of the Act in that it will promote just and equitable principles of trade by assisting in the measurement of co-specialist performance, thereby helping to ensure that co-specialists meet certain minimum standards.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange's Floor Procedure Committee has recommended that the Mandatory Posting Rule be withdrawn.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file

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[1] *See*, Securities Exchange Act Rel. Nos. 24444 (May 12, 1987) 52 FR 19002 and 24892 (September 9, 1987) 52 FR 35018, respectively.

[2] *See*, SR–MSE–87–13.

number in the caption above and should be submitted by February 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 440 Filed 1-8-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2303]

Arkansas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 31, 1987 I find that Crittenden County in the State of Arkansas constitutes a disaster loan area because of damage from severe storms and flooding beginning on December 24, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 3, 1988 and for economic injury until the close of business on October 3, 1988 at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051 or other locally announced locations.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses without Credit Available Elsewhere	4.000%
Businesses (EIDL) without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000%

The number assigned to this disaster is 230306 for physical damage and for economic injury the number is 659900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 5, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-384 Filed 1-8-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/15-5024]

Motor Enterprises, Inc.; Application for Conflict of Interest Transaction

Notice is hereby given that Motor Enterprises, Inc. (MEI), 3044 West Grand Boulevard, Detroit, Michigan 48202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b)(1) of the Regulations governing small business investment companies (13 CFR 107.903(b)(1) (1987)) for an exemption from the provisions of the cited Regulations.

MEI proposes to loan $25,000 to The Donut Factory, 16851 Livernois Avenue, Detroit, Michigan 48221.

The proposed financing is brought within the preview of § 107.903(b)(1) of the Regulations because the owner of The Donut Factory, Mr. Douglas C. Venable, is the son of Mr. Abraham S. Venable, a Vice President and Director of MEI. Both are therefore Associates of MEI under § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Detroit, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 4, 1988.

[FR Doc. 88-385 Filed 1-8-88; 8:45 am]

BILLING CODE 8025-01-M

Docket No. 44808

Date Filed: December 31, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 28, 1988.

Description: Amendment No. 1 to the Application of the Flying Tiger Line Inc. amends its application as follows: "4. Flying Tigers hereby applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between the coterminal points Columbus, Ohio (to be served through Rickenbacker Airport) and Detroit and Flint, Michigan, on the one hand, and Toronto, Ontario, Canada, on the other hand, subject to such terms, conditions, and limitations as the Department may find to be consistent with the public convenience and necessity."

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-393 Filed 1-8-88; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the

OMB Desk Officer within 30 days of this notice.

Dated: December 31, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Veterans Benefits.
2. Application for Designation as Management Broker.
3. VA Form 26-6685.
4. This information is used to utilize the services of local brokers in the sale and management of VA-owned properties.
5. On occasion.
6. Individuals or households.
7. 250 responses.
8. 63 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Monthly Certification of On-the-Job and Apprenticeship Training.
3. VA Form 22-6553d.
4. This information is used to determine the amount of benefits payable to the veteran or eligible person who is pursuing apprenticeship and other on-the-training.
5. Monthly.
6. Individuals or households; State of local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; and Small businesses or organizations.
7. 223,981 responses.
8. 37,330 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Vocational Traninig Applications for VA Pensioners (Chapter 15, Title 38, U.S.C.)
3. VA Form 28-0666.
4. This form is the initial source of information to evaluate a veteran's claim for these benefits.
5. On occasion.
6. Individuals or households.
7. 2,500 responses.
8. 500 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Application for Educational Assistance Test Program Benefits (Section 901, PL 96-342).
3. VA Form 22-8889.
4. This information is used to determine eligibility and entitlement to educational assistance benefits.
5. On occasion.
6. Individuals or households.
7. 800 responses.
8. 400 hours.
9. Not applicable.

[FR Doc. 88-422 Filed 1-8-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 8
Monday, January 11, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

January 7, 1988.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, January 15, 1988, 9:30 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. A Media View of Civil Rights: Present and Future
IV. Commission Appropriation for FY '88
V. Planning for '90: Reorganization of Commission

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8105.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 88–506 Filed 1–7–88; 2:50 p.m.]
BILLING CODE 6335–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 5, 1988.

LOCATION: Room 440, Westwood Towers, 5401 Westband Avenue, Bethesda, MD

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS#4964

The staff will brief the Commission on issues related to Enforcement Matter OS#4964.

*The Commission decided by unanimous vote that agency business required scheduling this meeting without the normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westband Avenue Bethesda, MD 20207 301–492–6800.

January 7, 1988.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 88–517 Filed 1–7–88; 3:24 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westband Avenue, Bethesda, MD.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. FY 89 Budget

The Commission will consider issues related to the budget for fiscal year 1989.

2. Status, Briefing, Chemical Program

The staff will brief the Commission on the progress being made on various projects within the Chemical Hazards Program.

Closed to the Public

3. Enforcement Matter OS#3320

The staff will brief the Commission on issues related to enforcement matter OS#3320.

*Agenda revised 1/7/88 to delete previous item 1 concerning fire toxicity and to add new item 1 concerning the FY 89 Budget.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westband Avenue, Bethesda, MD 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

January 7, 1988.

[FR Doc. 88–518 Filed 1–7–88; 3:24 pm]
BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 12, 1988 from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Revoking Charter of Farm Credit System Capital Corporation; and
2. Approve Documents to Charter the Farm Credit System Assistance Board.

Dated: January 7, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 88–479 Filed 1–7–88; 1:25 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 5, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Report of the Director, Office of Corporate Audits and Internal Investigations:
Audit Report re: Audit of Loan Management and Liquidation—DOL Denver, Consolidated Office (Memo dated December 3, 1987)

Application of The Glen Burnie Mutual Savings Bank, an operating non-FDIC-insured savings bank located at 1 Crain Highway, S.E., Glen Burnie, Maryland, for Federal deposit insurance.

Application of Columbian Savings Bank, an operating non-FDIC-insured savings bank located at 305 St. John Street, Havre de Grace, Maryland, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 6, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,
Deputy Executive Secretary.

[FR Doc. 88–453 Filed 1–7–88; 9:12 am]
BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87–30182.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 7, 1988, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

FEDERAL REGISTER NO.: 88–312.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 14, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS WITHDRAWN FROM THE AGENDA AND WILL BE CONSIDERED ON JANUARY 21: Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3–110.6).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88–500 Filed 1–7–88; 2:36 pm]
BILLING CODE 6715–01–M

FEDERAL ENGERGY REGULATORY COMMISSION

January 6, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: January 13, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9308, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note.**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 859th Meeting—January 13, 1988 Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 8924–002, Northeast Hydrodevelopment Corporation
CAP–2.
Project No. 5915–004, White Chuck Water Company
CAP–3.
Project No. DE88–87–001, Kirkway Electric Corporation
CAP–4.
Project No. 9167–009, Pennsylvania Hydroelectric Development Corporation
CAP–5.
Project No. 9694–002, Power Resources Development Corporation
CAP–6.
Project No. 8488–003, Cosumnes River Water and Power Authority
CAP–7.
Project No. 9167–007, Pennsylvania Hydroelectric Development Corporation
CAP–8.
Project Nos. 5376–002 and 003, Boise Cascade Corporation
CAP–9.
Omitted
CAP–10.
Project No. 3295–008, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District
CAP–11.
Project No. 2840–012, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District
CAP–12.
Project No. 10425–002, Steven J. Wight
CAP–13.
Project No. 7964–002, JDJ Energy Company
CAP–14.
Project Nos. 8668–001 and 8883–001, Northeast Hydrodevelopment Corporation
CAP–15.
Project No. 9412–001, Calaveras Public Utility District and Middle Fork Ditch Hydro Partners
CAP–16.
Project No. ER81–177–007, Southern California Edison Company
CAP–17.
Project No. ER88–47–001, Southwestern Public Service Company
CAP–18.
Project No. ER88–558–013, Gulf States Utilities Company.
CAP–19.
Project No. ER86–684–002, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, GPU Service Corporation and Niagara Mohawk Power Corporation
CAP–20.
Project No. ER87–386–001, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., New England Power Company, Public Service Company of New Hampshire and Boston Edison Company
CAP–21.
Project No. ER87–387–001, Pennsylvania Power & Light Company
CAP–22.
Project Nos. ER85–424–000, ER85–425–000, ER85–468–001, ER85–534–001, ER85–692–001, ER86–508–001, ER87–175–007, 002, ER87–223–001 and 002, Southwestern Electric Power Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM87–21–000, Revision of Freedom of Information Act Rules
CAM–2.
Docket Nos. RM87–3–019 through 020, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986
CAM–3.
Docket No. RM87–34–054, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAM–4.
Docket No. RM79–44–001, West Virginia Department of Energy
CAM–5.
Omitted

Consent Gas Agenda

CAG–1.
Omitted
CAG–2.
Docket No. RP88–40–000, Mountain Fuel Resources, Inc.
CAG–3.
Docket No. RP86–33–000, and RP86–91–000, Midwest Gas Transmission Company
CAG–4.
Docket No. RP85–122–004, Colorado Interstate Gas Company
CAG–5.
Docket No. RP82–80–027, ANR Pipeline Company
CAG–6.
Docket No. RP86–116–014, Panhandle Eastern Pipe Line Company
CAG–7.
Docket No. RP85–125–004, Distrigas of Massachusetts Corporation
CAG–8.
Docket No. RP88–17–002, Southern Natural Gas Company
CAG–9.
Docket No. TA88–2–51–001, Great Lakes Gas Transmission Company
CAG–10.
Docket No. RP87–70–006, East Tennessee Natural Gas Company
CAG–11.
Docket No. TA88–1–45–001, Inter-City Minnesota Pipelines Ltd., Inc.
CAG–12.
Docket Nos. RP88–69–008, TA86–2–15–005, RP82–51–007, RP86–138–004 and GP82–31–008, Mid Louisiana Gas Company
CAG–13.
Docket No. RP85–125–000, Distrigas of Massachusetts Corporation
CAG–14.
Docket No. RP87–86–002, KN Energy, Inc.
CAG–15.
Docket No. RP86–157–002, El Paso Natural Gas Company
CAG–16.
Docket No. RP86–86–001, Sabine Pipe Line Company
CAG–17.
Docket No. RP84–82–002, Tarpon Transmission Company
CAG–18.
Docket No. TA87–5–21–002, 003 and 004, Columbia Gas Transmission Corporation
CAG–19.
Docket Nos. RP82–58–023 and RP82–103–008, Panhandle Eastern Pipe Line Company and Central Illinois Light Company
CAG–20.

Docket No. RP87-72-001, Interstate Power Company v. Natural Gas Pipeline Company of America
CAG-21.
Docket No. TA87-3-22-003, Consolidated Gas Transmission Corporation
CAG-22.
Docket No. RP87-92-001, Williston Basin Interstate Pipeline Company
CAG-23.
Docket No. RP82-55-032, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket No. RP85-209-000, United Gas Pipe Line Company
CAG-25.
Docket No. IS87-35-001, Gulf Central Pipeline Company
CAG-26.
Docket Nos. TA87-2-30-002, 003 and 004, Trunkline Gas Company
CAG-27.
Docket No. RP87-127-000, Alabama-Tennessee Natural Gas Company
CAG-28(A).
Docket No. CP86-578-000, Northwest Pipeline Corporation
CAG-28(B).
Docket No. RP86-51-000, Northwest Pipeline Corporation
Docket No. RP86-164-000, Mountain Fuel Resources, Inc. v. Northwest Pipeline Corporation
CAG-29.
Omitted
CAG-30.
Omitted
CAG-31.
Docket No. ST81-90-001, Natural Gas Pipeline Company of America
CAG-32.
Docket No. RI82-6-000, ARCO Oil & Gas Company
CAG-33.
Docket Nos. CI86-418-001 and CI86-424-001, El Paso Natural Gas Company
CAG-34.
Docket No. G-4579-044, Cities Service Oil and Gas Corporation (The George R. Brown Partnership)
Docket No. G-4579-045, Mobile Exploration and Producing North America
Docket No. G-4579-046, Texaco Inc. and Texaco Producing Inc.
Docket No. G-4579-047, Cities Service Oil and Gas Corporation (Operator)
Docket No. G-6886-004, Union Texas Petroleum Corporation (Operator)
Docket No. CI86-328-001, Belco Development Corporation
Docket No. CI87-226-001, Enstar Corporation
Docket Nos. CI87-1-002 and CI87-261-001, American Royalty Producing Company (Successor to Partnership Properties Company)
Docket No. CI83-1045-001, Samson Resources Company
Docket No. G-3244-001, Cabot Corporation, *et al.*
Docket No. G-2756-001, Kerr, McGee Corporation
CAG-35.
Omitted
CAG-36.
Omitted
CAG-37.
Docket Nos. CI88-2-000 and CI88-3-000, Texas Eastern Transmission Corporation
CAG-38.
Omitted
CAG-39.
Omitted
CAG-40.
Docket Nos. RP86-116-015 and CP86-585-005, Panhandle Eastern Pipe Line Company
CAG-41.
Docket No. RP87-13-001, The Brooklyn Union Gas Company, Complainant v. Distrigas of Massachusetts Corporation, Respondent
Docket No. RP87-30-001, Boston Gas Company, Complainant v. Distrigas of Massachusetts Corporation, Respondents
CAG-42.
Docket No. RP87-328-001, Northwest Pipeline Corporation
CAG-43.
Docket No. CP87-159-006 and CP87-304-003, Pacific Gas Transmission Company
CAG-44.
Docket Nos. CP87-176-001 and CP63-159-001, Panhandle Eastern Pipe Line Company
CAG-45.
Docket No. RP85-621-006, ANR Pipeline Company
CAG-46.
Docket Nos. CP87-467-001, CP86-474-001, 002, CP86-422-001 and CP86-456-001, Great Lakes Gas Transmission Company
Docket No. CP79-467-014, ANR Pipeline Company
CAG-47.
Omitted
CAG-48.
Docket No. CP87-198-001, Black Marlin Pipeline Company
CAG-49.
Docket No. CP83-335-191, Williston Basin Interstate Pipeline Company
CAG-50.
Docket Nos. CP83-14-123 and 124, Northern Natural Gas Company, Division of Enron Corporation
CAG-51.
Docket No. CP87-106-000, Midwestern Gas Transmission Company
CAG-52.
Docket No. CP87-146-000, West Lincoln Natural Gas District, Applicant and Southern Natural Gas Company, Respondent
CAG-53.
Docket No. CP87-169-000, Texas Eastern Transmission Corporation
CAG-54.
Docket No. CP87-473-000, Carnegie Natural Gas Company
CAG-55.
Docket No. CP87-134-000, Transwestern Pipeline Company
CAG-56.
Docket No. CP87-483-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-57.
Docket No. CP87-147-000, El Paso Natural Gas Company
CAG-58.
Docket Nos. CP87-200-000 and CP87-215-000, United Gas Pipe Line Company
CAG-59.
Docket No. CP87-196-007, Transcontinental Gas Pipe Line Corporation
Docket No. CP87-203-006, Consolidated Gas Transmission Corporation and North Penn Gas Company
CAG-60.
Docket No. CP85-824-004, Colorado Interstate Gas Company
CAG-61.
Docket No. CP85-636-005, Northern Natural Gas Company, Division of Enron Corporation
CAG-62.
Docket No. RP85-169-027, Consolidated Gas Transmission Corporation
CAG-63.
Docket No. CP86-676-000, Equitable Gas Company, a Division of Equitable Transmission Company and Equitable Transmission Company

I. Licensed Project Matters

P-1.
Project Nos. 3258-002, 3583-001, 3741-001 and 3742-001, Joseph M. Keating
Project No. 6156-003, Morris M. Zack and Milton M. Zack
Docket No. EL85-19-102, Procedures for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.
P-2.
Project No. 6188-001, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson, and Dale E. Grenoble
Docket No. EL85-19-102, Procedure for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.
P-3.
Project No. 4669-002, John L. Symons
Docket No. EL85-19-102, Procedures for Assessing Hydropower Projects Clustered in River Basins. Orders pertaining to the Applications for license examined in the Environmental Impact Statement prepared for the Owens River Basin, California.

II. Electric Rate Matters

ER-1.
Docket No. ER88-112-000, Orange and Rockland Utilities, Inc. Order on tariff covering purchases from commercial and industrial customers.
ER-2.
Docket Nos. ER85-646-001 and ER85-647-001 (Phase I), ER85-646-005 and ER85-647-003 (Phase II), New England Power Company. Opinion and order determining just and reasonable rates (cancelled plant issues).
ER-3.
Omitted
ER-4.
Docket No. EL87-60-000, Central Illinois Public Service Company. Declaratory order on proposed corporate reorganization.

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket No. GP87-42-000, Grynberg Production Company, Jack Grynberg, and Celeste Grynberg, Complainants, v. Mountain Fuel Resources, Inc., Respondent. Order on Complaint.
M-4(A).
Docket No. RM87-16-000, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts. Final Rule.
M-4(B).
Docket No. CI84-10-006, Felmont Oil Corporation and Essex Offshore, Inc. Order on court remand.
M-4(C).
Docket Nos. CP84-348-005, 006 and 007, Mississippi River Transmission Corporation
Docket No. CP84-183-004, Transcontinental Gas Pipe Line Corporation
Docket Nos. CI86-307-002, 003, CI86-688-002, 003, CI86-689-001 and 002, Sea Robin Pipeline Company. Rehearing of orders authorizing pipeline to cease purchases.
M-4(D).
Docket Nos. CI77-337-002 and C-14227-001, Union Texas Petroleum Corporation. Opinion and order on rehearing. Opinion No. 274-A.

I. Pipeline Rate Matters

RP-1.
Docket No. RP87-16-000, El Paso Natural Gas Company. Opinion on initial decision concerning take-or-pay buyout and buydown cost passthrough mechanism.
RP-2.
Docket Nos. RP86-119-000, TA84-2-9-007 and TA85-1-9-004, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Order on settlement concerning take-or-pay buyout and buydown cost passthrough mechanism.
RP-3(A).
Docket Nos. RP87-55-000 and TA81-1-21-022, Columbia Gas Transmission Corporation. Order on costs to reform contracts.
RP-3(B).
Docket Nos. TA81-1-21-022, 023, 024, 025, 026 and 027, Columbia Gas Transmission Corporation. Order on remand.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket No. CP86-232-008, Panhandle Eastern Pipe Line Company. Rehearing of order on complaint alleging undue discrimination.
CP-2.
Docket Nos. CP83-75-000, 001 and 002, Consolidated System LNG Company
Docket Nos. CP80-33-001 and 002, Columbia LNG Corporation. Contested settlement of proposal to abandon an undivided one half ownership interest in a liquefied natural gas facility.
CP-3.
Docket Nos. CP86-492-000, CP86-493-000 and CP86-494-000, Moraine Pipeline Company and Natural Gas Pipeline Company of America. Request for optional certificate to construct facilities and transport gas.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-472 Filed 1-7-88; 11:09 am]
BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 11, 1988:

A closed meeting will be held on Tuesday, January 12, 1988, at 2:30 p.m. An open meeting will be held on Thursday, January 14, 1988, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 12, 1988, at 2:30 p.m., will be:

Institution of injunctive action.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding.

The subject matter of the open meeting scheduled for Thursday, January 14, 1988, at 10:00 a.m., will be:

1. Consideration of whether to issue a Memorandum Opinion and Order with regard to Sierra Pacific Resources ("Resources"), an exempt intrastate holding company under the Public Utility Holding Company Act of 1935, authorizing Resources to acquire a 14.5% common stock interest in a new company that will construct an electric generating unit to sell electric energy at wholesale. For further information, please contact Robert F. McCulloch at (202) 272-7699.

2. Consideration of whether to adopt new rules and amendments to rules and forms relating to advertising by investment companies. For further information, please contact Robert E. Plaze at (202) 272-2107.

3. Consideration of whether to issue two releases that: (1) Adopt a proposal providing for inclusion of a consent to service of process provision on behalf of the Commission and self-regulatory organizations in Form BD, and (2) propose for public comment inclusion of a provision providing for consent to service of process to any application for a protective decree on behalf of the Securities Investor Protection Corporation. For further information, please contact Henry E. Flowers at (202) 272-2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogary at (202) 272-3195.

Jonathan G. Katz,
Secretary.
January 5, 1988.

[FR Doc. 88-446 Filed 1-6-88; 5:08 p.m.]
BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Meeting No. 1398

TIME AND DATE: 10 a.m. (e.s.t.), Wednesday, January 13, 1988.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on December 16 and 21, 1987.

Discussion Item

1. Report on Existing Industries Program.

Action Items

Old Business

1. Cooperative Agreement with North Atlantic Technologies, Inc. for Cooperation in a Project to Demonstrate an Open Channel Air Preheater Test Program in Support of the 20-MW Hybrid Atmospheric Fluidized Bed Combustion Project.

2. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—(2.1) Test and Replacement Program for Silicone Cables at the Sequoyah Nuclear Plant; (2.2) Provide Engineering and Related Services in Support of the Integrated Design Inspection for the Emergency Raw Cooling Water System at the Sequoyah Nuclear Plant; (2.3) Civil Engineering Calculation Regeneration Program at the Sequoyah Nuclear Plant; (2.4) Special System Review of the Design, Modification, Testing, and Operation of Emergency Equipment Cooling Water and Residual Heat Removal Systems at Browns Ferry Nuclear Plant; and (2.5) Configuration Management to Provide

Calculations Supporting the Design Basis and Plant Configuration Required at Browns Ferry Nuclear Plant.

New Business

A—Budget and Financing

A1. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Replace Existing Telephone System at the Nuclear Plants.

A2. Modification of Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings—Replace Generator Circuit Breaker and Cables at Ocoee No. 1 Hydro Plant.

B—Purchase Awards

B1. Request for Proposal AB-06700A—Rehabilitation of Existing Insulation, Ductwork, and Precipitator Shell at Bull Run Fossil Plant.

B2. Request for Proposal YD-763282-01—Corporate Data Center Systems Procurement for the ADP Equipment Management Branch.

B3. Negotiation YE-204634—IBM or IBM Compatible Equipment for the ADP Equipment Management Branch.

C—Power Items

* C1. Power Contract with the Aluminum Company of America (ALCOA) for Power Supply to ALCOA's Aluminum Reduction and Fabrication Plants at Alcoa, Tennessee, and an Amendatory Agreement with Tapoco Providing for Eventual Discontinuance of the Primary Exchange of Power and the Replacement of the Existing Settlement Provisions for Exchange Energy Owed TVA.

C2. Power Contract with Tennessee River Pulp & Paper Company Providing for Power Supply for Operation of the Company's Pulp and Paper Mill Near Counce, Tennessee.

C3. Amendment to White Oak Coal Lease (TV-63282A) with Dollar Branch Coal Corporation of Manchester, Kentucky.

C4. Contract No. TV-73571A with the Tennessee Emergency Management Agency Covering Arrangements for Purchase of Equipment Necessary to Implement Radiological Emergency Plans Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personal Items

* D1. Recommendations for Hourly and Annual Trades and Labor Employees Resulting from Negotiations Between TVA and Tennessee Valley Trades and Labor Council—52nd Annual Wage Conference.

D2. Supplement to Employee Loan Agreement (TV-72614A) with RLG, Inc., Requested by the Office of Nuclear Power.

D3. Supplement to Employee Loan Agreement (TV-71871A) with Seehuus & Hart, Associates, Inc., Requested by the Office of Nuclear Power.

D4. Supplement to Personal Services Contract No. TV-71877A with Shaw, Pittman, Potts & Trowbridge of Washington, DC, for Legal Services, Requested by the Office of the General Counsel.

D5. Supplement to Personal Services Contract No. TV-63666A with Praxis Engineers, Inc., Milpatis, California, for Development of a Coal Preperation Process Control System, Requested by the Office of Power.

E—Real Property Transactions

E1. Sale of a Permanent Easement to Larry J. and Peggy Taylor for an Access Road, Turnaround, and Maintenance of a Mailbox, Affecting 0.1 Acre of Fort Loudoun Reservoir Land in Blount, County, Tennessee—Tract No. XFL-120H.

F—Unclassified

F1. Supplement to Contract (TV-72077A) with U.S. Department of Agriculture, Forest Service, Northeastern Forest Experiment Station, Providing for Conduct of Exposure Experiments at Whitetop Mountain to Determine Cause of Red Spruce Decline in High Elevation of Southern Appalachians.

F2. Supplement to Letter Agreement (TV-66857A) with the Missouri River Division Laboratory, Corps of Engineers, U.S. Department of Army, for Performance of Environmental Laboratory Analyses to Determine Priority Pollutants at Certain Sampling Sites Located in the Missouri River Division of the Corps of Engineers.

F3. Agreement (TV-73585A) with Hawaiian Sugar Planters' Association Providing for Cooperation in the Development and Implementation of Projects Related to Options for Sugar Cane Producers with Respect to Energy.

F4. Revision to TVA Code Relating to Regional Human Resource Development.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: January 6, 1988.

W.F. Willis,

General Manager.

[FR Doc. 88-488 Filed 1-7-88; 1:20 pm]

BILLING CODE 8120-01-M

* This item approved by individual Board members.

This would give formal ratification to the Board's action.

Corrections

Federal Register

Vol. 53, No. 6

Monday, January 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3425/R924; FRL—3305—6]

Pesticide Tolerance for N—(Mercaptomethyl) Phthalimide S—(O,O—Dimethyl Phosphorodithioate)

Correction

In rule document 87-29369 beginning on page 48538 in the issue of Wednesday, December 23, 1987, make the following correction:

§ 180.261 [Corrected]

On page 48539, in the second column, in § 180.261(b), in the table, in the second column, "01" should read "0.1".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, and 441

[BERC—513—F]

Medicaid Program; Relations With Other Agencies, Miscellaneous Medicaid Definitions, Third Party Liability Quality Control, and Limitations on Federal Funds for Abortions

Correction

In rule document 87-28903 beginning on page 47926 in the issue of Thursday, December 17, 1987, make the following corrections:

1. On page 47927, in the third column, in the 27th line, "recipient who are" should read "recipients who are not".

2. On page 47931, in the third column, in paragraph (d), in the third line, "Pub. L. 97-272" should read "Pub. L. 96-272".

§ 431.625 [Corrected]

3. On page 47933, in the first column, in § 431.625(a)(1), in the second line, "requests" should read "requires".

§ 435.1009 [Corrected]

4. On page 47934, in § 435.1009, in the first column, in the introductory text, in the fourth line, "physical" should read "physician" and in the second column, in the first line, "insitution" should read "institution".

BILLING CODE 1505-01-D

VOL
53

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federal register

Monday
January 11, 1988

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 7 et al.
Federal Acquisition Regulation;
Miscellaneous Amendments

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52

[Federal Acquisition Circular 84-32]

Federal Acquisition Regulation; Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-32 amends the Federal Acquisition Regulation (FAR) with respect to the following: A-76 Cost Comparison Public Review Period Revision; Revision to FAR 8.405-1(a); Blanket Purchase Agreement Authorization Lists; Release of Solicitation Mailing Lists; Small Business Size Standards; Revision Regarding Applicability of CWHSSA to FAR 22.305; Reporting Veteran's Employment; Adding Names to Two Countries to the European Economic Community List; Other Socioeconomic Programs; Noncompliance with Bid Guarantee Requirements; Excise Tax Exemptions; GSBCA Jurisdiction; Vists to Contractor Facilities; and Use of Property Clauses in Service Contracts.

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 32, Items I, II, III, IV, V, VI, VIII, IX, X, XI, XII, XIII, and XIV. The Paperwork Reduction Act (44 U.S.C. 3501, et seq.) does not apply because these final rules do not impose any additional reporting or recordkeeping requirements or collection of information from offerors contractors or members of the public which require the approval of OMB under the Act.

FAC 32, Item VII. OMB has assigned OMB Control No. 1293-0005 to the DOL information collection requirements.

B. Regulatory Flexibility Act

FAC 32, Items I, II, III, IV, V, VI, VIII, IX, X, XI, and XII. Analysis of the proposed revisions indicate that they are not "significant revisions" as defined in FAR 1.501, i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with 41 U.S.C. 418b pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

FAC 32, Item VII. In the **Federal Register** on March 4, 1987 (52 FR 6677), the Department of Labor certified that their final rule will not have a "significant economic impact upon a substantial number of small entities" within the meaning of 5 U.S.C. 605(b).

FAC 32, Item XIII. Because the final rule impacts only the Federal Government, the final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and 41 U.S.C. 418b, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR Subpart will be considered in accordance with 5 U.S.C. 610.

FAC 32, Item XIV. The DoD, GSA, and NASA certify that this rule will not have a significant economic impact on a substantial number of small entities as the rule merely relieves contractors of responsibility for Government property under circumstances where the property is located on Government installations and the contractor thereby has less than full control over the property. No comments from small entities were received regarding the Initial Regulatory Flexibility Act Analysis prepared for the proposed rule and published in the **Federal Register** on February 21, 1986 (51 FR 6360). A final Regulatory Flexibility Analysis has been prepared and is on file in the Office of the FAR Secretariat.

C. Public Comments

FAC 32, Item IV. A proposed rule was published on November 19, 1986 (51 FR 41897). The comments received were not considered to be of such significance as to require any change to the proposed rule.

FAC 32, Item XIV. A proposed rule was published in the **Federal Register** on February 21, 1986 (51 FR 6360). As a result of the public comments, only one change was made to the proposed rule to correct a typographical error at 45.106(d).

List of Subjects in 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52

Government procurement.

Dated: January 5, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-32 is effective January 29, 1988.

December 28, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

December 24, 1987.

Paul Traus,

Acting Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-32 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—A-76 Cost Comparison Public Review Period Revision

FAR 7.306(b)(3) is revised to conform with the policy presently set forth in the supplement to the Office of Management and Budget (OMB) Circular number A-76 (revised August 1983) Part I, Chapter 2, Section I, Appeals of Cost Comparisons, paragraph 6a which specifies a period of 15 to 30 working days for the public review period.

Item II—Revision to FAR 8.405-1(a)

FAR 8.405-1(a) is revised to provide that, in the case of Multiple-Award Schedules, ordering offices shall fully justify in their contract file, any orders over $1,000.00 per line item placed at other than the lowest price. The dollar threshold has been raised from $500.00 to $1,000.00.

Item III—Blanket Purchase Agreement Authorization Lists

FAR 13.203-1(j)(5) is revised to allow an alternate method of identification of individuals authorized to place PBA calls. The current method, providing a list of names of the inviduals authorized to place BPA calls to the supplier, is administratively burdensome where frequent personnel changes occur. This change will allow identification by position title.

Item IV—Release of Solicitation Mailing Lists

FAR 14.205-5 is revised to clarify that contracting offices may require written requests for the release of lists of prospective bidders who were furnished copies of plans and specifications on construction contracts.

Item V—Size Standards

FAR 19.102 is revised to add two SIC codes that were not included in the new tables published in FAC 84-28.

Item VI—Revision Regarding Applicability of CWHSSA to FAR 22.305

FAR 22.305 is revised to delete the applicability to Enrwetok Atoll and Kwajelein Atoll from the Contract Work Hours Safety Standards Act.

Item VII—Reporting Veteran's Employment

FAR 22.1300 is revised and the clause at 52.222-37 is added to include the Department of Labor reporting requirements related to special disabled veterans and veterans of the Vietnam era.

Item VIII—Adding Names of Two Countries to the European Economic Community List

FAR 25.104(a) is revised by adding Portugal and Spain to the European Economic Community list of countries.

Item IX—Other Socioeconomic Programs

FAR Part 26, Other Socioeconomic Programs, is added (no text at FAR level) to facilitate agency needs to promulgate additional agency-level socioeconomic coverage within Subchapter D, Socioeconomic Programs.

Item X—Noncompliance With Bid Guarantee Requirements

FAR 28.101-4 is revised to provide contracting officers with additional situations where consideration may be given to the waiver of noncompliance with bid guarantee requirements.

Item XI—Excise Tax Exemptions

FAR 29.202 is revised to update the Code of Federal Regulations citations. A new section 29.203, Other Federal tax exemptions, is added to include federal tax exemptions other than for manufacturers or special fuels excise taxes.

Item XII—General Services Board of Contract Appeals Jurisdiction

FAR 33.106(a)(1) is revised to reflect a recent revision of 40 U.S.C. 759(f) to give the GSBCA authority to determine its own jurisdiction.

Item XIII—Visits to Contractor Facilities

FAR 42.101(a) and 42.402(a) and (b) are revised to specify that prospective visitors to contractor facilities are to provide information concerning the visit to the cognizant Contract Administration Office (CAO) sufficiently in advance and in adequate detail so as to permit the CAO to advise the visitors in the event information related to contract administration functions currently exists that may satisfy the stated purpose of the visit. This is to preclude duplicate demands being made upon contractors.

Item XIV—Use of Property Clauses in Service Contracts

FAR 45.103, 45.106, and 52.245-4 are revised to clarify the contractor's responsibility for Government-furnished property under service contracts performed at Government installations.

Therefore, 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 8, 13, 14, 19, 22, 25, 26, 28, 29, 33, 42, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.306 is amended in paragraph (b)(3) by revising the second sentence to read as follows:

7.306 Evaluation.

* * * * *

(b) * * *

(3) * * * The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.405-1 [Amended]

3. Section 8.405-1 is amended in the second sentence of paragraph (a) by removing the figure "$500" and inserting in its place the figure "$1,000".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

4. Section 13.203-1 is amended by revising paragraph (j)(5) to read as follows:

13.203-1 General.

* * * * *

(j) * * *

(5) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

* * * * *

PART 14—SEALED BIDDING

5. Section 14.205-5 is amended in paragraph (b) by adding a second sentence to read as follows:

14.205-5 Release of solicitation mailing lists.

* * * * *

(b) * * * Contracting offices may require written requests and establish appropriate procedures.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.102 is amended in the size standards tables, Group 36, SIC Code 3699, by removing the size "500" and inserting in its place "750" and by adding numerically in Major Group 50, two SIC codes and their corresponding description and size to read as follows:

19.102 Size standards.

* * * * *

5051 Metals Service Centers and Offices	100
5052 Coal and Other Minerals and Ores	100

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 [Amended]

7. Section 22.305 is amended in paragraph (e) by removing the words "Eniwetok Atoll, Kwajalein Atoll,".

22.1300 [Amended]

8. Section 22.1300 is amended in the first sentence following the parenthetical reference "41 CFR Part 60-250" by adding the words "and Part 61-250".

9. Section 22.1304 is revised to read as follows:

22.1304 Department of Labor notices and reports.

(a) The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Director.

(b) The Act requires contractors to submit a report at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, have been waived (see 22.1303). The contractor shall use Standard Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

10. Section 22.1308 is amended by revising the section title, by redesignating paragraph (b) as (c), and by adding a new paragraph (b) to read as follows:

§ 22.1308 Contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, in solicitations and contracts containing the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans.

* * * * *

PART 25—FOREIGN ACQUISITION

25.103 [Amended]

11. Section 25.103 is amended by removing the words "Defense Acquisition Regulation" and inserting in their place the words "Department of Defense (DOD) Federal Acquisition Regulation Supplement".

25.104 [Amended]

12. Section 25.104 is amended in paragraph (a) by removing in the second and fourth sentences the date "January 1, 1981" and inserting in each place the date "January 1, 1986" and by adding alphabetically in the third sentence following the word "Netherlands", the words "Portugal, Spain,".

13. Part 26 is added to read as follows:

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Note.—This part contains to text at the FAR level. It has been created to facilitate promulgation of additional agency-level socioeconomic coverage which properly falls under FAR Subchapter D—Socioeconomic Programs, but neither implements or supplements existing FAR Parts 19, 20, nor 22 through 25.

PART 28—BONDS AND INSURANCE

14. Section 28.101-4 is amended by adding paragraphs (g), (h), and (i) to read as follows:

28.101-4 Noncompliance with bid guarantee requirements.

* * * * *

(g) When an otherwise acceptable bid bond was submitted with a signed bid, but the bid bond was not signed by the offeror.

(h) When an otherwise acceptable bid bond is erroneously dated or bears no date at all.

(i) When a bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number and the name and location of the project involved, so long as it is acceptable in all other respects.

PART 29—TAXES

29.202 [Amended]

15. Section 29.202 is amended in paragraph (b) by removing the reference "26 CFR 48.4041-12" and inserting in its place "26 CFR 48.4221-3"; by removing in paragraph (c) the reference "26 U.S.C. 4221" and inserting in its place "26 CFR 48.4221-2"; by removing in paragraph (d) the reference "26 CFR 48.4041-9(c)" and inserting in its place "26 CFR 48.4221-4(d)(2)"; by removing in paragraph (d) the period following the word "quarters" and inserting the period following the parenthetical reference "(26 U.S.C. 4041 and 4221)."; and by removing in paragraph (f) the reference "26 U.S.C. 4064(a)" and inserting in its place "26 U.S.C. 4053".

16. Section 29.203 is added to read as follows:

29.203 Other Federal tax exemptions.

(a) Pursuant to 26 U.S.C. 4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(b) Pursuant to 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

PART 33—PROTESTS, DISPUTES, AND APPEALS

17. Section 33.105 is amended by revising in paragraph (a)(1) the first sentence to read as follows:

33.105 Protests to GSBCA.

(a)(1) An interested party may protest an ADP acquisition subject to section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759) by filing a protest with the GSBCA. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

18. Section 42.101 is amended in paragraph (a) by revising the first sentence to read as follows:

42.101 Policy.

(a) Agencies requiring field contract administration or audit services are encouraged to use cross-servicing arrangements with existing contract administration and contract audit components to preclude duplicate demands being made upon contractors (see 42.102(a) for the directories of cognizant offices). * * *

* * * * *

19. Section 42.402 is amended by revising the introductory text of paragraph (a); by redesignating paragraph (b) as (c), and by adding a new paragraph (b) to read as follows:

42.402 Visits to contractors' facilities.

(a) Government personnel planning to visit a contractor's facility in connection with one or more Government contracts shall provide prior notification to the cognizant CAO, with the following information, sufficiently in advance to permit the CAO to make necessary arrangements. Such notification is for the purpose of eliminating duplicative reviews, requests, investigations, and audits relating to the contract administration functions in Subpart 42.3 delegated to CAO's and shall, as a minimum, include the following (see also paragraph (b) of this section):

* * * * *

(b) If the visit will result in reviewing, auditing, or obtaining any information from the contractor relating to contract administration functions, the prospective visitor shall identify the information in sufficient detail so as to permit the CAO, in coordination with the contractor, to determine whether such information, adequate to fulfill the requirement, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located. Where the office is the CAO, such information will be immediately forwarded or otherwise made available to the requestor.

* * * * *

PART 45—GOVERNMENT PROPERTY

20. Section 45.103 is amended by removing in paragraph (b)(2) the word "or"; by removing in paragraph (b)(3) the period at the end of the sentence and inserting in its place the words "; or" and by adding paragraph (b)(4) to read as follows:

45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

* * * * *

21. Section 45.106 is amended by revising paragraph (b)(2) and paragraph (d) to read as follows:

45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see Subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less; unless a contract with an educational or nonprofit organization is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Section 52.222-37 is added to read as follows:

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(b), insert the following clause:

Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jan. 1988)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workplace of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order or $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

23. Section 52.245-4 is amended by revising the introductory text to read as follows:

52.245-4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

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[FR Doc. 88-367 Filed 1-8-88; 8:45 am]
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Monday
January 11, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-24]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Fayetteville Municipal/Grannis Field Airport, NC; Pope Air Force Base (AFB), NC, and Shaw AFB, SC. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRAS) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 93 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On August 7, 1987, the FAA proposed to designate ARSA's at Fayetteville Municipal/Grannis Field Airport, NC; Pope AFB, NC, and Shaw AFB, SC. (52 FR 29474). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA received seven comments on the proposed ARSA's. One of the commenters was in favor of all three locations. The remaining commenters offered objections to one or all of the proposed sites.

The Soaring Society of America (SSA) submitted a number of objections to the basic ARSA program. All comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252). The SSA, though they found no record of any affiliated organizations near the proposed sites, objected based on their objection to the ARSA program. The SSA offered no site specific recommendations/objections.

One commenter objected to the Fayetteville ARSA based on the impact on his small business, citing the Regulatory Flexibility Act of 1980. The commenter requested that a cutout of the five-mile core be provided for his small private airport.

Provisions have been made in the ARSA program for local letters of agreement to accommodate such small operations. The Facility Manager at Fayetteville has discussed the problem with the commenter and the commenter is satisfied that his objection will be resolved with a letter of agreement.

Another commenter suggested that Fayetteville Approach Control would not be able to handle the increased workload created by the ARSA.

The FAA does not agree. Fayetteville Approach Control currently handles the traffic participating in the TRSA program which is better than 95 percent of total traffic. The FAA does not anticipate a significant increase in overall traffic, and the facility is confident that they will be able to provide the desired level of service.

The Commander at Simmons Army Airfield submitted a letter supporting the Fayetteville and Pope ARSA's and offered some recommended alterations. The desired alterations would remove the Simmons Army Air Field control zone from the surface area.

The FAA finds the recommendations have merit and through discussions with the proponent has made alterations to the Fayetteville and Pope ARSA's, as reflected in this rule, to the satisfaction of the commenter.

A commenter suggested that the FAA retain the TRSA at Shaw AFB but use ARSA separation standards. He further recommended that two approach corridors be established instead of the five- and ten-mile circles.

The FAA finds that these recommendations are in conflict with the standardization intent of the ARSA program. A National Airspace Review (NAR) Task Group comprised of all facets of aviation recommended that the FAA establish standardized airspace in the vicinity of airports. The recommendation was intended to make it easier for pilots to predict what configuration of airspace they will find when flying into a new area. Therefore, we will not adopt the recommendetion. The same commenter also remarked about radio quality and "looser tolerance." These remarks, though not ARSA related, are being passed on to the appropriate offices for investigation.

One commenter had six recommendations for the Shaw ARSA. His first recommendation was to raise the floor of the five- to ten-mile area to Shaw's minimum vectoring altitude (MVA), to allow for more room over antennas and for operation beneath the ARSA. The FAA does not concur. The ARSA concept is designed to enhance safety in the vicinity of airports with significant activity. Theoretically, with the floor of the ARSA at the MVA, an IFR aircraft could be at the MVA and a nonparticipant one foot below. Such a situation could result in a midair collision while both aircraft were operating legally. An ARSA is designed to provide air traffic controllers with information about all aircraft operating to/from and in the vicinity of the primary airport at critical altitudes. This proposal would preclude that at one of the most critical altitudes.

The commenter secondly suggested that the staffing at Shaw was not sufficient to handle the increase in traffic activity. The FAA finds that the staffing at Shaw is not a valid concern. Shaw Approach Control currently operates a TRSA where more than 90 percent of total traffic are participants. The Air Force assures us that the staff at Shaw can handle any probable activity increase and provide the desired level of service.

The commenter also suggested that he was under the impression that the FAA had already made their decision prior to any FAA regulatory process. The FAA has followed regulatory processes. All suggestions/comments to the docket were considered prior to taking any final regulatory action. This is demonstrated by the alteration made to the Fayetteville/Pope ARSA due to suggestions received.

The last two comments from this commenter dealt with the way air traffic is counted for ARSA establishment purposes and potential procedural matters for the Shaw Aero Club.

The FAA finds that the commenter's concerns as to the methods of counting air traffic are not valid. Establishment criteria for an ARSA is based on instrument operations at the primary airport, not overflights transiting the area. Formation flights are counted as one activity not by the number of individual aircraft. Shaw meets the FAA's establishment criteria.

The FAA also finds that the suggestion for the Shaw Aero Club is a procedural matter outside the pervue of this rulemaking action. The suggestion involved establishing procedures for the Shaw Aero Club to have unencumbered access between Shaw AFB and Shaw Municipal Airport. The ARSA program does provide for establishment of letters of agreement to minimize the impact where necessary.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation discussed in the NPRM, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will occur in the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction of midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Fayetteville Municipal/Grannis Field Airport, NC; Pope AFB, NC, and Shaw AFB, SC. Each location designated is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.50 [Amended]

2. Section 71.501 is amended as follows:

Fayetteville Municipal/Grannis Field Airport, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Fayetteville Municipal/Grannis Field Airport (lat. 34°59'28"N., long. 78°52'50"W.) excluding that airspace below 1,400 feet MSL within a 1½-mile radius of Gray's Creek Airport (lat. 34°53'01"N., long. 78°50'09"W.); and that airspace within a 10-mile radius of the airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace contained within Restricted Areas R-5311 A, B and C when they are active. This airport radar service area is effective during the specific days and hours of operation of the Fayetteville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Pope AFB, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB (lat. 35°09'58"N., long. 79°01'03"W.), excluding that airspace below 1,400 feet MSL contained in the Simmons Army Air Field, NC, Control Zone, and excluding that airspace contained within Restricted Areas R-5311 A, B and C when they are active; and that airspace within a 10-mile radius of Pope AFB extending upward from 2,000 feet MSL to and including 4,200 feet MSL, beginning at the northern boundaries of R-5311 A, B and C clockwise to the 020° bearing from the airport; and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport beginning at the 020° bearing from the airport clockwise to the northern boundaries of R-5311 A, B and C, excluding that airspace contained in R-5311 A, B and C when they are active and excluding that airspace contained in the Fayetteville Municipal/Grannis Field Airport Airport Radar Service Area (ARSA). This ARSA is effective during the specific days and hours of operation of the Fayetteville Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Shaw AFB, SC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Shaw AFB (lat. 33°58'24"N., long. 80°28'24"W.) excluding that airspace below 1,500 feet MSL within a 2-mile radius of the Sumter Municipal Airport (lat. 33°59'42"N., long. 80°21'45"W.); and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Shaw AFB, excluding that airspace contained within Restricted Area R-6002 when it is in use.

Issued in Washington, DC, on January 4, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-414 Filed 1-8-88; 8:45 am]

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federal register

Monday
January 11, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Area; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-27]

Proposed Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice amends an earlier notice in which the FAA proposed to designate an Airport Radar Service Area (ARSA) at Chicago Midway Airport, IL, by proposing a change in the description of the ARSA. The wrong description was inadvertently published. Midway Airport is a public airport at which Stage II radar service is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at Chicago Midway Airport would reduce the risk of midair collision and promote the efficient control of air traffic in the terminal.

DATES: Comments must be received on or before February 17, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Airspace Docket No. 87-AWA-27, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

On October 8, 1987, the FAA proposed to designate an ARSA at Chicago Midway Airport, IL, (52 FR 37718). This supplement proposes to amend the earlier notice by changing the description of the ARSA. As originally proposed, the ARSA ceiling was proposed to be 3,000 feet MSL. Further study indicated a need to amend the original proposal to obtain full advantage of the ARSA, however, the wrong description was submitted. The entire proposal as amended is stated below.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Chicago Midway Airport, IL [Revised]

That airspace within a 5-mile radius of the Chicago Midway Airport (lat. 41°47'10" N., long 87°45'06" W.) extending upward from the surface to 4,000 feet MSL; and that airspace within a 10-mile radius of the Chicago Midway localizer course to Runway 31L clockwise to where the 10-mile arc of the O'Hare VOR intersects the 10-mile radius of the airport, thence via the O'Hare 10-mile arc, extending upward from 1,900 feet MSL to 4,000 feet MSL. All airspace contained in the O'Hare TCA is excluded from the Midway ARSA.

Issued in Washington, DC, on January 5, 1988.

Daniel J. Peterson,

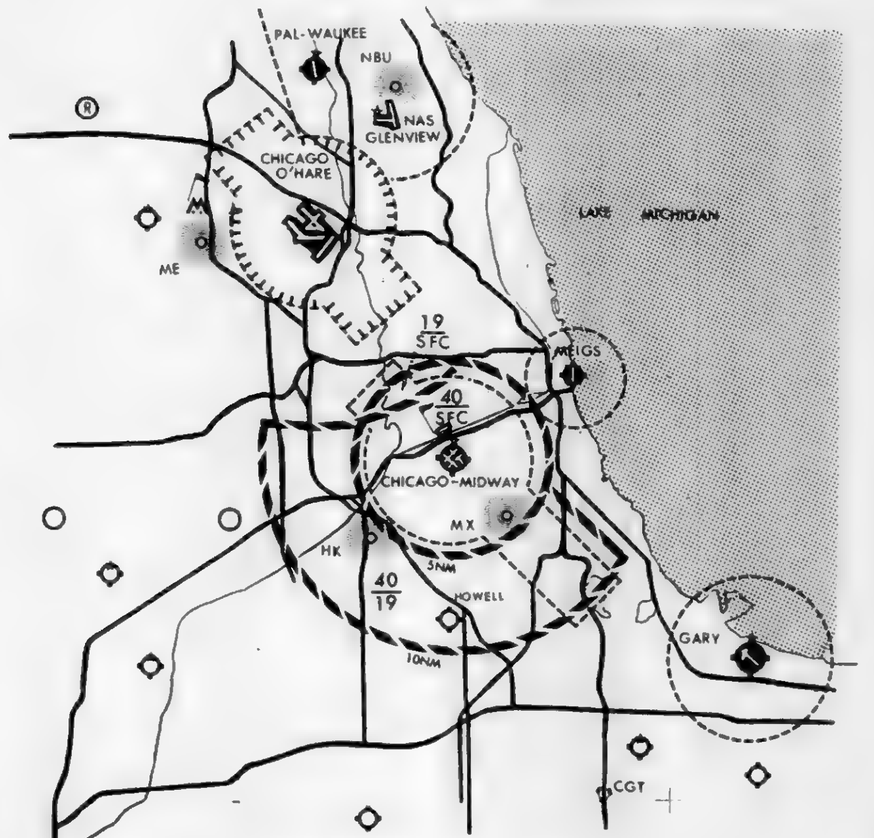
Manager, Airspace-Rules and Aeronautical Information Division.

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AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHICAGO, ILLINOIS
CHICAGO-MIDWAY
FIELD ELEV. 219' MSL



All airspace contained in the O"Hare TCA is excluded from the Midway ARSA.

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 88-415 Filed 1-8-88; 8:45 am]

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federal register

Monday
January 11, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport, Radar Service Areas; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA. With the exception of Santa Barbara, each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before April 10, 1988. Informal airspace meeting dates are as follows: Baton Rouge Metro Ryan Field, LA—March 15, 1988; Charleston Yeager Airport, WV—March 16, 1988; City of Colorado Springs Municipal Airport, CO—March 10, 1988; Palm Springs Municipal Airport, CA—March 14, 1988; and Santa Barbara Municipal Airport, CA—March 10, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:
Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-52, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Baton Rouge Metro Ryan Field, LA, ARSA
Date: March 15, 1988
Time: 7:00 p.m.
Location: Civil Air Patrol Comm. Squadron, 4524 Blanche Noyes Road (Off Blanche Road and Highway 67), Baton Rouge, LA 70611

Charleston Yeager Airport, WV, ARSA
Date: March 16, 1988
Time: 7:00 p.m.
Location: Columbia Gas Transmission Co., 1700 MacCorkle Ave., S.E., Charleston, WV 25325

City of Colorado Springs Municipal Airport, CO, ARSA
Date: March 10, 1988
Time: 7:00 p.m.
Location: Best Western Palmer House, I-25 at Fillmore, Colorado Springs, CO 80907

Palm Springs Municipal Airport, CA, ARSA
Date: March 14, 1988
Time: 7:00 p.m.
Location: City Hall Council Chambers, 3200 Taquito-McCallum Way, Palm Springs, CA 92282

Santa Barbara Municipal Airport, CA, ARSA
Date: March 10, 1988
Time: 7:00 p.m.
Location: Santa Barbara County School's Office Auditorium, 4400 Cathedral Oaks, Santa Barbara, CA 93105

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves five locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-52." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda:
Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 93 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's which warrant implementation of an ARSA.

Related Rulemaking

This notice proposes ARSA designation at five locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at four of the locations at which ARSA's are proposed in this notice. Santa Barbara is a radar facility currently providing Stage II service. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). Stage II service, with the exception of separation, provides the same. TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR in voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action. At the five proposed locations, the volume and density of traffic have increased to the point where the implementation of ARSA's is strongly recommended.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Baton Rouge Metro Ryan Field, LA; Charleston Yeager Airport, WV; City of Colorado Springs Municipal Airport, CO; Palm Springs Municipal Airport, CA; and Santa Barbara Municipal Airport, CA which are public airports, at four of which nonregulatory TRSA's are currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern

for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above the airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at these locations is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours and these facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor

procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARAS's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiently and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in an overall improvement in efficency in terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States,

small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amended

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Baton Route Metro, Ryan Field, LA [New]

That airspace within a 5-mile radius of the Baton Route Metro, Ryan Field (lat. 30°31'57"N., long. 91°08'59"W.) extending upward from the surface to and including 4,100 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,300 feet MSL to and including 4,100 feet MSL.

Colorado Springs Municipal Airport, CA [New]

That airspace within a 5-mile radius of the Colorado Springs Municipal Airport (lat. 38°48'31"N., long. 104°42'34"W.) extending upward from the surface to and including 10,200 feet MSL; and that airspace within a 10-mile radius of the airport, beginning at a line direct from a point at the 270°T bearing from the airport 5 miles to a point at the 333°T bearing from the airport 10 miles, clockwise to the 099°T bearing from the airport extending upward from 8,200 feet MSL to and including 10,200 feet MSL, excluding that airspace within a 2-mile radius of the Meado Lake Airport (lat. 38°57'00"N., long. 104°34'23"W.); and that airspace within a 10-mile radius of the airport from the 099°T bearing from the airport clockwise to the 188°T bearing from the airport extending upward from 7,100 feet MSL to and including 10,200 feet MSL.

Charleston Yeager Airport, WV [New]

That airspace within a 5-mile radius of the Yeager Airport (lat. 38°22'23"N., long. 81°35'36"W.) extending upward from the surface to and including 5,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,800 feet MSL to and including 5,000 feet MSL.

Palms Springs Municipal Airport, CA [New]

That airspace within a 5-mile radius of the Palm Springs Municipal Airport (lat. 33°49'41"N., long. 116°30'19"W.) extending upward from the surface to and including 4,500 feet MSL; and that airspace within a 10-mile radius of the airport from the 286°T bearing from the airport clockwise to the 093°T bearing from the airport extending upward from 2,200 feet MSL to and including 4,500 feet MSL; and that airspace within a 10-mile radius of the airport from the 093°T bearing from the airport clockwise to the 139°T bearing from the airport extending upward from 1,700 feet MSL to and including 4,500 feet MSL.

Santa Barbara Municipal Airport, CA [New]

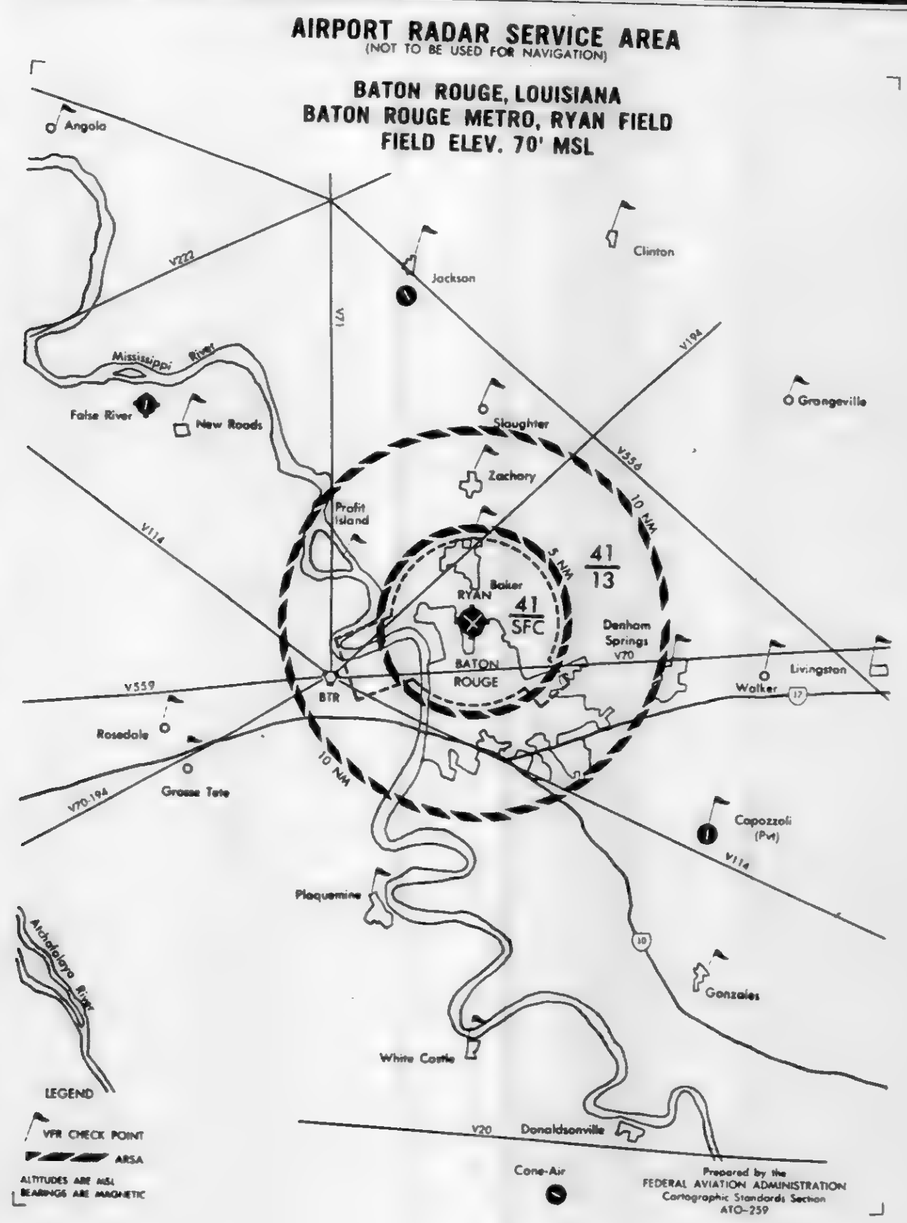
That airspace within a 5-mile radius of the Santa Barbara Municipal Airport (lat. 34°25'34"N., long. 119°50'22"W.) extending upward from the surface to and including 4,000 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace from the 295°T bearing from the airport, between the 5- and 10-mile radius, clockwise to a line from the 057°T bearing from the airport on the 5-mile radius direct to a point on the 078°T bearing on the 10-mile radius.

Issued in Washington, DC, on January 4, 1988.

Daniel J. Peterson,

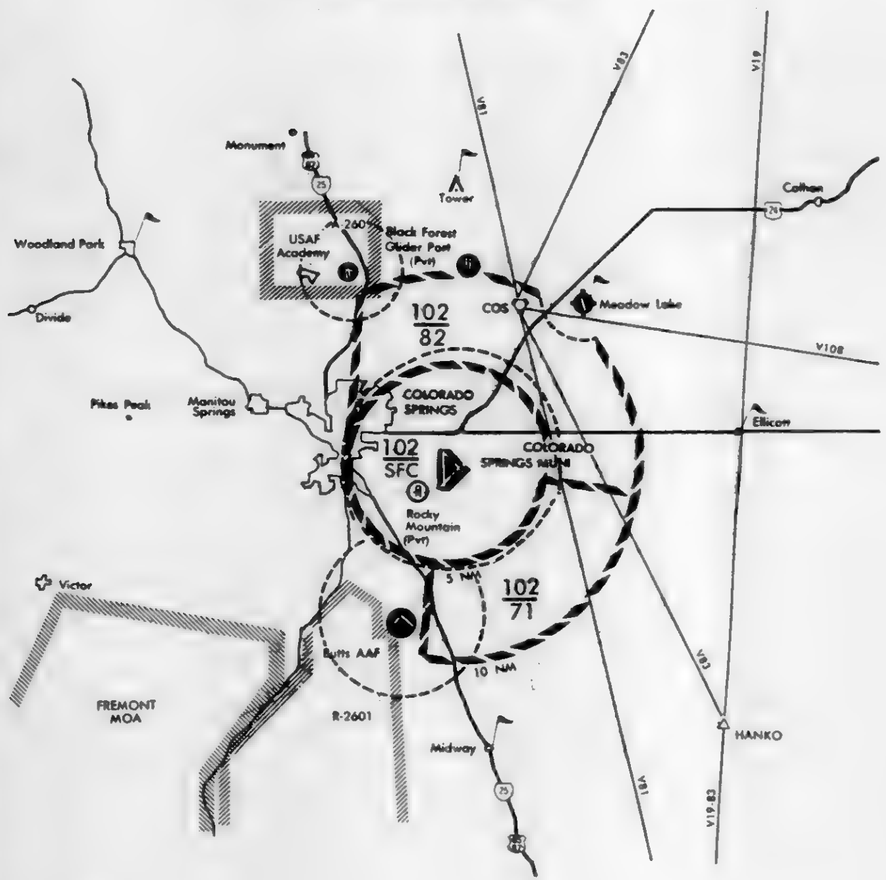
Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

COLORADO SPRINGS, COLORADO
CITY OF COLORADO SPRINGS MUNI AIRPORT
FIELD ELEV. 6172' MSL



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

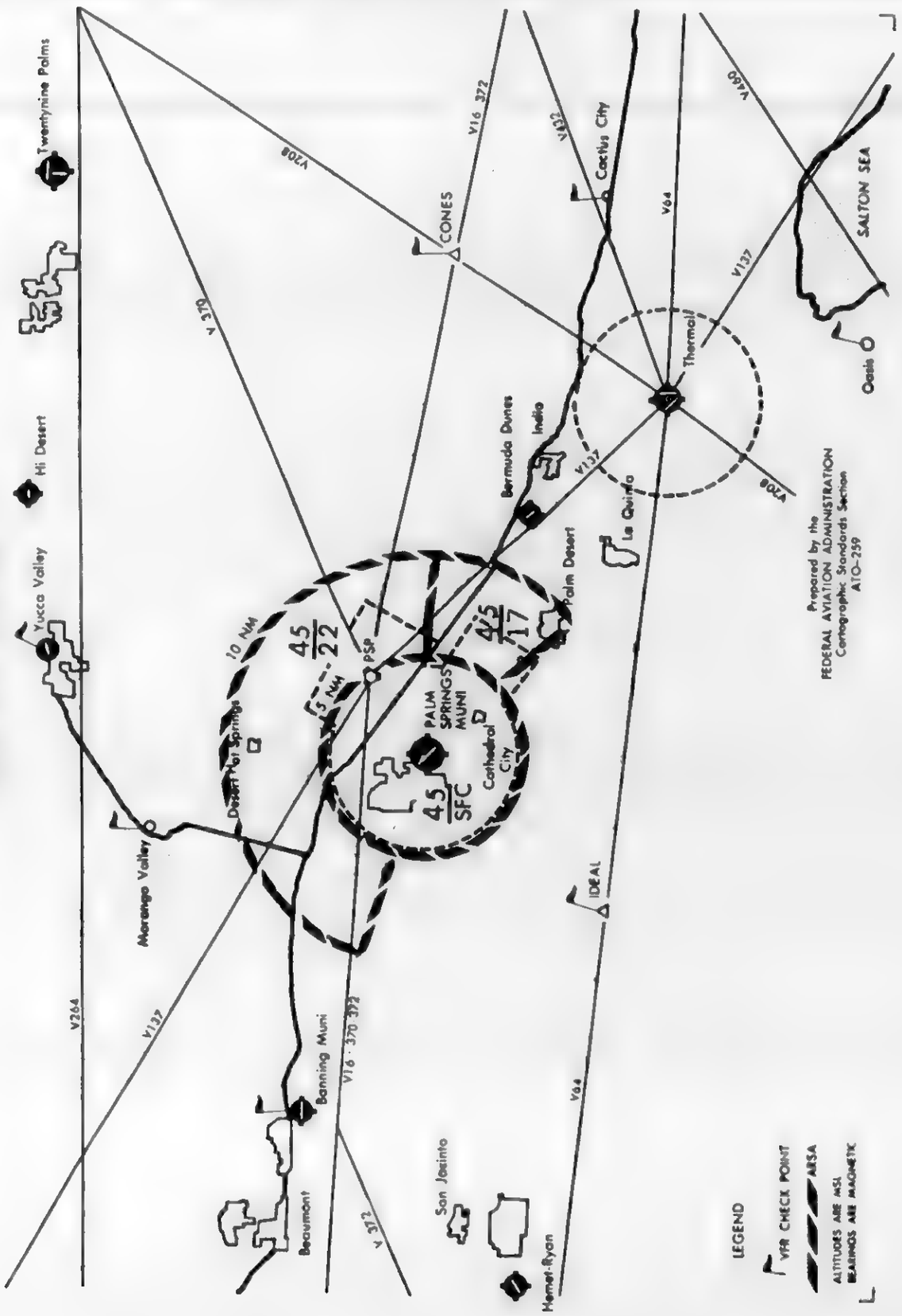
CHARLESTON, WEST VIRGINIA
YEAGER AIRPORT
FIELD ELEV. 982' MSL



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SANTA BARBARA, CALIFORNIA
SANTA BARBARA AIRPORT
FIELD ELEV. 10' MSL

[FR Doc. 88-416 Filed 1-8-88; 8:45 am]

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Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

[Docket Nos. AO-309-A27 and AO-374-A11]

Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision merges the Great Basin and Lake Mead Federal milk orders, based on industry proposals considered at a public hearing held March 18–20, 1986, in Salt Lake City, Utah. In addition to the presently regulated marketing areas, the merged "Great Basin" marketing area would include the presently unregulated portion of the State of Utah, two counties in Wyoming, and additional counties in Idaho. The provisions of the merged order are generally patterned after those of the two separate orders, and the present Class I price differentials at Salt Lake City and Las Vegas are maintained.

One feature of the merged order not now contained in either order includes, in the pool plant definition, a manufacturing plant located within the marketing area and operated by a cooperative association. The obligation of a partially regulated distributing plant operator regulated by a State order would be determined by the value of the fluid milk products distributed in the Federal order marketing area at the difference between the Class I price paid by the handler regulated under the State order and the applicable Federal order Class I price.

For the first time in the Federal milk order system, the merged order includes a plan for pricing milk on the basis of its protein, as well as butterfat, components. The differential value of milk used in Class I and Class II would be pooled to determine producers' shares of the higher-valued uses, and the value of protein used in Classes II and III would be pooled with the value of skim milk used in Class I to determine the value of protein in producer milk.

The merger is needed to reflect changes in market structure in that the two separately regulated areas have become, in effect, one common market. Cooperative associations will be polled to determine whether producers favor the issuance of the merged order.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Suspension Order (Great Basin): Issued May 28, 1986; published June 3, 1986 (51 FR 19821).

Notice of Proposed Suspension (Great Basin): Issued July 29, 1986; published August 4, 1986 (51 FR 27866).

Notice of Proposed Suspension (Lake Mead): Issued July 29, 1986; published August 1, 1986 (51 FR 27555).

Termination of Proceeding on Proposed Suspension (Lake Mead): Issued August 29, 1986; published September 9, 1986 (51 FR 32104).

Suspension Order (Great Basin): Issued September 2, 1986; published September 5, 1986 (51 FR 31759).

Recommended Decision: Issued July 14, 1987; published July 21, 1987, (52 FR 27372).

Extension of time for filing exceptions on proposed amendments: Issued August 26, 1987; published September 1, 1987 (52 FR 32933).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Great Basin and Lake Mead marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Salt Lake City, Utah, on March 18–20, 1986. Notice of such hearing was issued on February 6, 1986, and published February 11, 1986 (51 FR 5070).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, AMS, on July 14, 1987, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "2. Need for merger of the orders.":

a. A new paragraph is added after paragraph 3.

b. Paragraphs 10, 11, and 20 are revised.

c. Three new paragraphs are added after paragraph 21.

2. Under the heading "3. Merged and expanded marketing area.", paragraph 5 is revised.

3. Under the heading "4. Milk to be priced and pooled.":

a. Paragraphs 7 and 8 are revised.

b. Three new paragraphs are added after paragraph 8.

c. A new paragraph is added after paragraph 14.

d. Two new paragraphs are added after paragraph 37.

e. Three new paragraphs are added after paragraph 53.

4. Under the heading "5. Multiple component pricing.":

a. Paragraphs 14 and 17 are revised.

b. Two new paragraphs are added after paragraph 17.

c. Three new paragraphs are added after paragraph 24.

d. Two new paragraphs are added after paragraph 25.

e. Paragraph 28 is revised.

f. Two new paragraphs are added after paragraph 28.

g. Two new paragraphs are added after paragraph 31.

h. Paragraphs 32 and 35 are revised.

i. Three new paragraphs are added after paragraph 36.

j. One new paragraph is added after paragraph 38.

k. Two new paragraphs are added after paragraph 41.

5. Under the heading "8. Class prices, location adjustments and component prices.", paragraphs 3, 16, and 17 are revised.

6. Under the heading "9. Handlers' value of milk for computing prices to producers.", paragraph 3 is revised.

7. Under the heading "11. Obligations of partially regulated distributing plants.":

a. Paragraph 10 is revised.

b. Three new paragraphs are added after paragraph 10.

c. Paragraphs 11 through 14 are deleted.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the Great Basin and Lake Mead orders should be included under one order;

3. Whether the proposed merged marketing area should be expanded to include additional territory;

If a single order is issued for the proposed merged and expanded marketing area, what its provisions should be with respect to:

4. Milk to be priced and pooled;

5. Multiple component pricing;

6. Handler reports;

7. Classification of milk;

8. Class prices, location adjustments and components prices;

9. Handler obligations, the differential pool and the skim milk/protein pool;

10. Payments to producers;

11. Obligations of partially regulated distributing plant operators;

12. Administrative provisions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Character of commerce.* The handling of milk in the proposed and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "merged Great Basin marketing area", includes 45 contiguous counties, of which 29 comprise the entire State of Utah. The other counties are located in Idaho (10), Nevada (4), and Wyoming (2). The principal cities in the marketing area are Salt Lake City, Utah, and Las Vegas, Nevada. The specific territory included in the marketing area is set forth in the marketing area discussion.

Handlers located in the present Great Basin area have route sales primarily in Utah and Idaho, with some sales in the Wyoming counties proposed to be included in the merged Great Basin marketing area. Handlers regulated under the Lake Mead order distribute milk in southern Nevada and southern Utah. A number of California fluid milk plants dispose of fluid milk products in Nevada.

Similarly, milk procurement for the proposed merged area crosses state boundaries. Handlers regulated by the present Great Basin order procure milk in the States of Utah, Nevada, Idaho, Wyoming and Colorado. The milk needed to supply Lake Mead distributing plants is procured from Nevada, Utah, California and, at times, Arizona and Idaho.

There are numerous manufacturing plants located within the proposed marketing area that manufacture dairy products. These products are sold in Utah, Nevada, Idaho, Wyoming and other States. Manufactured products produced in many States are offered for sale in Utah, Idaho, Nevada and Wyoming.

2. *Need for merger of the orders.* Marketing conditions in the two separately regulated marketing areas under consideration justify the issuance of a single order regulating the handling of milk in these areas. This single order would be the most appropriate means of effectuating the declared policy of the Act.

Federal regulation of milk marketing in the Great Basin area was initiated November 1, 1959, when the Great Basin order became effective. The marketing area has since been amended several times to include Elko and White Pine Counties, Nevada; portions of Cache County, Utah, and Uinta County, Wyoming; and the seven Idaho counties currently in the order. The Lake Mead order became fully effective August 1, 1973. The marketing area covered by the Lake Mead order has not been changed since then.

The merger of the Great Basin and Lake Mead orders was proposed by Intermountain Milk Producers Association (IMPA), a federation of four cooperative associations that market milk in the Great Basin and Lake Mead marketing area. IMPA represents 75–80 percent of the producers whose milk is pooled under the Great Basin order, and nearly all of the producers included in the Lake Mead pool.

Note: Subsequent to the hearing, IMPA had merged with Mountain Empire Dairymen's Association to form Western Dairymens Cooperative, Inc. (WDCI). Proponent's exceptions and comments to the recommended decision were filed by WDCI.

A witness testifying on behalf of IMPA stated that the Lake Mead marketing area is an appendage of the Great Basin market, with handlers regulated by the two orders sharing a common procurement area throughout the State of Utah. He said that the milk surplus to Class I and Class II needs in both markets is absorbed by the same manufacturing plants, located primarily in the Great Basin area. The witness also stated that handlers regulated by the two orders compete for packaged fluid milk sales to consumers, and that fluid milk products packaged in plants regulated by one order are distributed by handlers regulated by the other order. The witness pointed out that most producers in the two marketing areas market their milk through IMPA, a federation of cooperatives active in both markets.

The IMPA representative explained that IMPA assures a market outlet for all of its member producers, and balances reserve and surplus supplies for the Lake Mead and Great Basin markets. He said that IMPA, as a handler under both the Lake Mead and Great Basin orders, furnishes bulk and packaged milk to other handlers and operates the fluid milk distributing plants and manufacturing plants formerly operated by the cooperative associations comprising the federation.

The witness stated that the proposed merger would not change the number of fully-regulated handlers, and would cause little change in the cost of milk to handlers or returns to producers. He claimed that additional supplies of milk would not be attracted to the market, although increases in the production of present producers and the conversion of manufacturing-grade producers to Grade A would be accommodated. According to the witness, merger of the orders would not displace present production, discourage market entry by new producers or affect current price alignment between Las Vegas and Salt Lake City handlers or between handlers at those locations and in other marketing areas.

A witness representing Rockview Dairies, Inc., testified in opposition to the proposed merger. Rockview Dairies operates a California distributing plant and two dairy farms which are nonmember producers for Anderson Dairy, the operator of a pool distributing plant under the Lake Mead order. The witness stated that although there appears to be a shared production area for the two orders, he saw little evidence of overlap of sales by handlers regulated under the Lake Mead and Great Basin orders and little movement of dairy products between the two orders. He observed that there would appear to be as much commonality of sales and production areas between the Great Basin and Southwestern Idaho-Eastern Oregon marketing areas, but that no merger of those orders had been

proposed. The witness claimed that a merger of the Lake Mead and Great Basin areas would result in lower blend prices paid to Lake Mead producers. He explained that milk pooled under the Lake Mead market is primarily used in Class I, with little Class II use and limited opportunities for disposing of surplus milk, while the Great Basin market uses a much larger percentage of its milk in Class II and Class III products. As a result of a merger, he said, the two nonmember producers shipping their milk to Anderson Dairy would have to pool their higher-valued Class I utilization with the much greater quantity of Great Basin milk that is used more predominantly in the lower-valued classes of utilization.

According to the Rockview Dairies representative, Anderson Dairy, the largest distributing plant regulated under the Lake Mead order, recently contracted with a California dairy farm (Rockview) for the farm's total milk supply, and made arrangements with a California nonpool plant to buy any of the farm's production surplus to Anderson's fluid milk needs. The witness predicted that as a result of Anderson's new procurement arrangements, the Lake Mead Market would be much less dependent on manufacturing plants located in the Great Basin marketing area for the disposal of milk production surplus to the fluid milk needs of the market.

A brief filed on behalf of Rockview Dairies, Inc., described proponent's proposal to merge the orders as an attempt by IMPA to establish a monopoly in the marketing area and to obstruct interstate commerce. The brief quoted proponent witness as testifying that the merged order proposed by IMPA would allow the milk produced in Clark County, Nevada (Las Vegas area), to be marketed there "rather than making way for some other producers to come into the market to be qualified." The Rockview Dairies' brief also stated that the record contains no evidence suggesting that the Lake Mead order fails to protect the interests of producers and consumers or to promote the orderly flow of the milk supply to the market, or causes any disruption of the orderly exchange of milk in interstate commerce.

The record indicates that the Lake Mead and Great Basin marketing areas have become interrelated to such an extent that a merger is the most appropriate means of regulating milk marketing in the area involved. When the two orders were promulgated, they regulated the handling of milk in areas that were clearly distinguishable as separate markets for particular handlers and producer groups. Changes in marketing practices and market structure since that time, however, have caused these separately regulated areas to become substantially interrelated in both distribution and supply arrangements. With a single organization, IMPA (which has now merged with Mountain Empire's Dairymen's Association to form WDCI), marketing the milk of most of the producers supplying milk to the present marketing areas, it is reasonable to expect that the interrelationship of the two areas will become even more pronounced over time.

With the formation of IMPA, cooperatives that formerly marketed the milk of member producers within two separate local markets have combined to market milk and balance milk supplies for the two markets as a whole. The provisions of the present individual orders that involve pooling qualifications do not encourage or promote efficient handling and hauling of milk throughout the area encompassed by the two orders. The proposed merger would assist IMPA in marketing the milk of its members in a more effective and efficient manner without encumbrances exerted on the federation's marketing system by the provisions of the separate orders. At the same time, the merger would have little effect on other handlers, consumers and nearly all of the nonmember producers in the merged marketing area.

Proponent cooperative federation operates a fleet of trucks to move member producer milk and directs milk to distributing plants regulated under both orders at the times and in the amounts needed. Under the present provisions of the two Federal orders, the federation must move producers' milk in a manner that will maintain the producer status of its members under either or both orders in order to ensure an adequate reserve supply of milk for both orders. In determining the order under which a producer's milk should be pooled, the federation must consider which plants need milk for fluid and Class II use, which producers' milk is to be included on particular farm pick-up routes, and the need to keep enough dairy farmers qualified as producers on both markets to assure the availability of milk to distributing plants in both markets on short notice. The federation sometimes must shift the market on which a producer's milk is pooled from one Federal order to another because of conditions such as a recent strike of workers at California milk plants. One result of the strike was increased demand for fluid milk in Las Vegas, necessitating the pooling of producers previously associated with the Great Basin market on the Lake Mead market. Another cause of instability in the relative milk supplies of the two markets is the nature of demand in Las Vegas. The number of people in Las Vegas varies widely, increasing significantly over weekends and holidays, and causing large shifts in the demand for fluid milk, both by consumers and by distributing plants.

Adoption of the merger proposal will equalize marketing conditions and prices to producers between the two marketing areas and contribute to greater efficiency by allowing distributing plants to be supplied from the most favorably-located producers without regard to the shipping requirements of two different orders. The distances milk is required to be hauled to qualify for pooling would be shortened, and hauling costs thereby reduced. Accounting and reporting requirements will be reduced if handlers no longer need to be concerned about two separate sets of provisions, two different reporting forms, or the complexities of dealing with the provisions regulating transfers of milk and milk products between orders. The merger would help to reduce unnecessary regulation and reduce costs by relieving the market administrator of duplicating many reports and duties involved in administering two orders instead of one.

It is apparent that, although route disposition from plants regulated under each of the separate orders may not have expanded into the other order area to any great degree, milk supplied by Great Basin producers and bottled in the Great Basin marketing area is increasingly being distributed in the Lake Mead area by Lake Mead handlers. At the same time, it is clear that nearly all of the milk historically associated with the Lake Mead order has become increasingly dependent on distant manufacturing plants in the Great Basin marketing area as outlets for milk produced in excess of the Lake Mead market's fluid milk requirements. If, as the Rockview Dairies' representative testified, the largest distributing plant operator in the Lake Mead market develops an independent supply of milk from California, the need for access to outlets for surplus milk supplies by Lake Mead producers will become even more acute.

Dependence by producers traditionally supplying the Lake Mead market upon the dwindling number of Lake Mead pool distributing plants [1] for a pooling base is likely to generate disorderly marketing conditions as producers struggle to assure that their milk will share in the marketwide pool. Data in the hearing record indicate that in May 1985, most of the Class I needs of the Lake Mead market could be met by milk produced in California and Clark County, Nevada. During that month only a small proportion, approximately 13 percent, of the milk produced in Utah and pooled on the Lake Mead order was actually needed at Lake Mead distributing plants for Class I use. Testimony by the IMPA witness indicated that under this situation the federation intends to maintain Lake Mead pool status for the Grade A milk of all of its member producers traditionally associated with the Lake Mead market, regardless of whatever excessive hauling costs or complex accounting and reporting procedures may be involved in doing so. The federation's incentive for continuing to assure that its producers are qualified for pooling under the Lake Mead order is the historically higher blend price paid to producers under the Lake Mead order than under the Great Basin order. During the years of 1983–85, the announced blend price paid to Lake Mead producers exceeded the Great Basin blend price by an average of approximately 15 cents per hundredweight.

With milk supplies from the southern and central Utah production area available to both the Great Basin and Lake Mead marketing areas and comprising a necessary reserve for the Lake Mead market, equilibrium in the prices paid to producers located in that area is necessary to avoid disorderly marketing conditions. Maintenance of the present pooling standards for a separate Lake Mead order would require the federation to incur unnecessary, expensive and inefficient marketing practices in order to maintain the pool status of its milk on the Lake Mead market.

In the absence of a merger, the federation would be able to assure an adequate supply of milk at its Lake Mead distributing plants while maintaining the Lake Mead pool status of as much of its producers milk as possible only by calculating each month the producer milk that would be pooled under the Lake Mead order. Enough milk would have to be associated with the Lake Mead order to be able to meet the plants' fluid milk requirements on the days the plants receive milk without associating so much milk with the order that the amount of milk diverted to manufacturing would exceed the order's diversion limits. Any milk in excess of that qualified for pooling on the Lake Mead market would have to be pooled under the Great Basin order. Under such conditions, the Great Basin pool would be carrying almost the entire seasonal reserve supply of milk for the Lake Mead marketing area. In addition, the federation would be incurring unnecessary trouble and expense for the sole purpose of marketing its members' milk to their greatest benefit.

The quotation of the IMPA witness from the hearing record used in the Rockview Dairies' brief refers to the requirement of the Lake Mead order that one day's production of a producer's milk must be received at a pool distributing plant each month in order for the producer's total production for the month to be pooled. The IMPA witness testified that, in order for milk produced in southern Utah, more than 200 miles from Las Vegas, to be pooled under the Lake Mead order, some of it must be shipped to Las Vegas each month, sometimes displacing milk produced in the Las Vegas area. The witness' statement was not an assertion that milk from other areas should not be marketed in the Las Vegas area, but rather that the provisions of the order should not require milk to be moved into the Las Vegas area solely in order to be pooled, necessitating the removal of locally-produced milk to make room for it. Provisions encouraging such uneconomic and inefficient handling of producer milk and the testimony that such handling has been engaged in are evidence that the Lake Mead order fails to protect the interests of consumers and handlers by failing to promote the orderly flow of the milk supply to the market. Adoption of the proposal to merge the orders does not require a finding that the Lake Mead order causes a disruption of the orderly exchange of milk in interstate commerce, but merely that such exchange would be improved by a merger of the orders.

The federation probably would be able to continue the Lake Mead pool status of some of its producers without merging the orders and without undertaking unnecessary and uneconomic hauling if the present Lake Mead diversion limits were relaxed. Relaxation of those limits would allow more producer milk to be pooled on the Lake Mead market without an increase in actual deliveries to pool distributing plants. However, increased diversion limits would allow more milk to be pooled under the Lake Mead order, causing a decline in Lake Mead prices to producers that would bring them into balance with Great Basin producer prices.[2]

For the reasons discussed above, the inevitable result of existing marketing conditions under the two separate orders is the uneconomic and inefficient hauling practices undertaken by the federation to assure the pool status of its members under the Lake Mead order. Any attempt to avoid such practices by relaxing the present Lake Mead pooling standards would have the effect of reducing the uniform price to Lake Mead producers to a point at which it will be in equilibrium with the Great Basin uniform price to producers similarly located. A merger of the two orders is the best means of accomplishing the same ends by assuring that participants in the merged marketing area will have no incentive to conduct their operations in other than the most efficient possible manner. The efficiencies of operation that may be expected to result from a merger of the two orders should, on the whole, benefit milk producers, handlers and consumers in the marketing areas affected.

As argued by the Rockview Dairies representative, the lower Class I utilization percentage in the present Great Basin area, relative to Lake Mead, can be expected to cause some reduction in prices paid to all producers delivering their milk to plants located in the present Lake Mead marketing area when the orders are merged. However, producers in the Lake Mead area would share in the 30-cent higher Class I price effective at locations in most of the present Great Basin marketing area, which would counteract some of the effect of the present Great Basin market's lower Class I use on returns to producers now supplying the Lake Mead market. In 1985, the average uniform price paid to producers whose milk was pooled under the Great Basin order was $12.61. The range in Great Basin uniform prices during 1985 was from $12.07 to $13.74. The average uniform price paid to Lake Mead producers during 1985 was $12.78, with a range of $12.14 to $13.78. The difference in prices paid to producers under the two orders, therefore, represents just over 1 percent of the uniform price under either order.

Exceptions to the recommended decision filed by Rockview protested the

[1] Official notice is taken of the cessation of bottling operations at the IMPA Cedar City, Utah, plant in August 1986.

[2] Official notice is taken of the dramatic increase in the volume of milk pooled under the Lake Mead order while diversion limits were suspended during early 1986, and the resulting decline in the uniform prices paid to producers.

merger of the Lake Mead and Great Basin orders and requested that the Lake Mead order be suspended. Rockview argued that at the time of the hearing, only a small percentage of the Class I sales in the Lake Mead marketing area was distributed by Great Basin handlers, and that no sales by Lake Mead handlers were distributed in the Great Basin area. Lacking any overlap in sales, Rockview stated, the only common element between the two orders is WDCI, the proponent cooperative that pools its members' milk under both orders. Rockview argued that if the marketing of milk by a common cooperative association is a legitimate basis for merging orders, then a merger of all of the orders in which WDCI markets milk (Orders No. 134, 135, and 137 as well as 136 and 139) should be considered. Rockview stated that prices to producers would not be equalized by the merger because the 30-cent location adjustment to be effective at Las Vegas will reduce the price paid to Rockview by 30 cents below the announced blend price under the proposed rule, reducing permanently the price paid to Rockview. The handler characterized the order merger as "creating a monopoly on the Class I dollars that are generated in the Lake Mead marketing area for the added benefit to the co-op members at the sole cost to Rockview Dairies."

The decision to merge the Great Basin and Lake Mead orders does not base the need for a merger on the sales competition. The principal reason for the merger is to remove the incentive for proponent cooperative to haul milk from common production areas in Utah to southern Nevada plants and back to Utah for processing simply to share in the proceeds of the Lake Mead pool. As far as the record indicates, only in the two marketing areas proposed to be merged does the cooperative have producers whose milk is sometimes needed at fluid plants in one order area and sometimes must be hauled to surplus manufacturing plants in the other order area. Of the milk currently pooled under the present Lake Mead order, the largest proportion is that of cooperative members. The minus 30-cent location adjustment also will apply in southern Utah where the cooperative's manufacturing plant for surplus Lake Mead production is located. Therefore, proponent cooperative will not realize any higher returns on the present Lake Mead volume of milk than will nonmember producers. The decision continues the present Class I price levels for Las Vegas and Salt Lake City, as proposed by proponents.

Suspension or termination of the Lake Mead order would tend to result in the Great Basin producers carrying the burden of the reserve supply for Nevada fluid milk handlers without sharing fully in the Class I proceeds from such plants' sales. As Rockview contended, suspension of the order would remove the incentive for uneconomical movements of milk. However, the merger would have the same effect. The merger has the added benefit of assuring that Nevada fluid milk plant operators will pay prices that are comparable to prices paid by the regulated handlers in California and Utah that compete with them for sales in Nevada. Without regulation, the Nevada plants would be free to pit Nevada, California and Utah producers against each other in bidding for the Nevada sales outlets. Such potential for destructive competition among producers is a primary reason for the implementation of milk orders.

In view of the marketing conditions discussed above, separate orders for the Great Basin and Lake Mead marketing areas are no longer compatible with the current marketing practices in these regulated areas. The adoption of a single regulation for the combined area would insure more orderly marketing through application of the same regulatory provisions to all handlers and producers associated with the merged order.

The cooperative federation proposed that the order for the merged marketing area follow the format of the present Lake Mead order, as it was issued more recently than the Great Basin order. Proponent pointed out that the provisions of the two orders do not differ greatly, and the proposed order includes most of the provisions of the individual orders except for certain modifications considered necessary to adapt the proposed order to the marketing conditions existing in the proposed merged marketing area. The provisions common to both orders, with certain modifications, have been appropriate in achieving the objectives sought by the regulatory plans for both marketing areas. Accordingly, on the basis of the record evidence, it is found and determined that the order provisions common to both orders would be appropriate for achieving orderly marketing conditions in the proposed merged and expanded marketing area. Only the significant modifications or specific provisions that were at issue will be dealt with in the decision. Wherever possible, the section numbers containing specific provisions have been designated to conform with the format of order provisions that was incorporated into 39 other Federal milk orders in 1974. Uniform numbering between orders should facilitate references to specific provisions.

The order adopted herein would continue the use of the part number for the present Lake Mead order, Part 1139, as proposed by the merger proponents. The amended Part 1139, upon issuance, would supersede Part 1138. The merged marketing area should retain the name "Great Basin", proposed by IMPA as being more descriptive of the territory included in the merged marketing area than the name "Lake Mead." The name "Intermountain" for the marketing area, also proposed by IMPA, would be more descriptive of a larger marketing area extending eastward of the boundaries of the proposed merged order.

Although the present two orders would no longer exist upon effectuation of the merged Great Basin order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures which would need to be completed after the effective date of the merger include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification procedures. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

3. *Merged and expanded marketing area.* The marketing area of the proposed merged order should include all of the territory in the presently designated marketing areas of the Great Basin and Lake Mead orders. Certain additional territory between and adjacent to the two present marketing areas also should be part of the proposed merged marketing area. The additional territory to be included are the entire Idaho counties of Caribou, Oneida and Power; Lincoln County, Nevada; the Utah counties of Beaver, Garfield, Kane, Piute, Rich, San Juan and Wayne; and Lincoln County, Wyoming. Previously unregulated portions of Cache, Iron and Washington counties, Utah; Uinta County, Wyoming; and Clark County, Nevada, also would be included. All territory within the boundaries of the designated marketing area which is occupied by government (municipal, State or Federal) reservations, installations, institutions or other establishments, likewise should be a part of the marketing area. Where such an establishment is partly within and partly without such territory, the entire establishment should be included in the marketing area.

The merged and expanded marketing area consists of the entire State of Utah, ten southeastern Idaho counties, the four easternmost Nevada counties, and two counties in the southwest corner of Wyoming. The total population of the merged and expanded marketing area, according to the 1980 census, was approximately 2,214,500 people, or about 170,700 more people than the two separate order areas contain. The territory proposed to be added to the merged order, therefore, increases the population of the merged marketing area by less than ten percent over that of the separate marketing areas.

The territory to be added to the merged marketing area was proposed for inclusion by IMPA. Proponent described all of the added territory as adjacent to counties presently regulated, sparsely populated, and primarily dependent upon handlers regulated by the Great Basin and Lake Mead orders for dispositions of fluid milk products. In response to questions, the IMPA witness stated that there is some distribution in some of the proposed area by handlers regulated under the Southwestern Idaho-Eastern Oregon and Western Colorado orders, but that dispositions in those portions of the area by Great Basin handlers predominate. Proponent justified the addition of entire counties and the presently unregulated portions of counties partially included in the present marketing areas by explaining that the use of county boundaries will make it easier for handlers to determine which of their sales of fluid milk products are inside and which are outside the marketing area. Handlers must report sales inside and outside the marketing area so that the market administrator will have a basis for determining whether or not the handlers meet pooling qualification standards.

The IMPA witness testified that no additional handlers would become regulated as a result of including the proposed additional territory in the merged marketing area. However, in response to questioning, the witness conceded that a manufacturing plant located at Thayne, Wyoming, and operated by IMPA would be included as a pool plant under the pool plant definition of the proposed order. In addition, he said, several producer-handlers would be included in the marketing area because of the inclusion of additional territory. It is expected that these producer-handlers would be exempt from the pooling and pricing provisions of the proposed order.

In view of the record evidence regarding marketing conditions in the proposed territory, and in view of proponent's testimony that such territory is supplied with fluid milk products primarily by handlers currently regulated under the two existing orders, the marketing area of the merged orders should be defined as proposed. There was no opposition in the hearing record to the addition of the proposed territory to the marketing area.

4. *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants and milk to which the applicable provisions of the order relate.

The following definitions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "distributing plant," "supply plant," "pool plant" and "nonpool plant". Definitions of persons include "producer," "handler," "producer-handler," "cooperative association," and "federation." Definitions relating to milk and milk products include "producer milk," "other source milk," "fluid milk product," "fluid cream product" and "filled milk". Some of these definitions were of particular issue at the hearing or are substantially different than those presently contained in either the Great Basin or Lake Mead orders. Such definitions are discussed below.

Pool plant. It is necessary to establish minimum performance requirements to distinguish between plants that serve the fluid needs of the regulated market and those that do not serve the market to a degree that warrants their sharing in the Class I utilization of the market by being included in the marketwide pool. The pooling standards for distributing plants, supply plants and cooperative-operated manufacturing plants that are included in the attached order are the most appropriate means of determining which plants should be eligible to share in the marketwide pool under the marketing conditions present in the merged marketing area.

The pool plant definition of the merged order should be based on that in the present Great Basin order, with the addition of a plant operated by a cooperative association and located within the marketing area. Certain features of the pooling standards for a distributing plant should be revised to conform with current marketing conditions existing in the proposed combined and expanded area. The pooling standards for distributing plants under the proposed order should reflect the current Great Basin standards of total route dispositions and a percentage of receipts, as proposed by proponents. Those standards are 50 percent for the months of September through February, 45 percent in March and April, and 40 percent in the months of May through August. The proposed requirement that a pool distribution plant dispose of at least 15 percent of its receipts as route disposition in the marketing area, also from the present Great Basin order, should also be adopted. However, a modification of the proposed order as published in the hearing notice that would include milk diverted from a distributing plant as a receipt for purposes of determining pool qualification should not be adopted.

Testimony on behalf of IMPA and its post-hearing brief supported the distributing plant percentage pooling standards adopted in this decision, describing them as varying inversely with the seasonal pattern of milk production. Proponent witness stated that qualification percentages lower than the 50 percent standard currently in the Lake Mead order would have no adverse effects on distributing plants in the Lake Mead market. At the same time, he said, Lake Mead handlers would have no difficulty in meeting the Great Basin 15 percent in-area requirement rather than the 10 percent of route disposition required to be sold inside the marketing area by pool plant operators under the Lake Mead order. There was no disagreement with either assertion from any other participants in the proceeding.

Although it was not included in its initial proposal as published in the hearing notice, the merger proponent proposed at the hearing that milk diverted from a distributing plant be included as part of such plants' total supply in determining its qualifications as a pool plant. As the pool distributing plant definitions of both the Lake Mead and Great Basin orders now include diversions to nonpool plants as receipts for determining pool plant qualifications, the witness explained the omission from the proposal as a typing error. Proponent did not attempt to explain why such diversions should be included as receipts for pool qualifications.

Two proprietary handlers, K.D.K. Inc. and Gossner Foods, Inc., filed post-hearing briefs objecting to the inclusion of diverted milk as a receipt in determining pool plant qualification under the proposed merged order. The handlers complained that adoption of

such a provision, along with other provisions proposed by IMPA, such as the inclusion of cooperative manufacturing plant in the pool plant definition, would severely disadvantage the operations of proprietary handlers vis-a-vis those of cooperatives in retaining their nonmember producer suppliers and in being able to compete for fluid milk accounts. Specifically, the handlers asserted that adoption of the proposed cooperative manufacturing pool plant definition (discussed below), IMPA would be able to pool much more milk than would proprietary handlers without having any greater proportion of milk used in Class I products.

Regardless of whether proponent's omission of diversions from the receipts to be considered in determining the pool qualification of distributing plants was due to a typographical error or not, the record of this proceeding indicates that diversions should not be included as receipts in such determinations. The percentage requirements of the pool distributing plant definition contained in the adopted merged order will be sufficient to ensure that a plant that qualifies as a pool distributing plant will be engaged primarily in the processing and disposition of fluid milk products, and that enough of those fluid milk products are distributed within the marketing area to demonstrate the plant's involvement in supplying the market's fluid needs. Provisions intended to limit the amount of milk a handler may associate with the pool would be included more appropriately under diversion limits. There is no reason to require proprietary handlers to meet standards not required of a cooperative association. Accordingly, diversions should not be included as receipts in determining pool distributing plant qualifications.

Proponent excepted to the omission from the pool plant definition of a distributing plant's diversions as receipts in determining pool plant qualifications. Proponent's exception, in addition to reiterating its earlier arguments, is based on the fact that the recommended provision would have the effect of lowering the standards to be met by pool distributing plants to less than half of the current requirements. Proponent speculated that omission of diversions from the receipts from which a distributing plant's pool status would be computed may, in combination with more liberal limits on diversions of pooled milk, allow substantial quantities of reserve milk for other markets to be pooled on the Great Basin order.

The pooling standards and diversion limits adopted for the merged order area are needed to accommodate the pooling of reserve milk supplies now associated with the market. The record does not indicate that there are substantial quantities of reserve milk associated with fluid milk distributing plants in other markets that could become regulated under the merged order.

The provision of the order that requires 15 percent of a handler's receipts to be distributed as route disposition within the marketing area for a distributing plant to qualify for pooling should assure that any handler so qualifying will have a substantial commitment to supplying the Great Basin market. If a handler from outside the marketing area were to qualify for pooling on the basis of in-area sales, however, it is more likely that the Great Basin market's blend price would be enhanced by the addition of Class I use rather than diluted by excessive supplies of reserve milk.

A provision currently contained in the Great Basin order that allows producer milk delivered by a cooperative to the pool distributing plant of another handler to be included as a receipt at the cooperative's distributing plant, and the amount of such milk assigned to Class I to be included in the cooperative plant's pool qualification should not be retained in the merged order. Although included in IMPA's proposed order, proponent agreed that the provision may not be helpful to the federation under the merged order, given some of the other provisions that were proposed for inclusion. IMPA should experience no difficulty in associating all of its historical supplies of producer milk with the merged order, and thus should have no need to use other handlers' receipts and dispositions to qualify its own plants. Adoption of the provision would only cause the market administrator to make many extra calculations in determining pool plant qualifications.

The definitions of a pool supply plant and a pool plant primarily engaged in the distribution of aseptically processed and packaged fluid milk products should be adopted as proposed by IMPA. As noted by proponent witness, the pool supply plant definition is little different from that contained in both orders now, while the definition of a pool distributing plant disposing of aseptically processed and packaged fluid milk products is the same as that contained in the present Great Basin order. None of the provisions of the two definitions was opposed by any interested person.

A new category of pool plant, not now defined in either the Great Basin or Lake Mead orders, should be included in the merged order. IMPA proposed that any manufacturing plant operated by a cooperative association, which is not covered under the other pool plant definitions and is located within the marketing area, be defined as a pool plant.

The cooperative would have to deliver at least 45 percent of its producer milk to pool distributing plants during each month or during the 12-month period ending with the current month to continue the pool status of such a plant.

Proponent witness testified that inclusion of the definition of a cooperative-operated manufacturing pool plant would allow IMPA to integrate its operations and better enable the federation to furnish other handlers with milk, providing supplemental supplies when needed; absorb surplus milk not needed by other handlers; process its own reserve supplies in its members' best interests; reduce the cost of transporting milk from farm to market and maintain its members as producers under the order. The witness explained that IMPA operates a number of fluid processing plants and manufacturing plants located throughout the proposed marketing area to serve the fluid needs of the market and handle the market's reserve supplies of milk. He said that several of the manufacturing plants, particularly those at Beaver, Utah; Idaho Falls, Idaho; and Thayne, Wyoming, are located near areas of high milk production. From those areas, he stated, producer milk can be shipped directly to distributing plants as needed or delivered to the nearby manufacturing plants when not needed for fluid use. The witness testified that order provisions requiring certain percentages of producer milk or a given number of days of production for each producer to be received at pool plants each month often require the federation to move some milk from the production areas to pool plants when it is not needed there. Such movements, he said, often displace other, close-in milk that must, in turn, be moved long distances to manufacturing outlets.

Because IMPA represents a large majority of the producers on the market, the witness claimed, the federation is the most likely source of supplemental milk supplies for other handlers, and absorbs most of the market's surplus milk. He introduced data that showed the daily variations in volumes of milk delivered to distributing plants and to manufacturing plants, pointing out that most distributing plants receive significant volumes of milk on five or fewer days per week. Because milk production is relatively constant on a day-to-day basis, daily deliveries to manufacturing plants, as shown by the exhibit, vary accordingly. According to the witness, designation of the cooperative manufacturing plants as pool plants will allow IMPA to provide better service to fluid milk handlers, to handle milk surplus to distributing plant requirements more efficiently, and to reduce the cost of unnecessary shipments to distributing plants for the sole purpose of keeping its producers pooled.

Proponent witness emphasized the desirability to the federation of maintaining producer status under the order for all of its members. He stressed that the federation cannot decide which of its members' milk should be pooled and which should not if the federation is not able to qualify all of their milk for pooling. Such decision, he claimed, would pit dairy farmers against each other for a share of the fluid market. The witness stated that the principal source of difficulty in qualifying all of the federation's producer milk for pooling is the fact that Class I use is not increasing as rapidly as milk production. He described the recent large surge in production as not only a local but a national problem, and asserted that the cooperative associations cannot control production increases. Proponent witness testified that adoption of the proposed pool plant definition would not result in a large volume of currently unpooled Grade A milk becoming eligible for pooling. He said that the only likely source of additional producers that would be added to the pool would be dairy farmers currently producing manufacturing grade milk who may convert their operations to Grade A.

In comments filed by proponent on the recommended decision, proponent stated that making the pool status of any or all cooperative-owned manufacturing plants mandatory may impede the ability of the cooperative association or federation to maintain the pool status of its members and the market-balancing functions of the association. There is no basis in the record of this proceeding to make the pool status of cooperative-owned manufacturing plants mandatory. If the cooperative association requests pool status for any such plant before the first day of the month for which pool status is desired, the manufacturing plant may be pooled as long as at least 45 percent of the cooperative's member milk is received at pool distributing plants during that month or the 12-month period ending with that month. However, if the cooperative association chooses pool status for some of its manufacturing plants but not for others, both the 45-percent delivery requirement and the order's diversion limits will apply to all of the cooperative's activities in total.

Addition of a cooperative manufacturing plant to the pool plant definition was opposed in post-hearing briefs filed by Gossner Foods, Inc., and K.D.K., Inc., two proprietary pool handlers under the present Great Basin order, and in exceptions filed in response to the recommended decision by Gossner Foods. The handlers claimed that the proposed definition would give cooperative associations a large advantage over proprietary handlers in being able to maintain the pool status of their producers. The handlers stated that allowing member milk deliveries to manufacturing plants to be considered as deliveries to pool plants would have the effect of liberating the cooperatives from the constraints of any diversion limits, particularly in view of the diversion limits proposed by IMPA for other handlers (discussed below). As pointed out in the brief filed by K.D.K., Inc., some of the reasons behind IMPA's desire for such a pool plant definition—assuring producers of continuing pool status, reducing the cost of transporting milk from farm to market, and handling reserve supplies of milk in the most efficient manner possible—apply equally to any handler with its own producers.

However, some of the reasons for IMPA's proposal for a cooperative manufacturing plant do not apply to proprietary handlers. Proponent witness repeated several times the federation's commitment to supplying the fluid needs of the market, whether through its own fluid processing plants, or as supplemental or full-supply deliveries to other handlers. Proponent also expressed a sense of the responsibility of a cooperative's role in absorbing the market's surplus milk in manufacturing products. It is apparent from the hearing record that adoption of a cooperative manufacturing pool plant definition would enable IMPA to supply milk to fluid handlers and handle much of the market's surplus milk supply more efficiently than is possible under the present provisions of the separate orders, while assuring that all of the milk of its member producers remains eligible for pooling. IMPA would be able to oversee the movement of milk to where it is needed and assure that it is moved most economically without concern about meeting the pooling standards relating to each plant's supply of milk. At the same time, the requirements that 45 percent of the cooperative's, or federation's, milk supply be received at pool distributing plants during the current month or the 12-month period ending with the current month would assure that the association does not pool large amounts of unneeded supplies of milk under the order. In effect, the requirement that a particular percentage of a cooperative's milk be received at pool distributing plants would serve as a limit on the ability of the cooperative, or federation of cooperatives, to move milk directly to either pool or nonpool manufacturing plants.

The objective desired by proponent in adopting a pool plant definition that includes a cooperative manufacturing plant would best be achieved by establishing a percentage requirement of deliveries to pool distributing plants of 45 percent, adjustable upward or downward by 10 percentage points by the Director of the Dairy Division as marketing conditions require. IMPA's proposal, as published in the hearing notice, included a requirement that 60 percent of the cooperative's (or federation's) milk supply be received at pool distributing plants in order for the cooperative's manufacturing plants to be pooled. However, after studying more closely IMPA's actual deliveries to distributing plants, proponent witness stated that 50 percent appeared to be a more realistic number. In suggested order language contained in the post-hearing brief filed on behalf of IMPA, the percentage had declined to 45 percent, with no explanation or justification. However, examination of data introduced at the hearing for the two separate orders combined supports the 45 percent requirement. Producer milk pooled under the two separate orders in 1985 had increased more than 30 percent, while Class I use increased less than eight percent. As a result, the percentage of producer milk used in Class II and III increased more than 10 percentage points, to nearly 50 percent. There is no reason to believe that increase in milk production in the merged area will slow very much in the near future, or that Class I use will increase greatly enough to keep pace with production increases. In addition, milk production in the area could be increased by approximately 20 percent by the conversion of IMPA's Grade B producers to Grade A. It would seem prudent, if the delivery requirement of milk to pool distributing plants for cooperative manufacturing pool plants is not to be obsolete before it is implemented, to set a standard of 45 percent.

Although not specifically included in the hearing notice, a provision allowing the pool plant percentage requirements to be raised or lowered 10 percentage points by the Director of the Dairy Division should be adopted. Such a temporary revision of percentage requirements should apply also to pool distributing plant and pool supply plant standards, and to the limits on the amount of a handler's milk supply that may be delivered directly from producers' farms to nonpool plants. When questioned by the attorney for Kraft, Inc., about the desirability of such a provision, the proponent witness indicated no objection to its inclusion. In the post-hearing brief filed on behalf of Kraft, Inc., adoption of such provision was supported as providing "additional flexibility during a time of changing and uncertain production and marketing conditions." In view of the difficulty of projecting milk production and use trends in the marketing area, such a provision would make suspension of the percentage pooling standards and diversion limits unnecessary if milk production increases are greater than anticipated, and would also allow the delivery requirement percentage to be increased if milk supplies for fluid use become tighter than expected.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants which are associated with the market but not to the degree that they should be fully regulated by the order. As used herein, a nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. A description of the specific categories of nonpool plants included in the "nonpool plant" definition follows.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

As proposed by the merger proponent and adopted herein, an "exempt plant" means a distributing plant with an average route disposition in the marketing area of less than 1,000 pounds per day. Also included in the "exempt plant" definition are a plant operated by a government agency or by a college or university and a plant from which all of the route disposition is for charitable purposes without remuneration. The present Great Basin order contains a definition of an "exempt plant" as "a governmental agency, Brigham Young University or any approved plant from which the total route disposition is to individuals or institutions for charitable purposes and is without remuneration from such individuals or institutions." Although the proposed merged order did not include exemptions for the latter descriptions of plants, proponent witness testified that IMPA would support exempt plant status for government agency and college plants as long as such plants are not engaged in commercial distribution in competition with regulated handlers, and for plants operated solely for charitable purposes.

Witnesses representing Brigham Young University and the Church of Jesus Christ of the Latter Day Saints (LDS Church) testified that the exemptions from regulation currently afforded their milk plants are necessary to their plants' operations, and that neither institution is involved in commercial sales of fluid milk products. The LDS Church witness stated that the Deseret Milk Plant in Salt Lake City processes its own farm production and distributes milk products free of charge to the poor and needy, as determined by a bishop. He testified that in 1985, the milk plant processed and disposed of approximately 10 million pounds of milk. In order to balance the milk needs of the plant, he said, approximately 500,000 pounds of surplus milk was sold to IMPA, and about 175,000 pounds of supplemental supplies were purchased from IMPA. The witness stated that the LDS plant sells some surplus milk to IMPA, and has no commercial sales of fluid milk products.

The witness representing Brigham Young University (BYU) testified that the operation of a dairy herd and a dairy processing plant are essential for continuing the University's teaching and research programs in dairy production and manufacturing. He stated that the University can afford to operate the farm and plant only if they are fully functional and paying their own way by supplying most of the dairy products used in BYU's food services system. The witness testified that the BYU dairy operation has been exempt from the terms of the Great Basin milk order for many years, and that such an exemption is necessary for the continued operation of the farm and plant. He said that in the past supplemental milk supplies have been purchased, and that production in excess of campus demand has been sold. At the present time, he stated, approximately one-third of the BYU herd's production is sold as surplus.

In testimony at the hearing and in a post-hearing brief, IMPA stated that plants distributing less than 1,000 pounds of milk per day in the marketing area would not have a destabilizing effect on the market if such plants are not regulated. The IMPA witness testified that exemption of plants only casually associated with the market would eliminate needless regulation. He stated also that IMPA would support continued exemption for the LDS plant and for the BYU dairy operation on the basis that neither entity is involved in disposing of fluid milk products through commercial channels. At any time such operations engage in competition with regulated handlers by disposing of fluid milk products in commercial channels, he said, they should lose their exempt status and become regulated.

The "exempt plant" definition, as proposed and modified by proponent, should become part of the merged order. A milk handler disposing of less than 1,000 pounds of fluid milk per day is not likely to disrupt marketing conditions in a market which disposes of nearly two million pounds of milk per day. In addition, organizations such as the LDS and BYU milk plants are not in competition with the fully regulated handlers who compete for route sales in the market. The "exempt plant" definition should be constructed in such a way that if such entities were to enter commercial distribution channels their exemption from regulation would cease.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Such a plant would be one from which during the month an average of 1,000 pounds or more of fluid milk products is disposed of daily as route disposition in the marketing area, but is not operated by a government agency, a college or university, or a charitable institution from which route disposition is for charitable purposes and without remuneration. Also, such a plant would distribute less than 15 percent of its receipts as route disposition within the defined marketing area of the order and/or not meet the minimum total route disposition requirement of the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant that transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under the order.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and/or making payments for milk under the merged order. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to the milk of producers that it causes to be picked up at the farms and delivered to a pool plant or diverted for the cooperative's account to a nonpool plant;

(3) A producer-handler;

(4) The operator of an other order plant from which milk is disposed of in the marketing area;

(5) The operator of an exempt plant;

(6) The operator of a partially regulated distributing plant; and

(7) The operator of an unregulated supply plant.

All such persons are now defined as handlers under the Lake Mead order, and most are so defined under the present Great Basin order. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their regulatory status under the order can be readily determined by the market administrator.

Proponent witness testified that the proposed definition is essentially the same as those contained in the separate orders and is intended to serve the same purpose. Specifically, the definition is nearly identical to the one contained in the present Lake Mead order. Adoption of the proposed handler definition should help to assure orderly marketing in the merged marketing area.

Producer-handler. The merged order should continue the exemption now contained in each of the two individual orders of a "producer-handler" from the pooling and pricing provisions of the order. Under the merged order, the definition of a producer-handler should be essentially the same as that now contained in the Great Basin order. The amount of fluid milk products a producer-handler would be able to purchase from pool or other order plants and still maintain its exemption from regulation would be increased somewhat from 3,000 pounds to 5,000 pounds per month, or 5 percent of the producer-handler's Class I sales, whichever is greater.

Proponent witness testified that a farmer who is engaged in distributing its own milk production should be exempt from regulation as long as the operation of the farm or dairy plant does not involve other milk-producing or processing entities. The witness explained, however, that as long as a producer-handler does not share its Class I disposition with the other producers in the pool, the producer-handler should not be able to share in the Class I proceeds of other producers. He said that there may be times when a producer-handler cannot produce all of its Class I needs, and may have to purchase Class I milk from the pool, sharing some of its Class I use with other producers. At other times, the witness observed, a producer-handler may need to dispose of surplus milk as a Class III sale to a pool outlet, an action which would not affect other producers.

Although the actual order language proposed by proponent would reduce the limit on the amount of milk a producer-handler would be allowed to purchase from pool sources, proponent stated that the limit on the amount of milk a producer-handler may purchase from pool sources should be increased because of the growth in size of producers in recent years, and an assumption that producer-handlers have also grown in size. According to the witness, the regulatory status of handlers currently involved in either order would not change as a result of the proposed changes in the present producer-handler definitions of the Lake Mead and Great Basin orders. There was no other testimony at the hearing relating to the limits to be placed on a producer-handler's operations.

A primary basis for exempting a producer-handler from the pricing and pooling provisions of the order is that such a person customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from its own production. Any fluctuations in a producer-handler's daily and seasonal milk needs is met through his own farm production, and any excess milk supplies are disposed of at its own expense. Under this arrangement, a producer-handler seldom can be a major competitive factor in the market for regulated handlers, nor can such a person have a preferred market for its milk relative to producers who supply the regulated handlers and share in the proceeds of the marketwide pool.

If a producer-handler processes milk from its own farm but also relies on pool plants for substantial supplies, either in bulk or packaged form, its operations are not significantly different than the operations conducted by a pool handler. However, since its operation is not fully regulated, the pool does not receive the benefits of the producer-handler's Class I sales. And yet, the other producers in the market are bearing the cost of balancing its operation by carrying such operator's necessary reserve milk supplies. Such an operator should not have producer-handler status under the merged order, but should be accorded pool status similar to that of any other handler who receives significant amounts of milk from pooled sources.

In view of the marketing situation in the merged order, the proposed producer-handler definition should serve to identify and exempt from regulation those entities who rely almost entirely on their own milk production to balance their fluid sales. At the same time, producer-handlers who rely too heavily on pool resources to balance their fluid milk needs would become fully regulated handlers, sharing their Class I use with the other producers in the market. According to the market statistics introduced by the market administrator, producer-handler dispositions appear to represent a relatively small part of Class I sales in the Great Basin market and little or none of the Class I sales in the Lake Mead marketing area. The limits proposed to be placed on producer-handler purchases should be adequate to prevent such persons from creating disorderly marketing conditions in the merged marketing area, and should be adopted.

Proponent filed an exception to the recommended decision objecting to the limits established on producer-handler purchases from pool sources. Proponent cited the unusually large size of producers located in the Lake Mead area and nearby regions of California as the reason producer-handler purchases should be limited to the lesser of 5,000 pounds or 5 percent of the producer-handler's Class I sales rather than the greater of such limits. According to proponent, the pool distributing plants in southern Nevada are not so large that they could not be fully supplied by any one of a number of producers in the area. Proponent asserted that the ability of a very large producer-handler to rely on pool reserves to supplement the quantities of milk represented by one of the southern Nevada pool plants without losing its exemption from regulation could disrupt orderly marketing in that portion of the marketing area.

Although proponent's speculation about possible developments in the Nevada portion of the merged marketing area may be accurate, order provisions are more appropriately established on the basis of current marketing conditions. At the time of the hearing, there were twelve producer-handlers

operating in the Great Basin marketing area and none in the Lake Mead area. Under the present terms of the Great Basin order, a producer-handler may purchase the greater of 3,000 pounds or 5 percent of its Class I sales from pool sources. Adoption of a lower limit on purchases from pool sources of the lesser of 5,000 pounds or 5 percent of the producer-handler's Class I sales could have the effect of regulating some producer-handlers that currently are exempt from pooling. There is no basis in the record to make it more difficult for producer-handlers to avoid full regulation. Accordingly, producer-handlers should be able to purchase the greater of 5,000 pounds or 5 percent of their Class I sales from pool sources.

One change to be made in the producer-handler definition as proposed is that producer-handlers should be able to receive Class I milk from pool sources by diversion directly from producers' farms as well as by transfer from pool plants. At times, it may be more efficient for a pool handler to deliver supplemental milk supplies directly from a farm pick-up route than to pump milk out of a pool plant into a tank truck for delivery to the producer-handler. Also, allowing such milk to be moved by diversion as well as by transfer will help to forestall incidents in which a producer-handler operating within the order's limits inadvertently receives a partial load of diverted milk rather than transferred milk and must be pooled as a result. The effect on the pool of allowing a producer-handler to receive Class I milk by diversion would be the same as if such milk were received by transfer, except that the handler selling the milk may be able to handle the milk more efficiently.

Producer. The producer definition proposed for the merged order and adopted in this decision is essentially the same as those in the present Lake Mead and Great Basin orders. However, the provision of the producer definition in the Lake Mead order commonly referred to as the "dairy farmer for other markets" provision has been modified by proponent to avoid unnecessarily restricting the pooling of milk under the order. The present Great Basin order contains no such description of a nonproducer, and proponents expressed concern that adoption of the present Lake Mead provision would make it difficult to manage the milk supplies marketed in the regulated areas of Idaho and Wyoming, and in northern Utah.

Proponent witness described the present Lake Mead provision as requiring that all of a producer's milk production for a month be pooled under some Federal order if any of the producer's milk is to be eligible for pooling, beginning with the first day of the month. He explained that the modification would allow a producer's milk to be pooled if the producer became associated with the market sometime after the first day of the month, but would still require that all of the producer's production for the remainder of the month be pooled. Proponent supported the change in the provision by observing that the Grade B producers who convert to Grade A and wish to share in the pool should not have to wait until the first day of the month following their change in status to do so. In addition, he stated that IMPA sometimes balances fluid milk needs and handles reserve supplies in cooperation with handlers in other nearby marketing areas, and that the modification would assist the cooperative in the efficient management of such milk supplies without allowing producers' pool status to change on a daily basis.

The "dairy farmer for other markets" exclusion from the producer definition would prevent dairy farmers whose milk is regularly used for fluid disposition in other markets from pooling the surplus part of their production on the merged order and sharing the Class I value of the merged Great Basin pool with those producers who regularly supply the fluid needs of the merged order. Modification of the "dairy farmer for other markets" provision would prevent it from becoming too restrictive to enable handlers to market milk in the most efficient manner possible.

Producer milk. The order must define clearly which milk is eligible to be included in the marketwide pool and share in the market's fluid milk sales. For this reason, certain minimum standards of association with the market are determined for individual producers and for all of a handler's producers as a group. The merged order should require that all producers "touch base" by delivering at least one day's production of milk to a pool plant each month. Diversion limits on the amount of milk not needed at fluid processing plants that may be delivered directly from producers' farms to nonpool manufacturing plants should be established at 60 percent for the months of April through August and 50 percent in other months of the total milk delivered to pool plants and diverted to nonpool plants by a handler.

Proponent proposed, and argued at the hearing and in a brief, that an appropriate level of allowable diversions would be much lower than the limits adopted in this decision. Proponent based its argument that diversions should be limited to 25 percent in the months of April through August and 15 percent in other months of the producer milk delivered to pool plants by a handler on the expected existence in the merged order of the cooperative-operated pool manufacturing plant definition adopted in this decision. Because the cooperative would be able to count deliveries to its own manufacturing plants as deliveries to pool plants, proponent witness stated, the cooperative's need to divert milk to nonpool plants would be reduced substantially. In the post-hearing brief filed on behalf of IMPA, proponent argued that its proposed diversion limits are nearly the same as those in the present Great Basin order and should be adopted to serve the same purpose currently served by those limits. In addition, proponent argued that the 15-percent limit proposed for the months of September through March should be reduced from the current Great Basin order's 20-percent limit for the purpose of encouraging manufacturing plants to release milk to distributing plants during the season of the year when milk is more likely to be needed for fluid use.

Kraft, Inc., proposed that a handler be allowed to divert a quantity of milk equal to the volume delivered to pool plants during the months of April through August, and 50 percent of the volume of milk delivered to pool plants during other months. In effect, a handler would be able to divert 50 percent of its total milk supply to nonpool plants in the months of April through August, and 33 percent in other months. In the post-hearing brief submitted on behalf of Kraft, the diversion limits proposed to be incorporated in the merged order were relaxed to 50 percent of a handler's milk supply on a year-round basis to better accommodate the present needs of pool handlers.

In testimony presented at the hearing, the witness representing Kraft described the production and marketing conditions in the present Great Basin marketing area as unable to support the highly restrictive diversion limits proposed by IMPA. We cited percentages of Class I use in the Great Basin market for the months of April through December 1985 that ranged from a low of 41.6 percent in June 1985 to a high of 53.6 percent in November 1985. The witness then pointed out that the diversion limit percentages proposed by IMPA, at 25 and 15 percent of milk delivered to pool plants, would actually represent only 20 and 13 percent, respectively, of the total volume of milk handled by a diverting handler. The Kraft witness acknowledged that IMPA would be able to pool all of its member milk within IMPA's proposed diversion limits if a cooperative manufacturing plant is to be considered a pool plant. He asserted, however, that other handlers would continue to require realistic diversion limits to promote efficient handling because of their inability to designate their manufacturing outlets as pool plants. The Kraft witness observed that the diversion limits in both the Great Basin and Lake Mead orders have been suspended much of the time for the last several years because IMPA has been unable to operate within the present limits of the two orders.

Witnesses representing KDK Dairy, Inc., and Gossner Foods, Inc., two proprietary handlers pooled under the Great Basin order, testified that the diversion limits proposed by IMPA for the merged order would be entirely too restrictive to enable either of those two handlers to maintain the pool status of all of the producers whose milk they currently handle. The witness for KDK testified that KDK receives all of its milk supply from its own nonmember producers, and balances its supply by sending surplus milk to Gossner Foods' cheese plant in Logan, Utah. She stated that KDK is located about 20 miles south of Salt Lake City and about 100 miles south of the Cache Valley area where most of KDK's producers are located. The witness said that when producers' milk is not needed for fluid use at KDK, it can be diverted to the Gossner cheese plant at Logan, Utah, near the producers' location. She described such milk movements as being more efficient and less costly to producers than shipping the milk to the KDK plant, unloading it, reloading it and shipping it back to Gossner Cheese. Such unnecessary and expensive milk shipments would be required, the witness said, in order to pool KDK's producer milk supply if the restrictive diversion limits proposed by IMPA were adopted.

The KDK witness stated that with the recent loss of a major account, KDK has found itnecessary to divert about 50 percent of its producer milk supply to manufacturing use. She explained that it is important to KDK to have a large enough supply of milk available in order to expand sales if the opportunity to do so should arise. She also indicated that it is as important for KDK to be able to pool all of its producer milk supply as it is for IMPA to be able to maintain the pool status of all of its member producers. The brief filed by KDK argued further that KDK and Gossner both balance their own supplies of milk and share the same problems of operating within the current order provisions as IMPA does. The brief states that IMPA would be able to operate within its own proposed diversion limits only if the IMPA manufacturing plants are considered pool plants, and that imposing the proposed limits only on proprietary handlers would be inequitable. The KDK brief, while stating a preference for unlimited diversions, supported the Kraft proposal to establish diversion limits at 50 percent during the months of April through August and 33 percent in other months of a handler's total supply of producer milk, in preference to the limits proposed by IMPA.

A representative of Gossner Foods testified that diversion limits should be established at a level that would allow a handler to divert 50 percent of its milk supply on a year-round basis. The witness described Gossner's fluid milk business as an aseptic packaging and processing pool plant. In addition, he said, Gossner operates a cheese factory through which it balances the milk supply for its fluid milk plant. The witness said that Gossner's aseptic fluid milk sales are primarily to the military, and explained that Gossner needs reserve supplies of milk large enough to enable the handler to bid on contracts which, if accepted, might double Gossner's output and result in a need for more producer milk receipts. Further, in a brief filed by Gossner, the handler stated that the reserve supply of milk which must be available to fill contracts must be of a dependably high quality that will enable the milk to withstand the high sterilizing temperatures required for aseptically packaged fluid milk products. The handler stated that it is important for Gossner to receive milk from its own group of producers in order to work with the producers to ensure that high quality milk receipts are available to fill contracts.

The post-hearing brief filed by Gossner advocated that the order contain no limits on the volume of producer milk that may be diverted to nonpool plants if, as a result of adopting the cooperative pool manufacturing plant definition, IMPA would be subject to no such limit on diversions. In the brief the handler described diversion limits affecting proprietary handler operations under such circumstances as discriminatory. Gossner stated that all producers associated with the present Great Basin order should have their total production pooled and priced, asserting that the IMPA witness' testimony to the effect that the federation cannot pool the milk of some cooperative members and fail to pool others' is applicable to nonmembers as well. In fact, the handler observed, a cooperative's ability to reblend monies received from the marketwide pool among its members makes pool status much less important to individual cooperative members than to nonmembers. In lieu of continuing the present situation, in which diversion limits are suspended, Gossner advocated adoption of a limit on diversions of 50 percent of a handler's total producer milk supply.

It is true that adoption of the cooperative pool manufacturing plant definition would, for all practical purposes, exempt IMPA from the effects of the order's diversion limits by changing the status of the federation's manufacturing plants from nonpool plants to pool plants. However, the provision of the cooperative pool manufacturing plant definition that requires that a cooperative association deliver at least 45 percent of the total supply of its member producer milk to pool distributing plants would, in effect, require the same standard of performance of IMPA as the diversion limits require of other handlers in the market.

It is obvious from the testimony of the witnesses representing KDK Dairy and Gossner Foods, as well as from the market statistics, that the diversion limit percentages proposed by IMPA are much too restrictive to allow other handlers to operate their milk plants or to handle their producer milk supplies efficiently or economically. The percentage of producer milk used in Classes II and III has been increasing in recent months and, as producer milk increases continue, the rate of increase of milk surplus to the fluid needs of the market shows no sign of abating. The diversion limits of both of the present orders have been found too restrictive for some time now, a fact reflected by the suspension of those limits for much of the last several years. Establishing diversion limits even more restrictive than those in the present Great Basin order would ensure that the milk of some producers in the market would fail to be pooled, or that the limits would have to be suspended as soon as the merged order is effective.

The diversion limits adopted in this decision are only somewhat more liberal than those contained in the present Lake Mead order. Relaxation of the present Lake Mead diversion limits for the merged order is necessary because of the historically greater use of milk in Class II and III in the Great Basin

marketing area than under the Lake Mead order, and the predominantly greater share of the milk to be pooled under the merged order represented by present Great Basin production.

While it is true that allowing IMPA to pool its manufacturing plants will solve the over-diversion problems experienced by the cooperatives, the existence of pool manufacturing plants should not be a basis for narrowly limiting the amount of milk that may be diverted to nonpool plants by other handlers. Unnecessarily restrictive diversion limits would continue to encourage inefficient handling of producer milk by handlers that use nonpool manufacturing plant outlets to dispose of their surplus milk. The same data that supports a requirement that a cooperative association deliver only 45 percent of its member producer milk to pool distributing plants in order to pool its manufacturing plants also supports diversion limits that would allow other handlers to qualify all of their producer milk supply for pooling on the basis of delivering approximately the same percentage of their milk to pool distributing plants as cooperatives are required to deliver.

Gossner Foods, Inc., submitted an exception to the recommended decision that advocated the deletion of all diversion limits and "touch-base" requirements from the merged order. Gossner contends that any dairy farmer producing Grade A milk should be entitled to share in the marketwide pool, and that handlers should not have to determine which producers may participate when the entire quantity of each producer's production is available and meets the requirements for fluid use. Although the Great Basin order's diversion limits have been suspended since January 1985, and its "touch-base" requirements have been suspended since July 1985, there is no record evidence that indicates that the continued absence of such provisions would be beneficial to the marketing area. There is no way of assuring which producer milk is available and qualified for fluid use unless it is delivered, at least occasionally, to a fluid milk processing plant. Furthermore, all producers who share in the benefits of marketwide pooling should bear some responsibility for assuring an adequate supply of milk for the market's fluid needs.

Exceptions to the recommended decision filed by proponents included an explanation of proponents' assertion that cooperative associations, because of their role of carrying and marketing reserve supplies for other handlers in the market, are entitled to wider latitude under the order in the application of provisions pertaining to the amount of milk such associations are able to pool. According to proponent, handlers that have only fluid milk operations may not need any diversion privileges at all but can rely on the cooperative for any needed reserve milk supplies. Proponent states that giving fluid milk handlers the same diversion limits that cooperatives operate within, in effect, gives cooperative associations much less flexibility in pooling their member milk than proprietary handlers have in pooling the milk of their nonmember producers. However, the hearing record shows clearly that in the Great Basin market there are at least two proprietary handlers that do not rely on reserve supplies of milk obtained from cooperative associations, but carry their own reserve supplies. Limiting the percentage of diversions that these handlers would be allowed under the order to the very low level advocated by proponents would have the effect of requiring these handlers to obtain their reserve milk supplies from proponents. Such a provision, especially in a market in which the principal cooperative association is one of the primary competitors for fluid milk distribution, would create an unwarranted anticompetitive marketing situation.

Federal milk orders customarily do not contain differing diversion allowances for cooperative associations and proprietary handlers. There is no basis in the record of this proceeding to provide for more liberal diversion limits for cooperative associations than for proprietary handlers. To the extent that proponent does carry some responsibility for balancing the fluid milk needs of the market, the provision allowing a cooperative association-owned manufacturing plant located within the marketing area to be considered a pool plant is intended to assist proponent in maintaining the pool status of the milk of its members.

Diversion limits for the months of September through March should be 50 percent of the total milk supply of a handler. For the months of April through August, the limit on the proportion of a handler's milk supply that may be diverted to nonpool plants should increase to 60 percent. Because milk production and consumption vary seasonally, there should be some recognition of the fact that more milk will have to be diverted to manufacturing uses during some periods of the year than during others. As proposed by IMPA, diversion limits should allow more milk to be delivered directly to nonpool plants during the months of April through August than during September through March. Statistics for the Great Basin and Lake Mead marketing areas for 1984 and 1985 indicate that the percentage of milk used in Class II and Class III is higher during the months of April through September than in other months. As a consequence, higher percentages of milk must be diverted during those spring and summer months than during the fall and winter. September, however, is the traditional month for schools to resume classes and therefore, for Class I consumption in schools to increase. Consequently, September should not be included with the months during which diversion limits would be increased.

In Kraft's brief it was suggested that if in the event of over-diversions the handler fails to designate which milk is to be excluded from the pool, the market administrator should first exclude the last milk diverted during the month in lots of an entire day's production until the diversion limit is reached. There is no testimony in the record to support such a procedure, which could be a sizable administrative burden for the market administrator. As proposed by IMPA, the merged order directs that if the diverting handler fails to designate which producers' milk is not to be producer milk, none of the handler's diverted milk shall be producer milk. Such a provision should ensure that an over-diverting handler will not neglect to designate which producer milk should not be pooled.

An additional modification to the producer milk definition suggested by a Kraft representative at the hearing and included in Kraft's post-hearing brief should be adopted. Provision should be made in the merged order for the Director of the Dairy Division to adjust diversion limits up or down by 10 percentage points. Such a provision will provide additional flexibility in providing for efficient disposal of surplus milk or assuring adequate supplies of milk for fluid uses at a time when production tends and marketing conditions are changing and uncertain. No parties present at the hearing objected to the inclusion of such a provision in the merged order.

Federation. A definition of the term "federation" should be included in the merged order, as originally proposed by IMPA. A federation should be defined in the order as a business organization incorporated under state law that is owned and operated by two or more cooperative associations. Most of the references to cooperative associations in the order will also refer to

federations. At the hearing, IMPA's witness testified that such a definition would not be necessary because the four individual cooperative associations of which Intermountain Milk Producers Association is composed were planning to merge their organizations into one cooperative association by the time the merger proceeding would be completed. However, all of the descriptions of marketing conditions in the merged marketing area included references to IMPA as a federation and were based on the organizational status of the cooperatives that then existed. Until there is evidence that the federation has ceased to exist, the definition should be included in the order.

5. *Multiple component pricing.* IMPA included in its proposed merged order a plan to price milk according to its content of protein and butterfat, as well as the differential values of milk used in Class I and Class II. The proposed pricing plan, with some modifications, should be adopted. Under the component pricing plan adopted herein, handlers' obligations for producer milk used in Class I will not be affected by the protein content of the milk.

At the present time under the Lake Mead and Great Basin orders, and under nearly all of the other Federal milk orders, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the approved milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound at Chicago, as reported for the month by the U.S. Department of Agriculture, by .115.

The IMPA witness advocated adoption of the proposal to price protein contained in producer milk on the basis that higher levels of protein in milk improve the yield of manufactured products in which the milk is used, and thereby increase returns to the handler using such milk. Therefore, the witness stated, milk containing a higher level of protein has a greater value, and should be priced accordingly. He testified that nearly all of the milk surplus to the fluid needs of the Lake Mead and Great Basin marketing areas is processed into cheese at nonpool plants located in and around the marketing areas. He described cheese as a product whose yield is largely a function of the protein content of the milk from which it is made, and stated that all of the cheese plants he had surveyed in or near the marketing area pay producers on the basis of the protein content of their milk, or on the basis of formulas which attribute cheese yield to the nonfat, or protein, and butterfat solids in producer milk.

The witness argued that the value of butterfat in milk has been reflected in payments for milk for decades, and that protein should not be treated any differently. In fact, he asserted, demand conditions for milk and dairy products have changed considerably over the years, and as a result the value of protein in milk has become more important than the value of butterfat. The witness cited the changing relationship between the prices of cheese and butter as an example of the shift in relative values of the two components. Prices cited for 1920 through 1980 indicate that cheese has risen in price relative to butter from less than half of the value of butter in 1920 to more than the value of butter in 1980. The witness stated, however, that up to the present time protein contained in producer milk has been priced at the same level as the water in which it is contained, while it clearly is of much greater value than water. He stated that under the present order provisions a producer is paid the same price for milk that will produce 11 pounds of cheese as for milk that will produce 9 pounds of cheese. The witness argued that producers should be given an incentive to increase their production of protein relative to water in milk by being paid for protein at a level that reflects its value in manufactured products.

Proponent witness testified that the ability of unregulated handlers to pay producers according to the protein content of their milk gives them an unfair advantage over pooled handlers, who must pay producers at least the order's minimum uniform price. Pooled handlers, therefore, are not allowed to pay producers less than the order's minimum price for milk of low protein content, although they are allowed to pay a premium for milk of high protein content. According to the witness, nonpool handlers consequently enjoy an advantage in procuring higher-protein milk supplies, and pooled handlers are left with milk of a lower protein test. The IMPA witness asserted that the declared policy of the Agricultural Marketing Agreement Act of 1937 would be effectuated by adoption of the use of protein in the pricing of milk under Federal milk orders because of the Act's requirement that prices to handlers be uniform. The witness argued that payment of the same price for milk which will yield different amounts of the same product is inequitable pricing.

According to the proponent witness many milk handlers, including proponent who represents a substantial majority of the producers in the proposed merged marketing area, currently pay producers at least partially on the basis of protein and have encountered no difficulty in so doing. An expert witness in the field of dairy chemistry testified that protein testing is indeed feasible and widely practiced in the dairy industry. He stated that although testing milk for any component, including butterfat, is not an exact science, the currently accepted methods of testing for the protein content of producer milk can be used to provide fair and equitable results on which payments for producer milk may be made. The expert witness testified that the accepted methods of testing producer milk for protein vary greatly in the cost of equipment and expertise required to perform the testing. He stated that one of the tests available is a better determinant of protein in milk than the Babcock test (the primary test for butterfat) is of butterfat, and that a lab technician's ability to obtain the same results with repeated testing is at least as good with one of the secondary protein tests as with the Babcock test. The expert witness described milk protein as distributed uniformly throughout the skim portion of milk. He stated that because of this characteristic of protein it is much easier to obtain a representative sample of milk for protein testing than for butterfat testing.

The IMPA witness testified in favor of using the price per pound of protein and butterfat to determine the value of those components in producer milk, rather than adjusting a uniform price to producers by the differential value of each component as is done currently in the case of butterfat. In addition, under the proposal producers would receive their share of the added value in the market's Class I and Class II utilization by means of a "weighted average differential" price.

Proponent recognized the difficulty of pricing protein used in Class I products, citing the widely-held belief in the fluid milk industry that consumers are not willing to pay for extra protein in fluid milk at a rate that would equal its value in other uses. Therefore, proponent proposed a negative adjustment to be made to the pool obligation of a handler whose average of protein in producer milk is higher than in the market as a whole, and who tests all of his receipts and milk used in his plant for protein.

In his testimony, proponent witness stressed the importance of complete testing and accounting for both butterfat and protein in all receipts and finished products. However, testimony in the record indicated that reliable tests of protein content are not available for some manufactured products, and that such a requirement would necessitate substantial additional expenditures for testing and accounting on the part of regulated handlers. Accordingly, the testing and accounting requirements were revised in proponent's brief to require that all fluid milk and cream products and fluid milk, cream and nonfluid receipts used in manufactured products be tested for butterfat and protein content and accounted for accordingly.

Other witnesses, who have dealt with protein pricing systems in other areas of the country, testified in favor of recognizing the value to handlers of protein in producer milk by adjusting payments to producers according to the protein content of their milk. The manager of a Wisconsin-based cooperative association with wide experience over a five-year period in marketing milk priced solely on the basis of protein and butterfat stated that protein pricing benefits handlers, producers and consumers. The witness testified that consumer demand has changed the relative values of skim milk and butterfat over time, shifting value from butterfat to skim milk and to the products such as cheese whose yield is affected by the protein content of skim milk. He said that handlers prefer a system which recognizes the effect of the composition of their producer milk receipts on the amount of finished product they are able to obtain from it. In addition, he testified, producers receive a signal to respond to price incentives by selecting cows on the basis of total protein and fat production.

The witness asserted that the operating efficiency of the entire dairy industry will be improved if milk is priced on the basis of the value of its protein or nonfat components, as well as its butterfat content. He predicted a reduction in the volume of milk produced combined with an increased percentage of protein and butterfat in the milk, with the result of enabling processing plants to operate more efficiently. As milk production and processing become more efficient, and therefore more profitable for producers and processors, he stated, consumers may benefit from the increased efficiency of the industry. The Wisconsin cooperative manager testified that accepted testing procedures for protein yield more consistent and repeatable results than the commonly-used butterfat tests. He indicated that his association has had no difficulty in testing, accounting or paying for milk on the basis of protein as well as butterfat.

A representative of an Iowa-based Midwest cooperative association testified that his association has been paying bonuses for protein in its members' milk since 1973. He stated that cooperative members are paid a bonus for protein tests above a 3.2 percent base, and that a deduction is made for milk testing below 2.9 percent protein. According to the witness, members perceive protein payment as equitable, and cooperative management favors the incentive created by such payments for the production of milk high in solids and high in cheese yield. The witness stated that Grade B producers are paid a higher rate for high protein content than is paid to Grade A producers because the milk of the Grade B producers is used in manufactured products where higher protein content results in increased yield, while Grade A milk is used in fluid milk where no gain is realized for higher protein content.

A witness associated with the California dairy industry testified that multiple component pricing has been used under the California State order for approximately 20 years, and that he favors it wholeheartedly. He stated that an adequate testing system, while expensive, is accurate and completely satisfactory. However, the California witness asserted that full accounting for protein as well as butterfat in all receipts and uses in a milk plant would be a nightmare for handlers. He stated that both protein and nonfat solids in milk can be tracked with the skim milk from which they cannot easily be separated and within which they are uniformly distributed. He also expressed the opinion that protein should be priced in all products, not just manufactured items, and that minimum standards of protein content should be established and enforced for all packaged milk.

A representative of the cheese-making industry testified that there is no doubt that protein has value in milk used to make cheese because of the direct relationship between the protein content of the milk and the amount of cheese that may be made from that milk. He also stated that the cheese-making organizations he heads believe that Federal orders must be modified to recognize the values of protein in milk. However, he expressed concern that the proposed pricing plan would apply the same price to protein in all uses when its value in different dairy products varies somewhat. He also expressed misgivings about the use of the skim milk value of the Minnesota-Wisconsin price and the market-wide average of protein to establish a value for protein. He explained that the protein content of milk produced in Minnesota and Wisconsin that is used in the computation of the "M-W" price, which is used as a price determinant under all milk orders, is greater than the protein content of milk produced in Utah and Nevada. He expressed the belief that as a result of the difference in protein content between the two areas, the proposed procedure for determining a value for protein may result in overvaluing that component in the merged Great Basin area.

The witness suggested that the order allow handlers to make deductions from producer payments for milk low in protein, in the same way that handlers currently pay premiums for higher-than-average levels of protein in producer milk. Such a solution, he suggested, would allow handlers to pay producers on the basis of the protein content in their milk, but would avoid incorporating a system of protein pricing within the order.

One reservation about the proposed pricing plan voiced by most of the witnesses who supported the adoption of some form of multiple component pricing is its inability to address the problem posed by the presence of somatic cells in milk. According to testimony in the hearing record, somatic cells occur naturally in milk. However, in the presence of infections such as mastitis, somatic cell numbers multiply greatly and produce enzymes that break down the casein component of milk protein that contributes to cheese yields. These witnesses urged that any protein pricing system, to be effective, should incorporate some type of quality payment schedule based on the somatic cell count of a producer's milk.

The notice of hearing in this proceeding included no reference to the consideration of any payment adjustments for somatic cell counts. The question of somatic cell counts and their effect, as well as other quality considerations constitute separate issues which should more appropriately be addressed at another proceeding with proper notice and opportunity for both opponents and proponents to prepare testimony.

In exceptions filed to the recommended decision, Kraft, Inc., stated that failure to account for the presence of somatic cells in producer milk is a serious defect in the proposed protein pricing plan because of the detrimental effect a high number of such cells has on cheese yields, even in high-protein milk. The handler requested that the hearing be reopened, at least for further briefing and receipt of evidence, for the purpose of including somatic cell adjustments. Kraft argued that the issue of protein pricing clearly includes the subsidiary issue of the effect of somatic cell presence on protein value, as many witnesses testified at the hearing. Exceptions filed by the Holstein-Freisian Association of America to the inclusion of protein pricing in the order included the comment that tests for protein in producer milk are flawed by their inability to adjust for the presence of somatic cells.

As previously stated, although there was much discussion of the effect of somatic cells on the value of protein in producer milk, the possibility of making any payment adjustments for somatic cell counts was not adequately noticed. As a consequence, unacceptable levels of somatic cell counts and appropriate value adjustments for differing levels of somatic cells cannot be formulated on the basis of the record in this proceeding. In addition, the need for such adjustments in the context of the protein pricing scheme contained herein was not adequately established. This record adequately supports the protein payment plan contained in this rulemaking. Therefore, Kraft's request for a reopened hearing is denied. There is no reason for further delay in the present proceeding. Any adjustments in protein price for somatic cells or other quality factors which may be considered necessary in the future may be the subject of another hearing if the pricing system presented here proves to be in need of such adjustments.

Opposition to the multiple component pricing proposal came from several fluid milk handlers regulated under the Great Basin order, and from a national trade association for dairy product processors. The witness for the trade association expressed concern that a lack of readily available and efficient methods of testing for protein may lead to non-uniform or unequal raw product costs for handlers. He also was opposed to including any Class I products and some Class II products in a component pricing scheme because the value of such products is not affected by their protein content. Additionally, the witness stated that there is no readily available method for handlers to extract protein or nonfat solids from the milk they receive, and therefore no advantage to a Class I or Class II processor in receiving high protein milk.

Another feature of the proposed payment plan opposed by the trade association representative was the requirement that a handler report and account for the protein contained in all incoming milk and finished products. The witness expressed a preference for a "used-to-produce" concept, under which all of the milk going into a product must be tested and all of its components accounted for, but which would not require the finished product itself to be tested. He described the available tests for protein as dangerous and expensive to perform, requiring specialized personnel and equipment. In addition, he stated that the officially recognized protein tests are not appropriate for determining the protein content of all dairy products. The witness suggested that the percentage of protein contained in a handler's milk receipts may be assumed to remain constant regardless of the product in which it is used. He stressed the importance of an efficient, practical, uniform and reliable testing program to assure equity between handlers and producers, and expressed doubt that present testing technologies are adequate to fulfill such conditions.

A further concern voiced by the trade association representative was that the price alignment of milk used in the same products in different marketing areas be maintained. He expressed scepticism that competition among handlers in adjoining markets can remain fair if a handler in one market who must pay for his milk on the basis of its protein content competes for sales with a handler in another market who does not pay for milk based on its protein content.

An expert witness testifying on behalf of the trade association expressed concern that the testing procedures necessary to implement a protein pricing system are too expensive for most fluid milk handlers to justify on the basis of the benefits to be enjoyed from such testing, both in terms of capital costs and in terms of salaries that would have to be paid to technicians more highly trained than a milk plant would otherwise need to employ. In addition, he testified, handlers' accounting and recordkeeping costs would increase as a result of such a pricing plan, as would the probability of extra costs associated with overages and excess shrinkage resulting from testing inaccuracies. The witness also observed that the protein content of nonfat solids varies significantly. Therefore, he stated, a plant that does not make cheese does not have any use for protein testing in controlling the solids content of its Class I and Class II finished products, even to determine whether its products meet the minimum identity standard for nonfat solids content.

Three fluid milk handlers currently pooled under the Great Basin order who opposed the proposed multiple component pricing plan also objected to the extra costs of testing and accounting for the protein, as well as the butterfat, in all of their receipts and finished products. The handlers found it especially unfair that they be expected to assume such an added cost burden in order to account for a component that does not enhance the value of the products they process and sell. Another feature of the proposal to which they objected was the deduction to be made from handlers' obligations in the case of handlers whose Class I milk contains a higher protein percentage than the marketwide average. Such a provision, they contended, would result in inequitable pricing for Class I use between handlers, with handlers receiving lower-protein milk paying less for it than handlers receiving milk containing the marketwide average percentage of protein or more. In such a case, the low-protein milk would be worth as much used in fluid milk products as milk containing more protein, although the costs to handlers would differ. The handlers complained that such a provision would fail to carry out the requirement of the Agricultural Marketing Agreement Act of 1937 that Federal milk orders establish uniform prices between handlers.

The protein content of milk received and used by handlers should be considered, along with butterfat and volume, as a factor in determining the value of producer milk under the order. Failure to include the effect of protein variations on the use value of milk in a marketing area in which a substantial volume of unregulated milk is subject to multiple component pricing can be expected to cause, and apparently has caused, serious problems for regulated handlers competing for the procurement of producer milk with the operators of

nonpool plants who have a supply of pooled milk. In addition, it is economically sound in such circumstances to recognize additional value in milk with a higher-than-average protein content by paying more for such milk.

There was no disagreement among hearing participants that, all things being equal, milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. If a handler receives milk that will result in greater volumes of finished products such as cheese or cottage cheese than the same volume of milk testing lower in protein, the handler should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. The reason producers have been paid partly on the basis of the butterfat content of their milk for decades is that butterfat is a component of milk which affects the amount of butter that can be manufactured from a given amount of milk. Butter has value, and therefore additional butterfat in milk increases the value of the milk. A handler is required to pay for the butterfat in the milk he receives, and it is not unreasonable that he be required to pay for the protein in his milk receipts if protein content is a factor in determining the value of milk as it is used.

Rockview Dairy, the nonmember producer supplying milk to Anderson Dairy, filed exceptions that included an objection to receiving payment on the basis of the protein content of its milk. According to Rockview, it is not appropriate to price Rockview's pooled production on the basis of its protein content because all of its pooled production is supplied to a fluid milk handler and all of its surplus milk is marketed outside the order.

Unless the protein content of Rockview's milk varies significantly from the marketwide average of protein in producer milk, payments to Rockview as a result of protein pricing should not vary markedly from present payment levels. All producers participating in the marketwide pool should be paid on the same basis. If producers whose milk is used only in fluid products are not paid on the basis of the protein in their milk, as other producers are, the logical result would be a decline in the protein content of fluid milk products as producers whose milk is higher in protein content shift from fluid outlets to those which enjoy an economic benefit from the protein content in producer milk.

An exception by the Holstein-Freisian Association of America to the use of multiple component pricing under a Federal order stated that the Department has rejected component pricing in the past, and that those decisions should be studied in the context of reevaluating the recommended decision. However, no prior hearing relating to the adoption of component pricing under a Federal order has ever been held. This decision, therefore, is not a departure from a long-established policy. The only basis on which this decision should be examined is the record of the current proceeding and its compliance with the provisions of the Agricultural Marketing Agreement Act of 1937.

Those testifying at the hearing agreed that cheese is the manufactured product whose yield is most affected by the protein content of the milk used to produce it. It is apparent that an overwhelming proportion of the producer milk pooled under the Great Basin and Lake Mead orders and surplus to the fluid needs of those markets is used to produce cheese. Exhibits in the record show that 85 percent of the Class II and Class III milk pooled on the Lake Mead and Great Basin markets was used to produce cheese in 1984, and 89 percent in 1985. Given the percentages of milk used in these classes in the two markets, 38.2 percent of the total producer milk pooled on the Lake Mead and Great Basin markets in 1984 was used in cheese and cottage cheese, and 49.6 percent in 1985. Therefore, it is appropriate in these areas to price milk on the basis of its protein content to the extent that protein content affects the value of the milk in the end use.

An exception to the recommended decision filed by the Holstein-Freisian Association of America stated that producers should be compensated for all of the fat and nonfat solids produced and delivered to handlers. The Association stated that the nutrients and minerals in whey have economic value and represent marketable products beyond the casein portion for cheese. Accordingly, the Association urged that total nonfat solids replace protein as a basis for payment of producers under the merged order.

It is recognized that nonfat non-protein solids in producer milk have value. However, because the overwhelmingly predominant use of surplus milk in the Great Basin market is in cheese, protein is the most appropriate component of producer milk on which to base payment for nonfat solids in this market. Because the price to be paid for protein represents the total value of the skim portion of the Minnesota-Wisconsin price, producers will receive the full value of the nonfat solids contained in their milk. That value will be distributed to producers on the basis of the protein tests of their milk.

While protein content was seen to be critical in establishing the value of milk used in cheese, there was no evidence that protein content has any effect on the value of fluid milk products at all. On the contrary, there appears to be general agreement that consumers are not willing to pay more for fluid milk with a higher-than-average protein content than they are for low-protein milk. Handlers cannot easily remove protein from fluid milk products to add it to products in which it would have value, and it is illegal for them to add water to milk to reduce its protein content. Therefore, handlers obtain no discernable difference in economic benefit from the various levels of protein contained in milk used in fluid milk products, and there is no justification for requiring them to pay for such milk according to its protein content.

Regardless of doubts voiced by those opposing adoption of a multiple component pricing plan under the order, there is no reason to believe that the problems involved in adopting such a plan are insurmountable. It is clear from testimony in the hearing record that pricing milk on the basis of its protein as well as its butterfat content is practiced in other areas of the U.S. and among most, if not all, of the cheese processors in the proposed merged marketing area, as well as by the group of cooperative organizations representing a substantial majority of the producers in this area. Although opponents of the proposed pricing plan expressed reservations about the accuracy and reliability of present methods of testing for protein, other testimony indicates that those testing methods are at least as adequate as butterfat testing for purposes of determining handler obligations and payments to producers.

There was some difference of opinion between witnesses about whether higher protein content results in greater yield of such Class II products as ice cream, dips and yogurt. Because the protein price is derived from the value of skim milk, the difference caused by valuing a relatively small amount of milk at the protein price rather than at the skim milk price can be expected to be negligible. Therefore, protein pricing should apply to all producer milk used in Class II and Class III. There is no point in creating special categories of Class II and Class III use for products that would not be subject to protein pricing when the protein pricing plan adopted in this decision would cause little change in most handlers' pool obligations. Additionally, those products represent a very small percentage of the total milk in the pool.

Kraft, Inc., a proprietary plant operator which is not a handler under either the Great Basin or Lake Mead order, and the Milk Industry Foundation, a trade association of proprietary plant operators, filed exceptions to the inclusion of Class II products in the component pricing provisions of the merged order. Kraft also requested that the Secretary reopen the hearing for further briefing or for the receipt of evidence supporting the segregation of Class II products that receive no economic benefit from higher protein content from inclusion in protein pricing. The exceptions incorrectly attributed the rationale for pricing producer milk used in Class II on the basis of its protein content solely to the fact that those products represent a small percentage of the total milk in the pool. In addition, Kraft's comments stated that separate ice cream or yogurt plants would have all of the milk used in the production of those products priced under a plan that shows no evidence of economic justification.

As the paragraph dealing with the application of protein pricing to milk use in Class II products clearly states, the value of protein in skim milk will be equivalent to the value of the skim milk under the order's present provisions unless the protein content of the milk in question deviates significantly from the marketwide average. Therefore, there should be no material changes in cost to handlers for milk of average or near-average protein content used in Class II. Furthermore, stand-alone ice cream or yogurt plants are not pool plants, and will not be required under the order to pay for their milk receipts on the basis of their protein content. There is no purpose to be served by reopening the hearing for further briefing or evidence, other than delay. The record of this proceeding provides adequate information upon which to base this decision.

Other objections raised by witnesses to the implementation of a multiple component pricing system within the order present no great obstacles to the adoption of such a system. The possibility that pricing milk on the basis of its protein content in one order may create competitive problems for handlers if milk in neighboring marketing areas is not priced in the same manner is overridden by the fact that different systems of pricing between regulated and unregulated handlers who receive pool milk within the proposed merged marketing area are currently causing competitive problems. Handlers in the proposed merged area and in other Federal order marketing areas have been selling their products for some time in competition with unregulated handlers in all areas who pay for their milk receipts on the basis of protein content without encountering any difficulties in the course of such competition serious enough to be mentioned in the hearing record. The competitive area in which different pricing bases appear to cause inequities is in the procurement of milk supplies from producers. Grade A producers with high-protein milk are likely to prefer that their milk be shipped to a cheese plant from which they can obtain the benefit of its protein content than be pooled by a handler with obligations to supply the fluid market. In consequence, there is some concern that the continued inability of pooled handlers to adjust payments to producers for differences in protein content will result in a gradual decline in the protein content of fluid milk products as producers with higher protein content recognize the economic advantage of delivering their milk to the nonpool handlers who will pay more for it.

Under the pricing plan adopted in this decision the protein price is derived from the Minnesota-Wisconsin price, upon which all Federal order prices are based. As a result, costs to handlers under Federal order regulation in neighboring areas should deviate little, if any, from costs to handlers in the merged marketing area. In nearby areas that are not under Federal regulation, of course, there is no assurance of price alignment with the merged Great Basin market for any product. That is a situation under which handlers have operated over the existence of the present orders, and under which handlers will continue to operate.

It was observed at several places in the hearing record that as producers respond to market signals by increasing the protein content of their milk, the protein price will decline. This result would occur because of the method of computing the protein price by dividing the skim portion of the Minnesota-Wisconsin price by the marketwide average percentage of protein in producer milk. As the marketwide average percentage of protein increases over time in response to paying producers on the basis of the protein content of their milk, the protein price as computed under the order will decrease. It was suggested that a more desirable method of computing an appropriate value for protein than that proposed, and adopted in this decision, would be to use the protein content of milk for which the Minnesota-Wisconsin price represents payment as a basis for determining the protein price to be used under the order. Such a price probably would better represent the actual value of protein in relation to the Minnesota-Wisconsin price and the butterfat price, both of which are determined by factors outside the local marketing area. Unfortunately, the protein content of the milk involved in calculating the Minnesota-Wisconsin price is not available.

An exception to the recommended decision filed by Kraft, Inc., a proprietary plant operator which is not a handler under either the Great Basin or Lake Mead order, stated that the recommended method of computing the protein price is unsupported by evidence that it will result in the actual marketplace value of protein, and requested that the proceeding be reopened for additional briefing or evidence. As stated in both this decision and the recommended decision, there is no established market value for protein per se, largely because protein is not easily separable from the skim milk in which it is contained. The pricing scheme in this decision is not based on the actual market value of protein. Therefore, no purpose would be served by reopening the hearing for further briefing or evidence on this point.

The protein price computed under the order will represent the value of skim milk used in manufactured products at the skim milk portion of the Minnesota-Wisconsin price. According to the testimony of proponents' expert witness, there is a direct relationship between the protein content of the skim portion of milk and the cheese yield obtained from the milk. Milk pricing adjusted for protein will better reflect the value of milk delivered by producers and used by handlers than pricing that is adjusted only for butterfat content. Use of the marketwide average protein content in calculating the protein price from the skim milk value of the Minnesota-Wisconsin price will assure that adjustments to handlers' obligations on the basis of protein content will, on the whole, deviate little from the order's present pricing method.

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According to several witnesses most of the unregulated handlers in Minnesota and Wisconsin include protein content as a basis for paying producers. These are the handlers whose payments to producers are surveyed in determining the Minnesota-Wisconsin price. As the producers in that area increase the protein content of their milk in response to payments for protein, the Minnesota-Wisconsin price should reflect the added value of increased protein. In fact, as observed by one witness, the present Minnesota-Wisconsin price apparently represents a return for milk containing more protein on the average than milk produced in the merged Great Basin area at the present time. It is possible that the protein price computed under the merged order could be overstated somewhat as a result. Increases in the protein content of Great Basin milk should result in a protein price closer to the actual value of protein reflected in the Minnesota-Wisconsin price.

The suggestion that the order allow handlers to adjust payments to producers for variations in protein content by allowing deductions for less-than-average protein as well as premiums for higher-than-average protein would not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary. There is no reason to believe that such a system would be practiced by all handlers.

The multiple component pricing plan contained in this decision modifies the plan supported at the hearing by proponents. Instead of full plant accounting for protein, as well as butterfat, used by a handler, the assumption will be made that the percentage of protein contained in the skim milk portion of each handler's receipts of producer milk is constant for any particular month, regardless of the class in which it is used. According to the testimony of some of those witnesses most experienced with the use of protein and nonfat solids in milk pricing, protein and other nonfat solids are evenly distributed throughout skim milk and cannot easily be separated from it, as butterfat is. Although proponents altered their proposal to require that protein and butterfat be accounted for in fluid form on a used-to-produce basis, such a procedure would still require fluid milk handlers to incur extra expenditures for testing and accounting for protein and butterfat in fluid milk, fluid cream and nonfluid ingredients in all milk products. Such extensive testing and accounting would represent unnecessary and burdensome requirements for handlers who currently do not have the equipment or personnel necessary to comply with such a provision. Under the provisions adopted, handlers would be responsible for reporting the protein and butterfat content of milk received from producers and cooperative association handlers that is to be priced and pooled under the order. The percentage of protein contained in the skim milk portion of such receipts could then be used to calculate the pounds of protein in skim milk in every step of the accounting procedure at which the pounds of protein would need to be known for pricing purposes.

A system under which handlers are required to report the protein content of only their producers' milk is not unduly burdensome. It is apparent in the hearing record that protein testing of producer milk in the marketing area is widespread. The handlers of most producer milk either have the equipment and personnel required for protein testing, and are currently using protein testing as a basis for paying producers, or they have close business associations with handlers who perform such testing. One proprietary handler who processes only fluid milk products, for instance, diverts all of the milk of its nonmember producers that is surplus to its fluid operation to the cheese plant of another handler. The cheese plant operator pays for milk received from its own producers partially on the basis of the protein content of the milk. Even if the pool plant operator's producers' milk is not ordinarily tested for proetin, it is regularly delivered to a plant at which such testing is available.

In the case of a handler who has neither protein testing capability nor any access to other handlers' facilities at a reasonable cost, the market administrator would be authorized to determine the protein test of producer milk for pool purposes. It is not foreseen that protein testing which must be undertaken by the market administrator would be of an extent great enough to warrant any increase in the maximum marketing service deduction allowed from payments to nonmember producers.

Proponent filed comments to the recommended decision excepting to the authorization of the market administrator to establish, as well as verify, the protein tests of producer milk. Proponent stated that such responsibility is not provided in the language of the recommended order or in the legislative authority on which Federal orders are based, and that the record does not support allowing some handlers' testing to be done by the market administrator at the expense of all handlers. Proponent argued further that testimony expressing concerns about the expense of protein testing was not well-founded, and that those persons who testified to wide experience with protein testing indicated that its cost is in line with the cost of testing for butterfat.

For the most part, those handlers testifying to wide experience with protein testing are very large handlers that are most familiar with testing by infra-red analysis, in which many samples can be tested for several components in a short time. In such an operation, the variable cost of obtaining protein tests would be little, if any, different than the cost of determining butterfat tests. However, for small fluid milk handlers who have little reason to be concerned with the protein tests of their producer receipts or their packaged products, the costs of acquiring the necessary equipment and training or hiring the necessary personnel for the purpose of conducting such testing could be excessive. Although protein testing services apparently are available from commercial labs, it is not necessary to require fluid milk handlers to incur such an expense merely for the purpose of obtaining information about the percentage of their producers' milk represented by a component that is of no commercial value to the handler.

The Act and many Federal milk orders authorize verification and testing when such activities are necessary to administer the terms of the order. At this time, the regulatory and reporting burden of requiring fluid milk handlers to undertake the testing activities that are required by the adoption of multiple component pricing could be unreasonably onerous on small handlers. Therefore, the market administrator is authorized under the order's marketing services provision to establish, as well as verify, producer tests. Marketing service activities are paid for by an assessment on nonmember producers, not on handlers. Therefore, proponents' concern that testing for some handlers will be done by the market administrator at the expense of all handlers has no basis.

Reservations about the effectiveness of such an accounting system were expressed by proponents, who hypothesized that handlers would be able somehow to manipulate the manner in which milk is received and used according to its protein content for their own financial benefit. It is difficult to see how handlers could arrange to use high-protein milk in cheese and low-protein milk in fluid products while paying for the protein used in Classes II and III on the basis of pro rata distribution of the protein content of producer milk receipts. It would seem that such a system of operation would cost more in terms of planning and execution than any benefit a handler might gain as a result. However, if the testing and accounting provisions of the merged order are not adequate for ensuring that handlers pay the full value of their milk receipts, those provisions can always be amended at a later time.

The problem presented by pricing protein contained in Class II and Class III milk while not taking protein into account in pricing Class I milk can best be solved by leaving the pricing of Class I milk much the same as it is at present. The protein price to be applied to Class II and Class III milk under the merged order would represent the skim milk portion of the Minnesota-Wisconsin price for the month divided by the marketwide percentage of protein in milk pooled during the previous month. The skim value of Class I milk can be determined by multiplying the skim milk portion of the Minnesota-Wisconsin price for the month by the hundredweight of skim milk allocated to Class I. This skim milk value of each handler's Class I milk (not to include the Class I differential) would then be combined with the value of protein in milk used in Class II and Class III to determine a total skim milk/protein value for the marketwide pool. Divided by the pounds of protein in producer milk in the pool, the value would yield a protein price to be paid to producers.

Comments filed in response to the recommended decision by proponents and by The American Jersey Cattle Club and National All-Jersey, Inc., suggested that the protein price paid to producers be referred to as the "producer protein price" rather than the "skim milk/protein price." The comments described the term "skim milk/protein price" as imprecise, misleading, confusing, and as giving a false marketing signal to producers. The term "producer protein price" was described as being simpler and more easily understood. The comments are persuasive. Accordingly, references to the "skim milk/protein price" in this decision and the accompanying order have been changed to "producer protein price." It should, however, be remembered that there is a significant difference between the phrases "protein price" (to handlers) and "producer protein price" (to producers).

Each producer's share of the differential value of the pool should be determined as proposed by proponents, although the mechanics should differ somewhat. The basis of the differential pool would be formed by multiplying the pounds of milk allocated to Class I by the difference between the Class I and Class III prices, and adding the amount computed by multiplying the pounds of milk allocated to Class II by the difference between the Class II and Class III prices. To the Class I and Class II differential values would be added adjustments for such items as overage, reclassified inventory, location of producer milk receipts, and other source milk assigned to Class I. The total value of the differential pool would be divided by the product pounds of producer milk in the pool to determine the rate per hundredweight by which each producer's share of the differential pool would be computed.

As a result of pooling the skim milk/protein and differential values of all producers' milk, producers would be paid on the basis of their total volume of production at a weighted average differential price, the protein contained in their production at the producer protein price per pound, and the butterfat contained in their production at the butterfat price per pound. Because the value of butterfat would not be affected by the products in which it is used, there is no need to pool butterfat values.

The multiple component pricing plan adopted in this decision is not necessarily intended to be a model for inclusion in other Federal milk orders. The terms and provisions of each order must be tailored to the peculiar marketing conditions existing in each marketing area, as the provisions of this order have been determined by the conditions in the merged Great Basin marketing area. As marketing conditions change, or if the provisions adopted in this decision are found to be inadequate, the order should be amended to assure orderly marketing.

The National Milk Producers Federation (NMPF), an organization of dairy farmer cooperatives, and the Holstein-Freisian Association of America filed comments relating to the status of the multiple component pricing plan adopted in this decision as a "landmark" upon which other orders would necessarily be modeled. NMPF argued that protein pricing would not represent the best possible milk pricing plan for marketing areas with substantial production of butter and nonfat dry milk, and urged the Department not to consider it such a model. The Holstein-Freisian Association, in spite of the immediately preceding paragraph, expressed concern that the industry will accept this decision as a model for other orders and that it therefore should be drafted as one.

Apparently, it must be reiterated that marketing conditions in other markets differ greatly from the merged Great Basin market in such respects as the percentage of producer milk that is surplus to the fluid needs of the market and the product mix in which such surplus milk is used, among others. Protein may not be the most appropriate nonfat component upon which to base producer payments in a market where butter and nonfat dry milk are the principal surplus products. In addition, improved methods of determining component prices or distributing pool proceeds among producers may be developed.

6. *Handler reports.* Reports required to be submitted by handlers should be similar to those required under the two separate orders, and to those proposed by proponents. However, proponents' proposed handler reporting requirement should be modified to conform with the incorporation of multiple component pricing as adopted in this decision. With respect to protein, only the protein pounds contained in producer milk receipts should be required to be reported. Reporting of the product pounds, skim milk and butterfat contained in other receipts and in utilization, disposition, and month-end inventories would give the market administrator adequate information for purposes of determining handlers' obligations. Handlers' reports of receipts and utilization should be due the seventh day after the end of each month, as is currently the case under the separate orders, and as proposed.

Payroll reports, indicating the receipts for which producers have been paid, should be submitted on or before the twenty-first day after the end of each month, as proposed. The due date for payroll reports would give handlers one more day for preparation of such reports than they currently have under the present Great Basin order. The payroll reporting dates under the present Lake Mead order would be inappropriate for the merged order because the present Lake Mead order requires payments for all pool milk to be collected by the market administrator. The information required to be reported would be the same as under present order provision, except for the addition of the protein content of each producer's milk and the amount paid for protein contained in

each producer's milk. Reports of receipts and utilization and payroll reports submitted by partially regulated distributing plant operators who elect to have their obligations computed as if they had been fully regulated handlers for the month should include the same information as provided by fully regulated handlers. Other partially regulated distributing plant operators may report their receipts and utilization in the same manner as they are currently required to report, omitting the protein content of their receipts.

The only deviation proposed from present reporting requirements was that handlers report the protein content of all their milk receipts and of all the uses made of those receipts. Many witnesses contended that such a requirement would add unnecessarily to the costs of testing and accounting for milk protein that would be imposed by adoption of a multiple component pricing scheme. As explained previously in this decision, protein in producer milk would be followed through a handler's operation and classified pro rata with the skim milk in which it is contained. Therefore, reporting of receipts and use of protein aside from its presence in producer milk would be unnecessary.

7. *Classification of milk.* The merged order should incorporate the same uniform classification plan that is currently contained in both of the two individual orders, and is commonly provided in most other Federal milk orders. The plan adopted herein provides, as is the case under the individual orders, for the classification of milk according to use, including rules for determining the classification of milk moved from one plant to another and the classification of shrinkage. The plan also sets forth a procedure for allocating the skim and butterfat pounds contained in a handler's receipts of milk and milk products from various sources to his utilization in each class in order to determine the classification of producer milk. A handler's receipts of cooperative member milk delivered directly from producers' farms to the handler's plant by the cooperative association should be included with the handler's direct receipts of producer milk for the purpose of allocating producer milk to classes of use.

Under the classification plan adopted in this decision, Class I milk would include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, would be classified as Class III.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted in a Class III classification.

Class III milk should include products which are made from surplus approved milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Additionally, Class III milk should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products and bulk cream products disposed of to any commercial food processing establishment or in producer milk diverted to a commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese in any form, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes. Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically-sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and certain other products as specified in the order would also be included as Class II milk.

The classification plan adopted herein was proposed by the merger proponent and includes the uniform classification plan contained in many other Federal orders. This plan was developed from exhaustive hearings held on the broad issue of classification in 1971 for 39 markets. A full discussion and appropriate order language on the uniform classification plan are contained in a final decision issued February 19, 1974 (39 FR 8202, 8452, 8712, 9012). A futher decision that refined the present uniform classification plan was issued July 11, 1975 (40 FR 30119). The uniform classification plan was later adopted under both the Great Basin and Lake Mead orders in decisions issued August 17, 1982 (47 FR 37203) and September 19, 1984 (49 FR 37599). These decisions were duly noted on the record of this proceeding.

Proponent testified that adoption of the uniform classification system would result in no change in classification from that currently contained in the two individual orders. He stated that inclusion of the system in the merged order would assure uniformity among such essential aspects of marketing orders as accounting requirements and the movement of packaged Class I and Class II products between border areas. No testimony opposing incorporation of the uniform classification system in the merged order was received. Accordingly, the classification system proposed by proponent should be adopted.

Allocation of receipts to utilization. Under the merged order, a system of allocating handlers' receipts to the various classes should be similar to that

adopted in the Assistant Secretary's June 19, 1964 (29 FR 9002), decision for 76 milk orders (including the Great Basin order). This decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at a pool plant from other order plants. The decision provides a procedure for allocating over a handler's total utilization his receipts from all sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I. The allocation system adopted for 76 milk orders in the 1964 decision was incorporated in the Lake Mead order when it was promulgated in 1973.

Since the aforementioned decision sets forth the procedures for dealing with unregulated milk under Federal orders, it is appropriate and necessary that the same system of allocation apply under the proposed merged order. Likewise, the appropriate treatment of other order milk received at pool plants under the merged order should conform with the plan included in the aforesaid decision that is used for coordinating the applicable regulations on all movements of milk between and among Federal order markets.

Merger proponent proposed allocation provisions that essentially would allocate handlers' other source receipts to their utilization as is now provided in the separate orders proposed to be merged. However, proponent advocated allocating the product pounds of receipts, rather than the skim milk and butterfat pounds, to the pounds of milk used in each class. The present method of allocating pounds of skim milk and butterfat in receipts to the skim milk and butterfat in classes of use under the two individual orders should be continued under the merged order.

Proponent witness testified that under a system that prices both the butterfat and protein components of milk the two components should be treated the same in each stage of the accounting and pricing process. Such consistent treatment, he explained, would require that protein, butterfat and skim milk pounds each be allocated to the classes of use, or that product pounds only be allocated. He described the allocation of all three components as being cumbersome, if not unmanageable, and as serving no useful purpose. The witness stated that under the proposal no price distinctions would be made for protein or butterfat based on the classes in which those components are used. He argued that while in the past butterfat disposed of in Class I was priced at a higher rate than butterfat used in manufactured products, at the present time the value of the butterfat content of milk is determined by one differential without regard to the classes in which it is used. He stated that the only purpose of allocating butterfat or protein to the classes in which they are used is to distinguish differences in value according to class. With single butterfat and protein prices applicable to all butterfat and protein in producer milk as provided by the proposal, the witness said, there is no reason to allocate milk components. He concluded that milk can be priced according to its class of use by allocating it only by product pounds without altering the obligations of handlers under the order.

Under the pricing and pooling provisions adopted in this decision, the butterfat and protein components of milk will not be treated in the same manner. The value of protein in producer milk used in Class II and Class III will be pooled with the value of skim milk used in Class I to determine the price to be paid producers for the protein in their milk. The value of butterfat will not be pooled. Even if butterfat and protein were to be priced in a parallel manner, these components have different physical characteristics, and cannot be considered to be handled in the same way. Butterfat is easily separable from the producer milk in which it is contained, and the butterfat content of nearly all fluid milk products is standardized to some extent. The butterfat, or cream, that is separated from producer milk is then further standardized for various cream products, added to ice cream mixes, or churned into butter.

Because butterfat can be separated from the skim milk in which it is contained, butterfat not needed in some products such as fluid milk products may be removed and used in other products, of which it will enhance the value. Protein, however, must be used with the skim milk throughout which it is distributed, even though extra amounts of protein may add no value to the fluid products in which the skim milk is used. Technology has not progressed to the point at which the protein component of milk can be removed from producer milk without use of a manufacturing process or without changing the form of the milk. Likewise, milk protein is not an end product of any commonly-used manufacturing process, and therefore cannot be added back to milk or milk products in its entirety or without other milk solids. The addition of nonfat milk solids to fluid milk in the fortification process involves adding nonprotein solids as well as protein. The use of casein in manufactured products adds only one form of milk protein.

Therefore, there is no reason for butterfat and protein to be treated in the same manner in determining the allocation of producer milk to the classes of use. The butterfat and skim milk portions of milk are separable, may be used separately in a milk plant, and therefore should be accounted for separately. All evidence available indicates that protein is evenly distributed within the skim portion of producer milk, and should be accounted for in proportion with the skim portion.

There are valid reasons for allocating milk to its classes of use by its skim and butterfat components, especially under the pricing system adopted in this decision. With the skim milk portion of milk classified as Class I subject to a skim milk price rather than to a protein price, it will be necessary to compute the pounds of protein by class in order to price only the pounds of protein used in Classes II and III. Allocation of skim milk and butterfat will make available the information necessary to prorate protein pounds to the skim milk allocated to each class, while allowing the calculation of the pounds of producer milk to be priced in each class. The calculation necessary to determine handler obligations under the order provisions adopted in this decision would not be unnecessarily burdensome or complicated for the market administrator. The necessary calculations would be performed by computer, as are nearly all pool computations at this time.

In addition to the need for separate allocation of skim milk and butterfat under the provisions of the merged order, proponent witness' assertion that allocating milk to classes of use by product pounds instead of by skim milk and butterfat pounds would not alter the obligations of handlers under the order is incorrect. The amounts of skim milk and butterfat used in each class established separate limits on the amount of skim milk and butterfat in the various types of receipts that can be allocated to each class. If the amounts of skim milk and butterfat in each class are combined into product pounds it is likely that for any given handler the product pounds in other source receipts allocated to the product pounds of use will result in a greater amount of receipts being allocated than if skim milk and butterfat receipts are allocated under separate limits. Receipts are generally allocated first to Class III use, and only to Class II and Class I when the limits established by Class III use have been exceeded. Therefore, it can

be expected that product pound allocation would, in cases where it differs from skim milk and butterfat allocation, always result in pricing fewer pounds of producer milk at the Class III price, and more pounds at the higher Class I and Class II prices.

Shrinkage and overage also should be computed and assigned to classes of use on the basis of skim milk and butterfat, rather than computing shrinkage on the basis of product pounds, protein and butterfat, and prorating it to Classes I and III solely on the basis of product pounds, as proposed by proponent. Shrinkage or overage in butterfat and skim milk often occur in opposite directions in the same dairy plant, as when skim milk shrinkage occurs during the same period as butterfat overage. If such a situation occurred under product pound accounting the shrinkage and overage would tend to cancel each other out. As a result, overage would not be allocated to its full extent and would only be priced as a component, without consideration of any greater value it may have in Class I or Class II use. Shrinkage also would be understated in such a case, and might be prorated quite differently to Class III and Class I than if the actual amount of shrinkage were prorated. With shrinkage computed and prorated by pounds of skim milk and butterfat, protein pounds in shrinkage or overage can still be computed, when necessary for pricing purposes, as a percentage of skim milk.

Milk for which handler is accountable. According to the producer milk definition proposed by IMPA and adopted in the decision, the milk for which a handler is accountable to the pool consists of the milk of a handler's own producers that is received or diverted by the handler and the milk delivered to the handler by a cooperative association directly from its members' farms. The IMPA witness testified that the proposed producer milk definition is a modification of the definitions of producer milk under the Great Basin and Lake Mead milk orders. The language of the proposed order would not allow the receipts of cooperative member milk at the handler's plant to be reported and accounted for by any other handler, including the cooperative. Under the proposed definition, the handler who first received milk from producers into a pool plant is the handler who is to be held responsible for reporting the disposition of the milk and accounting to the pool for its use. Such a procedure will be the most reasonable manner of determining the value of cooperative member milk received and used at a handler's plant, and the simplest to administer.

Some of the language proposed by IMPA for the general accounting and allocation sections of the order would not allow cooperative member milk received at a handler's plant to be accounted for as required by the proposed producer milk definition. Apparently, the proposed language of the general accounting and allocation sections was intended to follow the present Lake Mead order, while the producer milk definition is a mixture of both the Great Basin and Lake Mead orders. Accordingly, the proposed general accounting and allocation sections have been modified to assure that producer milk will be accounted for in the manner required by the producer milk definition.

8. *Class Prices, location adjustments and component prices.* The present Class I price levels at Salt Lake City, Utah, and Las Vegas, Nevada, should be maintained. Although proponents omitted the Class III and basic formula prices from their proposed order as unnecessary for the computation of handler obligations and producer payments, all of the prices normally defined in Federal milk orders, in addition to those necessary to implement multiple component pricing, should be included in the merged Great Basin order. Defining all the necessary prices in the order will make computations included in the determination of handler obligations and producer payments less complex than they otherwise might have to be.

The dates on which prices are to be announced should be the same as those proposed by proponents. The dates on which the class prices and component prices are to be announced are the same as those on which class prices are currently announced under the two separate orders, and are uniform among Federal milk orders generally. Announcement of the weighted average differential and the uniform price for the previous month on the 12th of the month also represents no change from the present orders. There was no opposition to the dates proposed.

Class I price and location adjustments. For the most part, Class I prices at locations within the marketing area should be unchanged from Class I prices under the separate orders. The Class I price for the merged Great Basin market should be the basic formula price for the second preceding month plus a Class I differential of $1.90. This price should apply to plants located in the Salt Lake City area and other areas listed below. For the purpose of applying location adjustments, the marketing area should be divided into three pricing zones. Zone 1, which would be the base zone and would have no price adjustment, should include northern Utah (which includes Salt Lake City) and northeastern Nevada. Zone 2 should comprise the six counties in the southeastern corner of Idaho. A location adjustment of minus 25 cents per hundredweight should apply (in effect, a Class I differential of $1.65). Zone 3 should include all of the area in southeastern Nevada (which includes Las Vegas) and southern Utah, the Wyoming portion of the marketing area, and the four northernmost Idaho counties in the marketing area. A minus 30-cent adjustment should apply ($1.60 Class I differential). This would continue the price level now applicable at Las Vegas.

The location adjustment for each zone, the resulting Class I differential (shown parenthetically), and the territory that should be included in each zone are as follows:

Zone 1—No adjustment ($1.90)

Utah Counties

Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Grand
Juab
Millard
Morgan
Rich
Salt Lake
Sanpete
Sevier
Summit
Tooele
Uinta
Utah
Wasatch
Weber

Nevada Counties

Elko
White Pine

Zone 2—Minus 25 cents ($1.65)

Idaho Counties

Bannock
Bear Lake
Caribou
Franklin
Oneida
Power

Zone 3—Minus 30 cents ($1.60)

Idaho Counties

Bingham
Bonneville
Jefferson
Madison

Wyoming Counties

Lincoln
Uinta

Nevada Counties

Clark
Lincoln

Utah Counties

Beaver
Garfield
Iron
Kane
Piute
San Juan
Washington
Wayne

At plant locations outside the marketing area, the Class I price and the weighted average differential price that are applicable at Salt Lake City, Utah, or Las Vegas, Nevada, whichever is nearer to the plant, should be reduced 1.5 cents for each 10 miles that the plant is from the nearer city.

Both the Class I prices to handlers and the weighted average differential prices to producers should be adjusted by the zone locations of the plants at which milk is received. At the present time, the Class I differential at Salt Lake City is $1.90. Prices under the Great Basin order are not adjusted for location at plants within 150 miles of Salt Lake City. For plant locations 150 to 160 miles from Salt Lake City, the Class I and uniform prices are reduced by 22 cents per hundredweight. Prices at locations more than 160 miles from Salt Lake City are reduced by 22 cents plus 1.5 cents per ten miles of distance in excess of 160 miles from Salt Lake City. As a result, Class I and uniform prices are reduced by 29.5 cents at pool plants located in Idaho Falls, Idaho and 23.5 cents at a pool plant in Pocatello, Idaho. Under the merged order the price adjustments at those locations would be minus 30 cents and 25 cents, respectively. Price changes of such small magnitude should create no competitive problems for the handlers affected. Price adjustments at locations in Idaho outside of the merged marketing area will be changed by 2 cents, since 24 cents rather than 22 cents would be provided for the first 160 miles. These adjustments also should be considered too minor to affect competitive relationships considering the relatively large distances involved from Salt Lake City.

The present Class I price differential at Las Vegas, Nevada, is $1.60, which also would be unchanged under the merged order. Currently, prices at locations more than 40 miles from Las Vegas are adjusted at a rate of 1.5 cents per 10 miles distance from Las Vegas. Location adjustments under the present Lake Mead order reduce Class I and uniform prices by 9 cents at Logandale, Nevada; 27 cents at Cedar City, Utah; and 34.5 cents at Beaver, Utah, for milk received at plants in those locations. The pricing plan incorporated in the merged order would remove the price differences at these locations, resulting in Class I and uniform price levels the same as those at Las Vegas. Currently, milk surplus to the Lake Mead market that must be moved to northern Utah for manufacturing use is subject to a 35-cent reduction in price for location. Under the pricing plan adopted in the merged order, milk so moved will be subject to the Zone 1 price effective at Salt Lake City.

Prices at locations outside the merged marketing area will be adjusted from the prices effective at Las Vegas or Salt Lake City, according to distance from the nearer of those two cities. This provision will assure that the present price relationships under the order between Lake Mead-area handlers and California handlers are unchanged.

Proponents supported adoption of their proposed zone pricing plan on the basis that it would facilitate the delivery of milk supplies from producers to different distributing plants and to manufacturing plants as milk is needed so that producer milk can be utilized to the greatest advantage. Proponents expect that the proposed zone pricing system will result in improved equity among handlers, improved service to handlers by producers and cooperatives, and more orderly marketing of producer milk. Proponent witness testified that the zone pricing system would result in prices similar to those effective under the two separate orders, with the exceptions noted in southeastern Nevada and southwestern Utah. He stated that proponents see no justification for lower Class I and uniform prices at Logandale, Nevada, or Beaver, Utah, than at Las Vegas. The witness explained that Beaver is the location of the nearest manufacturing plant for the reserve supplies of milk from the Cedar City area and from southern Nevada. He expressed the opinion that milk which must be moved to a manufacturing plant at additional cost to producers because it is not needed at a nearby bottling plant should not be subject as well to a price adjusted downward for location.

Proponent witness also stated that a zone pricing system removes the confusion of determining location adjustments on the basis of distance and eliminates small price differences between neighboring locations. He explained that prices to producers and handlers similarly situated would be equalized, and that milk marketers would no longer have to consider the location values at each individual distributing plant or manufacturing plant in arranging farm to market hauling.

Proponents recognized the need for higher prices in heavily populated area to compensate for the higher cost of delivering bulk milk to plants located there from outer fringes of the procurement area. The witness stated that the proposed zone pricing system would cover the costs of moving milk to where it is consumed, but would also simplify accounting and computing the costs and returns of milk supplied to handlers by the cooperative associations and by other suppliers. Proponent witness stated that under the proposed zone pricing system Class I costs to handlers would not change significantly from their present levels, and that total returns to producers would increase slightly.

The manager of a distributing plant located in Pocatello, Idaho, testified that, in order for his plant to compete on an equitable basis with handlers regulated under the Southwestern Idaho-Eastern Oregon order, the location adjustment at Pocatello should be increased by 16.5 cents per hundredweight, thereby decreasing the Class I price effective at that location. The witness proposed that the location adjustment at Pocatello be increased from 23.5 cents to 40 cents, rather than the 25-cent adjustment proposed by proponents. He testified that competition for fluid sales in the Pocatello areas comes primarily from distributing plants regulated under the Great Basin Federal milk order and located in northern Utah, and from a distributing plant regulated under the Southwestern Idaho-Eastern Oregon order located at Twin Falls, Idaho. According to the hearing record, the Class I differential at Twin Falls under the Southwestern Idaho-Eastern Oregon order is $1.50, and the Class I differential at Salt Lake City under the Great Basin order is $1.90. The Class I differential at Pocatello under the Great Basin order is currently $1.665, and would be $1.65 under the proposed zone pricing system. The witness complained that because of the present 16.5-cent difference in Class I prices between Twin Falls and Pocatello under the two orders, the Twin Falls handler enjoys a competitive advantage over the Pocatello handler on milk sold in the Pocatello area. He had no complaint about the 23.5-cent difference in prices paid for Class I milk by handlers in Salt Lake City and Pocatello.

Location adjustments are intended to offset the cost of moving bulk milk from

the location at which it is produced to locations at which it may be used. Location adjustments are not intended to cover handlers' costs of moving packaged milk from where it is processed to where it is purchased by consumers. The present price relationships between Salt Lake City, Pocatello, and Twin Falls provide incentives for milk to move from where it is produced to where it is needed for processing. A $1.50 Class I price differential apparently results in a high enough price to attract an adequate supply of milk to Twin Falls, Idaho, to fill the fluid requirements of the handler located there. The 16.5-cent (or proposed 15-cent) price difference between Twin Falls and Pocatello is not excessive considering that it is at least 100 miles between the two locations. At the regular location adjustment rate of 1.5 cents per 10 miles of distance, a 15-cent price difference would be entirely appropriate.

The 25-cent price difference between Pocatello and Salt Lake City should make it possible for producer milk to move from an area of heavy milk production in southeastern Idaho to the heavily-populated Salt Lake City area. The 40-cent price difference between Pocatello and Salt Lake City that would result from adopting the handler's proposal would misalign prices between those two locations within the marketing area, and would eliminate the gradual reduction of prices by distance from Salt Lake City to Pocatello, and Salt Lake City to Twin Falls. Furthermore, if competition between handlers for sales, rather than for procurement of producer milk, were the object of location adjustments, a 40-cent price difference between Salt Lake City and Pocatello would put Salt Lake City handlers at an even greater disadvantage in competing for sales in the Pocatello area than they currently have with a 23.5-cent price difference.

A representative of Safeway Stores, Inc., a large multiple-distributing plant handler with a Great Basin pool plant in Salt Lake City and a plant located in Commerce City, California, that is a partially regulated plant under the Lake Mead order, advocated adjusting prices from Las Vegas and Salt Lake City to locations outside the marketing area by 2.2 cents per hundredweight per 10 miles of distance rather than by 1.5 cents. He stated that the present 1.5-cent rate falls far short of covering the actual transportation expenses incurred in moving milk from the Los Angeles area to Las Vegas. He estimated those costs at over 10 cents per hundredweight per 10 miles, but based the proposed 2.2-cent rate on proposals currently under consideration for incorporation in other Federal orders. The witness had no data supporting a 2.2-cent cost for moving bulk milk from California to Nevada. The 10-cent cost he cited pertained solely to movements of packaged milk, and would be irrelevant to any determination of an appropriate location adjustment rate. The costs of transporting bulk milk have undoubtedly increased since the 1.5-cent location adjustment rate was adopted. However, in the absence of any data supporting a location adjustment rate other than the present 1.5 cents, and without any evidence that the 1.5-cent rate is inadequate, there is no basis for adopting a higher rate.

Other than the Pocatello handler's proposal to adopt a different price level at Pocatello, Idaho, there was no opposition expressed at the hearing to adoption of proponents' zone pricing system, even though Class I prices would be increased by 9 cents at the Logandale, Nevada, distributing plant, and by 27 cents at Cedar City, Utah. The change in location pricing at Beaver, Utah, would have no effect on Class I values because all of the milk received there is used solely in cheese, a Class III product. Price changes at locations in the Idaho portion of the marketing area are not significant enough to cause any concern about price misalignment between handlers or about competitive disruptions, as discussed earlier. Proponents' arguments that establishing prices by plants' locations within zones would be less complex and easier to determine than establishing prices by mileage from specific basing points are valid. In addition, although it may not seem wise to eliminate price differences between locations in Las Vegas and southern Utah when a substantial proportion of the reserve milk supply associated with the Lake Mead market is still produced in southwestern Utah, there is evidence that most of the necessary reserves for the Nevada distributing plants can be supplied from Clark County, Nevada, production.

The witness representing Rockview Dairies, which owns the two farms supplying nonmember producer milk to Anderson Dairy, the large Las Vegas distributing plant operator, testified that the handler has contracted for a full supply of milk from California producers, and would no longer be receiving milk from the cooperative associations. As a result, more milk produced in Nevada will be moved to Beaver, Utah, as surplus to the fluid needs of the market than will be hauled from farms in the Beaver area to distributing plants in Nevada. Therefore, there may no longer be any reason for price differences within the southern portion of the merged order. Because the proposed zone pricing system does not materially change prices elsewhere in the marketing area, the system of determining location adjustments by zones for locations within the marketing area, and by mileage from basing points for locations outside the marketing area, should be adopted as proposed.

Class II and Class III prices. Proponent's proposal included a Class II price at the same level existing currently in the Great Basin order, and 5 cents lower than under the Lake Mead order. There was no testimony in support of or opposition to the proposed Class II price level. It is apparent from record evidence, however, that by far the most manufacturing use of milk, in both Classes II and III, occurs in the present Great Basin marketing area. The Class II price as currently determined under that order, therefore, is applicable to most of the milk used in Class II under the two orders and would be the more appropriate Class II price for the merged order.

Proponent's proposed order did not include a Class III price, but used the definition of the present Class III price whenever necessary for pool computations such as determining the differences between the Class I and Class II, or Class III and Class III, prices. In the interest of simplicity, the merged order should include a definition of the Class III price that is the same as in both of the two existing orders. Also, instead of a definition of the "Minnesota-Wisconsin price", as proposed, the merged order should contain a definition of the equivalent "Basic formula price", as do most other orders.

Component prices. The value of the butterfat and protein components of producer milk should be determined by prices per pound, as proposed by the merger proponent. The butterfat and protein prices should also be computed as proposed. In addition, a "skim milk price" should be defined and used to determine the value of the skim portion of producer milk that is allocated to Class I. No provision for a butterfat differential is needed in the merged order because value adjustments for variations in producer butterfat will be made by paying producers a price per pound for the butterfat contained in their milk, rather than by adjusting the price per hundredweight to be paid producers to reflect the butterfat content of their milk.

Proponent witness justified the proposal to bill handlers and pay producers for milk components on a per-pound basis rather than by the use of differentials by explaining that values based on prices per pound would be easier to understand and compute when two components, rather than one, are used to determine the value of milk. Using two price differentials, for protein as well as butterfat, he testified, would be unduly complex and confusing.

The witness explained that under the proposal the value of one pound of butterfat would be determined by adding the value of a pound of skim milk to the current butterfat differential, which represents the difference in value between a pound of butterfat and a pound of skim milk. He indicated that the provisions in the proposed order that describe the computation of the "butterfat price" would base the value of a pound of butterfat on the current market price of butter.

The IMPA witness also addressed the question of determining an appropriate price for protein and concluded that the value of protein depends on the product in which it is used. He indicated that under market conditions current at the time of the hearing, protein would be worth about 80 cents per pound in milk used to make nonfat dry milk, and approximately twice that amount in milk used for cheese. The witness stated that IMPA's proposal would attribute the skim milk portion of the Minnesota-Wisconsin (M–W) price to protein by deducting the value of 3.5 pounds of butterfat from the M–W price, and dividing the result by the marketwide percentage of protein in producer milk during the previous month. Although the protein would thus be valued at the higher end of the possible range of protein prices, he justified that result on the basis of the overwhelmingly large proportion of the surplus milk used in cheese manufacture in the proposed merged marketing area.

The prices for butterfat and protein components should be determined in the manner proposed by proponents. The butterfat price would accurately reflect the market value of butterfat used in butter, and would result in no changes from the present pricing system in the value of butterfat to producers or to handlers. The butterfat price would be used only to determine payments to producers, and would not be included in handlers' obligations to the pool.

The "milk protein price" computation proposed by proponents also serves the purpose for which it is intended—to derive a price-per-pound for protein that will reflect the value to handlers of protein contained in the skim milk portion of producer milk. Because the protein price is to be derived from the skim milk portion of the Minnesota-Wisconsin price and the average protein content of producer milk in the market, the total value of the pool should be unchanged. In addition, due to the minor variations to be expected in the protein content of producer milk received by different handlers, handler obligations resulting from use of the component pricing system should be little different from their present obligations. Also, given the very large proportion of the milk produced for other than fluid uses in the merged marketing area that is used to make cheese, it is appropriate that the protein contained in the milk reflect the value of the product in which it is used.

As discussed earlier, the protein price should apply only to protein in producer skim milk allocated to Classes II and III. The price to be paid to producers for the protein in their milk should represent a combination of the value of protein in Class II and Class III uses and the value of skim milk in Class I use. The computation of the "producer protein price" to producers will be explained in the discussion of the producer protein pool.

The "skim milk price" was not included in proponents' proposed order, but would help to accomplish proponents' objectives of avoiding a charge to handlers for protein used in Class I and maintaining equitable Class I costs between handlers. The skim milk price should be computed by subtracting the differential value of 3.5 pounds of butterfat from the Class III price. The result would represent the value of 100 pounds of skim milk. When added to the differential value of a handler's Class I producer milk, calculated at the difference between the Class I and Class III prices, the handler's Class I skim milk value would determine the handler's obligation to the pool for his milk used in Class I.

The prices included in the merged order that are to be paid by handlers would result in a total pool value little different from that computed under the present pricing system. Total payments to producers also should not vary much from the present system. In fact, if the prices computed under the proposed merged order, as adopted herein, were carried out beyond the nearest full cent, the total pool value would be unchanged from its present level. However, there is no reason to carry out component prices to the tenths of cents when producer prices resulting from the merged pool should vary no more than 1 to 2 cents each month from the prices computed under the present system. Therefore, the butterfat, protein and skim milk prices should be rounded to the nearest whole cent. The prices from which the component prices are computed, however, and intermediate steps in the computations should be carried out as many decimal places as necessary to assure that the rounded component prices are as accurate as possible.

9. *Handlers' value of milk for computing prices to producers.* The value of milk to handlers under the multiple component pricing system adopted herein should reflect the value of protein in handlers' producer milk receipts that are used in Class II and Class III while continuing to price Class I milk without considering its protein content. At the same time, the present level of total costs of milk to all handlers should be maintained. These objectives can be met by determining handlers' obligations and rates of payments to producers through the operation of two marketwide pools. One pool would determine the price to be paid to all pooled producers for their share of the fluid market, and the other pool would determine the rate at which producers should be paid for the protein contained in their milk. Each handler's net obligation to the pool would be determined by subtracting the weighted average differential and producer protein values due to producers from the differential value and skim milk and protein values of the producer milk used by the handler. The value of butterfat to handlers should not be pooled, but should be paid directly to the dairy farmers who produced it.

The differential value of each handler's producer milk receipts used in Class I and Class II should be calculated by mulitplying the hundredwight of producer milk allocated to those classes by the difference between the appropriate class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that are currently included in determining the handler's value of milk should be included in the differential value. Those adjustments include the values of overage, beginning Class III inventory allocated to Class II or to Class I, other source and filled milk receipts allocated to Class I, and certain receipts from unregulated supply plants that are allocated to Class I.

The value adjustments for overage allocated to Class I should be determined by multiplying the Class I product pounds by the difference between the current month's Class I and Class III prices, skim milk pounds by the current month's skim milk price, and butterfat pounds by the current month's butterfat price. The product pounds of

overage allocated to Class II should be priced at the difference between the current month's Class II and Class III prices, the Class II butterfat pounds at the butterfat price and the protein pounds pro-rated to the skim milk pounds allocated to Class II at the protein price. The value of Class III overage would be determined by multiplying the protein pounds pro-rated to Class III skim milk overage according to the protein content of the handler's producer skim milk by the protein price, and adding the value of butterfat overage allocated to Class III multiplied by the butterfat price. In the case of reclassified inventory, the value adjustment would be the difference between the current month's Class I and Class II values of the inventory and its value at the previous month's protein and butterfat prices. The value of other source receipts allocated to Class I would be determined by multiplying the Class I product pounds so allocated by the difference between the current month's Class I and Class III prices.

The price to be paid to producers for the protein in their milk should be determined by combining the value of skim milk in Class I producer milk at the skim milk price with the value of protein in the skim milk in Class II and Class III producer milk at the protein price. The total of the skim and protein values, when divided by the total pounds of protein in pooled producer milk, will yield the price to be paid to producers for the protein in their milk. The price so computed should be referred to as the "producer protein price."

Proponent witness proposed that only the differential value of producer milk used in Class I and Class II, with the adjustments for overage, reclassified inventory, etc., be pooled. In order to maintain the present pricing of Class I milk, proponents advocated the use of an adjustment to be deducted from the differential value of a handler's producer milk if the handler's receipts of producer milk contained more than the average percentage of protein in producer milk in the market. The adjustment would assure that the handler would pay no more for the extra protein in his Class I milk than he would if his producer milk receipts contained only the marketwide average percentage of protein. Under the proposal, producers would be paid directly by handlers for the protein in their milk. Protein value would not be included in the pool. Proponents also proposed that payment for the butterfat contained in producer milk be made directly from handlers to producers, and not be included in the pool.

A number of persons protested, at the hearing and in post-hearing briefs, that proponent's method of adjusting the value for protein in Class I milk would result in inequitable costs to handlers for milk used in Class I. According to those opposing such a pricing procedure handlers receiving producer milk with a protein content lower than the marketwide average would pay less for it under such a system than handlers receiving milk with an average or higher-than-average protein content. The witnesses pointed out that such a provision would violate the requirement of the Agricultural Marketing Agreement Act of 1937 that costs of milk to handlers under the order be uniform.

Producers could be paid for the protein contained in their milk without the value of the protein to handlers being pooled if it were not for the necessity of removing the effect of protein content from the value of Class I milk. Handlers apparently are unable to recover the costs of additional protein from the sale of milk containing higher-than-average protein levels, and are unable to separate unneeded protein from the skim milk in which it is contained. Proponents' proposal to remove the effect of charging handlers for protein used in Class I milk by reducing handlers' pool obligations when their producer receipts contain more than the marketwide average percent of protein would result in charging handlers different rates for their receipts used in Class I. Such an outcome would not be equitable, nor would it result in uniform costs to handlers. Therefore, because of the constraints that must be considered in initiating protein pricing under a Federal milk order, handlers' pool obligations for protein and skim milk in producer milk, as adopted in this decision, would be determined on the basis of the skim milk used in Class I instead of the pounds of protein used in Class I. The value of protein in Class II and Class III producer milk would be pooled with the value of skim milk in Class I producer milk to determine the rate at which producers should be paid for the protein in their milk. The difference in pricing methods between Class I and Class II and III would allow for the fact that consumers apparently are unwilling to pay higher prices for milk containing higher percentages of protein, and would assure that handlers' pool obligations or payments to producers are not affected by the protein content of their producer milk receipts allocated to Class I. It is not expected that the producer protein price computed to determine the price producers would be paid for the protein in their milk would differ by more than one cent from the price handlers would be required to pay for the protein in their producer milk receipts allocated to Class II and Class III.

In view of the fact that the skim value of producer milk would be included in the producer protein pool and the butterfat value would be paid for outside of the pool, the differential values of milk used in Class I and Class II, and the adjustments normally made for overage, etc., should be shared among all of the producer milk in the pool through the operation of a differential pool. As proposed by proponent, the "weighted average differential price" that would be computed through the operation of the differential pool would represent the portion of the present uniform price that exceeds the Class III price because the protein, butterfat and skim milk prices will be derived from the Class III, or basic formula, price. As a result of the relationship between the component prices and the basic formula price, it will be possible to compute and announce a uniform price for informational and comparison purposes by simply adding the weighted average differential price to the basic formula price.

Handlers' payments to the producer settlement fund should be determined by subtracting the producer protein and differential values of the producer milk for which the handler is obligated to pay from the use value of the handler's receipts of producer milk, as determined by the handler's obligations to the two pools. As proposed by proponent, only the amount in excess of the producer value of the handler's receipts should be due to the producer-settlement fund. Requiring handlers to pay the full use value of their producer milk to the market administrator would necessitate the movement of excessive amounts of money. It is sufficient that only the amounts of money necessary to equalize payments among producers for their shares of the differential and skim milk/protein pools move into and out of the producer-settlement fund.

None of the adjustments necessary to implement protein pricing apply in the case of butterfat. Both of the existing separate orders provide for handler payments to producers for butterfat in their milk without the necessity of pooling butterfat values. The current method of paying producers directly for the butterfat in their milk rather than including it in the marketwide pool should be continued under the merged order.

Although the total value of the pool would not be changed materially because of adoption of the component pricing system included herein, the distribution of obligations to handlers and payments to producers can be expected to change as they reflect the level of protein in milk as it is produced, received and used.

10. *Payments to producers.* Producer returns should be pooled on a marketwide basis under the merged order so that producers might share equitably in the proceeds from the sale of their milk. Marketwide pooling is not being used in both of the individual markets, and its continuation was incorporated in proponents' proposed order. There was no opposition to marketwide pooling of producer returns.

Adoption of a system of paying producers on the basis of the protein content of their milk, as well as its butterfat content and their share of the Class I and Class II use in the market, necessitates a change in the way payments to producers should be determined. Proponents' proposal of a weighted average differential price to distribute returns from fluid milk uses among producers should be adopted. In addition, instead of paying producers a protein price that is the same as the price charged to handlers for their use of protein in Class II and Class III, as proposed by proponents, the value of protein used in Class II and Class III should be combined with the value of skim milk used in Class I to determine the total value of protein in the pool. In most months, the combined value of Class II and Class III protein and Class I skim milk divided by the pounds of protein in producer milk will result in a producer protein price to producers that is the same as the protein price to handlers when rounded to the nearest whole cent. Although there may be no difference between the protein price to handlers and the producer protein price to producers, the Class I skim milk and Class II and III protein should be pooled to assure that predominantly fluid milk handlers are not required to pay for their Class I milk on the basis of its protein content.

Under the merged order, as under the present separate orders, there would be no need to pool butterfat. The price per pound of butterfat would be paid to producers by the handlers receiving it. Under the present pricing system, handlers are billed according to prices published on the basis of 3.5 percent butterfat. Blend prices to be paid to producers are also announced on a 3.5 percent butterfat basis. Producers, however, are actually paid for their butterfat according to the uniform price adjusted by the butterfat differential to the specific butterfat content of their milk. Amounts paid to producers for the butterfat in their milk should be the same under the component pricing system as under the current system. Also, the portion of the present blend prices under the two separate orders that is due to pooling the higher-valued fluid uses and adjustments would be completely reflected in the weighted average differential price. Only the producer protein price would represent any redistribution of pool proceeds to producers.

Payments to producers and cooperative associations. The merged order should provide for a partial payment to producers on or before the last day of the month, and for a final payment on or before the 17th day of the following month. The partial payment would be for milk received during the first 15 days of the month and should be paid at a rate of 1.2 times the Class III price for the preceding month, but not to exceed the Class I price for the current month. Any proper deductions authorized by the producer could be made from the partial payment for milk delivered by the producer during the first 15 days of the month. The final payment to each producer should be determined by the applicable weighted average differential price adjusted for the location at which the producer's milk is received and the producer protein and butterfat prices, less any partial payment made to such producer and any proper deductions authorized by the producer. When payments are made to a cooperative association in lieu of payments to individual producers, both the partial and final payments should be made prior to the date payments are due to individual producers.

As adopted herein, the payment schedule is the same as now provided in the present Great Basin order. Proponent proposed payment dates similar to those in the present Great Basin order, with some payment dates to cooperative associations and their members moved by 1 or 2 days. There was no opposition to the proposed payment schedule at the hearing. However, in some cases it may be impossible for handlers to pay cooperative associations the full value of their receipts of the cooperative's member milk before the handler has had an opportunity to receive equalization payments from the producer-settlement fund. Because of the potential difficulties in making payments according to the proposed schedule, and because proponents did not explain the differences between their proposal and the payment dates in the present Great Basin order, the merged order should adopt the payment dates specified in the present Great Basin order.

Proponents included in the proposed merged order the present Great Basin rate of partial payment to producers for their milk deliveries during the first 15 days of the month of 1.2 times the previous month's Class III price. However, the witness representing Safeway Stores, Inc., proposed that the rate of partial payment be reduced to the level of the previous month's Class III price, as it is in most other Federal orders in the region, including the present Lake Mead order. In support of his proposal the witness testified that in 1981, when the higher partial payment rate was adopted, it resulted in prices lower than either the uniform price or the Class I price at the time. He stated that as the Class III price has increased, the partial payment rate has exceeded the uniform price and the Class I price. The witness said that the partial payment price has been as much as $1.66 over the uniform price and $.60 over the Class I price in recent years. He asserted that a partial payment should represent only a portion of the total amount due for the first 15 days' deliveries of milk, and certainly should not exceed the amount due for such milk. He argued that the proposed partial payment rate constitutes an overpayment for milk delivered during the first 15 days of the month, and should be reduced to the level of the previous month's Class III price.

A witness for IMPA testified that by the time producers are paid for milk delivered during the first 15 days of the month, they have already delivered 29 days' milk production without receiving any payment at all for the milk delivered. He characterized the present payment schedule as requiring a substantial extension of credit and credit risk which dairy farmers can ill afford. The witness stated that the partial payment provides cash to producers, enabling them to pay their bills and reducing the amount of credit they otherwise would be required to extend to handlers. He testified that farmers today are in a tight cash position, and should not be faced with reduced payments for the milk they have delivered. The witness admitted that a dairy farmer who ceased milk deliveries during the second half of the month could be overpaid for his total production if the partial payment for his first 15 days' milk deliveries is determined by the rate proposed by

merger proponents. Proponent witness stated that he would not be opposed to allowing authorized deductions to be made from partial payments to producers.

The partial payment rate under the order applies only to milk deliveries by producers during the first 15 days of the month. It seems clear that payments made for deliveries of milk during the period should not exceed the greatest possible pool value that might accrue to such deliveries. On the other hand, producers under the order usually have delivered nearly an entire month's production before receiving any payment for any of it. This problem could be addressed by requiring partial payments to producers to be made earlier, or by requiring partial payments to be made twice during the month rather than once. In any case, neither of those alternatives was proposed or discussed in any testimony.

Accordingly, the partial payment rate determined by multiplying the previous month's Class III price by 1.2 should be adopted, but should never be allowed to exceed the level of the current month's Class I price.

Partial payments at the rate adopted should not be required in the case of producers who ship milk for only a small part of the second half of the month. Given the present relationship of the uniform price and the partial payment rate, such producers would very likely be paid more for their first 15 days' delivery of milk than their entire production for the month is worth. For this reason, partial payments would be required to be made only to producers who continue to ship milk through the 17th day of the month. In addition, overpayments to producers on a partial payment basis can be avoided more easily if deductions deemed proper by the market administrator and authorized by producers are allowed to be made from producers' partial payments. Such a provision would help to assure that producer payments are more evenly spaced throughout the month, and that the deductions to be made from a producer's final payment would not exceed the total amount due to the producer for his milk production during the second half of the month.

11. *Obligations of partially regulated distributing plant operators.* Two options for computing the obligation to the pool of the operator of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of producer returns should be eliminated. Under the provisions adopted herein, such a handler may settle his obligation only by paying the amount that the Federal order Class I value of the fluid milk products that such plant distributes in the merged Great Basin marketing area (less Class I receipts from pool sources) exceeds the value of the milk at the applicable State order prices. Partially regulated distributing plant operators who are not regulated under a State order that provides for marketwide pooling would continue to have the same options under which their obligations to the pool are currently computed.

Under the present provisions of the Lake Mead order, every partially regulated distributing plant operator has three options that may be used in settlement of its pool obligations:

(a) The plant operator incurs no payment if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another Federal order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, which is commonly referred to as the "Wichita" option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to its own dairy farmers or to the producer-settlement fund.

(c) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced as Class I milk under any Federal order).

In addition, a partially regulated distributing plant operator regulated under a State order has a fourth option under which his pool obligation may be determined:

(d) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price applicable at the location of the plant and the applicable price for the fluid milk products distributed in the marketing area as determined under the State program.

The present Great Basin order contains only options (a), (b) and (c) for determining obligations of partially regulated distributing plants. Those options will be sufficient for determining the pool obligations of such plants not regulated under a State order. For determining the obligations of such plants that are State-regulated, options (a) and (d) will be sufficient.

An IMPA witness testified that some of the options currently available to determine the pool obligations of all partially regulated distributing plant operators are inappropriate for determining the obligations of such handlers that are regulated under a State order providing for marketwide pooling. According to the witness, approximately 20 percent of the fluid milk distributed within the current Lake Mead marketing area is distributed from plants located in southern California. He stated that these handlers are regulated under the California State Pooling Plan. Under the State Plan, he said, regulated handlers are required to pay for the milk they use, according to the class in which it is used, primarily on the basis of the butterfat and solids-not-fat contained in the milk. The value of all the milk received by each California handler is pooled on a marketwide basis and then redistributed to producers on the basis of the individual producer's production quota and base. As a consequence, the payments received by dairy farmers supplying individual plants have no direct relationship to the uses made of their milk by the handlers receiving it, or to the amounts paid into the pool by the receiving handlers.

The witness stated that the payment option currently available only to California State-regulated handlers, which prices sales in the marketing area at the difference between the State order and Federal order prices, is a precise method of determining the exact cost difference of the products. According to the witness, the other payment options available to partially regulated distributing plant operators have no validity in comparing the cost of the products under the State and Federal orders. The witness' position was that the costs attributed to the handler in payment options (b) and (c) above do not accurately represent the actual cost of the milk used by a California-regulated handler in the fluid products distributed within the Federal marketing area. He explained that under California regulation, the price paid by handlers for milk used in fluid products is publicly announced and strictly

enforced. He stated further that the milk pooling plan operated by the State of California differs so greatly from the provisions of the Federal order that the values which must be computed under options (b) and (c) above are extremely difficult to determine for California-regulated handlers. Therefore, he concluded, only the present payment option that takes into account the actual prices paid by California handlers for milk used in fluid products should be used to determine the payment obligations of such handlers. Although California handlers would be the only ones affected by the proposed provision under present marketing conditions, the witness stated that the payment provision would apply to any partially regulated distributing plant operators regulated under any State order that provides for marketwide pooling.

The representative of Safeway Stores, Inc., a company operating multiple distributing plants, one of which is a large distributing plant in southern California with fluid milk sales in the Lake Mead marketing area, testifed that the company would prefer to retain in the order all of the payment options currently available to the operator of a partially regulated distributing plant. The witness also proposed changing the language of the provisions governing the obligation of a partially regulated distributing plant operator regulated by a State order. The proposed modification would determine such an obligation on the basis of the difference in value of the fluid milk products distributed in the marketing area under the State and Federal order prices, rather than multiplying the pounds of such disposition by the difference between the applicable prices. The post-hearing brief filed on behalf of the handler expressed the opinion that the importance of retaining the present payment options of a partially regulated distributing plant operator is not as great as the handler considered it to be at the hearing.

The proponents' position with regard to partially regulated distributing plant obligations was supported by a witness representing a Great Basin pool distributing plant that had not yet begun operating at the time of the hearing. The witness supported the proposal in the interest of assuring that all handlers distributing fluid milk products in the marketing area have uniform costs for milk that is used in similar products.

Federal milk orders contain provisions that establish payment obligations of handlers who distribute fluid milk products within the marketing area, but not to an extent great enough to meet pooling standards. These obligations are imposed for the purpose of assuring that all handlers who distribute significant amounts of fluid milk products in the marketing area are subject to comparable costs for such milk. Payment obligations that would result in a cost of milk to a partially regulated distributing plant operator greater than that which would be imposed on a regulated handler would amount to a trade barrier. However, there is no indication that computing a partially regulated distributing plant operator's obligation to the pool on the basis of the difference between the values of the handler's milk under the Federal and State milk orders would be considered inequitable or a barrier to trade. Such a handler would be paying no more for milk distributed within the marketing area than the fully regulated handlers with whom the State-regulated handler is competing. At the same time, fully regulated handlers would be assured that the partially regulated handler has not obtained a competitive advantage by virtue of paying less than they are required to pay for milk used in fluid products.

Proponent witness' testimony in the hearing record is contradictory regarding proponents' intention as to whether the obligation of a partially regulated distributing plant operator should be determined on the basis of the difference in price between the Federal and State orders, or the difference in the values of the fluid milk products concerned as determined by the Federal and State orders. Most of the language in the section of the proposed merged order that deals with obligations of partially regulated distributing plant operators is identical to that in the present separate orders.

Proponents' modification of the language of the present Lake Mead order relating to such handlers that are State-regulated seemed to indicate that proponents wanted the State-regulated handlers' actual cost of milk to be the amount compared to the Federal order value in computing the handlers' pool obligation. However, in exceptions to the recommended decision, proponent argued that its testimony had been misunderstood, and explained that its intent had been to compute the obligation of partially regulated distributing plant operators at the difference between the Federal and State order Class I prices. According to proponent, variations in the butterfat and nonfat solids contents of the milk distributed by both Federally-regulated and State-regulated handlers are to be expected and have no bearing on the Class I differentials charged to handlers Therefore, proponent stated, such variations should not be considered in any determination of the rate of compensatory payment charged to partially regulated plants.

It is recognized that the Class I prices published by the State of California are for informational and comparison purposes, and do not determine exactly what a California-regulated handler actually pays for milk used in fluid products. However, the published prices do reflect what a handler would pay for milk of a standard butterfat and nonfat solids content, as Federal order prices reflect the value of milk at a standard butterfat content. The content of both butterfat and nonfat solids in milk distributed by both State-regulated and Federally-regulated handlers can be expected to vary between handlers. It would not be appropriate for the market administrator to become involved in determining the nonfat solids and butterfat content of milk distributed in the marketing area by State-regulated handlers in order to calculate the obligations of partially regulated distributing plants. Therefore, for the purpose of determining the amount of payment to be made by State-regulated handlers distributing milk within the Federal order marketing area, consideration of the State and Federal announced Class I prices will be sufficient.

The intent of the section of the merged order dealing with the obligations of partially regulated distributing plants not regulated by a State order was to leave such obligations unchanged. § 1139.76(a)(1)(iv), as published in the recommended decision, would change the computation of obligations such a handler would have to the marketwide pool. Therefore, the language of that paragraph has been changed from the recommended decision so that those handler obligations will remain unchanged.

12. *Administrative provisions—administrative assessment.* The maximum rate of payments by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Such payments are required if the market administrator is to perform the necessary function of administering the merged order. The 4-cent per hundredweight rate is the same as under the two separate orders, and was proposed at the hearing without objection. Continuation of the 4-cent rate should enable the market administrator to administer the merged order effectively. If experience indicates that the merged order can be

administered at a lesser rate, the order provides that the Secretary may adjust the rate downward without the necessity of a hearing.

Deduction for marketing services. The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat and protein testing and market information should be 6 cents per hundredweight. The marketing service deduction is necessary to reimburse the market administrator for providing such services to producers for whom the services are not provided by a cooperative association.

Currently, the maximum rates under the separate orders are 6 cents under the Great Basin order and 7 cents under the Lake Mead order. A 6-cent rate, which was proposed at the hearing without objection, should enable the market administrator to provide adequate testing and information services to nonmember producers. The marketing service deduction rate, like the administrative assessment, may be adjusted downward if the maximum rate is higher than necessary.

Because operation of the merged order would require that all producers' milk be tested for protein content, the market administrator would be authorized to establish, as well as verify, producer tests. Although not proposed, such a provision is necessary because it is apparent from the hearing record that not all of the handlers of producer milk in the merged order area are equipped to test for protein content.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the two orders effectively and equitably, the reserves in the administrative expense funds that have accumulated under the individual orders should be combined. Similar procedures should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new funds established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is equally equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the merged Great Basin market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged Great Basin market. Thus, monies now in the producer-settlement funds of the individual orders would be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund would also serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously state in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Great Basin and Lake Mead orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement, the Great Basin order which amends and merges the Great Basin and Lake Mead orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the merged marketing area, and the minimum prices specified in the tentative marketing agreement and the merged order, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the merged Great Basin order, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the merged Great Basin order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1139.85 of the tentative marketing agreement and the merged Great Basin order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending and merging the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Determination of Producer Approval and Representative Period

July 1987 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, amending and merging the orders regulating the handling of milk in the Great Basin and Lake Mead marketing area is approved or favored by producers, as defined under the terms of the attached order who during such representative period were engaged in the production of milk for sale within the marketing area defined in such attached order.

List of Subjects in 7 CFR 1136 and 1139

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on December 30, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order Amending and Merging the Orders Regulating the Handling of Milk in the Great Basin and Lake Mead Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The merged Great Basin order, which amends and merges the Great Basin and Lake Mead orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the merged Great Basin marketing area; and the minimum prices specified in the merged Great Basin order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The merged Great Basin order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the merged Great Basin order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1139.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Great Basin and Lake Mead marketing areas (Parts 1136 and 1139, respectively) shall be amended and merged into one order. Part 1136 is superseded thereby, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "Great Basin marketing area" (Part 1139), shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended and merged as follows:

The provisions of the proposed marketing agreement and order amending and merging the Great Basin and Lake Mead orders contained in the recommended decision issued by the Administrator, AMS, on July 14, 1987, and published in the **Federal Register** on July 21, 1987 (52 FR 27372), shall be and are the terms and provisions of this order, and are set forth in full herein, subject to the following modifications:

1. In § 1139.7, paragraph (d) is revised.

2. In § 1139.30, paragraph (a)(1) is revised.

3. In § 1139.52, paragraph (b) is revised.

4. In § 1139.60, paragraphs (c)(1), (d)(1), (d)(2), (e), (f), (g) and (i) are revised.

5. In § 1139.71, paragraphs (a)(2)(i) and (ii) are revised.

6. In § 1139.76, paragraphs (a)(1)(iv), (b)(2)(i), and (b)(3) are revised.

Accordingly, 7 CFR Part 1136 is proposed to be removed and Part 1139 is proposed to be revised as follows: Part 1136 [Removed]

PART 1139— MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1139.1 General provisions.

Definitions

1139.2 Great Basin marketing area.
1139.3 Route disposition.
1139.4 [Reserved].
1139.5 Distributing plant.
1139.6 Supply plant.
1139.7 Pool plant.
1139.8 Nonpool plant.
1139.9 Handler.
1139.10 Producer-handler.
1139.11 Approved milk.
1139.12 Producer.
1139.13 Producer milk.
1139.14 Other source milk.
1139.15 Fluid milk product.
1139.16 Fluid cream product.
1139.17 Filled milk.
1139.18 Cooperative association.
1139.19 Product prices.
1139.20 Federation.

Handler Reports

1139.30 Reports of receipts and utilization.
1139.31 Payroll reports.
1139.32 Other reports.

Classification of Milk

1139.40 Classes of utilization.
1139.41 Shrinkage.
1139.42 Classification of transfers and diversions.
1139.43 General accounting and classification rules.
1139.44 Classification of producer milk.
1139.45 Market administrator's reports and announcements concerning classification.

Class and Component Prices

1139.50 Class prices and component prices.
1139.51 Basic formula prices.

Sec.
1139.52 Plant location adjustments for handlers.
1139.53 Announcement of class and component prices.
1139.54 Equivalent price.

Differential Pool and Handler Obligations

1139.60 Computation of handler's obligations to pool.
1139.61 Computation of weighted average differential price.
1139.62 Computation of producers protein price.
1139.63 Uniform price and handlers' obligations for producer milk.
1139.64 Announcement of weighted average differential price, producer protein price, and uniform price.

Payments for Milk

1139.70 Producer-settlement fund.
1139.71 Payments to the producer-settlement fund.
1139.72 Payments from the producer-settlement fund.
1139.73 Value of producer milk.
1139.74 Payments to producers and to cooperative associations.
1139.75 Location and zone differentials for producer and nonpool milk.
1139.76 Payments by a handler operating a partially regulated distributing plant.
1139.77 Adjustment of accounts.
1139.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1139.85 Assessment for order administration.
1139.86 Deduction for marketing services.

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Final Decision—Great Basin and Lake Mead

Subpart—Order Regulating Handling

General Provisions

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.

Definitions

§ 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties

All

Nevada Counties

Clark, Elko, Lincoln and White Pine

Wyoming Counties

Lincoln and Uinta

Idaho Counties

Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine). The term "route disposition" does not include a delivery to a plant defined in § 1139.7(a) or (b).

§ 1139.4 [Reserved].

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

§ 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

§ 1139.7 Pool plant.

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of paragraphs (a) through (e) of this section:

(a) A distributing plant from which not less than:

(1) 50 percent in any month of September through February, 45 percent in any month of March and April, and 40 percent in any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(2) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to paragraph (a)(1) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of paragraph (a)(1) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to paragraphs (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b) or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 45 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

(e) The pool plant performance standards in paragraphs (a)(1), (b), (c) or (d) of this section may be reduced or increased by 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under paragraph (b) (1), (2) or (3) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act:

(1) A distributing plant qualified pursuant to § 1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7 (a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant:

(1) Having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month;

(2) Operated by a governmental agency, or a duly accredited college or university, disposing of fluid milk products only through the operation of its own food service, and having no route dispositions in commercial channels; or

(3) From which the total route disposition is to individuals or institutions for charitable purposes without remuneration from such individuals or institutions.

(d) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Unregulated supply plant" means a supply plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to milk that is received at the farm for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

§ 1139.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the role risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area, and:

(1) No fluid milk products are received at such plant during the month or by such person at any other location except:

(i) From the dairy farm(s) specified in (a) of this section; and

(ii) From pool plants by transfer or diversion, or from other order plants, in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month;

(2) Such plant is operated under such person's complete and exclusive management and control and at such person's sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by such person or by any person (including the operator of a plant, or vendor) who controls or is controlled by such person (e.g., as an interlocking stockholder) or in which such person (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at such person's plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except in the fortification of fluid milk products) as Class I milk.

§ 1139.11 Approved milk.

"Approved milk" means any milk or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

§ 1139.12 Producer.

(a) Except as provided in paragraph (b) hereof, "producer" means any person:

(1) Who produces approved milk; and

(2) Whose milk is received at a pool plant or diverted to a nonpool plant within the limits set forth in § 1139.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;

(2) Any person with respect to milk diverted to a pool plant from another order plant, if the other order designates such person as a producer under that order, and such milk is allocated to Class II or Class III utilization pursuant to § 1139.44(a)(8)(iii) and the corresponding step of § 1139.44(b);

(3) Any person with respect to milk diverted to another order plant if any

part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a nonpool plant (except another order plant) other than as a diversion from a pool plant after the first delivery of milk from such dairy farmer in any month was received as approved milk at a pool plant, or was otherwise qualified as producer milk.

§ 1139.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1139.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant subject to the conditions set forth in paragraph (d) in this section;

(b) Diverted by a handler defined in § 1139.9(b) to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(c) Received by a handler defined in § 1139.9(c) from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August and 50 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants or diverted to nonpool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to paragraph (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August, and 50 percent in other months of the producer milk received at or diverted from such pool plant for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler from the month may not duplicate milk diverted pursuant to paragraph (d)(2) of this section;

(4) The diversion limits of this paragraph may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the needs for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Diversions in excess of the percentages in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by the producer during the month as producer milk will not be subject to § 1139.12(b)(4); and

(6) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day's milk production from such farmer has been received at a pool plant.

§ 1139.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1139.40(b)(1) from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1)) for which the handler fails to establish a disposition.

§ 1139.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1139.51(b) and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

§ 1139.20 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.18.

Handler Reports

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler who operates one or more pool plants shall report for each such plant the quantities of, and the pounds of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler, and the pounds of milk protein contained in such receipts;

(2) Receipts of milk from handlers defined in § 1139.9(c) and the pounds of milk protein contained in such receipts;

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization, disposition or month-end inventories of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required under paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9 (b) and (c) shall report:

(1) The quantities of, and pounds of skim milk, butterfat and milk protein contained in receipts of milk from producers; and

(2) The utilization or disposition of all skim milk, butterfat and milk protein in such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pays producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

Classification of Milk

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese (all forms);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class III milk shall be all butterfat and skim milk:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41 (b) and (c).

§ 1139.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective qualities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator, or received from handlers defined in § 1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers defined in § 1139.9(c), except if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent of skim milk and butterfat, respectively, thereof. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

§ 1139.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1139.44 (a)(12) and the corresponding step of § 1139.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(a)(7) or the corresponding step of § 1139.44(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1139.44(a) (11) or (12) or the corresponding steps of § 1139.44(b), the skim milk and butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat in the following forms that is transferred or diverted to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests and the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignments of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of approved milk for such nonpool plant; and

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(b) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1139.43 General accounting and classification rules.

(a) Each month the market administrator shall:

(1) Correct for mathematical and other obvious errors all reports filed pursuant to § 1139.30; and

(2) Compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1139.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1139.40, 1139.41, and 1139.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1139.9 (b) or (c) shall be such handler's classification of producer milk.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1139.44 Classification of producer milk.

For each month the market administrator shall determine for each handler defined in § 1139.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1139.9(c) by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1139.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1139.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which approved milk status is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order, or from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and

then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1139.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same regulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment.

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1139.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1139.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1139.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(12) and the corresponding step of § 1139.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the certification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class and Component Prices

§ 1139.50 Class prices and component prices.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1139.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows: Subtract from the basic formula price an amount computed by multiplying the current month's butter price, based on the simple average of the wholesale selling prices per pound (using the mid-point of any price range as one price) of approved (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, by 4.025, and divide by 100. Add to the resulting amount the current month's butter price multiplied by 1.15. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the basic formula price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of protein in all producer milk for the preceding month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the basic formula price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month, by 4.025 and subtracting the result from the basic formula price.

§ 1139.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 and yield factors in effect under the Dairy Price Support program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(*a*) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(*b*) Multiply the butter price by the yield factor used under the Price Support program for determining the butterfat component of the whey value in the cheese price computation; and

(*c*) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(*a*) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(*b*) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1139.52 Plant location adjustments for handlers.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 1* 0 adjustments

Utah Counties

Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch and Weber.

Nevada Counties

Elko and White Pine.

(2) *Zone 2* Minus $0.25 adjustment

Idaho Counties

Bannock, Bear Lake, Caribou, Franklin, Oneida and Power.

(3) *Zone 3* Minus $0.30 adjustment

Idaho Counties

Bingham, Bonneville, Jefferson and Madison.

Wyoming Counties

Lincoln and Uinta.

Nevada Counties

Clark and Lincoln.

Utah Counties

Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne.

(b) For milk received from producers at a plant located outside the zones specified in paragraph (a) of this section, the Class I price applicable at the nearer of the Clark County, Nevada, courthouse or the Salt Lake County, Utah, courthouse shall be reduced by 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway, as determined by the market administrator, between the plant and the nearer of the two courthouses.

(c) For purposes of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any Class I utilization at the transferee plant that is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(d) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) or (b) of this section, except that the differential shall not be less than zero.

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month; and

(c) The 5th day after the end of each month, the Class III price, the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f), and the final Class II price for such month.

§ 1139.54 equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Differential Pool and Handler Obligations

§ 1139.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1139.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1139.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1139.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1139.44 multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1139.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1139.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1139.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1139.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1139.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from

Class III pursuant to § 1139.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b), and the value of the protein pounds associated with the skim milk subtacted from Class II pursuant to § 1139.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (i) through (iv) and (vii), and the corresponding step of § 1139.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (v) and (vi) and the corresponding step of § 1139.44(b) applicable at the location of the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to (§ 1139.44)(a)(11) and the corresponding step of § 1139.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1139.44, multiplied by the skim milk price for the month computed pursuant to § 1139.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1139.50(e).

§ 1139.61 Computation of weighted average differential price.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (a) through (g), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1136.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(g).

(e) Subtract not more than 5 cents per hundredweight. The result is the "Weighted Average Differential Price".

§ 1139.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1139.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1139.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1139.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1139.73 and 1139.74.

§ 1139.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1139.61, the producer protein price computed pursuant to § 1139.62, and the uniform price computed pursuant to § 1139.63(a).

Payments for Milk

§ 1139.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, subject to the provisions of § 1139.78, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77. Payment due a handler from the fund shall be offset as appropriate against payments due from such handlers.

§ 1139.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the weighted average differential price adjusted pursuant to § 1139.75; and

(ii) The value of the protein in such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the producer protein price computed pursuant to § 1139.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(g).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price f.o.b. the other order plant and the Class III price.

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If as such time the balance in the producer-settlement fund in insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received from each producer during the first 15 days of the month shall be determined by a rate computed by multiplying the Class III price for the preceding month by 1.2, but not to exceed the current month's Class I price.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer multiplied by the producer protein price computed pursuant to § 1139.62; plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(d).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (c), (d) or (e) of this section, each handler shall, on or before the last day of each month, make a partial payment to each producer from whom milk was received during the first 15 days of the month, and who had shipped milk to such handler through the 17th day of the month, at the rate set forth in § 1139.73(a), less proper deductions authorized in writing by such producer;

(b) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month, make a final payment to each producer for milk received from such producer during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk;

(1) Less any deductions for marketing services pursuant to § 1139.86;

(2) Less payment made pursuant to paragraph (a) of this section for such month;

(3) Less proper deductions authorized in writing by such producer;

(4) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and

(5) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, the handler may reduce his payments to producers pro rata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter no later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) In the case of a cooperative association authorized by its members to collect payment for their milk, and which has requested such payment from any handler in writing and has so notified the market administrator, payment shall be made for milk received during the month as follows:

(1) On or before the 3rd day prior the last day of the month for milk received from the members of such cooperative association at the rates set forth in § 1139.73(a); and

(2) On or before the 18th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in § 1139.73(b) with respect to deliveries by producer-members of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:

(1) The total pounds of milk received during the month and, if requested, the pounds received from each member-producer;

(2) The amount of payment made pursuant to paragraph (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from such payments.

(e) Each handler shall pay a cooperative association for milk received from such cooperative association in its capacity as a handler defined in § 1139.9(c), or from a pool plant operated by such association as follows:

(1) On or before the 2nd day prior to the last day of each month for milk received during the first 15 days of the month an amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 15th day of the following month for milk received during the month at not less than the value computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to paragraph (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments computed pursuant to § 1139.72, the market administrator shall reduce the weighted average differential price computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average differential price applicable to other source milk pursuant to § 1139.71(a)(2)(iii) shall be adjusted at the rates set forth in § 1139.52 (a) or (b) applicable at the location of the nonpool plant from which the milk was received (but not to be less than zero).

§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program that provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(b) the information necessary for making the appropriate computations, and so elects, the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not another order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the amount the Class I-Class III price difference exceeds the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location and the Class III price (but in no case less than 0).

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or another order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(e) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective other regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(g) less the value of such other source milk specified in § 1139.71(a)(2)(iii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(*1*) The operator of the partially regulated distributing plant submits with reports filed for the month pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(*2*) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(*3*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(*a*) The gross payment made by the operator of such partially regulated distributing plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(*b*) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant, less the value of butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(*c*) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determines the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Determine the value of the remaining pounds according to the difference between the appropriate Class prices applicable at the location of the partially regulated distributing plant (but not to be less than zero) as announced by the State order and as determined pursuant to § 1139.50.

§ 1139.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1139.78 Charges on overdue accounts.

(a) Any unpaid balance due from a handler pursuant to §§ 1139.71, 1139.76, 1139.77, 1139.85 and 1139.86, or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1139.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 14th day after the end of the month at the rate of 4 cents per hundredweight, or such lesser amount as the secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1139.44 (a) (7) and (11) and the corresponding steps of § 1139.44(b), except such other source milk that is excluded from the computations pursuant § 1139.60 (d) and (g);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of the handler's own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies acquired by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator to provide market information, and to verify or establish the weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

Marketing Agreement Regulating the Handling of Milk in the Great Basin Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do herby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1139.86 to 1139.86, all inclusive, of the order regulating the handling of milk in the Great Basin marketing area (7 CFR Part 1139) which is annexed hereto; and

II. The following provisions:

§ 1139.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of July 1987, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1139.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[FR Doc. 88-121 Filed 1-8-88; 8:45 am]

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Reader Aids

Federal Register

Vol. 53, No. 6

Monday, January 11, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106.....4
107-230.....5
231-398.....6
399-486.....7
487-608.....8
609-732.....11

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Executive Orders:
12537 Amended by EO 12624.....469
12578 (Superseded by EO12622).....222
12622.....222
12623.....467
12624.....469
Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987.....399

5 CFR
890.....1
Proposed Rules:
330.....408
351.....408

7 CFR
400.....2
905.....401
907.....6, 491
910.....7, 492
911.....402
959.....401
971.....401
987.....401
1430.....107
1902.....231
Proposed Rules:
68.....411
301.....140
401.....505, 507
907.....412
908.....412
910.....255
979.....413
981.....414
1126.....256
1136.....686
1136.....686
1260.....509
1701.....140

10 CFR
73.....403
Proposed Rules:
2.....415
430.....30

11 CFR
Proposed Rules:
109.....416
114.....416

12 CFR
206.....492
208.....492
226.....467
337.....597
525.....312
561.....324, 338
563.....324, 338, 354, 363, 372, 385
563c.....324
571.....338, 372, 385
583.....312
584.....312
Proposed Rules:
226.....467

14 CFR
39.....8-14, 232, 493-495
71.....496, 497, 619
75.....497
91.....233
97.....499
Proposed Rules:
39.....258, 514, 515
71.....516, 517, 666, 670, 674
73.....517

15 CFR
399.....108
Proposed Rules:
379.....418

16 CFR
13.....609
Proposed Rules:
13.....141

17 CFR
1.....609, 615
211.....109

18 CFR
271.....15
1301.....405

19 CFR
24.....615
Proposed Rules:
141.....30
178.....30

20 CFR
Proposed Rules:
361.....143
901.....147

21 CFR
81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236
561.....20, 233

606.....111
610.....111
640.....111
1308.....500

Proposed Rules:
193.....259
561.....259

23 CFR
655.....236

24 CFR
221.....615
236.....615

Proposed Rules:
115.....260

26 CFR
1.....117, 238

Proposed Rules:
1.....153, 261

28 CFR
541.....196

33 CFR
117.....119, 406
165.....616

36 CFR
404.....120

Proposed Rules:
223.....519

37 CFR
201.....122, 123

Proposed Rules:
203.....153

38 CFR
4.....21
21.....616

Proposed Rules:
21.....620

39 CFR
111.....124, 125
232.....126

40 CFR
2.....214
51.....392, 480
52.....392, 501
86.....470
180.....241, 243, 657
271.....126–128, 244

Proposed Rules:
52.....261
180.....262, 263
261.....519

41 CFR
101–20.....129

Proposed Rules:
Ch. 201.....620
141.....31
142.....31
261.....31

42 CFR
431.....657
435.....657
440.....657
441.....657

43 CFR
2.....24

44 CFR

Proposed Rules:
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR
95.....26
233.....467

46 CFR

Proposed Rules:
586.....624

47 CFR
Ch. I.....502
64.....27
73.....28, 29, 504

Proposed Rules:
1.....625
63.....625
73.....426
74.....529
76.....625
78.....529

48 CFR
7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132
513.....132

Proposed Rules:
215.....625
225.....626
252.....626

49 CFR
24.....467
541.....133
661.....617

Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426
1041.....155
1048.....155
1049.....155

50 CFR
611.....134
653.....244
663.....246, 248

Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Last List January 8, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030)

H.R. 3030/Pub. L. 100-233

Agricultural Credit Act of 1987. (Jan. 6, 1988; 101 Stat. 1568; 151 pages) Price: $4.25

H.R. 3479/Pub. L. 100-234

Notice to Lessees Numbered 5 Gas Royalty Act of 1987. (Jan. 6, 1988; 101 Stat. 1719; 5 pages) Price: $1.00

CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1–1199	25.00	Jan. 1, 1987
1200–End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0–45	25.00	Jan. 1, 1987
46–51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53–209	18.00	Jan. 1, 1987
210–299	22.00	Jan. 1, 1987
300–399	10.00	Jan. 1, 1987
400–699	15.00	Jan. 1, 1987
700–899	22.00	Jan. 1, 1987
900–999	26.00	Jan. 1, 1987
1000–1059	15.00	Jan. 1, 1987
1060–1119	13.00	Jan. 1, 1987
1120–1199	11.00	Jan. 1, 1987
1200–1499	18.00	Jan. 1, 1987
1500–1899	9.50	Jan. 1, 1987
1900–1944	25.00	Jan. 1, 1987
1945–End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1–199	18.00	Jan. 1, 1987
200–End	16.00	Jan. 1, 1987
10 Parts:		
0–199	29.00	Jan. 1, 1987
200–399	13.00	Jan. 1, 1987
400–499	14.00	Jan. 1, 1987
500–End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
12 Parts:		
1–199	11.00	Jan. 1, 1987
200–299	27.00	Jan. 1, 1987
300–499	13.00	Jan. 1, 1987
500–End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1–59	21.00	Jan. 1, 1987
60–139	19.00	Jan. 1, 1987
140–199	9.50	Jan. 1, 1987
200–1199	19.00	Jan. 1, 1987
1200–End	11.00	Jan. 1, 1987
15 Parts:		
0–299	10.00	Jan. 1, 1987
300–399	20.00	Jan. 1, 1987
400–End	14.00	Jan. 1, 1987
16 Parts:		
0–149	12.00	Jan. 1, 1987
150–999	13.00	Jan. 1, 1987
1000–End	19.00	Jan. 1, 1987
17 Parts:		
1–199	14.00	Apr. 1, 1987
200–239	14.00	Apr. 1, 1987
240–End	19.00	Apr. 1, 1987
18 Parts:		
1–149	15.00	Apr. 1, 1987
150–279	14.00	Apr. 1, 1987
280–399	13.00	Apr. 1, 1987
400–End	8.50	Apr. 1, 1987
19 Parts:		
1–199	27.00	Apr. 1, 1987
200–End	5.50	Apr. 1, 1987
20 Parts:		
1–399	12.00	Apr. 1, 1987
400–499	23.00	Apr. 1, 1987
500–End	24.00	Apr. 1, 1987
21 Parts:		
1–99	12.00	Apr. 1, 1987
100–169	14.00	Apr. 1, 1987
170–199	16.00	Apr. 1, 1987
200–299	5.50	Apr. 1, 1987
300–499	26.00	Apr. 1, 1987
500–599	21.00	Apr. 1, 1987
600–799	7.00	Apr. 1, 1987
800–1299	13.00	Apr. 1, 1987
1300–End	6.00	Apr. 1, 1987
22 Parts:		
1–299	19.00	Apr. 1, 1987
300–End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0–199	14.00	Apr. 1, 1987
200–499	26.00	Apr. 1, 1987
500–699	9.00	Apr. 1, 1987
700–1699	18.00	Apr. 1, 1987
1700–End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0–1.60	12.00	Apr. 1, 1987
§§ 1.61–1.169	22.00	Apr. 1, 1987
§§ 1.170–1.300	17.00	Apr. 1, 1987
§§ 1.301–1.400	14.00	Apr. 1, 1987
§§ 1.401–1.500	21.00	Apr. 1, 1987
§§ 1.501–1.640	15.00	Apr. 1, 1987
§§ 1.641–1.850	17.00	Apr. 1, 1987
§§ 1.851–1.1000	27.00	Apr. 1, 1987
§§ 1.1001–1.1400	16.00	Apr. 1, 1987
§§ 1.1401–End	20.00	Apr. 1, 1987
2–29	20.00	Apr. 1, 1987
30–39	13.00	Apr. 1, 1987
40–49	12.00	Apr. 1, 1987
50–299	14.00	Apr. 1, 1987
300–499	15.00	Apr. 1, 1987
500–599	8.00	[2] Apr. 1, 1980
600–End	6.00	Apr. 1, 1987
27 Parts:		
1–199	21.00	Apr. 1, 1987
200–End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
0–99	16.00	July 1, 1987
100–499	7.00	July 1, 1987
500–899	24.00	July 1, 1987
900–1899	10.00	July 1, 1987
1900–1910	28.00	July 1, 1987
1911–1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1987
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[3] July 1, 1984
1–39, Vol. II	19.00	[3] July 1, 1984
1–39, Vol. III	18.00	[3] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1986
33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
0–17	21.00	July 1, 1987
18–End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[4] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
7	6.00	[4] July 1, 1984
8	4.50	[4] July 1, 1984
9	13.00	[4] July 1, 1984
10–17	9.50	[4] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[4] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[4] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[4] July 1, 1984
19–100	13.00	[4] July 1, 1984
1–100	10.00	July 1, 1987
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987
42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	5.50	Oct. 1, 1987
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1986
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1986
41–69	13.00	Oct. 1, 1986
70–89	7.00	Oct. 1, 1987
90–139	11.00	Oct. 1, 1986
140–155	8.50	[5] Oct. 1, 1985
156–165	14.00	Oct. 1, 1986
166–199	13.00	Oct. 1, 1986
200–499	19.00	Oct. 1, 1986
500–End	9.50	Oct. 1, 1986
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	11.00	Oct. 1, 1986
70–79	17.00	Oct. 1, 1986
80–End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1–51)	21.00	Oct. 1, 1986
1 (Parts 52–99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3–6	17.00	Oct. 1, 1986
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1986
100–177	24.00	Oct. 1, 1986
178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1986
400–999	21.00	Oct. 1, 1986
1000–1199	17.00	Oct. 1, 1986
1200–End	17.00	Oct. 1, 1986
50 Parts:		
1–199	15.00	Oct. 1, 1986
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

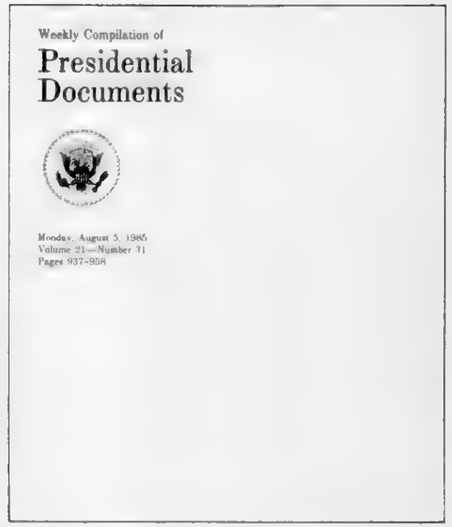
[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 53, No. 7
Tuesday, January 12, 1988

Agency for International Development
NOTICES
Housing guaranty programs:
Tunisia, 762

Agricultural Stabilization and Conservation Service
RULES
Conservation reserve program, 733

Agriculture Department
See also Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Food Safety and Inspection Service
PROPOSED RULES
Acquisition regulations, 749

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Pink bollworm, 733

Centers for Disease Control
NOTICES
Meetings:
Immunization Practices Advisory Committee, 759

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 752

Defense Department
NOTICES
Meetings:
Special Operations Policy Advisory Group, 753

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances; production quotas:
Carfentanil, 743
NOTICES
Applications, hearings, determinations, etc.:
Penick Corp., 764

Education Department
NOTICES
Grants; availability, etc.:
State student incentive grant program, 753

Environmental Protection Agency
NOTICES
Agency information collection activities under OMB review, 754

Executive Office of the President
See Management and Budget Office

Federal Communications Commission
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 754
Rulemaking proceedings; petitions filed, granted, denied, etc., 754
Applications, hearings, determinations, etc.:
Lundborg, Susan, et al., 755
Wolf, Robert J., et al., 755

Federal Maritime Commission
NOTICES
Agreements filed, etc., 755, 756
(2 documents)

Federal Mine Safety and Health Review Commission
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 737

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 756
Applications, hearings, determinations, etc.:
Algemene Bank Nederland, N.V., et al., 757
Berkely, James E., et al., 757
Enterprise Bancorp, Inc.; correction, 758
Somers Bancorporation et al., 758
Trustcorp, Inc., et al., 758

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 761
Comprehensive conservation plan/environmental statements; availability, etc.:
Alaska Peninsula National Wildlife Refuge, AK, 761
Koyukuk and Innoko National Wildlife Refuges, AK, 761

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
Compound evaluation system; availability, 751

Health and Human Services Department
See Centers for Disease Control; Health Care Financing Administration

Health Care Financing Administration
PROPOSED RULES
Medicaid:
Health maintenance organizations; membership requirements waiver, and State option for disenrollment restrictions, 744
NOTICES
Privacy Act; systems of records, 759

Interior Department
See also Fish and Wildlife Service; National Park Service

RULES
Property management:
Government furnished quarters; provision and assignment, 741

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Export trade certificates of review, 751
Meetings:
President's Export Council, 752

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
CPC International, Inc., 763
Railroad services abandonment:
Florida East Coast Railway Co., 763
Missouri Pacific Railroad Co., 764

Justice Department
See also Drug Enforcement Administration
RULES
Voting Rights Act; implementation:
Minority language groups, 735
NOTICES
Privacy Act; systems of records, 764
(3 documents)

Management and Budget Office
NOTICES
Consulting services use guidelines (Circular A-120); revised, 768

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 771

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Northwest Atlantic hake, 741

National Park Service
RULES
Commercial and private operations; nondiscrimination provisions, 739
NOTICES
National Register of Historic Places:
Pending nominations—
Arizona et al., 762

National Science Foundation
NOTICES
Meetings:
Graduate Fellowship Program Review Committee, 765

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northeast Nuclear Energy Co. et al., 765
Petitions; Director's decisions:
Babcock & Wilcox, 765
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 767
Arkansas Power & Light Co.; correction, 767
Northeast Nuclear Energy Co. et al., 766
Sacramento Municipal Utility District; correction, 768

Office of Management and Budget
See Management and Budget Office

Public Health Service
See Centers for Disease Control

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See National Highway Traffic Safety Administration

Treasury Department
NOTICES
Boycotts, international:
Countries requiring cooperation; list, 771

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301.....733
704.....733

21 CFR
Proposed Rules:
1308.....743

28 CFR
55.....735

29 CFR
2702.....737

36 CFR
5.....739

41 CFR
114-51.....741

42 CFR
Proposed Rules:
434.....744
435.....744

48 CFR
Proposed Rules:
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

50 CFR
611.....741

Rules and Regulations

Federal Register
Vol. 53, No. 7
Tuesday, January 12, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-179]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the pink bollworm quarantine and regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas.

EFFECTIVE DATE: February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Chief Staff Officer, Program Planning Staff, PPQ, APHIS, USDA, 6505 Belcrest Road, Room 643, Federal Building, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective April 16, 1987 (52 FR 12363–12364, Docket Number 87-010), we amended § 301.52-2a of the regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas. The regulations restrict the interstate movement of regulated articles from regulated areas in quarantined states for the purpose of preventing the spread of the pink bollworm to noninfested areas of the United States. Comments on the interim rule were required to be postmarked or received on or before June 15, 1987. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "Major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of less than $10,000; will not cause a major increase in cost of prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule affects the interstate movement of regulated articles from Lincoln County in Arkansas. Based on information compiled by the Department, we have determined that, although there are hundreds of small entities that move these articles interstate from nonregulated areas in the United States, only about five small entities move them interstate from Lincoln County, Arkansas. Further, the overall economic impact from this action is estimated to be less than $10,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 52 FR 12363–12364 on April 16, 1987.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 6th day of January 1988.

Donald L. Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-480 Filed 1-11-88; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Conservation Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations for the conduct of the Conservation Reserve Program ("CRP") which are codified in 7 CFR Part 704. One amendment authorizes the placement of filter strips in the CRP even if such land is not "highly erodible". Filter strips consist of croplands, capable of substantially reducing sedimentation, which are adjacent to rivers or certain other bodies of water. Second, to encourage the planting of trees on land placed in the CRP, the interim rule provides that land on which trees are to be planted may be placed in the CRP if one-third or more of the land meets the erodibility criteria set forth in 7 CFR Part 704. Normally, two-thirds or more of the land in a CRP filed must meet the criteria. The CRP is operated pursuant to Title XII of the Food Security Act of 1985 (the "Act").

DATES: The effective date of this interim rule is January 11, 1988. Comments must be received on our before March 14, 1988, to be assured of consideration.

ADDRESS: Comments may be mailed to James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen at the above address, (202) 447–6221.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor". It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The title and number of the Federal Assistance Program to which this rule applies are: Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Title XII of the Act directs the Secretary of Agriculture to formulate and carry out a Conservation Reserve Program (CRP) during the 1986 through 1990 crop years. The Secretary is authorized to enter into contracts, for a period of 10–15 years, with eligible owners and operators of highly erodible cropland or cropland meeting other special criteria, under which the owners and operators agree to convert the cropland to less intensive use. By the end of the 1990 crop year, the Secretary is required to enter into contracts sufficient to place between 40 and 45 million acres of land in the CRP.

The Act generally requires that land placed in the CRP must be highly erodible. However, section 1231(c)(2) permits the Secretary to include in the program lands that are not highly erodible but that pose an off-farm environmental threat or, if permitted to remain in production, pose a threat of continued degradation of productivity due to soil salinity.

Section 1234(c)(3)(B)(ii) specifically authorizes payments to be made under the CRP for permanently vegetated stream borders, filter strips of permanent grass, forbs, shrubs, and trees that will reduce sedimentation substantially. Section 1232(c) of the Act also provides that, to the extent practicable, not less than one-eighth of the acres placed in the CRP each crop year shall be devoted to trees.

The amendments made by this rule provide greater flexibility for achieving overall program goals. The next sign-up for the CRP is scheduled for February 1–19, 1988. In order that the changes provided herein may be in effect for that sign-up and to permit planning time for affected farmers, it has been determined that this rule shall be effective immediately. However, comments on these changes are requested and must be received by March 14, 1988, to be assured of consideration.

Filter strips—Currently, only fields meeting the erodibility criteria of the regulations (7 CFR 704.7 and 704.8) may be placed in the CRP. This amendment provides that cropland suitable for use as filter strips, although it does not meet the erodibility criteria specified in the regulations, may nonetheless be placed in the CRP program if the land, when placed in specified conserving uses, will reduce sedimentation substantially. Cropland may be considered a filter strip for inclusion in the program only if it is adjacent to certain specified types of waterbodies. The filter strip area permitted to be included in the CRP will be 1 to 1.5 chain lengths (66 to 99 feet) in width except in special cases where a wider strip is determined to be needed pursuant to field criteria of the Soil Conservation Service of the Department of Agriculture.

Planting trees on CRP land—Only about 5 percent of the approximately 23 million acres placed in the CRP to date has been planted to trees. Currently the regulations (7 CFR 704.7(c)) provide that a field shall be considered to be predominantly highly erodible if two-thirds or more of the land in such field meets the erodibility criteria set forth in the regulations. To encourage the placing of land in the CRP on which trees are to be planted, this interim rule amends the regulations to provide that, if a participant agrees to plant trees on land in a field, such field may be considered to be predominantly highly erodible if one-third or more of the land in such field meets the erodibility criteria set forth in the regulations.

This authority may be used along with other methods to encourage planting of trees at a reasonable cost. Past experience with the Soil Bank Program and other USDA conservation programs indicates that if trees are planted, the land will remain in protective cover longer than land planted to other cover crops, such as grass.

Lists of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Interim Rule

Accordingly, 7 CFR Part 704, Conservation Reserve Program, is amended as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: Secs. 1201, 1231–1244, Pub. L. 99–198, 99 Stat. 1354, as amended (16 U.S.C. 3801, 3831–3844).

2. Section 704.7 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 704.7 Eligible cropland.

* * * * *

(c) A field shall be considered to be predominantly highly erodible if 66⅔ percent or more of the land in such field meets the applicable requirements of paragraph (a)(3) of this section: *Provided*, That a field on which the participant agrees to plant trees may, as determined necessary by the Deputy Administrator to achieve overall program goals, be considered to be predominantly highly erodible if 33⅓ percent or more of the land in such field meets the applicable requirements of paragraph (a)(3) of this section.

(d) A field determined to be suitable for use as a filter strip may be eligible to be placed in the CRP, although it does not meet the applicable erodibility criteria of paragraph (a)(3) of this section, if the participant agrees to grow permanent grass, forbs, shrubs or trees on such field. A field may be considered to be suitable for use as a filter strip only if it—

(1) Meets the criteria of paragraph (a)(1) of this section;

(2) Is located adjacent to streams having perennial flow, other waterbodies of permanent nature (such as lakes and ponds), or seasonal streams, excluding such areas as gullies or sod waterways;

(3) Is capable, when permanent grass, forbs, shrubs or trees are grown on the field, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or other waterbodies; and

(4) Is 1.0 to 1.5 chain lengths (66 to 99 feet) in width: *Provided*, That such width may be exceeded to the extent necessary to meet SCS Field Office Technical Guide criteria.

Signed at Washington, DC on January 6, 1988.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–481 Filed 1–11–88; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 55

[Order No. 1246–87]

Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule makes minor changes in the text of the Attorney General's interpretive guidelines under the minority language provisions of the Voting Rights Act and brings the Appendix to the guidelines, which lists covered jurisdictions, up to date. This action is necessary to conform the guidelines to the changes made by Congress in extending the Voting Rights Act in 1982 and to the determinations of coverage made by the Director of the Census in 1984. This rule does not affect the status of any jurisdiction under the minority language provisions of the Voting Rights Act, nor does it reflect any change in the Attorney General's interpretation of the substantive requirements of these provisions.

EFFECTIVE DATE: January 12, 1988.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128, 202–724–5898.

SUPPLEMENTARY INFORMATION: Pursuant to the Voting Rights Act Amendments of 1982, Pub. L. 97–205, 96 Stat. 131, the Director of the Census has published in the **Federal Register** new determinations of coverage under section 203(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa–1a(b), 49 FR 25887 (June 25, 1984). This Amendment conforms the Attorney General's minority language interpretative guidelines, 28 CFR Part 55, to the new determinations of coverage and to the changes made in the Voting Rights Act by the 1982 Amendments.

Prior to the enactment of the 1982 Amendments to the Voting Rights Act, the minority language coverage of section 203 of the Act was scheduled to expire on August 6, 1985. Section 4 of the 1982 Amendments pushed back the expiration date to August 6, 1992 but also changed the coverage formula of section 203(b) to include as members of a language minority group for purposes of the coverage determination only those persons "who do not speak or understand English adequately enough to participate in the electoral process * * *." Sections 55.6, 55.11, and 55.13(b) of these guidelines have been revised to reflect the altered coverage formula, and the Appendix, which lists jurisdictions covered under the Act's minority language requirements, has been revised to reflect the determinations of the Director of the Census under the new formula.

In addition, the 1982 Amendments change the procedures and standards for termination of coverage under section 4(f)(4). Section 55.7(a) has been amended to reflect these changes, and § 55.7(b) has been amended to indicate the new termination date for section 203(c) coverage. Other technical changes have been made in the authority citation and in §§ 55.1, 55.2(a), and 55.4(a) (introductory language).

Absence of Comment Period

Because this revision of the Attorney General's minority language guidelines only conforms the guidelines to the changes effected by the Voting Rights Act Amendments of 1982 and to the 1984 determinations of coverage under section 203(b), which under the terms of that section are not subject to judicial review, and makes other minor technical changes, it is published as a Final Rule rather than as a Notice of Proposed Rulemaking. Under § 55.24, comments and suggestions on these guidelines are welcome at any time.

Regulatory Requirements

Under the definition of section 1(b) of EO 12291, 3 CFR Part 127 (1981 Compilation), this Amendment does not constitute a major rule. Accordingly, a regulatory impact analysis pursuant to section 3 of EO 12291 has not been prepared. Pursuant to section 3(c)(3) of EO 12291, this Final Rule was submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. The issuance of this Amendment does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR Part 61. Because this Amendment is excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The Attorney General does not, through this Amendment, conduct or sponsor the collection of information within the meaning of the Paperwork Reduction Act. See 44 U.S.C. 3502(4). Accordingly, approval from the Director of the Office of Management and Budget for such conduct or sponsorship is not required and has not been sought.

List of Subjects in 28 CFR Part 55

Administrative practice and procedure, Civil rights, Elections, Voting rights.

For the reasons set out in the preamble, 28 CFR Part 55 is amended as set forth below:

PART 55—[AMENDED]

1. The authority citation for Part 55 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1973b, 1973j(d), 1973aa–1a, 1973aa–2.

2. At the end of the table of contents the entry for Appendix is amended by the striking of the words "by the Voting Rights Act Amendments of 1975".

3. Section 55.1 is revised to read as follows:

§ 55.1 Definitions.

As used in this part—

"Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat. 131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

"Attorney General" means the Attorney General of the United States.

"Language minorities" or "language minority group" is used, as defined in

the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c)(3) and 203(e).

"Political subdivision" is used, as defined in the Act, to refer to "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

§ 55.2 [Amended]

4. Section 55.2(a) is amended by removing the words ", as amended by Pub. L. 94–73 (1975),".

§ 55.4 [Amended]

5. The introductory text of § 55.4(a) is revised to read as follows:

(a) The minority language provisions of the Voting Rights Act were added by the Voting Rights Act Amendments of 1975.

* * * * *

6. Section 55.6 is amended by removing the introductory text, revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 55.6 Coverage under section 203(c).

(a) Political subdivisions subject to section 203(c) are determined by the Director of the Census as follows:[2]

(1) The Director of the Census first identifies those States in which more than five percent of the voting-age citizens are members of a single language minority group and do not speak or understand English adequately enough to participate in the electoral process.

(2) From among the States identified in paragraph (a)(1) of this section he then identifies the States in which the illiteracy rate of such persons is greater than the national illiteracy rate. With respect to those States, he identifies the political subdivisions in which such persons constitute five percent or more of the citizen voting-age population.

(3) With respect to the States not reached under paragraph (a)(2) of this section he identifies the political subdivisions in which more than five percent of the voting-age citizens are members of a single language minority group and do not speak or understand English adequately enough to participate in the electoral process. From among those political subdivisions he identifies the political subdivisions in which the illiteracy rate of such persons is greater than the national illiteracy rate.

[2] The criteria for coverage are contained in section 203(b) of the Voting Rights Act and in section 4 of the Voting Rights Act Amendments of 1982.

(b) Political subdivisions identified under paragraphs (a)(2) or (a)(3) of this section are covered with respect to the language minority group of which such persons are members.

* * * * *

(d) Determinations of coverage under section 203(c) are made with regard to specific language groups of the language minorities listed in section 203(e).

§ 55.7 [Amended]

7. Section 55.7(a) is revised to read as follows:

(a) *Section 4(f)(4).* A covered State, a political subdivision of a covered State, or a separately covered political subdivision may terminate the application of section 4(f)(4) by obtaining the declaratory judgment described in section 4(a) of the Act.

* * * * *

8. Section 55.7(b) is amended by removing the word "1985" and by inserting in its place the word "1992".

9. Section 55.11 is amended by the addition of a new final sentence as follows:

§ 55.11 General.

* * * For those jurisdictions covered under section 203(c), the coverage determination (indicated in the Appendix) specifies the particular language for which the jurisdiction was covered and which thus, under section 203(c), is required to be used.

§ 55.13 [Amended]

10. Section 55.13(b) is amended by the insertion, in the second sentence thereof, following the words "in the language of such a group", of the words "pursuant to Section 4(f)(4)".

11. The Appendix is revised to read as follows:

Appendix—Jurisdictions Covered Under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as Amended

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec 4(f)(4) [1]	Coverage under sec. 203(c) [2]
Alaska	Alaskan Natives (statewide).	
Bethel Census Area		Alaskan Natives (Eskimo).
Dillingham Census Area		Do.
Kobuk Census Area		Do.
Nome Census Area		Do.
North Slope Borough		Do.
Wade Hampton Census Area		Do.
Yukon-Koyukuk Census Area		American Indian (Athapascan).
Arizona	Spanish Heritage (statewide)	
Apache County	American Indian.	American Indian (Navajo)
Cochise County		Spanish heritage.
Coconino County	American Indian.	American Indian (Navajo)
Graham County		Spanish heritage.
Greenlee County		Do.
Navajo County	American Indian.	American Indian (Navajo).
Pinal County	American Indian.	Spanish heritage.
Santa Cruz County		Do.
Yuma County		Do.
California:		
Fresno County		Do.
Imperial County		Do.
Kern County		Do.
Kings County	Spanish heritage.	Do.
Madera County		Do.
Merced County	Spanish heritage.	
San Benito County		Do.
Tulare County		Do.
Yuba County	Spanish heritage.	
Colorado:		
Alamosa County		Do.
Archuleta County		Do.
Bent County		Do.
Conejos County		Do.
Costilla County		Do.
Huerfano County		Do.
Las Animas County		Do.
Otero County		Do.
Pueblo County		Do.
Rio Grande County		Do.
Saguache County		Do.
Connecticut:		
Fairfield County: Bridgeport Town		Do.
Hartford County: Hartford Town		Do.
Florida:		
Collier County	Spanish heritage.	
Dade County		Spanish heritage.
Hardee County	Spanish heritage.	Do.
Hendry County	Spanish heritage.	
Hillsborough County	Spanish heritage.	
Monroe County	Spanish heritage.	
Hawaii:		
Hawaii County		Asian American (Japanese)
Kauai County		Do.
Maui County		Do.
Idaho:		
Mendoka County		Spanish heritage.
Massachusetts:		
Essex County: Lawrence City		Do.
Hampden County: Holyoke City		Do.
Suffolk County: Chelsea City		Do.
Michigan:		
Allegan County: Clyde Township	Spanish heritage.	Do.
Fennville City		Do.
Newaygo County: Grant Township		Do.

Jurisdiction	Coverage under sec 4(f)(4) [1]	Coverage under sec 203(c) [2]
Saginaw County: Buena Vista Township	Spanish heritage.	
Montana: Rosebud County		American Indian (Cheyenne)
New Jersey:		
Hudson County		Spanish heritage.
Passaic County		Do.
New Mexico:		
Bernalillo County		Do.
Chaves County		Do.
Cibola County		American Indian (Keresan), Spanish heritage.
Colfax County		Spanish heritage.
De Baca County		Do.
Dona Ana County		Do.
Eddy County		Do.
Grant County		Do.
Guadalupe County		Do.
Harding County		Do.
Hidalgo County		Do.
Lincoln County		Do.
Luna County		Do.
McKinley County		American Indian (Navajo)
Mora County		Spanish heritage.
Quay County		Do.
Rio Arriba County		Do.
Roosevelt County		Do.
Sandoval County		American Indian (Keresan), Spanish heritage.
San Juan County		American Indian (Navajo)
San Miguel County		Spanish heritage.
Santa Fe County		Do.
Socorro County		American Indian (Navajo), Spanish heritage.
Taos County		Spanish heritage.
Torrance County		Do.
Valencia County		Do.
New York:		
Bronx County	Spanish heritage.	Do.
Kings County	Spanish heritage.	Do.
New York County		Do.
North Carolina:		
Jackson County	American Indian.	
North Dakota:		
Rolette County		American Indian (Cree)
Sioux County		American Indian (Dakota)
Oklahoma:		
Adair County		American Indian (Cherokee)
South Dakota:		
Buffalo County		American Indian (Dakota).
Dewey County		Do.
Shannon County	American Indian	Do.
Todd County	American Indian.	Do.
Texas	Spanish heritage (statewide).	
Andrews County		Spanish heritage.
Aransas County		Do.
Atascosa County		Do.
Bailey County		Do.
Bee County		Do.
Bexar County		Do.
Brewster County		Do.
Briscoe County		Do.
Brooks County		Do.
Caldwell County		Do.
Calhoun County		Do.
Cameron County		Do.
Castro County		Do.
Cochran County		Do.
Comal County		Do.
Concho County		Do.
Cottle County		Do.
Crane County		Do.
Crockett County		Do.
Crosby County		Do.
Culberson County		Do.
Dawson County		Do.
Deaf Smith County		Do.
De Witt County		Do.
Dickens County		Do.
Dimmit County		Do.
Duval County		Do.
Ector County		Do.
Edwards County		Do.
El Paso County		Do.
Fisher County		Do.
Floyd County		Do.
Fort Bend County		Do.
Fno County		Do.
Gaines County		Do.
Garza County		Do.
Goliad County		Do.
Gonzales County		Do.
Guadalupe County		Do.
Hale County		Do.
Hall County		Do.
Haskell County		Do.
Hays County		Do.
Hidalgo County		Do.
Hockley County		Do.
Howard County		Do.
Hudspeth County		Do.
Inon County		Do.
Jackson County		Do.
Jeff Davis County		Do.
Jim Hogg County		Do.
Jim Wells County		Do.
Jones County		Do.
Karnes County		Do.
Kenedy County		Do.
Kinney County		Do.
Kleberg County		Do.
Knox County		Do.
Lamb County		Do.
La Salle County		Do.
Live Oak County		Do.
Loving County		Do.
Lubbock County		Do.
Lynn County		Do.
McCulloch County		Do.
McMullen County		Do.
Martin County		Do.
Mason County		Do.
Matagorda County		Do.
Maverick County		Do.
Medina County		Do.
Menard County		Do.
Mitchell County		Do.
Nolan County		Do.
Nueces County		Do.
Parmer County		Do.
Pecos County		Do.
Presidio County		Do.
Reagan County		Do.
Real County		Do.
Reeves County		Do.
Refugio County		Do.
Runnels County		Do.
San Patricio County		Do.
Schleicher County		Do.
Scurry County		Do.
Starr County		Do.
Sterling County		Do.
Sutton County		Do.
Swisher County		Do.
Terrell County		Do.
Terry County		Do.
Tom Green County		Do.
Upton County		Do.
Uvalde County		Do.
Val Verde County		Do.
Victoria County		Do.
Ward County		Do.
Webb County		Do.
Wharton County		Do.
Willacy County		Do.
Wilson County		Do.
Winkler County		Do.
Yoakum County		Do.
Zapata County		Do.
Zavala County		Do.
Utah: San Juan County		American Indian (Navajo)
Wisconsin:		
Jackson County: Komensky Town		American Indian (Ojibwa)
Portage County: Pine Grove Town		Spanish heritage
Sawyer County: Couderay Town		American Indian (Winnebago)

[1] Coverage determinations were published at 40 FR 43746 (Sept. 23, 1975), 40 FR 49422 (Oct. 22, 1975), 41 FR 784 (Jan. 5, 1976) (corrected at 41 FR 1503 (Jan. 8, 1976)) and 41 FR 34329 (Aug. 13, 1976). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to Section 4(a). See § 55.7(a) of this part.

[2] Coverage determinations were published at 49 FR 25887 (June 25, 1984).

Edwin Meese III,

Attorney General.

Dated: December 17, 1987.

[FR Doc. 88–485 Filed 1–11–88; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2702

Regulations Implementing the Freedom of Information Reform Act of 1986

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the Commission's regulations concerning fees and fee waivers for processing Freedom on Information Act requests in accordance with the standards required by the Freedom of Information Reform Act of 1986. The rule conforms to the guidelines established by the Office of Management and Budget on assessment of fees and the guidance of the Department of Justice on fee waivers.

EFFECTIVE DATE: Interim rule effective February 11, 1988; comments must be received on or before February 11, 1988.

ADDRESSES: Written comments should be addressed to Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K

Street, NW., 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street, NW., 6th Floor, Washington, DC 20006, telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act of 1986, Pub. L. 99–570, sections 1801–1804, 100 Stat. 3207, 3207–48 (1986) (FOIA Reform Act), amended the Freedom of Information Act, 5 U.S.C. 552 (FOIA), and established a new fee structure for fees generally as well as for certain categories of requesters. Specifically, the FOIA Reform Act establishes the following types of fees that may be charged depending on the identity of the requester and the anticipated use of the information: (1) *Commercial:* search, review, and duplication fees are assessable; (2) *educational or noncommercial scientific institutions whose purpose is scholarly or scientific research or a representative of the news media:* only duplication fees are assessable; and (3) *all others:* only search and duplication fees are assessable. 5 U.S.C. 552(a)(4)(A)(ii).

In addition, a revised statutory standard governing the waiver of FOIA fees has been established. Documents are to be furnished without any charge or at a reduced charge if disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii). Furthermore, fee schedules are to provide for recovery only of "direct costs," but no fee may be charged if the cost of routine processing and collection of the fee would likely equal or exceed the fee. Further, all requesters except commercial requesters may not be charged for the first two hours of search time or for the first one hundred pages of duplication involved in any request. 5 U.S.C. 552(a)(4)(A)(iv). Finally, no agency may require advance payment of any fee unless the requester has failed previously to pay fees in a timely fashion or the agency has determined that the fee will exceed $250. 5 U.S.C. 552(a)(4)(A)(v).

As required by the FOIA Reform Act, the Office of Management and Budget (OMB) has developed fee guidelines for implementation of the statute. 5 U.S.C. 552(a)(4)(A)(i). These guidelines were published in final form in the **Federal Register** on March 27, 1987, 52 FR 10012. The Commission's interim fee regulations conform with OMB's guidelines. The FOIA Reform Act also requires that individual agency regulations set forth "procedures and guidelines for determining when such fees should be waived or reduced." 5 U.S.C. 522(a)(4)(A)(i). Since OMB was not accorded responsibility for fee waiver matters under the FOIA Reform Act, the Department of Justice (DOJ), pursuant to its responsibility to encourage agency compliance with FOIA, has set forth government-wide policy guidance on the waiver of FOIA fees and issued an advisory memorandum to the heads of all federal agencies on April 2, 1987, entitled "New FOIA Fee Waiver Policy Guidance." The Commission's interim fee waiver regulations adopt the DOJ criteria for waiver of FOIA fees.

The purpose of these rules is to implement the changes mandated by the FOIA Reform Act. The Commission has chosen to establish interim rules because it is in the public interest to have the rule effective as soon as possible to effectuate the FOIA Reform Act. These interim rules will not become effective until February 11, 1988. A comment period of 30 days is provided. Upon receipt and consideration of any comments, these interim rules will be subject to finalization and possible change.

List of Subjects in 29 CFR Part 2702

Freedom of Information.

Accordingly, 29 CFR Part 2702 is amended as follows:

PART 2702—[AMENDED]

1. The authority citation for 29 CFR Part 2702 continues to read as follows:

Authority: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 801 *et seq.*)

2. Section 2702.5 is revised to read as follows:

§ 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

3. Sections 2702.6 through 2702.8 are added as follows:

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be $10 per hour for clerical time and $20 per hour for professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. If search charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Time spent on unsuccessful searches shall be fully charged.

(b) *Review fee.* The review fee shall be charged for the initial examination by the Executive Director of documents located in response to a request to determine if it may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. *See* § 2702.3. The review fee is $30 per hour.

(c) *Duplicating fee.* The fee copy of each page of paper up to 8½" x 14" shall be $.15 per copy per page. Any private sector services required will be assessed at the charge to the Commission. If duplication charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

§ 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the likely cost of processing and collecting the fee would be equal to or greater than the fee itself. Accordingly, the Commission has determined that fees of less than $10 shall be waived.

(b) Documents shall be furnished without any charge or at a charge reduced below the fees otherwise applicable if disclosure of the information (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) is not primarily in the commercial interest of the requester.

(i) The following six factors will be employed in determining when such fees shall be waived or reduced:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(D) The significance of contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(ii) The Executive Director, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. Appeals of adverse decisions may be made to the Chairman within 5 working days. Determination of appeals will be made by the Chairman within 10 working days of receipt.

§ 2702.8 Advance payment of fees; interest; debt collection procedures.

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250.

(b) Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay the amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

(c) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(d) The Debt Collection Act of 1982, Pub. L. 97–365, including disclosure to consumer credit reporting agencies and the use of collection agencies will be utilized to encourage payment where appropriate.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 88–459 Filed 1–11–88; 8:45 am]

BILLING CODE 6735–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 5

Commercial and Private Operations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the existing nondiscrimination language for commercial and private operators within the National Park Service.

This revision is necessary to conform National Park Service regulations to Federal nondiscrimination statutes already in effect.

The effect will be to keep commercial and private operators within the National Park Service from discriminating against any person because of sex, age, or disabling condition, as well as other nondiscrimination criteria already in effect in the Code of Federal Regulations.

EFFECTIVE DATE: February 11, 1988.

FOR FURTHER INFORMATION CONTACT: David E. Gackenbach, Chief, National Park Service, Concessions Division-680, P.O. Box 32127, Washington, DC 20013–7127, Telephone: (202) 343–8953.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS), acting on behalf of the Secretary of the Interior and pursuant to the Act of August 25, 1916, as supplemented and amended, 16 U.S.C. 3 *et seq.*, particularly the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.*, administers the operations of private concessioners which provide public accommodations, facilities and services within elements of the National Park System. Such accommodations, facilities and services, by law, must be provided under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. It is the policy of the Secretary that concession activities are limited to those that are necessary and appropriate for public use and enjoyment of the National Park Area in which they are located and that are consistent to the highest practical degree with the preservation and conservation of the area.

Concession operations are conducted by commercial and private operators and are administered by the NPS pursuant to Concession Contracts and Permits.

Lands managed by the NPS are subject to the relevant provisions of Title 16 of the United States Code and Title 36 of the Code of Federal Regulations. The Regulations contained in Chapter One of Title 36 of the Code of Federal Regulations govern, in general, the commercial and private activities.

The existing NPS regulations that prohibit discrimination in employment practices and in furnishing public accommodations and transportation services are codified at 36 CFR 5.8 and 5.9. These regulations have not been revised since 1966 and, consequently, do not reflect provisions of applicable Federal law and Executive Orders enacted since that date. This rulemaking revises these regulations to reflect prohibitions contained in Executive Order 11246 (September 24, 1965) as amended by Executive Order 11375 (October 13, 1967); Title V, section 504 of the Rehabilitation Act of 1973 and Executive Order 11141 (February 12, 1964) that pertain to sex, age or disabling condition. It also revises the address of the NPS Director.

The NPS is publishing this rulemaking as a final rule without prior publication of a proposed rule. This action is being taken because the NPS has determined

that in this case a proposed rulemaking and opportunity for public comment are unnecessary and contrary to the public interest. This determination is based on the fact that the revised regulatory text incorporates provisions of Federal Statutory Law and Executive Orders that have been in effect since the dates listed above and that were implemented by the NPS on the same dates. Prompt removal or revision of outdated regulatory text from the Code of Federal Regulations avoids confusion and facilitates consistent interpretation of regulations by NPS officials and the general public and is therefore in the public interest. Publication of a proposed rule would delay this process unnecessarily and would result in unnecessary additional expense, both contrary to the public interest.

Public comment on this rulemaking is unnecessary and irrelevant because the statutory provisions and Executive Orders are already in effect and will continue to take precedence over the existing regulatory text, regardless of public comment. These provisions are mandatory and contain no discretionary elements that are open to agency interpretation or whose implementation could be influenced by public comment to the NPS.

Drafting Information

The principal author of this rule is William H. Wood, National Park Service, Concessions Division, Washington, DC.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The amended regulations will not have any significant economic effect because they only serve to clarify nondiscrimination requirements that apply to commercial and private operators. There should be no additional expenditures involved as a result.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

For the reasons set out in the preamble 36 CFR Chapter 1 is amended as set forth below:

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

1. The authority citation for Part 5 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

2. By revising paragraphs (a) and (b) of § 5.8 to read as follows:

§ 5.8 Discrimination in employment practices.

(a) The proprietor, owner, or operator of any hotel, inn, lodge or other facility or accommodation offered to or enjoyed by the general public within any park area is prohibited from discriminating against any employee or maintaining any employment practice which discriminates because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in connection with any activity provided for or permitted by contract with or permit from the Government or by derivative subcontract or sublease. As used in this section, the term "employment" includes, but is not limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Each such proprietor, owner or operator shall post either the following notice:

Notice

This is a facility operated in an area under the jurisdiction of the United States Department of the Interior. No discrimination in employment practices on the basis of race, creed, color, ancestry, sex, age, disabling condition, or national origin is permitted in this facility. Violations of this prohibition are punishable by fine, imprisonment, or both.

Complaints or violations of this prohibition should be addressed to the Director, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

or notices supplied in accordance with Executive Order 11246 at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking employment.

* * * * *

3. By revising paragraphs (a) and (b) of § 5.9 to read as follows:

§ 5.9 Discrimination in furnishing public accommodations and transportation services.

(a) The proprietor, owner or operator and the employees of any hotel, inn, lodge, or other facility or accommodation offered to or enjoyed by the general public within a park area and, while using such a park area, any commercial passenger-carrying motor vehicle service and its employees, are prohibited from: (1) Publicizing the facilities, accommodations or any activity conducted therein in any manner that would directly or inferentially reflect upon or question the acceptability of any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin; or (2) discriminating by segregation or otherwise against any person or persons because of race, creed, color, ancestry, sex, age, disabling condition, or national origin in furnishing or refusing to furnish such person or persons any accommodation, facility, service, or privilege offered to or enjoyed by the general public.

(b) Each such proprietor, owner, or operator shall post the following notice at such locations as will insure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges:

Notice

This is a facility operated in an area under the jurisdiction of the U.S. Department of the Interior.

No discrimination by segregation or other means in the furnishing of accommodations, facilities, services, or privileges on the basis of race, creed, color, ancestry, sex, age, disabling condition or national origin is permitted in the use of this facility. Violations of this prohibition are punishable by fine, imprisonment, or both.

Complaints of violations of this prohibition should be addressed to the Director National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

* * * * *

Date: October 6, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–475 Filed 1–11–88; 8:45 am]

BILLING CODE 4310–70–M

Office of the Secretary

41 CFR Part 114–51

Property Management; Provision and Assignment of Quarters and Furnishings

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is amending 41 CFR Part 114–51, which contains the internal regulations and procedures governing provision and assignment of government furnished quarters (GFQ). These changes are made necessary by the repeal of Congressional limitations on the costs associated with construction of GFQ. In the future, costs will be controlled through the normal budget process. In addition, this change eliminates the design standards in the regulations and substitutes those found in Office of Management and Budget Circular A–18, as amended.

EFFECTIVE DATE: February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Billy Lee Hart, Chief, Property Management Division, 202–343–3336.

SUPPLEMENTARY INFORMATION: The Department of the Interior and Related Agencies Appropriation Bill, 1985: Report to the Committee of the Whole House No. 98–886, states in part: "In the past the Committee has carried a limitation on unit cost of employee housing. Due to the rapidly increasing costs of housing, there will no longer be a limitation on the unit cost of employee housing, but agencies will be expected to identify such costs in their budget justifications. Waivers from the Committee on these costs are no longer necessary." This Report was not changed by the Senate.

The Conference Report states in part: "The language and allocations set forth in House Report 98–886 and Senate Report 98–578 shall be complied with unless specifically addressed to the contrary in this joint resolution * * *." Since the issue dropping the limitation on cost of constructing employee housing was not specifically addressed to the contrary, the limitation is dropped. In the future all bureaus will address such costs in their budget justifications.

Concerning the issue of design standards, the Department finds that the design and construction standards imposed by OMB Circular A–18, as amended, are sufficient for our purposes.

Because these property management procedures govern only internal management actions of the Department, this document is not a rule as defined by E. O. 12291. The Department has determined that notice and public comment on the rule are not required because the Department, by amendment of 41 CFR Part 114–51, is simply revising internal instructions and procedures that affect only Departmental employees. 5 U.S.C. 553(b)(A). For the same reasons, the Department has also determined that the rule will not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act. The Department has further determined that these regulations will not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. Finally, the Department has determined that the rule has no federalism implications affecting the relationship between the national government and the States, as outlined in Executive Order 12612. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Billy Lee Hart, Chief, Property Management Division, Office of Acquisition and Property Management (343–3336).

List of Subjects in 41 CFR Part 114–51

Provision and Assignment of Quarters and Furnishings.

For the reasons set forth in the preamble, 41 CFR 114–51.1 is amended as set forth below.

Dated: December 31, 1987.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary—Policy, Budget and Administration.

PART 114–51—PROVISION AND ASSIGNMENT OF QUARTERS AND FURNISHINGS

1. The authority citation for Part 114–51 continues to read as follows:

Authority: 5 U.S.C. 301.

Subpart 114–51.1—Provision of Quarters

2. Section 114–51.102 is revised to read as follows:

§ 114–51.102 Determination of number, types, sizes, and design of housing units.

Bureaus shall be governed by the applicable provisions of Office of Management and Budget Circular No. A–18, Revised, in determining the number, types, sizes, and design standards of housing units to be provided employees at a given location.

§§ 114–51.103 through 114–51.104–3 [Removed]

3. Sections 114–51.103 and 114–51.104 through 114–51.104–3 are removed from this Subpart.

[FR Doc. 88–458 Filed 1–11–88; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276–4176]

Foreign Fishing; Hake Fisheries of the Northwest Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to respecify fishery specifications.

SUMMARY: NOAA issues this notice to respecify fishery specifications for the Hake Fisheries of the Northwest Atlantic Preliminary Fishery Management Plan (PMP). This notice continues the PMP into the 1988 fishing year which begin on January 1, with specifications that are identical to those in place for 1987. They will be in effect until replaced by an amendment currently being prepared by NMFS to address recent developments in the fishery.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, 617–281–3600, ext. 232.

SUPPLEMENTARY INFORMATION: NOAA publishes specifications of optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), reserve, and total allowable level of foreign fishing (TALFF). Specifications are accomplished at least yearly to inform the public or implement any changes based on new scientific information or on NMFS' and Regional

Fishery Management Councils' consultations on domestic and foreign fishing. Initially, for 1988, the specifications are identical to those in 1987. However, NMFS is currently developing an amendment that may (1) adjust these specifications based on new stock assessment information and (2) reduce or eliminate TALFF and reduce JVP based on a recommendation by the Mid-Atlantic Council. Parties interested in TALFF or joint ventures should be mindful that the amendment will likely replace and reduce the specifications published below. Public comments will be accepted on the amendment during its development and when it is formally proposed.

The annual specifications for the hake fisheries in the Northeast Region, Northwest Atlantic Ocean, published at 51 FR 25704, July 16, 1986, for silver hake in areas 1–4 and 5 and for red hake in area 5, and at 51 FR 25724, July 16, 1986, for red hake in areas 1–4 are reprinted and specified here for your convenience:

Species	Species code	Area	OY/TAC	DAH	DAP	JVP	Reserve	TALFF
I. NW Atlantic Ocean fisheries								
A. Hake Fisheries								
Hake, Silver	104	NW Atlantic 1–4	30,000	20,600	5,600	15,000	0	9,400
		NW Atlantic 5	13,000	9,000	2,000	7,000	0	4,000
Hake, Red	105	NW Atlantic 1–4	16,000	8,000	5,000	3,000	5,000	3,000
		NW Atlantic 5	6,000	3,500	500	3,000	II	2,500

List of Subjects in 50 CFR Part 611

Fisheries, Foreign Relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

Dated: January 6, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88–489 Filed 1–11–88; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 7
Tuesday, January 12, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposal To Place Carfentanil Into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) proposes that carfentanil, a narcotic substance, be placed into Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action has been initiated following DEA's receipt of a letter from the Assistant Secretary for Health, Department of Health and Human Services (DHHS), recommending that DEA initiate the scheduling of carfentanil while review of the new animal drug application for carfentanil is nearing completion. The scheduling of carfentanil in Schedule II will not be finalized until carfentanil is approved for marketing by the Food and Drug Administration (FDA). If finalized, this proposed rule would impose the regulatory controls and criminal sanctions of a Schedule II narcotic substance under the CSA to the manufacture, distribution, importation and exportation of carfentanil.

DATE: Written comments and objections must be received on or before February 11, 1988.

ADDRESS: Send comments to DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: On November 12, 1987, the Assistant Secretary for Health, on behalf of the Secretary, DHHS, sent to the Administrator of DEA a letter recommending that the scheduling process be initiated for placement of carfentanil into Schedule II of the CSA. Enclosed with the letter was a document prepared by the FDA entitled "Basis for the Recommended To Control Carfentanil Into Schedule II of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)) and the summarized recommendations regarding the scheduling of carfentanil.

The factors considered by the Assistant Secretary for Health with respect to carfentanil were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects, if known;

(3) The state of current scientific knowledge regarding the drug (or other substance);

(4) Its history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

Carfentanil is a rapidly acting and extremely potent synthetic compound that is an analog of fentanyl. Its pharmacological profile appears to be highly similar to that of fentanyl and related compounds. The pharmacological effects of carfentanil in experimental animals are readily reversed by administration of narcotic antagonists. The main therapeutic use of carfentanil will be its use in veterinary medicine to immobilize certain species of larger deer.

Based on the scientific and medical evaluation and the recommendation contained in the November 12, 1987 letter from the Assistant Secretary for Health, DHHS, the Administrator of DEA, pursuant to the provisions of 21 U.S.C. 811(a) and 811(b), finds that:

(1) Based on all available information, carfentanil has a high potential for abuse;

(2) Carfentanil, upon final approval of a new animal drug application by the FDA, will have a currently accepted medical use in treatment in the United States; and

(3) Abuse of carfentanil may lead to severe psychological or physical dependence.

The above findings are consistent with the proposed placement of carfentanil into Schedule II of the CSA. The Administrator further contends that carfentanil is an opiate as defined in 21 U.S.C. 802(18) since it has an addiction-forming and addiction-sustaining liability similar to morphine. Consequently, carfentanil is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

Interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. In the event that comments, objections or requests for a hearing received in response to this proposal raise one or more issues which warrant a hearing, the Administrator will publish in the **Federal Register** an order for a public hearing which will summarize the issues to be heard and set the time for the hearing that will not be less than 30 days after the date of the order. If no objections presenting grounds for a hearing on this proposal are received within the time limitation or if interested parties waive or are deemed to have waived their opportunity for a hearing or to participate in a hearing, the Administrator, after giving consideration to written comments and objections, will issue a final order pursuant to 21 CFR 1308.48 without a hearing. DEA's final decision concerning the scheduling of carfentanil will take into account the Assistant Secretary's recommendation, its own review, and any information received in response to this proposal.

Pursuant to Title 5, United States Code, Section 605(b), the Administrator

certifies that the scheduling of carfentanil will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). These proposed drug control actions relate to the initial control of a substance that is not yet marketed in the United States. Commercial products which contain carfentanil will be used in veterinary clinics specializing in big game control and treatment. This rule, if finalized, will cause such establishments to handle carfentanil in a manner identical to that in place for other Schedule II products.

In accordance with the provisions of section 201(a) of the CSA (21 U.S.C. 811(a)), this proposed scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby proposes to amend 21 CFR Part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraph (c) of § 1308.12 is amended by redesignating the existing paragraphs (c)(6) through (c)(24) as (c)(7) through (c)(25) and adding a new paragraph (c)(6):

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(6) Carfentanil—9743

* * * * *

Dated: January 5, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-417 Filed 1-11-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 434 and 435

[BERC-306-P]

Medicaid Program; Waiver of Certain Membership Requirements for Certain Health Maintenance Organizations (HMOs), and State Option for Disenrollment Restrictions for Certain HMOs Under Medicaid

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would revise current Medicaid rules to expand the waiver authority of the Secretary to permit certain health maintenance organizations (HMOs) meeting certain requirements to exceed the composition of enrollment limit, to allow certain organizations to contract on a risk basis, to permit continuation of benefits to recipients enrolled in certain organizations after they have lost entitlement to Medicaid, and to give a State the option of restricting a Medicaid enrollee's right to disenroll from certain types of risk HMOs and other organizations. These regulations would conform our regulations with authority provided in section 2364 of Pub. L. 98-369, the Deficit Reduction Act of 1984, as amended by section 9517 of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. We are also proposing to make a technical correction concerning HMO and PHP contracts.

DATE: To assure consideration, comments must be received by March 14, 1988.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-306-P, P.O. Box 26676, Baltimore, Maryland 21207.

If comments concern information collection or recordkeeping requirements please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Allison Herron, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for HCFA

In commenting, please refer to file code BERC-306-P.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone, 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Thomas Saltz, (301) 594-9374.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

Section 2178 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) was enacted to encourage and enable Medicaid agencies to make greater use of health maintenance organizations (HMOs) that provide cost-effective health care to Medicaid recipients. That section raised the maximum allowable proportion of Medicare and Medicaid enrollees an HMO delivering Medicaid services on a risk basis may have in order for a State to be eligible for Federal financial participation in its Medicaid expenditures to those entities. The amendment raised the limit on Medicare and Medicaid enrollees from fewer than 50 percent to fewer than 75 percent of the total enrollment. It did not alter the provision which authorizes a temporary waiver of that upper limit for new HMOs. (Section 1903(m)(2)(C) of the Social Security Act (the Act)). Waivers of the Medicare/Medicaid enrollee percentage limit are available during the first 3 years of a contract with a State, if the Secretary is satisfied that it has made an continues to make efforts to meet the enrollment limits as required in section 1903(m)(2)(C) of the Act. Additionally, the 1981 amendments provided for a waiver of indefinite duration to an HMO that is a public entity (i.e., owned or operated by a State, county, or municipal health department or hospital) if the Secretary determines the waiver can be justified and the public HMO is making reasonable efforts to meet the enrollment limit by enrolling persons not entitled to Medicare or Medicaid as permitted under section 1903(m)(2)(D) of the Act.

The Act also provided specific exceptions to certain organizations at section 1903(m)(2)(B). This section provides for a specific group of entities to be exempt altogether from the composition of enrollment requirement as well as other requirements in section 1903(m)(2)(A) pertaining to organizations contracting with the State on a prepaid capitation risk basis. These organizations include certain Community, Migrant, and Appalachian Health Centers, primarily funded by the Public Health Service (PHS), and Appalachian Regional Development Act, that had existed prior to June 30, 1976.

Section 1903(m)(2)(A)(vi) of the Act permitted enrollees of risk-basis HMOs to disenroll without cause at any time. Disenrollment was effective beginning the first calendar month following a full calendar month after the disenrollment request was made.

Section 1902(e)(2) of the Act permitted States to continue to provide Medicaid to enrolled recipients for periods up to 6 months from the date of enrollment in Federally qualified HMOs, even if the enrollee loses Medicaid eligibility before the enrollment period ends.

B. Current Regulations

The basic regulations governing entities eligible for risk contracts are at 42 CFR 434.20. Community, Migrant and Appalachian Health Centers are eligible for risk contracts under our regulations at § 434.20(a)(3). Under section 1903(m)(2)(B) of the Act, these entities may enter into prepaid capitation risk basis contracts with a State, and are exempt from the provisions of the law in section 1903(m)(2)(A) of the Act, which contain the requirements that HMOs must meet when providing comprehensive services on a risk basis. However, any Community, Migrant, or Appalachian Health Center that obtained grant funds under the PHS Act or the Appalachian Regional Development Act of 1965 subsequent to June 30, 1976, must instead meet requirements in section 1903(m)(2)(A) of the Act in order to contract with a State to provide comprehensive services on a risk basis. (In addition, these organizations may contract with Medicaid agencies on a cost basis under the Prepaid Health Plan (PHP) rules.)

Current regulations concerning waivers of the composition of enrollment requirement under Medicaid are found at 42 CFR 434.28. New HMOs with risk contracts may receive waivers of the requirement that Medicare and Medicaid enrollment be less than 75 percent, for up to 3 years after the date the entity is determined to be an HMO by the HCFA Regional Administrator (RA). Section 434.28(b)(1) requires the HMO to submit annual reports, satisfactory to the RA, demonstrating that it is making continuous efforts and progress toward achieving compliance with the less than 75 percent requirement. The waiver for public HMOs appears at § 434.28(b)(2), and permits the RA to approve a waiver for an HMO owned or operated by a State, county or municipal health department or hospital, if there are special circumstances that would justify a waiver or modification and the HMO has made and continues to make reasonable efforts to enroll persons not eligible for Medicare or Medicaid.

Section 434.27(b)(1) provides for an enrollee's right to disenroll without restriction. An enrollee of a risk HMO may terminate enrollment freely at any time, effective no later than the first day of the second month after the month in which he or she requested termination. Section 434.27(b)(2) states that the HMO also must inform the recipient of this right at the time of enrollment.

Sections 435.212 and 435.326 permit a State agency to allow categorically and medically needy individuals enrolled in a Federally qualified HMO who lose eligibility for Medicaid to be deemed eligible to continue to receive Medicaid services in the HMO for a period of enrollment up to 6 months. Recipients enrolled in any other type of prepaid capitation organization are not eligible for this benefit.

II. New Legislation

A. Eligibility of New Organizations

Section 9517(e)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amends section 1903(m)(2) of the Act by adding a new subparagraph (G) to the list of exemptions to the prohibition on Federal financial participation in State expenditures under risk contracts with entities or organizations which are not HMOs. This change permits a State to contract on a prepaid risk capitation basis for the scope of services described in section 1903(m)(2)(A) of the Act with entities that have been receiving during the previous 2 years a grant of at least $100,000 under section 329(d)(1)(A) or 330(d)(1) of the PHS Act or have been receiving $100,000 by grant, subgrant, or subcontract under the Appalachian Regional Deavelopment Act of 1965. Subparagraph (G) entities are subject to all requirements in section 1903(m)(2)(A) of the Act, with two exceptions: That the entity be determined an HMO by the Secretary, and that less than 75 percent of its membership be Medicare beneficiaries or Medicaid recipients.

B. Composition of Enrollment

Section 2364 of the Deficit Reduction Act of 1984 (DRA) added subparagraph (E) to section 1903(m)(2) of the Act. This subparagraph expands the waiver authority of the Secretary to permit States to receive Federal financial participation in expenditures to an HMO meeting certain requirements and exceeding the composition requirements of section 1903(m)(2)(A)(ii) of the Act, which requires that fewer than 75 percent of its enrollees are Medicare or Medicaid beneficiaries. To be eligible for this waiver, the HMO must: (a) Be a nonprofit organization with at least 25,000 members, (b) have been a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) for a period of at least 4 years, (c) provide basic health services through members of the staff of the organization, (d) be located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act, and (e) have previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1115 of the Social Security Act. The Secretary also must determine whether special circumstances justify a waiver, and whether the HMO has or is taking reasonable efforts to enroll persons not entitled for Medicare or Medicaid.

C. Termination of Enrollment

Section 2364 of the DRA also amended section 1903(m) of the Act to provide an exception to the requirement at section 1903(m)(2)(A)(vi)(I), and added a new paragraph at section 1903(m)(2)(F) of the Act. The exception gives a state the option of restricting a Medicaid enrollee's right to disenroll freely from certain risk HMOs during the second through the sixth month of each period of enrollment in such organizations. During the first month of enrollment an enrollee may request termination of enrollment without having any cause for this decision. However, for the remaining months of the period, requests for termination must be based on meeting the requirements for good cause. Termination of enrollment becomes effective no later than the beginning of the first calendar month following a full calendar month after the termination request is made. In order to restrict the right to request termination without cause to the first month of enrollment, the State must notify enrollees of the disenrollment restrictions at least twice per year. The restricted disenrollment option is applicable only to members of Federally qualified HMOs (as defined in section 1310(d) of the PHS Act) or certain other entities (Community, Migrant, and Appalachian Health Centers), orginally identified in section 1903(m)(2)(F)(ii) of the Act. Section 1903(m)(2)(F) of the Act was revised by section 9517(a) of COBRA, which deleted clause (ii), and identified the entities that had been

described in clause (ii) in a new subparagraph, section 1903(m)(2)(G). Also, to qualify for the limit on the individual's right to terminate his enrollment without cause, a Federally qualified HMO must have fewer than 75 percent Medicare and Medicaid enrollees. The Community, Migrant, and Appalachian Health Center identified in section 1903(m)(2)(G) are not subject to the 75 percent enrollment rule. This latter provision resulted from the COBRA revision of section 1903(m)(2)(F) of the Act.

The Conference Report that accompanied H.R. 4170, dated June 23, 1984, (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1364–5 (1984)) pertaining to section 2364 of Pub. L. 98–369, added clarification and guidance concerning implementation of restrictions upon disenrollment from an HMO. Examples of "good cause" for disenrollment during the restricted period (months, two up through six) suggested by the report were "poor quality care or lack of access to needed speciality services". The States are expected to establish procedures to review "cause" disenrollment requests promptly.

In addition, the report sets forth Congressional expectations that "current Federal regulatory requirements" for HMOs, including those which relate to "grievance procedures and quality assurance systems" at 42 CFR 434.32 and 434.34 respectively, would apply to this new provision of the law.

D. Continuation of Benefits

Section 9517(b) of COBRA amended section 1902(e)(2) of the act by adding a new group of organizations which may retain as members individuals who would otherwise lose entitlement to Medicaid, but whom the State may deem eligible for continuation of benefits during the remainder of a period of enrollment not exceeding 6 months from the date of enrollment in the organization. That group is described in section 1903(m)(2)(G) to the Act which was added by section 9517(a)(3) of COBRA. That section also permits these organizations (certain Community, Migrant, and Appalachian Health Centers), to contract with the State agency.

III. Provisions of the Proposed Regulations

We propose to revise §§ 434.20, 434.26, 434.27, 435.212 and 435.326 of Subchapter C of Title 42. The proposed changes in the regulations are discussed below:

A. Eligibility of New Organizations

We would add paragraph (a)(4) to § 434.20 to permit the new group of organizations to be eligible to contract on a risk basis. These organizations are identified by the statute as entities which receive, and have received during the previous 2 years, a grant of at least $100,000 under sections 329(d)(1)(A) or 330(d)(1) of the PHS Act or which receive and have received at least $100,000 during the previous 2 years by grant, subgrant, or subcontract under the Appalachian Regional Development Act of 1965. Any such organization would be exempt from the requirement that the Secretary determine that it is an HMO. We would add a new paragraph (b)(5) to § 434.26 that would exempt the new group of organizations from the composition of enrollment requirement. However, these organizations must meet all others HMO statutory requirements.

B. Composition of Enrollment

We would revise regulations located at § 434.26 to permit the Secretary to waive the composition of enrollment requirement for an HMO which meets certain criteria. A new paragraph § 434.26(b)(3) would be added to specify the legislative criteria, and current (b)(3) would be redesignated as (b)(4).

As noted in the previous section, we are proposing to amend the regulations to recognize the statutory exemption from the composition of enrollment standard for certain Community, Migrant, and Appalachian Health Centers. It has come to our attention that some of these exempt centers have joined to form larger organizations in order to operate an HMO of adequate size. Under simple arrangements, several community health centers have established an HMO that enrolls members who are then provided primary care services through the same community health centers. The HMO serves simply as the corporate vehicle allowing the centers to combine their efforts. In this circumstance, we believe that, consistent with Congressional intent, the HMO formed by centers that are exempt from the composition of enrollment standard should itself be exempt from the standard.

In some more complex arrangements, centers that are exempt from the composition of enrollment requirement may join with another organization, such as a nonexempt center or a hospital, to form the HMO. In addition, there may be arrangements in which not all of the primary services are provided through exempt centers. In these circumstances, we also believe that it would be consistent with Congressional intent to recognize the continuing force of the exemption if the exempt centers control the HMO and if substantially all the primary care services are provided through the exempt centers.

The proposed regulation contains an exemption for centers formed as HMOs under the two types of arrangement described above.

C. Termination of Enrollment

We would revise paragraph (b) of § 434.27 to include restriction of disenrollment rights in certain HMO risk comprehensive contracts. We would do this by allowing a State to continue to permit a Medicaid enrollee of an HMO to freely disenroll at any time, or to restrict disenrollment after the first month of enrollment unless there was good cause. Paragraph (b)(2) would be redesignated as (c) and new paragraphs (d), (e), (f), and (g) would be added that would specify the conditions to be met if a Medicaid agency chooses to limit disenrollment rights of Medicaid enrollees of certain HMOs.

We would specify at § 434.27(d) that the disenrollment restriction would apply only to Federally qualified HMOs and certain other entities identified in section 1903(m)(2)(G) of the Act and the proposed regulations at § 434.26(b)(5)(ii). Federally qualified HMOs whose Medicare and Medicaid enrollment constitutes 75 percent or more of its total enrollment would not be eligible for the disenrollment restriction. The other entities are exempt from the composition of enrollment rule.

We would describe at § 434.27(e) the requirements that an enrollee, an organization, and a State agency must meet for restricted disenrollment to occur. The regulations would permit the States flexibility in developing the procedures under which their restricted disenrollment program would operate. Under these provisions, an enrollee may only disenroll if the requirements for cause are met. We would require that an enrollee request disenrollment in writing to the State agency and the HMO, citing the reasons why he or she wishes to leave the HMO. Examples of reasons may include poor quality care, or lack of access to specialty services covered under the State plan or other reasons that a State may establish. The HMO must provide the State with whatever information the State may require to make a decision.

States could require recipients seeking to disenroll for cause to use an organization's grievance process prior to the State agency deciding the case. We are particularly interested in comments on this proposal that would permit

required use of the current grievance procedure regulations at 42 CFR 434.32 in the disenrollment process. We wish to ensure that timely action is taken in cases where disenrollment is requested for cause.

If the termination of an enrollment for good cause is approved by the HMO it must take place no later than the first day of the month after the month in which the recipient had requested termination in writing. If the State agency makes the determination about termination of enrollment for good cause, it must take final action within 15 days after receipt of the request for disenrollment, or within 30 days after such receipt if the State determines that additional information is needed.

Section 434.27(f) would provide for automatic disenrollment of a requesting enrollee if the State fails to take final action within 15 days, or if additional information is requested by the State, within 30 days after the request to disenroll is made. We believe the delays beyond these timeframes for a final decision would deny a recipient timely action in remedying a possibly serious problem.

Finally, § 434.27(g) would give an enrollee the right to appeal a decision by a State agency to deny a request to disenroll for good cause. The appeal procedure is left to the State to develop and implement. An organization also must inform potential enrollees of their disenrollment rights prior to enrollment, and at least 30 days before the start of a new enrollment period and at least twice per year.

D. Continuation of Benefits

We would revise our regulations at §§ 435.212 and 435.326 to permit certain Community, Migrant, and Appalachian Health Centers to participate in the provision permitting States to allow recipients to continue to receive Medicaid benefits for periods up to 6 months after they have lost entitlement. These sections of the proposed regulations also would permit HMOs owned and controlled by certain Community, Migrant, and Appalachian Health Centers to participate in the continuation of benefits rule.

E. Technical Change

We propose to make a technical correction to § 434.20(b) to clarify a cross reference made in this section.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis on any proposed major rule. A major rule is defined as any regulation that is likely to:

(1) Have an annual effect on the economy of $100 million or more,

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability or United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed provision expanding the waiver authority for the composition-of-enrollment limit (that is, no more than 75 percent of enrollees are Medicare or Medicaid participants) should not have a significant impact on Federal or State expenditures under the Medicaid program. A small number of HMOs are having temporary difficulties keeping enrollments within the limits and may benefit slightly because of expanded waiver authority under the proposed rule. However, the impact on providers' costs and Medicaid payment rates would be negligible.

We do not know how many Community, Migrant, and Appalachian Health Centers may meet the qualifying requirements of this proposed rule. The change would permit States to contract with these organizations which typically serve a predominately low-income population, on a risk capitation basis. These additional types of organizations would be able to offer services to recipients in a cost-effective and efficient manner, saving money for State Medicaid programs at the same time.

The proposal to grant States the option of establishing Medicaid rules restricting disenrollments during the second to sixth month period following enrollment could result in slight benefits to a small number of HMOs. Some HMOs are experiencing cash-flow problems because of frequent disenrollments by Medicaid patients. However, because we do not have information enabling us to estimate the number of States that would exercise this option, we cannot predict the number of HMOs that would be affected.

The proposal to permit States to continue Medicaid benefits to recipients who lose entitlement to the program but who are enrolled in certain Community, Migrant, and Appalachian Health Centers would encourage the participation of additional organizations in the program. Recipients often have changes in income which cause them to go on and off the rolls several times during relatively short periods. These fluctuations in Medicaid eligibility cause administrative difficulties, such as the timely stopping of State payments to an organization when a recipient's eligibility ends. An organization would also be able, under this proposed rule, to be certain of income for particular periods of enrollment. We expect only a negligible fiscal impact upon the Medicaid program.

The expected impact of this proposed rule on HMOs and on Medicare and Medicaid expenditures would be negligible. Further, the effects would result primarily from the statutory requirements of section 2364 of Pub. L. 98–369 and section 9517 of Pub. L. 99–272, not this proposed rule. Therefore, we have estimated that it is not a major rule under Executive Order 12291 and that an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) we prepare and publish an initial regulatory flexibility analysis for a proposed regulation unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small entities. All HMOs with risk comprehensive contracts under the Medicaid program would be considered small entities under the RFA.

To determine precisely the impact of these proposals and their significance we would need to know the cost impact of frequent disenrollments, the estimated number of reduced disenrollments under the proposed rule, and which States would exercise the option to apply the limit on disenrollments. In addition, we would need to know how many organizations qualify under the changes in the Act. We do not have such data. However, the number of HMOs affected would likely be small, the effects on HMOs would not be adverse, and the impact is a result of the statutory mandate, not of this rule. Therefore, we have determined, and the Secretary certifies, that this regulation would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

Sections 434.27 (b), (c), (e), and (g)(2) and (3) of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980.

BEST COPY AVAILABLE

Other organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the **ADDRESS** section of this preamble.

V. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to the issue in the preamble to that rule.

List of Subjects

42 CFR Part 434

Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements, Grant programs—health.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Supplemental Security Income (SSI).

A. 42 CFR Part 434, Subpart C would be amended as set forth below.

PART 434—CONTRACTS

Subpart C—Contracts With HMOs and PHPs: Contract Requirements

1. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 434.20, paragraph (a) is revised to read as follows, and in paragraph (b) the citation "§ 434.21" is revised to read "§ 434.21(b)."

General Requirements

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract, for the scope of services specified in § 434.21, only with an entity that—

(1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;

(3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as a PHP; or

(4) Is one of certain Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act. These entities are subject to the regulations governing HMOs under this Part, with the exception of the requirements of section 1903(m)(2)(A) (i) and (ii) of the Act.

* * * * *

3. In § 434.26, paragraph (b) is amended by redesignating paragraph (b)(3) as (b)(4) and new paragraphs (b)(3) and (b)(5) are added to read as follows:

§ 434.26 Composition of enrollment.

* * * * *

(b) * * *

(3) *Waiver for certain nonprofit HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for a nonprofit HMO which has a minimum of 25,000 members, is and has been Federally qualified for a period of at least 4 years, provides basic health services through members of its staff, is located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act, and has previously received a waiver under section 1115 of the Act of the requirement described in paragraph (a) of this section, if—

(i) There are special circumstances that justify modification or waiver; and

(ii) The HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

* * * * *

(5) *Special exemption.* (i) Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act are exempt from the basic rule; and

(ii) Health maintenance organizations (as defined in section 1903(m)(1)(A) of the Act) that are primarily owned and controlled by centers specified in paragraph (b)(5)(i) of this section are exempt from the basic rule if they furnish primary care services substantially through such centers.

4. Section 434.27 is amended by revising paragraph (b) and adding paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 434.27 Termination of enrollment.

* * * * *

(b) An HMO risk comprehensive contract must specify either—

(1) That an enrollee of an organization with a risk comprehensive contract may terminate enrollment freely at any time, effective no later than the first day of the second month after the month in which he or she requests termination; or

(2) If an agency chooses to restrict disenrollment rights under paragraph (d) of this section, that an enrollee may terminate enrollment freely during the first month of any period of enrollment up to 6 months, and may terminate enrollment during the remainder of the enrollment period only as provided under paragraph (e) of this section. Termination of enrollment during the first month of a period of enrollment is effective no later than the first day of the second month after the month in which he or she requests termination. Termination of enrollment during the remainder of a period of enrollment is in accordance with paragraph (f) of this section.

(c) An HMO risk comprehensive contract under paragraph (b) of this section must specify that the HMO will inform each recipient at the time of enrollment, of the right to terminate enrollment.

(d) A State plan may provide for contracts with certain organizations which restrict disenrollment rights of Medicaid enrollees under paragraph (b)(2) of this section if the following conditions are met—

(1) For purposes of this section the organization is—

(i) A Federally qualified HMO whose Medicare and Medicaid enrollment constitutes less than 75 percent of its total enrollment;

(ii) One of the entities identified in section 1903(m)(2)(G) of the Act; or

(iii) One of the entities described in § 434.26(b)(5)(ii); and

(2) The disenrollment requirements of paragraphs (e), (f) and (g) of this section are met.

(e) An agency choosing to restrict enrollee disenrollment rights under paragraph (b)(2) of this section in its contract with the organization—

(1) Must permit the enrollee to request disenrollment without cause during the first month of any enrollment period (an enrollment period may not exceed 6 months);

(2) Must permit an enrollee to disenroll during the remainder of any period of enrollment following the first month, if (in accordance with the organization's contract with the State agency) the organization approves the enrollee's request to disenroll, or if all of the following requirements are met—

(i) An enrollee requests in writing to the State agency and the organization disenrollment for good cause;

(ii) The request cites the reason(s) why he or she wishes to disenroll, such as poor quality care, lack of access to necessary specialty services covered under the State plan, or other reasons satisfactory to the State agency;

(iii) The organization provides information that the agency may require; and

(iv) The agency determines that good cause for disenrollment exists.

(3) May require that the recipient seek to redress the problem through use of the organization's grievance process prior to a State agency determination in a disenrollment for cause request, except in cases in which immediate risk of permanent damage to the recipient's health is alleged. The grievance process, when utilized, must be completed within 15 days after the enrollee's request to disenroll for cause is received by the organization. If the organization, as a result of the grievance process, approves an enrollee's request to disenroll, the State agency is not required to make a determination in the case.

(f) The State agency must take final action on the recipient's request within 15 days after receipt, or the recipient is deemed to have received approval for disenrollment. State agency action may be delayed beyond 15 days if the agency determines that additional information is required to consider its decision, but in no case may a decision be made and action taken later than 30 days after the request to disenroll is made. Disenrollment occurs no later than the first day of the month following the month in which a determination is made finding good cause for the recipient's disenrollment, or the date that such a request is deemed by the State to have been approved. If the agency fails to act within those specified timeframes, the recipient's request to disenroll is deemed to be approved as of the date that agency action was required.

(g) An agency which restricts disenrollment under paragraph (b)(2) of this section must also—

(1) Establish an appeal procedure for enrollees who disagree with the agency's finding that good cause does not exist for disenrollment.

(2) Require the organization to inform recipients who are potential enrollees prior to enrollment of their disenrollment rights; and

(3) Require the organization to notify enrollees of their disenrollment rights under this section—

(i) At least 30 days before the start of each new period of enrollment; and

(ii) No less than twice per year.

B. 42 CFR Part 435, Subpart C would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

Subpart C—Options for Coverage as Categorically Needy

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.212 is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) or in an entity specified in § 434.20(a)(4) or § 434.26(b)(5)(ii) (which provides services as described in § 434.21(b) of this chapter) and who becomes ineligible for Medicaid is deemed to continued to be eligible—

(a) For a period specified by the agency, ending no later than 6 months from the date of enrollment; but

(b) Only for benefits provided to him or her as an enrollee of the organization or entity described above.

3. Section 435.326 is revised to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an HMO.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in a Federally qualified HMO or in an entity specified in § 434.20(a)(4) or § 434.26(b)(5)(ii) which provides services as described in § 434.21(b) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: June 12, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved October 27, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-430 Filed 1-11-88; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF AGRICULTURE

48 CFR Parts 404, 407, 409, 410, 412, 414, 415, 416, 417, 419, 422, 424, 425, 428, 432, 436, 437, 439, 442, 445, 446, 447, and 452

[Agriculture Acquisition Circular No. 2]

Agriculuture Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of Operations, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed amendment to the Department of Agriculture Acquisition Regulation (AGAR). The revisions are intended to standardize Departmental coverage for the application of labor standards provisions in contracts for services prescribed by 29 CFR Part 4; to set administrative standards and guidelines for uniform solicitation provisions and contract clauses; and to prescribe miscellaneous internal policies and procedures.

DATE: Written comments must be received on or before February 11, 1988.

ADDRESS: Requests for a copy of the proposed rule and respondents' comments should be sent to the U.S. Department of Agriculture, Office of Operations, Procurement Division (Room 1575, South Build ng), Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, United States Department of Agriculture, Washington, DC 20250; (202) 447-8924.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
A. Executive Order 12291.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. National Environmental Policy Act.
III. Public Comments.

I. Background

One of the primary purposes of this rulemaking is to revise the AGAR, as necessary, to incorporate labor standards provisions applicable to Departmental contracts for services. USDA has been operating under instructions contained in the Federal Acquisition Circular 84-1 to follow policy and procedures contained in Federal Procurement Regulations (FPR), Temporary Regulation 76, for labor standards coverage applicable to

Federal service contracts. The FPR Temporary Regulation has expired.

There are other items within this proposed rule which will revise the blanket authority delegated to heads of contracting activities to acquire ADP resources; add policy and procedures for conducting cost-plus-award-fee contracts; and add uniform provisions and clauses for use under the Department's Contract Automation System.

II. Procedural Requirements

A. Executive Order 12291

The Executive order entitled "Federal Regulations" requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is accordingly exempt from such review.

B. Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the costs of goods or services, or other direct economic factors. It will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

All information collections contained in 48 CFR Subpart 422.70 are the direct result of Department of Labor (DOL) rules as published in 29 CFR Part 4. The DOL rules have been cleared by the Office of Management and Budget (OMB) and assigned the OMB control numbers shown therein. All other information collections contained in this AGAR amendment have been cleared by OMB in prior rulemaking or as declared by USDA in its information collection requests. For example, the information collections relative to the submission of contract proposals in section 415.407 have been declared and cleared previously as contract specific collections. This revised rule merely consolidates a range of information that contracting officers should, at their discretion, consider asking prospective contractors to furnish.

D. National Environmental Policy Act

USDA has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432, *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR Part 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR amendment set forth in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 404, 407, 409, 410, 412, 414, 415, 416, 417, 419, 422, 424, 425, 428, 432, 436, 437, 439, 442, 445, 446, 447, and 452.

Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the address set forth above.

Issued in Washington, DC., January 6, 1988.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 88–178 Filed 1–11–88; 8:45 am]

BILLING CODE 3410–08–M

Notices

Federal Register

Vol. 53, No. 7

Tuesday, January 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 86–035N]

Compound Evaluation System; Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) announces the availability of the document "Compound Evaluation System" (CES). CES describes guidelines used by FSIS in directing resources for monitoring and controlling potentially harmful residues of chemical compounds in meat and poultry products.

FOR FURTHER INFORMATION CONTACT: Dr. W.R. Miller, Director, Residue Evaluation and Planning Division, Science Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2807.

SUPPLEMENTARY INFORMATION: As part of its meat and poultry inspection program, FSIS conducts a residue program whereby residues of chemical compounds, such as animal drugs and pesticides, are monitored and controlled. Residues in meat and poultry tissues may result from a variety of sources. Violative residues from animal drugs and medicated feed often occur when the drug is used too near the time of slaughter of the livestock or poultry. Most pesticide residues result from the exposure of animals to pesticides applied to buildings, grazing areas, or feed storage areas.

Although most chemicals are appropriately used in livestock and poultry production, misues of these compounds does occur and may result in adulterating residues that ultimately cause the condemnation of carcasses or parts.

FSIS cannot monitor all chemical residues that may contaminate meat and poultry products and, therefore, must determine which chemical compounds have a greater public health significance. To assist in this determination, FSIS has developed the CES which is a well-defined, systematic approach used in evaluating chemical compounds and ranking their importance for residue monitoring. FSIS then assigns available resources and residue monitoring efforts accordingly.

FSIS hereby announces the development and availability of the CES document. Copies of CES may be obtained, without charge, from Dr. Miller at the above address.

Done at Washington, DC, on December 28, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88–482 Filed 1–11–88; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an export trade certificate of review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. A certificate of review protects the holder and the members identified in the certificate from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–A0001."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #87–A0001, which was issued on April 10, 1987 (52 FR 12578, April 17, 1987).

Applicant: American Film Marketing Association ("AFMA") 10000 Washington Boulevard; Suite S266 Culver City, CA 90232 (formerly located in Los Angeles, CA) Contact: Jerald A. Jacobs, legal counsel Telephone: 202/223–4400

Application No.: 87–A0001

Date Deemed Submitted: December 31, 1987

Summary of the Application

AFMA seeks to amend its certificate to:

1. Add each of the following companies (but not their controlling entities) as a "Member" within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2 (l): A.I.P. Distribution, Inc., Los Angeles, CA; Cineplex Odeon Films Int'l., Los Angeles, CA (controlling entity: Cineplex Odeon Corp.); Cinevest Entertainment Group, Inc., New York, NY; Double Helix Films, Inc., New York, NY; Ferde Grofe Films, Inc., Santa Monica, CA; Filmtrust Motion Picture Licensing, Culver City, CA; Image Organization, Los Angeles, CA; Imperial Entertainment, Hollywood, CA; J + M Film Sales, Los Angeles, CA (controlling

entity: J + M Entertainment): The Movie Group, Los Angeles, CA; Nova International Films, Beverly Hills, CA; Paul International, Inc., Los Angeles, CA; Virgin Vision Ltd., Los Angeles, CA (controlling entity: Virgin Films Ltd.); Vision International, Beverly Hills, CA; and Weintraub Entertainment Group, Los Angeles, CA.

2. Delete each of the following companies as a "Member" of the certificate: Embassy Films, Inc.; Granat Releasing Corp.; International Video Entertainment; JAD Films Int'l Inc.; RKO Programmes International; and UAA Films, Inc.

3. Change the listing of the company name for each current "Member" cited in this paragraph as follows: change Inter Planetary Pictures to American First Run; F/M Entertainment Int'l./Inc. to F/M Entertainment Int'l./Inc./The Norkat Co. Ltd.; Interaccess Film Dist. to Vestron International Group; International Film Representatives to Marshall Entertainment; Shapiro Entertainment Corp. to Shapiro/Glickenhaus Ent.; Showtime/The Movie Channel to Viacom International, Inc.; and Manson International to M.C.E.G./Manson Int'l.

Date: January 5, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-469 Filed 1-11-88; 8:45 am]

BILLING CODE 3510-DR-M

President's Export Council, Foreign Trade Practices and Negotiations Subcommittee and the Trade Expansion Subcommittee; Open Meeting

A joint meeting of the President's Export Council Subcommittee on Foreign Trade Practices and Negotiations and Subcommittee on Trade Expansion will be held February 3, 1988, 9:30 a.m.–11:30 a.m. and 1:00 p.m.–3:30 p.m. at the J. W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to U.S. export trade.

Open Session: Panel discussions on agriculture in the GATT.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Sylvia Lino (202) 377–1125

Dated: January 5, 1988.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 88-470 Filed 1-11-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh Effective on February 1, 1988

January 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary: In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1988 and extends through January 31, 1989, at the designated levels.

Background: Pursuant to its authority under Section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, and as translated to the new category system, the Committee for the Implementation of Textile Agreements will establish specific limits for the People's Republic of Bangladesh for cotton and man-made fiber textile products in Categories 331, 334, 335, 336, 338/339, 340/640, 341, 342/642, 347/348, 635, 638/639, 641, 645/646 and 647/648, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1988 and extends through January 31, 1989.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Proposed Tariff Schedule of the United States Annotated. See **Federal Register** notice dated September 25, 1987 (52 FR 36604), as amended on October 16, 1987 (52 FR 39264).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 7, 1988.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1988 and extends through January 31, 1989, in excess of the following limits:

Category	Twelve-month restraint limit
331	567,418 dozen pairs
334	68,328 dozen
335	122,684 dozen
336	63,600 dozen
338/339	636,000 dozen
340/640	1,491,968 dozen of which not more than 343,153 dozen shall be in shirts made from fabric with two or more colors in the warp and/or filling in Category 340pt./640pt.[1]
341	1,235,960 dozen of which not more than 432,586 dozen shall be in shirts made from fabric with two or more colors in the warp and/or filling in Category 341pt.[1]
342/642	209,880 dozen
347/348	1,112,364 dozen
635	154,836 dozen
638/639	821,500 dozen
641	498,712 dozen of which not more than 174,549 dozen shall be in Category 641pt.[1]
645/646	192,920 dozen
647/648	674,160 dozen of which not more than 438,204 dozen shall be in Category 647pt./648pt.[1]

[1] In Category 340pt. only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637, and 381.5660; in Category 640pt. only TSUSA numbers 381.3102, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.

[2] In Category 341pt., only TSUSA numbers 384.4609, 384.4610, 384.4612 and 384.4787.

[3] In Category 641pt. only TSUSA numbers 384.9110 and 384.9120.

[4] In Category 647pt./648pt. only TSUSA numbers 381.2370, 381.2375, 381.2859, 381.3190, 381.3335, 381.3549, 381.6679, 381.6984, 381.8531, 381.8672, 381.8835, 381.8840, 381.9234, 381.9310, 381.9575, 381.9580, 381.9846, 381.9974, 384.1950, 384.2010, 384.2015, 384.2017, 384.2030, 384.2040, 384.2050, 384.2267, 384.2345, 384.2348, 384.2351, 384.2355, 384.2667, 384.2783, 384.5482, 384.5684, 384.7756, 384.7858, 384.8241, 384.8242, 384.8244, 384.8245, 384.8247, 384.8256, 384.8258, 384.9000, 384.9172, 384.9174, 384.9176, 384.9372 and 384.9676.

To the extent that trade which now falls in the foregoing categories is within a category limit for the previous restraint periods, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits are subject to adjustment in the future according to the terms of the bilateral agreement of February 19 and 24, 1986, as amended, which provide in part, that specific limits may be adjusted by designated percentages for carryover. Appropriate adjustments will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-526 Filed 1-11-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group;

The Special Operations Policy Advisory Group (SOPAG) will meet on 18 March 1988 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on Key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Linda M. Bynum,

OSD Federal Register Liaison, Department of Defense.

January 7, 1988.

[FR Doc. 88-484 Filed 1-11-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for Fiscal Year 1988.

SUMMARY: The Secretary gives notice of the closing date for receipt of State applications for Fiscal Year 1988 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system for grants for students with substantial financial need.

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law, and must submit an application through the State agency that administered its SSIG Program on July 1, 1985.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands, provided they have executed the required agreement.

Authority for this program is contained in section 415A through 415D of the Higher Education Act of 1965, as amended (HEA).

(20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications: Applications for Fiscal Year 1988 SSIG funds must be mailed or hand-delivered by February 19, 1988.

Applications Delivered by Mail: Applications sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW., Washington, DC 20202 and marked for the attention of Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Room 4018, ROB–3. The Department of Education requires proof of mailing. Proof of mailing consists of one of the following: (1) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) a legible dated U.S. Postal Service postmark; or (3) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. State Agencies should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, State Agencies should check with their local post offices. The Department of Education encourages State Agencies to use registered or at least first-class mail.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th & D Streets SW., Room 4018, GSA Regional Office Building No. 3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State Agency should be guided by the table of allotments provided in the application package.

Basic State allotments, to the extent needed by the States are determined by formula and are not subject to negotiations. The States may also require a share of reallotments, in addition to their basic allotments, contingent upon the availability of such funds from allotments to any States unable to use all their basic allotments. In FY 1987, all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands participated in the SSIG assistance delivery network.

Applications Forms: The required application form for receiving SSIG funds will be mailed to officials of appropriate State Agencies at least 30 dys before the closing date.

Applicable Regulations: The following regulations are applicable to the SSIG Program:

(1) The State Student Incentive Grant Program regulations (34 CFR Part 692).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants) except for Subpart G, Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(3) The regulations in 34 CFR Part 604 the implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in Subpart A of 34 CFR Part 668.

For Further Information: For further information contact Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202; telephone (202) 732-4507.

(20 U.S.C. 1070c-1070c-4)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: January 6, 1988.

C. Ronald Kimberling,

Assistant Secretary of Postsecondary Education.

[FR Doc. 88-519 Filed 1-11-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3214-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Survey of Municipal Waste Combustors. (EPA ICR #1397).

Abstract: EPA proposes to develop a strategy for municipal waste combustion ash that addresses potential health and environmental effects and provides a management scheme for handling and disposing of the ash. The data collected will allow EPA to determine the impact or burden on the Municipal Waste Combustors (MWC) industry of alternative new source performance standards and emission guidelines for regulating emissions from new and existing MWCs.

Respondents: Owners and Operators of Municipal Waste Combustors.

Estimated Burden: 2,600 hours

Frequency of Collection: One time

Comments on the abstracts on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standard and Regulation (PM-223), Information and Regulatory Systems Division, 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503

Date: December 28, 1987

Daniel Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 88-502 Filed 1-11-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Systems Subcommittee, Advisory Committee on Advanced Television Service; First Meeting

The first meeting of the Systems Subcommittee of the Advisory Committee on Advanced Television Service will be held on January 25, 1988, in the Commission Meeting Room (856), 1919 M Street, NW. The meeting will start at 1:00 p.m. All interested parties are invited to attend.

The objective of the Systems Subcommittee is to specify the transmission/reception facilities appropriate for providing advanced television service in the United States. Dr. Irwin Dorros, Bellcore is the Chairman of the Systems Subcommittee. The agenda for the first meeting will consist of:

1. Introduction.
2. Objectives and Organization.
—charter and scope of the Subcommittee
—organization of the Subcommittee
3. Remarks by the Subcommittee Vice Chairmen.
4. Procedural Guidelines.
—membership in the Subcommittee
—meeting announcements
—decision methods
—documentation and distribution
—treatment of ATS candidate systems
—target work plan
—membership in the Working Parties; distribution of sign-up sheets
5. Working Party 1—Systems Analysis.
—charter
—organization
—work plan and objectives
—meeting schedule
6. Working Party 2—System Evaluation and Testing.
—charter
—organization
—work plan and objectives
—meeting schedule
7. Working Party 3—Economic Assessment.
—charter
—organization
—work plan and objectives
—meeting schedule
8. Working Party 4—ATS System Standard.
—charter
—organization
—work plan and objectives
—meeting schedule
9. Closing.
—collection of Working Party sign-up sheets
—Subcommittee meeting schedule
—discussion

Any questions regarding this meeting should be directed to Mr. Bruce France at (202) 632-7060.

Federal Communications Commission

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-511 Filed 1-11-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1704]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

January 7, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed by January 28, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2, 22 and 25 of the Commission's rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Common Carrier Services. (Gen. Docket No. 84-1234, RM-4247)

Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Santa Margarita and Guadalupe, California) (MM Docket No. 86-289, RM's 5389 & 5552)

Number of petitions received: 1

Subject: Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico. (CC Docket No. 86-309)

Number of petitions received: 4

Subject: Petition for Modification of § 68.318(b) of the Commission's rules. (CC Docket No. 88-423, RM-5363)

Number of petitions received: 1

Note.—The above petition for reconsideration was inadvertently listed on Report No. 1701, Mimeo No. 1091, released December 28, 1987, as being filed in CC Docket No. 85-166. Therefore the filing dates for responses is modified to correspond with this public notice.

Subject: Amendment of Part 15 of the Commission's Rules Concerning Input Selector Switches Used in Conjunction with Cable Television Service. (Gen Docket No. 87-107)

Number of petitions received: 1

Federal Communications Commission

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-512 Filed 1-11-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Susan Lundborg et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City and State	File No.	MM Docket No.
A. Susan Lundborg	South Padre Island, TX	BPH-850712R8	87-561
B. Rio Bravo, Ltd.	South Padre Island, TX	BPH-850712S2	
C. Tony A. Cranford	South Padre Island, TX	BPH-850712R6 (Dismissed)	
D. Texas Media Group, Inc.	South Padre Island, TX	BPH-850712R7 (Dismissed)	
E. South Padre FM Group	South Padre Island, TX	BPH-850712R9 (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding hearings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Environment, A
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-513 Filed 1-11-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Robert J. Wolfe et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and state	File No.	MM Docket No.
A Robert J. Woll & Shirley P. Woll, Woodstock, VT	BPH-860808MC	87-562
B Devine Providence Broadcasting, Inc., Woodstock, VT	BPH-860811MB	
C Katherine T. McCann, Woodstock, VT	BPH-860811MC	
D Jerry Young, Woodstock, VT	BPH-860811MH	

2. Pursuant to section 309(e) of the Communications Act of 1935, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A,B,C,D
2. Ultimate, A,B,C,D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-514 Filed 1-11-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreements No.:

203-009735-021

This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Whenever a state member bank wishes to establish a domestic branch, it must receive the approval of the Federal Reserve by filing a domestic branch application, which is in the form of a letter addressed to the appropriate Federal Reserve Bank.

2. *Report Title:* Investment in Bank Premises Application
Agency Form Number: FR 4014
OMB Docket Number: 7100–0139
Frequency: On occasion
Reporters: State member banks
Annual Reporting Hours: 50
Small businesses are affected.
General Description of Report:

This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Whenever a new investment in bank premises by a state member bank causes that bank's total dollar investment in bank premises to exceed 100 percent of the bank's capital stock account, the bank is required to send an application to the appropriate Reserve Bank requesting permission from the Federal Reserve to proceed.

3. *Report Title:* Application to Issue Capital Notes
Agency Form Number: FR 4015
OMB Docket Number: 7100–0140
Frequency: On occasion
Reporters: State member banks
Annual Reporting Hours: 25
General Description of Report:

This information collection is mandatory (12 U.S.C. 461 and 12 CFR 204.2(a)(1)(vii)(c)) and is not given confidential treatment.

Whenever a state member bank wishes to issue capital notes, it is required to file a letter-form application with the appropriate Reserve Bank asking for approval from the Federal Reserve.

Board of Governors of the Federal Reserve System, January 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–463 Filed 1–11–88; 8:45 am]

BILLING CODE 6210–01–M

Algemene Bank Nederland, N.V., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Boards Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(C)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 29, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland, N.V.*, Amsterdam, The Netherlands; A.B.N.—Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; and LaSalle National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Lane Financial, Inc., Northbrook, Illinois, and thereby indirectly acquire Lake View Trust & Savings Bank, Chicago, Illinois; Northwest National Bank of Chicago, Chicago, Illinois; Northbrook Trust & Savings Bank, Northbrook, Illinois; and Bank of Westmont, Westmont, Illinois.

In connection with this application Applicant also proposes to acquire Lane Life Insurance Company, Inc., Northbrook, Illinois, and thereby engage in insurance activities that are directly related to an extension of credit by Applicant and its subsidiaries, and reinsurance of credit life and credit disability insurance that is directly related to extensions of credit pursuant to § 225.25(b)(8)(i); Lane Mortgage Corporation, Northbrook, Illinois, and thereby engage in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1); and Lane Data Services, Inc., Northbrook, Illinois, and thereby engage in data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Carlson Bankshares, Inc.*, Comfrey, Minnesota; to acquire 87.76 percent of the voting shares of First State Bank of New London, New London, Minnesota.

In connection with this application, Applicant also proposes to acquire New London Agency, Inc., New London, Minnesota, and thereby engage in insurance activities in the town of New London, Minnesota, and the surrounding area pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. Comments on this application must be received by February 3, 1988.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–464 Filed 1–11–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; James E. Berkely et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

203–009735–022
Title: Steamship Operators Intermodal Committee
Parties:
American President Lines, Ltd.
Associated Container Transportation (USA)
Atlantic Container Line, Inc.
Barber Lines, A/S
Chilean Line
Columbus Lines, Inc.
Evergreen International Corp.
Farrell Lines, Inc.
Grancolombiana (New York), Inc.
Japan Line (USA), Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Line, Ltd.
Netumar Lines
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Showa Line, Ltd.
Trans Freight Lines, Inc.
Yamashita-Shinnihon Steamship Co., Inc.
Yangming Line
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendments would delete Coordinated Caribbean Transport, Inc.; Venezuelan Line (C.A. Venezolana de Navegacion) and South African Marine Corporation as parties to the agreement.

By order of the Federal Maritime Commission.

Dated: January 7, 1988.

Joseph L. Polking,

Secretary.

[FR Doc. 88–477 Filed 1–11–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010740–001
Title: Virginia International Terminals Agreement
Parties:
Virginia International Terminals, Inc.
Seapac Services, Inc.
Neptune Orient Lines, Inc.
Kawasaki Kisen Kaisha, Ltd.
Synopsis: The proposed agreement amends the basic agreement to add Kawasaki Kisen Kaisha, Ltd. ("K" Line) as a party to the agreement.

Agreement No.: 224–011080–002
Title: Philadelphia Port Corporation Terminal Agreement
Parties: Philadelphia Port Corporation
I.T.O. Corporation
Synopsis: The proposed agreement would: (1) Extend the term of the basic agreement for sixty days until March 5, 1988; and (2) provide the option to extend for three additional 60-day periods upon mutual consent, with notification to this Commission of each such extension.

Agreement No.: 224–200080
Title: Philadelphia Port Corporation Terminal Agreement
Parties: Philadelphia Port Corporation (PPC) I.T.O. Corporation (ITO)
Synopsis: The proposed agreement settles outstanding claims and disputes arising out of I.T.O.'s subleases from PPC of certain breakbulk facilities at the Tioga Marine Terminal. The agreement results in the termination of Agreement Nos. T–3092 and T–4151.

By Order of the Federal Maritime Commission.

Dated: January 7, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–478 Filed 1–11–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 6, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before February 3, 1988.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows: Federal Reserve Board Clearance Officer, Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report Title:* Domestic Branch Application
Agency Form Number: FR 4001
OMB Docket Number: 7100–0097
Frequency: On occasion
Reporters: State member banks
Annual Reporting Hours: 95
Small businesses are affected.
General Description of Report:

or to the offices of the Board of Governors. Comments must be received not later than January 27, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James E. Berkely*, Stockton, Kansas; to acquire an additional 2.26 percent of the voting shares of Western Bancshares, Inc., Stockton, Kansas, and thereby indirectly acquire Rooks County State Bank, Woodston, Kansas.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard V. Campana*, Scottsdale, Arizona; to acquire 1.33 percent; Von E. Dix, Scottsdale, Arizona, to acquire 1.33 percent; Larry A. Gunning, Paradise Valley, Arizona, to acquire 1.33 percent; and Robert J. Schaefer, Scottsdale, Arizona, to acquire 1.33 percent of the voting shares of Scottscom Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Scottscom Bank, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-465 Filed 1-11-88; 8:45 am]

BILLING CODE 6210-01-M

Enterprise Bancorp, Inc.; Formations of, Acquisition by, and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-29939) published at page 49509 of the issue for Thrusday, December 31, 1987.

Under the Federal Reserve Bank of Dallas, the entry for Enterprise Bancorp is revised to read as follows:

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Enterprise Bancorp, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Enterprise Bank—West, N.A., Houston, Texas.

Comments on this application must be received by January 14, 1988.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-466 Filed 1-11-88; 8:45 am]

BILLING CODE 6210-01-M

Somers Bancorporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14) of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Insterested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Somers Bancorporation*, Des Moines, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Somers Saving Bank, Somers, Iowa.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Aspen Bank Shares, Ltd.*, Aspen, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Pitkin County Bank & Trust Co., Aspen, Colorado.

2. *Central of Kansas, Inc.*, Junction City, Kansas; to acquire the successor by merger of The Peoples Interim National Bank of Clay Center, Clay Center, Kansas, and the Peoples National Bank of Clay Center, Clay Center, Kansas. Comments on this application must be received by February 3, 1988.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp of Colorado*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate Bank of Denver, N.A., Denver, Colorado.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-467 Filed 1-11-88; 8:45 am]

BILLING CODE 6210-01-M

Trustcorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval undersection 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 28, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio; to expand to a nationwide basis the geographic scope of the current activities of its subsidiary, Trustcorp Mortgage Company, South Bend, Indiana, which engages in originating, acquiring, selling and servicing residential, commercial, and industrial mortgage loans; and making construction and development construction loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *R & I Financial Corporation*, Elma, Iowa; to engage in insurance activities in a town of less than 5,000 pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted in Elma, Iowa, and the immediate contiguous area.

Board of Governors of the Federal Reserve System, January 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-468 Filed 1-11-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: February 10-11, 1988.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: FTS: 236-3751, Commercial: 404/639-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will discuss influenza, Japanese B encephalitis, BCG, Yellow Fever, Hepatitis B and Hemophilus influenzae type B infections and vaccines.

Agenda items are subject to change as priorities dictate.

Dated: January 6, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-505 Filed 1-11-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, the "1988 Physicians' Practice Costs and Incomes Survey", HHS/HCFA/ORD No. 09-70-0037. We have provided background information about the proposed system in the "Supplementary Information" section below.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB) on January 7, 1988. The new system of records, including routine uses, will become effective March 7, 1988, unless HCFA receives comments which would convince us to make a contrary determination. HCFA invites public comments by February 11, 1988, with respect to routine uses of the system.

ADDRESS: The Public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Deborah K. Williams, Office of Research and Demonstrations, Health Care Financing Administration, Room 2-B-14 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone 301-594-7623.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1845(e)(4)(C)(ii) of the Social Security Act (42 U.S.C. 1395w-1(e)(4)(C)(ii), which was added by section 9331(e) of the Omnibus Budget Reconciliation Act of 1986 (OBRA-86), Pub. L. 99-509. Section 1845(e)(4)(C)(ii) mandates HCFA to develop measures of geographic differences in medical practice cost. It specifically directs the Secretary "to collect data with respect to the costs of practice (including but not limited to data on nonphysician personnel costs, malpractice insurance costs, and commercial rents)" for the purpose of refining an interim geographic-based practice cost index. Further authority for the new system is provided under section 1842(b)(3) of the Act (42 U.S.C. 1395u(b)(3)), as amended by section 224 of the Social Security Amendments of 1972, Pub. L. 92-603.

Section 1842(b)(3), relating to the determination reasonable charges, among other things, requires the Secretary to justify "on the basis of appropriate economic index data" any increases in the prevailing charge levels for physician services for a given fiscal year. Section 1842(b)(3) is implemented in the Medicare regulations for determining prevailing charge at 42 CFR 405.504.

In 1975, the Health Care Financing Administration began a periodic survey of physicians' practice costs and incomes for the purpose of refining the Medicare Economic Index and to provide data on physicians that was not publicly available elsewhere. Surveys in 1975, 1976, 1977, 1978 and 1983 gathered data on practice income, office expenses and insurance variables.

The purpose of the 1988 Physicians' Practice Costs and Incomes Survey is to collect data necessary for the development of a Geographic Cost of Practice Index, and secondarily to update the weights of the cost shares of the Medicare Economic Index (MEI). In addition to updating the cost shares, the survey will collect data on physician fees, practice patterns and financial arrangements. The system of records will include data collected through a sample survey of physicians in the United States who have patient care as their major professional activity.

In order to conduct the survey, the contractor must have individually identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the

individual for "routine uses"—that is, disclosures for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of implementing those sections of the Medicare statute previously cited. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: January 5, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0037

SYSTEM NAME:

1988 Physician's Practice Costs and Incomes Survey, HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A Contractor site will be determined when the contract is executed. Contact the Systems Manager for the location of the Contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by this system will be a sample of at least 5000 physicians who provide patient care at least 20 hours per week in either an office or hospital based setting, and who live in the 50 United States and the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Practice costs (e.g., rent or depreciation for space and equipment, employee salaries and fringe benefits, malpractice insurance, transportation), gross and net income, deferred income and fringe benefits, practice financial arrangements, fees, workloads.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1845(e)(4)(C)(ii) of the Social Security Act (42 U.S.C. 139w-1(e)(4)(C)(ii)). Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)).

PURPOSE OF THE SYSTEM:

To provide data required for development of the Geographic Cost of Practice Index and to refine the cost share weights of the Medicare Economic Index.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made:

1. To contractors for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system, or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

2. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by a unique identifier assigned by the contractor to each physician record.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, the contractor will initiate automated processing (ADP) system security procedures required by DHHS ADP Systems Manual, Part 6, ADP Systems (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards. HCFA and other contractors using the data will not be able to identify the individual physicians who participated in the survey.

RETENTION AND DISPOSAL:

Hardcopy lists of names and case identification numbers will be retained in secure storage areas. Individual records delivered to HCFA on the final data tape will contain no individual names, and the case identifiers will be different from those used by the contractor. All identifying names and numbers will be stripped from the magnetic tape. Hardcopy lists of names and identifying numbers will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 223, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager at the address indicated above and specify name and address.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current.) (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Source of information contained in this record system include data collected from physicians by means of a telephone interview survey. Data will also be provided by the American Medical Association from its master file of physicians in the U.S.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-402 Filed 1-11-88; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340

Title: Sandhill Crane Harvest Questionnaire.

Abstract: Sandhill Crane hunting is authorized in eight Midwestern States. Information on the magnitude and composition of the harvest is needed for sound management and to preclude overharvest of the species. The subject questionnaire provides the major part of that information.

Service Form Number(s): 3-530 (original questionnaire), and 3-156a (followup questionnaire to nonrespondents).

Frequency: Annually.

Description of Respondents: Lesser Sandhill Crane Hunters.

Annual Responses: 7,300.

Annual Burden Hours: 608.

Service Clearance Officer: James E. Pinkerton, 202-653-7500.

Dated: December 23, 1987.

Marvin L. Plenert,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 88-460 Filed 1-11-88; 8:45 am]

BILLING CODE 4310-AN-M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan); Alaska Peninsula National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Alaska Peninsula National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATE: This Decision on the plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation. The Wilderness Review will not be final until a Supplemental Environmental Impact Statement is completed, including an opportunity for public review and comment.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative B, with major modifications, for implementation. The Service's preferred alternative is new, resulting from public comments on the Final Plan, and contains new information regarding an oil and gas potential within the Refuge; the Service reconsidered the Preferred Alternative and decided to modify it. The modification, which reduces the amount of land proposed for wilderness designation, is based on a combination of Alternatives B and E of the Final Plan. As a result, the Service is recommending that approximately 640,000 acres on the Alaska Peninsula Refuge be added to the National Wilderness Preservation System.

Alternative B, with this modification, provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 5, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-506 Filed 1-11-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review; Koyukuk National Wildlife Refuge and Northern Unit of the Innoko National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Koyukuk National Wildlife Refuge and the Northern Unit of the Innoko National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, with several changes, for implementation. As described in the Plan, Alternative A is the alternative preferred by the Service. The Service is not recommending any additions on the Refuge to the National Wilderness Preservation System.

Alternative A provides a high degree of resource protection and a good opportunity for achieving the purposes set forth in the Alaska Lands Act, including conservation of fish and wildlife populations and habitats.

Date: January 5, 1988.

Walter O. Steiglitz,

Regional Director.

[FR Doc. 88-507 Filed 1-11-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 2, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the signficance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 27, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Graham County

Safford, *Arizona Bank and Trust (Safford MRA)*, 429 Main
Safford, *Bingham, Richard, House (Safford MRA)*, 208 Ninth Ave.
Safford, *Brooks, Paul, House (Safford MRA)* 1033 Fith Ave.
Safford, *Buena Vista Hotel (Safford MRA)*, 322 Main
Safford, *Cross, T. D., House (Safford MRA)*, 918 First Ave.
Safford, *Davis, William Charles, House (Safford MRA)*, 301 Eleventh St.
Safford, *Horowitz, Joe, House (Safford MRA)*, 118 Main
Safford, *House at 611 Third Avenue (Safford MRA)*, 611 Third Ave.
Safford, *O'Brien, Mathew, House (Safford MRA)*, 615 First Ave.
Safford, *Oddfellows Home (Safford MRA)*, 808 Eighth Ave.
Safford, *Olney, George A., House (Safford MRA)*, 1104 Central
Safford, *Packer, Alonzo Hamilton, House (Safford MRA)*, 1203 Central
Safford, *Ridgeway, David, House (Safford MRA)*, 928 Central
Safford, *Safford High School (Safford MRA)*, 520 Eleventh St.
Safford, *Southern Pacific Railroad Depot (Safford MRA)*, 808 Central
Safford, *Talley, Hugh, House (Safford MRA)*, 1114 Third Ave.
Safford, *Talley, William, House (Safford MRA)*, 219 Eleventh St.
Safford, *Welker, James R., House (Safford MRA)*, 1127 Central
Safford, *Wickersham, David, House (Safford MRA)*, 1101 Fifth Ave.
Safford, *Williams, Dan, House (Safford MRA)*, 803 Relation
Safford, *Wilson, J. Mark, House (Safford MRA)*, 712 Relation
Safford, *Woman's Club (Safford MRA)*, 215 Main

ARKANSAS

Benton County

Bentonville, *Alden House (Benton County MRA)*, Rt. 1
Rogers, *Blackburn House (Benton County MRA)*, 222 N. Fourth St.

Garland County

Hot Springs, *Hot Springs High School*, Oak St. between Orange and Olive Sts.

COLORADO

Denver County

Denver, *Bats Grocery Store*, 4338 Clayton St.
Devner, *Hendrie and Bolthoff Warehouse Building*, 1743 Wazee

CONNECTICUT

New Haven County

New Haven, *Winchester Repeating Arms Company Historic District*, Roughly bounded by Sherman Pkwy., Ivy St., Mansfield St., Admiral St., and Sachem St.

LOUISIANA

Beauregard Parish

Dry Creek, *Dry Creek High School Building*, LA 113

MASSACHUSETTS

Berkshire County

Adams, *Hoosac Street School*, 20 Hoosac St.

Essex County

Danvers, *Fox Hill School*, 81 Water St.

Franklin County

Shelburne and Buckland, *Shelburne Falls Historic District*, Bridge and State Sts.

Middlesex County

Cambridge, *Gale, George, House (Cambridge MRA)*, 14–16 Clinton St.
Malden, *Odd Fellows Building*, 442 Main St.

Suffolk County

Boston, *District 13 Police Station*, 28 Seaverns Ave.

Worcester County

East Douglas, *Jenckes, E. N., Store*, Main St.
Winchendon, *Murdock School*, Murdock Ave.

NEW JERSEY

Mercer County

Rosedale vicinity, *Hunt Farmstead*, 197 *Blackwell Rd.*

Monmouth County

Holmdel, *Upper Meeting House of the Baptist Church of Middletown*, 40 Main St.
Wrightsville vicinity, *Merino Hill House and Farms*, Allentown—Clarksburg Rd., CR 524

NORTH CAROLINA

Craven County

New Bern, *Riverside Historic District*, Roughly bounded by N. Craven St., North Ave., E St., and Gulon St.

Guildford County

High Point, *Kirkman, O. Arthur, House and Outbuildings*, 501 W. High St.

OHIO

Delaware County

Delaware, *Neff, Edward E., House*, 123 N. *Franklin St.*

Franklin County

Canal Winchester, *Columbus, Hocking Valley and Toledo Railway Depot*, 100 N. High St.
Canal Winchester, *Chaney, O.P., Grain Elevator*, West Oak and N. High Sts.

WISCONSIN

Door County

Namur vicinity, *Namur Belgian—American District*, Roughly bounded by CR K, Brussels Rd., WI 57, Belgian Dr. and Green Bay

Waukesha County

Ocoanomowoc, *Peck, Clorence, Residence*, 430 and 434 N. Lake Rd.

[FR Doc. 88–476 Filed 1–11–88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION DEVELOPMENT

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Tunisia as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Tunisia. The Goverment of Tunisia has authorized A.I.D. to request proposals from eligible investors. The name and address of representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Tunisia

Project: **664–HG–005C—$9,000,000.**
Attention: **Mr. Fredj Abdelmajid, Dir. Des Finances Exterieures.**
Telephone: **340–588, 354–000, 651–324 or 651–328.**
Telex: **BANCENTUN 15375, 13308, 13309 or 13310.**

Interested investors should telegram their bids to the Borrower's representative on January 19th or January 20, 1988. However, bids submitted on January 20th shall be submitted no later than 3:00 a.m. New York Time (to correspond to the opening of the business day in Tunis). Bids should be open until 3:00 a.m. New York time on January 22, 1988. Copies of all bids should be simultaneously sent to the following addresses:

Ms. Sonia Hammam, Regional Housing Officer, RHUDO/Tunis, USAID/ Tunis, c/o American Embassy, Tunis, Tunisia, Telex: 13379 AMB TUN.

Telephone: 784–375, 784–300, 781–305 or 782–764.

Michael G. Kitay, Herbert T. McDevitt, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, DC 20523, Telex No.: 892703 AID WSA, Telefax No. 202/647–1805 (preferred communication).

Each proposal should consider the following terms:

(a) *Amount:* U.S. $9 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years with repayment amortizing gradually over the remaining life of the loan.

(d) *Interest Rate:* Proposals will be made on the basis of three rates: (fixed rate, variable rate, or variable rate with Borrowers option to convert to fixed rate).

(e) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing.

(f) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower, if pricing is not materially affected.

(g) *Fees:* Payable at closing from proceeds of loan.

Selection of investment bankers and/ or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Conflict of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the elibibility of investors and others aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 6212 N.S., Washington, DC 20523, Telephone: (202) 647–9082.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

Date: January 7, 1988.

[FR Doc. 88–532 Filed 1–11–88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–18119]

CPC International, Inc.; Control Exemption; BHL Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343, et seq., the acquisition of control by CPC International, Inc. of BHL Transport, Inc., subject to the condition for the protection of railroad employees in *New York Dock Ry.—Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This exemption will be effective on February 13, 1988. Petitions to reopen must be filed by February 8, 1988.

ADDRESSES: Send pleadings referring to No. MC–F–18119 to:

(1) Office of the Secretary, Case, Control Branch, Interstate Commerce, Commission, Washington, DC 20423, and

(2) Petitioner's representative: Frederick L. Shreves II, Garvey, Shubert & Barer, 1000 Potomac Street NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275–7691, TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (D.C. Metropolitan area) (assistance for the hearing impaired is available through TDD Services (202) 275–1721 (or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters).

Decided: December 24, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88–493 Filed 1–11–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–70 (Sub–No. 3)]

Florida East Coast Railway Co.; Abandonment in St. Johns and Putnam Counties, FL

The Commission has issued a certificate and decision authorizing the Florida East Coast Railway Company to abandon its 22.2-mile rail line between St. Augustine (milepost P–39.7) and East Palatka, FL (milepost P–61.9), in St. Johns and Putnam Counties, FL. The abandonment certificate will become effective 30 days after this publication unless within 15 days after publication the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: January 4, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented in part with a separate expression. Commissioner Simmons, joined by Vice Chairman Lamboley, dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88–494 Filed 1–11–88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 66)]

Missouri Pacific Railroad Co.; Abandonment in Muskogee, Wagoner and Tulsa Counties, OK; Findings

The Commission has modified a certificate and decision served December 16, 1987, authorizing the Missouri Pacific Railroad Company (MP) to abandon its 46.1-mile line of railroad between milepost 100.2 at Muskogee and milepost 146.3 at Tulsa, in Muskogee, Wagoner, and Tulsa Counties, OK. The modified decision authorizes MP to abandon its line of railroad only between milepost 100.2 near Muskogee and milepost 135.5 at Bixby. To the extent the certificate and decision are inconsistent with the modification, they were vacated.

The abandonment certificate as modified will become effective on January 15, 1988, unless the Commission also finds that: (1) A financially responsible party has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Decided: January 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-495 Filed 1-11-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 11-87]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division, Department of Justice, is eliminating a published Privacy Act system of records entitled "Justice Computer Service Utilization Report, JUSTICE/JMD-009."

The Justice Computer Service Utilization Report was misidentified as a Privacy Act system of records since information contained in the report is not retrieved by personal identifier. The report contains administrative management information relating to the use of computer resources by the Department components; thus, information is retrieved by job name or by organization code. Accordingly, this system, as published in the **Federal Register** on February 4, 1983 (48 FR 5359), is not a system of records as defined by the Privacy Act, and is removed from the Department's compilation of Privacy Act systems.

Dated: December 21, 1987.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-486 filed 1-11-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 12-87]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division (JMD), Department of Justice, is eliminating a published Privacy Act system of records entitled "Justice Computer Service Tape Library System, JUSTICE/JMD-011."

The computer service tape library was misidentified as a Privacy Act system of records since information on the library tape is not accessed by personal identifier. It is an indexing system used to locate individual tapes that are owned and accessed only by the Department components having responsibility for the records contained thereon.

The indexing system itself (the subject of this notice) is accessed by JMD only through the organization code, userid, or tape dataset name to determine where the individual tapes are physically located, and to identify the owners thereof and the subject matter or the type of records contained thereon. Access to records on the tapes is restricted to authorized personnel of the appropriate owner components through the use of passwords or user identification codes. Appropriate notices are published in the **Federal Register** where these records constitute a system of records as defined by the Privacy Act.

For the above-stated reasons, the Justice Computer Service Tape Library System, as published in the **Federal Register** on February 4, 1983 (48 FR 5359), is not a system of records as defined by the Act, and is removed from the Department's compilation of Privacy Act systems.

Dated: December 21, 1987.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-487 Filed 1-11-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 10-87]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division, Department of Justice, is eliminating a published system of records entitled "Expert Consultant/Witness File, JUSTICE/JMD-006." While the Division published notice of its intent to establish this system of records, it never actually implemented the system because of the unavailability of sufficient information to make it useful. Accordingly, the system, as published in the **Federal Register** on November 17, 1983 (51 FR 3673), is removed from the Department's compilation of Privacy Act systems.

Dated: December 21, 1987.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-492 Filed 1-11-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Penick Corp.

By Notice dated September 16, 1987, and published in the **Federal Register** on September 24, 1987 (52 FR 35973), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 4, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-483 Filed 1-11-88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Graduate Fellowship Program Review Committee; Cancellation of Meeting

The first meeting of the Committee to Review the Graduate Fellowship Program scheduled for January 13–15, 1988, at the National Science Foundation, Washington, DC has been cancelled. The meeting has been tentatively rescheduled for early March.

The initial meeting notice appeared on December 29, 1987, in 52 FR 49099.

For questions about this committee, please contact Dr. James F. Hays, Senior Science Advisor, at (202) 357–9443.

M. Rebecca Winkler,

Committee Management Officer.

January 6, 1988.

[FR Doc. 88-496 Filed 1-11-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets No. 50-336]

Issuance of Environmental Assessment and Finding of No Significant Impact; Northeast Nuclear Energy Co., et al., Millstone Nuclear Power Station, Unit 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

Identification of Proposed Action

The amendment would consist of a change to the operating license to extend the expiration dates of the operating license for Millstone Nuclear Power Station, Units 2, from December 11, 2010 to July 31, 2015. The proposed license amendment is responsive to the licensee's application dated December 22, 1986. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-65, Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit No. 2, Dockets No. 50-336, dated January 6, 1988.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for Millstone Nuclear Power Station, Unit 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station," June 1973 the Final Environmental Statement related to the operation of Millstone Nuclear Power Station Unit No. 3 NUREG–1064, December 1984, and more recent NRC policy.

Radiological Impacts

The staff concludes that the Exclusion Area, the Low Population Zone and the nearest population center distances will likely be unchanged from those described in NUREG–1064. Since the 40 year operating license for Millstone Unit 3 will go beyond the proposed operating life of Millstone Unit 2, the analysis in the FES, dated December 1984, would also bound the 40 year license for Millstone Unit 2 in regard to low population zone, and distance to population centers.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulation regarding as-low-as-is-reasonably-achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the occupational exposures for Millstone Unit 2 have been among the highest in the nuclear industry. The licensee is addressing the problem of high occupational exposures via a number of short and long term dose reduction initiatives. The NRC staff has reviewed the licensee's initiatives and believes that these initiatives will result in a substantial reduction in occupational exposures at Millstone Unit 2.

The NRC staff concludes that radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and the staff's previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Millstone Nuclear Power Station, Unit 2, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission's staff has reviewed the proposed change to the expiration date of the Millstone Nuclear Power Station, Unit 2, Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated December 26, 1986, (2) the Final Environmental Statement Related to Continuation of Construction of Unit 2 and Operation of Units 1 and 2, Millstone Nuclear Power Station, and June 1973, and (3) the Environmental Assessment dated January 6, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC, 20555 and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 6th day of January 1988.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88-455 Filed 1-11-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-135; License No. SNM-145]

Issuance of Director's Decision; Babcock and Wilcox

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to Petitions for action under 10 CFR 2.206 received from Ms. Cindee Virostek dated February 24, 1987, with respect to the Babcock & Wilcox Apollo facility. The Petitioner requested that the license for the facility be "suspended until corrective actions have been fully implemented," after which the license be "terminated and revoked, and the

facilities and grounds be released for unrestricted use."

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petitions. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206." (DD–88–1) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Silver Spring, Maryland this 5th day of January 1988.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–454 Filed 1–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Northeast Nuclear Energy Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

By application for license amendment dated December 28, 1987, as supplemented by letter dated January 5, 1988, the licensee requested changes to Millstone Unit 2 Technical Specification (TS) 4.6.1.2, "Containment Leakage" as follows: (1) The reference to ANSI Standard N45.4–1972 would be deleted and (2) the error analysis requirements would be modified to allow the use of alternate methods. The above changes to the TS have been proposed by the licensee to allow for use of ANSI/ANS Standard 56.8–1981 for "mass point" determination of containment leakage rate and for addressing the inherent errors associated with such testing.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 10, 1988, the licensee may file a request for a hearing with respect to the issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceedings. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 324–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 28, 1987, as supplemented by the letter of January 5, 1988. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06103.

Dated at Bethesda, Maryland this 5th day of January 1988.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–456 Filed 1–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–313 and 50–368]

Arkansas Power and Light Company; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–51, and NPF–6 issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Units 1 and 2 located in Russellville, Arkansas.

The amendments would revise the provisions in the Technical Specifications relating to the responsibilities of the Plant Safety Committee relative to procedure reviews, in accordance with the licensee's applications for amendment dated December 4, 1987.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 11, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth St. NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment dated December 4, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland this 6th day of January, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–522 Filed 1–11–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Arkansas Power and Light Company; Correction

The United States Nuclear Regulatory Commission issued a notice in the Federal Register on December 28, 1987 (52 FR 48887) that it is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Arkansas Power and Light Company for operation of the Arkansas Nuclear One, Unit 2 located in Russellville, Arkansas. The date on page 48887 of the earlier notice is changed from January 25, 1988

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to January 27, 1988, for the deadline by which the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 7th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-520 Filed 1-11-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration, Determination, and Opportunity for Prior Hearing; Correction

The United States Nuclear Regulatory Commission issued a notice in the **Federal Register** on December 28, 1987 (52 FR 48889) that it is considering issuance of an amendment to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District for operation of the Rancho Seco Nuclear Generating Station located in Sacramento County, California. The date on page 48889 of the earlier notice is changed from January 25, 1988 to January 27, 1988, for the deadline by which the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 7th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-521 Filed 1-11-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for the Use of Consulting Services

AGENCY: Office of Management and Budget.

ACTION: Revision to Circular A-120, "Guidelines for the Use of Consulting Services".

SUMMARY: This notice revises OMB Circular A-120, "Guidelines for the Use of Consulting Services," dated April 14, 1980.

The revision is based on recommendations of the Cabinet Council on Management and Administration which in 1984 conducted a study in response to reports of abuses of consulting services by Federal departments and agencies.

The revision: (1) Expands the coverage of the circular; (2) requires the designation of a single official by each agency to be responsible and accountable for assuring that the provisions of the circular are met; (3) mandates minimum controls for the management and reporting of advisory and assistance services; and (4) exempts from the provisions of the circular all activities carried out in accordance with Circular A-76 (Revised) "Performance of Commercial Activities."

EFFECTIVE DATE: These revisions to Circular A-120 are effective immediately.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Management and Budget, Financial Management Division, New Executive Office Building, 728 Jackson Place NW., Room 10201, Washington, DC 20503, (202) 395-6903.

SUPPLEMENTARY INFORMATION: Notice of the proposed revision was published for comment in the **Federal Register** on June 25, 1987, (52 FR 23918). In response, OMB received comments from more than 20 Federal agencies and private organizations.

Following is a summary of the major comments grouped by subject and a response to each.

Comment: Since the Cabinet Council study, a number of new safeguards have come into being. These include various provisions of the Competition in Contracting Act (Pub. L. 98-369), the establishment of competition advocates in all Federal agencies, the issuance of Circular A-123, and the annual reports by agency inspectors general. Because of these developments, the coverage of the circular should not be expanded.

Response: The additional management controls enacted since the Cabinet Council study may be presumed to have diminished abuses in the procurement of advisory and assistance services. However, there is not evidence that abuses have been eliminated and the types of activities covered by the expanded coverage continue to be inherently vulnerable. Further, the expanded coverage of the circular is consistent with the coverage adopted by the Department of Defense in 1986.

Comment: A substantial paperwork and management burden will be created by applying the controls previously required only for consulting services to the much larger number of procurements of advisory and assistance services.

Response: First, in response to comments (as noted below) the circular has been revised to eliminate day to day operational activities from its requirements. Secondly, agencies may find it useful to review their existing controls and consider whether it is desirable to apply them in their entirety to the newly covered activities. Some agencies now utilize greater control than is required by the Federal Acquisition Regulations (Subpart 37.2—Consultant Services). These additional controls need not be applied to all advisory and assistance services if, in the judgment of the agency, it is not desirable.

Comment: The requirement that the renewal of contracts entered into in accordance with Circular A-76 be subject to the provisions of the circular would constitute a disincentive to the initial use of the A-76 process.

Response: Section 3 has been revised to exempt all activities reviewed in accordance with Circular A-76.

Comment: The proposed definition includes a large number of routine, day to day activities which had never been identified as subject to significant abuses.

Response: Section 6.6 of the Exclusions has been revised to exclude day-to-day operations of functions such as building maintenance or ADP operations. In the same vein, section 5.A.(3)c has been revised to exclude training which maintains skills necessary for normal operations.

Comment: The requirement that procurements of advisory and assistance services be reported to the Federal Procurement Data System solely by use of the Individual Contract Action Report (SF 279) ignores the existence of accurate alternative reporting systems.

Response: Section 9 of the circular, Data Requirements, has been revised so that the Office of Federal Procurement Policy (OFPP) can allow agencies to use alternative reporting systems when appropriate.

A small number of additional revisions were also made in order to clarify the text and correct technical inaccuracies.

James C. Miller III,

Director.

[Circular No. A-120]

To the Heads of Executive Departments and Establishments

Subject: Guidelines for the use of Advisory and Assistance Services

1. *Purpose.* This circular establishes policy, assigns responsibilities, and sets guidelines to be followed by executive branch agencies in determining and controlling the appropriate use of advisory and assistance services obtained from individuals and organizations. This circular supersedes OMB Circular No. A-120 "Guidelines for the Use of Consulting Services," dated April 14, 1980.

2. *Background.* OMB Bulletin No. 78-11, issued May 5, 1978, first required agencies to apply extra controls to the procurement of consultant services. Circular A-120, dated April 14, 1980, provided permanent guidance in lieu of the interim guidance provided by the Bulletin. A Model Control System for consulting services was issued on January 15, 1982, to provide further guidance, which was non-mandatory.

In 1984, the Cabinet Council on Management and Administration (CCMA) completed a study of consulting services to estimate expenditures, review definitions and existing controls, and propose reforms. The study resulted from continuing reports, by GAO and other agencies, of problems in the way the Government manages and uses consulting services.

This revision of Circular A-120 is being issued (1) to expand the coverage of the circular; (2) to mandate controls for the management and reporting of advisory and assistance services; and (3) to clarify the relationship between Circular A-120 and OMB Circular No. A-76 (Revised) "Performance of Commercial Activities," issued August 4, 1983.

3. *Relationship to OMB Circular A-76.* Activities that are reviewed in accordance with the A-76 process are exempt from the provisions of this circular except that when the functions performed by the contractor meet the definition of advisory and assistance services set forth in this circular, the contracting action must be reported in accordance with Sections 8.A. and 9.A. below. When A-76 contracts are renewed, they are also exempt from the provisions of this circular.

4. *Coverage.* The provisions of this circular apply to advisory and assistance services obtained by the following arrangements:

A. Personnel appointment;
B. Procurement contract; and
C. Advisory committee membership.

5. *Definition.* Advisory and Assistance Services are those services acquired from non-governmental sources by contract or by personnel appointment to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems. Such services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, and direct assistance. Advisory and assistance services include consultant services provided by indivduals, as defined in the Federal Personel Manual, Chapter 304.

A. Advisory and assistance services include activities having any of the following characteristics:

(1) Individual Experts and Consultants. Individual experts and consultants are persons possessing special, current knowledge or skill which may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making. These named individuals may either work independently or be assembled into panels, commissions, or committees.

(2) Studies, Analyses, and Evaluations. Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

a. Objective: To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the application of fact finding, analysis, and evaluation.

b. Areas of application: All subjects, issues, or problems involving policy development or decision-making in the agency. These may involve concepts, organizations, programs and other systems, and the application of such systems.

c. Outputs: Outputs are formal, structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

d. Exclusions and exemptions: A complete list of exclusions and exemptions from the provisions of this circular is attached.

(3) Management and Professional Support Services. Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

a. Objective: To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

b. Areas of application: Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

c. Outputs: Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.

d. Exclusions and exemptions: A complete list of exclusions and exemptions from the provisions of this circular is attached.

(4) Engineering and Technical Services. Engineering and technical services (technical representatives) take the form of advice, training, or under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete "hardware system" are part of the normal development, production, and

procurement processes and do not fall within the meaning of this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are within the meaning of this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

6. *Exclusions.* The attachment lists the Government programs and activities that are excluded from the provisions of this circular unless agencies decide to include them (see Section 8A below).

7. *Policy.*

A. When essential to the mission of the agency, the proper use of advisory and assistance services is a legitimate way to :

(1) Obtain outside points of view to avoid too limited judgment on significant issues;

(2) Obtain advice regarding developments in industry, university or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts whose national or international prestige can contribute to the sources of important projects;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems; and

(7) Secure citizen advisory participation in developing or implementing Government programs that, by their nature or by statutory provision, call for such participation.

B. Advisory and assistance services shall not be:

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Awarded on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Procured through grants and cooperative agreements; and

(6) Obtained for professional or technical advice which is readily available within the agency or another Federal agency, except when the contract is entered into pursuant to the procedures and provisions of Circular A-76.

C. No contracts for advisory and assistance services may be continued longer than five years without being reviewed for continued compliance with this circular.

8. *Management Controls.*

A. Each agency will assure that it maintains an accounting or information system which effectively monitors and reports advisory and assistance service activites.

B. Each agency's management control system for advisory and assistance services shall at a minimum comply with the Federal Acquisition Regulation. Agencies are encouraged to apply the same control system to other procurements which in their judgment require similar management attention, notwithstanding the exclusion of those functions or programs from the provisions of this circular.

C. Each agency will assure that for all advisory and assistance service arrangements:

(1) The elements of the management control system required by this circular have been observed, and all procurements under this circular are administered in accordance with the requirements of the Federal Acquisition Regulation;

(2) As prescribed by the Federal Acquisition Regulation, written approval of all advisory and assistance services arrangements will be required at a level above the organization sponsoring the activity. Additionally, written approval for all advisory and assistance service arrangements during the fourth fiscal quarter will be required at the second level or higher above the organization sponsoring the activity;

(3) Every requirement is appropriate and fully justified in writing. Such justification will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services;

(4) Work statements are specific, complete, and specify a fixed period of performance for the service to be provided;

(5) Acquisition of advisory and assistance services conform to the Competition in Contracting Act of 1984;

(6) Appropriate disclosure is required of, and warning provisions are given to, the performer(s) to avoid conflict of interest;

(7) Advisory and assistance service arrangements are properly administered and monitored to ensure that performance is satisfactory;

(8) The service is properly evaluated at the conclusion of the arrangement to assess its utility to the agency and the performance of the contractor; and

(9) To the extent practicable, contracts for these services require a written report. Such reports typically would document the services delivered and may, in part, take the form of software packages.

D. Delegations of Authority.

(1) Each agency head shall designate a single official reporting directly to him or her who shall be responsible and accountable for assuring that the acquisition of advisory and assistance services meets the provisions contained in this circular. The single official shall have minimum responsibility for the procurement of such services.

(2) Each agency will establish specific levels of delegation of authority to approve the need for advisory and assistance services based on the policy and guidelines contained in this circular. The senior official shall review each advisory and assistance services request which exceeds an amount to be determined by the agency.

E. Policy and procedures governing advisory committees and their membership as well as the procurement of advisory and assistance services are contained in General Services Administration regulations, 41 CFR Part 101-6.

F. The Federal Personnel Manual, Chapter 304, governs policy and procedures regarding personnel appointments.

G. The Federal Acquisition Regulation governs policy and procedures regarding contracts.

9. *Data Requirements.*

A. Contracted advisory and assistance services shall be reported to the Federal Procurement Data System (FPDS) in accordance with the instructions in the FPDS Reporting Manual.

B. Contract actions of $25,000 or less reported on the Summary Contract Action Report ($25,000 or less) (SF 281) are not covered by this reporting requirement.

C. The following data systems will continue to provide information on advisory and assistance service arrangements within the executive branch:

(1) Central Personnel Data File (CPDF), operated by the Office of Personnel Management, provides data on personnel appointments, segregating advisors, experts, and advisory committee members.

(2) The Federal Procurement Data System (FPDS) provides data on contract arrangements that are monitored by the management control system required by Section 8 of this circular.

(3) Advisory committee data is provided in accordance with Section 2 of Executive Order No. 12024 to fulfill the requirements of section 6(c) of the Federal Advisory Committee Act, as amended (Pub. L. 92-463, 5 U.S.C., App.).

10. *Effective Date.* This circular is effective immediately.

11. *Inquiries.* All questions or inquiries should be submitted to the Office of Management Budget. Telephone number (202) 395-6903.

James C. Miller III,

Director.

Exclusions

1. The following activities are excluded from the purview of Circular A-120.

1. Activities that are reviewed in accordance with the A-76 process. (Such activities must be reported in accordance with sections 8.A and 9.A.)

2. Architectural and engineering services of construction and construction management services.

3. ADP/Telecommunications may be excluded if such functions and related services are controlled in accordance with 41 CFR Part 201, the Federal Information Resource Management Regulations.

4. Research on theoretical mathematics and basic medical, biological, physical, social, psychological or other phenomena.

5. Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

6. The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations, building maintenance, etc.).

7. Government-owned, contractor operated facilities (GOCOs) (e.g., Oak Ridge National Laboratory, the Holston Army Ammunition Plant in Kingsport, Tennessee). However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the provisions of this circular.

8. Clinical medicine.

9. Those support services of a managerial or administrative nature performed as a simultaneous part of, and non-separable from, specific development, production, or operational support activities. In this context, non-separable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

10. Contracts entered into in furtherance of statutorily mandated advisory committees.

11. Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.

12. Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.

13. Auctioneers, realty-brokers, appraisers, and surveyors.

II. The following programs are excluded from the purview of Circular A-120.

1. The National Foreign Intelligence Program (NFIP).

2. The General Defense Intelligence Program (GDIP).

3. Tactical Intelligence and Related Activities (TIARA).

4. Foreign Military Sales.

[FR Doc. 88-481 Filed 1-11-88; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP 87-12; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; General Motors Corp.

This notice grants the petition by General Motors Corporation of Warren, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on October 6, 1987, and an opportunity afforded for comment (52 FR 37394).

Standard No. 101 specifies individual identifying symbols for the windshield washer control and the windshield washer and wiper combined control. General Motors has determined that a total of forty-eight 1987 Brigadier trucks were manufactured with an incorrect illuminated identification for the windshield washer control. The symbol for combined windshield washer and wiper was used instead of the identifying symbol for windshield washer alone. General Motors supports its petition with the following:

1. "The washer control in question is properly identified on the control itself with the symbol specified in FMVSS 101. The incorrect symbol usage is limited to an adjacent identification which is present for purposes of meeting the illumination requirement of FMVSS 101.

2. The Owner's Manual clearly illustrates and describes the washer control and its function.

3. A driver will easily and readily recognize this control, especially the skilled professional driver of heavy duty commercial vehicles such as the Brigadier."

No comments were received on the petition.

Because the control itself bears the proper symbol, NHTSA believes that any confusion on the part of the driver is most likely to occur when the headlamps are in use, and the incorrect identification illuminated. The instrument panels of the trucks in question are designed such that the windshield washer control is adjacent to the windshield wiper control. The illuminated identification of the wiper control is correct, as is the symbol on the washer control itself, minimizing the possibility that the operator will activate the washer control in the belief that it is the wiper control. Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 83-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 6, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-497 Filed 1-11-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section

999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Dated: January 5, 1988.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-474 filed 1-11-88; 8:45 am]

BILLING CODE 4810-25-M

Reader Aids

Federal Register
Vol. 53, No. 7
Tuesday, January 12, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12537 Amended by EO 12624 ... 489
12578 (Superseded by EO12622) ... 222
12622 ... 222
12623 ... 487
12624 ... 489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 ... 399

5 CFR

890 ... 1

Proposed Rules:
330 ... 408
351 ... 408

7 CFR

301 ... 733
400 ... 2
704 ... 733
905 ... 401
907 ... 6, 491
910 ... 7, 492
911 ... 402
959 ... 401
971 ... 401
987 ... 401
1430 ... 107
1902 ... 231

Proposed Rules:
68 ... 411
301 ... 140
401 ... 505, 507
907 ... 412
908 ... 412
910 ... 255
979 ... 413
981 ... 414
1126 ... 256
1136 ... 686
1260 ... 509
1701 ... 140

10 CFR

73 ... 403

Proposed Rules:
2 ... 415
430 ... 30

11 CFR

Proposed Rules:
109 ... 416
114 ... 416

12 CFR

206 ... 492
208 ... 492
226 ... 467
337 ... 597
525 ... 312
561 ... 324, 338
563 ... 324, 338, 354, 363, 372, 385
563c ... 324
571 ... 338, 372, 385
583 ... 312
584 ... 312

Proposed Rules:
226 ... 467

14 CFR

39 ... 8-14, 232, 493-495
71 ... 496, 497, 619
75 ... 497
91 ... 233
97 ... 499

Proposed Rules:
39 ... 258, 514, 515
71 ... 516, 517, 666, 670, 674
73 ... 517

15 CFR

399 ... 108

Proposed Rules:
379 ... 418

16 CFR

13 ... 609

Proposed Rules:
13 ... 141

17 CFR

1 ... 609, 615
211 ... 109

18 CFR

271 ... 15
1301 ... 405

19 CFR

24 ... 615

Proposed Rules:
141 ... 30
178 ... 30

20 CFR

Proposed Rules:
361 ... 143
901 ... 147

21 CFR

81 ... 19
176 ... 97
193 ... 20, 233
540 ... 234
546 ... 235
558 ... 235, 236

561.....20, 233
606.....111
610.....111
640.....111
1308.....500
Proposed Rules:
193.....259
561.....259
1308.....743

23 CFR

655.....236

24 CFR

221.....615
236.....615
Proposed Rules:
115.....260

26 CFR

1.....117, 238
Proposed Rules:
1.....153, 261

28 CFR

55.....735
541.....196

29 CFR

2702.....737

33 CFR

117.....119, 406
165.....616

36 CFR

5.....739
404.....120
Proposed Rules:
223.....519

37 CFR

201.....122, 123
Proposed Rules:
203.....153

38 CFR

4.....21
21.....616
Proposed Rules:
21.....620

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501
86.....470
180.....241, 243, 657
271.....126–128, 244
Proposed Rules:
52.....261
180.....262, 263
261.....519

41 CFR

101–20.....129
114–51.....741
Proposed Rules:
Ch. 201.....620
141.....31
142.....31
261.....31

42 CFR

431.....657
435.....657
440.....657
441.....657
Proposed Rules:
434.....744
435.....744

43 CFR

2.....24

44 CFR

Proposed Rules:
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR

95.....26
233.....487

46 CFR

Proposed Rules:
588.....624

47 CFR

Ch. I.....502
64.....27
73.....28, 29, 504
Proposed Rules:
1.....625
63.....625
73.....426
74.....529
76.....625
78.....529

48 CFR

7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132
513.....132
Proposed Rules:
215.....625
225.....626
252.....626
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR

24.....467
541.....133
661.....617
Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426
1041.....155
1048.....155
1049.....155

50 CFR

611.....134, 741
653.....244
663.....246, 248
Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....268
672.....627

LIST OF PUBLIC LAWS

Note: No public bills which have become laws were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 11, 1988

VOL 53 NO 7 TUESDAY JANUARY 12 1988

VOL
53

ISS
8

JA
13

988

MI

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Vol. 53 No. 8

federal register

Wednesday
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988

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Pages 773-854

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Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

Agriculture Department
See Food and Nutrition Service

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration
NOTICES
Agency information collection activities under OMB review, 782

Council on Environmental Quality
NOTICES
Meetings; Sunshine Act, 837

Customs Service
NOTICES
Trade name recordation applications:
Better Working Environments, Inc.; correction, 839

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Great Lakes Gas Transmission Co. et al., 784
Remedial orders:
Carbonit Houston, Inc., et al., 786

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air programs; State authority delegations:
Alaska, 777
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 779
Superfund program:
Federal real property, sale or transfer; hazardous substance activity reporting, 850
NOTICES
Pesticide programs:
Confidential business information and data transfer to contractors, 794
Special review—
Cyanazine, 795
Pesticides; emergency exemptions, etc.:
Harmony, 793

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality; Presidential Documents

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations; loss-sharing agreements, 775

Federal Communications Commission
PROPOSED RULES
Radio services, special:
General mobile service; personal use and technology changes, 779

Federal Energy Regulatory Commission
NOTICES
Preliminary permits surrender:
Adirondack Hydro Development Corp., 786
Independence Electric Corp., 786
Lima Hydro Limited Partnership, 786
St. Vrain Environmentalists, 787
Applications, hearings, determinations, etc.:
Bayou Interstate Pipeline System, 787
Columbia Gas Transmission Corp., 787
Commonwealth Electric Co. et al., 788
Enron Oil & Gas Co. et al., 788
Galligan, Thomas J., Jr., 788
Gasdel Pipeline System, Inc., 788
Linweave, Inc., 789–791
(8 documents)
Mid Louisiana Gas Co., 791
Pacific Offshore Pipeline Co., 791
Texas Gas Transmission Corp., 791
Transwestern Pipeline Co., 792
Western Gas Interstate Co., 792
Williams Natural Gas Co., 793
Wisconsin Electric Power Co., 793

Federal Maritime Commission
NOTICES
Shipping Act of 1984:
North Europe-U.S. Pacific Freight Conference Agreement et al.; loyalty contracts, 803

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 837

Food and Nutrition Service
NOTICES
Child nutrition programs:
Summer food service program; reimbursement rates, 782

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Hawaii—
Chevron Oil Refinery, 783
Louisiana—
Citgo Oil Refinery, 783
Texas—
Valero Oil Refinery, 784

Health and Human Services Department
See National Institutes of Health; Public Health Service

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs, etc.:
Aliens; assisted housing use; restrictions, 842

Interior Department
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Malleable cast iron pipe fittings from—
Taiwan, 784
Applications, hearings, determinations, etc.:
Scripps Clinic and Research Foundation; correction, 839
Texas A&M University et al.; correction, 839

International Trade Commission
NOTICES
Import investigations:
Minoxidil powder, salts and compositions for use in hair treatment, 809
Noncontact tonometers, 809

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Chemical Lime, Inc., 809
Leadville-Climax Shortline Railway Co., 809
Railroad services abandonment:
CSX Transportation, Inc., 810

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Alaska; correction, 839
Colorado; correction, 839

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection; interior impact, and steering control rearward displacement, 780
NOTICES
Motor vehicle theft prevention standard; exemption petitions, etc.:
Chrysler Corp., 835

National Institutes of Health
NOTICES
Meetings:
National Center for Nursing Research, 806
National Heart, Lung, and Blood Institute, 807
(4 documents)
National Institute of Environmental Health Sciences, 808
Recombinant DNA Advisory Committee, 808
(2 documents)
Research Grants Division study sections, 805

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 837

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 834, 835
(3 documents)
Meetings; Sunshine Act, 837
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 817
Applications, hearings, determinations, etc.:
Finlay Testing Laboratories, Inc., 835
Long Island Lighting Co., 835

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Central States, Southeast and Southwest Areas Pension Fund, et al., 810
Jim W. Miller Construction, Inc., et al., 815

Postal Service
NOTICES
Meetings; Sunshine Act, 838
(2 documents)

Presidential Documents
ADMINISTRATIVE ORDERS
Pakistan; nuclear devices; certification (Presidential Determination No. 88-4 of Dec. 17, 1987), 773

Public Health Service
See also National Institutes of Health
NOTICES
Meetings:
Vital and Health Statistics National Committee, 808
(2 documents)

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 838

Transportation Department
See National Highway Traffic Safety Administration

Treasury Department
See also Customs Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Postal money orders exceeding $10,000, 776

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 842

Part III
Environmental Protection Agency, 850

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 88-4 of Dec. 17, 1987 773

12 CFR
614 775

24 CFR
200 842
215 842
235 842
236 842
247 842
812 842
880 842
881 842
882 842
883 842
884 842
886 842
912 842

31 CFR
103 776

40 CFR
61 777
Proposed Rules:
52 779
373 850

47 CFR
Proposed Rules:
95 779

49 CFR
Proposed Rules:
571 780

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–4 of December 17, 1987

Determination Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Honorable George P. Shultz, the Secretary of State

Pursuant to Section 620 E(e) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2375(e), I hereby certify that Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, December 17, 1987.

[FR Doc. 88–720
Filed 1–12–88; 9:32 am]
Billing code 3195–01–M

VOL
53
ISS
8
JA
13
988
UMI

Rules and Regulations

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Loss-Sharing Agreements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts an amendment to the regulation relating to the reversal of previously accrued financial assistance under Farm Credit System (System) loss-sharing agreements. The amendment implements provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233) and will facilitate the conversion of certain accounts payable of contributing banks into accounts payable of the Financial Assistance Corporation.

EFFECTIVE DATE: The amendment shall become effective in January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 was enacted on January 6, 1988. Section 6.9(e) of the Farm Credit Act of 1971 (1971 Act), as added by the Agricultural Credit Act of 1987, provides that on the date of the chartering of the Financial Assistance Corporation, which shall be not later than 5 days after the date of enactment of the Agricultural Credit Act of 1987, certain actions will be taken by System institutions which previously provided or received contributions under System capital preservation agreements for the calendar quarter ending September 30, 1988. On the date of chartering, the accounts payable on the books of contributing System banks shall be converted into accounts payable on the books of the Financial Assistance Corporation. Similarly, on that date, the accounts receivable on the books of receiving institutions shall be converted into accounts receivable from the Financial Assistance Corporation.

Under an existing FCA regulation at 12 CFR 614.4341, System institutions that made or received financial assistance in the form of cash or accruals in accordance which the activation of capital preservation agreements prior to October 1, 1988, are prohibited from reversing such financial assistance. The Board has determined that 12 CFR 614.4341 should be amended effective on the date of the chartering of the Financial Assistance Corporation, in order to enable the provisions of section 6.9(e) of the 1971 Act to be implemented as expeditiously as possible. Under the amended regulation, capital preservation agreement accounts payable and receivable can be converted by the affected System banks in accordance with the provisions of section 6.9(e).

The amendment to the regulation will not alter the financial condition of any of the recipient institutions since they will continue to reflect accounts receivable from the Financial Assistance Corporation in the same amount as are currently reflected on their books. The contributing banks will be benefited by this change since their financial condition will be improved by the amount of the obligations that are transferred to the Financial Assistance Corporation. In amending the regulation, the Board also eliminated references to the Farm Credit System Capital Corporation since the Agricultural Credit Act of 1987 provides for the revocation of its charter.

In accordance with 5 U.S.C. 553(b)(B) the Board, for good cause, finds that notice and public procedures on the amendment to this regulation are impracticable, unnecessary, and contrary to the public interest because this amendment implements a statutory provision which was designed to improve the financial condition of certain institutions which had previously contributed financial resources to other System institutions. The amendment will not have a negative financial impact on the institutions which had previously received capital preservation contributions since those contributions will continue to be reflected in their financial statements as accounts payable from the Financial Assistance Corporation. In accordance with 5 U.S.C. 553(d), this regulation is effective prior to the expiration of 30 days after its publication, as a rule which grants exemptions and relieves restrictions currently imposed on certain contributing System banks. Finally, in accordance with section 5.17(b)(2) of the 1971 Act, the Board finds that an emergency exists which requires this final regulation to become effective prior to the expiration of 30 calendar days after it is published in the Federal Register. An immediate effective date is necessary to ensure that contributing banks are able to improve their financial condition as quickly as possible by cancelling certain accounts payable, and thereby strengthening their ability to provide credit services to their borrowers.

List of Subjects in 12 CFR Part 614

Accounting, Agricultural, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Part 614 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

Section 614.4341 also issued under 12 U.S.C. 2012(22), 2053, 2072(18), 2093(15), 2122(18), 2216G, 2252(a)(10).

2. In Part 614, Subpart I, Loss-Sharing Agreements, § 614.4341 is revised to read as follows:

Subpart I—Loss-Sharing Agreements

. . . . .

§ 614.4341 Financial assistance.

No institution shall reverse any financial assistance provided under the 37-Bank Preservation Agreement or any other capital preservation/loss-sharing program that was received or accrued prior to July 1, 1988.

Dated: January 11, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-709 Filed 1-11-88; 5:06 pm]

BILLING CODE 6705-01-M

DEPARTMENT OF TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Regarding Reporting Requirements of the United States Postal Service

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is placing the United States Postal Service under the reporting requirements of the Bank Secrecy Act with respect to cash purchases of postal money orders exceeding $10,000, in response to the problem of drug money laundering through the purchase of postal money orders.

EFFECTIVE DATE: April 12, 1988.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91-508, as amended (codified at 31 U.S.C. 5311-5324, 12 U.S.C. 1829b, and 12 U.S.C. 1951-1959), empowers the Secretary of the Treasury to require "financial institutions," as defined in 31 U.S.C. 5312, to keep records and file reports that the Secretary of the Treasury determines have a high degree of usefulness in criminal, tax, or regulatory matters. *See* 31 U.S.C. 5311. The Secretary shall prescribe by regulation which "financial institutions" described in section 5312 will be required to report their cash transactions.

Section 1362(a) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (October 27, 1986), amended 31 U.S.C. 5312 to include the Postal Service in the definition of "financial institutions" under the Bank Secrecy Act. This measure followed testimony before the House Committee on Banking, Finance and Urban Affairs by a "smurf," or drug money launderer, who testified that he has successfuly laundered money by converting the cash proceeds of drug sales into postal money orders in Miami, Florida. The money launderer had taken advantage of the fact that a postal customer could buy an unlimited number of money orders at one time and that the Postal Service was not required to report cash transactions over $10,000 to Treasury under the Bank Secrecy Act, as are banks and other specified financial institutions.

At the same time this problem was being considered by Congress, the Department of the Treasury, through the Criminal Investigation Division of the Internal Revenue Service, concluded that the practice of drug money laundering through postal money orders was not confined to Miami. After review of the situation and discussions between Treasury and the Postal Service, the Postal Service proposed to limit to $10,000 the amount of postal money orders any customer may purchase during one day. *See* 52 FR 27992, July 27, 1987.

While Treasury commended that action, it determined this voluntary measure on the part of the Postal Service did not obviate the need for Treasury to designate the Postal Service as a financial institution subject to the requirements of the Bank Secrecy Act. For example, in order to prosecute a money launderer under section 5324 of Title 31, United States Code, which prohibits "structuring" of transactions to avoid a reporting requirement under the Bank Secrecy Act, the financial institution through which a money launderer structures transactions must itself be subject to Bank Secrecy Act reporting.

Therefore, Treasury issued a Notice of Proposed Rulemaking (52 FR 35562, September 22, 1987) to put the United States Postal Service under the reporting requirements of the Bank Secrecy Act and its implementing regulations. Treasury proposed that the U.S. Postal Service be included within the definition of "financial institution" in 31 CFR 103.11, and that a new paragraph in § 103.22(a) be added to require that the Postal Service file a report of each cash purchase of money orders in excess of $10,000.

As with all other financial institutions, multiple cash purchases totaling more than $10,000 are to be treated as a single transaction if the Postal Service has knowledge that they are by or on behalf of any person during any one day. For purposes of aggregation under the Bank Secrecy Act regulations, "knowledge" includes the concept of "willful blindness." *See United States v. Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). This concept applies to a person who has deliberately avoided positive knowledge; that is, "if a person has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge." *Jewell*, 532 F.2d at 700.

Discussion of Comments

Four comments were received in response to the Notice of Proposed Rulemaking, none of which advocated withdrawal of the proposal. Two of the commenters approved of the proposal, noting that this would close a loophole for money launderers.

A third commenter noted that if the proposal were accepted as put forth in the Notice, banks would no longer be able to place the Postal Service on their exempt lists. Under the present regulations, the Postal Service may be exempted unilaterally as a United States instrumentality. 31 CFR 103.22(b)(iii). Under the proposed rule, the Postal Service would become a nonbank financial institution. Nonbank financial institutions, with one minor exception, may not be placed on an exempt list. *See* 31 CFR 103.22(c). After consideration of the matter, Treasury has adopted this comment. Section 103.22(c) has been amended to permit banks to exempt the Postal Service unilaterally, even though it is a nonbank financial institution.

Treasury also received lengthy comments from the Postal Service. The Postal Service noted its present restriction on the sale of money orders and stated that there would be little likelihood of it ever filing a Currency Transaction Report, except for multiple transactions. The Postal Service indicated that while it did not oppose the rule, it anticipated difficulty in determining when a clerk would be deemed to have knowledge of multiple transactions resulting in a cash purchase by one person of over $10,000 of money orders. It specifically stated that, "[W]e do not believe that a clerk should be required to poll the other clerks in the post office concerning possible prior sales that day before he can sell a customer a large, but permissible, amount of money orders."

Treasury does not require extraordinary measures to ensure that every postal clerk knows what other clerks are doing. Treasury is requiring, however, that every clerk use what knowledge he or she has at the time of the transaction to determine whether to make further inquiry. As stated above, "knowledge" includes the concept of "willful blindness." Thus, if a clerk has his suspicions aroused, but then deliberately omits to make further inquiries because he wishes to remain in ignorance, he is deemed to have "knowledge." In addition, any system presently in use by the Postal Service should be utilized in order to ascertain whether a multiple transaction in cash purchases of money orders may have occurred.

The Postal Service also requested that Treasury permit a 90-day delay in the effective date in order to provide training and make any necessary changes in manuals or other Postal Service operations. Treasury considers this request to be reasonable and appropriate under the circumstances and has modified the final rule to be effective April 12, 1988.

Finally, the Postal Service urged that all issuers and sellers of money orders be covered under the Bank Secrecy Act reporting requirements. Treasury notes that the definition of "financial institution" presently includes "An issuer, seller, or redeemer of traveler's checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of such instruments within any given 30-day period." 31 CFR 103.11(g)(4). Thus, all issuers, sellers and redeemers of money orders, with one small exception, are covered under the Bank Secrecy Act regulations.

Conclusion

After consideration of the comments noted above, Treasury has adopted the proposal as originally put forth, with the addition and delayed effective date discussed above.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5324).

2. Section 103.11 is amended by adding a new paragraph (g)(9) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(g) *Financial institution.* * * *

(9) The United States Postal Service with respect to the sale of money orders.

* * * * *

3. Section 103.11 is further amended by adding at the end the following paragraph (r):

§ 103.11 Meaning of terms.

* * * * *

(r) *Postal Service.* The United States Postal Service.

4. The first sentence of § 103.22(a)(1) is amended by revising it to read as follows:

§ 103.22 Reports of currency transactions.

(a)(1) Each financial institution other than a casino or the Postal Service shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. * * *

* * * * *

5. Section 103.22(a) is further amended by redesignating paragraph (a)(3) as paragraph (a)(4) and adding a new paragraph (a)(3) to read as follows:

§ 103.22 Reports of currency transactions.

(a) * * *

(3) The Postal Service shall file a report of each cash purchase of postal money orders in excess of $10,000. Multiple cash purchases totaling more than $10,000 shall be treated as a single transaction if the Postal Service has knowledge that they are by or on behalf of any person during any one day.

* * * * *

6. Section 103.22(c) is amended by revising the last sentence to read as follows:

§ 103.22 Reports of currency transactions.

* * * * *

(c) * * * This section does not permit a bank to exempt its transactions with nonbank financial institutions (except for check cashing services licensed by state or local governments and the United States Postal Service) nor will additional exemption authority be granted for such transaction (except transactions by other check cashers).

* * * * *

Dated: December 22, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 88-539 Filed 1-12-88; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3215-1]

National Emission Standards for Hazardous Air Pollutants; Delegation to the State of Alaska Department of Environmental Conservation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The State of Alaska Department of Environmental Conservation (ADEC) on August 13, 1987, requested a partial delegation of Subpart M under NESHAP. This partial delegation would regulate the disposal of asbestos under Alaska's regulations (18 AAC 60 through 60.910). EPA granted the subdelegation request in a letter dated December 22, 1987.

EFFECTIVE DATE: December 22, 1987.

ADDRESSES: Material in support of this delegation may be examined during normal business hours at the following locations:

Air Programs Branch, (10A–87–15), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Alaska Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

FOR FURTHER INFORMATION CONTACT: Armina Nolan, Air Programs Branch, AT–092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1757, FTS: 399–1757.

SUPPLEMENTARY INFORMATION: On April 6, 1973 (38 FR 8820) and on April 5, 1984 (49 FR 13658), pursuant to section 112 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations for asbestos as a National Emission Standard for Hazardous Air Pollutants (NESHAP). Section 112(d) directs the Administrator to delegate authority to implement and enforce NESHAP to any state which has submitted adequate procedures.

The State of Alaska Department of Environmental Conservation (ADEC), in a letter dated August 13, 1987, requested partial delegation of Subpart M under NESHAP. This partial delegation would regulate the disposal of asbestos. After a thorough review of that request, the Regional Administrator of Region 10 approved the partial delegation subject to the conditions set forth in the following letter:

Dennis D. Kelso, Commissioner
Alaska Department of Environmental Conservation, Box 0, Juneau, AK 99811.

Dear Mr. Kelso: This is in response to your letter of August 13, 1987 requesting partial delegation of Subpart M under the National Emission Standards for Hazardous Air Pollutants (NESHAP). This partial delegation as stated in Alaska's 18 AAC 60 regulates the disposal of asbestos.

We have reviewed the rules and regulations of the State of Alaska and have determined that they provide an adequate and effective procedure for ADEC to implement and enforce the disposal of asbestos in accordance with NESHAPs. Therefore, we herby grant this partial delegation to the State of Alaska Department of Environmental Conservation as follows:

Authority for all sources located in the State of Alaska subject to the disposal of asbestos under Subpart M of the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61).

This delegation is based upon the following conditions:

1. Upon prior approval of the Regional Administrator of Region 10 the Commissioner of the ADEC may delegate his authority to implement and enforce NESHAP to air pollution control authorities in the state when such authorities have demonstrated that they have equivalent or more stringent programs in force.

2. Prior to the supersession of the state regulation for hazardous air pollutants by local ordinances or regulations, as provided for in 18 AAC 60 through 60.910 (Solid Waste Management), such local ordinances and regulations must be approved by EPA. The approval shall take place through the process of subdelegation established in condition 1 of this letter.

3. Alaska's regulations, 18 AAC 60 through 60.910 (Solid Waste Management) require federal facilities to meet substantive state, local and federal requirements and comply with state and local administrative procedures with respect to air pollution control and abatement.

4. Enforcement of this partial delegation in the State of Alaska will be the primary responsibility of ADEC. If ADEC determines that such enforcement is not feasible and so notifies EPA, or where ADEC acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Alaska subject to this partial delegation.

5. Acceptance of this partial delegation of Subpart M of NESHAP does not commit the State of Alaska to request or accept delegation of future standards and requirements or changes to existing standards and requirements. A new request for delegation will be required for any standards not included in the state's request of August 13, 1987.

6. If at any time there is a conflict between a state regulation and a federal regulation (40 CFR Part 61), the federal regulation must be applied if it is more stringent than that of the state. If the state does not have the authority to enforce the more stringent federal regulation, this portion of the delegation may be revoked.

7. If the Regional Administrator determines that a state procedure for enforcing or implementing this partial delegation of Subpart M of NESHAP is inadequate, or is not being effectively carried out, this partial delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation of ADEC.

A notice announcing this partial delegation will be published in the **Federal Register** in the near future.

Since this delegation is effective immediately, there is no requirement that ADEC notify EPA of its acceptance. Unless EPA receives from ADEC written notice of objections within ten days of the date of receipt of this letter, ADEC will be deemed to have accepted all of the terms of this partial delegation.

We are encouraged by ADEC's request for partial delegation and are hopeful that this will lead to further delegation of the applicable NESHAPs.

Sincerely,

Robie G. Russell,
Regional Administrator
cc: L. Verrelli

This Notice hereby notifies the public that a partial delegation of Subpart M under NESHAP for disposal of asbestos to the State of Alaska Department of Environmental Conservation took place on December 22, 1987.

This notice is issued under the authority of section 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et. seq.*).

Lists of Subjects in 40 CFR Part 61

Intergovernmental relations, Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: December 22, 1987.

Robie G. Russell,
Regional Administrator.

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

Subpart A—General Provisions

1. The authority citation for Part 61 continues to read as follows:

Authority: Section 110(c) of the Clean Air Act, as amended (42 U.S.C. 7401–7642).

2. Section 61.04 is amended by adding paragraph (C) to read as follows:

§ 61.04 Addresses.

* * * * *

(B) * * *

(C) State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

* * * * *

[FR Doc. 88–498 Filed 1–12–88; 8:45 am]
BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3215–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On October 29, 1987, (52 FR 41589), the U.S. Environmental Protection Agency (USEPA) proposed to change the attainment status designation for part of Clark County in Ohio relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS). USEPA proposed redesignating the present secondary nonattainment area to attainment. In response to a request from the Regional Air Pollution Control Agency (RAPCA) in Dayton, Ohio the public comment period is extended to January 28, 1988.

DATE: Comments must be postmarked on or before January 28, 1988.

If possible please send an original and three copies.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

Authority: 42 U.S.C. 7401–7642.

Dated: December 29, 1987.

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 88–499 Filed 1–12–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 87–265]

General Mobile Radio Service (GMRS)

AGENCY: Federal Communications Commission.

ACTION: Order extending time to file reply comments.

SUMMARY: This document extends the time for filing reply comments in this proceeding because the holiday season could act to impede the full participation of all interested parties with the former reply comment deadline.

DATE: Reply comments are now due on or before January 29, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 30, 1987.
Released: December 31, 1987.

By the Chief, Private Radio Bureau:

In the Matter of Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS).

1. On July 31, 1987, the Commission released a *Notice of Proposed Rule Making* in this matter (52 FR 29396, August 7, 1987). In that document we proposed to (1) limit eligibility for General Mobile Radio Service (GMRS) system licensing to individuals; (2) eliminate the need to re-license a GMRS system before changing channels; (3) add interstitial channels; (4) provide for transient use of mobile relays (repeaters); (5) broaden station operator eligibility and (6) create the concept of a small base station to enhance GMRS utility for the mobile-unit-oriented personal user.

2. Comments on this proposal were due on or before November 30, 1987. Reply comments on this proposal are due on or before December 31, 1987. The Personal Communications Section of the Electronic Industries Association's Information and Telecommunications Group (PCS–EIA) and the Personal Radio Steering Group, Inc. (PRSG), have both requested that the time for filing reply comments in this proceeding be extended. PRSG requested that we extend the reply comment period through January 15, 1987. PCS–EIA requested until January 29, 1987, to file reply comments.

3. In support of their request, PRSG stated that preliminary review of the comments being filed in this docket indicate a substantial interest by the public, including many current GMRS licensees. PRSG further stated that because the reply comment deadline fell during the Christmas/New Year holiday season, it expected that mail delivery service would be slowed because of seasonal volume and that there would be delays in obtaining timely access to copies of public comments.

4. In support of their request, PCS–EIA stated that the comments in this proceeding are both voluminous in number and size, with particular reference to the 200-plus page filing of PRSG. Because of shortened working weeks in the latter part of December, PCS–EIA requested a one-month extension in order to be able to adequately review the docket file and prepare reply comments.

5. It is in the public interest, convenience and necessity to obtain the fullest participation of all interested members of the public in this proceeding. Considerations related to the holiday season could act to impede the full participation of all interested parties with the current reply comment deadline.

6. In view of the foregoing, the Chief, Private Radio Bureau, acting under the authority delegated by § 0.331 of the Commission's rules, ORDERS that the reply comment period is extended in this proceeding. Reply comments may be filed on or before January 29, 1988.

List of Subjects in 47 CFR Part 95

General mobile radio.

Federal Communications Commission.

Ralph A. Haller,
Chief, Private Radio Bureau.

[FR Doc. 88–510 Filed 1–12–88; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Occupant Protection in Interior Impact and Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from Mitsubishi Motors Corporation requesting that NHTSA amend Safety Standard No. 201, *Occupant Protection in Interior Impact*, and Standard No. 204, *Steering Control Rearward Displacement*, to provide an exception from the requirements of those standards for vehicles that conform to the frontal barrier requirements of Safety Standard No. 208, *Occupant Crash Protection*, "by means of other than seat belt assemblies." The agency is denying the petition because the petitioner has not shown that compliance with either Standard No. 201 or 204 unjustifiably interferes with the development of air bag technology or other types of occupant restraint systems, or that there is sufficient reason for removing the protection offered by the two standards.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–4916.

SUPPLEMENTARY INFORMATION: On July 20, 1987, Mitsubishi Motors Corporation submitted a petition for rulemaking requesting that NHTSA amend Safety No. 201, *Occupant Protection in Interior Impact*, and Standard No. 204, *Steering Control Rearward Displacement*, to provide an exception from the requirements of those standards for vehicles that conform to the frontal barrier requirements of Safety Standard No. 208 "by means of other than seat belt assemblies." (Although Mitsubishi broadly describes the types of vehicles for which it petitions for an exception, the petition itself refers virtually only to air bag equipped vehicles. NHTSA thus considers Mitsubishi's petition to address only the one type of vehicle.)

The petitioner pointed out that Safety Standard No. 203, *Impact Protection for the Driver from the Steering Control System*, currently excepts from its application vehicles that conform to the frontal barrier crash requirements (S5.1) of Standard No. 208 by means other than seat belt assemblies. Mitsubishi said that the Standard No. 203 exception was made because "the air bag system had been recognized * * * as a useful means to provide better protection than a seat belt system against chest, neck and facial injuries to the driver in frontal crash[es]." Mitsubishi said that an air bag for the passenger seating position would have the "same effect" as that for the driver. The petitioner argued that Standard No. 201 should therefore be amended to provide the same type of exception currently found in Standard No. 203 for air bag equipped vehicles for the same reasons NHTSA excepted such vehicles in the latter standard.

Mitsubishi suggested also that NHTSA amend Standard No. 204 to except air bag equipped vehicles from the requirements of the standard for the same reasons petitioner requested the Standard No. 201 exception. Mitsubishi said that Standard No. 204 is directed at reducing the likelihood of chest, neck and head injuries, which the petitioner said unnecessarily duplicates the protection provided by air bags.

Standard No. 201

Standard No. 201 specifies requirements for padded instrument panels, seat backs, sun visors and armrests, to afford impact protection for occupants. Appropriate energy absorbing materials in the lower, mid and top surfaces of the instrument panel can lessen knee, chest and head injuries resulting from contacts therefrom. In addition, the standard requires interior compartments to remain closed during a crash.

The petitioner is correct that Standard No. 203 was amended pursuant to a petition for rulemaking from General Motors Corporation (GM) in May 1975 to exclude from the standard's requirements vehicles that conform to the frontal barrier crash requirements of Standard No. 208 by means other than seat belt assemblies. (40 FR 17992; April 24, 1975.)

However, Mitsubishi is not correct in its implication that NHTSA made the exclusion because the air bag system had advantages over safety belt systems in protecting the upper torso and head areas which made compliance with Standard No. 203 unnecessary. Standard No. 203 was amended because the agency gave heavy weight to the petitioner's assertions that its modification to the steering control system to incorporate the air cushion system made conformity of the steering column with Standard No. 203 difficult, and sometimes impossible. The agency determined that, while as a general matter requiring the "redundant" occupant crash protection offered by standards is justified for those situations where the primary occupant crash protection system fails or multiple collisions occur, the redundant protection offered by Standard No. 203 is not justified where it directly interferes with development of the more advanced and effective air bag technology.

Mitsubishi has provided no reason showing why an exception from Standard No. 201 is appropriate. Petitioner has not shown that compliance with Standard No. 201 interferes, in any way, with the development of occupant restraint systems such as an air bag system.

Further, the agency does not agree with the petitioner that the protection provided by interior compartment surfaces complying with Standard No. 201 is unnecessary on vehicles capable of meeting the frontal crash requirements of Standard No. 208 by a crash deployed restraint system. Typically, current air bag systems deploy during a collision at an approximate barrier equivalent speed of 12 miles per hour (mph). NHTSA has concluded that Standard No. 201 provides necessary protection to vehicle occupants against laceration or abrasion type injuries that could be inflicted by the interior surfaces of the vehicle compartment during crashes below the threshold speed for air bag deployment. The agency believes removing that protection for certain types of crashes would not be in the interest of safety.

Since the agency finds no reason for proposing the requested exception from Standard No. 201 that would outweigh the reasons given above to continue the standard's application to air bag equipped vehicles, Mitsubishi's request to amend Standard No. 201 is denied.

Standard No. 204

The purpose of Standard No. 204 is to reduce driver injuries and fatalities by limiting the rearward motion of the steering column in a frontal crash. The standard prohibits more than five inches of rearward displacement by the vehicle's steering assembly in a 30 mph frontal barrier crash.

The petitioner said that NHTSA should amend Standard No. 204 to except air bag equipped vehicles from its requirements for the same reasons petitioner said Standard No. 201 should be amended. NHTSA believes that the argument implicit in Mitsubishi's statements is that the exception is necessary because the steering column displacement limits of the standard are redundant given the injury criteria in Standard No. 208. These criteria limit the forces imposed on the head, chest and legs of a test dummy during a 30 mph frontal barrier crash test. Petitioner implicitly argues that because Standard No. 208 indirectly limits the rearward displacement of the steering column and vehicle structure, applying Standard No. 204 to vehicles meeting the frontal barrier crash test of Standard No. 208 is unnecessary.

The agency does not agree that the protection provided by Standard No. 204 is unnecessary for vehicles equipped with air bags. The standard essentially requires hardware to disconnect steering gear movement from the steering column under crash conditions. The standard provides protection to the driver of an air bag equipped vehicle against chest, neck or head injuries which could occur in frontal collisions at speeds below the deployment level of the vehicle's air bag, or in angular impacts where an air bag might not be as likely to deploy. NHTSA further believes that, in the absence of Standard No. 204, it is possible for a steering assembly to displace more than five inches in a situation where the injury criteria of Standard No. 208 were met. Thus, although the driver's impact with the assembly fell within the injury criteria of the latter standard, the rearward motion of the assembly might entrap the driver or make escape from the vehicle more difficult.

Because NHTSA sees no basis for proposing the requested amendment to Standard No. 204, the agency denies that request.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 40 CFR 1.50 and 501.8)

Issued on January 6, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–571 Filed 1–12–88; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement Rates for 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has been classified as *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

(Catalog of Federal Domestic Assistance, Program No. 10.559)

Background

Pursuant to section 123 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the Summer Food Service Program for Children during the 1988 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1986 through November 1987. The new reimbursement rates in cents are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs	
Breakfast	95.50
Lunch or Supper	171.25
Supplement	45.00
Administrative Costs	
a. For meals served at rural or self-preparation sites:	
Breakfast	8.75
Lunch or Supper	16.25
Supplement	4.50
b. For meals served at other types of sites:	
Breakfast	7.00
Lunch or Supper	13.50
Supplement	3.50

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals for each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represented a 3.6 per cent increase during 1987 (from 365.8 in November 1986 to 379.6 in November 1987) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Sec. 326 of Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341, (42 U.S.C. 1760), secs. 803, 807, 809, 816 and 817, Pub. L. 97–35, Secs. 203 and 208, Pub. L. 96–499, Secs. 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); Sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1761); Sec. 7, Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: January 8, 1988.

[FR Doc. 88–533 Filed 1–12–88; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal or collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: June 1988 Fertility, Birth Expectations, Immigration and Emigration Supplement
Form Number: Agency—CPS—1; CPS–260, CPS–666; OMB—NA
Type of Request: New collection
Burden: 57,000 respondents; 2,824 reporting hours
Needs and Uses: This survey will provide information on the fertility and birth expectations of women, both native and foreign born, by various demographic characteristics. The immigration items will provide information for evaluating immigration and naturalization policies. The emigration data will provide estimates for evaluating both current population estimates and 1990 census coverage.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–527 Filed 1–12–88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 49–87]

Foreign-Trade Zone 9, Honolulu, HI; Application for Subzone Chevron Oil Refinery

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Hawaii State Department of Business and Economic Development, grantee of FTZ 9, requesting special-purpose subzone status for the oil refinery of Chevron U.S.A., Inc., located in Ewa, Oahu, Hawaii, adjacent to the Honolulu Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 30, 1987.

The 50,000 BPD refinery (248 acres) is located on Malakole Road, within the James Campbell Industrial Park, Ewa, Oahu. The facility employs 180 persons and is used to produce gasoline, fuel oil, jet fuel, diesel, petroleum gases and asphalt. Some 66 percent of the refinery inputs are sourced abroad, including crude oil and feedstock. Some products, such as jet fuel, are exported.

Zone procedures would exempt the refinery from Customs payments on the foreign products used in its exports. On its domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. On some products, such as asphalt and certain gases, the company would be able to elect the duty rate available to importers of these products. (The current rate is zero. The duty on crude oil ranges from 5¼ to 10½ cents/barrel.) The applicant indicates that zone procedures will help the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; George Roberts, District Director, U.S. Customs Service, Pacific Region, P.O. Box 1641, Honolulu, HI 96806; and Colonel F.W. Wanner, District Engineer, U.S. Army Engineer District Honolulu, Building 230, Ft. Shaffer, HI 96858.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, P.O. Box 50026, 4106 Federal Bldg., 300 Ala Moana Blvd., Honolulu, HI 96813
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Constitution Avenue NW., Washington, DC 20230.

Dated: December 30, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–528 Filed 1–12–88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 48–87]

Foreign-Trade Zone 87, Lakes Charles, LA; Application for Subzone Citgo Oil Refinery

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lake Charles Harbor and Terminal District, grantee of FTZ 87, requesting special-purpose subzone status for the oil refinery of Citgo Petroleum Corporation (subsidiary of Southland Corporation), located in Calcasieu Parish, Louisiana, adjacent to the Lake Charles Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 30, 1987.

The 260,000 BPD refinery complex (3,497 acres) is located on the west bank of the Calcasieu River, three miles southwest of Lake Charles, on State Highway 108, Calcasieu Parish, Louisiana. The facility employs 1600 persons and is used to produce gasoline, kerosene, fuel oil, coke, lubricants, propane, propylene, waxes, and sulphur. Some 80 percent of the refinery's inputs are sourced abroad, including crude oil, naptha, and cat feed. Products such as coke and propylene are exported.

Zone procedures would exempt the refinery from Customs payments on the foreign products used in its exports. On its domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. On certain products such as coke, propane, propylene, and waxes, the company would be able to elect the rate available to importers of these products. (Currently the rate is zero. The duty on crude oil ranges from 5¼ to 10½ cents/barrel.) Foreign merchandise moved into zones are also exempt from state and local *ad valorem* taxes. The applicant indicates that zone procedures will help the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Lloyd K. Brown, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, LA 70160.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 150 Marine St., P.O. Box 1466, Lake Charles, LA 70602
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: December 30, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–529 Filed 1–12–88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 47-87]

Foreign-Trade Zone 122, Nueces County, TX; Application for Subzone Valero Oil Refinery

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the oil refinery of Valero Refining Company (subsidiary of Valero Energy Corporation) located in Nueces County, Texas, adjacent to the Corpus Christi Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 30, 1987.

The 80,000 BPD refinery (381 acres) is located at 5900 Up River Road, Nueces County. The facility employs 345 persons and is used to produce gasoline, naptha, other middle distillates, fuel oil, light oils, cat gasoline, butane, propane, asphalt and sulphur. Some 90 percent of the refinery inputs are sourced abroad, including crude oil, intermediate feedstocks and components.

Zone procedures would exempt the refinery from Customs payments on the foreign products used in its exports. On its domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. On certain products, such as asphalt, sulphur, propane, and butane, the company would be able to elect the rate available to importers of these products. (Currently the rate is zero. The duty on crude oil ranges from 5¼ to 10½ cents/barrel.) Foreign merchandise moved into zones are also exempt from state and local *ad valorem* taxes. The applicant indicates that zone procedures will help the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057; and Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77553.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Government Plaza, 400 Mann Street, Suite 305, Corpus Christi, Texas 78401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: December 30, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-530 Filed 1-12-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-507]

Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Malleable Cast Iron Pipe Fittings, Other than Grooved, From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Because of clerical errors, we are amending our final determination and antidumping duty order in this investigation for one of the four companies investigated, and we are directing the U.S. Customs Service to adjust the cash deposit or bonding rate for that company, San Yang, to 27.90%. The rates for the four other companies remain the same as announced in our antidumping duty order. Because of our amendment of the rate for San Yang, we are also amending the "all-other" rate to 28.27%.

EFFECTIVE DATE: January 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 31, 1986 (51 FR 1091), we published a final determination and on May 23, 1986, we published an antidumping duty order (51 FR 18918) of sales at less than fair value on malleable cast iron pipe fittings, other than grooved, from Taiwan.

Subsequent to the publication of the final determination, we discovered certain clerical errors in our calculations for one of the four companies we investigated, San Yang. Both petitioner and the respondent were given an opportunity to comment. We have corrected these errors and are consequently amending our final determination and order by changing the weighted-average margin for San Yang. This correction results in changes in our analysis which are summarized below.

Foreign Market Value

Commerce has recalculated the weighted-average margin based on the following two changes:

1. We subtracted San Yang's home market packing costs in our calculation of San Yang's foreign market value; and

2. We recalculated San Yang's U.S. credit expenses by (a) using a per-pound credit expense for each fitting which was obtained by dividing San Yang's total U.S. credit expenses by the total weight of San Yang's fittings exported to the United States and (b) correcting our inadvertent conversion of such U.S. credit expenses into Taiwanese dollars.

Accordingly, the cash deposit or bonding rates listed in the "Suspension of Liquidation" section of the final determination and cash deposit rate listed in the antidumping duty order is amended to read as stated in the "SUMMARY" section of this notice.

December 31, 1987.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-531 Filed 1-12-88; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-58-NG]

Great Lakes Gas Transmission Co. and Michigan Gas Co.; Joint Application To Reassign an Import Authorization Without Increasing the Volumes of Natural Gas Imported From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of joint application to reassign an import authorization without increasing the volumes of natural gas imported from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 19, 1987, of a joint application from Great Lakes Gas Transmission Company (Great Lakes) and Michigan Gas Company (Michigan Gas) requesting that the volumes of natural gas that Great Lakes is authorized to import from Canada be reduced by the amount it resells to Michigan Gas, and the Michigan Gas be authorized to import the gas directly. TransCanada PipeLines Limited (TransCanada) would remain the supplier of the gas and Great Lakes would transport it for Michigan Gas. The authorized import for resale to Michigan Gas is for a total of up to 7,300 Mcf per day, subject to a maximum annual limitation of 1,387,000 Mcf (FPC order issued January 4, 1974, Docket No. CP66-110), and Michigan Gas requests authorization to import identical volumes. The only significant change is the proposed transfer of the import authority for Great Lakes to Michigan Gas.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 12, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9822.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: During approximately the last two years, Great Lakes has encouraged Michigan Power Company, prior owner of gas facilities which it sold to Michigan Gas effective August 31, 1987, and its other resale customers to negotiate pricing arrangements directly with TransCanada. This has resulted in significantly lower prices and arrangements that include indices which adjust prices in accordance with market conditions. As a result of this experience, the applicants believe it is in their mutual interest for Michigan Gas to purchase directly from TransCanada the volumes of gas now being purchased by Great Lakes and resold to Michigan Gas, and for Great Lakes only to transport these volumes for Michigan Gas. This would allow Michigan Gas more flexibility in future price negotiations and will provide better communication of market signals between Michigan Gas and TransCanada. The authorizations issued to Great Lakes would be modified to eliminate the volumes that Great Lakes is authorized to import from TransCanada for resale to Michigan Gas, and Michigan Gas would be authorized to import the identical volumes directly from TransCanada.

The application included a September 2, 1987, precedent agreement between Great Lakes, Michigan Gas and TransCanada, a proposed gas purchase contract between Michigan Gas and TransCanada, and a proposed transportation service agreement between Great Lakes and Michigan Gas. Effective as of the first day of the month following the receipt of all regulatory and governmental approvals acceptable to the parties, Michigan Gas will import the volumes of gas directly from TransCanada; Great Lakes and Michigan Gas will terminate their service agreement; and Great Lakes will transport the Michigan Gas volumes from the Emerson, Manitoba, interconnection to the Michigan Gas delivery points in accordance with a FERC approved gas tariff. The proposed gas purchase contract has identical pricing provisions to those currently in effect and the contract term remains the same, ending November 1, 1991. For the initial delivery month the price would be the same as under the TransCanada/Great Lakes contract for purchases by Great Lakes for resale to Michigan Gas. After the initial delivery month the price would be adjusted if the comodity charge exceeded the commodity charge for the previous month by five percent or more.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9476. They must be filed no later than 4:30 p.m. e.s.t., February 12, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of this joint application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 4, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-515 Filed 1-12-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to Carbonit Houston, Inc., and Richard W. Johnson

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Carbonit Houston, Inc., and Richard W. Johnson.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the United States Department of Energy hereby gives notice of a Proposed Remedial Order which was issued on November 13, 1987, to Carbonit Houston, Inc., c/o Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, and Richard W. Johnson, 14 Wild Ginger, The Woodlands, Texas 77380. This Proposed Remedial Order alleges overcharges in the amount of $8,344,644.03, plus interest, resulting from violations of 10 CFR 212.186, 10 CFR 205.202 and 10 CFR 210.62(c) during the period January 1978 through December 1978. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F-078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon

Chandler L. van Orman, Acting Administrator, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-40, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on January 4, 1988.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 88-516 Filed 1-12-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Adirondack Hydro Development Corp.; Surrender of Preliminary Permit

[Project No. 9622-001]

January 7, 1988.

Take notice that the Adirondack Hydro Development Corporation, permittee for the Ploof Falls Project No. 9622 located on the St. Regis River in Franklin County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on May 30, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the Ploof Falls Project did not indicate feasibility for development.

The permittee filed the request on December 9, 1987, and the preliminary permit for Project No. 9622 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-541 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8922-002]

Independence Electric Corp.; Surrender of Preliminary Permit

January 7, 1988.

Take notice that the Independence Electric Corporation, Permittee for the Celina Hydro Project No. 8922, has requested that its permit be terminated. The permit was issued on June 10, 1985, and would have expired May 31, 1988. The project would have been located on the Cumberland River in Cumberland, Monroe, Clinton, and Russell Counties, Kentucky. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on December 17, 1987, and the preliminary permit for Project No. 8922 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-542 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9696-003]

Lima Hydro Limited Partnership; Surrender of Preliminary Permit

December 9, 1987.

Take notice that Lima Hydro Limited Partnership, permittee for the Lima Hydro Project, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9696 was issued May 14, 1986, and would have expired on April 30, 1989. The project would have been located on the Red Rock River at Lima Dam near Lima, Beaverhead County, Montana.

The permittee filed the request on November 12, 1987, and the preliminary permit for Project No. 9696 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-543 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9504-001]

St. Vrain Environmentalists; Surrender of Preliminary Permit

January 7, 1988.

Take notice that the St. Vrain Environmentalists, permittee for the proposed North St. Vrain Creek Project No. 9504, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 24, 1986, and would have expired on December 31, 1988. The project would have been located on the North St. Vrain Creek in Boulder County, Colorado.

The permittee filed the request on November 3, 1987, and the preliminary permit for Project No. 9504 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-544 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-61-000]

Bayou Interstate Pipeline System; Filing

January 7, 1988.

Take notice that on December 30, 1987, Bayou Interstate Pipeline System, (Bayou) tendered for filing the following tariff sheets of its FERC Gas Tariff, Original Volume No. 1, to be effective February 1, 1988.

Second Substitute Third Revised Sheet No. 4
Substitute Fourth Revised Sheet No. 4
Sixth Revised Sheet No. 5
Second Revised Sheet No. 8
Substitute First Revised Sheet No. 50
Second Revised Sheet No. 78

Bayou states that the tariff sheets were filed pursuant to the Purchased Gas Cost Adjustments provision contained in Section 15 of Bayou's tariff and to eliminate the Incremental Pricing Adjustments provision of its tariff in accordance with Order No. 478 issued July 27, 1987. Further, Bayou states that it is submitting Substitute Fourth Revised Sheet No. 4 to restate the Base Gas Cost Rate under revised rates filed in Docket No. RP88-1-000 and suspended by the Commission until April 1, 1988. Copies of the filing were served upon Bayou's jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before January 14, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-545 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-43-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Tariff

January 6, 1988.

Take notice that on December 30, 1987, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheets, to be effective February 1, 1988:

One hundred and twenty-second Revised Sheet No. 16
Tenth Revised Sheet No. 16B
Original Sheet No. 16B1
Original Sheet No. 16B2
First Revised Sheet No. 46E
Original Sheet No. 68
Original Sheet No. 68A
Original Sheet No. 68B

Columbia states that the revised tariff sheets reflect a proposed adjustment to its current no-gas commodity sales rates effective February 1, 1988 to recognize the elimination of certain costs incurred by Columbia to reform its high-cost contracts with certain Southwest producers, which results in a decrease in Columbia's non-gas commodity sales rate of 15.74 cents per Dth. Columbia states that the proposed adjustment is expressly conditioned on, and shall be effective upon, acceptance of Columbia's proposal in the instant filing to amortize certain contract reformation costs over four years by means of a fixed charge, for a total fixed charge recovery over four years of approximately $348.5 million, plus interest calculated in accord with 18 CFR 154.38(d)(4)(iv)(c) (1987) of the Commission's Regulations. According to Columbia, this amount represents one-half of Columbia's contract reformation costs subject to the instant filing attributable to the period commending April 1, 1987. Columbia proposes to allocate such costs among its customers on the basis of contract demand levels of Rate Schedule CDS and G customers and maximum daily obligation levels of Rate Schedule SGS customers.

Columbia states that the instant filing is contingent upon Commission action on its April 10, 1987 filing in Docket No. RP87-55-000 with regard to certain matters subject to briefing therein. Upon the effectiveness of the rates proposed in the instant filing, Columbia would refund, with interest calculated pursuant to 18 CFR 154.38(d)(4)(iv)(c) (1987) of the Commission's Regulations, the contract reformation costs collected in Docket No. RP87-55-000 by means of a direct payment to all parties which paid such charges commencing May 11, 1987.

Columbia states that as support for the cost of service, exclusive of the contract reformation costs, Columbia incorporates by reference its September 30, 1986 section 4(e) filing in Docket No. RP86-168, *et al.*, as revised by motions on February 27, 1987, and July 31, 1987, as well as Columbia Gulf Transmission Company's initial and revised filings in Docket No. RP86-167-000.

Columbia states that pursuant to § 388.110 of the Commission's Regulations, it has requested that the Commission treat certain contract reformation information and data as commercially sensitive and confidential data, the disclosure of which would be harmful to Columbia. It states that, due to the highly confidential and proprietary nature of the information contained in "Confidential Binder A," Columbia submits that access to the contents thereof be limited to parties other than producers, royalty owners and interstate pipelines to this proceeding. Columbia will maintain copies of the Confidential Binder A at its Charleston, West Virginia and Washington, DC offices for parties other than producers, royalty owners and interstate pipelines to review, which will be subject to appropriate protective

BEST COPY AVAILABLE

conditions. Columbia submits that a protective order of the nature of the one issued by the Presiding Judge in Columbia's ongoing section 4 rate case in Docket No. RP86-168, *et al.*, would be appropriate.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before January 13, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-546 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL88-5-000]

Commonwealth Electric Co. v. Boston Edison Co.; Filing

January 6, 1988.

Take notice that on December 29, 1987, Commonwealth Electric Company tendered for filing pursuant to sections 205, 206, 306 and 307 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure a Petition for Investigation and Complaint against Boston Edison Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before February 5, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-547 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-190-000, CI88-191-000]

Enron Oil & Gas Co. and Enron Producing Co.; Applications

January 7, 1988.

Take notice that on December 22, 1987, Enron Oil & Gas Company (EOG) and Enron Producing Company (EPC), of P.O. Box 1188, Houston, Texas 77251, filed applications pursuant to section 7(c) of the Natural Gas Act and §§ 154.92(d), 154.94, 157.23 and 157.24 of the Federal Energy Regulatory Commission's Regulations, to make sales of natural gas in interstate commerce to Northern Natural Gas Company, Division of Enron Corp. (Northern) as total successors-in-interest to acreage in various offshore and onshore properties, which were previously treated as first sales of pipeline production gas by Northern's Exploration and Production Division (E&P). EOG and EPC request authorization to continue to make sales of natural gas in interstate commerce for resale to Northern pursuant to new Gas Purchase Contracts dated December 16, 1987. These applications are on file with the Commission and open to public inspection.

By assignments effective August 1, 1987, EOG has acquired all of Northern's interests in certain offshore producing properties and facilities and EPC has acquired all of Northern's interests in certain onshore producing properties and facilities.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 26, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-548 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1651-000]

Thomas J. Galligan, Jr.; Filing

January 5, 1988.

Take notice that on December 23, 1987, Thomas J. Galligan, Jr. filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

Position	Name of corporation	Classification
Director	Boston Edison Company	Public Utility.
Director	New England Mutual Life Insurance Company	Mutual Life Insurance Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-549 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-22-000]

Gasdel Pipeline System, Inc.; Technical Conference

January 7, 1988.

A technical conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Tuesday, January 19, 1988 at 10:00 a.m. in Room 4200 at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-550 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

Linweave, Inc.; Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2775 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2775 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 360 kW.

The principal project works currently licensed for Project No. 2775 are: (1) A penstock; (2) water wheel; (3) 360 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-551 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

Linweave Inc.; Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2772 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2772 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 460 kW.

The principal project works currently licensed for Project No. 2772 are: (1) A penstock; (2) water wheel; (3) 460 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell

Acting Secretary

[FR Doc. 88-552 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

Linweave, Inc., Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2771 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2771 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 400 kW.

The principal project works currently licensed for Project No. 2771 are: (1) A penstock; (2) water wheel; (3) 400 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-553 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

Linweave, Inc., Existing Licensee's Intent To File an Application for New License

January 7, 1988

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2770 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2770 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 240 kW.

The principal project works currently licensed for Project No. 2770 are: (1) A penstock; (2) water wheel; (3) 240 kW generator; (4) tailrace; and (5)

appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–554 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

Linweave, Inc., Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2768 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2768 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 250 kW.

The principal project works currently licensed for Project No. 2768 are: (1) A penstock; (2) water wheel; (3) 250 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–555 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

Linweave, Inc.; Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2786 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2786 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 400 kW.

The principal project works currently licensed for Project No. 2786 are: (1) A penstock; (2) water wheel; (3) 400 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–556 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

Linweave, Inc.; Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2758 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2758 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 280 kW.

The principal project works currently licensed for Project No. 2758 are: (1) A penstock; (2) water wheel; (3) 280 kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–557 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

Linweave, Inc.; Existing Licensee's Intent To File an Application for New License

January 7, 1988.

Take notice that on July 2, 1987, Linweave, Inc., licensee for the Linweave, Inc. Project No. 2497 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Linweave, Inc. Project No. 2497 will expire on February 28, 1991. The project is located on the Holyoke Canal System in Hampden County, Massachusetts, and has a total capacity of 400 kW.

The principal project works currently licensed for Project No. 2497 are: (1) A penstock; (2) water wheel; (3) 400–kW generator; (4) tailrace; and (5) appurtenant electrical and mechanical facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87–7–000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87–7–000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–558 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–39–000]

Mid Louisiana Gas Co.; Substitute Compliance Filing

January 7, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on December 24, 1987, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets:

To become effective September 1, 1987:

Substitute Sixtieth Revised Sheet No. 3a
Substitute Third Revised Sheet No. 3a.1

To become effective November 1, 1987:

Substitute Sixty-First Revised Sheet No. 3a
Substitute Fourth Revised Sheet No. 3a1

Mid Louisiana states that the purpose of the filing of the revised Tariff Sheets is to correct an error in the computation of the South Georgia Adjustment contained in the December 15, 1987, Compliance Filing.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–559 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–42–000]

Pacific Offshore Pipeline Co.; Change in Rate

January 7, 1988.

Take notice that on December 24, 1987, Pacific Offshore Pipeline Company ("POPCO") tendered for filing a Notice of a Change in Rates for natural gas service rendered to its sole jurisdictional customer, Southern California Gas Company, pursuant to Rate Schedule G–1, FERC Gas Tariff Original Volume No. 1. To implement this notice of change, POPCO tendered for filing and acceptance Third Revised Tariff Sheet No. 5 superseding Second Revised Tariff Sheet No. 5.

POPCO states that based upon the test period cost of service, POPCO projects a decrease in annual revenue requirement and therefore files a rate decrease of approximately $1.2 million per annum. POPCO states that the reduction is due to a decline in rate base and a requested decrease in rate of return on equity. POPCO further notes that the decrease calculation includes costs associated with the settlement of all outstanding take-or-pay claims with its sole producer-supplier, Exxon Corporation, and contract reformation and gas cost buy-downs providing market sensitivity pricing provisions. POPCO does not propose any other change in its rates.

POPCO has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective December 28, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–560 Filed 1–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–2–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 7, 1988.

Take notice that on December 30, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 1
Eleventh Revised Sheet No. 10

Alternate Eleventh Revised Sheet No. 10
Eleventh Revised Sheet No. 10A
Alternate Eleventh Revised Sheet No. 10A
Sixth Revised Sheet No. 14
First Revised Sheet No. 107
First Revised Sheet No. 111
Second Revised Sheet No. 112
Third Revised Sheet No. 113
First Revised Sheet No. 114
Third Revised Sheet No. 115
Third Revised Sheet No. 116
Second Revised Sheet No. 117

Texas Gas states that these tariff sheets reflect an increase of purchased gas costs pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and the elimination of all incremental pricing provisions from the tariff. The sheets are proposed to be effective February 1, 1988.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-561 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-175-014]

Transwestern Pipeline Co.; Compliance Filing

January 7, 1988.

Take notice that on December 17, 1987, Transwestern Pipeline Company (Transwestern) filed an acceptance of its Stipulation and Agreement as modified, along with revised tariff sheets as listed in the attached appendix to comply with the Commission's order issued on January 28, 1987, as modified by the Commission's order issued on November 17, 1987. Transwestern requests a January 16, 1988 effective date for its revised tariff sheets. Copies of Transwestern's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

F.E.R.C. Gas Tariff, Second Revised Volume No. 1

Cover Sheet
31st Revised Sheet No. 6
Original Sheet No. 29A
2nd Revised Sheet No. 30
2nd Revised Sheet No. 30A
2nd Revised Sheet No. 30B
Original Sheet No. 30C
Original Sheet No. 30D
Original Sheet No. 30E
2nd Revised Sheet No. 31
2nd Revised Sheet No. 32
Original Sheet No. 32A
2nd Revised Sheet No. 33
2nd Revised Sheet No. 34
2nd Revised Sheet No. 34A
Original Sheet No. 34B
Original Sheet No. 34C
Original Sheet No. 34D
2nd Revised Sheet No. 35
2nd Revised Sheet No. 36
Original Sheet No. 51A
1st Revised Sheet No. 66
4th Revised Sheet No. 68
Original Sheet No. 68A
Original Sheet No. 68B
5th Revised Sheet No. 80
3rd Revised Sheet No. 81
2nd Revised Sheet No. 126
2nd Revised Sheet No. 127
2nd Revised Sheet No. 128
Original Sheet No. 129
Original Sheet No. 130
Original Sheet No. 131
3rd Revised Sheet No. 132-146
4th Revised Sheet No. 147

[FR Doc. 88-562 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-52-000]

Western Gas Interstate Co; Proposed PGA Rate Adjustment

January 7, 1988.

Take notice that on December 30, 1987, Western Gas Interstate Company ("Western") submitted for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet Nos. 215, 217
Second Revised Sheet Nos. 211, 213, 214, 216
Third Revised Sheet No. 212
Ninth Revised Sheet No. 11
Eleventh Revised Sheet No. 10

The proposed effective date for the tariff sheets is February 1, 1988.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that the proposed changes provide for: (1) An increase in cost under Western's Rate Schedule G-N of 4.99 cents per Mcf.; and (2) a decrease in cost under Western's Rate Schedule G-S of 34.57 cents per Mcf.

Western states that the filing does not include any adjustment to its surcharge due to Western's sale of exchange gas, which sale was addressed in *Western Gas Interstate Company*, Docket Nos. TA87-2-52-000.

Western states that its filing includes certain revisions to its tariff pursuant to Order No. 478. More specifically, Western's filing eliminates provisions to its tariff pertaining to the implementation of the Commission's incremental pricing rules.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-563 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-005]

Williams Natural Gas Co.; Filing

January 6, 1988.

Take notice that on December 23, 1987, Williams Natural Gas Company (WNG) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, to be effective January 1, 1988:

Original Volume No. 2

First Revised Sheets Nos. 1, 3, 15 and 27
Second Revised Sheet Nos. 144 and 309

The instant revised tariff sheets were inadvertently omitted from its December 18, 1987 filing. WNG requests that the instant tariff sheets be incorporated into its December 18, 1987 filing. Copies of the omitted tariff sheets have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before January 13, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-564 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-173-000]

Wisconsin Electric Power Co.; Filing

January 6, 1988.

Take notice that on December 30, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an executed assignment agreement between Wisconsin Electric and Cliffs Electric Service Company (CESCO). Under the assignment agreement, CESCO will transfer its rights and obligations under an Interconnection Agreement between itself and the City of Marquette Board of Power and Light (Marquette) to Wisconsin Electric. Under the Interconnection Agreement the parties agree to provide each other various power and energy services as economic circumstances dictate.

Wisconsin Electric requests an effective date of the later of Wisconsin Electric's closing on the Presque Isle Power Plant or January 1, 1988.

Copies of the filing have been served on Marquette, CESCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-565 Filed 1-12-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180751; FRL-3214-8]

Receipt of Applications for Specific Exemptions To Use Methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amin]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the North Carolina Department of Agriculture (hereafter referred to by State or as "Applicant") for use of the unregistered product Harmony, to control wild garlic in wheat and barley in North Carolina. Harmony, manufactured by E.I. duPont de Nemours and Company, contains the unregistered active ingredient methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amin]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before January 19, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180751," should be submitted:

By mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Robert A. Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the unregistered product, Harmony, to control wild garlic in wheat and barley.

Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant has requested a maximum of one postemergence application of Harmony. Applications will be made between the two-leaf and boot stage of wheat and barley when wild garlic is 6 to 12 inches high. A maximum of 0.67 ounce of product is proposed to be applied per acre in North Carolina. A maximum of 100,000 acres of wheat and barley is proposed to be treated in North Carolina. If all of the acreage were treated, a maximum of 4,188 pounds of product would be needed in North Carolina.

Applications are proposed to be made using ground equipment only. All applications are proposed to be made by or under the direct supervision of certified applicators. North Carolina has requested authorization to make treatments through April 10, 1988.

The Applicant claims that emergency conditions exist due to the presence of wild garlic bulblets in harvested wheat and barley. Grain sold with garlic bulblets present is generally docked on a per-bulblet basis. The Applicant claims that the new regulations under the U.S. Grain Standards Act which lower by two-thirds the amounts of wild garlic allowable in marketed wheat and barley have contributed to the need for a better means of controlling garlic. If these new standards cannot be met, prices will be docked severely or the grain may be refused altogether. In either event, the economic consequences could be substantial if growers are unable to control wild garlic in wheat and barley.

The Applicant claims that the registered alternatives currently available do not provide a sufficient level of control of wild garlic. The Applicant claims that wheat and barley growers have traditionally used 2,4-D and dicamba to control this weed. Specifically, the Applicant claims that these pesticides only provide 20 to 75 percent control of wild garlic.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before January 19, 1988, and should bear the identifying notation "OPP–180751." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Carolina Department of Agriculture.

Dated: December 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–504 Filed 1–12–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100050; FRL–3313–7]

Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Research and Development, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC as authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable SRC to fulfill the obligations of the contract and serves to notify affected persons.

DATE: SRC will be given access to this information no sooner than January 19, 1988.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4460).

SUPPLEMENTARY INFORMATION: Under Contract No. 68–03–3521, SRC will be preparing and updating health and environmental effects documents for EPA's Office of Research and Development. These documents will address health and environmental effects, including aquatic toxicity, and environmental fate and transport, of the following chemicals and their constituents: Dichlorophenoxy (2,4–) Acetic Acid, Sodium Diethyldithiocarbamate, Thallium Salts, and Ammonium Acetate. These documents serve to support listings under the Resource Conservation and Recovery Act (RCRA) and also provide health related limits and goals for emergency and remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This contract involves no subcontractors.

The Office of Research and Development and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract, and these evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SRC prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Research and Development. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: January 4, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–315 Filed 1–12–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30000/46B; FRL–3214–9]

Cyanazine; Intent To Cancel Registrations; Denial of Applications for Registration; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination and intent to cancel.

SUMMARY: On April 10, 1985, EPA issued a Notice of Initiation of Special Review of registrations of pesticide products containing cyanazine. On January 7, 1987, EPA issued a Notice of Preliminary Determination announcing its preliminary determination that continued use of registered cyanazine products would be allowed only if registrants modified certain terms and conditions of registration as described herein.

This notice concludes the Special Review of pesticide products containing cyanazine and announces EPA's final decision to cancel registrations and deny applications of all such products unless registrants make specified modifications to the terms and conditions of their registrations.

DATES: A request for a hearing by a registrant or applicant must be received by February 12, 1988, or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by February 12, 1988.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Joanna J. Dizikes, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–5098).

SUPPLEMENTARY INFORMATION: This notice is organized into eight units. Unit I is the Introduction. It provides the background information concerning this cancellation action. Units II and III summarizes the risks and the benefits associated with the use of cyanazine. Unit IV contains the comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments and EPA's response to those comments. Unit V describes the Agency's risk/benefit conclusions, and Unit VI describes the regulatory actions required to be complied with by this notice. Unit VII describes the procedures which will be followed in implementing the regulatory actions EPA is announcing in this notice. Unit VIII describes the public docket established for the Cyanazine Special Review.

I. Introduction

A. Notice of Special Review and Preliminary Notice of Intent To Cancel

On April 10, 1985, EPA issued a Notice of Special Review (also called Position Document 1 of "PD–1") on pesticide products containing cyanazine (50 FR 14151), following a finding that cyanazine met or exceed the risk criteria in 40 CFR 162.11(a)(3)(ii)(B), which were in effect at that time. The new, revised risk criteria which appear at 40 CFR 154.7(a)(2) are met or exceeded as well.

The Cyanazine Special Review was based on teratology studies using oral administration which showed that cyanazine produced teratogenic effects in the Fischer 344 rat [lowest-observed-effect-level (LOEL)=25 mg/kg/day, no-observed-effect-level (NOEL)=10 mg/kg/day] and fetotoxic effects in New Zealand white rabbit (LOEL=2 mg/kg/day, NOEL=1 mg/kg/day). Exposures to mixers/loaders and applicators were identified as the occupational exposures of concern.

Dermal absorption and dermal developmental toxicity studies were submitted to the Agency after the issuance of the Notice of Special Review on cyanazine. These new data led to refinement of the risk estimates presented in the Notice of Special Review. The dermal developmental toxicity study demonstrated a NOEL of 573 mg/kg/day.

Following review of public comments and available data, the Agency issued a Notice of Preliminary Determination on January 7, 1987, as well as the Cyanazine Technical Support Document. That document discussed in detail the Agency's determination regarding the risks arising from the use of cyanazine and the modifications to registration which, if adopted, would reduce risks to acceptable levels. Such modifications involved risk reduction measures and included requirements for the use of protective gloves, closed loading systems, and chemical-resistant aprons, as well as label statements regarding the cleaning of protective gloves, separate laundering of protective clothing, and the reason cyanazine has been classified for Restricted Use.

This notice announces the Agency's intent to cancel registrations and deny applications for registration for all pesticide products that contain cyanazine as an active ingredient, unless the terms and conditions of registration are amended as described in Unit VI. This action is based on the Agency's determination that the use of cyanazine will result in unreasonable adverse effects to mixers, loaders, and applicators of cyanazine unless the required measures are adopted. A detailed discussion of the basis of this action is contained in the Notice or Preliminary Determination and the Cyanazine Technical Support Document issued on January 7, 1987 (52 FR 589). This Notice constitutes the final Agency action on the Special Review of cyanazine pesticide products initiated by the results of the developmental toxicity studies discussed herein.

B. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with widespread and commonly recognized practice.

The burden of proving that a pesticide satisfies the standard for registration rests on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide appears to cause unreasonable adverse effects on the environment.

In determining whether the use of a pesticide poses risks which are greater

than the benefits of its use, EPA considers both possible changes to the terms and conditions of registration which can reduce risks, as well as the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require such changes be made in the terms and conditions of registration.

Alternatively, EPA may determine that no change in the terms and conditions of a registration will adequately ensure that use of the pesticide will not pose unreasonable adverse effects. In that event, the Administrator may issue a Notice of Intent to Cancel the registration or may hold a hearing to determine whether it should be cancelled under FIFRA section 6(b). In determining whether to issue such a notice, the Administrator must take into account the impact of the action on production and prices of agricultural commodities, retail food prices, and other possible effects on the agricultural economy. At least 60 days before formally issuing such a notice, he must inform the Secretary of Agriculture in writing of the substance of the proposed actions and supply the Secretary with an analysis of the expected impact on the agricultural economy. At the same time, under FIFRA section 25(d), the Administrator is required to submit the proposal to the Scientific Advisory Panel for comment as to the impact on health and the environment of the action proposed in the cancellation notice. EPA is also required by law, where appropriate, to consult with the U.S. Department of the Interior's Office of Endangered Species to see if the proposed action may affect an endangered species.

Unless expedited procedures are employed, EPA informs the public of its proposals to issue cancellation notices so that registrants and other interested persons can also comment or provide relevant information before a final Notice of Intent to Cancel is issued. Registrants and other interested persons are invited to review the data upon which the proposal is based and to submit data and information to address whether EPA's initial determination of risk was in error. In addition to evidence relating to risks, comments may include evidence as to whether any economic, social, and environmental benefits of use of the pesticide outweigh the risks of use.

If, after reviewing the comments received, EPA decides to issue a Notice of Intent to Cancel, and adversely affected person may request a hearing to challenge the action. In the hearing, any party opposing cancellation would have an opportunity to present evidence. Other interested parties could intervene to present evidence. At the end of the hearing, EPA would decide on the basis of the evidence presented whether or not to cancel or restrict the registration of pesticide products. If no hearing is requested, each registration would be cancelled by operation of law 30 days after receipt by the registrant or publication in the **Federal Register** of the final notice, whichever occurs later.

II. Determination of Risks

A. Risk Assessment and Risk Reduction Measures

The Technical Support Document includes a detailed discussion of the developmental toxicity demonstrated by the cyanazine studies, which include anophthalmia, microphthalmia, skeletal variations, diaphragmatic hernia, dilated brain ventricles, and cleft palate, as well as detailed discussions of the Agency's exposure assessment and risk assessment.

The Agency's risk assessment indicates that, while the degree of risk varies depending on the use rate and the number of acres treated, the risk is unreasonable without the adoption of protective measures as specified herein.

Traditionally, the Agency prefers the use of an oral NOEL to assess the developmental toxicity hazard of dietary exposures and a dermal developmental toxicity NOEL for occupational exposures, because each NOEL provides information relative to the potential hazard posed by a pesticide from that chosen route of administration. Based on the NOEL (573 mg/kg/day) from the dermal developmental toxicity study in rabbits and exposure estimates from a cyanazine exposure study, margins-of-safety (MOSs) were developed using the following formula:

$$\text{Margin-of-Safety (MOS)} = \frac{\text{Dermal Developmental Toxicity NOEL}}{\text{Exposure level}}$$

The Agency generally considers a MOS of less than 100 for this biological endpoint to be a matter of concern.

1. *Ground Boom Application.* The MOSs presented for ground boom application assume that the mixer/loader and applicator are the same person. The MOSs are greater than 100 for all application rates to corn, cotton, wheat fallow, and milo when protective gloves are worn during mixing and loading operations and when adjusting, repairing, or cleaning equipment, as shown in the following Table 1:

TABLE 1.—MARGINS-OF-SAFETY FOR GROUND BOOM APPLICATION [1]

	Corn	Cotton	Wheat fallow	Milo
Applicator [2]				
No protection [3]	7	21	11	21
Gloves [3]	670	1,980	990	1,980
Gloves/closed cab	4,240	12,730	6,370	12,730

[1] The MOSs in this table are for the highest use rates.

[2] Assumes that mixer/loader and applicator are the same person.

[3] The approximately two order of magnitude difference in the MOSs between the no glove scenario and the glove scenario is a result of comparing two independent data bases and the effect of protective gloves on reducing exposure. A worker exposure study submitted by the registrant contained exposure data only for handling scenarios in which gloves were worn. This Table is not intended to imply that protective gloves can reduce total dermal exposure by two orders of magnitude.

2. *Aerial Application.* Aerial application to corn, grain sorghum, and wheat fallow is minimal. There are no data showing that cyanazine is being applied aerially to cotton.

The MOSs for mixer/loaders during aerial use are less than 100 unless protective gloves are worn during mixing and loading operations and when adjusting, repairing, or cleaning equipment and a closed loading system is used, as shown in the following Table 2:

TABLE 2.—MARGINS-OF-SAFETY FOR AERIAL APPLICATION [1]

	Grain sorghum	Corn	Wheat fallow
Applicator (Pilot)	320	170	250
Mixer/Loader:			
No Protection (open pour)	5	2	2
Gloves (open pour)	24	11	12
Gloves/Closed System	1000	440	520

[1] The MOSs in this table are for the highest use rates.

3. *Chemigation.* Corn is the only crop for which chemigation is listed on the label as an application method. The MOSs for chemigation are less than 100 unless protective gloves are worn during mixing and loading operations and when adjusting, repairing, or cleaning equipment, and a closed loading system is used, as shown in the following Table 3:

TABLE 3.—MARGINS-OF-SAFETY FOR CHEMIGATION [1]

	Corn
Applicator:	
No protection (open pour)	13
Gloves (open pour)	59
Gloves/Closed System	2490

[1] The MOSs in this table are for the highest use rate.

4. *Spray Drift.* Surrogate exposure studies were used to estimate exposure to cyanazine through spray drift. Based on these exposure estimates, the MOS for a population exposed to cyanazine by spray drift would be over 1000.

B. Other Risk Reduction Measures

1. *Separate Laundering.* Secondary exposure may occur when contaminated clothes are brought home. Although data are not available to quanitfy such exposure, data do show that cross-contamination does occur when contaminated clothes are washed with household laundry. Washing cynazine-contaminated clothes separately from household laundry would prevent cross-contamination of other laundry.

2. *Chemical-Resistant Aprons.* While the risk of dermal exposure to the body from leaning against tanks during mixing or loading operations (a common occurrence) and accidental spills cannot be quantified, it may be significant in light of the developmental toxicity of cyanazine. Wearing a chemical-resistant apron while mixing or loading cyanazine would reduce exposure from accidental contact or spills.

3. *Washing of Protective Gloves.* Because hands receive the largest percentage of the dermal exposure during mixing/loading, the Agency believes that protective gloves will be contaminated on the outside with cyanazine. If protective gloves are washed with soap and water after use and before being removed from the hands, the risk of exposure from contaminated gloves will be reduced.

4. *Restricted Use.* Cyanazine products have already been classified for Restricted Use, as stated in the cyanazine Registration Standard which was issued in January 1985. The Registration Standard stated that the reason for this Restricted Use classification was that cyanazine had been detected in ground water and surface water. Label language regarding cyanazine's developmental toxicity and detection in ground water and surface water was added to cyanazine labels in accordance with the Registration Standard, but this language was not explicitly tied to the Restricted Use requirement.

The Agency's preliminary determination proposed requiring labels to further state that cyanazine products have specifically been classified for Restricted Use because cyanazine has been found in ground water and because it has caused birth defects in laboratory animals. The Agency based that proposed requirement on the belief that the reasons a pesticide is classified for Restricted Use should be more prominently displayed on the labels so that the users and other members of the public can more readily identify these reasons.

State sponsored monitoring studies, available at the time the Registration Standard was issued, had located residues of cyanazine in wells in Iowa, Pennsylvania, Minnesota, Illinois, and Vermont. Only a small percentage of all the cyanazine samples taken were positive, at levels close to 1 part per billion (ppb). Also, the Agency Office of Water Regulations and Standards' STORET data base had reported finding cyanazine in wells. That data base included reports on 1584 samples, reporting 21 positive samples (1.3 percent), with the 85th percentile level equal to 0.2 ppb. (State agencies submit data into the STORET data base.)

To provide a more systematic evaluation of cyanazine's contamination potential, the Agency required the registrant to conduct a ground water and surface water monitoring study. Those data have now been submitted and reviewed and are summarized below.

Two study areas of two counties each were monitored in 1986. In the hydrogeologically vulnerable East Coast, Sussex County, Delaware and Worcester County, Maryland were sampled. In the moderately vulnerable Midwest study area, Champaign County, Illinois and Jones County, Iowa were studied. There were no positive results in the 400 samples (200 wells each sampled twice). These results have some consistency with the previously mentioned monitoring studies which showed 1 percent positives with findings near and less than 1 ppb.

As a result of the newly generated monitoring data and the previously available data, the Agency no longer believes that cyanazine has significant ground water contamination potential. Therefore, EPA no longer believes that gound water contamination should be a reason for classifying cyanazine for Restricted Use. Therefore, all cyanazine labels will include a statement that cyanazine products have been classified for Restricted Use only because cyanazine has caused birth defects in laboratory animals. However, because some instances of contamination were reported in the earlier studies, the Agency believes the ground water advisory statement should remain on the label.

III. Determination of Benefits

A. The Effect of the Risk Reduction Measures on Benefits

The Agency expects that the risk reduction measures required in this Notice will have a negligible effect on the benefits otherwise associated with the use of pesticide products containing cyanazine. The requirements involving separate laundering, washing of gloves, and adding a statement on Restricted Use to the cyanazine label will have minimal impact on the cost of using cyanazine pesticide products. The requirements to use protective gloves and aprons will have a negligible impact on the cost of use of cyanazine products. In as much as there is not a great deal of aerial use of cyanazine and most aerial applicators already have systems which allow for some degree of closed transfer, the requirement that aerial applicators use closed loading systems is not expected to have a significant impact on

the benefits associated with cyanazine use. Similarly, there is little use of cyanazine through chemigation, and the requirement that closed loading systems be used with chemigation is not expected to have a significant impact on benefits. None of the modifications are expected to prevent users from using cyanazine products wherever such products are currently used. Thus, the Agency believes that the required modifications will have a negligible impact on the benefits associated with the use of pesticide products containing cyanazine.

B. Benefits and the Types of Applications

1. *Ground Boom Application.* The largest use of cyanazine is for broadleaf and grass weed control in corn, accounting for about 95 percent of its total annual usage. Approximately 15 to 20 million acres (20 to 25 percent of the total U.S. corn acreage) of corn are treated annually with cyanazine as either the sole active ingredient or tank-mixed with other herbicides. Growers select cyanazine over other available herbicides for the following reasons: (a) It has a wide annual broadleaf and grass weed control spectrum; (b) it can be tank-mixed with a number of herbicides to broaden its weed cotnrol spectrum; (c) it has relatively short persistence in the soil; (d) it has no rotational crop restrictions; and (e) certain soil types and/or soil conditions require the use of a short residual herbicide in order to rotate to different crops. The Agency assumes that the overall impacts from cancellation of cyanazine use on corn could have significant impacts to individual users in those areas where soil conditions preclude the use of more persistent chemicals. The Agency assumes that since the costs of the required label modifications to the user are relatively low, no one who is currently using cyanazine would be kept from its use in the future. As a result, there would only be a negligible reduction in benefits in relation to those benefits which are currently realized.

Only small acreages of wheat fallow, cotton, and sorghum are treated with cyanazine in the United States. Cyanazine is used primarily where a broad spectrum of weed control is desirable without the carry-over associated with many of the more residual herbicides. As with the impact on benefits to cyanazine use on corn, the Agency also assumes that there would only be a negligible reduction in the benefits of cyanazine use of wheat fallow, cotton, and sorghum as a result of the required label modifications.

2. *Aerial Application.* Available data indicate that approximately 70,000 acres of corn are treated aerially with cyanazine. Aerial application to grain sorghum and wheat fallow is minimal. There are no data showing that cyanazine is being applied aerially to cotton. The main benefits from aerial application are the ability to treat either a large area in a short period of time or when the soil in the fields is too wet to allow access with ground equipment. The Agency assumes that the costs resulting from the label modification which requires closed systems for transfer of cyanazine will not create significant hardship or reduction in these benefits because most aerial applicators already have systems which allow for some degree of closed transfer.

3. *Chemigation.* No significant usage of cyanazine through chemigation has been reported. The Agency assumes that the required label modifications will therefore have no significant effect on the benefits associated with that type of application.

IV. Comments of USDA, SAP, and Public

A. Comments From USDA and Agency Response

In accordance with FIFRA section 6, the Agency's preliminary determination was sent to the U.S. Department of Agriculture (USDA) for comment.

Comment From USDA. USDA commented that EPA did not give a numerical estimate for the benefits of cyanazine use on corn and that EPA should examine the risks associated with cyanazine's alternatives.

Agency Response. In the Cyanazine Special Review Technical Support Document, which was issued with the Agency's preliminary determination on cyanazine, the Agency assumed that the overall impacts from cancellation of cyanazine on corn would be low due to the availability of registered alternatives. EPA did not conduct a quantitative estimate of the benefits of cyanazine use on corn because EPA concluded that the impacts on corn farmers will be negligible if the registrant maintains its registrations with the label modifications proposed by the Agency in its preliminary determination.

Therefore, the Agency does not expect those who use cyanazine now to stop using cyanazine and switch to an alternative herbicide because of the required modifications to cyanazine labels. However, as mentioned in the Agency's Technical Support Document for cyanazine, the following herbicides may be used as alternatives to cyanazine: Alachlor; atrazine; prometryn; propachlor; fluometuron; diuron; and simazine. The risks associated with these alternatives are given in Unit IV.A.1.–7. of this notice.

1. *Alachlor.* Sufficient toxicity data in laboratory animals are available in the Agency to classify this pesticide under toxicity category III for acute oral and dermal exposure. This chemical does not cause eye or skin irritation.

No teratogenic effects were demonstrated when alachlor was given to pregnant rats. However, administration of alachlor to rats at 30 mg/kg/day through three successive generations produced kidney alterations in F2 and F3 offspring. A reproductive NOEL was established by the Agency at 10 mg/kg/day.

Evidence of a mutagenic effect was not demonstrated in the several assays (CHO/HGPRT, Salmonella, *E. coli*, and *B. subtilis*). Data from chronic feeding studies indicated that alachlor induced nasal turbinate tumors in rats and bronchiolar alveolar tumors in female mice. This herbicide is classified as a category B2 oncogen (probable human carcinogen) by the Agency and a consolidated Q^* (cancer potency) of 8×10^{-2} for $(mg/kg/day)^{-1}$ human equivalents has been calculated. These risks are discussed in the Agency's Conclusion of Special Review for Alachlor signed on December 14, 1987.

2. *Atrazine.* The available toxicity data support the classification of atrazine under toxicity category III for acute oral, dermal, and inhalation exposure. Atrazine is neither a dermal nor eye irritant.

A rat developmental toxicity study has been classified as Supplementary Data because a developmental toxicity NOEL could not be established. The LOEL was 10 mg/kg/day (lowest dose tested), based on an increased incidence of runts. A maternal NOEL was established at 10 mg/kg/day, with decreased body weight observed at 70 mg/kg/day.

A rabbit developmental toxicity study showed a NOEL of 1 mg/kg/day and a LOEL of 5 mg/kg/day for maternal toxicity, based on reduced body weight gains. The NOEL for developmental toxicity was 5 mg/kg/day and the LOEL was 75 mg/kg/day, based on increased resorptions, reduced fetal weights for both sexes, and increases in delayed ossification. The rabbit study is also classified as Supplementary Data.

In a chronic/oncogenic rat study, an increase in carcinomas of the mammary glands was observed in females fed 70, 500, or 1000 parts per million (ppm) for 2 years. There was also an increase in the incidence of fibroadenomas/carcinomas (1000 ppm) and all mammary tumors in females receiving 500 and 1000 ppm, when compared to controls. The Agency has classified atrazine as a category C carcinogen (possible human carcinogen). Mammary gland adenocarcinoma incidence data were used to estimate the Q^* of atrazine. The Q^* was determined to be 1.24×10^{-1} $(mg/kg/day)^{-1}$ in human equivalents.

3. *Prometryn.* The available toxicity data place technical prometryn under toxicity category III for acute oral and dermal, and toxicity category IV for acute inhalation exposure. There is no evidence to suggest that prometryn is a dermal or eye irritant.

A developmental toxicity NOEL was established at 72 mg/kg in rabbits but no developmental toxicity NOEL could be ascertained from a rat teratology study. Although the rat multigeneration reproduction study was classified as supplementary data, there is no suggestive evidence of an adverse effect on reproduction up to and including the highest dose tested, 5 mg/kg/day.

Chronic and oncogenicity data are insufficient to assess the oncogenic potential of prometryn.

4. *Propachlor.* Propachlor is moderately toxic to laboratory animals. The acute oral and dermal LD50s are classified as toxicity category III and IV, respectively. Placement of propachlor in rabbit eyes produced corneal opacity, ulceration, iris irritation, chemosis, and conjunctivitis. This herbicide is also a strong dermal sensitizing agent.

Administration of propachlor to pregnant rats did not result in developmental toxicity up to and including a dosage level of 200 mg/kg.

The reproductive and the oncogenic potential cannot be ascertained since no valid studies are available. It is noteworthy to mention that propachlor is structurally related to alachlor (discussed previously), a B2 oncogen.

5. *Diuron.* Diuron is classified as toxicity category III for acute oral, dermal, and inhalation exposure. It does not produce eye or skin irritation.

No acceptable teratology studies are available to assess the developmental toxicity potential of diuron. A multigeneration reproduction study was conducted in rats and decreased F2b and F3a offspring weights were noted at the single dose level tested (6.25 mg/kg).

No acceptable oncogenicity studies are available. However, diuron was clastogenic in an *in vivo* cytogenetic assay. Further, diuron is structurally related to linuron, a category C oncogen (possible human carcinogen).

6. *Fluometuron.* Sufficient data are available to suggest that fluometuron has a low acute toxicity in laboratory animals. The acute oral and dermal LD50s and the acute inhalation LC50 belong to toxicity category III. However, fluometuron produces severe dermal irritation, corneal opacity, and may cause dermal sensitization.

No data are available to assess the developmental toxicity, reproductive, chronic, mutagenic, and oncogenic potential for this herbicide.

7. *Simazine.* Simazine is structurally related to atrazine and cyanazine. It is relatively non-toxic to laboratory animals after acute oral exposure (toxicity category IV). However, it is moderately toxic after inhalation (toxicity category II). The 80 percent wettable powder formulation produced corneal opacity and skin irritation.

A developmental toxicity NOEL was established in rabbits at 75 mg/kg/day with decreased fetal weights and increased skeletal variations noted at the 200 mg/kg/day. In the rat, administration of 100 ppm did not exert any adverse reproductive effect.

Data are inadequate to assess the chronic toxicity, oncogenic and mutagenic potentials of simazine.

In summary, the Agency has a more complete data base for cyanazine than for most of its alternatives. The most widely used alternative to cyanazine is atrazine, which may have more persistent residues, has been classified as a category C oncogen, and leaches through the ground at the same rate as cyanazine.

B. Comments From SAP and Agency Response

In accordance with FIFRA section 24, the Agency's preliminary determination was sent to the FIFRA Scientific Advisory Panel (SAP or Panel) for comment. An open meeting was held with the SAP on March 24, 1987 to discuss scientific issues being considered by the Agency in connection with the Special Review of cyanazine. Specifically, the Agency requested any comments that the Panel wished to make with regard to the Agency's use of the dermal developmental toxicity study to assess the hazards from dermal exposure.

1. *SAP Comment on Maternal Toxicity.* The Panel believed that the dermal developmental toxicity study was an appropriate data set for determining hazards from dermal exposure. However, the Panel also believed that the toxic endpoint that should have been used was the NOEL for dermal maternal systemic toxicity (96 mg/kg/day), not dermal developmental toxicity (573 mg/kg/day). The Panel stated that developmental toxicity occurred only at doses that were maternally toxic, and maternal systemic toxicity occurred at lower exposures; thus, a lower MOS existed for adult animals than for the developing fetus.

Agency Response. Oral administration of technical cyanazine induced developmental toxicity (including malformations) in rabbits and rats. From the rabbit oral developmental toxicity data, both maternal and fetal developmental toxicity NOELs were established at 1 mg/kg/day.

Dermal application of technical cyanazine produced maternal toxicity (body weight depression and food consumption reduction) at 283 mg/kg/day and above. A maternal NOEL was established at less than 96 mg/kg/day based upon dermal irritation and at 96 mg/kg/day based upon systemic effects. Developmental toxicity (delayed ossification) was found at 955 mg/kg/day and a dermal developmental toxicity NOEL was established at 573 mg/kg/day. The NOEL of 573 mg/kg/day for dermal developmental toxicity was used by the Agency to calculate risk in its preliminary determination.

A Peer Review Committee consisting of representatives from different Agency Offices met to discuss the comments raised by the SAP. The Peer Review Committee concluded that the use of the maternal NOEL from a developmental toxicity study in calculating the MOS may not be justified because:

a. In general, maternal toxicity end points determined from a developmental toxicity study (body weight, organ weight, food consumption, clinical signs) are insensitive parameters that do not reflect a true NOEL. Based upon the weight-of-evidence, determination of maternal toxicity requires scientific judgement on a case-by-case basis.

b. Developmental toxicity manifestations may or may not be associated with maternal toxicity because the mechanisms by which toxicity is manifested are different.

c. As a screening test, a developmental toxicity study is designed primarily to assess effects on the developing organism and does not allow characterization of subtle changes in systemic toxicity due to an inadequate length of exposure (10 days).

d. Manifestations of maternal systemic toxicity may result from repeated exposures whereas manifestations of developmental toxicity more likely result from a single exposure. Therefore, NOELs for maternal systemic toxicity and for

developmental toxicity may not reflect comparable lengths of time during which exposure occurred.

2. *SAP Comment on Label Language.* The SAP believes that the Agency is correct in requiring the label changes to reduce applicator exposure, but that it should not state that birth defects are the reason since developmental toxicity occurred at maternally toxic doses and maternal systemic toxicity occurred at lower exposures.

Agency Response. The SAP recommendation relative to "maternal toxicity occurred at lower doses than developmental toxicity" applied only to the dermal developmental toxicity data. By the oral route of administration, developmental toxicity and maternal toxicity are observed at the same dose level (both NOELs are established at 1 mg/kg/day and both LOELs are established at 2 mg/kg/day). The Agency's "Guideline for the Health Assessment of Suspect Developmental Toxicants (1986)" states that "when developmental effects are produced only at maternally toxic doses, the types of developmental effects should be examined carefully, and not discounted as being secondary to maternal toxicity. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from the maternal toxicity; rather, when the lowest observed effect level is the same for the adult and developing organisms, it may simply indicate that both are sensitive to that dose level."

The developmental toxicity hazard of cyanazine was demonstrated by the oral route of administration (structural abnormalities including malformations) at maternally toxic doses, (indicating that both the mothers and developing organisms may be equally sensitive to that dose level), and confirmed by the dermal route of administration (developmental delay, altered growth) at doses higher than those producing maternal toxicity. Therefore, the developmental toxicity hazard of cyanazine is still of concern and failure to state that "* * * cyanazine has caused birth defects in laboratory animals * * *" is not justified. Consequently, the Agency supports its original position of requiring this advisory statement on cyanazine labels.

C. Comments From the Public and Agency Response

The only public comment submitted in response to the Agency's preliminary determination which challenged the Agency's position was submitted by the cyanazine registrant, E.I. Du Pont De Nemours Company (Du Pont). The Cyanazine Technical Support Document, which was issued with the Agency's preliminary determination, cited Shell Chemical Company, Setre Chemical Company, and R.F. Lindsey and Sons as the registrants for cyanazine. However, since the preparation of the Technical Support Document, Setre and Lindsey have voluntarily cancelled their cyanazine registrations, and Du Pont has purchased Shell's cyanazine registrations.

1. *Du Pont Comment on Birth Defects Labels.* Du Pont believed that there was no basis for concern from exposures associated with present use labels and that the statement regarding birth defects should be removed from the label. Also, Dupont stated that maternal toxicity was always seen at doses lower than those showing fetotoxicity, and therefore, cyanazine was not a true "teratogen" and should be of no concern.

Agency Response. By the dermal route of administration, structural anomalies (not malformations) are observed in rabbits at doses higher than those producing maternal toxicity. However, by the oral route of administration, manifestations of developmental toxicity, including malformations: Anophthalmia/microophthalmia; dilated brain ventricles; and diaphragmatic hernia, are observed in both rabbits and rats. Although these manifestations occur at a dose level which also produces some evidence of maternal toxicity, they cannot be considered as secondary to maternal toxicity.

Current information is inadequate to assume that developmental effects at maternally toxic doses result only from maternal toxicity; rather, when the lowest effect is the same for the adult and developing organisms, it simply indicates that both are sensitive to that dose level. Therefore, the association between developmental toxicity manifestations in both rats and rabbits by the oral route of administration and cyanazine cannot be ruled out. Based upon these data, there is evidence to suggest that cyanazine is a developmental toxicant (multispecies evidence of similar findings).

Du Pont's statement, "maternal toxicity was always seen at doses lower than those showing fetotoxicity," is misleading. This is true for the dermal but not for the oral studies in which maternal toxicity and fetotoxicity occurred at the same dosage level.

2. *Du Pont Comment on Separate Laundering.* Du Pont agreed that cross-contamination may occur when contaminated clothing is washed with household laundry and that separate laundering is a "prudent precaution" to take with all pesticide contaminated clothing. However, Du Pont questioned "the imposition of a requirement to launder cyanazine-contaminated clothing separately from household laundry in lieu of data specific to cyanazine." Du Pont believed that "this requirement should be added to cyanazine labels at the time this change is mandated for all pesticide labeling, unless specific data warrant otherwise."

Agency Response. The Agency notes that Du Pont agrees that it would be prudent to wash cyanazine-contaminated clothing separately from household laundry. The Agency believes that by stating such on the label it is more likely that this precaution will be taken. That label language is being required to be added to cyanazine labels at this time in order to reduce potential exposure and because the Agency has just completed its review of worker exposure to this chemical.

3. *Du Pont Comment on Chemical-Resistant Aprons.* Du Pont disagreed with the Agency's position regarding the use of chemical-resistant aprons. In opposition to a statement which was made in the Agency's preliminary determination, Du Pont stated that there were data to quantify the risks associated with dermal exposures resulting from leaning against mixing tanks and accidental spills; Du Pont stated that the cyanazine exposure study which was used by the Agency to calculate some of the risks presented in the preliminary determination employed all common practices in mixing and loading, including leaning against the spray tanks. Also, Du Pont believed that chemical-resistant aprons were bulky and cumbersome to wear and proposed the following label language, instead of requiring the use of chemical-resistant aprons:

> In case of accidental exposure, remove contaminated clothing and wash skin thoroughly with soap and water. Replace contaminated garments with clean, freshly laundered clothing before returning to pesticide handling operations.

Agency Response. The Agency has no indication that chemical-resistant aprons are difficult to wear and has imposed this requirement on other pesticide registrations. The Agency does not agree with Du Pont's proposed label language because it is unlikely that when an accidental spill occurs, a pesticide operator would be in a situation where it is convenient to immediately remove his/her clothing, put on clean clothing, and resume his/her duties.

4. *Du Pont Comment on Restricted Use Classification.* Du Pont also believed that cyanazine should be reclassified from Restricted Use to general use. Du Pont based their position on the beliefs that: Cyanazine is not a teratogen in the absence of maternal effects; the Agency's requirements for additional protective clothing and closed loading systems will provide adequate occupational MOSs; and recently collected ground water samples did not contain detectable residues of cyanazine or the amide metabolite SD 20258.

Agency Response. The Agency agrees with Du Pont's comment that it is not appropriate to classify cyanazine for Restricted Use due to ground water concerns. As discussed in Unit II.B.4. of this notice, new monitoring data have shown that out of 400 samples from 200 wells in two East Coast counties and two Midwest counties, no detectable levels of cyanazine were found. However, the Agency continues to believe that cyanazine poses developmentally toxic concerns and that Restricted Use is an appropriate requirement to mitigate this concern.

The Agency has found that when a pesticide is classified for Restricted Use, the pesticide operators are better educated in the proper use of a pesticide. Therefore, it is more likely that label directions will be complied with, and practices are less likely to occur which may result in unreasonable exposures to mixers/loaders or applicators. Therefore, cyanazine will remain classified for Restricted Use because of its developmental toxicity.

V. Risk/Benefit Conclusions

As discussed in Unit II. of this notice, the Agency has found that there are substantial risks associated with the currently registered use patterns of pesticide products containing cyanazine. The Agency has also determined that there are modifications available that can significantly reduce these risks. The Agency has further determined in Unit III. of this notice that adoption of these modifications will have a negligible effect on the benefits associated with the use of pesticide products containing cyanazine. The Agency therefore believes that current use patterns generally cause unreasonable adverse effects upon the environment and that cyanazine products should be cancelled unless the following modifications are made:

1. For ground boom applications, the label must require: a. The use of protective gloves; b. use of chemical-resistant aprons; c. separate laundering of cyanazine-contaminated clothes; and d. washing of protective gloves. In addition, the label must include a statement explaining that cyanazine products have been classified for Restricted Use because cyanazine has caused birth defects in laboratory animals.

2. For aerial applications and chemigation, the label must require: a. The use of protective gloves; b. a closed loading system; c. use of chemical-resistant aprons; d. separate laundering of cyanazine-contaminated clothes; and e. washing of protective gloves. In addition, the label must include a statement explaining that cyanazine products have been classified for Restricted Use because cyanazine has caused birth defects in laboratory animals. The labels of product formulations which cannot be used in a closed loading system must contain language prohibiting the use of those formulations via aerial application and chemigation.

VI. Compliance With This Notice

A. Definitions

The following terms are defined for the purposes of this Unit.

1. "Manufacturer" refers to any registrant who, as defined, sells or distributes a pesticide product containing cyanazine.

2. "Distribute and sell" and grammatical variants refer to the distribution, sale, offering for sale, holding for sale, shipping, delivering for shipment, or receiving and (having so received) delivering or offering to deliver a pesticide product.

B. Requirements for Complying With This Notice

A manufacturer of any pesticide product containing cyanazine must submit an application to amend the registration of the product within 30 days of publication in the Federal Register or receipt of this notice, whichever is later, to be allowed to continue to sell and distribute the product. The application must propose to amend the registration of the product to include the following terms and conditions and modifications to labeling:

a. Require the use of protective gloves when mixing or loading cyanazine or when adjusting, repairing, or cleaning equipment.

b. Require the following precaution concerning the washing of protective gloves:

> Protective gloves must be washed with soap and water after use and before removing from the hands.

c. Require the use of closed systems in connection with aerial use and chemigation (product formulations which cannot be used in a closed loading system must prohibit aerial use and chemigation).

d. Require use of a chemical resistant apron when mixing or loading.

e. Require that all "Restricted Use" statements include a statement that cyanazine products have been classified for Restricted Use because cyanazine has caused birth defects in laboratory animals.

f. Include the following precaution concerning the washing of contaminated clothing:

> Cyanazine-contaminated clothing should be laundered separately from household laundry to prevent cross-contamination of other laundry. Heavily contaminated or drenched clothing and protective equipment must be discarded or destroyed in accordance with State and local regulations.

C. Existing Stocks and Disposal Provisions

Under the authority of FIFRA section 6(a)(1), EPA will establish certain limitations on the sale, distribution and use of existing stocks of cyanazine pesticide products subject to any final cancellation notice. EPA defines the term "existing stocks" to mean any quantity of cyanazine pesticide products in the United States on the effective date of final cancellation of a cyanazine registration or on the effective date an application for amendment of registration as provided for in Section VI.B of this notice is granted by the Agency. Such existing stocks include cyanazine products that have been formulated, packaged and labeled and are being held for shipment or release or have been shipped or released into commerce.

As stated earlier in this notice, EPA believes certain modifications to the terms and conditions of registration are necessary in order to prevent the use of cyanazine products from causing an unreasonable adverse effect upon the environment. In order to allow for the modifications to be made or to allow for substitution of alternative control methods, EPA will allow sale and distribution of existing stocks of cyanazine for up to six months after final cancellation or approval of an amendment to the registration. Existing stocks may be sold or distributed, by the registrant or by any other person, after this six-month period only if the stocks have been relabeled to reflect the modifications identified in this notice.

EPA also will allow use of existing stocks for up to 1 year after final cancellation or approval of an amendment to the registration. Existing stocks may be used after this one-year period only in accordance with the

modifications identified in this notice. Any disposal of existing stocks not relabeled in accordance with this notice must be in accordance with the requirements of the Resource Conservation and Recovery Act.

Any existing stocks provisions involved in voluntary cancellation of a cyanazine product prior to the publication of the final Notice is not affected by this provision.

VII. Procedural Matters

This notice announces EPA's intent to cancel the registrations of pesticide products that contain cyanazine. This Unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit V. of this notice.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This Unit of the Notice explains how much persons may request a hearing on EPA's final cancellation and denial notice (and the consequences of requesting a hearing or failing to request a hearing in accordance with these procedures).

A. Procedures for Amending the Terms and Conditions of Registration To Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this notice may avoid cancellation by filing for an application for an amended registration which contains the label modifications detailed in Unit VI.B of this notice. This application must be filed within 30 days of receipt of this notice or within 30 days from the publication of this notice, whichever occurs later. Applicants for a registration subject to this notice must file an amended application for registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to: Robert J. Taylor, Product Manager 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. (703–557–1800).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this notice, or within 30 days from publication of this notice, whichever occurs later. Any other person adversely affected by the action described in this notice may request a hearing within 30 days of publication of this notice in the **Federal Register.**

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures requires, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requiremenbuts may result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product(s) for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request* If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing request will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registration within the statutory period provided herein. (See Unit VI of this notice.)

If the registration of a product covered by this notice is cancelled by operation of law, the sale and distribution of existing stocks is governed by the provisions of Unit VI of this notice.

C. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing arising from this Notice of Intent to Cancel: The Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, and the Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication on the merits of any of the issues involved in this proceeding, with the trial staff or any interested person not employed by EPA, without fully complying with the applicable regulations.

VIII. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP–30000/46B) for the Cyanazine Special Review. This public docket includes:

(1) This notice.

(2) Any other notices pertinent to the cyanazine Special Review.

(3) Non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this notice, and any other notice, regarding cyanazine submitted at any time during the Special Review process by any person outside government.

(4) A transcript of any public meeting held by the Agency for the purpose of gathering information on cyanazine.

(5) Memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to cyanazine.

(6) A current index of materials in the cyanazine public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: December 29, 1987.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88–508 Filed 1–12–88; 8:45 am]

BILLING CODE 1560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 88–1]

Agreement Provisions on Loyalty Contracts; Order to Show Cause; Consolidation of Proceeding With FMC Docket No. 87–26; Establishment of Procedural Schedule for Consolidated Dockets; North Europe-U.S. Pacific Freight Conference Agreement et al.

Agreement No. 202–000093–040, North Europe-U.S. Pacific Freight Conference Agreement;

Agreement No. 202–010270–024, Gulf-European Freight Association Agreement;

Agreement No. 202–010656–024, North Europe-U.S. Gulf Freight Association Agreement;

Agreement No. 202–010636–028, U.S. Atlantic-North Europe Conference Agreement;

Agreement No. 202–010637–025, North Europe-U.S. Atlantic Conference Agreemnt.

This proceeding is instituted pursuant to sections 5, 8, 10, 11, 12 and 13 of the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. sections 1704, 1707, 1709, 1710, 1711 and 1712.

The following conferences or associations of ocean common carriers (collectively, "the Conferences") have filed agreements each having the effect of proscribing or regulating the use of loyalty contracts:

The North Europe-U.S. Pacific Freight Conference ("NEUSPFC") filed on behalf of its members [1] Agreement No. 202–000093–040 ("NEUSPFC Agreement"), which modifies Article 11 of the basic conference agreement. Under provisions of section 6 of the Shipping Act of 1984, 46 U.S.C. app. section 1705, the NEUSPFC Agreement is scheduled to become effective on January 11, 1988.

The Gulf-European Freight Association ("GEFA") filed on behalf of its members [2] Agreement No. 202–010270–024 ("CEFA Agreement"), which modifies Article 5 of the basic conference agreement. The GEFA Agreement is scheduled to become effective January 18, 1988.

The North Europe-U.S. Gulf Freight Association ("NEGFA") filed on behalf of its members [3] Agreement No. 202–010656–024 ("NEGFA Agreement"), which modifies Article 5 of the basic conference agreement. The NEGFA Agreement is scheduled to become effective January 18, 1988.

The U.S. Atlantic-North Europe Conference ("ANEC") filed on behalf of its members [4] Agreement No. 202–010636–028 ("ANEC Agreement"), which modifies Article 5 of the basic conference agreement. The ANEC Agreement is scheduled to become effective January 18, 1988.

The North Europe-U.S. Atlantic Conference ("NEAC") filed on behalf of its members [5] Agreement No. 202–010637–025 ("NEAC Agreement"), which modifies Article 5 of the basic conference agreement. The NEAC Agreement is scheduled to become effective on January 18, 1988.

The five agreements referenced above (collectively, "the Agreements") share common characteristics and effect. The Agreements provide, *inter alia*, that (1) members of the Conferences are prohibited from taking independent action ("IA") for the purpose of entering into loyalty contracts with shippers; and (2) members of the Conferences are individually prohibited from entering into such loyalty contracts. The Agreements differ only in that the GEFA, NEGFA, ANEC and NEAC Agreements purport to authorize conference loyalty contracts in conformity with the antitrust laws [6] while the NEUSPFC Agreement is silent on the subject of loyalty contracts at the conference level.

The foregoing loyalty contract provisions of the subject Agreements are substantially similar in language and effect to that filed by the Transpacific Westbound Rate Agreement ("TWRA") in Agreement No. 202–010689–027 ("TWRA Agreement"). The Commission recently directed the TWRA and its members to demonstrate why their restrictions on loyalty contracts should not be found in violation of the Shipping Act of 1984. *See* FMC Docket No. 87–26, *Agreement No. 202–010689–027 Transpacific Westbound Rate Agreement—Loyalty Contracts*, Order to Show Cause, served December 3, 1987. For the reasons set forth below, the Commission has determined that it should also examine in a show cause proceeding the lawfulness and basis for the instant Agreements. As these Agreements share common legal issues with the TWRA Agreement, the Commission has further determined that it will consolidate this docket with proceedings previously instituted in FMC Docket No. 87–26 for purposes of further hearing and decision. [7]

The term "loyalty contract" is defined at section 3(14) of the 1984 Act, 46 U.S.C. app. section 1702(14), to mean:

> " " " a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by commiting all or a fixed portion of its cargo to that carrier or conference.

It appears that the cited articles of the Agreements violate the Act for the reasons which follow.

Section 5(b) of the 1984 Act, [8] 46 U.S.C. app. section 1704(b)(8), requires that each conference agreement must provide that its members may take independent action "on any rate or service item required to be filed in a tariff under section 8(a)." " " " As pertinent, section 8(a)(1), 46 U.S.C. app. section 1707(a)(1), requires that tariffs shall:

" " " " "

" " " " "

(E) include sample copies of any loyalty contract, bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

Accordingly, it appears that a loyalty contract is a rate or service item required to be included in a tariff within the meaning of section 8(a) of the 1984 Act. Therefore, by prohibiting IA on loyalty contracts, it appears that the Agreements are in violation of section 5(b)(8) of the Act.

The sole statutory provision expressly restricting the use of a loyalty contract by an ocean carrier is section 10(b)(9) of the 1984 Act, 46 U.S.C. app. section 1709(b)(9) which requires that such contract conform to the antitrust laws. However, it appears that neither section 10(b)(9) nor any other provision of the 1984 Act authorizes a conference to undertake any action infringing upon a member's prerogative to enter into loyalty contracts.

Section 5(b)(5) of the Act, 46 U.S.C. app. section 1704(b)(5), requires that each conference agreement must "prohibit the conference from engaging in conduct prohibited by section 10(c)(1)" of the Act. Section 10(c)(1), 46 U.S.C. app. section 1709(c)(1), provides

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[1] The members of NEUSPFC are identified in Appendix 1.

[2] The members of GEFA are identified in Appendix 2.

[3] GEFA and NEGFA share a common membership. Members of NEGFA are identified in Appendix 2.

[4] The members of ANEC are identified in Appendix 3.

[5] ANEC and NEAC share a common membership. Members of NEAC are identified in Appendix 3.

[6] The GEFA, NEGFA, ANEC and NEAC Agreements utilize operative agreement language which is identical for all four conferences.

[7] The Commission intends that a uniform procedural schedule govern all parties to these consolidated dockets. Respondents and intervenors in Docket No. 87–26 will therefore be afforded additional time to prepare their initial affidavits and memoranda of law, consistent with the new timetable for hearing set forth herein.

[8] As pertinent, section 5 provides:

(b) Conference Agreements—Each conference agreement must—

" " " " " "

(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act " " " in lieu of the existing conference tariff provisions for that rate or service item.

that no conference or group of two or more common carriers may:

boycott or take any other concerted action resulting in an unreasonable refusal to deal.

Further, section 10(a)(3) of the Act, 46 U.S.C. app. section 1709(a)(3) provides that no person may "operate under an agreement required to be filed * * * except in accordance with the terms of the agreement * * *."

Article 11 of each of the underlying agreements of the respondent Conferences provides, *inter alia*, that the conference shall not take concerted action resulting in an unreasonable refusal to deal. Nonetheless, by collectively authorizing and agreeing to their respective Agreements, which agreement provisions severally and jointly result in an arbitrary and capricious refusal to deal with shippers who might otherwise seek to enter into loyalty contracts, it appears that the Conferences and their members negated the effect of and operated contrary to Article 11 and the prohibition required by section 5(b)(5). It therefore appears that the Conferences and their members have violated sections 5(b)(5), 10(a)(3), and 10(c)(1) of the Act.

In this connection, we vote that the GEFA, NEGFA, ANEC, and NEAC Agreements differ from those of TWRA and NEUSPFC in that the former would authorize conference loyalty contracts. Our concern is that this is a distinction without a difference, if the authority is not exercised.[9]

Now therefore, it is ordered That pursuant to section 11 of the Shipping Act of 1984, the North Europe-U.S. Pacific Freight Conference Agreement, Gulf-European Freight Association Agreement, North Europe-U.S. Gulf Freight Association Agreement, U.S. Atlantic-North Europe Conference Agreement, and North Europe-U.S. Atlantic Conference Agreement and their members show cause why they should not be found to be operating in violation of section 5(b)(8) of the Shipping Act of 1984 for not complying with the mandatory independent action provision of that section of the 1984 Act and, if found to be operating in violation, why the Agreements should not be disapproved, canceled, or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the North Europe-U.S. Pacific Freight Conference Agreement, Gulf-European Freight Association Agreement, North Europe-U.S. Gulf Freight Association Agreement, U.S. Atlantic-North Europe Conference Agreement, and North Europe-U.S. Atlantic Conference Agreement and their members show cause why they should not be found to be in violation of section 5(b)(5) of the Shipping Act of 1984 for not prohibiting concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation of section 5(b)(5) of the 1984 Act, why the Agreements should not be disappproved, cancelled or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the North Europe-U.S. Pacific Freight Conference Agreement, Gulf-European Freight Association Agreement, North Europe-U.S. Gulf Freight Association Agreement, U.S. Atlantic-North Europe Conference Agreement, and North Europe-U.S. Atlantic Conference Agreement and their members show cause why they should not be found to be in violation of section 10(c)(1) of the Shipping Act of 1984 for taking concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation of section 10(c)(1) of the 1984 Act, why the Agreements should not be disapproved, canceled or modified by the Commission;

It is further ordered That pursuant to section 11 of the Shipping Act of 1984, the North Europe-U.S. Pacific Freight Conference Agreement, Gulf-European Freight Association Agreement, North Europe-U.S. Gulf Freight Association Agreement, U.S. Atlantic-North Europe Conference Agreement, and North Europe-U.S. Atlantic Conference Agreement and their members show cause why they should not be found to be in violation of section 10(a)(3) of the Shipping Act of 1984 for operating other than in accordance with the terms of the underlying conference agreement, which prohibits taking concerted action resulting in an unreasonable refusal to deal and, if found to be operating in violation, why the Agreements should not be disapproved, canceled or modified by the Commission;

It is further ordered That should it be determined that North Europe-U.S. Pacific Freight Conference Agreement, Gulf-European Freight Association Agreement, North Europe-U.S. Gulf Freight Association Agreement, U.S. Atlantic-North Europe Conference Agreement, and North Europe-U.S. Atlantic Conference Agreement and their members have operated in violation of sections 5(b)(5), 5(b)(8), 10(a)(3) or 10(c)(1) of the Act the matter may, pursuant to section 13 of the Shipping Act of 1984, be referred to an Administrative Law Judge in an appropriate proceeding to determine whether penalties should be assessed and, if so, the level of such penalties;

It is further ordered That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered That the North Europe-U.S. Pacific Freight Conference Agreement; Gulf-European Freight Association Agreement; North Europe-U.S. Gulf Freight Association Agreement; U.S. Atlantic-North Europe Conference Agreement; North Europe-U.S. Atlantic Conference Agreement; and their respective members are named Respondents in this proceeding;

It is further ordered That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact and shall be filed no later than the date fixed below;

It is further ordered That this proceeding is hereby consolidated for purposes of hearing and decision with proceedings in FMC Docket No. 87–26, *Agreement No. 202–010689–027, Transpacific Westbound Rate Agreement—Loyalty Contracts;*

It is further ordered That:

(a) Affidavits of fact and memoranda of law shall be filed by Respondents in these consolidated proceedings and any intervenors in support of the Agreements no later than February 16, 1988;

(b) Reply affidavits and memoranda of law shall be filed by the Bureau of Hearing Counsel, Protestants in Docket No. 87–26, and any intervenors in opposition to the Agreements no later than March 17, 1988;

(c) Rebuttal affidavits and memoranda of law, if any, shall be filed by Respondents in these consolidated proceedings and any intervenors in support of the Agreements no later than April 1, 1988;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefor and why argument by memorandum is inadequate to present the party's case; and

(c) Any such request for evidentiary hearing or oral argument shall be filed no later than April 11, 1988;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon all Respondents and Protestants in these consolidated proceedings;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502–118, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by August 1, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix 1

North Europe-U.S. Pacific Freight Conference Agreement

[Agreement No. 202–000093–040]

Members: Hapag-Lloyd AG, Johnson Scanstar, Compagnie Generale Maritime, Incotrans BV, Sea-Land Service, Inc.

Appendix 2

Gulf-European Freight Association Agreement

[Agreement No. 202–010270–024]

Members: Compagnie Generale Maritime, Lykes Bros. Steamship Co., Inc., Gulf Container Line, B.V., Hapag-Lloyd AG, Sea-Land Service, Inc., P&OCL (Trans Freight Lines) Ltd., Nedlloyd Lijnen, B.V.

North Europe-U.S. Gulf Freight Association Agreement

[Agreement No. 202–010656–024]

Members: Compagnie Generale Maritime, Lykes Bros. Steamship Co., Inc., Gulf Container Line, B.V., Hapag-Lloyd AG, Sea-Land Service, Inc., P&OCL (Trans Freight Lines) Ltd., Nedlloyd Lijnen, B.V.

Appendix 3

U.S. Atlantic-North Europe Conference Agreement

[Agreement No. 202–010636–028]

Members: Atlantic Container Line, B.V., Dart-ML Ltd., Hapag-Lloyd AG, Sea-Land Service, Inc., Gulf Container Line, B.V., P&OCL (Trans Freight Lines) Ltd., Compagnie Generale Maritime, Nedlloyd Lijnen, B.V.

North Europe-U.S. Atlantic Conference Agreement

[Agreement No. 202–010637–025]

Members: Atlantic Container Line, B.V., Dart-ML Ltd., Hapag-Lloyd AG, Sea-Land Service, Inc., Gulf Container Line, B.V., P&OCL (Trans Freight Lines) Ltd., Compagnie Generale Maritime, Nedlloyd Lijnen, B.V.

[FR Doc. 88–570 Filed 1–12–88; 8:45 am]

BILLING CODE 6730–01–M

[9] This proceeding is instituted for the purpose of determining whether the Agreements are in conformity with the 1984 Act in prohibiting their members from entering into loyalty contracts with shippers. Because the provisions of particular loyalty contracts are not in issue here, this proceeding does not seek to inquire into the lawfulness of any such loyalty contract—e.g., whether a particular loyalty contract may violate section 10(b)(10) of the Act, 46 U.S.C. app. section 1709(b)(10), which prohibits a common carrier from demanding, charging or collecting any rate or charge that is unjustly discriminatory between shippers or ports. Nor does this proceeding seek to address whether a particular loyalty contract offered by a carrier or conference violates section 10(b)(9) of the Act, which prohibits use of a loyalty contract except in conformity with the antitrust laws.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for February through March 1988, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland, 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	February–March 1988 meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380	Feb. 16–18	8:30	Le Mendien Hotel, Newport Beach, CA
Bacteriology & Mycology–1, Dr. Timothy J. Henry, Rm. 304, Tel. 301–496–7340	Feb. 10–12	8:30	Guest Quarters Hotel, Bethesda, MD
Bacteriology & Mycology–2, Dr. William Branche, Jr., Rm. 306, Tel. 301–496–7862	Feb. 17–19	8:30	Crowne Plaza, Rockville, MD
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 436, Tel. 301–496–7109	Feb. 10–12	9:00	Omni Georgetown Hotel, Washington, DC
Biochemical Endocrinology, Dr. Janos Varga, Rm. 226, Tel. 301–496–7430	Feb. 17–19	9:00	Crowne Plaza, Rockville, MD
Biochemistry–1, Dr. Adolphus P. Toliver, Rm. 3188, Tel. 301–496–7516	Feb. 11–13	8:30	Howard Johnson, Convention Ctr., Miami, FL
Biochemistry–2, Dr. Alex Lacouraa, Rm. 318A, Tel. 301–496–7517	Feb. 18–20	8:30	Crowne Plaza, Rockville, MD
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301–496–7107	Feb. 25–27	9:00	Holiday Inn, Georgetown, DC
Biophysical Chemistry, Dr. John B. Wolff, Rm. 2368, Tel. 301–496–7070	Feb. 25–27	8:30	Hotel San Carlos, Phoenix, AZ
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7056	Feb. 9–11	9:00	Ramada Inn, Bethesda, MD

Study section	February-March 1988 meetings	Time	Location
Cardiovascular & Pulmonary, Dr. Anthony C. Chung, Rm. 2A-04, Tel. 301-496-7316	Feb. 23-25	8:30	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901	Feb. 22-24	8:30	Holiday Inn, Georgetown, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396	Mar. 2-4	8:00	Basement Room, Federal Building, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Hugh Stamper, Rm. 340, Tel. 301-496-8844	Feb. 22-24	8:30	Holiday Inn, Bethesda, DC.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078	Feb. 24-26	8:30	Crowne Plaza, Rockville, MD.
Diagnostic Radiology, Dr. Catherine Wingate, Rm. 2188, Tel. 301-496-7850	Feb. 24-26	8:30	Omni Georgetown, Hotel, Washington, DC.
Endocrinology Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346	Feb. 3-5	8:30	Hyatt Regency, Bethesda, MD
Epidemiology & Disease Control-1, Dr. Nathan Watzman, Rm. 203C, Tel. 301-496-7246	Feb. 10-12	8:30	Holiday Inn, Chevy Chase, MD.
Epidemiology & Disease Control-2, Dr. Horace Stiles, Rm. 340, Tel. 301-496-7248	Feb. 10-12	8:30	Holiday Inn, Chevy Chase, MD.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940	Feb. 16-18	8:00	Hyatt Regency Hotel, Bethesda, MD.
Experimental Immunology, Dr. Calbert Lang, Rm. 222B, Tel. 301-496-7238	Feb. 24-26	8:00	Omni Georgetown Hotel, Washington, DC.
Experimental Therapeutics-1, Dr. Morris Kelsey, Rm. 221, Tel. 301-496-7839	Feb. 10-12	8:30	Hyatt Regency Hotel, Bethesda, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301-496-6848	Mar. 3-4	8:30	Guest Quarters, Hotel, Bethesda, MD
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	Feb. 26-28	8:30	Quail Ridge Inn, Taos, NM
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Feb. 29-Mar. 2	8:30	Room 10, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Donna J. Dean, Rm. 354B, Tel. 301-496-7140	Feb. 24-26	8:30	Room 8, Bldg. 31C, Bethesda, MD
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301-496-7730	Feb. 24-26	8:00	Marbury House, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271	Feb. 11-13	9:00	Holiday Inn, Bethesda, MD
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494	Feb. 10-12	8:30	Omni Shoreham Hotel Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508	Feb. 18-20	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Joel Solomon, Rm. 355B, Tel. 301-496-7508	Feb. 24-26	8:00	Ramada Inn, Bethesda, MD
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Feb. 17-19	8:30	Sheraton Brickell Point, Miami, FL.
Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301-496-7640	Feb. 10-12	8:30	Holiday Inn, Georgetown, DC
Human Development & Aging-3, Dr. Anita Sostek, Rm. 203A, Tel. 301-496-9403	Feb. 17-19	8:30	Sheraton Brickell Point, Miami, FL.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7597	Feb. 23-25	8:30	Linden Hill Hotel, Bethesda, MD.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301-496-7780	Feb. 17-19	8:30	Holiday Inn, Bethesda, MD
Immunological Sciences, Dr. Anita Weinblatt, Rm. 233A, Tel. 301-496-7179	Feb. 24-26	8:30	Howard Johnson Wellington Hotel, Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	Feb. 18-20	8:30	Crowne Plaza, Rockville, MD
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	Feb. 17-19	9:00	Holiday Inn, Bethesda, MD.
Metabolic Pathology, Dr. Marcelena Powers, Rm. 435, Tel. 301-496-5251	Feb. 10-12	9:00	Howard Johnson Wellington Hotel, Washington, DC.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	Mar. 3-5	8:30	Room 9, Bldg. 31C, Bethesda, MD
Metallobiochemistry, Dr. Edward Zapolski, Rm. 340, Tel. 301-496-7733	Feb. 18-20	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 236, Tel. 301-496-7183	Feb. 24-26	8:30	Crowne Plaza, Rockville, MD
Microbial Physiology & Genetics-2 Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	Feb. 9-11	8:30	Hyatt Regency Hotel, Bethesda, MD
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7080	Feb. 18-20	8:30	One Washington Circle Hotel, Washington, DC.
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	Feb. 18-20	8:30	Days Inn, Rockville, MD
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Feb. 4-6	8:30	Crowne Plaza, Rockville, MD
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 407B, Tel. 301-496-7279	Feb. 17-19	8:00	Tucson Hilton East, Tucson, AZ
Neurological Sciences-2, Dr. Stephen Gobet, Rm. 1A05, Tel. 301-496-8806	Feb. 17-19	8:30	Tucson Hilton East, Tucson, AZ
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	Feb. 10-12	8:30	Hyatt Regency Hotel, Bethesda, MD
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	Feb. 23-26	8:30	One Washington Circle Hotel, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	Feb. 16-19	9:00	Howard Johnson Wellington Hotel, Washington, DC.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	Feb. 17-19	8:30	Omni Georgetown Hotel, Washington, DC
Nursing Research, Dr. Gertrude McFarland, Rm. A16, Tel. 301-496-0558	Mar. 8-10	8:00	Linden Hill Hotel, Bethesda, MD.
Nutrition Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	Feb. 29-Mar. 2	8:00	Room 9, Bldg. 31C, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 22-25	8:30	Days Inn, Rockville, MD.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	Feb. 8-11	8:30	Days Inn, Rockville, MD.
Orthopedics & Musculoskeletal, Ms. Joan Stewart, Rm. 350, Tel. 301-496-7581	Mar. 2-4	8:30	Crowne Plaza, Rockville, MD
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	Feb. 24-26	8:30	Holiday Inn, Chevy Chase, MD
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	Mar. 1-4	8:30	Crowne Plaza, Rockville, MD.
Pathology B, Dr. Gerald Fred, Rm. 340, Tel. 301-496-7248	Feb. 24-26	8:30	Ramada Inn, Bethesda, MD
Pharmacology, Dr. Joseph Kaiser, Rm. 208, Tel. 301-496-7408	Feb. 16-18	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	Feb. 15-17	8:30	Crowne Plaza, Rockville, MD
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	Feb. 25-27	8:00	Holiday Inn, Georgetown, DC
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Feb. 25-27	9:00	Adams Hilton Hotel, Phoenix, AZ
Radiation, Dr. John Zimbrick, Rm. 218A, Tel. 301-496-7073	Feb. 22-24	8:30	Holiday Inn, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	Feb. 8-11	8:30	Holiday Inn, Bethesda, MD
Reproductive Endocrinology, Dr. Bela Gulyas, Rm. 325B, Tel. 301-496-8857	Feb. 10-12	8:30	Holiday Inn, Bethesda, MD
Respiratory & Applied Physiology, Dr. Clyde Wellums, Rm. 218A, Tel. 301-496-7320	Feb. 22-24	8:00	Room 8, Bldg. 31C, Bethesda, MD
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	Feb. 24-26	8:30	Hotel Tower Place, Atlanta, GA
Sensory Disorders & Language, Dr. Michael Kelesz, Rm. 3A-07, Tel. 301-496-7560	Feb. 24-26	8:00	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	Feb. 11-13	9:00	Quality Inn, Washington, DC
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	Feb. 28-Mar. 1	8:00	Hyatt Regency Hotel, Bethesda, MD
Surgery, Anesthesiology & Trauma, Dr. Keith Kramer, Rm. 319B, Tel. 301-496-7771	Feb. 25-26	8:30	Ramada Inn, Bethesda, MD.
Toxicology, Dr. Alfred Mirocha, Rm. 205, Tel. 301-496-7570	Mar. 9-11	8:00	Omni Europa Hotel, Chapel Hill, NC.
Tropical Medicine & Parasitology, Dr. Jean Heikman, Rm. 334, Tel. 301-496-1190	Feb. 15-17	8:30	Holiday Inn, Georgetown, DC.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7605	Feb. 26-28	8:30	Quail Ridge Inn, Taos, NM.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	Feb. 3-5	9:00	St. Francis Hotel, Santa Fe, NM
Visual Sciences A-2, Dr. Gilbert Meier, Rm. 439A, Tel. 301-496-7795	Feb. 17-19	8:30	Howard Johnson Plaza Hotel, Washington, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	Feb. 24-26	8:30	Holiday Inn, Bethesda, MD

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: December 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-583 Filed 1-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research Advisory Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Center for Nursing Research Advisory Council, National Center for Nursing Research, February 16-17, 1988, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on February 16, from 9 a.m. to recess and on February 17 from 8:30 a.m. to 9:30 a.m. Agenda items to be discussed will include the NCNR Director's Report, NCNR Advisory Council Biennial Report to Congress, percentile vs. priority score ranking, a tour of NIH's Clinical Center, models of collaboration within NIH, National Nursing Research Agenda, report of the meeting of the Advisory Committee to the Director, NIH, renewal of statement of understanding, and discussion of ethical statement from June 1987 meeting.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. section 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on February 17 at 9:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open on February 17, immediately following the review of applications, if any policy issues are raised which need further discussion.

Mrs. Ruth K. Aladj, Executive Secretary, National Center for Nursing Research Advisory Council, National Institutes of Health, Building 31A, Room 1E10, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: December 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-575 Filed 1-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 18-19, 1988, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 8, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on February 18 to adjournment on February 19, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1988. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: January 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-576 Filed 1-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, February 19, 1988. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 7, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-0931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839 Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 4, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-577 Filed 1-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 21-23, 1988, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 21, from 7 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b (c)(4) and 552b (c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 22 from approximately 8 a.m. until adjournment on February 23, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-578 Filed 1-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Cholesterol Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on February 19, 1988, from 9 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400.

BEST COPY AVAILABLE

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, C–200, Bethesda, Maryland 20892, (301) 496–0554.

Dated: January 7, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 88–579 Filed 1–12–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, January 19–20, 1988, which was published in the **Federal Register** on Monday, December 7, 1987 (52 FR 46420).

The entire meeting was previously scheduled to be open to the public. The meeting will now be closed on January 20 for approximately one hour beginning at 8:30 a.m., and on January 20 for approximately two hours beginning at 12 noon, in accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S.C. The closed portion involves the consideration of personnel qualifications and performance, the competence of individudal investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: January 7, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–580 Filed 1–12–88; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Recombinant DNA Advisory Committee, February 1, 1988, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on December 23, 1987 (52 FR 48660).

The meeting was cancelled due to lack of a sufficient number of agenda items.

Dated: January 7, 1988.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 88–581 Filed 1–12–88; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee, Working Group on International Projects; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on International Projects at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on February 1, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss applicability of NIH Guidelines to projects carried out abroad. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on International Projects, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Date: January 7, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–582 Filed 1–12–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Committee on Vital and Health Statistics Subcommittee; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Long Term Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will meet on Tuesday, January 19, 1988, from 2:00 p.m. to 5:00 p.m. and Wednesday, January 20, 1988, from 9:00 a.m. to 4:00 p.m. in Room 337A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Subcommittee will conduct a review of functional assessment approaches, and will consider a nursing service classification and availability of Long-Term Care Data Sets.

Further information regarding the Subcommittee may be obtained by contacting Richard Havlik, National Center for Health Statistics, Room 2–12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: December 17, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 88–524 Filed 1–12–88; 8:45 am]

BILLING CODE 4160–17–M

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, February 3, 1988 from 1:00 p.m. to 5:00 p.m., Thursday, February 4, 1988 from 9:00 a.m. to 5:00 p.m., and Friday, February 5, 1988 from 9:00 a.m. to 1:30 p.m. in Room 703A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Committee will receive reports from each of its Subcommittees and may address new business as appropriate.

Further information regarding this meeting of the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Date: December 17, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 88–525 Filed 1–12–88; 8:45 am]

BILLING CODE 4160–17–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–267

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Commission Decision Not To Review Initial Determination Terminating One Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent Health International Laboratories, Inc. on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) terminating Health International Laboratories, Inc. as a respondent in the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–3395.

SUPPLEMENTARY INFORMATION: On December 11, 1987, the presiding administrative law judge issued an ID (Order No. 44) granting the joint motion of complainant The Upjohn Company and respondent Health International Laboratories, Inc. to terminate the investigation with respect to Health International Laboratories on the basis of a settlement agreement. No petitions for review of the ID and no government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 5, 1988.

[FR Doc. 88–569 Filed 1–12–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–270]

Certain Noncontact Tonometers; Termination of Investigation as to a Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination granting a joint motion to terminate the investigation as to respondent P.A. Consulting Services, Ltd. ("P.A.") on the basis of a settlement agreement.

SUMMARY: On November 23, 1987, complainant Cambridge Instruments, Inc. and respondent P.A. filed a joint motion to terminate this investigation as to P.A. on the basis of a settlement agreement. On December 8, 1987, the presiding administrative law judge issued an initial determination ("ID") granting the joint motion to terminate the investigation. The Commission published a notice of the ID on December 16, 1987 (52 FR 47766). The Commission determined not to review the ID.

FOR FURTHER INFORMATION CONTACT: Timothy M. Reif, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202–523–5937.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 5, 1988.

[FR Doc. 88–568 Filed 1–12–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31200]

Chemical Lime, Inc.; Acquisition and Operation Exemption; Rail Lines of CSX Transportation, Inc.

Chemical Lime, Inc. (CLI), a noncarrier has filed a notice of exemption to acquire and operate approximately 45.26 miles of railroad extending from milepost SR 838.26 to milepost SR 793.0, between Sulphur Springs and Shands, FL from CSX Transportation, Inc. (CSX). The agreement for transfer of the line between CLI and CSX is to be consummated on or before December 31, 1987.

Any comments must be filed with the Commission and served on David H. Baker, Holland & Knight, Suite 900, 888 17th Street, NW., Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–408 Filed 1–12–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31185]

Leadville-Climax Shortline Railway Co.; Acquisition and Operation Exemption; Rail Lines of Burlington Northern Railroad Co.

Leadville-Climax Shortline Railway Company (LCSR), a noncarrier, has filed

a notice of exemption to acquire and operate approximately 13.74 miles of railroad of Burlington Northern Railroad Company (BN), located in Colorado. The line extends from BN milepost 137.47 at Climax, CO, to BN milepost 151.21 at Leadville, CO. The agreement for transfer of the lines between LCSR and BN was to be consummated on or before January 1, 1988.

This transaction will also involve the issuance of securities by LCSR, which will be a class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on Stephanie Shaw Olsen, Leadville-Climax Shortline Railway Company, Leadville, CO 80461.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-409 Filed 1-12-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 228X)]

CSX Transportation, Inc.; Abandonment Exemption in Ross County, OH

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.55-mile line of railroad between valuation station 4631+83 (milepost 87.81) near Musselman and valuation station 5135+50 (milepost 97.36) near Chillicothe, in Ross County, OH.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on February 12, 1988 (unless stayed pending reconsideration). Petitions to stay must be filed by January 22, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by February 1, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) and will serve it on all parties by January 18, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 7, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-653 Filed 1-12-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-6978] et al.

Proposed Exemptions; Central States, Southeast and Southwest Areas Pension Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Central States, Southeast and Southwest Areas Pension Fund (the Plan)

Located in Chicago, Illinois

[Exemption Application No. D-6978]

Proposed Amendments to Exemption

The Department is proposing to modify a portion of Prohibited Transaction Exemption (PTE) 85-211 (50 FR 43222, December 30, 1985) issued to Morgan Stanley Group Inc. (MSG), the Named Fiduciary (the Named Fiduciary) on behalf of the Plan. Authority to grant the proposed amendments to the exemption is given the Department under section 408(a) of the Act, section 4975(c)(2) of the Code and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

If the proposed amendments are adopted, paragraph (A) of PTE 85-211 would be restated so that the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply until January 21, 1990 to the adjustment, disposition, and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property [as described in Part VIII of PTE 77-11 (42 FR 54041, October 7, 1977) and PTE 84-114 (49 FR 30609, July 31, 1984)], but only to the extent that PTE 84-14 (49 FR 9494, March 13, 1984) is not applicable with respect to such transactions by reason of any of the following: (1) The assets of the Plan represent more than 20 percent of the total client assets under the management of the investment manager at the time of the transaction; (2) the investment manager does not satisfy the definition contained in Part V(a)(4) of PTE 84-14; or (3) the transaction is between the Plan and the Central States, Southeast and Southwest Areas Health and Welfare Fund (the Welfare Plan), or the transaction is between the Plan and a person which is a party in interest and at the time of the transaction [as defined in Part V(i) of PTE 84-14] either such party in interest or its "affiliate" [as defined in Part V(c) of PTE 84-14] has the authority or, during the preceding one year, has exercised the authority: (a) To appoint or terminate the Named Fiduciary of the Plan or (b) to otherwise alter the terms under which a person serves as the Named Fiduciary of the Plan.

Effective Date: If granted, the proposed amendments would be effective January 1, 1985. They will expire on January 21, 1992.

Summary of Facts and Representations

1. *The Plan.* The Plan is a multiemployer defined benefit pension plan established in 1955 by an Agreement and Declaration of Trust between various local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and employers having collective bargaining agreements with those unions. The Plan is jointly administered by eight trustees (the Trustees), an equal number of whom are appointed indirectly by participating unions and employers in compliance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended.

More than 10,000 employers currently make contributions to the Plan under collective bargaining agreements involving approximately 300 local union organizations. The number of active and retired participants and beneficiaries in the Plan as of December 31, 1985 totaled approximagely 459,000. As of March 31, 1987, the total of the Plan's assets under control of MSG was valued at approximately $8.16 billion.

2. *The 1977 Agreements.* In 1977, pursuant to an agreement with the Department and the Internal Revenue Service (the Service), the Trustees entered into a series of contracts with certain independent investment managers, delegating to them direct control over the Plan's assets. By agreements dated June 30, 1977, the Trustees appointed The Equitable Life Assurance Society of the United States (Equitable) to serve as the Named Fiduciary of the Plan and as an investment manager for 25 percent of the Plan's securities-related assets. The Trustees also appointed three additional investment managers to manage the Plan's remaining securities-related assets. In addition, Equitable and Victor Palmieri and Company, Incorporated (VPCO) were appointed to manage the Plan's real estate-related assets.

As the Named Fiduciary, Equitable was given exclusive responsibility to develop investment policies and objectives for the Plan; allocate the assets among different types of investments and investment managers; and appoint, remove and monitor the performance of the securities-related investment managers. The Trustees retained responsibility for monitoring the performance of Equitable both as the Named Fiduciary and as investment manager for the securities-related and real estate-related assets. Both Equitable and the Trustees were empowered to monitor the performance of VPCO.

3. *The Consent Decree (the Consent Decree).* To resolve outstanding litigation against the Plan and the Trustees, certain negotiations between the Department and the Plan culminated in the adoption of the Consent Decree which was entered on September 22, 1982 by the United States District Court for the Northern District of Illinois, Eastern Divison (the Court). The Consent Decree requires that all assets of the Plan be subject to the exclusive authority and control of the Named Fiduciary. The Consent Decree gives the Named Fiduciary exclusive authority to manage all present and future investments of the Plan (other than assets held in the Benefits and Administration Account) or to delegate this authority to such investment managers and real estate managers as it determines are necessary to manage the Plan's assets. The Consent Decree provides that the Trustees retain the responsibility to monitor the performance of the Named Fiduciary. The Trustees are further empowered by the Consent Decree to terminate the Named Fiduciary without cause upon six months' written notice.[1]

To further the objectives of the Consent Decree, the Department and the Plan agreed to the appointment by the Court of an independent special counsel (the Independent Special Counsel). The Court has appointed Mr. William B. Saxbe (Mr. Saxbe), former Attorney General of the United States as the Independent Special Counsel. The Independent Special Counsel is required to devote special attention to compliance by all Plan fiduciaries with the fiduciary responsibility provisions of the Act and is authorized to monitor and review the activities of the Trustees, the Named Fiduciary, the investment managers and other parties. The Independent Special Counsel is also required to file written quarterly reports with the Court regarding matters within his jurisdiction.

[1] The Named Fiduciary may also be removed by the Court for good cause shown after 60 days' notice is given to the Named Fiduciary and the Department. However, the removal of the Named Fiduciary, with or without cause, may only occur concurrent with Court approval of the appointment of a similarly-qualified successor Named Fiduciary

5. *Appointment of MSG as the Named Fiduciary.* On November 16, 1983, the Trustees adopted a resolution to appoint MSG as the Named Fiduciary of the Plan and to succeed Equitable, subject to the Court's approval. On November 17, 1983, the Trustees implemented the resolution by entering into a contract with MSG (formerly known as Morgan Stanley, Inc.), thereby appointing MSG as the Named Fiduciary, effective January 20, 1984 (the 1983 Named Fiduciary Agreement). Under the 1983 Named Fiduciary Agreement, MSG was given exclusive authority to manage and control the assets of the Plan (except for assets held in the Benefits and Administration Account).

After appropriate notice to the Department, on January 17, 1984, the Court granted the motion of the Plan for approval of MSG as the Named Fiduciary. In accordance with the order, MSG assumed its responsibilities as the Named Fiduciary on January 20, 1984. MSG also entered into investment management agreements with the investment managers who were already serving in such capacities. The agreements, which were effective as of January 20, 1984, required MSG to monitor the activities of all investment managers. MSG's conduct in such regard continued to be subject to the review of the Trustees, the Independent Special Counsel, the Court and the Department.

5. *Existing Prohibited Transaction Exemptions.* In 1977, the Department and the Service issued PTE 77–11, a nine-part exemption, that was designed to resolve a number of questions which arose, or which were they likely to arise, with respect to prohibited transactions involving the management of the Plan's assets under the 1977 Named Fiduciary Agreement and the various individual investment management agreements. In particular, Part VIII of PTE 77–11 provided exemptive relief for the adjustment and/or continuation by investment managers of any pre-existing loan, lease, service agreement or other arrangement with a party in interest, or the continued holding by the Plan of any pre-existing employer security or employer real property as those terms are defined in sections 407(d)(1) and (d)(2) of the Act. The exemption relieved the investment managers of the burden of investigating whether previously entered transactions constituted prohibited transactions, and allowed such managers to make investment decisions on behalf of the Plan. Part VIII of PTE 77–11 was also intended to cover the "working-out" of a loan with a party in interest.

On July 31, 1984, the Department issued PTE 84–114 which was effective January 20, 1984, and which extended for up to one year several parts of PTE 77–11, including Part VIII. This extension permitted the Plan's investment managers to continue to manage the Plan's assets without a disruption in the continuity of advise and services while MSG, as the new Named Fiduciary, performed in-depth reviews of the Plan's investments and investment policy and the managers' performance. PTE 84–114 also required MSG to have all investment managers and real estate investment managers document, in monthly reports to MSG and the Trustees, all transactions occuring in the prior month with parties in interest that involved certain real estate assets of the Plan. Because PTE 84–114 would soon expire, MSG requested a further, five year extension of Parts V, VIII and IX of PTE 77–11. On December 30, 1985, the Department issued PTE 85–211, effective as of January 1, 1985. However, PTE 85–211 was limited in its application, and may be relied upon to the extent that PTE 84–14 is not applicable solely by reason of an investment manager's failure to satisfy the assets under management test or the equity requirements of PTE 84–14. PTE 85–211 also contained an identical reporting and disclosure provision.

6. *Transactions and Rationale for Amendments to Existing Exemptive Relief.* MSG is concerned that PTE 84–14 may not be applicable to exempt transactions between the Plan and the Central Conference of Teamsters (the Union), it locals or other employee benefit plans sponsored in whole or in part by the Union, because the Union may be considered to have the indirect power to terminate MSG which, in turn, has the power to terminate the investment managers.[3] If PTE 84–14 is inapplicable for this reason, MSG believes PTE 85–211 would also be inapplicable. As a result, MSG represents that continuing transactions (such as loans or leases) with the Union or its locals which were exempted by Part VIII of PTE 77–11, may have become prohibited transactions as of January 1, 1985, when PTE 84–114 was superseded by PTE 85–211.[3]

MSG has identified three investments for which this concern exists:

(a) Certain continuing leases of office space (the Leases) between the Plan as lessor the Union as lessee and between the Plan as lessor and the Welfare Plan as lessee [4] in the International Tower Building, Chicago, Illinois. MSG explains that Eastdil Advisers, Inc., the Plan's investment manager for the Leases, is of the opinion that the Plan has always received fair market value rent since the inception of such Leases.

(b) A loan by the Plan (the Kansas City Loan) to the Teamsters' and Truck Drivers' Building Association (the Borrower) which consists of a number of Union locals in the Kansas-Missouri area. MSG states that the Kansas City Loan is still outstanding.

(c) Two loans by the Plan (the Ohio Loans) to the Central Ohio Teamsters Building Co., Inc., a company formed by a Union local. According to MSG, the Ohio Loans were sold to an unrelated party on March 21, 1986.

MSG believes these investments may be regarded as prohibited transactions. In the case of the Leases and the Kansas City Loan, MSG explains that such investments were no longer subject to a prohibited transaction exemption after January 1, 1985. Similarly, with respect to the Ohio Loans, MSG represents that such Loans were not covered by an administrative exemption from January 1, 1985 until the date of their sale to the unrelated party.

MSG submits that an unusual problem is presented by the potential disposition of the Kansas City Loan. MSG states that effects to market the Kansas City Loan by its investment manager have been unsuccessful primarily due to the unattractness of the loan terms and the poor creditworthiness of the Borrower. Although the Borrower has offered to buy-out or work-out the Kansas City Loan at an all cash, discounted price (which exceeds that offered by any other potential bidder), and the investment manager believes that a sale of the Kansas City Loan to the Borrower would be in the best interests of the Plan, MSG believes a sale of such loan to the Borrower may constitute a

[1] MSG explains that the circumstances of the Plan, including the independence of its investment managers and the oversight of their activities are unique.

[2] Although PTE 85–211 is effective from January 1, 1985 until January 21, 1990, MSG represents that it has considered the amount of time that will be required to terminate the transactions that are subject to the amendments and it believes a longer exemptive period is necessary. As described below, the transactions include the lease of office space to the Union and the Welfare Plan. The Union and the Welfare Plan will move to new quarters, and it is anticipated that such move will occur by 1990. However, MSG represents that construction delays or other not unusual problems may delay the move past January 21, 1990, and has therefore requested that the effective date for the transactions subject to the amendments be extended to January 21, 1992.

[3] The Welfare Plan is a party in interest with respect to Plan because it is a contributing employer which respect to the Plan within the meaning of the section 3(14)(C) of the Act.

prohibited transaction that is not covered by either PTE 84–14 or PTE 85–211.

7. *Requested Amendments to Exemption.* MSG requests that PTE 85–211 be modified and made retroactively effective as of January 1, 1985 by amending the third paragraph thereof to read as follows (changes indicated):

In addition, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by the reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply, until January 21, 1992 to the following:

(A) the adjustment, *disposition*, and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property (as described in Part VIII of PTE 77–11 and PTE 84–114), but only to the extent that PTE 84–14 is not applicable with respect to such transactions by reason of *any of the following:* (1) the assets of the Plan represent more than 20 percent of the total client assets under the management of the investment manager at the time of the transaction; (2) the investment manager does not satisfy the definition contained in Part V(a)(4) of PTE 84–14; *or (3) the transaction is between the Plan and the Welfare Plan, or the transaction is between the Plan and a person which is a party in interest and at the time of the transaction [as defined in Part V(i) of PTE 84–14] either such party in interest or its "affiliate" [as defined in Part V(c) of PTE 84–14] has the authority or, during the preceding one year, has exercised the authority: (a) to appoint or terminate the Named Fiduciary of the Plan or (b) to otherwise alter the terms under which a person serves as the Named Fiduciary of the Plan; and* * * *

MSG states that the insertion of the word "disposition" in new subparagraph (A) is intended to clarify that no interpretation of "adjustment" of a pre-existing "arrangement" would exclude from the coverage of the exemption a negotiated termination of a pre-existing "arrangement" with a party in interest, which termination involves a disposition to the party in interest. MSG explains that this change is intended to include, for example, the sale of the Kansas City Loan to the Borrower.

MSG also represents that the addition of clause (3) to subparagraph (A) would bring within the scope of PTE 85–211 certain additional transactions (as described above) that may not be covered by PTE 84–14. MSG believes that such pre-existing transactions should not lose exemptive relief as of January 1, 1985, the effective date of PTE 85–211. MSG thinks that such an effect would be detrimental to the interests of the participants and beneficiaries of the Plan. Therefore, MSG requests the addition of new clause (3) in subparagraph (A), which would have the effect of clarifying that PTE 85–211 applies to these pre-existing transactions.

MSG states that the reference in new clause (3) to transactions between the Plan and the Welfare Plan is intended to cover the lessor-lessee relationship between such plans. MSG also states that the remainder of new clause (3) is meant to describe a class of persons who may have authority over the Trustees of the Plan such that, they might be thought to have indirect control over MSG or even the Plan's investment managers. While such class of persons might be thought to be very broad, MSG explains that the effect of the new language would be to clairfy that exemptive relief is restored to a finite number of pre-existing, previously exempt transactions.

MSG represents that any proposal to adjust, dispose of or continue any such investment will be brought to its immediate attention by the investment manager having responsibility over the investment. MSG says it has no difficulty in making this representation because at present, due to the sensitivity surrounding such loans and leases to the Welfare Plan and other persons associated with the Union, it requires that investment managers immediately inform MSG of any proposal to adjust, dispose of or contiue any such investment. MSG, in turn, summarizes such proposals in monthly reports delivered to the Trustees at their monthly meeting with MSG. Copies of the reports are also delivered to the Independent Special Counsel. Moreover, the Independent Special Counsel (and/or his representatives) typically attends the monthly Trustees' meeting. If the Independent Special Counsel were to perceive any material problem in connection with any proposal, MSG resumes Mr. Saxbe would bring this matter to the attention of the Court in his quarterly report filed with the Court. Thus, MSG states it has already established a monitoring system whereby it and Mr. Saxbe are kept informed of any transactions which might fall within the purview of Part VIII of PTE 77–11 and PTE 84–114.

MSG asserts further that if, in the course of undertaking its monitoring function it were to become aware of potential harm to the Plan in any of the transactions under discussion, or of an attempt for it or an investment manager to become unduly influenced in the negotiation of such transactions, it would have the responsibility to make certain such harm would not occur and that such influence would be resisted. Accordingly, MSG states that it would take such reasonable and affirmative steps as were appropriate under the circumstances. Such steps might include refusing to take certain recommended actions; informing the Department or the Court of any wrongdoing; or, initiating litigation on behalf of the Plan.

MSG also states that the investment managers it appoints may take similar actions in order to avoid conflicts of interest or other prohibited transactions with respect to the above described investments. Depending upon the circumstances, MSG represents that the investment manager may refuse to undertake suggested actions; apprise MSG, the Independent Special Counsel, the Department or the Court of any wrongdoing; or commence litigation in the name of the Plan.

8. *Views of the Independent Special Counsel.* By letter dated February 16, 1987, Mr. Saxbe states that it is his understanding that the purpose of the requested relief is to provide that the exemption granted to MSG by PTE 84–114 and, as essentially extended through 1990 by PTE 85–211, will apply to a finite number of pre-existing, previously exempt transactions, which had been covered by PTE 84–114 and that might not be covered by PTE 85–211 or any outstanding class exemption. Because of the continuing, unique nature of the Plan's assets, the magnitude of those assets and the very large number of individuals who are parties in interest to the Plan, Mr. Saxbe represents that he is still of the view that the relief granted in PTE 84–114 and PTE 85–211 was in the best interest of the Plan and its participants and beneficiaries. He also states that he believes the proposed amendments to a portion of PTE 85–211 would be in the best interest of the Plan and its participants and beneficiaries.

9. In summary, it is represented that the proposed amendments to PTE 85–211 satisfy the statutory requirements of section 406(a) of the Act because: (a) They ensure the continued, effective management of the Plan's assets; (b) they provide relief for a few, certain pre-existing transactions that had previously been exempt but might not be covered by PTE 84–14 due to the identities of the parties involved; (c) the amendments to PTE 85–211 would be subject to the provisions relating to reporting and disclosure that were previously imposed in PTE 84–114 and PTE 85–211 for identical relief; (d) MSG will continue to be responsible for monitoring the activities of investment managers, and its conduct will continue to be subject to review by the Trustees, the Independent Special Counsel, the Court and the Department; and (e) of the Independent Special Counsel believes the proposed

amendments to PTE 85–211 are in the best interest of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Karl R. Moedl, M.D., P.A. Profit Sharing Retirement Plan (the Profit Sharing Plan) and Karl R. Moedl, P.A. Pension Retirement Plan (the Pension Plan; collectively, the Plans) Located in Albuquerque, New Mexico

[Application No. D–7168 and D–7169]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of certain real property (the Property) by the Plans from Karl R. Moedl, M.D. and Joan S. Moedl, husband and wife, and disqualified persons with respect to the Plans, provided that the Plans pay no more than the fair market value for the Property as of the date of purchase.[a]

Summary of Facts and Representations

1. The Plans are defined contribution plans with two participants, Karl R. Moedl, M.D. and his wife, Joan S. Moedl (the Moedls). As of September 30, 1987, Karl R. Moedl, M.D. had an account balance of $484,334.37 in the Profit Sharing Plan and account balance of $142,977.00 in the Pension Plan. As of the same date, September 30, 1987, Joan S. Moedl had an account balance of $55,203.63 in the Profit Sharing Plan and an account balance of $13,673.00 in the Pension Plan. Karl R. Moedl, M.D., who is the sole shareholder of the Employer, is the trustee of the Plans. The Moedls, who are the applicants, represent that all former participants in the Plans have received their vested and accrued benefits from the Plans at the time of terminating their employment. The applicants also represent that that Moedls will be the only participants at risk with respect to the Property and, at any time other persons become participants, their segregated accounts in the Plan will not be involved with the Property.

2. The Property is a condominium with six rooms and three baths, units number C–203, located on Lus Kula Street, Waikbloa Villas I and II, Kamuela, Hawaii 96743. The Property has been appraised, as of July 15, 1987, to have a fair market value of $158,000, by Mr. Bill M. Brodbeck II, M.A.I. of Sevco Real Estate Appraisers, Kailua-Kona, Hawaii, an independent appraiser with no affiliations with the Plans or the Moedls.

3. The Moedls have offered to sell the Property to the Plans for cash with an undivided 78 percent interest in the Property being acquired by the Profit Sharing Plan for $117,000 and an undivided 22 percent interest in the Property being acquired by the Pension Plan for $33,000. Neither sales commissions nor fees of any kind will be paid by the Plans to any person in connection with the sale of the Property. The division of the interests in the Property, as proposed in the purchase transaction, will involve less than 25 percent of the total assets of the Plans and their respective account balances. the applicants also represent that the Plan will lease the Property to persons who are not parties in interest or disqualified persons with respect to the Plan and at no time will the Moedls rent or otherwise use the Property themselves.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because (a) The purchase price of the Property will be approximately 21.68 percent of the Plans' total assets and the proportionate purchase prices of the Property will be 21.69 percent of the Profit Sharing Plan's assets and 21 percent of the Pension Plan's assets; (b) the Plan will be paying less for the Property than the fair market value as determined by an independent appraiser; and (c) the Moedls are the only participants to be affected by the proposed transaction and they desire that the transaction be consummated.

Notice to Interested Persons: Since Karl R. Moedl, M.D. is the sole shareholder of the Employer and he and his wife are the sole participants of the Plans, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requested for a public hearing are due 30 days after publication of this notice in the Federal Register.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

John W. Dwyer, P.C. Pension Plan and John W. Dwyer, P.C. Profit Sharing Plan (the Plans) Located in Bismarck, North Dakota

[Application Nos. D–7224 and D–7225]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).[a] If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale for cash by the Plans of certain real property (the Real Property) to John W. Dwyer, Sr., the father of the sole shareholder of the Plans' sponsor and a disqualified person with respect to the Plans, provided that the price paid be no less than the greater of the fair market value of the Real Property on the date of sale or the total outlay by the Plans in connection with the acquisition and holding of the Real Property to the date of sale.

Summary of Facts and Representations

1. The Plans are a money purchase pension plan (the Pension Plan) and a profit sharing plan (the Profit Sharing Plan) whose sole participant is John W. Dwyer (Mr. Dwyer). The Plans' sponsor is John W. Dwyer, P.C., which is engaged in the practice of lobbying and administrative law. As of November 30, 1986, the Pension Plan had assets of $93,344 and the Profit Sharing Plan has assets of $140,018.

2. In December, 1986, the Plans purchased the Real Property, 440 acres of unimproved farm land located in McKenzie County, North Dakota, for $114,000 in cash, from the estate of Dean Jacobson, an unrelated third party. The Pension Plan owns 40% of the Real Property, and Profit Sharing Plan owns 60%. The purchase was made to earn rental income for the Plans. However, the applicant represents that farmland values in McKenzie County have been decreasing rapidly, and the rent on the Real Property has not offset the decrease in the value of the Real Property. At the present time the Real Property is leased to Mr. Dwyer's brother for approximately $8,400 per annum. Property tax on the Real Property amounts to approximately $500 per annum.

3. On May 11, 1987, Henry Skjelvik, a real estate broker doing business as Skjelvik Agency in Watford City, North Dakota, estimated the fair market value of the Real Property at $79,290. On May 22, 1987, Deborah Kahl, an appraiser with Badlands Appraisal Service in Watford City, North Dakota, estimated the fair market value of the Real Property at $81,400.

4. Accordingly, the applicant proposes that the Plans sell the Real Property for cash to John W. Dwyer, Sr., Mr. Dwyer's father, for the greater of $116,000, or the total expenditure by the Plans in connection with their acquisition and holding of the Real Property, including, but not limited to the price originally paid by the Plans, legal expenses, property tax, and insurance, provided that the sale price is no less than the fair market value of the Real Property on the date of sale.

5. The applicant agrees to file Form 5330 and to pay all applicable excise tax due in connection with the existing lease of the Real Property by Mr. Dwyer's brother within sixty days of the publication in the **Federal Register** of an exemption for the sale of the Real Property.

6. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The Real Property will be sold for cash for the greater of $116,000 or the total expenditure by the Plans in connection with their acquisition and holding of the Real Property, but in no case less than the fair market value of the Real Property as of the date of sale; (b) the proposed sale represents a one-time transaction for cash which can be easily verified; (c) the proposed sale will not require the payment of commissions, fees, or other costs by the Plans; (d) the proposed transaction will enable the Plans to dispose of an asset which is dropping in value and which is not producing income sufficient to offset its depreciating value; and (e) the applicant believes that the proposed sale is in the best interest of the Plans.

Notice to interested persons: Because Mr. Dwyer is the only participant in the Plans; it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 401(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of January 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–573 Filed 1–12–88; 8:45 am]

BILLING CODE 4510–29–M

[a] Since Karl R. Moedl, M.D. is the sole shareholder of Karl R. Moedl, M.D., P.A. (the Employer) and, along with his wife, Joan S. Moedl, are the only participants in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–(3)b. However there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[a] The applicant represents that John W. Dwyer, Jr., is the sole shareholder of John W. Dwyer, P.C., the Plans' sponsor, and is the Plans' sole participant. Hence, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[Prohibited Transaction Exemption 88–1; Exemption Application No. D–6892 et al.]

Grant of Individual Exemptions; Jim W. Miller Construction, Inc. Profit Sharing Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Jim W. Miller Construction Co., Inc. Profit Sharing Trust (the Plan) Located in St. Cloud, Minnesota

[Prohibited Transaction Exemption 88–1; Exemption Application NO. D–6692]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sales of certain parcels of real property located in St. Cloud, Minnesota, by the Plan to Jim W. Miller Incorporated and Miller Companies, Inc. parties in interest with respect to the Plan, provided that all the terms of the proposed transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transactions are consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27082.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

John W. Truban, P.C. Pension Plan; John W. Truban, P.C. Profit Sharing Plan (the Plans) Located in Winchester, Virginia

[Prohibited Transaction Exemption 88–2; Exemption Application Nos. D–6842 and D–6843]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sales of certain real property by the Plans to John W. Truban, a party in interest with respect to the Plans, for a sales price of $35,000 provided all the terms of the proposed sale are as favorable to the Plans as those obtainable by the Plans in an arm's-length transaction with an unrelated party on the date the transactions are consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 17, 1987 at 52 FR 27083.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Children's Clinic Profit Sharing Trust (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 88–3; Exemption Application No. D–6908]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $100,000 by the Plan to Baby Docs, Ltd., a party in interest with respect to the Plan, provided that the terms and conditions of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party on the date the loan is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1987 at 52 FR 39722.

For further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

W.J. Collins, Inc. Money Purchase Pension Plan (the Plan) Located in Walnut Creek, CA

[Prohibited Transaction Exemption 88–4; Exemption Application No. D–7031]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution, on December 12, 1985, to the Plan of a 5.416 percent interest (the Interest) in certain unimproved real property by Warren J. Collins, Inc. (the Employer), a disqualified person with respect to the Plan, provided: (a) The Interest was valued for contribution purposes at no greater than its fair market value at the time of the contribution; and (b) the Employer's Federal tax deduction taken for making the contribution was not greater than the value of the Interest at the time it was contributed to the Plan.[1]

[1] Because Mr. Warren J. Collins is the sole owner of the Employer that sponsors the Plan as well as the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1987 at 52 FR 39725.

Effective Date: This exemption is effective December 12, 1985.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Earl R. Waddell & Sons, Inc. Profit Sharing Plan and Trust (the Plan) Located in Fort Worth, TX

[Prohibited Transaction Exemption 88–5; Exemption Application No. D–7058]

Exemption

The restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 17, 1986, to the past cash sale, on January 17, 1986, of a $100,000 par value Federal National Mortgage Association mortgage backed trust certificate (the Bond) by Earl R. Waddell & Sons, Inc. to the Plan, provided that the Plan paid no more than the Bond's fair market value as of the date of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 25, 1987 at 52 FR 32084.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Centre Radiology, P.A. Profit Sharing Plan and the Centre Radiology, P.A. Money Purchase Pension Plan (together, the Plans) Located in Cumberland, Maryland

[Prohibited Transaction Exemption 88–6; Exemption Application No. D–7209]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975C(1) (A) through (E) of the Code, shall not apply to (1) the proposed loan of $525,000 (the Loan) by the individually directed accounts of Drs. Emmett W. Cox, Daniel F. Jackson, and Robert F. Miller in the Plans to Radeq, Inc. (Radeq), a party in interest with respect to the Plans; and (2) the personal guarantees of the Loan by the common stockholders of Radeq, some of whom are parties in interest with respect to the Plans, provided that the terms of the Loan are no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1987 at 52 FR 42745.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Federal Paper Board Salaried Employees' Pension Plan; Federal Paper Board Hourly-Wage Employees' Pension Plan; and Federal Paper Board Co., Inc. Pension Plan for Hourly Employees of the Paper Division-Carolina Operations (the Plans) Located in Montvale, New Jersey

[Prohibited Transaction Exemption 88–7; Exemption Application No. D–7268]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the September 14, 1987 contribution to the Plans of certain real property (the Property) by the Federal Paper Board Company, Inc. (the Employer), the Plans' sponsor, provided the Property was valued at no greater than its fair market value at the time of contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1987 at 53 FR 39727.

Effective Date: This exemption is effective September 14, 1987.

Written Comments and Hearing Requests: The Department received no requests for a public hearing. The only written comment was submitted by the Employer. The Employer informed the Department that the subject transaction was entered into on September 14, 1987. Therefore, the Employer submitted a written request to make the exemption retroactive to September 14, 1987. The Employer represents that all the requisite safeguards were in place and that the Plans' independent fiduciary, Wachovia Bank and Trust, N.A., approved of the transaction as of that date. The Department has considered the entire record, including the comment submitted, and has determined to grant the exemption as proposed, effective September 14, 1987.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this Seventh day of January 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretation, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–574 Filed 1–12–88; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 21, 1987 through December 31, 1987. The last biweekly notice was published on December 30, 1987 (52 FR 49217).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not

normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 12, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: January 20, 1987

Description of amendment request: The following proposed Technical Specification (TS) changes are in response to the BG&E application dated January 20, 1987. The proposed TS changes:

(1) Modify the Unit 1 TS Limiting Condition For Operation (LCO) 3.3.3.2 for incore detectors by placing additional restrictions upon operability above those that were required for operation during the previous cycle (Cycle 8).

(2) Change the surveillance periods of the Unit 1 and 2 TS Surveillance Requirements (SRs) 4.1.3.4.c (demonstration of full length control element assembly (CEA) drop time) and 4.3.3.2.b (incore detector channel calibration) from at least once per 18 months to at least once per refueling interval, where a refueling interval shall be defined as 24 months,

(3) Modify the Units 1 and 2 TS SR 4.7.11.1.1.f.3, for cycling fire suppression water system flow path valves that are not testable during plant operation, and 4.7.11.4.b, for the inspection, reracking and replacement of degraded coupling gaskets for fire hoses inside containment, by extending their associated surveillance intervals from at least once every 18 months to at least once per refueling interval (24 months), and

(4) Renumber the Units 1 and 2 TS SR 4.7.11.1.1.f.3 as 4.7.11.1.1.g.2 and TS SR 4.7.11.1.1.g as 4.7.11.1.1.g.1 and change the Units 1 and 2 TS SRs 4.7.11.1.1.g (fire suppression system flow test), 4.7.11.2.b and c (spray and sprinkler system functional tests), and 4.7.11.4.c (containment fire hose stations operability and hydrostatic tests) by making administrative changes and more restrictive changes to the surveillance requirements.

Basis for proposed no significant hazards consideration determination: Change No. 1 proposes to modify the Unit 1 TS LCO 3.3.3.2 for incore detector operability by making its provisions more restrictive than those required for Unit 1 Cycle 8 operation. During startup for Unit 1 Cycle 8, an unexpectedly large number of incore detector strings failed thereby placing the Unit close to its operability limits. To provide increased operational flexibility for Unit 1 during Cycle 8 operations, the requirements of TS LCO 3.3.3.2 were relaxed for one cycle only. In order to restore LCO 3.3.3.2 to its pre-cycle 8 requirements, the following modifications are proposed:

(1) LCO 3.3.3.2.a would require at least eight operable symmetric incore detector segment groups, with at least two of these detector segment groups at each of the four axial elevations containing incore detectors, to have sufficient operable detector segments to compute at least two azimuthal power tilt valves at each of these four axial elevations. During Cycle 8, eight symmetric incore detector segment groups of no specified elevation were required with sufficient operable detector segments to compute at least two azimuthal power tilt valves at three of the four axial elevations.

(2) LCO 3.3.3.2.b would require that at least 75% of all incore detector segments be operable for recalibration of the excore neutron flux detection system rather than the 50% required during Cycle 8.

(3) LCO 3.3.3.2.c would require, for monitoring the unrodded planar radial peaking factor, the unrodded integrated radial peaking factor, or the linear heat rate, that at least 75% of all incore detector locations be operable rather than the 50% required during Cycle 8.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

One of the examples, (ii) was "a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." This proposal is one such change as the proposed TS LCO modifications make the operability requirements for incore detectors more restrictive than those currently specified for Cycle 8.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed changes to TS LCO 3.3.3.2 involve no significant hazards considerations.

Change No. 2 proposes to change the surveillance periods from 18 to 24 months for the Units 1 and 2 TS surveillance requirements for demonstrating full length CEA drop time (TS 4.1.3.4.c) and for performing incore detector channel calibrations (TS 4.3.3.2.b).

The current surveillance period for these tests is 18 months which corresponds to the current refueling cycle. The extension in the surveillance interval to 24 months is requested to facilitate a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated...

The licensee has proposed a six-month extension in the surveillance period of TS 4.1.3.4.c for performing CEA drop time test. Control element assembly drop time is required to be less than or equal to 3.1 seconds. The CEA drop time is measured from the time that electrical power is interrupted to a fully withdrawn CEA to the time required for the CEA to be at its 90% insertion position. This drop time testing is performed at a reactor coolant system average temperature greater than or equal to 515° F and with all four reactor coolant pumps operating. These conditions are representative of reactor conditions for reactor trips from operating conditions. The purpose of the CEA drop time testing is to ensure that scram insertion times are consistent with those used in the safety analyses. Factors which could adversely affect the CEA drop times when the surveillance interval is increased are (1) changes in component clearances, (2) changes in the physical configuration of the CEA or guide tubes, and (3) the buildup of corrosion products and suspended material in the coolant system that could interfere with CEA motion. Changes to component clearances and changes in the physical configuration of the CEA or guide tubes are more likely to occur when the reactor vessel head is removed and when maintenance is performed on the CEAs (including replacement) and that portion of the drive system directly interfacing with a fuel assembly. For these two factors, Surveillance Requirements 4.1.3.4.a and 4.1.3.4.b are applicable and not affected by the proposed change in the testing interval of Surveillance Requirement 4.1.3.4.c. Buildup of corrosion products and suspended material in the coolant system are minimized by coolant chemistry requirements and other controls on the reactor coolant system. In addition, each CEA is exercised at least once per 31 days in accordance with Surveillance Requirement 4.1.3.1.2. This testing should detect sticking CEAs and mitigate the proposed 6-month extension in the surveillance interval of TS 4.1.3.4.c for demonstrating CEA drop time. Furthermore, each planned or unplanned reactor trip that may occur during the extended 24-month operating cycle would provide additional information on CEA drop times and operability, thus, indicating any problems developing with regards to CEA drop time.

To determine the time dependency of CEA drop time with respect to the length of the operating cycle, CEA drop time measurements from 15 hot functional test data/sets were analyzed. Eight sets of measurements were taken from Unit 1 and seven from Unit 2. The average CEA drop time for standard fuel assemblies was approximately 2.3 seconds. The maximum standard deviation for drop times in any fuel cycle was 0.094 seconds. The 15 sets of test data included data from both 12-month and 18-month fuel cycles. Thus, this data indicates that no increase in drop time trend was observed due to either

lengthening the operating cycles or to increased periods between surveillance testing from 12 to 18 months.

The licensee's analysis of previous fuel cycle CEA drop time measurements, which showed no adverse affects when shifting from a 12-month to an 18-month cycle, as well as the other surveillance requirements that are performed to determine CEA drop time, indicate that the CEA drop time should not be appreciably affected by the proposed 6-month extension of the surveillance period of the TS 4.1.3.4.c to 24 months. Hence, the probability or consequences of previously evaluated accidents would not be significantly increased.

Also, the licensee has proposed a 6-month extension in the surveillance interval of TS 4.3.3.2.b for performing incore detector channel calibrations. The incore detector channel calibration excludes the neutron detectors but includes all electronic components. The channel calibration consists of two parts: (1) a resistance check of the cable from the computer termination to the reactor core, and (2) a check of the ability of the computer to read a known voltage level. The resistance check verifies cable integrity. A review of resistance checks performed since the initial startups of Calvert Cliffs Units 1 and 2 has been conducted. No evidence of cable degradation was found. However, all of the in-containment cable is being replaced with environmentally qualified cable. The design specification for the new cable will ensure that it is at least as reliable as the cable it replaces. The second part of the channel calibration checks the computer's ability to read a known voltage level. Three known signals are input into the computer: (1) a short circuit, (2) a 150 millivolt signal, and (3) a 250 millivolt signal. Proper computer readings are verified for each test with the voltages being between ±2 millivolts. Other checks to verify proper computer operation are also performed and include CRT and alarm printer verification.

Test data from the initial units' startups to the present has been reviewed to determine if performance changed in an adverse manner over time and with the shift from a 12-month to an 18-month operating cycle. The licensee noted no adverse trends and found that all tests had been consistently satisfactory.

In addition, performance of the power distribution TS Surveillance Requirements 4.2.2.1.2 and 4.2.3.2, which are at least once per 31 mode 1 days, provides further assurance of the operability of the incore detection system. The licensee states that if the incore detector system was to be inoperable, other methods are employed to carry out its monitoring and calibration functions.

The licensee's analysis of previous fuel cycle incore detection system calibration data, which showed no adverse trends when shifting from a 12-month to an 18-month cycle, as well as the power distribution surveillance requirements that are imposed at least once every 31 days of mode 1 operation, indicate that the operability of the incore detectors should not be appreciably affected by the proposed 6-month extension to 24 months of the surveillance interval of TS 4.3.3.2.b for performing incore detector channel calibrations. Hence, the probability or consequences of previously evaluated accidents would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated...

The proposed changes only extend the surveillance intervals for CEA drop time testing and incore detector calibrations. This proposal does not change any system design or facility operation; therefore, it does not create the possibility of a new or different kind of accident from any previously evaluated.

(iii) Involve a significant reduction in a margin of safety...

The margins of safety that could be potentially affected by these changes included the margin from reactor coolant system overpressurization and the margins from peak centerline temperature (PCT) and from the depature from nucleate boiling (DNB), due to a possible decrease in the negative reactivity insertion rate on a reactor trip and from inaccurate flux monitioring due to degradation in the incore detectors.

However, a review of plant surveillance history shows that: (1) both of these systems (CEAs and incore detectors) have been extremely reliable, and (2) the surveillance results of both systems have routinely yielded excellent results that were independent of the time between surveillances (cycle length). In addition, in both cases there exists other TS surveillance requirements that monitor CEA and incore detector performance and would most likely indicate any ongoing degradation in either system, thus mitigating any potential hazards presented by extending the surveillances intervals. Therefore, this change does not involve any significant reduction in a margin of safety.

Based upon the above, the NRC staff proposes to determine that the proposed changes to TS Surveillance Requirements 4.1.3.4.c and 4.3.3.2.b involve no significant hazards considerations.

Change No. 3 proposes to modify the Units 1 and 2 TS SRs 4.7.11.1.1.f.3, for cycling fire suppression water system flow path valves that are not testable during plant operation, and 4.7.11.4.b, for the inspection, re-racking and replacement of degraded coupling gaskets for fire hoses inside containment, by extending their associated surveillance intervals from at least once every 18 months to at least once per refueling interval (24 months).

The interval for these surveillances is 18 months which corresponds to the current refueling cycle. The extension of the surveillance interval to 24 months is requested to facilitate a 24-month operating cycle.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated...

The proposal to modify TS Surveillance Requirement 4.7.11.1.1.f.3 affects only two fire suppression water system valves inside containment. LCO 3.7.11.1.c at all times requires an operable fire suppression water system flow path that takes a suction from the water storage tanks and transfers the water through the distribution system up to the first valve before the water flow alarm device on each sprinkler, hose standpipe or spray system riser. All valves in this flow path can be tested during unit operation with the exception of the two valves inside containment (the motor operated containment isolation valve and a manual block valve). TS Surveillance Requirement 4.7.11.1.1.f.3 requires these two valves to be tested by cycling and verifying flow. The licensee's results from a review of plant history indicate that there has never been a failure of either valve to perform adequately. The licensee further states that there is no evidence that a 6-month extension in this surveillance interval between valve cycles would adversely impact valve operation. Hence, the probability or consequence of previously evaluated accidents would not be significantly increased by the proposed 6-month extension of the surveillance interval of TS 4.7.11.1.1.f.3.

The proposed modification of TS Surveillance Requirement 4.7.11.4.b would affect only the inspection and reracking of fire hoses inside containment. A review of previously conducted containment fire hose inspections revealed no failures of the fire hoses. The licensee states that these results were expected as it has been a licensee policy to replace all fire hoses inside containment on a three-year frequency. The licensee intends, for the 24-month operating cycle, to hydrostatically test or replace all containment fire hoses every two years.

Furthermore, test results have shown that the hose coupling gasket material has not degraded significantly over the three-year interval between hose replacements. Finally, during hose inspection, there has never been evidence of hose mildew, rot or similar damage due to chemicals, abrasion, moisture or normal wear. Thus, it is unlikely that the containment fire hoses would experience any significant degredation over the proposed 6-month surveillance interval extension. Hence, the probability or consequences of the proposed change to TS 4.7.11.4.b would not significantly increase the probability or consequences of any previously evaluated accidents.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated...

These proposed changes do not create the possibility of any new or different accidents as no plant modifications or changes in system operation or surveillance testing, other than test interval, shall be made.

(iii) Involve a significant reduction in a margin of safety...

Extending the surveillance interval for these two tests does not involve a significant reduction in any margin of safety. Efforts were made to extend the surveillance interval of only those tests that could not be performed during unit operation (i.e., testing and inspecting fire hoses and fire suppression water system valves inside containment). These containment fire protection components are generally inaccessible during unit operation, and so, will be tested during refueling outages. However, the likelihood of a fire inside containment during unit operation is much smaller than during outage work periods. Thus, the likelihood of a fire occurring inside containment that would damage safety and safety-related systems will not be significantly increased by this proposed 6-month test interval extension. Therefore, the margins of safety provided by these safety and safety-related systems will not be significantly reduced.

Based upon the above, the NRC staff proposes to determine that the proposed changes to TS SRs 4.7.11.1.1.f.3 and 4.7.11.4.b involve no significant hazards considerations.

Change No. 4 proposes to renumber the Units 1 and 2 TS SR 4.7.11.1.1.f.3 as 4.7.11.1.1.g.2 and TS SR 4.7.11.1.1.g as 4.7.11.1.1.g.1 and to modify the Units 1 and 2 TS SRs 4.7.11.1.1.g, 4.7.11.2.b & c and 4.7.11.4.c by making administrative or more restrictive changes to the current surveillance requirements. The proposed restrictive changes to the surveillance requirements are as follows:

(1) the surveillance interval for performing a fire suppression water system flow test in accordance with TS 4.7.11.1.g would be changed to "at least once per refueling interval" (24 months) from the currently required "at least once per 3 years."

(2) the spray and sprinkler system cycling test of each flow path valve would be conducted at least every 12 months. Currently, only testable valves are required to be cycled at least every 12 months by TS 4.7.11.2.b, whereas TS 4.7.11.2.c.1.b requires the cycling of those not testable during plant operation at least every 18 months. All of these valves, however, are testable during plant operation, making TS 4.7.11.2.c.1.b superfluous. Consequently, the licensee has proposed deletion of TS 4.7.11.2.c.1.b and of the word "testable" from the phrase "by cycling each testable valve" in TS 4.7.11.2.b,

(3) fire hose station valve operability and hose hydrostatic tests currently are required by TS 4.7.11.4.c to be performed at least once per 3 years. The licensee has proposed that these tests on fire hose stations inside containment be required to be performed at least once during refueling interval (24 months).

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazard consideration.

Two of the examples were "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature" and "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." These proposals are such administrative and more restrictive changes as they simplify the TS to better reflect plant conditions and also, require surveillances to be performed more frequently.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed changes to TS 4.7.11.1.1.f.3, 4.7.11.1.1.g, 4.7.11.2.b. & c and 4.7.11.4.c involve no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Robert A. Capra, Director

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: November 6, 1987 as supplemented by December 16, 1987

Description of amendment request: The proposed amendment would revise Tables 3.2-1 and 4.2-1 of the Quad Cities, Units 1 and 2, Technical Specifications (TS) for High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) Systems Steam Line High Flow Indication Instrumentation. More specifically, a TS amendment was requested that would: (1) revise the number of operable or tripped HPCI and RCIC steam line high flow indication instrument channels from a minimum of four (4) channels to two (2) channels; this will correct a discrepancy that has existed since the original TS were issued, by making the number of channels consistent with the original design basis and actual plant configuration, and (2) revise the HPCI and RCIC high steam flow time delay setting of $3 < t < 10$ seconds to a more conservative setting of $3 < t < 9$ seconds; this change was recommended by the Commonwealth Edison Company (CECo, the licensee) Engineering Department based upon General Electric (GE) Company analysis.

Additionally, the TS amendment would correct a typographical error in the associated surveillance requirement bases. Current TS for Units 1 and 2 identify the high steam flow instruments as 1-2389 A thru D and 2-2389 A thru D, while the correct designations are 1-2352, 1-2353, 2-2352 and 2-2353. The low pressure instruments are listed as 1-2352, 1-2353, 2-2352 and 2-2353 in the Units 1 and 2 TS, while the correct designations are 1-2389 A thru D and 2-2389 A thru D. Instrument numbers for the high steam flow instrumentation were actually the designations for the low pressure instrumentation while the instrument numbers for the low pressure instrumentation, are actually the designations for the HPCI high steam flow instruments. Revising these instrument designations is considered to be an administrative change.

The application for amendment was originally noticed in the **Federal Register** (52 FR 45884) on December 2, 1987. CECo supplemented their initial

submittal on December 16, 1987 to incorporate the proposed time delay setting into applicable surveillance requirements of Table 4.2-1. This revised time delay setting for TS table 4.2-1 had been inadvertently omitted from the November 6, 1987 application for amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.91(a), the licensee has provided the following analysis in their amendment application addressing these three standards.

CECo has analyzed this proposed amendment and determined that operation of the facility, in accordance with the proposed amendment, would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Previously evaluated accidents were based on two channels for the RCIC and HPCI steam line flow indications rather than four; this means that the evaluations were based on conditions that actually exist in the plant, not the number of channels found in the current Technical Specifications. Plant operations and accident analyses are not changed.

b. The proposed time delay setting is lower than the setting which currently exists. Operating with a maximum time delay setting of nine seconds is more conservative that the previously approved ten second value.

c. Changing instrument designation to correct typographical errors are considered to be an administrative change and has no effect upon previously evaluated accident scenarios.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. The number of HPCI and RCIC instrument channels are corrected to reflect the number of channels that actually exist, and upon which the original system design was based. The manner in which the plant has been, or will be operated does not change. Additionally, operating with a minimum number of two tripped or operable HPCI or RCIC high flow instrument channels is more conservative than with four channels.

b. The new time delay setting is more conservative than the value that currently exists in the Quad Cities TS.

c. Correction of typographical errors are considered to be administrative in nature and have no effect on plant operation.

3. Involve a significant reduction in the margin of safety because:

a. The number of HPCI and RCIC instrument channels are corrected to reflect actual plant configuration and original design. There are no changes being made to hardware. The proposed amendment does not reduce the margin of safety since the minimum number of operable or tripped channels will be more conservative.

b. The new maximum time delay setting will be more conservative than the value currently in TS.

c. Correction of typographical errors involve the designation for HPCI instrumentation only, safety margins are unaffected.

The Commission has reviewed the licensee's TS amendment request and concurs with their analysis for no significant hazards consideration determination. Accordingly, the Commission proposes to determine the aforementioned amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennephin Avenue, Dixon, Illinois 61021.

Attorney to licensee: Michael I. Miller, Esq. of Isham, Lincoln, & Beale at Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment: December 22, 1987

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.2.D.3 (refueling floor radiation monitor setpoint) and associated bases, and TS 6.2.C.1 (review responsibilities for changes to procedures).

Current TS establish a trip setpoint of 100 mR/hr for refueling floor radiation monitors. Commonwealth Edison Company (CECo, the licensee) has proposed revising this setpoint to "less than or equal to 100mR/hr" in order to prevent possible inadvertent trips during instrument calibration. These radiation monitors are calibrated to 100 mR/hr which does not allow for normal instrument setpoint drift if the TS trip setpoint is also at 100 mR/hr.

Instead of allowing review and approval responsibilities to be split up among various subject areas as required by present TS, the proposed amendment would prescribe that all procedure changes "shall be reviewed and approved by the Technical Staff Supervisor, the Assistant Superintendent, and department head...". Altering review and approval responsibilities for changes to procedures (identified in TS Section 6.A and 6.B), in this fashion, should increase consistency and improve uniformity for all areas of plant activities. Furthermore, this proposed amendment will also elevate review responsibility to a higher level of management.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.91(a), the licensee has provided the following analysis in their amendment application addressing these three standards.

CECo has analyzed this proposed amendment and determined that operation of the facility, in accordance with the proposed amendment, would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment merely establishes an upper bound limit for the refuel floor radiation monitors consistent with what currently exists in the Tech Specs. This is considered to be a change in the conservative direction and will not effect system design or safety function.

The proposed amendment also raises the level of reviews for procedure changes to the Assistant Superintendent level for all procedures identified in Section 6.2.A. and 6.2.B. of the TS. This change results in a higher level of approval for changes to procedures than is currently provided in the TS. This change is considered to be administrative in nature and should improve the quality of plant procedures used to operate the station.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment does not exceed the existing setpoint for refuel floor radiation monitors, but rather makes 100mR/hr the upper bounding value. There are no hardware changes, nor are there any new modes of operation associated with this amendment.

Revised review and approval responsibilities for procedures changes would be an administrative change. No new equipment or modes of operation have been introduced as a result of this TS revision. Revising the authorization level for procedure changes to a higher level does not introduce any new equipment or modes of operation at Quad Cities Station.

3. Involve a significant reduction in the margin of safety because the setpoint of 100mR/hr is not being changed to a different value, but rather is becoming an upper bounding value for the refuel floor radiation monitors. This will prevent inadvertent trips which may occur because of normal instrument drift and unnecessary system challenges. Any deviation from the 100mR/hr setpoint allowed by the proposed TS change would result in an increased margin (i.e. radiation level setpoint is only allowed to be lowered).

Section 6 revisions are considered to be administrative in nature. This TS revision being proposed does not result in hardware modifications that would effect the way plant systems are being operated.

The Commission has reviewed the licensee's TS amendment request and concurs with their analysis for no significant hazards consideration determination. Accordingly, the Commission proposes to determine the aforementioned amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennephin Avenue, Dixon, Illinois 61021.

Attorney to licensee: Michael I. Miller, Esq. of Isham, Lincoln, & Beale at Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 20, 1987.

Description of amendment request: The proposed change would revise the license condition for the receipt, possession and use of byproduct, source and special nuclear material in accordance with a standard, generalized format that allows flexibility in amounts of such material in support of reactor operation.

Basis for proposed no significant hazards consideration determination: The licensee has evaluated this proposed amendment for determining whether or not it involves a significant hazards consideration as follows:

The control of byproduct, source or special nuclear material sources exceeding 100 millicuries is by approved Radiological Services Department procedures which contain information described in Regulatory Guide 1.70.

The ability to handle sources has been demonstrated at Palisades since the Provisional Operating License was issued. Personnel qualifications, facilities, and equipment and procedures for handling have also been established. Surveillance leak testing to determine source leakage was incorporated into the Technical Specification, Section 6.21, approved in Amendment No. 86.

The amount of reactor fuel which can be received, possessed, and used may vary from the present license limit but will be limited by available storage and amounts required for operation.

The changes do not involve a significant hazards consideration at Palisades as this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This change revises the license conditions for the amount of special nuclear material, source material, and byproduct material in accordance with the NRC's letter of January 24, 1975, with some modification. Provisions to ensure reactor fuel is limited to amounts compatible with the present possession amounts are controlled by the amount of storage space and fuel necessary for reactor operation as described in the FSAR.

The sources will be adequately leak tested, stored and used and records will be maintained as required by the Technical Specification, Section 6.21.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. Appropriate controls for receipt, handling and storage of the special nuclear material, byproduct material and source material are in place and remain unchanged as a result of this request to ensure no new or different accident will be created.

(3) Involve a significant reduction in a margin of safety. The controls over the receipt, handling and storage remain unchanged as a result of this request. These controls will ensure no safety margin is reduced.

The Palisades Plant Review Committee has reviewed this Technical Specification Change Request and has determined that this change involves no significant hazards consideration.

The Commission's staff has reviewed the licensee's evaluation and agrees. The staff therefore proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station Unit 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: April 23, 1987, revised October 28, 1987, November 9, 1987, and December 4, 1987.

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix A Technical Specifications Sections 2 - Safety Limits, 3 - Limiting Conditions for Operation, 3/4 - Basis for Limiting Conditions for Operations and Surveillance Requirements, and 6 - Administrative Controls. Additionally, the proposal would amend the Index. The proposed amendment would extensively revise the TMI-2 Technical Specifications to align license requirements appropriate to current, as well as future, plant conditions through the remainder of the current cleanup operations. At the end of the current cleanup operations the licensee plans to place the facility into a post-defueling monitored storage condition (PDMS). The proposed amendment allows for the transition from the current defueling phase through the completion of defueling and offsite fuel shipment by the incorporation of technical specifications that are applicable during specific phases or modes of the cleanup. Certain technical specifications are retained during the entire transition period while others are phased out or modified as the cleanup progresses. Phase-out of specific requirements would be dependent on the status of the cleanup as defined by the facility mode. Three cleanup modes are proposed:

Mode 1 - The current condition, during which defueling and other major tasks are in progress.

Mode 2 - The period subsequent to defueling of the reactor vessel and the reactor coolant system but prior to completion of the core debris shipping program. The possibility of criticality in the Reactor Building (RB) is precluded and no canisters containing core material are in the RB.

Mode 3 - The period subsequent to shipment of the remaining core material offsite.

Thirty days prior to an anticipated change in mode, the licensee proposes to submit to the NRC a report which provides the basis for the transition.

As noted above the licensee has defined Mode 1 as the current cleanup condition and Mode 2 would begin following the completion of defueling. The licensee's Mode 1 defueling program

is expected to result in the removal of greater than 99% of the reactor fuel. During Mode 1 all technical specification requirements, with one exception, currently in the license would be maintained. This exception involves the licensee's proposal to immediately delete the requirement for NRC approval prior to changes in their Radiation Protection Plan.

After the transition from Mode 1 to Mode 2 the systems and requirements for monitoring and protecting the reactor core are no longer needed and the licensee proposes their deletion. The Borated Water Injection Capability, Reactor Coolant System Water Control, Reactor Coolant System Temperature Control and Neutron Monitoring are examples of systems and monitoring capability which would no longer be needed. Additionally, the requirement for licensed operators would no longer be needed once the core material is removed. Also, the licensee proposes to delete the requirement for preapproval of procedures by the NRC.

The transition from Mode 2 to Mode 3 would further reduce the operability requirements for certain plant systems. For example, with the removal offsite of all of the defueled core material, the requirements to maintain a specific water level and boron concentration for Spent Fuel Pool 'A' would be deleted. Additionally, limitations on crane operation inside the Fuel Handling Building would be deleted and the requirement for the collection of meteorological data would be eliminated from the Technical Specifications.

The licensee also proposes a number of administrative changes to the Technical Specifications. Sections that have been deleted in previous license amendments would be completely removed from the Technical Specifications and no mention of their past incorporation in the license would appear in the amended Technical Specification. Section 2, Safety Limits, previously deleted, would be revised to state that there are no safety limits applicable to TMI-2. The licensee also proposes to revise the Technical Specification Index to be consistent with the deletions. No extensive renumbering of the remaining technical specifications is proposed.

The licensee proposes to change the applicability of Technical Specifications 3.3.3.1, Radiation Monitoring Instrumentation; 3.3.3.8, Fire Detection Instrumentation; 3.6.1.4, Internal Pressure; 3.6.3.1, Containment Purge Exhaust System; 3.7.6.1, Flood Protection; 3.7.9, Sealed Sources; 3.7.10.1, Fire Suppression Water System; 3.7.10.2, Deluge/Sprinkler Systems; 3.7.10.4, Fire Hose Stations; 3.7.11, Penetration Fire Barriers; 3.9.12.1, Fuel Handling Building Air Cleanup Exhaust System; 3.9.12.2, Auxiliary Building Air Cleanup Exhaust System and 3.9.13, Accident Generated Water from "Recovery Mode," which is the current term for the ongoing cleanup operations, to "Modes 1, 2, 3" which is the licensees' proposed terminology for the remainder of the current cleanup effort. Accordingly, there would be a change in the terminology but not in the applicability of the requirements. To parallel this change the licensee proposes to delete from section 1.3 the definition of "Recovery Mode" and replace it with the three modes discussed above.

A revised definition of "Containment Integrity" (Section 1.7) is proposed. The new definition is consistent with the current definition but has been modified to define specific criteria under which double valve isolation external to containment would be allowed due to the unique circumstances of TMI-2. These criteria are similar to those which fall under the present provision of allowing double valve isolation outside containment in accordance with NRC approval.

A new definition of "Containment Isolation" (Section 1.21) has been added to the Definitions Section. The licensee proposes to add this definition to support the addition of Technical Specification 3.6.1.2, Containment isolation requirements have been added for Modes 2 and 3 to provide provisions for maintaining the containment as a contamination barrier during these two facility modes.

The licensee proposes to change the phase "Recovery Mode" to "Facility Mode" in Section 3.0.1, Limiting Conditions for Operation, to reflect the use of modes in the applicability of certain Technical Specifications.

Proposed changes to Technical Specification 3.1.1.1, Borated Cooling Water Injection, incorporate a minimum temperature requirement in the action statement and applicability of this specification only during Mode 1. Borated cooling water injection capability to the Reactor Coolant System (RCS) to eliminate the possibility of an inadvertent criticality is only applicable if there is fuel in the RCS. Once Mode 1 defueling is completed there is no requirement for borated water injection. The minimum temperature requirement was added to the action statement to be consistent with the minimum temperature requirements elsewhere in the specification.

The licensee proposes to make Technical Specification 3.1.1.2, Boron Concentration Reactor Coolant System, applicable only during Mode 1. Boration of the RCS is for the prevention of an inadvertent criticality. Once Mode 1 defueling is completed the possibility of an inadvertent criticality is eliminated, therefore, boration of the RCS is unnecessary.

The licensee proposes to modify Technical Specification 3.1.1.3, Fuel Transfer Canal and Fuel Storage Pool A Boron Concentration, which currently specifies boration of the Fuel Transfer Canal and the Spent Fuel Storage Pool "A" by removing the requirement for boration of the Spent Fuel Pool and placing it in a new section 3.1.1.4, Boron Concentration-Spent Fuel Pool "A", and making the remainder of 3.1.1.3, pertaining only to the fuel transfer canal, and applicable only during Mode 1. Once Mode 1 defueling is completed there is no further need for the fuel transfer canal and therefore, no boration requirements are necessary to avert criticality. During Mode 2 there may still be canisters containing core debris in the Spent Fuel Pool "A". Therefore, there would be a continuing requirement to maintain boration of the fuel pool. The proposed section 3.1.1.4, pertaining only to Spent Fuel Pool "A" would be applicable during Modes 1 and 2.

The licensee proposes to make Technical Specification 3.3.1.1, Intermediate and Source Range Neutron Flux Monitors, applicable only during Mode 1. Once Mode 1 defueling is completed, the shutdown status of the core is assured and the basis for maintaining these monitors no longer exists. The licensee also proposes to delete from the action statement the requirement that a Special Report be submitted if the monitors are inoperative. According to 10 CFR 50.73 a licensee is required to submit a Licensee Event Report (LER) when a Technical Specification Action Statement has not been satisfied. The requirement for a special report is redundant with the requirements under 10 CFR 50.73. The LER would contain the same information as required by the Special Report.

Technical Specifications 3.3.2, Engineered Safety Feature Actuation System (ESFAS) Instrumentation, would be deleted by the licensee. The current technical specification requires the operability of one ESFAS channel related to the automatic starting of the diesel generators with loss of offsite power. Amendment 27 deleted the operability requirements for the diesel generators. There is no longer a basis for

maintaining the ESFAS Instrumentation operable.

The licensee proposes to change the applicability of Technical Specification 3.3.3.4, Meteorological Instrumentation, from Recovery Mode to Modes 1 and 2 and the time clock in the action statement would be changed from eight hours to seven days. The potential off-site consequences of the worst case accident during Mode 3, a fire in the reactor building, is bounded by the numerical guidelines of 10 CFR 50 Appendix I. Since the basis for requiring meteorological data is to evaluate the need for initiating protective measures to protect the health and safety of the public and the worst case release is less than the releases permitted under Appendix I no protective measures would be necessary. Therefore there would be no requirement to maintain meteorological instrumentation for TMI-2. Changing the action statement requiring an inoperable meteorological monitoring channel to be restored within a specified period of time from 8 hours to 7 days is consistent with the requirements of the B&W Standard Technical Specifications and the TMI-2 pre-accident Technical Specification. The requirement for the eight hour timeclock was incorporated in Technical Specification 3.3.3.4 by the NRC Amendment of Order dated February 11, 1980. At the time of this Order, the Reactor Building contained high concentration of radioactive Krypton-85, as well as many other radionuclides. In the event of a leak from the facility it would have been and has been important to have operable meteorological instrumentation to assess the consequences of the release. As the cleanup progresses the magnitude of potentially airborne radionuclides in the facility that could be released to the environment has been substantially reduced. Therefore, the licensee concludes that the original need for the rapid restoration of meteorological data channels no longer exists.

The licensee proposed to change Technical Specification 3.3.3.5, Essential Parameter Monitoring Instrumentation. The specification currently requires the monitoring of the following essential parameters: (1) reactor building pressure, (2) reactor vessel water level, (3) incore temperature, (4) reactor building water level, (5) borated water storage tank level, (6) steam generator level, (7) spent fuel storage pool "A" water level, and (8) fuel transfer canal (deep end) water level.

The licensee proposed to make parameters 3, 4, 5 and 6 applicable only to Mode 1. The requirements for reactor building pressure (1 above) has been transferred to Section 4.6.1.4.a of the Recovery Operations Plan. The requirement for reactor vessel water level (2 above) has been transferred to technical specification 3.4.2, the requirement for spent fuel storage pool "A" water level (7 above) has been transferred to technical specification 3.9.1 and the requirement for fuel transfer canal (deep end) (8 above) has been transferred to technical specification 3.9.3. Once the reactor vessel has been defueled there is no requirement for monitoring incore temperature, reactor building water level, borated water storage tank level or the steam generator level.

Technical Specification 3.3.37, Chlorine Detection Systems would be modified by the licensee by making the specification applicable only during Mode 1. Chlorine detection is required to protect the inhabitants of the control room. An accidental chlorine release would be detected promptly and the Control Room Emergency Ventilation System would automatically isolate the control room and initiate recirculation. Manning the control room will only be required during Mode 1 (see proposed changes to Section 6.2.2 below). Once the fuel has been removed from the RCS the requirement for manning the control room with licensed operators will be deleted. Therefore, the maintenance of the Chlorine Detection System would be unnecessary.

The licensee proposes to change the applicability of Technical Specification 3.4.2, Reactor Vessel Water Level Monitoring, from Recovery Mode to Mode 1. The reactor vessel water level monitor ensures that indication is available to monitor for changes in the reactor vessel water level. This device provides warning of a leak in the RCS inventory that could result in a boron dilution event. Once defueling of the reactor vessel is completed it is no longer necessary to maintain water in the reactor vessel, consequently, the capability to monitor the water level is no longer required.

The licensee proposes to change the applicability of Technical Specification 3.4.9 Pressure/Temperature Limits from Recovery Mode to Mode 1. The current specification states that the RCS shall remain open to the reactor building atmosphere and that repressurization shall only be allowed following NRC approval. Temperature limits on the RCS are specified to prevent precipitation of the boron or boiling of the Reactor coolant. Once Mode 1 defueling is completed there would be no requirement to maintain a specific boron concentration or a potential source of heat to cause boiling. Consequently, the capability to monitor the RCS water temperature and RCS pressure would not be required.

Technical Specification 3.5.1 Control Room Communications presently require that direct communications between the control room or the communication center and personnel in the reactor building be maintained. The licensee proposed to make this requirement applicable only during Mode 1 when core alterations are being made. The current specification states that it is applicable during core alterations. Once the licensee completes Mode 1 defueling there will no longer be any core, therefore, core alterations would not be possible and this requirement would not be necessary.

The licensee proposes to change Technical Specification 3.6.1.1, Containment Integrity, the current specification is applicable during the Recovery Mode the licensee has proposed making it applicable only during Mode 1. Once Mode 1 defueling is completed double containment isolation would no longer be required since the maximum possible release of radionuclides due to the worst case accident, a fire inside containment, would be less than the 10 CFR 50 Appendix I numerical guidelines. The licensee proposes to further modify the specification by allowing modifications to containment penetrations provided that a single isolation barrier is maintained. If no isolation barriers are provided the action statement requires the cessation of any activity inside the reactor building that could result in a radiation release.

Technical Specification 3.6.1.3, Containment Air Locks (Mode 1), would be modified by the licensee to be applicable only during Mode 1. The specification requires the operability of each air lock and both air lock doors. If an air lock is inoperable the requirement is to maintain at least one door closed and repair the air lock to operable status within 24 hours. Once Mode 1 defueling is completed the source term for an inadvertent release of radioactivity to the environment is substantially reduced, consequently, the need to restore the air lock to operable status would not be required.

The licensee proposes to add Technical Specification 3.6.1.2, Containment Isolation. The proposed Technical Specification would require primary containment isolation during Modes 2 and 3. The specification would provide an appropriate provision for

maintaining the containment as a contamination barrier subsequent to Mode 1 defueling. There would no longer be a requirement for double isolation of penetrations.

The licensee also proposes to add Technical Specification 3.6.1.6, Containment Air Locks (Modes 2 and 3). Each containment air lock would be considered operable with at least one air lock door operable during Modes 2 and 3. This would provide an appropriate containment barrier subsequent to defueling. There would no longer be a requirement for double isolation capability for the air locks.

Technical Specification 3.6.1.5, Air Temperature specifies the primary containment average air temperature. The licensee proposes to make this specification applicable only during Mode 1. The purpose of this specification is to insure that the life of instrumentation and equipment installed in the containment is maximized, and that the boron in the RCS will remain in solution preventing the possibility of recriticality. Once defueling is completed there will no longer be the requirements for the operability of most of the instrumentation and equipment, and boration of the RCS, consequently, the requirement to maintain containment temperature within a specified range is not required.

The licensee proposes to modify Technical Specification 3.7.7.1, Control Room Emergency Air Cleanup System by changing the applicability from Recovery Mode to Mode 1. The Control Room Emergency Air Cleanup System is required to be maintained operable to protect control room operators in the event of an accident and to maintain control room habitability in the event of chemical releases. Once Mode 1 defueling is completed there will be no requirement to man the control room (see proposed changes to Section 6.2-2), consequently maintenance of control room habitability is not required.

Technical Specification 3.7.10.3, Halon System, protects circuits and equipment required for safe shutdown and core protection in specific areas of the plant from the propagation of a fire. The licensee proposes to change the applicability of this specification from Recovery Mode to Mode 1. Once Mode 1 defueling is completed there will be no circuits or equipment necessary for the protection of the core.

The licensee proposes to change the applicability of Specification 3.8.1 A.C. Sources, 3.8.2, Onsite Power Distribution Systems, and 3.8.2.3, DC Distribution. The licensee proposes to change the applicability from Recovery Mode to Mode 1. The purpose of these specifications is to assure that the power sources and associated distribution systems are available to supply the safety related equipment required to maintain the unit in a stable condition following the March 28, 1979 accident. Once Mode 1 defueling is completed no safety related equipment will be required to maintain the unit in a safe and stable condition, consequently, the power sources and distribution systems would not be required. The licensee also proposes to administratively renumber specifications 3.8.2.1.b, and 3.8.2.3 and 3.8.2.2.1 respectively.

Technical Specifications 3.9.1, Spent Fuel Pool "A" Water Level Monitoring and 3.9.2 Spent Fuel Pool "A" Water Level require monitoring of the water level in the spent fuel pool and maintenance of a level specified in the Recovery Operations Plan. The licensee proposes to establish the applicability to these two specifications to Modes 1 and 2. Spent Fuel Storage Pool "A" is used to store defueling canisters containing core material prior to shipment offsite. While canisters are in storage in the spent fuel pool the fuel pool will be flooded and borated. Once all canisters have been removed from the TMI site the spent fuel pool will no longer be used, consequently, monitoring and maintenance of a specific water level would no longer be required.

The licensee proposes to change Technical Specifications 3.9.3, Fuel Transfer Canal (Deep End) Water Level Monitoring, and 3.9.4, Fuel Transfer Canal (Deep End) Water Level, by establishing the applicability of the specifications to Mode 1. The Fuel Transfer Canal is used to transfer defueling canisters from the reactor building to the fuel handling building. While transfers take place the Fuel Transfer Canal is flooded and borated to protect personnel from radiation. Once Mode 1 defueling is completed the Fuel Transfer Canal will no longer be needed to transfer defueling canisters and, therefore, monitoring and maintenance of a specific water level would no longer be required.

Technical Specification 3.10.1, Crane Operations-Containment Building, delimits load travel within containment. The license proposes to change the applicability of the specification from Recovery Mode to Mode 1. The basis for this specification is to prevent a load drop into the reactor vessel causing a reconfiguration of the core debris and/or structural damage which could hinder defueling. Once Mode 1 defueling is completed the basis for controlling heavy loads inside the containment will be eliminated and the specification will no longer be required.

The licensee proposes to change the applicability of Technical Specification 3.10.2, Crane Operations-Fuel Handling Building, from Recovery Mode to Modes 1 and 2. The basis for this specification is to prevent a load drop in the Fuel Handling Building causing damage to canisters containing core material. Subsequent to Modes 1 and 2 all core material will have been shipped off-site. Thus, the basis for controlling heavy loads inside the Fuel Handling Building is eliminated and the specification is not required.

The licensee proposes to clarify the applicability of portions of Technical Specification 6.2-2, TMI-2 Organization. Specification 6.2.2 specifies, in part, the staffing required by 10 CFR 50.54 paragraphs (m)(2) (ii) and (m)(2)(iii) for fueled nuclear power plants. Subsequent to Mode 1 defueling TMI-2 will no longer be considered fueled and the licensee proposes that the requirements for licensed operators will no longer apply. Furthermore, the current specification states that a licensed operator would be in the control room when there is fuel in the reactor. The licensee proposes that specifying the applicability to only Mode 1, when there is fuel in the reactor, is an administrative change consistent with NRC regulations. Specification 6.2.2.C states that an individual qualified in radiation protection procedures shall be on site when fuel is in the reactor. The licensee proposes to change the wording of this specification to "During Mode 1, an individual qualified in radiation protection procedures shall be onsite when fuel is in the reactor."

The licensee proposes to limit the applicability of Technical Specification 6.8.2.2, Procedures, to Mode 1. The current Technical Specification requires NRC review and approval of all procedures and changes thereto which alter the distribution or processing of a quantity of radioactive material the release of which could cause the magnitude of radiological releases to exceed 10 CFR 50 Appendix I limits. Once Mode 1 defueling is completed the potential source term within the reactor building and the maximum credible accident, a fire, would not result in a maximum dose to an individual from fission products and transuranics in excess of 10 CFR Appendix I limits. Although during Mode 2 there will be defueling canisters containing significant amounts of fuel still onsite the licensee is of the opinion that these canisters have proven to be effective in preventing inadvertent criticality. Furthermore, potential accident scenarios associated with these canisters have shown that they provide adequate protection for the public.

The licensee proposes to change Technical Specification 6.11, Radiation Protection Program, by deleting the requirement for NRC approval of the Radiation Protection Plan. Removal of this requirement is based on the past performance of the licensee in the area of radiation protection and the desire to remove the NRC from the procedure review and approval cycle at TMI-2. It is also consistent with the Standard Technical Specifications for Babcock and Wilcox plants. Auditing by the NRC of the Radiation Protection Plan and licensee compliance with the plan would continue.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is in a long-term cold shutdown for accident recovery. Short-lived fission products which make up the preponderance of the source term for operating reactors have decayed to negligible levels. The decay heat produced by the core has now dropped to less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Consequently, in previous license amendments, the staff has determined that the potential accidents analyzed for TMI-2 in the current mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The changes proposed by the licensee are changes to the Appendix A Technical Specifications. They consist primarily of specifying the circumstances under which the existing Specifications are applicable and improving the clarity of the requirements. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated because no changes to current safety systems or setpoints are proposed while there is still sufficient fuel in the RCS to cause a criticality event. No active systems are required to maintain TMI-2 in its current safe shutdown condition. Once Mode 1 defueling is completed the possibility of an offsite release of radiation in excess of 10 CFR 50 Appendix I limits is greatly reduced. Those systems necessary to monitor the core and facilitate defueling will no longer be required. Maintenance of these systems will no longer be necessary.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. Deletion of monitoring requirements cannot create the possibility of any new or different kind of accident. Deletion of safety systems designed to protect the core once the core is removed cannot increase the probability of accidents. The proposed changes represent a gradual reduction in the scope of license requirements and are consistent with the changing status of the facility as the cleanup progresses.

The proposed changes do not involve a significant reduction in a margin of safety, because, as mentioned perviously, no active components are required to maintain the current safe shutdown of TMI-2. Furthermore, as the cleanup progresses the margin of safety increases. Once Mode 1 defueling and Mode 2 offsite shipment is completed there will be a significant increase in the margin of safety.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: William D. Travers

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: July 13, 1987

Description of amendment request: This amendment would modify a provision of Section 1.II of the Hatch Unit 1 Technical Specifications (TS) which limits the operating cycle length for instrument and electrical surveillance. The existing TS 1.II limits the operating cycle interval to 15 months as regards instrument and electrical surveillance. The proposed change would define the operating cycle interval as 18 months instead of 15 months and would delete the reference to electrical and instrumentation surveillance.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR Part 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Standard Technical Specifications (STS) include a Surveillance Frequency Notations table (Table 1.1) which defines a refueling cycle interval as 18 months. A copy of this table is incorporated in the TS for Hatch Unit 2. However, the Hatch Unit 1 TS, which are in an earlier "custom" TS, have a Section 1.II defining "Surveillance Frequency" in which it is stated that: "The operating cycle interval as pertaining to instrument and electrical surveillance shall never exceed 15 months." The terms operating cycle and refueling cycle are synonymous. Thus, the 15-month operating cycle for Unit 1, as specified in TS 1.II, is more restrictive than the 18-month refueling cycles specified in the STS and in the Hatch Unit 2 TS. Further complicating matters, Amendment 110 to the Hatch Unit 1 TS added a Table 1.1, "Frequency Notations," in which a refueling cycle interval is specified as 18-months. However, Section 1.II was not changed. Thus, the Unit 1 TS are internally inconsistent. The licensee proposes to change the words in Hatch Unit 1 definition of Surveillance Frequency to: "The operating interval is defined as 18-months." This change would remove the internal inconsistency and would adjust the operating cycle for Hatch Unit 1 to the same 18-month period allowed for Unit 2.

The licensee states that the actual plant trip setpoints for instruments and electrical equipment are set conservative to the TS allowable values, such that the allowable values are not compromised during an operating cycle by instrument drift. Extending the

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allowable time between refuelings to 18 months instead of 15 months would require an adjustment to the actual trip setpoints, but would not affect the TS allowable setpoints. Thus, this change would not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, since the design functions of the electrical and instrument systems are not affected by this change, the change would not create the possibility of a new or different kind of accident from any accident previously evaluated. Finally, margins of safety are not significantly reduced by the proposed change since the TS allowable setpoints are unchanged.

On the basis of the above, the Commission has determined that the requested amendment meets the three criteria and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Lawrence P. Crocker, Acting Project Director

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: November 9, 1987 (TSCR 173)

Description of amendment request: The proposed amendment would remove the Radiological Environmental Monitoring Program (REMP) from the Technical Specifications. In addition, the REMP would be changed to: (a) permit monitoring frequencies to be changed to calendar periods such as weekly, monthly, etc; (b) increase the time from 30 days to 60 days for reporting environmental samples exceeding the reporting levels; and (c) make typographical and administrative changes. The REMP will continue to be required by the Technical Specifications even though it is not in the Technical Specifications. Future changes to the REMP that would reduce the effectiveness of the REMP are required to be reviewed and approved by NRC prior to implementation by the licensee.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 173 to remove the REMP from the Technical Specifications although the REMP will still be required by the Technical Specifications. It has evaluated TSCR 173 to determine if a significant hazards consideration exists. The results of this evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

Removal of the Radiological Environmental Monitoring Program (REMP) from the Technical Specifications reduces the size of the Technical Specifications without impacting the effectiveness of the REMP. The changes to the REMP are administrative with one noted change to the reporting requirements of the REMP. The REMP will continue to be required by technical specification even though 10 CFR 50.36a does not require the REMP to be in the technical specifications. The REMP is a reformatted version of the technical specification it replaces. The information and specific requirements of the program are essentially the same as the former technical specification with the following exceptions:

1. Monitoring frequencies that are specified in a specific number of days has been changed to a calendar period such as weekly, monthly, etc. as appropriate. Other minor changes have been made to be more consistent with NUREG-0472 and the Branch Technical Position.

2. Typographical errors have been corrected.

3. A reporting requirement for environmental samples exceeding the reporting levels as specified in Table 2 has changed. This was changed from 30 to 60 days to allow adequate time for laboratory analysis of samples.

Safety and safety controls shall remain unaffected.

Future changes that reduce the effectiveness of this initially approved REMP shall be reviewed and approved by the NRC prior to implementation by GPUN. This is required by Technical Specification 6.15.

Future changes that do not reduce the effectiveness of the REMP shall be submitted to the NRC for review in the Annual Radiological Environmental Operating Report for the period in which the changes were made. These changes will be fully reviewed and approved by GPUN management consistent with review and approval procedures, prior to implementation. This is required by Technical Specification 6.5.

GPUN has determined that this technical specification change request poses no significant hazards as defined by the NRC in 10 CFR 50.92.

Since this change is administrative:

A. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The technical specification changes are administrative and do not affect plant equipment. The results of this change will not impact the safety of the plant or the public health.

Therefore, the technical specification change for the Radiological Environmental Monitoring Program does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

B. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of affect from any accident previously evaluated since it does not affect plant equipment.

Therefore, it is concluded that the technical specification change for the Radiological Environmental Monitoring Program does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. All safety criteria as described in the former technical specification bases are preserved in the Radiological Environmental Monitoring Program.

Therefore, it is concluded that the technical specification change for the Radiological Environmental Monitoring Program does not involve a significant reduction in a margin of safety.

We agree with GPU's conclusion that this license amendment request involves no significant hazards considerations in that operation of TMI-1 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The REMP will remain as a functional program and we can perceive at this time no significant hazard from removing the REMP from the Technical Specifications. Adjustments to monitoring frequencies and one reporting requirement are minor and insignificant in terms of plant safety and public health. Future changes to the REMP that would reduce its effectiveness are required to be approved by NRC prior to implementation.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 10, 1987.

Description of amendment request: The proposed change would revise Technical Specification 3.5.2, ECCS Subsystems - Tavg Greater than 350° F and Technical Specification 3.5.3, ECCS Subsystems - Tavg Less than 350° F by adding a note to the Applicability section of both Technical Specifications to indicate that two ECCS subsystems are required to be operable when the RCS average temperature is equal to or greater than 500° F.

Technical Specification 3.5.2 currently requires two independent emergency core cooling system (ECCS) subsystems to be operable when the reactor is in Modes 1, 2 and 3; however, the requirements of this Technical Specification in Mode 3 are applicable only if the pressurizer pressure is equal to or greater than 1750 psia. The proposed change will add a note to the Mode 3 applicability statement that will require both ECCS subsystems to be operable any time the RCS average temperature is equal to or greater than 500° F, regardless of the pressurizer pressure.

Technical Specification 3.5.3 currently requires one ECCS subsystem to be operable if the reactor is in Modes 3 and 4 with a Mode 3 requirement that the pressurizer pressure is less than 1750 psia. The proposed change to this Technical Specification is similar to the proposed change to Technical Specification 3.5.2 in that a note will be added to the Mode 3 applicability statement that requires the RCS average temperature to be less than 500° F before it is acceptable to have only one ECCS subsystem in service.

The reason for the proposed change to these Technical Specifications is to ensure that at least one train of high pressure safety injection (HPSI) is available (even if a single failure is assumed) to mitigate the consequences of a postulated steam line break (SLB) accident initiated from an RCS average temperature of 500° F or greater. The Cycle 2 safety analysis has shown that borated water from HPSI is required to prevent the core from becoming critical during the uncontrolled RCS cooldown (associated with a SLB) from greater than 500° F.

In addition, the proposed change will also revise the title of the subject Technical Specifications such that they will be described in terms of modes of operation rather than average coolant temperature.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change will require that two ECCS subsystems are operable whenever the average temperature of the RCS is equal to or greater than 500° F. This will ensure that, even if one ECCS subsystem is assumed to fail, one train of HPSI will be available to inject borated water into the RCS during an SLB. As described in the safety analysis for Cycle 2, borated water (from HPSI) is required to mitigate the reactivity transient associated with the RCS cooldown and prevent the core from returing to a critical condition. Below 500° F the RCS cooldown (and associated reactivity transient) during the SLB is less severe and HPSI flow is not required to maintain the core subcritical. Therefore, since the proposed change reduces the consequences of a SLB it will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change does not involve any physical changes to plant systems, structures or components nor will there be any significant changes to plant operating procedures. The proposed change will simply clarify the RCS conditions which must exist prior to taking one of the ECCS subsystems out of service. Thus, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of this Specification is to ensure there will be sufficient emergency core cooling capability available in the event of a LOCA and a coincident single failure that results in the complete loss of one ECCS subsystem. The proposed change will not affect the LOCA analysis since it merely adds a restriction that requires both ECCS subsystems to be operable whenever the RCS temperature is equal to or greater than 500° F. This additional restriction ensures that sufficient borated water can be added to the RCS to mitigate the reactivity transient associated with the uncontrolled RCS cooldown that occurs during a steam line break. Since the proposed change adds a restriction that was not already a part of the Technical Specifications and since this restriction ensures that the consequences of a broader range of steam line breaks can be mitigated, the proposed change will result in an increase in the margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether significant hazards consideration exists by providing certain examples (52 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, (e.g., a more stringent surveillance requirement).

In this case, the proposed change is similar to Example (ii) in that it constitutes an additional restriction (i.e., RCS temperature) that must be satisfied before it is acceptable to have only one ECCS subsystem in service.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: November 16, 1987

Description of amendment request: The proposed amendment would revise the allowable value and isolation trip setpoints for the reactor core isolation cooling (RCIC) high steam line flow. As

noted in the Technical Specifications, the existing values are preliminary with the actual values to be determined during the startup test program. The proposed changes are based on system testing during the startup test program. The proposed amendment is in accordance with the licensee's application of November 16, 1987.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The RCIC Steam Line break analysis assumes that the system will isolate when the steam flow reaches 300% of rated steam flow. This change to the Technical Specification assures that the as-built plant is in agreement with the design basis. Revising the setpoint to the as-built conditions equivalent to the 300% rated flow value assures that a RCIC steam line break will be detected and isolated in accordance with the requirements of GDC 54 without impacting the qualification or operation of other safety systems or safe shutdown of the plant. The new setpoint is conservative relative to the old setpoint. In summary, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility or a new or different kind of accident previously evaluated for the following reasons:

The reactor building response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

In addition, since the design basis for RCIC system isolation has not changed, the environmental qualification of plant equipment is not adversely affected by this proposed amendment, further assuring that components are not challenged in a manner not previously assessed. In summary, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons:

The proposed change will not cause existing Technical Specification operational limits or system performance criteria to be exceeded. The proposed change ensures that the system design requirements are met. Allowances for instrument drift, instrument accuracy, and calibration capability have been maintained in accordance with Bases Section B3/4.3.2 of the Technical Specifications. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

Based upon the above considerations, the staff proposes to determine that the proposed changes do not constitute a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College, Oswego, New York 13126.

Attorney for licensee: Mr. Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 4, 1987

Description of amendment request: The amendment would revise Technical Specification Section 3/4.3.2 to delete the chlorine detection system. The chlorination systems at Millstone Unit Nos. 1, 2 and 3 have been modified to use sodium hypochlorite instead of gaseous chlorine. This has resulted in the elimination of on-site bulk storage of liquid chlorine and the possibility of an on-site chlorine release.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the proposed changes and has concluded that the amendment does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The potential for a chlorine release affecting control room habitability no longer exists since the chlorine rail cars have been removed from the Millstone site. Thus, removal of the requirements on the chlorine detection system will not increase the consequences of any event.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no changes in the way the plant is operated. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. Control room habitability is not affected because on-site chlorine bulk storage has been eliminated, the number of chlorine rail, truck, and barge shipments does not exceed the levels discussed in Regulatory Guide 1.78, and the credible off-site chlorine bulk storage facilities are at least 5 miles distant from the site. The proposed changes do not affect the consequences of any accident previously analyzed.

The staff has reviewed the licensee's submittal and concurs with its no significant hazards determination.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, Dockets Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 25, 1985 and supplemented October 15, 1987

Brief description of amendments: The amendment relocates a footnote from item 1.c.1 of Table 3.3.2-1 to item 1.c.1 of Table 4.3.2-1, thereby ensuring that the required surveillance testing of mechanical pumps is identified.

Date of issuance: December 30, 1987

Effective date: December 30, 1987

Amendments Nos.: 115 and 142

Facility Operating License Nos. DPR-71 and DPR-62. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3710) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1987.

No significant hazards consideration comments received: No.

The October 15, 1987 letter provided corrected technical specification pages that did not change the initial determination of no significant hazards consideration as published in the **Federal Register**.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 28, 1987

Description of amendments: These amendments revise the Technical Specifications to incorporate additional action steps describing steps operators should take if core flow and power do not meet the definition of recirculation system operability and to change the surveillance requirements to require that baseline average power range monitor and local power monitor neutron flux noise levels be established after each refueling outage.

Date of issuance: December 30, 1987

Effective date: December 30, 1987

Amendments Nos.: 114 and 141

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 17, 1987 (52 FR 23097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 8, 1987

Brief description of amendments: The amendments modify the Technical Specifications defining fuel Average Planar Linear Heat Generation Rate limits and Emergency Core Cooling System surveillance requirements.

Date of issuance: December 21, 1987

Effective date: December 21, 1987

Amendment Nos.: 150 and 87

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 18, 1987 (52 FR 44244) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1983.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Indiana and Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 9, 1987

Brief description of amendments: The amendments revised the Technical Specifications by deleting the provision that the auxiliary building crane main hoist be deenergized and the load blocks unloaded whenever the crane is moved over the spent fuel assemblies in the spent fuel pool.

Date of issuance: December 17, 1987.

Effective date: December 17, 1987.

Amendment Nos.: 113 and 96.

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 28, 1987 (52 FR 2883) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Indiana and Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: October 28, 1987

Brief description of amendment: The amendment revised the provisions in the Technical Specifications to extend 18-month surveillances from December 31, 1987 to the refueling outage currently scheduled to begin in early 1988 for response-time testing for reactor trip and engineering safety features (ESF) instrumentation; response testing of equipment to ESF signals; reactor vessel level indication calibration; auxiliary feedwater system testing, including channel functional testing of loss of main feedwater pump signal; and diesel generator testing, including relief valve testing and essential service water valve testing.

Date of issuance: December 28, 1987

Effective date: December 28, 1987

Amendment No.: 97

Facility Operating License No. DPR-74. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1987 (52 FR 45413) The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated December 28, 1987.

No significant hazards consideration comments received: No. The proposed amendment was noticed with an opportunity for prior hearing.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of applications for amendment: October 17, 1986 and August 6, 1987, as supplemented December 15, 1987.

Brief description of amendment: The August 6, 1987 application for license amendment requested changes to the Technical Specifications (TS), Appendix A to the operating license, in eight areas: (1) a clarification to the definition of secondary containment integrity; (2) a change in the name of a supporting organization represented on the Safety Review Committee; (3) a nomenclature change for a secondary containment isolation valve; (4) deletion of the manual initiation handswitch calibration requirement for ECCS pumps; (5) deletion of expired footnotes; (6) a change to reflect new upper containment pool gates; (7) a change to add certain smoke detectors; and (8) a modification to the setpoint for residual heat removal (RHR)/reactor core isolation cooling (RCIC) steam line high flow. These changes are made in this amendment. The October 17, 1986 application for license amendment requested four changes to the TS. Three of the changes were made in Amendment 29 to the operating license, issued March 31, 1987. The fourth requested change, the addition of TS for smoke detectors in the control rod drive repair room, is made in this amendment.

Date of issuance: December 30, 1987

Effective date: December 30, 1987

Amendment No. 42

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications and the Environmental Protection Plan.

Dates of initial notice in **Federal Register:** September 23, 1987 (52 FR 35796) The December 15, 1987 letter provided supplemental information which did not change the initial determination of no significant hazards considerations as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 20, 1987

Brief description of amendment: The amendment changed the Technical Specifications relating to design features of the fuel storage facilities.

Date of issuance: December 21, 1987.

Effective date: December 21, 1987.

Amendment No.: 113

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 18, 1987 (52 FR 44246). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: October 20, 1987

Brief description of amendment: To reflect deletion of low reactor pressure permissive switches from the emergency core cooling system (core spray and low pressure coolant injection) pump start logic.

Date of issuance: December 17, 1987

Effective date: December 17, 1987

Amendment No.: 13

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1987 (52 FR 43694). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 16, 1987

Brief Description of amendment: The amendment changes Technical Specifications to clarify and enhance limiting conditions of operation and surveillance requirements pertaining to the standby liquid control system.

Date of issuance: December 30, 1987

Effective date: 30 days from date of issuance

Amendment No.: 102

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7700) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 28, 1987 as clarified by letter dated November 2, 1987.

Brief Description of amendment: This amendment revises the Technical Specifications to reflect administrative changes to Section 6 of the Technical Specifications.

Date of issuance: December 29, 1987

Effective date: December 29, 1987

Amendment No.: 101

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35808) and renoticed on November 18, 1987 (52 FR 44247). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 12, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Dates of application for amendment: August 13, 1987, as revised October 23, November 25, December 22, and December 27, 1987

Brief description of amendment: The amendment provides interim changes to the Technical Specifications for the standby liquid control system and the ATWS recirculation pump trip system to reflect modifications made to conform to 10 CFR 50.62 regarding anticipated transients without scram (ATWS).

Date of issuance: December 30, 1987

Effective date: December 30, 1987

Amendment No. 41

Facility Operating License No. NPF-29: This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1987 (52 FR 46136) The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 30, 1987.

No significant hazards consideration comment received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 21, 1987.

Brief description of amendment: The amendment changed the Technical Specifications to extend the secondary containment isolation logic functional test interval from six months to eighteen months.

Date of issuance: December 22, 1987.

Effective date: December 22, 1987.

Amendment No.: 114

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with State of Nebraska, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 22, 1987.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

NRC Project Director: Jose A. Calvo

Dated at Bethesda, Maryland this 7th day of January 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[Doc. 88-523 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on January 28, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, January 28, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45: "Shutdown Decay Heat Removal Requirements."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 8, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-534 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on January 21 and 22, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, January 21, 1988—8:30 a.m. until the conclusion of business Friday, January 22, 1988—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the following pertinent waste management topics: *HLW:* (1) Status report on the effects of recent legislative actions on NRC's HLW program; and (2) NRC's Review Plan for the Yucca Mountain Consultation Draft Site Characterization Plan, including a status report on NRC's review. *LLW:* (1) The DOE and NRC uranium mill tailings programs; (2) Revision 1 of the Standard Review Plan for shallow land burial (SLB), including engineered barriers and alternatives to SLB ; and (3) Status report on recently-reported rupture of TMI-2 radioactive waste liners. *RES:* (1) New directions for HLW and LLW research in response to legislative and budgetary changes; and (2) Hydrologic transport and modeling of the near-surface nitrate disposal area, Chalk River Nuclear Laboratory.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:00 a.m. and 4:45 p.m. Persons planning to attend this meeting are urged contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-535 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Change on Location of Meeting

The **Federal Register** published Monday, December 28, 1987 (52 FR 48891) contained notice of a meeting of the ACRS Thermal Hydraulic Phenomena Subcommittee scheduled for January 20 and 21, 1988, 8:30 a.m. *The location has been changed to the Los Alamos Study Center, Building SM 207—Room 216, Cesa Grande Street (off West Jenez Road), Los Alamos National Laboratory, Los Alamos, NM.* All other items pertaining to this meeting remain the same as previously published.

Dated: January 6, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-538 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 53-17854-01; Docket No. 30-13435; ASLBP No. 88-559-01-SC]

Finlay Testing Laboratories, Inc.; Designation of Licensing Board in Place of Single Member Presiding Officer

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Finlay Testing Laboratories, Inc.*, Docket No. 30-13435, is hereby appointed. Administrative Judges Robert M. Lazo, Glenn O. Bright and Richard F. Cole will serve in place of Administrative Judge Robert M. Lazo who had been serving as a single member Presiding Officer.

As reconstituted, the Board is comprised of the following Administrative Judges:

Dr. Robert M. Lazo, Chairman
Mr. Glenn O. Bright
Dr. Richard F. Cole

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the New Board members are:

Administrative Judge Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 4th day of January 1988.

[FR Doc. 88-537 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-5]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating licensing proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Christine N. Kohl, Chairman,
Alan S. Rosenthal,
Dr. W. Reed Johnson

C. Jean Shoemaker,

Secretary to the Appeal Board

Dated: January 4, 1988.

[FR Doc. 88-536 Filed 1-12-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petitions for Exemptions From the Vehicle Theft Prevention Standard; Chrysler Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption

SUMMARY: This notice grants the petition by Chrysler Corporation for an exemption from the marking requirements of the vehicle theft prevention standard for a 1989 passenger car line Chrysler intends to introduce. The agency grants this exemption under section 605 of the

Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard. NHTSA has decided to grant Chrysler's request that we treat the name plate of this new car line as confidential information until the manufacturer introduces the product line.

DATE: The exemption granted by this notice will become effective beginning with the 1989 model year.

SUPPLEMENTARY INFORMATION: On September 11, 1987, this agency received a petition from Chrysler Motors Corporation (Chrysler) for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), pursuant to the requirements of 49 CFR Part 543, *Petitions for Exemption from the Vehicle Theft Prevention Standard.*

On September 6, 1987, NHTSA published a final rule setting out procedures for manufacturers to follow in preparing and submitting petitions for model year 1988 and thereafter. These procedures essentially are identical to procedures adopted in an interim final rule (January 7, 1986, 51 FR 706) establishing the Part 543 requirements to be followed by manufacturers in preparing and submitting petitions for exemption during model year 1987.

The agency reviewed the material Chrysler submitted and concluded that the company met the requirements for petitions in §§ 543.5, 543.6, and 543.7 as of September 11, the date on which NHTSA received Chrysler's completed petition, and on which the 120-day period for processing Chrysler's petition began. The agency further decided to grant the company's request under 49 CFR Part 512 to treat the name plate of the product line and detailed design specifications as confidential business information.

In its petition, Chrysler described an antitheft system that is activated by switching the ignition to "off," opening any door, using the power door locks to activate the locking system, and closing the door. These steps activate the starter interrupt function and also arm an audible and visual alarm. Sensors in the doors, hatch, and trunk trigger the alarm.

Based on substantial evidence, the agency has determined that installing Chrysler's device in this new car line is likely to be as effective in reducing and deterring vehicle theft as are the Part 541 marking requirements. This determination is based on the information Chrysler submitted with its petition and on other available information. The agency believes that the device will provide the types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Chrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Chrysler provided on its device. This information included results of the manufacturer's prototype design verification testing program. The agency notes that the methods of encouraging use and preventing defeat of the Chrysler antitheft device are similar to the methods of other devices that the agency has considered effective. Chrysler stated in its petition that it believes its antitheft device will reduce and deter theft at least to the same extent as complying with Part 541 would.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early state of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Chrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "[t]o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden with § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if Chrysler contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: January 7, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-572 Filed 1-12-88; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COUNCIL ON ENVIRONMENTAL QUALITY

DATES, TIME, AND PLACE: Monday, January 25, 1988, 10:00 a.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place Northwest, Washington, DC.

DATE: January 11, 1988.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Under the Council's regulations implementing the National Environmental Policy Act, Federal agencies may refer to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory effects. (40 CFR Part 1504 *et seq.*) In accordance with those regulations, the Department of the Interior has referred to the Council a proposal by the Department of the Navy to establish the Cherry I and Core Military Operating Areas at Cherry Point, North Carolina. The primary issue raised in the referral is noise impact on the Cape Lookout National Seashore.

The purpose of the meeting is to aid the Council in seeking a resolution of the referral. Representatives from both the Department of the Navy and the Department of the Interior will be present to discuss the referral with the Council. Additionally, representatives from other federal, state and local agencies and members of the public who have an interest in the referral may present views on the issues raised in the referral. Organizations and individuals wishing to make oral presentations at the meeting must request time in writing from CEQ by January 22, 1988.

Interested individuals need not attend this meeting to present their views. Any person may submit written comments for the record until February 8, 1988.

2. Other business may be discussed.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503 (202) 395-5754.

A. Alan Hill,

Chairman.

[FR Doc. 88-556 Filed 1-11-88; 2:02 pm]

BILLING CODE 3125-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, January 19, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 11, 1988

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-586 Filed 1-11-88; 10:12 am]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, January 20, 1988.

PLACE: Conference Rooms 8A, B, & C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Rear-End Collision of Amtrak Passenger Train 94 and Conrail Train ENS-121, on the Northeast Corridor, at Chase, Maryland, January 4, 1987.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 8, 1988.

[FR Doc. 88-626 Filed 1-11-88; 2:01 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 11, 18, 25, and February 1, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 11

No Commission Meetings

Week of January 18—Tentative

Wednesday, January 20

10:00 a.m.
Briefing on Status of Sequoyah Restart (Public Meeting)
2:00 p.m.
Briefing on NRC Technical Training Program (Public Meeting)

Thursday, January 21

2:00 p.m.
Briefing on Regulation of Transportation of Radioisotopes and Results of the Model Study (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 1—Tentative

Tuesday, February 2

10:00 a.m.
Briefing on NRC Human Factors Programs (Public Meeting)
2:00 p.m.
Status of NRC Research Initiatives in Response to NAS Report (Public Meeting)

Wednesday, February 3

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting) (Tentative)
2:00 p.m.
Briefing on Status of State, Local, and Indian Tribe Programs (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation session are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that

no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates, (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

January 7, 1988.

[FR Doc. 88–689 Filed 1–11–88; 4:00 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE, BOARD OF GOVERNORS

Vote to Close Meeting

During its January 4, 1988, meeting, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of the meeting. The portion to be closed was to involve a discussion concerning the extension of a contract for outside auditing services.

The Board determined, pursuant to 5 U.S.C. 552b(c)(9)(B), that the portion of the meeting to be closed was exempt from the open meeting requirement of the Sunshine Act on the grounds that the public interest did not require otherwise and that the portion to be closed was likely to disclose information whose premature disclosure was likely to significantly frustrate the negotiation of the proposed contract.

Prior to the January 4 meeting, the Board of Governors gave due notice of its intention to hold the meeting, the notice and the proposed agenda for the meeting having been published in the Federal Register on December 28, 1987, (FR 48621). On January 4, the Board determined by a unanimous vote that an addition to the agenda was required and that no earlier announcement of the new item was possible.

In accordance with 5 U.S.C. 552b(f)(1), the General Counsel of the United States Postal Service certified that in his opinion the portion of the meeting to be closed might properly be closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B).

The persons who attended this portion of the closed meeting were Board members Coughlin, Griesemer, Hall, McConnell, Nevin, Pace, Peters, Ryan, Setrakian and Tisch; Secretary for the Board Harris; and General Counsel Cox.

David F. Harris,

Secretary.

[FR Doc. 88–684 Filed 1–11–88; 10:10 am]

BILLING CODE 7710-12-M

POSTAL SERVICE BOARD OF GOVERNORS

VOTE TO CLOSE MEETING

At its meeting on January 4, 1988, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for February 1, 1988, at United States Postal Service headquarters, 475 L'Enfant Plaza SW., Washington, DC. The meeting will concern consideration of a proposed filing with the Postal Rate Commission regarding Express Mail service.

The meeting is expected to be attended by the following persons: Governors Griesemer, Hall, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(4) of Title 5, United States Code, and §7.3(d) of Title 39, Code of Federal Regulations, the discussion of this matters is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose privileged market information pertinent to postal services. The Board also determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regualtions, the discussion is exempt because it is likely to specifically concern the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(4) and (10) of Title 5, United States Code, and § 7.3 (d) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–685 Filed 1–11–88; 1:40 pm]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 19, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Transfer of Functions
(3) Review of and Proposal for RRB Automation Efforts of August 31, 1987
(4) FTE Allocation for FY 88
(5) Repayment of the RUIA Loan
(6) Work Stoppage—Springfield Terminal Railway Company—November 12, 1987.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COMM No. 312–751–4920, FTS No. 386–4920.

Dated January 8, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–691 Filed 1–11–88; 1:14 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 87-28394 beginning on page 46813 in the issue of Thursday, December 10, 1987, make the following correction:

On page 46813, in the third column, in the 16th line, in the entry for Docket Number 88-027, Scripps Clinic and Research Foundation, after *Customs:*, insert the date "November 6, 1987."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-free Entry of Scientific Instruments; Texas A & M University et al.

Correction

In notice document 87-28240 beginning on page 46639 in the issue of Wednesday, December 9, 1987, make the following correction:

On page 46640, in the first column, in the third complete paragraph, in the entry for the University of Nebraska, "*Docket Number:* 88-109" should read "*Docket Number:* 88-019."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-08-4220-10; F-14988]

Amended Proposed Withdrawal Application and Opportunity for Public Meeting; Alaska

Correction

In notice document 87-28307 beginning on page 46850 in the issue of Thursday, December 10, 1987, make the following correction:

On page 46851, in the first column, the land description is corrected to read as follows:

KATEEL RIVER MERIDIAN (UNSURVEYED)

T. 7 N., R. 25 E.,
Sec. 18, S½N½SW¼SW¼, S½SW¼SW¼, SW¼NW¼SE¼SW¼, SW¼SE¼SW¼, W½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼;
Sec. 19, W½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼, NW¼, N½SW¼, N½SW¼SW¼, N½NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SW¼NW¼SE¼,
those portions excluding PLO Nos. 1910 and 3942.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-11; C-28292]

Proposed Continuation of Withdrawal; Colorado

Correction

In notice document 87-29528 beginning on page 48770 in the issue of Thursday, December 24, 1987, make the following corrections:

1. Correct the heading to read as set forth above.

2. On page 48770, in the third column, the land description for Gunnison National Forest should read as follows:
T. 14 S., R. 85 W.,
Sec. 23, SE¼NE¼SW¼, S½NE¼NW¼SW¼, and N½SE¼NW¼SW¼.

3. In the same column, in the last complete paragraph, in the third line, insert "Creek" after "Cement"; and in the sixth line, "form" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 88-1]

Recordation of Trade Name; "Better Working Environments, Inc."

Correction

In notice document 88-64 appearing on page 193 in the issue of Tuesday, January 5, 1988, make the following correction:

In the heading, "[T.D. 38-1]" should read "[T.D. 88-1]".

BILLING CODE 1505-01-D

VOL
53

ISS
8

JA
13

1988

MI

federal register

Wednesday
January 13, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, and 912

Aliens; Withdrawal of Restrictions on the Use of Assisted Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886 and 912

[Docket No. R-88-974; FR-1588]

Aliens; Withdrawal of Restrictions on the Use of Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule clarifies the status of the final rule published on April 1, 1986, concerning restrictions on providing housing assistance to ineligible aliens by removing the portions of the rule dealing specifically with aliens, which never have been made effective. To take the place of those provisions of the April 1, 1986, rule, the Department plans to publish a proposed rule to implement section 214 of the Housing and Community Development Act of 1980, as amended by section 329(a) of the Housing and Community Development Amendments of 1981, by section 121(a)(2) of the Immigration Reform and Control Act of 1986 (IRCA), and by section 164 of the Housing and Community Development Act of 1987 (1987 Act).

EFFECTIVE DATE: March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500, (202) 755-7084, or Grady J. Norris, Assistant General Counsel for Regulations, at the same address, (202) 755-7055.

SUPPLEMENTARY INFORMATION:

Background

The April 1986 rule never has been made effective because of litigation and Congressional action. Since enactment of the Immigration Reform and Control Act, the April 1986 rule is outdated with respect to verification procedures and documentation. However, it has been codified in Title 24 of the Code of Federal Regulations. This final rule removes the alien restriction provisions of the April 1986 rule; it also removes from Parts 215 and 235 (governing the Rent Supplement and section 235 home ownership assistance programs) the provisions that purport to restrict eligibility of nonimmigrant student-aliens. This second removal action conforms Parts 215 and 235 to the parts governing all of the other covered programs, and it is consistent with the instructions concerning the effectiveness of restrictions on aliens contained in a Notice published on November 21, 1986 in the **Federal Register** concerning the April 1, 1986 rule. That Notice (51 FR 42088) discussed the causes for the delay in implementing the April 1986 rule and described the status of restrictions against providing housing assistance to aliens in the following terms (at 42089):

> It is the position of the Department that the statutory prohibition on housing assistance for illegal aliens, which is contained in section 214 as amended by the 1986 immigration reform legislation, is not self-implementing. Owners and PHAs may not take any action to deny or terminate assistance pursuant to section 214 before the effective date of a HUD regulation implementing this statute.

This rule confirms that status of implementation of section 214: until a subsequent final rule is issued, there are no HUD restrictions against the use of assisted housing by aliens, and managers of HUD-assisted housing are not authorized to collect information concerning the citizenship or alien status of applicants or participants.

History

Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary from making financial assistance available under the United States Housing Act of 1937 (Public and Indian Housing and Section 8 Housing Assistance), sections 235 and 236 of the National Housing Act (Homeownership and Interest Reduction programs, respectively) or section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement), for the benefit of an alien who is not a lawful permanent resident of the United States or an alien whose unlawful residence since before January 1, 1982 has been adjusted to that of a lawful temporary resident (under section 245A of the Immigration and Nationality Act).

Section 214 was originally enacted in 1980. The 1980 statute prohibited HUD from providing housing assistance to "nonimmigrant student-aliens." HUD implemented the statute by issuing regulations providing that, in the covered programs, nonimmigrant student-aliens were ineligible for assistance. A definition of "nonimmigrant student-aliens" was added to all the appropriate program regulations. When section 214 was revised by Congress in 1981, nonimmigrant student-aliens no longer were specifically mentioned. Instead of naming one category of aliens who were not to receive assistance, the revised statute provides that no aliens except those listed in the statute (as lawful permanent residents) were to be eligible for assistance. Nonimmigrant student-aliens are not included in any of the eligible categories, and therefore are ineligible under the statute for assistance. When effective regulations are issued to implement section 214, as amended, the statutory prohibition against the Secretary providing assistance for ineligible categories will be implemented.

To implement the 1981 changes, a proposed rule was published on May 3, 1982 (47 FR 18914), amending regulations for the various housing programs affected. A final rule was published on October 4, 1982, but it stated that notice of the effective date would be published in the future in the **Federal Register**. Before that rule was made effective, Congress enacted a provision (in 1983) barring HUD from implementing that rule for a one-year period (section 474(e) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, approved November 30, 1983). After the one-year period expired, the Department decided to make changes to the rule.

On April 1, 1986, the Department published a revised final rule (51 FR 11198) to implement section 214. Corrections and technical amendments to that rule were published on April 25, 1986 (51 FR 15611), July 16, 1986 (51 FR 25687), July 28, 1986 (51 FR 26876), and September 29, 1986 (51 FR 34570).

The most recent publication with respect to the April 1, 1986 rule, as revised, was the Notice published in the **Federal Register** on November 21, 1986 (51 FR 42088), deferring the effective date of the rule "until at least October 1, 1987." That Notice referred to Congressional actions that required delay in implementing the final rule. The HUD Appropriations Act for Fiscal Year 1987 had provided that no funds appropriated by that Act or any other Act could be used in Fiscal Year 1987 to implement or enforce the regulations published on April 1, 1986, and the enactment of IRCA required changes in verification procedures for the status of all applicants and tenants. The Notice stated that the April 1986 rule would not be made effective until after promulgation of revisions (and solicitation of public comment thereon) to implement changes required by the Immigration Reform and Control Act of 1986. After publication of the Notice, a court order was entered in a national class action on December 18, 1986 by a United States District Court preliminarily enjoining HUD from implementing the April, 1 1986 rule. *Yolano-Donnelly Tenants' Association v. Pierce* (E.D. Cal., No. CIV S-86-846-MLS).

In recognition that the nonimmigrant student-alien restriction had been replaced by a broader restriction (which the Department has been unable to implement) and that denial or termination of assistance under section 214 must be in accordance with IRCA, many provisions dealing with the subject of nonimmigrant student-aliens scattered throughout existing program regulations were removed in the course of amending those rules for other purposes. (See the final rule on income definition published on June 16, 1986 (51 FR 21850), removing the reference to nonimmigrant student-aliens from the section dealing with occupancy requirements (§ 236.70) and from definitions §§ 215.1 and 236.2; the final rule on Shared Housing published on June 11, 1986 (51 FR 21300), removing from § 812.2 the definition of nonimmigrant student-alien and the provision in the definition of a "family" that had disqualified households which included a nonimmigrant student-alien; and the final technical amendment to the income definition rules published on September 9, 1987 (51 FR 34108), amending the definition of "family" found in § 912.2 in the same way.) References to nonimmigrant student-aliens did remain, however, in §§ 215.20(b)(2), 235.5(g), 235.10(e), 235.325(c) and 235.375 (a)(1), (a)(5) and (e).

Purpose of This Rule

The principal purpose of this rule is to remove the restrictions concerning aliens published in the April 1, 1986 rule and to restore the program regulations to their pre-April 1986 state. The primary exception to restoration is to remove the remaining vestiges of the prohibition that was directed to nonimmigrant student-aliens only. The other type of exception to restoration is the preservation of non-alien changes to the affected program regulations made by the April 1986 rule. This rule removing the ineffective alien provisions and largely restoring the program rules to their pre-April 1986 condition will permit consideration anew of the entire subject, including the effect of the IRCA changes and the 1987 Act changes.

Description of Specific Changes

1. Part 200

Subpart G, consisting of §§ 200.180-200.184, was added by the April 1986 rule and has no effect other than to implement the restriction on assistance to aliens. This rule removes and reserves Subpart G in its entirety.

2. Part 215

The change made in § 215.1 by the April 1986 rule was to remove the definition of nonimmigrant student-alien. However, that change also was made independently by a subsequent rule concerning the definition of income published on June 16, 1986 (51 FR 21853). Consequently, the withdrawal of the April rule has no effect on § 215.1.

The April 1986 rule revised § 215.20(b) to change the disqualification of nonimmigrant student-aliens to a reference to the restrictions on eligibility found in Subpart G of Part 200. This rule removes and reserves paragraph (b)(2) of § 215.20. A sentence added by the April 1986 rule to § 215.55(a) requiring owners to obtain information about the citizenship or eligible alien status of applicants and tenants was purportedly removed by a final rule (June 16, 1986, 51 FR 21857) as corrected (September 30, 1986, 51 FR 34590). However, the language still appears in Title 24 of the Code of Federal Regulations (CFR), so this rule removes it.

3. Part 235

Paragraph (f) was added to § 235.2 by the April 1986 rule. This rule removes and reserves that paragraph. Paragraph (g) of § 235.5, defining the term nonimmigrant student-alien, was removed by the April 1986 rule. Instead of restoring that paragraph, this rule confirms and makes effective its removal, to make it consistent with the other parts affected by the alien restrictions. Similarly, paragraph (e) of § 235.10, which prohibits endorsement of mortgage insurance where the mortgagor is a nonimmigrant student-alien, was removed by the April 1986 rule. This rule confirms and makes effective the removal of that paragraph.

Section 235.13 was added by the April 1986 rule to specify when a person seeking the benefits of mortgage insurance under this program must provide evidence of citizenship or eligible alien status. This rule removes and reserves that section.

Section 235.325, defining eligible cooperative members, was amended by the April 1986 rule by removing paragraph (c), which disqualifies nonimmigrant student-aliens. This rule confirms and makes effective the removal of that paragraph.

Section 235.375 specifies when assistance terminates under the program. There are three references to nonimmigrant student-aliens in that section (paragraphs (a)(1), (a)(5), and (e)), which the April 1986 rule removed. This rule confirms and makes effective their removal.

4. Part 236

The April 1986 rule made two amendments to Part 236 which were affected by intervening amendments. The amendments are the addition of a paragraph (c) to the definition of "qualified tenant" in § 236.2, and the addition of a sentence in paragraph (a) of § 236.80, referring to Subpart G of Part 200, which was added by the April 1986 rule. The final income definition rule published on June 16, 1986 (51 FR 21850) as corrected on September 30, 1986 (51 FR 34590) purported to remove both of these references. Although the reference in § 236.2 was removed from the CFR as a result of that rulemaking, the CFR still contains the reference in § 236.80, so this rule removes it.

One other reference to Subpart G of Part 200 was added to Part 236 by the April 1986 rule, and subsequently has not been removed: a sentence was added to the end of § 236.710. This rule removes that sentence.

5. Part 247

This part governs termination of occupancy of tenants in projects subsidized by HUD. In § 247.3, dealing with entitlement to occupancy, the April 1986 rule revised paragraph (c) to specify that a tenant's failure to submit information on income and composition of the household—including citizenship or eligible alien status—constituted material noncompliance with the rental agreement. This rule removes the portion of that revised language that refers to citizenship or alien status, but makes effective the remainder of the revised paragraph.

6. Part 812

The April 1986 rule revised § 812.1, Purpose and Applicability, to update it and to indicate that this part implements the restrictions on assistance to ineligible aliens. This rule removes paragraph (a)(3), which mentions aliens, but otherwise confirms and makes effective that revision. Section 812.2, Definitions, was revised by the April 1986 rule to alphabetize all definitions and to expand the definitions to include terms related to the restrictions on aliens. The rule was subsequently revised to alphabetize the list of definitions, but it did not include the alien-related terms. This rule simply removes the April 1986 version with the alien-related terms.

Sections 812.5, 812.6, and 812.7 were added in their entirety by the April 1986 rule to specify the types of evidence of citizenship or eligible alien status, the times for submission of such evidence, the type of notice to be given that a

submission is required, and the types of actions of conferring assistance that cannot be taken without receipt of proper evidence of eligible status. Those sections are being removed and reserved by this rule.

7. Parts 880 and 881

Section 880.504 and the corresponding section of Part 881 were amended by the April 1986 rule by adding a paragraph (e), requiring termination of assistance for failure to submit evidence of citizenship or eligible alien status. This rule removes that paragraph from the two sections.

Paragraph (b) of the corresponding .601 sections was revised by the April 1986 rule to list some of the management and maintenance functions of owners of section 8 New Construction and Substantial Rehabilitation housing projects. This rule amends that paragraph of the two sections by removing the reference to obtaining evidence of citizenship or eligible alien status, and makes that amended provision effective.

The April 1986 rule added a sentence referring to submission of evidence of citizenship or eligible alien status, in accordance with applicable requirements of Part 812, to paragraphs (c)(1) and (c)(3) of the corresponding .603 sections. This rule removes those references.

In § 880.607 and the corresponding section in Part 881, dealing with termination of tenancy, the April 1986 rule revised paragraph (b)(3) to specify that failure to submit information on income and composition of the household—including citizenship or eligible alien status—constituted material noncompliance with the rental agreement. This rule removes the portion of that paragraph that refers to citizenship or alien status, but makes effective the remainder of the revised language.

8. Part 882

The April 1986 rule revised § 882.116, Responsibilities of the PHA, to be more specific about the steps to take to assure adequate information about applicants' eligibility. This rule makes the new language effective but removes the language concerning citizenship or eligible alien status, leaving no authority for PHAs or owners to inquire about applicants or participants' citizenship or alien status.

Paragraph (a)(1) of § 882.118, Obligations of the Family, was revised by the April 1986 rule, by adding evidence of citizenship or eligible alien status to the list of information to be submitted by the family. This rule makes the revised language effective but removes the reference to evidence of eligible status and the obligation of families to submit any such evidence.

The April 1986 rule revised paragraphs (a)(2), (a)(7) and (m)(1), and added a new paragraph (k)(4) to § 882.209, Selection and Participation—to add references to requirements for submission of evidence of eligible status. The reference in paragraph (a)(7) was removed by a correction document (51 FR 25988). This rule removes the remaining references, including paragraph (k)(4) in its entirety.

Section 882.210, Grounds for Denial or Termination of Assistance, was amended by the April 1986 rule by adding a paragraph (e) referring to the provisions of §§ 882.118 and 812.7 regarding submission of evidence of eligible status. This rule removes paragraph (e).

Section 882.212, Reexamination of Family Income and Composition, was amended by the April 1986 rule by adding a sentence at the end of paragraphs (a) and (c) dealing with submission of evidence of eligible status. This rule removes the sentence from each of those paragraphs.

The April 1986 rule revised § 882.514, Family Participation, by adding language to paragraph (a)(1) about the PHA's obligation to obtain evidence of an applicant's citizenship or eligible alien status. This rule removes this added language, but otherwise makes the revision effective.

A sentence cross-referencing provisions in Part 812 dealing with evidence of eligible status was added by the April 1986 rule to paragraphs (a) and (c) of § 882.515, Reexamination of Family Income and Composition. This rule removes the cross-references from both paragraphs.

9. Part 883

A new paragraph (e) was added by the April 1986 rule to § 883.605, Leasing to Eligible Families, to address the issue of termination of assistance for failure to submit proper evidence of eligible status. This rule removes that paragraph.

Paragraph (b) of § 883.702, Responsibilities of Owner, was revised by the April 1986 rule to list some of the management and maintenance functions of owners of Section 8 State Housing Agency housing projects. This rule amends that paragraph by removing the reference to obtaining evidence of citizenship or eligible alien status, and makes the amended provision effective.

A sentence cross-referencing provisions in Part 812 dealing with evidence of eligible status was added by the April 1986 rule to paragraphs (c)(1) and (c)(3) of § 883.704, Selection and Admission of Tenants. This rule removes the cross-references from both paragraphs.

In § 883.708, dealing with termination of tenancy, the April 1986 rule revised paragraph (b)(3) to specify that failure to submit information on income and composition of the household—including citizenship or eligible alien status—constituted material noncompliance with the rental agreement. This rule removes the portion of that paragraph that refers to citizenship or alien status, but makes effective the remainder of the revised language.

10. Part 884

The April 1986 rule revised paragraphs (a)(3) and (e)(7) of § 884.116, Responsibilities of the Owner, to refer to the owner's obligation to obtain proper evidence of citizenship or eligible alien status. This rule amends the revised language to remove those references.

A sentence cross-referencing provisions in Part 812 dealing with evidence of eligible status was added by the April 1986 rule to § 884.216 and to paragraphs (a) and (c) of § 884.218. This rule removes the cross-references from those locations.

A new paragraph (e) was added by the April 1986 rule to § 884.223, Leasing to Eligible Families, to address the issue of termination of assistance for failure to submit proper evidence of eligible status. This rule removes that paragraph.

11. Part 886

Paragraph (a)(3) of § 886.119, Responsibilities of the Owner, was revised by the April 1986 rule to list some of the management and maintenance functions of owners of section 8 New Construction housing projects administered by the Farmers Home Administration of the Department of Agriculture. This rule amends that paragraph by removing the reference to obtaining evidence of citizenship or eligible alien status, and makes the amended provision effective.

A new paragraph (e) was added by the April 1986 rule to § 886.129, Leasing to Eligible Families, to address the issue of termination of assistance for failure to submit proper evidence of eligible status. This rule removes that paragraph.

In § 886.328, dealing with termination of tenancy, the April 1986 rule revised paragraph (b)(3) to specify that failure to submit information on income and composition of the household—including citizenship or eligible alien status—

constituted material noncompliance with the rental agreement. This rule removes the portion of that paragraph that refers to citizenship or alien status, but makes effective the remainder of the revised language.

A new paragraph (e) was added by the April 1986 rule to § 886.329, Leasing to Eligible Families, to address the issue of termination of assistance for failure to submit proper evidence of eligible status. This rule removes that paragraph.

12. Part 912

The changes made in Part 812 by the April 1986 rule described above were also made in corresponding sections of Part 912. Consequently, the remedial changes made by this rule to those sections of Part 912 are the same as described for Part 812.

Justification for Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, despite the exemption contained in 5 U.S.C. 553 from the requirement to solicit public comment for these rules. However, under 24 CFR Part 10, the Department may omit solicitation of public comment before publishing a final rule, in a particular case, if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, the withdrawal of the April 1986 rule and the removal from the Code of Federal Regulations of its provisions concerning aliens, which never have been made effective merely serves as public notice that the rule will not be made effective as previously published—and, indeed, could not be made effective because of the preliminary injunction entered December 18, 1986 in the *Yolano* litigation—and that a new rule on which comment will be solicited will be published in the Department's efforts to implement the requirements of section 214 of the Housing and Community Development Act of 1980, as amended. The removal of these ineffective provisions and of other ineffective provisions dealing with nonimmigrant student-aliens does not, in effect, alter the status quo. Far from imposing any new regulatory requirements, this rule wipes the slate clean for new action. Therefore, prior notice and comment are unnecessary.

Findings and Certifications

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item number 923 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40369), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities since its effect is merely to clarify that there are no currently effective restrictions on providing housing assistance to ineligible aliens.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321–4347), since the withdrawal of a rule that has not yet been made effective has no real impact on program applicants and participants.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs: housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agenices), Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs: housing and community development, Rent subsidies.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs: housing and community development, Homeownership, Low and moderate income housing, Mortgage insurance.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Projects, Rent subsidies, Taxes, Utilities.

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 812

Low and moderate income housing.

24 CFR Part 880

Grant programs: housing and community development, Low and moderate income housing, New construction, Rent subsidies.

24 CFR Part 881

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 882

Grant programs: housing and community development, Housing, Low and moderate income housing, Mobile homes, Rent subsidies.

24 CFR Part 883

Grant programs: housing and community development, Low and moderate income housing, New construction and substantial rehabilitation, Rent subsidies.

24 CFR Part 884

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies, Rural areas.

24 CFR Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 912

Low and moderate income housing.

For the reasons set forth in the preamble, the Department withdraws the final rule concerning Restrictions on the Use of Assisted Housing affecting 24 CFR Parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886 and 912 and amends those parts as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 200.180 through 200.184 [Removed and Reserved]

2. Subpart G consisting of §§ 200.180 through 200.184, is removed and reserved.

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for Part 215 continues to read as follows:

Authority: Sec. 101(g), HUD Act of 1965 (12 U.S.C. 1701s); section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 215.20 [Amended]

4. Section 215.20 is amended by removing paragraph (b)(2) of the rule currently in effect (and as published on April 1, 1986, 51 FR 11218), and that paragraph is reserved.

§ 215.55 [Amended]

5. Section 215.55 is amended by removing the second sentence of paragraph (a) as published on June 16, 1986 (51 FR 21857).

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

6. The authority citation for Part 235 is revised to read as follows:

Authority: Secs. 211 and 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 235.2 [Amended]

7. Section 235.2 is amended by removing and reserving paragraph (f).

§ 235.5 [Amended]

8. Section 235.5 is amended by removing paragraph (g).

§ 235.10 [Amended]

9. Section 235.10 is amended by removing paragraph (e).

§ 235.13 [Removed and reserved]

10. Section 235.13 is removed and reserved.

§ 235.325 [Amended]

11. Section 235.325 is amended by removing paragraph (c).

§ 235.375 [Amended]

12. Section 235.375 is amended by removing the second sentence of paragraph (a)(1), by removing paragraph (a)(5) in its entirety, and by removing the last sentence in paragraph (e).

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

13. The authority citation for Part 236 continues to read as follows:

Authority: Secs. 211 and 236, of the National Housing Act (12 U.S.C. 1715b, 1715z–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 236.80 [Amended]

14. Section 236.80 as published on June 16, 1986 (51 FR 21861) is amended by removing the second sentence of paragraph (a).

§ 236.710 [Amended]

15. Section 236.710 is amended by removing the last sentence.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

16. The authority citation for Part 247 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act; (42 U.S.C. 3535(d)).

§ 247.3 [Amended]

17. Section 247.3(c) published April 1, 1986 (51 FR 11219) is made effective and the second sentence is amended by removing the parenthetical phrase.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

18. The authority citation for Part 812 continues to read as follows:

Authority: Sec. 3, U.S. Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 812.1 [Amended]

19. Section 812.1 published on April 1, 1986 (51 FR 11219) is made effective; paragraph (a)(1) is amended by adding the word "and" at the end; paragraph (a)(2) is amended by inserting a period before the semicolon and by removing the word "; and" at the end; and paragraph (a)(3) is removed.

§ 812.2 [Removed]

20. Section 812.2 published on April 1, 1986 (51 FR 11219) is removed.

§§ 812.5, 812.6, 812.7 [Removed and reserved]

21. Sections 812.5, 812.6, and 812.7 are removed and reserved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

22. The authority citation for Part 880 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 880.504 [Amended]

23. Section 880.504 is amended by removing paragraph (e).

§ 880.601 [Amended]

24. Paragraph (b) of § 880.601 published on April 1, 1986 (51 FR 11224) is made effective, and the words "obtaining evidence of citizenship or eligible alien status from the family," are removed from the second sentence.

§ 880.603 [Amended]

25. Section 880.603 is amended by removing the last sentence from paragraph (c)(1) and from paragraph (c)(3).

§ 880.607 [Amended]

26. Paragraph (b)(3) of § 880.607 published on April 1, 1986 (51 FR 11225) is made effective, and the parenthetical phrase is removed from the second sentence.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

27. The authority citation for Part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 881.504 [Amended]

28. Section 881.504 is amended by removing paragraph (e).

§ 881.601 [Amended]

29. Paragraph (b) of § 881.601 published on April 1, 1986 (51 FR 11225) is made effective, and the words "obtaining evidence of citizenship or eligible alien status from the family," are removed from the second sentence.

§ 881.603 [Amended]

30. Section 881.603 is amended by removing the last sentence from paragraph (c)(1) and from paragraph (c)(3).

§ 881.607 [Amended]

31. Paragraph (b)(3) of § 881.607 published on April 1, 1986 (51 FR 11225) is made effective, and the parenthetical phrase is removed from the second sentence.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

32. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 882.116 [Amended]

33. Paragraph (c) of § 882.116 published on April 1, 1986 (51 FR 11225) is made effective, and the words "for obtaining evidence of citizenship or eligible alien status from a Family, and" are removed from the second sentence. Paragraph (m) is amended by inserting a semicolon after the first occurrence of the word "chapter" and by removing the subsequent phrase", and obtaining evidence of citizenship or eligible status from the Family in accordance with Part 812 of this chapter."

§ 882.118 [Amended]

34. Paragraph (a)(1) of § 882.118 published on April 1, 1986 (51 FR 11225) is made effective, and the words "submission of required evidence of citizenship or eligible alien status, and" are removed.

§ 882.209 [Amended]

35. Section 882.209 published on April 1, 1986 (51 FR 11226) is made effective but is amended by removing paragraph (k)(4); and by removing paragraph (ii) from paragraph (a)(2) and redesignating paragraph (iii) of parargaph (a)(2) as paragraph (ii) and by amending (a)(2)(i) by adding the word "and" at the end.

§ 882.210 [Amended]

36. Section 882.210 is amended by removing paragraph (e).

§ 882.212 [Amended]

37. Section 882.212 is amended by removing the last sentence from paragraph (a) and from paragraph (c).

§ 882.514 [Amended]

38. Paragraph (a)(1) of § 882.514 published on April 1, 1986 (51 FR 11226) is made effective, and the words "for obtaining evidence of citizenship or eligible alien status from a Family, and" are removed.

§ 882.515 [Amended]

39. Section 882.515 is amended by removing the last sentence from paragraph (a) and from paragraph (c).

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

40. The authority citation for Part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 883.605 [Amended]

41. Section 883.605 is amended by removing paragraph (e).

§ 883.702 [Amended]

42. Paragraph (b) of § 883.702 published on April 1, 1986 (51 FR 11226) is made effective, and the words "obtaining evidence of citizenship or eligible alien status from a family," are removed.

§ 883.704 [Amended]

43. Section 883.704 is amended by removing the last sentence from both paragraph (c)(1) and paragraph (c)(3).

§ 883.708 [Amended]

44. Paragraph (b)(3) of § 883.708 published on April 1, 1986 (51 FR 11227) is made effective, and the second sentence of paragraph (b)(3) is amended by removing the parenthetical phrase.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

45. The authority citation for Part 884 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 884.118 [Amended]

46. Paragraphs (a)(3) and (a)(7) of § 884.118 published on April 1, 1986 (51 FR 11227) are made effective; paragraph (a)(3) is amended by removing the comma following the word "Family" and inserting the word "and" in its place, and by removing the words ", and has submitted required evidence of citizenship or eligible alien status in accordance with Part 812"; and paragraph (a)(7) is amended by removing the words ", and obtaining evidence of citizenship or eligible alien status from a Family at annual reexamination in accordance with Part 812".

§ 884.216 [Amended]

47. Section 884.216 is amended by removing the last sentence.

§ 884.218 [Amended]

48. Section 884.218 is amended by removing the last sentence from both paragraph (a) and paragraph (c).

§ 884.223 [Amended]

49. Section 884.223 is amended by removing paragraph (e).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

50. The authority citation for Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 886.119 [Amended]

51. Paragraphs (a)(3) and (a)(7) of § 886.119 published on April 1, 1986 (51 FR 11227) are made effective; paragraph (a)(3) is amended by removing the comma following the word "Family" and inserting the word "and" in its place, and by removing the words ", and has submitted required evidence of citizenship or eligible alien status in accordance with Part 812"; and paragraph (a)(7) is amended by removing the words ", and obtaining evidence of citizenship or eligible alien status from a Family at annual reexamination in accordance with Part 812".

§ 886.129 [Amended]

52. Section 886.129 is amended by removing paragraph (e).

§ 886.328 [Amended]

53. Paragraph (b)(3) of § 886.328 published on April 1, 1986 (51 FR 11228) is made effective, and the second sentence is amended by removing the parenthetical phrase.

§ 886.329 [Amended]

54. Section 886.329 is amended by removing paragraph (e).

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

55. The authority citation for Part 912 is revised to read as follows:

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Authority: Secs. 3, U.S. Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 912.1 [Amended]

56. Section 912.1 is published on April 1, 1986 (51 FR 11228) is made effective and paragraph (a)(3) is removed. Paragraph (a)(2) is amended by removing the word "and" at the end and changing the semicolon to a period.

§§ 912.5, 912.6, and 912.7 [Removed and reserved]

57. Sections 912.5, 912.6, and 912.7 published on April 1, 1986 (51 FR 11229) are removed and reserved.

December 30, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-447 Filed 1-12-88; 8:45 am]

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federal register

Wednesday
January 13, 1988

Part III

Environmental Protection Agency

40 CFR Part 373

Reporting Hazardous Substance Activity When Transferring Federal Real Property; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 373

[SWH FRL-3279-9]

Reporting Hazardous Substance Activity When Transferring Federal Real Property

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing regulations in response to requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499). Under section 120(h), whenever, any agency, department, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States, and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the contract must include notice of the type and quantity of such hazardous substance, and the time at which such storage, release, or disposal took place. EPA is to prescribe the form and manner of such notice. Today's notice would define when these requirements apply, as well as prescribe the form and manner of notice, as required by section 120(h).

DATE: Comments on this proposed rule must be received on or before February 12, 1988.

ADDRESSES: Commenters must each send an original and two copies of their comments to EPA Superfund Docket (WH-562), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number 120FP-TR on the comments. The docket is located in the EPA Superfund Docket Room (LG 100), 401 M Street SW., Washington DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday except for public holidays. To review docket materials, make an appointment by calling 202-382-3046. The public may obtain copies of docket materials as provided for in 40 CFR Part 2. A fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/CERCLA Hotline at 1-800-424-9346 (toll-free) or in the Washington Metropolitan Area at 202-382-3000. For information on specific aspects of this proposed rule, contact Richard Dailey, Office of Waste Programs Enforcement (WH-527), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202-382-5647.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
  A. Statutory Authority
  B. Interagency Coordination
II. Content of the Rule
  A. Definition of "Department, Agency, or Instrumentality"
  B. The Concept of "Real Property"
  C. Proposed Exclusion for Residential Property
  D. Requirement to Search Agency Files
  E. Definition of "Hazardous Substances"
  F. Definitions of the terms "Storage, Release, and Disposal"
    1. Definition of "Storage"
    2. Storage Trigger
    3. Definition of "Release"
    4. Definition of "Disposal"
  G. Form and Manner of Notice
III. Regulatory Analyses
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Analysis
  C. Paperwork Reduction Act
IV. References

I. Introduction

A. Statutory Authority

The Superfund Amendments and Reauthorization Act (SARA), Pub. L. 99-499, amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* SARA added section 120(h)(1) of CERCLA which states that "* * * whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to be released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files." Section 120(h)(2) requires the Environmental Protection Agency (EPA) to promulgate regulations specifying the form and manner of such notice no later than 18 months after enactment of SARA or, in other words, by April 17, 1988. The notice requirement goes into effect six months after the effective date of the regulation.

In addition to the notice requirements specified by section 120(h)(1) described above, section 120(h)(3)(B) requires covenants to be included in deeds transferring certain property owned by the United States. Specifically, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released or disposed of, each deed entered into for transfer of the property by the United States to any other person or entity must contain covenants warranting that (1) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer; and (2) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States. However, this provision does not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property. There is no statutory requirement that EPA promulgate rules to implement the requirements for deeds in CERCLA section 120(h)(3), and EPA does not plan to issue such rules.

B. Interagency Coordination

The statute specifies that EPA is to develop the notice regulations required by section 120(h)(2) in consultation with the Administrator of the General Services Administration (GSA). The Agency has worked closely with GSA in the development of this proposal, and will continue to consult with GSA throughout the rulemaking process. Additionally, EPA has solicited information and comment from other potentially affected agencies. EPA encourages any affected agencies of the United States that have not been consulted to contact the person named above under the section titled "**FURTHER INFORMATION,**" and to comment on the specific provisions of this proposal.

II. Content of the Rule

Section 120(h) of CERCLA states that its requirements apply to the sale or other transfer of real property owned by the United States by any department, agency, or instrumentality of the United States. As noted above, section 120(h) requires EPA to consult with the General Services Administration (GSA) in the development of these rules. Such consultation is appropriate because, in many cases, GSA serves as the agency through which other federal agencies transfer or convey title to their real property. However, it is important to note that many agencies have independent authority to dispose of their own real property as well; today's proposed rules would apply to all agencies, departments or instrumentalities of the United States involved in the sale or other transfer of real property. It should be noted that EPA presumes that the term "transfer" in the statute is used pursuant to its definition in the Federal Property Management Regulations found at 41 CFR 101-47, and that today's proposed regulations apply to agencies undertaking the activity defined therein.

A. Definition of "Department, Agency, or Instrumentality"

For the purposes of this rule, "department, agency, or instrumentality of the United States" means those entities or organizations created or chartered by the legislative, executive or judicial branches of the federal government, including those corporations that are chartered by the federal government.

B. The Concept of "Real Property"

The concept of real property has evolved over hundreds of years and, is generally used to "designate both things which are permanent, fixed, and immovable, as lands, and rights arising out of, or connected with, lands; and includes land and whatever is affixed thereto, and rights arising out of, or annexed to or exercisable within or about, the land (73 C.J.S. *Property* section 16, 1985). The Federal Acquisition Regulation, developed in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974, as amended by Pub. L. 98-83, defines real property as "land and rights in land, ground improvements, utility distribution systems and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment."

C. Proposed Exclusion for Residential Property

Because section 120(h) states that its requirements apply to any real property "owned" by the United States, the requirements of this section appear to extend to property that federal agencies own because they lent funds or guaranteed certain loans, and then acquired the property after default through foreclosure. Agencies which may take title to real property through foreclosure include, among others, the Small Business Administration (SBA), the Economic Development Administration (EDA), the Farmers Home Administration (FmHA), the Veterans Administration (VA), and the Federal Housing Administration (FHA).

While there is a paucity of legislative history on section 120(h), EPA believes that it is unlikely that Congress intended the notice and covenant requirements of this section apply to properties obtained by the United States through foreclosure and held in a custodial manner until sale. Nevertheless, EPA believes that the statute and the requirements proposed today should apply to some of those properties. For example, EPA believes that it is appropriate to apply section 120(h) to agencies such as the FmHA, when it acquires farm property on which pesticides or other chemicals may have been disposed, or the SBA, EDA, or any other agency when it takes title to a commercial or industrial interest with previous hazardous substance activity. Because EPA believes that the types of properties described above have the potential to present a threat to human health and the environment, the Agency also believes that compliance with the proposed regulations is both prudent and appropriate.

However, the FmHA, VA, and FHA acquire through foreclosure and subsequently sell or transfer over 125,000 pieces of property per year that are exclusively residential. The EPA expects that most small, residential properties would not be the site of any significant hazardous substances activity, and that any protection that may be afforded human health and the environment by application of the statute to such properties would be minimal. Additionally, the Agency believes that the record-checking and notice requirements for the volume of properties transferred by these agencies would be unnecessarily burdensome, and that, in any case, the statute was probably not intended to cover these types of properties.

Based on these considerations, EPA today is proposing to exclude from the notice requirements specified in section 120(h)(2) certain small, residential properties that are acquired and sold by agencies such as the VA, FHA, and the FmHA.

EPA has examined a provision in a Commonwealth of Massachusetts proposed Senate bill (no. 2054) that excluded residential property from hazardous substance disclosure and liability requirements of the Massachusetts Superfund law. As in the Massachusetts bill, EPA today proposes to exclude from the section 120(h)(2) notice requirement those properties that are owned by the United States as a result of foreclosure, and that are one- to four-family residences that are used to provide not more than four dwelling units, including accessory land, and buildings or improvements incidental to such dwellings. EPA believes that using this definition for the proposed exclusion for residential property is appropriate, because it is consistent with the fact that the Department of Housing and Urban Development (HUD) considers one-to-four family unit dwellings as single family residences for the purposes of mortgage insurance under the National Housing Act of 1939.

While not required to act on any aspect of the section 120(h)(3) covenant requirements, EPA presumes that exclusion from the notice requirements of 120(h)(1) would extend an exclusion to the covenants required under 120(h)(3).

The EPA requests comment on whether it is appropriate to exclude certain federally-owned, residential properties from the requirements of section 120(h), and if so, whether the Agency's proposed approach is reasonable. EPA also requests comment on whether it is reasonable to conclude that any exclusions from the requirements of section 120(h)(1) extend to the requirements of 120(h)(3).

D. Requirement to Search Agency Files

As stated above, section 120(h)(1) provides that any contract to sell or transfer property owned by the United States shall give notice of the type and quantity of any hazardous substances that have been stored for one year or more, known to have been released, or disposed of, and the time that such storage, release, or disposal took place, "to the extent that such information is available on the basis of a complete search of agency files." EPA today proposes that, for the purposes of this rule, a "complete search of agency files" shall consist of a thorough review by the transferring agency of any and all files and records (including archives) held by the agency and, if applicable, the parent agency, that relate to the present or past use(s) of the real property that is being sold or transferred. The transferring agency shall make a diligent effort to examine all relevant files by searching the areas where files relating to the use and history of the property are normally kept, with particular emphasis upon records held or obtainable without undue burden that relate to the environmental compliance obligations of the owner of the realty as discharged by or on behalf of the selling or transferring agency. EPA requests comment on this proposed definition.

E. Definition of "Hazardous Substances"

Section 126(h) refers to the storage, release, and disposal of "hazardous substances." Section 101(14) of the Act defines a set of "hazardous substances" by reference to substances designated by EPA under other environmental statutes. EPA's list currently contains 717 substances. The Agency may designate additional substances as hazardous under section 1002 of CERCLA.

F. Definitions of the Terms "Storage, Release, and Disposal"

1. Definition of "Storage"

CERCLA does not define the term "storage." However, the Resource Conservation and Recovery Act (RCRA) defines storage for the purposes of hazardous waste management. For the purposes of implementing section 126(h), EPA today proposes to use the RCRA definition of the term "storage" by substituting the word "substances" for the word "wastes," wherever the latter appears in the RCRA definition. In other words, for the purposes of today's rule, the term "storage" is defined as the holding of hazardous substances for a temporary period, at the end of which the hazardous substance is either used, neutralized, disposed of, or stored elsewhere.

2. Storage Trigger

Section 120(h) requires notice of the storage of hazardous substances only if those substances have been stored for more than one year. In this notice, EPA is proposing a quantitative "trigger" for the storage reporting requirement as well. In other words, section 120(h) would only apply when hazardous substances were stored in quantities greater than a specified amount (for more than one year). EPA believes that requiring federal agencies disposing of real property to report on very small quantities of hazardous substances that have been stored on the property would be burdensome that probably would not contribute significantly to the protection of human health and the environment. Additionally, the Agency believes that the storage of hazardous substances is not tantamount to their release and/or disposal and, in turn, may present less of an environmental threat. EPA believes that this position is consistent with, and logically derives from, the statutory language found in section 3001(d)(8) of the Resource Conservation and Recovery Act (RCRA). Section 3001(d)(6) of RCRA outlines the storage, treatment, and disposal requirements for generators of small quantities of hazardous waste; that is, those entities that generate between 100 and 1000 kilograms (kg) per month of hazardous waste. By statute, small quantity generators may store 6000 kilograms of hazardous waste on-site for up to 180 days (or 270 days if the generator must ship or haul such wastes over 200 miles) without submitting an application for a permit to become an interim storage facility. Since these limits on storage are statutory, it appears that Congress did not consider the storage of hazardous wastes (all of which are included in CERCLA's definition of hazardous substances) to be as significant a problem as the disposal and/or release of those same wastes.

However, the Agency believes that establishing 6000 kilograms as the level below which the section 120(h) notice requirement for the storage of hazardous substances would not apply would be inappropriate. First, the allowed RCRA storage period of 6000 kg of hazardous wastes is six months rather than the one-year period mandated by section 120(h). Additionally, 6000 kg is approximately six tons (or around thirty 55-gallon barrels), which is a substantial amount. Therefore, EPA believes that a 6000 kg cutoff would be inconsistent with the intent of section 120(h).

Under RCRA, generators of no more than 100 kilograms (about 220 pounds or 25 gallons) of hazardous waste in any calendar month are considered conditionally exempt small quantity generators. Because such generators are exempt from many of the RCRA hazardous waste requirements, EPA considered using 100 kilograms as the cutoff for reporting the storage (for one year or more) of hazardous substances under section 120(h). However, since generators of 100 kilograms or less per month of hazardous waste are allowed to store up to 1000 kilograms on site, EPA believes that 1000 kilograms would be a more appropriate trigger level for the section 120(h) notice requirement for the storage of hazardous substances.

Therefore, EPA today proposes that the notice requirement for reporting the storage of hazardous substances under section 120(h) apply only to those hazardous substances that have been stored for one year or more at quantities of greater than or equal to 1000 kilograms. The exception to this would be for the storage of those substances that are considered acutely hazardous wastes under RCRA (40 CFR 261.30). The storage reporting requirement for acutely hazardous wastes under 120(h) would be one kilogram.

The Agency requests comment on the proposed definition of storage, on whether the concept of a quantitative trigger for the storage notice requirement is appropriate, and on the proposed 1000-kilogram storage trigger.

3. Definition of "Release"

The term "release" is defined under section 101(22) of CERCLA to mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances or pollutant or contaminant). The definition also excludes certain categories of releases from the requirements of CERCLA (see CERCLA section 101(22)).

4. Definition of "Disposal"

The term "disposal" is not defined under CERCLA. Therefore, EPA proposes to use the definition of the term in RCRA, again by substituting the word "substances" for the word "wastes." Thus, the term "disposal," for the purposes of implementing 120(h), is proposed to mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. The Agency requests comment on this proposed definition of the term "disposal."

G. Form and Manner of Notice

Section 120(h)(2) requires EPA to promulgate regulations specifying the form and manner of the notice of hazardous substance activity that is to be included in the contract of sale or transfer of real property owned by the United States. EPA is proposing one approach and describing an alternative approach to the form and manner of the notice required by section 120(h). Both approaches are explained below.

The proposed approach would require that the notice for reporting hazardous substance activity under CERCLA section 120(h) contain information similar to that required for reporting the release of hazardous substances under CERCLA section 102 and by 40 CFR 302.4. While the notice would not necessarily have to take the form of the sample provided, the notice would at a minimum, be required to list the name of the hazardous substance, the Chemical Abtracts Services Registry Number (CASRN) where applicable; the regulatory synonym (where applicable) as found in 40 CFR 302.4; the RCRA hazardous waste number (where applicable) as found at 40 CFR 260.30, and the quantity, if greater than 1,000 kilograms (or one kilogram for acutely hazardous wastes), of each hazardous substance stored for one year or more, or released or disposed of on the property, and dates of such storage, release, or disposal. The notice would be required to carry the following statement, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated by the Environmental Protection Agency under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund")."

Under the alternative approach that EPA is considering, agencies would use GSA form SF 118b to comply with section 120(h)(1). Column i on GSA form 118b requires "a description of any reservations or exceptions running with the land or imposed by the holding agency," such as outstanding mineral rights, easements, rights-of-way, railroads, and contamination. If GSA form 118b is used, EPA would require that the disposing agency provide (in an addendum to 118b(i), if necessary), at a minimum, the same information required in the proposed approach described above. The notice would also contain the statement described above indicating that the notice and the information contained in it was generated in response to requirements promulgated under section 120(h) of CERCLA. The Agency requests comments on both approaches to the form of the notice required by section 120(h), and also requests submission of any appropriate alternative approaches during the comment period.

III. Regulatory Analysis

A. Regulatory Impact Analyses

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation, or international trade.

Because this proposed rule affects only agencies, departments, or instrumentalities of the United States, no formal Regulatory Impact Analysis was conducted. However, EPA has attempted to ascertain the expected costs of the proposed regulation and several of the possible or proposed alternatives. As proposed, the regulations would cost the government approximately $700,000 per year. If the proposed notice exclusion for residential properties is not included, the cost per year to the government is approximately $2,000,000, an increase of approximately 62 percent. EPA was not able to ascertain the economic relief that may be provided by the proposed storage trigger.

This rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). Since this proposed rule affects only agencies, departments, or instrumentalities of the United States, no regulatory flexibility analysis is required. Therefore, EPA certifies that the rule will not have significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule only affects entities of the Federal government. Therefore, the reporting and notification requirements contained in this rule are not subject to approval by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 35501, *et seq.*

IV. References

(1) U.S. EPA. "Background Document for the Federal Real Property Transfer Regulations as Authorized by section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act." U.S. EPA, OWPE, Washington, DC, 1987.

List of Subjects in 40 CFR Part 373

Federal facilities, Federal real property transfer, Environmental protection, Hazardous substances, Hazardous materials, Reporting and recordkeeping requirements, Superfund, Hazardous substance storage, release, and disposal.

Date: January 4, 1988.

Lee M. Thomas,

Administrator.

Therefore, for the reasons set out in the preamble, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

1. Part 373 is added to read as follows:

PART 373—REPORTING HAZARDOUS SUBSTANCE ACTIVITY WHEN SELLING OR TRANSFERRING FEDERAL REAL PROPERTY

Sec.
373.1 General requirement.
373.2 Applicability.
373.3 Content of notice.
373.4 Definitions.

Authority: Sec. 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

§ 373.1 General requirement.

Effective October 17, 1988, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of the such department, agency, or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

§ 373.2 Applicability.

(a) The notice required by 40 CFR 373.1 applies to all real property sold or transferred by the United States except for those properties which are acquired by the United States through foreclosure proceedings, and which are residential properties that are one- to four-family residences used to provide not more than four dwelling units, including accessory land, buildings, and improvements incidental to such dwellings.

(b) The notice required by 40 CFR 373.1 for the storage for one year or

more of hazardous substances applies only when hazardous substances are or have been stored in quantities greater than or equal to 1000 kilograms, except that hazardous substances that are also listed under 40 CFR 261.30 as acutely hazardous wastes, and that are stored for one year or more, are subject to the notice requirement when stored in quantities greater than or equal to one kilogram.

§ 373.3 Content of notice.

The notice required by 40 CFR 373.1 must contain the following information:

(a) The name of the hazardous substance; the Chemical Abstracts Services Registry Number (CASRN) where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the RCRA hazardous waste number specified in 40 CFR 261.30, where applicable; the quantity in kilograms and pounds of the hazardous substance that has been stored for one year or more, or released or disposed of on the property, and the date(s) that such storage, release, or disposal took place.

(b) The following statement, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund")."

§ 373.4 Definitions.

For the purposes of implementing this regulation, the following definitions apply:

(a) "Department, agency, or instrumentality" means those entities or organizations created or chartered by the legislative, executive or judicial branches of the Federal government, including those corporations that are chartered by the Federal government.

(b) "Hazardous substances" means that group of substances defined as hazardous under CERCLA section 101(14), and that appear at 40 CFR 302.4.

(c) "Storage" means the holding of hazardous substances for a temporary period, at the end of which the hazardous substance is either used, neutralized, disposed of, or stored elsewhere.

(d) "Release" is defined as specified by CERCLA section 101(22).

(e) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(f) "Complete search of agency files" means a thorough review by the transferring agency of any and all files and records, including archives, held by the agency and parent agency relating to the present and past use(s) of the real property being sold or transferred. The transferring agency must search the areas where files relating to the history and use of the property are normally kept, with particular emphasis upon records held or obtainable without undue burden that relate to the environmental compliance obligations of the owner of the realty as discharged by or on behalf of the agency.

[FR Doc. 88-503 Filed 1-12-88; 8:45 am]
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Reader Aids

Federal Register
Vol. 53, No. 8
Wednesday, January 13, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Executive Orders:
12537 Amended by EO 12624 ... 489
12578 (Superseded by EO12622) ... 222
12622 ... 222
12623 ... 487
12624 ... 489
Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 ... 399
No. 88-4 of Dec. 17, 1987 ... 773

5 CFR
890 ... 1
Proposed Rules:
330 ... 408
351 ... 408

7 CFR
301 ... 733
400 ... 2
704 ... 733
905 ... 401
907 ... 6, 491
910 ... 7, 492
911 ... 402
959 ... 401
971 ... 401
987 ... 401
1430 ... 107
1902 ... 231
Proposed Rules:
68 ... 411
301 ... 140
401 ... 505, 507
907 ... 412
908 ... 412
910 ... 255
979 ... 413
981 ... 414
1126 ... 256
1136 ... 686
1260 ... 509
1701 ... 140

10 CFR
73 ... 403
Proposed Rules:
2 ... 415
430 ... 30

11 CFR
Proposed Rules:
109 ... 416
114 ... 416

12 CFR
208 ... 492
226 ... 467
337 ... 597
525 ... 312
561 ... 324, 336
563 ... 324, 338, 354, 363, 372, 385
563c ... 324
571 ... 338, 372, 385
583 ... 312
584 ... 312
614 ... 775
Proposed Rules:
226 ... 467

14 CFR
39 ... 8-14, 232, 493-495
71 ... 496, 497, 619
75 ... 497
91 ... 233
97 ... 499
Proposed Rules:
39 ... 258, 514, 515
71 ... 516, 517, 666, 670, 674
73 ... 517

15 CFR
399 ... 108
Proposed Rules:
379 ... 418

16 CFR
13 ... 609
Proposed Rules:
13 ... 141

17 CFR
1 ... 609, 615
211 ... 108

18 CFR
271 ... 15
1301 ... 405

19 CFR
24 ... 615
Proposed Rules:
141 ... 30
178 ... 30

20 CFR
Proposed Rules:
361 ... 143
901 ... 147

21 CFR
81 ... 19
176 ... 97
193 ... 20, 233
540 ... 234

546.....235
558.....235, 236
561.....20, 233
606.....111
610.....111
640.....111
1308.....500
Proposed Rules:
193.....259
561.....259
1308.....743

23 CFR

655.....236

24 CFR

200.....842
215.....842
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842
881.....842
882.....842
883.....842
884.....842
886.....842
912.....842
Proposed Rules:
115.....260

26 CFR

1.....117, 238
Proposed Rules:
1.....153, 261

28 CFR

55.....735
541.....196

29 CFR

2702.....737

31 CFR

103.....776

33 CFR

117.....119, 406
165.....616

36 CFR

5.....739
404.....120
Proposed Rules:
223.....519

37 CFR

201.....122, 123
Proposed Rules:
203.....153

38 CFR

4.....21
21.....616
Proposed Rules:
21.....620

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244
Proposed Rules:
52.....261, 779
180.....262, 263
261.....519
373.....850

41 CFR

101–20.....129
114–51.....741
Proposed Rules:
Ch. 201.....620
141.....31
142.....31
261.....31

42 CFR

431.....657
435.....657
440.....657
441.....657
Proposed Rules:
434.....744
435.....744

43 CFR

2.....24

44 CFR

Proposed Rules:
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR

95.....26
233.....467

46 CFR

Proposed Rules:
588.....624

47 CFR

Ch. I.....502
64.....27
73.....28, 29, 504
Proposed Rules:
1.....625
63.....625
73.....426
74.....529
76.....625
78.....529
95.....779

48 CFR

7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132
513.....132
Proposed Rules:
215.....625
225.....626
252.....626
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR

24.....467
541.....133
661.....617
Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426, 780
1041.....155
1048.....155
1049.....155

50 CFR

611.....134, 741
653.....244
663.....246, 248
Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Last List January 11, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 145/Pub. L. 100–235

Computer Security Act of 1987. (Jan. 8, 1988; 191 Stat. 1724; 7 pages) Price: $1.00

H.R. 1162/Pub. L. 100–236

To amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order. (Jan. 8, 1988; 101 Stat. 1731; 2 pages) Price: $1.00

H.R. 1340/Pub. L. 100–237

Commodity Distribution Reform Act and WIC Amendments of 1987. (Jan. 8, 1988; 101 Stat. 1733; 11 pages) Price: $1.00

H.R. 3395/Pub. L. 100–238

Making technical corrections relating to the Federal Employees' Retirement System, and for other purposes (Jan. 8, 1988; 101 Stat. 1744; 34 pages) Price: $1.25

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Contents

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
National registry proposal; development of procedures, 953

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 860
Papayas grown in Hawaii, 862
PROPOSED RULES
Filberts/hazelnuts grown in Oregon and Washington, 900
Milk marketing orders:
Ohio Valley et al., 902
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 898

Agriculture Department
See also Agricultural Marketing Service; Forest Service
NOTICES
Meetings:
Rural Development National Advisory Council, 939

Air Force Department
RULES
Military personnel:
Issuing certificates in lieu of lost or destroyed certificates of separation, 876

Army Department
See also Engineers Corps
NOTICES
Meetings:
Science Board, 944

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Surveys, determinations, etc:
Manufacturing area; annual, 940

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Louisiana, 939

Coast Guard
RULES
Anchorage regulations:
California, 878
Ports and waterways safety:
Outer Apra Harbor, Guam, Marianas Islands; security zone, 878
NOTICES
Environmental statements; availability, etc.:
New Jersey Turnpike, 944

Commerce Department
See also Census Bureau; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration; National Technical Information Service
NOTICES
Meetings:
Private Sector Initiatives Presidential Board of Advisors, 940

Copyright Office, Library of Congress
NOTICES
Phonorecord players, coin-operated, recordation and certification, 965

Defense Department
See also Air Force Department; Army Department; Engineers Corps
PROPOSED RULES
Acquisition regulations:
Milestone billing for long-term contracts, 931

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Mobil Gas Co. Inc., 945

Employment and Training Administration
NOTICES
Adjustment assistance:
Ethyl Corp. et al., 960
Westran Corp., 961
Meetings:
Apprenticeship 2000 initiative, 961

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 945

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
New Jersey Turnpike, 944

Environmental Protection Agency
PROPOSED RULES
Toxic substances:
Testing requirements—
Hazardous waste chemicals, 911
Phenylenediamines, unsubstituted, 913
NOTICES
Meetings:
Science Advisory Board, 949
Toxic and hazardous substances control:
Chemical substances inventory; incorrect listings removed, 949
Chemical testing—
Data receipt, 951

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Export Administration
See International Trade Administration

Federal Aviation Administration
PROPOSED RULES
Restricted areas; correction, 991
Transition areas, 907–910
(4 documents)

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 990

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 990

Federal Emergency Management Agency
PROPOSED RULES
Nondiscrimination on basis of age in Federal programs and activities, 922
NOTICES
Disaster and emergency areas:
Arkansas, 952
Puerto Rico, 952

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act, etc.:
Purchased gas adjustment regulations, 867
NOTICES
Environmental statements; availability, etc.:
PennEast Gas Service Co. et al., 946
Oil pipelines, interstate; tentative valuations, 948
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 947
Flambeau Paper Corp., 949
National Fuel Gas Supply Corp., 947
Northern Natural Gas Co., 948
Terra Resources, Inc., 948

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Multnomah County, OR, 984

Federal Maritime Commission
NOTICES
Agreements filed, etc., 952

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
National Railroad Passenger Corp., 984
Union Pacific Railroad Co. et al., 985

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Landmark Financial Corp. et al., 952

Fish and Wildlife Service
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Kanuti National Wildlife Refuge, AK, 957
Kodiak National Wildlife Refuge, AK, 958
Nowitna National Wildlife Refuge, AK, 958
Tetlin National Wildlife Refuge, AK, 957

Forest Service
NOTICES
Environmental statements; availability, etc.:
Kootenai National Forest, MT, 939

General Services Administration
NOTICES
Procurement:
Copiers, method of award, 953

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Mutual mortgage insurance and rehabilitation loans—Occupied conveyance, 868

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. and Foreign Commercial Service Advisory Council, 941
Countervailing duties:
Carbon steel wire rod from—
Malaysia, 942
Singapore, 942
Meetings:
President's Export Council, 942

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Abernathy, G. Richard, 958
Rio Grande Industries, Inc., et al., 959
Tennessee Southern Railroad Co., Inc., 959

Justice Department
NOTICES
Pollution control; consent judgments:
South Carolina Department of Health and Environmental Control et al., 959

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 960

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
U.S. Sprint Fiber Optic Cable Network; fiber optic cable right-of-way, ND, MT, ID, and WA, 953
Meetings:
Rock Springs District Advisory Council; tour, 954
Opening of public lands:
Arizona, 954
Realty actions; sales, leases, etc.:
Arizona, 955
(2 documents)
Wyoming, 956
Resource management plans, etc.:
San Juan Resource Area, UT, 955
Survey plat filings:
Idaho, 954
Wilderness study areas:
Mineral survey reports—
Montana, 956
Withdrawal and reservation of lands:
Oregon and Washington, 956

Libraries and Information Science, National Commission
NOTICES
Meetings; Sunshine Act, 990

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Helen Mining Co., 963
Mountain View Coal Co., 964
White County Coal Corp., 964, 965
(2 documents)

Minority Business Development Agency
NOTICES
Business development center program applications:
California, 942

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 966

National Commission on Libraries and Information Science
See Libraries and Information Science, National Commission

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 967

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Hydraulic and air brake systems, 934
New pneumatic tires, 936
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Bram, Edrice et al., 987
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 987

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 894
Gulf of Alaska, Bering Sea and Aleutian Islands groundfish; correction, 991
Gulf of Alaska groundfish, 890

National Science Foundation
NOTICES
Meetings:
Division of Microelectronic Information Processing Systems Advisory Committee, 967
Nuclear Science Advisory Committee, 967
Regulatory Biology Advisory Panel, 967

National Technical Information Service
NOTICES
Inventions, Government-owned; availability for licensing, 943

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Philadelphia Electric Co., 970
Meetings:
Reactor Safeguards Advisory Committee, 971
(2 documents)
Strategic special nuclear material; fuel facilities possessing formula quantities safeguards requirements; guidance, 972
Organization, functions, and authority delegations:
Region I office; address change, 972
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 968
Public Service Electric & Gas Co. et al., 972

Office of United States Trade Representative
See Trade Representative, Office of United States

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 990

Personnel Management Office
RULES
Health benefits, Federal employees:
Medically underserved areas; 1988 list, 860
Restoration to duty from military service or compensable injury, 857
PROPOSED RULES
Health benefits, Federal employees:
Medically underserved areas, 898

Presidential Documents
PROCLAMATIONS
Special observances:
Martin Luther King, Jr., Day (Proc. 5760), 855

Public Health Service
See Agency for Toxic Substances and Disease Registry

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Mexican Debt Exchange transaction; accounting and disclosure, 865

NOTICES
Agency information collection activities under OMB review, 973
Self-regulatory organizations; proposed rule changes:
Pacific Stock Exchange, Inc., 980
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 975, 979 (2 documents)
Pacific Stock Exchange, Inc., 980
Philadelphia Stock Exchange, Inc., 980
Applications, hearings, determinations, etc.:
Banco De Vizcaya, S. A., 973
Girozentral und Bank der Osterreichischen Sparkassen Aktiengesellschaft et al., 976
Horizon Funds, 977
Public utility holding company filings, 981

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 982
Disaster loan areas:
North Carolina, 982
Pennsylvania, 982

State Department
NOTICES
Agency information collection activities under OMB review, 983
Meetings:
International Telegraph and Telephone Consultative Committee, 983

Surface Mining Reclamation and Enforcement Office
RULES
Initial and permanent regulatory program:
Performance bonds; bond release application, 994

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Unfair trade practices, petitions, etc.:
European Community; oilseeds case; investigation, 984

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration
RULES
Program Fraud Civil Remedies Act; implementation, 880

Treasury Department
NOTICES
Agency information collection activities under OMB review, 988 (2 documents)

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Early Poussin in Rome: The Origins of French Classicism, 989

Veterans Administration
RULES
Vocational rehabilitation and education:
Election of benefits, 879
NOTICES
Agency information collection activities under OMB review, 989
Committees; establishment, renewal, termination, etc.:
Special Medical Advisory Group, 989

Separate Parts in This Issue

Part II
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 994

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5760 855

5 CFR
353 857
890 860
Proposed Rules:
890 898

7 CFR
905 860
928 862
Proposed Rules:
905 898
982 900
1033 902
1046 902

14 CFR
73 991
Proposed Rules:
71 (4 documents) 907-910

17 CFR
211 865

18 CFR
154 867
270 867
273 867
375 867
381 867

24 CFR
203 868

30 CFR
800 994

32 CFR
887 876

33 CFR
110 878
165 878

38 CFR
21 879

40 CFR
Proposed Rules:
795 911
796 911
799 (2 documents) 911, 913

44 CFR
Proposed Rules:
7 922

48 CFR
Proposed Rules:
232 931
252 931

49 CFR
31 880
Proposed Rules:
571 (2 documents) 934, 936

50 CFR
611 (2 documents) 890, 894
672 (2 documents) 890, 991
675 (2 documents) 894, 991

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

Presidential Documents

Title 3—

The President

Proclamation 5760 of January 12, 1988

Martin Luther King, Jr., Day, 1988

By the President of the United States of America

A Proclamation

Twenty years ago this coming April, Dr. Martin Luther King, Jr., was slain by an assassin in Memphis, Tennessee. Violence and hatred, the enemies against which he offered an uncompromising message of brotherhood and hope, had claimed another victim in a decade of tumult that plumbed the very spirit of this Nation. Martin Luther King was martyred not only for his beliefs, but for the passionate conviction and consistency with which he espoused them. That those convictions prevailed, that his dream of the death of bigotry did not die with his life's ebbing, offered immutable confirmation of his fervent belief that "unarmed truth and unconditional love will have the final word in reality."

Martin Luther King's leadership was of the same character as his dream. It was larger than personality and broader than history. It bore the stamp of the religious tradition that formed his early life and led him to an assistant pastorship at Ebenezer Baptist Church in Atlanta at age 18. It took anchor in what he called the "magnificent words" of the Declaration of Independence and in the Constitution, words he echoed and to which he so often appealed in his speeches and writings against the cruelty and irrationality of segregation and prejudice. His was leadership that spoke to the best in every person's nature and that never failed, even in the face of curses and threats, iron bars and police lines, to turn men's eyes toward "the bright and glittering daybreak of freedom and justice."

Arrested in a march for desegregation on Good Friday, 1963, Martin Luther King wrote from the Birmingham City Jail of his faith in this ultimate dawning of equality: "We will reach the goal of freedom in Birmingham and all over the nation, because the goal of America is freedom. Abused and scorned though we may be, our destiny is tied up with the destiny of America. . . . If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands." Those demands, he saw, were claims to the orginal promise of the truths our Founders proclaimed "self-evident"—that "all men are endowed by their Creator with certain unalienable rights," among them the "rights to Life, Liberty and the pursuit of Happiness." He called these words a "promissory note to which every American was to fall heir," and he insisted that what was centuries overdue could no longer be delayed.

Martin Luther King's words were eloquent because they were borne not by his tongue alone but by his very being; not by his being alone but by the beings of every one of his fellow black Americans who felt the lash and the sting of bigotry; and not by the living alone but by every generation that had gone before him in the chains of slavery or separation. He brought light to the victims of segregation, but he brought light as well—in a way, illumined by faith, more sorely needed—to its perpetrators. He saw how evil could crush the spirit of both the oppressor and the oppressed, but whereas "unearned suffering" was redemptive, those who were motivated by hatred and inflicted pain had no recourse but to abandon the instruments of prejudice and to change heart.

Through his evocation, by his words and his presence, of transcendent ideals, Martin Luther King pierced to the heart of American society and changed it, irrevocably, for the better. He, and all those who marched with him, overcame. As they did so, so too did the America that Lincoln had said could not stand divided—transmuted now through the toil and blood of its fallen heroes into a land more wholly free. The work of justice and freedom continues, but its goal is less distant, its hardships more tolerable, and its triumph more sure. For these gifts to our Nation, during his lifetime and in the decades past and to come, all Americans join in fitting celebration of the birth of Martin Luther King, Jr.

By Public Law 98-144, the third Monday in January of each year has been designated as a public holiday in honor of the "Birthday of Martin Luther King, Jr."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 18, 1988, as Martin Luther King, Jr., Day.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-819
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Editorial note: For the President's remarks of Jan. 12 on signing Proclamation 5760, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 2).

Rules and Regulations

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 353

Restoration to Duty From Military Service or Compensable Injury

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the restoration rights of employees who perform military duty or are injured on the job. This revision is being issued together with a comprehensive revision of Chapter 353 of the Federal Personnel Manual (FPM). The principal purpose of the revision is to update, simplify, and clarify the regulations and instructions.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: On April 10, 1987, OPM published (at 52 FR 11657) proposed regulations to amend 5 CFR Part 353 governing the restoration rights of employees who perform military duty or sustain compensable injuries or illnesses. At the same time, the corresponding FPM chapter was sent to agencies and unions for comment, and was made available to the general public. We received comments from 22 agencies, almost all of which were supportive of the new proposal and saw it as a substantial improvement. We also received comments from 3 unions and 1 individual. Key aspects of the proposal are summarized below along with a discussion of the more significant comments received on both the regulations and the FPM, and OPM's decision.

Key Provisions

—Revises § 353.102 to clarify that restoration rights following compensable injury apply only to Federal employees. Also, adds a definition of "equivalent position" and includes "furlough" in the definition of "leave of absence."
—Deletes material in §§ 353.104 and 353.105 pertaining to how employees on military duty or injury compensation are to be carried. (This information is covered in more detail in FPM Chapter 353.)
—Revises § 353.106 pertaining to notification of rights and obligations to make clear that an employee has an obligation to use due diligence in ascertaining his or her rights, and to return to duty as soon as he or she is able.
—Revises § 353.201(b) to provide that an employee whose position is reclassified during his or her absence is entitled to be considered for the regraded position in accordance with the provisions of Part 335 of this chapter.
—Revises § 353.201(c) to clarify that the prohibition on demoting or separating an employee absent on military duty applies only when the individual has restoration rights under title 38 of the U.S. Code.
—Revises § 353.203 to clarify that OPM will provide placement assistance to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.
—Revises § 353.302 to change the focus from the time limits to who is entitled to mandatory restoration.
—Deletes material in § 353.303 pertaining to the position to which restored to reflect the provisions of 38 U.S.C. 2021(a)(A)(i) and the expiration of the so-called Whitten Amendment that effectively removed the requirement to obligate the position of an employee entering military service.
—Deletes material in § 353.305 pertaining to conflicting restoration rights, since conflicting restoration rights should rarely be an issue. (These rights are discussed in FPM Chapter 353.)
—Deletes most of the material in § 353.308 on notice of appeal rights. The right to appeal is covered in the new § 353.104.
—Adds a new § 353.306 specifying that Reservists are entitled to a leave of absence to perform military duty.
—Revises § 353.401 to remove repetitive and unnecessary material and to clarify that employees of the legislative and judicial branches do not have appeal rights to the MSPB. Also provides a limited right for partially recovered employees to appeal an agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.
—Transfers material in Subpart E on the restoration rights of TAPER (temporary appointments pending establishment of a register) employees to § 353.305.

Comments Received

—Two agencies suggested extending the 30-day period following receipt of a request for restoration, within which the agency is required to restore an individual returning from military duty. We are unable to comply with this request for two reasons:

1. Congress clearly intended that an employee returning from military duty be restored as soon as practicable; and

2. The current 30-day provision is one of longstanding which has been generally accepted and proven workable. As such, it has taken on the characteristics of a law and cannot be arbitrarily changed.

—The proposed regulations provide for OPM placement assistance for executive branch employees returning from military duty when it is "not feasible" for their former agencies to restore them. A few agencies asked for further guidance as to the specific circumstances which would permit an agency to claim it was not feasible to restore such an individual. Given the many differences in agencies and individual employee circumstances, we believe it would be virtually impossible and counterproductive to attempt to define this further in a way that would cover all eventualities. We believe this is best left to individual determinations. In general, however, it is intended that the agency must have exhausted all efforts to place the individual before referral to OPM for placement assistance. On this basis, we have changed "not feasible" to "not possible."

—A few agencies suggested we add a requirement specifically requiring individuals returning from military duty or injury compensation to request restoration in writing and to state that they were requesting restoration under one of these two laws. This would put their agencies on notice that special treatment was required. We have not adopted this suggestion because we believe it is unnecessary and goes beyond the law. Neither of the governing statutes makes any mention of an employee having to apply for restoration in a certain manner. In essence, this proposal would mainly be for the convenience of the personnel office—but at the expense of the employee.

—Several agencies questioned or suggested changes in provisions which are essentially matters of law. For example, they questioned why an employee on military duty should be protected from reduction in force and why we need a provision protecting the vacation privileges of employees on a leave of absence to perform military duty. These provisions are based on 38 U.S.C. 2021, *et seq.*

—One agency felt strongly that we were going too far in giving employees absent because of military duty or compensable injury, the right to be considered automatically for all promotions. The agency pointed out that this places an enormous burden on the agency and rarely, if ever, results in a promotion for the employee. We have taken a closer look at this and agree with the agency. Accordingly, we have modified this section to *require* automatic promotion consideration only when an employee is in a career ladder, in an apprenticeship program, or when his or her position is reclassified at a higher grade.

—One agency suggested we clarify at what point an employee on the reemployment priority list is entitled to be considered outside the commuting area. Rather than regulate this issue, we prefer to leave these decisions to individual agencies, based on the circumstances in each case.

—One agency and a union believe we were diminishing the restoration rights of individuals returning from military duty by not giving them mandatory rights to the positions they left. Actually, this would go beyond the law. The law provides restoration rights only to the position the employee left *or an equivalent one.*

—One agency opposed the extension of appeal rights that allows partially recovered employees to appeal failure to credit time spent on compensation for purposes of rights and benefits based upon length of service, e.g., within grade increases. We believe, however, that 5 U.S.C. 8151 clearly reflects Congress' intent that time spent on compensation be credited for all purposes based on length of service—including within-grade increases. In this connection, the law makes no distinction between partially and fully recovered employees; it merely says that upon reemployment, the employee shall be entitled to all rights and benefits based upon length of service, including within-grade increases. Accordingly, a limited appeal right is appropriate to ensure that the law is given effect.

—One organization asked that, to avoid confusion, we delete references to restoration rights under 5 U.S.C. 3551 because this section is out-of-date and duplicates restoration rights in Title 38, United States Code. We have done so.

—One union asked that we include references to employee grievance rights under negotiated grievance procedures. We have done so.

—One organization and a union questioned the definition of "equivalent position." We have deleted this definition because of the broad range of positions in the Federal service and the difficulty of arriving at a definition which accurately encompasses all possibilities. We believe the determination of what constitutes an equivalent position is best left to individual judgments based on the particular circumstances in each case

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to internal Federal personnel matters.

List of Subjects in 5 CFR Part 353

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 353 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Part 353 is revised to read as follows:

Authority: 38 U.S.C. 2021 et seq., and 5 U.S.C. 8151.

2. The heading for Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

3. Section 353.101 is revised to read as follows:

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 2021, et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part and to corresponding material published in Chapter 353 of the Federal Personnel Manual.

4. Section 353.102 is amended by removing the paragraph designations, alphabetizing the definitions, and revising the definitions of "agency," "leave of absence," and "military duty" to read as follows:

§ 353.102 Definitions.

* * * * *

"Agency" means (1) with respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and (2) with respect to restoration following military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia

* * * * *

"Leave of absence" means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

"Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States; (2) inactive duty training in the Armed Forces of the United States; and (3) active duty in the Public Health Service that is covered by 38 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. Inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training in the Armed Forces of the United States.

5. In § 353.103, paragraph (c) is redesignated as paragraph (b), and the original paragraph (b) is redesignated as paragraph (c). Both paragraphs are revised to read as follows:

§ 353.103 Persons covered.

* * * * *

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.305 covers the restoration rights of employees serving under temporary appointments pending establishment of register (TAPER).

§§ 353.104 and 353.105 [Removed]

6. Sections 353.104 and 353.105 are removed.

7. Section 353.106 is redesignated as § 353.104 and revised to read as follows:

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by Chapter 43 of Title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.107 [Redesignated as § 353.105]

8. Section 353.107 is redesignated as § 353.105.

9. Section 353.201 is revised to read as follows:

§ 353.201 Personnel actions.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or military duty can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of injury or military duty shall be considered for that position in accordance with the provisions in Part 335 of this chapter.

(c) An employee with restoration rights, absent on military duty, may not be demoted or separated (other than military separation). If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay.

(d) An employee absent because of compensable injury is subject to the same terms and conditions of employment with respect to demotion, separation, reduction in force (RIF), etc., as though he or she had not been injured. An employee who receives compensation during a period of LWOP or separation not due to compensable injury (e.g., expiration of appointment or RIF) or during a period when he or she would not normally be expected to work (e.g., seasonal employment) is not entitled to any greater rights or benefits than he or she would have received if not entitled to workers' compensation

10. Section 353.203 is revised to read as follows:

§ 353.203 OPM placement assistance.

OPM will provide placement assistance to employees returning from military duty or compensable injury when the employing agency has been abolished and its functions were not transferred to another agency. Upon request, OPM will also provide placement assistance to an employee returning from military duty when it is not possible for the employing agency to restore the individual

§ 353.301 [Removed]

11. Section 353.301 is removed

12. Section 353.302 is redesignated as § 353.301 and revised to read as follows

§ 353.301 Military returnees and injured employees who recover within 1 year.

The following individuals are entitled to mandatory restoration to their former positions or equivalent ones.

(a) An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 2021 or 2024 (a), (b), or (c). This eligible individual must be restored as soon as possible after making application but in no event later than 30 days after the application is received by the agency.

(b) An individual who fully recovers from a compensable injury within 1 year of the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the employee resumes regular employment with the United States. Such an individual must be restored immediately and unconditionally.

§ 353.304 [Redesignated as 353.302]

13. Section 353.304 is redesignated as § 353.302 and revised to read as follows:

§ 353.302 Physical disqualification.

An individual who is physically disqualified for the former position or equivalent because of disability sustained during military service or because of compensable injury shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. For an employee who sustains a compensable injury, this right applies for a period of 1 year from the date compensation begins.

§§ 353.303, 353.305, and 353.308 [Removed]

14. Sections 353.303, 353.305, and 353.308 are removed.

§ 353.307 [Redesignated as § 353.303]

15. Section 353.307 is redesignated as § 353.303

§ 353.306 [Redesignated as § 353.304]

16. Section 353.306 is redesignated as § 353.304.

§ 353.501 [Redesignated as § 353.305]

17. Section 353.501 is redesignated as 353.305 and revised to read as follows:

§ 353.305 Restoration rights of TAPER employees.

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in grade GS–16, GS–17, or GS–18), is entitled to be restored to the position he or she left, or an equivalent position in the same commuting area

18. A new § 353.306 is added to read as follows:

§ 353.306 Leaves of absence.

Documentation, reporting, and other requirements relating to leaves of absence shall be specified from time to time in the FPM System. The following employees are entitled under Title 38 of the U.S. Code, to a leave of absence in connection with military duty.

(a) A member of a Reserve component who performs active duty for training or inactive duty (38 U.S.C. 2024(d)).

(b) An employee who reports for enlistment, induction, or physical examination (38 U.S.C. 2024(e)).

19. Section 353.401 is revised to read as follows:

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided below, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore or improper restoration. All appeals are to be submitted in accordance with the MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in Parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

Subpart E—[Heading Removed]

20. The heading for Subpart E is removed.

[FR Doc. 88-693 Filed 1-13-88; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas for 1988

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations pertaining to benefits for individuals in Medically Underserved Areas. This amendment is necessary to comply with a provision of FEHB law, which mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians.

DATES: Interim rule effective January 1, 1988. Comments must be received on or before March 14, 1988.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632-4634.

SUPPLEMENTARY INFORMATION: Pub. L. 99-251, enacted on February 27, 1986, and entitled the "Federal Employees Benefits Improvement Act of 1986," amended the FEHB law by requiring restoration of payment to all qualified providers in Medically Underserved Areas effective January 1, 1985. Each year, OPM compares the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population and determines which states qualify as Medically Underserved Areas for the next calendar year.

OPM has determined that for 1988 the following six states are Medically Underserved Areas for purposes of the FEHB Program: Alabama, Louisiana, Mississippi, North Dakota, South Dakota, and West Virginia. This differs from OPM's determination for 1987 in that the states of North Dakota and South Dakota have been added to the group of states designated as medically underserved and the state of Wyoming is no longer included.

Waiver of Notice of Proposed Rulemaking

Under sections 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice is being waived because OPM's annual determination of Medically Underserved Areas, which takes effect on January 1 of each year, is a purely mechanical calculation based on statistical data and cannot be changed under current law.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the second through fourth sentences of the paragraph defining "Medically underserved area" are removed and the following is added to the end of the definition to read as follows:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM has determined that effective January 1, 1988, the following states are "medically underserved areas" for purposes of this subpart: Alabama, Louisiana, Mississippi, North Dakota, South Dakota, and West Virginia.

[FR Doc. 88-695 Filed 1-13-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Size Requirements for Florida Grapefruit and Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim final rule which relaxed the minimum size requirements for fresh shipments of domestic and imported pink seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter), and the minimum size requirement for fresh domestic shipments of Dancy tangerines from size 176 (2 9/16 inches in diameter) to size 210 (2 5/16 inches in diameter).

These fruits can be shipped from the production area to any point in the continental United States, Canada, or Mexico. The maturity level of, size composition of, and market demand conditions for these fruits warrant these relaxations.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order, approximately 15,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, producers, and importers may be classified as small entities.

The interim final rule was issued October 22, 1987, and published in the **Federal Register** (52 FR 41400, October 28, 1987). That rule amended § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, issued under Marketing Order 905. That rule provided that interested persons could file public comments through November 27, 1987. No comments were received. The interim final rule temporarily relaxed the minimum size requirements for domestic and import shipments of pink seedless grapefruit from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) effective October 22, 1987, and the minimum size requirement for domestic shipments of Dancy tangerines from size 176 (2 9/16 inches in diameter) to size 210 (2 5/16 inches in diameter) effective November 30, 1987. The relaxations for grapefruit and tangerines will remain in effect through August 21, 1988, by which time shipments for the 1987-88 season will be finished. The resumption of tighter requirements for 1988-89 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

The Citrus Administrative Committee recommended relaxation of the size requirements for Florida grapefruit and tangerines at its September 22, 1987, meeting. It recommended the relaxation for grapefruit be made effective as soon as possible, and that for tangerines be made effective on November 9, 1987. On October 16, 1987, the committee modified its September 22, 1987, recommendation to provide that the relaxation for tangerines be made effective November 30, 1987. The committee indicated that the tangerine crop was not maturing as rapidly as anticipated.

The committee believes that grapefruit shipments to Canada can be significantly increased by relaxing the size requirement early in the season rather than waiting until later in the season as has been the practice in prior years. The committee's recommendation to relax the size requirement for Dancy tangerines follows the practice of prior years of lowering the size requirement when the crop has reached an acceptable level of maturity, flavor and size.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action continues the relaxed minimum size requirement for domestically produced pink seedless grapefruit, the continued relaxation is also applicable to imported pink seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 was issued under Section 8e of the Act.

The minimum size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum size requirements applicable to domestic shipments of pink seedless grapefruit and the minimum size requirement applicable to the domestic shipments of Dancy tangerines. This rule recognizes current and prospective supply and demand for such fruit and is necessary to permit handlers to ship smaller sized fruit to meet market needs. No problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

Some Florida tangerine and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provisions. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers will be beneficial, because it will enable handlers to provide tangerines and grapefruit consistent with buyer requirements. The application of minimum size requirements to Florida grapefruit and tangerines, and to imported grapefruit over the past several years, has resulted in fruit of acceptable size being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, the information contained in the interim final rule, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains the same handling requirements currently in effect for Florida and imported pink seedless grapefruit and Dancy tangerines; (2) such handling requirements only apply to the remaining 1987–88 season shipments of these fruits; (3) the grapefruit import requirements are mandatory under section 8e of the Act; and (4) the interim final rule provided a 30-day period for filing written comments, and none were received; and (5) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, grapefruit, oranges, tangelos, tangerines.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 905 is taken:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending § 905.306 which was published at 52 FR 41400 on October 28, 1987, is adopted as a final rule without change.

Dated: January 5, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–685 Filed 1–13–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 928

[Docket No. AO–371–A1]

Papayas Grown in Hawaii; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 928 for papayas grown in Hawaii. The amendment provisions: (1) Authorize a public member of the committee and changes in the size and composition of the committee, and limit committee member tenure to 3 consecutive 2-year terms of office; (2) provide an additional method of nominating persons to fill committee vacancies; (3) require an affirmative vote by a majority of the committee members to take any action; (4) authorize a late payment charge on past due assessments; (5) authorize container marking regulations, and container identification of inspected papayas; (6) provide for different grade, size, container, container marking, and pack regulations for papayas shipped to different geographical areas and market types; (7) provide for periodic continuance referenda every 6 years; and (8) make conforming changes. The amendments are designed to improve the effectiveness of the marketing order program.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: 202–475–3918.

SUPPLEMENTARY INFORMATION: Prior Documents in this Proceeding: The Notice of Hearing was issued November 8, 1985, and published in the **Federal Register** (50 FR 46773, November 13, 1985). The Recommended Decision was issued February 5, 1987, and published in the **Federal Register** (52 FR 4462, February 11, 1987). The Secretary's Decision was issued May 29, 1987, and published in the **Federal Register** (52 FR 21065, June 4, 1987; 52 FR 22888, June 16, 1987).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Hilo, Hawaii, on November 20–21, 1985, to consider the proposed amendment of Marketing Order No. 928 regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the Papayas Administrative Committee established under the order, hereinafter referred to as the committee. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator, on February 5, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto by March 13, 1987. No exceptions were filed.

The Secretary's Decision was issued May 29, 1987, directing that a referendum be conducted during the period June 22–30, 1987, among papaya producers in Hawaii to determine whether they favored various amendment proposals to the order. In that referendum, Hawaiian papaya producers voted, by volume, number, or both, in favor of all the amendment proposals listed in the referendum ballot.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing of the probable regulatory and informational impact of the amendment proposals on small businesses for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 122 handlers of papayas subject to regulation under the Hawaiian Papaya Marketing Order who handled papayas for fresh market with an estimated crop value of $10,872,000 during the marketing season which ended December 31, 1986. There are approximately 344 papaya producers in Hawaii.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Hawaiian papaya handlers and producers may be classified as small entities.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

Order Amending the Order—Regulating the Handling of Papayas Grown in Hawaii

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the Marketing Agreement and Marketing Order No. 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii.

Upon the basis of the record, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of papayas grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of papayas grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of papayas grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make this order amending the order effective not later than the date of publication in the **Federal Register**. Any delay beyond that date would tend to interfere with effective functioning and administration of the order. The amendatory order authorizes changes in the operation and functioning of the order, which should be made effective as soon as possible. The specified effective date is necessary to meet these objectives.

Changes are authorized in the size, composition, and voting requirements of the committee. In addition, late payment charges on unpaid assessments are authorized to foster timely payments. The committee has experienced difficulty in collecting assessments from some handlers in a timely manner and has expressed interest in implementing late payment charges to encourage handlers to pay their assessments on time.

Moreover, additional types of handling regulations to meet the needs of specific markets are permitted by the amendment. The committee needs to meet and recommend program changes before they can be implemented by the Secretary. The committee would like to meet as soon as possible to consider needed changes authorized by this action. The committee needs to make timely decisions relating to handling regulations and financial operations when it meets, because Hawaiian papayas are shipped to market on a continuous basis 12 months a year.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) Determinations

It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Papayas Grown in Hawaii" upon which the aforesaid public hearing was held has not been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping covered by the said order, as hereby amended) who, during the period January 1, 1986, through December 31, 1986, handled not less than 50 percent of the volume of such papayas covered by the said order as hereby amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such producers during the period January 1, 1986, through December 31, 1986 (which has been deemed to be a representative period), having engaged within Hawaii, in the production of papayas for market.

(3) The refusal or failure of sufficient handlers to sign the proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act.

(4) In the absence of a requisite number of handlers, by volume, signing the proposed marketing agreement, the issuance of the following amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of the papaya producers in Hawaii.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of papayas grown in Hawaii shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on February 5, 1987, and published in the **Federal Register** (52 FR 4462, February 11, 1987), and in the Secretary's Decision issued by the Deputy Assistant Secretary on May 29, 1987, and published in the **Federal Register** (52 FR 21065, June 4, 1987 and as corrected at 52 FR 22888, June 16, 1987), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 928.11 to read as follows:

§ 928.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 928.31(o):

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe; and Kalawao County.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

3. Revise § 928.20 to read as follows:

§ 928.20 Establishment and membership.

There is hereby established a Papaya Administrative Committee consisting of 13 members, each of whom shall have an alternate who shall have the same qualifications as the member. Ten of the members and their alternates shall be growers and are referred to as "grower" members of the committee. Seven of the grower members and their alternates shall be producers of papayas in District 1, two grower members and their alternates shall be producers of papayas in District 2, and one grower member and alternate shall be procducers of papayas in District 3. No grower organization shall be permitted to have more than three members on the committee. Three of the members and their alternates shall be representatives of handlers and are referred to as "handler" members of the committee. The three handler members and their alternates shall be selected from the production area at large. No handler organization shall be permitted to have more than one handler member on the committee. The number of grower and handler members and alternates on the committee, and the composition of the committee between growers and handlers may be changed as provided in § 928.31(o). The committee also may be increased by one public member and one alternate public member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe the qualifications of, and the nominating procedure for, the public member and alternate.

4. Revise § 928.21 to read as follows:

§ 928.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending on the second succeeding June 30, or such other dates recommended by the committee and established by the Secretary. The consecutive terms of office of a member shall be limited to three 2-year terms. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

5. Amend § 928.22 by removing paragraph (a), by redesignating current paragraph (b) as (a), by revising the first sentence of new paragraph (a)(1), and by adding a new paragraph (b) to read as follows:

§ 928.22 Nomination

(a) *Successor Members.* (1) The committee shall hold or cause to be held, not later than 45 days before the beginning of the term of office of committee members, separate meetings of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. * * *

(b) In the event that nominees for all available positions are not provided by the aforesaid procedure, then such unfilled positions shall be treated as vacancies and the provisions of § 928.26 shall apply.

6. Revise § 928.23 to read as follows:

§ 928.23 Selection.

The Secretary shall select the grower, handler, and public members, and an alternate for each, from nominations made under §§ 928.20, 928.22 and 928.26, or from other qualified persons.

7. Revise § 928.24 to read as follows:

§ 928.24 Failure to nominate.

If nominations are not made in the time and manner prescribed in §§ 928.20, 928.22 and 928.26, the Secretary may without regard to nominations select the members and alternate members of the committee.

8. Revise § 928.26 to read as follows:

§ 928.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 928.20, 928.22, and 928.23: *Provided,* That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 928.20. To the extent practicable, the committee's recommended nominee for a grower member or alternate grower member position to represent a particular district shall be a grower recommended to the committee by the incumbent grower representatives of the committee from a particular district, or such nominee shall be a qualified grower recommended by the grower group with which the former member was associated immediately prior to vacating the position; and the recommended nominee for a handler member or alternate handler member position shall be the handler recommended to the committee by the incumbent handler representatives of the committee, or such nominee shall be a qualified handler recommended by the packinghouse with which the former member was associated immediately prior to vacating the position.

9. Amend § 928.31 by revising paragraph (o) to read as follows:

§ 928.31 Duties.

* * * * *

(o) With the approval of the Secretary, to redefine the districts into which the production area is divided, to reapportion the grower member representation on the committee among the districts, to increase or decrease the number of grower and handler members and alternates on the committee, and to change the composition of the committee by changing the ratio between grower and members including their alternates. Any such changes within the papaya industry and shifts in papaya production among the districts within the production area.

10. Amend § 928.32 by revising paragraph (a) to read as follows:

§ 928.32 Procedure.

(a) A majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and such majority must concur to approve any committee action.

* * * * *

11. Amend § 928.41 by revising the last sentence in paragraph (b) to read as follows:

§ 928.41 Assessments.

* * * * *

(b) * * * Assessments not paid within a period of time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. When such interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

12. Amend § 928.52 by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 928.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimension, marking, or pack of the container, or containers, which may be used in the packaging or handling of papayas.

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of papayas to destinations within any geographical area or market type identified and recommended by the committee and approved by the Secretary.

* * * * *

13. Amend § 928.55 by adding a new paragraph (c) to read as follows:

§ 928.55 Inspection and certification.

* * * * *

(c) The committee, with the approval of the Secretary, may prescribe such rules and regulations as it may deem necessary to assure compliance with this section and provide for identification of containers of papayas which have been inspected and certified for handling.

14. Revise § 928.64 to read as follows:

§ 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this order by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this order at the end of any fiscal year whenever the Secretary finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of papayas for market: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of papayas produced in the production area. Such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this order is favored by the producers.

(e) The Secretary shall conduct a continuance referendum every sixth fiscal year prior to October 1, with the first such referendum to be conducted within six years from the effective date of this amendment of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal year in which the Secretary has found that continuance of this order is not favored by producers, who, during a respresentative period determined by the Secretary, have been engaged in the production for market of papayas in the production area. Such termination of the order shall be effective only if announced on or before December 15 of the then current fiscal year.

(f) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Effective date: January 14, 1988.

Signed at Washington, DC, on: January 6, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-630 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 75]

Staff Accounting Bulletin No. 75

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Jones, Office of the Chief Accountant (202/272-2130); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

January 4, 1988.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 75 to the table found in Subpart B.

Staff Accounting Bulletin No. 75

The staff hereby adds Sub-Section 2 to Topic 11.H of the staff accounting bulletin series. Topic 11.H.2 discusses the staff's views regarding certain accounting and disclosure issues relevant to a proposed Mexican Debt Exchange transaction.

Topic 11: Miscellaneous Disclosure

* * * * *

H. Disclosures by Bank Holding Companies Regarding Certain Foreign Loans

* * * * *

2. Accounting and Disclosures by Bank Holding Companies for a "Mexican Debt Exchange" transaction

Facts: Inquiries have been made of the staff regarding certain accounting and disclosure issues raised by a proposed "Mexican Debt Exchange" transaction which could involve numerous bank holding companies with existing obligations of the United Mexican States ("Mexico") or other Mexican public sector entities (collectively, "Existing Obligations"). The key elements of the Mexican Debt Exchange are as follows:

Mexico will offer for sale bonds ("Bonds"), denominated in U.S. dollars, which will pay interest at a LIBOR-based floating rate and mature in twenty years. Mexico will undertake to list the Bonds on the Luxembourg Stock Exchange. The Bonds will be secured, as to their ultimate principal value only, by non-interest bearing securities of the U.S. Treasury ("Zero Coupon Treasury Securities") which will be purchased by Mexico. The Zero Coupon Treasury

Securities will be pledged to holders of the Bonds and held in custody at the Federal Reserve Bank of New York and will have a maturity date and ultimate principal value which match the maturity date and principal value of the Bonds. While the Bonds will have default and acceleration provisions, the holder of a Bond will not be permitted to have access to the collateral prior to the final scheduled maturity date, at which time the proceeds of the collateral will be available to pay the full principal amount of the Bonds. As such, the holder of a Bond ultimately will be secured as to principal at maturity; however, the interest payments will not be secured. The Bonds will not be subject to future restructurings of Mexico's Existing Obligations, and Mexico has indicated that neither the Bonds nor the Existing Obligations exchanged therefor will be considered part of a base amount with respect to any future requests by Mexico for new money.

The Mexican Debt Exchange will be structured in such a way that potential purchasers of the Bonds will submit bids on a voluntary basis to the auction agent. These bids will specify the face dollar amount of existing restructured commercial bank obligations of Mexico or of other Mexican public sector entities that the potential purchaser is willing to tender and the face dollar amount of Bonds that the purchaser is willing to accept in exchange for the Existing Obligations. Following the auction date, Mexico will determine the face dollar amount of Bonds to be issued and will exchange the Bonds for Existing Obligations taking first the offer of the largest face dollar amount of Existing Obligations per face dollar amount of Bonds, and so on, until all Bonds which Mexico is willing to issue have been subscribed. It is therefore possible that a greater amount of Existing Obligations could be tendered than Mexico is willing to accept.

Question 1: How should the Mexican Debt Exchange transaction be accounted for?

Interpretive Response: GAAP allows loans to be carried at historical cost only if the holder has both the intent and ability to hold the loans to maturity. The staff believes that tendering Existing Obligations to the auction agent is inconsistent with an intent to hold such tendered loans to maturity. Accordingly, the tender of the obligations is an event that must be given accounting recognition either (i) by writing the loans down to the price at which the bank has agreed to accept Bonds in the tender (tender price) or (ii) by increasing as necessary the allowance for loan losses to an amount sufficient to result in a net carrying value for the loans tendered that equals the tender price.

Under the second approach, the staff believes that at the tender date, management has a responsibility to assess the allowance for losses relative to its LDC portfolio to determine if it is sufficient to result in a net carrying value for the loans tendered which is the same as the tender price. If it is not sufficient, an increase in the allowance through a provision for loan losses charged to income is necessary. Disclosure of the amount and nature of any change to the allowance or the reasons why one is not considered necessary should be made.

Under the second approach, at the date the Existing Obligations are accepted by Mexico and the bank receives the Bonds, the Existing Obligations accepted should be removed as an asset from the balance sheet, the fair value of the Bonds received should be recorded as an asset, and the allowance for losses should be reduced by the difference between these two amounts.

Of course, pursuant to Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies," management has a continuing responsibility to assess the adequacy of the allowance for loan losses relative to the Mexican debt not tendered and the remaining LDC portfolio to assure that the allowance is adequate to provide for losses due to ultimate collectibility including anticipated losses from sale, swap or other exchange of loans.

Question 2: What financial statement and other disclosure issues regarding the Mexican Debt Exchange and the Bonds received should be considered by registrants?

Interpretive Response: The staff believes that disclosure of the nature of the transaction would be necessary, including:

—Carrying value and terms of Existing Obligations exchanged;

—Face value, carrying value, market value and terms of Bonds received;

—The effect of the transaction on the allowance for loan losses and the provision for losses in the current period; and

—Annual interest income on Existing Obligations exchanged and annual interest income on Bonds received.

On an ongoing basis, the staff believes that the terms, carrying value and market value of the Bonds should be disclosed, if material, due to their unique features.

Question 3: What disclosure with respect to the Bonds received would be acceptable under Industry Guide 3?

Interpretive Response: Instruction (4) to Item III.C.3. of Industry Guide 3 states: "The value of any tangible, liquid collateral may also be netted against cross-border outstandings of a country if it is held and realizable by the lender outside of the borrower's country." Given the unique features of the Bonds in that the ultimate repayment of the principal amount (but not interest) at maturity is assured, the staff will not object to either of two presentations. Under the first presentation, the carrying value of the Bonds, including any accrued but unpaid interest, would be included as a "cross-border outstanding" to the extent it exceeds the current fair value of the Zero Coupon Treasury Securities which collateralize the bonds. Alternatively, under the second presentation, the carrying value of the bond principal would be excluded from Mexican cross-border outstandings provided (a) disclosure is made of the exclusion, (b) for purposes of determining the 1% and .75% of total assets disclosure thresholds of Item III.C.3. of Industry Guide 3, such carrying values are not excluded, and (c) all the Guide 3 disclosures relating to cross-border outstandings continue to be made, as discussed further below.

For registrants that adopt the alternative disclosure approach and whose Mexican cross-border outstandings (excluding the carrying value of the Bond principal) exceed 1% of total assets, appropriate footnote disclosure of the exclusions should be made. Such footnote should indicate the face amount and carrying value of the Bonds excluded, the market value of such Bonds, and the face amount and current fair value of the Zero Coupon Treasury Securities which secure the Bonds.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than 1% of total assets but with the addition of the carrying value of the Bond principal would exceed 1%, the carrying value of the Mexican cross-border outstandings may be excluded from the list of countries whose cross-border outstandings exceed 1% of total assets provided that a footnote discloses the amount of Mexican cross-border outstandings (excluding the carrying value of the Bond principal) along with the footnote-type disclosure concerning the Bonds discussed in the previous paragraph. This disclosure and any other material disclosure specified by Item III.C.3. of Industry Guide 3 would continue to be made as long as Mexican exposure, including the carrying value of the Bond principal, exceeded 1%.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed .75% but be less than 1%, cross-border outstandings disclosed pursuant to Instruction (7) to Item III.C.3. of Industry Guide 3 may exclude Mexico provided a footnote is added to the aggregate disclosure which discloses the amount of Mexican cross-border outstandings and the fact that they have not been included. The carrying value of the Bond principal may be excluded from the amount of Mexican cross-border outstandings disclosed in the footnote provided the footnote-type disclosure discussed in the second preceding paragraph is also made.

In essence, the alternative discussed herein results in a change only in the method of presenting information, not in the total information required.[1]

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BILLING CODE 8010-01-M

[1] The following represents proposed disclosure using the alternative method discussed above. Of course, it would be necessary to supplement this disclosure with the additional disclosures regarding foreign outstandings that are called for Guide 3 (e.g., an analysis of the changes in aggregate outstandings), and the disclosures called for by the Interpretive Responses to Questions 1 and 2.

The appropriate disclosure would depend on the level of Mexican cross-border outstandings as follows:

A. Assuming that the remaining Mexican cross-border outstandings are in excess of 1% of total assets:

—Mexican cross-border outstandings (which excludes the total amount of the carrying value of Bond principal) would be disclosed in the table presenting all such outstandings in excess of 1%.

—Proposed footnote disclosure—

Not included in this amount is $—— million of Mexican Government Bonds maturing in 2008, with a carrying value of $—— million [if different from face value]. These Mexican Government Bonds had a market value of $—— million on [reporting date].

The principal amount of these bonds is fully secured, at maturity, by $—— million face value of U.S. zero coupon treasury securities that mature on the same date. The current fair value of these U.S. Government securities is $—— million at [reporting date]. This collateral is pledged to holders of the bonds and held in custody at the Federal Reserve Bank of New York.

The details of the transaction in which these bonds were acquired was reported in the Corporation's Form [8-K, 10-Q or 10-K] for [date]. Accrued interest on the bonds, which is not secured, is included in the outstandings reported [amount to be disclosed if material]. Future interest on the bonds remains a cross-border risk.

B. Assuming that remaining Mexican cross-border outstandings are less than 1% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed 1%:

—There would not be any disclosure included in any cross-border table.

—The total amount of remaining cross-border Mexican outstandings would be disclosed in a footnote to the table. Such footnote would also explain that the Mexican outstandings are excluded from the table.

—Additional footnote disclosure—(same disclosure in A above).

—The disclosure required under this paragraph (plus any other disclosure required by Item III.C.3. of Guide 3) would continue so long as Mexican exposure, including the carrying value of the Mexican Bond principal, exceeded 1%.

C. Assuming that the remaining Mexican cross-border outstandings is less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal is greater than .75% but less than 1%:

—Mexico would not be included in the list of names of countries required by Instruction 7 to Item III.C.3. of Industry Guide 3 and the amount of Mexican cross-border outstandings would not be included in the aggregate amount of outstandings attributable to all such countries.

—A footnote would be added to this disclosure of aggregate outstandings which discusses the Mexican outstandings and the Mexican Bonds. An example follows:

Not included in the above aggregate outstandings are the Corporation's cross-border outstandings to Mexico which totalled $—— million at [reporting date]. This amount is less than .75% of total assets. (The remaining portion of this footnote is the same disclosure in A above.)

D. Assuming that the total of the Mexican cross-border outstandings plus the carrying value of the Bond principal is less than the .75% of total assets:

—No disclosure would be required.

—However, same disclosure as in A above would be provided if any other aspects of the financial statements are materially affected by this transaction (such as the allowance for loan losses).

* * * * *

Changes in aggregate outstandings to certain countries experiencing liquidity problems are required to be presented in tabular form in compliance with Instruction (8)(b) to Item III.C.3. In this table, Existing Obligations exchanged for the Bonds would generally be included in the aggregate cross-border outstandings at the beginning of the period during which the exchange occurred. For registrants using the alternative method, the amount of Existing Obligations which were exchanged would be included as a deduction in the "other changes" caption in the table. In addition, a footnote will be provided to the table as follows:

—Relates primarily to the exchange of unsecured Mexican outstandings for Mexican bonds. The principal amount of these bonds is secured at maturity by $— —face U.S. Zero Coupon Treasury Securities which mature on the same date and have a current fair value of $——. Future interest on the bonds remains a cross-border risk.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, 273, 375, and 381

[Docket No. RM86-14-001]

Revisions to the Purchased Gas Adjustment Regulations

Issued: January 11, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On November 10, 1987, the Federal Energy Regulatory Commission issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8020.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On November 10, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule to amend its regulations governing the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987) (to be codified at 18 CFR 154.301, *et. seq.*).

The Commission received petitions for rehearing of this final rule by the persons listed in the Appendix to this order. To have sufficient time to consider the issues raised in these petitions, the Commission grants rehearing of its final rule solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of a petition on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these petitions will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Appendix

ANR Pipeline Company
Colorado Interstate Gas Company
Arizona Direct Customers
Northwest Pipeline Corporation
Consolidated Gas Transmission Corporation
Natural Gas Pipeline Company of America
Transcontinental Gas Pipe Line Corporation
Northwest Natural Gas Company
El Paso Natural Gas Company

Tennessee Gas Pipe Line Company
Enron Interstate Pipelines
Columbia Gas Distribution Companies
Great Lakes Gas Transmission Company
Williams Natural Gas Company
Panhandle Eastern Pipe Line Company
Trunkline Gas Company
National Fuel Gas Supply Corporation
Texas Eastern Transmission Corporation
Producer Associations
Columbia Gas Transmission Corporation

[FR Doc. 88-677 Filed 1-13-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-88-1233; FR-2064]

Mutual Mortgage Insurance and Rehabilitation Loans; Conveyance of One- to Four-Family Properties Occupied by Tenants or Former Mortgagors

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations at 24 CFR 203.670 through 203.683 under the general heading of Occupied Conveyance. Included in this rule are revised criteria for determining when HUD will accept conveyance of a one- to four-family property by a mortgagee when there are tenants or former mortgagors in occupancy. The purpose of this rule include: (1) Modification of the habitability and eligibility criteria for occupied conveyance in accordance with the Department's policy of maximizing its ability to reduce its inventory of acquired properties, while providing necessary protections for the occupants of acquired properties; and (2) Revision of the notice and occupant appeal procedures governing departmental decisions involving occupied conveyance. This rule modifies the proposed rule published in the **Federal Register** of February 25, 1986 (51 FR 6556).

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expried, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Director, Single Family Property Disposition Division, Department of Housing and Urban Development, Room 9172, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 755-5740. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the Department's single family mortgage insurance programs, HUD insures mortgages securing loans for the purchase of one- to four-family properties. *See*, e.g., section 203, 204 and 221(d)(2) of the National Housing Act, 12 U.S.C. 1709, 1710 and 17151(d)(2). The insurance contact provides that HUD will pay an insurance claim to a mortgagee upon the assignment of the mortgage or upon conveyance of the property to HUD after a default. As a condition to the receipt of mortgage insurance benefits in connection with a foreclosure or a deed in lieu of foreclosure, a mortgagee must ensure that the property is vacant, and must transfer good marketable title to the property to the Secretary of HUD. In addition, section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) provides a broad authorization to the Secretary to manage and dispose of property acquired through the mortgage insurance program: "Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary shall have power to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, any properties conveyed to him * * *."

HUD regulations at 24 CFR Part 203, Subpart B contain the terms of the contract of mortgage insurance, as well as provisions for the conveyance of a one- to four-family property to HUD upon the foreclosure of a HUD-insured mortgage. In certain circumstances, HUD will accept transfer of the property with tenants or former mortgagors in occupancy. The criteria and procedures governing "occupied conveyance" were stated in 24 CFR 203.670 through 203.683, as promulgated in regulations published in the **Federal Register** of September 10, 1980 (45 FR 59563).

Under current HUD regulations, HUD may approve occupied conveyance in the following situations:

1. (a) Occupancy of the property is essential to protect it from vandalism; *or* HUD owns a number of vacant homes in the area; *or* (in the case of two- to four-family dwellings) the property's marketability would be enhanced by occupied conveyance; *or*

(b) A resident suffers from a temporary illness or injury that would be aggravated by the process of moving from the property; *and*

2. The property is habitable; *and*

3. The occupants meets specified eligibility criteria.

This final rule makes a number of changes to the above-summarized criteria, and to the procedures governing "occupied conveyances." In addition, it makes several revisions to the proposed rule published on February 25, 1986 (51 FR 6556). In promulgating these revisions, HUD believes that the following policies, reflected in the current regulations, are important for implementing section 204(g) of the NHA:

(1) HUD's Single Family Property Disposition Program must remain essentially a sales program, and its primary objective must be to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds.

(2) Because HUD does not have the resources to perform effectively the role of a large scale landlord in conjunction with its Property Disposition Program, occupied conveyance should be approved only as a temporary measure to support the sales program.

In the preamble to the proposed rule, which was published in 1986 (51 FR 6557), HUD cited various nationwide trends since the promulgation of the current regulations in 1980. Included among the nationwide trends from 1980 to 1985 cited in that preamble were the nationwide decrease in the size of HUD's inventory for acquired properties and HUD's significantly improved turnover rate for acquired one- to four-family properties. However, since the publication of the proposed rule, HUD's inventory of acquired properties has increased substantially.

From September 1985 to September 1987, HUD's inventory of acquired one-to four-family properties has increased from 16,000 to 38,000 properties. This increase has been particularly significant for HUD Regions VI–X. The inventory of acquired properties in those Regions, as a percentage of HUD's nationwide total, has increased from 50 percent in September 1985 to 72 percent in September 1987. HUD's turnover rate for the sale of acquired one- to four-family properties has increased from 5.3 months in September 1985 to 7.2 months in September 1987.

II. Final Rule

The key distinctions between the proposed rule and the current regulations were discussed in the preamble of the proposed rule at 51 FR 6556–6559. The following paragraphs summarize the key distinctions between this final rule and the current regulations, with references to the proposed rule where appropriate.

A. Properties Eligible for Occupied Conveyance

This rule maintains the criteria for determining the Secretary's interest under current § 203.671 and the definition of "residential area" under current § 203.672. However, it revises § 203.670 to eliminate any examination of the habitability of a HUD-owned property as affecting persons suffering from a temporary illness or injury which would be aggravated by the process of moving from the property. This revision reflects HUD's concern that a requirement that properties occupied by ill or injured persons be "habitable" would require HUD to make substantial repairs on those acquired properties. In addition, HUD's expenditure for these repairs would be unwarranted, given the temporary (maximum of three months) duration of the occupancy.

The proposed rule would have eliminated the criteria pertaining to vandalism and the presence of HUD-owned vacant, unsold properties in a designated "residential area." In addition, the proposed rule would have limited the occupied conveyance of one-family properties to situations involving a temporary illness or injury. Although HUD is aware of situations where occupied one-family properties generally result in decreased marketability, the Department has determined that there does not currently exist sufficient nationwide data to justify revising current §§ 203.670 and 203.671 to limit HUD's approval of continued occupancy in acquired one-family properties.

A new paragraph (c) is added to current § 203.670 to provide for HUD's acceptance of occupied conveyance where: (1) The Department has notified the mortgagee that it was considering a request for continued occupancy, (2) no further notification of HUD's decision on the request has been received by the mortgagee, and (3) ninety days have elapsed since the mortgagee notified HUD of pending acquisition. (However, where the mortgagee is *not* notified by HUD, within forty-five days from the date of HUD's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee must convey the property vacant unless otherwise directed by HUD (*see* § 203.678(b)). These revisions are designed to create greater predictability for mortgagees concerning HUD's occupied conveyance decisions.

B. Modification of the Habitability Criteria for Occupied Conveyance Decisions

Section 203.673 of this rule substantially revises the current habitability criteria. This final rule includes the following restrictions on HUD's repair costs to bring the property up to minimum standards of habitability as defined in revised § 203.673:

(1) Limitation of repair costs to five percent of the fair market value of the property (excluding the cost of abating any lead-based paint hazards); and

(2) Replacement of certain standards for the performance of mechanical systems in occupied properties with standards more focused on "habitability" or hazard-prevention concerns—e.g., that the property be free from hazards that may adversely affect the health and safety of the occupants (*see* § 203.673(b)(2)).

Proposed § 203.671(a) has been revised to exclude from the cost limitations (five percent of the fair market value of the property) necessary repair costs related to the abatement of lead-based paint hazards as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

HUD is revising the current standard of fifteen percent of the repaired value of the acquired property because:

(1) Given the emphasis of the Single Family Property Disposition Program on protecting HUD's mortgage insurance funds from excessive losses, repair costs must be held to a minimum. (The five percent standard in this rule reflects HUD's statistical data for average repair costs for acquired properties sold during the period August 1986 through August 1987. HUD has determined that the average repair cost for acquired properties sold during the period August 1986 through August 1987 has been approximately $2,000, and the average sales price has been approximately $37,000. The substantial majority of these acquired properties were one-family properties.)

(2) The capacity of most HUD Field Offices successfully to supervise substantial repairs on many aquired properties is limited, particularly with occupants in residence in those properties.

(3) HUD has revisited the administrative record to the 1980 rulemaking on this matter and has found no statistical basis for the current standard of 15 percent of the repaired value of the property.

Although the sale of HUD-acquired properties returns funds to the FHA insurance fund, the average loss during the period of August 1986 through August 1987 was approximately $19,000 per property. HUD does not believe that this trend would be reversed by additional investment in acquired properties. Given the limited staff resources in Field Offices, HUD's capacity to properly supervise substantial repairs is seriously restricted. In addition, repairing properties will require HUD's holding acquired properties in its inventory for longer periods, thereby increasing both the turnover rate and HUD's holding costs for the property.

C. Modification of the Eligibility Criteria for Occupied Conveyance Decisions

Concerning the eligibility criteria for HUD's occupied conveyance decisions, § 203.674 of this rule continues the substance of current § 203.674. Tenants remaining in occupancy after conveyance are required to execute a month-to-month lease with HUD, to pay a "fair market rent" established by HUD based on comparable properties, to permit access by HUD staff or representatives for inspections and repairs, and to permit access by sales brokers. This rule also continues the use of an affordability test for all occupied conveyances. In § 203.674, paragraphs (a)(3) and (b)(5) reduce the standard under current § 203.674(c) from 40 percent to 38 percent of the occupant's "net effective income" (defined in this rule as gross income less Federal income taxes). In addition, this rule includes, as a possible "compensating factor" for allowing a higher percentage of the occupant's net effective income to meet housing costs, situations where the occupant is able to rely on cash savings or contributions from family members. Under the eligibility criteria in this rule, occupants must have occupied the property for at least 90 days before the date the mortgagee acquires title—instead of the minimum of 60 days provided under the current rule. This revision will minimize current mortgagee problems in providing effective notice in typical occupancy situations under this rule, which involve tenancies of more than 90 days. (See section III.B.3 of the preamble for a fuller discussion of the problem.)

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Section 203.674(a) of this rule substantially revises the current requirements for continued occupancy based on temporary illness or injury. Included among these revisions are a limitation on continued occupancy to three months (unless extended by the Secretary) and a different treatment of this category (as compared to occupied conveyances based on other criteria) with respect to the habitability standards in revised § 203.673. HUD believes, given its limited capacity for substantial rehabilitation of acquired properties under the Property Disposition Program, the habitability requirements in § 203.673 should not be applied to occupied conveyances based on temporary illness or injury.

D. Notice Requirements for the Inspection of HUD-Acquired Properties

Paragraphs (a)(4) and (b)(5) of § 203.674 of this rule provide that, as a part of the eligibility requirements for continued occupancy, occupants must agree to allow access to the property, during normal business hours and upon at least two days advance notice, by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished. This notice may consist of a telephone communication with the occupant or a member of the occupant's family, a letter addressed to the occupant, or other method of actual notice. HUD intends that this change in the timing of the notice (from 15 days in advance to two days) provide adequate notice to the occupant while facilitating the HUD Field Office's scheduling of inspections and repairs and the operations of sales brokers.

E. Procedural Requirements for Notice of Pending Acquisition, Requests for Continued Occupancy, and the Department's Final Decision on Requests

This rule retains, in modified form, the procedural guarantees of the current regulations for full notice and participation by occupants of HUD-acquired properties. Under § 203.675 of this rule, notice of pending acquisition must be transmitted by the mortgagee, 60 to 90 days before acquisition, (1) to the mortgagor and to the heads of household who are actually occupying the respective units of the affected property, and (2) to the HUD Field Office. (Under the current regulations, this 60- to 90-day advance notification is only required to be given by the mortgagee to the HUD Field Office, which subsequently notifies the occupant.) During notification from the mortgagee to the occupant will provide more expeditious actual notice than the current practice of the mortgagee's notification to the HUD Field Office, which in turn notifies the occupant.

This rule maintains the substance of other procedural safeguards in the current regulations providing for full participation of occupants in HUD's determination whether to grant occupied conveyances (*see* §§ 203.676 and 203.677). HUD believes that these provisions will continue to provide due process protections for affected occupants, while focusing the scope and time of occupants' review to avoid unnecessary burdens on HUD Field Offices. Section 203.677 specifies that the initial HUD Field Office decision on continued occupancy requests will be made by the Chief, Property Disposition and any appeal will be decided by the Field Office Manager or a designated representative of the Field Office Manager (other than the Chief, Property Disposition).

Revised § 203.677 of this rule limits access to material that directly pertains to the conditions for which continued occupancy was denied, and makes it available only after an appeal or request for a conference has been filed. Current § 203.677(a) permits occupants to review relevant information in HUD's possession after a request for continued occupancy is denied, without regard to whether an appeal is filed. Since HUD's staff resources are limited, the retrieval, assembly, photocopying, mailing and explaining of materials to current occupants who are not requesting a conference or filing an appeal would constitute an administrative burden, particularly since many occupants will not file an appeal. HUD believes that this revision will not sacrifice any essential procedural rights of current occupants in preparing for an informal conference or an appeal of an adverse initial decision.

F. Procedures for the Disposition of HUD-Acquired Properties

Section 203.678 provides for the conveyance of vacant HUD-acquired property where the occupant fails to request permission for continued occupancy within the time period specified in the rule. Section 203.679 maintains the grounds set out in the current regulations for the Department's commencement of eviction actions.

III. Summary of Public Comments on the Proposed Rule

A. Vandalism and Vacancy Criteria in Current § 203.671

Several tenant organizations commented that the proposed elimination of the vandalism and vacancy criteria in current § 203.671 would be detrimental to the interests of occupants of HUD-acquired properties. These organizations stated that because of the adverse impact of the proposed rule on the availability of low income housing in certain cities (e.g., New York City), the rule constitutes an "unreasonable exercise of delegated authority" under certain statutes including the NHA. (These commenters also cited general policy provisions of various Federal statutes, e.g., as stated in 42 U.S.C. 1441 (Housing Act of 1949) and 42 U.S.C. 4621 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), to support their argument that the proposed rule was contrary to "[F]ederal housing policy".) The tenant organizations commented that the national statistics HUD cited in the preamble to the proposed rule do not accurately reflect the need for the occupied conveyance of HUD-acquired properties in specific residential areas with crime or homelessness problems or a lack of affordable housing. A consultant for the mortgage banking industry concurred that there would be little advantage in eliminating the criteria in current § 203.671.

HUD has determined that the vandalism and vacancy criteria in current § 203.671 should be maintained. Concerning these criteria, HUD intends to provide clarification to HUD Field Offices on: (1) The delineation of "residential areas" under § 203.672, and (2) the vandalism and vacancy criteria in § 203.671.

Concerning § 203.672, HUD intends that Field Offices not be limited to any particular delineation of a "residential area" for HUD-acquired properties. However, a Field Office should delineate an area of a manageable size and justify that delineation in writing, based on a defensible rationale. Concerning the appropriate delineation of "residential areas", Field Offices should consult with (and place substantial weight on the comments of) persons active in the local real estate industry (e.g., local real estate boards or appraisers).

B. Temporary Illness or Injury Criteria in Current § 203.674

A tenant organization commented that the temporary illness or injury criterion in the proposed rule (and in the current regulations) is to narrow, and that it should be expanded to cover permanent disabilities (in particular, the permanent disabilities of the elderly). Other tenant organizations commented that the temporary illness or injury criterion should not be limited to three months.

HUD disagrees with the comments of these tenant organizations and believes that an expansion of the temporary illness or injury criteria in the manner proposed by these organizations would prevent HUD from carrying out its primary objective under section 204(g) of the NHA—disposing of acquired properties in the shortest feasible time. HUD is attempting to balance its interest in accommodating the needs of ill or injured occupants with its interest in rapidly disposing of its inventory of acquired properties. The three-month limit for occupied conveyances should permit adequate time for facilitating moving arrangements by ill or injured occupants.

C. Regulatory Presumption Concerning the Marketability of Occupied Two- to Four-Family Properties in Current § 203.671

Several tenant organizations criticized HUD's proposed deletion of current § 203.671(c)—the presumption that, with respect to two- to four-unit properties, the marketability of those properties would be improved by retaining occupancy of one or more units. These organizations stated that occupancy by tenants in two- to four-unit properties acquired by HUD after foreclosure by the mortgagee often will improve the marketability of those properties.

HUD has determined that in certain local housing situations, the current occupancy of multi-unit properties could improve their marketability. The Department has decided to retain the regulatory presumption in current § 203.671(c).

D. Habitability Criteria (Current § 203.673)

Several tenant organizations commented that HUD should continue the habitability criteria in current § 203.673. In particular, these organizations suggested that certain features of the current regulations should be maintained, *i.e.*, that the maximum repair cost to meet the habitability criteria should be set at 15 percent of the value of the property after rehabilitation and that maximum repair limits should exclude costs related to the abatement of lead-based paint hazards. According to these comments, the inclusion of the cost of abating any lead-based paint hazards under the habitability standard would be contrary to HUD's obligations under the Lead-Based Paint Poisoning Prevention Act as interpreted in *Ashton* v. *Pierce*, 716 F.2d 56 (D.C. Cir. 1983). However, these organizations agreed with the proposed revision of current § 203.673(b) to eliminate the standard that the habitability of residential structures depends on the long-term soundness of their mechanical systems.

In addition, these comments stated that the cost limitations for rehabilitation efforts under the proposed rule (prohibiting the occupied conveyance of properties that require repair in excess of $500 for each residential unit and $500 for the external or common areas to bring units up to acceptable habitability standards) would result in HUD's rejection of requests for occupied conveyance in most situations.

HUD has determined that proposed § 203.671(a) should be revised to exclude costs for the abatement of lead-based paint hazards from the cost limitations otherwise imposed on unit repairs. In addition, HUD has determined that the proposed limitations on repair costs should be modified to minimize rejections of requests for continued occupancy. The repair cost limitation in this rule is five percent of the fair market value of the property. (This repair cost limitation reflects HUD's experience with typical repair costs under its Single Family Property Disposition Program).

HUD has published revised rules under the Lead-Based Paint Poisoning Prevention Act to set standards for the elimination of lead-based paint hazards in certain HUD housing assistance programs. For a background on this rulemaking and HUD's obligations under *Ashton* v. *Pierce*, see the **Federal Register** of January 15, 1987 (52 FR 1876). Requirements affecting HUD's single family property disposition program are contained in § 200.815 of that rule (see 52 FR 1891).

E. Eligibility for Continued Occupancy (Current §203.674)

1. *Eligibility criteria based on net effective income.* Tenant organizations commented that certain eligibility criteria in the proposed rule would discriminate against low income tenants of HUD-acquired properties. (Proposed § 203.672(b)(5) restricted the maximum percentage of an occupant's income used for rent to 35 percent of the occupant's "net effective income" (gross income, less city, State and Federal income taxes and Social Security taxes).) These organizations cited national statistics indicating that the standard of 35 percent of "net effective income" in the proposed rule would result in a rejection of requests for occupied coveyance in most instances. For example, in 1985, median rent in the United States as a percentage of median occupant income was 37.6 percent, and in certain states (Arizona, California, Florida, New Hampshire, and Vermont), the median rent for tenants was 40 percent or more. In addition, these organizations cited statistics showing that in 1984, one-third of all New York City tenants were paying more than 40 percent of their income for rent.

A consultant for the mortgage banking industry commented that the eligibility criterion under proposed § 203.672(a)(3) should be revised to a standard of 38 percent of "net effective income". According to this comment, a 38 percent standard would be consistent with current HUD mortgage credit practice. In addition, this commenter stated that to be in accord with current FHA mortgage credit practice, "net effective income" should be defined as gross income less Federal income taxes (but *not* less city and State income taxes and Federal Social Security taxes).

HUD has determined that the eligibility standard of 35 percent of "net effective income" is too strict and should be revised to accord with current HUD mortgage credit practice. Accordingly, paragraphs (a)(3) and (b)(3) of § 203.672 of this rule set an eligibility standard of 38 percent of "net effective income" and include a definition of "net effective income" as gross income less Federal income taxes. In addition, to provide some flexibility for HUD Field Offices, § 203.672(b)(5) of this rule maintains a consideration for "compensating factors" to allow occupants to qualify under the eligibility criteria despite paying more than 38 percent of their "net effective income" to meet their total housing cost (rent plus utility costs to be paid by the occupant). The category of utility costs has been added to provide a more accurate test of an occupant's ability to reasonably afford future rental payments.

2. *Notice requirements for the inspection of HUD-acquired properties.* Concerning paragraphs (a)(4) and (b)(4) of proposed § 203.672, tenant organizations commented that notice requirements for the inspection of HUD-acquired properties should not be changed to an advance notice of only two days by telephone communication with the occupant or any member of the occupant's family, or by a letter addressed to the occupant. These organizations suggested that the notice requirements in the current regulations (15 days) be maintained and that the method of notice should be through both certified and regular mail.

HUD disagrees with this comment. The notice provisions in paragraphs (a)(4) and (b)(4) of revised § 203.674

provide for an appropriate time and manner of notice for inspections. Given the management constraints of HUD Field Offices in conducting necessary repairs under § 203.673, the Field Offices of their agents (Area Management Brokers) often do not have the capacity to schedule inspections sufficiently in advance to meet the current 15-day notice requirement. Since the purpose of these inspections is to ensure that necessary repairs to units are expeditiously determined and accomplished in accordance with the habitability standards under § 203.673, a two-day notice requirement is important to the successful operation of the Property Disposition Program.

3. *Eligibility requirement for continued occupancy.* The Mortgage Bankers Association commented that proposed § 203.672(b)(3) should be revised to state that the occupant must have been in occupancy for at least 90 days (instead of 60 days, as under proposed) § 203.672(b)(3)) before the date that the mortgagee acquires title to the property. According to this comment, problems have occurred where the notice to the occupant arrives *between* 60 to 90 days before the expected date of acquisition of title, but the occupancy changes *after* the arrival of the notice and *before* the end of the 90-day period. (Under proposed § 203.673(a), the mortgagee would be required to provide the occupant with notice of pending acquisition at least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title.) For example, if the mortgagee provides notice to an occupant 70 days before acquisition of title and the occupancy changes at 60 days before acquisition, the new occupant could be denied notice.

HUD agrees that proposed § 203.673(a) should be revised to set a 90-day eligibility requirement for continued occupancy. Section 203.674(b)(3) of this rule responds to the concerns of the Mortgage Bankers Association. This slight increase in the eligibility criteria for continued occupancy in acquired properties will resolve the above-mentioned notice problems cited by the Mortgage Bankers Association. These notice problems concern typical occupancy situations covered under this rule (involving tenancies of more than 90 days). HUD is attempting to minimize the possibility that occupants will not receive proper notification of the occupied conveyance procedures.

F. Notice to Occupants of Pending Acquisition (Current § 203.675)

Tenant organizations commented that the proposed rule would shift from HUD to the mortgagee the duty to provide notice to occupants of acquired properties, and would decrease the probability that occupants actually would receive appropriate notice. These organizations stated that without the notice requirements of current § 203.676 (requiring that HUD notify the occupant that acquisition is pending and describing the procedure for requests for continued occupancy), tenants in acquired properties might not receive adequate (if any) notice from mortgagees.

In addition, these organizations commented that the shift of responsibility from HUD to mortgagees could create notification problems where a foreclosed HUD-insured property is purchased at the foreclosure sale by a party other than the mortgagee. These commenters stated that without the requirements in current § 203.676 (including the Department's obligation to notify the tenants that HUD soon will be acquiring the property and that the occupants may request permission from HUD to remain in occupancy), mortgagees may decide to bypass HUD's occupied conveyance procedures and to notify occupants that they must vacate the property without sending a copy of the notification to HUD.

These tenant organizations recommended that:

(1) Both HUD and the mortgagee be required to notify occupants of their rights by certified and regular mail, and that the mortgagee also be required to file an affidavit with HUD certifying its compliance with the notification requirements; and

(2) Copies of the notification to tenants transmitted by the mortgagee to HUD should certify that adequate notification has been served on all the named occupants and that all the occupants of the property have been included in the notification.

The Mortgage Bankers Association commented that proposed § 203.673 should be revised as follows:

(1) Mortgagees should be required to fulfill the notification requirement through regular mail service—not by certified or registered mail; and

(2) Proposed § 203.673(a) should be clarified to specify the mortgagee's responsibility for notification to occupants in situations where acquisition by HUD is delayed by bankruptcy filings, litigation, or for any other reason.

A consultant for the mortgage banking industry also criticized proposed § 203.673(a), because it would shift the burden of occupant notification to the mortgagee instead of HUD.

HUD disagrees with the commenters that the shifting of notification burdens from HUD to mortgagees will increase the likelihood that mortgagors and current tenants will not receive adequate notice. HUD doubts that such problems will occur, since HUD will receive a copy of the notification and will be in a position to monitor whether a mortgagee has complied with § 203.675(a) of this rule. Similarly, HUD disagrees with the tenant organizations' request that the notification requirements in proposed § 203.673 be revised to include strict requirements for the use of certified mail service and related mortgagee certification. HUD believes that regular mail service will be effective in providing adequate notification to mortgagors and occupants of the potential acquisition of the property by HUD.

HUD also believes that the Mortgage Bankers Association (MBA)'s proposed revisions to this rule are inappropriate. MBA requested that HUD revise the current regulations to address specifically mortgagees' notification responsibilities where the acquistion of a one- to four-family property by HUD is delayed by bankruptcy filings, litigation, or for any other reason. MBA's request for clarification of the notification requirements in the event of these types of intervening events involves HUD Field Offices' interpretation of the phrase "[a]t least 60 days, but not more than 90 days, before the date on which the mortgagee *reasonably expects* to acquire title to the property" (emphasis added) in § 203.675(a). HUD Headquarters will monitor HUD Field Offices' interpretation of this phrase, to require renotification by mortgagees, where appropriate, in situations involving intervening events. Where appropriate, guidance will be provided by HUD Headquarters concerning Field Offices' response to situations involving intervening events.

G. Decision to Approve or Deny A Request (Current § 203.677)

Several tenant organizations commented that proposed § 203.675(a) should be revised to reflect the following concerns: (1) An appeal of HUD's decision not to grant continued occupancy should be set at 20 days after the receipt of the notice of HUD's decision, not 20 days after the issuance date of HUD's notice; (2) the deadline for a request for an informal conference

should be the same as the deadline for an administrative appeal of HUD's decision—20 days after the date of HUD's notice, not 10 days after that date; (3) the rule should be revised to acknowledge that if an occupant does not respond to the initial notice of acquisition, lack of proper notice or any other "good cause" should be considered as an appropriate reason for an appeal of HUD's decision to require vacant delivery of foreclosed property; and (4) the rule should be revised to provide for an "impartial fact-finder" to decide an appeal of HUD's decision not to grant a request for continued occupancy.

HUD has determined that the specific deadlines for an appeal or an informal conference under § 203.677(a) provide a reasonable accommodation of the various interests involved in occupants' appeals of an initial HUD decision not to grant a request for continued occupancy. HUD believes that the appeal procedures afford adequate procedural due process protections. Under these procedures, such factors as a lack of proper notice or any other "good cause" could be considered, among other reasons, in HUD's decision on an occupant's appeal. However, HUD agrees with the tenant organizations that there should be a formal designation of two tiers of HUD decision making. Section § 203.677(a) of this rule designates the Chief, Property Disposition as the decision maker at the first tier, with the Field Office Manager or a designated representative (other than the Chief, Property Disposition) as the decision maker on appeal.

Tenant organizations also urged that proposed § 203.675(b) be revised to allow for the availability, at any time, of all material in HUD's possession concerning an occupied conveyance situation under review. HUD has decided to maintain § 203.675(b), as proposed, as part of this final rule. HUD has determined that without reasonable limitations on tenants' searching through administrative records, Field Offices would continue to be exposed to an administrative burden concerning searches of departmental files by tenants who might not request an appeal or conference. HUD believes that limiting tenants' access to Field Office files to situations involving their preparation for a future informal conference with HUD or for an appeal of the Department's decision will preserve limited staff resources, without sacrificing any essential procedural rights of current occupants in preparing for a furture informal conference or an appeal of an adverse decision by the Chief, Property Disposition.

H. Conveyance of Vacant Property (Current § 203.678)

A consultant for the mortgage banking industry criticized the removal of current § 203.679(b) and the substitution of proposed § 203.676(b). According to this commenter, these revisions have resulted in an excessive shift of responsibility to mortgagees. (Under current § 203.679(b), HUD must accept occupied conveyance where 90 days have elapsed since the mortgagee notified HUD of pending acquisition without any notification from HUD of a request for continued occupany. However, under § 203.678(b) of this rule, if the mortgagee has *not* been notified by HUD, within 45 days of the date of the notification of pending acquisition, that a request for continued occupancy from a tenant has been received by HUD, the mortgagee must convey the property vacant, unless otherwise directed by HUD).

The Mortgage Bankers Association raised similar concerns. According to the Association's comment, proposed § 203.678(b) could create situations where the mortgagee would move to evict current tenants despite HUD's receipt of the occupant's request for continued occupany. (This scenario assumes that HUD fails to notify the mortgagee on a timely basis of the Department's receipt of the occupant's request.) In addition, the Association emphasized the importance of current § 203.679(b) as a mechanism for forcing the expeditious conveyance of a FHA-insured property to HUD after a default. Several tenant organizations also criticized the proposed removal of current § 203.679(b).

HUD agrees that current § 203.679(b) should be included in this final rule to provide a deadline for the Department's consideration of a request for continued occupancy. A new paragraph (c) is being added to § 203.670 as part of this final rule to recognize HUD's acceptance of occupied conveyance where (1) 90 days have elapsed since the mortgagee notified HUD of pending acquisition, (2) the Department notified the mortgagee that it was considering a request for continued occupancy and (3) no subsequent communication from HUD has been received by the mortgagee. HUD believes that this provision will clarify mortgagee decision making in situations where a Field Office has not notified the mortgagee in a timely manner of the Field Office's decision on a request for continued occupancy. (Similarly, § 203.678(b) clarifies situations where the mortgagee has *not* been given timely notice by HUD that a request for continued occupancy is under consideration.)

IV. Miscellaneous

Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will thereafter publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. The Department intends to delay the effectiveness of this final rule pending conforming handbook and mortgagee letter changes. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President in February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned has determined that this rule would not have a significant economic impact on a substantial number of small entities. This rule establishes a revised structure for the Department's decisions on occupied conveyances and will not have a significant impact on small mortgagees or other affected small entities.

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2502–0268.

This rule was listed as item number 978 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40379) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.130, 14.132, 14.133, 14.140, 14.154, 14.159, 14.161, 14.163, 14.165, 14.166, 14.172, and 14.175.

List of Subjects in 24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Sections 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The Table of Contents for Part 203, Subpart C is amended by revising §§ 203.670 through 203.681 and by removing §§ 203.682 and 203.683, to read as follows:

Subpart C—Servicing Responsibilities

* * * * *

Occupied Conveyance

Sec.
203.670 Conveyance of occupied property.
203.671 Criteria for determining the Secretary's interest.
203.672 Residential areas.
203.673 Habitability.
203.674 Eligibility for continued occupancy.
203.675 Notice to mortgagors and tenant occupants of pending acquisition.
203.676 Request for continued occupancy.
203.677 Decision to approve or deny a request.
203.678 Conveyance of vacant property
203.679 Continued occupancy after conveyance.
203.680 Approval of occupancy after conveyance.
203.681 Authority of HUD Field Office Managers.

Subpart C—Servicing Responsibilities

* * * * *

Occupied Conveyance

3. Section 203.670 is revised to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that will ensure the maximum return to the mortgage insurance funds, consistent with the need to preserve and maintain urban residential areas and communities.

(b) The Secretary will accept conveyance of an occupied property containing one to four residential units if the Secretary finds that:

(1) An individual residing in the property suffers from a temporary illness or injury that would be aggravated by the process of moving from the property, and that the individual meets the eligibility criteria in § 203.674(a); or

(2) It is in the Secretary's interest to accept conveyance of the property occupied under § 203.671, the property is habitable as defined in § 203.673, and each occupant who intends to remain in the property after the conveyance meets the eligibility criteria in § 203.674(b).

(c) HUD consents to accept good marketable title to occupied property where 90 days have elapsed since the mortgagee notified HUD of pending acquisition, the Department has notified the mortgagee that it was considering a request for continued occupancy, and no subsequent notification from HUD has been received by the mortgagee.

4. Sections 203.673 through 203.681 are revised to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is "habitable" if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more five percent of the fair market value of the property. The cost of abating any lead-based paint hazards in the property, as required by HUD regulations promulgated under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), is excluded from these repair cost limitations.

(b)(1) Each residential unit must contain:

(i) Heating facilities adequate for healthful and comfortable living conditions, taking into consideration the local climate;

(ii) Adequate electrical supply for lighting and for equipment used in the residential unit;

(iii) Adequate cooking facilities;

(iv) A continuing supply of hot and cold water; and

(v) Adequate sanitary facilities and a safe method of sewage disposal.

(2) The property shall be structurally sound, reasonably durable, and free from hazards that may adversely affect the health and safety of the occupants or may impair the customary use and enjoyment by the occupants. Unacceptable hazards include, but are not limited to, subsidence, erosion, flood, exposure to the elements, exposed or unsafe electrical wiring, or an accumulation of minor hazards, such as broken stairs.

(c) If repairs, including lead-based paint abatement, are to be made while the property is occupied, the occupant must hold the Secretary harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

§ 203.674 Eligibility for continued occupancy.

(a) Temporary occupancy because of illness or injury of an individual residing in the property will be limited to three months (unless extended by the Secretary), and will be permitted only if all the conditions in this paragraph (a) are met:

(1) A timely request is made in accordance with § 203.676, including the submittal of documents required in § 203.675(b)(4).

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, and to pay a fair market rent as determined by the Secretary. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(4) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

(b) An occupant who does not meet the temporary illness or injury criteria is eligible for continued occupancy only if all the conditions in this paragraph (b) are met:

(1) A timely request is made in accordance with § 203.676.

(2) The occupant agrees to execute a month-to-month lease, at the time of acquisition of the property by the Secretary and on a form prescribed by HUD, to pay fair market rent as determined by the Secretary, and to pay the rent for the first month in advance at the time the lease is executed. The rental rate shall be established on the basis of rents charged for other properties in comparable condition after completion of repairs (if any).

(3) The occupant will have been in occupancy at least 90 days before the date the mortgagee acquires title to the property.

(4) The occupant's total housing cost (rent plus utility costs to be paid by the occupant) will not exceed 38 percent of the occupant's net effective income (gross income less Federal income taxes). However, a higher percentage may be permitted if the occupant has been paying at least the required rental amount for the dwelling, or if there are other compensating factors (e.g., where the occupant is able to rely on cash savings or on contributions from family members to cover total housing costs).

(5) The occupant agrees to allow access to the property (during normal business hours and upon a minimum of two days advance notice) by HUD Field Office staff or by a HUD representative, so that the property may be inspected and any necessary repairs accomplished, or by a sales broker.

§ 203.675 Notice to occupants of pending acquisition.

(a) At least 60 days, but not more than 90 days, before the date on which the mortgagee reasonably expects to acquire title to the property, the mortgagee shall notify the mortgagor and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD. The mortgagee shall send a copy of this notification to the appropriate HUD Field Office.

(b) The notice shall provide a brief summary of the conditions under which continued occupancy is permissible and advise them that:

(1) Potential acquisition of the property by the Secretary is pending;

(2) The Secretary requires that properties be vacant at the time of conveyance to the Secretary, unless the mortgagor or other occupant can meet the conditions for continued occupancy in § 203.670, the habitability criteria in § 203.673, and the eligibility criteria in § 203.674;

(3) An occupant may request permission to remain in occupancy in the event of acquisition of the property by the Secretary by notifying the HUD Field Office in writing, with any required documentation, within 20 days of the date of the mortgagee's notice to the occupant;

(4) If an occupant seeks to qualify for continued occupancy under the temporary illness or injury provisions of § 203.674(a), the occupant shall provide to the HUD Field Office, at the time of the occupant's request for permission to remain in occupancy, documentation to support this claim. Documentation shall include an estimate of the time when the patient could be moved without severely aggravating the illness or injury, and a statement by a State-certified physician establishing the validity of the occupant's claim. HUD may require more than one medical opinion or may arrange an examination by a physician approved by HUD; and

(5) If an occupant fails to make a timely request, the property must be vacated before the scheduled time of acquisition.

(Approved by the Office of Management and Budget under OMB control number 2502–0268)

§ 203.676 Request for continued occupancy.

An occupant may request permission to continue to occupy the property following conveyance to the Secretary by notifying the HUD Field Office in writing, within 20 days after the date of the mortgagee's notice of pending acquisition. Verification of temporary illness or injury as described in § 203.675(b)(4) shall be submitted within this time period if an occupant seeks to qualify for continued occupancy under the provisions of § 203.674(a). The HUD Field Office will notify the mortgagee in writing that an occupied conveyance has been requested.

(Approved by the Office of Management and Budget under OMB control number 2502–0268)

§ 203.677 Decision to approve or deny a request.

(a) The HUD Field Office will provide written notification of its decision to an occupant who makes a timely request to continue to occupy the property. The decision of the HUD Field Office on this matter will be made by the Chief, Property Disposition. If the decision is to deny the request, the notice to the occupant will include a statement of the reason or reasons for the decision and of the occupant's right to appeal. The occupant may appeal HUD's decision within 20 days after the date of HUD's notice. The appeal must be addressed to the Field Office Manager and be in writing, and the occupant may provide documentation intended to refute the reasons given for HUD's decision. The occupant may also request an informal conference with a representative of the HUD Field Office Manager. A request for an informal conference must be made in writing within 10 days after the date of HUD's notice. The occupant may be represented at the conference by counsel or by other persons with pertinent expert knowledge or experience.

(b) After notification that HUD has denied a request for continued occupancy, the occupant, on his or her request, shall be permitted to review all relevant material in HUD's possession (including a copy of the inspection report if the request is denied because the property is not habitable as defined in § 203.673). Only material in HUD's possession that directly pertains to conditions for continued occupancy under §§ 203.670, 203.673, and 203.674 may be considered material relevant for an occupant's review under this paragraph. This review shall be limited to a review of material for purposes of the informal conference or the appeal of the Department's decision. The information will only be provided after request for an informal conference or appeal has been submitted to HUD.

(c) After consideration of an appeal, the HUD Field Office will notify the applicant in writing of HUD's final decision. This final decision will be made by the HUD Field Office Manager or a representative of the Field Office Manager (other than the Chief, Property Disposition). If the decision is to deny the occupant's request, the notice to the occupant will reflect consideration of the issues raised by the occupant.

(d) If, after consideration of an appeal, the Field Office Manager denies the request for new or additional reasons, the occupant will be afforded an opportunity to request that the Field Office Manager reconsider its decision under the provisions of paragraph (c) of this section.

§ 203.678 Conveyance of vacant property.

(a) HUD will require that the property be conveyed vacant if the occupant fails to request permission to continue to occupy within the time period specified in § 203.676, or fails to request a conference or to appeal a decision to

deny occupied conveyance within the time period specified in § 203.677(a).

(b) If the mortgagee has not been notified by HUD, within 45 days of the date of the mortgagee's notification of pending acquisition, that a request for continued occupancy is under consideration, the mortgagee shall convey the property vacant, unless otherwise directed by HUD.

§ 203.679 Continued occupancy after conveyance.

(a) Occupancy of HUD-acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(b) HUD will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action in any of the following situations:

(1) Failure of the occupant to execute the lease required by §§ 203.674 (a)(2) and (b)(2), or failure to pay the rental amount required, including the initial payment at the time of execution of the lease, or to comply with the terms of the lease;

(2) Failure of the occupant to allow access to the property upon request in accordance with §§ 203.674 (a)(4) and (b)(5);

(3) Necessity to prepare the property for sale; or

(4) Assignment of the property by the Secretary to a different use of program.

§ 203.680 Approval of occupancy after conveyance.

When an occupied property is conveyed to HUD before HUD has had an opportunity to consider continued occupancy (e.g., where HUD has taken more than 90 days to make a final decision on continued occupancy in accordance with § 203.670(c)), a determination regarding continued occupancy will be made in accordance with the conditions for the initial approval of occupied conveyance. Any such determination shall be in accordance with HUD's obligations under the terms of any month-to-month lease that has been executed.

§ 203.681 Authority of HUD Field Office Managers.

Field Office Managers shall act for the Secretary in all matters relating to assignment and occupied conveyance determinations. The decision of the Field Office Manager under § 203.677 will be final and not be subject to further administrative review.

§§ 203.682 and 203.683 [Removed]

5. Sections 203.682 and 203.683 are removed.

Date: December 30, 1987.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 88-567 Filed 1-13-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 887

Military Personnel; Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by revising Part 887, Issuing of Certificates in Lieu of Lost or Destroyed Certificates of Separation. This regulation tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation and where and how to apply. This revision provides additional information and makes minor changes to update and to clarify the part.

EFFECTIVE DATE: February 16, 1988.

ADDRESS: HQ AFMPC/DPMDOP, Randolph AFB, Texas 78150-6001.

FOR FURTHER INFORMATION CONTACT: Mr. Sal Garcia, telephone (512) 652-2089.

SUPPLEMENTARY INFORMATION: On September 24, 1987, the Department of the Air Force published a proposed rule in the **Federal Register** on issuing of certificates in lieu of lost or destroyed certificates of separation (52 FR 35927). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 887

Archives and records, Military personnel.

Therefore, 32 CFR Part 887 is revised to read as follows:

PART 887—ISSUING OF CERTIFICATES IN LIEU OF LOST OR DESTROYED CERTIFICATES OF SEPARATION

Sec.

887.0 Purpose.
887.1 Explanation of terms.
887.2 Safeguarding certificates.
887.3 Persons authorized CILs.
887.4 Requesting CILs.
887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents

Authority: 10 U.S.C. 1041.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is Title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin "THIS IS AN IMPORTANT RECORD—SAFEGUARD IT" (if it is not printed on the certificate).

Note.—Do not show this legend on DD Form 363AF, Certificate of Retirement.

§ 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

§ 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3(b), (c), and § 887.7.

Note.—Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

§ 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

(b) DD Form 363AF, Certificate of Retirement, is used to replace any lost or destroyed certificate of retirement from the Air Force (issued only to service members).

(c) AF Form 386, Certificate in Lieu of Lost or Destroyed Discharge (AUS), is used to replace any lost or destroyed certificate of discharge from the Army.

(d) AF Form 681, Certificate in Lieu of Lost or Destroyed Certificate of Service (AUS), is used to replace any lost or destroyed certificate of service, or like form, issued on release from extended active duty (EAD) in the Army.

(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

§ 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS-7 or above.

§ 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of (d) above.

§ 887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMD00), Randolph AFB TX 78150-6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMD0A2), Randolph AFB TX 78150-8001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMD00 for officers, and HQ AFMPC/DPMD0A2, for enlisted members, Randolph AFB TX 78150-6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR-AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280-5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

§ 887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see § 887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an "official" seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-597 Filed 1-13-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11-87-07]

Anchorage Ground Regulations; Anaheim Bay Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Naval Weapons Station, Seal Beach, California requested the Coast Guard amend 33 CFR 110.215. This change revises the Explosive Anchorage Regulations for the waters of Anaheim Bay Harbor, California by adding the area between the Entrance Channel and the West Jetty to the existing anchorage. This action is necessary to conform the regulation to the present usage of the anchorage. Reference to Commandant, Eleventh Naval District, a position which no longer exists, is deleted.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade M.J. Lodge, Aids to Navigation Branch, Eleventh Coast Guard District, Suite 702, 400 Oceangate, Long Beach, CA (213) 499-5410.

SUPPLEMENTARY INFORMATION: On September 15, 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 34815). Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of these regulations are Lieutenant Commander F.L. McClain, project officer, Marine Safety Division, Eleventh Coast Guard District, Lieutenant Junior Grade M.J. Lodge, project officer, Aids to Navigation Branch, Eleventh Coast Guard District and Lieutenant Commander Arthur E. Brooks, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Only a small number of vessels will be involved and the U.S. Navy will cooperate with public use of the area to the extent allowed by explosive loading requirements. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46(c) and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.215 is revised to read as follows:

§ 110.215 Anaheim Bay Harbor, California; U.S. Naval Weapons Station, Seal Beach, California; Naval Explosives Anchorage.

(a) *The anchorage ground.* The waters of Anaheim Bay Harbor between the east side of the Entrance Channel and the East Jetty, and the west side of the Entrance Channel and the West Jetty as outlined in the following two sections:

Latitude	Longitude
(1) *East Side:*	
33°44'03.0" N	118°05'35.0" W
33°43'53.0" N	118°05'15.0" W
33°43'49.0" N	118°05'18.0" W
33°43'38.5" N	118°05'58.0" W
33°43'37.0" N	118°05'57.0" W
33°44'00.6" N	118°05'35.0" W

Latitude	Longitude
(2) *West Side:*	
33°44'06.0" N	118°05'40.0" W
33°44'06.0" N	118°05'58.5" W
33°44'01.0" N	118°06'01.0" W
33°43'40.5" N	118°06'03.0" W
33°43'39.5" N	118°06'02.0" W
33°44'05.0" N	118°05'40.0" W

(b) *The regulations.* (1) This area is reserved for use of naval vessels carrying or transferring ammunition or explosives under standard military restrictions as established by the Safety Manual, Armed Service Explosives Board.

(2) No pleasure or commercial craft shall navigate or anchor within this area at any time without first obtaining permission from the Commanding Officer, Naval Weapons Station, Seal Beach, California. This officer will extend full cooperation relating to public use of the area and will fully consider every reasonable request for the passage of small craft in light of requirements for national security and safety of persons and property.

(3) Nothing in this section shall be construed as relieving the owner or operator of any vessel from the regulations contained in Part 204.195 of Title 33, covering navigation in Anaheim Bay Harbor.

(4) The regulations in this section shall be administered by the Commanding Officer U.S. Naval Weapons Station, Seal Beach, California and by such agencies as he may designate, and enforced by the Captain of the Port, Los Angeles-Long Beach, California.

Dated: January 11, 1988.

Terry Lucas,

Acting Rear Admiral (Lower Half), U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 88-704 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP HONOLULU Regulation 88-01]

Security Zone Regulations; Outer Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around the U.S. Navy vessel USS PROTEUS which will be moored at mooring buoy no. 951 located at 13°26'51"N, 144°38'13.8"E in Outer Apra Harbor, Guam, Marianas Islands. The security zone will extend for a distance of 200 yards in all directions from USS PROTEUS. The zone is needed to safeguard USS PROTEUS against destruction from sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on February 4, 1988. It terminates on February 9, 1988 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT R.E. Tinker (671) 477-3340, at USCG Marianas Section Office, Guam.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM or delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to or destruction of the USS PROTEUS.

Drafting Information

The drafters of this regulation are CDR M.W. Mastenbrook, project officer for the Captain of the Port, and LCDR R.W. Bogue, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation will begin on February 4, 1988 when the USS PROTEUS will moor at mooring buoy no. 951 in Outer Apra Harbor, Guam. Since mooring buoy no. 951 is a Navy maintained mooring buoy, and is located in excess of 500 yards from the main shipping channel, there should be no adverse impact on harbor use due to this security zone. USS PROTEUS will moor at the buoy to undertake routine maintenance work, and the security zone will be terminated when the USS PROTEUS leaves the moorage upon completion of this work. The purpose of this regulation is to protect the USS PROTEUS from injury or destruction from sabotage, accidents or other subversive acts. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1401 is added to read as follows:

§ 165.T1403 Security Zone: Outer Apra Harbor, Guam

(a) *Location.* The following area is a security zone: In outer Apra Harbor, Guam, when the USS PROTEUS is moored to mooring buoy no. 951 located at 13°26'51" N, 144°38'13.8" E, a security zone will extend in all directions from the vessel for a distance of 200 yards.

(b) *Effective date.* This regulation becomes effective on February 4, 1988 at 12:01 AM local Guam time. It terminates on February 9, 1988 at 11:59 PM local Guam time unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.33 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: January 4, 1988.

C.W. Gray,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 88-705 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Election of Benefits Under the Vocational Rehabilitation Program

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The purpose of these amendments is to bring the rules affecting election of benefits under the vocational rehabilitation program into conformity with provisions of law. The Veterans' Compensation and Program Improvement Amendments of 1984 allowed concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the Veterans Administration (VA) under certain limited conditions. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act 1986 bars concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under any conditions. These final regulatory amendments bring existing rules into conformity with these statutory changes.

DATES: These amendments are effective October 28, 1986, except for § 21.21(a)(2), which is effective March 2, 1984.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2886.

SUPPLEMENTARY INFORMATION: At pages 31416 and 31418 of the **Federal Register** of August 20, 1987, the VA published proposed regulatory amendments which implement the statutory provisions concerning concurrent payment of benefits under chapter 31 and other programs of education administered by the VA. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. No comments, suggestions, or objections were received. Since no comments, suggestions, or objections were received, these amendments are adopted as final.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. These amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These regulations are retroactively effective. The amendment allowing receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under certain conditions is retroactively effective March 2, 1984. The rule barring concurrent receipt of benefits under any conditions is retroactively effective October 28, 1986. In each case, the effective date is the date the statutory provision becomes effective. These are interpretive rules which implement statutory changes. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the respective dates of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

The Administrator certifies that these final amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

Pursuant to 5 U.S.C. 605(b), these final regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the final regulatory amendments implement and interpret statutory provisions. These amendments only concern the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by revising § 21.21 to read as follows:

§ 21.21 Election of benefits under education programs administered by the Veterans Administration.

(a) *Election of benefits.* A veteran must make an election of benefits in all cases. The veteran may reelect at any time. The veteran's election of benefits is subject to the following conditions:

(1) A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under one of the other programs listed in § 21.4020 of this part may not receive benefits concurrently under more than one program except as indicated in paragraph (a)(2) of this section;

(2) An eligible veteran may receive benefits concurrently for pursuit of different programs of education or training under chapter 31 and another program of education listed in § 21.4020 of this part during the period from March 2, 1984, to October 27, 1988.

(Authority: 38 U.S.C. 1761(b); sec. 317, Pub. L. 99-576)

(b) *Use of prior training in formulating a rehabilitation program.* If a veteran has pursued an educational or training program under an education program listed in § 21.4020 of this part, the earlier program of education or special restorative training shall be utilized to the extent practicable.

(Authority: 38 U.S.C. 1795)

[FR Doc. 88-589 Filed 1-13-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 31

[Docket No. 45164]

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule implements the Program Fraud Civil Remedies Act of 1986 (Act), which authorizes the Department of Transportation (and certain other Federal agencies) to impose through administrative adjudication civil penalties and assessments against certain persons making false claims or statements.

EFFECTIVE DATE: This rule is effective on January 14, 1988.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Deputy Assistant General Counsel for Environmental, Civil Rights and General Law (C-10), Department of Transportation, 400 7th Street SW., Room 10102, Washington, DC 20590 at (202) 366-9154 (FTS 366-9154).

SUPPLEMENTARY INFORMATION: On October 2, 1987, the Department published a notice of proposed rulemaking to implement the Act (52 FR 36968). The Department received no comments on its proposed rule. The Department is now issuing its regulation in final form. Notwithstanding the lack of public comment, there are a few minor changes from the proposed rule. These are generally due to alterations in the model regulation for implementing the Act prepared by an interagency task force formed by the Department of Health and Human Services at the request of the President's Council on Integrity and Efficiency (PCIE).

As mentioned in the preamble to the proposed rule, the PCIE's request was in keeping with the statement of the Senate Governmental Affairs Committee in its report on the Act that the committee "expects that [agency] regulations would be substantively uniform throughout the government, except as necessary to meet the specific needs of a particular agency or program." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). The Department is following the model regulation except in a small number of minor respects.

While the Department received no comments, other Federal agencies have published substantially identical proposed regulations and received a small number of comments. Representatives of the Department of Transportation and other agencies, through the interagency task force, participated in assessing two of these comments (a set of comments from the Section of Public Contract Law of the American Bar Association and a comment from 13 States), and making a few changes to the model regulation as a result of these comments.

The more noteworthy changes from the proposed rule, both ones due to changes in the model regulation and one other made by the Department, are discussed below. The changes to sections discussed below are due to changes to the model regulation resulting from the Section of Public Contract Law's comments to other agencies. The addition to the definition of "representative" in § 31.2, which clarifies the intent of the definition, was made on the Department's own initiative based on a Section of Public Contract Law comment. For a fuller discussion on the comments from the Section of Public Contract Law, see, for example, the preamble of the final regulation of the General Services Administration (52 FR 45183, Nov. 25, 1987).

The comment from the 13 States objected to including States in the regulatory definition of "person." In response, the model regulation was changed to reiterate the statutory definition. The definition of "person" in the Department's proposed regulation (§ 31.2) followed this revised definition and remains unchanged.

In § 31.2, the Department clarified the definition of "benefit" to restrict the definition to application in the context of "statement." In the same section, the Department also added language to the definition of "representative" to indicate that the requirement that a "representative" be a member of the bar is not intended to prevent an individual from appearing for himself or herself, or a corporation or other entity from appearing pro se by an owner, officer, or employee of the corporation or entity.

In § 31.5(b)(6), the regulation continues to require that the reviewing official's notice to the Department of Justice of intention to issue a complaint include a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. However, the Department deleted the final sentence of the proposed regulation, which provided details, as unnecessary and covering a matter best left for the Department and the Department of Justice to resolve.

In § 31.8, the Department clarified the regulation to indicate that service of a *complaint* is complete upon receipt, either through the mail as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Service of an *answer* (§ 31.9) is complete upon proper mailing or delivery.

In § 31.9, the Department added a new paragraph (c) that provides that a defendant may file within 30 days of receipt of the complaint a request for an extension for up to an additional 30 days to file a complete answer. For good cause shown, the ALJ may grant the request. The purpose of this change is to give the defendant who is unable to file a complete answer on time and who can show good cause for needing more time a mechanism for obtaining an extension.

In § 31.38, the Department changed paragraph (b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 31.38, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration. This change gives the defendant a full 30 days to file a notice of appeal.

Except as modified above, the rationale for the Department's rule as discussed in the preamble to the proposed rule continues to apply.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the rule will establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements. As such, this rule will have no direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that a regulatory impact analysis is not required.

Department of Transportation Regulatory Policies and Procedures

Because this rule will affect all Departmental administrations and provide important new tools for combating fraud in Departmental programs, it is a significant rule under the Department's regulatory policies and procedures. Hower, because the rule's economic impacts will be minimal, it has been determined that a regulatory evaluation is not needed.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)), the Department prepares and publishes a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these regulations will not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rule. Therefore, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. The Department has determined that this rule does not contain any information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

Effective Date

The Act, which became law on October 21, 1986, requires the promulgation of final implementing regulations within 180 days of enactment. The Department finds good cause to make the final rule effective immediately based on this statutory deadline, the public interest in not further delaying the rule's remedies for fraud against the Government, the fact that this is not a major rule under Executive Order 12291, and the absence of any comments on the proposed rule.

List of Subjects in 49 CFR Part 31

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties.

Issued in Washington, DC, on January 11, 1988.

Jim Burnley,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation adds a Part 31 to Title 49, Subtitle A, of the Code of Federal Regulations, to read as follows:

PART 31—PROGRAM FRAUD CIVIL REMEDIES

Sec.

31.1 Basis and purpose.
31.2 Definitions.
31.3 Basis for civil penalties and assessments.
31.4 Investigation.
31.5 Review by the reviewing official.
31.6 Prerequisites for issuing a complaint.
31.7 Complaint.
31.8 Service of complaint.
31.9 Answer.
31.10 Default upon failure to answer.
31.11 Referral of complaint and answer to the ALJ.
31.12 Notice of hearing.
31.13 Parties to the hearing.
31.14 Separation of functions.
31.15 Ex parte contacts.
31.16 Disqualification of reviewing official or ALJ.
31.17 Rights of parties.
31.18 Authority of the ALJ.
31.19 Prehearing conferences.
31.20 Disclosure of documents.
31.21 Discovery.
31.22 Exchange of witness lists, statements, and exhibits.
31.23 Subpoenas for attendance at hearing.
31.24 Protective order.
31.25 Fees.
31.26 Filing, form, and service of papers.
31.27 Computation of time.
31.28 Motions.
31.29 Sanctions.
31.30 The hearing and burden of proof.
31.31 Determining the amount of penalties and assessments.
31.32 Location of hearing.
31.33 Witnesses.
31.34 Evidence.
31.35 The record.
31.36 Post-hearing briefs.
31.37 Initial decision.

Sec.
31.38 Reconsideration of initial decision.
31.39 Appeal to authority head.
31.40 Stays ordered by the Department of Justice.
31.41 Stay pending appeal.
31.42 Judicial review.
31.43 Collection of civil penalties and assessments.
31.44 Right to administrative offset.
31.45 Deposit in Treasury of United States.
31.46 Compromise or settlement.
31.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 31.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, §§ 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the authority or to certain others, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 31.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Transportation.

Authority head means the Assistant Secretary or Deputy Assistant Secretary for Budget and Programs, Department of Transportation.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 31.7.

Defendant means any person alleged in a complaint under § 31.7 to be liable for a civil penalty or assessment under § 31.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 31.10 or 31.37 and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Transportation or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose pro se appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

Reviewing official means the Deputy General Counsel of the Department of Transportation, or other officer or employee of the Department who is designated by the Deputy General Counsel and eligible under 31 U.S.C. 3801(a)(8).

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 31.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 31.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 31.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 31.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 31.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 31.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 31.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 31.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 31.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 31.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 31.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 31.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 31.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the

reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 31.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 31.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service of a complaint is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 31.9 Answer.

(a) The defendant may request a hearing by serving an answer on the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. Service of an answer is complete upon such delivery or mailing. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, serve on the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to serve an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly the complaint, the general answer denying liability, and the request for an extension of time as provided in § 31.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days from the original due date within which to serve an answer meeting the requirements of paragraph (b) of this section.

§ 31.10 Default upon failure to answer.

(a) If the defendant does not answer within the time prescribed in § 31.9(a), the reviewing official may refer the complaint to an ALJ by filing the complaint and a statement that defendant has failed to answer on time.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 31.8, a notice that an initial decision will be issued under this section.

(c) In addition, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 31.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to answer on time, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from answering, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to answer on time, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 31.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal in accordance with § 31.26 within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to answer on time based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to answer on time, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to answer on time is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 31.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall refer the matter to an ALJ by filing the complaint and answer in accordance with § 31.26.

§ 31.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 31.8. At the time, the ALJ shall send a copy of such notice to the representative for the Government and shall file a copy with the Docket Clerk.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 31.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 31.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 31.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provisions does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 31.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 31.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 31.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 31.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 31.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 31.4(b) are based, unless such documents are subject to a privilege

under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 31.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the serving of an answer pursuant to § 31.9.

§ 31.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 31.22 and 31.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion shall be accompanied by a copy of the request for production of documents, request for admissions, or interrogatories, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 31.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 31.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 31.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 31.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 31.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list of any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 31.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall be accompanied by a proposed subpoena, which shall specify and documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 31.8. A subpoena on a party or upon an individual under the control of party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service. If the ALJ has not acted on such a motion by the return date, such date shall be suspended pending the ALJ's final action on the motion.

§ 31.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously submit to the ALJ specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 31.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 31.26 Filing, form, and service of papers.

(a) *Filing and form.* (1) A party filing any document under this part shall submit (i) the original and two copies to the Docket Clerk, Documentary Services Division (C–55), Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590; and (ii) two copies simultaneously to the ALJ or, if on appeal, to the authority head. The requirements of this paragraph apply to all filings under this part, regardless of whether there is a cross-reference to § 31.26.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Docket Clerk, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone nunber of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 31.8 shall be made by delivering a copy, or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 31.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the United States mail, an additional five days will be added to the the time permitted for any responses.

§ 31.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing response thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) Except as provided by §§ 31.21(e)(3) and 31.23(f), which concern subpoenas, the filing or pendency of a motion shall not automatically alter or extend a deadline or return date.

§ 31.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Sanctions include but are not limited to those specifically set forth in paragraph (c), (d), and (e) of this section. Any such sanction shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposition penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 31.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 31.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendent's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 31.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false fictitious, of fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 31.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present written and oral argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 31.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 31.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party (i) appearing for the entity pro se or (ii) designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 31.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected at the offices of the Docket Clerk (see § 31.26(a)(1) for address) and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 31.24.

§ 31.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 31.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 31.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 31.31.

(c) The ALJ shall promptly serve the intitial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 31.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 31.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 31.39.

§ 31.39 Appeal to authority head.

(a) Any defendant who has served a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal in accordance with this section and § 31.26.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 31.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal and the time for filing motions for reconsideration under § 31.38 has expired, the Docket Clerk shall forward two copies of the notice of appeal to the authority head, and shall forward or make available the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and with a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 31.3 is final and is not subject to judicial review.

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§ 31.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 31.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 31.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 31.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 31.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 31.42 or § 31.43, or any amount agreed upon in a compromise or settlement under § 31.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 31.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 31.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 31.42 or during the pendency of any action to collect penalties and assessments under § 31.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 31.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 31.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 31.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 31.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

[FR Doc. 88-716 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 71146-8001]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of 1988 initial specifications of groundfish; prohibited species catch limits for certain groundfish species and for Pacific halibut; reapportionments of reserves; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces 1988 (1) total allowable catches (TACs) for each category of groundfish in the Gulf of Alaska and apportionments thereof, including reserves; (2) assignments of the sablefish TAC to authorized fishing gear users; (3) prohibited species catch (PSC) limits for certain groundfish species and Pacific halibut that will be imposed on joint venture processing (JVP) fisheries; and (4) PSC limits of Pacific halibut on domestic annual processing (DAP) fisheries. These actions are intended to specify the allowable harvest and PSC levels of groundfish for the 1988 fishing year. This action is necessary to provide the public with the Secretary's determination of the groundfish harvest quotas and apportionments.

DATES: Effective January 1, 1988. Comments are invited on the reapportionments of reserves to JVP and DAP until January 26, 1988.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This notice establishes three quotas related to groundfish management in the Gulf of Alaska for the 1988 fishing year. They are: (1) TACs, (2) PSC limits for fully utilized groundfish species, and (3) PSC limits for Pacific halibut. The Secretary has adopted, for the interim, the use of the acronym TAC in this notice, which is contained in Amendment 16 to the FMP, in lieu of target quota (TQ). The Secretary is currently reviewing Amendment 16 under section 304 of the Magnuson Fishery Conservation and Management Act (Magnuson Act). He has also included in this notice, for the interim, Atka mackerel and squid in the "other species" category, which are included in the Amendment 16 management regime. He is taking these interim actions to avoid confusion in the fishing industry, which is aware of these proposed changes.

(1) Total Allowable Catches.

TACs for groundfish species in the Gulf of Alaska are established by the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This FMP was developed under the Magnuson Act and is implemented by regulations appearing at 50 CFR 611.92 and Part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt).

TACs are apportioned initially among DAP, JVP, reserves, and total allowable level of foreign fishing (TALFF) for each species under §§ 611.92 and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for each species category. These reserve amounts are set aside for possible reapportionment to DAP and/or to JVP if the initial apportionments prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF.

Under §§ 611.92 and 672.20(a)(2), the Secretary, after consultation with the North Pacific Fishery Management Council, specifies the TAC for each calendar year for each target species and the "other species" category, and apportions the TACs among DAP, JVP, reserves, and TALFF. The sum of the TACs must be within the OY range.

Under § 672.20(c)(1), the preliminary specifications of DAP and JVP amounts were published in the **Federal Register** (52 FR 44154, November 18, 1987) and comments were requested to be submitted to the Regional Director until December 18, 1987. Two letters of comments were received, which are summarized and responded to below.

The Council met December 8–11, 1987, to review the best available information on the status of groundfish stocks. This information was contained in the Resource Assessment Document (RAD), which was prepared and presented by the Gulf of Alaska Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). Information contained in the RAD was from the 1987 triennial survey of groundfish conducted by the Northwest and Alaska Fisheries Center, NMFS and from results of hydroacoustic surveys of pollock stocks conducted in 1986. The Council's SSC reviewed the available information and recommended to the Council the acceptable biological catches (ABCs) discussed below and shown in Table 1 of § 672.20. The AP also considered information contained in the RAD and recommended TACs for each species.

The plan Team's RAD, with the SSC's and AP's recommendations and the Council's actions at its December 8–11 meeting, is summarized as follows:

Pollock—The Plan Team considers the condition of the pollock biomass, which is based on three-year-old and older fish, to be fair, but increasing in size. The 1986 biomass of 496,300 mt was projected to reach 687,000 mt in 1987 and 866,800 to 1,033,000 mt in 1988, depending on the various recruitment and catch levels. The predicted increases in biomass are primarily due to the strong 1984 year class. The Plan Team has identified an ABC range of 90,000 to 120,000 mt for the combined Western and Central (Western/Central) Regulatory Areas for 1988. Harvests in this range would allow the biomass to increase into 1989 for three of the four recruitment scenarios, and would promote a stable biomass for even the most pessimistic recruitment scenario. A preliminary ABC of 3,375 mt was estimated by the Plan Team for the Eastern Regulatory Area. For the Western/Central Regulatory Area, the SSC recommended an ABC of 90,000 mt and the AP recommended a TAC of 90,000 mt. For the Eastern Regulatory Area, the SSC recommended an ABC of 3,000 mt and the AP recommended that the TAC equal the SSC's ABC. The Council adopted TACs of 90,000 mt and 3,000 mt for the Western/Central and Eastern Regulatory Areas, respectively.

Pacific cod—The Plan Team considers the condition of the Pacific cod biomass, which is based on fish of all age groups, to be good and stable in size. The current estimate of biomass is 481,700 mt. The Plan Team recommended that the ABC be a range of 99,000 mt to 165,000 mt, apportioned according to the distribution of the 1987 trawl survey. The SSC recommended an ABC of 99,000 mt and the AP recommended a TAC of 70,000 mt. The Council adopted a TAC of 80,000 mt with apportionments among the regulatory areas as follows: Western—19,000 mt; Central—60,800 mt; and Eastern—200 mt.

Flounders—The Plan Team considers the condition of the flounder biomass, which is based on fish of all age groups, to be good and stable in size. The current estimate of biomass is 2,110,800 mt. The Plan Team recommended the ABC should be set at 767,700 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 32,000 mt, which reflects the conservation objectives of the Council to protect Pacific halibut in a flounder trawl fishery. The Council adopted a TAC of 23,000 mt, after considering the mix of various fisheries be gear type and the continued recommendation of the International Pacific Halibut Commission to establish a mortality lievel for Pacific halibut in the Gulf of Alaska at no more than 2,000 mt.

Rockfish in the genus *Sebastes*—In 1987, harvest quotas for rockfish in the genus *Sebastes* were specified for the following management categories: (a) "Other rockfish" throughout the Gulf of Alaska, (b) the separately defined Pacific ocean perch complex in each of the three regulatory areas, and (c) demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area. For 1988, TACs for this genus are specified for the following management categories: (a) "other rockfish", including the Pacific ocean perch complex in each of the three regulatory areas, (b) pelagic shelf rockfish in each of the three regulatory areas, and (c) demersal shelf rockfish in the Southeast Outside District of the Eastern Regulatory Area.

"Other rockfish"—The Plan Team considers the condition of this assemblage to be fair and the biomass, which is based on all age groups, to be increasing in size. The current biomass is estimated to be 798,400 mt. The Plan Team recommended the ABC should be set at 16,800 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 16,800 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas as follows: Western—4,850 mt; Central—7,100 mt; and Eastern—4,850 mt.

Pelagic shelf rockfish—The Plan Team considers the condition of this assemblage to be fair and the biomass, which is on all age groups, to be increasing in size. The current biomass is estimated to be 165,000 mt. The Plan Team recommended the ABC should be set at 3,300 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 3,300 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas as follows: Western—550 mt; Central—2,350 mt; and Eastern—400 mt.

Shelf demersal rockfish—No information is available to estimate biomass or yield for shelf demersal rockfish. This rockfish assemblage is the target of a longline fishery in the Southeast Outside District. Information from the Alaska Department of Fish and Game on this rockfish assemblage suggests that the population is declining. The AP and Plan Team recommended the TAC for shelf demersal rockfish in the Southeast Outside District be set at

660 mt, in accordance with recommendations from the Alaska Department of Fish and Game made on the basis of performance of the fishery in 1987. Should inseason catch information indicate that stocks may not be sufficiently abundant to produce a harvest equal to TAC, closures may be necessary to prevent overfishing.

Thornyhead rockfish—The Plan Team considers the condition of this assemblage to be fair, but the biomass, which is based on all age groups, to be declining in size. The current biomass is estimated to be 99,000 mt. The Plan Team recommended the ABC should be set at 7,750 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 3,750 mt and the Council adopted the AP's recommendation for a Gulf of Alaska-wide TAC.

Sablefish—The Plan Team considers the condition of sablefish to be good and the biomass in water depths between 200 meters and 1,000 meters to be stable at 520,000 mt and above a level which will produce maximum sustainable yield. The Plan Team recommended the ABC should be set at 35,000 mt. The SSC adopted the Plan Team's recommendation. The AP recommended a TAC of 28,000 mt and the Council adopted the AP's recommendation with apportionments among the regulatory areas and districts as follows: Western—4,060 mt; Central—12,540 mt; West Yakutat District—4,900 mt; and Southeast Outside/East Yakutat District—6,500 mt.

"Other species"—No recommendations were made by the Plan Team for this group. FMP procedures define the quota for this category be set at 5 percent of the sum of the TACs established for the other groundfish categories, or 12,426 mt.

The sum of the above TACs adopted by the Council is 260,936 mt, which falls within the OY range specified by the FMP. The Council, after adopting the TACs, then deliberated on the apportionment of the TACs for each species among DAP, JVP, reserve, and TALFF. The Council reviewed the results of the NMFS-conducted U.S. processor survey and the stated requests by joint venture companies for JVP. Prior to the Council's meeting, NMFS surveyed the U.S. processing industry about its processing capacity and the extent to which that capacity will be used for groundfish species in 1988. This survey did not include sablefish and all of the rockfish species, which are known to be fully utilized as a result of prior years' harvests. The survey did include pollock, Pacific cod, and flounder. When the Regional Director reviewed the survey results, he considered the probability that those amounts would actually be processed, considering the amount of processing machinery that was available or which was planned for, but not yet in place, both on shore and on catcher/processor and mothership processor vessels.

In doing so, the Regional Director discounted some of the survey results as overly optimistic. He presented his analysis (see table of NMFS projections of DAP for pollock, Pacific cod, and flounder, below) to the Council, which in turn used it to recommend to the Secretary initial DAP specifications. TALFF is set at zero, because all species are expected to be fully utilized by U.S. fishermen, either in DAP or JVP fisheries.

DAP requests (mt) that were submitted to NMFS, and NMFS' initial projections of DAP (mt) for pollock, Pacific cod, and flounder for 1988 following its survey of U.S. processors.

	DAP requests	NMFS initial projections
Pollock	145,425	111,299
Pacific Cod	79,492	62,567
Flounder	24,465	16,128

The Secretary has reviewed the Council's recommendation for TAC specifications and apportionments and hereby implements these specifications under § 672.20(c)(1). The FMP stipulates that 20 percent of each TAC be set aside in a reserve for possible reapportionment at a later date. At this time, the Secretary is reapportioning reserves for each species category to either DAP or JVP, which, added together, equal domestic annual harvest (DAH).

By doing so, the Secretary is anticipating that U.S. fishermen will need all of the DAH amounts so specified. Only those amounts that the Secretary has determined will not be needed by DAP are proposed to be apportioned to JVP at this time.

This information is summarized in Table 1.

TABLE 1.—INITIAL ABCs, TACs, DAPs, JVPs, RESERVES, AND TALFFs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS AND GULF-WIDE (GW) OF THE GULF OF ALASKA

Species	Area [1]	ABC	TAC	Reserve	DAP	JVP	TALFF
Pollock	W/C	90,000	90,000	0	90,000	0	0
	E	3,000	3,000	0	3,000	0	0
Total		93,000	93,000	0	93,000	0	0
Pacific cod	W	19,000	19,000	0	13,000	6,000	0
	C	73,000	60,800	0	55,750	5,050	0
	E	7,000	200	0	200	0	0
Total		99,000	80,000	0	68,950	11,050	0
Flounders	W	142,650	1,600	0	1,550	50	0
	C	538,280	21,300	0	14,300	7,000	0
	E	86,770	100	0	100	0	0
Total		767,700	23,000	0	15,950	7,050	0
Sablefish	W	5,075	4,060	0	4,060	0	0
	C	15,680	12,540	0	12,540	0	0
	WYK	6,125	4,900	0	4,900	0	0
	SEO/EYK	8,120	6,500	0	6,500	0	0
Total		35,000	28,000	0	28,000	0	0

TABLE 1.—INITIAL ABCs, TACs, DAPs, JVPs, RESERVES, AND TALFFs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS AND GULF-WIDE (GW) OF THE GULF OF ALASKA—Continued

Species	Area [1]	ABC	TAC	Reserve	DAP	JVP	TALFF
Other rockfish [2]	W	4,850	4,850	0	4,850	0	0
	C	7,100	7,100	0	7,100	0	0
	E	4,850	4,850	0	4,850	0	0
Total		16,800	16,800	0	16,800	0	0
Pelagic shelf rockfish [3]	W	550	550	0	550	0	0
	C	2,350	2,350	0	2,350	0	0
	E	400	400	0	400	0	0
Total		3,300	3,300	0	3,300	0	0
Demersal shelf rockfish [4]	SEO	N/A	660	0	660	0	0
Thornyhead rockfish	GW	3,750	3,750	0	3,750	50	0
Other species [5]	GW	N/A	12,426	0	10,926	1,500	0
Total			260,936	0	241,286	19,650	0

[1] See Figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yukatat District includes all fish of the genus *Sebastes* except pelagic shelf rockfish. The category "other rockfish" in the Southeast Outside District includes all fish of the genus *Sebastes* except pelagic shelf rockfish and demersal shelf rockfish.
[3] The category pelagic shelf rockfish includes *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).
[4] Demersal shelf rockfish includes *Sebastes paucispinus* (bocaccio), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. proriger* (redstripe rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. brevispans* (silvergray rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), and *S. pinniger* (canary rockfish).
[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, octopus, Atka mackerel, and squid. The TAC is equal to 5 percent of the TACs of the target species.

(2) Fully Utilized Species

Section 672.20(b)(1) specifies that if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify for 1988 the PSC limit applicable to the JVP fisheries for that species or species group. Any specified PSC limit must be for bycatch only and cannot be retained. JVP fisheries have been established in the Western and Central Regulatory Areas for Pacific cod and in the Central Regulatory Area for flounder. Therefore, the issue of fully utilized species is relevant to these JVP fisheries. The Secretary, on the basis of the NMFS-conducted U.S. processor surveys has determined that three species or species groups will be fully utilized in 1988 where JVP fisheries will be prosecuted. These are pollock, sablefish, and "other rockfish".

The Council reviewed information on bycatch amounts of these fully utilized species that JVP fisheries might catch while fishing for their joint venture specifications. The Council adopted the following PSC limits for the fully utilized species: lock—100 mt, sablefish—188 mt, and "other rockfish"—432 mt. Pelagic shelf rockfish are also fully utilized, but are not expected to be caught in the JVP fisheries, which will be using only bottom trawl gear. Under § 672.20(c)(iv), if the Regional Director determines that a PSC limit applicable to a directed JVP fishery has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting all further JVP fishing in all or part of the regulatory area concerned.

(3) Halibut Prohibited Species Catch Limits

Section 672.20(f)(2)(i) specifies a framework procedure for setting PSC limits for Pacific halibut. This procedure requires the Secretary, after consultation with the Council, to publish a notice in the **Federal Register** establishing PSC limits for Pacific halibut.

The Secretary has consulted with the Council and announces the halibut PSC limits for 1988: For DAP, the PSC limit is 4,240 mt and for JVP, it is 240 mt. The sum of these PSC limits is 4,480 mt, which would result in a fishing mortality of 2,047 mt, given the expected survival and mortality rates for Pacific halibut with the mix of gear types and fishing operations in the fisheries. The PSC limits are derived from bycatch rates (see table below) experienced by vessels in previous years' fisheries while targeting on groundfish with bottom trawls and midwater trawls and by vessels targeting on Pacific cod and Sablefish with hook-and-line gear.

Historical bycatch rates (percent) by weight in the Western (W) and Central (C) Regulatory Areas used to calculate the PSC limits for Pacific halibut in the DAP and JVP 1988 groundfish fisheries. Rates are from fisheries for groundfish with bottom trawls and midwater trawls and from fisheries for Pacific cod and sablefish with hook-and-line (HL) gear.

	Bottom trawl		Mid-water trawl		Cod HL		Sablefish HL	
	W	C	W	C	W	C	W	C
DAP	2.53	2.53	0.08	0.08	5.23	8.15	1.2	1.2
JVP	2.53	2.53	0.08	0.08	5.23	8.15		

If the Regional Director determines that the catch of Pacific halibut by U.S. vessels fishing in DAP or JVP operations will reach a PSC limit, the Secretary will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other

than pelagic trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies. He may, allow some of those vessels to continue to fish for groundfish using bottom trawl gear under specified conditions.

Public Comments on 1988 Preliminary Initial Specifications

Two letters of comment were received by the Regional Director which are summarized together and responded to as follows:

Comment: NMFS should take a conservative approach in estimating any projected increases in DAP. NMFS should carefully monitor the progress of DAH fisheries during the course of the year so surpluses can quickly be identified and reapportioned.

Response: NMFS estimates of DAP projected catches, which were accepted by the Council at its December 1987 meeting, were based on an analysis of the results of the most detailed and comprehensive survey of the domestic industry that NMFS has performed. Survey information for each operation was compared to actual performance information for 1987, and in the case of new operations, to operations of similar size and configuration. This was a conservative approach; overall, NMFS' estimate of total DAP groundfish for 1988 was 76 percent of amounts requested for the Gulf of Alaska and the Bering Sea combined.

Using only the previous year's performance by industry to make projections for 1988 is misleading, in view of the dynamic and rapidly expanding nature of the groundfish industry. In the case of DAP, catch rates and deliveries for certain species, including Pacific cod, increased dramatically late in the third quarter and during the fourth quarter of 1987, as several operations came on line and many others came up to full production. NMFS made the reasonable assumption that these companies will be continuing at or close to full production levels from the beginning of 1988. Moreover, as many as twenty-one new floating processors will be entering the fishery in 1988.

In its presentation to the Council, NMFS indicated that the category of new operations was most difficult to assess due to two unknowns: performance capability and actual start-up date. Therefore, NMFS will be monitoring the progress of these vessels and will be prepared to make revisions as information becomes available during the season. Also NMFS will assess the performance of all current operations, including JVP operations, in order to identify and reapportion surpluses.

Other Regulatory Actions

Under § 672.20(d)(1)(ii), the Secretary may reapportion to DAH any amounts of the reserves that he determines to be needed to supplement DAH as soon as practicable on April 1, June 1, and August 1, and on such other dates as he determines necessary. The Secretary is reapportioning all reserves to either DAP or JVP effective January 1, 1988, on the basis of NMFS' initial estimates of DAP and JVP needs. Under § 672.20(d)(5)(iv), when the Secretary determines that apportionment is required on dates other than those specified and he finds it necessary to apportion additional amounts without affording a prior opportunity for public comment, he will invite such comments for a period of 15 days after the effective date of the apportionment. Therefore, the Secretary is inviting comments on the reapportioning of reserves until January 26, 1988.

The Secretary publishes for the information of the public Table 2, showing the assignments of sablefish TACs among the gear types as provided for by § 672.24.

TABLE 2.—SABLEFISH TOTAL ALLOWABLE CATCH (TAC) AND AMOUNTS OF TAC, IN PERCENT AND METRIC TONS, ALLOCATED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

Area/district	TAC	Gear	Percent	Share
Western	4,050	Hook-and-line	55	2,230
		Trawl	20	810
		Pot	25	1,020
Central	12,540	Hook-and-line	80	10,030
		Trawl	20	2,510
West Yakutat	4,900	Hook-and-line	95	4,660
		Trawl	5	240
Southeast Outside/ East Yakutat	8,900	Hook-and-line	95	8,160
		Trawl	5	320

Other Matters

This action is taken under §§ 611.92 and 672.20 and complies with Executive Order 12291. The Secretary finds it necessary to apportion the reserves of pollock, Pacific cod, and flounders without affording a prior opportunity for public comment or delayed effectiveness to prevent the premature closure of a target DAP or JVP fishery for these species, which might otherwise occur due to the large amount of fishing effort expected.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Parts 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 11, 1988.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 88-607 Filed 1-11-88; 5:05 pm]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of initial specifications of groundfish for 1988; reapportionment of reserves; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial domestic annual harvest (DAH) and reserve amounts for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1988 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. The initial specification of the total allowable level of foreign fishing (TALFF) is zero.

This action is necessary to establish harvest limits for groundfish in the 1988 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 8–11, 1987. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0801 Greenwich Mean Time (GMT) or 0001 Alaska Standard Time (AST) January 1, 1988, through 0900 G.m.t. January 1, 1989, or 2400 AST, December 31, 1988, or until changed by subsequent notice in the **Federal Register**.

Comments on the reapportionment part of this notice are invited until January 26, 1988.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations at 50 CFR 611.93 and Part 675 which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and its implementing regulations at § 675.20(a) require the Secretary, after consultation with the Council, to annually specify the TAC, initial DAH, and initial TALFF for each target species and the "other species" category as soon as practicable after December 15. The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt). Table 1 satisfies this requirement.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1988 fishing year was published (52 FR 44157, November 18, 1987) and comments were invited until December 18, 1987. Four written comments were received which are summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 8–11, 1987 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1987 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the 1987 resource assessment document (RAD). The Plan Team annually produces such a document as the first step in the process of specifying TACs. The RAD contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1988 and other biological data from the 1987 draft RAD were provided in the notice of preliminary 1988 specifications (52 FR 44157, November 18, 1987). The Plan Team's revised ABCs were reviewed by the SSC, AP, and Council at its December 1987 meeting. Minor revisions were made based on the SSC's review to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1988 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1988 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY for all species of 2.0 million mt. The Secretary finds also that the recommended TACs, to the extent possible under the maximum OY limit, are consistent with socioeconomic aspects of the FMP goals and objectives.

TAC Apportionment

The amount of groundfish in each TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. The reserve is not designated by species or species group and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals ITAC minus DAH. For 1988, initial TALFF is zero for all species because DAH equals ITAC.

Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP). The final specifications provide large increases in DAP, reflecting the rapidly expanding nature of the U.S. groundfish fishery. Under the intent of the domestic processor preference amendments to the Magnuson Act (Pub. L. 95–354), JVP equals ITAC minus DAP. The final TACs, ITACs, reserve, and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1988 are given in Table 1 of this notice.

JVP Split Apportionment

Amendment 11 to the FMP established a procedure for splitting the initial JVP apportionment of pollock for each subarea into two parts (52 FR 45986, December 3, 1987). Part One will be available for harvest by the JVP fishery on January 15 while Part Two will be withheld until April 16. Under § 675.20(b)(3), for each subarea, Part One will be 40 percent of the sum of the initial pollock JVP plus 15 percent of the TAC for pollock. Part Two will be any unharvested portion of Part One plus the pollock JVP remaining after the first period and as adjusted by any reapportionments from reserve and DAP. Accordingly, the Part One JVP pollock apportionments in the Bering Sea (BS) and Aleutian Islands (AI) subareas respectively, rounded to the nearest metric ton, are calculated as follows:

BS Part One = 0.40 (490,838 + 195,000) = 274,335;

AI Part One = 0.40 (34,090 + 6,750) = 16,336.

Incidental catches of pollock in JVP fisheries for other groundfish occurring between January 1 and January 15 may be retained and will be counted against part One. However, such incidental catches must be less than 20 percent of the catch pursuant to the definition of "directed fishing" in § 675.2, because JVP directed fishing for pollock during this 15-day period is not permitted.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i). This reapportionment subtracts a total of 804 mt from the reserve and adds it to the JVP of several species categories as indicated in Table 2. Species categories receiving reapportioned amounts from the reserve are species which are likely to be harvested incidentally in JVP fisheries for other species. The purpose of this reapportionment is to provide JVP fishermen with a retainable bycatch of these incidentally harvested species. Alternatively, the JVP fisheries would be required to treat these bycatch species in the same manner as prohibited species which would result in wastage of the resource.

Comments and Responses

Four letters of comment were received on the preliminary 1988 specifications published November 18, 1987 (52 FR 44157). Two letters of comment concerned the upper limit of the OY

range and are responded to under Comment 1. Three letters had basically the same comment regarding the estimated DAH harvest in 1988 and are responded to under Comment 2. Comments in the fourth letter are responded to under Comment 3.

Comment 1: The OY limit of 2.0 million mt arbitrarily and artificially restricts Bering Sea groundfish harvests and is inconsistent with the National Standards set by the Magnuson Act.

Response: The FMP and its implementing regulations at § 675.20(a)(2), require the Secretary to specify the TAC for each species category such that the sum of the specified TACs is within the OY range of 1.4 million to 2.0 million mt. The Council process is the appropriate forum to adjust the OY range as an FMP amendment is required. NOAA notes that modification of this range is on the Council's 1988 FMP amendment agenda.

Comment 2: Apportionments of groundfish to DAP are too large based on past DAP performance. DAP and JVP catch projections of Pacific cod for 1988 are too high based on actual DAP and JVP catches in recent years. NMFS should carefully monitor the progress of DAH fisheries during the course of the year so that surpluses can be identified quickly and reapportioned.

Responses: The NMFS projection of DAP catches in 1988 was based on a critical analysis of the most detailed and comprehensive survey performed by NMFS to date of the ability and intent of the domestic industry to process BSAI area groundfish. Survey information for each operation was compared to actual performance information for 1987 and, in the case of new operations, to those of similar size and configuration. For the BSAI area, NMFS' estimate to total DAP catch in 1988 is 82 percent of groundfish amounts requested and the estimated DAP catch of Pacific cod is 78 percent of the amount requested.

DAP catch rates of certain species, including Pacific cod, increased dramatically late in the third quarter and during the fourth quarter of 1987, as several operations came on line and many others came up to full production. An assumption that these companies will continue at or close to full production levels from the beginning of 1988 is reasonable. Past performance alone, however, is misleading in making DAP and JVP catch projections for 1988. For instance, the dynamic and rapidly expanding nature of the JVP operation planned for 1988 accounted for 30,000 mt or nearly 20 percent of the total Pacific cod requested by JVP. Moreover, up to twenty-one new floating processors will be entering the DAP fishery in 1988. Of these, two trawlers, six longliners, and one mothership intend to target on Pacific cod. New fishing and processing operations are the most difficult to assess due to their unknown performance capability and actual start-up date. It is difficult for NMFS accurately to assess production estimates of new operations. However, NMFS will monitor the progress of these and other DAP and JVP operations on a continuing basis and will reapportion surpluses as information becomes available during the season.

Comment 3: The U.S. fishing industry has the capability to harvest the entire TAC of Pacific cod in 1988. Elimination of TALFF for Pacific cod would raise its market price for U.S. fishermen.

Response: Based on the latest NMFS industry survey (see response to Comment 2), NOAA agrees that the domestic capacity and intent to harvest Pacific cod in the BSAI area in 1988 has increased. The initial TALFF for Pacific cod is set at zero (Table 1). However, this amount may change during the season if the DAH fisheries do not appear likely to harvest the entire Pacific cod TAC. It is not clear that U.S. fishermen would realize a significant increase in the exvessel price of Pacific cod solely from elimination of foreign directed fishing for this species.

Classification

This action is authorized under 50 CFR Part 675 and complies with Executive Order 12291. The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit fishermen who would otherwise forego harvestable amounts of groundfish, the 30 day delayed effectiveness.

TABLE 1.—FINAL 1988 TOTAL ALLOWABLE CATCH (TAC) AND INITIAL APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	Initial DAP [3]	Initial JVP [4]	Initial DAH [5]	Initial TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	614,162	490,838	1,105,000	0
AI	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
AI	6,000	5,100	5,100	0	5,100	0
Other Rockfishes:						
BS	400	340	340	0	340	0
AI	1,100	935	935	0	935	0
Sablefish:						
BS	3,400	2,890	2,890	0	2,890	0
AI	5,000	4,250	4,250	0	4,250	0
Atka Mackerel: BSAI	21,000	17,850	80	17,770	17,850	0
Pacific Cod: BSAI	200,000	170,000	87,416	82,584	170,000	0
Yellowfin Sole: BSAI	254,000	215,900	26,356	189,544	215,900	0
Greenland Turbot: BSAI	11,200	9,520	9,520	0	9,520	0
Arrowtooth Flounder: BSAI	5,531	4,701	3,808	893	4,701	0
Other Flatfishes: BSAI	131,369	111,664	26,403	85,261	111,664	0
Squid: BSAI	1,000	850	850	0	850	0
Other Species: BSAI	10,000	8,500	2,000	6,500	8,500	0
Total	2,000,000	1,700,000	792,520	907,480	1,700,000	0

[1] Amounts are in metric tons.

[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

TABLE 2.—REAPPORTIONMENT OF RESERVE: REVISED 1988 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,300,000	1,105,000	614,162	490,838	1,105,000	0
AI	45,000	38,250	4,160	34,090	38,250	0
Pacific Ocean Perch:						
BS	5,000	4,250	4,250	0	4,250	0
Change				+28		
Revised	5,000	4,250	4,250	28	4,278	0
AI	6,000	5,100	5,100	0	5,100	0
Change				+441		
Revised	6,000	5,100	5,100	441	5,541	0
Other Rockfishes:						
BS	400	340	340	0	340	0
Change				+30		
Revised	400	340	340	30	370	0
AI	1,100	935	935	0	935	0
Change				+165		
Revised	1,100	935	935	165	1,100	0
Sablefish:						
BS	3,400	2,890	2,890	0	2,890	0
Change				+37		
Revised	3,400	2,890	2,890	37	2,927	0
AI	5,000	4,250	4,250	0	4,250	0
Change				+47		
Revised	5,000	4,250	4,250	47	4,297	0
Atka Mackeral: BSAI	21,000	17,850	80	17,770	17,850	0
Pacific Cod: BSAI	200,000	170,000	87,416	82,584	170,000	0
Yellowfish Sole. BSAI	254,000	215,900	26,356	189,544	215,900	0
Greenland Turbot: BSAI	11,200	9,520	9,520	0	9,520	0
Change				+31		
Revised	11,200	9,520	9,520	31	9,551	0
Arrowtooth Flounder: BSAI	5,531	4,701	3,808	893	4,701	0
Other Flatfishes: BSAI	131,369	111,664	26,403	85,261	111,664	0
Squid:						
BSAI	1,000	850	850	0	850	0
Change				+25		
Revise	1,000	850	850	25	875	0
Other Species: BSAI	10,000	8,500	2,000	6,500	8,500	0
Total	2,000,000	1,700,000	792,520	907,480	1,700,000	0
Change [7]				+804		
Revised	2,000,000	1,700,000	792,520	908,284	1,700,804	0

[1] Amounts are in metric tons.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.
[7] This increase in JVP and DAH was subtracted from the reserve. Hence, the remaining reserve = 300,000 − 804 = 299,196.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 11, 1988.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 88-698 Filed 1-11-88; 5:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its Federal Employees Health Benefits (FEHB) Program regulation to specify (1) how it determines which states qualify as Medically Underserved Areas, and (2) how and when it will announce its determination. This action is necessary to expedite notice of Medically Underserved Areas to the public.

DATE: Comments must be received on or before March 14, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632–4634.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians. Such states are designated as Medically Underserved Areas for purposes of the FEHB Program and the law requires payment to all qualified providers in these states.

Each year, before the FEHB open season begins, OPM determines which states qualify as Medically Underserved Areas for the next calendar year. OPM makes its determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. This is a purely mechanical calculation and could not be changed under current law. Any change in the status of a state reflects a change in the data provided to OPM. Thus, we see no reason to issue proposed regulations and invite comments every year. Instead, OPM proposes to announce the results of its annual determination in a public notice in the **Federal Register**. OPM's proposed change in its way of providing this information would begin with its determination for calendar year 1989 (which will be made before the November 1988 FEHP open season).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the following three sentences are inserted between the current first and second sentences:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM makes its annual determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. The determination will be made prior to the annual FEHB open season and will be for the next calendar year. OPM will announce this determination before each open season in a public notice in the **Federal Register**. * * *

[FR Doc. 88–694 Filed 1–13–88; 8.45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. A0–85–A9]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Hearing on Proposed Amendments of Marketing Agreement and Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending the Marketing Agreement and Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The purpose of the hearing is to receive evidence on proposals to amend provisions of the marketing agreement and order concerning: (1) Classifying Canada and Mexico as export markets rather than domestic markets as they are now; (2) making by definition the Interior District synonymous with Regulation Area I, and the Indian River District synonymous with Regulation Area II; (3) changing the eligibility requirements for grower members to serve on the committee; (4) permitting the committee to borrow money to fund committee operations in emergency situations; and (5) providing for the conduct of periodic referenda on continuance of the order every six years. These proposals were submitted by the Citrus Administrative Committee to improve the administration, operations, and functioning of the marketing order.

DATE: The hearing will begin at 9:30 a.m., February 17, 1988.

ADDRESS: The hearing will be held at the auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida 33802.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: 202–475–3918, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 3rd Street, NW., P.O. Box 2276, Winter Haven, Florida, 33883–2276, telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION:

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

Proposals have been submitted by the Citrus Administrative Committee, and the Fruit and Vegetable Division, U.S. Department of Agriculture. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order; (ii) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, oranges, grapefruit, tangerines, tangelos.

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Proposals submitted by the Citrus Administrative Committee:

Proposal No. 1:

Amend § 905.9, and paragraphs (a)(3), (a)(4), (a)(5), and (d) of § 905.52 to read as follows:

§ 905.9 Handle or ship.

"Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way, to place fruit in the current of commerce between the production area and any point outside thereof in the continental United States; and (b) to export fruit from any continental United States port to any designation.

§ 905.52 Issuance of regulations.

(a) * * *

(1) * * *

(2) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided*, That no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the shipment of fruit for export: *Provided*, That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

(b) * * *

(c) * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety, but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

Proposal No. 2:

Amend §§ 905.15, and the first sentence in § 905.16 to read as follows:

§ 905.15 Regulation Area I.

"Regulation Area I" is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

"Regulation Area II" is defined as the "Indian River District", and shall include that part of the State of Florida particularly described as follows:

* * * * *

Proposal No. 3:

Amend § 905.19 by revising paragraph (a) to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least 8 but not more than 9 grower members, and 8 shipper members. Grower members shall be persons who are growers or employees of growers. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

* * * * *

Proposal No. 4:

Amend § 905.41 by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In order to provide funds for the administration of these provisions in cases of extreme emergency, the committee may borrow money on a short term basis not to exceed one full

year. The authority to borrow money may only be used to meet financial obligations as they occur and to allow the committee a season to adjust its reserve funds to meet any additional obligations.

Proposal No. 5:

Amend § 905.83 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

. . . . . .

(c) The Secretary shall conduct a referendum six years after the effective date of this part and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area; except, that termination of this part shall be effective only if announced on or before July 31 of the then current fiscal period.

. . . . . .

The proposal submitted by the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture is to make such changes as may be necessary to make the marketing agreement and order conform with any amendments thereto that may result from the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an exparte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 7, 1988

J. Patrick Boyle,

Administrator

[FR Doc. 88-683 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-22-M

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Proposed Establishment of Final Free and Restricted Percentages for the 1987-88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes the establishment of final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1987–88 marketing year. The proposed percentages would specify the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers.

DATES: Comments must be received by February 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085, South Building, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,400 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $100,000, ans small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Filbert/Hazelnut Marketing Board (Board) is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes the formulas for computing the inshell trade demand, as well as preliminary, interim, and final percentages which establish the amount of inshell filberts/hazelnuts the market can support throughout the season. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must recommend to the Secretary final percentages which release 115 percent of the inshell trade demand. The 15 percent over 100 percent of the inshell trade demand is released to ensure an adequate carryover into the following season. The Board's recommendation and this proposed rule are based on requirements specified in the order.

This proposed rule would restrict the amount of domestic inshell filberts/hazelnuts that can be marketed in domestic markets. However, the domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages would benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in § 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by not more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or disposed of in noncompetitive inshell outlets (restricted) early in the 1987–88 season. The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The Board computed and announced preliminary free and restricted percentages of 19 and 81 percent, respectively, to release 80 percent of the inshell trade demand. The reason only 80 percent of the inshell trade demand is releasable under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim and final free and restricted percentages. The Board uses current crop estimates to calculate the interim and final percentages. The interim percentages are calculated the same as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final percentages release an additional 15 percent of the inshell trade demand which is used to ensure an adequate carryover into the following season. The final percentages must be effective at least 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

On September 3, 1987, the Board discussed its marketing policy and recommended the use of volume control regulations for the 1987–88 season. The Board computed and announced an estimated inshell trade demand and preliminary percentages which were calculated to release 80 percent of the inshell trade demand to the domestic inshell market.

The Board met on November 12, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage will not adversely affect the 1987–88 domestic inshell market. Accordingly, no interim free and restricted percentages were recommended. The proposed marketing percentages are based on the industry's final production estimates and would release 4,723 tons to the domestic inshell market.

In addition to complying with the provisions of the marketing order, the Board also considers the Department's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (420 tons) has been included in the calculations used in determining the inshell trade demand. The proposed final percentages, which would release 115 percent of the inshell trade demand would also release 125 percent of prior years' sales, thus exceeding the Guideline's requirement.

The marketing percentages are based on the industry's initial production estimates and the following supply and demand information for the 1987–88 marketing year:

Inshell supply	Tons
(1) Total production (USDA official forecast of orchard-run production, 1987 crop)	20,000
(2) Less substandard (farm use disappearance)	1,568
(3) Merchantable production (the Board's adjusted crop estimate)	18,432
(4) Plus: undeclared carryin as of July 1, 1987 subject to regulation	0
(5) Supply subject to regulation (Item 3 plus Item 4)	18,432
(6) Average trade acquisition based on three prior years' domestic sales	4,198
(7) Increase to encourage increased sales (10 percent)	420
(8) Less: declared carryin as of July 1, 1987 not subject to regulation	525
(9) Inshell Trade Demand	4,093
(10) 15 percent of the average trade acquisitions based on three years' domestic sales	630
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,723

Percentages	Free	Restricted
(12) Final percentages (Item 11 divided by Item 5) x 100	26	74

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 982

Agricultural Marketing Service, Marketing agreements and orders, filberts/hazelnuts, Oregon, Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 49 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 982.237 is added to Subpart—Grade and Size Regulation to read as follows:

Note.—The following section will not be published in the Code of Federal Regulations.

§ 982.237 Final free and restricted percentages—1987–88 marketing year.

(a) The final free and restricted percentages for merchantable filberts/hazlenuts for the 1987–88 marketing year shall be 26 and 74 percent, respectively.

Dated: January 7, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-684 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1033 and 1046

[Docket Nos. AO-166-A57 and AO-123-A58]

Milk in the Ohio Valley, and Louisville-Lexington-Evansville Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the pooling provisions of the Ohio Valley and Louisville-Lexington-Evansville milk orders based on industry proposals considered at a public hearing held June 30-July 1, 1987. As recommended, a pool distributing plant physically located in the Louisville-Lexington-Evansville marketing area would be regulated under that order irrespective of the market in which the plant has most of its fluid milk products distribution.

The decision also recommends another change in the Louisville-Lexington-Evansville order. This change slightly modifies the method for accounting for excess diversions to nonpool plants. These changes are needed to reflect current marketing conditions and to insure orderly marekting.

DATE: Comments are due on or before January 29, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action changes the current regulatory status of a pool distributing plant that is located in the Louisville-Lexington-Evansville marketing area but is regulated by the Ohio Valley order because a greater portion of its fluid milk products distribution is in the latter order's marketing area. It would regulate such plant under the Louisville-Lexington-Evansville order. Such action is expected to equate the cost of raw milk supplies to the pool plant so situated with its principal competition. The economic impact of such action will be to increase returns to dairy farmers whose milk will be pooled under the Louisville-Lexington-Evansville order while slightly reducing returns to dairy farmers whose milk will continue to be pooled under the Ohio Valley order. The overall economic impact of the action is expected to be minimal.

Prior document in this proceeding: Notice of Hearing: Issued June 15, 1987; published June 19, 1987 (52 FR 23306).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, and Louisville-Lexington-Evansville marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Louisville, Kentucky, on June 30-July 1, 1987, pursuant to a notice of hearing issued June 15, 1987 (52 FR 23306).

The material issues on the record of the hearing relate to:

1. Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order.
2. Diversion of producer milk under the Louisville order.
3. Pool plant qualification requirements for a balancing plant operated by a cooperative association and regulated by the Ohio Valley order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Regulation of a distributing plant physically located in the Louisville-Lexington-Evansville marketing area but currently regulated by the Ohio Valley milk order*

The Louisville-Lexington-Evansville order (Louisville order) should be amended to provide that a distributing plant which meets the pooling standards of the Louisville order and one or more other Federal orders and which is located in the Louisville order's marketing area shall be a pool plant under the Louisville order irrespective of the quantity of fluid milk products distributed in any other Federal order market. However, such pool plant status shall be accorded only as long as the Louisville order's Class I price at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition.

Presently, when a distributing plant qualifies for pooling under the Louisville order and another order, it is regulated in the market in which it has the greater route sales.

"Lock-in" provision adopted herein for the Louisville order cannot achieve its intended purpose without a corollary change in the pooling standards of the Ohio Valley order. Thus, the Ohio Valley order should provide that any plant with route sales in the Ohio Valley marketing area shall be exempt from full regulation under that order, even though it has more sales in the Ohio Valley market than in the other market, if the plant is subject to full regulation under the other order.

Both Dairymen, Inc. (DI), and Milk Marketing, Inc. (MMI), proposed (proposals 1 and 2 as listed in the Notice of Hearing) that a distributing plant that is physically located in the Louisville order's marketing area (Order 46) should be regulated by that order irrespective of the quantity of such plant's route disposition in any other Federal order marketing area. Proposal No. 1 would amend Order 46 by locking in such a plant under the order and proposal No. 2 is intended to amend the Ohio Valley order (Order 33) by releasing from regulation such a plant even though such plant may have more fluid milk sales in the Order 33 area than in the Order 46 area.

A witness for DI stated that this action is necessary in order to minimize disruptive market conditions in the Kentucky supply area. The witness indicated that the proposal would only affect the Kroger Company's (Kroger) distributing plant located in Clark County, Kentucky (Order 46 marketing area), but currently regulated by Order 33. He said that the milk procurement and sales patterns of the Kroger plant establish a primary association of the plant with the Order 46 market.

The DI witness testified that the traditional method of pooling a distributing plant has always been on the basis of the market in which the plant has the most sales. The justification for this method, he said, was to ensure that all handlers having the major portion of their sales in the same order area were subject to the same minimum order prices and other regulatory provisions. He said that this principle rested on an assumption that such competing plants would be located in the same geographic area.

Also, the witness for DI said that the traditional method of pooling fluid milk plants has become outdated because of large processing plants, such as chain store plants, that have sales over wide geographical areas. The proposal, he said, better serves the principle of trying to assure that all handlers competing for milk procurement and sales in an order area are subject to the same price as their competition. He indicated the proposal would regulate a distributing plant under the order for the marketing area where it is physically located even though its route distribution was greater in another Federal order's marketing area.

The spokesman for DI said that producers supplying the Kroger plant are located within the same geographic area as producers who supply Order 46 plants and to some extent producers who supply plants regulated under the Tennessee Valley, Nashville, and Alabama-West Florida orders. He said that this proposal would minimize any blend price inequities which may occur between producers located within this same geographic supply area because a distributing plant would be regulated within the same area from which it procures its milk supply. Producers, he says, who supply other Federal order plants located in the same general area are receiving significantly different blend prices.

A witness for MMI also testified in support of proposals 1 and 2. He said that MMI cannot service the Kroger plant at competitive prices and that this problem is caused by the difference between the Order 33 blend price and blend prices in markets to the south. He stated that in order for MMI to make their members' pay prices competitive, MMI has found it necessary to charge the Kroger plant at Winchester a surcharge of 15 cents on all the milk that Kroger purchases. The MMI witness stated that the 15-cent surcharge to Kroger has helped MMI maintain a competitive position in the procurement area and that they have used that surcharge to pay for such things as subsidies to milk haulers, over-order premiums to MMI's members, and to pay extra premiums in certain competitive areas.

The spokesman for NMI said that a higher blend price is needed at the Winchester plant because the Order 33 blend price and the normal over-order charge is not sufficient to assure an adequate supply of milk at that location. He said that Federal order prices should be the prime determinant in the assurance of adequate supplies and it should not be the responsibility of suppliers to selectively determine that certain plants should pay higher over-order charges than other plants with the same Federal order Class I price. The blend price must be increased, he said, by either having a higher Class I price at that location or having the plant regulated by another market with a higher percentage of Class I utilization.

A witness for the Kroger Company (Kroger) testified in support of these proposals. The Kroger witness said that for the first 5 months of 1987, the Winchester plant's Class I sales in the Order 46 marketing area averaged more than 33 percent of its total fluid milk sales and that its fluid milk sales in the Order 33 marketing area averaged less than 50 percent of its total fluid milk sales. He said that of the total in-area packaged Class I sales for Order 46, its sales represent about 16 percent of the total market and that of the total in-area packaged Class I sales for Order 33, its sales represent about 8 percent of the total. In addition, he said, that when comparing its Class I sales in each of the two order areas of the first 5 months of 1987 with the same period of 1986, sales in the Order 33 area have declined and sales in the Order 46 area have increased.

The spokesman for Kroger said that because of the recent increases in the Class I differentials in the southern markets, Winchester has not been as attractive a market outlet as before. This, he said, has contributed to the need for Kroger to pay, beginning in September 1986, an additional 15-cent per hundredweight surcharge over the regular premium price and that this surcharge amounted to approximately $439,000 for the first five months of 1987.

The Kroger witness said that these proposals would make the Winchester plant more competitive with other plants in the procurement of milk. In addition, he said that the lock-in proposals would equalize producer's pay prices under the order in the Winchester plant's procurement area and should eliminate the need for the 15-cent surcharge.

A representative for Huntington Interstate Milk Producers Association (Huntington) also testified in support of the lock-in proposals. He said that Huntington supplies Order 33 milk plants including the Winchester plant. In recent weeks, he said, Huntington had lost a few members because a supply plant at Maysville, Kentucky, was offering these producers the Order 46 weighted average price, which is higher than the Order 33 blend price.

A representative for the National Farmers Organization (NFO), which has member producers on both the Order 33 and Order 46 markets, testified in opposition to the lock-in proposals. Exhibits that were introduced by NFO showed that if the Kroger plant were to be pooled under Order 46, that order's blend price would have increased at least 11 cents and as much as 18 cents for the first 5 months of 1987. In addition, the exhibits showed that the blend price in Order 33 for this same period would have been decreased between 6 and 9 cents.

The witness for NFO said that the proposals would have the effect of penalizing producers whose milk is pooled on Order 33 in order to save some milk for the Kroger plant at Winchester. The NFO witness said that the difference in blend prices for the two markets could be as much as 49 cents. He said that such a disparity in blend prices between these two close-together regulated markets will create inequities among producers within the same milk shed. Furthermore, he said, the base-excess plan of Order 46 will create additional friction with the Order 33 producers.

While acknowledging the uniqueness of the Kroger problem, the representative of NFO held that a plant should be regulated under the Federal order for the area in which it has the most sales. It was his position that producers in the market in which the plant has the greater proportion of its

sales have a right to share in the Class I sales associated with that plant.

A brief was filed by the Louis Trauth Dairy, Inc. (Trauth) in opposition to proposals 1 and 2. In his Order 33 handler's view, the proposals represent a radical departure from the policies established for regulating plants under marketing orders. Its brief asserts that the proponents have not met their burden of proof and that the record shows that milk is regularly diverted away from the Winchester plant, thereby indicating that plant does not have a supply problem.

The testimony presented at the hearing indicates that under current marketing conditions the lock-in provisions for the Louisville order as proposed by DI and MMI would apply only to Kroger's distributing plant at Winchester, Kentucky.

The adoption of the proposal is warranted because of special circumstances surrounding the operation of the Winchester plant. The plant is located in the marketing area of the Louisville order. It began operating in November 1982 and during this month the plant was a pool distributing plant under the Ohio Valley order. From December 1982 through March 1983, it was a pool city plant (pool distributing plant) under the Louisville order. Since then, the plant has continued to be pooled under the Ohio Valley order.[1]

The Winchester plant distributes fluid milk products in five Federal order markets and in unregulated areas of West Virginia and Kentucky. Most of its sales, however, are concentrated in two markets: the Ohio Valley market and the Louisville market. Data introduced into the record show that during the January-May 1987 period the Kroger plant had nearly 50 percent of its Class I distribution in the Ohio Valley market, about 34 percent in the Louisville market and about 16 percent in all other areas, including the Eastern Ohio-Western Pennsylvania, Tennessee Valley and Indiana Federal order markets.

The entire raw milk supply for the Kroger plant is obtained from DI and MMI (which includes milk of Huntington Interstate Milk Producers) and comes from producers principally located in Kentucky. The plant receives milk directly from the farms of producers and incidental or supplemental supplies from supply plants operated by MMI. Most of the plant's milk supply is obtained from producers located in the same geographical area as producers supplying handlers regulated by the Louisville order and other orders south and east of the plant's location. The record indicates that in at least 18 Kentucky counties there are producers who supply the Kroger plant as well as other producers in the same counties that supply plants regulated under the following other orders: Alabama-West Florida, Georgia, Louisville, Nashville, and Tennessee Valley (southern markets).

While the Class I prices under the Louisville and Ohio Valley orders at the Kroger plant's location are identical, the uniform weighted average price of producers under the Louisville order usually have been higher than the comparable Ohio Valley prices. For example, during the 53-month period from January 1983 through May 1987, the uniform weighted average prices to producers under the Louisville order exceeded the comparable Ohio Valley order's prices during 49 months. The amount of these differences ranged from a low of one cent to a high of 35 cents per hundredweight and averaged 14 cents for the 49 months. A similar situation exists for the Winchester plant in competing for milk supplies with handlers regulated in other southeastern order markets where both Class I prices and uniform prices to producers are substantially higher than such prices under the Ohio Valley order.

As indicated by the record evidence, the higher pay prices available to producers under the Louisville and other southeastern order in the Kentucky supply area have created difficulties for the Kroger plant at Winchester in procuring adequate supplies. The principal difficulty cited in this regard was the impact of the present 15-cent per hundredweight additional charge by both DI and MMI on all milk purchases by Kroger. It is evident from the record evidence that this 15-cent charge, which has been in effect since September 1986, was designed to overcome the difficulties of maintaining an adequate supply of milk for the Kroger Winchester plant as a result of producer pay price differences between the two markets in question. Although the record clearly establishes that a higher price is required at this location to attract adequate supplies, the present extra 15-cent charge used for this purpose places the Kroger Company at a competitive disadvantange with other handlers that it competes with for sales.

As noted previously, usually a distributing plant that qualifies for pooling under more than one order during the same month is regulated under the order for the area in which such plant's route distribution is the greatest. This tends to insure that all handlers having their principal sales in a market are subject to the same prices and other regulatory requirements. This conditions of pooling a distributing plant is the basis for regulating the Kroger plant under the Ohio Valley order, because a greater quantity of its sales is distributed in such order's marketing area than in any other order marketing area.

The pricing problems affecting the procurement of adequate milk supplies for the Winchester plant, however, are severe enough to override the traditional basis for pooling a distributing plant that qualifies as a pool plant under more than one order during the same month. Under such circumstances, consideration must be given to regulating the Winchester plant in the market in which there is reasonable assurance that it will have available an adequate supply of producer milk. It is concluded that the Kroger Winchester plant or any other distributing plant located in the Louisville marketing area can be reasonably assured of and adequate supply if it is regulated under the Louisville order.

It should be noted that under the type of lock-in provision adopted herein, the Kroger plant or another distributing plant so situated would continue to be pooled indefinitely under the Louisville order so long as the plant meets such order's performance requirements for a pool distributing plant. This condition of pooling is intended to assure that the Winchester plant is primarily engaged in the processing and distribution of fluid milk products to an extent that such plant's route distribution in the marketing area is a major competitive factor.

As noted earlier, under the lock-in provision adopted herein, such pool plant status is accorded a distributing plant so long as the Louisville order's Class I price applicable at such plant's location is not less than the Class I price applicable at the same plant's location under another order for a market where it has its greatest route distribution. This additional condition of pooling is intended to prevent any competitive price advantage accruing to a plant that otherwise would be locked-in under the adopted provision.

Under the lock-in provision adopted herein, the Louisville order would regulate the Winchester plant even though it had a greater proportion of its route distribution in the marketing area of the Ohio Valley order. However, the intent of this pooling arrangement is in

[1] Official notice is taken on the lists of pool handlers under Federal Orders 33 and 46 as published by the respective market administrators for the months of November 1982 through September 1987.

conflict with the present pooling requirements of the Ohio Valley order since it does not have a complementary provision which will permit the plant to be locked-in under the Louisville order. As proposed by the lock-in proponents, the Ohio Valley order should be amended to provide for such a complementary provision.

In opposing the proposed lock-in provision at the hearing and in post-hearing briefs, opponents maintained that no departure should be made from the long established policy concerning regulation of a distributing plant that qualifies for pooling under two or more orders. It was the position of opponents that the record evidence did not warrant any departure from such established policy regarding the Winchester operation. Contrary to opponents' position, the pricing problems of Kroger are severe enough to warrant overriding the customary pooling provisions as related to the Kroger operation and support the adoption of the proposed lock-in provision.

NFO contended that the proposed lock-in proposal, if adopted, will widen the difference in producer pay prices between the Louisville and Ohio Valley orders to the extent that it will create inequities among producers within the same supply area. The record evidence, however, does not support this claim. Rather, adoption of the proposals will tend to provide uniformity of prices to producers within the procurement area of the Winchester plant.

2. *Diversion of producer milk under the Louisville order.* Rule concerning the diversion of producer milk from pool plants to nonpool plants should be modified to provide a procedure for accounting for over-divisions to nonpool plants. On the basis of this record, however, other division proposals should not be adopted. Such proposals would (1) relax the delivery requirement of an individual producer to establish division eligibility for the months of March through August; and (2) modify the basis of determining the quantity of producer milk that may be diverted to nonpool plants during the September-February period.

Presently, the order provides that during the months of March through August at least two days' production (one delivery for a producer on every-other-day pickup) of a producer must be physically received at a pool plant each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk. During the September-February period, monthly diversions of a producer's milk to a nonpool plant cannot exceed 22 days' production (11 every-other-day pickup).

NFO proposed that diversion eligibility for a producer be reduced to one day's production received at a pool plant and that diversions to nonpool plants during each of the months of September through February not exceed 60 percent of the producer milk received at a pool plant. At the hearing, however, NFO revised its diversion limitation proposal to increase the 60 percent factor to 70 percent and to permit diversion limits to be based either on 70 percent of total producer deliveries to pool plants or on the number of days of production of an individual producer that is actually delivered to a pool plant. Also, it proposed that under either option, diversion limitations should apply uniformly to both a cooperative association and a proprietary handler.

In support of its proposal to reduce the delivery requirement for an individual producer during the March-August period, a spokesman for NFO testified that the present two-day delivery requirement has occasionally caused problems when one day's production of a large producer has been picked up by two different bulk tank trucks on succeeding days without both trucks delivering to a pool plant. According to the witness, this method of handling can result in some producer milk being depooled. The spokesman indicated that this is because the diverting handler, having assumed that all producers whose milk was on each truck met the two-day delivery requirement, would not discover the error until after the end of the month, when it was too late to correct the problem. To minimize or avoid the problem, the witness stated, it is necessary for the diverting handler to have the milk on an every-other-day truck route delivered to a pool plant at least twice a month solely to make certain that the two-day delivery requirement is met. He stated that this causes excessive hauling and handling because the additional milk delivered to the pool plant is not needed. Reducing the delivery requirement to one day, according to the witness, would eliminate this unnecessary expense and simplify monitoring producer shipments.

Also, NFO proposed that the limits on the quantity of milk that may be diverted to nonpool plants during the September-February period be based either on a percentage of a handler's total producer milk receipts at pool plants or, as presently provided, on the number of days of production of an individual producer that may be diverted to a nonpool plant. The purpose of the proposal, as stated by NFO's witness, is to provide the diverting handler with a choice in achieving efficient diversion of reserve milk supplies to nonpool plants. Proponent's spokesman testified that basing diversion limitations only on the number of delivery days of an individual producer causes a handler unnecessary handling, pumping and hauling milk solely to maintain producer status for some of its dairy farmers. In NFO's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than is permitted now. Rather, NFO claimed that is would provide for increased efficiency in marketing reserve milk.

A spokesman and DI testified in opposition to NFO's proposals concerning diversions to nonpool plants. This witness argued that the present diversion provisions are adequate because there is every indication that the amount of milk being diverted by handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments. To this end, DI offered two counter proposals which would (1) require that eight day's production of a producer be received at a pool plant during each of the months of September through February and (2) that the amount of milk that a handler may divert to nonpool plants not exceed a volume to one-third of the handler's producer milk physically received at or diverted from pool plants during such months.

At the hearing and in post-hearing briefs, both MMI and Kroger supported DI's position regarding diversions to nonpool plants.

Neither the delivery requirement for an individual producer or the limits on diversions to nonpool plants during September through February should be modified on the basis of this record.

The testimony presented by NFO in support of its proposal to change to a one-day delivery requirements, to a large extent, was general in nature and lacked "specificity." Its witness, for example, did not provide any evidence regarding the problem that NFO has had in meeting the order's present delivery requirement. Although the NFO witness testified that the two-day delivery requirement occasionally caused qualification problems when one day's production of a large producer was picked up in the same bulk tank truck that was also picking up 2 days' production of other producers, there was no evidence presented which indicated the number of times that this problem occurred or the quantity of milk of its member producers that was depooled.

The record evidence does not demonstrate that the two-day delivery requirement is excessive or that it is not needed to demonstrate that a producer is genuinely associated with the fluid market. Accordingly, the proposal is denied.

The basic issue developed on the record with respect to NFO's other diversion proposal concerns whether to provide an alternative option of basing diversion limitations on a percentage of a handler's total producer milk supply and what constitutes reasonable diversion limits in light of the market's present supply-demand conditions so that fluid milk plants are assured of adequate milk supplies.

The record evidence indicates that Class I utilization for Order 46 averaged 59.9 percent for 1986 and ranged from a low of 50.4 percent in June to a high of 72.4 percent in September. For the first five months of 1987, Class I utilization averaged 63.0 percent compared to an average of 56.0 percent for the same period in 1986. This supply-demand situation indicates that allowing a diverting handler to divert to a nonpool plant as much as 70 percent of its total producer receipts, as proposed by NFO, would not be appropriate.

Also, the record evidence suggests that all handlers on the marekt are able to operate within the diversion limits as now contained in the present order. For instance, data contained in the record shows that for 1986 diverted milk, as a percentage of producer receipts, ranged from a low of 16.5 percent for September to a high of 31.5 percent in May. Also, for the first five months of 1987, diversions to nonpool plants averaged 22.1 percent compared to 26.2 percent for 1986.

Conversely, on the basis of this record there is no apparent need to limit diversions to nonpool plants to the extent proposed by DI. There was no demonstration by DI that the current limit on the amount of milk that may be diverted is causing in any way disruptive marketing conditions.

In view of these considerations, the diversion limits, as now provided in the order, are appropriate for this market, considering current supply-demand conditions. The record evidence does not provide a compelling basis for changing the present diversion limits. Accordingly, all proposals to change diversion limits are denied.

As indicated previously, the order should be revised to specify the procedure for accounting for over-diverted milk. As proposed by both NFO and DI and as herein adopted, the order is revised to provide that milk diverted in excess of the diversion limits as prescribed by the order shall not be producer milk and that the diverting handler shall designate the dairy farmers' deliveries that shall not be producer milk. Also, if the diverting handler fails to make such designation, none of the diverted milk of such handler shall be producer milk. This modification is desirable and appropriate.

Subsequent to the hearing, NFO filed a petition to have the hearing reopened in the event that the Secretary determines that DI's counter proposals that were offered in response to NFO's proposals concerning diversions to nonpool plants would be "worthy of consideration." Since DI's proposals were not adopted, the issue raised in NFO's petition is moot.

DI proposed at the hearing to amend the performance standards for a pool distributing plant. As proposed, diverted milk would be included along with milk physically received at the distributing plant as the base in calculating a plant's Class I utilization percentage. A specified minimum Class I utilization percentage is used as one of the condition's that must be met in determining the pooling status of a distributing plant under the order.

Counsel for NFO objected to the proposal on the basis that it was not included in the hearing notice and thus was outside the scope of the hearing. The Administrative Law Judge (ALJ) presiding at the hearing ruled that the proposal was not properly noticed and thus sustained the objection of NFO's counsel.

DI, in its brief, renewed the request to allow for testimony to be taken on the proposal since it was its position that the proposal was within the scope of the hearing. After a careful review of the matter, it is concluded that the ALJ's ruling in this regard was proper. Therefore, the motion reverse the ruling of the ALJ is denied.

3. *Pooling provisions for a plant operated by a cooperative association and regulated under the Ohio Valley order.* As noted in the hearing notice, a proposal of NFO would have reduced from 50 percent to 40 percent the quantity of members' milk that must be delivered to pool distributing plants in order to qualify a plant operated by a cooperative association as a pool plant. At the hearing, NFO did not present any testimony in support of the proposal and in its brief NFO stated that it wanted to withdraw the Proposal. Witnesses for both MMI and the Kroger Company testified in opposition to the proposal. Accordingly, no further consideration is given to the proposal in this proceeding.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley and Louisville-Lexington-Evansville orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements for the Ohio Valley and Louisville-Lexington-Evansville marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1033 and 1046

Milk marketing orders, Milk, Dairy products.

1. The authority citation for CFR Parts 1033 and 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.56 is amended by revising the first sentence of paragraph (a) through the first comma and adding a new paragraph (c) to read as follows:

§ 1033.56 Plants subject to other Federal orders.

(a) Except as specified in § 1033.31 and in paragraphs (b) and (c) of this section, * * *

* * * * *

(c) A plant qualified pursuant to § 1033.12(a) which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

3. Section 1046.7 is amended by revising paragraph (e) to read as follows:

§ 1046.7 Pool plant.

* * * * *

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of other order issued pursuant to the Act, except:

(i) A plant that qualifies as a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month; and

(ii) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the pooling requirements of another Federal order on the basis of route disposition if the plant is located in the Louisville-Lexington-Evansville marketing area and this order's Class I price applicable at the plant is not less than the Class I price that would be applicable at the plant if regulated under the order for the Federal order marketing area in which the plant has the greatest route disposition; and

(3) A plant that qualifies as a pool plant pursuant to paragraph (a) of this section and which also meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

4. Section 1046.13 is amended by adding a new paragraph (c)(4) to read as follows:

§ 1046.13 Producer milk.

* * * * *

(c) * * *

(4) Any milk diverted in excess of the limits prescribed in paragraph (c)(3) of this section shall not be producer milk. The diverting handler shall designate the farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk.

* * * * *

Signed at Washington, DC, on: January 7, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–882 Filed 1–13–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWP–35]

Proposed Revision to the Kingman, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Kingman, AZ transition area. This proposal enlarges the 700 foot transition area to provide additional controlled airspace for aircraft on the Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) runway 21 instrument approach procedure to the Kingman Municipal Airport. This proposal also enlarges the 1,200 foot transition area west of the Kingman Municipal Airport to provide additional controlled airspace for instrument flight rules (IFR) departures.

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–53, Docket No. 87–AWP–35, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide that factual basis supporting the views and

suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-35." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Kingman, AZ transition area. This revision will provide additional controlled airspace for aircraft on the VOR/DME RWY21 instrument approach procedure to the Kingman Municipal Airport and for IFR departures from the Kingman Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kingman, AZ [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Kingman Municipal Airport (lat. 35°15'34"N., long. 113°56'14"W.); and that airspace within 5 miles each side of the Kingman VOR 025° radial extending from the 5-mile radius area to 19 miles northeast of the VOR; that airspace extending upward from 1,200 feet above the surface within 5 miles southeast and 9 miles northwest of the Kingman VOR 025° and 205° radials, extending from 13 miles southwest to 38 miles northeast of the VOR; and that airspace bounded by a line beginning at lat. 35°24'46"N., long. 114°01'31"W.; to lat. 35°06'44"N., long. 114°10'28"W.; to lat. 35°21'15"N., long. 114°13'25"W.; to the point of beginning.

Issued in Los Angeles, California, on December 22, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-368 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-34]

Proposed Revision to the Parker, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Parker, AZ transition area. This revision will provide controlled airspace for aircraft executing the Very High Frequency Omni-Directional Range/Distance Measuring Equipment (VOR/DME-A) instrument approach procedure to the Avi Suquilla Airport, Parker, Arizona.

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Toikel, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Parker, AZ, transition area. This will provide controlled airspace for aircraft executing the VOR/DME-A instrument approach procedure to the Avi Suquilla Airport, Parker, Arizona. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Parker, AZ [Revised]

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Avi Suquilla airport (lat. 34°09'03"N., long. 114°16'14"W.); and that airspace extending upward from 1200 feet above the surface within 10 miles northwest and 7 miles southeast of the Parker VORTAC 071° and 251° radials extending from 9 miles southwest to 29 miles northeast of the VORTAC.

Issued in Los Angeles, California, on December 17, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-369 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-4]

Establishment of Brawley, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Brawley, CA. This transition area will provide controlled airspace for aircraft executing a new instrument approach procedure to the Brawley Airport.

DATE: Comments must be received on or before February 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 87-AWP-4, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comment on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWP-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report

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summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Brawley, CA. and provide controlled airspace for aircraft executing a new instrument approach procedure to the Brawley Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brawley, CA—[New]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Brawley Airport (lat. 32°59'23"N. long. 115°30'56"W.); within 3 miles either side of the Imperial VORTAC 358° radial extending from the 6-mile radius area to 9.5 miles south of the airport; and that airspace extending upward from 1200 feet above the surface within an 8-mile radius of the Brawley Airport.

Issued in Los Angeles, California, on December 16, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88–370 Filed 1–13–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-31]

Proposed Revision to Camp Pendleton, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Camp Pendleton, CA, transition area and expand the 700 foot transition area to the southwest and southeast of the Camp Pendleton tactical air navigation aid (TACAN). This expanded transition area will provide additional controlled airspace for aircraft operating under instrument flight rules (IFR) in the vicinity of Camp Pendleton Marine Corps Air Station (MCAS).

DATES: Comments must be received on or before February 29, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–31, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AWP–31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Camp Pendleton, CA, transition area. This will provide additional controlled airspace southwest and southeast of the Camp Pendleton TACAN for IFR flights at Camp Pendleton MCAS. Section 71.181 of Part 71 of the Federal Aviation Regulations republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Camp Pendleton, CA [Revised]

That airspace extending upward from 700 feet above the surface within 4.5 miles southeast and 3 miles northwest of the Camp Pendleton TACAN (lat. 33°18'04"N., long. 117°21'06"W.) 041° and 221° radials, extending from 1 mile southwest to 16 miles northeast of the TACAN; and that airspace bounded by a line beginning at lat. 33°18'00"N., long. 117°15'00"W; to lat. 33°15'00"N., long. 117°15'00"W. to lat. 33°15'00"N., long. 117°18'18"W., to the point of beginning.

Issued in Los Angeles, California, on December 16, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88–371 Filed 1–13–88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 796, and 799

[OPTS–42088C; FRL–3215–4]

Office of Solid Waste Chemicals; Proposed Test Rule; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period on its proposed rule under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, to require testing on 73 chemicals which are constituents of hazardous waste streams (52 FR 20336; May 29, 1987). These chemicals are referred to as the Office of Solid Waste chemicals. This additional period will permit comment on updated information incorporated into the exposure analysis and the economic analysis.

DATE: This document reopens the comment period until February 16, 1988.

ADDRESS: Address written comments in triplicate identified by the document control number (OPTS–42088C) to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

The public record supporting these actions is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances; Room E–543, 401 M Street SW., Washington, DC 20460 (202) 544–1404.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 29, 1987 (52 FR 20336), EPA issued a proposed rule for 73 Office of Solid Waste chemicals which included testing for chemical fate and human health effects. EPA previously extended the comment period in a document published in the Federal Register of August 7, 1987 (52 FR 29395). EPA is reopening the comment period to permit comment on: (1) Data documenting potential for exposure to certain chemicals; (2) toxicity data on one chemical; and (3) an updated economic assessment for chemicals for which there previously was insufficient or no available economic information. The non-confidential exposure, economic, and toxicity information is now available for review in the public docket.

I. Background

The proposed rule required testing for human health effects (90-day subchronic toxicity) and/or chemical fate (anaerobic biodegradation, hydrolysis, and soil sorption), depending on identified data gaps for each chemical. EPA's Office of Solid Waste needs these data to support its effort under section 3001 of the Resource Conservation and Recovery Act (RCRA) to identify those wastes which may pose a substantial hazard to human health and the environment if improperly managed.

The proposed human health effects and chemical fate testing is based on the authority of section 4(a) (1) (A) of TSCA. EPA finds that the disposal of these chemicals may present an unreasonble risk of injury to health or the environment; that there are insufficient data and experience to determine or predict the effects of disposal on health or the environment; and that testing is necessary to develop these data.

Comments were received from Chemical Manufacturers Association (CMA), Synthetic Organic Chemical Manufacturers Association, Inc. (SOCMA), Vulcan Chemicals, Regulatory Network, Inc. (Maleic Anhydride Consortium), Monsanto Co., Methyl Chloride Industry Association, Morton Thiokol, Inc., Calorie Control Council, and the Natural Resources Defense Council (NRDC), on the basis for the section 4(a)(1)(A) findings of "may present an unreasonable risk of injury to health or the environment" for the chemicals listed in the proposed rule.

All of the chemicals in the proposed rule are listed in Appendix VIII of 40 CFR Part 261. NRDC believes that the threshold requirement for being listed in Appendix VIII is more than adequate to satisfy the "may present an unreasonable risk to health or the environment" finding required by TSCA, nothing that:

Substances will be listed in Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic,

mutagenic or teratogenic effects on humans or other life forms. 40 CFR 261.11(a).

NRDC believes that, since EPA is basing its decision for a test rule on the "unreasonable risk" finding rather than the "substantial exposure" finding, there is no requirement for a showing of substantial human exposure.

CMA and other industry commenters, however, believe that the general assertion, contained in the proposed rule, that the subject chemicals are known to be constituents of wastes to which humans might be exposed does not support a conclusion under TSCA that each of the chemicals may present a hazard or risk.

II. Exposure Data

While EPA believes that the record contains sufficient information to support its findings, since relevant data are easily available and obtainable within the timeframe allowed for this rulemaking, the Agency is now inserting into the record for this rule data that document the presence of certain chemicals in waste streams and/or ground water, demonstrating potential for human exposure. The data show that tens of thousands of pounds of these chemicals are being released annually via disposal. Also, the type of disposal described in the data bases for the subject chemicals, such as deep well injection, discharge to landfill, or discharge to a POTW (publicly-owned treatment works), indicate potential for leaching and exposure to these chemicals. Indeed, data exist for many of the chemicals which document incidents in which the chemicals have migrated from their place of treatment, storage, or ultimate disposal. It is likely that these data represent only a portion of actual contamination occurrences throughout the country.

The data have been obtained by searching three data bases used by the Office of Solid Waste: The Industry Studies Data Base (ISDB), the Hazardous Waste Damage Incident Data Base (DIDB), and the Hazardous Waste Disposal Site (HWDS) Data Base. Many of the chemicals are listed in more than one data base. Much of the data contained in the ISDB is RCRA confidential business information (CBI), and is contained in a separate RCRA CBI docket. The non-CBI information is available for review in the OPTS docket No. 42088C.

The ISDB is a computerized repository of chemical manufacturing and waste management information, established by the Waste Characterization Branch of the Office of Solid Waste in conjunction with the Hazardous Waste Listing Program. The information was provided directly from chemical manufacturers under the authority of RCRA section 3007 through questionnaire surveys, sampling and analysis site visits, and from other sources. As mentioned above, the vast majority of the data relate to proprietary product processes and are classified as CBI.

The DIDB presents a nationwide retrospective view of incidents in which hazardous wastes or products have migrated from their place of treatment, storage, or ultimate disposal. The DIDB was developed to allow the rapid identification of large numbers of incidents illustrating specific types of contamination scenarios. Presently, the data base contains summaries of nearly 1,000 mismanagement incidents.

The HWDS Data Base, developed by EPA's Environmental Monitoring Systems Laboratory, Las Vegas, NV, contains hazardous waste disposal site groundwater monitoring data obtained from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) and the RCRA programs of EPA. Each of the 10 EPA regional offices was visited between April 1983 and September 1983, resulting in the acquisition of site investigation data for 183 Superfund sites. Groundwater data were also obtained for 175 interim-status phase RCRA sites from the State of Texas (115 sites), the State of Louisiana (40 sites), and EPA's Office of Solid Waste (20 sites).

In addition to groundwater monitoring results for each chemical contaminant, pertinent site data such as classification of site (RCRA, CERCLA), type of operation (landfill, lagoon, etc.), type of well (private, public water supply, monitoring), well location (up/downgradient, on-/off-site), sampling date, and geographic location (regions, state) were also entered into the data base.

III. Toxicity Data

Toxicity data on one chemical, methanethiol, were inadvertently omitted from the docket in support of the proposed test rule. This information, along with exposure data from the ISDB, support the TSCA section 4(a)(1)(A) "may present an unreasonable risk" finding for this chemical, and are now available in the docket for public review.

IV. Literature Review

CMA asserted in its comments that "EPA has not conducted a satisfactory review of existing data and experience for each chemical, and, therefore, the Agency is unable to reach conclusions about the adequacy of such data for supporting the proposed section 4 rules." In response to this comment, EPA reviewed the literature search document for each endpoint for each chemical. As a result, EPA is now supplementing the public docket with results of the literature search for three chemicals, all for the anaerobic biodegradation rate end-point: Acetamide, 2-fluoro (insufficient data); 2,3-dichloropropanol (no data); and 2,6-dinitrotoluene (insufficient data). This information supports the TSCA section 4(a)(1)(A)(ii) finding that there are insufficient data and experience upon which the effects of commercial activity with the subject chemicals on health or the environment can reasonably be determined or predicted.

V. Economic Analysis

The economic analysis prepared in support of the proposed rule assessed the potential for significant adverse economic impact of 49 chemicals. The analysis has now been revised to incorporate additional information concerning certain of the 49 chemicals and to assess six additional chemicals. The original economic analysis indicated that the potential for significant adverse economic impact may be high for 10 of the 49 chemicals based upon the expected testing costs for those chemicals. This number has been revised to nine, with four chemicals removed from this category and three other chemicals added.

For four of those chemicals, 1,3-dichlorobenzene, 1,3-dichloro-2-propanol, 2,3-dichloro-1-propanol, and dihydrosafrole, additional market information has led EPA to revise its assessment of the potential for significant adverse economic impact. It now appears that the potential for significant adverse economic impact may be low for these four chemicals. For one chemical previously classified as having a low likelihood of significant adverse economic impact, nicotine, an increase in the estimated testing costs indicates that the chemical should now be classified as having a high likelihood of significant impact.

The original economic analysis also indicated that the potential for significant adverse impact was uncertain for five chemicals. For two of these chemicals, 1,2,4,5-tetrachlorobenzene and phenacetin, EPA now believes that the potential for significant adverse economic impact is high.

For one chemical previously classified as having a low likelihood of significant adverse economic impact, methyl chlorocarbonate, an increase in the estimated testing costs indicates that the likelihood is now uncertain.

The likelihood of significant adverse economic impact was not addressed in the original economic analysis for 24 chemicals which were believed to be manufactured solely as pesticides or not currently manufactured or imported. For 3 of these 24 chemicals, pentabromoethane, pentabromobenzene, and maleic hydrazide, the probability of significant adverse economic impact is believed to be low. For 4-bromobenzylcyanide and endrin, there is a high likelihood of significant adverse economic impact. For 2-chloroethyl vinyl ether, the likelihood of significant adverse economic impact is uncertain.

Please refer to the revised economic analysis contained in the docket for a more detailed discussion of the economic assessment for these chemicals.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42088C). This record includes all information considered in the development of the proposed rule and appropriate Federal Register notices. The Agency will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the May 29 proposal plus the following information:

(1) Notice of Proposed Rulemaking, Solid Waste Chemicals (52 FR 20336; May 29, 1987).

(2) Exposure data from three sources: The Industry Studies Data Base, the Hazardous Waste Damage Incident Data Base, and the Hazardous Waste Disposal Site Data Base.

(3) Revised economic analysis for the proposed rule.

(4) Toxicity data on methanethiol.

(5) Literature search information for: acetamide, 2-fluoro; 2,3-dichloropropanol; and 2,6-dinitrotoluene.

VII. Other Regulatory Requirements

The Agency discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the May 29, 1987 proposal, and no changes are indicated for this notice.

Dated: December 30, 1987.

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

[FR Doc. 88-632 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42088D; FRL-3215-7]

Unsubstituted Phenylenediamines; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and reopening of comment period.

SUMMARY: In response to comments received by the Agency in response to the proposed rule for the unsubstituted phenylenediamines (pdas), EPA is reopening the comment period to permit public comment on modifications and additions EPA is proposing in the testing program for neurotoxic, mutagenic, oncogenic, and aquatic toxicity effects.

DATES: This document reopens the period of comment on the proposed rule, which appeared in the Federal Register of January 6, 1986 (51 FR 472), until February 29, 1988.

ADDRESS: Address written comments in triplicate identified by the document control number (OPTS-42088D) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

The public record supporting these actions is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 6, 1986 (51 FR 472), EPA issued a proposed rule for unsubstituted phenylenediamines (pdas) which included testing for chemical fate and aquatic toxicity for *ortho*-phenylenediamine (*o*-pda) (CAS #94-54-5) and *para*-phenylenediamine (*p*-pda) (CAS #106-50-3) and chemical fate, aquatic toxicity, mutagenicity, and oncogenicity (if triggered by mutagenicity testing and if an oncogenicity test conducted in Japan was inadequate) for *meta*-phenylenediamie (*m*-pda) (CAS #108-45-2). EPA previously extended the comment period in a document published in the Federal Register of March 5, 1986 (51 FR 7593). In response to public comments, EPA is restructuring the proposed aquatic toxicity testing for all three isomers and the proposed mutagenicity and oncogenicity testing for *m*-pda, and is now proposing that neurotoxicity testing be conducted on all three isomers. As regards specific modifications to proposed 40 CFR 799.3300 *Unsubstituted phenylenediamines*, the addition of which was proposed in the Federal Register of January 6, 1986 (51 FR 472), EPA is proposing to modify paragraphs (c) and (e) and add new paragraph (f) concerning the effective date, 44 days after publication of the final rule. EPA will merge the two proposals in the final rule.

I. Background

In the Federal Register of January 6, 1986 (51 FR 492), *m*-pda was proposed for testing in the *Drosophila* sex-linked recessive lethal test (SLRL), in indirect photolysis, and for acute toxicity to *Daphnia*, rainbow trout, and algae. The same environmental fate testing and aquatic toxicity testing were proposed for *o*-pda and *p*-pda as for *m*-pda. For all three isomers, it was proposed that additional aquatic toxicity testing be triggered from the results of the required acute testing. No neurotoxicity testing was proposed. The rationale for requiring testing was explained in the proposal.

Comments were received from Dow Chemical Corp. (Dow), E.I. duPont de Nemours and Company (duPont), Joseph A. Lowenstein Sons, Inc., The American Psychological Association (APA), First Chemical Company, and the Naylor Dana Institute for Disease Prevention Laboratory. The public comments presented both newly developed data and data not previously reviewed by EPA for all three isomers which, after careful review, have prompted the Agency to modify the proposed mutagenicity testing for *m*-pda and the aquatic toxicity testing for all three isomers, and to propose neurotoxicity testing for all three isomers. No modifications are being proposed in this document to the proposed environmental fate testing described in the January 1986 proposal.

II. Modifications to the Proposed Testing Program for PDAS

A. Summary of Mutagenicity and Oncogenicity Issues

1. *Mutagenicity testing.* The January 1986 proposal stated that the Agency believes that exposure to *m*-pda may present an unreasonable risk of injury to human health for mutagenic effects and that data are insufficient to assess this risk. Consequently, testing of *m*-pda in the SLRL assay was proposed; if this test was positive, the mouse specific locus assay (MSL) and oncogenicity

testing would be triggered. DuPont's comments (Ref. 2 in Unit IV. B. below) were the only ones which addressed mutagenicity testing.

DuPont supported its arguments (Ref. 2) for not testing *m*-pda with references by Lee et al. (Ref. 3), Vogel et al. (Ref. 4), studies done for the National Toxicology Program (NTP) (Ref. 2), Seiler (Ref. 6), Tanaka and Katoh (Ref. 7), Picciano, *et al.* (Ref. 8), and Ashby (Ref. 9) and with references in the C9 aromatic hydrocarbon fraction rule (see the 50 FR 20662; May 18, 1985). DuPont recognizes that *m*-pda causes mutations *in vitro* in the Ames test and the Chinese hamster ovary chromosomal aberration test (CHO) (Ref. 24) and that it inhibits mouse testicular cell DNA synthesis *in vitro* (Ref. 6), but duPont argues that because *m*-pda is negative in the dominant lethal assay in male rats (Refs. 25 and 26), no significant new information would be generated by requiring additional chromosomal aberration or somatic cell gene mutation studies on this substance. DuPont also suggested alternative testing which involves dermal exposure of rat testis to labeled *m*-pda and measuring DNA binding in the testicular cells as the only justifiable testing.

The Agency has thoroughly reviewed the comments and data submitted by DuPont. These data were insufficient to change the Agency's findings that the mutagenic potential of *m*-pda is inadequately characterized. The Agency still believes that testing of *m*-pda for gene mutation in mice (Figure 1 below) is needed to adequately characterize the mutagenic potential of this isomer. However, EPA is modifying its testing proposal for *m*-pda in response to duPont's comment questioning whether pdas reach germ cell tissue and cause chromosomal aberrations by adding chromosomal aberration testing in mice to the proposed testing. The mouse is proposed as a test species for the *in vivo* tests because *m*-pda has been shown to accumulate in mouse testicular tissue (Refs. 6 and 7). These data, combined with the negative dominant lethal data in the rat, support using the mouse as the species of choice for further chromosomal aberration testing (Refs. 25 and 26). The Agency is modifying its testing proposal for *m*-pda to include testing in the *in vivo* mammalian bone marrow cytogenetics test—chromosomal analysis (MBMC), in the mouse, according to 40 CFR 798.5385. If this test is positive, a mouse dominant lethal assay would be triggered, to be conducted according to 40 CFR 798.5450 (Figure 1 below). A positive dominant lethal assay would trigger a heritable translocation assay (subject to a public program review), to be conducted according to 40 CFR 798.5460. No further chromosomal aberration testing would be required if the MBMC is negative. As in EPA's original proposal, *m*-pda would also be tested in the SLRL assay, 40 CFR 798.5275, which if positive would, subject to a public program review, trigger MSL testing, in accordance with 40 CFR 798.5200.

The Agency continues to believe that the proposed triggers and upper-tier testing provide the most reliable description of the mutagenic potential of a chemical substance. EPA's rationale was discussed in its proposed TSCA section 4 rule for C–9's (50 FR 20662; May 17, 1985). Results from the SLRL and chromosomal testing would be included in the decision logic at the public program review stage of the weight-of-evidence determination of the need for the higher-tiered mutagenicity testing.

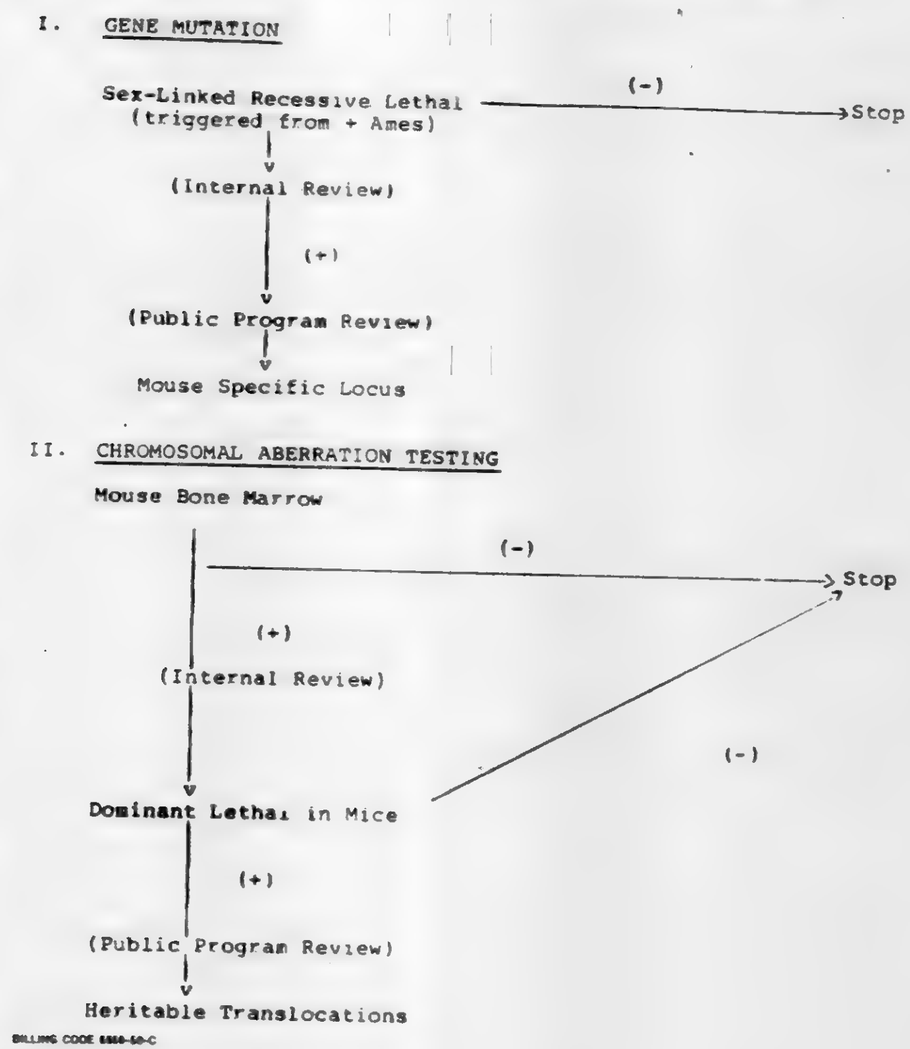
As to duPont's proposed testicular binding testing in rats (Ref. 2), the Agency would consider any additional DNA binding data submitted prior to the public program review stage of the process (Figure 1 below) as part of the total evaluation of the mutagenicity potential for *m*-pda. However, since this DNA binding test does not provide evidence for the potential heritability of any effects which may be demonstrated, the Agency does not believe this test should be part of the required test program for *m*-pda. DuPont also proposed that *m*-pda be tested in the rat, a species already shown to be negative with respect to the dominant lethal effect (Refs. 25 and 26). Therefore, the Agency is suggesting that the mouse be the species of choice for DNA binding studies, if industry elects to include results from this test for Agency consideration.

2. *Oncogenicity testing.* The proposal stated that oncogenicity testing of *m*-pda would be initiated if the SLRL were positive and the results from oncogenicity testing in progress in Japan were inadequate for Agency purposes.

In response to the public comments received, the Agency is proposing the additions to the mutagenicity testing program described above. EPA's standard chromosomal aberration testing scheme, as described in EPA's C9 rule (50 FR 20662; May 17, 1985) includes provisions for triggering oncogenicity testing from a positive *in vitro* cytogenetics test such as the Chinese hamster ovary (CHO) assay. Because a positive CHO is available (Ref. 25), EPA is proposing that the oncogenicity bioassay on *m*-pda be conducted without further triggering. However, the Agency is also proposing that review of all the available scientific evidence (including the results of the proposed mutagenicity testing program described in Figure 1 below and the oncogenicity study in progress in Japan) be concluded before the chronic assay is initiated. If, in EPA's judgment, the evidence indicates that *m*-pda oncogenicity potential is adequately characterized, the Agency proposes to solicit public comment on whether it should rescind the requirement for the oncogenicity test. If in EPA's judgment the evidence indicates a need for oncogenicity testing, the Agency will notify the test sponsors to initiate the chronic study by a certified letter or by notice in the **Federal Register**.

BILLING CODE 6560-50-M

Figure 1: PROPOSED MUTAGENICITY TESTING PROGRAM



BILLING CODE 6560-50-C

B. Summary of Neurotoxicity Issues

The January 1986 proposal stated that neurotoxicity testing was not being proposed for the pdas. The neurotoxicity concerns identified by the Interagency Testing Committee (ITC) were based upon the potential formation of methemoglobin in people exposed to pdas. Secondary effects from the methemoglobin development could include neurotoxic effects. Pda manufacturers supplied information showing that methemoglobinemia could not be documented in people working in the manufacture of these substances. Consequently the Agency did not propose neurotoxicity testing for pdas. Comments were received from the Neurobehavioral Toxicity Test Standard Committee (NTTSC), Psychopharmacology Division of the American Psychology Association (Ref. 14). The NTTSC argued that the pdas produce adverse effects on the central nervous system and that additional testing is necessary to characterize this damage.

NTTSC argued that the pdas could metabolize into chemicals which are highly reactive with tissue nucleophiles. This reactivity could lead to biological effects on the central nervous system. These potential effects could result in behavioral modifications at levels substantially below those that may cause methemoglobinemia. According to NTTSC, convulsive activity in humans resulting from chemical toxicity is already known to occur with some non-pdas at levels substantially below those which may cause methemoglobin formation. NTTSC states that 3 to 6 people per 1,000 are epileptic and that these people would be especially susceptible to potential convulsive agents. Both *m*-pda and *p*-pda have been reported to induce seizures in experimental animals.

NTTSC (Ref. 14) argued that there are enough people exposed and enough unsubstituted phenylenediamines production to warrant testing. NTTSC further argues that sufficient information exists to suggest the pdas may pose a risk of neurotoxic effects and therefore these tests should be included in the required testing program. NTTSC also suggested a strategy to evaluate neurotoxic potential which was discussed in detail in their comments. To support their arguments, NTTSC provided the following documentation.

Effects in humans caused by the pdas according to NTTSC include: sleepiness, headache, paresthesia, gastrointestinal irritation, changes in reflex excitability, increased respiration, body temperature, and pulse rate (Close, Ref. 18 and Berger, Ref. 19), and visual disturbances (Berger, Ref. 19).

Toxicity of *p*-pda in rabbits was studied by Erdmann and Vahlen (Ref. 15), Pollak (Ref. 16), and Puppe (Ref. 17). Oral administration, subcutaneous injection, or topical application resulted in both clonic and tonic spasms just prior to death. In dogs, both oral administration and subcutaneous injections resulted in lethargy followed by clonic and tonic spasms prior to death (Refs. 15 and 17). The dogs also demonstrated edema of the eyes, reddening of the conjunctiva (Ref. 15), exophthalmus and increased intraocular pressure (Ref. 17).

A major review article in the Journal of the American College of Toxicology provided additional information which indicates that *p*-pda interferes with the normal metabolism of isolated guinea pig brain tissue (Ref. 19). In mice, *p*-pda accumulated in the brain within 24 hours after application to shaved areas of the animals. The *p*-pda was not detected in brain tissue 48 hours after the treatment. In both humans and monkeys, *p*-pda in hair dyes accumulated in the hair shaft and was excreted in the urine of both species up to seven days after the application of the dye.

EPA has evaluated the NTTSC arguments and reviewed their submissions. Even though some of these data are over 50 years old, the Agency finds that (1) the manufacturing, processing, and use of the pdas may present an unreasonable risk of neurotoxic effects because as many as 1,000 workers involved in the manufacture, processing, and use of the three pda isomers are potentially exposed to all three isomers, and the data presented by NTTSC suggest that the pdas may cause acute and subchronic neurotoxic effects; (2) the data are insufficient to characterize the neurotoxic potential of the pdas; and (3) testing for neurotoxic effects is necessary to answer these questions.

Therefore, EPA is now proposing that all three pda isomers be tested for neurotoxic effects in rats in the neurotoxicity functional observational battery (FOB), according to 40 CFR 798.6050 and the motor activity test (MAT), according to 40 CFR 798.6200. These tests are designed to be conducted either independently or as an additional parameter of another acute or subchronic health effects test. Because no subchronic testing is being proposed, EPA is combining the FOB and the MAT to provide the neurotoxicity testing program specifically for the pdas. EPA is proposing that the pdas be initially tested for acute neurotoxic effects and that they be administered by oral exposure. Clinical observations would be made, at a minimum, before dosing and at 1, 4, 24, and 48 hours and at 7 days. Both positive and negative controls would be used and the dose range would be as required by the FOB, according to 40 CFR 798.6050. Motor activity would be measured at time of peak effects as determined using FOB. The two acute studies would be structured as described in 40 CFR 798.6200 and conducted so that the requirements of the two tests are not violated.

If positive neurotoxic effects are observed at 24 hours or later, a 90-day subchronic FOB, MAT, and neuropathology test would be conducted according to 40 CFR 798.6050, 798.6200, and 798.6400, respectively. At the end of the subchronic testing, animals would be sacrificed and the nervous tissue preserved for histopathological examination as described in 40 CFR 798.6400.

At the completion of the histopathological examination, data would be submitted to the Agency. The final report for the acute toxicity shall be received by EPA within 6 months, and those for subchronic neurotoxicity testing and neuropathological examination shall be received by EPA within 15 months of the effective date of the final test rule.

C. Summary of Chemical Fate Issues

The Agency states its findings in the January 1986 proposal that pdas may enter the aquatic environment in sufficient quantities and persist long enough that exposure to the pdas may present an unreasonable risk of injury to aquatic organisms. However, persistence data are lacking, and testing is therefore necessary to estimate pda persistence in ambient waters. The proposal presented a new test guideline, the indirect photolysis test, to predict removal of chemicals in ambient waters and proposed it as a test standard for pdas. The indirect photolysis test requires that humic acids be added to the test waters because humic acids may play a key role in indirect photolysis of pdas in the environment. Comments on the chemical fate testing were received from DuPont (Ref. 2).

DuPont argued (Ref. 2) that the aquatic oxidation rate study which it submitted on the three pda isomers closely parallels the conditions under which the aquatic toxicity studies (see Unit II.D below) were conducted and adequately simulate the removal of pdas from ambient waters by oxidation.

DuPont also believes humic acid is present in its well water. However, no documentation quantifying the humic acid was included in the oxidation rate studies. DuPont further argues that the oxidation rate studies in its submission included rate-constant determinations under both light and dark laboratory conditions and that the rate constants for each isomer were similar under both light and dark testing conditions. Also, duPont argued EPA did not provide reference to situations where oxidation occurs in the absence of light, to justify testing these chemicals in the dark. DuPont argues that under the conditions of its study, *p*-pda is so reactive in aqueous solutions that no additional significant information would be gained from the required testing.

EPA analyzed the oxidation rate studies and disagrees with duPont that the oxidation rate studies submitted in the public comments (Ref. 2) and EPA's proposed indirect photolysis study are comparable and that additional testing is not necessary.

The proposed indirect photolysis test measures oxidative rates: (1) In sunlight; (2) under controlled conditions to minimize, or eliminate, biodegradation, volatilization, sorption, etc.; and (3) in the presence of dissolved humic acids, a critical ingredient in indirect photolysis (oxidation). DuPont measured loss of pdas under conditions with fluorescent light, no dark controls, and no dissolved humic acids. Fluorescent light does not resemble sunlight in wavelength distribution and light intensity. Dissolved humic acids play a key role in indirect, oxidative photolysis of the pdas in the environment and were not included in duPont's studies in measured quantities.

The duPont data from the experiments on *o*-, *m*-, and *p*-pda in Haskell well water were fitted to a first-order loss of diamine at the initial diamine concentration of 2.5 and 25 mg/L. For all three isomers, the half-life increased at the higher concentration. In a first-order rate process, the half-life is independent of the concentration of the substrate. Biodegradation probably did not play a role in the results for *p*-pda, since microbial counts were relatively low and the duration of the experiment was 8 hours. However, for *m*- and *o*-pda biodegradation may have had significant influence on the results since the microbial counts were relatively high and the experimental duration of 21 days was quite long. In all experiments, the loss of diamine was all that was demonstrated. In no case was it shown that decomposition products were formed. Consequently, EPA is unsure that oxidation of the diamine was being measured in these experiments.

In the experiments measuring loss of *p*-pda in Delaware River water, diamine loss was measured with and without aeration and the half-lives were very similar (aerated half-life was approximately 4.0 hours and the non-aerated half-life was approximately 4.7 hours). If oxidation had occurred, the aerated sample of *p*-pda should have decomposed considerably faster than the non-aerated sample.

Consequently, the Agency has not received any information in the public comments which causes it to modify the indirect photolysis testing proposed and thus continues to propose that it be conducted.

D. Summary of Aquatic Toxicity Issues

EPA proposed aquatic toxicity testing for all three isomers, according to a specific environmental effects testing scheme. Positive results would trigger additional acute or chronic testing. Comments were received from duPont (Ref. 2) and Dow (Ref. 21) addressing the aquatic toxicity program for pdas.

DuPont argued that the aquatic toxicity data submitted in October 1985 (Ref. 22) are sufficient to characterize the aquatic toxicity of all three isomers. Moreover, duPont argued the use of fathead minnow and static test systems provided useful data, as indicated by the broad range of sensitivity exhibited by the fathead minnow to these three isomers and the extreme sensitivity of the minnow to *p*-pda. In claiming that testing in more than one fish species was unnecessary, duPont calculated predicted environmental concentrations (PEC) of 3.5 ppd and 6.5 ppb for *o*- and *m*-pda from the data submitted in October 1985 (Ref. 23). Application of 100X and 1,000X PEC as prescribed in the proposed rule led DuPont to conclude that no additional fish toxicity testing would be triggered. DuPont also argued in response to issues raised in the proposal, that if fish testing was necessary, precedent for using freshwater fish toxicity studies to predict chemical toxicity to brackish and saltwater fish has been adequately established in the open literature. Therefore, duPont contended no testing in saltwater fish could be justified.

EPA agrees that for pdas, testing of brackish or saltwater organisms is not necessary since pdas are not expected to enter saltwater and is therefore now proposing that any testing of pdas in fish be conducted only in freshwater species. However, EPA disagrees that testing only in fathead minnows adequately characterizes the toxicity of pdas in aquatic vertebrates.

The Agency has evaluated the acute aquatic toxicity data submitted by duPont for *o*-, *m*-, and *p*-pda in fish, invertebrates, and algae in the following Table 1, and believes that additional aquatic toxicity testing in necessary for all three isomers.

TABLE 1.—Acute Toxicity of PDAS to Aquatic Organisms (ppm)

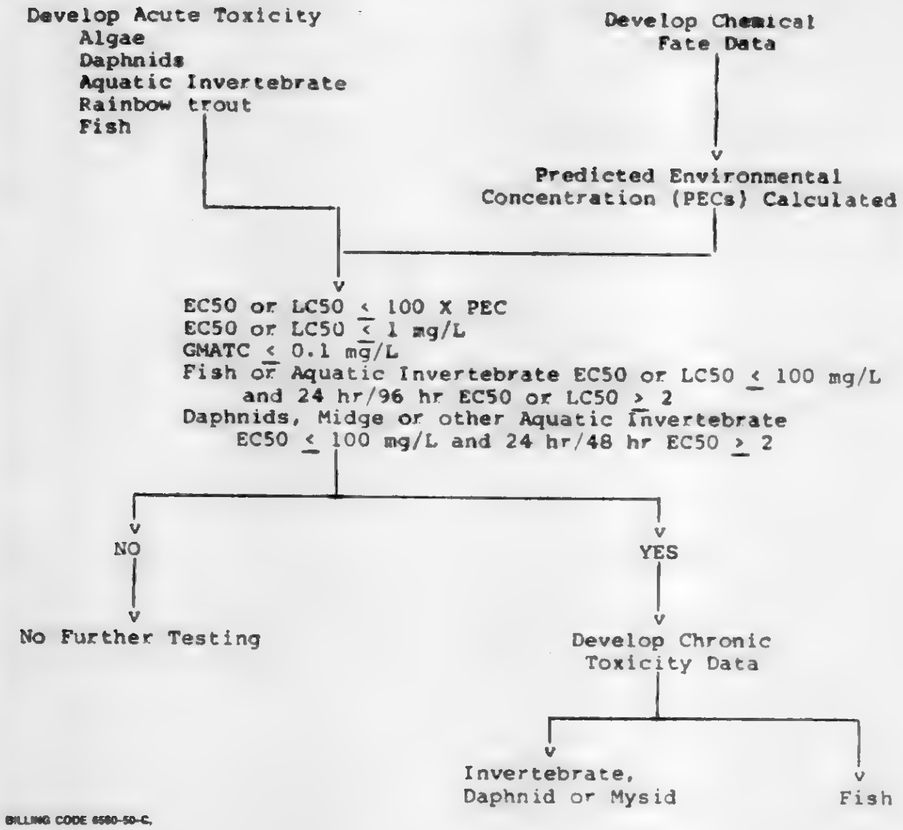
Substance	Aquatic organisms		
	Fathead minnow (FM)	Daphnia magna (DM)	Scenedesmus quadricauda
p-pda	44	0.88	0.16
m-pda	1814	5.9	2.4
o-pda	0.057	0.28	0.26

(Ref. 22)

The inconsistencies in the toxicity data between chemicals and among organisms also leads EPA to propose refined decision criteria for aquatic testing in the following (Figure 2).

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Figure 2 -- PROPOSED PDA DECISION LOGIC FOR DEVELOPING DATA FOR AQUATIC ORGANISMS



BILLING CODE 6560-50-C

These data demonstrate that for unsubstituted pdas there are large differences in LC50 values in the different species tested. Because of these large differences, the decision criteria in Figure 2, and the requirements outlined in the NPRM, the Agency believes that additional data should be developed for pdas.

Both DuPont (Ref. 2) and Dow (Ref. 21) argued that *Gammarus* is an inappropriate test species for two reasons: *Daphnia* tend to be a more sensitive species than *Gammarus;* and the gammarid test has not been subjected to the same intense peer review as the daphnid test. They therefore contend that any data generated by the required testing would provide little useful information for hazard assessment at this time.

EPA has used toxicity data developed for *Gammarus* as part of its evaluation of chemical impact on aquatic systems; examples are included as references 31, 32, and 33, and more recent examples of *Gammarus* being tested for toxic effected are included as references 27, 28, 29, and 30. Industry did not provide data which showed *Gammarus* to be an inadequate test organism. EPA finds no evidence to cause it to modify its proposed use of *Gammarus* as a test species.

DuPont further argued that the chronic *Daphnia* test submitted by duPont (Ref. 22) is adequate to judge the chronic toxicity of *m*-pda to the animals, and therefore no additional testing is needed.

EPA believes that the toxicity of *m*-pda to aquatic invertebrates is still inadequately characterized and that the proposed testing (below) in both *Daphnia* and *Gammarus* is necessary to adequately characterize differences in species sensitivity to *m*-pda.

DuPont (Ref. 2) also argued that the flow-through system required by EPA's proposed test standards would not provide different information from the static data which they submitted since these chemicals, especially *m*-pda, are very volatile and under flow-through systems these substances would rapidly assume the same levels as those found in the static test systems. DuPont further argues that the flow-through system would create logistical problems with *Daphnia* testing, namely, loss of animals resulting from flushing the test chambers with fresh test water.

EPA disagrees that static systems would be better for testing the pdas in aquatic systems. Flow-through systems are designed to maintain constant exposure levels to unstable chemicals and are therefore being proposed for the testing described below. However, the Agency recognizes that several of the static acute toxicity tests indicate that *o*- and *p*-pdas are highly toxic to selected organisms, and to repeat the acute toxicity testing of *o*- and *p*-pdas using the same organisms and flow-through conditions would not be a cost-effective use of resources. Therefore, EPA is proposing certain additional tests as described below.

In response to EPA's request for comment on the appropriateness of using one isomer as a surrogate for testing toxicity of the pdas, duPont contends that sufficient acute toxicity data are available for all three isomers and that the chronic data for *m*-pda are adequate for making a prediction of chronic toxicity for this category of chemicals. The data submitted by duPont indicate that the toxicity of the three isomers may vary widely among the species tested and that *o*- and *p*-pda may be more toxic than *m*-pda. Consequently, the Agency disagrees that the chronic toxicity of *m*-pda to either fish or invertebrates would provide an adequate prediction of the chronic toxicity of the other isomers to these organisms, and is therefore proposing chronic toxicity testing for any of the isomers which meet the decision criteria for triggering chronic testing.

The Agency is proposing that *p*-pda be tested for acute toxicity with rainbow trout and *Gammarus* in accordance with 40 CFR 979.1400 and 795.120, respectively. On the basis of LC50 values, early lifestage testing would be conducted with the more sensitive fish (fathead minnow or rainbow trout) in accordance with § 797.1600. The concentration of pda would be measured before, during, and at the end of testing. The results from the acute studies on *p*-pda would be incorporated into the pda test scheme to determine whether all chronic toxicity testing is triggered and the appropriate organism(s) in which to conduct the chronic testing.

The Agency is proposing that *o*-pda be tested for acute toxicity with the rainbow trout and *Gammarus*, in accordance with 40 CFR 797.1400 and 795.120, respectively. Using the fathead minnow LC50 value, and the 24/96 hr LC50 ratio to be calculated from the testing data, early life stage testing would be conducted with the more sensitive fish (fathead minnow or rainbow trout) in accordance with 40 CFR 797.1600. The concentration of *o*-pda would be measured during and at the beginning and end of the study. The results from the acute studies on *o*-pda would be incorporated into the pda test scheme to determine whether chronic toxicity testing is triggered and the appropriate organism(s) in which to conduct the chronic testing.

The Agency is proposing that *m*-pda be tested for acute toxicity with the rainbow trout and the *Gammarus* in accordance with 40 CFR 797.1400 and § 797.120 respectively. *m*-Pda is moderately toxic to *Daphnia*. During the acute toxicity study, the concentration of *m*-pda was 63 percent of the nominal concentration at 48 hours. The Agency requires these tests to be repeated when the measured concentration is substantially less than the nominal concentration, unless a decision criterion is satisfied that requires a subsequent test to be conducted. Since the *Daphnia* EC50 < 100 × PEC, the Agency is proposing to require a *Daphnia* chronic test to be conducted in accordance with 40 CFR 797.1330. Although duPont submitted chronic data for *Daphnia*, they are inadequate for regulatory purposes because an acceptable MATC was not determined.

Testing of all three isomers would be conducted in flow-through systems. Reporting requirements would remain as in the January 6 proposal.

E. Issues for Comment

The Agency solicits comments on issues related to the proposed environmental effects testing scheme and for the proposed neurotoxicity and mutagenicity testing.

1. Dow (Ref. 21) argued that more scientific rationale is needed for justification of the decision criteria (i.e., 100 X) proposed for triggering additional testing in Figure 2 above.

The Agency recognizes that decision criteria have certain weaknesses and that toxic effects for different classes of chemicals in different species of organisms may vary widely. Toxic effects may also vary widely within specific categories of chemicals, as is the case for pdas. However, the Agency believes that the decision criteria in the testing scheme presented in Figure 2 are adequate for purposes of this rule. If data exist which support use of different decision criteria for more efficient assessment of chemical toxicity to the environment, the Agency encourages submission of these data during this extension of comment for the pdas proposed test rule.

2. EPA is considering expanding the analytical portion of the *p*-pda aquatic toxicity testing by requiring a quantitative analysis of the breakdown products present in the test solution at the onset and termination of the acute test. The acute toxicity data submitted by DuPont for *p*-pda indicated continued toxic effects throughout the 96-hour test

period at levels below the detection limit for this substance. The Agency is concerned that either *p*-pda is extremely toxic to aquatic organisms of that it is oxidized very rapidly into toxic compounds which are causing the observed toxicity. The Agency believes that the mode of toxicity for *p*-pda should be identified. Consequently, the Agency is soliciting comment on the degree of sensitivity of current analytical techniques and whether they could be modified to provide more sensitive detection of *p*-pda. The Agency is also requesting comments on the analytical methodology for the *p*-pda oxidation products, their level of sensitivity, and the materials balance necessary to account adequately for the *p*-pda added to the test chamber.

3. Neurotoxicity testing has been proposed for *o*-, *p*- and *m*-pda. The Agency solicits comments on the testing program presented above.

4. The mutagenicity testing program for *m*-pda has been modified to include chromosomal aberration testing in the mouse. Comments are sought on the addition of the chromosomal aberration testing and the selection of the mouse as the test species.

F. Reporting Requirement

The January 6, proposed rule for pdas contains language about the submission of study plans, for some tests, that applies only to two-phase rules. In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors for pdas would be required to submit individual study plans at least 45 days before the initiation of each study.

III. Economic Analysis of Proposed Rule

EPA has analyzed the potential economic impact of the total testing program proposed for all three isomers. The estimated costs for testing *p*-, *m*-, and *o*-pda, assuming maximum testing, are $182,000, $1,330,000, and $182,000, respectively, or an estimated total cost for all three isomers of $1.69 million. The total estimated annualized cost (7 percent interest for 15 years) is $186,000. Based upon 1984 production figures of 35 million pounds, the total unit cost of testing is estimated to be 0.0053 $/lb. The worst-case estimated costs of testing as percentages of current market price for *p*-, *m*-, and *o*-pda are 0.13, 0.26, and 0.16 percent, respectively. This is not considered to be a significant economic impact.

IV. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42008D). This record includes all information considered in the development of the proposed rules and appropriate **Federal Register** notices. The Agency will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the January 6 proposal plus the following information:

(1) Notice of Proposed Rulemaking, unsubstituted phenylenediamines (51 FR 472).

(2) DuPont. "Comments of E.I. DuPont de Nemours & Co., Inc., Wilmington, Delaware 19898. 40 CFR Parts 790, 797, & 799. Unsubstituted Phenylenediammes—Proposed Test Rule. Document Control No. OPTS–42008B." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1986.

(3) Lee, W.R., S. Abrahamson, R. Valencia, E.S. von Halle, F.E. Wurgler, and S. Zimmering. "The sex-linked recessive lethal test for mutagenesis in *Drosophila melanogaster*. A report of the U.S. Environmental Protection Agency Gene-Tox Program." *Mutation Research*. 123:183–279.

(4) Vogel, E.W., H. Frei, M.K. Fujikawa, et al. "Summary report on the performance of *Drosophila* assays." In *Progress in Mutation Research*. Vol. 5. Elsevier, Amsterdam. J. Ashby and F.J. deSerres. pp. 47–57. 1985.

(5) Vogel, E.W., J.A. Zijlstra and W.G.H. Blijleven. "Mutagenic activity of selected aromatic amines and polycyclic hydrocarbons in *Drosophila melanogaster*." *Mutation Research*. 107:53–77. 1983.

(6) Seiler, J.P. "Inhibition of testicular DNA synthesis by chemical mutagens and carcinogens. Preliminary results in the validation of a novel short term test." *Mutation Research*. 46: 305–310. 1977.

(7) Tanaka N. and M. Katoh. "Unscheduled DNA synthesis in the germ cells of male mice *in vivo*." *Japanese Journal of Genetics*. 54(6): 405–414. 1979.

(8) Picciano, J.C., W.E. Morris, S. Kwan, and B.A. Wolf. "Evaluation of teratogenic and mutagenic potential of the oxidative dyes, 4-chlororesorcinol, *m*-phenylenediamine, and pyrogallol." *Journal of the American College of Toxicology*. 2(4): 325–333. 1983.

(9) Ashby, J. "Gonadal genotoxicity assays as practical surrogates for germ-cell mutagenicity assays." *Environmental Mutagenesis*. 7: 263–266. 1985.

(10) First Chemical Corporation. "Response to proposed test rule on unsubstituted phenylenediamines by Sorell L. Schwartz, Ph.D., Georgetown University." Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1986.

(11) Holland, J.M., D.G. Gosslee and N.J. Williams. "Epidermal carcinogenicity of bis(2,3-epoxycyclopentyl) ether, 2,2-bis(*p*-glycidyloxyphenyl)propane, and *m*-phenylenediamine in male and female C3H and C57BL/6 mice." *Cancer Research*. 39: 1718–1725. 1979.

(12) Burnette, C., B. Lanman, R. Giovacchini, et al. "Long-term toxicity studies on oxidation hair dyes. *Food and Cosmetic Toxicology* 13:353–357. 1975.

(13) Weisburger, E.K., A.B. Russfield, F. Hamburger, et. al. "Testing of twenty-one environmental aromatic amines and derivatives for long-term toxicity or carcinogenicity." *Journal of Environmental Pathology and Toxicity*. 2: 325–356. 1978.

(14) Comment on the proposed test rule for the unsubstituted phenylenediamines (51 FR 472: January 6, 1986). Cover Memo: Psychopharmacology Division of the American Psychological Association. Ronald W. Wood, Chairman. Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency. 1985.

(15) Erdmann, E. and E. Vahlen. "On the effects of *p*-phenylenediamine and quinonediamine." *NS Archive fur Experimentelle Pathologie und Pharmakologie* 401–418. 1905. (German with English translation)

(16) Pollak, E. "A Case of Paraphenylene Diamine Poisoning." *Wiener Klinishe Wochenschrift*, 31: 712–715. 1900. (German with English Translation)

(17) Puppe, E. "On Paraphenylene Intoxication." *New York Academy of Medicine*. 116–127. 1896. (German with English translation)

(18) Close, W.J. "A case of poisoning from hair dye (paraphenylenediamine)." *Medical Journal of Australia*. January 9: 53–54. 1932.

(19) Berger, E. "Visual disturbance due to the use of hair dye containing anilin." *Archives of Ophthalmology*. 38: 397–400. 1909 (July).

(20) Final Report on the Safety Assessment of *p*-Phenylenediamine. *Journal of the American College Toxicology*. 4(3): 203–286. 1985.

(21) Dow Chemical Co. Letter from Carlos M. Bowman, Ph.D. "Response to Notice of Proposed Rule Making." Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. March 12, 1986.

(22) DuPont. Voluntary submission by E.I. DuPont de Nemours & Co., Inc., of aquatic toxicity testing. Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. 1985.

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(24) Ishidate, Jr. M. and K. Yoshikawa "Chromosomal aberration tests with Chinese hamster cells *in vitro* with and without metabolic activation. A comparison study on mutagens and carcinogens" *Archives of Toxicology* (Suppl. 4): 41–44. 1980.

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(26) Shea, C.W. and S. Green. "Dominant lethal assay of some hair-dye components in random-bred male rats." *Mutation Research*. 66: 85–88. 1979.

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(28) Sanders, H.O., J.B. Hunn, E. Robinson-Wilson, and F.L. Mayer. "Toxicity of seven potential polychlorinated biphenol substitutes to algae and aquatic invertebrates." *Environmental Toxicology and Chemistry*. 4(2):149–154. 1985.

(29) Nebeker, A.V., M.A. Cairns, J.H. Gakstatter, et al. "Biological methods for determining toxicity of contaminated freshwater and sediments to invertebrates." *Environmental Toxicology and Chemistry*. 3(4):617–630. 1984.

(30) Ewell, W.S., J.W. Gorsuch, R.D. Kringle, et al. "Simultaneous evaluation of the acute effects of chemicals on seven aquatic species." *Environmental Toxicology and Chemistry*. 5(9):831–840. 1986.

(31) U.S.E.P.A. "Ambient water quality criteria for aldrin/dieldrin." U.S. Environmental Protection Agency. EPA 440/5–80–019. 1980.

(32) U.S.E.P.A. "Ambient water quality criteria for toxaphene." U.S. Environmental Protection Agency. EPA 440/5–80–076. 1980.

(33) U.S.E.P.A. "Ambient water quality criteria for polychlorinated biphenyls." U.S. Environmental Protection Agency. EPA440/5–80–068. 1980.

(34) Brooke, L.T., D.J. Call, D.L. Geiger, and C.E. Northcott (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume I." Center for Lake Superior Environmental Studies, University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1984.

(35) Geiger, D.L., C.E. Northcott, D.J. Call, and L.T. Brooke (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume II." Center for Lake Superior Environmental Studies, University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1985.

(36) Geiger, D.L., S.H. Poirier, and D.J. Call (eds). "Acute toxicities of organic chemicals to fathead minnows. Volume III." Center for Lake Superior Environmental Studies. University of Wisconsin-Superior, Superior, Wisconsin. 54880 (Available for purchase from Center for Lake Superior Environmental Studies 715/394–8426). 1986.

(37) Significant new uses of chemical substances; General Provisions for New Chemical follow-up (52 FR 15594; April 29, 1987).

(38) U.S.E.P.A. "Testing costs for unsubstituted Pdas." Computer printout. U.S. Environmental Protection Agency. November 13, 1986.

Dated: December 30, 1987.

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In proposed § 799.3300 by adding new paragraphs (c)(1)(i) (C), (D), and (E) and (c)(3) and (*f*) and by revising the following paragraphs: (c)(1)(ii) and (2); (e)(1)(i) (A), (B), and (C); (e)(1)(ii)(C); (e)(2)(i) (A) and (B); and (e)(2)(ii)(C), to read as follows:

§ 799.3300 Unsubstituted phenylenediamines.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) The *in vivo* mammalian bone marrow cytogenetics test; chromosomal analysis (MBMC) shall be conducted in the mouse on *m*-pda in accordance with § 798.5395 of this chapter.

(D) If the MBMC conducted pursuant to paragraph (c)(1)(i)(C) of this section is positive, the dominant lethal assay (DL) in mice shall be conducted on *m*-pda in accordance with § 798.5450 of this chapter.

(E) If the DL conducted pursuant to paragraph (c)(1)(i)(D) of this section is positive, heritable translocation (HT) testing in the mouse on *m*-pda shall be conducted in accordance with § 798.5460 of this chapter, if after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that testing shall be initiated.

(ii) *Reporting requirements.* (A) The final results and final report for the SLRL assay and the MBMC assays shall be submitted to EPA no later than 12 months after the effective date of this section.

(B) The final results and final report of the DL and the mouse specific-locus tests shall be received by EPA no later than 48 months after the effective date of this section.

(C) The final results and the final report of the HT shall be received by EPA no later than 36 months after the effective date on which EPA notifies the test sponsor under paragraph (c)(1)(i)(E) of this section to begin testing.

(D) Interim reports for the SLRL assay, MBMC, DL, HT, and mouse specific-locus studies are required at 6-month intervals beginning 6 months after the effective date of this section or the date of notification by EPA that testing shall be initiated and ending when the final report is submitted.

(2) *Oncogenicity*—(i) *Required testing.* A 2-year dermal oncogenicity bioassay shall be conducted with *m*-pda in both rats and mice in accordance with § 798.3320 of this chapter if *m*-pda yields positive test results in: the SLRL test conducted pursuant to paragraph (c)(1)(i)(A) of this section, or the MBMC and DL tests conducted pursuant to paragraphs (c)(1)(i)(C) and (c)(1)(i)(D) of this section if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(ii) *Reporting requirements.* (A) The final results and final report for the oncogenicity bioassay shall be submitted to EPA no later than 53 months after the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (e)(2)(i) of this section that testing shall be initiated.

(B) Interim progress reports for the oncogenicity bioassay shall be submitted every 6 months after notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated and ending when the final report is submitted.

(3) *Neurotoxicity*—(i) *Required testing.* (A) Acute neurotoxicity testing in the neurotoxicity functional observational battery (FOB) in accordance with § 798.6050 of this chapter, and the motor activity test (MAT) in accordance with § 798.6200 of this chapter, shall be conducted simultaneously in the same animals. Each isomer, *o*-, *m*-, and *p*-pda, shall be tested in the FOB and MAT. The test substances shall be administered as a single oral dose in mice. Clinical observations shall be made at a minimum of 1, 4, 24, and 48 hours and at 7 days after dosing.

(B) If neurotoxic effects are observed at 24 hours, or longer, during the testing conducted pursuant to paragraph (c)(3)(i)(A) of this section, then 90-day subchronic neurotoxic FOB, MAT, and neuropathology shall be conducted in accordance with §§ 798.6050, 798.6200, and 798.6400 of this chapter, respectively, for each pda isomer showing such effects. At the end of the subchronic tests, the animals shall be sacrificed and the nervous tissue preserved and examined as described in § 798.6400 of this chapter.

(ii) *Reporting requirements.* (A) The final data and final report for the acute neurotoxicity testing shall be submitted to the EPA no later than 6 months after

V. Other Regulatory Requirements

The Agency discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the January 1986 proposal, and no changes are indicated for this notice.

List of Subjects in 40 CFR Part 799

Chemicals, environmental protection, hazardous substances, reporting and recordkeeping requirements.

the effective date of this section. If triggered, the final report for the subchronic neurotoxicity testing and neuropathological examination shall be submitted to the EPA no later than 15 months after the effective date of this section

(B) [Reserved]

* * * * *

(e) * * *

(1) * * *

(i) * * *

(A) Flowthrough fish acute toxicity tests (LC50) in the rainbow trout (*Salmo gairdneri*) shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 797.1400 of this chapter.

(B) Acute flow-through studies on the fresh water invertebrate *Gammarus* shall be conducted with *o*-, *m*-, and *p*-pda in accordance with § 795.120 of this chapter.

(C) If the concentration affecting 50 percent of the population (EC50) for any study conducted pursuant to paragraphs (e)(1)(i)(A) and (B) of this section is less than or equal to 100 X Predicted Environmental Concentration (PEC), less than or equal to 1 milligram/liter (mg/L), or less than or equal to 100 mg/L and shows indications of chronicity, chronic toxicity testing shall be conducted pursuant to paragraph (e)(2) of this section. Indications of chronicity shall be the following: for fish or aquatic invertebrates, the ratio of 24 hr/96 hr LC50 is greater than or equal to 2; for daphnids or gammarids, the ratio of 24 hr/48 hr LC50 is greater than or equal to 2.

* * * * *

(ii) * * *

(A) * * *

(B) * * *

(C) An interim report for each acute toxicity test is required 6 months after the effective date of this section.

(2) * * *

(i) * * *

(A) A fish early life cycle flow-through test shall be conducted in the most sensitive fish species, either *Pimephales promelas* or *Salmo gairdneri*, with each isomer, *o*-, *m*-, and *p*-pda, demonstrating an LC50, determined by testing of fish pursuant to paragraph (e)(1)(i)(A) of this section, equal to or less than 100 X PEC; less than 1 mg/L; or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(C) of this section. Testing shall be conducted in accordance with § 797.1600 of this chapter.

(B) An invertebrate life cycle flow-through toxicity test shall be conducted in *Daphnia magna* for each of the *o*-, *m*-, or *p*-pda isomers demonstrating an EC50, determined by testing of invertebrates pursuant to paragraph (e)(1)(i)(B) of this section, equal to or less than 100 X PEC, or less than 1 mg/L, or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(D) of this section. Testing shall be conducted in accordance with § 797.1330 of this chapter.

(ii) * * *

(C) Progress reports shall be submitted at 6-month intervals beginning 6 months after the submission of acute toxicity testing which triggers the chronic toxicity test requirement and ending when the final report is submitted.

* * * * *

(f) *Effective date.* The effective date of this section shall be [44 days after the date of publication of the final rule in the **Federal Register**].

[Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070-0033]

[FR Doc. 88-633 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 7

Nondiscrimination on the Basis of Age in Program or Activities on the Basis of Age in Financial Assistance from FEMA

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: These proposed regulations implement provisions of the Age Discrimination Act of 1975, and the general government wide regulation, codified at 45 CFR Part 90.

The Age Discrimination Act of 1975 (hereinafter "the Act") prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

These regulations are designed to guide the actions of recipients of financial assistance from FEMA. The regulations incorporate the basic standards for determining age discrimination, which are set forth in the general regulations, 45 CFR Part 90. They discuss the responsibilities of FEMA recipients and the investigations, conciliation and enforcement procedures FEMA will use to ensure compliance with the Act.

DATE: Comments are due March 14, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Curran, Director of Personnel and Equal Opportunity, Room 8110, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3962 (Voice), (202) 646-4117 (TTD).

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The preamble containing supplementary information is divided into the following four sections:

I. Background—provides a brief history of the development of the Act and these regulations.

II. Regulatory procedures—explains compliance with various regulatory requirements.

III. Overview of the Regulations—summarizes the contents of the regulations.

IV. Important questions about the Regulations—answers various questions raised during the development of these regulations.

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Act prohibits discriminating on the basis of age in all programs and activities receiving federal financial assistance.

The Act prohibits recipients of federal financial assistance from taking actions that result in denying or limiting services or otherwise discrimination on basis of age. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

Like other civil rights statutes, the Act applies only to programs or activities in which there is an intermediary (recipient) standing between the federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the Social Security program in which federal funds flow directly and unconditionally from the federal government to the individual beneficiary of those funds.)

Prior to the development of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally-funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published a second part of its study in January 1979. The Act also required each affected federal agency to respond to the Commission's findings and recommendations, and provided time for the Congress to consider amendments to the Act.

After receipt of the report from the Commission on Civil Rights and the federal agency responses to that report, the Congress considered amendments to the age Discrimination Act. In October 1978, Congress amended the Act (Pub. L. 95-478). The amendments: (1) Added a private right of action to the Age Discrimination Act; (2) provided a mechanism for the disbursal to alternate recipients of funds that have been withheld under the Age Discrimination Act; (3) added a requirement that the Department of Health, Education and Welfare (HEW) (now the Department of Health and Human Services, HHS) approve the final regulations of other federal agencies; (4) made the effective date of regulations implementing the Act no earlier than July 1, 1979; (5) required annual reports to the Congress on progress to implementing the Act; and (6) removed the word "unreasonable" from the Act's statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the 1975 Act. The amended Act continues to apply to persons of all ages.

The Act requires HHS to issue proposed and subsequent final general regulations setting standards to be followed by all federal departments and agencies in implementing the Act. HEW issued proposed general regulations on December 1, 1978 and final general regulations on June 12, 1979. Those general regulations and the prohibition against age discrimination became effective on July 1, 1979.

The Act requires each department or agency which operates programs of federal financial assistance to issue proposed and final regulations consistent with the general regulations. The Secretary of HHS must approve all agency and department regulations.

II. Regulatory Procedures

Impact Analysis-Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more—or certain other specified effects. FEMA concludes that the regulations implementing the Age Discrimination Act are not a major rule within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of these small entities," an analysis must be prepared describing the rule's impact on these small entities. "Small entities" are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. Based on the cost analysis of the age regulations, FEMA finds that the effect of the age regulations on small entities is minimal. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act and Recordkeeping and Reporting Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 3067-0177.

III. Overview of the Regulations

The following paragraphs summarize the text of the proposed FEMA age discrimination regulations and explain any changes that have been made as a result of the public participation process. The final regulations are divided into 4 subparts:

Subpart A—General

Subpart B—Standards for Determining Age Discrimination

Subpart C—Duties of FEMA Recipients

Subpart D—Investigation, Conciliation and Enforcement Procedures

Subpart A—General

Subpart A explains the purpose of the FEMA age discrimination regulations, which is to set out the Agency's policies and procedures under the Act and the general regulations. (§ 7.910) These regulations apply to each FEMA recipient and to all programs or activities receiving financial assistance from FEMA. (§ 7.911)

Although the Act generally covers all programs and activities that receive federal financial assistance, it does not apply to any age distinction "established under authority of "any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are "established under authority of any law" continue in use. These regulations adopt without change the definition of "any law" established in the general regulations. Therefore, these regulations do not apply to age distinctions contained in federal statutes, state statutes or local statutes or ordinances adopted by elected, general purpose legislative bodies. (§ 7.911)

The Act also excludes from its coverage most employment practices. However, the Age Discrimination in Employment Act (ADEA), administered by the Equal Employment Opportunity Commission (EEOC), continues to be the federal statute that prohibits employment discrimination against most persons of the age of 40 or older. Subpart A also defines terms used in these regulations. (§ 7.912)

Subpart B—Standards for Determining Age Discrimination

Subpart B of these regulations incorporates the basic standards for determining what constitutes age discrimination that are set out in the general regulations.

The regulations state that no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subject to discrimination under, any program or activity receiving federal financial assistance. (§ 7.920)

The specific prohibited actions are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (44 CFR Part 7). As a general rule, separate or different treatment which denies or limits service from, or participation in, a program receiving federal funds is prohibited by these regulations.

The Act does include some exceptions to the general rule against age discrimination. The regulations provide definitions for two terms that are essential to an understanding of these exceptions: "normal operation" and "statutory objective." (§ 7.921)

The regulations adopt the four-part test established in the general regulations to determine when an explicit age distinction is necessary to the normal operation of a program or to

the achievement of a statutory objective of a program. The test (sec § 87.922 of the regulations) requires that: The age distinction be used as a measure of another characteristic(s); the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; the other characteristic(s) can reasonably be measured by age; and the other characteristic(s) is impractical to measure directly on an individual basis.

All parts of the test must be met for an explicit age distinction to satisfy one of these exceptions and to continue in use in a federally-assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in the administration of federally-assisted programs, when the recipient alleges the distinction is necessary to the normal operation or the achievement of a statutory objective of a program and when the age distinction is not specifically authorized by a federal, state or local statute.

Recipients of federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on *"reasonable factors other than age."* In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. The regulations require, however, that the factor bear a direct and substantial relationship to the program's normal operation or statutory objective. (§ 7.923)

These regulations place on the recipient of FEMA funds the burden of proving that an age distinction or other action falls within the exceptions discussed above. (§ 7.924)

There are three other instances in which FEMA recipient may use age distinctions that would otherwise be prohibited by the Act and these regulations: (1) A recipient may take voluntary affirmative action to overcome the effects of conditions that have resulted in limited participation in the recipient's program on the basis of age (§ 7.926); (2) a recipient may give special benefits to the elderly or to children (§ 7.926); and (3) a recipient may comply with distinctions contained in FEMA regulations. (§ 7.927)

Subpart C—Duties of FEMA Recipients

Subpart C explains the duties of FEMA recipients which are established by the general regulations.

FEMA recipients have primary responsibility to ensure that their programs and activities are in compliance with the Act, the general regulations and these regulations.

Where a FEMA recipient passes on financial assistance to sub-recipients, the recipient must notify sub-recipients of their obligations under the Act and its regulations. FEMA recipients must also inform beneficiaries about the protection provided by the Act and its regulations. (§ 7.931)

Each recipient of federal financial assistance must sign an assurance that it will comply with the Act and its regulations. (§ 7.932)

FEMA may require recipients employing the equivalent of 15 or more full-time employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the Agency. (§ 7.932)

Each FEMA recipient must keep records and make available to FEMA upon request information that FEMA determines is necessary to establish whether the recipient is in compliance with the Act and its regulations. Recipients must also allow FEMA reasonable access to books and records to the extent FEMA finds necessary to determine compliance with the Act and its regulations. (§ 7.933)

Subpart D—Investigation, Conciliation, and Enforcement Procedures

Subpart D of these regulations establishes the procedures FEMA will use in its investigation, conciliation and enforcement activities. These procedures are closely tied to requirements in the general regulations, primarily in Subpart D. Additional information on the filing of complaints and on mediation is provided in section IV of this preamble.

FEMA may conduct compliance or pre-award reviews or use other similar procedures to ensure compliance with the Act and its regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred. (§ 7.940)

Complaints of age discrimination may be filed with FEMA by an individual or a class or by a third party. The complaint must allege discrimination occurring on or after July 1, 1979. The complaint must be filed within 180 days from the date the complainant first knew of the alleged act of discrimination, although FEMA may extend this time limit for good cause. The filing date for a complaint will be the date upon which the complaint is sufficient to be processed. A complaint is deemed "sufficient" when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimination) upon which to begin an investigation. A complaint must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and be signed by the complainant. FEMA will notify the recipient and the complainant of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the process. FEMA will permit a complainant to add information to a complaint when necessary to meet the requirements of sufficient complaint. FEMA will return to the complainant any complaint that does not fall within the jurisdiction of the Act and will explain the reason(s) why the complaint is outside the jurisdiction of the Act. (§ 7.941)

FEMA will refer to mediation all sufficient complaints that fall within the coverage of the Act. On June 12, 1979, the Secretary of HEW designated the Federal Mediation and Conciliation Service (FMCS) to manage the mediation process which was established by the general regulations for all ADA complaints. Complainants and recipients are required to participate in the effort to reach a mutually satisfactorily mediated settlement of the complaint, although they need not meet with the mediator at the same time. Generally, mediation may last no more than 60 days from the date a complaint is filed with FEMA. The mediator will have the authority to terminate the mediation at any time before the end of the 60 day period if the process appears to have broken down. The mediator also has the authority to extend the 60 day mediation period where settlement is likely. A settlement based on terms satisfactory to both parties will be put in writing and sent to FEMA. FEMA will take no further action on a complaint that has been successfully mediated. The mediator will protect the confidentiality of all information obtained in the course of mediation. (§ 7.942)

FEMA will investigate complaints that are unresolved after mediation or are re-opened because the mediation agreement is violated. FEMA will first attempt to resolve the complaint through informal fact-finding. An agreement reached during information investigation will be signed by both parties and by a FEMA official. The agreement will not affect any other enforcement by FEMA. The settlement is not a finding of discrimination against a recipient. If these informal efforts do not succeed, FEMA will develop formal findings through further investigation of the complaint. (§ 7.943)

A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination. (§ 7.944)

The procedures for securing compliance with the Act and these regulations are taken from the general regulations. The procedures include termination of federal funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any federal, state or local government agency to correct a violation. These regulations include a provision for the deferral of new federal financial assistance from FEMA when termination proceeding are initiated. (§ 7.945)

FEMA will use the procedural provisions contained in the regulations implementing Title VI of the Civil Rights Act of 1964 to enforce the FEMA age discrimination regulations. These provisions are at 40 CFR 7.151 *et seq.* (§ 7.946)

When FEMA withholds funds from a recipient (according to the provisions of § 7.945), the Director may disburse those funds to an alternate recipient, except in the case of funds allocated pursuant to a Presidential declaration of disaster or emergency. The alternate recipient must demonstrate the ability to comply with these regulations and to achieve the goals of the federal statute which authorized the financial assistance. (§ 7.948)

Complainants may file civil actions as provided by law when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and FEMA has made no finding, or if FEMA issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. District Court where the recipient is located or transacts business. The complainant must indicate at the time the suit is filed if the attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipients is the subject of a pending action in any U.S. court. Complainants who wish to file an action must provide 30 days notice to the Attorney General, the Director, and the recipient. (§ 7.949)

IV. Important Questions About the Regulations

This section of the preamble answers various important questions about these regulations.

1. What Age Does the Act Cover?

Section 303 of the Act prohibits discrimination on the basis of age in federally-assisted programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its conference committee report that the Act is intended to apply to persons of all ages. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons originally suggested that HHS construe the general regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act. Thus, all regulations issued to implement the Act provide protection to persons of all ages.

2. When is the Prohibition Against Age Discrimination Effective?

The Act provides that its prohibition of age discrimination becomes effective upon the issuance of regulations. Section 304 provides for the issuance of age discrimination regulations in two phases:

(a) HHS publishes general, government-wide regulations to implement the prohibition against age discrimination in federally-assisted programs; and

(b) Each federal agency then publishes regulations specific to its programs and consistent with the general regulations.

The Act's prohibition of age discrimination became effective when the first set of regulations, the general regulations, became effect on July 1, 1979. The general regulations established standards for determining age discrimination and procedures for enforcing the Act. All federal agencies must adopt those standards in their agency—specific regulations.

3. Where Can Complaints of Age Discrimination Be Filed with FEMA?

Complaints involving FEMA recipients and beneficiaries should be sent to: Federal Emergency Management Agency, Office of Personnel and Equal Opportunity, 500 C Street SW., Washington, DC 20472.

Any complaint must allege age discrimination occurring after the date of final adoption of this rule. The complaint should: (a) Identify the parties involved; (b) give the date of the alleged violation or when the complainant first knew of the alleged violation; (c) generally describe what happend; and (d) be signed by the complainant.

FEMA screens all complaints and refers those that describe actions covered by the Act and contain the necessary information to the FMCS for mediation.

The Act states that a complainant may file a civil action 180 days from the date the complaint was filed with the federal agency if the agency has taken no action, or upon the date the agency makes a determination in favor of the recipient, whichever comes first. For purposes of exhaustion of administrative remedies within FEMA, the 180 day period will run from the date the complaint is filed with FEMA. In cases where FEMA has not taken final action on a complaint and 180 days elapse, the complainant retains the option of filing a civil action, or having FEMA continue to pursue the complaint through the administrative process. FEMA retains the option of continuing its enforcement activities even after a suit is filed.

4. What are the Rules Against Age Discrimination?

These regulations adopt without change the provisions against age discrimination from the general regulations. The general regulations provide that, except as provided in the Act and its regulations, "* * * No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." It means that unless permitted by one of the exceptions, recipients of FEMA assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything that is not permitted by one of the exceptions to deny or limit persons on the basis of their age in their efforts to participate in FEMA-assisted programs or activities.

The prohibition against age discrimination does not include an absolute prohibition against separate treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving financial assistance

from FEMA would be prohibited by these regulations. Separate or different treatment which does no deny or limit services is permitted. Separate or different treatment may be necessary to normal operation or to the achievement of a statutory objective by the recipient and may qualify as an exception under these regulations.

5. What is the Meaning of the Exception of Age Distinction "Established Under Authority of Any Law?

The Age Discrimination Act applies to all programs and activities that receive federal financial assistance. However, the Act does not apply to age distinctions "established under authority of any law" that provide benefits or establish criteria for participation on the basis of age or in age related terms. Age distinctions that qualify under this exception do not require further scrutiny under these regulations.

The regulations define the term "any law" to mean a federal, state or local statute or ordinance adopted by an elected, general purpose legislative body. This provision does *not* provide an automatic exemption for age distinctions that are contained in regulations or in ordinances enacted by bodies which are not elected or are special-purpose even though elected, such as state or local school boards.

The exemption for age distinctions "established under authority of any law" applies to both explicit uses of age (e.g., a statute that defines an adult to be a person over age 18) and the use of age-related terms (e.g., statutes that refer only to "adults" or "children" or "youths" without defining those terms explicitly). When a statute (federal, state or local) uses, but does not define, an age-related term, FEMA will accept reasonable definitions of those terms in regulations without further scrutiny. Thus, for example, FEMA would not ordinarily question a definition of "child" as a person up to age 18, but would seek further justification of the regulations which define "child" as a person up to age 30.

6. When is an Age Distinction Necessary to the Normal Operation or to the Achievement of a Statutory Objective of a Program or Activity?

These regulations incorporated from the general regulations the four-part test for determining when an explicit age distinction is necessary to the normal operation of a program or activity, or to the achievement of a statutory objection. FEMA will use this four-part test to scrutinize age distinctions imposed in the administration of federally-assisted programs, but which are not explicitly authorized by a federal, state or local statute or ordinance adopted by an elected, general-purpose legislative body. If the age distinction in question fails any part of the four-part test, the recipient of FEMA funds may not continue to use that age distinction.

The four-part test is designed to require careful scrutiny of age distinctions in programs receiving federal financial assistance and to weed out age distinctions that are neither directly related to an essential characteristic or a program not based on explicitly stated objectives of a law. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience, if this results in denial or limitation of services on the basis of age.

FEMA encourages its recipients to apply to every age distinction flexibility; that is, to permit a person who demonstrates eligibility to participate in the activity or program even though he or she would otherwise be barred by age distinction. Other things being equal, a distinction under review is more likely to qualify under any of the exceptions if it does not automatically bar all those who do not meet the age requirements.

7. When is the Use of a Factor Other than Age Exempted from the Coverage of These Regulations?

The Age Discrimination Act permits a recipient of federal funds to examine its use of factors other than age which have a disproportionate effect on the basis of age in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of a factor other than age is sufficiently related to achieving a legitimate program purpose and, therefore, justifies limiting or denying services or participation to persons disproportionately excluded because of age.

8. What are "Special Benefits" for the Elderly or Children?

These regulations incorporate the provision of the general regualtions permitting a recipient of a program to provide special benefits to children or the elderly.

The special benefits provision resulted from FEMA's encouragement of providing special benefits to children or the elderly. These special benefits often take the form of special discounts or reduced fees for the elderly in a federally-funded program.

In reviewing such special benefits in specific cases to insure that they are in fact consistent with the Act and Congressional intent, FEMA will consider the rationale for the special benefit, the effect on other individuals, and all other relevant factors.

The regulations leave to the reasonable discretion of the recipient the definition as to who qualifies as "children" or "the elderly" for purposes of receiving a special benefit.

9. What is the Effect of Age Distinctions Contained in FEMA Regulations?

Section 7.927 makes explicit what is implicit in § 90.32 of the government-wide regulation. Section 90.32 of the government-wide regulation establishes the mechanism for determining that age distinctions imposed by government agencies are consistent with the Age Discrimination Act and implementing regulations. Under this section, agencies must within 12 months review age distinctions imposed on recipients by regulations, policies and administrative practices. Each agency must then publish, for public comment, in the Federal Register a comprehensive accounting of all such age distinctions, listing those to be continued, the justifications for their continuance, those to be adopted by regulations, and those to be eliminated. After this 12-month period, agencies may not continue any age distinction that has not already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553. In addition, beginning with the effective date of an agency's final regulation, an agency may not impose a new age distinction unless it is adopted by regulation under the Administrative Procedure Act using these notice and comment procedures.

This comprehensive mechanism for carefully scrutinizing age distinctions imposed by federal agencies on recipients to insure their consistency with the Age Discrimination Act and implementing regulations is based upon public participation and the rule making process of the Administrative Procedure Act, through which the appropriateness and validity of any age distinction can be thoroughly evaluated. Implicit in this far-reaching mechanism is that age distinction contained in regulations adopted under the Administrative Procedure Act are entitled to a very strong presumption of permissibility. Section 7.927 makes this explicit by providing that any age distinctions contained in a rule or regulation issued by FEMA will be presumed to be within the statutory exemption applicable to actions necessary to the achievement of a statutory objective of the program to which the rule or regulation applies. This does not mean that such age distinctions are immune from additional scrutiny to insure their consistency with the Age Discrimination Act and implementing regulations, but that such further scrutiny will be under the general standards of the Act, rather than under the process established for previously unreviewed age distinctions, in which the recipient has the burden of proving tht the detailed standards contained in § 7.922 of the regulation have been met. Since the review process of rule making proceeding subjected the age distinctions to scrutiny on all possible bases, it is appropriate that any subsequent review be limited to determining violation of fundamental statutory requirements. This provision thus reaffirms that recipient upon whom age distinctions are imposed by FEMA regulations adopted pursuant to statutory authority and under the Administrative Procedure Act, as well as the public, can be assured that such age distinctions have been carefully considered and are believed by FEMA to be possible under the Age Discrimination Act and implementing regulations.

10. Do the Regulations Require Proportional Allocation of Services and Funds by Age?

Some believe that certain age groups, especially the elderly, do not get their "fair share" of funds or program slots in certain federally-funded programs. These persons argue that the serious under-representation of certain age groups in the allocation of program funds or services *is* age discrimination and should be prohibited by these regulations.

These regulations do *not* require proportional program participation by age or the proportional allocation of funds by age. However, disproportionate allocation of funds or program participation may be one element that triggers an examination of whether age discrimination exists in the federally-funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rate of participation, fund allocation, or services has nondiscriminatory causes.

11. How do these Regulations Require Mediation of Complaints?

FEMA supports mediation as an important innovation in the resolution of age discrimination complaints. The mediation process represents an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes indicates that the 60 days allowed for mediation will not significantly delay the enforcement process.

Mediation is being used with increasing success to resolve disputes between parties outside the traditional area of labor management negotiations. The most important feature of the mediation process is that it will be under the supervision of an impartial third party, a mediator assigned by the Federal Mediation and Conciliation Service (FMCS). FMCS was designated by the Secretary of HEW to mediate age discrimination complaints for all federal departments and agencies which distribute federal financial assistance. The mediator is in no way connected with HHS or the funding agency in the age discrimination dispute. Instead, mediators have been recruited and selected by the FMCS. Each mediator is assigned to the dispute by the FMCS without consultation with the FEMA.

The mediators have been specially trained in procedures for resolving disputes and in the requirements of the Age Discrimination Act and its implementing regulations. The mediator will contact the two parties and explain the procedures to both the complainant and the recipient. Mediation does not necessarily mean that the two parties to the dispute must meet face-to-face; each may meet separately or otherwise discuss the matter with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. A complainant who believes that he or she is not receiving full satisfaction in the mediation process need not agree to a settlement of the dispute. A complainant will have to wait no more than 60 days for the complaint to be returned to FEMA for its investigation to begin.

This 60 day period will count as part of the 180 days which FEMA has to resolve the complaint before a court action can be filed by the complainant. The 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines that agreement will likely be reached during the extended period.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the services of the mediator will be paid for by the federal government. The mediation itself is conducted in an informal atmosphere in which both sides attempt to resolve the dispute in a mutually satisfactory manner. This should encourage the parties to discuss their dispute without resoring to efforts to build a formal legal case.

FEMA believes that the Age Discrimination Act offers a unique opportunity to try this innovative approach to the resolution of disputes. The mediation process is being monitored very closely as it is used to resolve age discrimination complaints received by all recipients of federal financial assistance. The results of this evaluation will be reported by HHS as part of the required review of the effectivess of the general age discrimination regulations.

List of Subjects in 44 CFR Part 7

Aged, Civil rights.

The Federal Emergency Management Agency (FEMA) proposes to revise Part 7 of Title 44 of the Code of Federal Regulations as set forth below:

PART 7—NONDISCRIMINATION ON THE BASIS OF AGE IN FEMA PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

7.910 What is the purpose of the Age Discrimination Act of 1975?
7.911 What is the purpose of FEMA age discrimination regulations?
7.912 To what programs do these regulations apply?
7.913 Definition of terms used in these regulations.

Subpart B—Standards for Determining Age Discrimination

7.920 Rules against age discrimination.
7.921 Definitions of "normal operation" and "statutory objective."
7.922 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
7.923 Exceptions to the rules against age discrimination: Reasonable factors other than age.
7.924 Burden of proof.
7.925 Affirmative action by recipient.
7.926 Special benefits for children and the elderly.
7.929 Age distinction contained in FEMA regulations.

Subpart C—Duties of FEMA Recipients

7.930 General responsibilities.
7.931 Notice to subrecipients and beneficiaries.
7.932 Assurance of compliance and recipient assessment of age distinctions.
7.933 Information requirement.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

7.940 Compliance reviews.
7.941 Complaints.
7.942 Mediation.
7.943 Investigation.
7.944 Prohibition against intimidation or retaliation.
7.945 Compliance procedure.
7.946 Hearings, decisions, post-termination proceedings.
7.947 Remedial action by recipient.
7.948 Alternate funds disbursal procedure.
7.949 Exhaustion of administrative remedies.

Authority: 42 U.S.C. 6101, *et seq*; 45 CFR Part 90.

Subpart A—General

§ 7.910 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act also permits federally-assisted programs and activities, and recipients of federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 7.911 What is the purpose of FEMA age discrimination regulations?

The purpose of these regulations is to set out FEMA policies and procedures under the Age Discrimination Act of 1975 and the general government-wide regulations, 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance. The Act and the general regulations permit federally assisted programs, activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 7.912 To what programs do these regulations apply?

(a) The Act and these regulations apply to each FEMA recipient and to each program or activity operated by the recipient which receives or benefits from federal financial assistance provided by FEMA.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a federal, state or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving federal financial assistance for public service employment under the Job Training Partnership Act, (29 U.S.C. 150, *et seq.*)

§ 7.913 Definition of terms used in these regulations.

As used in these regulations, the term "Act" means the Age Discrimination Act of 1975 as amended, (Title III of Pub. L. 94–135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard or method of administration.

"Age" means how old a person is, or the number of years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children", "adult", "older persons", but not "student").

"Agency" means the Federal Emergency Management Agency.

"Director" means the Director of the Federal Emergency Management Agency.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or

(b) Services or federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is not returned to the federal government.

"Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on federal financial assistance. A subrecipient is generally regarded as a recipient of federal financial assistance and has all the duties of a recipient in these regulations.

"United States" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States. The term "state" also includes any one of the foregoing.

Subpart B—Standards for Determining Age Discrimination

§ 7.920 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 7.922 and 7.923 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving federal financial assistance, directly or through contractual licensing or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to the discrimination under, a program or activity receiving federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 7.921 Definitions of "normal operation" and "statutory objective."

For purposes of §§ 7.922 and 7.923, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objective.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any federal statute, state statute or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 7.922 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 7.920, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 7.923 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 7.920 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 7.924 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.922 and 7.923 is on the recipient of federal financial assistance.

§ 7.925 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in the limited participation in the recipient's program or activity on the basis of age.

§ 7.926 Special benefits for children and the elderly.

If a recipient operating a program provided special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 7.922.

§ 7.929 Age distinctions contained in FEMA regulations.

Any age distinctions contained in a rule or regulation issued by FEMA shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 7.922.

Subpart C—Duties of FEMA Recipients

§ 7.930 General responsibilities.

Each FEMA receipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford FEMA access to its records to the extent FEMA finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 7.931 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on federal financial assistance from FEMA to sub-recipients, the recipient shall provide the sub-recipients written notice of their obligations under the Act and these regulations.

(b) Each receipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protection against discrimiantion provided by the Act and these regulations.

§ 7.932 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of federal financial assistance from FEMA shall sign a written assurance as specified by FEMA that it will comply with the Act and these regulations.

(b) Recipient assessment of age distinctions.

(1) As part of the compliance review under § 7.940 or complaint investigation under § 7.943, FEMA may require a recipient employing the equivalent of one or more employees to complete a written evaluation, in a manner specified by the responsible Agency official, of any distinction imposed in its program or activity receiving federal financial assistance from FEMA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the FEMA regulations, the recipient shall take corrective action.

§ 7.933 Information requirement.

Each recipient shall:

(a) Keep records in a form acceptable to FEMA and containing information which FEMA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to FEMA, upon request, information and reports which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit FEMA reasonable access to the books, records, accounts, and other recipient facilities and sources of information to the extent FEMA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 7.940 Compliance reviews.

(a) FEMA may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. FEMA may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, FEMA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, FEMA will arrange for enforcement as described in § 7.945.

§ 7.941 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with FEMA, alleging discrimination prohibited by the Act occurring after the date of final adoption of this rule. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause showing, FEMA may extend this time limit.

(b) FEMA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) FEMA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures: A complaint is deemed "sufficient"

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when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimiantion) upon which to begin an investigation.

(1) Accepting as a sufficient complaint any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact FEMA for information and assistance regarding the complaint resolution process.

(d) FEMA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 7.942 Mediation.

(a) FEMA will promptly refer to a mediation agency designated by the Director all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exception; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to FEMA. FEMA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with FEMA. Mediation ends if:

(1) Sixty days elapse from the time the compaint is filed; *or*

(2) Prior to the end of that 60 day period, an agreement is reached; *or*

(3) Prior to the end of that 60 day period, the mediator determines that an agreement cannot be reached.

This 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to FEMA.

§ 7.943 Investigation.

(a) *Informal investigation.* (1) FEMA will investigate complaints that are unresolved after mediation or are re-opened because of a violation of a mediation agreement.

(2) As part of the initial investigation, FEMA will use informal fact finding methods, including joint or separate discussion with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. FEMA may seek the assistance of any involved state program agency.

(3) FEMA will put any agreement in writing and have it signed by the parties and an authorized official at FEMA.

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If FEMA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, FEMA will attempt to obtain voluntary compliance. If FEMA cannot obtain voluntary compliance, it will begin enforcement as described in Sec. 7.945.

§ 7.944 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of FEMA's investigation, conciliation and enforcement process.

§ 7.945 Compliance procedure.

(a) FEMA may enforce the Act and these regulations through:

(1) Termination of a recipient's federal financial assistance from FEMA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any federal, state or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) FEMA will limit any termination under § 7.945(a)(1) to the particular recipient and particular program or activity or part of such program and activity FEMA finds in violation of these regulations. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive federal financial assistance from FEMA.

(c) FEMA will take no action under paragraph (a) of this section until:

(1) The Director has advised the recipient of its failure to comply with the Act and for these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the federal program or activity involved. The Director will file a report whenever any action is taken under paragraph (a) of this section.

(d) FEMA also may defer granting new federal financial assistance from FEMA to a recipient when a hearing under § 7.945(a)(1) is initiated.

(1) New federal financial assistance from FEMA includes all assistance for which FEMA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New federal financial assistance from FEMA does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 7.945 (a)(1).

(2) FEMA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 7.945 (a)(1). FEMA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) FEMA will limit any deferral to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of these regulations. FEMA will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not and would not, in connection with new funds, receive federal financial assistance from FEMA.

§ 7.946 Hearings, decision, post-termination proceedings.

Certain FEMA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to FEMA enforcement of these regulations. They are found at 44 CFR 7.10 through 7.16.

§ 7.947 Remedial action by recipient.

Where FEMA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that FEMA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that had discriminated, FEMA may require both recipients to take remedial action.

§ 7.948 Alternative funds disbursal procedure.

(a) When FEMA withholds funds from a recipient under these regulations, the Director may, if allowable under the statute governing the assistance, disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or state or political subdivision of the state.

(b) The Director will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the federal statute authorizing the program or activity.

§ 7.949 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act.

Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(2) FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed;

(iii) That before commencing the action, the complainant shall give 30 days' notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (federal or state) of the United States.

Date: January 8, 1988.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-617 Filed 1-13-88; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Milestone Billing Arrangements

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The proposed rule reinstates milestone billing arrangements as a form of contract financing on certain long-term defense contracts.

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 14, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 87-124 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: LTCOL Robert Gustin, USAF, DASD-P(CPF), Chairman, Contract Finance Committee, telephone (202) 697-6716.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council is considering a proposed revision to the DoD FAR Supplement Part 232. The proposed rule prescribes the policies and procedures for incorporating milestone billing arrangements into certain long-term defense contracts. This contract financing method was previously authorized in the Defense Acquisition Regulation under Appendix E. When the Defense Acquisition Regulation was superseded in March 1984, however, the provision for milestone billings was not included in the Federal Acquisition Regulation because it was regarded as DoD-unique. It was not included in the DoD Federal Acquisition Regulation Supplement because, at that time, the customary progress payment rate was relatively high (i.e., 90%) and DoD had implemented a flexible progress payment method.

Action to reinstate milestone billing arrangements is being taken in conjunction with other reforms to DoD's profit and contract financing policies. A recent DoD study, called the "Defense Financial and Investment Review" (DFAIR), recommended use of milestone billing arrangements on long-term contracts that had few delivery payments. DFAIR found that such contracts had an abnormally higher inventory carrying cost because they presented minimum opportunity for contractors to receive payment for costs not covered by progress payments. Furthermore, since interest expenses are not allowable on defense contracts and must be absorbed in the profit margin, the profitability of these long-term contracts was substantially diminished. With the reduction in the customary

progress payment rate of 80% in 1985 and to 75% in 1986, the need for this type of supplemental contract financing is apparent.

B. Regulatory Flexibility Act Information

The proposed rule will not impact small business concerns. Milestone billing arrangements will be restricted to large, long-term contracts with few contract deliveries. Small business concerns already receive special consideration in the progress payments policies (i.e., higher customary progress payment rate, less restrictive application criteria, incurred cost basis).

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any new information collection requirements.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. A new Subpart 232.70, consisting of sections 232.7000 through 232.7007, is added to read as follows:

Subpart 232.70—Milestone Billing Arrangements

Sec.

232.7000 Milestone billing arrangements.
232.7001 Criteria for use.
232.7002 Milestone events.
232.7003 Milestone values.
232.7004 Contract administration.
232.7005 Consideration.
232.7006 Approval procedures.
232.7007 Contract clause.

Subpart 232.70—Milestone Billing Arrangements

232.7000 Milestone billing arrangements.

(a) A milestone billing arrangement is a supplementary contract financing provision for making interim payment to a contractor for work accomplished which does not involve physical delivery to the Government. The arrangement consists of milestone events, milestone values, and a contract administration plan.

(b) Milestone billings are contract financing payments which supplement payments made under the Progress Payments clause. They are not invoice payments for supplies delivered or services performed by the contractor.

(c) Milestone arrangements are subject to the administrative provisions of the Progress Payments clause. They are liquidated against invoice payments for contract line items upon which milestone billings were made. They are also recoverable in a manner similar to progress payments in the event of default.

232.7001 Criteria for use.

(a) A milestone billing arrangement may be granted, under the approval procedures prescribed in 232.7006, on contracts which meet all of the following criteria:

(1) Contract includes the Progress Payments clause;

(2) Contract price exceeds $50 million;

(3) Period of contract performance exceeds four years;

(4) Contractor deliveries to the Government do not commence until 24 months after the start of the period of performance;

(5) Actual costs incurred for each milestone event can be completely segregated; and

(6) Adequate consideration is received from the contractor (see 232.7005).

(b) A milestone billing arrangement may not be granted if the contract provides for flexible progress payments (see 232.501(S–711)) or if the contract provides for advance payments or unsual progress payments.

232.7002 Milestone events.

(a) Milestone events shall be based on significant work to be accomplished in fulfilling contract requirements. Each event shall be severable as a contract line item or subline item and completely verifiable. Examples of milestone events might include the following:

(1) Completion of a significant engineering task;

(2) Manufacture of special tooling or equipment;

(3) Site preparation; and

(4) Completion of a subassembly.

(b) Milestone events may not be based on insignificant task, administrative functions, percentage of completion estimates, or passage of time. Examples of unacceptable milestone events include the following:

(1) Attendance at meetings;

(2) Submission of program status or financial reports;

(3) Placement of orders to vendors or subcontractors; and

(4) Capital expenditures.

(c) Milestone events may not be established to occur for the first 12 months of a contract's period of performance and may not occur more frequently than every three months.

(d) Milestone events should not be established to take place after commencement of contract deliveries.

232.7003 Milestone values.

(a) A milestone value shall be established for each milestone event. The value shall be the estimated cost for the work accomplished.

(b) Cost estimates shall comply with the applicable cost accounting standards and contract cost principles prescribed by regulation.

(c) A milestone value shall not include profit.

232.7004 Contract administration.

(a) A milestone billing arrangement must include a contract administration plan. This plan must clearly describe the work to be accomplished under the milestone events, their corresponding values, and the documentation and procedures for making payment. Each milestone event and value shall be related to deliverable end items in the contract. This relationship will be identified in the contract administration plan through a matrix similar to the example shown below. The matrix is necessary to ensure that milestone payments are properly liquidated against subsequent invoice payments. A milestone event may not relate to more than one contract line item. However, a contract line item may have more than one relatable milestone event, as shown in the example.

EXAMPLE: MILESTONE BILLING MATRIX

[Dollar amounts in millions]

Milestone	Milestone value by contract line item			
	1	2	3	Total
1	$5	—	—	$5
2	—	50	—	6
3	—	4	—	4
4	—	—	$15	15
Total values	5	10	15	30
Line item prices	10	20	40	70

(b) Milestone billing requests shall be submitted by the contractor to the contracting officer in accordance with the contract administration plan. The contracting officer should obtain an audit of the milestone billing request from the contract auditor. Prior to making payment to the contractor, the contracting officer will verify that work performed under the milestone event has been satisfactorily accomplished. This verification does not constitute Government acceptance of the work performed.

(c) The milestone billing amount shall be lesser of (1): The milestone value or (2) the actual allowable costs incurred for completing the milestone event. The contractor's payment is to be reduced by progress payments made to the contractor for the milestone event. This adjustment does not represent a liquidation of progress payments; it only determines the amount of supplementary contract financing. Milestone payment based on cumulative milestone values or cumulative actual costs incurred is prohibited (i.e., a favorable cost variance on one milestone event may not be used to offset an unfavorable cost variance on another). Examples of computing milestone payments are shown below:

EXAMPLE: MILESTONE PAYMENT COMPUTATION

[Dollar amounts in millions]

	Example 1	Example 2
Milestone value	$20	$20
Actual cost incurred	24	16
Milestone billing	20	16
Progress payments[1]	18	12
Milestone payment	2	4

[1] At 75% of actual costs incurred.

(d) Milestone payments shall be liquidated against contractor invoices for relatable line items delivered. The invoice payment shall be first reduced by the liquidation of progress payments in the manner required under the Progress Payments clause. The remaining amount is then reduced by the milestone payments. This sequence is necessary to liquidate these contract financing payments properly. The matrix included in the contract administration plan will guide such liquidation actions.

Example: Milestone Payment Liquidation

	Millions
Price of item delivered	$40
Progress payments liquidated	30
Delivery payment before adjustment	10
Milestone payments on item delivered	5
Delivery payment	5

(e) Milestone values may not be revised under the "Adjustment of Payments" provisions of an Incentive Price Revision clause in fixed-price incentive contracts. Further, milestone values may not be adjusted pursuant to any Economic Price Adjustment clause.

232.7005 Consideration.

Milestone billing arrangements supplement progress payments; therefore, separate consideration is required. The value of the consideration must be adequate in view of the Government's costs in providing the supplemental financing.

Where the Weighted Guidelines Method is used, milestone billing events shall be equated to contract deliveries in determining the working capital adjustment (215.970–1(b)(4)).

232.7006 Approval procedures.

(a) Milestone billing arrangements shall be approved by the Service/Agency official responsible for the comptroller function. This authority may be delegated to a senior level official within the comptroller function.

(b) A contractor's request for a milestone billing arrangement will be forwarded to the designated approval authority in the manner established by each Service/Agency. As a minimum, the request for approval should contain the following:

(1) Contractor's request for the milestone billing arrangement and supporting rationale;

(2) Proposed contract administration plan;

(3) Cost analysis of the milestone value of each milestone event

(4) Recommendation of the contracting officer.

(c) The contracting officer shall not include a milestone billing arrangement in a contract award, even conditionally, unless requisite approval has been obtained.

(d) The contracting officer shall not include a provision for milestone billing arrangements in any solicitation.

232.7007 Contract clause.

(a) Individual milestone events shall be incorporated into a contract as separate contract line items or subline items.

(b) The contracting officer shall insert the Milestone Billing Arrangement clause at 252.232–7008 when milestone billing arrangements have been approved for use under 232.7006.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232–7008 is added to read as follows:

252.232–7008 Milestone Billing Arrangements.

As prescribed at 232.7007(b), insert the following clause:

Milestone Billing Arrangement (Jan 1988)

(a) This contract provides for milestone billings as supplemental contract financing to payments made under and subject to the terms of the Progress Payments clause. The description of milestone events, milestone values, and billing procedures are specified in the contract Administration Plan, dated (insert date), which is hereby incorporated as part of this contract. Payments under this milestone billing arrangement are contract financing payments and not invoice payments for supplies delivered or services performed by the contractor.

(b) Milestone billings shall be based upon work satisfactorily accomplished in accordance with this contract.

(c) The milestone billing amount shall be the lesser of: (1) The milestone value or (2) the actual allowable costs incurred for completing the milestone event as determined by applicable cost accounting standards and contract cost principles. The milestone payment is to be reduced by the amount of progress payments previously made to the contractor for the milestone event. This adjustment does not represent a liquidation of progress payments.

(d) Milestone payments shall be liquidated against contractor invoices for relatable line items delivered. The invoice payment shall be first reduced by the liquidation of progress payments in the manner required under the Progress Payments clause. The remaining amount is then reduced by the milestone payments.

(e) Milestone billing payments are fully recoverable in the event of default in the same manner as progress payments made under the Progress Payments clause. The contractor is required to pay the Government on demand for the full amount of contract financing provided under the milestone billing arrangement.

(End of clause)

[FR Doc. 88–649 Filed 1–13–88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-03, Notice 1]

Federal Motor Vehicle Safety Standards Hydraulic Brake Systems; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standards No. 105, *Hydraulic Brake Systems*, and No. 121, *Air Brake Systems*, specify procedures for the burnishing or "breaking in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting some of the performance tests for vehicle braking. This notice proposes to amend the standards to specify, for all types of vehicles, that automatic brake adjusters remain operational during the burnish procedures and subsequent brake tests. Since automatic brake adjusters are operational during normal use, specifying that they be operational during brake testing would help approximate real-world conditions and better test real-world performance.

DATES: Comments must be received on or before March 14, 1988. This proposal would become effective one year after publication of a final rule in the **Federal Register**. Optional compliance would be permitted effective 30 days after publication.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION:

Standards No. 105, *Hydraulic Brake Systems*, and No. 121, *Air Brake Systems*, specify procedures for the burnishing or "breaking-in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting some of the performance tests for vehicle braking.

On July 27, 1983, NHTSA published in the **Federal Register** (48 FR 29560) a notice of proposed rulemaking (NPRM) to amend the burnish procedures of Standards No. 105 and No. 121, as they apply to heavy vehicles. One of the proposed changes concerned automatic adjusters. The agency noted that Standard No. 105 specifies for hydraulic-braked vehicles that automatic adjusters can be disconnected prior to the burnish procedure, but if disconnected, they must remain disconnected throughout the brake tests. If the devices are not disconnected, a brake adjustment is permitted at the end of the burnish and all remaining tests are performed with the adjusters connected. On the other hand, NHTSA has interpreted Standard No. 121 to require for air-braked vehicles that automatic adjusters not be disconnected. The June 1983 NPRM proposed to specify in both standards, for heavy vehicles, that automatic adjusters remain operational during brake tests. Under that proposal, vehicles with gross vehicle weight ratings (GVWR's) of 10,000 pounds or less would continue to have been permitted to be tested with automatic adjusters deactivated.

Some of the commenters on the June 1983 NPRM argued that there is no reason to treat vehicles with a GVWR in excess of 10,000 pounds differently from vehicles with a GVWR of 10,000 pounds or less. These commenters stated that if deactivation of automatic adjusters is permitted for light vehicles, heavier vehicles should be offered the same option.

On May 23, 1985, NHTSA published in the **Federal Register** (50 FR 21313) a supplemental NPRM (SNPRM) concerning a number of the issues raised by commenters in response to the June 1983 notice. With respect to automatic adjusters, the agency stated that it agreed with the implicit point that the reasons for and against permitting the deactivation of automatic adjusters apply equally to all vehicles with these adjusters, regardless of size. NHTSA announced in that notice that rather than address the question of the deactivation of automatic brake adjusters in a piecemeal fashion, it would instead issue a notice addressing that issue for all vehicles.

This notice supersedes the June 1983 notice, on the issue of whether automatic adjusters must remain operational during brake tests. NHTSA is now proposing to specify, for all types of vehicles, that automatic brake adjusters remain operational during the burnish procedures and brake tests of Standards No. 105 and No. 121.

One of the purposes behind the various test conditions and procedures specified in Standards No. 105 and No. 121 is to test vehicles as they will perform when used on the road. Since automatic brake adjusters are operational during normal use, specifying that they be operational during brake testing helps approximate real-world conditions and better tests real-world performance.

The May 1985 SNPRM noted above proposed for heavy vehicles that the brakes be adjusted in accordance with the manufacturer's recommendations at specified intervals during the burnish procedure, as well as at the end of the procedure. NHTSA notes that, under that proposal, automatic adjusters would be permitted to be manually adjusted at the same times as proposed for other types of brake adjustments during burnish. As discussed by that notice, the most important reason for specifying adjustments at designated intervals is to ensure the most repeatable test results by standardizing the procedures to be followed by all parties. See 50 FR 21316. That proposal is not being changed by this notice.

As indicated above, the May 1985 SNPRM did not cover vehicles with a GVWR of 10,000 pounds or less. Under this proposal, manual adjustment for those vehicles would be permitted only at the end of the burnish procedure. This is consistent with Standard No. 105's current requirements for vehicles whose automatic adjusters are not deactivated. It is also consistent with the agency's proposal for an internationally harmonized passenger car brake standard. See 52 FR 1474, January 14, 1987.

In the past, problems were sometimes experienced with automatic brake adjusters during burnish procedures. For some vehicles, the swelling of linings made it difficult to complete the burnish procedures, due to high temperatures. This explains the provision in Standard No. 105 that currently permits automatic adjusters to be disconnected. However, newer designs for linings and automatic adjusters have essentially eliminated these problems, particularly for lighter vehicles. NHTSA is aware of only one manufacturer, Ford, which currently specifies that the automatic adjusters on any of its vehicles with a GVWR of 10,000 pounds or less be deactivated for purposes of brake testing.

Automatic adjusters for heavy vehicles are not as fully developed as those for vehicles with a GVWR of 10,000 pounds or less. However, by permitting manual adjustment at specified intervals during the burnish procedures, and problems that occur can be resolved by means of simple adjustments.

Another reason to permit manual adjustment of automatic adjusters for heavy vehicles during the burnish

procedures is to treat vehicles with and without automatic adjusters the same for purposes of testing, i.e., adjusted to peak performance. This helps to ensure that the standards do not unwittingly discourage manufacturers from offering automatic adjusters.

NHTSA notes that while those parts of the May 1985 SNPRM concerning brake adjustments during burnish are related to this proposal, this notice does not repeat the changes in the regulatory text proposed by that notice.

The proposed amendments would become effective one year after publication of a final rule in the **Federal Register**. Optional compliance would be permitted effective 30 days after publication. NHTSA believes that few, if any, changes to current vehicles would be required as a result of the proposed amendments. The one year period would enable manufacturers to conduct compliance testing, as well as make any minor changes to their vehicles that might be necessary in order to ensure compliance. If any manufacturer commenters believe that a leadtime longer than one year should be provided, the agency requests that the issue be addressed separately for (1) hydraulic braked vehicles with a GVWR of 10,000 pounds or less, (2) hydraulic braked vehicles with a GVWR greater than 10,000 pounds, and (3) air-braked vehicles.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. This proposal would have little effect on the cost or design of the vehicles to which it might become applicable. Instead, the proposal would make only minor changes in the test procedures for the braking standards. Since the effects of the proposal, if adopted as a final rule, would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The effect of this proposal, if adopted, on any small manufacturers of vehicles or brake systems would be minimal, since the proposal would make only minor changes in the test procedures for the braking standards. Few, if any, design or manufacturing changes would be required of these manufacturers. Small organizations and governmental units would not be significantly affected, since any price impacts associated with this proposed action would be so minimal as not to affect the purchasing of new motor vehicles by these entities.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S7 would be revised to read as follows:

* * * * *

S7. *Test procedures and sequence.* Each vehicle shall be capable of meeting all the applicable requirements of S5, when tested according to the procedures and in the sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) For vehicles manufactured before [effective date of final rule], automatic adjusters may be locked out, at the option of the manufacturer, when the vehicle is prepared for testing. If this option is selected, adjusters must remain locked out for the entire sequence of tests. For vehicles manufactured on or after [effective date of final rule], automatic adjusters must remain activated at all times, including during burnish and testing. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15, or S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a decelereation, a stop or snub shall be obtained by the following procedures: (1) Exceed the test speed by 4 to 8 mph; (2) close the throttle and coast in gear to approximately 2 mph above the test speed; (3) shift to neutral; and (4) when

the test speed is reached, apply the service brakes.

. . . . .

3. S7.4.1.2 would be revised to read as follows:

. . . . .

S7.4.1.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's published recommendations, as furnished to the purchaser. If no recommendations are furnished to the purchaser, no adjustments are made.

. . . . .

4. S7.4.2.2 would be revised to read as follows:

. . . . .

S7.4.2.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's published recommendations as furnished to the purchaser. If no recommendations are furnished to the purchaser, no adjustments are made.

§ 571.121 [Amended]

5. S6 would be revised to read as follows:

. . . . .

S6. *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Except as otherwise specified, where a range of conditions is specified, the vehicle shall be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times, including during burnish and testing.

. . . . .

Issued on January 11, 1988

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-709 Filed 1-12-88; 9:52 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket 88-04, Notice 1]

Federal Motor Vehicle Safety Standards New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 109, *New Pneumatic Tires*, requires that the maximum permissible inflation pressure for each tire must be either 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The European Tyre and Rim Technical Organisation (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional maximum inflation pressure, 340 kPa, in the standard. This notice grants E.T.R.T.O.'s petition and proposes to include the 340 kPa pressure in Standard No. 109. Conforming amendments would be made through the standard so that test criteria suitable for this new inflation pressure would be established for the various required performance tests.

DATES: Comments must be submitted by February 29, 1988. The proposed effective date is 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Dockets hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 [202-4803].

SUPPLEMENTARY INFORMATION: Standard No. 109, *New Pneumatic Tires*, requires that the maximum permissible inflation pressure for each tire must be either 32, 36, 40 or 60 psi, or 240, 280 or 300 kPa. The standard specifies differing test criteria depending upon the maximum permissible inflation pressure.

The European Tyre and Rim Technical Organization (E.T.R.T.O.) submitted a petition for rulemaking requesting the inclusion of an additional inflation pressure, 340 kPa, in Standard No. 109. The petitioner stated that its members are receiving requests with increasing frequency from vehicle manufacturers for reinforced tires at an inflation pressure higher than 300 kPa, for purposes of safety and optimum vehicle handling. The requests for these tires are primarily for station wagons. E.T.R.T.O. requested that a pressure of 340 kPa be added, so that the standard inflation pressure for reinforced tires (280 kPa) can be increased for special performance requirements with no increase in tire load capacity.

NHTSA addressed petitions raising almost identical issues in 1978. As discussed below, the 300 kPa maximum pressure for non-reinforced tires was added to the standard in response to those petitions. The relationship of the 300 kPa non-reinforced tire to the standard inflation pressure (240 kPa) non-reinforced tire is analagous to that of the 340 kPa reinforced tire to the 280 kPa reinforced tire. Thus, NHTSA believes that the 340 kPa pressure should be added to Standard No. 109 for the same reasons the 300 kPa pressure was added.

In 1978, Goodyear Tire & Rubber Company and the Rubber Manufacturers Association (RMA) requested amendments to permit the production of new P-type tires using a higher maximum permissible inflation pressure than then allowed in Standard No. 109. As indicated above, the standard inflation pressure for these tires is 240 kPa, and the petitioners requested inclusion of a 300 kPa pressure.

In response to these petitions, NHTSA published a notice of proposed rulemaking (NPRM) on March 2, 1978 (43 FR 8578), to add the 300 kPa pressure to Standard No. 109. The agency noted that higher inflation tires have less rolling resistance on the road and may therefore result in increased fuel economy. NHTSA stated that experiments conducted on these tires by the manufacturers indicate that such increased fuel economy can be achieved without any sacrifice of vehicle ride quality or safety.

The March 1978 NPRM also addressed the issue of the appropriate load levels during testing for the higher inflation tires. The notice stated:

> The NHTSA would require tire performance tests to be made at the same load levels as prescribed for the 240 kPa tire, because the agency tentatively concludes that these are the most severe test conditions for higher inflation pressure tires. The new high inflation tires are not extra load tires and, therefore, are not designed to carry greater tire loads. In fact, they are designed to carry identical loads as the 240 kPa tire. The agency had determined that to increase the performance test inflation to 300 kPa, for example, would actually result in easier test conditions for the endurance and high speed performance tests. The increased tire inflation pressure would result in less sidewall flex for high inflation tires than they would sustain if only inflated to 240 kPa. Removing sidewall flex increases the sidewall stiffness. Softer sidewalls decreases heat generation. Therefore, the NHTSA tentatively concludes that the tire should be tested at the lower inflation pressure, since this condition is more severe and better assures the safety of the tire. 43 FR 8578-1.

The agency's March 1978 proposal was adopted as a final rule in a notice published on June 5, 1978 (43 FR 24310).

Since NHTSA believes E.T.R.T.O.'s petition raises virtually identical issues to those resulting in the addition of the 300 kPa pressure, it is granting the organization's petition for rulemaking and proposing to include an additional maximum inflation pressure of 340 kPa in Standard No. 109. Conforming amendments would be made throughout the standard establishing test criteria for the various required performance tests for this new inflation pressure. These new test criteria would be identical to those currently specified for 280 kPa tires.

The proposed amendments would become effective 30 days after publication of a final rule in the Federal Register. NHTSA believes that there is a good cause for an effective date within that time period since the amendments would relieve a restriction and permit the sale of tires which can provide better performance without any negative impact on safety.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments would not impose new requirements for current tires but instead permit a new category of tire. Since the new tires that would be permitted by the proposal could provide better performance, the amendments could result in consumer benefits.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. The agency believes that few of the tire manufacturers would qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce these new tires. Small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. These small entities could benefit to small extent if they purchase vehicles with these new tires.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not have any significant impact on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 [Amended]

2. S4.2.1(b) would be revised to read as follows:

. . . . .

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, or 340 kPa.

. . . . .

3. S4.2.2.2 would be revised to read as follows:

. . . . .

S4.2.2.2 *Physical dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, 300, or 340 kPa) 7 percent or 0.4 inch, whichever is larger.

. . . . .

4. S4.3.4 would be revised to read as follows:

. . . . .

S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 300, or 340 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

. . . . .

5. Tables I–A, I–B and I–C of Appendix A would be revised to read as follows:

TABLE I-A.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH OF 6 INCHES AND ABOVE

Cord material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,850	2,574	3,300	1,650	3,300	1,650	3,300
Nylon or polyester (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

TABLE I-B.—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH BELOW 6 IN.

Cord material	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Rayon (in-lbs)	1,000	1,875	2,500	1,000	2,500	1,000	2,500
Nylon or polyester (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900

TABLE I-C.—FOR RADIAL PLY TIRES

Size Designation	Maximum permissible inflation						
	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Below 160 mm (in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900
160 mm or above (in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200

6. Table II Of Appendix A would be revised to read as follows:

TABLE II.—TEST INFLATION PRESSURES

Maximum permissible inflation pressure	32 lb/in²	36 lb/in²	40 lb/in²	60 lb/in²	240 kPa	280 kPa	300 kPa	340 kPa
Pressure to be used in tests for physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220
Pressure to be used in test for high-speed performance	30	34	36	58	220	260	220	260

Issued on January 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-707 Filed 1-12-88; 9:52 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Advisory Council on Rural Development; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary schedules the third meeting of the National Advisory Council on Rural Development:

Name: National Advisory Council on Rural Development.

Date: January 27-28, 1988.

Time and Place: January 27-28, 1988; Sheraton Park Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia. January 27, 8:30 a.m.-5:00 p.m.; January 28, 8:30 a.m.-2:00 p.m.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To advise the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multistate, State, substate and local organizations and jurisdictions. The Council will provide the Secretary with assistance in identifying rural problems and supporting efforts and initiatives in rural development.

Contact Person: Jeanne Kling, Acting Assistant, Office of the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219-A, Administration Building, Washington, DC 20250, telephone (202) 447-5371.

Done at Washington, DC, this 11th day of January, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88-681 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

ASARCO's Rock Creek Project, Silver/Copper Mine, Kootenai National Forest, Sanders County, MT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, in conjunction with Montana Department of State Lands, will prepare an environmental impact statement for a proposal to permit the development of ASARCO's Rock Creek silver/copper mine project approximately 13 miles from Noxon, Montana.

ASARCO's proposed plan of operation was submitted pursuant to Forest Service locatable mineral regulations 36 CFR Part 228 Subpart A, and State of Montana Metal Mine Reclamation Act Title 82, Chapter 4, Part 3, MCA.

Government agencies and the public who may be interested in or affected by the proposal are invited to participate in the scoping process. The Forest Service, in conjunction with Montana Department of State Lands, will hold a public scoping meeting on Wednesday, January 27, 1988, at the Noxon School at 7:00 p.m. A scoping document is available for public review.

The EIS will consider a range of alternatives based on the issues and concerns associated with the project. The two alternatives that can be specified at present are the No Action alternative and the alternative to approve the project as proposed. Other alternatives may consist of modifications or changes in the various elements comprising the proposal.

Upon determination that ASARCO's Plan of Operation inclusive of environmental baseline reports is complete, the analysis process is expected to take about 12 months. The draft environmental impact statement should be available approximately 7 months from completeness determination. A public meeting will be held in conjunction with the issuance of the draft Environmental Impact Statement.

The final Environmental Impact Statement should be available approximately 12 months from completeness determination.

James F. Rathbun, Forest Supervisor, Kootenai National Forest, Libby, Montana, is the responsible official.

Written comments concerning the analysis should be sent to the Forest Supervisor, Kootenai National Forest, Supervisor's Office, 506 U.S. Hwy. 2 West, Libby, Montana 59923 by February 17, 1988.

Questions about the proposed action and environmental impact statement should be directed to Ron Erickson, Project Coordinator, Kootenai National Forest, telephone (406) 293-6211.

Date: January 5, 1988.

James F. Rathbun,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 88-591 Filed 1-13-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on January 21, 1988, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to hold orientation for the newly rechartered Advisory Committee and conduct program planning for the balance of fiscal year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253. (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 4, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-592 Filed 1-13-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on January 25, 1988. Committee meetings will also be held on this date. Public comment is welcome.

TIME AND PLACE: Presidential Board of Advisors on Private Sector Initiatives: Monday, January 25, 1988, 1:30 p.m., at the New York Stock Exchange, 11 Wall Street, New York, New York. Room to be posted.

Committee Meetings: Monday, January 25, 1988, 10:30 a.m., at the New York Stock Exchange, 11 Wall Street, New York, New York. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: January 11, 1988

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 88–795 Filed 1–14–88; 8:45 am]

BILLING CODE 3510-DP-M

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with Title 13, United States Code (sections 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are listed under major headings based on the *Standard Industrial Classification Manual* (1987 edition) promulgated by the Office of Management and Budget for use of Federal Government statistical agencies.

Annual Current Industrial Reports

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Carpets and rugs

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Men's and boys' apparel
Women's apparel
Underwear and nightwear
Children's apparel
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber production and mill stocks

Major Group 26—Paper and Allied Products

Pulp, paper, and board

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Inorganic fertilizer materials and related products
Paint and allied products

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics bottles

Major Group 31—Leather and Leather Products

Footwear

Major Group 32—Stone, Clay, and Glass

Consumer, scientific, technical, and industrial glassware Fibrous glass

Major Group 33—Primary Metal Industries

Steel mill products
Insulated wire and cable
Nonferrous castings
Ferrous castings

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products
Robots

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Communication equipment
Semiconductors and printed circuit boards
Electromedical equipment
Electric housewares and fans
Electric lighting fixtures
Major household appliances

Major Group 37—Transportation Equipment

Aerospace orders

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks

Selected instruments and related products

In addition, the following surveys are conducted on a mandatory basis only in the years for which the economic censuses are conducted. In the intervening years, surveys are conducted on a voluntary basis.

Major Group 25—Office Furniture, Supplies, and Related Products

Office furniture

Major Group 30—Rubber and Plastics Products

Rubber and plastic hose and beltings
Mechanical rubber goods

Major Group 35—Industrial Equipment and Consumer Goods

Vending machines (coin-operated)

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Class containers

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabrics (gray)
Consumption on the woolen system and worsted combing

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Inventories of steel producing mills

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military
Truck trailers

Annual Survey of Manufactures

The annual survey of manufactures (ASM) is a simple survey conducted in each of the 4 years between the censuses of manufactures. For 1987, which is a census year, the ASM report form (MA–1000) replaces the first page of the regular census form for those establishments included in the ASM sample panel. In addition to information on employment, payroll, and other items normally requested on the regulator census form, establishments included in the ASM sample are requested to supply information on assets, capital expenditures, retirements, depreciations, rental payments, supplemental labor costs, and costs of purchased services for 1987.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D and, for comparative purposes, the total net sales and receipts and the total employment of the company.

Annual Survey of Shipments to Federal Government Agencies

A survey of shipments to the Federal Government is conducted to provide information on the effect of Federal procurement on 84 selected industries. Plans are to expand the survey for 1987 to collect information on foreign vulnerability and manufacturers' ability to increase military production.

Annual Survey of Pollution Abatement Costs and Expenditures

The annual survey of pollution abatement costs and expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities.

Annual Survey of Plant Capacity

The annual survey of plant capacity obtains information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Date: January 7, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88–627 Filed 1–13–88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

U.S. and Foreign Commercial Service Advisory Council; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR Subpart 101–6–10 (1987), Federal Advisory Committee Management Rule, and after consultation with the General Services Administration, the Secretary of Commerce has determined that the establishment of the U.S. and Foreign Commercial Service Advisory Council is in the public interest in connection with the performance of duties imposed on the Department by law.

The Council will advise the Secretary through the Director General of the U.S. and Foreign Commercial Service on operations of the US&FCS, and its programs and services for export promotion.

The Council consists of approximately 30 members, most of whom will be from the private sector. The Council will have well balanced representation from small and large businesses, state and local development agencies, industry associations and Chambers of Commerce from both the United States and overseas.

The Council will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act. The Council's charter will be filed under the Act, 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the establishment of the U.S. and Foreign Commercial Service Advisory Council. Comments and inquiries may be addressed to Genevieve McSweeney Ryan, Speical Assistant to the Director General for the U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Washington, DC., 20230, phone (202) 377–3641.

Date: January 9, 1987.

Alexander H. Good,

Director General U.S. and Foreign Commercial Service.

[FR Doc. 88-692 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-FP-M

[C-557-701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Malaysia. The preliminary determination will be made on or before February 1, 1988.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0189 (Morrison) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION: On November 2, 1987, petitioners filed a timely request for an extension of the preliminary determination pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On November 13, 1988, we published the notice of postponement of the countervailing duty investigation of carbon steel wire rod from Malaysia (52 FR 43633). The notice stated that we would issue our preliminary determination on or before January 15, 1988.

On January 4, 1988, the petitioners requested that the Department further postpone its preliminary determination for an additional 16 days. Accordingly, the period for the preliminary determination in this investigation is hereby extended. We intend to issue a preliminary determination on or before February 1, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-687 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Singapore. The preliminary determination will be made on or before February 16, 1988.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-0189 (Morrison) or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION: On December 17, 1987, petitioners filed a timely request for an extension of the preliminary determination pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

On January 4, 1988, we published the notice of postponement of the countervailing duty investigation of carbon steel wire rod from Singapore (53 FR 47). The notice stated that we would issue our preliminary determination on or before February 1, 1988.

On January 4, 1988, the petitioners requested that the Department further postpone its preliminary determination for an additional 14 days. Accordingly, the period for the preliminary determination in this investigation is hereby extended. We intend to issue a preliminary determination on or before February 16, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-688 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DS-M

President's Export Council Executive Committee; Meeting

A meeting of the President's Export Council Executive Committee will be held February 2, 1988, 12:30-4:00 p.m., Room 4832, Department of Commerce, 14th and Constitution NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Discussion of matters properly classified under Executive Order 12356, dealing with trade negotiations, trade and economic relations with other countries, trade barriers, budget and trade deficits, and other trade related matters.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on October 27, 1987, in accordance with the Federal Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6622, U.S. Department of Commerce, (202) 377-3271.

For further information or copies of the minutes contact Laureen Daly (202) 377-1125, Room 3214, U.S. Department of Commerce, Washington, DC 20230.

Date: January 11, 1988.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 88-686 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Minority Business Development Center Program; Solicitation of Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $318,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Riverside Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $270,400 in Federal funds and a minimum of $47,718 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The I.D. Number for this project will be 09-10-88010-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94150.

January 27, 1988 at 10:00 a.m.

Proposals are to be Mailed to the Following Address:

Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California, 94150, 415/974-9597.

Closing date: The closing date for applications is February 22, 1988. Applications must be postmarked by midnight February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 7, 1988.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

[FR Doc. 88-622 Filed 1-13-88; 8:45 am]

BILLING CODE 3510-21-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-864,920 (4,702,870)
Method and Apparatus for Forming Three Dimensional Structural Components From Wood Fiber

SN 7-075,168
Control of Parasitic Nematode Ova with *Bacillus Sphaericus*

SN 7-101,918
Monoclonal Antibodies to Soybean Kunitz Trypsin Inhibitor and Immunoassay Methods

Department of Commerce

SN 6-802,091 (4,705,949)
Method and Apparatus Relating To Specimen Cells for Scanning Electron Microscopes

SN 6-868,485 (4,707,013)
Split Rail Parallel Gripper

Department of Health and Human Services

SN 6-332,341 (4,704,384)
Aziridinyl Quinone Antitumor Agents

SN 6-781,461 (4,704,357)
Immortalized T-Lymphocyte Cell Line For Testing HTLV-III Inactivation

SN 6-865,055 (4,694,007)
Use of Trimetrexate As Antiparasitic Agent

SN 7-082,464
Alteration of Biological Properties of Vaccinia Virus by Insertion of Lymphokine Genes

SN 7-085,707
Method for Treating Malignancy and Autoimmune Disorders in Humans

SN 7-098,977
Improved Vaccine Against Rotavirus Diseases and Method of Preparing Same

SN 7-100,412
Sensitive Bioassay for Detecting Viruses and Screening Antiviral Agents

SN 7-100,909
Reagents and Probes For Distinguishing and Isolating Different GTP-Binding Proteins

SN 7-107,098
A Kit For Diagnosing Cancer Metastatic Potential

Department of the Air Force

SN 6-149,792 (4,686,826)
Mixed Flow Augmentor Incorporating A Fuel/Air Tube

SN 6-298,687 (4,687,337)
Atmospheric Aerosol Extinctiometer

SN 6-483,191 (4,687,338)
Method of Measurement of Haze In Transparencies

SN 6-493,593 (4,694,195)
Ratio Analyzer

SN 6-576,498 (4,686,534)
Retro Directive Radar and Target Simulator Beacon Apparatus and Method

SN 6-616,347 (4,682,126)
Electromagnet For Programmable Microwave Circulator

SN 6-624,567 (4,680,797)
Secure Digital Speech Communication

SN 6-656,844 (4,680,589)
Adaptive Fast Fourier Transform Weighting Technique To Increase Small Target Sensitivity

SN 6-675,174 (4,678,909)
Charge Depletion Meter

SN 6-689,700 (4,689,758)
Microcomputer Controlled Image Processor

SN 6-705,827 (4,683,474)
Survivable Ground Base Sensor

SN 6-721,966 (4,696,569)
Method of Measuring Spherical Aberration and Apparatus Therefor

SN 6-726,568 (4,679,917)

Device For Measuring Intraocular Light Scatter
SN 6-727,507 (4,685,772)
Tunable Acousto-Optic Filter With Improved Spectral Resolution and Increased Aperture
SN 6-733,957 (4,687,484)
Low Drug Conductor
SN 6-736,898 (4,687,281)
Synthetic Aperture Laser Radar
SN 6-758,927 (4,678,142)
Precision Guided Antiaircraft Munition
SN 6-763,575 (4,679,934)
Fiber Optic Pyrometry With Large Dynamic Range
SN 6-772,814 (4,691,305)
Automatic Attenuator For Sonobuoys
SN 6-782,629 (4,681,261)
Heat Resistant Short Nozzle
SN 6-789,863 (4,685,194)
Direct Mask Self-Aligned Field Oxide Technique
SN 6-790,292 (4,695,973)
Real-Time Programmable Optical Correlator
SN 6-804,194 (4,683,367)
Quadrature Switch Apparatus for Multi Mode Phase Shift Drivers
SN 6-812,206 (4,679,939)
In Situ Small Particle Diagnostics
SN 6-816,596 (4,684,904)
Low Phase Noise Two Port Voltage Controlled Oscillator
SN 6-819,334 (4,683,309)
Phenylquinoxaline Resin Monomers
SN 6-822,579 (4,683,443)
Monolithic Low Noise Amplifier With Limiting
SN 6-831,894 (4,679,086)
Motion Sensitive Frame Integration
SN 6-831,902 (4,693,546)
Guided-Wave Optical Power Divider
SN 6-831,910 (4,693,547)
Optically Controlled Integrated Optical Switch
SN 6-836,500 (4,680,500)
Integral Grid/Cathode For Vacuum Tubes
SN 6-838,970 (4,682,176)
Active Matching Transmit/Receive Module
SN 6-866,807 (4,683,813)
Separable Hinge With Self Retaining Hinge Pin
SN 6-867,642
Whole Word, Phrase or Number Reading
SN 6-867,727 (4,687,652)
Low Temperature Formation Of Mullite Using Silicon Alkoxide and Aluminum Alkoxide
SN 6-888,608 (4,681,014)
Missile Azimuth Alignment System
SN 6-891,822 (4,686,448)
Slewing Power Supply for Programmable Phase Shifter Drive
SN 6-896,035 (4,680,063)
Method for Refining Microstructures of Titanium Ingot Metallurgy Articles
SN 6-903,361 (4,686,397)
Brush and Commutator Segment Torquer Motor
SN 6-916,964 (4,683,340)
Bis(Benzilyloxy) Compounds
SN 6-930,163 (4,686,997)
Skeletal Bone Remodeling Studies Using Guided Trephine Sample
SN 7-011,656
An Apparatus and Method For Soldering and Contouring Foil E-Beam Windows
SN 7-046,110
Fabrication of Cooled Faceplate Segmented Aperture Mirrors (SAM) by Electroforming
SN 7-060,882
A Fault Tolerant Test Apparatus For Large Rams
SN 7-066,290
Digital Detection Circuit
SN 7-066,291
Digital Clock Synchronizer Apparatus
SN 7-069,999
Electromagnetic Pulse Rotary Seal
SN 7-084,342
Uniform Excitation Apparatus By a Single Power Supply of Two Dimensional Arrays of Waveguide Gas Lasers
SN 7-084,784
Benzazole Substituted Terephthalic Acid Monomers
SN 7-085,894
Pendant Benzazole Rigid-Rod Aromatic Heterocyclic Polymers
SN 7-087,857
In-Situ Beta Alumina Stress Simulator
SN 7-090,481
Subject Operated Pupilometer
SN 7-100,385
Quick Disconnect Duct Coupler

Department of the Army

SN 7-068,389
Electromagnetic Launcher With Cryogenic Cooled Superconducting Rails
SN 7-089,100
Periodic Permanent Magnet Structure With Increased Useful Field
SN 7-091,686
Method of Manufacturing Dislocation and Etch Channel Free Quartz Resonator Blanks
SN 7-109,144
Potable Water Corrosion Test Loop and Specimen Holder Therefor
SN 7-112,192
Permanent Magnet Structure For A Nuclear Magnetic Resonance Imager For Medical Diagnostics
SN 7-113,293
Permanent Manget Structures For the Production Of Transverse Helical Fields

Tennessee Valley Authority

SN 6-899,567 (4,670,036)
Cyclotriphosphazatriene-Derivatives as Soil Urease Activity Inhibitors

[FR Doc. 88-701 Filed 1-13-88; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 29 January 1988.

Times of Meeting: 0915-1130 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to provide a classified briefing to the Defense Science Board (DSB). The briefing will cover the ongoing findings of the ASB Subgroup on Competitive Strategies, and provide information to the DSB in their study effort. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., apecifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-800 Filed 1-13-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

DEPARTMENT OF TRANSPORTATION

Coast Guard

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Widening of the New Jersey Turnpike

AGENCIES: Army Corps of Engineers, DOD. Coast Guard, DOT.

ACTION: Notice of intent to prepare a draft environmental impact statement for a regulatory permit action.

1. Description of Proposed Action

SUMMARY: The New Jersey Turnpike Authority proposes to widen the New Jersey Turnpike from a point just north of Interchange 11 in Woodbridge, Middlesex County to U.S. Route 46 near the Turnpike's northern terminus in Ridgefield Park, Bergen County. The total length of the project is approximately 28 miles along the existing portion of the Turnpike alignment that currently crosses five counties and twelve municipalities in northeastern New Jersey. The work would create a roadway 12 to 14 lanes wide along the length of the project, a new interchange, and include the widening or reconstructing of most other interchanges. Approximately 181 acres of wetlands would be filled and 24 waterbodies would be crossed. The U.S. Army Corps of Engineers and the U.S. Coast Guard are joint lead agencies for the project under Section 404 of the Clean Water Act and the General Bridge Act of 1946 and will jointly prepare the EIS.

2. Reasonable Alternatives

a. No action (no build).

b. Improve mass transit facilities.

c. Construct roadway to span all waters of the United States.

(d) Construct new roadway along an upland alignment.

e. Redesign other roadways in area to accommodate Turnpike's future traffic load.

f. Widen the eastern spur of the Turnpike.

g. Reverse direction of certain lanes during peak travel times.

h. Reduce number of proposed lanes.

i. Use of high occupancy vehicle lanes.

3. Scoping Process

a. Public Involvement. Scoping meetings will be held as appropriate during the EIS development process to obtain public and agency input to the DEIS, and all parties are encouraged to submit comments at any time during the development of the DEIS. The draft and final EIS will be distributed for comment to all known interested parties and appropriate agencies.

b. Significant Issues Requiring In-depth Analysis. Need for the work; practicable alternatives to the proposal; impacts to fish and wildlife habitat and resources; water quality; socio-economics; cultural resources; land use and zoning; air quality; noise; contaminated sediments; landfills; groundwater; relocation of the 16W Interchange; and mitigation for projection impacts.

c. Assignments. The U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have agreed to be cooperating agencies in the preparation of this EIS.

d. Environmental review and consultation. Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500-1508), Corps regulations ER 200-2-2 dated August 25, 1980 (revised March 2, 1981) and Coast Guard Commandant Instruction M16475.1B. Appropriate concerned agencies and individuals will be consulted throughout the preparation of the EIS.

4. Scoping Meeting Will Be Held

January 26, 1988, 10:00 AM—
Hackensack Development Commission Offices 1, DeKorte Park Plaza, Lyndhurst, New Jersey 07003

5. Estimated Date of Statement Availability

March 1989.

ADDRESSES: Questions about the proposed action and DEIS can be answered by:

U.S. Coast Guard: Commander (OBR), First Coast Guard District, Governors Island, Building 135A, New York, New York 10004-5098 ATTN: Gary Kassof.

U.S. Army Corps of Engineers: U.S. Army Engineer District, New York, 26 Federal Plaza, New York, New York 10278-0090 Project Manager: James Haggerty, ATTN: CENAN-OP-R. Tel. No. (212) 264-0184.

EIS Coordinator: Michele Farmer. ATTN: CENAN-PL-E. Tel. No. (212) 264-4662.

Date: January 1988.

Simeon M. Hook,

Acting Chief, Planning Division U.S. Army Engineer District, New York.

December 30, 1987.

Gary Kassof,

Acting Bridge Administrator First Coast Guard District.

[FR Doc. 88-596 Filed 1-13-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-19-NG]

Mobil Gas Company Inc.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Mobil Gas Company Inc. (MOGASCO) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 87-19-NG authorizes MOGASCO to import up to 100 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., January 7, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-714 Filed 1-13-88; 8:45 am]
BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Education Panel; Notice of Open Meeting

Notice is hereby given of the following meeting:

Name: Education Panel of the Energy Research Advisory Board (ERAB).

Date & Time: January 27, 1988, 8:30 a.m.-5:00 p.m.

Place: Battelle Memorial Institute, 2030 M Street, NW., Suite 800, Washington, DC 20036.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review DOE's activities with the education community to ensure that the Department is playing its proper role with other Federal agencies and the private sector in the support of scientific and technical education and training.

Tentative Agenda

January 27, 1988

8:30 a.m. Discuss Panel's Draft Report
12:00 Noon Lunch
1:00 p.m. Continue Morning Discussion
4:50 p.m. Public Comment (10 Minute Rule)
5:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 7, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88–715 Filed 1–13–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP87–4–000 and CP87–28–000]

PennEast Gas Service Co. and Texas Eastern Transmission Corp.; Intent To Prepare an Environmental Assessment and Request for Comments on Environmental Issues on The PennEast Phase I Looping Project

January 11, 1988.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced dockets. The *PennEast Phase I Looping Project* would consist of 28.01 miles of 36-inch-diameter pipeline on Texas Eastern Transmission Corporation's (Texas Eastern) Penn-Jersey Transmission System in central Pennsylvania; an additional 17,200 horsepower at two existing compressor stations; and a new 3,500 horsepower compressor station in Centre Hall, Pennsylvania. The staff is requesting comments on:

(1) The scope of the environmental assessment;

(2) Significant environmental issues;

(3) Alternatives to the proposal; and

(4) Measures to mitigate environmental impacts.

Written comments, submitted in accordance with the instructions in this notice, should be filed no later than February 12, 1988.

Project Background

On October 2, 1986, PennEast Gas Service Company (PennEast) filed an application with the FERC in Docket No. CP87–4–000 to construct 59.26 miles of 24- and 36-inch-diameter pipeline, and 24,100 horsepower of compression in Pennsylvania and New Jersey. Facilities would have been constructed in two phases and serve to increase capacity along Texas Eastern's Penn Jersey Transmission Line through central Pennsylvania. Phases I and II would have provided an additional 245,000 dekatherms per day (Dtd) for five local distribution companies.

The Phase I facilities proposed by PennEast are related to loop segments and compression proposed by Texas Eastern in Docket No. CP87–28–000 on October 16, 1986 where it proposed to construct another 8.00 miles of 36-inch-diameter pipeline loops and 17,200 horsepower of compression in Pennsylvania. Texas Eastern would have used 3,200 horsepower and the remaining 14,000 horsepower would have been allocated to PennEast Phase I. The facilities would have provided 23,115 Dtd for the purpose of firming up an interruptible transportation and delivery service for Consolidated Edison Company of New York, Inc., pursuant to Texas Eastern's SS-II storage service.

Subsequently in a related but separate action, Texas Eastern and PennEast filed a joint application on November 24, 1986 in Docket No. CP87–92–000 to construct 315.7 miles of pipeline and 69,000 horsepower of compression in Ohio, West Virginia, Pennsylvania, New Jersey, and New York. This project—the *Capacity Restoration and Expansion Program*—would have restored capacity by replacing the facilities on Texas Eastern's Line No. 1 and Line No. 2 across southern Pennsylvania, as well as provide incremental capacity for several other projects. A portion of the proposed incremental capacity on Line No. 1 and Line No. 2 would have been dedicated to the services proposed in Docket Nos. CP87–4–000 and CP87–28–000; thereby rendering unnecessary the majority of the loops and compression which had been proposed for the Penn Jersey Transmission Line. Therefore environmental review work on the Penn Jersey loop projects in Docket Nos. CP87–4–000 and CP87–28–000 was halted.

On February 24, 1987, the FERC issued a "Notice of Intent to Prepare an Environmental Assessment for the *Capacity Restoration and Expansion Program* and Request for Comments on Environmental Issues." At approximately the same time, issues surfaced concerning potential polychlorinated biphenyls (PCBs) contamination of those facilities proposed for abandonment or removal. The overall project schedule has been delayed pending resolution of these issues.

On November 2, 1987, PennEast filed a Notice of Partial Withdrawal by which Phase II would be withdrawn from Docket No. CP87–4–000. As a result, PennEast would now construct only the Phase I facilities previously identified which consist of 20.01 miles of 36-inch-diameter pipeline loops on Texas Eastern's Penn-Jersey Transmission System, and 3,500 horsepower of compression at Centre Hall Pennsylvania. The Phase I facilities would provide a total of up to 100,000 Dtd firm sales of gas to the following five local distribution companies in New York and New Jersey: Brooklyn Union Gas Company, Long Island Lighting Company, Elizabethtown Gas Company, New Jersey Natural Gas Company, and Public Service Electric and Gas Company.

Therefore the environmental assessment in the current project, the *PennEast Phase I Looping Project*, will analyze the Phase I facilities proposed by PennEast in Docket No. CP87–4–000. The document will also analyze the 8.00 miles of 36-inch-diameter pipeline loops and 17,200 horsepower of compression proposed by Texas Eastern in Docket No. CP87–28–000, since the two projects would share compressor additions and form continuous loop segments in several locations.

Proposed Facilities

The general locations of the proposed pipeline loop segments and compressor facilities are identified in Figure 1.[1] Texas Eastern and PennEast would construct a total of 28.01 miles of 36-inch-diameter pipeline at the four loop segments identified in table 1. The loop segments would require an additional 25-foot-wide permanent right-of-way, with a 75-foot-wide temporary right-of-way during construction.

TABLE 1.—PROPOSED PIPELINE LOOPS

Segment	Length (miles)	County
Lilly Loop	3.75	Cambria, Blair
Shermans Dale Loop	5.00	Dauphin
Bernville Loop	5.76	Berks
Bechtelsville Loop	13.50	Berks, Montgomery, Lehigh, Bucks

Texas Eastern and PennEast would also construct a total of 20,700 horsepower of compression at two existing sites and at one new location identified in table 2.

[1] Figure 1 is not printed in the Federal Register, but is available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357–8118.

TABLE 2.—PROPOSED COMPRESSOR FACILITIES

Location	Horsepower	Site (acres)	County
Centre Hall	3,500-new	10	Centre
Shermans Dale	8,600-upgrade	existing	Perry
Bernville	8,600-upgrade	existing	Berks

Construction Techniques

The pipeline facilities are proposed for construction between June and November 1988. Construction would begin with the clearing and grading of a temporary right-of-way approximately 75-feet-wide to prepare a relatively level strip to accommodate construction equipment. Rotary wheel ditching machines, backhoes, or rippers would then excavate a trench sufficiently deep to provide the minimum depth of cover, normally 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of consolidated rock are encountered. Topsoil would be removed and conserved in all cropland areas.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench welded together, coated, and lowered into the trench. Backfilling of the trench would use previously excavated materials. Topsoil that was conserved would be replaced at its original horizon. The right-of-way would be restored to its original contour as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with Texas Eastern's erosion and sedimentation control plans filed with appropriate state agencies and reviewed by the staff.

Comment Procedure

The FERC staff has identified several issues which will be specifically addressed in its *PennEast Phase I Looping Project* Environmental Assessment and requests comments on the following issues:

(1) Alternatives to the proposed Centre Hall Compressor Station including alternative sites in Potter and Spring Townships.

(2) Conformance of pipeline loop construction with on-going site contamination cleanup activities at the Lilly and Bechtelsville Compressor Stations.

Comments are also solicited on any additional topics of environmental concern to residents and others in the project area.

A copy of this notice and request for comments on environmental issues have been sent, as appropriate, to Federal, State, and local environmental agencies, parties in this proceeding, and the public. All county planning commissions in the project area have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the environmental assessment should be filed as soon as possible but no later than February 12, 1988. All written comments must reference Docket No. *CP87–4–000* and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The environmental assessment will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The environmental assessment will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal, and State agencies, and to interested members of the public. The environmental assessment may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Chris Zerby, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, telephone (202) 357–8066.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–675 Filed 1–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–45–000]

Arkla Energy Resources a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

January 11, 1988

Take notice that Arkla Energy Resources ("AER"), a division of Arkla, Inc., on December 31, 1987 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volumes 1–A and 2. AER states that the proposed tariff sheets reflect an annual overall jurisdictional rate increase of approximately $79.8 million proposed to be effective February 1, 1988. AER states that the principal reasons for the proposed rate increases are the shifts in the extent and manner in which its system is now used and an increase in recoupable gas prepayments.

AER states that for the purposes of its filing, AER has classified and allocated costs and designed its rates based on the modified fixed variable methodology. AER also proposes to reclassify its Gathering plant as Transmission to reflect the primary function of such facilities.

Copies of the filing were served upon AER's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–678 Filed 1–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–2–16–000]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

January 11, 1988.

Take notice that on December 31, 1987, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 4 to become effective February 1, 1988.

National states the purpose of Twelfth Revised Sheet No. 4 is to reflect a net increase of 2.34 cents per Dth. This change consists of an increase in current purchased gas cost of 13.42 cents per Dth, and a further decrease in the purchased gas cost surcharge adjustment of 11.08 cents per Dth.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Sercretary

[FR Doc. 88-679 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-59-000]

Nothern Natural Gas Co.; Division of Enron Corps.; Purchase Gas Cost; Adjustment Rate Change

January 11, 1988.

Take notice that on December 31, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Fifty-Second Revised Sheet No. 4b
Twentieth Revised Sheet No. 4b.1

Original Volume No. 2

Fifty-Ninth Revised Sheet No. 1c

Northern states that it established a PGA rate of $2.2480 per MMBtu which reflects an increase of $.2876 per MMBtu from the PGA rate of $1.9604 per MMBtu established in Northern's 1988 general PGA filing.

Northern states that since the projection of 1988 gas purchased costs may not reflect the level of gas purchased costs it actually will experience on February 1, 1988, it may not bill the commodity rates established in its filing on February 1, 1988. Instead, Northern states that it will utilize its flexible PGA tariff mechanism, if necessary, to reflect in the commodity rates on February 1, 1988, the estimated actual cost of purchased gas being experienced at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-680 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

January 11, 1988.

Notice

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report

Valuation Docket No. PV-1483-000
Interstate Storage & Pipe Line Corporation, 889 Elm Street, P.O. Box 1032, Manchester, New Hampshire 03105

On or before February 17, 1988, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to Rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designed in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Leon J. Slavin,

Chairman, Oil Pipeline Board.

[FR Doc. 88-676 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-192-000]

Terra Resources, Inc.; Application

January 11, 1988.

Take notice that on December 23, 1987, Terra Resources, Inc. (Applicant), of P.O. Box 2329, Tulsa, Oklahoma 74101, filed an application, pursuant to the provisions of section 7 of the Natural Gas Act, as amended, and Subpart B of 18 CFR Part 157, §§ 157.23-157.28, 157.41 of the Federal Energy Regulatory Commission's Regulations, to continue certain sales of natural gas in interstate commerce to Arkla Energy Resources, a division of Arkla Inc. (Arkla), from Latimer, Leflore, and Pittsburg Counties, Oklahoma, previously made by James C. Meade, under his small producer certificate in Docket No. CS76-897, all as more fully shown in the application which is on file with the Commission and open to public inspection.

By assignments effective December 31, 1986, Terra Resources, Inc. acquired certain acreage from James C. Meade.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 26, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-674 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

Existing Licensee's Intent To File an Application for New License; Flambeau Paper Corp.

December 9, 1987

Take notice that on October 26, 1987, Flambeau Paper Corporation, licensee for the Lower Hydroelectric Project No. 2421, filed a statement of its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Lower Hydroelectric Project No. 2421 will expire on December 31, 1993. The project is located on the North Fork of the Flambeau River in Price County, Wisconsin, and has a total capacity of 1,500 kVA.

The principal project works currently licensed for Project No. 2421 are: (1) A concrete dam 186 feet long and 32 feet high, with earth-filled abutments; (2) a powerhouse enclosing three turbine-generators; (3) a substation; and (4) appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost, at the licensee's offices as described in the Interim Rule.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-650 Filed 1-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3215-8]

Science Advisory Board, Radiation Advisory Committee, Radon Measurement Proficiency Program Subcommittee; Open Meeting—January 26-27, 1988

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Measurement Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held in the Training Room of Building 40 at the U.S. Environmental Protection Agency's Eastern Environmental Radiation Facility, 1890 Federal Drive, Montgomery, Alabama 36109. The meeting will begin at 9.00 a.m. Tuesday and adjourn no later than 5:00 p.m. Wednesday.

The Subcommittee will review the *Radon Measurement Proficiency Program* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Michael Mardis at (202) 475-9605 at the Office of Radiation Programs, ANR-464, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public. However, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on January 20, 1988. The telephone number is (202) 382-2552.

Terry F. Yosie,

Director, Science Advisory Board.

Date: December 29, 1987.

[FR Doc. 88-634 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-81014; FRL-3215-6]

Intent To Remove Forty-Nine Incorrectly Reported Chemical Substances From the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substance Inventory, EPA has concluded that certain chemical substances were incorrectly reported and listed. EPA intends to remove 49 chemical substances from the Inventory and solicits public comment on the appropriateness of that removal.

DATES: Comments must be received by EPA on or before February 29, 1988.

ADDRESSES: Three copies of the written comments should be addressed to: OTS Document Control Officer (TS-790), Environmental Protection Agency, Office of Toxic Substances, 401 M St., SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS-81014. The administrative record supporting this action is available for public inspection in the OPTS Reading Rm. NE Mall G004, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2607(b)) requires the Administrator of the EPA to identify, compile, and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710), which appeared in the **Federal Register** of December 23, 1977 (42 FR 64572). These regulations provided the basis for the initial compilation of the TSCA Chemical Substance Inventory, which identifies the chemical substances in U.S. commerce.

The Inventory is a compilation of chemical substances that have been manufactured, imported, or processed in the United States for commercial purposes since January 1, 1975. The Inventory's primary purpose is regulatory. It defines a new chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included in the Inventory, it is considered a new substance (section 3(9) of TSCA), and a premanufacture notice (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its regulatory function, it must be continuously and accurately updated as new information becomes available. Updated information includes such items as the identities of new chemical substances which are being introduced

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into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the **Federal Register** of July 29, 1980 (45 FR 50544), that it would accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29 **Federal Register** notice pertain to chemical identity.

Since the publication of the Inventory and the July 29, 1980, **Federal Register** notice, the Agency has received numerous requests to correct certain previously submitted Inventory reports. The Agency reviewed these correction requests and the corresponding reports originally submitted for the Inventory, and concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of the Inventory submissions, the Agency discovered that each of the incorrectly listed substances was reported only by the one submitter who subsequently requested that EPA correct the chemical identity originally reported, or who subsequently notified the Agency that the substance in question was solely manufactured for a non-TSCA use.

There are various reasons why chemical substances were incorrectly reported for the Inventory. First, the mistakes could have been typographical or transcriptional and were not known to the submitter when the original report was submitted. Second, improved analytical equipment and methods may have allowed for a more accurate description of a previously reported substance. Third, EPA may have identified reporting errors and requested corrections. Regardless of the source of error, the result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and is included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will be impaired, and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish. In addition, substances which probably should be subject to PMN review before they are manufactured or imported could avoid that review if they remain on the Inventory.

In this notice, the Agency proposes to remove 49 chemical substances. The Agency has found that these chemical substances were incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the 49 chemical substances is further identified by its corresponding Chemical Abstracts Preferred Name.

Of the 49 chemical substances proposed for removal, 48 were reported for inclusion on the Inventory. Subsequently, persons who had reported the chemical substances in question informed EPA of errors in their submissions. In the majority of these cases, the errors were due to mistaken chemical identities. The corrected identities for these chemical substances have been added to the Agency's Master Inventory File. In other cases, substances which were not eligible for reporting under TSCA because they had not been manufactured, imported, or processed for a TSCA purpose in the U.S. since January 1, 1975, were included on the Inventory. The remaining chemical substance was never reported for the Inventory but was included due to a transcriptional error. This error was subsequently discovered by EPA during a routine revision of the Inventory submissions. EPA has checked each of these 49 chemical substances as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No others were found.

In accordance with EPA policy (OTS Order 7730.7), an erroneously or incorrectly reported chemical substance should be removed from the TSCA Inventory. Accordingly, these 49 chemical substances do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the Inventory any of the 49 chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed chemical substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulations (40 CFR 710.2(p)), by anyone during the period January 1, 1975, through the publication date of this notice. The Agency is also interested to know whether any person can show that any of the chemical substances could have been properly reported for the Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. With the publication of this notice, any on-going manufacture, import, or processing of any of the 49 chemical substances listed below which was begun prior to the publication date of this notice may continue until publication of the final notice of disposition. All such comments must be submitted to EPA within the 45-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the **Federal Register**. EPA will not consider any request to retain any of the listed chemical substances on the Inventory based solely on the manufacture, import, or processing of that substance which begins after the publication date of this notice. If the Agency determines that any of the chemical substances listed below should not be removed from the Inventory, manufacturers, importers, or processors of these chemical substances would be invited to submit Inventory reports to establish the need to retain the chemical substances on the Inventory. The substances would then remain on the Inventory. On the other hand, if the Agency concludes that a chemical substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the chemical substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any manufacture or import of the chemical substance from the date of removal.

Chemical Substances Proposed for Removal From TSCA Inventory

136-83-4..... Phenol, 2-nonyl-.
5462-71-5..... Benzeneacetic acid, 4-cyano-.
12237-62-6..... C.I. Pigment Violet 27.
17736-40-2..... 1,3-Benzenediol, compd. with 1,3,5,7-tetraazatricyclo[3.3.1.1 ^{3,7}]decane.
18342-69-3..... 2,4,11,13-Tetraazatetradecane diimidamide, *N,N''*-dihexyl-3, 12-diimino-, dihydrochloride.
22573-93-9..... 2,4,11,13-Tetraazatetradecane diimidamide, *N,N''*-bis[2-ethylhexyl]-3,12-diimino.
24925-59-5..... Benzenamine, 4-nonyl-*N*-(4-nonyl phenyl)-.
24968-07-1..... Oxirane, ethyl-, homopolymer.
25035-84-1..... Propanoic acid, ethenyl ester, homopolymer.
31440-49-0..... 2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.

35428-64-9..... 2-Propenoic acid, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-propenoate.
36089-06-2..... Butanedioic acid, methylene-, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxynthyl 2-propenoate.
36089-48-2 ..... 2-Propenoic acid, 2-methyl-, polymer with *N*-(butoxymethyl)-2-propenamide, butyl 2-propenoate, ethenylbenzene and methyl 2-methyl-2-propenoate.
37569-89-4..... Poly(oxy-1,2-ethanediyl), .alpha.-(3-chloro-2-hydroxypropyl)-.omega.-(3-chloro-2-hydroxypropoxy)-.
38974-68-4..... L-Glutamic acid, *N*-(4-iodobenzoyl)-.
40195-82-2..... 1-Propene, 3,3,3-trifluoro-2-(trifluoromethyl)-, polymer with ethene.
51233-77-3..... Propanoic acid, 3-methyl-, phenyl ester.
51728-14-4..... Phenol, 2-[bis(4-hydroxyphenyl)methyl]-.
55157-26-1..... 1,3-Isobenzofurandione, 5,5'-carbonylbis-, polymer with 3-ethynyl benzenamine and 3,3'-[1,3-phenylene bis(oxy)]bis[benzenamine].
55782-90-6..... Benzenamine, 4-isononyl-*N*-(4-isononylphenyl)-.
57444-70-9..... L-Glutamic acid, *N*-(4-chlorobenzoyl)-.
61833-88-5..... 2(3*H*)-Furanone, dihydro-, polymer with *N*-(2-aminoethyl)-*N'*-[2-[(2-aminoethyl]amino]ethyl]-1,2-ethane diamine and *N*-(2-aminotheyl)-1,2-ethanediamine.
66794-58-9..... Sorbitan, monoisooctadecanoate, poly(oxy-1,2-ethanediyl) derivs.
67785-90-4..... Butenedioic acid, methylene-, polymer with 1,3-butadiene and 1,1-dichloroethene.
67786-03-2..... Oxirane, 2,2'-[[[2-(oxyranylmethoxy)phenyl] methylene]bis[4,1-phenylene oxymethylene]]bis-.
67859-91-0..... 1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2,2,4-trimethyl-1,3-pentanediol.
67893-13-4..... Poly(oxy-1,2-ethanediyl), .alpha.-[[(cyclohexylamino)methyl]-4-isononylphenyl]-.omega.-hydroxy-.
67905-97-9..... 2-Propenamide, polymer with *N,N*-di-2-propenylcyclohexanamine.
67909-72-6..... Oxirane,2,2'-[[[2-(oxiranylmethoxy)phenyl] methylene]bis[4,1-phenylene oxymethylene]]bis-, polymer with 1,3-diisocyanatomethylbenzene.
68003-36-1..... Benzenesulfonamide, 2-amino-*N*-ethyl-5-methyl-*N*-phenyl-.
68071-12-5..... Nonanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, benzoate.
68214-14-2..... 1,3-Benzenedicarboxylic acid, bis (2-hydroxyethyl) ester, polymer with tetrahydro-2,5-dioxio-3-furansulfonic acid.
68298-56-6..... Hexanedioic acid, polymer with 2-ethylhexyl 2-propenoate, 2,5-furan dione and 1,2-propanediol.
68381-90-6 [1]..... Soybean oil, polymer with allyl alc., glycerol, isophthalic acid, Me methacrylate, styrene and terphthalic acid.
68458-40-8 [1]..... Paraffin waxes and Hydrocarbon waxes, polymers with melamine and methylolated octadecylurea.
68515-66-2 [1]..... Cellulose, 2-hydroxypropyl ether, reaction products with ethylenimine.
68811-64-3 [1]..... Urea, reaction products with formaldehyde.
70210-02-5..... 2-Naphthalenesulfonic acid, 7-amino-5-[[4-[(2-bromo-1-oxo-2-propenyl]amino]-2-[(4-methyl-3-sulfophenyl]sulfonyl]phenyl] azo]-, disodium salt.
70644-50-7..... 2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with methyl-2-propenoate and 2 propenamide.
70644-52-9..... Methanaminimum, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl]amino]-, chloride, polymer with ethenyl benzene and 2-propenamide.
70644-54-1..... Methanaminium, *N,N,N*-trimethyl-1-[(1-oxo-2-propenyl]amino]-, bromide, polymer with ethenylbenzene and 2-propenamide.
70644-55-2..... 2-Propen-1-aminium, *N,N*-dimethyl-*N*-2-propenyl-, chloride, polymer with ethenylbenzene and 2-propenamide.
72845-92-2..... Formaldehyde, polymer with 3-methylphenol and nonylphenol.
72854-40-1..... Cuprate(3-), [3-hydroxy-4-[[2-hydroxy-5-[[2-(sulfooxy]ethyl]sulfonyl] phenyl]azo]-2,7-naphthalene disulfonato(5-)]-, trisodium.
72297-30-8..... Cuprate(1-), [4-[[dihydroxy[(2-hydroxy-3,5-dinitrophenyl]azo]phenyl] azo]benzenesulfonato(3-)]-, hydrogen.
73309-48-5..... 8,16-Pyranthrenedione, 2, 10-dichloro.
73758-86-4..... 2-Butenedioic acid (*E*)-, polymer with 1,3-butadiene, 1,1-dichloro ethene and 2-propenoic acid.
76822-91-8 [1]..... Butanamide,2,2'-[(3,3'-dichloro [1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[3-oxo-*N,N''*-bis(*o*-anisyl and phenyl) derivs.
81137-17-1..... 3-Piperidinemethanesulfonic acid, 5-[[5-[[4-chloro-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-ethyl-2-hydroxy-4-methyl-6-oxo-, trisodium salt.

[1] CAS Registry Numbers followed by an asterisk represent chemical substances of unknown or variable composition, complex reaction products, or biological materials. These substances have nonspecific registrations and lack accepted molecular formula representations.

Dated: December 31, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 88-636 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44503; FRL-3215-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the submission of test data pursuant to final test rules for three chemicals under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days of its receipt.

I. Test Data Submissions

This notice announces test data submissions received by EPA pursuant to test rules under section 4 of TSCA.

A. Propylene Oxide

ARCO Chemical Company submitted data to EPA for propylene oxide (CAS No. 75-56-9) on December 22, 1987. The submission describes an inhalation development toxicity study using mated CDF (Fischer 344) rats. Inhalation developmental toxicity testing in rats is required by a test rule, which is codified at 40 CFR 799.3450. Propylene oxide's major use is as a chemical intermediate. It is also used as a stabilizer in dichloromethane.

B. 2-Ethylhexanoic Acid

The Chemical Manufacturers Association (CMA) submitted data to EPA for 2-ethylhexanoic acid (CAS No. 149-57-5) on December 17, 1987. The submission describes pharmacokinetics studies in the female Fischer 344 rat.

Pharmacokinetics testing is required by a test rule, which is codified at 40 CFR 799.1650. This chemical is used as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives.

C. 1,2,4,5-Tetrachlorobenzene

The Chemical Manufacturers Association (CMA) submitted data to EPA for 1,2,4,5-Tetrachlorobenzene (CAS No. 95-94-3) on December 22, 1987. The submission describes a developmental toxicity study (by gavage) in Fischer 344 rats, and a developmental toxicity study (by gavage) in New Zealand white rabbits. Developmental toxicity testing is required by a test rule, which is codified at 40 CFR 799.1054. The chemical is found in a liquid solution that is being used as a temporary dielectric retrofilling fluid in PCB-containing electrical transformers.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44503). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 6, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-635 Filed 1-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-807-DR]

Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-807-DR), dated December 31, 1987, and related determinations.

DATED: January 6, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Arkansas, dated December 31, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 31, 1987:

The Counties of Mississippi, Monroe, Ouachita, and Pulaski for Individual Assistance.

The Counties of Arkansas, Cross, Lee, Lonoke, Poinsett, and Woodruff as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-615 Filed 1-13-88; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-805-DR]

Major Disaster Declaration; Puerto Rico

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-805-DR), dated December 17, 1987, and related determinations.

DATED: January 6, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the Commonwealth of Puerto Rico, dated December 17, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 17, 1987:

The Municipality of Santa Isabel for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 88-616 Filed 1-13-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200057-001.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (TPA)

Garrison Stevedoring, Inc.

Synopsis: The proposed agreement is to clarify certain language appearing in the original agreement including: in Addendum I, Section B-2, the last sentence which provides that all credits shall be non-assignable by Tenant has been eliminated; in Addendum I, section B-3, the last sentence, concerning payments to TPA in connection with Tenant's stevedoring and terminalling business, has been changed to provide that excess payments shall be paid as a cash rebate; and in Addendum I, Section B-4, a new last paragraph has been added regarding dockage and wharfage payments. This paragraph provides that Tenant will be refunded payments received that were generated by Tenant's business in excess of its minimum annual guarantee.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88-673 Filed 1-13-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Landmark Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Landmark Financial Corporation*, Hartford, Connecticut; to acquire 24.9 percent of the voting shares of SBT Corp., Old Saybrook, Connecticut, and thereby indirectly acquire Old Saybrook Bank and Trust Company, Old Saybrook, Connecticut.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capital Directions, Inc.*, Mason, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Mason State Bank, Mason, Michigan. Comments of this application must be received by January 29, 1988.

2. *Lake City Bancorporation*, Lake City, Iowa; to become a bank holding company by acquiring 100 percent of the voting share of Lake City State Bank, Lake City, Iowa.

Board of Governors of the Federal Reserve System, January 7, 1988.

Jame McAfee,

Associate Secretary of the Board.

[FR Doc. 88-585 Filed 1-13-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Change in Method of Award for Procurement of Copiers

Notice is hereby given that the General Services Administration, Federal Supply Service has established January 28, 1988 as the deadline for public comment concerning the proposed contracting change in the method of award for copiers having copy speeds ranging from 30 copies per minute to 55 copies per minute. Agency and industry comments are to be directed to Nicholas Economou, General Services Administration, Federal Supply Service, Office Equipment Division (FCGE), Washington, DC 20406 by close of business, January 28, 1988.

The machines presently under the purchase category of Multiple Award Schedule FSC Group 36, Part IV (purchase only) will be included in Single Award Schedule FSC Group 36, Part IV, Section A (purchase and maintenance). The contract period for this schedule is 7-1-88 through 6-30-89. Type of contract will be a fixed price, requirements, indefinite delivery type.

The estimated value of Government business to be granted on these "mid-range" machines is $5 million.

Method of Award will be through competitive negotiations utilizing a Life Cycle Cost evaluation technique. The Life Cycle Cost evaluation will be similar to that which has been used successfully in Single Award Schedule 36-IV-A since 1984. Similar terms and conditions as has been applicable to Single Award Schedule 36-IV-A since 1984 will also apply. Bid samples for Government testing will be required. Successful offerors will be required to provide a satisfactory subcontracting plan in accordance with Pub. L. 95-507. Anticipated issue date of the solicitation is 2-1-88 with a closing date of 3-1-88.

Copies of the proposed commercial items descriptions A-A-2571 and A-A-2572, setting forth the requirements and test procedures for the copiers in the 30-55 cpm speed range, may be obtained by calling William Daugherty at (703) 557-5135.

Dated: December 21, 1987.

Nicholas M. Economou,

Office Equipment Division.

[FR Doc. 88-595 Filed 1-13-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Meetings

ACTION: Notice of Meetings.

The following duplicate meetings will be convened by the Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Public Health Service:

Date:	February 9, 1988.	February 18, 1988.	February 23, 1988.
Time:	9:30 am-4:30 pm.,	9:30 am-4:30 pm.,	9:30 am-4:30 pm.
Place:	Sheraton Inn, Newark Airport, 901 Spring Street, Elizabeth, New Jersey 07201.	Hilton Inn Airport, (Detroit), 31500 Wick Road, Romulus, Michigan 48174.	Los Angeles Midtown Hilton, 400 N. Vermont Avenue, Los Angeles, California 90004.

Status: Open to the public for observation and participation, limited only by the space available.

Purpose: To review, discuss, and further develop the Procedures Document for implementation of the ATSDR "National Registry Proposal" for creating registries of individuals exposed to hazardous substances. Viewpoints and suggestions from industry, organized labor, environmental groups, academia, State and Federal governmental agencies, and the public are invited.

A draft Procedures Document has been developed which includes criteria and procedures for site (or chemical) selection, identification of prospective participants, data items to be collected, file creation dissemination. Each meeting will be conducted as a workshop and will focus solely on this document and not on any specific site.

Copies of the draft Procedures Document will be made available in advance upon request or at the site of the meeting. Interested persons may submit written statements, relevant material, or comments directly to ATSDR until March 15, 1988.

Contact Person for More Information: To obtain advance registration forms and/or a draft Procedures Document or additional information concerning the workshops contact: JeAnne Burg, Ph.D., Chief, Exposure and Disease Registry Branch, ATSDR, 1600 Clifton Road, NE., MS-F-38, Atlanta, Georgia 30333, telephones: FTS: 236-4810; Commercial: 404/488-4810.

Dated: January 11, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 88-726 Filed 1-13-88; 8:45 am]

BILLING CODE 4160-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-08-5100-09-XEAF]

Montana; Notice of Public Scoping Meetings

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of public scoping meetings for an environmental analysis of an application by U.S. Sprint Fiber Optic Cable Network for Right-of-Way in North Dakota, Montana, Idaho and Washington.

SUMMARY: Federal subsurface land in the Burlington Northern Railroad right-of-way is proposed for a fiber optic cable right-of-way for U.S. Sprint Fiber Optic Cable Network. U.S. Sprint has

filed an application for a subsurface right-of-way under the authority of the Federal Land Policy and Management Act of 1976 (90 Stat. 273) and 43 CFR Part 2800. The proposed subsurface right-of-way is located under the Burlington Northern Railroad right-of-way from Fargo, North Dakota, to Spokane, Washington.

Public scoping meetings for interested individuals and agencies are scheduled as follows:

January 18, 1988, at 7 p.m. PST, Conference Room, Sand Point Ranger District Office, Idaho Panhandle National Forest, 1500 Highway 2, Sand Point, Idaho

January 19, 1988, at 7 p.m. MST, Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana

January 20, 1988, at 7 p.m. MST, Rimrock Room, Northern Hotel—Best Western, Broadway & First Avenue North, Billings, Montana

January 21, 1988, at 7 p.m. MST, Cardinal Room, Interstate Inn, 71 West Twelfth, Dickinson, North Dakota.

The scoping meetings will be held to receive comments on the project from the public and private sectors of the community.

Current scheduling calls for a contracted environmental assessment to be completed by Dames & Moore, Inc. of Phoenix, Arizona, by May 1, 1988. Construction would follow with a target operational date of January 1, 1989.

FOR FURTHER INFORMATION CONTACT: The BLM Project Coordinator, Loren Glade, Miles City District Office, P.O. Box 940, Garryowen Road, Miles City, Montana 59301 or call (406) 232–4331.

Submittal date: December 31, 1987.

David D. Swogger,

Acting District Manager.

[FR Doc. 88–702 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-DN-M

[ID–943–08–4520–12]

Filing Plats of Survey; Idaho

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter stated:

Boise Meridian

T. 13 S., R. 38 E., accepted June 30, 1987, officially filed September 16, 1987.

T. 28 N., R. 9 E., accepted August 23, 1987, officially filed September 23, 1987.

T. 45 N., R. 5 W., accepted September 24, 1987, officially filed December 11, 1987.

T. 62 N., R. 4 W., accepted November 10, 1987, officially filed December 15, 1987.

T. 30 N., R. 4 E., accepted October 15, 1987, officially filed December 16, 1987.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Date: January 4, 1988.

Donald A. Simpson,

Chief, Land Services Section.

[FR Doc. 88–703 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-GG-M

[WY–040–08–4100–90]

Meeting and Tour of the Rock Springs District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings and tour of the Rock Springs District Advisory Council.

DATE: Meeting will be held Wednesday, February 17, 1988, at 9:30 a.m. Tour will be conducted Thursday, February 18, 1988.

ADDRESS: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald Sweep, District Manager, Rock Springs District, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The Rock Springs District Advisory Council will meet on Wednesday, February 17, 1988, at 9:30 a.m. in the Rock Springs District Office building. The agenda will include a general briefing and orientation, election of chairman, and tour. The meeting is open to the public.

A trona mine tour will leave the District Office parking lot on Highway 191 North, Rock Springs, at 9 a.m. on Thursday, February 18, 1988, and return about 1 p.m. the same day. If anyone is interested in participating in the tour, advance request to the District Manager by February 10 is mandatory.

Donald H. Sweep,

District Manager.

January 6, 1988.

[FR Doc. 88–608 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-22-M

[AZ–940–08–4212–12; A–22448]

Arizona; Opening Order

January 5, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Order providing for opening of surface estate in Arizona.

SUMMARY: This notice is to inform the public of the opening of the surface estate in 10,851.68 acres acquired by the United States in State Exchange A–22448.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: At 9:00 a.m. on February 16, 1988, the reconveyed land described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on February 16, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Gila and Salt River Meridian, Arizona

T. 11 N., R. 11 W.,
Sec. 13, N½;
Sec. 14, N½.
T. 11 N., R. 15 W.,
Sec. 8, E½;
Sec. 16, N½, SW¼.
T. 12 N., R. 14 W.,
Sec. 16, E½.
T. 12 N., R. 15 W.,
Sec. 2, lots 1–4, incl., NW¼SW¼.
T. 12 N., R. 16 W.,
Sec. 16, SE¼SE¼.
T. 13 N., R. 13 W.,
Sec. 16, E½;
Sec. 36, all.
T. 13 N., R. 14 W.,
Sec. 32, E½E½, SW¼;
Sec. 36, SW¼.
T. 13 N., R. 15 W.,
Sec. 32, all.
T. 14 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½, S¼.
T. 15 N., R. 10 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, S½.
T. 15 N., R. 10 W.,
Sec. 36, all.
T. 19 N., R. 19 W.,
Sec. 16, N½.
T. 19 N., R. 20 W.,
Sec. 2, SE¼NE¼, SW¼NW¼, S½S½.
T. 21 N., R. 20 W.,
Sec. 36, lots 1–4, incl.
T. 22 N., R. 21 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 24 N., R. 18 W.,
Sec. 2, lot 4.
T. 25 N., R. 18 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 25 N., R. 19 W.,
Sec. 36, all.
T. 26 N., R. 18 W.,
Sec. 26, all;
Sec. 34, NE¼, E½NW¼, S½.
T. 28 N., R. 15 W.,
Sec. 32, lots 1 and 2, W½, W½SE¼, SE¼SE¼.
T. 28 N., R. 16 W.,
Sec. 36, NE¼SE¼, S½SE¼.

The areas described comprise 10,851.68 acres in La Paz, Mohave and Yavapai Counties.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–607 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-32-M

[AZ–050–08–5410–10, A–23099]

Arizona; Yuma District Notice of Filing, Request for Conveyance of Federally-Owned Minerals in Mohave County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing, request for conveyance of Federally-owned minerals.

SUMMARY: An application was filed on November 12, 1987, for Federally-owned mineral rights under the following described privately-owned lands by Ixtapa Builders Corporation, Lake Havasu City, Arizona, under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719:

T. 19 N., R. 22 W., Gila and Salt River Meridian, Arizona,
Sec. 12, N½S½, S½N½, containing 320 acres.

Upon publication of this Notice in the **Federal Register**, these mineral interests shall be segregated from all forms of appropriation under the public land laws, including the mining laws. This segregative effect shall terminate upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application, or 2 years from the date of filing of the application (November 12, 1989), whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

J. Darwin Snell,

District Manager.

Date: January 5, 1988.

[FR Doc. 88–605 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-32-M

[AZ–940–08–4212–13; A–22311]

Arizona; Conveyance of Public Land; Order Providing for Opening of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action serves to inform the public of the conveyance of 37.43 acres of public land out of Federal ownership and the acquisition of 320.00 acres by the United States. This Notice will open the 320.00 acres of reconveyed land in Mohave County to surface entry.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Bureau of Land Management, Arizona State Office (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange between the United States and Paul L. Overman and Dolores M. Overman. The Bureau of Land Management transferred the following described land on December 30, 1987, by Patent No. 02–88–0023, pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 15 N., R. 19 W.,
Sec. 6, lot 7.
Containing 37.43 acres in Mohave County.

In exchange the surface in the following described land was reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 18 W.,
Sec. 11, W½.
Containing 320.00 acres in Mohave County

At 9:00 a.m., on February 16, 1988, the land described above will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on (February 16, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

This exchange enabled Paul L. Overman and Dolores M. Overman to acquire land near developed areas and enabled the United States to acquire land containing multiple resource values. The public interest was well served by the completion of this exchange.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–606 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-32-M

[UT–060–4410–06]

Proposed Resource Management Plan and Final Environmental Impact Statement; San Juan Area, UT

January 6, 1988.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of extension of protest period for the San Juan Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: The protest period for the Proposed Resource Management Plan and Final Environmental Impact Statement (RMP/EIS) for the San Juan Resource Area, Moab District, Utah has been extended to February 1, 1988. The protest period commenced on December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM P.O. Box 7, Monticello, Utah 84535; (801) 587–2141.

SUPPLEMENTARY INFORMATION: The RMP will guide management of 1.8 million acres of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM) in San Juan County, Utah.

This notice amends the Notices of Availability published in the **Federal Register** by the BLM on December 10, 1987, and by the Environmental Protection Agency (EPA) On December 18, 1987. Those notices stated that the protest period would end 30 days after publication of the EPA notice, or on January 18, 1988. The protest period has been extended to February 1, 1988.

The proposed RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of the BLM, 18th and C Streets NW., Washington, DC 20240, on or before February 1, 1988.

Gene Nodine,

District Manager.

[FR Doc. 88–604 Filed 1–13–88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-08-4212-14; W79576]

Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal of Competitive Sale Reference **Federal Register** Document 83-22711 appearing on page 37535, August 18, 1983. The competitive sale of the following public land in Wyoming is hereby withdrawn:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 105 W.;
Sec. 18: Lot 5, N½NE¼, NE¼NW¼.

FOR FURTHER INFORMATION CONTACT: Sally Haverly, Realty Specialist, (307) 362-6422.

Gene C. Herrin,

Associate District Manager.

Dated: December 30, 1987.

[FR Doc. 88-609 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-22-M

[MT-920-08-4332-08]

Public Review of Mineral Survey Reports on Wilderness Study Areas (WSAs), Montana

ACTION: Notice of the availability of five Mineral Survey Reports produced by the U.S. Geological Survey (USGS)/U.S. Bureau of Mines (USBM), on Bureau of Land Management (BLM) WSAs in Montana. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Montana BLM is requesting the public to review combined USGS and USBM "Mineral Survey Reports" which have been completed for preliminarily suitable WSAs. If the public identifies significant differences in interpretation of the data presented in these reports, or submits significant new minerals data for consideration, the BLM will request that USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Billings, Butte, Lewistown, and Miles City, Montana.

DATE: New information will be accepted on the reports enumerated in this notice until March 15, 1988.

ADDRESS: Send information on reports to the Deputy State Director, Division of Mineral Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT:

Jerry Klem, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Telephone (406) 657-6841.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the BLM prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the Montana State Director is providing this public review and comment period. Usually there is a 1- to 2-year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time, or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the BLM. Significant new minerals data or new interpretations of the minerals data will be forwarded to the USGS and USBM for further consideration. Evaluations received by the BLM from the USGS and USBM will be considered by the State Director in the final wilderness suitability recommendations.

Information requsted from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible, and include:

1. The name and number of the subject WSA and Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject WSA.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific WSA. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

The following is a list of available Mineral Survey Reports by WSA on which new information will be accepted:

Burnt Lodge Wilderness Study Area, Phillips and Valley Countries, Montana (USGS Bull. 1722-A).

Terry Badlands Wilderness Study Area, Prairie and Custer Counties, Montana (USGS Bull. 1722-B).

Ruby Mountains Wilderness Study Area, Madison County, Montana (USGS) Bull. 1724-A).

Blacktail Mountains Wilderness Study Area, Beaverhead County, Montana (USGS Bull. 1724-B).

Farlin Creek Wilderness Study Area, Beaverhead County, Montana (USGS Bull. 1724-C).

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, P.O. Box 25425, Federal Center, Denver, CO 80225.

Marvin LeNoue,

Acting State Director.

Date: January 4, 1988.

[FR Doc. 88-594 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-08-4220-11; GP-08-041; ORE-03141, ORE-05531, OR-19229, OR-19236, OR-32812, OR-22243(WASH), OR-22618(WASH), WASH-02135]

Proposed Continuation of Withdrawals; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that all or portions of eight separate land withdrawals continue for an additional 100 years and requests that the lands involved remain closed to surface entry and mining, and, where closed, be opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. All the lands are within The Dalles Lock and Dam Project and are described as follows:

1. ORE-03141, Public Land Order No. 1256 of November 28, 1955. Containing 55.37 acres.
   Located in Sherman County near Biggs, Oregon.
   T. 2 N., R. 16 E., W.M., secs. 7, 9, 10 and 18, Oregon.
2. ORE-05531, Act of Congress of June 23, 1959. Containing 4.70 acres.
   Located in Wasco County, 6 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 16, Oregon.
3. OR-19229, Executive Order of January 31, 1898. Containing 5.00 acres.
   Located in Wasco County, 5 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 31, and T. 2 N., R. 15 E., W.M., sec. 21, Oregon.
4. OR-19236, Public Land Order No. 45 of October 7, 1942. Containing 6.40 acres.
   Located in Wasco County, near Celilo, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 29, and T. 2 N., R. 15 E., W.M., secs. 17 and 20, Oregon.
5. OR-32812, Executive Order No. 1212 of June 22, 1910. Containing 6.00 acres.
   Located in Wasco County, near Celilo, Oregon.
   T. 2 N., R. 15 E., W.M., sec. 15, Oregon.
6. OR-22243(WASH), Public Land Order No. 45 of October 7, 1942. Containing 41.26 acres.
   Located in Klickitat County, Washington, near Celilo, Oregon.
   T. 2 N., R. 15 E., W.M., secs. 18 and 19, Washington.
7. OR-22618(WASH), Secretarial Order of March 28, 1910. Containing 91.70 acres.
   Located in Klickitat County, Washington, 6 miles northeast of The Dalles, Oregon.
   T. 2 N., R. 14 E., W.M., sec. 19, Washington.
8. WASH-02135, Public Land Order No. 1260 of December 1, 1955. Containing 31.30 acres.
   Located in Klickitat County, Washington, near Celilo, Oregon.
   T. 2 N., R. 14 E., W.M., secs. 13, 17 and 19, and T. 2 N., R. 15 E., W.M., sec. 14, Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws and some of the lands are closed to the mineral leasing laws. The U.S. Army Corps of Engineers requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to applications and offers under the mineral leasing laws where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: December 30, 1987.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc. 88-610 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Tetlin National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Tetlin National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); Section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with nine changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Servire.

copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with five changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Service. The Service is not recommending any additional on the Tetlin Refuge to the National Wilderness Preservation System.

Alternative C provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-619 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Kanuti National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S Fish and Wildlife Service has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kanuti National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Land Act); Section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative C, with nine changes, for implementation. As described in the Plan, Alternative C is the alternative preferred by the Servire.

The Service is not recommending any additions on the Kanuti Refuge to the National Wilderness Preservation System.

Alternative C provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Steiglitz,

Regional Director.

[FR Doc. 88-620 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review (Plan) for the Kodiak National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Deicision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kodiak National Wildlife Refuse, Alaska pursuant to section 304 (g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980; section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATE: This Decision on the Plan will be implemental immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: Alternative C with some modifications, described in the Decision, has been selected by the Service for implementation. As desribed in the Plan, Alternative C is the alternative preferred by the Service. The Service is recommending that 1.17 million acres on the Kodiak Refuge be added to the National Wilderness Preservation System.

Alternative C emphasizes protection of fish and wildlife populations and habitats as well as protection of resource values in specific river drainages while providing for anticipated increase in public use.

Dated: January 8, 1988.

Walter O. Steiglitz,

Regional Director.

[FR Doc. 88-618 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Nowitna National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Nowitna National Wildlife (Refuge), Alaska, pursuant to section 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemental immediately with specific management plans undergoing development and regulation proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has Alternative A, with five changes, for implementation. As described in the Plan, Alternative A is the current situation and the alternative preferred by the Service. The Service is recommending any additions on the Nowitna Refuge to the National Wilderness Preservation System.

Alternative A provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: January 8, 1988.

Walter O. Steiglitz,

Regional Director.

[FR Doc. 88-621 Filed 1-13-88; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31198]

G. Richard Abernathy; Continuance in Control; Exemption; Tennessee Southern Railroad Co.; Inc.

G. Richard Abernathy has filed a notice of exemption under 49 CFR 1180.4(g) regarding his continuance in control of Tennessee Southern Railroad Company, Inc. (TSRC), under the provisions of 49 CFR 1180.(d)(2). At present, Mr. Abernathy controls Georgia Northeastern Railroad Company, Inc., Walking Horse & Eastern Railroad Company, Columbia & Silver Creek Railroad Company, and Sequatchie Valley Railroad. TSRC, a noncarrier controlled by G. Richard Abernathy, has filed concurrently a notice of exemption in Finance Docket No. 31198, *Tennessee Southern Railroad Company, Inc.—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*, seeking an exemption to acquire by lease and purchase and operate approximately 117.86 miles of railroad located in Tennessee and Alabama. The lines will be purchased and leased from CSX Transportation, Inc. (CSX).

Mr. Abernathy indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). [1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-410 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association has requested the imposition of labor protective conditions. Because this transaction falls within the scope of 49 U.S.C. 11343, such conditions have been imposed routinely.

[Finance Docket No. 31198]

Tennessee Southern Railroad Co., Inc., Acquisition and Operation Exemption; Rail Lines of CSX Transportation, Inc.

Tennessee Southern Railroad Company, Inc. (TSRC), a noncarrier, has filed a notice of exemption to acquire by lease and purchase and to operate approximately 117.86 miles of railroad located in Tennessee and Alabama from CSX Transportation, Inc. (CSX). The rail lines extend from milepost 229.50 at Natco, TN, to milepost 233.40 at Columbia, TN; from milepost 233.00 at Columbia, TN, to milepost 272.70 at Nucarbon, TN; from milepost 272.70 at Nucarbon, TN, to milepost 312.26 at Florence, AL; from milepost 233.40 at Columbia, TN, to milepost 265.80 at Pulaski, TN; and from milepost 229.50 at Natco, TN, to milepost 227.20 at Godwin, TN.

The agreement for transfer of the lines between TSRC and CSX was to be consummated on or before December 29, 1987. This transaction will also involve the issuance of securities by TSRC, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

A transaction relating to the control of TSRC by G. Richard Abernathy is the subject of a notice of exemption filed concurrently in Finance Docket No. 31199, *G. Richard Abernathy—Continuance in Control Exemption—Tennessee Southern Railroad Company, Inc.* Any comments must be filed with the Commission and served on Mark M. Levin, of Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797, and David W. Hemphill, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-411 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 2, Finance Docket No. 32000]

Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Co.; Control; Southern Pacific Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed procedural schedule.

SUMMARY: The Commission proposes an expedited procedural schedule for this proceeding as set forth below.

DATES: Public comments must be filed by January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: January 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley and Simmons.

Noreta R. McGee,

Secretary.

Proposed Schedule for the DRGW-SPT Consolidation

Day 1 Application filed. Discovery begins.

D+15 Notice of the application published in the **Federal Register**.

D+20 Discovery conference on application held.

D+75 Comments and protests due on the application; requested conditions and inconsistent applications due.

D+80 Discovery conference on comments, protests, conditions, and inconsistent applications held.

D+115 Response to comments, protests, conditions and rebuttal in support of primary application due.

D+120 Rebuttal in support of comments, protests, conditions, and inconsistent applications due.

D+130 Briefs due, all parties.

D+140 Oral argument.

D+180 Decision served.

[FR Doc. 88-711 Filed 1-13-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980; South Carolina Department of Health and Environmental Control, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 28, 1987, a proposed partial consent decree in *United States* v. *South Carolina Department of Health and Environmental Control, et al.*, Civ. No. 80-1274-6 was lodged with the United States District Court for the District of South Carolina. Aquair is one of four defendants sued by the United States. The other three defendants have not settled and an appeal of this case is currently pending before the United States Court of Appeals for the Fourth Circuit, *United States* v. *Monsanto, et al.* No. 86-1261 (L).

The proposed consent decree provides that Aquair will pay the United States $5,000 in a post-judgment settlement. Aquair is a specialized chemical producer which generated hazardous substances disposed of at the Bluff Road site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *South Carolina Department of Health and Environmental Control, et al.*, D.J. Ref. 90-7-1-61.

The proposed decree may be examined at the office of the United States Attorney, Federal Building, 1100 Laurel Street, Columbia, South Carolina, 29201, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365. Copies of the Consent Decree may be examined or obtained in person or by mail at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th and

Pennsylvania Avenue NW., Washington, DC 20530.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-598 Filed 1-13-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Agreement and Undertaking
1215-0034; OWCP-1
On occasion
Businesses or other for-profit
300 responses; 75 hours; 1 form

The OWCP-1 is a joint use form (Longshore and Black Lung programs) completed by employers to provide the Secretary of Labor with authorization to sell securities, or to bring suit under indemnity bonds deposited by self-insured employers in the event there is a default in the payment of benefits.

Employment Standards Administration

Housing Terms and Conditions
1215-0146; WH-521, 521a and 521b
On occasion
Individuals or households; farms; businesses or other for-profit; small businesses or organizations
431 responses; 647 hours; 2 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires any farm labor contractor, agricultural employer or agricultural association providing housing to post or present, by written statement, to each migrant agricultural worker the terms and conditions, if any, of occupancy.

Mine Safety and Health Administration

First Aid Training for Supervisory Employees 1219-0085
On occasion
Businesses or other for profit; small businesses or organizations
5,115 respondents; 2,558 hours

Requires coal mine operators to keep records of first aid training received by supervisory employees.

Mine Safety and Health Administration

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments
1219-0015
Annually; weekly
Businesses and other for profit; small businesses or organizations
675 respondents; 78,230 hours

Requires coal mine operators to submit to MSHA an annual status report and certification on refuse piles and impoundments; and to keep records of the results of weekly examinations and instrumentation monitorings of impoundments.

Employment Standards Administration

Worker Information
1215-0145; WH-516, 16a and 16b
On occasion
Individuals or households; farms, businesses or other for profit; small businesses or organizations
52,000 responses; 26,882 responses; 3 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employers, and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

Signed at Washington, DC, this 7th day of January, 1988.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 88-659 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-27 4510-43-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Ethyl Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 28, 1987-January 1, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) The increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,209; Ethyl Corp., Sayreville, NJ

TA-W-20,221; Century Brass Products, Inc., Waterbury, CT

TA-W-20,223; Faulkner Mills, Inc., North Billerica, MA

TA-W-20,247; Woodland Foundry Co., Woodland, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,241; Universal Wire Products, Inc., North Haven, CT

U.S. imports of wire and cable declined absolutely in 1986 compared to 1985 and in the first three quarters of 1987 compared to the same period in 1986.

TA-W-20,239; Munsingwear, Inc., Ashland, WI

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,227; Miss Elaine, Inc., O'Fallon, IL

A certification was issued covering all workers of the firm separated on or after October 19, 1986.

TA-W-20,235; General Motors Corp., BOC Conner St., Detroit, MI

A certification was issued covering all workers of the firm separated on or after October 30, 1986.

I hereby certify that the aforementioned determinations were issued during the period December 28, 1987-January 1, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: January 5, 1988.

[FR Doc. 88-661 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Westran Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assitance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are elibible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 25, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 25, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 4th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Westran Corporation Alloy Steel Div. (Wkrs)	Duncan, OK	1/4/88	12/24/87	20,362	Steel.
American Trading & Production Corp. (Company)	Houston, TX	1/4/88	12/16/87	20,363	Oil & Gas.
Baxter Travenol (Workers)	Kingstree, SC	1/4/88	12/17/87	20,364	Hospital Products.
College-Town, Ltd., G.W.U.)	Braintree, MA	1/4/88	12/22/87	20,365	Sportswear.
Control Data Corp. (Workers)	Arden Hills, MN	1/4/88	12/1/87	20,366	Computer Systems.
Esks Company (IAMAW)	Dubuque, IA	1/4/88	12/17/87	20,367	Motors.
Gates Energy Products (Workers)	Paris, MO	1/4/88	12/22/87	20,368	Batteries.
Hagales Industries, (Workers)	Forsyth, MO	1/4/88	12/17/87	20,369	Slacks.
Health-Tex, Inc. (ACTWU)	Central Falls, RI	1/4/88	12/23/87	20,370	Clothing.
Kewell/Tulsa-Houston, A Joint Venture (IUE)	Oyster Creek, TX	1/4/88	12/15/87	20,371	Oil/Gas Pipelines.
M&S Convoy, Inc. (Teamsters)	New Stanton, PA	1/4/88	12/17/87	20,372	Autos.
Oxford Shirt Company (Workers)	Dublin, GA	1/4/88	12/22/87	20,373	Shirts.
RTE (Workers)	Waukesha, WI	1/4/88	12/4/87	20,374	Transformers.
Rohm and Haas Tennessee (AB&GWU)	Knoxville, TN	1/4/88	12/21/87	20,375	Plexiglas Acrylic Sheet.
Samuls Dress Co. (ILGWU)	New York, NY	1/4/88	12/8/87	20,376	Dresses.
Texaco U.S.A.-Onshore Exploration Dept. (Workers)	New Orleans, LA	1/4/88	12/17/87	20,377	Petroleum Products.
VW Federal Credit Union (Workers)	Youngwood, PA	1/4/88	12/15/87	20,378	Autos.
Volkswagen of America (Workers)	Valley Forge, PA	1/4/88	12/18/87	20,379	Auto Parts.
Westinghouse Electric Corp. (Company)	Round Rock, TX	1/4/88	12/17/87	20,380	Motors & Generators.
Action International LTD (UAW)	Mt. Clemens, MI	1/4/88	12/18/87	20,381	Flatware & Hollowware Potter

[FR Doc. 88-662 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-30-M

Apprenticeship 2000 Initiative; Public Meetings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor is announcing three public meetings to be held as part of the Apprenticeship 2000 initiative. These meetings will provide interested individuals with an opportunity to present oral or written views to ETA on the role of apprenticeship as a means of meeting the challenges of a changing American work place. The meetings will focus on basic issues relating to the concept of apprenticeship and its place in the American workforce in the year 2000 and beyond.

DATES: The dates of the three public meetings are as follows:

February 17, 1988: Washington, DC
February 23, 1988: Chicago, Illinois
February 25, 1988: San Francisco, California

The meetings will begin at 9:00 a.m. and adjourn at 5:00 p.m. There will be a one hour break for lunch (12:00 noon to 1:00 p.m.). Although each meeting will be limited to one day, it may be possible to extend the ending time to later in the day, if necessary. Persons desiring to present oral statements at the meeting shall submit a notice of intent to appear, postmarked on or before February 5, 1988.

ADDRESSES: The locations of the three public meetings are as follows:

Washington—Quality Inn Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.
Chicago—Dirksen Federal Building, Room 2525, 219 South Dearborn Street, Chicago, Illinois 60604.
San Francisco—San Francisan Hotel, 1231 Market Street, San Francisco, California 94103.

Notices of intent to present oral statements or written statements shall be mailed to:

Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Acting Director, Bureau of Apprenticeship and Training, Employment and Training Administration, Room N–4649, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–535–0540.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA), Department of Labor is holding three public meetings as part of the Apprenticeship 2000 initiative announced in the December 2, 1987, **Federal Register**, 52 FR 45904. The focus will be on the broad issues surrounding the concept of apprenticeship and its potential for meeting the needs of American industry. Background information and agenda topics/issues as well as meeting objectives are set forth below.

Background on Apprenticeship and on Workforce Projections

Formal apprenticeship began with the medieval trade guilds and continues today throughout the Western world. The basic concept of apprenticeship, while becoming more structured, has remained unchanged. Apprenticeship is on-the-job training combined with related instruction in occupations that require a wide and diverse range of skills and knowledge, as well as independent judgment. Apprenticeship programs are operated by employers, employer associations or jointly by management and labor on a voluntary basis. Currently, over 43,000 apprenticeship programs are registered with State or federal apprenticeship agencies.

The formal American apprenticeship system was established in 1937 with the passage of the National Apprenticeship Act, Pub. L. 75–308 (29 U.S.C. 50). During the past 12 months approximately 340,000 registered apprentices have received training in more than 770 apprenticeship occupations. The Federal Government's role in apprenticeship is largely one of promotion and technical assistance. The Federal Government provides no direct financial support to apprenticeship programs. States with formal apprenticeship councils (about half the States) also largely provide technical, rather than financial, support to apprenticeship programs. See 29 CFR Parts 29 and 30.

The apprenticeship concept is particularly well-suited to industries and occupations that require skilled and versatile workers. Apprenticeship programs involve employers, unions, workers and government acting cooperatively to meet the demands of the work place. For employers, apprenticeship offers a well-rounded, highly skilled worker who can be expected to complete complex tasks and meet unanticipated work challenges through independent action and mature judgment. For workers, apprenticeship means earning while learning; the promise of high paying skilled jobs with opportunity for advancement and credentials that permit movement within an industry. For government, apprenticeship programs offer a large return in human capital for a very small investment in government resources. All these factors suggest an expanded role for the apprenticeship of a shifting job market and a changing workforce composition.

The Department of Labor is looking at apprenticeship as a key means of developing new and replacement skilled workers. In doing so, a number of issues need to be explored to determine the apprenticeship role.

Agenda Topics/Issues

Five major issues surrounding expansion of apprenticeship were laid-out in the issue paper previously published in the December 2, 1987, **Federal Register** notice. 52 FR at 45906–45907. These same issues will continue to frame the debate surrounding the apprenticeship role and, while not limited to these issues, will be the focus of the public meetings. They are restated below:

Issue #1: Should/Can the Apprenticeship Concept be Broadened to All Industries? Construction trades account for well over half of all apprentices. Is it feasible and/or desirable for there to be a major expansion to other industries? In looking at this issue it is important to explore all the ramifications of an expanded apprenticeship program and its impact on the current system. Further, while an apprenticeship presence in all industries may be unrealistic, is it possible to target specific industries for expansion of apprenticeship. If so, which ones?

Issue #2: What Should Be the Limitations or Parameters, in Terms of Occupations, of An Expanded Apprenticeship Effort? There are currently over 770 recognized apprenticeable occupations. However, over three-quarters of all apprentices are being trained in just 30 occupations. What do these facts mean in terms of possibilities for expansion of occupations? What other occupations are suited to the apprenticeship concept? Are changes needed, or even desirable, in the basic apprenticeship concept is order to fit the occupations of today and tomorrow?

Issue #3: What Should Be the Delivery System for an Expanded Apprenticeship System? A strength of apprenticeship in construction trades is the joint apprenticeship committees which provide the core organization around which small construction firms and labor organizations can pool their resources and share the cost of providing extensive training. Are there similar existing delivery systems that can be utilized for expansion of apprenticeship? If so, how could these systems be best utilized? What new delivery systems would need to be created and how should they be structured? Establishing a strong local infrastructure to support apprenticeship in new industries or expand the use of apprenticeship in industries now utilizing such system of training may be the key to possible expansion.

Issue #4: What Should Be the Role of Government in an Expanded Apprenticeship System? The governments' current role n apprenticeship is unique. As stated earlier, unlike other publicly supported training programs, the Federal Government's role is largely limited to promotion and technical assistance. The amount of resources, if any, devoted to apprenticeship by the states is generally small and varies considerably from State to State. Should government's role be expanded beyond current promotional, registration and servicing activities for apprenticeship programs? Should government have a more active role in setting standards, certifying apprentices, providing accreditation of programs, or developing supporting training systems for related instruction? What are the proper linkages among public agencies? Which agencies properly have a role in apprenticeship and what are those roles? What other organizations could play those roles, if not a goverment agency?

Issue #5: How Can Apprenticeship Be More Effectively Linked to the Education System? With a shrinking number of new labor force entrants, our country can ill-afford young workers spending unproductive years looking for an appropriate place in the labor market. School-to-work programs, linking students to an apprenticeship during the last year of high school, as is common in Europe, should be explored. How can these programs be expanded and how should they be tailored to meet the needs of society, employers and student workers?

The above issues and questions by no means include all possible avenues of exploration; however, they may prove helpful to potential participants in preparing written or oral comments and are intended to provide focus to the debate. Participants are welcome to raise and discuss other issues and questions related to the concepts of apprenticeship.

Meeting Objectives and Procedures

The ETA is seeking participation in the meetings from a wide spectrum of interested individuals. Speakers will be scheduled, to the extent feasible, to provide a broad but balanced number of viewpoints and to reflect a variety of interests represented at the public meetings. The ETA recognizes that individuals have some problems and concerns relating to a very specific aspect or operation in the current apprenticeship program. However, we believe these issues are best addressed through regular channels rather than through the public meeting forum. Accordingly, speakers are encouraged to focus their remarks on the broad issues surrounding the apprenticeship review.

The goal of the meetings is to provide maximum factual input from members of the public. Therefore, the meetings will be structured to include a brief introduction followed by scheduled speakers. As noted in the **DATES** and **ADDRESSES** sections above, speakers wishing to present statements shall file notices of intent. To assist the ETA in appropriately scheduling speakers, the written notice of intent to present oral comments should include the following information:

(1) The name, address, and telephone number of each person to appear;
(2) Affiliation; and
(3) The issues and/or concerns that will be addressed.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their oral remarks to no more than five minutes. While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. However, all written statements will be accepted and incorporated into the public record. The Department of Labor will make the final determination on selection and scheduling of speakers.

A Department of Labor official will preside at each of the three meetings. The proceedings will be audiotaped and transcribed.

Next Steps

The ETA plans to analyze all comments received in response to this initiative. A report on the outcome of these public meetings and responses to the issue paper will be published as a **Federal Register** notice. Further input and public discussion may also be solicited to clarify, review or expand on the results of the public comments received in response to the Apprenticeship 2000 initiative. The comments received in response to the December 2, 1987, notice also are being considered as part of this process.

The ETA plans to continue research on apprenticeship issues and to consult individually with interested parties. Research questions to be explored include studies of the current system and its potential for accommodating change. Research projects of 6 to 12 months duration will be undertaken.

The ETA plans to complete the first phase of this project by summer. Results of the review and any preliminary recommendations on the feasibility of modification of the apprenticeship system will be published at that time.

Signed at Washington, DC, this 11th day of January, 1988.

Roberts T. Jones,
Acting Assistant Secretary for Employment and Training.

[FR Doc. 88–680 Filed 1–13–88; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–87–258–C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Helen Mining Company, R.D. #2, Box 2110, Homer City, Pennsylvania 15748–0504 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Homer City Mine (I.D. No. 36–00926) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that mining is being conducted to develop a combination belt and track entry. When development is completed, the return entry will be eliminated and will become an intake aircourse. The approximate length of the combination track/belt development section is 10,000 feet. It will be necessary to utilize a 750 kva, 600 kva and possibly a 150 kva transformer, to provide power to the belt drives and pumps.

3. As an alternate method, petitioner proposes that—

(a) The electric equipment will be housed in a fire proof structure or area with automatic closing fire doors. The fire doors will be activated by thermal devices with an activation temperature not greater than 165 degrees, and will be designed to enclose all associated electric components in a reasonably air tight enclosure in case of a fire or excessive temperature;

(b) A signal activated by a heat sensor will be located so that it can be seen or heard by a responsible person;

(c) The electric equipment will be protected with thermal devices, or

equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) An automatic fire suppression system will be installed and maintained in the fire-proof area;

(e) Flammable or combustible material will not be stored or allowed to accumulate in the fire-proof structure or area;

(f) Fire-fighting equipment will be provided on the outside of the fire-proof structure on the intake side; and

(g) The electric equipment will be examined, tested, and maintained by a qualified person, and the area enclosing the structure will be examined for hazardous conditions daily. The records of the examinations will be kept in a book on the surface.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 7, 1988.

[FR Doc. 88-663 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-233-C]

Mountain View Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mountain View Coal Company, RD #1, Box 104, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its R & S Slope (I.D. No. 36-07850) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such persons for one hour or longer.

2. Petitioner states that the devices are too bulky and, heavy to be worn safely while working or in the steeply pitching and narrow areas of the mine.

3. The mine is always damp to wet, and very little electrical equipment is used.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

5. Petitioner states that the mine can be evacuated in less than 10 minutes.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 8, 1988.

[FR Doc. 88-664 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-259-C]

White County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

White County Coal Corporation, Route 1, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Pattiki Mine (I.D. No. 11-02662) located in White County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, in lieu of coursing air currents directly into the return, petitioner proposes to use the air ventilating the electrical equipment as part of the overall intake ventilation for active workings.

3. In support of this request, petitioner proposes to install an early warning fire detection system. Low-level carbon monoxide sensors will be installed within 50 feet inby of all underground transformer stations, shops, battery-charging stations, substations compressor stations and permanent pumps where the air ventilating these facilities is used to ventilate active workings. The monitoring device will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated senor and for monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the facility or location will be patrolled and monitored for carbon monoxide by a qualfied person once each hour until the monitoring system becomes operable.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. The comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 7, 1988.

[FR Doc. 88-665 Filed 1-13-88; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-87-262-C]

White County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

White County Coal Corporation, Route #1, P.O. Box 457, Carmi, Illinois 62821 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pattiki Mine (I.D. No. 11-02662) located in White County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to use the belt haulage entry as an intake aircourse.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide detection system will be installed in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring device will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 16, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

January 7, 1988.

[FR Doc. 88-666 Filed 1-13-88; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM87-9]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is reviewing the operation of the jukebox compulsory license of the copyright law (17 U.S.C. 116). In particular, the Copyright Office is interested in learning the extent to which the 1985 voluntary agreement between the performing rights societies and the Amusement and Music Operators Association (AMOA) is working satisfactorily. This notice requests participation in a public hearing intended to elicit comments, views, and information which will assist the Office in this review of the effectiveness of the jukebox compulsory licensing system, and the regulations issued to facilitate the parties' voluntary agreement.

DATES: The public hearing will be held on March 10, 1988 in Washington DC beginning at 10 a.m., in Room LM-621 (yellow quadrant). Anyone desiring to testify should contact the Office of the General Counsel, Copyright Office at (202) 287-8380 by March 3, 1988. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on March 7, 1988. Comments are also invited from persons who do not wish to testify by March 7, 1988.

ADDRESSES: Hearing location: The hearing will be held in Room LM-621 of the James Madison Memorial Building, Library of Congress, First and Independence Ave., SE., Washington, DC beginning at 10:00 a.m..

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act of 1976, Title 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the performance of nondramatic musical works..

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Section 116 establishes general rules governing the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and certificates to be affixed to licensed phonorecord players.

The administration and civil enforcement of the compulsory licensing system has caused friction between copyright owners and jukebox operators.[1] The royalty fee initially

[1] In general, the licensing of performing rights in musical compositions is handled by the performing rights societies. Section 116(e) of the copyright law identifies the performing rights societies as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC, Inc. In copyright matters, jukebox operators have been represented by their trade association, Amusement & Music Operators Association (AMOA).

established in the 1976 Copyright Act was a yearly $8 per coin-operated phonorecord player. In 1981, the Copyright Royalty Tribunal, under its statutory authority, raised the royalty fee 46 FR 884 (1981). In 1982 and 1983 the fee became $25 per jukebox and thereafter, $50 per jukebox, subject to a cost of living adjustment on January 1, 1987. Jukebox operators argued this increase was too high, but the rate adjustment was upheld by the courts. *Amusement and Music Operator's Association* v. *Copyright Royalty Tribunal*, 676 F.2d 144 (7th Cir. 1982), *cert. denied*, 459 U.S. 907 (1982). The Copyright Office implemented the rate adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982). The current rate is $63 per jukebox.

The AMOA then sought legislative reform of the jukebox compulsory license, particularly with respect to the copyright royalties payable. Several bills were introduced in the 98th Congress (e.g., S. 1734, H.R. 3853 and H.R. 4010), which would have established a one-time royalty fee per jukebox for the entire useful life of the box, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and countered with arguments that voluntary compliance with the compulsory licensing scheme by operators was low. While the Copyright Act of 1976 contains significant penalties for performing copyrighted musical compositions without a negotiated or compulsory license, enforcement is expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners say they lose a significant portion of the royalties to which they are entitled under the existing law.

In order to reach a mutually acceptable solution without legislation, Congressional leaders in the 98th Congress, including Representative Robert Kastenmeier of Wisconsin, Chairman of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, urged the interested parties to enter into private negotiations. Adopting this advice, the performing rights societies and AMOA succeeded in reaching an agreement in 1985, which will be in effect until 1990. Although the agreement itself has not been made public, the main provisions were described in a press release by Mr. Kastenmeier. Under the agreement, the performing rights societies agreed to provide rebates to operators who obtain a compulsory license. Payment of the rebate, however, is conditional upon an increase in the number of jukeboxes licensed. The AMOA further agreed to encourage its membership to record their jukeboxes with the Copyright Office. In addition, the parties agreed to allow jukebox operators to transfer certificates from jukeboxes not in service to those that were publicly performing musical compositions. The Copyright Office promoted this portion of the agreement by modifying the content of the jukebox certificate, and adjusting its regulations. 50 FR 52458 (1985).

Despite the existence of the special agreement, the number of jukeboxes licensed has continued to decline. In calendar year 1984 the number of machines licensed was 104,391. In 1985 the number dropped to 99,985, in 1986 to 99,069, and in 1987 to 96,204.

On November 16, 1987, Representative Kastenmeier wrote to the Copyright Office in his capacity as Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice concerning the experience under the special agreement. The Subcommittee expressed interest in assessing the extent to which the voluntary agreement is working, and requested the assistance of the Copyright Office in securing this important information.

Accordingly, the Copyright Office has decided to hold a public hearing on March 10, 1988 to obtain information about the experience under the voluntary agreement between the music performing rights societies and AMOA. The Office, through its representative on the administrative committee established by the parties to oversee the agreement's implementation, has received regular briefings about developments. Through a public hearing, parties to the agreement (and other members of the public) can give the Office their own assessment of the experience under the special agreement and can perhaps offer constructive suggestions for improving it. The Office seeks all information relevant to the operation of the jukebox compulsory license and the experience under the special voluntary agreement. In particular, the Office would like to receive information on the following points:

(1) Has the change in Copyright Office regulations regarding the content of the jukebox certificate served its purpose of facilitating transfer of certificates from active to inactive boxes? Has this regulatory change led to any abuses of the certificate, such as licensing a smaller number of boxes than are actually active?

(2) Has the number of licensed jukeboxes decline because fewer boxes are in circulation, because of the increase in the royalty fees, because of ignorance of the law, because of willful noncompliance, because of a combination of the factors, or because of other factors? How many jukeboxes are in active circulation and operation in the United States?

(3) Can any of the parties to the voluntary agreement suggest ways to improve the agreement, or other ways to ensure compliance with the copyright law?

Dated: January 5, 1988.

Ralph Oman,

Register of Copyrights.

[FR Doc. 88-629 Filed 1-13-88; 8:45 am]

BILLING CODE 1410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-01]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: January 28, 1988, 8:30 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 847, Federal Office Building 10B, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

January 28, 1988

8:30 a.m.—Opening Remarks.
9:30 a.m.—Purpose, Scope and Approach.
10 a.m.—Historical Perspective.
11 a.m.—Concerns/Issues.
1 p.m.—Overview of Programs.
3 p.m.—Summary Session.
5 p.m.—Adjourn.

January 7, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

FR Doc. 88-654 Filed 1-13-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before February 16, 1988.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category Revision

Title: Process of Application, Evaluation, Award, and Report of NEH Travel to Collections Fellowships.
Form Number: 3136-0065.
Frequency of Collection: Collections occur twice yearly, according to individual program application deadlines.
Respondents: Academic scholars, teachers and independent scholars.
Use: Application, evaluation, and award process for individuals in the Travel to Collections programs.
Estimated Number of Respondents: 1,080.
Estimated Hours of Respondents to Provide Information: 6,800.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-652 Filed 1-13-88; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee; Meeting

December 29, 1987.
Name: Division of Microelectronic Information Processing Systems Advisory Committee.
Date and Time: February 8, 1988, 8:30 a.m.–5:00 p.m; February 9, 1988, 8:30 a.m.–3:00 p.m.
Place: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Stephanie Gorman, National Science Foundation, (202) 357-7373.
Minutes: May be obtained from contact person.
Purpose of Meeting & Agenda: To discuss the content of the Division's program goals and objectives and to advise on areas and priorities, new initiatives and other topics of interest to the Division.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 88-623 Filed 1-13-88; 8:45 am]

BILLING CODE 7555-01-M

DOE/NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting.
Name: DOE/NSF Nuclear Science Advisory Committee
Date and Time: February 5, 1988, 9:00 a.m.–12:00 p.m., 2:00 p.m.–5:00 p.m.; February 6, 1988, 9:00 a.m.–3:00 p.m.
Place: Millikan Board Room, Millikan Library, California Institute of Technology, 1201 California St., Pasadena, CA 91125.
Type of Meeting: Open.
Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.
Agenda:
Friday, February 5, 1988, 9:00 a.m.–12:00 noon. Presentation and discussion of NSF and DOE budgets and manpower data and of Theory Subcommittee report.
2:00 p.m.–5:00 p.m., Discussion of Theory and Inflation Subcommittee reports. Report on meeting of Canadian Delegation and NSF/DOE Agency representatives concerning invitation to participate in KAON.
Saturday, February 6, 1988, 9:00 a.m.–3:00 p.m. Discussion of Instrumentation Subcommittee. Report on activities of HEPAP Subpanel on Future Modes of Experimental Research in High Energy Physics. General discussion and comment.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-624 Filed 1-13-88 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Regulatory Biology; Meeting

The National Science Foundation announces the following meeting.
Name: Advisory Panel for Regulatory Biology.
Date and Time: February 3, 4, and 5, 1988, 8:30 a.m. to 5:00 p.m.
Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 321, National Science

Foundation, Washington, DC 20550, Telephone 202/357-7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of (5) U.S.C. 553b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 88-625 Filed 1-13-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power and Light Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF-6, issued to Arkansas Power and Light Company (the licensee), for operation of Arkansas Nuclear One, Unit 2 (ANO-2) located in Russellville, Arkansas.

The proposed amendment would modify the technical specifications to permit the licensee to render eight of the ten main steam safety valves inoperable and reset the remaining two valves in order to carry out a 10 year hydrostatic test on the main steam system in accordance with the licensee's application for amendment dated November 30, 1987. The test is to be carried out with the plant in the Hot Standby mode. The technical specification presently require that all main steam safety valves be operable in Hot Standby. The licensee also proposes using steam for the test rather than water.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for the proposed finding is as follows:

Criterion 1—Does Not Involve A Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would not involve an increase in the probability or consequences of an accident previously evaluated because the reactor would not be critical and the pressures in the main steam system would not exceed the design margin. Although the hydrostatic test requires the main steam system to be at a higher than normal pressure, sufficient overpressure protection will be provided by the two operable code safety valves. Therefore, the probability of a main steam line break (MSLB) accident will not be increased. The elevated secondary system pressure will require a higher primary system average temperature because of the thermodynamic coupling at the hot standby (Mode 3) plant conditions. A reactor coolant system (RCS) average temperature of 545°F at Hot Standby results in a saturated secondary steam pressure of about 1000 psi. The required hydrostatic test pressure upper bound of 1200 psi will correspond to a RCS average temperature about 28°F higher. In the event of a postulated MSLBk, this could result in a slightly greater cooldown, and therefore a slightly greater positive reactivity addition than that assumed in the MSLB evaluation. However, the consequences of a postulated MSLB would still be bounded by the MSLB accident analysis. The hydrostatic test will be performed with significantly greater available shutdown margin and a much less negative moderator temperature coefficient. The negative reactivity associated with these considerations is much greater than the slight additional positive reactivity addition made possible by the elevated secondary system pressure; therefore, an increase in the consequences of a postulated MSLB is not involved.

The higher RCS average temperature associated with the elevated main steam system pressure required for the hydrostatic test was also evaluated by the licensee for any affects on related Chapter 15 events, including Uncontrolled Control Element Assembly (CEA) Withdrawal from a Subcritical Condition and the CEA Ejection. Although the conservative assumptions used for the FSAR Chapter 15 analyses would still bound the consequences of these events with the higher initial RCS temperature, the licensee has elected to perform the hydrostatic test with all CEAs inserted in the reactor core, and has proposed the TS change to require that the reactor trip breakers shall be open for the duration of the test to effectively prevent any possible CEA withdrawal scenario. The worth of the assumed ejected CEA is less than the amount the core will be subcritical. Therefore, an increase in the probability or consequences of a CEA withdrawal or ejection event is not involved. At the end of core file, criticality can not occur at hot conditions with all rods inserted. Additionally, the available shutdown margin and dilution monitor administrative procedural requirements further assure that an increase in the probability or consequences of a Boron dilution event is not involved.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated. Analyses of a spectrum of MSLB and CEA withdrawal accidents were performed for the ANO-2 FSAR and evaluated again for each core reload to demonstrate acceptable consequences. Allowing a system hydrostatic test will not create the possibility of a new or different kind of accident.

Criterion 3—Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change would not involve a significant reduction in a margin of safety because the relatively small amount of energy required to provide the pressures for testing could be dissipated through the two operable code safety valves, thus preventing an overpressure in the main steam system. In addition, the proposed change would allow testing such that the steam system will not incur the stresses which would result from the weight of the water if tested by water pressure. Although it could be perceived that the proposed change could allow some reduction in a margin of safety by allowing a higher than normal main steam pressure with a lower steam relief capacity, hydrostatic testing is required by ASME Section XI and, in fact, preserves the margin of safety by demonstrating the integrity of the main steam system pressure boundary. It could also be perceived that the higher RCS average temperature associated with the elevated secondary system pressure required for the hydrostatic testing could reduce the margin of safety, but as discussed under Criterion 1, this potential effect is slight and is offset by the conservatisms inherent in the accident analyses and the conditions under which the testing will be performed.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determifnation unless it receives a request for a hearing.

Written comments may be submitted by mail to Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 11, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commision's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding. The petition should specifically explain the reason why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contentions set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves no significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth St. NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board

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designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1987 which is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland this 6th day of January, 1988.

For The Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate–IV, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–457 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–353]

Philadelphia Electric Co., Limerick Generating Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion date specified in Construction Permit No. CPPR–107 issued to Philadelphia Electric Company (PECo or applicant) for the Limerick Generating Station, Unit No. 2. The facility is located at the applicant's site on the Schuylkill River near Pottstown, in Limerick Township, Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–107 to January 1, 1992. The proposed action is in response to the applicant's request dated August 13, 1987.

The Need for Proposed Action

The proposed action is needed because construction of the facility is not yet fully completed. The change in the schedule for completion of the construction of Unit 2 results from suspension of construction by the Applicant in accordance with the terms of an order issued by the Pennsylvania Public Utility Commission (PaPUC) on December 23, 1983. Such order directed the Applicant to: (1) Suspend construction of Unit 2 pending operation of Unit 1; or (2) cancel Unit 2 or (3) continue construction of Unit 2 solely with internally generated funding. Applicant advised the PaPUC on January 24, 1984 that of the choices available, it had suspended construction of Unit 2 pending operation of Unit 1. As a result of this action all activities at the Unit 2 construction site were suspended during the period from January 1, 1984 to February 1, 1986 except essential activities required to protect the site, the public and workers and actions required to allow a prompt resumption of construction.

The PaPUC's order of December 23, 1983 and the subsequent suspension of construction of Unit 2 resulted from an order entered by the PaPUC on October 10, 1980, which initiated an investigation into the need for and the economy of the Limerick facility. At the conclusion of this investigation, the PaPUC issued an Opinion and Order on August 27, 1982 that concluded that either cancellation or suspension of construction at Limerick Unit 2 would be in the public interest. Applicant appealed such Opinion and Order. After the affirmation of the August 27, 1982 order by the Pennsylvania Supreme Court, the PaPUC entered a further order on June 10, 1983 which required Applicant to comply with its Order of August 27, 1982.

On July 21, 1983 Applicant filed a response to the PaPUC Order which resulted in a series of replies in opposition by several parties, following which the PaPUC entered its December 23, 1983 Opinion and Order discussed above. On January 24, 1984 Applicant filed its response to the PaPUC Order dated December 23, 1983 in which it advised the PaPUC that Applicant had suspended construction of Limerick Unit 2 pending operation of Limerick Unit 1. Thus, by January 1984, essentially all construction activity at Limerick Unit 2 had been suspended. In an Order entered February 22, 1984 the PaPUC accepted the Applicant's response as being in compliance with the PaPUC Orders of August 27, 1982, June 10, 1983 and December 23, 1983.

On August 7, 1984, with construction of Unit 2 still suspended, the PaPUC commenced a further investigation of Limerick by issuing an Order to Show Cause why the completion of Limerick Nuclear Generating Station Unit 2 would be in the public interest. Following this investigation, the PaPUC entered an Opinion and Order dated December 5, 1985 finding that completion of Limerick Unit 2 is in the public interest if the Applicant accepted certain cost-containment and operation incentive plans set forth in the PaPUC's Opinion and Order. On December 23, 1985, Applicant notified the PaPUC of its plan to complete Limerick Unit 2 and its acceptance of the PaPUC's cost containment and operation incentive programs. On January 2, and 6, 1986, two parties to the PaPUC proceeding filed petitions for review with the Pennsylvania Commonwealth Court challenging the PaPUC Order. On January 17, 1986, the Applicant filed its own petition for review in the nature of a cross-appeal seeking certain modifications of the PaPUC's Order in the event that one or more of the positions of the opposing parties should prevail. On February 18, 1986, the Commonwealth Court affirmed the December 5, 1985 Opinion and Order of the PaPUC in all respects.

On February 1, 1986 Limerick Unit 1 was declared to be in commercial operation and construction of Limerick Unit 2 was resumed later in that month and is continuing. At the time of suspension of construction activities in January, 1984 Unit 2 construction was approximately 30 percent complete and engineering activity was approximately 82.5 percent complete. Since the resumption of work on Unit 2, engineering has progressed to the point where it is, as of October 1987 approximately 91 percent complete and construction activities are approximately 73 percent complete.

The events described above relating to suspension of construction have resulted from conditions which were beyond the control of Applicant and could not have been predicted at the time the construction schedule upon which the present construction completion date of CPPR–107 was established. The completion dates proposed by Applicant are considered reasonable based upon Applicant's present schedule of engineering and construction activities, progress in these areas since resumption of work on Unit 2, and taking into account the uncertainties involved in a major construction effort of this type.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of Limerick Unit 2 have been previously discussed and evaluated in NRC's Final Environmental Statement (FES) issued in November 1973 for the construction permit stage which covered construction of both units. The environmental impacts associated with operation of the Limerick Generating Stations, Units 1 and 2, were discussed in NRC's FES issued April 1984 (NUREG–0974).

The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the applicant more time to complete construction in accordance with the previously approved construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concluded that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. This extension does not allow any work to be performed of the type not previously authorized by the existing construction permit. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action

An alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of power production. Further, this option would not eliminate the environmental impacts of construction already incurred. Therefore, this alternative is rejected.

Alternative Use of Resource

This action does not involve the use of resources not previously considered in the FES for the Limerick Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for extension dated August 13, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 6th day of January 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–668 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Research Program; Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on January 29, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, January 29, 1988—8:30 a.m. until 1:00 p.m.

The Subcommittee will discuss the methodology to be used by the RES Staff to prioritize NRC research activities.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allowed therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 11, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–690 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on January 22, 1988, at the AMFAC Hotel, 2910 Yale Blvd., SE., Albuquerque, NM.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 22, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review the results of the concrete containment model test.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting

has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 7, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc 88–691 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

Proposed Amendments Regarding Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC staff will discuss draft guidance related to the proposed amendments for safeguards requirements for fuel facilities possessing formula quantities of strategic special nuclear material which were published on December 31, 1987, for public comment (52 FR 49418).

DATES: January 19–20, 1988.

ADDRESS: White Flint 1, 11555 Rockville Pike, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Kristina Z. Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0360.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to further the licensee's understanding of the proposed amendments, which strengthen safeguards at fuel facilities possessing formula quantities of strategic special nuclear material and which upgrade the facilities to a level equivalent to the protection in place at comparable Department of Energy facilities. The meeting will elicit industry comments on the associated guidance and answer questions on the proposed physical security requirements.

The meeting will be divided into sessions for the NRC presentations and for licensee questions on the current draft guidance.

Since classified information may be discussed during the briefing, there will be two sessions: One open to the public, and one closed.

Dated in Silver Spring, Maryland, this 6th day of January, 1988.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–672 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

Change of Address at Region I

Effective January 19, 1988, NRC's Region I Office will be moved to a new location. The new address will be U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. The current commercial telephone number (215–337–5000) remains unchanged. The FTS switchboard number has been changed to 8–346–5000. Individual staff members may be reached by dialing FTS 8–346–5XXX, as the last three digits of their current telephone numbers remain the same as listed in the NRC Telephone Directory (NUREG/BR–0046).

Dated at Bethesda, Maryland, this 11th day of January 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–671 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric & Gas Co. and Atlantic City Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric & Gas Company and Atlantic City Electric Company (the licensees) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would:

(1) Increase the Minimum Critical Power Ratio (MCPR) safety limit in Technical Specifications (TS) 2.1.2 and 3/4.4.1 and in Bases sections related to these TSs.

(2) Replace the curves in Figures 3.2.1–1 and 3.2.1–2 to provide Maximum Average Planar Heat Generation limit curves for two new fuel types that will replace two existing fuel types during the next operating cycle (Cycle 2).

(3) Change TS 3/4.2.3 to provide new MCPR limits for Cycle 2 operation providing limits for two exposure ranges rather than a single exposure range as in the existing TS. The two ranges are (a) from Beginning-of-Cycle (BOC) to End-of-Cycle (EOC) minus 2000 MWD/ST and (b) from EOC minus 2000 MWD/ST to EOC. The *Action* and *Surveillance Requirements* for TS 3/4.2.3 would also be revised to reflect this new option of using either of the two new exposure ranges and to delete the existing option of operating at 400°F or less.

(4) Revise existing Figure 3.2.3–1, MCPR vs Tau, by providing the MCPR vs Tau curves for the first exposure range discussed above and revise existing Figure 3.2.3–2, K_f Factor by deleting the K_f Factor curve and replacing it with the MCPR vs Tau curves for the second exposure range discussed above.

(5) Add a new Figure 3.2.3–3 with a new K_f Factor curve for Cycle 2 operation.

(6) Delete Table 3.2.3–1 which currently provides MCPR Feedwater Heating Capacity Adjustments for operation below 400°F.

(7) Revise the TSs to allow operation above the 100% Load Line and up to 105% Rated Core Flow by:

(a) Extending the K_f Factor curve up to 110% of Rated Core Flow (instead of the current 100%).

(b) Clamping the Upscale Setpoints for the Rod Block Monitor in TS Table 3.3.6–2 at the 100% recirculation flow value.

(c) Increasing the Motor Generator Set mechanical and electrical stops in TS 4.4.1.1.3 to physically allow for increased core flow.

Prior to issuance of the prosposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 16, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of

Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule in the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 14, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Bethesda, Maryland, this 6th day of January 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–670 Filed 1–13–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Extension

Rule 17f–1
File No. 270–236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f–1 under the Investment Company Act of 1940. Rule 17f–1 sets forth conditions under which a registered management investment company may place or maintain its assets in the custody of a member of a national securities exchange. The rule imposes a burden of about 4 hours annually, per respondent.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 8, 1988.

[FR Doc. 88–641 Filed 1–13–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16205; 812–6918]

Banco De Vizcaya, S.A.; Application

Date: January 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act").

Applicant: Banco De Vizcaya, S.A.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit the issuance and sale of its equity securities in the United States.

Filing Dates: The application was filed on November 17, 1987, and amended on December 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant, c/o Jeffrey Small, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's representations:

1. Applicant is a full service commercial bank incorporated and registered in the Kingdom of Spain, which provides a comprehensive range of banking and other financial services to the public. Applicant maintains an extensive network of branches in Spain and also maintains branches, agencies, subsidiaries and representative offices in a number of other countries in Europe, North and South America and Asia. As of December 31, 1986, Applicant was the fifth largest banking group in Spain in terms of total consolidated loans and advances ($9.84 billion), and the sixth largest in terms of total consolidated assets ($20.41 billion), with total consolidated customer deposits of approximately $13.43 billion.

2. The Bank of Spain is the central bank of Spain and exercises general supervision over all Spanish financial institutions in a manner similar to that of the central banks of most European countries and the United States. The Bank of Spain supervises the compliance of Spanish banks with liquidity, investment and guarantee ratios. In addition, Spanish banks are subject to inspection by auditors designated by the Bank of Spain.

3. Applicant conducts its United States operations through a branch in New York and agencies in Miami and San Francisco. Applicant also owns a subsidiary bank in Puerto Rico and has a 48% interest in a bank holding company in New Mexico. These banking activities subject the Applicant to the supervisory authority of the Board of Governors of the Federal Reserve System, the banking departments of the States of New York, Florida and California and the Commissioner of Financial Institutions of the government of Puerto Rico. Moreover, Applicant is fully subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978 ("IBA").

Applicant's Conditions:

1. In connection with Applicant's proposal to issue and sell its equity securities in a public offering in the United States, either directly or in the form of American depositary shares represented by American depositary receipts ("ADRs"), Applicant undertakes that any such public offering will be duly registered under the Securities Act of 1933 ("1933 Act"). Applicant will not sell its equity securities in any such public offering until the appropriate registration statements pertaining thereto have been declared effective by the SEC. Further, Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with any such public offering.

2. In the case of a private offering of its equity securities Applicant undertakes to comply with the requirements for the exemption from registration provided by section 4(2) of the 1933 Act or Regulation D thereunder. Such private offering would be made only to a limited number of sophisticated institutional investors or other investors as permitted by Regulation D, and Applicant will provide for the delivery to such investors of information concerning the Applicant, its business and the securities being offered.

3. Applicant undertakes to submit to the jurisdiction of the New York State and United States Federal courts sitting in The City of New York for the purpose of any suit, action or proceeding arising out of the offering of its equity securities, and, will appoint a corporation with an office in The City of New York engaged in providing corporate services for lawyers as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable for as long as any of the Applicant's equity securities issued in reliance upon an order of the SEC are outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process will not affect the right of any holder of Applicant's equity securities to bring suit in any court which may have jurisdiction over the Applicant by virtue of the offer and sale of its equity securities or otherwise. The agent for service of process will not be a trustee for the holders of any securities issued by the Applicant or have any responsibilities or duties to act for such holders as would a trustee.

4. Applicant undertakes that it will not make any offering of its equity securities in the United States in reliance upon the requested exemptive order if either: (1) Applicant ceases to be regulated as a commercial bank in the Kingdom of Spain, or (2) Applicant ceases to be subject to banking regulation in the United States. Moreover, Applicant has (a) no present intention of withdrawing its presence in the United States and (b) no present intention to curtail its banking operations in Spain to the extent that it would cease to be regulated as a bank in Spain.

5. If Applicant's operations are curtailed in the future with the result that Applicant is no longer regulated as a foreign bank in the United States, Applicant agrees to continue to comply with its undertakings concerning submission to jurisdiction and appointment of an agent to accept service of process until such time as there are no holders in the United States of its equity securities issued in reliance on the requested order.

Applicant's Legal Analysis:

Applicant asserts that the requested order is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the requested exemption will advance the policies underlying the IBA of nondiscriminatory treatment of foreign banks in the United States. Applicant states that access to the United States investment market will provide it with a new source of capital which constitutes an important element of any bank's capital structure. Applicant also asserts that the proposed exemption will benefit the general public as well as institutional and other sophisticated investors in the United States by making Applicant's equity securities available to such investors. Applicant notes that the exception from the 1940 Act's definition of an investment company for domestic banks under section 3(c)(3) of the 1940 Act was provided because the particular abuses against which the 1940 Act was directed were deemed unnecessary for commercial banking entities because of the comprehensive regulation and supervision of banks. Applicant contents that these reasons also apply to Applicant because its operations are controlled and overseen by Spanish banking authorities and its United States operations are subject to United States banking laws and various state banking laws. Hence, Applicant concludes that it would be inappropriate to subject it to regulation under the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-848 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AGS Computers Inc.
Common Stock, $.10 Par Value (File No. 7-0974)

Allstate Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-0975)

Ameron Inc.
Common Stock, $2.50 Par Value (File No. 7-0976)

Arco Chemical Co.
Common Stock, $1.00 Par Value (File No. 7-0977)

Belco (A.H.) Corp.
Common Stock, $.67 Par Value (File No. 7-0978)

Belding Heminway Co.
Common Stock, $1.00 Par Value (File No. 7-0979)

Edison Brothers Stores, Inc.
Common Stock, $1.00 Par Value (File No. 7-0980)

Equifax Inc.
Common Stock, $2.50 Par Value (File No. 7-0981)

Equitec Financial Group
Common Stock, $.01 Par Value (File No. 7-0982)

Flexi-Van Corp.
Common Stock, $.01 Par Value (File No. 7-0983)

Florida Steel Corp.
Common Stock, $.100 Par Value (File No. 7-0984)

Hancock Fabrics Inc.
Common Stock, $.01Par Value (File No. 7-0985)

Hartmarx Corp.
Common Stock, $2.50 Par Value (File No. 7-0986)

International Multifoods Corp.
Common Stock, $1.00 Par Value (File No. 7-0987)

Interstate Bakeries Corp.
Common Stock, $.10 Par Value (File No. 7-0988)

Katy Industries Inc.
Common Stock, $1.00 Par Value (File No. 7-0989)

Lawter International Inc.
Common Stock, $1.00 Par Value (File No. 7-0990)

Logicin Inc.
Common Stock, $.10 Par Value (File No. 7-0991)

Manhattan Ind., Inc.
Common Stock, $1.00 Par Value (File No. 7-0992)

Mark IV Ind., Inc.
Common Stock, No Par Value (File No. 7-0993)

MFS Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7-0994)

Munford Inc.
Common Stock, $1.00 Par Value (File No. 7-0995)

National Semiconductor Corp.
$4.00 Cumulative Exchangeable Depository Preferred, No Par Value (File No. 7-0996)

British Petroleum Co., Ltd.
Warrants (File No. 7-0997)

Brooklyn Union Gas Co.
Common Stock, $50 Par Value (File No. 7-0998)

Buckeye Partners, L.P.
Common Stock, No Par Value (File No. 7-0999)

Cenvill Investors Inc.
Common Stock, $.01 Par Value (File No. 7-1000)

Christiana Co., Inc.
Common Stock, $1.00 Par Value (File No. 7-1001)

Clayton Homes
Common Stock, $.10 Par Value (File No. 7-1002)

CRS Sirrine Inc.
Common Stock, $1.00 Par Value (File No. 7-1003)

Desoto Inc.
Common Stock, $1.00 Par Value (File No. 7-1004)

Dreyfus Strategic Municipals Inc.
Common Stock, $.0001 Par Value (File No. 7-1005)

NCH Corp.
Common Stock, $1.00 Par Value (File No. 7-1006)

Nerco International Inc.
Common Stock, No Par Value (File No. 7-1007)

Newell Co.
$2.08 Cumulative Convertible "A" Preferred, $1.00 Par Value (File No. 7-1008)

Neiman Marcus Group Inc.
Common Stock, $.01 Par Value (File No. 7-1009)

Pilgrims Pride Corp.
Common Stock, $.01 Par Value (File No. 7-1010)

Placer Dome Inc.
Common Stock, No Par Value (File No. 7-1011)

Republic NY Corp.
Common Stock, Par Value $5.00 (File No. 7-1012)

RLI Corp.
Common Stock, $1.00 Par Value (File No. 7-1013)

Royal International Optical Corp.
Common Stock, $.10 Par Value (File No. 7-1014)

Service Corp. International
Common Stock, $1.00 Par Value (File No. 7-1015)

Sprague Technologies Inc.
Common Stock, $1.00 Par Value (File No. 7-1016)

Tandum Computers Inc.
Common Stock, $2.50 Par Value (File No. 7-1017)

UST Inc.
Common Stock, $.50 Par Value (File No. 7-1018)

Universal Foods Corp.
Common Stock, $.10 Par Value (File No. 7-1019)

USPCI Inc.
Common Stock, $.10 Par Value (File No. 7-1020)

Amek Fructose Corp.
Class "A" Common Stock, $.10 Par Value (File No. 7-1021)

Baker Hughes Inc.
Common Stock, $1.00 Par Value (File No. 7-1022)

Blount Corp.
Class "A" Common Stock, $1.00 Par Value (File No. 7-1023)

Claremont Capital Corp.
Common Stock, $1.00 Par Value (File No. 7-1024)

Giant Food Inc.
Class "A" Common Stock, $1.00 Par Value (File No. 7-1025)

Turner Corp.
Common Stock, $1.00 Par Value (File No. 7-1026)

Kysor Industrial Corp.
Common Stock, $1.00 Par Value (File No. 7-1027)

These securities are listed and registered on one or more other national securities exchange and are reported in

the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-642 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16203; 812-7994]

Girozentrale und Bank der Osterreichischen Sparkassen Aktiengesellschaft and Girozentrale Vienna Finance (Delaware) Inc.; Application

January 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Girozentrale und Bank der Osterreichischen Sparkassen Aktiengesellschaft (the "Bank") and Girozentrale Vienna Finance (Delaware) Inc. (the "Issuer")

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the offer and sale of the Issuer's debt securities in the United States.

FILING DATE: The application was filed on November 3, 1987, and amended on December 21, 1987.

HEARING OR NOTIFICATION OF HEARINGS: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272-2847 or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300.

Applicants' Representations:

1. The Bank is a joint stock company, formed in Vienna in 1937, which acquired its present corporate form in 1958. The Bank is the second largest banking institution, largest non-nationalist bank, and leading investment bank in Austria. Counsel to the Applicants further states that, based upon discussions with the appropriate staff of the Bank, the Bank is engaged regularly in, and derives a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary in Austria. On March 2, 1987, the Bank was given a license by the Comptroller of the Currency to establish and operate a branch in New York.

2. The Bank is subject to extensive supervision of and regulation by Austrian banking authorities that is comparable in many respects to the supervision of United States commercial banks. The Bank is authorized to carry on a banking business under the Kreditwesengesetz 1979, as amended (Banking Act) and is subject to supervision and regulation by the Budesminister for Finanzen (Federal Minister of Finance) and the Osterreichische National Bank (Austrian National Bank). In addition, pursuant to the Bank Holding Company Act of 1956 and the International Banking Act of 1978, the United States operations of the Bank are supervised and regulated by the Comptroller of the Currency and the Federal Reserve Board.

3. The Issuer was organized under the laws of the State of Delaware on July 17, 1987. All of its outstanding capital stock is owned by the Bank. There has been, and in the future there will be, no public offering of the Issuer's capital stock or of any other equity security of the Issuer. Similarly, there will be no offering in the United States of the Bank's capital stock or of any other equity security of the Bank other than in conformity with applicable United States laws, regulations and rules. The Issuer's sole business will consist of issuing and selling the Issuer's commercial paper notes (the "Notes") and depositing the net proceeds from the sale thereof (the "Deposits") at the Grand Cayman Branch (the "Branch") of the Bank pursuant to a deposit agreement (the "Deposit Agreement") to be entered into by the Issuer, the Branch and the Bank.

4. Substantially all of the Issuer's assets will consist of a single evidence of indebtedness of the Branch issued to the Issuer evidencing the Issuer's Deposits. Under certain provisions of the Deposit Agreement, the Branch unconditionally agrees to repay to the Issuer each Deposit made by the Issuer at the Branch, including accrued interest thereon, on the maturity's date of the Deposit. In the Deposit Agreement, the Branch waives any and all right of set-off it may have in respect to the Deposits. In addition, each Noteholder is assigned as security and granted a security interest in the Deposit and accrued interest corresponding to his Note. If the Issuer fails to pay a Note in accordance with its terms, the Deposit Agreement entitles the Noteholder to receive payment by the Branch of the Deposit and accrued interest.

5. The Bank confirms expressly in the Deposit Agreement that the aforementioned obligations of the Branch to the Issuer and to the Noteholder are its own obligations. The Bank in the Deposit Agreement expressly waives any defenses available to it against performance of its obligations to the extent that such defenses exist under Cayman Islands law and are based on insolvency, moratorium, liquidation or similar laws of the Cayman Islands affecting the Branch, or based on currency or foreign exchange laws of the Cayman Islands or acts of state of the Cayman Islands Government relating to expropriation, seizure or moratorium of payment affecting the Branch as such or affecting the obligations of the Branch to repay its deposits in general.

6. The Issuer proposes to issue and sell in the United States short-term negotiable Notes. The Notes will be offered and sold pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended (the "1933 Act") provided by section 3(a)(3) thereof. The Notes will be sold in minimum denominations of $100,000, will have maturities not exceeding nine months, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or the Issuer. The Bank and the Issuer do not currently intend to sell commercial paper notes in the United States in excess of an aggregate amount for the Bank and the Issuer, of US $500,000,000 at any time outstanding.

7. The Issuer will not market any Notes prior to receiving an opinion of its United States counsel's to the effect that the proposed offering is exempt from the registration requirements of the 1933 Act by virtue of section 3(a)(3) thereof. The Issuer does not request SEC review or approval of such counsel's opinion regarding the availability of an exemption for the Notes under section 3(a)(3) of the 1933 Act.

8. The Notes will be offered publicly, through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. While an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. The Issuer will ensure that each dealer of the Notes will furnish to each offeree memoranda describing the businesses of Applicants, and will provide financial information from the most recent annual audited financial statements for the Bank, together with a description of the material differences between the Austrian accounting principles utilized in the preparation of the financial statements of the Bank and generally accepted accounting principles as applied in the United States. The memorandum prepared by each dealer of the Notes will be updated as promptly as practicable to reflect material adverse changes in the financial status of Applicants and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States. The Issuer will select a major commercial bank to act as issuing and paying agent for the Notes (the "Depositary").

9. Under Austrian law and pursuant to the Deposit Agreement, the repayment obligation of the Branch in respect of the Deposits is an obligation of the Bank, the Bank's obligations in respect of its liabilities to the Issuer will rank at least part passu among themselves and with all other unsecured and unsubordinated indebtedness (including deposit liabilities) of the Bank and superior to rights of shareholders; the holders of the Notes will have a direct course of action against the Bank in the event of any default in payment on the Notes.

10. The Issuer represents that, prior to their issuance, the Notes will have received one of the three highest investment grade ratings from at least one unaffiliated, nationally recognized statistical rating organization and the Issuer's United States counsel shall have certified that the rating was received. The Bank will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint the Issuer as agent to accept any process which may be served in any action based upon its obligations to the Issuer as described herein. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Deposits and all obligations of the Bank to the Issuer as described herein have been paid. The authorized agent will not be, or be obligated to act as, a trustee for the holders of the Notes.

11. The Bank and the Issuer may, from time to time, offer their debt securities or non-voting preferred stock other than the Notes for sale in the United States. The obligations of the Issuer in respect of any such debt securities and non-voting preferred stock issued by the Issuer will be supported by the Bank's guarantee. Any future issuance of Applicant's debt securities or non-voting preferred stock will be made in reliance upon Rule 6c-9 under the 1940 Act, unless Applicants file an application seeking to amend any order issued on this application to substitute the Bank's guarantee with a functional equivalent.

Applicants' Legal Analysis:

1. Approval of the application is both necessary and appropriate in the public interest. It would benefit not only the Bank but also institutional and other sophisticated investors in the United States who would otherwise be precluded from purchasing securities issued by foreign banks, which represent an important segment of the short term, prime quality securities available for purchase on the international market.

2. Approval of the exemption would be consistent with the protection of investors because the existing regulatory structure to which the Bank is subject affords sufficient protection for investors. The Bank is subject to extensive regulation under Austrian banking law comparable in many respects to that imposed on United States banks and such regulation renders the 1940 Act's protection unnecessary. In addition, with respect to any offering of its securities in the United States, the Bank would be subject to the antifraud provisions of the 1933 Act and of the Securities Exchange Act of 1934.

3. The rationale for granting a section 6(c) exemption to the Bank extends to the Issuer as well because of the parent-subsidiary relationship between the Bank and the Issuer. The sole business of the Issuer will be to operate as a financing vehicle for the Bank. The proceeds from the sale of Notes by the Issuer will be lent to or deposited with the Branch. If the Bank, instead of issuing the Notes directly, chooses to use the Issuer as a financing vehicle, the same policy considerations should apply and the Issuer should be granted an exemption. This rationale applies particularly here, because, as a consequence of the parent-subsidiary relationship, payment of the Notes does not depend upon the operations or investment policy of the Issuer, for as a result of the Deposit Agreement, the holders of the Notes may ultimately look to the Bank. Accordingly, the concerns of public policy which dictated the enactment of the 1940 Act are not applicable to the Issuer nor do the holders of the Issuer's Notes require the protection afforded by the 1940 Act.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following condition: Applicants consent to any SEC order being expressly conditioned on their compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-647 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16204 (812-6991)]

The Horizon Funds; Application

Date: January 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order Under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Horizon Funds.

Relevant 1940 Act Sections: Order requested pursuant to section 17(d) and Rule 17d–1 thereunder.

Summary of Application: Applicant seeks an order to permit it to enter into master repurchase agreements with non-affiliated financial institutions such as broker-dealers and banks pursuant to which individual repurchase transactions would be effected as described below.

Filing Date: The application was filed on October 20, 1987, and amended on December 2, 1987, and January 4, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington DC 20549; Applicant, Thomas M. Collins, President, 156 West 56th Street, 19th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, (202) 272–3016, or Thomas Mira, Staff Attorney, (202) 272–3033 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4500).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open-end management investment company, and is a "series" investment company currently comprised of five series representing interests in five investment portfolios—The Horizon Prime Fund, The Horizon Treasury Fund, The Horizon Tax-Exempt Money Fund, The Horizon Intermediate Tax-Exempt Fund and The Horizon Intermediate Government Fund. The requested order concens only the Prime and Treasury Funds both of which are money market funds ("Subject Funds"). The net asset values of the Subject Funds are determined, and shares of each portfolio are priced, daily as of 4:00 p.m. Eastern Time by the amortized cost method of valuation. Currently, to be executed on a given date, a purchase order for shares of these portfolios must be received that day by the Subject Funds' custodian prior to 2:30 p.m. Eastern Time, which is also the latest time orders may be placed for overnight investment of monies received on that day. Purchase orders received prior to 2:30 p.m. Eastern Time on a business day are executed at 4:00 p.m. on the same day. Purchase orders received after 2:30 p.m. Eastern Time are not accepted.

2. Purchases or shares include customers of Applicant's investment adviser, Security Pacific National Bank ("Security Pacific"), and its affiliates which maintain customer directed, non-discretionary accounts with Security Pacific or its affiliates. Applicant wishes to permit Security Pacific to purchase shares of the Subject Funds, as agent for its customers, in automatic investment transactions whereby Security Pacific will follow the standing instructions of its customers and automatically invest excess cash balances of its customers' cutody, agency or other non-discretionary accounts in shares of one of the Subject Funds. These "sweep" transactions will be effected automatically by computer each business day as of 12:00 noon Pacific Time (3:00 p.m. Eastern Time) but the machine processing required to tabulate each day's transaction activities will be completed later during the day when the daily processing for its accounting system is completed ("Completion Time"). The Completion Time will normally be no later than 1:00 a.m. Eastern Time the following morning.

3. Net income with respect to the Subject Funds is determined and declared daily as a dividend to the respective shareholders of record as of the close of trading on the New York Stock Exchange (currently 4:00 p.m. Eastern Time). Accordingly, if Applicant were to accept orders from Security Pacific after 2:30 p.m. Eastern Time without special arrangements for investment of the proceeds of these orders, dividends would be payable on shares purchased pursuant to such orders but the proceeds of such orders would remain uninvested overnight and dividends to other Subject Fund shareholders would be diluted. The requested order is intended to permit Security Pacific to enter into repurchase transactions on behalf of the Subject Funds by 2:30 p.m. Eastern Time each business day, based upon amounts estimated to be received by Applicant on that day through the operation of the sweep program, with confirmation of the exact principal amount of the transaction for the account of Applicant occurring on the following business day.

4. In order to permit Applicant to invest anticipated net assets attributable to the sweep program on the same day they are available for investment (despite the fact that the exact amount therefor will not be known until the Completion Time), Applicant and Security Pacific propose the following procedure. Security Pacific will enter into a repurchase transaction with an unaffiliated entity ("Seller") under a repurchase agreement on behalf of Applicant in an amount which it considers, based upon experience in administering its computer sweep program, to be sufficient to invest any net assets of the Subject Funds attributable to the operation of the sweep program that day ("Sweep Repurchase Agreement"). For example, if Security Pacific estimates that the Subject Funds will receive an aggregate of $50 million during the day through sweep transactions (after allowing for other net sales or net redemption of shares of these Funds), Security Pacific will enter into a repurchase transaction on behalf of the Subject Funds in the amount of $50 million. Security Pacific will wire the sale price of the securities transferred by the Seller which serve as the collateral for the repurchase agreement to an account with the Applicant's custodian. At the same time the Seller in a transaction will transfer such securities to an appropriate account of Applicant and take action necessary to perfect a security interest in favor of Applicant in the securities at the time of their transfer. Until the Completion Time, Applicant will have a perfected security interest in all of the securities transferred in connection with the Sweep Repurchase Agreement. In connection with the proposed repurchase transactions Applicant will comply with the SEC's position concerning repurchase agreements set forth in Investment Company Act Release No. 13005, February 2, 1983, Investment Company Act Release No. 10666, April 18, 1979, and SEC interpretations set forth in letters to the Investment Company Institute dated January 5, April 17 and June 19, 1985.

5. To the extent that a repurchase transaction entered into on behalf of a Subject Fund was sufficient to make such Fund fully invested with respect to sweep funds, the account of such Fund will reflect the specific amount it had in fact invested in a transaction (including its ownership of the eligible securities purchased by such investment). If a repurchase transaction was not sufficient to make such Fund fully invested with respect to sweep funds, Applicant's records will reflect the Fund's investment in the entire amount of such repurchase transaction and Security Pacific would retain an uninvested case position with respect to sweep funds in excess of the Sweep Repurchase Agreement. Therefore, the interests of Subject Fund shareholders would not be diluted because amounts in excess of the repurchase agreement would not be invested in shares of either Subject Fund. If the Sweep Repurchase Agreement exceeds amounts available for investment, Security Pacific will be deemed to have purchased such excess securities for its own account. Applicant states that Security Pacific normally has the ability to predict with a good degree of accuracy the likely aggregate daily amount of sweep funds and normally will enter into a Sweep Repurchase Agreement in an amount greater than its estimated sweep.

6. On the next business day, based on the amount actually invested by the Subject Funds through operation of the sweep program, the Seller and Applicant's custodian will confirm by telephone the amount of the repurchase transaction that the Subject Funds had in fact entered into with their own assets and the Sellers will issue the required telex or wire confirmations of the specific terms of Applicant's repurchase transactions. In addition, the Sellers will issue separate confirmations to Security Pacific for its own account confirming that those eligible securities transferred by the Sellers the previous day which the Subject Funds had not purchased with their own assets had, in fact, been purchased by Security Pacific with its own funds. Except for differences attributable to the differing amounts of the repurchase transactions, the terms of the transactions and the confirmations to Applicant and to Security Pacific would be identical. Applicant will continue to have a perfected security interest in those eligible securities which were confirmed to it as being subject to its repurchase transactions under the Sweep Repurchase Agreement. To the extent that any Sweep Repurchase Agreement is secured by two or more issues of securities differing as to quality, maturity or rate, each security will be apportioned between the Subject Funds and Security Pacific pro-rata to the extent possible. Where such pro-rata apportionment is not possible, securities will be apportioned in a manner that Security Pacific, acting as adviser to Applicant, believes will leave each party in a comparably secured position.

7. The effect of the proposed procedure will be to permit Security Pacific to purchase and pay for shares in the Prime and Treasury Funds, as agent for its customers, by 2:30 p.m. Eastern Time, even though the exact number of shares acquired by Security Pacific as agent is not determined until the Completion Time. Although there are other procedures for investment of the proceeds of any day's sweep pending determination of the exact amount of such proceeds at the Completion Time (e.g., Security Pacific could delay investment in the Prime and Treasury Funds until the next business day and could invest sweep proceeds overnight in a separate repurchase transaction), Security Pacific believes that the proposed procedures are required to comply with its customers' directions to invest the excess balance in their sweep accounts directly in investments such as the Subject Funds. In addition, Security Pacific believes that the overall return to its customers will be greater if it invests sweep proceeds directly in the Subject Funds rather than placing such proceeds in an intermediate investment.

Applicant's Legal Analysis

1. Applicant and Security Pacific wish to adopt the proposed investment procedure in the interest of all shareholders in response to the demands placed on portfolio management by the sweep program. Applicant believes that the requested order is appropriate in the public interest because it will permit the investment of cash received through the sweep program on the day orders are executed and will thereby reduce any dilution in daily dividends. Applicant also believes that the proposed procedure provides only benefits and has no disadvantages to Subject Fund shareholders. Applicant's rights vis-a-vis Sellers under repurchase transactions will be protected by repurchase agreements which are substantially similar to the form of General Repurchase Agreement prepared by the Investment Company Institute for the mutual fund industry. Moreover, pending reconciliation of the day's transaction activity, Security Pacific will segregate and hold for the exclusive benefit of Applicant, all securities transferred to Security Pacific in connection with repurchase transactions entered into for the Subject Funds. Until the amounts of the Subject Funds' assets actually invested in a Sweep Repurchase Agreement are determined at the Completion Time, Security Pacific will assume that only Subject Fund assets were used for such transactions and their interests will be protected by a perfected security interest in such securities.

2. The interest of Security Pacific in negotiating the maximum interest rate available on any repurchase transaction entered into on behalf of the Subject Funds will be the same as the interest of such Funds. To the extent that Security Pacific is deemed to be a participant in the proposed investment procedure within the meaning of section 17(d) of the 1940 Act and Rule 17d–1 thereunder, Applicant concludes that Security Pacific's "participation" is not on a basis different from or less advantageous than that of the Subject Funds.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–848 Filed 1–13–88; 8:45 am]

BILLING CODE 8010–0–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 7, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Americana Hotels Realty Corp.
Common Stock, $1.00 Par Value (File No. 7–1031)

Avemco Corp.
Common Stock, $.10 Par Value (File No. 7–1032)

British Petroleum
Partial Payment, ADS 1st Installment, No Par Value (File No. 7–1033)

Cleveland Cliffs Inc.
$2.00 Cumulative Convertible Exchangeable Preferred Stg., No Par Value (File No. 7–1034)

Ennis Business Forms Inc.
Common Stock, $2.50 Par Value (File No. 7–1035)

First Financial Fund Inc.
Common Stock, $.001 Par Value (File No. 7–1036)

Hexcel Corp.
Common Stock, No Par Value (File No. 7–1037)

IBP Inc.
Common Stock, $.05 Par Value (File No. 7–1038)

Kaufman Broad Home Corp.
Common Stock, $1.00 Par Value (File No. 7–1039)
PNC Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–1040)
United Water Resources Inc.
Common Stock, $3.50 Par Value (File No. 7–1041)
Variety Corp.
Cumulative Convertible Class 1 "A" Preferred, No Par Value (File No. 7–1042)
Fisher & Porter Co.
Common Stock, $1.00 Par Value (File No. 7–1043)
Gull Inc.
Common Stock, $.10 Par Value (File No. 7–1044)
Lilly, Eli & Co.
Cont. Pymt. Oblig. Units, No Par Value (File No. 7–1045)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-643 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:
Lionel Corporation
Common Stock, Par Value $.10 (File No. 7–0973)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-644 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 7, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:
Millipore Corporation
Common Stock, Par Value $1.00 (File No. 7–1046)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-645 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25237; File No. SR-PSE-87-30]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Pacific Stock Exchange, Inc.; Pilot Program for Display of Multiple-Series and Stock/Option Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1987, the Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 under the Securities Exchange Act (the "Act") of 1934, hereby proposes to extend a test of the dissemination of certain indications of market interest through the Autex Trading Information System ("AUTEX"). By Release dated May 29, 1987, (No. 34–24528; SR–PSE–87–07) the Securities and Exchange Commission approved a six-month test of a system by which PSE options members could display certain indications of interest for multiple options series orders and/or stock/option orders through AUTEX. To complete the test of this program the Exchange requests an extension of three months.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

[1] For a more detailed description of the AUTEX pilot program, see Securities Exchange Act Release No. 24388 (April 28, 1987), 52 FR 15982.

and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposal is for a continuation of a test to electronically disseminate indications of interests for certain types of options orders. The Exchange believes that three additional months are required to provide for ample input from members and customers as to the desirability of the system. The proposal is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is intended to facilitate transactions in securities and will provide a greater ability to eliminate impediments in the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [2] and the rules and regulations thereunder. The Commission understands that use of the AUTEX system to date has been extremely limited. The three-month pilot program extension requested by the PSE should enable the Exchange to better educate its members as to the availability and advantages of the AUTEX system and guage more closely the potential demand for such a system.

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. The purpose of this rule filing is simply to extend for three months the operation of a pilot program approved previously pursuant to standard notice and comment procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposal relates to a pilot program already published for comment and in operation for six months. Based on its experience during the three-month pilot extension, the Commission anticipates that by the conclusion of this period (*i.e.*, February 29, 1988), the PSE will be able to make a determination as to whether to seek permanent status for the AUTEX program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 4, 1988.

[FR Doc. 88-699 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f (1982).

[Release No. 35-24558]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 7, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 1, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc.; Central and South West Corporation (70-7218; 70-7113)

Central and South West Corporation ("CSW"), a registered holding company, and its factoring subsidiary, CSW Credit, Inc. ("CSW Credit"), 2121 San Jacinto Street, Dallas, Texas 75201, have filed a post-effective amendment to their applications-declarations pursuant to sections 6, 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated July 19, 1985 (HCAR No. 23767), the Commission authorized CSW to organize and acquire CSW Credit, a corporation formed for the purpose of factoring accounts receivable of the CSW electric utility companies. CSW was authorized to make equity investments in CSW Credit in an amount up to $80 million, and CSW Credit was authorized to borrow up to $320 million, through December 31, 1986. By order dated July 31, 1986 (HCAR No. 24157), the Commission authorized CSW Credit to expand its factoring activities to include the purchase of receivables of electric utilities not associated with the CSW system, subject to the condition that the average amount of nonassociate company receivables purchased by CSW Credit during any twelve-month period would remain below the corresponding amount of associate company receivables. To finance these expanded activities through December 31, 1988, CSW was authorized to make

additional equity investments of up to $40 million in CSW Credit, through either capital contributions or the acquisition of common stock of CSW Credit; and CSW Credit was authorized to sell to CSW up to $40 million of its common stock and to borrow up to an additional $160 million pursuant to bank lines to credit or through the issuance of commerical paper. CSW and CSW Credit now request authorization through December 31, 1989 for CSW Credit to factor accounts receivable of nonassociate utility companies whose primary revenues are derived from the sale of gas and/or electricity, within the limitation imposed by the 1986 order. CSW Credit proposes to borrow up to $320 million and $304 million to finance the factoring of associate and nonassociate receivables, respectively. CSW also proposes to make equity investments in CSW Credit of up to $80 million and $76 million in connection with the factoring of associate and nonassociate receivables, respectively.

Jersey Central Power & Light Company, et al. (70-7333)

Jersey Central Power & Light Company ("JCP&L"), 161 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, "Companies"), subsidiaries of General Public Utilities Corporation, a registered holding company, have filed a post-effective amendment to their application pursuant to sections 9(a) and 10 of the Act.

By order dated March 11, 1987 (HCAR No. 24339), the Companies were authorized to enter into Lease Agreements ("Leases") with Prulease, Inc. ("Lessor"), an affiliate of The Prudential Insurance Company of America. Under the Leases, the Lessor would acquire title from and simultaneously lease to the Companies from time to time certain nuclear fuel, fuel assemblies and component parts ("Nuclear Material") for use in their jointly owned Three Mile Island, Unit No. 1 nuclear generating station. The Lessor's unrecovered acquisition costs for Nuclear Material and payments for related services and costs (collectively, "Acquisition Costs") would not exceed $100 million at any one time oustanding. Individual sublimits applicable to Met-Ed, JCP&L and Penelec were $50 million, $25 million and $25 million, respectively. The Leases further provided that the Lessor's unrecovered Acquisition Costs, when added to such costs under the lease agreements between the Lessor and JCP&L concerning Nuclear Material for use at JCP&L's Oyster Creek nuclear generating station, as authorized by order of the Commission of Setpember 24, 1986 (HCAR No. 23841), would not exceed a total of $175 million at any one time outstanding.

The Companies now propose to amend their respective Leases in order to (i) increase the total amount of Acquisition Costs at any one time outsanding to $125 million, (ii) increase the individual sublimits applicable to Met-Ed, JCP&L and Penelec to $62.5 million, $31.25 million and $31.25 million, respectively, and (iii) eliminate the restriction that such Acquisition Costs, when added to Acquisition Costs outstanding under JCP&L's Oyster Creek nuclear-material lease agreement with Prulease, may not exceed an aggregate of $175 million at any one time outstanding. Met-Ed also proposes to amend its Lease to reduce the Lease Rate payable with respect to any Acquisition Costs incurred after the date of amendment from 1.625% to 1.5% over the rate charged on 30-day dealer-placed commerical paper rate issued by Prudential Funding Corporation, as such rate is in effect from time to time on the 15th day of each month.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-700 Filed 1-13-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6587]

North Carolina; Declaration of Disaster Loan Area

Carteret, New Hanover, Onslow and Pender Counties in the State of North Carolina constitute an Economic Injury Disaster Loan Area because of the closure of the coastal waters to shellfishing from November 2, 1987, and continuing, by the Department of Natural Resources of the State of North Carolina due to red tide contamination. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file up applications for economic injury assistance until the close of business on October 4, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: January 4, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-602 Filed 1-13-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2304]

Pennsylvania; Declaration of Disaster Loan Area

The City of White Haven, Luzerne County, in the State of Pennsylvania constitutes a disaster loan area because of damage from a fire which occurred on December 23, 1987. Applications for loans for physcial damage may be filed until the close of business on March 7, 1988 and for economic injury until the close of business on October 6, 1988 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308

or other locally announced locations. The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Business With Credit Available Elsewhere	8.000%
Businesses Without Credit Available Elsewhere	4.000%
Businesses (F.I.D.L.) Without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000%

The number assigned to this disaster is 230405 for physical damage and for economic injury the number is 659200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: January 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-603 Filed 1-13-88; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by February 16, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

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Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: SBIR Mailing List and Confirmation Request

Form No.: SBA 1386

Frequency: On occasion

Description of Respondents: The information submitted by firms enables the Small Business Administration to maintain a mailing list and send publications to these firms explaining the SBIR Program.

Annual Responses: 30,000

Annual Burden Hours: 250

Title: Leave Policies in Small Business

Frequency: One time, non-recurring

Description of Respondents: This survey is needed to analyze the effects on varying firms sizes of pending Federal legislation that would require employers to provide unpaid family and medical leave to employees.

Annual Responses: 4,000

Annual Burden Hours: 1,000

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 88-713 Filed 1-13-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1044]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

1. *Summary:* Section 2 of Executive Order 12532 of September 9, 1985 (codified in Pub. L. 99-440), provides that no U.S. Government agency may intercede with any foreign government on behalf of any U.S. national who does not adhere to certain fair labor principles specified in the order. The following summarizes the information collection proposals submitted to OMB:

a. Type of Request—Reinstatement.
Originating Office—Bureau of African Affairs.
Title of Information Collection—Questionnaire Involving South Africa and Fair Labor Standards.
Frequency—Annual.
Respondents—U.S. firms operating in South Africa.
Estimated Number of Responses—35.
Estimated Total Number of Hours Needed to Respond—1,050.

b. Type of Request—Reinstatement.
Originating Office—Bureau of African Affairs.
Title of Information Collection—Application for Registration.
Form Number—DSP-85.
Frequency—Once.
Respondents—U.S. firms operating in South Africa.
Estimated Number of Responses—20.
Estimated Total Number of Hours Needed to Respond—20.

The final rule containing this collection of information was published in the **Federal Register** on December 31, 1985 (50 FR 53308).

2. *Summary:* The operation of a motor vehicle in the United States by foreign diplomatic personnel is a benefit under the Foreign Missions Act, 22 U.S.C. 4302, which must be obtained through the Department of State. The following summarizes the information collection proposal submitted to OMB.

Type of request—New.
Originating office—Office of Foreign Missions.
Title of information collection—Diplomatic Driver License Application.
Form Number—DSP-103.
Frequency—On occasion.
Respondents—Foreign government representatives.
Estimated Number of Responses—8,000.
Estimated Total Number of Hours Needed to Respond—4,000.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647-3538. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7340.

Dated: December 31, 1987.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

[FR Doc. 88-611 Filed 1-13-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1151]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 1, 1988 at 10:00 a.m. in Room 1408, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to discuss issues related to the work of CCITT Study Group II. The meeting will address Issuer Identifier Code Administration and Assignment procedures for Automated International Telephone Credit Cards within the U.S.A. and preparations for the initial World Numbering Zone 1 Committee Meeting. The meeting may also consider other issues related to U.S. Study Group "C".

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: January 4, 1988.

Earl S. Barbely,

Director Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-612 Filed 1-13-88; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Section 301 European Community Oilseeds Case; Initiation of Investigation

ACTION: Initiation of investigation under section 302 of the Trade Act of 1974.

SUMMARY: Under 19 U.S.C. 2412(a), the U.S. Trade Representative (USTR) has determined to initiate an investigation of the European Community's (EC's) oilseed practices and policies as they affect imports of oilseeds, particularly soybeans, from the United States.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Marilyn Moore ((202) 395-5006), Laura Kneale ((202) 395-3074) or John Kingery ((202) 395-6800), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20506.

SUPPLEMENTARY INFORMATION: On December 16, 1987, the American Soybean Association filed a petition under section 302 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2412, alleging that the EC has engaged in practices affecting imports of oilseeds, particularly soybeans, that deny rights of the United States under a trade agreement, are inconsistent with a trade agreement, and are unjustifiable, unreasonable and burden or restrict United States commerce. The practices complained of are, inter alia, subsidies provided to the EC processors of oilseeds that encourage purchase of EC oilseeds to the detriment of imports of oilseeds, particularly soybeans, from the United States.

On January 5, 1988, the USTR initiated an investigation of these practices and requested consultations with the EC, as required by section 303(a) of the Trade Act. USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Trade Act in preparing United States presentations for such consultations. Any interested person is invited to submit comments on the issues raised by the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.8 and are due no later than February 5, 1988. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street, NW., Washington, DC 20506.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 88-657 Filed 1-13-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed Sandy River Bridge project on the Crown Point Highway in Multnomah County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coodinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301, Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the bridge over the Sandy River in Troutdale. This bridge is part of the Columbia River Highway Historic District. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include building a new bridge for vehicle traffic in one of several locations downstream of the current bridge and maintaining the historic bridge for bicycle and pedestrian use and taking no action.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program)

Issued on December 8, 1987.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-589 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-87-2]

Petition for Exemption or Waiver for Test Program; National Railroad Passenger Corp.

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a request dated October 23, 1987, for an extension of time in which to complete the testing of additional equipment under the provisions of a temporary waiver of 49 CFR 213.57(b), that section of the Federal Track Safety Standards that prescribes the maximum allowable operating speeds for trains on curves as a function of actual superelevation and curvature. Amtrak requested this waiver, initially, for the test operation of an RTG II Turbine train on its Northeast Corridor line between New York and Boston at curving speeds which would produce up to six inches of lateral unbalance. This petition was conditionally approved by the Federal Railroad Administration October 5, 1987. These tests were conducted on October 8 and 9, 1987, in accordance with the conditions described in the Federal Register Volume 52, Number 197, pages 38035 and following. The period identified by FRA, within which the waiver was to be effective was scheduled to end on October 31, 1987. The request for the extension of the test period—from October 31, 1987, to January 31, 1988—was based on the petitioner's intention to test a type of turbine-powered passenger trainset quiet similar to the RTG II model at curving speeds resulting in seven inches of lateral unbalance. Before FRA could officially respond to this first extension request, Amtrak submitted a second, dated December 2, 1987, asking that the TRG-II Turbine trainset be included now in the seven-inch unbalanced operation series and that the test period be extended to March 31, 1988, to permit the investigation of vehicle response of both models at curving speeds resulting in seven inches of unbalanced superelevation.

The RTL trainset is very similar to the RTG II version; the latter was assembled in France from French designs, the former was fabricated in this country under license issued by the French manufacturer. Certain modifications of the basic RTG design led to the RTL equipment having slightly different response characteristics when running than are exhibited by the parent model. For this reason, FRA will require of the petitioner, a series of instrumented RTL trainset round trips between Boston, Massachusetts, and New Haven, Connecticut, at gradually increased curving speeds. Of the total route, Boston to New York City, it is now recognized by FRA and Amtrak that it is practical to consider elevated curving speeds only east of New Haven. The purpose of the instrumented trainset operation is to observe in the data the onset, if indeed this occurs, of unfavorable vehicle behavioral features. Similar instrumented trainset operation will be required in the RTG II case to evaluate vehicle response above the six inch unbalanced speed regime for which data already exist.

An instrumented RTG II trainset has already been operated within this test zone at speeds producing six inches of curve unbalance (October 9, 1987). There are 272 curves to be negotiated, on both tracks, between New Haven and Route 128 Station, just west of Boston. Of this total, six curves were identified from a data analysis where transient input required that train speed be reduced somewhat from the values that would produce six inches of unbalance. From this low incidence of vehicle response to track perturbation, it can be concluded that this track section is relatively smooth. Even so, FRA adopts the position that the RTL Turbine trainset is different enough from the RTG model to demand an independent analysis of risk associated with test operations. A like inquiry will be directed to the proposed increase in testing speed for the RTG II. From these analyses, if test feasibility is demonstrated, will come a series of conditions attached to FRA approval for the petitioner to operate RTL/RTG Turbine trainsets at speeds developing seven inches of cant deficiency on curves. It is expected that these conditions would take the form of those applied to the original RTG Turbine trainset test operation. These conditions were described, as noted earlier, in the Federal Register.

The approach to evaluating the risk of accident to the RTL/RTG test trainsets will pursue the steps outlined below:

1. As was done with the RTG trainset, RTL equipment will be parked for the lean test, on each of two (reversed direction) curves, having six inches of superelevation. The lean of the two carbody types induced by the superelevation causes deflections in truck suspension springing. These dimensional changes will be consolidated with the same types of measurement values recorded while the trainset is parked on level track. All of these data will then be entered into a steady state curving model along with other data unique to the RTL trainset, the output of which will be in the form of estimated values for the following parameters:

- Body roll angle;
- Truck lateral force;
- High and low rail vertical loads;
- Distance from track center line of the resultant load intercept;
- Lateral carbody accelerations at floor level;
- Underbalance;

as a function of whatever speed Amtrak proposes for a given curve.

This exercise can be carried out with a high degree of confidence in the validity of results, remarkable correspondence having been demonstrated between predicted and actual values for the parameters measured in test, not only for the RTG II trainset, but in earlier other-vehicle tests.

As was done in the RTG II instance, estimated RTL trainset performance will then be compared with that of other vehicle types previously analyzed and tested and known to be safe within specific ranges.

2. Because it is desired to operate both the RTG and RTL trainsets at speeds that will be higher than experienced during the initial RTG II trainset tests, it becomes important to have some understanding of how equitably the trucks of the trainsets distribute applied loads. Consequently, each of the three truck types supporting an RTL trainset will be subjected to standard load equalization tests in order to determine how effectively vertical loads are distributed among the four truck wheels. RTG trainset trucks are identical to those of the RTL equipment and need not be so tested.

3. Amtrak staff created a continuous record of track geometry between New Haven and Boston in July 1987 and then in September. These two records will be carefully compared in order to identify any change.

If it is determined through this analysis that the risk of accident is acceptably low, the test conditions will then be formulated. These are the restrictions that FRA would attach to an approval of including an RTL Turbine trainset within the scope of the original October 5, 1987, waiver of compliance with 49 CFR 213.57(b) and including an RTG II trainset for test operation at seven inch unbalanced speed.

Typical conditions would be as follows:

- Installation onboard the test trainset of a suite of instrumentation measuring and recording, for example, lateral carbody accelerations and train speeds.
- Round trips shall be scheduled between Boston and New Haven at train speeds producing 4, 6, 7 and 8 inches of curve unbalance, successively. During and following each of these unbalanced speed runs, the strip chart output of the onboard instrumentation shall be observed and analyzed by Amtrak and FRA technical staff who will arrive at mutually acceptable interpretation of the values displayed in the data.

Locations where test train speeds cause the values shown below to be exceeded shall be identified and future operation at those sites shall be at a lower speed:

a. Carbody steady state lateral accelerations of approximately 0.20g;

b. Transient accelerations (related to track alignment and crosslevel variation) of approximately 0.33g.

These two values are individually and independently operative as limits; they are not to be combined.

- The location of the onboard accelerometer will be at floor level in the trailing power car located as close as possible to the pivot point of the leading (passenger compartment) truck or close to the pivot point of the trailing (power) truck if pretest vehicle analysis indicates this to be a more appropriate location and it is physically possible to gain access to this area.
- In no event shall the test train operate at more than 110 mph.
- Evidence of recent accelerometer calibration shall be available to the FRA Test Monitor prior to the start of test or, if not, calibration shall occur immediately following the test series, and the resulting documentation shall be provided to the FRA Test Monitor in copy form.
- There shall be a capability for understandable voice communication between the Amtrak Test Director and test train Engineman continuously operative during each test run. It is the responsibility of the petitioner to have sufficient spare devices for this purpose onboard to obviate communication interruption because of equipment failure.
- Copies of test train operating instructions not issued by a train

dispatcher shall be available to FRA Test Monitor before each test.

• During periods when wind gusts of 50 mph or greater are predicted, the test trainset shall not be operated at speeds developing more than 3 inches of unbalanced elevation.

• The Manual on Uniform Traffic Control Devices (for Streets and Highways), Revision No. 4 (page 8C–7) recommends a warning period of at least 20 seconds for actuated automatic highway grade crossing protection. If the operation of the test train produces a warning period of less than 20 seconds at any active highway grade crossing device, the petitioner shall present a plan to FRA prior to any unbalanced speed testing, which describes compensating measures that will be taken to provide highway traffic with the recommended warning interval.

• The FRA Test Monitor shall have the authority to withdraw, at anytime for cause, the waiver of (Amtrak) compliance with § 213.57(B) of the Federal Track Safety Standards.

• The Test RTL/RTG II Turbine trains shall be equipped in the control compartment(s) with accurate, operating speed indicating device(s).

• The waiver will automatically expire at 11:59 p.m., March 31, 1988.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speeds producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if by March 1, 1988 the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H–87–2" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by March 1, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar test programs. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on January 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–637 Filed 1–13–88; 8:45 am]

BILLING CODE 4910–06–M

Petition for Exemption or Waiver of Compliance; Union Pacific Railroad Co. et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting writtent views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before March 1, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Union Pacific Railroad Company

Waiver Petition Docket Number LI–87–10

The Union Pacific Railroad Company (UP) requests a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The UP seeks a waiver of compliance with § 229.123 of the regulation for 32 locomotives currently assigned to Bailey Yard, North Platte, Nebraska, for switch and hump yard service and for any additional locomotives assigned to Bailey Yard for this service in the future. This type of service often requires the locomotives to move from one side of the hump to the other which involves moving over the car retarders at the discharge end of the hump. The height of these retarders above the rail and the angle of the rail are such that the pilots hit the retarders, damaging them and bending the locomotive pilots. The railroad is requesting that it be allowed to raise the end pilots to 6¾ inches above the top of the rail, instead of the allowable maximum 6 inches, to achieve sufficient clearance and avoid damage to the locomotive pilots and the retarders.

Norfolk Southern Corporation

Waiver Petition Docket Number LI–87–9

On behalf of its operating subsidiaries, the Norfolk Southern Corporation (NS) requests a waiver of compliance with certain provisions of the Steam Locomotive Rules (49 CFR 230.108(b), main reservoir hammer testing, and § 230.110, air brake equipment cleaning requirments) for their steam locomotive number 1218.

NS desires to have the main air reservoir and air brake systems made subject to the following provisons of the Locomotive Safety Standards: 49 CFR 229.31(c), drilling of telltale holes in the exterior surface of all welded main air reservoirs, and §§ 229.27 and 227.29, testing requirements for schedule 26L air brake components. The locomotive is used in excursion service, mostly, on weekends through the summer season.

Denver, Rio Grande and Western Railroad Company

Waiver Petition Docket Number SA–87–10

The Denver, Rio Grande and Western Railroad Company (DRGW) requests a 6 month temporary waiver of compliance with certain provisions of the Railroad Safety Appliance Standards pertaining to locomotives, 49 CFR 231.30(g)(1)(ii). Its locomotives presently in service were found to have the required horizontal end handholds, which in some instances also serve as horizontal uncoupling levers, located more than 50 inches above the top of the rail. The standard for the end handhold is that it may be not less than 30 inches nor more than 50 inches above the top of the rail. The DRGW will begin a modification program immediately to bring its locomotives into compliance and plan to have the program completed within the 6 month period.

Claremont and Concord Railway Company

Waiver Petition Docket Number RSGM–87–13

The Claremont and Concord Railway Company (CLCO) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. These locomotives operate over approximately 3 miles of track through mostly rural and wooded areas which terminate in the city of Claremont, New Hampshire. The CLCO states that they operate in an area of very low vandalism. Carrier records indicate no reportable incidents relating to glazing defects by any acts of vandalism.

South Central Tennessee Railroad

Waiver Petition Docket Number RSGM–87–14

The South Central Tennessee Railroad seeks a permanent waiver of comphance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The carrier operates approximately 50 miles of track, about 10 miles within the city limits of Centerville, Dickson, and Hohenwald, Tennessee. The remaining trackage is through rural agricultural communities and sparsely populated wooded areas. The carrier states that they have not experienced any acts of vandalism, rock throwing, or rifle fire directed at their equipment since they began operations in 1985. Carrier records do not reveal any incidents of vandalism. The carrier feels that the expense of retrofitting their locomotive with certified glazing would impose an undue financial burden on them for protection against situations they do not encounter.

The Hutchinson and Northern Railway Company

Waiver Petition Docket Number RSGM–87–15

The Hutchinson and Northern Railway Company (HN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The HN operates approximately 6 miles of track located within a residential or light industrial area near Hutchinson, Kansas. The carrier states that these locomotives have never been vandalized in any fashion. Carrier records do not reveal any accidents or incidents involving glazing on these locomotives. The carrier indicates that the two locomotives operate at speeds below the 10 mph limit.

The Merchants Grain Railroad, Inc.

Waiver Petition Docket Number RSGM–87–16

The Merchants Grain Railroad, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 4½ miles of track located near Jeffersonville, Indiana. The area of travel consists of rural wooded regions with no over- or underpasses. The carrier states that there have been no incidents of the locomotive striking debris on the track, being hit by thrown objects, or any injuries relative to the locomotive glazing. There has been no vandalism to the locomotive or injuries to the crew since they initiated operations in August 1985.

The Plymouth and Lincoln Railroad

Waiver Petition Docket Number RSGM–87–17

The Plymouth and Lincoln Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over approximately 6½ miles of track located in heavily wooded regions and sparsely populated areas near Lincoln, New Hampshire. The carrier states that there have been no incidents of vandalism to their equipment or injuries due to glazing since they began operations in May 1987.

The Great Walton Railroad Company, Inc.

Waiver Petition Docket Number RSGM–87–18

The Great Walton Railroad Company, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The carrier began operation in March 1987 with 10 miles of track located between Social Circle, Georgia and Monroe, Georgia. The region consists mostly of rural, agricultural areas. There have been no reported instances of vandalism by the railroad's previous owner, CSX Transportation, Inc.

Issued in Washington, DC, on January 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–638 Filed 1–13–88; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Denials of Petitions for Defect Remedy Hearing

This notice sets forth the reasons for the denials of two petitions to conduct a hearing to determine whether a manufacturer has reasonably met its obligation to remedy a safety-related defect (15 U.S.C. 1416).

Ms. Edrice Bram of Northbrook, Ill., petitioned the agency to conduct a public hearing to determine if the Toyota Motor Corporation had reasonably met its responsibility to notify her of a safety related defect and to repair her 1984 Toyota Supra vehicle without charge. As a result of her petition Toyota agreed to reissue a notification letter to all owners who had not yet had their vehicles repaired, thus obviating the need for an agency hearing. The petition was denied on February 3, 1986.

On August 27, 1987, Dal Sun Kim of Salt Lake City, Utah, asked NHTSA to conduct a hearing to determine if General Motors Corporation had reasonably met its responsibility to repair his 1983 Chevrolet Cavalier without charge. General Motors informed the agency that the vehicle was repaired to Mr. Kim's satisfaction on October 26, 1987, and on October 30 his petition was denied.

(Sec. 158, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 7, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88–639 Filed 1–13–88; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP 87–13; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.102, Federal Motor Vehicle Safety Standard

No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition. Section S3.2 of Standard No. 102 requires that:

> Identification of shift lever positions of automatic transmissions and of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver.

Section 571.3 of 49 CFR defines the meaning of the word "driver" as "the occupant of a motor vehicle seated immediately behind the steering control system." In recent interpretations of Standard No. 102, NHTSA has ruled that Section S3.2's requirement that the identification of shift lever positions of automatic transmissions be permanently displayed in view of the driver requires a display whenever a driver is in the driver's seating position, even if the ignition is not turned on. General Motors has sold approximately 113,000 passenger cars that do not comply with this interpretation of FMVSS No. 102. The vehicles are equipped with electronic transmission shift lever position displays which are only visible to the driver when the ignition switch is turned to the positions of "on" or "off". According to NHTSA's rulings, this violates the requirement of permanently displayed shift lever positions. The following table shows the number of noncompliant vehicles sold between 1985 and 1987 by model type.

Model type	No. of vehicles sold		
	1985	1986	1987 [1]
Buick Electra and LeSabre		9,637	21,574
Olds Regency and Delta 88	7,679	26,965	36,624
Olds Toronado		3,164	7,360

[1] 1987 figures are General Motors projected sales.

General Motors vehicles equipped with electronic transmission shift lever position displays and built on or after November 15, 1987, have an additional message on the instrument panel which states: "Vehicle is in Park before [P]RNDL is Illuminated"

In General Motors' view, this eliminates any future noncompliance. General Motors believes the noncompliance is inconsequential for the following reasons:

First and, perhaps, foremost, we do not perceive a need for displaying the PRNDL based exclusively on occupancy of the driver's seating position. The need arises when someone is driving the vehicle and, by virtue of driving the vehicle, has occasion to shift the transmission. The affected GM vehicles are all equipped with backdrive. Therefore, it is not possible to shift the transmission when the key is in the 'lock' or 'accessory' positions. In addition, it is not possible to turn the key to the 'lock' or 'accessory' positions unless the transmission is in park. Given that the purpose of Section S3.2 is to avoid the likelihood of shifting errors, we believe GM's electronic PRNDL designs not only satisfy that objective, but may in fact represent an improvement over conventional mechanical designs.

A second major consideration is that the recent [agency] interpretations do not appear to use the term 'driver' as comprehended in the purpose of FMVSS 102. Recall that the requirement is that the PRNDL be permanently displayed in view of the driver. It seems to us that, for purposes of FMVSS No. 102, a driver is more than just someone who happens to be occupying the driver's seat. Any number of examples could be given, such as a small child who might crawl into that seat, or someone sitting at a drive-in theatre watching a movie, etc., where the seat is occupied, but where the vehicle is not being operated.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: February 16, 1988.

(Section 102, Pub.L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 11, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-658 Filed 1-13-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0230
Form Number: 6458
Type of Review: Extension
Title: Certification and Election Form
Description: Form 6458 is used to make elections and certifications under the Crude Oil Windfall Profit Tax Act of 1980. The form is used by persons seeking to have an exemption from, or a smaller amount of tax applied to them. It is also used by persons who desire to withhold the tax from other producers. The form is also used by the persons listed above to revoke these elections.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 2,381 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-613 Filed 1-13-88; 8:45am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0129.
Form Number: ATF F 4473 (ATF F 5300.9).
Type of Review: Revision.
Title: Firearms Transaction Record Part I, Intra-State Over the Counter.
Description: This form is used to establish the eligibility of a buyer and to determine if a firearms sale is legal. It becomes part of the dealer's records and is used by law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act.
Respondents: Individuals or households, Businesses or other for profit, Small Businesses or organizations.
Estimated Burden: 1,829,331 hours.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Wasington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-614 Filed 1-13-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Early Poussin in Rome: The Origins of French Classicism," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the Kimbell Art Museum in Forth Worth, Texas, beginning on or about September 24, 1988, to on or about November 27, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: January 6, 1988.

[FR Doc. 88-593 Filed 1-13-88; 8:45am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8627, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act [44 U.S.C. Chapter 35]. This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 5, 1988.

By direction of the Administrator

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Reinstatement

1. Department of Medicine and Surgery.
2. Request for and Consent to Release of Drug Abuse, Alcoholism or Alcohol Abuse, or Sickle Cell Anemia Information from Medical Records.
3. VA Form 10-5345.
4. This form is used by the VA to obtain written consent from veterans to release medical records containing information on drug/alcohol abuse and sickle cell anemia.
5. On occasion.
6. Individuals or households.
7. 492,808 responses.
8. 24,640 hours.
9. Not applicable.

[FR Doc. 88-587 Filed 1-13-88; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group (SMAG); Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Special Medical Advisory Group (SMAG) has been renewed for a two year period beginning December 8, 1987, through December 8, 1989.

Dated: January 6, 1988.

By direction of the Administrator.

Dennis R. Boxx,

Deputy Associate Administrator for Public Affairs.

[FR Doc. 88-590 Filed 1-13-88; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:05 p.m. on Thursday, January 7, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the closed Capital Bank & Trust Co., Baton Rouge, Louisiana; (2) matters relating to a request for financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) two personnel matters.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 11, 1988.

Federal Deposit Insurance Corporation.

Margaret Olsen,

Deputy Executive Secretary.

[FR Doc. 88-758 Filed 1-12-88; 12:39 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, January 20, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 21, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987-33—Rodney D. Joslin on behalf of The Lawyers for Better Government Fund Federal.
Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3—110.6).
Petition for Rulemaking filed by the Ted Haley Congressional Committee.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-770 Filed 1-12-88; 2:54 pm]

BILLING CODE 6715-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 95, January 4, 1988.

DATE AND TIME: January 14, 1988.

PLACE: San Antonio Public Library, 203 South St. Mary's Street, San Antonio, Texas 78205.

STATUS: 4:15 p.m.–6:15 p.m.—closed. Subpart B, Sec. 1703.202(a)(2) & (9) of the Code of Federal Regulations, 45 CFR, Ch. XVII Part 1703.

FOR FURTHER INFORMATION CONTRACT: Vivian J. Arterbery, NCLIS Executive Director, 1111 18th Street, NW., Washington, DC 20036 (202) 254-3100.

Dated: January 7, 1988.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 88-759 Filed 1-12-88; 1:34 pm]

BILLING CODE 7537-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, January 26, 1988.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:00 p.m.):

1. Finance Project in Middle Eastern Country
2. Worker Rights Determination
3. Country Concentration Monitoring
4. Country Concentration Underwriting
5. Report on Private Political Risk Insurance Market
6. Claims Report
7. Overview on Finance and Insurance Operations
8. Report on Debt to Equity Conversion Funds
9. U.S. Effects Study
10. Budget Status Report
11. Finance Report
12. Finance and Insurance Reports

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:00 p.m.)

1. Approval of the Minutes of the Previous Board Meeting
2. Approval of Proposed Regular Meetings of the Board
3. Amendments to OPIC Bylaws
4. Personnel Action
5. Treasurer's Report
6. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7078.

Margaret A. Kole,

OPIC Corporate Secretary.

January 12, 1988.

[FR Doc. 88-760 Filed 1-12-88; 1:35 pm]

BILLING CODE 3210-01-M

Corrections

Federal Register
Vol. 53, No. 9
Thursday, January 14, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 70472-7197]

Groundfish of the Gulf of Alaska, Bearing Sea and Aleutian Islands

Correction

In rule document 87-29799 beginning on page 49021 in the issue of Tuesday, December 29, 1987, make the following correction:

On page 49021, in the second column, in the second line, "52 FR 22892" should read "52 FR 22829".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 87-ACE-8]

Proposed Alteration and Establishment of Restricted Areas; Fort Leonard Wood, MO

Correction

In proposed rule document 87-28453 beginning on page 47021 in the issue of Friday, December 11, 1987, make the following corrections:

1. On page 47022, in the first column, the first bold heading should read "**R-4501A, B, C and D Fort Leonard Wood, MO [Amended]**".

2. In the same column, the second bold heading should read "**R-4501F Fort Leonard Wood, MO [New]**".

3. In the same column, under **R-4501G Fort Leonard Wood, MO [New]**, in the fourth line, "37°44'00"" should read "37°44'48"".

BILLING CODE 1505-01-D

VOL
53

ISS
9

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federal register

Thursday
January 14, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is amending the rules that govern the information required in an application to release a performance bond to include the name of the permittee and amending the bonding rules to allow third parties to guarantee a self-bond. These revisions are in accordance with the Secretary's brief of March 5, 1984, in which the Secretary addressed the National Wildlife Federation's challenge to the omission of the permittee's name in the published notice of bond release and in response to a June 16, 1986, petition for rulemaking from the National Coal Association/American Mining Congress (NCA/AMC) Joint Committee on Surface Mining Regulations requesting that OSMRE amend its rules to allow third parties to guarantee a self-bond. The rules were proposed on November 26, 1986, with a comment period that closed on February 5, 1987. Six parties commented on this proposal. These final rules are adopted for the permanent regulatory program.

EFFECTIVE DATE: This rule is effective on February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Mancino, Office of Surface Mining Reclamation and Enforcement U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone No. (202) 343-7952.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments and Rules Adopted
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act, Pub. L. 95-87), 30 U.S.C. 1201 *et seq.*, sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulation implemented the general requirements of the Act and established performance standards to be achieved by different operations. The regulations dealing with the requirements for performance bonding are contained within 30 CFR Chapter VII, Subchapter J, Part 800. This part was revised on July 19, 1983 (43 FR 32932) and August 10, 1983 (43 FR 36429).

Section 800.40 of 30 CFR contains the requirements for release of performance bonds. Sections 800.5 and 800.23 of 30 CFR contain the requirements for acceptance of a self-bond. On November 26, 1986 (51 FR 42985) OSMRE proposed to revise these sections.

Section 800.5 was proposed to be revised by the removal of the term "parent corporation" from the definition of self-bond, and replaced by the term "corporate guarantor."

Section 800.23 was proposed to be revised by the removal of the term "parent corporation" and replaced by the term "corporate guarantor" in the requirements for obtaining a self-bond.

The changes proposed in §§ 800.5 and 800.23 resulted from the acceptance by OSMRE of a petition to change the regulations filed by the Joint National Coal Association (NCA)/American Mining Congress (AMC) Committee on Surface Mining Regulations. This petition, filed according to the rulemaking provisions of 30 CFR 700.12, was published in the **Federal Register** on October 29, 1985 (50 FR 43722) for public comment. On June 16, 1986, OSMRE made a decision to accept one proposal and to reject two other proposals of the petition. Notice of OSMRE's decision was published in the **Federal Register** on July 7, 1986 (51 FR 15047).

Section 800.40(a)(2) was proposed to be revised by the addition of the words "the permittee's name" to the requirements for release of performance bonds. This change was made in response to a commitment made by the Secretary in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action 79-1144 (D.D.C. 1984).

II. Discussion of Comments and Rules Adopted

The public comment period for these rules opened on November 26, 1986, and closed February 4, 1987. The commenters generally favored the proposed changes in the bonding rules, with one exception discussed below. A total of six commenters filed written statements resulting in over 12 comments. Two were from State regulatory authorities, two were from coal operators, one was from a national coal industry trade organization, and one was from an environmental group. Five of the commenters favored the change in the self-bonding sections of the rules and one opposed the changes. Two of the commenters supported the change in the requirements for bond release notice and the other four did not comment. No public hearings or meetings were requested and none were held. After considering all the comments on the proposed rulemaking, OSMRE is finalizing the rule with some minor changes based on the comments received.

Some industry commenters proposed that OSMRE reconsider various proposals to revise the existing bonding regulations, discussed in the rulemaking petition of September 19, 1985 (51 FR 15047). These comments were not directed to the proposed rulemaking herein and are thus not relevant nor appropriate to this rulemaking.

OSMRE wishes to emphasize that although OSMRE has not proposed to include certain provisions in its national rules, States may submit for OSMRE's approval alternative systems under section 509(c) of the Act that will achieve the objectives and purposes of the bonding program as set forth in section 509.

Sections 800.5 and 800.23 Definitions and Self-bonding.

Section 800.5 contains definitions applicable to this section. OSMRE proposed to revise the definition of self-bond, to include a corporate guarantor in place of a parent corporation. Based on the comments received, as discussed below, OSMRE has adopted the proposal to define a self-bond to include a corporate guarantor but has revised the definition to require the permit applicant to execute the indemnity agreement as well as the corporate guarantor. The term "applicant" has been used instead of the term "permittee" in the definition to reflect the language of section 509 and to label more accurately the status of the potential permittee at the time the indemnity agreement is executed.

Section 800.23 contains the requirements for the qualification, acceptance and replacement of self-bonds. OSMRE proposed to revise this section by replacing the term "parent corporation guarantor" wherever it appeared with the term "corporate guarantor". The changes would have occurred in paragraphs (b), (c), (d), (e)(1), (e)(2), (e)(3), (f) and (g). Based on the comments received, OSMRE has retained the original provisions of 30 CFR 800.23 for those paragraphs dealing with parent guarantors of a self-bond, but has added new language concerning non-parent guaranteed self-bonds and included requirements for the self-bond applicant whenever a non-parent entity guarantees the self-bond. One new provision relating to non-parent guarantors is contained in new paragraph 820.23(c)(2).

Section 800.23(g) obligates a permittee to post an alternate bond in the same amount as the self-bond if the financial conditions of the permittee or corporate guarantor no longer satisfy the financial criteria of §§ 800.23(b)(3) and 800.23(d). OSMRE wishes to clarify that under § 800.12(d) the alternate bond may consist of a self-bond guaranteed by a non-parent corporate guarantor and one or more of the other types of bonds. However it should be emphasized that under such circumstances a self-bond can only be used in an amount which will satisfy the applicable financial criteria and that the total amount of the combination bond must be equivalent to the self-bond being replaced.

OSMRE also wishes to clarify that the "continuous operation" requirement of § 800.23(b) that must be satisfied by the applicant and each guarantor may be satisfied by continuous operation as a business entity. It does not mean that the entity must have been in the coal mining business for five years.

One regulatory authority commenter suggested that OSMRE require in these final regulations that any corporate or third party guarantor must comply with State licensing requirements applicable to corporations which underwrite bonds, if fees are charged for their services. OSMRE did not accept this proposal because it is beyond the intent of SMCRA to deal with corporate licensing requirements that are the subject of State laws and regulations other than SMCRA. This rule is not intended to affect the applicability of any state licensing requirement.

One environmental organization commenter opposed the proposed revisions to both §§ 800.5 and 800.23 on the grounds that: (1) The proposal was not consistent with the Act; (2) the third party guarantor would have no interest in the successful mining and reclamation of the guaranteed operation; (3) the signing of an indemnity agreement by a utility or other non-parent guarantor might not be legally enforceable; (4) OSMRE or the States have no practical experience of non-parent guarantees of self-bonding and parent company self-bonding; (5) self-bonds are inherently riskier than surety bonds; (6) Congress intended that the objectives of self-bonding to be the same as for other types of bonding; and (7) the proposal decreases the permittee's responsibilities for reclamation. These issues will be discussed in turn.

1. Consistency of the Proposed Revisions With the Act

The commenter opposed this proposal on the gounds that section 509(c) of the Act does not authorize the acceptance of a self-bond by a party other than the permit applicant. OSMRE believes that the final rule is consistent with section 509(c) of SMCRA and is promulgating the rule as revised in response to many of the suggestions of the commenter. Section 509(c), which provides general guidance on self-bonding, neither prohibits a system that allows for a written guarantee on an *applicant's* self-bond nor limits the Secretary's discretion to provide for such a guarantee of a "self-bond". The intent of the performance bonding provision of section 509 is to provide a means of ensuring that reclamation requirements established by the Act will be fullfilled. The intent is not to financially penalize permittees but to have their performance guaranteed. Such guarantees can be obtained through a corporation licensed to do business as a surety, through posting of collateral or through filing a "self-bond", as defined by OSMRE. In developing the bonding regulations over the years, OSMRE has promulgated various provisions for achieving the intent of section 509.

In response to the commenter's concerns, the language being adopted in the final rule has been modified in a number of respects to emphasize that it is the permittee who posts the self-bond and that the third party functions as the guarantor. As mentioned above, the definition of "self-bond" reflects that in each instance, the permit applicant must be a person who executes the indemnity agreement, and not just the non-parent guarantor, as was proposed. Also the final rule recognizes that in situations involving non-parent corporate guarantors, the applicant must meet the "history or financial solvency and continuous operation" requirements of section 509(c) in order to become eligible for self-bonding. Thus, under new paragraph 800.23(c)(2) the applicant must meet the requirements of solvency and continuous operation set forth in 30 CFR 800.23(b) (1), (2) and (4). However, the final rule allows the "assets test" of 30 CFR 800.23(b)(3) to be met by the non-parent corporate guarantor. The regulatory authority may require additional financial information from the applicant under paragraph (b)(3), when such information is needed. The non-parent corporate guarantor must meet the standards of § 800.23(b) (1) through (b) (4) to serve in that capacity.

2. Third-Party Guarantor's Interest in the Mining Operation

The commenter cited preamble language from OSMRE's bonding rulemaking of 1983 (48 FR 36424) to support the view that OSMRE should not accept third party guarantees for self-bonds, on the basis that self-bonds did not provide sufficient assurance of a direct interest in the successful mining and reclamation operations of the permittee. OSMRE believes that its policy position in 1983 is no longer appropriate due to recent events in the bonding and surety industries.

Bonding regulations, as well as other OSMRE regulations have changed over the years and the policy set forth in the previous rulemaking have changed with changing conditions, new data and information. A regulatory agency is not bound by previous positions merely on the basis of consistency and should adjust its policy on the basis of experience and new information. Regulatory changes can be made on the basis of experience of new information on the operation of performance bonding in coal mining reclamation, an area that has changed considerably since the passage of the first set of OSMRE bonding regulations on in 1979. The assertion by the commenter that OSMRE must not change the regulations because of assumptions by OSMRE in previous rulemaking actions is not reasonable in view of new information and data contradicting those assumptions.

Recent events have shown that surety bonds do not always provide risk-free guarantees of reclamation. Guarantees provided by a surety company usually become worthless when the surety experiences bankruptcy and/or liquidation. At least 9 sureties and two banks have recently failed, affecting more than 400 mining companies, 25,000 permitted acres and over 8 million tons of annual coal production. These surety and bank failures have resulted in regulatory authorities not having the necessary funds to perform reclamation. Based on this experience and new information, OSMRE has concluded that a financially sound corporate guarantor may be in as good or better position to guarantee reclamation than some surety companies. In all its previous rulemaking, surety guarantees were considered by OSMRE to contain minimal risk and that they would almost always provide the funds needed for reclamation, in the event of forfeiture (44 FR 15114, March 13, 1979). However, the recent surety failures demonstrate that the issue of direct interest in an

operation is less important than the financial soundness of any guarantors, be they parent, non-parent, surety or banks. OSMRE believes that the regulatory authority needs to monitor and track all such guarantors' financial soundness through either its State insurance commission, or the Treasury Circular 570 which lists those sureties authorized to do business with the Federal government. The issue of the non-parent corporation's lack of interest in successful reclamation is directly addressed by making such a corporation party to the indemnity agreement. Once legally bound to ensure reclamation, the corporate guarantor should have the requisite interest in the permittee fulfilling its reclamation obligations. Therefore, the commenter's objection on the basis of direct interest in the operation is rejected.

3. Legality of Utility of Other Non-parent Guarantor Signing an Indemnity Agreement

The commenter asserted that signing of an indemnity agreement by a utility or other non-parent guarantor might not be legally enforceable. The proposed rule has been revised to respond to the comment. Paragraph (e)(2) has been revised to require the filing of an affidavit certifying that the signing of the indemnity agreement by the guarantor is valid under existing State and Federal law. Such an affidavit would preclude the unlawful agreement hypothesized by the commenter. This paragraph also contains a requirement that such guarantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond; this provides additional protection against possible legal conflicts.

4. OSMRE and State Experience With Non-parent Guarantees of Self-Bonding and Parent Company Self-Bonding

The commenter asserts that, because OSMRE and the States have no practical experience of non-parent guarantees of self-bonding and parent company self-bonding, it should not promulgate the proposed revision. The commenter cited 51 FR 42985 (November 26, 1986) and takes exception to the example of non-parent, self-bond envisioned by OSMRE. OSMRE believes that self-bonding with parent or non-parent guarantor as allowed by this final rule is as effective as surety bonding and will fully meet the intent of SMCRA to ensure that reclamation occurs in the event of operator non-performance. Mining operators have alleged to OSMRE that the reason for lack of applications for self-bonds at the Federal level is the high standard of the financial criteria of the regulations. It is important to note that these financial criteria are not changed by the proposed rulemaking for self-bond guarantees. Under the proposed rule, *any* party that seeks to guarantee the self-bond of a permittee must qualify according to the financial standards of 30 CFR 800.23, including the execution of an indemnity agreement to bind equally the permittee and the guarantor. This legally binding agreement is not changed by this revision to the OSMRE rules. Such an indemnity agreement binds all parties, be they corporate sureties, partnerships, public utility corporations, or other corporate guarantors regardless of their interest in the mining operation.

5. Self-Bonds Are Inherently Riskier Than Other Bond Types

The experiences of the previous five years do not bear out the generalization that self-bonds are riskier than surety guarantees. Surety failures have occurred in a number of States. The commenter's contention that surety bonds can be covered by reinsurance has not been the experience in recent surety failures in the area of surface mining operations. OSMRE and State regulatory authorities have initiated forfeiture proceedings on some mining operations which were guaranteed by those sureties now out of business. As discussed above, the probability of collecting funds to perform reclamation from these sureties is quite low. The previous fears that self-bonding would be abused as a means to circumvent reclamation requirements have not materialized. Moreover, whatever concerns may exist concerning non-guaranteed self-bonds, this final rule authorizes a category of self-bonds which are guaranteed in every instance by a financially sound corporation. In fact such corporations may be more financially sound that certain sureties.

6. Congressional Intent That Objectives of Self-Bonding to be the Same as for Other Types of Bonding

The commenter asserted that the Congress intended the objectives of self-bonding to be the same as for other types of bonding, that is, the assurance of the completion of the reclamation plan, at no expense to the public. OSMRE agrees with this statement and this final rule reflects this objective.

OSMRE is changing the bonding regulations because experience and new information warrants change. These rules are consistent with the objectives of bonding, and continue to assure the completion of the reclamation plan at no expense to the public. At no time does OSMRE intend to deviate from the Congressionally mandated purpose of bonding.

7. Permittee Responsibilities for Reclamation

A commenter asserted that the proposed revisions to §§ 800.5 and 800.23 decreases the responsibility of a permit applicant to comply with the reclamation plan. OSMRE disagrees. This rule does not diminish the permittees's responsibility to perform reclamation. What it does do is to provide another class of financially responsible entities to guarantee that the permittee meets its obligations. In the earliest OSMRE rulemaking on self-bonding, OSMRE stated that "the indemnity agreement provides joint and several liability for all individuals involved in a particular operation (and) gives all of them a significant incentive to comply with the Act." (44 FR 15117, March 13, 1979). This has not changed.

In terms of permittee responsibility, a permit holder is liable for reclamation specified by his permit. The permittee is liable for correcting violations and payment of fines or penalties associated with such violations. In the event of a forfeiture, the permittee is the party declared in forfeiture. Under most circumstances, the permittee would be unable to obtain any other coal mining permit. The permittee will be obligated to the party guaranteeing its self-bond under the indemnity agreement and will also be liable under such an agreement.

Section 800.40 Requirement to release performance bonds.

Section 800.40 contains the requirements for release of performance bonds. Subsection 800.40(a)(2) contains the requirements for public notification of bond release. This notification must contain the permit number and approval date, the location of the area affected, the acreage affected, the type and amount of bond, the portion of the bond to be released, the reclamation work performed and the result achieved, and the name and address of the regulatory authority to whom comments, objections or requests for public hearings on the proposed release are sent. These requirements were originally found at § 807.11, promulgated on March 13, 1979 (44 FR 14902). During the rule revisions of 1983, this section was incorporated into a new § 800.40 and the phrase, "the permittee's name" was removed from the section. The proposed revision was to restore the phrase to the requirements of this section. No commenter was opposed to this revision and OSMRE is promulgation the rule as proposed.

Reference Materials

Reference materials used to develop these final rules are as follows:

OSMRE. Proceedings of the Workshop on Coal-Mined Land Reclamation Bonding, September 11, 1986. 182 pp.

Washington Post, "Insurance Firm's Fall Raises Questions", "The Insurance Regulators", various articles on April 11–17, 1986 *Land Marc*, "The Bonding Crisis", All articles of November/December 1986 Issue. 29 pp.

OSMRE, "Monthly bond Insolvency Report Summary", January 1987.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in 30 CFR Part 800 have been approved according to Office of Management and Budget procedures under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1029–0043.

Executive Order 12291

The U.S. Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that is it not major and does not require a regulatory impact analysis. The rule will provide an additional alternative method of bonding which may result in lower costs for bonding to the coal industry.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule would not have a significant economic impact on a substantial number of small entities. This rule will impact a relatively small number of coal operator the majority of which would not be small operators.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts on the human environment by this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of this preamble. Based upon this EA, OSMRE has made a Finding of No Significant Impact on the quality of the human environment (FONSI) in accordance with OSMRE procedures under the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4332(2)(c).

Author

The principal author of this final rule is Frank Mancino, Physical Scientist, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1475.

List of Subjects in 30 CFR Part 800

Insurance, Reporting and Recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, 30 CFR Part 800 is amended to read as follows.

Date: December 3, 1987.

J. Stephen Griles,

Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for Part 800 is revised to read as follows:

Authority: Pub. L. 95–87, as amended, (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34.

2. Section 800.5 is amended by revising paragraph (c) to read as follows:

§ 800.5 Definitions.

* * * * *

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

* * * * *

3. Section 800.23 is amended by redesignating paragraphs (c) introductory text, (c)(1), (c)(2) and (c)(3) as (c)(1), (c)(1)(i), (c)(1)(ii) and (c)(1)(iii), by adding new paragraph (c)(2), by adding a new sentence at the end of paragraph (d), and by revising paragraphs (e)(2), (e)(4), (f) and (g), to read as follows:

§ 800.23 Self-bonding.

* * * * *

(c) * * *

(2) The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.

(d) * * *

For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) * * *

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

* * * * *

(4) Pursuant to § 800.50, the applicant, parent or non-parent corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants, parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant, parent or non-parent corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

4. Section 800.40 is amended by revising paragraph (a)(2) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) * * *

(2) Within 30 days after an applicantion for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40 (f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

* * * * *

[FR Doc. 88-667 Filed 1-13-88; 8:45 am]

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Reader Aids

Federal Register

Vol. 53, No. 9

Thursday, January 14, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5760 ... 855

Executive Orders:
12537 (Amended by EO 12624) ... 489
12578 (Superseded by EO12622) ... 222
12622 ... 222
12623 ... 487
12624 ... 489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 ... 399
No. 88-4 of Dec. 17, 1987 ... 773

5 CFR

353 ... 857
890 ... 1, 860

Proposed Rules:
330 ... 408
351 ... 408
890 ... 898

7 CFR

301 ... 733
400 ... 2
704 ... 733
905 ... 401, 860
907 ... 6, 491
910 ... 7, 492
911 ... 402
928 ... 862
959 ... 401
971 ... 401
987 ... 401
1430 ... 107
1902 ... 231

Proposed Rules:
68 ... 411
301 ... 140
401 ... 505, 507
905 ... 898
907 ... 412
908 ... 412
910 ... 255
979 ... 413
981 ... 414
982 ... 900
1033 ... 902
1046 ... 902
1126 ... 256
1138 ... 686
1260 ... 509
1701 ... 140

10 CFR

73 ... 403

Proposed Rules:
2 ... 415
430 ... 30

11 CFR

Proposed Rules:
109 ... 416
114 ... 416

12 CFR

206 ... 492
208 ... 492
226 ... 467
337 ... 597
525 ... 312
561 ... 324, 338
563 ... 324, 338, 354, 363, 372, 385
563c ... 324
571 ... 338, 372, 385
583 ... 312
584 ... 312
614 ... 775

Proposed Rules:
226 ... 467

14 CFR

39 ... 8-14, 232, 493-495
71 ... 496, 497, 619
75 ... 497
91 ... 233
97 ... 499

Proposed Rules:
39 ... 258, 514, 515
71 ... 516, 517, 666, 670, 674, 907-910
73 ... 517, 991

15 CFR

399 ... 108

Proposed Rules:
379 ... 418

16 CFR

13 ... 609

Proposed Rules:
13 ... 141

17 CFR

1 ... 609, 615
211 ... 109, 865

18 CFR

154 ... 867
270 ... 867
271 ... 15
273 ... 867
375 ... 867
381 ... 867
1301 ... 405

19 CFR

24 ... 615

Proposed Rules:
141.....30
178.....30

20 CFR

Proposed Rules:
361.....143
901.....147

21 CFR

81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236
561.....20, 233
606.....111
610.....111
640.....111
1308.....500

Proposed Rules:
193.....259
561.....259
1308.....743

23 CFR

655.....236

24 CFR

200.....842
203.....868
215.....842
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842
881.....842
882.....842
883.....842
884.....842
886.....842
912.....842

Proposed Rules:
115.....260

26 CFR

1.....117, 238

Proposed Rules:
1.....153, 261

28 CFR

55.....735
541.....196

29 CFR

2702.....737

30 CFR

800.....994

31 CFR

103.....776

32 CFR

887.....876

33 CFR

110.....878
117.....119, 406
165.....616, 878

36 CFR

5.....739
404.....120

Proposed Rules:
223.....519

37 CFR

201.....122, 123

Proposed Rules:
203.....153

38 CFR

4.....21
21.....616, 879

Proposed Rules:
21.....620

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244

Proposed Rules:
52.....261, 779
180.....262, 263
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR

101–20.....129
114–51.....741

Proposed Rules:
Ch. 201.....620
141.....31
142.....31
261.....31

42 CFR

431.....657
435.....657
440.....657
441.....657

Proposed Rules:
434.....744
435.....744

43 CFR

2.....24

44 CFR

Proposed Rules:
7.....922
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR

95.....26
233.....467

46 CFR

Proposed Rules:
588.....624

47 CFR

Ch. I.....502
64.....27
73.....28, 29, 504

Proposed Rules:
1.....625
63.....625
73.....426
74.....529
76.....625
78.....529
95.....779

48 CFR

7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132
513.....132

Proposed Rules:
215.....625
225.....626
232.....931
252.....626, 931
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR

24.....467
31.....880
541.....133
661.....617

Proposed Rules:
3.....100
7.....100
10.....100
383.....265
391.....42
571.....426, 780, 934, 936
1041.....155
1048.....155
1049.....155

50 CFR

611.....134, 741, 890, 894
653.....244
663.....246, 248
672.....890, 991
675.....894, 991

Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Last List January 13, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2598/Pub. L. 100–239

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. (Jan. 11, 1988; 101 Stat. 1778; 7 pages) Price: $1.00

S. 1389/Pub. L. 100–240

To amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments. (Jan. 11, 1988; 101 Stat. 1785; 3 pages) Price: $1.00

VOL
53
ISS
9
JA
14
988
UMI

VOL
53
ISS
10
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1-15-88
Vol. 53 No. 10

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53
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Vol. 53 No. 10
Pages 999-1330

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Friday
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Contents

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Upper Florida et al., 1035

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation
RULES
Practice rules governing formal adjudicatory proceedings under various statutes, 1001

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis—
Cattle and bison; State and area designations, 1002

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Westinghouse Electric Corp. et al., 1074
National cooperative research notifications:
Composite Materials Characterization, Inc., 1074
West Agro, Inc., 1074

Army Department
NOTICES
Meetings:
Science Board, 1056

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Commerce Department
See Economic Analysis Bureau; Foreign-Trade Zones Board; International Trade Administration; Patent and Trademark Office

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 1055

Customs Service
RULES
Vessels in foreign and domestic trades:
Small vessels; reporting requirements
Correction, 1103
NOTICES
Automated manifest system; new information dissemination product, proposed, 1097

Defense Department
See also Army Department
NOTICES
Meetings:
Military Personnel Testing Advisory Committee, 1055

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Ben-Eliezer, Carmel, M.D., 1080
Janssen, Inc., 1080
M.D. Pharmaceutical, Inc., 1080

Economic Analysis Bureau
RULES
Direct investment surveys:
Foreign direct investments in United States; BE-12 reporting requirements, 1015

Education Department
NOTICES
Agency information collection activities under OMB review, 1056
Grants; availability, etc.:
Drug-free schools and communities program, 1057

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 1081

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Oregon, 1019, 1020
(2 documents)
Toxic substances:
Asbestos abatement projects; worker protection, 1021
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska; correction, 1043
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Sierra Andersen and General Metal Works PM10 High Volume Air Sampler Systems; correction, 1062
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 1063
Weekly receipts, 1063
Toxic and hazardous substances control:
Chemical testing—
Conditional exemptions, 1062

Executive Office of the President
See Management and Budget Office; Presidential Documents; Trade Representative, Office of United States

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
IFR altitudes, 1005
PROPOSED RULES
Rulemaking petitions; summary and disposition, 1038
(2 documents)
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 1066

Federal Communications Commission
RULES
Common carrier services:
Dominant carriers, rate base and net income components, 1027
Telephone companies—
Terminal equipment; line power output functions continuity requirements; correction, 1103
Radio broadcasting:
AM daytime-only broadcast stations; unlimited-time operation, etc., 1030
Radio services, special:
Public safety services, national plan; frequencies assignment, regional public safety plans development, etc., 1022

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Soybeans; correction, 1001

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 1101
(3 documents)

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Power & Light Co. et al., 1057
Small power production and cogeneration facilities; qualifying status:
AES Riverside, Inc., et al., 1058
Petrolia Power Co., 1059
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 1059
Louisiana Department of Natural Resources, 1060
Panhandle Eastern Pipe Line Co., 1060
Tennessee Gas Pipeline Co., 1061

Federal Home Loan Bank Board
RULES
Federal home loan bank system, etc.:
Supervisory agents, 1003
Federal Savings and Loan Insurance Corporation:
Annual report disclosure requirements, 1004

Federal Maritime Commission
NOTICES
Agreements filed, etc., 1064
Meetings; Sunshine Act, 1102

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 1102

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 1064
(2 documents)
Meetings; Sunshine Act, 1102
Applications, hearings, determinations, etc.:
Bryn Mawr Bank Corp. et al., 1065
FBC Holding Co., Inc., et al., 1065
Long, Judy, et al., 1066

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Redman Industries, Inc., 1039

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
St. Paul Guardian Insurance Co., 1099

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 1072
(2 documents)
Environmental statements; availability, etc.:
Kenai National Wildlife Refuge, AK, 1071

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Halofuginone hydrobromide, bacitracin methylene disalicylate and roxarsone, 1017
NOTICES
Meetings:
Advisory committees, panels, etc., 1067

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Georgia—
Yamaha Golf Cart and Water Vehicle Plant, 1046
Indiana—
Subaru/Isuzu Auto/Truck Plant, 1046

General Services Administration
NOTICES
Travel regulations:
Relocations; real estate origination fee reimbursement limitation, etc.; correction, 1103

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 1066

Housing and Urban Development Department
RULES
Mortgage and loan insurance program, etc.:
Preference for families occupying substandard housing, involuntarily displaced, or paying more than fifty percent of income for rent, 1122

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service

Internal Revenue Service
RULES
Income taxes:
Consent dividends
Correction, 1103
NOTICES
Meetings:
Exempt Organization Advisory Group, 1099

International Trade Administration
NOTICES
Antidumping:
Bimetallic cylinders from Japan, 1046
Cell-site transceivers and related subassemblies from Japan, 1048
Elemental sulphur from Canada, 1048
Granite products from—
Italy and Spain, 1050
Malleable cast iron pipe fittings from—
Taiwan, 1050
Potassium permanganate from Spain, 1051
Countervailing duties:
Apparel from Argentina, 1053
Applications, hearings, determinations, etc.:
Baylor College of Medicine et al., 1052
Michigan State University, 1053
University of California, 1053

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 1073
Railroad operation, acquisition, construction, etc.:
Missouri Pacific Railroad Co. et al., 1073
Union Pacific Railroad Co. et al., 1073
Railroad services abandonment:
CSX Transportation, Inc., 1074

Justice Department
See Antitrust Division; Drug Enforcement Administration

Labor Department
See Employment Standards Administration

Land Management Bureau
RULES
Oil and gas leasing:
Onshore operations; oil royalty rates, 1184
PROPOSED RULES
Minerals management:
Onshore oil and gas production accounting; responsibility transfer, 1039
NOTICES
Meetings:
Canon City Grazing Advisory Board, 1070
Idaho Falls District Grazing Advisory Board, 1070
Opening of public lands:
Montana, 1070
Realty actions; sales, leases, etc.:
California, 1071
California; correction, 1103
Wyoming, 1068, 1069
(2 documents)
Resource management plans, etc.:
Socorro Resource Area, NM, 1069

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 1296

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
RULES
Royalty management:
Gas product valuation, 1230
Oil product valuation, 1184
PROPOSED RULES
Royalty management:
Onshore oil and gas production accounting; responsibility transfer, 1039

National Credit Union Administration
RULES
Federal credit unions:
Community development revolving loan program, 1005

National Highway Traffic Safety Administration
RULES
Vehicle identification number, content requirements; trailers and incomplete trailers, 1032

National Institutes of Health
NOTICES
Meetings:
Fogarty International Center Advisory Board, 1068

National Park Service
NOTICES
Concession contract negotiations:
Jamaica Bay Riding Academy, Inc., 1072

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 1082
Applications, hearings, determinations, etc.:
Florida Power Corp. et al.; correction, 1082
Tennessee Valley Authority, 1082

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Meetings:
Trademark Affairs Public Advisory Committee, 1055

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 1018

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 1102

Presidential Documents
ADMINISTRATIVE ORDERS
Alaska natural gas; foreign exports (Presidential Finding of Jan. 12, 1988), 999

Public Health Service
See Food and Drug Administration; National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Natural gas transportation, etc.—
Maximum allowable operating pressure; alternative method; confirmation or revision, 1043
Non-welded tie-in joints; pressure testing exception, 1045
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 1090–1096 (3 documents)
Inconsistency rulings, etc.—
Connecticut; Citizens Against Nuclear Trucking, 1089

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 1102
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 1084
Philadelphia Stock Exchange, Inc., 1084
Applications, hearings, determinations, etc.:
First Capital Life Insurance Co. et al., 1085
Reliance Financial Services Corp., 1084
Reliance Group Holdings, Inc., 1085
Reliance Group, Inc., 1085
Variable Annuity Life Insurance Co. Separate Account One, 1087
Variable Annuity Life Insurance Co. Separate Account Two, 1087

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
NOTICES
License surrenders:
Comerica Capital Corp., 1088

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Imports information during first 10 months (1987), 1302

Transportation Department
See also Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 1088
Hearings, etc.—
Seattle/Portland-Japan service case, 1088

Treasury Department
See Customs Service; Fiscal Service; Internal Revenue Service

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Sweden: A Royal Treasury 1550-1700, 1099
Meetings:
Public Diplomacy, U.S. Advisory Commission, 1099

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 1286

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
Vocational Rehabilitation and Counseling Officer; discontinuance actions, special review, 1042

Separate Parts in This Issue

Part II
Department of Housing and Urban Development, 1122

Part III
Department of the Interior, Minerals Management Service, Bureau of Land Management, 1184

Part IV
Department of the Interior, Minerals Management Service, 1230

Part V
United States Sentencing Commission, 1286

Part VI
Office of Management and Budget, 1296

Part VII
Office of the United States Trade Representative, 1302

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Findings:
Jan. 12, 1988.....999
7 CFR
1.....1001
401.....1001
Proposed Rules:
1006.....1035
1012.....1035
1013.....1035
9 CFR
77.....1002
12 CFR
501.....1003
563.....1004
583.....1003
795.....1005
14 CFR
95.....1005
Proposed Rules:
Ch. I (2 documents).....1038
15 CFR
806.....1015
16 CFR
Proposed Rules:
13.....1039
19 CFR
4.....1103
21 CFR
558.....1017
24 CFR
215.....1122
880.....1122
881.....1122
882.....1122
883.....1122
884.....1122
886.....1122
904.....1122
905.....1122
960.....1122
26 CFR
1.....1103
29 CFR
2676.....1018
30 CFR
202 (2 documents).....1184, 1230
203.....1184
206 (2 documents).....1184, 1230
207.....1184
210.....1184
241.....1184
Proposed Rules:
210.....1039
216.....1039
36 CFR
Proposed Rules:
21.....1040
40 CFR
52 (2 documents).....1019, 1020
763.....1021
Proposed Rules:
52.....1043
43 CFR
3100.....1184
3160.....1184
Proposed Rules:
3160.....1039
47 CFR
0.....1022
65.....1027
68.....1103
73.....1030
90.....1022
49 CFR
565.....1032
Proposed Rules:
192 (2 documents).....1043, 1045

VOL
53
ISS
10
JA
15
988
UMI

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

Presidential Documents

Title 3—

The President

Presidential Finding of January 12, 1988

Presidential Finding Concerning Alaska Natural Gas

This Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15 percent of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. Leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas on the basis of market financing could encompass the export of some of this gas to other countries. Because world energy markets are interrelated, our Nation will benefit from an enlarged international gas supply. Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

Before Alaska natural gas can be exported to nations other than Canada or Mexico, Section 12 of the Alaska Natural Gas Transportation Act (15 U.S.C. 719j) requires me to find exportation "will not diminish the total quantity or quality nor increase the total price of energy available to the United States." In order to make this finding, it has been necessary to assess the relationship of Alaska natural gas to the U.S. energy market.

There exist adequate, secure, reasonably priced supplies of natural gas to meet the demand of American consumers for the foreseeable future. This demand can be met by lower-48 production and already-approved Canadian imports. If necessary, this demand also can be met at lower delivered energy cost by coal, oil, imported liquified natural gas (LNG), natural gas from Mexico, and other energy sources.

Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

This finding removes the Section 12 regulatory impediment to Alaskan natural gas exports in a manner that allows any private party to develop this resource and sets up competition for this purpose. It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources, using private sector resources with no government subsidy, will benefit our entire Nation.

This finding represents a determination that the effects of exports of Alaska natural gas on American consumers would comply with the market criteria of Section 12 in the context of current and projected future energy markets and that such exports would be consistent with our comprehensive energy policy. It does not assess the merits or feasibility of a particular project, but rather lets the marketplace undertake a realistic consideration of various options concerning Alaska natural gas. The operation of market forces is the best guarantee that Alaska natural gas will be developed efficiently and that there is an incentive to find additional reserves.

I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System (ANGTS). This Administration supports the timely, economic development of Alaskan natural resources. To this end the Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

This finding shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 12, 1988.

[FR Doc. 88-860
Filed 1-13-88; 2:30 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Beef Promotion and Research Act, the Honey Research, Promotion, and Consumer Information Act, the Pork Promotion, Research, and Consumer Information Act, and the Watermelon Research and Promotion Act.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Richard N. Hooper, Federal Assistance Officer, Financial Management Division, Agricultural Marketing Service, USDA, Room 3973–S, Washington, DC 20090–6456; telephone (202) 447–4906.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act (7 U.S.C. 2901–2911), the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), the Pork Promotion, Research, and Consumer Information Act (7 U.S.C. 4801–4819), and the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), each authorize the assessment of civil penalties and the issuance of cease and desist orders against any person found to be in violation of the respective Act, order, or regulation issued thereunder.

The Department's uniform rules of practice (7 CFR Part 1, Subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the Acts listed above should also be governed by these uniform procedures.

This action has been determined to be exempt from the procedures under Executive Order 12291 and Departmental Regulation 1512–1 because it is administrative in nature.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking (5 U.S.C. 553) do not apply to the promulgation of agency rules of practice. Further, this action simply extends the applicability of the Department's long established uniform rules of practice to newly-passed statutes. Accordingly, this action is made effective upon publication in the Federal Register.

In consideration of the foregoing, 7 CFR Part 1, Subpart H, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1, Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; secs. 4, 5, 7, 35 Stat. 32, as amended; sec. 6, 28 Stat. 438, as amended; secs. 2, 3, 32 Stat. 792, as amended; sec. 6, 33 Stat. 1265, as amended; 34 Stat. 1260, as amended; secs. 9, 10, 37 Stat. 318, as amended; 37 Stat. 832; sec. 28, 39 Stat. 490; sec. 407, 42 Stat. 169; sec. 10, 42 Stat. 1519; sec. 15, 48 Stat. 537, as amended; sec. 402, 53 Stat. 1285; 56 Stat. 40, as amended; sec. 205(b), 60 Stat. 1090; sec. 108, 71 Stat. 34, as amended; sec. 14, 72 Stat. 447, as amended; sec. 6, 76 Stat. 131, as amended; sec. 11, 76 Stat. 163; sec. 21, 80 Stat. 353; sec. 2, 86 Stat. 282, as amended; sec. 9, 84 Stat. 1408; sec. 14, 84 Stat. 1629; sec. 11, 87 Stat. 897; sec. 310, 90 Stat. 2767; sec. 18, 89 Stat. 2884; sec. 13, 94 Stat. 2233; sec. 7, 95 Stat. 1678; 98 Stat. 3115; 99 Stat. 1597; 99 Stat. 1806; 99 Stat. 1622; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 1592, 1624(b), 2151, 2908, 3812, 4610, 4815, 4970; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 164, 463(b), 621, 1043; 43 U.S.C. 1740.

§ 1.131 [Amended]

2. Section 1.131(a) is amended by inserting the following statutory reference in the list of statutes in alphabetical order: Beef Promotion and Research Act of 1985, section 9 (7 U.S.C. 2908), Honey Research, Promotion, and Consumer Information Act, section 11 (7 U.S.C. 4610), Pork Promotion, Research, and Consumer Information Act of 1985, section 1626 (7 U.S.C. 4815), Watermelon Research and Promotion Act, section 1651 (7 U.S.C. 4910).

Done at Washington, DC, January 5, 1988.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 88-380 Filed 1-14-88; 8:45 am]
BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 7; Doc. No. 5158S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Final Rule in the **Federal Register** on Wednesday, November 25, 1987, amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.117, to be known as the Soybean Endorsement. In that publication an incorrect price per bushel, used in connection with adjustment of losses, was cited. The reference was to the price per bushel of U.S. No. 2 soybeans. That reference should have read U.S. No. 1. This notice is published to correct that error.

ADDRESS: Written comments on this correction should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 87–27053, appearing at 52 FR 45152 to 45155 is corrected as follows:

In § 401.117, on page 45154, in the center column, subsection 7.b.(1)(b)(i) of the *Soybean Endorsement* is corrected to read "Dividing the value per bushel of

such soybeans by the price per bushel of U.S. No. 1 soybeans; and."

Done in Washington, DC on January 6, 1988.

Edward D. Hews,

Acting Manager Federal Crop Insurance Corporation.

[FR Doc. 88-719 Filed 1-14-88; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 87-184]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designations of the states of Virginia and Washington from modified accredited states to accredited-free states. This action is necessary because we have determined that Virginia and Washington meet the criteria for designation as accredited-free states.

DATES: Interim rule effective January 15, 1988. Consideration will be given only to comments postmarked or received on or before March 15, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket Number 87-184. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free states, modified accredited states, or nonmodified accredited states. The criteria for determining the status of states (the term state is defined to mean any state, territory, the District of Columbia, or Puerto Rico) or portions of states are contained in a document captioned "Uniform Methods and Rules-Bovine Tuberculosis Eradication," 1985, edition, which has been made part of the regulations by incorporation by reference. The status of either states or portions of states is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Virginia and Washington were designated in § 77.1 of the regulations as modified accredited states. However, Virginia and Washington now meet the requirements for designation as accredited-free states. Therefore, we are amending the regulations by removing Virginia and Washington from the list of modified accredited states in § 77.1 and adding them to the list of accredited-free states in that section.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the states of Virginia and Washington may affect the marketability of cattle and bison from these states since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. Donald L. Houston, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they can accurately reflect the current tuberculosis status of Virginia and Washington as accredited-free states and thereby provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, 9 CFR Part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, the definition for "Modified accredited state" paragraph (2) is amended by removing "Virginia" and "Washington".

3. In § 77.1, the definition for "Accredited-free state" paragraph (2) is amended by adding "Virginia" and "Washington" immediately before "West Virginia".

Done in Washington, DC, this 12th day of January, 1988.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-814 Filed 1-14-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 501 and 583

[No. 88-15]

Operations, Definitions

January 5, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending and consolidating its regulations on officers as agents by delegating to the Principal Supervisory Agents at each Federal Home Loan Bank, authority to designate Supervisory Agents to assist in the performance of duties delegated by the Board and the FSLIC. This change is being implemented to increase administrative efficiency and relieve the Board of a time-consuming, routine procedure. The designation of a Supervisory Agent by a Principal Supervisory Agent will be immediately communicated, in writing, accompanied by the individual's resume and statement of qualifications, to the Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), and the Director of the Office of District Banks ("ODB"). The designation of the Principal Supervisory Agent and Director of Agency Functions, or equivalent position, at each Federal Home Loan Bank remains the responsibility of the Board.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Legal Counsel, (202) 778-2524, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant element of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks") under the direction of the Principal Supervisory Agents. By establishing ORPOS (Board Resolution No. 86-755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by ORPOS and ODB, has determined that delegation of routine administrative duties presently performed by the Board can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks.

This delegation does not diminish the statutory responsibility of the Board to oversee, control and, where necessary, improve the functions of examination and supervision. It will, however, expedite delivery of decisions.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 501 and 583

Claims,
Holding companies,
Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 501, Subchapter A, and Part 583, Subchapter F, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 501—OPERATIONS

1. The authority citation for Part 501 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1988).

2. Amend § 501.10 by revising the introductory text of the section to read as follows:

§ 501.10 Officers as agents.

For the following purposes, officers and employees of a Federal Home Loan Bank, when designated by the Principal Supervisory Agent, shall be the agent of the Board and the Federal Savings and Loan Insurance Corporation. The Principal Supervisory Agent will immediately communicate, in writing, such designation, accompanied by the individual's resume and statement of qualifications to: The Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision, and the Director of the Office of District Banks. Counsel to the Bank shall render to agents so designated such legal services as may be necessary to enable them to properly carry out their duties:

* * * * *

3. Section 501.11 is amended by revising the heading of the section; by revising paragraph (a); and by adding a new paragraph (i) to read as follows:

§ 501.11 Designation of Principal Supervisory Agent and Supervisory Agents.

(a) For the following purposes, the President of each Federal Home Loan Bank also shall be the Principal Supervisory Agent of the Board and the Federal Savings and Loan Insurance Corporation. *Provided, however,* that when designated by the Principal Supervisory Agent, in accordance with criteria developed by the Office of Regulatory Policy, Oversight and Supervision, some officer or employee of the Bank other than, or in addition to, the President may act as agent of the Board and the Federal Savings and Loan Insurance Corporation. Such persons appointed by the Principal Supervisory Agent shall be designated Supervisory Agents. The Principal Supervisory Agent will immediately communicate, in writing, such designation, accompanied by the individual's resume and statement of qualifications to: The Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision, and the Director of the Office of District Banks. Two supervisory agent designations, those of Principal Supervisory Agent and Director of Agency Functions, or equivalent positions, remain the province of the Board. Counsel to the Bank shall render to all such agents legal services as may be necessary to

enable them to properly carry out their duties.

* * * * *

(i) Said agent shall have the authority to administer savings and loan holding company regulations as contained in Subchapter F of this Title.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

4. The authority citation for Part 583 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

5. Revise 583.5 to read as follows:

§ 583.5 Supervisory Agent.

The term "Supervisory Agent" means: (a) The President of the Bank of the Federal Home Loan Bank district in which the subsidiary insured institution of the registrant or applicant has its principal office, or in which the principal savings and loan or savings bank business of the registrant or applicant is located (as indicated in the designation, if any, filed pursuant to § 584.1 of this subchapter), or (b) any other person who is specifically authorized by the Principal Supervisory Agent or the Board to act on the Corporation's behalf in the administration of this subchapter.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–731 Filed 1–14–88; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Part 563

[No. 88–1]

Operations; Annual Report Disclosure Requirements

Dated: January 4, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation, is amending its regulations on Annual Report ("AR") disclosure requirements by expanding the authority delegated to the Principal Supervisory Agent ("PSA"). This expansion of authority will establish a shorter decision process and enable the agency to respond more quickly and efficiently to annual report disclosure waiver requests and review of AR disclosure reports requiring preapproval.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Financial Analyst, Office of Regulatory Policy, Oversight and Supervision, (202) 778–2660, Federal Home Loan Bank Board System, 900 19th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant elements of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks") under the direction of the PSA. By establishing the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") (Board Resolution No. 86–755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by ORPOS and the Office of General Counsel ("OGC"), has determined that delegation of routine casework presently performed by ORPOS and OGC can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks, following prescribed guidelines and procedures.

This delegation does not diminish the statutory responsibility of the Board to oversee, control and where necessary improve the functions of examination and supervision. It will, however, expedite delivery of decisions.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.45 by revising paragraphs (c), (d); and by revising the introductory text of Form AR, General Instructions Item (6)(e), Instruction 9 to read as follows:

§ 563.45 Disclosure.

* * * * *

(c) *Filing requirements.* Three copies of each annual report, prepared pursuant to paragraph (a) of this section, and any notice of meeting transmitted to voting members pursuant thereto, shall be publicly filed with the Board concurrently with or prior to transmission of such report or notice pursuant to paragraph (a) of this section. All copies shall be mailed or delivered to the Principal Supervisory Agent ("PSA"). If the PSA determines that the material so filed fails to comply in any material respect with the requirements of Form AR, the PSA may require such material for a period of three years thereafter to be filed with the PSA and authorized for use prior to being transmitted to voting members.

(d) *Annual disclosure requirements for institutions under $15 million in assets.* An insured institution which is not exempt from paragraph (a) by paragraph (b)(2) of this section, and which has less than $15,000,000 in assets as of the end of any audit period (beginning with the audit period immediately preceding its 1978 annual meeting), shall prepare an annual report meeting the requirements of Form AR with respect to each such audit period as to which such institution does not conform with paragraph (b)(3) of this section. Three copies of each annual report required by the preceding sentence shall be publicly filed with the Board at least 20 days prior to the annual meeting following the audit period as to which such report was prepared. Copies shall be mailed or delivered to the PSA. If the PSA determines that an annual report prepared by an insured institution pursuant to this paragraph (d) reveals practices or events during the audit period covered by such report which, if

continued, the PSA believes should be disclosed to persons having voting rights in such institution, then the PSA may require such institution to comply with the requirements of paragraph (a) of this section in connection with the annual report for its next audit period if such a report is required by this paragraph (d). If an annaul report prepared pursuant to this paragraph (d) reveals information of the type described in the immediately preceding sentence, the PSA will notify the institution in writing within 60 days of the filing of such report that such institution must submit its annual report (if any) for its next audit period to the PSA for a determination as to whether such institution must comply with the requirements of paragraph (a) of this section in connection with such report.

* * * * *

Form AR (Annual Report Form)

General Instructions

* * * * *

Item 6 * * *

(e) * * *

Instructions. 1. * * *

9. An insured institution that has engaged in a transaction that must be disclosed pursuant to Item 6(e) of Form AR may be granted a waiver by the Principal Supervisory Agent upon affirmative showing that the institution—

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 88–732 Filed 1–14–88; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Community Development Revolving Loan Program for Credit Unions; Office of Management and Budget Approval of Collection Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA has received OMB approval of its collection requirements in its regulation governing the Community Development Revolving Loan Program for Credit Unions. An OMB control number has been assigned to the collection requirements.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: On September 16, 1987, the final rule entitled "Community Development Revolving Loan Program for Credit Unions" was published in the **Federal Register** (52 FR 34891, 9/16/87). The final rule contained three collection requirements. Two of the requirements § 705.5—Application for Participation, and § 705.6(a)(2)—Community Needs Plan) had received prior OMB approval. The third requirement (§ 705.8—State-Chartered Credit Unions), for the written concurrence of state regulatory authority for state-chartered credit unions participating in the program, was not previously submitted to OMB. All three collection requirements were submitted to OMB on October 6, 1987. OMB approved of all three collection requirements on November 13, 1987. The approval is valid through September 30, 1990. The OMB control number assigned to the three collection requirements is 3133–0109.

List of Subjects in 12 CFR Part 795

Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 11, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR Part 795 is amended as follows:

PART 795—[AMENDED]

1. The authority citation for Part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a)(11), and 5 U.S.C. 3507(f).

§ 795.1 [Amended]

2. Section 795.1 of the NCUA Regulations lists current OMB control numbers. The following should be added to the Display in § 795.1(b).

12 CFR part or section where identified and described	Current OMB control No.
. . . . .	.
795.5	3133–0109
795.6(a)(2)	3133–0109
795.8	3133–0109
. . . . .	.

[FR Doc. 88–769 Filed 1–14–88; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25507; Amdt. No. 341]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitude and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this

amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on December 16, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 341 EFFECTIVE DATE, JANUARY 14, 1988

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO READ IN PART		
CALBE, CA FIX	PALMDALE, CA VORTAC	
VIA PDZ VORTAC 306 & PMD VORTAC 142		10000
		MAA-17500
PARADISE, CA VORTAC	*CALBE, CA FIX	6000
*8500 - MCA CALBE FIX, NW BND		MAA-17500
IS AMENDED TO DELETE		
GRANTSBURG, WI VOR	EVELETH, MN VOR	3500
§95.1001 DIRECT ROUTES-U.S.		
PUERTO RICO ROUTES		
B520 IS AMENDED TO READ IN PART		
BORINQUEN, PR VORTAC	DORADO, PR NDB	2700
		MAA-45000
DORADO, PR NDB	CULEB, VI FIX	2000
		MAA-45000
ATLANTIC ROUTES		
AR 14 IS AMENDED TO DELETE		
DIXON, NC NDB/DME	EDDYS, NC FIX	18000
		MAA-45000
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
BROUN, GA FIX	*HARPS, GA FIX	2200
*3800 - MRA		
RALEIGH/DURHAM, NC VORTAC	HARVY, VA FIX	3000
LAYER, MA FIX	KITTY, MA FIX	*4500
*2300 - MOCA		
BOSTON, MA VORTAC	PEASE, NH VOR	2000
§95.6006 VOR FEDERAL AIRWAY 6		
IS AMENDED TO READ IN PART		
COLLI, CA FIX	*PITTS, CA FIX	5000
*3800 - MCA PITTS FIX, S BND		
PITTS, CA FIX	*REJOY, CA FIX	**4000
*2800 - MCA REJOY FIX, S BND		
**2300 - MOCA		
FOLLY, CA FIX	*COLOM, CA FIX	5000
*9500 - MCA COLOM FIX, NE BND		
§95.6006 VOR FEDERAL AIRWAY 6—Continued		
LAKE TAHOE, CA VORTAC	*MUSTANG, NV VORTAC	13000
*12000 - MCA MUSTANG VORTAC, SW BND		
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
TALOR, WI FIX	*PETTY, WI FIX	**7000
*7000 - MCA PETTY FIX, N BND		
**1700 - MOCA		
PETTY, WI FIX	*PROOT, WI FIX	4000
*4000 - MCA PROOT FIX, S BND		
PROOT, WI FIX	FALLS, WI VOR	3000
FALLS, WI VOR	GREEN BAY, WI VORTAC	3000
§95.6008 VOR FEDERAL AIRWAY 8		
IS AMENDED TO READ IN PART		
KREMMLING, CO VORTAC	SURFS, CO FIX	15300
SURFS, CO FIX	*DENVER, CO VORTAC	9500
*12000 - MCA DENVER VORTAC, W BND		
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
LEEVILLE, LA VORTAC	SAFES, LA FIX	*2500
*1600 - MOCA		
NEW ORLEANS, LA VORTAC	MACAW, LA FIX	*1900
*1400 - MOCA		
ST LOUIS, MO VORTAC	CAPITAL, IL VORTAC	*2700
*2100 - MOCA		
§95.6013 VOR FEDERAL AIRWAY 13		
IS AMENDED TO READ IN PART		
FARMINGTON, MN VORTAC	CINCI, MN FIX	3400
CINCI, MN FIX	SIREN, WI VOR/DME	*3400
*2700 - MOCA		
SIREN, WI VOR/DME	DULUTH, MN VORTAC	3100
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
WOONS, RI FIX	MILIS, MA FIX	2000
MILIS, MA FIX	BOSTON, MA VORTAC	2000
§95.6031 VOR FEDERAL AIRWAY 31		
IS AMENDED TO READ IN PART		
GIBBE, NY FIX	BEEPS, NY FIX	-3500
*3000 - MOCA		

FROM	TO	MEA
§95.6031 VOR FEDERAL AIRWAY 31—Continued		
BEEPS, NY FIX *3600 - MOCA	ROCHESTER, NY VORTAC	*6000
§95.6033 VOR FEDERAL AIRWAY 33		
IS AMENDED TO READ IN PART		
HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	4000
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED BY ADDING		
NANTUCKET, MA VORTAC	SANDY POINT, RI VOR/DME	2000
IS AMENDED TO READ IN PART		
HANCOCK, NY VORTAC *3600 - MOCA	ROCHESTER, NY VORTAC	*6000
§95.6035 VOR FEDERAL AIRWAY 35		
IS AMENDED TO READ IN PART		
GREENVILLE, FL VORTAC *3000 - MRA	*SALER, GA FIX	2500
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	CARVL, FL FIX	2100
CARVL, FL FIX	BRUNSWICK, GA VORTAC	2000
BROUN, GA FIX *3800 - MRA	*HARPS, GA FIX	2200
§95.6055 VOR FEDERAL AIRWAY 55		
IS AMENDED TO READ IN PART		
EAU CLAIRE, WI VORTAC *4900 - MRA	*ALEEN, WI FIX	3000
ALEEN, WI FIX	SIREN, WI VOR/DME	3000
SIREN, WI VOR/DME *5000 - MRA	*FELTY, MN FIX	3000 MAA-14000
FELTY, MN FIX	BRAINERD, MN VORTAC	3000 MAA-14000
§95.6071 VOR FEDERAL AIRWAY 71		
IS AMENDED TO READ IN PART		
BATON ROUGE, LA VORTAC *3000 - MRA	*RELAY, LA FIX	2200
RELAY, LA FIX *3000 - MRA **1700 - MOCA	*WRACK, LA FIX	**2200
WRACK, LA FIX *2500 - MRA **1700 - MOCA	*WILIN, MS FIX	**2200

FROM	TO	MEA
§95.6071 VOR FEDERAL AIRWAY 71—Continued		
WILIN, MS FIX EL DORADO, AR VORTAC	NATCHEZ, MS VOR/DME SPARO, AR FIX SE BND NW BND	2200 *2500 *4000
*1800 - MOCA SPARO, AR FIX *1700 - MOCA	CANEY, AR FIX	*4000
BUTLER, MO VORTAC *2600 - MOCA	TOPEKA, KS VORTAC	*3100
§95.6078 VOR FEDERAL AIRWAY 78		
IS AMENDED TO READ IN PART		
ZABLE, MI FIX *3000 - MRA **2500 - MOCA	*BANJO, MI FIX	**5000
§95.6084 VOR FEDERAL AIRWAY 84		
IS AMENDED TO READ IN PART		
BEEPS, NY FIX *2600 - MOCA	SYRACUSE, NY VORTAC	*3500
§95.6115 VOR FEDERAL AIRWAY 115		
IS AMENDED TO READ IN PART		
CHATTANOOGA, TN VORTAC	ETOWA, TN FIX	3000
ETOWA, TN FIX	GROSS, TN FIX	3100
GROSS, TN FIX	KNOXVILLE, TN VORTAC	3000
§95.6126 VOR FEDERAL AIRWAY 126		
IS AMENDED TO READ IN PART		
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	4000
§95.6134 VOR FEDERAL AIRWAY 134		
IS AMENDED TO READ IN PART		
FUNDS, CO FIX *12000 - MCA DENVER VORTAC, SW BND	*DENVER, CO VORTAC	16300
§95.6141 VOR FEDERAL AIRWAY 141		
IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *1500 - MOCA	DRUNK, MA FIX	*2000
DRUNK, MA FIX *2500 - MRA **1500 - MOCA	*CELTS, MA FIX	**2000

FROM	TO	MEA
§95.6148 VOR FEDERAL AIRWAY 148		
IS AMENDED TO READ IN PART		
GOPHER, MN VORTAC *4900 - MRA **2700 - MOCA	*ALEEN, WI FIX	**5000
ALEEN, WI FIX *2700 - MOCA	HAYWARD, WI VOR/DME	*5000
§95.6157 VOR FEDERAL AIRWAY 157		
IS AMENDED TO READ IN PART		
COLTS NECK, NJ VOR/DME *2700 - MOCA	KINGSTON, NY VORTAC	*4000
§95.6159 VOR FEDERAL AIRWAY 159		
IS AMENDED TO READ IN PART		
GREENVILLE, FL VORTAC *3000 - MRA	*SALER, GA FIX	2500
§95.6193 VOR FEDERAL AIRWAY 193		
IS AMENDED TO READ IN PART		
WHITE CLOUD, MI VORTAC	TRAVERSE CITY, MI VORTAC	3200
§95.6205 VOR FEDERAL AIRWAY 205		
IS AMENDED TO READ IN PART		
SIMBY, CT FIX *2500 - MOCA	LAYER, MA FIX	*4500
LAYER, MA FIX *2300 - MOCA	KITTY, MA FIX	*4500
BOSTON, MA VORTAC *2100 - MOCA	SCUPP, MA FIX	*3000
§95.6215 VOR FEDERAL AIRWAY 215		
IS AMENDED TO READ IN PART		
*TADDS, MI FIX *3500 - MRA **1700 - MOCA	SALES, MI FIX	**3500
§95.6218 VOR FEDERAL AIRWAY 218		
IS AMENDED TO READ IN PART		
GRAND RAPIDS, MN VOR/DME *5000 - MRA **3000 - MOCA	*FELTY, MN FIX	**5500
FELTY, MN FIX *3000 - MOCA	GOPHER, MN VORTAC	*5500

FROM	TO	MEA
§95.6265 VOR FEDERAL AIRWAY 265		
IS AMENDED TO READ IN PART		
HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	4000
§95.6267 VOR FEDERAL AIRWAY 267		
IS AMENDED TO READ IN PART		
WORMS, FL FIX *2100 - MOCA	JACKSONVILLE, FL VORTAC	*3000
§95.6274 VOR FEDERAL AIRWAY 274		
IS AMENDED TO READ IN PART		
PULLMAN, MI VORTAC	GRAND RAPIDS, MI VOR/DME	2500
§95.6289 VOR FEDERAL AIRWAY 289		
IS AMENDED TO READ IN PART		
HONEE, TX FIX *1600 - MOCA	LUFKIN, TX VORTAC	*3000
ABOTT, AR FIX *2000 - MOCA	FORT SMITH, AR VORTAC	*2500
MULBY, AR FIX *3500 - MOCA	HARRISON, AR VOR/DME	*4000
FORNEY, MO VOR *2500 - MOCA	VICHY, MO VORTAC	*3000
§95.6297 VOR FEDERAL AIRWAY 297		
IS AMENDED TO READ IN PART		
BANJO, MI FIX *2500 - MOCA	ZABLE, MI FIX	*5000
§95.6325 VOR FEDERAL AIRWAY 325		
IS AMENDED TO READ IN PART		
DALAS, GA FIX *3700 - MOCA	GADSDEN, AL VOR/DME	*5000
§95.6328 VOR FEDERAL AIRWAY 328		
IS AMENDED TO READ IN PART		
TROZE, CO FIX *9200 - MCA DENVER VORTAC, SW BND	*DENVER, CO VORTAC	7500
§95.6419 VOR FEDERAL AIRWAY 419		

FROM	TO	MEA
§95.6419 VOR FEDERAL AIRWAY 419—Continued		
IS AMENDED TO READ IN PART		
NYACK, NY FIX	CARMEL, NY VORTAC	2500
§95.6431 VOR FEDERAL AIRWAY 431		
IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *2100 - MOCA	BOSTON, MA VORTAC	*3000
§95.6465 VOR FEDERAL AIRWAY 465		
IS AMENDED TO READ IN PART		
BULLION, NV VORTAC *11800 - MCA WELLS VOR, SW BND	*WELLS, NV VOR	13000
§95.6469 VOR FEDERAL AIRWAY 469		
IS AMENDED TO READ IN PART		
BADDI, PA FIX *2900 - MOCA	HARRISBURG, PA VORTAC	*4000
§95.6475 VOR FEDERAL AIRWAY 475		
IS AMENDED TO READ IN PART		
MILIS, MA FIX	BOSTON, MA VORTAC	2000
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
ROCKDALE, NY VORTAC	STODA, NY FIX	4000
§95.6484 VOR FEDERAL AIRWAY 484		
IS AMENDED TO READ IN PART		
SALT LAKE CITY, UT VORTAC	PARLE, UT FIX	11500
PARLE, UT FIX	MYTON, UT VORTAC	13000
§95.6505 VOR FEDERAL AIRWAY 505		
IS AMENDED TO READ IN PART		
GOPHER, MN VORTAC *2600 - MOCA	SIREN, WI VOR/DME	*3000
SIREN, WI VOR/DME	DULUTH, MN VORTAC	3100
§95.6510 VOR FEDERAL AIRWAY 510		
IS AMENDED TO READ IN PART		
NODINE, MN VORTAC	DELLS, WI VORTAC	3000
DELLS, WI VORTAC	OSHKOSH, WI VORTAC	2900
OSHKOSH, WI VORTAC	FALLS, WI VOR	3000
FALLS, WI VOR	MUSKEGON, MI VORTAC	3500
§95.6569 VOR FEDERAL AIRWAY 569		
IS AMENDED TO READ IN PART		
SILBE, TX FIX *1800 - MOCA	LUFKIN, TX VORTAC	*2500

FROM	TO	MEA	MAA
§95.7006 JET ROUTE NO. 6			
IS AMENDED BY ADDING			
SALINAS, CA VORTAC	AVENAL, CA VORTAC	18000	45000
AVENAL, CA VORTAC	PALMDALE, CA VORTAC	18000	45000
IS AMENDED TO DELETE			
BIG SUR, CA VORTAC	*ZONAL, CA FIX	18000	45000
ZONAL, CA FIX	PALMDALE, CA VORTAC	26000	45000
§95.7010 JET ROUTE NO. 10			
IS AMENDED BY ADDING			
DES MOINES, IA VORTAC	IOWA CITY, IA VORTAC	18000	45000
§95.7107 JET ROUTE NO. 107			
IS AMENDED TO READ IN PART			
ROCK SPRINGS, WY VORTAC	CASPER, WY VORTAC	18000	45000
§95.7174 JET ROUTE NO. 174			
IS AMENDED TO READ IN PART			
WILMINGTON, NC VORTAC	DIXON, NC NDB/DME	18000	45000
DIXON, NC NDB/DME	NORFOLK, VA VORTAC	18000	45000
§95.7192 JET ROUTE NO. 192			
IS AMENDED BY ADDING			
PAWNEE CITY, NE VORTAC	IOWA CITY, IA VORTAC	18000	45000
§95.7207 JET ROUTE NO. 207			
IS AMENDED BY ADDING			
RALEIGH/DURHAM, NC VORTAC	FRANKLIN, VA VORTAC	18000	45000
§95.7209 JET ROUTE NO. 209			
IS AMENDED TO READ			
GREENWOOD, SC VORTAC	RALEIGH/DURHAM, NC VORTAC	18000	45000
RALEIGH/DURHAM, NC VORTAC	TAR RIVER, NC VORTAC	18000	45000

BEST COPY AVAILABLE

FROM	TO	MEA	MAA
§95.7209 JET ROUTE NO. 209—Continued			
TAR RIVER, NC VORTAC	NORFOLK, VA VORTAC	18000	45000
NORFOLK, VA VORTAC	SALISBURY, MD VORTAC	18000	45000
§95.7223 JET ROUTE NO. 223			
IS AMENDED TO READ IN PART			
LA GUARDIA, NY VOR/DME	ELMIRA, NY VORTAC	18000	38000
§95.7228 JET ROUTE NO. 228			
IS AMENDED TO DELETE			
PLATTSBURGH, NY VORTAC	U.S. CANADIAN BORDER	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT FROM	AIRWAY SEGMENT TO	CHANGEOVER POINTS DISTANCE	CHANGEOVER POINTS FROM
V-6			
IS AMENDED BY ADDING			
OAKLAND, CA VORTAC	SACRAMENTO, CA VORTAC	34	OAKLAND
V-141			
IS AMENDED TO DELETE			
HYANNIS, MA VORTAC	BOSTON, MA VORTAC	30	HYANNIS
V-273			
IS AMENDED TO DELETE			
HUGUENOT, NY VORTAC	HANCOCK, NY VORTAC	17	HUGUENOT
V-299			
IS AMENDED BY ADDING			
LOS ANGELES, CA VORTAC	VENTURA, CA VORTAC	18	LOS ANGELES
V-510			
IS AMENDED BY ADDING			
FALLS, WI VOR	MUSKEGON, MI VORTAC	41	FALLS

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-95		
	IS AMENDED TO DELETE		
DEER PARK, NY VORTAC	BINGHAMTON, NY VORTAC	60	DEER PARK
	J-211		
	IS AMENDED TO DELETE		
JOHNSTOWN, PA VORTAC	WESTMINSTER, MD VORTAC	47	JOHNSTOWN
	J-522		
	IS AMENDED BY ADDING		
HANCOCK, NY VORTAC	KINGSTON, NY VORTAC	41	HANCOCK

[FR Doc. 88-749 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 70872-7278]

BE-12, Benchmark Survey of Foreign Direct Investment in the United States, 1987

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: Section 4(b) of the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended) requires that a benchmark survey of foreign direct investment in the United States be conducted covering 1987 and every fifth year thereafter. This final rule revises 15 CFR 806.17 to set forth the reporting requirements for the survey covering 1987 and to delete the requirements now in § 806.17, which were for the last benchmark survey covering 1980. It also amends 15 CFR 806.15 to change the year of coverage of this next benchmark survey from 1985, as was specified in the original legislation authorizing the survey, to 1987, as now specified by amendment to that legislation (see Pub. L. 97-33 and Pub. L. 97-70).

EFFECTIVE DATE: This rule will be effective February 16, 1988. Forms are scheduled to be mailed to respondents at the end of February 1988 and a completed Form BE-12(LF) or BE-12(SF) is due to be filed with BEA by May 31, 1988. Also, Form BE-12(X), Determination of Reporting Status, must be completed and filed within 30 days of the date it was received.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0660.

SUPPLEMENTARY INFORMATION: In the November 5, 1987 Federal Register, Volume 52, No. 214, 52 FR 42447, BEA published a notice of proposed rulemaking setting forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1987. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter * * *. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the level of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The data from the survey are used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They are also used in formulating, and assessing the impact of, U.S. policy on foreign direct investment. They provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an Instruction Booklet; a Form BE-12(X), which is to be used to determine the reporting status of those to whom the survey packet is sent; a Form BE-12(LF), a long form for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $20 million; and a Form BE-12(SF), a short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. Although the survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates are exempt from reporting on Form BE-12(LF) and Form BE-12(SF) if their assets, sales, and net income are $1 million or less.

Primarily to minimize the reporting burden on respondents, BEA made a number of major changes in the reporting requirements between the 1980 and 1987 benchmark surveys. They are:

1. Introduction of the BE-12(SF), the short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. In the 1980 benchmark

survey, in contrast, smaller nonbank affiliates had to report on the 1980 equivalent of the long form. Thus, the short form will significantly reduce the reporting burden for these smaller affiliates and for the survey as a whole. The short form will also be utilized by banks, whereas there was a separate form for banks in 1980.

2. Introduction of the BE–12(X), Determination of Reporting Status. This form replaces the exemption claim form used in the 1980 survey. It allows companies to determine if they must file the long form or the short form or if they are exempt from filing altogether. This form will be placed first in the survey packet and should give reporters a quick, easy way to determine their reporting status at the outset. This rule revises 15 CFR 806.17 to implement the above changes in reporting requirements for the survey.

In addition, this rule amends 15 CFR 806.15 to change the year of coverage of the benchmark survey from 1985 to 1987. The original legislation authorizing the survey required that a benchmark survey be conducted at least once every 5 years. Because a benchmark survey covering 1980 was conducted, the original legislation would have implied that the next survey cover 1985. However, amendments to the original legislation made in 1981 (see Pub. L. 97–33 and Pub. L. 97–70) now require the conduct of "a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter." The postponement of this survey from 1985 to 1987 was done in order to place it on the same 5-year cycle as the Census Bureau's economic censuses. As a consequence, it will be possible to link the enterprise data reported to BEA in its benchmark surveys, and the establishment data reported to the Census Bureau in its economic census, for those U.S. companies that are in the foreign direct investment universe.

Executive Order 12291

BEA has determined that this rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0608–0042).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and most that are foreign owned are excluded from reporting on Form BE–12(LF) and Form BE–12(SF) by the $1 million exemption level below which reporting on these forms is not required. Also, under this rule, companies with assets, sales, or net income above $1 million, but not above $20 million, will report on the much more abbreviated BE–12(SF), rather than on the BE–12(LF). This provision will significantly reduce the burden on smaller businesses.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: December 28, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 806 is amended as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 806.15(j)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

3. Section 806.15(j)(2) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

4. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1987.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1987. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and §§ 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1987, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning Form BE–12(X) within 30 days of its receipt and, if applicable, by completing and returning Form BE–12(LF) or Form BE–12(SF) by May 31, 1988.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1987 fiscal year. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1987, Determination of Reporting Status, must be completed and filed within 30 days of its receipt by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year and that is not fully consolidated, or in the case of real estate investments, aggregated on a Form BE–12(X) of another U.S. affiliate. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond by completing and returning Form BE–12(X) within 30 days of its receipt, even if the person does not meet the requirements for reporting on Form BE–12(LF) or BE–12(SF), as contained in § 806.17(c) (2) and (3) below.

(2) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Long Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) It is *not* a bank or bank holding company, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Short Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative), but no one item exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes, or if:

(ii) The U.S. affiliate *is* a bank or a bank holding company, and one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE–12(LF) or Form BE–12(SF) if each of the following three items for the U.S. affiliate (not the foreign parent's share) did not exceed $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(i) Total assets (do not net out liabilities),

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE–12(LF) or Form BE–12(SF) because it falls below the exemption level, then it must complete and file a Form BE–12(X) with item 3 marked and the information requested in item 3 filled in.

(d) *Due date.* A fully completed and certified Form BE–12(LF) or Form BE–12(SF) is due to be filed with BEA not later than May 31, 1988. In addition, Form BE–12(X) must be completed (including the certification) and filed within 30 days of the date it was received.

[FR Doc. 88–771 Filed 1–14–88; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone, Hydrobromide, Bacitracin Methylene Disalicylate, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of halofuginone hydrobromide in combination with bacitracin methylene disalicylate and roxarsone in Type C medicated feeds for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broilers.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, has filed NADA 140–533 providing for the use of a combination of halofuginone hydrobromide, bacitracin methylene disalicylate, and roxarsone Type A medicated articles to make Type C medicated feeds containing 2.27 grams halofuginone hydrobromide per ton, 10 to 50 grams bacitracin methylene disalicylate per ton, and 22.7 to 45.4 grams roxarsone per ton for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* for improved feed efficiency, and for increased rate of weight gain in broilers. The application is approved and the regulations in 21 CFR 556.76, 558.285, and 558.530 are amended by adding new paragraphs (d)(3)(xi), (c)(5), and (d)(4)(v), respectively, to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.76 is amended by adding new paragraph (d)(3)(xi) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xi) Halofuginone hydrobromide and roxarsone in accordance with § 558.265.

3. Section 558.265 is amended by adding new paragraph (c)(5) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) * * *

(5) *Amount per ton.* Halofuginone hydrobromide 2.72 grams (0.0003 percent) plus bacitracin methylene disalicylate 10 to 50 grams and roxarsone 22.7 to 45.4 grams.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; for increased rate of weight gain; and for improved feed efficiency.

(ii) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; use as sole source of organic arsenic; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

4. Section 558.530 is amended by adding new paragraph (d)(4)(v) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(4) * * *

(v) Roxarsone may be used in combination with halofuginone hydrobromide and bacitrain methylene disalicyclate as in § 558.265.

Dated: January 7, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-733 Filed 1-14-88; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1988.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promply so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•		•		•		•		•			•			•		
February 1988	.10125	.0975	.0925	.0875	.0825	.07625	.07625	.07625	.07625	.07625	.07	.07	.07	.07	.07	.06

Issued at Washington, DC, on this 12th day of January 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-797 Filed 1-14-88; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3310-3]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a new Oregon Department of Environmental Quality (DEQ) rule regulating the height of stacks and the use of dispersion techniques, submitted on May 30, 1986, which replaces the existing rules for stack heights and dispersion techniques, as a revision to the Oregon State Implementation Plan (SIP). This revision was submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter the Act).

EFFECTIVE DATE: This action will be effective on March 15, 1988, unless notice is received before February 16, 1988, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A-86-7), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 SW Fifth Avenue, Portland, Oregon 97207

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the Oregon Department of Environmental Quality (DEQ) submitted a new rule regulating the use of stack heights and dispersion techniques (OAR 340-20-037) as a revision to the Oregon State Implementation Plan (SIP). This new Section adopts the EPA stack height regulations from 40 CFR Part 51 by reference (specifically, 40 CFR 51.1 (ff) through (kk), 51.12 (j) and (k), and 51.18(l) [1]). The existing rules for stack heights and dispersion techniques (OAR 340-20-340 and 345) have been rescinded and are replaced by the new section. However, the DEQ inadvertently failed to adopt the EPA definition of the terms "emission limitation" and "emission standard" from 40 CFR 51.1(z) which is necessary for proper implementation of the other stack height provisions. In an October 23, 1987, letter from the Director of the DEQ to the EPA Regional Administrator, the DEQ committed to adding a definition of these terms to its administrative rules in the near future and, in the interim, implement their existing rules consistent with the EPA definition. EPA is therefore approving the new rule as a revision to the Oregon SIP, replacing the existing rules, with the understanding that a definition of the terms "emission limitation" and "emission standard" will be added when the rules are next revised.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on the revision approved herein, the action on the revision will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on the revision and another will begin a new rulemaking by announcing a proposal of the action on the revision and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 1988. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

[1] EPA has recently recodified these sections as follows: § 51.1 (ff) through (kk) as § 51.100 (ff) through (kk); § 51.12(j) as § 51.118(a); § 51.12(k) as § 51.118(b); and § 51.18(l) as § 51.164. The DEQ has indicated that they will revise the codification in their regulations accordingly.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 24, 1987.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(78) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(78) On May 30, 1986, the State of Oregon Department of Environmental Quality submitted a new rule, OAR 340-20-037 "Stack Heights and Dispersion Techniques" and requested the deletion of the existing rules, OAR 340-20-340 and 345 "Stack Heights and Dispersion Techniques". On October 23, 1987, the State of Oregon Department of Environmental Quality submitted a letter indicating how this new rule will be implemented until a definition of the terms "emission limitation" and "emission standard" is added.

(i) Incorporation by reference.

(A) Letter of May 30, 1986, from the Oregon State Department of Environmental Quality to EPA Region 10. Revisions to the Oregon Administrative Rules, Chapter 340, Division 20, Section 037 "Stack Heights and Dispersion Techniques", adopted by the Environmental Quality Commission on April 25, 1986.

(B) Letter of October 23, 1987, from the Oregon State Department of Environmental Quality to EPA Region 10.

3. Section 52.1988 is amended by revising paragraph (a) to read as follows:

§ 52.1988 Air contaminant discharge permits.

(a) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the State in accordance with the provisions of the federally-approved Air Contaminant Discharge Permit Rules (OAR 340-20-140 through 185), New Source Review Rules (OAR 340-20-220 through 276), Stack Heights and Dispersion Techniques Rules (OAR 340-20-37), and Plant Site Emission Limit Rules (OAR 340-20-300 through 320), except Alternative Emission Limits (Bubble) for sulfur dioxide or total suspended particulates which involve trades were the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

* * * * *

[FR Doc. 88-822 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3306-2]

Approval and Promulgation of State Implementation Plan: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking action approves the Oregon State Implementation Plan (SIP) revision pertaining to the carbon monoxide (CO) attainment plan for the Grants Pass area. The CO plan relies upon the construction of a third bridge over the Rogue River to relieve traffic congestion in the downtown nonattainment area, as well as the Federal Motor Vehicle Emission Control Program to demonstrate attainment of the CO standard by December, 1990. This SIP revision was submitted to EPA by the Oregon Department of Environmental Quality on November 24, 1986, and was supplemented on January 8, 1987.

EFFECTIVE DATE: March 15, 1988.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A-87-1), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Executive Building, 811 SW. 6th Avenue, Portland, Oregon 97204

FOR FURTHER INFORMATION CONTACT: David S. Kircher, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone: (206) 442-4198, FTS: 399-4198.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 1985, Grants Pass, Oregon, was designated a newly discovered nonattainment area for CO (50 FR 51251). As a newly discovered area, the EPA policies contained in the EPA Policy Statement on post-1982 attainment areas, November 2, 1983 (48 FR 50686) and in the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," January 27, 1984, apply. In essence, newly designated nonattainment areas must meet requirements for 1979 SIP's as described in the Preamble for SIP Approval of Part D SIP's (April 4, 1979, 44 FR 2072). In accordance with the policies stated therein, the Grants Pass plan projects attainment by December, 1990, which is within the five-year time limit from the date of the nonattainment designation.

The plan calls for the construction of a third bridge over the Rogue River in conjunction with the Federal Motor Vehicle Emission Control Program to bring the area into attainment. For a detailed description of the plan, refer to the proposed rulemaking that was published on July 15, 1987 (52 FR 26534).

II. Response to Comments

On July 15, 1987 (52 FR 26534), EPA provided a 30 day public comment period on this proposed approval. No comments were received.

III. Final Rulemaking Action

Today, EPA is approving the Grants Pass, Oregon, carbon monoxide (CO) plan and the established attainment date of December, 1990, as a revision to the existing SIP.

IV. Administrative Review

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 1988. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 20, 1987.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(82) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(82) On November 24, 1986 and supplemented on January 8, 1987, the Director of the Department of Environmental Quality submitted the Grants Pass carbon monoxide control strategy as a revision to the Oregon State Implementation Plan.

(i) Incorporation by reference.

(A) Letter dated November 24, 1986 from the Director of the Department of Environmental Quality to EPA Region 10.

(B) State of Oregon Clean Air Act Implementation Plan Section 4.11 Grants Pass Carbon Monoxide Control Strategy as adopted by the Environmental Quality Commission on October 24, 1986.

(ii) Additional information.

(A) Letter dated January 8, 1987 from the Director of the Department of Environmental Quality to EPA Region X.

(B) Technical appendices for the Grant Pass Carbon Monoxide Control Strategy, Appendix 4.11.1 through 10.

3. Section 52.1973 is amended by revising the table to read as follows:

§ 52.1973 Attainment dates for national standards.

* * * * *

Air Quality Control Region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st [1]	2nd [2]	1st [1]	2nd [2]			
Portland Interstate AQCR							
Interstate AQCR (Washington portion):							
1. Portland-Vancouver (Oregon portion)	a	f	a	b	b	h	b
2. Salem	a	b	a	b	b	e	b
3. Eugene-Springfield AQMA	a	i	a	b	b	h	b
4. Remainder of AQCR	c	c	a	b	b	d	c
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA	i	k	a	b	b	i	b
2. Grants Pass	c	c	a	b	b	i	b
3. Remainder of AQCR	c	c	a	b	b	b	b
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b
Central Oregon Intrastate AQCR	a	c	a	b	b	b	b
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b

[1] 1st—Primary.
[2] 2nd—Secondary.
[a] Area designated as having air quality levels presently below the primary standards or area is unclassifiable.
[b] Area designated as having air quality levels presently below secondary standards or area is unclassifiable.
[c] May, 1975.
[d] May 31, 1976.
[e] Dec. 31, 1982.
[f] Dec. 31, 1986.
[g] [Reserved]
[h] Dec. 31, 1985.
[i] Dec. 31, 1987.
[j] [Reserved]
[k] Dec. 31, 2000.
[l] Dec. 31, 1990.

[FR Doc. 88-821 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-62050A; FRL-3215-5]

Asbestos Abatement Projects; Worker Protection; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: This document makes corrections to the final rule for Asbestos Abatement Projects; Worker Protection (40 CFR Part 763) which appeared in the Federal Register of February 25, 1987 (52 FR 5618).

DATE: This technical amendment is effective January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554-1404

SUPPLEMENTARY INFORMATION: On February 25, 1987 (52 FR 5618), the Environmental Protection Agency (EPA) issued a final rule titled "Asbestos Abatement Projects: Worker Protection." The EPA rule adopted many of the provisions of the Occupational Safety and Health Administration's (OSHA) rule titled "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite: Final Rules" published on June 20, 1986 (51 FR 22612). On May 12, 1987 (52 FR 17752), OSHA published technical amendments to their above cited rule. In reviewing the OSHA technical amendment notice, EPA found that some of the OSHA amendments are applicable to the EPA "Asbestos Abatement Projects: Worker Protection." Accordingly, EPA is issuing this notice to make technical amendments corresponding to OSHA's technical amendments and to correct minor typographical errors in the EPA "Asbestos Abatement Projects: Worker Protection" rule

Accordingly, the preamble to FR Doc. 87-3645 published in 52 FR 5618-5650 February 25, 1987, is corrected as follows: Corrections to the preamble

1. On page 5618, column 3, third full paragraph, two lines from the bottom "Units V.C" is corrected to read "Units I.V.C."

2. On page 5619:

a. Column 1, line 2, "V.C." is corrected to read "I.V.C.".

b. Column 2, first full paragraph, under "B. *Air Monitoring*", line 20, "Unit V.C" is corrected to read "Unit I.V.C.".

c. Column 3, second full paragraph, line 1, "Section 763.121(e)(6)(iv)" is corrected to read "Section 763.121(e)(6)(iii)(B)".

3. On page 5620, column 3, under "I. *Housekeeping*", line 1, "Section 763.121(1)" is corrected to read "Section 763.121".

4. On page 5621, column 2, second full paragraph, line 16, "Section 763.122(a)(1)" is corrected to read "Section 763.122(a)".

5. On page 5622, column 3, first full paragraph, line 15, "safe" is corrected to read "same".

6. On page 5623, column 2, first full paragraph, line 4, insert "million" after "$4.2"

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting requirements

Dated: December 31, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

§ 763.121 [Amended]

2. In § 763.121:

a. In paragraph (h)(2)(iv), in Table 1, line 2 under the "Required respirator" column, insert "other than a disposable respirator" before "equipped".

b. In paragraph (k)(3)(i), line 4, "asbestos in excess of the action level" is revised to read "asbestos at or above the action level".

c. Paragraph (k)(3)(ii) is revised to read as follows: "Training shall be provided prior to or at the time of initial assignment, [unless the employee has received equivalent training within the previous 12 months] and at least annually thereafter."

d. In paragraph (k)(3)(iii)(G), line 2 is revised to read "requirements; and".

e. In paragraph (k)(3)(iii)(H), line 1, "A review" is revised to read "The content".

f. In paragraph (m)(3)(i), line 2, "D, E, and F" is corrected to read "D and E".

Appendix A to § 763.121—EPA/OSHA Reference Method—Mandatory

3. Under *"Sampling and Analytical Procedure"*:

a. Item 2., line 3, "50–mm extension cowl" is revised to read "50–mm electrically conductive extension cowl."

b. Item 13.b., line 1, "Count all particles" is revised to read "In the absence of other information, count all particles".

Appendix B to § 763.121—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

4. Under *"Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory,"* in the "Flow rate" entry, "1/min" signifying liters per minute, is revised to read "L/min", the four times it appears.

5. Under *"Equipment,"* item 1., line 2, "50–mm extension cowl" is revised to read "50–mm electrically conductive extension cowl".

6. Under *"Sampling"*:

a. Item 4., in the equation on the left side, "min" is revised to read "minimum".

b. In the *note*, last line, "samples" is revised to read "sample".

7. Under *"Calculations,"* item 21., the equation is revised to read:

$$E = \frac{(F/n_f) - (B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:

n_f—number of fields in submission sample

n_b—number of fields in bulk sample

Appendix C to § 763.121—Qualitative and Quantitative Fit Testing Procedures—Mandatory

8. Under "I. *Isoamyl Acetate Protocol*":

a. In "C. *Fit test,*" item 15., remove the last two sentences.

b. Item 20.(3), "prothesis" is corrected to read "prosthesis".

9. Under "II. *Saccharin Solution Aerosol Protocol*":

a. Item 14., line 2, "IAA" is revised to read "saccharin solution aerosol".

b. Item 20.(3), line 2, "prothesis" is corrected to read "prosthesis".

10. Under "III. *Irritant Fume Protocol*":

a. Paragraph (A), line 4, "combination of high-efficiency and acid gas cartridges" is revised to read "high-efficiency cartridge."

b. Item 8.v., line 3, "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

c. Item 12., line 2, "IAA" is revised to read "irritant fume".

d. Item C.3.c., line 3, "particular" is revised to read "particulate".

e. Item C.4.a., line 5, "Norton" is revised to read "North".

f. Item C.4.a.(2), line 2, "*negative pressure slight* is revised to read "*negative pressure of slight.*"

g. Item C.5.e., is revised to read "*Recoding (R).* The test subject (keeping eyes closed) shall repeat after the test conducter the 'rainbow passage' at the end of this section. The subject shall talk slowly aloud so as to be heard clearly by the test conductor or monitor."

h. In item C.5.h., line 2, delete "perform".

i. In item C.6., delete "(see paragraph 4.h)".

Appendix E to § 763.121—Interpretation and Classification of Chest Roentgenograms—Mandatory

11. Paragraph (a) is revised to read as follows: "Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the boldlines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH."

[FR Doc. 88-631 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[GEN Docket No. 87-112; FCC 87-358]

Public Safety Radio Services, Assignment of Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules and technical standards for use of the 821–824/866–869 MHz bands by public safety licensees. These rules are included in the National Plan for Public Safety, which is contained in this Report and Order. In addition to the issuance of technical guidelines for the use of this spectrum, the National Plan also provides direction to local, state, and federal authorities in the development of regional public safety plans.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–6497 or Fred Thomas, Frequency Allocation Branch, Spectrum Engineering Division, Office of Engineering and Technology (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, GEN Docket No. 87–112, adopted November 24, 1987, and released December 18, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This Report and Order establishes the policies and rules for a national plan for public safety services (The National Plan). In particular, it sets forth the service rules and technical standards for the 821–824/866–869 MHz bands which the Commission allocated for public safety use in 1986. In adopting this

Report and Order, the Commission is responding to a 1983 Congressional mandate directing the FCC to establish a plan to ensure that public safety needs are taken into account in making allocations of the electromagnetic spectrum.

2. The National Plan is intended to satisfy two broad objectives. First, it will facilitate interoperability between communications systems to permit local, state, and federal agencies to coordinate their activities; and second, the Plan will ensure efficient use of the spectrum allocated for public safety.

3. The Plan sets national policy guidelines and technical standards for use of the new spectrum while also allowing regional public safety planners to develop regional plans tailored to their areas' own particular communications needs. The regional plans will be prepared by regional planning committees in the forty-eight regions established in the *Order*, under the general oversight of the Commission. Those plans will address the spectrum utilization requirements of all of the public safety and special emergency entities of the regions.

4. The National Plan permits entities in both the Public Safety Radio Services and the Special Emergency Radio Service to obtain licenses in the new 821–824/866–869 MHz spectrum. In instances where the demand for frequencies exceeds the available spectrum, the Plan will allow the individual regional planning committees to recommend which entities should receive spectrum, based on the committees' determination as to which are most important to the protection of life and property. The regional plans will be submitted to the Commission. The Commission will solicit comment on each plan and review it for compliance with the National Plan. No licenses will be granted to operate in this spectrum in any region until the plan for that region is accepted by the Commission.

5. The Plan mandates that the new 800 MHz bands will consist of 25 kHz channels spaced 12.5 kHz apart ("12.5 kHz offset"). In making this determination, the Commission found that this channeling plan would be spectrum efficient, would enable interoperability with existing 800 MHz public safety systems, and would accommodate sophisticated digital encryption systems and digital data communications systems.

6. The Plan also establishes five Mutual Aid Channels in the 821–824/866–869 MHz bands. These frequencies will be used to enable local, state and federal public safety entities to communicate with one another in times of emergency.

7. Finally, in an effort to promote efficient use of the spectrum, the Plan will require that trunked systems be utilized by licenees having more than four channels, and that loading standards currently applicable to existing 800 MHz public safety services be applicable to the new 800 MHz allocation.

8. The National Plan also addresses a series of other issues, such as federal agency concerns and the use of cellular radio and mobile satellite systems, and provides guidance to the regions in the allocation of vacated (lower-band) frequencies and in the assignment of unused 800 MHz frequencies.

Regulatory Flexibility Act Final Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

10. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analsis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

Paperwork Reduction Act Statement

11. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on the public as a result of the creation of regional planning committees and the requirement that they prepare and submit a regional plan to the Commission. Implementation of new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

12. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301, and 303(r) Parts 0 and 90 of the Commission's Rules, 47 CFR Parts 0 and 90 *are amended* as set forth below.

13. *It is further ordered* that this Order will become effective February 16, 1988.

14. *It is further ordered* that this proceeding *is terminated.*

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 90

Radio.

Amendatory Text

A. 47 CFR Part 0 is amended as follows:

PART 0—[AMENDED]

15. The authority citation for Part 0 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552, unless otherwise noted.

16. New § 0.335 is added to read as follows:

§ 0.335 Authority delegated jointly to the Chief of the Private Radio Bureau and the Chief Engineer.

Authority is delegated jointly to the Chief of the Private Radio Bureau and the Chief Engineer to review and accept regional plans submitted and modifications thereto as required under the public safety National Plan adopted in General Docket 87–112.

B. 47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

17. The authority citation for Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

18. New § 90.16 is added to read as follows:

§ 90.16 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Radio Services and the Special Emergency Radio Service. The National Plan is contained in the *Report and Order* in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 821–824 MHz and the 866–869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821–824 MHz and 866–869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 90.17 [Amended]

19. The frequency table in paragraph (b) of § 90.17 is amended by revising frequency band "806–821" to read "806–

824" and revising frequency band "851–866" to read "851–869".

20. Paragraph (c)(15) of § 90.17 is revised to read:

* * * * *

(c) * * *

(15) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.19 [Amended]

21. The frequency table in paragraph (d) of § 90.19 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

22. Paragraph (e)(22) of § 90.19 is revised to read:

* * * * *

(e) * * *

(22) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.21 [Amended]

23. The frequency table in paragraph (b) of § 90.21 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

24. Paragraph (c)(10) of § 90.21 is revised to read:

* * * * *

(c) * * *

(10) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.23 [Amended]

25. The frequency table in paragraph (b) of § 90.23 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

26. Paragraph (c)(10) of § 90.23 is revised to read:

* * * * *

(c) * * *

(10) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

§ 90.25 [Amended]

27. The frequency table in paragraph (b) of § 90.25 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

28. Paragraph (c)(16) of § 90.25 is revised to read:

* * * * *

(c) * * *

(16) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

29. New § 90.34 is added to read as follows:

§ 90.34 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Radio Services and the Special Emergency Radio Service. The National Plan is contained in the *Report and Order* in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 821–824 MHz and the 866–869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821–824 MHz and 866–869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 90.53 [Amended]

30. The frequency table in paragraph (a) of § 90.53 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

31. Paragraph (b)(21) of § 90.53 is revised to read:

* * * * *

(b) * * *

(21) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

32. Section 90.175 is amended by revising paragraph (b) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(b) For frequencies between 470 and 512 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz: A statement from the applicable coordinator recommending specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service or category of user involved.

* * * * *

33. Section 90.203 is amended by adding a new paragraph (i) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(i) Equipment type accepted after February 16, 1988 and marketed for public safety operation in the 821–824/866–869 MHz bands must have the capability to be programmed for operation on the mutual aid channels as designated in § 90.617(a) of the Rules.

§ 90.205 [Amended]

34. The frequency table in paragraph (b) of § 90.205 is amended by revising frequency band "806 to 821" to read "806 to 824" and revising frequency band "851 to 866" to read "851 to 869".

35. Section 90.209 is amended by revising paragraph (b)(4), by redesignating existing paragraphs (i) and (j) as new paragraphs (j) and (k), respectively, and by adding a new paragraph (i) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(4) For all F3E or G3E emissions on frequencies below 947 MHz, except for the frequency bands 896 to 901 MHz and 935 to 940 MHz, maximum authorized bandwidth shall be 20 kHz. Except for frequencies in the 821–824 and 866–869 MHz bands, the maximum authorized frequency deviation shall be 5 kHz. For frequencies in the 821–824 and 866–869 MHz bands the maximum authorized freuqency deviation shall be 4 kHz. Stations authorized for operation on or before December 1, 1961, in the frequency band 73.0–74.6 MHz may continue to operate with a bandwidth of 40 kHz and a deviation of 15 kHz. For stations operating on frequencies above 947 MHz, except as provided in paragraph (b)(5) of this section, the maximum authorized bandwidth and frequency deviation will be specified in the station authorization.

* * * * *

(i) For transmitters that operate in the frequency bands 821–824 and 866–869 MHz that are not equipped with an audio low-pass filter in accordance with the provisions of § 90.211(d)(1), the power of any emission shall be attenuated below the unmodulated carrier power (P) in accorance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of 4 kHz or less: 0 dB.

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 4 kHz up to and including 8.5 kHz: At least $107 \log_{10}(f_d/4)$.

(3) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 8.5 kHz up to and including 15 kHz: At least $40.5 \log_{10}(f_d/1.16)$.

(4) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 15 kHz up to and including 25 kHz: At least $116 \log_{10}(f_d/6.1)$.

(5) On any frequency removed from the center of the authorized bandwidth by more than 25 kHz: At least $43 + \log_{10}$ (output power in watts), or 80 dB, whichever is lesser attenuation.

36. Section 90.211(d) is amended by revising the introductory text and paragraph (d)(1)(ii), and by amending paragraph (d)(2) by changing the reference to "(i)" to read "(j)" in the two places in which it appears to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(d) Each transmitter shall meet the requirements provided in paragraph (d)(1) or (2) of this section. The requirements of this paragraph do not apply to mobile stations that are authorized to operate with a maximum power output of 2 watts or less or to any radio-telecommunication system operating wholly within the limits of one or more of the territories or possessions of the United States, or Alaska, or Hawaii, except those systems operating in the frequency ranges 806 to 824 MHz, 851 to 869 MHz, 896 to 901 MHz, and 935 to 940 MHz.

(1) * * *

(i) * * *

(ii) For transmitters that operate in the frequency band of 450 to 470 MHz and that are authorized on or after November 1, 1967, and transmitters that operate in the frequency bands of 470 to 512 MHz, 806 to 824 MHz, 851 to 869 MHz, 929 to 930 MHz, and Traveler's Information Stations on 530 and 1610 kHz, the attenuation of the low-pass filter between the frequencies of 3 kHz and 20 kHz shall be greater than the attenuation at 1 kHz by at least: $60 \log_{10}(f/3)$ decibels where "f" is the frequency in kHz. At frequencies above 20 kHz, the attenuation shall be 50 decibels greater than the attenuation at 1 kHz.

* * * * *

37. Section 90.213 is amended by inserting two lines in numerical order in the Table following paragraph (a) as follows:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

Frequency range (MHz)	Fixed and base stations: Over 200 W output power	Fixed and base stations: 200 W or less output power	Mobile stations: Over 2 W output power	Mobile stations: 2 W or less output power
*	*	*	*	*
821 to 824	[1] .0001	[1] .0001	.00015	.00015
*	*	*	*	*
866 to 869	.0001	.0001	.00015	.00015
*	*	*	*	*

[1] Control stations may operate with the frequency tolerance specified for associated mobile stations.

* * * * *

38. Section 90.477 is amended by revising paragraph (b) to read as follows:

§ 90.477 Interconnected systems.

* * * * *

(b) In the frequency ranges 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz, interconnection with the public switched telephone network is authorized under the following conditions:

* * * * *

39. Section 90.492 is revised to read as follows:

§ 90.492 One way paging operations in the 806–824 MHz, 866–869 MHz, 896–901 MHz and 935–940 MHz Bands.

Paging operations are permitted in the 806–824, 851–869, 896–901, and 935–940 MHz bands only in accordance with §§ 90.378 and 90.645 (e) and (h).

40. The heading for Part 90, Subpart S, of the Rules and Regulations is revised to read as follows:

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

41. Section 90.601 is revised to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all conventional systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands, and trunked systems operating in the 809.750–816/854.750–861 MHz, 821–824/866–869 MHz, and 896–901/935–940 MHz bands. Trunked systems operating in the 816–821/861–866 MHz bands are governed by the rules in Subpart M until action is taken by the Commission to merge Subpart M with Subpart S. This subpart also governs the use of frequencies in the 806–821/851–866 MHz bands along the Mexican and Canadian border areas in accordance with existing agreements. It includes eligibility requirements, applications procedures, operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

42. Section 90.603 is amended by revising the introductory text to read as follows:

§ 90.603 Eligibility.

The following persons are eligible for licensing in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands.

* * * * *

43. The heading immediately preceding § 90.611 is revised to read as follows:

Policies Governing the Processing of Applications and the Selection and Assignment of Frequencies for Use in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands

44. Section 90.613 is amended by revising the introductory text, and amending the "Table of 806–821/851–866 MHz Channel Designations" by revising the entry for channels 1 and 600 and by adding new channels 601 to 830 to read as follows:

§ 90.613 Frequencies available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the upper half of each frequency pair is listed in the table.

Table of 806–824/851–869 MHz Channel Designations:

Channel No.	Base Frequency (MHz)
1	851.0125
*	*
600	865.9875
601	866.0125
602	0375
603	0500
604	0625
605	0750
606	0875
607	1000

—Continued

Channel No.	Base Frequency (MHz)
608	1125
609	1250
610	1375
611	1500
612	1625
613	1750
614	1875
615	2000
616	2125
617	2250
618	2375
619	2500
620	2625
621	2750
622	2875
623	3000
624	3125
625	3250
626	3375
627	3500
628	3625
629	3750
630	3875
631	4000
632	4125
633	4250
634	4375
635	4500
636	4625
637	4750
638	4875
639	5125
640	5375
641	5500
642	5625
643	5750
644	5875
645	6000
646	6125
647	6250
648	6375
649	6500
650	6625
651	6750
652	6875
653	7000
654	7125
655	7250
656	7375
657	7500
658	7625
659	7750
660	7875
661	8000
662	8125
663	8250
664	8375
665	8500
666	8625
667	8750
668	8875
669	9000
670	9125
671	9250
672	9375
673	9500
674	9625
675	9750
676	9875
677	867.0125
678	.0375
679	.0500
680	.0625
681	.0750
682	.0875
683	.1000
684	.1125
685	.1250
686	.1375
687	.1500
688	.1625
689	.1750
690	.1875
691	.2000
692	.2125
693	.2250
694	.2375
695	.2500
696	.2625
697	.2750

—Continued

Channel No	Base Frequency (MHz)
698	.2875
699	.3000
700	.3125
701	.3250
702	.3375
703	.3500
704	.3625
705	.3750
706	.3875
707	.4000
708	.4125
709	.4250
710	.4375
711	.4500
712	.4625
713	.4750
714	.4875
715	.5125
716	.5375
717	.5500
718	.5625
719	.5750
720	.5875
721	.6000
722	.6125
723	.6250
724	.6375
725	.6500
726	.6625
727	.6750
728	.6875
729	.7000
730	.7125
731	.7250
732	.7375
733	.7500
734	.7625
735	.7750
736	.7875
737	.8000
738	.8125
739	.8250
740	.8375
741	.8500
742	.8625
743	.8750
744	.8875
745	.9000
746	.9125
747	.9250
748	.9375
749	.9500
750	.9625
751	.9750
752	.9875
753	868.0125
754	.0375
755	.0500
756	.0625
757	.0750
758	.0875
759	.1000
760	.1125
761	.1250
762	.1375
763	.1500
764	.1625
765	.1750
766	.1875
767	.2000
768	.2125
769	.2250
770	.2375
771	.2500
772	.2625
773	.2750
774	.2875
775	.3000
776	.3125
777	.3250
778	.3375
779	.3500
780	.3625
781	.3750
782	.3875
783	.4000
784	.4125
785	.4250
786	.4375
787	.4500

—Continued

Channel No	Base Frequency (MHz)
788	.4625
789	.4750
790	.4875
791	.5000
792	.5125
793	.5250
794	.5375
795	.5500
796	.5625
797	.5750
798	.5875
799	.6000
800	.6125
801	.6250
802	.6375
803	.6500
804	.6625
805	.6750
806	.6875
807	.7000
808	.7125
809	.7250
810	.7375
811	.7500
812	.7625
813	.7750
814	.7875
815	.8000
816	.8125
817	.8250
818	.8375
819	.8500
820	.8625
821	.8750
822	.8875
823	.9000
824	.9125
825	.9250
826	.9375
827	.9500
828	.9625
829	.9725
830	.9875

* * * * *

45. Section 90.617 is amended by revising the heading, paragraph (a), and the heading of Table 1 following paragraph (a); and by adding new paragraph (a)(1) immediately following Table 1 to read as follows:

§ 90.617 Frequencies in the 809.750–816/854.750–861 MHz, 821–824/866–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

(a) The channels listed in Table 1 and paragraph (a)(1) are available to eligible applicants in the Public Safety Category which consists of the Local Government, Police, Fire, Highway Maintenance, Forestry Conservation, and Special Emergency Radio Services. These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexican border, and 140 km (87 miles) from the U.S./Canadian border. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(g).

Public Safety Category

Table 1: 806–821/851–866 MHz Band Channels (70 Channels)

* * * * *

(1) Channels numbers 601–830 are also available to eligible applicants in the Public Safety Category in areas farther than 110 km (68.4 miles) from the U.S./Mexican border, and 140 km (87 miles) from the U.S./Candian border. The assignment of these channels will be done in accordance with the policies defined in the *Report and Order* of Gen. Docket No. 87–112 (See §§ 90.16 and 90.34). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: channels 601, 639, 677, 715, 753.

* * * * *

46. Section 90.621 is amended by revising paragraphs (c), (d), and (e); and by adding new paragraph (i) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16). Industrial/Land Transportation, and Business Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Separations will be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible inteference will not be taken into account.

(d) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16). Industrial/Land Transportation, and Business Categories that have met the loading level necessary for channel exclusivity will be protected in the same fashion as described in paragraph (c) of this section.

(e) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16). Industrial/Land Transportation, and Business Categories that have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(i) Applications for Public Safety systems (both trunked and conventional) in the 821–824/866–869 MHz bands will be assigned and protected based on the criteria established in the appropriate regional plan. See § 90.16 and the *Report and Order* in General Docket 87–112.

47. The heading immediately preceding § 90.635 is revised to read as follows:

Technical Regulations Regarding the Use of Frequencies in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands

48. Section 90.635 is amended by revising the titles of Tables 2, 3, and 4 to read as follows:

§ 90.635 Limitations on power and antenna height.

* * * * *

Table 2—Equivalent Power and Antenna Heights for Base Stations in the 851–869 MHz, and 935–940 MHz Bands Which Have a Requirement for a 32 km (20 mi.) Service Area Radius

* * * * *

Table 3—Equivalent Powers and Antenna Heights for Suburban-Conventional Base Stations in the 851–869 MHz, and 935–940 MHz Bands Which Have a Requirement for Less Than 20-mi. Service Area Radius—Maximum Effective Radiated Power (Watts).

* * * * *

Table 4—Equivalent Powers and Antenna Heights for Urban-Conventional and Trunked System Base Stations in the 851–869 MHz and 935–940 MHz Bands Which Have a Requirement for Less Than 20-mi. Service Area Radius—Maximum Effective Radiated Power (Watts).

49. Section 90.637 is amended by revising paragraph (a) to read as follows:

§ 90.637 Restrictions on operational-fixed stations.

(a) Except for control stations, operational-fixed operations will not be authorized in the 806–824 MHz, 851–869 MHz, 896–901 MHz, or 935–940 MHz bands. This does not preclude secondary fixed tone signalling and alarm operations authorized in § 90.235.

* * * * *

Federal Communications Commission.

Charles A. Brown, Jr.,

Acting Secretary.

[FR Doc. 88–743 Filed 1–14–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 65

[CC Docket 86–497; FCC 87–391]

Common Carrier Services; Amendment of Part 65 To Prescribe Components of the Rate Base and Net Income of Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to amend various sections of Part 65 to revise the rate base components of the dominant carriers; to update the regulatory net income treatment of various items due to new regulated/nonregulated cost separation rules; and to make Part 65 applicable to the independent telephone companies for the first time.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Chief, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted December 17, 1987 and released December 24, 1987. The full text of this Commission item is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this item may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC.

Summary of Report and Order

On January 16, 1987, the Commission proposed to amend Part 65 of its rules to prescribe rate base and net income determination principles for all dominant carriers. Based on an analysis of the comments received in this proceeding, the Commission has decided to modify its Part 65 proposal as follows with the changes being effective January 1, 1988.

In the NPRM the Commission proposed to include in the rate base the interstate portions of assets summarized in Accounts 2001, "Telecommunications Plant-in-Service", 2002, "Property Held for Future Use" and 2003, "Telecommunications Plant Under Construction-Short Term" and to exclude from the rate base the interstate portion of the assets summarized in Accounts 2004, "Telecommunications Plant Under Construction-Long Term", 2005, Telecommunications Plant Adjustment", 2006, "Nonoperating Plant" and 2007, "Goodwill". With respect to Accounts 2001, 2002 and 2003, the Commission has decided that these accounts should be included in the rate base and that Account 2001 should be expanded to include capital leases. Capital leases will be recorded as assets consistent with generally accepted accounting principles, except that embedded leases qualifying for capital lease status will be adjusted to a value representative of the present value the lease would have had on January 1, 1988, if the lease were capitalized at its inception. With respect to sale/leaseback arrangements the Commission has decided that the present value of the capital lease should be reduced by any gain on the proceeds of the sale. The Commission also decided not to revise its tentative conclusion to exclude from the rate base the interstate portion of assets included in Accounts 2004 through 2007. The Commission was not persuaded by those parties wishing to include Account 2004 in the rate base. The Commission instead reiterated its *Docket 19129 Phase II Decision* belief that public interest considerations required a distinction between current and future ratepayers and that long term projects are not used and useful for communications services.

The final rule continues the *Docket 19129 Phase II Decision* rate base treatment for materials and supplies and other noncurrent assets but excludes from the rate base any portion of investments in affiliated and nonaffiliated companies and nonregulated investments recorded in Accounts 1401, 1402 and 1406.

In the NPRM the Commission proposed to exclude prepayments from the rate base because they failed the used and useful test and were not considered to be capital items on which carriers should be allowed a rate of return. The final rule excludes prepayments from the rate base but permits prepayments to be taken into account in cash working capital allowances based on lead-lag studies.

The NPRM proposed to deduct deferred taxes and other deferred credits from the rate base. In the final rule the Commission clarified its proposal regarding deferred taxes. Carriers will not be required to deduct "nonoperating deferred taxes" from the rate base because these nonoperating deferred taxes are not related to any item included in the rate base.

In addition to deferred taxes and other deferred credits, the NPRM proposed to deduct accounts payable, advance billing and payments, drafts outstanding and accrued taxes from the rate base because these items provide capital to the carriers at "zero cost" to investors. The final rule does not require carriers to deduct the above items from the rate base. The Commission made this modification because it no longer planned to eliminate lead-lag studies to determine cash working capital which was a major reason for proposing the rate base changes for zero cost funds. These zero cost items, however, will still be taken into consideration in the lead-lag studies required of larger carriers.

In an effort to minimize or eliminate the need for lead-lag studies, the NPRM proposed permitting a cash working capital allowance using a historical base that reflected the individual characteristics of the carrier subject to the Commission's rate base determinations. The NPRM proposed that carriers be allowed an initial cash working capital allowance for 1988 based on their respective average interstate cash balances for the five calendar quarters ending June 30, 1988. After reviewing the comments and the alternatives presented by the parties, the Commission decided to continue to rely on lead-leg studies for all large carriers because it produces more accurate results and does not appear to be unduly burdensome for these carriers. Small carriers, however, will be permitted to use a formula approach contained in USTA's comments to determine cash working capital except that there must be an adjustment to the formula for lags in the payment of expenses.

The NPRM proposed to retain the treatment of expense accounts as stated in the *Docket 19129 Phase II Decision*. However, the NPRM singled out charitable contributions, advertising, nonoperating gains and losses, and gains and losses from the disposition of land and artworks, memberships and abandoned projects as areas which should be scrutinized before being included or excluded in the determination of regulated net income. After reviewing the comments, the Commission decided to follow the *Docket 19129 Phase II Decision* treatment for these items updated to reflect *Docket 86-111 Decision* rules for regulated and nonregulated operations.

Ordering Clauses

Accordingly, it is ordered, that pursuant to the provisions of Sections 1, 4(i), 4(j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 14(i)-(j), 201–205, 218, 220, 403 and Section 553 of the Administrative Procedure Act, 5 U.S.C. Section 553, Part 65 of the Commission's Rules 47 CFR Part 65 is amended by the policies, rules and requirements set forth herein, effective January 1, 1988.

List of Subjects in 47 CFR Part 65

Interstate rate of return prescription procedures and methodologies.

H. Walker Feaster III,

Acting Secretary.

Appendix B

PART 65—[AMENDED]

Part 65 Chapter I of the Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 65 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. The table of contents to Part 65 would be revised to add new § 65.450 to Subpart C, new § 65.510 to Subpart D and to add new Subpart G so that the table of contents would read in pertinent part as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

* * * * *

Subpart C—Exchange Carriers

* * * * *

Sec.

65.400 Determination of sets of firms that have risk characteristics that are comparable to interstate exchange access services.

65.450 Net income.

Subpart D—Interchange Carriers

65.500 Determination of comparable firms for carriers other than exchange carriers.

65.510 Net income.

* * * * *

Subpart G—Rate Base

65.800 Rate base.

65.810 Definitions.

65.820 Included items.

65.830 Deducted items.

Authority: * * *

* * * * *

3. Subpart C would be amended by adding § 65.450 to read as follows:

Subpart C—Exchange Carriers

* * * * *

§ 65.450 Net income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110–6441), plant nonspecific operations (Accounts 6510–6565), customer operations (Accounts 6610–6623), corporate operations (Accounts 6710–6790), other operating income and expense accounts (Accounts 7100–7160), and operating taxes (Accounts 7200–7250), except to the extent this Commission specifically provides to the contrary.

(b) Gains and losses related to the disposition of plant in service items, shall be handled as follows:

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4360 (Other Deferred Credits) and credited to Account 6563 (Amortization Expense—Tangible) over the amortization period established for the capital lease;

(2) Gains or losses related to the disposition of land and other nondepreciable items recorded in Account 7150 (Gains and Losses Resulting from the Sale of Land and Artworks) shall be included in net income for ratemaking purposes, but adjusted to reflect the relative amount of time such property was used in regulated operations and included in the rate base; and

(3) Proceeds related to the disposition of property depreciated on a group basis and used jointly in regulated and nonregulated activities, including sale-leaseback arrangements for property depreciated on a group basis, shall be credited to the related reserves and attributed to regulated and nonregulated in proportion to the accumulated regulated and nonregulated depreciation for that group.

(c) Gains or losses related to the disposition of property that was never included in the rate base shall not be considered for ratemaking purposes.

(d) Except for reasonable charitable deductions and interest related to customer deposits, nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600–7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

4. Subpart D would be amended by adding § 65.510 to read as follows:

Subpart D—Interexchange Carriers

* * * * *

§ 65.510 Net income.

The net income methodology specified in § 65.450 shall be utilized by all interexchange carriers subject to § 65.500.

5. Subpart G, consisting of §§ 65.800 through 65.830, would be added to read as follows:

Subpart G—Rate Base

§ 65.800 Rate base.

The rate base shall consist of the interstate portion of the accounts listed in § 65.820 that has been invested in plant used and useful in the efficient provision of interstate telecommunications services regulated by this Commission, minus any deducted items computed in accordance with § 65.830.

§ 65.810 Definitions.

As used in this Subpart "account xxxx" means the account of that number kept in accordance with the Uniform System of Accounts for Class A and Class B Telecommunications Companies in 47 CFR Part 32.

§ 65.820 Included items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), and Account 2003 (Telecommunication Plant Under Construction-Short Term), and to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment).

(b) Material and Supplies. The interstate portion of assets summarized in Account 1220.1 (Materials and Supplies) that are used for routine maintenance and repairs of telephone plant and equipment or associated with projects classified in Account 2003 (Telecommunications Plant Under Construction-Short Term) but not yet charged to that account.

(c) Noncurrent Assets. The interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent they arise from the provision of interstate telecommunications services and have been specifically approved by this Commission for inclusion. Otherwise, the amounts in Accounts 1401–1500 shall not be included.

(d) Cash Working Capital. The interstate portion of investment required to meet current expenses. The calculation of this amount shall take into account interstate revenue and expense items which are received or paid before the service is rendered and interstate revenue and expense items received or spent after the service is rendered. Claims for a cash working capital allowance from Class A carriers, as defined in 47 CFR 32.11 shall be accompanied by a current lead-lag study. In lieu of a lead-lag study, claims for a cash working capital allowance from Class B Carriers may be calculated using the following formula:

(1) The sum of the percentage of interstate revenues billed in arrears shall be multiplied by the average revenue lag days for such revenues and be added to the sum of the percentage of interstate revenues billed in advance multiplied by the average lag days for such revenues.

(2) The resultant weighted revenue lag days from the calculation in paragraph (d)(1) of this section shall then be divided by 365 days.

(3) The sum of the percentage of interstate expenses paid in advance shall be multiplied by the average lag days from the payment to the midpoint of the benefit period and deducted from the sum of the percentage of interstate expenses paid after the provision of the service multiplied by the average lag days for such expense.

(4) The resultant weighted average expense lag days from the calculation in paragraph (d)(3) of this section shall then be divided by 365 days and deducted from the weighted revenue lag days to arrive at a weighted net lag days.

(5) The weighted net lag day factor derived in paragraph (d)(4) of this section should then be multiplied by annual interstate operating expenses exclusive of depreciation to arrive at the cash working capital allowance.

§ 65.830 Deducted items.

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of liabilities related to compensated absences (Account 4120) to the extent of the difference between the interstate portion of the deferred charge related to compensated absences (Account 1439) and the interstate portion of the corresponding liability.

(4) The interstate portion of unfunded accrued pension costs (Account 4310).

(5) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits compensated absences and other deferred credits shall be determined by multiplying the sum of such funds by the interstate plant factor. (The interstate plant factor shall be computed by dividing interstate plant in service by total plant in service); except that the interstate portion of customer deposits may be determined by special study when use of the interstate plant factor would yield distorted results.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstate/intrastate expenses which give rise to the liability.

[FR Doc. 88-509 Filed 1-14-88; 8:45 am]
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47 CFR Part 73

[MM Docket No. 87-131; FCC 87-356]

Radio Broadcasting Services; Unlimited-time Operation by Existing AM Daytime-Only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-only Stations; and Minimum Power of Class III Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC has amended its Rules to (1) permit unlimited-time operations for existing daytime-only AM radio broadcast stations on the AM regional channels, and on two clear channels: 940kHz and 1550 kHz; (2) discontinue the authorization of new daytime-only stations; and (3) reduce the generally applicable minimum power of Class III AM radio broadcast stations from 0.5 kW to 0.25 kW. This action is needed to relieve daytime-only stations and the listening public from the disadvantages of limitations on their hours of operation under present rules. The revised rules will make possible unlimited-time operation by qualifying daytime-only stations on the above-noted channels.

EFFECTIVE DATE: The rule amendments enter into effect December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Vicki Assevero or Louis C. Stephens, Policy and Rules Division, Mass Media Bureau, (202) 632-7792, or (202) 632-7792, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 87-131, adopted November 18, 1987, and released December 1, 1987. This *Report and Order* may be consulted and will be available for coying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this *Report and Order* may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Washington, DC 20037.

Summary of Report and Order:

1. Having previously opened the way for unlimited-time operation for most daytime-only AM radio broadcast stations operating on the 14 foreign clear channels, the FCC took similar action for those assigned to the regional AM channels and to 940 kHz and 1550 kHz. Pursuant to the newly adopted rule amendments, the Commission has calculated and informed, each qualifying daytime-only station the power, within a range of .001 kW (1 watt) to 0.5 kW, that it may use for broadcasting during nighttime hours with the antenna systems they are licensed to start using at sunrise. The authorized power was set at levels calculated to provide required interference protection to foreign and comestic stations.

2. Daytime-only stations authorized to operate during nighttime hours with power sufficient to enable them to provide a field strength of at least 141 mV/m at 1 kilometer from their transmitters will be reclassified as Class II-B stations if on 940 kHz or 1550 kHz or as Class III if on any of the 41 regional channels.

3. None of the stations permitted to operate during nighttime hours are required to provide interference protection to each other. They are, however, required to protect: (1) Foreign stations, (2) existing unlimited-time stations, and (3) new and changed unlimited-time stations for which construction permits had been issued or applications tendered no later than December 1, 1987. The reclassified stations may apply, under regular procedures, for nighttime power increases, up to the maximum generally permitted for the class of channel occupied, consistent with requisite protection against interference to other stations.

4. Stations reclassified as Class II-S or III-S are not required to provide the generally required minimum signal to their principal cities nighttime, nor are they be required to meet the requirement generally applicable to stations that regularly operate during nighttime hours, that they broadcast at least 4 hours between 6 p.m. and midnight. Stations reclassified as Class II-B, II-C, or III are required to meet the latter requirement, but, so long as their nighttime powers are limited to those initially authorized by the Commission, they would be exempted from the minimum city signal requirement.

5. The minimum power of stations on regional channels was reduced from 0.5 kW to 0.25 kW. The few Class IV stations assigned to regional channels that already, exceptionally operate at 0.25 kW without interference protection, will be reclassified as Class III stations, entitled to protection.

6. Individual stations have been notified of the powers they may use during nighttime hours and the date when nighttime operations may start, in Orders to Show Cause why the station's license should not be modified to permit such operations.

7. Finally, the assignment of additional daytime-only AM stations on 940 kHz, 1550 kHz, and the 41 regional AM channels, has been discontinued.

8. With reference to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the revised rules will have a beneficial impact on small daytime-only AM stations that are enabled, through more extended hours of operation, to provide enhanced services to the public, and thereby compete more effectively with existing unlimited-time AM and FM stations.

9. The Secretary of the Commission is directed to send a copy of the *Report and Order* in this proceeding to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

10. *Paperwork Reduction Act Statement:* The rule changes have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified norm,

information, collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

11. **Authority for the rule changes** is contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.21 is amended by adding a new sentence at the end of paragraphs (a)(2)(ii) and (a)(2)(iv), revising paragraphs (a)(2)(v) and (b)(1), and adding a new paragraph (b)(3), to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * *

(2) * * *

(ii) * * * A former Class II-D station operating on 940 or 1550 kHz that is authorized to operate during nighttime hours will be reclassified as Class II-B notwithstanding the fact that its authorized nighttime power is less than 0.25 kW, if it RMS field strength at 1 kilometer is 141 mV/m or higher.

* * * * *

(vi) *Class II-D Stations.* * * * No application will be accepted for new Class II-D (daytime-only) stations.

(v) *Class II-S Stations.* Class II-S stations are former Class II-D stations that have been authorized to operate nighttime on the 14 channels listed in § 73.25(c) or on 940 kHz or 1550 kHz, at powers that are less than 0.25 kW; provided that, if the nighttime power of such a station on 940 or 1550 kHz, although less than 0.25 is sufficient to enable its RMS field strength at 1 kilometer to attain the level of 141 mV/m or more, it shall be classified as a Class II-B station. Class II-S stations operate without protection from interference at night, but do receive protection from interference during the daytime.

(b) *Regional Channel.*

* * * * *

(1) *Class III stations.* A station designated as Class III operates unlimited-time on a regional channel, and is designed to render service B primarily to a principal center of population and in the rural area contiguous thereto. Except as provided in paragraph (b)(2) of this section, a Class III station operates with a power not more than 5 kW and not less than 0.25 kW; provided that, an unlimited-time station that operates on a regional channel during nighttime hours with a power of less than 0.25 kW will nevertheless be classified as Class III station if its RMS field strength is 141 mV/m or more at 1 kilometer.

* * * * *

(3) *Class III-S Station.* A Class III-S station is a former daytime-only station that operates on a regional channel with a nighttime power that is both less than 0.25 kW and insufficient to enable the station to attain an RMS field strength of at least 141 mV/m or more at 1 kilometer.

* * * * *

3. Section 73.24 is amended by revising the second sentence of paragraph (j) of this section to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(j) * * * The following categories of stations need not demonstrate the ability to provide such coverage during nighttime operation: (1) Daytime-only AM stations; and (2) former daytime-only stations that were reclassified as Class II-B or II-S on 940 or 1550 kHz or as Class II-C of II-S on the 14 frequencies listed in § 74.25(c) or as unlimited-time Class III or III-S stations or regional channels, and have not since been authorized to increase nighttime power.

* * * * *

§ 73.25 [Amended]

4. Section 73.25 is amended by removing the second sentence from paragraph (c).

5. Section 73.26 is amended by revising the text of paragraph (a) up to the colon, and adding a new paragraph (c), to read as follows:

§ 73.26 Regional channels; Class III stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class III and Class III-S stations: * * *

* * * * *

(c) No application for new daytime-only stations will be accepted on the channels listed in paragraph (a) of this section.

6. Section 73.29 is revised to read as follows:

§ 73.29 Class IV stations on regional channels.

No license will be granted for the operation of a Class IV station on a regional channel.

7. Section 73.31 is amended by revising the table in paragraph (a) to read as follows:

§ 73.31 Rounding of nominal power specified on applications.

(a) * * *

Nominal power (kW)	Rounded down to nearest figure (kW)
Below 0.25	0.001
0.25 to 0.99	0.01
1 to 9.9	0.1
10 to 50	1

* * * * *

8. Section 73.99 is amended by adding a new paragraph (l), as follows:

§ 73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA).

* * * * *

(l) The authorization of unlimited-time operation by daytime-only stations that are reclassified as Class II-S or Class III-S stations will not affect their right to operate during prescribed presunrise and postsunset hours in accordance with PSRA's and PSSA's issued pursuant to this section.

9. Section 73.182 is amended by revising the second sentence of paragraph (a)(3) up to the semicolon, to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) * * * They operate with powers not less than 0.25 kW and not more 5 kW, and are normally protected to the 1500 uV/m groundwave contour nighttime and the 500 uV/m groundwave contour daytime; * * *

10. On the line in the table in § 73.182(s) which starts with the entry "III" in the first column, the entry in the third column that now reads "0.5 kW to 5 kW" is revised to read "0.25 kW to 5 kW."

11. Footnote [2] to the table in § 73.182(s) is revised to read as OB follows:

* * * * *

[2] For adjacent channel, see paragraph (t) of this section.

* * * * *

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12. Immediately preceding the last line of the table in § 73.182(s) a new line is added as follows:

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference [1]		Permissible interfering signal on same channel [2]	
			Day [3]	Night	Day	Night [4]
•	•	•	•	•	•	•
III-S	do	0.25 kW to 5kW (daytime) less than 0.25 kW nighttime.	500 uV/m	not prescribed	do	Not prescribed.
•	•	•	•	•	•	•

[1] When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.
[2] For adjacent channel, see paragraph (t) of this section.
[3] Groundwave.
[4] Skywave field strength for 10 percent or more of the time

• • • • •

13. Section 73.1740(a)(1)(i) is revised to read as follows:

§ 73.1740 Minimum operating schedule.

(a) • • •

(1) • • •

(i) Daytime-only AM stations and former daytime-only AM stations that have been reclassified as Class II-S or III-S need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

• • • • •

14. Section 73.3571 is amended by adding a new paragraph (d)(5), to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

• • • • •

(d) • • •

(5) The following special procedures will be followed in authorizing Class II-D daytime-only stations on 940 and 1550 kHz, and Class III daytime-only stations on the 41 regional channels listed in § 73.26(a), to operate unlimited-time.

(i) Each eligible daytime-only station in the foregoing categories will receive an Order to Show Cause why its license should not be modified to specify operation during nighttime hours with the facilities it is licensed to start using at local sunrise, using the power stated in the Order to Show Cause, that the Commission finds is the highest nighttime level—not exceeding 0.5 kW—at which the station could operate without causing prohibited interference to other domestic or foreign stations.

(ii) Stations accepting such modifications shall be reclassified. Those authorized in such Show Cause Orders to operate during nighttime hours with a power of 0.25 kW or more, or with a power that, although less than 0.25 kW, is sufficient to enable them to attain RMS field strengths of 141mV/m or more at 1 kilometer, shall be redesignated as Class II-B stations if they are assigned to 940 or 1550 kHz, and as unlimited-time Class III stations if they are assigned to regional channels.

(iii) Stations accepting such modification that are authorized to operate during nighttime hours at powers less than 0.25 kW, and that cannot with such powers attain RMS field strengths of 141 mV/M or more at 1 kilometer, shall be redesignated as Class II-S stations if they are assigned to 940 or 1550 kHz, and as Class III-S stations if they are assigned to regional channels.

(iv) Applications for new stations may be filed at any time on 940 and 1550 kHz and on the regional channels. Also, stations assigned to 940 or 1550 kHz, or to the regional channels, may at any time, regardless of their classifications, apply for power increases up to the maximum generally permitted. Such applications for new or changed facilities will be granted without taking into account interference causes to Class II-S or Class III-S stations, but will be requred to show interference protection to other classes of stations, including stations that were previously classified as Class II-S or Class III-S, but were later reclassified as Class II-B or Class III unlimited-time stations as a result of subsequent facilities modifications that permitted power increases qualifying them to discontinue their "S" subclassification.

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[FR Doc. 88-823 Filed 1-14-88; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. 88-02; Notice 2]

Vehicle Identification Number—Content Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, by simplifying vehicle identification information coding requirements for trailer manufacturers. Specifically, this rule amends Table I. § 565.4 by deleting the requirement that trailer manufacturers include in the VIN code a "series" designation for trailers, and by changing vehicle attributes for incomplete trailers. The amendment will bring VIN requirements for trailers in line with actual trailer manufacturing practices, thereby facilitating VIN information retrieval, and increasing the accuracy and efficiency of vehicle defect recall campaigns.

DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202-366-5287).

SUPPLEMENTARY INFORMATION:

Introduction. Under Standard 115, *Vehicle Identification Number—Basic Requirements*, a motor vehicle manufacturer must assign a 17-character vehicle identification number (VIN) to each vehicle it makes. The purposes of the VIN system are to simplify vehicle identification information retrieval, and increase the accuracy and efficiency of vehicle defect recall campaigns. Title 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, sets forth format and content requirements for VINs. Section 565.4, *General Requirements*, tells what information a manufacturer must code into a VIN, and in what sequence.

Under § 565.4, the 17-character VIN is divided into four sections. The first section uniquely identifies the vehicle manufacturer, make, and type. The second encodes vehicle attributes which vary according to vehicle type. The third section consists of one character (the check digit) and serves to verify the accuracy of a VIN transcription. The final section encodes the vehicle model year, the plant of manufacture, and the number sequentially assigned by the manufacturer in the production process. This amendment affects only the second VIN sequence consisting of the five characters in positions four through eight (4–8).

In this section, a VIN number must disclose those unique motor vehicle attributes set out in Table I of section 565.4. In encoding these attributes, a manufacturer may determine what characters to use and the order in which to place them. The manufacturer must supply NHTSA with whatever information is necessary to decipher the meaning of its characters relative to Table I.

Currently, for a trailer or trailer kit, Table I requires a manufacturer to identify: (1) The type of trailer; (2) series; (3) body type; (4) length; (5) axle configuration.

On May 19, 1986, in response to a petition for rulemaking from the Truck Trailer Manufacturers Association (TTMA), this agency published a notice proposing to amend Table I. In support of its petition, TTMA stated that a survey of its membership revealed that trailer manufacturers do not divide their product lines by series as automobile manufacturers do. TTMA asserted that trailers are identified sufficiently by trailer type, body type, length, and axle configuration. Further, TTMA asserted that requiring a series designation in trailer VINs may not simplify vehicle identification information retrieval, or contribute to the accurate identification of a particular trailer. For these reasons, TTMA's first request was that NHTSA remove the "series" designation as an attribute that a trailer manufacturer must identify in a VIN.

TTMA's second request concerned incomplete trailers. Currently, Table I states five attributes which a manufacturer must encode in the VIN for any type of incomplete vehicle, including trailers. These attributes are model or line, series, cab type, engine type, and brake system. TTMA asked that NHTSA amend Table I to delete the "brake system" designation for incomplete trailers. However, upon further examination of this issue, the agency tentatively determined that most of the "incomplete vehicle" attributes may be inappropriate for trailers, and proposed that manufacturers encode the same attributes for incomplete and complete trailers. The VINs for all trailer categories would be required to include information respecting trailer type, body type, length, and axle configuration.

Comments. NHTSA received two comments on the proposed rule—one from the petitioner, and one from Theurer, Inc., a truck trailer manufacturer. TTMA made a summary statement in support of the proposal. Theurer agreed that the term "series" did not apply to its product line, that a trailer manufacturer should encode the same attributes for incomplete and complete trailers, and that the company believed the economic consequences of the revision would be minimal.

Adopting the Proposed Changes. After reviewing the comments, NHTSA has determined that the proposed changes to Table I should be adopted. The primary purpose of the VIN requirement is to facilitate identifying a motor vehicle that may be the subject of a vehicle recall campaign. If one can identify trailers through trailer type, body type, length, and axle configuration, there is no need to require the use of any designation that fails to serve Part 565's purpose, and that compels a manufacturer to include a superfluous designation or risk violating the regulation. Therefore, this rule deletes the requirements that trailers be identified by "series."

Therefore, NHTSA amends Table I of § 565.4 by doing the following: First, the agency is deleting "series" from the list of those attributes a trailer manufacturer must encode in the second VIN sequence. Second, the agency removes "incomplete trailers" from the "incomplete vehicle" category, and places "incomplete trailers," in the "trailer and trailer kits" category. This change means that a trailer manufacturer must encode the same attributes in that second VIN sequence irrespective of whether the trailer is complete or incomplete. Finally, the agency makes a technical correction by removing an erroneous reference to "Footnote 1" after "axle configuration" in the list of trailer attributes. These changes will affect the manufacturers of certain vehicles as follows:

Complete Trailers and Trailer Kits. With respect to complete trailers and trailer kits, the agency would like to emphasize two points. First, the agency notes that this amendment of Table I does not require a manufacturer to change the characters currently used in the second section. Instead, Part 565 permits each trailer manufacturer to decide whether to delete whatever character now occupies the "series" space. If a trailer manufacturer decides to change the VIN by deleting the "series" character or changing the code with respect to these four attributes, then the manufacturer must submit new material to this agency informing NHTSA how to read this sequence.

Second, as a result of this amendment, manufacturers of complete trailers and trailer kits now have five characters with which to describe the four Table I attributes. In this second VIN sequence, a manufacturer determines what characters to use and where to place them. A manufacturer may choose to use two characters to indicate any one of these attributes.

Incomplete Trailers. With respect to incomplete trailers, this amendment changes both the number and nature of the attributes an incomplete trailer manufacturer must encode in the second sequence. Because of this amendment, every manufacturer of incomplete trailers must change the attributes used in this section. Also, these manufacturers must submit material to the agency explaining how to decipher the sequence relative to the four new attributes these manufacturers now must encode in a VIN.

Paperwork Reduction

The VIN information requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Therefore, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB makes its decision on this request.

Costs and Other Effects

Having evaluated the rule's economic and other effects, the agency determines that this rule is neither major as defined by Executive Order 12291, nor significant as defined by the Department's Regulatory Policies and Procedures. NHTSA concludes that the

rule's economic and other consequences are so minimal that preparing a full regulatory evaluation is not required. The agency notes that the only comment submitted on the question of economic consequences concurs with this position.

For complete trailers, a trailer manufacturer who decides to change the second VIN sequence must submit new information telling NHTSA how to read the sequence. This submission would be a one-time submission. With respect to incomplete trailer manufacturers, such persons must revise the second sequence in its entirety because NHTSA now requires different information for these vehicles than what the agency required previously. However, this rule imposes no greater burden on these manufacturers than the encoding responsibilities they now face, but only changes the vehicle attributes an incomplete trailer manufacturer must encode in the second VIN sequence. The only other burden is submitting information telling the agency how to read the manufacturer's code. Again, this submission is one-time only.

The agency estimates that all trailer manufacturers would incur slight administrative and other cost burdens in preparing new deciphering information for the agency, and that incomplete trailer manufacturers will experience no greater cost to include the new Table I attributes in the second sequence than they now incur. Similarly, the Government's cost to process and store this revised information would be minimal.

The agency also has considered the effects of this rule under the Regulatory Flexibility Act. This rule makes minor changes in those attributes a trailer manufacturer must encode in the second VIN sequence so that the VIN more accurately describes trailer characteristics. Under this rule, trailer manufacturers that are small businesses have the minor, one-time cost of preparing and submitting modified deciphering information for VINs on trailers manufactured after the rule's effective date. Thereafter, a manufacturer has to submit deciphering information only when manufacturing changes—such as the production of a new vehicle type—occur. The rule does not affect a manufacturer's basic administrative or cost burdens. Nor does it affect small organizations and small government jurisdictions because consumer prices will not change as a consequence of this rule. For these reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Finally, the agency has analyzed this amendment for purposes of the National Environmental Policy Act, and determined that this rule has no significant effect on the human environment.

List of Subjects in 49 CFR Part 565

Imports, Motor vehicle safety, Motor vehicles.

The agency amends Part 565, *Vehicle Identification Number—Content Requirements*, in Title 49 of the Code of Federal Regulations, as follows:

PART 565—[AMENDED]

1. The authority citation for Part 565 is revised to read as follows:

Authority: 15 U.S.C. 1395, 1397, 1401, 1407, and 1412; delegation of authority at 49 CFR 1.50.

2. Table I in § 565.4(b) is revised to read as follows:

§ 565.4 [Amended]

* * * * *

(b) * * *

Table I—Type of Vehicle and Information Decipherable

Passenger car: Line, series, body type, engine type,[1] and restraint system type.

Multi-purpose passenger vehicle: Line, series, body type, engine type,[1] gross vehicle weight rating.

Truck: Model or line, series, chassis, cab type, engine type,[1] brake system and gross vehicle weight rating.

Bus: Model or line, series, body type, engine type,[1] and brake system.

Trailer, including trailer kit and incomplete trailer: Type of trailer, body type, length, and axle configuration.

Motorcycle: Type of motorcycle, line, engine type,[1] and net brake horsepower.[1]

Incomplete vehicle other than trailer: Model or line, series, cab type, engine type,[1] and brake system.

Issued January 11, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-706 Filed 1-12-88; 3:01 p.m.]

BILLING CODE 4910-59-M

[1] Engine net brake horsepower when encoded in the VIN shall differ by no more than 10 percent from the actual net brake horsepower; shall, in the case of motorcycle with an actual net brake horsepower of 2 or less, be not more than 2; and shall, in the case of a motorcycle with an actual brake horsepower greater than 2, be greater than 2.

Proposed Rules

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1006, 1012 and 1013

[Docket Nos. AO-356-A26, AO-347-A29 and AO-286-A36]

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Upper Florida, Tampa Bay and Southeastern Florida milk orders. The principal proposals would modify the pool plant performance standards, producer milk diversion limits, shrinkage and charges on overdue accounts provisions of the orders. In most cases, the proposed amendments would provide for uniformity of language among the Florida orders with respect to these provisions. Proponents contend that the modifications are needed to reflect changed marketing conditions.

DATE: The hearing will convene at 9:30 a.m. on January 26, 1988.

ADDRESS: The hearing will be held at the Plaza Inn (formerly HJ Plaza), 603 Lee Road, Orlando, Florida 32810 (305) 644-6100.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Plaza Inn (formerly HJ Plaza), 603 Lee Road, Orlando, Florida 32810 (305) 644-6100 beginning at 9:30 a.m., on January 26, 1988, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1006, 1012 and 1013 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Florida Dairy Farmers' Association and Tampa Independent Dairy Farmers' Association

Proposed Amendments to Part 1013, Regulating the Handling of Milk in the Southeastern Florida Marketing Area:

Proposal No. 1

Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

Proposal No. 2

In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) * * *

(b) * * *

(c) The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 3.5 and round the result to the nearest cent.

Proposal No. 3

§ 1013.73 [Amended]

Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $8,".

Proposed Amendments to Part 1006, Regulating the Handling of Milk in the Upper Florida Marketing Area:

Proposal No. 4

Revise § 1006.7 to read as follows:

§ 1006.7 Pool Plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk pursuant to § 1006.13, and that has route disposition, except as filled milk, in the marketing area during the month of not less than 10 percent of such receipts; or

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

Proposed Amendments to Parts 1012 and 1013, Regulating the Handling of Milk in the Tampa Bay and Southeastern Florida Marketing Area:

Proposal No. 6

Revise §§ 1012.7 and 1013.7 to read as follows:

§ ____.7 Pool Plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk pursuant to § ____.13, and that has route disposition, except as filled milk, in the marketing area during the month of not less than 10 percent of such receipts; or

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § ____.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § ____.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk. Proposed Amendments to Parts 1006, 1012 and 1013, Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Area:

Proposal No. 6

In §§ 1006.13, 1012.13 and 1013.13, paragraph (b) is revised to read as follows:

§ ____.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of milk physically received from member producers at all pool plants during the month shall not be producer milk:

(i) 40 percent in April, May and June,

(ii) 30 percent in march, and

(iii) 20 percent in all other months;

(5) The operator of a pool plant other than a cooperative association may divert for its account only the milk of producers who are not members of a cooperative association. The total quantity of such milk so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month from producers who are not members of the cooperative association shall not be producer milk:

(i) 40 percent in April, May and June,

(ii) 30 percent in March, and

(iii) 20 percent in all other months;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk.

Proposal No. 7

In §§ 1006.40, 1012.40, and 1013.40 paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ ____.40 Classes of Utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § ____.41(a) to the receipts specified in § ____.41(a)(2) and in shrinkage specified in § ____.41 (b) and (c).

* * * * *

Revise §§ 1006.41, 1012.41, and 1013.41 to read as follows:

§ ____.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § ____.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a fluid milk product or a bulk fluid cream product.

(b) the shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § ____.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § ____.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § ____.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

Proposal No. 8

§§ 1006.51, 1012.51 and 1013.51 [Amended]

Amend §§ 1006.51, 1012.51 and 1013.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

Proposal No. 9

Amend §§ 1006.52, 1012.52, and 1013.52 by adding a new paragraph (c) to read as follows:

§ ____.52 Plant Location Adjustments for Handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

Proposal No. 10:

In §§ 1006.75, 1012.75, and 1013.75 revise paragraph (b) to read as follows:

§ ____.75 Plant Location Adjustments for Producers and on Nonpool Milk.

(a) * * *

(b) For purposes of computations pursuant to §§ ____.71 and ____.72, the uniform price shall be adjusted at the rates set forth in § ____.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

Proposal No. 11

Amend §§ 1006.78, 1012.78, and 1013.78 by increasing the rate to one percent per month and by providing for late payment charges on payments due producers and cooperative associations as well as on all funds due the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 12

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, Paul W. Halnon, P.O. Box 4790, Winter Park, Florida 32793, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department

employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on January 12, 1988.

William T. Manley,
Acting Administrator.

[FR Doc. 88-824 Filed 1-14-88; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-1]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 14, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 6, 1988.

Denise D. Hall,
Acting Manager, Program Manager Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25412	General Aviation Manufacturers Association (GAMA).	Description of Petition: Petitioner requests amendment of regulations to exclude small (under 75,000 lbs. MGTOW, less than 20 passenger seats) transport category airplanes from the fire blocking seat cushion requirements. Regulations Affected: 14 CFR 25.853(c). Petitioner's Reason for Rule: Safety benefits of fire blocking anticipated by § 25.853(c) will not be realized or needed in this class of small, Part 25 transport category airplanes.

[FR Doc. 88-751 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Ch. I

[Summary Notice No. PR-88-2]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 14, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 6, 1988.

Denise D. Hall,
Acting Manager, Program Manager Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of the petition
25323	Aviation Consumer Action Project	14 CFR Part 21	To require that air carriers provide every passenger with a protective breathing device in the event of an in-flight or post-crash fire in which toxic fumes and smoke are present. *Petitioner's Reason for Rule:* Many accidents involving passenger airlines have shown that occupants who survive an airplane crash are often incapacitated by the smoke and toxic fumes released when a post-crash fire breaks out, and that for this reason alone, they fail to evacuate the airplane in a timely manner.

[FR Doc. 88-752 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2640]

Redman Industries, Inc.; Mobile Home Owners Warranty and Warranty Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Redman Industries, Inc., a corporate respondent in the order in Docket No. C-2640, has requested the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATES: Deadline for filing comments in this matter is February 10, 1988.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2640 was published at 40 FR 18989 on May 1, 1975. The petitioner, Redman Industries, Inc., manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Redman to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Redman intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Redman enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified time frames.

List of Subjects in 16 CFR Part 13

Mobile homes.

Emily H. Rock,
Secretary.

[FR Doc. 88-772 Filed 1-14-88; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 210 and 216

43 CFR Part 3160

Onshore Oil and Gas Production Accounting, Transfer of Responsibility

November 18, 1987.

AGENCY: Mineral Management Service (MMS), Interior.

ACTION: Proposed rule, request for comments.

SUMMARY: The Department of the Interior is transferring the responsibility for production accounting for onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to the Mineral Management Service (MMS). Consequently, MMS is proposing to amend its regulations governing production accounting at 30 CFR Part 216 to add a requirement for lease operators to report onshore production data to MMS.

A phased conversion schedule is proposed to accomplish the transfer of production accounting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 would remain in effect until the transfer is completed. However, 43 CFR Part 3160 is proposed to be amended to provide instructions to operators during the conversion.

The MMS is also proposing to amend 30 CFR Part 210 and to add a reference to an "Onshore Production Reporter Handbook" which would be distributed to all operators and would provide specific guidance on how to prepare and submit the required production data to MMS.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Written comments, suggestions, or objections regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Gregory Smith of the Production Accounting Division of the Royalty Management Program, MMS.

I. Background

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the Production Accounting and Auditing System (PAAS) to onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory Committee (RMAC) propose recommendations on the issue.

The DOI study, called the "Minerals Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS

would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160–6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs (BIA), States, and Indian Tribes.

Based on these studies, the Secretary decided in June 1987 that:

—Responsibilities for receipt and processing of production data should be transferred from BLM to MMS,
—Operators of Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report, which will be slightly modified, and
—The MMS should distribute production data to all users.

II. Proposed Rule

This proposed rulemaking action would establish an onshore production reporting requirement under MMS regulations at 30 CFR 216.50 and provide for reporting by lease operators to MMS on a modified production report to be called the "Monthly Report of Operations" and designated as From MMS–3160.

Changes to the existing Form BLM 3160–6 would include consolidation of unit agreement and communitization agreement number identification into one field, standardization of the report month identifier, allowance of gas inventory reporting and the addition of data elements to reprot gas volumes transferred for processing, plant name, operator contact name, and phone number. Changes are also proposed in the method of reporting well numbers. Currently, wells are identified on the production report by the operator's well number. This reporting method does not uniquely identify all wells on a lease or agreement. The MMS plans to conduct automated editing of production reports to ensure, among other things, that all wells on a lease/agreement are reported. Such editing is impossible without unique identification of wells on the report. Therefore, MMS proposes to require reporting of wells on the new Form MMS–3160 by American Petroleum Institute (API) well number. The DOI will assign API well numbers to wells which have not previously been assigned such numbers. Several months before new requirements commence, each operator will be provided a list of all API well numbers to be used for production reporting purposes.

It is MMS's intent that all information obtained on the new Form MMS–3160 in regard to Federal leases, and Indian leases which are part of a unit containing non-Indian leases, be open for public inspection and copying. All information in regard to Indian leases, other than those which are part of a unit containing non-Indian leases will be considered to be proprietary or confidential. The MMS specifically requests comments on the proposed new reporting requirements and MMS's intended confidential treatment of the information.

The MMS proposes that the new Form MMS–3160 be added to the reports identified in 30 CFR 216.40(c). This would make each line of information required on the form subject to assessment for incorrect or late reports and failure to report. The reporter would also be subject to civil and criminal penalties under 30 CFR 241.51 and 241.52 for failure to comply with the Form MMS–3160 reporting requirements.

Specific and detailed guidance for preparation of the Form MMS–3160 would be forthcoming in an "Onshore Production Reporter Handbook" to be distributed to all operators. This proposed rulemaking includes the addition of a reference to the "Onshore Production Reporter Handbook" in §§ 210.53 and 216.15.

The MMS proposes a phased conversion schedule to accomplish the transfer of production accounting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 would remain in effect until the conversion is completed. However, 43 CFR Part 3160 is proposed to be amended to provide instructions to operators during the conversion. The operators would be required to continue reporting production data to BLM on BLM Form 3160–6 until such time as they are notified to begin reporting to MMS. Notification will include start-up schedules, specific reporting guidelines, and facsimile (sample) reports to guide initial reporting.

In Phase 1a of the conversion schedule, only production reports (Form MMS–3160) related to production on leases/agreements under the jurisdiction of the Wyoming BLM State Office would be due for receipt by MMS in Lakewood, Colorado, and in Phase 1b of the schedule, only reports under the jurisdiction of the Colorado, Montana, and Utah BLM State Offices would be due for receipt by MMS. In Phase 2, production reports related to production on leases/agreements under the jurisdiction of the Eastern States, Nevada, California, and Alaska BLM State Offices would be due for receipt by MMS. In Phase 3, production reports related to production on leases/agreements under the jurisdiction of the BLM Tulsa District Office would be due for receipt by MMS. In Phase 4, production reports related to production on all other leases/agreements under the jurisdiction of the New Mexico BLM State Office would be due for receipt by MMS. The MMS will publish in the **Federal Register** a notice on the MMS receipt due date for each phase of the conversion schedule at least 60 days prior to the date. Each operator would be given written notice to begin reporting to MMS on the Form MMS–3160 at least 30 days before the beginning of the production month for which they are being converted.

This proposed conversion schedule will be delayed if BLM or MMS experiences significant difficult in preparatory work related to this transfer of responsibilities. Likewise, the conversion schedule will be delayed if the error rate for reports in any phase remains at a high level for 3 months after conversion.

Previous regulations have provided that operators would be given notification of changes to onshore production reporting requirements 1 year prior to implementation. The proposed rulemaking provides less than a 1-year notification because this would not be a major change to existing reporting requirements.

Operators participating in the onshore PAAS pilot program, an those who report both offshore and onshore production, are being requested to provide MMS their preference of reporting onshore operations on the standard PAAS forms or on the Form MMS–3160. After Phase 1 commences, all operators reporting production to MMS are subject to civil penalties and assessments if there is a violation of the reporting requirements.

Except for those operators reporting in the onshore PAAS pilot program, onshore operators would need to submit only the Form MMS–3160. However, a decision will be made in the future as to whether onshore lease operators ultimately will be required to submit the PAAS Gas Analysis Report (Form MMS–4005) and whether onshore gas plant operators will be required to submit the PAAS Gas Plant Operations Report (Form MMS–4056) and Fractionation Plant Operations Report (Form MMS–4057). In accordance with 30 CFR 216.20, operators will be given a 1-year notice before reporting on these three forms is required if a decision is made to implement these requirements.

Operators submitting corrected/amended reports for reporting periods prior to the effective date of this rule would submit them to the appropriate BLM office. Those reports would be submitted on either the Form MMS–3160 or Form BLM 3160–6. However, all corrected/amended reports for prior periods must show the same well numbers as shown on the original submission.

III. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes included in this proposed rulemaking are technical corrections only and not substantive changes. This proposed rulemaking would establish a reporting requirement in MMS regulations, that currently exists in BLM regulations, with a few additions to the information collection requirements.

Paperwork Reduction Act of 1980

The information collection requirements located at the proposed new § 216.50 have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C 4332(2)(C)).

List of Subjects

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Mineral production, Mineral royalties, Reporting and recordkeeping requirements, Oil and gas, Solid minerals.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: December 4, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 210 and 216 and 43 CFR Part 3160 are proposed to be amended as set forth below:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 210—[FORMS AND REPORTS]

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 210.53 is revised to read as follows:

§ 210.53 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an *Auditing and Financial System (AFS) Oil and Gas Payor Handbook, a Production Accounting and Auditing System (PAAS) Reporter Handbook, and an Onshore Production Reporter Handbook* which are available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, T.A., Denver, Colorado 80217.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for Part 216 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 216.10 is revised to read as follows:

§ 216.210 Information collection.

(a) The information collection requirements contained in Part 216 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS–3160—Monthly Report of Operations—due by the 10th day of the second month following the production month	1010–100?
MMS–4060—Mine Information Report—due at the request of MMS during the initial conversion of the mine/lease to the PAAS	1010–0063
MMS–4051—Facility and Measurement Information Form and Supplement—due at the request of MMS during the initial conversion of the facility and measurement device operators to the PAAS	1010–0040
MMS–4052—Well Information Form—due at the request of MMS during the initial conversion of the lease and agreement operators to the PAAS	1010–0040
MMS–4053—First Purchaser Report—due at the request of MMS	1010–0040
MMS–4054—Oil and Gas Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4055—Gas Analysis Report—due by the 15th day of the second month following the production month	1010–00 0
MMS–4056—Gas Plant Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4057—Fractionation Plant Operations Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4058—Production Allocation Schedule Report—due by the 15th day of the second month following the production month	1010–0040
MMS–4059—Solid Minerals Operation Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4060—Solid Minerals Facility Report—due by the 15th day of the second month following the production month	1010–0063
MMS–4061—API Well Number Change Report—due 10 days prior to submission of Form MMS–4054	1010–0040

(b) The information collected will be used to permit accounting and auditing of production information submitted by the reporter for mineral production from Federal and Indian leases and federally approved agreements. Information reporting forms are available from MMS. Requests shall be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver Colorado 80217.

3. Section 216.15(a) is revised to read as follows:

§ 216.15 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in a *Production Accounting and Auditing System (PAAS) Reporter Handbook, and an Onshore Production Reporter Handbook*, which are available from: Minerals Management Service, Attention: Report Contact Branch, P.O. Box 17110, Denver, Colorado 80217.

* * * * *

4. Section 216.40(c) is revised to read as follows:

§ 216.40 Assessment for incorrect or late reports and failure to report.

* * * * *

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Monthly Report of Operations (Form MMS–3160), Oil and Gas Operations Report (Form MMS–4054), Gas Analysis Report (Form MMS–4055), Gas Plant Operations Report (Form MMS–4056), Fractionation Plant Operations Report (Form MMS–4057), and Production Allocation Schedule Report (Form MMS–4058).

* * * * *

5. Section 216.50 is added to read as follows:

§ 216.50 Monthly report of operations.

(a) Notwithstanding the provisions of §§ 216.6(e) and 216.20 of this part, an operator will be required to comply with the requirements of this section the beginning of the production month which is more than 30 days after MMS notifies the operator that it is subject to the requirements of this section. Until this section is applicable, operators shall continue to be subject to the reporting requirements of 43 CFR Part 3160.

(b) A Monthly Report of Operations (Form MMS–3160) must be filed by each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned unless production data is authorized to be reported on Form MMS–4054. A completed Form MMS–3160 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 10th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM, or until monthly omission of the report is authorized by the MMS. The MMS may grant time extensions for filing Form MMS–3160 on a case-by-case basis upon written request to the Chief, Production Accounting Division, Royalty Management Program, MMS.

(c) Specific and detailed guidance on how to prepare and submit the required production data on the Form MMS–3160 are contained in a MMS *Onshore Production Reporter Handbook*. See § 216.15 of this part.

(d)(1) Operators already reporting onshore lease production data to MMS in accordance with § 216.54 of this part on the effective date of this rule may request to change to the provisions of this section. Any request to change the requirements of this section must be made by advance written notice of MMS and have MMS approval.

(2) An operator who reports production data to MMS for offshore leases in accordance with § 216.54 of this part may request to report for its onshore leases in accordance with the requirements of that section. Any such request must be made by advance written notice to MMS and have MMS approval.

(e)(1) Information submitted on Form MMS–3160 in regard to Federal leases and Indian leases which are part of a unit containing non-Indian leases is not considered to be proprietary or confidential.

(2) All information submitted on Form MMS–3160 in regard to Indian leases, other than those included in paragraph (e)(1) of this section, will be considered to be proprietary or confidential.

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS—GENERAL

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. section 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Section 3162.4–3 of Subpart 3162—Requirements for Lessees and Operators, is amended by adding a sentence at the beginning of the introductory text to read as follows:

§ 3162.4–3 Monthly report of operations [Form 3160–6].

The operator shall report production data to BLM in accordance with the requirements of this section until required to begin reporting to MMS pursuant to 30 CFR 216.50. * * *

* * * * *

[FR Doc. 88–754 Filed 1–14–88; 8:45 am]

BILLING CODE 4310–MR–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Panel

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Veterans Administration (VA) is proposing to change the procedure under which a special review is provided in cases in which discontinuance of the rehabilitation program of a veteran with a service-connected disability of 50 percent or more is being considered. These reviews are currently conducted by the Vocational Rehabilitation Panel (VRP). Under the proposed change this responsibility would be reassigned to the Vocational Rehabilitation and Counseling (VR&C) Officer. The change would provide greater flexibility in utilizing the VRP, improve program administration, and maintain the quality of service to seriously disabled veterans.

DATES: Comments must be received on or before February 12, 1988. Comments will be available for public inspection until February 26, 1988. We propose to make these amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 26, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2886.

SUPPLEMENTARY INFORMATION: The VRP is a multidisciplinary group of professional staff of the VA. The VRP furnishes technical assistance in cases involving seriously disabled veterans and dependents. Under current provisions, the VRP reviews each case in which discontinuance of the rehabilitation program of a veteran with a service-connected disability evaluated at 50 percent or more disabling is being considered.

The VA is proposing to reassign the responsibility for conducting this special review to the VR&C Officer. Under this change, the VR&C Officer could continue to utilize the assistance of the VRP as necessary in the individual case. The change would provide greater flexibility in utilizing the VRP, improve program administration, and maintain the quality of service to seriously disabled veterans.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments concern only the internal agency procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 18, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is proposed to be amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

§ 21.62 [Amended]

1. Section 21.62 is amended by removing paragraph (b)(4).

§ 21.198 [Amended]

2. Section 21.198 is amended by adding paragraph (b)(7) as set forth below:

§ 21.198 "Discontinued" status.

* * * * *

(b) * * *

(7) *Special review of proposed discontinuance action.* The Vocational Rehabilitation and Counseling (VR&C) Officer shall review each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. The VR&C Officer may utilize existing resources to assist in the review, including referral to the Vocational Rehabilitation Panel (VRP).

(Authority: 38 U.S.C. 1504(a)(1))

* * * * *

[FR Doc. 88–588 Filed 1–14–88; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3218–2]

Approval and Promulgation of State Implementation Plans; Proposed Revision of Alaska State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to proposed rule.

SUMMARY: EPA is hereby correcting a notice contained in 52 FR 48837 dated December 28, 1987, concerning the proposed approval of the State of Alaska stack height rules. This notice, on page 48838, indicates the Office of Management and Budget reviewed this document as required by section 3 of Executive Order 12291. Furthermore, a statement is made in reference to a proposed disapproval of administrative procedures. These statements were made in error since EPA is proposing to approve the State's rule in their entirety and the solicitation of public comment on proposed approvals is exempt from this Executive Order.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Region 10, Environmental Protection Agency, 1200 Sixth Avenue AT–092, Seattle, Washington 98101, telephone: (206) 442–4253. FTS: 399–4253.

Dated: January 8, 1988.

Robie G. Russell,

Regional Administrator.

[FR Doc. 88–762 Filed 1–14–88; 8:45 am]

BILLING CODE 6560–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–97; Notice 1]

Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to permit the use of an alternative method for determining the maximum allowable operating pressure (MAOP) of a gas pipeline when its class location (population density) increases. The alternative would permit reduction of MAOP in direct proportion to a previous test pressure. The current rule unnecessarily requires retesting even though the previous test provides an adequate margin of safety above the MAOP.

DATE: Interested persons are invited to submit written comments on this proposal by March 15, 1988. Late filed comments will be considered to the extent practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection

and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: In a letter dated January 22, 1985, the Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned OPS to amend § 192.611 by adding an alternative method for confirming or revising the MAOP of a pipeline after it experiences a change in class location. (Pet. P–29). The alternative would apply to pipelines that have been pressure tested to less than 90 percent of specified minimum yield strength (SMYS) for at least 8 hours.

Currently, § 192.611(a) provides that if the class location increases for a pipeline segment that has been previously tested to at least 90 percent of its SMYS for at least 8 hours, the MAOP must be confirmed or reduced so that the hoop stress will not exceed 72 percent of SMYS in Class 2; 60 percent in Class 3; or 50 percent in Class 4.

Two alternatives apply when a pipeline segment that has not been so tested undergoes a class location change. First, under § 192.611(b), a pipeline segment's MAOP must be reduced so that the hoop stress does not exceed the level permitted for a similar new pipeline segment in the new class location. For example, if a pipeline originally tested to 88 percent of SMYS for 8 hours and operating at 59 percent of SMYS changes from Class 2 to Class 3, its MAOP must be reduced to not more than 50 percent SMYS, because this is the hoop stress limit that Part 192 prescribes for new pipelines in Class 3. The second alternative, found in § 192.611(c), permits the operator to retest the pipeline segment so that it meets the requirements of Subpart J and to establish the MAOP as a proportion of the test pressure. This proportion may not exceed the ratio of the appropriate hoop stress limit under § 192.611(a) to 90 percent of SMYS. For Class 2 the ratio is 0.8; for Class 3 it is 0.667; and for Class 4 it is 0.555. Thus, the pipeline in the example above could continue to operate in Class 3 at an MAOP of 59 percent of SMYS if it were retested to 88 percent SMYS (MAOP = 0.667 × test pressure).

As illustrated under § 192.611 (b) and (c) identical tests can result in significantly different MAOP's depending only on whether the test is performed before or after the class change. This discrepancy was raised in the ASME petition. ASME's proposed solution is to amend § 192.611 to permit a proportional reduction in MAOP by applying the ratios specified in § 192.611(c) without requiring retesting under Subpart J. The effect of the proposal is to reduce the significance of prior testing to at least 90 percent of SMYS in determining a safe MAOP on a proportional basis.

In evaluating the proposal, OPS examined the purpose of § 192.611 and the importance of retesting in achieving that purpose of pipelines previously tested to less than 90 percent of SMYS for a least 8 hours.

The goal of the initial pressure test is to raise the pressure to a sufficiently high level so that all of the reasonably detectable manufacturing flaws or construction defects in the pipeline can be identified and eliminated without damaging or deteriorating the intrinsic properties of pipe without such flaws or defects. After this task is accomplished the MAOP is set at a level below the test pressure to create a safety margin between the operating hoop stress and the stress used for flaw elimination (test pressure). This safety margin, which increases with class location, is intended to prevent failures due to the subsequent growth of latent flaws or defects or to accidental overloading.

The purpose of reevaluating a pipeline's MAOP under § 192.611 is to continue to provide a reduced risk of failure as population increases. Under § 192.611 (a), (b), and (c), this is accomplished by confirming or revising MAOP as a proportion of test pressure, thus resulting in an appropriate safety margin. Hence, retesting is needed only when the initial test fails to provide the required safety margin above the desired MAOP. Therefore, it appears reasonable that the safety margin rather than the act of retesting is the critical factor under § 192.611, regardless of the initial test level.

This philosophy is reflected in the hazardous liquid pipeline regulations (Part 195). Section 195.302 requires either hydrostatic testing of certain pipelines or reduction of operating pressure to provide at least a 20-percent safety margin between operating pressure and test pressure. If the pressure is reduced, the margin is between operating pressure and the highest documented operating pressure maintained for a least 4 hours.

Because the safety margin between MAOP and test pressure is the significant factor under § 192.611, when a pipeline undergoes a class location change and has been tested previously to a level less than 90 percent SMYS for at least 8 hours, the MAOP should be permitted without retesting to be confirmed or reduced according to the safety margins required by § 192.611(c)(1). Thus, OPS is proposing to include these changes in § 192.611(a).

For pipelines that have been pressure tested in place for at least 8 hours, the proposed § 192.611(a) would permit proportional confirmantion or reduction of MAOP utilizing factors specified currently in § 192.611(c)(1) (0.8 for Class 2, 0.667 for Class 3, 0.555 for Class 4). Pipelines tested to 90 percent or more of SMYS would not be permitted to operate above the stress levels that the current rule permits for the class location concerned. In effect, a change of one class location would necessitate testing under § 192.611(c) to maintain an MAOP only if the pipeline had not previously experienced an adequate pressure test. Also, specific reference to the 90-percent SMYS level would be unnecessary as MAOP would be proportional to whatever test pressure up to 90 percent SMYS were used. The more stringent safety margins required by § 192.611(b) would have effect if an initial test were held for less than 8 hours and an operator chooses not to retest under § 192.611(c).

OPS requests that commenters address the points raised in this NPRM on whether a safety margin based on a prior pressure test rather than a retest is sufficient for the safety of pipelines initially tested to less than 90 percent of SMYS for a least 8 hours. Where possible, comments should be accompanied by appropriate supporting data or analyses.

Impact Assessment

The proposed alternative would reduce the number of pressure tests performed subsequent to class location changes. However, the alternative would be advantageous only in a small number of cases, namely when the initial test pressure was relatively near 90 percent SMYS. Thus, the proposal is expected to have a minimal economic impact, and a Draft Evaluation will not be prepared. Consequently, this proposal is considered nonmajor under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also, the agency certifies under Section 605 and of the Regulatory Flexibility Act that the proposal will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Class location, Testing.

In view of the foregoing, OPS proposes to amend 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section § 192.611(a) would be revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(a) If the segment involved has been previously tested in place for a period of not less than 8 hours, the maximum allowable operating pressure must be confirmed or reduced to a level not to exceed 0.8 times the test pressure for Class 2 locations, 0.667 times the test pressue for Class 3 locations, and 0.555 times the test pressure for Class 4 locations. The corresponding hoop stress may not exceed 72 percent of SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

* * * * *

Issued in Washington, DC, on January 12, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88–785 Filed 1–14–88; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 192

[Docket No. PS–96; Notice 1]

Exception From Pressure Testing Non-Welded Tie-in Joints

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the gas pipeline safety regulations to except non-welded tie-in joints from the pressure test requirements. The regulations currently except welded tie-in joints; and the rationale for this exception applies equally to non-welded tie-in joints.

DATE: Interested persons are invited to submit written comments on this proposal by February 29, 1988. Late filed comments will be considered to the extent practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Office of Hazardous Materials Transportation, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docket material will be available in Room 8426 for inspection and copying between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: The New England Gas Association (NEGA) submitted in January 1983 a petition for rulemaking (P–20), supported by letters from Washington Gas Light, Northeast Utilities, and the Southern Connecticut Gas Company. Subsequently, in May 1984, NEGA modified its petition. The modified petition was also supported by a letter from the Southern Connecticut Gas Company.

The petition concerns Subpart J of Part 192, which prescribes pressure test requirements to detect potentially hazardous leaks and, in some cases, to substantiate the maximum allowable operating pressure (MAOP). Section 192.503(d) exempts tie-in joints made by welding from these pressure test requirements (Tie-in joints are the connection of separately constructed pipelines.) As modified, the petition requests amendment of § 192.503(d) to except from the pressure test requirements of Subpart J tie-in joints that are made by methods other than welding, such as by compression coupling.

OPS agrees with NEGA that, regardless of the joining method (welding, mechanical, or otherwise), a post-installation pressure test of tie-in joints cannot be effected practically. Either an additional segment must be tested, creating new tie-in joints to be tested, or other parts of the pipeline must be overpressured. In addition, while tie-in pipe or coupling devices can be pretested, the actual joint can only be tested in place.

In practice, testing has not been enforced through the recognition by field personnel of the near impossibility of compliance. The integrity of a non-welded tie-in joint is nevertheless assured because such joint is subject to the requirements of Subpart F governing the joining of materials in pipelines other than by welding.

OPS proposes to revise § 192.503(d) by substituting the word "joint" for the word "weld." The proposed revision would eliminate the unnecessary and impractical requirement.

The petitioners also requested that § 192.619(a)(2) be changed to state explicitly that the MAOP established for a test segment applies also to the tie-in joint. OPS does not believe that such revision is necessary, since exception of tie-in joints from the pressure test needed to establish the MAOP of a test segment under § 192.619(a)(2) would implicitly except each tie-in joint from the requirements of § 192.619(a)(2).

Impact Assessment

The proposal is considered to be nonmajor under Executive Order 12291 and not significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this proposal would have a minimal effect on the economy by codifying existing compliance practices, the economic effect has been found not to require further evaluation. Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Test, Tie-in, Joint.

Proposed Revisions

For the reasons set forth in the Supplementary Information, 49 CFR Part 192 is proposed to be amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804, 49 CFR 1.53.

2. Section 192.503(d) would be revised to read as follows:

§ 192.503 General requirements.

* * * * *

(d) Each joint used to tie-in a test segment of pipeline is excepted from the test requirements of this subpart.

Issued in Washington, DC, on January 12, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88–786 Filed 1–14–88; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 31-87]

Foreign-Trade Zone 72; Indianapolis, IN; Application for Subzone Subaru/Isuzu Auto/Truck Plant, Tippecanoe County, IN

The comment period for the above case, involving a special-purpose subzone for the auto/truck manufacturing plant of Subaru/Isuzu Automotive, Inc., in Tippecanoe County, Indiana (52 FR 44820, 11/20/87), is extended to February 8, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 11, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-799 Filed 1-14-88; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 35-87]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Yamaha Golf Cart and Water Vehicle Plant, Coweta County, GA

The comment period for the above case, involving a special-purpose subzone for the golf cart and water vehicle plant of Yamaha Motor Manufacturing Corporation of America in Coweta County, Georgia (52 FR 45474, 11/30/87), is extended to March 11, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 11, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-798 Filed 1-14-88; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-588-705]

Preliminary Determination of Sales at Less Than Fair Value; Bimetallic Cylinders From Japan

ACTION: Notice.

SUMMARY: We have preliminarily determined that bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of bimetallic cylinders from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 28, 1988.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202) 377-3965 or Raymond Busen (202) 377-3464, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 4, 1987, we received a petition in proper form filed by Xaloy, Incorporated and Bimex Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on August 24, 1987 (52 FR 32328, August 27, 1987), and notified the ITC of our action.

On September 18, 1987, the ITC determined that there is a reasonable indication that imports of bimetallic cylinders are materially injuring a U.S. industry (U.S. ITC Pub. No. 2017, September 1987).

On October 8, 1987, a questionnaire was sent to Hitachi Metals, Ltd. (HML), which accounted for a substantial portion of the exports to the United States during the period of investigation. HML's response to section A was due on October 22, 1987, while the response to the remainder of the questionnaire, was due on November 9, 1987.

On October 16, 1987, respondent requested an extension of the deadline to October 28, 1987 for the response to section A of the questionnaire. The extension was granted.

On October 23, 1987, respondent requested a two-week extension until November 23 to respond to the remainder of the questionnaire. An extension was granted until November 18, 1987. On October 26, 1987, we received the response to section A.

On November 18, 1987, the response to the remainder of the questionnaire was received. On November 20, 1987, we sent a deficiency letter to the respondent which stated that failure to provide the requested information by December 4, 1987 may result in our using best information available for this preliminary determination. Our letter stated that HML's response was deficient because it reported only those home market sales it claimed were identical to certain U.S. sales and did not provide home market sales for comparison to the majority of United States sales. We requested that HML report all home market sales of such or similar merchandise.

On November 24, 1987, we sent a supplemental deficiency letter to the respondent asking for clarification of other data submitted in HML's October 26 and November 18, 1987, responses to our questionnaire. We reiterated our position with regard to the requirements for the submission of all home market sales of both identical and similar merchandise, as stated in our November 20 deficiency letter, and again advised HML that failure to respond by December 4 may result in our using the best information available for this preliminary determination.

On December 4, 1987, we received an incomplete response to the two deficiency letters.

On December 7, 1987, we presented a letter to the respondent stating that the response continued to be deficient and that, in accordance with section 776(b) of the Act, if the deficient response was not corrected by the the January 11 preliminary determination date, we might not be able to verify the information and might have to rely on best information available for our final determination. No further information was received from the respondent.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are bimetallic cylinders which are provided for in TSUSA items 678.3570, 678.3575, and 678.3580. The corresponding Harmonized System (HS) number is 8477.90.0000. The bimetallic cylinder is defined as a hollow metal cylinder which serves as part of a machine used to process various materials including plastic resins and various types of food either by injection molding, extrusion, or by blow molding. The product consists of an outer sheet of steel and an inner lining of an alloy which are metallurgically bonded, the inner lining being of a material which is resistant to a corrosive and abrasive environment. Nitrided cylinders, those cylinders whose inner surfaces have been hardened and tempered by a nitriding process, are not included in this investigation.

Fair Value Comparisons

To determine whether sales of bimetallic cylinders in the United States were made at less than fair value, we compared the United States price with the foreign market value, both of which were based on the best information available. We used the best information available as required by section 776(b) of the Act for the reasons in the "Case History" section of this notice.

The period of investigation for bimetallic cylinders from Japan was March 1, 1987 through August 31, 1987.

United States Price

As best information available for United States price, we used the U.S. price information provided in the petition. The petition provided prices for four sizes of bimetallic cylinders.

Foreign Market Value

As the best information available for foreign market value, we used home market prices provided in the petition. An adjustment was made to petitioners' home market prices to reflect exchange rates as certified by the Federal Reserve Bank.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, if we have received a sufficient response to our deficiency letters by January 11, 1988, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of bimetallic cylinders from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The average dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
Hitachi Metals, Ltd.	17.42
All Others	17.42

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on February 17, 1988, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this

notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 10, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.38, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-800 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-021]

Cell-Site Transceivers and Related Subassemblies From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 3, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period January 1, 1986 through December 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from Kokusai Electric Co., Ltd. ("Kokusai"). The final dumping margin is unchanged from that presented in the preliminary results of review.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 33459) the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under items 685.2810 and 685.2820 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 8525.20.15 and 8525.20.30.

The review covers one known manufacturer/exporter, Kokusai, and the period January 1, 1986 through December 31, 1986.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from Kokusai.

Comment: Kokusai argues that our reference to "no shipments" in our preliminary results notice should refer to no reviewable shipments, i.e., no shipments other than the shipments covered in our last administrative review.

Department's Position: We agree that there were shipments during the 1986 review period. Confusion arose since those shipments were made pursuant to contracts entered into during the 1985 review period and were inadvertently covered in our last administrative review.

Final Results of the Review

Based on our analysis of the comment received, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margin exists for the period January 1, 1986 through December 31, 1986:

Manufacturer/exporter	Margin (percent)
Kokusai	0.08

Since the margin for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1986 and who is unrelated to Kokusai, no cash deposit shall be required.

These deposit requirements and waiver are effective for all shipments of Japanese cell-site transceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: January 7, 1988.

[FR Doc. 88-801 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review and revocation inpart.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on elemental sulphur from Canada. The review covers ten producers and/or exporters of this merchandise to the United States and generally the period December 1, 1982 through March 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. At the request of the petitioner the Department held a public hearing on September 23, 1987. Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec pending receipt of additional information. Because Timshell, Inc. did not respond to our antidumping questionnaire and Burza Resources declined to release its proprietary data under an administrative protective order, we used the best information available for these two firms. The preliminary results for two firms were incorrect due to certain clerical errors and we have changed those results accordingly. The remaining final results of our review remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23327) the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of elemental sulphur currently classifiable under item number 415.4500 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 2503.10.00, 2503.90.00, and 2802.00.00.

The review covers ten producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1982 through March 31, 1986.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results. We received comments from the petitioner and two respondents. At the request of the petitioner, Freeport McMoRan, Inc., we held a public hearing on September 23, 1987.

Comment: One Canadian respondent, Home Oil Co., Ltd., contends that the Department erred when it refused to provide Home Oil a requested disclosure. Home Oil states that the Department's regulations do not mention a deadline for disclosure requests, particularly where, as here, the request preceded publication of the final results of review. Home Oil also alleges that the Department made three errors in its calculation of U.S. price and foreign market value.

Department's Position: In the June 19 preliminary results notice we stated that "interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part, within 14 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication". Since Home Oil requested disclosure over three months after the date of publication, the request was untimely and we did not consider it. In addition, the allegations of three possible errors in computations, being made 3 to 4 months after the date of publication, were equally untimely; therefore, we did not consider them.

We are deferring our review of InterRedec pending the receipt of additional information; therefore, we have not addressed the petitioner's comments on InterRedec.

Final Results of the Review and Revocation in Part

Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec, pending the receipt of additional information and, for the reasons discussed above, we have changed the rate for Timshel (U.S.) and Burza Resources. The preliminary results for two firms were incorrect due to certain clerical errors and we have changed those results accordingly. The remaining final results of our review remain unchanged from the preliminary results, and we determine that the following margins exist:

Producer/Exporter	Period of review	Margin (percent)
Burza Resources	12/01/82-11/30/84	28.90
Petrogas Processing	12/01/82-11/30/84	[1] 0
Canadian Superior Oil	04/01/84-03/31/86	0
Chevron Standard	04/01/84-03/31/86	0
Gulf Oil Canada	04/01/84-05/31/86	0
Home Oil	12/01/82-11/30/83	0.59
	12/01/83-11/30/84	0
Hudson's Bay Oil & Gas	04/01/84-03/31/86	0
Petro-Canada Resources	12/01/82-11/30/83	2.11
	12/01/83-11/30/84	5.83
Shell Canada Resources	04/01/84-03/31/86	0
Timshell (U.S.)	12/01/82-11/30/84	28.90

[1] No shipments during the period; margin from the last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each producer/exporter directly to the Customs Service.

For the reasons set forth in the preliminary results of review, tentative revocation in part, and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Canadian Superior, Chevron Standard, Gulf Oil Canada, Hudson's Bay Oil and Gas, and Shell Canada Resources. Accordingly, we revoke in part the antidumping finding on elemental sulphur from Canada. This partial revocation applies to all unliquidated entries of this merchandise exported by Canadian Superior, Chevron Standard, Gulf Oil Canada, Hudson's Bay Oil and Gas, and Shell Canada Resources, entered, or withdrawn from warehouse, for consumption on or after May 30, 1986. The May 30th effective date was selected because the finding on these five companies had previously been revoked and was reinstated pursuant to court order on May 30, 1986.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms.

For any shipment from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative reviews for each of those firms (50 FR 37888, September 18, 1985, 51 FR 43954, December 5, 1986, and 51 FR 45153, December 17, 1986). For any future entries of this merchandise from a

new exporter not covered in this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after March 31, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 11, 1988.

[FR Doc. 88-802 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-701, A-489-701]

Postponement of Preliminary Antidumping Duty Determinations; Certain Granite Products From Italy and Spain

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in these investigations to postpone the preliminary determinations as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determinations of whether sales of certain granite products from Italy and Spain have occurred at less than fair value until not later than February 23, 1988.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION: On December 15, 1987 (52 FR 47618), we published the notice of postponement of the antidumping duty investigations to determine whether certain granite products from Italy and Spain are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determinations by February 3, 1988.

On December 30, 1987, petitioners requested that the Department postpone the preliminary determinations by an additional 20 days, *i.e.*, until not later than 210 days after the date of receipt of the petitions, in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for the preliminary determinations in these investigations is hereby extended. We intend to issue preliminary determinations not later than February 23, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

January 11, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-803 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-507]

Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on malleable cast iron pipe fittings, other than grooved, from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period January 14, 1986 through April 30, 1987. The review indicates the existence of dumping margins for these firms during the period.

Since the two firms did not respond to the Department's antidumping questionnaire, we used the best information available, which was the margins from the original fair value investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey of John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18918) the antidumping duty order on malleable cast iron pipe fittings, other than grooved, from Taiwan. Two manufacturers, San Yang and Tai Yang, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the review on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Centeral Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of malleable cast iron pipe fittings, other than grooved, and are currently classifiable under TSUSA items 610.7000 and 610.7400 and HS item number 7307.19.10.

The review covers two manufacturers and/or exporters of Taiwanese malleable cast iron pipe fittings, other than grooved, to the U.S. and the period January 14, 1986 through April 30, 1987. Since both firms failed to respond to the Department's antidumping questionnarie, we used the best information available for appraisement and cash deposit purposes for these firms, which is the margins from the fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period January 14, 1986 through April 30, 1987:

Manufacturer	Margin (percent)
San Yang	27.90
Tai Yang	37.09

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 10 days of the date of publication.

Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments of Taiwanese malleable cast iron pipe fittings, other than grooved, by these firms. For any shipments of this merchandise from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate from the final determination of sales at less than fair value for each of those firms (51 FR 10901, March 31, 1986).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to either reviewed firm, a cash deposit of 37.09 percent shall be required.

These cash deposit requirements are effective for all shipments of Taiwanese malleable cast iron pipe fittings, other than grooved, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Dated: January 11, 1988.

[FR Doc. 88-804 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-007]

Potassium Permanganate From Spain; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on potassium permanganate from Spain. The review covers Asturquimica, S.A., and the period January 1, 1986 through December 31, 1986. The review indicates the existence of a dumping margin during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 2277) the antidumping duty order on potassium permanganate from Spain. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review and we published a notice of initiation on February 23, 1987 (52 FR 5479). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Units, Room B-099, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of potassium permanganate currently classifiable under TSUSA item 420.2800. This product is currently classifiable under HS item 2841.60.00. Potassium permanaganate is an inorganic chemical produced in free flowing, technical and pharmaceutical grades.

The review covers Asturquimica, S.A. and the period January 1, 1986 through December 31, 1986.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the f.o.b. packed price to an unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight and port charges. We added the amount of indirect taxes on exported merchandise which was rebated at the time of export under the provisions of the Regimen Transitorio del IVA program. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on the packed f.o.b. plant price to unrelated purchasers. We made adjustments for differences in

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merchandise, differences in credit costs and packing costs.

We did not make a level of trade adjustment requested by Asturquimica in calculating foreign market value because we used only home market sales to customers which we determined to be at the same level of trade as those in the United States.

We denied Asturquimica's claims for adjustment for technical services, invoice processing and handling because these expenses were not directly related to the sales under consideration as required in § 353.15(a) of the Commerce Regulations. The advertising expense claimed was denied as it was not attributable to a later sale of the merchandise by the purchaser, as required in § 353.15(b) of the regulations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily detemine that a margin of 20.75 exists for Asturquimica, S.A. for the period January 1, 1986 through December 31, 1986.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 20.75 percent based on the above margin shall be required. These deposit requirements are effective for all shipments of Spanish potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 11, 1988.

[FR Doc. 88-806 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Baylor College of Medicine et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-273. Applicant: Baylor College of Medicine, Houston, TX 77030. Instrument: Electron Microscope, Model H-7000. Manufacturer: Hitachi, Japan. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: December 16, 1986.

Docket No.: 87-275. Applicant: Florida State University, Tallahassee, FL 32306-3050. Instrument: Electron Microscope, Model JEM-1200 EX/DP/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 32825, August 31, 1987. Instrument Ordered: June 18, 1987.

Docket No.: 87-280. Applicant: The Regents of the University of California, Riverside, CA 92521. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manuafacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 37356, October 6, 1987. Instrument Ordered: May 6, 1987.

Docket No.: 87-284. Applicant: Naval Hospital, San Diego, San Diego, CA 92134-5000. Instrument: Electron Microscope with Integrated Imaging Spectrometer CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 37356, October 6, 1987. Instrument Ordered: August 15, 1987.

Docket No.: 87-285. Applicant: St. Joseph's Hospital, Tampa, FL 33607. Instrument: Electron Microscope, H-300. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 37352, October 6, 1987. Instrument Ordered: June 8, 1987.

Docket No.: 87-287. Applicant: Massachusetts Eye and Ear Infirmary, Boston, MA 02114. Instrument: Electron Microscope, Model CM10/PC. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: August 21, 1987.

Docket No.: 87-291. Applicant: Emory University, Atlanta, GA 30322. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: July 31, 1987.

Docket No.: 87-292. Applicant: University of California, San Francisco, CA 94143. Instrument: Electron Microscope, Model JEM-1200EX. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: Febraury 18, 1987.

Docket No.: 87-296. Applicant: New York Medical College, Valhalla, NY 10595. Instrument: Electron Microscope, Model H-7000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: May 19, 1987.

Docket No.: 87-300. Applicant: University of Oaklahoma, Norman, OK 73019. Instrument: Electron Microscope with Accessories, Model JEM-2000FX/SIP/DP. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: April 13, 1987.

Docket No.: 87-301. Applicant: Father Flanagan's Boys Town, Boys Town National Institute, Omaha, NE 68131. Instrument: Electron Microscope, Model CM 10/PC. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: June 18, 1987

Docket No.: 87-308. Applicant: Harvard University School of Public Health, Boston, MA 02115. Instrument: Electron Microscope, with Integrated Imaging Spectrometer, Model CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 42029, November 2, 1987. Instrument Ordered: June 16, 1987.

Docket No.: 87-309. Applicant: University of Texas Medical Branch at Galveston, Galveston, TX 77550. Instrument: Electron Microscope Model H-7000-3D, with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 43218, November 10, 1987. Instrument Ordered: May 20, 1987.

Comments: None Received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific enducational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-807 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Michigan State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-282. Applicant: Michigan State University, East Lansing, MI 48824-1325. Instrument: CN Analyzer-Isotope Ratio Mass Spectrometer, TRACERMASS. Manufacturer: Europa Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 37356, October 6, 1987. Reasons For This Decision: The foreign article provides Dumas combustion linked to an on-line gas isotope ratio mass spectrometer capable of analyzing small samples (5-150 milligrams nitrogen content) with high precision (0.001 atom% ^{15}N at natural abundance).

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The National Bureau of Standards advises in its memorandum dated November 25, 1987, that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-808 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Santa Barbara; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-001. Applicant: University of California, Santa Barbara, CA 92106. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 52 FR 43219, November 10, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (July 28, 1987). Reasons: The foreign insturment provides an automated acid bath carbonate preparation system and also provides high precision measurement of C^{13} and O^{18}. The capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no timely response to a formal request for quotation sent to the only known domestic manufacturer of comparable instruments, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-809 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

(C-357-404)

Certain Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 10, 1987, the Department published the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina. We determine the bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984, and 0.46 percent *ad valorem* for 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR

26053) the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina (48 FR 9846; March 12, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine apparel, currently classifiable under the following items of the Tariff Schedules of the United States Annotated:

372.7540, 374.2500, 374.3530, 374.6500, 376.2830, 381.0540, 381.0542, 381.0546, 381.4130, 381.4180, 381.4770, 381.5650, 381.6240, 381.8930, 381.9035, 381.9540, 381.9545, 381.9585, 384.0207, 384.0208, 384.0212, 384.0236, 384.0320, 384.0330, 384.0340, 384.0350, 384.0360, 384.0370, 384.0406, 384.0432, 384.0433, 384.0436, 384.0437, 384.0438, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0497, 384.0608, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0905, 384.0944, 384.1000, 384.1319, 384.1321, 384.1611, 384.1612, 384.1613, 384.1680, 384.1920, 384.2105, 384.2115, 384.2120, 384.2125, 384.2205, 384.2216, 384.2816, 384.2881, 384.2821, 384.2850, 384.2910, 384.2920, 384.2930, 384.2940, 384.2950, 384.3758, 384.3767, 384.3777, 384.4608, 384.4647, 384.4765, 384.4925, 384.5234, 384.5275, 384.5276, 384.5277, 384.5278, 384.5279, 384.5299, 384.5526, 384.5930, 384.6310, 384.6330, 384.6340, 384.6350, 384.6360, 384.6371, 384.6372, 384.6385, 384.7010, 384.7020, 384.7215, 384.7220, 384.7510, 384.7522, 384.7528, 384.7532, 384.7534, 384.7536, 384.7538, 384.7542, 384.7544, 384.7546, 384.7548, 384.7552, 384.7554, 384.7556, 384.7558, 384.7562, 384.7595, 384.8024, 384.8026, 384.8073, 384.8225, 384.8300, 384.9115, 384.9445, and 704.6500.

The review covers the period December 21, 1984 through December 31, 1985 and ten programs: (1) The reembolso; (2) post-export financing; (3) pre-export financing; (4) incentives for exports from southern ports; (5) tax reductions for investors; (6) regional tax incentives; (7) tax reductions for locating in industrial parks; (8) discounts of foreign currency accounts receivable; (9) low-cost loans for projects outside Buenos Aires; and (10) BANADE loan guarantees.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of an exporter, Pulloverfin, S.A.I.C., and an importer, Che Amigo, U.S.A. ("the respondents"), we held a public hearing on August 6, 1987.

Comment 1: The respondents contend that the Department incorrectly disallowed indirect taxes claimed under the reembolso as prior-stage taxes. The reembolso study submitted in this review is based upon the apparel industry's 1985 fiscal incidence and cost structure. It is an update of the 1978 apparel reembolso study, which the Treasury Department previously verified and accepted in its final determination on certain textiles and textile products from Argentina (43 FR 53421, November 16, 1978). In that case, the Commerce Department allowed a tax incidence of 19.33 percent in three successive administrative reviews of that order, covering calendar years 1981, 1982, and 1983.

The respondents argue that to apply a stricter linkage test in this case and deny prior-stage taxes because of slight variances from previous studies is to demand unrealistic precision in the administration of the countervailing duty law. The Department cannot demand such precision when its only reason for disallowing prior-stage taxes is that it was not able to establish from the records of the verified companies the level of prior-stage tax incidence. Apparel producers cannot be expected to maintain the records of taxes billed or paid by prior-stage producers.

In the alternative, the respondents claim that the Department must allow the prior-stage taxes, verified and accepted in the textile portion of the original investigation in this case, for yarn and woven fabric because yarn and woven fabric are earlier stages in the production of apparel.

Department's position: In deciding whether a tax rebate program provides a countervailable benefit, the Department asks two questions: (1) Does the requisite linkage between the payment and the indirect tax incidence exist? and (2) Is the payment less than, equal to, or greater than, the indirect tax on the exported product? (*See* Senate Finance Committee Report on the 1979 Trade Agreements Act, S. Rep. No. 249, 96th Cong., 1st Sess. 85 (1979); *Industrial Fasteners Group, American Importers Association v. United States*, 710 F.2d 1576 (Fed. Cir. 1983); and *Certain Fasteners from India, Final Countervailing Duty Determination and Countervailing Duty Order* (45 FR 48607; July 21, 1980).)

If we find the linkage requirements are not met, the full value of the export payment is countervailable. If linkage is found, the payments are countervailable only to the extent that they exceed the indirect tax incidence during the period of review.

Contrary to the respondents' belief, we have found linkage in this review. (*See* preliminary results of review, at page 26053.) However, the determination as to whether the reembolso payments are less than the indirect tax burden on apparel during a particular review period requires a separate inquiry. For this purpose, we cannot accept the respondents' suggestion that we use outdated information from a separate proceeding (materials relied on in the 1978 textile final determination), or even the 1981 information relied on in the 1984/85 textile proceeding. Rather, we must rely on evidence which reasonably demonstrates the level of indirect taxes on apparel during the period of review.

We attempted to obtain and verify prior-sage tax information both at the Argentine government and at the Argentine apparel trade association, and were unable to do so. As a last resort, we attempted to obtain and verify that information at the company level, again without success. Consequently, while we were able to find linkage, we were unable to determine whether the reembolso payments during this review period were less than, equal to, or greater than the indirect tax incidence on apparel during the same period.

Comment 2: The respondents contend that the Department erroneously calculated the benefit from the reembolso program by using the absolute difference between the reembolso rate and the allowable amount of tax incidence. The Department should allocate the countervailable amount of reembolso payments on exports to the United States actually received during the review period over total exports to the United States. If the Department uses this method, it should also calculate company-specific rates for firms such as Pulloverfin, whose total reembolso receipts lead to *de minimis* benefits.

Department's position: Even if we accepted the respondents' method of calculation, we do not have enough information to calculate the benefit on the basis of actual rebates received. The Argentine government did not provide the total amount of reembolso payments made to all apparel exporters during the during the period of review. We have that informaiton for only four out of 45 companies.

Since we calculated the benefits for all companies based on the full reembolso rate, no company's rate was "significantly different" from the weighted-average country-wide rate, and there was therefore no basis for setting company-specific rates in 1984. In 1985, this is not an issue because the subsidy rates for all firms were *de minimis*.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984, and 0.48 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. We consider any rate less than 0.50 percent to be *de minimis*.

The Department will instruct the Customs Service to assess countervailing duties of 0.83 percent of the f.o.b. invoice price on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 21, 1984 and exported on or before December 31, 1984, and to liquidate, without regard to countervailing duties, any shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.)

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Dated: January 11, 1988.

[FR Doc. 88-806 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on February 23, 1988, at the U.S. Patent and Trademark Office in Room 912 of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Automation Activities
(2) Financial Reporting
(3) Quality of the Registration Process
(4) Intent to Use Legislation

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231 Telephone: 703-557-7464.

Approved:

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Dated: January 11, 1988.

[FR Doc. 88-788 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 10, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 43785) of additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to provide the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988.

Commodities

Detergent, General-Purpose
7930-00-531-9715
7930-00-531-9716

Detergent, Laundry
7930-01-045-3515
7930-01-045-3517

C.W. Fletcher,

Executive Director.

[FR Doc. 88-777 Filed 1-14-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5:00 p.m. on January 21-22, 1988. The meeting will be held at the Ramada Inn Old Town, 2435 Jefferson Street, in San Diego, California 92110. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts, and composition of the Armed Forces Qualification Test. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. W.S.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC

20301–4000, telephone (202) 697–9271, no later than January 13, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 11, 1988.

[FR Doc. 88–753 Filed 1–14–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Open Meeting of Army Science Board

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 2 February 1988.

Time of Meeting: 0800–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The C3I Functional Subgroup of the Army Science Board will meet to provide independent evaluation of a broad range of topics including, but not limited to, Parallel Processing, Robotics, Fiber Optics, management of technologies and systems insertion/transfer. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–613 Filed 1–14–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 16, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purposes of the information collection, violated State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 11, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: New
Title: Continuation Application for College Assistance Migrant Program
Agency Form Number: 483
Frequency: Quarterly
Affected Public: Non-profit institutions.
Reporting Burden—
Responses: 4
Burden Hours: 80
Recordkeeping—
Recordkeepers: 4
Burden Hours: 20

Abstract: This form will be used by private nonprofit institutions and institutions of higher education to apply for non-competing grants under Title IV, section 418A of the Higher Education Act, as amended. The Department uses the information to make grant awards and determine the project's accomplishments to date.

Office of Elementary and Secondary Education

Type of Review: New
Title: Continuation Application for High School Equivalency Program
Agency Form Number: 484
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden—
Responses: 19
Burden Hours: 380
Recordkeeping—
Recordkeepers: 19
Burden Hours: 95

Abstract: This form will be used by private nonprofit institutions and institutions of higher education to apply for non-competing grants under Title IV, section 418A of the Higher Education Act, as amended. The Department uses the information to make grant awards and determine the project's accomplishments to date.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Quarterly Cumulative Caseload Report
Agency Form Number: RSA–113
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden—
Responses: 336
Burden Hours: 336
Recordkeeping—
Recordkeepers: 84
Burden Hours: 84

Abstract: This report is used by State Vocational Rehabilitation (VR) agencies to provide caseload data. The Department uses the information collected to assess the accomplishments or program goals and objectives and to aid in effective program management.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Survey on the Validity of Rehabilitation Services Administration Data Reports
Agency Form Number: 480
Frequency: One time only
Affected Public: State and local governments
Reporting Burden—
Responses: 83
Burden Hours: 498
Recordkeeping—
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will collect statistical and financial data from State Vocational Rehabilitation agencies. The Department uses the information to determine the validity of these data.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Questionnaires on the 1987–88 National Survey of Postsecondary Faculty
Agency Form Number: G478
Frequency: Triennially
Affected Public: Individuals or households
Reporting Burden—
Responses: 15,200
Burden Hours: 15,200
Recordkeeping.—
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will collect data on the administrative policies and procedures of postsecondary institutions, and the characteristics, qualifications, workloads, allocation of time, income, attitudes, etc., of postsecondary faculty. The Department uses the information to assess the supply of, and demand for instructional faculty and factors that affect the quality of instruction.

[FR Doc. 88–773 Filed 1–14–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.184C]

Availability of Funds for Grants Under Drug-Free Schools and Communities Program

Purpose: To provide assistance to State educational agencies, local educational agencies, institutions of higher education and other nonprofit agencies, organizations, and institutions to support drug and alcohol abuse education and prevention activities.

Deadline for Transmittal of Applications: Ongoing (Applications under this competition will be reviewed in accordance with § 764.20)

Applications Available: Immediately.

Available Funds: $2,000,000.

Estimated Range of Awards: $50,000–$100,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 27.

Project Period: 12 months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program, 34 CFR Parts 764 and 766, published in the **Federal Register** on July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Invitational Priority: In accordance with 34 CFR 75.105(c)(1), the Secretary encourages applicants to propose projects that provide technical assistance, including consultants, to schools facing a serious immediate threat from illegal drug use and that also involve law enforcement officials, parents, school personnel and community organizations.

The following are some examples of the types of projects the Secretary is particularly interested in supporting:

- Prevent drug use by providing technical assistance, to help improve security in the schools or on school premises;
- Provide technical assistance to schools to secure areas around schools and to see that the sale and use of drugs are stopped;
- Help schools obtain information and adopt practices from other school districts with sound policies for preventing serious drug-related incidents; or
- Implement collaborative arrangements with local educators, parents, students and communities to remove drugs from their schools and the lives of their students, including imposition of strong penalties for drug use and selling.

The above example are only suggestions. Applicants are encouraged to propose activities other than these examples.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 4642.

Dated: January 11, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88–774 Filed 1–14–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–721–005 et al.]

Central Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

January 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Power & Light Company

[Docket No. ER86–721–005]

Take notice that on December 31, 1987, Central Power and Light Company (CPL) tendered for filing a refund report pursuant to the Commission's letter order, dated November 24, 1987, in this proceeding.

CPL's refund report included tabulations for each wholesale customer showing the monthly billing determinants, revenue receipt dates and revenues under prior, present and settlement rates; the monthly revenue refunds, the monthly interest and a summary of all refunds; and workpapers underlying the interest calculations.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. AEP Generating Company

[Docket No. ER84–579–013 and ER84–707–004]

Take notice that on December 14, 1987, AEP Generating Company tendered for filing pursuant to Commission Order dated October 30, 1987, a compliance and refund report. AEP Generating Company states that on November 25, 1987 it refunded by check $732,283.95 ($721,799.00 principal and $10,484.95 interest) to Virginia Electric and Power Company and $313,701.33 ($309,344.00 principal and $4,357.33 interest) to Kentucky Power Company.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Service Commission of the Commonwealth of Kentucky and the Virginia State Corporation Commission.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power & Light Company

[Docket No. ER86–174–000]

Take notice that on December 31, 1987, Arkansas Power & Light Company (AP&L) tendered for filing an amendment dated November 20, 1987 to the Letter Agreement of December 9, 1983 (filed in Docket No. ER84–193–000) between AP&L and the Louisiana Energy & Power Authority. The amendment provides for an extension of the term of the Letter Agreement through December 31, 1988 and has no impact on rate, contract capacity or revenue.

AP&L requests that the Commission waiver any requirements with which AP&L has not already complied.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power & Light Company and West Texas Utilities Company

[Docket No. ER88-176-000]

Take notice that on December 31, 1987, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) each tendered for filing an Electric Reliability Council of Texas (ERCOT) Qualitying Facility Transmission Service Tariff and a revised Master ERCOT Transmission Service Facility Charge Rate Schedule. CPL and WTU filed the tariffs in order that they may provide transmission service in connection with sales by Qualifying Facilities to other Electric Utilities in ERCOT on a basis which is consistent with the terms on which other ERCOT utilities provide such services in connection with the same transactions. The Master Rate Schedules are intended as a mechanism to be used to file with the Commission the basic data used to determine transmission service facility charges under various CPL and WTU transmission service tariffs. CPL and WTU request an effective date of January 1, 1988 for the tariffs and have therefore requested that the Commission's notice requirements be waived.

Copies of the filing have been sent to the Public Utilities Commission of Texas.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Power & Light Company

[Docket No. ER88-178-000]

Take notice that on January 4, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing an application for authorization under 15 U.S.C. 824b. In its application, Iowa Power requests approval of an amendment to the Transmission Facilities Agreement (TFA) among Iowa Power, Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, and Iowa Southern Utilities Company, relating to the ownership and operation of the transmission facilities associated with the Neal 3 generating station. The amendment changes the form of ownership of the facilities; prior to the amendment, each utility was sole owner of a specified portion of the facilities. after the amendment, the utilities will own the facilities as tenants-in-common. In addition, the amendment reduces the fixed rate applicable to transactions under the agreement (to reflect changed federal tax rates) and reflects the exchange of certain properties among the parties to the agreement.

Weiver of the Commission's notice requirements has been requested by Iowa Power.

Iowa Power states a complete copy of the filing has been mailed to Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, and the Iowa State Utilities Board.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER82-769-010]

Take notice that on December 18, 1987, Minnesota Power & Light Company (MP&L) tendered for filing pursuant to Commission Order dated December 3, 1987, a revised compliance report containing revised support schedules which detail calculation of Cooperative Power Association's (CPA) Investment Obligation and Accumulated Fixed Cost and Interest thereunder, that reflect removal of incremental power flow over 903 Line from the numerator only of FERC Staff's allocator for determining interim rates, and incorporate the July 8, 1987 effective date of interim rates. MP&L states that it has also filed the revised Outlet Facilities Agreement No. 3 (OFA 3R) between MP&L and CPA, containing attachments which have been modified to reflect the December 3, 1987 FERC Order and the July 8, 1987 effective date of interim rates.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Mississippi Power & Light Company

[Docket No. ER88-175-000]

Take notice that on December 31, 1987, Mississippi Power & Light Company (MP&L) tendered for filing a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of January 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER88-177-000]

Take notice that on December 31, 1987, Southwestern Electric Power Company (SWEPCO) tendered for filing an Electric System Interconnection Agreement, dated January 1, 1988, between SWEPCO and Cajun Electric Power Cooperative, Inc. (Cajun). Under the Interconnection Agreement SWEPCO will supply Cajun with firm transmission service to two of Cajun's member cooperatives and with as-available transmission service for up to 89 megawatts of power from the Southwestern Power Administration. The Interconnection Agreement further provides for various interchange transactions between SWEPCO and Cajun.

SWEPCO requests an effective date of January 1, 1988, and therefore requests waiver of the Commission's notice requirements. Copies of the filing were served upon Cajun and the Louisiana Public Service Commission.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

e. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-788 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-178-000 et al.]

AES Riverside, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 11, 1988.

Take notice that the following filings have been made with the Commission.

1. AES Riverside, Inc.

[Docket No. QF88-178-000]

On December 22, 1987, AES Riverside, Inc. (Applicant) of 1925 North Lynn Street, Suite 2000, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Woonsocket, Rhode Island. The facility will consist of coal-fired fluidized bed combustion boilers and an extraction/condensing steam turbine generator. Extraction steam from the steam turbine will be used in the production of carbon dioxide. The maximum net electric power production capacity of the facility will be 180 MW. Construction of the facility is expected to begin on or about July 1989.

2. Hoechst Celanese Corporation

[Docket No. QF88-176-000]

On December 28, 1987, Hoechst Celanese Corporation (Applicant), of P.O. Box 428, Bishop, Texas 78343 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located on U.S. Highway 77 South in Bishop, Texas. The facility will consist of a combustion turbine generator and a heat recovery steam generator. The thermal energy recovered from the facility will be used for process heating. The average electric power production capacity of the facility will be 35 MW. The primary energy source will be natural gas. The installation of the facility will commence in January, 1988.

3. Multitrade Group, Inc.—Pittsylvania County, Virginia

[Docket No. QF88-165-000]

On December 18, 1987, Multitrade Group, Inc. (Applicant) of Post Office Box 717, Ridgeway, Virginia 24148 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Town of Hurt, in Pittsylvania County, Virginia. The facility will consist of three stoker boilers, a condensing steam turbine generator, and related auxiliary equipment. The primary energy source of the facility will be biomass in the form of wood waste. The net electric power production capacity of the facility will be 76 megawatts.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-790 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-158-000]

Petrolia Power Co., Raymond Graf No. 1 Well, Clay County, Texas; Application for Commission Certification of Qualifying Status of a Small Power Production Facility Utilizing "Waste" Natural Gas

January 11, 1988.

On December 11, 1987, Petrolia Power Company (Applicant) of 5511 Parkcrest Drive, Suite 107, Austin, Texas 78731 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately five miles southeast of Petrolia, in Clay County, Texas. The facility will consist of one to several spark ignition engine-generator units. Applicant states that the primary energy source of the facility will be "waste" natural gas. The electric power production capacity of the facility will be up to 10 megawatts.

Supplemental "Waste" Natural Gas Information

The "waste" natural gas that will be utilized as the primary energy source of the facility will be produced from the Raymond Graf No. 1 well drilled into the Lower Cisco (Sand) Formation in the Petrolia field. The well is located in Clay County, Texas in Block 64 of the Parker County School Land Survey. The gas at the well head has a heat content of 681 Btu/SCF (dry basis, 14.65 psia, 60° F) and is composed of carbon dioxide—0.06%, nitrogen—39.06%, methane—56.57%, ethane—1.83%, propane—1.12%, iso-butane—0.28%, n-butane—0.58%, iso-pentane—0.17%, n-pentane—0.15%, and hexanes plus—0.18%. The well is capable of producing 1500 Mcf/day of natural gas. Applicant proposes to dehydrate the gas stream and also to separate 0.028 gallons/Mcf of natural gas liquids through expansion cooling from the gas stream before utilization in the facility. Any person interested in purchasing the raw or processed gas is encouraged to file a response with the Commission expressing such desire.

Any person desiring to be heard of objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-791 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-000]

Arkla Energy Resources a Division of Arkla, Inc.; Restatement of Base Tariff Rates

January 11, 1988.

Take notice that on December 31, 1988 Arkla Energy Resources ("AER"), a division of Arkla Inc. filed new tariff sheets, along with supporting statements and schedules in accordance with § 154.38(d)(vi)(a) of the Commission's regulations under the Natural Gas Act for the purpose of restating AER's base tariff rates. The new tariff sheets, listed in Appendix A hereto, have a proposed effective date of February 1, 1988.

AER states that the cost and revenue study accompanying its tariff sheets,

which is based on AER's cost and revenue experience for the twelve months ended September 30, 1987, demonstrates that AER's base tariff rates are insufficient to recover AER's jurisdictional cost of service and to earn AER's previously-allowed rate of return. Nonetheless, AER states that it does not propose in this docket any increase in rates.

Any person desiring to be heard or to protest AER's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214 (1987). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of AER's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

First Revised Volume No. 1

Forty-Sixth Revised Sheet No. 4
Pro-Forma Sheet No. 7–A

Original Volume No. 1–A

Fourth Revised Sheet Nos. 5 and 6

Original Volume No. 3

Forty-Fifth Revised Sheet No. 185

[FR Doc. 88–792 Filed 1–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP86–116–017]

Panhandle Eastern Pipe Line Co.; Compliance Filing

January 11, 1988.

Take notice that on December 23, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets as listed on the attached Appendix No. 1 pursuant to Ordering Paragraph (B) of the Commission's November 17, 1987 Order in the subject dockets. The proposed effective date of these revised tariff sheets is July 1, 1986, July 1, 1987, July 6, 1987 and October 1, 1987.

Panhandle states that on July 6, 1987 and August 10, 1987 it filed in Docket No. CP86–232–011 revised tariff sheets to be effective July 6, 1987 in accordance with the Commission's Opinion No. 275 and Order of June 4, 1987 and Ordering Paragraph (B) of the Commission's Order of August 5, 1987. Accordingly, Panhandle also submits herewith revised tariff sheets listed in Appendix No. 1 to be effective July 6, 1987 to reflect these Commission changes to Rate Schedule PT.

Further, Panhandle states that on August 28, 1987, it filed in Docket No. RP87–95–000 revised tariff sheets to be effective October 1, 1987 to reflect an Annual Charge Adjustment (ACA) provision in its FERC Gas Tariff pursuant to Order No. 472. Therefore, Panhandle also submits herewith revised tariff sheets listed in Appendix No. 1 to be effective October 1, 1987 to reflect the ACA provision in Rate Schedule PT as approved by the Commission's Orders of September 30, 1987 and November 16, 1987.

Additionaly, Panhandle states that Ordering Paragraph (F) of the Commission's Order in the above-referenced dockets dated November 17, 1987 required it to conform section 7(c) certificate rates to the rates approved in the subject docket. The remaining section 7(c) certificate rates that were not accepted herein and subject to Ordering Paragraph (F) have been revised in each individual certificate proceeding. Therefore, Panhandle states that it is in conformance with Ordering Paragraph (F).

Panhandle further states that it respectively requests waiver of any provisions or regulations, in order that this compliance filing and the accompanying tariff sheets may be accepted.

Copies of this Notice are being served on all intervenors, jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix No. 1—Panhandle Eastern Pipe Line Company

Proposed Tariff Sheets

FERC Gas Tariff, Original Volume No. 1

To Be Effective July 1, 1986

Second Substitute Original Sheet No. 32–Y
First Substitute Original Sheet No. 32–AA
First Substitute Original Sheet No. 32–AB
Original Sheet No. 32–AB.1
First Substitute Original Sheet No. 32–AC
Original Sheet No. 32–AC.1
Original Sheet No. 32–AC.2
First Substitute Original Sheet No. 32–AE
First Substitute Original Sheet No. 32–AF
First Substitute Original Sheet No. 32–AG
First Substitute Original Sheet No. 32–AI
Original Sheet No. 32–AI.1

To Be Effective July 1, 1987

First Substitute First Revised Sheet No. 32–Y

To Be Effective July 6, 1987

First Revised Sheet No. 32–AC.1
First Substitute Original Sheet No. 32–AH.1
Second Substitute First Revised Sheet No. 32–AI

To Be Effective October 1, 1987

First Substitute Alternate Second Revised Sheet No. 32–Y
First Substitute First Revised Sheet No. 32–AA

[FR Doc. 88–793 Filed 1–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP87–73–000]

State of Louisiana, Department of Natural Resources; Preliminary Findings

Issued January 12, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On various dates in 1983 and 1984, the State of Louisiana, Department of Natural Resources (Louisiana), filed with the Federal Energy Regulatory Commission ten notices of well category determinations.[1] The determinations pertained to nine wells that qualified for the Natural Gas Policy Act of 1978 (NGPA) section 102[2] status and one that qualified for NGPA section 108[3] status. These 10 wells are operated by four different producers.

Absent Commission action, the notices would have become final after 45 days pursuant to § 275.202(a) of the Commission's regulations. The Commission advised Louisiana within 45 days of receipt of each notice that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the applications. Despite repeated requests for the necessary additional information, neither Louisiana nor the applicants have provided such information. Consequently, none of the determinations has become final. The Appendix to this order summarizes each determination and its deficiency.

Under section 503(a)(2) of the NGPA, when a jurisdictional state or federal agency makes a determination as to whether natural gas qualifies under one of the pricing categories found in NGPA sections 102, 103, 107, or 108, the jurisdictional agency is required to provide the Commission with notice of the determination. Section 503(c)(3) allows the Commission to prescribe the form and content of filings made with jurisdictional agencies in connection with determinations. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence.

Since its initial conclusion that the notices were incomplete, the Commission has attempted repeatedly to obtain the information required to complete the notices. Finally, in a letter dated February 3, 1987, the Commission advised Louisiana and the applicants that the Commission might reverse the Louisiana determinations if the required information were not received and noted that refunds might be required. No response has been received for the subject cases.

Accordingly, the Commission believes that a preliminary finding should be issued that the notices of determinations submitted by Louisiana are not supported by substantial evidence. Further, our finding here is consistent with a finding in *Delta Gas Corporation*[4] where the data to support a determination was incomplete for a substantial period of time and a final order reversed the determination.

The Commission Orders

(A) Pursuant to § 275.202 of the Commission's regulations and section 503 of the NGPA, the Commission makes a preliminary finding that the above-mentioned ten well category determinations made by the State of Louisiana and described in the Appendix are not supported by substantial evidence in the record on which the determinations were made.

(B) Jurisdictional agencies, interested parties, or any other person may, within 30 days after issuance of this notice, submit written comments and request an informal conference with the Commission's staff

By the Commission.

Lois D. Cashell,

Acting Secretary.

[1] See Appendix.

[2] 15 U.S.C. 3312 (1982).

[3] 15 U.S.C. 3318 (1982).

[4] See 35 FERC ¶61,097 (1986); 36 FERC ¶61,169 (1986).

APPENDIX—INCOMPLETE LOUISIANA NOTICES OF DETERMINATION

Applicant	Well name	NGPA section	FERC No.	LA Docket No.	Initial FERC letter	Deficiency in record
Centennial Exploration, Inc.	Hoss SU42 Kalmbach #1	102	JD83-28231	NGPA 82-3355	4-29-83	Apparent marker wells not explained.
Do	Kalmbach #1D	102	JD83-28232	NGPA 82-3354	4-29-83	Do
Mid Louisiana Gas Company	MLGC Fee Gas #870	108	JD83-42141	NGPA 83-0507	6-04-83	Record shows too much gas production during initial 90-day production period.
Do	MLGC Fee Gas #986	108	JD83-42150	NGPA 83-0518	6-04-83	Do
Do	MLGC Fee Gas #987	108	JD83-42159	NGPA 83-0525	6-04-83	Do
Samedia Petroleum Corporation	Guillot #4	102	JD84-05446	NGPA 82-0395	12-15-83	Apparent marker well not explained.
Do	Guillot #6	102	JD84-05492	NGPA 82-0396	12-15-83	Appears subject well is an old well.
Do	Guillot A-1	102	JD84-10342	NGPA 82-3442	1-19-84	Apparent marker well not explained.
McHenry-Powell Operating Company	Frank Matthews #1 & 1D	108	JD84-12487	NGPA 83-1558	2-02-84	Record shows zero production days during initial 90-day production period.
Samedia Petroleum Corporation	Guillot #1	102	JD84-34188	NGPA 82-0392	4-27-84	Apparent marker wells not explained.
Do	Guillot #2	102	JD84-24199	NGPA 82-0393	4-27-84	Do
Do	Guillot #3	102	JD84-24200	NGPA 82-0394	4-27-84	Do
Turmac Energy Company	St. Landry Securities #1	102	JD84-36169	NGPA 81-2841	7-16-84	Insufficient engineering and geological evidence to support new onshore reservoir finding.

[FR Doc. 88–789 Filed 1–14–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM87–34–054]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued January 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying the request of Tennessee Gas Pipeline Company for rehearing of the Commission's November 20, 1987, letter order, directing Tennessee to complete its response to the Commission's Take-or-Pay Data Request.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8274.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On December 8, 1987, Tennessee Gas Pipeline Co. (Tennessee) requested rehearing of the Commission's November 20, 1987 letter order, directing Tennessee to complete its response to the Commission's Take-or-Pay Data Request. That data request was issued pursuant to Order No. 500[1] in order to obtain information on the nature and extent of interstate pipelines' take-or-pay problems. The deadline for compliance was November 2, 1987.

[1] 52 FR 30334 (Aug. 14, 1987).

Tennessee asserts that it responded to the data request on November 2, 1987 to the best of its ability. However, Tennessee's November 2 response did not comply in all respects with the data request. For example, the data request required pipelines to provide identification of sellers, and their relative working interests, under those contracts which were to be reported on an individual-contract basis. Tennessee had not provided this data nor furnished an adequate explanation of why such information was unavailable or could not be developed. Without this information, the Commission would be unable to analyze fully Tennessee's take-or-pay situation.

On November 23, Tennessee filed a supplemental response which included working interest data or information upon which a reasonable assignment of relative working interest could be developed. Regardless of whether the data in the November 23 filing was sufficient to comply with the data request, it is clear that as of the November 20, 1987 issuance of the letter order directing Tennessee to comply with the data request, Tennessee was not in compliance with the take-or-pay data request. Accordingly, the Commission sees no reason to grant rehearing of the November 20 letter order.

The Commission Orders

Rehearing of the November 20, 1987 letter order directing Tennessee to comply with the Commission's take-or-pay data request is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-787 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3216-3]

Ambient Air Monitoring Reference and Equivalent Methods; Correction

In a notice of "Reference Method Designations" published in the **Federal Register** (Vol. 52, page 45684, December 1, 1987), a component of the high-volume air samplers associated with the designated PM ^{10} reference methods was inadvertently omitted from the list of such components under the method identified as RFPS-1287-063. The component "Electronic mass flow controller" should be added to that list. In the method identified as RFPS-1287-064, the model number of one of the high-volume air samplers associated with the method was identified incorrectly as "SAU-11H". The correct model number is "SAUV-11H". On page 45685, column 2, line 9, "Model inlet" should read "Model 321 inlet".

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-784 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40016; FRL-3216-7]

Conditional Exemptions From Toxic Substances Control Act Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers who submitted exemption applications for testing of the chemical substances named in the final test rules listed below as of the date of this notice. Any applications received after that date will be addressed separately.

Chemicals	CAS No.	CFR citation
Chlorinated benzenes (health effects testing):		
1,2,4 Trichlorobenzene (1,2,4-TCB)	120-82-1	40 CFR 799.1053
Monochlorobenzene (MCB)	108-90-7	40 CFR 799.1051
1,2-Dichlorobenzene (1,2-DCB)	95-50-1	40 CFR 799.1052
1,4-Dichlorobenzene (1,4-DCB)	106-46-7	40 CFR 799.1052
1,2,4,5-Tetrachlorobenzene (1,2,4,5-TCB)	95-94-3	40 CFR 799.1054
Bisphenol A (BPA, 4,4-isopropylidenediphenol)	80-05-7	40 CFR 799.940
2-Ethylhexanoic acid (EHA)	149-57-5	40 CFR 799.1650
9,10-Anthraquinone (anthraquinone)	84-65-1	40 CFR 799.500
Fluoroalkenes:		
Vinyl fluoride (VF)	75-02-5	40 CFR 799.1700
Vinylidene fluoride (VDF)	75-38-7	40 CFR 799.1700
Hexafluoropropene (HFP)	116-15-4	40 CFR 799.1700
Tetrafluoroethene (TFE)	116-14-3	40 CFR 799.1700
Tetrabromobisphenol A (TBBPA)	79-94-7	40 CFR 799.4000
2-Ethylhexanol (EH)	104-76-7	40 CFR 799.1645

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2603.

Dated: January 4, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-785 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-33165]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 4, 1988 Through January 8, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880000, Draft, FHW, MD, US 50/Salisbury Bypass Construction, US 50 east of Rockawalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD, Due: February 29, 1988, Contact: Edward Terry (301) 962-4010.

EIS No. 880001, FSuppl, FHW, RI, RI-138 Improvement, Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, Funding, Newport County, RI, Due: February 15, 1988, Contact: Michael Moan (401) 277-2694.

EIS No. 880002, DSuppl, FHW, SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC, Due: February 29, 1988, Contact: William Rice (803) 765-5411.

EIS No. 880003, Final, AFS, OH, Wayne National Forest, Land and Resource Management Plan, Implementation, Athens, Gallia, Hocking, Jackson, Lawrence, Monroe, Perry, Scioto, Vinton and Washington Counties, OH, Due: February 15, 1988, Contact: Terry Hoffman (812) 275-5987.

EIS No. 880004, Draft, COE, WA, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, Clallam, and Snohomish Counties, WA, Due: February 29, 1988, Contact: Frank J. Urabeck (206) 764-3708.

EIS No. 880005, FSuppl, COE, CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Mile 0 to 194, Updated Information, Solano, Sacramento, Sutter, Colusa, Glenn, Yolo and Butte Counties, CA, Due: February 15, 1988, Contact: George Qualley (916) 445-8964.

EIS No. 880006, DSuppl, FHW, OR, North Roseburg Interchange/I-5 Construction Project, Skewed Diamond Alternative, Funding, Douglas County, OR, Due: March 1, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 880007, Draft, AFS, OR, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Due: April 15, 1988, Contact: Robert Devlin (503) 672-6601.

Amended Notices

EIS No. 870440, Final, BLM, San Juan Resource Area, Resource Management Plan, Implementation, San Juan County, UT, Due: February 1, 1988, Contact: Steve Howard (801) 524-3127, Published FR 12-18-87—Review period extended.

Dated: January 12, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-775 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3316-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 28, 1987 through December 31, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (F202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-FHW-E40711-NC, Rating LO, US 220 Construction, Steed to Ulah Connection, Funding, Randolph and Montgomery Counties, NC, SUMMARY: EPA finds this document adequately addresses air quality. While there are some streams to be crossed, wetland impacts will be minimal if no stream channels are relocated. The major project impact will be the relocation of 25 homes.

ERP No. DS-NAS-E12002-00, Rating LO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Spacecraft Modifications, Implementations, SUMMARY: EPA concludes that no significant long-term, adverse environmental impacts will occur based on the current data base.

Final EISs

ERP No. F-BIA-K08015-CA, Colmac 45mw Biomass-Fueled Power Plant, Construction and Operation, Lease Approval, Cabazon Indian Reservation, Riverside County, CA, SUMMARY: EPA requests that gound water quality and wastewater be periodically monitored to ensure that project wastewater does not leach selenium or toxics into local aquifers.

ERP No. F-BLM-J61050-MT, Missouri Brooks WSA's Recommendations, Wilderness Designation or Nondesignation, Dog Creek South, Stafford, Ervin Ridge, Woodhawk, Antelope Creek, Cow Creek, Bridge Coulee, Musselshell Breaks, Billy Creek, Seven Blackfoot, Burnt Lodge and Terry Badlands WSA's, Fergus, Blaine, Phillips, Valley, Garfield and Prairie Counties, MT, SUMMARY: EPA has no objections to the recommendations in this document.

ERP No. FS-COE-A36034-CA, Corate Madera Creek Flood Control Project, Unit No. 4, Updated Modifications, Implementation, Town of Ross, Marin County, CA, SUMMARY: EPA had no comments on this document.

ERP No. F-FHW-E0891-FL, Northwest Hillsborough Expressway Construction, I-275 to FL-597/Dale Mabry Highway, Funding and 404 Permit, Hillsborough County, FL, SUMMARY: EPA's comments regarding the Hydrocarbon Burden Analysis was adequately responded to in this document. However, the response to intersectional analysis is not adequate. EPA cannot make a determination as to air quality impacts with regard to carbon monoxide until this information is made available. This document also adequately addressed potential impact to wetlands.

ERP No. F-FHW-F40287-MI, I/96 BL/Cedar Street Improvement, Cloverland Drive to Mt. Hope Road, Reconstruction and Right-Way Acquisition, Funding, City of Lansing, Ingham County, MI, SUMMARY: EPA has no objections to the project as proposed in this document.

ERP No. F-SFW-F84003-00, Upper Mississippi River National Wildlife and Fish Refuge Master Plan, Implementation, NM, WI, IA, and IL, SUMMARY: EPA has no objections to

the preferred alternative. EPA agrees with the recommendations that the U.S. Fish and Wildlife Service would provide future NEPA documentation once the detailed designs for the necessary component projects are finalized.

Dated: January 12, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-776 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200082.

Title: Commercial Port of Saipan Terminal Agreement.

Parties:

Commercial Port of Saipan,
Commonwealth Ports of Authority
Saipan Stevedore Company

Synopsis: The proposed agreement provides for the lease of Charlie Dock at the Commercial Port of Saipan to Saipan Stevedore Company to conduct a terminal and stevedoring business. The agreement's term is to expire July 31, 2000.

By Order of the Federal Maritime Commission.

Dated: January 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-794 Filed 1-14-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 11, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

For Further Information Contact

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. Report title: Quarterly and Annual Reports of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders.

Agency form number: FR 2090a, 2090q.

OMB Docket Number: 7100-0205.

Frequency: Annually and quarterly.

Reporters: Commercial banks, S&Ls, MSBs, FSBs and U.S. agencies and branches of foreign banks.

Annual reporting hours: 2355.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a) and 3105(b)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide data used in the computation of the repurchase agreement (RP) component of the monetary aggregate. The revised selection criteria for the annual and quarterly panels reduce the number of respondents in each case with only a small reduction in RP coverage.

Board of Governors of the Federal Reserve System, January 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-721 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

January 11, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Date: Comments must be received within fifteen working days of the date of publication in the Federal Register. Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Weekly and Monthly Money Market Fund Asset Reports.

Agency form number: FR 2051 a, b, c, and d.

OMB Docket number: 7100-0012.

Frequency: Weekly and Monthly.

Reporters: Money Market Mutual Funds.

Annual reporting hours: 2643.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 353 et. seq.] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide information on the assets of money market mutual funds which is used by the Federal Reserve System in the construction of the monetary aggregates.

2. *Report title:* Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB Docket number: 7100-0150.

Frequency: Monthly if needed.

Reporters: Households and individuals.

Annual reporting hours: 156.

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a, 263, 1828(c), 1842, 1843, 4008, and 15 U.S.C. 1693b(a)]. No isues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

The survey provides the Federal Reserve with considerable flexibility in obtaining household-based information specifically tailored to the Federal Reserve's policy and regulatory and operational responsibilities.

Board of Governors of the Federal Reserve System, January 11, 1988.

[FR Doc. 88-722 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

Bryn Mawr Bank Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 5, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. **Bryn Mawr Bank Corporation,** Bryn Mawr, Pennsylvania; to engage *de novo* through its subsidiary, Havens & Company, Inc., Radnor, Pennsylvania, in providing (i) advice concerning marketing of loans or other extensions of credit and (ii) assistance to any person in selling and purchasing such assets. This application has been submitted pursuant to §§ 225.25(b)(1), (b)(4), and (b)(5) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **U.S. Bancorp,** Portland, Oregon; to engage *de novo* through its subsidiary, Qualivest Capital Management, Inc., Portland, Oregon, in providing consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-723 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

FBC Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 224.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 5, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FBC Holding Company, Inc.,* Crestview, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Crestview, Crestview, Florida.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Texas 75222:

1. *First American Bankcorp, Inc.,* New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Texas American Bank/Levelland, Levelland, Texas.

Board of Governors of the Federal Reserve System, January 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-724 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817 (j) (7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Judy Long, Thomas Lipford, and Kerrie Simon*, trustees for the First Citizens National Bank Employee Stock Ownership Plan and Trust, Dyersburg, Tennessee, to acquire an additional 11.47 percent of the voting shares of First Citizens Bancshares, Inc., Dyersburg, Tennessee, and thereby indirectly acquire First Citizens National Bank of Dyersburg, Dyersburg, Tennessee.

Board of Governors of the Federal Reserve System, January 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-725 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 11, 1987.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Head Start Salary Survey—NEW—To determine comparability of salaries among Head Start teacher salaries and public school teachers salaries. Respondents: 1,905; Frequency of Response: One-time; Estimated Annual Burden: 1,119 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-0509 for copies of package)

1. PHS Acquisition Regulations—Part 380—Special Program Requirements Affecting PHS Acquisitions and, Part 352-Solicitation Provisions and Contract Clauses—0990-0128—These reporting and recordkeeping requirements in the Public Health Service Acquisition Regulations cover special programs such as drugs and medical supplies; laboratory animals; Indian Self Determination; reusable cylinders; and safety and health. The requirements are necessary to assure the proper monitoring of these special requirements. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,282; Frequency of Response: Occasionally; Estimated Annual Burden: 7,148 hours.

2. Preferred Provider Organization Study—NEW—This survey will be completed by physicians participating in select Preferred Provider Organizations (PPO) and will gather information on the physicians' experience with the PPOs. The result will be incorporated into the HHS study of PPOs. Respondents: Businesses or other for-profit. Number of Respondents: 1,575; Frequency of Response: Single-time; Estimated Annual Burden: 210 hours.

3. Evaluation of Demonstration of Innovative Approaches to Reduce Long Term AFDC Dependency Among Teenage Parents; Task 13: Survey of Child Care Supply and Demand—NEW—This study will collect data from child care centers, family day care providers and day care users in three evaluation sites. The data will be used to analyze child care supply and demand for the sites. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 16,000; Frequency of Response: Single-time; Estimated Annual Burden: 1,549 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Food and Drug Administration

1. Tamper Resistent Packaging Requirements for Certain OTC Drug and Cosmetic Products—091-0149—This regulation requires certain over-the counter human drug and cosmetic products to be appropriately labeled, alerting consumers to the tamper-resistent packaging. Respondents: Businesses or other for-profit. Number of Respondents: 500; Frequency of Response: Occasionally; Estimated Annual Burden: 2,000 hours.

2. New Animal Drug Application—0910-0032—Applicants proposing to market animal drugs must detail the scientific and technical information required for the physical manufacture of the drug product, and scientific information relative to the safety and effectiveness of the drug use. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 220; Frequency of Response: Occasionally; Estimated Annual Burden: 419,883 hours

3. Investigational New Drug Application—21 CFR Part 312—0910-0014—Provides data needed by FDA medical officers in determining whether and how a proposed new drug may be tested for safety and effectiveness. This revision adds the information collection requirements of the "Treatment Use of an Investigational New Drug" which affects the availability of unapproved drugs for use in the treatment of life threatening diseases for which there is no known effective therapy. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4,300; Frequency of Response: Occasionally; Estimated Annual Burden: 627,752 hours.

4. Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content—0910-0198—Approximately 25-60 million Americans have sodium related disorders and are trying to reduce sodium consumption. Food manufacturers will provide nutrition labeling for persons to select appropriate foods to achieve desired intakes of sodium. Respondents: Businesses or other for profit, Small businesses or organizations. Number of Respondents: 3,500; Frequency of Response: Occasionally; Estimated Annual Burden: 19,712 hours.

Centers for Disease Control

1. AIDS Prevention and Surveillance Project Reports—NEW—Information and data gathered by recipients of AIDS Cooperative Agreements will be reported to CDC as narrative or summary statistical reports. Projects will report on activities such as: AIDS Surveillance, assessment of AIDS-related knowledge, attitudes, and behavior, AIDS public information and education, and counseling and HIV testing, and special activities to reach minorities at risk. Respondents: State or local governments. Number of Respondents: 64; Frequency of Response: Quarterly; Estimated Annual Burden: 768 hours.

2. NIOSH Information Dissemination strategy—0920-0031—A short questionnaire is sent annually to new additions to the NIOSH mailing list in order to update the list and to select the particular areas of interest of mailing list patrons. This information collection also accomplishes the revisions in the mailing list mandated by the Joint Committee on Printing. Respondents: Individuals or householders. Number of Respondents: 3,000; Frequency of Response: Annual; Estimated Annual Burden: 200 hours.

3. Third National Health and Nutrition Examination Survey (NHANES III) Pilot Tests—0937-0178—NHANES III will measure and monitor the health and nutrition status of the U.S. as a six-year survey involving 60,000 participants ages two months and older. Pilot testing is necessary to evaluate and refine questionnaire design; sampling, training and examination procedures; equipment; automation; and outreach efforts. Respondent: Individuals or households. Number of Respondents: 1,750; Frequency of Response: 1; Estimated Annual Burden: 5,696 hours.

4. HIV Testing Laboratory Survey—NEW—Laboratories participating in the CDC HIV testing performance evaluation program will be asked to respond to quarterly surveys in order to access the quality of the HIV testing process. Laboratories will describe current HIV testing processes. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 960; Frequency of Response: 2.5; Estimated Annual Burden: 3,600 hours.

Office of the Assistant Secretary for Health

1. 1987 National Medical Expenditure Survey (NMES) (Round 4 of Household Survey of American Indians and Alaska Natives, Phase III of Institutional Population Component)—0937-0179—NMES will survey the civilian noninstitutionalized population and population in nursing homes and facilities for the mentally retarded, providing national estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 63,290; Frequency of Response: Ocasionally; Estimated Annual Burden: 54,015 hours.

National Institutes of Health

1. Factors Associated with Premature Births: Missouri Followback Survey—NEW—More accurate information is need to better understand why some women deliver very low birth weight infants or suffer fetal deaths. This survey will collect population-based data which can be used to examine this major health problem in order to design future intervention strategies to reduce infant mortality. Respondents: Individuals or households, State or local governments. Number of Respondents: 6,500; Frequency of Response: Single-time; Estimated Annual Burden: 4,544 hours.

2. Expedited Review for competition for Funds to Participate in IV International AIDS Conference—NEW—the information collected will be used by NIH staff to increase participation of young investigators at the IV International AIDS Conference, to be held in Stockholm, Sweden in June 1988. The information is necessary to establish the need for subsidized financial support; to verify submission of a research abstract to the Conference Committee; and to document the proper state of professional development of applicants. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 150; Frequency of Response: Single-time; Estimated Annual Burden: 41 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, or one of the following numbers:

PHS: 202-245-2100
OS: 202-245-0509
HDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503 Attn: (name of OMB Desk Officer).

Dated: January 11, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-755 filed 1-14-88; 8:45 am]

BILLING CODE 4160-04-M

Food and Drug Administration

Advisory Committees Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice: amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a public advisory committees' meetings notice of the Ophthalmic Devices Panel on January 21 and 22, 1988, and the Vaccines and Related Biological Products Advisory Committee on January 25 and 26, 1988. The amendment reflects an addition to the agenda on January 22, 1988, and changes in agenda and meeting times on January 25, 1988. The agendas for January 21, 1988, and January 26, 1988, remain unchanged. Notice of the January 21 and 22, 1988, and January 25 and 26, 1988, meetings was published in the **Federal Register** of December 22, 1987 (52 FR 48461).

SUPPLEMENTARY INFORMATION: In FR Doc. 87-29230, appearing at page 48461 in the **Federal Register** of December 22, 1987, the following corrections are made under the headings, "Ophthalmic Devices Panel" and "Vaccines and Related Biological Products Advisory Committee":

1. On page 48461, second column, under the heading, "Ophthalmic Devices Panel" at the end of the *Open committee discussion* paragraph, two sentences are added to the agenda scheduled for January 22, 1988, to read as follows:

Open committee discussion:

• • • The committee will also discuss the clarification of scientific and administrative issues surrounding use of premarket approval for salt tablets indicated for rinsing, heat disinfection,

and storage of soft (hydrophilic) contact lenses. An evaluation of the labeling changes introduced by FDA with regard to the approved salt tablet and enzyme tablet applications will also be discussed.

2. On page 48462, first column, lines 1–7 of the *Type of meeting and contact person* paragraph, the agenda on January 25, 1988, is revised to read as follows:

Type of meeting and contact person. Closed committee deliberations, January 25, 8:30 a.m. to 12:30 p.m.; open public hearing 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 5:30 p.m.; * * *.

3. On page 48462, first column, lines 1–5 of the *Open committee discussion* paragraph, the meeting times in the open committee discussion scheduled for January 25, 1988, are revised to read as follows:

Open committee discussion. On January 25, 1988, from 2:30 p.m. to 5:30 p.m., the committee will discuss influenza vaccine formulation for the 1988–89 season.* * *

4. On page 48462, first column, lines 1–8 of the *Closed committee deliberations* paragraph, the meeting times in the closed committee deliberations scheduled for January 25, 1988, are revised to read as follows:

Closed committee deliberations. On January 25, 1988, from 8:30 a.m. to 12:30 p.m.,* * * the committee will review trade secret or confidential commercial information relevant to pending license applications and investigational new drugs.

Dated: January 12, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–856 Filed 1–13–88; 10:59 am]

BILLING CODE 4160-01-M

National Institutes of Health

Fogarty International Center Advisory Board; Meeting

Notice is hereby given of a change in the meeting of the Fogarty International Center (FIC) Advisory Board, John E. Fogarty International Center for Advanced Study in the Health Sciences, January 26–27, 1988, Stone House (Building 16), National Institutes of Health, which was published in the **Federal Register** on December 31, 1987 (52 FR 49518).

This was to be a 2-day meeting of the Board, convening at 8:30 a.m., on January 26 and 27, but has been changed to 1 day, 8:30 a.m., January 27.

The meeting will be open to the public from 8:30 a.m. to 1 p.m.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., the Board meeting will be closed to the public on January 27 from 1:30 to 3 p.m. to discuss FIC program initiatives. Public discussion of this information is likely to disclose information prematurely and could significantly frustrate implementation of the proposed initiatives.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will also be closed to the public on January 27, from 3 p.m. to adjournment for the review, discussion, and evaluation of individual research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

A revised agenda of the Board meeting may be obtained from Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491).

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–737 Filed 1–14–88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–08–4212–14; W–94373]

Wyoming; Realty Action; Direct Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—sale of public lands in Lincoln County, Wyoming (W–94373).

SUMMARY: The following public lands have been examined and found suitable for Direct Sale under Section 203 of the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. 1713 (1982):

Sixth Principal Meridian, Wyoming

T. 21 N., R. 114 W.,

Tract 46

The land described contains 14.38 acres.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: The Bureau proposes to sell the land to the Town of Opal for a wastewater treatment facility. The lands are currently leased to the Town for that purpose. The proposed direct sale to the Town of Opal would be made at fair market value.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan, and would serve important public objectives which cannot be achieved prudently or feasible elsewhere. The lands contain no other public values. The planning document and environment assessment/land report covering the proposed sale will be available for review at the address above.

Conveyance of the above public lands will be subject to:

1. The following floodplain covenant: Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977 (42 FR 26951) and section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1982), this patent is subject to a permanent restriction which constitutes a covenant running with the land and lying within the Housing and Urban Development (HUD) 100 year floodplain. The floodplain is identified in the HUD National Floodplain Insurance Program Community Panel Map 560032–1125–B, effective February 15, 1980. The floodplain may not be used for residential building; public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures.

2. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. Reservation of all minerals to the United States.

4. Oil and gas leases BLM serial numbers W–82729 and W–104231.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the land sale to the Area Manager, Kemmerer Resource Area, P.O. Box 632, Kemmerer, Wyoming 83101. Any adverse comments to the land sale will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Ron Wenker,

Area Manager.

December 21, 1987.

[FR Doc. 88–1 Filed 1–14–88; 8:45 am]

BILLING CODE 4310-22-M

[WY–042–07–4212–14; W–89369]

Wyoming; Realty Action; Lease of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—noncompetitive commercial lease of public land in Uinta County, Wyoming (W–89369).

SUMMARY: Notice is given that the following described parcel of public land has been examined and found suitable for leasing under provisions of section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732). The parcel includes 5 acres of public land in:

Sixth Principal Meridian, Wyoming

T. 16. N., R. 116 W.

Section 32: S½SE¼SE¼SE¼

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: The lease is intended to authorize the use of a sewage evaporation pond by Burns Brothers, Inc. at its Bingo Fuel Stop near Fort Bridger, Wyoming. The 10 year renewable lease will legalize an activity that has been occurring for several years. The parcel would be offered to Burns Brothers, Inc. for a direct, noncompetitive lease at no less than fair market rental. The lease would be subject to all valid existing rights.

For a period of forty-five (45) days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the noncompetitive commercial lease to the Area Manager, Kemmerer Resource Area, P.O. Box 632, Kemmerer, Wyoming 83101. Any adverse comments to the noncompetitive commercial lease will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Ron Wenker,

Area Manager.

December 21, 1987.

[FR Doc. 88–2 Filed 1–14–88; 8:45 am]

BILLING CODE 4310-22-M

[NM–030–8–4410–08]

Availability of Draft Socorro Resource Area Resource Management Plan/Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: Bureau of Land Management (BLM) announces the availability of the Draft Socorro RMP/EIS for public review and comment. This document analyzes land-use planning options for approximately 1,520,610 acres of public land and 2,235,440 acres of Federal mineral estate in west-central New Mexico. The BLM also recommends designation of three new Areas of Critical Environmental Concern (ACEC) and the expansion of an existing one.

DATE: Comments on the Draft RMP/EIS must be submitted or postmarked no later than April 22, 1988. All comments must be sent to: Bureau of Land Management, RMP Team Leader, 198 Neel Avenue, NW, Socorro, NM 87801. There will be public hearings on the adequacy of the draft impact analysis at the following locations:

Quemado, NM—March 23, 1988; 7 p.m.; Community Center

Socorro, NM—March 24, 1988; 7 p.m.; 198 Neel Avenue, NW

Oral testimony will be limited to 10 minutes per person.

A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Socorro planning process. In addition, review copies may be examined at:

BLM State Office, Joseph M. Montoya Federal Bldg., Santa Fe, NM

BLM Las Cruces District, 1800 Marquess, Las Cruces, NM

BLM Socorro Resource Area, 198 Neel Avenue NW., Socorro, NM

Socorro Public Library, 401 Park SW., Socorro, NM

BLM DSC Library, Denver Service Center, Building 50, Denver, CO

State of New Mexico Library, 325 Don Gaspar, Santa Fe, NM

University of New Mexico, School of Law Library, 1117 Stanford NE., Albuquerque, NM

Thomas Branigan Memorial Library, 200 E. Picacho, Las Cruces, NM.

SUPPLEMENTARY INFORMATION: Four alternatives for managing the public lands in the Socorro Resource Area are proposed in the Draft RMP/EIS. Each alternative discusses the following issues:

1. Land Ownership Adjustments
2. Vegetative Uses
3. Off-Road Vehicle Use
4. Access
5. Special Management Areas
6. Wild Horse Management
7. Coal Leasing Suitability/Assessment

In addition, two management concerns were addressed by alternatives: fluid leasing and right-of-way exclusion and avoidance areas.

Alternative A, the Current Management Alternative, discusses a level of management similar to the current situation. This alternative corresponds to the No Action Alternative required by NEPA.

Alternative B, the Balanced (or Preferred) Alternative, provides for a combination of resource uses that would protect important environmental values and sensitive resources while at the same time allow development of certain resources which provide commercial goods and services.

Alternative C, the Resource Conservation Alternative, emphasizes maintaining or improving important values.

Alternative D, the Resource Production Alternative, maximizes the production of resources and economic development from the public lands.

Areas of Critical Environmental Concern: The potential ACECs which are evaluated in the Draft RMP/EIS are described below. Following the description of the values for which the area was nominated are the major use restrictions (alphabetical characters) which apply to the ACEC. The alphabetical characters are defined at the end of the ACEC discussion.

Potential ACECs Proposed for Designation in the Preferred Alternative of the Drat RMP/EIS

1. Ladron Mountain (62,460 acres)—Program emphasis is on wildlife values. Major use restrictions include: A, B, C, D, F, G, J, K, L, O, and Q.

2. Sawtooth (120 acres)—Program emphasis is on sensitive plants. Major actions include: D, H, I, N, and Q.

3. Tinajas (3,520 acres)—Currently 1,280 acres are designated as an ACEC; this area is being proposed for expansion. Program emphasis is on cultural values. Major actions include: D, E, G, L, N, and Q.

4. San Pedro (1,200 acres)—Program emphasis is on sensitive plants. Major actions include: D, G, L, and Q.

Potential ACECs Evaluated But Not Proposed for Designation in the Draft RMP/EIS

1. Pelona Mountain (78,320 acres)—Program emphasis was for wildlife values. Major actions include: A, E, H, K, R, and P.

2. Aqua Fri (10,770 acres)—Program emphasis was for wildlife values. Major actions include: E, H, K, M, N, O, and Q.

3. Cerro Pomo (8,840 acres)—Program emphasis was for recreation values. Major actions include: E, H, K, M, N, P, and Q.

4. Soaptree (1,200 acres)—Program emphasis was for sensitive plants. Major actions inclue: E, H, M, Q, and S.

5. Horse Mountain (7,720 acres)—Program emphasis was for wildlife values. Major actions include: A, E, H, K, M, N, and R.

6. Continental Divide National Scenic Trail (7,680 acres)—Program emphasis was on recreation values. Major actions include: D, H, J, K, M, O, and Q.

7. Walnut Canyon (1,730 acres)—Program emphasis was for recreation values. Major actions include: E, H, K, M, N, P, and Q.

8. Rio Saledo (6,400 acres)—Program emphasis was for cultural values. Major actions include: E, H, K, M, O, and Q.

9. Town of Riley (600 acres)—Program emphasis was for cultural values. Major actions include: E, H, K, M, N, O, and Q.

10. San Lorenzo Canyon (4,800 acres)—Program emphasis was for recreation values. Major actions include: E, H, P, and R.

11. Iron Mine Ridge (800 acres)—Program emphasis was for sensitive plants. Major actions include: E, H, K, M, and Q.

12. Taylor Canyon (320 acres)—Program emphasis was for sensitive plants. Major actions include: E, H, M, and Q.

13. Harvey Plot (3 acres)—Program emphasis was for rangeland values. Major actions include: E, H, N, and Q.

Symbols for Major Use Restrictions

A. Close to domestic sheep and goat grazing.
B. Close allotment No. 1152 to grazing.
C. Reintroduce Desert Bighorn Sheep.
D. Limit motor vehicle use to existing roads and trails.
E. Close to motor vehicle use.
F. Close certain vehicle trails.
G. Restrict authorization for rights-of-way and leases.
H. Exclude authorization for rights-of-way and leases.
I. Designate as a fire suppression area.
J. Limit fire suppression.
K. Close to woodcutting.
L. Restrict mineral material disposals.
M. Exclude mineral material disposals.
N. Withdraw from locatable mineral entry.
O. Restrict geophysical operations.
P. Exclude geophysical operations.
Q. Fluid Leasing Stipulations.
R. Close to fluid leasing.
S. Exclude vegetative material sales.

FOR FURTHER INFORMATION CONTACT: For additional information or to obtain copies of the Draft RMP/EIS, contact Joel Farrell, RMP Team Leader, Socorro Resource Area, 198 Neel Avenue, NW, Socorro, NM 87801. Telephone: (505) 835-0412.

Larry L. Woodard,
State Director.

Dated: January 7, 1988.

[FR Doc. 88-650 Filed 1-14-88; 8:23 am]
BILLING CODE 4310-FB-M

[CO-950-4322-02]

Canon City Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that the Canon City District Grazing Advisory Board meeting will be held at 10 a.m. Friday, February 26, 1988, at the office of the Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado.

Matters to be discussed at this meeting include but are not limited to:

1. Requests for expenditure of range betterment funds.
2. Prioritization of range improvement projects for Fiscal Year 1989.
3. Arkansas River Recreation Area Management Plan.

This meeting will be open to the public. However, facilities and space to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. Any member of the public may file with the Board a written statement concerning matters to be discussed. Further information concerning the meeting may be obtained from Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (303) 275-0631. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

Donnie R. Sparks,
District Manager.

[FR Doc. 88-734 Filed 1-14-88; 8:45 am]
BILLING CODE 4310-JB-M

[ID-030-08-4322-15]

Idaho Falls District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Tuesday, February 23, 1988. Notice of this meeting is in accordance with Pub. L. 92-463. The meeting will begin at 9:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments on the agenda items will be accepted from 9:30 to 10:00 a.m.

The agenda items are the Election of Officers, District Highlights, noxious weed program, the Pocatello RMP and Blackfoot River stock driveway update and funding for range projects.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public review during regular business hours, (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

DATE: February 23, 1988.

ADDRESS: Written comments should be submitted to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Public Affairs Specialist, Telephone (208) 529-1020.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 88-735 Filed 1-14-88; 8:45 am]
BILLING CODE 4310-GG-M

[MT-930-08-4212-13; M-74197]

Conveyance and Order Providing for Opening of Public Land in Carter County; Montana.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6082.

1. Notice is hereby given that pursuant to Section 206 of FLPMA, the following described surface estate was conveyed to Charles L. Oleson and Ella V. Oleson:

Principal Meridian, Montana

T. 5 S., R. 62 E.,
Sec. 32, SW¼SW¼.
T. 6 S., R. 62 E.,
Sec. 1, SW¼NE¼;
Sec. 2, lot 4;
Sec. 4, lot 1;
Sec. 10, E½NE¼, SW¼NE¼.
Aggregating 280.40 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Carter County, Montana:

Principal Meridian, Montana

T. 5 S., R. 61 E.,
Sec. 33, SE¼NE¼, E½SE¼;
Sec. 34, SW¼NW¼, NW¼SW¼.
T. 6 S., R. 61 E.,
Sec. 1, lots 1 and 2.
Aggregating 280.46 acres.

3. The values of federal public land and the nonfederal land in the exchange were appraised at $9,800 each.

4. At 9 a.m. on March 9, 1988, the land described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 9, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The lands described in paragraph 1 were segregated from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange by the Notice of Realty Action published in the Federal Register on August 21, 1987 (52 FR 31672). The segregation terminated on the affected lands on issuance of the patent on December 21, 1987.

James Binando,
Acting Deputy State Director, Division of Lands and Renewable Resources.

January 8, 1988.

[FR Doc. 88-736 Filed 1-14-88; 8:45 am]
BILLING CODE 4310-DN-M

Realty Action; Exchange of Public and Private Lands in Butte County, Lake County, Mendocino County, Siskiyou County, Sonoma County and Tehama County, CA

SUMMARY. This document corrects the legal descriptions for Tracks 5 and 9 contained in the Notice of Realty Action dated December 17, 1987 and published on page 48882 in the Federal Register of Monday, December 28, 1987 (52 FR 48882).

FOR FURTHER INFORMATION CONTACT: Bruce Dawson, Acting Clear Lake Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482; Phone (707) 462-3873.

Corrections for Tracts 5 and 9 should read as follows:

Tract 5 T. 24 N., R. 2 E.,
Sec. 32, NE¼NE¼;
Tract 9 T. 42 N., R. 5 W.,
Sec. 28, SW¼NE¼.

Date: January 8, 1988.

Edwin G. Katias,
Acting District Manager.

Note: Please note that an additional correction to this document is published elsewhere in the Corrections Section of this issue of the Federal Register.

[FR Doc. 88-628 Filed 1-14-88; 8:45 am]
BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of Environmental Assessment for the Furbearer Management Plan, Kenai National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has prepared, for public review, a draft environmental assessment of the Furbearer Management Plan for the Kenai National Wildlife Refuge, Alaska. This action has been taken pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969.

DATES: Remarks on this environmental assessment must be submitted on or before February 26, 1988, to receive consideration in determining the action to be taken.

ADDRESS: Remarks should be addressed to: Office of the Kenai National Wildlife Refuge, Attn: Daniel Doshier, P.O. Box 2139, Soldotna, AK 99669-2139.

FOR FURTHER INFORMATION CONTACT: Daniel Doshier, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, AK 99669-2139; telephone (907) 262-7021.

SUPPLEMENTARY INFORMATION: In August 1987, the Service prepared a draft Furbearer Management Plan for the Kenai National Wildlife Refuge under the management constraints and direction provided by the Kenai Refuge Comprehensive Conservation Plan and Service policy. This plan is intended to provide specific guidance for the management of furbearers and their uses, including trapping. Because of the importance of furbearers as a wildlife resource and the local and national interest in their management and use, the Service determined under the provisions of the National Environmental Policy Act that an environmental assessment needed to be prepared.

It should be noted that the Service has substantially modified its preferred alternative (Alternative B) for managing furbearers on the Kenai Refuge from proposals in the draft Furbearer Management Plan. The Service took this action in response to the public comments received on the draft plan and recommendations from the Kenai Refuge furbearer management charrette, held on December 2-4, 1987, in Soldotna.

The Service is accepting comments, suggestions and recommendations from the public on this draft environmental assessment for 45 days. The comment period will end on February 26, 1988. A decision document on the action taken by the Service, a summary of the comments on the draft environment assessment, and a description of how the assessment was modified, if necessary, to address the public comments will be sent to all those individuals and groups that commented on the environmental assessment or expressed an interest.

Based on its selection of a preferred alternative, the Service will be forwarding recommendations to the state Board of Game to take action at its March 1988 meeting. Under its Memorandum of Understanding with the Alaska Department of Fish & Game, the Service cooperatively manages the fish and wildlife resources of the Kenai Refuge. The desired approach of the

BEST COPY AVAILABLE

Service is for the Board of Game to implement any proposed closures or changes in harvest regulations on the Kenai Refuge.

Date: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-756 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit Issued for the Months of October, November, December 1987

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329, telephone (202/343-4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October 1987		
Calver, David James	720885	10/07/87
November 1987		
National Park Service	719521	11/06/87
Grimm, James R.	721784	11/06/87
Cardarelli, Nathan F.	717523	11/06/87
National Zoological Park	723055	11/10/87
Zoo Atlanta	716097	11/13/87
San Diego Zoological Society	721598	11/16/87
San Diego Zoological Society	721880	11/16/87
Thomas, William P.	721879	11/16/87
San Diego Zoological Society	722143	11/19/87
Sachse, William S.	721285	11/20/87
Cincinnati Zoo	721480	11/23/87
Lowry Park Zoological Gardens	721795	11/23/87
Duke University Primate Center	721555	11/25/87
American Type Culture Collection	718938	11/27/87
American Type Culture Collection	722152	11/27/87
Morgan, Richard W.	722302	11/30/87
Cincinnati Zoo	722067	11/30/87
San Diego Zoological Society	722365	11/30/87
December 1987		
Smithsonian Institute	721953	12/02/87
Honolulu Zoo	719813	12/03/87
Conant, David S.	721915	12/03/87
Cincinnati Zoo	722430	12/03/87
San Diego Zoological Society	722364	12/08/87
Foster, James W.	721342	12/28/87

Date: January 11, 1988.

R.K. Robinson,

Chief, Permit Branch, Office of Management Authority.

[FR Doc. 88-815 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

[PRT-720915 et al.]

Receipt of Applications for Permits; J. Randell Hales et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-720915

Applicant: J. Randell Hales, Stone Mountain, GA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-724318

Applicant: Thelma June Fedonick, Norfolk, NY

The applicant requests a permit to purchase three pairs of captive-hatched Hawaiian (-nene) geese (*Nesochen (-Branta) sandvicensis*) from Mr. Walter Sturgeon of Durham, New Hampshire, for captive propagation purposes.

PRT-723926

Applicant: Robert M. Biedenharn, Long Beach, CA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Phil van der Merwe, Cape Province, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-723091

Applicant: Bruce McCaw, Bellvue, WA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd on the Tsolwana Game Farm, Queenstown, South Africa, for the purpose of enhancement of the survival of the species.

PRT-724290

Applicant: Montrose Nursery, Hillsborough, NC

The applicant requests a permit to sell in interstate commerce nursery cultivated plants of Tennessee coneflower (*Echinacea tennessiensis*) in order to enhance the survival of the species in the wild.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: January 11, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-816 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Jamaica Bay Riding Academy, Inc.; Intention to Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 USC 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Jamaica Bay Riding Academy, Inc., authorizing it to continue to provide riding academy facilities and services for the public at Gateway National Recreation Area, New York, for a period of ten (10) years from January 1, 1989. The Fact Sheet which describes this opportunity will be released to the public in the near future, and sixty days will be allowed from the date of release for responses to be received.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact The Superintendent, Gateway National Recreation Area, Floyd Bennett Field, Brooklyn NY 11234, for information as to the requirements of the proposed contract.

Date: January 8, 1988.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 88-727 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporated hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and the address of its principal office is: Vyquest, Inc., a corporation incorporated under the laws of the State of New Jersey, 1033 Clifton Avenue, P.O. Box 1727, Clifton, NJ 07015-1727.

2. The wholly-owned subsidiaries which will participate in the operations are all incorporated in the State of Indiana and are as follows:

(i) Beach Craft Motor Homes Corporation.
(ii) Beach Craft Commercial Vehicles Corporation.
(iii) Bravo RV's, Inc.
(iv) Goshen Coach Corporation.
(v) Honey RV's, Inc.
(vi) Parkwood Homes, Inc.
(vii) Touraco, Inc.
(viii) Van Express, Inc.
(ix) Yellowstone, Inc.

Noreta R. McGee,

Secretary.

[FR Doc. 88-710 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31191]

Missouri Pacific Railroad Co.; Merger Exemption; the Weatherford, Mineral Wells and Northwestern Railway Co.

The Missouri Pacific Railroad Company, Inc. (MP) and its wholly-owned subsidiary, The Weatherford, Mineral Wells and Northwestern Railway Company (Weatherford), have filed a notice of exemption to merge Weatherford into MP on December 31, 1987.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to provide recordkeeping efficiencies through corporate simplification.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert B. Batchelder, General Commerce Counsel, 1416 Dodge Street, Omaha, NE 68179.

Decided: December 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 88-412 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31192]

Union Pacific Railroad Co.; Merger Exemption; Oregon Short Line Railroad Co., Oregon-Washington Railroad & Navigation Co., Des Chutes Railroad Co., Los Angeles & Salt Lake Railroad Co. and Spokane International Railroad Co.

Union Pacific Railroad Company (UP), Oregon Short Line Railroad Company (OSL), Oregon-Washington Railroad & Navigation Company (OWRN), Des Chutes Railroad Company (DCRR), Los Angeles & Salt Lake Railroad Company (LASL) and Spokane International Railroad Company (SIRR) have filed a notice of exemption for the following described mergers. SIRR and OSL are wholly-owned subsidiaries of UP. OWRN and DCRR are wholly-owned subsidiaries of OSL, while LASL is a wholly-owned subsidiary of both OSL and UP.

The transactions proposed in this exemption involve five sequential phases which are described below.

I. On December 29, 1987, OWRN was to be merged into OSL.

II. On December 29, 1987, DCRR was to be merged into OSL.

III. On December 30, 1987, following the mergers of OWRN and DCRR into OSL, OSL was to merge into UP.

IV. On December 31, 1987, subsequent to the merger of OSL, LASL was to be merged into UP.

V. On December 31, 1987, SIRR was to be merged into UP. UP shall continue as the surviving corporation after all the mergers.

These mergers constitute one aspect in an overall process of consolidating the UP rail companies into a single, efficient operating company. Consummation of the mergers will eliminate the inefficiencies inherent in maintaining six carrier entities, particularly with regard to record keeping, and through coordination and consolidation improve the efficiency of the operations and services now being provided by the carriers as separate entities. No adverse changes in the level of transportation services or significant operational changes are contemplated to result from the mergers.

The mergers involve a series of transactions that are all within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). These transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employee affected by the transactions will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions. Pleadings must be filed with the Commission and served on: Robert B. Bathelder, General Commerce Counsel, 1416 Dodge Street, Omaha, NE 68179.

Decided: January 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-413 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 233X)]

CSX Transportation, Inc.; Abandonment Exemption; Warren, Simpson, and Logan Counties, KY

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.66-mile line of railroad between milepost LF-118.34 near Memphis Jct., and milepost LF-128.0 near South Union, located in Warren, Simpson and Logan Counties, KY.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition of use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective February 14, 1988 (unless stayed pending reconsideration). Petitions to stay must be filed by January 25, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by February 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by January 20, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-864 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to National Cooperative Research Act of 1984; Composite Materials Characterization, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by Composite Materials Characterization, Inc. ("CMC, Inc.") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to CMC, Inc. and (2) the nature and objectives of CMC, Inc. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to CMC, Inc. and its general areas of planned activity are given below.

The parties to CMC, Inc. are General Electric Company; Grumman Aerospace Corporation; Lockheed Corporation; LTV Aerospace and Defense Company; Rohr Industries, Incorporated; and United Technologies Corporation, Sikorsky Aircraft Division. The objective of CMC, Inc. is to undertake research and development on testing of composite materials and on a standardized system for grading and characterizing composite materials.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-708 Filed 1-14-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to National Cooperative Research Act of 1984; West Argo, Inc.; Iodophors Joint Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by West Argo, Incorporated simultaneously with Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Iodophors Joint Venture (the "Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are A & L Labs; Chemical Specialties Manfacturers Association; Chemland, Inc.; Diversey Wyandotte; Ecolab, Inc.; H. B. Fuller, Monarch Division; GAF Chemicals; Huntington Labs; West Argo, Inc.; and West Chemical Products. The objective of the Joint Venture is to sponsor and conduct toxicological research on the class of antimicrobials known as Isodophors and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Antimicrobial Data Call-In Notice issued by the EPA on March 4, 1987.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-707 Filed 1-14-88; 8:45 am]

BILLING CODE 4410-01-M

United States v. Westinghouse Electric Corp. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation.*

The complaint of the United States in this case alleges that the acquisition by Westinghouse Electric Corporation ("Westinghouse") of Challenger Electrical Equipment Corporation ("Challenger"), including its residential circuit breaker production facilities located in Puerto Rico, pursuant to their acquisition agreement, may substantially lessen competition in the production and sale in the United States of residential circuit breakers for use in residential dwellings and small commerical buildings in violation of section 7 of the Clayton Act (15 U.S.C. 18).

A circuit breaker is an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload. Residential circuit breakers are circuit breakers, ranging in rating from 15 amperes to about 100 amperes, that are produced principally for sale to electrical contractors for use in load centers installed in newly-constructed housing. They also are sold to electricians and home owners for use as replacements in and additions to existing load centers.

Challenger and Westinghouse are the third and fifth largest suppliers of residential circuit breakers in the United States. Challenger produces residential circuit breakers at three plants located in Puerto Rico and at a facility in Albermarle, North Carolina. Westinghouse produces residential circuit breakers through its Distribution and Control Business Unit, at plants in Puerto Rico and the Dominican Republic. In 1986, Challenger accounted for about 13 percent of residential circuit breaker sales in the United States and Westinghouse accounted for about 10 percent.

Westinghouse would not have acquired Challenger's Albemarle facility, which would have been retained by certain shareholders of Challenger, but which they planned to sell. However, pursuant to the acquisition agreement, Westinghouse would have received from these shareholders a covenant not to compete that would have prevented them from using the Albemarle facility to compete for sales of residential circuit breakers for use in load centers installed in newly-constructed housing. Thus, this covenant would have precluded these shareholders from selling a load center compatible with the residential circuit breakers produced at the Albemarle facility. The Albemarle facility, therefore, would have been relegated to competing only in the replacement market.

The proposed Final Judgment would require Westinghouse to relinquish the covenant not to compete regarding the Albemarle facility and also would require the Albemarle facility to be sold through a court-appointed trustee to a purchaser that will operate the Albemarle facility as a viable, ongoing business, engaged in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly-constructed housing. The trustee would be given six months to accomplish the sale.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Room 10-437, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001 (202/724-7966).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87-3528]

Filed: December 30, 1987.

Antitrust: Judge Oberdorfer.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

(2) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party of other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 30, 1987.

For Plaintiff United States of America:
Michael Boudin,
Acting Assistant Attorney General.
Judy Whalley,
John W. Clark,
P. Terry Lubeck,
Mark C. Schechter,
Attorneys, U.S. Department of Justice.
Willie L. Hudgins, Jr.,
Lisa M. Phelan,
Attorneys, U.S. Department of Justice Antitrust Division Washington, DC 20001 (202) 724-7890.

For Defendant Westinghouse Electric Corporation:
Joe Sims,
Jones, Day, Reavis & Pogue, Metropolitan Square, 1450 G Street NW., Washington, DC.

For Defendant Challenger Electrical Equipment Corporation:
Sidney S. Rosdeitcher,
Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York.

For Defendant American Properties Corporation:
Sidney S. Rosdeitcher,
Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York.

Stipulation approved for filing.
Done this ___ day of December, 1987.
United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87-3528]

Filed: December 30, 1987.

Antitrust: Judge Oberdorfer

Final Judgment

Whereas, plaintiff, United States of America, has filed its Complaint herein on December 30, 1987, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II.

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Challenger" means defendant Challenger Electrical Equipment Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "American" means defendant American Properties Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

E. "Circuit breaker" means an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload.

F. "Residential circuit breaker" means a circuit breaker, ranging in rating from 15 amperes to about 100 amperes, that is used in a load center in a residential dwelling or a small commercial building.

III.

A. The provisions of the Final Judgment shall apply to Westinghouse, Challenger, and American, each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Westinghouse shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

A. Westinghouse having committed itself to acquire Challenger pursuant to a Stock Purchase Agreement dated October 1, 1987, (1) Westinghouse is hereby ordered and directed prior to that acquisition to release the shareholders of American from the covenant not to compete contained in Section 5.10 of that agreement, as the covenant relates to the residential circuit breaker business of Challenger located at Albemarle, North Carolina, (2) Challenger is hereby ordered and directed prior to that acquisition to transfer to American its circuit breaker business located at Albemarle, North Carolina, and all of its other assets (excluding receivables), wherever located, related solely to its residential circuit breaker business at that location, and (3) American is hereby ordered and directed thereafter to sell through a trustee all of its stock or assets. Only the trustee, and not American, shall have the right to sell American, and neither it nor the other defendants shall take any action to interfere with or impede the trustee's accomplishment of the required sale.

B. Sale of American shall be accomplished in such a way as to satisfy plaintiff that American's assets can and will be operated by the purchaser as a viable, ongoing business, engaged in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Sale shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing promptly and effectively in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing and (2) the purchaser has the managerial, operational, and financial capability to compete promptly and effectively in the manufacture and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing.

C. Wheeler Financial Services of Malvern, Pennsylvania is hereby appointed trustee to sell American pursuant to this Final Judgment. The trustee shall have the full power and authority to accomplish the sale at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. American shall use all reasonable efforts to assist the trustee in accomplishing the required sale. American shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by American must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified American of the proposed sale.

D. The trustee shall serve at the cost and expense of Westinghouse, pursuant to the fee agreement between them dated December 29, 1987, and shall account for all monies derived from the sale of American and all costs and expenses incurred. After the accounting is completed to the parties' and the trustee's satisfaction, or upon Court approval if the parties and the trustee cannot agree, all monies derived from the sale shall be paid to American or its shareholders and the trust shall be terminated.

E. The trustee shall have full and complete access to the personnel, books, records, and facilities of American, and it shall develop such financial or other information relevant to the sale as the trustee may request. At the trustee's option and subject to customary confidentiality assurances, prospective purchasers shall have full and complete access to such personnel, facilities, and information.

F. The trustee shall file monthly reports with plaintiff, Westinghouse, American, and the Court setting forth the trustee's efforts to accomplish the sale ordered by this Final Judgment. If the trustee has not accomplished such sale within six (6) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to plaintiff, Westinghouse, and American, but only

plaintiff and American shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

Until the sale of American is completed pursuant to this Final Judgment, American shall: (A) Take no steps with respect to the operation of its residential circuit breaker business, except in the ordinary course of business, that negatively would impact the operation of the Albemarle residential circuit breaker business as a profitable business; (B) refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel of American's residential circuit breaker business, except in the ordinary course of business, or unless reasonably comparable alternative benefits are provided, without prior approval of plaintiff; (C) maintain normal repair maintenance schedules for American's residential circuit breaker business and at least preserve such schedules as they currently exist; (D) preserve American as a viable producer of residential circuit breakers; (E) refrain from offering or selling any assets of American's residential circuit breaker business, except in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of American's residential circuit breaker business' manufacturing or sales operations, except in the ordinary course of business, from that existing at the time of the consummation of the acquisition by Westinghouse of Challenger, without the prior approval of the plaintiff; and (F) refrain from taking any action that would jeopardize its sale as a viable producer of residential circuit breakers.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed sale pursuant to Section IV of this Final Judgment, the trustee shall notify plaintiff and American of the proposed sale. The notice shall set forth the details of the proposed transaction and, for each person not previously identified that offered or expressed an interest or desire to acquire any ownership interest in American, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed sale, plaintiff may request from American and the proposed purchaser additional information concerning the proposed sale. American shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Plaintiff may also require the proposed purchaser to commit to provide periodic reports concerning its efforts promptly and effectively to compete in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, and has committed to provide the periodic reports required of it, the sale shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from American and the proposed purchaser, whichever is later, unless American shall agree to extend the time, plaintiff shall notify in writing American and the trustee if it objects to the proposed sale. If plaintiff fails to object within the period specified, or if plaintiff notifies American and the trustee in writing that it does not object, the sale may be consummated, subject only to American's right to object to the sale under the proviso in Section IV.C. Upon objection by plaintiff, the proposed sale shall not be consummated. Upon objection by American under the proviso in Section IV.C., the proposed sale shall not be consummated unless approved by the Court.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX

This Final Judgment will expire on the third anniversary of the completion of the sale required herein.

X

Entry of this Final Judgment is in the public interest.

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87–3528]

Filed: December 30, 1987.
Antitrust: Judge Oberdorfer.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Westinghouse Electric Corporation, Challenger Electrical Equipment Corporation, and American Properties Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil proceeding began on December 30, 1987 when the United States filed a complaint alleging that the proposed acquisition by Westinghouse Electric Corporation (hereinafter "Westinghouse") of Challenger Electrical Equipment Corporation (hereinafter "Challenger"), including certain of its residential circuit breaker production facilities, would violate section 7 of the Clayton Act (15 U.S.C. 18). The complaint alleges that the effect of the acquisition by Westinghouse of the Challenger facilities pursuant to their acquisition agreement may be substantially to lessen competition in the production and sale in the United States of residential circuit breakers. A circuit breaker acts as an overcurrent protection device by interrupting the flow of electric current in the event of a power overload. Residential circuit breakers, which carry ratings from 15 to about 100 amperes, are designed to be clipped into load centers, which are metal boxes that hold the circuit breakers, and are used in residential dwellings and small commercial buildings. The complaint requests that Challenger's residential circuit breaker plant located at Albemarle, North Carolina be divested to a purchaser able promptly to become a viable independent competitor in the production and sale in the United States of residential circuit breakers.

The United States, Westinghouse, Challenger, and American Properties Corporation (hereinafter "American") have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the judgment, and to punish violations of the judgment.

II. Events Giving Rise to the Alleged Violation

Westinghouse and Challenger entered into an agreement on October 1, 1987, pursuant to which Westinghouse would acquire Challenger, including all of its plants that produce residential circuit breakers, except for a plant located in Albemarle, North Carolina at which Challenger produces its Stab-Lok line of residential circuit breakers. Under the agreement, Westinghouse also would preclude the Challenger shareholders who would own the Albemarle plant, which they plan to sell after the acquisition, from producing a compatible line of load centers for the Stab-Lok breakers. The purchase price to be paid by Westinghouse is $195 million.

Westinghouse and Challenger both produce a broad line of electrical equipment for residential and commercial construction markets. Westinghouse reported total 1986 sales of about $11 billion, and Challenger reported total 1986 sales of about $260 million. Both firms currently manufacture residential circuit breakers. Westinghouse produces residential circuit breakers at facilities located in Aguas Buenas and San Lorenzo, Puerto Rico and in the Dominican Republic. Westinghouse's 1986 sales of residential circuit breakers totaled about $35 million. Challenger produces residential circuit breakers at facilities located in Caquas, Comerio, and Canovana in Puerto Rico, as well as at the Albemarle facility. Its 1986 residential circuit breaker sales totaled about $56 million.

The complaint alleges that the production and sale of residential circuit breakers is a relevant product market for antitrust purposes. Circuit breakers are installed in virtually all new residential construction. Fuses, the only functional substitutes for circuit breakers, are considerably less convenient and less durable than circuit breakers. Industrial circuit breakers, which are designed to handle high voltage and amperage ratings, cannot be substituted for residential circuit breakers. Electrical contractors do not view fuses or industrial circuit breakers as substitutes for residential circuit breakers, and a small but non-transitory increase in the price of residential circuit breakers would not cause purchasers to switch from residential circuit breakers.

Residential circuit breakers are sold individually for use in a compatible load center. Some residential circuit breakers are discrete in design and will fit only in a particular load center, while others are interchangeable and will fit in load centers produced by several manufacturers.

Residential circuit breaker manufacturers distribute most of their products through electrical distributors to electrical contractors. The contractors install the circuit breakers in load centers in newly constructed homes and small buildings. In addition, a small number of residential circuit breakers are sold as replacements in or additions to already-installed load centers.

Entry into the production and sale of residential circuit breakers requires at least two years. Among the reasons that entry is time consuming are the need for a new entrant to design a full line of residential circuit breakers of all amperages customarily used in residential dwellings, the need to obtain Underwriters Laboratories Incorporated ("UL") approval for the new residential circuit breakers, and the need to offer a circuit breaker that is compatible with a load center suitable for use in newly constructed houses.

UL approval is an important factor in the sale of residential circuit breakers in the United States. UL tests residential circuit breakers for endurance and interrupting capability. UL requires that the tested circuit breakers be samples made on actual production lines rather than prototypes individually constructed.

The complaint alleges that the production and sale in the United States of residential circuit breakers is highly concentrated. In 1986, Challenger, the third largest producer of residential circuit breakers in the United States, accounted for about 13 percent of the market, and Westinghouse, the fifth largest producer, accounted for about 10 percent. Of the remaining eight firms that compete in the United States, only five accounted for more than 5 percent of sales in 1986. Imports of residential circuit breakers accounted for only about 3 percent of total United States sales in 1986. By acquiring Challenger's residential circuit breaker plants located in Puerto Rico, Westinghouse would become the second largest producer of residential circuit breakers for sale in the United States with a market share of about 28 percent. By requiring that the shareholders of Challenger, the only firm that had produced a load center compatible with the residential circuit breakers it produces at its Albemarle facility, not produce such a load center, Westinghouse would eliminate that facility as a competitor in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Such an acquisition would increase the Herfindahl-Hirschman Index by about 208 to 1886.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The United States brought this action because the effect of an acquisition by Westinghouse of Challenger's Puerto Rican residential circuit breaker production facilities pursuant to their acquisition agreement may be substantially to lessen competition in violation of section 7 of the Clayton Act in the production and sale of residential circuit breakers in the United States. The risk to competition posed by this acquisition substantially would be eliminated through the sale of Challenger's Albemarle, North Carolina plant to a purchaser that would operate the plant as an active and independent competitor in the residential circuit breaker business.

To this end, Section IV of the proposed Final Judgment would require that Westinghouse release the shareholders of American from the covenant not to compete with the residential circuit breaker plant located at Albemarle, North Carolina, that Challenger transfer the Albemarle, residential circuit breaker plant to American, a corporation owned by those Challenger shareholders, and that American be sold to a purchaser that has the intent and capability to compete promptly and effectively in the production and sale of residential circuit breakers. Until the sale is completed, American must not take any action that would jeopardize its sale as a viable producer of residential circuit breakers and shall preserve itself as a viable producer of such circuit breakers.

Under this section, the Court would appoint a trustee to sell American. Only the trustee would have the right to sell the company. Westinghouse would be required to pay all of the trustee's expenses in selling American.

Section VI of the proposed Final Judgment would provide the United States an opportunity to review any proposed sale before it occurs. Under Section VI, if the United States were to request information from American to assess a proposed sale, the sale could not be consummated until 15 days after American supplied the information. If the United States were to request information from the proposed purchaser, the sale could not be consummated until the United States certified in writing that it was satisfied that the proposed purchaser has provided the additional information. If the United States were to object to a sale of American, the sale could not be completed.

Section IX would provide that the Final Judgment would expire on the third anniversary of the required sale of American.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provision of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Westinghouse, Challenger, and American have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Judiciary Center Building, Room 10–437, Washington, DC 20001.

Under Section VIII of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment would require that Challenger's Stab-Lok residential circuit breaker business be sold through a court appointed trustee to a purchaser that would use the business promptly to become a viable competitor in the newly constructed housing segment of the residential circuit breaker business. Thus, it would assure that Challenger's former Stab-Lok business would remain a viable business separate from Westinghouse and an active competitor in Westinghouse in the United States market for residential circuit breakers.

Compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would resolve the competitive concerns raised by the proposed transaction. The lessening of competition due to the acquisition of these Challenger facilities would be corrected by reestablishing the Stab-Lok business as a viable independent competitor.

The only alternative considered to settling this action pursuant to the proposed Final Judgment was for the United States to file suit and seek a preliminary injunction to enjoin Westinghouse's acquisition of Challenger's Puerto Rican residential circuit breaker plants. The United States rejected this alternative because the sale required under the Final Judgment should establish a viable independent competitor in the United States residential circuit breaker market and prevent the acquisition from having a significant anticompetitive effect in that market. The government believes that in the hands of an appropriate purchaser, the Albemarle facility quickly could account for a substantial share of the domestic residential circuit breaker

market. In 1986, Stab-Lok's residential circuit breaker sales totaled about $21 million, over 5 percent of the United States residential circuit breaker market. The plant has substantial excess capacity and its products utilize a well-known trademark.

Under the circumstances, the government determined that the public interest in preserving competition in the United States residential circuit breaker market would be served best by obtaining an enforceable consent decree requiring the sale of the Albemarle facility and by filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 15(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: December 30, 1987.

Respectfully submitted,

Willie L. Hudgins, Jr.,

Attorney, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Judiciary Center Building, Washington, DC 20001.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation, Defendants*

[Civil No. 87-3528]

Filed: December 30, 1987.
Antitrust: Judge Oberdorfer.

Certificate of Service

I, Willie L. Hudgins, Jr., hereby certify that a copy of the attached plaintiff's Competitive Impact Statement has been served this 30th day of December, 1987, by depositing said document in the United States mail with postage prepaid to:

Sidney S. Rosdeitcher, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY 10019

Joe Sims, Jones, Day, Reavis & Pogue, Metroplitan Square, 1450 G. Street NW., Washington, DC 20005–2008.

Willie L. Hudgins, Jr.,

Attorney, U.S. Department of Justice, Antitrust Division, Rm. 10–437, 555 4th St., NW., Washington, DC 20001, 202/724–7990.

[FR Doc. 88–802 Filed 1–14–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 87–14]

Carmel Ben-Eliezer, M.D., Glenshaw, PA; Hearing

Notice is hereby given that on February 2, 1987, the Drug Enforcement Administration, Department of Justice, issued to Carmel Ben-Eliezer, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB7911046 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Friday, January 15, 1988, in the United States Claims Court, Courtroom No. 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: January 11, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–728 Filed 1–14–88; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 16, 1987, Janssen Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (February 16, 1988).

Gene R. Haislip,

Deputy Assistant Administrotor, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 6, 1988.

[FR Doc. 88–729 Filed 1–14–88; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 10, 1987, M.D. Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than February 16, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

Dated: January 6, 1988.

[FR Doc. 88–730 Filed 1–14–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. FL88–41 dated January 8, 1988.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Texas, TX 87–45 [TX 88– Jan. 2, 1987. 45).

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Delaware, DE88–2 (Jan. 8, 1988). p. 94.
Maryland, MD88–15 (Jan. 8, 1988). p. 454.
New York:
NY88–6 (Jan. 8, 1988) ..... pp. 727–736
NY88–7 (Jan. 8, 1988) ..... pp. 737–754
NY88–8 (Jan. 8, 1988) ..... pp. 755–766
NY88–9 (Jan. 8, 1988) ..... pp. 767–768
NY88–10 (Jan. 8, 1988) ..... pp. 769–780
NY88–11 (Jan. 8, 1988) ..... pp. 781–790
Pennsylvania:
PA88–4 (Jan. 8, 1988) ..... pp. 870–871.
PA88–14 (Jan. 8, 1988) ..... pp. 944–947.
Listing by Decision (index) .. pp. xlix, lvi.

Volume II:

Illinois:
IL88–1 (Jan. 8, 1988) ..... p. 71.
IL88–3 (Jan. 8, 1988) ..... p. 114.
IL88–5 (Jan. 8, 1988) ..... p. 128.
IL88–12 (Jan. 8, 1988) ..... p. 164.
IL88–13 (Jan. 8, 1988) ..... p. 174.
Indiana:
IN88–4 (Jan. 8, 1988) ..... pp. 278–286b.
IN88–6 (Jan. 8, 1988) ..... pp. 302–316b.
Listing by Decision (index) p. lxi.

Volume III

Utah, UT88–1 (Jan. 8, 1988) p. 336.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–566 Filed 1–14–88; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on January 29, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 29, 1988—1:00 p.m. until the conclusion of business: The Subcommittee will discuss the procedures being used by the NRC staff in: (a) Defining the scope of generic issues and unresolved safety issues, and (b) modifying the original scope of these issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advises of any changes in schedule, etc., which may have occurred.

Date: January 12, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–868 Filed 1–14–88; 8:45 am]

BILLING CODE 7590–01–M

Correction to Florida Power Corp. (Crystal River Unit 3); Exemption

On December 31, 1987, the **Federal Register** published a notice of an Exemption which had been granted to the Florida Power Corporation for Crystal River Unit 3. There is a correction to that notice. On Page 49537, first column, the heading should have read: "Florida Power Corporation, et al." instead of "Florida Power and Light Company, et al."

Dated at Bethesda, Maryland, this 11th day of January, 1988.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II.

[FR Doc. 88–618 Filed 1–14–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. DPR–77 and Facility Operating License No. DPR–79, issued to the Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee. The proposed amendments are in response to the licensee's submittal dated January 11, 1988.

The proposed amendments would revise the Technical Specification (TS) surveillance requirement 4.7.7.e.3 (Units 1 and 2) to allow up to 1000 cubic feet per minute intake of fresh air to the control room during operation of the control room emergency ventilation system (CREVS).

Because of the potential for impacting the heatup of Sequoyah Nuclear Plant, Unit 2, the licensee has requested these proposed TS amendments be processed on an emergency basis or as expeditiously as possible. TVA has stated the proposed TS changes are a result of hardware related deficiencies which were previously unidentified. TVA has actively pursued numberous parallel paths in an attempt to meet the existing surveillance requirements. At the point where it was indicated that a TS change was required, the change package was developed with the highest priority.

NRC has reviewed the circumstances resulting in the submittal of the proposed TS changes. It is desirable to promptly act on this change in order to assure operational and procedural continuity of the Sequoyah (SQN) heatup. Accordingly, NRC staff has determined that sufficient justification exists for consideration of these amendments on an exigent basis.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

NRC staff has reviewed the licensee's proposed application and has determined that an increase in control room filtered fresh air intake from 200 cubic feet per minute (CFM) to < 1000 cfm does not affect the probability of any accident previously evaluated. Rather, this change results in a very small increase in the worst case postulated control room operator dose, from 1.1 to 1.5 rem. This increase is insignificant and well below the 10 CFR Part 50 Appendix A, Criterion 19 limit of 5 rem. There appear to be no other affects on the consequences of any accident previous analyzed.

NRC staff has also determined that the proposed TS changes do not create the possibility of a new or different kind of accident from any previously analyzed because the function and operation of the CREVS is unchanged. The percentage of fresh air intake with respect to recirculated air is the only change proposed and, therefore, would not create a new accident.

The proposed TS changes do not involve a significant reduction in a margin of safety. Although there is a very small increase in the calculated worst case postulated dose to the control room operators, the dose still remains less than one-third of the dose limit specified in 10 CFR Part 50 Appendix A, Criterion 19, and there are no systems, equipment, or components adversely affected.

TVA has provided the following analysis:

Operation of SQN in accordance with the proposed amendment will not:

(1) *Involve a significant increase in the probability or consequences of an accident previously evaluated.* CREVS is an engineered safety features (ESF) system designed to recirculate a portion of the control room air through cleanup trains composed of high efficiency particulate attenuation (HEPA) filters and charcoal absorbers. The system also supplies a stream of fresh air to the control room to keep it pressurized relative to the outdoors and the adjacent areas of the plant. This fresh air is processed by the cleanup trains described above. This serves to minimize the inleakage of unfiltered, contaminated air into the control room. Calculations have shown that increasing the fresh air makeup flow up to 1000 cfm will not increase the postulated control room operator doses above 10 CFR 50 Appendix A limits. Increasing the makeup flow also ensures proper pressurization of the control room, minimizing any unfiltered inleakage.

(2) *Create the possibility of a new or different kind of accident from any previously analyzed.* Increasing the makeup flow to the control room has only minor effects on control room operator dose, and ensures adequate control room pressurization. The function and operation of CREVS is otherwise unchanged.

(3) *Involve a significant reduction in a margin of safety.* Calculations have shown that there are small changes in control room operator dose as a result of increasing the filtered makeup flow to the control room. The resultant doses, however, remain well below the limits of 10 CFR 50 Appendix A, Criterion 19. Additionally, the increased makeup flow ensures that the control room is adequately pressurized, minimizing the potential for unfiltered inleakage.

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

The staff has reviewed the licensee's no significant hazards consideration determination as discussed above and agrees with the licensee's conclusion that this action does not involve a significant hazards consideration. Therefore, the Commission proposes to determine that this change does not involve significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final

determination will consider all public and State comments received.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Gary G. Zech, Assistant Director for Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 11, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Acting Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–871 Filed 1–14–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Millipore Coporation

Common Stock, Par Value $1.00 (File No. 7–1048) This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 1, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–738 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Wells Fargo Company

Common Stock, Par Value $5.00 (File No. 7–1047) This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 1, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–739 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–7099]

Reliance Financial Services Corp.; Issuer Delisting

In the matter of an application to withdraw from listing and registration; Reliance Financial Services Corporation (9¼% Sinking Fund Debentures, Due 1992; 9⅞% Sinking Fund Debentures, Due 1997; 11¼% Sinking Fund Debentures, Due 2008; Senior Reset Notes Due November 1, 2000; and Senior Reset Notes Due December 1, 2000). January 11, 1988.

Reliance Financial Services Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The securities are also listed and actively traded on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of these securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 1, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–740 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–8278]

Reliance Group, Inc.; Issuer Delisting

In the matter of an Application to Withdraw from listing and registration; Reliance Group, Incorporated (9⅞% Subordinated Sinking Fund Debentures, Due September 1, 1988; 9⅞% Subordinated Sinking Fund Debentures, Due June 1, 1999). January 11, 1988.

Reliance Group, Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The Company's securities are also listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of the above mentioned securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 1, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–741 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–8305]

Reliance Group Holdings, Inc., Issuer Delisting

In the matter of an application to withdraw from listing and registration; Reliance Group Holdings, Inc. (14% Senior Debentures, Due 1996; 11½% Sinking Fund Debentures, Due December 1, 1997). January 11, 1988.

Reliance Group Holdings, Inc. ("Company") has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The Company's common stock is also listed on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of the above mentioned securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 2, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–742 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–16212; File No. 812–6921]

First Capital Life Insurance Co. et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Capital Life Insurance Company ("First Capital Life"), Pilgrim Variable Annuity Separate Account of First Capital Life Insurance Company ("Pilgrim Separate Account") and Pilgrim Distributors Corporation ("Pilgrim").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit payment to First Capital Life from the assets of the Pilgrim Separate Account of the mortality and expense risk charge under a certain variable annuity contract (the "Contract").

Filing Date: The Application was filed on November 17, 1987.

Hearing or Notification of Hearing: If no hearing is ordered the requested exemption will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 4, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues of contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o First Capital Life Insurance Company, 11011 North Torrey Pines Road, P.O. Box 2700, La Jolla, California 92038.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney (202) 272–2058 or Lewis Reich, Special Counsel (202) 272–2061 (Office of Insurance Products).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. First Capital Life is a stock life insurance company organized under the laws of the State of California. It was authorized to conduct business as a life insurance company on January 16, 1963. From August 1, 1980, until September 1, 1987, First Capital Life conducted business under the name of E.F. Hutton Life Insurance Company. Pilgrim Separate Account is a separate investment account of First Capital Life established to act as a funding entity of variable annuity contracts. The Separate Account was established pursuant to a resolution of the Board of Directors of First Capital Life under California law adopted on July 29, 1981, and is registered with the SEC as a unit investment trust. A registration statement on Form N-4 has been filed with the SEC.

2. The Pilgram Separate Account is divided into subaccounts called "Variable Accounts." Each Variable Account will invest in shares of a designated Series of the Pilgrim Variable Investment Fund (the "Fund") which is a diversified, open-end management investment company. The Fund registered with the SEC as an open-end management investment company and filed a registration statement on Form N-1A. The Fund is a series-type mutual fund that contains six series: The Money Market Series, the Asset Allocation Series, the Rising Dividend Series, the Government Bond Series, the High Yield Bond Series, and the Natural Resources Series. Each of the Series will pursue different investment objectives and policies.

3. A Contract Owner will be permitted to allocate his or her account value to the First Capital Life Real Property Account ("Real Property Account") which will, after an initial starting period of not more than one year, invest at least 80% of its assets in real estate participating mortgage loans, equity ownership of real estate and conventional real estate nonparticipating loans. The balance of the assets will consist of some form of cash equivalent liquid assets. The Real Property Account has filed a registration statement on Form S-1 with the SEC.

4. A Contract Owner also will be permitted to allocate all or a portion of his or her account value to the Fixed Account. Accumulation Values allocated to the Fixed Account are combined with all General Account assets of First Capital Life. First Capital Life currently offers one Fixed Account option under which the guaranteed minimum interest credited to the Fixed Account will be at the effective rate of 4% per year, compounded daily. First Capital Life may declare excess interest to the Fixed Account at least annually at its sole discretion which will be guaranteed for one year.

5. Pilgrim Management Corporation will serve as investment adviser to each Series of the Fund. Pilgrim Management Corporation is a wholly-owned subsidiary of First Capital Holdings Corporation. Pursuant to a distribution agreement between First Capital Life and Pilgrim Distributors Corporation, Pilgrim will act as distributor of the Contracts. Pilgrim will distribute the Contract through representatives who are licensed to sell securities and variable annuities. The offering of the Contract will be continuous.

6. The Contract provides for the accumulation of values on a fixed or a variable basis. Payment of annuity benefits will be on a fixed basis. The variable aspects of the Contract differ significantly from the fixed aspects in that the value under the Contract will vary with the investment performance of the accounts and the Contract Owner and Annuitant under a Contract thereby assume the risk of investment gain or loss during the accumulation period rather than First Capital Life. A Contract Owner makes investment decisions under the Contract by directing the allocation of purchase payments and accumulated value to the Variable Accounts, the Real Property Account and the Fixed Account.

7. The Contract is currently intended to be used in connection with either a retirement plan qualified under sections 401, 403(a), 403(b), 408 or 457 of the Internal Revenue Code (Qualified Plan) or a Nonqualified Plan (individual purchaser).

8. The Contract is an individual flexible purchase payment Contract which provides for an initial purchase payment and for subsequent purchase payments if the Contract Owner so desires. There is, however, no obligation to make additional payments.

9. Prior to the date on which annuity payments are to commence, part of or all of the values under a Contract may be surrendered for cash payment, or alternatively, the values under the Contract may be applied to certain annuity payment options set forth in the Contract.

10. The Contract provides that during the accumulation period a mortality and expense risk charge will be deducted by First Capital Life in an amount equal on an annual basis to 1.25% of the average daily net asset values in each Variable account and in the Real Property Account. Of such charges, approximately 1.00% is for assuming the mortality risk and 0.25% is for assuming the expense risk. The mortality and expense risk charge is accrued daily and paid quarterly to First Capital Life to compensate it for the risk it assumes that the Annuitants under the Contract as a class may live longer than expected (necessitating a greater number of annuity payments) and that its expenses may be higher than the deduction for such expenses. The rate imposed for the mortality and expense risk charges is contractual and may not be changed by First Capital Life.

11. Applicants represent that they have reviewed the level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, presence of charge level or annuity rate guarantees and the markets in which the Contract will be offered, and based upon the foregoing, Applicants further represent that the maximum charges under the Contract are within the range of industry practices for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

12. Applicants do not believe that the sales load imposed under the Contract will necessarily cover the expected costs of distributing the Contract. Any "shortfall" will be made up from the general account assets which include, *inter alia*, amounts derived from risk charges. First Capital Life has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contract will benefit the Pilgrim Separate Account and the Contract Owners. First Capital Life will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

13. Applicants further represent that the Pilgrim Separate Account will only invest in underlying fund(s) which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b-1 under the Act to finance distribution expenses. Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of these charges.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88-610 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16211; File No. 811-1774]

Variable Annuity Life Insurance Company Separate Account One; Application

January 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Variable Annuity Life Insurance Company Separate Account One ("Separate Account One").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will br granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney at law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, DC 20549; Applicant, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a diversified open-end management investment company.

2. Applicant was reorganized under an Agreement and Plan of Reorganization ("Plan") on April 17, 1987. The purpose of the Plan was to merge The Variable Annuity Life Insurance Company Separate Account Two ("Separate Account Two"), a diversified open-end management investment company, and Applicant into a new division of The Variable Annuity Life Insurance Company Separate Account A ("Separate Account A"), a unit investment trust. The new division of Separate Account A then invested exclusively in a new fund of the American General Series Portfilio Company (the "Series Company") called the Quality Growth Fund (the "Fund").

3. The Plan was adopted by unanimous vote of Applicant's Board of Managers and by unanimous vote of the Series Company's Board of Directors, including unanimous vote of the independent directors, and was subsequently approved by a majority vote of Applicants contractowners. Applicant shall have effected its dissolution within one year of the date of the merger, as provided for in Article I, Section 1.01 of the Plan.

4. Applicant represents that it has retained no assets or liabilities under the Plan, nor is Applicant a party to any significant litigation or administrative proceeding, except that Applicant was named as a defendant in *Otto v. VALIC*, 814 F. 2d 1127 (7th Cir. 1986). Separate Account A has inherited Applicants position with respect to any present or future litigation.

5. Applicant further represents that it has no contractholders and is not now engaged in, nor proposes to engage in, any business activities. It has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-611 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16210; File No. 811-1828]

Variable Annuity Life Insurance Company Separate Account Two; Application

January 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Variable Annuity Life Insurance Company Separate Account Two ("Separate Account Two").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or task to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney at law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicant is registered under the 1940 Act as a diversified open-end management investment company.

2. Applicant was reorganized under a Agreement and Plan of Reorganization ("Plan") on April 17, 1987. The purpose

of the Plan was to merge The Variable Annuity Life Insurance Company Separate Account One ("Separate Account One"), a diversified open-end management investment company, and Applicant into a new division of the The Variable Annuity Life Insurance Company Separate Account A ("Separate Account A"), a unit investment trust. The new division of Separate Account A then invested exclusively in a new fund of the American General Series Portfolio Company (the "Series Company") called the Quality Growth Fund (the "Fund"). Applicant achieved its objective under the Plan by transferring all of its assets via Separate Account One into Separate Account A, in exchange for equivalent interests in Separate Account A.

3. The Plan was adopted by unanimous vote of Applicant's Board of Managers and by unanimous vote of the Series Company's Board of Directors, including unanimous vote of the independent directors, and was subsequently approved by a majority vote of Applicant's countractowners. Applicant shall have effected its dissolution within one year of the date of the merger, as provided for in Article I, Section 1.01 of the Plan.

4. Applicant represents that it has retained no assets or liabilities under the Plan, nor is Applicant a party defendant to any significant litigation or administrative proceeding. The survivor Fund shall inherit the position of Applicant with respect to any future litigation. No litigation is expected to have a material impact on the financial position of the Fund.

5. Applicant further represents that it has no contractholders and is not now engaged in, nor proposes to engage in, any business activities. It has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-812 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0150]

Comerica Capital Corp.; Surrender of License

Notice is hereby given that Comerica Capital Corporation, (CCC), 211 West Fort Street, Detroit, Michigan 48275, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). CCC was licensed by the Small Business Administration on June 23, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on October 31, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 12, 1988.

[FR Doc. 88-779 Filed 1-14-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[88-01]

Aviation Proceedings; Agreements Filed During the Week Ending January 8, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45383

Parties: Members of International Air Transport Association.

Date Filed: January 4, 1988.

Subject: Within TC1 Fares.

Proposed Effective Date: February 15, 1988.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-784 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket 45165]

Seattle/Portland-Japan Service Case; Hearing

Served January 12, 1988.

Notice is given that the hearing in this proceeding will commence on February 16, 1988 at 10 a.m. and will run for the necessary consecutive days. Starting time each day will be 10 a.m. (local time) unless changed during the hearing. The site for the economic phase is Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. The location of the civic party phase on February 25 and 26, 1988 is Courtroom 514, Henry M. Jackson Building, 915 Second Avenue, Seattle, Washington.

By letter dated December 31, 1987, American Airlines, Inc. advises that the last quarter of the cost year (year ending September 30, 1987) adopted at the prehearing conference now appears to have an "apples and oranges" problem because of the changed format for expense reports on Form 41 that affects that quarter. "Consequently, it would be very difficult to create unit costs for the year ended September 30, 1987, for purposes of this proceeding." Accordingly, I grant American's limited request that Item III B.1.e. and footnote 8 of the evidence request be modified so that unit costs for financial projections are for the 12 months ended June 30, 1987, rather than September 30, 1987. The April 1, 1987 date in footnote 5 will be unchanged.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88-784 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on January 15, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of minutes of the meeting held on November 16, 1987; (3) Executive Director's Report; (4) Special Committee Activities Report for November-December 1987; (5) Report of the Fiscal and Management Subcommittee; (6) Consideration of proposals to hold a technology review in 1988 and move the annual assembly to May 1989; (7) Approve text for RTCA Federal Charter Proposal and Resolution for Assembly; (8) Consideration of proposals to establish new special committees; (9) Consider action on Department of Defense response to RTCA letter on Global Positioning System Constellation; (10) Other Business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 24, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-750 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR-21; Docket No. IRA-38]

Connecticut Statute and Regulations Governing Transportation of Radioactive Materials; Invitation To Comment on Appeal of IR-21

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The State of Connecticut has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the September 28, 1987 decision of the Director, Office of Hazardous Materials Transportation [IR-21; 52 FR 37072, October 2, 1987], finding Connecticut's statutory and regulatory permitting system for the transportation of certain radioactive materials inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) adopted thereunder. Comments are invited on the merits of the appeal.

DATES: Comments received on or before February 29, 1988 and rebuttal comments received on or before April 14, 1988 will be considered before an administrative ruling is issued by the Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC. Comments and rebuttal comments must be submitted to the Dockets Unit at the above address and include the Docket Number IRA-38. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Lindsey Audin, Technical Director, Citizens Against Nuclear Trucking, 1 Everett Avenue, Ossining, NY 10562, and to Hon. Joseph I. Lieberman, Attorney General, State of Connecticut, 30 Trinity Street, Hartford, CT 06106 ATTN: Assistant Attorney General Cornelius F. Tuohy

Each comment and rebuttal comment submitted to the Dockets Unit must certify that copies were sent to the above-named individuals. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Audin and Lieberman at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of Title 49, CFR, sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or political subdivision requirement and the HMTA or HMR is possible; and (2) the extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain notice, routing, permit, information, documentation and time requirements.

2. The Inconsistency Ruling (IR-21)

On September 28, 1987, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 21 (IR-21), which was published at 52 FR 37072 on October 2, 1987. The Director determined that the Connecticut permitting system for transportation of certain radioactive materials is inconsistent with the HMTA and the HMR, and the ruling therefore preempted Connecticut General Statutes Sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54 and 55. In reaching that decision, the Director made the following findings:

(1) Citizens Against Nuclear Trucking (CANT) has standing to apply for an inconsistency ruling.

OHMT encourages use of its administrative inconsistency ruling process to resolve preemption issues under the HMTA in as expeditious and inexpensive a manner as possible. Thus, OHMT applies a broad interpretation of the "person affected" standard in inconsistency proceedings. In any event, 49 CFR 107.209(b) authorizes the Director, OHMT, to issue inconsistency rulings *sua sponte*.

(2) The Connecticut permitting system constitutes an unauthorized prior restraint on shipments that are presumptively safe based on their compliance with Federal regulations.

State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations), such as Connecticut's permit requirement, are inconsistent with the HMTA and the HMR.

(3) Connecticut's permitting system contains burdensome time of application requirements and time of transport restrictions which are likely to cause delays in radioactive materials transportation.

Connecticut's two-hour advance notice requirement, and its prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tend to ensure delays. In addition, Connecticut's statewide time restrictions on radioactive materials transportation tend to redirect and delay hazardous materials transportation.

3. The Appeal of IR-21

On October 29, 1987, the State of Connecticut filed an appeal of IR-21 with the Research and Special Programs Administration. The State filed a brief in support of its appeal by letter dated December 21, 1987. Connecticut argues that: (1) Its regulatory scheme is not an obstacle to the accomplishment of the HMTA, and (2) the undisputed facts in the case show that the regulations have not interfered with either the intrastate

or interstate transportation of radioactive materials. Connecticut asserts, therefore, that IR-21 is contrary to the facts and law and should be reversed.

4. Public Comment

Comments should be restricted to the issue of whether the challenged Connecticut permitting system is inconsistent with the HMTA or the regulations issued thereunder. Persons intending to comment should examine the complete appeal documents in the RSPA Dockets Branch and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Issued in Washington, DC on January 11, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-745 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 2, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
1479-X	Allied-Signal Inc., Morristown, NJ.	1479
3563-X	U.S. Department of Energy, Washington, DC.	3563
3941-X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	3941
3996-X	Stauffer Chemical Co., Westport, CT.	3996
4052-X	Boeing Aerospace Co., Seattle, WA.	4052
4453-X	Independent Explosives Co., of Pennsylvania, Scranton, PA.	4453
4850-X	Owen Oil Tools, Inc., Fort Worth, TX.	4850
5643-X	Union Carbide Corp., Danbury, CT.	5643
5704-X	Trojan Corp., Salt Lake City, UT.	5704
5891-X	U.S. Department of Energy, Washington, DC.	5891
6309-X	Olin Corp., Stamford, CT	6309
6325-X	Mining Services International Corp., Salt Lake City, UT.	6325
6484-X	Angus Chemical Co., Northbrook, IL.	6484
6517-X	Coyne Cylinder Co., Huntsville, AL.	6517
6530-X	Brown Welding Supply, Inc., Salina, KS.	6530
6530-X	Acme Welding Supply Co., Inc., Bismarck, ND.	6530
6563-X	S.L.O. Health Products, Inc., Los Oso, CA.	6563
6611-X	L'Air Liquide Corp., Le Blanc-Mesnil, France.	6611
6611-X	Air Products and Chemicals, Inc., Allentown, PA.	6611
6637-X	Russell-Stanley Corp., Rancho Cucamonga, CA.	6637
6691-X	Union Carbide Corp., Danbury, CT.	6691
6746-X	Firestone Tire and Rubber Co., Akron, OH.	6746
6765-X	Airco Industrial Gases, Murray Hill, NJ.	6765
6787-X	Russell-Stanley Corp., Rancho Cucamonga, CA.	6787
6921-X	Airco Industrial Gases, Murray Hill, NJ.	6921
6985-X	U.S. Department of Energy, Washington, DC.	6985
7011-X	Russell-Stanley Corp., Rancho Cucamonga, CA.	7011
7052-X	FABRIKA Ni-Cd BATERIJA "TREPCA", Gnjilane, Yugoslavia.	7052
7052-X	Aluminum Co., of America, Pittsburgh, PA.	7052
7052-X	Tadiran Ltd., Industries, Inc., Rehovot, Israel.	7052
7052-X	Tadiran Electronic Industries, Inc., Woodland Hills, CA	7052
7052-X	U.S. Department of Energy, Washington, DC.	7052
7052-X	Rayovac Corp., Madison, WI	7052
7052-X	Syntron, Inc., Houston, TX.	7052
7052-X	Exploration Logging, Inc., Sacramento, CA.	7052
7052-X	Datasonics, Inc., Cataumet, MA.	7052
7052-X	Panasonic Industrial Co., Secaucus, NJ.	7052
7052-X	Matsushita Battery Industrial Co., Osaka, Japan.	7052
7594-X	Bromine Compounds, Limited, Beer Sheva, Israel.	7594
7598-X	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	7598
7654-X	Mallinckrodt, Inc., Paris, KY.	7654
7731-X	Minnesota Valley Engineering, Inc., New Prague, MN.	7731
7737-X	Parker Hannifin Corp., Eastlake, OH.	7737
7770-X	Arbel-Fauvet-Girel, Paris, France.	7770
7803-X	Plastican, Inc., Leominster, MA.	7803
7811-X	EM Science, Cincinnati, OH.	7811
7811-X	J.T. Baker Chemical Co., Phillipsburg, NJ.	7811
7876-X	J.T. Baker Chemical Co., Phillipsburg, NY.	7876

Application No.	Applicant	Renewal of exemption
7928-X	Alaska Marine Highway System, State of Alaska, Juneau, AK.	7928
7954-X	Air Products and Chemicals, Inc., Allentown, PA.	7954
7972-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	7972
7991-X	Union Pacific Railroad Co., Omaha, NE.	7991
8006-X	Strombecker Corp., Chicago, IL.	8006
8074-X	Airco, The BOC Group, Inc., Murray Hill, NJ.	8074
8156-X	Scott Environmental Technology Inc., Plumsteadville, PA.	8156
8156-X	Cryogenic Rare Gas Laboratories, Inc., Hanahan, SC.	8156
8230-X	G. Frederick Smith Chemical Co., Columbus, OH.	8230
8352-X	Degussa Corp., Teterboro, NJ.	8352
8390-X	Olin Hunt Speciality Products, Inc., West Paterson, NJ.	8390
8390-X	Hi Pure Chemicals, Inc., Nazareth, PA.	8390
8390-X	Image Technology, Tempe, AZ.	8390
8390-X	Texas Instruments, Inc., Dallas, TX.	8390
8391-X	EFI Corporation, d/b/a EFIC, San Jose, CA.	8391
8396-X	Catalyst Resources, Inc., Elyria, OH.	8396
8409-X	EM Science, Cincinnati, OH.	8409
8410-X	EM Science, Cincinnati, OH.	8410
8414-X	Arbel-Fauvet-Girel, Paris, France.	8414
8426-X	C.K.C., Inc., Paso Robles, CA.	8426
8445-X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	8445
8445-X	SET Liquid Waste Systems, Inc., Wheeling, IL.	8445
8450-X	LTV Aerospace and Defense Co., Dallas, TX.	8450
8526-X	North Star Transport, Inc., St. Paul, MN.	8526
8627-X	Exxon Chemical Americas, Houston, TX.	8627
8843-X	Owen Oil Tools, Inc., Fort Worth, TX.	8843
8870-X	EM Science, Cincinnati, OH.	8870
8871-X	Chase Bag Co., Greenwich, CT.	8871
8976-X	Henkel Corp., Morristown, NJ.	8976
9118-X	ICI Americas, Inc., Wilmington, DE.	9118
9134-X	I.S.C., Limited, Avonmouth, Bristol, England.	9134
9145-X	Exxon Pipeline Co., Houston, TX.	9145
9146-X	Biefa-Felser GmbH, Postfach, West Germany.	9146
9157-X	Air Products and Chemicals, Inc., Allentown, PA.	9157
9168-X	All-Pak, Inc., Pittsburgh, PA.	9168
9181-X	U.S. Department of Energy, Washington, DC.	9181
9262-X	Jet Research Center, Inc., Arlington, TX.	9262
9281-X	Jet Research Center, Inc., Arlington, TX.	9281
9514-X	Control Data Corp., Minneapolis, MN.	9514
9577-X	Altus Corp., San Jose, CA (see footnote [1]).	9577
9578-X	Hughes Aircraft Co., Miami, FL.	9578
9770-X	AMSPEC Chemical Corp., Gloucester City, NJ (see footnote [2]).	9770

[1] To authorize shipment of batteries containing lithium metal, thionyl chionde and by-products in discharged and depleted states.

[2] To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, DE.

Application No.	Applicant	Parties to exemption
8426-P	Paramount Tank, Inc., Paramount, CA	8426
8451-P	IRECO Inc., Salt Lake City, UT	8451
8451-P	Reynolds Industries Systems, Inc., San Ramon, CA.	8451
8845-P	NL Petroleum Services, Inc., Houston, TX	8845
8845-P	Penwood, Inc., Fort Worth, TX	8845
8845-P	Wedge CRC, Inc., Arlington, TX	8845
8915-P	Liquid Air Corp., Walnut Creek, CA	8915
8971-P	NL Petroleum Services, Inc., Houston, TX.	8971
8978-P	SAFT America, Inc., Cockeysville, MD	8978
9262-P	NL Petroleum Services, Inc., Houston, TX.	9262
9266-P	Compagnie des Containers Reservoirs, Paris, France.	9266
9275-P	Scientific Creations, Atlanta, GA	9275
9507-P	Liquid Air Corp., Walnut Creek, CA	9507
9708-P	Metals Selling Corp., Putnam, CT	9708
9732-P	Wedge CRC, Inc., Arlington, TX	9732
9785-P	Degussa Corp., Teterboro, NJ	9785

Application No.	Applicant	Parties to exemption
3569-P	NL Petroleum Services, Inc., Houston, TX.	3569
5800-P	Air Products and Chemicals, Inc., Allentown, PA.	5800
7052-P	Penwood, Inc., Fort Worth, TX	7052
7616-P	Norfolk Southern Corp. and Subsidiaries, Norfolk, VA.	7616
8035-P	NL Petroleum Services, Inc., Houston, TX.	8035
8196-P	Compagnie des Containers Reservoirs, Paris, France.	8196
8232-P	Compagnie des Containers Reservoirs, Paris, France.	8232

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 6, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

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Grants and Denials of Applications for Exemptions; Pennwalt Corp., et al

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2913-X	DOT-E 2913	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.301(d)(1), 173.301(d)(2), 173.302(a)(1), 173.34(d), 175.3.	To authorize use of non-DOT specification metal cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 4.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3569-X	DOT-E 3569	Ni. McCullough/Ni. Industries, Inc., Houston, TX.	49 CFR 173.249, 172.101 Column 4, 175.3.	To authorize use of non-DOT specification nonrefillable cylinders, for transportation of a liquid oxidizer. (Modes 1, 2, 3, 4)
4354-X	DOT-E 4354	Pennwalt Corp., Buffalo, NY	49 CFR 173.119(m), 173.245, 173.266(d), 173.266(e).	To authorize shipment of chlorobromates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container (Modes 1, 2, 3.)
4453-P	DOT-E 4453	Mining Services International, Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party To exemption 4453 (Modes 1, 3.)
4453-X	DOT-E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	Thermex Energy Corp., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4932-X	DOT-E 4932	Federal Laboratories, Inc., Saltsburg, PA	49 CFR 172.101, 173.305(a), 175.3	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends overpacked in DOT Specification 12B fiberboard box. (Modes 1, 2, 4.)
5800-P	DOT-E 5800	Athena Corp., Oceanside, CA	49 CFR 175.3, Part 173, Subparts D, F, G.	To become a party to exemption 5800 (Modes 1, 2, 4.)
6530-X	DOT-E 6530	Liquid Air Corp., Walnut Creek, CA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Scott Specialty Gases, Plumsteadville, PA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-P	DOT-E 6530	Amerigas, Inc., Elk Grove Village, IL	49 CFR 173.302(c)	To become a party to exemption 6530 (Modes 1, 2.)
6530-X	DOT-E 6530	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders (Modes 1, 2.)
6530-X	DOT-E 6530	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6657-X	DOT-E 6657	Liquid Air Corp., Walnut Creek, CA	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA having an age over 35 years for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, 5.)
6785-X	DOT-E 6785	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.315(a), 178.75(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6785-X	DOT-E 6785	L'Air Liquide Corp., Le Blanc-Mesnil, France.	49 CFR 173.315(a), 178.75(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6800-X	DOT-E 6800	Plast-Drum Corp., Lockport, IL	49 CFR 173.266	To authorize manufacture, marking and sale of non-DOT specification 30- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6848-X	DOT-E 6848	McDonnell Douglas Astronautics Co., Saint Louis, MO.	49 CFR 173.52(a)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a) (Modes 1, 2, 3.)
6861-X	DOT-E 6861	Teledyne McCormick Selph, Hollister, CA	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)
7205-X	DOT-E 7205	U.S. Department of Defense, Falls Church, VA.	49 CFR 49 CFR 148.20-99	To authorize use of a non-DOT specification cargo tank, for transportation of a flammable gas and a nonflammable gas. (Mode 3.)
7235-X	DOT-E 7235	Luxfer USA Limited, Riverside, CA	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
7440-X	DOT-E 7440	Flexton Professional Products, Inc., Jacksonville, FL.	49 CFR 173.1200(a)(6)(ii)(A), 173.1200(a)(6)(ii)(E), 173.306(a)(3)(ii), 173.306(a)(3)(iv).	To authorize transport of a nonflammable gas, as non-DOT specification one-piece, impact-extruds, cylindrical, aluminum container (Modes 1, 2, 3.)
7548-X	DOT-E 7548	Stauffer Chemical Co., Westport, CT	49 CFR 173.245a(a), 173.3a, 174.63(b), 176.348.	To authorize use of a non-DOT specification 316L stainless steel portable tank, for shipment of a certain corrosive material. (Modes 1, 2, 3.)
7584-X	DOT-E 7584	Bezeq Components, Limited, Beer Sheva, Israel.	49 CFR 173.353	To authorize railroad as an additional mode of transportation. (Modes 1, 2, 3.)
7586-X	DOT-E 7586	American Optisorb Co., Wayne, NJ	49 CFR 173.358, 173.359	To authorize transport of certain poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7607-X	DOT-E 7607	Baker/ESA, Inc., Canoga Park, CA	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607-P	DOT-E 7607	AUS Corp., Tucker, GA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Smith & Denison, Inc., Hayward, CA	49 CFR 172.101, 175.3.	To become a party to exemption 7607. (Mode 5.)
7638-X	DOT-E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.314(a), 175.3	To authorize manufacture, marking and sale of DOT Specification 4L cylinders for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4.)
7867-P	DOT-E 7867	Enertel, Inc., Phoenix, AZ	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To become a party to exemption 7867. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Estes Industries, Inc., Penrose, CO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Centuri Engineering Co., Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Flight Systems, Inc., Raytown, MO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7867-X	DOT-E 7867	Flight Systems, Inc., Burns Flat, OK	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Crown Rocket Technology, Mountlake Terrace, WA.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Aero Technology Co., Las Vegas, NV	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Model Rectifier Corp., Edison, NJ	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7867-X	DOT-E 7867	Vulcan Systems, Inc., Colorado Springs, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
8175-X	DOT-E 8175	Norac Company, Inc., Azusa, CA	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benzoyl peroxide, wet, in a plastic lined DOT Specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
8180-X	DOT-E 8180	Dow Corning Corp., Midland, MI	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To authorize use of non-DOT specification steel drums for shipment of a corrosive material and a flammable liquid. (Modes 1, 2.)
8207-X	DOT-E 8207	Reanord, Inc., Commerce City, CO	49 CFR 173.245(a)(17), 175.3, 178.131	To authorize shipment of certain corrosive liquids, n.o.s., in a one-quart tin can, placed in a molded polyethylene liner, overpacked in a modified 2B gauge, unlined DOT Specification 37A 2-gallon drum, also containing a non-hazardous resin mix. (Modes 1, 2, 3, 4.)
8230-X	DOT-E 8230	J. T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.266(b)(6), 173.266(a)(4)	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8264-X	DOT-E 8264	Hercules, Inc., Wilmington, DE	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1, 2.)
8265-X	DOT-E 8265	Hercules, Inc., Wilmington, DE	49 CFR 173.197a, 173.93, 177.839(g)	To authorize shipment of certain solid propellant explosives and smokeless powders for small arms in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms in DOT-21C fiber drums packed in fiberboard boxes. (Modes 1, 2.)
8287-X	DOT-E 8287	Rohm and Haas Co., Philadelphia, PA	49 CFR 173.245(a)(18), 173.245(a)(29), 178.19-4(c), 178.35e-2(b).	To authorize shipment of a corrosive liquid in a DOT Specification 6D/2SL composite container or DOT Specification 34 drum equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polyethylene bottles with vented closures. (Modes 1, 2, 3.)
8301-X	DOT-E 8301	Container Corporation of America, Wilmington, DE.	49 CFR 173.247, 173.295, 173.346, 173.356.	To authorize use of a 90-gallon capacity DOT Specification 34 polyethylene container, for shipment of certain flammable, corrosive and Poison B liquids, and liquid organic peroxides. (Modes 1, 2, 3.)
8348-X	DOT-E 8348	Frell, Inc., Corpus Christi, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-312 except for bottom outlet valve variation, for transportation of flammable or corrosive waste, liquids or semi-solids. (Mode 1.)
8377-X	DOT-E 8377	Teledyne McCormick Selph, Hollister, CA	49 CFR 172.101, 173.113, 175.3	To authorize transport of devices described as detonating fuzes, Class C explosives, in non-DOT specification fiberboard boxes packed in non-DOT specification strong wooden boxes. (Modes 1, 4.)
8390-P	DOT-E 8390	Olin Hunt Specialty Products, Inc., West Paterson, NJ	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8390-P	DOT-E 8390	Hi Pure Chemicals, Inc., Nazareth, PA	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8390-P	DOT-E 8390	Image Technology, Tempe, AZ	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8451-P	DOT-E 8451	Boeing Military Airplane Co., Wichita, KS	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Ford Aerospace and Communications Corp., Newport Beach, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	New England Ordnance, Inc., Guild, NH	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Atlantic Research Corp., Gainesville, VA	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Aerojet Solid Propulsion Co., Sacramento, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453-X	DOT-E 8453	Nelson Brothers, Inc., Parrish, AL	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307 or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacific Powder Co., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacific Motor Transport, Inc., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacos, Inc., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8516-X	DOT-E 8516	Atlas Powder International, Limited, Pearlington, MS.	49 CFR 175.83(b)	To authorize stowage of certain oxidizers and blasting agents in the same hold, compartment or freight container (Mode 3.)
8518-P	DOT-E 8518	Pacific Construction & Maintenance, Inc., Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8554-P	DOT-E 8554	Luckey Trucking, Inc., Streator, IL	49 CFR 173.114a, 173.154, 173.93, 178.241-5, 178.342-5, 178.343-5.	To become a party to exemption 8554. (Mode 1.)
8568-X	DOT-E 8568	L'Air Liquide, Le Blanc-Mesnil, France	49 CFR 173.315(a), 178.75(h)(4)	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8578-X	DOT-E 8578	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	49 CFR 178.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8662-X	DOT-E 8662	Consolidated Rail Corp., Philadelphia, PA	49 CFR Parts 106–177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8669-X	DOT-E 8669	Ethyl Corp., Baton Rouge, LA	49 CFR 178.354, 174.63(b)	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound. (Modes 1, 2, 3.)
8716-X	DOT-E 8716	GTE Products Corp., Waltham, MA	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8716-X	DOT-E 8716	Foote Mineral Co., Exton, PA	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8720-X	DOT-E 8720	Applied Companies, San Fernando, CA	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure non-refillable cylinders, for shipment of nonflammable and nonliquefied gases. (Modes 1, 2, 4.)
8723-P	DOT-E 8723	ECONEX Inc. Wheaton, IL	49 CFR 172.101, 173.114a(h)(3), 178.415, 178.83.	To become a party to exemption 8723 (Modes 1, 3.)
8732-X	DOT-E 8732	Dow Chemical U.S.A., Midland, MI	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732-X	DOT-E 8732	Davis Distributors, Inc., Longview, TX	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732-X	DOT-E 8732	Chemcentral, Inc., Chicago, IL	49 CFR 173.245	To authorize use of a DOT Specification MC-306 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8808-P	DOT-E 8808	M & T Chemicals Inc., Rahway, NJ	49 CFR 173.184	To become a party to exemption 8808. (Mode 1.)
8858-P	DOT-E 8858	De La Mare Engineering, Inc., San Fernando, CA	49 CFR 172.101, 173.60	To become a party to exemption 8858. (Modes 1, 2.)
8960-X	DOT-E 8960	Sunshine Aero Industries, Inc., Crestview, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8995-X	DOT-E 8995	Foam Supplies, Inc., Olivette, MO	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
9015-X	DOT-E 9015	Monsanto Co., St. Louis, MO	49 CFR 173.217	To authorize shipment of certain dry oxidizers in collapsible, polyethylene-lined, woven polypropylene bags having a capacity of not more than 2000 pounds (40 cubic feet) each. (Modes 1, 2, 3.)
9016-X	DOT-E 9016	van Leer Verpackungen GmbH, Hamburg, West Germany	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 200 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9066-X	DOT-E 9066	Bayern-Chemie GMBH	49 CFR 173.154, 175.3	To authorize an additional airbag gas generator containing a flammable solid, n.o.s. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Porsche Cars North America, Inc., Reno, NV	49 CFR 173.154, 175.3	To authorize two alternative packaging configurations, DOT Specification 12B30 fiberboard boxes, for shipment of airbag gas generators, classed as flammable solids. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Volvo Cars of North America, Rockleigh, NJ	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9066-P	DOT-E 9066	Mercedes-Benz of North America, Inc., Montvale, NJ	49 CFR 173.154, 175.3	To become a party to exemption 9066 (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Porsche Cars North America, Inc., Reno, NV	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Bayern-Chemie GmbH., Aschau, West Germany	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9082-X	DOT-E 9082	Rhone-Poulenc, Inc., Monmouth Junction, NJ	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 3.)
9130-P	DOT-E 9130	Applied Biochemists, Inc., Mequon, WI	49 CFR 173.154	To become a party to exemption 9130. (Modes 1, 2.)
9130-P	DOT-E 9130	Great Lakes Chemical Corp., El Dorado, AR	49 CFR 173.154	To become a party to exemption 9130. (Modes 1, 2.)
9158-X	DOT-E 9158	General Ceramics, Inc., Haskell, NJ	49 CFR 173.365	To authorize shipment of solid waste materials contaminated with beryllium oxide, in a non-DOT specification roll-on, roll-off, bulk container. (Modes 1.)
9169-X	DOT-E 9169	Pacific Breathing Co., Torrance, CA	49 CFR 173.154	To authorize transport of a water reactive material in vented freight shipping containers. (Modes 1 a 3.)
9254-X	DOT-E 9254	Spear Products, Inc., Memphis, TN	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixtures in inside nonrefillable aluminum containers comparable to DOT Specification 2Q, with integral pressure relief system. (Modes 1, 2, 3, 4.)
9275-P	DOT-E 9275	Shaklee Corp., San Francisco, CA	49 CFR Parts 106–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9339-X	DOT-E 9339	BlueArc, Inc., Anchorage, AK	49 CFR 172.101 Column 6, 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,000 to 2,200 gallon capacity, for transportation of nitrogen refrigerated liquid. (Modes 4.)
9352-X	DOT-E 9352	Mobrey Pipeline Systems, Inc., Houston, TX	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a skid chassis or trailer, for transportation of flammable liquids and flammable gases. (Modes 1.)
9355-X	DOT-E 9355	Black & Decker Corp., Hampstead, MD	49 CFR Parts 100–177	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Modes 1, 2, 3, 4, 5.)
9486-X	DOT-E 9486	Rhone-Poulenc, Inc., Monmouth Junction, NJ	49 CFR 173.366(a)(5)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9485-N	DOT-E 9485	Chem-Tech, Limited, Des Moines, IA	49 CFR 173.304	To authorize transport of an insecticide liquefied gas mixture in DOT Specification 4BA260 cylinders. (Modes 1, 2, 3.)
9485-X	DOT-E 9485	Kaw Valley, Inc., Leavenworth, KS	49 CFR 173.304	To authorize transport of an insecticide liquefied gas mixture in DOT Specification 4BA260 cylinders. (Modes 1, 2, 3.)
9498-P	DOT-E 9498	C-I-L Inc., North York, Ontario, Cana	49 CFR 173.367, 173.370	To become a party to exemption 9498 (Modes 1, 2, 3.)
9498-X	DOT-E 9498	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.367, 173.370	To authorize shipment of potassium cyanide, solid, and sodium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bag, each having a capacity not exceeding 2,205 pounds each. (Modes 1, 2, 3.)
9505-X	DOT-E 9505	Norac Company, Inc., Azusa, CA	49 CFR 173.157	To authorize transport of wet benzoyl peroxide in polyethylene containers, packed in DOT Specification 12B fiberboard boxes. (Modes 1.)
9508-X	DOT-E 9508	Akzo Chemie America Arnak Chemicals, Chicago, IL.	49 CFR 173.119(m), 173.242	To authorize transport of flammable liquids and corrosive liquids in the same outside packagings when the corrosive liquids are not in metal cans, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9512-X	DOT-E 9512	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.119(a), (m), 173.245(a), 178.346(a), 178.342-5, 178.343-5	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 except bottom outlet and each bottom inlet must be equipped with an additional shut-off valve, blank flange or a sealing cap, for shipment of liquid and semi-solid waste material. (Mode 1.)
9536-X	DOT-E 9536	Transway Systems, Inc., Stoney Creek, Ont. Canada.	49 CFR 173.119(a) (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tank, patterned after the MC-307 or MC-312 specifications with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
9549-P	DOT-E 9549	Owen Oil Tools, Inc., Fort Worth, TX	49 CFR 173.100(w), 175.30	To become a party to exemption 9549 (Modes 1, 3, 4.)
9654-P	DOT-E 9654	Degussa Corp. Teterboro, NJ	49 CFR 173.266(a) (2), 178.109-6	To become a party to exemption 9654 (Modes 1, 2, 3.)
9681-P	DOT-E 9681	ICI Americas Inc., Bryon, GA	49 CFR 173.65	To become a party to exemption 9681 (Modes 1, 3, 4.)
9711-X	DOT-E 9711	Konica USA, Inc./Konica Business Machine USA, Inc., Englewood Cliff, NJ.	49 CFR 173.245(a) (12), 175.3	To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrugated fiberboard carton then a maximum of two cartons overpacked in a DOT Specification 12B box. (Modes 1, 2, 4.)
9742-P	DOT-E 9742	Bromine Compounds Ltd., Beer-Sheva, Israel	49 CFR 173.353, 178.245	To become a party to exemption 9742 (Modes 1, 2, 3.)
9748-X	DOT-E 9748	Graf Bros. Corp., Springfield, NJ	49 CFR 178.224, Part 173	To authorize water as an additional mode of transportation. (Modes 1, 2, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9766-N	DOT-E 9766	Hercules, Inc., Wilmington, DE	49 CFR 173.92	To authorize use of non-DOT specification fiber drums containing not more than 9 TOW M114 Rocket Motors. (Mode 1.)
9769-N	DOT-E 9769	Rollins Environmental Services (FS), Inc Wilmington, DE	49 CFR 178.83, 177.848	To authorize use of lab-packs for transportation by vessel, partially exempts lab-packs from segregation requirements. (Modes 1, and 3.)
9802-N	DOT-E 9802	McNeely Charter Service, Inc., Earle, AR	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9803-N	DOT-E 9803	Transcon Transport, Inc., Smithville, TN	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9809-N	DOT-E 9809	Texas-New Mexico Pipe Line Company, San Angelo, TX.	49 CFR 173.119.	To authorize use of a non-DOT specification container described as a mechanical displacement meter prover mounted on a truck, for transportation of flammable liquids. (Mode 1.)
9818-N	DOT-E 9818	Olin Corp., Stamford, CT	49 CFR 173.31(c), Retest Table 1, Note a	To authorize use of a DOT Specification 105A500W tank car tank with the tank and safety relief valves overdue for retesting for a one-time shipment of chlorine. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9499-X	DOT-E 9499	Cleveland Container Corp., Cleveland, OH	49 CFR 178.19, part 173, subparts D, F	To authorize manufacture, marking and sale of 3½, 5, 5½, and 6-gallon capacity DOT Specification 3S removable head polyethylene drums, for shipment of corrosive and flammable liquids. (Modes 1 2, and 3.)
EE 9796-X	DOT-E 9796	Heavy Cargo Airlines Ltd., Stansted Essex, England.	49 CFR 172.101	To authorize a one time shipment of rocket ammunition with explosive projectile, Class A explosive, cargo-only aircraft, although it is forbidden for transportation by air. (Mode 4.)
EE 9855-X	DOT-E 9855	Korean Air Lines Co., Ltd., Los Angeles, CA	49 CFR 172.101, column 9(b), 175.30	To authorize shipment of explosive projectiles, Class A explosives, and rocket motor and propellant explosive solids, Class B explosive, which are forbidden for transportation by air or are in quantities greater than those prescribed for transportation. (Mode 4.)
EE 9858-N	DOT-E 9858	Shadyside Hospital, Pittsburgh, PA	49 CFR 173.316, 176.63(b)	To authorize use of non-specification packaging and patient use of oxygen systems on board a passenger ship. (Mode 3.)
EE 9869-N	DOT-E 9869	Sandoz Chemicals Corp., Charlotte, NC	49 CFR 173.265	To authorize use of insulated DOT Specification MC-307 stainless steel cargo tanks, for transportation of certain Class B poison. (Mode 1.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9698-N	Michelin Tire Corp., Greenville, SC	49 CFR 173.119(a) (3), (4)	To authorize shipment of a mixture of 80–90% heptane and 20–10% rubber and other non-hazardous materials, flammable liquids, n.o.s., classed a flammable liquid in a non-DOT dissolution tank assembly container inside a cage assembly. (Mode 1.)

Denials

9699–N Request by Aviex Jet, Inc. Houston, TX to authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in qualities greater than those prescribed for air shipment denied October 26, 1987.

9724–N Request by McDonnell Douglas Corporation St. Louis, MO to authorize shipment of limited quantities of flammable liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, compressed gases, paints and paint related material in prescribed packages without the use of shipping papers, marking, labeling or placarding denied October 26, 1987.

9739–N Request by Unocal Corporation Los Angeles, CA to authorize shipment of sodium tetrathiocarbonate, classed as a corrosive liquid, in a DOT Specification MC–306 cargo tank denied October 7, 1987.

Note: DOT–E 9814 was published in the Federal Register on Thursday, October 8, 1987 on page 37708 as a grant of an emergency exemption request. It should have appeared as a denial of the emergency request.

Issued in Washington, DC, on January 5, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–747 Filed 1–14–88; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Transportation; Applications for Exemptions; Williams International et al.

AGENCY: Research and Special Programs Administrations, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes February 16, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9898–N	Williams International, Walled Lake, MI	49 CFR 173.102, 173.82, 175.3	To authorize shipment of cartridge power devices and explosive power devices, classed as Class C explosive, affixed on an empty gas turbine engine in a non-DOT specification packaging. (Modes 1, 2, and 4.)
9900–N	Natco, Inc., Chicago, IL	49 CFR 173.217, 178.224	To authorize manufacture, marking and sale of non-DOT specification fibre drums, equivalent to DOT 21C Specification fibre drums except the tops are constructed of polyethylene, for shipment of calcium hypochloride, hydrated, classed as oxidizer. (Modes 1, 2, and 3.)
9901–N	J.T. Baker Inc., Phillipsburg, NJ	49 CFR 173.268, 173.269	To authorize shipment of nitric acid, classed as oxidizer or corrosive material, and perchloric acid, classed as oxidizer, in a DOT Specification 12A fiberboard package with inside glass containers cushioned by molded polystyrene. (Modes 1, 2, and 3.)
9902–N	Stauffer Chemical Co., San Francisco, CA	49 CFR 173.273(b)(1)	To authorize shipment of sulfur trioxide, unstabilized, classed as a corrosive material in DOT Specification 3AA cylinders of approximately 7.3 gallons capacity without overpack. (Mode 1.)
9903–N	Sherwood, Division of Harsco, Lockport, NY	49 CFR 173.327(a)	To authorize manufacture, marking and sale specially designed and operated valves to be used on cylinders for shipment of poison A materials.

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on 01/06/1988

J. Suzanne Hedgepeth,

Chief Exemptions Branch, Office of Hazardous Materials Transportation

[FR Doc. 88– Filed 1–14–88; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A–130; Customs Automated Commercial System

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), has been developing a module called the Automated Manifest System (AMS). Through the AMS, carriers, port authorities (PAs) and service centers electronically transmit data from inward vessel manifests to Customs. Customs uses this information concerning the nature and origin of the cargo to make decisions with respect to inspection and examination. Customs thereafter electronically informs the senders, their agents and others of this information. An underlying purpose for this exchange is to expedite the release of cargo from Customs custody.

In June, 1988, Customs intends to make available for sale to the public a *magnetic tape* which will contain data from all the manifests being transmitted electronically to Customs. At that time, Customs intends to provide to eligible PAs *on line access* to this manifest data, and to other data concerning the status of cargo moving within their port limits. This information will enable the PAs to more efficiently monitor the movement of cargo through their facilities, as well as perform their cargo release responsibilities.

Information from inward manifests is presently available to the public in hard copy, pursuant to section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431). The statute also requires that Customs safeguard the confidentiality of the names and addresses of importers, consignees and their shippers upon request. Accordingly, the names and addresses of those who have requested confidentiality will be deleted from the manifest data to be provided.

While not all of the manifests filed with Customs are filed in an automated fashion via AMS, it is envisioned that AMS will eventually contain all vessel manifest data and replace the paper manifest. Because of the amount of data involved, the increased access that the automated format provides, and the anticipated growth of automated systems in all phases of the processing of Customs commercial transactions, Customs believes it appropriate to give notice and an opportunity to comment to those who may be interested in obtaining the information as well as those importers and consignees who may wish to request confidentiality, or are otherwise affected by release to the PAs of data pertaining to all importations arriving at their ports.

DATES: Comments must be received on or before March 15, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202) 566–8237.

FOR FURTHER INFORMATION CONTACT:
Legal Aspects: B. James Fritz, Chief, Regulations Control and Disclosure Law Branch, (202) 566–8681.
Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations (202) 566–6012.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A–130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of significant new proposed information dissemination products. Such notice is intended to allow agencies to gauge the impact of such products upon affected segments of the public. Two such products are proposed. The first is automated vessel manifest and cargo release data to PAs via on line access. The second is automated vessel manifest data to the public via magnetic tape.

For more than three years, Customs has been developing the Automated Commercial System. The ultimate goal of the ACS is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has developed an Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data and inspection guidelines, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

Automated manifest data may be transmitted to Customs by one of two methods. Carriers may transmit data directly to the AMS with their own compatible automated system. Alternatively, carriers may use the computer facilities of PAs or service centers which have established interface capability with Customs. After receiving and analyzing the data, Customs makes its decision with respect to inspection and release of the merchandise.

Once the merchandise is authorized for release, the carrier, service center or PA which transmitted the data receives a message from the system informing it of that fact. Thus each user will be able to track the status of cargo for which it transmitted data. A more detailed explanation of the data provided is set forth below.

Section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, certain information with respect to the nature of the merchandise on board the vessel. Subsection (c)(1) of section 431 provides that the following information when contained on the manifest shall be made available for public disclosure:

1. The general character of the cargo,
2. The number of packages and gross weight,
3. The name of the vessel or carrier,
4. The port of loading,
5. The port of discharge,
6. The country or origin of the shipment
7. The name and address of each importer or consignee and the name and address of the shipper unless the importer or consignee has requested confidential treatment of such information.

Section 103.14(d), Customs Regulations, (19 CFR 103.14(d)) sets forth the procedures pursuant to which an importer or consignee may request confidential treatment of its name and address and that of its shippers. To date, Customs Headquarters has on file approximately 1,100 requests for confidential treatment.

Section 103.14(c), Customs Regulations, provides that accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel

manifests and to copy therefrom manifest information made public by statute. Members of the general public are not given direct access to the documents but may obtain information from manifests upon request. Importers or agents are permitted to examine manifests in which they have an interest as principal or agent.

At present, Customs compiles a list of those importers and consignees who have requested confidentiality. The list is updated on a weekly basis, and is provided to all Customs offices nationwide. The list is also provided to certain commercial trade publications such as King Publishing Co., the Journal of Commerce and others. These trade publications publish the manifest data, taking steps to make certain that the names and addresses of those who have requested confidentiality are deleted.

Dissemination of Manifest Data to Port Authorities

Background

When ACS was in the planning stages, Customs encouraged various sectors of the international trade community to participate in its development in order to share in the benefits that could accrue through the more efficient processing of commercial transactions. Among those who expressed a significant interest in ACS (particularly in AMS) were PAs. PAs viewed AMS as a means of streamlining their involvement in the processing of cargo as well as attracting new business to their ports.

Customs viewed PAs as a potential conduit for the transmission of AMS data for non-automated carriers who were interested but otherwise lacked the capability to electronically transmit their manifest data. PAs were informed that if they were willing to assume this role they would be eligible to receive all *automated manifest data* for those manifests which Customs receives for vessels calling in their ports regardless of whether the carrier used the PA to transmit its data. The data elements that comprise the manifest file are set forth in Appendix 1 to this document.

In addition to receiving manifest data, eligible PAs would be entitled to receive release data which conveys the status of the cargo which is being processed through their ports. Release data would be provided from the manifest where an automated manifest is filed at the port. In addition, where no automated manifest is filed, PAs would receive release data obtained from entry documents for all formal entries made in the port provided that the entry filer has given his written consent. The data elements pertaining to this release data are set forth in Appendix 2.

Finally, eligible PAs would receive manifest data which is transmitted through AMS with respect to all cargo which moves master in bond to their ports. For example, when a carrier files an automated manifest for cargo from a vessel which calls at Seattle but will move via master in bond procedures to Boston, the Massachusetts Port Authority will receive an extract of the manifest filed at Seattle. This will enable Massport to have a more acurate account of cargo in transit to it.

It is emphasized that the above data to be provided to PAs is to be provided via on-line access. Customs recognizes that the value of the data to the PAs as a basis for cargo release services is tied to its being provided in an expeditious manner. Accordingly, Customs intends to provide this data directly to the PA's automated system as soon as is operationally feasible.

Eligibility Criteria

In order to be eligible to receive automated manifest data, release data, and the master in bond data, a PA must develop the *full technical capacity* to transmit as well as receive AMS data. This means that the PA must demonstrate to Customs satisfaction that it possesses all the necessary facilities to be capable of immediately providing full AMS services for any interested carrier.

Customs recognizes that the development of this capacity does not guarantee that carriers will choose to avail themselves of the PAs services. One difficulty has been the fact that many carriers do not use a unique bill of lading number in their business operations. Such a unique identifier is necessary in order for AMS to operate. It is hoped, however, that a proposed amendment to the Customs Regulations mandating the use of a unique bill of lading identifier will eliminate this obstacle to participation in AMS by carriers. See 52 FR at 46802, dated December 9, 1987.

Customs has not established a minimum number of manifests to be transmitted in order for a PA to be eligible to receive this data. Customs will, however, condition continued access to the information on efforts by the PAs to acquire customers for this service. Should Customs learn that a PA has declined to provide AMS services when requested by a carrier, or has not made efforts to obtain participation by carriers, Customs will reevaluate its decision to provide access.

Providing Automated Manifest Data to the Public

Separate and apart from its decision to provide manifest data to PAs as described above, Customs intends to make available to the public, in the form of a magnetic tape, certain data with respect to all the manifests captured by AMS nationwide. This tape would be available at a price which would reflect the cost of producing it, and would contain the same data elements that are in the manifest file to be provided to the PAs. See Appendix 1 for the precise data elements involved. It is contemplated that the tape will be available on a weekly basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566–5492.

Confidentiality of Manifest Data

As noted above, the manifest data to be provided to the PAs and to the public will be sanitized by removing the names and addresses of those importers/consignees and that of their shippers when confidentiality has been requested. Customs has developed a computer program which will automatically delete the name and address of these requesters when manifests containing their name are transmitted through AMS. In determining the precise automated system to be employed, Customs was faced with a choice between using an "alpha" system or a "soundex" system. Each system has certain limitations. The alpha system will only delete the name of the importer/consignee when there is an exact match as to spelling and formulation between the way the name has been transmitted by the carrier or service center and the name that the importer has provided to Customs. Thus where abbreviations and incorrect spellings of names are transmitted, the data would not be deleted from the system.

The soundex approach would eliminate from the system not only the exact formulation of the name in question, but also a variety of sound alike names. This approach would be overinclusive, resulting in the deletion of many names and addresses where no request for confidentiality had been made.

In addition, the soundex approach requires a significantly more complex programming effort.

Customs intends to use the alpha approach. In order to safeguard the names and addresses of companies which have requested confidentiality, however, Customs advised each of the requesters of the limitations of the system and invited them to enumerate variations of their name which they believe may be transmitted into AMS. Many importers have responded with these variations and Customs has added them to its database so that confidentiality will be protected whenever a match is made between any of the versions of the name submitted and the version transmitted by the carrier. A copy of the letter to the requesters is provided as Appendix 3 to this document. Customs remains willing to program these additional variations as they are received, as well as new requests for confidentiality. Such requests should be directed to the Regulations Control and Disclosure Law Branch, Customs Headquarters: Attention: Mr. Crowley.

Dissemination of the Entry Number

Among the data elements which will be provided to the port authorities as part of the bill of lading status report is the entry number assigned to the goods once entry has been filed. See Appendix 2 to this document. Providing this entry number is an essential link between the data in the manifest file and entry process.

Customs has identified two potential issues with respect to providing the entry number to the PAs. Each of these issues relates to Customs obligation to protect the identity of the importer or consignee of the merchandise when confidentiality has been requested.

The Bulletin Notice of Liquidation, Customs Form 4333, lists the entry number together with the name of the entry filer. By matching this data with the manifest data being provided, one may determine the identity of the entry filer and the nature of the goods being imported despite the importer's request for confidentiality. In order to resolve this issue, Customs has decided to amend the Bulletin Notice of Liquidation so as to remove any reference to the name of the entry filer. Importers and brokers will be able to identify their entires through the entry number.

[FR Doc. 88–781 Filed 1–14–88; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; St. Paul Guardian Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24624 to reflect this addition:

St. Paul Guardian Insurance Company. Business Address: 385 Washington Street, St. Paul, Minnesota, 55102. Underwriting Limitation [b]: *$1,484,000.* Surety Licenses [c]: All except NV, NJ, PA, WY. Incorporated in: Minnesota. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business, and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC, 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: December 31, 1987.

[FR Doc. 88–718 Filed 1–14–88; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Exempt Organization Advisory Group; Open Meeting

The second meeting of the Exempt Organization Advisory Group will be held on Thursday, February 25, 1988, from 2:00 p.m. to 5:30 p.m. and will continue on Friday, February 26, from 9:00 a.m. to noon. The meeting will be held in room 3313 of the Internal Revenue Service National Office Building, 1111 Constitution Avenue NW., Washington, DC.

Among the agenda items for the meeting are a discussion of recently enacted legislation affecting lobbying and political activities of charitable organizations, a continuation of the previous meeting's discussion of section 501(h) and 4911 proposed regulations, and a discussion of unrelated business income tax issues.

The meeting will be open to the public, although seating will be limited. Opportunity for public statements will be provided at the end of the meeting, or at other appropriate intervals, to the extent that time permits.

Brief written comments from members of the public of no more than two double-spaced pages relating to each announced agenda topic will be accepted by the Service for consideration as a discussion item by the Advisory Group. Comments should be sent by January 27, to the Assistant Commissioner (Employee Plans and Exempt Organizations), Attn: EOCAG, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

For additional information contact Robert L. Brauer, Assistant Commissioner (Employee Plans and Exempt Organizations), telephone 202–566–3171 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–798 Filed 1–14–88; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held January 20, 1988, in Room 600, 301 4th Street SW., Washington, DC, from 11:30 a.m. to 12:30 p.m.

The Commission will meet with Mr. Stanton Burnett, Counselor, USIA, for a briefing on Public Diplomacy and the U.S.-Soviet summit.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: January 11, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88–744 Filed 1–14–88; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978

(43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Sweden: A Royal Treasury 1550–1700," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the National Gallery of Art in Washington, DC, beginning on or about April 13, 1988, to on or about August 14, 1988, at The Minneapolis Institute of Arts in Minneapolis, Minnesota, beginning on or about October 9, 1988, to on or about January 1, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88–782 Filed 1–14–88; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:32 a.m. on Wednesday, December 23, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) The application of The Haysville State Bank, Haysville, Kansas, an insured State nonmember bank, for consent to merge, under its charter and title, with First Interim Corporation, Wichita, Kansas, a wholly-owned subsidiary of First Bancorp of Kansas, Wichita, Kansas; and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1987.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88–881 Filed 1–13–88; 1:40 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, January 19, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the Corporation's budget for 1988.

Recommendation regarding reserves for losses.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–882 Filed 1–13–88; 1:40 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, January 19, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Memoranda regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–883 Filed 1–13–88; 1:40 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—January 20, 1988.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Trans-Atlantic Amnesty Program.
2. Procedures for Compromise and Settlement of Civil Penalties.
3. Service Contracts Filed by the Asia North America Eastbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–827 Filed 1–13–88; 10:24 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 11, 1988.

Change in Previously Announced Items

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The following changes are noted for the meeting scheduled for January 13, 1988.

1. Oral argument in *Rushton Mining Company*, Docket No. PENN 86–44–R, etc. has been postponed until February 11, 1988. The Commission will also consider the case at that time.

2. *Harlan L. Thurman v. Queen Ann Coal Company*, Docket No. SE 86–121–D will be considered as previously announced.

It was determined by a unanimous vote of Commissioners that this change be made and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–846 Filed 1–13–88; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–869 Filed 1–13–88; 11:49 am]

BILLING CODE 6210–01–M

POSTAL RATE COMMISSION

TIME AND DATE: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is amended under "Time and Date" to read: 9:30 a.m. and 2:00 p.m. on January 14, 15, 20, 26, 27 and February 1, 2, 3, and 4; and 9:30 a.m. on January 21 and 28, 1988.

PLACE: Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is also amended under "Matter To Be Considered" to read: A series of 20 CLOSED meetings to discuss evidence in Docket No. R87–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88–828 Filed 1–13–88; 10:24 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 655 January 11, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 5, 1988.

CHANGES IN THE MEETING: Additional meeting.

A following item will be considered at a closed meeting scheduled for Thursday, January 14, 1988, following the 10:00 a.m. open meeting.

Report of investigation.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

January 13, 1988.

[FR Doc. 88–833 Filed 1–13–88; 4:00 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Petition for Modification; Terminal Equipment Line Power To Operate Continuity of Output Functions

Correction

In rule document 87-29612 appearing on page 49413 in the issue of Thursday, December 31, 1987, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION**, in the second line from the bottom, "to" should read "too".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 26]

Federal Travel Regulations

Correction

In notice document 87-29142 beginning on page 48325 in the issue of Monday, December 21, 1987, make the following correction:

On page 48326, in the second column, in paragraph 2-6.2d.(1)(b)(1), in the second line, "prepared" should read "prepaid".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4212-13; CA 20077]

Realty Action; Exchange; Public Lands and Private Lands in Butte County, Lake County, Mendocino County, Siskiyou County, Sonoma County, and Tehama County, CA

Correction

In notice document 87-29630 beginning on page 48882 in the issue of Monday, December 28, 1987, make the following corrections:

1. On page 48882, in the second column, under Tract 10 T. 42 N., R. 5 W., the land description should read: Sec. 18, W½SW¼NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼;

2. In the same column, under Tract 11 T. 9 N., R. 11 W., after " Sec. 26, S½ NW¼", insert "Containing 386.25 acres more or less."

3. In the same column, in the 21st line from the bottom,"Tract 13 N.," should read "T. 13 N.,".

NOTE: For a Bureau of Land Management correction to this document see the Notices section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-150]

Customs Regulations Amendments Concerning Reporting Requirements for Small Vessels

Correction

In rule document 87-29181 beginning on page 48194 in the issue of Monday, December 21, 1987, make the following corrections:

1. On page 48195, in the first column, in the 25th line from the bottom, "Operations" should read "Operators".

2. On the same page, in the second column, in the 14th line, "Marine" should read "Marina".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8166]

Income Tax; Consent Dividends

Correction

In rule document 87-28635 beginning on page 47554 in the issue of Tuesday, December 15, 1987, make the following corrections:

§ 1.565-1T [Corrected]

1. On page 47555, in the first column, in § 1.565-1T(a), in the sixth line, "actual" was misspelled.

2. On the same page, in the third column, in § 1.565-1T(c)(3), in the fourth line, "if filed" should read "is filed".

§ 1.565-2T [Corrected]

3. On page 47556, in the second column, in § 1.565-2T(b)(2), *Example (1)*, in the second line, "high" should read "his".

4. On the same page, in the same column, in § 1.565-2T(b)(2), *Example (2)*, in the second line, "it" should read "its" and in the ninth line, "cash $5,000" should read "cash of $5,000".

BILLING CODE 1505-01-D

VOL
53

ISS
10

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federal register

Friday
January 15, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 215 et al.

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960

[Docket No. R-88-1187; FR-1597]

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a statutory directive to give preference in the provision of housing assistance to families eligible for assistance under the Public and Indian Housing, Section 8, or Rent Supplement programs that are living in substandard housing, that are involuntarily displaced, or that are paying more than 50 percent of family income for rent. This rule helps to ensure that housing assistance under these programs is directed to those with greatest housing needs. This rule implements a proposed rule on this subject, published on September 26, 1984 (49 FR 37787).

EFFECTIVE DATE: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date: Public Housing Agencies and owners must implement this rule no later than July 13, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Program Planning Division, Room 6182, Department of Housing and Urban Development, telephone (202) 426-3970 (for 24 CFR Parts 215, 880, 881, 884, and 886); Madeline Hastings, Existing Housing Division, Room 6124, Department of Housing and Urban Development, telephone (202) 755-6887 (for 24 CFR Part 882); and Nancy Chisholm, Office of Policy, Room 4118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713 (for 24 CFR Parts 904, 905, and 960). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Table of Contents

Statutory Basis
Treatment of Certificates and Vouchers
The Proposed Rule
Public Comments
I. Application of the Federal Preferences
  A. Primacy of the Federal Preferences
  B. Use of Local Preferences to Select Among Federal Preference-Holders
  C. Aggregating and Ranking the Federal Preferences
  D. Fair Housing and Equal Opportunity Considerations
  E. Advance HUD Approval of Federal Preference Systems
  F. Relationship to Other Federal Authorities
  1. Preferences and Requirements in Other Federal Statutes
  (a) Broad Range of Incomes
  (b) Other Statutory Requirements
  2. Preferences and Requirements in Regulatory Authorities
  (a) No Apparent Conflict
  (b) Apparent Conflict
  3. FHEO Administrative and Judicial Remedies
II. Discretion Accorded PHAs
III. Definitions of the Federal Preferences
  A. Involuntary Displacement
  B. Substandard Housing
  C. Fifty Percent of Income for Rent
IV. Treatment of Waiting Lists
V. Degree of Targeting
VI. Social Effects of the Federal Preferences
VII. Tenant Mobility
VIII. Potential for Fraud and Abuse in Qualifying for a Federal Preference
IX. Administrative Burdens
X. Informal Review of Federal Preference Denials
XI. Miscellaneous

Statutory Basis

Section 206 of the Housing and Community Development Amendments of 1979 (Pub. L. No. 96-153, section 206, 93 Stat. 1108 (1979)) (the 1979 Act) amended the Public and Indian Housing and Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437 d and f, respectively) (the 1937 Act) to provide that the criteria used by project owners, Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) to select applicants for housing assistance must give "preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking" housing assistance. Section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181, section 203, 97 Stat. 1178 (1983)) (the 1983 Act) later amended these authorities to provide that the selection criteria used must give a preference to a third category of families—those that "are paying more than 50 percentum of family income for rent."

Section 203(a)(4) of the 1979 Act also amended section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (Rent Supplement), by adding a new subsection (k) that provides:

> In making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance * * *.

In addition, section 203(b)(3) of the 1983 Act amended section 101(e)(1)(B) of the Rent Supplement authority by including substantially identical language for families paying more than 50 percent of income for rent. As amended, section 101(e)(1)(B) reads in relevant part:

> * * * The Secretary shall issue * * * certificates as to * * * (B) whether the individual or family was occupying substandard housing, was paying more than 50 percentum of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section.

Although the rent burden preference is appropriately included in the Rent Supplement provision, the amendment adding the preference affected section 101(e)(1)(B) only, and not section 101(k), the section that Congress originally had enacted to created the preference for those persons occupying substandard housing or involuntarily displaced. (See section 203(a)(4) of the 1979 Act.) However, this rule extends the rent burden preference to persons who qualify for assistance under the Rent Supplement program. In doing so, the Department believes that the rule carries out the intent of Congress, notwithstanding the failure to include the language in section 101(k) of the Rent Supplement statute.

The amendments to the Public and Indian Housing and Section 8 programs made by section 206 of the 1979 Act provide for a "preference" to certain classes of families. The comparable amendment to the Rent Supplement program in section 203(a)(4) of the 1979 Act provides for a "priority" to the same classes of families. The Department has studied the legislative history to determine whether the Congress intended to impart a meaning to the word "priority" different from that intended by use of the word "preference". Research has shed no light on the legislative intent in this regard. In view of the apparent unified intent of the several amendments (notwithstanding that they affect different programs), the Department has treated the words synonymously. To avoid ambiguity, the word "preference", and not "priority", is used throughout the rule.

> **Note.**—For ease of reference, this rule refers to the three statutory preferences as the "Federal preferences" or "preferences."

Treatment of Certificates and Vouchers

Section 8(d)(1)(A) of the 1937 Act specifies that the *owner* is responsible for providing the preferences in the Section 8 Existing program—the Certificate, Moderate Rehabilitation, and Loan Management Set-Aside programs. In the Loan Management program, the owner is responsible for the entire tenant selection process, and the final rule requires that the owner give preference as provided in the statute.

In the Certificate and Moderate Rehabilitation program, however, the PHA (and not the private owner) plays the key role in the applicant selection process with respect to applying the preferences. In the Certificate program, the PHA selects those to whom it issues Certificates of Family Participation from its waiting list; the owner determines whether it will rent to the individual Certificate-holder. (See 24 CFR 882.209.) Similarly, the owner of a Section 8 Moderate Rehabilitation project generally determines the suitability of individual applicants that the PHA refers to the owner from its waiting list. (See 24 CFR 882.514(b).) Even in the unusual case where the PHA has no families on its waiting list interested in living in a rehabilitated project, and the owner itself solicits applicants, the owner refers all candidates to the PHA to determine their eligibility, which would include their qualification for a preference, if the families referred exceeded the units available. (See 24 CFR 882.514(c).)

In order to implement the preferences in the Certificate and Moderate Rehabilitation programs in a way that carries out the clear Congressional intent in enacting the preferences and is consistent with the implemention of the preferences in the other covered programs, the rule imposes the preference requirements at the point at which applicants are selected from the pool of applicants: *i.e.*, when the PHA, rather than the private owner, acts in the process.

Section 207 of the 1983 Act amended section 8 of the 1937 Act to establish the Housing Voucher program. Section 8(o)(3) of the 1937 Act requires the use of the three Federal preferences in selecting recipients of Housing Vouchers. The Department has been implementing the Housing Voucher program through Notices of Funding Availability (NOFAs) published in the **Federal Register**. (See 49 FR 28458 (July 12 1984); 50 FR 8196 (February 28, 1985); 50 FR 19475 (May 8, 1985); 51 FR 10932 (March 31, 1986); and 52 FR 5250 (February 19, 1987).) Housing Vouchers have been authorized in these editions on the **Federal Register** for the following uses: the Rental Rehabilitation Program, A Freestanding Housing Voucher Demonstration, a Small PHA/Rural Area Housing Voucher Demonstration, Section 8 "Opt-Out" Projects, Demolition or Disposition of Public Housing Units, and Formula Allocation to HUD Regional Offices. Readers should consult the NOFA of February 19, 1987 (52 FR 5250) for a full description of the current Housing Voucher program.

The Department published a proposed rule on August 14, 1987 (52 FR 30388) that would add a new 24 CFR Part 887 to codify the Housing Voucher program in the Code of Federal Regulations. The proposed rule seeks public comment on the February 19, 1987 NOFA, as modified by the proposed rule. Under the proposed rule, a PHA (to the extent it receives an additional allocation of Housing Vouchers) would have to provide Housing Vouchers or Certificates to lower income families that are displaced from rental rehabilition projects by physical rehabilitation activities. The application of the preferences would otherwise be substantially similar to the implementation of the Section 8 Certificate program, as discussed in this final rule, and the reader wishing to become generally familiar with the preference provisions for the Housing Voucher rule, should review the regulatory text and preamble discussion for the Certificate program. Following consideration of the public comments received on the proposed rule, the Department will publish final Housing Voucher program regulations, including provisions to implement the Federal preferences for that program.

It is important to note one change proposed by the Housing Voucher rule. In the past, a PHA could use the additional Housing Vouchers provided by HUD in connection with the Rental Rehabilitation program (RRP) for eligible families living in RRP projects if, after the rehabilitation, the families would have to pay more than 30 percent of their income for rent. These families could then use the Housing Voucher to remain in the project, or to move. However, the proposed Housing Voucher rule would make a substantial change in the rules under which Housing Vouchers allocated in connection with RRP can be used.

As noted above, the proposed rule would require PHAs to use their additional allocation of Housing Vouchers to provide rental assistance to eligible families that would be displaced from their project because of physical construction activities. These additional Housing Vouchers would no longer be provided to families that are not physically displaced, even if their rent increased. These families may be eligible for Housing Vouchers from a PHA's waiting list and, if their rent exceeds 50 percent of their income, they would qualify for a preference under today's final rule. Accordingly, an eligible family encountering an increased rent burden in its RRP unit, but who is *not* required by rent increases in the project to pay more than 50 percent of income for rent, would not qualify for preferential access to assisted housing under either the Housing Voucher proposed rule or this final rule (unless, of course, the family qualified for a preference on a basis other than rent burden). As discussed in more detail later, however, PHAs would have discretion to adopt local selection preferences to assist RRP families experiencing post-rehabilitation rent increases.

Section 882.209(a)(7) contains a clause not found in the comparable paragraphs for the other affected programs. This clause provides that the PHA's obligation to select a family from the waiting list is subject to any obligation the PHA may have to ensure the availability of a Certificate for a purpose specified in § 882.209(a)(4)(ii)(B). Under the Housing Voucher Program, a PHA immediately may use for general Housing Voucher program purposes (*i.e.*, for families on the Housing Voucher Program waiting list) Housing Vouchers that were allocated for Rental Rehabilitation purposes. See 52 FR 5250, February 19, 1987, the Housing Voucher Program Notice. That notice, in explaining the "immediate use" provision, requires that

> [A] PHA may use housing vouchers for general program purposes *before* they are used for rental rehabilitation projects.
>
> The PHA may use the housing vouchers for families on its Section 8 waiting list, if the PHA determines that it will have an adequate number of housing vouchers or Section 8 certificates available when needed in connection with a rental rehabilitation project. The PHA must develop a written plan to assure this availability. In determining whether this immediate use is feasible, the PHA must consult with the rental rehabilitation grantee.
>
> *Id.* at 5253.

As a condition to immediate use, however, a PHA must develop a plan to ensure the availability of Housing Vouchers *or Certificates* when the rental rehabilitation need arises. The purpose of the clause in § 882.209(a)(7) is to enable the PHA to provide a Certificate to a rental rehabilitation family to meet its obligation created by the previous "immediate use" of the Rental Rehabilitation allocation Housing Vouchers. The Rental Rehabilitation allocation is the only special allocation under either the Certificate Program or the Housing Voucher Program that includes the concept of immediate use for general program purposes, and the concommitant obligation to ensure the availability of Certificates (or Housing Vouchers) when needed for the purpose for which the Certificates (or Housing Voucher were specifically allocated. Nonetheless, the Department has drafted this clause to cover any such situation that may arise in the future.

When the pending Housing Voucher rule is promulgated, it will similarly recognize that, for purposes of ensuring the availability of vouchers allocated for Rental Rehabilitation where those vouchers were subjected to an earlier "immediate use" for other purposes, a PHA may require selection of families for Voucher assistance outside the normal waiting process.

The rent-burden preference is to be granted to a family paying more than 50 percent of its income for rent "at the time [the family] is seeking assistance." See, e.g., section 8(d)(1)(A) of the U.S. Housing Act of 1937. The Department construes this language to mean that the family must be rent-burdened at the point that a family is *offered* assistance for a unit, not only at the time that the family *applies* for assistance.

However, application of the cited statutory language could work a hardship on a family occupying a unit being rehabilitated under the Rental Rehabilitation Program (RRP), by requiring that the family first pay the increased post-rehabilitation rent before qualifying for the rent-burden preference. In HUD's view, such a family should not necessarily have to begin paying the increased rent before its preference status could be recognized. Such a requirement would be an unnecessary formalism—especially since the increased rent would have been occasioned by the improvements to the family's unit funded by RRP—a program administered by HUD.

To observe such formalism would work an intolerable hardship on an RRP family that has continued to occupy a unit during Rental Rehabilitation, anticipating continued occupancy of the same unit without housing assistance. Upon notification of the post-rehabilitation rent and discovery that the rent would exceed 50 percent of family income, the family might well conclude that continued occupancy would only be possible with assistance. Unless this family could apply for a preference based on the *anticipation* of increased rent, the RRP activity would have the effect of requiring the family to pay unaffordable rent for an indefinite period while it awaited qualification for a certificate, voucher, or other assistance.

Also, some eligible RRP families will qualify for a statutory preference by virtue of living in substandard housing. Upon being offered assistance on that basis, this rule's verification procedures would require the family to demonstrate that its unit *continued* to be substandard at the time assistance became available. If rental rehabilitation activity had caused the family's entitlement to the substandard housing preference no longer to be verifiable, it would be harsh to refuse a certificate to such a family when the family, in a short time, was clearly going to qualify for the rent burden preference.

To reduce these impacts on RRP families to the extent possible, the rule creates a limited exception, applicable to the Section 8 Existing Housing Certificate program (Part 882), with respect to the normal application and verification procedures associated with the rent burden preference. This exception, appearing in paragraphs (c) and (f) of § 882.219, provides that RRP families who have been advised that their post-rehabilitation rent for the same unit that they are currently occupying will be increased to more than 50 percent of the family's income will be considered as paying the higher rent from the date the family is offered assistance, as long as the family would become subject to the higher rent within sixty days of the offer of assistance. (When the pending Housing Voucher rule is promulgated, it will similarly treat the subject of the rent burden preference as it relates to Rental Rehabilitation tenants.)

The Department is limiting the period during which this presumptive rent burden preference would be operative to sixty days to be consistent with the requirement in section I.(f)(2)(ii) of Part III of the February 19, 1987 Housing Voucher NOFA (52 FR 5250, 5262) that "housing vouchers * * * must be issued * * * approximately 60 days before the estimated completion date for the rehabilitation work."

The Proposed Rule

On September 26, 1984 (49 FR 37787 (1984)), the Department published a proposed rule to implement the 1979 and 1983 statutory provisions. That rule amended regulations affecting 24 CFR Part 215 (Rent Supplement Payments); Part 880 (Section 8 Housing Assistance Payments Program for New Construction); Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation); Part 882 (Section 8 Housing Assistance Payments Program—Existing Housing), Subparts A and B (Section 8 Certificates), D and E (Section 8 Moderate Rehabilitation), and F (Manufactured Home Owners); Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies); Part 884 (Section 8 Housing Assistance Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects); Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations), both Subparts A (Loan Management) and C (Property Disposition); Part 904 (Low Rent Housing Homeownership Opportunities); Part 905 (Indian Housing); and Part 960 (Admission to, and Occupancy of, Public Housing).

The Proposed rule provided for a preference in selection for those applicants who otherwise were qualified for housing assistance under the program involved and who, at the time they were seeking assistance, were involuntarily displaced, living in substandard housing, or paying more than 50 percent of their family income for rent. PHAs and owners were required to inform prospective tenants (including those on the waiting list) of the availability of the preferences, and to give them an opportunity to show that they qualified for preferred status.

The three Federal preferences were given primacy over all local preferences and priorities. Thus, an applicant who qualified for any one of the Federal preferences would have been selected to receive housing assistance before non-preferred applicants, irrespective of their qualification for one or more non-Federal (*i.e.*, locally established) preferences or priorities, or their position on the waiting list. The preferences were coequal, and no ranking or cumulation of the preferences was permitted.

The proposed rule envisaged a two-step approach by which an applicant generally would qualify for a Federal preference. First, the applicant would *certify* that he or she was in one of the three preferred classes when he or she initially applied for housing assistance;

before receipt of assistance, however, the applicant had to provide appropriate documentation to the owner or PHA so that the applicant's status in a preferred class at that time could be *verified*.

The rule set forth definitions for each of the Federal preferences, and described the procedures that PHAs and owners would apply to verify that an applicant qualified for a preference. Verification was to be established principally by documentation supplied by the applicant from third-party sources. While private owners, and PHAs administering Rent Supplement and Section 8 programs (other than 24 CFR Part 882), were bound to follow the definitions and verification procedures set out in the rule, PHAs administering public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, were given the discretion to adopt their own verification procedures, and, subject to HUD's approval, could apply their own definitions of the Federal preferences.

Public Comments

The Department received over 130 comments on the proposed rule. The majority of these comments was critical of the rule, or of one or more of its provisions. As a result of these comments and the Department's ongoing review of the statutory scheme governing the Federal preferences, the Department has made a number of revisions in the proposed rule, which are incorporated in today's final rule.

These revisions are discussed at length below, along with the Department's treatment of the public comments. Briefly, the significant revisions include the following. The final rule retains the requirement for the Rent Supplement and Section 8 programs (other than the Certificate and Moderate Rehabilitation programs) that Federal preference-holders will always be considered for housing assistance before families without a Federal preference, irrespective of the latter's qualification for one or more non-Federal preferences. Project owners under these programs will, however, have broad discretion (not provided under the proposed rule) to determine the weight to be assigned each of the Federal preferences vis-a-vis the other two. Thus, owners may aggregate or rank the three preferences or their definitional elements (or both), and use State or local preferences as a means of selecting among Federal preference-holders.

PHAs administering the Public and Indian Housing programs and the Section 8 Certificate and Moderate Rehabilitation programs will have the same discretion as project owners to determine the weight to be assigned among the Federal preferences. They will also be permitted, however, to make rental assistance available to families *without* a Federal preference *before* Federal preference-holders, for up to 10 percent of the families initially receiving assistance in any one-year period.

The definition of involuntary displacement has been clarified to include situations in which a landlord has decided not to renew a tenant's lease. Victims of domestic violence may qualify for a preference on grounds of involuntary displacement. Similarly, the definition of substandard housing has been expanded to include "homeless" persons. Finally, the rule adds language providing for administrative review of a decision denying an application for a preference.

For the convenience of the reader and to better organize the Department's responses, the comments are classified according to the general subject matter that they addressed, followed by the Department's response to each category of comments.

I. Application of the Federal Preferences

A. Primacy of the Federal Preferences

In the proposed rule, the Department gave the three preferences primacy over all non-Federal preferences. The Department stated its position as follows:

> * * * in the weighting process, an applicant qualifying for any one of these three preferences would outweigh, and therefore be chosen before, another applicant who does not qualify for one of the three preferences, regardless of the combination or aggregation of other (*i.e.*, State or locally created) preferences enjoyed by the other applicant, and without regard to which applicant applied first, or the length of time the first applicant was on the waiting list. [49 FR 37788–9.]

The Department specifically requested comment on the "effect and propriety of implementing the three preferences" in this manner. 49 FR 37788. This request elicited numerous respones, primarily from PHAs. The overwhelming majority of the commenters expressed strong opposition to the provision, particularly insofar as it had the effect of overriding local preferences for residents of the community in which the assisted housing is located.

One of the grounds for objection to the proposal to make the three preferences preeminent was that such a policy would be contrary to the Congressional intent expressed in the Conference Report accompanying the 1979 Act. H. Rep. No. 706, 96th Cong., 1st Sess. 55 (1979). Commenters emphasized language in that Report to the effect that the preferences are intended to *guide* the PHA in selecting tenants—not to permit HUD to direct the selection of certain tenants. Similarly, commenters argued that nothing in the legislation enacted in 1979 and 1983 creating the three preferences suggests that Congress intended to subordinate local discretion by granting primacy to the three preferences. One commenter contended that making the preferences preeminent would directly contravene the United States Housing Act of 1937, and that there should be no preemption of local priorities without specific direction from the Congress.

Some commenters noted their objection less on legal than on practical grounds. It was argued that preemption would cause an undue burden on the lower income residents of a jurisdiction, since the PHA, which was established to serve the low-income residents of that jurisdiction, would be forced to provide housing for residents of other jurisdictions. A commenter viewed the proposal as significantly reducing a PHA's ability to tailor housing assistance programs to suit local housing conditions. This commenter urged that PHAs be given maximum flexibility to accommodate the three preferences within the pattern of locally established priorities. The commenter stressed that local preferences should not be thought of as exclusionary; instead, argued the commenter, they facilitate the creation of assisted housing opportunities and accomplish the goal of assisting the needy, with strict adherence to affirmative marketing requirements.

Other commenters contended that preemption of local residency preferences would threaten the viability of the public housing program, cause participating communities to withdraw from HUD's housing assistance programs, and discourage non-participating communities from entering the programs. Commenters stated that local preferences are in the nature of a contract: *i.e.*, local communities agree to cooperate in the development of assisted housing in return for the assurance that their needy residents will be served. Commenters believed that the proposed rule violated that agreement. Finally, State Housing Finance Agencies admonished HUD to recall the special arrangement that exists between them and HUD with respect to the level of discretion that they were originally intended to have in carrying out Section 8 programs.

The Department has reviewed its original position on the primacy of the Federal preferences in light of the comments, and has determined that PHAs operating Public and Indian Housing programs and Section 8 Certificate and Moderate Rehabilitation programs may be given some flexibility to devise tenant selection systems that favor applicants without a Federal preference over Federal preference-holders.

As noted above, the statutory text in neither the 1979 nor 1983 Act sheds definitive light on how the preferences should be implemented. The Conference Report on the 1979 Act provides the following guidance:

> The conferees believe that during a period of reduced funding for assisted housing, the programs should be directed toward those families who have the most urgent housing needs. The priority is intended to guide the owner or PHA in determining which potential tenants to select. The priority is not intended nor should it be used to allow the Department to direct an owner or PHA to select certain tenants. It would be unacceptable and clearly not authorized by this provision for the Department to require a PHA or owner to select tenants from a list developed by the Department. This provision is not intended to alter the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner. It is simply intended to have owners and PHAs give priority to meeting the urgent housing needs of those families living in substandard conditions or being involuntarily displaced. [H. Rep. No. 786, 96th Cong., 1st Sess. 53 (1979).]

Note.—The House Report on the 1979 Act contains substantially similar language. See H.R. Rep. No. 154, 98th Cong., 1st Sess. 18 (1979).

The Department does not consider the language of either the statute or the Conference Report as *requiring* that the Federal preferences be implemented in a way that wholly preempts State or local tenant selection preferences. The statute and legislative history require only that "preference" be given to "families" in one of the three preferred categories. Use of the plural, "families," indicates that preference is to be accorded to a *class* of applicants, not to *each* individual applicant. The term "preference" can have a range of meanings—from providing some advantage in the selection process to guaranteeing preferred candidates the next available rental assistance. Providing preference to a class of applicants suggests a general mandate that, unless "preference" is construed in its most preemptive sense, may permit some individual non-preferred applicants to take precedence over preference-holders in the tenant selection process.

Given the commenters' overwhelming opposition to the proposed rule's "primacy of the preferences" approach, and the lack of legislative guidance on how to construe the preference provisions, the Department believes that the term "preference" should not be given such a prescriptive construction. Instead, we believe that the statutory mandate can be satisfied by giving *substantial preference to families in the preferred categories; i.e.*, by ensuring that substantially all preference-holders receive assistance ahead of non-preference-holders, but permitting some non-preference-holders to go before preference-holders. The Department believes that this approach is not only permissible under the statutory language, but also is responsive to the Congressional objective expressed in the Conference Report that HUD's rental assistance programs "should be directed toward those families who have the most urgent housing needs", as expressed by the preferences.

Accordingly, the Department has amended the final rule to permit PHAs operating Public and Indian Housing programs, and Section 8 Certificate and Moderate Rehabilitation programs, to establish tenant selection systems that permit applicants without a Federal preference to receive housing assistance ahead of those with a Federal preference. To ensure compliance with the statute and its legislative intent, however, the rule requires that not more than 10 percent of the families that are initially admitted to assistance in the Public and Indian Housing and Moderate Rehabilitation programs, or that initially receive a Certificate of Family Participation in the Certificate program, may be non-preference-holders that took precedence over families with a Federal preference.

The 10 percent limit applies only where the PHA has one or more applicants with a Federal preference, and permits assistance to be given first to a non-preferred applicant. It is possible, especially for smaller PHAs, that no applicant holding a Federal preference will be available when assistance is to be provided. In this situation, the PHA may make the assistance available to the non-preference-holder, without counting it against the 10 percent cap.

The 10 percent ceiling will be determined for each waiting list that the PHA maintains. This will permit PHAs that have "merged" waiting lists to avoid the administrative burden of ensuring compliance with the 10 percent standard for each program they operate.

Performance under the standard will be measured on an annual basis. Thus, PHAs will be responsible for administering their programs so that at the end of each one-year period, the 10 percent limit is not exceeded. Since some PHAs may not wish to begin the one-year period when the rule is implemented, but may prefer another starting date (such as the beginning of the PHA's fiscal year), the rule permits PHAs to select an initial reference period of less than one year before the start of the first full year under the rule.

Finally, in fashioning its own system, a PHA may employ the 10 percent exception to carry out preference objectives required by State law or those adopted by the PHA itself to advance local policy—for example, a local residency preference. Additionally, there would be no obstacle to a PHA's decision to adopt new local preferences to meet new program objectives. For example, a PHA could provide a local preference for tenants of Rental Rehabilitation projects who encounter increased rent burdens in their Rental Rehabilitation units, but whose rent burden doesn't reach a level to qualify the families for a Federal preference.

The Department wishes to stress that only the *initial* receipt of assistance for a *family* is counted toward the 10 percent limit. Thus, a family that moves from one public housing project to another in the same PHA's jurisdiction, or that moves from a unit assisted under the Certificate program and is given a Certificate for a new unit, is not subject to this rule.

As noted above, the 10 percent exception is only available for PHAs operating certain programs. Owners (including PHAs) participating in the other Section 8 programs must comply with the proposed rule's "primacy of the preferences" approach; *i.e.*, Federal preference-holders must be considered for housing assistance before those who do not qualify for a Federal preference.

The Department has two reasons for adopting this bifurcated approach. First, the vast majority of those who commented on the "primacy of the preferences" feature of the proposed rule were PHAs. Their comments voiced virtually unanimous and heated opposition to this aspect of the rule, especially insofar as this approach could override local residency preferences. As noted in the comment summary above, many PHAs view local residency preferences as an essential part of their programs—even as an implicit "contract" under which local communities agree to cooperate in the development of assisted housing in return for the assurance that their needy residents will be served first.

In contrast, few owners under the rule's other programs commented on, or objected to, the "primacy of the preferences." Owners in these programs typically do not use local tenant selection preferences, including residency preferences, and, thus, do not have nearly the intense interest in this issue that PHAs do.

Second, PHAs and IHAs have traditionally been given a great deal of discretion in the administration of their local public housing programs. Indeed, one of the major policies of the 1937 Act is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *" Section 2 of the 1937 Act. Moreover, PHAs and IHAs are public bodies created by State, local, and tribal governments, and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for administering the preferences serves the goal of minimizing Federal control over matters of local concern that are within the competency of local governments. By contrast, for most purposes, the owners of projects under the other programs are not likely to receive guidance in the management of projects from non-mortgagee agencies of State or local governments.

In addition, the final rule continues the approach taken in the proposed rule of treating PHAs that administer Section 8 projects in the same way as other Section 8 owners. PHAs administering Section 8 projects have traditionally been viewed as project owners. Thus, they are commonly required to fulfill different regulatory requirements for the public housing and Section 8 programs. For example, Section 8 projects are not subject to a cooperation agreement requirement under section 5(e)(2) of the 1937 Act, are not exempt from State and local real and personal taxes under section 6(d) of the Act, are not eligible for operating subsidies under section 9 or for comprehensive improvement assistance under section 14 of the Act, and are not subject to requirements governing the demolition and disposition of housing under section 18 of the Act. Additionally, PHA public housing lease and grievance procedures under 24 CFR Part 966 differ from the termination of tenancy provisions under 24 CFR Chapter VIII that govern FHA-insured Section 8 projects.

For these reasons, the Department has determined that the 10 percent exception approach should only be extended to PHAs, and only the PHAs operating Public and Indian Housing programs and Certificate and Moderate Rehabilitation programs. We believe that this approach adequately responds to the commenters' concern that PHAs be given flexibility to tailor the Federal preferences to locally defined needs and requirements. The 10 percent "safety valve" provides PHAs with significant discretion to fashion their own tenant selection systems, while ensuring achievement of the statutory objective of directing housing assistance to those with the greatest need.

Finally, it should be noted that the position of the Federal statutory preferences under the rule vis-a-vis locally derived preferences may work a limited preemption of local preferences—including those that may have been established by State or local law. The Department believes that this result is a necessary concommitant of the statutory directive and is clearly appropriate under preemption doctrine pronounced by the U.S. Supreme Court in *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985). As the Court stated in that case at 713:

> "Even where Congress has not completed displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz, supra*, at 67.

It is clear that in certain circumstances the Federal preferences may conflict with preferences established by State or local law. For example, the rule may require that assistance be provided to an applicant who holds only a Federal preference before another applicant who does not qualify for a Federal preference, but who holds a veterans' preference created by State law. Since only one candidate can "go first," the two requirements conflict; in the words of the Court, "compliance with both federal and state regulations is a physical impossibility," and "the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress * * *'". In such a situation, the State law must yield to the Federal imperative.

It should be noted, however, that this conclusion does not mean that preferences created by State and local law are wholly preempted, and have no place in the talent selection process. Owners and PHAs may continue to use these preferences in their selection policies. Thus, PHAs and owners may use these preferences to rank Federal preference-holders, as well as to rank applicants who do not qualify for Federal preference. In addition, PHAs that qualify for the 10 percent exception discussed earlier, may favor applicants with State or local preferences over those with Federal preferences, consistent with the standards for using the 10 percent exception and applicable FHEO requirements. Where, however, the State or local preference conflicts with the Federal preferences, the State or local law must yield to the Federal statute implemented by today's final rule.

B. Use of Local Preferences to Select Among Federal Preference-Holders

As noted earlier, the proposed rule provided no role for local preferences to distinguish among applicants that held a Federal preference; the only issue was whether an applicant qualified for a Federal preference and, if so, he or she received consideration for assistance based solely on the *Federal* preference, irrespective of the number or type of *local* preferences that the applicant might hold. The final rule alters this rigid approach by permitting PHAs and owners in all of the programs subject to this rule to use State or local preferences as a means of selecting among Federal preference holders. For example, a PHA or owner could provide that an applicant who was living in substandard housing and had a local residence preference would receive assistance before another who only held a substandard housing preference. Another example of a local preference that a PHA or owner may use to distinguish among Federal preference-holders is a preference to select qualified candidates for a State or local program to move low-income families from welfare to employment and economic and social self-sufficiency.

In addition, according weights could reflect local concerns associated with ongoing housing assistance activity. For example, a PHA could provide that those paying more than 50 percent of family income for rent because their living units had increased in cost after Rental Rehabilitation activity should take precedence over those paying 50 percent of family income for rent where

other factors account for the high rent burden.

It should be noted that this approach is distinct from the 10 percent exception discussed in the previous section. The 10 percent feature permits PHAs to admit to assistance some families that have no Federal preference over those that do. The discretion accorded here enables PHAs and owners to use local preferences as a means of rank-ordering among those applicants that do have preference and, those without a Federal preference can receive assistance before those with such a preference. The Department believes that the ability to use local preferences in this way will augment the latitude given PHAs under the 10 percent exception features. It will also give other owners needed flexibility in administering their programs.

This approach also responds to commenters' concerns that PHAs and owners have the greatest possible flexibility to tailor housing assistance to meet local needs, and to commenters' fears that the rule would force them to accept non-resident Federal preference-holders before residents. As noted above, PHAs and owners may use local residency preferences as a way of ranking Federal preference-holders. Thus, at least among federally preferred applicants and to the extent such preferences do not conflict with applicable fair housing and equal opportunity requirements, PHAs and owners could ensure that local residents come first.

It is at least theoretically possible that a non-resident Federal preference-holder could take precedence over a resident, if no resident applicant held a Federal preference and, in the case of certain PHA programs, the 10 percent exception was unavailable. Although the Department has no data upon which to estimate the incidence of this situation, we do not expect it to occur with any frequency, especially for PHAs and owners that have sizable waiting lists. In any event, however, the Department believes that if the Federal preferences operate to furnish assistance to a non-resident Federal preference-holder before a resident without a Federal preference, this is a necessary concommitment to implementing the statutory mandate.

C. Aggregating and Ranking the Federal Preferences

As noted before, the proposed rule did not permit the Federal preferences to be aggregated or ranked. (See 49 FR 37789.) Thus, with respect to aggregation, a prospective tenant who qualified for two or more of the preferences could not take precedence over another who qualified for only one. With respect to ranking, qualification for a preference could be based on any permissible ground, and once obtained, each preference was coequal with the others: *i.e.*, determinations of the relative weight to be accorded the preferences or their bases for qualification (or both) were not permitted.

Commenters opposed this policy on grounds that it provided no means of determining who has the greatest need for housing assistance—a problem that is exacerbated if, as some commenters argued, qualification for at least one of the preferences would be nearly universal. The Department has reviewed the position taken in the proposed rule, and has decided to permit PHAs and project owners to rank the preferences or their components (or both), and to aggregate the preferences according to the PHA's or owner's determination of the relative need for housing that the preferences represent.

For example, *with respect to aggregating the preferences*, a PHA or owner may decide that a family that is paying more than 50 percent of its income to rent a substandard unit has a greater need for housing than one that is paying more than 50 percent of its income for a standard unit, and provide assistance to the former family before the latter. *With respect to ranking the preferences*, a PHA or owner may provide that those living in substandard housing have a greater need for housing than those paying more than 50 percent of family income for rent and, therefore, may accord the former preference greater weight in the selection process than the latter preference.

With respect to ranking the preferences' definitional elements, a PHA or owner may provide that those living in housing that is dilapidated or that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family and, therefore, may accord the former circumstance greater weight in the selection process than the latter circumstance. Similarly, a PHA or owner may provide that those living in dilapidated housing or housing that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those paying more than 50 percent of family income for rent, but that those paying more than 50 percent of income for rent have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family. In this case, PHAs and owners could accord appropriate weights reflecting these determinations of need.

Since PHAs and owners will meet the statutory requirement that preference be given the three categories of applicants, irrespective of the aggregation or ranking of the preferences chosen, the rule does not impose specific limits on PHA or owner discretion to rank or cumulate the Federal preferences. Paragraph (b) of today's rule contains these provisions.

Note.—This preamble makes a number of references to amendments to specific "paragraphs" of today's rule. Since this proceeding amends several Parts of 24 CFR, but uses essentially the same paragraph designations for each Part amended, this terminology means that the paragraph referred to has been amended in each Part covered by this rule.

D. Fair Housing and Equal Opportunity Considerations

Today's rule contains language in paragraph (b) to ensure that the Federal preferences and any non-Federal preferences and priorities are established and administered in a manner that (1) is consistent with HUD's affirmative fair housing marketing policies (see 24 CFR 200.610) and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan, and (2) is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended* at 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. These provisions are designed to ensure that the mandates of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and related civil rights authorities are met. (Part 905 of the rule contains modifications appropriate to the special status of Indians under civil rights laws.)

E. Advance HUD Approval of Federal Preference Systems

The final rule imposes no new requirements for advance HUD approval of owner or PHA preference systems. These systems, however, are subject to existing approval requirements, such as the requirement in the Section 8 Certificate and Moderate Rehabilitation programs that tenant selection preferences be incorporated into the PHA's Administrative Plan.

For other programs covered by the rule, owners and PHAs must send HUD a copy of any preference system that proposes to use a local residency preference. This submission requirement does not affect the ability of the owner or PHA to implement the Federal preferences, but reflects the Department's concern that residency preferences be administered in accordance with HUD's fair housing and equal opportunity requirements.

F. Relationship to Other Federal Authorities

Several commenters requested guidance on the relationship between the three preferences and existing Federal preferences or requirements. Specific guidance was requested on the following:

—The requirement that PHAs select families eligible for assistance under the Section 8 Moderate Rehabilitation program that reside in units designated for rehabilitation, without requiring that they be placed on a waiting list. (24 CFR 882.514(b))

—The provision permitting PHAs to give a preference for admission to Independent Group Residences to families that express an interest in residing in such a Residence. (24 CFR 882.209(a)(8))

Preliminarily, it should be noted that the "primacy of the preferences" concept in the proposed rule involved only the relationship between the three Federal preferences and *locally created* (or non-Federal) preferences. The rule itself did not speak to the relationship between the three preferences and other *Federal* preferences or requirements. The preamble, however, contained the following guidance:

> The rule would not preempt those classes of tenants accorded specified preferential treatment under other Federal regulatory or statutory authorities. For example, sections 221(f) and 231(f) of the National Housing Act (NHA), 12 U.S.C. 1715*l*(f), and 1715v(f), respectively, authorize the Secretary to adopt procedures to assure that housing provided under these sections "is available to displaced families" (section 221(f)) or to prescribe procedures to secure for handicapped families "preference or priority of opportunity to rent the living units specially designed for their use and occupancy" (section 231(f)). These statutory requirements are implemented by regulatory provisions at 24 CFR 221.537(c), giving a preference to displacees, and at 24 CFR 231.9, giving a preference to elderly or handicapped persons.
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> * * * * *
>
> The statutory language is unambiguous that these [the Federal] preferences must be given to eligible applicants, but these preferences are not intended to be applied so as to vitiate other regulatory and statutory objectives. For example, 24 CFR 860.204(c) [now § 960.204(c)] makes it clear that tenant selection policies shall be in compliance with, among other things, "the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964." Owners and PHAs are, thus, under a continuing obligation to observe all pertinent Federal regulatory and statutory requirements while giving the preferences to eligible applicants. See also 24 CFR 880.603(d), 881.603(b) and 883.704(b). (49 FR 37789)

The Department believes that this approach is correct, and has amended the proposed rule to make this relationship clearer, by requiring that the three Federal preferences be implemented in a manner that is "consistent with" other applicable Federal requirements. (See paragraph (b) of today's rule.) Because of the variety and complexity of the situations in which the three preferences may interact with other Federal preferences and requirements, and the confusion expressed by the commenters on this point, the Department believes that detailed discussion and guidance on how these authorities interrelate is appropriate.

In the Department view, the basic precept is that the three preferences and other Federal authorities should be read in a way that fully implements each provision to the maximum extent possible. Situations may occur, however, in which there is conflict between the preferences and the other authority: *viz.*: where one provision can be given effect only at the sacrifice of the other. The following guidance is intended primarily to address these situations.

1. *Preferences and Requirements in Federal Statutes*—(a) *Broad Range of Incomes.* Section 6(c)(4)(A) of the 1937 Act requires PHAs administering public housing programs to establish tenant selection criteria that both contain the three preferences and are designed "to assure that, within a reasonable period of time, the project will include families with a broad range of incomes * * *." This provision presents special issues, since the two requirements are coequal elements of the same subparagraph. The Department believes that PHAs are under an obligation to try to satisfy both requirements to the fullest extent possible. For example, each requirement can be met by applying the preferences to the income groups involved. Thus, if a higher income family is needed to satisfy the "broad range of incomes" requirement, a higher income family that qualifies for a preference would be chosen first; if a poorer family is the next to be chosen, a poorer family with a preference would be selected first. Similarly, PHAs may use the "broad range of incomes" requirement as a type of "local preference," by ranking Federal preference-holders according to the income categories involved.

Problems may arise, however, in situations where both the preferences and the "broad range of incomes" requirements cannot be satisfied, as for example, where the "broad range of incomes" policy requires a higher income family, but only poorer families hold a preference. In this situation, PHAs could satisfy the "broad range of incomes" requirement by using the 10 percent exception authority to admit to tenancy the non-preferred candidate ahead of the federally preferred applicant: in the example, the non-preferred higher income applicant before the preferred lower income applicant.

If, however, the 10 percent authority is not available, the Department believes that the preferences generally take precedence. In the example, the poorer family with the preference must be considered for assistance before the non-preferred, higher income applicant.

The Department believes that this conclusion is amply supported by the statute and its legislative history. As noted above, the preference portion of section 6(c)(4)(A) is categorical in its mandate: the PHA's tenant selection criteria "shall give preference." The legislative history referred to earlier is equally categorical. On the other hand, the portion of the statute dealing with range of incomes is far less categorical. Thus, the statute requires that the PHAs actions be designed to achieve the "broad range of incomes within a reasonable period of time." In implementing this authority, § 960.205(c) and (c)(6) require PHAs to establish selection criteria that (1) are "reasonably related to achieving the basic objective" and (2) "by preference or otherwise" will be "reasonably calculated to obtain the basic objective."

Since the preference language is expressed in far more direct and immediate terms, the Department believes that the preferences take precedence over the "broad range of incomes" requirement, where both of the requirements cannot be satisfied in a given instance.

(b) *Other Statutory Requirements.* Examples of other statutory provisions that contain preference and other requirements include the following National Housing Act authorities: section 221(f) (preference for displaced families—defines "displaced families"

more narrowly than "involuntary displacement" under the final rule); sections 231(a)(1) and (f) (not less than 50 percent of insured units must be specially designed for the use and occupancy of elderly persons, and preference for handicapped persons, respectively); section 250(c)(2) (priority for prospective section 8 tenants with the lowest income, where section 8 assistance is provided to forestall prepayment of insured, subsidized project mortgages); and section 207(b)(2) (prohibition of discrimination against families with children). Section 3(b)(3) of the 1937 Act gives preference in admission to assisted housing to elderly, handicapped, or displaced single persons before other single persons who are not in one of those categories.

Consistent with the basic precept described above, the three preferences and these provisions should be implemented so as to achieve the objectives of both the preferences and these authorities. For example, among applicants for Section 8 units in section 231 projects who qualify for one of the three preferences, elderly or handicapped applicants would be taken first. Where a conflict arises—such as if no elderly or handicapped applicants in the example hold a preference—*the program-specific requirement would prevail.* Thus, in the example, elderly or handicapped applicants without a preference would take precedence over other applicants with a preference. The rationale for this result is that where Congress has provided competing authorities, the more specific should take precedence. In the example, the section 231 preference prevails, since that preference inheres in the nature of the project itself, whereas the three preferences apply to Section 8 assistance generally.

2. *Preferences and Requirements in Regulatory Authorities*—(a) *No Apparent Conflict.* There are a number of regulatory authorities that provide for preferences or impose other requirements that can clearly be given full effect together with the three preferences. These authorities include:

—Fair housing and equal opportunity requirements, such as those contained in §§ 880.210, 882.111, and 960.203; and

—§ 882.209(a)(6), which allows a PHA to establish a preference for selecting an eligible applicant who has indicated a desire to reside in an Independent Group Residence, when a current Section 8 participant in an IGR moves.

Fair housing and equal opportunity requirements apply to the selection of all applicants for assisted housing, irrespective of whether they hold a Federal preference. Thus, these requirements do not conflict with the preferences.

In the Part 882 example, PHAs can satisfy the Federal preferences by offering Certificates first to those who are Federal preference-holders. The fact that no preference-holders wish to take advantage of these opportunities, or that there may not be a family on the waiting list that qualifies for a Federal preference, does not create a conflict under these regulatory provisions: the PHA has discharged its responsibilities by making the Certificates first available to Federal preference-holders on the waiting list.

(b) *Apparent conflict.* There are, however, several regulatory authorities that have the potential for conflict with the Federal preferences. For example, § 882.514(b) requires PHAs to select eligible families living in a project to be rehabilitated under the Section 8 Moderate Rehabilitation program "without requiring that these Families be placed on a waiting list." Subparts A (Loan Management) and C (Property Disposition) of Part 886 provide Section 8 assistance to otherwise eligible tenants who are occupying assisted projects when the Section 8 contract is executed. Section 882.209(a)(4)(ii)(B) provides for Certificates for eligible families living in:

(i) HUD-owned multifamily projects, when HUD decides to sell the project or to vacate units in the project;

(ii) HUD-held multifamily projects, when HUD forecloses, and a party other than HUD acquires the project at foreclosure; and

(iii) Section 8-assisted projects, in which the owner elects not to renew a Section 8 contract.

Each of these authorities can have the effect of targetting Section 8 Certificates to those who are eligible for Section 8 assistance, but who do not qualify for any of the Federal preferences. The Department has concluded, however, that the preference requirements should not be implemented in a way that vitiates these special Section 8 authorities.

Moderate Rehabilitation. The purpose of the Section 8 Moderate Rehabilitation program is "upgrading and thereby preserving the Nation's housing stock." (Section 8(e)(2) of the 1937 Act, 42 U.S.C. 1437f(e)(2)). The subsidy involves a 15-year Section 8 Housing Assistance Payments (HAP) contract that is attached to the structure. The Department does not believe that Congress intended that the program and the Federal preferences interact in a way that could result in the displacement of Section 8-eligible families from Moderate Rehabilitation projects, only to fill the vacancies created with other Section 8-eligible families.

In addition, in HUD's appropriation Acts, the Congress routinely approves the use of Section 8 authority for Moderate Rehabilitation. See, for example, the table of gross reservations for fiscal years 1984 and 1985 (H.R. Rep. No. 867, 98th Cong., 2d Sess. 9, 11 (1984)), fiscal year 1986 (H.R. Rep. No. 363, 99th Cong., 1st Sess. 6 (1985)), and fiscal year 1987 (H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986)). The Department believes that this Congressional approval indicates clear Congressional intent that the Moderate Rehabilitation program continue, despite the fact that some of the tenants initially receiving Section 8 assistance may not qualify for a Federal preference. Thus, it is permissible to direct Section 8 Moderate Rehabilitation assistance to existing occupants who qualify under the program.

Loan Management/Property Disposition. The primary purpose of Part 886, Subpart A (Loan Management), is to reduce claims on the Department's insurance fund by aiding those FHA-insured or HUD-held projects with immediately or potentially serious financial difficulties. (§ 886.101(c)). The purposes of Part 886, Subpart C (Property Disposition), are to increase and maintain the amount of decent, safe, and sanitary housing affordable by lower income families; minimize displacement of tenants; preserve and revitalize residential neighborhoods; and dispose of projects in a manner consistent with HUD's disposition objectives. (§ 886.301.) The subsidy involves five- and 15-year, respectively, Section 8 HAP contracts that are attached to the structure.

As in the case of Moderate Rehabilitation, Congress regularly approves the use of Section 8 authority for Loan Management and Property Disposition. See, for example, the tables of gross reservations referred to above for fiscal years 1984 and 1985, fiscal year 1986, and fiscal year 1987. The Department believes that this legislative history provides adequate sanction for the use of Loan Management and Property Disposition authority for tenants in place when the Section 8 contract is executed, without regard to whether they qualify for a Federal preference at that time. In addition, to the extent that rents for these tenants were subsidized before their receipt of Section 8 assistance, they would not be considered to be "seeking assistance" as contemplated by the preference statute, but rather to be transferring directly from one form of rental subsidy to another—an event that the Department believes is outside the purview of the preference authority.

HUD-owned/Held Multifamily Projects. Sections 882.209(a)(4)(B)(2) and (3) require that if HUD makes Section 8 Certificates available to a PHA for use in connection with (1) a HUD-owned multifamily project that HUD decides to sell or in which HUD wishes to vacate units, or (2) a HUD-held multifamily project that is acquired at foreclosure by a party other than HUD, and PHA must use them for these purposes. These uses of Certificates provide an alternative to the project-based subsidy approach for supporting HUD's Property Disposition program that is contemplated by Part 886, Subpart C.

Since these Certificates are funded from authority made available for Property Disposition, the same considerations mentioned above with respect to Congressional approval in appropriation Acts pertain to their use. In addition, as noted above, provision of Section 8 assistance to a tenant whose rent was subsidized before receipt of a Certificate is not subject to the preference provision.

Section 8 "Opt-outs." Certain project-based Section 8 contracts provide for an initial term not to exceed five years, and are renewable at the sole option of the owner for additional terms of up to five years, not to exceed a specified period. (See 24 CFR 880.109 (1979) and 24 CFR Part 1273, App. II (1975).) The regulatory scheme under § 882.209(a)(4)(B) (4) calls for PHAs to make Section 8 assistance available for eligible families residing in projects when the owner elects not to renew the contract for an additional term. Since provision of Section 8 assistance in these circumstances simply substitutes one form of rental assistance for another, the preference provisions are, as noted above, inapplicable.

Demolition/Disposition of Public Housing. Congress has regularly approved HUD's request to make Section 8 Housing Vouchers available to tenants of public and Indian projects that are to be demolished or disposed of. See, for example, the tables of gross reservations referred to above for fiscal years 1986 and 1987. Since receipt of a Voucher in these circumstances simply substitutes one form of assistance for another, the preference provisions are inapplicable.

3. *FH&EO Administrative and Judicial Remedies.* Where HUD makes a finding of discrimination in accordance with procedures under applicable civil rights law, and imposes a race-conscious remedy, imposition of the remedy takes precedence over the Federal preferences. That is, if the remedy calls for the next tenant to be a minority family and no minority families qualify for a preference, a non-preferred minority family would be selected for the unit over a non-minority family with a preference. Similarly, court-decreed civil rights remedies take precedence over the preferences. These types of remedies are necessary to redress specific instances of discrimination, and the Department does not believe the Congress intended the preferences to override them.

II. Discretion Accorded PHAs

The proposed rule permitted PHAs (including IHAs) operating public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, to develop their own definitions for the three preferred categories (subject to HUD approval), and to devise their own verification procedures. (See the proposed rule's amendments to 24 CFR Parts 904 and 905 and §§ 882.209a(a), 882.514a(a), and 960.204a(a).) That rule required owners under all other programs (including PHAs and IHAs, where they own projects under those programs) to adopt the definitions and verification procedures prescribed in the rule. A commenter objected to this bifurcated approach on grounds that since applicants may apply for assistance under several of the programs covered by this rulemaking, it will be confusing to an applicant who has applied for assistance under both "PHA" and "owner" programs to find his or her eligibility not being defined or determined (or both) in a uniform manner.

As noted earlier, this bifurcated approach is amply justified by the statutory and programmatic differences between "PHA programs" and "project owner programs." In addition, the Department believes that any confusion that may be occasioned by this approach can be minimized by providing necessary information and instructions to prospective tenants—as required in paragraph (a) of the rule. Accordingly, the Department has retained the bifurcated approach in today's rule.

III. Definitions of the Federal Preferences

The definitions of the preferences used in the proposed rule elicited numerous comments and requests for clarification. The following summarizes the public comments, and gives HUD's responses, for each of the preference categories.

Before discussing this material, the Department wishes to emphasize two general points. First, the Department has attempted to draft the rule's difinitions broadly enough to ensure that those with the most urgent housing needs will be covered, yet narrowly enough that qualification for the preferences will not be so widespread as to dilute their effect. Second, as discussed above, the final rules governing the Public and Indian Housing programs (24 CFR Parts 904, 905, and 960), and the Section 8 Certificate and Moderate Rehabilitation programs (24 CFR Part 882, Subparts A and B, D and E, and F), differ from the rules for the other programs in serveral respects, including PHA (and IHA) discretion (subject to HUD approval) to develop their own definitions of the preferred categories. HUD's disposition of the public comments in based solely upon the definitions contained in the proposed rule, and does not address alternative definitions that PHAs or IHAs may propose.

A. *Involuntary Displacement*

One commenter asked whether a family that is evicted for non-payment of rent would be considered "involuntarily displaced," if the failure to pay the rent resulted from the loss of employment of a family member. Since paragraphs (d)(3) (A) and (B) of the proposed rule required the owner's action causing the displacement to be "beyond an applicant's ability to control or prevent" and to occur "despite an applicant's having met all previously imposed conditions of occupancy," respectively, the proposed rule did not consider a tenant displaced by eviction—irrespective of the reason—as "involuntarily displaced." The Department limited the definition in this manner to avoid imposing the further burden of PHAs and owners of having to determine why an applicant was evicted. The Department continues to believe that it is inappropriate to require PHAs and owners to assume this additional burden, and no change is made in this rule in this respect. It should be noted, however, that a family suffering a loss of income due to the unemployment of a wage earner may qualify for one or both of the other two preferences.

Paragraph (c)(1)(i) of the proposed rule provided that an applicant would qualify for the preference if "the applicant has been involuntarily displaced and is not living in standard replacement housing." Paragraph (c)(5) defined "standard replacement housing" as, among other things, "adequate for the family size." One commenter asked

what is to be considered "adequate for family size." Given the greater discretion accorded them under the rule, PHAs have discretion to fashion their own definition for the Public and Indian Housing programs, and for the Section 8 Certificate and Moderate Rehabilitation programs; the Department expects PHAs and project owners in the other programs to use the applicable occupancy standards contained in HUD Handbooks. Accordingly, the final rule does not contain a definition of this phrase.

Several commenters objected to the provision in paragraph (d) of the proposed rule that excluded from the definition of "involuntary displacement" a landlord's decision not to renew a lease or occupancy agreement. They argued that a tenant whose tenancy is terminated against his or her will is just as "involuntarily displaced" as tenants who are displaced because of other owner actions that meet the proposed rule's definition. They also argued that since landlords can use "lapse of time evictions" to terminate tenancy in lieu of giving notice of other owner actions that qualify under the definition, excluding such "evictions" from the definition could deprive tenants of the documentation necessary to qualify for a preference.

The Department agrees with these commenters, and has removed that limitation from the final rule. The Department notes, however, in response to other comments, that recognizing an owner's decision not to renew a lease as a possible ground for "involuntary displacement" would not lead to preferential treatment of "undesirable" tenants whose landlords opted to let their leases expire rather than pursue an eviction. Project owners and PHAs administering Public and Indian Housing projects remain obliged to determine whether prospective tenants' habits or practices make them unsuitable for tenancy in assisted projects; this rule in no way affects that responsibility.

One commenter thought it "unfair that a deserving family" would not get a preference on the basis that it was involuntarily displaced, if it was involuntarily displaced at one time, but it is living in standard replacement housing when its qualification for a preference is verified. The proposed rule excluded such a family because, as the comment itself states, the family is living in *standard* housing, and (assuming that the family is not paying more than 50 percent of its income for rent) no longer has the urgent need for housing assistance that the preferences are designed to address. Stated differently, the family has achieved the very state—occupancy of standard housing—that the granting of a preference would have helped them achieve. The final rule is unchanged on that point.

One commenter suggested that the preference for involuntary displacement should be limited to 30 days on either side of the displacing event. The Department does not agree with this suggestion. Paragraph (c)(1)(i) of the proposed rule conferred the involuntary displacement preference if the applicant had been involuntarily displaced and was not living in standard, replacement housing, or would have been involuntarily displaced within six months of certification or verification as to qualification for the preference. The Department does not believe that it makes sense to impose a time period after the displacement occurs; the only relevant inquiry at that point is whether the applicant is living in standard, replacement housing. Imposition of a 30-day limit for prospective displacements is too short a period, and would disqualify too many applicants that the statute—if given any reasonable interpretation—was intended to reach. Indeed, the intake process for housing assistance applications may itself take more than the 30 days suggested.

The Department rejects the comment that the preference for substandard housing and involuntarily displaced families should be limited to situations where a family's property is condemned—and then only if the condemned property complied with the applicable code when the applicant claiming a preference first occupied it. The Department believes that the standard suggested is far too narrow, and would inappropriately exclude many of the situations that a fair reading of the term "involuntary displacement" and Congressional intent would cover. In addition, limiting the preference to situations in which the property met code standards at initial occupancy would impose a unnecessary (and frequently impossible) administrative burden on prospective tenants, as well as on PHAs and owners.

One commenter recommended that where modernization of a project results in affected tenants being temporarily relocated, the tenants should be given an additional priority on the waiting list. Such tenants, insofar as this rule is concerned, would not be considered involuntarily displaced. They would not be "applicants for housing" to which the preferences apply, but tenants holding the right to reoccupy their units after rehabilitation, without any reference to a waiting list.

A commenter suggested that only government agencies whose functions involve public improvement and development should be authorized to verify that a family has been involuntarily displaced. This commenter argued that permitting verification of involuntary displacement on the basis of previous landlords' representations would encourage landlords to lie in order to use the availability of the preferences as a way of getting rid of "problem tenants."

This suggestion is impracticable, in the Department's view, because some jurisdictions may not have such agencies, or if they do, the agencies may not have the competency or resources to furnish the verification required. The Department believes that the proposed rule's approach of also permitting the previous landlord or agent to provide written notice of a prospective tenant's reason for displacement strikes an appropriate balance between protecting project owners and PHAs from "problem tenants" and ensuring tenants' access to reasonable means of verifying their qualification for a preference.

The Department does not believe, as a commenter argued, that private action is too broad and vague to serve as a ground for according a preference, or that verification of private action is excessively difficult. The Department has reviewed the legislative history surrounding enactment of the "involuntary displacement" basis for awarding a preference, and can find nothing to suggest that the term should be limited to displacement caused by governmental action. On the contrary, the solicitude in the legislative history that housing assistance be directed to those with the most urgent housing needs argues strongly for including both public and private displacement, since one's status of having been "involuntarily displaced" and need for housing turn on the *fact* of displacement, not the *nature* of the displacing action. In addition, HUD believes that the type of private action that is cognizable under the rule is clearly delineated and circumscribed, and that verification would generally be no more difficult than would be required for public action.

Paragraph (d) of the proposed rule contained an illustrative listing of occurrences that may constitute "involuntary displacement." Most of the examples on the list dealt with the project owner's withdrawal of the structure or the family's unit from the rental market. One commenter recommended that this listing be deleted, because (in the commenter's view) it produces confusion and implies a narrower construction than the rest of the definition requires. The Department notes that the listing is only illustrative and is not intended (nor would it have the effect) of narrowing the types of displacements that may be cognizable under paragraph (d)(3). The final rule is unchanged on that point.

The final rule adds a provision including the victims of domestic violence among those who may qualify for a preference on grounds of involuntary displacement. (See paragraph (d)(2) of the rule.) The Department believes that according a preference for the victims of domestic violence recognizes their pressing need for a safe home environment for themselves and their families, and is entirely consonant with the preferences' objective of directing housing assistance to those with the greatest housing needs. Specifically, an applicant for housing assistance would be considered involuntarily displaced if the applicant leaves his or her dwelling as a result of actual or threatened physical violence directed against the applicant or a member of the applicant's family by his or her spouse or other member of the applicant's household. The Department does not believe that actual violence against the applicant should be a condition precedent to qualifying for the preference: the threat of violence against the applicant, or actual or threatened violence against the applicant's family, has the same effect of destroying the peaceful enjoyment of the family abode.

The final rule also considers as involuntarily displaced an applicant who lives in a unit with a spouse or other member of the applicant's household who engages in this type of violence. The Department does not believe that an applicant should be forced physically to vacate the unit before qualifying for the preference. Such a position would be wholly insensitive to the difficult and complex situation in which the victims of domestic violence often find themselves, and may result in additional, unnecessary physical and emotional damage to the applicant and his or her family.

The final rule amends paragraph (e) of the proposed rule to specify that a domestic violence situation is to be verified through written confirmation from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence. Although the final rule generally focuses on verification by objective arms of government to reduce the administrative burdens on PHAs and owners, the Department believes that reference to clergymen, physicians, and private operators of facilities for victims of domestic violence is appropriate, since many genuine instances of domestic violence may only be shared with private counselors and doctors, and may never come to the attention of government authorities. The final rule also provides that the instances of violence must be recent or of a continuing nature. This requirement is designed to ensure that a preference claim is based upon a current domestic violence condition. Paragraph (c)(5) of the rule contains a conforming change to make clear that in the domestic violence situation, "standard, replacement housing" does not include the dwelling shared by the victim and the assailant, or temporary shelters for the victims of domestic violence.

The Department wishes to emphasize that identification of victims of domestic violence (and, as noted later, "homeless families") among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families, or for the purpose of providing transient housing facilities or temporary shelter.

The final rule also amends paragraph (c)(5) of the proposed rule to require that "standard, replacement housing" be "permanent" and occupied pursuant to a lease or occupancy agreement. This is a technical change to make clear that the type of replacement housing that can divest an applicant of the involuntary displacement preference must not be temporary in nature.

Paragraph (d)(2) of the proposed rule has been revised to add code enforcement as a potential public displacement action. This is a minor change to make clear that public displacement actions can include code enforcement actions that are not part of a public improvement or development program. (See paragraph (d)(1)(ii).)

Finally, the final rule amends paragraph (d)(3) to specify that an applicant who vacates a unit as a result of actions taken because of his or her refusal to comply with the applicable program occupancy policies and procedures with respect to the occupancy of underoccupied and overcrowded units is not to be considered "involuntarily displaced." (For examples of regulations containing these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.) This is a minor amendment designed to prevent an applicant who refuses to follow HUD's requirements for ensuring that assisted tenants are not overhoused from benefiting from the noncompliance, by attempting to establish qualification for a preference after any resulting displacement.

B. Substandard Housing

A commenter suggested that, to avoid PHA inspection of units, a "substandard" unit should be defined as one that does not meet the Section 8 Housing Quality Standards (HQS). The rule does not require PHAs or project owners to inspect applicants' units. Paragraph (g) of the proposed rule provided that verification of substandard housing would consist of a written statement or notice from a local government agency or from the applicant's present landlord as to the unit's condition. Since, as noted above, PHAs in some programs would have discretion to develop and use their own verification procedures, they may *elect* to inspect the unit involved as part of these procedures, but the rule does not *require* them to do so.

In addition, the Department does not believe that PHAs and project owners should have to use the Section 8 HQS to determine whether a housing unit is substandard. The HQS are designed to set minimum standards for determining whether a unit is eligible for Section 8 assistance, and are more prescriptive than the definition of "substandard housing" contained in paragraph (g). While the HQS are appropriate for determining minimum standards for federally assisted housing, the Department believes that the purpose of the Federal preferences—to target housing assistance to those with the greatest housing need—is better served by the approach taken in the proposed rule, of generally focusing the definition of substandardness on more serious indicators of inadequate housing quality. Thus, the final rule is unchanged on that point.

A housing authority recommended that a preference for living in substandard housing should only be given if the unit is so bad that (i) it is

actually condemned under the local housing code or (ii) repeated attempts to bring it into compliance with the code have failed. The Department does not believe that the rule should require use of such a narrow definition of "substandard." This definition would exclude from preferred treatment many applicants for housing assistance that have urgent housing needs and, thus, fit squarely within the class of individuals whom Congress intended to assist. In addition, the suggested definition would impose heavy administrative burdens on PHAs, owners, and applicants for tenancy in determining compliance with code requirements both before and after efforts to correct the deficiencies, and would force applicants to endure substandard conditions for perhaps lengthy periods, while any number of attempts to bring the unit up to code standards are made. The Department does not believe that the rule should mandate such a definition.

Another commenter suggested that verification of substandardness should require proof of an official inspection, rather than allowing the landlord to do it. This commenter contended that the landlord can certify to the presence or absence of certain basics, such as operable indoor plumbing or electricity, but not to their adequacy or safety.

The Department agrees that landlords may not possess the credentials necessary to make a professional determination that a housing unit is unsafe or inadequate. The Department believes, however, that landlord verification should be retained, even in cases requiring judgment as to the unit's condition.

The terms used in the regulation—such as the adequacy and safety of electrical service or heat, and whether the unit's condition endangers the health, safety, or well-being of the tenant's family—are not technical, and are readily comprehensible to the layman. Indeed, to the extent that the commenter fears that a landlord's judgment will err on the side of substandardness, the Department believes that the incentive runs the other way, since landlords will be inclined to characterize their units as substandard only when they in fact are. Depriving an applicant for housing assistance of this mode of verification, however, could impose additional delay and expense on the applicant, and in cases where there is no governmental unit qualified to provide the verification required, would render qualification for a preference on this ground impossible. The Department notes that under the rule, PHAs and owners could insist on a recitation of the facts underlying the alleged substandard condition of the unit to give them an adequate basis to make an informed judgment. In addition, as noted above, PHAs in certain programs (but not owners) would be free to propose their own means of verifying qualification for a preference on this ground.

Another commenter argued that the verification process should require a certain lapse of time to determine whether the landlord is willing to bring the unit into compliance with the applicable code, rather than using the unit's condition at a single given moment as the basis for the preference. This commenter stated that if the goal is to keep decent low-income housing stock on the market, there should be some pressure on the landlord to upgrade the unit and that tenants should not be encouraged to abandon the unit because of a preference system.

Preliminarily, it should be noted that the goal of this rule making is not to pressure landlords to bring their units up to code standard, but to target assistance to prospective tenants who have the greatest need for housing assistance. Requiring a period of time within which a housing owner can try to bring a unit up to standard would entail a considerable administrative burden on the PHA or project owner in monitoring and inspecting repair efforts, and could result in excessive delays during which tenants would be forced to live in substandard housing. Moreover, as a practical matter, the modes of verification contemplated by the rule would be unlikely to support a preference based on a single point in time: verification based on notice of substandard condition from a government agency would consume some time during which a unit can be repaired (if the landlord so intends) and the landlord would be unlikely to characterize the unit as substandard, unless he or she had decided not to make the needed repairs. The final rule is unchanged on that point.

Another commenter believed that the definition of "substandard" should be rooted in local housing codes, where available, rather than HUD regulations, because of the large differences among localities and regions of the country. For example, the commenter stated that in some jurisdictions, outdoor toilet facilities are commonplace and acceptable under local codes. In the commenter's view, to make all families without indoor toilets eligible for a preference would "wreak havoc" on the resources of PHAs in these areas.

The Department does not believe that this comment requires a change in the rule. As noted earlier, PHAs in certain programs may submit their own definitions of the preferences to make them more compatible with local codes. In addition, the final rule permits both PHAs and project owners to rank the preferences or their definitional elements (or both). Thus, for example, in areas where privies are common and accepted, the weight assigned a preference for this condition could be small. In any event, these factors ensure that implementation of the rule would not have the catastrophic effects suggested by the comments.

One commenter proposed that the definition of "substandard housing" should be changed, because it includes as substandard Single Room Occupancy (SRO) units that HUD subsidizes under the Section 8 program. These units are defined as units that contain no sanitary or food preparation facilities, or that contain one but not both types of facilities, and that are suitable for occupancy by a single individual who is capable of independent living. The Department agrees with the commenter, and has added language to paragraph (f) of the final rule to make clear that SRO housing is not substandard solely because it does not contain either or both of these facilities.

One commenter thought that the rule should first provide for an evaluation of the relative merits of similarly situated families living in substandard housing before it is determined which families should get the preference, because a family may choose to live in a substandard dwelling for personal reasons (e.g., to live near an infirm relative, or emotional attachment to a particular neighborhood). The Department sees no need to require such an evaluation. To the extent that a family occupies a substandard dwelling for a particular personal reason, that family will not, presumably, apply for assisted housing, since it may entail relocating. More importantly, interposing evaluative criteria in the rule would add a significant administrative burden on PHAs and project owners in ferreting out the motives of applicants for assistance. (If, however, a PHA under 24 CFR Chapter IX or Part 882 wished to distinguish among applicants on this basis, the rule does not prohibit it from doing so.)

The final rule amends paragraph (f) to specify that "homeless" families are considered to be living in substandard housing for purposes of qualifying for a preference. This is a technical change to make clear that those whose need for

housing assistance is more pressing—those who have no permanent home at all—are living in "substandard" housing, and may qualify for preferred status. A "homeless family" is defined to include any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

This definition is taken from section 103 of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). Use of this definition will enable the Department to target its housing assistance resources to the same general class of families and individuals that are eligible for the many housing and other initiatives contained in the McKinney Act. This coordinated approach brings the greatest amount of resources to bear on the homeless, and is clearly the most effective way of providing assistance to these individuals and families.

The Department again wishes to emphasize that identification of the homeless among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families or for the purpose of providing transient housing facilities or temporary shelter. The final rule also amends paragraph (g) to specify that verification of homelessness consists of written confirmation of this status from a public or private facility that provides shelter for these individuals, or from the local police department or social services agency.

C. Fifty Percent of Income for Rent

The proposed rule provided a preference for those paying more than 50 percent of their income for rent. Paragraph (f) defined "rent" to include actual utility payments in the case of tenant-furnished utilities. Some commenters contended that inclusion of actual utility costs would encourage profligacy in energy consumption, rather than conservation, and would penalize the family that conserves energy, thereby paying less than 50 percent of its income for rent. It is unlikely, a commenter said, that Congress intended that the profligate family should get a preference at the expense of an energy-conservative family. Another commenter recommended that the utility allowance for the Section 8 Existing program be used in calculating "rent," with allowance for the use of actual utility bills in special circumstances.

The Department does not believe that the commenters' concern—that including actual utility expenses will encourage energy waste—is well-founded. It is the unusual family that will be wasteful in its use of energy and, thus, its disposable income in the hope of getting a preference. HUD believes that such premeditation is unlikely. The Department believes, however, that use of a utility allowance concept, except where the applicant prefers to use actual utility bills, is a good suggestion, and has amended the final rule accordingly. For PHAs and IHAs administering programs under 24 CFR Chapter IX, the allowance would represent the PHA's or IHA's estimate of the cost of utilities. For the other programs covered by this rule, the allowance would be the Section 8 Existing utility allowance. This change should relieve some of the administrative burdens on PHAs and project owners of verifying actual utility payments, while at the same time ensuring that the full amount of tenant-purchased utility costs are counted, where they exceed the utility allowance.

One commenter suggested that the rule be amended to exclude from "rent" amounts received by or on behalf of a family to help defray utility expenses. The commenter believed that the rent-burden determination should take into account only amounts actually paid by the family for shelter costs. The Department agrees with this comment, and has amended paragraph (j) to make clear that the utility component of "rent" is to be reduced by the amount of the subsidy under any energy assistance program, to the extent that this amount is not included in the family's income.

One commenter suggested that the rule be amended to permit third-party verification of an applicant's present rental and utility payments, for purposes of determining qualification for the rent burden preference. The commenter contended that third-party verification is more accurate and reduces the incidence of fraud. The Department agrees with this comment, and has amended the final rule specifically to permit owners and PHAs to verify present rental payments with applicants' present landlords and to obtain the required utility expense information directly from the utility provider. This form of direct verification also would make clear PHAs' and project owners' authority to fill in gaps in applicants' records of the required documentation.

One commenter asserted that by including utility costs in the definition or rent, higher income persons will qualify under the rent-burden preference. The Department is unsure of the point of this comment, but to the extent it questions inclusion of tenant-purchased utilities in the definition of rent, the Department rejects it. This treatment of tenant-supplied utilities is a long-standing departmental policy, reflecting the fact that utility costs are part of overall shelter costs and that tenants should not be treated differently based on whether their utility costs are included in the rent paid to the landlord or are paid separately.

One commenter suggested that in an effort to minimize collusion, the rent-burden preference should not be available where the tenant and the landlord are friends or are related. The Department rejects this suggestion, because it may unfairly exclude honest applicants by establishing an irrebuttable presumption of dishonesty based on consanguinity or friendship. Instead, the Department will depend on its investigative and enforcement efforts and those of PHAs and owners to disclose collusive acts intended to qualify an applicant for a preference improperly.

The second part of this comment argued that to qualify for the rent-burden preference, the rule should provide that the applicant must hold a lease with a term of 12 months or longer, and that the lease must have been entered into before the claim for a preference on this basis was made. The Department is not persuaded that the commenter's position should be adopted because in many instances, for reasons unrelated to attempts to qualify for a preference, applicants do not have 12-month leases. Thus, if this requirement were written into the rule, many qualified applicants would be unfairly

excluded from consideration for the grant of the rent-burden preference.

One commenter suggested that the defintion of "rent" be expanded to include payments to amortize the purchase of a manufactured home, where the family owns the home but rents the space on which it is located. The Department agrees with this comment. Although the rent-burden preference literally covers only "rental" situations, treating a manufactured homeowner who rents the home's pad as a "renter" is consistent with the existing coverage under section 8(j) of the 1937 Act. In addition, the final rule has been amended to make clear that members of a cooperative housing regime are "renters" for purposes of qualifying for the rent-burden preference. Like owners of manufactured homes who rent their pads, cooperative members are considered renters under the Section 8 program. (See section 8(f)(2).) Paragraph (i) of the rule contains these changes.

The final rule also expands the types of documentation that may be used to verify a tenant's rental payments, to include cancelled checks or money order receipts. This is a minor change designed to ease applicants' verification burdens while at the same time preserving the documentary nature of acceptable evidence of qualification for a preference.

Finally, the final rule adds a new paragraph (c)(6), specifying that an applicant may not qualify for a rent-burden preference if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures regarding the occupancy of underoccupied and over-crowded units. This provision is analogous to the amendment discussed earlier, prohibiting an applicant that refuses to follow these policies and procedures from claiming that any resulting displacement confers a preference on grounds of involuntary displacement

IV. Treatment of Waiting Lists

As noted earlier, the proposed rule envisioned a two-step process for awarding a Federal preference. (See paragraph (c).) Under this approach, applicants could claim a preference when they applied for housing assistance, simply by certifying that they met the required standards. Later, when they were to be offered housing assistance, their actual qualification for a preference at that time would be verified by appropriate documentation Under this system, it is possible for an applicant that qualified for a preference at the time of application to lose preferred status at the verification stage.

One commenter argued that it is unfair to take preferred status away from an applicant that qualifies for a preference while on the waiting list, but loses the preference at the time assistance is to be provided. The commenter believed that applicants would have difficulty understanding this situation, and that they are entitled to expect some degree of certainty with respect to their positions on the waiting list. The commenter recommended that verification be at the time of application to ensure that "cheaters" do not go to the top of the list. The commenter stated that because there is usually a long time between application and offer of assistance, "cheaters" may in fact be able to qualify for a preference before the verification stage.

The statute requires that preference be given to applicants who are in one of the three preferred categories "at the time they are seeking assistance." The Department believes that an applicant is "seeking assistance" during the entire period from application to receipt of assistance. To hold otherwise, would, in the Department view, undermine the statutory objective of directing housing assistance to those with the most urgent housing need, since (as in the commenter's example) the applicant does not qualify for a preference (and, thus, by definition, does not have an urgent need for housing assistance) at the time a unit is offered. Therefore, the Department believes that the statute does not permit, as the commenter urges, an applicant to retain a preference claimed at the time it applies for assistance, irrespective of later changes in the applicant's circumstances.

Further, the Department believes that any confusion that this two-step approach may cause should be minimized, if PHAs and project owners provide the information about how the preferences work that paragraph (a) of the final rule contemplates. Finally, the Department does not believe that the commenter's concern about "cheaters" abusing the two-step process justifies imposition of full-scale verification at both the application and offer of assistance stages. It should be noted, however, that paragraph (c)(2) of the rule specifically permits PHAs and owners to provide for such verification, at their option. It should be noted also that the paragraph (c)(2) permits applicants to claim a Federal preference at any time while they are on a waiting list. This is intended to ensure that applicants may claim preferred status at any point in the process, and should help assuage the commenter's fears that "cheaters" will falsely certify to qualification for a preference and gain an unfair advantage over *bona fide* applicants.

One commenter asked whether conventional public housing waiting lists still are to be arranged within a given priority by incoming rent ranges. As noted above, section 6(c)(4)(A) of the 1937 Act requires PHAs operating public housing programs to implement both the preferences and the "broad range of incomes" requirement. PHAs are expected to use whatever techniques are needed to meet the two requirements, including appropriate arrangement of waiting lists. Where both requirements cannot be satisfied, however, PHAs must give the preferences precedence.

A commenter suggested that the rule should allow PHAs to waive notification to applicants on the waiting list whose position is not affected by the adoption of the three Federal preferences. This suggestion raises serious issues of fairness, since PHAs and project owners may not know which families qualify for a preference without giving each family on the waiting list notice of the availability of the preferences and an opportunity to demonstrate the family's qualification for a preference. Without this information, PHAs and owners may not be able to guage the effect of implementation of the rule on individual families on the waiting list. On the other hand, where a waiting list is very long, notification of *all* applicants on the list could be prohibitively expensive and could hold little, if any, genuine benefit for many applicants, particularly those at the bottom of the list.

The Department has revised the final rule to give PHAs and owners some flexibility in implementing the notification requirement, while protecting the legitimate interests of applicants who may qualify for a Federal preference. The amendment reiterates the requirement that all applicants (including those on waiting lists at or after implementation of the rule) be notified of the availability of the Federal preferences and be given an opportunity to demonstrate their qualification for them. It permits, however, PHAs and owners to give notice to fewer than all applicants on a waiting list *at any given time*, where the PHA or owner determines that universal notice would be impracticable because of the list's length. The PHA or owner would instead be required to notify a sufficient number of applicants at any given time to ensure that, based on the

number of preference-holders already on the list and the expected availability of assistance, (i) there is an adequate pool of applicants on the waiting list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the preferences and the preferences claimed by applicants already on the waiting list, any applicant who has not been notified would qualify for assistance before other applicants whom the PHA or owner has notified.

The Department believes that this approach is responsive to the concerns raised by the commenter, as well as the interests of applicants. It should be noted that the degree of relief that this amendment will afford PHAs and owners will vary inversely with the complexity and number of gradations in the preference hierarchy they adopt. As noted earlier, PHAs and owners may use local preferences as a way of distinguishing among Federal preference-holders, and may aggregate or rank the preferences or their components. The higher the pyramid of preferences under these authorities, the less confidence a PHA or owner would have in reaching the required conclusion that it is unlikely that any applicant preference-holders who has not been notified would receive assistance before preference-holders who have been.

One commenter urged HUD to consider grandfathering all those on current waiting lists from the rule's implementation. The commenter urged that this be done in the interest of fairness to applicants that have been waiting for housing for a long time. In the Department's review of the statute and its legislative history, it has found no indication of Congressional intent to grandfather those on the waiting lists. Instead, the Congressional solicitude for directing assistance to those most in need of housing assistance seems to cut the other way: implementation should not await the exhaustion of current waiting lists.

It should be noted, however, as stated in the preamble to the proposed rule (49 FR 37784), that the Department is delaying the rule's implementation date for 180 days after publication. This time is needed to permit PHAs and owners to take steps necessary for full implementation of the rule (including appropriate notice to those on waiting lists) and to give applicants on waiting lists who are notified an opportunity to gather material necessary to demonstrate their qualification for a preference. As a practical matter, the six-month delayed effective date has the effect of grandfathering many who are currently on waiting lists.

A commenter viewed the rule's provision for notification to applicants on waiting lists as leading to confusion about how their status is affected, because (in the commenter's view) it carries the implication that (a) their qualification is somehow now open to doubt, (b) they must take further steps to obtain verification or risk loss of their status, and (c) taking steps to obtain new verification will obtain for them a better position on the waiting list. The commenter viewed this last point as "most insidious," since, in the commenter's view, qualification for a preference will be almost universal.

The Department agrees that implementation of the preferences may cause applicants some confusion and concern over the effect of the preferences on their chances of receiving housing assistance. This is an inevitable consequence of implementing the statutory mandate. However, PHAs and project owners can minimize applicant concern and confusion by providing clear and complete information on the nature of the preferences, their effect, and how they may be obtained. As stated below, the Department does not believe that qualification for the preferences would be universal.

One commenter feared that implementation of the preferences would adversely affect individuals who need emergency housing. The Department believes that this fear is unfounded, since the preferences do not affect the provision of temporary, emergency housing and, in any event, most families in need of emergency housing would also qualify for one or more of the preferences, with whatever weight within the preference system PHAs and owners chose to give such housing.

Finally, a commenter argued that implementation of this rule would create public distrust of waiting lists and erode hard-earned public credibility for the assisted housing delivery system. The Department does not believe that the rule will have this effect, provided that it is implemented fairly and in a way that is comprehensible to applicants for assistance—results that are largely within the control of the PHAs and owners responsible for administering the preferences.

V. Degree of Targeting

A number of commenters asserted that the preference rule would have marginal impact, since virtually all very low-income applicants for housing assistance would qualify for at least one of the preferences. The Department does not agree with this assertion.

Based on 1983 American Housing Survey (AHS) data, the Department estimates that approximately 55 percent of very low-income families unserved by a housing assistance program may qualify for a preference, either because they are living in substandard housing or paying more than 50 percent of their income for rent. Very low-income families that may qualify for a preference solely because they are involuntarily displaced would be expected to constitute a very small percentage of preference-holders on currently unserved by housing assistance programs. While the percentage of prefrence-holders on current waiting lists may vary, it is clear that, on an overall basis, the preferences are responsive to the statutory objective of directing housing assistance to those unserved, very low-income families that have the most urgent housing needs. It should also be noted that use of the discretion accorded PHAs and project owners in today's rule to aggregate or rank the preferences and their definitional components would have the effect of further targeting assistance to the most needy *among* those who hold a preference. The Department intends to monitor carefully the incidence of preference qualification generally, as well as individual PHA and owner implementation of the preferences, to determine whether any additional statutory or regulatory changes are needed to ensure that the preferences carry out their intended targeting objective.

VI. Social Effects of the Federal Preferences

A number of commenters expressed concern about the effect that the Federal preferences would have on assisted housing projects and the assisted tenant populations. Some commenters stated that those paying more than 30 percent of their income for rent would always be welfare recipients. They believed that by giving the rent-burden preference, the working poor would be penalized. If the rule goes into effect, these commenters emphasized, projects would end up with welfare clients only. This would defeat PHAs' attempts to house a racial and economic cross-section of tenants, and would result in management and maintenance problems. Other commenters saw the regulations as providing primarily minorities with a preference, thus assuring that public housing would become predominantly minority-occupied and "ghettoized." This would result, they argued, in

further burdens on housing authorities and city governments.

Another commenter stated that projects historically work best with a social and economic mix of all races, and that once projects become 50 percent minority-occupied, it is impossible to "turn them around." This commenter stated that most families that would qualify for a preference are minority, and a large percentage are on welfare and will stay there, "as long as HUD and Congress give them preferential treatment."

The Department takes issue with these comments. Analysis of American Housing Survey data suggests that, nationwide, neither black nor welfare households are likely to predominate as a result of the implementation of the rent-burden preference. For example, only 21 percent of the very low-income, unsubsidized households paying at least 50 percent of their income for rent are black. This is nearly equal to blacks' representation among all very low-income households (22 percent). The proportion (29 percent) of welfare households among all high rent-to-income households (family and elderly) is slightly greater than their overall proportion (24 percent) among very low-income households. However, neither the relative nor absolute share of welfare households is dominant.

It is possible that in different areas there would be different impacts as a result of the implementation of the preferences. Nonetheless, families that qualify for preferred status will receive a preference in the selection of tenants—without regard to race or source of income. Indeed, any system that attempted to discriminate on either of these grounds would raise grave legal and public issues.

Some commenters also specifically cited the rent-burden preference as destructive of a sound policy of housing a cross-section of income ranges. A tenant mix reflective of the surrounding neighborhood is vital, argued a commenter, to keep public housing desirable. These commenters thought that the rule would be a disincentive to the working poor, and would result in the working poor not being housed. Congress, the comments said, is reneging on an important aspect—income mix—that is necessary to eliminate pockets of poverty and reduce crime and vandalism.

As noted earlier, PHAs are required to implement both the preference provisions and the "broad range of incomes" requirement in section 6(c)(4)(A) of the 1937 Act, and must subordinate the range of incomes to the preferences only where both provisions cannot be satisfied. The Department does not believe that implementation of this rule would have the effects that the commenters fear.

VII. Tenant Mobility

Some commenters criticized the proposed rule on grounds that it would discourage residents or assisted housing from moving from one jurisdiction to another, since, as long as they lived in assisted housing, they would be unable to qualify for a preference and, therefore, would have to move to substandard housing or pay more than 50 percent of their income in rent in order to have a realistic chance of receiving housing assistance again. The commenter believed that this result conflicted with the goal of promoting housing choice and HUD's commitment to interjurisdictional transfers using Section 8 Existing assistance (the "portability" concept under the Housing Voucher program). Another commenter raised the same issue with respect to intrajurisdictional moves—for example, where an assisted family wants to move closer to a job, but remains within its current PHA's jurisdiction.

Some moves—both inter- and intra-jurisdictional—are not subject to this rule. An assisted family that moves within the same program administered by a PHA (such as from one public housing unit to another or from one unit to another with a Certificate, within the same PHA's jurisdiction), or within a project (one or more buildings managed as a single project) controlled by a private owner, generally is not subject to meeting the preference requirements, because the assisted family moves without losing its assisted status. The Department considers this type of move to be internal to the PHA or to the project owner's operation, and not to be an event that requires reapplication for assistance.

An assisted family that moves outside the program administered by a PHA may or may not be subject to the preference requirements, depending on the circumstances and as discussed below. As one commenter point out, the Department strongly encourages the interjurisdictional transfer (or "portability") of Section 8 Certificates and Housing Vouchers. Indeed, the Housing Voucher program requires "portability" between jurisdictions operating Housing Voucher programs, and encourages portability of Vouchers between Certificate and Housing Voucher jurisdictions. In addition, there are in place many voluntary mobility programs around the country. In all of these cases, when the assisted family actually brings the assistance with it, as is provided in the required Housing Voucher portability program, or as is provided in many of the voluntary mobility programs in which the PHAs exchange Certificates or Housing Vouchers, there is no reapplication for assistance: the assisted family is not subject to the preference rule.

However, in any case where the assisted family is placed on the waiting list (even though it may be at the bottom), the family is considered to be reapplying for assistance, and, therefore, is subject to the preference rule. As some of the commenters stated, application of the preferences to assisted tenants could severely restrict their ability to move among jurisdictions and housing programs, since assisted tenants, by definition, generally cannot qualify for a Federal preference. Commenters felt that, in many cases, literal application of the preference rule would impose a significant impediment to mobility that is not present in the current system.

The Department shares the concerns expressed by the commenters. Indeed, as a commenter noted, HUD has been a long and ardent advocate of mobility for assisted tenants.

On the other hand, most tenants receiving housing assistance under the programs subject to the rule have by definition achieved the very state that the preferences are intended to produce: residence in a standard unit with affordable rent. Providing these tenants a preference if they wish to move could place them ahead of other preferred tenants who must endure the conditions that qualified them for a preference for a longer period, before assistance can be made available for them. Arguably, this result is neither fair as a policy matter, nor significantly faithful to the Congressional concern that housing assistance be directed to those with the most pressing housing needs.

The Department believes that the issues involved in "mobility" for assisted tenants under the final rule are best addressed after a notice and comment rulemaking. Therefore, the Department will issue a proposed rule dealing with the interrelationship between the Federal preferences and assisted tenants whose admission to another program or project involves placement on a waiting list. The Department will attempt to make this rulemaking effective at or shortly after this final rule's implementation—180 days after publication. However, if the rule does not take effect until after implementation of this final rule, assisted tenants who wish to move to another project or program, but are first placed on a waiting list, must demonstrate their qualification for a preference in the same way as unassisted applicants.

VIII. Potential for Fraud and Abuse in Qualifying for a Federal Preference

A general criticism of the proposed rule was that it would encourage families to create situations that would give them a preference and lead to manipulation and abuse to the disadvantage of the honest applicant. A further criticism was that the rule would encourage collusion between landlords and tenants since, by allowing the landlord to provide verification as to an applicant's status, the rule would put the landlord in a position to falsify facts to get rid of, or to help, individual tenants. It also was claimed that the rule would have the effect of encouraging applicants that live in substandard housing to remain there, so that they may gain a better position on the waiting list.

The Department agrees that there are those—both landlords and tenants—who may resort to fraud and abuse to further their own interests: no program is immune from such practices. With respect to this rule, however, the Department has had to balance fraud and abuse considerations along with a number of other factors, including the administrative costs to HUD, as well as to PHAs and project owners, of imposing more stringent verification and investigatory requirements, and the ability of applicants for assistance to demonstrate their qualification for a preference without unnecessary burdens or restrictions. The Department has reviewed the approach taken in the proposed rule in light of the public comments, and continues to believe that this approach strikes an appropriate balance among the considerations involved.

The Department has drafted the verification provisions of the rule to minimize the incidence of fraud and abuse. These provisions focus on objectively verifiable, independent sources to establish qualification for a preference. Thus, paragraphs (e) and (g) of this rule include, as appropriate means of verification, written notice from governmental entities as to claims of involuntary displacement or residence in substandard housing. Paragraph (j) requires PHAs and owners to verify a family's income in accordance with well-known, existing procedures for HUD's assistance programs, which (among other things) provide for the use of release and consent forms to assist verification. Paragraph (j) also provides for verification of an applicant's rent by production of pertinent lease documents or direct contact with the applicant's current landlord, and verification of an applicant's utility expenses, either by reference to a utility allowance concept in lieu of actual utility bills, or (where the applicant elects to use actual utility expenses) actual utility consumption data furnished by the applicant or by the utility provider.

It is true that landlords are permitted to provide verification for claims of displacement stemming from the landlord's actions or from the substandard nature of the dwelling. In addition, verification of involuntary displacement based on domestic violence may come from clergymen or physicians, and verification of domestic violence and homelessness could come from private shelters and other facilities. The Department believes that, in some cases, these types of verification may be the only timely and, perhaps the only, available means of verification. To disallow these means of verification because they may be subject to abuse could have the effect of denying applicants reasonable access to demonstrate qualification for a preference. Moreover, each of these forms of verification must be in writing, thereby creating a record that should both deter abuse and assist in prosecution in those instances in which abuse is found.

On the other hand, the Department does not believe that it would be cost-effective to impose additional verification requirements on PHAs and owners, and through them, on prospective tenants. For example, a number of the commenters argued that verification should include a finding as to an applicant's motivation for a given decision, such as a decision to move to (or to remain in) a substandard unit. Even though this inquiry might expose some cases of abuse, the Department does not believe that requiring such a staff-intensive effort is cost-effective. It is adequate, in the Department's view, simply to demonstrate the fact of substandard housing and to grant the preference upon that basis.

The Department intends to be sensitive to indications of fraud, waste, and abuse under this rule in the course of established, on-site monitoring reviews, and will take whatever regulatory or other action is appropriate in light of this experience. Finally, it should be noted that PHAs operating programs under 24 CFR Parts 882, 904, 905, or 960 are free to establish their own verification standards and procedures (which can be more stringent than those prescribed in this rule), at the PHAs' option.

IX. Administrative Burdens

A number of commenters expressed concern that conversion to, and maintenance of, a system for administering the preferences would impose on PHAs and owners considerable administrative and legal burdens for which HUD will not compensate them. Some considered the two-step certification/verification process to be wasteful, since they believed that it would, in effect, create a "revolving door," in which the same applicant would repeatedly make preference claims that are later denied. One commenter proposed an alternative system under which qualification for the preferences would be determined only at the point at which assistance is to be offered. Under this approach, families on the waiting list would be screened for qualification for a preference, with those not qualifying returned to the waiting list.

Others found the requirement that applicants for housing assistance (including those currently on waiting lists) be notified of the availability of the preferences to be excessively costly, and recommended alternatives, such as posting notice of the preferences in PHAs' offices. Still others found the PHA's or project owner's verification responsibilities to be onerous. Specifically, some indicated a belief that the proposed rule would require PHAs to make "home visits" to determine whether the unit is substandard; some believed that verification when assistance is offered would require verification of an applicant's status not only at that point, but also when the applicant originally certified to his or her qualification for a preference.

The Department recognizes that PHAs and owners have to carry out additional administrative tasks to implement and maintain the preference system. The rule has been drafted, however, to keep these burdens to the absolute minimum necessary to carry out the statutory mandate. Specifically, the Department continues to believe that the two-step certification/verification process contained in the proposed rule is the clearest and least burdensome way of administering the preferences. It focuses the verification of preference claims at the only time that verification is needed—when assistance is to be offered the applicant—and, through initial certification, narrows the pool of applicants that PHAs and owners must review at the verification stage. The Department believes that omission of

the certification stage in the alternative proposed by a commenter would often lead to a more burdensome procedure than that contemplated by the final rule, since a PHA or owner may have to contact and process a number of applicants before it even reaches an applicant claiming a preference.

It is true that some PHAs and project owners may incur some costs in contacting applicants currently on waiting lists. Since the Department believes that the statute was intended to cover those on waiting lists, there is no alternative to requiring individual notice. As discussed earlier, however, the Department has modified the proposed rule to permit notification of less than all applicants on the waiting list at any given time. This revision should enable PHAs and project owners to avoid the costs and administrative burdens associated with mass notifications. In any event, these costs are one-time, start-up expenses, and will not recur once the preference system is in place. Although the rule requires PHAs and owners to notify future applicants of the availability of the Federal preferences, this can be done in the same way that tenants are given notice of other tenant selection standards.

The Department has specifically drafted the verification procedures contained in today's rule to minimize administrative costs. As noted earlier, the rule relies on written documentation from agencies of government to the extent feasible. These documents should be readily verifiable, without the need for further investigation. Verification from other sources (such as landlords) must also be in writing, but may require further verification. As mentioned before, the Department believes that use of this form of verification is necessary to provide applicants a reasonable opportunity to show that they qualify for a preference.

With respect to the specific points raised in the comments, the rule does not require PHAs to make "home visits" to determine whether a unit is substandard. Only written verification from the local government or the applicant's present landlord is required. At the verification stage, the only inquiry is whether the applicant qualifies for a preference at that time. Neither this rule nor its predecessor contemplates a determination as to whether the applicant's earlier certification as to qualification for a preference was correct. The rule also makes clear that the applicant bears the burden of producing the required documentation, except in those cases where third-party verification is needed.

Finally, the Department believes that administrative costs associated with establishing and maintaining the preference system—including one-time, start-up costs—should be absorbed by the PHAs and project owners. The Department does not believe that administering the preferences will involve significant costs over the long term. Moreover, in a number of instances, PHAs and owners should be able to apply established procedures to their administration of the preferences. For example, paragraph (j) of the final rule specifically provides that owners and PHAs should verify "income" for purposes of the rent-burden preference in the same way as they do for initial determinations of eligibility and annual reexaminations of income under the program involved. Use of existing procedures should help to minimize PHA and owner administrative costs. Further, a number of PHAs already provide preferences analogous to those required under this rule, without (to the Department's knowledge) the kinds of excessive burdens that the commenters suggested. Thus, the Department does not anticipate a need to provide additional funding to enable PHAs and owners to administer the preferences.

X. Informal Review of Federal Preference Denials

Several commenters expressed uncertainty as to whether the proposed rule contemplated some form of informal review of the decision of a PHA or project owner to deny an applicant's qualification for a preference. In response to these comments, this rule contains a new paragraph (k) to make clear that the owner or PHA must provide prompt, written notice to the applicant of a determination denying a preference (including a brief statement of the reasons for the determination), and give the applicant an opportunity to meet with the PHA or owner (or its representative) to review the denial.

The Department believes that this "notice and opportunity for meeting" approach strikes an appropriate balance among the competing interests involved in the denial of a preference. On the one hand, this approach recognizes the importance of qualification for a preference in securing housing assistance at the earliest time, by establishing a mandatory mechanism for the prompt resolution of factual issues and concerns. On the other hand, use of this degree of informal procedure reflects the Department's belief that the denial of a preference—which has the effect of prolonging an applicant's wait for housing assistance—is not of such magnitude as to justify imposition of the administrative burdens on PHAs and project owners that are inherent in a more formal process.

The new paragraph (k) provides that the meeting is to be conducted by any person or persons designated by the owner or PHA, including an officer or employee of the PHA or project owner, or the person who denied or reviewed the denial of a preference, or his or her subordinate. The Department believes that permitting the individual who denied or reviewed the denial of a preference to conduct the meeting amply supports the fairness of the process, given the essentially factual focus of the inquiry, the effect on the applicant of a preference denial, and the need to minimize the administrative burdens on PHAs and project owners, particularly PHAs and owners with limited staff resources. The rule contains a provision found in the informal review provisions of the existing housing assistance regulations, stating that the availability of informal process for denial of a preference does not affect other rights that the applicant may have regarding discrimination on the basis of race, color, creed, religion, sex, national origin, age, or handicap. This provision makes clear an applicant's existing right to protection from unlawful discrimination. The final rule also amends the informal review procedures in the existing regulations to make clear that the special provisions contained in paragraph (k) apply in the case of preference denials.

Finally, the Department wishes to stress that the administrative review requirements contained in this rule apply only to the issue of whether the applicant meets the criteria for receiving a preference. They do not apply to matters such as the propriety of the PHA's or owner's system for applying the preferences or alternate definitions of the preference categories that PHAs in certain programs may establish. These matters reflect policy choices that are committed to the discretion of PHAs and project owners, consistent with HUD's requirements. The Department does not believe that the informal meeting contemplated by this rule is an appropriate forum for considering challenges to PHAs' or project owners' overall policies.

XI. Miscellaneous

A commenter asserted that there is currently no HUD handbook for State Housing Finance Agencies (HFAs). This led the commenter to inquire whether HUD intended that HFAs comply with Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Program*, in light of the reference in paragraph (j)(1) of the rule that verification of income be in accordance with existing procedures.

HFAs are subject to Handbook 4350.3. This was explicitly stated in the Handbook revisions issued as Change–1 on March 7, 1985, and later clarified in a memorandum to State Agency Directors on April 17, 1985. Paragraph 1–6.b. of Handbook 4350.3 CHG–1 states that HFAs may enforce State requirements, in addition to the Handbook requirements, if the State requirements do not conflict with the Handbook or with HUD regulations. Paragraph 1–6.b.(2) further states that, if any HFA policies conflict with the Handbook, the Agency must certify that the policies do not conflict with applicable statutes and regulations.

One commenter recommended that language similar to §§ 880.603(b)(2), 881.603(b)(2), and 883.704(b)(2) of the proposed rule be added in Parts 882, 884, and 886. These sections of the proposed rule provided that, if a family is entitled to a preference, the owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants. This was an exception to the existing provision that states:

> If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

The Department agrees with this comment, and has extended the provisions of the proposed rule (with some modifications) to all the Parts covered by this rule making. Specifically, this rule provides that, notwithstanding the fact that a project owner or PHA is not accepting applications because of the length of the waiting list, it may not refuse to accept an application from an applicant who claims qualification for a preference or to place the applicant (if otherwise eligible) on the waiting list, unless it determines, on the basis of the number of applicants who are already on the waiting list and claim a preference, and the anticipated turn-over of assistance, that: (1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the programs, the preference the applicant claims, and the preferences claimed by applicants already on the waiting list, the applicant would qualify for assistance before those who are on the waiting list. This provision is designed to ensure that there is an ample supply of preferred applicants on the waiting list, despite the fact that the waiting list may be closed to those who do not claim a preference. The Department recognizes that maintaining a waiting list that is heavily weighted towards applicants with a preference may operate effectively to preclude applicants without a Federal preference from assisted housing, especially where housing resources are severely limited; however, in the Department's view, this possibility is an unavoidable result of the statute.

The Department has also amended the proposed rule to make clear that the preferences apply to the selection of tenants to receive assistance under the Rent Supplement and Section 8 programs, rather than the selection for admission to a project assisted under these programs. This is a technical change, to reflect the fact that projects under these programs may be partially subsidized and that the preferences apply to the selection of tenants to receive rental assistance, not to the admission of tenants to units without such assistance. (This issue does not arise in the Section 8 Certificate or public housing programs, since there are no "partially subsidized" projects under these authorities.)

The Department also wishes to note the following regarding partially subsidized Rent Supplement and Section 8 New Construction and Substantial Rehabilitation projects. Under current practice, a family that is seeking rental assistance and that qualifies for a preference may, because of the unavailability of subsidy, move into a partially assisted project without rental assistance, with the express understanding that the family will receive a subsidy when it becomes available. If the housing owner verifies that the family qualifies for a Federal preference when it is admitted to the project, the Department believes that the owner may honor this understanding, without requiring the family to demonstrate independent qualification for a preference when the rental assistance is in fact offered. The Department views the admission without subsidy in these circumstances as an interim measure, and does not believe the admission should have the potential effect of divesting the family of the preferred status for which it has qualified.

As a related matter under the Section 8 and Rent Supplement programs, a tenant's eligibility for assistance continues until the rent payable by the tenant equals the full market rent for the unit. The termination of eligibility at this point does not "preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract." (See §§ 215.55(c), 880.603(c)(3), 881.603(c)(3), 882.212(c), 882.515(e), 883.704(c)(3), 886.124(c), and 886.324(c).) The Department believes that resumption of payments in these circumstances occurs without regard to whether the tenant qualifies for a preference at the time of resumption. A tenant who once establishes eligibility for rental assistance does not lose his or her right to receive assistance solely because the actual receipt of assistance may be interrupted.

Finally, the final rule contains a number of technical modifications to the proposed rule. Chief among these are the following. The proposed rule would have made only a few conforming changes to the existing regulatory framework. The final rule is fully woven into the existing regulations. In addition, the proposed amendment to 24 CFR Part 905 (Indian Housing) only covered the Mutual Help Homeownership Opportunity program. This rule extends the applicability of the preferences to all of Part 905, as contemplated by the preference statute and the original proposed rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. As noted in detail in the earlier discussion on "Administrative Burdens", the Department has taken great care to minimize the rule's burdens on all PHAs and project owners (including small entities), and does not believe that administering the preferences would involve significant costs over the long term.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The assigned OMB control number will be announced by separate Notice in the **Federal Register**.

This rule was listed as sequence number 985 under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40381) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.105, 14.149, and 14.156.

List of Subjects

24 CFR Part 215

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 880

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 881

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Manufactured homes, Rent subsidies.

24 CFR Part 883

Grant programs: Housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 884

Grant programs: Housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Parts 904, 905, 960

Public housing.

Accordingly, the Department amends 24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In Part 215, a new § 215.22 is added, to read as follows:

§ 215.22 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference.

(2)(i) The housing owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include those on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the housing owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would qualify for admission to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection policies. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section and other applicable requirements (including applicable limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 48 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section, or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for preferred status.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change for one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or under this part with respect to the unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied units. (For examples of these policies and procedures, see §§ 215.66, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result

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in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or famly who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilitites (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.21.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the avarage monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the provisions of this part and applicable HUD handbook provisions.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's administrative instructions. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the housing owner may not be accepting additional applications for assistance under this part because of the length of any waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance under this part and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Additional verification for applicants receiving Rent Supplement payments.* An owner may request the Secretary (or in the case of a State Agency Project the Secretary's designee) to issue a certificate that a family qualifies for a Federal preference under this section. HUD will issue this certificate only if the owner requests it.

(n) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

3. The authority citation for 24 CFR Part 880 continues to read as follows:

Authority: Secs. 3, 5, and 6, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

5. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with §880.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 880.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to

request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

* * * * *

6. In Part 880, a new § 880.613 is added, to read as follows:

§ 880.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 880.210, 880.601 and 880.603 (including limitations on the use of local residency requirements and preferences contained in § 880.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntary displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" in living is substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtacted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payment.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienhold directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

7. The authority citation for 24 CFR Part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

9. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 881.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 881.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex or national origin. The informal review provisions for the denial of a tenant selection preference under § 881.613 are contained in paragraph (k) of that section.

* * * * *

10. In Part 881, a new § 881.613 is added, to read as follows:

§ 881.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preference in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 881.210, 881.601, and 881.603 (including limitations on the use of local residency requirements and preferences contained in § 881.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, placed on any waiting list, or the time of submission of his or her application for admission to an assisted project. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964,

42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 48 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, incluing the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

11. The authority citation for 24 CFR Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation, provision of a Federal preference in selecting applicants for participation in accordance with § 882.219, verification of family income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this part;

* * * * *

13. In § 882.209, paragraphs (a)(2) and (a)(7) are revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income-eligible. The PHA shall also give a preference in selecting applicants for participation (in accordance with § 882.219) to eligible Families that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

(7) The PHA shall maintain a waiting list of income-eligible Families that have applied for participation in the PHA's Section 8 program. Subject to any obligation to use Certificates to ensure the availability of assistance under one of the uses prescribed in paragraph (a)(4)(ii)(B) of this section, the PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any Federal preferences under § 882.219) stated in the administrative plan or equal opportunity housing plan. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualfies for a Federal preference as provided in § 882.219(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of Certificates to be issued, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

14. In §882.216, a new paragraph (a)(4) is added, to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(4) The informal review provisions for the denial of a Federal preference under § 882.219 are contained in paragraph (k) of that section.

* * * * *

15. In Part 882, a new § 882.219 is added, to read as follows:

§ 882.219 Federal selection preferences.

(a) *General.* (1) In selecting applicants for a Certificate of Family Participation under § 882.209, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for a Certificate of Family Participation of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for a Certificate of Family Participation maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of Certificates to be issued:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be issued a Certificate before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or they may, in their own discretion and without HUD approval, adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its policies and procedures for selecting applicants for participation under § 882.209. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 882.111, the selection and participation provisions of § 882.209 (including limitations on the use of local residency requirements and preferences contained in § 882.209(a)(4)(i)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be issued a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued a Certificate of Family Participation before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially issued a Certification of Family Participation in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preference-holders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowancy for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation assistance under this part, to pay more than 50 percent of its income to continue renting the rehabilitation unit.

(2) Applicants may claim qualification for a Federal preference when they apply for a Certificate of Family Participation (or thereafter until a Certificate is issued) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before issuing a Certificate of Family Participation to an applicant who qualifies for one on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the issuance of a Certificate, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of its refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period, or if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 905, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation under this part, to pay more than 50 percent of its income to continue renting the rehabilitated unit.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

16. In § 882.514, paragraphs (a)(1), (b), and (f) are revised to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of Family eligibility.* (1) The PHA is responsible for receipt and review of applications and determination of Family eligibility for participation, in accordance with HUD regulations (see Parts 812 and 813). The PHA is responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments. The PHA is also responsible for giving a Federal selection preference in accordance with § 882.517.

* * * * *

(b) *Selection of Families for participation.* When vacancies occur, the PHA will refer to the Owner one or more appropriate size Families on its waiting list. The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirement or preferences as approved by HUD. The PHA must select Families eligible for housing assistance payments currently residing in units that are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of

the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 882.517(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions under this part, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

(f) *Families determined by the PHA to be ineligible.* If a Family is determined by the PHA to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA must promptly notify the Family by letter of the determination and the reasons for it and the letter must state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the Family is ineligible, it must so notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, handicap, or national origin. The informal review provisions for the denial of a Federal selection preference under § 882.517 are contained in paragraph (k) of that section.

17. In Part 882, a new § 882.517 is added, to read as follows:

§ 882.517 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance under this subpart of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance under this part maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions under this part:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section, or they may adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each PHA must include the Federal preferences in its tenant selection standards. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 882.407 and 882.514, and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to a project assisted under this subpart before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted to such a project in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preferenceholders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional element (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise

that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) The PHA may establish selection preferences for applicant living in the area where the PHA determines that it is not legally barred from entering into Contracts. However, preferences may not be based upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction must be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before selecting an applicant for participation, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the PHA's selection of the applicant for participation, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if:

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent;

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA shall verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the henholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

18. The authority citation for 24 CFR Part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. In § 883.702, paragraph (b) is revised to read as follows:

§ 883.702 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

20. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(2) and (3) are revised to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal preference in accordance with § 883.714.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 883.714(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that: (i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or if the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

* * * * *

21. In Part 883, a new § 883.714 is added, to read as follows:

§ 883.714 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project,

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 883.312, 883.702, and 883.704 (including limitations on the use of local residency requirements and preferences contained in § 883.704(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 48 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the framework.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until the time that they are offered assistance) by certifying to the owner that they quality for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragrph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size, and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does ot include any individual imprisoned or otherwise detained pursuant to an Act of the Congress of a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify a family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupany agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payments receipts (which may include cancelled checks or money order receipts) of a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for Part 884 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

23. In § 884.116, paragraph (a)(3) is revised to read as follows:

§ 884.116 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.226, and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria;

* * * * *

24. In § 884.214, paragraphs (b)(1) and (2) are revised, and a new paragraph (b)(7) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, section and admission of families.* (1) The owner is responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD: *Provided,* That in establishing criteria for the selection of applicants, no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community.

(2) For every family that applies for admission, the owner and the applicant will complete and sign the form of application prescribed by HUD. However, if there are no vacant units and the owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the owner may advise the applicant that the owner is not accepting applications for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 884.226(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that:

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference, and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or the preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed

application to the HUD field office (in the case of private-owner/PHA projects, the owner simultaneously must send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted family unit after this copy has been received by the HUD field office (or, in the case of private-owner/PHA projects, until the copy has been received by the PHA with a certification by the owner that the owner has sent a copy to HUD).

* * * * *

(7) The informal review provisions for the denial of a Federal selection preference under § 884.226 are contained in paragraph (k) of that section.

25. In Part 884, a new § 884.226 is added, to read as follows:

§ 884.226 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 884.113 and 884.214 (including limitations of the use of local residency requirements and preferences contained in § 884.214(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the preferences under this section is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), an owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended,* 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the

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applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To Accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

26. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. In § 886.119, paragraph (a)(3) is revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of Families, verification of Income, provision of Federal selection preferences in accordance with § 886.132, and other pertinent requirements; and determination of eligibility and amount

of Tenant Rent in accordance with Part 813 of this chapter;

* * * * *

28. In § 886.121, paragraph (b) is revised to read as follows:

§ 886.121 Marketing.

* * * * *

(b) In taking applications, selecting families, and all related determinations, the owner must comply with the applicable provisions of the Contract and of this subpart.

29. In Part 886, a new § 886.132 is added, to read as follows:

§ 886.132 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 886.114 and 886.121 and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 48 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household, or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit of agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient

number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the owner may be refusing additional applications because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (1) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or

preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

30. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.*

* * * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with Part 813 of this chapter;

* * * * *

31. In § 886.321, paragraphs (b) (1), (2), and (6) are revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. The owner will be responsible for determination of eligibility of applicants for tenancy after sale, selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR Part 813. The owner shall pay any utility reimbursement to each family each month it is due. Local residency requirements are prohibited. Local residency preferences are discouraged and may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preferences, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(2) For every family that applies for admission, the owner and the applicant must complete and sign the form of application prescribed by HUD. When the owner decides no longer to accept applications or to accept applications only from families that claim a Federal preference under § 886.337, the owner must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect must also be published. Notwithstanding the fact that the owner may not be accepting additional applications for tenancy because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 886.337(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (i) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admissions before other applicants on the waiting list. The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

* * * * *

(6) If the owner determines that an applicant is not eligible, or, if eligible, not selected, the owner must notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this paragraph (b)(6) do not preclude an applicant from exercising his or her other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap. The owner must retain for three years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition. The informal review provisions for the denial of a tenant selection preference under § 886.337 are contained in paragraph (k) of that section.

* * * * *

32. In Part 886, a new § 886.337 is added to read as follows:

§ 886.337 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and

other requirements of §§ 886.313 and 886.321 (including limitations on the use of local residency requirements and preferences contained in § 886.321(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this subpart before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweight two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfair for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it dose not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the houshold who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local of governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displace if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section.

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agency that an applicant had to, or will have to, vacate a unit by a date certain because or an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, or displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of the government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination or intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, or adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f) (3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise

applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income, as follows:

(1) The owner must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord [or cooperative] under the lease or occupancy aggreement—

(A) By requiring the family to furnish copies of its most recent rental [or cooperative charges] receipts [which may include cancelled checks or money order receipts] or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts [which may include cancelled checks or money order receipts] or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

33. The authority citation for 24 CFR Part 904 continues to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

34. In § 904.104, paragraphs (c), (f)(1), and (g)(2) are revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), will determine whether each applicant family is income-eligible for the development, and will assign each eligible applicant his or her appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

* * * * *

(f) * * *

(1) Selection procedures that do not automatically deny admission to a particular class; that ensure selection on a nondiscriminatory and nonsegregated basis; that give a Federal preference in accordance with § 904.122; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan.

* * * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development will be so notified in accordance with HUD-approved procedure. The notice will state the reason for the applicant's rejection (including a nonrecommendation by the recommending committee, unless the applicant has previously been so notified by the committee) and that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice. The informal review provisions for the denial of a Federal preference under § 904.122 are contained in paragraph (k) of that section.

35. In Part 904, a new § 904.122 is added, to read as follows:

§ 904.122 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to housing under Turnkey III, each LHA must give preference to applicants who are otherwise eligible and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The LHA must inform all applicants for admission to housing under Turnkey III of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for admission maintained by the LHA when this section is implemented or thereafter.

(ii) If the LHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the LHA may provide this notification to fewer than all applicants on the list at any given time. The LHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the LHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the LHAs framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to housing under Turnkey III before those who have received notification.

(3) An LHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the LHA submits alternative definitions for HUD's review and approval. An LHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or they may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each LHA must include the Federal preferences in its selection policies and procedures. The LHA must apply the Federal preferences in a maner that is consistent with the provisions of this section, the nondiscrimination and other requirements of § 904.104, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be admitted to housing under Turnkey III before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The LHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to housing under Turnkey III before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted in any one-year period (or such shorter period selected by the LHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the LHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitions elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than and, take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Requirements or preferences for those living in the jurisdiction of the LHA at the time of application are permissible, subject to the following: no requirement or preference may be based upon the identity or location of the housing that is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction will be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(1) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission (or thereafter until they are selected for a Turnkey III development) by certifying to the LHA that they qualify for preference under paragraph (c)(1) of this section. An LHA must accept this certification, unless the LHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a Homebuyers Ownership Opportunity Agreement with an applicant who has been selected on the basis of a Federal preference, the LHA must require the applicant to provide verification that he or she qualifies for a preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of a Homebuyers Ownership Opportunity Agreement, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an LHA need not require the applicant to verify such qualification again, unless, as determined by the LHA, such a long time has elapsed since verification as to make reverification desirable, or the LHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or

temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the LHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, *rent* is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility provides,

(A) The LHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The LHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The LHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) The LHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The LHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the LHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the LHA determines that an applicant does not meet the criteria for receiving a Federal preference, the LHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the LHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the LHA. These designated may be an officer or employee of the LHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* LHAs must implement the provisions of this section no later than July 13, 1988.

PART 905—INDIAN HOUSING

36. The authority citation for 24 CFR Part 905 continues to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(d), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

37. Section 905.302 is amended by revising paragraphs (b)(2) (ii) and (iii), and by adding a new paragraph (b)(2)(iv), to read as follows:

§ 905.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the LHA's Projects;

(iii) To achieve compliance with the applicable provisions of Part 913 of this chapter, including, but not limited to, §§ 913.103 through 913.105, which specify the requirements concerning income levels of families who would otherwise qualify; and

(iv) To give a preference in the selection of tenants and Homebuyers (in accordance with § 905.313) to families that at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

38. In Part 905, a new § 905.313 is added, to read as follows:

§ 905.313 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each IHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The IHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the IHA when this section is implemented or thereafter.

(ii) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable

because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the IHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) An IHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the IHA submits alternative definitions for HUD's review and approval. An IHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or it may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each IHA must include the Federal preferences in its tenant selection policies and procedures. The IHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the IHA must establish a system for applying the Federal preferences that provides than an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The IHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference receive assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the IPH before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the IHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) To the extent that HUD has determined that Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 apply to a tribal government, any selection preferences or priorities used by an IHA within such a tribe's jurisdiction must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities.

(4) The IHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the IHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in the project) by certifying to the IHA that they qualify for a preference under paragraph (c)(1) of this section. An IHA must accept this certification, unless the IHA verifies that the applicant is not qualified for a Federal preference.

(3) Before an applicant is admitted to a project on the basis of a Federal preference, the IHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and admission to a project, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an IHA need not require the applicant to verify such qualification again, unless, as determined by the IHA, such a long time has elapsed since verification as to make reverification desirable, or the IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the IHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal (i) to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or (ii) to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of

government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.*

(1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The IHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The IHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The IHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) An IHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family 's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) An IHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the IHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the IHA determines that an applicant does not meet the criteria for receiving a Federal preference, the IHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the IHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the IHA. Those designated may be an officer or employee of the IHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference under this section, unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an inadequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Effective date.* IHAs must implement the provisions of this section no later than July 13, 1988.

39. In § 905.406, paragraph (d) is revised to read as follows:

§ 905.406 Selection of MH homebuyers.

* * * * *

(d) *Making the selections.* Promptly after HUD approval of the application for a Project, the IHA must proceed with selection of as many Homebuyers as there are homes in the Project. Selection of Homebuyers must be made from the MH waiting list in accordance with the date of application, qualification for a Federal preference in accordance with § 905.313, and other pertinent factors under the IHA's admissions regulations established in accordance with § 905.302. Selection of a Homebuyer will be made only after the site for that Homebuyer has received HUD final site approval and the form of MH contribution to be made by that Homebuyer has been determined. Notwithstanding the fact that IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 905.313(c)(2), unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of homes available, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

40. In § 905.407, paragraph (a) is revised to read as follows:

§ 905.407 Notification to applicant families.

(a) *Notification to families not meeting admission requirements.* When an IHA determines that a family does not meet the admission requirements, the IHA must give the family prompt written notice of this determination. The notice must state the basis for the determination, and that the family is entitled to an informal hearing by the IHA on the determination, if a request for such hearing is made within a reasonable time (as specified in the notice). The informal review provisions for the denial of a Federal preference under § 905.313 are contained in paragraph (k) of that section.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

41. The authority citation for 24 CFR Part 960 continues to read as follows:

Authority: Secs. 3, 5, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

42. In § 960.204, paragraph (b) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(b) Such policies and procedures must be designed to—

(1) Avoid concentrations of the most economically and socially deprived families in any one or all of the PHA's public housing projects;

(2) Preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment;

(3) Subject to the requirements and limitations of Part 913 of this chapter, attain, within a reasonable period of time, a tenant body in each project composed on families with a broad range of incomes and rent-paying ability that is generally representative of the range of incomes of lower income families in the PHA's area of operation, as defined in State law; and

(4) Give preference (in accordance with § 960.211) to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

43. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter.) Information relative to the acceptance or rejection of an applicant, or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * * * *

44. Section 960.207 is revised to read as follows:

§ 960.207 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination. The informal review provisions for the denial of a Federal preference under § 960.211 are contained in paragraph (k) of that section.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined. Notwithstanding the fact that the PHA may not be accepting additional applications for tenancy because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 960.211, unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

45. In Part 960, a new § 960.211 is added, to read as follows:

§ 960.211 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each PHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) The PHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions of HUD's review and approval. The PHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section or it may, in its own discretion and without HUD approval, adopt verification procedures of its own, as provided in § 960.206.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal

preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its tenant selection policies and procedures. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 960.203, the requirements with respect to tenant selection policies and procedures and standards and criteria under §§ 960.204 and 960.205 (including limitations on the use of residency preferences and requirements contained in § 960.204(e)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are provided assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities used by a PHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07, or HUD's regulations and requirements issued under these authorities.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the PHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in a project) by certifying to the PHA that they qualify for a preference under paragraph (c)(1) of this section. A PHA must accept this certification unless the PHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease with an applicant who has been offered a unit on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The PHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if

information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

Dated: December 21, 1987.

Samuel R. Pierce, Jr.,

Secretary.

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Friday
January 15, 1988

Part III

Department of the Interior

Minerals Management Service
Bureau of Land Management

30 CFR Parts 202, 203, 206, 207, 210, and 241
43 CFR Parts 3100 and 3160
Revision of Oil Product Valuation Regulations and Related Topics; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

Bureau of Land Management

43 CFR Parts 3100 and 3160

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service and Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, the Minerals Management Service (MMS) of the Department of the Interior issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Sixteen persons made oral presentations at those hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with Congress, MMS issued a Further Notice of Proposed Rulemaking on August 17, 1987 (52 FR 30826), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* dated June 27, 1987, at pages H5651–H5666.

The public comment period on the First Further Notice of Proposed Rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, September 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a Second Further Notice of Proposed Rulemaking and second draft final rules (52 FR 39846, October 23, 1987). Public comments were received for 30 days. Over 25 additional comments were submitted in response to the second further notice of proposed rulemaking. Many commenters repeated comments that had been submitted in response to earlier requests for comments. However, MMS did receive additional comments, particularly on sections that were changed. All comments were reviewed and considered in drafting the final rule.

MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in January 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of oil from Federal and Indian leases. These regulations will apply prospectively to production on or after the effective date specified in the **EFFECTIVE DATE** section of this preamble.

II. Purpose and Background

The MMS is revising the current regulations regarding the valuation of oil to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Parts 3100 and 3160.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for lease production.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization of Parts 202, 203, 206, 207, 210, and 241. Each part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General"; "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil"; and "Subpart D—Oil, Gas, and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections are renumbered and/or moved to a new subpart. In addition, new §§ 202.51, 202.101, 206.103, 206.104, 207.1, 207.2, 207.5, and 210.55 are added to the appropriate parts and subparts.

Current § 206.104 is an onshore operational regulation which is under the jurisdiction of the Bureau of Land Management (BLM). This section is being redesignated as 43 CFR 3162.7–4, and the existing § 3162.7–4 is being redesignated as § 3162.7–5. Also, in order to avoid any inconsistencies between these final rules and the BLM rules, 43 CFR 3103.3–1 is being revised by deleting subsections (c) and (d) and redesignating existing subsection (3) as new subsection (c).

This rule applies prospectively to production on or after the effective date specified in the **EFFECTIVE DATE** section of this preamble. It supersedes all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations and Notice to Lessees (NTL's) issued over past years. Specific guidelines governing reporting requirements consistent with these new oil valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. Redesignations:	
1. Subpart Titles	
The titles of all subparts in Parts 202, 203, 206, 207, 210, and 241 have been redesignated, retitled, or added as necessary, to reflect the following titles: (Subparts are reserved under certain Parts).	The subparts were retitled in order to organize them by a commodity (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly.
Subpart A—General Provisions	
Subpart B—Oil, Gas, and OCS Sulfur, General	
Subpart C—Federal and Indian Oil	
Subpart D—Federal and Indian Gas	
Subpart E—Solid Minerals, General	
Subpart F—Coal	
Subpart G—Other Solid Minerals	
Subpart H—Geothermal Resources	
Subpart I—OCS Sulfur	
2. Part 202	
Sections 202.150, 202.151, and 202.152 under old Subpart D are redesignated as § 202.100, under new Subpart C and §§ 202.53, and 202.52, under new Subpart B, respectively.	This action is the result of retitling of the subparts.
3. Part 203	
Section 203.150 under old Subpart D is redesignated as § 203.50 under new Subpart B	This action is the result of retitling of the subparts.
Section 203.200 under old Subpart E is redesignated as § 203.250 under new Subpart F	
4. Part 206	
Sections 206.300 and 206.301 under old Subpart G are redesignated as §§ 206.350 and 206.351 under new Subpart H, respectively.	This action is the result of retitling of the subparts.
Section 206.104 under old Subpart C is redesignated under Title 43 CFR as § 3162.7–4. Existing § 3162.7–4 is redesignated as § 3162.7–5.	This section addresses a BLM onshore operations issue which properly belongs in 43 CFR.
5. Part 210	
Sections 210.300 and 210.301 of old Subpart F are redesignated as §§ 210.250 and 210.251 under new Subpart H, respectively.	This action corresponds to the redesignation of Subpart F as Subpart H.
Section 241.100 under old Subpart C is redesignated as § 241.53 under new Subpart B.	This action is the result of retitling of the subparts.
II. Deletions:	
1. Part 202	
Sections 202.100 through 202.103 are removed from old Subpart C	These sections cover activities now governed by BLM.
2. Part 203	
Section 203.100 is removed from old Subpart C	This section covers an activity now governed by BLM operations personnel.
3. Part 206	
Section 206.103 is removed from old Subpart C	This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206.
4. Part 207	
Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed	The subject matter of these sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion.
5. Part 210	
Sections 210.100 through 210.105, and §§ 210.150 and 210.151 are removed from old Subparts C and D, respectively.	These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). Section 210.105 has been replaced by new § 210.55.
6. Part 241	
Section 241.10 under Subpart A is removed and reserved. Paragraph (c) of new § 241.53 (formerly § 241.100) is removed from new Subpart B.	The forms identified in § 241.53(c) and § 241.10 are no longer applicable.
III. Additions:	
1. Part 202	
Sections 202.51 and 202.101 are added to new Subparts B and C	These new sections provide oil valuation standards and procedures.
2. Part 206	
Sections 206.103 and 206.104 are added to new Subpart C	These new sections provide oil valuation standards and procedures.
3. Part 207	
Sections 207.1, 207.2, and 207.5 are added to new Subpart A	These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements.
4. Part 210	
Section 210.55 is added	This will replace § 210.105.

The rules in § 206.100 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting any Indian lease, are inconsistent with the regulations, then the lease, statute, or treaty will govern to the extent of the inconsistency. The same principle applies to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241. Because the definitions are specific to these parts, they may not necessarily conform to definitions of the same terms in other Federal agencies' regulations.

III. Response to General Comments Received on Proposed Oil Product Valuation Regulations and Related Topics

The notice of proposed oil valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1858). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30826, August 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR 39846, October 23, 1987). Over 150 comments were received from interested persons including Indian lessors, the States, and industry.

The commenters included industry/trade groups, State, local, and Federal governmental entities, Indian Tribes or allottees, a State/Tribal association, and an individual.

The MMS received many diverse comments on the principles underlying

the proposed valuation methodology. These comments did not address specific sections of the proposed regulations. The respondents generally comprised two groups, with industry generally on one side and States and Indians on the opposing side. The general comments were categorized into five more-or-less interrelated issues: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts.

(1) Acceptance of gross proceeds as the value for royalty purpose

Industry commenters generally agreed that the basic premise underlying the proposed rulemaking is sound because value is best determined by the interaction of competing market forces. However, State and Indian commenters disagreed, particularly objecting to the concept of accepting gross proceeds received under arm's-length transactions as representative of market value. The commenters were concerned that the acceptance of gross proceeds, without additional testing of its validity, could lead to manipulation of pricing schedules, an erosion of payors' accountability and, in general, would fail to protect the interests of the lessor. Many pointed out that gross proceeds has historically not been considered equivalent to market value, citing various legal opinions in support. In view of this, State and Indian commenters declared that royalty value should be equivalent to the highest price posted for like-quality production in a field or area.

MMS Response: The MMS's experience demonstrates that the highest price posted in a given field does not necessarily reflect a bona fide offer to purchase, nor does it reflect that significant quantities of oil are being purchased at that price. In these regulations, MMS generally will assess royalty on the value to which the lessee is legally entitled under its arm's-length contract. MMS maintains that gross proceeds to which a lessee is legally entitled under arm's-length contracts are determined by market forces and thus represent the best measure of market value. For many Indian leases, MMS will also require consideration of the highest price paid for a major portion of production in accordance with the lease terms.

To assure that gross proceeds represent market value, and thus insure accountability, Indian and State commenters suggested that reported gross proceeds values should be tested/validated by using the net-back (work-back) procedure as an independent crosscheck. They also suggested that royalty reporting should be routinely monitored by using this procedure.

MMS Response: The MMS believes that gross proceeds under arm's-length contracts are representative of market value. However, MMS will continue to monitor value determinations under its regulations to ensure that those determinations yield reasonable values. To routinely perform labor-intensive net-back calculations is impractical.

Some State respondents doubted that the benchmark hierarchy system for determining values under non-arm's-length transactions could be properly applied because of the system's complexity and because the valuation procedure is predicated upon a payor's ability and willingness to identify a transaction as either arm's-length or non-arm's-length. They feared that industry might be reluctant to identify non-arm's-length transactions and thus merely declare gross proceeds as value, thereby placing the burden of proper finding upon MMS during audit.

MMS Response: The MMS supports the benchmark system. Most of industry, those who report under the system, believe it to be a workable system. In general, industry can identify its own arm's-length contracts based on standards established in these regulations and it is in its best interests not to classify non-arm's-length transactions as arm's-length because of the threat of both high interest costs and possible penalties. However, MMS will use the audit process to verify that contracts which are claimed to be arm's-length satisfy all the standards of the definition, discussed in detail below.

(2) Deduction of Transportations Costs

Although industry commenters supported the proposed deductions for transportation costs, many of the respondents believed the allowable deductions were too restrictive, and one suggested that transportation allowances should be actual costs based on Federal Energy Regulatory Commission (FERC) tariffs or arm's-length transportation arrangements. However, comments from States and Indians objected to the allowances as being too liberal and unnecessarily open-ended by effectively granting the allowances regardless of need. They suggested that transportation deductions should be allowed only when transportation costs are necessary to the sale of the production, that transportation allowances should be limited to OCS production only, or that no deductions should be allowed, at least for tribal lands.

MMS Response: The MMS believes that costs incurred by a lessee to transport lease production to a delivery point off the lease increases its value and, therefore, is a recognized deduction. See the transportation allowance section of this preamble for further discussion.

(3) Legal Mandates and Responsibilities Toward Indians

Some State and Indian respondents questioned the legality of the proposed rulemaking, expressing their view that the proposed modifications, particularly with respect to arm's-length contracts and gross proceeds, are contrary to the intent of the valuation requirements of the Mineral Lands Leasing Act, 30 U.S.C. 181 *et seq.*, and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, and are a marked departure from historical valuation regulations and lease terms. Their basic argument is that the statutes require royalty based on the value of production and a royalty clause based upon "value" is not satisfied by a valuation procedure based upon gross proceeds; in their opinion, value may be considerably higher than revenues from arm's-length transactions.

MMS Response: The regulations generally define value on the basis of market transactions, consistent with commonly held economic philosophy, rather than some arbitrary "value" which can be easily misconstrued, disputed, or misinterpreted. The MMS believes there is no conflict between the intent of the Mineral Lands Leasing Act, FOGRMA, and the valuation procedures being adopted herein.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue*, 135 F.2d 314, 317 (2d Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word "value." The word "fair" can modify the word "value" as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term "fair market value," however, has been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of these regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to "arm's-length contracts," in many instances, are accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

The Indian commenters took particular exception to the proposed rulemaking, pointing out that the proposed valuation procedures based on gross proceeds are in conflict with the Secretary's duty under the Unallotted Indian Leasing Act of 1938 and the Indian Mineral Development Act of 1982 to ensure that tribes and allottees receive the maximum return for their property. They disagreed that gross proceeds represented market value, and thus believed they would not receive the maximum benefit accruable from production pursuant to statutes. One respondent suggested that the proposed regulations apply prospectively only to newly issued leases so that royalties owed to Tribes and allottees under existing regulations would not be diminished.

MMS Response: MMS believes the new valuation regulations, with the changes discussed in more detail below, are fully consistent with the Secretary's obligations to Indian lessors.

(4) Complexity and Obscurity of Regulations and Definitions

Some commenters believed that the proposed rulemaking generally was excessively complicated, leading to difficulty in interpretation. As a result, they believe the proposed rules fail to achieve the stated goals of simplification and providing certainty.

MMS Response: The MMS has endeavored to correct certain identified deficiencies in the final rulemaking. The regulations combine previous regulations, NTL's, orders, and internal policies. They will provide a single source for product value guidance which necessarily will be simpler and more comprehensive than the existing procedures.

(5) Economic Impacts

State and Indian commenters disagreed with MMS's statement that the proposed regulations would yield long-term benefits to royalty owners. Indian commenters, in particular, believed the proposed valuation rules would have a significant detrimental economic impact on Tribes and allottees. A detailed analysis of the economic impacts of the proposed rules was suggested by one commenter to support MMS's claim that the short-term effects on revenues would be limited.

MMS Response: The MMS believes that the regulations provide valuation criteria that will result in reasonable values and will create an atmosphere of certainty in royalty payments and thereby correct some of the royalty deficiencies encountered in the past.

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30826), and the Second Further Notice of Proposed Rulemaking of October 23, 1987 (52 FR 39846), specifically requested comments on certain broad issues, and the Second Further Notice of Proposed Rulemaking also specifically requested comments on certain individual issues. Because the response to both the broad and specific issues were also addressed in the Preamble to the Final Gas Valuation Regulations published elsewhere in today's **Federal Register**, reviewers are directed to the responses provided in the Preamble to that rulemaking.

The MMS will monitor the operation and effect of the rules being adopted today. In 3 years, MMS will review the results of its analysis to determine if any significant changes to the regulations are required. In the meantime, technical and minor adjustments to the rules will be made as necessary.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 1858, January 15, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.52 Royalties.

For purposes of clarity, one State commenter suggested that the word "royalty" be inserted before the words "rate specified", and the words "amount of royalty" be deleted and replaced with the words "royalty rate." This suggestion was made because some lessees have confused the computation of royalty rate and the computation of the amount of royalties due.

MMS Response: The MMS agrees that these suggested changes should be made for purposes of clarity and the final rule has been modified accordingly.

The MMS has removed from the final rules the two sections addressing the general responsibilities of MMS and lessees. All of these responsibilities are addressed in various provisions of 30 CFR and elsewhere. Thus, these sections were duplicative and, based on the comments received, caused confusion.

Section 202.100 Royalty on oil.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment

in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty-in-kind. However, because requests to take royalty-in-kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty-in-kind, he or she must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that when royalties are paid in value, the royalties due are equal to the value for royalty purposes multiplied by the royalty rate.

Industry commenters recommended that this section state that no permission is necessary to exempt from royalty any oil used for the benefit of the lease, either on-lease or off-lease, and including communitized or unitized areas. In addition, another industry commenter stated that where agency approval is necessary, this section should address the procedure to acquire such permission.

Some Indian commenters also recommended that any royalty-free use of oil be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations. One Indian commenter objected to any off-lease use of oil that would be royalty free.

MMS Response: The royalty-free use of oil is an operational matter covered by the appropriate operating regulations of the BLM and MMS for onshore and OCS operations, respectively. The BLM requirements are governed by the provisions of Notice to Lessees and Operators No. 4A. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS does not believe that prior approval for royalty-free use of oil is warranted because most leases by their specific terms allow royalty-free use of oil and it is a matter which will be reviewed during audits to prevent abuse.

One industry commenter proposed that MMS consider expansion of § 202.100(b) to include appropriate royalty deductions for the oil equivalent cost of alternative fuels which may also be used for beneficial purposes on the lease.

MMS Response: This suggestion was not adopted. This issue is more properly directed to operational regulations, not value regulations, and is outside the scope of this rule. The MMS has included these provisions simply to reflect the general lease terms and regulatory provisions which prescribe the royalty obligations.

Proposed § 202.100(b), which addressed royalty-free use of oil for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving multiple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

A State commenter suggested changes designed to help end the confusion about the distinction between computing the royalty rate and computing the amount of royalties due. MMS has adopted some changes to the wording of §§ 202.100(a) and (b) for clarity.

Section 202.100(c) was proposed as § 206.100(d). A comment was received from industry suggesting the addition of the phrase "because of negligence of lessee" after the words "offshore lease," in order to be consistent with section 308 of FOGRMA.

MMS Response: This subpart addresses the valuation of oil which has been determined to be "avoidably lost," not the reason(s) for that determination. Determination of "avoidably lost" and "negligence" is a function of MMS OCS Operations for OCS leases and BLM for onshore Federal and Indian leases. The BLM's requirements are governed by the provisions of 43 CFR Part 3160 and Notice to Lessees and Operators No. 4A. The MMS's requirements are governed by 30 CFR Part 250. The addition of the recommended phrase, therefore, is considered inappropriate for inclusion in this rulemaking.

Section 202.100(d) requires royalties to be paid on insurance compensation for unavoidably lost oil. Several industry commenters stated that to require a lessee to pay royalties on any compensation received through insurance coverage or other arrangements for oil unavoidably lost is unfair. They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should then receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if the lessee receives insurance compensation from a third person. No royalty is due where the lessee self-insures.

The MMS has added at § 202.100(e) of the final rules a provision concerning production governed by a federally approved unitization or communitization agreement. Section 202.100(e) states that all agreement production attributable to a Federal or Indian lease in accordance with the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually takes the production is not the lessee of the Federal or Indian lease. Only a few concerns were expressed about this requirement and many commenters supported it. Most important, however, § 202.100(e) requires generally that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. For example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, then it will be sold or otherwise disposed of by other unit participants. If one of the unit participants other than the Federal lessee transports the oil to a terminal off the unit area under an arm's-length transportation agreement and then sells the oil under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties, it only addresses the issue of valuation.

These rules do not require non-Federal and non-Indian lessees to conform to these regulations for valuing production. The MMS merely has required that the lessee must determine its royalty liability in accordance with the other interest owners' contracts or

proceeds as long as those royalties comply with these value regulations. Any balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

The MMS has added a new subparagraph (3) to the final rules to clarify that all agreement participants actually taking volumes in excess of their allocated share of production in any month are deemed to have taken ratably from all persons taking less than their proportionate share. The MMS decided that such a provision was required to provide certainty as to which unit participants' dispositions the lessee must consider to satisfy the requirements of this provision, especially where there is no balancing agreement among the unit participants.

Some industry commenters also stated that the foreseeable results of this paragraph include: (1) Chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners.

MMS Response: The MMS believes that lessees generally will be able to comply with the requirements of the regulations. However, MMS has added a new subparagraph (2) which authorizes MMS to approve a royalty valuation method different from that prescribed by subparagraph (1) to value any volumes of agreement production allocated to a lessee but which the lessee does not take. The lessee must request the exception and MMS may approve it only if it is consistent with the purposes of the regulations. For example, under a unit agreement a Federal lessee may be entitled to 1,000 barrels of production. It is required to pay royalty on that volume. However, it only is able to sell 750 barrels that month. The lessee could request that MMS allow it to pay royalty on the remaining 250 barrels at its contract price.

The MMS recognizes that under most balancing agreements, a lessee who has under taken at some point will over take to balance its account. Since the lessee was required to pay royalties on the value of its allocated share when it under took, the lessee is not required to pay additional royalties for prior periods for that lease when it subsequently over takes. Again, royalties are due only on the allocated share of agreement production even when the lessee takes and sells a greater volume. The MMS has added a new subparagraph (4) to clarify this issue.

Some industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. It also could cause a hardship for Indian lessors who rely on a steady stream of revenues when there is production from their leases. Therefore, it is not an acceptable procedure.

In response to comments that the valuation method for production from unitization and communitization agreements required by the proposed and draft rules could cause royalty calculation and reporting problems for lessees, MMS is including in the final rules in subsection (f) an exception authority for valuing production from Federal and Indian leases committed to agreements. The authority is discretionary and may be exercised where the lessee requests an alternative method, the proposal is consistent with applicable statutes, lease terms and agreement terms, to the extent practical persons with an interest in the agreement are notified and given an opportunity to comment, and, to the extent practical all persons with an interest in a Federal or Indian lease committed to the agreement agree to use the proposed method.

Section 206.100 Purpose and scope.

One industry commenter agreed with the concept that Indian Tribal and allotted leases be treated under the same oil valuation standards applied to Federal leases unless the specific lease terms require otherwise. That commenter also suggested that MMS support Indian Tribes and allottees, if requested, in marketing their royalty share of production. An Indian Tribe commenter asserted that it may be inconsistent to use the same oil valuation standards for Indian and Federal leases: "Because of the trust responsibility of the United States to maximize Indian royalties, it may be inconsistent to have Indian and Federal leases treated the same under this section, especially if the policy of Interior is to earn a reasonable and long-term maximum rate of return and revenues for all parties."

MMS Response: The MMS believes generally that maintaining a single set of oil valuation regulations that apply to both Federal and Indian lands (except leases on the Osage Indian Reservation) provides for consistency and certainty in the determination of the value of oil for all lands administered by the DOI and will result in obtaining a reasonable and appropriate rate of return to all parties concerned. However, because of the lease terms of many Indian leases, MMS has included in the rules some additional valuation standards applicable only to those Indian leases.

MMS has added a general statement that the purpose of these rules is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

In accordance with paragraph (b) of this section, where the provisions of any statute, treaty, lease or settlement agreement are inconsistent with these regulations, the lease, statute, treaty or settlement agreement provision will govern to the extent of that inconsistency. This policy also applies to court decisions—regulatory revisions will be required to the extent of any inconsistency with the existing regulations, provided they are not ambiguous or unclear in their intent. Thus, MMS maintains the DOI's responsibility to Indians by assuring that the regulations do not supersede the authority granted by the lease, or violate provisions of a statute, treaty, or court decision.

Several Indian respondents commented on § 206.100(b). One suggested that the proposed rules should expressly recognize that "where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or *as interpreted by the courts*, are inconsistent with the regulations, then the lease, statute or treaty, or *court interpretation* would govern to the extent of the inconsistency."

Another commenter expressed the view that "caution should be exercised before stating that 'the lease * * * provision shall govern to the extent of that inconsistency.' Many Indian allottee and tribal leases are very old and were entered into when industry practices were very different than they are now. The parties to the lease may have understood the lease to incorporate standard industry practice at that time. For this reason, some provisions may have been omitted from the written instrument. It may be proper to interpret some of those unwritten provisions in light of today's standards, but it may be grossly unfair to the

royalty owner to so interpret others. One such example may be transportation costs. If transportation costs were not being deducted from royalties when the lease was entered into, transportation costs should not be deducted now, even though not mentioned in the lease. It is our conclusion that this should be considered and the regulations should make some mention of this consideration." Another commenter suggested including settlement agreements entered into to resolve administrative or judicial litigation because these agreements may vary from the rules.

MMS Response: Obviously, MMS will comply with court orders and judicial decisions which affect these regulations. It is well known, however, that court decisions often focus only on parts of issues, leaving those decisions open to interpretation. Furthermore, a court's jurisdiction can limit the applicability of its decision. It is for these reasons that MMS has elected not to include an express reference to court decisions or court interpretations in this or any other subpart of these regulations.

Contrary to the interpretation of this section by the second commenter, the regulations will not change any specific lease provisions. The MMS has included the suggested reference to settlement agreements.

Few comments were received concerning § 206.100(c). One from industry endorsed the recommendation of the Royalty Management Advisory Committee (RMAC) Oil Valuation Panel which proposes placing a limit on the time period during which MMS may conduct an audit on a lease. It asserted that such a limitation "encourages prompt action, assures the retention of appropriate records, and gives the lessee assurance that its current business will not be disrupted by examinations of very remote payments. We believe a 6-year limitation is reasonable for both MMS and the lessee."

The Indian respondent is concerned that "Although all royalty payments made to MMS will purportedly be subject to later audit and adjustment, MMS's past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: These regulations concern valuation procedures, not accounting functions. All MMS audits are subject to the requirements found at 30 CFR 217.50, which does not specify any time limit during which MMS may conduct an audit. Because the reference in § 206.100(c) is intended only to be a general reminder that royalty payments will be audited, the recommendation to place a time limit on audits was not adopted. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. MMS will address the issue of audit closure elsewhere.

Several Indian commenters suggested that MMS should amend § 206.100(d) to specifically refer to the Secretary's trust responsibility to the Indians.

MMS Response: The MMS has made the suggested change.

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g).

Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that, at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: In the draft final rules accompanying the second further notice of proposed rulemaking, MMS proposed to add a § 206.100(e) which provided that regulations, guidelines, and Notices to Lessees in effect on the date that an Alaska Native Corporation acquired a proportionate interest in a lease will continue to apply to that interest. The MMS received several comments that this provision is unfair and not supportable because the lease terms expressly recognize that regulations may change and that the lease will be subject to the new regulations. The MMS agrees with the comments and has deleted this section from the final rules. However, it should be clarified that these rules do not have any retroactive effect. The MMS does not intend that any rules adopted in this rulemaking would apply to production involving Alaska Native Corporation interests which occurred prior to the effective date of this rulemaking.

Section 206.101 Definitions.

"Allowance"—Comments were received on this paragraph from State entities, Indian Tribes, and a Federal agency. One State commenter pointed out that this definition appears to be inconsistent with the sections of the valuation regulations dealing with transportation allowances (§§ 206.104 and 206.105). The word "allowance" is defined in terms of being "authorized," "accepted" or "approved," whereas the regulations state that a transportation "allowance" can be deducted without prior approval. Their concern is that the definition should match the usage in the regulations. An Indian commenter stated that the definition should "clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary*." A Federal agency comment stated that the definition is too liberal and would result in the Federal Government subsidizing oil companies' operation costs. They cited an example where a transportation allowance of as much as 50 percent could be granted for moving oil in lateral lines to off-lease measurement points; specifically, from wellheads to a Lease Automatic Custody Transfer (LACT) unit. One State commenter suggested that the definition is unnecessarily broad and recommended deleting the language "or an MMS-accepted or approved" as well as deleting the phrase "to a point of sale or point of delivery remote from the lease." This commenter also suggested adding the words "necessary and" before the word "reasonable." The rationale for making these changes is that there are other sections of the regulations that clarify "that MMS need not provide advance approval before a lessee could take an allowance." The "accepted or approved" language could be interpreted to suggest that "allowances are not subject to later adjustments by MMS after full audit, based on arguments that the allowance was accepted by MMS after receipt of the actual costs report under § 206.105(b)(2), or accepted under the terms of the regulations."

MMS Response: These regulations, in effect, "authorize" the lessees to deduct certain costs incurred for transportation from the value without prior approval. (See §§ 206.104 and 206.105). Allowances computed by the lessee shall be "accepted" by MMS subject to review and/or audit. The MMS has not included a definition of the phrase "remote from the lease" in the final rules. To eliminate any confusion, MMS has replaced this phrase with the phrase "off the lease." Thus, transportation off the lease, other than gathering, is subject to an allowance. The MMS has included an express statement in the final rule that transportation allowances do not apply to gathering costs. An industry group comment that the phrase "excluding gathering" be deleted was rejected because MMS believes that gathering is a cost of making oil marketable, which must be borne exclusively by the lessee.

"Area"—A comment was received from industry addressing this definition as being imprecise and in need of specified limits in order to define how large an "area" can be. In addition, the commenter proposed that the definition should be clarified by inserting the phrase "or producing unit" after "oil and/or gas field."

MMS Response: The definition seeks to encompass a concept that is very difficult to describe. Narrowing its scope by describing it in terms of size will only establish an arbitrary basis for the definition. To avoid this, MMS elected to retain the definition as proposed.

"Arm's-length contract"—A large number of comments were received on this definition from industry, Indians, a State/Tribal association, States, and a Federal agency. The proposed definition of "arm's-length contract" generated a significant number of comments because it is, as one commenter noted, the "" * * * linchpin of the benchmark system * * *." Because of the importance of this concept, it is not surprising that several commenters disagreed with the definition, either in part or in its entirety. Indeed, one State commenter described the reliance on the concept of "arm's-length" as a method of determining value to be "both inefficient and inappropriate" and suggested deleting the definition altogether. The majority of commenters, however, focused on what they considered to be flaws in the originally proposed definition and the specific recommendations they considered necessary to conclusively address those flaws.

One Indian commenter suggested that the basic flaw in the definition is the assumption that the interests of the lessee and the lessor are identical. This commenter pointed out that the courts "have recognized that the interests of lessees and lessors often diverge. See, e.g., *Piney Woods Country Life School* v. *Shell Oil Company* 726 F.2d 225 (5th Cir. 1984), *cert. denied*., 105 S. Ct. 1868, (1985), *Amoco Production Company* v. *Alexander*. 622 S.W. 2d 563, (Tex. 1981)." Another State commenter described the definition as "clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties." The assumption that arm's-length contract prices reflect market value "ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price oil below its value, especially if the benefit of the reduced royalty burden can be shared by means of the oil sales contract." This commenter believed that the lessee's and lessor's interests may not be the same, and that the royalties due lessors is viewed by many lessees as a cost to be minimized, not maximized. Another comment submitted by the State/Tribal association cited the following as an example of a situation where, although the parties are unaffiliated, the market value may be less than the arm's-length contract price: "Thus, for example, the price received by a lessee/producer who is a captive shipper of a single purchaser pipeline, albeit unaffiliated, will be accepted as the value, despite the fact that competing market forces are not operating. Even if audit revealed facts that would indicate that the sales price is suspect, the government would be bound under the proposed regulations to accept it if the parties were nominally unaffiliated. The MMS proposal would even foreclose the use of standard price checks, presently used * * * in * * * audit efforts, to assure that contract proceeds represent the statutory requirement of fair market value of production." One State commenter concluded that in its attempt to establish an "almost purely objective" test and provide for certainty in valuation, MMS has inadequately tried to justify "giving away the power to prevent manipulation of the public's royalties." Other State and Indian commenters claimed that the proposed definition, although it may be objective, remains "unworkable" mainly because it does not include any reference to "adverse economic interests" and "free and open market" nor would it serve as an effective audit tool. They urge MMS to use the definition first proposed by MMS to the RMAC because "that definition incorporates the common legal understanding of the term arm's-length—the existence of unaffiliated willing buyers and willing sellers of adverse economic interests operating in a free and open market—and is the only definition that can assure against valuation becoming an industry 'honor system.'"

One State commenter stressed that even though the inclusion of additional criteria ("adverse economic interest" and "free and open market") would increase subjectivity, "the appeals process is in place to provide protection against arbitrary decisions." State and Indian commenters specifically recommended that the proposed definition be replaced by the one proposed to RMAC by MMS in the draft regulations. That definition reads as follows:

> Arm's-length contract means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interests not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

One Indian Tribal commenter suggested that "MMS should derive a definition of oil value for royalty purposes [instead of what they consider would be a necessary, all-inclusive, lengthy definition of arm's-length contract) which is simple and which represents the true value of the production. The [commenter] submits that such a definition must be based on the highest price paid or posted for similar oil in the same field or area." Another commenter stressed that the definition limits the discretion of the Secretary to select whatever method he/she considers appropriate to determine the value of oil for royalty purposes.

A large number of industry commenters agreed that the definition of an "arm's-length contract" as "a contract or agreement between independent and nonaffiliated persons" is sound and appropriate. However, these same commenters (plus some Indian and State commenters) objected to the phrase in the proposed definition "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" as being too "restrictive." [1] The rationale for this position is that the phrase appears to defeat MMS's intent to use arm'slength contracts as the principal valuation method. Many industry commenters addressed the need to clarify the definition in order to insure that joint ventures, joint operating agreements, tax partnerships, and other relationships where the "interest" of one party in another is not one of beneficial control, are specifically excluded. As one of these commenters put it: "Similarly, involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms.

[1] Several commenters used the word "restrictive" to mean that the language in the proposed definition regarding "if one person owns an interest (regardless of how small), either directly or indirectly, in another person" significantly restricts the number of situations where an arm's-length contract would actually exist. A few comments espoused this same position, yet they termed the definition as too "broad." As used in this discussion, MMS considers the word "restrictive" to represent the above-mentioned position, and the word "broad" to denote that the language of the definition is either too vague or not restrictive enough.

However, the reference to joint venture in the definition of person, which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas. Such joint operations are often mandated and/or approved and sanctioned by the various governmental agencies having jurisdiction and supervision over the operations (i.e., communitization, unitization, and development plans; and joint bidding agreements). They do not establish joint marketing rights, or otherwise erode the competitive desire of each owner to achieve maximum value for its share of production." Several industry commenters also complained that the ownership by one party of one share of stock in another party would confer affiliated or non-arm's-length status to virtually all otherwise arm's-length transactions between the two parties. They further stated that this would be true even if the pension plan of one party holds one share of stock in the other party. One Indian commenter suggested that MMS would waste its efforts trying to determine ownership interest: "There is also a problem with using ownership interest 'regardless of how small' in the definition. There is no definition in the proposed regulations of 'owns an interest.' Would the ownership of one share of stock be considered owning an interest? Parameters must be set and adhered to. When MMS starts trying to determine ownership interests no matter how small, an endless quagmire will develop, and time and resources will be devoted to this determination when they would be better spent on MMS's other duties."

Another industry commenter pointed out that the proposed definition is inconsistent with the guidelines concerning beneficial control under generally accepted accounting principles, while a number of other industry commenters claimed that it eliminates certainty in valuation.

The majority of all the comments stress the need to replace the phrase "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with a statement that specifies quantifiable limits that would be used to determine whether or not one party would be considered to have a controlling interest in another party. Nearly all of these comments recommended that MMS adopt the following language for the definition of control which has already been implemented by BLM as codified at 43 CFR 3400.0–5(rr)(3) (51 FR 43910, December 5, 1986):

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

A few industry commenters recommended replacing the word "person" with the word "party" in the definition of arm's-length contract because they foresee that the use of the word "person" will "unnecessarily preclude contracts between joint ventures from qualifying as arm's-length." Similarly, one industry commenter suggested deleting the words "consortium" and "joint venture" from the definition for "person" ("party") for the same reason.

Finally, one industry commenter objected to "the implicit and explicit presumption throughout the Oil Proposal that proceeds actually received through affiliated sales are less than fair value. This presumption places an unfair, impractical, and impossible standard on a producer who, acting in its best economic interest, elects to sell to an affiliated entity. In this regard, a redefinition of the term "Arm's-Length Contract" is recommended to eliminate reference to and inclusion of de minimis relationships."

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3). In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which requires that to be arm's-length a contract must reflect the total consideration actually transferred from the buyer to the seller, either directly or indirectly. For example, if the parties to the contract agreed that the price for oil from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters believed that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also believed that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

The comments on the second draft final rule were similar to those already received. Many commenters raised questions about possible audit difficulties. The American Petroleum Institute supported the definition in the second draft final rule.

MMS Response: The MMS adopted many of the changes suggested for the originally proposed definition. The MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". The MMS did not adopt the concept of "free and open market" because that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between nonaffiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. In response to many comments on the second draft final rule, MMS has reduced the control threshold to 10 percent. The MMS can rebut presumptions of noncontrol between 0 and 10 percent and lessees can rebut presumptions of control between 10 and 50 percent.

Many commenters thought that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures because there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate of course would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 10-percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections, discussed below. The MMS also believes that these sections satisfy the request that the rules prescribe that the lessee has the burden of proving nonaffiliation because one of the requirements for demonstrating that a contract is an arm's-length contract is to demonstrate the degree of affiliation between the contracting parties.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership (e.g., 5 percent) must be made available to MMS upon request.

The final rule also provides that, to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed. Some industry commenters objected to this provision stating that, if the contract was arm's-length when executed, it should satisfy MMS.

MMS Response: When the parties to a contract no longer have opposing economic interests, the reliability of that contract as an accurate indicator of value becomes suspect. In such circumstances, MMS will not rely on a contract price to conclusively establish value.

The MMS asked for comments on whether the term "relatives" needed further definition. Many useful comments were received. The MMS has decided, however, that further explanation of the meaning of relatives is better suited to guidelines which will be prepared after these rules are adopted."

"Audit"—Only a few comments were received on this proposed definition. All the comments focused on the portion of the definition which followed the first sentence. Generally, these comments suggested that the proposed definition limited the scope of MMS's authority, particularly with regard to Indian leases.

MMS Response: It is MMS's intention that the definition not be limited. Therefore, the final rule deletes everything following the first sentence of the proposed definition because the succeeding sentences were only intended to be explanatory.

"Condensate"—One industry comment advocated adding the phrase "beyond normal lease separation procedures" after the word "processing" in the first sentence of the definition in order to clarify that "liquid hydrocarbons resulting from normal lease separation procedures are condensate" whereas "processing," in this context, refers to more sophisticated facilities that are generally located off lease.

MMS Response: This definition has been retained intact in the final rule. However, a definition of the word "processing" has been added for clarification purposes at § 206.101.

"Contract"—A comment from a State commenter recognized that "as a matter of law, oral contracts are enforceable." This commenter recommends that the words "oral or" be deleted because they argue that "there is no way that the terms of such contracts can be adequately verified to assure that all of the consideration and benefits under it have been honestly detailed by the lessee under proposed § 207.4. Thus, the government, in a situation involving an oral contract, must assure itself that it has all of the information relevant to the transaction; reliance on the 'contract' document—drafted by one party only—would be insufficient."

MMS Response: The MMS has retained this definition as proposed because, in accordance with § 207.4, oral contracts negotiated by the lessee must be placed in written form and retained by the lessee. If the MMS believes that the written documentation is not a truthful representation of the actual terms of the sales agreements, the lessee may be liable for penalties for submitting false, inaccurate, or misleading data.

"Gathering"—MMS included in the draft final rule a definition of gathering as the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area [if authorized by the BLM or MMS operations authority]. In most instances, gathering is a cost of production or marketing for which MMS will not grant any deduction.

The MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition. Several industry commenters recommended limiting gathering to the lease or unit area so a transportation allowance may be obtained for all offlease movement.

MMS Response: The definition has been retained intact. The operational regulations of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit, or communitized area for the purpose of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

"Gross Proceeds"—MMS received many comments on the definition of "gross proceeds" from industry, States, Indian Tribes, and a State/tribal association.

One State agreed with the language of the proposed definition and supported its endorsement as follows: "Such a definition must be all inclusive. Any exceptions would only serve as precedents for carving more exceptions, and invite creative accounting mechanisms aimed at escaping royalty obligations."

One Indian commenter recommended replacing the word "entitled" with the phrase "accrued or accruing to" while another State commenter supported retaining the word "entitled" because it confirms the lessee's "obligation to act in the best interests of the lessor." This same commenter, however, pointed out: "In the Purpose and Background statement, MMS states that it is the intent of the regulations to include as royalty all of the benefits accruing, or that could accrue, to the lessee. However, the actual definition of gross proceeds does not encompass all potential benefits. For example, a lessee may accept a lower price for its production from a Federal lease for the opportunity to sell to the particular purchaser its production from other leases. Despite the difficulties of attributing a value to such an opportunity, it is a benefit accruing to the lessee under its sales contract. The language of the definition, however, suggests that 'gross proceeds' only encompasses consideration that has been stated in dollar terms. Thus, it technically does not include all of the benefits that could accrue under a sales contract."

A majority of those commenters that objected to the proposed definition expressed the same basic arguments in support of their position. Several industry commenters argued that the proposed definition contains language which is too expansive, claiming that the word "entitled" injects uncertainty and subjectivity into valuation. In addition, this term is considered objectionable by some because, as one commenter stated, "the intent of 'entitled' is not clearly understood, nor is it a clearly defined legal term. Lessees cannot know how either they or MMS auditors will, or should, apply the 'entitled' concept." They recommend deleting this term and abandoning the underlying concept altogether.

A few industry commenters suggested that the proposed definition does not conform to the terms of Federal and Indian oil and gas leases nor the statutes under which they were issued. They argue that the present definition "attempts to collect royalty on consideration received by the lessee [for] other than production saved, removed, or sold from the lease" and that it seeks to redefine "value" to include income or credits which are unrelated to such production.

Other industry commenters agreed with this overall approach, especially as it relates to reimbursements for "production costs" and "post-production costs." One commenter addressed this point at length: "This definition must be changed to limit the royalty to the value of the production at the lease. The current expansive definition allows MMS to reach far beyond that value to confiscate the value added by post-production activities. The MMS has misread the *The California Co. v. Udall* decision to require the lessee to do much more than place production in a marketable condition. If production could be sold at a lease but the lessee determines to enhance the value by retaining control and further processing it, the value added or reimbursements for the costs of such further handling are not appropriate for consideration in the value of the product for royalty purposes."

Many of the industry commenters objected to the "laundry list" of services they asserted are unrelated to production being included as part of "gross proceeds." One industry commenter urged MMS to adopt language which would specifically allow a variety of costs to be deducted from gross proceeds in order to arrive at the value of production.

A few industry commenters concluded that the definition, in its present form, is inconsistent with industry practice and not responsive to the "interaction of market forces."

One industry commenter noted that "some of the items specifically identified as subject to royalty under the gross proceeds concept are the subject of ongoing litigation and the MMS should not preempt judicial decision through regulation."

One State commenter asserted that the definition is only necessary as a determinant of minimum value and, in this sense, should be as expansive as possible. This commenter suggested that "the words 'but is not limited to' need to be added after the words 'gross proceeds, as applied to oil also includes.' " This language was thought to be needed because there is "no reason to restrict the term gross proceeds to encompass only those items listed." Furthermore, this commenter is concerned that the present language will "restrict the Secretary's authority to react if different types of sales arrangements arise in the future."

Another industry commenter asserted that there are "serious ambiguities and inconsistencies" in the definition of gross proceeds "as related to transportation deductions imposed by oil purchasers. These ambiguities and inconsistencies could be interpreted to preclude the use of a market-based value for royalty oil where oil purchasers in the area deduct actual transportation costs from their posted prices."

A large number of industry commenters recommended that MMS adopt the definition proposed by the RMAC Oil Valuation Panel which reads as follows: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from a Federal, Tribal, or Indian allotted lease."

Many of the comments on the second draft final rule addressed the gross proceeds definition, particularly industry comments. These comments again generally stated that the definition is too expansive.

MMS Response: In the draft final rule, MMS included a definition which was modified slightly from the original proposal. In the second draft final rule, MMS again made a modification discussed below, which has been retained in the final rule. The MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. (See § 206.102(i).) It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the oil, whether that consideration is in the form of money or any other form of value.

Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-length contract. Therefore, MMS purposefully has drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the first draft final rule with the term "accruing." There may be certain types of consideration which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

The so-called "laundry list" of services are all benefits that a lessee may be legally entitled to under the terms of the contract and are considered part of the value for the production from the lease. Costs of production and placing production in marketable condition are considered services that the lessee is obligated to perform at no cost to the Federal Government or Indian lessor.

"Indian Tribe"—MMS has corrected the typographical error in the proposed definition and has replaced the word "state" with the words "United States."

"Lease"—One Indian commenter focused on the following issue: "Inclusion of any contract, profit-sharing arrangement, joint venture, or other agreement in the term 'lease' as opposed to a more standardized Bureau of Indian Affairs (BIA) form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: Contracts, profit-sharing arrangements, and joint ventures are all examples of types of valid leases already in existence. All specify royalty provisions, some more detailed than others. Nonetheless, they all qualify under the definition of "lease." Therefore, MMS has retained the proposed definition in the final rule.

"Lessee"—The proposed definition of "lessee" generated comments from the industry and from States. By far the most significant issue raised is that the proposed definition is inconsistent with the statutory definition of "lessee" found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The originally proposed definition uses the phrase "or any person who has *assumed* an obligation" whereas the language in FOGRMA uses the word "*assigned*" in place of the word "assumed." The commenters argued that MMS's use of the word "assumed" expands the definition beyond the intent of Congress and "seeks to invalidate the lease provisions with respect to royalty payment * * *" They further asserted that there is no reason to redefine the term and recommended using the definition found in FOGRMA at section 3(7), 30 U.S.C. 1702(7).

Two industry commenters suggested that the definition be narrowed to "exclude persons who have assumed an obligation to make royalty and other payments required by the lease." Their argument focused on the difference in responsibilities between lessees and payors: "The payor is not necessarily a lessee and should not be defined as one. A lessee is bound by the terms of a lease agreement while a payor is not."

Two industry commenters suggested that the definition as provided in FOGRMA should be revised for the purposes of these regulations for the sake of clarity.

A State commenter objected to the proposed definition because it has the effect of spreading "the reporting and payment responsibility among numerous parties. With each of these parties reporting and paying separately, no single party has the responsibility to insure that 100 percent of all production is reported and 100 percent of the royalties are paid."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." The term "assigned," as used in this part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM, or BIA. It is MMS's intent that operators and others who pay royalties follow these regulations in determining the royalties due. The lessee of record is ultimately responsible if the operator or payor does not properly pay the royalties due the lessor.

"Like-quality lease products"—Several Indian commenters stated that the definition should not include any reference to legal characteristics. The concern of many of these commenters was that this criterion could result in State-imposed limitations on royalty values.

MMS Response: The MMS disagrees that reference to legal characteristics should be deleted. The term like-quality is used in the rules for comparability purposes. If oil is regulated, only oil in the same regulated category should be considered in a comparability analysis.

"Load Oil"—One industry commenter suggested that the word "fuel" be added as noted in the following proposed language: " *Load oil* means any oil which has been used with respect to the operation of oil or gas wells for *fuel*, stimulation, workover, chemical treatment, production or such other purposes as the operator may elect."

A State commenter recommended deleting the phrase "as the operator may elect" from the definition because: "There is no reason to institutionalize, in an enforceable regulatory form, a standard of lessee discretion."

MMS Response: Load oil is distinguished by MMS as oil used for the purposes of stimulating production through injection into the wellbore. Using oil for the purposes of enhancing the value of, or otherwise treating, lease production at the surface is not considered "load oil." Thus, oil used as fuel is not load oil. Also, in order to eliminate confusion, MMS has deleted the phrase "or such other purposes as the operator may elect."

"Marketable condition"—Only a few persons commented on this definition. A State commenter addressed the following concerns: "The definition states that product will be deemed marketable if it is 'in a condition that will be accepted by a purchaser under a sales contract typical for the field or area.' Such contracts, now or in the future, may provide that the purchaser bear the costs of the treatment necessary to place products in a marketable condition. Under the definition, as written, therefore, there would be a theoretical market for untreated product, and MMS would lose the benefit of the increased value attributable to requiring the lessee to perform the necessary conditioning.

"An additional problem exists because of the difficulty of determining what is 'typical' for the field or area. This is because of the same informational difficulties that disable MMS from adequately applying the majority portion analysis. Without full access to the range of sales arrangements that may exist for production in a given area, MMS will be forced to rely on lessee-selected documentation in order to determine what type of conditioning is 'typical' for the area."

Two industry commenters stated that the definition is too subjective and provides no guidance to the lessee.

MMS Response: The MMS believes it is highly unlikely that the oil industry would change the quality requirements for oil sales to avoid paying royalties on nonrecoverable marketing costs. If such an arrangement occurred, MMS would then need to determine if the arrangement is an attempt to avoid paying royalties on the market value of the oil, or a contract to not only purchase the oil, but to place it in

marketable condition as well. In either case, the costs for placing the product in marketable condition would not be an allowable deduction from the value for royalty purposes. (See § 206.102(i).)

"Marketing Affiliate"—MMS received several comments that sales to marketing affiliates who then resell the oil to third persons should not be treated under the rules as non-arm's-length sales. MMS has addressed this issue in the valuation rules discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production. Some industry commenters stated that the term "only" should be deleted to include affiliates that purchase oil from other sources including other sellers in the same field.

MMS Response: The MMS is retaining the term only. If the affiliate of the lessee also purchases oil from other sources, then that affiliate's posted price or oil sales contract prices could be used in determining value if they satisfy the first benchmark. Also, deleting the term "only" from the definition may require the lessee to track production much farther downstream than the point at which it can be valued under the benchmarks.

"Net-back method"—Two State commenters objected to the proposed definition and industry commenters recommended adding clarifying language. The following discussion outlines the position of the two State commenters that found the proposed definition objectionable: "Briefly, our objections are twofold: 1. Net-back is a useful method to independently cross-check lessee declared values, and thus its use should not be restricted to those situations in which the 'first' sale, transfer, or use is downstream from the lease.

"Second, net-back should be allowed from any reasonable point at which a value can be ascribed to the product. There is no guarantee that the 'initial sales point' or 'first alternate point' will exhibit the open market conditions essential for attribution of a true value for the products.

"We therefore propose the following alternate definition: Net-back method means a procedure for valuing or verifying prices assigned to lease products or for independent cross checking of the validity of the gross proceeds of lease products or of prices posted or paid in a field or area. The procedure involves calculating back from any downstream point at which values for such products reasonably and fairly can be derived. In applying the net-back, consideration will be given to the reasonable costs of processing and transportation from the producing lease, unit or communitized area to arrive at a value for the products at the lease."

The industry commenter recommended that the following language be added to the proposed definition: "In net back calculation the alternate point used for value determination shall be the point which is the closest point to the lease at which a price for similar lease products can be established by alternate means. Such alternate means may include posted prices or published spot market prices."

MMS Response: Upon review, MMS determined that the originally proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point off the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where oil production from a Federal lease is used-on lease to generate electricity which is then sold. If the value of the oil cannot be determined through application of the first four benchmarks in the regulations (see § 206.102(c)), then a net-back method would involve beginning with the sale price of the electricity and then deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the farthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" was deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between oil production and "Stainmaster Carpet," if the value of the second product can be determined through comparison with sales of other such products in the same market, MMS would begin the net-back from that product, not from the sale price of the carpet.

"Person"—One Indian commenter supported the inclusion of "joint venture" in the definition of "person" while two industry commenters recommended that "joint venture" be deleted. The rationale these two commenters rely on as the basis for recommending deletion is that the term "person" is used in the definition of "arm's-length contract" and if "that definition is not altered as suggested herein, then inclusion of a joint venture in the definition of person will further narrow the definition of arm's-length transaction by clouding the issue of control and the application of the definition [of] arm's-length to other joint venturer transactions." Another industry commenter advocated replacing the word "firm" with the word "company" because they believe that, in this context, it would be more appropriate. Another industry commenter recommended adding the phrase "when established as a separate entity" after the term joint venture.

MMS Response: The MMS has adopted the addition of the suggested phrase concerning joint ventures in the final definition. The MMS agrees that two unaffiliated parties jointly developing and producing a lease should not be viewed as one entity unless those parties have formally established a separate entity that involves them both.

"Posted price"—The proposed definition received only a few comments, two of which recommended expanding the definition of posted price to include the phrase "or at the specific onshore or offshore terminal(s) listed in the announcement" after the words "in the field." These industry commenters stated that there are "currently very few 'field postings,' rather there are terminal postings" and that expansion of the definition as noted above would avoid confusion in applying the definition.

Another industry commenter believed that the word "posted" is outdated and that some purchasers may not publish a price bulletin, instead providing price quotations or notices to any seller desiring to do business with the purchaser.

A State commenter recommended deleting the phrase "net of all deductions" for the following reasons: "The 'net of all deductions' language should be deleted. MMS has proposed a system of allowances, which as a practical matter makes the 'net of deduction' language unnecessary for the purposes of defining 'posted price.' This proposal could be interpreted to institutionalize the allowances without a mechanism of independent cross-check by MMS.

"Common industry deductions are for transportation and conditioning. Yet there are no restrictions upon what a poster can include as a deduction from the posted price. Thus MMS must retain the power to scrutinize such matters, and add such deductions back into the value of the production when necessary."

This same commenter believed that the definition is too restrictive: "We also object to restricting the definition of posted price to formal price bulletins. Rather, the definition should be broader and include both prices posted and those regularly paid. It is not unusual for a buyer to come into the market and offer publicly a price for crude, which is like a posting but not necessarily a price bulletin. Such publicly announced offers to buy could be at a price higher than offered in a price bulletin, and are no less 'market determined' than supposedly are postings in bulletins. Price bulletins are, generally, only circulated by the major companies and thus reliance on them may give undue advantage to the ability of those companies to establish prices." A State commenter also recommended deleting the phrase "and location for oil in marketable condition" stating that this provision authorizes lessees to, in effect, deduct transportation costs without any review by MMS.

MMS Response: The MMS is expanding the definition in the final rule to include references to onshore and offshore "terminal postings" and "price notices." For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all adjustments" has been revised to read "net of all adjustments to." As used in this definition, the term "adjustments" refers to deductions from the price of oil for quality adjustments such as API gravity and sulfur content. Adjustments for location also may be taken into account where appropriate. It would be unfair not to take into account price reductions which reflect location.

"Processing"—MMS has added a definition of "processing" as any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. Under this definition, the changing of pressures and/or temperatures in a reservoir is not considered processing.

Section 206.102 Valuation standards.

Section 206.102(a) sets the basic standard that the value for royalty purposes will be the value of the oil determined pursuant to this section less applicable allowances. One State commenter recommended that the phrase "less applicable transportation allowances" be deleted because it is unnecessary, confusing, and because it implies that the lessee can deduct the transportation allowance from the value received and report the resultant reduced value as a single line item.

MMS Response: The regulation as adopted refers to "applicable" allowances, which includes transportation allowances. It does not imply that any and all costs can be deducted. Also, it refers to "this Subpart" which includes § 206.105. That section provides complete details regarding transportation allowances. Therefore, this suggestion was not adopted.

Two Indian commenters recommended that the paragraph be modified by (1) deleting any reference to the transportation allowances because they are improper for Indian leases, and (2) adding the phrase "in marketable condition."

MMS Response: Transportation allowances are allowable under most Indian leases. It has been MMS's practice to grant such allowances. If an Indian lease restricts such allowances, then the lease terms will govern.

The MMS does not agree that the phrase "in marketable condition" should be inserted prior to the word "determined." Section 206.102(i) requires that oil be placed in marketable condition at no cost to the lessor. Thus, because § 206.102(a) provides that value be "determined pursuant to this section," the marketability requirement already is included.

The MMS is including in the final rule a new paragraph (a)(2) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the value for royalty purposes will be based upon the higher of those two values. The draft final rule included a provision that, if MMS determined that the major portion results in an unreasonably high value, then it would not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, value should establish a minimum value, and a major portion value in most instances will be reasonable because at least half the oil is sold at or above that price. MMS agrees and has made the change to the final rule.

Many Indian commenters raised concerns about the qualifications included in this paragraph. These commenters must recognize that, if data are not available, it is impossible to do a major portion analysis.

The MMS is also including in paragraph (a)(2) a description of how the major portion is computed. It will be determined using like-quality oil sold under arm's-length contracts because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one barrel of the oil (starting from the bottom up) is sold. An industry commenter recommended deletion of the reference to "area". However, because only arm's-length contracts are used in the analysis, the field may not yield a sufficiently reasonable sample in all cases. Generally, it will not be necessary to look beyond the field.

The MMS believes that, for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

One industry commenter was critical of the major portion analysis claiming that it could yield eratic results in some circumstances. An Indian commenter suggested that MMS use the Conservation Division Manual procedure for computing major portion which was claimed to be different from what was included in the rules.

MMS Response: The major portion analysis has been a part of valuation procedures for at least 45 years. The MMS considers it to be a workable procedure. The MMS maintains that the procedure contained in the final rules is consistent with the Conservation Division Manual (which no longer is in effect).

Section 206.102(b) provides the valuation procedure for valuing oil sold pursuant to arm's-length contracts. Many comments were received regarding the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. They were about equally divided in number as to those in favor and those opposed.

Several State and Indian commenters, and one State/Indian association disagreed with the concept of valuing oil on the basis of gross proceeds received

under an arm's-length contract. The commenters contend that, historically, gross proceeds has been regarded as a minimum value and that it has long been recognized that a market value clause in a lease "is distinctly and substantially different from a gross proceeds clause." They were concerned that the concept establishes an industry honor system. Also, concern was expressed that the proposed regulations be consistent with the provisions of the Indian lease agreement, and they questioned whether the proposed regulation permits the Secretary to discharge his/her responsibilities to the Indian lessors. These commenters maintained that whether an arm's-length transaction yields market value depends upon the definition of arm's-length contract.

Two State and two Indian commenters expressed concern that the proposed regulations will institutionalize an industry "honor system" for valuation of Federal royalty production. The commenters stated that the rules provide no mechanism for independent oversight and cross-check of lessee declarations of value and impose such impossible information burdens on government that they can only result in total reliance on lessee-generated information. They stated further that whether an arm's-length transaction yields market value depends upon the definition of "arm's-length" and whether independent price checks confirm the receipt of proceeds.

The commenters pointed out that many sales arrangements may appear to be arm's-length on the surface, but in actuality the producers are "captive shippers" subject to forced sale and the purchaser's take-it-or-leave-it price. This scenario is stated to be contrary to the common legal understanding of an arm's-length market-determined price. The commenters noted that MMS's definition of "arm's-length" does not even contain the minimum acceptable requirements, in a legal sense, necessary to assure that such contracts are, in fact, arm's-length. They argue that the use of an arm's-length/gross proceeds valuation method requires that such matters as open-market conditions and the relationships between parties, beyond mere affiliation, be investigated. Also, the commenters stated that MMS does not confine arm's-length to those contracts that involve only the consideration for the sale of lease products. Coupled with the proposed definition of gross proceeds, the commenters believe "this allows lessees the opportunity to manipulate the prices received for their production from a Federal lease by accepting a lower price in order to sell production from other non-Federal leases, possibly at a more profitable price."

MMS Response: In response to a large number of comments from the States, Indians, and industry, MMS has modified the regulations which govern the valuation of oil production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most cases, the 7/8ths or 5/6ths owner will be striving to obtain the highest attainable price for the oil production for the benefit of itself; the royalty owner benefits from this incentive. It also adds more certainty to the valuation process for payors and provides them with a clear and equitable value on which to base royalties. Under the final regulations, in most instances the lessee will not need to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement effort. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. As an example, in return for Seller's reduced price for oil production from a Federal lease, Buyer may agree to reduce the price of gas it sells to the Seller from a non-Federal lease. This agreement is not reflected in the oil sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, MMS could accept the lessee's gross proceeds as value, adjusted to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the oil production be valued in accordance with paragraph (c), the standards used to value oil disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts. Thus, despite several industry comments suggesting that this section be deleted, MMS is retaining it in the final rules.

MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties.

Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists once the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of negligence in negotiating a contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has

breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the oil production be valued pursuant to the first applicable of paragraphs (c)(2), (c)(3), (c)(4), or (c)(5). Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market the production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessee includes, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudently manipulated, or negligence in negotiating contracts.

The MMS believes that new § 206.102(b)(1) establishes a more definable standard than paragraph (b)(1) of the draft final rule at 52 FR 30857 ("whether there may be factors which would cause the contract not to be arm's-length"). Although MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

Some commenters requested that the rules require MMS to give a lessee an opportunity to respond before making a finding under subsection (b)(1)(iii). Generally, the appeals regulations in 30 CFR Part 290 give the lessee such an opportunity before a final MMS decision is made. However, MMS will give a lessee an opportunity to comment. MMS has put such a provision in the rules.

If valuation in accordance with the fourth and fifth benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(2).

One Indian commenter suggested that the lessee should certify that this is the highest price he could have received for that oil at the time of the sale. The same commenter also noted that MMS's regulations, at a minimum, must be consistent with the language of the Indian leases. Other Indian commenters stated that the concept of basing royalty on gross proceeds received under an arm's-length contract is not in accord with the responsibilities of the Secretary. One of these commenters stated that "the lease and regulations provide that value be determined, not gross proceeds. Gross proceeds is merely evidence of such value. Acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, especially if the previous MMS practice of accepting reports from lessees without scrutiny continues."

MMS Response: The MMS believes that the regulations as adopted, with the changes discussed earlier, will permit the Secretary to discharge his/her responsibilities properly.

One State commenter objected to the whole approach of the regulations. It was suggested that auditors need to be given additional flexibility to disregard deflated prices. This commenter believed that "gross proceeds" should be set aside as a valuation method where "outside consideration" may have caused contract prices to be reduced.

MMS Response: The MMS has concluded that the final rules strike a reasonable balance between allowing MMS not to accept arm's-length contract prices in appropriate circumstances and giving the lessee some certainty that its arm's-length prices will be acceptable as value. No additional changes were made.

One State commenter objected to the phrase "monitoring, review, and audit" or similar phrases which appear throughout the proposed regulations because it suggests that the terms listed are synonymous. An MMS review or reconciliation is not the same as a full audit. The commenter suggested that the following paragraph be added:

"( ) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes or allottees until after full audit."

Also, the commenter suggested that the words "lease terms, or relevant statutes" need to be added after the words "requirements of these regulations" in proposed § 206.102(b) and (d)(1), for purposes of clarification and precision.

MMS Response: The suggested additional paragraph language has been included in the final rule as § 206.102(k) with minor modifications. This paragraph reflects MMS's longstanding view that a value determination based on limited review does not estop the MMS from redetermining that value until an audit has been completed and the audit period formally closed. MMS intends, however, to prepare more detailed guidelines as to when an audit is closed. The phrase "lease terms, or relevant statutes" has not been added to § 206.102(b) because there is a provision in the regulations that in the event of conflict the lease terms govern. Likewise, all persons are subject to statutory requirements.

Two suggestions were made regarding the establishment of a floor value. One Indian commenter objected to the proposed regulations because they "* * * would permit MMS to rely upon an industry honor system for valuation of Federal royalty production." However, if MMS's proposed valuation approach is to be adopted, they suggested that § 206.102(b) be revised to read as follows:

"The value of oil which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area. If such proceeds do fall more than 10 percent of such prices, the value of oil in that case shall be 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area." It was stated that this approach will permit MMS to have a uniform and administratively simple benchmark to establish market value, rather than "evaluating each contract on a case-by-case basis in light of the many possible indicia of a sale at less than fair market value * * *."

Another Indian commenter stated that: "The proposed regulations would allow substantial manipulation and undervaluation of the royalty amount. Most centrally, it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation for the public's resources. At a minimum, only prices under *genuine* arm's-length contracts should be acceptable for royalty purposes. The proposed regulations would allow collusive contracts to qualify as 'arm's-length contracts.' " It was also stated that if MMS remains intent upon accepting royalty on the basis of what the commenter considers to be below-value contract prices, "we urge that MMS at least impose a floor value, such as 80 percent of the value of production as determined under the 'value' criteria applicable to oil not sold under arm's-length contracts."

MMS Response: The MMS generally does not believe that establishment of a "floor value" (other than gross proceeds) is appropriate or equitable because it could result in royalty being assessed on a value greater than the lessee received under an acceptable arm's-length contract. Where an arm's-length contract operates to set the price at

which the lessee can sell the production, that contract likewise should set the royalty value in most circumstances. However, under the lease and the regulations, MMS has the authority to establish value for royalty purposes and will do so for non-arm's-length contracts where it is justified, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for many Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two.

One Indian commenter raised the question of what "which could accrue" means and also pointed out that, if the value of oil is to be based on gross proceeds, the regulations need to be more precise in stating which gross proceeds are to be used.

MMS Response: The regulations include a detailed definition of the term "gross proceeds." The MMS believes the definition is adequate. MMS has deleted the phrase "or which could accrue" from the final rule.

Many commenters approved of the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. Basic reasons for approval were stated in one comment as follows: "This standard is fair and reasonable; it will promote necessary certainty and consistency for the lessor and lessee alike; it is based on the lease language; it is administratively feasible; and it relies on an objective valuation mechanism—the market. It is appropriate in arm's-length situations because both the buyer and the seller have agreed to be bound by the best price each thought it could get for the duration of the contract. In such circumstances the royalty owner's interest in securing fair market value is protected by the arm's-length nature of the transaction." The 11 industry commenters also objected to use of the phrase "or which could accrue" in the first sentence. This objection can best be summarized in the following comment: "Use of the phrase creates uncertainty and subjectivity and should not be implemented in regulations which must have certainty as a foundation." Industry commenters stated that it is unfair for the lessor to determine after the fact that proceeds "could be accrued." Also, one of these commenters noted that lessees act in a competitive market and "in the absence of fraud, cannot fairly be held to a *post hoc* determination that proceeds could have accrued." One of these commenters summarized as follows: "In sum, the proposed definition of 'gross proceeds' is in need of substantial revision. The MMS should modify it to include only those monies actually received for the sale of production. Other regulations which would require payment of royalties on phantom proceeds should also be amended accordingly."

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitutes the market value of a commodity. This does not preclude MMS from establishing a value where necessary; e.g., the contract does not meet MMS's standards for an arm's-length contract, the lease agreement requires a different value, or the lessee has engaged in misconduct. The phrase, "or which could accrue," is deleted from the final rule. As noted above, many commenters thought that this phrase would allow MMS to second-guess the price which the lessee agreed to in its arm's-length contract by arguing that other persons selling oil may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

Many comments were received regarding the proposed benchmark system in § 206.102(c). They were about equally divided in number as to those in favor and those opposed.

Several States, Indians, and one State/Indian association objected to the proposed benchmark system. Most of these commenters supported highest posted prices using the net-back procedure as verification. One of their objections to the benchmark system is that the proposed methodologies are unworkable and provide no reasonable method of verification. Another objection is that the proposed system would impair effective oversight and reduce royalties. Also, these objectors state that in their view the proposed procedures would severely burden the audit program and, as a practical matter, would preclude adequate verification of the "lessee's declarations." In addition, they stated that the use of the net-back procedure is unduly restricted, and, to the contrary, should be used frequently for independent verification. They believe that more readily verifiable methods should be used to ensure that fair-market value is being received.

One of these commenters summarized a number of objections as follows: "Historically, gross proceeds has been regarded as minimum value; however, the proposed benchmarks appear to be primarily aimed at converting gross proceeds as *the* value. Gross proceeds is not necessarily fair market value. Published gross proceeds are not always all consideration received, for example, drilling advances and special equipment lease agreements." Also, "* * * no mechanisms are provided to cross-check * * * values reported under the first three benchmarks; since MMS has taken the notion that it does not have the authority to obtain access to other arm's-length contracts from producers not obligated to report to MMS, comparisons could not be made." It was also stated that "The most effective benchmark, net back calculation, would never be used because of the prioritized order of other valuation methods."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined by using the most applicable benchmark. These same commenters recommended modifying the first benchmark to require comparison with other posted prices or contract prices in the field.

MMS Response: The MMS believes that a prioritized benchmark system is workable and fair. Obviously, for OCS leases, MMS has access to information regarding all posted prices and contracts (if any). In addition, the majority of onshore fields with Federal lands are comprised of a significant percentage of such lands (if not the majority) so that needed price information is readily available. In many instances, Indian lands comprise a significant portion of an oil field. Where necessary, information sometimes can be obtained from the appropriate State agency. Although price and field boundary data are available for most onshore leases, the acquisition of volume data associated with an arm's-length sale has been difficult to obtain. Accordingly, MMS has added § 206.102(d) which provides that any Federal or Indian lessee will make available upon request to the authorized MMS, State and Indian representatives, and others, arm's-length sales and volume data for like-quality production in the field or area or nearby fields or areas. Undoubtedly, there will be a few instances where it will be difficult to obtain needed information, but this is true of any procedure adopted.

The MMS believes that, in the vast majority of cases, gross proceeds constitute market value. In those cases where this is not true, MMS will establish an appropriate value for royalty purposes. "Arm's-length" sales will not be accepted without question. The MMS will obtain needed information to ascertain that they are truly arm's-length as defined in the regulations.

In response to comments that the first benchmark should not accept a lessee's posted prices without some comparison of other postings in the field, MMS has modified the first benchmark. Under this benchmark, the value still will be the lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). However, the lessee also must demonstrate that those prices are comparable to other contemporaneous posted prices or oil sales contract prices for purchases or sales of significant quantities of like-quality oil in the same field (or area). To evaluate comparability, the factors include price, duration, market or markets served, terms, quality of oil, volume, and such other factors as may be appropriate to reflect the value of the oil.

MMS received many industry comments suggesting that the first benchmark exclude the requirement that the lessee's own posted price or oil sales contract prices be comparable to posted prices or oil sales contract prices of others. Because sales data of other persons often is not available, the commenters believe that uncertainty has unnecessarily been introduced into the process. One industry commenter believed that the benchmark, as revised, would be workable and provide sufficient flexibility.

MMS Response: The MMS believes that the first benchmark will be retained, as revised, in the second draft final rule. This benchmark best ensures that the lessee's non-arm's-length prices are reasonable determinants of value.

One Indian commenter criticized the benchmark system as follows: "The utter failure of MMS to recognize its obligation to maximize tribal royalties is evidenced also in the provisions governing valuations where arm'slength contracts do not exist. Each of the three alternative methods require a determination that the lessee's sales price is similar to that for purchases of significant quantities of like oil in the same field or area. The MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's contemporary posted prices. Posted prices in the oil industry, however, are generated by the purchasers and not the sellers. Either MMS had made an error in its drafting or this benchmark plainly is so ridden with potential conflicts of interest that it can not possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resource returns."

Another Indian commenter suggested that the desired goal of certainty can be accomplished by use of the highest price paid method: "MMS' embracement of the contract price approach in its drive towards certainty in value can be as easily achieved through the highest price paid method. It would also encourage producers when negotiating contracts to come as close to that figure as possible knowing that is what they will have to pay the royalty on. The contract sales approach proposed by MMS does not encourage obtaining the maximum value for the resource by the purchaser [lessee]."

MMS Response: In many instances the lessee, being a purchaser, has published a posted price bulletin. Posted price bulletins are generally available. In addition, the lessee must retain all data which are subject to audit. From experience, MMS does not believe that basing all royalties on the highest price in the field or area is fair or in the best interests of the Federal or Indian lessor. Therefore, such a standard was not adopted.

One State commenter noted that the modifier "contemporaneous" in three of the sections is vague and undefined. "For a purchase under a posting or contract to be used as an indicia of value for the monthly reporting period, it should relate to production during the same reporting period."

MMS Response: MMS has added § 206.102(c)(6) to the final rule which defines "contemporaneous" as postings or prices in effect at the time the royalty obligation is incurred. This means the postings or contract prices in effect at the time oil is removed, sold, or otherwise disposed of in a manner which results in royalty being due on the oil.

According to one State commenter, "It is difficult to establish an alternative system to calculate fair market value * * *. The MMS should use the posted price criteria of the benchmark system verified by a ne-tback analysis to assure the credibility of posted prices."

MMS Response: The MMS believes that the use of a routine net-back analysis on a routine basis to verify oil value is impractical and unnecessary.

Two Indian commenters expressed concern about the prioritized benchmark system. They argued that restricting the Secretary's ability to use different methodologies in any order the Secretary chooses will tie the Secretary's hands in dealing with difficult situations.

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his/her responsibilities to the Tribes and allottees and will provide certainty in the valuation process to both the lessees and lessors. Although a prioritized benchmark system does limit flexibility, this drawback is outweighed by the benefits of certainty.

One State commenter thought there is a lack of guidance in administering the prioritized benchmark system and that MMS does not indicate what kind of evidence will be sufficient to permit an auditor to continue down the list of benchmarks.

MMS Response: The MMS will require that the lessee make a reasonable effort to apply a benchmark before proceeding to the next. Auditors must be satisfied that lessee information is sufficiently accurate and complete to implement a benchmark. The addition of § 206.102(d), whereby lessees must provide arm's-length sales and volume information, will assist in the enforcement of these "comparability" requirements. It would be impossible for MMS to attempt to implement a procedure where government has to make all the decisions. Such a procedure would impose a tremendous administrative burden which would be very costly.

Some industry and State commenters expressed concern regarding the lack of an adequate definition of the terms "significant quantities" and "field or area", and the administrative problems that will result therefrom. One State commenter stated that the term "significant quantities" is vague and undefined. An industry commenter recommended that the term "significant quantities" be deleted because (1) posted prices in an open marketplace "are for no other purpose than determining market value", and (2) the lessee has no way of knowing the quantity of volumes purchased by other purchasers in the area.

MMS Response: As was discussed in the preamble to the proposed rules (52 FR 1858, January 15, 1987), the term "significant quantities" is variable depending on the sales volumes from the field and the volume of production. What constitutes significant production from an onshore field may not be significant for an OCS field. Therefore, "significant quantities" will vary case by case.

One Indian commenter stated that "* * * many posted prices are artificially low because there is low demand, but there is still a threshold low amount where a company will purchase more than their demand" and recommended that "* * * the totality of the circumstances should be utilized (and set forth in the regulations), including spot markets, highest posted prices, and to some extent, posting for similar oil in other fields."

MMS Response: The current regulations, which are being revised in response to heavy criticism, list the various criteria with no specific priority. The purpose of the benchmark system is to provide all concerned with a reasonable degree of certainty as to criteria to be used in valuing oil.

One Industry commenter stated that the prioritized benchmark system "imposes a prejudicial valuation on an affiliated lessee" because a nonaffiliate receiving the same price as an affiliate would pay on actual proceeds received, whereas the affiliate may have to pay a higher royalty under, for example, benchmark 206.102(c)(2). The recommendation was made that "* * * the first applicable of the following subsections "* * * language in § 206.102(c) be replaced with "* * * any of the applicable subsections."

MMS Response: The situation described could occur. However, MMS believes that, generally, posted prices for like-quality oil in the same field or area will be comparable. Thus, there likely will be little or no disparity in the values in most situations.

Many industry commenters, a Federal agency, and an individual approved of the proposed benchmark system. One industry commenter stated that they "* * * strongly support the adoption of clear and consistent standards of valuation for royalty oil based upon the true value of the product—the price received in the marketplace for the sale of that oil. The valuation proposal * * * recognizes the interaction of competing market forces and recognizes that a seller of oil will normally negotiate the best deal it can to further its own interests. The use of a price that is generally available to all sellers is a much more reasonable approach to the determination of 'value' for a given supply of oil than the arbitrary selection of a price that one seller may have received under circumstances that do not include all sellers. Where an arm's-length contract does not exist, the benchmark system of valuation permits an objective procedure for arriving at the valuation based upon posted prices which have been the basis for sales of oil for many years." Another industry commenter supported both the benchmarks and their prioritization because both will add certainty to valuation determinations. Also, the use of the lessee's contemporaneous posting will provide a "benchmark valuation for many major producers." One industry commenter noted that "This ordering of the benchmarks is the result of extensive public comment which showed that, for valuation of oil, posted prices should be moved closer to the top of the hierarchy insofar as posted prices account for the vast majority of oil transactions."

MMS Response: The MMS believes that the proposed benchmark system is a valid and realistic system for determining the value of oil not sold pursuant to an arm's-length contract. The benchmarks are primarily based on posted prices which are the normal basis for oil sales and which reflect the price of oil in a free and open market. Posted price information for significant quantities of like-quality oil sold from a field or area will normally be available. The addition of § 206.102(d) will permit necessary information on arm's-length sales to be obtained. In other situations, the benchmarks provide for use of spot sale prices, net-back, or any other reasonable method.

One industry commenter noted that most, if not all, posted prices are prices posted by a purchasing, marketing, or transporting entity, some of which may have producing lessee affiliates. "However, taken literally, there will not be a *lessee's* posted price."

MMS Response: MMS has added a new § 206.102(c)(6) which defines lessee, for purposes of this section, as including a designated purchasing agent.

One State commenter noted that proposed § 206.102(c)(1) fails to anticipate that a lessee could make purchases at different postings within the same reporting period and suggests that, in such a case, "the volume weighted average would seem to be appropriately specified, because it could be easily computed by the payor and would be less susceptible to manipulation by the payor."

MMS Response: The MMS concurs with this change and has included language to implement it in § 206.102(c)(1).

One Indian commenter stated that the use of this benchmark (contemporaneous posted prices) rather than the major-portion analysis provided for in existing oil and gas regulations represents a breach of the Secretary's trust obligations.

MMS Response: The MMS believes that the regulations as adopted will permit the Secretary to discharge his/her responsibilities. Major portion analysis will be used under the final regulations, where appropriate.

Some industry commenters recommended that legal characteristics of the oil be included in the comparability criteria in paragraph (c)(1).

MMS Response: This addition is unnecessary because the section already refers to like-quality oil, which is defined as including legal characteristics.

One industry commenter recommended that paragraph (c)(2) be modified by adding the phrase "known to the lessee" after the word "prices" so that the first part of the sentence would read, "The arithmetic average of contemporaneous posted prices, known to the lessee, used in arm's-length transactions * * * ."

MMS Response: This suggestion was not adopted because it results in too great a degree of subjectivity.

One industry commenter supported the use of "arithmetic average" as a benchmark, but suggested that there should either be an agreement between the lessees and MMS as to which companies' postings are to be used, or that MMS publish a list of the companies whose postings may be used to calculate an arithmetic average. The commenter pointed out that in the case of South Louisiana (used for offshore) there are at least one dozen companies that post oil prices and there could be price changes in one month on different dates by all of the companies.

MMS Response: The MMS may decide, upon request, on the basis of an individual case, to designate postings to be used in calculating an arithmetic average. It is not considered practical to do this continuously.

Three Indian commenters objected to the use of "arithmetic average" and recommended that a "weighted average" be used instead. Another commenter stated that use of "arithmetic average will not yield a true market value because the lessee is given the opportunity to manipulate prices by selling some oil at extremely depressed prices."

MMS Response: Paragraph (c)(2) requires consideration of postings of persons other than the lessee. Although the postings are available to the lessee and to MMS, volumes often are not. Thus, requiring a weight averaging of third party data is not practical.

To make this benchmark "more workable and administratively feasible" one industry commenter recommended using the average of all postings of the relevant type of oil in an area.

MMS Response: The MMS has found that postings do not always indicate a purchaser's willingness to buy. Therefore, any average which includes all postings may become skewed because of posted prices which are not market responsive. Pursuant to § 206.102(c) (1), (2), and (3), there must be significant quantities of oil sold before a posting or contract price can be averaged in.

One industry commenter recommended that paragraph (c)(3) be modified by adding the phrase "known to the lessee" after the word "contracts", and by replacing the phrase "area or nearby areas" with the phrase "field or area" for reasons of "clarification."

MMS Response: The addition of the phrase "known to the lessee" was not adopted because it would result in inserting too great a degree of subjectivity. The term "field or area" was not adopted because the intent is to utilize a larger area than "field or area" in reviewing arm's-length contract prices.

One industry commenter suggested that MMS should publish a list of postings to be used to compute the arithmetic average required by subsections (2) and (3). It was thought that the large number of postings creates a monitoring and auditing/validation burden.

MMS Response: MMS recognizes that in some cases there may be several postings which will be required to be averaged. However, the information is available and it is not that burdensome for lessees. In fact, MMS expects that in certain fields lessees will be able to work together to compute averages which may be applicable to all of them.

One State commenter stated that "Subparts (iii) and (iv) attempt to distinguish between arm's-length contracts and spot sales. But, there is no basis for saying arm's-length spot sales are not also arm's-length contracts under the definitions. Additionally, there is no requirement (and there should be) that only spot sales which are genuinely arm's-length should qualify as indicia of royalty value."

MMS Response: The MMS concurs that the spot sales used in the benchmark should be arm's-length spot sales and will insert the term "arm's-length" immediately preceding "spot sales" in the final rule, § 206.102(c)(4). With regard to the first comment, if a spot sale is for a significant quantity of oil, it could be considered under paragraph (c)(3).

Some States and Indians stated that when applying benchmarks, it should not be necessary in all circumstances to consider all other sales in the field. In other instances, it may be necessary to look beyond the field. MMS agrees that the size of the sample cannot be predetermined but must depend upon the terms of the applicable benchmark and the actual circumstances in the field or area.

Most of the State and Indian commenters who opposed the benchmark system supported highest posted price with the use of a net-back method for verification of values used. One of the State commenters, in describing MMS's proposed use of net-back in proposed § 206.102(c)(5) as too restrictive, made the following statements: "* * * the government would carry the burden of establishing that none of the preceeding benchmarks can be applied before it would [be] authorized to use net-back * * * In effect, net-back will rarely, if ever, be used. At the same time it is the only method of valuation proposed by MMS that can be applied independently from lessee submitted documentation."

MMS Response: The MMS agrees that there will be infrequent use of the net-back method. It is believed, however, that the other benchmarks which have higher priority will result in a reasonable value for royalty purposes and obviate the need to undertake a labor-intensive net-back method. The MMS routinely will verify lessee-generated information used in applying the benchmarks during its monitoring process and through audit.

One State commenter articulated the viewpoint of a large number of other commenters by recommending an alternative method of valuation, namely use of the highest posted price paid or offered in the field or area with the net-back procedure used as verification or backup.

The commenter also stated that "* * * the approach we suggest—highest posted or a refined product value net-back—serves the twin goals of assuring the collection of fair market value and providing certainty to the lessee. Highest [price] posted or paid is more easily determined than the arm's-length nature of a contract, and a refined product value can be calculated by the lessee itself or provided by the government. It also is an approach that is independent of lessee generated information and thus meets Congress' intent that independent methods of verification be employed. Gross proceeds would continue as the absolute minimum acceptable value."

MMS Response: The MMS believes that gross proceeds received under arm's-length contracts and posted prices used to purchase significant quantities of oil in arm's-length transactions generally represent the market value of oil and does not agree that it is necessary to perform a refined product net-back analysis to verify them.

One industry commenter expressed approval of the concept in proposed paragraph (e)(1) that prior MMS approval generally need not be obtained where value is determined pursuant to paragraph (c). One Indian commenter expressed concern that "once approval is granted, follow-up audits are unlikely", and recommended that "There should be provisions mandating routine MMS audits of valuation methods occurring at intervals not greater than one year." One industry commenter objected to the fact that MMS will not be giving prior approval stating that this subsection places "the burden * * * on the producer to prove the determination of value." One State commenter stated that the regulation should specify that the lessee retain "all data relevant to determination of royalty value," instead of "all available data to support its determination of value." That State commenter stated that the regulation should specify that MMS "will" order compliance when incorrect payments are discovered, rather than stating "MMS may direct a lessee to use a different value."

MMS Response: Although MMS will be making periodic audits, it is not appropriate to specify the scheduling, type, and timing of audits in these regulations. With regard to the second comment, the lessee is responsible to comply fully with the regulations by properly valuing the oil, for royalty purposes, in accord with the appropriate benchmark and to retain all relevant data. The MMS has adopted the suggestion that the phrase "all data relevant to determination of royalty value" be substituted for "all available data to support its determination of value" in § 206.102(e)(1). Also, the word "will" has been substituted for the word "may" in the last sentence.

Many industry commenters stated that the requirements of § 206.102 (d) and (e) to make all data available to

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MMS are too broad and should be limited to fee lands within the boundaries of approved Federal units or communitized areas. They argued that lessees should not be required to provide information on their other sales prices or volumes.

MMS Response: Because lessees, in many instances, will be determining value for Federal or Indian production by reference to other sales in the field or area, MMS must have access to the data to the same extent as the lessee to determine whether the lessee's valuation was in accordance with the regulations.

Section 206.102(f) was proposed as § 206.102(e) and provides that lessees will pay additional royalties and interest if the lessees improperly determine value. One industry commenter recommended that any "retroactive valuation determinations" on the part of MMS "be limited to fraudulent and noncompliance situations." That commenter went on to suggest that if MMS determines that a lessee underpaid royalties, then the interest associated with those royalties should only accrue from the date of that determination until royalties are paid.

MMS Response: The lessee is responsible for properly determining value for royalty purposes in accordance with the lease terms, regulations, and appropriate instructions and court decisions. Accordingly, if royalty is underpaid, the lessee is responsible for the additional royalty due plus any interest from the time such payment(s) should have been made. MMS has adopted this section as it was proposed.

Another industry commenter agreed that underpayment of royalties was subject to interest, but recommended that MMS likewise should pay the lessee/payor any interest "statutorily authorized" on reimbursed credits or royalty offsets when royalty overpayments are discovered.

MMS Response: The MMS is barred by law from paying interest on royalty overpayments, but is required by law (i.e., FOGRMA) to collect interest on late payments.

Section 206.102(g) was proposed as § 206.102(f) and prescribes a procedure for a lessee to request a value determination from MMS. Some industry commenters suggested that there be a time limit of 120 days for MMS valuation responses. Some of these commenters also recommended that there be no penalties or accrual of interest for any underpayment of royalties during this period (which would not be known until after MMS's decision).

MMS Response: The MMS will make every effort to respond timely, but this is necessarily dependent upon available resources. MMS cannot agree to a regulatory time limit. Because the lessee is responsible for proper valuation, interest is assessed if the lessee makes an improper valuation. The MMS believes a lessee should be able to request a valuation determination at any time. One of the changes to this section clarifies that, when MMS makes a value determination, it may use any of the valuation criteria authorized by the rules. This gives MMS the necessary flexibility to deal with unusual situations which otherwise do not fit the regulations.

One commenter suggested that there should be opportunity for review of a value determination by the affected royalty recipient (State, Tribe, etc.) before a final decision is made because, without such review, the cooperative audit role is rendered meaningless.

MMS Response: The MMS does not consider it practical to require a review by a State or an Indian lessor when a value determination is made. The MMS will attempt to coordinate its value determinations with States doing audits under section 205 of FOGRMA and Indian Tribes doing audits under section 202 of FOGRMA. This does not make the cooperative audit role, in accordance with FOGRMA, less meaningful or effective.

One industry commenter recommended that the provision be clarified that an MMS rejection of a proposed valuation determination is appealable to either the Director or Interior Board of Land Appeals (IBLA).

MMS Response: This modification is not necessary because all MMS final orders or decisions arising from the regulations in Titles 25, 30, and 43 are appealable pursuant to 30 CFR Parts 243 and 290.

One Indian commenter recommended that lessors also should be able to request MMS determinations. They also recommended that the regulations should require MMS to notify Tribes/allottees of any changes in valuation determinations.

MMS Response: The regulations as adopted in § 206.102(g) do not provide a specific procedure for the Indian lessor to request a valuation determination from MMS. However, MMS always is available to discuss with Indian lessors any valuation issue regarding their leases.

One State commenter recommended that the third sentence be modified by adding the word "all" before "available data", and replacing "to support its proposal" with "relevant to the valuation of its production". Also, the phrase "subject to audit" should be added.

MMS Response: The MMS has made some of these changes for purposes of clarity and comprehensiveness.

Section 206.102(h) was proposed as § 206.102(g). It provides that the value for royalty purposes cannot be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances. Several industry respondents considered the phrase "or which could accrue" objectionable and urged its deletion. The main reason given for their position is that the language creates uncertainty and subjectivity, contrary to MMS's stated objective of gaining certainty and precision in royalty accounting.

MMS Response: MMS has deleted the phrase "which could accrue" from the final rule. As explained above, with respect to § 206.102(b), MMS is satisfied that the term "accruing" includes all consideration to which the lessee is entitled pursuant to its contract, not just what it actually receives.

Industry commenters suggested that some off-lease post production costs (such as those carried out on leases in "especially hostile or remote environments") and certain onlease post-production costs (such as those deemed to be "extraordinary" for onshore leases, the cost of submerged gathering lines, the cost of environmental compliance, and the cost of post-production facilities installed on leases in water depths greater than 400 feet for offshore leases) should be shared by the lessor and counted as deductions from royalty payments along with transportation allowances. One stated rationale for this suggestion is that some "post-production" costs enhance the value of the oil and, therefore, the costs should be shared by both lessee and lessor, as are the benefits. One commenter simply stated that the phrase "and other deductions" should be added to the "less applicable transportation allowances" language.

MMS Response: The MMS has modified § 206.102(h) to refer to deductions for any applicable allowance. As explained below, however, MMS has not adopted a rule which would provide for deduction of certain extraordinary costs.

State commenters objected to the deduction of transportation allowances from value and particularly from the gross proceeds, especially if gross proceeds is considered a "minimum value." One of the commenters stated that the "less transportation allowances" language is particularly confusing because "it suggests that lessees can deduct the allowance from the value determination" rather than as a separate line item as required by § 206.105(c)(4) of the final rule.

MMS Response: Section 206.102(a) provides that the value for royalty purposes is the value determined in accordance with § 206.102 (i.e., arm's-length gross proceeds or a value determined using benchmarks) less applicable allowances. The purpose of § 206.102(h) is to make it clear that, no matter what valuation method is used, the value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. Therefore, if a benchmark-derived value less applicable allowances is less than gross proceeds less applicable allowances, gross proceeds less applicable allowances is to be used as the value for royalty purposes. In either event, the lessee may be entitled to deduct transportation allowances to determine value, for royalty purposes, at the lease (unless the benchmark-derived value already is a value at the lease—in that even no further transportation allowance would be authorized.)

Section 206.102(i) was proposed as § 206.102(h). This section addresses the lessee's obligation to place lease production in marketable condition. Five industry commenters opposed the concept that the lessee is responsible for placing the product in marketable condition at no cost to the lessor and recommended specific deletion of language in the proposed regulation to accomplish this. One industry commenter recommended that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence, and another industry commenter pointed out that the lessor does share in marketable condition costs under net-profit-share leases.

The MMS specifically requested comment on a provision in the draft final rules which would provide an allowance for certain production related costs in extraordinary situations. Many comments were received from industry supporting this provision and suggesting that it be broadened.

MMS Response: Historically, MMS's policy and practice is that the lessee is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable.

The MMS received many comments on the section added to the draft final rules that provided for certain extraordinary cost allowances. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing oil in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraphs (2)(i) or (2)(ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that once approved, the allowance should extend beyond one year.

MMS Response: After carefully considering all of the comments on this issue, MMS has decided not to retain the extraordinary cost allowance provision in the final rules. It was concluded that the burdens placed on the lessee by the environment in which it must operate were matters taken into account at the time the lease was issued, affecting the amounts of bonus bids and in some cases the royalty rate. The MMS has determined that if a lessee is entitled to further economic relief, it is inappropriate to provide that relief by adjusting the value of the production by methods which are inconsistent with MMS's historical practice and interpretation of the lessee's express obligation to place production in marketable condition at no cost to the lessor. Rather, the more appropriate mechanism is for the Department to consider royalty rate relief in circumstances where it is warranted for existing leases, and for lessees to consider such factors when entering leases in the future.

Section 206.102(j) was proposed as § 206.102(i). There were several comments on this section from industry, States, and Indians. The majority of the comments were negative in some respect; only two commenters (one industry and one State) concurred with the proposed regulation as written. State and industry commenters recommended deleting the regulation in its entirety, indicating that the regulation is inappropriate in the context of oil sales because the majority of oil is sold under monthly posted prices and is not normally subject to contractual price escalations or increments. They suggested that the regulation is more appropriate to gas sales contracts and does not belong as an oil valuation standard.

One industry commenter argued that MMS has neither the authority nor the expertise to determine "the highest price a prudent lessee can receive through legally enforceable claims under its contract." The commenter also suggested deleting most of this section with the exception of the third sentence (of the second draft final rule) and the requirement that the lessee must pay royalties on all volumes of production which are sold.

MMS Response: Although the large majority of oil is sold under posted price bulletins, the division order, which sets forth the division of proceeds and is signed by all interest owners, is considered to constitute the "contract" for purposes of these regulations.

Several modifications, many taking issue with the "prudent operator" concept, were suggested as follows:

Two industry commenters suggested deleting the first sentence ("Value shall be based on the highest price a prudent operator can receive under its contract") because (1) it countermands the use of the actual proceeds benchmark system established in § 206.102 (b) and (c); and (2) the requirement of a lessee to obtain the highest theoretical price, regardless of the cost involved in obtaining that price, may contradict the definition of "prudent operator" found in the draft coal regulations at § 206.5(nn) and, therefore, ignores "the realities of the marketplace and the courthouse and unfairly precludes the lessee from exercising sound business judgment."

One industry commenter recommended revising the paragraph to conform to the reasonable value standard of § 206.102 generally. Here the commenter argued that the "highest price" standard of this subsection is in direct opposition to the reasonable value standards of previous subsections, thus causing the proposed rulemaking to be contradictory.

MMS Response: The MMS has modified the first sentence of the final rule to read "Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract." As noted in the preamble to the proposed rule, this section prescribes a diligence concept. As discussed above, with regard to the concept of gross proceeds "accruing" to a lessee, MMS requires a lessee to pay royalty on that value which it was entitled to get. These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

One industry commenter suggested changing the fourth sentence to read "the lessee will owe no additional royalty *unless or* until monies are * * * received" in cases of disputed payments.

MMS Response: The MMS has adopted this suggested modification as consistent with its intent. However, this provision does not permit a lessee to avoid paying royalties where a purchaser has failed to pay, in whole or in part or timely, for a quantity of oil.

One State respondent suggested that an explicit provision for the assessment of interest for delayed payments should be added, with such a requirement being an equitable compromise for the lessor's agreement to delay enforcement of its rights to the timely payment of full royalties.

MMS Response: When a matter is being legally contested between the parties, and the lessee has taken appropriate legal action, MMS's policy is not to require payment of the amount in dispute until the lessee actually receives it. If a purchaser fails completely to pay for a volume of production, royalties still are due the month following the month of sale or other disposition. In all cases, interest is due if the royalties are paid late. However, in the case of disputed price increments, the royalties are not due until the end of the month following the month that the lessee receives them.

An Indian commenter also suggested that the last sentence should be clarified to make explicit that the bankruptcy of a purchaser of oil should not permit a lessee to avoid its royalty payment obligation.

MMS Response: The MMS believes that the language already encompasses a bankruptcy situation and recognizes that the lessee still has an obligation to pay its royalties.

Section 206.102(k) provides that no redetermination of value by MMS as the result of review, reconciliation, monitoring or a like process is final or binding against the lessor until the audit period is formally closed. MMS intends to issue additional guidelines as to when an audit period is closed.

Several industry commenters thought that any determinations by MMS should be binding.

MMS Response: The MMS is adopting this section. The MMS cannot be bound by a preliminary determination which may not be based on a full array of information as would be available during an audit.

Section 206.102(l) was proposed as § 206.102(j). Comments were received from three State and six Indian representatives objecting to the restrictive terms/effect of this paragraph. In general, the comments pointed out that the requirement to obtain valuation information through Freedom of Information Act (FOIA) requests would inhibit Indian Tribes, allottees, and States from gaining access to the information required to assure that valuations are properly determined. In particular, "The second sentence of the proposed regulation appears to be an unlawful effort to preclude the exercise of departmental discretion under FOIA to voluntarily release nonproprietary data to royalty owners on a case-by-case basis. The third sentence appears to prohibit tribes and allottees from requesting such information through the BIA." It was generally recommended that the paragraph should be clarified to indicate that all valuation information should be available to States, Indian Tribes, and allottees without going through FOIA procedures. (Two Indian commenters offered specific language that could be appended to the paragraph to clarify its intent regarding the sharing of information with authorized parties.)

MMS Response: The intent of this paragraph was not to preclude access allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.103 Point of royalty settlement.

Several industry representatives and a few States commented on this section. The State commenters recommended that § 206.103 be strengthened by defining standards for establishing the point of royalty settlement and thereby minimizing pipeline losses. Lease or unit boundaries were suggested as the point of royalty settlement for onshore production, and the entrance to the first onshore facility was suggested for OCS production.

MMS Response: These regulations pertain to the valuation of oil and are not concerned with the criteria for the point of royalty settlement. The point of royalty settlement is authorized by MMS operations offices for Federal OCS leases and by BLM for onshore Federal and Indian leases.

Two industry commenters addressed the clarity and intent of § 206.103(a)(2). One of these commenters pointed out that the reference to an adjustment for differences in quality and quantity (such as for basic sediment and water) was unclear, asking what adjustments would apply and how these would be made. The other commenter recommended deleting the paragraph altogether because only the quantity and quality actually measured at the point of royalty settlement should be used for royalty computations.

MMS Response: The paragraph cannot be deleted because there are situations, usually onshore, where the gross proceeds accruing to a lessee are based upon the quantity and quality of oil at a point that is different than the point of royalty settlement specified by BLM to be used in calculating Federal or Indian royalty, usually at the tank battery on the lease. In this situation, the quantity and quality criteria measured at the tank battery on the lease must be used to determine the proper value, which, because the quantity of oil at the contractual sales point is less, will be greater than the lessee's gross proceeds.

Many commenters from industry objected to the provision of § 206.103(b) disallowing actual or theoretical losses between the point of royalty settlement and the actual delivery point. They pointed out that pipeline losses are an integral part of transportation over which the lessees/operators have no control and thus should be an allowable component of transportation deductions. They also pointed out that disallowance of losses is contrary to the concept of accepting gross proceeds under arm's-length transactions because the lessor's royalty may be calculated on a different basis than what the lessee is paid by the purchaser.

MMS Response: The issue addressed here deals with volume and quality measurements upon which royalty must be based. The issue of line losses being included as a component of transportation deductions is addressed in the section of the regulations dealing with transportation (§§ 206.104 and 206.105).

One industry commenter suggested that § 206.103(b) be clarified regarding load oil, and recommended that the section be modified to specifically exclude load oil from royalty obligation.

MMS Response: The determination of whether or not load oil is considered to be royalty-bearing is a function of lease terms and the origin of the oil so used, and is generally the responsibility of the BLM and MMS OCS operations personnel for onshore and OCS leases, respectively. As such, no specific language was added to address this issue.

Section 206.104 Transportation allowances—general.

Comments on transportation allowances that did not relate to any specific section of the regulations were classified in the General section of the oil transportation regulations. Although there were comments on a wide variety of subjects, they have been grouped as follows: Post-production costs, validity issues, adequacy/inadequacy issues, cost issues, Royalty-In-Kind (RIK) issues, and issues relating to the definition of terms.

Many commenters addressed the issue of whether or not MMS should allow lessees to deduct all post-production costs from royalty payments. Transportation costs are one type of post-production cost. MMS will not respond to that issue again in this section because it was fully addressed in the discussion of § 206.102(i). Moreover, because the final rules provide an allowance for transportation costs, it is unnecessary to consider whether such costs also are to be considered "post-production costs."

Many commenters addressed the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Six State and five Indian commenters stated that transportation allowances should not be granted unless necessary to sell the product or to promote development, or unless the transportation results in a higher royalty value. Six Indian and one State commenter stated that MMS should not grant any transportation allowances under any circumstances.

One Indian commenter stated that the regulations should not be allowed to change the lease terms. According to this commenter, the granting of transportation allowances is, in effect, a change to the lease terms.

Two Indian commenters stated that MMS must take into account its responsibility to Tribes and allottees in preparing the regulations and must determine the fairness and reasonableness of all transportation allowances.

One industry commenter stated that the reason that MMS grants allowances is because certain Interior Board of Land Appeals (IBLA) decisions required that transportation be considered when determining product value on which royalty is based. Another industry commenter stated that MMS should grant a transportation allowance even if the product value is determined at the lease, if the sales contract required the lessee to incur the expense of transporting the oil to the point of sale.

MMS Response: On the basis of decisions by the Interior Board of Land Appeals (IBLA), Solicitor's opinions, and judicial decisions, it has been longstanding MMS policy to grant transportation allowances when oil is transported to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the regulations being adopted are consistent with past practice and are consistent with the Secretary's responsibility to the Indians. The MMS believes that royalty should be free of production and marketing costs. However, values may have to be adjusted for transportation and/or processing in determining value at the lease.

The MMS agrees that the proposed procedure for determining a transportation allowance places a great deal of reliance on the oil industry. However, this program will be under continuous review and oversight by MMS. There is nothing in the final oil transportation allowance regulations that would change the terms of any Indian lease. The MMS believes that the policy of granting transportation allowances is appropriate and should continue.

Another issue centered around the adequacy or inadequacy of the proposed oil transportation regulations in general. Some commenters believed that the regulations are completely flawed, while others pointed to specific instances where changes should be made to improve their specific applicability.

One industry commenter suggested that MMS should approve the use of contract prices which are net of transportation costs. Another industry commenter stated that the regulations should be revised to eliminate the alleged bias against frontier and deep-water areas. They also recommended the elimination of the ceiling on transportation allowances. Another industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements.

Two industry commenters stated that, in their view, the proposed regulations serve as a disincentive for companies to build and operate transportation facilities. One industry commenter stated that the oil transportation regulations should be revised to achieve certainty by adopting a more rational and realistic approach.

MMS Response: In response to comments received, MMS has changed the regulations to recognize that, in arm's-length situations where the specified price is reduced by a transportation factor, the lessee does not have to report the transportation factor as a transportation allowance. The MMS also recognizes that transportation costs for frontier and deep-water areas may be extraordinarily high and may exceed 50 percent of the value of oil. Because of this concern, MMS has adopted a provision in the final regulations to permit the transportation allowance to exceed the 50-percent limitation with approval from MMS. As the general rule, however, the transportation allowance authorized by the regulations may not exceed 50 percent of the value of the oil at the point of sale on the basis of a selling arrangement. The MMS has

decided that pre-approval of all transportation allowances is not a cost-effective procedure. The 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance, based on reasonable actual costs, will exceed that limit.

The MMS received a number of comments relating to transportation allowances for RIK oil. Industry commenters stated that MMS should grant a transportation allowance for onshore RIK oil. Another industry commenter suggested that the regulations should clearly state that the lessee is not required to transport RIK oil from the lease. Other industry commenters stated that this section was in conflict with § 208.8 of the proposed RIK regulations.

MMS Response: The suggestion that MMS should grant a transportation allowance for onshore RIK oil was not adopted because the onshore lease terms provide that the in-kind oil will be made available to the lessor on the lease at no cost to the lessor. The MMS believes that there is no need to state explicitly that the lessee is not required to transport onshore RIK oil. Many of these issues will be addressed in MMS's revisions to the RIK regulations (See 52 FR 2202, January 20, 1987).

Another issue discussed by several commenters concerns the definition of terms used in the regulations. Several respondents commented on the use of the term "reasonable" to describe transportation costs. One State commenter recommended that the term "reasonable" was too vague and should be defined. Three industry commenters recommended that the term "reasonable" be deleted. Six commenters were concerned about the term "remote from the lease." Two Indian and two State respondents commented that the phrase "remote from the lease" should be defined. Two industry commenters stated that the phrase "remote from the lease" should be changed to "the first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance and includes the requirement that the transportation costs be necessary to market the oil. The MMS agrees that the phrase "remote from the lease" caused confusion and has replaced it with the phrase "off the lease."

The MMS received comments from a large number of respondents on § 206.104(b). This proposed regulation established a 50-percent limit on transportation allowances.

Most of the comments on this paragraph related to one major topic, the limitation of 50 percent on oil transportation allowances. Comments were also received on the proposal not to allow royalty payments to be reduced to zero. Comments on the 50-percent allowance issue were also divided between those commenters who wanted to retain the limit and add additional qualifications, those who wanted to raise the limit, and those who wanted to lower the limit.

Most industry commenters stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; the 50-percent limit could impose a serious economic deterrent to the exploration and development of frontier areas and could serve as a disincentive to the building of transportation systems; the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; it would be a rare case when an oil transportation cost would come close to the proposed 50-percent cap, much less exceed it; the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Industry commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee for the following reason: If the actual cost of transportation can be reasonably justified, it should be permitted if a lessee can adequately demonstrate that a higher allowance is in the best interest of the lessor.

One Indian commenter stated MMS should change the 50-percent limitation to a 20-percent limitation because the 50-percent limit is excessively high.

Industry and State commenters stated that MMS should clarify the exception criteria which would allow transportation allowances to exceed the 50-percent limitation. The proposed "best interest of the lessor" criteria was described as vague and unclear and could be interpreted to exclude all cases. Criteria for approval should allow a lessee to more objectively plan development of oil and gas prospects.

Several industry respondents stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. This procedure should be applied to all transportation systems, but it would be especially important in the frontier areas.

A State, a State/Tribal association, and a few industry commenters stated that MMS should retain the 50-percent limitation in the proposed regulations for the following reasons: The limit should apply in all cases with no distinction made between circumstances where transportation is a component of price and where transportation costs are incurred directly by the lessee; the 50-percent limit is acceptable as a guideline but MMS should freely exercise its authority to allow transportation costs in excess of 50 percent of the value of the lease product; the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

One industry respondent and one State commenter stated that royalty payments should not be reduced to zero. The State respondent commented that it is a privilege to use public lands and it should not be possible to take production from it royalty-free. Two industry respondents stated that royalty payments should be allowed to go to zero for marginal production and for cases where reservoir maintenance is a concern.

MMS Response: The MMS has decided generally that the 50-percent limitation should be retained in the final rule. The transportation allowance for oil is limited to 50 percent of the value of the oil on the basis of a selling arrangement. A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. In no event, however, can the transportation allowance exceed 100 percent of the value of the oil.

MMS received comments that a transportation allowance in excess of 50 percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual, and necessary" are sufficient to protect the lessor's interests.

The MMS received several comments from industry on § 208.104(c) which requires allocation of transportation costs among all products transported. One commenter stated that for transportation allowances, MMS should allocate costs on the basis of relative value rather than on the basis of relative volume. Two commenters recommended that costs associated with the transportation of nonroyalty-bearing products (i.e., water) should be deductible. It was also stated that to the extent transportation for certain nonroyalty-bearing products cannot be avoided, the costs should be equally as deductible as the oil transportation. Four commenters recommended deleting the requirement that transportation costs must be allocated among all products for one or more of the following reasons: Allocation would be a labor-intensive process and an onerous burden inflicted upon reporting parties; allocation would be impractical because, in many instances, volumes are not available; and it would require significant additional effort to complete additional Forms MMS–4110.

Other industry commenters recommended that allowances be granted for nonroyalty-bearing substances up to 30 percent of the volume of the transported stream.

MMS Response: The MMS has considered the comments regarding allocating costs on the basis of relative value. The MMS does not agree with the proposal that the costs of transporting nonroyalty-bearing substances should be included in a transportation allowance in all instances. However, upon review, MMS has recognized that there could be circumstances where it is appropriate to provide an allowance which includes the costs of transporting certain nonroyalty-bearing substances such as waste products, including water. For example, there may be circumstances where transportation of water along with the oil is necessary in order to transport the oil. For other than waste products, the final rule provides, however, that prior MMS approval is required before an allowance may be taken for the cost of transporting nonroyalty-bearing substances.

The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would not be difficult in most instances.

Section 206.105 Determination of transportation allowances.

(a) Arm's-length transportation contracts.

Although there were comments on a wide variety of subjects, they have been grouped under nine issues as follows: Acceptance of FERC-approved tariffs and arm's-length transportation agreements, excessive penalty and retroactive approvals, MMS's approval of the transportation allowances, acceptance of transportation reduced prices, status of currently approved allowances, required filing every 12 months, allowance on nonroyalty-bearing production, allocation of transportation costs, and period for filing a proposed allocation method.

(1) Acceptance of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Several industry commenters responded that the oil transportation allowance regulations should be written to support the use of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Indian commenters expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Indian commenter stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. Another Indian commenter expressed doubt that there can even be an arm's-length contract between companies in the oil industry. One Indian commenter stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. Another Indian respondent expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian commenter also stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length and non-arm's-length contract situations.

MMS Response: The MMS currently uses FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs. In these final rules, for non-arm's-length and no-contract situations, MMS generally will permit only the reasonable, actual expenses incurred by the lessee as the allowance. For lessees who have tariffs approved by FERC or a State regulatory agency, MMS is creating an exception to this policy, discussed below in regard to § 206.105(b). MMS has added a sentence to § 206.105(a)(1) clarifying that the lessee has the burden of demonstrating that its contract is arm's-length.

MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to § 206.105(b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty which would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

(2) The disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110, Oil Transportation Allowance Report.

The MMS received responses from several industry respondents stating that the disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110 is an excessive penalty for what they consider to be a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4110 before the Form MMS–2014 is filed. However, one State commenter agreed with the proposed regulation disallowing the deduction for any period in which the Form MMS–4110 was not received.

Many industry commenters responded on this paragraph stating that the regulations should have a provision allowing retroactive transportation deductions. The general consensus was that a lessee does not always have the details on transportation worked out before production begins, and sometimes it is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing nature of current oil and gas markets.

MMS Response: The MMS considered the comments on retroactive requests and has revised the regulations, § 206.105 (a)(1) and (b)(1), to allow lessees to request transportation allowances retroactively for a period of not more than 3 months. Pursuant to § 206.105(d), if a lessee takes a deduction without complying with the regulations, interest only must be paid until the date that appropriate forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed owing to the limitation on retroactivity.

(3) Prior MMS approval of transportation allowances.

Industry respondents expressed approval of the self-implementing procedure in the transportation allowance regulations. This was regarded as a method of relieving a considerable administrative burden on both industry and MMS. One Indian commenter disagreed with the self-

implementing nature of the regulations because it was regarded as a method of establishing the 50-percent limitation as a floor for transportation allowances.

State and Indian commenters stated that MMS should pre-approve all transportation allowances and should provide approval only on a showing of necessity to promote development or a showing that a higher value could be obtained for the oil at a point of sale away from the lease. It was also stated that neither the MMS nor the States and Indian Tribes have the resources to audit all leases and if these allowances are not monitored "up front" they will never be audited.

MMS Response: The MMS has determined that it is not necessary to preapprove all transportation allowances. The MMS will monitor and review transportation allowances for regulatory compliance and reasonableness. Therefore, most allowances under § 206.105(a) and (b) do not require prior MMS approval.

(4) Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations.

Industry commenters responded that MMS should accept transportation-reduced prices without requiring the filing of Form MMS-4110 for both arm's-length and non-arm's-length situations. This policy was regarded as reducing the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was regarded as a potential technique to exceed the 50-percent limitation provision of the regulation. One commenter stated that neither industry nor MMS could administer trucking-rate transportation allowances on the basis of lease-by-lease and, therefore, MMS will probably be forced to accept transportation-reduced values where trucking is involved.

MMS Response: The MMS considered these comments and determined that § 206.105(a)(5) of the final rule should provide that transportation factors specified in arm's-length contracts are to be considered as reductions in value rather than transportation allowances. The use of Form MMS–4110 for the transportation factors is not required. However, so as not to provide a means of avoiding the 50-percent limit on transportation allowances, the final rules provide that the transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(5) Should current approved transportation allowances remain in effect until they expire?

Two industry commenters responded that it would be administratively easier if the regulations would allow a current approved transportation allowance to remain in effect until it expires. Seven industry commenters stated that the transportation allowance reported on Form MMS–4110 should continue until the applicable contract or rate terminates or is modified or amended. State commenters stated that, owing to some allowances currently being taken without written MMS approval, only those lessees with documented approval should be allowed to continue without submission of the Form MMS–4110.

MMS Response: The MMS considered these comments and has revised the regulations at § 206.105(c)(1)(v) and (c)(2)(v) to provide that transportation allowances in effect on the date these regulations become effective will be allowed to continue until they terminate, subject to audit. However, MMS is limiting this provision only to those allowances that have written approval from MMS. Because the regulations are being revised to remove any prior approval by MMS before a deduction can be taken, and the submission of Form MMS–4110 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by requiring all allowances to be deducted under the new rules documented as of the effective date.

(6) Should MMS require the filing of Form MMS–4110 every 12 months?

Industry commenters stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred. Two industry commenters responded that there is no apparent reason for MMS requiring the filing of Form MMS–4110 every 12 months.

MMS Response: The MMS requires the annual filing of Form MMS–4110 for use in monitoring costs and volumes associated with a multi-million dollar transportation allowance program. The regulation is being adopted as proposed.

(7) Should MMS allow transportation allowances for production which is not royalty bearing?

An industry commenter recommended that a transportation allowance should include costs associated with moving water because some water is retained in pipeline oil. Another industry respondent recommended deletion of the last sentences of § 206.105(a)(2) and (b)(3) which prohibit disallowances for transporting lease production which is not royalty-bearing.

MMS Response: As discussed earlier, MMS has decided that it is appropriate to provide an allowance which includes the costs of transporting certain production, including waste products, which is not royalty bearing.

(8) Allocation of a cost applicable to more than one product.

Two industry commenters stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on the basis of relative volume. One industry commenter suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

One State commenter suggested that MMS provide guidance on what will be an acceptable method of allocation in situations that involve the transportation of both gaseous and liquid products. One industry commenter suggested that the rules could be further enhanced by allowing for the adoption of an allocation procedure contained in a different arm's-length transportation contract where similar conditions and products exist.

MMS Response: The MMS has added a new paragraph which provides that, upon request of the lessee, MMS will approve the allocation of costs on the basis of the values of the products transported unless such allocation method is not consistent with the purposes of the regulations in Part 206. It would be difficult for MMS to provide guidance on acceptable methods of allocation because of the many different situations involving the transportation of both gaseous and liquid products. The MMS believes that the most advantageous procedure is to have the lessee submit an allocation proposal to MMS in these situations. Thus, § 206.105(a)(3) and (b)(4) require the lessee to submit such an allocation proposal within prescribed timeframes.

(9) The MMS should extend the period to submit a proposed allocation method.

Two commenters stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload and burden, and a more reasonable provision of time would be 120 days. Others requested an even longer period.

MMS Response: The MMS determined that 3 months is a reasonable time period to submit a proposed allocation method and § 206.105(a)(3) and (b)(4) have been revised accordingly.

(b) *Non-arm's length or no contract.*

The MMS received many comments on § 206.105(b), which applies to non-arm's-length or no-contract

transportation situations, from industry, industry trade groups, States, Indian Tribes, and a Federal agency. Most of the negative comments actually addressed § 206.104(a), and those comments generally expressed the belief that no transportation allowance of any kind should be granted by MMS.

The comments received on these paragraphs have been grouped into nine issues as follows: Acceptance of State or FERC tariffs, acceptance of comparable arm's-length contracts, use of a benchmark system, penalties, increase in estimated allowances, prior approval of allowances, allowable costs, rate of return, and retaining Alternatives 1 and 2 for return on capital.

(1) Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Industry commenters stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should "rightfully rely on the expertise of FERC and State agencies which set pipeline tariffs to determine fair and reasonable transportation charges." It was also stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS. One industry commenter stated that FERC tariffs should be accepted as an allowable deduction regardless of whether the transportation contract is arm's-length or non-arm's-length because the tariff represents the recognized value of the service.

One industry commenter stated that MMS should accept as a transportation allowance either a FERC tariff or the actual cost including a reasonable profit, whichever is higher. This would give the lessee an option that would be more fair than the single method prescribed by MMS.

Two industry commenters stated that MMS should require actual costs only when there was no pipeline or published tariff. The use of internal cost accounting to determine the value of a transportation allowance was believed to be at odds with the interests of the lessee.

MMS Response: After careful consideration, MMS has decided that, generally, for non-arm's-length or no-contract situations, the fairest and best way to determine transportation allowances is to allow actual, reasonable costs plus, if appropriate, an acceptable cost for the lessee's undepreciated capital equipment. However, MMS has concluded that where a lessee has a tariff approved by FERC or a State agency, it is unnecessarily burdensome and duplicative to recompute costs. Therefore, MMS will recognize FERC tariffs (for both Federal and Indian leases) and tariffs approved by a State regulatory agency (for Federal leases) as a valid cost in computing a transportation allowance when it is an actual out-of-pocket expense pursuant to an arm's-length transportation contract. Existence of such tariffs for a transportation system also will authorize MMS to grant an exception to the requirement to use actual costs for non-arm's-length or nocontract situations. See discussion below.

(2) Should MMS accept comparable arm's-length contracts for determining transportation allowances?

Several industry respondents stated that MMS should accept comparable arm's-length contract costs as the transportation allowance. The costs incurred under comparable arm's-length contracts were described as the best indicator of the value of that service provided by the lessee in transporting oil to a market or to any other point where it could be sold.

MMS Response: It is MMS's past and present practice generally to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base oil transportation allowances on actual, reasonable costs plus return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.105(b)(5) will provide an exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS will grant the exception only if the lessee has a tariff for the system approved by FERC (for both Federal and Indian leases) or a State regulatory agency (for Federal leases). However, the rules contain protection from unreasonably high tariffs. The MMS will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no such arm's-length transportation charges to use for comparison, MMS will deny the exception request if no FERC or State regulatory analysis exists and the FERC or State regulatory agency has declined to investigate pursuant to MMS's timely objections upon filing, and the tariff significantly exceeds the lessee's actual costs for transportation as determined under the regulations in subsection (b)(2).

(3) Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Many industry respondents stated that MMS should allow transportation deductions based on a benchmark system. These commenters suggested that MMS allow the lessee the market value of the transportation service on the basis of a benchmark system featuring arm's-length contracts and tariffs with cost accounting being used only as a last resort.

MMS Response: The MMS considered the benchmark valuation system featuring arm's-length contracts and FERC tariffs with cost accounting being used as a last resort. The MMS has not adopted this recommendation for the same reasons as cited in issue no. 2 above.

(4) Should a penalty be imposed for late submission of the Form MMS–4110?

An industry respondent commented that requiring lessees to file Forms MMS–4110 and MMS–2014 at the same time would impose an unfair penalty on lessees for being unable to complete Form MMS–4110 prior to the Form MMS–2014 reporting deadline and that there is no need to cancel all currently approved allowances. Two other industry commenters suggested that submittal of Form MMS–4110 be only on the basis of as-needed, pursuant to contract changes.

MMS Response: The MMS has reconsidered the reporting requirement that would deny the transportation allowance for those periods for which no Form MMS–4110 was filed. Pursuant to § 206.105(b)(1) of the final rules, a lessee may claim a transportation allowance retroactively for a period of 3 months from the first day of the month that the Form MMS–4110 is filed. However, if the lessee has taken an allowance before filing the form, it must pay interest from the date the allowance was taken until the form is filed. The lessee will also be required to repay the amount of any allowance which is disallowed owing to the 3-month limitation on retroactivity. See

§ 206.105(d). The proposal to retain all current allowances in effect until they expire was considered and it was decided that approved allowances (i.e., allowances approved in writing by MMS) in effect on the effective date of these rules will be allowed to continue in effect until they expire. See §§ 206.105(c)(1)(v) and 206.105(c)(2)(v).

(5) Should the estimated rate reported on Form MMS–4110 be allowed to increase over the prior period, if justified?

One industry commenter requested that the estimated rate be allowed to increase over the prior period, if justified. This respondent also recommended that the initial allowance be effective for a period greater or lesser than the 12 months to allow industry to convert to calendar year reporting. This would ease the administrative burden. Another industry commenter questioned the cost effectiveness of the two-step submission of estimates and corrections. This commenter recommended that any adjustment, plus or minus, be made prospectively only.

MMS Response: The recommendation to allow an estimated rate to increase over the actual rate for the prior period, if justified, has been addressed in the final regulations. Pursuant to § 206.105(c)(2)(iii), the lessee may use an estimate higher or lower than the previous year's actual rate if the lessee believes it is appropriate when submitting Form MMS–4110. The recommendation to adjust the initial reporting period to allow industry to convert to calendar year reporting has been considered and the regulations at § 260.105(c) have been revised to provide for calendar-year reporting.

(6) Should MMS require prior approval for allowances?

Industry respondents commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed. Two State commenters proposed that MMS should require prior approval on non-arm's-length contract or no-contract deductions for transportation because adequate audit resources are not available to audit the allowances, and it is very likely that many leases will never be audited. One Indian commenter proposed that MMS require prior approval and audit to prevent abuse in the claiming of depreciation and overhead costs.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered pre-approval and pre-audit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4110. Therefore, with limited exceptions, no prior approval of allowances will be required.

(7) Should costs other than reasonable actual costs be considered in calculating the transportation allowance?

A few industry respondents stated that MMS should revise the regulations to make an allowance for debt service and State and Federal income taxes. Three industry commenters recommended that MMS provide for a complete recovery of costs plus an acceptable profit for assuming the risks involved in undertaking the service function of transportation. One industry commenter recommended that MMS allow for administrative overhead beyond that which is directly associated with, or attributable to, the transportation system.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments. The proposal to extend the amount of overhead beyond that which is directly allocable or attributable to transportation is not acceptable. Administrative overhead or any other costs not directly associated with transportation are not allowed.

(8) What rate of return should be used to calculate return on depreciable investment?

Most industry respondents opposed the use of Moody's Aaa corporate bond rate as unrealistic and too low. One industry commenter stated that "There is no reason to equate pipeline risks with the highest rated, most secure debt rate." Two industry commenters stated that the proposed rate is very conservative and arbitrary and the general consensus of the parties was that the rate of return should be adequate to reflect the risks involved in the oil and gas business. Seven respondents stated that the Aaa rate is the absolute lowest borrowing rate available only to a few "blue chip" companies.

One industry respondent suggested four alternatives to Moody's Aaa bond rate: (1) Prime rate plus 5 percent; (2) one and one-half times the average 20-year treasury bill rate; (3) 150 percent of Moody's Aaa rate; or (4) the rate of return methodology adopted by FERC in Opinion No. 154-B. This industry commenter also stated that industry's position supports a rate of return plus additional points to reflect risk factors, and two other industry commenters suggested that the rate of return should include Federal income tax.

Several industry respondents recommended a rate of return based upon the cost of debt and equity financing. One party stated that "Assets are not financed by debt alone; equity financing must be included in the calculation of an actual and reasonable cost of capital * * *" and suggested a rate to account for equity financing and an alternative method for extraordinary circumstances based on the weighted-average cost of capital. Another industry commenter suggested that the proposed rate "* * * would not include any return on equity which is a significant portion of the capitalization of the pipeline." One industry commenter suggested "* * * a true rate of return for the risk involved and the cost of capital for both debt and equity." Another respondent suggested a rate based on "* * * both cost of credit and equity capital." One industry respondent stated that "Most firms receive funds from both debt and equity sources."

Two industry commenters proposed the prime rate plus 5 percent in accordance with the RMAC panel. Two industry respondents suggested the average 20-year Treasury Bill rate times 150 percent. Seven industry commenters recommended either the average 20-year Treasury Bill rate times 150 percent or the prime rate plus 5 percent as proposed by the Oil Valuation and Gas Valuation Panels, respectively. One industry respondent recommended the prime rate plus 7 percent. Another industry respondent suggested Moody's 20-year Baa rate plus 9 percent as an equitable rate of return. One industry commenter preferred the Treasury Bill rate times 150 percent if MMS fixes the rate at the time of initial investment, or the prime rate plus 5 percent if MMS redetermines the rate yearly. Another industry respondent suggested a 23-percent pre-tax rate of return. One industry commenter suggested that a risk component of from 5 to 7 points above the Aaa rate be adopted.

Two industry commenters stated that the limitation on the rate of return serves as an economic disincentive for lessees to invest in high-risk ventures, such as the frontier areas. Three industry respondents commented that a lessee affiliated with the pipeline would be at a disadvantage under the proposed rate of return because it would not be competitive with other producers deducting a transportation allowance that includes risk factors.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.

There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return that is based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, and Standard and Poor's bond rate.

The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.105(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments on this issue, including several comments on the draft final rule that the BBB bond rate is not much better than the first proposal, MMS will issue a notice of proposed rulemaking to reconsider the applicable rate of return for purposes of these regulations.

The MMS does not consider State and Federal income taxes as an appropriate expense that should be included in a transportation allowance and does not agree that the rate of return should be increased to allow for income tax liability.

(9) Should MMS retain the provisions of both Alternative 1 and Alternative 2?

Some industry respondents commented that MMS should retain both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv). One industry commenter recommended that both Alternatives 1 and 2 be included in any cost-based methodology for determination of a transportation allowance. Another industry commenter recommended that both alternatives be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments. Two industry respondents stated that MMS should retain Alternative 1. One industry commenter stated that it endorsed use of the first alternative because it gives lessees some latitude in choosing the depreciation method.

One industry respondent commented that MMS should not retain Alternative 2. The commenter stated that this alternative would encourage third parties to become involved in the pipeline business, in which case MMS would absorb the full market cost of transportation provided.

Several industry respondents commented that MMS should adopt Alternative 2 and apply it to all existing and future transportation facilities. One commenter stated that limiting Alternative 2 (return on initial capital investment) to new or newly acquired transportation systems is unsupported in the proposed rules and Alternative 2 should be available without the limitation imposed by the MMS. Two industry commenters stated that they presumed Alternative 2 has no limit on the deduction under this alternative. Both industry commenters stated that although Alternative 1 specifically states that a transportation system may be depreciated only once, there is no mention of such a cap on Alternative 2 and, therefore, it is presumed that this option has no limit. One industry commenter stated that it believed it was appropriate to include both Alternative 1 and Alternative 2 in any cost-based methodology for determination of a transportation allowance.

One industry respondent recommended that MMS permit the depreciation schedule to be adjusted to reflect additional capital investment of a subsequent purchaser because, if additional capital is invested, there is no double recoupment of capital investment.

Several industry commenters stated that MMS's proposal to disallow recapitalization is inequitable. One commenter stated that because this proposal would only recognize the original capital costs, the additional capital costs which may have been invested by the new owner may not be recovered.

Some industry respondents stated that, although they agreed with the concept of allowing a rate of return on the transportation facilities, the application of the allowance is unfair insofar as a company using Alternative 1 (i.e., one with existing facilities) would only be receiving a return on investment for the undepreciated investment (or net book value).

Some industry respondents stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that because the intention is to provide the lessee with a rate of return for his invested capital he should not be penalized by a diminishing return caused by tying the return into a depreciation option.

Several industry commenters stated that MMS should allow a lessee to add estimated abandonment costs to its depreciable capital investment value. One industry commenter stated that, although MMS has set out that the proposed regulations require recognition of salvage values, often the cost of abandonment exceeds any salvage value; consequently, it was suggested that the estimated cost of abandonment of the transportation system be included as an expense of operation to the lessee.

An industry commenter stated that a transportation system should be depreciated only once. The commenter suggested that the regulation state "A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once."

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv) and concluded that both alternatives should be retained. However, under the final rule, § 206.105(b)(2)(iv), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing oil only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that

this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The MMS has taken the position that, because it does not participate in the profit or losses that could result from the sale of transportation facilities, no costs for dismantling and abandonment should be included in transportation allowances.

The final rules provide that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee may not be altered by a change in ownership.

(c) *Reporting requirements.*

The MMS received many comments from industry and Indians on the reporting requirements, § 206.105(c), in addition to the comments already discussed above. The two major issues of concern relating to the reporting requirements were (1) usage of Form MMS–4110, and (2) the terms of the allowance and reporting periods.

(1) Should MMS require the filing of Form MMS–4110?

Several industry and Indian commenters opposed the use of Form MMS–4110. One Indian commenter stated that there should be more monitoring of deductions taken from royalty and requested that MMS retain an approval process instead of the mere filing of Form MMS–4110. One industry commenter stated that Form MMS–2014 will show the transportation allowance taken and that Form MMS–4110 is unnecessary. Two industry commenters recommended the filing of an "Intent to Deduct Transportation." One industry commenter stated that the transportation costs under arm's-length contracts should be part of the value and Form MMS–4110 should be filed only for non-arm's-length transportation.

Many industry commenters stated that it would be burdensome to file a new Form MMS–4110 each time a trucking charge or similar net change occurred in a contract price. One industry commenter stated that price postings have been amended as often as three times per month. One industry commenter suggested that Addendum No. 15 be incorporated into the new regulations and expanded to include offshore leases. One industry commenter stated that the regulations are not clear about whether or not a Form MMS–4110 must be filed for prices net of transportation. This industry commenter also stated that in some situations the lessee may not know a price is being netted of transportation in time to file Form MMS–4110.

One Indian commenter stated that the information on Form MMS–4110 should be clear and uncomplicated and should be available to the Indians.

MMS Response: The MMS believes that Form MMS–4110 must be required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the pre-approval of the allowances. The MMS has made the information on Form MMS–4110 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The information on these forms will be made available to the Indians upon proper request. The filing of a Form MMS–4110 equates to an "intent to deduct transportation." The transportation costs under an arm's-length contract are separate from the value determination under such a contract so a Form MMS–4110 should be filed for transportation costs determined under both arm's-length and non-arm's-length contracts.

In arm's-length situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, filing a Form MMS–4110 is unnecessary. In these situations, the point of sale is at the point the purchaser acquires the oil and, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the oil, the reduction of price for the transportation costs past the point of sale would be considered. Section 206.105(a)(5) of the final rule incorporates the necessary regulatory language.

(2) Term of the allowance periods and the timetable for reporting.

One industry commenter endorsed the 12-month term for both onshore and offshore leases. Another industry commenter strongly suggested that all transportation allowances based on cost accounting be determined on the basis of calendar-year reporting. This industry respondent also suggested that all existing transportation allowances based on cost accounting be extended until April 1, 1988, when data for the 1987 allowance would be submitted.

Other industry commenters opposed the termination of all current allowances and recommended continuing allowances in effect for a period of time beyond the effective date of the regulations to allow for smooth transition. The general consensus was that it would be an administrative burden to require the filing of Form MMS–4110 immediately upon passage of the rulemaking. In addition, two of these four industry respondents proposed that the transportation allowances remain in effect for an additional 90 days beyond the issuance date of the regulations. One of these commenters suggested filing new forms only when the current allowance expires.

One industry commenter recommended a grace period for filing all allowances. Another industry commenter proposed a 90-day filing period for new Forms MMS–4110 that are submitted for contract revisions.

MMS Response: The MMS concurs with a 12-month term and the final regulations, in § 206.105(c), have been changed to provide that a Form MMS–4110 will be filed by calendar year. The MMS considered extending current allowances and § 206.105 (c)(1)(v) and (c)(2)(v) now provide that certain allowances will continue in effect until they expire. These are limited to allowances approved in writing by MMS. In regard to a grace period for filing, the regulations have been revised to allow a grace period of 3 months for all non-arm's-length and no-contract situations. The regulations in § 206.105(c)(2)(iii) allow the lessee 3 months after the end of the previous reporting period to file the Form MMS–4110, during which period the lessee will continue to use its previous allowance. Also, the final regulations at § 206.105 (a)(1) and (b)(1) have been revised to allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS. Therefore, even if the lessee is not able to file the Form MMS–4110 timely, the lessee could file the Form MMS–4110 and claim the transportation allowance on a corrected Form MMS–2014 at a later date. The rules also have been modified to include in paragraphs (c)(i)(vi) and (c)(2)(vii) a provision to allow MMS to establish reporting requirements different from those specified in the rules where circumstances warrant.

The MMS has received some comments on the Form MMS–4110. Those comments will be considered in revising the final forms.

(d) *Adjustments.*

Several industry respondents commented on § 206.105(e), which was proposed as § 206.105(d), and pertains to adjustments. Four principal issues were identified.

(1) Should MMS require retroactive adjustments to transportation allowances?

It was the general consensus in the comments that adjustments were a very large burden on both industry and the MMS and that some way should be found to eliminate the need for the many adjustments that result from differences between actual and estimated transportation allowances. Six industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would greatly relieve the administrative burden on MMS and industry. Three industry commenters recommended that actual data from one period be used as the allowance for the subsequent period, eliminating the need for adjustments. It was stated also that this procedure would relieve the burden on MMS and industry associated with the requirement to make adjustments to each account, each month, for each year.

MMS Response: To ease the burden resulting from the adjustments requirement, MMS has eliminated the need for many retroactive adjustments by accepting arm's-length-contract transportation costs when the lessee timely files the Form MMS–4110. For non-arm's-length and no-contract situations, MMS did not eliminate the need for adjustments between actual and estimated transportation allowances. The MMS considered alternatives such as (1) rolling forward differences into subsequent periods, or (2) using actual data from one period to be used as the next period's actual allowance, but determined that either procedure could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. However, because many lessees now will be able to use FERC tariffs for non-arm's-length transportation allowances, retroactive adjustments will be further reduced.

(2) Should MMS require refunds to be requested under the refund procedure requirement of section 10 of the Outer Continental Shelf (OCS) Lands Act?

An industry commenter stated that refunds for estimates tendered in excess of actual costs should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act, 43 U.S.C. 1339, because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. Two industry respondents emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden to industry and MMS. Two industry commenters stated that the current long review and audit process is now causing lessees to lose the time value of money in the refunds which are due the lessees under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful and the suggestion was made that MMS should consider transportation allowance adjustments to be exceptions to the refund requirements of Section 10 of the OCS Lands Act. Overpayments would be recovered through line-item adjustments on Form MMS–2014.

Two industry commenters suggested that the submission of Form MMS–4110 should constitute the tolling of the 2-year statute of limitations period defined in section 10 of the OCS Lands Act. These parties believed that this should be put in the regulations to avoid burdensome refund procedures.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is examining the issue and will provide guidance to lessees.

(3) Payment of interest.

Industry commenters stated that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that, if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized.

MMS Response: MMS has no legal authority to pay interest.

(f) *Actual or theoretical losses.*

The MMS received over 15 industry comments on § 206.105(f), which was proposed as § 206.105(e). All commenters basically stated that MMS should amend or delete this paragraph to allow actual or theoretical losses as a transportation cost.

Nine industry respondents stated that line losses are actual transportation costs which should be allowed by MMS. The basic premise of these comments was that all costs resulting from line losses should be deductible because, if MMS does not absorb its pro rata share of such transportation costs, an inequity results.

As a variation of this issue, eight industry commenters declared that only certain oil losses should be deductible from royalty. Other industry respondents commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One of these commenters stated that, if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff. In other words, the losses are part of the total cost of the transportation arrangement and should be deductible. Three industry commenters stated that MMS should allow those line losses not attributable to negligence. One of these commenters stated that a credit should be allowed for line losses not attributable to negligence and such change would conform to Section 308 of the FOGRMA, which specifies that a lessee is liable for royalty payments on oil and gas lost or wasted from a lease site when such loss or waste is because of negligence on the part of the operator of the lease.

One industry commenter stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. The MMS will include, as part of a transportation allowance under an arm's-length contract, amounts required to be paid in cash or in-kind for line losses. However, because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length or no-contract situations. However, if any tariff approved by FERC or a State regulatory agency is authorized to be used for a non-arm's-length transportation allowance situation, any component of that tariff for actual or theoretical losses will be allowed.

(g) *Other transportation cost determinations.*

Only a few comments were received on § 206.105(g), which was proposed as § 206.105(f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back.

The major concern raised about this paragraph was the application of the transportation allowance regulations to a net-back valuation. Two industry commenters stated that the use of restrictive cost-based transportation allowances is inequitable when the net-back valuation procedure is used and recommended that the section be reworded to recognize total "actual costs" incurred to move or improve the hydrocarbon for sale downstream.

MMS Response: The MMS has reviewed and analyzed the comments relating to the procedure for netting

costs back to the lease to determine a value for royalty purposes. The MMS remains convinced that the cost-based allowance procedure for determining oil transportation allowances is appropriate for determining value under a netback procedure. If there is an applicable FERC tariff, upon application by the lessee, that could be used instead.

Section 207.5 Contract and sales agreement retention.

Two comments were received regarding § 207.5 (formerly proposed as § 207.4), one from industry and one from a State. The State commenter suggested several modifications to clarify and insure that sufficient documentation on oil sales is maintained and made available to FOGRMA-authorized State auditors and other authorized personnel.

The industry commenter suggested that the regulations should limit the audit period, and thus the time for record retention, to six years. This would avoid "an unnecessary administrative burden" upon industry to maintain records for an indefinite period.

MMS Response: The MMS has modified the final rule to require lessees to maintain and make available all documents relevant to the valuation of production.

This subpart is not the appropriate place to address record retention requirements. The record retention provisions are found at § 212.51 (a) and (b).

Section 3162.7-4 Royalty rates on oil: sliding and step-scale leases (public land only).

This section was proposed as § 202.101. The Bureau of Land Management (BLM) advised that "the redesignation into 43 CFR must be accomplished prior to finalization of the proposed MMS regulations under 30 CFR Part 202 because the well count regulations (43 CFR Part 3100) must be referenced in the new 30 CFR Part 202." The BLM recommended extensive changes in this part "regardless of whether these regulations remain under 30 CFR or are reassigned to 43 CFR."

MMS Response: No changes to the proposed section will be made in the final rule. However, because this regulation is the responsibility of the BLM, it is being redesignated as 43 CFR 3162.7-4. After redesignation, BLM may elect to make certain revisions. MMS has corrected typographical errors which appeared in the proposed rule.

V. Procedural Matters

Executive Order 12291

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian oil royalty valuation regulations; clarifies DOI oil royalty valuation and oil transportation allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of the implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.5, and 210.54 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010-0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 207

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: January 6, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Parts 3100 and 3160 are amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 202 is amended by revising the Part title and the titles of Subparts B, C, D, E, F, G, and H to read as follows:

PART 202—ROYALTIES

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§§ 202.100, 202.101, 202.102, 202.103 [Removed]

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52 respectively]

4. Sections 202.100, 202.101, 202.102 and 202.103 under old Subpart C are removed. Sections 202.150, 202.151 and 202.152 under old Subpart D are redesignated as new §§ 202.100 under new Subpart C, 202.53 and 202.52 under new Subpart B, respectively.

5. Subpart B is revised to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
202.51 Scope and definitions.
202.52 Royalties.
202.53 Minimum royalty.

Subpart B—Oil, Gas, and OCS Sulfur, General

§ 202.51 Scope and definitions.

(a) This subpart is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

§ 202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws, reduces, or in the case of OCS leases, reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

§ 202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

6. Subpart C is revised to read as follows:

Subpart C—Federal and Indian Oil

Sec.
202.100 Royalty on oil.
202.101 Standards for reporting and paying royalties.

Subpart C—Federal and Indian Oil

§ 202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in-kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to Part 206 of this title multiplied by the royalty rate in the lease.

(b)(1) All oil (except oil unavoidably lost or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this part applies is subject to royalty.

(2) When oil is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of the MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty-free.

(3) Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance compensation for unavoidably lost oil, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value, for royalty purposes, of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR Part 206. In applying the requirements of 30 CFR Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value, for royalty purposes, of that portion as though the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

(2) If a Federal or Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purposes of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods when the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal and Indian leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee MMS may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms, and agreement terms; (2) persons with an interest in the agreement, including, to the extent practical, royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal or Indian lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60°F. When reporting oil volumes for royalty purposes, corrections must have been made for Basic Sediment and Water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60°F.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 203 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§ 203.100 [Removed]

§ 203.150 [Redesignated as § 203.50]

§ 203.200 [Redesignated as § 203.250]

4. Section § 203.100 under old Subpart C is removed. Section 203.150 under old Subpart D is redesignated as § 203.50 under new Subpart B. Section 203.200 under old Subpart E is redesignated as § 203.250 under new Subpart F.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 206 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§§ 206.300 and 206.301 [Redesignated as §§ 206.350 and 206.351]

4. Sections 206.300 and 206.301 under old Subpart G are redesignated as new §§ 206.350 and 206.351 under new Subpart H, respectively.

§ 3162.7–4 [Redesignated as 3167.7–5]

§ 206.103 [Removed]

§ 206.104 [Redesignated as 3162.7–4]

5. 43 CFR 3162.7–4 is redesignated as 43 CFR 3167.7–5. 30 CFR 206.103 is removed and 30 CFR 206.104 is redesignated as new 43 CFR 3162.7–4.

6. Subpart C is amended by adding new §§ 206.103 and 206.104 and by revising §§ 206.100, 206.101, 206.102, and 206.105 to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The purpose of this subpart is to establish the value of production, for royalty purposes, consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any statute, treaty, or settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.101 Definitions.

For the purposes of this subpart:

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement that has been arrived at in the market place between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gathering" means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and offshore leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payment or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price, or through reduced prices in later sales and which are made before production commences, become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Load oil" means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or workback method) means a method for calculating market value of oil at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the oil and any extracted, processed, or manufactured products, or from the value of the oil or any extracted, processed, or manufactured products at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

"Net profit share" (for applicable Federal and Indian lessees) means the specified share of the net profit from

production of oil and gas as provided in the agreement.

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

"Oil shale" means a kerogen-bearing rock (i.e., fossilized, insoluble, organic material). Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen, upon distillation, will yield liquid and gaseous hydrocarbons.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

"Posted price" means the price specified in publicly available posted price bulletins, offshore or onshore terminal postings, or other price notices net of all adjustments for quality (e.g., API gravity, sulfur content, etc.) and location for oil in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the MMS Royalty Management Program (Oil and Gas or Solid Minerals) Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Tar sands" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

§ 206.102 Valuation standards.

(a)(1) The value of production, for royalty purposes, of oil from leases subject to this subpart shall be the value determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(2)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1)(i) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, oil which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil. If the contract does not reflect the total consideration, then the MMS may require that the oil sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between two contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the oil production be valued pursuant to the first applicable of paragraph (c)(2), (c)(3), (c)(4), or (c)(5) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value. If the oil production is then valued pursuant to paragraph (c)(4) or (c)(5) of this section, the notification requirements of paragraph (e) of this section shall apply.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the oil.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area); provided, however, that those posted prices or oil sales contract prices are comparable to other contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of posted prices or oil sales contract prices, the following factors shall be considered: Price, duration, market or markets served, terms, quality of oil, volume, and other factors as may be appropriate to reflect the value of the oil. If the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS-2014 will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area);

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field (or, if necessary to obtain a reasonable sample, from the same area), and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil;

(5) A net-back method or any other reasonable method to determine value;

(6) For purposes of this paragraph, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Federal or Indian lessee will make available, upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(4) or (c)(5) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS-2014 using a valuation method authorized by paragraph (c)(4) or (c)(5) of this section and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on the difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.103 Point of royalty settlement.

(a)(1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 of this subpart is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement

approved by the BLM for onshore leases or the MMS for offshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.104 Transportation allowances—general.

(a) Where the value of oil has been determined pursuant to § 206.102 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable, actual costs incurred by the lessee to:

(1) Transport oil from an onshore lease to the point off the lease; provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as RIK, a transportation allowance shall be provided for the reasonable, actual costs incurred to transport that oil to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government or Indian lessor.

(b)(1) Except as provided in paragraph (a)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined pursuant to § 206.102 of this subpart. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value, for royalty purposes, under any selling arrangement, be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported as provided in § 206.105. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(2)(i) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. The MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price, or a posted price, includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arms-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and such allocation shall be made in a consistent and equitable manner. Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported. The MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance on the basis of the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) (for both Federal

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and Indian leases) or a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) No FERC or State regulatory agency cost analysis exists and the FERC or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements.* (1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, pursuant to an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) Non-arm's-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases that will affect the allowance. MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and for failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest

computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting production from Federal OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS2014 to reflect actual costs together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than its actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

30 CFR Part 207 is revised to read as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

207.1 Required recordkeeping.
207.2 Definitions.
207.3 Contracts made pursuant to new form leases.
207.4 Contracts made pursuant to old form leases.
207.5 Contract and sales agreement retention.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 207.1 Required recordkeeping.

The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010–0061.

§ 207.2 Definitions.

The definitions in Part 206 of this title are applicable to this part.

§ 207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new lease form was adopted (Form 4–1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty-in-kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 207.5 of this subpart.

§ 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement contains either the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

§ 207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

Subpart B—Oil, Gas, and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Part 210 is amended by revising the titles of Subparts B, C, D, F, and G to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. The following subparts are added to Part 210:

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur—[Reserved]

§§ 210.100, 210.101, 210.102, 210.103, 210.104, 210.105, 210.150, 210.151 [Removed]

§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and §§ 210.150 and 210.151 under Subpart D are removed. Sections 210.300 and 210.301 under Subpart F are redesignated as new §§ 210.350 and 210.351, respectively, under new Subpart H.

5. 30 CFR Part 210, Subpart B, is amended by adding § 210.55 to read as follows:

§ 210.55 Special forms or reports.

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by MMS.

PART 241—PENALTIES

1. The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 241 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart H—[Removed]

3. "Subpart H—Indian Lands—[Reserved]" is removed.

Subparts E, F, and G—[Redesignated as Subparts F, G, and H]

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read:

Subpart I—OCS Sulfur [Reserved]

6. A new Subpart E is added to read:

Subpart E—Solid Minerals, General—[Reserved]

§ 241.10 [Removed and Reserved]

7. Section 241.10 under Subpart A is removed and reserved.

§ 241.50 [Amended]

8. Section 241.50 under Subpart B is amended by removing the phrase "this subpart" and replacing it with the phrase "Subparts B, C and D of this part."

§ 241.100 [Redesignated as § 241.53]

9. Section 241.100 under Subpart C is redesignated as a new § 241.53 under Subpart B and retitled "Assessments for nonperformance."

§ 241.53 [Amended]

10. Paragraph (c) from newly redesignated § 241.53 is removed.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 3100—OIL AND GAS LEASING

1. The authority citation for Part 3100 continues to read as follows:

Authority: Minerals Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Minerals Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514), the Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3103.3–1 [Amended]

2. Section 3103.3–1 is amended by removing paragraphs (c) and (d) and redesignating existing paragraph (e) as new paragraph (c).

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396g), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070/6); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Newly redesignated § 3162.7–4 is revised to read as follows:

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is

computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days; down 4 days for repairs	X
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 28, 24 hours, pulling rods and tubing	X
4. Produced for 12 days; down June 13 to 30	
5. Produced for 8 hours every day (head well)	X
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days	X
8. New well, completed June 22; produced for 9 days	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

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Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206
Revision of Gas Royalty Valuation Regulations and Related Topics; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at those hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a further notice of proposed rulemaking on August 17, 1987 (52 FR 30776), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651–H5666.

The public comment period on the first further notice of proposed rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, Sept. 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors, and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a second further notice of proposed rulemaking and second draft final rules (52 FR 39792, October 23, 1987). Public comments were received for 30 days. Over 35 additional comments were submitted in response to the second further notice of proposed rulemaking. Many commenters repeated comments that had been submitted in response to earlier requests for comments. However, MMS did receive additional comments, particularly on sections which were changed. All comments were reviewed and considered in drafting the final rules.

The MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in February 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of gas from Federal and Indian leases. These regulations will apply prospectively to gas production on or after the effective date specified in the DATES section of this preamble.

II. Purpose and Background

The MMS has revised the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation and processing costs for gas to aid in the calculation of proper royalty due the lessor.

A number of sections have been renumbered and/or moved to a new subpart. In Part 202, existing §§ 202.150, 202.151, and 202.152 of Subpart D, were redesignated as new sections under Subparts B and C and new §§ 202.150, 202.151 and 202.152 were added. Sections 206.150, 206.151, and 206.152 under Part 206, Subpart D, have been revised. In addition, new §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 have been added to Subpart D of Part 206.

Several general provisions which relate to both oil and gas have been added to Part 202. These provisions are included in the final rule to amend the oil valuation regulations also being published by the Department elsewhere in today's **Federal Register**.

This rule applies prospectively to gas production on or after the effective date of this rule. It supersedes all existing gas royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations, and Notices to Lessees (NTL) issued over past years, particularly NTL–5 (42 FR 22610, May 4, 1977, as amended; 51 FR 28759, July 25, 1986). Specific guidelines governing reporting requirements consistent with these new gas valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. Redesignations:	
Part 202	
Sections 202.150, 202.151, and 202.152 under Subpart D are redesignated as new §§ 202.100, under Subpart C, and new §§ 202.53 and 202.54, under Subpart B, respectively	This administrative action more appropriately locates within Part 202 the information contained in these sections.
II. Removals:	
Part 206	
Sections 206.106 and 206.107 are removed from Subpart C.	These requirements have been incorporated into new §§ 202.150 and 202.151 in Part 202.
III. Additions:	
1 *Part 202:*	
New §§ 202.150, 202.151, and 202.152 are added to Subpart D.	These new sections provide gas valuation standards and
2 *Part 206:*	
New §§ 206.10, 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to Subparts A and D.	These new sections provide gas valuation standards and procedures and identify allowable costs for transportation and processing to be deducted from gas royalty value.

The rules in § 206.150 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty governs to the extent of the inconsistency. The same principle applies to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Response to General Comments Received on the Proposed Gas Valuation Regulations and Related Topics

The notice of proposed rulemaking for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes was published in the **Federal Register** on February 13, 1987 (52 FR 4732). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30776, Aug. 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR 39792, October 23, 1987). Over 200 comments were received from interested persons including Indian lessors, the States, and industry.

The Indian commenters included tribal groups, a tribal council, and Indian trade groups. Various government agencies, including State entities, Federal agencies, State associations, State Governors, and local governments also commented. Industry commenters included oil and gas companies, individual commenters, and several industry trade groups.

Many commenters made comments on the basic issues and principles underlying the proposed rulemaking without addressing specific sections of the proposed regulations, but addressing the basic premise underlying the proposed valuation methodology. These comments generally were repeated in response to the first and second notices of further proposed rulemaking.

The respondents were generally composed of two groups, with industry generally on one side and States, Indians, and local governments on the other. Industry generally endorsed the basic principles underlying the proposed regulations. Although the industry commenters objected to many of the specific provisions of the proposed and draft rules, they stated generally that a market-oriented approach based on gross proceeds from arm's-length contracts would fulfill MMS's goals of creating royalty certainty, fairness, and long-term revenue maximization. Some industry commenters advocated the adoption, in total, of the Royalty Management Advisory Committee (RMAC) Gas Panel's recommendations as the only proper solution to the valuation issue. States, Indians, and local governments, on the other hand, generally objected to the basic premise of the proposed valuation methodology that gross proceeds from arm's-length contracts represent value. They also objected to other parts of the proposed regulations for a variety of reasons.

The general comments raised by industry, States, and Indians may be categorized similarly to those raised with respect to the oil valuation regulations: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmarks, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts. Because the general issues raised and MMS's responses thereto are so similar, MMS hereby incorporates the discussion in the General Comments portion of Section III of the Preamble to the final oil valuation regulations published elsewhere in today's **Federal Register**, as if fully and completely set forth herein.

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30776), and the Second Further Notice of Proposed Rulemaking of October 23, 1987 (52 FR 39792), specifically requested comments on certain broad issues. These issues were whether there were additional requirements or approaches which would improve the royalty payment process, the ability of auditors to determine compliance with these regulations and the extent to which these rules were responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office, and the Department's Office of Inspector General.

A number of comments were received on additional requirements or approaches which would improve the royalty payment process. Some of the commenters stated that improvement had been made, but the provisions in the draft final rules attempting to ensure that a lessee had acted prudently had removed some of the certainty of earlier versions. These commenters suggested that MMS recognize that lessees act prudently in contract negotiations and allow royalty to be based on these contracts.

One commenter recommended that regulations must be revised as soon as the requirements of those provisions are identified as creating problems for lessees and MMS. One Indian commenter suggested that MMS establish an Indian audit branch and a special Indian valuation office.

MMS Response: The MMS does believe that the vast majority of lessees act prudently in contract negotiations and that values for royalty purposes will be set by the terms of those contracts. Therefore, the provisions of the final regulations providing MMS with the ability to assure that values are set only by the terms of arm's-length contracts that have been prudently negotiated should not detract from the improvements made over the existing regulations.

The suggestion that timely revisions to regulatory provisions be made to alleviate problems is well received by MMS. Many reports have stated that the area of product valuation was long ignored by the Department. MMS believes that the dialogue with industry, States, and Indians over the last few years has been invaluable in leading to these final rules, and it is anticipated that communication will continue so that necessary revisions to any of the provisions of the final rules adopted today will be timely promulgated.

It is clear from the requirements of the final rules that MMS must become increasingly familiar with the transactions occurring in those areas where Federal and Indian lands are situated. Many of the Indian lands under the Department's jurisdiction are in

close proximity to Federal lands and purchasers of production from these areas often are the same. Although MMS expects that the increased awareness of the marketplace and the already high priority given audits of Indian leases will suffice in assuring compliance with these rules, MMS will study the suggestion for separate audit and valuation offices for Indian lands.

Most of the commenters addressing the ability of auditors to determine compliance with these regulations suggested the establishment of guidelines governing audit closure rather than addressing the specific issue. A few commenters stated that clear regulations with timely revisions would enhance the ability of auditors to determine compliance. One commenter stated that the difficulty in determining if any consideration outside of the contract exists, the lack of any provisions for approval of non-arm's-length contracts, the burden on auditors to show control and administer the benchmark system, and the lack of independent cross-checks on values all act as impediments to auditors in determining compliance with the regulations.

MMS Response: The MMS agrees that regulations that are clear and understandable and timely revision of provisions causing problems enhance an auditor's ability to determine compliance with those regulations. The MMS agrees that it is difficult to identify consideration that exists outside of a contract. However, it is no more difficult than determining whether or not the requirement under current regulations that a lessee pay royalties based upon its gross proceeds has been met when part of the consideration received by the lessee is not covered by the sales contract. Similarly, approval of non-arm's-length contracts would not improve an auditor's ability to determine compliance. Approval of non-arm's-length contracts would not assure that the lessee has provided documentation of all consideration to be received in the transaction. Further, the resources that would be necessary to approve all non-arm's-length contracts and any amendments thereto would be overwhelming. The MMS does recognize that demonstrating control will be somewhat burdensome on auditors. However, showing control and the valuation of the gas sold under that contract under the benchmark system does not mean that the gross proceeds under that contract will not be accepted as defining value. Also, there are tests in the final rules that will result in the valuing of the gas under the benchmark system if the value under an arm's-length contract is unreasonable because of misconduct or a breach of the lessee's duty to market the gas for the mutual benefit of the lessee and the lessor. Finally, MMS does not agree that the benchmark system will be difficult to administer or that there will be a lack of cross-checks. As stated above, MMS realizes that it must become increasingly familiar with transactions occurring in the areas where Federal and Indian leases are situated. By becoming more familiar and obtaining sales volume and price information, MMS will be able to identify anomalies that exist and review the circumstances involved in those transactions.

Two commenters stated that the changes in the valuation regulations and other changes implemented by the Department were responsive to the concerns addressed by the Linowes Commission and others. One commenter stated that the regulations were not responsive to the concerns addressed by the Linowes Commission because States' suggestions were ignored, and the regulations were open to interpretation in many areas and lacked independent cross-checks.

MMS Response: The MMS believes that the regulations adopted today address most of the concerns of the Linowes Commission and others. Clarity and a great deal of certainty have been added to replace the vague requirements of the existing regulations which were identified as the major contributor to the undervaluing of production. The MMS does not agree that the concerns of States were ignored. Representatives of States have been involved in every step of the long process leading to these final rules and many of the provisions in the final rules directly reflect suggestions made by States. Although MMS does not agree that the final rules are as open to interpretation as suggested by this commenter, MMS intends to supplement these rules with chapters in the MMS Payor Handbook specifically dealing with all areas of valuation. The MMS will be able to identify anomalies in reported values and allowances by monitoring information reported to it and comparing reported information with other reported information and information collected independently by MMS. The MMS believes that such monitoring of reported values and allowances meets the requirement for cross-checks called for by the Linowes Commission.

The Second Further Notice of Proposed Rulemaking also specifically requested comments on certain individual issues. These issues were: (1) The feasibility of a larger scale royalty-in-kind program, particularly including gas; (2) whether or not the oil and gas valuation regulations should be consolidated; (3) whether or not the provisions dealing with extraordinary cost allowances relating to gas production and gas processing should be retained; (4) the practical limit on the term "relative" used in the definition of arm's-length contract; (5) whether or not allowances for certain post-production costs should be added; and (6) the allocation of transportation costs among products.

The comments received regarding a royalty-in-kind program for gas were evenly divided. Half of the commenters recommended that MMS take its gas royalty in-kind, particularly when there is a disagreement over the value of the gas. However, most of these commenters suggested a separate rulemaking to address the complicated issues involved in such a program. The other half of the commenters stated that MMS should not implement a royalty-in-kind program for gas because of the complications of such a program.

MMS Response: The MMS agrees that a royalty-in-kind program for gas is too complicated to be implemented without an in-depth study of all of the issues involved.

The commenters addressing the consolidation of the oil and gas valuation regulations either rejected the idea altogether or suggested deferring any attempt to do so until after the separate regulations are issued as final rules.

MMS Response: The MMS agrees that consolidation could not be accomplished in a timely manner and that experience with the separate rules should be obtained to identify if a need for consolidation exists.

The comments received concerning the remaining four issues will be addressed in later sections of this preamble dealing with the regulatory provisions specifically concerning those issues.

The MMS will monitor the operation and effect of the rules being adopted today. In 3 years, MMS will review the results of its analysis to determine if any significant changes to the regulations are required. In the meantime, technical and minor adjustments to the rules will be made as necessary.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 4732, Feb. 13, 1987) may be consulted for a full description of the purposes of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal or, in some instances, from the draft final rules. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue*, 135 F.2d 314, 317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word value. The word "fair" can modify the word value as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term fair market value, however, has been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purposes of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of the regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

Section 202.150 Royalty on gas.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty-in-kind. However, because requests to take royalty-in-kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty-in-kind, he or she must contract MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that when royalties are paid in value, the royalties due are equal to the value, for royalty purposes, multiplied by the royalty rate.

Section 202.150(b).

The MMS received many industry comments stating that unavoidably flared gas should be exempt from royalty requirements. Commenters stated that the definition of the term "unavoidably lost" should be incorporated in § 206.151, Definitions. The commenters also recommended that this paragraph address the procedures for obtaining permission to use gas off-lease for the benefit of the lease.

One industry commenter recommended deletion of the phrase "when such off-lease use is permitted by the appropriate agency." The commenter recommended that legal interpretations affecting the inclusion of any on-lease or off-lease use could be more appropriately covered in the MMS Payor Handbook.

Industry commenters also stated that on-lease or off-lease royalty-free gas use should also include gas used in post-production operations, including boosting residue gas delivery pressure and other operations incidental to marketing, because this gas is used for the benefit of the lease.

One industry commenter recommended the inclusion of the following language: "Gas used for the benefit of the lease in royalty free, which includes gas used in lease equipment located on a platform or in a central facility serving multiple leases. Such platform or central facility may be located on a lease other than the one physically providing gas used."

One industry commenter did not agree that the standard for royalty liability detailed in this paragraph is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1756, which limits royalty liability to loss or waste owing to negligence or noncompliance with operational requirements.

Two industry commenters proposed that MMS consider expansion of the clause to include all gas used "on or off a lease as long as it is for the benefit of the lease."

Industry commenters endorsed MMS's decision that gas used off-lease for the benefit of the lease is royalty-free when such use is permitted by the appropriate agency.

Some Indian commenters also recommended that any royalty-free use of gas be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations.

MMS Response: The determination of whether or not gas has been unavoidably or avoidably lost and whether or not gas used is royalty-free (whether used off-lease or on-lease) are operational matters covered by the appropriate regulations of the Bureau of Land Management (BLM) and MMS for onshore and offshore operations, respectively. The BLM's requirements are governed by the provisions of 43 CFR Part 3160 and Notice of Lessees and Operators No. 4A. The MMS's requirements are governed by the provisions of 30 CFR Part 250. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS

does not believe that prior approval for royalty-free use of gas is warranted because most leases, by their specific terms, allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

Proposed § 202.150(b)(2), which addressed royalty-free use of gas for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving mutliple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

One industry commenter was strongly in agreement with § 202.150(b)(3) of the proposed rules, which recognizes the provisions of Indian leases that are inconsistent with the regulations.

One Indian commenter stated that this paragraph may not act to the benefit of Indian lessees unless MMS makes a specific requirement by instruction, manual releases, or notices to lessees with respect to the specific valuation guidelines to be applied.

MMS Response: The provisions of proposed § 202.150(b)(3) were adopted in the final rules. In most instances, the valuation regulations will apply equally to both Federal and Indian leases. This section covers any leases which may be inconsistent with the regulations. The final regulations recognize the primacy of statutes, treaties, and oil and gas leases and provide a means for dealing with special valuation requirements for both Indian and Federal leases. In many instances, lease terms are modified by unitization or communitization agreements. The reference to "leases" in the regulations means the lease terms as modified by any such agreement, where appropriate.

Section 202.150(c).

Section 202.150(c) was proposed as § 206.150(d). It provides that if the BLM (for onshore leases) or MMS (for offshore leases) determines that gas was avoidably lost or wasted, then the value of that gas will be determined in accordance with Part 206. This section also applies to gas drained from onshore leases for which BLM determines that compensatory royalty is due.

One industry commenter stated that the term "avoidable" indicates that such losses could have been anticipated and eliminated and that serious charges like these should be documented and proven, not merely assumed after the loss has been reported. Therefore, the commenter takes exception to this regulation.

MMS Response: Avoidably lost determinations are handled by personnel responsible for lease management operations, BLM onshore and MMS offshore, and are not a valuation issue. Any operator or lessee that BLM or MMS notifies of an avoidable loss determination has the right to appeal the determination if it is believed to be unjust or unfair.

One Indian commenter stated that payment should be due for the entire value, and not just the royalty portion of gas that is determined to have been avoidably lost or wasted from Indian leases.

One industry commenter stated that it should be made clear in this provision that the amount due for avoidably lost gas should be a royalty value and not the total value (100 percent).

MMS Response: The MMS policy for offshore leases is to assess only royalty for gas determined to have been avoidably lost. This also is BLM's policy for onshore leases for gas avoidably lost on and after October 22, 1984. This date is the effective date of BLM's revised regulations at 43 CFR 3162.7–1(d) (49 FR 37356, September 21, 1984), which included the provision for royalty on avoidably lost gas in accordance with Section 308 of FOGRMA, 30 U.S.C. 1756. The MMS and the BLM believe that collection of royalty provides an effective deterrent to wasting gas.

Section 202.150(d).

Section 202.150(d) was proposed as § 206.150(e) and requires royalties to be paid on insurance compensation for unavoidably lost gas.

Several industry commenters stated that to require a lessee to pay royalties on any compensation received "through insurance coverage or other arrangements for gas unavoidably lost is unfair." They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

The MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should than receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if the lessee receives insurance compensation from a third person. No royalty is due where the lessee self insures.

Section 202.150(e).

Several industry commenters opposed § 202.150(e), which was proposed as § 202.150(c). They questioned the authority to require other non-Federal/Indian lessees to pay royalties on leases on which they are not the lessee. According to the commenters, this could present gas balancing problems where production taken by a lessee falls below that lessee's production entitlement. These commenters suggested that proposed § 202.150(c) fails to recognize the marketing aspects of production. Although MMS attempted to clarify the purpose and scope of this section in the draft final rules, many additional comments were received. Many industry commenters commented that a requirement to pay royalties based upon what other unit participants receive for the gas raises many problems of information gathering making timely and accurate reporting of royalties extremely difficult. These commenters suggested alternatives such as allowing a lessee to pay royalties based upon its own contract price or allowing a lessee to pay royalties based upon the volume of production it actually sold.

MMS Response: Section 202.150(e) of the final rules states that all production attributable to a Federal or Indian lease under the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Only a few concerns were expressed about this requirement and many commenters supported it. Most important, however, § 202.150(e) requires generally that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. As an example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, it will be sold

or otherwise disposed of by other unit participants. If one of the unit participants other than the Federal lessee transports unprocessed gas to a sales point off the unit area under an arm's-length transportation agreement and then sells the gas under an arm's-length sales contract, the value, for royalty purposes, will be that participant's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what participant must report and pay the royalties; it only addresses the issue of valuation.

These rules do not require non-Federal and non-Indian lessees to conform to these regulations for valuing production. The MMS merely has required that the lessee must determine its royalty liability in accordance with the other interest owners' contracts or proceeds as long as those royalties comply with these value regulations. Any gas balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

The MMS has added a new paragraph (3) to the final rules to clarify that all agreement participants actually taking volumes in excess of their allocated share of production in any month are deemed to have taken ratably from all persons taking less than their proportionate share. The MMS decided that such a provision was required to provide certainty as to which unit participants' dispositions the lessee must consider to satisfy the requirements of this provision, especially where there is no balancing agreement among the unit participants.

Two industry commenters also stated that the foreseeable results of this paragraph includes: "* * * (1) chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners."

MMS Response: The MMS believes that lessees generally will be able to comply with the requirements of the regulations. However, MMS has added a new paragraph (2) which authorizes MMS to approve a royalty valuation method different from that prescribed by paragraph (1) to value any volumes of agreement production allocated to a lessee but which the lessee does not take. The lessee must request the exception and MMS may approve it only if it is consistent with the purposes of the regulations. For example, under a unit agreement a Federal lessee may be entitled to 100,000 mcf of production. The lessee is required to pay royalty on that volume. However, the lessee is able to sell only 75,000 mcf under its arm's-length contract that month. The lessee could request that MMS allow it to pay royalty on the remaining 25,000 mcf at its contract price.

The MMS recognizes that under most balancing agreements, a lessee who has undertaken at some point will overtake to balance its account. Because the lessee was required to pay royalties on the value of its allocated share when it undertook, the lessee is not required to pay additional royalties for prior periods for that lease when it subsequently over takes. Again, royalties are due only on the allocated share of agreement production even when the lessee takes and sells a greater volume. The MMS has added a new paragraph (4) to clarify this issue.

Some industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. It also could cause a hardship for Indian lessors who rely on a steady stream of revenues when there is production from their leases. Therefore, it is not an acceptable procedure.

In response to comments that the valuation method for production from unitization and communitization agreements required by the proposed and draft rules could cause royalty calculation and reporting problems for lessees, MMS is including in the final rules in subsection (f) an exception authority for valuing production from Federal and Indian leases committed to agreements. The authority is discretionary and may be exercised where the lessee requests an alternative method, the proposal is consistent with applicable statutes, lease terms and agreement terms, to the extent practical, persons with an interest in the agreement are notified and given an opportunity to comment, and, to the extent practical, all persons with an interest in a Federal or Indian lease committed to the agreement agree to use the proposed method.

Section 202.151 Royalty on processed gas.

Section 202.151(a).

Some commenters recommended deleting the word "reasonable" before the words "actual costs" in paragraph (a) because the lessee should be able to deduct actual costs from the processed gas value. One commenter stated that condensate recovered without resorting to processing should not be included in calculating royalty if the condensate is not allocated to the lease.

MMS Response: The MMS's policy is to allow "reasonable" actual costs incurred by the lessee for processing lease production. The MMS does not believe that it should share in unreasonable costs and has not adopted this suggestion. The MMS does not agree that a lessee should be allowed to remove production from the lease and avoid the royalty obligation for any part of that production. Therefore, MMS will retain the requirement that condensate recovered without resorting to processing be included when determining the value of gas that is processed.

The MMS received a comment regarding the requirement for dual accounting in § 206.155. That commenter stated that dual accounting should be required in all instances where gas is processed from onshore Federal and Indian leases, because that is the only way to ensure that royalty is paid on that portion of the gas stream leaving the lease which becomes a liquid during the transmission of the gas to the plant. These liquids are commonly referred to as drip condensate. The commenter pointed out that in many instances the company transporting the gas retains these liquids and the lessee makes no royalty payment for this portion of the production removed from the Federal or Indian lease.

MMS Response: As the commenter properly pointed out, royalty is due on all gas production removed from the lease, including any gas which becomes a liquid during transmission to a gas plant. When gas is sold at the lease and the lessee does not retain or exercise the right to process the gas, the total gas production removed from the lease is properly accounted for at that point. Thus, the issue of royalty on drip condensate is not involved in these instances.

When gas is processed by the lessee, any portion of the gas removed from the lease which becomes a liquid during transmission to a gas plant must be accounted for to properly define the value of the total gas production

removed from the lease upon which royalty is due. Although MMS is not adopting the recommendation to require dual accounting in all instances where gas is processed, MMS is modifying the final rules in § 202.151 and § 206.153 to specify this requirement. Therefore, it is being made clear that the value of gas which is processed by a lessee must include the combined values of the residue gas, all gas plant products *and* any condensate recovered downstream of the point of royalty settlement without resorting to processing.

Section 202.151(b).

Several industry commenters stated that an allowance for boosting residue gas should be allowed under paragraph (b) for operation of the processing plant. The rationale was that costs associated with this process are incurred as a result of processing and should not be regarded as costs necessary to place the gas in marketable condition.

MMS Response: The regulations specify the MMS's policy that the lessee is required to condition the production for market. The cost for boosting residue gas is considered as a cost necessary to place the gas in marketable condition, and will not be an allowable deduction.

Three industry commenters recommended deleting the word "reasonable" before the words "* * * amount of residue gas * * *" and allowing actual amounts of residue gas used to be royalty-free. Indian commenters were concerned that the regulation should specify that residue gas could not be disproportionately charged to their leases royalty-free.

MMS Response: Historically, MMS's policy has been to allow a reasonable amount of residue gas to be royalty-free for the operation of a processing plant. In most instances the actual amounts of residue gas used are considered to be reasonable. However, the final rule specifies that only a lease's proportionate share of the residue gas necessary for the operation of the processing plant may be allowed royalty-free. Although adopted in response to the concerns of Indian commenters, this provision is equally applicable to all Federal and Indian leases.

Section 202.151(c).

Two industry commenters strongly endorsed the language set forth in paragraph (c).

One Indian commenter stated that "* * * the Secretary should not retain unilateral authority to authorize the royalty-free reinjection of residue gas or gas plant products from Indian production into unit areas or communitized areas." The recommendation was that the volume of royalty-free residue gas or gas plant products which can be reinjected into a unit area should be limited to the ratio of lease production to total unit production multiplied by the volume of unit production reinjected.

One industry commenter requested clarification that the use of the word "reinjection" includes original injection. In addition, the commenter recommended deletion of the qualification "* * * when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval, * * *" because the recovery must be paid for entirely by the lessee.

MMS Response: The BLM or MMS for onshore or offshore operations, respectively, has the authority to approve the plan of development or operations. The issue regarding reinjection of residue gas or gas plant products is a matter which is addressed by the appropriate operational regulations of BLM and MMS.

Section 202.152 Standards for reporting and paying royalties on gas.

Section 202.152(a)

One industry commenter recommended that the phrase "if the Btu value is required pursuant to the lessee's contract" be added to the end of the last sentence of paragraph (a)(2). This commenter stated the Btu measurement is an expensive process and should not be required periodically unless necessary.

One Federal agency commenter stated that the frequency of Btu measurement be required quarterly, if not monthly, if not covered by the lessee's contract. This commenter stated that there are many situations which may require more frequent monitoring of the Btu heating value to assure proper assessment of gas royalties.

MMS Response: The Btu measurement is necessary in determining the proper value of the gas for royalty purposes. In addition, the BLM onshore and MMS OCS operations regulations require periodic Btu measurements.

Section 202.152(b).

One industry and one Federal agency commenter suggested that the words "where applicable" be added at the end of paragraph (b)(2). They stated that when the production is composed of carbon dioxide, nitrogen, or helium there will be no applicable Btu value.

MMS Response: This regulation has been modified in the final rule to read as follows: "Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a)." The concern expressed regarding Btu values for nonhydrocarbon gases is resolved by the inclusion of the words "where applicable" in the final rule for paragraph (a).

Regarding paragraph (b)(4), one Indian commenter stated that if sulfur is sold in a unit other than a long ton, the lessee should be allowed to report it to MMS and to Indian lessors in that unit.

MMS Response: The unit for reporting sulfur volumes must be standardized for reporting purposes. The most common unit used by industry for reporting sulfur is the long ton. A simple arithmetic formula can be used to convert a unique sales unit to long tons.

Section 206.150 Purpose and scope.

Section 206.150(a).

Several commenters suggested that Indian and Federal lands are dissimilar and deserve separate treatment when valuation and other gas production matters are under consideration. They recommend that separate regulations be promulgated for Indian leases.

MMS Response: The MMS believes that because these regulations provide for a reasonable and appropriate value for royalty purposes, completely separate rules for Federal and Indian leases generally are unnecessary. The regulations in § 206.150(b) recognize the primacy of terms of statutes, treaties, and oil and gas leases which provide special valuation requirements for both Federal and Indian leases. In addition, certain additional provisions applicable only to Indian leases have been included in these regulations.

The MMS has added a general statement that the purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws and other applicable laws and lease terms.

Section 206.150(b).

One industry commenter suggested the addition of the phrase "in the event that any term of an approved existing unit or communitization agreement is inconsistent with the final rule, then such agreement will govern to the extent of the inconsistency."

MMS Response: Section 18 of the standard Federal form of a unit agreement states: "The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof * * *." Therefore, the offered language is unnecessary owing to this existing unit agreement provision.

One Indian commenter suggested the addition of the phrase "provisions of Title 25 of the Code of Federal Regulations will supersede the provisions of this part, to the extent of any inconsistency."

MMS Response: The valuation regulations which were in Title 25 of the Code of Federal Regulations are identical to the provisions of many Indian leases. Therefore, these final regulations would cover any inconsistencies with lease terms if there were any. Moreover, BIA currently intends to amend the valuation regulations in 25 CFR simply to refer to the MMS valuation regulations.

Indian commenters recommended that, where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or as interpreted by the courts, are inconsistent with the regulations, the lease, statute or treaty, or court interpretation would govern to the extent of the inconsistency.

MMS Response: This suggestion was not adopted because it was not considered necessary. If the regulations are inconsistent with the requirements of any court decision, the court decision would take precedence.

One commenter suggested the MMS include in this section a reference to settlement agreements resulting from administrative or judicial litigation. It was pointed out that some settlement agreement provisions may vary from the regulations.

MMS Response: The MMS has made the suggested change in the final rules because the terms of a settlement of administrative or judicial litigation will govern. In response to a comment on the draft final rules, MMS has included references to settlement agreements involving Indian lessors.

Section 206.150(c).

A few industry commenters requested that consideration be given to the establishment of a "statute of limitations" for MMS audit and adjustment purposes. This commenter suggested that a 6-year period be adopted which would commence with the filing of the lessee's royalty report. It was also suggested that a provision be included for the lessee and MMS to mutually agree to waive the limitation for specific incidents and items under appeal or before the courts, but it should never apply in cases of fraud. This would partially relieve both the lessee and MMS of records archival responsibility and the associated costs, which are significant. Also, the limitation goes well beyond the cost-effective period for conducting normal compliance and follow-up audits. The suggested statute of limitations could be similar in concept and language as that used by the Internal Revenue Service.

MMS Response: The MMS performs all audits in accordance with 30 CFR 217.50. Any limitation such as that suggested would properly be included in a rulemaking to amend that section of the regulations. Therefore, it is beyond the scope of this rulemaking. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. The MMS will address the issue of audit closure elsewhere.

Section 206.150(d).

The MMS received many comments from Indians that this section should specifically reference the Secretary's trust responsibilities to the Indians.

MMS Response: The MMS has incorporated the suggested change.

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to the proportionate share of production which corresponds to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g). Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: In the draft final rules accompanying the second further notice of proposed rulemaking, MMS proposed to add a § 206.150(e) which provided that regulations, guidelines, and Notices to Lessees in effect on the date that an Alaska Native Corporation acquired a proportionate interest in a lease will continue to apply to that interest. The MMS received several comments that this provision is unfair and not supportable because the lease terms expressly recognize that regulations may change and that the lease will be subject to the new regulations. The MMS agrees with the comments and has deleted this section from the final rules. However, it should be clarified that these rules do not have any retroactive effect. MMS does not intend that any rules adopted in the rulemaking would apply to production involving Alaska Native Corporation lease interests which occurred prior to the effective date of this rulemaking.

MMS is including in the final rules a new subsection (e) to specify which Notice to lessees are to be terminated by this rulemaking.

Section 206.151 Definitions.

"Allowance"—One industry commenter suggested that the proposed definition be modified as follows: "Processing allowance means an allowance for processing gas; i.e., an authorized or an MMS-accepted or approved deduction for the costs of processing gas determined pursuant to §§ 206.158 and 206.159." The same commenter stated further that "Transportation allowance means an allowance for moving unprocessed gas, residue gas, or gas plant production to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant; i.e., an authorized or an MMS-accepted or approved deduction for transportation costs, determined pursuant to §§ 206.156 and 206.157." This commenter recommended deleting the phrase "for the reasonable, actual costs incurred by the lessee." The method of determining the allowance should be addressed in the regulation setting forth the calculation method, not in the definition of allowance. If MMS adopts comparable arm's-length transportation and processing costs as a benchmark for non-arm's length contracts, the above cited phrase could be incorrect in certain instances."

A few industry and one Indian commenter stated that certain terms incorporated in the definition are subjective in nature. One industry commenter stated: "The New Rules do not draw a clear, objective line between costs that may be deducted and costs that may not be deducted. What is 'remote'? What is 'field gathering'?" Two industry commenters want the word "reasonable" deleted in the definition of "processing allowance and transportation allowance." They believe that the "Lessee should be entitled to deduct actual cost of processing and transportation. 'Reasonable' implies that the deduction may be something less than actual." One Indian commenter stated: "* * * the use of the terms accepted and approved call into question important issues regarding the relationship of the acceptance or

approval with later audit. We assume that acceptance would not preclude later audit review and disallowance or modification when justified." One industry commenter suggested deleting the words "remote from" and replacing them with "off." The commenter "believes what is really intended by the phrase 'remote from' is to cover transportation to sales and delivery points of the lease."

Finally, one Indian commenter, referring to "allowance," pointed out that: "The definition should clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*"

MMS Response: The final rule includes some modifications to the proposed language. It should be noted that processing and transportation allowances are "accepted" subject to review and/or audit. The MMS also has deleted the phrase "remote from the lease" and replaced it with the phrase "off the lease" for clarification that any transportation off the lease, except gathering (see definition below), is eligible for an allowance.

"Area"—One industry commenter stated that "'Area' should be more precisely defined so that there are reasonable limits to how large an 'area' is. In addition, for the sake of clarification, the words 'or producing unit' should be inserted after 'oil and/or gas field' * * *."

MMS Response: For royalty computation purposes, the definition of "area" must remain flexible so that it may be applied to diverse situations. The size of an "area" may vary with each specific royalty valuation determination for gas.

"Arm's-length Contract"—The proposed definition of "arm's-length contract" was addressed by a large number of State, Indian, and industry commenters.

Many commenters stated that the originally proposed definition of arm's-length contract was so restrictive that many perfectly valid arm's-length transactions may fail to qualify, thus potentially rendering this key element of the benchmark system meaningless. These commenters suggested that MMS should adopt a definition of "affiliated person" based on control versus mere ownership of stock. They stated that in order to eliminate this problem, the underlying language should be deleted in favor of language already adopted by BLM in its regulations implementing Section 2(a)(2)(A) of the Minerals Lands Leasing Act of 1920 (MLLA). The rule, 43 CFR 3400.0–5(rr)(3), added by 51 FR 43910, 43922 (1986), specifies that:

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

One industry commenter further recommended that "* * * MMS also adopt a 5% ownership threshold, below which there is an absolute presumption of noncontrol which is not subject to rebuttal. The 5% threshold is taken from the Investment Companies Act [* * *] which establishes that there is no effective affiliation between parties when direct or indirect ownership of voting stock is below 5%."

One industry commenter stated: "Additionally, for those companies in which there is a definite controlling interest, a transaction should still be treated as arm's-length if the controlling company is regulated by a regulatory agency who approves rates or tariffs charged to third parties."

Many industry commenters recommended changing MMS's reference from "persons" to "parties." One of these commenters stated that "involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to 'joint venture' in the definition of 'person,' which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas."

One industry commenter was concerned that: "The proposed language does not clarify at what time affiliation is to be determined. Is it when the contract is originally executed or some subsequent time during the term of the contract? In the current climate of mergers and acquisitions, affiliation may change." Another industry commenter stated that although the definition of "arm's-length contract" is well written, any additional language elaborating on the state of being affiliated should be deleted because it would allow auditors to reject too many arm's-length contracts.

One State commenter stated that "The definition of 'arm's-length contract' is clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties. The assumption behind accepting arm's-length contract prices is that those prices will reflect market value. The definition proposed by MMS ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price gas below its value, especially if the benefit of the reduced royalty burden can be shared by means of the gas sales contract." One Indian commenter questioned "* * * whether there are any truly arm's-length relationships in today's market which would make an arm's-length valuation method valid. We are particularly concerned that the arm's-length label essentially forecloses any scrutiny by MMS of the value reported by the lessee." One State/Indian association stated that nonaffiliation does not guarantee arm's-length: "For example, arrangements between families (via blood, kinship, heir, or marriage) offer similar conditions for influencing proceeds subject to royalty."

Two State commenters, one State/industry association, one Indian, and one Indian trade group are of the opinion, as expressed by one commenter, that: "MMS's desire for an 'almost purely objective' test provides a totally inadequate justification for giving away the power to prevent manipulation of the public's royalties." These commenters conclude that: "The definition as proposed is not workable even though it is objective." They suggest that MMS's definition in the draft regulations presented to the RMAC would allow more legally accurate results:

"Arm's length contract" means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interest not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

Some Indian and State commenters agreed that, as one commenter phrased it: "The adverse economic interest and open market requirements have long been standard criteria for determining the arm's-length nature of contracts. These criteria have allowed for an accurate line of demarcation between arm's-length and non-arm's-length."

One State commenter supplied the following questions to be asked to test the arm's-length nature of a contract: "(1) Is there an individual who is a board member, officer, partner or employee of one of the contracting parties, and also a board member, officer or employee of the other? (2) What, if any, other commercial relationships exist or are being proposed between the buyer and seller? (3) Is there any family relationship between the buyer and seller? (4) Is there any other special relationship between the parties to the gas sales contract?"

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5 (rr)(3) quoted above. In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which required that, to be arm's-length, a contract must reflect the total consideration actually transferred from the buyer to the seller either directly or indirectly. For example, if the parties to the contract agreed that the price for gas from a Federal or Indian lease would be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters thought that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also thought that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

The comments on the second draft final rule were similar to those already received. Many commenters raised questions about possible audit difficulties. The American Petroleum Institute supported the definition in the second draft final rule.

MMS Response: The MMS adopted many of the changes suggested for the originally proposed definition. The MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". The MMS did not adopt the concept of "free and open market" because that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between nonaffiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. In response to many comments on the second draft final rule, MMS has reduced the control threshold to 10 percent. The MMS can rebut presumptions of noncontrol between 0 and 10 percent and lessees can rebut presumptions of control between 10 and 50 percent.

Many commenters thought that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures because there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate, of course, would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 10-percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections. See §§ 206.152(b)(1)(i) and 206.153(b)(1)(i). The MMS also believes that these sections satisfy the request that the rules prescribe that the lessee has the burden of proving nonaffiliation since one of the requirements for demonstrating that a contract is an arm's-length contract is to demonstrate the degree of affiliation between the contracting parties.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed. Some industry commenters objected to this provision stating that if the contract was arm's-length when executed, it should satisfy MMS.

MMS Response: When the parties to a contract no longer have opposing economic interests, the reliability of that contract as an accurate indicator of value becomes suspect. In such circumstances, MMS will not rely on a contract price to conclusively establish value.

The MMS asked for comments on whether the term "relatives" needed further definition. Many useful comments were received. The MMS has decided, however, that further explanation of the meaning of relatives is better suited to guidelines which will be prepared after these rules are adopted.

"Audit"—One industry commenter expressed concern over MMS's interpretation of what constitutes an

audit: "MMS's use of terms such as 'review,' 'examination,' rather than 'audit,' arbitrarily eliminates the right of lessees to offset overpayments and underpayments discovered during the course of an audit." This commenter believes that an account reconciliation by MMS should be termed an audit.

One Indian commenter did not disagree with the definition but thought that the processed information available to MMS is not adequate to perform thorough audits. "Our view of the definition of audit is academic because the MMS will accept payment reports without review in the future as in the past, unless resources and personnel are provided by the Tribe to accomplish the task."

One industry commenter stated that the review and resolution of exceptions processed by MMS's automated systems constitutes auditing by mail. The industry takes exception to this procedure.

MMS Response: The MMS has simplified the definition of "audit" as follows: "Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases."

"Compression"—One industry commenter suggested deleting the definition because the term does not require an explanation.

MMS Response: The MMS believes that the definition should be retained because it clarifies a term used in the regulations.

"Field"—One industry commenter suggested adding the underlined language to clarify that this definition is for royalty purposes: "Field means, *for purposes of oil and gas royalty*, a geographic region * * *."

MMS Response: The additional language proposed by the commenter is unnecessary because the underlying premise of all the definitions contained in § 206.151 is that they are for royalty purposes.

"Gas"—One industry commenter stated that "The term should refer to unprocessed gas. The chemical definition is inappropriate in this context because it fails to distinguish between manufactured and raw gas."

MMS Response: The MMS believes that the definition adequately and correctly defines the term "gas" in language which is accepted by the oil and gas industry.

"Gas Plant Products"—One industry commenter stated that the phrase "excluding residue gas" should be deleted from this paragraph. According to this commenter, "Residue gas is a manufactured product as that term has been used by Federal courts in the royalty context. See *U.S. v. General Petroleum; California v. Seaton* affirmed *California v. Udall* * * *. If gas is processed, or manufactured there is no rational basis for limiting the deduction of manufacturing costs against the value of only gas plant products other than residue." An Indian Tribe supported the exclusion of residue gas from the definition.

One industry commenter suggested, "* * * we think the word 'nitrogen' should be excluded from the definition of 'Gas Plant Products' since some natural gas is high in this component, and there is currently a small or nonexistent market for small amounts of nitrogen. Purchasers have traditionally downgraded the price for high nitrogen gas, and if producers have to bear additional royalty as well, they may elect to shut in or plug wells due to poor economics."

MMS Response: The MMS does not agree that the phrase "excluding residue gas" should be deleted from this paragraph. Historically, no processing allowance has been allowed to be applied against the residue gas, and MMS generally has retained this position in the final rule. The MMS has also concluded that the definition should not be modified to exclude nitrogen. The MMS has, however, included in § 206.158(d) a provision for an extraordinary processing allowance for atypical types of gas production operations.

"Gathering"—MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition. Several industry commenters recommended limiting gathering to the lease or unit area so a transportation allowance may be obtained for all off-lease movement.

MMS Response: The definition has been retained intact. The operational regulation of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit, or communitized area for the purposes of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

"Gross Proceeds"—MMS received a large number of comments on this definition.

Three Indian commenters, one State commenter, and one State/Indian association commenter supported the definition and urged MMS to retain the entitlement concept despite pressures to the contrary. A State commenter stated that "MMS has correctly resisted lessee efforts to exclude the royalty owner from sharing in some kinds of consideration, such as severance tax reimbursement and take or pay payments." This commenter recommended clarifying the first sentence by amending it as follows: "Gross proceeds (for royalty purposes) means the total monies and *the value of* other consideration paid *or given* to [an oil] and gas lessee, or monies and *the value of* other consideration to which such lessee is entitled, for the disposition of gas." The commenter stated that "These additions are necessary because when 'consideration' is not in the form of 'monies' it is necessary to determine its value."

Many industry commenters opposed the definition of "gross proceeds" as proposed because they believed it is too expansive and contrary to the provisions of the Mineral Lands Leasing Act and the OCS Lands Act. Instead, they propose the following: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from Federal, Indian Tribal or Indian allotted leases." One commenter stated further that "Such definition is unambiguous, furthering the MMS's desire for certainty in its regulations. Reimbursement for production-related costs and take-or-pay payments are currently being litigated. If it is eventually determined that royalty is owed on such payments such definition will not have to be modified. On the other hand, the proposed definition will have to be amended if industry is successful in its claims that royalty is not due on such amounts." One industry commenter proposed adopting the definition of "gross proceeds" endorsed by a majority of the RMAC Gas Panel. It reads: "* * * all consideration due and payable to the lessee for the sale of gas and processed gas products, less any applicable allowances for transportation, processing and other post production expenses."

Several of the industry commenters disagreed with the entitlement language contained in the originally proposed definition. Their concerns are represented by the following statement from one of the comments: "Proceeds have long been defined and understood to mean the consideration, money or the monetary equivalent of other nonmonetary consideration *actually received by a lessee*. The MMS' expansive definition of proceeds, including monies to which a lessee is *entitled*, makes product valuation uncertain and subjective. This uncertainty and subjectivity arises because: (1) The meaning of entitlement is not clearly understood, nor is it a clearly defined legal term; (2) lessees do not know how either they or MMS will, or should, apply this standard; and (3) the required steps which a lessee must take to secure entitlements to consideration are unknown. It will put MMS into the business of second guessing lessee's business transactions. To minimize this second guessing problem of uncertainty we recommend the concept of entitlement be eliminated from further consideration." One industry commenter was concerned that "a lessee would be required to pay royalties on monies to which it is entitled, not on what is received or on what is settled for as a matter of compromise." In order to add more certainty to the concept of "entitlement," one commenter suggested "a simple statement to the effect that MMS expects to be indemnified against the negative consequences of a lessee sleeping on its *clear cut uncontested* contract rights should suffice."

Many industry commenters had the opinion, as one commenter phrased it, that "Federal statutes, regulations, and leases do not require lessees to pay royalty on reimbursements received for post-production services." Several commenters believed that "the claim for royalty on production-related cost reimbursements received by a lessee pursuant to the FERC's Order No. 94 series is particularly inappropriate." One commenter stated that "a demand for royalties on Order No. 94 violates the royalty clause of the MLA, the OCSLA, as well as MMS's own regulations implementing these statutes, for at least two reasons. First, these reimbursements do not result from the production of gas but from services performed by the producer subsequent to production. Second, such reimbursements are not consideration for production that is sold or removed and are thus outside the scope of the royalty clause. Consequently, the MMS' proposal to include production-related cost reimbursements in the definition of gross proceeds is simply wrong." Another industry commenter "strongly asserts the producer's right to deduct all post-production costs involved in marketing gas. Further tax reimbursements should be exempt from royalty." Finally, one industry commenter stated that "all post-production costs should be shared by lessor and lessee because such costs enhance the value of the production for the benefit of both lessor and lessee."

Many industry and a few individual commenters responded to the inclusion of take-or-pay payments in the definition of "gross proceeds." The consensus among these commenters is that MMS has no lawful reason or authorization to collect royalties on take-or-pay payments. One commenter stated that "the typical take-or-pay clause in a contract between the lessee and the gas purchaser requires the purchaser to pay for the specified minimum quantity of gas for each contract year. Whenever the gas purchaser takes less than the contract minimum for a particular year, the purchaser is required to make a take-or-pay payment to the lessee. The purpose of take-or-pay payments is to guarantee the lessee a steady cash-flow, regardless of the level of actual production, to meet its operation and maintenance costs. The payments are not for production; indeed, they are made in lieu of taking production. Consequently, to the extent the lessee receives take-or-pay payments there is no gas production or sale because the gas remains in the ground."

Several industry commenters recommended the increased use of "in-kind" royalty clauses to resolve good faith royalty disputes. One industry commenter stated "indeed, the 'in-kind' standard should be considered as the measure of product 'value,' where a producer and the MMS, or a State auditor under a delegation of authority, disagree over whether a contract is 'arm's-length,' or over contract 'entitlements,' the gas should be taken 'in-kind,' by volume at the wellhead. This means that the royalty owner must assume all subsequent costs or marketing the gas."

MMS Response: In the draft final rule, MMS included a definition which was only slightly different than the proposal. In the second draft final rule, MMS again made a slight modification, discussed below, which has been retained in the final rule. The MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. The MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the gas, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-lenght contract. Therefore, MMS has purposefully drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the first draft final rule with the term "accruing." There may be certain types of considerations which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

Costs of production and post-production costs are lease obligations which the lessee must perform at no cost to the Federal Government or Indian owner. The services listed in the definition are all benefits that a lessee may receive under the terms of the contract and are considered part of the value, for royalty purposes, for the production removed or sold from the lease.

It is MMS's position that take-or-pay payments are part of the gross proceeds accruing to a lessee upon which royalty is due.

The MMS retains the exclusive right to determine when it will accept "in-kind" production in fulfillment of a lessee's royalty obligation. Although

MMS received many comments supporting a gas royalty-in-kind program. MMS received an equal number identifying significant problems with such a program. The MMS does not anticipate adopting a gas royalty-in-kind program at this time.

"Lease"—One Indian commenter stated the following: "Inclusion of any contract profit-sharing arrangement, joint venture or other agreement in the term 'lease' as opposed to a more standardized BIA form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: This definition must be broad enough to cover any agreement that may be issued or approved by the United States for either Federal or Indian lands.

"Lease products"—One industry commenter stated: "Lease products definition should be deleted as it eliminates the important and necessary distinction between raw gas and manufactured products. Use of the phrase 'gas' and 'gas plant products' is preferable as it serves to make this distinction."

MMS Response: The MMS believes that this definition is appropriate and correct and does not eliminate any distinction between raw gas and manufactured products. The definition of the terms "gas" and "gas plant products" will be retained in the definitions paragraph.

"Lessee"—Several industry representatives and trade groups commented that the originally proposed definition of "lessee" was too broad. One commenter stated that "As drafted, it would include any person who pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty payments. Thus, under the proposed definition, the voluntary royalty remitter would become subject to all of the royalty valuation obligations imposed on lessees and would, consequently, become directly liable for any infractions of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law." To be consistent with that law, industry suggests that MMS substitute for its definition of "lessee" the one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(7):

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

Most of these commenters favored this definition because "the statutory definition includes persons who have been issued a lease or who have been *assigned* an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfully expand the definition to include any person who has *assumed* an obligation to make such payments."

One industry commenter recommended adding the phrase "for royalty payment purposes" directly after the word "Lessee" for the purpose of clarity. "We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations by someone else merely assuming royalty responsibility."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM or BIA. It is MMS's intent that operators and others who pay royalties follow these regulations in determining the royalties due. The lessee of record is ultimately responsible if the operator or other payor does not properly pay the royalties due the lessor.

"Like-quality lease products"—Some Indian commenters recommended deleting any reference to legal characteristics from this definition. They believed that by using legal characteristics of gas in defining like-quality gas many elements would be used to differentiate gas in such a manner as to lower gas values. They were concerned that gas sold in intrastate commerce would not be considered as being like-quality to gas sold in interstate commerce. They believed that such distinction would be contrary to court rulings. Further, the Indian commenters believed that gas should be considered only on its chemical and physical characteristics. The Indians commented that inclusion of the term could lead to the possibility that State regulations could influence the value of gas produced on Indian leases.

MMS Response: The MMS believes that legal characteristics of gas must be considered in determining like-quality production. However, the legal characteristics of gas intended to be considered under this definition are limited to categories under NGPA and the price regulated or deregulated status of the gas. The MMS does not believe that mixing NGPA categories of gas or comparing regulated to deregulated gas is reasonable when defining like-quality gas for royalty purposes. Without such distinction, gas that is price regulated at levels below $1.00 per MMBtu might be used to demonstrate the acceptability of a price for gas that should be compared to gas selling for prices in excess of $2.00 per MMBtu under market-sensitive contract provisions free from Federal price controls. Similar problems could result by mixing price regulated gas with price deregulated gas, even though the gas qualifies under the same provisions of NGPA. For example, between January 1, 1985, and July 1, 1987, all wells qualifying under NGPA Section 103 qualified under section 103(c). However, there were two different maximum lawful price ceilings prescribed by this section and a provision that deregulated certain section 103 gas. Regarding the distinction between intrastate and interstate sales, it has not been MMS's practice, nor is it intended to be under these final regulations, to incorporate the market chosen by a lessee in the definition of like-quality gas (unless adopted as a requirement by NGPA in defining categories).

"Marketable Condition"—One industry commenter suggested changing the definition to "Marketable Condition means condition acceptable to the purchaser under its sales contract."

One industry commenter suggested adding the words *"and/or transporter"* after the word "purchaser" in the definition.

One industry commenter stated that phrases such as "sufficiently free from impurities" and "a contract typical for the field or area" are subjective and ambiguous. The commenter stated that "All references to 'marketable condition' should be dropped in the final regulations. Instead, the regulations should reflect the distinction between production and post-production costs and clearly allow the lessee with an arm's-length contract to deduct post-production costs."

Several industry commenters expressed the view that the lessor should share proportionately in all post-production costs including those costs incident to placing production in a marketable condition.

One commenter expressed the view that the regulations must define "production costs" and "post-productior costs." The commenter disagrees with

MMS's position that these costs are costs associated with the obligation of the lessee to place production in a marketable condition, especially when costs are incurred downstream or off-lease. The commenter suggested that MMS should reconsider its position and allow deductions for nonproduction-related or post-production costs.

Another commenter believes that the costs of dehydration, separation, compression, and storage performed at a plant and incurred subsequent to the sales point should be deemed to have occurred for gas processing and not as a cost necessary to place the gas in marketable condition. This commenter also stated that a reasonable amount of gas, residue or unprocessed, should be allowed for fuel.

One industry commenter stated that "The proposed definition of 'marketable condition' is problematic because it seems to set up a normative standard for the condition of a product when, in fact, products may be sold profitably in a variety of conditions. We do not believe the lessee should be required to meet a specific set of processing criteria in all circumstances. The lessee, for its own profit and for that of its lessor, must be able to evaluate potential benefits and costs under each circumstance without being bound by what the lessor may consider 'typical' for the field or area. Furthermore, regarding the term 'typical', what was typical 20 years ago almost certainly is not typical now; yet there is no reference in this definition to the need for contracts to be fairly contemporaneous in order to be comparable. The definition set forth in the report of RMAC's Gas Working Panel is far preferable to the proposed rule."

MMS Response: The MMS believes that the definition is clear, concise, and equitable. The definition is not subject to manipulation, as one commenter stated. Furthermore, the suggestion that a uniform standard be developed for what is "marketable" is unrealistic because the gas marketplace is dynamic. The definition, as written, allows MMS the latitude to apply the concept of "marketable" in a fair and correct manner, now and in future gas markets. Also, MMS adheres to its long standing policy that costs incurred to place production in a marketable condition are to be borne solely by the lessee. Therefore, the MMS has not made any changes to the proposed definition.

"Marketing affiliate"—The MMS received several comments that sales to marketing affiliates who then resell the gas to third persons should not be treated under the rules as non-arm's-length sales. The MMS has addressed this issue in the valuation rules, discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire *only* the lessee's production and to market that production. Some industry commenters stated that the term "only" should be deleted to include affiliates that purchase gas from other sources including other sellers in the same field.

MMS Response: The MMS is retaining the term "only". If the affiliate of the lessee also purchases gas from other sources, then that affiliate presumably will have comparable arm's-length contracts with the other parties which should demonstrate the acceptability of the gross proceeds accruing to the lessee from its affiliate. Also, deleting the term "only" from the definition may require the lessee to track the production to a sales point much farther downstream than the point at which it can be valued based upon the comparable arm's-length contracts of its affiliate.

"Net-back Method"—One industry commenter recommended deleting the second sentence of the definition because the procedure for performing a net-back calculation cannot be adequately explained in one sentence. Another industry commenter believed that the reference to net-back method needs clarification. A net-back is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the gas at a point remote from the well. Consequently, a net-back procedure can be employed simultaneously with another valuation criterion to arrive at the value at the well."

One industry commenter stated the following about the definition: "It is vague because there is no explanation of what 'working back' means; it is overly broad because the first 'use' of virtually all gas is downstream from the lease. In addition, exclusive reliance on costs, however 'costs' are determined, may well understate the value added to production by downstream value-enhancement activities."

One State commenter stated that "the definition is internally inconsistent because it declares the 'net-back method' to be a method for valuing 'unprocessed gas' which is first sold downstream of, among other things, 'processing plants.' One of these references must be deleted to preserve consistency. The concept is vague because no standard is provided for determining what is meant by the phrase 'first alternative point which can be used for value determination.' "

MMS Response. Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point remote from the lease. The MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where gas production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the gas cannot be determined through application of the first three benchmarks in the regulations (see § 206.152(c)), then a net-back method would involve beginning with the sale price of the electricity and deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the farthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" was deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between raw gas production and "Stainmaster Carpet," if the value of the second product can be determined through comparisons with sales of other such products in the same market, MMS would begin the net-back from that product, not from the carpet.

"Net Output"—One industry commenter recommends "substituting the phrase 'actually extracts' for 'produces'. Net output of a plant is that which is *actually extracted*, not theoretically extractable." Another industry commenter suggested that the language be amended to clarify that gas produced at a plant but determined to have been unavoidably lost be excluded from the term.

MMS Response: The MMS disagrees with the commenter's recommended addition. The phrase "actually extracts" could be interpreted as meaning something different than "is produced." The MMS also disagrees that the term should be amended to exclude volumes determined to have been unavoidably lost. It has long been an established practice that incidental losses occurring

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from the plant be excluded from royalty computations. Also, if the gas produced from the plant is determined by BLM or MMS, as appropriate, to have been unavoidably lost, the regulations when taken as a whole would exclude such volumes.

"Person"—One industry commenter recommended replacing the word "firm" with "company" in the interest of clarity.

Several industry commenters expressed the opinion that if the definition is not altered "then inclusion of joint venture in the definition of person could be extended to oil and gas joint venture operations and further narrow the definition of an arm's-length transaction by clouding the issues of control and affiliation. The sale of hydrocarbons produced through joint venture operations should not be presumed to be other than arm's-length because the individual parties and not the 'joint venture' are responsible for making their own sales of their share of the production." One industry commenter stated that the solution to the problem is to delete the term "joint venture" from the definition. Another industry commenter proposed the following definition: "Person means any individual, firm, corporation, association, partnership, consortium, or joint venture. For purposes of this definition, association, partnership, consortium or joint venture shall not include any relationship or arrangement resulting from persons entering into any joint operating agreement, production sharing agreement, farm-out or farm-in agreement, or any similar agreement or contracts generally found in the oil and gas industry for the cooperative exploration of mineral resources." Another industry commenter recommended adding the phrase "when established as a separate entity" after the term joint venture.

MMS Response: The MMS has adopted the addition of the suggested phrase concerning joint ventures in the final definition. The MMS agrees that two unaffiliated parties jointly developing and producing a lease should not be viewed as one entity unless those parties have formally established a separate entity that involves them both.

"Posted Price"—One industry commenter stated that the word "posted" is an outdated term which should be deleted and that the following underlined language should be added to the definition. "Posted price means the price in the field, net of all deductions, as specified in a publicly available * * * price bulletin *or price notices available as part of normal business operations to an operator desiring to do business with specific purchasers*, that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable condition * * *." The commenter also stated that, "if gas price bulletins become generally circulated, it may be that some buyers may not publish a price bulletin as that term is normally used in the industry, but will provide and make available price quotations or notices to any operator (seller) desiring to do business with the buyer."

MMS Response: The MMS has revised the definition in the final rule. For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all deductions" has been modified to read "net of all adjustments." As used in this definition, the term "adjustments" refers to deductions from the price of gas or gas plant products for quality adjustments. Adjustments for location also may be taken into account where appropriate.

"Processing"—Two industry commenters recommended "that a clarifying statement be included to recognize that a plant may be located on the lessee's Federal/Indian lease. If a gas plant is located on a lease, then any of the 'field processes', as set out in the definition may well be an integral part of the plant process and consequently must be considered elements of processing." One industry commenter suggested that the following sentence be inserted between the proposed second and third sentences: "However, these processes will be considered as processing if they are included as an inherent part of the process to separate the produced gas into gas plant products and residue gas." Two industry commenters recommended "The addition of the word 'fractionation' at the end of the first sentence. Fractionation is a plant process and an allowance should be granted as is currently allowed by MMS."

One Federal agency commenter stated that some confusion may arise when comparing proposed § 206.151(bb) to proposed § 206.158(d). "Once the gas reaches the gas plant it would be arguable that any process associated with treating the gas, such as dehydration or mechanical separation, is generating a gas plant product that would be eligible for a processing cost deduction."

One industry commenter suggested changing the definition of "processing" to: "*'Manufacturing:'* The transformation of a raw gas stream into one or more saleable products by processes other than dehydration, standard field conditioning and separation techniques. Manufacturing includes gas processing, sweetening, purification, desulfurization, gas separation, adsorption, absorption, liquefaction and other extraction techniques. Furthermore, gas processing should be defined as: *Gas Processing:* The manufacturing technique whereby wet gas is treated to remove natural gas liquids such that the natural gas liquids and dry residue gas are separately marketable." This commenter thinks that "manufacturing also includes the physical operation attendant to the specific manufacturing process such as the dehydration and compression steps which occur within a gas plant. The MMS has instead attempted to limit its attention to 'gas processing' and thus provides an allowance only to such operations. The position of the MMS is based upon a clear misapplication of the *Udall* case, namely, that all operations for placing gas in marketable condition, *including manufacturing operations*, are not deductible. Compounding its error, the MMS ignores the *General Petroleum* holding, not affected by *Udall*, that residue gas is a manufactured product, and so proposes that no manufacturing cost be deducted against the residue gas."

One State commenter stated that the definition of "processing" is very vague. According to this commenter, the distinction between "field processing" and other "processing" is not clearly drawn. The commenter asserted that "The ambiguity of the definition of 'processing' would not be so troubling except for the fact that it seems to control the meaning of the term 'unprocessed gas,' which is not defined in the proposed regulations despite its critical importance. One would think that regulations aimed at providing certainty would present clear guidelines for identifying the 'processing' costs in which the royalty owner must share."

MMS Response: The MMS has considered the comments carefully but disagrees that the proposed definition is confusing and vague. Therefore, it will be retained unchanged in the final rule.

"Residue Gas"—One industry commenter suggested that "Residue gas may also include ethane." Another industry commenter recommends deleting this definition but states: "Nevertheless, if this definition is maintained residue gas should be restricted to residue gas resulting from processing sweet gas containing hydrocarbons."

MMS Response: The MMS has not adopted the suggestions made by the commenters and the definition remains unchanged. The definition recognizes that residue gas may include ethane.

"Spot Sales"—One industry commenter suggested deleting all language in the proposed definition that follows the word "duration." According to this commenter, "The additional language is not necessary to define a spot sales agreement as it defines what is *not* required, versus what *is* required."

One industry commenter suggested deleting the clause "* * * which does not require a cancellation notice to terminate * * *" "Many spot sales agreements require ten (10), thirty (30), or sixty (60) days notices of cancellation * * *. The MMS purpose of including only those contracts which do not imply an intent to continue in subsequent periods is adequately served by the balance of the definition."

Three industry/trade group commenters recommended that this paragraph should be retitled as "'spot/direct sales agreements' and a definition for direct sales be added as follows: A direct sale (which generally does not contain a reserve dedication) is a similar agreement but is usually made with an end user or local distribution company *and can be a short or long term contract.*"

One industry commenter recommended adding the following sentence to the definition: "A spot or direct sale which meets all of the criteria of an arm's-length contract as defined in § 206.151(d) of these regulations shall be treated as an arm's-length contract according to these regulations." The commenter believes that the proposed definition must clearly state that a spot sales agreement will be treated as arm's-length if it meets all the requirements of an arm's-length agreement.

MMS Response: In the final rule, MMS has inserted the word "normally" immediately preceding the phrase "require a cancellation notice to terminate." The MMS also agrees that there are spot sales which constitute arm's-length contracts. However, to be considered as a comparable arm's-length contract in the valuation of gas which is not sold pursuant to an arm's-length contract, these contracts also must meet other standards. See, for example, § 206.152(c)(1).

"Take-or-pay payment"—Several industry comments were received on this definition and all recommended its deletion. The comments are reflected by the following statement of one of the commenters: "While the definition proposed is technically correct, it should be deleted from the proposed rule because, as stated in the discussion of § 206.151(m) above, take-or-pay payments are not consideration for the sale of production."

MMS Response: The MMS has decided that the definition of take-or-pay payment is unnecessary. Take-or-pay payments have a generally understood meaning in the industry and may take different forms. MMS has decided to remove any definition from the final rules since a regulatory definition may not correspond with all types of payments which fall within the concept of take-or-pay payments which should be royalty bearing. The MMS already addressed above the issue of whether take-or-pay payments should be included in gross proceeds.

"Warranty Contract"—One industry commenter stated that "the exclusion of warranty contracts from the valuation of gross proceeds under an arm's-length contract is intended to exclude those low-value warranty contracts that were entered into prior to the mid 1970's. However, the proposed definition is so broad that it will encompass future negotiated selling arrangements." To clearly express the MMS's intent, the commenter "proposes that the definition be restricted to those contracts entered into before a specific date."

MMS Response: The MMS has modified the definition to refer only to long-term contracts entered into prior to 1970. This also includes contracts entered into prior to 1970 that may have been amended either before or after 1970.

Proposed New Definitions

Commenters have proposed adding the following definitions to the list of existing definitions: natural gas liquids; post-production costs; production; production costs; royalty; and unavoidably lost gas.

MMS Response: The MMS has decided not to include any of the suggested additional definitions. The terms either have a recognized meaning (such as "royalty") or are not used in the regulations (such as "post-production costs").

Section 206.152 Valuation standards—unprocessed gas.

Section 206.152(a).

Paragraph (a)(1) provides that the provisions of § 206.152 apply only to gas that is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. The section expressly does not apply to contracts where the lessee reserves the right to process the gas or to percent-of-proceeds contracts. Several industry commenters stated that the proposal to exclude percent-of-proceeds contracts from this section is unreasonable and unfair to the lessee. They stated that the percentage of proceeds mechanism is a means of arriving at the wellhead value and is not a sale of processed gas. The commenters also stated that the requirement to submit allowances forms to MMS in these cases would be burdensome and, with the provision for exceeding the processing allowance limitations, such treatment is unnecessary. All industry commenters recommended classifying percent-of-proceeds contracts under unprocessed gas.

MMS Response: The MMS still believes that the percentage-of-proceeds contracts should be treated as processed gas as proposed. Without such treatment, lessees would be free to avoid many requirements and limitations of the valuation regulations simply by the manner in which they structure their contracts. In many cases the lessee will agree to any terms dictated by the processing plant owner to be able to realize revenue from the oil production from its wells. Under some cases MMS is familiar with, lessees have agreed to provide fuel to run compressors off the lease without compensation and lessees have given all or a substantial portion of any condensate recovered between the point of title transfer and the inlet of the plant to the plant operator without compensation. Further, in some cases, the lessee may allow itself to be paid based upon prices received by the plant operator under a non-arm's-length contract without the lessee being able to ensure that those prices reflect market value. Finally, MMS does not believe that any percentage-of-proceeds contracts, even being arm's-length contracts, would be an acceptable benchmark for determining values under non-arm's-length percentage-of-proceeds contracts. However, the final rule includes provisions for an exception from processing allowance limitations (see § 206.158(c)(3)), which should address many of the commenters' concerns).

An Indian commenter stated that this section is inconsistent with the ruling in *Jicarilla Apache Tribe v. Supron*, which held that under the terms of the Indian leases in dispute, wet gas had to be valued as the higher of the value at the lease or as the value of all products at the tailgate of the plant, less transportation and processing costs.

MMS Response: The MMS's regulations recognize the primacy of statutes, treaties, and oil and gas leases, thus providing a means for determining

special valuation requirements not only for Indian leases, but also for Federal leases. Many Indian leases have provisions that require dual accounting for processed Indian gas production.

Section 206.152(a)(2).

One Indian commenter stated that this proposed rule authorizes alterations in dealings between the Indian lessor and the industry lessee. The commenter further stated that this provision will result in royalties which are adjusted for transportation costs not contemplated by either party to the lease. The commenter recommended that all references to transportation allowances be deleted and that value be defined, for royalty purposes, to be the fair-market value of the gas at the lease in marketable condition.

One industry commenter objected to the concept of determining royalty on the value of gas and the associated products after completion of the manufacturing or processing phase. The commenter recommended that royalty be due only on the market value of the product as it is produced at the wellhead.

Industry commenters recommended that the phrase "less applicable transportation" should be expanded to include other cost allowances such as production costs.

MMS Response: The MMS has modified the final rule to refer to "applicable allowances". In response to the comments, transportation allowances generally are appropriate for most Indian leases. The regulation refers to "applicable" allowances and does not imply that any and all transportation costs can be deducted. If transportation allowances are not appropriate, the word "applicable" restricts application only to those leases where they can be applied.

The MMS is including in the final rule a new paragraph (a)(3) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the royalty value, for royalty purposes, will be the higher of those two values. The draft final rule included a provision that if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, value should establish a minimum value, and a major portion value in most cases will be reasonable because at least half the gas is sold at or above that price. The MMS agrees and has made the change to the final rule.

Many Indian commenters raised concerns about the qualifications included in this paragraph. These commenters must recognize that if data are not available, it is impossible to do a major portion analysis.

The MMS is also including in paragraph (a)(3) a description of how the major portion is computed. It will be determined using like quality gas, which includes legal characteristics (generally, the specific NGPA category). Only gas sales under arm's-length contracts will be used because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one mcf of the gas (starting from the bottom up) is sold. An industry commenter recommended deletion of the reference to "area". However, because only arm's-length contracts are used in the analysis, the field may not yield a sufficiently reasonable sample in all cases. Generally, it will not be necessary to look beyond the field.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length-contract prices or the benchmarks for non-arm's-length-contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.152(b).

Several industry commenters stated that they supported the concept of relying on gross proceeds in an arm's-length transaction as the principal determinant of value. Some industry commenters also endorsed the overall approach to valuation determination procedures and eliminating the requirement that a lessee obtain preapproval. Industry commenters supported the acceptance of the gross proceeds received by their marketing affiliates under arm's-length contracts as value rather than treating the initial transfer to the marketing affiliate as a non-arm's-length transaction subject to valuation under the benchmark system. Industry also suggested that the regulations be amended to provide that, when the marketing affiliate sells commingled production from many leases to many parties and the sales contracts do not specify the source of the gas, the value of the gas sold from all contributing leases be defined as the weighted average price at which the production was sold.

MMS Response: The MMS agrees with the commenter that the value of gas sold in the manner described by the commenter is properly defined by the weighted average price at which the commingled stream was sold, but believes that guidelines to be prepared for inclusion in the MMS Oil and Gas Payor Handbook would be the proper place to specifically address the issue.

One Indian commenter recommended that a definition of gas value, for royalty purposes, be based on the highest price paid or offered for similar gas in the same field or area, and requested MMS to adopt the following approach:

Section 206.102 (sic) Valuation Standards.

(a) Remains the same.

(b) The value of gas which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue, to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area. If such proceeds fall more than 10 percent below such prices, the value of gas in that case shall be 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area.

A State commenter stated that the proposed regulations would allow substantial manipulation and undervaluation of the royalty amount because it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation. They recommended at a minimum, only prices under "genuine" arm's-length contracts should be acceptable for royalty purposes and urged MMS to at least impose a floor value, such as 80 percent of the value of production as determined under the "value" criteria applicable to gas not sold under arm's-length contracts.

One Indian commenter recommended the inclusion of provisions specifically reserving to MMS the right to review and audit "arm's-length" contracts and that the proceeds under all contracts should be subject to price checks—market value analysis—before being accepted as value. Another Indian commenter requested that all arm's-length contracts be filed with MMS and that MMS require that agreements for the sale or disposition of gas within different branches of the same company be in writing and on file.

One Indian commenter stated that "if MMS is to properly undertake its responsibilities, a predetermination of

value on which royalty is to be based should be made *before* production value is reported." In addition, it was recommended that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination. Also, it was suggested that the Secretary should have all benchmarks available to him and MMS should have the flexibility to set benchmark minimum prices established by the highest price paid or offered for a major portion of gas produced from the field or area.

MMS Response: The suggestions to predetermine the value on which royalty is to be based were not adopted because of the increase in administrative burden which would be very costly for MMS (and, in some instances, to industry). An internal sales agreement cannot be considered to be arm's-length.

In response to a large number of comments from the States, Indians, and industry, MMS has modified the regulations which govern the valuation of gas production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. The MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most cases, the 7/8ths or 5/6ths owner will be striving to obtain the highest attainable price for the gas production for the benefit of itself. The royalty owner benefits from this incentive.

It also adds more certainty to the valuation process for payors and provides them with a clear and logical value on which to base royalties. Under the final regulations, in most instances the lessee will not have to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee. This is particularly a concern for lessees who have long-term arm's-length contracts where sales prices under newer contracts may be higher. If MMS were to establish royalty value based on prices under those newer contracts, (*i.e.*, prices which the lessee cannot obtain under its contract), the resulting royalty obligation could, in some instances, consume the lessee's entire proceeds.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement efforts. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

The MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. For example, in return for Seller's reduced price for gas production from a Federal lease, Buyer may agree to reduce the price of oil it sells to the Seller from a non-Federal lease. This agreement is not reflected in the gas sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, MMS could accept the lessee's gross proceeds as value, adjusted to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the gas production be valued in accordance with paragraph (c), the standards used to value gas disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts. Thus, despite many industry comments suggesting that this section be deleted, MMS is retaining it in the final rules.

The MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. The MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists when the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the gas production be valued pursuant to paragraph (c)(2) or (c)(3). Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market its production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessor includes, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudently manipulated, or negligence in negotiating contracts.

The MMS believes that new § 206.152(b) establishes a more definable standard than subsection (b) of the first draft final rule at 52 FR 30813 ("whether there may be factors which would cause the contract not to be arm's-length"). Although MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

Some commenters requested that the rules require MMS to give a lessee an opportunity to respond before making a finding under subsection (b)(iii). As a general matter, the appeals regulations

in 30 CFR Part 290 give the lessee such an opportunity before a final MMS decision is made. However, MMS will give a lessee an informal opportunity to comment when it determines the lessee has breached its duty to market the gas for the mutual benefit of the lessee and the lessor.

If valuation in accordance with the second and third benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(3).

The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length was implied in the rules. However, the MMS has added a clarifying provision to the final rule which provides that the lessee will have the burden of demonstrating that its contract is arm's-length. This includes overcoming presumptions of control where two parties are possibly affiliated.

Section 206.152(b)(2) of the proposed rules excepted warranty contracts from the general acceptance of gross proceeds as value for arm's-length contracts. One industry commenter recommended that advance MMS approval not be required for the value of gas sold pursuant to a warranty contract since all activities are subject to audit.

Two industry commenters stated that this section should be deleted and that the gross proceeds received by the producer under a warranty contract should be used for determining royalty just as it is for other arm's-length contracts.

Two industry commenters recommended that MMS consider limiting the warranty contracts exception to those contracts entered into before a specific date, such as prior to the mid-1970's.

MMS Response: The MMS has adopted the rule that the value of gas sold pursuant to a warranty contract will be determined by MMS. The issue of limiting the definition of warranty contracts to those executed prior to 1970 was discussed above in the definition of warranty contract.

Most industry commenters strongly disagreed with the language "or which could accrue" contained throughout the regulations. Most companies recommended that the language be deleted. Most commenters stated that the language is too speculative and appears to provide for a second-guess mechanism under which a lessee's sale today can be reviewed in light of knowledge gained at a later date.

MMS Response: The MMS has determined that the phrase "or which could accrue" will be deleted in reference to gross proceeds. Many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its contract by arguing that other persons selling gas may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

One Indian commenter stated that "acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties," and that they do not believe "gross proceeds accruing or which could have accrued in an arm's-length transaction should be determinative of value for gas produced from Indian and Federal leases."

MMS Response: As discussed previously, these rules do not provide for conclusive acceptance of gross proceeds except in well-defined and appropriate circumstances. The MMS believes that the rules as adopted with the changes discussed earlier will result in appropriate values for Indian leases, in accordance with the Secretary's responsibilities.

Section 206.152(c).

Gas which is not sold pursuant to an arm's-length contract is required by the regulations to be valued in accordance with a series of benchmarks. Several State, Indian, and industry commenters disagree with various aspects of the proposed benchmark system because they think that it is vague and subjective. Two State commenters stated that because the majority of gas contracts are not arm's-length, the benchmark system proposed by MMS may be too complex. They recommend that "* * * MMS should study the numerous pricing provisions related to gas sales, and on the basis of the study establish Federal floor values which could be used by lessees to compute a minimum royalty and which would be publicly available."

One State commenter believes that the appropriateness of using the benchmark system depends upon whether the benchmarks are fair and reliable. According to this commenter, "The proposed system would not be fair to the royalty owner because it would lead to the potential for abuse and would certainly result in the diminution of royalties. It would be unreliable because the standards are vague, subjective, and subject to abuse. Unlike the proposed benchmarks for oil valuation, we do not believe that the proposed gas valuation benchmarks can be developed into a fair and workable system. Instead, we believe all the factors listed in paragraphs (c)(1) through (c)(4) should be combined into a single valuation standard." One industry commenter stated that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Many industry representatives and trade groups and one Indian trade group, with minor changes, support the benchmarks and giving them priorities because both will add certainty to valuation determinations. They commend MMS for the recognition of market forces as the principal determinant of value. One commenter stated that "The truest representation of the value of a product is what it can be sold for on the open market, at arm's-length. The proposed benchmarks for valuation of gas under arm's-length contract, non-arm's-length contract, and no contract transactions promote accurate valuation according to the marketplace, and provide rational standards for MMS to follow in monitoring establishment of gas value."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined using the most applicable benchmark. These same commenters recommended combining the first two benchmarks. Other commenters suggested a different ordering of the benchmarks.

MMS Response: The MMS believes that a prioritized benchmark system is a valid and usable system for determining the value of gas not sold pursuant to an arm's-length contract. The system allows the lessee some certainty in determining its own value without dependence upon MMS to establish the value. The suggestion that MMS develop Federal floor values is not feasible or equitable and would be difficult to administer. Therefore, other than some minor modifications, the benchmarks have been adopted as proposed. The MMS believes that the proposed ordering of the benchmarks basically is correct and equitable to both the lessee and lessor. The MMS agrees that the net-back method will not be used frequently. The net-back analysis should only be used where less complex procedures are not feasible. For purposes of this section, MMS does not consider a situation where either transportation or processing allowances are deducted from an arm's-length delivered sales price for gas as a net back. Such procedures will typically be used for royalty valuation. See the discussion of the net-back method above.

In the draft final rule, MMS combined the first two benchmarks. The standard still was the lessee's gross proceeds, but the lessee was determining comparability against a broader sample which helps ensure that the lessee's gross proceeds reflect the value of the gas in the market, not just what that lessee considers to be the market value.

MMS received many industry comments suggesting that the first two benchmarks be separated again because the lessee's own sales data are a good measure of value and are determinable. Sales data of other persons often are not available, according to these commenters.

MMS Response: The MMS believes that the benchmarks will be retained as revised in the second draft final rule. These benchmarks best ensure that the lessee's non-arm's-length prices are reasonable determinants of value.

Some States and Indian lessors stated that when applying benchmarks, it should not be necessary in all circumstances to consider all other sales in the field. In other instances, it may be necessary to look beyond the field. The MMS agrees that the size of any sample cannot be predetermined but must be based upon the actual circumstances in the field or area.

Three Indian commenters stated that MMS's failure to recognize its obligation to maximize tribal royalties is evidenced in the proposed benchmark system. One commenter stated that "MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's comparable contracts in the same field or area, notwithstanding possible underselling during the same period. Plainly, this benchmark is so riddled with potential conflicts of interest that it cannot possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resources." Another commenter stated that the proposed benchmark system is based on the premise that gross proceeds represents market value and "Gross proceeds have always been considered as the minimum value of production because it has long been recognized that price does not always indicate value. The proposed benchmarks appear to treat gross proceeds as the maximum value." This commenter "believes that gas production should be valued at the highest price posted or paid in the field regardless of whether the contract is arm's-length or non-arm's-length * * *." Finally, one Indian commenter stated that "The lease provisions should prevail and should require the Secretary to formulate and implement procedures for the majority portion analysis. These provisions of the regulations should include a statement which indicates that it will not be applied to Indian Tribal and allottee leases. If, however, these provisions will be applied to Indian tribal and allottee leases, then each benchmark should be considered a reasonable option that the Secretary can utilize to determine value and the Secretary should use the reasonable option which brings the highest revenue to the Indian Tribe or allottee."

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his responsibilities to the Tribes and allottees because the value determined in accordance with the benchmarks will be compared to the major portion, with royalties due on the higher value. This process is required by paragraph (a)(3), discussed above.

One industry commenter recommended that "the last benchmark of net-back pricing be eliminated from the list because we believe that it would not be routinely used and would be administratively impractical to implement. The reference to any other reasonable method to determine value should be retained."

MMS Response: The MMS disagrees that the net-back method should be deleted. The net-back method is a viable valuation procedure, even though it will not be routinely used.

One industry commenter stated that "* * * depending upon how one treats 'spot sales', the hierarchy of measures which they establish could result in a substitution of a poorer measure for one that represents the best measure of gas value." This commenter recommended placing spot-sale agreements higher in the hierarchy of benchmarks.

MMS Response: The MMS believes that the position of "spot sales" in the benchmark system is appropriate. The first two proposed benchmarks, combined as one in the final rule, are a better measure of establishing value for royalty purposes than spot sales. The rule has been modified to reference "arm's-length" spot sales.

One industry commenter suggests that the wording of the criteria should be amended to avoid ambiguity in their application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the lessee's arm's-length contracts (first criterion) or the arm's-length contracts of other lessees in the field (second criterion)." This commenter "* * * understands the intent of the proposed regulations is that the proceeds under the referenced arm's-length contracts would be used to set royalties, but the regulation does not expressly so state. Indeed, as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent', then the next criterion in the hierarchy would apply. This ambiguity should be removed."

MMS Response: The MMS disagrees that these provisions are unclear. Under the benchmark system, value will be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not be reasonably applied. Therefore, if the proceeds under comparable arm's-length contracts in the field are not "equivalent" to the proceeds under the non-arm's-length contract, then the first benchmark does not apply and the lessee should try to apply the second benchmark. If that one also does not apply, then the lessee must apply the third benchmark.

One industry commenter stated that "for making comparisons to arm's-length contracts, when the producer is selling gas to an affiliate and that affiliate is also purchasing gas in the same field or area under an arm's-length contract, the marketing experiences of the parties to the arm's-length contract should be a primary consideration (not just of the volume of gas sold, for example). If the producer under a comparable arm's-length contract is active in the marketplace, it is only reasonable that he would neither accept less nor pay more than the market price for gas. In addition, larger volumes of gas do not always attract a better price than a smaller volume. In some cases, the larger volume is harder to move because it has to be sold in pieces."

MMS Response: The rules, as adopted, require that there be numerous factors considered before an arm's-length contract could be deemed

comparable. The purpose for consideration of these factors is to prevent abuses through application of only a few factors so that contracts containing unusually low or high prices could be used.

Many industry commenters recommended that legal characteristics of the gas be included in the comparability criteria in paragraph (c)(1).

MMS Response: This addition is unnecessary as the section already refers to like-quality gas, which is defined as including legal characteristics.

One industry commenter suggested "an alteration to the proposed regulations under §§ 206.152 and 206.153 to validate any intracompany or affiliate intercompany 'sale', if that transaction is monitored by a regulatory body to determine the market responsiveness of the transaction. Specifically, the commenter suggests that MMS's proposed regulations recognize the FERC's right to determine the justness and reasonableness of (producer) 'first sale' market rates, where those costs are 'passed on' to interstate pipeline sale-for-resale customers via Purchased Gas Cost Adjustment Clauses filed by interstate pipelines as part of their FERC Gas Tariff."

MMS Response: The MMS and FERC have different statutory responsibilities. It is MMS's responsibility to determine the value of production from Federal and Indian leases. Although FERC's actions may be one criterion to consider in determining value, MMS cannot accept them as conclusive.

One industry commenter stated that under the benchmark system it is difficult for an affiliated producer to prove its determination of value, especially with respect to those properties it does not operate. According to this commenter, "The MMS is in the unique position of having access to data, facts, and information that are not readily available to an individual producer. Indeed, attempts to gather such information might violate antitrust laws. Without access to this information on a continuing basis, application of these benchmarks becomes difficult, if not impossible." This commenter recommended "that the burden of proof be shifted to the MMS such that a rebuttable presumption exists that the gross proceeds accrued to an affiliated producer is reasonable value absent a clear showing to the contrary by the MMS using these benchmarks." Other commenters also suggested that MMS gather and make available sales data in certain fields.

MMS Response: Obviously, a lessee will be able to obtain the necessary data on its sales for application of the first benchmark. The MMS also believes that in most fields or areas lessees will be able to obtain data on third-party transactions. If those data are unavailable, the lessee will have to use one of the succeeding benchmarks, but in no event can the lessee use a value which is less than its gross proceeds. Because values determined under the second and third benchmarks must be the subject of a notice to MMS (see § 206.152(e)(3) of the final rules), and because a lessee may seek a value determination from MMS (see § 206.152(g) of the final rules), MMS is satisfied that ultimately the lessee will be able to determine the proper royalty value for its gas.

One State commenter noted that it is inappropriate to put the valuation process into a benchmark straight jacket. In addition, this commenter stated that this paragraph permits a lessee to deliberately price its non-arm's-length disposition at the lowest price it can argue to be "comparable" in the field, even where much higher values may be obtained in other dispositions from the field.

MMS Response: A lessee will have many factors to consider in establishing a price under its non-arm's-length contracts, including tax consequences and regulatory concerns. If the price selected is equivalent to the price under comparable arm's-length contracts which must meet the standards in paragraph (c)(1), MMS is satisfied that the price reflects market value and is acceptable for royalty purposes.

One Indian commenter was concerned that the lessee would apparently make the determination as to whether the "arm's-length" contract under which the comparison is made is, in fact, arm's-length. Also, although the data are subject to monitoring, review, and audit by MMS, the commenter believes that in view of the past experience with audits by MMS, the lessees' reporting of gross proceeds under non-arm's-length contracts would remain on the honor system.

MMS Response: Under most valuation procedures MMS considered for these regulations, it would be up to the lessee in the first instance to apply those procedures and report royalties each month. The MMS has adopted rules which it hopes are clear and comprehensible. It must be assumed that lessees will apply the rules properly considering the likelihood of audit and the possibility of significant interest and perhaps penalties for intentional underpayment of royalties.

One industry commenter interpreted the regulations to require that gas sold pursuant to spot-sales contracts would be valued under the first benchmark, even though "spot sales" are mentioned in a later benchmark. In addition, the commenter stated that the best measure of value for gas sold pursuant to arm's-length spot sale contracts are those contracts and not other long-term contracts which are not comparable.

MMS Response: If a spot-sales contract is arm's-length, the value of the gas sold under it would be determined pursuant to paragraph (b), not by application of the benchmarks.

Two industry commenters stated that the net-back method should be stricken from this section because the net-back method is to be used as a benchmark only when the preceding benchmarks are inapplicable; therefore, to these commenters it seems inappropriate to include it as a presumed priority when any other reasonable method is what is actually intended.

One industry commenter stated that the reference to net-back method needs clarification. Further, the commenter stated that net-back method is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the production at a point remote from the well.

One State commenter noted that there is no logical basis for favoring valuation on the basis of "gross proceeds" less allowable deductions while disfavoring "net-back method". Also, the net-back method is essentially the same thing as "gross proceeds" with allowable deductions.

MMS Response: The MMS believes that the benchmark priority system is appropriate. As explained above in regard to the definition of net-back method, MMS does not anticipate that this method will be used frequently. It generally will be used where the nature of the product has changed (i.e., gas to electricity) and it is necessary to work back from the sales price of the electricity to get a value for the gas.

Section 206.152(d).

Two industry commenters supported the premise that "if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations, MMS would accept such maximum price as value."

One industry commenter recommended deleting the last sentence of this paragraph because gas sold under a warranty contract is valued in the same manner as gas sold pursuant to any other arm's-length contract.

The MMS also received several comments from the Indians and States stating that the rules should specify that State and local price ceilings will not operate to limit the value for royalty purposes. The MMS proposed to include such a provision in the second draft final rule. Some commenters supported this provision. Others, including mostly industry and one State commenter, objected to the provision on the grounds that it is unfair to producers who must be bound by these ceilings when selling their production.

MMS Response: The final rulemaking adopts this paragraph with the addition of a provision that price limitations set by any State or local government will not be considered to be a maximum price permitted by Federal law. Therefore, in some situations, value for royalty purposes may exceed a State or local price limitation. The MMS agrees with those commenters who argued that States and local governments should not be able to limit royalty values, particularly for Indian leases.

The last sentence, which is now paragraph (d)(2), was not deleted because the MMS believes that warranty contracts must be viewed differently than other arm's-length contracts for purposes of value. Unlike arm's-length contracts for gas production which is committed to the contract, the seller under a warranty contract often had the sole authority to determine the origin of the gas production to be delivered. Therefore, the seller had the option not to sell particular production from a Federal or Indian lease under the warranty contract and to sell it at a higher price. Thus, although in some NGPA categories the warranty contract price is the maximum price permitted by law for gas sold *under that contract*, it is the sole decision of the lessee to dedicate gas from Federal or Indian leases to that contract.

Section 206.152(e).

Several industry and State commenters supported establishing a valuation procedure which does not require the prior approval of MMS because it will expedite and simplify the valuation process. Two industry commenters stated that "the time during which the MMS may direct a lessee to pay royalty at a different value should be limited to a specific period so that the lessee is not required to indefinitely retain the records it relies upon to support the value determination." A State commenter noted that "Also, the lessee should be required to retain 'all data relevant to determination of royalty value', not simply the evidence supporting the lessee's claimed value. A lessee should not be allowed to destroy relevant evidence supporting a different royalty valuation, and to retain only that which is self-serving. Also, the regulation should specify that MMS 'will' order compliance when incorrect payments are discovered."

Many industry commenters stated that the provision is too broad and should be limited to fee lands within the boundaries of approved Federal unit or communitized areas. They argued that lessees should not be required to provide information on their other sales prices or volumes.

MMS Response: The MMS has adopted in the final rule a valuation procedure that generally does not require MMS's prior approval. The second sentence has been modified to read as follows: "* * * the lessee shall retain all available data relevant to the determination of value." Lessees are required to retain all records to support value determinations for a period of 6 years, unless an audit is ongoing, as mandated by section 103 of FOGRMA, 30 U.S.C. 1713. The lessee is responsible for complying fully with the regulations by properly valuing lease products, for royalty purposes, in accordance with the appropriate benchmark and to retain all relevant data. The MMS believes that the adopted language clearly states this requirement. The MMS also has adopted in paragraph (e)(2) of the final regulations a requirement that lessees make available to authorized MMS State and Indian representatives, or to the Department's Office of the Inspector General, arm's-length sales and volume data which it has available for like-quality production sold from the same field or area or nearby fields or areas. Because lessees in many instances will be determining value for Federal or Indian production by reference to other sales in the field or area, MMS must have access to the data to the same extent as the lessee to determine whether the lessee's valuation was in accordance with the regulations.

Several industry commenters recommended that MMS delete the requirement of proposed paragraph (e)(2) that a lessee must notify MMS if it uses the third or fourth (now second or third) benchmarks because it is not consistent with MMS's self-implementing concept and current MMS auditing and monitoring rights are adequate to allow the MMS to verify royalty compliance.

MMS Response: The MMS believes that what is now paragraph (e)(3) in the final rule is consistent with its self-implementing policy because lessees that determine value pursuant to paragraphs (c)(2) or (c)(3) of this section must notify MMS of their determination after the fact and not before the fact. In every instance, value for royalty purposes is subject to future audit. This section has been modified so that the notice is due the end of the month following the month the lessee first reports royalties on the Form MMS–2014 using paragraph (c)(2) or (c)(3).

Section 206.152(f).

One State commenter suggested that a "provision should be made for penalties for willful violations and violations made in reckless disregard of royalty obligations."

Industry representatives commented that if the lessee must pay any difference plus interest, MMS should also pay, when applicable, any difference plus any interest statutorily authorized.

MMS Response: If a lessee knowingly or willfully underpays royalty, it may be subject to civil penalties in accordance with FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR Part 241. With regard to the second comment, MMS is barred by law from paying interest on royalty overpayments but is required by law (i.e. FOGRMA) to collect interest on late payments.

Section 206.152(g).

This paragraph provides that the lessee may request a value determination from MMS. One State commenter noted that "the lessee should be required to submit 'all data relevant to determination of royalty value'. Again, a lessee should not be able to limit its documentary submittal to evidence which 'supports' its claimed royalty value. Also, because of the impact upon the States and Indians, and in light of the existing cooperative and State audit programs, an opportunity should be given for review and comment on royalty determination requests by the potentially impacted State, Alaska Native Corporation, Indian Tribe or Indian allottee." One Indian commenter suggested that in addition to a lessee, a lessor should at any time be able to request a royalty value determination from MMS. This commenter also stated that "this paragraph should require MMS to notify the Tribe or allottee involved of any change in value determinations."

Several industry commenters stated that "the MMS should impose a time limitation on itself to respond to requests for valuations from a lessee, in the absence of which the lessee should not be held liable for interest or

penalties for underpayment of royalty." Further, one industry commenter stated that this section should be used to allow a value determination to be made by MMS which would accommodate the circumstances of a particular lessee when its circumstances do not allow for a definitive value determination under the applicable benchmark. As an example, the commenter stated that, although its gas sales are made under arm's-length contracts, the manner in which the gas is marketed (bundled sales of gas from many leases on the spot market to many purchasers) prevents the tracing of the gas produced from any one lease to a particular sales outlet and, thus, the defining of the gross proceeds received from the sale of the gas produced from that one lease.

MMS Response: The proposed language has been modified to require that a lessee submit all available data relevant to its valuation proposal. The MMS does not consider it practical to include in the regulations a requirement for review by the State or Indian lessor when a value determination is made. This does not make the cooperative audit program in accordance with FOGRMA less effective because MMS will make every effort to assist and consult with States and Indian lessors in valuation matters. The MMS also will make every effort to respond timely to requests by lessees, but this is necessarily dependent upon available resources; thus, MMS cannot agree to a regulatory time limit. The MMS has added a sentence to accommodate the requested flexibility. Therefore, this section now provides that MMS may use any of the valuation criteria authorized by the regulations when issuing a value determination. The MMS has adopted this change because of the continuing changes in the way gas is marketed.

Section 206.152(h).

This paragraph provides generally that the value of production, for royalty purposes, cannot be less than the lessee's gross proceeds less applicable allowances. One industry commenter recommended that the last sentence be replaced with "* * * allowance determined pursuant to these *regulations*." Another industry commenter recommended that the phrase "less applicable transportation and processing allowances" be expanded to include "and other cost allowances." Some industry commenters recommended deleting these paragraphs entirely.

MMS Response: For reasons discussed earlier in this preamble, MMS has determined that the phrase "or which could accrue" should be deleted from the final rule. The MMS also has modified this section to refer to all applicable allowances, not just transportation allowances.

Section 206.152(i).

This paragraph addresses the lessee's obligation to place lease production in marketable condition. Several State, Indian, and individual commenters agree with the MMS's proposed provision that costs such as those for compression to meet pipeline pressure requirements to place the gas in marketable condition should be borne by the lessee.

One industry commenter was concerned that "marketable condition" is not a constant, but acknowledges the lessee should act as a reasonably prudent operator in marketing its products. Many industry commenters believed that the statutory framework and lease terms provide that royalty is due only on the market value of gas as it is produced at the wellhead and any obligation the lessee may have to render the gas marketable does not entitle the lessor to a free ride on those expenses incurred by the lessee subsequent to production. These commenters also believed the lessee is entitled to deduct all reasonable post-production expenses, including any costs incurred by the lessee to make the product marketable.

Some industry commenters recommended deleting this provision because of the changes occurring in the marketplace. They stated that these costs are subject to negotiation and may be incurred by either party. They believed that it is incorrect to assume that costs incurred by a purchaser have a direct effect on the price to be paid and suggested that the price paid by the purchaser should be used for royalty valuation unless stated specifically in the contract that it was adjusted to cover the subject costs.

One industry commenter noted that the Federal Energy Regulatory Commission has rejected imposition of any national quality standards for gas sold in first sales and has left to each producer-purchaser contract the resolution of which downstream-of-the-wellhead services are to be provided by which party to the contract. Reference was made to FERC Order No. 84A, 22 FERC 61,055 (1983).

Most industry commenters essentially believed that the lessor should proportionately share in all costs subsequent to production, including the costs of placing production in marketable condition. They believed that all so-called "post production" costs should be shared because such costs are incurred to enhance the value of the production from the lease for the benefit of both the lessee and the lessor; proportionate sharing of those costs would yield a value of production that is equal for both lessee and lessor. These commenters believed that royalty is due on the market value of production at the lease or well, and that proportionate sharing of any post-production costs incurred to enhance the value of production is necessary to meet this requirement.

They stated that, under the proposed rules, no allowance is made for the costs of processing residue gas to place it in marketable condition or for any other post-production costs incurred to dehydrate, compress, or gather the product. They further stated that MMS has abandoned the definition of "associated" and "principal" products but the unjustified concept underlying these terms has apparently been retained.

The industry commenters generally argued that MMS improperly sweeps all post-production operations under the holding of the *California* v. *Udall* case. They stated that MMS goes so far as to say that even if a buyer willingly buys raw, unconditioned gas (i.e., if there is an actual market for such gas in the field), any of the costs the buyer incurs to place the gas in "marketable" condition will be added to the purchase price of the gas. They believed that this approach totally distorts the concept of market value at the lease, ignores the holding in *Udall*, and exceeds the reasonable and legal limits of the Secretary's discretion. They further stated that the Secretary should recognize the realities of today's onshore leasing and production and that all post-production costs should be deductible but, at the very least, they believed that off-lease post-production and unusual or extraordinary on-lease post-production costs should be shared proportionately.

The industry commenters stated that the MMS should recognize that manufacturing/processing, transportation, and other post-production costs are legitimate deductions necessary to arrive at the value of production, for royalty purposes, at the lease or well and that such costs should be deductible from the value of all marketable products when necessary to reflect the actual expenditures that enhanced the value of the gas after production. They further stated that if MMS continues to rely on the *Udall* holding, its proper application requires a consideration of the purpose served by a particular facility to

distinguish between costs "incidental to marketing" and manufacturing or transportation costs.

The MMS specifically requested comment on a provision in the draft final rules which would provide an allowance for certain production related costs in extraordinary situations. Many comments were received from industry supporting this provision and suggesting that it be broadened.

MMS Response: Historically, the policy and practice of MMS is that the lessee is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable.

The MMS received many comments on the section added to the draft final rules that provided for certain extraordinary cost allowances. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing gas in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraph (i) or (ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that, when approved, the allowance extend beyond one year.

MMS Response: After carefully considering all of the comments on this issue, MMS has decided not to retain the extraordinary cost allowance provision in the final rules. It was concluded that the burdens placed on the lessee by the environment in which it must operate were matters taken into account at the time the lease was issued, affecting the amounts of bonus bids and, in some instances, the royalty rate. The MMS has concluded that if a lessee is entitled to further economic relief, it is inappropriate to provide that relief by adjusting the value of the production by methods which are inconsistent with MMS's historical practice and interpretation of the lessee's express obligation to place production in marketable condition at no cost to the lessor. Rather, the more appropriate mechanism is for the Department to consider royalty rate relief in circumstances where it is warranted for existing leases, and for lessees to consider such factors when entering leases in the future under royalty reduction procedures which can be adjusted to the price and cost circumstances prevailing on a particular lease and at a particular time.

Section 206.152(j).

One industry commenter stated that this provision, as proposed, goes against the firm notion of gross proceeds and grants an exception only in situations where the lessee is entitled to a contractual price increase. According to the commenter, this ignores the reality of the existing situation in the gas marketplace where many purchasers have unilaterally suspended contractually obligated takes and payments under the pretext of "force majeure." The commenter believed that it may be more prudent in many instances to diligently renegotiate contracts which would be in the best interest of the lessee and lessor. The commenter further stated that such renegotiations may take place over an extended period of time during which the lessee may be receiving less than its contract price for its gas; therefore, under these circumstances, where the lessee is taking documented, reasonable measures to force purchaser compliance and to favorably renegotiate its contract, the lessee should only be required to pay royalty on the gross proceeds it receives from the purchaser for its gas.

The industry commenter also stated that rapid deterioration of purchasers' markets has caused unilateral price actions; further, difficult and protracted negotiations have ensued during which proceeds are less than the contractually agreed-to price. The commenter mentioned that lengthy litigation is a last resort. The lessor benefits from continued production at market prices pending final resolution and, therefore, a more realistic approach would be to accept proceeds if proceeds were not less than the prevailing market price in the field or area.

One Indian commenter foresaw the ability of willing parties to amend contracts to compromise payments that have accrued to or would accrue to the lessee under its existing contract. The commenter believed that, of course, such contract revisions cannot be avoided in all instances but, if they are made, the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price.

One industry commenter argued that MMS has neither the authority nor the expertise to determine "the highest price a prudent lessee can receive through legally enforceable claims under its contract." The commenter also suggested deleting most of this section with the exception of the third sentence (of the second draft final rule) and the requirement that the lessee must pay royalties on all volumes of production which are sold.

One State commenter expressed that, by freely allowing contract revisions (even retroactive ones), MMS would provide a gaping loophole in the requirement that a lessee seek to enforce its contract "entitlements." The commenter believed that when a lessee is challenged by the MMS about not enforcing its contract rights, there are few buyers who will not agree to assist their sellers by retroactively amending their contracts to the lower amount actually paid.

MMS Response: The MMS has adopted this provision with only minor changes from the original proposal. However, the paragraph does not preclude the approach suggested by the commenters. This section requires a lessee to pay royalty in accordance with the contract price, but also expressly recognizes that contract prices may be amended retroactively. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper or timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties.

However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Two industry commenters suggested that the phrase "the lessee will owe no additional royalty until monies are * * * received" be reworded to insert the phrase "unless or" before the word "until". They believed that it is contrary to the concept of "proceeds received" to attempt to assess royalty on proceeds which have never been received when only part payment is made to the lessee in contract disputes.

MMS Response: The MMS adopted the suggested change in the final regulation.

One commenter stated that retroactive application of contract revisions may be inconsistent with FOGRMA because it requires that royalties be keyed to production and not to sales. The commenter further stated that timely application by a lessee for a price increase should not be sufficient to allow a lessee to defer payment of royalties until monies or consideration resulting from the price increase are received. The commenter stated that a lessee should be required to go further in pressing its claim for benefits accruing or which could accrue to the lessee under the contract before nonpayment of additional royalties is allowed, perhaps even to the point of instituting litigation.

Two industry commenters stated that the "prudent operator" clause is unnecessary because it is in the lessee's own best interest to obtain the maximum amount of revenue possible under the terms of the applicable contract. They believed that the inclusion of a "prudent operator" standard in the regulations contradicts the concept of using market proceeds and merely serves to impose an obligation on MMS auditors to evaluate and second-guess the prudency of the actions of lessees. They also believed the "prudent operator" clause opens the door to regulatory uncertainty and the basing of royalties on amounts in excess of the market value of gas. They believe the provision should be eliminated.

MMS Response: Although most lessees will try to maximize the amount of revenue possible under the terms of the applicable contract, not all will be diligent. Therefore, MMS must protect the Federal Government's and Indian's interests by using the "prudent operator" clause.

Two industry commenters stated that they disagreed with MMS's attempt to enforce contract entitlements. They believed that, as proposed, royalties would be based on the highest price obtainable and would serve to encourage the pursuit of price increases, rather than the proper payment of royalties based on the prices received. They also believed that this provision is contrary to MMS's own statement that "value is best determined by the interaction of competing market forces, the 7/8ths or 4/5ths owner is going to negotiate the best deal he/she can to further his/her own interest, advancing those of the royalty owners as well;" therefore, they recommended this provision be deleted.

MMS Response: The MMS does not view this provision as contrary to the approach it has taken to determine values. It would be inconsistent with the theme of these regulations for MMS to not require full compliance with its principal value determinant.

Section 206.152(k).

The MMS has added a new paragraph (k) to the draft final rules which provides that in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, that determination will not be binding until MMS has done an audit and the audit formally is closed. The MMS intends to issue further guidelines on when an audit is closed.

Several industry commenters thought that any determinations by MMS should be binding.

MMS Response: The MMS is adopting this section. The MMS cannot be bound by a preliminary determination which may not be based on a full array of information as would be available during an audit.

Section 206.152(l).

Two individual commenters stated that this paragraph, which was proposed as paragraph (k), appears to preclude the lessor or overriding royalty interest owner from obtaining any information to substantiate the transportation and processing costs he is being charged. Therefore, they are opposed to this provision.

One Indian commenter stated that this provision perpetuates restrictions upon disclosure of data required in reviewing a lessee's computation of royalty. The commenter believed that Indian Tribes should be provided copies of all reports submitted by their lessees to MMS, upon request. The commenter also stated that the Tribes need this information to monitor lessees as well as responsible Federal agencies, and requested that the information provisions be revised to ease release of this information to Tribes subject to reasonable restrictions upon disclosure to third parties.

One Indian commenter stated that this provision should make it clear that all information will be available to Indian lessors and States without going through the Freedom of Information Act procedures. The commenter also stated that to place such a burden on Indian Tribes and States who are the beneficiaries of the production would not be reasonable.

One Indian commenter stated that the scope of this provision is so broad that it effectively denies Indian Tribes and allottees and States access to the information required to assure that valuations are properly determined. The commenter reminded MMS that the intent of the FOGRMA is to provide all interested parties, including Indian Tribes and allottees and States, the data necessary to conduct audits, oversee the audits performed by MMS, and in the case of Indian Tribes, to manage their mineral resources and to plan for governmental operations. The commenter stated that it could not understand why the MMS included this provision inasmuch as the almost unanimous vote of the Royalty Management Advisory Committee on a resolution recommending that the regulations provide Indian Tribes access to data demonstrates that industry also understands that Indian Tribes require and should have access to such data.

MMS Response: The intent of this paragraph is not to preclude access to information for those who are working in concert with the MMS to the extent allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessee or from MMS to the extent provided in lease terms or applicable law. In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.153 Valuation standards—processed gas.

This section is almost identical to § 206.152 and the comments received were also similar. Therefore, MMS will not repeat the section-by-section analysis or response to comments for this section. Interested persons should refer to the corresponding part of § 206.152.

Section 206.154 Determination of quantities and qualities for computing royalties.

Paragraph 206.154(a) establishes procedures for determining the volumes and quality of unprocessed gas that must be used in computing royalties. Three industry commenters were opposed to MMS or BLM assigning a point of royalty settlement that is different from the lessee's sales point where the transfer of title occurs, as stipulated in the lessee's arm's-length gas sales contract.

One industry commenter stated that MMS must recognize that the proper point of royalty valuation is the lease and that MMS cannot confiscate the entrepreneurial profits which are added by downstream activities of the lessee and are not part of the value of the production in which the lessor is entitled to share.

Two industry commenters stated that this provision is inconsistent with the statutes, lease terms, and the proposed gross proceeds valuation methodology.

MMS Response: Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition as measured on the lease unless prior approval to measure off-lease is obtained from BLM or MMS, for onshore and offshore leases, respectively. This will assure the lessor that the total production from the lease is accounted for. This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, at a quality, is valued for royalty purposes.

One industry commenter stated that paragraph (a)(2) would adjust the price received under an arm's-length contract in the event that there were some line loss between the point of royalty settlement and the point of sale. The commenter stated that the arm's-length contract whose quantity provisions MMS would modify requires the purchaser to pay only for production which is actually received but, by adjusting the quantity figures, MMS is, in effect, amending, solely for royalty purposes, the deal between the lessee and the purchaser.

MMS Response: The MMS must structure its royalty accounting program to be in concert with the administration of oil and gas leases by the other components of the Department of Interior's full mineral leasing program. As such, this provision simply recognizes that it is the measured production, as required by BLM or MMS operations personnel, that must be valued for royalty purposes.

Paragraph 206.154(b) establishes the procedures for determining the quantity of residue gas and gas plant products on which royalty must be paid. One industry commenter suggested that this provision be reworded to indicate that "net output" means the production from the plant and not tailgate deliveries. The commenter stated that net monthly output could be interpreted to mean plant tailgate deliveries. The commenter said that if this were the case, royalty would not be paid on plant products until they were sold.

Another commenter stated that, in current marketing situations, it is impossible to avoid temporary storage of gas plant products. The commenter said that purchasers are nominating volumes they will purchase which may or may not coincide with production. The commenter also stated that royalties should not be paid on production stored until it is sold because, in that manner, value can be properly determined. The commenter said that residue gas must be delivered as produced because there will normally be no means by which the lessee can store it.

MMS Response: As adopted at § 206.151, net output means the quantity of residue gas and each gas plant product that a processing plant produces. Therefore, royalty is due on residue gas and gas plant products at the time they are produced.

One industry commenter stated that this *methodology* of net output is contrary to the MMS concept of gross proceeds accruing from the *sale* under an arm's-length contract. The commenter said that many gas plants place the net output in temporary storage awaiting sales and that the net output of gas plant products is not valued until removal from temporary storage and sale. The commenter stated that, if this paragraph is implemented, it is probable that there would be many MMS audit exceptions as a result of the valuation of net output rather than actual sales from temporary storage facilities.

One industry commenter stated that it may be difficult to establish the value of the product that remains in storage. The commenter also stated that, if the lessee is forced to compute a value, then the concept of "gross proceeds" becomes meaningless because the lessee, in effect, becomes the purchaser of the product. The commenter claims that when the product is disposed of at a later date, MMS would have no basis on which to review the proceeds eventually realized by the lessee for sale of the production.

MMS Response: The MMS believes that there is no conflict between the gross proceeds methodology and these provisions. It must be recognized that it is the volume of gas leaving the lease which must be valued, for royalty purposes, and the use of the cumulative value of any condensate recovered downstream of the point of royalty settlement without resorting to a manufacturing process, plus the residue gas and gas plant products, less applicable allowances, is the method by which this is done when gas is processed. Therefore, all such condensate, residue gas, and gas plant products attributable to this production must be used in determining value. Adjusting the gross proceeds to reflect the net output attributable to the lease would be accomplished by applying the unit value established by the actual product sales to the portion of the net output attributable to the lease, which was not sold in the month produced. Likewise, if the quantity of any product sold during a month is greater than the net output attributable to a lease because of sales of a quantity of product which was previously placed in storage, the gross proceeds would be reduced. If proper documentation is maintained by the lessee and made available to MMS during an audit, no audit exceptions should result.

Paragraph 206.154(c) establishes the procedure to allocate the net output of a processing plant back to the leases. One industry commenter proposed that the language be modified to reflect the view that any lease allocation method agreed to between a seller and purchaser and/or processor will be deemed acceptable, including methods where the parties are affiliates, subject to review by MMS.

One industry commenter suggested that any contractually prescribed method should be deemed acceptable in preference to "a generally accepted lease allocation method", which may be a contention in the future.

An industry group recommended that MMS recognize the validity of allocation methods approved by BLM.

MMS Response: The MMS has adopted a specific procedure for

allocating the net output of a processing plant back to leases. The method adopted is the method prescribed by the current regulations. The MMS believes that this procedure is the predominant method used by industry. However, MMS has adopted a provision in the final rule whereby a lessee may request approval of other allocation methods.

One industry commenter suggested the addition of the sentence "This same methodology shall also apply to allocations among unitized and communitized areas." The commenter believed that this inclusion of units and communitized areas was intended.

One Federal agency commenter suggested the modification of the proposed rule to include a tight definition of the term "generally accepted." The commenter said this term should be defined as an allocation method used consistently by a majority of gas plant operators and this method must be in accordance with the method promulgated by an industry group such as COPAS.

MMS Response: The final rule adopted limits the use of methods other than the one prescribed, as outlined above. Therefore, the term "generally accepted" has been eliminated from the final rule. Unitized and communitized areas will be covered under this provision and MMS does not deem it necessary to add a specific reference.

Paragraph (d) prohibits deductions from royalty volume or royalty value for actual or theoretical losses. Indian and State commenters agreed with this provision, stating that no deductions should be allowed for actual or theoretical losses prior to the point of royalty settlement.

Many industry commenters stated that line losses are attributable to several factors. They stated that line losses are partially attributable to metering differences and partially attributable to physical factors, and they are a part of the reality of oil and gas field operations. They believed that the provision should be amended for both valuation and allowance purposes to provide a credit for line loss not attributable to negligence, because such a change in the regulations would be in conformance with FOGRMA. They stated that allowing losses would also make the allowance regulations conform to the overall market orientation underlying the valuation proposal, because costs associated with line loss are commonly explicit components of arm's-length contracts and tariffs.

MMS Response: When a volume of gas, upon which royalty is due, has been determined in accordance with the requirements of MMS's offshore operations and BLM's onshore operations personnel, MMS must collect royalty upon its value. Likewise, it is imperative that the quantities of residue gas and gas plant products attributable to a lease be determined once, and only once, and royalty paid on those volumes. This is consistent with the historical practice of the Department. The treatment of line losses as a cost of transportation is addressed later in this preamble.

Section 206.155 Accounting for comparison.

In the proposed rule, MMS required so-called dual accounting only in situations where the lessee (or a person to whom the lessee transferred gas pursuant to a non-arm's-length contract) processes the lessee's gas and, after processing, the residue gas is not sold pursuant to an arm's-length contract.

Some industry commenters stated that the removal of the requirement to perform dual accounting for OCS gas sales where the residue is sold pursuant to an arm's-length contract is a substantial improvement in the regulations which will reduce paperwork for both MMS and lessees.

Another industry commenter endorsed the MMS's decision to abolish "accounting for comparison" (more commonly known as dual accounting) for processed gas except where the lessee has no arm's-length contract for the sale of residue gas or where dictated by lease terms. The commenter had no objection to such value comparison if the gas is processed in a lessee-owned plant, and the residue gas is not sold under an arm's-length contract.

Several industry commenters stated that they believed the continuation of dual accounting for most processed gas in non-arm's-length residue sales is unnecessary. They said that because the residue gas will be valued pursuant to MMS's guidelines in both arm's-length and non-arm's-length situations, the elimination of dual accounting for one and not the other will create substantial administrative effort when both arm's-length and non-arm's-length residue sales occur at the same plant. They also stated that as long as a substantial portion of sales from a plant continue to be arm's-length, which they propose to be set at 25 percent or higher, elimination of the dual accounting requirement for the remainder of that plant will not result in any lesser degree of accuracy in determining market value.

One industry commenter stated that this provision stops short of being totally consistent with other MMS proposals on gas valuation. The commenter said that inasmuch as MMS has determined that there is an acceptable method to value residue gas sales under non-arm's-length or no-contract situations, there is justification for eliminating dual accounting for residue gas valued in accordance with this provision, regardless of the types of sales contracts.

Another industry commenter believes that royalty is due only on the market value of gas, associated products, and oil because they are produced at the wellhead. The commenter stated that the concept of dual accounting under which MMS assesses royalty on either the value of the principal and associated products after processing or the value of the unprocessed gas, whichever is higher, is fundamentally unfair.

Two industry commenters recommended that this paragraph be deleted because dual accounting results in higher value to the lessor than the lessee. They believed that the value should be based upon the value of the unprocessed gas at the lease if the gas is not processed, or upon net realization (gross proceeds minus allowances) if gas is processed, and not the higher of the two. They stated that, because the proposed method is applied after the fact, only the lessee bears any losses. Another commenter stated that it would be unfair and inequitable to require the payment of royalty on a basis higher than the value of the processed gas when the value differential is not because of the negligence or imprudent actions on the part of the lessee but instead represents the current market fluctuations for the gas plant products and residue gas. The commenter also suggested the addition of the word "applicable" before the word allowances in paragraph (a)(1).

MMS Response: To ensure that the Federal and Indian lessors receive the proper royalties, MMS continues to believe that dual accounting must be used where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas and, after processing the gas, the residue gas is not sold pursuant to an arm's-length contract. This provision will encourage the producer under a non-arm's-length contract to obtain the highest price for the gas produced whether that higher price comes from processing the gas or whether it comes from selling the unprocessed gas.

One industry commenter stated that dual accounting imposes an unreasonable accounting burden on both the lessee and the Department and allows the Department to effectively second-guess the lessee each month on the decision to process the gas.

MMS Response: The MMS's current policy is to require dual accounting for all offshore gas processed by the lessee, including affiliates, and for onshore gas processed by the lessee in a lessee-owned plant or onshore gas sold to an affiliate of the lessee and that affiliate processes the gas. Because the requirement for dual accounting adopted in the final rule eliminates some of the current requirements, the accounting and administrative burden should be reduced for both industry and MMS.

Proposed paragraph (b) specifically provided for dual accounting where required by the terms of a Federal or Indian lease. Industry commenters agreed with this provision provided that the lease terms, whether Indian or Federal, specifically require dual accounting.

Three Indian commenters stated that dual accounting should be required for all Indian leases whether specifically stated in the lease terms or not. They stated that this is needed for the Secretary to fulfill his trust responsibilities to the Indians.

MMS Response: The MMS has adopted this provision essentially as proposed.

Section 206.156 Transportation allowances—general.

The MMS received a large number of comments from the States, Indians, and industry on this section of the regulations. Comments on transportation allowances which did not relate to any specific section of the regulations were considered to be addressed to the General section of the transportation regulations, § 206.156. These comments addressed four broad issues—validity issues, adequacy/inadequacy issues, post-production costs and other cost issues, and issues relating to the definition of terms.

1. One issue concerned the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Some State and Indian commenters stated that transportation allowances should only be granted when necessary (1) to market the product, (2) to promote development of the lease, (3) to obtain a higher royalty value, (4) to enhance offshore development, or (5) if the royalty revenue increases enough to offset the allowance. The key word in these comments was "necessary." None of the parties believed that any transportation allowance should be given if it was not necessary. A State representative suggested approving the transportation allowances on the basis of individual cases only if necessary.

One Indian commenter stated that only the reasonable, actual, and necessary transportation costs from a lease boundary to a point of sale should be allowed and the costs should not include any profit or allocated overhead from the regional or home office.

One Indian commenter stated that the regulations should establish transportation allowances as an exception, not as a rule.

Several Indian commenters stated that MMS should not grant any transportation allowances as a deduction against Indian royalties. The commenters opposed the transportation allowance for Indian leases for such reasons as (1) Indian leases do not provide for transportation as a deduction from royalty, and (2) transportation allowances have never been granted for Indian leases.

The Indian commenters emphasized that MMS must take into account its trust responsibility to the Tribes and allottees in preparing valuation regulations. These commenters advised that MMS must protect the Indians' interests.

The MMS received comments from Tribes and State representatives asserting that the royalty interest should be cost-free. These comments all stressed that royalties have always been and should always remain free of costs. All commenters believed that the costs of making lease production marketable, including transportation, are the responsibility of the lessee. A State representative suggested that MMS "* * * keep the door closed on all presale costs. Once it's opened, it's hard to let only the chosen ones in."

MMS Response: Based on Interior Board of Land Appeals decisions, Solicitor opinions, and judicial decisions, it has been DOI policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has specifically ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the transportation allowance regulations being adopted are consistent with past practice and consistent with the Secretary's responsibility to the Indians. The MMS believes generally that royalty should be free of cost. However, values may need to be adjusted for transportation and/or processing to determine value at the lease. The MMS believes that the policy of granting transportation allowances to properly value lease production is appropriate and should continue.

2. Another issue concerned the adequacy or inadequacy of the proposed gas transportation regulations in general. Some commenters believed that the regulations were generally deficient, while others pointed to specific instances where changes should be made to improve their specific applicability. Following is a brief summary of these types of comments.

Some industry and State respondents commented on the flexibility of the regulations. One industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements. Another industry commenter suggested that the regulations should accommodate changes in transportation and marketing. One State representative expressed concern that the regulations do not address new marketing opportunities related to the unbundling of pipeline services and market area gas storage which allow for greater sales levels in higher priced periods.

The MMS received comments from Tribes regarding the relationship between the lease terms and the regulations. One commenter requested that the regulations not be allowed to change the lease terms. Another commenter stated that the regulations should be consistent with the lease terms. A third commenter stated that, where the lease is silent, the regulations should not allow the gross proceeds received under an arm's-length contract to be reduced for transportation costs.

The MMS received comments regarding the effect of transportation allowances on revenues. A State organization stated that MMS should develop simple and concise rules that do not adversely affect Western States' revenues, and which will allow for more effective auditing. One Tribe requested that the royalty rate not be decreased in effect by redefining the rate basis. One local community commenter stated that the proposed regulations should not be issued without assessing the impact on the school or other local subdivision budgets. Five local community commenters opposed the proposals on the grounds that deductions would be taken too liberally, or perhaps royalty payments would be eliminated completely.

One Tribe stated that the regulations should apply only to new leases. One

industry party and one Tribe recommended that a separate set of regulations be developed for Indian lands only.

MMS Response: The MMS believes that the regulations are complete and are sufficiently flexible to apply to the different types of gas transportation arrangements that might arise in the future. MMS is aware of nothing in the transportation allowance regulations that would change the terms of any Indian mineral lease. The MMS agrees that the procedure for determining a transportation allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit transportation allowances has been maintained under the new regulations. The MMS believes that the consideration of transportation costs is necessary to determine the value of lease production at the lease.

3. One broad issue discussed by commenters was the deduction of post-production costs and other costs from royalty payments.

The MMS received many comments concerning the issue of post-production costs as an allowable deduction from royalty. Many industry commenters commented in favor of allowing all post-production costs to be deducted from the royalty portion.

MMS Response: This section of the regulations addresses only transportation allowances. The issue of post-production cost allowances is properly addressed in other sections of the regulations.

4. One issue commented on by several commenters concerns the definition of terms used in the regulations.

Some industry respondents commented that the term "reasonable" should be deleted from this section. One industry concern was that this term will only result in a wide diversity of opinion as to what a reasonable cost is.

One industry representative suggested that the term "actual" should be deleted for clarification purposes.

The MMS received several comments from the States, Indians, and industry suggesting that the term "remote from the lease" should be defined or changed. An industry representative stated that many terms, such as "remote" and "field gathering" beg for definition. This commenter requested that a distinction between "gathering" and "transportation" be delineated, for royalty purposes, and also suggested that the term "remote" should mean anything outside the lease boundary. Two industry commenters identically recommended changing this phrase to "first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance.

The MMS agrees that the term "gathering" should be defined. The definition of "gathering" has been included in § 206.151 and was discussed above. The phrase "remote from the lease" has been deleted from the final rule which uses the phrase "off the lease."

Section 206.156(b)

The MMS received several comments on paragraph (b), proposed as paragraph (c), which requires that transportation costs be allocated among all products transported. The proposed paragraph also provided that no allowance may be taken for transporting products which are not royalty-bearing.

Industry commenters recommended deletion of this paragraph. One industry representative stated that transportation costs represent the rate for moving the aggregate product stream. The industry commenters stated that allocation is an administrative burden and is unfair and inequitable, and it is inequitable to require allocation of transportation costs for the incidental movement of nonroyalty-bearing products.

One industry representative recommended that transportation costs be taken as an aggregate charge against the value of the full product stream.

One industry representative stated that this paragraph adapts an unrealistic transportation deduction exception by not allowing a transportation deduction for nonroyalty-bearing products. According to this commenter, practical realities dictate that nonroyalty-bearing products entrained with gas be transported.

Other industry commenters recommended that allowances be granted for nonroyalty-bearing substances up to 30 percent of the volume of the transported stream.

MMS Response: The MMS does not agree with the commenters' proposal that the cost of transporting nonroyalty-bearing substances should be shared by the lessor in all instances. However, upon review, MMS has recognized that it is appropriate to provide an allowance which includes the costs of transporting certain nonroyalty-bearing substances such as waste products, including water. For example, there may be circumstances where transportation of water along with the royalty-bearing portion of the production is necessary. For other than waste products, the final rule provides, however, that prior MMS approval is required before an allowance may be taken for the costs of transporting non-royalty-bearing substances.

The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would only be burdensome in a few instances where the products being transported are not all in the same physical state.

Section 206.156(c).

Paragraph 206.156(c) was proposed as paragraph (b). The MMS received a large number of comments on this provision which limited the transportation allowance to 50 percent of the value of the product transported. The comments on this paragraph related to one major topic: Whether the limitation should be eliminated or retained.

Industry commenters and trade group representatives stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: (1) If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; (2) The 50-percent limit could impose a serious economic deterrent to the development of frontier areas; (3) The limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; (4) It would be a rare case when a natural gas transportation cost would come close to the proposed 50-percent cap, much less exceed it; and (5) The proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Several commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee.

Many industry commenters and trade groups stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. According to the commenters, this procedure should be applied to all transportation systems, but it would be especially important in the frontier areas. One commenter from industry stated that MMS should not permit roll forwards because it would create paperwork and allow the lessees to use the 50-percent limit permanently.

Industry commenters and trade groups stated that the 50-percent limit could be a disincentive for exploration and for building transportation systems when costs exceeding the cap may not be recovered.

One State representative stated that the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

Several industry commenters suggested that MMS should specify the conditions for which MMS will approve an allowance in excess of 50 percent. Three Indian commenters and one Congressman recommended that the standard should be whether the allowance in excess of 50 percent is in the best interests of the lessor.

MMS Response: The MMS has decided generally to retain the 50-percent limit on transportation in the final rule. For unprocessed gas valued pursuant to § 206.152, the transportation allowance deduction based on a selling arrangement is limited to 50 percent of the value of the unprocessed gas determined in accordance with § 206.152. For processed gas, the transportation allowance for gas plant products or residue gas based on a selling arrangement is limited to 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153. Natural gas liquids are considered one product.

A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. Thus, the 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance based on reasonable actual costs will exceed that limit. In no event may the allowance for any lease product equal 100 percent of the value of that product. MMS received comments that the transportation allowance in excess of 50-percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual, and necessary" is sufficient to protect the lessor's interests.

The MMS is not including in the final rule any specific standard as to when the 50-percent limit may be exceeded. This will require a case-by-case determination.

Section 206.156(d).

The MMS received comments from industry representatives on this paragraph (d), which recommended that MMS should be required to pay interest on overpayments by lessees to the extent permitted by law.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.157 Determination of Transportation Allowances.

Paragraph (a) of the regulations addresses transportation allowances where the lessee has an arm's-length contract for transportation services. The MMS received many comments on this paragraph of the regulations. Although there were comments on a wide variety of subjects, 11 principal issues were addressed: Acceptance of arm's-length transportation agreements; excessive penalty and retroactive approvals; MMS's approval of the transportation allowances; acceptance of transportation reduced prices; status of currently approved allowances; required filing every 12 months; allowance on nonroyalty bearing production; allocation of transportation costs; suggested deletion to regulations; period for filing a proposed allocation; MMS payment of interest on lease overpayments; and clarification of the conversion process.

1. Acceptance of arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Industry commenters supported the proposal to accept arm's-length contract costs as a reasonable transportation allowance. These commenters explained that arm's-length contracts provide an accurate indicator of "reasonable actual costs" because they reflect the true costs to the lessee for transporting production to a sales point downstream of the lease.

Some Tribes expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Tribe stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. One Tribe expressed doubt that there can ever be an arm's-length contract between companies in the gas industry. Another Tribe stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. One Tribe also expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian trade organization stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length contracts (and non-arm's-length contract situations).

MMS Response: The MMS currently uses the payments made by a lessee under an arm's-length transportation agreement as an accurate indicator of reasonable, actual costs. The MMS has determined that payments made under arm's-length contracts are the best available indicator of reasonable, actual costs incurred by the lessee. MMS has added a sentence clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty which would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

2. Disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295.

The MMS received responses from several industry commenters and industry trade groups stating that the disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295 is an excessive penalty for what was considered by the commenters to be such a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4295 before the Form MMS–2014 is filed.

Many commenters stated that the regulations should have a provision allowing transportation allowances on a retroactive basis because a lessee does not always have the details on transportation worked out before production begins. Thus, it sometimes is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing current oil and gas markets.

It was suggested that MMS should consider a monetary fine for failure to file, or disallow the deduction for any period until Form MMS–4295 is filed. The lessee would not lose a deduction.

but would be precluded from taking the deduction until the proper forms are submitted to MMS for the periods covered.

MMS Response: After careful consideration of the comments, MMS has determined that the reporting penalties included in the proposed regulations were excessive. The MMS has also considered the comments on retroactive approvals and has revised the final regulations to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, paragraph (d) of the final rules provides that if a lessee deducts a transportation allowance on a Form MMS–2014 without complying with the requirements of this section, the lessee will owe interest on the amount of the deductions until the date proper forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed because of the limitation on retroactivity.

3. The MMS's preapproval of transportation allowances.

The proposed rule provided that prior MMS approval was not required before a lessee could deduct a transportation allowance based on an arm's-length contract. Representatives of trade organizations, oil and gas companies, and one business expressed approval of the self-implementing concept for transportation allowance regulations. This was seen as a method of relieving a considerable administrative burden on both industry and MMS. Tribes disagreed with the self-implementing nature of the regulations because it was seen as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One Tribe stated that MMS should preapprove all transportation allowances and should do so only on a showing of necessity to promote development or a showing that a higher value could be obtained for the gas at a point of sale away from the lease. It was also pointed out by this commenter that neither the MMS nor Indian Tribes have the resources to audit all leases and, if these allowances are not monitored "up front," they will never be audited.

MMS Response: The MMS considers arm's-length contracts a valid indicator of reasonable, actual costs. Thus, it is not necessary to preapprove transportation allowances based on such contracts. The MMS will monitor the transportation allowances, and they are subject to later audit.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations.

Representatives of oil and gas companies and trade organizations commented that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations. It was believed that this policy would reduce the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was considered a potential technique to exceed the 50-percent limitation provisions of the regulation.

MMS Response: The MMS has determined that the regulations should be revised to provide that transportation factors which reduce arm's-length sales contract or posted prices are to be considered as reductions in value rather than transportation allowances. This provision is included in paragraph (a)(5). However, so as not to provide a means of avoiding the 50-percent limit on transportation allowances, the final rules provide that the transportation factor may not exceed 50 percent of the base price of the product without MMS's approval.

5. Should current approved transportation allowances remain in effect until they expire?

Industry respondents stated that the transportation allowance reported on Form MMS–4295 should continue until the applicable contract or rate terminates, or is modified or amended. State respondents stated that, because some allowances are currently being taken without specific, written MMS approval, only those with documented approval should be allowed to continue without the submission of Form MMS–4295.

MMS Response: The MMS has revised the regulations in paragraphs (c)(1)(v) and (c)(2)(v) to provide that any transportation allowances in effect on the date these regulations become effective will be allowed to continue until such allowances terminate subject to later audit. However, MMS is limiting this provision only to those allowances that have written MMS approval. Because the regulations are being revised to remove any prior approval by MMS before a deduction may be taken, and the submission of Form MMS–4295 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by having all allowances to be deducted under the new rules documented as of the effective date.

6. Should MMS require the filing of Form MMS–4295 every 12 months?

Industry representatives stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred, and there is no apparent reason for MMS to require the filing of Form MMS–4295 every 12 months. One industry representative recommended that this section be deleted.

MMS Response: The MMS requires the annual filing of Form MMS–4295 for use as a control and monitoring mechanism even when there is no change in the applicable contract or rate.

7. Should MMS allow transportation allowances for production which is not royalty-bearing.

Several industry representatives suggested deleting this section and proposed that transportation costs be taken as an aggregate charge against the value of lease production or that MMS cover cost allocation methodology in the MMS Royalty Management Program Oil and Gas Payor Handbook. One industry respondent recommended deleting any references concerning the disallowance for transporting lease production which is not royalty-bearing.

MMS Response: As discussed earlier, MMS will allow transportation allowances that include costs of transporting certain production which is not royalty-bearing, such as waste products.

8. Allocation of a cost applicable to more than one product.

One industry representative stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on relative volume. One business representative suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

Another industry representative recommended that allocation be based on the weighted average value of each product having a commercial value in that area. According to this commenter, transportation costs should not be allocated to by-products or products with no commercial value.

An industry representative suggested using an allocation procedure only when substantial volumes of nonroyalty-bearing products are being transported because of the considerable costs and reporting burdens involved in allocating costs.

MMS Response: The MMS has added a new paragraph which provides that, upon request by the lessee, MMS will approve the allocation of costs on the basis of the values of the products transported unless such allocation method is not consistent with the purposes of the regulations in Part 206. In situations involving the transportation of both gaseous and liquid products, it is difficult for MMS to provide guidance on acceptable methods of allocation because of the many different circumstances that exist. The MMS believes it would be advantageous to have the lessee submit an allocation proposal to MMS in these situations.

9. Should MMS extend the period in which to submit a proposed allocation method?

Representatives from industry suggested periods of 90–180 days, instead of the proposed 60-day period, to submit a proposed allocation method where an arm's-length contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

Representatives from oil and gas companies and one trade organization stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload burden, and a more reasonable provision of time would be from 90 to 180 days.

MMS Response: The MMS has modified § 206.157 (a)(3) of the final rule to provide a 3-month period.

10. Should MMS pay interest on lease overpayments?

One industry commenter stated that MMS should pay interest on overpayments consistent with statutory authority.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

11. Clarification of the conversion process.

Two respondents from the oil and gas industry commented that proposed paragraph (a)(5), concerning the conversion of payment to a dollar-value equivalent, should not be adopted because it is too complicated. If it is retained, it should be clarified with guidelines.

MMS Response: The value of production upon which royalty is due is reported to MMS as a dollar value; therefore, MMS believes that any deduction from that value when determining the royalty due also must be expressed as a dollar value. The MMS does not consider the conversion to a dollar-value equivalent to be complicated. This requirement is included in § 206.157(a)(4) of the final rules.

Paragraph (b) establishes the procedures for claiming a transportation allowance where the lessee has a non-arm's-length transportation contract or has no contract. The comments received under this section addressed eight principal issues: Acceptance of State or FERC tariffs, use of the benchmark system, penalties, prior approval, allowable costs, rate of return, retaining Alternatives 1 and/or 2, and allocation of costs.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Many industry commenters and trade groups stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should rely on the expertise of FERC and State agencies that set pipeline tariffs to determine fair and reasonable transportation charges. Several industry representatives stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS.

MMS Response: After careful consideration, MMS has decided that generally the fairest and best way to determine transportation allowances for non-arm's-length or no-contract situations is to allow actual, reasonable costs plus an acceptable rate of return on the lessee's undepreciated capital investment. However, MMS has concluded that where a lessee has a tariff approved by FERC or a state regulatory agency, it is unnecessarily burdensome and duplicative to recompute costs. Therefore, MMS will recognize FERC tariffs (for both Federal and Indian leases) and tariffs approved by a State regulatory agency (for Federal leases) as a valid cost in computing a transportation allowance when it is an actual (out-of-pocket) expense pursuant to an arm's-length transportation contract. Existence of such tariffs for a transportation system also will authorize MMS to grant an exception to the requirement to use actual costs for non-arm's-length or no-contract situations. See discussion below.

2. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Several industry commenters and trade groups stated that MMS should allow the market value of the transportation service based on a benchmark system.

For those commenters recommending a benchmark system for determining the transportation allowance, the commenters suggested that MMS allow the lessee the market value of the transportation service based on a benchmark system featuring arm's-length contracts and tariffs and cost accounting to be used only as a last resort. It was suggested that this procedure was in keeping with the market-based concept and objective of bringing certainty to the regulations.

MMS Response: It is MMS's past and present practice generally to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" or any other benchmark criterion may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee in order to obtain State or county land access, such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base gas transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.157(b)(5) will provide an exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS will grant the exception only if the lessee has a tariff for the system approved by FERC (for both Federal and Indian leases) or a State regulatory agency (for Federal leases). However, the rules contain protection from unreasonably high tariffs. The MMS will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines owned by the lessee or others, providing similar transportation services in that area. If there are no such arm's-length transportation charges to use for comparison, MMS will deny the exception request if no FERC or State regulatory agency cost analysis exists and the FERC or State regulatory agency has declined to investigate pursuant to MMS timely objections upon filing, and the tariff significantly exceeds the lessee's actual costs for transportation as determined under the regulations in subsection (b)(2).

3. Should a penalty be imposed for late submission of the Form MMS–4295?

One industry commenter objected to the penalty of disallowing a transportation allowance for failure to file the applicable Form MMS–4295.

One industry spokesperson stated that the lessee should be assessed a fee of $10.00 per day for each day the Form MMS–4295 is not received.

One industry commenter suggested 120 days as a reasonable time in which to submit a completed page one of Form MMS–4295.

MMS Response: MMS has determined that the reporting penalties included in the proposed rule were excessive. MMS also has considered the comments on retroactive approvals and has revised the final regulations in § 206.157(b)(1) to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that the Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, (d) provides an interest assessment for taking a transportation allowance without complying with the reporting requirements of the regulations, as well as a requirement that a lessee repay the amount of any deduction disallowed because of the limitation on retroactivity.

4. Should MMS require prior approval for allowances?

Several industry commenters and one trade group commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed.

States and Indians stated that prior approval of allowances should be required. Because of the numbers of selling arrangements involving costs, these commenters were concerned that as a practical matter MMS will not question or audit the majority of deductions.

One Indian Tribe commenter stated that prior approval should be required before overhead expenses and depreciation are allowed; otherwise, transportation allowances will be subject to abuse and Indian royalties will suffer.

One Indian Tribe representative stated it was not proper to allow depreciation, unless prior approval and prior audit is required.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered preapproval and preaudit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exceptional processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4295. Therefore, with limited exceptions, no prior MMS approval will be required. However, the lessee will be required to file a completed Form MMS–4295 before taking the allowance.

5. Should costs other than actual, reasonable costs be considered in calculating the transportation allowance?

Industry commenters stated that State and Federal income taxes are legitimate expense items and should be allowed.

One industry spokesperson recommended that dismantling costs be included in the calculation of transportation allowances because this is a real cost of doing business.

One trade group representative recommended that MMS reformulate the transportation provisions to allow a firm or entity providing necessary transportation services a complete recovery of costs plus an acceptable profit for assuming the risks involved in providing transportation service.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments.

6. What rate of return should be used to calculate return on capital investment?

Industry commenters, trade groups, private businesses, one city mayor, and Indian Tribes stated that the use of the Moody Aaa corporate bond rate proposed by MMS in paragraph (b) is inequitable for the rate of return. Following are some of the reasons provided by the respondents for this viewpoint:

a. The prime rate represents a nearly risk-free return on short-term borrowing.

b. The use of Moody's Aaa bond rate assumes minimal risk and 100-percent debt financing.

c. For fairness, a rate of return must consider both cost of credit and equity capital.

d. A rate of return based solely on a prime lending rate would not make the investment in the transportation system a competitive project when compared with other projects.

e. The choice of Moody's Aaa rated debt is very conservative and arbitrary.

Industry commentees and trade groups recommended various alternatives to the Moody Aaa corporate bond rate:

a. A rate equal to 150 percent of the 20-year T-bill rate.

b. The prime rate plus 5 percent.

c. One and onehalf times the average 30-year T-bill rate.

d. The 20-year corporate industrial bond rated Baa.

e. A yearly average of the monthly rate for 20-year T-bills.

f. The 20-year corporate industrial bond rated Baa plus 9 percentage points.

g. One and one-half times the prime rate.

h. The FERC tariff rate of return.

i. The before-tax rate of return of double the Moody's Aaa bond rate.

j. A specific rate of return should be determined for each lessee.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to build a transportation system. The MMS is not persuaded that a rate of return should include a profitability factor as a part of the transportation allowance. The MMS has examined the use of the corporate bond rate very carefully and has concluded that the use of such a rate would be feasible and would be appropriate for use as a rate of return considering the risks associated with the transportation of gas and gas plant products. There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move gas that has already been discovered is a much different risk (and a risk that can reasonably be insured against) than the risk associated with the drilling of a well. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, Standard and Poor's bond rate, and the other rates suggested by the commenters. The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined

that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.157 (b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments received on this issue, including comments on both the draft final rules that the BBB bond rate is not much better than the first proposal, MMS will issue a notice of proposed rulemaking to consider further modifications to this section.

7. Should MMS retain the provisions of Alternative 1 and/or Alternative 2?

Some industry commenters recommended that MMS retain both alternatives of depreciation and return on initial depreciable capital investment. One industry commenter and one trade group stated that both alternatives should be included in any cost-based methodology for determination of a transportation allowance. One industry commenter recommended that both methods be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments.

Two industry commenters and one trade group stated that MMS should retain Alternative 1. One industry spokesperson sought clarification on Alternative 1 to ensure both depreciation and return on depreciated investments are allowed.

One trade group representative endorsed Alternative 2, provided that its use is an option for the lessee. One industry commenter supported Alternative 2, suggesting that the initial capital investment should be the basis for depreciation of any newly acquired transmission facility or gas plant. One trade group representative stated that Alternative 2 should be applicable to instances where a lessee has purchased a transportation system that has previously been depreciated to some extent. One private business representative stated that Alternative 2 should be available without the limitation on new or newly acquired transportation systems because it provides a viable substitute where original cost records no longer exist.

One industry commenter recommended not adopting Alternative 2 because it provides a significantly lower rate of return to the lessee.

Two commenters stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that if the intention is to provide the lessee with a rate of return for his invested capital, the lessee should not be penalized by a diminishing return caused by tying the return into a depreciation option. One industry representative stated that, based on the current Moody's bond rate, Alternative 2 should only be advantageous for projects with over 30 years of life.

One industry commenter stated an inequity could result in the case of transferring transportation facilities from one party to another because it may be impossible to allocate specific capital costs to particular segments for purposes of determining the depreciation cost allowance and the return on undepreciated capital investment cost allowances. One industry commenter stated that MMS should accept a depreciation method recognized by FERC whether or not the method is one of the two suggested. According to the commenter, this would eliminate the administrative burden of maintaining another set of depreciation records. One Federal agency commenter suggested there be no restriction on the depreciation method used.

Several industry commenters stated that disallowing recapitalization is inequitable. One industry representative stated that the rule, as proposed, prohibits a new owner from recovering his costs because those costs would be based on the present market value of the pipeline. One industry commenter stated that it would be administratively burdensome to disallow recapitalization because it would require the lessee to maintain two separate sets of books on depreciation, one for normal business and one for royalty purposes. One industry representative stated that prohibiting establishment of a new capital cost based upon the sale or transfer of a pipeline is inconsistent with both the philosophy of arm's-length transactions and of approving an allowance based on actual costs.

Two industry commenters stated that the regulation should be more specific on how the lessee must adjust for continuing changes in reserves. For example, the continued development of different unitized depths in complex geologic areas or in areas with multiple leases will result in the continued redetermination of reserves.

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 and concluded that both alternatives should be retained. However, under the final rule, § 206.157(b)(2)(iv)(B), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing gas only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The use of reserve life as a depreciation method is at the election of the lessee. If the method does not serve the lessee's needs, then a different depreciation method may be chosen. If the reserve life method of depreciation is chosen, it would be entirely appropriate for the lessee to adjust the reserve life when changes in reserves occur.

The MMS has determined that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee cannot be altered by a change in ownership.

8. Should costs be allocated among lease products?

Two industry commenters and one trade group suggested deletion of the sections requiring allocation of costs (§ 206.157 (b)(3) and (b)(4) of the final rule). Two industry representatives stated that requiring allocation of transportation costs is an unjustified expense to the lessee and a burdensome administrative task for both industry and MMS.

One industry commenter stated that allocation of costs among products is at odds with the basic valuation equation.

MMS Response: MMS believes that the cost to transport a product should correspond with the product transported. MMS recognizes that accountability is difficult and allocation may be a burdensome task but there is no acceptable way to avoid this responsibility.

Section 206.157(c).

The MMS received many comments from industry, States, and Indians on paragraph (c), which establishes reporting requirements for transportation allowances.

The comments received addressed the following issues: General comments pertaining to the requirement to file for allowances, comments on the initial 90-day submittal period, the subsequent annual requirement to submit Form MMS–4295, Gas Transportation

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Allowance Report, establishment of alternate reporting dates, and miscellaneous comments.

1. The requirement to submit a Form MMS–4295 in order to claim a transportation allowance.

Two industry commenters commend the MMS for proposing an allowance that does not require prior approval. One industry commenter and one trade group disagree with proposed Form MMS–4295 because it requires too much information and puts a burden on industry. One trade group representative stated that MMS should substitute a form entitled "Intent to Take a Transportation Allowance" in lieu of the complicated annual filings proposed. One State representative stated that the reporting scheme would demand a major commitment of resources and would be difficult to administer. One trade group commenter stated that submission of Form MMS–4295 will greatly increase the paperwork of both industry and MMS. Two industry commenters stated that, without proper public review and comment, they cannot endorse the use of Form MMS–4295. Ten commenters—seven industry and three trade groups—stated that provision should be made for allowances currently in effect on the effective date of the regulations to continue until the allowance expires to avoid an undue administrative burden on MMS and lessees. Some commenters also pointed out that flexibility is needed to deal with special circumstances such as spot sales contracts.

MMS Response: Form MMS–4295 is required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the preapproval of the allowances. The MMS has made the information on Form MMS–4295 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The filing of a Form MMS–4295 equates to an "intent to deduct transportation."

For arm's-length contracts, paragraph (c)(1) requires the filing only of page one of the Form MMS–4295. Pursuant to paragraph (c)(2), for most non-arm's-length contracts, the lessee must submit the entire form. Lessees who receive an exception under subsection (b)(5) and are authorized to use their FERC tariff will be required to file only the first page of Form MMS–4295. See §§ 206.157 (c)(2)(i) and (c)(2)(viii).

For transportation allowances in effect on the effective date of these rules (which includes only those approvals from MMS which are in writing), no form needs to be filed until the allowance terminates. See § 206.157 (c)(1)(v) and (c)(2)(v). These continued allowances will be subject to audit.

The MMS has also included in paragraphs (c)(1)(vi) and (c)(2)(vii) of this section authority to establish reporting requirements different from those in the regulations where necessary to accommodate special circumstances.

2. Requirement to file a Form MMS–4295 within 90 days after the end of the reporting period.

One industry commenter stated that a 120-day filing period should be permitted for filing Form MMS–4295 to ease the administrative burden. This commenter suggested that if the form is not received within the prescribed 120 days, the lessee could be assessed a fee of $10.00 per day for each day the form is not received. One industry representative suggested that a minimum 180-day conversion should be allowed from the date of publication of the final regulations.

One trade group representative agreed that a 12-month term should be endorsed for both onshore and offshore allowances. One industry representative recommended that allowances be based on data from a full calendar year and be reported to MMS by April 1 for the preceding year. Nine commenters, seven industry and two trade groups, stated that an annual reporting request is unduly burdensome and that lessees should only be required to file Form MMS–4295 when there is a change in the allowance amount.

Industry representatives stated that failure to file a completed Form MMS–4295 should not result in a denial of allowances because this constitutes a substantial penalty.

One industry spokesperson stated that to ease MMS's workload, each lessee should be assigned a particular due date for filing all forms. One Indian trade group was concerned over the provision establishing different reporting dates from those specified in order to provide more effective administration.

One industry commenter on the second draft final rule stated that a 90-day filing deadline is unacceptable.

MMS Response: The final regulations in § 206.157(c)(1)(iii) and (c)(2)(iii) give the lessee 3 months after the end of the previous reporting period to file the required forms. The lessee will continue to use the previous allowance during that three-month period. Also, as described earlier, the final regulations allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS. Therefore, even if the lessee is not able to timely file the Form MMS–4295, the lessee could file the Form MMS–4295 and claim the transportation allowance on a corrected Form MMS2014 at a later date.

The MMS concurs with a 12-month term and the final regulations require that a Form MMS–4295 will be filed on the basis of a calendar year.

3. Miscellaneous comments received.

One industry representative stated that MMS should continue its policy of not requiring reporting or approval of reduction in sales prices which reflect transportation. One industry commenter recommended that deductions taken as an offset against price should be accepted by MMS without the necessity of filing Form MMS–4295.

MMS Response: In situations where the purchaser is reducing the contract price for a transportation cost and the lessee is incurring no out-of-pocket expense, a Form MMS–4295 is not required. In these situations, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the gas, the reduction in price for the transportation costs past the point of sale would be considered. As explained above, MMS has placed some limits on the reduction before MMS approval is required.

Section 206.157(d).

MMS has added a new § 206.157(d) to the final regulations. This paragraph requires a lessee that deducts a transportation allowance from its royalty payments before complying with the requirements of this paragraph (i.e. filing the proper forms) to pay interest from the date it improperly took the deduction until the form is filed. As noted above, pursuant to paragraph (c), the lessee also will be required to pay back any allowance deducted more than 3 months prior to the first day of the month the proper forms are filed, plus interest.

Section 206.157(e).

This section was proposed as paragraph (d) and provides an adjustment procedure where the estimated allowance differs from the actual allowance.

Industry representatives commented that the MMS proposal for handling interest payments is unfair, and stated that "It is equitable that, if the lessee must pay any difference in royalty owed plus interest, MMS should also pay any difference plus interest statutorily authorized."

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Several industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would relieve the immense administrative burden on MMS and industry. One oil and gas company recommended that actual data from one period be used as the allowance for the following period, thus requiring no adjustments.

MMS Response: The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's allowance, but determined that such procedures could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. Consequently, MMS has decided to retain the estimated and actual cost procedure.

Two oil and gas companies commented that refunds for estimates tendered in excess of actual costs should not be classified as refunds of a royalty payment under Section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line item adjustments not subject to the refund process. It was the firms' position that the OCS Lands Act, Section 10, does not require requests for refunds when estimated costs are less than actual costs and stated that the concept of estimate versus payment is clearly discernible. "Payment" is defined as a discharge of indebtedness, while "estimate" is a rough or approximate calculation, not an overpayment.

One oil and gas company commented that the current extensive review and audit process is causing lessees to lose the time value of money in the refunds which are due them under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful, and it was suggested that MMS consider transportation allowance adjustments to be exceptions to the refund requirements. Overpayments could then be recovered by lineitem adjustments on Form MMS–2014.

Two oil and gas companies strongly emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with Section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden for industry and the MMS.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is reviewing the issue and will provide guidance to lessees.

Three oil and gas companies and one trade organization representative rejected using prior year actual costs for the current reporting period, stating that it automatically requires retroactive adjustment. They recommend that lessees be allowed to use forecast rates based on their knowledge and experience with the operations. Three oil and gas companies proposed that MMS establish an allowable range and not require retroactive adjustments if performance is within the allowable range.

One oil and gas company recommended using market-based allowances, requiring a single entry and resulting in fewer adjustments and fewer transportation records to be reviewed. One oil and gas company recommended that, to reduce costs, adjustments should be made by a single entry each year, not monthly.

MMS Response: The MMS was unable to develop an acceptable accounting methodology that would eliminate retroactive adjustments of prior period tentative transportation allowances for non-arm's-length and no-contract situations. The final regulations do, however, permit a lessee to adjust its estimates in the succeeding period based on forecasted rates. Moreover, because MMS now will accept FERC tariffs for most non-arm's-length transportation situations where they exist, fewer adjustments will be necessary because fewer lessees will be required to use the actual cost methodology.

Section 206.157(f).

Paragraph (f) of this section was proposed as paragraph (e) and, as proposed, provided that no cost is allowed for transportation which results from payments for actual or theoretical losses. The MMS received many different comments on this paragraph from industry, trade groups, and one U.S. Senator and an Indian tribal organization. Generally, the commenters stated that line losses are actual costs of doing business, should be allowable, and that this paragraph of the regulations should be deleted. The Indian commenter, however, said such deductions are not justifiable.

Industry commenters and the U.S. Senator commented that line losses are actual transportation costs which should be allowed by MMS. One industry commenter stated that line losses occur beyond the control of the lessee and are practical and legitimate occurrences. Another industry commenter stated that such allowances are real transportation costs borne by the lessee. Seven industry commenters stated that MMS should allow line losses not attributable to negligence.

Three commenters-two industry and one trade group representative—commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One industry commenter stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff because the losses are part of the total cost of the transportation arrangement. One industry representative stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance. Other commenters recommended deletion of this paragraph.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. Because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length and no-contract situations. However, the final rule provides that costs associated with payments for losses under arm's-length transportation agreements should be allowed because the payment is an out-of-pocket expense to the lessee. Also, the final rule provides that when a tariff approved by FERC or a State regulatory agency is authorized to be used by the lessee as its transportation allowance, any component of that tariff representing such losses will be allowed.

Section 206.157(g).

The MMS received comments on § 206.157(g), which was proposed as paragraph (f). This paragraph allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back method.

The industry respondents stated that use of cost-based transportation allowances is inequitable when using net-back valuation because actual costs incurred should be recognized. According to these comments, if MMS collects royalty on the enhanced downstream value, MMS should bear its share of actual costs incurred to move the hydrocarbon for sale downstream.

MMS Response: The MMS remains convinced that the cost-based allowance procedure for determining

gas transportation allowances is appropriate for determining value under a net-back procedure. If there is an applicable tariff, upon application, that could be used instead.

Section 206.158 Processing allowances—general.

The processing allowance regulations are almost the same as the transportation allowance regulations. As expected, therefore, most of the comments were the same. Because responding to the same comments and explaining the same regulatory section is duplicative and unnecessary, in this section MMS generally will respond only to comments and explain regulatory provisions which are unique to gas processing allowances.

Section 206.158(a).

The MMS received many different comments from Indians, industry, and States, as well as from some other persons, on paragraph (a) of this section of the regulations, which generally provide for a processing allowance. Comments on gas processing allowances, which did not relate to any specific section of the regulations, are addressed in this paragraph of the gas processing regulations.

One industry representative cautioned that, although the final processing regulations must contain certainty, they should also be flexible enough to encourage innovative marketing of the gas plant products. Similarly, one State agency said that the proposed regulations must reflect the changing nature of industry, serve to encourage rather than discourage new projects, and allow existing operations to identify new markets.

MMS Response: The MMS believes that the regulations are complete and sufficiently flexible to accommodate different types of gas processing arrangements that might arise in the future. The MMS further believes that the regulations are reasonable. To not discourage new development, MMS has provided an exception process whereby a lessee may be able to justify a processing allowance in excess of the 66⅔-percent limitation and has provided the lessee with broad latitude to deduct processing costs under arm's-length contracts. For processing under non-arm's-length and no-contract situations, MMS has provided the lessee with several alternatives for depreciation and return on investment. MMS also has provided for an extraordinary cost allowance for processing gas production. The MMS does not believe that the objectives of certainty and flexibility should replace the Federal Government's responsibility to properly account for the removal of minerals from a Federal or Indian lease.

One industry commenter and one industry trade organization thought that this section should incorporate a provision to include the deduction of fractionation costs.

One industry commenter and one industry trade representative recommended that processing allowances continue to be granted on the basis of percentage of value.

MMS Response: The regulations, as adopted, accommodate fractionation costs as part of the processing allowance cost. Therefore, a specific provision is not necessary. The MMS has determined that an allowance based on a cost per unit is more equitable and will result in less difference between actual and estimated allowances than an allowance based on percentage, especially in times of rapid price fluctuations.

Section 206.158(b).

Paragraph (b) of this section requires allocation of processing costs among gas plant products. Comments were received principally from industry.

There was general opposition from industry to the allocation of processing allowances by gas plant product. They recommended either to delete this paragraph or to rewrite it in such a manner as to allow all processing costs in full to be deducted from the value of both the residue gas and gas plant products. One industry representative proposed a change which would allow the allocation of processing costs to both the value of gas plant products and residue gas.

One industry representative stated that the cost of processing should not be allocated to one product when it benefits all products. One industry trade group stated that the allocation of costs among products is contrary to the valuation principle that the value of production should equal the sum of all gross proceeds less the sum of all post-production costs.

Two industry representatives plus one industry trade group recommended that, if allocation of costs are necessary, allocation should be based on percentage of sales rather than on a cost per unit; that is, based on value rather than volume. Two industry representatives and one trade group thought that the allocation of costs presents an administrative burden for both industry and MMS.

Two industry commenters recommended the addition of the phrase "(fractionated or unfractionated)" between the words "liquids" and "shall" in the last sentence of this subsection.

MMS Response: It has been a longstanding MMS policy and regulatory requirement that no processing allowance be granted against the value of residue gas. Among the reasons for this is that processing is viewed as necessary to place the residue gas in marketable condition and that processing does not generally enhance the value of residue gas. Thus, generally no processing allowance is authorized against the value of the residue gas in the final rule. The MMS believes that allocating processing costs based on relative volume rather than on relative value is more equitable because the costs of extracting any given product may be unrelated to that product's value. Also, MMS will not include the addition of the phrase "(fractionated or unfractionated)" in the last sentence because it does not clarify the meaning of the sentence.

Section 206.158(c).

As proposed, paragraph (c) of this section generally limited the processing allowance deduction to two-thirds of the value of each gas plant product. The MMS received a large number of comments on this paragraph.

Most industry-related commenters expressed their objection to the 66⅔-percent limitation on the processing allowance, and the exclusion of residue gas value from the allowance determination. Other commenters supported this position.

One State representative suggested that the limitation creates a floor and feared that a 66⅔-percent processing allowance will be taken as an automatic deduction.

An industry trade organization commented that in processing a sour, low quality gas stream, the 66⅔-percent limitation does not reflect actual costs to industry. This trade group plus four industry commenters stated that in high-cost or lowquality areas, the limitation will discourage development.

Many industry commenters recommended, in lieu of a strict limitation, that the 66 2/3-percent level be a threshold above which an allowance will be granted according to specific criteria. For example, one industry commenter recommended a higher allowance upon MMS approval. Another industry commenter requested that a higher allowance be approved on the basis of "national interest" criteria.

Some industry commenters stated that MMS should allow lessees to carry forward processing costs otherwise allowable (except for the 66⅔-percent limitation) from the current year to subsequent years.

The MMS also received several comments from parties who supported the proposed 66⅔-percent limitation on the processing allowance, including two oil producers, one interest owner, one State representative, and one State and Tribal organization. Another oil producer added that it opposed increasing the limitation. One interest owner stated that the limitation should be lowered.

An additional comment from a State and Tribal organization stated that it favors the exclusion of residue gas from the allowance determination. An Indian trade group stated its objection to the Director approving an allowance in excess of 66⅔-percent.

Six parties (one oil producer, one State representative, one interest owner, two industry parties, and one State and Tribal organization) stated their opposition to a "carry forward" provision for costs exceeding the 66⅔-percent limitation. One industry commenter stated that such a process would be "impractical."

One industry commenter suggested that the 66⅔-percent limitation should not apply to arm's-length processing contracts. It also was recommended that the 66⅔-percent calculation should be done before deducting transportation allowances.

Two industry commenters and three industry groups recommended that the rules should specify the conditions for which an allowance in excess of two-thirds would be approved.

MMS Response: The MMS has devoted considerable time and effort in evaluating the 66⅔-percent limitation on the processing allowance, and the exclusion of the value of residue gas from the allowance computation. Section 206.158(c)(2) of the final rule provides that the processing allowance deduction on the basis of an individual product cannot exceed 66⅔-percent of the value of each gas plant product at the point of sale determined in accordance with § 206.153. No processing allowance may be taken against the value of the residue gas, except for certain extraordinary allowances specifically approved by MMS in accordance with paragraph (d), discussed below.

The 66⅔-percent limit is to be applied against the value of the product already reduced by any transportation allowance for transportation costs incurred after the gas is processed. Transportation allowances related to transportation from the field to the processing plant would not be deducted before applying the 66⅔-percent limitation.

The MMS has retained in the final rule a procedure whereby the lessee may request an exception from the 66⅔-percent limitation. The lessee must demonstrate that any costs in excess of the limitation are reasonable, actual, and necessary. This procedure will allow MMS to monitor more closely those situations where the allowance based on reasonable, actual costs will be in excess of the 66⅔-percent limitations. Under no circumstances may the processing allowance equal 100 percent of the value of any product. As with transportation allowances, many commenters suggested that any additional allowance must be in the "best interests of the lessor." As stated earlier, MMS believes that this standard is too subjective and that the standard included in the rules will protect the lessors' interests.

The MMS will not include any specific standards in the rule for when the two thirds limit may be exceeded. This will require case-by-case review.

Industry respondents and industry trade groups stated their objection to the requirement regarding substitution of other products for residue gas in situations where residue gas is absent. One industry trade group stated that, in this situation, the lessee should be able to deduct the processing costs against the sum of all marketable products. Industry commenters recommended that this sentence be deleted. Industry commenters were also concerned that this paragraph would prohibit an allowance from being taken against all gas plant products if the residue gas was returned to the lease for reinjection or other uses.

MMS Response: The MMS did not intend, where residue gas was returned to the lease, that this provision would require the lessee to designate at least one gas plant product as being placed in marketable condition as a result of processing. The provision was intended to cover those situations where no residue gas was produced at the plant at all owing to the absence of, or very low levels of, hydrocarbons in the gas when produced from the well. However, because the extraordinary processing allowance procedure discussed below would most likely be applicable in these situations, MMS has modified the final rule to eliminate the requirement that the lessee designate a gas plant product against which no allowance would be granted. Instead, the final rule provides that MMS may designate a gas plant product against which no allowance would be applied if circumstances warrant.

Section 206.158(d)

The MMS received many comments on paragraph (d) of this section, which provides generally that no processing cost deduction will be allowed for the costs of placing lease production in marketable condition. Comments were received from industry, Indian Tribes, local businesses, a town mayor, a Federal agency, and individuals.

The major issue raised in this paragraph was whether or not costs associated with placing a product in marketable condition, generally referred to by the commenters as post-production costs, should be deductible from royalty.

All industry-related commenters, the local businesses, and one town mayor supported the concept that all post-production costs be allowable deductions from royalty.

Industry commenters expressed their view that certain post-production costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. One industry commenter stated that ". . . other off-lease post-production costs and certain 'extraordinary' on-lease costs" should be deductible.

MMS Response: MMS already has addressed the post-production cost issue with regard to other sections of these regulations. Post-production costs, excluding those for transportation and processing, are not allowable deductions from royalty. Post-production costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor. These costs are not considered part of the processing costs and, therefore, are not deductible in a processing allowance.

MMS has included in the final regulations a new § 206.158(d)(2) which was included in the second draft final rule. Pursuant to this paragraph, if a lessee incurs extraordinary costs for processing gas production, it may apply to MMS for an extra allowance above that to which it otherwise would be entitled pursuant to these regulations. The allowance is discretionary with MMS, but may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions, extraordinary, unusual, or unconventional. Under this paragraph, an allowance could be provided against the value of the residue gas. The MMS

has removed any reference to "unique" processing operations. It is not MMS's intent to limit the allowance to one-of-a-kind plants. MMS also has included flexibility for longer approval periods.

Section 206.159. Determination of processing allowances.

Section 206.159(a).

The MMS received a large number of comments from States, Indians, and industry. Again, most of the issues raised in the comments were the same as for the corresponding section of the transportation allowance regulations and will not be repeated.

Two industry commenters responded in favor of the provision in § 206.159(a)(1) whereby MMS would accept costs incurred under arm's-length processing agreements as the reasonable, actual costs incurred by the lessee because they thought these arrangements reflect true processing costs experienced by the lessee. One Indian Tribal trade group opposed this proposal because of the concern that, under these procedures, the Indian lessor's royalty could be reduced to virtually nothing.

One industry commenter suggested changing section (a)(1) to read "If a lessee has an arm's-length contract or a negotiated Products Purchase Agreement (PPA) to process gas, the processing cost deduction shall be the reasonable actual cost incurred * * *."

MMS Response: The MMS believes that processing costs incurred by a lessee under arm's-length agreements represent actual costs to the lessee and should be appropriate as a processing allowance. The suggestion that a negotiated Products Purchase Agreement be recognized as properly defining the actual cost incurred is not adopted. A Products Purchase Agreement may not be an arm's-length contract. However, where the lessee's arm's-length processing agreement specifies that the costs are to be those contained in the Products Purchase Agreement, then those costs would be acceptable owing to the arm's-length processing agreement of the lessee. MMS has added a provision clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. Under the provisions of these regulations, the lessor's royalty cannot be reduced to zero. Also, as with transportation allowances, MMS has added two paragraphs which provide that MMS will treat as non-arm's-length any processing contracts which reflect more than the consideration actually transferred from the lessee to the processor (i.e., the cost is inflated) or where there is misconduct by or between the contracting parties or the lessee otherwise breaches its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor.

With regard to the requirement of § 206.159(a)(2) that processing costs be allocated among all products, one industry commenter was critical of the proposal to treat all NGL's (but no other plant products) as one product. The commenter thought this was discriminatory toward the lessees in favor of processors of wet gas, not only because some lessees typically will be able to recover total processing costs from the value of the NGL's, but if other products are produced, costs would need to be allocated to them, with the possibility that some of these costs would not be totally recovered. This industry representative stated that all of the marketable products should be treated as one product, including residue gas, for purposes of allocating processing costs. Another industry representative made proposals which would make the allocation procedure unnecessary.

MMS Response: The NGL's, historically, have been considered one plant product, for royalty purposes, because they are commonly extracted first as raw make at an extraction facility. MMS has determined that all other individual plant products must be evaluated separately for processing allowances for the reasons stated previously.

Section 206.159(b).

The MMS received a very large number of comments on § 206.159(b), which provides for a processing allowance determination where the lessee has a non-arm's-length contract for processing or no contract. Comments were from industry commenters, industry trade organizations, State representatives, a Federal agency, an interest owner, local businesses, and from a town mayor.

The major issues addressed regarding this paragraph were (1) the requirement of a lessee's actual costs versus use of a benchmark system, (2) the use of "Alternative 1" or "Alternative 2" for depreciation or a return on capital investment, and (3) the rate of return on capital investment. These issues are basically the same as for the transportation allowance and have been responded to. However, some comments were specific to processing costs.

Industry comments disagreed with the proposal under this paragraph to base allowances on cost accounting procedures.

Industry commenters explicitly voiced their support for a market value concept; i.e., MMS should accept the market value of service for the allowance determination. One industry commenter added that, under the proposed methodology, MMS ignores "competitive market forces." Another industry commenter requested that MMS adopt a "market-oriented" approach. Still another industry commenter stated that, if a non-arm's-length contract for processing reflects the market value for that service, it should be acceptable.

The industry commenters specifically recommended that MMS should adopt a benchmark system for allowance determinations under this section. These commenters suggested that comparable arm's-length contracts be used to determine the allowance for non-arm's-length processing arrangements in the same facility. One of the industry commenters added that the use of comparable arm's-length contracts will reduce the number of adjustments and other records to be filed.

One State representative opposed a benchmark system.

Four industry commenters and one industry trade group complained that cost accounting is a departure from the valuation requirements and that it discriminates against lessee affiliates.

Another industry commenter recommended that, if plant ownership interest is sufficiently small, it should be treated as an arm's-length arrangement.

MMS Response: The MMS considered a benchmark valuation system featuring comparable arm's-length contracts to determine processing allowances, with cost accounting being used as a last resort. MMS concluded that such a procedure is not the fairest and best way to determine gas processing allowances considering the overall interests of industry, the Federal Government, States, and Indian Tribes. The MMS does not believe that allowances generally should be valued on a "market-based system" the way products are valued for royalty determination purposes for several reasons.

First, the determination of an allowance on a "market-based system" would not be representative of a lessee's actual, reasonable costs. Second, if one lessee bases its allowance on actual costs, and another lessee processing gas in the same facility bases its allowance on market value, an inequity will result.

For these reasons, MMS has decided that generally the gas processing allowance is best determined on actual, reasonable costs plus a return on undepreciated capital investment, or its initial capital investment. However, MMS has included in § 206.159(b)(4) of the final rules a provision whereby a lessee may apply to MMS for an exception from the requirement to use actual costs. MMS may grant such an exception, at its discretion, only if two conditions are met: (1) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (2) at least 50 percent of the gas processed at the plant is processed pursuant to arm's-length processing contracts. MMS has decided not to include a third requirement that the persons purchasing processing services from the lessee had a reasonable alternative to processing at the lessee's plant. Industry commenters noted that there often is no choice for the purchaser, thus the third requirement would render the exception unrealistic. If the exception is granted, the lessee must use as its allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts at the same plant. Although some State and Indian commenters expressed concern over deviating from a true cost-based approach, MMS is satisfied that if these conditions are met, the processing allowance will reflect the market and that MMS will be able to monitor the use of these allowances.

Three industry commenters recommended that the 50-percent threshold be reduced to 25 percent. The MMS did not adopt this change because there did not appear to be broad support for a change to the 50-percent threshold.

Two industry commenters stated that State and Federal income taxes should be considered as allowable costs on the premise that such costs are real, tangible costs to the lessee.

Two other industry commenters suggested that plant dismantling and abandonment costs should be allowable, advising that such costs are a real cost of doing business.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. Therefore, income taxes are not an appropriate expense that should be included in the processing allowance. The MMS takes the position that, because it does not participate in the profit or losses from the sale of processing facilities, no costs for dismantling and abandonment should be included in processing allowances.

The basic issue regarding requirements to allocate processing costs among all plant products is discussed under § 206.158(b). However, specific comments pertaining to the allocation under non-arm's-length and no-contract situations are discussed here.

Industry commenters disagreed with the requirement to allocate costs on generally accepted oil and gas accounting principles. One of these commenters recommended deleting this requirement. Other commenters advised that generally accepted principles for cost allocation do not exist. One commenter suggested instead that allocations be based on (1) cost-benefit analysis, and (2) cause-and-effect relationships.

One industry commenter recommended that this requirement be modified to include an allocation of costs to residue gas.

MMS Response: The MMS believes that if cost-benefit analysis and cause-and-effect relationships are generally acceptable procedures in cost allocation, these procedures would be acceptable to MMS. MMS will consider cost allocation procedures for unique situations on the basis of individual cases in order to arrive at an equitable allocation procedure. As stated previously, MMS believes that it is not appropriate to allocate processing costs to residue gas.

Section 206.159(c).

The MMS received several comments on paragraph (c) of this section, which addresses reporting requirements for processing allowances. Again, this paragraph is virtually identical to the corresponding provision for transportation allowances, and the response to comments for that section is, for the most part, applicable here.

The two major areas of concern were (1) use of Form MMS–4109, and (2) the terms of the reporting periods and filing timetables.

Industry commenters and Indian Tribes expressed some opposition to Form MMS–4109. One industry respondent and one industry trade group objected to commenting on the form until it is published, adding that it should not conflict with any rights of the lessee. Several industry commenters opposed the filing of Form MMS–4109 at all. One of the industry commenters stated that processing rates under an arm's-length or non-arm's-length contract should be accepted at face value. An industry trade group claimed that filing of the form would be an unnecessary burden for both industry and MMS. Another industry commenter stated that it opposed any reporting requirements such as annual renewals or contract change updates. A Tribe opposed industry taking an allowance on the honor system and merely filing a form to claim it.

MMS Response: The MMS believes that Form MMS–4109 must be required in order for MMS to monitor the processing allowance program. The MMS believes it can effectively monitor the processing allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4109 as clear and uncomplicated as possible considering the complex nature of processing allowances. The filing of a Form MMS–4109 does not conflict with any lease provisions or rights of the lessees. The MMS agrees that its procedure for determining a processing allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit processing allowances has been maintained under the new regulations.

The MMS received several comments on the Form MMS–4109 format. These comments will be considered in designing the final form.

The initial concern about reporting periods was MMS's proposal to create a new reporting period for all allowances which would commence the date the new regulations are effective. Industry commenters opposed this, recommending instead that all existing allowances be grandfathered under the new regulations. Another industry commenter requested 180 days for conversion to the new reporting period.

Another topic addressed by the respondents was the term of the reporting period. Industry commenters favored a reporting period that extends as long as the contract terms are effective, instead of an arbitrary 12-month period. One of the industry commenters stated that resources are wasted by requiring the lessee to file year after year even though there are no changes. However, one industry commenter and one industry trade group endorsed the 12-month reporting period. The industry commenter specifically requested a calendar-year period.

Two industry commenters recommended a longer grace period in which to file subsequent Forms MMS–4109. These commenters both suggested 120 days to file updated forms.

MMS Response: The MMS concurs with a 12-month term and the regulations have been changed to allow filing of Form MMS–4109 by calendar year. The regulations have also been changed to allow a grace period of 3 months during which the lessee continues to use the previous allowance. The MMS also decided that existing allowances (but only those approved in

writing by MMS) will continue in effect until they expire, subject to later audit, with the exception of processing allowances for OCS production, which are based on non-arm's-length or no-contract situations. Because these allowances are based upon a procedure radically different from the procedure adopted in the final rule, they will continue in effect until they expire or until the end of the calendar year, whichever occurs first.

Section 206.159(d)

Paragraph (d) of this section is the same as for transportation allowances. If a lessee deducts a processing allowance without filing the proper forms, it will owe interest on the amount of the deduction until the proper forms are filed, subject to the 3-month retroactivity provision.

Section 206.159(e).

As with transportation allowance adjustments, the issues regarding paragraph (e) of this section were (1) the requirement to file adjustments, (2) the refund procedure under Section 10 of the OCS Lands Act, and (3) the payment of interest.

It was the general consensus that adjustments were a very large burden on both industry and MMS and that some way should be found to eliminate the need for so many adjustments resulting from differences between actual and estimated processing allowances. Six industry representatives and two industry trade groups recommended that positive or negative differences between estimated and actual costs should be rolled forward into the processing allowance for the subsequent period, or prospectively.

One industry commenter asserted that retroactive adjustments should not be necessary if the actual allowance falls within an allowable range of the estimated allowance, and two other industry commenters suggested rolling forward small differences into next year's costs within an allowable range.

One industry commenter proposed single-entry adjustments for an entire year instead of month-by-month adjustments. This party also made the comment that if a market-based allowance were permitted, it would be more certain and fewer adjustments would be necessary.

MMS Response: The MMS expended considerable effort in an attempt to arrive at an accounting methodology that would eliminate retroactive adjustments of processing allowances and continue to be fair to industry, MMS, and Indian lessors, but was unable to do so.

One industry representative stated that overpayments, when estimates were less than actual costs, should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process.

MMS Response: The refund procedure will not be specified in these regulations. MMS is reviewing the issue and will provide guidance to the lessees on refund procedures.

Industry representatives commented that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that, if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized. Another issue of concern was the payment of interest requirement.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.159(f).

Paragraph (f) of this section requires that the provisions in this section will apply to determine processing costs in situations where value must be established under other methods such as net-back.

One industry commenter recommended that the definition of "net-back method" be clarified.

MMS Response: A definition of the netback method has been included in § 206.151, which is slightly different from that proposed. The MMS believes this revised definition clarifies MMS's intent.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations, to clarify the DOI gas royalty valuation policy, and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0075.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: January 6, 1988.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 206 are amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. A new Subpart D consisting of §§ 202.150, 202.151, and 202.152 is added to read as follows:

Subpart D—Federal and Indian Gas

Sec.

202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

Subpart D—Federal and Indian Gas

§ 202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this subpart, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to 30 CFR Part 206 of this title multiplied by the royalty rate in the lease.

(b)(1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this subpart applies is subject to royalty.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal or Indian lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value for royalty purposes of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR Part 206. In applying the requirements of 30 CFR Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

(2) If a Federal or Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purpose of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods at the time the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal and Indian leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee MMS may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms and agreement terms; (2) to the extent practical, persons with an interest in the agreement, including royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal or Indian lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.151 Royalty on processed gas.

(a) A royalty, as provided in the lease, shall be paid on the value of: (1) Any condensate recovered downstream of the point of royalty settlement without resorting to processing; and (2) residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this subpart. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of 30 CFR Part 206.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in 30 CFR Part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant shall be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (mcf), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F, except that for OCS leases in

the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract provided that the sales contract does not conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. A new § 206.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS-4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0075
MMS-4110—Oil Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010-0061
MMS-4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are required to receive a benefit.

§§ 206.106 and 206.107 [Removed]

3. Sections 206.106 and 206.107 are removed from Subpart C.

4. Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.
206.150 Purpose and scope.
206.151 Definitions.
206.152 Valuation standards—unprocessed gas.
206.153 Valuation standards—processed gas.
206.154 Determination of quantities and qualities for computing royalties.
206.155 Accounting for comparison.
206.156 Transportation allowances—general.
206.157 Determination of transportation allowances.
206.158 Processing allowances—general.
206.159 Determination of processing allowances.

Subpart D—Federal and Indian Gas

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute, treaty, settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, treaty provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

(e)(1) Notice to Lessees 1 is terminated.
(2) Notice to Lessees 1A is terminated.
(3) Notice to Lessees 5 is terminated.
(4) Notice to Lessees and Operators (NTL) on the Outer Continental Shelf (OCS) concerning royalty payments on oil and gas lost or used on leases or units on the OCS is terminated.

§ 206.151 Definitions.

For purposes of this subpart:

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for processing gas, or an approved or MMS-initially accepted deduction for costs of such processing, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Compression" means the process of raising the pressure of gas.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gas" means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

"Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

"Gathering" means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to: Take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

"Net output" means the quantity of residue gas and each gas plant product that a processing plant produces.

"Net profit share" (for applicable Federal and Indian leases) means the specified share of the net profit from

production of oil and gas as provided in the agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

"Posted price" means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Warranty contract" means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 shall apply instead of this section. This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155.

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value of production for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1)(i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then the MMS may require that the gas sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the gas production be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other

disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed in paragraph (d)(1) of this section shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee

directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this subpart. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas (in which event these regulations will apply to determine value as if the person actually selling or disposing of the residue gas or gas plant products were the lessee of the Federal or Indian lease).

(2) The value of production, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this part, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products sold under arm's-length contracts from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1)(i) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then the MMS may require that the residue gas or gas plant product sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the residue gas or gas plant product be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For the purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed by paragraph (d)(1) of this section shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed on that difference pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(i) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government, its beneficiaries, the Indian Tribes, or allottees, until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from the MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this

section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal and Indian leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.151(c), royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.156 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of (1) the combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this subpart; or (2) the value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.152 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.158 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 206.157.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this subpart, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.152 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this subpart the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153 of this subpart. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products

under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(2)(i) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee begins the transportation, whichever is later, unless MMS approves a longer period. The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) (for both Federal and Indian leases) or a state regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that: (i) The tariff is excessive as compared to arm's-length transportation charges by the lessee or others providing similar transportation services; or (ii) if there are no arm's-length transportation charges by the lessee or others providing similar transportation services, the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4295 (and Schedule 1) prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4295 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii), and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with subsection (b)(5) of this section, it shall follow the reporting requirements of subsection (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or state regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowances—general.

(a) Where the value of gas is determined pursuant to § 206.153 of this subpart, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.153 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 206.156 of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing

lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.159 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then the MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the processing allowance be determined in accordance with paragraph (b) of this section when MMS determines that the value of the processing may be unreasonable. MMS will notify the lessee and give the lessee an opportunity to provide an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988, or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuels; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The MMS may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts; if the MMS grants the exception, the lessee shall use as its processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.* (1) Arm's-length contracts. (i) With the exception of those processing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4109 (and Schedule 1) prior to the time, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4109 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purpose of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations became effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) Non-arm's-length or no contract.

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or nocontract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from onshore Federal and Indian leases. For gas production from OCS leases such allowances will be allowed to continue until they terminate or until the end of the calendar year, whichever is earlier. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109. The data

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shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) *Other processing cost determinations.* The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

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Part V

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Amendments to Sentencing Guidelines and Official Commentary; Request for Public Comment, and Notice of Hearing; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of amendments to sentencing guidelines and official commentary. Request for public comment. Notice of hearing.

SUMMARY: Pursuant to its emergency authority, the Commission formally adopted the revisions to the guidelines, policy statements and commentary dated October 1987, which were published in the **Federal Register** on November 20, 1987, (52 FR 44674). The Commission then adopted the amendments listed below. By law, these amendments are temporary, but the Commission is considering their permanent adoption. The Commission may report other permanent amendments to Congress on or before May 1, 1988. The Commission invites public comment on these amendments and all other aspects of the guidelines.

DATES: The effective date of the Commission's actions is January 15, 1988. Public comment on all aspects of the sentencing guidelines, policy statements and official commentary should be received by the Commission no later than March 14, 1988, in order for the Commission to consider the comments in conjunction with the next set of regular amendments, which must be sent to Congress by May 1, 1988. The Commission plans to hold public hearings in Washington, D.C., on March 21 and 22, 1988, on these and any other proposed amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004. Attention: Sentencing Guidelines Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Under 28 U.S.C. 994(x), promulgation of guidelines by the Commission pursuant to 28 U.S.C. 994 is subject to the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553. However, Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) authorizes the Commission to adopt temporary guidelines or amendments under certain limited circumstances. The Commission understands the advance notice, comment and hearing provisions that apply to the promulgation of permanent guidelines to be inapplicable under such circumstances. Absent contrary action, temporary guidelines or amendments remain in effect until and during the pendency of the next report to Congress pursuant to 28 U.S.C. 994(p).

The Commission concluded that questions as to the controlling status of the October 1987 revisions vis-a-vis the earlier published version had created unnecessary confusion and uncertainty in interpreting the guidelines; the elimination of this confusion and uncertainty constituted an urgent and compelling reason to re-adopt the October 1987 version under the emergency guidelines promulgation authority. In addition, the Commission has learned that users of the guidelines found certain aspects of the guidelines or commentary to be unclear, causing inconsistent interpretations. Furthermore, in a number of instances, clerical or technical errors had been made in the guidelines and commentary; these errors were likely to lead to errors in applying the guidelines, and in one instance rendered the guideline inconsistent with existing law. The Commission determined that the prevention of application errors and the avoidance of unnecessary litigation constituted urgent and compelling reasons to make various amendments. Finally, the Commission concluded that certain guidelines should be revised promptly to conform to recently-enacted legislation pertaining to criminal offenses, as contemplated by Section 21(a)(2) of the Sentencing Act of 1987. The specific reason(s) for each amendment are listed immediately after that amendment in the material that follows.

Authority: Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987).

William W. Wilkins, Jr.,
Chairman.

Appendix C—Amendments to the Sentencing Guidelines Manual of October 1987

Pursuant to the Emergency Guidelines Promulgation Authority provided in section 21 of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987), the Sentencing Commission has:

(1) Re-promulgated, effective January 15, 1988, the revisions in official commentary, policy statement revision, and correction of typographical errors in certain guidelines which were previously adopted by the Commission and issued in the Guidelines Manual (October 1987); and

(2) Promulgated, also effective January 15, 1988, additional temporary amendments to previously issued sentencing guidelines and official commentary as set forth in this Appendix.

The format under which the temporary amendments are presented in this Appendix is designed to facilitate a comparison between previously existing and amended provisions, in the event it becomes necessary to reference the former guideline or commentary language.

§ 1B1.1. Application Instructions

1. Section 1B1.1(b) is amended by inserting "in the order listed" immediately following "Chapter Two".

Section 1B1.1(d) is amended by deleting "one" and "three" and inserting in lieu thereof "(a)" and "(c)" respectively.

The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting, as an additional note, the following:

"4. The offense level adjustments from more than one specific offense characteristic within an offense guideline are cumulative (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. E.g., in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subsection that best describes the level of bodily injury is used; the adjustments for different degrees of bodily injury (subsections (A), (B), and (C)) are not added together.".

The purposes of this amendment are to correct a clerical error and to clarify the operation of the guidelines by consolidating the former § 1B1.4 (Determining the Offense Level) with this section.

§ 1B1.2. Applicable Guidelines

2. Section 1B1.2(a) is amended by deleting "guideline" the first time it appears and inserting in lieu thereof "offense guideline section".

Section 1B1.2(a) is amended by inserting, as an additional sentence at the end of the subsection, the following:

"Similarly, stipulations to additional offenses are treated as if the defendant had been convicted of separate counts charging those offenses.".

Section 1B1.2(b) is amended by deleting:

"The court shall determine any applicable specific offense characteristic, victim related adjustment, or departure from the guidelines attributable to offense conduct according to the principles in § 1B1.3 (Relevant Conduct).",

and inserting in lieu thereof:

"After determining the appropriate offense guideline section pursuant to subsection (a) of this section, determine the applicable guideline range in accordance with § 1B1.3 (Relevant Conduct).".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 2 by deleting:

"any applicable victim related adjustment from Chapter Three, Part A, and any guideline departures attributable to the offense conduct from Chapter Five, Part K, using a 'relevant conduct' standard, as that standard is defined in § 1B1.3.",

and inserting in lieu thereof:

"and any other applicable sentencing factor pursuant to the 'relevant conduct' definition in § 1B1.3.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 3 by deleting:

"In such instances, the court should consider all conduct, circumstances, and injury relevant to the offense (as well as all relevant offender characteristics). See § 1B1.3 (Relevant Conduct).",

and inserting in lieu thereof:

"See §§ 1B1.3 (Relevant Conduct) and 1B1.4 (Information to be Used in Imposing Sentence)."

The purposes of this amendment are to correct a clerical error and to clarify the operation of the guidelines.

§ 1B1.3. Relevant Conduct (Retitled Relevant Conduct (Factors that Determine the Guideline Range))

3. Section 1B1.3 and the Commentary thereto is amended by deleting the entire text thereof, including the title, as follows:

"Relevant Conduct

To determine the seriousness of the offense conduct, all conduct, circumstances, and injuries relevant to the offense of conviction shall be taken into account.

(a) Unless otherwise specified under the guidelines, conduct and circumstances relevant to the offense of conviction means:
acts or omissions committed or aided and abetted by the defendant, or by a person for whose conduct the defendant is legally accountable, that (1) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (2) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (3) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

(b) Injury relevant to the offense of conviction means harm which is caused intentionally, recklessly or by criminal negligence in the course of conduct relevant to the offense of conviction.

Commentary

Application Note:

1. In sentencing, the court should consider all relevant offense and offender characteristics. For purposes of assessing offense conduct, the relevant conduct and circumstances of the offense of conviction are as follows:

a. Conduct directed toward preparation for or commission of the offense of conviction, and efforts to avoid detection and responsibility for the offense of conviction;

b. Conduct indicating that the offense of conviction was to some degree part of a broader purpose, scheme, or plan;

c. Conduct that is relevant to the state of mind or motive of the defendant in committing the crime;

d. Conduct that is relevant to the defendant's involvement in crime as a livelihood.

The first three criteria are derived from two sources, Rule 8(a) of the Federal Rules of Criminal Procedure, governing joinder of similar or related offenses, and Rule 404(b) of the Federal Rules of Evidence, permitting admission of evidence of other crimes to establish motive, intent, plan, and common scheme. These rules provide standards that govern consideration at trial of crimes "of the same or similar character," and utilize concepts and terminology familiar to judges, prosecutors, and defenders. The governing standard should be liberally construed in favor of considering information generally appropriate to sentencing. When other crimes are inadmissible under the Rule 404(b) standard, such crimes may not be "relevant to the offense of conviction" under the criteria that determine this question for purposes of Chapter Two; such crimes would, however, be considered in determining the relevant offender characteristics to the extent authorized by Chapter Three (Adjustments), and Chapter Four (Criminal History and Criminal Livelihood) and Chapter Five, Part H (Specific Offender Characteristics). This construction is consistent with the existing rule that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense * * * for the purpose of imposing an appropriate sentence," 18 U.S.C. 3577, so long as the information "has sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F. Supp. 751 (D. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983).

The last of these criteria is intended to ensure that a judge may consider at sentencing, information that, although not specifically within other criteria of relevance, indicates that the defendant engages in crime for a living. Inclusion of this information in sentencing considerations is consistent with 28 U.S.C. 994(d)(11).".

and inserting in lieu thereof the following:

"Relevant Conduct (Factors that Determine the Guideline Range)

The conduct that is relevant to determining the applicable guideline range includes that set forth below.

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1) All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

(2) Solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all such acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) All harm or risk of harm that resulted from the acts or omissions specified in subsections (a)(1) and (a)(2) above, if the harm or risk was caused intentionally, recklessly or by criminal negligence, and all harm or risk that was the object of such acts or omissions;

(4) The defendant's state of mind, intent, motive and purpose in committing the offense; and

(5) Any other information specified in the applicable guideline.

(b) Chapter Four (Criminal History and Criminal Livelihood). To determine the criminal history category and the applicability of the career offender and criminal livelihood guidelines, the court shall consider all conduct relevant to a determination of the factors enumerated in the respective guidelines in Chapter Four.

Commentary

Application Notes:

1. Conduct "for which the defendant is otherwise accountable," as used in subsection (a)(1), includes conduct that the defendant counseled, commanded, induced, procured, or willfully caused. (Cf. 18 U.S.C. 2.) If the conviction is for conspiracy, it includes conduct in furtherance of the conspiracy that was known to or was

reasonably foreseeable by the defendant. If the conviction is for solicitation, misprision or accessory after the fact, it includes all conduct relevant to determining the offense level for the underlying offense that was known to or reasonably should have been known by the defendant. See generally §§ 2X1.1–2X4.1.

2. "Such acts and omissions," as used in subsection (a)(2), refers to acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable. This subsection applies to offenses of types for which convictions on multiple counts would be grouped together pursuant to § 3D1.2(d); multiple convictions are not required.

3. "Harm" includes bodily injury, monetary loss, property damage and any resulting harm.

4. If the offense guideline includes creating a risk or danger of harm as a specific offense characteristic, whether that risk or danger was created is to be considered in determining the offense level. See, e.g., § 2K1.4 (Arson); § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides). If, however, the guideline refers only to harm sustained (e.g., § 2A2.2 (Assault); § 2B3.1 (Robbery)) or to actual, attempted or intended harm (e.g., § 2F1.1 (Fraud); § 2X1.1 (Attempt, Solicitation or Conspiracy)), the risk created enters into the determination of the offense level only insofar as it is incorporated into the base offense level. Unless clearly indicated by the guidelines, harm that is merely risked is not to be treated as the equivalent of harm that occurred. When not adequately taken into account by the applicable offense guideline, creation of a risk may provide a ground for imposing a sentence above the applicable guideline range. See generally § 1B1.4 (Information to be Used in Imposing Sentence); § 5K2.0 (Grounds for Departure). The extent to which harm that was attempted or intended enters into the determination of the offense level should be determined in accordance with § 2X1.1 (Attempt, Solicitation or Conspiracy) and the applicable offense guideline.

5. A particular guideline (in the base offense level or in a specific offense characteristic) may expressly direct that a particular factor be applied only if the defendant was convicted of a particular statute. E.g., in § 2K2.3, a base offense level of 12 is used "if convicted under 26 U.S.C. 5861." Unless such an express direction is included, conviction under the statute is not required. Thus, use of a statutory reference to describe a particular set of circumstances does not require a conviction under the referenced statute. Examples of this usage are found in § 2K1.3(b)(4) ("if the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i), or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels"); and § 2A3.4(b)(2) ("if the abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels").

Background: This section prescribes rules for determining the applicable guideline sentencing range, whereas § 1B1.4 (Information to be Used in Imposing Sentence) governs the range of information that the court may consider in adjudging sentence once the guideline sentencing range has been determined. Conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range. The range of information that may be considered at sentencing is broader than the range of information upon which the applicable sentencing range is determined.

Subsection (a) establishes a rule of construction by specifying, in the absence of more explicit instructions in the context of a specific guideline, the range of conduct that is relevant to determining the applicable offense level (except for the determination of the applicable offense guideline, which is governed by § 1B1.2(a)). No such rule of construction is necessary with respect to Chapter Four because the guidelines in that Chapter are explicit as to the specific factors to be considered.

Subsection (a)(2) provides for consideration of a broader range of conduct with respect to one class of offenses, primarily certain property, tax, fraud and drug offenses for which the guidelines depend substantially on quantity, than with respect to other offenses such as assault, robbery and burglary. The distinction is made on the basis of § 3D1.2(d), which provides for grouping together (i.e., treating as a single count) all counts charging offenses of a type covered by this subsection. However, the applicability of subsection (a)(2) does not depend upon whether multiple counts are alleged. Thus, in an embezzlement case, for example, embezzled funds that may not be specified in any count of conviction are nonetheless included in determining the offense level if they are part of the same course of conduct or part of the same scheme or plan as the count of conviction. Similarly, in a drug distribution case, quantities and types of drugs not specified in the count of conviction are to be included in determining the offense level if they were part of the same course of conduct or part of a common scheme or plan as the count of conviction. On the other hand, in a robbery case in which the defendant robbed two banks, the amount of money taken in one robbery would not be taken into account in determining the guideline range for the other robbery, even if both robberies were part of a single course of conduct or the same scheme or plan. (This is true whether the defendant is convicted of one or both robberies.)

Subsections (a)(1) and (a)(2) adopt different rules because offenses of the character dealt with in subsection (a)(2) (i.e., to which § 3D1.2(d) applies) often involve a pattern of misconduct that cannot readily be broken into discrete, identifiable units that are meaningful for purposes of sentencing. For example, a pattern of embezzlement may consist of several acts of taking that cannot separately be identified, even though the overall conduct is clear. In addition, the distinctions that the law makes as to what constitutes separate counts or offenses often turn on technical elements that are not especially meaningful for purposes of sentencing. Thus, in a mail fraud case, the scheme is an element of the offense and each mailing may be the basis for a separate count; in an embezzlement case, each taking may provide a basis for a separate count. Another consideration is that in a pattern of small thefts, for example, it is important to take into account the full range of related conduct. Relying on the entire range of conduct, regardless of the number of counts that are alleged or on which a conviction is obtained, appears to be the most reasonable approach to writing workable guidelines for these offenses. Conversely, when § 3D1.2(d) does not apply, so that convictions on multiple counts are considered separately in determining the guideline sentencing range, the guidelines prohibit aggregation of quantities from other counts in order to prevent "double counting" of the conduct and harm from each count of conviction.

Continuing offenses present similar practical problems. The reference to § 3D1.2(d), which provides for grouping of multiple counts arising out of a continuing offense when the offense guideline takes the continuing nature into account, also prevents double counting.

Subsection (a)(4) requires consideration of the defendant's "state of mind, intent, motive or purpose in committing the offense." The defendant's state of mind is an element of the offense that may constitute a specific offense characteristic. See, e.g., § 2A1.4 (Involuntary Manslaughter) (distinction made between recklessness and criminal negligence). The guidelines also incorporate broader notions of intent or purpose that are not elements of the offense, e.g., whether the offense was committed for profit, or for the purpose of facilitating a more serious offense. Accordingly, such factors must be considered in determining the applicable guideline range.".

The purpose of this amendment is to clarify the guideline. The amended language restates the intent of § 1B1.3 as originally promulgated.

§ 1B1.4. Determining the Offense Level (Retitled Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines))

4. Section 1B1.4 and the Commentary thereto is amended by deleting the entire text thereof, including the title, as follows:

"Determining the Offense Level

In determining the offense level:

(a) Determine the base offense level from Chapter Two;

(b) Make any applicable adjustments for specific offense characteristics from Chapter Two in the order listed;

(c) Make any applicable adjustments from Chapter Three;

(d) Make any applicable adjustments from Chapter Four, Part B (Career Offenders and Criminal Livelihood).

Commentary

Application Notes:

1. A particular guideline (in the base offense level or in a specific offense characteristic) may expressly direct that a particular factor be applied only if the defendant was convicted of a particular statute. E.g., in § 2K2.3, a base offense level of 12 is used "if convicted under 26 U.S.C. 5861." Unless such an express direction is included, conviction under the statute is not required. Thus, use of a statutory reference to describe a particular set of circumstances does not require a conviction under the referenced statute. Examples of this usage are found in § 2K1.3(b)(4) ("if the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i), or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels"); and § 2A3.4(b)(2) ("if the abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels"). In such cases, the particular circumstances described are to be evaluated under the "relevant conduct" standard of § 1B1.3.

2. Once the appropriate base offense level is determined, all specific offense characteristics are to be applied in the order listed.

3. The offense level adjustments from more than one specific offense characteristic within an offense guideline are cumulative (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. E.g., in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subsection that best describes the level of bodily injury is used; the adjustments from different degrees of bodily injury (subsections (A), (B) and (C)) are not added together).

4. The adjustments in Chapter Three that may apply include Part A (Victim-Related Adjustments), Part B (Role in the Offense), Part C (Obstruction), Part D (Multiple Counts), and Part E (Acceptance of Responsibility).",

and inserting in lieu thereof the following:

"Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines)

In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. See 18 U.S.C. 3661.

Commentary

Background: This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing sentence within that range. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3557. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99 Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range. In addition, information that does not enter into the determination of the applicable guideline sentencing range may be considered in determining whether and to what extent to depart from the guidelines. Some policy statements do, however, express a Commission policy that certain factors should not be considered for any purpose, or should be considered only for limited purposes. See, e.g., Chapter Five, Part H (Specific Offender Characteristics).".

The purposes of this amendment are to remove material made redundant by the reorganization of this Part and to replace it with material that clarifies the operation of the guidelines. The material formerly in this section is now covered by § 1B1.1

§ 2B1.2. Receiving Stolen Property

5. Section 2B1.2 is amended by transposing the texts of subsections (b)(2) and (3).

The Commentary to § 2B1.2 captioned "Application Notes" is amended by deleting:

"3. For consistency with § 2B1.1, it is the Commission's intent that specific offense characteristic (b)(3) be applied before (b)(2).",

and by renumbering Note 4 as Note 3.

The purpose of this amendment is to correct a clerical error in the guideline. Correction of the error makes the deleted Commentary unnecessary.

§ 2B2.1. Burglary of a Residence

6. The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 4 by inserting "or other dangerous weapon" immediately following "firearm".

The purpose of the amendment is to correct a clerical error.

§ 2B5.1. Offenses Involving Counterfeit Obligations of the United States

7. The Commentary to § 2B5.1 captioned "Statutory Provisions" is amended by deleting "473" and inserting in lieu thereof "474", and by deleting "510," and ", 2314, 2315".

The purpose of this amendment is to correct a clerical error.

§ 2B5.2. Forgery; Offenses Involving Counterfeit Instruments Other Than Obligations of the United States

8. The Commentary to § 2B5.2 is amended by deleting "Statutory Provision: 18 U.S.C. 510" and inserting in lieu thereof "Statutory Provisions: 18 U.S.C. 471–473, 500, 510, 1003, 2314, 2315".

The purpose of this amendment is to correct a clerical error.

§ 2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

9. The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 3 by deleting "§ 3C1.1(c)(1)" and inserting in lieu thereof "§ 2C1.1(c)(1)".

The purpose of this amendment is to correct a typographical error.

§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent To Commit These Offenses)

10. The Commentary to § 2D1.1 captioned "Application Notes" is amended in the Measurement Conversion Table in Note 10 by deleting "1 lb=.45 kg" and inserting in lieu thereof "1 lb=.4536 kg", by deleting "1 kg=2.2 lbs", by deleting "1 gal=3.8 liters" and inserting in lieu thereof "1 gal=3.785 liters", and by deleting "1 qt=.95 liters" and inserting in lieu thereof "1 qt=.946 liters".

The purpose of this amendment is to correct a clerical error.

11. The Commentary to § 2D1.1 captioned "Application Notes" is amended by deleting:

"11. If it is uncertain whether the quantity of drugs involved falls into one category in the table or an adjacent category, the court may use the intermediate level for sentencing purposes. For example, sale of 700–800 grams of heroin is at level 30, while sale of 400–699 grams is at level 28. If the exact quantity is uncertain, but near 700 grams, use of level 29 would be permissible.".

The purpose of this amendment is to delete an erroneous reference to interpolation, which cannot apply as the guideline is written.

12. The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting, as a new note, the following:

"11. Types and quantities of drugs not specified in the count of conviction may be considered in determining the offense level. See § 1B1.3(a)(2) (Relevant Conduct). If the amount seized does not reflect the scale of the offense, see Application Note 2 of the Commentary to § 2D1.4. If the offense involved negotiation to traffic in a controlled

substance, see Application Note 1 of the Commentary to § 2D1.4.".

The purpose of this amendment is to clarify the Commentary.

§ 2D1.2. Involving Juveniles in the Trafficking of Controlled Substances

13. Section 2D1.2(a)(1) is amended by deleting "less than fourteen years of age" and inserting in lieu thereof "fourteen years of age or less".

Section 2D1.2(a)(2) is amended by deleting "fourteen" and inserting in lieu thereof "fifteen".

The Commentary to § 2D1.2 captioned "Statutory Provision" is amended by deleting "21 U.S.C. 845(b)" and inserting in lieu thereof "21 U.S.C. 845b".

The Commentary to § 2D1.2 captioned "Background" is amended by deleting:

"[provided for by the minimum base offense level of 13] in addition to the punishment imposed for the applicable crime in which the defendant involved a juvenile. An increased penalty for the employment or use of persons under age fourteen is statutorily directed by 21 U.S.C. 845b(d).",

and inserting in lieu thereof:

An increased penalty for the employment or use of persons fourteen years of age or younger reflects the enhanced sentence authorized by 21 U.S.C. 845b(d).".

The purpose of this amendment is to correct clerical errors in the guideline and Commentary.

§ 2D1.3. Distributing Controlled Substances to Individuals Younger Than Twenty-One Years, To Pregnant Women, or Within 1,000 Feet of a School or College

14. The Commentary to § 2D1.3 captioned "Application Notes" is amended in Note 1 by deleting:

"If more than one enhancement provision is applicable in a particular case, the punishment imposed under the separate enhancement provisions should be added together in calculating the appropriate guideline sentence.",

and inserting in lieu thereof:

"If both subsections (a)(1) and (a)(2) apply to a single distribution (e.g., the distribution of 10 grams of a controlled substance to a pregnant woman under twenty-one years of age), the enhancements are applied cumulatively, i.e., by using four times rather than two times the amount distributed.".

The purpose of this amendment is to clarify the Commentary.

§ 2D2.1. Unlawful Possession

15. Section 2D2.1(a)(1) is amended by deleting "or LSD," immediately following "opiate".

Section 2D2.1(a)(2) is amended by inserting ", LSD," immediately following "cocaine".

The purpose of this amendment is to correct a clerical error.

§ 2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

16. The Commentary to § 2D2.3 captioned "Statutory Provision" is amended by deleting "21 U.S.C. 342" and inserting in lieu thereof "18 U.S.C. 342".

The purpose of this amendment is to correct a typographical error.

§ 2J1.7. Commission of Offense While on Release

17. The Commentary to § 2J1.7 captioned "Application Notes" is amended by deleting:

"1. By statute, a term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment. 18 U.S.C. 3147.

2. This guideline assumes that the sentence imposed for the offense committed while on release, which may have been imposed by a state court, is reasonably consistent with that which the guidelines would provide for a similar federal offense. If this is not the case, a departure may be warranted. See Chapter Five, Part K (Departures).

3. If the defendant was convicted in state court for the offense committed while on release, the term of imprisonment referred to in subdivision (b) is the maximum term of imprisonment authorized under state law.",

and inserting in lieu thereof:

"1. This guideline applies whenever a sentence pursuant to 18 U.S.C. 3147 is imposed.

2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See § 3D1.2.".

The Commentary to § 2J1.7 captioned "Background" is amended by deleting "necessarily" and inserting in lieu thereof "generally".

The purposes of this amendment are to clarify the Commentary and to delete erroneous references.

§ 2J1.8. Bribery of Witness

18. Section 2J1.8(c)(1) is amended by deleting "perjury" and inserting in lieu thereof "bribery of a witness".

The Commentary to § 2J1.8 captioned "Application Notes" is amended by deleting:

"4. Subsection (c) refers to bribing a witness regarding his testimony in respect to a criminal offense."

The purpose of this amendment is to correct a clerical error. Correction of this error makes the deleted Commentary unnecessary.

§ 2K2.2. Receipt, Possession, or Transportation of Firearms and Other Weapons in Violation of National Firearms Act

19. The Commentary to § 2K2.2 captioned "Application Note" is amended by deleting "Application Note" and inserting in lieu thereof "Application Notes", and by inserting, as an additional Application Note, the following:

"2. Subsection (c)(1) refers to any situation in which the defendant possessed a firearm to facilitate another offense that he committed or attempted.".

The purpose of this amendment is to clarify the guideline.

§ 2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien

20. Section 2L1.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L1.1(b)(1) is amended by deleting "for profit or with knowledge" and inserting in lieu thereof "other than for profit, and without knowledge", and by deleting "increase by 3 levels" and inserting in lieu thereof "decrease by 3 levels".

The Commentary to § 2L1.1 captioned "Background" is amended by deleting:

"A specific offense characteristic provides an enhancement if the defendant committed the offense for profit or with knowledge that the alien was excludable as a subversive.",

and inserting in lieu thereof:

"A specific offense characteristic provides a reduction if the defendant did not commit the offense for profit and did not know that the alien was excludable as a subversive.".

The purpose of this amendment is to make the guideline conform to the typical case.

21. Section 2L1.2(b)(2) is amended by deleting "bringing illegal aliens into the United States" and inserting in lieu thereof "smuggling, transporting, or harboring an unlawful alien, or a related offense".

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 2 by deleting "bringing illegal aliens into the United States" and inserting in lieu thereof "smuggling, transporting, or harboring an unlawful alien, or a related offense".

The purpose of this amendment is to correct a clerical error in the guideline and conform the Commentary to the corrected guideline.

22. The Commentary to § 2L1.1 captioned "Application Notes" is amended by inserting, as an additional note, the following:

"8. The Commission has not considered offenses involving large numbers of aliens or dangerous or inhumane treatment. An upward departure should be considered in those circumstances.".

The purpose of this amendment is to clarify the factors considered by the Commission in promulgating the guideline.

§ 2L1.2. Unlawfully Entering or Remaining in the United States

23. Section 2L1.2(a) is amended by deleting "6" and inserting in lieu thereof "8".

Section 2L1.2(b) is amended by deleting the following:

"(b) Specific Offense Characteristic

(1) If the defendant previously has unlawfully entered or remained in the United States, increase by 2 levels.".

The Commentary to § 2L1.2 captioned "Statutory Provisions" is amended by deleting "§§ 1325, 1326" and inserting in lieu thereof "§ 1325 (second or subsequent offense only), 8 U.S.C. 1326".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by deleting:

"The adjustment at § 2L1.2(b)(1) is to be applied where the previous entry resulted in deportation (voluntary or involuntary) with or without a criminal conviction. If the previous entry resulted in a conviction, this adjustment is to be applied in addition to any points added to the criminal history score for such conviction in Chapter Four, Part A (Criminal History).",

and inserting in lieu thereof:

"This guideline applies only to felonies. First offenses under 8 U.S.C. 1325 are petty offenses for which no guideline has been promulgated.".

The purpose of this amendment is to delete coverage of a petty offense.

§ 2L2.2. Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use

24. The Commentary to § 2L2.2 captioned "Application Notes" is amended in Note 1 by deleting "an enhancement equivalent to that at § 2L1.2(b)(1)," and inserting in lieu thereof "a result equivalent to § 2L1.2.".

The purpose of this amendment is to make the Commentary consistent with § 2L1.2, as amended.

§ 2L2.4. Fraudulently Acquiring or Improperly Using a United States Passport

25. The Commentary to § 2L2.4 captioned "Application Notes" is amended in Note 1 by deleting "an enhancement equivalent to that at § 2L1.2(b)(1)," and inserting in lieu thereof "a result equivalent to § 2L1.2.".

The purpose of this amendment is to make the Commentary consistent with § 2L1.2, as amended.

§ 2Q2.1. Specially Protected Fish, Wildlife, and Plants

26. The Commentary to § 2Q2.1 captioned "Statutory Provisions" is amended by deleting "707" and inserting in lieu thereof "707(b)".

The purpose of this amendment is to correct a clerical error.

§ 2X1.1. Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline

27. The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 by deleting "§ 2A4.1" and inserting in lieu thereof "§ 2D1.4".

The purpose of this amendment is to correct a typographical error.

§ 3A1.2. Official Victim

28. The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Victim' refers to an individual directly victimized by the offense. This term does not include an organization, agency, or the government itself.",

and inserting in lieu thereof:

"This guideline applies when specified individuals are victims of the offense. This guideline does not apply when the only victim is an organization, agency, or the government.".

The purpose of this amendment is to clarify the Commentary.

§ 3E1.1. Acceptance of Responsibility

29. Section 3E1.1(a) is amended by deleting "the offense of conviction" and inserting in lieu thereof "his criminal conduct".

The purpose of this amendment is to clarify the guideline.

§ 4B1.1. Career Offender

30. Section 4B1.1 is amended by deleting "(2) the instant offense is a crime of violence or trafficking in a controlled substance" and inserting in lieu thereof "(2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense".

The purposes of this amendment are to correct a clerical error and to clarify the guideline.

31. Section 4B1.1 is amended by deleting:

"Offense statutory maximum	Offense level
(A) Life	37
(B) 20 years or more	34
(C) 10 years or more, but less than 20 years	26
(D) 5 years or more, but less than 10 years	17
(E) More than 1 year, but less than 5 years	12
(F) 1 year or less	4".

and inserting in lieu thereof:

"Offense statutory maximum	Offense level
(A) Life	37
(B) 25 years or more	34
(C) 20 years or more, but less than 25 years	32
(D) 15 years or more, but less than 20 years	29
(E) 10 years or more, but less than 15 years	24
(F) 5 years or more, but less than 10 years	17
(G) More than 1 year, but less than 5 years	12".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting:

"The guideline levels for career offenders were established by using the statutory maximum for the offense of conviction to determine the class of felony provided in 18 U.S.C. 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. 3581.".

The purpose of this amendment is to correct the guideline so that the table relating offense statutory maxima to offense levels is consistent with the current authorized statutory maximum terms.

§ 4B1.2. Definitions

32. Section 4B1.2(2) is amended by inserting "845b, 856" immediately following "841," and by deleting "§§ 405B and 416 of the Controlled Substance Act as amended in 1986," immediately following "959;".

Section 4B1.2(3) is amended by deleting:

"(1) The defendant committed the instant offense subsequent to sustaining at least two felony convictions for either a crime of violence or a controlled substance offense (i.e., two crimes of violence, two controlled substance offenses, or one crime of violence and one controlled substance offense), and (2)",

and inserting in lieu thereof:

"(A) The defendant committed the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (B)".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by deleting "means any of the federal offenses identified in the statutes referenced in § 4B1.2, or substantially equivalent state offenses" and inserting in lieu thereof "includes any federal or state offense that is substantially similar to any of those listed in subsection (2) of the guideline", by inserting "importing," immediately following "manufacturing,", and by inserting "import," immediately following "manufacture,".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 3 by deleting "Felony" and inserting in lieu thereof "Prior felony".

The purposes of this amendment are to correct a clerical error and to clarify the guideline.

§ 5C2.1. Imposition of a Term of Imprisonment

33. The Commentary to § 5C2.1 captioned "Application Notes" is amended in Note 4 by deleting "at least six" and inserting in lieu thereof "more than six", by deleting "6–22" whenever it appears and inserting in lieu thereof in each instance "8–14", and by deleting "three" whenever it appears and inserting in lieu thereof in each instance "four".

The purpose of this amendment is to correct a clerical error.

§ 5D3.2. Term of Supervised Release

34. Section 5D3.2(b) is amended by deleting:

"(1) Three years for a defendant convicted of a Class A or B felony;
(2) Two years for a defendant convicted of a Class C or D felony;
(3) One year for a defendant convicted of a Class E felony or a misdemeanor.",

and inserting in lieu thereof:

"(1) At least three years but not more than five years for a defendant convicted of a Class A or B felony;
(2) At least two years but not more than three years for a defendant convicted of a Class C or D felony;
(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor.".

The purpose of this amendment is to permit implementation of the longer terms of supervised release authorized by the Sentencing Act of 1987.

§ 5E4.1. Restitution

35. Section 5E4.1(a) is amended by inserting immediately preceding the period at the end of the subsection:

", and may be ordered as a condition of probation or supervised release in any other case".

The purpose of this amendment is to clarify the guideline.

§ 5E4.2. Fines for Individual Defendants

36. Section 5E4.2 is amended by deleting:

"(b) The generally applicable minimum and maximum fine for each offense level is shown in the Fine Table in subsection (c) below. Unless a statute expressly authorizes a greater amount, no fine may exceed $250,000 for a felony or a misdemeanor resulting in the loss of human life; $25,000 for any other misdemeanor; or $1,000 for an infraction. 18 U.S.C. 3571(b)(1).

(c) (1) The minimum fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) Any monetary gain to the defendant, less any restitution made or ordered.

(2) Except as specified in (4) below, the maximum fine is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the estimated loss caused by the offense; or

(C) Three times the estimated gain to the defendant.",

and inserting in lieu thereof:

"(b) Except as provided in subsections (f) and (i) below, or otherwise required by statute, the fine imposed shall be within the range specified in subsection (c) below.

(c)(1) The minimum of the fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) The pecuniary gain to the defendant, less restitution made or ordered.

(2) Except as specified in (4) below, the maximum of the fine range is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the gross pecuniary loss caused by the offense; or

(C) Three times the gross pecuniary gain to all participants in the offense.".

The Commentary to § 5E4.2 captioned "Application Notes" is amended by deleting:

"2. The maximum fines generally authorized by statute are restated in subsection (b). These apply to each count of conviction. Ordinarily, the maximum fines on each count are independent and cumulative. However, if the offenses 'arise from a common scheme or plan' and 'do not cause separable or distinguishable kinds of harm or damage,' the aggregate fine may not exceed 'twice the amount imposable for the most serious offense.' 18 U.S.C. 3572(b) (former 18 U.S.C. 3623(c)(2)).

3. Alternative fine limits are provided in subsection (c)(2). The term 'estimated gain' is used to emphasize that the Commission does not intend precise or detailed calculation of the monetary gain (nor of the loss) in using the alternative fine limits. In many cases, circumstances will make it unnecessary to consider these standards other than in the most general terms.",

and inserting in lieu thereof:

"2. In general, the maximum fine permitted by law as to each count of conviction is $250,000 for a felony or for any misdemeanor resulting in death; $100,000 for a Class A misdemeanor; and $5,000 for any other offense. 18 U.S.C. 3571(b)(3)–(7). However, higher or lower limits may apply when specified by statute. 18 U.S.C. 3571 (b)(1), (e). As an alternative maximum, the court may fine the defendant up to the greater of twice the gross gain or twice the gross loss. 18 U.S.C. 3571 (b)(2), (d).

3. Alternative fine limits are provided in subsection (c). The terms 'pecuniary gain' and 'pecuniary loss' are taken from 18 U.S.C. 3571(d). The Commission does not intend precise or detailed calculation of the gain or loss in using the alternative fine limits. In many cases, circumstances will make it unnecessary to consider these standards other than in the most general terms.".

The Commentary to § 5E4.2 captioned "Application Notes" is amended in Note 4 by deleting "Any restitution" and inserting in lieu thereof "Restitution".

The Commentary to § 5E4.2 captioned "Background" is amended by deleting:

"defendant. In addition, the Commission concluded that greater latitude with a gain based fine was justified; when the court finds it necessary to rely on the gain, rather than the loss, to set the fine, ordering restitution usually will not be feasible because of the difficulty in computing the amount.",

and inserting in lieu thereof:

"participants. In addition, in many subcases restitution will not be feasible.".

The purposes of this amendment are to make the guideline consistent with 18 U.S.C. 3571, as amended, to clarify the Commentary, and to correct clerical errors in the guideline and Commentary.

Appendix A—Statutory Index

37. Appendix A is amended by inserting the followingstatutes in the appropriate place according tostatutory title and section number:

"7 U.S.C. 2024(b)	2F1.1",
"7 U.S.C. 2024(c)	2F1.1",
"18 U.S.C. 874	2B3.2, 2B3.3".
"18 U.S.C. 914	2F1.1",
"18 U.S.C. 923	2K2.3",
"18 U.S.C. 1030(a)(1)	2M3.2",
"18 U.S.C. 1030(a)(2)	2F1.1",
"18 U.S.C. 1030(a)(3)	2F1.1",
"18 U.S.C. 1030(a)(4)	2F1.1",
"18 U.S.C. 1030(a)(5)	2F1.1",
"18 U.S.C. 1030(a)(6)	2F1.1",
"18 U.S.C. 1030(b)	2X1.1",
"18 U.S.C. 1501	2A2.2, 2A2.3",
"18 U.S.C. 1720	2F1.1",
"18 U.S.C. 4082(d)	2P1.1",
"19 U.S.C. 1304	2T3.1",
"20 U.S.C. 1097(c)	2B4.1",
"20 U.S.C. 1097(d)	2F1.1",
"38 U.S.C. 3502	2F1.1",
"42 U.S.C. 1307(a)	2F1.1",
"42 U.S.C. 1395nn(c)	2F1.1",
"45 U.S.C. 359(a)	2F1.1".

The purpose of this amendment is to make thestatutory index more comprehensive.

38. Appendix A is amended by deleting:

"18 U.S.C. 703	2Q2.1",
"18 U.S.C. 707	2Q2.1",

and inserting in lieu thereof:

"18 U.S.C. 707(b)	2Q2.1";

by deleting:

"18 U.S.C. 112(a)	2A2.1, 2A2.2,2A2.3",

and inserting in lieu thereof:

"18 U.S.C. 112(a)	2A2.2, 2A2.3";

by deleting:

"18 U.S.C. 510(a)	2B5.1",

and inserting in lieu thereof:

"18 U.S.C. 510	2B5.2";

by deleting:

"18 U.S.C. 1005	2F1.1, 2S1.3",

and inserting in lieu thereof:

"18 U.S.C. 1005	2F1.1";

by deleting:

"18 U.S.C. 1701	2B1.1, 2H3.3",

and inserting in lieu thereof:

"18 U.S.C. 1700	2H3.3";

by deleting:

"18 U.S.C. 2113(a)	2B1.1, 2B3.1",

and inserting in lieu thereof:

"18 U.S.C. 2113(a)	2B1.1, 2B2.2,2B3.1, 2B3.2";

by deleting "2B5.1," from the line beginning with"18 U.S.C. 2314"; and by deleting "2B5.1." from the line beginning with"18 U.S.C. 2315".

The purpose of this amendment is to correct clerical errors.

[FR Doc. 88–717 Filed 1–14–88; 8:45 am]
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federal register

Friday
January 15, 1988

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of January 1, 1988 of 19 deferrals contained in the two special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987.

Rescissions (Table A and Attachment A)

As of January 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of January 1, 1988, $1,819 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 52, FR p. 37739, Thursday, October 8 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

James C. Miller III,

Director.

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TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In million of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In million of dollars)
Deferrals proposed by the President	1,873.0
Routine Executive releases through January 1, 1987 (OMB/Agency releases of $54.3 million and cumulative adjustments of $0)	-54.3
Overturned by the Congress	0
Currently before the Congress	1,818.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D88-1	40,000		10-1-87	35,000				5,000
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					120,425
Timber salvage sales	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work	D88-5	628,025		10-1-87					628,025
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87					104
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					51,015
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					636
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
Southwestern Power Administration, Operation and maintenance.....	D88-16	6,000		10-29-87					6,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D88-17	774		10-29-87					774
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D88-18	2,391		10-29-87					2,391
Social Security Administration Limitation on administrative expenses (construction).....	D88-10	6,171		10-1-87					6,171
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D88-19	85,000		10-29-87	6,800				78,200
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D88-12	879,049		10-1-87					879,049

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS.....		1,873,023	0		54,256	0		0	1,818,767

[FR Doc. 88-780 Filed 1-14-88; 8:45 am]

BILLING CODE 3110-01-C

federal register

Friday
January 15, 1988

Part VII

Office of the United States Trade Representative

Generalized System of Preferences; Information On Imports During First Ten Months of 1987 and Invitation of Comments

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Information On Imports During First 10 Months of 1987 and Invitation of Comments

This notice is for information only and has no legal effect. It is provided to inform the public of certain import statistics covering the period of January through October 1987 and to afford the public an opportunity to comment on certain discretionary decisions the President must make on or about April 1, 1988 with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974 (19 U.S.C. 2464(c)), and possible redesignation of articles previously removed, or "graduated," from GSP. Presidential decisions concerning the application of competitive need limits and all other product-related decisions stemming from the 1987 GSP Annual Review (52 FR 28896) are expected to be announced on or about April 1 and implemented on July 1, 1988.

NOTE: If the proposed Harmonized System tariff nomenclature (HS) is implemented prior to July 1, 1988, thus replacing the current Tariff Schedules of the United States (TSUS), product-specific decisions concerning the GSP program announced on or about April 1, 1988 and based on the TSUS will likely be subject to change.

In addition, the contents of this notice would also be likely to change.

If the HS is implemented prior to July 1, 1988, the conversion of the GSP program reflected in United States International Trade Commission (USITC) Publication 2030 ("Harmonized Tariff Schedule of the United States") will go into effect upon the date of implementation. The public will be notified of any additional changes in the HS-based GSP program as listed in USITC Publication 2030 after the HS has been implemented. USITC Publication 2030 can be obtained by contacting: United States Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 783–3238.

The HS is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purpose of classifying goods in international trade. Legislation concerning the implementation of this new tariff nomenclature system is currently being considered by the Congress. Should this legislation be passed by Congress and signed into law by the President, the HS will replace the current TSUS (51 FR 44163, 52 FR 7057, 52 FR 12281). (End Note.)

Pursuant to section 504(c), any GSP-eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any GSP-eligible article in excess of (1) $25 million indexed to the nominal growth of the U.S. Gross National Product since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed by GSP eligibility not later than July 1 of the next calendar year. Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately $76,096,551 million for calendar year 1987.

As a result of the Trade and Tariff Act of 1984, a general review of the GSP was initiated in February of 1985 (50 FR 6294) and the results of the review announced on January 2, 1987 (52 FR 389). The purpose of the review was to determine whether beneficiary countries have become "sufficiently competitive" in GSP-eligible products, on a product and country specific basis. For countries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million indexed to the nominal growth of U.S. GNP since 1984. Based on preliminary data and subject to revision, the aforementioned dollar limit for countries found to be sufficiently competitive is expected to be approximately $29,710,777 million for calendar year 1987.

Section 504(d)(2) of the Trade Act of 1974, as amended, permits the President to disregard the 50 percent competitive need limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. Gross National Product. This *de minimis* level is expected to be approximately $8,936,688 million for calendar year 1987.

A proclamation will be issued to be effective July 1, 1987 (unless the HS is implemented prior to July 1 as previously discussed), making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1987.

It should be emphasized that the information set forth below covers only the first 10 months of 1987 (January through October). While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment on potential discretionary decisions.

List I below shows specific GSP-eligible articles for which countries have already exceeded competitive need limitations (country supplied over $76,096,551 million, or $29,710,777 in the case where a country has been found sufficiently competitive in the product, during January-October 1987) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows specific GSP-eligible articles for which countries are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over $59 million, or, for countries found to be "sufficiently competitive", over 22 percent and/or over $23 million during January-October 1987).

List III below shows specific GSP-eligible articles for which countries, despite accounting for more than 50 percent (or 25 percent in the case of a country found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis* waiver (country accounted for more than the applicable percentage limit and the value of total U.S. imports was less than $8,936,688 million during January-October 1987).

List IV below shows specific articles for which countries are currently ineligible for GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent, or 25 percent in the case of products determined to be sufficiently competitive, of the value of U.S. imports and did not exceed the applicable dollar competitive need limit during January-October 1987).

The column headed "TSUS" in the lists below set forth item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), representing categories of imported articles.

NOTE: The President has taken action to suspend, indefinitely, Chile from the list of beneficiary developing countries effective February 28, 1988 (52 FR 49129 and 52 FR 49137). Therefore, the information concerning specific products and Chile in Lists I through IV should be disregarded. (End Note.)

As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimis* and whether to redesignate countries with respect to products are discretionary. In this regard, the GSP Subcommittee of the Trade Policy Staff Committee invites public comment relevant to these potential upcoming decisions.

All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th St. NW., Room 517, Washington, DC 20506. All such submissions should conform to 15 CFR 2007, particularly Sections 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). Furthermore, all those parties providing comments should indicate on the first page of the submission the name of the petitioner, the TSUS number(s), HS subheading(s), and beneficiary country(s) of interest, and the type of action (i.e., the use of the President's *de minimis* waiver authority, etc . . .) in which the party is interested. (The appropriate HS subheadings(s), if unknown, can be obtained by contacting the Classification and Value Division, U.S. Customs Service, at (202) 566–5858.)

These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than the close of business Monday, February 8, 1988 at the address listed above. If the comments contain business confidential information, twenty copies of a non-confidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly market "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly market at the top and bottom of each and every page "public version" or "non-confidential."

Written comments submitted in connection with these decisions will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. The GSP Information Center is located in the Office of the United States Trade Representative at the address listed above. The telephone number of the GSP Information Center is (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

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LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	12161	ARGENTINA	43.6%	$62,866,761	$144,337,358
*	12165	ARGENTINA	59.8%	$61,807,074	$103,338,976
*	13551	MEXICO	68.9%	$535,736	$778,000
*	13595	MEXICO	95.7%	$14,478,802	$15,126,725
*	13620	MEXICO	97.5%	$1,559,927	$1,600,409
*	13622	MEXICO	98.9%	$3,020,700	$3,053,537
*	13710	MEXICO	69.7%	$38,174,515	$54,807,847
*	13740	MEXICO	90.2%	$3,051,263	$3,381,284
*	13750	MEXICO	97.7%	$30,719,657	$31,458,533
*	13763	MEXICO	98.7%	$55,310,314	$56,043,014
*	14676	MEXICO	83.8%	$21,058,899	$25,121,493
*	14803	MEXICO	78.9%	$15,081,250	$19,103,421
*	14817	MEXICO	93.0%	$19,861,486	$21,351,573
*R	16705	MEXICO	21.6%	$160,053,660	$739,575,635
R	19221	COLOMBIA	53.2%	$50,313,820	$94,508,375
*	20660	MEXICO	30.2%	$16,835,143	$55,697,654
*R	22250	TAIWAN	31.7%	$639,854	$2,020,715
R	24014	TAIWAN	52.2%	$39,589,169	$75,867,105
*R	24520	BRAZIL	32.5%	$20,915,893	$39,838,076
*	24530	BRAZIL	44.7%	$6,228,459	$13,941,660
*	25660	KOREA, SOUTH	1.0%	$414,940	$40,034,604
	25687	MEXICO	86.7%	$118,230,450	$136,303,913
*	25691	BRAZIL	67.6%	$62,215	$92,083
*R	33740	KOREA, SOUTH	18.4%	$3,093,028	$16,818,431
*R	33740	HONG KONG	1.5%	$259,022	$16,818,431
*R	35581	TAIWAN	21.6%	$19,211,341	$88,845,407
*R	38961	HONG KONG	6.9%	$15,360,375	$224,136,259
*R	38961	TAIWAN	18.7%	$41,813,641	$224,136,259
*	40620	ISRAEL	66.4%	$1,556,752	$2,343,132
*	40719	MEXICO	2.8%	$1,782,284	$62,747,808
*	41072	TURKEY	5.2%	$215,809	$4,155,270
	41222	BAHAMAS	52.1%	$92,126,709	$176,928,477
*R	41324	KOREA, SOUTH	34.6%	$1,028,322	$2,969,586
*	41723	ISRAEL	90.5%	$1,694,693	$1,871,981
*R	42106	TAIWAN	49.6%	$1,166,080	$2,349,525
*	42949	ISRAEL	43.0%	$2,018,388	$4,694,309
*	43764	BRAZIL	24.9%	$3,185,775	$12,812,113
R	43950	SINGAPORE	36.9%	$95,579,263	$259,151,943
*R	44542	TAIWAN	46.6%	$16,561,375	$35,503,879
*	45244	BRAZIL	64.8%	$2,608,408	$4,026,214
*	47356	MEXICO	78.0%	$318,565	$408,482
*R	51164	MEXICO	34.4%	$532,928	$1,547,881
*	52221	MEXICO	36.4%	$11,628,874	$31,984,022
*R	53222	KOREA, SOUTH	14.5%	$1,866,803	$12,850,045
*R	53222	TAIWAN	29.7%	$3,820,762	$12,850,045
*	53231	MEXICO	32.9%	$1,962,272	$5,968,146
*	53330	BRAZIL	5.1%	$4,190,449	$81,713,187
*	53330	KOREA, SOUTH	28.1%	$22,989,795	$81,713,187
*	53330	TAIWAN	17.2%	$14,042,883	$81,713,187

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	53491	TAIWAN	49.4%	$5,978,154	$12,098,561
*	53531	MEXICO	38.1%	$21,066,520	$55,123,029
*	54553	MEXICO	20.6%	$5,761,202	$27,937,963
R	54567	TAIWAN	68.2%	$46,771,201	$68,619,382
*	54587	TAIWAN	57.8%	$13,484,314	$23,342,382
*	60628	MEXICO	24.0%	$3,475,927	$14,487,272
*	60636	BRAZIL	61.5%	$6,576,955	$10,690,746
*R	60637	BRAZIL	29.1%	$15,792,464	$54,262,926
*R	60644	BRAZIL	2.4%	$1,062,122	$44,213,621
*R	61065	KOREA, SOUTH	3.7%	$234,886	$6,288,885
*R	61070	TAIWAN	2.1%	$54,484	$2,614,016
*R	61074	KOREA, SOUTH	9.0%	$1,343,435	$14,992,392
*R	61074	TAIWAN	9.3%	$1,396,878	$14,992,392
*R	61082	KOREA, SOUTH	36.8%	$5,818,956	$15,828,329
*	61084	BRAZIL	7.9%	$2,601,395	$32,993,024
*	61084	KOREA, SOUTH	24.9%	$8,209,830	$32,993,024
*	61084	TAIWAN	9.4%	$3,094,423	$32,993,024
*	61086	KOREA, SOUTH	8.3%	$875,795	$10,502,024
*	61086	TAIWAN	34.2%	$3,596,723	$10,502,024
*R	61088	TAIWAN	27.2%	$4,063,795	$14,929,989
*	61203	CHILE	21.5%	$8,953,562	$41,592,018
*	61206	PERU	7.0%	$44,021,118	$625,956,314
	61206	CHILE	26.1%	$163,207,130	$625,956,314
*	61206	ZAMBIA	4.9%	$30,415,549	$625,956,314
*R	61318	TAIWAN	32.3%	$2,837,219	$8,770,510
*	64214	KOREA, SOUTH	52.7%	$4,973,630	$9,430,213
*	64216	KOREA, SOUTH	61.7%	$34,485,548	$55,847,957
*R	64217	KOREA, SOUTH	0.7%	$8,484	$1,289,127
*	64632	KOREA, SOUTH	64.2%	$2,398,931	$3,733,761
*R	64692	TAIWAN	32.2%	$50,137,688	$155,923,052
*R	64703	TAIWAN	37.9%	$69,606,270	$183,750,338
	64897	TAIWAN	68.6%	$93,972,851	$137,021,632
*R	64937	TAIWAN	33.9%	$15,195,056	$44,776,992
*R	65089	HONG KONG	11.4%	$312,479	$2,752,660
*	65089	TAIWAN	49.2%	$1,354,073	$2,752,660
*	65137	TAIWAN	69.8%	$20,389,344	$29,219,989
*R	65146	KOREA, SOUTH	9.8%	$482,877	$4,934,174
*	65146	TAIWAN	62.9%	$3,102,962	$4,934,174
R	65148	TAIWAN	41.7%	$33,688,610	$80,806,404
*	65149	TAIWAN	65.2%	$2,537,515	$3,893,833
*R	65203	KOREA, SOUTH	20.9%	$964,849	$4,606,352
*	65260	TAIWAN	67.4%	$3,882,526	$5,759,170
*	65284	MEXICO	27.1%	$22,836,355	$84,215,106
*	65300	SINGAPORE	0.8%	$735,851	$90,273,674
*R	65300	KOREA, SOUTH	4.7%	$4,212,516	$90,273,674
*	65300	TAIWAN	3.9%	$3,524,911	$90,273,674
R	65335	TAIWAN	81.0%	$43,748,411	$54,023,345
R	65337	TAIWAN	59.1%	$75,786,335	$128,323,054
*R	65338	TAIWAN	5.6%	$113,039	$2,024,613

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	65339	TAIWAN	56.3%	$126,114,047	$224,192,619
*R	65348	TAIWAN	49.2%	$6,503,402	$13,212,047
R	65352	TAIWAN	22.6%	$33,327,760	$147,388,897
*	65390	HONG KONG	49.1%	$4,798,172	$9,779,936
*	65393	TAIWAN	68.8%	$3,227,536	$4,689,318
*R	65394	KOREA, SOUTH	46.6%	$49,230,275	$105,544,443
R	65400	TAIWAN	50.2%	$54,505,782	$108,478,817
*	65408	MEXICO	10.7%	$5,429,543	$50,723,414
*R	65408	TAIWAN	51.3%	$26,004,594	$50,723,414
R	65425	TAIWAN	46.5%	$62,383,594	$134,037,371
*	65430	KOREA, SOUTH	41.6%	$3,482,784	$8,370,559
*R	65430	TAIWAN	21.2%	$1,772,410	$8,370,559
*	65440	TAIWAN	53.5%	$2,913,087	$5,447,276
*R	65460	HONG KONG	38.1%	$5,438,148	$14,260,790
	65725	TAIWAN	17.7%	$103,709,700	$584,560,707
*R	65735	TAIWAN	40.2%	$38,347,212	$95,457,042
R	65740	TAIWAN	34.2%	$64,966,322	$190,003,768
*R	66042	BRAZIL	27.7%	$102,849,726	$371,160,519
	66048	MEXICO	51.2%	$518,502,950	$1,011,979,369
R	66067	MEXICO	6.5%	$51,682,074	$790,023,743
R	66067	BRAZIL	7.0%	$55,046,361	$790,023,743
R	66071	BRAZIL	4.6%	$37,535,938	$812,752,424
R	66097	SINGAPORE	6.2%	$33,935,988	$545,607,055
R	66106	MEXICO	6.7%	$48,220,001	$716,360,522
	66106	HONG KONG	13.3%	$95,118,086	$716,360,522
	66106	TAIWAN	49.9%	$357,410,686	$716,360,522
*R	66109	SINGAPORE	14.0%	$18,161,337	$129,430,897
R	66120	MEXICO	16.0%	$81,406,671	$509,540,396
R	66135	KOREA, SOUTH	14.7%	$46,731,994	$318,260,699
*	66165	ISRAEL	8.5%	$2,178,717	$25,515,118
*R	66194	HONG KONG	7.8%	$1,096,380	$13,977,716
*R	66194	TAIWAN	27.5%	$3,847,954	$13,977,716
*	66235	MEXICO	32.0%	$7,444,753	$23,270,114
R	66408	BRAZIL	4.3%	$46,201,616	$1,067,296,086
R	66410	MEXICO	6.3%	$57,932,187	$917,682,837
*R	66410	TAIWAN	8.3%	$75,953,253	$917,682,837
*R	67216	TAIWAN	42.8%	$58,330,287	$136,368,175
*	67431	TAIWAN	80.4%	$17,877,535	$22,245,789
R	67434	TAIWAN	7.7%	$34,203,721	$442,883,834
*R	67435	TAIWAN	4.9%	$54,526,583	$1,123,012,600
R	67442	TAIWAN	23.1%	$73,212,471	$317,469,534
	67615	MEXICO	5.1%	$84,135,322	$1,664,110,440
R	67615	KOREA, SOUTH	10.6%	$176,838,269	$1,664,110,440
	67615	TAIWAN	15.8%	$262,555,004	$1,664,110,440
*R	67620	TAIWAN	29.2%	$91,239,777	$312,980,469
	67630	KOREA, SOUTH	4.5%	$232,718,715	$5,124,432,331
R	67630	HONG KONG	1.6%	$80,146,837	$5,124,432,331
	67630	TAIWAN	11.1%	$566,601,290	$5,124,432,331
*	67656	MEXICO	0.8%	$7,255,010	$952,615,781

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	67656	KOREA, SOUTH	2.1%	$20,136,620	$952,615,781
*	67656	HONG KONG	0.6%	$5,444,645	$952,615,781
*R	67656	TAIWAN	7.6%	$72,158,325	$952,615,781
	67850	MEXICO	6.4%	$219,175,192	$3,412,574,490
R	67850	BRAZIL	2.5%	$86,030,963	$3,412,574,490
	67850	SINGAPORE	3.9%	$133,849,703	$3,412,574,490
*	67850	KOREA, SOUTH	8.2%	$281,300,594	$3,412,574,490
*	67850	HONG KONG	2.2%	$74,152,050	$3,412,574,490
	67850	TAIWAN	11.0%	$377,062,393	$3,412,574,490
*R	68014	TAIWAN	40.4%	$64,134,405	$158,778,726
	68235	MEXICO	51.3%	$102,811,828	$200,284,383
	68260	MEXICO	18.1%	$265,997,632	$1,473,036,414
	68260	HONG KONG	8.5%	$124,576,456	$1,473,036,414
	68260	TAIWAN	9.4%	$138,807,712	$1,473,036,414
*R	68301	KOREA, SOUTH	14.2%	$7,560,350	$53,145,292
*R	68301	TAIWAN	17.1%	$9,079,371	$53,145,292
*	68315	MEXICO	16.2%	$31,067,335	$191,792,712
*R	68370	HONG KONG	18.2%	$5,330,692	$29,360,500
*R	68370	TAIWAN	4.9%	$1,442,919	$29,360,500
*R	68380	HONG KONG	46.8%	$10,575,494	$22,604,639
*R	68410	TAIWAN	41.1%	$2,316,312	$5,639,095
*	68425	SINGAPORE	3.8%	$20,962,583	$555,894,277
	68425	KOREA, SOUTH	54.5%	$303,131,934	$555,894,277
	68448	HONG KONG	41.1%	$89,165,046	$216,725,440
R	68448	TAIWAN	18.6%	$40,233,657	$216,725,440
*R	68453	TAIWAN	46.5%	$5,422,965	$11,666,410
*	68455	MEXICO	37.3%	$14,439,569	$38,668,522
	68458	KOREA, SOUTH	12.1%	$117,828,863	$974,883,060
	68458	TAIWAN	17.4%	$169,188,043	$974,883,060
*	68459	HONG KONG	0.7%	$1,633,789	$240,438,100
*	68459	TAIWAN	2.0%	$4,768,543	$240,438,100
*R	68470	KOREA, SOUTH	7.8%	$67,924,952	$867,014,841
	68470	TAIWAN	24.5%	$212,838,866	$867,014,841
*R	68514	KOREA, SOUTH	7.8%	$38,895,827	$495,967,639
*R	68514	TAIWAN	11.0%	$54,369,279	$495,967,639
*	68516	KOREA, SOUTH	0.3%	$227,036	$78,266,731
*	68516	HONG KONG	3.0%	$2,311,205	$78,266,731
*	68516	TAIWAN	33.8%	$26,421,137	$78,266,731
*	68524	SINGAPORE	9.6%	$23,153,639	$240,771,780
*	68524	KOREA, SOUTH	2.2%	$5,177,744	$240,771,780
*	68524	TAIWAN	15.4%	$37,109,502	$240,771,780
*	68531	KOREA, SOUTH	0.7%	$188,778	$25,298,389
*	68531	TAIWAN	22.0%	$5,568,813	$25,298,389
R	68532	MEXICO	13.1%	$36,334,464	$277,032,121
*	68532	KOREA, SOUTH	3.0%	$8,214,564	$277,032,121
*R	68532	TAIWAN	5.8%	$16,126,968	$277,032,121
*	68533	KOREA, SOUTH	1.6%	$2,948,333	$181,060,241
*R	68533	TAIWAN	3.3%	$6,014,041	$181,060,241
R	68539	KOREA, SOUTH	28.6%	$64,541,922	$225,357,429

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	68539	HONG KONG	22.3%	$50,299,624	$225,357,429
*	68540	KOREA, SOUTH	8.9%	$284,823,710	$3,187,265,642
R	68540	HONG KONG	1.7%	$53,726,100	$3,187,265,642
*R	68540	TAIWAN	3.3%	$105,090,643	$3,187,265,642
*	68565	SINGAPORE	22.7%	$16,036,560	$70,494,773
	68590	MEXICO	15.5%	$366,383,274	$2,358,903,276
	68590	TAIWAN	9.6%	$226,894,144	$2,358,903,276
*	68660	MEXICO	53.1%	$8,765,383	$16,514,904
R	68690	KOREA, SOUTH	25.6%	$32,600,802	$127,233,701
	68810	TAIWAN	81.2%	$107,980,228	$133,042,036
	68812	MEXICO	75.0%	$496,241,330	$661,560,086
*	68812	TAIWAN	9.9%	$65,780,430	$661,560,086
*	68817	MEXICO	6.8%	$917,922	$13,558,158
	68818	MEXICO	41.1%	$187,657,460	$456,986,856
R	68818	TAIWAN	21.6%	$98,733,564	$456,986,856
*	68832	KOREA, SOUTH	28.8%	$1,853,859	$6,437,375
*R	68841	HONG KONG	24.4%	$3,733,529	$15,308,351
*	68841	TAIWAN	1.6%	$252,182	$15,308,351
R	68842	MEXICO	8.3%	$74,320,158	$898,574,491
R	68842	KOREA, SOUTH	4.9%	$44,094,785	$898,574,491
	68842	HONG KONG	11.4%	$102,457,953	$898,574,491
	68842	TAIWAN	17.6%	$158,444,010	$898,574,491
	69232	MEXICO	9.5%	$447,096,182	$4,712,186,425
*	69232	BRAZIL	4.5%	$211,033,638	$4,712,186,425
R	69232	KOREA, SOUTH	1.2%	$56,934,638	$4,712,186,425
	69232	TAIWAN	3.4%	$159,203,272	$4,712,186,425
*R	69260	TAIWAN	50.5%	$38,720,556	$76,664,914
	69610	TAIWAN	49.4%	$129,438,889	$262,147,211
*	69635	TAIWAN	38.4%	$5,858,791	$15,270,089
*	69640	TAIWAN	31.8%	$2,012,309	$6,320,587
*	70661	HONG KONG	11.6%	$5,053,264	$43,703,576
*R	70661	TAIWAN	32.3%	$14,102,729	$43,703,576
	70845	TAIWAN	42.4%	$109,347,831	$257,732,944
*R	70847	HONG KONG	7.5%	$24,319,911	$323,296,943
*	70909	MEXICO	37.7%	$23,279,733	$61,741,495
*	70915	ISRAEL	16.8%	$13,945,622	$82,950,282
*	70940	HONG KONG	17.7%	$5,947,989	$33,577,539
*	71072	TAIWAN	40.7%	$3,934,616	$9,666,777
*	71138	MEXICO	20.8%	$3,607,223	$17,345,198
*R	72208	KOREA, SOUTH	3.0%	$804,254	$26,983,217
*R	72208	HONG KONG	24.1%	$6,500,765	$26,983,217
*R	72208	TAIWAN	45.8%	$12,362,975	$26,983,217
*R	72211	KOREA, SOUTH	9.7%	$6,865,322	$70,973,853
*R	72211	HONG KONG	11.6%	$8,257,172	$70,973,853
*	72211	TAIWAN	36.2%	$25,675,282	$70,973,853
R	72330	BRAZIL	10.2%	$31,205,931	$305,772,739
R	72445	MEXICO	4.7%	$50,729,935	$1,089,452,181
	72445	KOREA, SOUTH	10.8%	$117,591,986	$1,089,452,181
*R	72501	KOREA, SOUTH	49.1%	$20,230,941	$41,179,260

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	72503	KOREA, SOUTH	34.5%	$28,169,881	$81,643,867
*R	72532	TAIWAN	49.5%	$7,382,407	$14,928,046
*R	72546	KOREA, SOUTH	38.8%	$10,973,629	$28,271,769
*	72546	TAIWAN	12.4%	$3,508,506	$28,271,769
*R	72625	TAIWAN	52.6%	$9,195,168	$17,494,502
	72706	MEXICO	60.3%	$136,894,645	$227,111,101
*	72711	HONG KONG	9.6%	$13,988,901	$145,390,269
R	72711	TAIWAN	32.8%	$47,652,772	$145,390,269
*R	72723	TAIWAN	32.3%	$1,341,772	$4,159,950
*R	72729	YUGOSLAVIA	20.0%	$63,059,924	$314,639,094
*R	72729	TAIWAN	34.1%	$107,308,094	$314,639,094
*R	72735	TAIWAN	33.1%	$424,312,687	$1,281,788,609
*	72739	YUGOSLAVIA	11.0%	$1,090,226	$9,945,859
*R	72739	TAIWAN	28.6%	$2,839,988	$9,945,859
*R	72741	TAIWAN	27.5%	$10,394,087	$37,796,948
R	72759	TAIWAN	33.3%	$37,151,817	$111,596,967
*	72770	TAIWAN	30.9%	$283,579,242	$916,335,973
*	72822	TAIWAN	70.8%	$15,184,290	$21,454,673
*R	73094	KOREA, SOUTH	35.3%	$6,142,180	$17,392,509
*	73130	TAIWAN	42.6%	$550,138	$1,291,729
R	73252	TAIWAN	90.7%	$123,052,584	$135,643,975
*R	73415	TAIWAN	41.5%	$23,418,223	$56,452,415
R	73420	TAIWAN	9.7%	$50,158,436	$518,040,017
*R	73425	HONG KONG	23.4%	$1,946,508	$8,324,958
R	73477	KOREA, SOUTH	20.5%	$37,964,602	$184,840,865
	73477	TAIWAN	48.4%	$89,545,813	$184,840,865
*	73486	TAIWAN	56.6%	$15,891,982	$28,059,447
*	73507	KOREA, SOUTH	48.3%	$11,839,429	$24,507,273
*R	73509	TAIWAN	54.0%	$25,967,587	$48,114,411
*	73512	TAIWAN	60.1%	$6,814,124	$11,337,643
R	73520	KOREA, SOUTH	12.7%	$54,325,030	$426,556,344
*	73520	TAIWAN	60.0%	$255,732,629	$426,556,344
*R	73714	HONG KONG	7.6%	$2,293,598	$30,194,857
*R	73715	HONG KONG	9.4%	$6,066,169	$64,211,627
*R	73716	HONG KONG	8.9%	$5,269,943	$59,348,175
*	73723	HONG KONG	8.4%	$9,133,769	$108,664,673
*	73730	KOREA, SOUTH	57.5%	$389,461,851	$677,680,762
*R	73742	KOREA, SOUTH	28.8%	$1,588,398	$5,513,657
*R	73780	HONG KONG	24.0%	$10,491,949	$43,722,052
*	73793	TAIWAN	11.6%	$20,278,316	$174,254,370
*	73798	TAIWAN	17.9%	$48,867,693	$272,553,484
*R	74011	HONG KONG	0.1%	$14,332	$10,273,502
*R	74012	HONG KONG	1.3%	$174,575	$13,674,847
*R	74013	HONG KONG	0.6%	$2,043,723	$340,627,100
	74014	THAILAND	9.0%	$81,636,472	$910,201,005
*R	74014	HONG KONG	9.2%	$83,520,184	$910,201,005
*	74015	HONG KONG	37.6%	$116,611,085	$310,349,348
R	74038	KOREA, SOUTH	30.0%	$57,455,178	$191,682,543
*	74039	TAIWAN	32.9%	$726,619	$2,205,336

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	74041	KOREA, SOUTH.....	23.3%	$30,781,356	$131,907,406
*	74125	HONG KONG.....	18.3%	$793,171	$4,333,702
*R	75020	TAIWAN.....	58.7%	$24,698,848	$42,095,254
*R	75040	HONG KONG.....	36.3%	$7,719,178	$21,275,653
*R	75045	KOREA, SOUTH.....	30.0%	$4,088,573	$13,609,943
*	75122	TAIWAN.....	96.6%	$3,163,862	$3,274,155
*R	75525	HONG KONG.....	43.1%	$20,786,646	$48,191,414
*R	77141	TAIWAN.....	36.1%	$17,094,647	$47,291,674
*	77145	TAIWAN.....	47.1%	$3,052,136	$6,480,581
R	77220	TAIWAN.....	22.6%	$52,813,471	$234,091,489
	77235	TAIWAN.....	89.9%	$226,936,538	$252,563,393
	77251	BRAZIL.....	4.7%	$83,533,252	$1,759,476,211
	77251	KOREA, SOUTH.....	7.8%	$137,073,536	$1,759,476,211
R	77251	TAIWAN.....	2.3%	$40,973,199	$1,759,476,211
*R	77260	KOREA, SOUTH.....	25.1%	$7,333,939	$29,233,931
*R	77305	TAIWAN.....	38.2%	$3,709,507	$9,699,851
*R	77445	HONG KONG.....	21.7%	$5,543,070	$25,503,720
R	77450	TAIWAN.....	54.8%	$39,656,846	$72,339,730
*	77451	TAIWAN.....	7.3%	$505,439	$6,951,076
*	77453	TAIWAN.....	28.5%	$802,193	$2,819,082
	77455	TAIWAN.....	19.4%	$107,741,888	$555,979,565
*	77456	TAIWAN.....	8.4%	$294,733	$3,515,090
*	79003	TAIWAN.....	53.8%	$15,832,565	$29,417,329
*R	79010	TAIWAN.....	36.3%	$4,647,908	$12,816,607
	79039	TAIWAN.....	86.8%	$87,569,889	$100,894,274
R	79055	TAIWAN.....	23.6%	$33,389,632	$141,735,162
	79115	KOREA, SOUTH.....	29.5%	$117,380,389	$398,027,889
	79115	HONG KONG.....	25.1%	$99,900,147	$398,027,889
*	79128	MEXICO.....	2.6%	$336,097	$13,108,696
R	79160	TAIWAN.....	41.2%	$44,408,994	$107,888,047

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	10584	ISRAEL.....	84.7%	$5,448,077	$6,432,991
*	10670	THAILAND.....	60.6%	$8,312	$13,720
	12162	INDIA.....	59.5%	$11,228,451	$18,859,998
*	12164	INDIA.....	62.2%	$3,759,839	$6,044,310
*	12470	BRAZIL.....	49.7%	$74,538	$150,088
*R	13032	ARGENTINA.....	23.5%	$286,993	$1,222,201
*	13037	ARGENTINA.....	82.2%	$1,787,414	$2,173,816
*	13180	URUGUAY.....	77.9%	$47,979	$61,561
*	13541	ISRAEL.....	52.7%	$1,042,081	$1,978,103
*	13560	GUATEMALA.....	55.2%	$149,119	$270,127
*	13570	TURKEY.....	84.1%	$105,086	$124,943
*	13580	EL SALVADOR.....	94.8%	$31,964	$33,728
	13590	MEXICO.....	95.5%	$26,446,583	$27,680,534
*	13600	DOMINICAN REPUBLIC..	74.5%	$4,788,876	$6,427,806
	13630	MEXICO.....	69.1%	$11,191,129	$16,192,254
*	13661	MEXICO.....	91.5%	$1,225,633	$1,339,455
*	13677	MEXICO.....	88.9%	$3,628,920	$4,081,550
*	13680	MEXICO.....	65.6%	$1,504,024	$2,291,815
*	13697	TAIWAN.....	58.8%	$1,203,356	$2,047,484
*	13702	DOMINICAN REPUBLIC..	91.9%	$1,651,902	$1,797,199
R	13704	MEXICO.....	27.0%	$4,307,210	$15,955,859
*	13771	MEXICO.....	61.7%	$2,357,091	$3,820,647
*	13788	JAMAICA.....	54.7%	$3,613,845	$6,611,339
*	13789	DOMINICAN REPUBLIC..	98.6%	$1,615,417	$1,638,749
*	13793	DOMINICAN REPUBLIC..	53.3%	$483,017	$905,374
	13805	MEXICO.....	78.6%	$45,315,581	$57,625,758
*	14011	CHILE.....	50.0%	$1,459,934	$2,919,274
*	14020	INDIA.....	57.7%	$238,430	$413,175
*	14021	MEXICO.....	83.2%	$3,739,055	$4,492,937
*	14054	ISRAEL.....	75.5%	$1,238,130	$1,640,762
	14177	MEXICO.....	49.9%	$16,196,494	$32,436,081
R	14198	MEXICO.....	31.5%	$5,493,092	$17,447,476
*	14526	HONG KONG.....	48.7%	$875,116	$1,796,248
*	14550	MEXICO.....	96.8%	$2,147,561	$2,218,254
*	14565	TAIWAN.....	57.6%	$1,312,693	$2,280,469
*R	14612	ARGENTINA.....	48.4%	$1,120,756	$2,317,753
	14622	TURKEY.....	73.5%	$9,414,206	$12,811,442
*	14678	CHILE.....	52.5%	$180,237	$343,432
*	14687	DOMINICAN REPUBLIC..	79.8%	$172,248	$215,827
*	14733	JAMAICA.....	86.5%	$188,517	$217,958
*	14754	MEXICO.....	63.5%	$125,280	$197,352
	14812	MEXICO.....	69.5%	$10,147,581	$14,603,549
*	14825	MEXICO.....	88.6%	$4,255,030	$4,799,892
R	14830	MEXICO.....	45.3%	$10,330,884	$22,807,394
*	14835	GUATEMALA.....	75.0%	$735,338	$980,713
*	14877	KOREA, SOUTH.....	53.6%	$13,987	$26,079
*R	14950	MEXICO.....	47.6%	$1,964,216	$4,126,388
*	14960	THAILAND.....	60.9%	$3,270,763	$5,367,410
*	15200	ECUADOR.....	94.6%	$489,900	$518,085

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	15254	BRAZIL	44.5%	$801,489	$1,801,453
*	15320	DOMINICAN REPUBLIC	84.2%	$32,210	$38,237
*	15443	TAIWAN	65.8%	$76,145	$115,773
*	15460	THAILAND	56.7%	$435,288	$767,623
*	15535	DOMINICAN REPUBLIC	47.8%	$2,704,931	$5,662,892
*	16105	TAIWAN	90.7%	$127,951	$141,030
*	16175	ISRAEL	87.9%	$361,961	$411,646
*	16188	INDIA	100.0%	$1,239	$1,239
*	16211	LEBANON	64.6%	$12,831	$19,850
*	16813	TRINIDAD ISLAND	100.0%	$496,561	$496,561
R	16898	MEXICO	46.5%	$6,703,455	$14,418,784
*	16944	COLOMBIA	52.7%	$759,820	$1,441,675
*	16958	YUGOSLAVIA	100.0%	$2,000	$2,000
*	17040	MEXICO	49.1%	$2,010,901	$4,096,707
*	17615	BRAZIL	69.4%	$1,663,125	$2,395,679
*	17670	MEXICO	51.0%	$2,041,882	$4,003,625
*	17716	ISRAEL	76.0%	$24,677	$32,452
*	18453	ARGENTINA	52.1%	$227,012	$436,065
*	18834	MEXICO	54.4%	$151,638	$278,621
	19221	COLOMBIA	53.2%	$50,313,820	$94,508,375
	19223	COLOMBIA	90.5%	$28,228,137	$31,174,811
*R	20091	MEXICO	26.0%	$1,215,985	$4,683,498
*	20091	HONDURAS	68.0%	$3,185,901	$4,683,498
	20262	MEXICO	96.1%	$39,185,470	$40,773,576
R	20266	TAIWAN	28.1%	$14,352,415	$51,001,673
*	20330	MALAYSIA	52.0%	$632,255	$1,215,635
*	20405	TAIWAN	68.8%	$2,370,302	$3,444,033
*	20435	HONDURAS	57.8%	$224,214	$387,803
	20440	TAIWAN	84.0%	$22,861,635	$27,227,192
R	20630	TAIWAN	31.3%	$20,774,650	$66,475,791
*	20647	TAIWAN	70.6%	$2,194,670	$3,106,859
	20698	TAIWAN	67.8%	$75,661,053	$111,547,757
*	22234	TAIWAN	91.9%	$92,450	$100,621
*	22236	TAIWAN	85.3%	$583,003	$683,217
*	24010	BRAZIL	98.1%	$5,416,319	$5,521,364
*	24012	BRAZIL	80.5%	$969,789	$1,204,963
	24014	TAIWAN	52.2%	$39,589,169	$75,867,105
*	24019	TAIWAN	57.6%	$571,115	$991,032
	24021	INDONESIA	56.1%	$9,004,057	$16,049,835
*	24032	BRAZIL	57.5%	$69,449	$120,820
*	24050	TAIWAN	75.1%	$67,322	$89,650
*	25120	ISRAEL	77.8%	$78,546	$101,021
*	25261	MEXICO	89.1%	$1,096,397	$1,229,864
*R	31525	MEXICO	33.1%	$1,166,292	$3,519,554
*	31535	PHILIPPINES	83.5%	$2,640,468	$3,161,784
*	31555	BRAZIL	47.3%	$46,988	$99,385
*	31580	THAILAND	80.6%	$505,863	$627,718
*	31590	THAILAND	71.3%	$71,163	$99,748
*	31901	INDIA	99.1%	$1,578,113	$1,592,419

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	31903	INDIA	94.6%	$1,459,700	$1,543,109
*	31905	INDIA	98.9%	$6,362,132	$6,431,153
*	31907	INDIA	97.9%	$178,998	$182,787
*	36035	INDIA	72.0%	$561,761	$780,403
*	36121	INDIA	78.6%	$29,820	$37,960
	38614	TAIWAN	48.7%	$12,625,507	$25,947,467
*	39016	TAIWAN	84.4%	$24,166	$28,622
*	40212	MEXICO	54.5%	$2,066,360	$3,791,702
*	40220	MEXICO	55.9%	$1,238,483	$2,216,322
*	40647	INDIA	100.0%	$6,160	$6,160
	40823	BRAZIL	53.9%	$38,762,867	$71,970,701
R	40872	TAIWAN	34.3%	$13,047,819	$38,062,596
*	41056	TAIWAN	54.4%	$18,014	$33,140
*	41182	YUGOSLAVIA	50.3%	$4,241,721	$8,426,003
*	41231	ISRAEL	48.4%	$637,372	$1,318,163
*	41280	MEXICO	76.4%	$708,284	$926,589
*R	41645	TAIWAN	26.6%	$1,893,911	$7,108,574
*	41722	MEXICO	47.8%	$1,726,364	$3,613,484
*	41722	TRINIDAD ISLAND	51.3%	$1,854,399	$3,613,484
*	41754	HONG KONG	50.7%	$45,472	$89,766
*	41824	INDIA	67.8%	$74,099	$109,252
*	41876	MEXICO	56.1%	$1,122,733	$2,002,904
*	41878	MEXICO	64.0%	$2,262,602	$3,535,470
*	41910	CHILE	78.2%	$4,257,976	$5,446,098
*	42002	ISRAEL	81.2%	$789,882	$973,136
*	42020	INDIA	80.0%	$452,684	$565,848
*	42024	ISRAEL	86.4%	$499,147	$577,727
*R	42060	MEXICO	93.9%	$5,320,407	$5,665,046
*	42070	ISRAEL	100.0%	$72,313	$72,313
*	42082	ISRAEL	99.4%	$339,466	$341,610
*	42114	CHILE	70.3%	$2,124,363	$3,020,003
*	42276	MEXICO	58.7%	$965,883	$1,646,448
*	42532	HONG KONG	48.5%	$1,533	$3,164
*	42584	TRINIDAD ISLAND	61.7%	$732,856	$1,187,021
*	42600	MEXICO	95.8%	$806,990	$841,953
*	42716	ARGENTINA	96.7%	$403,913	$417,603
*	42725	MEXICO	81.4%	$413,058	$507,620
*	42746	MEXICO	100.0%	$246,278	$246,278
*R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
*	42850	BRAZIL	92.3%	$200,289	$216,976
*	42858	TAIWAN	65.0%	$415,000	$638,616
*	42929	BRAZIL	68.3%	$2,140,445	$3,133,857
*	43510	DOMINICA ISLAND	71.7%	$243,184	$339,375
*	43713	INDIA	85.3%	$205,934	$241,316
*	44510	TAIWAN	64.9%	$745,949	$1,149,212
R	44546	MEXICO	41.7%	$14,516,646	$34,787,076
*	45254	BRAZIL	52.2%	$399,403	$764,608
*	45516	VENEZUELA	100.0%	$49,014	$49,014
*	45518	BRAZIL	100.0%	$57,020	$57,020

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	45530	TAIWAN	95.7%	$162,652	$170,007
*	45546	TAIWAN	73.5%	$331,669	$451,124
*	46605	PHILIPPINES	84.3%	$645,912	$766,085
*	46610	MEXICO	49.8%	$23,047	$46,285
	47085	MEXICO	61.6%	$6,893,466	$11,186,622
*	47338	CYPRUS	74.3%	$84,774	$114,136
*	47352	MEXICO	99.5%	$7,288,121	$7,325,746
*	47378	MEXICO	91.2%	$2,140,175	$2,347,420
*	47382	KOREA, SOUTH	89.1%	$216,000	$242,329
*	51131	MEXICO	74.5%	$441,758	$592,660
*	51224	MEXICO	51.1%	$166,228	$325,466
*	51671	INDIA	100.0%	$369,259	$369,259
*	51673	INDIA	84.7%	$24,705	$29,175
*	51674	INDIA	86.7%	$85,525	$98,625
*	51676	INDIA	77.6%	$152,523	$196,621
*	51841	MEXICO	79.7%	$335,157	$420,406
*	52187	MEXICO	56.9%	$2,327,315	$4,092,960
*	52241	MEXICO	91.8%	$343,036	$373,870
*	52351	TAIWAN	50.1%	$11,540	$23,029
*	52394	TAIWAN	63.9%	$1,342,747	$2,100,362
R	53411	TAIWAN	32.0%	$29,541,666	$92,380,389
*	53481	TAIWAN	64.7%	$4,840,100	$7,479,457
	53484	TAIWAN	75.2%	$29,411,290	$39,135,044
R	53512	MEXICO	40.3%	$20,171,941	$50,021,936
*R	54021	MEXICO	38.5%	$2,435,837	$6,325,463
*	54257	HONG KONG	93.2%	$16,200	$17,386
*R	54277	MEXICO	30.2%	$142,720	$471,893
*	54292	TAIWAN	100.0%	$22,320	$22,320
*	54294	TAIWAN	86.0%	$47,444	$55,195
	54441	MEXICO	48.0%	$58,634,119	$122,140,940
R	54451	TAIWAN	24.7%	$15,764,454	$63,819,902
R	54553	TAIWAN	52.1%	$14,549,380	$27,937,963
*	54565	MEXICO	70.1%	$850,191	$1,212,302
	54567	TAIWAN	68.2%	$46,771,201	$68,619,382
*	54585	TAIWAN	90.8%	$1,202,883	$1,324,161
*	54647	TAIWAN	74.0%	$1,313,463	$1,776,042
R	54737	TAIWAN	36.1%	$5,200,208	$14,399,216
*	60210	MEXICO	80.9%	$63,795	$78,869
*	60315	VENEZUELA	85.3%	$5,608,810	$6,577,875
	60340	CHILE	68.6%	$9,031,017	$13,167,156
*	60350	MEXICO	87.2%	$4,553,001	$5,222,511
*	60505	LIBERIA	53.7%	$20,760	$38,675
*	60673	MEXICO	50.0%	$2,740,673	$5,483,828
R	60914	BRAZIL	45.2%	$11,319,353	$25,026,548
*	61058	TAIWAN	74.2%	$74,015	$99,741
*	61063	KOREA, SOUTH	98.4%	$145,554	$147,908
*	61065	TAIWAN	61.2%	$3,846,898	$6,288,885
*	61070	ISRAEL	69.5%	$1,816,972	$2,614,016
*	61071	TAIWAN	67.6%	$58,564	$86,570

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	61203	MEXICO	58.8%	$24,475,352	$41,592,018
*	61230	YUGOSLAVIA	86.4%	$545,595	$631,333
*	61250	MEXICO	47.7%	$142,272	$298,033
*	61271	PERU	51.4%	$485,231	$944,702
*	61303	MEXICO	50.7%	$74,321	$146,543
*	61311	MEXICO	96.8%	$2,524,659	$2,607,584
	61815	VENEZUELA	72.5%	$54,377,988	$74,954,193
*	61842	BAHRAIN	47.0%	$2,156,473	$4,592,459
*	62215	VENEZUELA	61.7%	$180,553	$292,414
*	62220	BOLIVIA	50.9%	$62,157	$122,039
*	62404	MEXICO	47.6%	$1,018,255	$2,139,520
*	62410	PERU	57.2%	$85,549	$149,632
*	62631	MEXICO	84.6%	$9,702	$11,464
*R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
*	62815	BRAZIL	69.5%	$277,355	$398,963
*	62890	CHILE	64.0%	$986,391	$1,541,559
*	62895	CHILE	100.0%	$114,500	$114,500
*	63266	MEXICO	91.3%	$354,671	$388,677
*	64208	KOREA, SOUTH	61.6%	$899,383	$1,459,105
*	64225	TAIWAN	63.3%	$16,375	$25,889
*R	64245	MEXICO	61.9%	$939,789	$1,518,744
*	64258	VENEZUELA	100.0%	$162,510	$162,510
*	64285	TAIWAN	83.5%	$158,457	$189,698
*	64464	EL SALVADOR	93.6%	$27,893	$29,798
*	64604	TAIWAN	72.0%	$10,027	$13,928
*	64606	TAIWAN	56.1%	$225,875	$402,750
*	64628	KOREA, SOUTH	83.7%	$1,042,811	$1,245,697
R	64630	KOREA, SOUTH	40.0%	$5,871,460	$14,696,352
*	64647	TAIWAN	80.4%	$830,388	$1,032,597
*	64653	HONG KONG	53.7%	$1,020,061	$1,898,265
*R	64665	TAIWAN	33.3%	$2,476,522	$7,441,731
R	64672	TAIWAN	30.2%	$7,189,842	$23,841,691
*	64678	TAIWAN	50.3%	$785,139	$1,560,271
*	64685	TAIWAN	61.7%	$901,180	$1,460,519
*	64687	TAIWAN	73.6%	$281,880	$382,891
R	64695	TAIWAN	32.9%	$9,148,113	$27,842,472
R	64697	TAIWAN	42.0%	$4,556,617	$10,841,656
*	64698	MEXICO	76.1%	$249,474	$327,926
R	64705	TAIWAN	36.7%	$14,350,751	$39,147,449
*	64710	TAIWAN	51.5%	$95,539	$185,666
*	64855	TAIWAN	70.3%	$3,473,506	$4,938,471
*	64857	TAIWAN	54.7%	$902,714	$1,651,084
*	64873	TAIWAN	65.3%	$3,565,199	$5,461,287
*R	64880	TAIWAN	36.2%	$52,375	$144,855
R	64885	TAIWAN	35.6%	$12,859,343	$36,139,259
*	64891	TAIWAN	77.2%	$999,617	$1,295,004
*R	64895	TAIWAN	36.1%	$2,390,638	$6,624,305
*	64971	TAIWAN	60.9%	$16,013	$26,274
*	64977	HONG KONG	51.9%	$445,186	$857,455

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	64989	TAIWAN	70.1%	$159,287	$227,191
R	65021	TAIWAN	29.3%	$12,620,664	$43,105,514
*	65037	TAIWAN	49.6%	$1,008,263	$2,033,567
*	65047	TAIWAN	91.1%	$524,216	$575,296
*	65048	TAIWAN	62.1%	$435,282	$701,106
*	65056	TAIWAN	47.1%	$2,253,593	$4,784,369
*	65079	TAIWAN	57.2%	$137,352	$240,173
*	65104	TAIWAN	96.9%	$74,188	$78,089
	65121	TAIWAN	73.9%	$10,470,623	$14,176,104
*	65125	TAIWAN	53.3%	$1,738,312	$3,262,610
R	65131	TAIWAN	24.3%	$2,801,183	$11,523,240
*	65153	TAIWAN	65.1%	$2,721,307	$4,177,159
R	65155	TAIWAN	36.7%	$6,683,191	$18,200,191
*	65160	KOREA, SOUTH	49.1%	$32,886	$66,970
*	65162	KOREA, SOUTH	85.9%	$65,026	$75,676
*	65213	TAIWAN	100.0%	$2,782	$2,782
R	65224	TAIWAN	26.7%	$2,533,008	$9,479,906
	65272	KOREA, SOUTH	57.3%	$7,591,668	$13,242,657
*	65325	MEXICO	71.8%	$1,861,778	$2,591,786
	65335	TAIWAN	81.0%	$43,748,411	$54,023,345
	65337	TAIWAN	59.1%	$75,786,335	$128,323,054
	65345	TAIWAN	48.5%	$10,663,672	$21,966,774
*	65347	TAIWAN	76.5%	$1,362,719	$1,781,452
*	65370	KOREA, SOUTH	52.1%	$58,369	$111,953
R	65396	TAIWAN	39.7%	$12,275,495	$30,940,337
	65399	TAIWAN	83.7%	$9,120,392	$10,893,376
	65400	TAIWAN	50.2%	$54,505,782	$108,478,817
	65425	TAIWAN	46.5%	$62,383,594	$134,037,371
R	65435	TAIWAN	43.4%	$3,971,989	$9,149,603
R	65445	TAIWAN	45.4%	$11,132,283	$24,502,486
	65450	TAIWAN	52.8%	$11,231,808	$21,269,199
*	65455	TAIWAN	81.9%	$1,696,037	$2,069,790
R	65460	TAIWAN	23.9%	$3,413,521	$14,260,790
	65465	TAIWAN	83.0%	$9,506,596	$11,448,275
R	65475	TAIWAN	63.1%	$13,749,812	$21,793,372
*	65610	SINGAPORE	55.6%	$3,663,593	$6,587,370
R	65615	MEXICO	46.4%	$6,693,011	$14,424,741
*	65630	HONG KONG	53.3%	$488,758	$916,340
	65724	TAIWAN	75.4%	$13,357,046	$17,713,597
	65740	TAIWAN	34.2%	$64,966,322	$190,003,768
*	65790	MEXICO	83.0%	$1,400,135	$1,686,982
*	66020	TAIWAN	51.3%	$49,056	$95,718
	66035	ISRAEL	74.3%	$8,652,548	$11,648,808
	67442	TAIWAN	23.1%	$73,212,471	$317,469,534
R	68019	TAIWAN	32.2%	$15,297,745	$47,487,335
*	68025	TAIWAN	58.2%	$1,650,252	$2,837,721
	68062	SINGAPORE	77.0%	$7,582,001	$9,841,521
	68255	SINGAPORE	60.1%	$15,650,972	$26,038,112
R	68312	MEXICO	22.5%	$11,060,015	$49,208,023

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	68332	HONG KONG	26.7%	$68,491,889	$256,540,500
	68360	MEXICO	14.0%	$75,355,581	$539,267,307
*R	68410	HONG KONG	26.5%	$1,495,425	$5,639,095
R	68506	TAIWAN	69.5%	$10,023,148	$14,418,161
	68514	HONG KONG	13.3%	$66,196,503	$495,967,639
R	68522	KOREA, SOUTH	22.4%	$4,649,046	$20,765,895
R	68522	HONG KONG	25.4%	$5,282,590	$20,765,895
	68539	KOREA, SOUTH	28.6%	$64,541,922	$225,357,429
*	68542	HONG KONG	100.0%	$11,070	$11,070
R	68570	HONG KONG	7.9%	$28,968,316	$367,783,735
	68590	KOREA, SOUTH	2.6%	$61,792,461	$2,358,903,276
R	68618	TAIWAN	38.2%	$7,378,874	$19,314,521
	68630	TAIWAN	84.7%	$19,595,574	$23,148,557
*	68650	SINGAPORE	48.1%	$992,235	$2,063,449
	68817	TAIWAN	63.4%	$8,590,900	$13,558,158
*	68820	VENEZUELA	69.0%	$2,404,904	$3,487,083
*	68830	KOREA, SOUTH	71.5%	$2,229,515	$3,116,861
R	68834	HONG KONG	51.6%	$18,667,490	$36,159,526
	68842	MEXICO	8.3%	$74,320,158	$898,574,491
*	69431	TAIWAN	56.7%	$110,390	$194,719
	70090	MEXICO	77.6%	$9,725,145	$12,526,213
*	70232	MEXICO	66.0%	$372,175	$563,512
*	70245	MEXICO	93.7%	$41,000	$43,776
	70314	MEXICO	76.4%	$9,770,232	$12,783,448
R	70372	TAIWAN	45.9%	$18,243,245	$39,728,246
*	70495	PHILIPPINES	50.9%	$299,539	$588,251
R	70582	TAIWAN	37.6%	$9,231,721	$24,536,230
R	70583	TAIWAN	26.1%	$12,341,204	$47,271,032
*	70619	KENYA	47.9%	$15,311	$31,952
*	70633	KOREA, SOUTH	66.4%	$1,682,876	$2,532,993
	70645	HONG KONG	61.3%	$5,882,323	$9,595,258
*	70841	ISRAEL	64.8%	$24,181	$37,331
*	70871	TAIWAN	76.8%	$5,389,253	$7,014,416
*	71060	HONG KONG	63.5%	$1,086,838	$1,710,431
*	71067	TAIWAN	78.8%	$115,577	$146,627
*	71068	BRAZIL	48.7%	$30,087	$61,777
*	71130	TAIWAN	58.9%	$331,925	$563,558
*	71131	INDIA	76.9%	$3,386,195	$4,400,987
	71249	TAIWAN	4.4%	$61,598,287	$1,401,637,922
	71315	MEXICO	51.3%	$5,207,799	$10,151,170
*	72202	TAIWAN	81.5%	$1,086,274	$1,332,973
*	72214	TAIWAN	94.8%	$3,180,903	$3,356,962
*	72255	HONG KONG	62.3%	$429,775	$690,120
*	72278	TAIWAN	96.2%	$4,265,096	$4,431,833
*	72435	TAIWAN	49.5%	$3,735	$7,553
	72550	TAIWAN	70.4%	$52,166,278	$74,054,243
*	72552	TAIWAN	60.8%	$4,641,352	$7,636,192
R	72725	TAIWAN	33.7%	$3,080,774	$9,142,349
R	72740	TAIWAN	26.4%	$16,832,805	$63,682,148

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	72747	TAIWAN	33.7%	$9,535,225	$28,296,443
R	72765	TAIWAN	38.7%	$9,813,962	$25,350,267
R	72786	TAIWAN	42.7%	$10,560,303	$24,708,813
*	73110	TAIWAN	72.1%	$646,999	$897,459
*	73142	BRAZIL	100.0%	$12,418	$12,418
*	73150	TAIWAN	61.0%	$799,633	$1,310,613
R	73170	TAIWAN	34.8%	$6,198,874	$17,816,699
*	73243	TAIWAN	90.8%	$3,242,414	$3,569,345
	73260	TAIWAN	88.2%	$57,020,810	$64,674,454
R	73262	TAIWAN	55.2%	$8,076,188	$14,629,415
	73410	TAIWAN	74.4%	$7,231,012	$9,722,546
*	73430	HONG KONG	73.5%	$623,107	$847,649
*	73434	HONG KONG	55.0%	$1,182,161	$2,151,132
*	73440	TAIWAN	68.3%	$4,082,088	$5,972,427
*R	73442	BRAZIL	33.3%	$844,905	$2,539,765
*	73442	TAIWAN	47.9%	$1,215,641	$2,539,765
*	73451	TAIWAN	89.0%	$5,170,558	$5,811,963
*	73460	TAIWAN	95.0%	$1,881,838	$1,981,870
*	73471	TAIWAN	89.0%	$1,427,691	$1,604,454
*	73472	TAIWAN	75.2%	$4,173,974	$5,550,806
*	73485	INDONESIA	51.4%	$814,418	$1,584,684
	73487	TAIWAN	89.5%	$28,282,534	$31,586,499
R	73488	TAIWAN	37.6%	$4,627,260	$12,312,461
R	73491	TAIWAN	41.9%	$5,833,723	$13,930,297
R	73509	KOREA, SOUTH	28.9%	$13,896,937	$48,114,411
*R	73510	TAIWAN	32.7%	$699,658	$2,140,221
*	73511	TAIWAN	77.0%	$1,162,830	$1,510,022
R	73765	TAIWAN	40.0%	$4,271,049	$10,668,012
	73798	HONG KONG	24.8%	$67,480,695	$272,553,484
	74015	THAILAND	23.1%	$71,837,774	$310,349,348
*	74030	HONG KONG	67.5%	$3,988,330	$5,906,341
*	74034	HONG KONG	79.2%	$1,329,017	$1,677,563
*	74075	KOREA, SOUTH	50.6%	$506,350	$1,000,133
*	74115	TAIWAN	47.4%	$1,222,476	$2,576,829
*	74120	HONG KONG	97.1%	$1,606,896	$1,655,129
R	74150	HONG KONG	26.9%	$5,066,716	$18,831,583
*	74510	HONG KONG	58.8%	$452,583	$770,167
R	74545	TAIWAN	40.4%	$9,881,313	$24,463,348
*	74556	MALAYSIA	47.8%	$1,141,468	$2,388,299
*	74560	TAIWAN	61.5%	$1,653,712	$2,687,322
*	74570	TAIWAN	86.4%	$1,046,062	$1,210,712
*	74815	TAIWAN	55.2%	$1,590,321	$2,879,978
*	74836	TAIWAN	55.6%	$1,238,678	$2,226,262
*	75005	TAIWAN	60.4%	$639,454	$1,059,535
	75022	TAIWAN	68.0%	$13,026,666	$19,149,775
*	75025	HONG KONG	51.1%	$3,475,176	$6,804,676
*	75035	TAIWAN	50.2%	$1,482,446	$2,953,026
R	75045	TAIWAN	37.1%	$5,044,572	$13,609,943
R	75047	TAIWAN	47.4%	$9,396,328	$19,831,846

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	75050	KOREA, SOUTH	54.7%	$948,038	$1,732,458
*	75055	KOREA, SOUTH	67.4%	$1,541,370	$2,286,334
R	75065	TAIWAN	73.5%	$12,926,496	$17,588,327
R	75070	TAIWAN	36.0%	$15,220,481	$42,333,041
*	75075	HONG KONG	48.3%	$1,978,171	$4,097,300
*	75080	TAIWAN	91.2%	$1,379,998	$1,513,061
	75105	TAIWAN	74.6%	$70,585,560	$94,642,172
*	75110	INDIA	69.9%	$36,888	$52,788
*	75111	TAIWAN	48.6%	$801,693	$1,649,895
*	75115	TAIWAN	71.5%	$26,431	$36,984
*	75121	TAIWAN	93.2%	$1,134,737	$1,217,191
*	75124	TAIWAN	96.9%	$1,082,699	$1,117,048
*	75125	TAIWAN	86.8%	$1,986,076	$2,286,827
*	75520	ISRAEL	53.9%	$1,077,036	$1,998,581
*	75615	HONG KONG	65.9%	$4,517,975	$6,860,533
*	75623	INDIA	70.8%	$7,278	$10,273
*	75635	TURKEY	69.1%	$239,289	$346,256
*	75650	HONG KONG	52.3%	$2,724	$5,204
*	76038	MEXICO	59.7%	$621,694	$1,040,883
*	76050	TAIWAN	70.0%	$703,185	$1,004,916
*	76056	TAIWAN	56.2%	$1,071,427	$1,906,771
	77007	MEXICO	88.6%	$24,212,701	$27,319,451
R	77040	MEXICO	34.5%	$5,199,707	$15,064,555
*	77105	MEXICO	100.0%	$29,720	$29,720
	77143	TAIWAN	14.7%	$68,676,182	$465,615,414
R	77206	TAIWAN	54.8%	$14,262,447	$26,031,073
R	77216	HONG KONG	18.7%	$24,164,208	$129,455,902
*	77229	HONG KONG	50.9%	$205,409	$403,857
R	77280	TAIWAN	29.5%	$7,387,539	$25,062,637
R	77295	TAIWAN	40.9%	$16,470,218	$40,310,408
R	77297	TAIWAN	42.0%	$26,397,259	$62,909,497
R	77310	TAIWAN	41.0%	$6,779,803	$16,547,171
*	77320	TAIWAN	58.6%	$98,941	$168,906
	77450	TAIWAN	54.8%	$39,656,846	$72,339,730
R	77458	HONG KONG	6.9%	$28,393,678	$409,468,760
	77458	TAIWAN	17.1%	$70,209,416	$409,468,760
*	79000	TAIWAN	47.5%	$721,654	$1,519,046
R	79060	TAIWAN	29.9%	$2,785,747	$9,319,044
	79061	TAIWAN	49.1%	$6,978,076	$14,198,211
*	79063	HONG KONG	71.5%	$351,720	$491,993
	79070	KOREA, SOUTH	80.6%	$40,034,369	$49,698,804
*	79110	HONG KONG	68.7%	$402,092	$585,437
*	79120	THAILAND	51.8%	$40,038	$77,351
	79128	ARGENTINA	54.9%	$7,193,208	$13,108,696
*	79170	TAIWAN	67.4%	$1,230,737	$1,825,229
*	79260	HONG KONG	84.2%	$5,680,272	$6,748,146

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	10584	ISRAEL	84.7%	$5,448,077	$6,432,991
	10670	THAILAND	60.6%	$8,312	$13,720
	12164	INDIA	62.2%	$3,759,839	$6,044,310
	12470	BRAZIL	49.7%	$74,538	$150,088
R	13032	ARGENTINA	23.5%	$286,993	$1,222,201
	13037	ARGENTINA	82.2%	$1,787,414	$2,173,816
	13180	URUGUAY	77.9%	$47,979	$61,561
	13541	ISRAEL	52.7%	$1,042,081	$1,978,103
	13560	GUATEMALA	55.2%	$149,119	$270,127
	13570	TURKEY	84.1%	$105,086	$124,943
	13580	EL SALVADOR	94.8%	$31,964	$33,728
	13600	DOMINICAN REPUBLIC	74.5%	$4,788,876	$6,427,806
	13661	MEXICO	91.5%	$1,225,633	$1,339,455
	13677	MEXICO	88.9%	$3,628,920	$4,081,550
	13680	MEXICO	65.6%	$1,504,024	$2,291,815
	13697	TAIWAN	58.8%	$1,203,356	$2,047,484
	13702	DOMINICAN REPUBLIC	91.9%	$1,651,902	$1,797,199
	13771	MEXICO	61.7%	$2,357,091	$3,820,647
	13788	JAMAICA	54.7%	$3,613,845	$6,611,339
	13789	DOMINICAN REPUBLIC	98.6%	$1,615,417	$1,638,749
	13793	DOMINICAN REPUBLIC	53.3%	$483,017	$905,374
	14011	CHILE	50.0%	$1,459,934	$2,919,274
	14020	INDIA	57.7%	$238,430	$413,175
	14021	MEXICO	83.2%	$3,739,055	$4,492,937
	14054	ISRAEL	75.5%	$1,238,130	$1,640,762
	14526	HONG KONG	48.7%	$875,116	$1,796,248
	14550	MEXICO	96.8%	$2,147,561	$2,218,254
	14565	TAIWAN	57.6%	$1,312,693	$2,280,469
R	14612	ARGENTINA	48.4%	$1,120,756	$2,317,753
	14678	CHILE	52.5%	$180,237	$343,432
	14687	DOMINICAN REPUBLIC	79.8%	$172,248	$215,827
	14733	JAMAICA	86.5%	$188,517	$217,958
	14754	MEXICO	63.5%	$125,280	$197,352
	14825	MEXICO	88.6%	$4,255,030	$4,799,892
	14835	GUATEMALA	75.0%	$735,338	$980,713
	14877	KOREA, SOUTH	53.6%	$13,987	$26,079
R	14950	MEXICO	47.6%	$1,964,216	$4,126,388
	14960	THAILAND	60.9%	$3,270,763	$5,367,410
	15200	ECUADOR	94.6%	$489,900	$518,085
R	15254	BRAZIL	44.5%	$801,489	$1,801,453
	15320	DOMINICAN REPUBLIC	84.2%	$32,210	$38,237
	15443	TAIWAN	65.8%	$76,145	$115,773
	15460	THAILAND	56.7%	$435,288	$767,623
	15535	DOMINICAN REPUBLIC	47.8%	$2,704,931	$5,662,892
	16105	TAIWAN	90.7%	$127,951	$141,030
	16175	ISRAEL	87.9%	$361,961	$411,646
	16188	INDIA	100.0%	$1,239	$1,239
	16211	LEBANON	64.6%	$12,831	$19,850
	16813	TRINIDAD ISLAND	100.0%	$496,561	$496,561

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	16944	COLOMBIA	52.7%	$759,820	$1,441,675
	16958	YUGOSLAVIA	100.0%	$2,000	$2,000
	17040	MEXICO	49.1%	$2,010,901	$4,096,707
	17615	BRAZIL	69.4%	$1,663,125	$2,395,679
	17670	MEXICO	51.0%	$2,041,882	$4,003,625
	17716	ISRAEL	76.0%	$24,677	$32,452
	18453	ARGENTINA	52.1%	$227,012	$436,065
	18834	MEXICO	54.4%	$151,638	$278,621
R	20091	MEXICO	26.0%	$1,215,985	$4,683,498
	20091	HONDURAS	68.0%	$3,185,901	$4,683,498
	20330	MALAYSIA	52.0%	$632,255	$1,215,635
	20405	TAIWAN	68.8%	$2,370,302	$3,444,033
	20435	HONDURAS	57.8%	$224,214	$387,803
	20647	TAIWAN	70.6%	$2,194,670	$3,106,859
	22234	TAIWAN	91.9%	$92,450	$100,621
	22236	TAIWAN	85.3%	$583,003	$683,217
	24010	BRAZIL	98.1%	$5,416,319	$5,521,364
	24012	BRAZIL	80.5%	$969,789	$1,204,963
	24019	TAIWAN	57.6%	$571,115	$991,032
	24032	BRAZIL	57.5%	$69,449	$120,820
	24050	TAIWAN	75.1%	$67,322	$89,650
	25120	ISRAEL	77.8%	$78,546	$101,021
	25261	MEXICO	89.1%	$1,096,397	$1,229,864
R	31525	MEXICO	33.1%	$1,166,292	$3,519,554
	31535	PHILIPPINES	83.5%	$2,640,468	$3,161,784
	31555	BRAZIL	47.3%	$46,988	$99,385
	31580	THAILAND	80.6%	$505,863	$627,718
	31590	THAILAND	71.3%	$71,163	$99,748
	31901	INDIA	99.1%	$1,578,113	$1,592,419
	31903	INDIA	94.6%	$1,459,700	$1,543,109
	31905	INDIA	98.9%	$6,362,132	$6,431,153
	31907	INDIA	97.9%	$178,998	$182,787
	36035	INDIA	72.0%	$561,761	$780,403
	36121	INDIA	78.6%	$29,820	$37,960
	39016	TAIWAN	84.4%	$24,166	$28,622
	40212	MEXICO	54.5%	$2,066,360	$3,791,702
	40220	MEXICO	55.9%	$1,238,483	$2,216,322
	40647	INDIA	100.0%	$6,160	$6,160
	41056	TAIWAN	54.4%	$18,014	$33,140
	41182	YUGOSLAVIA	50.3%	$4,241,721	$8,426,003
	41231	ISRAEL	48.4%	$637,372	$1,318,163
	41280	MEXICO	76.4%	$708,284	$926,589
R	41645	TAIWAN	26.6%	$1,893,911	$7,108,574
	41722	MEXICO	47.8%	$1,726,364	$3,613,484
	41722	TRINIDAD ISLAND	51.3%	$1,854,399	$3,613,484
	41754	HONG KONG	50.7%	$45,472	$89,766
	41824	INDIA	67.8%	$74,099	$109,252
	41876	MEXICO	56.1%	$1,122,733	$2,002,904
	41878	MEXICO	64.0%	$2,262,602	$3,535,470

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	41910	CHILE	78.2%	$4,257,976	$5,446,098
	42002	ISRAEL	81.2%	$789,882	$973,136
	42020	INDIA	80.0%	$452,684	$565,848
	42024	ISRAEL	86.4%	$499,147	$577,727
R	42060	MEXICO	93.9%	$5,320,407	$5,665,046
	42070	ISRAEL	100.0%	$72,313	$72,313
	42082	ISRAEL	99.4%	$339,466	$341,610
	42114	CHILE	70.3%	$2,124,363	$3,020,003
	42276	MEXICO	58.7%	$965,883	$1,646,448
	42532	HONG KONG	48.5%	$1,533	$3,164
	42584	TRINIDAD ISLAND	61.7%	$732,856	$1,187,021
	42600	MEXICO	95.8%	$806,990	$841,953
	42716	ARGENTINA	96.7%	$403,913	$417,603
	42725	MEXICO	81.4%	$413,058	$507,620
	42746	MEXICO	100.0%	$246,278	$246,278
R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
	42850	BRAZIL	92.3%	$200,289	$216,976
	42858	TAIWAN	65.0%	$415,000	$638,616
	42929	BRAZIL	68.3%	$2,140,445	$3,133,857
	43510	DOMINICA ISLAND	71.7%	$243,184	$339,375
	43713	INDIA	85.3%	$205,934	$241,316
	44510	TAIWAN	64.9%	$745,949	$1,149,212
	45254	BRAZIL	52.2%	$399,403	$764,608
	45516	VENEZUELA	100.0%	$49,014	$49,014
	45518	BRAZIL	100.0%	$57,020	$57,020
	45530	TAIWAN	95.7%	$162,652	$170,007
	45546	TAIWAN	73.5%	$331,669	$451,124
	46605	PHILIPPINES	84.3%	$645,912	$766,085
	46610	MEXICO	49.8%	$23,047	$46,285
	47338	CYPRUS	74.3%	$84,774	$114,136
	47352	MEXICO	99.5%	$7,288,121	$7,325,746
	47378	MEXICO	91.2%	$2,140,175	$2,347,420
	47382	KOREA, SOUTH	89.1%	$216,000	$242,329
	51131	MEXICO	74.5%	$441,758	$592,660
	51224	MEXICO	51.1%	$166,228	$325,466
	51671	INDIA	100.0%	$369,259	$369,259
	51673	INDIA	84.7%	$24,705	$29,175
	51674	INDIA	86.7%	$85,525	$98,625
	51676	INDIA	77.6%	$152,523	$196,621
	51841	MEXICO	79.7%	$335,157	$420,406
	52187	MEXICO	56.9%	$2,327,315	$4,092,960
	52241	MEXICO	91.8%	$343,036	$373,870
	52351	TAIWAN	50.1%	$11,540	$23,029
	52394	TAIWAN	63.9%	$1,342,747	$2,100,362
	53481	TAIWAN	64.7%	$4,840,100	$7,479,457
R	54021	MEXICO	38.5%	$2,435,837	$6,325,463
	54257	HONG KONG	93.2%	$16,200	$17,386
R	54277	MEXICO	30.2%	$142,720	$471,893
	54292	TAIWAN	100.0%	$22,320	$22,320

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	54294	TAIWAN	86.0%	$47,444	$55,195
	54565	MEXICO	70.1%	$850,191	$1,212,302
	54585	TAIWAN	90.8%	$1,202,883	$1,324,161
	54647	TAIWAN	74.0%	$1,313,463	$1,776,042
	60210	MEXICO	80.9%	$63,795	$78,869
	60315	VENEZUELA	85.3%	$5,608,810	$6,577,875
	60350	MEXICO	87.2%	$4,553,001	$5,222,511
	60505	LIBERIA	53.7%	$20,760	$38,675
	60673	MEXICO	50.0%	$2,740,673	$5,483,828
	61058	TAIWAN	74.2%	$74,015	$99,741
	61063	KOREA, SOUTH	98.4%	$145,554	$147,908
	61065	TAIWAN	61.2%	$3,846,898	$6,288,885
	61070	ISRAEL	69.5%	$1,816,972	$2,614,016
	61071	TAIWAN	67.6%	$58,564	$86,570
	61230	YUGOSLAVIA	86.4%	$545,595	$631,333
	61250	MEXICO	47.7%	$142,272	$298,033
	61271	PERU	51.4%	$485,231	$944,702
	61303	MEXICO	50.7%	$74,321	$146,543
	61311	MEXICO	96.8%	$2,524,659	$2,607,584
	61842	BAHRAIN	47.0%	$2,156,473	$4,592,459
	62215	VENEZUELA	61.7%	$180,553	$292,414
	62220	BOLIVIA	50.9%	$62,157	$122,039
	62404	MEXICO	47.6%	$1,018,255	$2,139,520
	62410	PERU	57.2%	$85,549	$149,632
	62631	MEXICO	84.6%	$9,702	$11,464
R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
	62815	BRAZIL	69.5%	$277,355	$398,963
	62890	CHILE	64.0%	$986,391	$1,541,559
	62895	CHILE	100.0%	$114,500	$114,500
	63266	MEXICO	91.3%	$354,671	$388,677
	64208	KOREA, SOUTH	61.6%	$899,383	$1,459,105
	64225	TAIWAN	63.3%	$16,375	$25,889
R	64245	MEXICO	61.9%	$939,789	$1,518,744
	64258	VENEZUELA	100.0%	$162,510	$162,510
	64285	TAIWAN	83.5%	$158,457	$189,698
	64464	EL SALVADOR	93.6%	$27,893	$29,798
	64604	TAIWAN	72.0%	$10,027	$13,928
	64606	TAIWAN	56.1%	$225,875	$402,750
	64628	KOREA, SOUTH	83.7%	$1,042,811	$1,245,697
	64647	TAIWAN	80.4%	$830,388	$1,032,597
	64653	HONG KONG	53.7%	$1,020,061	$1,898,265
R	64665	TAIWAN	33.3%	$2,476,522	$7,441,731
	64678	TAIWAN	50.3%	$785,139	$1,560,271
	64685	TAIWAN	61.7%	$901,180	$1,460,519
	64687	TAIWAN	73.6%	$281,880	$382,891
	64698	MEXICO	76.1%	$249,474	$327,926
	64710	TAIWAN	51.5%	$95,539	$185,666
	64855	TAIWAN	70.3%	$3,473,506	$4,938,471
	64857	TAIWAN	54.7%	$902,714	$1,651,084

R = REDUCED LIMIT APPLIES

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LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	64873	TAIWAN	65.3%	$3,565,199	$5,461,287
R	64880	TAIWAN	36.2%	$52,375	$144,855
	64891	TAIWAN	77.2%	$999,617	$1,295,804
R	64895	TAIWAN	36.1%	$2,390,638	$6,624,305
	64971	TAIWAN	60.9%	$16,013	$26,274
	64977	HONG KONG	51.9%	$445,186	$857,455
	64989	TAIWAN	70.1%	$159,287	$227,191
	65037	TAIWAN	49.6%	$1,008,263	$2,033,567
	65047	TAIWAN	91.1%	$524,216	$575,296
	65048	TAIWAN	62.1%	$435,282	$701,106
	65056	TAIWAN	47.1%	$2,253,593	$4,784,369
	65079	TAIWAN	57.2%	$137,352	$240,173
	65104	TAIWAN	94.9%	$74,108	$78,089
	65125	TAIWAN	53.3%	$1,738,312	$3,262,610
	65153	TAIWAN	65.1%	$2,721,307	$4,177,159
	65160	KOREA, SOUTH	49.1%	$32,886	$66,970
	65162	KOREA, SOUTH	85.9%	$65,026	$75,676
	65213	TAIWAN	100.0%	$2,782	$2,782
	65325	MEXICO	71.8%	$1,861,778	$2,591,786
	65347	TAIWAN	76.5%	$1,362,719	$1,781,452
	65370	KOREA, SOUTH	52.1%	$58,369	$111,953
	65455	TAIWAN	81.9%	$1,696,037	$2,069,790
	65610	SINGAPORE	55.6%	$3,663,593	$6,587,370
	65630	HONG KONG	53.3%	$488,758	$916,340
	65790	MEXICO	83.0%	$1,400,135	$1,686,982
	66020	TAIWAN	51.3%	$49,056	$95,718
	68025	TAIWAN	58.2%	$1,650,252	$2,837,721
R	68410	HONG KONG	26.5%	$1,495,425	$5,639,095
	68542	HONG KONG	100.0%	$11,070	$11,070
	68650	SINGAPORE	48.1%	$992,235	$2,063,449
	68820	VENEZUELA	69.0%	$2,404,904	$3,487,083
	68830	KOREA, SOUTH	71.5%	$2,229,515	$3,116,861
	69431	TAIWAN	56.7%	$110,390	$194,719
	70232	MEXICO	66.0%	$372,175	$563,512
	70245	MEXICO	93.7%	$41,000	$43,776
	70495	PHILIPPINES	50.9%	$299,539	$588,251
	70619	KENYA	47.9%	$15,311	$31,952
	70633	KOREA, SOUTH	66.4%	$1,682,876	$2,532,993
	70841	ISRAEL	64.8%	$24,181	$37,331
	70871	TAIWAN	76.8%	$5,389,253	$7,014,416
	71060	HONG KONG	63.5%	$1,086,838	$1,710,431
	71067	TAIWAN	78.8%	$115,577	$146,627
	71068	BRAZIL	48.7%	$30,087	$61,777
	71130	TAIWAN	58.9%	$331,925	$563,558
	71131	INDIA	76.9%	$3,386,195	$4,400,987
	72202	TAIWAN	81.5%	$1,086,274	$1,332,973
	72214	TAIWAN	94.8%	$3,180,903	$3,356,962
	72255	HONG KONG	62.3%	$429,775	$690,120
	72278	TAIWAN	96.2%	$4,265,096	$4,431,833

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	72435	TAIWAN	49.5%	$3,735	$7,553
	72552	TAIWAN	60.8%	$4,641,352	$7,636,192
	73110	TAIWAN	72.1%	$646,999	$897,459
	73142	BRAZIL	100.0%	$12,418	$12,418
	73150	TAIWAN	61.0%	$799,633	$1,310,613
	73243	TAIWAN	90.8%	$3,242,414	$3,569,345
	73430	HONG KONG	73.5%	$623,107	$847,649
	73434	HONG KONG	55.0%	$1,182,161	$2,151,132
	73440	TAIWAN	68.3%	$4,082,088	$5,972,427
R	73442	BRAZIL	33.3%	$844,905	$2,539,765
	73442	TAIWAN	47.9%	$1,215,641	$2,539,765
	73451	TAIWAN	89.0%	$5,170,558	$5,811,963
	73460	TAIWAN	95.0%	$1,881,838	$1,981,870
	73471	TAIWAN	89.0%	$1,427,691	$1,604,454
	73472	TAIWAN	75.2%	$4,173,974	$5,550,806
	73485	INDONESIA	51.4%	$814,418	$1,584,684
R	73510	TAIWAN	32.7%	$699,658	$2,140,221
	73511	TAIWAN	77.0%	$1,162,830	$1,510,022
	74030	HONG KONG	67.5%	$3,988,330	$5,906,341
	74034	HONG KONG	79.2%	$1,329,017	$1,677,563
	74075	KOREA, SOUTH	50.6%	$506,350	$1,000,133
	74115	TAIWAN	47.4%	$1,222,476	$2,576,829
	74120	HONG KONG	97.1%	$1,606,896	$1,655,129
	74510	HONG KONG	58.8%	$452,583	$770,167
	74556	MALAYSIA	47.8%	$1,141,468	$2,388,299
	74560	TAIWAN	61.5%	$1,653,712	$2,687,322
	74570	TAIWAN	86.4%	$1,046,062	$1,210,712
	74815	TAIWAN	55.2%	$1,590,321	$2,879,978
	74836	TAIWAN	55.6%	$1,238,678	$2,226,262
	75005	TAIWAN	60.4%	$639,454	$1,059,535
	75025	HONG KONG	51.1%	$3,475,176	$6,804,676
	75035	TAIWAN	50.2%	$1,482,446	$2,953,026
	75050	KOREA, SOUTH	54.7%	$948,038	$1,732,458
	75055	KOREA, SOUTH	67.4%	$1,541,370	$2,286,334
	75075	HONG KONG	48.3%	$1,978,171	$4,097,300
	75080	TAIWAN	91.2%	$1,379,998	$1,513,061
	75110	INDIA	69.9%	$36,888	$52,788
	75111	TAIWAN	48.6%	$801,693	$1,649,895
	75115	TAIWAN	71.5%	$26,431	$36,984
	75121	TAIWAN	93.2%	$1,134,737	$1,217,191
	75124	TAIWAN	96.9%	$1,082,699	$1,117,048
	75125	TAIWAN	86.8%	$1,986,076	$2,286,827
	75520	ISRAEL	53.9%	$1,077,036	$1,998,581
	75615	HONG KONG	65.9%	$4,517,975	$6,860,533
	75623	INDIA	70.8%	$7,278	$10,273
	75635	TURKEY	69.1%	$239,289	$346,256
	75650	HONG KONG	52.3%	$2,724	$5,204
	76038	MEXICO	59.7%	$621,694	$1,040,883
	76050	TAIWAN	70.0%	$703,185	$1,004,916

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
76056	TAIWAN	56.2%	$1,071,427	$1,906,771
77105	MEXICO	100.0%	$29,720	$29,720
77229	HONG KONG	50.9%	$205,409	$403,857
77320	TAIWAN	58.6%	$98,941	$168,906
79000	TAIWAN	47.5%	$721,654	$1,519,046
79063	HONG KONG	71.5%	$351,720	$491,993
79110	HONG KONG	68.7%	$402,092	$585,437
79120	THAILAND	51.8%	$40,038	$77,351
79170	TAIWAN	67.4%	$1,230,737	$1,825,229
79260	HONG KONG	84.2%	$5,680,272	$6,748,146

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	12161	ARGENTINA	43.6%	$62,866,761	$144,337,358
	14177	MEXICO	49.9%	$16,196,494	$32,436,081
	15520	DOMINICAN REPUBLIC	16.4%	$53,390,002	$324,622,793
	15520	BRAZIL	11.1%	$36,055,992	$324,622,793
	20709	TAIWAN	41.7%	$49,289,958	$118,188,176
	24530	BRAZIL	44.7%	$6,228,459	$13,941,660
	25660	KOREA, SOUTH	1.0%	$414,940	$40,034,604
R	33740	KOREA, SOUTH	18.4%	$3,093,028	$16,818,431
R	33740	HONG KONG	1.5%	$259,022	$16,818,431
R	35581	TAIWAN	21.6%	$19,211,341	$88,845,407
	38614	TAIWAN	48.7%	$12,625,507	$25,947,467
R	38961	HONG KONG	6.9%	$15,360,375	$224,136,259
	40719	MEXICO	2.8%	$1,782,284	$62,747,808
R	42582	BRAZIL	20.2%	$1,485,111	$7,340,467
R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
	43764	BRAZIL	24.9%	$3,185,775	$12,812,113
R	49094	BRAZIL	21.8%	$262,199	$1,200,054
	52221	MEXICO	36.4%	$11,628,874	$31,984,022
R	53222	KOREA, SOUTH	14.5%	$1,866,803	$12,850,045
	53231	MEXICO	32.9%	$1,962,272	$5,968,146
	53531	MEXICO	38.1%	$21,006,520	$55,123,029
R	53531	BRAZIL	18.1%	$9,951,860	$55,123,029
R	54451	TAIWAN	24.7%	$15,764,454	$63,819,902
	54553	MEXICO	20.6%	$5,761,202	$27,937,963
	60628	MEXICO	24.0%	$3,475,927	$14,487,272
R	60644	BRAZIL	2.4%	$1,062,122	$44,213,621
R	61065	KOREA, SOUTH	3.7%	$234,886	$6,288,885
R	61070	TAIWAN	2.1%	$54,484	$2,614,016
R	61074	TAIWAN	9.3%	$1,396,878	$14,992,392
R	61082	TAIWAN	19.0%	$3,008,152	$15,828,329
	61203	CHILE	21.5%	$8,953,562	$41,592,018
	61206	PERU	7.0%	$44,021,118	$625,956,314
	61206	ZAMBIA	4.9%	$30,415,549	$625,956,314
	61847	BRAZIL	2.0%	$308,298	$15,110,378
R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
R	63242	BRAZIL	14.1%	$3,603,903	$25,641,286
R	64217	KOREA, SOUTH	0.7%	$8,484	$1,289,127
R	64880	HONG KONG	7.8%	$11,363	$144,855
	65087	HONG KONG	27.3%	$28,426	$104,127
R	65089	HONG KONG	11.4%	$312,479	$2,752,660
	65089	TAIWAN	49.2%	$1,354,073	$2,752,660
R	65131	TAIWAN	24.3%	$2,801,183	$11,523,240
R	65146	KOREA, SOUTH	9.8%	$482,877	$4,934,174
R	65203	KOREA, SOUTH	20.9%	$964,849	$4,606,352
	65284	MEXICO	27.1%	$22,836,355	$84,215,106
R	65300	KOREA, SOUTH	4.7%	$4,212,516	$90,273,674
R	65338	TAIWAN	5.6%	$113,039	$2,024,613
	65345	TAIWAN	48.5%	$10,663,672	$21,966,774
	65390	HONG KONG	49.1%	$4,798,172	$9,779,936

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	65430	KOREA, SOUTH.....	41.6%	$3,482,784	$8,370,559
R	65430	TAIWAN.....	21.2%	$1,772,410	$8,370,559
R	65460	TAIWAN.....	23.9%	$3,413,521	$14,260,790
	65780	TAIWAN.....	46.2%	$4,256,673	$9,213,850
	66048	BRAZIL.....	3.3%	$33,191,593	$1,011,979,369
R	66109	SINGAPORE.....	14.0%	$18,161,337	$129,430,897
	66165	ISRAEL.....	8.5%	$2,178,717	$25,515,118
	66235	MEXICO.....	32.0%	$7,444,753	$23,270,114
	67656	MEXICO.....	0.8%	$7,255,010	$952,615,781
	67656	KOREA, SOUTH.....	2.1%	$20,136,620	$952,615,781
	67656	HONG KONG.....	0.6%	$5,444,645	$952,615,781
	67850	HONG KONG.....	2.2%	$74,152,050	$3,412,574,490
R	68301	KOREA, SOUTH.....	14.2%	$7,560,350	$53,145,292
R	68301	TAIWAN.....	17.1%	$9,079,371	$53,145,292
	68315	MEXICO.....	16.2%	$31,067,335	$191,792,712
	68332	HONG KONG.....	26.7%	$68,491,889	$256,540,500
	68360	MEXICO.....	14.0%	$75,355,581	$539,267,307
R	68370	HONG KONG.....	18.2%	$5,330,692	$29,360,500
R	68370	TAIWAN.....	4.9%	$1,442,919	$29,360,500
	68425	SINGAPORE.....	3.8%	$20,962,583	$555,894,277
R	68435	HONG KONG.....	15.1%	$2,917,895	$19,327,525
	68455	MEXICO.....	37.3%	$14,439,569	$38,668,522
	68459	HONG KONG.....	0.7%	$1,633,789	$240,438,100
	68459	TAIWAN.....	2.0%	$4,768,543	$240,438,100
	68514	HONG KONG.....	13.3%	$66,196,503	$495,967,639
	68516	KOREA, SOUTH.....	0.3%	$227,036	$78,266,731
	68516	HONG KONG.....	3.0%	$2,311,205	$78,266,731
	68516	TAIWAN.....	33.8%	$26,421,137	$78,266,731
R	68522	KOREA, SOUTH.....	22.4%	$4,649,046	$20,765,895
	68531	KOREA, SOUTH.....	0.7%	$188,778	$25,298,389
	68531	TAIWAN.....	22.0%	$5,568,813	$25,298,389
	68532	KOREA, SOUTH.....	3.0%	$8,214,564	$277,032,121
R	68532	TAIWAN.....	5.8%	$16,126,968	$277,032,121
R	68533	MEXICO.....	9.8%	$17,827,675	$181,060,241
	68533	SINGAPORE.....	4.4%	$7,960,580	$181,060,241
	68533	KOREA, SOUTH.....	1.6%	$2,948,333	$181,060,241
R	68533	TAIWAN.....	3.3%	$6,014,041	$181,060,241
	68565	SINGAPORE.....	22.7%	$16,036,560	$70,494,773
R	68573	HONG KONG.....	5.3%	$10,765,243	$203,794,550
	68817	MEXICO.....	6.8%	$917,922	$13,558,158
R	68841	HONG KONG.....	24.4%	$3,733,529	$15,308,351
	68841	TAIWAN.....	1.6%	$252,182	$15,308,351
	69635	TAIWAN.....	38.4%	$5,858,791	$15,270,089
	69640	TAIWAN.....	31.8%	$2,012,309	$6,320,587
	70661	HONG KONG.....	11.6%	$5,053,264	$43,703,576
R	70847	HONG KONG.....	7.5%	$24,319,911	$323,296,943
	70909	MEXICO.....	37.7%	$23,279,733	$61,741,495
	70940	HONG KONG.....	17.7%	$5,947,989	$33,577,539
	71072	TAIWAN.....	40.7%	$3,934,616	$9,666,777

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	71131	BRAZIL.....	13.9%	$613,261	$4,400,987
	71138	MEXICO.....	20.8%	$3,607,223	$17,345,198
R	72208	HONG KONG.....	24.1%	$6,500,765	$26,983,217
R	72211	HONG KONG.....	11.6%	$8,257,172	$70,973,853
	72211	TAIWAN.....	36.2%	$25,675,282	$70,973,853
R	73029	BRAZIL.....	19.9%	$249,774	$1,257,216
R	73425	HONG KONG.....	23.4%	$1,946,508	$8,324,958
	73507	KOREA, SOUTH.....	48.3%	$11,839,429	$24,507,273
R	73714	HONG KONG.....	7.6%	$2,293,598	$30,194,857
R	73715	HONG KONG.....	9.4%	$6,066,169	$64,211,627
R	73716	HONG KONG.....	8.9%	$5,269,943	$59,348,175
	73723	HONG KONG.....	8.4%	$9,133,769	$108,664,673
	73760	TAIWAN.....	40.3%	$10,099,446	$25,044,409
R	73780	HONG KONG.....	24.0%	$10,491,949	$43,722,052
	73793	TAIWAN.....	11.6%	$20,278,316	$174,254,370
R	73796	MEXICO.....	10.1%	$15,453,209	$153,101,215
	73796	HONG KONG.....	28.6%	$43,770,840	$153,101,215
R	73798	MEXICO.....	7.0%	$19,026,468	$272,553,484
	73798	HONG KONG.....	24.8%	$67,480,695	$272,553,484
	73798	TAIWAN.....	17.9%	$48,867,693	$272,553,484
R	74011	HONG KONG.....	0.1%	$14,332	$10,273,502
R	74012	HONG KONG.....	1.3%	$174,575	$13,674,847
R	74013	HONG KONG.....	0.6%	$2,043,723	$340,627,100
	74038	TAIWAN.....	24.6%	$47,163,102	$191,682,543
	74039	TAIWAN.....	32.9%	$726,619	$2,205,336
	74041	HONG KONG.....	18.7%	$24,692,340	$131,907,406
	74041	TAIWAN.....	25.4%	$33,490,456	$131,907,406
	74125	HONG KONG.....	18.3%	$793,171	$4,333,702
	77143	TAIWAN.....	14.7%	$68,676,182	$465,615,414
	77145	TAIWAN.....	47.1%	$3,052,136	$6,480,581
R	77216	HONG KONG.....	18.7%	$24,164,208	$129,455,902
	77216	TAIWAN.....	33.3%	$43,101,396	$129,455,902
R	77445	HONG KONG.....	21.7%	$5,543,070	$25,503,720
	77451	TAIWAN.....	7.3%	$505,439	$6,951,076
	77453	TAIWAN.....	28.5%	$802,193	$2,819,082
	77456	TAIWAN.....	8.4%	$294,733	$3,515,090
	77458	TAIWAN.....	17.1%	$70,209,416	$409,468,760
R	79127	BRAZIL.....	15.3%	$18,598,458	$121,203,086
	79128	MEXICO.....	2.6%	$336,097	$13,108,696

R = REDUCED LIMIT APPLIES

[FR Doc. 88-864 Filed 1-14-88; 8:45 am]
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Reader Aids

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5760 ... 855

Executive Orders:
12537 (Amended by EO 12624) ... 489
12578 (Superseded by EO12622) ... 222
12622 ... 222
12623 ... 487
12624 ... 489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 ... 399
No. 88-4 of Dec. 17, 1987 ... 773
Presidential Findings:
Jan. 12, 1988 ... 999

5 CFR

353 ... 857
890 ... 1, 860

Proposed Rules:
330 ... 408
351 ... 408
890 ... 898

7 CFR

1 ... 1001
301 ... 733
400 ... 2
401 ... 1001
704 ... 733
905 ... 401, 860
907 ... 6, 491
910 ... 7, 492
911 ... 402
928 ... 862
959 ... 401
971 ... 401
987 ... 401
1430 ... 107
1902 ... 231

Proposed Rules:
68 ... 411
301 ... 140
401 ... 505, 507
905 ... 898
907 ... 412
908 ... 412
910 ... 255
979 ... 413
981 ... 414
982 ... 900
1006 ... 1035
1012 ... 1035
1013 ... 1035
1033 ... 902
1046 ... 902
1126 ... 256
1136 ... 686
1260 ... 509
1701 ... 140

9 CFR

77 ... 1002

10 CFR

73 ... 403

Proposed Rules:
2 ... 415
430 ... 30

11 CFR

Proposed Rules:
109 ... 416
114 ... 416

12 CFR

206 ... 492
208 ... 492
226 ... 467
337 ... 597
501 ... 1003
525 ... 312
561 ... 324, 338
563 ... 324, 338, 354, 363, 372, 385, 1004
563c ... 324
571 ... 338, 372, 385
583 ... 312, 1003
584 ... 312
614 ... 775
795 ... 1005

Proposed Rules:
226 ... 467

14 CFR

39 ... 8-14, 232, 493-495
71 ... 496, 497, 619
75 ... 497
91 ... 233
95 ... 1005
97 ... 499

Proposed Rules:
Ch. I ... 1038
39 ... 258, 514, 515
71 ... 516, 517, 668, 670, 674, 907-910
73 ... 517, 991

15 CFR

399 ... 106
806 ... 1015

Proposed Rules:
379 ... 418

16 CFR

13 ... 609

Proposed Rules:
13 ... 141, 1039

17 CFR
1.....609, 615
211.....109, 865

18 CFR
154.....867
270.....867
271.....15
273.....867
375.....867
381.....867
1301.....405

19 CFR
4.....1103
24.....615
Proposed Rules:
141.....30
178.....30

20 CFR
Proposed Rules:
361.....143
901.....147

21 CFR
81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233
606.....111
610.....111
640.....111
1308.....500
Proposed Rules:
193.....259
561.....259
1308.....743

23 CFR
655.....236

24 CFR
200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122
Proposed Rules:
115.....260

26 CFR
1.....117, 238, 1103
Proposed Rules:
1.....153, 261

28 CFR
55.....735
541.....196

29 CFR
2676.....1018
2702.....737

30 CFR
202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994
Proposed Rules:
210.....1039
216.....1039

31 CFR
103.....776

32 CFR
887.....876

33 CFR
110.....878
117.....119, 408
165.....616, 878

36 CFR
5.....739
404.....120
Proposed Rules:
223.....519

37 CFR
201.....122, 123
Proposed Rules:
203.....153

38 CFR
4.....21
21.....616, 879
Proposed Rules:
21.....620, 1040

39 CFR
111.....124, 125
232.....126

40 CFR
2.....214
51.....392, 480
52.....392, 501, 1019, 1020
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244
763.....1021
Proposed Rules:
52.....261, 779, 1043
180.....262, 263
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR
101–20.....129
114–51.....741
Proposed Rules:
Ch. 201.....820
141.....31
142.....31
261.....31

42 CFR
431.....657
435.....657
440.....657
441.....657
Proposed Rules:
434.....744
435.....744

43 CFR
2.....24
3100.....1184
3160.....1184
Proposed Rules:
3160.....1039

44 CFR
Proposed Rules:
7.....922
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR
95.....26
233.....467

46 CFR
Proposed Rules:
588.....624

47 CFR
Ch. I.....502
0.....1022
64.....27
65.....1027
68.....1103
73.....28, 29, 504, 1030
90.....1022
Proposed Rules:
1.....625
63.....625
73.....426
74.....529
76.....625
78.....529
95.....779

48 CFR
7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
28.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132
513.....132
Proposed Rules:
215.....625
225.....626
232.....931
252.....626, 931
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

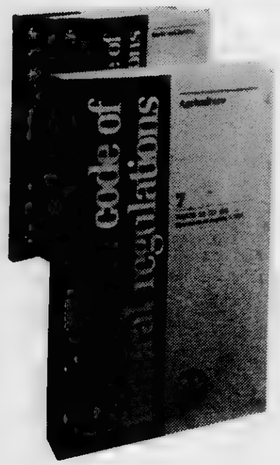
49 CFR
24.....467
31.....880
541.....133
565.....1032
661.....617
Proposed Rules:
3.....100
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
571.....426, 780, 934, 936
1041.....155
1048.....155
1049.....155

50 CFR
611.....134, 741, 880, 894
653.....244
663.....246, 248
672.....890, 991
675.....894, 991
Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



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federal register

Tuesday
January 19, 1988

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Contents

Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 1418
(2 documents)

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 1333
Oranges (navel) grown in Arizona and California, 1333
PROPOSED RULES
Milk marketing orders:
Memphis, TN, 1369
Southwest Plains, 1370
Upper Midwest, 1360

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Cooperative State Research Service; Forest Service
RULES
Agricultural Stabilization and Conservation Service State, county, and community committees; selection and functions
Correction, 1441

Animal and Plant Health Inspection Service
RULES
Plant regulations:
Phytosanitary export certification; inspector qualifications, 1332

Antitrust Division
NOTICES
National cooperative research notifications:
Southwest Research Institute, 1418

Army Department
NOTICES
Military traffic management:
Freight carrier address requirements (MT Form 364-4), 1396

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
RULES
Ports and waterways safety:
Port access routes—
Tampa Bay, FL, 1347
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 1432

Commerce Department
See also Economic Development Administration; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 1392

Commission on Merchant Marine and Defense
NOTICES
Meetings, 1396

Committee for Purchase From the Blind and Other Severely Handicapped
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1379

Cooperative State Research Service
NOTICES
Grants; availability, etc.:
Food and agricultural sciences national needs graduate fellowships grants program, 1390

Customs Service
PROPOSED RULES
Quota-class merchandise; quantity entry limits, 1376

Defense, Commission on Merchant Marine and
See Commission on Merchant Marine and Defense

Defense Department
See also Army Department
RULES
Organization, functions, and authority delegations:
Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict), 1345
Personnel:
Active duty certificate of release or discharge (DD Form 214/5 series), 1341
Voluntary private health insurance conversion program, 1343
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Residential treatment centers; participation requirements
Correction, 1378
NOTICES
Committees; establishment, renewal, termination, etc.:
Educational Benefits Board of Actuaries, 1396
Special Operations Policy Advisory Group, 1396

Economic Development Administration
NOTICES
Grants; availability, etc.:
Economic development assistance programs; funds availability, 1444

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Canstates Petroleum Marketing, 1397

Education Department
PROPOSED RULES
Special education and rehabilitation services:
Handicapped infants and toddlers; early intervention program, 1461

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 1397 (3 documents)

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 1398

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 1354
Hazardous waste program authorizations:
Tennessee, 1358
NOTICES
Meetings:
Cold temperature carbon monoxide emissions from mobile sources; public workshop, 1407
Toxic and hazardous substances control:
Significant adverse reactions; records and reports—Tri(alkyl/alkoxy) phosphates and diisocyanates, 1408

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 1439

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 1439 (2 documents)

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 1334
Jet routes, 1336–1339 (3 documents)
Transition areas, 1335, 1338 (2 documents)
PROPOSED RULES
Airworthiness directives:
British Aerospace, 1371
CASA, 1372
Cessna, 1373
DeHavilland, 1376
Control zones, 1375
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 1433
National Airspace Review Enhancement Program Advisory Committee, 1433

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Alabama, Georgia, and Tennessee, 1386
Kansas, 1386
Michigan, 1387
New York, 1387
Oklahoma, 1387
Oregon, 1388
Pennsylvania, 1388
NOTICES
Applications, hearings, determinations, etc.:
Blue Ridge Broadcasting Co., Inc., et al., 1409
Clay, George Henry, et al., 1410

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 1439

Federal Energy Regulatory Commission
NOTICES
Preliminary permits surrender:
Adirondack Hydro Development Corp., 1407
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 1399
Arkla Energy Resources, 1399
Curtis, William A., 1400
Duke Power Co., 1400
El Paso Natural Gas Co., 1400
Enron Oil & Gas Co., 1401
Greenville, MI, 1402
Holyoke Gas & Electric Department et al., 1402
Iowa-Illinois Gas & Electric Co., 1403
Lawrenceburg Gas Transmisssion Corp., 1403
Northern Natural Gas Co., 1403
Northwest Pipeline Corp., 1404
Texas Eastern Transmission Corp., 1406
Western Transmission Corp., 1406

Federal Railroad Administration
NOTICES
Automatic train control; Northwest corridor carriers, 1433

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 1439
Applications, hearings, determinations, etc.:
Cascade State Corp. et al., 1410
Gay, A., et al., 1410

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 1440

Food and Drug Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Center for Biologics Evaluation and Research public advisory committees, 1411
Center for Drug Evaluation and Research public advisory committees, 1412
Medical devices; premarket approval:
BOSTON EQUALENS (Itafluorofocon A) Contact Lens, 1413

Forest Service
NOTICES
Environmental statements; availability, etc.:
Deschutes National Forest, OR, 1390
Pacific Northwest Region, nurseries and tree improvement center; vegetation, animal, insect, and disease control, 1391

General Services Administration
RULES
Acquisition regulations:
Contracting officer warrant program and imprest fund transactions; purchase thresholds increase Correction, 1441
NOTICES
Agency information collection activities under OMB review, 1411

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service

Health Care Financing Administration
PROPOSED RULES
Medicare:
Immunosuppressive drugs, 1383

Health Resources and Services Administration
See also Public Health Service
NOTICES
Advisory committees; annual reports; availability, 1414

Interior Department
See Land Management Bureau; Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Partnerships; taxable years Correction, 1441

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Anhydrous sodium metasilicate from France, 1392
Potassium chloride from Canada, 1393

International Trade Commission
NOTICES
Import investigations:
Potassium chloride from Canada, 1416

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Atchison, Topeka & Santa Fe Railway Co. et al., 1417
Rio Grande Industries, Inc., et al., 1417

Justice Department
See Antitrust Division

Labor Department
See also Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 1418

Land Management Bureau
RULES
Public land orders:
Nevada, 1359
Oregon, 1359
NOTICES
Airport leases:
Nevada, 1415
Oil and gas leases:
Utah, 1415

Merchant Marine and Defense, Commission on
See Commission on Merchant Marine and Defense

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Arch on the North Fork, Inc., 1418
B&S Coal Co., Inc., 1419
C&B Coal Co., Inc., 1419
Homestake Mining Co., 1420
Oakwood Mining Co., 1420
Scarlett Coal Co., Inc., 1420
Webster County Coal Corp., 1421
Wormy Coal Co., 1421

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
ARCO Oil & Gas Co., 1415
Exxon Co. U.S.A., 1415

National Archives and Records Administration
RULES
Records and donated historical materials:
Self-service copiers, use, 1348

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 1422
Humanities Panel, 1422

National Institutes of Health
NOTICES
Meetings:
Acquired Immunodeficiency Syndrome Program Advisory Committee, 1414

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 1440

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 1395
Pacific Fishery Management Council, 1395, 1396 (2 documents)

Nuclear Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
Nuclear Safety Research Review Committee, 1423

Export and import license applications for nuclear facilities or materials, 1423
Meetings:
Reactor Safeguards Advisory Committee
Proposed schedule, 1423

Personnel Management Office
RULES
Pay administration:
Fair Labor Standards Act; exemption criteria, 1331

Presidential Documents
PROCLAMATIONS
Special observances:
Sanctity of Human Life Day (Proc. 5761), 1464

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Alcohol, Drug Abuse, and Mental Health Administration, 1414

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
De minimis sales, 1341
NOTICES
Meetings; Sunshine Act, 1440
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 1427
National Association of Securities Dealers, Inc., 1430
Self-regulatory organizations; unlisted trading privileges:
Pacific Stock Exchange, Inc., 1429
Philadelphia Stock Exchange, Inc., 1429
Applications, hearings, determinations, etc.:
Mutual Benefit Life Insurance Co. et al., 1425

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Railroad Administration

Treasury Department
See also Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 1437

United States Information Agency
NOTICES
Meetings:
Book and Library Advisory Committee, 1437

Veterans Administration
RULES
Disabilities rating schedule:
Mental disorders; nomenclature and descriptive terms Correction, 1441
Loan guaranty:
Loan claims payment, 1349
PROPOSED RULES
Loan guaranty:
Legal services incurred in terminating loan; maximum reimbursement increase, 1378
NOTICES
Meetings:
Environmental Hazards Advisory Committee, 1438

Separate Parts In This Issue

Part II
Department of Commerce, Economic Development Administration, 1444

Part III
Department of Education, 1461

Part IV
The President, 1464

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5761 1464
5 CFR
551 1331
7 CFR
7 1441
353 1332
907 1333
910 1333
Proposed Rules:
1068 1360
1097 1369
1106 1370
14 CFR
39 1334
71 (2 documents) 1335, 1336
75 (3 documents) 1336–1339
Proposed Rules:
39 (4 documents) 1371–1374
71 1375
17 CFR
211 1341
19 CFR
Proposed Rules:
132 1376
142 1376
26 CFR
1 1441
32 CFR
45 1341
104 1343
374 1345
Proposed Rules:
199 1378
33 CFR
166 1347
34 CFR
Proposed Rules:
303 1461
36 CFR
1254 1348
38 CFR
4 1441
36 1349
Proposed Rules:
36 1378
40 CFR
52 1354
271 1358
41 CFR
Proposed Rules:
51–7 1379
42 CFR
Proposed Rules:
410 1383
43 CFR
Public Land Orders:
6661 1359
6662 1359
47 CFR
Proposed Rules:
73 (7 documents) 1386–1388
48 CFR
501 1441
513 1441

VOL
53
ISS
11
JA
19
988
UMI

Rules and Regulations

Federal Register
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Tuesday, January 19, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations to modify the criteria for determining the exemption status of work covered by section 7(k) of the Fair Labor Standards Act (FLSA). This change affects exemption determinations for supervisory firefighters, and a limited number of other Federal employees, at the GS–7 through GS–9 levels. It corrects an unintended side effect of the regulations published on March 4, 1986, which resulted in significant reduction in the total pay of most of these employees, thus causing recruitment, retention, and pay structure problems. This final rule is expected to result in determinations that most of these employees are nonexempt under the FLSA (covered by FLSA overtime provisions).

EFFECTIVE DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Jack Tapping, (202) 632–4530.

SUPPLEMENTARY INFORMATION: The changes effected by this final rule were published for comment at 52 FR 34657 on September 14, 1987, and distributed for information to Heads of Departments and Independent Establishments in Federal Personnel Manual Bulletin 551–19 on September 23, 1987. In the 30-day period provided for comment, ending on October 14, 1987, OPM received five comments from agencies, two comments from unions, and 28 comments from employees.

Generally, comments favored the proposed regulatory changes. However, several employees said the proposal does not go far enough and proposed that all supervisory firefighters should be nonexempt or that all firefighters working over a stated number of hours a week should be nonexempt. Several employees also said the 80 percent rule described in 5 CFR 551.204(b) of the proposed regulation should also be applied to supervisory firefighters at GS–10 or higher. One employee said the 80 percent rule should be applied up through a certain organizational level, rather than through a certain GS level, in a fire department. Another employee said that the regulations should be such that no supervisory firefighter would lose total pay when promoted to the next higher GS level.

The common thread in these comments was the attempt to recognize a common denominator other than GS level among supervisory firefighters, or to avoid pay inversion upon promotion from a level where the exemption test is difficult to meet (i.e., where the 80 percent rule applies) to a level where it is relatively easy to meet (i.e., where the primary duty rule applies). We are unable to consider the blanket nonexemption of all supervisors or nonexemption of all employees working over a stated number of hours a week because the basis for applying that exemption test would be something other than the duties and responsibilities performed, as required by the FLSA. Because there is no FLSA basis for allowing nonexemption at all levels, there would be no way of assuring that some promotions will not result in a pay loss. Further, we do not believe it wise to adopt an organizational, rather than GS, level as a basis for limiting application of the 80 percent rule. This is because duties and responsibilities differ at the same organizational level in fire departments of different sizes.

We find the primary duty test is appropriate at GS–10 and above, as was provided for in regulation from 1974 to 1985. At these high supervisory and management levels, there is no basis for applying the strict 80 percent test to qualify them for FLSA overtime benefits.

Another comment from two employees suggested that fire-fighters in foreign areas be covered by FLSA overtime provisions. However, section 13(f) of the FLSA requires exemption of foreign areas from coverage, and provides no mechanism for waiver of that requirement.

Several employees and one agency focused on the definition of "supervisory and closely related work" as it is used with the 80 percent rule. The intention in this rule is to distinguish between time a supervisor spends actually doing the same work as subordinates, and time spent accomplishing work through subordinates. Accomplishing work through subordinates includes both time directing their work and time planning and evaluating their work. We believe it is the responsibility of each agency headquarters to provide detailed guidance, in the context of its own work situations, on how their definition will be consistently interpreted.

This final rule changes the regulations prospectively at the beginning of the first pay period on or after February 18, 1988.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies to federal employees only.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is adopting its proposed rules as published September 14, 1987, (52 FR 34657) as final rules without change as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority citation for Part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

2. Paragraph (b) of § 551.204 is revised to read as follows:

§ 551.204 Executive exemption criteria.

* * * * *

(b) In addition to the primary duty criterion that applies to all employees, foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems), employees at the GS–7 through GS–9 level subject to section 207(k) of Title 29, United States Code, and employees classified at the GS–5 or GS–6 level (or equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

[FR Doc. 88–870 Filed 1–15–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 87–130]

Qualifications of Inspectors Issuing Phytosanitary Export Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: APHIS is amending the Phytosanitary Export Certification regulations by revising the definition of "inspector" to include requirements for a state plant regulatory official to be authorized to issue federal phytosanitary certificates. To be considered qualified to participate in the Cooperative Federal-State Phytosanitary Export Certification Program, inspectors must comply with specific selection criteria. This action ensures that all cooperating state inspectors meet the same basic requirements.

EFFECTIVE DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Leonard M. Crawford, Staff Officer, Regulatory Services Staff, PPQ, APHIS, USDA, Room 628, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8537.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on July 23, 1987 (52 FR 27687–27688, Docket Number 86–337), we proposed to amend 7 CFR Part 353 (referred to below as the regulations) by adding certain basic qualifications to the definition of "inspector."

We received two comments during the public comment period that ended September 21, 1987, 60 days after publication of our proposal. Both came from state departments of agriculture, and both addressed the list of basic qualifications required of state inspectors eligible to issue phytosanitary export certificates.

Our amendment states that, to be eligible for designation as an inspector, a state plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in recognizing and identifying domestic plant pests known to occur within the cooperating state, and a minimum of 2 years' experience in state plant regulatory activities. Six years' experience in state regulatory activities may be substituted for the degree requirement.

Both commenters considered the requirements for state inspectors unnecessarily stringent. In particular, both recommended that we waive or modify the 2-year state plant regulatory experience requirement.

As we stated in our proposal, the current amendment is incorporating into the regulations the selection criteria that already exist for state inspectors participating in the Cooperative Federal-State Phytosanitary Export Certification Program. Each Memorandum of Understanding signed by a cooperating state sets forth these basic requirements. We did not propose to change existing requirements.

However, at its November 1987 meeting, the National Plant Board Advisory Council, which consists of state and federal plant regulatory agency representatives, considered and rejected the commenters' recommendations. As a result, we are not changing the requirements for state inspectors; we are making no changes based on the comments received.

Based on the rationale set forth in the proposal and in this document, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment sets forth the minimum requirements for a state plant regulatory official to quality as an inspector authorized to issue federal phytosanitary certificates. The amendment reiterates, without changing, the qualifications specified in each Memorandum of Understanding on the export certification program.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 353

Agricultural commodities, Exports, Plant diseases, Plant pests, Plants (Agriculture).

Accordingly, 7 CFR Part 353 is amended to read as follows:

PART 353—PHYTOSANITARY EXPORT CERTIFICATION

1. The authority citation for Part 353 continues to read as follows:

Authority: 7 U.S.C. 147a; 7 CFR 2.17, 2.51, 371.2(c).

2. Section 353.1, paragraph (b)(4), is revised as follows:

§ 353.1 Definitions.

* * * * *

(b) * * *

(4) *Inspector.* An employee of Plant Protection and Quarantine, or a state plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of the products inspected under the Act. To be eligible for designation, a state plant regulatory official must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in state plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying domestic plant pests known to occur within the cooperating state. Six years' experience in state plant regulatory activities may be substituted for the degree requirement.

* * * * *

Done in Washington, DC, this 13th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–953 Filed 1–15–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 668]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 668 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 15 through January 21, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 668 (§ 907.968) is effective for the period January 15 through January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural serevice firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the navel Orange Administrative Committee (Committee). The Committee met publicly on January 12, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a 9 to 2 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is good.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, to effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.968 is added to read as follows: [This section will not appear in the Code of Federal Regulations.]

§ 907.968 Navel Orange Regulation 668.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 15, 1988, through January 21, 1988, are established as follows:

(a) District 1: 1,554,000 cartons;

(b) District 2: 296,000 cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

Dated: January 13, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 88–951–Filed 1–14–88; 9:03 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 596]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 596 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period January 17 through January 23, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 596 (§ 910.896) is effective for the period January 17 through January 23, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on January 12, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is weaker.

Pursuant to 5 U.S.C. 533, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.896 is added to read as follows:

(This section will not appear in the Code of Federal Regulations.)

§ 910.896 Lemon Regulation 596.

The quantity of lemons grown in California and Arizona which may be handled during the period January 17, 1988, through January 23, 1988, is established at 275,000 cartons.

Dated: January 13, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-950 Filed 1-14-88; 9:03 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-165-AD; Amdt. 39-5828]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Model ATR-42 series airplanes by individual telegrams. This AD requires installation of a drain hole in the autopilot roll actuator. This action is prompted by a report of ice binding the aileron autopilot servo, causing difficulty when the pilot attempted to maneuver the ailerons. This condition, if not corrected, could lead to loss of control of the airplane.

DATE: Effective February 4, 1988.

This AD was effective earlier to all recipients of telegraphic AD T87-25-51, dated December 4, 1987.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On December 4, 1987, the FAA issued telegraphic AD T87-25-51, applicable to Aerospatiale Model ATR-42 series airplanes, which requires installation of a drain hole in the autopilot roll actuator, and an inspection to ensure that a rubber plug, if installed, has been removed from the autopilot roll actuator. That action was prompted by a report where, during final approach and following autopilot disconnect, the ailerons on a Model ATR-42 airplane became stiff and heavy, with very poor flight control effects. The airplane landed without further incident. Subsequent inspection revealed ice binding the aileron autopilot servo.

Honeywell, Inc., Sperry Commercial Flight Systems Group, has issued Service Bulletin 21-1987-063, dated October 20, 1987, which contains instructions for installation of a drain hole in the autopilot roll actuator (part number 7002260-922 Upgrade D) cap, which will permit adequate water drainage. Avions de Transport Regional (AIR) Service Bulletin ATR42-22-0006, Revision 1, dated August 10, 1987, references the Sperry Service Bulletin for instructions to accomplish this installation on Model ATR-42 series airplanes.

This AD requires installation of a drain hole in the autopilot roll actuator, in accordance with paragraphs 2a, 2b, 2c, 2d, 2f, and 2g of the Sperry Service Bulletin.

In addition, this AD requires inspections of all ATR-42 airplanes to ensure that the rubber plug, part number 7013335, if installed, has been removed from all autopilot roll actuators in order to permit adequate water drainage.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that his document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR-42 airplanes, certificated in any category. Compliance is required within the next 10 hours time-in-service, unless previously accomplished.

To prevent loss of aileron control due to autopilot servo freezing, accomplish the following:

A. Modify the autopilot roll actuator, part number 7002260-922, in accordance with paragraphs 2a, 2b, 2c, 2d, 2f, and 2g of Honeywell, Inc., Sperry Commercial Flight Systems Group, Service Bulletin 21-1987-063, dated October 20, 1987. In performing this modification, ensure that foreign debris does not enter the internal portions of the actuator.

B. Inspect all ATR-42 autopilot roll actuators, part number 7002260-922, to ensure that the rubber plug (part number 7013335) has not been installed in the drain hole.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 4, 1988.

It was effective earlier to all recipients of telegraphic AD T87-25-51, dated December 4, 1987.

Issued in Seattle, Washington, on December 31, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-834 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-14]

Designation of Transition Area Bonifay, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Bonifay, Florida, Transition Area to accommodate instrument flight rule (IFR) operations at Tri-County Airport. This action lowers the base of controlled airspace from 1,200 to 700 ft. above the surface in the vicinity of the airport. An instrument approach procedure has been developed to serve the airport and the controlled airspace is required for IFR Aeronautical activities.

EFFECTIVE DATE: 0901 UTC, February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Earnest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 27, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Bonifay, Florida, Transition Area (52 FR 44137). This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Tri-County Airport. The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Bonifay, Florida, Transition Area and lowers the base of controlled airspace in the vicinity of Tri-County Airport from 1,200 to 700 ft. above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Bonifay, Florida (New)

That airspace extending upward from 700 ft. above the surface within a 6.5 mile radius of Tri-County Airport (latitude 30°51'30"N, longitude 85°36'00"W) within three miles either side of the 010° bearing from the Tri-County NDB (latitude 30°51'05"N, longitude 85°36'05"W), extending from the 6.5 mile radius to 8.5 mile radius north of the NDB.

Issued in East Point, Georgia, on December 28, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–836 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–11]

Establishment of Transition Area, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides additional controlled airspace in the vicinity of Missoula, Montana. This revision to the existing 1,200 foot transition area provides the users with the benefit of radar vectors at altitudes compatible with the instrument approach procedures for the Missoula Airport. This action does not change the existing 700 foot transition area.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–11, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

On July 2, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the existing 1,200 foot transition area at Missoula, Montana (52 FR 25029). This action was necessary to provide additional controlled airspace to radar vector aircraft at altitudes compatible with instrument approach procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received to the proposal. The Air Transport Association (ATA) concurred with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is necessitated by changes to Instrument Flight Rules procedures which have caused the Missoula ATCT to require the Salt Lake City ARTCC to position arriving aircraft on a published route or approach transition prior to release of control. Due to restrictions in service volume for the Missoula VORTAC, the positioning of aircraft must, therefore, be accomplished by radar vectors. The absence of uniform controlled airspace restricts arriving aircraft below 15,000 feet AMSL to fly nonradar routes which increases their flying time; and aircraft arriving at 15,000 feet AMSL or above are required to remain high until established on an approach transition. The revision to the 1,200 foot transition area will provide the user with the benefit of radar vectors at altitudes compatible with the instrument approach procedures. This action does not change the existing 700 foot transition area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Missoula, Montana (Revised)

That airspace extending upward 700 feet above the surface within a 23.5 mile radius of the Missoula VORTAC (lat. 46°54'29" N., long. 114°04'58" W.) extending from the Missoula VORTAC 190° radial clockwise to the 290° radial; within 9.5 miles southwest and 5.5 miles northeast of the Missoula VORTAC 312° radial extending from the VORTAC to 38 miles northwest of the VORTAC; within 3 miles each side of the Missoula VORTAC 172° radial extending from the VORTAC to 19.5 miles southeast; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°30'00" N., long. 115°15'00" W., to lat. 47°30'00" N., long. 112°40'53" W., to lat. 46°44'00" N., long. 112°19'58" W., to lat. 46°44'00" N., long. 112°19'00" W., to lat. 46°44'00" N., long. 112°54'00" W., to lat. 46°33'00" N., long. 113°05'00" W., to lat. 46°00'00" N., long. 113°05'00" W., to lat. 46°00'00" N., long. 115°15'00" W., to point of beginning and excluding the portion within the Great Falls, Montana, and Helena, Montana, and Coopertown, Montana, 1,200 foot transition areas.

Issued in Seattle, Washington, on December 29, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–835 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–4]

Alteration of Jet Routes; Expanded East Coast Plan—Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of several jet routes located in the vicinity of New York (52 FR 25241). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realigment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J–75, J–79 and J–109 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 28687 and 35693) is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-75 [Amended]

By removing the words "Westminster, MD; Modena, PA;" and substituting the words "INT Gordonsville 040° and Modena, PA, 231° radials; Modena;"

J-79 [Amended]

By removing the words "Sea Isle, NJ; Kennedy, NY; INT Kennedy 080° and Nantucket, MA, 255° radials; INT Nantucket 255° and Hyannis, MA, 205° radials; Hyannis;" and substituting the words "INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Hyannis, MA, 205° radials; Hyannis;"

J-108 [Revised]

From Wilmington, NC; Flat Rock, VA; Linden, VA; to Buffalo, NY.

Issued in Washington, DC, on January 5, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-842 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-AWA-5]

Alteration of Jet Routes, Expanded East Coast Plan—Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of several jet routes located in the vicinity of New York (52 FR 25608). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposed to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conduced in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case. In consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40 percent reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-110, J-121, J-134, J-147, J-149, J-150 and J-162 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-110 [Amended]

By removing the words "Coyle, NJ; to Kennedy, NY." and substituting the words "to Coyle, NJ."

J-121 [Amended]

By removing the words "Hampton; Providence, RI; to INT Providence 045° and Boston, MA, 068° radials." and substituting the words "Hampton; Sandy Point, RI; INT Sandy Point 031° and Kennebunk, ME, 190° radials; to Kennebunk."

J-134 [Amended]

By removing the words "INT Henderson 083° and Shawnee, VA, 262° radials; to Shawnee." and substituting the words "to Linden, VA."

J-147 [Amended]

By removing the words "to Gordonsville, VA." and substituting the words "to Casanova, VA."

J-149 [Amended]

By removing the words "From Casanova, VA, via INT of Casanova 280° and Rosewood, OH, 116° radials;" and substituting the words "From Armel, VA; INT Armel 273° and Rosewood, OH 116° radials;"

J-150 [Amended]

By removing the words "From Gordonsville, VA, via INT Gordonsville 059° and Woodstown, NJ, 230° radials; Woodstown, Robbinsville, NJ; Hampton, NY;" and substituting the words "From Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Coyle, NJ; INT Coyle 075° and Hampton, NY, 231° Radials; Hampton;"

J-162 [Amended]

By removing the words ", INT of Bellaire 122° and Shawnee, VA, 288° radials; to Shawnee." and substituting the words "; INT Bellaire 133° and Morgantown, WV, 287° radials; Morgantown; to Martinsburg, WV."

Issued in Washington, DC, on January 5, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-841 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-AWA-6]

Alteration of Jet Routes; Expanded East Coast Plan—Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulation (14 CFR Part 75) to alter the descriptions of several jet routes located in the vicinity of New York (52 FR 25607). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and

complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11034) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-190, J-191 and J-209 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 30230 and 43056) is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Ex. Or. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-190 [Revised]

From Carleton, MI; Slate Run, PA; Binghamton, NY; Rockdale, NY; to Albany, NY. The segment within Canada is excluded.

J-191 [Amended]

By removing the words "From Coyle, NJ, via Kenton, DE;" and substituting the words "From Robbinsville, NJ, via INT Robbinsville 226° and Kenton, DE, 035° radials; Kenton;"

J-209 [Amended]

By removing the words "to Salisbury." and substituting the words "Salisbury; INT Salisbury 018° and Coyle, NJ, 226° radials; Coyle; to INT Coyle 036° and Robbinsville, NJ, 136° radials."

Issued in Washington, DC, on January 5, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-840 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 76]

Staff Accounting Bulletin No. 76; De Minimis Sales

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin amends Topic 2-E of the staff accounting bulletin series to express the staff's view on the effect of certain *de minimis* sales by affiliates on compliance with the requirement of Accounting Series Release Nos. 130 and 135 regarding risk sharing in business combinations accounted for as pooling of interests.

FOR FURTHER INFORMATION CONTACT: John A. Heyman, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

January 12, 1988.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is hereby amended by adding Staff Accounting Bulletin No. 76 to the table found in Subpart B.

Staff Accounting Bulletin No. 76

In Staff Accounting Bulletin ("SAB") No. 65 (Topic 2-E), the staff indicated that it will generally not question whether there is a lack of the risk sharing requisite for the use of pooling of interests accounting as the result of sales by affiliates which occur prior to 30 days before the consummation of the combination. After the issuance of SAB No. 65, the staff was asked whether the use of pooling of interests accounting would be precluded by sales by affiliates, after a date 30 days prior to the consummation of the combination and prior to the publication of financial results covering at least 30 days of post-merger combined operations, if those sales were *de minimis* in amount.

The staff hereby amends Question 2 of Section E of Topic 2 to include its view on what constitutes a *de minimis* sale, and the effects of such sales during the aforementioned period on the applicability of pooling of interests accounting.

Topic 2: Business Combinations

* * * * *

E. Risk Sharing in Pooling of Interests.

* * * * *

Question 2.

* * * * *

Interpretive Response.

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Additionally, the staff will generally not question the use of the pooling of interests accounting method because of sales by affiliates which occur after a date 30 days prior to the consummation of the combination and prior to the publication of financial results covering at least 30 days of post-merger combined operations, if those sales are *de minimis* in amount.[3] To be viewed as *de minimis*, (i) the sales by an affiliate must not be greater than 10 percent of the affiliate's pre-combination (or equivalent post-combination) shares, and (ii) the aggregate sales by all affiliates of a combination company must not exceed the equivalent of 1 percent of that company's pre-combination outstanding shares.[4] [5]

[3] It should be noted, however, that nothing herein should be construed as addressing any issues relating to the applicability of section 16(b) of the Securities Exchange Act of 1934 to sales during this period.

[4] Where the consummation dates for two or more pooling of interests business combinations result in the overlapping of the periods during which sales by affiliates are restricted, these limits would apply to the aggregate sales during the combined period. Thus, for example, if the periods for two combinations overlap, an individual affiliate's aggregate sales during the combined period could not exceed 10 percent, rather than 20 percent, of the affiliate's precombination (i.e., before either of the pooling transactions, even if one has been consummated) shares.

[5] The question of whether outstanding stock options should be considered outstanding shares and shares owned by an affiliate in computing, respectively, the 1 percent and 10 percent limits, depends on an assessment of facts and circumstances such as the relation of the option price to the market value of the stock, the imminence of exercisability and/or expiration, and the number of options held by an affiliate in relation to the number of shares owned and the effect, if any, the consummation of the combination will have on the terms of the options. Thus, for example, it would clearly be inappropriate to include in calculating the limits any outstanding stock options of a combining company for which the issuer will not issue replacement options or common stock.

Furthermore, the staff will generally not raise a question as the result of charitable contributions or bona fide gifts;[6] however, the recipients of such gifts would have to hold the shares for the period indicated by Accounting Series Release Nos. 130 and 135.[7]

[FR Doc. 88-947 Filed 1-15-88; 8:45 am]

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[6] Transfer of shares to other parties that are required or inspired by any legal duties to support dependents or that are in any sense a payment to settle a debt or other obligation would not be considered to be "bona fide" gifts.

[7] For practical reasons, the holding period restrictions would not normally attach to shares donated to charitable institutions that have traditionally been supported by contributions from the general public (as opposed to supported largely by a specific donor).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 45

[DoD Instruction 1336.1]

Certificate of Release or Discharge From Active Duty (DD Form 214/5 Series)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment updates the Circle of Federal Regulations to reflect administrative changes.

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lt. Colonel S. Strobridge, Office of the Assistant Secretary of Defense (Force Management and Personnel), Pentagon, Washington, DC 20301, telephone (202) 695-6312.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 45

Armed forces reserves, Military personnel.

Accordingly, Title 32 CFR Part 45 is amended to read as follows:

PART 45—CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214/5 SERIES)

1. The authority citation for Part 45 continues to read as follows:

Authority: 10 U.S.C. 1167 and 972.

§ 45.3 [Amended]

2. In § 45.3(e)(1)(iii), change "VA Form 21–526e" to read "VA Form 21–526" and remove the words "at Separation from Service,".

3. Section 45.5 is revised to read as follows:

§ 45.5 State Directors of Veterans Affairs.

Alabama

Director, Department of Veternas Affairs, P.O. Box 1509, Montgomery, AL 36192–3701.

Alaska

Director, Division of Veterans Affairs, Department of Military & Veterans Affairs, 3601 C Street, Suite 620, Anchorage, AK 99503.

American Samoa

Veterans Affairs Officer, Office of Veterans Affairs, American Samoa Government, P.O. Box 2586, Pago Pago, AS 96799.

Arizona

Director of Veternas Affairs, Arizona Veterans Service Commission, 3225 N. Central Avenue, Suite 910, Phoenix, AZ 85012.

Arkansas

Director, Department of Veternas Affairs, 1200 West 3rd, Room 105, Little Rock, AR 72201.

California

Director, Department of Veterans Affairs, 1227 O Street, Room 200A, Sacramento, CA 95814.

Colorado

Director, Division of Veterans Affairs, Department of Social Services, 1575 Sherman Street, Room 122, Denver, CO 80203.

Connecticut

Commandant, Veterans Home and Hospital, 287 West Street, Rocky Hill, CT 06067.

Delaware

Chairman, Commission of Veterans Affairs, P.O. Box 1401, Dover, DE 19901.

District of Columbia

Chief, Office of Veterans Affairs, 941 North Capital Street NE., Room 1211 F, Washington, DC 20421.

Florida

Director, Division of Veterans Affairs, P.O. Box 1437, St. Petersburg, FL 33731.

Georgia

Commissioner, Department of Veterans Service, Floyd Veterans Memorial Bldg, Suite E–970, Atlanta, GA 30334.

Guam

Office of Veterans Affairs, P.O. Box 3279, Agana, Guam 96910.

Hawaii

Director, Department of Social Services & Housing, Veterans Affairs Section, P.O. Box 339, Honolulu, HI 96809–0339.

Idaho

Administrator, Division of Veterans Services, P.O. Box 7765, Boise, ID 83707.

Illinois

Director, Department of Veterans Affairs, 208 West Cook Street, Springfield, IL 62705.

Indiana

Director, Department of Veterans Affairs, 707 State Office Building, 100 N. Senate Avenue, Indianapolis, IN 46204.

Iowa

Administrator, Veterans Affairs Division, 7700 NW. Beaver Drive, Camp Dodge, Johnston, IA 50131–1902.

Kansas

Executive Director, Kansas Veterans Commission, Jayhawk Tower, Suite 701, 700 SW. Jackson Street, Topeka, KS 66603–3150.

Kentucky

Director, Kentucky Center for Veterans Affairs, 600 Federal Place—Room 1365, Louisville, KY 40202.

Louisiana

Executive Director, Department of Veterans Affairs, P.O. Box 94095, Capitol Station, Baton Rouge, LA 70804–4095.

Maine

Director, Bureau of Veterans Services, State Office Building, Station 117, Augusta, ME 04333.

Maryland

Executive Director, Maryland Veterans Commission, Federal Bldg.—Rm 110, 31 Hopkins Plaza, Baltimore, MD 21201.

Massachusetts

Commissioner, Department of Veterans Services, 100 Cambridge Street, Room 1002, Boston, MA 02202.

Michigan

Director, Michigan Veterans Trust Fund, Ottawa Bldg., No. Tower, 3rd Floor, Lansing, MI 48909.

Minnesota

Commissioner, Department of Veterans Affairs, Veterans Service Building, 2nd Floor, St. Paul, MN 55155.

Mississippi

President, State Veterans Affairs Board, 120 North State Street, War Memorial Building, Room B–100, Jackson, MS 39201.

Missouri

Director, Division of Veterans Affairs, P.O. Drawer 147, Jefferson City, MO 65101.

Montana

Administrator, Veterans Affairs Division, P.O. Box 5715, Helena, MT 59604.

Nebraska

Director, Department of Veterans Affairs, P.O. Box 95083, State Office Building, Lincoln, NE 68509.

Nevada

Commissioner, Commission for Veterans Affairs, 1201 Terminal Way, Room 108, Reno, NV 89520.

New Hampshire

Director, State Veterans Council, 359 Lincoln Street, Manchester, NH 03103.

New Jersey

Director, Division of Veterans Programs & Special Services, 143 E. State Street, Room 505, Trenton, NJ 08608.

New Mexico

Director, Veterans Service Commission, P.O. Box 2324, Santa Fe, MN 87503.

New York

Director, Division of Veterans Affairs, State Office Building #6A–19, Veterans Highway, Hauppauge, NY 11788.

North Carolina

Asst. Secretary for Veterans Affairs, Division of Veterans Affairs, 227 E. Edenton Street, Raleigh, NC 27601.

North Dakota

Commissioner, Department of Veterans Affairs, 15 North Broadway, 6th Floor, Fargo, ND 58102.

Ohio

Director, Division of Soldiers Claims & Veterans Affairs, State House Annex, Room 11, Columbus, OH 43215.

Oklahoma

Director, Department of Veterans Affairs, P.O. Box 53067, Oklahoma City, OK 73152.

Oregon

Director, Department of Veterans Affairs, Oregon Veterans Building, 700 Summer Street NE., Suite 150, Salem, OR 97310–1270.

Pennsylvania

Director, Department of Military Affairs, Bureau for Veterans Affairs, Fort Indiantown Gap, Annville, PA 17003.

Puerto Rico

Director, Bureau of Veterans Affairs, Human Resources, Department of Labor, 505 Munoz Rivera Avenue, Hato Rey, PR 00918.

Rhode Island

Chief, Veterans Affairs Office, Metacom Avenue, Bristol, RI 02809.

South Carolina

Director, Department of Veterans Affairs, Brown State Office Building, 1205 Pendleton Street, Columbia, SC 29201.

South Dakota

Director, Division of Veterans Affairs, 500 East Capitol Avenue, State Capitol Building, Pierre, SD 57501–5083.

Tennessee

Commissioner, Department of Veterans Affairs, 215 8th Avenue, North, Nashville, TN 37203.

Texas

Executive Director, Veterans Affairs Commission of Texas, Box 12277, Capitol Station, Austin, TX 78711.

Utah

Veterans Benefits Coordinator, P.O. Box 45011, 150 West North Temple, Salt Lake City, UT 84145.

Vermont

Director, Veterans Affairs Office, State Office Building, Montpelier, VT 05602.

Virginia

Director, Division of War Veterans Claims, 210 Franklin Road SW., Room 1002, P.O. Box 809, Roanoke, VA 24004.

Virgin Islands

Director, Division of Veterans Affairs, P.O. Box 890, Christiansted, St. Croix, VI 00820.

Washington

Director, Department of Veterans Affairs, P.O. Box 9778, Mail Stop PM–41, Olympia, WA 95804.

West Virginia

Director, Department of Veterans Affairs, 605 Atlas Building, Charleston, WV 25301–9778.

Wisconsin

Secretary, Department of Veterans Affairs, P.O. Box 7843, 77 North Dickinson Street, Madison, WI 53707.

Wyoming

No DVA.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 12, 1988.

[FR Doc. 88–873 Filed 1–15–88; 8:45 am]

BILLING CODE 3810–01–M

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32 CFR Part 104

[DoD Directive 6000.3]

Voluntary Private Health Insurance Conversion Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: 32 CFR Part 104 was published as a final rule on July 15, 1969. Formally called "Health Care Coverage for Persons Being Separated from Active Duty," it established a program designed to give certain persons being separated from active duty an opportunity to purchase short-term health insurance coverage for themselves and their dependents. The FY 85 DoD Authorization Act report language requested the Department of Defense to develop a competitively priced, long term, comprehensive, private sector health insurance policy. Congress requested that the policy be designed for purchase by all former spouses, members and their dependents separating from the Uniformed Services, and dependent children reaching the age of majority and that it cover pre-existing conditions. 32 CFR Part 104 needs to be revised to include this wider group.

EFFECTIVE DATE: January 5, 1988.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), the Pentagon, Room 3D318, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Galaty, telephone (202) 694–4685.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 104

Health insurance, Military personnel.

Accordingly, 32 CFR Part 104 is revised to read as follows:

PART 104—VOLUNTARY PRIVATE HEALTH INSURANCE CONVERSION PROGRAM

Sec.

104.1 Reissuance and purpose.
104.2 Applicability and scope.
104.3 Definitions.
104.4 Policy.
104.5 Responsibilities.

Authority: Sec. 301; 80 Stat. 379; 5 U.S. Code 301.

§ 104.1 Reissuance and purpose.

This part reissues 32 CFR Part 104 to:

(a) Respond to the congressional requests in Report 98–1080, "Conference Report of the Committees on Armed Services on the National Defense Authorization Act," Pages 301 to 303, Fiscal Year 1985, Report 99–1001, "Conference Report of the Committees on Armed Service on the National Defense Authorization Act," Page 484, Fiscal Year 1987, Report 99–718, "Conference Report of the Committee on Armed Services, U.S. House of Representatives on H.R. 4428, the National Defense Authorization Act," Pages 211 and 212, Fiscal Year 1987 to make a private health insurance conversion policy available for purchase through the Department of Defense.

(b) Update policy, establish procedures, and assign responsibilities.

§ 104.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and, by agreement, to the other Uniformed Services (Coast Guard, Public Health Service (PHS), and National Oceanic and Atmospheric Administration (NOAA)).

(b) Covers Service members and their family members who lose eligibility for Uniformed Services medical benefits and minors for whom active duty or retiree families are responsible legally, but who are not eligible for Uniformed Services medical benefits.

§ 104.3 Definitions.

Conversion policy. A comprehensive, private-pay health insurance policy that provides benefits similar to those available under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). It must be available without exception to all eligible individuals and cover preexisting conditions (with a maximum of a 1-year waiting period on such conditions) at a rate lower than similar private individual insurance policies.

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Initial enrollment premiums may cover no more than a 90-day period and, unless otherwise arranged with the purchaser, no more than 30-day periods thereafter. Insurance companies may apply standard underwriting principles to policy expansions if they choose to offer the policy to additional categories of beneficiaries or extend enrollment periods. Additionally, after the Uniformed Services help in the initial enrollment and payment process, all payments and policy arrangements must be made between the purchasing individual and the company offering the policy. An insurance company or companies offering conversion policies under this part shall have financial and operational responsibility for such policies. The U.S. Government (including the Department of Defense, the Coast Guard, PHS, and NOAA) shall assume no financial liability and shall have no legal or other responsibility for those conversion policies and their administration.

Eligible. Individuals are eligible to purchase a conversion policy when they lose their eligibility for Uniformed Services health benefits, or are minors who become the legal responsibility of active duty or retired members, or are survivors and are not eligible for Uniformed Services health benefits. These eligible individuals include:

a. Spouses of members whose marriage ends in divorce, dissolution, or annulment after at least 1 year of marriage.

b. Members leaving active duty (other than those separated for health conditions existing before service) and their family members who were covered by CHAMPUS.

c. Unmarried children of active duty, deceased, or retired members when such children lose their eligibility upon reaching the age of 21 (23 if in school).

d. Children who are legal wards or previously adopted children of active duty or retired members or survivors.

e. Dependent grandchildren living with active duty or retired members or survivors.

Qualifying event. The event that enables an individual to become eligible to purchase a conversion policy.

§ 104.4 Policy.

It is DoD policy that:

(a) All eligible individuals shall be given an opportunity to purchase a conversion policy. Active duty members separating from a Uniformed Service shall have at least 30 days after their separation to purchase a conversion policy. Former spouses, children coming of age, and legal dependents shall have a minimum of 90 days after their qualifying event.

(b) An insurance company or companies offering conversion policies under this part shall supply all designated distribution centers with explanation brochures, applications, and updated premium schedules.

(c) Uniformed Services members and, when practical, their family members shall be informed of the availability of conversion policies at applicable times during their active duty service, during separation processing, or when contacting a personnel office, a separation office, an identification card office, a health benefits advisor in a military medical facility, a family service center, a clergy office, or a legal office about benefit status changes. All interested individuals shall be:

(1) Given material explaining the costs, benefits, and enrollment procedures of conversion policies.

(2) Advised of eligibility criteria, enrollment periods, policy costs, and premium payment schedule.

(3) Informed of the following:

(i) Purchase of coverage under the policy is voluntary.

(ii) Cost of any policy in which they enroll shall be borne entirely by them.

(iii) They must enroll within a specified time after their status change occurs and must make the first payment at the time of enrollment.

(iv) All payment arrangements (with the exception of separating members who want the first payment made as a one-time payroll deduction or want the separation center to submit their personal check for them) must be made directly with the insurance company offering the conversion policy they select.

(v) All questions involving their coverage are a matter between them and the company providing the coverage, and the U.S. Government does not have liability or responsibility for the administration of the policy.

(d) Once an agreement has been signed between an insurance company and the Department of Defense, conversion policies shall continue to be offered until one of the two following events occurs:

(1) An insurance company offering a conversion policy provides the Department of Defense with a 90-day notice that it is terminating the agreement.

(2) The Department of Defense gives an insurance company a 90-day notice that it is terminating its agreement to offer its conversion policy.

§ 104.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)), or designee, shall:

(1) Advertise through applicable trade journals, periodicals, or other channels, at least once every 3 years, the interest of the Uniformed Services in making conversion policies available.

(2) Select one or more conversion policies that meet the requirements of this Directive, determine the effective date of each conversion policy, and sign a letter of agreement with each insurance company offering conversion policies.

(3) Inform the Uniformed Services of the effective date of each conversion policy, work with the applicable organizations in the Department of Defense and the Uniformed Services to specify the publicity and enrollment material and procedures to be used, and ensure that information on the availability of conversion policies is offered to eligible individuals.

(4) Monitor and evaluate the implementation of this Directive, review periodically all conversion policies being offered and all proposed changes to conversion policies, and, when necessary, do the following:

(i) Make recommendations to the Secretary of Defense or the Uniformed Services on the conversion policies.

(ii) Amend the letter of agreement with an insurance company offering a conversion policy.

(iii) Withdraw the privileges of offering a conversion policy under this part when it is determined that the best interests of the Uniformed Services and the persons losing eligibility to the medical benefit make such action applicable.

(b) The *Assistant Secretary of Defense (Public Affairs)* (ASD(PA)), or designee, shall direct the ASD(PA) staff to help publicize the program through its normal channels on a periodic basis.

(c) *The Secretaries of the Military Departments* and, where agreed to, the *Commandant of the Coast Guard*, the *Secretary of Health and Human Services*, and the *Secretary of Commerce*, or designees, shall:

(1) Establish internal programs implementing this part.

(2) Direct their public affairs offices to help publicize the program.

(3) Direct their Service publication distribution centers to disseminate information on the program periodically.

(4) Require personnel offices, separation offices, identification card offices, military medical facilities, family service centers, clergy offices, and

applicable legal offices to do the following:

(i) Stock explanation brochures, application forms, and payment schedules specified by the Office of the ASD(HA) (OASD(HA)) and supplied by insurance companies offering the conversion policies.

(ii) Inform eligible individuals of the availability of policies and provide interested individuals with brochures, application forms, and payment schedules.

(5) Require personnel or separation offices, upon request of an individual interested in purchasing a conversion policy, to validate the applications or supply one of the following applicable validation forms consistent with 32 CFR Part 286a.

(i) Defense Enrollment Eligibility Reporting System (DEERS) printouts.

(ii) Standard Form DD 214, "Certificate of Release or Discharge from Active Duty," or approved DD 1172, "Application for Uniformed Services Identification and Privilege Card."

(iii) An official statement of service.

(6) Require separation or finance and accounting offices to collect the first premium or arrange for payroll deductions to be made, when requested by a separating member. Following transmittal directions specified by the OASD(HA), forward, at least once a week, all applications and payroll deductions or premium checks to the designated office of the insurance company from which the coverage was purchased.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1988.

[FR Doc. 88-924 Filed 1-15-88; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 374

[DoD Directive 5138.3]

Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes the Office of the Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict) (SAD(SO/LIC)) and assigns functions, authorities, and relationships to implement the authority vested in the Secretary of Defense by Title 10 U.S.C.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301, telephone (202) 697-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 374

Organizations and functions (Government agencies).

Accordingly, Title 32, Chapter I, is amended to add Part 374 to Subchapter R to read as follows:

PART 374—ASSISTANT SECRETARY OF DEFENSE (SPECIAL OPERATIONS AND LOW-INTENSITY CONFLICT)

Sec.

374.1 Purpose.
374.2 Definitions.
374.3 Responsibilities and functions.
374.4 Relationships.
374.5 Authorities.
374.6 Effective date.

Authority: 10 U.S.C. 133.

§ 374.1 Purpose.

This part:

(a) Implements section 136(b)(4) of Title 10, U.S.C. to establish the position of Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC)).

(b) Assigns responsibilities, functions, relationships, and authorities to the ASD(SO/LIC) pursuant to the authority vested in the Secretary of Defense under 10 U.S.C.

§ 374.2 Definitions.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies.

Low-Intensity Conflict (LIC). As established by U.S. guidance, LIC is political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. It involves protracted struggles of competing principles and ideologies. LIC ranges from subversion to the use of armed force. It is waged by a combination of means employing political, economic, informational, and military instruments. Such conflicts are often localized and generally in the Third World, but contain regional and global security implications. LIC activities comprise a full range of offensive and defensive measures employed in accordance with national security strategy objectives. These activities include Foreign Internal Defense (FID) measures to help governments combat insurgency and other forms of low-intensity aggression, political and economic support for developing nations, support for resistance movements, antiterrorism and counterterrorism policy, contingency operations, drug interdiction, and peacekeeping operations.

Special Operations (SO). SO are actions conducted generally in enemy-held, enemy-denied, or sensitive territory by specially trained, equipped, and organized DoD forces in pursuit of national military, political, economic, or psychological objectives. SO are essentially of a political-military nature and are affected more directly by political considerations than conventional operations. They may support conventinal operations or be conducted independently, during peace or hostilities, when conventional operations are inappropriate or infeasible. SO are frequently of a high risk nature and characterized by oversight at the national level. They differ generally from conventional operations in their operational techniques, mode of employment, and dependence upon operational intelligence and indigenous assets. SO activities include each of the following insofar as it relates to SO: Direct Action, Strategic Reconnaissance, Unconventional Warfare, FID, Civil Affairs, Psychological Operations, Counterterrorism, Humanitarian Assistance, Theater Search and Rescue, and such other activities as may be specified by the President or the Secretary of Defense in accordance with section 167(j)(10) of 10 U.S.C.

§ 374.3 Responsibilities and functions.

The Assistant Secretary of Defense (Special Operations and Low Intensity Conflict (ASD(SO/LIC)) is the Principal Staff Assistant and civilian advisor to the Secretary of Defense for policy and planning related to SO/LIC activities within the Department of Defense. The ASD (SO/LIC) has the statutory duty for the overall supervision of SO and LIC activities within the Department of Defense. Subject to the direction of the Secretary of Defense, the ASD(SO/LIC) shall be responsible for policy guidance and oversight to govern planning, programming, resourcing, and executing SO and LIC activities. In the performance of these responsibilities, the ASD(SO/LIC) shall:

(a) Formulate policies and programs for plans, resources, and implementation of SO and LIC activities, and oversee the implementation of these policies and programs.

(b) Translate national security policy objectives into specific defense policy objectives achievable by designated SO and LIC activities.

(c) Conduct studies and analyses that support the exercise of assigned responsibilities and functions.

(d) Oversee an integrated development and refinement of doctrines, strategies, and processes for SO and LIC; prepare overall plans and implementation guidance for the various areas in the world where SO and LIC objectives exist.

(e) Provide policy guidance and recommendations to consider and incorporate SO and LIC mission options in contingency planning; coordinate with the Under Secretary of Defense (Policy), (USD(P)) to review the SO and LIC aspects of contingency plans; and evaluate the fit between policy, strategic guidance, planning, and capabilities.

(f) Review, analyze, and evaluate the various policies, processes, and programs of DoD Components that impact on the capability to plan, resource, prepare forces, and execute SO and LIC operations; and initiate and coordinate actions or taskings that enhance the readiness, capabilities, and effective use of SO and LIC forces.

(g) Supervise the overall preparation and justification of program recommendations and budget proposals for SO activities in the Five-Year-Defense Plan (FYDP) of the Department of Defense. In developing the FYDP, the ASD(SO/LIC) shall seek the advice and assistance of the Commander in Chief United States Special Operations Command (USCINCSOC), and may seek advice and assistance from other DoD Components. The ASD(SO/LIC) and USCINCSOC will have visibility and control over utilization of Major Force Program 11 resources.

(1) During the planning and programming phases of the FYDP preparation, the ASD(SO/LIC) shall coordinate with the Director, Program Analysis and Evaluation (PA&E).

(2) During the budgeting phase of the FYDP preparation, the ASD(SO/LIC) shall coordinate with the Assistant Secretary of Defense (Comptroller) (ASD(C)).

(h) Advise the Under Secretary of Defense (Acquisition) (USD(A)) on acquisition priorities and requirements for SO- and LIC-related material and equipment; participate in the Defense Acquisition Board and other appropriate boards and committees as the proponent for SO and LIC issues; and maintain liaison to monitor progress in achieving milestone.

(i) Oversee the promulgation and periodic review of regulations for the United States Special Operations Command (USSOCOM) activities as required by section 167(h) of 10 U.S.C.; review, in coordination with the Chairman, JCS, and USCINCSOC, the procedures by which USCINCSOC receives, plans, and executes tasking of the National Command Authorities.

(j) Provide, in conjunction with the Chairman, JCS, and USCINCSOC, DoD oversight of the readiness of the unified combatant commands to conduct SO.

(k) Advise the Secretary of Defense on assigning SO and other forces to USSOCOM.

(l) Ascertain where intelligence shortfalls exist and confer with USCINCSOC; the Director, Defense Intelligence Agency (DIA); the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C^{3}I)); and the intelligence community to recommend activities that support the capability and plans of the Department of Defense to conduct SO and LIC missions.

(m) Monitor the development of crises through the Crisis Action System (CAS), and, as appropriate, recommend options for separate or integrated, military or nonmilitary, actions utilizing SO capabilities; monitor SO actions during the planning and execution phases of the CAS; report to the Secretary of Defense, after consultation with the Chairman, JCS, any significant change in the relationship between the SO actions, targets, level of force and risk, and the political object to be achieved.

(n) In accordance with established procedures, including General Counsel of the Department of Defense (GC, DoD) consultation and DoD Directive S-5210.36, advise the USD(P) on fulfillment of interagency support requests for utilization of DoD forces or resources in SO and LIC activities; monitor interagency use of DoD forces or resources in SO and LIC activities; report to the USD(P) whenever it appears that questions may arise with respect to the legality or propriety of such utilization.

(o) Develop, in coordination with USD(A) and other appropriate DoD Component officials, mechanisms for integrating SO and LIC programs into other DoD Component research, development, test and evaluation (RDT&E) and procurement efforts.

(p) Serve, in association with USCINCSOC, as the Principal DoD official responsible for presenting the SO and LIC programs to Congress.

(q) Serve as the DoD point of contact and spokesman regarding SO and LIC matters germane to assigned functions and responsibilities; represent the Secretary of Defense with other governmental agencies, including interagency groups, with respect to such matters.

(r) Study the methodologies of foreign government SO and LIC organizations to improve DoD capability in peace and war.

(s) Recommend to the Secretary of Defense legislative initiatives to enhance SO and LIC capabilities.

(t) Clear all related public affairs releases/statements with the Assistant Secretary of Defense (Public Affairs).

(u) Perform such other duties as the Secretary of Defense may prescribe.

§ 374.4 Relationships.

(a) In the performance of assigned duties, the ASD(SO/LIC) shall:

(1) Consult and coordinate with DoD Components when addressing issues under their respective purview.

(2) Establish effective communication and liaison for the exchange of information and advice in the field of assigned responsibility with all DoD Components, other U.S. and foreign government activities, and non-DoD research institutions, including commercial and academic entities.

(3) Whenever practicable, use existing facilities and services of the Department of Defense or other Federal Agencies to avoid duplication and achieve maximum efficiency and economy.

(4) In cordination with USCINCSOC, operate within the DoD Acquisition System, ensuring that direction from the USD(A) on matters on acquisition policy, procedures, and execution is complied with in accordance with 32 CFR Part 382.

(5) Establish and maintain an interactive process with the Department of State (DoS), National Security Council (NSC), DoD Components and other bodies to promote early identification of possible problems that might arise in different parts of the world and to initiate planning guidance for the use of SO and LIC activity initiatives.

(6) Promote understanding of SO and LIC activities within the Department of Defense, other Federal Agencies, the civilian community at large, and foreign SO and LIC official communities; and ensure the development of SO/LIC exercise participation in national wargaming efforts.

(b) Nothing herein shall be interpreted to interpose the ASD(SO/LIC) in the operational chain of command prescribed by section 163 of 10 U.S.C. or to subsume and replace the functions and responsibilities of the Chairman, JCS, and the Unified Combatant Commanders as prescribed by law.

§ 374.5 Authorities.

The ASD(SO/LIC) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M, to implement policies approved by the Secretary of Defense in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified or Specified Commands shall be issued through the Chairman, JCS.

(b) Act for the Secretary of Defense in participating in and discharging DoD responsibilities on interdepartmental and interagency groups exercising SO- and LIC-related functions.

(c) Obtain such reports, information, advice, and assistance, consistent with policies and criteria of DoD Directive 7750.5.[1]

(d) Communicate directly with the heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands (other than NSCINCSOC) shall be coordinated with the Chairman, JCS.

(e) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate.

(f) After consultation with responsible policy officials, establish and maintain liaison with Ministry of Defense officials dealing with SO and LIC matters in allied and friendly nations.

(g) Establish arrangements for DoD participatiopn in those non-DoD governmental programs for which primary cognizance is assigned.

§ 374.6 Effective date.

This part is effective January 4, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 12, 1988.

[FR Doc. 88–872 Filed 1–15–88; 8:45 am]

BILLING CODE 3810-01-M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 3801 Tabor Avenue, Attn: Code 1052, Philadelphia, PA 19120.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 85–097]

Port Access Routes; Approach to Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a new fairway anchorage in the approach to Tampa Bay, Florida; eliminates the southern Tampa fairway anchorage; and renames the northern Tampa fairway anchorage. These actions are necessary to permit deep draft vessels to anchor safely in the approach to Tampa Bay. The intended effect of this rule is to enhance navigation safety by providing accessible anchorages contiguous to and associated with the Tampa Shipping Safety Fairway. This final rule implements the results of the port access route study as reported in the **Federal Register** on December 29, 1986 (51 FR 46880).

EFFECTIVE DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Office of Navigation (G–NSS–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0415.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) concerning the fairway anchorages in this rule was published on July 27, 1987 (52 FR 28019). Interested parties were given until September 25, 1987, to submit comments. No comments were received and a public hearing was not held.

Drafting Information

The principal persons involved in drafting this rulemaking are: Margie G. Hegy, Project Manager, and Christena G. Green, Project Attorney, Office of Chief Counsel.

Background

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coast Guard to designate shipping safety fairways and fairway anchorages to provide vessels unobstructed, safe access to United States ports.

A shipping safety fairway is an area in which no fixed structures are permitted. This may inhibit exploration and exploitation of mineral resources in the designated area. A fairway anchorage is contiguous to and associated with a fairway, and fixed structures are permitted with a two mile spacing limitation (33 CFR 166.200(c)(1)). A shipping safety fairway and associated fairway anchorages may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety.

To ensure that the interests of all affected parties are considered, the PWSA mandates that a port access route study be conducted before new shipping safety fairways or fairway anchorages are designated. Once such a designation is made under the authority of the PWSA, the paramount right of navigation is recognized within the designated area. In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study is announced.

The study which supports the need for this rulemaking was initiated by a notice in the **Federal Register** on December 12, 1985 (50 FR 50808 corrected at 51 FR 1257). The study results were published in the **Federal Register** on December 29, 1986 (51 FR 46880). The Coast Guard found that the Tampa Harbor deepening project conducted by the Corps of Engineers (COE) required the use of designated spoil areas within the Tampa Shipping Safety Fairway adjacent to the southern Tampa fairway anchorage (33 CFR 166.200(d)(49)(i)). The resulting depth of water (operational draft of 33 feet, 6 inches) reduced the safety and convenience of access to and from the southern anchorage.

The study recommended that a new fairway anchorage, designated the Western Tampa Fairway Anchorage, be established to the west of the existing northern Tampa fairway anchorage; that the southern Tampa fairway anchorage be eliminated; and that the existing northern Tampa fairway anchorage be renamed the Eastern Tampa Fairway Anchorage. On July 27, 1987, the Coast Guard published a notice of proposed rulemaking (52 FR 28019) with this specific proposal implementing the study recommendations.

This rulemaking establishes a new fairway anchorage encompassing approximately six square nautical miles in the approach to Tampa Bay, Florida, approximately 15 miles offshore at its closest point, adjacent to the Tampa Shipping Safety Fairway. The anchorage, which is recommended for deep draft vessels, has a depth of 42–66 feet and will provide better holding grounds, deeper water, better landmarks, and a natural lee for boarding pilots in rough weather.

The existing northern fairway anchorage (33 CFR 166.200(d)(49)(i)) lies

to the east of the new anchorage and has a depth of 27–36 feet. The existing northern fairway anchorage is recommended for shallower draft vessels and is renamed the Eastern Tampa Fairway Anchorage.

This rulemaking also deletes the southern Tampa fairway anchorage (33 CFR 166.200(d)(49)(ii)).

Regulatory Evaluation

This rulemaking will not have adverse energy or environmental impact. To the contrary, the risk of environmental damage will decrease because vessels will have an established anchorage where the placement of structures will be limited to a two mile spacing.

The Coast Guard is directed by the PWSA to anticipate development on the Outer Continental Shelf and vessel traffic requirements and to reconcile the potential conflict with naviation by establishing routing measures in frequently used corridors. Since no conflicts have been identified with the Minerals Management Service (MMS) offshore leasing program and since fairway anchorages allow structures within certain spacing limitations, no significant interference with access to oil and gas is anticipated. On the other hand, the new fairway anchorage will increase navigation safety in the approach to Tampa Bay by providing a deeper, safer, and more navigable fairway anchorage.

When there is evidence fixed , structures must be placed in an area designated as a shipping safety fairway or fairway anchorage to gain access to significant quantities of oil or gas, a request for an adjustment will be given the appropriate consideration by the Coast Guard. The request will be handled in accordance with the PWSA and rulemaking procedures to determine whether navigation safety will be jeopardized by a modification. In most cases, a modification will require a PWSA port access study before rulemaking can commence.

This regulation is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the new anchorage which can be identified and calculated at this time. This designation will contribute to navigation safety without interfering significantly with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

PART 166—[AMENDED]

In consideration of the foregoing, Part 166 of Title 33 CFR is amended as follows:

1. The authority citation for Part 166 is amended to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Section 166.200 is amended by revising paragraph (d)(49) to read as follows:

§ 166.200 Shipping safety fairways and anchorages, Gulf of Mexico.

* * * * *

(d) * * *

(49) Tampa Anchorages—(i) Eastern Tampa Fairway Anchorage. The area enclosed by rhumb lines [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	*Longitude*
27°36'48" N.,	83°00'00" W.,
27°39'00" N.,	83°00'00" W.,
27°39'00" N.,	82°55'54" W.,
27°36'48" N.,	82°55'54" W.

(ii) Western Tampa Fairway Anchorage. The area enclosed by rhumb lines [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	*Longitude*
27°36'48" N.,	83°05'06" W.,
27°39'00" N.,	83°05'06" W.,
27°39'00" N.,	83°01'00" W.,
27°36'48" N.,	83°01'00" W.

* * * * *

Dated: January 13, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88–921 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of NARA Self-Service Copiers

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This rule makes minor revisions to National Archives and Records Administration (NARA) regulations relating to the use of self-service card-operated copiers. The regulation increases the number of locations where such copiers are located in the National Archives Building to include microfilm-to-paper copiers. It also provides for the availability of a card-operated copier at the Washington National Records Center. Additionally, this revision makes a minor change in the operation of the debitcard system to increase the locations where debitcards may be purchased and to provide for a deposit to be charged for debitcards until such cards are returned to NARA.

DATE: This rule is effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: The debitcard system was designed and implemented for use on high-volume self-service copiers located in designated research areas of the National Archives Building to facilitate the photocopying of a large number of records by researchers.

NARA has expanded the use of this debitcard system to include a high-volume self-service copier at the Washington National Records Center and microfilm-to-paper copiers in the National Archives Building. Additionally, researchers are now able to purchase debitcards from a vending machine as well as from the Cashier's Office (Room G–1) in the National Archives Building.

NARA is publishing this revision as a final rule without issuing a proposed rule because the rule contains no substantive changes.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, NARA amends Part 1254 of Chapter XII of Title 36 as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118.

2. In § 1254.71 the heading and paragraphs (a), (c), (d), (e) and (f) are revised to read as follows:

§ 1254.71 Use of the self-service card-operated copiers in the National Archives Building and the Washington National Records Center.

(a) Researchers who wish to make copies of records in the National Archives Building or the Washington National Records Center may use the self-service card-operated copiers located in designated research areas. To make use of these copiers, researchers should follow the procedures outlined in paragraphs (b) through (f) of this section.

* * * * *

(c) The attendant will examine the records to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination of suitability, if requested to do so by the researcher. If the records are suitable for copying on the self-service copier, the attendant will ensure that the containers are brought to the copier location and will inform researchers when they will be available there. The following types of records may not be copied on the self-service copier:

(1) Bound archival volumes;

(2) Records fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending the records may cause damage;

(3) Records larger than 11 inches by 14 inches;

(4) Records with uncancelled security classification markings;

(5) Records with legal restrictions on copying; and

(6) Records in poor physical condition, in the judgement of the research room attendant.

(d) The self-service copiers located in the designated research area on the second floor of the National Archives Building may be used between 9 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays. The self-service copier located in Room 400 of the National Archives Building may be used between 8:45 a.m. and 10:00 p.m., Monday to Friday, and between 8:45 a.m. and 5:15 p.m. Saturday. The self-service copier located in the designated research area at the Washington National Records Center may be used between the hours of 8:00 a.m. and 4:15 p.m., Monday to Friday, except Federal holidays. If NARA further expands the use of the debitcard system to additional self-service copiers, the hours of use will be posted near the equipment. The continuous use by one researcher of a high-volume self-service copier may be limited to one hour if other researchers wish to use the machine.

(e) Researchers may use cash to purchase a debitcard from a vending machine during the hours that the self-service copier is in operation. Additionally, debitcards may be purchased with cash, check, money order, or funds from an active deposit account from the Cashier's Office located in Room G–1 of the National Archives Building, between the hours of 8:45 a.m. and 5 p.m., Monday through Friday, except Federal holidays. When a new debitcard is issued by a vending machine or the Cashier's Office, the value of the card will be reduced by the applicable deposit which will be refunded to the purchaser when the card is returned to the Cashier's Office in Room G–1. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(f) To obtain a refund of any unused amount on a debitcard and the card deposit, a researcher must bring the debitcard to the Cashier's Office in the National Archives Building. Cash refunds for debitcards are currently limited to $5.00 or less. Refunds due for more than $5.00 are currently paid by U.S. Treasury check in approximately 6–8 weeks. NARA may increase the maximum cash refund amount upon waiver by the U.S. Department of the Treasury of applicable regulation. Refunds due on debitcards obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

Dated: December 30, 1987.

Claudine J. Weiher,

Acting Archivist of the United States

[FR Doc. 88–930 Filed 1–15–88; 8:45 am]

BILLING CODE 7515-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Payment of Loan Guaranty Claims

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations to implement certain provisions of title V of Pub. L. 98–369, the Deficit Reduction Act of 1984. Under the new law, the VA will continue to specify a minimum amount for credit to the veteran's indebtedness and accept conveyance of the security property only if, based on the net value of the property, it is in the Government's best interest to do so. These amendments are designed to conform the regulations to the new law governing acquisition of properties and payment of claims upon termination of VA-guaranteed loans, to clarify policies for the establishment of a final date for claim computation when foreclosure is unduly delayed, and to add appropriate definitions of terms.

EFFECTIVE DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202) 233–3668.

SUPPLEMENTARY INFORMATION: On June 2, 1987, VA published in the **Federal Register** (52 FR 20617) proposed amendments to its regulations governing payment of loan guaranty claims. These amendments were designed to implement certain of the requirements of Pub. L. 98–369, the Deficit Reduction Act of 1984, as more fully discussed in the June 2, 1987, **Federal Register**. Interested persons were invited to submit their written comments.

One comment was received on the proposed regulations from an attorney who represents a lender presently involved in litigation with the VA. The commentator opposed promulgation of these regulations based on prejudice which the attorney believed would result to her client's position in the case under litigation, and would unlawfully interfere with the litigation. We do not agree. These regulations implement Pub. L. 98–369, which was enacted after the date of the events which gave rise to the litigation, and therefore have no real bearing on the litigation. VA has been operating under the discretionary authority of existing 38 CFR 36.4320 to implement the requirements of Pub. L. 98–369 since 1984.

The commentator also objected to the proposed regulations on the ground that they modified the conditions of loan guaranty under which her client had purchased GI loans, and that they would thereby increase financial losses to GI loan holders. We do not agree.

The guaranty provided to GI loan holders was, from the inception of the Loan Guaranty program, limited to an agreement on the part of VA to pay a claim equal to a percentage of the loan in the event of a default. VA promulgated 38 CFR 36.4320 to authorize acquisition of properties in those cases in which the property value was such that VA could reduce its claim liability

by acquisition of the property; however, decisions as to whether to acquire property and estimations of property value were discretionary with VA. The proposed regulations are consistent with the provisions of Pub. L. 98–369, and do not reduce VA's claim liability under the guaranty. They do, however, benefit loan holders by establishing in regulatory form the conditions under which VA must accept property conveyances, thereby reducing to some extent VA's discretion. Accordingly, VA has determined to adopt the regulations as originally proposed.

Under section 1810 of title 38, United States Code, the VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home improvements. Currently the VA guarantees 60 percent of the loan amount up to a maximum amount of $27,500. The guaranty is a promise by the government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

When a VA guaranteed loan goes into default, the holder has the primary servicing responsibility. VA supplements this servicing in an effort to avoid foreclosure of the loan and to help the veteran retain his or her home. Often VA intercedes with the holder to encourage the acceptance of a repayment plan giving the veteran the opportunity to reinstate the loan, or extension of additonal forbearance to give the veteran an opportunity to sell the property and save the equity.

If the servicing efforts by the holder and VA fail and the holder proceeds with termination of the loan, 38 CFR 36.4320 governs the rights and duties of the holder and the VA in connection with disposition of the property. In most cases, the VA establishes a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the security. If the property is sold to the holder at the foreclosure sale for a price no higher than the amount specified by the VA, the holder may convey the property to the VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, the VA acquires the loan security (the home) and normally reduces its claim liability.

In the proposed rule, in § 36.4320(f) and § 36.4320(h)(5), several words were inadvertently omitted and have been inserted into the final rule. With these additions, the proposed rule is hereby adopted as final.

The Administrator hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply implement a new claims and conveyancing scheme prescribed by Pub. L. 98–369 which sets forth the circumstances under which the Administrator will acquire properties which secured defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The final regulations have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.211)

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

These amendments are promulgated under authority granted the Administrator by sections 210(c), 1803(c)(1), 1816 and 1820 of Title 38 United States Code, and the enabling legislation.

Approved: December 23, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—LOAN GUARANTY

1. Section 36.4300 and the NOTE preceding it are revised to read as follows:

Guaranty or Insurance of Loans to Veterans

Note: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. Chapter 37 are not restated in these regulations and must be taken into consideration in conjunction with §§ 36.4300 to 36.4393 of this part, inclusive.

§ 36.4300 Applicability of §§ 36.4300 to 36.4393, inclusive.

(a) Sections 36.4300 to 36.4393 of this part, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication in the **Federal Register**, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38, United States Code, Chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of Title 38, United States Code, shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 210(c), 1803(c), 1819(g))

2. In § 36.4301, the following paragraphs are revised: The introductory text, the paragraph entitled "Dwelling," paragraph (5)(i) of the paragraph entitled "Full disbursement," the paragraph entitled "Indebtedness," and the paragraph entitled "Purchase price." Also, definitions for "Liquidation sale," "Net value," "Specified amount," and "Unguaranteed portion of the indebtedness" are added. The added and revised material reads as follows:

§ 36.4301 Definitions.

Whenever used in 38 U.S.C. Chapter 37 or §§ 36.4300 to 36.4375 of this part, inclusive, and §§ 36.4390 through 36.4393 of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

* * * * *

"Dwelling." Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 1810(a)(6) and §§ 36.4356 through 36.4360(a) of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(Authority: 38 U.S.C. 1810(a)(9) and (f))

* * * * *

"Full disbursement." * * *

(5) * * *

(i) The amount is not in excess of 10 percent of the loan, or

* * * * *

"Indebtedness." The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4393 of this part, inclusive, which have been paid and debited to the loan account as of the applicable date established pursuant to paragraph (f) of § 36.4319 or § 36.4321 of this part.

(Authority: 38 U.S.C. 1816)

* * * * *

"Liquidation sale." Any judicial, contractural or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security.

(Authority: 38 U.S.C. 1816)

* * * * *

"Net value." The fair market value of real property, minus the total of the costs the Administrator estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, "property improvement" is defined as any repair which must be completed to satisfy minimum property requirements for existing construction as described by the Administrator. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this part which were sold during the preceding 3 fiscal years and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* An estimate of the total costs for VA of personnel compensation and overhead (including all travel, transportation, standard level user charges (SLUC), communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(i) Dividing the salary and benefits cost by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(ii) Dividing paragraph (3)(i) of this definition by the DVB ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years to derive the percentage to be used in estimating net value. (The Administrator may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual cost incurred over the last 3 years. Based on FY 1987 data, the percentage to be used when calculating net value will be 10.75%. The fiscal year and the percentage will be updated annually through a notice in the **Federal Register**.

(Authority: 38 U.S.C. 1816)

"Purchase price." The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

* * * * *

"Specified amount." A sum, equal to the lesser of the net value of real property or the total indebtedness secured thereby, which the Administrator designates as the minimum amount to be credited to the indebtedness incident to a liquidation sale.

(Authority: 38 U.S.C. 1816)

"Unguaranteed portion of the indebtedness." The indebtedness computed as of the applicable date of under paragraph (f) of § 36.4319 or § 36.4321 of this part minus the amount of the guaranty payable as of such date.

(Authority: 38 U.S.C. 1816)

3. In § 36.4319, paragraphs (d), (e) and (f) are revised to read as follows:

§ 36.4319 Legal proceedings.

* * * * *

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Administrator is a party, original process and any other process prior to appearance, proper to be served on the Administrator, shall be delivered to the loan guaranty officer of the regional office of the VA having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Administrator will cause appropriate special or general appearance to be entered in the case of an authorized attorney.

(Authority: 38 U.S.C. 1816)

(e) After appearance of the Administrator by attorney all process and notice otherwise proper to serve on the Administrator before or after judgment, if served on the attorney of record, shall have the same effect as if the Administrator were personally served within the jurisdiction of the court.

(Authority: 38 U.S.C. 1816)

(f) If following a default, the holder does not bring appropriate action within 2 months after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at the Administrator's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Administrator. The Administrator may also intervene in, or begin and prosecute to completion any action or proceeding, in the Administrator's name or in the name of the holder, which the Administrator deems necessary or appropriate. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or properly taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the

holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

(Authority: 38 U.S.C. 1816)

4. In § 36.4320, paragraphs (a) through (d); (f); (h)(1), (h)(2), (h)(5), (h)(5)(ii), (h)(5)(ii)(A), and concluding text; (h)(7); (h)(10); (i)(2); and (j) are revised to read as follows:

§ 36.4320 Sale of security.

(a) Upon receipt by the Administrator of notice of a liquidation sale of any security for a guaranteed or insured loan, the Administrator shall determine the net value of the security and shall notify the holder of the net value and of the regulatory provision which will govern the disposition of the security.

(1) If the net value of the real property securing a guaranteed or insured loan exceeds the unguaranteed portion of the indebtedness, the Administrator shall specify in advance of the liquidation sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the following:

(i) The specified amount in such cases shall be the lesser of the net value of the property or the total indebtedness.

(ii) If a minimum amount for credit to the indebtedness has been specified in relation to a liquidation sale of real property, and:

(A) The holder acquires the property, or the rights to the property, at the sale for an amount not in excess of such specified amount, the holder shall credit to the indebtedness the amount specified. The holder then may retain the property or, not later than 15 days after the date of sale, advise the Administrator of the holder's election to convey or transfer the property, or the rights to the property, to the Administrator;

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder shall not have the option to convey the property to the Administrator unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section;

(C) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale;

(D) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified.

(iii) If a minimum amount has been specified by the Administrator, the Administrator's liability under loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (a)(1)(ii) of this section, not to exceed the Administrator's maximum liability as computed under § 36.4321 of this part.

(2) If the net value of the real property securing a guaranteed or insured loan does not exceed the unguaranteed portion of the indebtedness:

(i) The Administrator shall notify the holder that no minimum amount will be specified for credit to the indebtedness on account of the value of the security to be sold;

(ii) The Administrator may not accept conveyance or transfer of the property;

(iii) The holder shall credit against the indebtedness the net proceeds of the sale, and the Administrator's liability under loan guaranty shall be limited to the total indebtedness less the amount credited to the indebtedness not to exceed the Administrator's maximum liability as computed under § 36.4321 of this part; and

(iv) The liability of the Administrator shall not be subject to adjustment by reason of any subsequent disposition of the property by the holder.

(3) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, and:

(i) Such minimum bid exceeds an amount which has been specified by the Administrator under paragraph (a)(1) of this section; and

(ii) The holder acquires the property at the liquidation sale for an amount not exceeding the amount legally required; the holder may elect to convey the property to the Administrator pursuant to paragraph (a)(1)(ii)(A) of this section. The amount bid at the sale or the total indebtedness, whichever is less, shall govern instead of the specified amount and for the purpose of determining the Administrator's liability under loan guaranty.

(Authority: 38 U.S.C. 1816)

(b) The holder should not carry out a liquidation sale until the Administrator has furnished the notice required under paragraph (a) of this section. In the event the holder carries out a liquidation sale prior to receiving such notice, the holder shall credit against the indebtedness the greater of:

(1) The net proceeds of the sale; or

(2) The amount of the indebtedness or the net value of the property, whichever is less.

The provisions of paragraph (a)(1)(ii)(A) of this section, which extends to the holder the option of conveying or transferring the property to the Administrator, shall not be applicable, and the Administrator's liability under the loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (b)(1) or (2) of this section, not to exceed the Administrator's maximum liability as computed under § 36.4321 of this part.

(Authority: 38 U.S.C. 1818)

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Administrator to the terms of such proposal shall be obtained in advance of such conveyance or transfer. In consenting to the terms of the debtor's proposal the Administrator shall furnish the notice required under paragraph (a) of this section.

(Authority: 38 U.S.C. 1816)

(d) Upon receipt by the Administrator of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any personal property which is security for a guaranteed or insured loan, the Administrator may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold.

(1) If a minimum amount has been specified by the Administrator, and

(i) The holder is the successful bidder at the sale for an amount not in excess of such minimum amount, the holder shall sell the property pursuant to paragraph (d)(3) of this section and the amount realized from the resale of the property shall govern, instead of the specified minimum amount, in the final accounting for determining the rights and liabilities of the holder and the Administrator,

(ii) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,

(iii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified,

(iv) The holder is the successful bidder at the sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale or the amount realized from the resale of the property pursuant to paragraph (d)(3) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d)(4) of this section.

(2) If a minimum amount has not been specified by the Administrator under paragraph (d)(1) of this section, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d)(4) of this section.

(3) If personal property has been repossessed or otherwise acquired by a holder and no public sale is proposed or required to be held to entitle the holder to effect a further disposition of such property, or if the holder is the successful bidder at the sale of personal property as provided in paragraph (d)(1) of this section, the holder shall sell the property within a reasonable time. The holder shall submit to the Administrator a written advice setting forth the price, terms, conditions and the expenses of the proposed sale at least 10 days in advance, and the Administrator shall either assent to such sale in which event the holder shall credit against the indebtedness the net proceeds of the sale or, upon agreement to indemnify the holder to the extent of any increased or resultant loss, the Administrator may specify the minimum net price for which the security may be sold. If such amount has been specified, the holder shall sell the personal property within a reasonable time in the open market for the best price obtainable: *Provided, that* the prior approval of the Administrator shall be obtained if the property is to be sold for a net amount less than the specified amount, or if the property is to be sold on terms other than all cash. The ultimate net amount realized by the holder from such sale shall be reported by the holder to the Administrator in an accounting which will determine their respective rights and liabilities.

(4) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Administrator and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this paragraph and for the purpose of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Administrator under the guaranty shall not be subject to any adjustment by reason of such bid.

(Authority: 38 U.S.C. 1816)

* * * * *

(f) The holder in accounting to the Administrator in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. Interest may be included at a rate not to exceed that specified in § 36.4311(c) of this part on the unpaid principal balance of the indebtedness to the date of the liquidation sale of real property referred to in paragraph (a) or (b) of this section or to the date of the private sale of personal property referred to in paragraph (d) of this section, as the case may be. In connection with the conveyance or transfer of property to the Administrator the holder may include in accounting to the Administrator the following expense items of actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:

(Authority: 38 U.S.C. 1816)

(1) State and documentary stamp taxes as may be required.

(2) The customary cost of obtaining evidence of title in favor of the Administrator as specified in paragraph (h)(5) of this section but not including title evidence obtained incident to the making of the loan or any expenses incurred to clear title defects.

(3) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (h)(4) of this section.

(4) Recording fees.

(5) Any other expenditures in connection with the property which are approved by the Administrator.

(h) * * *

(1) If the holder's notice to the Administrator electing to convey or transfer the property precedes the acquisition of the property by the holder and the holder then acquires the property, the holder shall promptly after such acquisition advise the Administrator of the acquisition. Such advice, or the notice of election if given subsequent to acquisition, shall state the amount of the successful bid (if the property was acquired by the holder at public sale) and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date.

(2) The holder shall not cancel any insurance in force when the holder acquires the property. Coincident with the notice of election to convey or transfer the property to the Administrator or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall obtain endorsements on all such insurance policies naming the Administrator as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Administrator at the time of the conveyance or transfer of the property to the Administrator or as soon after that time as feasible.

* * * * *

(5) Each conveyance or transfer of real property to the Administrator pursuant to this section shall be acceptable if the holder thereby convenants or warrants against the acts of the holder and those claiming under the holder (e.g., by special warranty deed) and if it vests in the Administrator or will entitle the Administrator to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. Any title so acceptable will not be unacceptable to the Administrator by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b) of this part: *Provided that,*

* * * * *

(ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324 of this part. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Administrator of any of the following evidence of title issued by an institution or person satisfactory to the Administrator, in form satisfactory to him/her showing that title to the property of the quality specified in this paragraph is or will be vested in the Administrator:

(A) A title policy insuring the Administrator in an amount approximately equal to the

consideration for the property, or a commitment for such title policy; or

* * * * *

In lieu of such title evidence, the Administrator will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 1802(d) or from a holder of financial responsibility satisfactory to the Administrator. In any case where the holder does not deliver evidence of title of the character specified in this paragraph, the holder to aid the Administrator in determination of acceptability of title shall without expense to the Administrator furnish such evidence of title, including survey, if any, as may have been obtained by the holder incident to the making of the loan or attendant to the foreclosure.

* * * * *

(7) As between the holder and the Administrator, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (h)(10) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Administrator. Such risk of loss is assumed by the Administrator from the date of receipt of the holder's election to convey or transfer the property to the Administrator or, in the event of receipt of notice of such election prior to acquisition, from the date of the Administrator's receipt of notice of acquisition by the holder: *Provided, that* if custody over the property has not been delivered by the holder to the Administrator on the date when the Administrator otherwise would have assumed the risk of loss, the Administrator's assumption of the risk of loss will be deferred until such custody over the property is delivered, or until the property has been conveyed or transferred to the Administrator. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Administrator at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Administrator may surrender custody of the property as of the date specified in the Administrator's notice to the holder. The Administrator's assumption of such risk shall terminate upon such surrender.

* * * * *

(10) In respect to a property which was the security for a condominium loan guaranteed or insured 38 U.S.C. 1810(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Administrator until the Administrator expressly assumes such responsibility or until conveyance of the property to the Administrator, whichever first occurs. The holder shall have the right to convey such property to the Administrator only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Administrator agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(i) *Definitions.* * * *

(2) The term "property" or "real property" as used in this section shall include

(i) A leasehold estate which at the time of closing the loan was not less duration than prescribed by § 36.4350(a)(2) of this part, and

(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Administrator may have under § 36.4325 of this part. The Chief Benefits Director, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. Chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia: *Provided, that* no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

5. In § 36.4321, paragraph (a) and (c) are revised to read as follows:

§ 36.4321 Computation of guaranty claims; subsequent accountings.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than

(1) The date of judgment or of decree of foreclosure, or

(2) In nonjudicial foreclosures the date of publication of the first notice of sale, or

(3) In cases in which the security is repossessed without a judgment, decree or foreclosure, the date the holder repossesses the security, or

(4) If no security is available, the date of claim but not more than 8 months after the first uncured default or

(5) Any date fixed under the provisions of paragraph (f) of § 36.4319 of this part.

Deposits or other credits or set-offs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(Authority: 38 U.S.C. 1816)

* * * * *

(c) The claimant shall be deemed to have received as trustee for the benefit of the United States any amount received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Administrator to the extent of the debtor's liability to the Administrator as guarantor.

* * * * *

(Authority: 38 U.S.C. 210(c))

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3313-2]

Approval and Promulgation of Implementation Plans: Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today, USEPA is approving an Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) for 77 counties. On February 4, 1987 (52 FR 3452), USEPA proposed to disapprove Indiana's most recent general SO_2 regulation, 325 Indiana Administrative Code (IAC) 7-1, which had been submitted on October 6, 1980. For 77 counties, USEPA proposed disapproval solely because the rule contained a 30-day fuel averaging compliance methodology which could be used to refute evidence of non-compliance through a stack test. On October 21, 1987, Indiana submitted as a revision to its SO_2 plan a revised compliance methodology, 325 IAC 7-1-3.1, Reporting Requirements and Methods to Determine Compliance, which establishes stack testing as an independently enforceable test method. While the State was adopting this revised rule, USEPA used its parallel processing procedures to approve the revised compliance methodology (52 FR 27016, July 17, 1987).

The revised compliance methodology was promulgated by the State on September 24, 1987, and submitted to USEPA on October 21, 1987. Today, USEPA is approving new compliance methodology 325 IAC 7-1-3.1 (1987), is reinstating the other general requirements of 325 IAC 7-1 (1980), and, thus, is reinstating its approval of an SO_2 SIP for 77 of the 92 Indiana counties. USEPA will be taking additional action on the remaining 15 counties in future rulemaking.

EFFECTIVE DATE: This final rulemaking becomes effective on February 18, 1988.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller, at (312) 353-0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604;

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

A copy of today's revision to the Indiana SIP is also available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2205.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 1982 (47 FR 10813) and May 13, 1982 (47 FR 20583), USEPA approved or conditionally approved Indiana's SO_2 SIP for most areas of the State. In these rulemakings, USEPA took no action on one of three compliance methods contained in Indiana's 1980 SO_2 regulation (325 IAC 7-1), i.e., the method which is based on determining the 30-day average of the sulfur content of the fuel.

On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's March 12, 1982, approval of the SO_2 emission limits in Indiana's revised plan, solely because USEPA did not rulemake on the 30-day averaging compliance method contained in the rule. See *Indiana & Michigan Electric Company (IMEC) v. USEPA*, 733 F.2d 489. As a consequence of this decision and another recent decision, *Sierra Club v. Indiana-Kentucky Electric Company*, 716 F.2d 1145 (7th Cir. 1983), there are no federally enforceable SO_2 emission limits regulating existing sources in Indiana.

On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana SO_2 plan. That notice proposed to disapprove Indiana's overall SO_2 plan, because the 30-day averaging compliance methodology in the rule (325 IAC 7-1-3) was inconsistent with protection of the 3-hour and 24-hour SO_2 National Ambient Air Quality Standards (NAAQS); and the stack test methdology, which is consistent with short-term emission limits, was not independently enforceable. For 77 [1] of Indiana's 92 counties, this was the only basis for the proposed disapproval of Indiana's SO_2 plan. For the remaining 15 counties,[2] technical deficiencies were noted as well.

USEPA's February 4, 1987, notice indicated that correction of the identified deficiency in the compliance methodology rule would allow USEPA to reinstate its March 12, 1982 (47 FR 10813), final approval for these 77 counties. On March 12, 1987, Indiana submitted to USEPA for "parallel processing" [3] its proposed revised compliance methodology rule, 325 IAC 7-1-3.1, as preliminarily adopted by the Board on March 4, 1987.[4] The revised compliance methodology rule replaces the 325 IAC 7-1-3 in the 1980 version of 325 IAC 7-1. The revised rule includes a stack test compliance method and either a 30-day or a calendar month (depending upon the size of the source) averaging fuel analysis method,[5] each of which may be used at any time to determine compliance or non-compliance with source emission limitations. However, a determination of non-compliance through the use of one method cannot be refuted by evidence of compliance through the other method.

In accordance with the February 4, 1987, proposed rulemaking notice, on July 17, 1987 (52 FR 27016), USEPA: (1) Proposed (under parallel processing) to approve 325 IAC 7-1-3.1, because it provides for the independent use of stack testing to determine compliance with the SO_2 emission in 325 IAC 7-1 and (2) proposed to reinstate most of Indiana's other SO_2 provisions (i.e., 325 IAC 7-1-1, 2 (except for any emission limits in the 15 counties), 4, 5, 6, and 7. Based on these, it also proposed to reinstate its approval of Indiana's plan for the 77 counties, because an approvable compliance methodology was the only deficiency in the plan for these 77 counties.

On October 21, 1987, Indiana submitted 325 IAC 7-1-1.3, as adopted by the Indiana Air Pollution Control Board (Board) on July 1, 1987, and promulgated by the State on September

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[1] These 77 counties are: Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Decatur, Dekalb, Delaware, Dubois, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jennings, Johnson, Knox, Kosciusko, Lagrange, Lawrence, Madison, Marshall, Martin, Miami, Monroe, Montgomery, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, St. Joseph, Scott, Shelby, Spencer, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Wabash, Warren, Washington, Wells, White, and Whitley. All of these counties are designated "Better than National Standards" for SO_2 (40 CFR 81.315).

[2] The remaining 15 Counties are: Dearborn, Floyd, Gibson, Jefferson, Lake, LaPorte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne.

[3] The generic procedures for "parallel processing" are described at 47 FR 27073 (June 23, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, then USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, then USEPA may publish a rulemaking notice reproposing action as necessary.

[4] For the exact language of 325 IAC 7-1-3.1, see 52 FR 27017 (July 17, 1987).

[5] Although the rule contains a possible 30-day averaging compliance methodology for certain sources and monthly averaging for others, for the purposes of this notice, this combination of methodologies will be referred to as 30-day averaging.

24, 1987. USEPA has determined that the version of the rule most recently submitted is identical to the preliminarily adopted 325 IAC 7–1–3.1. Therefore, based on USEPA's analysis of the rule and review of comments received in response to USEPA's proposals, USEPA approves this rule for inclusion into the Indiana SO_2 SIP. Its inclusion resolves the past deficiencies in the short-term compliance methodology for SO_2 sources in Indiana by including stack testing as an independent means of determining compliance or non-compliance. In addition, USEPA reinstates the other general provisions of 325 IAC 7–1 (1980), i.e., 325 IAC 7–1–1, 2 (except for any emission limits in the 15 counties), 4, 5, 6, and 7. Thus, USEPA is reinstating its approval of the SO_2 plan for the 77 counties, because the State has submitted an approvable compliance methodology, and this resolves the only deficiency cited by USEPA in its February 4, 1987, proposed disapproval of the plan for these counties.[6]

II. Comments on the February 4, 1987, and July 17, 1987, Proposed Rulemaking Notices Which Are Applicable to Today's Rulemaking; USEPA's Responses

The following summarizes the applicable public comments received by USEPA in response to its proposed rulemaking notices of February 4, 1987, and July 17, 1987. Only those comments on the February 4, 1987, proposal which concerned the compliance methodology aspect of the State's SO_2 plan are included here. Comments on the other aspects of the SO_2 plan, including county-specific deficiencies for the remaining 15 counties, will be addressed where appropriate in future rulemaking actions.

[6] All SO_2 plans must be consistent with USEPA's Stack Height Regulations, which implement the stack height provisions of section 123 of the Act (July 8, 1985, 50 FR 27892). USEPA's stack height regulations apply to stacks (and sources) which came into existence and dispersion techniques implemented on or after December 31, 1970. Stack height credit for the purpose of establishing an emission limitation is restricted to good engineering practice (GEP), i.e., the greater for 213 feet or the GEP formula height. Credit for dispersion techniques, i.e., merged stacks, is generally prohibited, with a few exceptions, e.g., total plantwide allowable SO_2 emissions do not exceed 5000 tons per year and the stack was originally designed and constructed with merged gas streams. Indiana has certified that its emission limit for all sources within the 77 counties are not affected by stack height credit in excess of GEP or any other dispersion technique. USEPA will rulemake on Indiana's certification for these counties in future **Federal Register** notices.

February 4, 1987, Comments and Responses

Comment: The Indiana Coal Council (ICC), Public Service Indiana (PSI), the Aluminum Company of America (ALCOA) and Peabody Holding Company (Peabody) claimed that 30-day averaging is a valid method of demonstrating compliance.

In support of this claim, the commentors stated that:

(1) Statewide SO_2 emission reductions have been achieved and no monitored violations of the SO_2 NAAQS have been recorded since compliance has been determined on a 30-day averaging basis;

(2) USEPA has not demonstrated that a 30-day average will not protect the 3-hour and 24-hour NAAQS;

(3) USEPA has failed to adequately address sulfur variability in fuels as it claimed it would in past **Federal Register** notices;

(4) USEPA recently stated that it has made no generic determination about long-term compliance averaging; and

(5) the Seventh Circuit did not disapprove the use of 30-day averaging in its May 11, 1984, *IMEC* decision.

Response: USEPA notes that Indiana has replaced its previous compliance methodology, in which compliance with an emission limit on a 30-day averaged basis could refute a violation determined by a stack test, with a compliance methodology where each method, i.e., stack test and 30-day/monthly averaging, is independently enforceable. Therefore, portions of these comments are no longer relevant.

Moreover, Indiana did not and has never demonstrated that its emission limits averaged over 30 days protect the 3-hour and 24-hour SO_2 NAAQS.[7] Under the Clean Air Act, it is the responsibility of a State submitting a 30-day averaged compliance method to show that that method, in combination with its emission limits, would protect the NAAQS. Therefore, USEPA cannot approve Indiana's emission limits as being adequate to protect the 3-hour and 24-hour NAAQS, when compliance is determined using the 30-day averaged compliance methodology as contained in Indiana's former rule 325 IAC 7–1–3.

USEPA acknowledges that it is continuing to review the acceptability of long-term averaging and sulfur variability in fuels. Until that review is complete, USEPA must rule on all SO_2 SIPs submitted in relationship to the present SO_2 policies. Therefore, it cannot approve the 30-day averaging compliance methodology, because Indiana has not demonstrated that this compliance methodology assures the attainment and maintenance of the present short-term SO_2 NAAQS.

As to the ambient monitoring data, USEPA generally does not accept monitoring data as the sole basis for an attainment demonstration. (See the Arizona copper smelter comment below.) This is because modeling normally is the only feasible method capable of determining the highest concentrations that will occur under a wide range of meteorological conditions with a given set of emission parameters. Also, due to actual stack heights or configurations which do not conform with USEPA's July 8, 1985, stack height regulations, ambient monitoring data cannot be used to assure creditable attainment under these circumstances. Finally, contrary to the commentors' assertion, Indiana sources have contributed to monitored exceedances in recent years. Therefore, USEPA is not convinced that the ambient SO_2 data support the use of long-term averaging.

USEPA agrees that the Court in its *IMEC* decision did not disapprove the use of 30-day averaging nor did it preclude USEPA from approving 30-day averaging. However, it did set aside USEPA's approval of emission limits in Indiana's plan until USEPA rule made on this methodology. USEPA's February 4, 1987, proposed disapproval of that methodology and July 17, 1987, proposed approval of the revised methodology were directly responsive to the Court's mandate.

Comment: ALCOA, PSI and Peabody disagreed with USEPA that daily exceedances of the emission limitation will cause actual exceedances of the NAAQS, given the conservativeness in the process used to set emission limitations. PSI claimed that the probability of the joint occurrence of worst-case meteorology, worst-case operating levels, and an emission limitation exceedance is "infinitestimally" small. PSI also asserted that USEPA's stated accuracy for its models (i.e., within a factor of two) is neither conclusive nor supportive of USEPA's "deterministic" application of these models. The commentor maintained that the only deterministic measurement of air quality is actual monitoring data.

Response: These comments concern the validity of USEPA's modeling guidelines and procedures [8] which are not the subject of today's rulemaking.

[7] The primary SO_2 NAAQS is violated when, in a calendar year, either: (1) The annual arithmetic mean value of SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 ug/m^3) (the annual primary standard), or (2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 ug/m^3 more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1,300 ug/m^3 more than once.

Comment: To support its claim that a 30-day average will protect the short-term SO_2 NAAQS, PSI submitted a copy of two analyses performed by a consultant; one used concurrent actual emission rates, in pounds per million British Thermal Unit (lbs/MMBTU), actual operating rates and meteorology for a 5-year period, and the other used maximum operating rates, actual lbs/MMBTU levels, and meteorology for a 5-year period. These analyses showed attainment of the short-term NAAQS, despite many days with lbs/MMBTU values above the 30-day average emission limit. PSI and ALCOA urged USEPA to approve the use of this approach as a means of supporting 30-day averaging compliance strategies.

Response: USEPA does not accept the proposed modeling approaches and the specific analyses as demonstrating that a 30-day averaged emission limit will protect the 3-hour and 24-hour NAAQS. USEPA modeling guidelines specify that the modeled emission rates must represent maximum worst-case operating load and maximum allowable emission limitations. PSI's use of actual operating rates and/or actual lbs/MMBTU values is not consistent with this guidance. Furthermore, the assumed dependence between emissions and meteorology (e.g., operating rates and/or lbs/MMBTU value for Day 1 were only modeled with meteorology for Day 1, etc.] is without any basis. Thus, USEPA must reject PSI's proposed modeling approach for addressing a long-term emission average.

Comment: PSI stated that USEPA's approval of the Arizona SO_2 SIP for copper smelters established a precedent for using a statistical attainment demonstration for SO_2.

Response: As noted in a letter from J. Craig Potter, Assistant Administrator for Air and Radiation, USEPA, to Nancy A. Maloley, Commissioner, Indiana Department of Environmental Management (DEM), dated May 22, 1986, the multipoint rollback statistical approach approved for the Arizona smelters was approved as a "result of a wide range of factors stemming from the very unusual nature of the smelter emission problems." Mr. Potter cited the particularly difficult problems of smelters (e.g., extreme variations of emissions, presence of fugitive emissions, complex terrain). Congress' own special treatment of smelters in section 119 of the Clean Air Act (Act), and the SIP requirements for additional monitoring, commitment to study control levels, and continuous compliance methodology.

USEPA views the smelter SO_2 issue as being fundamentally different than the Indiana SO_2 issue, because Indiana SO_2 emissions are produced largely by utility power plants and large industrial boilers. USEPA will continue to rely on its existing air quality modeling methods to establish emission limits for such sources.

Comment: ICC, DEM, PSI and Peabody noted that Indiana is in the process of developing a revised compliance test method rule. Based on this revised rule, the ICC and DEM urged USEPA to approve the SIP for the 77 counties identified in the February 4, 1987, notice without further reproposal. Peabody urged approval of the entire SIP without further reproposal.

Response: USEPA's July 17, 1987, supplemental rulemaking notice proposed to approve 325 IAC 7–1–3.1 and the emission limitations for 77 of Indiana's 92 counties, as discussed earlier in this rulemaking notice. USEPA, today, is approving the SIP of these 77 counties and the general provisions of Indiana's SO_2 rule for all counties. USEPA will act upon the emission limits for the remaining 15 counties in future rulemaking notices.

Comment: ICC stated that withdrawal of 30-day averaging would adversely impact the Indiana coal industry.

Response: USEPA's proposed disapproval of Indiana's plan, including the 30-day averaging provisions of 325 IAC 7–1–3, was based on the criteria established by Section 110 of the Act. These criteria do not include consideration of economic impacts caused by control measures necessary to assure attainment and maintenance of the NAAQS. (See *Union Electric Co. v. USEPA*, 427 U.S. 246 (1976).) The State, however, may consider such effects in the development of its SIP.

Comment: Peabody cited the existence of a 30-day enforcement policy in Ohio. The commentor stated that a similar policy should be established in Indiana also.

Response: The 30-day enforcement policy for Ohio did not modify the SIP; it merely established a procedure for prioritizing enforcement cases. Compliance on a short-term and continuous basis is still necessary to ensure attainment of the 3-hour and 24-hour NAAQS. As recognized by the commentor, such a policy is an enforcement matter; not related to USEPA's approval of a SIP. Thus, discussion of such a 30-day enforcement policy for Indiana is not appropriate in this rulemaking.

July 17, 1987, Comments and Responses

Comment: Peabody, DEM and ICC supported USEPA's proposed rulemaking. DEM noted that 325 IAC 7–1–3.1 was adopted by the Board in final on July 1, 1987, and that this rule would be formally submitted to USEPA after it was promulgated by Indiana in September. DEM also pointed out its progress correcting the technical deficiencies in the remaining 15 counties.

Response: USEPA will rulemake on the county-specific provisions for each of these 15 counties in future rulemaking actions.

Comment: The Hoosier Environmental Council (HEC) commented on the State's revised compliance test method rule (325 IAC 7–1–3.1). The commentor believes that daily emission averages are preferable to a 30-day average, supported by a stack test.

Response: Although daily emission averaging may protect the 24-hour and annual SO_2 NAAQS, it intrinsically can not protect the 3-hour SO_2 NAAQS, whereas, as discussed below, stack testing is consistent with protection of the 3-hour standard. Moreover, although USEPA recognizes the benefit of having emissions data for each and every day, it must be understood that USEPA is rulemaking on the State regulation before it; not developing a new regulation. To this end, USEPA accepts the State's regulation, because it provides for an independent stack test, which will allow for protection of the 3-hour, 24-hour, and annual NAAQS. Any suggestions for alternative approaches should be directed to the State.

Comment: Citizens for a Better Environment (CBE), Save the Dunes Council (SDC) and HEC opposed USEPA's proposed rulemaking. CBE, SDC and HEC commented that 325 IAC 7–1–3.1 will not ensure compliance on a continuous, short-term basis.

The commentors noted that the 30-day averaging method is deficient because it would result in violations of the short-term NAAQS, it lacks uniform analytical and quality assurance measures, and it does not require the use of the most up-to-date emission factors. CBE and SDC implied that stack testing on a yearly basis would be acceptable. HEC rejected both stack testing and 30-day averaging, and, as noted above, instead preferred daily emissions data.

Response: Rule 325 IAC 7–1–3.1 allows the State or USEPA to require the use of a stack test to determine compliance with a source's emission

[8] USEPA's modeling guidance is found in "Guideline on Air Quality Models."

limit(s). The State's rule establishes 30-day averaging as an alternative compliance methodology. As discussed above, violations of the short-term NAAQS could occur if emission limits are enforced on a 30-day averaged basis. USEPA is approving Indiana's compliance plan as submitted because stack testing is consistent with the short-term NAAQS [9] and the rule provides that evidence of noncompliance developed with one methodology, e.g., a stack test, cannot be refuted by evidence developed with the other methodology.

Final Summary

USEPA approves 325 IAC 7-1-3.1 as a revision to the Indiana SO_2 SIP, because it provides for an independent stack test compliance method for SO_2 sources in the State. Additionally, it reinstates its March 12, 1982, final approval of the general provisions of 325 IAC 7-1, i.e., 325 IAC 7-1-1, 2 (with the exception of any emission limits for the 15 counties), 4, 5, 6, and 7, and, thus, reinstates its approval of an SO_2 plan under section 110 of the Clean Air Act for the 77 counties.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 31, 1987.

Lee M. Thomas,

Administrator.

[9] USEPA's preference for stack testing was noted most recently in a memorandum dated July 29, 1987, from Gerald Emison, Director, Office of Air Quality Planning and Standards, USEPA, entitled "State Implementation Plans for Sulfur Dioxide." The memo states that USEPA is continuing to accept a USEPA Reference Method 6 (40 CFR Part 60 Appendix A) stack test as an adequate SIP compliance test method for SO_2. USEPA's policy specifies no required frequency for stack testing.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, Subpart P, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(66) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(66) On October 21, 1987, the State of Indiana submitted 325 IAC 7-1-3.1, Reporting Requirements and Methods to Determine Compliance, as a revision to its SO_2 plan. At paragraph (c)(19) of this section, USEPA approved/conditionally approved Indiana's SO_2 plan, 325 IAC 7-1, for most areas of the State. However, the emission limits in this plan were set aside by the Court of Appeals for the Seventh Circuit because USEPA took no action on the State's 30-day averaging compliance method in 325 IAC 7-1-3. New compliance method 325 IAC 7-1-3.1 replaces former 325 IAC 7-1-3. Therefore, with EPA's approval of 325 IAC 7-1-3.1, USEPA is reinstating its March 12, 1982, approval of Indiana's October 6, 1980, SO_2 rule, 325 IAC 7-1-1, 7-1-2 (except for any emission limits in the below named counties), 7-1-4, 7-1-5, 7-1-6, and 7-1-7. Other than these general provisons and 325 IAC 7-1-3.1, USEPA is not acting on or approving today Indiana's SO_2 plan for Dearborn, Floyd, Gibson, Jefferson, Lake, LaPorte, Marion, Morgan, Porter, Posey, Sullivan, Vermillion, Vigo, Warrick, and Wayne Counties.

(i) Incorporation by reference.

(A) Sulfur Dioxide Emission Limitations, 325 IAC 7-1 Introductory Text, 7-1-1, 7-1-2, 7-1-4, 7-1-5, 7-1-6, and 7-1-7 filed with the Secretary of State on August 27, 1980.

(B) 325 IAC 7-1-3.1, Reporting Requirements and Methods to Determine Compliance, promulgated September 24, 1987.

* * * * *

§ 52.795 [Amended]

3. Section 52.795 is amended by removing and reserving paragraph (d).

[FR Doc. 88-219 Filed 1-15-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[FRL-3317-1]

Tennessee; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of Tennessee's compliance schedule to apply for program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Tennessee to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1–271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 52 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Tennessee

Tennessee received final authorization of its hazardous waste program on February 5, 1985 [50 FR 2820, January 22, 1985]. Today EPA is publishing a compliance schedule for Tennessee to submit an application to obtain the program revision for the following Federal program requirement:

HSWA Section 3006(f)—Availability of Information

The State has agreed to obtain the needed program revision according to the following schedule:

March 30, 1988—Draft regulations developed to include analogues to HSWA section 3006(f)
June 1, 1988—Statutory change required for adoption of analogue to HSWA section 3006(f) passed by Tennessee Legislature
June 30, 1988—Public Hearing on draft regulations
August 10, 1988—Draft regulations adopted by Tennessee Solid Waste Disposal Control Board
September 10, 1988—Adopted regulations reviewed by the Department's Office of General Counsel
October 10, 1988—Approved and signed by Attorney General. Regulations effective approximately 45 days later.

Tennessee expects to submit an application to EPA for authorization of the above mentioned program revision by December 31, 1988.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: December 31, 1987.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 88-877 Filed 1-15-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6661

[NV-940-08-4220-10; N-37165]

Withdrawal of Public Land for Lovelock Cave Archeological Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 10 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Lovelock Cave Archeological Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-784-5481.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management archeological site:

Mount Diablo Meridian

T. 24 N., R. 30 E.,
Sec. 12, E½SW¼SW¼NE¼, W½SE¼SW¼NE¼.

The area described contains 10 acres in Churchill County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated January 6, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-851 Filed 1-15-88; 8:45 am]

BILLING CODE 4310-HC-M

43 CFR Public Land Order 6662

[OR-943-07-4220-10-GP-07-159; OR-37548]

Withdrawal of Public Land for Travis M. Tyrrell Seed Orchard and Administrative Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 832.50 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to be used as the Travis M. Tyrrell Seed Orchard and Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry, under the general land laws, including the mining laws [30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use as a Bureau of Land Management seed orchard and administrative site:

Willamette Meridian

Revested Oregon and California Railroad Grant Land, Travis M. Tyrrell Seed Orchard and Administrative Site

T. 20 S., R. 5 W.,
Sec. 9, NE¼, E½NW¼, E½E½E½SW¼NW¼, W½SE¼SE¼SW¼NW¼, E½SW¼, E½E½NW¼SW¼, E½W½SE¼NW¼SW¼, E½SW¼SW¼, E½SW¼SW¼SW¼, E½SE¼NW¼SW¼SW¼, E½SW¼SW¼SW¼, NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼, W½SE¼, W½SE¼SE¼, and W½W½SE¼SE¼SE¼;
Sec. 15, W½W½NW¼NE¼NE¼, NW¼NE¼, W½NE¼SW¼NE¼, W½SW¼NE¼, NW¼, and N½N½SW¼;
Sec. 21, W½E½NE¼NE¼, W½NE¼NE¼, E½NW¼NE¼, and E½W½NW¼NE¼.

The area described contains 832.50 acres in Lane County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

January 5, 1988.

[FR Doc. 88-852 Filed 1-15-88; 8:45 am]

BILLING CODE 4310-33-M

Proposed Rules

Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-175-A41]

Milk in the Upper Midwest Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that reserve supply plants be subject to minimum shipping standards during the months of August through December in order to be pool plants under the Upper Midwest Federal milk order. The plants would be required to ship to pool distributing plants 5 percent of the total milk production received from dairy farmers or diverted by the plant operator during each month of August and December, and 8 percent of such receipts during each of the months of September, October and November in order to maintain their pool status. Two or more reserve supply plants would be allowed to have their receipts and shipments to pool plants considered on a combined, or unit, basis to meet the minimum shipping requirements or a "call" by the market administrator for milk supplies needed for Class I, or fluid, use. However, each plant in such a unit would have to ship at least 5 percent of its receipts on an individual basis during one month of any August through December period in order to qualify for pool status during the month of December.

A proposal to reduce the current requirement that a daily average of at least 25,000 pounds of Grade A milk from dairy farmers be received at a pool reserve supply plant is denied.

The decision is based on the record of a public hearing held July 7–8, 1987, in Bloomington, Minnesota. The proposed changes were submitted and supported by six cooperative associations that represent a substantial proportion of producers who supply milk to the market. The changes are necessary to assure an adequate supply of milk in an orderly manner for Class I (fluid) use in the Upper Midwest marketing area.

Other issues considered at the hearing were whether the operator of one or more distributing plants and one or more soft-products (cream items, cottage cheese and yogurt but excluding ice cream) plants located within the marketing area should be allowed to have such plants considered as one plant or unit, for pooling purposes, and whether the proposals considered at the hearing should be handled in an expedited manner. A separate decision on those issues was issued September 2, 1987.

DATE: Comments are due on or before February 8, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456 Washington, DC 20090–6456 (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action would assure that all milk handlers whose producers share in the returns from the market's higher-valued, or fluid, uses will bear some of the responsibility for seeing that milk is made available for those uses. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued June 19, 1987; published June 25, 1987 (52 FR 23843).

Partial Decision: Issued September 2, 1987; published September 9, 1987 (52 FR 33943).

Order amending the Order: Issued September 28, 1987; published October 2, 1987 (52 FR 36909).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 20th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment(s) set forth below are based on the record of a public hearing held at Bloomington, Minnesota, on July 7–8, 1987, pursuant to a notice of hearing issued June 19, 1987 (52 FR 23843).

The material issue on the record of hearing that is dealt with in this decision is whether reserve supply plants should be required to ship minimum percentages of their producer milk receipts to pool distributing plants in order to qualify for pool status under the order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Reserve Supply Plant Shipping Standards

The Upper Midwest order should be changed to require pool reserve supply plants to ship a minimum percentage of their receipts to pool distributing plants during the months of August through December. Handlers would be allowed to have their receipts and shipments considered as a unit for purposes of determining whether pooling standards have been met. However, each plant in a unit would have to deliver at least 5 percent of its producer receipts to pool distributing plants during one month of the August through December period in order to qualify for pooling during the month of December. At the present time, reserve supply plants are subject to no minimum shipping requirements to qualify for pooling unless the market administrator finds that milk supplies for Class I use are needed at pool distributing plants and issues a "call" for such supplies.

The change was proposed by six cooperative associations that represent a majority of the producers supplying milk to the Upper Midwest market. The cooperative associations are Land O'Lakes, Inc. (LOL), Mid-America Dairymen, Inc. (Mid-Am), Cass-Clay Creamery, Inc., Wisconsin Dairies Cooperative, First District Association and Associated Milk Producers, Inc. (AMPI). Representatives of five of the proponents and a witness for Marigold Foods, the operator of three fluid milk plants under the order, testified in favor of the proposal. The proposed changes would require reserve supply plants to ship a minimum of 5 percent of their total supply of Grade A producer milk to pool distributing plants during the months of August and December, and 8 percent during September through November, in order to be pool plants. Under the proposal, reserve supply plants that meet the shipping standards during the months of August through December would continue to be pooled for the following months of January through July. The proposal would allow two or more reserve supply plants operated by the same handler to be pooled as a unit by having their receipts and shipments to distributing plants considered on a combined basis. Under the proposal, the minimum shipping standards could be reduced on a temporary basis by the Director of the Dairy Division. The present provision allowing the market administrator to issue a "call" for additional needed supplies of milk for Class I use would remain in the order. Proponents' would reduce the current requirement that a reserve supply plant assemble at least a daily average milk supply of 25,000 pounds to a 25,000-pound requirement on at least 2 consecutive days of each month. Adoption of the proposal was opposed by witnesses testifying on behalf of two cooperative associations: Farmers Union Milk Marketing Cooperative (Farmers Union) and National Farmers Organization (NFO); and on behalf of Kraft, Inc., Universal Foods, and the Trade Association of Proprietary Plants (TAPP).

The LOL witness testified that LOL operates eight reserve supply plants and a distributing plant under the order, and supplies a significant part of the milk needed for Class I use at two other pool distributing plants. The witness stated that distributing plants in the Upper Midwest marketing area have experienced continuing difficulty in securing dependable supplies of milk in the absence of a "call" from the market administrator requiring reserve supply plants to ship milk for fluid needs. He attributed the reluctance of reserve supply plant operators to ship milk to distributing plants to the substantial costs incurred in supplying milk for Class I use. The witness stated that when a "call" is issued, plant operators can be assured that most of their competitors are sharing equitably in the cost of supplying Class I milk to the market, but described the issuance of a "call" for milk as a procedure too cumbersome and defective to be used to secure milk supplies for the fluid needs of the market on a regular basis.

The witness explained that, in shipping milk to distributing plants for Class I use, reserve supply plant operators incur additional costs of running duplicate Grade A and Grade B farm bulk pickup routes instead of operating one commingled route, and hauling milk from supply plants to distributing plants. He estimated that such costs would be about 50 cents per hundredweight for milk hauled 75 miles. In addition, the witness cited the cost of releasing Grade A milk of Class I use from a supply plant that is also a manufacturing plant. He stated that under-utilization of a manufacturing plant's capacity because of the necessity of shipping milk for Class I use may cost $10,000 per day, or range from $1.25–$1.43 per hundredweight of Class I milk shipped. The witness pointed out that, in view of the unreimbursed costs of shipping Class I milk to distributing plants, plant operators that do not ship enjoy a competitive advantage over those that do. He stated that it is more expensive for supply plant operators to remove milk from their manufacturing operations during the fall, when manufacturing plants are operating at below-capacity levels because of lower levels of milk production, than at any other time of the year.

The LOL witness testified that the only factors that serves to offset the costs of releasing milk for Class I use are location adjustments provided under the order and over-order premiums. He said that the location adjustment on most reserve supply plants is only 6 cents, or a small fraction of the cost of supplying milk for Class I use, and that the premium customarily charged in addition to the order price for milk delivered for Class I use during the fall months is 60 cents per hundredweight. The witness stated that the economic incentives available to reimburse reserve supply plant operators for shipping Class I milk will cover the costs of such shipments only for those reserve supply plants located relatively near the market, and are, for the most part, inadequate to assure a large enough supply of milk for Class I use.

The witness testified that the threat of a "call" for Class I milk shipment by the market administrator under the present order has served as a shipping requirement for many years, but that its effectiveness has diminished recently in view of declining milk supplies. He stated that the "call" provision had to be used for three consecutive months in the fall of 1986 in order to obtain an adequate supply of Class I milk for distributing plants. The witness characterized use of the "call" as assuring that most competitors are sharing equitably in the cost of supplying Class I milk.

According to the LOL witness, all reserve supply plants that share in the market's Class I returns by sharing in the order's blend price also should share in the burden of supplying Class I milk to fluid milk plants. The witness asserted that mandatory shipping standards are the only reasonable mechanism to insure that all reserve supply plants ship Class I milk at a minimal level. He described minimum shipping requirements as eliminating doubt about whether it will be necessary for reserve supply plants to ship Class I milk to distributing plants. Under the present order provisions, he explained, there is uncertainty on the part of reserve supply plant operators as to whether they will be required to ship milk for Class I use until a call is actually announced, usually about the first day of the month for which deliveries are to be required. The witness further stated that mandatory shipping percentages will encourage reserve supply plant operators to make

advance arrangements to supply Class I customers on a regular basis rather than having to find a Class I outlet after a call is announced. He indicated that minimum shipping requirements would encourage reserve supply plant operators to more closely monitor quality discipline at producers' farms and to assure that their plants are capable of delivering high-quality milk to distributing plants. The witness stated that planning and orderly operation of both manufacturing plants and distributing plants, and more orderly movement of milk from production areas to the marketplace, would be enhanced by requiring the timing and volume of milk movements to be established well in advance for the purpose of meeting the order's minimum shipping standards.

The LOL witness supported the cooperatives' proposed 5 percent and 8 percent shipping requirements on the basis that these percentages would not compel reserve supply plants to ship more milk than would be needed at distributing plants, but would be near the actual volume of milk needed from reserve supply plants. The witness stated that approximately half of the milk supplies received at pool distributing plants during August through December 1986 originate at supply and reserve supply plant, and that the total milk supplies from pool sources represented about 17 percent of the producer milk pooled under the order. The witness supplied data indicating that the actual shipments to distributing plants from supply and reserve supply plants during 1986 exceeded the mandatory shipping percentages proposed by proponents. He noted that if the proposed percentage shipping requirements prove to be inadequate or excessive in the future, the market administrator would retain the authority to issue a "call" for increased shipments, and the Director of the Dairy Division would be authorized to reduce the level of shipments required. The LOL witness testified that the months of August through December are the time of year when Class I requirements are greatest, while the opportunity cost to manufacturing operations of supplying milk for Class I use is also greatest. He stated that adoption of minimum performance standards for all pool participants would ease the market supply problems currently experienced during the fall months.

The witness testified in favor of proponents' proposal to require that a reserve supply plant receive at least 25,000 pounds of milk on only two consecutive days during the month instead of the present requirement that such a plant receive a daily average of at least 25,000 pounds of milk. He stated that the original intent of the present provision was to assure that a reserve supply plant operator would have the capability of putting together a tankerload of milk in two days for shipment to distributing plants. According to the witness, the proposed change would continue the original intent, but would allow some savings in the cost of operating reserve supply plants.

A witness representing Wisconsin Dairies stated that the cooperative operates five reserve supply plants under the order. He testified that the Upper Midwest order was designed to further orderly marketing, and had done so quite well for ten years with the "call" provision used only once. However, he stated, use of the "call" provision for three consecutive months during the fall of 1986 was not conducive to orderly marketing. The witness testified that Wisconsin Dairies was already shipping above any anticipated "call" percentage in the fall of 1986 and felt that volunteering to ship additional volumes of milk was not a sound business practice when some reserve supply plant operators were unwilling to serve the fluid milk market. He emphasized that since all reserve supply plants share in the market's Class I returns it is only fair that all should share in serving the fluid milk needs of the market.

A witness testifying on behalf of AMPI stated that AMPI operates eight reserve supply plants under the Upper Midwest order, and supplies milk to eight distributing plants. The witness testified that prior to September 1986 the threat that the "call" provision would be implemented worked well to assure an adequate supply of milk for Class I use. He stated that some suppliers shipped additional milk voluntarily while others gave up milk reluctantly in response to the market administrator's indication that a "call" would be issued if needed. Class I milk supplies were not supplied to bottlers. The witness said that suppliers seem reluctant to ship Class I milk under the current marketing conditions of declining production because of the value of additional milk to manufacturing plants, especially during the fall months of the year. He attributed the necessity of using the "call" provision for three consecutive months in 1986 to the common understanding that some suppliers, who are also competitors for producer milk, were shipping little or no milk to distributing plants. He described three months of operating under the "call" provision as having three months of shipping requirements but not knowing what the required percentage would be until each month started.

The AMPI witness compared the percentages required by operation of the "call" provision in September–November 1986 with the proposed percentage requirements and determined that if the proposed requirements had been in effect in the fall of 1986, the small amount of milk in excess of the proposed percentages that would have been required for Class I use could have been obtained easily by negotiations between distributing plant operators and the operators of reserve supply plants. The witness described marketing conditions in the presence of "calls" for three consecutive months as characterized by uncertainty and lack of planning between suppliers and customers, leading to disorderly marketing conditions. He testified that he understood the proposal would allow the Director to increase, as well as decrease, the shipping percentage required of reserve supply plants, or, in a situation that would not allow time for such action by the Director, to allow the market administrator to issue a "call" for additional shipments.

A witness for Mid-Am testified that the association operates five reserve supply plants under the Upper Midwest order. The witness stated that one of the primary purposes of the Federal order is to assure an adequate supply of milk for distributing plants and consumers. He explained that as the amount of milk pooled under the Federal order increases, a smaller percentage of the total volume is needed to supply the market's fluid needs. As a result, he said, an increasing percentage of producer milk is used in manufactured products and handlers become accustomed to using producer milk in their manufacturing plants. The witness stated that the economic benefits to handlers of not shipping milk to distributing plants interfere with the orderly flow of milk for Class I use. However, he asserted, any organization participating in the blend price generated by Class I sales should accept the burden of supplying those sales, even if that burden includes shipping milk two or three hundred miles for Class I use. He observed that the economic incentives provided both under the order and outside the order, such as over-order prices, are insufficient to pull milk away from use in manufacturing plants. At the same time, he said, the order's shipping

provisions do not push the milk out of the reserve supply plants unless a "call" is issued. The witness concluded that the "call" provision was not intended to be used on a frequent basis, and that mandatory shipping requirements are the appropriate means of supplying the fluid needs of the market.

The Mid-Am witness suggested that the proposed mandatory shipping standards be allowed to be met by units formed by two or more cooperative associations in addition to the units to be permitted of multiple plants operated by one handler. He opposed allowing proprietary handlers to form units with cooperative associations or with other proprietary handlers. He stated that the benefits of efficiencies resulting from the activities of a unit of cooperative associations would accrue to their dairy farmer members, but that efficiencies achieved by a unit of proprietary handlers may not be passed back to dairy farmers. Mid-Am's proposed modification of the proposed shipping requirements was supported by the witness for LOL who stated that a unit pooling provision for cooperative associations would accustom the associations to working together to increase their efficiency and effectiveness in supply milk to the market.

A witness for Cass-Clay Creamery, Inc., testified that Cass-Clay operates three distributing plants, one reserve supply plant and three supply plants, all pooled under the Upper Midwest order, and four nonpool manufacturing plants. The witness stated that milk supplies in the vicinity of its Fargo, North Dakota, fluid milk plant have been hard to obtain during the fall months of the last several years. He explained that Fargo was not within the designated area delineated by the market administrator for the "calls" issued for Class I milk shipments in September through November 1986, and that procurement of milk supplies for the Fargo plant was not, therefore, assisted by announcement of a "call." In fact, the witness testified, the two or three reserve supply plants located near the Fargo area from which milk might be available do not, to his knowledge, have Interstate Milk Shippers' (IMS) approval. He stated that without IMS approval such milk supplies would be of no use to the Cass-Clay distributing plant. The witness argued that if the supply of milk continues to decrease, not enough will be available for Class I use. He stated that milk must move to fluid outlets as a result of either price incentives or performance requirements, and concluded that the proposed shipping standards would alleviate the problem of inadequate price incentives and make the marketing of Class I milk more equitable for all market participants.

A witness representing Marigold Foods, a proprietary handler that is a large purchaser of Grade A milk in the Upper Midwest market, testified that adoption of a minimum shipping requirement for reserve supply plants would assure all milk suppliers that producer groups sharing in the order's blend price have performed some of the responsibility of delivering milk to the Class I market. He explained that reserve supply plants are able to pay producers the Federal order blend price for all of their milk, whether any of it is used in Class I or not, and therefore are able to compete with other handlers for a supply of milk that will enable them to operate their manufacturing plants at an optimal level. He stated that required shipping percentages would establish supply patterns by all suppliers participating in the pool and may create a climate that would eliminate the need for any future "calls."

The Marigold witness testified that in July 1986 Marigold began to try to secure an adequate supply of milk for the fall period beginning with September 1, 1986. He stated that it quickly became apparent that those suppliers who already supplied Marigold were not going to increase their shipments, and that suppliers who did not already supply Marigold were not going to start doing so. The witness testified that he had notified the market administrator of his difficulty in obtaining milk supplies about August 1, and the market administrator started the procedure required to issue a "call" at that time. After the "call" for September 1986 was issued, he continued, the procurement situation did not improve greatly because suppliers would ship milk to Marigold's plants only until they had fulfilled the "call" requirements. He stated that much of his time in the last half of 1986 was spent in trying to keep Marigold's plants operating, even though "calls" were also issued for October and November.

The witness for Marigold testified that Marigold would like to be able to offer a high enough price for its milk supply so that its plants could be assured of an adequate supply of milk on a year-round basis. However, he pointed out, Marigold cannot pay more than the prevailing price in the market for its milk supply and still be able to compete for sales with handlers paying less. The witness attributed suppliers' reluctance to ship milk for Class I use to their desire to keep their milk supplies for their own manufacturing plants.

A witness representing Kraft, Inc., testified in opposition to the proposed mandatory shipping standards. He explained that Kraft operates a reserve supply plant under the Upper Midwest order, is a regular supplier of milk to the Class I market, and ships to distributing plants a percentage of its total supply approximately equal to the market's percentage of Class I use. The witness asserted that the current provisions of the order are flexible enough to adjust to the changing needs of the market while minimizing regulatory intervention. He stated that use of the call provision during the fall of 1986 accomplished the purpose for which it was intended, of supplying needed milk to pool distributing plants for Class I use. Although he acknowledged the inequity between reserve supply plants that ship milk to the fluid market and those that do not, the witness asserted Kraft's opposition to mandatory percentage requirements. He described mandatory shipping standards as inflexible, and stated that their adoption may result in requiring handlers to ship milk to the fluid market in excess of Class I needs.

In the event mandatory shipping requirements are adopted in spite of Kraft's opposition, the Kraft witness suggested modifications to the proposed amendments. First, he stated, the director of the Dairy Division should have the discretion to reduce the required shipping percentages to zero instead of by 5 percent, as proposed by proponents. He argued that the reason for allowing the Director to adjust shipping percentages is to save the time and expense of a Federal order hearing proceeding, and that there is no point in limiting the Director's discretion for the three months during which 8 percent of a reserve supply plant's receipts are required to be shipped to distributing plants. In addition to allowing a multi-plant handler to qualify more than one reserve supply plant as a unit, as proposed by proponents, the Kraft witness advocated that any group of handlers be allowed to consider their reserve supply plants as a unit for the purpose of meeting the minimum shipping requirements. He stated that allowing all handlers to form such units would maximize the transportation efficiencies available to meet the Class I needs of the market, and would help defray the cost of complying with mandatory shipping percentages for small or poorly-located handlers. Finally, the Kraft witness proposed a modification to the proposed provision that would protect a multiple-plant

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handler from losing pool status entirely if the percentage shipping requirements are not met. He suggested that when such a handler files a request with the market administrator for pool status for its reserve supply plants, the request should describe the sequence in which plants would be excluded from the unit in the event minimum performance standards are not met.

A witness representing Farmers Union Milk Marketing Cooperative (FUMMC) also opposed the adoption of mandatory shipping requirements. He described such requirements as unnecessary and undesirable in that the percentage of producer milk needed for Class I use in the Upper Midwest marketing area is the lowest in the U.S., averaging only about 13 percent. According to the FUMMC witness, the cause of the problem in getting milk to distributing plants is the unreasonably low handling charges established by the principal cooperatives in the market. He charged that proponent cooperatives own interests in eight distributing plants that distribute milk in the Upper Midwest order area, and that, having kept the cost of obtaining milk supplies low to themselves, they now want the government to require other handlers to give up profitable sales in order to supply milk for Class I use at a loss. The witness also noted that some of proponent cooperatives sell large volumes of manufactured dairy products to the government on a year-round basis. He stated that any mandatory shipping standards should require that milk be used for sales to distributing plants rather than to the Commodity Credit Corporation.

The FUMMC witness testified that proponents favor mandatory shipping percentages in order to assure that handling charges on milk supplied to the fluid market remain at their present level of 50 or 60 cents per hundredeight. He attributed proponents' motive for keeping handling charges low to their desire for making it impossible for other organizations marketing producers' milk to compete for producer milk supplies. The witness stated that four proprietary handlers, three of them small family-owned businesses, had lost their pool status as a result of their failure to meet the shipping percentages required by the "calls" issued during the fall months of 1986. He pointed out that mandatory shipping requirements could be expected to have the same effect on other handlers in similar positions. The FUMMC witness testified that if mandatory shipping requirements are adopted, he would support a provision that would allow proprietary handlers, as well as cooperative associations, to form units for the purpose of meeting the required shipping percentages.

A witness testifying on behalf of National Farmers Organization (NFO) opposed the proposal to require a minimum level of shipments from reserve supply plants to distributing plants. He stated that the present pooling provisions of the Upper Midwest order were designed to accommodate the pooling of an already abundant supply of Grade A milk and the milk of any Grade B producers who wish to upgrade to Grade A, and should continue to do so. The witness described the threat of implementation of the call provisions as the single most effective tool in aligning buyers and sellers, and stated that operating without using the call provision is in the best interests of the market. He explained that without either a "call" for Class I milk supplies or mandatory shipping percentages only milk that is needed for fluid use moves to distributing plants. He observed that milk that is moved for fluid use comes from the closest and most economical sources. The witness said that the entire marketing area has never been included under a "call", but that the area from which shipments are required under a "call" has been large enough so that the burden of supplying the required milk for Class I use has never been borne too heavily by one organization. At the same time, he stated, the "call" area has never been large enough to require very distant milk to be moved or excess shipping costs to be incurred. The witness observed that 34 percent of the milk pooled under the order during December 1986 was produced within the area from which milk was "called" for Class I use during the fall months of 1986.

The NFO representative testified that if mandatory shipping standards were adopted, milk supplies very distant from the metropolitan area would be required to move uneconomically to distributing plants or lose pool status. He used as an example a supply of NFO milk located near Benoit, Wisconsin, that would have to be shipped over 200 miles to the nearest distributing plant at a cost of 72 cents per hundredweight for transportation. Another examsple cited by the wintess was a proprietary reserve supply plant located in eastern North Dakota. According to the witness, the three distributing plants located closest to this proprietary handler are all cooperative-owned, and depend on their own members' milk supplies. As a result, he said, Minneapolis/St. Paul, at a distance of 368 miles from the handler, would be the likeliest market for any milk the handler would be required to ship. The witness stated that the transportation cost of such shipments would be $1.29 per hundredweight. He said that requiring such shipments when more than ample supplies of milk are produced much closer to the market is not in the best interests of the market.

The NFO witness explained that as milk supplies have declined, handlers that have manufacturing operations are not willing to release greater supplies of milk to distributing plants without being adequately compensated for the costs they would incur as a result. The witness introduced data showing that the service charges received for milk supplied to distributing plants in Federal milk order areas surrounding the Upper Midwest are generally somewhat higher (by $.28 to $1.11) than service charges paid by distribuing plants in the Upper Midwest order area. He noted that some NFO milk produced within the Upper Midwest milkshed is delivered to pool distributing plants in other Federal order areas and pooled under those orders because the service charges paid by the receiving handlers in those areas return much more money to the cooperative than do sales to Upper Midwest distributing plants.

The witness for NFO stated that the cooperative historically has supplied to distributing plants a higher percentage of its milk supply than the marketwide percentage of producer milk used in Class I, but will no longer ship milk from reserve supply plants without being able to recover direct transportation costs. The witness further warned that if mandatory shipping standards are adopted, NFO would seriously consider reducing its shipments of milk for Class I use to just above the required percentage instead of its current 27-percent level of performance. He predicted that the result of adoption of minimum shipping requirements would be to reduce service charges below their current inadequate level and to generate excesive costs of moving milk unnecessarily from reserve supply plants to distributing plants.

The witness expressed NFO's opposition to reducing the 25,000 pound per day average receipt requirement at reserve supply plants. He described the current standard as minimal, and stated that reducing it would serve no constructive purpose even though one NFO reserve supply plant has failed to be pooled as a result of falling below the required volume of receipts.

A witness testified in opposition to the proposal on behalf of Universal Foods, a proprietary manufacturing plant operator whose producers are pooled through Twin Town Cheese Factory, Inc. Twin Town Cheese Factory is a cheese manufacturing company that operates a reserve supply plant. The witness stated that milk for Class I use is supplied to Upper Midwest distributing plants from the Twin Town plant on a year-round basis at a level that exceeds the "call" percentages announced during the fall of 1986. He stated that in order to obtain an adequate supply of producer milk, Twin Town must pay producer premiums and hauling subsidies that result in milk costs that range from 80 cents to $1.00 over the Federal order blend price. He noted that, given the cost of acquiring milk, supplying it to distributing plants at 50 cents over the Class I price is not economical. The wintess also stated that one of the results of adopting mandatory shipping standards would be the reduction of the service charges currently collected for deliveries of milk to distributing plants.

A witness representing the Trade Association of Proprietary Plants (TAPP) testified in opposition to the proposed minimum shipping requirements. The witness said that the order's "call" provision has operated to assure an adequate supply of milk to handlers and consumers, making a minimum shipping percentage unnecessary. He explained that a required shipping percentage of 5 to 8 percent coupled with a provision allowing the percentage to be increased or decreased at the discretion of the Dairy Division Director is little different from the present "call" provision. He stated that the "calls" announced in the fall of 1986 involved most of the market area, and that the "call" provision could be applied on a marketwide basis to assure that it would affect all reserve supply plant operators equally.

The TAPP witness attributed the difficulty distributing plants experience in securing an adequate supply of milk to proponent cooperatives' failure to develop an organization and pricing policy outside of the Federal order to solve supply problems and develop equity between handlers and producers on an economically sound basis. He stated that the shipment of milk and organization of the market is the primary responsibility of cooperatives. The witness testified that cooperative associations should organize to establish over-order charges at a level that would be high enough to cover the full cost of supplying milk to the Class I market and thereby encourage milk shipments. Instead, he claimed, proponent cooperative associations have competed with each other to set over-order service charges low enough to maintain year-round sales of their members' milk to fluid handlers. He charged that cooperatives then use the "call" provision or minimum shipping requirement to force proprietary handlers to give up milk for fluid use at the time of year it is most profitable for handlers to keep milk supplies in their own manufactaring plants.

The TAPP representative characterized the proposal as contrary to the Regulatory Flexibility Act which, he said, protects small businesses from the adverse effects of government regulations. He stated that a minimum shipping percentage would have a greater impact on a small proprietary plant's operations. Such a plant, he said, may not be equipped to get involved in selling milk for fluid use. The witness described the operations of proponent cooperative associations as being more advantagous than those of small proprietary handlers in supplying the market for Class I use. He said that proponents' milk supplies are located close to the market; are largely direct-delivered to distributing plants, resulting in lower handling costs; and are often pooled in multiple-plant operations, allowing more flexibility in handling. He cited the example of a small cheese plant operator who had decided to drop out of the pool during the fall months of 1986 when a "call" for milk supplies was announced, rather than ship the percentage required by the "call." In order to participate in the pool and be able to pay his producers the blend price during subsequent months, the witness said, the handler had to incur the expense of shipping a percentage of his receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year, and thereby qualify as a supply plant.

The witness for TAPP argued that distributing plants should pay whatever price is needed to obtain an adequate supply of milk for Class I use without any minimum shipping standards or "call" provisions to require handlers to ship milk for fluid use. Without such regulatory forcing of shipments, he said, over-order service charges will rise to cover the cost of shipping milk to distributing plants.

The Upper Midwest milk order should require that all reserve supply plants ship at least a minimum percentage of their receipts of producer milk to pool distributing plants. At the present time it is apparent that without a "call" requiring shipments to fluid milk plants many handlers avoid such shipments altogether.

A situation in which some reserve supply plant operators ship milk at levels well above the marketwide percentage of producer milk used in Class I, and other reserve supply plant operators do not ship milk at all is equitable to none of the market participants. According to the record testimony, handlers who supply milk for fluid use incur significantly greater costs than those who retain their milk supplies for manufacturing use. As a result, shipping handlers are disadvantaged with respect to their competitors, both in the cost of producing manufactured products and in their ability to attract an adequate supply of producer milk. Because handlers that carry the burden of supplying the fluid milk market have higher operating costs than other handlers, their ability to pay producers as much as non-shipping handlers pay is impaired, resulting in inequitable returns to producers. In addition, a distributing plant operator who must pay more than the customary over-order service charges for some of the milk required to operate his plant is placed at a competitive disadvantage relative to other distributing plant operators who may be able to obtain adequate supplies at the customary price.

In order to participate in the marketwide pool, and thus subsidize their payments to producers with the Federal order blend price, reserve supply plant operators should demonstrate their willingness and ability to help supply milk for the higher-valued uses that generate the blend price. Testimony that some reserve supply plants are not approved or equipped to ship milk to distributing plants indicates that some handlers participating in the marketwide pool may not be capable of supplying milk for fluid use, even if they were willing. Although the cost of shipping Class I milk apparently exceeds the returns for such shipments, it would not be reasonable to allow handlers and producers that have neither the ability nor any intention to supply milk for Class I use to enjoy the benefits of participating in the marketwide pool, since a basis purpose of the order is to assure an adequate supply of milk for fluid use.

In addition to fostering equitable treatment under regulation, mandatory shipping standards would dispel any doubts handlers may have about whether they will be required to ship milk to distributing plants or not. Also, minimum shipping requirements will encourage establishment of regular supply relationships between reserve

supply plant operators and distributing plants.

Opponents' arguments against adoption of minimum shipping percentages centered on the idea of efficiency. It is inefficient to move milk long distances for fluid use when there are closer-in supplies of milk available. However, one of the more significant costs of supplying the fluid market, according to both proponents and opponents, is the opportunity cost of milk removed from a manufacturing plant operating at less than full capacity to be delivered to a distributing plant. The "give-up" cost associated with shipping such milk falls as heavily on a handler located near Minneapolis/St. Paul as it does on a handler located in central North Dakota. The transportation cost of moving such milk, of course, would be greater for the North Dakota handler.

An additional argument by opponents was that minimum shipping requirements would serve to reduce the already inadequate handling charges on shipments of Class I milk. However, opponents' data showed that handling charges effective in surrounding marketing areas, most of which are subject to required shipping percentages, are generally higher than in the Upper Midwest area. This data would seem to indicate that the presence of shipping requirements in an order does not necessarily have the effect of discouraging over-order handling charges.

The problem of handling and hauling milk in an efficient and economical manner while complying with minimum shipping requirements can best be solved by allowing handlers to have the operations of their reserve supply plants considered on a combined, or unit, basis for the purpose of meeting pooling standards. Proponents initially proposed that a handler operating more than one reserve supply plant be allowed to have the plants' pool qualifications determined on a combined basis. Two of the proponents then testified that they would favor a provision allowing two or more cooperative associations to have their reserve supply plant operations considered on a combined basis for determining pool qualifications. Two opponents of the proposal advocated that if minimum shipping requirements are adopted, any group of handlers should be allowed to have their reserve supply plants pooled on a "unit" basis in order to enhance their efficiency of handling and hauling milk.

Allowing handlers to pool their reserve supply plants on a unit basis would counteract most of the inefficiencies involved in requiring minimum shipping percentages, and would decrease the cost of pooling for handlers that have only one plant or are distant from the center of the marketing area. Handlers within such a group may decide between themselves which plants should ship the qualifying milk to distributing plants and which plants would not need to ship. The unit would qualify for pooling, then, on the basis of the percentage of producer milk receipts at all of the plants in the unit that is shipped to distributing plants. Although it is true, as one witness claimed, that savings in the operating costs of proprietary handlers are not necessarily passed on to producers, it is clear from the hearing record that the procurement of producer milk supplies in the Upper Midwest marketing area is extremely competitive. Under these circumstances, handlers that wish to procure supplies of producer milk must be willing to pay their producers a price competitive with prices paid to cooperative member producers. It is most likely that the very competitive procurement situation in the market will ensure that proprietary handlers pass savings in operations on to their producers.

A request for unit status should be filed with the market administrator by July 15, when requests for pool status for individual reserve supply plants are also due. These requests will assure that units formed for meeting shipping percentages are firmly established before each August through December shipping period. The requests filed by the handlers who wish to form units should specify the order in which plants would be eliminated from a unit if the unit fails to meet the minimum shipping percentages required by the order. Because of the provisions allowing plants that have been pool plants during an August through December period to retain automatic pool status through the following months of January through July, it is important that the composition of a unit change as little as possible during the qualifying period, with the exception of a plant eliminated because the unit does not meet the pooling standard. Administrator of a provision that would allow handlers to add plants to a unit, as well as subtract them, would prove to be cumbersome. Therefore, no plant should be able to rejoin a unit after being eliminated for the unit's failure to qualify, and no plant should be permitted to join a unit after its initial formation. However, a plant which fails to meet the minimum shipping requirements, either singly or as part of a unit, may qualify for pooling as a reserve supply plant in any month thereafter during the August-December qualifying period. Reserve supply plants that refuse to meet "call" requirements, on the other hand, should not be able to regain pool reserve supply plant status by any means until the following August. In either case, a plant losing reserve supply plant status during any month of the qualifying period may qualify for pooling as a regular supply plant during the months of January through July by delivering to distributing plants a percentage of its receipts equivalent to the marketwide percentage of producer milk used in Class I during the same month of the previous year. Multi-plant handlers wishing to have their plants considered as a unit would be subject to the same provisions as a group of handlers forming a unit.

The requirement that a request be filed with the market administrator to form a unit for the purpose of qualifying reserve supply plants for pooling is adapted from the present order provisions and proponents' proposal. The Upper Midwest order currently requires that a handler file a request for the pool status of a reserve supply plant at least 15 days prior to the first day of the month for which pool status is to begin. Proponents' proposal specifies that a reserve supply plant operator file such a request by each July 15 in order to obtain pool status for the plant for the following year. Timely notification to the market administrator of a handler's intention to qualify one or several reserve supply plants for pooling, or of the intention of a group of handlers to qualify a unit of reserve supply plants for pooling, will facilitate the effective administration of the order.

The 5- and 8-percent levels of required shipping percentages proposed by proponents will assure that all reserve supply plant operators will bear a significant and equitable share of the responsibility of supplying milk for Class I use. At the same time, the proposed percentages are not high enough to generate excess shipments of milk to distributing plants. According to the hearing record, shipments at the proposed percentages would not have supplied adequate supplies of milk to the fluid market during the fall months of 1986. It is expected that negotiations between reserve supply plant operators and distributing plant operators will be able to fill any gap between required and needed shipments. In any case, retention of the "call" provision and incorporation of a provision allowing the Director of the Dairy Division to temporarily reduce the required shipping percentages will give the order flexibility in dealing with any fluctuations in supply and demand.

In addition to establishing minimum shipping percentages to assure that reserve supply plants supply the fluid market on a more equitable basis than in the past, and incorporating unit pooling for groups of reserve supply plant operators to facilitate efficiency in handling and hauling, it is also important to assure that each plant included in the marketwide pool is at least capable of delivering milk to distributing plants. For this reason, the order should include a requirement that each reserve supply plant deliver at least 5 percent of its receipts to pool distributing plants during one month of the August-December qualifying period.

Opponents argued that requiring any deliveries from small, poorly-located handlers violates the Regulatory Flexibility Act by placing an unfair burden on such handlers, and promotes inefficient and uneconomic handling. They cited the example of several handlers who had opted not to meet the shipping percentages required by the "call" for fluid milk supplies for the months of September, October and November 1986. As a result, opponents stated, the reserve supply plants operated by those handlers had been penalized by their ineligibility to be pooled for the next full year after losing pool status.

The level of shipping requirements adopted in this decision is neither unfair nor a violation of the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that the impact of government regulation on small businesses be considered and analyzed. The impact of requiring shipments from small handlers has been considered and found to be proportionate with the regulatory burden on all other handlers. Requiring no performance at all from small handlers is unfair to all of the other handlers who do deliver milk to distributing plants. Participation in the pool is not compulsory. Handlers must make business decisions about such matters as the cost of delivering a minor percentage of their milk supplies to the fluid market during one month versus the benefit of participating in the pool for a number of months without having to ship any milk for Class I use. If the cost of meeting the shipping requirements outweighs the benefit of sharing in the market's Class I use, then a handler is clearly better off not to give up that fraction of his milk supply. If, on the other hand, participation in the pool for a number of months is a greater benefit than the cost of releasing some milk to the fluid market for one month, meeting shipping requirements will be in the handler's best interests. Allowing handlers to form units to meet the order's minimum shipping standards will help to offset most of the inefficient or uneconomic handling practices promoted by the adoption of such standards.

As proposed by proponents, the provision authorizing the market administrator to issue a "call" for supplies of milk for Class I use from reserve supply plants should remain in the order. Although it is anticipated that the percentage shipping standards adopted herein will result in an adequate supply of milk for fluid use, with occasional need for negotiation, it is possible that additional milk may be required at some time during the year. The "call" provisions proposed by proponents are identical to those currently contained in the Upper Midwest order. Aside from an objection to the existence of any requirements that milk be moved from reserve supply plants to distributing plants, no modifications of the present "call" provisions were proposed. Even so, one change should be made. The provision that precludes a plant from being pooled as a reserve supply plant for a full year after failing to comply with announced shipping requirements should be changed to prohibit such a plant from being pooled through the following July. If failure to comply with a "call" occurred, for instance, during the month of October, the plant would not be eligible for pooling as a reserve supply plant until the following October. As a result, the plant not only could not be a pool reserve supply plant from the months of January through July immediately following its failure to comply, but would also be ineligible for an additional January through July period because of its failure to be pooled for the months of August and September of the following year.

In order to assure that excessive movements of Class I milk to distributing plants are not required of reserve supply plant operators, the Director of the Dairy Division should have the discretion of reducing the minimum shipping percentages. This aspect of proponents' proposal would add needed flexibility to the requirement that reserve supply plants ship at least a certain percentage of their receipts to distributing plants. If less than the required percentages of milk are needed to fulfill the market's fluid needs, the objective of efficient marketing would be better served by allowing the excess milk to remain in manufacturing plants. There is no need to include authorization for the Director to increase the required percentages. If additional milk supplies are needed for Class I use, the ability of the market administrator to issue a "call" for the needed milk will expedite the shipment of such supplies.

Proponents' proposal to reduce the requirement that a reserve supply plan receive a daily average of 25,000 pounds of milk per day to 25,000 pounds on two consecutive days should be denied. As stated earlier, only those plants that actually are capable of supplying milk to the fluid market should be eligible for pooling as reserve supply plants. A plant that receives only 25,000 pounds of milk on two consecutive days of a month represents no real potential supply of milk to the fluid market. As stated by the NFO witness, the current requirement is minimal, and should be maintained.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient

quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Upper Midwest marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1068

Milk marketing orders, Milk, Dairy products.

PART 1068—[AMENDED]

1. The authority citation for CFR Part 1068 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1068.7 Pool plant, amend paragraph (d) by revising (d)(3), revising and redesignating (d)(4) as (d)(5) and adding a new (d)(4), revising and redesignating (d)(5) as (d)(7) and revising (d)(6), as follows:

§ 1068.7 Pool plant.

* * * * *

(d) * * *

(3) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than July 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for August and continue through the following July unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants during each of the months of August and December is 5 percent or more and during each of the months of September, October, and November is 8 percent or more of the total Grade A milk received at the plant from dairy farms during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant), subject to the following conditions:

(i) These shipping percentages may be decreased by up to five percentage points during the months of August and December, and by up to eight percentage points during the months of September, October and November, by the Director of the Dairy Division if he finds that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either on his own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, he shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(ii) A cooperative association that operates a reserve supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(5) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(A) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call and milk supplies for which a cooperative association is the handler pursuant to § 1068.9(c) must be in addition to any shipments already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipments to an other order plant may not be classified pursuant to § 1068.42(b)(3); and

(iii) Failure of a handler to comply with any announced shipping requirement pursuant to § 1068.7(d)(5), including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to § 1068.7(D). A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to § 1068.7(d) until the following August;

(6) In order to meet the requirements of paragraphs (d)(4) and (d)(5) of this section, two or more reserve supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which the plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of § 1068.7(d) (4) and (5). Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each reserve supply plant for which the shipping percentages in § 1068.7(d)(4) are met as part of a unit described in § 1068.7(d)(6) must, individually, ship at least 5 percent of the Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) to pool distributing plants in one of the months of August through December in order to be a reserve supply plant for the month of December.

(7) A plant must have been a pool plant under this order pursuant to § 1068.7 (a), (b) or (d) during each of the preceding months of August through December to be a pool reserve supply plant during the following months of January through July.

Signed at Washington, DC, on January 12, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–825 Filed 1–15–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1097

Milk in the Memphis, Tennessee, Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites public comments on a proposal to continue through 1988 the suspension, which expired December 31, 1987, of the pool supply plant provision of the Memphis order. The extended suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is continuing to make supplemental shipments of milk to meet the increased fluid milk needs of Memphis distributing plants. The supply that Mid-Am has available to meet the greater need for milk in fluid uses by such Memphis handlers is milk received at the cooperative's plants which handle reserve milk supplies associated with distributing plants that are regulated under other Federal order markets. Mid-Am contends that the level of shipments needed by such handlers could result in Mid-America's plants and the associated milk supplies becoming regulated under the individual-handler pool Memphis order. Mid-Am contends that such a regulatory change would result in a reduction of return to its member-producers and disrupt their normal association with other Federal orders. Mid-Am also claims that an extension of the suspension would allow the reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the orders with which the milk is currently associated and facilitate making sufficient supplies of milk available to Memphis distributing plants for fluid use.

DATE: Comments are due on or before January 26, 1988.

ADDRESS: Comments (two copies) should be filed with USDA/AMS, Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing specialist, USDA/AMS, Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers would continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Memphis, Tennessee, marketing area is being considered for the months of January through December 1988:

In § 1097.7, paragraph (b) in its entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS, Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include January 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal would continue through 1988 the suspension, which expired on December 31, 1987, of that portion of the fluid milk plant provision that defines a pool supply plant. The Memphis order regulates a plant that ships in excess of 70,000 pounds of milk to fully regulated distributing plants during the month.

An extension of the prior suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that is making supplemental shipments of milk to meet increased fluid milk needs of plants regulated under the Memphis order. Mid-Am indicates that the shipments to such handlers continue to be made and are expected to be necessary throughout 1988.

Mid-Am indicates that the most feasible supply that it has available to meet the continuing fluid milk needs of Memphis handlers is located in the heavy milk production area of southwest Missouri. However, milk in such area is associated with Mid-Am's plants that are regulated under the Southern Illinois, Southwest Plains, or Texas Federal order. These plants are qualified for pool status under the respective orders on the basis of shipments from the plant to distributing plants or on the basis of Mid-Am's marketwide performance in supplying milk to distributing plants. Mid-Am contends that shipments from such plants could result in the regulation of one or more of its plants under the Memphis order.

Mid-Am claims that since the Memphis order provides for individual-handler pooling, regulation of any such plant under that order would result in a reduction of returns to Mid-Am's producers since the reserve milk supplies of the other markets would also shift regulation. Thus, Mid-Am contends that an extension of the previous suspension is necessary to permit the continued pooling during 1988 of the reserve milk supplies under the orders with which such milk is currently associated and to facilitate making sufficient supplies of milk available to Memphis handlers for fluid use.

Mid-Am has been relying on the southwest Missouri production area to supply Memphis handlers since September 1986. A shift in the regulation of such plants has been avoided by a suspension of the Memphis pool supply plant provision during October–December 1986 and March–December 1987 and by alternating the plants from which milk is shipped to Memphis distributing plants in the months the provision was not suspended. Proponent anticipates that a greater and continuing reliance on such milk supplies will be necessary during 1988 and that the requested suspension will be necessary during that period.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1097 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on January 12, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–826 Filed 1–15–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1106

[Docket No. AO–210–A47]

Milk in the Southwest Plains Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Kansas Food Packers, Inc. has requested a hearing to consider a proposal to amend the Southwest Plains order. The handler operates a bottling plant in the marketing area that processes and packages ultra-high temperature (UHT) fluid milk products. Such products are distributed on routes in this and other marketing areas covered by Federal orders. The handler's proposal would regulate the plan under the Southwest Plains order regardless of where the plant's sales are made. Petitioner claims that the amendments are needed to establish a greater degree of regulatory and pricing stability for the plant and has asked that the changes be adopted on an expedited basis.

DATE: The hearing will convene at 9:00 a.m., local time, on February 17, 1988.

ADDRESS: The hearing will be held at the Tulsa Marriott, 10918 East 41st Street, Tulsa, OK 74146, (918) 627–6000.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Tulsa Marriott, 10918 East 41st Street, Tulsa, OK 74146, beginning at 9:00 a.m., local time, on February 17, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwest Plains marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposal No. 1.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Kansas Food Packers, Inc.

Proposal No. 1

Revise § 1106.7 by adding a new paragraph (e) to read as follows and redesignating the present paragraph (e) as paragraph (f).

§ 1106.7 Pool plant.

* * * * *

(e) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route distribution, except filled milk, during the month of not less than 50 percent during the months of September–March and 35 percent during the months of April–August of fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1106.13; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Richard E. Arnold, P.O. Box 701440, Tulsa, OK, 74170–1440, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington office only)

Office of the Market Administrator, Southwest Plains Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on January 13, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–952 Filed 1–15–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–163–AD]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 200 and 400 series airplanes, which would require inspection for cracks and repair or replacement, if necessary, of the aft attendant's seat support structure. This proposal is prompted by reports of cracks in the mounting brackets of the aft attendant's seat support structure below the cabin floor. This condition, if not corrected, could lead to failure of the support bracket and jamming of engine controls.

DATES: Comments must be received no later than March 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–163–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: R.J. Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–163–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist or develop on British Aerospace Model BAC 1–11 200 and 400 series airplanes.

There have been several reports of cracks in the mounting brackets of the support structure of the aft flight attendant's seat. This condition, if not corrected, could lead to failure of the mounting brackets, and resultant jamming of the throttle and high pressure shut-off valve control cables of the number two engine.

British Aerospace has issued Alert Service Bulletin 53–A–PM5931, Issue No. 1, dated November 19, 1986, which describes inspections for cracks in the mounting brackets, and repair or replacement, if necessary. The United Kingdom CAA has classified this alert service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections for cracks in the aft attendant's seat support structure, and repair or replacement, if necessary, in accordance with the previously mentioned service bulletin.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of engine controls due to a failed mounting bracket of the aft attendant's seat, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within the next 350 landings after the effective date of this AD, whichever occurs later, inspect the mounting brackets of the aft attendant's seat for cracks in accordance with British Aerospace Alert Service Bulletin 53-A-PM5931, Issue No. 1, dated November 19, 1986.

1. If cracks detected are less than 1 inch in length, repair prior to further flight and continue to inspect at intervals of 350 landings, in accordance with the service bulletin.

2. If cracks detected exceed 1 inch in length, replace brackets before further flight in accordance with the service bulletin.

3. If no cracks are found, repeat the inspections in accordance with the service bulletin at intervals not to exceed 3,600 landings.

B. Incorporation of Modification PM5931 constitutes terminating action for the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacture may obtain copies upon request to British Aerospace, Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 8, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-829 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-164-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, which would require replacement of the existing fuel shut-off valves with new ones. This proposal is prompted by reports of failures in the operation of electrical motor fuel shut-off valves. This condition, if not corrected, could lead to inability to shut off the fuel supply in the event of a fire..

DATES: Comments must be received no later than March 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. A. Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direccion Generale de Aviacion Civil (DGAC), which is the airworthiness authority of Spain, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on CASA Model C-212 series airplanes.

There have been reports of failures in the operation of electrical motor fuel shut-off valves. The valve cannot be operated through the throttle controls, and does not reach the fully open and/or fully closed positions. This condition could result in inability to shut off the fuel supply in the event of a fire.

CASA has issued Service Bulletin 212-28-15, dated April 11, 1983, which describes replacement of the affected valves with improved valves that have a new seal and springs and the valve setting at 25 psi. The Spanish DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the fuel shut-off valves in accordance with the service bulletin previously mentioned.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost for parts per airplane is $3,500. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $29,280.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($3,060). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-28-15, dated April 11, 1983, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent inability to close fuel shut-off valves in the event of a fire, accomplish the following:

A. Replace the fuel shut-off valves with new valves, in accordance with CASA C-212 Service Bulletin 212-28-15, dated April 11, 1983.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 8, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-831 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-44]

Airworthiness Directives; McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 Fixed-Pitch Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection and rework of areas near the blade hub on McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers. The proposed AD is needed to prevent blade separation which could possibly lead to engine separation and loss of aircraft control.

DATES: Comments must be received on or before March 15, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-ANE-44, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 87-ANE-44."

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, Vandalia, Ohio 45377.

A copy of the service bulletin is contained in Rules Docket No. 87-ANE-44 at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Central Region, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7134.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications recieved on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87-ANE-44." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers have evidence of scratches or tool marks on the propeller blade-to-hub forward face transition area. These stress risers can lead to fatigue crack initiation and subsequent blade separation. Two accidents have been reported in which a blade separation had occurred.

Metallurgical examination of the two blade fracture surfaces revealed evidence of fatigue cracking initiating along one of the scratches. Scratches are suspected to have started with a chordwise grinding operation used to accomplish a smooth blend in the blade-to-hub forward face transition area during the manufacturing of the propeller. A surface finish was not required in this area until December 1984, when the design was changed to require a finish of 125 root-mean-square micro-inch. Propellers produced between 1977 and December 1984 may possibly have scratches. Since this condition is likely to exist on other propellers of the same type design, the proposed AD would require dye penetrant inspection and rework of the propeller blade-to-hub forward face transition area to remove any indication of scratches or tool marks on McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 propellers.

Conclusion

The FAA has determined that this proposed regulation involves 8,778 propellers and an approximate cost of $120.00 per propeller. No repetitive inspection or rework will be required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

McCauley Accessory Division, Cessna Aircraft Company: Applies to McCauley Accessory Division, Cessna Aircraft Company Model 1A103/TCM6958 fixed-pitch propellers installed on, but not limited to, Cessna Aircraft Company, Models 152 and A152 and Reims Aviation S.A. Models F152 and FA152 aircraft. Affected propeller serial numbers are 770001 through 777390 and BC-001 through HH-001 with the following exceptions:

CA024	HB019
CA066	HB021
GA072	HB026
HB005	HB028
HB006	HB032
HB008	HB033
HB009	HB034
HB016	HB036
HB017	HB037
HB018	HB038

Compliance is required within the next 100 hours time in service after the effective date of this AD, or before the accumulation of 1200 hours time in service, whichever occurs later, unless already accomplished.

To prevent blade separation near the hub, accomplish the following:

(a) Inspect and rework in accordance with McCauley Accessory Division Service Bulletin 169-A, dated December 7, 1987.

(b) Remove from service any propeller which, after inspection, shows evidence of cracks.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Central Region, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office, may adjust the compliance time specified in this AD.

The FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's service bulletin identified and described in this document.

Issued in Burlington, Massachusetts, on December 31, 1987.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-830 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-170-AD]

Airworthiness Directives; the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposd Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to de Havilland Model DHC-8-100 series airplanes, which would require clearly marking the location and means of entering the lavatory. This proposal is prompted by reports of passengers mistaking the passenger exit door handle for the lavatory door handle. This condition, if not corrected, could lead to depressurization of the airplane.

DATES: Comments must be received no later than March 11, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-170-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTRACT: Mr. Andrew Gfrerer, Systems and Equipment Branch (ANE-173), New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested perons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-170-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been three reports of aircraft depressurization on de Havilland Model DHC-8-100 series airplanes as a result of labels causing confusion in discerning the passenger exit door handle from the lavatory door handle, which are in close proximity. Passengers have mistaken one handle for the other, which has resulted in depressurization of the airplane when the exit door was inadvertently opened.

De Havilland has issued Service Bulletin 8-11-14, Revision A, dated July 20, 1987, which describes procedures to replace labels for lavatory door and passenger door handles. Transport Canada, which is the airworthiness authority of Canada, has issued Canadian Airworthiness Directive CF-87-07, dated July 7, 1987, making compliance with the service bulletin mandatory.

This airplane is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacing the labels marking the location and means of opening the lavatory in accordance with the service bulletin previously mentioned.

It is estimated that 36 airplanes of U.S. registry would be affected by this AD, that it would take approximately .5 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of AD on U.S. operators is estimated to be $720.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($20). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to Model DHC-8-100 series airplanes, serial numbers 3 and subsequent, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent depressurization caused by passengers mistaking the passenger exit door handle for the lavatory door handle, accomplish the following:

A. Within 60 days after the effective date of this AD, replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8-11-14, Revision A, dated July 20, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on January 6, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-833 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-20]

Proposed Designation of Control Zone, Ft. Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a control zone to encompass the airspace surrounding the Ft. Pierce/St. Lucie County International Airport with an extension to contain an instrument approach procedure. Airspace affected by designation of the control zone extends upward from the surface within a 5-mile radius of the airport with an extension to contain IFR arrival operations. The control zone is planned to be effective on a part-time basis corresponding to the hours the Airport Traffic Control Tower is in operation.

DATES: Comments must be received on or before February 20, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:
Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-20, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Ft. Pierce, Florida, Control Zone. This action will lower the base of controlled airspace from 700 ft. above the surface down to the surface. The additional controlled airspace will provide an increased level of safety to aircraft executing instrument operations at the airport. The airport averages approximately 500 commercial IFR operations per month. Additionally, the airport serves as a principal U.S. Customs and Immigration port of entry for general aviation aircraft entering the U.S. from the Bahamas and the Caribbean. Ft. Pierce is served by a non-federal control tower which, in addition to providing communications, will provide weather observation and reporting service during the hours the control zone is effective. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Ft. Pierce, FL [New]

Within a 5-mile radius of Ft. Pierce/St. Lucie County International Airports (latitude 20°29'37"N, 80°22'01"W); within 2 miles each side of the Vero Beach VORTAC (latitude 27°40'41"N, 80°20'23"W) 25° radial extending from the 5-mile radius area to 8 miles southeast of the Vero Beach VORTAC, excluding that portion within the Vero Beach, Florida, control zone. This control zone is effective during specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in East Point, Georgia, on December 28, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-832 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 142

Quota Quantity Entry Limits

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations with regard to the quantity of quota-class merchandise which may be entered at the opening of a quota. This proposal would clarify the current regulations and correct a situation whereby some importers have attempted to receive a quantity of quota-class merchandise in excess of their pro rata share by filing multiple entries. In the past, when importers filed entries for a quota quantity in excess of the known quota restraint level, Customs has reduced the importer's total quantity presented to the restraint level and then authorized release according to that importer's pro rata share. This share was computed by comparing the quantities of all entry summaries to the available quota quantity to obtain the percentage of available quota quantity to be allocated to each importer. This procedure involves a considerable workload for Customs quota control personnel because, if the total quantity presented by an importer is not matched with that importer, the importer could be allocated a quantity in excess of the quantity of quota-class merchandise it should have received. Thus, an importer who failed to comply with the regulations could gain an unfair advantage over importers who do comply. Under this proposal, entries for excess quantities would be rejected as not being in proper form rather than being reduced to the appropriate quantity and grouped with all other entries for the allocation of available quota quantity. Accordingly, importers who do not file entries or withdrawals for consumption of quota-class merchandise for a quantity above the quota restraint level would be more certain to receive their proper pro rata share of the merchandise. The proposal would also make certain non-substantive technical amendments to clarify and simplify the existing regulations

DATE: Comments must be received on or before March 21, 1988.

ADDRESS: Comments (preferably in triplicate,) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Karen Cooper, Quota Branch, Regulatory Trade Programs Division (202-566-8502).

SUPPLEMENTARY INFORMATION:

Background

An import quota is a control on the number of units or on the duty rate of specified merchandise which may be entered into the commerce of the U.S. during a specified period of time. There are two types of Customs administered import quotas; absolute and tariff-rate. An Absolute quota is a limit, or control on the total number of units of specified merchandise which may be entered during a specified period of time. A tariff-rate quota is a control on the quantity of merchandise which may be entered at a specified rate of duty. Under a tariff-rate quota there is no limit on the total quantity of merchandise permitted to enter, but quantities of the merchandise in excess of a quantity permitted to enter the U.S. at a specified duty rate, are subject to a higher duty rate. The limitations, which may be established by legislation, are published in the Tariff Schedules of the United States (19 U.S.C. 1202) and the Customs Bulletin.

To ensure that all importers have an equal opportunity to enter merchandise that is subject to a quota, rules and procedures applicable to quotas administered by Customs, have been developed and published in Part 132, Customs Regulations (19 CFR Part 132).

Section 132.4, Customs Regulations (19 CFR 132.4), provides that at the opening of the quota, no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota.

When a quota is expected to fill at opening and the total quantity presented exceeds the quota quantity available, a pro rata share is distributed to each importer. The pro rata share is based on the ratio of total quantity presented to total quantity authorized to enter under the restraint level. Although § 132.4, Customs Regulations (19 CFR 132.4), provides that an importer shall not be permitted to present entries or withdrawals for quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota, some importers file entries for excess quantities. By filing multiple entries, these importers file for an aggregate quantity of the quota merchandise in excess of the admissible quantity. Customs quota control personnel must, therefore, ascertain if any importer made presentations in excess of the quota restraint level. When it has been ascertained that a particular importer's total presentations exceed the quota restraint level, the practice has been to decrease the importer's total presentations down to the quota restraint level and to authorize release according to that importer's pro rata share. This share, as provided for in § 132.12(c), Customs Regulations (19 CFR 132.12(c)), was computed by comparing the quantities of all entry summaries to the available quota quantity to obtain the percentage of available quota quantity to be allocated to each importer. This procedure involves a considerable workload for Customs quota control personnel because, if the total presentations by an importer are not matched with that importer, the importer could be allocated a quantity in excess of the quantity it should receive. Thus, an importer who fails to comply with the regulations could gain an unfair advantage over importers who do comply. To correct this situation, Customs proposes to consider all entries for quota-class merchandise filed by a particular importer, when the quantity of merchandise covered thereby exceeds the quantity admissible under the applicable quota, as not being in proper form and to reject them. This would require the importer to file a new entry. The proposal would also make certain non-substantive technical amendments to clarify and simplify the existing regulations.

Proposed Action

Accordingly, it is proposed to add a sentence to § 132.4, Customs Regulations (19 CFR 132.4), to make it clear that when an importer files entries or withdrawals for consumption for quantities of quota-class merchandise in excess of the admissible quantity, those entries and withdrawals will be rejected and returned to the importer.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the reuglatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

19 CFR Part 142

Customs duties and inspection, Imports.

Proposed Amendments

It is proposed to amend Part 132, Customs Regulations (19 CFR Part 132), as set forth below:

PART 132—QUOTAS

1. The authority citation for Part 132 would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Headnote 11), and 1624.

2. It is proposed to revise § 132.4 to read as follows:

§ 132.4 Quota quantity entry limits.

At the opening of the quota no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota. If the total presentations by an importer exceed the quantity admissible under

the quota, they will be considered to not be in proper form and will be returned to the importer.

3. It is proposed to revise the third sentence of § 132.13(a)(1)(i) to read as follows:

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.* * * *

(1) *For release of merchandise*—(i) *Tariff-rate.* * * * This section does not prohibit an importer from obtaining release of the merchandise under the immediate delivery or entry procedure. * * *

It is proposed to amend Part 142, Customs Regulations (19 CFR Part 142), as set forth below:

PART 142—ENTRY PROCESS

1. The authority citation for Part 142 would continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1623, 1624.

2. It is proposed to revise the first sentence of § 142.21(e)(1) to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(e) *Quota-class merchandise*—(1) *Tariff-rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under an entry or a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 28, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-875 Filed 1-15-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Participation Requirements for Residential Treatment Centers (RTC)

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In FR Doc. 87-27153, appearing in the Federal Register on December 4, 1987 (52 FR 46096), the Office of the Secretary of Defense published a proposed amendment to Part 199 of this title clarifying participation requirements and establishing a new reimbursement system for payment of RTC care. Comments were requested to be submitted on or before January 4, 1988. Because of the wide interest this proposed amendment elicited, and to ensure that all interested parties are given the opportunity to make their views known, the Office of the Secretary of Defense is extending its public comment period to February 18, 1988.

DATE: Comments must be submitted on or before February 18, 1988.

FOR FURTHER INFORMATION CONTACT: David E. Bennet, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1988.

[FR Doc. 88-823 Filed 1-15-88; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty: Increase in Maximum Allowable Amount the VA will Reimburse a Loan Holder for Legal Services Incurred in Terminating a Loan

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Veterans Administration (VA) is proposing to amend its loan guaranty regulations (38 CFR Part 36) by increasing from $350 to $700 the maximum allowable amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in terminating a VA guaranteed home loan. The amendment is proposed as a result of the increased cost of legal services. It will allow the VA to reimburse a loan holder for the cost of, or a greater portion of the cost of, retaining the experienced legal counsel needed for the timely termination of a VA guaranteed home loan.

DATES: Comments must be received on or before February 16, 1988. Comments will be available for public inspection until February 29, 1988. The VA proposes to make this regulatory amendment effective 30 days after the publication of the final regulatory amendment.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits (202) 233-3668.

SUPPLEMENTARY INFORMATION: Sections 36.4276(b) and 36.4313(b) of Title 38, Code of Federal Regulations, were last amended May 29, 1980, to establish $350 as the maximum amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred in terminating a VA guaranteed loan. Although the cost of trustee's fees and legal services has increased since 1980, most loan holders are reluctant to incur expenses which will not be reimbursed by the VA. As a result, in some areas holders are having increasing difficulty in retaining the experienced legal counsel necessary for timely completion of foreclosure under the current maximum allowable amount. Increasing the maximum amount to $700 will reduce delays in foreclosure which are often due to assignment to inexperienced counsel in areas where foreclosure is a lengthy and expensive process. This will decrease accrued interest and advances on loans in foreclosure, and, in turn, reduce the amount of the VA's claim liability. Increasing the maximum amount to $700 will also bring the VA schedule for attorney fees into fairly close alignment with the current attorney fee schedule authorized by the Federal National Mortgage Association.

The VA has found that in 26 States the maximum amount of $350 has been authorized for reimbursement, while actual expenses are estimated to be higher. The VA has also found that there are fewer than five States in which normal legal costs exceed $700. Increasing the maximum amount to $700 will have no impact in areas where the normal legal costs remain less than $350, because each VA regional office may authorize reimbursement for legal costs which is less than the regulatory maximum.

The Administrator hereby certifies that this proposed regulatory amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Raising the maximum the VA can reimburse loan holders will enable holders to more easily retain experienced legal counsel to foreclose loans. However, it will not have a significant economic impact because only actual costs paid may be reimbursed, and holders do not ordinarily incur costs in excess of the reimbursable amount. Also, holders of most VA guaranteed loans are not small entities. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is therefore, exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Administrator has also determined that the proposed regulatory amendment is not a "major rule" within the meaning of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumer or individual industries; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community development, Manufactured homes, Veterans.

This amendment is proposed under the authority granted the Administrator by sections 210(c) and 1820(a) of Title 38, United States Code.

Approved: December 23, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 36, *Loan Guaranty*, is proposed to be amended as follows:

PART 36—[AMENDED]

§ 36.4276 [Amended]

1. In § 36.4276(b) remove the words "$350" wherever they appear and insert the words "$700" in their place.

§ 36.4313 [Amended]

2. In § 36.4313(b) remove the words "$350" wherever they appear and insert the words "$700" in their place.

[FR Doc. 88-819 Filed 1-15-88; 8:45 am]

BILLING CODE 8320-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Part 51-7

Public Availability of Agency Materials

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed rule.

SUMMARY: The Committee proposes to amend its regulations implementing the Freedom of Information Act (FOIA).

DATE: Comments must be received on or before March 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: It is proposed to amend 41 CFR Part 51 to revise Part 7 to conform with the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), the fee guidelines issued by the Office of Management and Budget (OMB), and the fee waiver criteria published by the Department of Justice.

To comply with the OMB guidelines, the Committee is proposing to amend 41 CFR Part 51-7 to provide for the collection of fees for the provision of document search, duplication, and review services; for the handling of requests from various categories of requesters; for the circumstances under which fees shall and shall not be charged; for the advance collection of fees; for the assessment of interest on requests for which fees have not been paid; and for the effect of the Debt Collection Act of 1982 on FOIA requests. The fees set forth in the proposed rule are based upon the guidelines prescribed by the Office of Management and Budget (OMB) published at 52 FR 10012 (March 27, 1987). It is also proposed to include procedures pertaining to the preservation of agency records under the FOIA.

This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). Nor will these regulations cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 606(b), do not apply.

List of Subjects in 41 CFR Part 51-7

Freedom of Information

It is proposed to revise 41 CFR Part 51-7 to read as follows:

51-7 PUBLIC AVAILABILITY OF AGENCY MATERIALS

Sec.

51-7.1 Purpose.
51-7.2 Scope.
51-7.3 Definitions.
51-7.4 Availability of materials.
51-7.5 Requests for records.
51-7.6 Aggregating requests.
51-7.7 Committee response to requests for records.
51-7.8 Business information.
51-7.9 Records of other agencies.
51-7.10 Appeals.
51-7.11 Extensions of time.
51-7.12 Fee schedule.
51-7.13 Fees charged by category of requester.
51-7.14 Fee waivers and reductions.
51-7.15 Collection of fees and charges.
51-7.16 Preservation of records.

Authority: 5 U.S.C. 552

§ 51-7.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of nonexempt material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe uniform fees to be charged by the Committee to recover search, review, and duplication costs.

§ 51-7.2 Scope.

(a) These regulations shall apply to all final determinations made by the Committee including all objections; and to any other Committee records reasonably described and requested by a person in accordance with these regulations—except to the extent that such material is exempt in accordance with paragraph (b) of this section.

(b) Requests for inspection and copies shall not be granted with respect to materials that:

(1)(i) Are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(ii) Are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Committee;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Committee;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably by expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Whenever a request is made which involves access to records described in (b)(7)(i) of this section and—

(1) The investigation or proceeding involves a possible violation of criminal law, and—

(2) There is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interefere with enforcenment proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(d) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(e) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in (b)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

§ 51-7.3 Definitions.

As used in these regulations:

(a) Term "Act" means the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) The term "Committee" means the Committee for Purchase form the Blind and Other Severely Handicapped.

(c) The term "Committee" means the Committee for Purchase from the Blind and Other Severely Handicapped.

(c) The term "Chairman" means the Chairman of the Committee for Purchase from the Blind and Other Severely Handicapped.

(d) The term "Executive Director" means the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped.

(e) The term "exempt materials" means those materials described in § 51-7.2(b).

(f) The term "non-exempt materials" refers to all materials described in § 51-7.2(a), except "exempt materials" included in § 51-7.2(b).

(g) The term "duplication" refers to the process of making a copy of a document necessary to respond to a request. Such copies can take the form of paper copy, audio-visual materials, or machine readable materials (e.g. magnetic tape or disk), among others.

(h) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(i) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 51-7.4 Availability of materials.

All non-exempt materials shall be available for inspection during normal business hours at the Committee's offices, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. Space shall be made available at that location for the use of any person who is granted permission to inspect such materials. An individual who intends to visit the Committee offices in person to inspect non-exempt material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification that certain records are available for inspection in the Committee offices, an individual who intends to inspect those records shall make an appointment with the Executive Director at least 24 hours in advance.

§ 51-7.5 Requests for records.

(a) Requests to inspect, and obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. All requests for records shall be deemed to have been made pursuant to the Freedom of Information Act (FOIA), regardless of whether the Act is specifically mentioned. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, and other identification which will help to identify the records.

(c) If the Committee determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend to the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances shall be the date of receipt of the amended or clarified request.

(d) Nothing in this part shall be interpreted to preclude the Committee from honoring an oral request for information, but, if the requester is dissatisfied with the response, the Committee official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request shall be the date of receipt of the written request. For recordkeeping purposes, the Committee, in responding to an oral request for information, may ask the requester to confirm the oral request in writing.

§ 51-7.6 Aggregating requests.

When the Committee reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Committee may aggregate any such requests and charge accordingly. Elements to be considered in determining whether a belief would be reasonable include the time period in which the requests have occurred and the subject matter involved.

§ 51-7.7 Committee response to request for records.

(a) An initial determination whether, and to what extent, to grant each request for records or a fee waiver shall be made by the Executive Director within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of that request. The person making the request shall be notified as soon as the determination is made.

(b) In making an initial determination whether and to what extent requested information will be released, the Committee shall first consider whether the material requested is of a type described in § 51-7.2(a); if it is, the request shall be granted unless the material is exempted by § 51-7.2(b). If the material requested is not a type described in § 51-7.2(a), or is the subject of one or more exemptions the request may be denied.

(c) If a determination is made to grant a request, the relevant material shall be furnished within a reasonable time following the determination to grant the request, and after payment of the fee specified in § 51-7.12 when required, except that copies of less than 10 pages of material requested in person ordinarily will be furnished immediately following the determination to grant the request.

(d) Where portions of the requested material are exempt under § 51-7.2(b), and are reasonably segregable from the remainder of the material, those portions shall be excised from the materials disclosed.

(e) If a determination is made to deny a request, or a portion thereof, the notification shall include a statement of the reasons for such action, shall set forth the name and position of the person responsible for the denial, and shall advise the requester of the right, and the procedures required under § 51-7.10 to appeal the denial to the Chairman.

(f) The Committee will require prepayment of fees for search, review, and reproduction which are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. The Committee will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. The Committee will not start processing a request until payment is received.

(g) Whenever duplication fees or search fees for unsuccessful searches are anticipated to exceed $25, but not more than $250 and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, the Committee will notify the requester of the amount of the anticipated fee. Similarly, where an extensive and therefore costly successful search is anticipated, the Committee will notify requesters of the anticipated fees.

(h) Photocopies and directives furnished to the public are restricted to one copy of each page.

§ 51-7.8 Business information.

(a) When, in responding to an FOIA request, the Committee cannot readily determine whether the information obtained from a person is privileged or confidential business information, it shall:

(1) Obtain and consider the views of the submitter of the information and provide the submitter at least 10 working days to object to any decision to disclose the information and to provide reasons for the objection.

(2) Provide business information submitters with notice of any determination to disclose such records, to which the submitter has objected to disclosure, 10 working days prior to the disclosure date, and the reasons for which its disclosure objection is not sustained.

(3) Notify business information submitters promptly of all instances in which FOIA requesters are bringing suit seeking to compel disclosure of submitted information.

(b) The submitter, in responding to a request under (a)(1), must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain how disclosure would cause such harm.

(c) When a central nonprofit agency has submitted business information on behalf of a workshop, the workshop shall be considered to be the "business information submitter" for the purposes of this section.

§ 51-7.9 Records of other agencies.

(a) When the Committee receives a request to make available current records that are the primary responsibility of another agency, the Committee will refer the request to the agency concerned for appropriate action.

(b) The Committee will notify the requestor of the referral in paragraph (a) of this section and include the name and address of the office to which the request was referred.

§ 51-7.10 Appeals.

(a) An appeal to the Chairman of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests shall state the specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests should be addressed to the Chairman at the Committee offices.

(b) The Chairman shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Chairman, any material with which the reversal is concerned shall be made available in accordance with § 51-7.7(b)

(d) If the denial is upheld, in whole or in part, the Chairman shall include in

the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the name and position of the person responsible for the denial.

§ 51–7.11 Extensions of time.

(a) Whenever unusual circumstances exist, such as those set forth in paragraph (b) of this section, the times within which determinations must be made by the Executive Director on requests for access (10 working days), and by the Chairman on requests for reconsideration (20 working days), may be extended by written notice to the requester. The notice shall set forth reasons for such extension, and the date on which a determination is expected to be made. Extensions of time shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" may mean:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request; or

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

(3) The need to obtain and consider the views of a business information submitter under § 51–7.8.

§ 51–7.12 Fee schedule.

(a) This schedule sets forth fees to be charged for processing requests for records under the FOIA. No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting records under FOIA.

(b) Subject to the criteria set forth in § 51–7.13, fees may be assessed under FOIA on all requests involving document search, duplication, and review. Fees may also be charged in situations involving special services to requests, such as in certifying that records requested are true copies, or in sending records by special methods such as express mail, etc.

(c) Instances in which fees may not be charged.

(1) No charge shall be made for the first 100 pages of duplicated information (8½" x 14" or smaller-size paper), or the first two hours of manual search time, or the first two minutes of computer search time, except on requests seeking documents for a commercial use, as specified in § 51–7.13.

(2) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself.

(3) In addition, fees shall not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records.

(4) Documents shall also be furnished without charge when members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed).

(d) Fees for records and related services.

(1) The fee for photocopies of pages 8½"" x 14"" or smaller shall be $0.20 for each page.

(2) The fee for photocopies larger than 8½"" x 14"" shall be $0.50 per linear foot of the longest side of the copy.

(3) The fee for other forms of duplicated information, such as microfilm, audio-visual materials, or machine-readable documentation (i.e. magnetic tape or disk) shall be the actual direct cost of producing the document(s).

(4) Manual searches shall be charged at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay.

(e) Computer searches and services shall be charged at the rate of $22.00 per minute. The $22.00-per-minute rate includes the cost of operating the central processing unit (CPU), and the computer operator's salary. When the services of a computer programmer or a computer program analyst are required in connection with an FOIA request, the fee for those services shall be $16.00 and $20.00 per hour, respectively.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

§ 51–7.13 Fees charged by category of requester.

(a) Under FOIA, as amended, there are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category.

(b) Commercial use requesters—For commercial use requesters, the Committee shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents referenced in § 51–7.12(c)(1). The Committee may charge for the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) In determining whether a requester properly belongs in this category the Committee must determine whether the requester will put the documents to a commercial use. Where the Committee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Committee may seek additional clarification from the requester.

(c) Educational and non-commercial scientific institution requesters—Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commerical" basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search for review services. Requests in this category must not be made for a commercial use.

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast to the public.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers or periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though not actually employed by it.

(e) All other requesters-Fees for requesters who do not fit into any of the above categories shall be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 51–7.14 Fee waivers and reductions.

The Committee will waive or reduce fees on requests for information if disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester.

(a) In determining when fees shall be waived or reduced, the Committee will consider the following six factors:

(1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the government";

(2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding";

(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activites;

(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) The Committee may waiver or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested in the Committee determines that disclosure will primarily benefit the general public.

(c) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is $20.00 or less.

§ 51–7.15 Collection of fees and charges.

(a) Except when prepayment is required, payments shall be collected to the fullest extent possible at the time the requested materials are furnished. Payments shall be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States.

(c) In instances where a requester has previously failed to pay a fee, the Committee may require the requester to pay the full amount owed, plus any applicable interest as provided below, as well as the full estimated fee associated with any new request before it begins to process the new or subsequent request.

(d) On requests that result in fees being assessed, interest will be charged on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C., and will accrue from the date of the billing.

(e) In attempting to collect fees levied under FOIA, the Committee will abide by the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

§ 51–7.16 Preservation of records.

The Committee shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and to the General Records Schedule. Records shall not be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

C.W. Fletcher,

Executive Director.

[FR Doc. 88–778 Filed 1–15–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BERC–424–P]

Medicare Program; Medicare Coverage of Immunosuppressive Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 9335(c) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, which provides Medicare coverage for immunosuppressive drugs furnished to an individual who receives an organ transplant for which Medicare payment is made, for a period of one year after the transplant procedure.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 21, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–424–P, P.O. Box 26676, Baltimore, Maryland 21207.

If your prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–424–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday

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through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: James Hannon (301) 597–1734.

SUPPLEMENTARY INFORMATION:

I. Background

Before enactment of section 9335(c) of Pub. L. 99–509, Medicare coverage of immunosuppressive drugs had been provided only when furnished in an institutional setting or as "incident to" a physician's professional service. While sections 1861(s)(2) (A) and (B) of the Social Security Act (the Act) provided Medicare Part B coverage for "services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered * * *", iommunosuppressive drugs have not been covered by Medicare because they may be self-administered. Currently, regulations at 42 CFR 410.10 (b) and (c) provide that payment may be made for drugs and biologicals that can not be self-administered when furnished "incident to" a physician's professional service, and regulations at 42 CFR 410.29 exclude from Medicare Part B coverage any drug or biological that can be self-administered, except when furnished by a hospital as part of an outpatient diagnostic service.

The Task Force on Organ Transplantation, established by the National Organ Transplant Act (Pub. L. 98–507) recommended unequivocally that Federal funds be used to provide these drugs (Report to the Secretary and the Congress on Immunosuppressive Therapies, October 1985). It has been established that the use of cyclosporine has lessened the duration of hospitalization as well as the accumulated charges in the first six months after the transplant. Cyclosporine also controls or minimizes graft failure and reduces rates of complications.

Accordingly, in section 9335(c) of Pub. L. 99–509, Congress amended section 1861(s)(2) of the Act to provide Medicare coverage of immunosuppressive drugs, furnished to an individual who receives an organ transplant for which Medicare payment is made, within one year after the date of the transplant procedure. Coverage of those drugs is available under Medicare Part B for immunosuppressive drugs furnished on or after January 1, 1987. To implement the new amendment HCFA issued manual instructions to its Medicare contractors in April 1987.

II. Proposed Policy for Coverage of Immunosuppressive Drugs

We are proposing to interpret the statutory phrase, "within one year after the date of the transplant procedure," to mean 365 days from the day on which an inpatient is discharged from the hospital. We believe the term "transplant procedure" can be interpreted to mean something broader than just the operation itself, and for the reasons set forth below, we propose to consider the procedure to end at the date of discharge. If the date of operation is used instead of the date of discharge, the immunosuppressive drug benefit would vary from one Medicare beneficiary to another, depending upon the patient's post-operative recovery period while an inpatient. For example, if one patient's hospital stay was 30 days longer than another patients, the patient would receive less coverage under Part B. Further, the Conference Report accompanying Pub. L. 99–509 (H.R. Rept. 99–1012, page 337) indicates that Congress was aware that immunosuppressive drugs are already covered while a beneficiary is in the hospital. Nonetheless, Congress added this coverage by amending section 1861(s)(2) of the Act, which is a listing of "medical and other health services" covered under Part B of Medicare. By amending this section, Congress made immunosuppressive drugs a specific Part B benefit which extends explicitly for one year. Since inpatient immunosuppressive drugs are covered already under Part A, and since the date of discharge is later than the date of surgery, to use the actual transplant date would require us to either shorten the coverage period under Part B to less than one year or pay for inpatient hospital services with Part B funds. The former is inconsistent with Congressional intent. If we were to provide Part B benefits beginning at the time of the operation, we would have to adjust the DRG weights to exclude the costs of post-operative immunosuppressive drugs. This would be cumbersone. Further, it is administratively more difficult for the carrier to determine the date of the operation rather than the date of discharge.

We are proposing to provide coverage for those immunosuppressive drugs that have been specifically labeled as such and approved for marketing by the Food and Drug Administration (FDA). We would also provide coverage for other drugs that are used in conjunction with immunosuppressive drugs as part of a therapeutic regime reflected in FDA-approved labeling for immunosuppressive drugs. By December 1986, the FDA had identified and approved for marketing only four specifically labeled immunosuppressive drugs to prevent rejection of a transplanted organ or tissue. They are:

- Sandimmune (cyclosporine), Sandoz Pharmaceutical;
- Imuran (azathioprine), Burroughs Wellcome;
- Atgam (antithymocyte globulin), Upjohn; and
- Orthoclone OKT3 (Muromonab-CD3), Ortho Pharmaceutical.

In addition, other drugs which are used in conjunction with immunosuppressives but not themselves labeled as immunosuppressive drugs include, for example, adrenal corticosteroids (prednisone) administered to patients receiving cyclosporine in accordance with FDA labeling of cyclosporine. (It should be noted that where any of the listed immunosuppressive drugs have to be administered by a physician, or as an incident to a physician's service, they could also have been covered and paid for by Medicare Part B prior to the enactment of Pub. L. 99–509 if it was furnished "incident to" the physician's professional service (see section 1861(s)(2) (A) and (B) of the Social Security Act)).

Payment is made on a reasonable cost basis if the beneficiary is the outpatient of a participating hospital. Payment will be made on a reasonable charge basis where the drugs are furnished by Part B suppliers or physicians.

In December 1986, manufacturers and the Red Book indicated that prices for the most commonly prescibed immunosuppressive drugs are as follows, although substantial discounts were available. Dosage is dependent on a number of medical factors as determined by the physician.

Sandimmune (cyclosporine), Sandoz Pharmaceutical:	
Amp, I.V. 250 mg., 5 ml., 10s ea. UD	$144.60
Sol. Oral. 100 mg/ml., 50 ml., ea.	161.70
Imuran (azathioprine), Burroughs Wellcome:	
Vial, 100 mg., 20 ml. ea.	45.54
Tab. 50 mg., 100s ea.	59.16
Atgam. (antithymocyte/globulin), Upjohn Amp. 50 mg./ml., 5 ml. ea.	87.50
Orthoclone OKT3 (muromonab—CD3) Ortho Amp. 5 mg./5 ml., 5 ml. ea.	300.00
Prednisone, Multiple Manufacturers Tab. 5 mg., 100s ea.	[1] 2.30

[1] This is a multiple source drug. We have given a mid-range price

Generally beneficiaries will obtain Immunosuppressive drugs from a hospital or community pharmacy or from their physician, for example, a transplant surgeon. However, some patients may obtain these drugs from mail-order pharmacies; they offer reduced prices which minimizes beneficiaries' coinsurance liability. In determining the reasonable charge for immunosuppressive drugs, the carriers will assure that their payments do not result in grossly excessive or grossly deficient charges taking these factors into account.

III. Proposed Revisions to Regulations Text

We propose to make the following revisions to the regulations text:

- We would revise § 410.10 to include immunosuppressive drugs in the term "medical and other health services".
- We would revise § 410.29 to exclude immunosuppressive drugs that would be covered as provided in § 410.65 from the term "any drug or biological that can be self-administrered".
- We would add a new 42 CFR 410.65 to provide Medicare coverage of drugs used in immunosuppressive therapy that are furnished to an individual who receives an organ transplant for which Medicare payment is made, for a period of up to one year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-base enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not small entities, but we treat all pharmacists as small entities.

We have determined that the criteria for a "major rule" are not met and that a regulatory impact analysis is not required. Also, we have determined and the Secretary certifies that this proposed rule would not have significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

V. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

VI. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

List of Subjects in 42 CFR Part 410

Medical and other health services, Medicare.

We are proposing to amend 42 CFR Part 410 as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

Subpart B is amended as follows:

1. The authority citation for Subpart B continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x, (r), (s) and (cc), 1395hh and 1395rr).

2. The table of contents is amended by adding a new § 410.65 to read as follows:

* * * * *

Sec.

§ 410.65 Immunosuppressive drugs.

* * * * *

2. In § 410.10, the introductory language is republished and a new paragraph (r) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(r) Immunosuppressive drugs.

3. In § 410.29, the introductory language is republished, and paragraph (a) is revised to read as follows:

§ 410.29 Limitations on drugs and biologicals.

Medicare Part B does not pay for the following:

(a) Except as provided in § 410.28(a) of this part, any drug or biological that can be self-administered, whether furnished by a physician, a provider of services, or other than a provider of services, except hemophilia clotting factors as provided in § 410.63(b), and immunosuppressive drugs as provided in § 410.65.

* * * * *

4. A new § 410.65 is added to read as follows:

§ 410.65 Immunosuppressive drugs.

Effective January 1, 1987, payment may be made for immunosuppressive drugs that have been approved for marketing by the Food and Drug Administration and either specifically labeled for the prevention or treatment of rejection of a transplanted organ or tissue, or identified in FDA-approved labeling for use in conjunction with immunosuppressive drug therapy. Coverage is available for immunosuppressive drugs furnished to an individual who receives an organ transplant for which Medicare payment is made, for a period of up to one year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed.

(Catalog of Federal Domestic Assistance Program No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: July 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 22, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–863 Filed 1–15–88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-591, RM-5845; RM-5935; RM-5992]

Radio Broadcasting Services; Scottsboro, AL, Trenton, GA, and Signal Mountain, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three mutually exclusive petitions for rule making in the states of Alabama, Georgia and Tennessee, as follows: (1) *Scottsboro, AL*—seeks to substitute Channel 251C2 for Channel 252A (RM–5845); (2) *Trenton, GA*—seeks the allotment of Channel 251A as a second local FM service (RM–5935); (3) *Signal Mountain, TN*—seeks the allotment of Channel 251A as a first local commercial FM service.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Ronald A. Livengood, President, Kea Radio, Inc., P.O. Box 459, Scottsboro, AL 35768

Robert S. Stone, Esq., McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901–0550 (Counsel for RA–AD of Trenton, Inc.)

James E. Price, Sterling Communications, Inc., P.O. Box 80484, Chattanooga, TN 37411–7484 (Consultant to SunCom, Inc.)

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–591, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Three mutually-exclusive petitions were filed by (1) Kea Radio, Inc., licensee of Station WKEA(FM) (Channel 252A), Scottsboro, AL, requesting the substitution of Channel 251C2 for Channel 252A and modification of its license to specify operation on the higher powered channel, to provide that community with its first wide coverage area FM service. This proposal can be accommodated at a restricted transmitter site 24.5 kilometers southeast of the community. (2) RA–AD of Trenton, Inc. seeks the allotment of Channel 251A to Trenton, GA, as that community's second local FM service. Channel 251A can be allotted to Trenton with a site restriction 9.8 kilometers northeast of the community. (3) SunCom, Inc. seeks the allotment of Channel 251A to Signal Mountain, TN, as that community's first local FM service. Channel 251A can be allotted to Signal Mountain with a site restriction 3.6 kilometers southwest.

This *Notice* seeks comments and showings to aid the Commission in the comparative evaluation of the conflicting proposals to determine which community will receive the allotment of Channel 251. The basic issue to be resolved is whether preference should be accorded a first local service vs. an increase in existing service, or an additional service. In accordance with the Commission's allotment priorities we are initially favoring a first local service at Signal Mountain, TN. However, since this *Notice* invites comments from all proponents and requests further showings to demonstrate a preference under our allocation priorities, we are provisionally proposing allotments at each community pending an evaluation of the comments and showings received.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–889 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–586, RM–6005]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KWHK Broadcasting Co., Inc., proposing the allotment of FM Channel 248A to Hutchinson, Kansas as that community's third FM broadcast service.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: KWHK Broadcasting Co., Inc., 525 North Main, P.O. Box 1967, Hutchinson, Kansas 67504–1967 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–586, adopted December 8, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–890 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–592, RM–6022]

Radio Broadcasting Services; Iron River and Kingsford, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northland Advertising, Inc., proposing the substitution of FM Chennel 256C2 for Channel 257A at Iron River, Michigan, and modification of its license for Station WIKB–FM to specify operation of Channel 256C2. To accommodate Channel 256C2 at Iron River, an additional channel substitution would be necessary. Channel 251A must be substituted for Channel 256A at Kingsford, Michigan. A construction permit for Channel 255A is held by Edward and Alice Slater. Canadian concurrence must be obtained for the allotment of Channel 256C2 at Iron River and Channel 251A at Kingsford.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John W. Hough, John W. Hough & Associates, P.C., 208 S. LaSalle Street, Suite 1876, Chicago, Illinois 60604 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notices of Proposed Rule Making, MM Docket No. 87–592, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–891 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–588, RM–6112]

Radio Broadcasting Services; Endwell, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Harold Kozlowski proposing the allocation of Channel 298A to Endwell, New York, as the community's first local FM service. Channel 298A can be allocated to Endwell in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) north to avoid a short-spacing to unoccupied and unapplied for Channel 299A at Tunkhannock, Pennsylvania. Canadian concurrence is required since Endwell is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harold Kozlowski, 13511 Leith Court, Chantilly, Virginia 22021 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–590, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–892 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–10–M

47 CFR Part 73

[MM Docket No. 87–587, RM–6111]

Radio Broadcasting Services; Byng, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Don Carmichael proposing the allocation of Channel 261C2 to Byng, Oklahoma, as the community's first local FM service. Channel 261C2 can be allocated to Byng in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to avoid a short-spacing to Station KTCS–FM, Fort Smith, Arkansas.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or counsultant, as follows: Don Carmichaek, P.O. Box 1258, Ada, Oklahoma 74820 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–587, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037..

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–893 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–589, RM–6108]

Radio Broadcasting Services; Creswell, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Visionary Radio Euphonics of Oregon, Inc. proposing the substitution of Channel 237C2 for Channel 237A at Creswell, Oregon, and the modification of its license for Station KZAM to specify the higher powered channel. Channel 237C2 can be allocated to Creswell in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.3 miles) south to avoid a short-spacing to Station KXL–FM, Portland, Oregon. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the higher powered channel at Creswell.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter A. Casciato, 750 Battery Street, Suite 340, San Francisco, California 94111 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–589, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–844 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–588, RM–6107]

Radio Broadcasting Services; University Park, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by State College Communications Corp. proposing the substitution of Channel 246A for Channel 244A at University Park, Pennsylvania, and the modification of its license for Station WQWK(FM) to specify the new channel. Channel 246A can be allocated to University Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) west which will accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment is required since University Park is located within 320 kilometers (200 miles) of the U.S.-Canadian border. Since this proposal does not contemplate an increase in facilities, the procedures outlined in § 1.420(g) of the Commission's Rules do not apply.

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Louis Schwartz, Esq., Lawrence M. Miller, Esq., Schwartz, Woods & Miller, Suite 206, The Palladium, 1325 Eighteenth Street NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–588, adopted December 14, 1987, and released January 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, with involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–895 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program for Fiscal Year 1988; Solicitation of Graduate Fellowships Grants Proposals From Colleges and Universities

Purpose: Notice is hereby given that under the authority contained in section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152 (a)(3)(B)), the Cooperative State Research Service (CSRS) through its Higher Education Programs (HEP) will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

Available funds: The total amount available for this purpose in Fiscal Year 1988 is approximately $2,800,000.

Targeted areas: Food and agricultural sciences areas appropriate for fellowship applications are those in which developing shortages of expertise have been determined and targeted by CSRS-HEP for national needs doctoral fellowship support. The targeted national needs areas for FY 1988 are: Water Science; Biotechnology; Food, Forest Products of Agribusiness Marketing; Food Science/Human Nutrition; and Bioprocessing or Food/Agricultural Engineering. Approximately twenty percent of the available funds will be allocated to each national need area.

Proposal limitations: For the Fiscal Year 1988 program, a proposal may request funding in only one (1) national need area. A proposal may request a minimum of two (2) fellowships and a maximum of four (4) fellowships in the national need areas for which funding is requested. While no limitation is placed on the number of proposals an institution may submit, not more than two (2) proposals may be submitted by the same college or equivalent administrative unit within an institution. Additionally, total funds awarded to an institution under the program in Fiscal Year 1988 shall not exceed $288,000.

Financial and other limitations: Each institution funded will receive $48,000 for each doctoral fellowship awarded. However, total program funds available are not evenly divisible by $48,000. Therefore, one fellowship will be supported on a partial basis with a lesser amount of funds. Except in the case of the partially funded fellowship, fellowship monies must be used to: (1) Support the same doctoral fellow for three (3) years at $15,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the three year duration of the fellowship. While proposals must document institution willingness to recruit and train at least 2–4 fellows in a National Need Area, the Department may, based on reviewers comments, fund fewer fellows than requested in a proposal.

Application information: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. To obtain a copy of the Application Kit, write or call the Grants Administrative Management office (address and telephone number below): USDA-CSRS, Office of Grants and Programs Systems, Grants Administrative Management, Room 005 Justin Smith Morrill Building, 15th and Independence Avenue SW., Washington, DC 20251–2200. Telephone: (202) 475–5049

Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalog must be received by the Grants Administrative Management office at the preceding address no later than the close of business April 5, 1988. If you do not receive a written acknowledgement by April 20, 1988 please call (202) 475–5049 to verify that your proposal was received. The grants will be awarded and administered in accordance with the regulations set forth in Title 7, Chapter XXXIV, Part 3402 published in the **Federal Register** February 19, 1987, 52 FR 4712. Additional regulations regarding this assistance program may be found in the Department of Agriculture Uniform Federal Assistance Regulations (7 CFR Part 3015).

Supplementary information: This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0024.

John Patrick Jordan,
Administrator, Cooperative State Research Service.

[FR Doc. 88–854 Filed 1–15–88; 8:45 am]
BILLING CODE 3410-22-M

Forest Service

Newberry Caldera Known Geothermal Resource Area; Intention To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to permit geothermal leasing in the Newberry Caldera Known Geothermal Resource Area (KGRA) on the Fort Rock Ranger District, Deschutes National Forest, Deschutes County, Oregon. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by March 1, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Norman Arseneault, Forest Supervisor, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Sally Collins, Minerals Staff Officer, Deschutes National Forest, and George Chesley, District Ranger, Fort Rock Ranger District, Deschutes National Forest, 1645 Highway 20 East, Bend, Oregon 97701.

SUPPLEMENTARY INFORMATION: The EIS will be prepared in accordance with existing approved land and resource management plans. The document will discuss whether to lease in the KGRA and what restrictions may apply to the leased area. The KGRA encompasses about 31,360 acres.

In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this site. A range of alternatives will be developed and examined to deal with the significant issues developed during the scoping process. One alternative will include the no action alternative. Other alternatives will consider different intensites of leasing and leasing with or without special management requirements including no surface occupancy stipulations.

James F. Torrence, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, state and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Bureau of Land Management, Department of the Interior, will be invited to participate as a cooperating agency. They are the agency authorized to permit leasing. Their expertise will be used in this process.

Public meetings will be held in central Oregon. Notice of meeting dates and locations will be published in local newspapers and posted in public buildings.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1988. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Newberry Caldera KGRA participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by March 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: January 11, 1988.

Richard A. Ferraro,
Acting Regional Forester

[FR Doc. 88–898 Filed 1–15–88; 8:45 am]
BILLING CODE 3410-11-M

Control of Unwanted Vegetation, Animals, Insects and Diseases in the Region's Nurseries and Tree Improvement Center; Intention To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the Nursery Operation and Management at the Bend Nursery, Bend, Oregon; J. Herbert Stone Nursery, Medford, Oregon; Dorena Tree Improvement Center, Cottage Grove, Oregon; and Wind River Nursery, Carson, Washington. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by March 11, 1988.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to George Matejko, Timber Management, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Questions bout the proposed action and EIS should be directed to George Matejko, Timber Management, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208, phone 503–221–3066.

SUPPLEMENTARY INFORMATION: In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. One of those is no action. Other alternatives will consider a range of methods for the control of unwanted vegetation, animals, insects and diseases in the Region's nurseries and tree improvement center. The methods under consideration include biological, chemical, manual, and mechanical techniques. The activities that require controls include the cover crop, seed protection, nursery bed preparation, and seedling protection from germination to lifting and storage of prepared seedlings.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper interdisciplinary team make up.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the EIS and alternatives.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

James F. Torrence, Regional Forester, Pacific Northwest Region, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 1988. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management project participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed [see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by January 1989. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations, and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: January 11, 1988.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 88-899 Filed 1-15-88; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program, Participation 1986 Panel Wave 8; 1987, Panel Wave 5.

Form Number: Agency—SIPP–6800, SIPP–7500, SIPP–88/7503, SIPP–88/7505(L); OMB—NA.

Type of Request: New collection.

Burden: 47,040 respondents; 23,520 reporting hours.

Needs and Uses: The collected data will provide the executive and legislative branches with improved statistics on income distribution and data not previously available in eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Agency: Bureau of the Census.

Title: Survey of Income and Program, Participation 1988 Panel Wave 2.

Form Number: Agency—SIPP–8200, SIPP–8502L; OMB—0607–0595.

Type of Request: Revision of a currently approved collection.

Burden: 24,300 respondents; 36,540 reporting hours.

Needs and Uses: The collected data will provide the executive and legislative branches with improved statistics on income distribution and data not previously available in eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

January 7, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-932 Filed 1-15-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-427-096]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the U.S., Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 33856) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The petitioner, PQ Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate ($Na_2Si_0_3$) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under TSUSA number 421.3400 and HS item numbers 2839.11.00 and 2839.19.00.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	Jan. 12, 1986.	[1] 60

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for my § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties of 60 percent for Rhone Poulenc. For any future entries of this merchandise a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1986 and who is unrelated to the reviewed firm, a cash deposit of 60 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: December 8, 1987.

[FR Doc. 88-934 Filed 1-15-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-701]

Suspension of Antidumping Duty Investigation; Potassium Chloride From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has decided to suspend the antidumping duty investigation involving potassium chloride from Canada. The basis for the suspension is an agreement by the Canadian producers/exporters which account for substantially all of the known imports of potassium chloride from Canada to revise their prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or John Brinkmann, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0161 or 377–3965.

SUPPLEMENTARY INFORMATION:

Case History

Since the last **Federal Register** publication pertaining to this case (the notice of postponement of the final determination (52 FR 33857, September 8, 1987)), the following events have occurred. We conducted verification in Canada and the United States between September 18 and October 26, 1987. A hearing, requested by the petitioners and respondents, was held on November 30, 1987. Pre-hearing and post-hearing briefs were submitted by parties to the proceeding. On December 9, 1987, we initialed a proposed suspension agreement with respect to potassium chloride from Canada. Comments on the proposed suspension agreement were received from Olin Corporation on December 15, 1987, and January 4, 1988.

Scope of Investigation

The product covered by this investigation is potassium chloride, otherwide known as muriate of potash. The product is currently classified in the *Tariff Schedules of the United States* (TSUS) under item number 480.50 and Harmonized System (HS) item number 3104.2000. It is understood that the suspension agreement does not include imports of potassium chloride from Canada containing 0.5 percent or less of sodium chloride (300 ppm).

Interested Party Comment

The Olin Corporation asks that the Department exclude from the scope of the investigation imports of potassium chloride from Canada containing 0.5 percent or less of sodium chloride (300 ppm) ("low-sodium potash") and submits that such an exclusion would serve the public interest. It contends that low-sodium potash may properly be considered a separate grade of potash, that it is chemically different from the basic potash product imported for use in agricultural and industrial applications, and that it is used only in the production of potassium hydroxide. Olin further asserts that low-sodium potash sells at a significant price premium to agricultural and industrial grade products, and its production requires additional and costly processes, thereby making the possibility of evading the suspension agreement unlikely. Finally, Olin states that the domestic industry has never demonstrated an ability to meet Olin's requirements for low-sodium potash.

We have received no written comments from petitioners on this issue.

DOC Position

The Department has determined, based on the information it has received, that low-sodium potash be excluded from the scope of the investigation for purposes of this suspension agreement. Should this investigation be continued or resumed, the Department will consider additional information on this issue.

Suspension of the Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(c) of the Tariff Act of 1930, as amended (the Act), we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. We have further determined that the suspension agreement will: (1) Eliminate completely the injurious effects of exports to the United States of the subject merchandise, and (2) will prevent the suppression or undercutting of price levels of domestic potassium chloride by imports of that merchandise from Canada.

The suspension agreement provides that for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair value entries of the exporter examined during the course of the investigation. We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 734(d)(1) of the Act. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the suspension agreement, signed January 8, 1988, are set forth in Appendix I to this notice.

Pursuant to section 734(f)(2)(B) of the Act, the suspension of liquidation ordered in the preliminary affirmative determination in this case (52 FR 3215, August 28, 1987) shall continue in effect, subject to section 734(h)(3) of the Act.

If requested, the Department will conduct an administrative review of this suspension agreement as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if it receives such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 8, 1988.

Suspension Agreement Concerning Potassium Chloride From Canada

Pursuant to the provision of section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) (the "Act"), and section 353.42 of the Commerce Regulations (19 CFR 353.42), the Department of Commerce (the "Department") and the signatory producers/exporters of potassium chloride from Canada enter into this Suspension Agreement ("Agreement"). On the basis of this Agreement, the Department shall suspend its antidumping duty investigation, initiated on March 5, 1987 (52 FR 6836), concerning potassium chloride from Canada, subject to the terms and conditions set forth below.

I. Product Coverage

This Agreement applies to potassium chloride produced and exported, directly or indirectly, to the United States from Canada. Potassium chloride is currently classified under item number 480.50 of the *Tariff Schedules of the United States* (TSUS) and item number 3104.20.00 of the *Harmonized System*. It is understood that this Agreement does not include imports of potassium chloride from Canada containing 0.5 percent or less of sodium chloride (300 ppm).

II. Basis for the Agreement

In order to satisfy the requirements of section 734(c) of the Act, each signatory producer/exporter of potassium chloride from Canada, individually, agrees that the price it will charge for each entry of potassium chloride exported to the United States from Canada for consumption in the United States will be such that any amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted-average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries by such signatory producer/exporter that were examined during the Department's investigation.

III. Monitoring of the Agreement

A. General Monitoring Provisions

1. The Department will monitor entries of potassium chloride from Canada to ensure compliance with Section II of this Agreement.

2. Each signatory producer/exporter agrees to supply the Department with any information and any documentation which the Department may require to ensure that the signatory producer/exporter is in full compliance with the terms and conditions of this Agreement.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of potassium chloride from Canada are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of potassium chloride during the period this Agreement is in effect.

B. Specific Monitoring Provisions

1. Import Monitoring

a. The Department will review all data available to it, including official import data from the Bureau of the Census, on a monthly basis to determine whether there have been imports that are inconsistent with the provisions of Section II of this Agreement.

b. The Department will monitor the Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the signatory producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

2. Consultations

a. When the Department identifies, through price monitoring or otherwise, that sales may have been made at prices inconsistent with Section II of this Agreement, the Department will notify each signatory producer/exporter which it believes is responsible. The Department will consult with each such signatory producer/exporter for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with Section II of this Agreement.

b. During the consultation period, the Department will examine any information which it develops or which is submitted, including information requested by the Department under III(A)(2) above.

3. Review

If the Department is not satisfied at the conclusion of the consultation period that sales by such signatory producer/exporter are being made in compliance with this Agreement, the Department will conduct a review to determine whether this Agreement is being violated by such signatory producer/exporter.

IV. Violation of the Agreement

If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of sections 734 (c) or (d) of the Act, the Department will take such action as it determines is appropriate under section 734(i) of the Act and the Department's corresponding regulations.

V. Other Provisions

A. In entering into this Agreement, the signatory producers/exporters do not admit that any exports of potassium chloride from Canada have an injurious effect on potassium chloride producers in the United States.

B. A signatory producer/exporter may withdraw from this Agreement upon 15 days written notice to the Department.

C. Upon request, the Department will advise any signatory producer/exporter on the Department's methodology for calculating its United States price and foreign market value. Further, the Department reserves the right to modify its methodology in calculating United States price and foreign market value.

VI. Termination

Absent likelihood of injurious effect of exports of potassium chloride from Canada, the Department expects to terminate this suspended investigation and Agreement by January 1993.

VII. Effective Date

The effective date of this Suspension Agreement is the date of publication in the **Federal Register**.

Co-signed on this 7th day of January, 1988.

Harvey Applebaum,

For International Minerals and Chemical (Canada) Ltd.

Ann Ottoson King,

For Noranda, Inc. (Central Canada Potash Co.).

Donald Harrison,

For Potash Company of America, a Division of Rio Algom Limited.

Stephen L. Gibson,

For Potash Corporation of Saskatchewan.

Michael R. Calabrese,

For S & P Canada II (Kalium Chemicals).

Joel R. Junker,

For Cominco Ltd.

John C. Jost,

For Potash Company of Canada Limited, Agent for Denison-Potacan Potash Co.

Paul W. Fox,

For Saskterro Fertilizers Ltd.

I have determined that this Agreement meets the requirements of section 734 of the Act. In particular, I have determined that the provisions of Section II provide for the complete elimination of injurious effect of potassium chloride from Canada to the United States, and will prevent the suppression or undercutting of price levels of potassium chloride produced in the United States by such exports. Furthermore, I have determined that the provisions of Section III ensure that this Agreement can be monitored effectively pursuant to section 734(d) of the Act, and that this Agreement is in the public interest as required under section 734(d) of the Act.

U.S. Department of Commerce

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 8, 1988

[FR Doc. 88–835 Filed 1–15–88; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene separate public meetings at the Sheraton Brickell Point, 495 Brickell Avenue, Miami, FL, as follows:

Council: Will convene January 26, 1988, at 8:30 a.m., to discuss committee reports; review scientific information of the effectiveness of the 45-day cooperative closure of the shrimp fishery with Texas and specify rules for the 1988–89 season, and approve for public hearings the provisions of a draft amendment which would close Federal waters to the harvest of red drum. Meeting adjournment is at 5 p.m.

Committees: The Red Drum Management Committee will convene January 25, 1988, at 8 a.m., and adjourn at noon, followed by the the Shrimp Management Committee which will convene at 1 p.m., and adjourn at 5 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: January 13, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–916 Filed 1–15–88; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Plan Development Team will convene a public meeting, January 25, 1988, at 1 p.m., at the Pacific Council's office (address below), and continue through the remainder of the week, to complete drafting of the annual report to the Council entiled "Review of the 1987 Ocean Salmon Fisheries." A

public comment period is scheduled also for 3 p.m. on January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: January 11, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–917 Filed 1–15–88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Committee will convene a public meeting in conjunction with the Pacific Council's Technical Advisory Group to continue its work on developing limited access options, and to work on the development of a moratorium and permit system option for discussion by the Pacific Council.

The public meeting will convene February 3, 1988, at 10:30 a.m., and will continue through February 4, 1988, at the Red Lion Inn-Portland Center, Coos Bay Room, 310 SW. Lincoln Street, Portland, OR. If necessary, the public meeting will reconvene February 5, 1988, in Room 330 at the Public Council's office (address below).

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: January 13, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservaton and Management, National Marine Fisheries Service.

[FR Doc. 88–918 Filed 1–15–88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1988. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, January 25, 1988, Beginning 9:00 a.m.; Tuesday, January 26, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

Supplementary Information: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–847 Filed 1–15–88; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Educational Benefits Board of Actuaries; Renewal

ACTION: Renewal of the DoD Educational Benefits Board of Actuaries.

SUMMARY: Under the provisions of Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given that the Department of Defense Educational Benefits Board of Actuaries has been determined to be in the public interest and has been renewed.

The DoD Educational Benefits Board of Actuaries assists and advises the President and the Secretary of Defense on actuarial matters associated with the DoD Education Bendtis Fund. The Board reviews evaluations of the Fund conducted under the provisions of Title 10, United States Code, section 2006 (f); reports annually to the Secretary of Defense on the actuarial status of the fund; and reports periodically to the President and the Congress on the status of the fund, including recommendations on changes necessary to protect the public interest and maintain the fund on a sound basis.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 13, 1988.

[FR Doc. 88–925 Filed 1–15–88; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Renewal

ACTION: Renewal of the Special Operations Policy Advisory Group.

SUMMARY: Under the provisions of Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given that the Special Operations Policy Advisory Group (SOPAG) has been determined to be in the public interest and has been renewed.

The SOPAG provides the Secretary of Defense with timely advice on critical national policy issues focusing on special operations. These special operations are generally characterized as high risk activities that require oversight at the national level. The SOPAG constitutes a standing cadre of knowledgeable, high-ranking individuals capable of rendering expert advice to senior DOD leadership on sensitive issues in special operations.

January 13, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–926 Filed 1–15–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command; Policy Statement

AGENCY: Department of the Army, DOD.

ACTION: Policy statement.

SUMMARY: Item 1, Section A, Carrier Information, Department of Defense Standard Tender of Freight Services, MT Form 364–4, requires the carrier to provide a street address. Numerous carriers are providing post office box numbers in this item instead of an actual street address. Tenders will not be accepted with a post office box number in this section. A mailing address other than the actual street address may be indicated on page 2 of the tender in Section C, Carrier's Offer and Instructions.

EFFECTIVE DATE: This procedure is effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McCormick, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (202) 756–1565.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–927 Filed 1–15–88; 8:45am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement, European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 17 kilograms of irradiated research reactor fuel of U.S. origin from the DIDO reactor in the Federal Republic of Germany for reprocessing and storage at Department of Energy facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 12, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–955 Filed 1–15–88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community and Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SD(EU)–52, for the transfer from NUKEM GmbH, Hanau, the Federal Republic of Germany, to the Eidgenossiches Institut fur Reaktorforschung(EIR), Wurenlingen, Switzerland, of silicide fuel elements containing 90 kilograms of uranium, enriched to 19.95 percent in the isotope uranium-235, for fuel for the Saphir research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 12, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–956 Filed 1–15–88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87–73–NG]

CanStates Petroleum Marketing; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 17, 1987, of an application filed by CanStates Petroleum Marketing (CanStates) to import up to 100 MMcf per day and a maximum of 73 Bcf of Canadian natural gas for a term of two years beginning on the date of first delivery for sales to a wide range of markets in the United States, including pipelines, local distribution companies, electric utilities and commercial and industrial end-users. CanStates is a Michigan partnership between two Michigan corporations, Rankin Petroleum, Inc., and Polysar Hydrocarbons, Inc. CanStates will purchase Canadian natural gas supplied from CanStates Energy, its Canadian affiliate, as well as a variety of other producers, producer groups and associations, and pipeline companies located in Canada. CanStates intends to utilize existing facilities of U.S. pipelines. CanStates proposes to file quarterly reports with the ERA in the month following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas

Proposed Subsequent Arrangement; Nuclear Regulatory Commission

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" pursuant to general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale: Contract Number S–CA–405, for the sale of 0.001 grams of plutonium-244 for use as standard reference material to Atomic Energy of Canada Ltd., Chalk River, Ontario, Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 12, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–955 Filed 1–15–88; 8:45 am]

BILLING CODE 6450-01-M

Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8233

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

In the event the ERA approves this request, it may, consistent with past practice, and in order to maximize the importer's operating flexibility designate only a total volume of natural gas to be imported during the authorized term rather than impose daily or annual limits.

Public Comment Procedures.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties, written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CanStates' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 11, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–862 Filed 1–15–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Date and Time: February 10, 1988—9:00 a.m.–5:00 p.m.; February 11, 1988—9:00 a.m.–12:00 Noon.

Place: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585.

Contact: John E. Metzler, Executive Director, Energy Research Advisory Board, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–5444.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

February 10

9:00 a.m. Business Items
- —Approval of November Meeting Minutes
- —Schedule of ERAB Meetings for 1988
- —Summer Study

9:30 a.m. Report on High Performance Computing
10:30 a.m. Break
10:45 a.m. FY–88 Budget for the Department of Energy
11:30 a.m. New Studies
12:30 p.m. Lunch
1:15 p.m. Progress Report on ERAB Educational Panel
1:45 p.m. Review of ERAB Competitiveness Study
3:00 p.m. Break
3:15 p.m. Competitiveness Study: Continuation of Review
4:50 p.m. Public Comment (10 minute rule)
5:00 p.m. Adjourn

February 11, 1988

9:00 a.m. Current Trends in Scientific and Technical Manpower for the Future
9:45 a.m. Progress on the ERAB Research and Technology Utilization Panel
11:50 a.m. Public Comment (10 minute rule)
12:00 Noon Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact John Metzler at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC on January 12, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–861 Filed 1–15–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER88–170–000]

Arizona Public Service Co.; Notice of Filing

January 6, 1988.

Take notice that on December 30, 1987, Arizona Public Serivce Company (APS) tendered for filing proposed changes in the following FPC/FERC Rate Schedules:

FPC/FERC FERC No.	Agreement title
3	SRP–Power Coordination Agreement.
12	ED–3
21	ED–5
32	Tucson Elect. Power–Power Coord. Agmt.
68	ED–1
78	LADWP–Interruptible Transmission.
80	SCE–Firm Transmission.
82	Plains–Coordination Agmt.
91	Tucson Elect. Power–Firm Transmission.
92	Tucson Elect. Power–Interruptible Trans.
93	SOG&E–Interruptible Transmission.
97	AEPCO–Interruptible Transmission.
102	PNM–Interruptible Transmission.
103	SCE–Interruptible Transmission.
104	Revised Inland Power Pool Agreement.
110	El Paso Elect. Co.–Interruptible Trans.
115	City of Farmington–Interruptible Trans.
116	Plains–Interruptible Transmission.
127	ED–8
129	ED–7

APS requests that customer agreements providing for Wheeling Service by APS be amended to allow recovery of the Arizona Transaction Privilege Tax and the Pinal County or Maricopa County or Yuma County Transportation Excise Tax (where applicable).

These proposed changes are not intended to increase the level of the base rates but are needed so APS can recover taxes paid to the State.

A number of affected customers have executed Indemnity Agreements which provide, pending the outcome of an appeal with the State regarding the application of such tax, that APS shall not assess the tax charge. However, in the event that the Company does not prevail in its appeal, then each customer will pay and taxes owed and implementation of the tax charge will commence thenceforth.

The Company requests that the proposed changes become effective 60 days after the filing except for ED–1 (Rate Schedule No. 68), ED–3, (Rate Schedule No. 12) and ED–5 (Rate Schedule No. 21). An effective date concurrent with the date of the Commission's Final Order is requested for ED–1 and ED–3 and an effective date of January 1, 1987 for ED–5.

Copies of this filing have been served upon the APS' jurisdictional customers affected by the filing and applicable State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–902 Filed 1–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–150–000]

Arkla Energy Resources, a Division of Arkla, Inc.; Request Under Blanket Authorization

January 12, 1988.

Take notice that on December 31, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP88–150–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate taps and related jurisdictional facilities necessary to enable AER to deliver gas from its jurisdictional system for delivery to consumers served by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to the public inspection.

AER specifically proposes (1) to construct and operate a sales tap on its Line 6 in Sedgwick County, Kansas, to deliver gas to ALG for service to Melvin C. Hampton, Jr., a domestic customer who would use approximately 140 Mcf per year; and (2) to construct and operate a sales tap on its Line 6 in Sumner County, Kansas, to deliver gas to ALG for service to Robert Ferguson, a domestic customer who would use approximately 140 Mcf per year.

AER states that the gas would be delivered from its general system supply, which it is states is adequate to provide the service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–903 Filed 1–15–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7878-003]

William A. Curtis; Surrender of Exemption

January 12, 1988.

Take notice that William A. Curtis, exemptee for the proposed Hidden Springs Project, has requested that his exemption from licensing be terminated. The exemption was issued on September 30, 1985. The project would have been located on Hidden Springs, a tributary of Billingsley Creek near the town of Hagerman, in Gooding County, Idaho. The exemptee states that no construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on December 3, 1987, and the exemption for Project No. 7878 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-804-Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-169-000]

Duke Power Co.; Filing

January 6, 1988.

Take notice that on December 30, 1987, Duke Power Company (Duke) tendered for filing with the Commission a new Service Schedule G-1988 and Appendix D thereto, both to be a part of the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Duke states that the Interchange Agreement is on file with the Commission and has been designated Duke Rate Schedule FERC No. 10.

Duke states further that Service Schedule G-1988 and Appendix D supersede Service Schedule G-1982 (including Appendix A), currently on file with the Commission and provide for the transmission of power and energy between CP&L's Eastern and Western Service Areas over the Duke system. The Monthly Transmission Capacity Rate proposed for the period from April 1, 1988 to June 30, 1989 is $12,990. This rate will be updated annually. Based on a 12-month period ending September 30, 1987, Duke estimates that the proposed rate will provide an increase in revenues from CP&L of approximately $307,586 over that provided by the rates in Service Schedule G-1982.

Duke has proposed an effective date of April 1, 1988, the date service is to begin under Service Schedule G-1988.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-805 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-44-000]

El Paso Natural Gas Co.; Change in Rates

January 12, 1988.

Take notice that on December 31, 1987, El Paso Natural Gas Company ("El Paso") tendered for filing a notice of change in rates (and certain identified tariff provisions) for natural gas service rendered to jurisdictional customers under all rate schedules contained in Volume Nos. 1 and 1-A and certain rate schedules in Volume Nos. 2 and 2A of El Paso's FERC Gas Tariff. El Paso also tendered, in conjunction with the notice of change in rates, proposed tariff sheets to implement a gas supply inventory charge ("GIC") which will allow El Paso's sales customers to freely nominate a firm sales entitlement based on a known gas price and a GIC rate. To implement this notice of change and the GIC, El Paso tendered for filing and acceptance the revised and original tariff sheets identified on the attached Appendix. The proposed effective date for the tendered tariff sheets and the change in rates the subject hereof, is February 1, 1988.

El Paso states that based upon the test period cost of service and projected sales and transportation quantities employed in this notice, El Paso projects a deficiency of some $365 million in annual revenues from jurisdictional sales and transportation service at current rates. Such deficiency has arisen, notwithstanding significant economies and cost savings effected by El Paso in the past several years, principally as a result of a substantial increase in El Paso's take-or-pay costs, a decrease in natural gas liquid revenues and a decline in throughput on El Paso's interstate transmission system since settlement of its last general rate change proceeding at Docket No. RP85-58-000. Therefore, El Paso is proposing to increase rates for natural gas service rendered to jurisdictional customers by an amount sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in this notice.

El Paso states that the increase in rates necessary to offset the projected revenue deficiency is reflected in the tendered tariff sheets. El Paso is also proposing numerous changes in the terms and conditions of its sales and transportation rate schedules and the form of the rates to be charged thereunder.

El Paso states that it is also proposing to include, as section 22 of the General Terms and Conditions in its First Revised Vol No. 1 Tariff, a provision which will allow El Paso to bill its largest sales customers a GIC designed to reimburse El Paso for gas supply inventory costs incurred on and after July 1, 1988 in maintaining gas supplies to meet the sales service entitlements of those customers.

El Paso has requested that waiver be granted of § 154.63(f), Statement E, of the Federal Energy Regulatory Commission's ("Commission") Regulations as necessary to permit El Paso to utilize an end-of-test period balance for its prepaid gas purchase costs.

El Paso also states that it recognizes that deferred taxes are overfunded as a result of the Tax Reform Act of 1986. Therefore, as more fully explained in the accompanying statement, El Paso has included a plan for returning excess deferred taxes to its customers. El Paso proposes to return a portion of such excess deferred income taxes using the average rate assumption method required under the Tax Reform Act and the remainder through use of a "reverse South Georgia" method.

El Paso states that it also tendered *pro forma* tariff sheets wherein it is proposing two new rate schedules to apply to transportation services to new markets. Such transportation service would be implemented under section 311 of the Natural Gas Policy Act of 1978 and pursuant to Part 284 of the Commission's Regulations. Rate Schedule T-5 will apply to transportation service on an interruptible basis and Rate Schedule T-6 will apply to transportation service provided on a firm basis.

El Paso has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective February 1, 1988.

El Paso states that a copy of the notice of change has been served upon all affected customers served under El Paso's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A and all direct sale customers served from El Paso's interstate system under contracts providing for rates that are "keyed" to jurisdictional rates, and upon all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

First Revised Volume No. 1

Second Revised Sheet No. 1
Seventeenth Revised Sheet No. 100
Fifth Revised Sheet No. 100-A
Original Sheet No. 100-C
Original Sheet No. 100-D
Second Revised Sheet No. 101
Third Revised Sheet No. 200
Second Revised Sheet No. 201
First Revised Sheet No. 202 and 203
Third Revised Sheet No. 210
Fourth Revised Sheet Nos. 211 through 213
First Revised Sheet No. 214
First Revised Sheet No. 215
Third Revised Sheet No. 220
Sixth Revised Sheet No. 221
Fifth Revised Sheet No. 222
Fourth Revised Sheet No. 223
Fourth Revised Sheet No. 224 and Third Revised Sheet No. 225
Third Revised Sheet Nos. 230 through 232
First Revised Sheet Nos. 233 and 234
Third Revised Sheet No. 240
Second Revised Sheet No. 241
First Revised Sheet No. 242
Third Revised Sheet No. 250
First Revised Sheet No. 300
First Revised Sheet Nos. 305 and 306
First Revised Sheet Nos. 308 through 312
First Revised Sheet Nos. 315 through 317
Third Revised Sheet No. 350
First Revised Sheet No. 350-A
Original Sheet No. 350-B
Original Sheet Nos. 366 through 368
Original Sheet Nos. 369 through 373
Original Sheet No. 374

Original Volume No. 1-A

Third Revised Sheet No. 1
Sixth Revised Sheet No. 20
First Revised Sheet No. 21
Original Sheet No. 21-A
Ninth Revised Sheet No. 24
Second Revised Sheet No. 111
Third Revised Sheet No. 112
Third Revised Sheet No. 113
Second Revised Sheet No. 114
Second Revised Sheet Nos. 115 and 116
First Revised Sheet Nos. 130 through 135
Original Sheet Nos. 136 through 199
First Revised Sheet Nos. 201 through 204
Second Revised Sheet No. 205
First Revised Sheet No. 206
First Revised Sheet No. 207
Third Revised Sheet No. 208
First Revised Sheet No. 208-A
Second Revised Sheet No. 209
Second Revised Sheet No. 210
First Revised Sheet No. 211
First Revised Sheet No. 212
Second Revised Sheet No. 213
First Revised Sheet Nos. 216 through 218
First Revised Sheet No. 220
First Revised Sheet No. 224
First Revised Sheet Nos. 228 through 237
Second Revised Sheet Nos. 311 and 312
Second Revised Sheet No. 315
Second Revised Sheet Nos. 317 through 319
First Revised Sheet Nos. 321 through 329
Original Sheet Nos. 330 through 399

Third Revised Volume No. 2

Forty-first Revised Sheet No. 1-D
Twenty-first Revised Sheet No. 1-D.2
Original Sheet No. 1-D.3
Sixth Revised Sheet No. 1-T
Seventh Revised Sheet No. 1-U
Original Sheet No. 1-V

Original Volume No. 2A

Forty-third Revised Sheet No. 1-C
Seventh Revised Sheet No. 14-MM
Seventh Revised Sheet No. 15-MM

[FR Doc. 88-806 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-12787-000 et al.]

Enron Oil & Gas Co.; Application

January 12, 1988.

Take notice that on December 15, 1987, Enron Oil & Gas Company (Enron), of P.O. Box 1188, Houston, Texas 77251, filed an application, pursuant to section 7(c) of the Natural Gas Act and § 154.92(d), of the Federal Energy Regulatory Commission's Regulations, for authorization to continue certain sales of natural gas in interstate commerce to various pipeline purchasers previously made by HNG Oil Company (HNG) in the dockets shown on the attached Appendix "B". Enron also requests that HNG's rate schedules be redesignated as those of Enron. This application is on file with the Commission and open to public inspection.

By Certificate of Ownership And Merger Merging BelNorth Petroleum Corporation, Belco Development Corporation and HNG Oil Company into Enron Oil & Gas Company dated December 10, 1986, HNG was merged into Enron effective December 31, 1986.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 26, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

APPENDIX B

Former HNG oil company rate schedule and Docket No.	Purchaser	Location field, county, and State	Contract date
No. 2, G-12797	Texas Gas Pipe Line Corp	Big Hill Field, Jefferson County, TX	06-15-74
No. 4, G-12797	Texas Eastern Transmission Corp	Hankamer Field, Liberty County, TX	06-24-74
No. 5, CI62-1053	Valley Gas Transmission Inc	Whitted Field, Hidalgo County, TX	08-14-58
No. 7, G-19546	Transcontinental Gas Pipe Line Corp	S. Mineral Field, Bee County, TX	03-19-82
No. 9, G-19546	do	Mineral Field, Bee County, TX	03-19-82
No. 10, G-19546	do	Ray Wilcox Field, Bee County, TX	04-01-81
No. 17, G-10181	Texas Eastern Transmission Corp	Salem Field, Victoria County, TX	08-05-81
No. 20, G-19628	Valley Gas Transmission Inc	Good Friday Field, Duval County, TX	09-15-58
No. 23, CI61-648	Valero Interstate Transmission Co	Yeary Field, Kleberg County, TX	12-01-80
No. 26, CI68-1199	Natural Gas Pipeline Co. of America	Lochridge Field, Ward County, TX	08-21-67
No. 27, CI72-468	Northern Natural Gas Co	N.E. Oats Field, Pecos County, TX	07-02-71
No. 28, CI72-589	KN Energy Inc	Reydon West Area, Roger Mills County, OK	03-02-72
No. 29, CI72-748	El Paso Natural Gas Co	Dollarhide Field, Lea County, NM	02-18-74
No. 30, CI72-749	do	Dollarhide Field, Lea County, NM	02-18-74
No. 33, CI75-445	Natural Gas Pipeline Co. of America	Evetts Field, Loving & Winkler Counties, TX	09-01-67
No. 34, CI75-720	El Paso Natural Gas Co	Cooper (Morrow) Field, Eddy County, NM	05-06-75
No. 35, CI76-323	do	Hemphill County, TX	12-10-75
No. 36, CI77-31	do	Phantom Draw (Wolfcamp) Field, Eddy County, NM	09-02-76
No. 37, CI77-185	Mid-Louisiana Gas Co	Viking (Upper Morrow) Field, Hemphill County, TX	10-21-76
No. 38, CI77-185	KN Energy Inc	Hemphill County, TX	01-12-77
No. 39, CI77-555	Panhandle Eastern Pipe Line Corp	Viking (Upper Morrow) Field, Hemphill County, TX	07-19-73
No. 40, CI77-538	National Gas Pipeline Co. of America	Crawford (Morrow) Field, Eddy County, NM	09-07-76
No. 41, CI77-683	El Paso Natural Gas Co	Rankin S.E. Field, Roger Mills County, OK	06-26-77
No. 44, CI78-697	do	Malaga West Morrow Field, Eddy County, NM	[1] 03-01-83
No. 46, CI78-1059	Natural Gas Pipeline Co. of America	Shoebar Ranch Unit, Lea County, NM	06-01-87
No. 49, CI80-389	Trunkline Gas Co	Terrell Point Field, Gollard County, NM	06-22-79

[1] Contract included herein. Roller-over contract to 12-19-77 contract.

[FR Doc. 88-907 Filed 1-15-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9180-001]

City of Greenville, MI; Surrender of Exemption

January 12, 1988

Take notice that the City of Greenville, exemptee for the proposed Franklin Street Dam Project, has requested that its exemption from licensing be terminated. The exemption was issued on June 6, 1986. The project would have been located on the Flat River in City of Greenville, in Montcalm County, Michigan. No construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on November 2, 1987, and the exemption for Project No. 9180 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-908 Filed 1-15-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL88-7-000]

City of Holyoke Gas & Electric Department v. Boston Edison Co.; Filing

January 14, 1988.

Take notice that on December 31, 1987, City of Holyoke Gas and Electric Department (Holyoke) pursuant to sections 205, 206, 306, 307(a) and 309 of the Federal Power Act, and pursuant to Rules 206, 207, 212 and 217 of the Commission's Rules of Practice and Procedure, tendered for filing a Complaint and request for declaratory and other relief against Boston Edison Company (Boston Edison). Holyoke states that the Complaint and petition concerns the Participation Agreement dated December 1, 1974 between Holyoke and Boston Edison for the purchase and sale of 0.98552%—approximately six MW—of the output of Boston Edison's Pilgrim Unit No. 1 nuclear plant and a related Transmission Agreement dated December 1, 1974. Holyoke states that the Pilgrim Unit has been out of service since April 12, 1986 and that the prolonged outage has deprived Holyoke of most of the benefits of its contract for almost two years and has caused the City to suffer substantial losses.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 16, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint are also due on or before February 16, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-909 Filed 1-15-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No.ER88-171-000]

Iowa-Illinois Gas and Electric Co.; Filing

January 6, 1988.

Take notice that on December 30, 1987, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa, tendered for filing proposed changes in its rate schedule for third party purchase and resale transactions pursuant to Commission Order No. 84, designated as:

Iowa-Illinois Gas and Electric Company
FERC Order No. 84 Rate Schedule
1st Revised Sheet No. 1
Cancelling Original Sheet Nos. 1 and 2.

The rate schedule is applicable to third party purchase and resale of electric power. The rate schedule change revises the quantifiable cost portion of the rate from a fixed 2.17 mills per kWh to permit charging up to 2.89 mills per kWh.

Iowa-Illinois states that its reasons for proposing the rate schedule change are to reflect increases and decreases in the quantifiable costs since the initial calculations were made and to increase Iowa-Illinois' flexibility to effectively market power and energy by permitting it to charge less than the full cost supported rate.

Copies of the filing were served upon Iowa State Utilities Board; Illinois Commerce Commission, Eldridge Iowa Electric and Water Utility Board; Illinois Municpal Electric Agency; Waverly Iowa Municipal Electric Utility; Tipon Iowa Municipal Utilities; Illinois Power Company; Commonwealth Edison Company; Geneseo Illinois Municipal Utilities; Union Electric Company; Interstate Power Company; Iowa Electric Light and Power Company; Iowa Public Service Company; Iowa Southern Utilities Company; and Northern States Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-910 Filed 1-15-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-1-14-000]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

January 12, 1988.

Take notice that on January 4, 1988, Lawrenceburg Gas Transmission Corporation ("Lawrenceburg") tendered for filing one (1) revised gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, dated as issued on December 31, 1987, proposed to become effective February 1, 1988 and identified as follows: Forty-third Revised Sheet No. 4.

Lawrenceburg states that its revised tariff sheet was filed under its Purchased Gas Adjustment (PGA) Provision in order to track changes in the rates of its pipeline supplier.

Lawrenceburg also included with its filing Alternate Forty-third Revised Sheet No. 4, which it has requested the Commission approve in the event that alternate tariff sheets filed by its pipeline supplier are approved effective February 1, 1988.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-911 Filed 1-15-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP88-144-000]

Northern Natural Gas Co.; Abandonment Application

January 12, 1988.

Take notice that on December 22, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-144-000, an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon by transfer to Enron Oil & Gas Company (EOG) and Enron Producing Company (EPC), certain production properties and related production facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Northern requests that such authorization be granted effective August 1, 1987.

Effective August 1, 1987, Enron Corp. assigned all offshore gas wells, properties and related production facilities to EOG, and all onshore gas wells, properties and related production facilities to EPC. Northern states that prior to the assignment Enron Corp.'s Exploration and Production Division (E & P) had produced natural gas from the subject properties into Northern's system and such pipeline production was permitted to be priced under the Natural Gas Policy Act of 1978 (NGPA). Northern has now entered into contracts with EOG and EPC for the sale and purchase of the gas produced from the subject properties. Northern states that such contracts are market responsive and that the price of natural gas under such contracts is the same as under the Northern-Exploration and Production Gas Purchase Agreement.

Northern states that the subject application only applies to those producing properties and related facilities which produce natural gas which is subject to sections 102(d), 104, 108 or 109 of the NGPA and over which the Commission retains jurisdiction under the Natural Gas Act. Northern further states that the properties involved in this application are composed of E & P's interest in 216 producing wells which have an estimated deliverability of 27 MMcfd. In support of its proposed abandonment, Northern states that there will be no change in service from the production properties, nor will there be a change in the price of gas Northern includes in its rates.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 26, 1988, file with the Federal Energy

BEST COPY AVAILABLE

Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-912 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-000]

Northwest Pipeline Corp., Change in FERC Gas Tariff

January 12, 1988.

Take notice that on January 4, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing changes to its FERC Gas Tariff to be effective February 3, 1988, consisting of the following revised tariff sheets:

Primary Case Tariff Sheets

First Revised Volume No. 1

Fortieth Revised Sheet No. 10
Twenty-Second Revised Sheet No. 10-A
Second Revised Sheet No. 15
Orginal Sheet Nos. 15-A and 15-B
Second Revised Sheet No. 16
First Revised Sheet Nos. 16-A and 17
Original Sheet No. 17-A
First Revised Sheet No. 20
Original Sheet Nos. 20-A and 20-B
Second Revised Sheet No. 21
First Revised Sheet No. 22
Original Sheet Nos. 23 through 25
Third Revised Sheet No. 26
First Revised Sheet No. 26-A
Third Revised Sheet No. 27
Original Sheet No. 27-A
Second Revised Sheet No. 28
Original Sheet Nos. 28-A through 30
Second Revised Sheet No. 100
Original Sheet Nos. 138 through 199
Second Revised Sheet Nos. 300 through 302
First Revised Sheet No. 303

Original Volume No. 1-A

Fourteenth Revised Sheet No. 201
First Revised Sheet Nos. 300 and 301
Second Revised Sheet No. 302
First Revised Sheet Nos. 303 and 304
First Revised Sheet No. 311
Second Revised Sheet Nos. 312 through 314
Original Sheet Nos. 315 and 316
Second Revised Sheet No. 400
Original Sheet Nos. 422 through 500
First Revised Sheet Nos. 501 through 600
Original Sheet No. 602

Original Volume No. 2

Thirteenth Revised Sheet No. 2
Fifth Revised Sheet Nos. 2.1, 2.2 and 2.3
Ninth Revised Sheet No. 2-A
Third Revised Sheet No. 2-A.1
Fourteenth Revised Sheet No. 2-B
Fourth Revised Sheet No. 3

Northwest states that the changes reflect, *inter alia*, substantial revisions to its sales and transportation rates designed to comport with an "open access" mode of operation pursuant to its pending Offer of Settlement filed September 17, 1987, in Docket No. CP86-578-000, which would effectuate Order 500 open access transportation on the Northwest system and which requires Northwest to make the instant rate filing with the new rates "to become effective no earlier than January 1, 1988, but no later than May 1, 1988."

Northwest states further that the changes would increase revenues from jurisdictional services by $56,802,000 based on the test period consisting of the twelve-month period ended September 30, 1987, adjusted for known and measurable changes through April 30, 1988. Northwest states that (1) the revenue schedules contained in this filing do not reflect revenues Northwest would receive for gathering services under its present rate design and revenues it would receive pursuant to a liquid revenue tracking provision of its current rate settlement (Docket No. RP85-13); (2) these additional revenues under present rate conditions, are estimated to total $43.9 million dollars which effectively reduce the requested increase to $12.9 million dollars; and (3) the revenue increases indicated under the three alternative proposals would also be reduced by the same amount. Northwest states that while there have been offsetting increases and decreases in the cost of various aspects of Northwest's operations, the net result of which has been a decrease in the overall revenue requirement from that reflected in the currently effective Commission-approved rates, the increase in jurisdictional rates reflected in this filing is necessary to permit Northwest the opportunity to recover such reduced revenue requirement due to (1) reduced volumes, (2) changes in operation of its system to an open access basis, and (3) changes in cost allocation and rate design from its prior general rate proceeding.

Northwest states that the filed changes also incorporate revisions to its tariff that are necessary to update the Index of Purchasers, to update the schedule of D2 quantities, to provide for adjustments to Northwest's rates to reflect any future changes in Federal income tax rates, to provide for adjustments to Northwest's rates to assure its continued ability to qualify for the use of accelerated depreciation in its Federal income tax returns, to provide for standby charges, and to change the abbreviations for Northwest's open access transportation rate schedules.

Northwest states that it has also included in this filing the following alternate tariff sheets in the event the Commission determines to eliminate the minimum annual commodity charge from Northwest's PL-1 Rate Schedule:

Alternate Case 1 Tariff Sheets

First Revised Volume No. 1

First Alternate Fortieth Revised Sheet No. 10
First Alternate Twenty-Second Revised Sheet No. 10-A
First Alternate Second Revised Sheet No. 15
First Alternate Orginal Sheet Nos. 15-A and 15-B
First Alternate Second Revised Sheet No. 16
First Alternate First Revised Sheet Nos. 16-A and 17
First Alternate Original Sheet No. 17-A
First Alternate First Revised Sheet No. 20
First Alternate Original Sheet Nos. 20-A and 20-B
First Alternate Second Revised Sheet No. 21
First Alternate First Revised Sheet No. 22
First Alternate Original Sheet Nos. 23 through 25
First Alternate Third Revised Sheet No. 26
First Alternate First Revised Sheet No. 26-A
First Alternate Third Revised Sheet No. 27
First Alternate Original Sheet No. 27-A
First Alternate Second Revised Sheet No. 28
First Alternate Original Sheet No. 29
First Alternate Second Revised Sheet No. 100
First Alternate Original Sheet Nos. 138 through 199
First Alternate Second Revised Sheet Nos. 300 through 302
First Alternate First Revised Sheet No. 303

Original Volume No. 1-A

First Alternate Fourteenth Revised Sheet No. 201
First Alternate First Revised Sheet Nos. 300 and 301
First Alternate Second Revised Sheet No. 302
First Alternate First Revised Sheet Nos. 303 and 304 and 311
First Alternate Second Revised Sheet Nos. 312 through 314
First Alternate Original Sheet Nos. 315 and 316
First Alternate Second Revised Sheet No. 400
First Alternate Original Sheet Nos. 422 through 500
First Alternate First Revised Sheet Nos. 501 through 514
First Alternate Original Sheet Nos. 515 through 600
First Alternate Original Sheet No. 602

Original Volume No. 2

First Alternate Thirteenth Revised Sheet No. 2
First Alternate Fifth Revised Sheet Nos. 2.1, 2.2 and 2.3
First Alternate Ninth Revised Sheet No. 2-A
First Alternate Third Revised Sheet No. 2-A.1
First Alternate Fourteenth Revised Sheet No. 2-B
First Alternate Fourth Revised Sheet No. 3

Northwest states that in the event that its pending open access certificate in Docket No. CP86-578-000 has not been issued and accepted by the time the above identified tariff sheets are permitted to become effective, Northwest has included in this filing the following two sets of alternate tariff sheets (as applicable) reflecting conforming and updating revisions to Northwest's transportation rates under existing transportation rate schedules:

Alternate Case 2 Tariff Sheets (alternative to Primary Case)

First Revised Volume No. 1

Second Alternate Fortieth Revised Sheet No. 10
Second Alternate Twenty-Second Revised Sheet No. 10-A
Second Alternate Second Revised Sheet No. 100
Second Alternate Original Sheet Nos. 135 through 199
Second Alternate Second Revised Sheet Nos. 300 through 302
Second Alternate First Revised Sheet No. 303

Original Volume No. 1-A

Second Alternate Fourteenth Revised Sheet No. 201
Second Alternate First Revised Sheet Nos. 300 and 301
Second Alternate Second Revised Sheet No. 302
Second Alternate First Revised Sheet No. 303
Second Alternate Original Sheet Nos. 304 through 310
Second Alternate First Revised Sheet No. 311
Second Alternate Second Revised Sheet Nos. 312 through 314
Second Alternate First Revised Sheet No. 331 and 332
Second Alternate Second Revised Sheet No. 333
Second Alternate First Revised Sheet Nos. 334 through 336
Second Alternate Third Revised Sheet Nos. 337 and 338
Second Alternate Fourth Revised Sheet No. 339
Second Alternate Third Revised Sheet No. 340
Second Alternate Second Revised Sheet Nos. 341 through 343
Second Alternate Third Revised Sheet Nos. 344 through 345
Second Alternate Second Revised Sheet No. 346
Second Alternate First Revised Sheet No. 347
Second Alternate Second Revised Sheet No. 400
Second Alternate Original Sheet Nos. 422 through 500

Original Volume No. 2

Second Alternate Thirteenth Revised Sheet No. 2
Second Alternate Fifth Revised Sheet Nos. 2.1, 2.2 and 2.3
Second Alternate Fourth Revised Sheet No. 2.4
Second Alternate Ninth Revised Sheet No. 2-A
Second Alternate Third Revised Sheet No. 2-A.1
Second Alternate Fourteenth Revised Sheet No. 2-B
Second Alternate Fourth Revised Sheet No. 3

Alternate Case 3 Tariff Sheets (Alternative to Alternate Case 1)

First Revised Volume No. 1

Third Alternate Fortieth Revised Sheet No. 10
Third Alternate Twenty-Second Revised Sheet No. 10-A
Third Alternate Third Revised Sheet Nos. 26 and 27
Third Alternate Original Sheet Nos. 28 through 30
Third Alternate Second Revised Sheet No. 100
Third Alternate Original Sheet Nos. 135 through 199
Third Alternate Second Revised Sheet Nos. 300 through 302
Third Alternate First Revised Sheet No. 303

Original Volume No. 1-A

Third Alternate Fourteenth Revised Sheet No. 201
Third Alternate First Revised Sheet No. 301
Third Alternate Second Revised Sheet No. 302
Third Alternate First Revised Sheet No. 303
Third Alternate Original Sheet Nos. 304 through 310
Third Alternate First Revised Sheet No. 311
Third Alternate Second Revised Sheet Nos. 312 through 314
Third Alternate First Revised Sheet Nos. 331 and 332
Third Alternate Second Revised Sheet No. 333
Third Alternate First Revised Sheet Nos. 334 through 336
Third Alternate Third Revised Sheet Nos. 337 and 338
Third Alternate Fourth Revised Sheet No. 339
Third Alternate Third Revised Sheet No. 340
Third Alternate Second Revised Sheet Nos. 341 through 343
Third Alternate Third Revised Sheet Nos. 344 and 345
Third Alternate Second Revised Sheet No. 346
Third Alternate First Revised Sheet No. 347
Third Alternate Second Revised Sheet No. 400
Third Alternate Original Sheet Nos. 422 through 500

Original Volume No. 2

Third Alternate Thirteenth Revised Sheet No. 2
Third Alternate Fifth Revised Sheet Nos. 2.1, 2.2, and 2.3
Third Alternate Fourth Revised Sheet No. 2.4
Third Alternate Ninth Revised Sheet No. 2-A
Third Alternate Third Revised Sheet No. 2-A.1
Third Alternate Fourteenth Revised Sheet No. 2-B
Third Alternate Fourth Revised Sheet No. 3

Northwest states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Regulatory Commission, 825 North Capitol Street N.E., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-913 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-17-000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

January 12, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 31, 1987, tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fourth Revised Volume No. 1

Substitute Eighty-ninth Revised Sheet No. 14
Substitute Eighty-ninth Revised Sheet No. 14A
Substitute Eighty-ninth Revised Sheet No. 14B
Substitute Eighty-ninth Revised Sheet No. 14C
Substitute Eighty-ninth Revised Sheet No. 14D

Original Volume No. 2

Substitute Twenty-eight Revised Sheet No. 235
Substitute Twentieth Revised Sheet No. 241
Substitute Twenty-eighth Revised Sheet No. 322

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 27, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. Texas Eastern states that the changes proposed consist of:

(1) A PGA increase of $.004/dth in the Demand-1 component of Texas Eastern's sales rates and decreases of $.0003/dth in the Demand-2 component and $.0133/dth in the commodity component pursuant to section 23 of Texas Eastern's tariff based upon a small increase in the projected cost of gas purchased from producers and pipeline suppliers and a decrease of $.0163/dth in the Surcharge Adjustment based upon the balance in Account 191 as of October 31, 1987;

(2) An increase in rates for sales and transportation services pursuant to section 27 of Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1988 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC account as of October 31, 1987.

Texas Eastern states that consistent with the Commission's requirements for the treatment of demand charges paid to Canadian suppliers, Texas Eastern has included in this filing demand charges payable to ProGas Limited based upon the methodology specified in Opinions Nos. 256 and 256-A in Natural Gas Pipeline, Company's Docket No. TA85-1-26-004 and 005. As a result Texas Eastern's total annual demand payment to ProGas Limited included in this filing is $8,013,690. Texas Eastern states that this is the identical amount supported by its compliance filing of September 21, 1987 in Docket No. TA87-3-17-002, which is currently before the Commission for approval.

Texas Eastern states that it has before the Commission for approval tariff sheets reflecting the proposed settlement in Docket No. RP85-177. Should Commission approval of the settlement be received, Texas Eastern states that it will file tariff sheets reflecting the tracking changes proposed in this filing in concert with the Docket No. RP85-177 settlement rates.

Texas Eastern also tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fourth Revised Volume No. 1

Fifteenth Revised Sheet No. 14E
Fifth Revised Sheet No. 107
Fifth Revised Sheet No. 108
Substitute Eighth Revised Sheet No. 110
Third Revised Sheet No. 111A
Seventh Revised Sheet No. 112
Fourth Revised Sheet No. 113

Texas Eastern states that these tariff sheets reflect the elimination from Texas Eastern's tariff of those provisions implementing Incremental Pricing Surcharges as required by the Commission's directive in Order No. 478 issued July 27, 1987 in Docket No. RM87-28-000, *et al.*

The proposed effective date of the above tariff sheets is February 1, 1988.

Texas Eastern has respectfully requested waiver of any of the Commission's Regulations deemed necessary to accept the above tariff sheets to be effective on February 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Jan. 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-914 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-57-000]

Western Transmission Corp.; Proposed Changes

January 12, 1988.

Take notice that Western Transmission Corporation (Western) on January 4, 1988, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Thirtieth Revised Sheet No. 3-A, superceding Twenty-Ninth Revised Sheet No. 3-A.

Western proposes to increase the monthly charges for purchased gas to Colorado Interstate Gas Company (CIG), Western's sole jurisdictional customer, in accordance with the provisions of Section 18 of the General Terms and Conditions of Western's FERC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is February 1, 1988.

Copies of this filing have been served on CIG.

Any person desiring to be heard or to make any protest with reference to said filing should on or before January 20, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-915 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9686-001]

Adirondack Hydro Development; Surrender of Preliminary Permit

January 12, 1988.

Take notice that the Adirondack Hydro Development Corporation, permittee for the Moose Falls Project No. 9686 located on the Moose River in Lewis County, New York has requested that its preliminary permit be terminated. The preliminary permit was issued on June 8, 1986, and would have expired on May 31, 1989. The permittee state that analysis of Moose Falls Project did not indicate feasibility for development.

The permittee filed the request on December 21, 1987, and the preliminary permit for Project No. 9686 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-901 Filed 1-15-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3316-9]

Cold Temperature CO Emissions From Mobile Sources; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: On March 8, 1988, the Environmental Protection Agency (EPA) will hold a public workshop to discuss the current and expected impact on air quality of carbon monoxide (CO) emissions from in-use motor vehicles at temperatures below 68 °F and the need for and relative costs and benefits of alternative methods to reduce CO emissions at cold temperatures.

DATES: The workshop will be convened at 10:00 a.m. on March 8, 1987. A second day will be reserved for continuation, if necessary.

ADDRESSES: The workshop will be held at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105 (313-668-4200). Supporting materials relevent to this workshop are available from the Agency contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. John M. German, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668-4214.

SUPPLEMENTARY INFORMATION: Title I of the Clean Air Act, as amended, requires EPA to establish certain ambient air quality standards and requires that all areas in the United States plan to meet these standards by the end of 1987, at the latest. Based on 1985-1986 ambient monitoring data, it is estimated that 40 to 50 of these areas will not be in attainment of the ambient standard for CO ("nonattainment areas") at the end of 1987.

Mobile sources account for most of the total CO inventory. A substantial reduction in vehicle CO emissions is currently occurring as older vehicles are replaced in use with newer technology vehicles designed to meet stricter emission standards. In-use emissions can be further reduced by encouraging owners to properly maintain their vehicles. Inspection/maintenance (I/M) programs have been implemented in most nonattainment areas to facilitate improved in-use maintenance. However, even assuming improved I/M programs are adopted, EPA still projects 4 to 10 potential CO nonattainment areas in the year 2000. A number of uncertainties are involved in making this projection. For example, as noted below, additional data on cold ambient performance of current vehicle designs would be useful. Such additional data and refinement of EPA's modeling analysis could affect the projections of CO nonattainment areas. Some observers have expressed their view that many more areas may still be in nonattainment (reference: report dated September, 1987 entitled "Ambient Temperature During CO Exceedances—Program and Policy Implications" by Richard W. Joy and Thomas C. Austin). In the extended time frame, the number of CO nonattainment is expected to rise after the year 2000 due to continued growth and a leveling off of the benefits of new vehicle turnover and improved I/M programs.

The large majority of CO ambient air violations occur at temperatures below 68 °F. Since EPA currently tests vehicles for compliance with emission standards only in the 68-86 °F temperature range, cost-effectiveness methods of reducing vehicle CO emissions at colder temperatures may exist which are not currently being utilized on all vehicles. Such methods could help many areas comply with CO ambient air quality standards and maintain compliance in the future.

EPA is conducting this public workshop to solicit input from the industry, states, local air quality control districts, and other knowledgable parties regarding the extent of the CO nonattainment problem, in both the short term and the long term, and the relative costs and benefits of reducing vehicle CO emissions at colder temperatures.

The following list of issues constitutes a preliminary agenda for the workshop. A document prepared by EPA which contains additional background information and examines the issues in further detail may be obtained from the Agency contact listed above. Comments on additional items to be added to the agenda are solicited.

Issues to be Addressed

A. Extent of Future CO Nonattainment

1. CO Nonattainment Through the Year 2000

Participants in the workshop are requested to provide information on the extent to which the current Federal motor vehicle control program and various local control strategies will enable local areas to attain compliance with the CO ambient air quality standards. Comments are also requested on the relative costs and benefits of various local solutions which could be used by potential noncompliance areas. In particular, any as yet unpublished information is requested on the technical potential of oxygenated gasoline blends to reduce vehicle CO emissions, especially at cold ambient temperatures. Anticipated plans to promote the use of oxygenated fuels in the short term should also be described.

Analyses are requested on the potential short-term local CO air quality benefits of a new Federal motor vehicle

program to reduce cold temperature CO emissions. In addition, comments and supporting analyses are requested on the extent to which area growth could be a significant factor in short-term CO noncompliance.

2. Continued Long-Term CO Compliance After the Year 2000

It is anticipated that the CO emission rate benefits from the current Federal motor vehicle control program and most currently conceived local control strategies will be almost totally realized by the year 2000. Comments are requested addressing the following issues:

a. What will be the effect of growth on the ability of areas to comply with the ambient air quality standards in the long term?

b. What strategies would be available to offset anticipated growth and increased vehicle miles traveled (VMT) in the long-term?

c. Will the potential CO benefit of exygenated gasoline fuels be eroded in the long term due to such vehicle design strategies as closed-loop fuel control and adaptive memory? If so, what is the anticipated ultimate CO benefit of exygenated fuels?

d. What is the potential for the use of alternative fuels such as methanol and compressed natural gas (CNG) to help CO nonattainment areas?

e. Would a Federal motor vehicle program to reduce cold temperature CO emissions be a cost effective method to help CO nonattainment areas and prevent long term increases in area noncompliance?

B. Vehicle Cold Temperature CO Emissions

1. In-Use Vehicle Cold Temperature CO Emission of Late Model Vehicles

Currently, very little cold temperature test data exist for modern technology cars and trucks. EPA is implementing testing programs to collect additinal data on a small sample of 1985–1987 fuel injection light-duty vehicles at 20 °F, 50 °F, and 75 °F. Participants in the workshop are requested to provide information on what data currently are available, especially colder ambient temperature vehicle emission test data, and the status of programs intended to procure additional data. EPA will also report on the status of its own data acquisition projects.

2. Technological Feasibility for Vehicle CO Improvements

Comments are requested on the relative cold temperature CO benefits and costs of technology-based methods, including alternative hardware and calibration strategies, for further reducing vehicle CO emissions. If lead time considerations are significant these should also be described.

3. Cold Temperature Testing Procedures and Facilities

Standardized test procedures do not currently exist for temperatures below 68 °F. Comments are requested on procedural considerations in conducting cold temperature testing and whether different cold temperature test procedures could significantly affect the test data. Comments are also requested on the extent of currently existing cold temperature test facilities and plans for acquiring additional capability.

4. Alternatives for Improvement of Motor Vehicle Emissions

a. *Cold Temperature Vehicle CO Standards.* As most CO air quality violations occur at temperatures below 68°F, an obvious potential approach would be to establish separate colder temperature CO standards for new vehicles. Options to be considered include the level of stringency and the temperature range over which standards would be specified. EPA requests comments that will assist it in evaluating the feasibility, need for, and cost-effectiveness of various levels of stringency. Suggestions for alternatives to a specific standard at a specific temperature are also solicited. Finally, comments are requested on the practicality and desirability of some form of voluntary compliance program.

b. *More Stringent FTP CO Standards.* Comments are requested on the merits of a more stringent overall CO standard for all vehicles in terms of the current FTP (including the current temperature range), in lieu of specifically regulating CO emissions at cold temperatures.

c. *Low Speed Worm Vehicle Operation at Cold Ambient Temperatures.* Comments are requested on the premise that warm vehicle operation in very low speed congested traffic may be a significant part of the CO nonattainment problem in some areas. Is there a basis to conclude that CO exceedances can be better controlled by emphasizing control under warm vehicle operation at cold temperatures?

d. *Other Alternatives.* Comments are requested as to whether other feasible motor vehicle alternatives exist to help CO nonattainment areas.

C. Additional Information and Workshop Record Closing Date

Persons interested in making persentations at the workshop are requested to notify the Agency contact listed above at least two weeks prior to the workshop so that a final agenda can be prepared. Suggestions for agenda items or issues to be discussed should also be submitted at least two weeks prior to the workshop.

Presenters should be aware that EPA intends to follow the general outline in the "Issues to be Addressed" section, above. While consideration was given to having interested parties present all their prepared comments at one time, EPA believes it makes more sense to handle one issue at a time and hear all views. Therefore, presentations should be prepared for issues falling into any one of the following three general categories:

1. CO nonattainment through the year 2000
2. Continued long-term compliance after the year 2000
3. Vehicle cold temperature CO emissions

Any party may make presentations in any or all of the above three general categories. In addition, EPA will provide an opportunity for commenters to present opening statements and overviews of their overall position at the beginning of the workshop.

The record of the workshop will be left open for a currently undefined period of time following the close of the workshop. EPA will establish the closing date for subsequent written submissions based upon information presented at the workshop.

Dated: January 12, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-879 Filed 1-15-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-630028; FRL-3317-3]

The Specified Members of the Categories Tri (Alkyl/Alkoxy) Phosphates and Diisocyanates; Request for Records and Reports Regarding Significant Adverse Reactions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA is requiring manufacturers, importers, processors, and distributors of the specified members of the category "tri(alkyl/alkoxy)phosphates" (TaaP) and the specified members of the category "diisocyanates" to submit records and reports of allegations that the specified members of these categories cause significant adverse reactions to health or the environment. This Toxic Substances Control Act (TSCA) section 8(c) action is necessary so that health risks of exposure to the specified members of the category TaaP and the specified members of the category diisocyanates can be more fully evaluated.

DATES: Records and reports must be submitted by March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554–1404.

SUPPLEMENTARY INFORMATION: Under the authority of section 8(c) of TSCA, chemical manufacturers, processors, importers, and distributors must maintain records of significant adverse reactions to health or the environment alleged to have been caused by chemical substances or mixtures and, upon request, submit or make the records available to the Agency. Regulations specifying these recordkeeping and reporting requirements are codified at 40 CFR Part 717. EPA can notify those responsible for reporting by letter and/or by announcing such requirements for submitting copies of records by a notice in the **Federal Register**. A **Federal Register** notice will be used when a large number of respondents are expected, or when the identities of all potential respondents are not readily known to the Agency.

Therefore, pursuant to 40 CFR 717.17 this notice requires the submission of records of significant adverse reactions to health or the environment alleged to have been caused by:

CAS No.	Chemical name
78–40–0	Phosphonic acid, triethyl ester
78–42–2	Phosphonic acid, tris(2-ethylhexyl) ester
78–51–3	Ethanol, 2-butoxy-, phosphate (3:1)
91–08–7	Benzene, 1,3-diisocyanato-2-methyl-
91–97–4	1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-
101–68–8	Benzene, 1,1'-methylenebis[4-isocyanato-
104–49–4	Benzene, 1,4-diisocyanato-
123–61–5	Benzene, 1,3-diisocyanato-
126–71–6	Phosphonic acid, tris(2-methylpropyl) ester
126–73–8	Phosphonic acid tributyl ester
139–25–3	Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-
512–56–1	Phosphonic acid, trimethyl ester
584–84–9	Benzene, 2,4-diisocyanato-1-methyl-
822–06–0	Hexane, 1,6-diisocyanato-
919–62–0	1-Butanol, 3-methyl-, phosphate (3:1)
1321–38–6	Benzene, diisocyanatomethyl- (unspecified isomer)
1623–19–4	Phosphonic acid, tri-2-propenyl ester
2536–05–2	Benzene, 1,1'-methylenebis[2-isocyanato-
2556–36–7	Cyclohexane, 1,4-diisocyanato-
2778–42–9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl)-
3033–37–2	1-Tridecanol, phosphate (3:1)
3173–72–6	Naphthalene, 1,5-diisocyanato-
4098–71–9	Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-
4200–55–9	Phosphonic acid, tris(decyl) ester
4889–45–6	Phosphonic acid, trioctadecyl ester
5124–30–1	Cyclohexane, 1,1'-methylenebis[4-isocyanato-
5873–54–1	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)methyl]-
6163–73–1	Ethanol, 2-methoxy-, phosphate (3:1)
7332–46–9	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)
9016–87–9	Isocyanic acid, polymethylenepolyphenylene ester
10347–54–3	Cyclohexane, 1,4-bis(isocyanatomethyl)-
10427–00–6	2-Furanmethanol, tetrahydro-, phosphate (3:1)
15646–96–5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-
16938–22–0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-
26447–40–5	Benzene, 1,1'-methylenebis[isocyanato-
26471–62–5	Benzene, 1,3-diisocyanatomethyl-
32052–51–0	Isocyanic acid, trimethylhexamethylene ester
38661–72–2	Cyclohexane, 1,3-bis(isocyanatomethyl)-
56827–95–3	1-Hexadecanol, phosphate (3:1)
57344–01–1	Poly(oxy-1,2-ethanediyl), alpha.-alpha.'-[(octyloxy)phosphinylidene]bis[.omega.-hydroxy-
57344–02–2	Poly(oxy-1,2-ethanediyl), alpha.-[bis(octyloxy)phosphinyl]-.omega.-hydroxy-
64131–07–3	1-Hexacosanol, phosphate (3:1)
64131–08–4	1-Tetracosanol, phosphate (3:1)
64131–09–5	1-Docosanol, phosphate (3:1)
64131–10–8	1-Eicosanol, phosphate (3:1)
64131–18–6	1-Octacosanol, phosphate (3:1)
64502–13–2	Poly(oxy-1,2-ethanediyl), alpha.-alpha.'-alpha.''-phosphinylidynetris[.omega.-hydroxy-
73070–47–0	Poly(oxy-1,2-ethanediyl), alpha.-alpha.'-alpha.''-phosphinylidynetris[.omega.-(tridecyloxy)-
74049–24–4	Poly(oxy-1,2-ethanediyl), alpha.-alpha.'-(methoxyphosphinylidene)bis[.omega.-hydroxy-
75790–84–0	Benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-1-methyl-
75790–87–3	Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-

This notice also requires reporting of records kept pursuant to § 717.17 that cite as the cause of a significant adverse reaction a mixture, article, site discharge, or company process/operation that contains or involves a specified member of the category TaaP or a specified member of the category diisocyanates where the significant adverse reaction could reasonably be attributed in whole or in part to a specified member of such categories or a synergistic reaction of a specified member of these categories in combination with another (other) substance(s).

The report shall contain the company name and address, the name and telephone number of a contact person, and at a minimum be in the form of a copy of the abstract of the allegation record that is required to be kept pursuant to 40 CFR 717.15(b)(2). Records currently on file or recorded as of publication of this notice must be submitted no later than March 4, 1988. Copies of records should bear the docket number 8cF–0188–0002 and must be submitted to: Document Processing Center (TS–790), Room L–100, Office of Toxic Substances, Environmental Protection agency, 401 M Street SW., Washington, DC 20460, Attn: Section 8(c) Report.

(Approved by the Office of Management and Budget under control number 2070–0017)

Dated: January 8, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–880 Filed 1–15–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Blue Ridge Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Blue Ridge Broadcasting Co. Inc. Churchville, VA	BPH–861125MH	87–569
B. Peter Wayne Lechman, Churchville, VA	BPH–861126ND	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative, A,B
2. Ultimate, A,B

3. If there is any non-standarized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–896 Filed 1–15–88; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; George Henry Clay et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. George Henry Clay, Montgomery, AL	BPH-870327KB	87-567
B. Lighthouse FM Limited Partnership, Montgomery, AL	BPH-870330MG	
C. G. Dean Pearce, Montgomery, AL	BPH-870330MY	
D. PrimeMedia Broadcasting, Inc., Montgomery, AL	BPH-870331MB	
E. Alabama Radio Movement, Inc., Montgomery, AL	BPH-870331ML	
F. CCI-FM, Ltd., Montgomery, AL	BPH-870331MW	
G. Benjamin Macwan, Montgomery, AL	BPH-870331NP	
H. Alvin C. Dixon Jr., Montgomery, AL	BPH-870331OL	
I. Confederate Broadcasting, Inc., Montgomery, AL	BPH-870331OO	
J. Johnnie F. Knight, Montgomery, AL	BPH-870414KG	
K. Montgomery Broadcast Properties, Ltd., Montgomery, AL	BPH-870415KO	
L. JCT Broadcasting, Limited Partnership, Montgomery, AL	BPH-870415MB	
M. Montgomery Radio Joint Venture, Montgomery, AL	BPH-870415MH	
N. Linda Breland Valeska, d/b/a Breland Broadcasting, Montgomery, AL	BPH-870415MI	
O. June N. Phelps, Montgomery, AL	BPH-870415MM	
P. Double LS Broadcasting, Inc. Montgomery, AL	BPH-870415MR	
Q. Montgomery Broadcast Associates, Inc., Montgomery AL	BPH-870415MP	
R. Montgomery Broadcasting Corp., Montgomery, AL	BPH-870415MQ	
S. White Broadcasting Network, Inc., Montgomery, AL	BPH-870415MR	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. City coverage, A–S
2. Financial qualifications, I
3. Air hazard, A–S
4. Comparative, A–S
5. Ultimate, A–S

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transaction Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–867 Filed 1–15–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Cascade State Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 5, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cascade State Corp.*, Cascade, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Cascade State Bank, Cascade, Iowa.

2. *Fidelity Company*, Dyersville, Iowa; to acquire 80 percent of the voting shares Cascade State Corp., Cascade, Iowa, and thereby indirectly acquire Cascade State Bank, Cascade, Iowa.

3. *F & W Bancorporation, Inc.*, Kaukauna, Wisconsin; to acquire 80 percent of the voting shares of PTD Bancorp, Inc., Potosi, Wisconsin, and thereby indirectly acquire Potosi State Bank, Potosi, Wisconsin, and Darman Financial of Wisconsin, Incorporated, Verona, Wisconsin, and thereby indirectly acquire The First State Bank of Fennimore, Fennimore, Wisconsin. In connection with this application, F & M Merger Corporation, Kaukauna, Wisonsin, has also applied to acquire PTD Bancorp, Inc.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Anmer Corporation*, Neligh, Nebraska; to become a bank holding company by acquiring 84.45 percent of the voting shares of the successor by merger of The National Bank of Neligh, Neligh, Nebraska, and First State Bank, Oakdale, Nebraska, now known as First United Bank, Neligh, Nebraska.

Comments on this application must be received by January 28, 1988.

c. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Willow Bend Bancshares, Inc.*, Plano, Texas; to acquire 100 percent of the voting shares of Preston North National Bank, Dallas, Texas.

Comments on this application must be received by February 10, 1988.

Board of Governors of the Federal Reserve System, January 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–866 Filed 1–15–88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquete Avenue, Minneapolis, Minnesota 55480:

1. *A. Gay and Beverly Jensen*, Drayton, North Dakota; to acquire an additional .89 percent; and Dennis Kliniske, Drayton, North Dakota; to acquire an additional .89 percent of the voting shares of Walsh County Bancorporation, Inc., Drayton, North Dakota, and thereby indirectly acquire Bank of Minto, Minto, North Dakota.

Board of Governors of the Federal Reserve System, January 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–867 Filed 1–15–88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINSTRATION

Agency Information Collection Activities Under the Office of Management and Budget Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reinstate four recently expired information collections previously approved under OMB control numbers 3090–0072, U.S. Government Lease for Real Property, and 3090–0088, Description of Property for Possible Leasing, Lessor's Annual Cost Statement, and Proposal To Lease Space.

AGENCY: Operations Division, Public Building Service, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: 3090–0072, 800 respondents, one response per year, 30 minutes per response on average, burden hours, 400; 3090–0088, 3,200 respondents, one response per year each, about 7 hours per response, 22,500 burden hours.

FOR FURTHER INFORMATION CONTACT: Hilary Peoples, 202–566–1508.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–566–068.

Dated: January 11, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88–848 Filed 1–15–88; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees in the Center for Biologics Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATE: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Jack Gertzog, Office of Scientific Advisors and Consultants (HFN–30), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455,

or

Naomi Kulakow, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the following three advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. Allergenic Products Advisory Committee: three vacancies occurring August 31, 1988.

2. Blood Products Advisory Committee: five vacancies occurring September 30, 1988, including the consumer-nominated member.

3. Vaccines and Related Biological Products Advisory Committee: three vacancies occurring January 31, 1989.

The functions of the three committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, vaccines, immunological products, and other biological products intended for use in the diagnosis, prevention, or treatment of human diseases, and to make appropriate recommendations to the Commissioner. These three committees also review and evaluate intramural research programs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergenic products, infectious diseases, internal medicine, epidemiology, statistics, hematology, immunology, blood banking, virology, bacteriology, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas fo expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is ordinarily 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials.

Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nonimation, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: January 12, 1988.

Ronald A. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–886 Filed 1–15–88; 8:45 am]

BILLING CODE 4160-01-M

Request for Nominations for Voting Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the commitees during the next 12 months and beyond.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATE: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Jack Gertzog, Office of Scientific Advisors and Consultants (HFN–30), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455,

or

Naomi Kulakow, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the following 14 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. Anesthetic and Life Support Drugs Advisory Committee: Four vacancies occurring June 30, 1988, including the consumer-nominated member.

2. Anti-Infective Drugs Advisory Committee: Three Vacancies occurring November 30, 1988.

Arthritis Advisory Committee: Three vacancies occurring September 30, 1988, including the consumer-nominated member.

4. Cardiovascular and Renal Drugs Advisory Committee: Two vacancies occurring June 30, 1988, including the consumer-nominated member.

5. Dermatologic Drugs Advisory Committee: Two vacancies occurring August 31, 1988.

6. Endocrinologic and Metabolic Drugs Advisory Committee: Four vacancies occurring June 30, 1988, including the consumer-nominated member.

7. Fertility and Maternal Health Drugs Advisory Committee: Two vacancies occurring June 30, 1988.

8. Gastrointestinal Drugs Advisory Committee: Four vacancies occurring June 30, 1988, including the consumer-nominated member.

9. Oncologic Drugs Advisory Committee: Four vacancies occurring June 30, 1988, including the consumer-nominated member.

10. Peripheral and Central Nervous System Drugs Advisory Committee: Three vacancies occurring January 31, 1989.

11. Psychopharmacologic Drugs Advisory Committee: Four vacancies occurring June 30, 1988.

12. Pulmonary-Allergy Drugs Advisory Committee: Three vacancies occurring June 30, 1988.

13. Radiopharmaceutical Drugs Advisory Committee: Three vacancies occurring June 30, 1988.

The functions of the 13 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties indicated by the title of the committee and to make appropriate recommendations to the Commissioner of Food and Drugs.

14. Drug Abuse Advisory Committee: Three vacancies occurring June 30, 1988, including the consumer-nominated member.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of all information gathered by both the Department of Health and Human Services (DHHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs or other substances.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergy, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is ordinarily 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and 21 CFR Part 14, relating to advisory committees.

Dated: January 12, 1988.

Ronald A. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–887 Filed 1–15–88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M–0395]

Polymer Technology Corp.; Premarket Approval of THE BOSTON™ EQUALENS™ (itafluorofocon A) CONTACT LENS

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (DA) is announcing its approval of the application by Polymer Technology Corp., Wilmington, MA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical THE BOSTON™ EQUALENS™ (itafluorofocon A) CONTACT LENS (clear and tinted with or without ultraviolet light absorber). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by February 16, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–a305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On May 5, 1987, Polymer Technology Corp., Wilmington, MA 01887, submitted to CDRH an application for premarket approval of THE BOSTON™ EQUALENS™ (itafluorofocon A) CONTACT LENS (clear and tinted with or without ultraviolet light absorber). The lens is indicated for daily wear and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and for the correction of corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −20.00 D to +12.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling. The tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206. The lens may contain an ultraviolet absorber which has been integrated as an additive within the lens polymer matrix. The approved rigid gas permeable contact lens is identified at 21 CFR 886.5916 (52 FR 33346; September 2, 1987).

On July 24, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 30, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the approved lens states that the lens is to be disinfected using only the recommended chemical disinfection system. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH aproves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved

lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regualtions or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 18, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 11, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–860 Filed 1–15–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Migrant Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue SW., Washington, DC., telephone (202) 245–6791. Copies may be obtained from: Mrs. Sonia M. Leon Reig, Executive Secretary, National Advisory Council on Migrant Health, Room 7A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Date: January 12, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–900 Filed 1–15–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Acquired Immunodeficiency Syndrome Program Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the NIH Acquired Immunodeficiency Syndrome Program Advisory Committee on February 26, 1988, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 4:15 p.m. on February 26, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The purpose of the meeting is to provide an introduction and overview of the NIH AIDS Research Program.

Dr. Jay Moskowitz, Associate Director for Program Planning and Evaluation, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Date: January 1, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–958 Filed 1–15–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegates of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163–3616–7, August 19, 1975, as amended by 52 FR 19778, May 27, 1987) is amended to reflect a reorganization of the National Institute of Mental Health, ADAMHA. The reorganization revises the functional statements for the Office of Policy Analysis and Coordination and the Office of Resource Management.

Section HM–B, Organization and Functions, is amended as follows: Delete the functional statements for the *Office of Policy Analysis and Coordination (HMM13)*, and the *Office of Resource Management (HMM15)*, and substitute the following: *Office of Policy Analysis and Coordination (HMM13)*

(1) Provides a focal point for developing goals and implementing strategies to influence Institute planning, policy, and program development by: (a) Monitoring and analyzing Federal, State and local legislative, regulatory, and judicial activities; (b) stimulating interaction and information exchange with the scientific community and with professional and constitutent groups; and (c) gathering and analyzing information on research and clinical human resource needs; (2) oversees an evaluation process to examine and improve performance, identify needs, solve problems, and recommend resource allocations; and (3) oversees an executive secretariat for correspondence control.

Office for Resource Management (HMM15)

Directs and coordinates the Institute's resource allocation and management improvement processes by overseeing: (a) Program planning and financial management; (b) grants and acquisition activities; (c) information resource management; (d) program analysis; (e) management policy and procedure development, interpretation, and implementation; and (f) the provision of general administration services throughout the Institute.

Date: January 4, 1988.

Robert E. Windom,

Assistant Secretary for Health

[FR Doc. 88–874 Filed 1–15–88; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–08–4212–21; N–41274]

Relinquishment of Airport Lease and Opening of the Land; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of relinquishment and opening order.

SUMMARY: This action is notice that an airport lease has been relinquished and that the land will be opened to the operation of the public land laws, including mining and mineral leasing.

DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 E. 4th Street, Winnemucca, Nevada 89445, 702–623–3676.

SUPPLEMENTARY INFORMATION: Notice is hereby given that airport lease N–41274, involving the following described land, has been relinquished:

Mount Diablo Meridian, Nevada

T. 45 N., R. 37 E.,
Sec. 27, Lots 3 and 4.

The area described contains 27.27 acres in Humboldt County.

At 10 a.m. on February 18, 1988, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 18, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on February 18, 1988, the land will be opened to location under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–817 Filed 1–15–88; 8:45 am]

BILLING CODE 4310–HC–M

[U–59094]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–415), a petition for reinstatement of oil and gas lease U–59094 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U–59094 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–928 Filed 1–15–88; 8:45am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1608 and 2137, Block 60, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 7, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 8, 1988.

J. Rogers Pearcy

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–853 Filed 1–15–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5604 and 5805, Blocks 144 and 145.

respectively, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on January 5, 1988. Comments must be received by February 3, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 8, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-854 Filed 1-15-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: January 5, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0019.

Type of Submission: Extension.

Title: Certificate of Eligibility of Exchange Visitor (J-1) Status

Purpose: Applicants must apply for Certificate of Eligiblity for Exchange Visitor (J-1) Status visas. J-1 Status visas are needed by AID sponsored participants (Trainees) and are provided by means of the U.S. Exchange Visitor Program. Visas for these trainees are issued by the Immigration and Naturalization Service upon receipt of Form IAP-66, Certificate of Eligiblity for Exchange Visitor (J-1) Status.

Respondents will have a submission burden of one response annually and an estimated annual recordkeeping burden of 22 hours per recordkeeper.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: January 5, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-849 Filed 1-15-88; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (AID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: January 7, 1988.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0524.

Type of Submission: Reinstatement.

Title: Guidelines for Development Education Project Grants.

Purpose: The Biden-Pell Amendment to the International Security and Development Cooperation Act of 1980 urges the Administrator of AID to provide support to the ongoing efforts of private and voluntary organizations engaged in increasing public awareness of the issues pertaining to world hunger and poverty. AID's major response to this legislative mandate is the Development Education Grants Program, initiated in FY 1982. Through this competitive, cost-shared grants program, applications for funding are considered on an annual basis. The information is used by AID officials in order to select the most qualified candidates for grants awards. The annual reporting burden is once per respondent and each response requires approximately five hours.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, DC 20503.

Date: January 7, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-929 Filed 1-15-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-374 (Final)]

Potassium Chloride From Canada

AGENCY: International Trade Commission.

ACTION: Postponement of hearing in final antidumping investigation.

EFFECTIVE DATE: January 14, 1988.

SUMMARY: On January 8, 1988, the United States Department of Commerce entered into an agreement that suspends the antidumping investigation involving potassium chloride from Canada, provided for in item 480.50 of the Tariff Schedules of the United States. The agreement calls for Canadian producers/exporters to revise their U.S. prices to eliminate sales of potassium chloride at less than fair value. The agreement will be effective on the date of publication in the **Federal Register**. In view of this action, the United States International Trade Commission hereby gives notice of the postponement of its public hearing in this investigation, scheduled for January 19, 1988, (52 FR 35772, September 23, 1987), pending the Department of Commerce's official publication of suspension.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Authority: This notice is published pursuant to §§ 201.13 and 201.14(b) of the Commission's Rules of Practice and Procedure (19 CFR 201.13 and 201.14(b)).

By order of the Commission.

Issued: January 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-1037 Filed 1-15-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31105]

The Atchison, Topeka and Santa Fe Railway Co.; Acquisition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, the transactions between The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the State of Oklahoma, whereby Santa Fe will acquire sole ownership of a 6.8-mile rail line in Oklahoma City, OK and control of Oklahoma City Junction Railway Company. The exemption is subject to standard labor protective conditions.

DATES: The exemption will be effective on February 18, 1988. Petitions to stay must be filed by January 29, 1988, and petitions for reconsideration must be filed by February 8, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31105 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Michael W. Blaszak, General Attorney, 80 East Jackson Boulevard, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: January 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1007 Filed 1-15-88; 8:45 am]

BILLING CODE 7035-01-M

[Decision and Notice No. 1; Finance Docket No. 32000]

Rio Grande Industries, Inc.; Acquisition for Control of Southern Pacific Transportation Co.

Decided: January 11, 1988.

Notice. On December 31, 1987, Rio Grande Industries, Inc. (Rio Grande), SPTC Holding, Inc. (SPTC Holding), and the Denver and Rio Grande Western Railroad Company (DRGW) (collectively, applicants), jointly field, pursuant to 49 CFR 1180.4(b), a prefiling notification of intent to file an application under 49 U.S.C. 11344 for approval of Rio Grande's acquisition of control, through its wholly-owned subsidiary SPTC Holding, of Southern Pacific Transportation Company (SPT).

Pursuant to the terms of a Share Purchase Agreement dated December 24, 1987, Rio Grande, through SPTC Holding proposes to acquire all issued and outstanding shares of SPT common stock beneficially owned by Southern Pacific Company, and held in a voting trust by La Salle National Bank, as trustee. Applicants state that the year 1986 will be used for traffic diversion, competitive, costing and pro forma financial studies.

Because the transaction contemplates the acquisition of control of SPT, a class I railroad, by Rio Grande, which controls DRGW, a class I railroad, it constitutes a "major" transaction under the Commission's regulations 49 CFR 1180.2(a). Any requests for additional information will be made at a later date.

Waiver. Applicants seek waiver of the pre-filing notice of intent (49 CFR 1180.4(b)) to the extent it must be filed 3 to 6 months prior to the filing of an application. They plan on filing their consolidation application on or before February 22, 1988.

In support of their waiver request, applicants argue that it has been a matter of public record for some time that the SPT shares would be sold, that SPT has been managed and operated in a state of uncertainty since institution of the voting trust in December 1983, and that there is no valid reason to delay submission of their consolidation application for 3 months. We agree. As we stated recently in Decision 33, Finance Docket No. 30400, *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company*, served January 6, 1988, the Commission plans to act promptly in processing the application.[1] Applicants' request for waiver of the pre-filing notification will be granted.

This decision will not significantly affect the quality of the human environment or energy conservation.

It is ordered:

1. Applicants' requested waiver of the notice of intent requirement is granted as stated above.

2. This decision shall be effective on the date served.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-885 Filed 1-15-88; 8:45 am]

BILLING CODE 7035-01-M

[1] On January 6, 1988 applicants filed a proposed procedural schedule and a motion for protective order. We will separately issue a notice addressing scheduling matters and invite comment on it. The request for protective order is also under review.

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; The Importance of Lubricating Oil in Diesel Particulate Emissions (Southwest Research Institute)

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, Southwest Research Institute ("SwRI") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of parties to the group research project, The Importance of Lubricating Oil in Diesel Particulate Emissions.

The notification identifying the original parties to the project, and describing the nature and objectives of the project, is published at 52 FR 35335 (September 18, 1987).

The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the additional parties to the group research project are:

Exxon Chemical Company,
Mobil Research and Development Corporation,
Volvo Truck Corporation,
Caterpillar, Inc.,
Saab-Scania AB.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-861 Filed 1-15-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
National Longitudinal Survey of Work Experience of Youth
(Was 1205-0250)
Annually
Individuals or Households
10,500 responses; 10,500 hours; 4 forms

The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Bureau of Labor Statistics
National Longitudinal Survey of Work Experience of Young Women
(Was 1205-0249)
Annually
Individuals or Households
3,616 responses; 3,517 hours; 2 forms

The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by women 34-44. These women were 14-24 years of age when this longitudinal survey began in 1966.

Extension

Employment and Training Administration
State Job Training Plan
1205-0204
Biennially
State or local governments
15 respondents; 150 burden hours

The State Job Training Plan, required by JTPA for those States with one Statewide JTPA program, will provide information on the activities to be conducted and participants to be served by the State under JTPA.

Employment and Training Administration
Service Delivery Area Appeal
1205-0202
On occasion
State or local governments
20 respondents; 40 burden hours; no forms

The information collected will be used to determine whether JTPA recipients denial of designation of entities as service delivery area is in conformance with the JTPA.

Signed at Washington, DC, this 12th day of January, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-936 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-256-C]

Arch on the North Fork, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch on the North Fork, Inc., P.O. Box 928, Jackson, Kentucky 41339 has filed a petition to modify the application of 30 CFR 77.811 (movement of portable substations and transformers) to its Southfork Surface Mine (I.D. No. 15-03328) located in Breathitt County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that portable substations and transformers be deenergized before they are moved from one location to another.

2. As an alternate method, petitioner proposes to use a rubber-tired, trailer-mounted, portable generator to move large electric mining shovels and draglines, using specific equipment and safety procedures as outlined in the petition.

3. In support of this request, petitioner states that by avoiding the need to deenergize a portable substation, establish ground fields, and use longer length trailing cable the alternate method would eliminate excessive exposure of personnel to energized trailing cable, which can be damaged from being dragged by equipment over long distances.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Date: January 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-937 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-255-C]

B & S Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

B & S Coal Company, Inc., HC 81, Box 244, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its No. 2 Mine (I.D. No. 15-15432) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 11, 1988.

[FR Doc. 88-938 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-254-C]

C & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & B Coal Company, Inc., Route 1, Box 507, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Colliers Creek No. 1 Mine (I.D. No. 15-15225) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety due to the height of the coalbed.

3. Petitioner further states that due to uneven roof and soft and uneven bottom the cabs or canopies could strike and dislodge roof support. The cabs or canopies would also limit the equipment operator's visibility.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 11, 1988.

[FR Doc. 88-939 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-34-M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.4361(b) (3) (underground evacuation drills) to its Homestake Gold Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that evacuation drills include evacuation of all persons from their work areas to the surface or to designated central evacuation points.

2. Petitioner states that there is no uniform time for a shift change because each area of the mine has different hoisting schedules. Evacuation drills are usually scheduled one to two hours prior to the majority of the crews' quitting time. Therefore, mining crews in drifts, stopes, etc., in their normal mining cycle are generally in an explosives charging phase of operations when a drill is initiated. The crew members must leave their work areas immediately upon smelling stench regardless as to where they are in their work cycle. After everyone has reached the surface some crew members return underground to detonate charged holes so as to not leave safety hazards for an oncoming crew or possibly overnight. This necessitates three additional hours to return underground for blasting purposes and shortens ventilation time between shifts.

3. As an alternate method, petitioner proposes to designate central evacuation points for specific areas of the mine, with specific conditions as outlined in the petition.

4. In support of this request, petitioner states that if the central evacuation points are established it would increase safety to all because the crew members would be able to quickly return to there work areas to complete charging operations and blast holes, and thereby not leave these conditions any longer than necessary.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: January 11, 1988.

[FR Doc. 88-940 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-275-C]

Oakwood Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Oakwood Mining Company, 109 Broad Bottom Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-16223) Located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam ranging from 43 to 45 inches in height, with consistent ascending and descending grades.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the cabs or canopies could strike and dislodge roof support bolts or cause the equipment to wedge against the top, causing injury to the operator. The cabs or canopies would also limit the equipment operator's vision and create a cramped sitting position, resulting in fatigue.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Dated: January 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-941 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-285-C]

Scarlett Coal Co., Inc.; Petition for Modification of Application Mandatory Safety Standard

Scarlett Coal Company, Inc., HC 87, Box 192, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 1 (I.D. No. 15-14830) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30—40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one person of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one person;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 11, 1988.

[FR Doc. 88-942 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-276-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 45, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Retiki Mine (I.D. No. 15-00672) located in Henderson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install an early warning fire detection system using a low-level carbon monoxide detection system with specific conditions as outlined in the petition.

3. A sensing device will be placed at each belt drive and tailpiece except where flights are set in piggyback fashion. Then one sensing device will be provided for the tailpiece and belt drive and one sensing device will be installed each 2,000 feet along the entire belt line.

4. Where belt drives are set at ninety degree angles to the main line belts, a sensing device will be provided for both the tailpiece and belt drive.

5. Air off the belt lines will not be used for face ventilation. Temporary stoppings will be erected in the first pillow line outby each section tailpiece and belt line air is vented to the return.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition are available for inspection at that address.

Date: January 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-943 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-290-C]

Wormy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Wormy Coal Company, P.O. Box 1298, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its No. 1 Mine (I.D. No. 15-14194) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 18, 1988. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 11, 1988.

[FR Doc. 88-944 Filed 1-15-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* February 1, 1988.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations to the Division of General Programs, for projects beginning after July 1, 1988.

2. *Date:* February 1-2, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research applications for Humanities, Science and Technology submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

3. *Date:* February 4-5, 1988.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations to the Division of General Programs, for projects beginning after July 1, 1988.

4. *Date:* February 8, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for American History, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

5. *Date:* February 9, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Fine Art, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

6. *Date:* February 18, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Archaeology (New World), submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

7. *Date:* January 29, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Tools category in the field of Literature, for the Division of Research Programs, for projects beginning after July 1, 1988.

8. *Date:* February 4, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access and Tool category in the field of Arts and Architecture, for the Division of Research Programs, for projects beginning after July 1, 1988.

9. *Date:* February 5, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Tools category in the fields of Ancient History, to the Division of Research, for projects beginning after July 1, 1988.

10. *Date:* February 19, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access category in the field of Literature, for the Division of Research Programs, for projects beginning after July 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-876 Filed 1-15-88; 8:45 am]

BILLING CODE 7536-01-M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 5, 1988, from 9:00 a.m.-5:45 p.m.; February 6, 1988, from 9:00 a.m.-6:00 p.m.; and on February 7, 1988, from 9:00 a.m.-1:00 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 5, 1988, from 9:00 a.m.-5:45 p.m., and on February 6, 1988, from 9:00 a.m.-4:30 p.m. The topics for discussion will include Program Review and Guidelines for: Opera-Musical Theater, Music Ensembles, Arts in Education, Inter-Arts and the Endowment Fellows Program; the Endowment's Five-Year Planning Document; a Report on Special Constituencies Self Evaluation; and a Report on the Recording Industry.

The remaining sessions of this meeting on February 6, 1988, from 4:30 p.m.-6:00 p.m. and on February 7, 1988, from 9:00 a.m.-1:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

January 12, 1988.

[FR Doc. 88-931 Filed 1-15-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Administrator, General Services Administration, the Nuclear Regulatory Commission has determined that the establishment of the Nuclear Safety Research Review Committee is necessary and in the public interest to obtain independent advice and recommendations concerning the overall management and direction of the nuclear safety research program.

The purpose of the Committee is to advise the Director of the Office of Nuclear Regulatory Research on matters of overall management importance, as suggested by the following questions:

1. Is the program being planned, implemented, and managed in accordance with the NRC philosophy of Nuclear Regulatory Research?

2. Is the program likely to meet the needs of the users of research?

3. Is there an appropriate long range program, and is it going in the right direction?

4. Are the best people doing the work at the best places? Are there options, including cooperative programs, that would yield higher quality work, or otherwise improve program efficiency?

5. Is the program free of obvious bias and have the research products been given adequate, unbiased peer review?

Membership on the Committee will be drawn from industrial, national laboratory, university, and not-for-profit research organizations. In addition to having experience in dealing with the problems of managing large research efforts, panel members will have demonstrated expertise in such areas as applied physics, chemistry, radio-biology, health physics, human factors, digital and analog instrumentation and control systems, materials science and engineering and the classical engineering disciplines.

The Committee currently plans to hold its first meeting on February 17-18, 1988. For further information regarding this Committee, call Charles Kelber (telephone 301/492-3710).

Date: January 12, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-859 Filed 1-15-88; 8:45 am]

BILLING CODE 7590-01-M

Application for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type	Material in Kilograms			Country of destination
		Total element	Total isotope	End use	
Transnuclear, Inc., 12-16-87, 12-16-87, XSNM02359	93.3 enriched uranium	280.650	243.186	Fuel for THTR-300 reactor	West Germany
Transnuclear, Inc., 12/16/87, 12/16/87, XSNM02360	93.2 enriched uranium	32.6	30.4	Fuel for Orphee research reactor	France

For the Nuclear Regulatory Commission.

Dated this 11th day of January 1988 at Bethesda, Maryland.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

[FR Doc. 88-920 Filed 1-15-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 14, 1987 (52 FR 47484). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1988 ACRS full Committee meeting can be obtained by a prepared

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telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Thermal-Hydraulic Phenomena, January 20 and 21, 1988, Los Alamos, NM. The Subcommittee will review the documentation developed by LANL to support the TRAC PF1 Thermal-Hydraulic Codes pursuant to the NRC RES Code Scaling Assessment and Uncertainty (CSAU) requirements. The status of the CSAU effort vis-a-vis the proposed ECCS Rule revision will also be discussed.

Waste Management, January 21 and 22, 1988, Washington, DC. The Subcommittee will review the following pertinent waste management topics: *HLW:* (1) Status report on the effects of recent legislative actions on NRC's HLW program; and (2) NRC's Review Plan for the Yucca Mountain Consultation Draft Site Characterization Plans, including a status report on NRC's review. *LLW:* (1) The DOE and NRC uranium mill tailings programs; (2) Revision 1 of the Standard Review Plan for shallow land burial (SLB), including engineered barriers and alternatives to SLB; and (3) Status report on recently reported rupture of TMI-2 radioactive waste liners. *RES:* (1) New directions for HLW and LLW research in response to legislative and budgetary changes; and (2) Hydrologic transport and modeling of the near-surface nitrate disposal area, Chalk River Nuclear Laboratory.

Structural Engineering, January 22, 1988, Albuquerque, NM. The Subcommittee will review the results of the concrete containment model test.

Decay Heat Removal Systems, January 28, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45: "Shutdown Decay Heat Removal Requirements."

Safety Research Program, January 29, 1988, Washington, DC. The Subcommittee will discuss the methodology to be used by the RES Staff to prioritize NRC research activities.

Generic Items, January 29, 1988, Washington, DC. The Subcommittee will discuss the procedures being used by the NRC Staff in: (a) Defining the scope of generic issues and unresolved safety issues, and (b) modifying the original scope of these issues.

TVA Organizational Issues, February 2-3, 1988, Chattanooga, TN. The Subcommittee will continue its review of the safety issues associated with the TVA management reorganization and the Sequoyah restart.

Reliability Assurance, February 9, 1988, Washington, DC. The Subcommittee will discuss items regarding testing performed on Containment Isolation valves and a test plan for the isolation of high energy line breaks. The final version of Regulatory Guide 1.100, Revision 2, "Seismic Qualification of Electrical and Mechanical Equipment for Nuclear Power Plants," will be reviewed.

Safety Philosophy, Technology and Criteria, February 9, 1988, Washington, DC. The Subcommittee will discuss the near-final draft of the Staff's proposed Implementation Plan for the Safety Goal Policy Statement.

Human Factors Seminar, February 10, 1988, Washington, DC. The Subcommittee will be briefed on topics of interest regarding Human Factors.

Metal Components, February 18, 1988, Washington, DC. The Subcommittee will review Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Material."

Joint Scram Systems Reliability and Core Performance, February 19, 1988, Washington, DC. The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients) in general, and ATWS analyses in particular.

Diablo Canyon, February 23-24, 1988, San Francisco, CA. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Reliability Assurance, March 8, 1988, Washington, DC. The Subcommittee will discuss: (1) Value reliability, including value testing schemes by EPRI, MOVATS, Liberty Technical Center, and Oak Ridge National Laboratory; (2) RES plans for MOV and check value related work; (3) valve testing insights from Peter Wohld; and (4) incidents related to valves (German hydrogen explosion in PORV and TVA MOV interchangeability problem).

Auxiliary Systems, March 9, 1988, Washington, DC. The Subcommittee will discuss the final report on the Fire Risk Scoping Study being performed by Sandia National Laboratories for the NRC.

Babcock & Wilcox Reactor Plants, March 23-24, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Metal Components, Date to be determined, Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping and other topics related to Subcommittee activities.

Advanced Pressurized Water Reactors, Date to be determined (February/March), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives and the NRC Staff regarding the PRA for WAPWR (RESAR SP/90) design.

Waste Management, Date to be determined (February/March), Washington, DC. The Subcommittee will review the final draft of the Q-List GTP prior to its publication. Other pertinent radioactive waste management topics will likely also be reivewed.

Advanced Pressurized Water Reactors, Date to be determined (March), Washington, DC. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Containment Requirements, Date to be determined (March/April), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A-48).

Severe Accidents, Date to be determined (March/April) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter of Individual Plant Examinations (IPEs).

Thermal Hydraulic Phenomena, Date to be determined (March/April), Washington, DC. The Subcommittee will review the final version of the proposed ECCS Rule.

Safety Philosophy, Technology and Criteria, Date to be determined (March/April), Washington, DC. The Subcommittee will review the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to sever reactivity transients.

Containment Requirements, Date to be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

Decay Heat Removal Systems, Date to be determined (April/May), Washington, DC. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Advanced Pressurized Water Reactors, Date to be determined (April/May), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Occupational and Environmental Protection Systems, Date to be determined, Washington, DC. The Subcommittee will review: (1) The "hot particle" problem, (2) the new revision to the definition of an "extraordinary nuclear occurrence", (3) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (4) the emergency planning rule, (5) the control room habitability report by ANL, and (6) other related matters.

Auxiliary Systems, Date to be determined, Washington, DC. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

Regional Programs, Date to be determined, Atlanta, GA. The Subcommittee will review the activities under the control of the NRC Region II Office.

Decay Heat Removal System, Date to be determined, Washington, DC. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date to be determined, Washington, DC. The Subcommittee will review the Diagnostic Evaluation Program and other related staff plant review efforts.

ACRS Full Committee Meeting

February 11-13, 1988—Items are tentatively scheduled.

*A. *Advanced Reactors (Open)*—Review and comment regarding key design features of advance liquid metal cooled and gas cooled reactor plant designs.

*B. *Leak-Before-Break Requirements (Open)*—Review and comment regarding proposed final revision of the NRC Standard Review Plan Section 3.6.3 regarding leak-before-break evaluation procedures.

*C. *EPRI Requirements for Advanced LWRs (Open)*—Briefing by EPRI representatives regarding proposed requirements for 600 MWe nuclear power plants.

*D. *NRC Safety Research Program (Open/Closed)*—Discuss proposed ACRS report to the U.S. Congress on the NRC safety research program and proposed ARCS comments to the NRC regarding proposed methodology for prioritization of research activities.

*E. *NRC Quantitative Safety Goals (Open)*—Briefing and discussion regarding proposed implementation plan for the NRC Quantitative Safety Goals.

*F. *Maintenance Policy Statement (Open)*—Discussion and comment as appropriate of proposed NRC policy statement regarding nuclear power plants.

*G. *Diagnostic Evaluation Program (Open)*—Briefing and discussion of NRC DEP including initial evaluation of the Dresden and McGuire nuclear power plants.

*H. *Systematic Assessment of Operating Experience (Open)*—Briefing and discussion of recently completed AEOD studies of nuclear power plant operational data and related activities.

I. *New Member (Closed)*—Discuss qualifications of candidates proposed for appointment to the Committee.

*J. *Nuclear Waste Management and Disposal (Open)*—Report and discussion of congressional redirection of the nuclear waste management and disposal program and related waste management issues.

*K. *TVA Nuclear Organization and Operations (Open)*—Review and comment regarding proposed changes in TVA nuclear management structure and proposed restart of TVA nuclear plants.

*L. *ACRS Subcommittee Activities (Open)*—Reports and discussion regarding the status of assigned subcommittee activities, including thermal-hydraulics ECCS rules, and decay heat removal.

*M. *ACRS Procedures and Practices (Open)*—Discuss proposed changes in ACRS Bylaws regarding the activities of ACRS members and proposed hierarchial structure for important safety-related issues.

*N. *Safety Implications of Control Systems (tentative) (Open)*—Discuss proposed ACRS comments regarding proposed NRC Staff resolution of Generic Issue A-47, Safety Implications of Control Systems.

*O. *Generic Issues (Open)*—Discuss proposed ACRS comments and recommendations regarding the effectiveness of NRC Staff activities to resolve generic issues and USIs.

*P. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

March 10-12, 1988—Agenda to be announced.

April 7-9, 1988—Agenda to be announced.

Dated January 13, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-960 Filed 1-15-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16223/File No. 812-6781]

Application for Exemption; Mutual Benefit Life Insurance Co. et al.

Date: January 12, 1988.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: The Mutual Benefit Life Insurance Company (the "Company"), Mutual Benefit Variable Contract Account-9 (the "Account"), and Mutual Benefit Financial Service Company (the "Underwriter").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue variable annuity contracts which provide for the deduction of an asset based sales charge and mortality and expense risk charges from the assets of the Account. A notice was previously published on August 11, 1987 (Rel. No. IC-15912) concerning exemptions for the mortality and expense risk charges under the Contracts. Applicants filed an amendment to the application concerning the asset based sales charge.

Filing Date: The application was filed on June 30, 1987 and amended on December 2, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. The

Mutual Benefit Life Insurance Company and Mutual Benefit Variable Contract Account-9 at 520 Broad Street, Newark, New Jersey 07101 and Mutual Benefit Financial Service Company at 290 Westminister Street, Providence, Rhode Island 02903.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. The Company is a mutual life insurance company organized under the laws of New Jersey. The Account is a separate account of the Company currently seeking registration under the Act as a unit investment trust.

2. The Account is divided into sub-accounts which invest solely in the shares of one of the five corresponding portfolios of Seligman Mutual Benefit Portfolios, Inc. The Account was established to fund the individual flexible purchase payment deferred variable annuity contracts (the "Contracts") to be issued by the Company.

3. During the first five years of a Contract, the Company proposes to assess and deduct from each sub-account of the Account a daily asset based sales charge ("Asset Based Sales Charge") which will amount to an aggregate of 0.48% annually of the assets of each sub-account. No Asset Based Sales Charge will be assessed and deducted during a Contract's annuity period. Applicants represent that the sum of any Asset Based Sales Charge and any applicable contingent deferred sales load ("CDSL") under a Contract will not exceed 8.5% of the purchase payments under that Contract.

4. Applicants submit that the deduction of the sales charges under the contracts, as an Asset Based Sales Charge and as a CDSL, will be more favorable to the Contract owner than the deduction of the sales charges from the purchase payments. First, the amount of the Contract owner's purchase payments that will be allocated to the Account will be greater than it would be if the sales charges were deducted from purchase payments. Second, the death benefit under the Contract may be greater since the death benefit may be based, in part, on a Contract owner's total accumulation value under his or her Contract.

5. The Company proposes to deduct from the Account a daily charge for mortality and expense risks ("Risk Charge") equivalent to an annual rate of 1.25% of the average daily net asset value of the Account. The proposed Risk Charge consists of approximately .35% for mortality risks and approximately .90% for expense risks.

6. The Company assumes a mortality risk by its contractual obligations to pay a death benefit prior to the settlement date. The Company assumes a further mortality risk by its contractual obligation to continue to make annuity payments to each annuitant for the entire life of the annuitant under annuity options involving life contingencies.

7. The Company assumes an expense risk because the Administration Charge, which is assessed against each Contract annually, may be insufficient to cover certain administrative service fees and other administrative expenses assumed by the Company. The Administration Charge, initially set at $30, may not be increased above $60 per year.

8. The level of the Risk Charge is within the range of industry practice for comparable annuity contracts. Applicants have reviewed publicly available information regarding products of other companies taking into consideration such factors as: guaranteed minimum death benefits; guaranteed annuity purchase rate; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants have concluded that the Risk Charge is within the range of charges determined by industry practice. Applicants will maintain at their principal office, and make available to the SEC, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of the Company's comparative review.

9. The Risk Charge is reasonable in relation to the risks assumed and guarantees provided in the Contract. This representation is based upon Applicant's analysis of the mortality risks (taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates and the guaranteed minimum death benefit) and the expense risks (taking into account deductions from the Account assets other than Risk Charges and the estimated costs, now and in the future, for certain product features). The Company will maintain at its principal office, available to the SEC, a memorandum setting forth in detail this analysis.

10. No front end sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A CDSL will be assessed when redemption (withdrawal) of a purchase payment is made within five years of its payment date. The amounts obtained from the CDSL and the Asset Based Sales Charge reimburse the Company for expenses incurred in selling the Contracts. These expenses include commissions and other promotional or distribution expenses associated with marketing the Contracts and the costs of printing and distributing prospectuses, Contracts, sales material and any other relevant information concerning the Contracts. The CDSL is expressed as a percentage of the amount redeemed, according to the following table:

Years since purchase payments made	Charge percentage
Less than one	6
At least one, but less than two	5
At least two, but less than three	4
At least three, but less than four	3
At least four, but less than five	1
At least five	0

In no event will the CDSL be made against any purchase payments redeemed which have been held under the Contract longer than five years immediately preceding the date of redemption. Payments made first are considered to be withdrawn first.

11. Applicants acknowledge that the Asset Based Sales Charge and CDSL may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Risk Charge, all or a portion of such profit may be used for distribution expenses. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Account and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the SEC.

12. Applicants submit tht although the proposed Asset Based Sales Charge may not fall within the literal terms of section 2(a)(35) of the Act, the charge is consistent with the intent and definition of "sales load" in the Act. The Company has not imposed a front end sales charge on purchase payments under the Contracts, although the Company will continue to incur expense for the sale of the Contracts. The Asset Based Sales Charge and the CDSL are designed to reimburse the Company for the expenses of selling the Contract. Applicants submit that such expenses are within the definition of "sales load" and, except for the timing of the imposition of the Asset Based Sales Charge, would otherwise comply with section 2(a)(35). The Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have that plan formulated and approved by a board of directors a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

13. Applicants submit, based on all of their representations, that their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to section 6(c) of the Act from the operation of the provisions of sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the Asset Based Sales Charge and Risk Charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-948 Filed 1-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25264; File No. SR-CBOE-87-53]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading Options on the Europe, Australia, Far East Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on November 6, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are *italicized.*

Rules 24.1 through 24.13 of Chapter XXIV apply, with the following additions, to the Europe, Australia, Far East (EAFE) Index.

Rule 6.2 Trading Rotations

No. change.

. . . . Interpretations and Policies.

.01 and .02 No change.

.03 A closing trading rotation shall be employed for each series of individual stock options on the last business day prior to its expiration (hereinafter "closing rotation"). Open trading in such expiring series shall be permitted until the commencement of the closing rotation in such series. The closing rotation shall commence as soon as practicable after a closing price of the stock in its primary market is established. Open trading on expiring series of index options *except options on the Europe, Australia, Far East (EAFE) Index* shall be permitted on the last business day prior to expiration until 3:15 P.M. Chicago time, but a closing rotation for such expiring series of index options shall not be employed. *Open trading of expiring series of EAFE Index options shall continue until a final closing value for the Index is disseminated, but no closing rotation for such expiring series shall be employed.*

Rule 24.1 Definitions

(a) through (h) No change.

(i) The terms "market index" and "industry index" mean respectively an index designed to be representative of the stock market as a whole *or of stocks traded in a particular market(s)* and an index designed to be representative of a particular industry.

(j) No change.

Rule 24.9 Terms of Options Contracts

(a) and (b) No change.

(c) European Exercise—Options on the Standard & Poor's 500 Stock Index *and the Europe, Australia, Far East (EAFE) Index* can be exercised only on the last business day prior to the options expiration.

Rule 24.15

Morgan Stanley & Co. Inc. and International Perspective S.A. Disclaimer

Morgan Stanley & Co. Inc. and ("Morgan Stanley") and Capital International Perspective S.A. (CIPSA) make no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the EAFE Index or any data included therein in connection with the trading of options or for any other use. Morgan Stanley and CIPSA make no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the EAFE Indexes or any data included therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose.

The purpose of the proposed rule changes is to permit the Exchange to list for trading cash-settled, European-style securities index options on a broad-based index, the Europe, Australia, Far East ("EAFE") Index ("Index"). The Chicago Mercantile Exchange ("CME") has applied to the Commodity Futures Trading Corporation for designation as a contract market for trading futures on the EAFE Index.

Morgan Stanley & Co., Inc. ("Morgan"), an international banking and brokerage firm purchased the rights to EAFE and its constitutent indexes in 1986 from Capital International Perspective S.A. ("CIPSA"), a subsidiary of Capital International S.A. an international investment management company wholly owned by The Capital Group, Inc. of Los Angeles. Morgan therefore has proposed to license its rights to the Exchange and CME to trade securities index option contracts and futures contracts, respectively, based on EAFE. Morgan and CIPSA maintain an arms-length relationship and Morgan Stanley has no role in the selection of the constituents or in the calculation of the EAFE Index.

The Index was designed to represent the performance of an unmanaged portfolio of stocks listed for trading on stock markets other than those in North America. The EAFE Index presently includes stocks traded on exchanges in 17 countries, representing more than half of world trading volume. A list of the present constituent stocks and their home market exchanges is attached as Exhibit II.

Among the criteria for selecting constituent countries is (i) freedom from

investment and currency conversion restrictions and (ii) the size and liquidity of a country's securites markets. After a country is selected, constituent stocks are chosen to represent approximately 60% of the market and to mirror the characteristics of the market including the same proportion of stocks in specific industry groups. In addition to industry classification, float, liquidity and market capitalization criteria are employed by CIPSA in selecting the stocks. At present, EAFE is composed of 907 stocks. Unlike other broad-based indexes, however, the number of stocks to be included is not fixed and may vary to enable the Index to continue to reflect the primary home markets of the constituent countries. Changes to the Index can be made at any time and are of course announced when made.

EAFE is a capitalization-weighted index calculated daily by CIPSA based on official closing prices for each stock in its primary local ("home") market. The Index is priced on a transaction basis. Stocks that are not traded are treated the same as stocks with no price change; the price within the Index remains unchanged. At the same time, a bid/ask average foreign exchange rate for each of the currencies in which EAFE stocks are traded is calculated by a major European bank for use in the calculation of the Index.

The current value of the index is 100 times the ratio of the current market value of all shares outstanding of the companies in the index to the current base. The base value of the Index was equal to 100.0 on January 1, 1970. The base has been adjusted for changes in capitalization, substitutions, additions, and deletions of stocks in the Index in the same manner as other broad based indexes with which we are familiar. The EAFE Index is currently trading in the 800 range. Using a multiplier of $100, an EAFE contract would have a value of $80,000.

The EAFE Index will be updated during normal U.S. trading hours by a recognized quotation service. Other than a two and one-half hour European trading overlap, there will be no trading of constituent stocks on the home market during normal Exchange trading hours. Transactions that occur in component stocks in the home market during the overlap period will be reflected in the updated value of the Index. After the overlap period ends, the Index value will be updated to reflect currency fluctuations. The updated value of the Index will be disseminated to vendors through the OPRA System.

The Exchange proposes to amend Rule 24.9 in order to clarify that the EAFE index option will be a European style option and Rule 6.2 to clarify that the settlement value for expiring EAFE options will be determined by the EAFE Index value calculated in the afternoon of the last business day of the contract; the Index value is expected to be available at approximately 8:00 p.m. (Geneva time) or approximately 2:00 p.m. (Chicago time). The amendment to Rule 24.1 is intended to clarify that the index is based on prices of stocks in worldwide markets rather than those traded in the U.S. market. The disclaimers of Morgan Stanley and CIPSA set forth in new Rule 24.15 parallel that of Rule 24.14 which relates to the licensor of existing broad based indexes.

No further rules in Chapter XXIV need be amended since the EAFE Index option, as proposed, will be similar in all respects to the two-broad based Standard and Poor's Index Options presently listed for trading, including position and exercise limits, trading halts, expiration months, strike price intervals and multiplier. The Exchange proposes to trade the EAFE Index options during its regular trading hours of 8:30 a.m. to 3:15 p.m. (c.s.t).

Interest of U.S. investors in the geographical extension of the principles of portfolio diversification has increased dramatically in the past few years. Investment in foreign markets has substantially increased despite currency risks, high transaction costs and unfamiliar clearing and settlement procedures. The non-U.S. share of total securities volume has steadily increased.

The Exchange is proposing a cash settled index option based on the EAFE Index which has been used for more than a decade as a performance measure and evaluation guide for internationally-oriented stock portfolios. The EAFE Index option could provide an effective method for hedging the risks of foreign investments and, for portfolio managers, a low cost method of altering the composition of an international portfolio without incurring substantial transaction costs.

The Exchange expects to apply its existing index options surveillance procedures to the new EAFE Index option. While the Exchange maintains that the breadth of the EAFE Index, 907 stocks traded on exchanges in 17 countries, makes it unlikely that manipulation of a stock in its primary market will have an effect on the EAFE Index, it is mindful that the stocks traded in the Japanese and the United Kingdom markets constitute 74% of the capitalization of the Index. The Exchange will use its best efforts to enter into surveillance agreements with the major exchange in both of these countries in order to be able to exchange surveillance information on an "as needed basis". However, since the Exchange believes it unlikely that an investor or group of investors could manipulate a significant number of stocks to affect the Index, the Exchange requests that the Index option contract be allowed to list for trading, if necessary, prior to such agreements being executed and while negotiations are being vigorously conducted.

The proposed rule change is consistent with section 6(b) of the Act in general and section 6(b)(5) particular in that it provides an efficient method for transferring risk of ownership of foreign securities and is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88-949 Filed 1-15-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 13, 1988.

The above named national securities exchanges has filed an application with the Securities and Exchange Commission pursuant to section 12(f) (1) (B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Abitibi-Price, Inc.
Common Stock, No Par Value (File No. 7-1052)
Central Fund of Canada, Ltd.
Class A Common Shares (File No. 7-1053)
CNW Corporation
Common Stock, $1.00 Par Value (File No. 7-1054)
Computer Factory, Inc. (The)
Common Stock, $.01 Par Value (File No. 7-1055)
Conquest Exploration Company
Common Stock, $.20 Par Value (File No. 7-1056)
Flexi-Van Corporation
Common Stock, $.01 Par Value (File No. 7-1057)
General Nutrition, Inc.
Common Stock, No Par Value (File No. 7-1058)
Himont, Incorporated
Common Stock, $1.00 Par Value (File No. 7-1059)
G.W. Utilities, Ltd.
Common Stock, No Par Value (File No. 7-1060)
Interlake Corporation
Common Stock, $1.00 Par Value (File No. 7-1061)
Jamesway Corporation
Common Stock, $1.00 Par Value (File No. 7-1062)
LaQuinta Motor Inns Inc.
Common Stock, $.10 Par Value (File No. 7-1063)
Liberty All-Star Equity Fund
Common Stock, No Par Value (File No. 7-1064)
Media General Inc.
Class A Common Stock, $5.00 Par Value (File No. 7-1065)
Moore Corporation, Ltd.
Common Stock, No Par Value (File No. 7-1066)
Neiman-Marcus Group, Inc.
Common Stock, $.01 Par Value (File No. 7-1067)
Newmont Gold Company
Common Stock, $.01 Par Value (File No. 7-1068)
Placer Dome, Inc.
Common Stock, No Par Value (File No. 7-1069)
San Juan Basin Royalty Trust
Units of Beneficial Interest (File No. 7-1070)
Sprague Technologies, Inc.
Common Stock, $1.00 Par Value (File No. 7-1071)
Standard Federal Bank
Common Stock, $1.00 Par Value (File No. 7-1072)
TW Services, Inc.
Common Stock, $.01 Par Value (File No. 7-1073)
Varco International Inc.
Common Stock, No Par Value (File No. 7-1074)
Vista Chemical Company
Common Stock, $.01 Par Value (File No. 7-1075)
Zapata Corporation
Common Stock, $.25 Par Value (File No. 7-1076)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-945 Filed 1-15-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 13, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Georgia Gulf Corporation
Common Stock, $0.05 Par Value (File No. 7-1048)
Alcan Aluminum Limited (New)
Common Stock, No Par Value (File No. 7-1049)
Sprague Technologies, Inc.
Common Stock, $1.00 Par Value (File No. 7-1050)
Union Corporation
Common Stock, $.50 Par Value (File No. 7-1051)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 3, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-946 Filed 1-15-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25263; File No. SR-NASD-87-54]

Self-Regulatory Organizations; Order Granting Temporary Approval, On An Accelerated Basis to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Order Confirmation Transaction Service Enhancement to the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 7, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commisison is publishing this order to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby files a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to implement an enhancement to the NASDAQ System known as the Order Confirmation Transaction service ("OCT"). The OCT will provide an auxiliary medium for NASD firms to communicate with one another and confirm the execution of orders.

This communication interface will constitute an alternative to telephonic communication, which is critical during periods of unusual market activity such as that experienced in October, 1987. Experience demonstrates that normal telephone communication and member-to-member interaction can be disrupted by the number of calls necessitated during the peak volume periods. The OCT has been developed to prevent any future disruption by providing a cost effective, auxiliary communications capability through the NASDAQ System. Basically, the OCT enhancement to NASDAQ will enable NASD members to communicate and confirm the execution terms of individual transactions just as they do by telephone. Hence, the principal purpose of this enhancement is to supplement the existing capacity of market makers to consummate transactions when market conditions make telephonic communication difficult or unfeasible. Additionally, order executions negotiated through the OCT will automatically generate transaction reports for NASDAQ/NMS issues and locked-in trades (for both NASDAQ and NASDAQ/NMS issues) for clearance purposes. The following paragraphs outline the major elements of the OCT enhancement to the NASDAQ System.

Access to the OCT

Upon introduction, the OCT will be available to all NASD member firms that have authorized access to NASDAQ Level ⅗ terminals or Workstation units and that have appropriate clearing arrangements through a registered national clearing agency. Their usage of the OCT wil be limited to negotiation and confirmation of transactions in NASDAQ and NASDAQ-NMS issues during established business hours for the NASDAQ market (9:30 a.m.—4:00 p.m. e.t.). During this period, the OCT will be continuously available for use by any eligible NASD member. Although usage of the OCT will be voluntary, an eligible market maker will be unable to inhibit the receipt of OCT messages from other eligible NASD members during business hours. Hence, an NASD member will be assured that communication can be established with a market maker during unusual market conditions and that transactions can be consummated without reliance on the telephone.

Use of the OCT

The OCT enhancement will provide an alternative medium for retail firms to contact market makers and for market makers to contact one another, to negotiate trades, and to confirm executions when market conditions impedes performance of these routine functions by telephone. The OCT enhancement does not entail the imposition of any additional obligations beyond those already applicable to the market maker and NASD member in connection with telephonic transactions. Likewise, implementation of the OCT is unrelated to pending modifications of the Association's Small Order Execution System ("SOES").[1] Nonetheless, the NASD has established some basic operational requirements for the intitial phase of the OCT:

(i) An order entered through the OCT must be preferenced to a market maker in the security.

(ii) Principal as well as agency orders may be entered for possible confirmation through the OCT.

(iii) All orders entered through the OCT must be priced. Therefore, it will be impermissible to enter an order only with instructions to execute "at the market" or "on the close."

(iv) An order entered through the OCT must include the security's identifier, price, size (from 1 to 999,999 shares), buy or sell, and capacity indicator.

(v) A market maker receiving an order through the OCT will have two minutes to respond with an "accept" or "reject" message. If the receiving market maker does not act within two minutes, the order will be automatically cancelled and a notification of that result sent to the initiating firm.[2]

(vi) To consummate an execution via the OCT, a market maker must accept an order in its entirety. However, if an incoming buy (sell) order is priced below (above) the recipient's quoted offer (bid), or for an amount exceeding the recipient's displayed size, the market maker may properly reject it. Of course, the rejecting market maker can promptly communicate a counter proposal for possible acceptance by the initiating firm. This scenario illustrates the ability of a market maker to negoatie an execution by exchanging messages via the OCT.

(vii) Transmission of an "accept" message will automatically generate a printed confirmation of the execution to both parties and a last sale report for NASDAQ/NMS issues.

(viii) Acceptance of an OCT commitment will also produce a locked-in trade that in automatically forwarded to the appropriate clearing agency for comparison. This feature necessitates that firms employing the OCT be capable of clearing over-the-counter transactions in NASDAQ or NASDAQ/NMS issues through a registered national clearing agency.

(ix) Participating market makers will have the capacity to scan transactions which they have executed through the OCT during the course of a trading day. Additionally, they will be able to update the capacity field in the event that the initial entry was erroneous. OCT executions may be cancelled by mutual consent of the participating firms. Such cancellations, however, must be effected manually (*e.g.*, through the trade cancellation procedures stipulated by the appropriate clearing agency).

(x) The software of the OCT will automatically reject messages involving ineligible market makers or initating member firms.

(xi) To facilitate usage of this enhancement, the NASD will circulate a listing of members who do not have clearing arrangements and thus cannot be OCT participants.

[1] See NASD Notice to Members 87-77 (November 20, 1987) which solicits comment on proposed modifications to the Association's rules governing operation of the SOES.

[2] The NASD will maintain a computerized record of all messages entered through the OCT. This information will be used to generate exception reports identifying possible instances of market makers "backing away" from their displayed quotes or refusing to transact at their quoted markets without proper justification. These exception reports will be reviewed by the Association's NASDAQ Market Surveillance unit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The singular purpose of the OCT enhancement is to expand the communications facilities available to support the continuous, orderly operation of the NASDAQ marketplace during difficult or unusual market conditions like those experienced during October, 1987. The OCT will facilitate processing of orders during market extremes in that it will supplement the telephonic capacity of market makers to interact with one another. It will not permit the same degree of information exchange and personal interactions normally attendant to the negotiation of transactions by telephone. The OCT will permit NASD members, from a functional standpoint, to continue to conduct business with one another by communicating the same basic elements of information that are needed to negotiate and confirm executions via telephone. The major difference is that electronic messages will substitute for verbal messages. Additionally, the OCT enhancement will enable NASD members to realize certain efficiencies that are most desirable in periods of extreme market conditions, but unavailable respecting transactions effected via telephone. For example, consummation of a transaction through the OCT yields a printed confirmation to both parties to the transaction and obviates the separate entry of a trade report for round-lot executions in NASDAQ/NMS issues. Further, because orders executed through the OCT yield locked-in trades, this feature will help to reduce the volume of uncompared trades (and the attendant allocation of resources needed to resolve them) during periods in which overall market volume surges dramatically. In sum, institution of the OCT will supplement both the communications and order processing capabilities of NASD members. As a consequence, the NASDAQ marketplace will function more efficiently and effectively during periods of extreme volume and/or price volatility.

The NASD cites sections 11A and 15A of the Act as providing the statutory bases for the OCT. More specifically, subsections (A)-(D) of section 11A(a)(1) articulate the broad findings and policy goals which the Congress intended to guide the operational enhancement of the nation's securities markets. In this context, the Congress underscored the importance of applying new data processing and communications techniques to assure: (1) More efficient and effective market operations; (2) economically efficient execution of securities transactions; (3) broad availability of information with respect to quotations for and transactions in securities; and (4) the optimal execution of investors' orders. The NASD submits that the design and operation features of the OCT enhancement comport fully with these Congressional directives.

The instant proposal is also supported by subsection (b)(6) of section 15A under the Act. Among other things, that provision requires that the Association's rulemaking initiatives be designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest. As described earlier, the OCT will augment the communications and order handling capacities of NASDAQ market makers in NMS securities. Although usage of the OCT is voluntary, the NASD view it as an essential, auxiliary communications system that will enable market makers to conduct business with one another when telephonic communications are unavailable or unfeasible due to unusual conditions. Providing such a back-up capability promotes continuity in market operations in order to service all classes of investors. This result is fully consistent with the above-cited portions of section 15A(b)(6) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Implementation of the OCT enhancement does not involve the imposition of any competitive burden. This conclusion is supported by several factors. First, the OCT involves an enhancement of the facilities that support market making in NASDAQ securities by member firms. This type of enhancement does not alter the established terms of access respecting vendors' receipt of NASDAQ market information for redistribution to diverse groups of end users. Second, the OCT enhancement does not pose a competitive burden upon NASDAQ market makers and other eligible members. By design, the OCT is an auxiliary medium of communication that eligible firms may employ to conduct business when telephonic communication is not feasible. Accordingly, the OCT has been structured to accommodate conveyance of the same basic elements of information which firms communicate in negotiating and executing transactions via the telephone. Third, the OCT enhancement does not impose more stringent market making obligations on participating firms. Rather, it provides an altenative, voluntary mechanism which market makers can use to conduct their routine business. Fourth, firms voluntarily electing to utilize the OCT must have clearing arrangements through a registered national clearing group. This factor should not, however, constitute an undue limitation on voluntary use of the service. Currently, there are about 43,096 market-making positions in NASDAQ and NASDAQ/NMS issues. Of this total, only 31 firms—accounting for 206 market-making positions—lack the required clearing arrangement. The benefits to be derived by the industry and public investors from voluntary participation in the OCT materially outweigh the clearing requirement's minimal impact upon ineligible firms during critical periods of unusual market activity.

It is believed, therefore, that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The NASD requests the Commission to find good cause for approving this proposal prior to the 35th day after its publication in the **Federal Register**, and, in any event, by January 11, 1988. More specifically, the NASD requests temporary approval of this proposed rule change, on an expeditied basis, for a term of three months commencing from the date of the Commission's approval order.

Accelerated approval is necessary and appropriate for several reasons. First, the OCT constitutes a critical back-up capability to enable NASD members to continue conducting business during extreme or unusual market conditions. Clearly, public investors stand to benefit from the immediate availability of this back-up capability. Second, as a pure marketplace enhancement, the OCT has no impact whatsoever on the ability of securities information vendors to service their customers. Third, implementation of the OCT will not impose new or more stringent market making obligations on the affected market makers. Similarly, retail firms that are eligible to use the OCT will not incur any added obligations beyond those already incurred in consummating transactions via the telephone. For these reasons, the NASD urges that the Commission find good cause to grant accelerated approval of this rule change no later than January 11, 1988. On that date, the NASD proposes to implement this NASDAQ System enhancement.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission believes that immediate implementation of the OCT is consistent with the statutory goals set forth in subsections (A)–(D) of section 11A(a)(1) of the Act. Those provisions stress the importance of implementing communications enhancements that will advance the efficiency and effectiveness of a securities market in servicing the needs of all investors. The Commission also recognizes that the specific purpose of OCT is to provide an auxiliary communications medium that will assure continuous operation of the NASDAQ marketplace under extreme conditions like those which occurred in October of 1987. Introduction of this back-up capability, on an accelerated basis, will provide an added measure of investor protection by assuring the operational integrity of the NASDAQ market when difficult or unusual conditions disrupt the members' collective ability to conduct business via the telephone. In sum, the OCT enhancement to the NASDAQ System will supplement the operational capabilities of NASD member firms in order that they may service investors under extreme or unusual market conditions. Realization of these goals conforms with the Congressional findings in subsections (A)–(D) under section 11A(a)(1) of the Act.

Additionally, prompt implementation of the OCT is consistent with various policy goals contemplated by section 15A(b)(6) under the Act. In this regard, the Commission notes that the design and operational features of the OCT should serve to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination among persons engaged in regulating, clearing, and processing transactions in NASDAQ and NASDAQ/NMS securities; (3) perfect the mechanisms which support the continuous and orderly operation of the NASDAQ marketplace; and (4) foster protection of investors and of the public interest generally.

Based on the foregoing factors, the Commission finds good cause for granting accelerated approval of the instant proposal pursuant to section 19(b)(2)(B) of the Act for a three month period commencing from the date of this approval order.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other then those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–54 and should be submitted by February 9, 1988.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular sections 15A(b)(6) and 11A(a)(1) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of 90 days from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88–865 Filed 1–15–88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88–004]

Meetings of the Working Groups for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of meetings of the Fire Protection Working Group, Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The purpose of the working groups is to develop recommended safety requirements for vapor control systems in their respective areas. The recommendations of each working group will be considered by the full Subcommittee at its next meeting. The meetings of the working groups will be held on Thursday, February 4, 1988 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. Prior to convening the working groups, members of each working group will meet jointly in order to coordinate efforts. A similar joint meeting will be held at the conclusion of the working group meetings. The meeting is scheduled to begin at 9:00 a.m.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.
4. Discussion and development of safety requirements relating to vapor control systems and their components in the area of each working group.
5. Re-gathering of working groups and discussion of progress.
6. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: January 12, 1988.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87–822 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 156 (17th Meeting); Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on February 3–5, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of the sixteenth meeting; (3) review of task assignments identified at last meeting; (4) review of 5th draft of the committee report; (5) other business; (6) new task assignments; and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 5, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–838 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review Enhancement Program; Capacity Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Capacity Subcommittee of the National Airspace Review Enchancement Advisory Committee. The agenda of this meeting is as follows:

Opening remarks
Status Report
Consideration of Recommendations
Future Plan of Action
Summary

DATE: February 3, 1988, to convene at 1:00 p.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Room 1010, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Department of Transportation, Federal Aviation Administration, Office of Government and Industry Affairs, 800 Independence Avenue, SW., Room 1020, Washington, DC 20591, (202) 267–3727. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to Mrs. Wanda Munoz at the above address by January 20, 1988. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC, on January 6, 1988.

Michael P. Goldfarb,

Chief of Staff.

[FR Doc. 88–839 Filed 1–15–88; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Docket No. 87–2, Notice No. 4]

Automatic Train Control; Northeast Corridor Railroads; Supplement to Final Orders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Supplement to Final Orders of Particular Applicability.

SUMMARY: This document provides notice to the affected parties and the general public of FRA's supplement to final orders requiring that all trains operating on the Northeast Corridor (NEC) be controlled by locomotives equipped with Automatic Train Control (ATC). This supplement contains a discussion and specifications for freight train locomotive ATC.

EFFECTIVE DATE: February 18, 1988.

FOR FURTHER INFORMATION CONTACT: S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366–0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366–0628).

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987, FRA issued a Notice of Final Orders (52 FR 44510, November 19, 1987) requiring that all trains operating on the NEC spine be controlled by locomotives equipped with ATC. At the time of issuance of those orders, FRA was conducting analyses to determine the optimally safe braking specifications for ATC devices on freight trains on the NEC. FRA has concluded its study and determined that ATC does not present any undue safety risk for freight service on the NEC.

1. FRA's Study

Conventional ATC systems are composed of electromagnetic, electropneumatic, and pneumatic equipment that establishes an operational relationship between the signal system and the train air brakes. Conventional ATC functions so that when a more restrictive cab signal is established, a brake application at the service rate is imposed that continues until the train is brought to a stop or, under control of the locomotive engineer, its speed is reduced to a predetermined rate. When a more restrictive cab signal is established, the locomotive engineer must apply the

brakes within eight seconds in order to prevent an automatic brake application. In addition, when operating under a speed restriction, an automatic brake application will result if the train speed exceeds the predetermined rate and will continue until the train is brought to a stop or, under control of the locomotive engineer, the speed is reduced to that rate.

Results of computer simulations over three selected segments in the NEC representing the worst case terrain for developing undesirably severe in-train force levels strongly indicate that ATC-initiated brake applications on freight trains pose little hazard to safety of operations. The simulations dealt with severity of brake applications, hazards of severe buff and draft forces, and depletion of air reservoirs. The information developed from these simulations indicates that ATC devices meeting the requirements contained in Subpart E of 49 CFR Part 236 (Rules, Standards, and Instructions governing the installation, inspection, maintenance, and repair of automatic train stop, train control and cab signal devices), and presently available from at least two manufacturers, are adequate and safe to be applied to freight locomotives operating on the NEC.

The primary simulations were performed by the Illinois Institute of Technology Research Institute (IITRI) using state-of-the-art computer programs developed for their Research and Locomotive Evaluator Simulator (RALES) system. The Consolidated Rail Corporation (Conrail) and FRA used the Train Operations Simulator (TOS) program, developed by the Association of American Railroads, to define input parameters and to compare results obtained by IITRI.

The computer simulation model used by IITRI in conjunction with the operation of the RALES facility represents all aspects of the operation of the locomotive controls and the resulting consequences on the operation of the train as a whole and on each car in the train. Each car is considered individually, taking into account all pertinent factors, such as weight, dimensions, braking ratio, and type of air brake control valve. Braking, gravitational, inertial, and transient in-train forces are calculated for each car.

The RALES and TOS models are similar in both their structures and the results from their use. The RALES model, however, incorporates additional refinements not yet available in TOS, and permits more flexibility in the format of its output data presentation.

Both RALES and TOS simulation models accept as input data all pertinent operations of locomotive controls, including throttle positions, dynamic braking, automatic brake pipe pressure reductions and releases, and independent brake applications.

The output of each simulation model includes the instantaneous force at either end of any car or locomotive in the train, the train speed and location on the simulated railroad, locomotive traction or braking current in amperes, and the air pressure in brake pipes and brake cylinders throughout the train. The primary information considered in the study were the peak in-train forces and the train speed. The inter-vehicular forces are the best indicator of the probability of a train accident from train buckling or separation. The train speed is an indicator of the ability of a train operated in a particular manner to comply with the speed restrictions imposed on it by the signal system or other limiting factors.

The simulations incorporated four train consists: PYSE1, a combination of 115 intermodal and conventional freight cars with three locomotives; CRMIX, a train of four locomotives and 135 conventional freight cars; TV24, a train of three locomotives and 80 loaded intermodal flat cars; and CRCoal, a train of four locomotives and 110 loaded hopper cars. The train on which most of the comparative simulations were based was PYSE1. The PYSE1 represented an actual Conrail train that had presented particular train-handling problems. Thus, this train was selected to represent a "worst case" train for this study.

The various terrain features on which the simulations were run represented level, tangent track, and three locations on the NEC between Washington, D.C. and Baltimore. The hill-and-valley profile on that segment is recognized by Conrail, Amtrak, and FRA as the area in which a long freight train is more likely to develop higher inter-vehicular forces than anywhere else on the NEC.

The three locations were selected by using TOS to simulate the operation of the PYSE1 train twice in each direction over the entire Washington to Baltimore segment with two differing but realistic methods of normal train handling. The locations at which the highest inter-vehicular forces occurred were then analyzed to determine the cause of those forces. When the primary cause was determined to be the track profile, that location was selected as a critical point at which to simulate differing train handling sequences.

IITRI then conducted simulations with braking initiated at these critical locations and at points two-tenths of a mile in either direction from two of the critical locations to determine the sensitivity of inter-vehicular forces to the precise location at which braking was initiated. Since none of the critical locations chosen for simulation were near signals or other locations at which cab signal indications would normally change, simulations were also run with braking initiated at the next signal beyond the critical location.

The study indicates that freight trains can be safely operated on the NEC while complying with the requirements imposed by conventional ATC systems. At some locations, however, if the locomotive engineer of a long train does not have the slack properly adjusted at the time the ATC mandates a brake application, the application could result in unacceptably high inter-vehicular forces. A critical factor is the exact location at which braking is begun; for instance, if the braking is initiated 500 feet before or after passing a critical point, the peak inter-vehicular forces could be greatly reduced. The levels of those forces are also greatly influenced by the manner in which the throttle is handled during the early stages of an air brake application. Because the exact location of a train at the point of initiation of a brake application has been found to be critical, it follows that a system that can permit an engineer more flexibility in the method of accomplishing a required speed reduction can thereby produce lower inter-vehicular forces. Conrail believes it has developed such a system, which is discussed below.

Conrail is opposed to conventional ATC in freight operations because conventional ATC requires a brake application whenever the cab signal changes to a more restrictive aspect requiring a speed reduction. FRA recognizes that there is some merit to these objections.

High inter-vehicular forces may possibly be developed under certain train makeup and terrain conditions. Nevertheless, conventional ATC serves to improve safety of train operations by requiring speed reductions under control of the locomotive engineer or stopping of the train if the locomotive engineer does not operate the train in compliance with signal indications.

2. Conrail's BPS System

Conrail is nearing completion of development of a microprocessor-based speed control system, which Conrail refers to as a braking profile system, or BPS. This system is intended to be used in conjunction with Conrail's existing 4-aspect cab signal system that is supplemented with an automatic train stop device. Conrail's objective is to use the speed control system in lieu of conventional off-the-shelf ATC devices on its locomotives operating on the NEC.

Conrail's proposed system, as described by the railroad itself,

> Would require the engineer to keep his train speed within the *braking profile* after a more restrictive signal indication, but it would not dictate how he should do so. It may not be necessary to apply the train air brakes at all to reduce train speed in compliance with signal indications. Depending on conditions, the engineer may choose only to reduce throttle, or to use the dynamic brake, either of which alternatives is safer and more efficient than the air brake in some situations * * *. Conrail's [system] would activate a full service penalty air brake application if the engineer fails to acknowledge a more restrictive cab signal indication within 8 seconds after it is displayed. Also, failure to comply with the deceleration profile will result in a full service penalty air brake application.

At the present time Conrail's NEC cab signal aspects are: Clear (Proceed at maximum authorized speed of 50 mph.); Approach Medium (Proceed approaching next signal at medium speed of 30 mph.); Approach (Proceed prepared to stop at next signal. Train exceeding medium speed (30 mph) must at once reduce to that speed.); and Restricting (Proceed prepared to stop short of train, obstruction, or switch not properly lined, looking out for broken rail, but not exceeding 20 mph outside interlocking limits, 15 mph within interlocking limits.) Conrail's BPS will change train speeds to 50 mph under a Clear cab signal aspect; 40 mph under Approach Medium; and 20 mph under both Approach and Restricting aspects.

BPS will be installed in conjunction with Conrail's cab signal and automatic train stop (ATS) systems. The ATS requires that each cab signal aspect change to a more restrictive aspect be acknowledged by the locomotive engineer within eight seconds or an automatic brake application will be applied until the train is brought to a stop.

Like conventional ATC, Conrail's BPS will enforce speed reductions and compliance with signal indications by the locomotive engineer and stop the train if the locomotive engineer does not properly control the train.

BPS imposes a braking profile curve and audibly warns the locomotive engineer if an overspeed condition exists. It automatically applies irrevocable braking if the locomotive engineer fails to correct the overspeed within the parameters of the predetermined braking profile curve. The braking profile curve is based on the worst combination of block length, track grade, and train make-up. Whenever the cab signal changes to a more restrictive aspect the locomotive speed is automatically compared to the speed permitted by that restrictive aspect and a braking profile is generated. In addition, a visual display shows the actual speed and the time in seconds remaining before an irrevocable automatic brake application would occur absent an appropriate speed reduction.

The braking profile curves are based on the stopping distances from various speeds (with a full-service air brake application) to a signal that requires a train to stop. To that distance is added a 15 percent safety factor. These braking profile curves are designed to be effective within the "critical block" on the NEC.

The "critical block" is that block with the shortest distance from the entrance to the block to the point where the brakes must be applied (using a full service brake application) to stop the train within the block. The selection of the critical block is based on the length of the block, the track grades within the block, the maximum authorized speeds for freight trains within the block, and the braking properties of the heaviest trains operating at those speeds.

BPS differs from conventional ATC in that BPS does not mandate an application of the air brake when a speed reduction is required. Instead, BPS imposes the parameters of a braking profile curve within which a train may be operated without the imposition of an automatic brake application. The parameters are calculated by BPS from the previous cab signal indication, the present cab signal indication, the train speed, and the distance run since the last change of cab signal indications. The parameters displayed to the engine crew are the actual train speed and the time in seconds during which the train may operate at that speed before an automatic brake application will be initiated by the BPS. This display supplements and modifies the aspects displayed by the cab signal system, which will remain visible to the crew.

In operation, BPS will electronically monitor the cab signal indications and train speed in a fail-safe manner. When the locomotive speed exceeds that permitted by the cab signal indication, (*i.e.*, an overspeed condition), the BPS will automatically select a braking profile curve based on the previous and present cab signal indications. It will begin to measure the distance travelled by the locomotive since the overspeed condition began, and will calculate and display to the engine crew the time in which the train can continue at its present speed until BPS initiates an automatic brake application ("seconds to penalty").

When the cab signal mandates a reduction in train speed, the locomotive engineer will use an appropriate train handling method to reduce speed to that permitted by the signal indication. Depending on conditions, the engineer can adjust the throttle, use dynamic braking, or use air brakes to reduce the train speed. Until the train speed has been reduced to that permitted by the signal indication, the BPS display will indicate the time in seconds during which the train can travel at its current speed without having an automatic brake application, initiated by the BPS. During that time, the engineer retains full control of the train.

An audible alarm and flashing time display indicate that the combination of train speed and distance travelled within the block is reaching the limit for the braking profile in effect. If the train reaches this limit, the BPS will initiate an irrevocable automatic brake application.

However, if the speed of the train is reduced (within the parameters of the braking profile) to the speed required by the signal indication, the overspeed condition will no longer exist. The train can thus continue at the authorized speed. Exceeding that speed by one mile-per-hour will then activate the overspeed alarm; a three mile-per-hour overspeed will cause the BPS to initiate an automatic brake application to stop the train. The BPS will likewise enforce the maximum authorized speed for trains operating with a cab signal aspect indicating "proceed".

Conrail claims that BPS provides the locomotive engineer the ability to control the train speed by means other than an air brake application, *i.e.*, by reducing throttle position or using dynamic braking, depending on train speed, track gradient, and time to penalty brake application. The system does not require a brake application within eight seconds as does conventional ATC, and, it is claimed, is therefore safer. Additionally, the train is permitted to travel farther into the block at maximum safe speed, thereby reducing delay costs, keeping use of the train air brakes to minimum, and reducing maintenance and fuel costs.

Technical Issues

FRA has examined Conrail's prototype speed control system, performed extensive testing, and reviewed manufacturers' data on this system. At FRA's suggestion, Conrail and the manufacturers have adopted certain changes to increase its safety and integrity and to make it more compatible with the requirements of 49 CFR Part 236. Still, there are inherent features in Conrail's system that will not meet certain requirements of Part 236. A discussion of those features follows:

Section 236.502. This section requires that ATC operate to initiate an automatic brake application at least stopping distance from the entrance to a block under certain specified conditions. It further requires that ATC operate to initiate an automatic brake application at each main track signal requiring a reduction in speed.

Although by its nature, BPS will not impose an automatic brake application at a signal requiring a reduction in speed, BPS will not compromise safety since the braking profile curve requires that either the speed be reduced to the predetermined rate under control of the locomotive engineer or the train will be stopped by an irrevocable automatic brake application.

Section 236.503. This section requires that ATC operate to initiate an automatic brake application where the speed of a train exceeds the predetermined rate as required by the setting of the speed control mechanism.

Conventional ATC is designed to initiate an automatic brake application whenever the speed of the train exceeds the predetermined rate as required by the speed control mechanism.

In its testing of the BPS, FRA found that under certain conditions, a train could be accelerated above the speed permitted by an "approach" signal. This occurred when the speed of a train was 15 mph with a "clear" cab signal indication (which authorizes 50 mph speed). If the signal changed to "approach" (requiring a speed reduction to 20 mph), the train could be accelerated to a speed greater than 20 mph while still within the parameters of the braking profile.

In order to make BPS compatible with section 263.503, Conrail has agreed to impose a speed limiting curve three mph above the existing train speed when a more restrictive cab signal aspect is established. Thus, if the speed of a train were 25 mph with an "approach medium" cab signal indication (limiting speed to 40 mph) and the cab signal aspect changed to "approach," (limiting speed to 20 mph) the train could not be accelerated above 28 mph within the parameters of the profile braking curve without initiating an automatic brake application. As train speed is reduced, the speed limiting curve will likewise reduce until the predetermined speed is reached. This change resolved this technical issue without adversely affecting safety.

Section 236.515. This section requires that the cab signals be plainly visible to the members of the locomotive crew from their stations in the cab. The cab signal to which the BPS is interconnected is clearly visible to all crew members in the cab. However, the display of the prototype BPS is directly visible only to the locomotive engineer—other crew members cannot see the display unless they stand behind the engineer.

The BPS display contains pertinent information about the movement of the train of which all members of the locomotive crew should be aware. The display shows the train speed and time remaining before a penalty brake application (penetration of the parameters of the braking profile curve) when a more restrictive cab signal indication occurs. The locomotive engineer must then exercise his judgment regarding the method by which the train speed should be reduced, *i.e.*, throttle reduction, dynamic brake, or air brake.

The BPS display will modify the indications of the cab signal. It will, for instance, permit a train to pass a wayside signal displaying an aspect indicating that the train must stop at the next signal. The train will be permitted to continue at maximum authorized speed until the BPS mandates a speed reduction some distance into the block. The present rule requires that the train "proceed prepared to stop at next signal. Train exceeding Medium speed must at once reduce to that speed." BPS will not enforce the requirement to "at once reduce to that speed". However, any train not equipped with BPS must continue to comply with that portion of the rule. The "time to penalty" display of BPS will therefore serve to modify the indication of that signal by quantifying and extending the requirement to "at once reduce to medium speed."

Unless the display is visible to the other crew members from their stations in the cab, they will not be able to determine whether the locomotive engineer is properly controlling the train.

Conrail does not agree with FRA's reasoning on this issue and prefers that the BPS display not be considered part of the cab signal system. However, the BPS visual display modifies the indications of the cab signal aspects and thus should also be visible to other crew members.

Section 236.553. This section requires that a seal be maintained on any device (other than brake-pipe cut-out cock), by means of which the operation of the pneumatic portion of the ATC can be cut out. The BPS' "mode" switch, used to cut the system in and out for cab signal and non-cab signal territory obviously should not be sealed, yet a method is necessary to ensure that the system is operating when in cab signal territory. A further problem is that when a train is operating under a "restricting" signal aspect (maximum speed of 20 mph) and is traveling at 19 mph or less, the mode switch can be placed in non-cab signal position and the train can be accelerated above 20 mph. Positioning the mode switch in this manner effectively cuts out the BPS.

Conrail's BPS specifications require that the mode switch position be continuously recorded on an event recorder. Also, to further compensate for the mode switch not being sealed, Conrail will install outside lights on both sides of the locomotive that will be illuminated whenever the mode switch is in the cab signal territory position. If the BPS is cut out by unauthorized use of the mode switch, it will be apparent to crews of other trains and employees along the right-of-way. The information stored on the event recorder can then confirm the unauthorized cut-out. We believe this arrangement will adequately discourage unauthorized acts of cutting out the BPS.

Section 236.563. This section requires that the delay time of ATC not exceed 8 seconds. Delay time is the time which elapses after the onboard apparatus detects a more restrictive signal indication until the brakes start to apply. It is the time the locomotive engineer has to apply the brakes before control of the train is taken from him.

Conrail's braking profile was developed on the basis of the shortest block length and worst case train and track grade. The penalty brake application imposed when exceeding the braking profile curve provides sufficient braking distances at various speeds to stop within that block with a 15 percent safety factor. Thus, with BPS, a train is permitted to proceed into a block as far as safety permits before the speed control system automatically applies an irrevocable full service brake application. BPS' basic provision allowing a train to proceed the safe distance into a block exceeds eight seconds in all circumstances. Therefore, in Conrail's speed control system the requirement of an eight-second delay time is unduly restrictive, because the imposed braking profile curve provides a safe stopping distance with a 15 percent safety margin.

Supplement to Final Orders

In consideration of the foregoing the Final Orders of Particular Applicability issued November 16, 1987 are supplemented as follows:

1. Use of conventional ATC on freight train locomotives on the NEC is safe. Conventional ATC, which makes use of temporary suppression, results at most, in only moderate increases in buff forces. By careful use of the throttle during a temporary suppression application, the buff forces can be reduced. Therefore, no modifications or specification changes are necessary for conventional ATC installation on freight train locomotives on the NEC.

2. Conrail's proposed automatic train control system utilizing a braking profile system, when used in conjunction with automatic cab signals supplemented with ATS, provides a safe alternative to conventional automatic train control systems. It is an acceptable ATC system for use on controlling locomotives of NEC freight trains *provided that:*

A. the BPS system complies with all provisions of 49 CFR Part 236 that apply to automatic train control systems, except as modified herein;

B. the BPS system shall operate to initiate an automatic brake application at least stopping distance from the entrance to a block in which any condition described in section 236.205 exists;

C. the BPS system shall operate to require a reduction in speed to that prescribed by a main track signal requiring a reduction in speed;

D. the BPS system shall operate to initiate an automatic brake application within 27 seconds after the locomotive, at speeds exceeding 20 mph, enters or is within a block in which any condition described in section 236.205 occurs;

E. the BPS system shall operate to initiate an automatic brake application when the speed of the train exceeds the rate permitted by the braking profile curve;

F. the BPS system shall operate to initiate an automatic brake application if the system is deactivated while the speed of the locomotive exceeds 20 mph;

G. the visual display of the status of BPS is plainly visible to members of the locomotive crew from their stations in the cab;

H. indicators clearly visible from trackside on both sides of each equipped locomotive are illuminated when BPS is activated and operating properly, and extinguished at all other times;

I. the BPS system shall be connected to an operating event recorder which records each instance of activation and deactivation of the BPS so that the time and location of each activation and deactivation can be determined for at least 48 hours following the event;

J. each profile braking curve program shall be identified by a unique identifying number that can be displayed on the BPS visual display for identification purposes;

K. all components in the control circuits, including, but not limited to programmable chips, are permanently installed by soldering;

L. installation is permanent on each controlling locomotive designated for operation on the NEC;

M. Conrail and Amtrak issue operating rules governing operation of locomotives equipped with the BPS system that area in compliance with Part 236 and specifically address the situation in which the speed control system fails or is cut out en route; and

N. no train having a controlling locomotive with a failed or cut-out BPS system is permitted to depart its last terminal before entering the NEC.

3. Nothing contained herein, or in the Final Orders issued November 16, 1987, permits operation of non-ATC equipped controlling locomotives after the dates specified in the Final Orders. Carriers desiring to operate non-ATC-equipped locomotives in switching, transfer, or work train service must petition FRA for relief on a case-by-case basis through the waiver process as provided in 49 CFR Part 235.

Authority: The Signal Inspection Act (49 U.S.C. § 26) and the Federal Railroad Safety Act of 1970 (45 U.S.C. § 431 *et seq.*), delegated to the Federal Railroad Administrator by the Secretary of Transportation (49 C.F.R. 1.49(f), (g), and (m)).

Issued in Washington, DC, on January 14, 1988.

John H. Riley,

Administrator.

[FR Doc. 88-995 Filed 1-15-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0095
Form Number: ATF F 5530.5 (1678)
Type of Review: Extension
Title: Formula and Process for Non-beverage Products
Description: Businesses which use taxpaid alcohol to manufacture non-beverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF F 5530.5 (1678) that the spirits used were in the manufacture of products unfit for beverage purposes. This determination is based on the formula for the product made from their process.
Respondents: Businesses or other for-profit, Small Businesses or organizations
Estimated Burden: 1,500 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-868 Filed 1-15-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Book and Library Advisory Committee; Scheduled Meeting

The Book and Library Advisory Committee will hold a meeting on February 9, 1988, from 3:00 to 5:30 p.m., at 301 Fourth Street SW., Room 800, Washington, DC.

The meeting will be chaired by the new committee Chairman, Mr. John Sargent, and members will be discussing the U.S. Information Agency's book and library programs for fiscal year 1988.

Members of the public interested in attending the meeting should contact Ms. Louise Wheeler on (202) 485-8889, as entrance into the USIA Building is controlled.

Dated: January 11, 1988.

Louise G. Wheeler,

Director, Private Sector Committees.

[FR Doc. 88-855 Filed 1-15-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of the Veteran's Advisory Committee on Environmental Hazards will be held at the Veterans Adminstration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on February 18 and 19, 1988. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 9:00 a.m. both days in the Omar Bradley Conference Room. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Adminstration Central Office (phone 202/233-2115) prior to February 10, 1988.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: January 6, 1988.

By direction of the Administrator.

Robert W. Schultz,

Associate Deputy Administrator for Public Affairs.

[FR Doc. 88-844 Filed 1-15-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, January 25, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Final Rule on Employee Pension Benefit Plans in section 4(i) of the Age Discrimination in Employment Act, 29 CFR Part 1625

Closed Session

Litigation Authorizations: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full weeek in advance on future Commission sessions.

Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive Officer on (202) 634-6748.

Date: January 13, 1988.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued January 13, 1988.

[FR Doc. 88-971 Filed 1-14-88; 10:36 am]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION:

Correction of Sunshine Act Notice.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 11, 1988 (53 FR 652) of the forthcoming regular meeting of the Farm Credit Administration Board (Board) originally scheduled to be held on January 5, 1988 rescheduled for January 12, 1988. This notice is to revise the agenda for Tuesday, January 12, 1988.

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on January 12, 1988, from 10:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, January 12, is revised to read as follows:

1. Approval for Federal Intermediate Credit Banks of Texas, Wichita and Sacramento to contribute additional undistributed earnings to their contingency funds
2. Approve documents to revoke the Charter of the Farm Credit System Capital Corporation
3. Approve documents to Charter the Farm Credit System Assistance Board
4. Farm Credit Administration Statement of Mission
5. [1] Briefing on the Implementation of the Farm Credit Act Amendments of 1987
6. [1] Examination and Enforcement Matters

Dated: January 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88-1017 Filed 1-14-88; 3:55 pm]

BILLING CODE 6705-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the special meeting (53 FR 94, January 4, 1988) of the Farm Credit Administration Board (Board) scheduled for January 8, 1988 was cancelled due to inclement weather conditions. The matters scheduled to be considered at that meeting were addressed at the regular meeting held on January 12, 1988.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Dated: January 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-1018 Filed 1-14-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, January 12, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible closing of certain insured banks; and (2) a personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 13, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-998 Filed 1-14-88; 1:11 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on January 13, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 20, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Review of the Board's performance evaluation program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: January 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-972 Filed 1-14-88; 10:36 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 9:00 a.m., Wednesday, March 16, 1988.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Discussion of issues affecting the elderly.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 88-989 Filed 1-14-88; 1:12 pm]

BILLING CODE 6750-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m. Friday 15 January 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, 14 January 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-1008 Filed 1-14-88; 2:49 pm]

BILLING CODE 7545-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 655 January 11, 1988].

STATUS: Open meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 5, 1988.

CHANGES IN THE MEETING: Deletion.

The following items will not be considered at a open meeting scheduled for Thursday, January 14, 1988, at 10:00 a.m., in Room 1C30.

1. Consideration of whether to issue a Memorandum Opinion and Order with regard to Sierra Pacific Resources ("Resources"), an exempt intrastate holding company under the Public Utility Holding Company Act of 1935, authorizing Resources to acquire a 14.5% common stock interest in a new company that will construct an electric generating unit to sell electric energy at wholesale. For further information, please contact Robert F. McCullough at (202) 272-7698.

2. Consideration of whether to adopt new rules and amendments to rules and forms relating to advertising by investment companies. For further information, please contact Robert E. Plaze at (202) 272-2107.

3. Consideration of whether to issue two releases that (1) adopt a proposal providing for inclusion of a consent to service of process provision on behalf of the Commission and self-regulatory organizations in Form BD, and (2) propose for public comment inclusion of a provision providing for consent to service of process to any application for a protective decree on behalf of the Securities Investor Protection Corporation. For further information, please contact Henry E. Flowers at (202) 272-2848.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

January 13, 1988.

[FR Doc. 88-1027 Filed 1-14-88; 3:50 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 7

Selection and Functions of Agricultural Stabilization and Conservation (ASC) State, County and Community Committees

Correction

In rule document 87-29410 beginning on page 48511 in the issue of Wednesday, December 23, 1987, make the following correction:

§ 7.27 [Corrected]

On page 48517, in the first column, in § 7.27(a), in the 13th line, "eligible" should read "ineligible".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501 and 513

[Acquisition Circular AC-87-4]

Increase in Thresholds for Contracting Office Warrant Program and Imprest Fund Transactions

Correction

In rule document 88-13 beginning on page 132 in the issue of Tuesday, January 5, 1988 make the following corrections:

On page 132, in the third column, in Acquisition Circular [AC-87-4], in paragraph 5, in the second line, "513.503-3" should read "513.505-3"; and in paragraph 6, "charges" should read "changes".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8169]

Income Tax; Taxable Years of Certain Partnerships

Correction

In rule document 87-29773 beginning on page 48994 in the issue of Tuesday, December 29, 1987, make the following corrections:

§ 1.706-1T [Corrected]

1. On page 48995, in the third column, in § 1.706-1T(a)(2), in the 28th line, "income generally" should read "income shall generally".

2. On page 48996, in the third column, in § 1.706-1T(d), in *Example (2)*, in the second table, in the last line of the last column, "5.5" should read ".5".

3. On page 48997, in the first column, in § 1.706-1T(d), in *Example (5)*, in the second table, in the last column, move the line appearing between "0" and "4.0" down to between "4.0" and "4.5".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 4

Nomenclature and Descriptive Terms for Mental Disorders

Correction

In rule document 87-30138 beginning on page 21 in the issue of Monday, January 4, 1988, make the following correction:

On page 24, in the second column, the right column of the table was not aligned accurately with the left column of the table and is republished correctly as follows:

PSYCHONEUROTIC DISORDERS—Continued

	Rating
General Rating Formula for Psychoneurotic Disorders:	
The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as fantasy, confusion, panic and explosions of aggressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment	100
Ability to establish and maintain effective or favorable relationships with people is severely impaired. The psychoneurotic symptoms are of such severity and persistence that there is severe impairment in the ability to obtain or retain employment	70
Ability to establish or maintain effective or favorable relationships with people is considerably impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in considerable industrial impairment	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce definite industrial impairment	30
Less than criteria for the 30 percent, with emotional tension or other evidence of anxiety productive of mild social and industrial impairment	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability	0

NOTE (1): Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.

NOTE (2): The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits, fatigue or anxiety incident to actual situations, minor compulsive acts or phobias, occasional stuttering or stammering, minor habit spasms or tics, minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a mild degree, a 10 percent rating under the general rating formula may be assigned.

NOTE (3): It is to be emphasized that vague complaints are not to be erected into a concept of conversion disorder. A diagnosis of conversion disorder must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion disorder is found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.

	Rating
NOTE (4): When two diagnoses, one organic and the other psychological or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychological or psychoneurotic categories, the condition will be rated under the new diagnosis.	

BILLING CODE 1505-01-D

federal register

Tuesday
January 19, 1988

Part II

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs; Availability of Funds; Notice

BEST COPY AVAILABLE

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 71275-7275]

Economic Development Assistance Programs; Availability of Funds

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: In the matter of economic development assistance programs as described in Conference Report 100-498, Departments of Commerce, Justice, and State, the Judiciary, and related agencies appropriations, 1988; availability of funds.

The Economic Development Administration (EDA) announces its policies and application procedures for funds available in FY 1988 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions of the Nation and to address dislocations resulting from sudden, major job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during FY 1988.

I. General Policies

Because of the existing statutory criteria and a Congressional prohibition against terminating eligibility, areas containing approximately 90 percent of the U.S. population are eligible for EDA assistance, which in FY 1987 totaled less than $200 million. Priority consideration for funding will be given only to those projects having exceptional potential to benefit areas experiencing or threatened with the most severe economic distress. EDA is particularly interested in projects located in areas recognized by state and local governments as enterprise zones, especially projects in rural enterprise zones.

Distress may exist in a variety of forms, including exceptionally high unemployment rates, extremely low income levels, abnormally large concentrations of low income families, particularly low labor force participation rates, unusually large numbers (or high rates) of business failures or farm loan foreclosures, high farm credit delinquencies, sudden major layoffs and/or plant closures, and drastically reduced tax bases. Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of exceptionally high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed areas, EDA will give special consideration to those that address the needs of rural communities, particularly aid directed toward the economic diversification of such areas.

EDA expects substantial state and local support for proposed projects. Proposals that do not provide evidence of strong state and local leadership and financing are unlikely to receive EDA aid.

In the case of projects involving construction, EDA expects construction to be initiated and completed in a timely manner. Applicants are expected to anticipate predictable delays such as those caused by normal weather conditions, legal complications, community disputes, land acquisition, etc., and account for them in developing project schedules. Projects which are likely to encounter significant delays will normally not be given favorable consideration. Projects that experience unreasonable delays following EDA approval may be terminated and the funds deobligated. These policies are consistent with EDA's objective of supporting activities that can begin to benefit local economies as soon as possible, thereby meeting the urgent development needs identified by project applicants. EDA staff expects those responsible for developing and managing projects to maximize the impact of the public funds by preparing and implementing projects as thoroughly and expeditiously as possible.

EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one area to another. EDA nonrelocation requirements (13 CFR 309.3) apply to grants involving construction, rehabilitation or repair, and other financial assistance under Titles I, II, IV, IX, and section 301(f) of the Public Works and Economic Development Act of 1965, as amended, PWEDA (Pub. L. 89-136; 42 U.S.C. 3121-3246h).

Applicants who have delinquent accounts receivable with the Department of Commerce will not receive new awards until these debts have been paid or arrangements to pay them have been approved by the Department of Commerce.

Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General, and fund recipients may be subject to audits or other inspections by the same office.

Applicants eligible for assistance because of membership in an economic development district must be members in good standing and active participants in the district economic development planning process.

EDA staff will evaluate applications for conformance with published statutory, regulatory and policy requirements. Applications proposed for funding under these programs are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

An invitation to submit a formal application does not assure EDA funding. Unsuccessfull applicants will be notified of the status of their applications when all of EDA's funds for the program to which they have applied have been awarded.

The following material describes other policies and procedures associated with each of EDA's programs.

II. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Summary

Funds under the District, Indian and Area Planning Program are awarded to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes. This program is authorized under section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

Eligibility

Eligible applicants are Economic Development Districts, Redevelopment Areas, organizations representing Redevelopment Areas (or parts of such Areas), Indian Tribes, organizations representing multiple Indian tribes, the Federated States of Micronesia, and the Government of the Marshall Islands.

Program Objective

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported with this aid must be part of a continuous process involving significant leadership by public officials and private citizens.

Funding Availability

Funds in the amount of $18.205 million are available in two categories: Districts/Areas (Category A)—$15.330 million; and Indian Tribes (Category B)—$2.875 million.

Funding Instrument

Grant assistance can be provided for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to provide the remaining share. Category B grant assistance may be provided for up to 100 percent of project costs.

Project Duration

Both Category A and Category B assistance will normally be for a period of twelve months.

Selection Criteria

Priority consideration will be given to currently funded District and Indian grantees for proposals which are eligible under section 301(b), 42 U.S.C. 3151(b). At this time, it is not expected that funds will be available for other purposes. If, however, there are remaining funds, they will be used for new proposals from other eligible applicants under both Categories A and B and/or for special economic development activities that benefit one or more 301(b) grantees and cannot be financed with other resources. Information on application procedures for any funds available for special activity grants will be provided by EDA's Regional Offices or Headquarters staff after March 31, 1988. EDA will consider the following factors in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;
2. The economic distress of the area served by the applicant;
3. The currently funded grantees' past performance (including information in scheduled progress reports); and
4. The local leaders' involvement in applicant's economic development activities.

Proposal Submission Procedures

Currently funded grantees and other eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the District, Area or Indian tribe stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents. New applicants should submit proposals to the appropriate EDA Regional Office no later than April 30, 1988. Proposals postmarked after this date may not receive consideration.

Formal Application Procedures

EDA Regional Offices will contact currently funded grantees to inform them of the procedures for submitting applications for additional funding. Except in cases where work program changes or other factors dictate a different approach, EDA expects to offer new grants to currently funded grantees selected for additional assistance.

Following review of the proposals submitted by other entities, EDA will invite those selected for funding consideration to submit formal applications, which will include an SF-424 or similar form as currently approved by the Office of Management and Budget and other required application materials.

Further Information

For further information contact the appropriate EDA Regional Office (see Section X of this Notice) or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2873.

III. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

Summary

The Economic Development Administration announces its policies and application procedures for funds available for the State and Urban Planning Program operated under the authority of section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

Eligibility

Eligible applicants under this program are states, territories, cities and urban counties.

Program Objective

The primary objective of planning assistance under section 302(a) is to strengthen the economic development planning and policy-making capabilities of states, territories, cities and urban counties to ensure a more effective use of available resources in addressing economic problems, particularly those resulting in high unemployment and low incomes. Planning activities conducted under this assistance must be part of a continuous process involving significant local leadership from public officials and private citizens.

Funding Availability

Funds in the amount of $4.790 million ($1.916 million for states and $2.874 million for urban areas) are available for providing grant assistance under this program.

Funding Instrument

Grant assistance can be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share.

Project Duration

Assistance under this program normally will be for a period of twelve months.

Selection Criteria

Among the factors EDA expects to consider in evaluating proposals are the following:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.52(a)(1) and (2);
2. The economic distress of the area served by the applicant; and
3. For current grantees, past performance, including information on that performance reflected in progress reports submitted under previous grants.

Proposal Submission Procedures

EDA staff will contact grantees to explain any additional project selection criteria and, if appropriate, FY 1988 proposal submission procedures, including proposal submission dates.

It is expected that those entities selected to submit proposals will be asked to include at least the following items as part of the proposal package:

1. A letter signed by the head of the applicant organization or another authorized official indicating a desire to receive funds to carry out the types of

planning activities eligible under the 302(a) program.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. A work program outlining the specific development activities that will be carried out under the grant to address the problem(s) identified.

Proposals should be submitted to the appropriate EDA Regional Office (see section X of this Notice).

Formal Application Procedures

EDA will evaluate proposals using the selection criteria cited above and any other criteria developed and subsequently explained in writing to grantees. Following the review of proposals, EDA will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF–424 or similar form as currently approved by the Office of Management and Budget and other application materials.

Further Information

For further information contact the appropriate EDA Regional Office (see section X of this Notice) or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone 202–377–2873.

IV. Program: Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds under the Technical Assistance Program are awarded to eligible applicants to provide a wide range of assistance. The assistance is intended to assure the successful initiation and implementation of area, state, regional, and national development efforts designed to alleviate economic distress. This program is authorized under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for technical assistance grants or cooperative agreements include public or private nonprofit, national, state, area, district, or local organizations; public and private colleges and universities (including EDA-funded university centers); and other suitable entities (including Indian tribes, local governments, and state agencies). Working relationships among the parties will determine whether a grant or cooperative agreement is most appropriate. Other eligible applicants for technical assistance cooperative agreements are private individuals, partnerships, firms, and corporations.

Program Objective

The Technical Assistance Program is designed to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment and problems of economically distressed populations in rural and urban areas.

Funding Availability

Funds in the amount of $1.916 million are available for technical assistance projects proposed by eligible entities and projects initiated by EDA through Solicitation of Applications for specific technical assistance activities. Twenty percent of the available funds will be reserved for multi-regional and demonstration technical assistance projects, most of which are expected to be initiated by EDA.

Funding Instrument

EDA will provide grants and cooperative agreements not to exceed 75 percent of proposed project costs. Applicants are expected to provide the remaining share. In cases when EDA issues a Solicitation of Applications, an applicant's share may not be required.

Project Duration

Assistance will be for the period of time required to complete the scope of the work. Generally, this will not exceed twelve months.

Selection Criteria

Preference will be given to those technical assistance proposals which:

1. Produce strong evidence that the proposed project will lead to the near-term (between one and five years) generation and/or retention of private sector jobs, and do not depend upon further EDA or other Federal funding assistance to achieve results.

2. Strengthen the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas in distress.

3. Stimulate significant private and non-Federal public investment for economic development purposes, including funds from commercial lenders, public and private pension funds and other nontraditional sources.

4. Benefit severely distressed areas, particularly rural counties and communities.

5. Diversify distressed rural economies by means of enterprise zones and other strategies.

6. Demonstrate innovative approaches to stimulating economic development in depressed areas.

7. Establish links between the unemployed and underemployed and economic opportunities offered by new and expanding businesses, facilities and services.

8. Promote technology transfer and increased productivity to improve the competitiveness of firms/industries located in distressed areas.

9. Are consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the projects are located and have been recommended by the OEDP Committee (if appropriate to the nature of the project).

10. Present an appropriate and clear project design.

11. Are proposed by organizations or individuals with the capacity, qualifications and staff necessary to undertake the intended activities.

12. Present a reasonable, itemized budget for the proposed activities.

13. Involve a significant (preferably cash) contribution from applicant or other non-Federal sources.

Pre-Application Procedures

Parties seeking support for local technical assistance projects that will primarily benefit a substate or intra-regional area must contact the Economic Development Representative (EDR) for the area for a proposal package. This package may contain additional information on procedures and selection criteria. The EDA Regional Office will provide the name, address and telephone number of the EDR for the applicant's area (see list of Regional Offices at end of this notice). EDA staff will evaluate all proposals and invite applications for those which best satisfy the selection criteria.

As indicated above, EDA will during the course of the year identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to David H. Geddes, Director, Technical Assistance and Research Division, Economic Development Administration, Room 7317, U.S. Department of Commerce, Washington, DC 20230, by February 29, 1988. Applicants submitting information after that date may not be considered. EDA will review this information to determine eligibility to compete for projects under specific SOAs. Proposals for EDA demonstration projects or projects whose impacts will cross EDA regional boundaries should be submitted to David Geddes at the above address. Individuals or organizations located outside the Washington, DC metropolitan area should submit a copy of the letter transmitting their proposal to the EDR for the area in which they are located.

Formal Application Procedures

The appropriate EDA Office will ask entities whose proposals for technical assistance projects or responses to SOAs are selected for further consideation to complete formal application packages.

Further Information

For further information about local technical assistance projects—those that will benefit substate or intra-regional areas—contact the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office) or the appropriate EDA Regional Office (see list of EDA Regional Offices at end of this notice). For further information about demonstration or multi-regional projects, contact David H. Geddes, telephone (202) 377–4085.

V. Program: University Center Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds for basic university center projects are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The efforts of university centers should focus on helping public bodies, nonprofit organizations and businesses plan and implement activities designed to generate jobs and income. In addition, funds may be used for projects which promote the goals of the University Center Program in other ways. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for university center grants and cooperative agreements are public and private colleges and universities, associations representing such institutions, and other organizations with expertise in University Center Program issues.

Program Objective

The objective of these projects is to enable colleges and universities to contribute to overall economic development by using their resources to provide technical assistance that will alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or sub-state areas.

Funding Availability

Funds in the amount of $4.790 million are available for university center projects. Congress has directed that a total of $0.250 million be obligated as a direct grant "without any further requirement or delay" for the Center for International Trade Development at Oklahoma State University. Approval of this grant would reduce the university center funds available for the region in which this project is located.

Funding Instrument

University center project funds will be awarded through grants and cooperative agreements to cover a portion of project costs. The amount covered will not exceed 75 percent of proposed project costs. In the case of university center basic grants, the following policies regarding local share apply:

1. As announced in November 1985, university centers initially funded prior to FY 1986 (October 1, 1985) which continue to receive EDA support must, if funds are made available by Congress, gradually increase their share to match the EDA grant dollar-for-dollar by FY 1990. At least half of the local share must be in cash. Centers which do not demonstrate progress in this regard may not continue to receive EDA funding.

2. University centers initially funded in or after FY 1986 which continue to receive EDA support must, provided funds are made available by Congress after FY 1988, provide a minimum of $33,334 in the first year, $45,000 in the second year, $60,000 in the third year, $80,000 in the fourth year, $100,000 in the fifth year, $125,000 in the sixth year, and $140,000 in the seventh and final year. At least half of the local share must be in cash.

Project Duration

Grants and cooperative agreements will be for the period of time required to complete the scope of work. Generally this will not exceed twelve months.

Selection Criteria

In judging proposals from existing and potential university centers for basic grants, EDA will consider whether the proposed center programs:

1. Serve areas of significant economic distress;

2. Address the development needs of the service area;

3. Complement the activities of other organizations engaged in economic and business development (where applicable, the proposal must identify how it differs from the services provided by a local Small Business Development Center, Trade Adjustment Assistance Center (TAAC) or a Minority Business Development Center);

4. Possess the commitment, as evidenced by financial support and other resources, of the university leadership at the highest levels to the mission and purpose of the university center;

5. Possess the capacity to provide the proposed technical and other types of assistance to jurisdictions and organizations within the service area; and

6. Complement and support the local, regional or state economic development strategies in the service area. EDA staff will also consider the following factors in evaluating proposals for basic grants from potential centers:

1. The extent to which the center proposes to serve the economic development needs of economically distressed jurisdictions and community-based organizations.

2. The presence of another EDA-funded center in the state.

3. The presence of an SBA- or MBDA-funded center or a TAAC in the service area.

Proposals will also be judged on the quality of the proposed work program and the qualifications of the applicant to carry out that work program. Proposals for other projects that meet the goals of the University Center Program will be judged on similar factors. These include the potential impact of the project on distressed areas, the quality of the proposed work program, and the qualifications of the applicant to carry it out.

Depending on the availability of funds, EDA may hold a periodic competition for short-term (one to three year) incentive grants. This competition will be open to all currently and previously funded centers, except those which received initial funding in the previous year and those whose funding was discontinued because of poor performance.

Funding Policy

For centers judged to performing satisfactorily and if funds are made available by Congress, EDA's policy is to provide basic support of $100,000, annually, for five years and $50,000, annually, for the sixth and seventh years. No basic funds are provided after the seventh year of EDA support.

For centers initiated prior to FY 1982 (October 1, 1981), EDA's funding will be reduced in FY's 1988, 1989, and 1990 by 20, 40, and 50 percent, respectively, from the FY 1987 funding level. No funding will be provided in FY 1991. Exceptions to these policies may be made in unusual circumstances, such as when no other qualified institution exists to provide services to an area with extreme economic distress.

Proposal Submission Procedures

A. Basic Grants for Existing University Centers

Existing centers that have been selected to receive consideration for continued basic funding will be notified of all application procedures by the EDA Regional Offices. Any existing centers not selected to receive consideration for continued support will be so notified.

B. Basic Grants for New Centers

1. *Letters of Interest.* Colleges and universities interested in participating in the University Center Program should submit letters of interest, signed by the president or another authorized official, to the appropriate EDA Regional Office with a copy to the EDA Economic Development Representative (EDR). The letter should describe the center's proposed service area; the economic distress of that area; the relationship of the center's program to state, regional and local economic development strategies, as appropriate; and the activities to be undertaken with the EDA assistance. In addition, the letter must indicate that the college or university leadership understands that EDA's policy is to (a) provide funds for the basic university center operations for a maximum of seven years, if funds continue to be available to EDA for the University Center Program; and (b) require increasing financial support by the college or university over the seven years as described in item 2 under *Funding Instrument.*

2. *Deadlines.* February 29, 1988. Letters received after this date may not be considered.

3. *Proposals.* Colleges and universities selected by EDA for consideration as new centers will be invited by April 15, 1988 to submit detailed proposals. The appropriate Regional Office will provide instructions for preparing such a proposal. EDA will use the previously described selection criteria to evaluate these proposals. Those submitting unsuccessful proposals will be notified as soon as possible.

Formal Application Procedures

The appropriate EDA Regional Office will ask entities whose proposals for new basic university center grants are selected for further consideration to complete formal application packages.

Further Information

For further information, contact the appropriate EDA Regional Office (see section X of this Notice), the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office), or Tony Meyer, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2127.

VI. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Summary

Funds under the Research and Evaluation Program are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligibility

Eligible applicants are private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations.

Project Objective

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress; and (b) promote economic development.

Funding Availability

Funds in the amount of $1.210 million are available for this program. Funds will be used for projects selected through the application procedures cited below and for EDA-initiated solicitations.

Funding Instrument

EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

Project Duration

Assistance under this program will normally be for a period of up to 15 months.

Selection Criteria

EDA will use the following criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.
2. Potential usefulness of the research to state and local economic development practitioners.
3. General quality and clarity of the proposal.
4. Soundness and completeness of the research methodology.
5. Qualifications of principal investigator(s) and, where appropriate, performing organization(s).
6. Previous performance of principal investigator and/or performing organization on EDA-funded projects (i.e., the quality and timeliness of prior work).
7. Total cost, and value of product in relation to cost.
8. Ability to be completed in no more than 12 to 15 months. EDA is interested in receiving proposals dealing with:
1. Employment and unemployment;
2. Income and poverty;
3. Rural and other nonmetropolitan economic development;
4. Regional and local growth;
5. Industrial location;
6. Job creation methods;
7. State and local economic development efforts;
8. Private sector economic development efforts;
9. Developmental effects of public works and other infrastructure;
10. Capital markets and development finance, particularly non-Federal sources of economic development financing;
11. Industrial competitiveness;
12. Minority business and minority jobs;
13. Productivity and technology; and
14. Non-Federally funded financing proposals for economic development.

Requested grants and awards should be for specific, well-defined, onetime research projects. EDA research grants are not intended for support of continuing programs (ongoing research programs, publication and information programs, periodic forecasts, etc.) or for nonresearch activities. Some research proposals deal with or involve samples drawn from only one part of the United States. EDA normally prefers research that is not limited in geographic scope or that at least covers a very large multistate region, as opposed to research covering (in declining order of preference) a small region, a state, a multicounty area, or a single city or county. EDA prefers cause-and-effect research and descriptive analyses to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning and technical assistance for specific places will not be funded under the Research and Evaluation Program; the Planning and Technical Assistance Programs are for those purposes.

Proposal Submission Procedures

Potential applicants should submit a brief and concise proposal. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining methodology. Each proposal should include (1) a cover page giving a short descriptive project title, the name and address of the performing organization, the names and telephone numbers of the project director and principal investigators, the project duration, the amount of EDA funds requested, and the program (Research and Evaluation) that would provide the funds; (2) a brief scope-and-objectives section saying why the project is needed, giving its objectives, and providing a capsule description of the project; (3) a more detailed description of the project and its methodology; (4) a work plan showing different phases of the project and their timing; (5) a detailed budget showing cost breakdowns, with EDA-funded and any non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page; (6) resumes for the project director and principal investigators; and (7) a corporate or institutional capability statement, where appropriate.

The cover letter accompanying the proposal should inform EDA of whether any other organization(s) or Federal agency(ies) is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be identified.

Proposals should be submitted to David H. Geddes, Director, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230. Proposals postmarked after February 29, 1988, may not be considered.

Formal Application Procedures

EDA will evaluate the proposals using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit the additional materials required for a grant or cooperative agreement award.

Eligibility for Specific Solicitations

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, for funding consideration. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above. This information will be used to determine eligibility to compete for projects under specific SOAs. Those who submit information postmarked after March 5, 1988, may not be invited to respond to SOAs this fiscal year.

Further Information

For further information, contact David H. Geddes, at the above address; telephone, 202-377-4085.

VII. Program: Economic Adjustment Assistance (Title IX)

(Catalog of Federal Domestic Assistance No: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic (LTED) and Sudden and Severe Economic Dislocation (SSED))

Summary

Funds under the Economic Adjustment Program are used to assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED). This program is authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241-3245.

Program Objective

The LTED Program assists eligible applicants in implementing strategies that halt and reverse the long-term decline of their economies. Grants for Revolving Loan Funds (RLF) are usually provided under the LTED/RLF Program.

The SSED Program assists eligible applicants to respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to help communities prevent a sudden, major job loss; to reestablish employment opportunities as quickly as possible after one occurs; or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to permanent rather than temporary job losses. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas, EDA is particularly interested in Title IX projects designed to mitigate serious rural economic adjustment problems. EDA is also interested in proposals to help severely distressed areas with large minority populations.

Funding Availability

Funds in the amount of $24.657 million are available for the Economic Adjustment Program in FY 1988. Of the amount, $12.454 million will be available for the SSED Program and $12.203 million will be available to fund RLFs (LTED).

Funding Instrument

Title IX funds are awarded through grants which normally provide up to 75 percent of the project cost. Acceptable source of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; and other public and private donations.

The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share and any loan repayments must not be encumbered in any way that would preclude their use as required by the grant agreement. The local share for the RLF Program must be in cash. The local share for the SSED Program may be in cash and/or in-kind.

Eligible Applicants

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under Title IV of this Act, 42 U.S.C. 3161; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; a nonprofit organization determined by EDA to be the representative of a redevelopment area; the Federated States of Micronesia; and the Republic of the Marshall Islands.

Eligible Areas

A. LTED

In order to receive priority consideration for funding under the LTED/RLF Program, an area must be experiencing at least one of three economic problems; very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Eligibility is determined statistically. Further information is available from EDA's Regional Offices.

B. SSED

In order to receive priority consideration for funding under the SSED Program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss must result from the action of a single employer, or eighty (80) percent of the job loss must occur in a single industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Selection Criteria

Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicant's ability to manage the grant effectively.

A. LTED/RLF Selection Criteria

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. *Economic and Financial Needs of the Project Area.* a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants, deteriorating infrastructure, and declining farm economy, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the applicant's analysis of the local capital market and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Potential applicant's need for grant funds to carry out the project will be based on an assessment of its financial resources (e.g., budget deficit or surplus).

2. *Objectives and Benefits of Proposed Projects.* Priority will be given to projects which can:

a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole.

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area, particularly those identified in the OEDP, Title IX strategy, or other plans developed to deal with specific economic adjustment problems affecting the area. This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area.

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar. (Note: the local share or other funds provided by the RLF to finance loans cannot be counted as leveraged dollars.)

d. Direct new job opportunities to the long-term unemployed and underemployed.

e. Assist minorities, women and members of other economically disadvantaged groups in obtaining RLF loans.

f. Provide technical and management assistance for RLF borrowers, in addition to loan funds.

g. Use creative financing techniques to overcome specific gaps in the local capital market.

h. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within three years of grant approval with no less than 50 percent disbursed within eighteen months and 80 percent within two years.

i. Include a larger matching share than the required 25 percent or secure commitments for future funding from other private or non-Federal public sources.

j. Coordinate activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

3. *Effective Management of the RLF.* EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administrative Board with broad community representation, including appropriate public, private sector, minority and women representation.

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing.

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices.

d. A strategy for relending loan repayments which will ensure that the RLF revolves continuously and thus fulfills its purpose of creating jobs and stimulating economic activity on an ongoing basis.

e. Adequate resource to cover administrative costs of the RLF.

f. The potential applicant's experience and capacity for administering economic and business loan programs. If the potential applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that organization, rather than the potential applicant.

Nongovernment (excluding Economic Development Districts) organizations seeking funds must be sponsored by the local or state government having jurisdiction over the project area, and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernment entity no longer be able to administer the project.

B. SSED Evaluation Criteria

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limited to, the following factors.

a. The degree to which the number of dislocated workers exceeds the eligibility threshold.

b. The proportion of the total job loss represented by a single employer.

c. The proportion of employment in a single industry classification represented by the firm(s) closing.

d. The potential applicant's need for grant funds to carry out the project based on an assessment of its financial resources (e.g., budget deficit or surplus).

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. *For Implementation Grants.* (1) Job creation or retention in the near term is emphasized versus more long-term, general economic development. Projects likely to encounter delays, particularly in initiating or completing construction, will normally not be given favorable consideration.

(2) The jobs to be created and/or retained are permanent, will directly benefit the dislocated workers, and are new employment opportunities and not transferred from one area of the United States to another.

(3) The response to the problem is timely.

(4) EDA assistance will be complemented by, or will complement, appropriate state and local efforts, for example, training and job placement services, other Federal investments, such as Urban Development Action Grants, and private sector support.

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation.

(6) The cost per job created or retained is minimized.

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefits.

(8) The local share exceeds the required 25 percent.

b. *For Strategy Grants.* (1) The applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities.

(2) The proposed scope of work is responsive to the problem.

(3) The focus of the planning effort is on the generation of practical and implementable solutions.

(4) The local share exceeds the required 25 percent.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The grantee must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA approval of changes in the schedule prior to proceeding with project implementation.

EDA expects grantees to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, acquisition of state permits and approvals, normal weather conditions in area, and public objections to the project), and take them into account in preparing the project schedule. Grantees who fail to comply with project schedules may be subject to grant suspension and/or termination.

EDA will not provide additional funds to finance overruns that occur during project implementation.

Proposal Submission Procedures

Interested parties should contact the Economic Development Representative for the area or the appropriate EDA Regional Office for a proposal package. The EDA Regional Office can provide the name, address and telephone number of the Economic Development Representative for the area. Project proposals, submitted by eligible entities, will be evaluated by EDA staff on the basis of:

1. Conformance with the evaluation criteria mentioned above and statutory, regulatory and policy requirements.

2. The availability of funds.

Formal Application Procedures

Following a review of project proposals, EDA will invite those projects selected for funding consideration to submit formal applications.

Further Information

For further information about this program, contact the appropriate EDA Regional Office or Paul J. Dempsey, Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230, telephone 202-377-2659.

VIII. Program: Public Works and Development Facilities Assistance

[Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP)]

Summary

Funds available under the Public Works Program are used to finance public works and development facilities that contribute to the economic development of depressed areas. EDA's public works expenditures are authorized by Titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3)

Eligibility

Eligible applicants under this program include any state, or political subdivision thereof, Indian tribe, the Federated States of Micronesia, the Republic of the Marshall Islands, or private or public nonprofit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Redevelopment areas, other than those designated under the Public Works Impact Program, must have a current EDA-approved Overall Economic Development Program (OEDP).

Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization. Further information on areas eligible for this EDA program is available from EDA's Regional Offices.

Program Objective

The purpose of the Public Works Grant Program is to assist communities with the funding of public works and development facilities that contribute to

the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies, and improving local living conditions and the economic environment of the area. EDA emphasizes the alleviation of unemployment and underemployment among residents of the project area as a primary focus of this program. In view of the current rural distress, applications from rural communities will be reviewed with particular interest.

Funding Availability

Funds in the amount of $126.460 million are available for this program. Congress has directed that a total of $6.500 million be obligated as direct grants "without any further requirement or delay" for the Mississippi Institute for Technology Development ($3.0 million); the University of Bridgeport; Connecticut ($2.5 million); and the City of Worcester and the Worcester Business Development Corporation, Massachusetts ($1.0 million). Approval of these grants would reduce the funds available for each of the regions in which these projects are located.

Funding Instrument

EDA may provide grants with maximum EDA participation of 80 percent of project costs. On an average, EDA grants cover 50 percent of project costs. Applicants will be required to provide the local share from acceptable sources of the local share including, but not limited, to local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; Farmers Home Administration loans; and other public and private donations.

The local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified sources, and the funds must be readily available. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant agreement. Priority will be given to applications which maximize the local share's percentage of the project cost. Supplementary grant assistance to finance more than 50 percent of project costs will only be approved by EDA for projects in areas of high distress. Decisions on such assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate and the relative needs of the project (see 13 CFR 305.5).

Selection Criteria

For both regular public works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project selection criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of severe economic distress.

A. Public Works Project

Factors that will be taken into account in considering projects eligible under section 101(a)(1)(A)–(C) of PWEDA, 42 U.S.C. 3131(a)(1)(A)–(C), include whether and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the area where such project will be located;

2. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost per job in relation to total EDA project cost;

3. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project;

4. Fulfills a pressing need of the area, or part thereof, in which it will be located;

5. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support;

6. Is supported by significant private sector investment;

7. Has adequate local share of funds with evidence of firm commitment and availability;

8. Supports developments taking place in designated enterprise zones, particularly in rural areas;

9. Demonstrates that necessary permits, land acquisitions or options on land and rights-of-way have been obtained and that all other legal requirements of the application process have been satisfied; and

10. Gives evidence of the ability to begin and complete construction in a timely manner in accordance with a schedule to be agreed upon by EDA and the applicant and included in the grant award.

B. Public Works Impact Program

Factors that will be taken into account in considering projects under the Public Works Impact Program (PWIP) authorized by section 101(a)(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include whether and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;

2. Improves the economic or community environment in areas of severe economic distress;

3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons in the project area to work on the construction of the project; EDA will evaluate all plans to ensure that they contain a logical explanation of how the employment objectives will be met;

4. Assists in creating long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

5. Primarily benefits low-income families by providing essential services, or satisfying a pressing public need;

6. In addition to the requirements for regular public works projects, as contained in paragraph A.10, can begin construction quickly (normally within 90 days after acceptance of the grant by the applicant); and

7. Has substantial labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization: occupancy rates for existing developed industrial acres currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the Economic Development Representative for the area or the appropriate EDA Regional Office for guidance.

2. Commitments in writing from identified tenants to locate in the industrial park or site. Commitments must include description of the industry, the number of jobs created or saved, and an implementation schedule.

3. The existence of a concrete marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this requirement.

D. Favorable Consideration Is Not Likely for Projects Which

1. Are in areas with unemployment rates below the national average, unless it can be demonstrated to EDA's satisfaction by other more appropriate measures that the area is suffering substantial distress and economic hardship;

2. Are in pockets of poverty surrounded by economically affluent areas, unless the pocket of poverty meets EDA's PWIP or SIA designation criteria;

3. Are in Economic Development Centers that have stable economies with little distress, unless the application includes an Employment Strategy that contains a logical explanation of how new job opportunities will be created for and filled by residents of nearby highly distressed redevelopment areas;

4. Do not benefit the long-term unemployed or members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

5. Cannot be implemented within a reasonable period of time;

6. Involve substantial land purchase; or land purchases involving exorbitant costs. EDA prefers not being involved with land purchases.

7. Do not have the applicant's share of project funding readily available;

8. Support tourism or recreational activities, unless it can be demonstrated to EDA's satisfaction that tourism is the major industry in the area or that the project will assist in creating a significant number of jobs. In that case, the project must directly assist in providing job opportunities for unemployed and underemployed persons of the area and otherwise support the long-term growth of the area;

9. Involve industrial parks where there is evidence of excessive vacancies in existing developed industrial parks or sites in close proximity to the proposed project, unless there is evidence the proposed project is targeted to types of firms not readily accommodated or served by the existing industrial parks and firm commitments to locate in the industrial park exist;

10. Involve vocational-technical schools unless a direct link has been established between the training curriculum and the needs of existing local employers or those committed to locate in the labor market area;

11. Require a mortgage to be placed on the real property or the facility to be constructed/improved with EDA funds; or

12. Request additional financial assistance from EDA to finance cost overruns.

E. Prohibited Projects

No support will be provided for proposals such as:

1. Nonindustrial street/road construction or repair that is normally the responsibility of local government, county, or Federal highway programs;

2. Public buildings including, but not limited to judicial buildings, courthouses, jails, fire stations, hospitals, medical clinics, social service buildings, civic auditoriums, museums, and theaters;

3. Parking garages and pedestrian walkways (elevated or ground level malls);

4. Land reclamation including subsurface demolition and site cleanup activities; or

5. Beautification projects.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The recipient must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA's approval of changes in the schedule prior to proceeding with project implementation. EDA expects recipients to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, normal weather conditions in the area, acquisition of state permits and approvals, and public objections to the project), and to take them into account in preparing the project schedule. Recipients who fail to comply with project schedules may be subject to grant suspension and/or termination.

Under most circumstances, EDA will not provide additional funds to finance overruns that occur during project implementation.

Proposal Submission Procedures

To establish the merits of project proposals, interested parties should first contact the Economic Development Representative for the area. The EDA Regional Office can provide the name, address and telephone number of the Economic Development Representative for the area who will provide a preapplication form and arrange for conferences to discuss the proposal. EDA will screen proposals before inviting the submission of a formal application. Proposals will be evaluated based upon:

1. Conformance with statutory and other legal requirements and with the selection criteria mentioned above;

2. The merits of the proposal in addressing the relative economic development needs of the eligible area; and

3. The availability of funds as allocated to the Regional Offices.

Processing time for project proposals will depend on the completeness of information provided in the preapplication form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

Formal Application Procedures

Following a review of project proposals, EDA staff will invite entities whose projects are selected for funding consideration to submit formal applications.

Previous Applications

Project applications invited, but not funded in FY 1987, remain eligible for funding consideration. Those applications which were received by September 30, 1987, will be processed and evaluated in accordance with the project selection criteria published for FY 1987, current legal requirements, and EDA's revised nonrelocation policy as stated in 13 CFR 309.3, which was published in the Federal Register on June 10, 1987. Those applications not received by EDA by September 30, 1987, must be consistent with the project selection criteria and requirements published in this Notice and submitted on application forms issued by EDA for FY 1988. Applicants whose projects were invited but not submitted to EDA in FY 1987 should obtain FY 1988 application forms from EDA's Regional Offices.

Further Information

For further information contact the appropriate EDA Regional Office (see section X of this Notice).

IX. Program: Guaranteed Loans

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance)

Summary

Pursuant to Public Law 89–136 (42 U.S.C. 3142–3246(h)) (Act), EDA is

prepared to guarantee up to eighty percent (80%) of the principal and interest of loans to be made to private borrowers for the purchase of fixed assets and/or for working capital purposes for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses expand, establish, or maintain operations in both urban and rural eligible areas throughout the Nation. Guarantees offered under this program are made at the discretion of the Assistant Secretary for Economic Development based upon data from the borrower and lender current at the time the guarantee is offered.

Preapplication Procedures

Applicants should contact the appropriate EDA Regional Office Business Loans Division to discuss their proposals. EDA staff will screen proposals before inviting a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in the Act;

2. Regulatory requirements contained in 13 CFR Part 306 and 309; and restated in this Notice; and

3. Provisions of Office of Management and Budget (OMB) Revised Circular A–70, dated August 24, 1984 (A–70).

OMB Circular A–70 (Revised) Requirements

All loan guarantees must conform to the requirements of A–70, without exception. The most significant requirements of A–70 are as follows:

1. Loans must be secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan.

2. An annual guarantee fee, payable quarterly, equal to one-half percent of the outstanding EDA contingent liability will be charged. This fee is subject to change at any time prior to approval of a guarantee.

3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.

4. The lender must bear a significant portion of the risk of loss on the loan. No other security, guarantees, or any other arrangement that would not inure ratably to EDA for that portion of the loan not guaranteed by EDA will be permitted.

5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

Supplementary Information

A. Amount of Funding Available

EDA is authorized to commit up to $150 million to guarantee contingent liability for loan principal in FY 1988, which ends September 30, 1988.

B. Type of Financial Assistance

EDA staff will consider proposals for the guarantee of loans made by private lending institutions to private borrowers to finance the costs of fixed assets or for working capital purposes. EDA staff will not accept applications for projects which involve real estate development for either investment or speculation, or for the refinancing of current debt.

C. Who May Apply

Formal applications will be invited by EDA staff only after review and acceptance of satisfactory project proposals. Applications will be accepted only from private lending institutions (the "applicant") for the guarantee of loans to private business enterprises. EDA's relationship is essentially with the lender applicant, not the borrower.

D. Long-Term Employment

EDA staff will seek to assist in the creation or retention of permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

E. Repayment Ability

The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. EDA Guarantee Required

No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which, in the opinion of EDA, will permit accomplishing the project. In the event the borrower is a large corporation which would normally have funds available to finance the project, such corporation must certify that it would not locate the proposed project within the EDA-designated area without the benefits of EDA's financial assistance.

G. Relocation

Nonrelocation requirements apply to guaranteed loans under section 202, Title II of PWEDA. EDA's regulations at 13 CFR 309.3 prohibit transferring jobs from one commuting area to another. Certificates of nonrelocation will be required.

General Conditions of Assistance

A. Term of Loan

The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) years, and the loan should be fully amortized during its term. EDA will not ordinarily guarantee revolving-type or open-end working capital loans.

B. Guarantee Percentage and Interest Rate

Pursuant to A–70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantees a loan in excess of the following percentage and interest rates:

1. 80% guarantee—Lender prime rate plus 1.50%

2. 75% guarantee—Lender prime rate plus 1.75%

3. 70% guarantee—Lender prime rate plus 2.0%

4. 60% guarantee—Lender prime rate plus 2.5%

C. Guarantee Fee

Pursuant to A–70, EDA staff will charge the lender an annual guarantee fee, payable quarterly, equal to one-half percent of the outstanding contingent liability. EDA staff reserves the right to change this fee at any time prior to approval of the guarantee.

D. Application Fee

EDA staff may change an application processing fee to cover the costs of application processing and review.

E. Lender's Risk

That portion of the loan not guaranteed by EDA must be at risk to the recipient throughout the term of the loan. This precludes the recipient from obtaining any additional security, guarantee, or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA staff will be obligated to deal only with the recipient, and all participants must be eligible as recipients.

F. Other Lender-Borrower Relationships

When an recipient has other creditor/debtor relationships with the prospective borrower, EDA staff will seek assurances that these relationships will not create conflicts with EDA's interest in the recipient's servicing of the loan for which a guarantee is sought. Ordinarily, EDA staff will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

G. EDA Investment Per Job

EDA staff will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

H. Repayment Ability

Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

1. Applicant's normal detailed credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);

2. Three (3) years' financial statements, audited and certified by a public accountant, if available, or certified by a responsible officer of the prospective borrower; if in operation less than three years, financial statements since inception;

3. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application;

4. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-month basis for the first year after the loan is made and on a quarterly basis for the next two (2) years; and

5. One copy of the proposed note and loan agreement between the applicant and the prospective borrower with attachments.

I. Adequate Collateral

The lender must perfect and maintain perfected linen against and security interests in collateral adequate to permit full recovery of the loan in the case of default by the borrower. Collateral must be of such nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project and borrower's prospective earnings. The applicant must document why it is reasonably certain that adequate collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by an unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement. Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA.

J. Guarantees

Unconditional personal/corporate guarantees (of full and timely payment and performance by the borrower) will be required from all persons or entities which hold or control 10 or more percent of the ownership interests in a borrower unless:

1. The borrower has a profitable historical performance of no less than three out of the most recent five years, abundant collateral, adequate cash flow, and meets key industry standards (i.e., Robert Morris Associates);

2. Borrower's stock is so widely held that no one individual/family/entity can exercise control;

3. Borrower's parent, subsidiary, or affiliate that is required to guarantee is legally restricted from guaranteeing, or such guarantee would conflict with other existing contractual obligations of the prospective guarantor.

Cross guarantees may also be required from related corporate entities.

EDA staff will require current (not over ninety days old at the time the application is filed) personal or corporate financial statements signed by the prospective guarantor, and where appropriate and necessary to support the guarantee by the guarantor's spouse, and disclosing community and individual assets and indebtedness when applicable.

K. Equity Requirements

All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. The following minimum equity will be required:

1. For guaranteed working capital loans, the prospective borrower must have existing, or must provide, net working capital equal to not less than fifteen percent (15%) of its total working capital needs.

2. For guaranteed fixed asset loans, the prospective borrower must provide an equity investment in the loan project of at least fifteen percent (15%) of the aggregate loan project cost.

3. The prospective borrower must provide twenty-five percent (25%) of the aggregate loan project cost for:

a. New businesses with no operating history;

b. Loans without full personal and/or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to have above-average risk.

L. Feasibility Report

An independent technical, financial, and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

M. Tax-Exempt Obligations

The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds.

N. Other Requirements

1. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required in an amount at least equal to the lesser of the depreciated replacement value of the property being insured or the amount of the loan.

2. Keyman life insurance, which may be decreasing term insurance, normally will be required for principals and key

employees of the borrower, pledged or assigned to the lender.

Applicant Servicing Responsibilities

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to, executing such care and diligence in the disbursement, servicing, collection, and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the liquidation less reasonable expenses directly attributable to the liquidation. Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA staff will examine the applicant's records before honoring any guarantee.

Application Requirements

A. The application shall include the following:

1. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one area to another or to close facilities involved in the EDA-guaranteed project;

2. Approval of the application by the appropriate agency or instrumentality of the state or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

3. Full disclosure of the amount and nature of all fees charged to the borrower by the lender, attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and lobbying expenses are not allowable project costs and no proceeds of the loan may be used directly or indirectly for attorneys' or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval;

4. An agreement that neither the borrower nor the applicant will employ or retain for professional services any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of the assistance under the Act. This agreement shall remain in effect for two years after EDA grants assistance to the applicant;

5. An application for character/integrity investigation (Name Check Form CD–346) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower;

6. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of Section 702 of the Act. Section 702 unfair competition results if the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite processing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to formal offering of a loan guarantee are made solely at the applicant's or borrower's expense.

7. A description of state or local government assistance to the project; and

8. A signed statement by the borrower assuring that (a) real estate provided as collateral is not under notice of environmental violations from local, state or Federal agencies, (b) the real property is not the subject of an environmental impact study, and (c) there are no known violations of Federal, state or local environmental laws or requirements, including, but not limited to, 42 U.S.C. 9601–9657.

B. Loan guarantees are also subject to the following statutes:

1. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251–1376;

2. Davis-Bacon Act, as amended, 40 U.S.C. 276a–276a–5; 13 CFR 309.6;

3. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151–4157; 13 CFR 309.14;

4. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4370; CFR 309.18;

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470W–6;

6. The Wild and Scenic River Act, as amended, 16 U.S.C. 1271–1287;

7. The Clean Air Act, as amended, 42 U.S.C. 7401–7626;

8. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001–4128; and

9. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9001–9687.

Application Submission

Proposals should be submitted to the appropriate EDA Regional Office at the earliest possible date, but in no event later than May 30, 1988. Proposals from the Denver region will be processed by the Chicago Regional Office. Proposals received after this date may not be considered during FY 1988. Completed applications for authorized projects should be submitted no later than June 30, 1988. Incomplete applications or applications that do not conform to program requirements will be rejected by EDA.

The EDA Headquarters will review all loans recommended for approval by a Regional Office. Headquarters review will encompass credit as well as program objectives, priorities and interest. All guarantees required approval by the Assistant Secretary of Commerce for Economic Development.

For Further Information Contact

For further information contact the Chief of the Business Loans Division of the Regional Office that services your state (see section X of this Notice). In the case of projects located in the Denver region, the Chicago Regional Office Business Loans Division Chief is the appropriate contact.

X. EDA Regional Offices

The EDA Regional Offices and the states they cover are: Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, First Floor, Philadelphia, Pennsylvania 19106, telephone: (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

Atlanta Regional Office, Suite 750, 1365 Peachtree Street, NE, Atlanta, Georgia 30309, telephone: (404) 347–7401; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Denver Regional Office, Suite 300, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80204, telephone: (303) 844–4714; serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Chicago Regional Office, Suite A–1630, 175 West Jackson Boulevard, Chicago, Illinois 60604, telephone: (312) 353–7706; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Seattle Regional Office, Suite 1856, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, telephone: (206) 442–0596; serving Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Austin Regional Office, Suite 201, Grant Building, 611 East Sixth Street, Austin, Texas 78701, telephone: (512) 482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

January 6, 1988.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 88–845 Filed 1–15–88; 8:45 am]

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VOL
53

ISS
11

JA
19

19
988

UMI

federal register

Tuesday
January 19, 1988

Part III

Department of Education

34 CFR Part 303

Early Intervention Program for Infant and Toddlers With Handicaps; Proposed Rule; Extension of Comment Period

VOL
53
ISS
11
JA
19
988
UMI

DEPARTMENT OF EDUCATION

34 CFR Part 303

Early Intervention Program for Infant and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 18, 1987, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) for the new program for infants and toddlers with handicaps established under the 1986 amendments to the Education of the Handicapped Act. The NPRM provided for a comment period ending January 19, 1988 (52 FR 44352–44363).

In response to requests received, the Secretary extends the comment period.

DATE: The comment period for the November 18, 1987 NPRM is extended until February 16, 1988.

ADDRESS: All comments concerning the proposed regulations should be addressed to R. Paul Thompson or Thomas B. Irvin, U.S. Department of Education, Office of Special Education Programs, 400 Maryland Avenue SW. (Switzer Building, Room 4065 M/S 2313–4600), Washington, DC 20202

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson or Thomas B. Irvin. Telephone (202) 732–4278.

Dated: January 14, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–1049 Filed 1–15–88; 8:45 am]

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VOL
53

ISS
11

JA
19

988

UMI

federal register

Tuesday
January 19, 1988

Part IV

The President

Proclamation 5761—Sanctity of Human Life Day, 1988

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Federal Register
Vol. 53, No. 11
Tuesday, January 19, 1988

Presidential Documents

Title 3—

The President

Proclamation 5761 of January 14, 1988

National Sanctity of Human Life Day, 1988

By the President of the United States of America

A Proclamation

America has given a great gift to the world, a gift that drew upon the accumulated wisdom derived from centuries of experiments in self-government, a gift that has irrevocably changed humanity's future. Our gift is twofold: the declaration, as a cardinal principle of all just law, of the God-given, unalienable rights possessed by every human being; and the example of our determination to secure those rights and to defend them against every challenge through the generations. Our declaration and defense of our rights have made us and kept us free and have sent a tide of hope and inspiration around the globe.

One of those unalienable rights, as the Declaration of Independence affirms so eloquently, is the right to life. In the 15 years since the Supreme Court's decision in *Roe v. Wade*, however, America's unborn have been denied their right to life. Among the tragic and unspeakable results in the past decade and a half have been the loss of life of 22 million infants before birth; the pressure and anguish of countless women and girls who are driven to abortion; and a cheapening of our respect for the human person and the sanctity of human life.

We are told that we may not interfere with abortion. We are told that we may not "impose our morality" on those who wish to allow or participate in the taking of the life of infants before birth; yet no one calls it "imposing morality" to prohibit the taking of life after people are born. We are told as well that there exists a "right" to end the lives of unborn children; yet no one can explain how such a right can exist in stark contradiction of each person's fundamental right to life.

That right to life belongs equally to babies in the womb, babies born handicapped, and the elderly or infirm. That we have killed the unborn for 15 years does not nullify this right, nor could any number of killings ever do so. The unalienable right to life is found not only in the Declaration of Independence but also in the Constitution that every President is sworn to preserve, protect, and defend. Both the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life without due process of law.

All medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality—that they in fact are persons. Modern medicine treats unborn children as patients. Yet, as the Supreme Court itself has noted, the decision in *Roe v. Wade* rested upon an earlier state of medical technology. The law of the land in 1988 should recognize all of the medical evidence.

Our Nation cannot continue down the path of abortion, so radically at odds with our history, our heritage, and our concepts of justice. This sacred legacy, and the well-being and the future of our country, demand that protection of the innocents must be guaranteed and that the personhood of the unborn be declared and defended throughout our land. In legislation introduced at my request in the First Session of the 100th Congress, I have asked the Legislative branch to declare the "humanity of the unborn child and the compelling interest of the several states to protect the life of each person before birth." This duty to declare on so fundamental a matter falls to the Executive as well. By this Proclamation I hereby do so.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare the unalienable personhood of every American, from the moment of conception until natural death, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgment of mankind and the gracious favor of Almighty God. I also proclaim Sunday, January 17, 1988, as National Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and the sanctity of every human life.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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VOL
53
ISS
11
JA
19
988
UMI

Reader Aids

Federal Register

Vol. 53, No. 11

Tuesday, January 19, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5760	855
5761	1464

Executive Orders:

12537 (Amended by EO 12624)	489
12578 (Superseded by EO12622)	222
12622	222
12623	487
12624	489

Administrative Orders:

Presidential Determinations:

No. 88-2 of Oct. 30, 1987	399
No. 88-4 of Dec. 17, 1987	773

Presidential Findings:

Jan. 12, 1988	999

5 CFR

353	857
551	1331
890	1, 860

Proposed Rules:

330	408
351	408
890	898

7 CFR

1	1001
7	1441
301	733
353	1332
400	2
401	1001
704	733
905	401, 860
907	6, 491, 1333
910	7, 492, 1333
911	402
928	862
959	401
971	401
987	401
1430	107
1902	231

Proposed Rules:

68	411
301	140
401	505, 507
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370
1126	256
1136	686
1260	509
1701	140

9 CFR

77	1002

10 CFR

73	403

Proposed Rules:

2	415
430	30

11 CFR

Proposed Rules:

109	416
114	416

12 CFR

206	492
208	492
226	467
337	597
501	1003
525	312
561	324, 338
563	324, 338, 354, 363, 372, 385, 1004
563c	324
571	338, 372, 385
583	312, 1003
584	312
614	775
795	1005

Proposed Rules:

226	467

14 CFR

39	8-14, 232, 493-495, 1334
71	496, 497, 619, 1335, 1336
75	497, 1336-1339
91	233
95	1005
97	499

Proposed Rules:

Ch. I	1038
39	258, 514, 515, 1371-1374
71	516, 517, 668, 670, 674, 907-910, 1375
73	517, 991

15 CFR
399.....108
806.....1015
Proposed Rules:
379.....418

16 CFR
13.....609
Proposed Rules:
13.....141, 1039

17 CFR
1.....609, 615
211.....109, 865, 1341

18 CFR
154.....867
270.....867
271.....15
273.....867
375.....867
381.....867
1301.....405

19 CFR
4.....1103
24.....615
Proposed Rules:
132.....1376
141.....30
142.....1376
178.....30

20 CFR
Proposed Rules:
361.....143
901.....147

21 CFR
81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233
606.....111
610.....111
640.....111
1308.....500
Proposed Rules:
193.....259
561.....259
1308.....743

23 CFR
655.....236

24 CFR
200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122
Proposed Rules:
115.....260

26 CFR
1.....117, 238, 1103, 1441
Proposed Rules:
1.....153, 261

28 CFR
55.....735
541.....196

29 CFR
2676.....1018
2702.....737

30 CFR
202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994
Proposed Rules:
210.....1039
216.....1039

31 CFR
103.....776

32 CFR
45.....1341
104.....1343
374.....1345
887.....876
Proposed Rules:
199.....1378

33 CFR
110.....878
117.....119, 406
165.....616, 878
166.....1347

34 CFR
Proposed Rules:
303.....1461

36 CFR
5.....739
404.....120
1254.....1348
Proposed Rules:
223.....519

37 CFR
201.....122, 123
Proposed Rules:
203.....153

38 CFR
4.....21, 1441
21.....616, 879
36.....1349
Proposed Rules:
21.....620, 1040
36.....1378

39 CFR
111.....124, 125
232.....126

40 CFR
2.....214
51.....392, 480
52.....392, 501, 1019, 1020, 1354
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244, 1358
763.....1021
Proposed Rules:
52.....261, 779, 1043
180.....262, 263
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR
101–20.....129
114–51.....741
Proposed Rules:
Ch. 201.....620
51–7.....1379
141.....31
142.....31
261.....31

42 CFR
431.....657
435.....657
440.....657
441.....657
Proposed Rules:
410.....1383
434.....744
435.....744

43 CFR
2.....24
3100.....1184
3160.....1184
Public Land Orders:
6661.....1359
6662.....1359
Proposed Rules:
3160.....1039

44 CFR
Proposed Rules:
7.....922
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR
95.....26
233.....467

46 CFR
Proposed Rules:
588.....624

47 CFR
Ch. I.....502
0.....1022
64.....27
65.....1027
68.....1103
73.....28, 29, 504, 1030
90.....1022
Proposed Rules:
1.....625
63.....625
73.....426, 1386–1388
74.....529
76.....625
78.....529
95.....779

48 CFR
7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132, 1441
513.....132, 1441
Proposed Rules:
215.....625
225.....626
232.....931
252.....626, 931
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR
24.....467
31.....880
541.....133
565.....1032
661.....617
Proposed Rules:
3.....100
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
571.....426, 780, 934, 936
1041.....155
1048.....155
1049.....155

50 CFR
611.....134, 741, 890, 894
653.....244
663.....246, 248
672.....890, 991

675.....894, 991
Proposed Rules:
20.....42
226.....530
301.....156
652.....265
658.....266
672.....627

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988

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52	23.00	Jan. 1, 1987
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210–299	22.00	Jan. 1, 1987
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400–699	15.00	Jan. 1, 1987
700–899	22.00	Jan. 1, 1987
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1000–1059	15.00	Jan. 1, 1987
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1120–1199	11.00	Jan. 1, 1987
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1945–End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1–199	18.00	Jan. 1, 1987
200–End	16.00	Jan. 1, 1987
10 Parts:		
0–199	29.00	Jan. 1, 1987
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11	11.00	July 1, 1987
12 Parts:		
1–199	11.00	Jan. 1, 1987
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500–End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1–59	21.00	Jan. 1, 1987
60–139	19.00	Jan. 1, 1987
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200–1199	19.00	Jan. 1, 1987
1200–End	11.00	Jan. 1, 1987
15 Parts:		
0–299	10.00	Jan. 1, 1987
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16 Parts:		
0–149	12.00	Jan. 1, 1987
150–999	13.00	Jan. 1, 1987
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17 Parts:		
1–199	14.00	Apr. 1, 1987
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18 Parts:		
1–149	15.00	Apr. 1, 1987
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19 Parts:		
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21 Parts:		
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100–169	14.00	Apr. 1, 1987
170–199	16.00	Apr. 1, 1987
200–299	5.50	Apr. 1, 1987
300–499	26.00	Apr. 1, 1987
500–599	21.00	Apr. 1, 1987
600–799	7.00	Apr. 1, 1987
800–1299	13.00	Apr. 1, 1987
1300–End	6.00	Apr. 1, 1987
22 Parts:		
1–299	19.00	Apr. 1, 1987
300–End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0–199	14.00	Apr. 1, 1987
200–499	26.00	Apr. 1, 1987
500–699	9.00	Apr. 1, 1987
700–1699	18.00	Apr. 1, 1987
1700–End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0–1.60	12.00	Apr. 1, 1987
§§ 1.61–1.169	22.00	Apr. 1, 1987
§§ 1.170–1.300	17.00	Apr. 1, 1987
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§§ 1.641–1.850	17.00	Apr. 1, 1987
§§ 1.851–1.1000	27.00	Apr. 1, 1987
§§ 1.1001–1.1400	16.00	Apr. 1, 1987
§§ 1.1401–End	20.00	Apr. 1, 1987
2–29	20.00	Apr. 1, 1987
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40–49	12.00	Apr. 1, 1987
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Title	Price	Revision Date
1926	10.00	July 1, 1987
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1–39, Vol. II	19.00	[3] July 1, 1984
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33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
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400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
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200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
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39	13.00	July 1, 1987
40 Parts:		
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52	26.00	July 1, 1987
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61–80	12.00	July 1, 1987
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190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
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1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[4] July 1, 1984
3–6	14.00	[4] July 1, 1984
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42 Parts:		
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43 Parts:		
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44	17.00	Oct. 1, 1986
45 Parts:		
1–199	14.00	Oct. 1, 1987
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46 Parts:		
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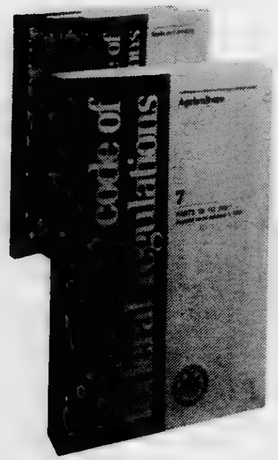
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53
ISS
11
JA
19
988
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53
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11
JA
19
988
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988

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WHEN: February 12; at 9:00 a.m.
WHERE: Room 2007, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.
RESERVATIONS: Call the San Francisco Federal Information Center, 415–556–6600

Contents

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

ACTION
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1496
NOTICES
Foster grandparent and senior companion programs; income eligibility levels, 1502

Agriculture Department
See also Federal Crop Insurance Corporation; Soil Conservation Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Microbiological Criteria for Foods National Advisory Committee, 1503

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
February, 1516

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Alexander Valley and Chalk Hill, CA, 1492

Centers for Disease Control
NOTICES
Meetings:
Mine Health Research Advisory Committee (NIOSH), 1519

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Bilateral agreement negotiations (1988), 1506
Cotton, wool, and man-made textiles:
Malaysia, 1506
Textile and apparel categories:
Harmonized system introduction; correction, 1540

Commodity Futures Trading Commission
NOTICES
Agency information collection activities under OMB review, 1506

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 1538

Economic Regulatory Administration
NOTICES
Natural gas exploration and importation:
Development Associates, Inc., 1507
Dynasty Gas Marketing, Inc., 1508
Shell Gas Trading Co., 1509
St. Lawrence Gas Co., Inc., 1508

Education Department
NOTICES
Grants; availability, etc.:
Disabled individuals, severely; special projects and demonstrations for providing vocational rehabilitation services; and projects with industry, 0000
Women's Educational Equity Act program; correction, 1506

Employment and Training Administration
NOTICES
Adjustment assistance:
General Motors Corp., 1530
Kerr-McGee Corp., 1531

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
PROPOSED RULES
Radioactive waste program, low-level:
Disposal capacity; unusual volumes allocation petition procedures, 1594

Environmental Protection Agency
PROPOSED RULES
Pesticide programs:
Agricultural pesticides; worker protection standards; notification to Agriculture Secretary, 1494
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pentachloronitrobenzene, 1495
NOTICES
Agency information collection activities under OMB review, 1510

Executive Office of the President
See Management and Budget Office; Trade Representative, Office of United States

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
Airworthiness directives:
SOCATA, 1468

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 1536
(2 documents)

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
Apples, 1467

Federal Election Commission
NOTICES
Special elections; filing dates:
Louisiana, 1510

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Pennsylvania et al., 1485
NOTICES
Agency information collection activities under OMB review, 1510

Federal Energy Regulatory Commission
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1469

Federal Maritime Commission
NOTICES
Complaints filed:
Delhi Petroleum Pty. Ltd. et al., 1511
North Carolina State Ports Authority et al., 1511
Freight forwarder licenses:
Interport Co., Inc., et al., 1511

Federal Mediation and Conciliation Service
NOTICES
Grants; availability, etc.:
Labor-management cooperation program, 1512

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 1538
Applications, hearings, determinations, etc.:
Community National Bancorp, Inc., et al., 1514
Formell, Leslie, et al., 1515
Montana Bancsystem, Inc., 1515
Progressive Bank, Inc., 1515

Fish and Wildlife Service
RULES
Sport fishing:
Refuge-specific fishing regulations, 1487
NOTICES
Endangered and threatened species permit applications, 1524

Food and Drug Administration
RULES
Medical devices:
Radiology devices—
General provisions and classifications, 1554
PROPOSED RULES
Medical devices:
Hematology and pathology devices, etc.—
Premarket notification exemptions, 1574
Radiology devices—
Premarket notification exemptions, 1588
NOTICES
Food for human consumption:
Wheat flour and macaroni products adulteration; defect action levels; compliance policy guide availability, 1520

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Louisiana, 1503

General Services Administration
RULES
Acquisition regulations:
Miscellaneous amendments
Correction, 1540
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 1478

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
Debenture interest rates, 1521

Indian Affairs Bureau
NOTICES
Buy Indian Act; contracts eligibility, 1522

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau
NOTICES
Meetings:
National Strategic Materials and Minerals Program Advisory Committee, 1521

International Trade Administration
NOTICES
Countervailing duties:
Canned tuna from Philippines, 1504
Meetings:
President's Export Council, 1505

International Trade Commission
NOTICES
Import investigations:
Fabricated structural steel from Canada, 1527

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Mahoning Valley Railway Co., 1528
Saginaw Valley Railway Co., Inc., 1528

Justice Department
NOTICES
Agency information collection activities under OMB review, 1528

Labor Department
See also Employment and Training Administration
NOTICES
Agency information collection activities under OMB review, 1529

Land Management Bureau
NOTICES
Opening of public lands:
Arizona; correction, 1540
(3 documents)
Realty actions; sales, leases, etc.:
California, 1522, 1523
(2 documents)

Management and Budget Office
NOTICES
Federal statistical activities; guidelines, 1542

Maritime Administration
NOTICES
War risk insurance; ship valuation system; revision, 1534

Merit Systems Protection Board
NOTICES
Meetings; Sunshine Act, 1539

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
ARCO Oil & Gas Co., 1524
Hall-Houston Oil Co., 1524
Phillips Petroleum Co., 1525

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Marine Fisheries Advisory Committee, 1505
Regional Fisheries Management Councils, 1506

National Park Service
NOTICES
Management and land protection plans; availability, etc.:
Middle Fork of Vermilion National Scenic River, IL, 1525
National Register of Historic Places:
Pending nominations—
Arizona et al., 1526

National Science Foundation
NOTICES
Meetings:
Equal Opportunities in Science and Engineering Committee, 1531

Nuclear Regulatory Commission
NOTICES
Organization, functions, and authority delegations:
Nuclear Material Safety and Safeguards Office, etc., relocation, 1531
Applications, hearings, determinations, etc.:
Duke Power Co., 1531
Duke Power Co. et al., 1532

Office of Management and Budget
See Management and Budget Office

Postal Service
NOTICES
Privacy Act; systems of records, 1533

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Reclamation Bureau
NOTICES
Realty actions; sales, leases, etc.:
California, 1523

Small Business Administration
RULES
Loans to State and local development companies
Correction, 1468
NOTICES
Disaster loan areas:
Arkansas, 1534
Mississippi, 1534
Puerto Rico, 1534
Texas, 1534

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Tesnatee Creek Watershed, GA, 1503
Waterfall-Gilford Creek Watershed, OK, 1503

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Import quotas and exclusions, etc.:
Specialty steel import relief, 1536

Transportation Department
See Federal Aviation Administration; Maritime Administration

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau
NOTICES
Notes, Treasury:
E-1995 series, 1535

United States Information Agency
NOTICES
Meetings:
Radio Broadcasting to Cuba Advisory Board, 1535

Veterans Administration
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 1535
Rehabilitation Advisory Committee, 1535
Vietnam Veterans Readjustment Problems Advisory Committee, 1536
Wage Committee, 1536

Separate Parts In This Issue

Part II
Office of Management and Budget, 1542

Part III
Department of Health and Human Services, Food and Drug Administration, 1554

Part IV
Department of Health and Human Services, Food and Drug Administration, 1574

Part V
Department of Health and Human Services, Food and Drug Administration, 1588

Part VI
Department of Education, 1592

Part VII
Department of Energy, 1594

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
405 1467

10 CFR
Proposed Rules:
730 1594

13 CFR
108 1468

14 CFR
39 1468

18 CFR
3 1469
375 1469
381 1469
388 1469

21 CFR
884 1554
892 1554
Proposed Rules:
864 1574
866 1574
868 1574
870 1574
876 1574
880 1574
882 1574
884 1574
890 1574
892 1574

27 CFR
Proposed Rules:
9 1492

40 CFR
Proposed Rules:
156 1494
170 1494
180 1495

41 CFR
105–60 1478

44 CFR
64 1485

45 CFR
Proposed Rules:
1215 1496

48 CFR
501 1540

50 CFR
33 1487

Rules and Regulations

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 405

[Amdt. No. 1; Doc. No. 5051S]

Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Apple Crop Insurance Regulations (7 CFR Part 405), by adding a new section, 7 CFR 405.9, Pilot Sunburn Option Amendment. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on apples against damage caused by excessive sun resulting in the apples grading less than U.S. Fancy. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective January 20, 1988. Comments due March 21, 1988.

ADDRESSES: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1990.

Edward D. Hews, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Insured apple producers have requested crop insurance coverage against losses brought about by apples being reduced in grade below U.S. Fancy due to sunburn. Some sunburn is suffered by an apple crop during any given year, but recently the protective cover of apple trees has been thinned or reduced by adverse weather conditions to the point where the apple crop is exposed to excessive sunshine resulting in an increase in sunburned apples which are reduced in grade below U.S. Fancy.

FCIC has determined that it is necessary to offer this form of protection to insureds who presently are insured under the basic Apple Crop Insurance Policy with the quality option as quickly as possible because of a relatively short time available for insureds to study the program and determine their crop insurance needs.

For this reason, good cause is shown for making this rule effective upon publication in the **Federal Register.**

FCIC is soliciting public comments, data, and opinions on this rule for 60 days after publication in the **Federal Register,** and will schedule a review of this rule as soon as possible after the 60-day period in order to publish any amendment made necessary by the comments received.

Written comment, data, and opinions on this rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 405

Crop insurance, Apples.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Apple Crop Insurance Regulations (7 CFR Part 405), effective for the 1988 and succeeding crop years, as follows:

PART 405—[AMENDED]

1. The authority citiation for 7 CFR Part 405 continues to read as follows:

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 405 is amended to add a new section, Pilot Sunburn Option Amendment (7 CFR 405.9) to read as follows:

§ 405.9 Pilot Sunburn Option Amendment.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Pilot Sunburn Option Amendment (Washington State)

Upon our approval, this amendment is applicable only for the 19 ____ crop year.

Insured's Name _____
Address _____
Contract Number _____
Crop Year _____
Identification Number _____
SSN _____
Tax _____

It is hereby agreed to amend the Federal Crop Insurance Apple Policy (basic policy) and the Fresh Fruit Option B in accordance with the following terms and conditions:

1. This option must be submitted to us on or before December 4, 1987. The sales closing date for the Apple Crop Insurance Policy and Fresh Fruit Option is extended through December 4, 1987, only if this option is purchased.

2. You must have a basic policy and Fresh Fruit Option B in force.

3. In addition to the causes of loss specified in paragraph 1a of the Apple Crop Insurance Policy, excess sun is an insurable cause of loss.

4. The Fresh Fruit Option B is, upon purchase of this option, amended to:

a. Change all references to "hail" to read "hail/excessive sun"; and

b. In paragraph 10(c) insert the following phrase after the words "russeting or color": "except that apples which grade less than U.S. Fancy due solely to sunburn (or hail and sunburn) will be adjusted according to paragraphs 10a(1) through 10a(4)."

5. The premium for this sunburn option will be ten (10) percent of the basic premium charged for Fresh fruit Option B.

6. All provisions of the basic policy and the Fresh Fruit Option not in conflict with this option are applicable.

7. a. Excessive sun is defined as the exposure of unharvested apples to direct or indirect sun sufficient to cause the apples to grade less than U.S. Fancy due to sunburn.

b. Sunburn is defined in accordance with applicable USDA Standards.

Insured's Signature Date

Corporation Representative's Signature and Code Number Date

Done in Washington, DC on January 12, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-1030 Filed 1-19-88; 8:45 am]

BILLING CODE 3410-08-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4; Amdt. 16]

Loans to State and Local Development Companies; Correction

AGENCY: Small Business Administration.

ACTION: Interim final rule; correction.

SUMMARY: This document corrects an interim final rule on loans to state and local development companies which was published in the **Federal Register** on July 23, 1987 (52 FR 27672).

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, DC 20416, (202) 653-6416.

SUPPLEMENTARY INFORMATION:

List of Subjects in 13 CFR Part 108

Loan programs—business, Reporting and recordkeeping requirements, Small business.

In order to correct FR Document 87-16575 appearing on page 27672 in the issue of July 23, 1987, the following changes are made to 13 CFR Part 108:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: Secs. 308(c), 501, 502, Pub. L. 85-699, 72 Stat. 689; Sec. 113, Pub. L. 98-302 (15 U.S.C. 631 note).

2. Section 108.503-10 is amended by revising the penultimate sentence to read as follows:

§ 108.503-10 [Amended]

* * * The interest on such injection shall not exceed a rate which is legal and reasonable.* * *

3. Section 108.505(f)(2)(iv) is revised to read as follows:

§ 108.505 [Amended]

* * * * *

(f) * * *

(2) * * *

(iv) Perform such other functions as SBA from time to time may prescribe.

Dated: January 6, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-712 Filed 1-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-27-AD; Amdt. 39-5829]

Airworthiness Directives; SOCATA Models TB 20 and TB 21 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain SOCATA Models TB 20 and TB 21 airplanes, which requires inspection of the main landing gear (MLG) hinge ball joints to detect looseness or interference of the MLG hinge strut with landing gear box stiffener, and subsequent modification of the main landing gear boxes to prevent the landing gear from binding and being unable to extend. This action is a result of FAA evaluation of the manufacturer's service information and an Airworthiness Directive issued by the responsible foreign certification airworthiness authority. The actions specified in this AD will preclude a gear up landing, and resulting damage to the airplane and hazard to the occupants.

DATE: *Effective date:* February 20, 1988. *Compliance:* Required as indicated in the body of this AD, unless already accomplished.

ADDRESSES: SOCATA TB Aircraft Service Bulletin No. 30, dated December 1986, applicable to this AD may be obtained from SOCATA Groupe Aerospatiale, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or Mr. Bernard H. Veyssiere, Deputy Product Support Manager, U.S., Aerospatiale, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, ACE-109, Aircraft Certification Division, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932; or Mr. Roger Anderson, Aerospace Engineer, AEU-100, Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 513.38.30.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the main landing gear (MLG) hinge ball joints to detect looseness or interference of the MLG hinge strut with landing gear box stiffener on certain SOCATA Model TB 20 and TB 21 airplanes was published in the **Federal Register** on September 23, 1987 (52 FR 35727). The proposal resulted from an FAA evaluation of the manufacturer's service information and Airworthiness Directives issued by the responsible foreign certification airworthiness authority. SOCATA issued Service Bulletin (SB) No. 30, dated, December 1986 which requires inspection of the (MLG) hinge ball joint to detect looseness or interference of the MLG hinge strut with landing box stiffener.

The Director General of Civil Aviation (DGCA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in France has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the effected airplanes.

On airplanes operated under French registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of SOCATA SB No. 30, and the mandatory classification of this Service Bulletin by the DGAC, and concluded that the condition addressed by SB No. 30 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of related cost. Accordingly, the proposal is adopted without change, except for minor editorial corrections.

The FAA has determined that this regulation involves 120 airplanes at an approximate one-time cost of $80 for each airplane, or a total one-time fleet cost of $9,600. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD.

SOCATA: Applies to Models TB 20 and TB 21 (Serial numbers 275 through 709) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect interference between the moveable portions of the landing gear structure that may prevent extension of the landing gear, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) visually and tactilely (by touch) inspect the main landing gear hinge ball joints for play or interference marks between the articulated strut and the main landing gear box stiffeners as described in SOCATA TB Aircraft Service Bulletin (SB) No. 30, dated, December 1986.

(1) If detectable play is observed in the hinge ball joints or interference marks are found on the articulated strut or landing gear stiffener box, before further flight modify the airplane as prescribed in SOCATA TB Aircraft S/B No. 30, dated December 1986.

(2) If no looseness or interference is found, within 100 hours TIS after the effective date of this AD modify the airplane as prescribed in SOCATA TB Aircraft SB No. 30, dated December 1986.

(b) Airplanes may be flown in accordance with FAR 21. 197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 513.38.30.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to SOCATA Groupe AEROSPATIALE, B.P. 38, 65001 Tarbes, France; Telephone 62.51.73.00 or 62.93.99.45 (for recorder); or Mr. Bernard H. Veyssiere, Deputy Product Support Manager, U.S. Aerospatiale, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 20, 1988.

Issued in Kansas City, Missouri, on January 6, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-837 Filed 1-19-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 375, 381 and 388

[Docket No. RM87-21-000; Order No. 488]

Revision of Freedom of Information Act Rules

Issued January 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations relating to public information and to requests for information made pursuant to the Freedom of Information Act (5 U.S.C. 552 (1982)) *as amended by* Freedom of Information Reform Act of 1986, Pub. L. 99-570, sections 1801-1804, 100 Stat. 3207, 3207-48 (1986). This final rule consolidates regulations previously provided in § 3.6 and Part 388 of the Commission's regulations. The final rule also incorporates changes mandated by Congress in the Freedom of Information Reform Act of 1986.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations relating to public information and to requests for information made pursuant to the

Freedom of Information Act.[1] The final rule consolidates regulations previously provided in § 3.8 and Part 388 of the Commission's regulations. The final rule also incorporates changes mandated by Congress in the Freedom of Information Reform Act of 1986.

II. Background

A. Commission Regulations

The current regulations relating to public information are in one part of the Commission's regulations and the regulations relating to requests under the Freedom of Information Act (FOIA) are in another part of the Commission's regulations.[2] Section 3.8 in Part 3 of the Commission's regulations [3] provides procedures for obtaining (1) public information from the Commission's Public Reference Room; (2) stenographic records of Commission hearings; (3) the Commission's opinions, decisions, orders and rulemakings; (4) the Commission's list of formal documents; (5) the Commission's annual report to Congress; (6) the Commission's reports, decisions, maps, statistics and other information on the electric power and natural gas industries; (7) the Commission's news releases; and (8) informal advice from Commission staff. Section 3.8 also provides procedures for press, television, radio and photographic coverage of Commission proceedings; and provides the fees for FOIA requests.

Part 388 of the Commission's regulations [4] implements FOIA and Government in the Sunshine Act. Part 388 prescribes the rules governing (1) public notice of Commission proceedings; (2) public notice and publication of Commission decisions, rules, statements of policy, organization, and operations; (3) Commission public records available for inspection and copying; (4) an index of Commission actions available for inspection; (5) timetables and appeal procedures in the event public records are withheld; (6) procedures to be followed when Commission staff is served with a *subpoena duces tecum;* (7) procedures for requesting information from the Commission; and (8) procedures for requests for confidential treatment of documents submitted to the Commission.

B. Freedom of Information Reform Act of 1986 and OMB Guidelines

Congress recently enacted legislation to change the FOIA in the Freedom of Information Reform Act of 1986 (FOIA Reform Act).[5] Specifically, Congress broadened the enforcement exemption of FOIA to include not only investigation records, but also other records or information compiled for enforcement purposes.

The FOIA Reform Act also requires Federal agencies to promulgate regulations specifying a schedule of fees applicable to processing FOIA requests as well as regulations establishing procedures and guidelines for determining when these fees should be waived or reduced. The FOIA Reform Act also mandates that Federal agencies' fee schedules and fee reduction or waiver regulations must conform to guidelines established by the Director of the Office of Management and Budget (OMB). On March 27, 1987, OMB issued its uniform FOIA fee schedule and guidelines,[6] to apply to all agencies subject to the Freedom of Information Act.

C. Commission's Notice of Proposed Rulemaking

On June 23, 1987,[7] the Commission issued a notice of proposed rulemaking (NOPR), proposing to consolidate Commission regulations [8] on public information and requests for information made pursuant to FOIA into Part 388 of the Commission's regulations. The Commission proposed classifying Commission information into two categories—Commission records available in the Public Reference Room and Commission records not available through the Public Reference Room—and described procedures for obtaining each of these types of Commission records.[9] Additionally, the Commission's NOPR modified the procedures employees and former employees must follow upon receipt of a subpoena. The Commission's NOPR also proposed to modify the appeal procedures for FOIA requests. The Commission did not receive any comments on its proposed consolidation or its revised subpoena procedures. The Commission, therefore, adopts its NOPR as proposed.

Commenters raised several concerns regarding the Commission's proposed FOIA fees as well as the Commission's confidentiality procedures. The Commission received comments from the Society of Professional Journalists, the Reporters' Committee for Freedom of the Press, Texaco, Inc., ANR Pipeline Company and Colorado Interstate Gas Company and Natural Gas Pipeline Company of America. These comments are addressed below.

III. Discussion

A. FOIA Fees and Fee Waiver or Reduction

The majority of comments submitted in response to the Commission's NOPR focus on issues involving the FOIA fees and the Commission's confidentiality procedures. Commenters raised two issues on the proposed FOIA fees. First, the Society of Professional Journalists argues that the Commission's proposed regulations fail to meet OMB's requirements.

The Commission disagrees with the Society. In fact, in this final rule the Commission is adopting OMB's regulations verbatim. These regulations specify that advance payments may be charged and collected for FOIA requests if a FOIA fee is expected to exceed $250, or if a FOIA requester has previously failed to pay fees in a timely fashion. If the Commission determines that the estimated fee for a FOIA request is likely to exceed $250, the Commission will seek satisfactory assurances of payment if the FOIA requester has a record of prompt payment or, ask for an advance payment of the amount up to the estimated cost if the requester has no history of payment. The Commission will require full advance payment of the estimated amount for FOIA requesters who have failed to pay in a timely fashion in the past, or who are currently delinquent.

Second, both the Society of Professional Journalists and the Reporters' Committee for Freedom of the Press argue that the Commission's criteria for fee reduction or waiver for FOIA requests are too restrictive.

The Commission believes that its fee reduction or waiver guidelines comply with the fee waiver standards mandated by the FOIA Reform Act and promulgated in OMB's guidelines. The FOIA Reform Act's fee waiver standards establish two basic

[1] 5 U.S.C. 552 (1982) *as amended by* Freedom of Information Reform Act of 1986, Pub. L. 99-570, sections 1801-1804, 100 Stat. 3207, 3207-48 (1986).

[2] *See* 18 CFR Parts 3 and 388 (1987).

[3] 18 CFR 3.8 (1987).

[4] 18 CFR Part 388 (1987).

[5] *See* note 1.

[6] The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

[7] Revision of Freedom of Information Act Rules, 52 FR 24027 (June 26, 1987), IV FERC Stats & Regs. ¶ 32,448 (1987).

[8] *See* note 2.

[9] The Commission is deleting from § 388.106 of its existing regulations references to documents listed as available in the Public Reference Room, which in fact are not available from the Public Reference Room. However, the Commission notes that while these documents may not be available from the Public Reference Room, they may be obtained under the second category of Commission records.

requirements.[10] First, the Commission must determine if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government. Second, the Commission must determine whether the information disclosed is not primarily in the commercial interest of the requester. The FOIA Reform Act does not require the Commission to grant the requested fee waiver or reduction unless both of these requirements are met.

The Commission's new regulations list several factors it will use in determining the public interest and the commercial interest of the FOIA requester. The Commission will use these factors to determine if a request for fee reduction or waiver of a fee for an FOIA request meets the FOIA Reform Act's statutory requirements as promulgated in OMB's guidelines. The Commission will review requests for fee waiver or reductions for FOIA requests on a case-by-case basis and will give full and careful consideration to the merits of each request.

B. Commission's Confidentiality Procedures

Commenters express several concerns regarding the proposed confidentiality provisions. First, the Reporters' Committee for Freedom of the Press requests the Commission to clarify that the notification provisions that allow for consultation with submitter of confidential information when an FOIA request is made, will not interfere with the Commission's obligation to grant or deny an FOIA request for information within 10 days. FOIA regulations provide that Federal agencies must determine whether to comply with a FOIA request within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of the FOIA request.[11]

The Commission recognizes that it must act on FOIA requests within the 10 working day time limit prescribed in FOIA, which may be extended in unusual circumstances by an additional 10 working days.[12] However, the Commission also is required to implement the notification procedures in Executive Order 12600, which requires Federal agencies to establish predisclosure notification procedures for confidential commercial information.[13] The Commission intends to balance these two requirements in reviewing FOIA requests that involve confidential information.

Texaco recommends changes to the proposed procedures for notification as well as the time period for response under § 388.112(d). Under the proposed Commission regulations, when an FOIA requester seeks a document for which the submitter has claimed confidential commercial treatment, the Commission official who will decide whether to make the document public will notify the submitter. Texaco recommends that the Commission's notice be in writing and that it begin to calculate the time for a response by the submitter from the date of receipt of the written notice. Texaco also recommends that the person who submitted the confidential commercial information should have at least 10 working days to respond in writing. Finally, Texaco recommends that the time period for notice of denial of a claim of privilege in § 388.112(e) should be expanded from five days to no less than 10 working days.

The Commission is not adopting Texaco's recommendations with regard to the time period for notification. FOIA requires Commission action on an FOIA request for information within 10 days excepting Saturdays, Sundays, and legal public holidays after receipt of the FOIA request.[14] FOIA provides that this 10 day time period may be expanded for an additional 10 days under unusual circumstances.[15] Therefore, the Commission is limited by these requirements of the statute. In fact, Texaco's proposals would expand the Commission's FOIA procedures beyond this statutorily-mandated time-frame.

However, the Commission is adopting another Texaco recommendation, *i.e.*, that requests for confidential treatment of documents, contain the name, title, address, telephone number and telecopy information of person(s) to whom correspondence or communication in regard to a confidential request is to be addressed. The Commission believes this will facilitate the process of notification.

ANR Pipeline Company (ANR) and Colorado Interstate Gas Company (CIG) argue that the Commission's proposal does not adequately encompass the procedural protections of Executive Order 12600.[16] Specifically, ANR and CIG argue that the Executive Order requires an agency to provide a written statement explaining the reasons why it has declined confidential treatment. They request the Commission to amend its existing FOIA regulations to provide that when the Commission notifies the submitter of confidential information that the Commission intends to disclose the information to a FOIA requester, it will include a written explanation of its reasons for declining confidential treatment.

The Commission is adopting ANR's and CIG's suggestion. In fact, the Commission routinely explains decisions to deny a person's request for confidential treatment of documents before releasing the documents even though this practice has never been codified. Therefore, the Commission is amending its regulations to codify this procedure.

Additionally, in response to ANR and CIG, the Commission is clarifying that the "confidential commercial information" defined in Executive Order 12600 is included within the scope of § 388.107(d), "trade secrets and commercial or financial information obtained from a person and privileged or confidential" which is also Exemption 4 of the FOIA.[17]

Natural Gas Pipeline Company of America (Natural) and ANR and CIG argue that the Commission must establish separate procedures to protect the confidentiality of information produced by a company pursuant to the Commission's rules of discovery related to trial-type proceedings.[18] ANR and CIG request the Commission to amend or clarify § 388.107(d) to provide that any documents that have been sealed pursuant to a protective order issued under the discovery rules [19] should be entitled to a presumption that such documents constitute "privileged or confidential material" exempt from FOIA disclosure. Natural requests the Commission to clarify that documents obtained by Commission trial staff pursuant to discovery in trial-type proceedings are not agency records subject to FOIA. Alternatively, Natural requests the Commission to establish procedures to ensure confidentiality for such data, if the data become the subject of a FOIA request.

The Commission does not believe that it is necessary to create a presumption that material found to be protected from discovery is automatically protected from a FOIA request. Since the Commission's procedures for protecting confidential treatment of documents under FOIA in § 388.112 are adequate,

[10] *See* 5 U.S.C. 552(a)(4)(A) (iii) (1983).

[11] 5 U.S.C. 552(a)(6)(A) (1982).

[12] 5 U.S.C. 552(a)(6)(B) (1982).

[13] 52 FR 23781 (June 25, 1987).

[14] *See* note 15.

[15] *See* note 18.

[16] *See* note 7.

[17] 5 U.S.C. 552(b)(4) (1982).

[18] 18 CFR Part 385, Subpart D (1987).

[19] *See* 18 CFR 385.410(c)(3) (1987).

additional procedures are unnecessary. However, the Commission's FOIA decisionmaker will consider as a factor a decision by an administrative law judge or the Commission that data obtained during discovery should be protected in reaching a decision to grant or deny a FOIA request.

C. Miscellaneous

Commenters also raise two miscellaneous issues. The first issue relates to aggregating FOIA requests. OMB's regulations provide that there is no charge for the first 100 pages of a FOIA request for certain categories of requesters. However, in order to prevent requesters from submitting piecemeal requests that take advantage of this exclusion, OMB established a test to determine whether consecutive requests should be consolidated, treated as one large request, and assessed a fee. The Commission proposed to adopt these regulations. The Society of Professional Journalists argues that the Commission's regulations[20] fail to reflect a presumption against aggregating FOIA requests made more than 30 days apart for purposes of obtaining a lower fee.[21]

The Society misunderstands OMB's regulations. OMB's guidelines do not specify that a rigid 30-day limit must be adopted. OMB explained that a 30-day limit does not achieve the goal of allowing an agency to identify FOIA requesters who are attempting to circumvent the FOIA fee provisions. Instead, OMB indicated that it preferred a more flexible standard under which agencies could decide to aggregate requests made at intervals more than 30 days, if they had a solid basis for doing so. The Commission has adopted OMB's regulations. It will use OMB's guidelines to aggregate requests.

Second, both the Reporters' Committee for Freedom of the Press and the Society of Professional Journalists request the Commission to change its definition of "representative of the news media." Further, the Society of Professional Journalists requests the Commission to delete the definition for "freelance journalists." The definitions adopted by the Commission are OMB's definitions. The Commission declines to amend OMB's definitions.

Additionally, the Commission is increasing the fee for certification of Commission records used in Federal or State court proceedings from $2.00 to $5.00. The Commission receives very few certification requests, generally from companies subject to Commission jurisdiction.[22] Occasionally, these certification requests have required a great deal of Commission staff time to consolidate and certify the requested records. The Commission believes that because of the time and manpower involved, a $5.00 fee for certification is reasonable. The Commission is adopting this fee in lieu of a page count fee which the Commission believes would be counterproductive and an unnecessarily time-consuming burden. The Commission is also revising its regulations in § 388.109(a) to indicate that the fee for documents obtained from the Commission's Records Information Management System (RIMS) will be 15 cents per page. This is consistent with the 15 cent duplicating fee for FOIA requests.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[23] requires Federal agencies to consider whether a rule, if promulgated will have a "significant impact on a substantial number of small entities."[24] Since approximately 90% of the FOIA requests affected by these regulations will amount to less than $5, the amended regulations are unlikely to create significant impact on entities no matter how small. Moreover, FOIA requesters will still be able to inspect rather than purchase Commission records if they so choose. Since this final rule's changes are not substantive, or are made in response to a Congressional mandate in the Reform Act as promulgated by OMB guidelines, the Commission believes that any "significant economic impact" has already been determined during Congressional deliberations and again during OMB's notice and comment procedures pursuant to APA. Accordingly, the Commission certifies, pursuant to section 605(b) of the RFA, that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Effective Date

This rule will be effective February 19, 1988.

List of Subjects

18 CFR Part 3

Freedom of information, Organization and function (Government agencies).

18 CFR Part 375

Authority delegations (Government agencies).

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 388

Freedom of information.

In consideration of the foregoing, the Commission amends Parts 3, 375, 381 and 388, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 3—ORGANIZATION OPERATION; INFORMATION AND REQUESTS

1. The authority citation for Part 3 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986.

§ 3.8 [Removed]

2. Part 3 is amended by removing § 3.8.

PART 375—THE COMMISSION

2. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–73521; E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act; 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2801 *et seq.*, as amended.

3. In § 375.313, paragraph (b) is revised to read as follows:

§ 375.313 Delegations to the Executive Director.

* * * * *

(b) Prescribe the updated fees for Part 381 of this chapter in accordance with § 388.109(b)(2) of this chapter.

* * * * *

PART 381—FEES

4. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142;

[20] 8 CFR 388.109(b)(2)(vii) (1987).

[21] 52 FR at 10019.

[22] Commission records indicate these requests average 10 per month.

[23] 5 U.S.C. 601–612 (1982).

[24] Id., 605(b) (1982).

Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

5. Section 381.301 is revised to read as follows:

Subpart C—Fees Applicable to General Activities

* * * * *

§ 381.301 Request for interpretation by the Office of Chief Accountant.

The fee established for a request for an interpretation by the Chief Accountant under Part 388 of the Commission's Rules of Practice and Procedure that requires a written response is $100.

The fee must be submitted in accordance with Subpart A of this part.

6. Part 388 is revised to read as follows:

PART 388—INFORMATION AND REQUESTS

Sec.

388.101 Scope.
388.102 Notice of proceedings.
388.103 Notice and publication of decisions, rules, statements of policy, organization and operations.
388.104 Informal advice from Commission staff.
388.105 Procedures for press, television, radio, and photographic coverage.
388.106 Requests for Commission records available in the Public Reference Room.
388.107 Commission records exempt from public disclosure.
388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).
388.109 Fees for record requests.
388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room and denial of requests for fee waiver or reduction.
388.111 Procedures in event of subpoena.
388.112 Requests for privileged treatment of documents submitted to the Commission.

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

§ 388.101 Scope.

This part prescribes the rules governing public notice of proceedings, publication of decisions, requests for informal advice from Commission staff, procedures for press, television, radio and photographic coverage, requests for Commission records, requests for confidential treatment of documents submitted to the Commission, procedures for responding to subpoenas seeking documents or testimony from Commission employees or former employees, fees for various requests for documents, and requests for reduction or waiver of these fees.

§ 388.102 Notice of proceedings.

(a) Public sessions of the Commission for taking evidence or hearing argument; public conferences and hearings before a presiding officer; and public conferences or hearings in substantive rulemaking proceedings, will not be held except upon notice.

(b) Notice of applications, complaints, and petitions, is governed by Rule 2009 (notice) in Part 385 of this chapter. Notice of applications for certificates of public convenience and necessity under section 7 of the Natural Gas Act is governed by § 157.9 of this chapter (notice of application). Notice of public sessions and proceedings and of meetings of the Commission is governed by Rule 2009 (notice) in Part 385 of this Chapter. Notice of hearings and of initiation or pendency of rulemaking proceedings is governed by Rule 1903 (notice in rulemaking proceedings) in Part 385 of this chapter. Notice of application under Part I of the Federal Power Act for preliminary permits and licenses is governed by §§ 4.31 and 4.81 of this chapter (acceptance or rejection and contents). Notice of proposed alterations or surrenders of license under section 6 of the Federal Power Act may be given by filing and publication in the **Federal Register** as stated in Rule 1903 (notice in rulemaking proceedings) in Part 385 of this chapter, and where deemed desirable by the Commission, by local newspaper advertisement. Notice of rates charged and changes therein is governed by the filing requirements of subchapters B and E of this chapter (regulations under the Federal Power Act and regulations under the Natural Gas Act). Other notice required by statute, rule, regulation, or order, or deemed desirable, may be given by filing and publication in the **Federal Register** as governed by Rule 1903 in Part 385 of this chapter (notice in rulemaking proceedings) or by service as governed by Rule 2010 (service) in Part 385 of this chapter.

§ 388.103 Notice and publication of decisions, rules, statements of policy, organization and operations.

Service of intermediate and final decisions upon parties to the proceedings is governed by Rule 2010 (service) in Part 385 of this chapter. Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the **Federal Register.** Commission opinions together with accompanying orders, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly. Copies of Commission opinions, orders in the nature of opinions, rulemakings and selected procedural orders, and intermediate decisions which have become final are published in the *Federal Energy Guidelines* and upon payment of applicable charges, may be obtained from: Commerce Clearing House, Inc. 4025 West Peterson Avenue, Chicago, Illinois 60646. Attention: Order Department.

§ 388.104 Informal advice from Commission staff.

The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the chief of the appropriate office or division. An inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed by § 381.301 of this chapter. An inquiry directed to the Office of the General Counsel for an interpretation of the Natural Gas Policy Act of 1978 must be accompanied by the fee prescribed in § 381.405 of this chapter.

§ 388.105 Procedures for press, television, radio, and photographic coverage.

(a) The Commission issues news releases on major applications, decisions, opinions, orders, rulemakings, new publications, major personnel changes, and other matters of general public interest. Releases are issued by and available to the media from the Office of External Affairs. Releases may be obtained by the public through the Public Reference Room.

(b) Press, television, radio and photographic coverage of Commission proceedings is permitted as follows:

(1) Press tables are located in each hearing room, and all sessions of hearings are open to the press, subject to standards of conduct applicable to all others present;

(2) Television, movie and still cameras, and recording equipment are

permitted in hearing rooms prior to the opening of a hearing or oral arguments, and during recesses, upon prior arrangement with the Commission or presiding administrative law judge. All equipment must be removed from the room before hearings or oral arguments begin or resume;

(3) Television, movie and still cameras, and recording equipment may not be used while hearings and oral arguments before administrative law judges are in progress;

(4) Television and press cameras and recording equipment may be used at Commission press conferences under prior arrangement with the Office of External Affairs, provided their use does not interfere with the orderly conduct of the press conference;

(5) Regulations pertaining to the use of television, movie and still cameras, and recording equipment in in connection with the Commission's open public meetings under the Government in the Sunshine Act are found in § 375.203 of this chapter.

§ 388.106 Requests for Commission records available in the Public Reference Room.

(a) A Public Reference Room is maintained at the Commission's headquarters and is open during regular business hours as provided in § 375.101(c) of this chapter. Documents may be obtained in person or in writing from the Public Reference Room by reasonably describing the records sought.

(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room include:

(1) Applications, declarations, complaints, petitions, and other papers seeking Commission action;

(2) Financial, statistical, and other reports to the Commission, power system statements of claimed cost of licensed projects, original cost and reclassification studies, proposed accounting entries, certificates of notification (under section 204(e) of the Federal Power Act), rates or rate schedules and related data and concurrences, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation, order, license, or permit;

(3) Answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter of proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing;

(5) All parts of the formal record in any matter or proceeding set for formal or statutory hearing, and any Commission correspondence related thereto;

(6) Presiding officer actions, correspondence, and memoranda to or from others, with the exception of internal communications within the Office of Administrative Law Judges;

(7) Commission orders, notices, findings, opinions, determinations, and other actions in a matter or proceeding;

(8) Commission correspondence relating to any furnishing of data or information, except to or by another branch, department, or agency of the Government;

(9) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency;

(10) Staff reports on statements of claimed cost by licensees when such reports have been served on the licensee;

(11) Commission correspondence on interpretation of the Uniform System of Accounts and letters on such interpretation signed by the Chief Accountant and sent to persons outside the Commission;

(12) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, order, license, or permit issued or administered by the Commision, and letters of opinion on that subject signed by the General Counsel and sent to persons outside the Commission;

(13) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Commission is a party and the correspondence with the courts or clerks of court;

(14) The Commission's Directives System;

(15) The Commission's opinions, decisions, orders and rulemakings;

(16) Reports, decisions, maps, and other information on electric power and natural gas industries;

(17) Subject index of major Commission actions;

(18) Annual report to Congress in which the Commission's operations during a past fiscal year are described; and

(19) Commission correspondence relating to the foregoing.

(c) For purposes of this section,

(1) "Commission correspondence" includes written communications and enclosures received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

(2) "Formal record" includes:

(i) Filings and submittals in a matter or proceeding,

(ii) Any notice or Commission order initiating the matter or proceeding, and

(iii) If a hearing is held, the designation of the presiding officer, transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs or service, references to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

The "formal record" does not include proposed testimony or exhibits not offered or received in evidence.

(3) "Matter or proceeding" means the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice or order.

§ 388.107 Commission records exempt from public disclosure.

The following records are exempt from disclosure.

(a)(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of natural defense or foreign policy, and

(2) Those records are in fact properly classified pursuant to such Executive order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Geological and geophysical information and data, including maps, concerning wells.

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2), of this section, a person may request access to Commission records that are not available through the Public Reference Room by using the following procedures:

(i) The request must be in writing, addressed to the Director of Public Affairs, and clearly marked "Freedom of Information Act Request."

(ii) The request must include:

(A) A statement by the requester of a willingness to pay a reasonable fee or fees not to exceed a specific amount, or

(B) A request for waiver or reduction or fees.

(iii) The request must identify the category of the request, consistent with the definitions provided in § 388.109(b)(1).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director of Public Affairs can ascertain the requester's category.

(3) A request for records received by the Commission not addressed and marked as indicated will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director of Public Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt and, if necessary, categorization by the Director of Public Affairs.

(b)(1) Except as provided in paragraph (b)(2) of this section, within 10 working days after receipt of the request, the Director of Public Affairs will determine whether to comply with the request for agency records and will notify the person making the request of the determination and the reasons for a decision to deny the request, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) Pursuant to § 388.110, the time limit for an initial determination may be extended by up to 10 working days.

(c) The procedure for appeal of denial of a request for Commission records is set forth in § 388.110.

§ 388.109 Fees for record requests.

(a) *Fees for records available through the Public Reference Room.*—(1) *General rule.* The fee for finding and duplicating records available in the Commission's Public Reference Room will vary depending on the size and complexity of the request. A schedule of fees for such services is prescribed annually. A person can obtain a copy of the schedule of fees in person or by mail from the Public Reference Room. Copies of documents also may be made on self-service duplicating machines located in the Public Reference Room. In addition, copies of data extracted from the Commission's files through electronic media are available on a reimbursable basis, upon written request to the Public Reference Room.

(2) Stenographic reports of Commission hearings are made by a private contractor. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the search and duplication service noted above. Copies of the contract are available for public inspection in the Public Reference Room.

(3) Copies of transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to § 375.206(f) of this chapter are also available at the actual cost of duplication or transcription.

(4) The public may purchase hard copies of certain documents from the Commission's Records Information Management System (RIMS). The fee is 15 cents per page. There will be no charge for requests consisting of 10 or fewer pages.

(5) Except for requests for certification by Government agencies, certification of copies of official Commission records must be accompanied by a fee of $5.00 per document. Inquiries and orders may be made to the Public Reference Room in person or by mail.

(b) *Fees for records not available through the Public Reference Room (FOIA requests).* The cost of duplication of records not available in the Public Reference Room will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of requests for fee waiver or reduction are set forth in § 388.110.

(1) *Definitions.* For the purpose of paragraph (b) of this section:

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act;

(ii) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

(iii) "Noncommercial scientific institution" refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

(iv) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Commission may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and for document review time, and 15 cents per page for duplication. Commercial use requests are not entitled to two hours of free seach time or 100 free pages of reproduction of documents.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommerical scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Commission will charge 15 cents per page for duplication. There is no charge for the first 100 pages.

(iii) For a request not described in paragraphs (b)(2) (i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and document review time, and 15 cents per page for duplication. There is no charge for the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters will be charged postage based on the current postage rate.

(v) The Commission, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees assessed by Commission staff for a Freedom of Information Act request are less than the appropriate threshold, the Commission may not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester.

(3) *Fees for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed $25, it will notify the requester of the estimated amount of search fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester can meet with Commission personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Interest—notice and rate.* The Commission will assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(5) *Advance payments.* The Commission will require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, if:

(i) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Commission will notify the requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion, the Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin the process a new request or a pending request from that requester.

(iii) When the Commission requires advance payment under this paragraph, the administrative time limits prescribed in this part will begin only after the Commission has received the fee payments described above.

(6) *Fee reduction or waiver.* (i) Any fee described in paragraph (b) of this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(A) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(B) Not primarily in the commercial interest of the requester.

(ii) The Commission will consider the following criteria to determine the public interest standard:

(A) Whether the subject of the requested records concerns the operations or activities of the government;

(B) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) Whether disclosure of the requested information will contribute to public understanding; and

(D) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(iii) The Commission will consider the following criteria to determine the commercial interest of the requester:

(A) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(B) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(iv) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

(7) *Debt collection.* The Commission will use the authorities mandated in the Debt Collection Act of 1982, 31 U.S.C. 3711, 3716–3719 (1982), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment of outstanding unpaid FOIA invoices.

(8) *Annual adjustment of fees.*—(i) *Update and publication.* The Commission, by its designee, the Executive Director, will update the fees established in this section each fiscal year. The Executive Director will publish the fees in the **Federal Register**.

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for records or request for fee waiver or reduction is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. Appeals filed pursuant to this section must be in writing, addressed to the General Counsel of the Commission, and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel or the General Counsel's designee will notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched. "Unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 388.111 Procedures in event of subpoena.

(a)(1) The procedures specified in this section will apply to all subpoenas directed to Commission employees that relate in any way to the employees' official duties. These procedures will also apply to subpoenas directed to former Commission employees if the subpoenas seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c) of this section will also apply to subpoenas directed to the Commission.

(2) For purposes of this section,

(i) "Employees", except where otherwise specified, includes "special government employees" and other Commission employees; and

(ii) "Nonpublic" includes any material or information which is exempt from availability for public inspection and copying;

(iii) "Special government employees" includes consultants and other employees as defined by section 202 of Title 18 of the United States Code.

(iv) "Subpoena" means any compulsory process in a case or matter, including a case or matter to which the Commission is not a party;

(b) Any employee who is served with a subpoena must promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances. Any former employee who is served with a subpoena that concerns nonpublic information shall promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances.

(c) A party causing a subpoena to be issued to the Commission or any employee or former employee of the Commission must furnish a statement to the General Counsel of the Commission. This statement must set forth the party's interest in the case or matter, the relevance of the desired testimony or documents, and a discussion of whether the desired testimony or documents are reasonably available from other sources. If testimony is desired, the statement must also contain a general summary of the testimony and a discussion of whether Commission records could be produced and used in lieu of testimony. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(d) Commission records or information which are not part of the public record will be produced only upon authorization by the Commission.

(e) The Commission or its designee will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's Rules of Practice and Procedure, and the public interest, taking into account factors such as applicable privileges including the deliberative process privilege; the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and records.

(f) The Commission authorizes the General Counsel or the General Counsel's designee to make determinations under this section.

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope.* Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should otherwise be withheld from public disclosure.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) A written statement requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information;

(2) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(3) Fourteen copies of the document without the information for which

privileged treatment is sought, and with a statement indicating that information has been removed for privileged treatment;

(4) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(c) *Effect of privilege claim.*—(1) *For documents filed with the Commission.* (i) The Secretary of the Commission will place documents for which privileged treatment is sought in accordance with paragraph (b)(2) of this section in a nonpublic file, while the request for confidential treatment is pending. By placing documents in a nonpublic file, the Commission is not making a determination on any claim for privilege. The Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the original document described in paragraph (b)(3) of this section in a public file, while the request for privilege treatment is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d) (e) and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice will be sent to the FOIA requester.

(e) *Notification before release.* Notice of a decision by the Director of the Division of Public Affairs, the Chairman of the Commission, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under Part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that information is privileged no less than five days before public disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Commission will notify the person who submitted documents containing confidential commercial information of the suit.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-60

Freedom of Information; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Office of Administration, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) has revised its regulations to implement the provisions of the Freedom of Information Reform Act of 1986.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Alexandra Mallus, GSA Freedom of Information Act (FOIA) Officer (202-535-7983).

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). This legislation amended the FOIA to provide broader exemption protection for law enforcement information and modified the Act's fee and fee waiver provisions. On June 24, 1987, GSA published a proposed rule revising its FOIA regulations accordingly. The fee provisions conform to the uniform FOIA fee schedule and guidelines promulgated by OMB, 52 FR 10011-20 (March 27, 1987). Fee waiver criteria are derived from the policy guidance issued by the Department of Justice on April 2, 1987. Public comment was invited, with the comment period extending to July 24, 1987. A total of four comments were received concerning the proposed regulations. Three comments came from organizations or individuals representing the media, and one came from an organization that monitors FOIA matters. A discussion of the comments follows.

All of the commenters objected to certain definitions contained in § 105-60.305-1, especially the definitions for "representative of the news media", including "freelance journalist" and "news"; "commercial-use request", and "educational institution." These definitions were taken from the OMB fee guidelines which were made final only after a period of public comment during which concerns such as those raised by these commenters were considered. The statute specifically mandates that agencies follow OMB guidelines in promulgating their own regulations. GSA believes that these definitions properly implement the statutory terms of the amended Act.

All four commenters objected to the fee waiver standards and language under § 105-60.305-5. GSA's fee waiver regulations are derived from the policy guidance issued by the Department of Justice on April 2, 1987. Specific concerns raised are addressed by Justice in its notice of final rulemaking 52 FR 33230-31 (September 2, 1987). GSA has reviewed the Department of Justice's criteria independently and has determined that they are in compliance with the statute and its requirements. Therefore, GSA does not believe it is necessary to revise this section.

In connection with the above, GSA received a comment suggesting that agencies establish automatic fee waivers for certain categories of requesters—public interest organizations, scholars, and journalists. The agency declines to do this, as GSA feels that each case must be decided on its merits under the new law.

In addition, one commenter criticized GSA for suspending time limits until the fee waiver issue is resolved. GSA has modified § 105-60.305-5(b) so that it will begin processing a request if the requester guarantees payment pending the outcome of the fee waiver decision.

Several commenters objected to GSA requiring prepayment of fees of more than $250. The amendments to the Act allow agencies to charge and collect advance payments when "the agency has determined that the fee will exceed $250." Thus, the agency firmly believes that its regulations are fully within the scope of the law. Moreover, the requirement that fees of more than $250 be prepaid is intended to protect the Government from loss of revenue, as has occurred in the past. The agency has revised § 105-60.305-8, however, to offer the requester an opportunity to modify his or her request so as to lower the fee. Another commenter objected to charging twice for the same search if prepayment is not received within 30 days. GSA has deleted this provision. Another commenter questioned GSA's authority to modify or suspend FOIA time limits and recommended deleting the third sentence of this section. GSA's requirement is taken directly from

OMB's guidelines and has not been changed.

One commenter objected to GSA charging for review time where FOIA exemptions would preclude releasing the material and urged that the agency delete the last two sentences of § 105-60.305-7(c). The amendments to the Act allow agencies to charge for the time required to review a document to determine if exemptions apply and whether it is releasable. Furthermore, this language is identical to that in OMB's guidelines; therefore, GSA declines to make these changes.

One commenter objected to GSA's method of calculating the first two hours of free computer search time. GSA's regulations are consistent with OMB's guidelines on this matter.

With regard to § 105-60.305-12(e) on aggregating requests, one commenter suggested that GSA incorporate OMB's wording concerning the prohibition of aggregating requests on unrelated subjects. GSA has revised this section accordingly.

One commenter urged that a provision allowing the requester "to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost" be included under the section on charging for unsuccessful searches. GSA has already taken this into consideration under § 105-60.305-12(d) and § 105-60.305-8.

One commenter objected to the agency taking time extensions for the purposes of consulting with submitters of information. These extensions are consistent with court decisions and the intent of EO 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 25, 1987. Hence, GSA does not feel that it is appropriate or proper to delete paragraph (4) from the list of circumstances under which a time extension may be granted (see § 105-60.404(a)).

It has always been GSA's policy to refer records which are the primary responsibility for another agency to that agency for releasability. One commenter objected to this procedure stating that records held from other agencies could probably be released. GSA believes that this is a false assumption and does not intend to change this procedure.

The regulations are revised to:

(a) Update organizational references and eliminate those sections which are the responsibility of the National Archives and Records Administration;

(b) Add various definitions which are to be applied when setting the fees for records requested under the FOIA;

(c) Establish four categories of requesters and specific levels of fees for each of these categories;

(d) Allow GSA to charge a commercial-use requester for the time spent in reviewing records to determine whether they are exempt from disclosure;

(e) Increase the fees for manual searches based on the class and average grade of the employee(s) performing the search;

(f) Provide that requesters subject to search fees, with the exception of commercial-use requesters, not be charged for the first 2 hours of search time;

(g) Raise the dollar amount for which there will be no charge from $5 to $10 and, with certain exceptions, the prepayment threshold from $10 to $250;

(h) Eliminate search fees for educational and noncommercial scientific institutions;

(i) Revise and clarify the general fee waiver standard;

(j) Add several administrative actions which GSA may take to improve the assessment and collection of fees; and

(k) Revise exemption 7 in accordance with the new statutory language concerning protection of law enforcement records and activities.

List of Subjects in 41 CFR Part 105-60

Freedom of information.

41 CFR Part 105-60 is revised to read as follows:

PART 105-60 PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.
105-60.000 Scope of part.

Subpart 105-60.1—General Provisions

105-60.101 Purpose.
105-60.102 Application.
105-60.103 Policy.
105-60.103-1 Availability of records.
105-60.103-2 Applying exemptions.
105-60.104 Records of other agencies.
105-60.105 Inconsistent directives of GSA superseded.

Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register

105-60.201 Published information and rules.
105-60.202 Published materials available for sale to the public.

Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

105-60.301 General.
105-60.302 Available materials.
105-60.303 Rules for public inspection and copying.
105-60.304 Index.
105-60.305 Fees.
105-60.305-1 Definitions.
105-60.305-2 Scope of section.
105-60.305-3 Record material available without charge.
105-60.305-4 Copy of GSA records available at a fee.
105-60.305-5 Waiver of fee.
105-60.305-6 Searches.
105-60.305-7 Reviews.
105-60.305-8 Prepayment of fees over $250.
105-60.305-9 Form of payment.
105-60.305-10 Fee schedule.
105-60.305-11 Fees for authenticated and attested copies.
105-60.305-12 Administrative actions to improve assessment and collection of fees.

Subpart 105-60.4—Described Records

105-60.401 General.
105-60.402 Procedures for making records available.
105-60.402-1 Submission of requests.
105-60.402-2 Response to initial requests.
105-60.403 Appeal within GSA.
105-60.404 Extension of time limits.

Subpart 105-60.5—Exemptions

105-60.501 Categories or records exempt from disclosure under the FOIA.

Subpart 105-60.6—Subpoenas or Other Legal Demands for Records

105-60.601 Service of subpoena or other legal demand.

Authority: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90-23, as amended by Pub. L. 93-502 and Pub. L. 99-570).

§ 105-60.000 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of records held by the General Services Administration (GSA) with respect to:

(a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability,

(b) Agency final opinions and orders, including policy statements and staff manuals,

(c) Operational and other appropriate agency records, and

(d) Agency proceedings.

This part also covers exemptions from disclosure of these records; procedures for the public to inspect and obtain copies of GSA records; and the service of a subpoena or other legal demand with respect to records.

Subpart 105-60.1—General Provisions

§ 105-60.101 Purpose.

Part 105-60 implements the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") (Pub. L. 90-23, which codified Pub. L. 89-487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002

(1964 ed.); Pub. L. 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Pub. L. 99–570, the Freedom of Information Reform Act of 1986. This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA.

§ 105–60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA which come within the scope of 5 U.S.C. 552.

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will furnish them promptly to any member of the public upon request addressed to the office designated in § 105–60.402–1 at fees specified in § 105–60.305–10. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of the FOIA that records be available to the public refers only to records in being at the date of the request and imposes no obligation on GSA to compile a record including development of a new computer program to respond to a request.

§ 105–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA as outlined in Subpart 105–60.5. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, GSA will disclose a record although it otherwise is subject to exemption.

§ 105–60.104 Records of other agencies.

If GSA receives a request to make available current records that are the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. GSA will inform the requester that GSA has forwarded the request to the responsible agency.

§ 105–60.105 Inconsistent directives of GSA superseded.

Any policies and procedures in any GSA directive that are inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register.

§ 105–60.201 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), GSA publishes in the **Federal Register**, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA; and

(e) Each amendment, revision, or repeal of the materials described in § 105–60.201.

§ 105–60.202 Published materials available for sale to the public.

Substantive rules of general applicability adopted by GSA as authorized by law which this agency publishes in the **Federal Register** and which are available for sale to the public are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5) and the Federal Acquisition Regulation (48 CFR Ch. 1); the Federal Property Management Regulations (41 CFR Ch. 101) and the Federal Information Resources Management Regulations (41 CFR Ch. 201). These regulations are available for sale by the Superintendent of Documents in

(a) Daily **Federal Register** form; and

(b) Code of Federal Regulations form, at prices established by the Government Printing Office.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105–60.301 General.

GSA makes available for public inspection and copying the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105–60.302, and an index of those materials as described in § 105–60.304, at convenient locations and times. Central Office materials are located in Washington, DC; some are also available at GSA regional offices. Each regional office has the materials for its region. All locations provide selected areas for the inspection and copying of documents. Reasonable copying services are furnished at the fees specified in § 105–60.305.

§ 105–60.302 Available materials.

GSA materials available under Subpart 105–60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by GSA and are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 105–60.303 Rules for public inspection and copying.

(a) *Locations.* Selected areas containing the materials available for public inspection and copying, described in § 105–60.302, are located in the following places:

Central Office

(GSA Headquarters), Washington, DC. Telephone: 202–535–7788

General Services Administration, 18th and F Streets NW., Library (Room 1033), Washington, DC 20405

Region 1

Boston, Massachusetts (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). Telephone: 617–565–6100

Business Service Center, General Services Administration (2SB–1), Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222

Region 2

New York, New York (Comprising the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands). Telephone 212–264–1234

Business Service Center, General Services Administration (2SB), 26 Federal Plaza, New York, NY 10278

Region 3

Philadelphia, Pennsylvania (Comprising the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). Telephone: 215–597–9613

Business Service Center, General Services Administration (3SB), Ninth and Market Streets, Room 5151, Philadelphia, PA 19107

Region 4

Atlanta, Georgia (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Caroline, South Carolina, and Tennessee). Telephone: 404–331–5103

Business Service Center, General Services Administration (4SB), Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street, SW, Room 318, Atlanta, GA 30303

Region 5

Chicago, Illinois (Comprising the States of Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin). Telephone: 312–353–5383

Business Service Center, General Services Administration (5SB), 230 South Dearborn Street, Chicago, IL 60604

Region 6

Kansas City, Missouri (Comprising the States of Iowa, Kansas, Missouri, and Nebraska). Telephone: 816–926–7203

Business Service Center, General Services Administration (6SB), 1500 East Bannister Road, Kansas City, MO 64131

Region 7

Fort Worth, Texas (Comprising the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma). Telephone: 817–334–3284

Business Service Center, General Services Administration (7SB), 819 Taylor Street, Room 11A05, Fort Worth, TX 76102

Region 8

Denver, Colorado (Comprising the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming). Telephone: 303–236–7409

Business Service Center, General Services Administration (7SB–8), Building 41, Denver Federal Center, Room 145, Denver, CO 80225

Region 9

San Francisco, California (Comprising the States of Hawaii, California, Nevada, and Arizona). Telephone: 415–974–0523

Business Service Center, General Services Administration (9SB), 525 Market Street, San Francisco, CA 94105

Region 10

Seattle, Washington (Comprising the States of Alaska, Idaho, Oregon, and Washington). Telephone: 206–931–7956

Business Service Center, General Services Administration (9SB–10), GSA Center, 15th and C Streets, SW, Room 2413, Auburn, WA 98001

National Capital Region

Washington, DC (Comprising the District of Columbia and the metropolitan area). Telephone: 202–472–1804

Business Service Center, General Services Administration (WSB), Seventh and D Streets, SW, Room 1050, Washington, DC 20407

(b) *Time.* The reading rooms or selected areas will be open to the public during the business hours of the GSA office where they are located.

(c) *Copying.* GSA will furnish reasonable copying services at fees specified in § 105–60.305.

(d) *Reading room and selected area rules*—(1) *Age.* GSA will not give permission to inspect materials to a person under 16 years old unless accompanied by an adult who agrees to remain with the minor while the minor uses the materials.

(2) *Handling of materials.* The removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book, or other article that could contain GSA informational materials.

(3) *Reproduction services.* The GSA Central Office Library or the Regional Business Service Centers will furnish "reasonable reproduction" services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Index.

GSA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 105–60.302.

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of these regulations:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires (as opposed to generally discussing) a Government agency to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available Government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining bases to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term "direct costs" means those expenditures which GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Not included in direct cost are overhead expenses such as costs of space, and heating or lighting the facility where the records are stored.

(c) The term "search" includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searches will not be undertaken when it would be more efficient to duplicate the entire document. Such activity will be distinguished from "review" of material in determining whether the material is exempt from disclosure (see subparagraph e, below). Searches may be done manually or by computer using existing programming.

(d) The term "duplication" refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microform, audiovisual materials, or machine-readable documentation. GSA will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(e) The term "review" refers to the process of examining documents located in response to request that is for commercial use (see paragraph (f) of this section) to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–7.

(f) The term "commercial-use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining whether a

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requester properly belongs in this category. GSA will look first at how the requester will use the documents.

(g) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

§ 105-60.305-2 Scope of section.

This section sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105-60.305-3 Record material available without charge.

GSA records available to the public are displayed in the business service center for that region. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105-60.305-4 Copy of GSA records available at a fee.

GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester. GSA will agree either to

(a) Show the originals to the requester,

(b) Make one copy available at a fee, or

(c) A combination of these alternatives.

In the case of voluminous materials, GSA will make copies as quickly as possible. GSA may make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105-60.305-5 Waiver of fee.

(a) Any request for waiver or reduction of a fee should be included in the initial letter requesting access to GSA records under § 105-60.402-1. The waiver request should explain how disclosure of the information would contribute significantly to public understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a request GSA will consider the following factors:

(1) Whether the subject of the requested records concerns "the operations or activities of the Government." The subject matter of the requested records must specifically concern identifiable operations or activities of the Federal Government---with a connection between them that is direct and clear, not remote or attenuated.

(2) Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. In this connection, GSA should consider whether the requested information is already in the public domain, either in a duplicative or a substantially identical form. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to "public understanding." The focus here must be on the contribution to public understanding, rather than personal benefit to be derived by the requester. For purposes of this analysis, the identity and qualifications of the requester should be considered, to determine whether the requester is in a position to contribute to public understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(5) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(b) If the initial request provides insufficient information for the agency to evaluate the request, GSA may ask the requester to furnish additional information. GSA will not start processing a request until the fee waiver issue has been resolved, unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

§ 105-60.305-6 Searches.

(a) GSA may charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105-60.305-10:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

§ 105-60.305-7 Reviews.

(a) GSA may charge for the time spent in the following activities in determining "review time" subject to applicable fees as provided in § 105-60.305-10:

(1) Time spent in examining a requested record to determine whether the record is permitted to be withheld in whole or in part; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(b) GSA will not charge for the time spent in resolving issues of law or policy regarding the application of exemptions.

(c) GSA may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(d) GSA will charge only commercial-use requesters for review time.

§ 105-60.305-8 Prepayment of fees over $250.

GSA will require prepayment of fees for search, review, and reproduction which are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. GSA will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. GSA will not start processing a request until payment is received.

§ 105-60.305-9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence.

§ 105-60.305-10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating a statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) In computing applicable fees, GSA will consider only the following costs in providing the requester records:

(1) *Review and search fees.*

Manual searches by clerical staff.	$9 per hour or fraction of an hour.
Manual searches and reviews by professional staff in cases in which clerical staff would be unable to locate the requested records.	$18 per hour or fraction of an hour.
Computer searches	Direct cost to GSA.
Transportation or special handling of records.	Direct cost to GSA.

(2) *Reproduction fees.*

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying.	$0.10 per page.
Pages over 8½ by 14 inches.	Direct cost of reproduction to CSA.
Pages requiring reduction, enlargement, or other special services.	Direct cost of reproduction to CSA.
Reproduction by other than routine electrostatic copying.	Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated in accordance with § 105-60.305-1(b).

(d) Categories of requesters. There are four categories of requesters: Commercial-use; educational and noncommercial scientific institutions; news media; and all other. The fees listed above apply with the following exceptions:

(1) GSA will not charge the requester if the fee is $10 or less as the cost of collection would be greater than the fee.

(2) Educational and noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated.

(i) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be $5. This amount would not be billed under the preceding section.

(ii) A request that results in 250 pages of material. The requester in this case would be charged $15.

(3) Noncommercial requesters who are not included under (2), above, will be entitled to the first 100 pages (paper copies) of duplication at no cost and 2 hours of search without charge. The term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requesters are not entitled to 2 hours of free search time.

(e) Determining category of requester. GSA may ask the requester to provide additional information at any time to determine what fee category he or she falls under. This applies to all requesters.

§ 105-60.305-11 Fees for authenticated and attested copies.

The fees set forth in § 105-60.305-10 apply to requests for authenticated and attested copies of GSA records.

§ 105-60.305-12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Charges for unsuccessful search.* The agency may assess charges for time spent searching for the records even if the agency fails to locate the records or if the records located are exempt from disclosure.

(d) *Notifying requester of charges over $25.* If charges are likely to exceed $25, GSA will notify the requester and obtain, in writing, assurance of the requester's willingness to pay the estimated fee. The requester shall also be offered an opportunity to modify his or her request to reduce the fee. GSA will not start processing the request until assurance of payment is received.

(e) *Aggregating requests.* When the agency reasonably believes that a requester, or group of requesters acting in concert, is attempting to break a request down into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charge accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type made within a 30-day period are made to avoid fees.

(f) *Advance payments.* (1) See § 105-60.305-8 regarding prepayment of fees for FOIA requests.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), GSA will require the requester to pay the full amount owed plus any applicable interest penalties and administrative costs as provided above, or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency

begins to process a new request or a pending request from that requester.

(3) If GSA acts under paragraphs (f)(1) and (2) of this section, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals form initial denial plus permissible time extensions) will begin only after it has received the fee payments described above.

Subpart 105–60.4—Described Records

§ 105–60.401 General.

(a) Except for records made available in accordance with Subparts 105–60.2 and 105–60.3, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with Subpart 105–60.5. Although the burden of reasonable description of the records rests with the requester, GSA will assist in identification.

(b) Upon receipt of a request that does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 receives a request reasonably describing the records.

§ 105–60.402 Procedures for making records available.

This section sets forth initial procedures for making records available when they are requested.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester should submit a request in writing to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405. For records located in the GSA regional offices, the requester should submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a), with the exception of Region 9. Requests for Region 9 should be sent to the following address: General Services Administration (9AA), 525 Market St., 28th Floor, San Francisco, CA 94105. Requests should include the words "Freedom of Information Act Request" prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the appropriate official identified in this section, unless the provisions under § 105–60.305–12(d) and (f) apply. Failure to include the words "Freedom of Information Act Request" or to sumbit a request to the official identified in this section will result in processing delays. A requester who has questions concerning an FOIA request may consult the GSA FOIA Officer, General Services Administration (CAIR), 18th and F Streets, NW., Washington, DC 20405, (202) 535–7983.

§ 105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal public holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter should state the agency's decision with respect to disclosure or nondisclosure of the requested records. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, GSA will inform the requester of the agency's need to take an extension of time.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, may appeal that decision within GSA. The requester must direct the appeal to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office.

(b) The GSA FOIA Officer must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester must appeal in writing and include a brief statement of the reasons he or she thinks GSA should release the records and enclose copies of the initial request and denial. The appeal letter should include the words "Freedom of Information Act Appeal" on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of GSA's decision in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. For purposes of this section, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide a written notice to the requester of any extension of time limits.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Government in the Sunshine Act, provided that the statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue of (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Privacy Act of 1974 and implementing regulations, Part 105–64, or if disclosure would cause no demonstrable harm to any public or private interest.

(d) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i) and

(1) The investigation or proceeding involves a possible violation of criminal law, and

(2) There is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(e) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(f) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

Subpart 105–60.6—Subpoenas or Other Legal Demands for Records

§ 105–60.601 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA should be addressed to the General Counsel, General Services Administration (L), Washington, DC 20405, with respect to GSA Central office records; to the appropriate Regional Counsel, for records in GSA regional offices; or to the Administrator of General Services.

(b) The Administrator, the General Counsel, Deputy General Counsels, Associate General Counsels, the Chairman of the Board of Contract Appeals, Inspector General, and, with respect to records in a GSA regional office, the Regional Administrator and Regional Counsel are the only GSA employees authorized to accept service of a subpoena duces tecum or other legal demand on behalf of GSA.

Dated: December 21, 1987.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 88–601 Filed 1–19–88; 8:45 am]

BILLING CODE 6820–61–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6772]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood

insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Pennsylvania:			
Hegins, Township of, Schuylkill County.[1]	422008	July 15, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Dec. 9, 1987, Rein.	Sept. 1, 1986.
Middlebury, Township of, Tioga County.[1]	421179	Aug 21, 1987, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Dec. 9, 1987, Rein.	July 1, 1987.
Mt. Pleasant, Borough of, Westmoreland County.[1].	422181	July 7, 1975, Emerg.; Feb. 1, 1987, Reg.; Feb. 1, 1987, Susp.; Dec. 9, 1987, Rein.	Feb. 1, 1987.
Vermont:			
Dorset, Town of, Bennington County.[1]	500014	July 29, 1975, Emerg.; Sept. 24, 1976, Reg.; Aug. 1, 1986, Susp.; Dec. 10, 1987, Rein.	Aug. 1, 1986.
Woodford, Town of, Bennington County.[1]	500023	Nov. 13, 1975, Emerg.; Sept. 18, 1985, Reg.; June 3, 1986, Susp.; Dec. 10, 1987, Rein.	Sept. 18, 1986.
North Dakota: Stafford, Township of, Renville County.[1].	380306	Feb., 17, 1976, Emerg.; Mar. 1, 1987, Reg.; Dec. 2, 1987, Withdrawn.	Mar. 1,1987.
Michigan: Evart, Township of, Osceola County.[2]	[3] 260810	Dec. 10, 1987, Emerg	
Texas: Walnut Springs, City of, Bosque County	480713	Dec. 10, 1987, Emerg	Oct. 1,1976.
Tennessee: Hawkins County, Unincorporated Areas.	470085	Dec. 11, 1987, Emerg	Oct. 21,1977.
Nebraska: Dunning, Village of, Custer County.[1]	310007	Oct. 25, 1977, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Dec. 2, 1987, Rein.	July. 1, 1987.
Oregon: Prescott, City of, Columbia County	410037	Dec. 17, 1987, Emerg.	Jan. 10,1975.
Texas: Hackberry, Town of, Denton County[3]	[3] 481607	Dec. 17, 1987, Emerg.	
North Carolina: Alamance, Village of, Alamance County.[3].	370457	Dec. 17, 1987, Emerg.; Dec. 17, 1987, Reg	
Louisiana: Winnfield, City of, Winn County	220247	Aug. 4, 1975, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; Aug. 25, 1987, Rein.	July 1, 1987.
Pennsylvania:			
Oakland, Township of, Venango County.[1]	422111	Feb 28, 1977, Emerg.; Feb. 1, 1987, Reg.; Feb. 1, 1987, Susp.; Dec. 21, 1987, Rein.	Feb. 1, 1987.
Perry, Township of, Lawrence County.[1]	421796	July 24, 1975, Emerg.; Nov. 1, 1986, Reg.; Dec. 18, 1986, Susp.; Dec. 21, 1987, Rein.	Nov. 1, 1986.
Iowa: Ellsworth, City of, Hamilton County.[1]	190136	Dec. 29, 1975, Emerg.; Aug. 1,1987, Reg.; Aug. 1, 1987, Susp.; Dec. 21, 1987, Rein.	Aug. 1,1987.
Louisiana: Killian, Village of, Livington Parish.[1]	220355	Oct. 26, 1977, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; Dec. 29, 1987, Rein.	Do.
Region I—Minimal Conversions			
Massachusetts: New Salem, Town of, Franklin County.	250123	Dec. 1, 1987, Suspension Withdrawn	Dec. 1, 1987.
Region II			
New York: Amsterdam, Town of, Montgomery County.	360441	....do	Do.
Region III			
Pennsylvania: Roseto, Borough of, Northampton County.	422255	....do	Do.
Region I—Regular Conversions			
Connecticut:			
Norfolk, Town of, Litchfield County	090181	Dec. 3, 1987, Suspension Withdrawn	Dec. 3, 1987.
Roxbury, Town of, Litchfield County	090051	....do	Do.
Maine: Eastport, City of, Washington County	230137	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
Pennsylvania:			
Lack, Township of, Juniata County	421742	....do	Do.
West Perry, Township of, Snyder County	422042	....do	Do.
Region IV			
Kentucky: Whitesburg, City of, Letcher County	210140	....do	Do.
Region V			
Michigan: Sebewaing, Village of, Huron County	260572	....do	Do.
Region VII			
Missouri: Chariton County, Unincorporated Areas.	290073	....do	Do.
Region II—Regular Conversions			
New York:			
Varick, Town of, Seneca County	360758	December 17, 1987, Suspension Withdrawn	Dec. 17, 1987.
Youngstown, Village of, Niagara County	360515	....do	Do.
Region IV—			
Alabama:			
Carbon Hill, City of, Walker County	010204	....do	Do.
Childersburg, City of, Talladega County	010197	....do	Do.
Demopolis, City of, Marengo County	010157	....do	Do.
Jackson, City of, Clarke County	010040	....do	Do.
Stevenson, City of, Jackson County	010113	....do	Do.
Sylacauga, City of, Talladega County	010199	....do	Do.
Vernon, City of, Lamar County	010139	....do	Do.
Region V			
Michigan:			
Hamlin, Township of, Mason County	260134	....do	Do.
Summit, Township of, Mason County	260307	....do	Do.
Region VIII			
Montana: Lake County, Unincorporated Areas	300155	....do	Do.

[1] Minimals.
[3] New.
[2] The Village of Alamance has adopted by reference Alamance County's Study and FIRM for floodplain management and insurance purposes. Alamanace County's FIRM Date is Dec. 1, 1981.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: January 14, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-994 Filed 1-19-88; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWR). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications will ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established, and to the extent practical, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: David E. Hefferman, Division of Refuges, Fish and Wildlife Service, 18th and C Streets NW., Washington, DC 20240; Telephone 202-343-1014.

SUPPLEMENTARY INFORMATION: 50 CFR Part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to: (1) Ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This final rule is amending and supplementing certain refuge-specific regulations in 50 CFR Part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed States.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, the October 5, 1987, proposed rule had a 30-day comment period. No public comments were received. Therefore, the proposed refuge-specific fishing regulations will be published, with minor technical corrections, as final in this rulemaking.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and the public use of NWRs. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary of the Interior (Secretary) under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to the opening of the refuge to fishing. In many cases, refuge-specific fishing regulations are included as a part of the fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and Refuge Recreation Act is ensured when the fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These proposed amendments to the codified refuge-specific fishing regulations will make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OBM under #1018-0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular NWR. The changes proposed in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 221-3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-7920.

Region 7—Alaska:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3542.

David E. Heffernan, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, Part 33 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 33—[AMENDED]

1. The authority citation for Part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd and 715i.

2. Section 33.5 is amended by revising (a)(1), (b) and (c)(2) as follows:

§ 33.5 Alabama.

(a) *Bon Secour National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(b) *Choctaw National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted only from sunrise to sunset.

(c) *Eufaula National Wildlife Refuge.* * * *

(2) Fishing, including bowfishing, is permitted from March 1 through October 31 only from sunrise to sunset on all refuge impoundments and waters other than the Walter F. George Reservoir.

* * * * *

3. Section 33.6 is amended by revising (a)(1), (b) introductory test and (d)(1); adding (d)(5) and (6) and revising (e)(1) as follows:

§ 33.6 Arkansas.

(a) *Big Lake National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 only from sunrise to sunset with the following exceptions: Bank fishing is permitted at any time in the area around Floodway Dam south of the Highway 18 bridge, and fishing only from sunrise to sunset from nonmotorized boats and boats with electric motors is permitted in the Sand Slough-Mud Slough Area from November 1 through the end of February.

* * * * *

(b) *Felsenthal National Wildlife Refuge.* Fishing, frogging and the taking of turtles and crawfish are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

(d) *Wapanocca National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 15 through September 30 only from sunrise to sunset.

* * * * *

(5) Big Creek and Ditch 8 are closed to fishing.

(6) Length limits for largemouth bass are required as posted.

(e) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

4. Section 33.13 is amended by revising (a)(1); redesignating (b) through (l) as (c) through (m); adding (b); revising newly redesignated (c)(1), (d), (f)(1), (g)(1), (h)(1) and (i)(1); adding (i) (6); revising newly redesignated (l) introductory text and (l)(1); adding (l)(3); revising newly redesignated (m)(1) and adding (m)(4) as follows:

§ 33.13 Florida.

(a) *Cedar Keys National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(b) *Chassahowitzka National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round, except in a designated sanctuary that is closed to all public entry from October 15 to February 15.

(c) *Egmont Key National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(d) *Hobe Sound National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round only from sunrise to sunset.

* * * * *

(f) *Lake Woodruff National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(g) *Lower Suwannee National Wildlife Refuge.* * * *

(1) Bank fishing is permitted in interior refuge creeks, borrow pits and canals from March 15 to September 30 only from sunrise to sunset.

* * * * *

(h) *Loxahatchee National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset on all areas of the refuge except the management impoundments and those areas marked by signs as closed to public entry or fishing.

* * * * *

(i) *Merritt Island National Wildlife Refuge.* * * *

(1) Night fishing is permitted from a boat only. A permit is required.

* * * * *

(6) Air thrust boats are prohibited.

* * * * *

(l) *St. Marks National Wildlife Refuge.* Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

(1) Freshwater fishing and crabbing are permitted only from sunrise to sunset.

* * * * *

(3) Launching of commercial or sport net boats at the saltwater boat ramp on C.R.59 is prohibited.

(m) *St. Vincent National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(4) Fishing seasons and largemouth bass length limits are posted.

5. Section 33.14 is amended by revising (a)(1), (d)(2), (f)(1), (h)(2) and (i)(3) as follows:

§ 33.14 Georgia.

(a) *Banks Lake National Wildlife Refuge.* * * *

(1) Fishing is permitted year-round only from sunrise to sunset.

* * * * *

(d) *Harris Neck National Wildlife Refuge.* * * *

(2) Bank fishing into estuarine waters is permitted only from sunrise to sunset.

* * * * *

(f) *Piedmont National Wildlife Refuge.* * * *

(1) Fishing is permitted from May 1 through September 30 only from sunrise to sunset.

* * * * *

(h) *Wassaw National Wildlife Refuge.* * * *

(2) Bank fishing into estuarine waters is permitted only from sunrise to sunset.

(i) *Wolf Island National Wildlife Refuge.* * * *

(3) Bank fishing into estuarine waters is permitted only from sunrise to sunset.

6. Section 33.19 is amended by revising (a)(7) and removing (a)(8) as follows:

§ 33.19 Iowa.

(a) *DeSoto National Wildlife Refuge.* * * *

(7) Minimum length and creel limits are required as posted.

* * * * *

7. Section 33.22 is amended by revising (b) (1) and (2), (d)(1), (e)(1), and (f)(7) as follows:

§ 33.22 Louisiana.

* * * * *

(b) *Catahoula National Wildlife Refuge.* * * *

(1) Fishing is permitted in Cowpen Bayou year-round only from sunrise to sunset.

(2) Fishing is permitted in the Duck Lake impoundment and discharge waters from March 1 through October 31 only from sunrise to sunset.

* * * * *

(d) *Delta National Wildlife Refuge.* * * *

(1) Fishing, shrimping and crabbing are permitted only from sunrise to sunset.

* * * * *

(e) *Lacassine National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 15 only from sunrise to sunset.

* * * * *

(f) *Sabine National Wildlife Refuge.* * * *

(7) Daily shrimp (heads on) take and/or possession limit is 5 gallons or 20 quarts per vehicle during the State inside water shrimp season; and 5 quarts take and/or possession limit per vehicle during the rest of the year.

* * * * *

8. Section 33.25 is amended by revising (a)(1) as follows:

§ 33.25 Massachusetts.

(a) *Great Meadows National Wildlife Refuge.* * * *

(1) Fishing is permitted along the main channel of the Sudbury River, Concord River and along designated banks of Heard Pond with the following exception: Fishing is not permitted within refuge impoundments.

* * * * *

9. Section 33.27 is amended by revising (a)(1) as follows:

§ 33.27 Minnesota.

(a) *Big Stone National Wildlife Refuge.* * * *

(1) Nonmotorized boats or boats with electric motors are permitted in the Minnesota River channel only.

* * * * *

10. Section 33.28 is amended by revising (b) as follows:

§ 33.28 Mississippi.

* * * * *

(b) *Noxubee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted from March 1 through October 31, except for the Noxubee River and the borrow pits along Highway 25 which are open year-round.

(2) Fishing is permitted only from sunrise to sunset. Boats may not be left on the refuge overnight.

(3) Limb lines, snag lines and hand grappling are prohibited in the Bluff and Loakfoma Lakes. Only nongame fish may be taken with a bow.

(4) All trotline material must be cotton twine. One trotline per person, and no more than two per boat.

(5) The length limit for largemouth bass taken from Loakfoma and Ross Branch Lakes is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be released unharmed.

(6) Boats are restricted to no-wake speeds on all refuge waters.

11. Section 33.37 is amended by redesignating (c) as (e) and (a) and (b) as (b) and (c); adding (a) and (d) and revising newly redesignated (b)(1), (c) (1) and (3) and (e)(2) as follows:

§ 33.37 North Carolina.

(a) *Alligator River National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round only from sunrise to sunset.

(2) Only the use of pole and line, rod and reel or cast net is permitted.

(3) A permit is required for night fishing.

(4) Frogs may be taken by the use of frog gigs only. A permit is required.

(b) *MacKay Island National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset from March 15 through October 15 with the exception that bank fishing is permitted in Corey's Ditch and the canal adjacent to the Knotts Island Causeway year-round.

* * * * *

(c) *Mattamuskeet National Wildlife Refuge.* * * *

(1) Fishing and crabbing are permitted from March 1 through November 1 from one-half hour before sunrise to one-half hour after sunset or as posted.

* * * * *

(3) Herring (alewife) dipping is permitted from March 1 to May 15 only from sunrise to sunset or as posted.

* * * * *

(d) *Pea Island National Wildlife Refuge.* Fishing and crabbing are permitted on designated areas of the refuge subject to the following condition: Fishing and crabbing are prohibited in North Pond, South Pond and Newfield impoundments.

(e) *Pee Dee National Wildlife Refuge.* * * *

(2) Fishing is permitted only from sunrise to sunset.

* * * * *

12. Section 33.41 is amended by revising (g)(1) as follows:

§ 33.41 Oregon.

* * * * *

(g) *Umatilla National Wildlife Refuge.* * * *

(1) Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.

* * * * *

13. Section 33.44 is amended by revising (a)(1) and (d)(1) as follows:

§ 33.44 South Carolina.

(a) *Cape Romain National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through September 30 only from sunrise to sunset.

* * * * *

(d) *Santee National Wildlife Refuge.* * * *

(1) Fishing is permitted on inland ponds only from sunrise to sunset or as posted.

* * * * *

14. Section 33.46 is amended by revising (a)(1), (b)(1), (c)(1) and (e)(2) and adding (a)(7) as follows:

§ 33.46 Tennessee.

(a) *Cross Creeks National Wildlife Refuge.* * * *

(1) Fishing is permitted in refuge pools and reservoirs from March 1 through October 31 only from sunrise to sunset.

* * * * *

(7) The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be released unharmed.

(b) *Hatchie National Wildlife Refuge.* * * *

(1) Fishing is permitted only from sunrise to sunset.

* * * * *

(c) *Lake Isom National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 15 through October 15 only from sunrise to sunset.

* * * * *

(e) *Reelfoot National Wildlife Refuge.* * * *

(2) Fishing is permitted only from sunrise to sunset.

* * * * *

15. Section 33.51 is amended by revising (a) (1) and (2) and adding (a) (3) and (4) as follows:

§ 33.51 Washington.

(a) *Columbia National Wildlife Refuge.* * * *

(1) Nonmotorized boats and boats with electric motors are permitted on Upper and Lower Hampton, Hutchinson, Royal and Shiner Lakes.

(2) Motorized and nonmotorized boats are permitted on all other refuge waters open to fishing except in Marsh Units I and II.

(3) Marsh Units I and II are restricted to shoreline fishing only.

(4) The taking of bullfrogs is prohibited.

* * * * *

16. Section 33.53 is amended by redesignating (c) as (d) and adding (c) as follows:

§ 33.53 Wisconsin.

* * * * *

(c) *Trempealeau National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Only hand-powered craft and boats using electric trolling motors are permitted.

(2) Fishing from boats is not permitted from October 10 through November 30.

* * * * *

17. Section 33.55 is amended by revising (a) (1) and (2) as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(1) Lobsters of 3¼ inch carapace length or more may be taken from the lagoon area from September 1 through May 31, but not by spearing; no female lobsters bearing eggs may be taken at any time.

(2) The use of nets, except throw nets, is prohibited.

Date: December 11, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-1002 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 652]

Realignment of the Boundary Common to the Alexander Valley and Chalk Hill Viticultural Areas

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF has received a petition for realignment of the boundary common to the Alexander Valley and Chalk Hill viticultural areas so that vineyards immediately within the north-central leg of the boundary of the Chalk Hill viticultural area would be relocated to the southeastern corner of the Alexander Valley viticultural area.

DATE: Written comments must be received by Febraury 19, 1988.

ADDRESS: Send written comments to Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, REF: Notice No. 652, P.O. Box 385, Washington, DC 20044-0385.

Copies of this proposal, the petition, the appropriate maps, and the written comments are available for public inspection during normal business hours at the ATF Reading Room, Ariel Rios Federal Building, Room 4412, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Specialist, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, Telephone (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) of Title 27, Code of Federal Regulations, Part 4, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Establishment of the Viticultural Areas

With the issuance of T.D. ATF-155 on October 21, 1983 and T.D. AFT-167 on October 24, 1984, ATF established, respectively, the Chalk Hill and the Alexander Valley viticultural areas in Sonoma County, California. On August 26, 1986, ATF issued T.D. ATF-233 which made several revisions to the boundary of the Alexander Valley viticultural area including the extension of the southern leg of the boundary to include the Digger Bend area east of Healdsburg.

Petition

By letter dated August 20, 1987, Ms. Willi Martin-Hilliard and Mr. Richard Godwin, owners and operators of separate vineyards sited on the south-facing slopes of Bell Mountain, filed a petition to extend the boundary of the Alexander Valley viticultural area approximately one mile south in order to include land on which is sited 76 acres of vineyards in the watershed of Martin Creek which flows into Barnes Creek to Brooks Creek and the Russian River.

The petition, researched and prepared by William K. Crowley, a professor of geography at Sonoma State University in Santa Rosa, California, documents the name recognition, history and physical features of this area and includes declarations of support from neighbors, grape growers and local winemakers.

The petition includes evidence that the land in the area enjoys name recognition and shares similar geological history, topographical features, soils, and climatic conditions as adjoining land within the boundary of the Alexander Valley viticultural area.

Name

The Alexander Valley viticultural area was established 30 days after the issuance of T.D. ATF-187 which was published in the **Federal Register** on October 24, 1984.

In early 1981, the Hilliards subdivided their property and sold the more northerly portion to Mr. Godwin. Also in 1981, the Hilliards planted 55 acres of wine grape vines on their portion of the subdivided property. In 1983, Mr. Godwin established a 21-acre vineyard on his property. The Hilliards and Mr. Godwin state that these vineyards are in closer proximity to vineyards planted in the Alexander Valley viticultural area than vineyards planted in either the Chalk Hill viticultural area or in the Russian River viticultural area. In fact, a part of Mr. Godwin's property, on which no grapes are presently planted, lies within the existing boundary of the Alexander Valley viticultural area.

The Hilliards have advised ATF that they were unaware until the Spring of 1986 that their vineyards had been excluded from the boundary established in November 1984 for the Alexander Valley viticultural area. Although the Hilliards planted their vineyards in 1981, they did not establish permanent residence on their property until November 1983. Consequently, when ATF held a public hearing in Sonoma County in February 1983 to air the petition filed by the Alexander Valley Appellation Committee in 1981 and a second group's petition to include land north of Geyserville to the Mendocino County line, the Hilliards saw no need to give testimony at the hearing or to file a written comment.

The petition includes a declaration of support from Mr. Frederick P. Furth, the petitioner for the Chalk Hill viticultural area. Included in Mr. Furth's letter is the statement "I have no objection to this (petition) and frankly have always considered your vineyards were in the Alexander Valley Appellation originally."

The petition also includes letters of support from Messers. Hank Wetzel, Russell H. Green, Jr., and Robert A. Young, wine grape growers in the Aleander Valley viticultural area, and wine producer Michael G. Dacres Dixon, all of whom were members of the Appellation Committee which filed the June 18, 1981, petition to establish the Alexander Valley viticultural area. All have demonstrated great concern that the Alexander Valley viticultural area be carefully defined and all maintain that these properties should have been included in the originally petitioned area.

The declarations support the petitioners' statement that the vineyards planted in 1981 on the Hilliard property and in 1983 on the Godwin property "are most closely associated with the Alexander Valley, both by people living in the area and by their proximity to other Alexander Valley vineyards."

Climate

Thermograph readings for the petitioned area were taken in 1981 on the Hilliard property. These readings suggest that the vineyards lie on the boundary between Region I and Region II. The petition states that the reading of 2,475 heat summation units "is similar to locations in the southern end of Alexander Valley, though obviously cooler than the central and northern portions." The petition notes that "because the property is in the boundary area of regular summer fog intrusions, readings could vary considerably from one year to the next, with the best guess that the (1981) reading is a relatively cool year."

Soils

The petition states that the principal soils of the Martin Creek area, namely, Felta very gravelly loams, Spreckels loam, and Yolo silt loam, "represent soil series and associations common to the existing Alexander Valley (viticultural area)."

Topography

The southeastern leg of the boundary of the Alexander Valley viticultural area extends in an easterly direction from the summit of Chalk Hill to just south of the summit of Bell Mountain. The Martin Creek area lies on the south-facing slopes of Bell Mountain. The vineyards are planted on low hills ranging from 300 to 400 feet above sea level. Part of the petitioned area is within the Franz Creek drainage and part is within the Brooks Creek drainage. The points of confluence where the waters in these streams flow into the Russian River are within the boundary of the Alexander Valley viticultural area.

The terrain of the Chalk Hill viticultural area to the south and west of the petitioned area is higher in elevation and more rugged than that of the petitioned area.

Chalk Hill Viticultural Area

ATF's proposal to revise the boundary of the Alexander Valley viticultural area affects a portion of the boundary common to the Chalk Hill viticultural area.

The petitioners request that the common boundary between the two viticultural areas be realigned so as to extend the southern leg of the boundary for the Alexander Valley viticutural area and to curtail the north-central leg of the boundary for Chalk Hill viticultural area.

The statement from the petitioner for the Chalk Hill viticultural area, the letters of support from the original petitioners for the Alexander Valley appellation, and the physical proximity of the vineyards in the petitioned area to vineyards within the present boundary of the Alexander Valley viticultural area support the criteria for history and recognition of name. The limited climatic data suggests that the petitioned area lies in a transitional space between the inland "coastal warm" Alexander Valley viticultural area and the Chalk Hill viticultural area. The latter encompasses the higher elevation "coastal warm" areas near Mark West Springs as well as the "coastal cool" basin of the Russian River south of Fitch Mountain.

Proposed Realignment of Common Boundary

The description of the boundary of the established Alexander Valley viticultural, as found in 27 CFR 9.53, would be amended to include all of section 28 and portions of section 27, 29, 33 and 34 in Township 9 N., Range 8 W. The description of the boundary of the established Chalk Hill viticultural area, as found in 27 CFR 9.52, would be amended to exclude all of section 28 and portions of section 27, 29, 33 and 34 in Township 9 N., Range 8 W.

Public Participation

ATF requests comments from all interested parties. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, issued February 17, 1981, ATF has determined that this proposed regulation is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The author of this document is Michael J. Breen, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. ATF is amending § 9.53 if Subpart C of Title 27, Code of Federal Regulations, Part 9, by removing existing paragraphs (c)(27) and (c)(28), redesignating paragraphs (c)(29) through (c)(40) as paragraphs (c)(35) through (c)(46), and adding new paragraphs (c)(27) through (c)(34) to read as follows:

§ 9.53 Alexander Valley.

* * * * *

(c) *Boundary.* * * *

(27) Then south from said peak, in a straight line, approximately 0.2 mile to the point where Chalk Hill Road crosses Brooks Creek (on the Healdsburg Quadrangle map);

(28) Then southeasterly, approximately 1.3 miles, along the roadbed of Chalk Hill Road to the point near the confluence of Brooks Creek and Barnes Creek where Chalk Hill Road intersects an unnamed unimproved road (known locally as Spurgeon Road) that parallels Barnes Creek in section 32, T. 9 N., R. 8 W.;

(29) Then easterly, approximately 0.45 mile, along said road (known locally as Spurgeon Road) to the point where the road is intersected by an unnamed unimproved road (known locally as the access to the Shurtleff Ranch) in section 33, T. 9 N., R. 8 W.;

(30) Then continuing along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch), approximately 1.33 miles, in a generally easterly direction, to the eastern terminus of said road at a small dwelling along the north fork of Barnes Creek in section 34, T. 9 N., R. 8 W. on the Mark West Springs, California, Quadrangle map;

(31) Then easterly along the north fork of Barnes Creek, approximately 0.5 mile, to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects the east line of section 34, T. 9 N., R. 8 W.;

(32) Then north, approximately 0.65 mile, along the east lines of sections 34 and 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the eastern border of section 27, T. 9 N., R. 8 W.

(33) Then in a generally northwesterly direction, approximately 1.07 miles, along said road to the point at which the road is crossed by the west line of section 27, T. 9 N., R. 8 W.;

(34) Then north, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the southeast corner of section 21, T. 9 N., R. 8 W.;

* * * * *

Par. 3. ATF is amending § 9.52 of Subpart C of Title 27, Code of Federal Regulations, Part 9, by removing existing paragraphs (c)(13) and (c)(14), redesignating paragraphs (c)(15) through (c)(24) as paragraphs (c)(21) through (c)(30), and adding new paragraphs (c)(13) through (c)(20) to read as follows:

§ 9.52 Chalk Hill.

* * * * *

(c) *Boundary.* * * *

(13) Then southerly, approximately 0.08 mile, along the west line of section 27, T. 9 N., R. 8 W., to the point at which an unnamed unimproved road which parallels the south bank of Martin Creek intersects the west line of section 27, T. 9 N., R. 8 W.;

(14) Then southeasterly, approximately 1.07 miles, along said road to the point at which the road is crossed by the east line of section 27, T. 9 N., R. 8 W.;

(15) Then southerly, approximately 0.65 mile, along the east lines of sections 27 and 34, T. 9 N., R. 8 W., to the point in the northeast corner of section 34, T. 9 N., R. 8 W. where the north fork of Barnes Creek intersects such line in section 34, T. 9 N., R. 8 W.;

(16) Then continuing along the north fork of Barnes Creek, approximately 0.5 mile, in a generally westerly direction to a small dwelling at the eastern terminus of an unnamed unimproved road (known locally as the access to the Shurtleff Ranch) in section 34, T. 9 N., R. 8 W.;

(17) Then continuing in a generally westerly direction, approximately 1.4 miles, along the unnamed unimproved road (known locally as the access to the Shurtleff Ranch) to its intersection with an unnamed unimproved road (known locally as Spurgeon Road) in section 33, T. 9 N., R. 8 W. on the Healdsburg, California, Quadrangle Map;

(18) Then westerly, approximately 0.45 mile, along the unnamed unimproved road (known locally as Spurgeon Road) to the point where the road intersects Chalk Hill Road in section 32, T. 9 N., R. 8 W.;

(19) Then in a generally northwesterly direction, approximately 1.3 miles, along Chalk Hill Road to the point where Chalk Hill Road crosses Brooks Creek in section 29, T. 9 N., R. 8 W.;

(20) Then north in a straight line, approximately 0.2 mile, to the top of a peak identified as Chalk Hill;

* * * * *

Approved: January 11, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88–991 Filed 1–19–88; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[OPP–300164A; FRL–3317.4]

Worker Protection Standards for Agricultural Pesticides; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation on worker protection standards for agricultural pesticides (40 CFR Parts 156 and 170). This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Breslin, Director, Pesticide Farm Safety Staff, Office of Pesticide Programs, Environmental Protection Agency, Rm. 1009, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7666.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator of EPA shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** any time after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Pub. L. 92–516, 86 Stat. 973 as amended (7 U.S.C. 136 *et seq.*)

Dated: December 30, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88–878 Filed 1–19–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 9E2249/P433; FRL–3216–6]

Pesticide Tolerances for Pentachloronitrobenzene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the fungicide pentachloronitrobenzene and its metabolites in or on the raw agricultural commodities collards, kale, and mustard greens. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 9E2249/P433], must be received on or before February 19, 1988.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 9E2249 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Georgia.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the fungicide pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA) and methylpentachlorophenyl sulfide (MPCPS) in or on the raw agricultural commodities collards, kale, and mustard greens at 0.1 part per million (ppm). The petition was later amended to propose residues of the fungicide at 0.2 ppm. The petitioner proposed that this use of PCNB and its metabolites on collards, kale, and mustard greens be limited to Georgia based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year dog feeding study (1.4 percent HCB) with a no-observed-effect level (NOEL) of 30 ppm (0.75 milligram (mg)/kilogram (kg)/day) and a lowest-observed-effect level (LOEL) of 180 ppm with liver weight increases, increased liver-to-body weight ratios, elevated serum alkaline phosphatase levels and microscopically observed cholestatic hepatosis with secondary nephrosis.

2. A three-generation rat reproduction study with a reproductive NOEL >500 ppm (25 mg/kg/day, highest level tested).

3. A 3-month mouse feeding study with NOELs of 1,250 ppm (187.5 mg/kg/day) for males and 2,500 ppm (375 mg/kg/day) for females and with LELs of 2,500 for males and 5,000 ppm (750 mg/kg/day) for females (increase liver weight and liver-to-body weight ratio, no liver histopathology).

4. A 2-year mouse oncogenicity study with a NOEL >5,000 ppm with no observed oncogenicity potential under conditions of the study at all levels tested (0, 2,500 and 5,000 ppm).

5. Mutagenicity tests include: An Ames assay for reverse or forward mutations, differential toxicity and DNA repair, a point mutation assay in mouse lymphoma cells, a mitotic recombination assay in yeast, a recessive lethal assay in fruit flies, an unscheduled DNA synthesis (UDS) assay in human fibroblast cells, a mouse dominant lethal assay, and a sister chromatid exchange assay in Chinese hamster ovary (CHO) cells, with no mutagenic potential observed. However, one of two assays with *E. coli* was positive, and a chromosomal aberration assay in CHO cells suggested that the fungicide has genotoxic activity.

Data gaps include chronic toxicity/carcinogenicity study in rats and teratology studies in two species.

The provisional acceptable daily intake (PADI), based on the dog feeding study with a NOEL of 30 ppm (0.75 mg/kg/day) and using a 300-fold safety factor, is calculated to be 0.0025 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.15 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances (permanent and

interim) for a 1.5-kg daily diet is calculated to be 0.000415 mg/kg/day; the current action will increase the TMRC by 0.0000085 mg/kg/day (2.0 percent). Published tolerances utilize 16.6 percent of the PADI; the current action will utilize an additional 0.34 percent.

A permanent tolerance has previously been established for residues of PCNB at 0.1 ppm in or on cottonseed and interim tolerances have been established for residues of PCNB in or on peanuts at 1.0 ppm and in or on bananas, beans, broccoli, Brussels sprouts, cabbage, cauliflower, garlic, peppers, potatoes and tomatoes at 0.1 ppm.

A comprehensive review of the data available was conducted in connection with a Special Review of pentachloronitrobenzene (PCNB) initiated on October 20, 1977 (42 FR 56072). The Special Review was based on a presumption that PCNB was potentially carcinogenic. On April 28, 1982, a Notice of Determination concluding the Special Review of PCNB was issued (47 FR 18177). The Agency stated that the evidence did not positively establish a correlation between exposure to PCNB itself and carcinogenicity. The Notice concluded that an impurity, hexachlorobenzene (HCB), was likely to be responsible for any potential carcinogenic effect of commercial PCNB, and the Agency stated that reducing the level of the impurity would reduce the potential risks posed by PCNB. Registrants of PCNB have agreed as a condition of continued registration to reduce the level of HCB to 0.1 percent or less by April of 1988.

PCNB has since been classified into Group D (inadequate evidence for classification), and the Agency has classified HCB as a Group B2 (probable human carcinogen) based on the increased incidence of liver tumors observed in rats, mice, and hamsters. A $Q1^*$ of 1.7 (mg/kg/day)–1 was calculated for HCB on the basis of liver tumors in rats. Although PCNB has been classified into Group D with respect to its carcinogenic potential, a mouse study conducted with relatively pure PCNB (containing 0.07 percent HCB) was negative for carcinogenicity, and other results in mice indicate that HCB may have a role in the previously suggested carcinogenic potential of PCNB.

The Agency has evaluated the oncogenic risk from dietary exposure resulting from existing uses of PCNB based on the maximum expected HCB residue level and percent of crops treated. Total dietary exposure multiplied by the oncogenic potency for HCB results in an upper bound for increased oncogenic risk of 3.5×10^{-6} for PCNB contaminated with 0.5 percent HCB. At 0.1 percent HCB contamination, exposure would be reduced five-fold, and the risk would be 7×10^{-7}. The oncogenic risk from dietary exposure resulting from PCNB (contaminated with 0.5 percent HCB) use on collards, kale, and mustard greens would amount to 7.2×10^{-5}, and from PCNB (contaminated with 0.1 percent HCB) the risk would be 1.4×10^{-5}.

The nature of the residues is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. An analytical enforcement method is currently available in the Pesticide Analytical Manual (PAM), Vol. I. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that collards, kale, and mustard greens are not considered as animal feed commodities, the tolerances established by amending 40 CFR 180.291 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E2249/P433]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 30, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.291 is amended by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.291 Pentachloronitrobenzene; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicides pentachloronitrobenzene (PCNB) and its metabolites pentachloroaniline (PCA) and methylpentachlorophenyl sulfide (MPCPS) in or on the following raw agricultural commodities:

Commodities	Parts per million
Collards	0.2
Kale	0.2
Mustard greens	0.2

[FR Doc. 88-763 Filed 1-19-88; 8:45 am]

BILLING CODE 6560-50-M

ACTION

45 CFR Part 1215

Freedom of Information Act Regulation

AGENCY: ACTION.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the Director of ACTION proposes to revise Chapter 45, Code of Federal Regulations, Part 1215, ACTION's Freedom of Information Act (FOIA) regulation, in order to update the existing regulation which was published in 1975. Specifically, the proposed revision: (1) Reflects changes in the Agency's FOIA procedures necessitated by internal reorganizations and by the 1982 separation of Peace Corps from ACTION; (2) codifies the centralized coordination of responses to FOIA requests which has for some time been the *de facto* practice of the Agency; and (3) implements certain provisions of the Freedom of Information Reform Act of 1986, Pub. L. 99–570, in accordance with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

DATE: Comments on the proposed rule must be received on or before February 19, 1988.

ADDRESS: Comments should be sent to: Assistant Director, Office of Administration, ACTION, Room M–306, 806 Connecticut Avenue NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Gregory C. La Rosa, Assistant General Counsel, (202) 634–9333.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act, 5 U.S.C. 552, as amended, requires each agency of the Federal Government to promulgate regulations informing the public of procedures for requesting information under the Act, specifying the schedule of fees applicable to the processing of such requests, and establishing procedures and guidelines for determining when such fees should be waived or reduced. ACTION's current FOIA regulation was promulgated in 1975 (40 FR 18558, Apr. 29, 1975).

Further, under the provisions of the Freedom of Information Reform Act of 1986, Pub. L. 99–570, §§ 1801–1804, 100 Stat. 3207, 3207–48 (1986), all Federal agencies subject to the FOIA are required to promulgate new fee and fee waiver regulations. Such regulations must inform the public of criteria (based on the identity of the requester) for assessing FOIA request processing fees; and of the factors to be considered in determining whether requests for fee waivers or reductions will be granted by the agency. Under the new legislation, such fee waivers or reductions may be granted only where disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, *and* it is established that disclosure of the information is not primarily in the commercial interest of the requester. OMB published guidance for all Federal agencies in drafting such fee regulations in the **Federal Register** on March 27, 1987; additional guidance was provided to the agencies by the Department of Justice in a Memorandum dated April 2, 1987. Section 1215.7 of this proposed regulation, ACTION's schedule of fees, is consistent with the guidance of OMB and the Department of Justice.

The proposed revision is intended both (1) to provide to the public detailed information regarding ACTION's adminstrative procedures for FOLA requests, responses, appeals, and fee assessments, and (2) to set forth for FOIA requesters the criteria the Agency will apply in accepting FOIA requests, in responding to FOIA requests for business information, and in ruling on requests for fee waivers or reductions. The factors to be considered by the Agency in making determinations regarding fee waivers and reductions conform to criteria established in guidence provided to Executive agencies by OMB and the Department of Justice.

Additionally, the proposed regulation no longer gives examples of the types of records which may be withheld from disclosure under the FOIA exemptions (set forth at § 1215.5 of the current regulation), because it is felt that such examples are gratuitous to the extent they simply repeat the language of the Act, and may be misleading and/or become easily outdated to the extent they suggest that denial of access may be based on generalizations rather than on case-by-case review.

ACTION has determined that this proposed regulation is not a major rule as defined by Executive Order 12291. The regulation will not result in:

1. A major effect on the economy;

2. A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regional; or

3. Any adverse effects on competition, employment, investment, productively, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation will not have a significant impact on a substantial number of small entities as defined by section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), as the rule codifies changes in the Agency's internal practice and procedure only.

The proposed regulation does not constitute a major Federal action significantly affecting the quality of the human environment, as defined by the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321, *et seq.*).

List of Subjects in 45 CFR Part 1215

Freedom of Information Act, Administrative practice and procedure.

For the reasons set out in the Preamble, the Director of ACTION proposes to revise 45 CFR Part 1215 to read as follows:

PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1215.1 Purpose.
1215.2 Definitions.
1215.3 Availability of records.
1215.4 Location of records.
1215.5 Record request and response procedures.
1215.6 Time limits and extensions.
1215.7 Schedule of fees.
1215.8 Business information.
1215.9 Appeal procedures.

Authority: Pub. L. 93–113, 87 Stat. 411 (42 U.S.C. 4951, *et seq.*); and 5 U.S.C. 552.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, manuals, instructions, and other records of ACTION pursuant to the Freedom of Information Act (5 U.S.C 552). Information customarily furnished to the public in the regular course of ACTION's official business may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974 (5 U.S.C. 552a). Rules for the disclosure by ACTION of records protected by the Privacy Act are set forth at 45 CFR Part 1224.

§ 1215.2 Definitions.

As used in this part, the following definitions shall apply:

(a) "The Act" means the Freedom of Information Act (5 U.S.C. 552).

(b) "The Agency" means ACTION.

(c) "Records" include all books, papers, maps, photographs or other documentary material, or copies thereof, regardless of physical form or characteristics, made or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities; but do not include books, magazines, or other materials not produced by ACTION and acquired solely for reference purposes.

(d) "Search" means time spent locating records responsive to a request, including page-by-page or line-by-line identification of responsive material within a record.

(e) "Review" means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (*i.e.*, excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(f) "Commercial use request" means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which a requester will put the records sought will be considered in determining whether the request is a commercial use request.

(g) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(h) "Non-commercial scientific institution" means an institution that is not operated on a for-profit basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to disseminate news to the public. The term "news" means information that is about current events or that would otherwise be of current interest to the public. Examples of news media entities include, but are not limited to, television and radio stations broadcasting to the public at large, and publishers of periodicals (but only those publishers who qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. Moreover, as new methods of news dissemination evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(j) "Business information" means trade secrets or other commercial or financial information.

(k) "Business submitter" means any commercial entity which provides business information to ACTION and which has a proprietary interest in such information.

(l) "Appeal" means the appeal by a requester of an adverse Agency determination on his request, or on his application for a waiver of fees, as described in 5 U.S.C. 552(a)(6)(A)(ii).

§ 1215.3 Availability of records.

(a) All publications and other documents heretofore provided by ACTION to the public in the normal course of Agency business will continue to be made available upon request to the Agency.

(b) The Agency will promptly make available to any member of the public who requests them, the following Agency records:

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by an office which have not been published in the **Federal Register**; and

(3) Administrative staff manuals and instructions to the staff which affect the public.

(c) A current index, which shall be updated at least quarterly, of the foregoing materials, is maintained by the Agency, and copies of some or any portion thereof will be furnished upon request. The Agency deems further publication of such index in the **Federal Register** unnecessary and impractical.

(d) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(e) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished at the cost of duplication, provided, however, that, in the event no copy exists, the Agency shall not be responsible for reprinting the document.

(f) All records of ACTION which are requested by a member of the public in accordance with the procedures established in this part shall be timely made available for inspection or copying, at the Agency's option, except to the extent that the Agency determines such records are exempt from disclosure under the Act.

(g) The Agency will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part).

§ 1215.4 Location of records.

(a) The Agency maintains a central records room at its headquarters, located at 806 Connecticut Avenue NW., Washington, DC 20525. The specific location of the central records room may change from time to time, but may be ascertained by inquiry to the receptionist in the Office of the Director, ACTION.

(b) The Agency maintains regional offices in the following locations:

Region I—Boston, Massachusetts (Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island)

Region II—New York, New York (New Jersey, New York, Puerto Rico and Virgin Islands)

Region III—Philadelphia, Pennsylvania (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia)

Region IV—Atlanta, Georgia (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee)

Region V—Chicago, Illinois (Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin)

Region VI—Dallas, Texas (Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas)

Region VIII—Denver, Colorado (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)

Region IX—San Francisco, California (American Samoa, Arizona, California, Guam, Hawaii and Nevada)

Region X—Seattle, Washington, (Alaska, Idaho, Oregon and Washington)

ACTION also maintains offices in most states, usually in the state capital. These field offices are not responsible for maintaining indexes, reading rooms, or records or documents other than those created and maintained in the normal course of the official business of such offices.

§ 1215.5 Record request and response procedures.

(a) *How made and addressed.* Requests under the Act for access to ACTION records must be in writing, and may be mailed or hand-delivered to the Director, Administrative Services Division, 806 Connecticut Avenue NW., Washington, DC 20525. All such requests, and the evelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 10 a.m. and 4 p.m., Monday through Friday, except on official holidays.

(b) *Agreement to pay fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees under § 1215.7 of this part, up to $25, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if costs are expected to exceed $25.00.

(c) *Request must adequately describe the record sought.* A request must describe the records sought in sufficient detail to enable Agency personnel to locate the records with reasonable effort. A request shall be regarded as fulfilling this requirement if it enables the Agency to identify responsive documents without unreasonable burden to or disruption of Agency operations. Persons wishing to inspect or secure copies of records should describe and identify such records as fully and as accurately as possible. Among the kinds of identifying information which a requester may provide are the following:

(1) The unit or program of the Agency which may have produced or may otherwise have custody of the record (*e.g.*, VISTA, RSVP, FGP);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or the time period to which it refers or relates;

(4) The type of record (*e.g.*, application, contract, grant or report);

(5) The name(s) of Agency personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(7) The distribution made of the record.

(d) *Initial processing.* Upon receipt of a request for Agency records, the Director, Administrative Services Division, will make an initial determination as to whether the request describes requested records with sufficient specificity to determine the office of the Agency having custody of any responsive records. If so, upon making such initial determination, he shall refer such request to the head of the custodial office. The office head shall promptly ascertain whether the description of records(s) requested is sufficient to permit a determination as to existence, identification, and location.

(e) *Insufficiently identified records.* On making a determination that the description contained in the request does not sufficiently describe a requested record, the Director, Administrative Services Division, shall promptly so advise the requester in writing; the requester may submit an amended request providing necessary additional identifying information. Such a request shall be deemed to have been received by the Agency on the date it receives the amended request.

(f) *Release of records; denial and right to appeal.* Upon receipt of a request specifically identifying existing Agency records, the Agency shall, within ten working days, either grant or deny the request in whole or in part, as provided in this subpart. Any notice of denial in whole or in part shall also inform the requester of this right to appeal the denial, in accordance with the procedures set forth at § 1215.9 below. If the Assistant Director, Administrative Services Division, determines that a request describes a requested record sufficiently to permit its identification, he/she shall review the requested records with the custodial office and the General Counsel, and shall make it available as provided herein, unless he/she decides to withhold the records as exempt from mandatory disclosure under the Act.

(g) *Form and content of notice granting a request.* The Agency shall provide written notice of a determination to grant a request. Such notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making the record available to the requester for inspection at a reasonable time and place. The procedure for inspection shall not unreasonably disrupt the operations of the Agency. The Agency shall inform the requester in the notice of any fees charged in accordance with the provisions of § 1215.7 of this part.

(h) *Form and content of notice denying a request.* The Agency shall notify a requester in writing of the denial of a request in whole or in part. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the exemption or exemptions under the Act on which the Agency has relied in denying the request, and a specific explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 1215.9 of this part, and a copy of that section.

§ 1215.6 Time limits and extensions.

(a) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, are mandatory, and a person requesting records shall be deemed to have exhausted his administrative remedies with respect to such request in the event the Agency fails to comply with the applicable time limits in accordance with this section.

(b) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, may be extended by the Agency upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Agency will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this subpart may include the following:

(1) Time necessary to search for and collect requested records from field offices of the Agency;

(2) Time necessary to locate, collect and review voluminous records responsive to a single request; or

(3) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of ACTION which have an interest in the request; or with a submitter of business information having an interest in the request.

§ 1215.7 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible dissemination of information concerning the programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection of copies of records to be met without substantial cost to requesters.

(b) Request processing charges will be determined by category of request, as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests from educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges will be assessed to cover the cost of reproduction alone.

excluding charges for reproduction of the first 100 pages.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(4) *All other requests.* When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from record subjects for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request).

(c) Fees assessed shall provide only for recovery of the Agency's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) When the Agency believes that a requester or group of requesters has divided one request into a series of requests for the purpose of evading the assessment of fees, the Agency may treat such requests as a single request.

(e) The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of $0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of $3.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical/administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of $5.50 per quarter hour.

(4) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(f) In the event a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the Director, Administrative Services Division, determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed $25.00, or will exceed the limit specified in the request, the requester shall be promptly notified in writing. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible to pay the anticipated costs. Such a request shall be deemed to have been received by the Agency upon the date of receipt of the amended request.

(g) Advance payment of assessable fees may be required from a requester when:

(1) The Agency estimates or determines that assessable charges are likely to exceed $250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Agency may require satisfactory assurance of full payment.)

(2) A requester has previously failed to pay a FOIA fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing).

When the Agency acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the Act will begin to run only after the Agency has received fee payments or assurances.

(h) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in section 3717 of Title 31 U.S.C., and will accrue from the date of billing.

(i) Payment of fees shall be made to the Director, Administrative Services Division, by check or money order payable to "ACTION." A receipt for any fees paid will be provided upon written request.

(j) Charges may be assessed for search and review time, even if the Agency fails to locate records responsive to a request or if records located are determined to be exempt from disclosure.

(k) No fee shall be charged if the costs of routine collection and processing of the fee will equal or exceed the amount of the fee.

(l)(1) a requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. Upon receipt of such a request, the Director of Administrative Services shall refer the request to the Deputy Director or to such official as the Deputy Director may designate, who shall promptly determine whether such fee waiver or reduction shall be granted.

(2) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Agency, and is not primarily in the commercial interest of the requester. The Agency shall consider the following factors in determining whether an application for a fee waiver or reduction will be granted:

(i) Does the requested information concern the operations or activities of the Agency?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Agency's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester? In applying this criterion, the Agency will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and that public interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction will be granted.

(3) When a fee waiver application has been included in a request for records, or has been made subsequent thereto, the request shall not be deemed to have been received until an Agency determination is made regarding the fee waiver application, provided, however, that such determination shall be made within five working days from the date any such request is received by the Agency.

(m) The Agency may use the authorities of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

§ 1215.8 Business information.

(a) Business information provided to ACTION by a business submitter shall be disclosed pursuant to a request under the Act in accordance with this section.

(b) The Agency shall promptly notify a business submitter is writing of any request for Agency records containing business information. Such written notice shall either specifically describe the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(c) Through the notice required in paragraph (b) of this section, the Agency shall afford a business submitter a reasonable opportunity to object to disclosure of the information in question, and to provide the Agency with a written statement of grounds for such objection. Such statement shall specify all grounds for withholding any information under any exemption of the Act and, in cases where it argues information should be withheld under exemption (b)(4) of the Act, a business submitter shall state specifically why the information is a trade secret or is otherwise protected as proprietary commercial or financial information. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act.

(d) The Agency shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to release requested business information. Whenever the Agency decides to disclose business information over the objection of a business submitter, the Agency shall forward to the business submitter a written notice of such decision, which shall include:

(1) The name, and title or position, of the person responsible for denying the submitter's objection;

(2) A statement of the reasons for which the business submitter's objection was not sustained;

(3) A description of the business information to be disclosed; and

(4) A specific disclosure date. Such notice of intent to disclose business information shall be mailed by the Agency not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(e) Whenever a requester brings suit to compel disclosure of business information, the Agency shall promptly notify the business submitter.

(f) The notice to submitter requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1215.9 Appeal procedures.

Upon receipt of a notice of denial, a requester may, within 15 calender days from the date of receipt of such notice, appeal such adverse determination to the Deputy Director. Such appeal shall be in writing and shall specify the date upon which the notice of denial was received by the person making such appeal. The Deputy Director shall make a determination with respect to any appeal within 20 working days after receipt of such appeal, and shall give written notice of such determination to the person making the appeal. To the extent the Deputy Director's determination on appeal upholds the original denial, the notice of such determination shall inform the person making the appeal of his right to seek judicial review of the Agency's denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

(42 U.S.C. 5042(13); 5 U.S.C. 552)

Issued at Washington, DC, on October 21, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 88–1038 Filed 1–19–88; 8:45 am]

BILLING CODE 6050–28–M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent and Senior Companion Programs; Income Eligibility Levels

AGENCY: Action.

ACTION: Notice of revision of income eligibility levels for foster grandparents and senior companion programs.

SUMMARY: This notice revises the schedules of income eligibility levels for participation in the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, October 2, 1986 (51 FR 35258). The revised schedule is based on revised Poverty Income Guidelines from the Department of Health and Human Services (DHHS), effective February 20, 1987 (52 FR 5341) and Supplemental Security Income (SSI) guidelines published by the Social Security Administration, January 1987. This revision adopts as the income eligibility level for each State the higher amount of either: (a) 125% of the DHHS Poverty Income Guideline, or (b) 100% of the DHHS Poverty Income Guideline plus the amount each state supplements Federal SSI, rounded to the next highest multiple of $5.00.

Any person whose income is not more than 100 percentum of the DHHS poverty income guideline for her/his specific household unit status shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: C. Wade Freeman, Assistant Director, Older American Volunteer Programs, ACTION, 806 Connecticut Avenue NW., M–1006, Washington, DC 20525 or telephone (202) 634–9355.

SUPPLEMENTARY INFORMATION: These ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, 97 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes required as a result of that review.

Schedule of Income Eligibility Levels: Foster Grandparent and Senior Companion Programs

For all States, (except Alaska, Hawaii, California, Connecticut, Massachusetts, Missouri, New Jersey and Wisconsin) the District of Columbia, Puerto Rico and the Virgin Islands

For household units of—							
One	Two	Three	Four	Five	Six	Seven	Eight
$6,875	9,250	11,625	14,000	16,375	18,750	21,125	23,500

For the following States:

State	For household units of—							
	One	Two	Three	Four	Five	Six	Seven	Eight
AK	10,530	14,175	16,475	18,745	21,075	23,375	25,675	27,975
CA	9,005	16,450	16,350	20,250	22,150	24,050	25,950	27,850
CT	7,255	8,470	10,370	12,270	14,170	16,070	17,970	19,870
HI	10,365	14,365	16,865	16,965	21,265	23,565	25,865	28,165
MA	6,875	9,825	11,725	13,625	15,525	17,425	19,325	21,225
MO	7,160	10,715	12,615	14,515	16,415	18,315	20,215	22,115
NJ	7,300	12,825	22,125	24,025	25,925	27,825	29,725	31,625
WI	6,875	9,380	11,625	14,000	16,375	18,750	21,125	23,500

For household units with more than eight members add the appropriate supplement for each additional member (over eight) as follows:

Alaska, $2,300
Hawaii, 2,190
All Others, 1,900

All of the above levels are calculated from the base DHHS Poverty Income Guidelines now in effect.

Those guidelines are:

Size of family unit	For all states (except Alaska and Hawaii) and the District of Columbia	For Alaska	For Hawaii
1	$5,500	$6,880	$6,310
2	7,400	9,240	8,500
3	9,300	11,620	10,690
4	11,200	14,000	12,880
5	13,100	16,380	15,070
6	15,000	18,760	17,250
7	16,900	21,140	19,450
8	18,800	23,520	21,640

Signed in Washington, DC, on January 13, 1988.

Donna M. Alvarado,
Director of ACTION.

[FR Doc. 88–1009 Filed 1–19–88; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

[Docket No. 87–012N–1]

National Advisory Committee on Microbiological Criteria for Foods; Change in Name

This notice announces a change in the name of the National Advisory Committee on Microbiological Quality Standards for Foods. On November 10, 1987, the Department published a notice announcing its intention to establish the National Advisory Committee on Microbiological Quality Standards for Foods (52 FR 43216). Interested persons were invited to submit written comments concerning this notice. As a result, four comments were received by the Department, all of which supported establishment of the Committee. However, the commenters believed that the name of the Committee should be changed to the National Advisory Committee on Microbiological Criteria for Foods to better reflect the intent of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria with initially recommended that this Advisory Committee be formed.

The Department concurs with this recommendation and has changed the name of the Committee to the National Advisory Committee on Microbiological Criteria for Foods.

John J. Franke, Jr.,
Assistant Secretary for Administration.

January 13, 1988.

[FR Doc. 88–1041 Filed 1–19–88; 8:45 am]
BILLING CODE 3410–DM–M

Soil Conservation Service

Tesnatee Creek Watershed, GA; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tesnate Creek Watershed, Lumpkin and White Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: B. C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 335 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, prepared by the Corps of Engineers in the 404 Permit process and supplemented by data developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and municipal water storage. The planned works of improvement include the construction of a dam approximately 700 feet long, 60 feet high, and 250 feet wide on Turner Creek, 2 miles west of Cleveland, White County, Georgia. The purpose of the project is flood control and water supply for the City of Cleveland. Approximately 550 feet of the channel below the outlet will be realigned. Above the dam, a reservoir aproximately 40 acres in surface area will be created at normal pool elevation.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 7, 1987.

B.C. Graham,
State Conservationist.

[FR Doc. 88–983 Filed 1–19–88; 8:45 am]
BILLING CODE 3410–16–M

Waterfall-Gilford Creek Watershed, OK; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Budd Fountain, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with installation of the Waterfall-Gilford Creek watershed project is available. Single copies of this record of decision may be obtained from C. Budd Fountain at the address shown below.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs projects are applicable.)

Donald R. Vandereypen,
Assistant State Conservationist (WR).

Date: December 9, 1987.

[FR Doc. 88–964 Filed 1–19–88; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 370]

Resolution and Order Approving the Application of the Caddo-Bossier Parishes Port Commission for a Foreign-Trade Zone in Shreveport, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Caddo-Bossier Parishes Port Commission, a Louisiana public corporation, filed with the Foreign-Trade Zones Board (the Board) on February 20, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Shreveport, Louisiana, within the Shreveport-Bossier City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval

includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Shreveport, Louisiana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Caddo-Bossier Parishes Port Commission (the Grantee), a Louisiana public corporation, has made application (filed February 20, 1987, Docket 1–87, 52 FR 7633) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Shreveport, Louisiana, within the Shreveport-Bossier City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 145, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 7th day of January, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–1036 Filed 1–19–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C–565–001]

Canned Tuna From the Philippines; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review of the countervailing duty order on canned tuna from the Philippines. Because the petitioner has notified the Department that it is no longer interested in maintaining the countervailing duty order, we tentatively determine to revoke the order. We invite interested parties to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1987, the petitioner, the Tuna Research Foundation, informed the Department of Commerce ("the Department") that it was no longer interested in maintaining the countervailing duty order on canned tuna from the Philippines (48 FR 50133 October 31, 1983).

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Philippine tuna packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under TSUSA item numbers 112.3020, 112.3040, and 112.3400. These products are currently classifiable under HS item numbers 1604.14.20–0 and 1604.14.30–0. We invite comments from all interested parties on these HS numbers. The review covers the period from January 1, 1986.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the statement by the petitioner, the Tuna Research Foundation, that it is no longer interested in maintaining the countervailing duty order on canned tuna from the Philippines provides a reasonable basis for revocation of the order. Therefore, we tentatively determine to revoke the order on canned tuna from the Philippines effective January 1, 1988.

We intend to instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1988, and to refund any estimated countervailing duties collected with respect to those entries. The current waiver of cash deposits of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication, or the first workday following. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (b) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 13, 1988.

[FR Doc. 88–1035 Filed 1–19–88; 8:45 am]

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held February 10, 1988, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session

9:00 a.m.–3:00 p.m. Discussion of matters properly classified under Executive Order 12610 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1987, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information contact Sharon A. Gongwer, (202) 377–4275.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–1034 Filed 1–19–88; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

Time and Date: The meeting will convene at 8:15 a.m., February 3, 1988, and adjourn at approximately 3:00 p.m., February 4, 1988.

Place: La Jolla Village Inn, 3299 Holiday Court, La Jolla, California.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters to Be Considered

Portions Open to the Public

February 3, 1988, 8:30 a.m.–12:00 noon, marine mammal protection act reauthorization, marine debris, proposed regulations/guidelines on Council/NMFS operations.

February 4, 1988, 8:00 a.m.–3:00 p.m., budget and program planning, marine fishing license proposals, MAFAC subcommittee reports, federal fisheries responsibilities, and fishery highlights.

Portion Closed to The Public

February 3, 1988, 1:30–3:30 p.m. (Executive Session), budget and program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on January 13, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other

portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff—Fisheries, Office of Legislative Affairs, NOAA, Washington, DC 20235. Telephone: (202) 673–5429.

Date: January 13, 1988.

Bill Powell,

Executive Director.

[FR Doc. 88–960 Filed 1–19–88; 8:45 am]

BILLING CODE 3510–08–M

Regional Fishery Management Councils; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Representatives of the Scientific and Statistical Committees of the Western Pacific, North Pacific and Pacific Fishery Management Councils will convene a joint public meeting, February 4, 1988, at 1:30 p.m., at the Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, WA, to review the proposed revisions to the Code of Federal Regulations, Guidelines for Fishery Management Plans. The public meeting will adjourn February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: January 13, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–1048 Filed 1–19–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comment on Bilateral Negotiations During 1988

January 14, 1988.

The U.S. Government anticipates holding negotiations during 1988 concerning expiring bilateral agreements covering certain cotton, wool and man-made fiber textiles and apparel from Brazil (March 31, 1988), Costa Rica (December 31, 1988), Dominican Republic (May 31, 1988), Guatemala (December 31, 1988), Maldives (September 28, 1988), Sri Lanka (May 31, 1988), Thailand (December 31, 1988), Turkey (June 30, 1988) and the Union of the Socialist Soviet Republics (December 31, 1988). (The dates noted in parenthesis are the expiration dates of the agreements.)

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1033 Filed 1–19–88; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products From Malaysia; Correction

In the **Federal Register** notice (52 FR 45371) and the corresponding letter to the Commissioner of November 20, 1987, which announced adjusted import limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Malaysia, Category 438pt. should be changed to Category 438–W.

Footnote 3 should be changed to read: In Category 438–W, only TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1032 Filed 1–19–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0017, Market Surveys, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to this rule provides a basis for periodic Commission publications and is used by Commission economists and universities for research projects.

ADDRESS: Persons wishing to comment on this information collection should contact Robert Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395–7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Market Surveys.

Control Number: 3038–0017.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 700.

Estimated Number of Respondents: 400.

Issued in Washington, DC on January 14, 1988.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–1031 Filed 1–19–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.083]

Applications for New Awards Under the Women's Educational Equity Act Program for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: This notice corrects an error made in the application notice published on November 5, 1987, in the **Federal Register** on page 42472. Under the heading "Priorities", the citation for model projects to eliminate persistent barriers to educational equity for women in 34 CFR is corrected to read § 745.27.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Ms. Alice T. Ford, Women's Educational Equity Act Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 2053, FOB–6, Washington, DC 20202. Telephone (202) 732–4351.

Program Authority: 20 U.S.C. 3341–3348.

Dated: January 13, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 88–1015 Filed 1–19–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–69–NG]

Development Associates, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 4, 1987, of an application filed by Development Associates, Inc. (DA), a wholly owned subsidiary of the Washington Water Power Company (Washington Water Power), to extend for two years its existing blanket authorization to import Canadian natural gas granted by the ERA in DOE/ERA Opinion and Order No. 102 (Order No. 102) issued January 14, 1986 (1 ERA 70,620). DA further requests that during this extended period it be authorized to import a maximum of 30 Bcf of natural gas, an increase from the 20 Bcf allowed under its present authorization for the period ending March 29, 1988. The applicant maintains that the increase in volume is necessary to supply the needs of end-use customers and local distribution companies who are increasingly availing themselves of opportunities to purchase natural gas in the spot market on competitive terms.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention as applicable, and written comments are to be filed no later than February 19, 1988.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–4523

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The gas will be supplied by individual producers, producer groups, associations, and pipeline companies on a short-term basis. DA would import such gas either on behalf of, or for resale to, Washington Water Power, other natural gas distributors and a variety of industrial and institutional end-users. The terms and conditions of each supply contract will be determined as a result of negotiations between DA and the Canadian supplier and would be responsive to competitive market prices in the U.S. domestic gas market.

DA proposes to file quarterly reports with the ERA within 30 days after the end of each calender quarter giving the details of the individual transactions. DA's prior quarterly reports filed with the ERA indicate that approximately 9.8 Bcf of natural gas was imported under Order No. 102 through September 30, 1987.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., February 19, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to acheive a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral persentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, as final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of DA's application is available for inspection and copying in the National Gas Division Docket Room,

GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., January 7, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–987 Filed 1–19–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–70–NG]

Dynasty Gas Marketing, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 10, 1987, of an application filed by Dynasty Gas Marketing, Inc. (DGM), for blanket authorization to import up to 100 Mcf per day or up to 36.5 Bcf per year of Canadian natural gas over a two-year period, begining on the date of the first delivery, for short-term and spot market sales to customers in the United States. DGM, a marketer of natural gas, is a Texas corporation with its principal place of business in Stafford, Texas. DGM proposes to import the gas from suppliers in the Canadian province of Saskatchewan through existing facilities located on the international border at Monchy, Saskatchewan, Canada. DGM intends to use available capacity on existing pipelines and distribution systems. The specific terms of each import and sale would be negotiated on an individual basis, including the price and volumes, based on competition in the market. DMG states that it will submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 19, 1988.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

In the event ERA approves this request, it may designate only a total volume of natural gas to be imported during the authorized term rather than daily or annual limits in order to provide the importer with maximum operating flexibility.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 19, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Dynasty's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 7, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–988 Filed 1–19–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–54–NG]

St. Lawrence Gas Co., Inc.; Order Granting an Extension of Terms of an Existing Import Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting an extension of terms of an existing import authorization.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending St. Lawrence Gas Company, Inc. (St. Lawrence), authorization to import up to 50,000 Mcf per day through October 31, 1989. The order issued in ERA Docket No. 87–54–NG does not otherwise change the terms of St. Lawrence's existing authorization.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 13, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–989 Filed 1–19–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–67–NG]

Shell Gas Trading Co.; Application To Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of December 2, 1987, of an application filed by Shell Gas Trading Company (Shell Gas) for blanket authorization to enter into short and intermediate term natural gas export arrangements with various Canadian purchasers. Authorization is requested to export up to 60 Bcf of natural gas over a two-year period beginning on the date of first delivery. Shell Gas, a wholly-owned subsidiary of Shell Energy Resources Inc., a Delaware corporation, purchases its gas from its affiliated companies, Shell Offshore Inc. and Shell Western E&P, as well as from non-affiliated domestic producers and sellers.

Shell Gas proposes to negotiate its gas export arrangements primarily with domestic open-access interstate pipelines for transportation to the international border. Shell Gas intends to us existing facilities at the border and within the United States for the transportation of the proposed exports. Each export sale would be negotiated individually, including its price and volume. Shell Gas will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 19, 1988.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 02024–111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would reduce the U.S. trade deficit, promote competition, and, in light of the continuing "gas bubble," would benefit the public interest. Parties, especially those that may oppose this application, should comment in their response on these matters.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 19, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Shell Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–990 Filed 1–19–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3317-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740 (FTS 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Review and Prevention of Significant Deterioration Permitting Programs. (EPA ICR #1230).

Abstract: All new major sources of air pollution emitting SO_2 and/or particulate matter must submit estimates of emissions, proposed control technology, and air quality impact before commencing construction so the appropriate reviewing authority can ensure that the construction will comply with Part C, Part D, and section 110 of the Clean Air Act. Existing facilities undergoing modification are also subject to these requirements.

Respondents: Major sources emitting SO_2 and particulate matter.

Estimated Burden: 675,000 hours.

Frequency of Collection: On occasion.

Comments on the abstracts on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standard and Regulations (PM–223), Information and Regulatory Systems Division, 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW., Washington, DC 20503.

Date: January 7, 1988.

Daniel Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 88–1028 Filed 1–19–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

[Notice 1988–2]

Filing Dates for Louisiana Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Louisiana Special Elections.

SUMMARY: Committees required to file reports in connection with the Special Primary Election to be held on March 8, 1988, must file a 12-day Pre-Election Report by February 25, 1988, and if there is a majority winner, a 30-day Post-Election Report by April 7, 1988. In the event no candidate receives a majority vote in the Special Primary Election, the 30-day Post-Election Report would not be required. Rather a Special General Election would be held on April 16, 1988, and the committees required to file reports in connection with the Special General Election would be required to file a 12-day Pre-Election Report due on April 4, 1988, and a 30-day Post-Election Report due on May 16, 1988.

For further information contact: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463. Telephone: (202) 376–3120, Toll-free: (800) 424–9530.

Notice of Filing Dates for Special Elections, 4th Congressional District, Louisiana

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the Special Primary Election shall file a 12-day Pre-Election Report due on February 25, 1988, with coverage dates from the last report filed through February 17, 1988. Political committees that have not previously filed a financial report should report all financial activity through February 17, 1988. If one candidate receives a majority of votes cast, a 30-day Post-Election Report is due on April 7, 1988, with coverage dates from Februrary 18, 1988, through March 28, 1988. Committees that file this report in a timely manner will be granted a waiver of the April Quarterly reporting requirement.

In the event that no candidate achieves a majority vote in the Special Primary Election, the 30-day Post-Election Report would not be required. Rather a Special General Election would be held on April 16, 1988. Committees involved in this Special General Election would be required to file a 12-day Pre-Election Report due on April 4, 1988, with coverage dates from February 18, 1988, through March 27, 1988, and a 30-day Post-Election Report due on May 16, 1988, with coverage dates from April 1, 1988, through May 6, 1988. These committees also file an April Quarterly Report covers activity through March 31, 1988, and is due April 15, 1988.

Committees involved in just the first of the two Special Elections would be required to file the report due February 25 on an April Quarterly Report due April 15, 1988, with coverage dates from February 18, 1988, through March 31, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

Dated: January 14, 1988.

[FR Doc. 88–1023 Filed 1–19–88; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0049.

Title: Request for Advance or Reimbursement.

Abstract: This form is a modified Standard Form 270 which is used by applicants to request a final payment.

Type of Respondents: State or local governments Non-profit institutions.

Number of Respondents: 2,500.

Burden Hours: 1,250.

Frequency of Recordkeeping or Reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: January 14, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–993 Filed 1–19–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

[Docket No. 88–2]

Delhi Petroleum PTY. Limited v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Delhi Petroleum Pty. Limited ("Complainant") against U.S. Atlantic & Gulf-Australia-New Zealand Conference and Columbus Line, Inc. ("Respondents") was served January 14, 1988.

Complainant alleges that Respondents have violated sections 10(b)(1), 10(b)(6)(A), 10(b)(6)(E) and 10(b)(12), Shipping Act of 1984, 46 U.S.C. app. 1709(b)(1), (b)(6)(A), (b)(6)(E) and (b)(12), and sections 14 and 15, Shipping Act, 1916, 46 U.S.C. app. 812 and 814 through the assessment of freight charges in excess of those lawfully applicable on a shipment of oilwell equipment and supplies moving from the Port of Houston, Texas U.S.A. to the Port of Brisbane, Australia.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 16, 1989, and the final decision of the Commission shall be issued by May 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88–1046 Filed 1–19–88; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 88–3]

North Carolina State Ports Authority v. The 8900 Lines et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by the North Carolina State Ports Authority ("NCSPA") against a conference of water carriers operating under FMC Agreement No. 8900 (hereinafter "The 8900 Lines") was served January 14, 1988.

NCSPA alleges that The 8900 Lines and its member carriers have violated various sections of the Shipping Act of 1984 and section 205 of the Merchant Marine Act, 1936 through the imposition of an arbitrary sucharge in the amount of $275.00 per container at the Port of Wilmington against export cargo destined for the Middle East. Specific violations of the Shipping Act of 1984 alleged include sections 10(b)(6)—unfair and unjustly discriminatory practices in the matter of rates; 10(b)(10)—assessment of a rate or charge that is unjustly discriminatory between shippers or ports; 10(b)(11)—making or giving any undue or unreasonable preference or advantage to ports and shippers that compete with NCSPA; 10(b)(12)—subjecting NCSPA and those using its facilities to an unreasonable refusal to deal and an undue or unreasonable prejudice or disadvantage; 10(c)(1)—imposition of a boycott upon NCSPA; 10(c)(2) engaging in conduct that unreasonably restricts the use of intermodal services, and 10(d)(1)—imposition of an unjust and unreasonable regulation or practice; 46 U.S.C. app. 1709 10(b)(6), 10(b)(10), 10(b)(11), 10(b)(12), 10(c)(1), 10(c)(2), and 10(d)(1).

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 16, 1989, and the final decision of the Commission shall be issued by May 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88–1045 Filed 1–19–88; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Interport Co. Inc. et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

The Interport Co., Inc., 2300 East Higgins Road, Elk Grove Village, IL 60007
Sankyu U.S.A., Incorporated, 235 Montgomery Street, Suite 467, San Francisco, CA 94104; Officer: Tsutomu Nakamura, President
Marina Air-Ocean International, 139 Mitchell Ave., So. San Francisco, CA 94080
Stephen A. Mace, Concourse A, Municipal Airport, Birmingham, AL 35212
Future Freight Systems, Inc., 60 Jacobus Avenue, South Kearny, NJ 07032; Officer: Joseph Sade, President/Director
Alltransport Incorporated, 17 Battery Place North, New York, NY 10004; Officers: Joachim Schoenfeld, President; Kurt Konodi-Floch, Exec. Vice President; Walter Gartner, Secretary/Treasurer
Braunkohle Transport U.S.A., Inc., 306 Axminister Drive, St. Louis, MO 63026, Officer: Dennis Denham, President
Maurice Pincoffs Co., 2040 North Loop West, Houston, Texas 77018; Officers: John Griffith, President; J. T. Symonds, Vice President; Daniel Breem, Director
World Trade Transport of Virginia, 22 Export Drive, Sterling, VA 22170; Officers: Henry R. Youngblood, President; Jack P. Moore, Vice President; Michael C. Moore, Vice President

By the Federal Maritime Commission.

Dated: January 14, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–1047 Filed 1–19–88; 8:45 am]

BILLING CODE 6730–01–M

Federal Mediation and Conciliation Service

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1988 Program Guidelines/Application Solicitation.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1988 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program. The program is supported by Federal funds authorized by the Labor Management Cooperation Act of 1978, subject to annual appropriations. No comments were received during the period set aside for public comments.

ADDRESS: Send applications to: Peter L. Regner, Director, Staff Operations and Programs, FMCS, 2100 K Street NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

Labor-Management Cooperation Program, Application Solicitation—FY 1988

A. Introduction

The following is the final solicitation for the Fiscal Year 1988 cycle of the Labor-Management Cooperation Program. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plan, area, public sector, and industry-wide labor and management committees which:

(A) Have been organized jointly by employeres and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section H. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by so-called "meet and confer" agreements are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 88, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and discuss the full range of impacts these problems could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problems. This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant. The chart should identify months as "month 1, 2," etc., rather than by name of month as the grant start date will not be determined until all applications are reviewed. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for an external evaluation or internal assessment of the project's success in meeting its goals and objectives.

An evaulation plan must be developed which will briefly discuss what basic questions or issues the assessment would examine and what baseline data the committee staff would already have/or will grant for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson on behalf of all members is not acceptable.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grant Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applications, the section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's fiscal feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration and quality of the application; and,

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site locations, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies are not eligible.

Third party private non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exception applies to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

The FMCS FY88 allocation for this program in $817,000. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (in-plant, industry, public sector, and area).

providing the FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY88 appropriation to contract for program support purposes (other than administrative).

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committee (i.e., in existance at least 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period will thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing inplant applicants; up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing are, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants of existing committees must provide at least 25 percent of the total allowable project costs. All matching funds must be in cash rather than in-kind goods or services. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently employed for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts only. Also, under no circumstances will business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY88 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than April 16, 1988. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, *plus three copies* should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW, Washington, DC 20427. Applications submitted without sufficient copies may be returned.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Board(s). The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process of those applications recommended by the Board(s).

All FY88 grant applicants will be notified of results, and all grant awards will be made, prior to September 30, 1988. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427, or by calling 202/653-5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 88-965 Filed 1-19-88; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Community National Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 10, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community National Bancorp, Inc.*, Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank and Trust Company of New York, Staten Island, New York.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. **Fifth Third Bancorp**, Cincinnati, Ohio; to merge with C & H Bancorp, Piqua, Ohio, and thereby indirectly acquire Citizens Heritage Bank, N.A., Piqua, Ohio.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with Citizens Union Corporation, Rogersville, Tennessee, and thereby indirectly acquire Citizens Union Bank, Rogersville, Tennessee.

2. **Dominion Bankshares Corporation**, Roanoke, Virginia; to merge with Greene County Bancshares, Inc., Greeneville, Tennessee, and thereby indirectly acquire Greene County Bank, Greeneville, Tennessee.

3. **Dominion Bankshares Corporation**, Roanoke, Virginia; to merge with Merchants & Planters Corporation, Newport, Tennessee, and thereby indirectly acquired Merchants & Planters Bank, Newport, Tennessee.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. **Putnam-Greene Financial Corporation**, Eatonton, Georgia; to acquire 100 percent of the voting shares of The Pembroke State Bank, Pembroke, Georgia.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **CNB Financial Corporation**, Kansas City, Kansas; to acquire 100 percent of the voting shares of First National Bank of Overland Park, Overland Park, Kansas.

Board of Governors of the Federal Reserve System, January 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-973 Filed 1-19-88; 8:45 am]

BILLING CODE 6210-01-M

Leslie Formell and Malcolm Deisenroth, Jr., Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Leslie Formell*, New Brighton, Minnesota; to acquire 100 percent of the voting shares of Graceville Bancorporation Inc., Graceville, Minnesota, and thereby indirectly acquire First State Bank of Graceville, Graceville, Minnesota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Malcolm Deisenroth, Jr.*, Tulsa, Oklahoma; to acquire an additional 14.60 percent of the voting shares of Tulbancorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Bank of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, January 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-974 Filed 1-19-88; 8:45 am]

BILLING CODE 6210-01-M

Montana Bancsystem, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Montana Bancsystem, Inc.*, Billings, Montana; to engage *de novo* in making and servicing loans on a limited basis pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the States of Montana, Colorado and Texas.

Board of Governors of the Federal Reserve System, January 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-975 Filed 1-19-88; 8:45 am]

BILLING CODE 6210-01-M

Progressive Bank, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Progressive Bank, Inc.*, Pawling, New York; to acquire the Stockbridge Group, Ltd., Hopewell Junction, New York, and thereby engage in making and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-978 Filed 1-19-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration; Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory councils in the month of February 1988. These committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: February 2-3: 9:00 a.m.

Place: National Institutes of Health, Building #31C, Conference Room #9, 9000 Rockville Pike, Bethesda, Maryland 20892

Status of Meeting:

Open—February 2: 9:00 a.m.–12 noon; February 3: 9:00 a.m.–5:00 p.m.

Closed—Otherwise.

Contact: Ms. Sheila H. Gardner, Parklawn Building, Room 8A-54, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0441

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA.

Date and Time: February 4-5: 10:30 a.m.

Place: National Institutes of Health, Building #1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting:

Open—February 4: 10:30 a.m.–5:00 p.m.

Closed—Otherwise.

Contact: James Vaughan, Parklawn Building, Room 16C-20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Committee Name: National Advisory Mental Health Council, MIMH

Date and Time: February 8-10: 9:00 a.m.

Place: February 8: National Institutes of Health, Building #31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892 February 9-10: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting:

Open—February 8: 9:00 a.m.–5:00 p.m.

Closed—Otherwise.

Contact: Rachel Townson, Parklawn Building, Room 9-105, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3367

Purpose: The Council advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 11-12: 9:00 a.m.

Place: J.W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC 20004

Status of Meeting:

Open—February 11: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Pamela J. Mitchell, Parklawn Building, Room 9C-14, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 11-13: 9:00 a.m.

Place: The Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 11: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Dorothy Tengood, Parklawn Building, Room 9C-18, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: February 11-13: 9:00 a.m.

Place: The Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Status of Meeting:

Open—February 11: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Shirley Maltz, Parklawn Building, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neurosciences Reserach Review Committee, NIMH.

Date and Time: February 11-13: 8:30 a.m.

Place: The Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 11: 8:30-9:30 a.m.

Closed—Otherwise.

Contact: Gerry, Parklawn Building, Room 9C-14, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: February 16-17: 9:00 a.m.

Place: Holiday Inn Crown Plaza, Rockville Room, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting:

Open—February 16: 9:00-9:30 a.m.

Closed—Otherwise.

Contact: Ronald F. Suddendorf, Parklawn Building, Room 16C-26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 16-19: 8:30 a.m.

Place: Ambassador II Room, Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20816.

Status of Meeting:

Open—February 16: 8:30-8:45 a.m.

Closed—Otherwise.

Contact: Elmore S. King, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2755.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse for support of research and research training activities and make recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: February 16-19: 9:00 a.m.

Place: Embassy II, The Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 16: 9:00-9:30 a.m.

Closed—Otherwise.

Contact: Daniel Mintz, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse for support of research and research training activities and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.

Date and Time: February 16-19: 8:30 a.m.

Place: Embassy I, The Bethesda Ramada Inn, 8400 Wisconsin Avenue, Rockville, MD 20814.

Status of Meeting:

Open—February 16: 8:30-9:30 a.m.

Closed—Otherwise.

Contact: Ron Gold, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 16-19: 8:30 a.m.

Place: Ambassador I Room, Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20816.

Status of Meeting:

Open—February 16: 8:30-8:45 a.m.

Closed—Otherwise.

Contact: Heinz Sorer, Parklawn Building, Room 10-42, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIJMH.

Date and Time: February 17–19: 9:15 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Status of Meeting:

Open—February 17: 9:15–10:00 a.m.
Closed—Otherwise.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 18–19: 9:00 a.m.

Place: Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status of Meeting:

Open—February 18: 9:00–9:30.9:30 a.m.
Closed—Otherwise.

Contact: Naomi Lichtenberg, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health in the fields of child, family and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 18–19: 9:00 a.m.

Place: J.W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

Status of Meeting:

Open—February 18: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Pamela J. Mitchell, Parklawn Building, Room 9C–14, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and Time: February 18–20: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open–February 18: 9:00–10:00 a.m.
Closed–Otherwise.

Contact: Cathy Oliver, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 22–23: 9:00 a.m.

Place: Crown Plaza Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting:

Open—February 22: 9:00 a.m.—9:30 a.m.
Closed—Otherwise.

Contact: Thomas D. Sevy, Parklawn Building, Room 16C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: February 22–24: 9:00 a.m.

Place: The Canterbury Hotel, 1733 "N" Street NW., Washington, DC 20036.

Status of Meeting:

Open—February 22: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Emilie A. Embrey, Parklawn Building, Room 9C–08, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Alcohol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and Time: February 23–24: 9:00 a.m.

Place: National Institutes of Health, Building #31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Parklawn Building, Room 12C–05, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1910.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B & C of Title XIX of the public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

Committee Name: Basic Behavioral Processes Research Review Committee, NIMH.

Date and Time: February 24–25: 9:00 a.m.

Place: The Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 24: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Doris East, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: February 24–26: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting:

Open—February 24: 9:00–11:00 a.m.
Closed—Otherwise.

Contract: Samir Zakhari, Parklawn Building, Room 16C26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: February 24–26: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 24: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Gloria Yockelson, Parklawn Building, Room 9C–14, 5600 Fishers Lane, Rockville, MD 20857, (301) 445–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 25–26: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting:

Open—February 25: 9:00–9:30 a.m.
Closed—Otherwise.

Contact: Thomas D. Sevy, Parklawn Building, Room 16C–26, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: February 25–26: 9:00 a.m.

Place: The Governor's House, Rhode Island Avenue at 17th Street NW., Washington, DC 20036.

Status of Meeting:

Open—February 25: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Frances Smith, Parklawn Building, Room 9C–02, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: February 29–March 1: 9:00 a.m.

Place: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—February 29: 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Gloria Yockelson, Parklawn Building, Room 9C–14, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Metal Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: January 13, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–1010 Filed 1–19–88; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

National Institute for Occupational Safety and Health, Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: February 4–5, 1988.

Place: Kentucky Room, Hyatt Regency Knoxville, 500 Hill Avenue, SE, Knoxville, Tennessee 37901.

Time and Type of Meeting: Open 8:30 a.m. to 5 p.m.—February 4; Open 8 a.m. to 1 p.m.—February 5.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health

research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; and discussions of musculoskeletal injuries, silicosis among miners, and coal workers pneumoconiosis.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

The requirement for a 15-day advance publication notice of this meeting was not met due to inclement weather and the closing of the CDC facility.

Dated: January 13, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-1000 Filed 1-19-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket Nos. 80D-0097 and 82D-0049]

Defect Action Levels for the Adulteration of Wheat Flour and Macaroni Products by Insects

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its final decision on the revised defect action levels for insect fragments in wheat flour other than durum wheat flour and in macaroni and noodle products. Based on the review of the comments, FDA is issuing the revised Compliance Policy Guide 7104.06, "Wheat Flour—Adulterated with Insect Fragments and Rodent Hairs," and is withdrawing the tentative revisions to Compliance Policy Guide 7102.06, "Macaroni and Noodle Products—Adulteration Involving Insect Fragments and Rodent Hairs." The comments and the agency's analysis of the comments are on file in the Dockets Management Branch under the appropriate docket number.

DATE: The revised defect action level will be effective January 20, 1988.

ADDRESS: Written requests for single copies of Compliance Policy Guide 7104.06 should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1986 (51 FR 34142), FDA announced the availability of two revised Compliance Policy Guides, in draft form: Compliance Policy Guide 7104.06, "Wheat Flour Adulterated With Insect Fragments and Rodent Hairs," and Compliance Policy Guide 7102.06, "Macaroni and Noodle Products—Adulteration Involving Insect Fragments and Rodent Hairs." The draft Compliance Policy Guides set forth revised defect action levels for insect fragments in wheat flour and in macaroni and noodle products. This action was initiated by a petition filed by the Millers' National Federation. Interested persons were given until November 24, 1986, to comment.

Ten letters, each containing one or more comments, were received from industry, industry associations, the U.S. Department of Agriculture, Kansas State University, and a consumer.

Based on the agency's review of the comments concerning the tentative revision of the defect action level for insect fragments in wheat flour other than durum flour, the agency has determined that the revised defect action level of wheat flour is more reflective of the capabilities of the flour milling industry, and therefore the revised defect action level should become effective.

FDA based its tentative revision of the defect action level for insect fragments in macaroni and noodle products on the tentative revised defect action level for insect fragments in wheat flour other than durum flour. However, the review of the comment in regard to the revision of the defect action level for insect fragments in macaroni and noodle products revealed a need to reevaluate the extent of the use of wheat flour other than durum flour in macaroni and noodle products. Therefore, until new data can be gathered concerning the extent of the use of wheat flour other than durum flour in macaroni and noodle products, the agency has determined that the defect action level for macaroni and noodle products should not be revised and the current defect action level should be retained.

The comments and the agency's analysis of the comments are on file in the Dockets Management Branch (address above) under the appropriate docket number: Docket Number 80D-0097 for wheat flour and Docket Number 82D-0049 for macaroni and noodle products. These documents are available in that office for public examination between 9 a.m. and 4 p.m., Monday through Friday.

Having reviewed and considered all the comments, the agency is announcing that: (1) The defect action level for insect fragments in wheat flour, other than durum flour in Compliance Policy Guide 7104.06, is established as 75 fragments per 50 grams of flour, (2) the tentative revision of the defect action level for insect fragments in Compliance Policy Guide 7102.06 for macaroni and noodle products is withdrawn, and (3) the current defect action level of 225 insect fragments per 225 grams for macaroni and noodle products is retained.

Effective dates for defect action levels are normally 60 days after publication of the notice of availability in the **Federal Register** in order to provide manufacturers with time to make any adjustments necessary to achieve compliance. However, such a delay is not needed for the revision of the defect action level for insect fragments in wheat flour because the revised defect action level is less restrictive than the previous one. Accordingly, the revised defect action level for wheat flour other than durum flour will become effective January 20, 1988.

Requests for single copies of Compliance Policy Guide 7104.06 are to be identified with Docket Number 80D-0097 and submitted in writing to the Dockets Management Branch (address above).

Dated: January 4, 1988.

Ronald A. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-1011 Filed 1-19-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1776; FR-2441]

Mortgage and Loan Insurance Programs Under the National Housing Act; Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1988, is 8¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for instance, whichever rate it higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1988, is 9⅛ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1988, is 9⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 9⅛ percent for the six-month period beginning January 1, 1988. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1988.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1979:

Effective rate (percent)	On or after	Prior to
8	Jan. 1, 1979	July 1, 1979.
8½	July 1, 1979	Jan. 1, 1980.
9½	Jan. 1, 1980	July 1, 1980.
9½	July 1, 1980	Jan. 1, 1981
11½	Jan. 1, 1981	Jan. 1, 1981
12½	July 1, 1981	Jan. 1, 1982
12½	Jan. 1, 1982	July 1, 1982.
10½	Jan. 1, 1983	July 1, 1983.
10½	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
12½	July 1, 1984	Jan. 1, 1985.
11½	Jan. 1, 1985	July 1, 1985.
11½	July 1, 1985	Jan. 1, 1986.
10½	Jan. 1, 1986	July 1, 1986.
8½	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987
8	July 1, 1987	Jan 1, 1988.
8¾	Jan. 1, 1988	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and January through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1988, is 8⅜ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1988.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: January 6, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-1022 Filed 1-19-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Thursday, February 4, 1988, from 9:30 a.m. until 12:30 p.m. or until business is concluded. The meeting will convene in Rooms 7000 A&B at the Department of the Interior, 18th and C Streets, NW., Washington, DC. It will be open to the public, subject to the availability of space.

The agenda will include: Introduction of new members, reports of task force activities, and any recommendations for possible action by the Committee. The final report of the Advanced Materials Task Force will be considered at this meeting. There will be a presentation on new technologies using pig iron and anthracite coal in the production of ferroalloys given by Thomas A. Schott, Chairman of Schott Incorporated. A second presentation will be made by Thomas F. Bates of GeoVision, Incorporated, on the production of a documentary on the every day use of minerals in society.

BEST COPY AVAILABLE

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The Committee is particularly interested in hearing any comments or suggestions regarding advanced materials and technology issues which fall within the purview of the Committee. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Executive Director (see below) of their intention to appear.

FOR FURTHER INFORMATION CONTACT: Gully Walter, Department of the Interior, Washington, DC., Room 6650, (202) 343–2136.

Dated: January 14, 1988.

Gully Walter,

Executive Director.

[FR Doc. 88–978 Filed 1–19–88; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Buy Indian Act Eligibility for Contracts

January 12, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice, change in policy.

SUMMARY: It is the Bureau's policy that all purchases or contracts be made or entered into with qualified Indian contractors to the maximum extent practicable and to contact non-Indian contractors only after it has been determined that there are no qualified Indian contractors within the normal competitive area that can fill and are interested in filling the procurement requirement.

For the purposes of the Buy Indian Act (25 U.S.C. 47, June 25, 1910), the term "Indian" means a person who is a member of an Indian tribe or otherwise considered to be an Indian by the tribe with which affiliation is claimed. Since 1971, the policy of the Bureau of Indian Affairs has been that an Indian contractor had to be 100% Indian owned and controlled in order to compete for contracts under the Buy Indian Act. The Bureau of Indian Affairs, however, has changed its policy with regard to the definition of Indian contractor to be "a legal entity that is 51% Indian owned." The reason for this change in policy is to encourage the development of Indian economic enterprises. The policy change became effective on January 12, 1988, however, the Bureau believes it is in the best interest of the public to have an opportunity to comment on and codify this policy in the Code of Federal Regulations. Accordingly, the public will have an opportunity to comment on proposed regulations for the Buy Indian Act program which are being prepared for publication. The contracts for this program will, in all other respects, adhere to the requirements of the Federal Acquisition Regulations (48 CFR Parts 1 and 14).

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

EFFECTIVE DATE: January 12, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy C. Garrett, Director, Office of Administration, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20240; telephone (202) 343–4174.

Ross O. Swimmer,

Assistant Secretary — Indian Affairs.

[FR Doc. 88–982 Filed 1–19–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–940–08–4212–13; CA 20256]

California; Realty Action; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal land within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portion for the preserve. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978–4815.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on December 15, 1987, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described public land:

San Bernardino Meridian, California

T. 6 S., R. 2 W.,
Sec. 14, Lots 1 to 16, inclusive;
Sec. 24, NW¼ NW¼;

The area described contains 685.36 acres in Riverside County.

2. In exchange for the land described in paragraph 1, on December 15, 1987, the United States accepted title to the following described private land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.,
Sec. 7, E½ NE¼, SW¼ NE¼, and N½ SE¼.

EXCEPT 50% of all mineral, gas, oil, and geothermal rights and substances under the real estate described in the deed, without rights of surface entry, as reserved in the deed recorded April 27, 1971, as Instrument No. 43314 of Official Records of Riverside County, California.

The area described contains 200 acres in Riverside County.

3. The values of the Federal public land and the non-Federal private land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on February 22, 1988, the land described above in paragraph 2 shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 22, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on February 22, 1988, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on February 22, 1988, the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Date: January 11, 1988.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 88–966 Filed 1–19–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4212–13; CA 18782]

California; Realty Action; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal land within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portion for the preserve.

The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978–4815.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on December 14, 1987, pursuant to the authority of sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described public land:

San Bernardino Meridian, California

T. 8 S., R. 8 E.,
Sec. 16, lots 1 to 7, inclusive, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼;

The area described contains 647.83 acres in Riverside County.

2. In exchange for the land described in paragraph 1, on December 11, 1987, the United States accepted title to the following described private land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 6 E.,
Sec. 1, SE¼SE¼;
T. 4 S., R. 7 E.,
Sec. 7, lots 1 and 2 of the SW¼, E½NW¼ NE¼, and W½SW¼SE¼.

EXCEPT 50% of all mineral, gas, oil, and geothermal rights and substances under the real estate described in the deed, without rights of surface entry, as reserved in the deed recorded April 27, 1971, as Instrument No. 43314 of Official Records of Riverside County, California.

The areas described contain 246.53 acres in Riverside County.

3. The values of the Federal public land and the non-Federal (private) land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on February 22, 1988, the land described above in paragraph 2 shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 22, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on February 22, 1988, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on February 22, 1988, the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

Date: January 11, 1988.

[FR Doc. 88–967 Filed 1–19–88; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Reclamation Central Valley Project, California; Realty Action; Competitive Sale of Public Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $22,400.00, the appraised value.

DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Merle Hopper, Civil Engineering Technician, Willows Office (CVP), P.O. Box 988, 1140 West Wood Street, Willows, California 95988–0988, telephone (916) 934–7066.

SUPPLEMENTARY INFORMATION: A tract of land in the west one-half of Section Twenty-three (23), Township Seventeen (17) North, Range Four (4) West, Mount Diablo Meridian, County of Colusa, State of California, containing an area of 112 acres, more or less.

Said above tract shall be subject to easements or rights-of-way existing or of record in favor of the public or to third parties.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at 1140 West Wood Street, Willows, California on April 7, 1988 at 10:00 a.m., at which time the sealed bids will be opened. Sealed bids will be accepted at the Bureau of Reclamation, Willows Office (CVP), at the above address until close of business on April 6, 1988. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. In order to promote full and free competition, a certificate of independent price determination must accompany each sealed bid which is included in the bid package. This can be obtained from the Willows Office.

The land is within the County of Colusa, State of California. The sale is consistent with the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering this land for sale. Interested parties are advised that no public access exists and no access will be provided by the United States.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Bureau of Reclamation, Willows Office (CVP), 1140 West Wood Street, Willows, California.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties. The quitclaim deed shall also make the land subject to conditions and covenants pursuant to Executive Orders 11988 and 11990.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determinaiton of the Department of the Interior.

Neil M. Schild,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

Date: January 7, 1988.

[FR Doc. 88-977 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Willis D. Hamilton, Orange, CA—PRT-723971

The applicant requests a permit to import a sport-hunted trophy of a bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by Mr. Phil van der Merwe, Cape Province, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Bob Clark, Oklahoma City, OK—PRT-723928

The applicant requests a permit to import four captive born radiated tortoises (Geochelone radiata) from Mr. Olaf Pronk, The Netherlands, for the purpose of captive breeding.

Applicant: Steven A. Bilbro, Monroe, WA—PRT-724251

The applicant requests a permit to import one pair of captive-bred peregrine falcons (Falco peregrinus anatum) from Mr. John Lejeune, British Columbia, Canada, for captive breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director of the above address. Please refer to the appropriate PRT number when submitting comments.

Date: January 14, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-1025 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3980, Block 104, portion, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on January 8, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review..

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 11, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-968 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5016, Block 379, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 8, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 11, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-969 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4534, Block 791, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Corpus Christi, Texas.

DATE: The subject DOCD was deemed submitted on January 8, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 11, 1988

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-970 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Proposed Middle Fork of the Vermilion National Scenic River, IL; Receipt of Application and 45-day Public Review Period

SUMMARY: On August 20, 1987, the Governor of the State of Illinois submitted an application to the Secretary of the Interior requesting that a 17.1-mile segment of the Middle Fork of the Vermilion River in east central Illinois be designated a State-administered component of the National Wild and Scenic Rivers System, in accordance with provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*). The segment involved extends from approximately river mile 46.9 downstream to river mile 29.8. The proposal is currently undergoing review by affected Federal Agencies as required by section 4(c) of the Act.

The general public and non-Federal Agencies are also invited to review and comment on the State's application and proposed national designation of the Middle Fork of the Vermilion River. Copies of the State application have been placed at the following locations for public inspection and review. The number in parenthesis behind the locations indicates the number of copies available for review.

Danville Public Library (5), Reference Desk, 307 North Vermilion Street, Danville, Illinois 61832

Urbana Free Library (2), Reference Desk, 201 South Race Street, Urbana, Illinois 61801

Kickapoo State Park Headquarters (1), Located at the east entrance of the park off Henning Road west of Danville, Illinois

Illinois Department of Conservation (2), Division of Planning, Room 300, 524 South Second Street, Springfield, Illinois 62706

State of Illinois Center (3), Department of Conservation, Suite 4-300, 100 West Randolph, Chicago, Illinois 60601

Illinois Department of Conservation (1), Region II Office, 110 James Road, Spring Grove, Illinois 60081

Illinois Department of Conservation (1), Region III Office, 6 Henson Place, Champaign, Illinois 61820

Illinois Department of Conservation (1), Region IV Office, 34 West Broadway, Alton, Illinois 62002

Illinois Department of Conservation (1), Region V Office, Located on State Route 37 a few miles north of Benton, Illinois.

National Park Service (2), Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102

DATE: Written comments will be accepted until March 7, 1988.

ADDRESSES: Written comments should be sent to: Regional Director, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Tom Gilbert, Regional Coordinator, National Wild and Scenic Rivers System, (402) 221-3481.

SUPPLEMENTARY INFORMATION: The Middle Fork of the Vermilion River was designated a State Protected River by Public Act 84-1257, enacted by the State

legislature and approved by the Governor of Illinois, on August 6, 1986. Section 2(a)(ii) of the Wild and Scenic Rivers Act provides that a river protected by or pursuant to an act of the State legislature may be designated as a component of the national system by the Secretary of the Interior upon application from the Governor of the State and findings that the river qualifies for inclusion.

Date: January 6, 1988.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 88-997 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 9, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 4, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott, *Santa Fe, Prescott and Phoenix Railroad Depot*, Cortez St.

CALIFORNIA

San Francisco County

San Francisco, *US Mint*, 155 Herman St.

CONNECTICUT

New London County

New London, *Coit Street Historic District*, Roughly bounded by Coit St., Washington, Tilley St., Bank St., and Reed St.

New London, *Downtown New London Historic District (Boundary Increase)*, Along Huntington, Washington and Jay Sts.; SW corner of Meridian and Gov. Winthrop Blvd.; along Bank and Sparyard Sts.

INDIANA

Laporte County

Michigan City, *Michigan City East Pierhead Light Tower and Elevated Walk*, E side of entrance to Michigan City Harbor

KENTUCKY

Hardin County

Fort Knox, *US Bullion Depository, Fort Knox, Kentucky*, Gold Vault Rd. and Bullion Blvd.

MAINE

Hancock County

Islesford vincinty, *Baker Island Light Station (Light Stations of Maine MPS)*, Baker Island, Acadia National Park

Northeast Harbor vincity, *Bear Island Light Station (Light Stations of Maine MPS)*, Bear Island, Acadia National Park

MICHIGAN

Calhoun County

Albion, *Robertson, Eugene P., House*, 412 S. Clinton St.

Manistee County

Onekama, *Manistee County Courthouse Fountain*, Onekama Village Park

Wayne County

Highland Park, *Highland Heights—Stevens' Subdivision Historic District*, Bounded by Woodard Ave., the alley S of E. Buena Vista Ave., Oakland Ave., and the alley S of Massachusetts Ave.

Highland Park, *Medbury's—Grove Lawn Subdivisions Historic District*, Roughly bounded by Hamilton Ave., the alley S of Louise Ave., Woodward Ave., and the alley S of Puritan Ave.

NEW YORK

Essex County

Willsboro Point vicinity, *Edgewater Farm*, 470 Point Rd.

Livingston County

Sonyea vicinity, *Black and White Farm Barn*, &Resort TR), 375 Littleworth La.

Sea Cliff, *House at 103 Roslyn Avenue (Sea Cliff Summer Resort TR)*, 103 Roslyn Ave.

Sea Cliff, *House at 112 Sea Cliff Avenue (Sea Cliff Summer Resort TR)*, 112 Sea Cliff Ave.

Sea Cliff, *House at 115 Central Avenue (Sea Cliff Summer Resort TR)*, 115 Central Ave.

Sea Cliff, *House at 137 Prospect Avenue (Sea Cliff Summer Resort TR)*, 137 Prospect Ave.

Sea Cliff, *House at 173 Sixteenth Avenue (Sea Cliff Summer Resort TR)*, 173 Sixteenth Ave.

Sea Cliff, *House at 176 Prospect Avenue (Sea Cliff Summer Resort TR)*, 176 Prospect Ave.

Sea Cliff, *House at 18 Seventeenth Avenue (Sea Cliff Summer Resort TR)*, 18 Seventeenth Ave.

Sea Cliff, *House at 19 Locust Place (Sea Cliff Summer Resort TR)*, 19 Locust Pl.

Sea Cliff, *House at 195 Prospect Avenue (Sea Cliff Summer Resort TR)*, 195 Prospect Ave.

Sea Cliff, *House at 199 Prospect Avenue (Sea Cliff Summer Resort TR)*, 199 Prospect Ave.

Sea Cliff, *House at 207 Carpenter Avenue (Sea Cliff Summer Resort TR)*, 207 Carpenter Ave.

Sea Cliff, *House at 240 Sea Cliff Avenue (Sea Cliff Summer Resort TR)*, 240 Sea Cliff Ave.

Sea Cliff, *House at 285 Glen Avenue (Sea Cliff Summer Resort TR)*, 285 Glen Ave.

Sea Cliff, *House at 285 Sea Cliff Avenue (Sea Cliff Summer Resort TR)*, 285 Sea Cliff Ave.

Sea Cliff, *House at 290 Eighth Avenue (Sea Cliff Summer Resort TR)*, 290 Eighth Ave.

Sea Cliff, *House at 332 Franklin Avenue (Sea Cliff Summer Resort TR)*, 332 Franklin Ave.

Sea Cliff, *House at 362 Sea Cliff Avenue (Sea Cliff Summer Resort TR)*, 362 Sea Cliff Ave.

Sea Cliff, *House at 378 Glen Avenue (Sea Cliff Summer Resort TR)*, 378 Glen Ave.

Sea Cliff, *House at 52 Eighteenth Avenue (Sea Cliff Summer Resort TR)*, 52 Eighteenth Ave.

Sea Cliff, *House at 58 Eighteenth Avenue (Sea Cliff Summer Resort TR)*, 58 Eighteenth Ave.

Sea Cliff, *House at 65 Twentieth Avenue (Sea Cliff Summer Resort TR)*, 65 Twentieth Ave.

Sea Cliff, *House at 9 Locust Place (Sea Cliff Summer Resort TR)*, 9 Locust Pl.

Sea Cliff, *St. Lukes Protestant Episcopal Church (Sea Cliff Summer Resort TR)*, 253 Glen St.

Orange County

West Point vicinity, *US Bullion Depository, West Point, New York*, US Military Academy

Suffolk County

Montauk, *Montauk Tennis Auditorium*, Flamingon Ave. and Edjemere St.

Ulster County

New Paltz vicinity, *DuBois, Josiah, Farm*, Libertyville Rd.

NORTH CAROLINA

Duplin County

Magnolia vicinity, *Dickson, Robert, Farm*, E. side of SR 1917

Wayne County

Mount Olive, *Southerland-Burnette House*, 210 N. Chestnut St.

OHIO

Cuyahoga County

Cleveland, *Glidden, Francis K., House*, 1901 Ford Dr.

Cleveland, *Weizer Building*, 8935 Buckeye Rd.

Franklin County

Columbus, *Berry Brothers Bolt Works*, 350 E. First Ave.

PUERTO RICO

Humacao County

Fajardo, *US Custom House (United States Custom Houses in Puerto Rico MPS)*, Calle Union

Mayaguez County

Mayaguez, *US Custom House (United States Custom Houses in Puerto Rico MPS)*, Ava. Gonzalez Clemente, esq. McKinley.

Ponce County

Ponce, *US Custom House (United States Custom Houses in Puerto Rico MPS)*, Calle Bonaire at Calle Aduana Playa de Ponce

San Juan County

San Juan, *US Custom House (United States Custom Houses in Puerto Rico MPS)*, Calle Puntilla, 1.

SOUTH CAROLINA

Darlington County

Darlington, *Cashua Street—Spring Street Historic District (City of Darlington MRA)*, Cashua St. between Columbian St. and Warley St., and Spring St. between Cashua St. and N. Ervin St.

Darlington, *Dargan, Julius A., House (City of Darlington MRA)*, 486 Pearl St.

Darlington, *Darlington Industrial Historic District (City of Darlington MRA)*, Roughly bounded by Sixth St., Ave. B, Dargan St., and Siskron St.

Darlington, *Deas, Edmund H., House (City of Darlington MRA)*, 229 Ave. E

Darlington, *First Baptist Church (City of Darlington MRA)*, 246 S. Main St.

Darlington, *Hudson, Nelson, House (City of Darlington MRA)*, 521 Pearl St.

Darlington, *Manne Building (City of Darlington MRA)*, 129 Pearl St.

Darlington, *McCall, Clarence, House (City of Darlington MRA)*, 870 Cashua St.

Darlington, *McCullough, Charles S., House (City of Darlington MRA)*, 480 Pearl St.

Darlington, *South Carolina Western Railway Station (City of Darlington MRA)*, 129 Russell St.

Darlington, *West Broad Street Historic District (City of Darlington MRA)*, W. Broad St. between Dargan St. and Player St.

Darlington, *Wilds—Edwards House (City of Darlington MRA)*, 120 Edwards Ave.

Darlington, *Williamson, Mrs. B. F., House (City of Darlington MRA)*, 141 Oak St.

SOUTH DAKOTA

Bon Homme County

Tabor, *Old St. Wenceslaus Catholic Parish House*, 227 Yankton St.

Brookings County

Brookings, *Brookings Commerical Historic District*, Roughly along Main Ave. between the CANW Railroad and the alley N of Fifth St.

Codington County

Kranzburg vicinity, *Ries, Nicholas T., Farmstead*, Off Codington County Hwy. 3

Custer County

Buffalo Gap vicinity, *Buffalo Gap Cheyenne River Bridge*, CR 856

Day County

Lily vicinity, *Barber, Charles A., Farmstead*, ¼ mi. W of Lily

Douglas County

Delmont, *Lenehan, Thomas, House*, Main St.

Jones County

Murdo vicinity, *Immanuel Lutheran Church*, 14 mi. N of I-90

Yankton County

Yankton, *Pennington, Governor John L., House*, 410 E. Third St.

TEXAS

Harris County

Houston, *San Felipe Courts Historic District*, 1 Allen Pkwy. Village.

[FR Doc. 88-996 Filed 1-19-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-387 (Preliminary)]

Certain Fabricated Structural Steel From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-387 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fabricated structural steel,[1] provided for in items 609.84, 609.86, 652.94, 652.95, 652.96, and 653.00 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 25, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 11, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on January 11, 1988, by counsel on behalf of the American Institute of Steel Construction, Inc. (AISC)., Chicago, Illinois.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on February 5, 1988, at the U.S. International Trade Commission

[1] For purposes of this investigation, the term "fabricated structural steel" means the following articles suitable for use in erecting or assembling buildings. (1) Angles, shapes, and sections, all of the foregoing of iron or steel, drilled, punched, or otherwise advanced; provided for in Tariff Schedules of the United States (TSUS) items 609.84 and 609.86; (2) columns, pillars, post, beams, girders, and similar structural units, all the foregoing of iron or steel (except non-malleable cast iron articles, rough or advanced), provided for in TSUS items 652.94, 652.95, 652.96; and (3) other structures and parts of structures not specially provided for, all the foregoing of iron or steel, provided for in TSUS item 653.00. The articles covered by this investigation are provided for in subheadings 7216.90.00, 7222.90.60, 7228.70.60, 7301.20.10, 7301.20.50, 7308.90.30, 7308.90.60, and 7308.90.90 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202–252–1192) not later than February 2, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before February 9, 1988, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 14, 1988.

[FR Doc. 88–1039 Filed 1–19–88; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31202]

Railroad Acquisition and Operation; The Mahoning Valley Railway Co.

The Mahoning Valley Railway Company (MVR) has filed a notice of exemption to lease and acquire through assignment and operate certain rail lines under an agreement with LTV Steel Company, Inc. (LTV), a noncarrier. The lines total 24.07 miles and consist of 15.38 route miles and 8.69 miles of industrial track. The LTV property over which MVR will operate is divided into two sections. No mileposts have been erected yet. (1) The Massillon Line is approximately 8.60 track miles (composed of 6.57 route miles and 2.03 miles of industrial track), beginning at a point approximately 2,300 feet south of Ordbrook Avenue SW., in Perry Township, Stark County, Ohio, and running in a northeasterly direction for a distance of approximately 1.22 miles to a point also in Perry Township, adjacent to Conrail Interchange Yard. The Massillon Line crosses property owned by LTV and Mercury Stainless, Inc. (Mercury). MVR will operate over LTV's property pursuant a lease agreement with LTV. It will operate over Mercury's property as the assignee of the rights held by LTV pursuant to a perpetual easement. MVR will also operate over certain spur and industrial track which connects with the Massillon Line. (2) The Canton Line is approximately 15.47 track miles (composed of 8.81 route miles and 6.66 miles of industrial track), bounded on the north by the line of Conrail and on the south by properties of LTV, and beginning at a point approximately 1,500 feet east of Trump Road in Perry Township, Stark County, and then running in a southwesterly direction approximately 1.44 miles to a point in the city of Canton, OH, approximately 750 feet from the western border of LTV. MVR will also operate over certain spur and industrial track which connects with the Canton Line.

Any comments must be filed with the Commission and served on Kimberly A. Madigan, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, (202) 628–2000, as representative of MVR and James J. Corbett, LTV Steel Company, Inc., 25 W. Prospect Avenue., Cleveland, OH 44115, (216) 622–5000, as representative of LTV.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1004 Filed 1–19–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31197]

Railroad Acquisition and Operation; Saginaw Valley Railway Co., Inc.

Saginaw Valley Railway Company, Inc. (SVRC), a non-carrier, has filed a notice of exemption to acquire and operate approximately 56 and one-half miles of railroad of CSX Transportation, Inc. (CSX), located in Michigan. The line extends from milepost 4.09 east of Saginaw, MI to milepost 62.56 at Bad Axe, MI. The agreement for transfer of the lines between SVRC and CSX was to be consummated on or before December 31, 1987.[1] Any comments must be filed with the Commission and served on Eric D. Gerst, ESQ. c/o Gerst, Heffner, & Foldes, Suite 900, 21 South 5th Street, Philadelphia, PA 19106.

A transaction relating to the control of SVRC is the subject of a petition for exemption filed concurrently in Finance Docket No. 31196, *Saginaw Valley Railway Company—Petition For Exemption and/or Approval of Common Control.*[1]

This transaction will also involve the issuance of securities by SVRC, which will be a class III carrier. The issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1005 Filed 1–19–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

January 11, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories.

[1] Informal approval of a voting trust agreement has been granted.

Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry and to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer and the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is Larry E. Miesse and can be reached on (202) 633–4312.

New Collections

(1) Larry E. Miesse, (202) 633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) Immigration User Fee.
(4) No form number.
(5) Quarterly with an annual report.
(6) Businesses or other for-profit. The information requested from commercial airlines, cruise lines and tour operators is generally required by Pub. L. 99–591 and is necessary for monitoring, follow-up and audit of user fee submissions. No form is required, only data basic to collection, payment and remittance of fees.
(7) 625 annual responses, .25 hours burden per response.
(8) 157 estimated public burden hours with estimated 1,250 burden hours for recordkeeping for a total public burden of 1,407 hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340.

(1) Larry E. Miesse, (202) 633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) National Legalization Survey.
(4) No form number.
(5) One-time.
(6) Individuals or households. Section 404 of Pub. L. 99–603 mandates a report to the Congress on legalized aliens to include a description of the demographic characteristics and a general profile of this population. This survey will obtain data for that report.
(7) 7,500 annual responses, .883 hours burden per response.
(8) 6,625 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312.
(2) Drug Enforcement Administration, Department of Justice.
(3) Piperdine Report.
(4) DEA Form 420.
(5) On occasion.
(6) Businesses or other for-profit, Federal agencies or employees, small businesses or organizations. 21 U.S.C. 830 requires that any person who sells, distributes, or imports piperdine to report via this form to the Drug Enforcement Administration. Information is used to control movement of piperdine and to determine any illicit use made of pipedine for the manufacture of phencyclidine, a Schedule II controlled substance.
(7) 600 annual responses, .167 burden hours per response.
(8) 100 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Larry E. Miesse, (202) 633–4312.
(2) Criminal Division, Department of Justice.
(3) Foreign Agents Registration Program.
(4) (a) Registration Statement of Individual (Foreign Agents).
(b) Short Form Registration Statement of Individuals (Foreign Agents).
(c) Exhibit A to Registration Statement (Foreign Agents).
(d) Exhibit B to Registration Statement (Foreign Agents).
(e) Supplemental Registration of Individuals (Foreign Agents).
(f) Amendment to Registration or Supplemental Registration Reports (Foreign Agents).
(g) Dissemination Report (Transmittal of Political Propaganda).
(5) (a), (b), (c), (d), (f), and (g) are on occasion, (e) is semiannually.
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organization. This program and its associated form are required by the provisions of 22 U.S.C. 611 *et seq.* and filings are maintained in the public office of the Registration Unit, Internal Security Section, Criminal Division, where they are available for public review.
(7) (a) 100 annual respondents at 1.5 burden hours each.
(b) 350 annual respondents at .429 burden hours each.
(c) 75 annual responses at .49 burden hours each.
(d) 75 annual responses at .33 burden hours each.
(e) 2,400 annual respondents at 1.375 burden hours each.
(f) 200 annual respondents at 1.5 burden hours each.
(g) 3,600 annual respondents at .5 burden hours each.
(8)(a) 150 hours annual burden.
(b) 150 hours annual burden.
(c) 38 hours annual burden.
(d) 25 hours annual burden.
(e) 3,300 hours annual burden.
(f) 300 hours annual burden.
(g) 1,800 hours annual burden.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Larry E. Miesse,

Department Clearance Office, Department of Justice.

[FR Doc. 88–1040 Filed 1–19–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or

reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration
Formaldehyde
Recordkeeping; On occasion
Businesses or other for-profit; Federal agencies or employees;
Small businesses or organizations
112,217 respondents; 955,043 burden hours; 0 forms

This regulation requires employers to train employees about the hazards of formaldehyde, monitor employee exposure, provide medical surveillance, and maintain accurate records of employee exposure. These records will be used by employers, employees, physicians and the Government to ensure that employees are not harmed by exposure to formaldehyde.

Survey to Collect Information on Bloodborne Diseases
Other
Businesses or other for profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; State or local governments
260 responses; 108 hours

The information for which this request has been submitted will assist in the determination of whether or not to issue a standard on occupational exposure to Hepatitis B and AIDS. The information will be requested of businesses where employees handle blood and/or body fluids.

Signed at Washington, DC, this fourteenth day of January, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–1021 Filed 1–19–88; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–19, 925 et al.]

General Motors Corp.; Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–19,925, BOC Orion Assembly, Orion Township, MI; TA–W–19,926, BOC Wentzville Assembly, Wentzville, Mo; TA–W–19,928, CPC Pontiac Fiero, Pontiac, MI; TA–W–19,934, CPC Flint Engine, Flint, MI; TA–W–20,050, BOC Clark Street, Detroit, MI; TA–W–20,051, BOC Fleetwood, Detroit, MI; TA–W–20,054, Truck & Bus Division, Flint, MI; TA–W–20,057, Fisher Guide, Fort Street, Detroit, MI; TA–W–20,035, BOC Conner Street, Detroit, MI.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance on September 23, 1987 for workers at CPC Fiero plant in Pontiac, Michigan (TA–W–19,928); on September 25, 1987 for workers at CPC Flint Engine, Flint, Michigan (TA–W–19,934); on October 20, 1987 for workers at BOC Clark Street, Detroit, Michigan and BOC Fleetwood, Detroit, Michigan (TA–W–20,050–51); on October 28, 1987 for workers at Fisher Guide, Fort Street plant, Detroit, Michigan (TA–W–20,057); on October 30, 1987 for workers of utility vehicles and station wagon-type truck assembly line at the Flint, Michigan Truck & Bus Division assembly plant (TA–W–20,054) and on December 29, 1987 for workers at BOC Conner Street, Detroit, Michigan (TA–W–20,235).

The certifications TA–W–19,928 and TA–W–19,934 were published in the **Federal Register** on October 6, 1987 (52 FR 37381); certifications TA–W–20,050 and TA–W–20,051 were published in the **Federal Register** on November 3, 1987 (52 FR 42158); certification TA–W–20,057 was published in the **Federal Register** on November 10, 1987 (52 FR 43257); certification TA–W–20,054 was published in the **Federal Register** on December 22, 1987 (52 FR 48470).

On December 4, 1987 the Department revised the negative determinations for workers at GM's BOC Orion Assembly plant in Orion Township, Michigan and BOC Wentzville Assembly Center in Wentzville, Missouri. The notices were published in the **Federal Register** on December 11, 1987 (52 FR 47063). On December 29, 1987 the Department issued a certification to workers at BOC Conner Street, Detroit, Michigan. This certification will be published shortly in the **Federal Register.**

On the basis of additional information that some workers were employed by more than one of the certified plants in the 52 weeks prior to their layoff, the Office of Trade Adjustment Assistance, on its own motion, revised the certifications to put the following assembly plants under a single certification. This permits workers to use their combined time in adversely affected employment for established eligibility for trade readjustment allowance (TRA) payments.

The separate certifications applicable to GM workers at BOC Orion Assembly; BOC Wentzville Assembly Center; CPC Pontiac Fiero; CPC Flint Engine; BOC Clark Street; BOC Fleetwork; Truck & Bus Division, Flint; Fisher Guide, Fort Street and BOC Conner Street are hereby revised as follows:

All workers at the following facilities of General Motors Corporation who became totally or partially separated from employment on or after the indicated impact dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA–W–	Plant	Impact date
19,925	BOC Orion Assembly, Orion Township, MI	7/16/86
19,926	BOC Wentzville, Wentzville, MO.	7/16/86
19,928	CPC Pontiac Fiero, Pontiac, MI.	7/16/86
19,934	CPC Flint Engine, Flint, MI	7/16/86
20,050	BOC Clark Street, Detroit, MI.	6/17/86
20,051	BOC Fleetwood, Detroit, MI	6/17/86
20,054	Truck & Bus Division, Flint, MI (utility vehicles and station wagon/type trucks only)	6/17/86
20,057	Fisher Guide, Fort Street, Detroit, MI	6/17/86
20,235	BOC Conner Street, Detroit, MI.	10/30/86

The expiration dates in the original certifications and termination date in TA–W–19,934 are unchanged.

Signed at Washington, DC., this 6th day of January 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–1020 Filed 1–19–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–18,474, et al.]

Kerr-McGee Corp., Petroleum Exploration Division, Oil & Gas Production Division, and Transworld Drilling Co., Subsidiary of Kerr-McGee Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–18,474, Oklahoma City, OK; TA–W–18,474A, all other locations in Oklahoma; TA–W–18,474B, all locations in Louisiana; TA–W–18,474C, all locations in Texas; TA–W–18,474D, all locations in Oklahoma; TA–W–18,474E, all locations in Louisiana; TA–W–18,474F, all locations in Texas; TA–W–18,474G, all locations in Alabama.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 1986 applicable to all workers of Kerr-McGee Corporation, Petroleum Exploration and Production Division, Morgan City, Oklahoma. The Certification was published in the **Federal Register** on January 21, 1987 (52 FR 2306). The certification was amended on January 20, 1987 to properly reflect the correct worker group. The amended notice was published in the **Federal Register** on February 10, 1987 (52 FR 4200). The certification was amended again on November 16, 1987 and the notice was published in the **Federal Register** on November 20, 1987 (52 FR 44646).

The Transworld Drilling Company furnished new information to the Department which showed two additional states where worker separations occurred that were not included in the amended certification. Accordingly, the amended certification is changed to include the states of Alabama and Texas where additional worker separations occurred.

The intent of the certification is to cover all workers Kerr-McGee Corporation's Petroleum Exploration and Oil and Gas Production Divisions and Kerr-McGee's wholly owned drilling subsidiary, Transworld Drilling Company. The amended notice applicable to TA–W–18,474 is hereby issued as follows:

All workers of Kerr-McGee Corporation, Petroleum Exploration and Oil and Gas Production Divisions, Oklahoma City, Oklahoma and all other Kerr-McGee Corporation locations of the Petroleum Exploration and Oil and Gas Production Divisions in Oklahoma, Louisiana and Texas and all workers of the Transworld Drilling Company in Oklahoma, Louisiana, Texas and Alabama who became totally or partially separated from employment on or after September 30, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of January 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–1019 Filed 1–19–88; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: Room 540, National Science Foundation 1800 G Street, NW., Washington, DC 20550

Dates: January 27, 28, 29, 1988.

Times: January 27: Subcommittee on Women, 9:00 a.m.–12:00 p.m.; January 27: Subcommittee on the Disabled, 1:30 p.m.–4:30 p.m.; January 28: Full Committee Meeting 9:00 a.m.–4:30 p.m.; January 29: Subcommittee on Minorities 9:00 a.m.–12:00 p.m.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635, Telephone: 202–357–7066

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the Director and other NSF staff.

M. Rebecca Winkler,

Committee Management Officer.

January 13, 1988.

[FR Doc. 88–1001 Filed 1–19–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Relocation of NRC Offices

Effective January 11, 1988, the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) has been relocated at the agency's new office building located at One White Flint North. Effective January 15, 1988, the NRC's Office of Governmental and Public Affairs' (GPA) State, Local, and Indian Tribe Programs and International Programs will be relocated at One White Flint North. The remainder of GPA, including Public Affairs and Congressional Affairs, will relocate at One White Flint North in late February 1988.

One White Flint North is located at 11555 Rockville Pike, Rockville, Maryland. The agency's mailing address remains unchanged—U.S. Nuclear Regulatory Commission, Washington, DC 20555. Specific telephone numbers for the relocated personnel may be obtained from the NRC Operator on 301–492–7000. A new telephone directory (NUREG/BR–0046) is expected to be issued in February 1988.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–1012 Filed 1–19–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co. et al.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U. S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for amendments to Facility Operating Licenses Nos. NPF-35 and NPF-52, issued to Duke Power Company, et al., (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, (the facility) located in York County, South Carolina.

The denied amendments, as proposed by the licensee, would modify the Unit 1 and Unit 2 Technical Specifications (TS) to allow additional time to remain in Mode 3 (hot standby) beyond that allowed in the current TS following the licensee's determination that the 1 gpm unidentified leak rate was exceeded but before reaching 3 gpm.

The licensee's application for the amendments was dated June 9, 1986, and supplemented February 18, March 23, and December 2, 1987. Notice of Consideration of issuance of these amendments was published in the **Federal Register** on April 8, 1987 (52 FR 11359).

In the course of its review, the NRC staff requested the licensee to submit a stability analysis of the flaw based on a 3 gpm leak rate utilizing the acceptance criteria defined in NUREG-1061, Volume 3. In lieu of providing such analysis, the licensee stated that they would rely on the leakage detection capability, which is 1 gpm, to negate the need for the flaw stability analysis. The staff has determined that although the leak detection capability is important to support operation, it is not a substitute for the analysis of the pipe toughness capability which may be represented by the stability of a 3 gpm flaw.

The proposed change allowing the leak rate to exceed 1 gpm would reduce the available safety margin. Therefore, extending the time to remain in Mode 3 following the determination that the 1 gpm leak rate was exceeded is unacceptable.

Accordingly the request was denied. The licensee was notified of the Commission's denial of the request by letter dated January 13, 1988.

By February 19, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel-Bethesda, U. S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

For further details with respect to this action, see (1) the application for amendment dated June 9, 1986, and supplemented February 18, March 23, and December 2, 1987, and (2) the Commission's letter to Duke Power Company dated January 13, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. A copy of item (2) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II-3, Division of Reactor Projects, I/II.

[FR Doc. 88-1013-Filed 1-19-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for amendments to Facility Operating Licenses Nos. NPF-9 and NPF-17, issued to Duke Power Company, (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, (the facility) located in Mecklenburg County, North Carolina.

The denied amendments, as proposed by the licensee, would modify the Unit 1 and Unit 2 Technical Specifications (TS) to allow additional time to remain in Mode 3 (hot standby) beyond that allowed in the current TS following the licensee's determination that the 1 gpm unidentified leak rate was exceeded but before reaching 3 gpm.

The licensee's application for the amendments was dated June 9, 1986, and supplemented February 18, March 23, and December 2, 1987. Notice of Consideration of issuance of these amendments was published in the **Federal Register** on April 8, 1987 (52 FR 11361).

In the course of its review, the NRC staff requested the licensee to submit a stability analysis of the flaw based on a 3 gpm leak rate utilizing the acceptance criteria defined in NUREG-1061, Volume 3. In lieu of providing such analysis, the licensee stated that they would rely on the leakage detection capability, which is 1 gpm, to negate the need for the flaw stability analysis. The staff has determined that although the leak detection capability is important to support operation, it is not a substitute for the analysis of the pipe toughness capability which may be represented by the stability of a 3 gpm flaw.

The proposed change allowing the leak rate to exceed 1 gpm would reduce the available safety margin. Therefore, extending the time to remain in Mode 3 following the determination that the 1 gpm leak rate was exceeded is unacceptable.

Accordingly the request was denied. The licensee was notified of the Commission's denial of the request by letter dated January 13, 1988.

By February 19, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

For further details with respect to this action, see (1) the application for amendment dated June 9, 1986, and supplemented February 18, March 23, and December 2, 1987, and (2) the Commission's letter to Duke Power Company dated January 13, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28230. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Darl S. Hood, Project Manager

Project Directorate II-3, Division of Reactor Projects, I/II.

[FR Doc. 88-1014-Filed 1-19-88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Records System Changes.

SUMMARY: This document gives notice that the Postal Service is revising its system of records, USPS 050.005, Finance Records—Accounts Receivable File Maintenance to add two new routine uses and the general disclosure authority at subsection (b)(12) of the Privacy Act permitting disclosure of information to consumer reporting agencies, and to make related minor editorial changes. The new routine uses authorize disclosure of limited information to (1) private debt collection agencies under contract for collection of debts owed the U.S. Government and (2) the Office of Personnel Management to determine the collectibility of monies owed to the Postal Service by retired annuitants. The intended effect of this notice is to make the public aware that the Postal Service may make such disclosures to collect and service its delinquent accounts receivables.

DATE: The new routine uses will become effective without further notice on February 19, 1988, unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, D.C. 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97-365) amended the Privacy Act of 1974, 5 USC 552a, to provide a new general disclosure authority, subsection (b)(12), permitting a Federal agency to disclose information about its delinquent debtors to a "consumer reporting agency" (as defined both in the Fair Credit Reporting Act, 15 U.S.C. 168la(f), and the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)). Disclosure can only be made if a claim is verified as overdue and certain due process steps have been taken that include validation of the debt and written notice to the debtor of the claim and his rights. Disclosure pursuant to subsection (b)(12) is restricted to information directly related to the identity of the debtor (name, address, social security number, and other information necessary to establish the identity of the debtor) and the history of the claim (amount, status, and history of the debt). To the extent that the Postal Service may wish to make future disclosures pursuant to subsection (b)(12), such disclosures would be made from its records system 050.005. Notice of the Postal Service's intent to disclose information from this system to consumer reporting agencies pursuant to subsection (b)(12) meets a requirement of the Debt Collection Act; advance notice is not required by the Privacy Act.

The Postal Service also intends to use the services of private debt collection agencies to recover debts delinquently owed to it. The Debt Collection Act of 1982 provides the statutory authority to make such disclosure pursuant to subsection (b)(3) of the Privacy Act, i.e., for a routine use. Such disclosures will be made from this system under proposed routine use No. 8 and pursuant to contract provisions that make the debt collection contractor subject to subsection (m) on the Privacy Act.

Proposed routine use No. 9 will permit the Postal Service to provide information about individuals indebted to the Postal Service for the purpose of identifying former Federal employees whose postal debts are collectible from available retirement accounts, or are uncollectible due to present unavailability of an existing account, a lump sum refund, or other reason. These individuals will be identified by conducting a computer matching program comparing the Postal Service's accounts receivable file and the annuitant files of the Office of Personnel Management. The match will be conducted in accordance with the Office of Management and Budget's Revised Supplemental Guidelines for Conducting Matching Programs (47) FR 21656, May 19, 1982) and will be announced in this publication prior to its initiation, as required by the Guidelines.

The addition of subsection (b)(12), the proposed routine uses, and the editorial changes are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act that require the submission of an altered system report. Accordingly, it is proposed that system 050.005 be amended as follows:

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable File Maintenance, 050.005.

SYSTEM LOCATION:

CHANGE TO READ, "Postal Data Centers and contractor sites."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Invoice number, location name, Social Security Number, employee name, designation code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

CHANGE TO READ, 39 U.S.C. 401; 5 U.S.C. 552a(b)(12); Debt Collection Act of 1982 (Pub. L. 97-365).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Purpose. CHANGE TO READ: "Records are used to facilitate debt collection, to monitor and record collections made by the USPS, and as a data source for management information for production of summary descriptive statistics and analytical studies."

b. Use

* * * * *

ADD,

8. Disclosure may be made to a debt collection agency for collection of a debtor's account as provided for by contract with the debt collection agency.

9. Disclosure of information about individuals indebted to the Postal Service may be made to the Office of Personnel Management under approved computer matching efforts in which either the Postal Service or OPM acts as the matching agency, but limited to those data elements considered relevant to determining whether the indebted individual has retirement funds available for set-off; collecting debts when funds are available for set-off; and writing off debts determined to be uncollectible.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(a)(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

* * * * *

SAFEGUARDS:

CHANGE TO READ: "Access is restricted to personnel of the General Accounting Section within the Postal Service and to contract employees responsible for assigned accounts. Computerized records are subject to the security of the computer room. Contract provisions make the contractor(s)

responsible for complying with the provisions of the Privacy Act (subsection (m)(1)), except in the case of subsection (b)(12) disclosures to consumer reporting agencies (subsection (m)(2))."

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-1003 Filed 1-19-88; 8:45 am]

BILLING CODE 7710-12-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2303; Amdt. #1]

Arkansas; Declaration of Disaster Loan Area

The above-numbered Declaration (52 FR 650, January 7, 1987) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated January 6, 1988, to include Mississippi, Monroe, Ouachita, and Pulaski Counties and the adjacent Counties of Arkansas, Cross, Lee, Lonoke, Poinsett, and Woodruff in the State of Arkansas because of damage from severe storms and flooding beginning on December 24, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on March 3, 1988 and for economic injury until the close of business on October 3, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59006).

Date: January 12, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-984 Filed 1-19-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2298; Amdt. #1]

Mississippi; Declaration of Disaster Loan Area

The above-numbered Declaration (52 FR 47987, December 17, 1987) is hereby amended to include Rankin County and the adjacent Counties of Madison and Simpson in the State of Mississippi because of damage from tornadoes and flooding which occurred on November 16, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 9, 1988, and for economic injury until the close of business on September 12, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: December 23, 1987.

James Abdnor,

Administrator.

[FR Doc. 88-1044 Filed 1-19-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2301; Amdt. #1]

Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration (52 FR 49243, December 30, 1987) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated December 18, 1987, to include the Municipality of Lajas in the Commonwealth of Puerto Rico because of damage from severe storms and flooding beginning on November 24, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 16, 1988, and for economic injury until the close of business on September 19, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: December 22, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-985 Filed 1-19-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2295; Amdt. #2]

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration (52 FR 45702, December 1, 1987), as amended (52 FR 47071, December 11, 1987), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated November 30, 1987, to include Leon and Madison Counties in the State of Texas, because of damage from severe storms and tornadoes on November 15-16, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on January 21, 1988, and for economic injury until the close of business on August 22, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: December 7, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-986 Filed 1-19-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M-001]

Notification to Interested United States Citizen Bidders of the Intent of NATO To Solicit Bids on a Project Involving Revision to the NATO Interallied Insurance Organization (IIO) Valuation System

The North Atlantic Council agreed in 1984 that a revised NATO War Risk Insurance Scheme would be prepared. The purpose of this scheme (following the outbreak of war or hostilities involving the Alliance) was to insure, on a mutual insurance association basis, ships placed at the disposal of a common pool of NATO shipping. Under the scheme, member governments would pay premiums for their insured values and the overall losses incurred.

It follows from the above that an essential part of the insurance scheme is a uniform system of valuation for the ships to be covered. For various reasons the system of valuation in operation prior to 1984 was regarded as unsatisfactory.

In 1984, it was decided that revision of the valuation system should proceed in two steps:

- Step 1 was to establish the changes required to the earlier structure of the ship valuation scales in order to make their valuations more effective.
- Step 2 was to review the ship valuation system in the light of Step 1.

Step 1 of the revision was carried out by consultants and their report submitted in January 1986. The consultants concluded that the valuation system resulted in price scales that were far removed from the present realities of the shipbuilding industry and made recommendations as to the changes that should be effected.

Following the submission of the consultants' report in January 1986 to the NATO technical group concerned with the development of plans for the IIO, namely the Shipping War Losses Working Group (SWLWG), the report was endorsed and policy approval given for Step 2 to proceed. NATO funding has been requested for work to commence on Step 2 during 1988, to continue over a two or three year period. This work on Step 2 is to be undertaken by consultants selected through a competitive bid process.

The Maritime Administration has been requested by the Planning Board for Ocean Shipping (PBOS), a NATO planning group to which the SWLWG reports, to identify potential United States contractors who might wish to bid on this project. The same request has been made of other members of NATO. Eventual bidding will be conducted by NATO on an international basis. Potential bidders, who feel that they are qualified and interested in bidding, and who desire that the names be submitted to NATO by the United States Government to be included on a potential bidders list, should identify themselves in writing.

When submitting expressions of interest, potential bidders should supply information concerning their capabilities and experience in the field. Information submitted should be pertinent and specific to the proposal under consideration on the following qualifications: (1) Experience: An outline of previous projects, specific work previously performed or being performed; (2) Personnel: Name professional qualifications and specific experience of technical personnel who may be assigned as principal investigator and/or project officer; (3) Security: A statement regarding industrial security clearance; and (4) Other: Any other specific and pertinent information that would enhance NATO's consideration of the submission.

The Maritime Administration has not been provided with any materials for distribution by NATO. The acquisition will be conducted directly by NATO in the course of this year.

Any person, firm, or corporation in the United States wishing to have its name submitted to NATO must file in writing with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. This submission must be received no later than 5:00 p.m. on February 5, 1988. This notice is published as a matter of discretion.

By Order of the Maritime Administration.

Dated: January 13, 1988.

James E. Saari,

Secretary.

[FR Doc. 88-1026 Filed 1-19-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 37-87]

Treasury Notes; Series E-1995

Washington, January 7, 1988.

The Secretary announced on January 6, 1988, that the interest rate on the notes designated Series E-1995, described in Department Circular—Public Debt Series—No. 37-87 dated December 30, 1987, will be 8¾ percent. Interest on the notes will be payable at the rate of 8¾ percent per annum.

Gerald Murphy

Fiscal Assistant Secretary.

[FR Doc. 88-982 Filed 1-19-88; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Advisory Board for Radio Broadcasting to Cuba; Meeting

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on January 25, 1988, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.

Monday, January 25, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti

11:00 a.m. 2. Status of selection of executive director

Part Two—Open to the Public

1:00 p.m. 3. Marti TV

2:00 p.m. 4. Marathon transmitter site upgrade status

2:30 p.m. 5. Audience research results

3:00 p.m. 6. Public testimony period.

Items one and two, which will be discussed from 10:00 a.m. to 12:00 noon, will be closed to the public. Item 1 involves discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b (c)(1). Item 2 relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b (c)(2).

Members of the public interested in attending the meeting should contact Peggy Chu (202) 485-7011 to make prior arrangements, as access to the building is controlled.

Dated: January 12, 1988.

Charles Z. Wick,

Director.

[FR Doc. 88-1136 Filed 1-19-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2) that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Paralyzed Veterans of America, 801 18th Street, NW., Washington, DC 20006, from February 17 through February 19, 1988. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war and on the need of such veterans for compensation, health care and rehabilitation.

The meeting will convene at 9 a.m., each day, and will be open to the public.

Following opening remarks by the Chairman and greetings by Agency management staff, various issues affecting health care and benefit delivery to former prisoners of war will be discussed over the first two days of the meeting. Topics will include community nursing home care, the burden of proof necessary to demonstrate entitlement to compensation and other matters deemed appropriate by the Chairman. The final day of the meeting, February 19, will be devoted to the composition of a report to the Administrator.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to: Mr. David Sturm, Policy Staff, Compensation and Pension Service, Room 410, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A summary report of the meeting and rosters of the Committee members may be obtained from Mr. David Sturm at the aforementioned address.

Dated: January 11, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-982 Filed 1-19-88; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, February 2 and 3, 1988. The sessions will begin at 8:30 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–233–2886) prior to January 26, 1988.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on February 3, 1988.

Dated: January 12, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–1024 Filed 1–19–88; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held February 11 and 12, 1988. This is a regularly scheduled meeting for the purpose of reviewing Agency services to Vietnam veterans and to formulate Committee goals and objectives for the next two year period. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The meeting on February 11 will begin at 8:30 a.m. and conclude at 4:15 p.m. The day's agenda will consist of Committee review of goals, objectives, and tasks for the next two years. Also the committee will receive status reports concerning pending legislation that may impact services to Vietnam veterans, the VA/DOL working agreement, and the chief Medical Director's and the Administrator's guidance for future Committee work. The meeting on February 12 will begin at 8:15 a.m. and conclude at 4 p.m. The second day's agenda will consist of a status report on Readjustment Counseling Service, a clinical report of the Committee's field trip to Bay Pines VAMC, a report by VA mental health officials on VA mental health services to Vietnam veterans, and a report by OPM officials on employee assistance programs available to veterans in the federal work force. Both day's meetings will be open to the public to the seating capacity of the rom.

Due to the limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office, (phone number 202–233–3317/3303).

Dated: January 12, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–963 Filed 1–19–88; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, January 28, 1988, at 2:30 p.m.
Thursday, February 11, 1988, at 2:30 p.m.
Thursday, February 25, 1988, at 2:30 p.m.
Thursday, March 10, 1988, at 2:30 p.m.
Thursday, March 24, 1988, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

This notice does not appear 15 days prior to the meeting due to delays in administrative processing.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: January 6, 1988.

By direction of the Administrator.

Robert W. Schultz,

Associate Deputy Administrator for Public Affairs.

[FR Doc. 88–1101 Filed 1–19–88; 8:45 am]

BILLING CODE 8320–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Amendments to Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice establishes an allocation for Austria of the quotas currently applicable to imports of certain stainless steel bar and stainless steel wire rod and makes modifications in the Tariff Schedules of the United States (TSUS) to implement this allocation.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Cassidy or Elena Bryan, Office of the United States Trade Representative, (202) 395–4510.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5679 of July 16, 1987 (52 FR 27308) provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5679 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the TSUS headnote of items proclaimed by the President in order to implement such actions.

Accordingly, the U.S. Trade Representative has determined that items 926.11 through 926.17, inclusive, schedule 9, subpart A, part 2 of the Appendix to the TSUS be modified by adding an allocation for Austria and changing quota quantitive for "Other", as follows:

Item	Articles	Quota quantity (in short tons) If entered during the restraint period	
		July 20 through January 19	January 20 through July 19
926.11	"Austria"	"n/a"	"108"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"110"	"107"
926.12	"Austria"	"107"	"108"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"118"	"115"
926.13	"Austria"	"43"	"n/a"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"49"	"n/a"
926.15	"Austria"	"n/a"	"28"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"97"	"167"
926.16	"Austria"	"27"	"28"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"170"	"167"
926.17	"Austria"	"11"	"n/a"
	Other, except as provided in headnote 10(g)(ii) to this subpart.	"70"	"n/a"

I have determined that the above changes in the import relief are appropriate to carry out the authority granted by the President to the U.S. Trade Representative and the obligations of the United States, with due consideration to the interests of the domestic producers of such specialty steel. This action is subject to further modification.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88–1178 Filed 1–19–88; 9:50 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 20, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Status:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Small Parts Petition, HP 87-2

The commission will consider Small Parts Petition, HP 87-2, from the Consumer Federation of America and the New York State Attorney General's office, which requests amendment of the small parts regulation.

2. Electrical/Mech./Children Program Status Briefings

The staff will brief the Commission on the progress being made on various projects within the Electrical/Mechanical/Children programs.

Closed to the Public

3. Enforcement Matter OS# 527

The staff will brief the Commission on Enforcement Matter OS# 527.

4. Enforcement Matter OS# 5912

The staff will brief the Commission on Enforcement Matter OS# 5912.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

January 14, 1988.

[FR Doc. 88-1050 Filed 1-15-88; 9:27 am]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 13, 1988.

Additional Item to be Considered at Open Meeting, Thursday, January 14th

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, January 14, 1988 at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Mass Media—2—Title: In re Reexamination of the Commission's Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications. Summary: This Order deals with appropriations legislation, Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes, Pub. L. No.100-202 (signed December 22, 1987), as it relates to the Commission's reexamination of its comparative licensing, distress sales and tax certificate policies premised on racial, ethnic or gender classifications.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission January 12, 1988. Commissioners Patrick, Chairman; Quello, and Dennis voting to consider this item.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 13, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1110 Filed 1-15-88; 2:16 pm]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 7, 1988.

FCC to Hold Open Commission Meeting Thursday, January 14, 1988

The Federal Communications Commission will hold on Open Meeting on the subjects listed below on Thursday, January 14, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Applications from the Association of American Railroads to use six 900 MHz frequencies for the operation of a nationwide Advanced Train Control System. Summary: The Commission will consider appropriate action on the requests.

Common Carrier—1—Title: Amendment of § 64.702 of the Commission's Rule and Regulations (Third Computer Inquiry) CC Docket No. 85-229, Phase I. Summary: The Commission will consider three petitions for further reconsideration in this proceeding.

Common Carrier—2—Title: Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry) CC Docket No. 85-229, Phase II. Summary: The Commission will consider nine petitions for reconsideration in this proceeding.

Common Carrier—3—Title: In the Matter of Pacific Bell and Nevada Bell Plan for the Provision of Voice Mail Service. Summary: The Commission will consider whether to approve the CEI plan filed by Pacific Bell.

Common Carrier—4—Title: In the Matter of the Bell Atlantic Companies Offer of Comparably Efficient Interconnection to Enhanced Service. Summary: The Commission will consider whether to approve the CEI plan filed by Bell Atlantic.

Common Carrier—5—Title: Prescription of Depreciation Rates for Domestic Telephone Companies. Summary: This Commission will consider the adoption of two Orders modifying the depreciation rates of various accounts for twelve triennial and nineteen annual update domestic telephone companies.

Common Carrier—6—Title: In the Matter of Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1991-2000 Period, CC Docket No. 79-184. Summary: The Commission will consider whether to adopt a Third Notice of Proposed Rulemaking in this proceeding.

Mass Media—1—Title: AM Stereophonic Broadcasting. Summary: The Commission will consider three petitions for rule making and two reports issued by the National Telecommunications and Information Administration concerning AM stereophonic broadcasting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 7, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1111 Filed 1-15-88; 2:16 pm]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 25, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1159 Filed 1-15-88; 3:56 pm]

BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, January 25, 1988.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTER TO BE CONSIDERED:

Adjudication of Chapter 43 cases which raise questions about the weight to be given to an employee's performance during the Performance Improvement Plan period.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: January 15, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88-1157 Filed 1-15-88; 3:38 pm]

BILLING CODE 7400-01-M

Corrections

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Implementation of 1988 Import Controls and Visa Arrangements Based on the Harmonized System

Correction

In notice document 87-29627 beginning on page 48859 in the issue of Monday, December 28, 1987, make the following correction:

On page 48859, in the third column, in paragraph 1, in the fifth line, "0.8312736 sm" should read "0.83612736 sm".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[APD 2800.12 CHGE 51]

Acquisition Regulation; Miscellaneous Changes

Correction

In rule document 88-14 beginning on page 130 in the issue of Tuesday, January 5, 1988, make the following correction:

501.170-4 [Corrected]

On page 131, in the first column, in section 501.170-4(a), in the ninth line, "GSA" should read "GSAR".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-13138]

Arizona; Conveyance of Public Land; Order Providing for Opening of Land

Correction

In notice document 87-28304 beginning on page 46847 in the issue of Thursday, December 10, 1987, make the following corrections:

1. On page 46847, in the third column, under T. 20 N., R. 21 W., Sec. 20 should read as follows:
NE¼, NW¼SW¼NE¼NW¼, S½S½ NE¼NW¼,
NW¼NE¼NW¼NW¼, S½NE¼ NW¼NW¼,
NW¼NW¼NW¼, N½SW¼NW¼NW¼, SE¼NW¼NW¼, E½NE¼SW¼NW¼, S½SW¼NW¼, SE¼NW¼;

2. In the same column, under T. 19 N., R. 15 W., in Sec. 31, "EW½W½" should read "E½W½".

3. On page 46848, in the first column, under T. 20 N., R. 15 W., in the fifth line, "S½" should read "W½" and "NW¼SE½" should read "NW¼SE¼". In the sixth line, "S½W½" should read "W½W½".

4. On the same page, in the third column, in the 11th line, "19 minutes" should read "00 minutes".

5. In the same column, under T. 20 N., R. 15 W., (cont.), in the first line, "W½NW¼" should read "W½NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212; A-21081]

Arizona; Opening Order

Correction

In notice document 87-28303 beginning on page 46846 in the issue of Thursday, December 10, 1987, make the following correction:

On page 46846, in the second column, under T. 10 S., R. 27 E., in the first line, "S½NW¼" should read "S½NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-12; A-20347 (B)]

Reconveyed Land Opened to Entry; Pinal County, AZ

Correction

In notice document 87-28930 appearing on page 47978 in the issue of Thursday, December 17, 1987, make the following correction:

In the second column, under **Gila and Salt River Meridian, Arizona**, the first line should read "T. 7 S., R. 18 E.,".

BILLING CODE 1505-01-D

federal register

Wednesday
January 20, 1988

Part II

Office of Management and Budget

Guidelines for Federal Statistical Activities; Notice

BEST COPY AVAILABLE

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Federal Statistical Activities

AGENCY: Office of Management and Budget.

ACTION: Notice of a draft circular establishing guidelines for Federal statistical activities.

SUMMARY: The Office of Management and Budget (OMB) is soliciting public comment on a draft OMB Circular that would revise government-wide guidance for planning and conducting statistical surveys, publishing statistical data, documenting statistical methods and procedures, and using standard statistical classifications, definitions, and data sources. The guidance, which applies to all Federal agencies subject to the Paperwork Reduction Act of 1980, is intended to assure that the results of statistical surveys and studies sponsored by the Federal government are as reliable and useful as possible and that statistical activities are conducted as efficiently as possible.

DATE: Comments must be received on or before April 19, 1988.

ADDRESS: Comments are invited on any aspect of the Circular. They should be made in writing and sent to Dorothy M. Tella, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503. The comments will be available for public examination at this address.

FOR FURTHER INFORMATION CONTACT: Dorothy M. Tella, (202) 395–3093.

SUPPLEMENTARY INFORMATION: Statistics collected and published by the Federal government constitute a large part of the available information about the United States economy, population, natural resources, environment, and public and private institutions. These data are used by the Federal government and others as the basis for actions that affect people's lives and well-being. It is essential that they be collected, processed, and published in a manner that guarantees and inspires confidence in their reliability. The statistical programs of the Federal government are decentralized among seventy or more agencies or separate departmental units. It is therefore also essential that, to the extent permitted by law, there be sufficient government-wide uniformity in statistical methods and practices to ensure the maximum usefulness of the statistics produced.

The Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3504), gives the Director of OMB broad responsibility for improving the usefulness of information collected, maintained, and disseminated by the Federal government and for reducing the Federal government's reporting burden on the public. Among the Director's functions under the Act are statistical policy and coordination functions, which include the development and implementation of policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, and such statistical data sources as may be required for the administration of Federal programs.

This Circular provides revised guidance for designing, conducting, and publishing statistical surveys and studies sponsored by Federal agencies. The guidelines are intended to ensure that such surveys and studies are designed to produce reliable data as efficiently as possible and that methods are documented and results presented in a manner that makes the data as accessible and useful as possible. The Circular would also establish guidelines for the use of standard classifications, definitions, and data sources. The Circular would rescind and replace guidance on the conduct of Federal statistical activities currently contained in 19 statistical policy directives. (Section 2 of the Circular lists the rescinded directives.) The Circular would, however, leave in place Directive No. 19, "Reports of the Department of Commerce on International Transactions" (43 FR 19272, May 4, 1978).

The Circular would for the first time establish guidelines for documenting all methods, procedures, and models used to produce statistical estimates and would revise and strengthen existing guidance on planning of statistical surveys, treatment of respondents, publication of statistical data, and use of standard statistical classifications, definitions, and data sources. The Circular would discontinue certain classifications and definitions as government-wide statistical standards, as indicated below.

The attachments to the Circular address the following subjects:

Planning Statistical Surveys. The OMB paperwork regulation (5 CFR Part 1320) requires that when agencies seek OMB approval to collect information, they demonstrate that they have taken reasonable steps to ensure that the information is useful and that the cost and burden of collecting it have been minimized. Attachment A of the Circular specifies the documentation that the sponsoring agency shall include in its request for OMB approval of a statistical survey to demonstrate that the survey is designed efficiently and will produce reliable, useful results.

Treatment of Respondents. The guidelines in Attachment B are intended to reassure respondents to statistical surveys that the Federal government is dealing with them honestly and forthrightly and that their interests are being protected. For this purpose, agencies that sponsor statistical surveys should provide certain information to potential respondents about the purpose of each survey and the planned use of the survey data, including any matching or combination of individual respondent data with data from administrative sources. Any such match or combination should meet the conditions specified in section 3.c. of the attachment. Matches for statistical purposes, to which the guidance in Attachment B applies, are not covered by the OMB Guidelines for conducting computerized matching programs (47 FR 21656, May 19, 1982). Agencies should take the specific steps outlined in Attachment B to ensure the protection from public disclosure of information collected under a pledge of confidentiality. Attachment B would also establish certain design guidelines for statistical surveys conducted under mandatory reporting authority, in order to minimize the burden of such surveys on individual respondents.

Statistical Publications. Attachment C contains guidelines for the presentation and documentation of the results of statistical surveys and studies. To ensure that other agencies and the public have an opportunity to verify and use the results of all Federally-sponsored statistical surveys and studies, the sponsoring agency should either publish the results or maintain them in an accessible data base such that requests for summary data or tabulations can be met within 90 days. This guidance is based on the presumption that data collected for statistical purposes have practical utility, as defined in 5 CFR Part 1320, only to the extent that they are accessible to potential users within and outside the Federal government. In deciding whether to publish the results or else to maintain them in an accessible data base, agencies will be expected to conform to the policies on the dissemination of government information products and services established in section 8.a.(9) of OMB Circular A–130, Management of Federal Information Resources (50 FR 52730, December 24, 1985).

Documentation of Methods and Procedures. Attachment D contains guidelines under which agencies would maintain publicly available documentation of all statistical methods, procedures, and models used to produce statistical data and estimates, thereby enabling users to make informed, independent judgments about the quality of data and estimates and to verify that they have been produced by sound, replicable methods.

Compilation, Release, and Evaluation of Principal Federal Economic Indicators. Attachment E contains guidelines for the compilation, release, and evaluation of data series that have been designated as principal economic indicators by the Director of OMB. The provisions in this attachment are the same as those in Statistical Policy Directive No. 3 (50 FR 38932, September 25, 1985), except for the addition, in Section 8, of the provision that agencies inform the public of the uncertainty or probable range of error in preliminary estimates of economic indicators.

Use of Standard Classifications, Data Sources, and Definitions. Attachment F establishes, and prescribes the uses of, certain standard statistical classifications, data sources, and definitions, which have all been previously established in OMB Statistical Policy Directives. Five classifications or definitions would be discontinued as government-wide statistical standards either because the current standards have not proven useful for the statistical purposes intended (standard Federal administrative regions, the standard industrial classification of enterprises, and the standard reference base period for Federal government general-purpose index numbers) or because they are used by only one or two agencies to collect and publish statistics (the standard classification of fields of science and engineering and the standard gas pressure base). In the latter case, OMB believes it is more practical for the principal user agencies to maintain the standards. The Circular makes it clear that the definitions of Metropolitan Statistical Areas (MSAs), the Standard Industrial Classification (SIC), and the Standard Occupational Classification (SOC) are established and maintained by OMB solely for statistical purposes and that agencies that use these statistical standards in nonstatistical programs bear the responsibility for assuring that the standard definitions or classifications are appropriate for those uses.

Provision of Statistical Data to International Organizations. Attachment G provides guidance on the implementation of Executive Order 10033.

In several cases, statistical activities covered by this Circular are also covered by other OMB Circulars. In such cases, this Circular supplements or clarifies the guidance in the other Circulars as it relates to statistical collections and publications. The specific instances of each are noted in the appropriate portions of the Circular.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

OMB Circular No. A-___

To the Heads of Executive Departments and Establishments.

Subject: Guidelines for Federal Statistical Activities.

1. *Purpose.* This Circular revises government-wide guidance for planning and conducting statistical surveys, publishing statistical data, and documenting statistical methods and procedures. These guidelines are intended to assure that all statistical surveys and studies sponsored by the Federal government produce as accurate and useful information as possible, serve their purposes as efficiently as possible, and impose no unnecessary burden on respondents. The Circular also prescribes four standards—a standard data source for population estimates, a standard data source for labor force and unemployment estimates, standard categories for reporting race and ethnic background, and a standard definition of poverty—to be used in the administration of Federal programs, consistent with statutory requirements. It also clarifies the responsibilities of agencies that use the Standard Industrial Classification (SIC), the Standard Occupational Classification (SOC), and the standard definitions of Metropolitan Statistical Areas (MSAs) for nonstatistical purposes.

2. *Rescissions.* This Circular rescinds and replaces Statistical Policy Directives Nos. 1–2 and 5–18 (43 FR 19260, May 4, 1978); Statistical Policy Directive No. 3 (46 FR 3253, January 14, 1981), as revised (50 FR 38932, September 25, 1985); and the directive entitled "Comparability of Statistics on Business Size" (47 FR 21362, May 18, 1982).

3. *Authority.* The Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3504); the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1104); Executive Order 10253 of June 11, 1951, as amended (see 31 USCA 1104); and Executive Order 10033 of February 8, 1949, as amended (see 22 USCA 286f).

4. *Background.* The Paperwork Reduction Act grants the Director of the Office of Management and Budget (OMB) broad authority to develop and implement government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classifications, statistical information presentation and dissemination, and statistical data sources required for the administration of Federal programs. The Act also reassigns to the Director the authority in the Budget and Accounting Procedures Act to develop programs and issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies of the executive branch of the Federal government. Since the Paperwork Reduction Act took effect in 1981, OMB has provided government-wide guidance on collecting and publishing statistical data in 19 statistical policy directives: Directives Nos. 1–2 and 5–19 (43 FR 19260, May 4, 1978); Directive No. 3 (46 FR 3253, January 14, 1981), as revised (50 FR 38932, September 25, 1985); and a directive establishing standard business size categories for statistical purposes, "Comparability of Statistics on Business Size" (47 FR 21362, May 18, 1982). This Circular rescinds and replaces all of these directives except Directive No. 19, "Reports of the Department of Commerce on International Transactions" (43 FR 19272, May 4, 1978).

OMB information collection reviews and other evaluations of statistical activities and publications have pointed to a need for more explicit guidance to agencies on (1) planning statistical surveys so that they meet the requirements set forth in 5 CFR Part 1320 for OMB approval under the Paperwork Reduction Act; (2) treating respondents to statistical surveys in a manner that ensures the public's continued willingness to provide accurate, timely information to the Federal government for statistical purposes; and (3) documenting statistical surveys and studies in such a way as to make their results as useful as possible, minimize the risk that statistics may be misinterpreted, and ensure the public that estimates have been produced by sound, replicable methods. The Circular establishes guidelines on these aspects of statistical work, as well as on the use of standard classifications, data sources, and definitions for statistical and administrative purposes; on the

compilation, release, and evaluation of principal Federal economic indicators; and on the provision of statistical data to international organizations, consistent with the requirements of Executive Order 10033.

5. *Coverage.* The provisions of the Circular apply to all Federal agencies subject to the Paperwork Reduction Act of 1980 (see 5 CFR 1320.7(a)), to all statistical surveys and studies sponsored by those agencies, and to all publications resulting from such surveys and studies.

6. *Agency Implementation.* This Circular provides policy guidance on statistical issues. This guidance should be applied to the extent permitted by the laws governing the agency's actions.

7. *Definitions.* For the purposes of this Circular:

a. "Benchmarking" is the reconciliation of one estimate with another that is thought to be more accurate.

b. "Data" is used interchangeably with "information", as defined in 5 CFR 1320.7(k), when referring to information collected in or resulting from statistical surveys and studies.

c. An "estimate" is a numerical value or relationship that is derived from a survey, model, other statistical or mathematical procedures, or professional judgment.

d. "Imputation" means assigning estimated values to fill in missing data on individual statistical records or to replace data supplied by respondents that an agency believes to be in error. Changes to correct obvious coding or recording errors made by the agency are not imputations. Filling in missing data with data that the same respondent has supplied on another statistical or administrative record is not defined as imputation if the data were supplied in response to the same question for the same time period.

e. "Publication" means any release of statistical data or results of a statistical study for distribution or sale to the public on paper, computer tape, disk, or any other semipermanent medium, or by means of electronic data bases.

f. A Federal agency is the "sponsor" of a statistical survey or study if:

(1) That agency conducts the survey or study using funds appropriated to it or available for discretionary use through other means;

(2) That agency provides funds appropriated to it to another Federal agency, other government organization, or a private contractor to conduct the survey or study; or

(3) The survey or study is conducted under a grant from or cooperative agreement with that agency and:

(A) The grantee or cooperating party is conducting the survey or study at the specific request of the agency for the planning, operation, or evaluation of its programs; or

(B) The terms and conditions of the grant or agreement provide for prior or ongoing agency approval of the collection of information or the procedures to be used in the survey or study.

g. "Statistics are the quantitative results of a survey or study. Statistics include both aggregate estimates and the elements of individual data records.

h. Information collected for "statistical purposes" is information collected for the purpose of reporting population characteristics, developing statistical procedures, or constructing sampling frames. Information collected for any other purpose is for "nonstatistical purposes".

i. "Statistical study" means any study that makes use of a survey, model, or statistical or mathematical procedure or of estimates derived by these means.

j. "Statistical survey" means a collection of data from or about any population or group for the purpose of studying characteristics of the population or group. Both collections of data gathered directly from respondents in a census or sample of the study population and compilations of data from administrative records for statistical purposes are defined as statistical surveys.

8. *Contents.* The guidance provided by this Circular is set forth in the attachments:

Attachment A—Planning of statistical surveys
Attachment B—Treatment of respondents
Attachment C—Statistical publications
Attachment D—Documentation of methods and procedures
Attachment E—Compilation, release, and evaluation of principal Federal economic indicators
Attachment F—Use of standard classifications, data sources, and definitions
Attachment G—Provision of statistical information to international organizations

9. *Submission of Agency Plan.* Within 120 days of the publication of this Circular, the head of each agency shall submit to the Director a plan, including completion dates, for bringing all the agency's programs into compliance with the guidelines in the Circular. Where appropriate, these plans shall be coordinated with the anticipated schedule for paperwork clearance reviews.

10. *Judicial Review.* This Circular is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

11. *Information Contact.* Chief, Statistical Policy Office, Office of Information and Regulatory Affairs. Telephone: (202) 395–3093.

ATTACHMENT A—Circular No. A-____

Planning of Statistical Surveys

1. This attachment outlines the documentation that is to accompany statistical surveys when they are submitted to OMB for approval under the Paperwork Reduction Act, in order to demonstrate that the surveys meet the relevant requirements of the Act and its implementing regulation, 5 CFR Part 1320. It replaces guidance on the planning of statistical surveys previously contained in Statistical Policy Directive No. 1, "Standards for Statistical Surveys," which is rescinded by this Circular.

2. With every request for OMB approval of a statistical survey under the Paperwork Reduction Act, the sponsoring agency shall submit supporting documentation to demonstrate that the survey has a useful purpose and is designed to accomplish that purpose as efficiently as possible. That documentation shall include the following information:

a. *The analytical purpose of the survey.* The documentation shall state specifically the analytical problem or research question the survey is expected to solve or answer and shall explain the role the survey is expected to play in the analysis. If the analysis calls for any individual match or combination of data collected directly from respondents in the survey with data from administrative sources, the documentation shall fully describe the purpose of and plans for the match or combination. Any such match or combination should comply with the provisions in Attachment B, Section 3.c. When requesting OMB approval of a pretest, the sponsoring agency shall specify the aspect of the survey that is to be pretested, the design features of the actual survey that will be determined by the results of the pretest, and the agency's plans and timetable for evaluating the pretest results.

b. *The statistical objectives of the survey.* The documentation shall specify the population to be investigated, the variables for which data are to be gathered, the parameters to be estimated on the basis of survey data, and the accuracy requirements for these estimates. If the survey is to investigate relationships among variables, differences among populations, or changes over time, the documentation shall indicate the necessary accuracy of the estimates of these relationships, differences, or changes.

c. *The need for a survey.* For any survey that involves a new collection of data from the public, the sponsoring agency shall describe its efforts to obtain suitable data from other sources, including existing surveys, administrative records, and model-based estimates, and explain why such alternatives were rejected.

d. *The feasibility of the survey.* The sponsoring agency shall submit documentation to demonstrate that the desired information exists and that it can be obtained through a survey in a sufficiently timely manner and at a sufficient level of accuracy and detail to serve the analytical purposes of the survey.

e. *Justification of the proposed frequency of the survey.* If the survey is to be recurring, the sponsoring agency shall submit documentation to demonstrate that:

(1) Measurable changes in the phenomena being studied are expected to occur in the proposed interval between data collections and that such changes need to be estimated to fulfill the analytical purpose of the survey;

(2) Without a survey at the proposed frequency, changes during this interval could not be estimated with an acceptable degree of accuracy; and

(3) The sponsoring agency is able and intends to collect, process, and publish data promptly if collection is at the frequency proposed.

f. *The survey design.* The sponsoring agency shall submit documentation to demonstrate that:

(1) The survey will collect all data not available from other sources that are necessary for the analyses the survey is intended to support.

(2) The survey is designed to satisfy the accuracy requirements of the analyses it is intended to support. The documentation shall include estimates of the variance of key parameters, including composites and projections, to demonstrate that they are likely to be within acceptable limits. If the survey is intended to measure relationships among variables, differences among populations, or changes over time, the documentation shall also include calculations to demonstrate that the relationships, differences, or changes of interest can probably be measured with the precision required. If the sample design calls for nonprobability sampling, the documentation shall explain the basis for statements about the accuracy of the estimates.

(3) The survey design is operationally feasible. The sponsoring agency shall demonstrate that it is able to carry out the survey as designed.

(4) Adequate steps have been taken to minimize the impact of nonsampling error on the estimates to be derived from survey data. The documentation shall identify the potential sources of error and give the sponsoring agency's projection of the size of such errors and their impact, individually and in the aggregate, on the estimates. All potential sources of nonsampling error shall be analyzed, including:

(A) Any differences between the target population (the universe of study) and the sampling frame;

(B) Any conceptual differences between the parameters to be estimated on the basis of survey data and the parameters desired for the planned analyses;

(C) In statistical studies that involve control groups, dissimilarities between the study group and the control group; and

(D) The expected extent and impact of overall and item nonresponse. The documentation shall include estimates of response rates based on the sponsoring agency's prior experience (or the experience of the organization conducting the survey) with the same survey or similar surveys. If the agency anticipates significantly different rates of nonresponse for different subgroups of the sampled population or for different questions in the survey, it shall provide separate estimates for all such subgroups and questions. If timeliness of response is important (for example, if the sponsoring agency has specified cut-off dates for publishing or using data), it shall indicate the expected response rates by the relevant cut-off dates.

Under 5 CFR 1320.6(g), statistical surveys must be designed to produce results that can be generalized to the universe of study. Accordingly, the sponsoring agency shall submit documentation to demonstrate either that nonsampling error is sufficiently small that it is unlikely to bias estimates derived from survey data, or that effective methods have been developed to adjust for such error. All benchmarking, imputation, and other adjustment methods shall be described in the documentation.

(5) The proposed design satisfies the survey objectives in a way that minimizes the burden on respondents, consistent with sound administrative practices and reasonable cost to the government. In estimating the burden on respondents, agencies shall take into account the amount of time it will take to provide proper responses and the cost of the time of the particular individuals who will be asked to respond, including any time that will be required by agency follow-up. Before submitting a survey to OMB for approval, the sponsoring agency shall analyze the benefits and costs of a range of possible design options, including alternative sample sizes and data collection techniques. The documentation supporting the request for approval shall summarize the results of this analysis.

(6) The survey meets the conditions set forth in Attachment B, Section 4, whenever response to the survey is mandatory. The documentation for surveys that use mandatory reporting authority shall also provide a justification of the use of such authority in terms of its effectiveness in meeting the survey's objectives. The documentation shall include the sponsoring agency's plans for enforcing the penalties for nonresponse.

g. *Performance and Quality Measures.* The documentation shall specify what measures the sponsoring agency will use to evaluate the performance of the survey and the quality of the data collected. It shall list the performance indicators that will be calculated and available after completion of the survey, such as:

(1) Nonresponse rates;

(2) Rates of edit failure;

(3) Percentage of cases requiring follow-up or reinterview; and

(4) Timeliness measures, such as the number of days required to collect data from respondents and the number of days between the reference date of the survey and the date survey results are published.

The documentation shall also include a description of the information validation techniques and quality control procedures that will be used to verify that data in publications or in final data bases are equivalent to the data actually collected.

h. *Disclosure control techniques.* The documentation shall state what disclosure control techniques are to be used in each kind of release of survey data (e.g., summary tabulations and microdata products). If variables or table cells are to be suppressed, the documentation shall indicate what variables will be suppressed and what cross classifications are likely to be lost. The description of disclosure control techniques shall be general enough so that it cannot be used to breach the protection against disclosure. The documentation shall report the

sponsoring agency's efforts to minimize the impact of its disclosure control techniques on the usefulness of the survey data.

i. *Quality standards for publishing data.* The documentation shall specify what quality standards the sponsoring agency will use to determine whether data from the survey are publishable or should be suppressed.

j. *Processing and reporting of survey data.* The documentation shall describe:

(1) The editing and imputation procedures to be used in processing the survey data;

(2) The procedures to be used in preparing estimates based on survey data, including benchmarking and seasonal adjustment methods and methods for creating composite variables; and

(3) The contents of all planned products of the survey, including tabulations to be published, analytical reports to be prepared by the sponsoring agency, and public use data products, with the dates that the sponsoring agency intends to release these products. If the data to be gathered in the survey are likely to be of substantial interest for research purposes, the sponsoring agency should plan to produce a public-use data file. The data file should be offered on a cost-recovery basis, i.e., with the fees for purchase or use of the file set so as to recover the agency's incremental cost of preparing, maintaining, and distributing the file, as provided in OMB Circular A–25. The agency's documentation shall indicate whether the agency plans to release a public-use data file in conformity with the provisions in Attachment C, Section 2.d. The documentation shall also provide a schedule for such release.

k. *The basis for any pledge of confidentiality.* If the sponsoring agency intends to make a pledge of confidentiality covering information collected in the survey, the documentation shall include the statement required by Attachment B, Section 3.b.(1) of this Circular, and shall indicate whether the agency has complied with all the other provisions of Attachment B., Section 3.a. and 3.b.

ATTACHMENT B—Circular No. A–____

Treatment of Respondents

1. This attachment sets forth guidelines for the treatment of respondents to statistical surveys, and replaces guidance on this subject previously contained in section 8 of Statistical Policy Directive No. 1. The guidelines in this attachment are independent of obligations imposed on agencies by the Privacy Act and apply regardless of whether the record systems supporting an agency's statistical programs are exempt from certain provisions of that Act under 5 U.S.C. 552a(k). Moreover, these guidelines are to be applied in addition to all relevant provisions of 5 CFR Part 1320. The guidelines for matching or combining statistical and administrative information (Sections 2.d.(3) and 3.c.) apply only to matches for statistical purposes and therefore do not overlap the OMB Guidelines for conducting computerized matching programs (47 FR 21656, May 19, 1982), which specifically exclude from their coverage matches for statistical purposes.

2. *Informing respondents.* Agencies that sponsor statistical surveys should ensure that potential respondents are provided the following information at the time they are asked to participate in such surveys:

a. The names of all sponsors of the survey, including organizations other than Federal agencies that are providing funding for the survey;

b. The subjects about which respondents will be asked to supply information, in sufficient detail to alert respondents to any sensitive topics in the survey;

c. For surveys in which information is to be collected periodically from the same respondents, the period during which and the frequency with which the respondent will be asked to supply information;

d. The uses that are intended to be made of information from the survey (e.g., to publish statistics on a stated subject or to carry out a particular study). The sponsoring agency should explicitly state:

(1) Whether it intends to use the information exclusively for statistical purposes. In cases for which that is the intent, the sponsoring agency should explicitly state the measures it has taken and its legal authority to prevent nonstatistical uses;

(2) Whether a pledge of confidentiality, made in accordance with the requirements of Section 3.b. of this attachment, covers the information collected and the fact of the respondent's participation in the survey; and

(3) Whether it plans to match or combine survey data with information about survey respondents from administrative sources. If any individual match or combination of survey data and administrative information is intended, the sponsoring agency should explain its nature and purpose to potential respondents; and

e. If the survey uses mandatory reporting authority, a full quotation of the relevant text of the statute(s) and/or regulation(s) that establish the mandatory reporting authority and the penalties for nonresponse.

3. *Protection of confidentiality and privacy.*

a. A Federal agency that collects information for statistical purposes under a pledge of confidentiality should protect that information from public disclosure to the extent permitted by law. Measures to provide this protection should include at a minimum:

(1) Written policies that proscribe the use of such information for nonstatistical purposes;

(2) Written policies and procedures for ensuring the physical security of the information while in the possession of the agency, its contractors, or its grantees. Where appropriate, these should include policies implementing the provisions of Appendix III of OMB Circular A–130 (50 FR 52730, December 24, 1985), on the Security of Automated Information Systems;

(3) A program to ensure that the agency's employees, contractors, and grantees are fully aware of their responsibilities for the safeguarding of confidential information; and

(4) Such other policies, programs, or agency rules as are available and necessary to protect from public disclosure respondent information that the agency believes qualifies for exemption from disclosure under the Freedom of Information Act (5 U.S.C. 552).

Policies, programs, or rules established for this purpose should eliminate any legal or administrative discretion otherwise retained by the agency to make public disclosures that are not consistent with the provisions of this section. Before submitting to OMB for review any proposed information collection for statistical purposes that is to be covered by a pledge of confidentiality, the sponsoring agency shall have resolved any legal questions affecting its ability to prevent public disclosure of the information.

b. To ensure consistent and accurate public understanding of pledges of statistical confidentiality, no agency should make such a pledge of confidentiality unless:

(1) It has provided a statement to OMB that it believes the information covered by the pledge is exempt from disclosure under the Freedom of Information Act, indicating upon what exemption it relies and, if the exemption is by statute, citing the relevant statute;

(2) It has met the requirements of Section 3.a. of this attachment for protecting confidentiality; and

(3) It includes in the information collection the following uniform pledge of confidentiality:

> This information collection conforms to legal and administrative standards established by the Federal government to assure confidential treatment of statistical information. The information you provide will be used only for statistical purposes and will not be published or released in any form that would reveal specific information reported by any individually identifiable respondent. The [name of sponsoring agency or department] has determined that the information you provide, as well as the fact that you have participated in this survey, is exempt from public disclosure under the Freedom of Information Act.

In any case where potential respondents might misinterpret agency statements concerning statistical use or confidential treatment, OMB may require the sponsoring agency to display on information collection forms, or otherwise convey to potential respondents, an explicit statement of noncompliance with the confidentiality provisions of this Circular.

c. If information is collected for statistical purposes, as stated to respondents pursuant to Section 2.d.(1) of this attachment, any individual match or combination of that information with information from administrative records should meet the following conditions:

(1) The match or combination is exclusively for statistical purposes;

(2) The sponsor of each statistical survey involved in the match or combination has informed all respondents as required in Section 2.d.(3) of this attachment; and

(3) Any match or combination involving a statistical survey is conducted as described in the sponsoring agency's request for OMB approval of the survey, submitted in accordance with Attachment A, Section 2.a. of this Circular.

4. *Designing and conducting surveys that use mandatory reporting authority.* Unless there is a statutory requirement that the survey be designed otherwise, any statistical survey that uses mandatory reporting authority should meet the following conditions:

a. The survey is designed so that all units in the population of study, or within each designated sampling stratum of the population, have an equal probability of being included in the survey;

b. If the survey requires periodic responses by the same respondents, the sample is redrawn at regular intervals not to exceed 3 years; and

c. The information that respondents are required to provide includes only factual information that can be obtained from and verified by respondents' records.

ATTACHMENT C—Circular No. A–____

Statistical Publications

1. This attachment sets forth guidelines for publishing the results of statistical surveys and studies. It replaces guidance previously contained in Statistical Policy Directive No. 2, "Standards for the Publication of Statistics," which is rescinded by this Circular.

2. *Obligation to publish.*

a. Agencies that sponsor statistical surveys and studies should either publish the results or else make them available upon request in a form that does not reveal information about any individually-identifiable respondent. Nonpublished results should be maintained in a data base that is sufficiently accessible that requests by other agencies or the public for tabulations or summaries can be met within 90 days.

b. Except as provided in Attachment E of this Circular for principal Federal economic indicators, no data collected in a statistical survey should be suppressed or withheld from release unless:

(1) Suppression is necessary to protect the confidentiality of information provided by individual respondents, or

(2) The data fail to meet the quality standards for publication that the sponsoring agency has specified in its request for OMB approval of the data collection, as required in Attachment A, Section 2.i. of this Circular. If it is necessary to suppress data because they fail to meet these standards, the sponsoring agency shall report to OMB the data items to be suppressed and the basis for suppression, as soon as the agency has that information, and should:

(A) Notify potential users that the data will not be published or otherwise released; and

(B) Make no use of the suppressed data in any published reports or estimates.

c. Agencies should annually publish, either in the **Federal Register** or in an agency publication, a catalog of the statistical data in their files, indicating the form in which they are available to the public (e.g., hardcopy reports, public use tapes, online, tabulations upon request), the period of time for which they will remain available in each form, and the name, address, and telephone number of the office within the issuing agency to which inquiries may be directed.

d. Agencies should provide for the prompt release of public-use data files that enable analysts outside the sponsoring agency to reproduce and verify the sponsoring agency's results, test alternative hypotheses, and develop alternative interpretations. If survey plans submitted to OMB included the preparation of public-use data files (see Attachment A, Section 2.j.(3)), the sponsoring agency should release these files no later than 90 days after the sponsoring agency's first published reports (except for preliminary summary tabulations) based on survey data. If such files are not available when the first reports are issued, the reports should contain a notice regarding their forthcoming availability.

3. *Use of standard statistical classifications and definitions.* Agencies should use the standard classifications and definitions set forth in Attachment F when publishing statistics for which there are such standards. When reporting statistics for which there are no such standards, the classifications and definitions used should support the broadest possible range of analytical uses of the data. Publications should explain all standard classifications and definitions that are used and provide appropriate references.

4. *Presentation of statistics.* The following guidelines apply to the presentation of statistical data in publications.

a. Data tables, charts, and graphs. Tables, charts, and graphs should be designed and labeled so that their meaning is clear and unambiguous. The publication should include an explanation of all technical terms and the definitions of all categorizations or appropriate references for them. Any term whose usage differs from common usage or might otherwise be misconstrued should be clearly defined. Labels should be properly aligned, groups clearly separated, and all group totals included. Labels for subgroups should be sufficiently indented to ensure that relationships among the categories are clear. If all subcategories are not displayed, there should be an explanation of what has been omitted. If tables contain percentages, the population totals that are needed to reproduce the numbers on which the percentages are based should be reported.

b. Complete presentation.

(1) Any publication that contains data tables based on sample surveys should also report estimates of standard deviations or variances. Variances and standard deviations should be directly measured from the sample whenever possible. If generalized variances or other approximations to the variances

are used in the publication, the publication should clearly inform users that the variance estimates are approximations and statistics that rely on these variances may be inaccurate. The publication should fully describe the methods used to estimate variances.

(2) To enable users to evaluate further the reliability of estimates, the agency issuing the publication should publish, or offer and be prepared to provide upon request, the actual number of observations in each published table cell.

(3) To enable users to discern the extent and impact of imputation, agencies should identify imputed data items with separate codes when they publish unsummarized data (as in public-use data files). When they publish summarized data, agencies should report the percentage of observations that are imputed for each variable included in the summary and should indicate (by code or other means) the percentage of data items that are imputed in each published table cell.

c. Discussion of findings. The evidence to support conclusions and statements about causes and effects should be presented in full in the publication. Inferences about differences and changes should be based upon generally accepted statistical techniques, which should be identified and described in the publication.

d. Preliminary and revised estimates. Any data or reports that are released prior to final editing, compilation, or correction should be clearly labeled as preliminary. The release should explain the limitations of the preliminary estimates, describe the nature of future corrections, and provide the scheduled dates for the publication of revisions. When revised data are published, the quantitative difference between the preliminary and revised data should be shown, the revision process described, and the effects of the revisions on the interpretation of the data explained.

5. *Documentation.* All publications of results of a statistical survey or study should include documentation that describes the purpose of and the procedures for conducting the survey or study and the quality and limitations of the results. For reports that are part of a regular series, the required documentation may be published separately but should be kept completely current and accurate. For one-time surveys or studies and for the first publication in a series, the documentation should be available at the same time as the publication. Public-use data files should provide the documentation both in paper form and as part of the file. The documentation should cover:

a. The purpose of the study.

b. A description of the study design. The documentation should explain the rationale for the study design and how the study was conducted. The description should be sufficiently detailed to serve most needs of the principal users of the publication and to ensure that all users are alerted to aspects of the study design that affect the interpretation of results. It should include a brief account of the outcome of the quality control procedures used. The publication should refer the user to the complete documentation of methods and procedures that the sponsoring agency maintains in accordance with Attachment D of this Circular.

c. The sources of all statistical data used in the study. The documentation should clearly identify data that were collected through different surveys or from different administrative record systems and describe how such data were changed through editing and imputation. The documentation should clearly identify constructed and estimated variables and describe the methods used to construct composite variables and the models or statistical procedures used to develop estimates. If data have been subjected to aggregate adjustments, such as benchmarking or seasonal adjustment, this should be clearly noted and the adjustment methods described.

d. A discussion of the limitations of the survey or study results. Sufficient information should be presented to enable the user to judge the accuracy of the reported results of the study and the extent to which the results can be extrapolated or generalized to other populations or circumstances.

6. *Review of publications.* Before releasing any publication, the agency should review it to ensure that it clearly and correctly presents information and that it complies with the standards in this Circular. Agencies that regularly issue statistical publications should establish a formal review process with written procedures and specific assignments of responsibility. The process should provide for independent review of each publication by at least one competent professional who was not involved in the preparation of the publication or the survey or study on which it is based.

7. *Assistance to users.* All publications should contain the name, address, and telephone number of an office within the agency issuing the publication that may be contacted for further information or assistance. The documentation of public-use files should indicate what user services are available for the file and what period of time such services will remain available.

ATTACHMENT D—Circular No. A-____

Documentation of Methods and Procedures

1. Agencies that regularly publish statistics should maintain complete and current documentation of all methods and procedures used to produce these estimates. This documentation should be publicly available in its entirety and therefore should not contain any information that the agency considers to be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). The documentation should include, but is not limited to, the areas detailed in this attachment.

2. *Surveys.* Agencies that sponsor statistical surveys should maintain for each survey a file documenting the survey design and the operations used to collect, process, and publish data from the survey. The file should be maintained until the survey is no longer being conducted and demand for the data no longer exists.

The documentation file should include:

a. Descriptions of: the target population; the sampling frame; the correspondence between the target population and the sampling frame; the sample design; collection methods, locations, and dates; follow-up procedures; the methods used to edit and tabulate survey data; any imputation and adjustment procedures applied to survey data; and the procedures used to control the quality of survey operations.

b. Copies of the forms used in the survey, including the survey questionnaire and the instructions to both respondents and interviewers;

c. The performance statistics, such as those presented in Attachment A, Section 2.g. of this Circular, that the sponsoring agency, its contractors, or its grantees have used for management and evaluation of the survey; and

d. The results of any evaluations of survey operations and data, including quality control audits.

3. *All imputation procedures, coding procedures, and procedures used to adjust data acquired through surveys or administrative records.* The documentation of such procedures, including benchmarking, revision, and seasonal adjustment procedures, should be complete enough to enable a competent professional from outside the agency to duplicate the procedures and results.

4. *Models.* The documentation of models used to generate estimates should be complete enough to enable a competent professional from outside the agency to use the model and duplicate the sponsoring agency's results. Model documentation should include the following: a model specification; a summary of the purpose of the model, including its principles, structure, and assumptions; a complete mathematical statement of the model; a description of any data base used with the model; a description of the validation, verification, and audit record associated with the model; and the results of using the model, including both the raw outputs and analysis based on those outputs.

If the documentation is for a computer model, it should also include a user's guide explaining how to run the model.

5. *The procedures used to generate statistical estimates that are required by statute or by this Circular to be used by Federal agencies in making determinations about the benefits, obligations, privileges, or rights of specific individuals or entities.* Complete, current documentation of all procedures, including specific assumptions and decision rules, should be available in published form at the time such estimates are released. All statistical estimates used in making such determinations should themselves be published.

ATTACHMENT E—Circular No. A-____

Compilation, Release, and Evaluation of Principal Federal Economic Indicators

1. This attachment replaces Statistical Policy Directive No. 3, "Compilation, Release and Evaluation of Principal Federal Economic Indicators," which this Circular rescinds.

2. Agencies that publish statistical estimates that have been designated by the Director of OMB as principal Federal economic indicators should follow the procedures prescribed in this attachment for the compilation, release, and evaluation of these estimates.

3. *Designation of Principal Indicators.* The Director of OMB shall determine, after consultation with the affected Federal agencies, the statistics and estimates to be designated as principal Federal economic indicators and covered by this attachment to the Circular. At the beginning of each calendar year, OMB will publish the list of indicators covered and the scheduled dates for release of each indicator during the year.

4. *Prompt Release.* The interval between the end of the period to which the statistics refer and the date when the data or estimates are released to the public should be as short as practicable. Agencies should compile and release series that are issued quarterly or more frequently within 22 working days of the end of the reference period.

5. *Release Schedule.* The releasing agency is responsible for ensuring that the interested public is aware of the release time and date. The last report of each calendar year should contain the time and date of all reports in the upcoming year. In addition, each release should include an announcement of the time and date of the next release. The releasing agency shall provide a schedule of releases for the upcoming calendar year to the Statistical Policy Office, Office of Information and Regulatory Affairs, OMB, by November 30th of each year. Changes in the release schedule may occur only if special, unforeseen circumstances arise. The releasing agency should announce and fully explain any schedule changes as soon as it has determined they are unavoidable.

There should be one office in the agency that can provide the release schedule of all the agency's principal economic indicators. The name, address, and telephone number of this office should be readily available to the public. Agencies should establish and maintain no more than two specific times of day for the release of their principal economic indicators and should only release indicators at such designated times.

6. *Announcement of Changes.* Agencies should announce any planned change in data collection, analysis, or estimation methods that may affect the interpretation of a principal economic indicator as far in advance of the change as possible. The agency should include the announcement in a regular report of the economic indicator. When possible, a period for public comment should be provided between the announcement of an intended change and its implementation. At a minimum, for quarterly and monthly series, the agency should announce the change at least three reports before the first report affected by the change. For weekly and annual series, the announcement should precede the first report affected by the change by at least three months. In the first report affected by the change, the agency should include a complete description of the change and its impact.

Agencies should fully explain unforeseeable changes due to special circumstances as soon as they are known and in the first report affected by the change.

7. *Release Procedure.* The statistical agency that produces each principal economic indicator should issue it in a press release or other printed report. The agency should issue a press release where this will significantly speed up the dissemination of data to the public.

Each statistical agency is responsible for establishing procedures to ensure that there is no premature release of information or data estimates during the time required for preparation of the public report. This includes the protection of public-use data banks, which should not receive any data or estimates until they are officially released. As soon as copies of materials for public release have been prepared, the agency should physically secure them.

Except for the authorized distribution described in this section, agencies should ensure that no information or data estimates are released before the official release time.

The agency shall provide prerelease information to the President, through the Chairman of the Council of Economic Advisers, as soon as it is available. The agency should grant prerelease access to others only under the following conditions:

a. The agency head has established whatever security arrangements, and imposed whatever conditions on the granting of access, that are necessary to prevent unauthorized dissemination or use.

b. The agency head will ensure that any person granted access has been fully informed of, and has agreed to, these conditions.

c. Any prerelease of information under an embargo will not precede the official release time by more than 30 minutes.

d. In all cases, prerelease access will precede the official release time only to the extent necessary for an orderly review of the data.

All employees of the Executive Branch who receive prerelease distribution of information and data estimates as authorized above are responsible for ensuring that no release occurs prior to the official release time. Except for members of the staff of the agency issuing the principal economic indicator who have been designated by the agency head to provide technical explanations of the data, employees of the Executive Branch should not comment publicly on the data until at least one hour after the official release time.

8. *Preliminary Estimates and Revisions.* Deciding when to release a principal economic indicator requires the balancing of accuracy and timeliness. Agencies should not

withhold information needed to evaluate current economic conditions by imposing unnecessarily stringent accuracy requirements on preliminary estimates. They should, however, fully inform the public of the degree of inaccuracy that is accepted to accommodate timely release.

In the case of estimates based on probability samples, agencies should publish measures of uncertainty based on the sampling variance and consideration of nonsampling errors, e.g., a root-mean-square error estimate or its equivalent. In cases where the confidence interval about any single point estimate cannot be estimated, results should be presented only in the form of an interval estimate. Methods used to estimate upper and lower bound values that define the interval estimate should be designed to meet three objectives: (1) Preliminary interval estimates should include the final point estimate with high probability; (2) the width of the interval should be consistent with the error history of the indicator being estimated; and (3) the bound values should be consistent with any confidence intervals that can be estimated for components of the indicator.

For either point or interval estimates, agencies shall apply the following guidelines when issuing and evaluating preliminary data and revisions:

a. Agencies should clearly identify estimates as preliminary or revised;

b. If the difference between preliminary and final aggregate estimates, or the width of a preliminary interval estimate, is large relative to average period-to-period differences, the agency should either take steps to improve the accuracy of preliminary estimates or delay the release of estimates until a reliable estimate can be made;

c. If preliminary estimates show signs of a consistent bias (for example, if revisions are consistently in the same direction), the agency should take steps to eliminate this bias;

d. Revisions occurring for routine reasons, such as benchmarking and updating of seasonality factors, should be consolidated and released simultaneously;

e. Agencies should release routine revisions of a principal economic indicator only as part of the regular reporting schedule; and

f. Revisions occurring for other than routine reasons should be fully explained and should be released as soon as adjustments can be completed.

9. *Granting of Exceptions.* Prior to taking any action that may be contrary to the provisions of Attachment E, the head of a releasing agency shall consult with the Director of OMB. If the Director determines that the action is contrary to the provisions of this attachment, the head of the agency may apply for an exception. Any agency requesting an exception shall demonstrate that the proposed exception is necessary and consistent with the purposes of the Circular.

10. *Performance Evaluation.* Each agency that issues a principal Federal economic indicator shall submit a performance evaluation of that indicator to the Statistical Policy Office, Office of Information and Regulatory Affairs, OMB, every three years. A schedule for the performance evaluation of data series or estimates designated as principal Federal economic indicators will be prepared by the Statistical Policy Office. The evaluation shall address the following issues:

a. The accuracy and reliability of the series, e.g., the magnitude and direction of all revisions, the performance of the series relative to established benchmarks, and the proportion and effect of nonresponses or responses received after the publication of preliminary estimates;

b. The accuracy, completeness, and accessibility of documentation describing the methods used in compiling and revising the indicator;

c. The agency's performance in meeting the designated release schedule and the prompt release objective of this Circular;

d. The agency's ability to avoid disclosure prior to the scheduled release time; and

e. Any additional issues that the Director may specify in writing to the agency at least 6 months in advance of the scheduled submission date.

The Director will review the evaluation to determine whether the indicator is prepared and published in conformity with all OMB statistical policies, standards, and guidelines. OMB will include a summary of the year's evaluations and their reviews in the annual report to Congress required by 44 U.S.C. 3514.

ATTACHMENT F—Circular No. A-____

Use of Standard Classifications, Data Sources, and Definitions

1. This attachment replaces guidance on the use of standard classifications, data sources, and definitions previously contained in Statistical Policy Directives 5–17 and in the directive on "Comparability of Statistics on Business Size" (47 FR 21362, May 18, 1982), all of which this Circular rescinds. Nine of the standards established in these directives are retained in the Circular. Five others have been discontinued as government-wide statistical standards, either because they have not proven useful for the statistical purposes intended or because they are used by only one or two agencies in collecting and publishing statistics and can effectively be maintained by these agencies. The discontinued standards are a standard reference base period for Federal government general-purpose index numbers; standard Federal administrative regions; the standard industrial classification of enterprises; the standard classification of fields of science and engineering; and the standard gas pressure base.

2. Agencies should use standard statistical classifications, data sources, and definitions for the purposes and in the manner specified in this section.

a. *Metropolitan Statistical Areas*

All agencies that conduct statistical programs to collect and publish data for Metropolitan Statistical Areas (MSAs) should use the most recent definitions of Metropolitan Statistical Areas established by the Office of Management and Budget.

OMB establishes and maintains the definitions of Metropolitan Statistical Areas solely for statistical purposes. In periodically reviewing and revising the MSA definitions, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions, nor will OMB modify the definitions to meet the requirements of any nonstatistical program.

Therefore, if an agency uses the MSA definitions in a nonstatistical program, it is that agency's responsibility to ensure that the definitions are appropriate for such use. In cases where an agency is publishing for comment a proposed regulation that would use the MSA definitions for a nonstatistical purpose, the agency should seek public comment on the proposed use of the MSA definitions. Agencies that use the MSA definitions in a nonstatistical program may modify the MSA definitions, exclusively for the purposes of that program. However, in order to avoid confusion with the standard statistical definitions, all such modifications should be clearly identified as deviations from the OMB standard definitions of Metropolitan Statistical Areas.

b. *Standard Industrial Classification*

All agencies that conduct statistical programs to collect and publish establishment data by industry type should use the Standard Industrial Classification (SIC), as published in the most recent edition of the *Standard Industrial Classification Manual.*

OMB establishes and maintains the Standard Industrial Classification solely for statistical purposes. In periodically reviewing and revising the SIC, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the classification, nor will OMB modify the classification to meet the requirements of any nonstatistical program.

Therefore, if an agency uses the SIC in a nonstatistical program, it is that agency's responsibility to ensure that the classification is appropriate for such use. In cases where an agency is publishing for comment a proposed regulation that would use the SIC for a nonstatistical purpose, the agency should seek public comment on the proposed use of the SIC. Agencies that use the SIC in a nonstatistical program may modify the SIC, exclusively for the purposes of that program. However, in order to avoid confusion with the standard statistical classification, all such modifications should be clearly identified as deviations from the Standard Industrial Classification.

Any agency requesting or requiring an establishment to provide its SIC code as part of an information collection shall clearly identify within the information collection instrument or its directions the name, address, and telephone number of a unit within that agency that will assist respondents in determining their appropriate SIC code. When submitting any such information collection request to OMB for clearance, the agency shall disclose any modifications it has made in the SIC for the purposes of any nonstatistical program of which the information collection is a part and shall demonstrate that it has sufficient and appropriately-trained personnel to assist its respondents in determining their SIC codes.

c. *Standard Occupational Classification*

All agencies that conduct statistical programs to collect and publish data by occupation should use the Standard Occupational Classification (SOC), as published in the most recent edition of the *Standard Occupational Classification Manual.*

OMB establishes and maintains the Standard Occupational Classification solely for statistical purposes. In periodically reviewing and revising the SOC, OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the classification, nor will OMB modify the classification to meet the requirements of any nonstatistical program.

Therefore, if an agency uses the SOC in a nonstatistical program, it is that agency's responsibility to ensure that the classification is appropriate for such use. In cases where an agency is publishing for comment a proposed regulation that would use the SOC for a nonstatistical purpose, the agency should seek public comment on the proposed use of the SOC. Agencies that use the SOC in a nonstatistical program may modify the SOC, exclusively for the purposes of that program. However, in order to avoid confusion with the standard statistical classification, all such modifications should be clearly identified as deviations from the Standard Occupational Classification.

Any agency requesting or requiring respondents to provide SOC codes as part of an information collection shall clearly identify within the information collection instrument or its directions the name, address, and telephone number of a unit within that agency that will assist respondents in determining their appropriate SOC codes. When submitting any such information collection request to OMB for clearance, the agency shall disclose any modifications it has made in the SOC for the purposes of any nonstatistical program of which the information collection is a part and shall demonstrate that it has sufficient and appropriately-trained personnel to assist its respondents in determining their SOC codes.

d. *Standard Business Size Categories*

When publishing statistics, agencies should use the size categories in the table below to classify reporting businesses by number of employees, revenues, or assets. Tabulations based on these categories should be accompanied by precise definitions of the variables used to measure size and of the type of reporting unit tabulated.

BUSINESS SIZE CATEGORIES

(Revenues or assets (dollars))

	under	$25,000.
$25,000	under	$50,000.
$50,000	under	$100,000.
$100,000	under	$250,000.
$250,000	under	$500,000.
$500,000	under	$1 million.
$1 million	under	$2.5 million.
$2.5 million	under	$5 million.
$5 million	under	$10 million.
$10 million	under	$25 million.
$25 million	under	$50 million.
$50 million	under	$100 million.
$100 million	under	$250 million.
$250 million	under	$500 million.
$500 million	under	$1 billion.
$1 billion	under	$2.5 billion.
$2.5 billion	under	$5 billion.
$5 billion	or more	

BUSINESS SIZE CATEGORIES

(Employment (number of employees))

0	(none)	
1	under	5
5	under	10
10	under	20
20	under	50
50	under	100
100	under	250
250	under	500
500	under	1,000
1,000	under	2,500
2,500	under	10,000
10,000	or more	

Agencies may combine adjacent size categories or truncate the size scale, if the limited scope of the data, the need to ensure the confidentiality of individual responses, or very large sampling variability makes it undesirable to publish data at the recommended level of detail. The reasons for such actions should be noted in the affected publication. Unless the categories are combined to ensure confidentiality of individual responses, agencies should, when they publish data that combine size categories, maintain unpublished estimates or internal documentation sufficient to allow reasonable retrospective estimates of the unpublished detail. Agencies may define additional partitions within the standard categories to meet particular analytical needs, but these should be in addition to, not in lieu of, the standard categories.

e. *Standard Payroll Reporting Period*

Agency requests to employers for data from their payroll records to be used for statistical purposes should refer to the payroll period that includes the twelfth day of the month.

f. *Source of Population Data for Use in the Administration of Federal Programs*

Agencies that are required by law to allocate Federal funds or determine eligibility for participation in a Federal program on the basis of the total population of State, county, or local units of government should use—to the extent permitted by law—the most current population estimates of the Bureau of the Census that have been published for all units of the relevant levels of government. If total population is used with other variables in a ratio or formula that is the basis of allocating Federal funds or determining eligibility for participation in a Federal program, unless otherwise required by law all the variables shall refer to the same year, which shall be the most recent year for which all data are available.

g. *Standard Source of Labor Force and Unemployment Estimates for Use in the Administration of Federal Programs*

Agencies that are required by law to allocate Federal funds or determine eligibility for participation in a Federal program on the basis of the employment, unemployment, or labor force participation levels or rates in the population or any subgroups of the population of State, county, or local units of government, should use—to the extent permitted by law—the most current estimates published by the Bureau of Labor Statistics that are available for all units of the relevant levels of government.

h. *Definition of Poverty*

Agencies that are required by law to use the definition of poverty established by the Office of Management and Budget, and agencies that publish statistical estimates of the number of persons, families, or households in poverty, should continue to use as the definition of poverty the annual income thresholds that for 1986 and prior years have been published by the Bureau of the Census in its Current Population Reports, P–60 series. For 1987 and subsequent years, the definition of poverty shall be the 1986 thresholds adjusted annually by the year-over-year change in the Consumer Price Index for all urban consumers.

i. *Racial and Ethnic Categories*

To the extent permitted by law, agencies should use the following categories for all purposes that require classifying people by racial and/or ethnic background. A person's racial and/or ethnic background is determined by the way in which the person chooses to be identified in his/her community.

Racial Categories:

American Indian or Alaska Native
Asian or Pacific Islander
Black
White

In establishing reporting systems and collecting data, agencies should permit individuals to identify themselves as "other" if they believe they do not fall into any of the categories listed above.

Ethnic Categories:

Hispanic
Not of Hispanic origin

Agencies may use other, more detailed categories as long as such categories can be aggregated into the basic categories listed in this section.

ATTACHMENT G—Circular No. A-____

Provision of Statistical Information to International Organizations

1. This attachment replaces Statistical Policy Directive No. 18, "Providing of Statistical Information to International Organizations," which this Circular rescinds.

2. In accordance with Section 1 of Executive Order 10033 of February 8, 1949, as amended (see 22 USCA 286f), the Director of OMB will determine, with the concurrence of the Secretary of State, what statistical information shall be provided in response to official requests received by the United States Government from any international organization of which the United States is a member, and will determine which agency or agencies shall prepare the statistical information to be provided. Agencies that have not been previously designated by the Director to prepare such information shall notify the Director and receive his concurrence before compiling or providing any statistical information for publication or use by any international organization of which the United States is a member.

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federal register

Wednesday
January 20, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 884 and 892

Radiology Devices; General Provisions and Classifications of 59 Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 884 and 892

[Docket No. 78N-2742]

Radiology Devices; General Provisions and Classifications of 59 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 59 generic types of radiology devices. The preamble to this rule responds to comments received on the proposed regulations classifying these devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: February 19, 1988.

FOR FURTHER INFORMATION CONTACT: Harvey Rudolph, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Background.
B. FDA's Priorities for Establishing Performance Standards.
C. Changes in the Name of the Radiology Device Advisory Committee.
D. Devices Not Being Classified at This Time.
E. Changes in Classifications of Devices.
F. List of Radiology Devices.
G. Summary of Comments on Classifications and FDA's Responses.
H. Exemptions for Class I Devices.
I. Minor Changes or Clarifications.
J. Guidelines for Measuring and Reporting Acoustic Output of Diagnostic Ultrasound Devices.
K. Classification Regulations Published to Date.
L. Reference.
M. Environmental Impact.
N. Economic Impact.

A. Background

In the **Federal Register** of January 29, 1982 (47 FR 4406), FDA published a proposed rule containing general provisions applicable to the classification of radiology devices and individual proposed regulations to classify 73 devices. FDA has withdrawn the proposals to classify 2 of the 73 proposed devices (September 17, 1982; 47 FR 41139) because FDA's Center for Drug Evaluation and Research regulates the radionuclide generator as a radiopharmaceutical drug, and the automatic contrast medium injector is essentially the same as, or is included in, the angiographic injector and syringe that has been classified into class II as a cardiovascular device (21 CFR 890.1650).

As to the remaining 71 proposed regulations, in this final rule FDA is classifying 59 devices, as follows: 13 devices into class I, 44 devices into class II, 1 device into class III, and, depending upon its intended use, 1 device into class I or class III. FDA is postponing classifications of certain versions or all versions of 14 devices, as described below under "D. Devices Not Being Classified at this Time."

FDA provided a period of 60 days, later extended to 90 days (March 19, 1982; 47 FR 11879), for interested persons to submit written comments on the proposed regulations. The comments received and FDA's responses are discussed below.

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before July 31, 1990, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regarded as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See section 520(1) of the act (21 U.S.C. 360j(1)).

The preamble to proposed regulations described the development of the general provisions and the proposed regulations classifying radiology devices and the activities of the Radiology Devices Panel, an FDA advisory committee that makes recommendations to FDA concerning the classification of radiology devices.

In April 1985, H.R. 2177 (99th Cong., 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) and the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards set out in section 514 of the act. If legislation comparable to this bill becomes law, there will be two categories of devices, class I (general controls) and class II (premarket approval, currently class III). Class II devices would be redesignated as class I devices. Because this legislation included transitional provisions that translate classifications under the current law to classifications under the proposed law, FDA is continuing its issuance of classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a performance standard is established under section 514 of the act (21 U.S.C. 360d) for the class II device.

In that notice, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices.

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.

b. The recommendations of FDA's advisory committees.

c. The impact of an FDA guidelines or recommendation.

d. The effect of a Federal standard or other regulatory controls under an authority other than the act.

e. The impact of voluntary standards.

f. The impact of activities authorized under the general controls provisions of the act.

g. The effect of dissemination of information and education efforts.

h. The sufficiency of voluntary corrective actions.

i. Valid scientific evidence developed since classification.

j. The existence of a petition for reclassification.

k. The impact of any other factors that affect a device's safety or effectiveness.

C. Changes in the Name of the Radiology Device Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Radiologic Devices Panel (the Panel) (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to radiology devices as did its predecessors, the Radiologic Devices Panel (1982-1984), the Obstetrics-Gynecology and Radiologic Devices Panel (1978-1982), and the Radiological Devices Classification Panel (1976-1978). Also, the charter for the new panel has been amended to include the functions of the Medical Radiation Advisory Committee.

D. Devices Not Being Classified at This Time

FDA is postponing classification of certain versions or all versions of the 14 AC-powered radiology devices listed below, to give the agency time to review additional data on the safety of electrically powered devices. Although FDA proposed to classify these devices into class II, it now is considering placing them in class I. When FDA does classify the devices not being classified at this time, it plans to use the same docket numbers.

Note that, as a result of postponing classifications of certain versions of two proposed thermographic devices and classifying other versions of these two devices in this final rule, each of these devices is counted twice—once as a device with classification postponed and also as a device now being classified.

FDA proposed to classify the AC-powered telethermographic system (§ 892.1450) into class II for certain intended uses and into class III for other intended uses. The agency is postponing the classification of this device intended for adjunctive diagnostic use and, in this final rule, is classifying the device intended for use as a sole diagnostic screening tool.

FDA proposed to classify the AC-powered versions of the liquid crystal thermographic system into class II or class III, depending upon the intended use of the device. FDA is postponing the classification of the AC-powered versions of the device intended for adjunctive diagnostic use. In this final rule, FDA is classifying all non-AC-powered versions of the device and is classifying the AC-powered versions of the device intended for use as a sole diagnostic screening tool.

Further, in this final rule, FDA is codifying classifications of the telethermographic system and the liquid crystal thermographic system in 21 CFR Part 884—Obstetrical and Gynecological Devices, because FDA believes this part to be a more appropriate place to publish these classifications in the Code of Federal Regulations.

The 14 devices whose classifications are being postponed are listed below.

Section No.	Device	Docket No.
1. 892.1100	Scintillation gamma camera.	78N-2743
2. 892.1110	Positron camera.	78N-2744
3. 892.1130	Nuclear whole body counter.	78N-2745
4. 892.1300	Nuclear rectilinear scanner.	78N-2750
5. 892.1320	Nuclear uptake probe.	78N-2752
6. 892.1330	Nuclear whole body scanner.	78N-2753
7. 892.1350	Nuclear scanning bed.	78N-2754
8. 892.1410	Nuclear electrocardiograph synchronizer.	78N-2760
9. 884.2980 (formerly 892.1450).	AC-powered telethermographic system.	78N-2762
10. 884.2982 (formerly 892.1480).	AC-powered liquid crystal thermographic system.	78N-2763
11. 892.1640	Radiographic film marking system.	78N-2773
12. 892.1890	Radiographic film illuminator.	78N-2795
13. 892.1900	Automatic radiographic film processor.	78N-2796
14. 892.1970	Radiographic ECG/respirator synchronizer.	78N-2803

E. Changes in Classifications of Devices

Based on the comments received and upon additional consideration of all information before the agency, FDA has placed each of the six devices listed below in a different class from that proposed. The agency's specific reasons for changing the classifications of these devices are provided in this preamble under "G. Summary of Comments On Classifications and FDA's Responses" in the respective paragraph number noted below after the name of the devices.

Section No.	Device	Proposed class	Final class
892.1370	Nuclear anthropomorphic phantom (see paragraph 3).	II	I
892.1380	Nuclear flood source phantom (see paragraph 3).	II	I
892.1400	Nuclear sealed calibration source (see paragraph 3).	II	I
892.1420	Radionuclide test pattern phantom (see paragraph 3).	II	I
892.5740	Radionuclide teletherapy source (see paragraph 3).	II	I
892.6500	Personnel protective shield (see paragraph 15).	II	I

FDA does not believe that it is necessary to issue new proposed regulations regarding these decisions. The purpose of publishing a proposed regulation and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposed regulation, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should, therefore, anticipate that in a

final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general regulation for radiology devices (see 47 FR 4406; January 29, 1982). Persons who disagree with the final classification of a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

F. List of Radiology Devices

The list below shows for each radiology device the section of the Code of Federal Regulations at which classification of that device is being codified, the docket number of the corresponding proposed classification regulation, and the classification of each device in the final rule. The list includes the radiology devices for which final classifications are being postponed. For each of these devices, the section number of the Code of Federal Regulations is in parentheses, the name of the device is identified with footnote [1] and no classification is provided. See "D. Devices Not Being Classified At This Time" for a description of FDA's reasons for postponing classifications of these devices. The names of six devices on the list whose final classifications are different from the classifications proposed for these devices are identified by an asterisk (*). If no comments were received on a proposed regulation, FDA is adopting the proposed regulation without a change in classification of the device unless specified otherwise in this rule.

SUBPART B—DIAGNOSTIC DEVICES

Section No.	Device	Docket No.	Classification
(892.1100)	Scintillation (gamma) camera [1]	78N-2743	
(892.1110)	Positron camera [1]	78N-2744	
(892.1130)	Nuclear whole body counter [1]	78N-2745	
892.1170	Bone densitometer	78N-2746	II
892.1200	Emission computed tomography system	78N-2747	II
892.1220	Fluorescent scanner	78N-2748	II
(892.1300)	Nuclear rectilinear scanner [1]	78N-2750	
892.1310	Nuclear tomography system	78N-2751	II
(892.1320)	Nuclear uptake probe [1]	78N-2752	
(892.1330)	Nuclear whole body scanner [1]	78N-2753	
(892.1350)	Nuclear scanning bed [1]	78N-2754	
892.1360	Radionuclide dose calibrator	78N-2755	II
892.1370	Nuclear anthropomorphic phantom*	78N-2756	I
892.1380	Nuclear flood source phantom*	78N-2757	I
892.1390	Radionuclide rebreathing system	78N-2758	II
892.1400	Nuclear sealed calibration source*	78N-2759	I
(892.1410)	Nuclear electrocardiograph synchronizer [1]	78N-2760	
892.1420	Radionuclide test pattern phantom*	78N-2761	I
884.2980	Telethermographic system (proposed as § 892.1450)	78N-2762	III
(884.2980)	Telethermographic system, AC-powered, if intended for adjunctive diagnostic use (proposed as § 892.1450) [1].	78N-2762	
884.2982	Liquid crystal thermographic system (proposed as § 892.1480)	78N-2763	I, III
(884.2982)	Liquid crystal thermographic system, AC-powered, if intended for adjunctive diagnostic use (proposed as § 892.1480) [1].	78N-2763	
892.1540	Nonfetal ultrasonic monitor	78N-2765	II
892.1550	Ultrasonic pulsed doppler imaging system	78N-2766	II
892.1560	Ultrasonic pulsed echo imaging system	78N-2767	II
892.1570	Diagnostic ultrasonic transducer	78N-2768	II
892.1600	Angiographic X-ray system	78N-2769	II
892.1610	Diagnostic X-ray beam-limiting device	78N-2770	II
892.1620	Cine or spot fluorographic X-ray camera	78N-2771	II
892.1630	Electrostatic X-ray imaging system	78N-2772	II
(892.1640)	Radiographic film marking system [1]	78N-2773	
892.1650	Image-intensified fluoroscopic X-ray system	78N-2774	II
892.1660	Non-image-intensified fluoroscopic X-ray system	78N-2775	II
892.1670	Spot-film device	78N-2776	II
892.1680	Stationary X-ray system	78N-2777	II
892.1700	Diagnostic X-ray high voltage generator	78N-2778	II
892.1710	Mammographic X-ray system	78N-2779	II
892.1720	Mobile X-ray system	78N-2780	II
892.1730	Photofluorographic X-ray system	78N-2781	II
892.1740	Tomographic X-ray system	78N-2782	II
892.1750	Computed tomography X-ray system	78N-2783	II
892.1760	Diagnostic X-ray tube housing assembly	78N-2784	II
892.1770	Diagnostic X-ray tube mount	78N-2785	II
892.1820	Pneumoencephalographic chair	78N-2786	II
892.1830	Radiologic patient cradle	78N-2789	II
892.1840	Radiographic film	78N-2790	I
892.1850	Radiographic film cassette	78N-2791	II
892.1860	Radiographic film/cassette changer	78N-2792	II

[1] Classification postponed.

SUBPART B—DIAGNOSTIC DEVICES—Continued

Section No.	Device	Docket No.	Classification
892.1870	Radiographic film/cassette changer programmer	78N-2793	II
892.1880	Wall-mounted radiographic cassette holder	78N-2794	II
(892.1890)	Radiographic film illuminator [1]	78N-2795	
(892.1900)	Automatic radiographic film processor [1]	78N-2796	
892.1910	Radiographic grid	78N-2797	I
892.1920	Radiographic head holder	78N-2798	I
892.1940	Radiologic quality assurance instrument	78N-2800	I
892.1950	Radiographic anthropomorphic phantom	78N-2801	I
892.1960	Radiographic intensifying screen	78N-2802	I
(892.1970)	Radiograpic ECG/respirator synchronizer [1]	78N-2803	
892.1980	Radiologic table	78N-2804	II

[1] Classification postponed.

SUBPARTS C-E—[RESERVED]

SUBPART F.—THERAPEUTIC DEVICES

892.5050	Medical charged-particle radiation therapy system	78N-2806	II
892.5300	Medical neutron radiation therapy system	78N-2810	II
892.5650	Manual radionuclide applicator system	78N-2813	I
892.5700	Remote controlled radionuclide applicator system	78N-2814	II
892.5710	Radiation therapy beamshaping block	78N-2815	II
892.5730	Radionuclide brachytherapy source	78N-2817	II
892.5740	Radionuclide teletherapy source*	78N-2818	I
892.5750	Radionuclide radiation therapy system	78N-2819	II
892.5770	Powered radiation therapy patient support assembly	78N-2820	II
892.5780	Light beam patient position indicator	78N-2821	II
892.5840	Radiation therapy simulation system	78N-2822	II
892.5900	X-ray radiation therapy system	78N-2823	II
892.5930	Therapeutic X-ray tube housing assembly	78N-2826	II
892.6500	Personnel protective shield*	78N-2827	I

[1] Classification postponed.

G. Summary of Comments on Classifications and FDA's Responses

1. In FDA's proposed regulations, FDA proposed to classify most of the radiology devices into class II. Comments argued (arguments 1a through 1h) that FDA should classify into class I many of the radiology devices that it proposed be in class II. FDA's responses to each of these arguments follow:

1a. Some comments said that electrical shock from devices was not a significant risk to health. These comments said that electrically powered radiology devices should be classified into class I instead of class II as proposed.

FDA currently is reviewing additional data on safety of electrically powered devices. The agency is postponing classifications of those AC-powered radiology devices it proposed be in class II, if FDA believes that the general controls of class I alone are sufficient to control all risks to health presented by the AC-powered devices, including the risks of electrical shock. Thus, FDA tentatively agrees that it should consider classifying certain AC-powered devices into class I. However, as to those devices for which FDA believes that the general controls of class I alone are insufficient to control any risks to health presented by an AC-powered radiology device in addition to the risk of electrical shock, FDA believes that they should not be classified into class I. Accordingly, FDA is postponing classifications of the 14 proposed radiology devices listed earlier in this preamble under "D. Devices Not Being Classified At This Time" while the agency reviews additional data on safety of electrically powered devices. Also, in this final rule FDA is classifying certain AC-powered devices into class II or class III to control risks to health other than electrical shock presented by these devices.

1b. Some comments said that voluntary standards exist for many radiology devices. The comments requested that FDA classify devices subject of such voluntary standards into class I, instead of class II as proposed.

FDA disagrees with the comments. FDA classifies devices using statutory criteria in section 513 of the act. These statutory criteria do not include reliance on voluntary standards. In the Federal Register of October 23, 1985 (50 FR 43060), FDA published a final policy statement regarding class II devices. This statement identifies the factors that FDA takes into account in setting priorities for initiating proceedings to establish performance standards under section 514 of the act for class II devices. Among the factors FDA considers is the existence of an adequate adhered-to voluntary standard. FDA's final policy statement does not include a provision for reliance on voluntary standards, nor does it provide for promotion of such standards. See "B. FDA's Priorities for Establishing Performance Standards" at the beginning of this preamble.

1c. A comment said that, when FDA classifies a device into class II, this constitutes a formal determination by FDA that without a performance standard there is not reasonable assurance that a device is safe and effective. The comment said that many devices that FDA proposed be in class II should be classified into class I until a mandatory standard is available. The comment suggested that, when a mandatory standard is available for

such a device. FDA could change the classification of the device to class II.

FDA agrees that classification of a device into class II is a formal determination by FDA that a mandatory performance standard is necessary (in addition to the requirements of general controls) to provide reasonable assurance of the safety and effectiveness of a device. However, FDA disagrees that the agency could classify a device that meets the statutory criteria for class II into class I until a mandatory performance standard is available and then place the device into class II. Such a temporary classification is unnecessary because the act provides that, until a standard for a class II device is established under section 514 of the act, the device may be marketed subject only to the general controls of the act. Thus, the act provides for the same marketing conditions that would apply if FDA temporarily classified a proposed class II device in class I.

1d. Several general comments stated that FDA proposed to classify too many radiology devices in class II and requested that FDA place more devices in class I.

FDA agrees that certain of the devices that it proposed to classify in class II should be in class I. These devices are identified earlier in this preamble under "E. Changes in Classifications of Devices." FDA's reasons for making these changes are provided below in paragraphs 3 and 15. FDA's reasons for classifying other radiology devices into class II as proposed are provided in FDA's responses below to comments on specific devices. In "A. Background" above, this preamble describes the Department of Health and Human Services' legislative proposal to amend the act to eliminate the statutory category of class II.

1e. Some comments argued that FDA proposed to classify too many radiology devices in class II, because FDA failed to weigh probable benefit against probable risk during its preparation of proposed classification regulations for radiology devices. The comments requested that FDA place more devices in class I. These comments said that FDA's proposed regulations unfairly required manufacturers to prove that their devices do not present health risks.

FDA disagrees with the comments' argument that the proposed classifications of certain radiology devices into class II are unfair and unreasonable. FDA also disagrees that it failed to weigh the probable benefits from the use of devices against the probable risks of these devices. FDA believes that the criteria it uses to determine the safety of a device, which criteria are found in section 513(a)(2) of the act and in 21 CFR 860.7, are required by law and are reasonable.

Further, FDA believes that any risk of injury or illness is unreasonable when no evidence is available of probable benefit to the health of those persons for whose use the device is intended. This conclusion is supported by the legislative history of the Medical Device Amendments of 1976 (Pub. L. 94–295). In its report, the House Committee on Interstate and Foreign Commerce explained the meaning of "potential unreasonable risk" as follows:

> The phrase 'presents a potential unreasonable risk of illness or injury' has two significant features. First, the requirement that a risk be unreasonable contemplates a balancing of the possibility that illness or injury will occur against benefits from use. Second, the risk need only be a potential one. The risk may be one demonstrated by reported injuries or it may simply be foreseeable. The fact that a device is being marketed without sufficient testing is an adequate basis for the Secretary's conclusion that the device presents a potential unreasonable risk to health.

H. Rept. 94–853, 94th Cong., 2d Sess. 36 (1976).

Further, the following language in 21 CFR 860.7(d)(1) describes the criteria FDA uses to determine the safety of a device:

> There is reasonable assurance that a device is safe when it has been determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions of use.

1f. As is clear, Congress contemplated imposition of the burden of proof of safety on the manufacturer. Some comments said that most of the radiology devices that FDA proposed be in class II should be in class I because manufacturers' compliance with the general controls of class I, such as the requirements of the current good manufacturing practice (CGMP) regulations (21 CFR Part 820), would provide reasonable assurance of the safety and effectiveness of the devices. It is unnecessary, the comments argued, to establish performance standards for these devices.

FDA disagrees that manufacturers' compliance with general controls would provide reasonable assurance of the safety and effectivness of many of the radiology devices that FDA proposed be in class II. FDA believes that, for certain devices, performance standards to control biocompatibility, electrical safety, sterility, radiation emission, or other characteristics sometimes are necessary to provide reasonable assurance of the safety and effectiveness of such devices. Also, FDA believes that certain devices should be classified into class III under the relevant statutory criteria.

1g. A number of comments requested that FDA classify more radiology devices into class I, because classifying such devices into class II would slow development of new devices.

FDA disagrees with the comments. Classification regulations have little immediate impact on device development because they apply only to already developed and marketed products. See the discussion under "N. Economic Impact" later in this preamble.

1h. Some comments requested that many devices that FDA proposed be in class II instead be placed in class I because these devices are intended for use by health care professionals, and establishment of mandatory performance standards for these radiology devices is unnecessary.

FDA disagrees with the comments. The agency bases its classifications of devices on characteristics of the devices themselves under criteria established in the statute. FDA's classifications are intended to assure that the radiology devices being used by health care professionals perform as intended, and otherwise provide reasonable assurance of the safety and effectiveness of devices. FDA's criteria and process for classifying devices are described earlier in this paragraph.

2. Some comments argued that several diagnostic X-ray systems or components of diagnostic X-ray systems that are listed below and that FDA proposed to be in class II are adequately regulated by the performance standard for diagnostic X-ray systems and their major components (21 CFR 1020.30 through 1020.32) promulgated under the Radiation Control for Health and Safety Act of 1968 (RCHSA) (Pub. L. 90–602, 42 U.S.C. 263f). The comments noted that all of the risks to health identified in the proposed regulations are addressed by the performance standard for such devices. The comments also argued that additional standards issued under section 514 of the act would be unnecessary, duplicative, and would not improve the safety and effectiveness of such devices. These comments recommended that FDA classify the radiology devices listed below (all of which are subject to the performance standards in 21 CFR 1020.30 through 1020.32 and 21 CFR 1040.10) in class I rather than class II.

Section No.	Device	Proposed rule: FR page No.
892.1600	Angiographic X-ray system.	4423
892.1610	Diagnostic X-ray beam-limiting device.	4424
892.1630	Electrostatic X-ray imaging system.	4424
892.1650	Image-intensified fluoroscopic X-ray system.	4425
892.1660	Non-image-intensified fluoroscopic X-ray system.	4425
892.1670	Spot-film device	4426
892.1680	Stationary X-ray system	4426
892.1700	Diagnostic X-ray high voltage generator.	4427
892.1710	Mammographic X-ray system.	4427
892.1720	Mobile X-ray system	4428
892.1730	Photofluorographic X-ray system.	4428
892.1740	Tomographic X-ray system.	4428
892.1750	Computed tomography X-ray system.	4429
892.1760	Diagnostic X-ray tube housing assembly.	4429
892.1830	Radiologic patient cradle.	4430
892.1860	Radiographic film/cassette changer.	4432
892.1870	Radiographic film/cassette changer programmer.	4433
892.1880	Wall-mounted radiographic cassette holder.	4433
892.5780	Light beam patient position indicator.	4441

FDA believes that performance standards under section 514 of the act are necessary (in addition to those under the Radiation Control for Health and Safety Act) to control the risks to health presented by the 19 devices listed above that were identified in the proposed regulations (47 FR 4406 at the page numbers shown above). FDA also believes that sufficient information is available to establish such standards. Accordingly, FDA is adopting the proposed regulations for the devices listed above with minor clarifying changes.

3. A number of comments requested that FDA classify the 13 devices listed below in this paragraph into class I instead of class II as proposed, arguing that the risks to health presented by these devices are adequately controlled through the licensing requirements of the Nuclear Regulatory Commission (NRC) and the Agreement States. "Agreement States" are those states which have entered into an effective agreement with the NRC or its predecessor, the Atomic Energy Commission, under section 247b of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

FDA agrees in part and disagrees in part with these comments, as shown below in responses 3a and 3c.

Response 3a. FDA agrees with the comments regarding the five devices listed below.

Section No.	Device
892.1370	Nuclear anthropomorphic phantom.
892.1380	Nuclear flood source phantom.
892.1400	Nuclear sealed calibration source.
892.1420	Readionuclide test pattern phantom.
892.5740	Radionuclide teletherapy source.

The establishment of performance standards under section 514 of the act for the devices listed above is unnecessary, because the general controls of class I, particularly the controls of the current good manufacturing practices regulations in 21 CFR Part 820, in conjunction with the regulatory controls of NRC and the Agreement States, provide reasonable assurance of the safety and effectiveness of the devices. NRC and agreement states ensure that sources are encapsulated, sealed, and accurately calibrated. Sealing of sources and compliance with CGMP's provide adequate assurance of safety. Accordingly, FDA is adopting the proposed regulations for each of the five devices listed above with changes in classification from class II into class I and minor clarifying changes.

Response 3b. FDA disagrees with the comments regarding the five devices listed below.

Section No.	*Device*
892.1200	Emission computed tomography system.
892.1220	Fluorescent scanner.
892.1310	Nuclear tomography system.
892.1360	Radionuclide dose calibrator.
892.5710	Radiation therapy beam shaping block.

Neither NRC nor the governments of the states regulate the five devices listed above. FDA believes that performance standards under section 514 of the act are necessary to control the risks to health presented by these devices that were identified in the proposed regulations. FDA also believes that sufficient information is available to establish such standards. Accordingly, FDA is adopting the proposed regulations for the five devices listed above with minor clarifying changes.

Response 3c. FDA disagrees with the comments regarding the three devices listed below.

Section No.	*Device*
892.1170	Bone densitometer.
892.5700	Remote controlled radionuclide applicator system.
892.5730	Radionuclide brachytherapy source.

Although NRC and agreement states do regulate the radionuclides that may be contained in, or used with, these devices, NRC does not control the overall safety or effectiveness of these devices, and there is no uniformity among the states in the degree of regulatory control provided regarding these three devices. In addition, the radionuclide brachytherapy source is intended to be occasionally implanted in the human body. Section 513(d)(2)(B) of the act (21 U.S.C. 360c(d)(2)(B)) requires that FDA classify all implants into class III unless the agency determines that, for a particular implant, premarket approval is unnecessary to provide reasonable assurance of its safety and effectiveness. FDA believes that insufficient evidence of safety and effectiveness is now available to classify into class I any radiology device intended to be implanted. Therefore, performance standards under section 514 of the act are necessary for all three devices to control the risks to health identified in the proposed regulations for these devices. FDA also believes that sufficient information is available to establish such standards. Accordingly, FDA is adopting the proposed regulations for the three devices listed above with minor clarifying changes.

4. Other comments requested that FDA classify the 11 devices listed below into class I instead of class II as proposed, arguing that the devices could safely be placed in class I, because voluntary standards exist for these devices.

Section No.	Device	Proposed rule; FR page No.
892.1310...	Nuclear tomography system.	4415
892.1540...	Nonfetal ultrasonic monitor.	4421
892.1550...	Ultrasonic pulsed doppler imaging system.	4422
892.1560...	Ultrasonic pulsed echo imaging system.	4422
892.1570...	Diagnosbc ultrasonic transducer.	4423
892.5050...	Medical charged particle therapy system.	4438
892.5300...	Medical neutron radiation therapy system.	4438
892.5700...	Remote controlled radionuclide applicator system.	4439
892.5710...	Radiation therapy beam shaping block.	4439
892.5730...	Radionuclide brachytherapy source.	4440
892.5750...	Radionuclide teletherapy system.	4440

FDA disagrees with the comments for the reasons given in paragraph 1b. See also the discussion at the beginning of this preamble under "B. FDA's Priorities For Establishing Performance Standards." FDA believes that performance standards under section 514 of the act are necessary to control the risks to health presented by these 11 devices that were identified in the proposed regulations (47 FR 4406 and at page numbers shown above). FDA also believes that sufficient information is available to establish such standards. Accordingly, FDA is adopting the proposed regulations for the 11 devices listed above with minor clarifying changes.

5. Yet more comments requested that FDA classify the 14 devices listed below into class I instead of class II as proposed, arguing that these electrically powered devices do not present a significant risk to health from electrical shock.

Section No.	Device
892.1170...	Bone densitometer.
892.1200...	Emission computed tomography system.
892.1220...	Fluorescent scanner.
892.1310...	Nuclear tomography system.
892.1540...	Nonfetal ultrasonic monitor.
892.1550...	Ultrasonic pulsed doppler imaging system.
892.1560...	Ultrasonic pulsed echo imaging system.
892.1570...	Diagnostic ultrasonic transducer.
892.1620...	Cine or spot fluorographic X-ray camera.
892.1630...	Electrostatic X-ray imaging system.
892.1640...	Radiologic film marking X-ray system.
892.1770...	Diagnostic X-ray tube mount.
892.1820...	Pneumoencephalographic chair.
892.5700...	Remote controlled radionuclide applicator system.

FDA believes that 13 of the devices listed above present risks to health in addition to the risk of electrical shock that require establishment of performance standards. Except for the radiologic film marking X-ray system (§ 892.1640), FDA believes that all of the devices listed above are intended for use during application of radiation to the body for diagnostic or therapeutic purposes. FDA believes that performance standards under section 514 of the act are necessary to control the risks to health presented by these devices. FDA also believes that sufficient information is available to establish such standards.

In the case of the radiologic film marking X-ray system (§ 892.1640), FDA is not aware of any currently marketed system which uses other than a visible light source to place identification information on X-ray film. Thus, the radiation risk to health identified by the panel no longer exists. Accordingly, FDA is postponing classification of the device, as it presents only the risk of electrical shock. The agency will repropose to classify this device as the radiologic film marking system with clarifying changes in its identification. See "D. Devices Not Being Classified at This Time." However, FDA is adopting the proposed regulations for the 13 other devices listed above with minor clarifying changes.

6. Some other comments requested that FDA classify the two devices named below into class I instead of class II as proposed, because, the comments said, classification into class II would inhibit the development of new phantoms by increasing development costs: § 892.1370 *Nuclear anthropomorphic phantom* and § 892.1420 *Radionuclide test pattern phantom.*

As to the comments' request that the two devices be in class I, FDA agrees but not for the reasons given by the comments. (See paragraphs 1g and 3a.)

7. Some comments requested that FDA classify the three devices listed below into class I instead of class II as proposed, arguing that the RCHSA performance standard (21 CFR 1020.30 through 1020.33) and the Occupational Safety and Health Administration's (OSHA) standards regarding safety in the workplace provide adequate regulatory control of the safety of the devices. The comments said that section 514 standards for the three devices would be unnecessary.

Section No.	Device
892.5840...	Radiation therapy simulation system.
892.5900...	X-ray radiation therapy system.
892.5930...	Therapeutic X-ray tube housing assembly.

FDA disagrees with the comments. FDA has recognized the importance of the safety and effectiveness of the radiation therapy simulation system and has amended the diagnostic X-ray equipment performance standard specifically to exclude this device from radiation safety performance requirements that are inappropriate or that would hamper the effectiveness of this device. The accuracy of the simulation, which includes accurate positioning, determines the effectiveness of the subsequent therapy, which was the concern of the Panel. Improper function of this device may result in excessive patient exposure and tissue damage. The comment mistakenly states that the RCHSA standard addresses this risk. The RCHSA performance standard at 21 CFR 1020.30 through 1020.33 does apply to a radiation therapy simulation system, but this standard only addresses radiation safety and does not assure that the radiation therapy simulation system is safe and effective for its intended uses. FDA believes that a performance standard under section 514 of the act is necessary for the radiation therapy simulation system.

The RCHSA performance standard does not apply to the other two devices named above: The X-ray radiation therapy system and the therapeutic X-ray tube housing assembly. Further, the OSHA standards do not control the safety and effectiveness of the three devices regarding application of radiation to patients. For these reasons, FDA believes that a performance standard under section 514 of the act is necessary for each of the three devices

to provide reasonable assurance of the safety and effectiveness of the devices and to control the risk to health of excessive radiation from improper function presented by the devices. FDA believes that sufficient information is available to establish such performance standards. Accordingly, FDA is adopting the proposed regulations for the three devices listed above with minor clarifying changes.

8. A comment said that the radionuclide dose calibrator (§ 892.1360) is not a medical device and should not be classified.

FDA disagrees with the comment. FDA believes that the radionuclide dose calibrator meets the definition of a device in section 201(h) of the act (21 U.S.C. 321(h)), because it is intended for medical purposes. Radionuclide dose calibrators are used to determine the dosage strength of a radionuclide before the radionuclide is administered to a patient. Therefore, a radionuclide dose calibrator is a component, part, or accessory to a medical device and is, thus, itself a device as defined by section 201(h) of the act. Accordingly, FDA is adopting the proposed regulation for the radionuclide dose calibrator with minor clarifying changes.

9. A comment requested that FDA classify the nuclear anthropomorphic phantom into class I instead of class II as proposed, because many different versions of the device are being used, and the device is intended for use with other devices that emit radiation throughout a large range of frequencies.

Unlike the comment, FDA believes that it would be possible to establish a performance standard for the device under section 514 of the act. However, FDA has decided that such a standard would be unnecessary. FDA is classifying the device into class I rather than class II, for the reasons provided in paragraph 3a.

10. Section 892.1480; Liquid crystal thermographic system—non-AC-powered and AC-powered.

If the device is intended for adjunctive use in diagnostic screening for detection of breast cancer or other uses, FDA proposed that the device be classified as follows: If non-AC-powered, class I; if AC-powered, class II. If the device (non-AC-powered or AC-powered) is intended for use alone in diagnostic screening for detection of breast cancer, FDA proposed that the device be classified into class III.

10a. Some comments requested that (1) the non-AC-powered device be classified into class I as proposed if it is used in diagnostic evaluations as an adjunct to other clinically accepted techniques and (2) the non-AC-powered device be classified into class II instead of class III as proposed if it is used alone in diagnostic evaluations. These comments gave no reasons for the suggested change in classification.

FDA agrees that the general controls of class I by themselves would provide reasonable assurance of the safety and effectiveness of the non-AC-powered liquid crystal thermographic system if the device is intended for diagnostic use as an adjunct to other generally accepted diagnostic procedures. Thus, FDA agrees that the device should be placed in class I if it is intended for adjunctive diagnostic use for various conditions or uses, e.g., in the diagnosis of breast cancer if the device is intended as an adjunct to clinical physical examinations including breast palpation and X-ray mammography.

However, FDA disagrees that the non-AC-powered liquid crystal thermographic system should be classified into class II if it is intended as a sole diagnostic tool (including screening tool) for diagnosis of breast cancer and other diseases. If the device is intended to be used as a sole diagnostic tool, FDA believes that the device cannot be classified as a class II device because there is insufficient information for the establishment of performance standards to provide reasonable assurance of the safety and effectiveness of the device.

10b. One comment suggested that FDA not classify the liquid crystal thermographic system in Part 892 with radiology devices because the device does not emit radiation.

FDA agrees that, for the reason given in the comment, the device should not be codified in Part 892. In this final rule, FDA is codifying the classification of certain versions of the device in 21 CFR Part 884—Obstetrical and Gynecological Devices (§ 884.2982). FDA also is postponing classification of the AC-powered version of the liquid crystal thermographic system intended for certain uses. See "D. Devices Not Being Classified At This Time." When FDA classifies the proposed but postponed versions of the device, the agency will codify its classification in Part 884 using the same docket number.

10c. Comments said that the risk to health of electrical shock is not a significant risk for the AC-powered device. These comments said that the AC-powered and non-AC-powered versions of the device should be placed in class I because no meaningful differences in risks to health exist between the non-AC-powered and AC-powered versions of the device.

FDA tentatively agrees that it is unnecessary to establish performance standards under section 514 of the act to control the risk to health of electrical shock presented by the AC-powered version of the liquid crystal thermographic system intended for certain adjunctive uses. Thus, FDA is postponing classification of the AC-powered version of the device if it is intended for certain uses, and the agency is considering classifying the device intended for these uses into class I. See "D. Devices Not Being Classified At this Time." For the reasons provided below, FDA disagrees that the proposed device should be classified into class I for all intended uses.

10d. Several comments stated that the efficacy of thermography in early detection of breast cancer can be significantly influenced by the degree of expertise and experience of the users. These comments said that the device should be in class I because the skill of the users assured safe and effective performance of the device.

FDA disagrees with the comments. Under the statute, FDA classifies devices based on attributes of the devices, including adequacy of labeling for their intended uses. Although user skill may enhance results obtained for use of a device, in determining the safety and effectiveness of a device for purposes of classification, FDA assumes that the users possess average skills.

10e. One comment requested that FDA classify both the non-AC-powered and the AC-powered versions of the liquid crystal thermographic system into class I for all intended uses instead of into class I, class II, or class III as proposed, depending upon certain intended uses of the device. The comment said that classification of the device, if it is intended for use as the only screening tool in the early detection of breast cancer, into class III would essentially eliminate its use.

FDA disagrees with the comment. Classification of a preamendments device into class II or class III under section 513 (c) and (d) of the act (21 U.S.C. 360c (c) and (d)) has no immediate impact on the commercial availability of the device. For each device classified into class II or class III under these sections of the act, FDA must publish an additional proposed and final regulation allowing further public comment before the agency can establish a performance standard (21 U.S.C. 360d) or require premarket approval (21 U.S.C. 360e) for the device. See the discussion later in this preamble entitled "N. Economic Impact." Further, the essential purpose of the classification procedures provided by Congress is to provide reasonable

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assurance of the safety and effectiveness of devices. Continued commercial availability of devices is not one of the criteria that FDA may consider when classifying devices.

10f. Some comments recommended that the liquid crystal thermographic system intended for consumer use, whether over-the-counter or prescription, be classified into class III.

FDA agrees with the comment. The agency is unaware that anyone has ever marketed the liquid crystal thermographic system for diagnostic use by consumers. If such a device were considered for marketing for diagnostic use by consumers, it would not be substantially equivalent to the preamendments device subject to the proposed rulemaking. Accordingly, FDA believes that a liquid crystal thermographic system intended for diagnostic use by consumers would be a new, not substantially equivalent device, classified by statute into class III. Further, before testing a liquid crystal thermographic system with such new intended uses on humans for purposes of gathering data to submit to FDA to obtain premarket approval, manufacturers should obtain from FDA an investigational device exemption for the device as specified in 21 CFR Part 812.

10g. Other comments indicated that FDA's statements in the proposed regulations about the unacceptably high levels of false-negative and false-positive results from using the liquid crystal thermographic system for diagnosing breast cancer were not accurate. One comment said that the false-negative rate for breast cancer detection using thermography is less than the false-negative rate using X-ray mammography. Another comment said that the high false-positive rate for breast cancer detection using thermography is of greater significance than the false-negative rate.

Some comments stated that the device should be in class I instead of class III when it is intended only for screening and detection of breast cancer. The comments stated that there is adequate evidence to show the safety and effectiveness of the device for this intended use. The comments submitted (or cited) a number of published studies to support their requests that the device be in class I.

FDA acknowledges the importance of both the false-negative and the false-positive rates when evaluating the efficacy of any cancer detection method. FDA is concerned that (1) based upon a false-negative thermogram, a woman may not seek proper medical attention, and (2) a false-positive result may cause a woman to lose faith in medicine and not participate in further routine clinical screening programs for cancer. Therefore, both the false-negative and the false-positive rates are important in evaluating the safety and effectiveness of thermographic devices. FDA has reviewed the data submitted and cited by the comments and other data and available information and has observed no scientific consensus regarding the safety and effectiveness of thermography when used alone in diagnosis of cancer. Based upon available data, FDA believes that thermography in the detection of breast cancer is appropriate only as an adjunct to other clinically accepted independent screening techniques, i.e., a clinical physical examination including palpation and X-ray mammography. Thermography may be useful to detect breast temperature variations which may be indicative of abnormalities. But its effectiveness, when used alone in the specific detection of breast cancer, has not been demonstrated.

To summarize, FDA is adopting the proposed regulation for the nonelectrically powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer or other diagnostic uses without a change in classification of the device from that proposed. Although FDA tentatively agrees that the AC-powered version of the liquid crystal thermographic system should be placed in class I if it is intended for adjunctive diagnostic use, for the reasons given above in paragraph 10c, FDA is postponing classification of the AC-powered version of the device if it is intended for adjunctive diagnostic use.

FDA believes that there is insufficient information to determine whether or not the general controls of class I by themselves are sufficient to provide reasonable assurance of the safety and effectiveness of the non-AC-powered or AC-powered liquid crystal thermographic system intended for use as the sole diagnostic tool in screening for breast cancer or other conditions and that insufficient information exists for the establishment of performance standards to provide such assurance. FDA believes that this device, when used as the only screening tool for the diagnosis of breast cancer or other conditions, is of substantial importance in preventing impairment of human health. Because of the potential for high levels of false-negative and false-positive test results, the device presents a potential unreasonable risk of illness or injury. Accordingly, FDA is adopting the proposed regulation classifying the nonelectrically powered and the electrically powered liquid crystal thermographic system intended as the only screening tool for the diagnosis of breast cancer or other conditions into class III with clarifying change in the identification of the device.

10h. FDA recognizes that the liquid crystal thermographic system is being commercially distributed for use in a wide range of diagnostic applications where variations in skin temperature may occur, such as (a) peripheral vascular disease, (b) musculoskeletal disorders, (c) extracranial cerebral vascular disease, (d) abnormalities of the thyroid gland, and (e) various neoplastic and inflammatory conditions. FDA believes that the liquid crystal thermographic system (non-AC-powered and AC-powered) intended for adjunctive use in diagnostic screening for breast cancer or other uses is a preamendments device. FDA believes that this preamendments device, if intended for use as the sole screening tool in diagnostic screening for breast cancer or other uses, has been substantially altered and has undergone a major change or modification of its intended use (see 21 CFR 807.85) and is not substantially equivalent to the liquid crystal thermographic system in commercial distribution on the enactment date of the amendments.

Because FDA believes that the liquid crystal thermographic system is being commercially distributed while intended for a new use, i.e., use unaided in diagnostic screening, FDA is codifying the statutory classification of the new device into class III for such new use. See § 884.3(b). Accordingly, the regulation classifying this class III device states that, as of the enactment date of the amendments, May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed.

11. Section 892.1450; Telethermographic System—AC-powered.

If the device is intended for adjunctive use in diagnostic screening for detection of breast cancer, FDA proposed that the device be classified in class II. If the device is intended for use alone in diagnostic screening for detection of breast cancer, FDA proposed that the device be classified in class III.

11a. One comment suggested that FDA not classify the telethermographic system in Part 892 with radiology devices because the device does not emit radiation.

FDA agrees that, for the reason given in the comment, the device should not be codified in Part 892. In this final rule, FDA is codifying the classification of one version of the proposed device in 21 CFR Part 884—Obstetrical and Gynecological Devices (§ 884.2980). FDA also is postponing classification of the telethermographic system intended for certain uses. See "D. Devices Not Being Classified At This Time." When FDA classifies the proposed but postponed version of the device, the agency will codify its classification in Part 884 using the same docket number.

11b. Some comments on the proposed regulation said that the device should be placed in class I for all intended uses, because the risk to health of electric shock is not a significant risk for this device.

FDA tentatively agrees that it is unnecessary to establish performance standards under section 514 of the act to control the risk to health of electric shock presented by the telethermographic system. Thus, FDA is postponing classification of the telethermographic system, if the device is intended for certain uses, and the agency is considering classifying the device intended for these uses into class I. See "D. Devices Not Being Classified At This Time." For the reasons provided below, FDA disagrees that the proposed device should be classified into class I for all intended uses.

11c. Several comments stated that the efficacy of thermography in early detection of breast cancer can be significantly influenced by the degree of expertise and experience of the users. These comments said that the device should be in class I because the skill of the users assured safe and effective performance of the device.

FDA disagrees with the comments. Under the statute, FDA classifies a device based on attributes of the device, including adequacy of labeling for its intended uses. Although user skill may enhance results obtained from use of a device, in determining the safety and effectiveness of a device for purposes of classification, FDA assumes that users possess average skills.

11d. One comment requested that FDA classify the telethermographic system into class I for all intended uses instead of into class II or class III as proposed, depending upon certain intended uses of the device. The comment said that classification of the device into class III if it is intended for use as the only screening tool in the early detection of breast cancer would essentially eliminate its use.

FDA disagrees with the comment. Classification of a preamendments device into class II or class III under section 513 (c) and (d) of the act has no immediate impact on the commercial availability of the device. For each device classified into class II or class III under this section of the act, FDA must publish and additional proposed and final regulation allowing further public comment before the agency can establish a performance standard (21 U.S.C. 360d) or require premarket approval (21 U.S.C. 360e) for the device. See the discussion later in this preamble entitled "N. Economic Impact." Further, the essential purpose of the classification procedures provided by Congress is to provide reasonable assurance of the safety and effectiveness of the devices. Continued commerical availability of devices is not one of the criteria that FDA may consider when classifying devices.

11e. Some comments recommended that the telethermographic system intended for consumer use, whether over-the-counter or prescription, be classified into class III.

FDA agrees with the comment. The agency believes that the telethermographic system intended for diagnostic use by consumers has never been marketed and that, if the device is intended for diagnostic use by consumers, it would not be substantially equivalent to the preamendments device subject to the proposed rulemaking. Accordingly, FDA believes that a telethermographic system intended for diagnostic use by consumers would be a new significant risk device. Before testing a telethermographic device with such new intended uses on humans for purposes of gathering data to submit to FDA to obtain premarket approval, manufacturers should obtain from FDA an investigational device exemption for the device as specified in 21 CFR Part 812.

11f. Other comments indicated that FDA's statements in the proposed regulations about the unacceptably high levels of false-negative and false-positive results from using the telethermographic system for diagnosing breast cancer were not accurate. One comment said that the false-negative rate for breast cancer detection using thermography is less than the false-negative rate using X-ray mammography. Another comment said that the high false-positive rate for breast cancer detection using thermography is of greater significance than the false-negative rate.

Some comments stated that the device should be in class I instead of class III when it is intended only for screening and detection of breast cancer. The comments stated that adequate evidence exists to show the safety and effectiveness of the device for this intended use. The comments submitted (or cited) a number of published studies to support their requests that the device be in class I.

FDA acknowledges the importance of both the false-negative and the false-positive rates when evaluating the efficacy of any cancer detection method. FDA is concerned that (1) based upon a false-negative thermogram, a woman may not seek proper medical attention, and (2) a false-positive result may cause a woman to lose faith in medicine and not participate in further routine clinical screening programs for cancer. Therefore, both the false-negative and the false-positive rates are important in evaluating the safety and effectiveness of thermographic devices. FDA has reviewed the data submitted and cited by the comments and other data and information available and has observed a lack of scientific consensus regarding the safety and effectiveness of thermography when used along in diagnosis of cancer. Based upon available data, FDA believes that thermography in the detection of breast cancer is appropriate only as an adjunct to other clinically accepted independent screening techniques, i.e., a clinical physical examination including palpation and X-ray mammography. Thermography may be useful to detect breast temperature variations which may be indicative of abnormalities. Thermography's effectiveness, when used alone in the specific detection of breast cancer, has not been demonstrated.

To summarize, although FDA tentatively agrees that the telethermographic system should be placed in class I if it is intended for adjuctive diagnostic use, for the reasons given above in paragraph 11b, FDA is postponing classification of the device if it is intended for adjunctive diagnostic use. Further, FDA believes that there is insufficient information to determine whether or not the general controls of class I by themselves are sufficient to provide reasonable assurance of the safety and effectiveness of the telethermographic system intended for use as the sole diagnostic tool in screening for breast cancer or other conditions and that insufficient information exists for the establishment of performance standards to provide such assurance. FDA believes that this device, when used as the only screening tool for the diagnosis of breast cancer or other conditions, is of substantial importance in preventing impairment of human health. Because of the potential for high levels of false-negative and false-positive test results, the device presents a potential unreasonable risk of illness or injury. Accordingly, FDA is

adopting the proposed regulation classifying the telethermographic system intended as the only screening tool for the diagnosis of breast cancer or other conditions into class III with clarifying changes in the identification of the device.

11g. FDA recognizes that the telethermographic system is being commercially distributed for use in a wide range of diagnostic applications where variations in skin temperature may occur, such as (a) peripheral vascular disease, (b) musculoskeletal disorders, (c) extracranial cerebral vascular disease, (d) abnormalities of the thyroid gland, and (e) various neoplastic and inflammatory conditions. FDA believes that the telethermographic system intended for adjunctive use in diagnostic screening for breast cancer or other uses is a preamendments device. FDA believes that this preamendments device, if intended for use as the sole tool in diagnostic screening for breast cancer or other uses, has been substantially altered and has undergone a major change or modification of its intended use (see 21 CFR 807.85) and is not substantially equivalent to the telethermographic system in commercial distribution on the enactment date of the amendments.

Because FDA believes that the telethermographic system is being commercially distributed while intended for a new use, i.e., used unaided in diagnostic screening, FDA is codifying the statutory classification of the new device into class III for such new use. See § 884.3(b). Accordingly, the regulation classifying this class III device states that, as of the enactment date of the amendments, May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed.

12. Section 892.1820; Pneumoencephalographic chair; proposed class II.

A comment on the proposed regulation requested that FDA classify the device into class I instead of class II, arguing that the adjustment of the tension of the restraint straps to prevent constriction of the patient's blood vessels is under control of the medical staff while the device is in use and that structural or control mechanism failure is not a significant hazard for this device.

FDA believes that, whether or not the comment is correct, the agency must classify the device into class II because the Panel cited additional risks to health, i.e., electromechanical malfunction or difficulties in administering contrast agents, in addition to the risk of vascular constriction. FDA believes that the identified risks would be minimized by establishing a performance standard for the device and that general controls alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that sufficient information is available to develop a performance standard for the device. Accordingly, FDA is adopting the proposed regulation classifying the pneumoencephalographic chair with minor clarifying changes.

13. Section 892.1850; Radiographic film cassette; proposed class II.

Some comments on the proposed regulation requested that FDA classify the device into class I instead of class II as proposed, arguing that the risk to health of misdiagnosis from poor contact of the radiographic film with the intensifying screen would be minimized if the user of the device employed readily available quality assurance tests.

FDA disagrees with the comments. Data collected by FDA indicate that significant differences in patient exposure can result from the choice of cassette used in a radiographic examination (Refs. 1 and 3). The aluminum equivalence of cassette front panels range from 0.06 to 1.7 millimeters. These thicknesses result in X-ray transmissions ranging from 98 to 61 percent of the incident beam and a worst-case difference in exposure to the patient of 1 to 1.6. In addition to direct exposure differences, the differences between cassettes can result in degradation of image quality and increased repeat rates. The agency believes that this information provides both a basis for and data to support development of a standard for the device. Accordingly, FDA is adopting the proposed regulation for the radiographic film cassette with a minor clarifying change.

14. Section 892.5770; Powered radiation therapy patient support assembly; proposed class II.

A comment on the proposed regulation requested that FDA classify the device into class I instead of class II, arguing that the risk to patients from failure of the device's structural integrity or control mechanism is not a significant risk.

FDA disagrees with the comment. FDA has received reports of patients being injured due to failures of this device. FDA believes that a performance standard is necessary for the powered radiation therapy patient support assembly to control the risk to patients' health from trauma resulting from failure of the structural or control mechanisms of the device. FDA also believes that sufficient information is available to develop a performance standard for the device. The agency further believes that general controls alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is adopting the proposed regulation for the powered radiation therapy patient support assembly with a minor clarifying change.

15. Section 892.6500; Personnel protective shield; proposed class II.

Some comments on the proposed regulation requested that FDA classify the device into class I instead of class II, arguing that performance standards are unnecessary to control the risk to health of excessive radiation exposure of patients from improper function of the device. The comments said that exposure to unnecessary radiation is a potential hazard but that unnecessary radiation exposure is unlikely to result from improper functioning of the device. The comments further stated that manufacturers' adherence to the requirements of the current good manufacturing practice (CGMP) regulations and testing by users before acceptance of the devices would provide a reasonable assurance of the safety and effectiveness of the personnel protective shield. One comment argued that the establishment of performance standards for all of the various kinds of shields encompassed in this generic type of device would not be cost effective.

FDA agrees with the comments. The general controls of class I alone for the personnel protective shield, particularly the requirements of the CGMP regulations in 21 CFR Part 820, would provide reasonable assurance of the safety and effectiveness of the device. The personnel protective shield is intended to protect the patient, the operator of radiation emitting medical devices, or other persons from any unnecessary radiation. The amount of shielding required varies (a) with the levels of radiation emitted, and (b) with the distance between the radiation source and the person being protected. FDA believes that users of radiation-emitting devices are essentially responsible for the amount and placement of shielding needed to prevent unnecessary or excessive radiation exposure from these devices. FDA now believes that the general controls of class I would provide reasonable assurance that the personnel protective shield is constructed properly and that it is unnecessary to establish performance standards for the device under section 514 of the act. Accordingly, FDA is adopting the proposed regulation for the personnel protective shield with a change in classification from class II to class I and minor clarifying changes.

H. Exemptions For Class I Devices

16. The various panels reviewing radiology devices recommended that FDA exempt the five radiology devices listed below from certain requirements of the act. In the preamble to the proposed regulations, the agency provided its reasons for agreeing or disagreeing with the panels' recommendations regarding exemptions (47 FR 4406 at 4410 and 4436).

In response to the panels' recommendations, FDA proposed that the first four radiology devices listed below be exempt from most requirements of the CGMP regulations (21 CFR Part 820) and the requirement of premarket notification (section 510(k) of the act and Subpart E of 21 CFR Part 807). FDA proposed to classify the radiographic intensifying screen into class I with no exemptions.

Section No.	Device
892.1840	Radiographic film.
892.1920	Radiographic head holder.
892.1940	Radiologic quality assurance instrument.
892.1950	Radiographic anthropomorphic phantom.
892.1960	Radiographic intensifying screen.

However, as stated in the proposed rule, the agency has determined that exemption of manufacturers of any device from §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements in § 820.180 concerning records ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate.

FDA has determined that no device that is labeled or otherwise represented as sterile will be exempted from the device CGMP regulations. A sterile device must be subject to all of the CGMP regulations to ensure that manufacturers adequately reduce the bioburden (number of microorganisms) on the device and its components during manufacturing processes. This reduction is accomplished through adherence to a comprehensive quality assurance program, as is required by the CGMP regulations, including adequate environmental controls, trained personnel, appropriate maintenance and calibration of sterilization equipment, recordkeeping concerning lot sterility, strict packaging and labeling controls, and other quality assurance measures.

16a. Exemptions from CGMP regulations.

Many general comments on the proposed regulations for radiology devices requested that the agency grant all of the exemptions that the panels had recommended.

FDA agrees that it should grant to the manufacturers of three of the five radiology devices listed in paragraph 16 above an exemption from most requirements of the CGMP regulations, as FDA proposed (§§ 892.1920, 892.1940, and 892.1950).

FDA disagrees that the agency should grant to manufacturers of the radiographic intensifying screen an exemption from the CGMP regulations. FDA believes that, in order to control the risks to health that may result from unnecessary radiation exposure from repeated radiographs or loss of diagnostic information due to the use of a substandard product and thereby to provide reasonable assurance of the safety and effectiveness of the device, this device should be subject to all of the requirements of the CGMP regulations.

FDA now believes that radiographic film should not be exempt from CGMP requirements because of wide variations in the amount of X-rays transmitted to patients and in the image quality produced by various types of film which is affected by the manufacturing process.

Accordingly, FDA is adopting the proposed regulations classifying the radiographic head holder, radiologic quality assurance instrument, and radiographic anthropomorphic phantom into class I with the exemptions from CGMP that were proposed.

16b. Exemptions from premarket notification procedures.

Many comments requested that FDA grant the exemptions from premarket notification procedures in section 510(k) of the act and Subpart E of 21 CFR Part 807 that the panels had recommended.

In this final rule, FDA is granting the exemption from the requirement of premarket notification for manufacturers of each of the four radiology devices that were proposed (§§ 892.1840, 892.1920, 892.1940, and 892.1950). Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant an exemption from the requirement of premarket notification for six additional class I radiology devices. In that proposed rule, FDA explains its recently developed policy on granting such exemptions.

I. Minor Changes or Clarifications

Occasionally, the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. Also, the agency is adding new §§ 884.3 and 892.3 in Subpart A of each part to explain the various effective dates for premarket approval requirements for devices classified into class III. FDA also is adding a new paragraph in the classification regulation for each device classified into class III to declare, where applicable, the effective date of premarket approval requirements for the device.

J. Guidelines For Measuring and Reporting Acoustic Output of Diagnostic Ultrasound Devices

FDA has developed guidelines to assist diagnostic ultrasound manufacturers prepare 510(k) premarket notifications on their devices. A copy of these guidelines, entitled "510(k) Guide for Measuring and Reporting Acoustic Output of Diagnostic Ultrasound Devices," can be obtained upon request from: Lillian L. Yin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

K. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations, published to date:

Panel name	Publication date in Federal Register
Circulatory Systems Devices Panel	March 9, 1979: 44 FR 13264–13434 (proposals). February 5, 1980: 45 FR 7904–7971 (final regulations)
Clinical Chemistry and Clinical Toxicology Devices Panel	February 2, 1982: 47 FR 4802–4929 (proposals). May 1, 1987: 52 FR 16102–16138 (final regulations)
Hematology and Pathology Devices Panel	September 11, 1979: 44 FR 52950–53083 (proposals). September 12, 1980: 45 FR 60578–60651 (final regulations)
General Hospital and Personal Use Devices Panel	August 24, 1979: 44 FR 49844–49954 (proposals). October 21, 1980: 45 FR 69678–69737 (final regulations)

Panel name	Publication date in Federal Register
Gastroenterology-Urology Devices Panel	January 23, 1981; 46 FR 7562-7641 (proposals); November 23, 1983; 48 FR 53012-53029 (final regulations).
Immunology Devices Panel	April 22, 1980; 45 FR 27204-27359 (proposals); November 9, 1982; 47 FR 50814-50840 (final regulations).
Microbiology Devices Panel	April 22, 1980; 45 FR 27204-27359 (proposals); November 9, 1982; 47 FR 50814-50840 (final regulations).
Obstetrics-Gynecology Devices Panel	April 3, 1979; 44 FR 19894-19971 (proposals); February 26, 1980; 45 FR 12662-12720 (final regulations)
Radiologic Devices Panel	January 29, 1982; 47 FR 4408-4451 (proposals); January 20, 1988 (final regulations)
Ophthalmic Devices Panel	January 26, 1982; 47 FR 3694-3749 (proposals); September 2, 1987; 52 FR 33346-33363 (final regulations)
Ear, Nose, and Throat Devices Panel	January 22, 1982; 47 FR 3260-3325 (proposals); November 6, 1986; 51 FR 40378-40393 (final regulations).
Dental Devices Panel	December 30, 1980; 45 FR 85982-86188 (proposals); August 12, 1987; 52 FR 30082-30106 (final regulations).
Anesthesiology and Respiratory Therapy Devices Panel	November 2, 1979; 44 FR 63292-63426 (proposals); July 16, 1982; 47 FR 31130-31150 (final regulations).
Neurological Devices Panel	November 23, 1978; 43 FR 54640-55732 (proposals); September 4, 1979; 44 FR 51726-51778 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices)	August 28, 1979; 44 FR 50458-50537 (proposals); November 23, 1983; 48 FR 53032-53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices)	July 2, 1982; 47 FR 29052-29140 (proposals); September 4, 1987; 52 FR 33686-33711 (final regulations).
General and Plastic Surgery Devices Panel	January 19, 1982; 47 FR 2610-2653 (proposals).

L. Reference

The following information has been placed on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

Schuping, R. E., et al., "Dose Reduction Potential of Carbon Fiber Material in Diagnostic Radiology." *Proceedings of the Society of Photo-Optical Instrumentation Engineers*, Vol. 233 (1980).

M. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

N. Economic Impact

The agency has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of the Executive Order 12291, the agency has carefully analyzed the impact of this final rule and it has determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II also remain subject only to the general controls provisions of the act unless and until an applicable performance standard is established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects

21 CFR Part 884

Medical devices.

21 CFR Part 892

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 884 and Part 892 as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. By adding new § 884.2980, to read as follows:

§ 884.2980 Telethermographic system.

(a) [Reserved]

(b) *Telethermographic system intended for use alone in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A telethermographic system for use as the sole diagnostic screening tool for detection of breast cancer or other uses is an electrically powered device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class III.

(3) *Date PMA or notice of completion of a PDP is required.* As of the enactment date of the amendments, May 28, 1976, an approval under section 515 of the act is required before the device described in paragraph (b)(1) may be commercially distributed. See § 884.3.

3. By adding new § 884.2982, to read as follows:

§ 884.2982 Liquid crystal thermographic system.

(a) *A nonelectrically powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A nonelectrically powered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer or other uses is a nonelectrically powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class I.

(b) *A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use alone in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use as the sole diagnostic screening tool for detection of breast cancer or other uses is a nonelectrically powered or an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include image display and recording equipment, patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class III.

(3) *Date PMA or notice of completion of a PDP is required.* As of the enactment date of the amendments, May 28, 1976, an approval under section 515 of the act is required before the device described in paragraph (b)(1) may be commercially distributed. See § 884.3.

4. By adding new Part 892 to read as follows:

PART 892—RADIOLOGY DEVICES

Subpart A—General Provisions

Sec.
892.1 Scope.
892.3 Effective dates of requirement for premarket approval.

Subpart B—Diagnostic Devices

892.1170 Bone densitometer.
892.1200 Emission computed tomography system.
892.1220 Fluorescent scanner.
892.1310 Nuclear tomography system.
892.1360 Radionuclide dose calibrator.
892.1370 Nuclear anthropomorphic phantom.
892.1380 Nuclear flood source phantom.
892.1390 Radionuclide rebreathing system.
892.1400 Nuclear sealed calibration source.
892.1420 Radionuclide test pattern phantom.
892.1540 Nonfetal ultrasonic monitor.
892.1550 Ultrasonic pulsed doppler imaging system.
892.1560 Ultrasonic pulsed echo imaging system.
892.1570 Diagnostic ultrasonic transducer.
892.1600 Angiographic X-ray system.
892.1610 Diagnostic X-ray beam-limiting device.
892.1620 Cine or spot fluorographic X-ray camera.
892.1630 Electrostatic X-ray imaging system.
892.1650 Image-intensified fluoroscopic X-ray system.
892.1660 Non-image-intensified fluoroscopic X-ray system.
892.1670 Spot-film device.
892.1680 Stationary X-ray system.
892.1700 Diagnostic X-ray high voltage generator.
892.1710 Mammographic X-ray system.
892.1720 Mobile X-ray system.
892.1730 Photofluorographic X-ray system.
892.1740 Tomographic X-ray system.
892.1750 Computed tomography X-ray system.
892.1760 Diagnostic X-ray tube housing assembly.
892.1770 Diagnostic X-ray tube mount.
892.1820 Pneumoencephalographic chair.
892.1830 Radiologic patient cradle.
892.1840 Radiographic film.
892.1850 Radiographic film cassette.
892.1860 Radiographic film/cassette changer.
892.1870 Radiographic film/cassette changer programmer.
892.1880 Wall-mounted radiographic cassette holder.
892.1910 Radiographic grid.
892.1920 Radiographic head holder.
892.1940 Radiologic quality assurance instrument.
892.1950 Radiographic anthropomorphic phantom.
892.1960 Radiographic intensifying screen.
892.1980 Radiologic table.

Subparts C–E—[Reserved]

Subpart F—Therapeutic Devices

892.5050 Medical charged-particle radiation therapy system.
892.5300 Medical neutron radiation therapy system.
892.5650 Manual radionuclide applicator system.
892.5700 Remote controlled radionuclide applicator system.
892.5710 Radiation therapy beam-shaping block.
892.5730 Radionuclide brachytherapy source.
892.5740 Radionuclide teletherapy source.
892.5750 Radionuclide radiation therapy system.
892.5770 Powered radiation therapy patient support assembly.
892.5780 Light beam patient position indicator.
892.5840 Radiation therapy simulation system.
892.5900 X-ray radiation therapy system.
892.5930 Therapeutic X-ray tube housing assembly.

Subpart G—Miscellaneous Devices

892.6500 Personnel protective shield.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 892.1 Scope.

(a) This part sets forth the classification of radiology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a radiology device that has two or more types of uses (e.g., use both as a diagnostic device and a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of this Title 21, unless otherwise noted.

§ 892.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without

any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commerically distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Diagnostic Devices

§ 892.1170 Bone densitometer.

(a) *Identification.* A bone densitometer is a device intended for medical purposes to measure bone density and mineral content by X-ray or gamma ray transmission measurements through the bone and adjacent tissues. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1200 Emission computed tomography system.

(a) *Identification.* An emission computed tomography system is a device intended to detect the location and distribution of gamma ray- and positron-emitting radionuclides in the body and produce cross-sectional images through computer reconstruction of the data. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1220 Fluorescent scanner.

(a) *Identification.* A fluorescent scanner is a device intended to measure the induced fluorescent radiation in the body by exposing the body to certain X-rays or low-energy gamma rays. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts and accessories.

(b) *Classification.* Class II.

§ 892.1310 Nuclear tomography system.

(a) *Identification.* A nuclear tomography system is a device intended to detect nuclear radiation in the body and produce images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of devices may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1360 Radionuclide dose calibrator.

(a) *Identification.* A radionuclide dose calibrator is a radiation detection device intended to assay radionuclides before their administration to patients.

(b) *Classification.* Class II.

§ 892.1370 Nuclear anthropomorphic phantom.

(a) *Identification.* A nuclear anthropomorphic phantom is a human tissue facsimile that contains a radioactive source or a cavity in which a radioactive sample can be inserted. It is intended to calibrate nuclear uptake probes or other medical instruments.

(b) *Classification.* Class I.

§ 892.1380 Nuclear flood source phantom.

(a) *Identification.* A nuclear flood source phantom is a device that consists of a radiolucent container filled with a uniformly distributed solution of a desired radionuclide. It is intended to calibrate a medical gamma camera-collimator system for uniformity of response.

(b) *Classification.* Class I.

§ 892.1390 Radionuclide rebreathing system.

(a) *Identification.* A radionuclide rebreathing system is a device intended to be used to contain a gaseous or volatile radionuclide or a radionuclide-labeled aerosol and permit it to be respired by the patient during nuclear medicine ventilatory tests (testing process of exchange between the lungs and the atmosphere). This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1400 Nuclear sealed calibration source.

(a) *Identification.* A nuclear sealed calibration source is a device that consists of an encapsulated reference radionuclide intended for calibration of medical nuclear radiation detectors.

(b) *Classification.* Class I.

§ 892.1420 Radionuclide test pattern phantom.

(a) *Identification.* A radionuclide test pattern phantom is a device that consists of an arrangement of radiopaque or radioactive material sealed in a solid pattern intended to serve as a test for a performance characteristic of a nuclear medicine imaging device.

(b) *Classification.* Class I.

§ 892.1540 Nonfetal ultrasonic monitor.

(a) *Identification.* A nonfetal ultrasonic monitor is a device that projects a continuous high-frequency sound wave into body tissue other than a fetus to determine frequency changes (doppler shift) in the reflected wave and is intended for use in the investigation of nonfetal blood flow and other nonfetal body tissues in motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1550 Ultrasonic pulsed doppler imaging system.

(a) *Identification.* An ultrasonic pulsed doppler imaging system is a device that combines the features of continuous wave doppler-effect technology with pulsed-echo effect technology and is intended to determine stationary body tissue characteristics, such as depth or location of tissue interfaces or dynamic tissue characteristics such as velocity of blood or tissue motion. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1560 Ultrasonic pulsed echo imaging system.

(a) *Identification.* An ultrasonic pulsed echo imaging system is a device intended to project a pulsed sound beam into body tissue to determine the depth or location of the tissue interfaces and to measure the duration of an acoustic pulse from the transmitter to the tissue interface and back to the receiver. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1570 Diagnostic ultrasonic transducer.

(a) *Identification.* A diagnostic ultrasonic transducer is a device made of a piezoelectric material that converts electrical signals into acoustic signals and acoustic signals into electrical signals and intended for use in diagnostic ultrasonic medical devices. Accessories of this generic type of device may include transmission media for acoustically coupling the transducer to the body surface, such as acoustic gel, paste, or a flexible fluid container.

(b) *Classification.* Class II.

§ 892.1600 Angiographic X-ray system.

(a) *Identification.* An angiographic X-ray system is a device intended for radiologic visualization of the heart, blood vessels, or lymphatic system during or after injection of a contrast medium. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1610 Diagnostic X-ray beam-limiting device.

(a) *Identification.* A diagnostic X-ray beam-limiting device is a device such as a collimator, a cone, or an aperture intended to restrict the dimensions of a diagnostic X-ray field by limiting the size of the primary X-ray beam.

(b) *Classification.* Class II.

§ 892.1620 Cine or spot fluorographic X-ray camera.

(a) *Identification.* A cine or spot fluorographic X-ray camera is a device intended to photograph diagnostic images produced by X-rays with an image intensifier.

(b) *Classification.* Class II.

§ 892.1630 Electrostatic X-ray imaging system.

(a) *Identification.* An electrostatic X-ray imaging system is a device intended for medical purposes that uses an electrostatic field across a semiconductive plate, a gas-filled chamber, or other similar device to convert a pattern of X-radiation into an electrostatic image and, subsequently, into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1650 Image-intensified fluoroscopic X-ray system.

(a) *Identification.* An image-intensified fluroscopic X-ray system is a device intended to visualize anatomical structures by converting a pattern of X-radiation into a visible image through electronic amplification. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1660 Non-image-intensified fluoroscopic X-ray system.

(a) *Identification.* A non-image-intensified fluoroscopic X-ray system is a device intended to be used to visualize anatomical structures by using a fluorescent screen to convert a pattern of X-radiation into a visible image. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1670 Spot-film device.

(a) *Identification.* A spot-film device is an electromechanical component of a fluoroscopic X-ray system that is intended to be used for medical purposes to position a radiographic film cassette to obtain radiographs during fluoroscopy.

(b) *Classification.* Class II.

§ 892.1680 Stationary X-ray system.

(a) *Identification.* A stationary X-ray system is a permanently installed diagnostic system intended to generate and control X-rays for examination of various anatomical regions. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1700 Diagnostic X-ray high voltage generator.

(a) *Identification.* A diagnostic X-ray high voltage generator is a device that is intended to supply and control the electrical energy applied to a diagnostic X-ray tube for medical purposes. This generic type of device may include a converter that changes alternating current to direct current, filament transformers for the X-ray tube, high voltage switches, electrical protective devices, or other appropriate elements.

(b) *Classification.* Class II.

§ 892.1710 Mammographic X-ray system.

(a) *Identification.* A mammographic X-ray system is a device intended to be used to produce radiographs of the breast. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1720 Mobile X-ray system.

(a) *Identification.* A mobile X-ray system is a transportable device system intended to be used to generate and control X-ray for diagnostic procedures. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1730 Photofluorographic X-ray system.

(a) *Identification.* A photofluorographic X-ray system is a device that includes a fluoroscopic X-ray unit and a camera intended to be used to produce, then photograph, a fluoroscopic image of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1740 Tomographic X-ray system.

(a) *Identification.* A tomographic X-ray system is an X-ray device intended to be used to produce radiologic images of a specific cross-sectional plane of the body by blurring or eliminating detail from other planes. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1750 Computed tomography X-ray system.

(a) *Identification.* A computed tomography X-ray system is a diagnostic X-ray system intended to produce cross-sectional images of the body by computer reconstruction of X-ray transmission data from the same axial plane taken at different angles. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.1760 Diagnostic X-ray tube housing assembly.

(a) *Identification.* A diagnostic X-ray tube housing assembly is an X-ray generating tube encased in a radiation-shielded housing that is intended for diagnostic purposes. This generic type of device may include high voltage and filament transformers or other appropriate components.

(b) *Classification.* Class II.

§ 892.1770 Diagnostic X-ray tube mount.

(a) *Identification.* A diagnostic X-ray tube mount is a device intended to support and to position the diagnostic X-ray tube housing assembly for a medical radiographic procedure.

(b) *Ciassification.* Class II.

§ 892.1830 Pneumoencephalographic chair.

(a) *Identification.* A pneumoencephalographic chair is a chair intended to support and position a patient during pneumoencephalography (X-ray imaging of the brain).

(b) *Classification.* Class II.

§ 892.1830 Radiologic patient cradle.

(a) *Identification.* A radiologic patient cradle is a support device intended to be used for rotational positioning about the longitudinal axis of a patient during radiologic procedures.

(b) *Classification.* Class II.

§ 892.1840 Radiographic film.

(a) *Identification.* Radiographic film is a device that consists of a thin sheet of radiotransparent material coated on one or both sides with a photographic emulsion intended to record images during diagnostic radiologic procedures.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

§ 892.1850 Radiographic film cassette.

(a) *Identification.* A radiographic film cassette is a device intended for use during diagnostic X-ray procedures to hold a radiographic film in close contact with an X-ray intensifying screen and to provide a light-proof enclosure for direct exposure of radiographic film.

(b) *Classification.* Class II.

§ 892.1860 Radiographic film/cassette changer.

(a) *Identification.* A radiographic film/cassette changer is a device intended to be used during a radiologic procedure to move a radiographic film or cassette between X-ray exposures and to position it during the exposure.

(b) *Classification.* Class II.

§ 892.1870 Radiographic film/cassette changer programmer.

(a) *Identification.* A radiographic film/cassette changer programmer is a device intended to be used to control the operations of a film or cassette changer during serial medical radiography.

(b) *Classification.* Class II.

§ 892.1880 Wall-mounted radiographic cassette holder.

(a) *Identification.* A wall-mounted radiographic cassette holder is a device that is a support intended to hold and position radiographic cassettes for a radiographic exposure for medical use.

(b) *Classification.* Class II.

§ 892.1910 Radiographic grid.

(a) *Identification.* A radiographic grid is a device that consists of alternating radiolucent and radiopaque strips intended to be placed between the patient and the image receptor to reduce the amount of scattered radiation reaching the image receptor.

(b) *Classification.* Class I.

§ 892.1920 Radiographic head holder.

(a) *Identification.* A radiographic head holder is a device intended to position the patient's head during a radiographic procedure.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1940 Radiologic quality assurance instrument.

(a) *Identification.* A radiologic quality assurance instrument is a device intended for medical purposes to measure a physical characteristic associated with another radiologic device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1950 Radiographic anthropomorphic phantom.

(a) *Identification.* A radiographic anthropomorphic phantom is a device intended for medical purposes to simulate a human body for positioning radiographic equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 892.1960 Radiographic intensifying screen.

(a) *Identification.* A radiographic intensifying screen is a device that is a thin radiolucent sheet coated with a luminescent material that transforms incident X-ray photons into visible light and intended for medical purposes to expose radiographic film.

(b) *Classification.* Class I.

§ 892.1960 Radiologic table.

(a) *Identification.* A radiologic table is a device intended for medical purposes to support a patient during radiologic procedures. The table may be fixed or tilting and may be electrically powered.

(b) *Classification.* Class II.

Subparts C–E—[Reserved]

Subpart F—Therapeutic Devices

§ 892.5050 Medical charged-particle radiation therapy system.

(a) *Identification.* A medical charged-particle radiation therapy system is a device that produces by acceleration high energy charged particles (e.g., electrons and protons) intended for use in radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.5300 Medical neutron radiation therapy system.

(a) *Identification.* A medical neutron radiation therapy system is a device intended to generate high-energy neutrons for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment support, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.5650 Manual radionuclide applicator system.

(a) *Identification.* A manual radionuclide applicator system is a manually operated device intended to apply a radionuclide source into the body or to the surface of the body for radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs, and accessories.

(b) *Classification.* Class I.

§ 892.5700 Remote controlled radionuclide applicator system.

(a) *Identification.* A remote controlled radionuclide applicator system is an electromechanical or pneumatic device intended to enable an operator to apply, by remote control, a radionuclide source into the body or to the surface of the body for radiation therapy. This generic type of device may include patient and equipment supports, component parts, treatment planning computer programs, and accessories.

(b) *Classification.* Class II.

§ 892.5710 Radiation therapy beam-shaping block.

(a) *Identification.* A radiation therapy beam-shaping block is a device made of a highly attenuating material (such as lead) intended for medical purposes to modify the shape of a beam from a radiation therapy source.

(b) *Classification.* Class II.

§ 892.5730 Radionuclide brachytherapy source.

(a) *Identification.* A radionuclide brachytherapy source is a device that consists of a radionuclide which may be enclosed in a sealed container made of gold, titanium, stainless steel, or platinum and intended for medical purposes to be placed onto a body surface or into a body cavity or tissue as a source of nuclear radiation for therapy.

(b) *Classification.* Class II.

§ 892.5740 Radionuclide teletherapy source.

(a) *Identification.* A radionuclide teletherapy source is a device consisting of a radionuclide enclosed in a sealed container. The device is intended for radiation therapy, with the radiation source located at a distance from the patient's body.

(b) *Classification.* Class I.

§ 892.5750 Radionuclide radiation therapy system.

(a) *Identification.* A radionuclide radiation therapy system is a device intended to permit an operator to administer gamma radiation therapy, with the radiation source located at a distance from the patient's body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts (including beam-limiting devices), and accessories.

(b) *Classification.* Class II.

§ 892.5770 Powered radiation therapy patient support assembly.

(a) *Identification.* A powered radiation therapy patient support assembly is an electrically powered adjustable couch intended to support a patient during radiation therapy.

(b) *Classification.* Class II.

§ 892.5780 Light beam patient position indicator.

(a) *Identification.* A light beam patient position indicator is a device that projects a beam of light (incoherent light or laser) to determine the alignment of the patient with a radiation beam. The beam of light is intended to be used during radiologic procedures to ensure proper positioning of the patient and to monitor alignment of the radiation beam with the patient's anatomy.

(b) *Classification.* Class II.

§ 892.5840 Radiation therapy simulation system.

(a) *Identification.* A radiation therapy simulation system is a fluoroscopic or radiographic X-ray system intended for use in localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field produced. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.5900 X-ray radiation therapy system.

(a) *Identification.* An X-ray radiation therapy system is a device intended to produce and control X-rays used for radiation therapy. This generic type of device may include signal analysis and display equipment, patient and equipment supports, treatment planning computer programs, component parts, and accessories.

(b) *Classification.* Class II.

§ 892.5930 Therapeutic X-ray tube housing assembly.

(a) *Identification.* A therapeutic X-ray tube housing assembly is an X-ray generating tube encased in a radiation-shielded housing intended for use in radiation therapy. This generic type of device may include high-voltage and filament transformers or other appropriate components when contained in radiation-shielded housing.

(b) *Classification.* Class II.

Subpart G—Miscellaneous Devices

§ 892.6500 Personnel protective shield.

(a) *Identification.* A personnel protective shield is a device intended for medical purposes to protect the patient, the operator, or other persons from unnecessary exposure to radiation during radiologic procedures by providing an attenuating barrier to radiation. This generic type of device may include articles of clothing, furniture, and movable or stationary structures.

(b) *Classification.* Class I.

Dated: December 24, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

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53

ISS
12

JA
20

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 864 et al.

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

[Docket No. 87N-0005]

Medical Devices; Proposed Exemptions From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, 110 generic types of class I devices. The devices that are the subjects of this proposed rule have been classified for several years. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by March 21, 1988. FDA is proposing that the final rule based on this proposed rule become effective 30 days after the date of publication of the final rule in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications thereby freeing agency resources for the review of more complex notifications. The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal of FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(K) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is unnecessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Already Classified Devices

On the dates listed, FDA published final regulations classifying among others, the devices listed below. When FDA classified these devices, the agency did not propose exemptions from the requirement of premarket notification for them. The panels charged with making classification recommendations on the devices did not focus on exempting them, and did not recommend exemption from premarket notification for them. After reviewing all of the types of devices subject to this notice, and in light of FDA's 510(k) guidance to its reviewers, FDA has determined that premarket notification with respect to the devices listed below is unnecessary for the protection of the public health. FDA believes that exempting these devices will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting these devices from the 510(k) premarket notification program, where premarket notification will not advance FDA's public health mission, will free resources available to address pressing regulatory concerns and make the agency more efficient.

No. of devices proposed to be exempt	CFR Part No., title, and publication dates of final rules
24	864—Hematology and pathology devices; September 12, 1980 (45 FR 60576).
38	866—Immunology and microbiology devices; November 9, 1982 (47 FR 50814).
18	868—Anesthesiology devices; July 16, 1982 (47 FR 31142).
3	870—Cardiovascular devices; February 5, 1980 (45 FR 7904).
9	876—Gastroenterology-urology devices; November 23, 1983 (48 FR 53012).
6	880—General hospital and personal use devices; October 21, 1980 (45 FR 69678).
7	882—Neurological devices; September 4, 1979 (44 FR 51726).
3	884—Obstetrical and gynecological devices; February 26, 1980 (45 FR 12682).
2	890—Physical medicine devices; November 23, 1983 (48 FR 53032).
110	

Hematology and Pathology Devices

Section	Device
864.1850...	Dye and chemical solution stains.
864.2220...	Synthetic cell and tissue culture media and components.
864.2240...	Cell and tissue culture supplies and equipment.
864.2260...	Chromosome culture kit.
864.2360...	Mycoplasma detection media and components.
864.2800...	Animal and human sera.
864.2875...	Balanced salt solutions or formulations.
864.3010...	Tissue processing equipment.
864.3250...	Specimen transport and storage container.
864.3300...	Cytocentrifuge.
864.3400...	Device for sealing microsections.
864.3600...	Microscopes and accessories.
864.3800...	Automated slide stainer.
864.3875...	Automated tissue processor.
864.4010...	General purpose reagent.
864.4400...	Enzyme preparations.
864.5800...	Automated sedimentation rate device.
864.5850...	Automated slide spinner.
864.6150...	Capillary blood collection tube.
864.6160...	Manual blood cell counting device.
864.6600...	Osmotic fragility test.
864.6700...	Erythrocyte sedimentation rate test.
864.8200...	Blood cell diluent.
864.8540...	Red cell lysing reagent.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the specimen transport and storage container (§ 864.3250) and the capillary blood collection tube (§ 864.6150) are limited and would apply only to those products intended for other than over-the-counter (OTC) distribution.

Immunology and Microbiology Devices

Section	Device
866.2050...	Staphylococcal typing bacteriophage.
866.2170...	Automated colony counter.
866.2300...	Multipurpose culture medium.
866.2320...	Differential culture medium.
866.2330...	Enriched culture medium.
866.2360...	Microbiological assay culture medium.
866.2360...	Selective culture medium.
866.2450...	Supplement for culture media.
866.2480...	Quality control kit for culture media.
866.2500...	Microtiter diluting and dispensing device.
866.2560...	Microbial growth monitor.
866.2580...	Gas-generating device.
866.2660...	Microorganism differentiation and identification device.
866.3010...	*Acinetobacter calcoaceticus* serological reagents.
866.3020...	Adenovirus serological reagents.
866.3035...	*Arizona* spp. serological reagents.
866.3065...	*Bordetella* spp. serological reagents.
866.3125...	*Citrobacter* spp. serological reagents.
866.3205...	Echovirus serological reagents.
866.3250...	*Erysipelothrix rhusiopathiae* serological reagents.
866.3255...	*Escherichia coli* serological reagents.
866.3270...	*Flavobacterium* spp. serological reagents.
866.3330...	Influenza virus serological reagents.
866.3340...	*Klebsiella* spp. serological reagents.
866.3400...	Parainfluenza virus serological reagents.
866.3410...	*Proteus* spp. (Weil-Felix) serological reagents.
866.3470...	Reovirus serological reagents.
866.3490...	Rhinovirus serological reagents.
866.3520...	Rubeola (measles) virus serological reagents.
866.3630...	*Serratia* spp. serological reagents.
866.3700...	*Staphylococcus aureus* serological reagents.
866.4500...	Immunoelectrophoresis equipment.
866.4520...	Immunofluorometer equipment.
866.4540...	Immunonephelometer equipment.
866.4600...	Ouchterlony agar plate.
866.4830...	Rocket immunoelectrophoresis equipment.
866.4900...	Support gel.
866.5800...	Seminal fluid (sperm) immunological test system.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Anesthesiology Devices

Section	Device
868.1030...	Manual algesimeter.
868.1910...	Esophageal stethoscope.
868.1930...	Stethoscope head.
868.1965...	Switching valve (ploss).
868.5220...	Blow bottle.
868.5280...	Breathing tube support.
868.5340...	Nasal oxygen cannula.
868.5365...	Posture chair for cardiac or pulmonary treatment.
868.5420...	Ether hook.
868.5560...	Gas mask head strap.
868.5620...	Breathing mouthpiece.
868.5640...	Medicinal nonventilatory nebulizer (atomizer).
868.5760...	Cuff spreader.
868.6100...	Anesthetic cabinet, table, or tray.
868.6175...	Cardiopulmonary emergency cart.
868.6225...	Nose clip.
868.6700...	Anesthesia stool.
868.6810...	Tracheobronchial suction catheter.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices listed above.

However, the proposed exemption for the medicinal nonventilatory nebulizer (atomizer) (§ 868.5640) would apply only when no curative labeling claims (e.g., "cures the common cold") are made. The proposed exemption for the tracheobronchial suction catheter (§ 868.6810) would apply only when no antichoke or food removal labeling claims are made.

Cardiovascular Devices

Section	Device
870.3730...	Pacemaker service tools.
870.4200...	Cardiopulmonary bypass accessory equipment.
870.4500...	Cardiovascular surgical instruments.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Gastroenterology-Urology Devices

Section	Device
876.4370...	Gastroenterology-urology evacuator.
876.4530...	Gastroenterology-urology fiberoptic retractor.
876.4560...	Ribdam.
876.4730...	Manual gastroenterology-urology surgical instrument and accessories.
876.4890...	Urological table and accessories.
876.5030...	Continent ileostomy catheter.
876.5820...	Hemodialysis system and accessories.
876.5900...	Ostomy pouch and accessories.
876.5920...	Protective garment for incontinence.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the gastroenterology-urology evacuator (§ 876.4370) and urological table and accessories (§ 876.4890) are limited and would apply only to those devices which are manually powered. The proposed exemption is also limited to those accessories of the hemodialysis system (§ 876.5820) that are remote from the extracorporeal blood system and the dialysate delivery system.

General Hospital and Personal Use Devices

Section	Device
880.5110...	Hydraulic adjustable hospital bed.
880.5120...	Manual adjustable hospital bed.
880.5510...	Non-AC-powered patient lifts.
880.6150...	Ultrasonic cleaner for medical instruments.
880.6280...	Medical insole.
880.6970...	Liquid crystal vein locator.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. The proposed exemption for the ultrasonic cleaner for medical instruments (§ 880.6150) does not apply to any solutions intended for use with the device for cleaning or sanitizing the instruments.

Neurological Devices

Section	Device
882.1200...	Two-point discriminator.
882.1500...	Esthesiometer.
882.1525...	Tuning fork.
882.1700...	Percussor.
882.1750...	Pinwheel.
882.4215...	Clip rack.
882.4650...	Neurosurgical suture needle.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices listed above. However, the proposed exemptions for the two-point discriminator (§ 882.1200) and the neurosurgical suture needle (§ 882.4650) are limited and would apply only to those devices made of the same material (single, surgical-grade, stainless steel alloy) that was used in the devices before May 28, 1976. The proposed exemption for the pinwheel (§ 882.1750) is limited and would apply only if (1) the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, and (2) it is manually operated. The proposed exemption for the esthesiometer (§ 882.1500) is also limited and would apply only if the device is composed of a single material. The proposed exemption for the percussor (§ 882.1700) would apply only to a small hand-held hammer with a rubber head, and the proposed exemptions for the clip rack (§ 882.4215) would apply only when the device is composed entirely of a single metal alloy having the same composition as the clips it is intended to hold.

Obstetrical and Gynecological Devices

Section	Device
884.2900...	Fetal stethoscope.
884.4520...	Obstetric-gynecologic general manual instrument.
884.5920...	Vaginal insufflator.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Physical Medicine Devices

Section	Device
890.3700...	Nonpowered communication system.
890.5125...	Nonpowered sitz bath.

FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Reference

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Request for Comments

Interested persons may, on or before March 21, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 864

Hematology and pathology devices, Medical devices.

21 CFR Part 868

Immunology and microbiology devices, Medical devices.

21 CFR Part 868

Anesthesiology devices, Medical devices.

21 CFR Part 870

Cardiovascular devices, Medical devices.

21 CFR Part 876

Gastroenterology-urology devices, Medical devices.

21 CFR Part 880

General hospital and personal use devices, Medical devices.

21 CFR Part 882

Medical devices, Neurological devices.

21 CFR Part 884

Medical devices, Obstetrical and gynecological devices.

21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890 be amended as follows:

S-021999 0005(00)(19-JAN-88-10:25:34)

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 864 is amended by adding new § 864.9 to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 864.1850 by revising paragraph (b) to read as follows:

§ 864.1850 Dye and chemical solution stains.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807. The devices also are exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. In § 864.2220 by revising paragraph (b) to read as follows:

§ 864.2220 Synthetic cell and tissue culture media and components.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807.

5. In § 864.2240 by revising paragraph (b) to read as follows:

§ 864.2240 Cell and tissue culture supplies and equipment.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807. If the devices are not labeled or otherwise represented as sterile, they are exempted from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. In § 864.2260 by revising paragraph (b) to read as follows:

§ 864.2260 Chromosome culture kit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. In § 864.2360 by revising paragraph (b) to read as follows:

§ 864.2360 Mycoplasma detection media and components.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807.

8. In § 864.2800 by revising paragraph (b) to read as follows:

§ 864.2800 Animal and human sera.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807.

9. In § 864.2875 by revising paragraph (b) to read as follows:

§ 864.2875 Balanced salt solutions or formulations.

* * * * *

(b) *Classification.* Class I. The devices are exempt from the premarket

notification procedures in Subpart E of Part 807.

10. In § 864.3010 by revising paragraph (b) to read as follows:

§ 864.3010 Tissue processing equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. In § 864.3250 by revising paragraph (b) to read as follows:

§ 864.3250 Specimen transport and storage container.

* * * * *

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification procedures in Subpart E of Part 807.

12. In § 864.3300 by revising paragraph (b) to read as follows:

§ 864.3300 Cytocentrifuge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

13. In § 864.3400 by revising paragraph (b) to read as follows:

§ 864.3400 Device for sealing microsections.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

14. In § 864.3600 by revising paragraph (b) to read as follows:

§ 864.3600 Microscopes and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The devices also are exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. In § 864.3800 by revising paragraph (b) to read as follows:

§ 864.3800 Automated slide stainer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

16. In § 864.3875 by revising paragraph (b) to read as follows:

§ 864.3875 Automated tissue processor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

17. In § 864.4010 by revising paragraph (b) to read as follows:

§ 864.4010 General purpose reagent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. In § 864.4400 by revising paragraph (b) to read as follows:

§ 864.4400 Enzyme preparations.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

19. In § 864.5800 by revising paragraph (b) to read as follows:

§ 864.5800 Automated sedimentation rate device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

20. In § 864.5850 by revising paragraph (b) to read as follows:

§ 864.5850 Automated slide spinner.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

21. In § 864.6150 by revising paragraph (b) to read as follows:

§ 864.6150 Capillary blood collection tube.

* * * * *

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification procedures in Subpart E of Part 807.

22. In § 864.6160 by revising paragraph (b) to read as follows:

§ 864.6160 Manual blood cell counting device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

23. In § 864.6600 by revising paragraph (b) to read as follows:

§ 864.6600 Osmotic fragility test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

24. In § 864.6700 by revising paragraph (b) to read as follows:

§ 864.6700 Erythrocyte sedimentation rate test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

25. In § 864.8200 by revising paragraph (b) to read as follows:

§ 864.8200 Blood cell diluent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

26. In § 864.8540 by revising paragraph (b) to read as follows:

§ 864.8540 Red cell lysing reagent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

27. The authority citation for 21 CFR Part 866 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

28. Part 866 is amended by adding new § 866.9 to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

29. In § 866.2050 by revising paragraph (b) to read as follows:

§ 866.2050 Staphylococcal typing bacteriophage.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

30. In § 866.2170 by revising paragraph (b) to read as follows:

§ 866.2170 Automated colony counter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

31. In § 866.2300 by revising paragraph (b) to read as follows:

§ 866.2300 Multipurpose culture medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

32. In § 866.2320 by revising paragraph (b) to read as follows:

§ 866.2320 Diffe... ial culture medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

33. In § 866.2330 by revising paragraph (b) to read as follows:

§ 866.2330 Enriched culture medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

34. In § 866.2350 by revising paragraph (b) to read as follows:

§ 866.2350 Microbiological assay culture medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

35. In § 866.2360 by revising paragraph (b) to read as follows:

§ 866.2360 Selective culture medium.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

36. In § 866.2450 by revising paragraph (b) to read as follows:

§ 866.2450 Supplement for culture media.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

37. In § 866.2480 by revising paragraph (b) to read as follows:

§ 866.2480 Quality control kit for culture media.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

38. In § 866.2500 by revising paragraph (b) to read as follows:

§ 866.2500 Microtiter diluting and dispensing device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

39. In § 866.2560 by revising paragraph (b) to read as follows:

§ 866.2560 Microbial growth monitor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

40. In § 866.2580 by revising paragraph (b) to read as follows:

§ 866.2580 Gas-generating device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

41. In § 866.2660 by revising paragraph (b) to read as follows:

§ 866.2660 Microorganism differentiation and identification device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

42. In § 866.3010 by revising paragraph (b) to read as follows:

§ 866.3010 Acinetobacter calcoaceticus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

43. In § 866.3020 by revising paragraph (b) to read as follows:

§ 866.3020 Adenovirus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

44. In § 866.3035 by revising paragraph (b) to read as follows:

§ 866.3035 Arizona spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

45. In § 866.3065 by revising paragraph (b) to read as follows:

§ 866.3065 Bordetella spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

46. In § 866.3125 by revising paragraph (b) to read as follows:

§ 866.3125 Citrobacter spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

47. In § 866.3205 by revising paragraph (b) to read as follows:

§ 866.3205 Echovirus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

48. In § 866.3250 by revising paragraph (b) to read as follows:

§ 866.3250 Erysipelothrix rhusiopathiae serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

49. In § 866.3255 by revising paragraph (b) to read as follows:

§ 866.3255 Escherichia coli serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

50. In § 866.3270 by revising paragraph (b) to read as follows:

§ 866.3270 Flavobacterium spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

51. In § 866.3330 by revising paragraph (b) to read as follows:

§ 866.3330 Influenza virus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

52. In § 866.3340 by revising paragraph (b) to read as follows:

§ 866.3340 Klebsiella spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

53. In § 866.3400 by revising paragraph (b) to read as follows:

§ 866.3400 Parainfluenza virus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

54. In § 866.3410 by revising paragraph (b) to read as follows:

§ 866.3410 Proteus spp. (Weil-Felix) serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

55. In § 866.3470 by revising paragraph (b) to read as follows:

§ 866.3470 Reovirus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

56. In § 866.3490 by revising paragraph (b) to read as follows:

§ 866.3490 Rhinovirus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

57. In § 866.3520 by revising paragraph (b) to read as follows:

§ 866.3520 Rubeola (measles) virus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

58. In § 866.3630 by revising paragraph (b) to read as follows:

§ 866.3630 Serratia spp. serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

59. In § 866.3700 by revising paragraph (b) to read as follows:

§ 866.3700 Staphylococcus aureus serological reagents.

* * * * *

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807.

60. In § 866.4500 by revising paragraph (b) to read as follows:

§ 866.4500 Immunoelectrophoresis equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

61. In § 866.4520 by revising paragraph (b) to read as follows:

§ 866.4520 Immunofluorometer equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

62. In § 866.4540 by revising paragraph (b) to read as follows:

§ 866.4540 Immunonephelometer equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

63. In § 866.4600 by revising paragraph (b) to read as follows:

§ 866.4600 Ouchterlony agar plate.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

64. In § 866.4630 by revising paragraph (b) to read as follows:

§ 866.4630 Rocket immunoelectrophoresis equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

65. In § 866.4900 by revising paragraph (b) to read as follows:

§ 866.4900 Support gel.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

66. In § 866.5800 by revising paragraph (b) to read as follows:

§ 866.5800 Seminal fluid (sperm) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 868—ANESTHESIOLOGY DEVICES

67. The authority citation for 21 CFR Part 868 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

68. Part 868 is amended by adding new § 868.9 to read as follows:

§ 868.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

69. In § 868.1030 by revising paragraph (b) to read as follows:

§ 868.1030 Manual algesimeter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

70. In § 868.1910 by revising paragraph (b) to read as follows:

§ 868.1910 Esophageal stethoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

71. In § 868.1930 by revising paragraph (b) to read as follows:

§ 868.1930 Stethoscope head.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

72. In § 868.1965 by revising paragraph (b) to read as follows:

§ 868.1965 Switching valve (pioss).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

73. In § 868.5220 by revising paragraph (b) to read as follows:

§ 868.5220 Blow bottle.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

74. In § 868.5280 by revising paragraph (b) to read as follows:

§ 868.5280 Breathing tube support.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

75. In § 868.5340 by revising paragraph (b) to read as follows:

§ 868.5340 Nasal oxygen cannula.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

76. In § 868.5365 by revising paragraph (b) to read as follows:

§ 868.5365 Posture chair for cardiac or pulmonary treatment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

77. In § 868.5420 by revising paragraph (b) to read as follows:

§ 868.5420 Ether hook.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

78. In § 868.5560 by revising paragraph (b) to read as follows:

§ 868.5560 Gas mask head strap.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

79. In § 868.5620 by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

80. In § 868.5640 by revising paragraph (b) to read as follows:

§ 868.5640 Medicinal nonventilatory nebulizer (atomizer).

* * * * *

(b) *Classification.* Class I. If no curative labeling claims are made (e.g., "cures the common cold"), the device is exempt from the premarket notification procedures in Subpart E of Part 807.

81. In § 868.5760 by revising paragraph (b) to read as follows:

§ 868.5760 Cuff spreader.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

82. In § 868.6100 by revising paragraph (b) to read as follows:

§ 868.6100 Anesthetic cabinet, table, or tray.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

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83. In § 868.6175 by revising paragraph (b) to read as follows:

§ 868.6175 Cardiopulmonary emergency cart.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 868.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

84. In § 868.6225 by revising paragraph (b) to read as follows:

§ 868.6225 Nose clip.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

85. In § 868.6700 by revising paragraph (b) to read as follows:

§ 868.6700 Anesthesia stool.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

86. In § 868.6810 by revising paragraph (b) to read as follows:

§ 868.6810 Tracheobronchial suction catheter.

* * * * *

(b) *Classification.* Class I. If no antichoke or food removal labeling claims are made, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 870—CARDIOVASCULAR DEVICES

87. The authority citation for 21 CFR Part 870 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10

88. Part 870 is amended by adding new § 870.9 to read as follows:

§ 870.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

89. In § 870.3730 by revising paragraph (b) to read as follows:

§ 870.3730 Pacemaker service tools.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures of Subpart E of Part 807.

90. In § 870.4200 by revising paragraph (b) to read as follows:

§ 870.4200 Cardiopulmonary bypass accessory equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

91. In § 870.4500 by revising paragraph (b) to read as follows:

§ 870.4500 Cardiovascular surgical instruments.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

92. The authority citation for 21 CFR Part 876 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

93. Part 876 is amended by adding new § 876.9 to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

94. In § 876.4370 by revising paragraph (b)(2) to read as follows:

§ 876.4370 Gastroenterology-urology evacuator.

* * * * *

(b) * * *

(2) Class I for the gastroenterology-urology evacuator when manually powered. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807.

95. In § 876.4530 by revising paragraph (b) to read as follows:

§ 876.4530 Gastroenterology-urology fiberoptic retractor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

96. In § 876.4560 by revising paragraph (b) to read as follows:

§ 876.4560 Ribdam.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

97. In § 876.4730 by revising paragraph (b) to read as follows:

§ 876.4730 Manual gastroenterology-urology surgical instrument and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

98. In § 876.4890 by revising paragraph (b)(2) to read as follows:

§ 876.4890 Urological table and accessories.

* * * * *

(b) * * *

(2) Class I for the manually powered table and accessories. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807.

99. In § 876.5030 by revising paragraph (b) to read as follows:

§ 876.5030 Continent ileostomy catheter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

100. In § 876.5820 by revising paragraph (b)(2) to read as follows:

§ 876.5820 Hemodialysis system and accessories.

* * * * *

(b) * * *

(2) Class I for other accessories of the hemodialysis system remote from the extracorporeal blood system and the dialysate delivery system, such as the unpowered dialysis chair, hemodialysis start/stop tray, dialyzer holder set, and dialysis tie gun and ties. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in Subpart E of Part 807.

101. In § 876.5900 by revising paragraph (b) to read as follows:

§ 876.5900 Ostomy pouch and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

102. In § 876.5920 by revising paragraph (b) to read as follows:

§ 876.5920 Protective garment for incontinence.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

103. The authority citation for 21 CFR Part 880 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

104. Part 880 is amended by adding new § 880.9 to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

105. In § 880.5110 by revising paragraph (b) to read as follows:

§ 880.5110 Hydraulic adjustable hospital bed.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

106. In § 880.5120 by revising paragraph (b) to read as follows:

§ 880.5120 Manual adjustable hospital bed.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

107. In § 880.5510 by revising paragraph (b) to read as follows:

§ 880.5510 Non-AC-powered patient lifts.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

108. In § 880.6150 by revising paragraph (b) to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807, except that any solutions intended for use with the device for cleaning or sanitizing the instruments are not exempt.

109. In § 880.6260 by revising paragraph (b) to read as follows:

§ 880.6260 Medical incole.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of part 807.

110. In § 880.6970 by revising paragraph (b) to read as follows:

§ 880.6970 Liquid crystal vein locator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 882—NEUROLOGICAL DEVICES

111. The authority citation for 21 CFR Part 882 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

112. Part 882 is amended by adding new § 882.9 to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectivenes, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

113. In § 882.1200 by revising paragraph (b) to read as follows:

§ 882.1200 Two-point discriminator.

* * * * *

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, and the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

114. In § 882.1500 by revising paragraph (b) to read as follows:

§ 882.1500 Esthesiometer.

* * * * *

(b) *Classification.* Class I. If the device is composed entirely of a single material, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

115. In § 882.1525 by revising paragraph (b) to read as follows:

§ 882.1525 Tuning fork.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of §820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

116. In § 882.1700 by revising paragraph (b) to read as follows:

§ 882.1700 Percussor.

* * * * *

(b) *Classification.* Class I. If the device is a small, hand-held hammer with a rubber head, the device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

117. In § 882.1750 by revising paragraph (b) to read as follows:

§ 882.1750 Pinwheel.

* * * * *

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, and it is manually operated, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

118. In § 882.4215 by revising paragraph (b) to read as follows:

§ 882.4215 Clip rack.

* * * * *

(b) *Classification.* Class I. If the device is composed entirely of a single metal alloy having the same composition as the clips it is intended to hold, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

119. In § 882.4650 by revising paragraph (b) to read as follows:

§ 882.4650 Neurosurgical suture needle.

* * * * *

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

120. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

121. Part 884 is amended by adding new § 884.9 to read as follows:

§ 884.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

122. In § 884.2900 by revising paragraph (b) to read as follows:

§ 884.2900 Fetal stethoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

123. In § 884.4520 by revising paragraph (b) to read as follows:

§ 884.4520 Obstetric and gynecologic general manual instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

124. In § 884.5920 by revising paragraph (b) to read as follows:

§ 884.5920 Vaginal insufflator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

PART 890—PHYSICAL MEDICINE DEVICES

125. The authority citation for 21 CFR Part 890 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

126. Part 890 is amended by adding new § 890.9 to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

127. In § 890.3700 by revising paragraph (b)(2) to read as follows:

§ 890.3700 Nonpowered communication system.

* * * * *

(b) * * *

(2) Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

128. In § 890.5125 by revising paragraph (b) to read as follows:

§ 890.5125 Nonpowered sitz bath.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the current good manufacturing regulations in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: December 24, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–858 Filed 1–19–88; 8:45 am]

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VOL
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ISS
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federal register

Wednesday
January 20, 1988

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 892

Radiology Devices; Proposed Exemptions From Premarket Notification; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 86N-0014]

Radiology Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, six class I generic types of radiology devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule classifying these and other radiology devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by March 21, 1988. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harvey Rudolph, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3428.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of unnecessary premarket notifications thereby freeing agency resources for the review of more complex notifications. FDA believes that exempting these devices will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting these devices from the section 510(k) premarket notification program, where premarket notification will not advance FDA's public health mission, will free resources available to address pressing regulatory concerns and make the agency more efficient.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal of FDA's Plan for Action Phase II (Ref. 1).

Criteria for 510(k) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment, and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution of the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device

detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I Radiology Devices

In the proposed regulations of January 29, 1982 (47 FR 4406), FDA proposed to classify preamendments radiology devices in accordance with amendments. When FDA proposed to classify the six devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices. The Panel did not recommend exemptions from the requirement of premarket notification for certain of these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, for the efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, FDA now is proposing to exempt from the requirement of premarket notification, with limitations, the six devices below.

Section	Device
892.1370...	Nuclear anthropomorphic phantom.
892.1380...	Nuclear flood source phantom.
892.1400...	Nuclear sealed calibration source.
892.1420...	Radionuclide test pattern phantom.
892.1880...	Wall mounted radiographic cassette holder.
892.6500...	Personnel protective shield.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before March 21, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 892

Radiology devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 892 be amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR Part 892 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–558, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 892 is amended by adding new § 892.9, to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 892.1370 by revising paragraph (b), to read as follows:

§ 892.1370 Nuclear anthropomorphic phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 892.1380 by revising paragraph (b), to read as follows:

§ 892.1380 Nuclear flood source phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

5. In § 892.1400 by revising paragraph (b), to read as follows:

§ 892.1400 Nuclear sealed calibration source.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 892.1420 by revising paragraph (b), to read as follows:

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§ 892.1420 Radionuclide test pattern phantom.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. In § 892.1880 by revising paragraph (b), to read as follows:

§ 892.1880 Wall mounted radiographic cassette holder.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

8. In § 892.6500 by revising paragraph (b), to read as follows:

§ 892.6500 Personnel protective shield.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: December 24, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-859 Filed 1-19-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Wednesday
January 20, 1988

Part VI

Department of Education

Invitation for New Applications for Certain Programs Under the Rehabilitation Services Administration; Notice

DEPARTMENT OF EDUCATION

Invitation for New Applications for Certain Programs Under the Rehabilitation Services Administration

In the matter of invitation for new applications for two programs under the Rehabilitation Services Administration for Fiscal Year 1988: (1) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals, and (2) Projects with Industry (CFDA Nos. 84.128A and 84.128B).

Purpose: Provide support to State and other public agencies and private agencies and organizations to expand or otherwise improve rehabilitation services leading to the placement of individuals with severe handicaps in employment.

Deadline for Transmittal of Applications: March 15, 1988.

Applications Available: January 29, 1988.

Available Funds: It is estimated that $730,000 will be available for the support of new projects under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals and $930,000 for new projects under Projects with Industry.

Applicable Regulations: (a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78; (b) Rehabilitation Services Administration Regulations, 34 CFR Parts 369, 373, and 379; and (c) when adopted in final form, the Notice of Proposed Priorities for these programs published in the Federal Register on January 4, 1988 (53 FR 104). Applicants should prepare their applications based on the proposed priorities. If there are any significant changes in the final priorities, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: The contact person listed in the Notice of Proposed Priorities, or for applications only, Mary V. Vest, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3332—Switzer Building, Mailstop 2312, Washington, DC 20202 (Telephone: (202) 732-1343).

Program Authority: 29 U.S.C. 777a(a)(1), and 795g.

Dated: January 14, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

APPLICATION NOTICES FOR FISCAL YEAR 1988

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period (Months)
Special projects and demonstrations for providing vocational rehabilitation services to severely disabled individuals, 84.128A	3/15/88	N/A	730,000	100,000–150,000	146,000	5	Up to 36.
Projects with industry, 84.128B	3/15/88	N/A	930,000	100,000–200,000	155,000	6	Up to 36.

[FR Doc. 88-1016 Filed 1-19-88; 8:45 am]
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federal register

Wednesday
January 20, 1988

Part VII

Department of Energy

Office of Nuclear Energy

10 CFR Part 730

Petitions Requesting Disposal Capacity for Unusual or Unexpected Volumes of Low-Level Radioactive Waste; Submission and Evaluation Requirements; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Nuclear Energy

10 CFR Part 730

Petitions Requesting Disposal Capacity for Unusual or Unexpected Volumes of Low-Level Radioactive Waste; Submission and Evaluation Requirements

AGENCY: Office of Remedial Action and Waste Technology, Office of Nuclear Energy (NE), DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is issuing a notice of proposed rulemaking in order to implement section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (the Act). This section authorizes DOE to grant to commercial nuclear power reactors allocations of disposal capacity for low-level radioactive waste resulting from unusual or unexpected operations or maintenance activities. The proposed regulation sets forth informational requirements applicable to petitioners for such allocations, as well as the criteria DOE will use to evaluate such petitions.

DATES: Written comments (6 copies) on this proposed rule must be received by March 21, 1988, in order to ensure their consideration.

A public hearing will be held on this proposed rule in Washington, DC, beginning at 10:00 a.m., e.s.t., on February 25, 1988, at the location specified in the addresses section. Requests to speak at the hearing must be received no later than 4:00 p.m. on February 23. Please bring at least 6 copies of the oral statement to the hearing.

ADDRESSES: All written comments (6 copies) and requests to speak at the public hearing should be addressed to: Mr. Jeffrey L. Smiley, NE-24, U.S. Department of Energy, Washington, DC 20545, (301-353-4216). Envelopes should include the notation, "Rulemaking Comment." The public hearing will begin at 10:00 a.m. and will be held in Washington, DC, at: U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., 20585. Each person to be heard is requested to bring 6 copies of his/her statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with Mr. Jeffrey L. Smiley in advance by so indicating in the letter requesting to make an oral presentation.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Smiley, Low-Level Waste Management Program, NE-24, U.S. Department of Energy, Washington, DC 20545, (301-353-4216); or Sandra Sherman, GC-31, Office of General Counsel, 1000 Independence Avenue, SW., Room 6B-256, Washington, DC 20585, (202-586-6972).

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240) (the Act) was enacted January 15, 1986. Subsections (1) and (2) of section 5(c) of the Act contain a formula for allocating to each commercial nuclear power reactor specific volumes of disposal capacity. Under the formula, a reactor may receive an allocation for the "transition period" between January 1, 1986, and December 31, 1989, and another allocation for the "licensing period" between January 1, 1990, and December 31, 1992 (together the "interim access period"). These "regular" allocations of disposal capacity, which do not require petitions to DOE, may be used to dispose of low-level waste at any of the three currently operating disposal sites at Barnwell, South Carolina; Richland, Washington; and Beatty, Nevada, during the interim access period, of January 1, 1986, through December 31, 1992. In addition to these regular allocations, section 5 of the Act authorizes DOE to grant to reactors, upon petition to DOE, additional allocations of disposal capacity for low-level waste which may result from "unusual" or "unexpected" operating and maintenance activities ("Unusual Volume allocations").

Section 5 provides that the total disposal capacity allocated by DOE under the Unusual Volumes procedure cannot exceed 800,000 cubic feet, or result in total allocations of disposal capacity to commercial nuclear power reactors in excess of 11,900,000 cubic feet.

On January 26, 1987, DOE published in the **Federal Register** a Notice of Inquiry soliciting public comment on issues that it considered central to its management of the Unusual Volumes procedure (52 FR 2792). These issues included the definition of "unusual or unexpected" activities; the availability of the 800,000 cubic feet capacity (depending on the rate that full-power operating licenses are granted); the petition process; informational requirements; and decision criteria for evaluating petitions. DOE expressed its intent to provide guidance for submitting, and criteria for evaluating petitions, upon consideration of the comments. Today, DOE responds to the comments received on the Notice of Inquiry and proposes rules for the petition process.

II. Analysis of Comments and Proposed Rules

Thirteen sources provided comments on the Notice of Inquiry. There was an overriding concern expressed by the commenters that a process should be implemented for equitably managing the Unusual Volumes procedure. The comments received and DOE's response to these comments are discussed below.

A. Definition of "Unusual" and "Unexpected" Activities

Section 5(c)(5) of the Act authorizes the Secretary to grant supplemental allocations of disposal capacity to commercial nuclear power reactors if such capacity is necessary to permit unusual or unexpected operating, maintenance, repair or safety activities. The Notice of Inquiry proposed a list of "unusual or unexpected" low-level waste generating activities and invited suggestions for other appropriate activities. Commenters supported the proposed list of activities, but cautioned that any such list should be illustrative, and not exclude other unforeseen activities.

DOE recognizes that other unforeseen operational or maintenance activities could be required over the 7-year interim access period. The definition of unusual or unexpected activities in § 730.2 is intended, therefore, as non-exclusive guidance to petitioners as to the type of low-level waste generating activities eligible for Unusual Volume allocations. As such, the list of examples is illustrative rather than prescriptive, and DOE will consider other activities not typically associated with day-to-day plant operations as eligible for allocations. However, DOE retains discretion regarding whether actually to grant an allocation for any such activity.

B. Availability of the 800,000 Cubic Feet of Capacity

The Act provides that DOE may not make Unusual Volume allocations that would result in total allocations to commercial power reactors in excess of 11,900,000 cubic feet. The 800,000 cubic feet of Unusual Volume disposal capacity is available, subject to further reduction, within this overall limitation. Congress derived the 800,000 cubic foot figure, in part, from estimates of the dates that commercial nuclear power reactors, planned or under construction, would receive their full-power operating licenses. The amount represents the difference between total estimated regular allocations, and the 11,900,000 cubic feet ceiling on all reactor low-level waste that can be disposed at the three operating disposal sites.

DOE expressed concern in the Notice of Inquiry that the entire 800,000 cubic feet may have to be scaled back if new reactors are licensed ahead of the projections used by the congressional committees in developing the allocation provision. However, commenters pointed out that licensing dates for new reactors will often be delayed, most likely ensuring that the entire 800,000 cubic feet will be available over the interim access period for distribution as Unusual Volume allocations. DOE will proceed on this basis, and has incorporated this assumption at § 730.8, *Schedule for Distributing Allocations*, of the proposed regulation. However, DOE will continue to monitor the licensing dates of new reactors in order to assess the impact on the continued availability of disposal capacity for Unusual Volume allocations, and to determine whether the amount should be reduced to reflect any projected shortfalls.

C. Petition Process

Since the Act does not prescribe procedures for administering the Unusual Volumes provision, the Notice of Inquiry contained five options for managing allocations over the interim access period. In assessing these options, and the comments thereon, DOE's objective was to fashion a method of allocation that would balance the need for equitable distribution during any one year, with the equally important necessity of preventing the premature depletion of the available disposal capacity prior to expiration of the interim access period.

Option 1, Petition as Needed: DOE would evaluate petitions as they were received on a case-by-case basis, until the 800,000 cubic feet of capacity was depleted.

Option 2, Annual Petitions: DOE would establish an annual deadline for submitting petitions for the upcoming year, and would simultaneously issue all allocations each year.

Option 3, One Time Petition: DOE would establish a deadline for submitting petitions covering the entire interim access period, and would issue allocations for each eligible petition on a one-time basis.

Option 4, Allocation Schedule: DOE would provide a disbursement schedule for allocating disposal capacity evenly over the interim access period.

Option 5, Combination of Options: DOE would select elements from the foregoing options.

The majority of commenters supported the establishment of a schedule for disbursement of allocations over the entire interim access period, as proposed under Option 4. Some comments supported Option 1, allowing petitions to be submitted as needed, but noted that this approach should nonetheless promote equity among petitioners by ensuring access to disposal capacity throughout the interim access period. In view of the convergence of concerns around the long-term availability of Unusual Volume allocations, DOE proposes to combine Options 1 and 4. Accordingly, the proposed rule at § 730.4(b) permits petitions to be submitted as needed, but § 730.8 requires DOE to disburse available disposal capacity evenly over the interim access period, and to proportionately limit, if necessary in any particular year, the volumes awarded in response to petitions.

To ensure the availability of capacity over the interim access period, DOE proposes to divide the 800,000 cubic feet equally among the 7 years of the interim access period. The resulting 114,286 cubic feet is the "yearly base volume" for Unusual Volumes allocations. Any capacity not allocated during a year will be applied in equal portions to each subsequent year. Since no allocations were granted in 1986, the 114,286 cubic feet available in 1986 would be distributed equally among the remaining 6 years of the interim access period, resulting in a new yearly base volume of 133,333 cubic feet for the years 1987 through 1992.

The proposed rules provide that DOE will not allocate more than the yearly base volume in any year, unless it determines that (1) the cumulative capacity to be allocated does not significantly exceed the yearly base volume, and a significant number of petitions would be affected by limiting the allocations, or (2) it is substantially likely that the Unusual Volume capacity available for the remainder of the interim access period will exceed the volume for which petitions may be submitted.

The proposed rules contain a mechanism for reconciling the limitation on total capacity issued each year with the flexibility granted to petitioners to file petitions as needed. The rules would permit DOE to (1) limit the capacity issued in response to any petition (or multiple petitions in a single year from the same petitioner) to 25 percent of the yearly base volume applicable on the date of the petition, and (2) reduce the capacity available for allocation if the total capacity that may be issued for that year may exceed the yearly base volume. Under the latter provision, DOE assumes that as the year advances, petitions submitted respecting activities occurring in that year may face an increasing likelihood of capacity reductions. This is because, as petitions are granted, DOE will have a firmer basis upon which to determine whether the yearly base volume for that year may be exceeded. Correspondingly, however, it is likely that a petition submitted later in a calendar year will request disposal capacity for an activity scheduled for the next calendar year; any Unusual Volume allocation in response to such a petition is less likely to be reduced, since it will be made against the yearly base volume available for that year's activities.

Under the proposed rules, DOE will not issue an allocation prior to 6 months before the start of the activity for which it is sought, which should also, promote a relatively even distribution over the interim access period. Moreover, in the event that the capacity allocated in response to a petition is reduced under either of the provisions above, or the volume of waste generated by the activity otherwise exceeds the volume allocated, a petition requesting an additional allocation may be submitted in a subsequent year.

Option 2 in the Notice of Inquiry would have obviated the need for capacity reductions on a case-by-case basis toward the end of the year. However, to reach this result, all petitions for an upcoming calendar year would have been required to be submitted well in advance of that year, allowing DOE to reduce each allocation proportionally if the capacity available for disbursement was not sufficient to satisfy each request in full. However, the commenters felt that this method would have required the petitions to be submitted too far in advance to allow petitioners to properly estimate the allocation that would have been needed to permit activity. Commenters also pointed out that, unlike most "unusual" activities, "unexpected" activities, by definition, cannot be anticipated in this manner.

A procedure using an annual deadline for submission of petitions would also require that some portion of the volume be set aside for unexpected activities that could not have been foreseen, and a set of rules for distinguishing between unusual and unexpected activities. Absent statutory direction, DOE believes that such a procedure would be cumbersome to administer, and that any potential benefit to petitioners would be outweighed by the inconvenience. Because of this, and because DOE

believes that, notwithstanding yearly fluctuations in the capacity awarded, the available capacity will be sufficient to accommodate petitions throughout the interim access period. DOE decided not to propose a process requiring an annual deadline. For the same reasons, DOE also rejected Option 3, requiring a one-time petition from each reactor for the entire interim access period.

In considering the proposed rules and the comments received on the Notice of Inquiry, it has become apparent to DOE that estimates of the volume of waste that will result from an unusual or unexpected activity may not match the volume ultimately generated. In the interest of equitable distribution of available capacity, DOE encourages conservative estimates of the volume of waste to be produced. (As noted, DOE will at any time accept petitions for additional capacity with respect to an activity for which an Unusual Volume allocation has already been granted). In this regard, the rules also provide that Unusual Volume capacity is granted conditionally upon use of the volume allocated for the activity stated in the petition. After completion of the activity and disposal of the resulting waste, it is the petitioner's responsibility promptly to report to DOE the volume of waste from the activity actually disposed. Any Unusual Volume capacity that has been awarded in excess of the volume of waste disposed will revert to DOE for redistribution.

D. Petition Information

The Notice of Inquiry proposed certain mandatory information requirements to be included in each petition, and also proposed certain "discretionary" elements in addition to the minimum requirements. The mandatory requirements proposed in the Notice of Inquiry were: (a) Name, address, and telephone number of the petitioner and point of contact; (b) name of reactor and utility; (c) description of the waste; (d) explanation of the need for an allocation; (e) description of the activity generating the waste; and (f) certification that the waste does not constitute a health or safety hazard and that the utility has not petitioned the Nuclear Regulatory Commission (NRC) for Emergency Access under section 6 of the Act. The proposed rule at § 730.5, *Contents of Petitions*, further elaborates the mandatory informational requirements in order to provide the level of detail necessary to make a proper evaluation of petitions. DOE will use the information to (1) identify the petitioner, (2) determine if and when the petitioner may be eligible for an Unusual Volumes allocation, and (3) determine the volume to be issued.

With the exceptions of item (d), explanation of need for the allocation, and item (f), "health and safety" certification, the commenters generally concurred in the mandatory informational requirements in the Notice of Inquiry.

A number of commenters requested that DOE demonstrate a legal basis for, and clarify, item (d), explanation of the need for the allocation. Section 5(c)(5)(A) of the Act requires the Secretary to state in writing his reasons for "so finding that making additional capacity available for such reactor through this paragraph is *required* to permit" the unusual or unexpected activity (emphasis added). The Act, then, suggests that an Unusual Volume allocation is not an entitlement comparable to the regular allocation that is granted as of right under section 5(c)(1). Instead, an Unusual Volume allocation is granted only upon demonstration of a need for additional capacity in order to permit activities that do not occur on a day-to-day basis.

One commenter suggested that a showing of need might discriminate in favor of reactors that had not made conservative use of their regular allocations, and against reactors that had implemented aggressive volume reduction programs. While recognizing this concern, DOE decided to retain the showing of need because (1) it is required by the Act, and (2) the high cost of disposal itself provides incentive for reactors to reduce waste volumes in spite of the availability of Unusual Volume allocations through the Unusual Volumes provision. DOE believes that Unusual Volume allocations should not be considered automatic, and will evaluate each petition based on its demonstration of need.

The mandatory information requirement, "Need for Allocation," has been further elaborated in the proposed rule to provide additional guidance to petitioners. Each category of information under this item now corresponds to a category of the decision criteria for determining eligibility and making volume determinations.

The commenters also requested clarification of item (f), which required that petitioners certify that the waste "does *not* constitute a health or safety hazard and that the utility has not petitioned the NRC for Emergency Access" (emphasis added). As proposed in the Notice of Inquiry, the "health and safety" certification was intended to be a corollary of the provision in section 6 (c)(1) of the Act that requires the NRC to determine that waste for which it grants emergency access does pose "an immediate and serious threat to the public health and safety."

In contrast to the Emergency Access provision, which provides a last resort for access to disposal facilities only if the waste poses a serious eminent danger, the risk posed by waste for which Unusual Volume petitions are submitted may vary widely, if the waste remains undisposed. One of the purposes of the Unusual Volumes procedure is to ensure that whatever potential risk the waste may pose is eliminated through properly regulated disposal. Therefore, upon further consideration, DOE has deleted the requirement that petitioners certify that the waste does not constitute a health and safety hazard.

The proposed rule retains the requirement that petitioners state that they have not also requested Emergency Access for the waste through the NRC. DOE believes that this procedure does not conflict with the NRC's proposed rules for Emergency Access (52 FR 47587), which require petitioners to demonstrate that waste for which emergency access is requested would not otherwise qualify for Unusual Volume capacity. DOE also believes that this modest requirement will serve to draw a distinction between these two provisions of the Act.

Requirement (c), "description of the waste," has been changed to require that petitions verify that waste for which the petition is submitted is suitable for disposal in at least one of the three currently operating disposal facilities. DOE will not distinguish between different types of waste eligible for Unusual Volume allocations as long as the waste is suitable for disposal in a currently operating site.

The proposed rule also contains two mandatory informational requirements not originally included in the Notice of Inquiry. The proposed rule would require petitions to include (1) the dates over which the activity occurred or will occur, and (2) the dates over which the waste will be shipped for disposal. This information will be necessary in order to determine when an unusual volume allocation may be issued in response to a petition, in view of the requirement that no allocation may be issued prior to 6 months before the commencement of the activity.

The discretionary information suggested in the Notice of Inquiry included: (a) Other utility management options; (b) impacts of denial of all or a portion of the request; (c) description of the utility's waste management plan and volume reduction program; and (d) projected allocation requirements during the interim access period. Item (d) has been incorporated into the proposed rule for *Contents of Petitions* at § 730.5(a)(6), which requires petitioners to indicate their requirements for disposal capacity over the interim access period.

Comments concerning DOE's use of discretionary information were divided. Some commenters recommended that the information be required, while others suggested that it was not germaine. Under the proposed rule, DOE would require the petition to contain only the mandatory information specified in § 730.5(a), *Contents of Petitions*. However, a petitioner could still include any of the discretionary information elements proposed in the earlier Notice, or any other information that it believed might be useful to DOE in evaluating the petition.

E. Decision Criteria

The Notice of Inquiry proposed five decision criteria that would be used to evaluate the eligibility of petitions for Unusual Volume allocations and, for each eligible petition, to determine the volume to be allocated. The proposed rule more clearly distinguishes these two processes by dividing them into separate sections, *Eligibility Criteria* (§ 730.6), and *Volume Determination* (§ 730.7), and including the applicable decision criteria under each.

The Notice of Inquiry proposed the following decision criteria: (a) The number of applications, (b) activity which generated the waste, (c) consequences of denial of the application, (d) other management options available to the petitioner, and (e) waste volume reduction performed on the waste.

A number of commenters suggested that item (a), the number of applications, was less important in determining the volume to be allocated than the sum of the volumes requested in the petitions. As described in the discussion under subsection C of this Notice, the proposed rule, at § 730.7(b), would require DOE to limit the capacity allocated if the total exceeds the volume available for disbursement in that year.

Item (b), activity which generated the waste, is included in the criteria for determining eligibility of petitions at § 730.6(a). DOE will consider whether the waste is the result of an unusual or unexpected operating, maintenance, repair or safety activity as defined in the proposed rule.

In response to comments, the decision criteria (c), consequences of denial of the application, and (d), other management options available to the petitioner, are not included in the proposed rule as evaluation criteria. Upon further consideration, DOE determined that both of these draft criteria were too speculative or subjective to provide a useful basis for evaluation.

Instead, the proposed *Eligibility Criteria* at § 730.6(b), and criteria for *Volume Determination* at § 730.7 (a), prescribe a more quantitative evaluation of the information required under *Contents of Petitions* to demonstrate the need for the Unusual Volume allocation (§ 730.5(a)(6)). These decision criteria call for a comparison of the capacity available from the petitioner's regular allocation, with the capacity requested in the petition. A petition would be ineligible where the reactor's regular allocation is or will be sufficient to accommodate the additional waste from the unusual or unexpected activity. Where the regular allocation provides partial relief, the petition would be eligible for an Unusual Volume allocation, but only to the extent that the capacity needed for the unusual activity cannot be offset by the petitioner's regular allocation.

Item (e) in the Notice of Inquiry, "waste volume reduction performed on the waste," is not included in the criteria for Volume Determination in the proposed rule. Because of increasing costs of disposal and the accessibility of volume reduction technology, DOE considers that the waste will most likely undergo volume reduction to the extent practicable.

As discussed earlier in this Notice, the proposed rule for Volume Determination at § 730.7(b), (c) and (d) also includes criteria requiring DOE to reduce allocations for which a petition is otherwise eligible if (1) the disposal capacity requested exceeds or may exceed the capacity available for distribution; (2) the capacity requested exceeds 25 percent of the capacity available for distribution; or (3) licensing of new reactors earlier than expected may result in the sum of regular allocations and Unusual Volumes allocation exceeding 11,900,000 cubic feet.

III. Procedural Requirements

A. Executive Order 11291

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Issuing Unusual Volume allocations, as proposed in this rule will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, DOE finds that sections 603 and 604 of the said Act do not apply to this rule because, if promulgated, the rule will affect only electrical utilities that own nuclear power reactors, and will not affect small entities.

C. National Environmental Policy Act

Issuing Unusual Volume allocations under this proposed rule will not result in any effect on the quality of the human environment because (1) the total capacity for disposal of low-level waste from commercial power reactors is limited to 11,900,000 cubic feet, irrespective of Unusual Volume allocations; (2) each disposal facility may limit the volume of waste disposed, regardless of the availability of reactor allocations; and (3) the types of waste for which Unusual Volume allocations are granted must be suitable for disposal at one of the currently operating disposal facilities. Therefore, DOE has concluded that the rulemaking is not a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required. However, petitions that meet eligibility requirements will be subject to review under the National Environmental Policy Act.

D. Paperwork Reduction Act

The Department of Energy has submitted the information collection listed at the end of this section to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Comments pertaining to the Paperwork Reduction Act aspects of this proposed information collection must be filed within 30 days of publication of this Notice. Address Paperwork Reduction Act comments to: Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202-395-3084). If

you plan to submit comments but require additional time, please notify Mr. Broussalian at the address above as soon as possible.

A copy of your comments should also be sent to: Mr. William A. Hambley, U.S. Department of Energy, MA-213.3, Organization and Management Systems, Mail Stop MA-21, Room 4D-035, 1000 Independence Avenue SW., Washington, DC 20585 (202-586-3282). For further information about Paperwork Reduction Act requirements, and for copies of relevant materials, please contact Mr. Hambley at the address above.

The following information was submitted to OMB concerning this information collection:

1. *Sponsor of the collection (DOE component)*: Office of Assistant Secretary for Nuclear Energy.

2. *Collection number*: Nuclear Materials 116.

3. *Current OMB docket number (if applicable)*: N/A.

4. *Collection title*: Unusual Volume Disposal Capacity Petitions.

5. *Type of request, e.g., new, revision or extension*: New.

6. *Frequency of collection*: This collection has no fixed frequency. Petitions will be filed by petitioners as needed.

7. *Response obligation, i.e., mandatory, voluntary or required to obtain or retain benefit*: Required to obtain benefit (i.e., Unusual Volume allocation).

8. *Affected public*: Utilities operating commercial nuclear power reactors.

9. *An estimate of the number of respondents per report period*: 5 respondents per report period (Fiscal year).

10. *An estimate of the number of respondents annually*: 5 annual responses.

11. *Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection*: 400 burden hours per fiscal year (i.e., 5 petitions at 80 burden hours per petition).

12. *A brief abstract describing the proposed collection and the respondents*: This information collection is necessary in order to allow DOE to implement its responsibilities under section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240) (the Act). This section authorizes DOE to grant to commercial nuclear power reactors allocations of disposal capacity in order to permit the disposal of low-level waste generated by unusual or unexpected activities. Without the information, DOE would be unable to determine whether the activity was eligible for such an allocation or how much additional disposal capacity would be required to allow the activity to take place.

IV. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposal set forth in this notice. Comments should be submitted to the address indicated in the addresses section of this notice and should be identified on the envelope with the designation, "Rulemaking Comment". Six copies should be submitted. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this rule. All written comments received on the proposed rule will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit 1 complete copy, as well as 6 copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination. This procedure is set forth in 10 CFR 1004.11, 44 FR 1908, January 8, 1979.

B. Public Hearing

The time and place of the public hearing are indicated in the date and addresses sections of this notice. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representing a group or class of persons that has an interest in the proposed rulemaking, to make a request for an opportunity to make an oral presentation. Such a request should be directed to the person indicated in the addresses section of this notice, and must be received by the date indicated in the dates section of this notice. A request to make an oral presentation should be identified on the envelope with the designation, "Rulemaking public hearing." The person making the request should briefly describe the interest concerned and provide a telephone number where he or she may be contacted during the day.

C. Conduct of Hearing

DOE reserves the right to arrange the schedule of oral presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes, but may be increased or reduced based on the number of persons requesting to be heard. A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing, as well as the entire rulemaking record will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a transcript from the reporter. If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Direct notice of cancellation will also be given to all persons scheduled to speak at the hearing.

List of Subjects in 10 CFR Part 730

Nuclear power plants and reactors, Waste treatment and disposal.

Issued in Washington DC on December 11, 1987.

William R. Voigt, Jr.

Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Part 730 is proposed to be added as set forth below.

PART 730—UNUSUAL VOLUMES ALLOCATION PETITION PROCEDURES

Subpart A—General Provisions

Sec.
730.1 Purpose and scope.
730.2 Definitions.
730.3 Communications.

Subpart B—Allocation Petitions

730.4 Filing.
730.5 Contents of petitions.
730.6 Eligibility criteria.
730.7 Volume determination.
730.8 Schedule for distributing allocations.

Authority: Sec. 5(c)(5), Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b-j).

Subpart A—General Provisions

§ 730.1 Purpose and scope.

The regulations in this part establish procedures for submitting petitions and for allocating disposal capacity under section 5(c)(5) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, and prescribe criteria for determining eligibility for such allocations. The regulations in this part apply to all operators of commercial nuclear power reactor units possessing a full-power operating license (pursuant to 10 CFR Part 50).

§ 730.2 Definitions.

As used in this part:

"Act" means the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240);

"Department" means the U.S. Department of Energy

"Interim Access Period" means the 7-year period beginning January 1, 1988 and ending December 31, 1992;

"Licensing Period" means the 3-year period within the interim access period beginning January 1, 1990 and ending December 31, 1992;

"Regular Activity" means an event at a commercial nuclear power reactor associated with day-to-day plant operations;

"Regular Allocation" means the issuance of a specific volume of low-level radioactive waste disposal capacity made to each commercial nuclear power reactor based on the formula in section 5(c)(1) and (2) of the Act for use at any of the currently operating commercial disposal sites.

"Transition Period" means the 4-year period within the interim access period beginning January 1, 1988 and ending December 31, 1989;

"Unusual or Unexpected Activity" means an event at a commercial nuclear reactor not typically associated with day-to-day plant operations, including but not limited to steam generator repair, primary coolant recirculation pipe repair or replacement, operation as a "dry site" reactor with no off-site radioactive liquid discharge, major equipment or hardware repair, removal, modification, or replacement, major equipment modification under the Nuclear Regulatory Commission's backfit rule (10 CFR 50.109), and activities designed to increase the capacity for spent nuclear fuel storage at power reactors.

"Unusual Volume Allocation" means an issuance of a specific volume of low-level radioactive waste disposal capacity to a commercial nuclear power reactor by the Secretary of Energy under section 5(c)(5) of the Act for disposal of waste from unusual or unexpected activities.

"Yearly Base Volume" is the total of Unusual Volume capacity in cubic feet that may be allocated by the Department for any calendar year.

§ 730.3 Communications.

Any communication or report concerning the regulation in this part and any petition filed under these regulations may be submitted to the Assistant Secretary for Nuclear Energy, U.S. Department of Energy, Washington, DC 20585.

Subpart B—Allocation Petitions

§ 730.4 Filing.

(a) Petitions for Unusual Volume allocations should be filed in triplicate with the Assistant Secretary for Nuclear Energy, U.S. Department of Energy, Washington, DC 20585. Written notification will be provided to the petitioner acknowledging receipt of the petition.

(b) Petitions may be filed as needed, i.e., before, during or after the activity for which the request is made.

(c) No Unusual Volume allocation will be made earlier than 6 months before the start of the unusual or unexpected activity for which an allocation is requested.

(d) A petition may be submitted for additional capacity for disposal of waste resulting from an unusual or unexpected activity for which an Unusual Volume allocation has already been made.

(e) Petitions are granted conditionally upon use of the volume allocated for the activity stated in the grant. Within 30 days after all waste resulting from such activity has been disposed, the recipient of an Unusual Volume allocation shall report to the Department the volume of waste resulting from the activity that has been disposed. The excess of any Unusual Volume capacity allocated for the activity will thereupon revert to DOE.

§ 730.5 Contents of petitions.

(a) Each petition for an Unusual Volume allocation shall contain the following information:

(1) Name, address and telephone number of point of contact;

(2) Name of the reactor and utility requesting an allocation;

(3) Detailed description of the activity generating the waste;

(4) Dates during which the activity occurred or will occur;

(5) Estimated dates (months and years) during which the waste will be shipped for disposal;

(6) Explanation of the need for the Unusual Volume allocation. This explanation shall include:

(i) The reactor's regular allocation for the period in which the unusual or unexpected activity occurred or will occur;

(ii) The volume of waste generated or estimated to be generated by the unusual or unexpected activity;

(iii) Explanation of the extent to which the reactor's regular allocation for the period in which the unusual or unexpected activity occurred or will occur can accommodate the waste generated by the unusual or unexpected activity;

(iv) The volume of disposal capacity requested, expressed in cubic feet.

(7) Statement that the petitioner has not applied to the Nuclear Regulatory Commission for emergency access under section 6 of the Act;

(8) Statement that the waste for which the petition is submitted is suitable for disposal at at least one of the operating disposal sites identified in the Act.

(9) Any other information the petitioner believes will assist in evaluating the petition.

(b) After the petition has been submitted, the Department may seek additional information from the petitioner in order to enable the Department to determine eligibility for an allocation, or to determine the capacity to be allocated.

§ 730.6 Eligibility criteria.

The Department will use the following criteria to determine whether a petition is eligible for an allocation.

(a) The activity for which the petition is submitted should be an unusual or unexpected activity, as defined in § 730.2.

(b) The petition should demonstrate that the balance of a reactor's regular allocation at the time the unusual or unexpected activity occurred or will occur, plus the balance of any Unusual Volume allocation the reactor has received, will not exceed the sum of the volume that will be needed for regular activities during the transition period or the licensing period, as applicable, and the volume that is needed during the period for the unusual or unexpected activity.

(c) The waste resulting from the activity for which the petition is

submitted should be suitable for disposal at at least one of the operating disposal sites identified in the Act.

§ 730.7 Volume determination.

(a) Except as adjusted under paragraphs (b), (c) or (d) of this section, the allocation issued in response to a petition shall be the difference between the volume that the Department determines to be required to dispose of waste from the unusual or unexpected activity, and that portion of total allocations received by the reactor (regular and Unusual Volume allocations) that will be available for application toward disposal of waste from the activity. The allocation volume that will be available for disposal of this waste is the difference between the total allocation volume that the reactor has received, and the sum of:

(1) The reactor's regular allocation volume already used for disposal of waste from regular activities;

(2) The reactor's regular allocation volume that is expected to be required for disposal of waste from regular activities through the remainder of the transition period or licensing period, as applicable;

(3) Any portion of the reactor's regular allocation volume that will have been used at the time the Unusual Volume allocation is issued to dispose of waste from the activity for which the petition is submitted; and

(4) Any portion of any previous Unusual Volume allocation that will have been used at the time the Unusual Volume allocation is issued to dispose of waste from the activity for which the petition is submitted.

(b) Except as provided in § 730.8, if the Department determines that the total Unusual Volume awarded for any year, as determined under paragraph (a) of this section, may exceed the yearly base volume for that year, as determined under § 730.8, the Department shall reduce pending and subsequent allocations for that year so that the sum of the volumes awarded does not exceed the yearly base volume.

(c) The capacity allocated to any single reactor shall not exceed 25 percent of the yearly base volume, as determined under § 730.8, during the year for which the allocation is made.

(d) If the Department determines that licensing of new reactors will result in the sum of regular reactor allocations and Unusual Volume allocations exceeding 11,900,000 cubic feet, then pending and subsequent allocations will be reduced so that the sum of all allocations does not exceed 11,900,000 cubic feet.

§ 730.8 Schedule for distributing allocations

(a) The yearly base volume that is available for disbursement by the Department during a calendar year in response to Unusual Volume petitions shall be determined as follows: The 800,000 cubic feet of capacity available shall be divided equally among the 7 years. Any capacity not allocated in a year shall be distributed in equal portions among subsequent years.

(b) Any excess disposal capacity conveyed to the Department under § 730.4(e) shall be distributed in equal portions to the yearly base volumes for subsequent years.

(c) The Department shall not allocate more than the yearly base volume in any year, unless it determines that:

(1)(i) The volume capacity to be issued does not significantly exceed the yearly base volume, and

(ii) A significant number of petitions would be affected by so limiting allocations; or

(2) It is substantially likely that the Unusual Volume capacity available for the remainder of the interim access period will exceed the capacity for which petitions will be submitted.

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Reader Aids

Federal Register
Vol. 53, No. 12
Wednesday, January 20, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19
1467-1600	20

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
5760	855
5761	1464
Executive Orders:	
12537 (Amended by EO 12624)	489
12578 (Superseded by EO12622)	222
12622	222
12623	487
12624	489
Administrative Orders:	
Presidential Determinations:	
No. 88-2 of Oct. 30, 1987	399
No. 88-4 of Dec. 17, 1987	773
Presidential Findings:	
Jan. 12, 1988	999

5 CFR

353	857
551	1331
890	1, 860
Proposed Rules:	
330	408
351	408
890	898

7 CFR

1	1001
7	1441
301	733
353	1332
400	2
401	1001
405	1467
704	733
905	401, 860
907	6, 491, 1333
910	7, 492, 1333
911	402
928	862
959	401
971	401
987	401
1430	107
1902	231
Proposed Rules:	
68	411
301	140
401	505, 507
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370
1126	256
1136	686
1260	509
1701	140

9 CFR

77	1002

10 CFR

73	403
Proposed Rules:	
2	415
430	30
730	1594

11 CFR

Proposed Rules:	
109	416
114	416

12 CFR

206	492
208	492
226	467
337	597
501	1003
525	312
561	324, 338
563	324, 338, 354, 363, 372, 385, 1004
563c	324
571	338, 372, 385
583	312, 1003
584	312
614	775
795	1005
Proposed Rules:	
226	467

13 CFR

108	1468

14 CFR

39	8-14, 232, 493-495, 1334, 1468
71	496, 497, 619, 1335, 1336
75	497, 1336-1339
91	233
95	1005
97	499
Proposed Rules:	
Ch. I	1038
39	258, 514, 515, 1371-1374

BEST COPY AVAILABLE

71.....516, 517, 666, 670, 674, 907–910, 1375
73.....517, 991

15 CFR

399.....108
806.....1015

Proposed Rules:

379.....418

16 CFR

13.....609

Proposed Rules:

13.....141, 1039

17 CFR

1.....609, 615
211.....109, 865, 1341

18 CFR

3.....1469
154.....867
270.....867
271.....15
273.....867
375.....867, 1469
381.....867, 1469
388.....1469
1301.....405

19 CFR

4.....1103
24.....615

Proposed Rules:

132.....1376
141.....30
142.....1376
178.....30

20 CFR

Proposed Rules:

361.....143
901.....147

21 CFR

81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233
606.....111
610.....111
640.....111
884.....1554
892.....1554
1308.....500

Proposed Rules:

193.....259
561.....259
864.....1574
866.....1574
868.....1574
870.....1574
876.....1574
880.....1574
882.....1574
884.....1574
890.....1574
892.....1574
1308.....743

23 CFR

655.....236

24 CFR

200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122

Proposed Rules:

115.....260

26 CFR

1.....117, 238, 1103, 1441

Proposed Rules:

1.....153, 261

27 CFR

Proposed Rules:

9.....1492

28 CFR

55.....735
541.....196

29 CFR

2676.....1018
2702.....737

30 CFR

202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994

Proposed Rules:

210.....1039
216.....1039

31 CFR

103.....776

32 CFR

45.....1341
104.....1343
374.....1345
887.....876

Proposed Rules:

199.....1378

33 CFR

110.....878
117.....119, 406
165.....616, 878
166.....1347

34 CFR

Proposed Rules:

303.....1461

36 CFR

5.....739
404.....120
1254.....1348

Proposed Rules:

223.....519

37 CFR

201.....122, 123

Proposed Rules:

203.....153

38 CFR

4.....21, 1441
21.....616, 879
36.....1349

Proposed Rules:

21.....620, 1040
36.....1378

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501, 1019, 1020, 1354
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244, 1358
763.....1021

Proposed Rules:

52.....261, 779, 1043
156.....1494
170.....1494
180.....262, 263, 1495
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR

101–20.....129
105–60.....1478
114–51.....741

Proposed Rules:

Ch. 201.....620
51–7.....1379
141.....31
142.....31
261.....31

42 CFR

431.....657
435.....657
440.....657
441.....657

Proposed Rules:

410.....1383
434.....744
435.....744

43 CFR

2.....24
3100.....1184
3160.....1184

Public Land Orders:

6661.....1359
6662.....1359

Proposed Rules:

3160.....1039

44 CFR

64.....1485

445.....749
446.....749
447.....749
452.....749

49 CFR

24.....467
31.....880
541.....133
565.....1032
661.....617

Proposed Rules:

3.....100
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
571.....426, 780, 934, 936
1041.....155
1048.....155
1049.....155

50 CFR

33.....1487
611.....134, 741, 890, 894
653.....244
663.....246, 248
672.....890, 991
675.....894, 991

Proposed Rules:

20.....42
226.....530
301.....156
652.....265
658.....268
672.....627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 14, 1988



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VOL
53
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13
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Pages 1601-1738

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Thursday
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Contents

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

ACTION
NOTICES
Grants; availability, etc.:
Student community service projects, 1647

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
Tobacco, 1605

Agriculture Department
See also Agricultural Stabilization and Conservation Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Food and Nutrition Service; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 1651
Meetings:
Dairy Policy National Commission, 1651

Bonneville Power Administration
NOTICES
Pacific Northwest-Pacific Southwest Long Term Intertie access policy, availability; meetings, 1660

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 1654
Iowa, 1654
Michigan, 1654
Mississippi, 1654
Pennsylvania, 1655

Coast Guard
NOTICES
Meetings:
Rules of the Road Advisory Council, 1698
Towing Safety Advisory Committee, 1698
(2 documents)

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 1655

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Tobacco, 1652

Defense Department
See also Navy Department
NOTICES
Meetings:
Science Board task forces, 1658–1659
(8 documents)

Economic Regulatory Administration
NOTICES
Violations, interest rates; policy, 1672

Education Department
NOTICES
Grants; availability, etc.:
Law school clinical experience program, 1660

Energy Department
See Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
Nonferrous metals manufacturing, 1641
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Nonconformance penalties for heavy-duty engines and vehicles, including light-duty trucks, 1716
Radiation protection programs:
Inactive uranium processing sites; standards for remedial actions, 1704
NOTICES
Air quality implementation plans:
Ozone and carbon monoxide nonattainment areas; post 1987 approval, 1677
Marine sanitation device standards:
Florida, 1678
Meetings:
Science Advisory Board, 1678
Water pollution control:
Disposal site determinations—
East Everglades area, FL, 1678

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Farm Credit Administration
NOTICES
Farm credit system:
Farm Credit System Financial Assistance Corp.; charter, 1679

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 1608
Boeing, 1609
Hamburger Flugzeubau, 1610
Marvel Schebler, 1611
McDonnell Douglas, 1613
Transition areas, 1614
NOTICES
Exemption petitions:
British Aerospace Public Limited Co., 1699

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 1629
Florida and Alabama, 1629
New York, 1629
Texas, 1630
(2 documents)
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 1680
Radio broadcasting:
FM vacant channel applications; universal window filing period, 1680
Rulemaking proceedings; petitions filed, granted, denied, etc., 1680
Applications, hearings, determinations, etc.:
Hartke Communications Corp. et al., 1681

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
Canning and processing peaches, 1640

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 1701

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Light Co. et al., 1674
Small power production and cogeneration facilities; qualifying status:
Northwest Arkansas Resource Recovery Authority, 1674
Applications, hearings, determinations, etc.:
APX Corp., 1675
Boston Edison Co. et al., 1675
Columbia Gas Transmission Corp. et al., 1676
Inter-City Minnesota Pipelines, 1676
Transcontinental Gas Pipe Line Corp., 1676, 1677
(2 documents)

Federal Maritime Commission
NOTICES
Agreements filed, etc., 1681

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bankers Advisory Corp. et al., 1682
Chemical New York Corp. et al., 1682
Parks, Donald J., et al., 1682

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Federal Indian reservations and ceded lands, 1645
NOTICES
Alaska National Interest Lands Conservation Act, Title VIII Implementation; report availability, 1686

Food and Nutrition Service
RULES
Food stamp program:
Liabilities and quality control arbitration, administrative review process, 1603

Health and Human Services Department
See Health Care Financing Administration; National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
End stage renal disease program; network organizations responsibilities, 1617
Inpatient hospital prospective payments system—
Periodic interim payments, 1621

Infant Mortality, National Commission to Prevent
See National Commission to Prevent Infant Mortality

Interior Department
See Fish and Wildlife Service; Land Management Bureau

International Trade Administration
RULES
Export administration regulations; emergency license procedure clarification, 1614
Export licensing:
Commodity control list—
Controllable pitch propellers and hub assemblies, 1616
NOTICES
Export trade certificates of review, 1655, 1656
(2 documents)

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
ConAgra, Inc., 1686, 1687
(2 documents)
Railroad operation, acquisition, construction, etc.:
Baltimore Belt Railroad Co. et al., 1688

Justice Department
NOTICES
Pollution control; consent judgments:
Empresa Lineas Maritimas Argentinas, S.A., et al., 1688
Sulphur Springs, TX, et al., 1688

Labor Department
See also Occupational Safety and Health Administration
NOTICES
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 1689

Land Management Bureau
NOTICES
Meetings:
Las Cruces District Advisory Council, 1685
Realty actions; sales, leases, etc.:
Arizona, 1685, 1686
(3 documents)
Arizona; correction, 1685

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 1701
(3 documents)

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 1689

(2 documents)
Space Systems and Technology Advisory Committee, 1690

National Commission to Prevent Infant Mortality
NOTICES
Hearings, 1690

National Highway Traffic Safety Administration
RULES
Motor vehicle theft prevention standard:
Insurer reporting requirements, 1635
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems, 1643
Motor vehicle theft prevention standard:
Insurer reporting requirements, 1641

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 1683
National Heart, Lung, and Blood Institute, 1684
(3 documents)

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Commercial fishing operations—
Taking and importing; general permit, 1638
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 1657
Permits:
Marine mammals, 1657

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 1659
Naval Research Advisory Committee, 1659

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 1690
Meetings; Sunshine Act, 1701
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co.; correction, 1692
Gulf States Utilities Co., 1691
Northeast Nuclear Energy Co.; correction, 1692
Wisconsin Public Service Corp. et al., 1692

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
Ethylene oxide; occupational exposure, 1724

Presidential Documents
ADMINISTRATIVE ORDERS
Nicaraguan Democratic Resistance; U.S. assistance (Presidential Determination No. 88-6 of Jan. 19, 1988, 1601

Prospective Payment Assessment Commission
NOTICES
Meetings, 1693

Public Health Service
See National Institutes of Health

Research and Special Programs Administration
RULES
Pipeline safety:
Natural gas transportation, etc.—
Standards and procedures; miscellaneous amendments, 1633

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Nationwide Life Insurance Co. et al., 1693
Public utility holding company filings, 1695

Small Business Administration
RULES
Federal claims collection; salary offset, 1606
NOTICES
Disaster loan areas:
Hawaii, 1696
South Dakota, 1696
Meetings:
Presidential Advisory Committee on Small and Minority Business Ownership, 1696
Applications, hearings, determinations, etc.:
Queneska Capital Corp., 1696

Soil Conservation Service
RULES
Conservation operations:
Reconsideration and appeal procedures, 1605

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 1697
(2 documents)

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

United States Information Agency
NOTICES
Art objects; importation of exhibition; New Sweden Colony, 1699

Veterans Administration
RULES
Acquisition regulations
Construction contracting procedures, 1630

Separate Parts In This Issue

Part II
Environmental Protection Agency, 1704

Part III
Environmental Protection Agency, 1716

Part IV
Department of Labor, Occupational Safety and Health Administration, 1724

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 1629
Florida and Alabama, 1629
New York, 1629
Texas, 1630
(2 documents)
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 1680
Radio broadcasting:
FM vacant channel applications; universal window filing period, 1680
Rulemaking proceedings; petitions filed, granted, denied, etc., 1680
Applications, hearings, determinations, etc.:
Hartke Communications Corp. et al., 1681

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
Canning and processing peaches, 1640

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 1701

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Light Co. et al., 1674
Small power production and cogeneration facilities; qualifying status:
Northwest Arkansas Resource Recovery Authority, 1674
Applications, hearings, determinations, etc.:
APX Corp., 1675
Boston Edison Co. et al., 1675
Columbia Gas Transmission Corp. et al., 1676
Inter-City Minnesota Pipelines, 1676
Transcontinental Gas Pipe Line Corp., 1676, 1677
(2 documents)

Federal Maritime Commission
NOTICES
Agreements filed, etc., 1681

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Bankers Advisory Corp. et al., 1682
Chemical New York Corp. et al., 1682
Parks, Donald J., et al., 1682

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Federal Indian reservations and ceded lands, 1645
NOTICES
Alaska National Interest Lands Conservation Act, Title VIII Implementation; report availability, 1686

Food and Nutrition Service
RULES
Food stamp program:
Liabilities and quality control arbitration, administrative review process, 1603

Health and Human Services Department
See Health Care Financing Administration; National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
End stage renal disease program; network organizations responsibilities, 1617
Inpatient hospital prospective payments system—Periodic interim payments, 1621

Infant Mortality, National Commission to Prevent
See National Commission to Prevent Infant Mortality

Interior Department
See Fish and Wildlife Service; Land Management Bureau

International Trade Administration
RULES
Export administration regulations; emergency license procedure clarification, 1614
Export licensing:
Commodity control list—Controllable pitch propellers and hub assemblies, 1616
NOTICES
Export trade certificates of review, 1655, 1656
(2 documents)

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
ConAgra, Inc., 1686, 1687
(2 documents)
Railroad operation, acquisition, construction, etc.:
Baltimore Belt Railroad Co. et al., 1688

Justice Department
NOTICES
Pollution control; consent judgments:
Empresa Lineas Maritimas Argentinas, S.A., et al., 1688
Sulphur Springs, TX, et al., 1688

Labor Department
See also Occupational Safety and Health Administration
NOTICES
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 1689

Land Management Bureau
NOTICES
Meetings:
Las Cruces District Advisory Council, 1685
Realty actions; sales, leases, etc.:
Arizona, 1685, 1686
(3 documents)
Arizona; correction, 1685

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 1701
(3 documents)

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 1689

(2 documents)
Space Systems and Technology Advisory Committee, 1690

National Commission to Prevent Infant Mortality
NOTICES
Hearings, 1690

National Highway Traffic Safety Administration
RULES
Motor vehicle theft prevention standard:
Insurer reporting requirements, 1635
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems, 1643
Motor vehicle theft prevention standard:
Insurer reporting requirements, 1641

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 1683
National Heart, Lung, and Blood Institute, 1684
(3 documents)

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Commercial fishing operations—Taking and importing; general permit, 1638
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 1657
Permits:
Marine mammals, 1657

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 1659
Naval Research Advisory Committee, 1659

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 1690
Meetings; Sunshine Act, 1701
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co.; correction, 1692
Gulf States Utilities Co., 1691
Northeast Nuclear Energy Co.; correction, 1692
Wisconsin Public Service Corp. et al., 1692

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
Ethylene oxide; occupational exposure, 1724

Presidential Documents
ADMINISTRATIVE ORDERS
Nicaraguan Democratic Resistance; U.S. assistance (Presidential Determination No. 88-6 of Jan. 19, 1988, 1601

Prospective Payment Assessment Commission
NOTICES
Meetings, 1693

Public Health Service
See National Institutes of Health

Research and Special Programs Administration
RULES
Pipeline safety:
Natural gas transportation, etc.—Standards and procedures; miscellaneous amendments, 1633

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Nationwide Life Insurance Co. et al., 1693
Public utility holding company filings, 1695

Small Business Administration
RULES
Federal claims collection; salary offset, 1606
NOTICES
Disaster loan areas:
Hawaii, 1696
South Dakota, 1696
Meetings:
Presidential Advisory Committee on Small and Minority Business Ownership, 1696
Applications, hearings, determinations, etc.:
Queneska Capital Corp., 1696

Soil Conservation Service
RULES
Conservation operations:
Reconsideration and appeal procedures, 1605

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 1697
(2 documents)

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

United States Information Agency
NOTICES
Art objects; importation of exhibition; New Sweden Colony, 1699

Veterans Administration
RULES
Acquisition regulations
Construction contracting procedures, 1630

Separate Parts In This Issue

Part II
Environmental Protection Agency, 1704

Part III
Environmental Protection Agency, 1716

Part IV
Department of Labor, Occupational Safety and Health Administration, 1724

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 88–6
of Jan. 19, 1988.....1601

7 CFR
272.....1603
275.....1603
614.....1605
724.....1605
Proposed Rules:
451.....1640

13 CFR
140.....1606

14 CFR
39 (5 documents).....1608–1613
71.....1614

15 CFR
372.....1614
374.....1614
399.....1616

29 CFR
Proposed Rules:
1910.....1724

40 CFR
421.....1704
Proposed Rules:
86.....1716
192.....1641

42 CFR
405.....1617
412.....1621
413.....1621
418.....1621

47 CFR
73 (5 documents).....1629, 1630

48 CFR
836.....1630
852.....1630

49 CFR
190.....1633
192.....1633
544.....1641
Proposed Rules:
544.....1635
571.....1643

50 CFR
216.....1638
Proposed Rules:
20.....1645

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–6 of January 19, 1988

Assistance to the Nicaraguan Democratic Resistance

In accordance with Section 111(b)(2)(A) of the Joint Resolution making further continuing appropriations for the fiscal year 1988 and for other purposes (Public Law 100–202), I hereby determine and certify that:

(a) at the time of this certification no cease-fire is in place that was agreed to by the Government of Nicaragua and the Nicaraguan democratic resistance;

(b) the failure to achieve such a cease-fire results from the lack of good faith efforts by the Government of Nicaragua to achieve such a cease-fire; and

(c) the Nicaraguan democratic resistance has engaged in good faith efforts to achieve such a cease-fire.

This determination and certification shall be transmitted to the Speaker of the House of Representatives and the President of the Senate and shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 19, 1988.

[FR Doc. 88–1351
Filed 1–20–88; 10:31 am]
Billing code 3195–01–M

Editorial note: For a White House announcement and the text of letters addressed to the Speaker of the House of Representatives and the President of the Senate, both dated Jan. 19, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 3).

VOL
53
ISS
13
JA
21
988
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Rules and Regulations

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 268]

Food Stamp Program; Quality Control Arbitration Timeframes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On March 21, 1986 (51 FR 9821) the Department of Agriculture published proposed regulations to amend the Food Stamp Program's administrative review process. This is the process through which administering State agencies can seek a reconsideration of claims filed against them by the Food and Nutrition Service (FNS). The proposed rule also contained amended arbitration procedures for State agencies to dispute quality control (QC) case findings, including timeframes for requesting and conducting arbitration.

The rule finalizes the timeframes for requesting and conducting QC arbitration. The Department is still considering the other proposals based on the comments received.

EFFECTIVE DATE: This action is effective February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Joseph H. Pinto, Supervisor, Certification Policy and QC Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756-3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551*. For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. Some requirements will be placed on State agencies. However, the requirements will not have a significant economic impact on local governments.

This rule does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Action of 1980 (44 U.S.C. 3507).

Background

On March 21, 1986, the Department proposed regulations to modify the arbitration process to (1) require State agencies to submit arbitration requests within 28 calendar days and (2) require the FNS regional arbitrator to make a decision or notify the State agency of the status of the case within 30 days. The Department received 43 comments on the timeframes. Nine commenters opposed the establishment of timeframes. The Department considered these comments but decided not to adopt them because an open-ended arbitration system does not allow for timely establishment of statutorily mandated quality control claims. The other 34 commenters supported the concept of timeframes. Twenty-eight of the commenters, however, requested modifications or changes to the timeframe provisions as proposed.

State Agency 28-Day Timeframes

Twelve commenters requested that the 28 day count begin with the date of receipt of the FNS regional findings, rather than date of transmittal. In the final rule, the Department has adopted this recommendation. The 28-day count for requesting FNS regional arbitration will begin with the date of receipt of the FNS regional office case findings by the State agency. Eight commenters requested different timeframes to submit a request, ranging from 30 days to as long as 120 days. The Department considered these comments but decided to retain the 28 days. The Department believes that 28 days is sufficient. Also, 28 days is consistent with the current Aid to Families with Dependent Children program practices.

Six commenters requested that waivers of the timeframes be allowed for extenuating circumstances. The Department considered this recommendation but decided not to adopt it. The Department considers 28 days to be sufficient for a State agency to prepare its request and submit it since the State agency has already completed its review of the household's circumstances before the Federal review is conducted. The State agency, in preparing its case for arbitration, is simply ensuring that all its verification, documentation, and the supporting material for its findings are included in its submittal for arbitration.

Eight commenters addressed the issue of submittal of full documentation. Four commenters wanted to submit the request for arbitration within 28 days but have additional time to submit the documentation. One commenter wanted the provision requiring full documentation to be deleted. One commenter requested clarification of the phrase "full documentation". Two commenters recommended that States be given 5 to 15 days to respond to requests from the arbitrator for additional information. Full

documentation includes, but is not limited to, the FNS–380 worksheet, verification and documentation of the household's circumstances, applicable policy and waivers and any other material the State considers applicable to support its case findings. As we discussed earlier, the Department believes that 28 days is sufficient to allow a State to prepare its case and submit it. Therefore, the recommendation to allow additional time to submit the documentation was not adopted. However, the Department is allowing States to submit additional information after it has submitted its request, provided it can do so within the 28 day timeframe. The Department has deleted the provision that the arbitrator shall return a request without full documentation. However, there may be instances when the arbitrator will require additional information to clarify an issue(s), and the Department has decided to adopt the recommendation to allow a State additional time beyond the 28 day timeframe to respond to a request for additional information from the arbitrator. This final rule allows a State agency 15 days from receipt of the arbitrator's request to submit the additional information that the arbitrator requested. Only information pertinent to the arbitrator's request will be accepted for review.

The final rule also establishes a 28-day timeframe for the State agency to request FNS national office arbitration on regional arbitration decisions with which the State agency disagrees. The 28 days begins with receipt of the FNS regional arbitrator's decision by the State agency. This timeframe is consistent with the timeframe for requesting FNS regional office arbitration. The provisions regarding the requirement to submit the request with full documentation and the limitation of the arbitrator's review to only the additional information submitted after the 28 day timeframe that the arbitrator requested also apply to requests for national office arbitration.

Currently, States are required to submit arbitration requests to the national office through the FNS regional offices. This requirement was established in FNS Handbook 315, The Federal Quality Control Validation Review Handbook, issued in December 1985. The policy was established to ensure consistency and to facilitate receipt by the national office of both the State agency and the regional office's cases. However, it has occasionally resulted in significant delays in national office receipt of requests and in State's receipt of decisions. To prevent such delays in the future and to expedite the process, this final rule requires State agencies to submit requests for national arbitration directly to the national office. The national office arbitration decision will be sent directly to the State agency.

FNS 30-Day Timeframe

The proposed rule provided that the FNS regional arbitrator would have 30 days to review a case and make a decision or to notify the State agency of the status of the case. Ten comments were received addressing this proposal. Four commenters believed that the State agency request and the FNS arbitration timeframe should be the same. Two commenters believed that the 30 day timeframe should be mandatory, with no provision for an extension. Two commenters recommended that the States be permitted extensions if the arbitrator was permitted extensions. One commenter recommended an alternate timeframe for both requesting arbitration and for the arbitrator to decide the case. One commenter recommended that the 30 day timeframe for the arbitrator begin with receipt of additional requested information. Another commenter recommended that the arbitrator's timeframe be suspended from the time of a request for additional information until the information is received. In the final rule, the Department has maintained the requirement for the FNS regional arbitrator to review a case and make a decision or notify the State agency of the status of the case within 30 days of receipt of the State's request. For the reasons discussed above, the Department has not extended the State's timeframe to match the arbitrator's timeframe. The Department did not reduce the arbitrator's timeframe or eliminate the notice of status provision because the FNS arbitrators have to review arbitration requests from several States. The Department has added a provision to the final rule that suspends the FNS regional arbitrator's timeframe during the period the arbitrator is waiting for additional information requested from the State agency.

Implementation

State agencies shall implement the provisions of this rule for requesting regional office arbitration on February 22, 1988, for all case findings received by the State agency on or after February 22, 1988. The State agency shall implement the provisions of this rule for requesting national office arbitration on February 22, 1988, for all regional arbitration decisions received on or after February 22, 1988. The Department will be proposing timeframes in a separate regulation for cases on which the findings were received prior to the effective date of this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272 and 275 are amended as follows:

PARTS 272 AND 275—[AMENDED]

1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 272.1, a new paragraph (g)(95) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(95) *Amendment No. 268.* The QC arbitration provisions shall be implemented by State agencies on February 22, 1988, for all cases for which the regional case findings or the regional arbitrator's decision are received on or after February 22, 1988.

3. Section 275.3 is amended by revising paragraph (c)(4) to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(4) *Arbitration.* Whenever the State agency disagrees with the FNS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis. There are two levels of FNS arbitration.

(i) *Regional level.* The first level of arbitration is the FNS regional office. The regional arbitrator shall be an individual who is not directly involved in the validation effort.

(A) The State agency shall request regional office arbitration within 28 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period runs to the end of the next work day.

(B) Full documentation of the case and the policy(s) in question should be submitted with the request for arbitration. However, the State agency may submit additional documentation, provided it can do so within the 28 days allowed in § 275.3(c)(4)(i)(A). Further, the State agency has 15 days from the date of receipt of a request to submit any additional information requested by the arbitrator. The regional arbitrator shall only consider information submitted after the 28-day timeframe has ended if it is submitted in response to the arbitrator's request and it is received within the 15-day timeframe.

(C) The regional arbitrator shall have 30 days to review the case and make a decision or to notify the State agency of the status of the case. If the arbitrator requests additional information from the State agency, this 30-day timeframe shall be suspended from the date the arbitrator requests the additional information until the information is received or the State's time period for submittal in § 275.3(c)(4)(i)(B) has expired.

(ii) *National level.* The second level of arbitration is the FNS national office. The Deputy Administrator for Family Nutrition Programs shall designate the national arbitrator.

(A) The State agency shall request national office arbitration within 28 calendar days of the date of receipt by the State agency of the regional arbitrator's decision. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period runs to the end of the next work day.

(B) The state agency shall submit the case directly to the national arbitrator. Full documentation of the case and the policy(s) in question should be submitted with the request for arbitration. However, the State agency may submit additional documentation, provided it can do so within the 28 days allowed in § 275.3(c)(4)(ii)(A). Further, the State agency has 15 days from the date of receipt of a request to submit any additional information requested by the arbitrator. The national arbitrator shall only consider information submitted after the 28 day timeframe has ended if it is submitted in response to the arbitrator's request and it is received within the 15-day timeframe.

* * * * *

Suzanne S. Harris,

Deputy Assistant Secretary for Food and Consumer Services.

Dated: January 15, 1988.

[FR Doc. 88–1161 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

7 CFR Part 614

Revisions in the Conservation Operations Reconsideration and Appeal Procedures

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the provisions for final determinations in administrative appeals to the Chief of the Soil Conservation Service to include a designated officer. The designated officer is needed to ensure that the same individual who has been involved with the rule development can act on all appeals, especially in the absence of the Chief. This should provide for more uniform treatment on all appeals than if various people acting for the Chief made the final appeal decisions.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Sherman L. Lewis, Director, Conservation Planning Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013, (202) 382–1845.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment thereon are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. 97–354, and thus is exempt from the provisions of that Act. This final rule amends the provisions for the final determination in administrative appeals related to decisions made by officials of the Soil Conservation Service pursuant to Title XII of the Food Security Act of 1985, Pub. L. 99–198, 16 U.S.C. 3801 *et seq.* The amendment provides for the use of a designated Soil Conservation Service official for final agency determinations, in lieu of a decision by the Chief of the Soil Conservation Service.

List of Subjects in 7 CFR Part 614

Administrative practice and procedures, Determinations, Reconsiderations, Appeals, Hearings, Soil conservation, Wetland conservation.

Accordingly, 7 CFR Part 614 is amended as follows:

PART 614—RECONSIDERATION AND APPEAL PROCEDURES

1. The authority citation for Part 614 is revised to read as follows:

Authority: 16 U.S.C. 3843(a).

§ 614.2 [Amended]

2. The definition of "Chief" in the second paragraph of § 614.2 is revised to read as follows:

"Chief" means the Chief, Soil Conservation Service (SCS), whose authorities and duties as the highest official in the agency are set forth in § 600.2 of this chapter. For the purposes of this part, the term "Chief" includes an official of the SCS national headquarters designated by the Chief to act for the Chief in making determinations under this part.

3. Section 614.5 is amended by revising paragraph (e) to read as follows:

§ 614.5 [Amended]

* * * * *

(e) Determinations by the Chief, or an official designated by the Chief, are the final decisions of the Department of Agriculture from which there is no further administrative review.

Wilson Scaling,

Chief.

[FR Doc. 88–1068 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–16–M

Agricultural Stabilization and Conservation Service

7 CFR Part 724

Tobacco Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, a proposed rule which was published in the **Federal Register** on July 20, 1987, (52 FR 27203). The rule amends the regulations at 7 CFR Part 724 to redefine the term "false

identification" to include the use of a tobacco marketing card to market a kind of tobacco other than the kind of tobacco for which the marketing card had been issued when two or more kinds of tobacco are produced on the same farm.

EFFECTIVE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Donald M. Blythe, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–4281.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

A proposed rule was published in the **Federal Register** on July 20, 1987 (52 FR 27203) which redefines the term "false identification" of tobacco for the purpose of determining marketing quota penalties. The proposed rule provided that false identification of tobacco occurs when a marketing card issued to market a kind of tobacco is used to market another kind of tobacco even though both kinds of tobacco are produced on the same farm. The proposed rule made other minor corrections in the regulations set forth at 7 CFR Part 724. However, none of these changes are considered substantive but are being made only for purposes of accuracy and clarity.

No comments were received in response to the proposed rule. Therefore, it has been determined that the provisions of the proposed rule be adopted as a final rule.

List of Subjects in 7 CFR Part 724

Acreage allotments Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Final Rule

Accordingly, the proposed rule is adopted as a final rule without change. 7 CFR Part 724 is amended as set forth below:

PART 724—[AMENDED]

1. The authority citation for Part 724 continues to read as follows:

Authority: Secs. 301, 313, 314, 316, 318, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1301, 1313, 1314, 1314b, 1363, 1372–1377, 1378, unless otherwise noted.

2. Section 724.51 is amended by adding paragraph (j)(4) to read:

§ 724.51 Definitions.

* * * * *

(j) * * *

(4) A tobacco marketing card issued to market a kind of tobacco is used to market another kind of tobacco produced on the same farm.

* * * * *

3. Section 724.91 is amended by revising paragraph (a)(1) to read:

§ 724.91 Producer penalties; false identification; failure to account; canceled allotments.

(a) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any kind of tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in the current year in excess of the farm acreage allotment for the kind of tobacco shall be deemed to have been marketed as excess tobacco from such farm.

* * * * *

Signed in Washington, DC on January 13, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88–981 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–05–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

Debt Collection

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its Debt Collection Regulations to make them consistent with those published by the Office of Personnel Management (OPM). The amendments permit SBA to collect debts of employees of other Federal agencies via salary offset and make certain other technical corrections.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, Deputy General Counsel, (202)—653–6642.

SUPPLEMENTARY INFORMATION: SBA proposed these amendments to its debt collection regulation on October 16, 1987, 52 FR 38452. The Office of Personnel Management (OPM) recommended the addition of § 140.2(j) which defines "agency" for the purposes of this part and minor changes to the language in § 140.2(a). Both suggestions were adopted. No other comments were received.

1. Definitions

Former § 140.2(c) excluded intra-agency overpayments due to normal processing delays from the definition of "debt." A reference to these exclusions was at one time included in 5 CFR 550.1103 but was later deleted from the OPM Final Regulation. The exclusions are now deleted from § 140.2(c) for consistency.

SBA is adding a new paragraph (g) to § 140.2 to define "employee". The former SBA Regulations did not define employee, but appeared to be limited to employees of the Small Business Administration. The new definition includes any person whose salary is eligible for offset pursuant to 5 U.S.C. 5514.

Upon the suggestion of OPM, SBA is adding a defintion section for "agency."

2. Section 140.4, General

The term "SBA employee" is deleted in this section. In its place, "employee" is used unless further clarification is required. The word "SBA" or "Agency" is changed to "agency" or "paying agency" where required to permit collection by another agency of debts owed to SBA.

3. Payments Made To Employees at The Time of Separation or Thereafter

SBA is amending § 140.4(a)(4) to clarify which payments due a former employee are subject to salary offset, 5 U.S.C. 5514, and which should be collected under administrative offset, 31 U.S.C. 3716. Salary offset procedures will be used to offset a final salary check and lump sum payments at the end of employment only if regular salary checks were being offset during employment. Other post-employment payments, such as a civil service annuity, must be offset pursuant to administrative offset, even if salary offset was in effect prior to the employee's retirement or other separation.

Under this regulation the employee, or former employee, shall be given only one opportunity to challenge an offset. Salary offset is a subcategory of administrative offset. The procedural rights under this section, salary offset, are more extensive than those under § 140.5, administrative offset. Therefore, a former employee who had a hearing, or an opportunity for hearing prior to salary offset will not be given a § 140.5 administrative offset "review"' upon separation.

4. Technical Correction

In paragraph (a)(4)(ii) of § 140.4, the term "retirement" is changed to "retired". "Retired pay" is a term of art which applies to certain members of the armed forces. The Comptroller General has ruled that such retired pay is subject to salary offset. "Retirement pay", on the other hand, is not a technical term and could be misunderstood to mean a civil service annuity which is not subject to salary offset but must be collected through administrative offset.

5. Interest, Penalties, Administrative Costs; Non-Waiver of Rights

SBA is amending § 140.4 by adding two new paragraphs (f) and (g) which permit SBA to assess interest, penalties and administrative costs against debtors. The new paragraphs make § 140.4 consistent with OPM Final Regulation, Pay Administration (General), 5 CFR 550.1104 (n) and (o).

The amendment also provides that an employee's involuntary payment by reason of debt collection efforts under these regulations must not be construed as a waiver of any rights which the employee may have.

6. Procedures When SBA Seeks to Collect a Debt

SBA is amending § 140.4(b) to clarify that this paragraph applies when SBA is attempting to collect debts owed by Federal employees to SBA.

A new paragraph (c) is added to explain how SBA will notify the debtor's paying agency of the debt. The procedures described are those required by OPM.

7. Deductions for the Account of Another Agency From the Salary of an SBA Employee

New paragraph (d) explains the procedures which another agency must follow when requesting SBA to deduct payments from the salary of an SBA employee.

For the purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not be likely to have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b), because employees are not considered small entities under the RFA.

Compliance With the Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

SBA certifies that this rule does not constitute a major rule for the purpose of Executive Order 12291, because the changes will not be likely to result in an annual effect on the economy of $100 million or more.

This proposed rule contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S. Chapter 35.

List of Subjects in 13 CFR Part 140

Credit, Practice and procedure, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), SBA proposes to amend Part 140, Title 13, Code of Federal Regulations, as follows:

PART 140—DEBT COLLECTION

1. The authority citation for Part 140 continues to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

§ 140.2 [Amended]

2. In § 140.2 the last sentence of the introductory text of paragraph (c) and paragraphs (c) (1) and (2) are removed.

3. Section 140.2 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) and adding a new paragraph (g) to read as follows:

* * * * *

(g) "Employee" for the purposes of § 140.2(f) and § 140.4 means a current civilian employee as defined in 5 U.S.C. 2105; an employee of the U.S. Postal Service or Postal Rate Commission; or a member of the Uniformed Services or Reserve of the Uniformed Services.

* * * * *

4. Section 140.2 is amended by adding a new paragraph (j) to read as follows:

* * * * *

(j) When used in this part, "Agency" has the meaning given at 5 CFR 550.1103.

5. Section 140.4, paragraph (a) is amended by revising the introductory text of paragraph (a); inserting a paragraph heading to paragraph (a)(4); removing paragraph (a)(4)(i); redesignating paragraph (a)(4) as (a)(4)(i), and revising it; and revising (a)(4)(ii), to read as follows:

§ 140.4 Salary offset.

(a) When SBA determines that an SBA or other Federal employee is indebted to the SBA for debts to which the SBA is entitled to be repaid at the time of the determination, the amount of indebtedness may be collected in monthly installments or at officially established pay intervals, by deduction from the current pay account of the individual.

* * * * *

(4) *Post employment payments.* (i) If an employee terminates employment after salary offset has been initiated, a deduction may be made from final salary payments, from payment for accrued annual leave, or from similar payments due the individual from the Federal government. Deductions against such final payments may exceed 15% of the total payment, up to the amount owed to the Federal government. If the employee terminates employment prior to the completion of salary offset procedures, deductions shall be made pursuant to 31 U.S.C. 3716.

(ii) Where SBA is collecting the indebtedness through deductions from biweekly or monthly retired pay, the Agency may not deduct more than 15 percent of disposable pay for any payment period, except that a greater percentage may be deducted upon the signed written consent of the individual involved.

* * * * *

6. Section 140.4, paragraph (b) is amended by revising the introductory text of paragraph (b)(1), and paragraphs (b)(1)(i), (b)(1)(iii), the introductory text of paragraph (b)(2), and paragraphs (b)(2)(ii) and (b)(2)(iii), (b)(3), (b)(4)(vi) and (b)(5) to read as follows:

* * * * *

(b) *Notice and Opportunity To Be Heard.* (1) Before initiating any proceedings under paragraph (a) of this section to collect any indebtedness of an

employee. SBA shall provide the employee with—

(i) A minimum of 30 days written notice, informing such individual: Of the nature and amount of the indebtedness determined to be due; the intention of the agency to initiate proceedings to collect the debt through deductions from pay;

* * * * *

(iii) An opportunity to enter into a written agreement acceptable to SBA to establish a schedule for the repayment of the debt; and

* * * * *

(2) If there is a statutory provision authorizing waiver, remission or forgiveness of the debt, SBA will give the employee—

* * * * *

(ii) Fifteen days from receipt of such notice in which to request consideration for waiver; and

(iii) A written response, if the employee timely requests a waiver. Such response shall answer the issues raised in the employee's request; state the agency's decision; and if the decision is not in the employee's favor, inform him or her whether there is a right to request a hearing before SBA's Office of Hearings and Appeals, that a hearing will be granted if the employee is entitled to one and timely files a request for a hearing, and that such hearing will be conducted prior to the initiation of deductions.

(3) Any alternative arrangement entered into pursuant to paragraph (b)(1)(iii) of this section shall be signed by both the employee and the SBA and be documented in the SBA's files.

(4) * * *

(vi) If the employee timely requests a waiver under § 140.4(b)(2), the time period in which to file a petition for a hearing is suspended. An employee must then file a petition for a hearing within 15 days after receiving a written response denying the request for a waiver.

(5) An employee loses his or her right to a hearing, and will have his or her disposable pay offset in accordance with the repayment schedule established if the employee fails to file a written petition for a hearing before the deadline established under § 140.4(b)(4).

7. Section 140.4 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) after the end of paragraph (b) as follows:

* * * * *

(c) Notice to paying agency. Upon completion of the procedures explained in paragraphs (a) and (b) of this section, SBA will provide the following to the paying agency:

(1) The Chief of SBA's Office of Portfolio Management shall certify, for SBA, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that these regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection must be made in installments, the SBA shall advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. SBA may, at its option, state the number and the commencing date of the installments. If SBA does not state such a date, the paying agency shall begin collection the next officially established pay period.

(3) SBA will forward the employee's written consent to the salary offset or signed statement acknowledging receipt of the required procedures. If SBA has not obtained such consent or statement, SBA will advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and give the dates the actions were taken.

(d) Deductions from pay of an SBA employee upon certification of another agency. SBA will make deductions from the pay of its employee upon receipt of a claim from another agency. The head of such agency, or a designee, shall provide the information required in paragraph (c) and certify that the claim satisfies the requirements of 5 U.S.C. 5514, the applicable regulations of the Office of Personnel Management, and the implementing regulations of the creditor agency.

8. The following new paragraphs (f) and (g) are added to § 140.4:

* * * * *

(f) Interest, penalties, and administrative costs. SBA is authorized to collect any assessment of interest, penalties, and administrative costs on debts being collected under this section. The assessment of these charges and the waiving of them must be made in accordance with 4 CFR 102.13.

(g) Non-waiver of rights by payments. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

Dated: December 17, 1987.

James Abdnor,

Administrator.

[FR Doc. 88-1043 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-121-AD; Amdt. 39-5833]

Airworthiness Directives; Airbus Industrie Model A300 B2 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 series airplanes, which requires inspection of the main landing gear (MLG) lower tie rods for cracks, and replacement, if necessary. This amendment is prompted by a report of cracks in the blending radius under the head of a lower tie rod. This condition, if not corrected, could lead to collapse of the main landing gear.

EFFECTIVE DATE: February 28, 1988.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic ultrasonic inspections of the main landing gear lower tie rods on Airbus Model A300 B2 series airplanes, and to replace defective lower tie rods before further flight, was published in the **Federal Register** on October 16, 1987 (52 FR 38457).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter, the Air Transport Association (ATA) of America, had no objections to the proposal.

The second commenter, Airbus Industrie, recommended the proposal be revised to include the requirement that, for airplanes which had accumulated over 10,000 landings, the initial inspection be accomplished within 250 landings. The intent of this suggestion was to include high-time airplanes that might be placed on the U.S. register in the future. The FAA does not concur. Since any Model A300 B2 airplane placed on the U.S register would have to meet the requirements of all applicable AD's, the FAA considers the suggested revision to be unnecessary.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $80.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 series airplanes, as listed in Airbus Industrie (AI) Service Bulletin A300-32-369, dated December 12, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG), accomplish the following:

A. Prior to each lower tie rod accumulating 7,000 landings or within the next 500 landings, whichever occurs later, and thereafter at intervals not to exceed 1,500 landings, perform an ultrasonic inspection of the MLG lower tie rods, in accordance with AI Service Bulletin A300-32-369, dated December 12, 1986. Replace defective lower tie rods before further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when aproved by the Manager, Standardization Branch, ANM-113, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Durat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1059 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-108-AD; Amdt. 39-5832]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing AD's, applicable to certain Boeing Model 737 series airplanes, which currently require inspection for cracking of the forward service doorway aft frame, and repair, if necessary. This amendment combines the inspections required by both AD's and adds inspections of the frame support structure for the lower four door stop fittings. This amendment is prompted by several reports of cracks of the door stop support structure for the door stops on the aft frame. This condition, if not corrected, could result in the loss of pressurization.

EFFECTIVE DATE: February 28, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection of certain Boeing Model 737 airplanes for cracking, and repair or replacement, as necessary, of the aft frame and the frame support structure of the forward service doorway, was published in the **Federal Register** on September 28, 1987 (52 FR 36276).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America submitted comments on behalf of three operators. One operator proposed that paragraph C. be revised to include the word "repair." This would allow repaired structure to meet the criteria for terminating action. The FAA agrees and paragraph C. of the final rule has been revised to reflect this change.

Two operators requested that the final rule allow credit for prior inspections performed in accordance with revision 1 of Boeing Alert Service Bulletin 737-53A1108, dated March 12, 1987, and that the final rule allow for phase-in scheduling for airplanes previously inspected. Since the inspections described in Revision 2 of the service bulletin are the same as those in Revision 1, the FAA concurs with the

commenters, and has revised paragraph B. of the final rule to reflect Revision 1.

One operator proposed that a new paragraph be added to specifically address the airplanes that have had the internal inspections performed at stringers S8 and S10 in accordance with paragraph B. of AD 87-01-06. The commenter suggested that the new paragraph require the external visual inspections of paragraph A. of this amendment to be performed at intervals of 800 landings until the inspection required by paragraph B. is acomplished. The FAA does not concur. There are a total of six intercostals and associated stringers that require internal inspection under the provisions of this amendment. The FAA does not consider it appropriate to extend the inspection intervals required by paragraph A. from 250 landings to 800 landings based upon an internal inspection of only two of the six stringers (e.g., S8 and S10), since awareness of the condition of two stringers is not adequate to ensure the structural integrity of the six fittings.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 450 airplanes of U.S. registry will be effected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. Operators is estimated to be $108,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-01-06, Amendment 39-5509 (52 FR 517; January 7, 1987), and AD 87-10-03, Amendment 39-5621 (52 FR 17935; May 13, 1987), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-53A1108, Revision 2, dated August 13, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the forward service door support structure, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within the next 125 landings after the effective date of this AD, for airplanes that have not been inspected in accordance with AD's 87-01-06 or 87-10-03, or 250 landings since the last inspection, whichever occurs later, perform a close visual inspection for cracks around the six door stop fittings of the forward service doorway aft frame in accordance with Boeing Alert Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 250 landings until the inspection required by paragraph B., below, is accomplished.

If cracks are found, prior to further flight, perform a visual inspection for cracks in the intercostals and stringers, which support these door stops. Parts found cracked must be repaired prior to further flight in accordance with the aforementioned service bulletin.

B. Prior to the accumulation of 25,000 landings or within the next 4,500 landings after the effective date of this AD, whichever occurs later, perform an internal visual inspection for cracks in the intercostals and stringers, which support these door stops, in accordance with Boeing Alert Service Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions. Repeat this inspection at intervals not to exceed 9,000 landings. Parts found cracked must be repaired before further flight, in accordance with the aforementioned service bulletin.

C. The repetitive inspections required by paragraph B., above, may be terminated after the intercostals and stringers have been reparied and/or modified in accordance with the terminating action specified in Paragraph III of the "Accomplishment Instructions" of Boeing Alert Bulletin 737-53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions, or after incorporation of a modification approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 87-01-06, Amendment 39-5509; and AD 87-10-03, Amendment 39-5621.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1056 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-128-AD; Amdt. 39-5834]

Airworthiness Directives; Hamburger Flugzeugbau (HFB) Model 320 Hansa Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to HFB Model 320 Hansa series airplanes, which requires an inspection for corrosion, and replacement, as necessary, of the drive shafts and rotary selectors of the landing flaps and slats of both wings, as well as the bolts and drive shafts of the speed brakes and slats. This amendment is prompted by a report of corrosion found on the bolts on the inner area of the air brake flap drive shaft on an airplane which was being repaired. This condition, if not corrected, could lead to degradation of lateral control.

EFFECTIVE DATE: February 28, 1988.

ADDRESSES: The applicable service information may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Postfach 95 01 09, D-2103 Hamburg 95, Federal Republic of Germany. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires an inspection for corrosion, and replacement, as necessary, of the drive shafts and rotary selectors of the landing flaps and slats of both wings, as well as the bolts and drive shafts of the speed brakes and slats on HFB Model 320 Hansa series airplanes, was published in the **Federal Register** on October 16, 1987 (52 FR 38456).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 70 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $42,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; of February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($2,800). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Hamburger Flugzeugbau: Applies to Model HFB-320-HANSA series airplanes, Serial Numbers 1021, 1023, 1026, 1030, 1033, 1035, 1040, 1045, and 1050-1057, certified in any category. Compliance required as indicated, unless previously accomplished:

To prevent asymmetric configuration which may cause degradation of lateral control, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect and replace, as necessary, the bolts, drive shafts, and rotary selectors for the wing flaps, slats, and speed brakes, in accordance with Messerschmitt-Bolkow-Blohm GmbH Service Bulletin 27-74, dated July 1, 1988.

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Messerschmitt-Bolkow-Blohm GmbH, Postfach 95 01 09, D-2103 Hamburg 95, Federal Republic of Germany. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1058 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-43; Amdt. 39-5830]

Airworthiness Directives; Marvel Schebler (Facet Aerospace Products Company) Carburetors, Model MA-3PA, Part Numbers A10-5220, A10-5257, and A10-5267, Manufactured After June 30, 1985, and Used on Textron Lycoming Model O-235-C1C, O-235-H2C, O-235-L2A, O-235-L2C, O-235-N2C, O-235-P1 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of certain Model MA-3PA carburetors from Textron Lycoming Model O-235-C1C, O-235-H2C, O-235-L2A, O-235-L2C, O-235-N2C, and O-235-P1 engines. This AD has been found necessary since a number of MA-3PA carburetors were improperly manufactured. Inspection of the subject model carburetor revealed a reduced interference fit between the metering sleeve and fuel bowl. This AD is needed to prevent rotation of the metering sleeve and consequent reduction in fuel flow with resultant loss of engine power.

DATES: *Effective*—February 1, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before March 15, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-43, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 87-ANE-43."

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The affected carburetors may be returned to Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, Attention: William Smith.

Facet Service Bulletin (SB) A1-87, dated October 1987, may be obtained from Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, Attention: Sales Department. A copy of the SB is contained in Rules Docket Number 87-ANE-43 in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Roy Hettenbach, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Recent reports have indicated a potential product defect with the Marvel Schebler (hereinafter called "Facet") Model MA-3PA carburetor. The manufacturing discrepancy was discovered by Facet quality control personnel, and a product recall was initiated. During a routine test at the Textron Lycoming facility in Williamsport, Pennsylvania, carburetor malfunctioning was encountered. Disassembly inspection of this carburetor indicated the same manufacturing defect. This defect is an oversize hole in the fuel bowl that results in a reduced interference fit between the metering sleeve and the carburetor fuel bowl. This reduced fit will permit rotation of the metering sleeve and result in a reduction in fuel flow to the engine. The affected engine would experience roughness and loss of power which could require an emergency landing of the aircraft. This manufacturing discrepancy has been traced back to July 1, 1985. The number of defective carburetors is 119, limited to Facet Part Numbers A10-5220, A10-5257, and A10-5267 with the specific serial numbers as prescribed in the body of this AD. The Facet product recall has been unsuccessful in that all the owners of these specific carburetors could not be determined.

Since this condition is likely to exist or develop on other Textron Lycoming Model O-235-C1C, O-235-H2C, O-2354-L2A, O-235-L2C, O-235-N2C, and O-235-P1 engines incorporating these MA-3PA carburetors, and AD is being issued which requires a check of all MA-3PA carburetor nameplates to determine the serial number. If the carburetor serial number is one of the affected serial numbers, then the carburetor must be removed. If the carburetor is to be inspected and repaired, it must be returned to the factory for disassembly, testing to determine the metering sleeve retaining force, repair, and flow bench checking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address identified under the caption of "**ADDRESSES**."

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-43." The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Marvel Schebler (Facet Aerospace Products Company): Applies to Marvel Schebler (Facet) Model MA-3PA carburetors, Part Numbers A10-5220, A10-5257, and A10-5267 manufactured since June 30, 1985, and having serial numbers as listed herein:

Carburetors and Serial Number

Model: MA-3PA
DD-4-1583 through DD-4-1610,
P/N: A10-5220
DD-4-1613, DD-4-1614, DD-4-1617,
(Lycoming P/N: LW-10072)
DD-4-1619 through DD-4-1622,
Lycoming Engine Models: O-235-C1C,
DD-4-1624 through DD-4-1627,
O-235-L2A, and O-235-L2C
DD-4-1629, DD-4-1632, and DD-4-1633
Model: MA-3PA
DM-3-1618 through DM-3-1626,
P/N: A10-5257 (Lycoming P/N: LW-16677)
Lycoming Engine Models: O-235-L2C and O-235-H2C
DM-3-1628, and DM-3-1629
Model: MA-3PA
DT-3-1911 through DT-3-1913,
P/N: A10-5267 (Lycoming P/N: LW-16677)
DT-3-1916, DT-3-1917,
Lycoming Engine Models: O-235-L2C, O-235-N2C, and O-235-P1
DT-3-1920, DT-3-1921, and DT-3-1923 through DT-3-1981

Compliance is required within the next 25 hours time in service or 30 days, whichever occurs first, after the effective date of this AD, for all applicable carburetors, unless already accomplished.

To prevent possible loss of engine power due to a loose metering sleeve, accomplish the following:

(a) Check all Textron Lycoming Model O-235-C1C, O-235-L2A, O-235-L2C, O-235-H2C, O-235-N2C, and O-235-P1 engines incorporating Marvel Schebler (Facet) Model MA-3PA carburetors, Part Numbers A10-5220, A10-5257, and A10-5267 manufactured since June 30, 1985, to determine the carburetor serial number. This serial number can be found on the carburetor nameplate located on the throttle body.

(b) If the serial number is one of those listed, remove the carburetor, tag it as unairworthy, and replace it with a serviceable one prior to further flight. If the serial number is not one of those listed above, no further corrective action is required.

(c) Make an engine logbook entry that this AD has been complied with.

Note (1): Facet Service Bulletin (SB) A1-87, dated October 1987, pertains to this subject and gives instructions for returning the affected carburetors directly to the factory for corrective action.

If being returned to the factory, the owner should package the carburetor to prevent enroute damage and ship directly to Facet Aerospace Products Company, 1048 Industrial Park Road, Bristol, Virginia 24201, USA, Attention: William Smith.

Note (2): To indicate carburetor corrective action has been taken, Facet will have stamped the lower portion of the carburetor nameplate with the number "87," in which case no further action is required.

Note (3): Persons authorized by FAR 43.3(g) may perform the check of paragraph (a) and engine logbook entry of paragraph (c) of this AD if the carburetor serial number is not one of those listed above.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(f) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office, Valley Stream, New York, may adjust the compliance time specified in this AD.

This amendment becomes effective on February 1, 1988.

Issued in Burlington, Massachusetts, on January 8, 1988.

Timothy P. Forté,

Acting Director, New England Region.

[FR Doc. 88-1055 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-80-AD; 39-5831]

Airworthiness Directives; McDonnell Douglas Model DC-9, -10, and -30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which currently requires eddy current inspections, and repair, if necessary, of the non-ventral aft pressure bulkheads. This amendment is prompted by reports of cracks found during an inspection of an aft pressure bulkhead on an airplane with a significantly lower number of accumulated landings than previously reported. This amendment revises the existing AD to require the initial inspection on airplanes with a lower number of accumulated landings than previously required. This action is necessary to detect fatigue cracks that could lead to possible structural failure and loss of cabin pressurization.

DATE: Effective February 28, 1988.

ADDRESS: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires the inspections for cracks in the web of the aft pressure bulkhead, and replacement, as necessary, on certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on July 21, 1987 (52 FR 27414). The comment period for the proposal closed September 10, 1987.

Interested persons have afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The two commenters requested that the proposed compliance period be increased from 2,500 landings after the effective date of AD to 3,300 or 4,000 landings. The commenters also advised that the requests are based upon the ability of operators to schedule inspections required by the AD, and to avoid schedule disruptions. The FAA does not agree with the commenters. The FAA has determined that the initial compliance threshold reflected in the rule is appropriate, based on the nature of the failure and the relatively low number of accumulated landings in the web of the aft pressure bulkhead that failed. Safety considerations necessitate that the initial compliance period remain as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

This AD will not increase the economic burden significantly for any operator, since neither the applicability, the time intervals between inspections, the number of manhours to accomplish the modification, nor the parts used to accomplish the inspection would be changed from that required by the existing AD.

For these reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation was prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal

Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising paragraph A. of AD 84-07-04, Amendment 39-4838 (49 FR 13015; April 2, 1984), to read as follows:

A. Prior to the accumulation of 37,500 landings, or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform an initial eddy current inspection of the aft pressure bulkhead webs as shown on McDonnell Douglas Service Sketch 3483 of S/B 53-174, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective February 28, 1988.

Issued in Seattle, Washington, on January 11, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1060 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-13]

Designation of Transition Area, Jackson, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Jackson, Kentucky, transition area to accommodate instrument flight rule (IFR) operations at Julian Carroll Airport. This action lowers the base of controlled airspace from 1200' to 700' above the surface in the vicinity of the airport. An instrument approach procedure has been developed to serve the airport and the controlled airspace as required for IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, February 23, 1988.

FOR FURTHER INFORMATION CONTACT: Earnest Joyce, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 27, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Jackson, Kentucky, transition area (52 FR 44138). This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Julian Carroll Airport. The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates the Jackson, Kentucky, transition area and lowers the base of controlled airspace in the vicinity of Julian Carroll Airport from 1200' to 700' above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Jackson, Kentucky (New)

That airspace extending upward from 700' above the surface within a 6.5 mile radius of the Julian Carroll Airport Lat. 37°35'19"N., Long. 83°19'03"W. Within 2.5 miles either side of the 348° radial from Hazard VOR Lat. 30°23'23"N. Long. 83°15'59"W., extending from the 6.5 mile radius to 7.5 miles south of the airport.

Issued in East Point, Georgia, on December 29, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-4910-13 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 372 and 374

[Docket No. 71160-7260]

Clarification of Emergency License Procedure

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are amended to clarify the procedures for submitting emergency license applications, reexport authorization requests, and amendment requests for prompt handling to the Office of Export Licensing. This rule provides instructions and information regarding the submission of applications by private courier service, and through the U.S. Postal Express Mail Service. Current provisions in the Regulations authorizing emergency amendment requests by telephone and through Commerce District Offices are removed.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Export Administration, U.S. Department of Commerce, Washington, DC 20230 (Telephone (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These collections have been approved by the Office of Management and Budget under control numbers 0065-0001, 0625-0003, and 0625-0009.

List of Subjects in 15 CFR Parts 372 and 374

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 372 and 374 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 372—[AMENDED]

1. The authority citation for 15 CFR Part 372 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 374—[AMENDED]

2. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. Section 372.4 is amended by revising paragraphs (h)(1) and (h)(3) and adding a new paragraph (h)(6) to read as follows:

§ 372.4 How to apply for a validated license.

* * * * *

(h) *Emergency clearance.* (1) When an exporter believes that an emergency situation necessitates expedited processing of an application, he should contact the Exporter Assistance Staff of the Office of Export Licensing (Telephone: 202-377-4811; telex: 892536; telefax: 202-377-3322). An "emergency" is defined as an unforeseeable situation over which the exporter has no control. Since a signed application must be submitted to the Office of Export Licensing before any action can be taken, the exporter should use one of the following emergency procedures for submitting the application form to OEL:

(i) Hand-carry the application directly to—

Processing Unit, Office of Export Licensing, Room 2705, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The best way to ensure prompt delivery, other than by company personnel hand carrying, is to use those private courier services that guarantee overnight delivery. Delivery must be made to the Processing Unit within the Office of Export Licensing. C.O.D. submissions will not be accepted. "Attention: Exporter Assistance Staff—Emergency Clearance Required" should be marked on the envelope. The Exporter Assistance Staff will review daily the applications for which emergency processing is requested and determine whether such processing is justified.

(ii) Submit by U.S. Postal Express Mail Service to—

Processing Unit, Room 2705, Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

with "Attention: Exporter Assistance Staff—Emergency Clearance Required" marked on the envelope. Express service guarantees next day delivery to the designated mail drop before close of business on that day.

(iii) Submit reexport and amendment requests according to procedures outlined in paragraphs (h)(1) (i) and (ii) of this section.

(iv) Submit applications for short supply commodities according to the procedure outlined in § 377.1(c)(3).

* * * * *

(3) The Exporter Assistance Staff will evaluate the exporter's application and determine whether emergency handling is warranted. Applicants should therefore include in a covering letter headed "Emergency Handling Request" the justification for the request supported, where appropriate, by copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. In certain cases, the exporter may be *required* to submit copies of orders, communications, letters of credit, or other documentation to show that a valid emergency exists. The letter should also include a statement that the exporter understands that a license issued under the emergency procedure is valid only until the end of the month following the month in which it is issued and may not be extended. Frequent emergency requests will be given particularly close scrutiny, since the Office of Export Licensing will not permit this emergency procedure to become a substitute for timely filing of license applications by exporters. Exporters who follow the emergency procedure will be informed by the Exporter Assistance Staff if their application does not warrant emergency handling. Otherwise, applicants can assume that their request for emergency handling has been granted.

* * * * *

(6) Emergency license procedures described in paragraph (h) of this section are not applicable to special licenses. Due to the comprehensive nature of Distribution, Project, or Service Supply Licenses or licenses issued under the Aircraft and Vessel Repair Station procedure, requests for

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emergency handling of those licenses will be denied. Any request for expedited treatment of Humanitarian or GTE Licenses should be directed to the Special Licensing Division of the Office of Export Licensing (telephone: 377–4196; telex: 892536; telefax: 377–4096).

4. Paragraph (h)(5) of § 372.11 is revised to read as follows:

§ 372.11 Amending export licenses.

(h) * * *

(5) *Emergency requests and clearances.* Under emergency conditions, an amendment request may be made by submitting the completed Form ITA–685P in accordance with the instructions in § 372.4(h). The Exporter Assistance Staff will advise exporters who follow this procedure if the amendment is *not* receiving emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

* * * * *

5.Section 374.3 is amended by adding a paragraph (b)(4) to read as follows:

§ 374.3 How to request reexport authorization.

* * * * *

(b) * * *

(4) *Emergency request and clearances.* Under emergency conditions, a reexport authorization request may be made by submitting either the completed Form ITA–699P or a Reexport Request letter. For exporters who follow these emergency procedures, the Exporter Assistance Staff will advise the applicants if their reexport authorization request does not warrant emergency handling. Otherwise, the applicants can assume that their request for emergency handling has been granted.

* * * * *

Dated: January 14, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–1164 Filed 1–20–88; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Part 399

[Docket No. 71161–7261]

Validated License Controls on Controllable-Pitch Propellers and Hub Assemblies

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which specfies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain controllable-pitch propellers and hub assemblies described in paragraph (e)(2) of the "List of Equipment Controlled by ECCN 1416A" in ECCN 1416A on the CCL (Supplement No. 1 to § 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Controllable-pitch propellers and hub assemblies rated at 40,000 hp capacity and below no longer require a validated license for export except to Country Groups S and Z; such propellers and hub assemblies are now controlled under ECCS 6399G on the CCL.

Notice of the foreign availability determination on this equipment was published on September 11, 1987 (52 FR 34976). Regulations that eliminated the validated license requirements for exports and reexports of this equipment to free world destinations were published on September 22, 1987 (52 FR 35538).

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: Donald J. Brychczynski, Office of Foreign Availability, Department of Commerce, Telephone: (202) 377–3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1416A is amended by revising the *"Validated License Required"* paragraph and paragraph (e)(2) under the "List of Equipment Controlled by ECCN 1416A" to read as follows:

1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

* * * * *

Validated License Required: Country Groups QSTVWYZ.

* * * * *

(e) * * *

(2) Controllable-pitch propellers and hub assemblies rated at greater than 40,000 hp;

* * * * *

Dated: January 15, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88–1167 Filed 1–20–88; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HSQ–137–F]

Medicare Program; End Stage Renal Disease Program; Responsibilities of Network Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises final regulations published on August 26, 1986 (51 FR 30356) pertaining to the End Stage Renal Disease (ESRD) networks and organizations to reflect certain provisions of the ESRD program amendments contained in sections 9335 (d) through (h) of the Omnibus Budget Reconciliation Act of 1986. These regulations revise the responsibilities of network organizations.

DATE: These final regulations will be effective on February 22, 1988, except 42 CFR 405.2112 (f) and (j), which must be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. When approval is obtained, a notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594–3413.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. At that time, the broad array of professionals and facilities involved in the treatment of persons with ESRD indicated the need for a system to promote effective coordination. We believed that the integration of hospitals and other health facilities into organized networks was the most effective way to assure the delivery of needed ESRD care. Therefore, on July 1, 1975, we established ESRD networks through final regulations published on June 3, 1976 (41 FR 22502).

Subsequently, the End-Stage Renal Disease Amendments of 1978 (Pub. L. 95–292) amended title XVIII of the Social Security Act (the Act) by adding section 1881. Section 1881(c) of the Act statutorily authorizes the establishment of ESRD network areas and network organizations, consistent with criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits. The amendments made to section 1881(c) of the Act did not include all of the provisions related to networks which had been included in the final regulations published on June 3, 1976 (41 FR 22502). The regulations were more prescriptive than the statute.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of Pub. L. 99–272 requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The statute permits the Secretary to consolidate network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and final regulations on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate and reorganize the existing 32 ESRD networks administratively. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335 (d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. The specific provisions that will be implemented by these regulations require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e));
- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragement (section 9335 (f) (1), (2), and (4); and (h));
- Report to the Secretary on facilities and provides that are not providing appropriate medical care (section 9335(f)(3));
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5));
- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5));
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)); and
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

On May 12, 1987, we published a proposed rule in the **Federal Register** (52 FR 17777) to implement the above provisions of Pub. L. 99–509. The provisions of the proposed rule appeared in section II of the preamble to the proposed rule (52 FR 17778) and are reprinted in section III of this final rule as the provisions of these final regulations.

Section 9335(d) of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. Specifically, those provisions require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987.
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board.
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made.
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's

ability to perform or actual performance of required network functions.

• Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price.

• Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

To implement these provisions of Pub. L. 99–509, we published a proposed notice on April 9, 1987 (52 FR 11550) and a final notice on October 2, 1987 (52 FR 37018).

II. Analysis of and Responses to Public Comments

We received 16 timely comments on the proposed notice. Comments were submitted by 5 of the 32 existing ESRD networks, the Renal Physicians Association, the National Renal Administrators Association, the American Nephrology Nurses' Association, the National Dialysis Association, the National Kidney Foundation, 1 hospital, 2 ESRD facilities, 1 ESRD patient, 1 State health department, and 1 State renal administrators' organization. The specific comments and our responses follow.

A. Vocational Rehabilitation

Comment: Several commenters expressed concern about the network role in vocational rehabilitation. The commenters suggested that the term vocational rehabilitation should be broadly interpreted to encompass quality of life factors for those whom vocational rehabilitation is not feasible. The commenters suggested that rehabilitation should not be focused solely on the ability of an individual to work but also should address independent living (the physical, social, and psychological state of the patient) services.

Several commenters do not believe that the networks are the proper organizations to direct the rehabilitation effort but that the network role should be to educate the vocational rehabilitation agencies about the special needs of the ESRD patients. One commenter stated that the rehabilitation effort of the networks will effect the dialysis units and require them to accommodate more patients on the early morning and evening shifts, which may be difficult for smaller units to manage. Another commenter pointed out that the ability of a facility to function in the placement of patients is dependent upon a number of factors; for example, the case mix of the facility, the locally available vocational rehabilitation programs, and whether the available programs are attuned to the needs of ESRD patients. Therefore, the commenter suggested that the comparative performance of facilities account for those important factors and that the networks place an emphasis on educating providers, physicians, and patients about the use of vocational rehabilitation programs. Finally, one commenter stated that patients should not be denied access to care because of his or her ability to participate in vocational rehabilitation programs or to become gainfully employed.

Response: The role of the network to encourage vocational rehabilitation is required by sections 9335(f) (1), (2), and (4) and 9335(h) of Pub. L. 99–509, and we must enforce that requirement. We fully agree with Congress that the vocational rehabilitation effort by the networks will serve to improve the quality of life for the ESRD beneficiaries. Each network contract will require the network organization to develop the criteria and standards and methods for encouraging vocational rehabilitation within the network area. The networks will have the latitude to define the criteria appropriate for their network area and apply their standards accordingly. We believe that these definitions will account for the ESRD population's potential for rehabilitation and that each network will develop innovative techniques and skills for encouraging vocational rehabilitation programs and for coordinating resources within the network area.

B. Onsite Review

Comment: Several commenters were concerned that expanding the network role to include onsite reviews would be duplicative of the role of other organizations, such as the State survey agency, and would be unnecessarily costly to the facilities and the networks. These commenters believe that this requirement is administratively burdensome and intrusive to the facilities. One commenter suggested that the various survey agencies coordinate their activities to assure that the providers are not required to spend an inordinate amount of time responding to review activities. One commenter stated that onsite review should be conducted only on an as needed basis and only on new facilities.

Response: The authority to conduct onsite reviews was established by section 9335(f)(5) of Pub. L. 99–509. Accordingly, these final regulations will require each network organization to develop criteria and standards for assessing the need for onsite reviews and to conduct onsite reviews in response to those criteria. We do not intend to restrict the authority of the networks in this important area. In addition, we do not believe that the network role in conducting onsite reviews will duplicate the role of any other agency. The responsibility of the networks is clearly stated in the law and regulations and the activities of the networks will be closely monitored through the contract administration process to assure that the networks fulfill their legal obligations.

C. Network Representation

Comment: One commenter stated that there is no criteria in the regulations specifying membership requirements for the network council or the medical review board. The commenter suggested that the network council should consist of representatives of all providers in the network area; the council should include representatives of the various disciplines responsible for ESRD care (for example, nurses, dietitians, nephrologists, social workers); patient representation should be expanded to account for up to ⅓ of the network council membership; the constitution of the network council should be part of the bylaws of the network organization; and two or more committees, at a minimum, the executive committee and the medical review board, should be elected by the network council to carry out the design and approval of the technical content of network policy. Other commenters suggested that the process used by the networks in appointing members on the various committees should be closely monitored.

Response: We initially deleted the prescriptive requirements for the network committees in regulations published in the **Federal Register** on August 26, 1986 (51 FR 30358). The preamble to those regulations discusses, in detail, our rationale for deleting the membership requirements. We still do not believe that it is necessary to retain prescriptive requirements in regulations. These regulations specify only the minimum legal requirements. There is nothing that would preclude the individual network organizations from exceeding these requirements and including additional professionals on the various committees and medical review board. Nevertheless, the mechanism for identifying potential medical review board and committee members and their actual appointment is subject to approval by us through the contracting process. We believe that the contract review process will assure the integrity of the various network panels and committees.

D. Network Funding

Comment: Several commenters requested that the funding mechanism be revised to account for transplant patients and to include transplant centers in the funding formula. Other commenters suggest that the funding levels will not be sufficient to perform the required activities.

Response: Section 9335(j) of Pub. L. 99–509 amended section 1881(b)(7) of the Act and specifies the funding mechanism for the network organizations. We have no administrative authority to modify the funding formula. In the Request for Proposals, we specified the maximum funding available for each area based upon the current estimates of patient population. Each network contract proposal will be evaluated for technical content and proposed cost. Each network price proposal will be assigned point values according to the following formula:

$$20 - \frac{\text{(Price of proposal—lowest priced proposal)}}{\text{Lowest priced proposal}} \times 20$$

The points assigned for price of the proposal will not exceed 20 percent of the total evaluation score. If there are no significant technical or financial and management differences, price alone may be the determining factor for source selection. This process will take advantage of competitive factors to assure that the network tasks will be performed.

E. Facility Payments

Comment: One commenter stated that since facilities will now be required to participate in vocational rehabilitation activities, the composite rate payments for dialysis facilities should be increased.

Response: The dialysis composite rate payment is a prospectively set payment based on actual dialysis facility cost experience for the entire dialysis service taken as a whole. As facility cost experience changes in response to market variations and changes in technology and treatment protocols, these changes are reflected in subsequent composite rate payments. There is always a lag between prospectively set payments and actual cost experience. Sometimes this may be to the financial benefit of the dialysis facilities; at other times, it may be to the financial benefit of the program. At this time, we do not have data on the increased costs, if any, of vocational rehabilitation activities nor on the extent to which facilities are already furnishing these services under the current composite rate.

F. Random Case Reviews

Comment: Several commenters expressed concern about networks conducting case reviews. Those commenters believe that networks should gather data and evaluate trend data to identify facility problems. Other commenters stated that the networks should conduct quality assurance studies as opposed to conducting case reviews.

Response: We believe that case review is the best method to assure that networks are performing their statutory responsibility to evaluate the appropriateness of care within the network area. The evaluation of trend data is certainly an acceptable technique but will best be accomplished on a national level by the ESRD registry. The networks will have the opportunity to evaluate trend data from the national program management and medical information system and to identify local aberrations from the national data. The strength of the networks will be access to facility records from which to supplement data on specific issues. Therefore, we reject the comment and networks will be required to conduct case reviews.

G. Network Oversight

Comment: Several commenters were concerned about avenues of administrative redress, given the ability of networks to recommend sanctions against ESRD providers.

Response: The administrative procedures for implementing alternative sanctions against ESRD facilities that fail to participate in network activities and pursue network goals are being prepared as a separate final rule. (We published a proposed rule regarding alternative sanctions against ESRD facilities on April 9, 1987 (52 FR 11517)). We will apply those sanctions on the basis of recommendations from the network organizations.

III. Provisions of the Final Regulations

We made no changes to the regulations that appeared in the proposed rule. We have reprinted those regulations exactly as they were published in the May 12, 1987 **Federal Register** in this final rule. These final regulations implement the provisions of section 9335 of Pub. L. 99–509 that are described in the "Background" section of this preamble. As a result of these statutory provisions, we will add the following requirements of the network organizations:

• Relating to vocational rehabilition programs, network organizations must encourage the participation of patients, providers of services, and renal disease facilities; develop criteria and standards relating to encouraging participation in vocational rehabilitation programs; and include in their reports to HCFA, the comparative performance of facilities regarding the placement of patients in appropriate settings for vocational rehabilitation programs.

• Network organizations must appoint a network council and a medical review board that each include at least one patient representative.

• Network organizations must conduct on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care developed by the network organizations.

• Network organizations must identify in their annual reports to HCFA those facilities that consistently fail to follow the recommendations of the medical review board.

• Network organizations must collect, validate, and analyze all data needed to prepare their annual reports to HCFA, the Secretary's report to Congress on the ESRD program, and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

Also, these regulations will require that the medical review board, in addition to at least one patient representative, include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients.

Section 405.2112(h) requires network organizations to appoint a network coordinating council, executive committee, and medical review board

for each network area. Section 9335(d)(1) of Pub. L. 99–509 specifies that network organizations must establish a network coordinating council and medical review board for each network area. The statute does not require an executive committee; therefore, we will remove the requirement for establishing an executive committee from § 405.2112(h). Also, we will revise the reference to a "network coordinating council" that appears in § 405.2112(h) to conform with the statutory language that refers to a "network council".

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any "major rule" that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, government agencies or geographic regions, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for final regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Although the network areas and organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are small organizational entities under the Regulatory Flexibility Act.

We have determined that this rule is not a major rule under the terms of E.O. 12291. Therefore, a regulatory impact analysis is not required. In addition, we have determined and the Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

V. Information Collection Requirements

Sections 405.2112 (f) and (j) of this final rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). When OMB approval of these sections is obtained, a notice will be published in the **Federal Register.** Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, ATTN: Allison Herron, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U is revised to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted

2. Section 405.2112 is revised to read as follows:

§ 405.2112 ESRD network organizations.

HCFA will designate an administrative governing body (network organization) for each network. The functions of a network organization include but are not limited to the following:

(a) Developing network goals for placing patients in settings for self-care and transplantation.

(b) Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs.

(c) Developing criteria and standards relating to the quality and appropriateness of patient care and, with respect to working with patients, facilities, and providers of services, for encouraging participation in vocational rehabilitation programs.

(d) Evaluating the procedures used by facilities in the network in assessing patients for placement in appropriate treatment modalities.

(e) Making recommendations to member facilities as needed to achieve network goals.

(f) On or before July 1 of each year, submitting to HCFA an annual report that contains the following information:

(1) A statement of the network goals.

(2) The comparative performance of facilities regarding the placement of patients in appropriate settings for—

(i) Self-care;

(ii) Transplants; and

(iii) Vocational rehabilitation programs.

(3) Identification of those facilities that consistently fail to cooperate with the goals specified under paragraph (f)(1) of this section or to follow the recommendations of the medical review board.

(4) Identification of facilities and providers that are not providing appropriate medical care.

(5) Recommendations with respect to the need for additional or alternative services in the network including self-dialysis training, transplantation and organ procurement.

(g) Evaluating and resolving patient grievances.

(h) Appointing a network council and a medical review board (each including at least one patient representative) and supporting and coordinating the activities of each.

(i) Conducting on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care as specified under paragraph (c) of this section.

(j) Collecting, validating, and analyzing such data as necessary to prepare the reports required under paragraph (f) of this section and the Secretary's report to Congress on the ESRD program and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

3. Section 405.2113 is amended by revising paragraph (a) to read as follows:

§ 405.2113 Medical review board.

(a) *General.* The medical review board must be composed of physicians, nurses, and social workers engaged in treatment relating to ESRD and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients, and at least one patient representative.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: October 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 12, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–1155 Filed 1–20–88; 8:45 am]

BILLING CODE 4120–01–M

42 CFR Parts 412, 413, and 418

[BERC–436–FC]

Medicare Program;

Periodic Interim Payments for Hospitals and Other Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule implements section 9311(a) of the Omnibus Budget Reconciliation Act of 1986, which sets forth the circumstances under which the periodic interim payment (PIP) method is available for services furnished by hospitals and other providers. Generally, inpatient hospital services furnished by hospitals excluded from the prospective payment system, as well as skilled nursing facility services, home health services, and hospice care services may be paid for on a PIP basis. With certain exceptions, inpatient hospital services furnished by prospective payment hospitals are not eligible for payment on a PIP basis.

DATES:

Effective Date: This final rule is effective on February 22, 1988.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 22, 1988.

ADDRESS: Mail Comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–436–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–436–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave. SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: John Eppinger, (301) 594–5354.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, the prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Prior to implementation of the prospective payment system, all providers of health care services (for example, hospitals, skilled nursing facilities, and home health agencies) were reimbursed based on the lesser of the reasonable cost of services furnished to Medicare beneficiaries or the provider's customary charges for those services.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate of payment, approximating actual cost as closely as possible, is determined by the intermediaries for each provider and interim payments are made on that basis during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay providers at least monthly during the cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. After receipt of the provider's cost report, the intermediary determines what the actual payment for the period should have been and a retroactive adjustment is made. The regulations that implement these policies are located at 42 CFR 413.64.

There are two methods of interim payment for inpatient hospital services for hospitals excluded from the prospective payment system. One method is based on actual bills submitted by the hospital. Under this method, interim payments are calculated by applying a predetermined per diem amount to the number of Medicare patient days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patient days or charges represents an estimate of the hospital's previous year's costs, adjusted to ensure that the current year's rate of payment is as close as possible to the current year's costs.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1968. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under the prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems in the early stages of the system. Thus, prospective payment hospitals that met the qualifications for receiving PIP could elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. The PIP payment is made two weeks after the end of a biweekly period of services. In these circumstances, year-end reconciliation is required.

Payment for capital-related costs and those direct medical education costs that are payable to prospective payment hospitals on a reasonable cost basis is made on an interim payment basis pending a year-end reconciliation based on a cost report. These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount into 29 equal payments made biweekly. In addition, the indirect teaching adjustment, if appropriate, is paid on a biweekly interim basis subject to final settlement. These payments are not considered as part of the PIP method of payment and are not affected by this rule. These payments will continue to be made on a biweekly basis.

Although the PIP method of interim payment is not based on actual bills submitted, a PIP hospital must continue to submit bills for subsequent intermediary verification of the accuracy of the rate. The rate is

reviewed at least twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals reimbursed on a reasonable cost basis. If necessary, as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted based on cumulative payment data for the year.

In August 15, 1986, we published a final rule in the **Federal Register** (51 FR 29386) concerning interim payments. In that rule, we took the following actions, which were to be effective on July 1, 1987:

- We eliminated PIP as an optional method of payment for inpatient hospital services furnished to Medicare beneficiaries, except for services furnished by rural hospital with fewer than 100 beds (See §§ 413.64(h)(1)(ii) and (k)(2)(i) and (ii).)
- In order to alleviate the cash flow problems that certain hospitals encounter, we provided for one interim payment to hospitals subject to the prospective payment system for each case in which a patient remains in the hospital more than 30 covered days. (See § 413.64(k)(5).) Under this provision any interim payment made was to be applied against the final payment made for the discharge.
- We also eliminated PIP for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), and for those hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act and approved by HCFA. However, under this provision, these hospitals were to be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA as a part of the demonstration or control system. (See § 413.64(h)(1)(ii)(C).)
- We provided that payment for direct medical education and other inpatient hospital costs excluded from the prospective payment system was to continue to be made biweekly on an interim payment basis. We amended §§ 405.454(j) and (m) to make these changes.

These sections were subsequently redesignated as §§ 413.64(h) and (k) respectively in a final rule with comment period published on September 30, 1986 (51 FR 34790).

We issued the August 15, 1986 final rule because evidence indicated that the PIP method had increasingly become a burden for the intermediaries and that it resulted in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. We stated that eliminating PIP for all hospitals (that is, those paid on the basis of reasonable costs and those subject to prospective payment) would allow intermediate to utilize their resources more effectively to better control payments to hospitals and all other providers. Furthermore, we stated that the elimination of PIP would encourage hospitals to submit their bills on a more timely basis since hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9311(a) of Pub. L. 99–509 added a new paragraph (e) to section 1815 of the Act that provides for the following—

- Payment must be made available for inpatient hospital services furnished by a prospective payment hospital, including distinct part psychiatric or rehabilitation units, on a PIP basis (rather than on the basis of bills actually submitted) in the following cases:

—The hospital's fiscal intermediary fails to meet the requirements of section 1816(c)(2) of the Act concerning the prompt payment of claims for three consecutive calendar months (see discussion below), the hospital requests payment on a PIP basis, and the hospital meets the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986. The hospital can continue to recieve PIP payments until its fiscal intermediary meets the prompt payment of claims requirements for three consecutive calendar months.

—The hospital has a disproportionate share adjustment percentage (as established in section 1886(d)(5)(F)(iv) of the Act) of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring during Federal fiscal year (FY) 1987 and the hospital requests payment on a PIP basis. Hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

—The hospital is located in a rural area, has 100 or fewer beds, and the hospital requests payment on a PIP basis. Again, hospitals meeting this criterion can receive PIP only if they were being paid on a PIP basis as of June 30, 1987 and the hospital continues to meet the requirements applicable to payment on a PIP basis that were in effect as of October 1, 1986.

- Payment on a PIP basis must be made available under the standards established in § 405.454(j) (redesignated as § 413.64(h)), as in effect on October 1, 1986, for the following services if the provider elects to receive and qualifies for PIP payment:

—Inpatient hospital services of a hospital excluded from the prospective payment system.

—Inpatient hospital services of a hospital receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c) of the Act, if payment on a PIP basis is an integral part of that reimbursement system.

—Skilled nursing facility services.

—Home health services.

—Hospice care.

- The Secretary may make appropriate accelerated payments to hospitals subject to the prospective payment system that have significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation.

Section 9311(b) of Pub. L. 99–509 added a new section 1816(c)(2) to the Act to provide for the following——

- Agreements between HCFA and intermediaries must provide that at least 95 percent of "clean" claims for which payment is not made on a PIP basis must be paid within the following time periods:

—For claims received in the 12-month period beginning October 1, 1986, 30 calendar days.

—For claims received in the 12-month period beginning October 1, 1987, 26 calendar days.

—For claims received in the 12-month period beginning October 1, 1988, 25 calendar days.

—For claims received in the 12-month period beginning October 1, 1989 and any succeeding 12-month period, 24 calendar days.

- A clean claim means a claim that has no defect or impropriety (including a lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made.
- If payment of a clean claim is not made within the applicable time period, interest must be paid (at the rate used for purposes of paying interest for failure to make prompt payments under 31 U.S.C. 3902(a)) for the period begining on the day after the required payment date and ending on the date on which payment is made.

II. Changes to the Regulations Governing PIP

In effect, except for the provision dealing with one interim payment to prospective payment hospitals experiencing unusually long lengths of stay (discussed below), section 9311 of Pub. L. 99–509 overrides the August 15, 1986 final rule and requires the publication of revised regulations. Our implementation of section 9311(a) of Pub. L. 99–509 is discussed in detail below.

A. Payment to Hospitals Subject to the Prospective Payment System

Section 1815(e)(1)(A) of the Act, as added by section 9311(a)(1) of Pub. L. 99–509, requires that payment on a PIP basis must be made available to a hospital subject to the prospective payment system, including a distinct part psychiatric or rehabilitation unit of the hospital, if——

- The hospital's intermediary does not meet the prompt payment of claims requirements of section 1816(c)(2) of the Act for three consecutive calendar months (see discussion above);
- The hospital requests payment on a PIP basis; and
- The hospital meets the requirements for receiving PIP that were in effect on October 1, 1986, as set forth in regulations at § 405.454(j). (Those regulations are now codified at § 413.64(h), and we are amending that provision as appropriate to conform to the former § 405.454(j).)

The hospital can continue to receive PIP until the intermediary meets the requirements of section 1816(c)(2) of the Act for three consecutive calendar months.

Section 9311(a)(2) of Pub. L. 99–509 specifies that the amendment made by section 9311(a)(1) of Pub. L. 99–509 is effective for claims received on or after July 1, 1987. Under this provision, once a prospective payment hospital is receiving PIP, it will not be removed from PIP until the earlier of the end of the first period of three consecutive calendar months during each of which the intermediary has met the prompt payment requirements or the date the hospital no longer meets the requirements to qualify for PIP that are set forth in § 413.64(h). For example, if a hospital is receiving PIP, and its intermediary meets the prompt payment requirements for two months and then fails to meet the requirements for the third month, the intermediary would have to meet the requirements for the next three consecutive calendar months in order to remove the hospital from PIP.

In the same manner, in the case of a hospital not on PIP, an intermediary must fail to meet the prompt payment requirements for three consecutive calendar months before a hospital could request PIP under this provision. That is, if an intermediary has been meeting the prompt payment requirements, fails to meet the requirements for two months, and then meets them again in the third month, its hospitals could not receive PIP unless the intermediary fails to meet the prompt payment requirements for another three consecutive calendar months.

In addition, section 9311(a)(3) of Pub. L. 99–509 provides that, for a hospital that was receiving payment on a PIP basis as of June 30, 1987, and that has requested continuation of payment on that basis, PIP must be continued (provided the hospital continues to meet the requirements for receiving PIP) until at least the end of the first period of three consecutive calendar months, beginning no earlier than April 1987, during all of which the intermediary met the prompt payment of claims requirements of section 1816(c)(2) of the Act. Therefore, unless an intermediary has met the prompt payment requirements for each of April, May, and June of 1987, a prospective payment hospital that was receiving PIP as of June 30, 1987, could continue to receive PIP beginning on July 1, 1987. The hospital may continue on PIP until the intermediary meets the prompt payment requirements for three consecutive calendar months.

For example, if an intermediary has met the prompt payment requirements for April, May, and July and meets them in August and September of 1987, but not for June 1987, a hospital receiving PIP as of June 30, 1987, will continue to receive PIP, upon its request, for discharges occurring through September 30, 1987. However, if an intermediary did not meet the prompt payment requirements in April 1987, but meets it in May, June, and July 1987, the same hospital will be eligible to continue receiving PIP only for discharges occurring through July 31, 1987.

For those hospitals that were not receiving PIP as of June 30, 1987, we are also using April 1987 as the beginning month for determining whether they were eligible for PIP beginning on July 1, 1987. Therefore, if a hospital was not receiving PIP as of June 30, 1987, that hospital was eligible to request PIP after June 1987 only if its intermediary failed to meet the prompt payment requirements for each of April, May, and June 1987 and the hospital meets the requirements of § 413.64(h) for receiving PIP. If the intermediary met the requirements in any one of these months, the hospital does not have an opportunity to request PIP until after its intermediary fails to meet the prompt payment requirements for three consecutive calendar months. (We discuss below the manner in which intermediaries will notify their hospitals of the availability of PIP and how the hospitals can request PIP.)

In the case of hospitals that were receiving PIP on June 30, 1987, and that wanted to continue PIP after that date, the law is not specific as to when the hospital must have made its request to continue PIP. However, based on our reading of section 9311(a)(3) of Pub. L. 99–509, which addresses hospitals on PIP as of June 30, 1987, that want to continue on PIP, we believe Congress intended that hospitals would notify their intermediaries prior to July 1, 1987, in order to ensure that PIP, in fact, continued on that date. In Program Memorandum A–87–4 (issued in May 1987), HCFA directed those intermediaries that anticipated that they would not meet the prompt payment requirements in April, May, and June to inform their hospitals of the date prior to July 1, 1987, by which the hospitals must notify the intermediaries of their request to continue PIP. Without this notification, we expect that intermediaries will have terminated PIP to those hospitals for discharges occurring on or after July 1, 1987. If an intermediary failed to meet the prompt payment requirements for April, May, and June, PIP will have continued uninterrupted for hospitals that timely submitted their requests to continue PIP.

In the case of a hospital not on PIP, an intermediary will notify its prospective payment hospitals of their eligibility for PIP under the provisions of section 1815(e)(1)(A) of the Act if it has not been in compliance with the prompt payment provisions for three consecutive calendar months. An intermediary will notify its hospitals within seven working days after the end of the third consecutive calendar month in which it has failed to meet the prompt payment requirements. After the intermediary receives a hospital's request for PIP, it will process the request under its usual procedures for provider requests for PIP. However, if the hospital's request is received by the intermediary by the 15th day of the month (or the first regular business day after the 15th), the intermediary will initiate PIP for a qualifying hospital effective with discharges occurring on or after the first day of the following month (that is, the

second month after the third consecutive calendar month in which the intermediary failed to meet the prompt payment requirements). Subsequent notification will not be given while the intermediary continues not to be in compliance.

When the intermediary has again met the prompt payment requirements for three consecutive calendar months, the hospitals will receive notice concurrent with their removal from PIP, which will be effective with discharges occurring the first day of the month following the third consecutive month in which the requirements were met.

Sections 1815(e)(1) (B) and (C) of the Act require that PIP be continued for two classes of hospitals subject to the prospective payment system regardless of their intermediaries' ability to meet the prompt payment requirements. Under section 1815(e)(1)(B) of the Act, payment must be made on a PIP basis to hospitals that were receiving PIP as of June 30, 1987, have a disproportionate share adjustment percentage of at least 5.1 percent as computed for purposes of establishing the average standardized amounts for discharges occurring in FY 1987, continue to meet the requirements for receiving PIP set forth in § 413.64(h) as in effect on October 1, 1986, and request payment on a PIP basis. Similarly, section 1815(e)(1)(C) of the Act specifies that payment must be made on a PIP basis to hospitals that were receiving PIP as of June 30, 1987, are located in a rural area and have 100 or fewer beds, continue to meet the requirements for receiving PIP set forth in § 413.64(h) as in effect on October 1, 1986, and request payment on a PIP basis.

For both of these types of hospitals, the opportunity to continue PIP is available only once. As in the case with hospitals addressed in section 9311(a)(3) of Pub. L. 99–509, the law is not specific as to when these hospitals must request to continue PIP. However, our reading of sections 1815(e)(1) (B) and (C) of the Act and of the accompanying conference agreement (H.R. Rep. No. 1012, 99th Cong., 2d Sess. 299 (1986)) clearly indicates that Congress believed that these types of hospitals should have the opportunity to continue PIP only if they were receiving such payments on June 30, 1987. Therefore, we believe that it intended that hospitals that meet these criteria would notify their intermediaries prior to July 1, 1987, in order to ensure that PIP, in fact, was continued on that date. In Program Memorandum A–87–4, HCFA also directed intermediaries to inform these hospitals of the date prior to July 1, 1987, by which they must have received the hospitals' notification requesting to continue PIP. Without this notification, we expect that intermediaries will have terminated PIP to those hospitals for discharges occurring on or after July 1, 1987.

The conference agreement also speaks of the availability of continuing PIP after June 30, 1987 for these types of hospitals "during the cost reporting period beginning in fiscal year 1987," that is, beginning on or after October 1, 1986 and before October 1, 1987. Read literally, this could be interpreted as permitting the hospital, depending on its specific cost reporting period, to request PIP or, in the case of section 1815(e)(1)(C) of the Act, to qualify as a rural hospital with 100 or fewer beds, long after June 30, 1987. However, if the hospital was receiving PIP on June 30, 1987, PIP would have been eliminated on July 1, either because the hospital did not request PIP or because it did not qualify under section 1815(e)(1)(C) of the Act. Therefore, a later request would not be a request to continue PIP but rather one to initiate it. We believe it would be inconsistent with the express terms of the statute to permit these hospitals to continue PIP. Thus, we have not adopted the conference agreement language that these hospitals can request PIP or can qualify under 1815(e)(1)(C) "during the cost reporting period beginning in fiscal year 1987" to the extent that such event occurs after July 1, 1987.

Hospitals with a disproportionate share adjustment percentage of at least 5.1 percent have already been identified during the calculation of the average standardized amounts for discharges occurring during FY 1987. The hospitals' intermediaries have notified those hospitals of which they are aware of their eligibility to request to continue to receive PIP under the disproportionate share provision.

Although we believe that the statute and accompanying conference agreement language clearly state that hospitals meeting the 5.1 percent criterion are to be identified from the data base used by HCFA in the calculation of the average standardized amounts for discharges occurring in FY 1987, we also believe that Congress intended that we be equitable in our selection of those hospitals that meet the criterion.

The percentage of Medicaid patient days to total patient days used in determining a hospital's disproportionate share adjustment percentage was based on Medicaid data from 1984 hospital cost reports. To ensure the most accurate standardization of the rates for discharges occurring in FY 1987, we made every attempt to secure the most accurate and complete Medicaid data possible within the timeframe available to us to develop the rates.

However, we have found that in some cases, despite our efforts, data applicable to 1984 were not entered into our data base for purposes of the computation of the rates. In some of these cases, the data had been properly submitted by the hospital, but was inadvertently excluded from the data base. In other cases, hospitals did not submit the data to HCFA.

We believe that data that are applicable to 1984 should be considered in determining if a hospital has a disproportionate share adjustment percentage of at least 5.1, even if they were not included in the calculation of the FY 1987 rates. Therefore, intermediaries are considering any previously unsubmitted 1984 Medicaid data that are received from hospitals in their determination of whether or not a hospital qualifies for PIP under this provision. A hospital that qualifies for PIP as a disproportionate share hospital will not lose its eligibility to receive PIP unless the hospital no longer meets the requirements of § 413.64(h) or the hospital requests to be removed from PIP.

A hospital qualifies as a rural hospital if it is located in any area outside of a metropolitan statistical area or New England County metropolitan area, as defined by the Executive Office of Management and Budget. See § 412.62(f). The hospitals' intermediaries have also notified those hospitals that are eligible to request PIP under this provision.

If a hospital that is eligible to receive PIP under section 1815(e)(1) (B) or (C) of the Act has not requested PIP by the date prior to July 1, 1987 specified by its intermediary or is receiving PIP on that date but is later removed from PIP at its own request or as a result of not meeting the requirements for receiving PIP, its opportunity to receive PIP at some later time will be the same as for other prospective payment hospitals; that is, eligibility for receiving PIP will be dependent on its intermediary's failure to meet the prompt payment requirements for three consecutive calendar months.

With regard to the count of beds in rural hospitals, a bed means a general routine or intensive care adult or pediatric bed maintained in a patient care area for inpatient lodging. It does not include beds assigned to newborns, to custodial or domiciliary care, to units excluded from the prospective payment system, to hospital-based skilled nursing facilities, or to areas maintained and utilized for only a portion of a patient's stay. See § 3600.1A5 of the Medicare Intermediary Manual (HCFA Pub. 13–3), added by transmittal No. 1337, July 1987. This is the definition that is currently used for making bed size determinations for other provisions of the prospective payment system. See §§ 412.106(a)(3) and 412.118(b).

A hospital requesting PIP under this provision must attest in writing that, as of July 1, 1987, it is a rural hospital with 100 or fewer beds as defined above. The intermediary will verify a hospital's attestation as necessary. Hospitals that are determined not to be rural hospitals, or to exceed 100 beds, do not qualify even if they previously were believed by the intermediary to qualify under this provision. Rural hospitals that only meet the criteria after July 1, 1987 will not be eligible for this one-time opportunity to receive PIP. Hospitals that receive PIP under this provision that at some later date no longer qualify as a rural hospital or no longer have 100 or fewer beds will be removed from PIP under this provision.

We are redesignating and revising § 413.64 (k)(1) through (k)(5) as a new § 412.116 to implement the provisions of section 1815(e)(1) of the Act. In addition, § 413.64(k)(6), which deals with reductions in capital payments under section 1886(g)(3) of the Act, is revised and redesignated as a new § 412.113(a)(2). (We have made a technical change in § 412.113(a)(1) to reflect the fact that hospitals subject to the prospective payment system continue to be paid in part on the basis of a hospital-specific portion.)

Section 1815(e)(3) of the Act specifies that, in the case of a hospital subject to the prospective payment system that has signficant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments. Accelerated payments are currently available to all providers that have experienced financial difficulties due to a delay by the intermediary in making payments or in exceptional situations in which the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle as set forth in regulations at § 413.64(g). However, we are adding a provision to § 412.116 to specify that accelerated payments are available to hospitals subject to the prospective payment system.

Since we began making accelerated payments to providers, it has been our policy that these payments should not be available to providers receiving PIP since problems related to bill processing and bill payment do not occur for a provider on PIP. To the best of our knowledge, this policy has been consistently applied to providers requesting accelerated payments.

We believe that the addition of section 1815(e)(3) to the Act, in specifying the availability of accelerated payments to hospitals subject to the prospective payment system, was not intended to alter our policy of making accelerated payments available only to providers not receiving PIP that meet the criteria in § 413.64(g). This belief is supported by the language of section 1815(e)(3) of the Act which states that " . . . the Secretary *may* make available appropriate accelerated payments (emphasis added)." Since Congress did not state that the Secretary *must* make accelerated payments available, we are permitted to continue our existing policy. Accordingly, as a part of this rule, we are clarifying in the regulations (§§ 412.116 and 413.64(g)) that accelerated payments are available only for providers not on PIP.

As discussed above, in the August 15, 1986 final rule, which would have eliminated PIP for all hospitals effective July 1, 1987, we provided for a special one-time interim payment to be made to prospective payment hospitals for unusually long lengths of stay. (See § 413.64(k)(5).) If requested by the hospital, the special payment (equal to the hospital's Federal rate multiplied by the appropriate diagnosis-related group weighting factor) was to be made if a beneficiary's length of stay exceeds 30 days. Any interim payment was to be applied against the final payment made for the discharge.

The amendments made by section 9311(a) of Pub. L. 99–509 did not include any provision for interim payments to prospective payment hospitals that are not on PIP. We believe that Congress was well aware of the provisions of the August 15, 1986 final rule and, in fact, Congress adopted portions of that rule in developing the PIP provisions of section 9311 of Pub. L. 99–509. There is no discussion in the conference agreement, nor in either the House bill or Senate amendment upon which the conference agreement was based, concerning the need for an interim payment for long stays for prospective payment hospitals not receiving PIP. We believe that it is clear that, in light of the changes it was making to PIP, Congress did not believe such a provision was necessary. Therefore, we are deleting this provision from the regulations.

B. Payment to Hospitals Excluded from the Prospective Payment System and Other Providers

Section 1815(e)(2) of the Act requires that PIP be available under the standards established in § 413.64(h) as in effect on October 1, 1986, for the following services if the provider elects to receive and qualifies for PIP:

- Inpatient hospital services of a hospital that is excluded from the prospective payment system.
- Inpatient hospital services of a hospital that is receiving payment under a State reimbursement control system under section 1814(b)(3) or 1886(c) of the Act if payment on a PIP basis is an integral part of the system.
- Home health services.
- Extended care services.
- Hospice care.

Section 413.64(h) currently provides for payment of PIP for skilled nursing facility (SNF) services, home health agency (HHA) services, and inpatient hospital services furnished in hospitals receiving payment in accordance with a State demonstration project or reimbursement control system in which payment on a PIP basis is specifically approved by HCFA as a part of the system. Therefore, we are revising that section of the regulations to add hospitals excluded from the prospective payment system. We are adding a new § 416.307 to the hospice regulations to specify that PIP is available for hospice care effective with claims received on or after July 1, 1987.

Section 9311(a) of Pub. L. 99–509 does not make any provision for payment of PIP to hospitals that are receiving payment under a State reimbursement control system under section 1814(b)(3) or 1886(c) of the Act in which PIP is not an integral part of the system. However, because we do not believe that these hospitals should be disadvantaged, we are providing in the regulations (§ 413.64(h)(ii)) that these hospitals are eligible to receive PIP under the same circumstances as prospective payment hospitals (that is, the provisions of section 1815(e)(1) of the Act as set forth in § 412.116) or as hospitals excluded from the prospective payment system (§ 413.64(h)(i)). Thus, a hospital, which would otherwise be subject to the prospective payment system, whose State reimbursement control system does not include PIP as an integral part will be eligible to receive PIP if its intermediary fails to meet the prompt payment requirements of section 1816(c)(2) of the Act for three consecutive calendar months or if the hospital meets the disproportionate

share or small rural hospital criterion. The intermediaries will notify all eligible hospitals whose State reimbursement control system does not meet the requirements for receiving PIP under § 413.64(h)(ii) of their eligibility to receive PIP under the provisions of section 1815(e)(1) of the Act or § 413.64(h)(i). We have determined that of the two States currently operating under this type of system, PIP is an integral part of the reimbursement system in New Jersey and is not an integral part of the system in Maryland.

III. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals, SNFs, HHAs, and hospices as small entities.

Since this rule, except for a few technical provisions, merely conforms the regulations to the statutory requirements, we have determined that a regulatory impact analysis is not required. Further, we have determined, ary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** for substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to public interest.

As discussed in detail above, we published a final rule on August 15, 1986 that, effective with services furnished on or after July 1, 1987, eliminated payment on a PIP basis for all hospitals except rural hospitals with fewer than 100 beds and hospitals receiving payment under a demonstration project or State reimbursement control system in which a form of interim payment similar to PIP is specifically approved as a part of the demonstration or control system. Section 9311(a) of Pub. L. 99-509 restores PIP as an option for all hospitals excluded from the prospective payment system effective with claims received on or after July 1, 1987. In addition, PIP will, for the first time, be available for hospice care. Section 9311(a) of Pub. L. 99-509 also provides for payment to be made on a PIP basis to prospective payment hosptials whose intermediaries do not meet the prompt payment requirements of section 1816(c)(2) of the Act, as well as to certain disproportionate share hospitals and small rural hospitals.

The regulations published in final in this rule implement the statutory provisions as Congress intended. The regulations are beneficial to hospitals excluded from the prospective payment system since they allow these hospitals to continue receiving payment on a PIP basis.

The regulations are also of benefit to prospective payment hospitals in that they allow two classes of those hospitals to continue receiving PIP and the remainder to receive PIP when their intermediaries fail to make prompt payment. Additionally, we have already notified the intermediaries in a program memorandum (as discussed above) to take certain actions to implement section 9311 of Pub. L. 99-509. Finally, we had already had the benefit of public comments concerning the availability of PIP to providers in response to the proposal to eliminate PIP that we published on June 3, 1986 (51 FR 19970). For these reasons, we believe that it would be contrary to the public interest to delay implementation of the statutory provisions until the process of publishing both proposed and final rules can be completed. Therefore, we find good cause to waive proposed rulemaking and to issue these regulations as final. Nonetheless, we are providing a 60-day period for public comment as indicated in the beginning of this preamble.

Because of the large number of items of correspondence we normally receive concerning regulations, we are not able to acknowledge or respond to the comments individually. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511) requires that any information collection requirements included in a regulatory document must be submitted to and approved by the Executive Office of Management and Budget (EOMB) before the public is required to comply with those requirements. The requirements of these regulations do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, they need not be reviewed by EOMB for that purpose.

List of Subjects

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a-1, 1395g(e), 1395hh, and 1395ww).

B. The table of contents of Part 412 is amended by adding the title of new § 412.116 to Subpart H to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

Sec.

* * * * *

412.116 Method of payment.

* * * * *

C. Subpart H is amended as follows:

1. In § 412.113, paragraph (a) is redesignated as paragraph (a)(1) and is revised and a new paragraph (a)(2) is added to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capitol related costs.* (1) *Payment.* Subject to the reductions described in paragraph (a)(2) of this section, payment for capital-related costs (as described in § 413.130 of this chapter) will be determined on a reasonable cost basis. The capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73.

(2) *Reduction to capital-related payments.*

(i) Except for sole community hospitals as defined in § 412.92, the amount of capital-related payments (including a return on equity capital as provided under § 413.157 of this chapter) is reduced by—

(A) Three and one-half percent for payments attributable to portions of cost reporting periods occurring during Federal FY 1987;

(B) Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1988; and

(C) Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1989.

(ii) If a hospital's cost reporting period encompasses more than one Federal fiscal year, the reductions to capital-related payments are determined on a prorated monthly basis.

* * * * *

2. A new § 412.116 is added to read as follows:

§ 412.116 Method of Payment.

(a) *General rule.* Unless the provisions of paragraphs (b) through (d) of this section apply, hospitals are paid for each discharge based on the submission of a discharge bill. Payments for inpatient hospital services furnished by an excluded distinct part psychiatric or a rehabilitation unit of a hospital are made as described in § 413.64(a), (c), (d), and (e) of this chapter.

(b) *Periodic interim payments*—(1) *Criteria for receiving periodic interim payments.*

Effective with claims received on or after July 1, 1987, a hospital that meets the criteria in § 413.64(h) of this chapter may request in writing to receive periodic interim payments as described in this paragraph. A hospital that is receiving periodic interim payments also receives payment on this basis for inpatient hospital services furnished by its excluded distinct part psychiatric or rehabilitation unit.

(i) *Failure of intermediary to make prompt payment.* Beginning with claims received in April 1987, the hospital's fiscal intermediary does not meet the requirements of section 1816(c)(2) of the Act, which provides for prompt payment of claims under Medicare Part A, for three consecutive calendar months. The hospital may continue to receive periodic interim payments until the intermediary meets the requirements of section 1816 (c)(2) of the Act for three consecutive calendar months. For purposes of this paragraph, a hospital that is receiving periodic interim payments as of June 30, 1987 and meets the requirements of § 413.64(h) of this chapter may continue to receive payment on this basis until the hospital's intermediary meets the requirements of section 1816(c)(2) of the Act for three consecutive calendar months beginning with April 1987.

(ii) *Hospitals that serve a disproportionate share of low-income patients.* The hospital is receiving periodic interim payments as of June 30, 1987 and has a disproportionate share payment adjustment factor of at least 5.1 percent as determined under § 412.106(c) for purposes of establishing the average standardized amounts for discharges occurring on or after October 1, 1986 and before October 1, 1987. The hospital's request must be made by a date prior to July 1, 1987, specified by the intermediary.

(iii) *Small rural hospitals.* The hospital is receiving periodic interim payments as of June 30, 1987, makes its request by a date prior to July 1, 1987, specified by the intermediary, and, on July 1, 1987, the hospital—

(A) Is located in a rural area as defined in § 412.62(f); and

(B) Has 100 or fewer beds available for use.

(2) *Frequency of payment.* The intermediary estimates a hospital's prospective payments as described in paragraph (b)(3) of this section and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. Each payment is made two weeks after the end of a biweekly period of service, as described in § 413.64(h)(5) of this chapter. These payments are subject to final settlement.

(3) *Amount of payment.* (i) The biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount as described in paragraph (b)(3)(ii) of this paragraph. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if a hospital receives interim payments for less than a full reporting period.

(ii) For purposes of determining periodic interim payments under this paragraph, a hospital's estimated average prospective payment amount is computed as follows:

(A) If a hospital has no payment experience under the prospective payment system, the intermediary computes the hospital's estimated average prospective payment amount by multiplying its payment rates as determined under § 412.70(c), but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(B) If a hospital has payment experience under the prospective payment system, the intermediary computes a hospital's estimated average prospective payment amount based on that payment experience, adjusted for projected changes, and subtracts from this amount estimated deductibles and coinsurance.

(4) Termination of periodic interim payments.—(i) *Request by the hospital.* A hospital receiving periodic interim payments may convert to payments on a per discharge basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates periodic interim payments if—

(A) A hospital no longer meets the requirements of § 413.64(h);

(B) A hospital is receiving payment under the criterion in paragraph (b)(1)(i) of this section and the intemediary meets the prompt payment requirements of section 1816(c)(2) of the Act for three consecutive calendar months; or

(C) A hospital that is receiving payment under the criterion set forth in paragraph (b)(1)(iii) of this section no longer meets the criterion.

(iii) *Limitation on reelection.* If a hospital that is receiving periodic interim payments under the criterion set forth in paragraph (b)(1)(ii) or (b)(1)(iii) of this section is removed from that method of payment either by its own request or by the intermediary, it may reelect to receive periodic interim payments only under the criterion set

forth in paragraph (b)(1)(i) of this section.

(c) *Special interim payments for certain costs.* For capital-related costs and the direct costs of medical education, which are not included in prospective payments but are reimbursed as specified in §§ 413.130 and 413.85 of this chapter, respectively, interim payments are made subject to final cost settlement. Interim payments for capital-related items and the estimated cost of approved medical education programs (applicable to inpatient costs payable under Part A and for kidney acquisition costs in hospitals approved as renal transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous year's experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment is made two weeks after the end of a biweekly period of services, as described in § 413.64(h)(5) of this chapter. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(d) *Special interim payments for the indirect costs of medical education.* Payments for the indirect costs of medical education (described in § 412.118) are paid based on an estimate of the total for the Federal portion of the diagnosis-related group revenue to be received in the current period. The total estimated annual amount of the adjustment is divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year-end adjustment. Each payment is made two weeks after the end of the biweekly period of services. The interim payments are reviewed by the intermediary at least twice during their reporting period and adjusted if necessary.

(e) *Outlier payments.* Payments for outlier cases (described in Subpart F of this part) are not made on an interim basis.

(f) *Accelerated payments*—(1) *General rule.* Upon request, an accelerated payment may be made to a hospital that is not receiving periodic interim payments under paragraph (b) of this section if the hospital is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the hospital.

(ii) Due to an exceptional situation, there is a temporary delay in the hospital's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* A hospital's request for an accelerated payment must be approved by the intermediary and HCFA.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as hospital bills are processed or by direct payment by the hospital.

II. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

B. In § 413.64, paragraph (a) is amended by removing the title of paragraph (a)(1), removing paragraph (a)(2), and redesignating paragraph (a)(1) as (a); paragraphs (g) and (h)(1) are revised; and paragraphs (k)(1) through (k)(6) are removed:

§ 413.64 Payments to providers: Specific rules.

• • • • •

(g) *Accelerated payments to providers.* Upon request, an accelerated payment may be made to a provider of services that is not receiving periodic interim payments under paragraph (h) of this section if the provider has experienced financial difficulties due to a delay by the intermediary in making payments or in exceptional situations, in which the provider has experienced a temporary delay in preparing and submitting bills to the intermediary beyond its normal billing cycle. Any such payment must be approved first by the intermediary and then by HCFA. The amount of the payment is computed as a percentage of the net reimbursement for unbilled or unpaid covered services. Recovery of the accelerated payment may be made by recoupment as provider bills are processed or by direct payment.

(h) *Periodic interim payment method of reimbursement.*

(1) In addition to the other methods of interim payment on individual provider billings for covered services, effective with claims recieved on or after July 1, 1987, the periodic interim payment (PIP) method is available for the following:

(i) Part A inpatient hospital services furnished in hospitals that are excluded from the prospective payment system under Subpart B of Part 412 of this chapter.

(ii) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as an integral part of the demonstration or control system. If that type of payment is not an integral part of the demonstration or control system, PIP is available for the hospital under paragraph (h)(1)(i) of this section for hospitals excluded from the prospective payment system or under § 412.118(b) of this chapter for prospective payment hospitals.

(iii) Part A SNF services.

(iv) Part A and Part B HHA services.

• • • • •

III. Part 418 is amended as follows:

PART 418—HOSPICE CARE

A. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc, and 1395hh).

B. The table of contents of Part 418 is amended by adding the title of a new § 418.307 to Subpart E to read as follows:

Subpart E—Reimbursement Methods

Sec

• • • • •

418.307 Periodic interim payments.

• • • • •

C. In Subpart E, a new § 418.307 is added to read as follows:

§ 418.307 Periodic interim payments.

Subject to the provisions of § 413.64(h) of this chapter, a hospice may elect to receive periodic interim payments effective with claims received on or after July 1, 1987.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program.)

Dated: July 23, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 23, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88–1156 Filed 1–20–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–303; RM–5744]

Radio Broadcasting Services; Santa Rosa, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 269B1 for Channel 269A at Santa Rosa, California, and modifies the Class A license of Station KVRE–FM, in response to a petition filed by Visionary Radio Euphonics, Inc. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Report and Order, MM Docket No. 87–303, adopted December 21, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California by revising Channel 269B1 for Channel 269A at Santa Rosa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1085 Filed 1–20–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–470; RM–5540, RM–5762, and RM–5763]

Radio Broadcasting Services; Lake Lorraine and Niceville, FL, and Evergreen, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 262A to Niceville, Florida, as its first FM service in response to the counterproposal of Emerald Coast Broadcasting. The counterproposal of Wolff Broadcasting, licensee of Station WEGN-FM, Evergreen, Alabama (RM–5763), to upgrade its Class A facility to Channel 227C2 is being treated in a separate proceeding (Docket 87–451). The request of Mac Carter for Channel 262C2 at Georgiana, Alabama, which conflicts with the Niceville proposal for Channel 262A, was not timely filed as a counterproposal and therefore cannot be accepted for consideration in this proceeding. Separately, a Further Notice in this proceeding is being issued in order to request additional information on the community status of Lake Lorraine, Florida, for Channel 227A. With this action, this proceeding is terminated.

DATES: *Effective* February 22, 1988. The window period for filing applications will open on February 23, 1988, and close on March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–470, adopted December 8, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Section 73.202 [Amended]

2. Section 73.202(b), of the rules is amended for Niceville, Florida, by adding Channel 262A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1082 Filed 1–20–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–198; RM–5711; RM–6060; RM–6061; RM–6062]

Radio Broadcasting Services; Baldwinsville, Crogan, McGraw, and Ellisburg, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Buckley Broadcasting Corporation of New York, substitutes Channel 221B1 for Channel 221A at Baldwinsville, New York, and modifies its license for Station WSEN to specify operation on the higher powered channels. Channel 221B1 can be allocated to Baldwinsville in compliance with the Commission's minimum distance separation requirements and can be used at Station WSEN's present transmitter location. Canadian concurrence in the allotment has been received. The counterproposals of Grover H. Hubbell to allocate Channel 221A to Crogan, New York, Channel 222A to McGraw, New York, and Channel 222A to Ellisburg, New York, have been dismissed due to a lack of continuing interest. With this action, this proceeding is terminated.

EFFECTIVE DATES: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–198, adopted December 17, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Baldwinsville, New York, by adding Channel 221B1 and deleting Channel 221A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1086 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-324; RM-5395, RM-5589]

Radio Broadcasting Services; Burnet and Mason, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Burnet, Texas, and Channel 250C2 to Mason, Texas, at the request of Broadcasters Unlimited, Inc., and Bruce G. Hughes, respectively. A second FM service could be provided to Burnet and a first FM service to Mason. Channel 223A requires a site restriction of 9.2 kilometers (5.7 miles) northwest of Burnet and a site restriction of 10.6 kilometers (6.1 miles) is required for Channel 250C2 at Mason. Mexican concurrence has been obtained. With this action, this proceeding is terminated.

DATES: *Effective* February 22, 1988. The window period for filing applications will open on February 23, 1988, and close on March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-324, adopted December 21, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, by adding Channel 223A to Burnet, Texas, and Channel 250C2 to Mason, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1084 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-234, RM-5745]

Radio Broadcasting Services; Palestine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Palestine, Texas, and modifies the license of Station KNET-FM to specify operation on the new frequency, as requested by Hawthorne Broadcasting Company, Inc. The substitution could provide Palestine with its first wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATES: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-234, adopted December 14, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by deleting Channel 252A and adding Channel 252C2 at Palestine.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1087 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Parts 836 and 852

Acquisition Regulations; Construction Contracting Procedures

AGENCY: Veterans Administration.

ACTION: Interim final rule.

SUMMARY: The Veterans Administration (VA) is issuing an interim final regulation to the VA Acquisition Regulation (VAAR) to update and clarify construction contracting procedures and clauses. The regulation is being published as an interim final rule in order to provide required detailed agency procedures, guidance, and necessary clauses for VA contracting officers' use. However, this regulation will not become a final regulation until assessment of all comments.

EFFECTIVE DATE: This interim final regulation is effective January 21, 1988. Written comments must be submitted on or before February 22, 1988, for consideration in the final regulation. Comments will be available for public inspection until March 1, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 pm., Monday through Friday (except holidays) until March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Policy and Interagency Service (91A), Office of Procurement and Supply, 810 Vermont Avenue NW., Washington DC 20420, (202) 233-3784.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule updates and clarifies construction contracting procedures and clauses. Various changes to the VAAR contain new and revised coverage on such topics as:

Construction project cost ranges,

Architect/engineer board membership,

Performance of work by the contractor—Network Analysis System (NAS),

Guarantee and payment provisions for new or replacement elevators, automatic transport systems, or any other type of system in which guarantee period services are required,

Special notes to bidders clarifying information about:

—Contractor qualification and experience requirement,

—VA specifications and drawings,

—Contractor time extension requests due to severe weather.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this interim final rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this interim final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change in itself will not have a significant economic impact on a substantial number of small entities because the provisions implement the requirements of the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

This interim final rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Parts 836 and 852

Government procurement.

Approved: January 13, 1988.

Thomas K. Turnage,

Administrator.

Chapter 8 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for Parts 836 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. In Subpart 836.2, section 836.204 is added to read as follows:

836.204 Disclosure of the magnitude of construction projects.

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

(a) Less than $25,000;
(b) Between $25,000 and $100,000;
(c) Between $100,000 and $250,000;
(d) Between $250,000 and $500,000;
(e) Between $500,000 and $1,000,000;
(f) Between $1,000,000 and $2,000,000;
(g) Between $2,000,000 and $5,000,000;
(h) Between $5,000,000 and $10,000,000;
(i) Between $10,000,000 and $20,000,000;
(j) Between $20,000,000 and $50,000,000;
(k) Between $50,000,000 and $100,000,000;
(l) More than $100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR subpart 1.4.)

836.602-2, 836.602-3, 836.602-4, 836.602-5 [Amended]

3. In Subpart 836.6, sections 836.602-2, 836.602-3, 836.602-4, and 836.602-5 are amended by removing the word "station" wherever it appears, and adding in its place, the word "facility."

4. In section 836.602-2, paragraphs (a) and (b) are revised to read as follows:

836.602-2 Evaluation boards.

* * * * *

(a) The evaluation board will be chaired by the Director of the Architect-Engineer Evaluation Staff, or the Area Project Manager (or Deputy Area Project Manager) will be designated to act when necessary. The board's members as appointed by the Director, Office of Facilities, will include the appropriate Area Project Manager and as many qualified professional architects or engineers from the Office of Facilities technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities or from other VA departments and staff offices will be designated for projects when appropriate.

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the Chief, Supply Service, and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Following the clause in section 852.236-72, Alternate I is added to read as follows:

852.237-72 Performance of work by the contractor.

* * * * *

Alternate I (Jan. 1988). For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

(c) If, during progress of work hereunder, the contractor requests a change in activities of work to be performed by contractor's forces and the contracting officer determines it to be in the best interest of the Government, the contracting officer may, at contracting officers' discretion, authorize a change in such activities of said work.

6. Following the clause in section 852.236-75, Supplement I is added to read as follows:

852.236-72 Guaranty.

* * * * *

Supplement I (Jan. 1988). If the specifications include guarantee period services, add the following paragraph (g) and redesignate paragraph (g) in the basic text as paragraph (h).

(g) Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR section 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the

separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor's refusal or failure to complete the work within this specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

852.236-81 [Amended]

7. In section 852.236-81, the clause is amended by removing the word "three" wherever it appears, and adding in its place the word "six."

8. In section 852.236-82, in the clause, paragraph (a)(1), the first sentence in paragraph (b), and paragraph (f) are revised, and Supplement I is added following the clause, to read as follows:

852.236-82 Payments under fixed-price construction contracts (without NAS).

* * * * *

(a) * * *

(1) The contracting officer may retain funds:

* * * * *

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. * * *

* * * * *

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Supplement I (Jan. 1988). If the specifications include guarantee period services, include the following paragraphs (6)(i) and (ii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of notice to proceed, the guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the estimated costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee service shall be prorated on an annual basis and paid in equal monthly payments by the VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

9. In section 852.236-83, in the clause, paragraphs (a)(1), the introductory text of (b), (b)(3), the last sentence in paragraph (c), and paragraph (f) are revised, and Supplement I is added following the clause, to read as follows:

852.236-83 Payments under fixed-price construction contracts (including NAS).

* * * * *

(a) * * *

(1) The contracting officer may retain funds:

* * * * *

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

* * * * *

(3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

* * * * *

(c) * * * The unit costs shall be those used by the contractor in preparing the bid and will not be binding as pertaining to any contract changes.

* * * * *

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

Supplement I (Jan. 1988). If the specifications include guarantee period services, include the following paragraphs (6)(i), (ii), and (iii) as an addition to the basic clause in paragraph (b):

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CPM cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of workhours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established costs including employee fringe benefits and what the contractor reasonably expects to pay over the guarantee period service, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by the VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payment and Default clauses.

10. In section 852.236-84, introductory text is added to read as follows:

852.236-84 Schedule of work progress.

This clause is to be used on projects which do not include a section entitled "Network Analysis System (NAS)." The cost-loaded activity network serves the same general purpose as the schedule of work progress.

* * * * *

11. In section 852.236-88, in the clause in paragraph (b), the first sentence in paragraph (j) is revised to read as follows:

852.236-88 Contract changes.

* * * * *

(b) * * *

(j) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefor. * * *

* * * * *

12. Section 852.236-91 is added to read as follows:

852.236-91 Special notes

Special Notes (Jan. 1988)

(a) Signing of the bid shall be deemed to be a certification by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communication facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturers' methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to produce systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10 year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe whether in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

[FR Doc. 88-1080 Filed 1-20-88; 8:45 am]

BILLING CODE 8320-10-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190 and 192

[Docket No. PS-99, Amdt. Nos. 190-1 and 192-58]

Pipeline Safety Standards and Procedures; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This final rule amends the gas pipeline safety standards by making a number of editorial and other minor changes based on a petition for rulemaking submitted by the New England Gas Association and RSPA's review of the standards. The changes clarify the intent of the standards. In addition, the pipeline safety enforcement procedures are modified to reflect changes in agency practices regarding payment of civil penalties.

EFFECTIVE DATE: This amendment takes effect February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366-2392, regarding the changes to safety standards; Barbara Betsock, (202) 366-4400, regarding the changes to enforcement procedures; or the Dockets Unit, (202) 366-5046, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The New England Gas Association (NEGA), by letter of June 19, 1981, recommended 79 unrelated changes, additions and deletions to Part 192. NEGA contended that the proposals would clarify the intent of the regulations and reduce the cost of compliance without compromising pipeline safety. RSPA considered the NEGA letter a Petition for Rulemaking (P-15).

A preliminary review of the NEGA proposals culminated in a letter to NEGA dated Feburary 28, 1984. This letter explained that three of the problems addressed by NEGA had been eliminated by rulemaking. The letter explained further that under Executive Order 12291 rulemaking actions must be based on a demonstrated need and on the costs and benefits of the contemplated action.

In response NEGA resubmitted a slightly modified list of 71 recommendations. By this final rule, RSPA partially grants the NEGA petition and makes additional minor changes to Part 192 based on its review of the standards.

NEGA Proposed Changes to Safety Standards

As NEGA proposed, the acronym "MAOP" has been added to the definition of "maximum allowable operating pressure" in § 192.3. NEGA argued that, "The letters MAOP are often used in these standards and should be contained in the definition." Contrary to this assertion, a review of the regulations did not reveal a single use of the acronym. However, this NEGA misconception is extremely common, and we believe reflective of the almost universal use of the acronym MAOP in the gas industry and RSPA. Since the acronym could be applied to the phrase "maximum actual operating pressure," albeit rarely and unintentionally, it will clarify the regulations to associate MAOP unambiguously with "maximum allowable operating pressure."

In § 192.59(a)(1), referring to the standards of manufacture of new plastic pipe, NEGA recommended the following be deleted: "except that before March 21, 1975, it may be manufactured in accordance with any listed edition of a listed specification." This language was inserted in 1975 when this section was revised to require the use of the "latest listed edition of a listed specification" for the manufacture of plastic pipe. (Amdt. 192-19, 40 FR 10472, March 6, 1975) The purpose of the language NEGA proposed to delete was to permit operators to use stockpiled pipe manufactured prior to the effective date of the amendment.

Twelve years have passed since this wording was inserted. It no longer serves a useful purpose, and RSPA agrees that it should be deleted. In addition, the concept of a "latest listed edition" is no longer valid because editions of listed specifications (those set forth in Section I of Appendix B) are no longer listed in sequence. Also, § 192.7(c) was amended previously to provide that an earlier edition of a specification may be used for materials manufactured according to that edition, provided that it was listed at the time of such manufacture. Therefore, RSPA has revised § 192.59(a)(1) to read, "It is manufactured in accordance with a listed specification." Section 192.59(b)(1), concerning used plastic pipe, has been amended similarly.

RSPA agrees with NEGA's proposed revision of § 192.161(f), concering branch connections. The word "detrimental" has been inserted between "prevent" and "lateral," so that only "detrimental" movement at branch connections has to be prevented. The revised text of this section makes it consistent with the intent of the regulation.

To express better the intent of § 192.177(a)(1), governing the location of bottle-type holders, the word "storage" has been deleted from "storage site." With this change, a bottle-type holder may be located at any "site" that meets the standards.

RSPA also has revised the lead-in text of § 192.355(b), as NEGA recommended, by deleting, "The outside terminal of each service regulator vent and relief vent must—" and substituting, "Service

regulator vents and relief vents must terminate outdoors, and the outdoor terminal must—." The current wording could be misinterpreted as being conditional, meaning if the vent terminates outside, it must comply with the requirements of § 192.355(b). This has never been the intent. This section was based on USAS B31.8—1968, a voluntary consensus standard covering gas piping. Paragraph 848.33 of the current edition of this standard, ANSI ASME B31.8—1986, includes the following, "All service regulator vents and relief vents, where required, shall terminate in the outside air • • •" RSPA believes that the foregoing reflects current and acceptable industry practice as well as the original intent of § 192.355(b).

Other Changes to Safety Standards

RSPA has made several additional clarifying changes not addressed in the NEGA petition. The first corrects a typographical error by replacing "conjection" with "conjunction" in § 192.281(e)(2).

RSPA has clarified § 192.191(b), concerning plastic fittings. The note that appears below the table in § 192.191(b) states that the pressures shown are the same as would be determined by applying the design formula for plastic pipe in § 192.121 and the limitations of § 192.123. This is no longer true. The design formula that appears in § 192.121 was amended previously to apply a uniform design factor of 0.32 to all plastic pipe regardless of class location. Thus, the table is superfluous and misleading, implying a differentiation in class location requirements beyond the 100-psig limitation for Classes 3 and 4 locations and distribution systems under § 192.123(a).

RSPA has deleted the current § 192.191(b) and replaced it with the following: "Thermoplastic fittings for plastic pipe must conform to ASTM D2513." This removes the existing conflict with §§ 192.121 and 192.123, and addresses thermoplastic fittings in a manner consistent with current practice and level of public safety. The 1981 edition of the ASTM D2513 document, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings," has been incorporated by reference in Part 192 for other purposes related to the use of plastic pipe (see §§ 192.59 (listed specification), 192.63, 192.281, and 192.283). Because the 1981 edition is the applicable edition incorporated by reference in Part 192 (§ 192.7) and operators have it available, it will serve for purposes of the new § 192.191(b) until updated through a separate rulemaking.

The remaining changes relate to confusion regarding required test pressures. Currently, leak test requirements for pipelines (other than service lines and plastic pipelines) to be operated "at or below 100 p.s.i.g." are addressed in § 192.509. Required test pressures for establishing the MAOP of steel pipelines to be operated "at 100 p.s.i.g. or more" are addressed in § 192.619(a)(2)(ii). These sections set forth confusing requirements for 100-psig steel mains. Section 192.509(b) requires a minimum test pressure of 90 psig for mains to be operated at 1 psig or more, while § 192.619(a)(2)(ii) requires a minimum test pressure for mains in Class 1 locations of 110 psig, and higher in other class locations. Operators often avoid the more stringent requirement of § 192.619(a)(2)(ii) by setting the MAOP of steel mains at 99 psig and conducting a 90-psig leak test. It is obviously not the intent of the standards to make 100 psig a unique operating pressure.

RSPA has removed the confusion in the following way. The titles and lead-in text of §§ 192.507 and 192.509 have been revised to change their statements of applicability. As amended, the test requirements of § 192.507 apply to pipelines operating at a hoop stress of less than 30 percent of SMYS and "at or above 100 p.s.i.g.," instead of the current "above 100 p.s.i.g.," bringing steel pipelines to be operated at 100 psig under § 192.507. The words "at or" have been deleted from "at or below 100 p.s.i.g." in the lead-in text of § 192.509, thus removing 100-psig pipelines from the requirements of that section.

The result of these changes is that test requirements for pipelines to be operated at 100 psig are clearly addressed in § 192.507 and the confusion over the current test requirements of §§ 192.509(b) and 192.619(a)(2)(ii) is eliminated. Compliance is simplified, while no operational changes are required.

Although Subpart J prescribes the pressure test requirements for new, replaced, and relocated pipelines, the minimum test pressures needed to substantiate a proposed MAOP are prescribed in Subpart L in § 192.619. To make this separation of related requirements easier to comprehend, the words "and with § 192.619" have been inserted after the words "in accordance with this subpart" in § 192.503(a)(1). This change explicitly directs the operator to the test pressure requirements, thus eliminating potential confusion without requiring operational changes.

Section 192.625(g), which pertains to interim standards for odorization of gas in transmission lines, has had no legal effect since final standards became effective under § 192.625(b) on January 1, 1977. It is therefore removed.

Enforcement Procedures

Under RSPA's procedures governing the assessment and collection of civil penalties for violation of a pipeline safety regulation, order, or statute, the person charged with the violation may pay the proposed civil penalty and close the case. (§ 190.209(a)(1)). RSPA considers such action by a respondent to be an admission of violation by the respondent. It is therefore relevant to the determination of the amount of any future civil penalty assessment under § 190.225. That section requires consideration of a "respondent's history of prior offenses." To make this clear, § 190.209(a)(1) is revised by adding the phrase "with prejudice to the respondent" after the words "close the case."

Under § 190.227(a), civil penalty payments are no longer remitted to the Chief Counsel's office. Certified checks or money orders are made payable to the "Department of Transportation" and sent to Chief General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Because it includes no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact would be slight, a full regulatory evaluation is not required.

The agency certifies under section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule makes a number of editorial and other clarifying changes to Part 192 and does not impose any substantive new safety requirements. The changes were considered in September 1987 by the Department's gas pipeline advisory committee, the Technical Pipeline Safety Standards Committee, which approved them without comment or modification. Each change makes the regulations more easily understood or states more clearly

the original intent which has been evident in practice but not stated as lucidly as possible. For example, the change to § 192.355(b) makes clear that service regulator vents and relief vents must terminate outside. This has always been the intent of the requirement, but the existing language allows an interpretation that such an outside terminal is optional. Because of the minor and principally editorial nature of the changes, and because they will not effect either implementation or enforcement activities, prior notice and opportunity for public comment are unnecessary. Therefore, in accordance with the Administrative Procedure Act, the changes are final.

In addition, because the two changes to Part 190 modify agency rules of practice and procedure, the Administrative Procedure Act does not require prior notice and opportunity for public comment on the changes.

List of Subjects

49 CFR Part 190

Pipeline safety, Penalty, Enforcement procedures.

49 CFR Part 192

Pipeline safety, Plastic pipe, Plastic fittings, Supports and anchors, Service regulators.

In view of the foregoing, RSPA amends 49 CFR Parts 190 and 192 as follows:

PART 190—[AMENDED]

1. The authority citation for Part 190 is revised to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009 and 2010; 49 CFR 1.53 and Appendix A to Part 1.

2. Section 190.209(a)(1) is revised to read as follows:

§ 190.209 Response options.

• • • • • •

(a) • • •

(1) Pay the proposed civil penalty as provided in § 190.227 and close the case with prejudice to the respondent;

• • • • • •

3. Section 190.227(a) is revised to read as follows:

§ 190.227 Payment of penalty.

(a) Payment of a civil penalty proposed, assessed, or compromised under this subpart must be made by certified check or money order payable to the "Department of Transportation." Except as provided by § 190.209, such payment is sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

• • • • • •

PART 192—[AMENDED]

4. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

5. In § 192.3, the definition of "Maximum allowable operating pressure" is revised to read as follows:

§ 192.3 Definitions.

• • • • • •

"Maximum allowable operating pressure (MAOP)" means the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part.

• • • • • •

6. In § 129.59, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 192.59 Plastic pipe.

(a) • • •

(1) It is manufactured in accordance with a listed specification; and

• • • • • •

(b) • • •

(1) It was manufactured in accordance with a listed specification;

• • • • • •

7. The text of § 192.161(f) is revised to read as follows:

§ 192.161 Supports and anchors.

• • • • • •

(f) Except for offshore pipelines, each underground pipeline that is being connected to new branches must have a firm foundation for both the header and the branch to prevent detrimental lateral and vertical movement.

§ 192.177 [Removed]

8. In § 192.177(a)(1), the word "storage" is removed.

9. Section 192.191(b) is revised to read as follows:

§ 192.191 Design pressure of plastic fittings.

• • • • • •

(b) Thermoplastic fittings for plastic pipe must conform to ASTM D 2513.

§ 192.281 [Amended]

10. Section 192.281(e)(2) is corrected by removing the word "conjection" and inserting the word "conjunction" in its place.

11. In § 192.355(b) the introductory text is revised to read as follows:

§ 192.355 Customer meters and regulators: Protection from damage.

• • • • • •

(b) *Service regulator vents and relief vents.* Service regulator vents and relief vents must terminate outdoors, and the outdoor terminal must—

• • • • • •

12. Section 192.503(a)(1) is revised to read as follows:

§ 192.503 General requirements.

(a) • • •

(1) It has been tested in accordance with this subpart and § 192.619 to substantiate the maximum allowable operating pressure; and

• • • • • •

13. In § 192.507 the title and introductory text are revised to read as follows:

§ 192.507 Test requirements for pipelines to operate at a hoop stress less than 30 percent of SMYS and at or above 100 p.s.i.g.

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and at or above 100 p.s.i.g. must be tested in accordance with the following:

• • • • • •

14. In § 192.509 the title and introductory text are revised to read as follows:

§ 192.509 Test requirements for pipelines to operate below 100 p.s.i.g.

Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated below 100 p.s.i.g. must be leak tested in accordance with the following:

• • • • • •

§ 192.625 [Removed]

15. Section 192.625(g) is removed.

Issued in Washington, DC on January 15, 1988.

M. Cynthia Douglass,

Administrator, Research & Special Programs Administration.

[FR Doc. 88–1173 Filed 1–20–88; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86–01; Notice 4]

Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1987

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

BEST COPY AVAILABLE

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires each passenger motor vehicle insurer to file annual reports with this agency, unless the insurer is exempted by this agency from filing such reports. This law specifies that NHTSA can exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of the unexempted companies, i.e., those insurance companies that are required to file annual reports.

The list of unexempted companies is subject to slight changes from time to time since a company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change. To address this situation, NHTSA publishes annual updates of the list of insurance companies that are required to file annual reports. The listings in these updates are based on the most current market share information available to the agency. Any insurance company omitted from this list is *not* required to file a report for the 1986 calendar year. Those insurance companies included on the list at the end of this rule were statutorily required to file reports for the 1986 calendar year not later than October 25, 1987. However, NHTSA recognizes that the statutory date for filing those reports has passed. Because this final listing is published after the statutory date has passed, the agency will accept as timely insurer reports for the 1986 calendar year that are filed within 30 days after this listing is published.

DATES: *Effective date:* This rule is effective January 21, 1988.

Deadline for submitting petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than February 22, 1988.

ADDRESS: Any petitions for reconsideration must be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4807).

SUPPLEMENTARY INFORMATION:

Background: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this rule.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as an insurer whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer", but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and because its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on two separate considerations. First, NHTSA determined that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis. Second, NHTSA determined that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for one percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for ten percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for ten percent or more of the total premiums.

The Proposal: The market shares for each of the insurance companies listed in the January 2, 1987, final rule were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. However, the A.M. Best data for 1985 became available after January 2. In the January final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62.

In accordance with that pledge, the agency published a proposed updated listing of subject insurance companies on May 28, 1987 (52 FR 19898). This proposal used the most current A.M. Best data to determine which insurance companies are statutorily required to file reports by October 25, 1987. This notice proposed that all insurance companies that were statutorily eligible for an exemption from these reporting requirements should be exempted.

The Comment and the Agency's Decision: Only one comment was filed in response to the proposed rule. The Sentry Insurance Group (Sentry) was listed in proposed Appendix A as an insurance company that was required to file an annual report this year for each State in which it did business. This

proposal was based on A.M. Best data showing that Sentry had a 1.0 percent market share nationally, and was therefore statutorily ineligible for an exemption. Sentry commented that its review of the A.M. Best data showed that Sentry had only 0.984 percent of the national market. Sentry stated that if this number were to be rounded, it should be rounded to 0.98 percent. If it were so rounded, Sentry asserted that it would be not be required to file a report in October 1987, because it would have a national market share of less than one percent.

A.M. Best reported to NHTSA that Sentry had a 1.0 percent market share nationally. In response to Sentry's allegations, NHTSA contacted A.M. Best officials and asked them whether Sentry's comment was accurate. After further examining their raw data, those officials stated that Sentry's assertion that its market share was actually 0.984 percent was mathematically correct, but statistically invalid. Those officials stated that A.M. Best has always rounded market share percentages to the nearest one tenth of a percentage point. According to those officials, A.M. Best has always followed this practice in order to account for the uncertainties and previous rounding of numbers used in these statistical calculations. In accordance with this longstanding practice, which A.M. Best applies to all insurance companies, Sentry's market share of 0.984 percent was rounded to 1.0 percent by A.M. Best and reported as such to the agency.

The A.M. Best practice is consistent with the general principle of statistics that an impression of numerical accuracy should be avoided, if such accuracy does not actually exist. This subject is discussed in John Griffin's *Statistics, Methods and Applications*, Holt, Rinehart and Winston, Appendix B (1962). Such spurious accuracy would be illustrated by an attempt to express the estimated population of a city in 1987 to a precise number in the final digit. It is not possible for such an estimate to be that accurate. Accordingly, persons making estimates must round off the estimate to the degree of accuracy of the least precise figure used in computing the estimate.

To illustrate this, let us suppose that a business were attempting to estimate its sales in four different States, and then determine what percentage of that four State area was represented by the sales in State B. Assume that the sales figures for the States were:

State A	25,000
State B	1,400,000
State C	12,000
State D	3,450,000

The total for these numbers 4,887,000. However, this total is an improper expression of accuracy. Since the least precise sales figure is expressed to the nearest hundred thousand in State B, the four State estimated total would also be expressed to the nearest hundred thousand, as 4.9 million.

If one then divides the sales figure in State B (1,400,000) by estimated total sales in the four States (4,900,000), the result is 28.57142857142 percent. This expression of the result of a very clear illustration of spurious accuracy. Applying proper statistical principles, the percentage calculated here cannot have more significant digits than are found in any one of the numbers that are divided. In this example, both the divisor and the dividend have only two significant digits. Therefore, the quotient could not have more than two significant digits and the result should be shown as 29 percent.

A.M. Best follows similar rounding procedures when it calculates the market shares for insurance companies. To avoid spurious accuracy in its reported percentages, A. M. Best has determined that its market share percentages should be expressed only to the nearest one tenth of a percentage point. This determination by A.M. Best appears consistent with sound statistical practices.

Therefore, the agency is not persuaded that there is a need for it to recalculate the market share information reported to it by A.M. Best, by asking A.M. Best to furnish its raw data for all insurance companies with a 1.0 percent share of the national market. When NHTSA announced its intention to base its market share determinations on the A.M. Best data, the A.M. Best practice of rounding off market shares to the nearest one tenth of a percentage point was known by all insurance companies. The agency will recalculate the A.M. Best estimates *only* if there is some reason to believe that the estimates are based on a mathematical error, unreasonable statistical practices or assumptions, or are arbitarily applied to only some insurance companies. In this case, none of these factors are present. Therefore, NHTSA does not believe it is necessary or appropriate for it to recalculate A.M. Best's reported market share information. Accordingly, Sentry Insurance Group appears in this final version of Appendix A, based on the A.M. Best report.

No other comments were received on the proposed listings. For the reasons set forth above and in the preamble to the proposed listing, this final rule adopts the proposed listings for both Appendix A and Appendix B.

NHTSA finds for good cause that this rule should be effective immediately upon publication in the Federal Register, instead of 30 days thereafter. As noted earlier in this preamble, section 612 of the cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers that were not exempted from these reporting requirements to file a report for the 1986 calendar year no later than October 25, 1987. This statutory obligation makes it imperative that this listing of the insurance companies that are *not* exempted from filing those reports become effective as soon as possible. As also noted above, NHTSA will consider reports by the listed insurance companies to be timely filed, if such reports are received by the agency not later than 30 days after the publication of this rule.

Regulatory Impacts: NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule reflecting more current A.M. Best data affects the impacts described in the final regulatory evaluation prepared for Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it will cost the one insurance company added to Appendix A about $100,000 to file its initial report, while saving about $50,000 for the company deleted from Appendix A. The two companies that are deleted from Appendix A, but added to Appendix B, will save about $30,000 each as a result of this change. The three companies deleted from Appendix B will save about $20,000 each, while the company required to report on one State instead of two will save about $10,000. Thus, the net total impact of these changes is estimated to be a savings of about $80,000 for insurance companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing Part 544. Interested persons may wish to examine that

evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act. Those insurance companies that did not qualify as small insurers under the older data, but do qualify under the newer data, would realize some savings, as discussed above. However, the economic impact would not be substantial, nor are there a substantial number of these companies.

In accordance with the National Environmental Policy Act, the agency has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 is revised to read as follows:

Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
USAA Group
Hartford Insurance Group
CIGNA Group
Geico Corporation Group
Continental Group
United States F & G Group
Fireman's Fund Group
California State Auto Association
Interinsurance Exchange Auto Club of Southern California
Sentry Insurance Group
Lincoln National Group

3. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Commercial Union Assurance Group (Maine)
American Family Group (North Dakota, South Dakota, and Wisconsin)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)
American International Group (Vermont)

Issued on January 15, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-1170 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Commercial Fishing Operations Permit; California Sea Lions

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Continuation of regulation and Reauthorization of general permit.

SUMMARY: On June 17, 1986, the National Marine Fisheries Service (NMFS) issued a General Permit to the Sportfishing Association of California under Category 6 of the general permit regulations (50 CFR 216.24). This permit authorized operators of commercial passenger fishing vessels (CPFV) to harass California sea lions when they were interfering with active sportfishing operations. The Permit is subject to annual reauthorization based on the NMFS' analysis of the effectiveness of approved harassment devices in deterring sea lions from interfering with sportfishing operations.

The NMFS conducted an analysis of activities conducted under the permit and found that the rate of sea lion interactions with CPFV operations has declined since environmental conditions stabilized subsequent to the 1983-84 El Nino event. Consequently, CPFV operators have not made substantial use of the permit. There were occasional interactions and the use of small numbers of seal bombs and cracker shells was reported. The NMFS concludes that the use of authorized harassment devices under the general permit presents no disadvantage to the sea lions.

Based on its findings, the NMFS is reauthorizing the general permit for gear category 6 issued to the Sportfishing Association of California for the period January 1, 1988 through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, (213-514-6199).

SUPPLEMENTARY INFORMATION: On December 4, 1985, (50 FR 49696) NMFS issued a final rule modifying the regulatory definition of "commercial fishing operation" to include commercial passenger fishing vessels (CPFVs). This modification created a new gear category (category 6) and established procedures for operators and owners of CPFVs to apply, under the authority of the Marine Mammal Protection Act, to harass marine mammals in the course of fishing operations. On June 16, 1986, the NMFS issued a General Permit to the Sportfishing Association of California (SAC) (51 FR 23457, June 27, 1986). Conditions appended to the permit placed certain restrictions on the taking. These included: limiting the techniques authorized for harassing California sea lions away from fishing operations to specific non-lethal devices; broadly specifying the geographic areas where devices may be used; and requiring that any harassment of sea lions be reported to the Regional Director. The authorization to harass sea lions granted by the General Permit is extended to individual vessel owners and operators through a Certificate of Inclusion issued to those individuals that complete an application with the Southwest Region.

The purpose of this report is to assess the effectiveness of the CPFV regulations and the SAC General Permit in both alleviating and monitoring these marine mammal-fishery interactions.

Permits Issued and Reports Received

During 1986, 39 Certificates of Inclusion were issued, 17 to vessel owners and 22 to operators. During 1987, 25 certificates (14 owners and 11 operators) were issued. Since issuance of the General Permit, the NMFS has received logs from only two certificate holders, reporting that devices were used on a total of 18 days. These logs report the use of 52 cracker shells and 10 seal bombs. In 36 reported interactions, the approved device(s) had the following effect on the sea lion present: 14—animal left the area; 18—had no effect on the animal; 4—device had mixed or uncertain effect on the animal. None of the reports received indicate any sea lions were harmed by the explosive devices, and no reports were received from other sources (e.g. passengers or CDFG biologists) that would indicate that the program had been disadvantageous to sea lions.

The low number of reports received may reflect: (1) A failure to report the use of these devices; (2) an unexpectedly low rate of sportfishery-marine mammal interactions; or most likely (3) some combination of these factors. In June, 1987, the Southwest Region discussed the apparently low reporting rate with the President of the SAC. Although he agreed to encourage certificate holders to comply fully with the established reporting requirements, no reports have been received in the Region since January 5, 1987.

Interactions between marine mammals and sportfishermen occurred frequently during the summers of the El Nino years (1983-85) when fishermen were targeting on surface fisheries, for species such as yellowtail and bonito. Since the summer of 1986, the rate of interaction appears to have dropped off (Doyle Hanan, CDFG, per comm). This is likely the result of a return of the sportfisheries to mid-water and bottom dwelling species such as kelp bass, rockfish, and halibut. In general, the same areas were fished by CPFVs during both periods so there is no geographic shift in fishing effort that would account for the decline in the rate of interaction.

Although a cause and effect relationship can not be demonstrated with any certainty, it is possible that interactions were high during the El Nino years because sea lion prey was less available and sea lions sought out CPFV catch as an alternative. When normal oceanographic conditions returned, sea lions reverted to their normal prey and interactions with CPFVs declined. However, it is likely that the above speculation at best accounts for only a portion of the failure to report interactions or use of devices since January, 1987.

Conclusions and Recommendations

Due to the low level of reported interactions, the NMFS is unable to evaluate the effectiveness of the mechanisms provided by the CPFV regulations and General Permit to deter interactions between sportfishermen and California sea lions.

The program appears to present no disadvantage to sea lions and there has been no adverse reaction from the public that has been exposed to the use of the devices. Therefore, the NMFS should continue the CPFV Category 6 program through the end of 1988 to provide additional time to assess its effectiveness. The Southwest Region, NMFS should cooperate with the SAC to ensure that reports of interactions and use of the harassment devices are submitted. At the end of the 1988 permit year, the data collected will be reviewed and a decision whether to continue the program will be made.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-1096 Filed 1-20-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 451

[Amdt. No. 1; Doc. No. 4749S]

Canning and Processing Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Canning and Processing Peach Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.122, Stonefruit Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than February 22, 1988, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1990.

E. Ray Fosse, Manager, FCIC, (10 has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs of prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endoursement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is pubised as a section to Part 401, effective for as subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 451 will be effective only through the end of the 1987 crop year, FCIC hearing proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Stonefruit Endorsement will be published as an endorsement to 7 CFR Part 401 (401.122, Stonefruit Endorsement), and become effective for the 1988 and succeeding crop year. Upon final publication, the provisions of the Canning and Processing Peach Crop Insurance Regulations, now contained in 7 CFR 451, would be superseded. Therefore, FCIC proposed to amend the subpart heading to provide that 7 CFR Part 451 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 451

Crop Insurance, Canning and processing peach.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Canning and Processing Peach Crop Insurance Regulations (7 CFR Part 451), as follows:

PART 451—[AMENDED]

1. The authority citation for 7 CFR Part 451 continues to read as follows:

Authority: Secs. 508, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516.

2. The Subpart heading in 7 CFR Part 451 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on January 14, 1988.

Edward D. Hews

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-1175 Filed 1-20-88; 8:45 am]

BILLING CODE 3410-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FRL-3317-7]

Standards for Remedial Actions at Inactive Uranium Processing Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of closure date for the hearing record.

SUMMARY: The Environmental Protection Agency proposed regulations to correct and prevent contamination of ground water beneath and in the vicinity of inactive uranium processing sites by uranium tailings on September 24, 1987 (52 FR 36000). A public hearing was held in Durango, Colorado, on October 29, 1987. At the hearing, we announced that the hearing record would remain open for additional comments until January 8, 1988. This notice extends that date.

DATES: The hearing record will remain open until January 29, 1988. Comments received on or before that date will be fully considered by the Agency in preparing its final rulemaking.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Dockets Section (LE-130), U.S. Environmental Protection Agency, Attn: Docket No. R-87-01, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kurt L. Feldmann, Guides and Criteria Branch (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460; telephone number (202) 475-9620.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88-1113 Filed 1-20-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. T86-01; Notice 5]

Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1988

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires insurers to file annual reports with this agency, unless NHTSA exempts an insurer from filing such reports. This law also spcifies that NHTSA can exempt only those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file annual reports.

However, an insurance company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. The listing of insurance companies in this notice is derived from more current market share information than was previously available to the agency. If these listings are adopted as a final rule, those insurance companies included on the list would be required to file reports for the 1987 calendar year not later than October 25, 1988. Any insurance company not on the final list is *not* required to file a report for the 1987 calendar year.

DATES: Comments on this notice must be received by this agency not later than March 7, 1988.

The final rule on this subject will be effective 30 days after the rule is published in the **Federal Register**.

ADDRESS: Comments on this notice should refer to Docket No. T86-01; Notice 5, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 a.m. to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4807).

SUPPLEMENTARY INFORMATION: Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this proposal.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer", but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on the fact that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis, and that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for one percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for ten percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for ten percent or more of the total premiums.

The market shares for each of the insurance companies were derived from the A.M. Best data for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. Since that time, A.M. Best data for more recent calendar years have become available. In the final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62. This rulemaking action implements that pledge. The agency would like to emphasize that this rulemaking does not affect its prior determination that those insurance companies that are statutorily eligible to be exempted from these reporting requirements should, in fact, be exempted therefrom. Instead, this rulemaking simply uses more current data to determine which insurance companies are eligible for such exemptions.

The 1986 calendar year A.M. Best data for market shares shows that five insurance groups (American International Group, CNA Insurance Group, American Family Group, Progressive Group, and Crum & Forster Companies) that did not have at least one percent of the national market for motor vehicle insurance premiums now have at least that amount. Accordingly, those five insurance groups would be added to Appendix A. These additions mean that each of these five groups will be required to file a report not later than October 25, 1988, setting forth the information required by Part 544 for each State in which it did business in the 1987 calendar year. Conversely, three insurers that had a one percent national market share in the older A.M. Best data (Interinsurance Exchange Auto Club of Southern California, Sentry Insurance Group, and Lincoln National) have fallen below the one percent threshhold in the newer data, so their names would be deleted from Appendix A. This means that those insurance groups would not be required to file reports in October 1988.

Additionally, three insurance groups would be deleted from Appendix B, the listing of insurers required to report for particular States because they have a 10 percent or greater market share in those States. Two of the deleted groups (American International Group and American Family Group) were deleted because they now have at least a 1.0 percent national market share. Accordingly, those groups must report on their activities in every State in which they did business, pursuant to section 612 of the Cost Savings Act. American General had been required to report on its activities in the State of Maine, because it had a ten percent market share in that State. The more recent A.M. Best data indicate that American General has fallen below that threshold level in Maine and does not have a ten percent market share in any other State. Therefore, American General's name would be deleted from Appendix B, and it would not be required to file a report in October, 1988.

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, this listing would ensure that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption would be expressly required to file reports.

NHTSA does not believe that this proposed rulemaking to reflect more current A.M. Best data would affect the impacts described in the final regulatory evaluation prepared for Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this proposal. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it would cost the five insurance companies that would be added to Appendix A about $100,000 each to file an initial report, while saving about $50,000 each for the three companies that would be deleted from Appendix A. The company that would be deleted from Appendix B would save about $20,000. Thus, the net total impact of these changes is estimated to be a cost increase of about $330,000 for insurance companies. This is well below the threshhold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing Part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T88-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this proposed rulemaking under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act. Those insurance companies that did not qualify as small insurers under the older data, but do qualify under the newer data, would realize some savings, as discussed above. However, the economic impact would not be substantial, nor is there a substantial number of these companies.

In accordance with the National Environmental Policy Act, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR Part 544 be amended as follows:

PART 544—[AMENDED]

1. The authority citation for Part 544 would continue to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
Hartford Insurance Group
USAA Group
United States F & G Group
Geico Corporation Group
American International Group
CIGNA Group
Continental Group
Fireman's Fund Group
CNA Insurance Group
California State Auto Association
American Family Group
Progressive Group
Crum & Forster Companies

3. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
Commercial Union Assurance Group (Maine)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)

Issued on January 15, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1172 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-05, Notice 1]

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. The standard specifies various criteria, typically concerning configuration, speed or weight, for excluding certain vehicles whose attributes result in restricted highway operation. In response to a petition for rulemaking submitted by Corpac Industries, Inc., this notice proposes to eliminate from the standard, the exclusion based on vehicle width. The agency tentatively concludes that the width exclusion is unnecessary to achieve the purpose of ensuring that the standard does not apply to certain vehicles that are appropriately excluded from the standard.

DATES: Comments must be submitted by March 7, 1988. The proposed effective date is 30 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5892).

SUPPLEMENTARY INFORMATION: Standard No. 121, *Air Brake Systems*, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Certain vehicles are excluded by section S3 from the standard's applicability because they have unusual physical or operational characteristics that result in restricted highway operation (e.g., low speed, permit requirements, daytime operation) which limits hazards and the possibility of accidents. Also, the unusual configurations and low production volumes of these vehicles sharply increase compliance costs.

Corpac Industries, Inc., submitted a petition for rulemaking requesting the elimination of Standard No. 121's exclusion of vehicles that have an overall vehicle width of more than 102 inches. The petitioner stated that the Surface Transportation Act of 1982 prevents states from establishing a maximum width of more than or less than 102 inches for commercial motor vehicles operating on the National Network and that this was subsequently modified to include the approximate

metric equivalent of 2.6 m or 102.36 inches. Corpac submitted information showing that thousands of trailers are now being produced which are 102.36 inches wide. The petitioner argued that Standard No. 121 does not technically apply to these vehicles and urged that the 102-inch exclusion be eliminated to prevent the production of vehicles with possibly markedly inferior braking performance.

The first issue raised by Corpac's petition is whether the 102.36-inch trailers now being produced are excluded from Standard No. 121 by virtue of the provision, set forth in section S3(a), that excludes vehicles that have "an overall vehicle width of more than 102 inches with extendable equipment in the fully retracted position." As discussed below, it is NHTSA's opinion that these vehicles are *not* excluded, although it agrees that the standard's application to the 102.36-inch wide trailers should be clarified.

Section 416(a) of the Surface Transportation assistance Act of 1982 states that "(n)o state, other than the State of Hawaii, shall establish, maintain, or enforce any regulation of commerce which imposes a width limitation of *more or less than 102 inches* on any segment of the National System of Interstate and Defense Highways, or any other qualifying Federal-aid highway as designated by the Secretary of Transportation, with traffic lanes designed to be a width of twelve feet or more * * *." (Emphasis added.)

In proposing regulations under the statute, the Federal Highway Administration (FHWA) stated the following:

> The American National Metric Council and the Truck Trailer Manufacturer's Association have called attention to the practices of some Canadian trailer manufacturers to construct their trailers 2.6 meters wide. This dimension is equivalent to 102.36 inches. The FHWA is interested in knowing the advantages and disadvantages of allowing trailers of 102.36-inch widths on the roads as perceived by the State and the public, in general. The FHWA solicits comments on the question of allowing 102.36-inch wide trailers on the National Network. 48 FR 41280, September 14, 1983.

In issuing a final rule, the FHWA stated:

> Commenters on the subject of recognizing the approximate metric width equivalent of 2.6 meters (102.36 inches), on trailers were strongly in favor of such a position. Standardization of truck width on an international basis is seen as an important objective, which will serve to enhance international trade. The FHWA concurs in that assessment. The final rule as contained in Section 658.15 establishes the maximum width as 102 inches or its approximate metric equivalent of 2.6 meters. The FHWA believes the States can accommodate the rule without changing laws or violating congressional intent. 49 FR 23312, June 5, 1984.

The FHWA regulation, set forth at 23 CFR 658.15, states:

> No State shall impose a width limitation of more or less than 102 inches, or its approximate metric equivalent, 2.6 meters (102.36 inches) on a vehicle operating on the National Network, except for the State of Hawaii * * *

Thus, 102.36 inches is defined in the FHWA regulation as the "approximate metric equivalent" of 102 inches, and was determined by FHWA as being consistent with congressional intent as not being "more or less" than 102 inches. Particularly given this background, it is NHTSA's opinion that the 102.36-inch trailers being produced in light of the FHWA regulation are not considered to have a width of "more than 102 inches" within the meaning of Standard No. 121's applicability section. The agency also notes that previous **Federal Register** notices make it clear that NHTSA did not intend the criteria in section S3 to exclude typical configuration vehicles from Standard No. 121. For example, in establishing the 102-inch width exclusion, the agency stated that, in all states other than Hawaii, vehicles exceeding this width were allowed to operate on the highway only by permit. See 42 FR 42208, August 22, 1977.

While it is NHTSA's opinion that the 102.36-inch vehicles are not excluded from Standard No. 121, it agrees that the applicability of the standard to those vehicles should be clarified.

While clarifying the standard's applicability could be achieved through amending S3(a) to expressly refer to the 102.36-inch trailers, the agency believes that a better approach would be to eliminate the exclusion altogether. The agency has tentatively concluded that it is not necessary to retain the width exclusion. NHTSA is unaware of any vehicles wider than 102 inches or 102.36 inches that do not come within one of section S3's other exclusions. The agency believes that those exclusions are sufficiently comprehensive to continue to exclude all vehicles whose function or construction result in restricted highway operation and for which compliance would be very difficult.

Accordingly, NHTSA is proposing to delete section S3's width exclusion. The agency specifically requests comments on whether any vehicles wider than 102 inches (or 102.36 inches) are being produced that do not come within one of the standard's other exclusions and on whether there are any other reasons to maintain a width exclusion. If any commenters favor maintaining a width exclusion, the agency requests comments on the appropriate width (e.g., more than 102.36 inches, 103 inches, etc.) and an explanation of the need for that particular width.

The proposed effective date is 30 days after publication of a final rule in the **Federal Register**. NHTSA believes there is a good cause for an effective date within that time period since the proposed amendment would clarify the standard's applicability.

The agency has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. As indicated above, the proposed amendment would clarify Standard No. 121's applicability to vehicles of 102.36 inches and is not believed to affect the applicability of the standard to any other vehicles. The agency has also determined that the effects of the proposal are so minimal that a full regulatory evaluation is not required.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. I certify that the proposed amendments would not have a significant economic impact on substantial number of small entities. For the reasons stated above, the proposed amendment would clarify Standard No. 121's applicability to vehicles 102.36 inches wide and is not believed to affect the applicability of the standard to any other vehicles. Thus, neither small businesses, small organizations, nor small governmental units would be affected by the proposed amendment.

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not have any significant impact on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be sutmitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S3 would be revised to read as follows:

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems. However, it does not apply to:

(a) Any vehicle equipped with an axle that has a GAWR of 29,000 pounds or more;

(b) Any truck or bus that has a speed attainable in 2 miles of not more than 33 mph;

(c) Any truck that has a speed attainable in 2 miles of not more than 45 mph, an unloaded vehicle weight that is not less than 95 percent of its GVWR, and no capacity to carry occupants other than the driver and operating crew;

(d) Any trailer that has a GVWR of more than 120,000 pounds and whose body conforms to that described in the definition of "Heavy hauler trailer" set forth in S4;

(e) Any trailer that has an unloaded vehicle weight which is not less than 95 percent of its GVWR; and

(f) Any load divider dolly.

Notwithstanding any language to the contrary, sections S5.3.1 S5.3.1.1, S5.3.2, S5.3.2.1, S5.3.2.2, S5.7.1, S5.7.3(a) and S5.7.3(b) of this standard are not applicable to trucks and trailers.

Issued on January 14, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1054 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Federal Indian Reservations and Ceded Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1988–89 hunting season.

SUMMARY: The purpose of this Notice of Intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1988–89 hunting season, under the interim guidelines implemented for this purpose in September 1985. A proposal must include the details described later in this document. The U.S. Fish and Wildlife Service (hereinafter the Service) also welcomes comments concerning this Notice of Intent.

DATE: Proposals and comments should be submitted as soon as possible and must be received by June 10, 1988.

ADDRESSES: All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240. A copy should be sent to the appropriate Service Regional Office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, Telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION:

Background

Beginning with the 1985–86 hunting season, the Service has employed interim guidelines described in the June 4, 1985 **Federal Register** (at 50 FR 23467) to establish special migratory bird hunting regulations on Federeal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tyribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such

hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approvals. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1988–89 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

It should be noted that the regulations that will be established for Indian tribes will include both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or near October 1 and includes most waterfowl species. Because final regulations for tribes for the 1988–89 hunting season must be established by September 1, 1988, the proposed and final rules for most tribal waterfowl seasons will be described in relation to the season dates, season length, and limits that will be permitted when final waterfowl hunting season frameworks are announced. For example, the daily bag and possession limits for ducks on most reservations in the Pacific Flyway will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks." This procedure is necessary because the early season will be underway before final frameworks for the late season are announced. The final rule for tribes will include the actual season dates, bag limits, etc., for species included in the early season because the final Federal frameworks will be established in time to include them in the final rule for tribes. In some instances, specific waterfowl regulations for a particular tribe or reservation also may be shown because they will be within the final Federal frameworks that will be established. However, for the reasons shown above, final regulations for most tribes will not inlcude exact details for waterfowl.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations will permit the States in the flyway in which the reservation is located.

Pertinent details in proposals received from tribes will be published for public review in a later **Federal Register** document. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1988–89 hunting season should submit their proposals as soon as possible, but not later than June 10, 1988. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

FISH AND WILDLIFE SERVICE REGIONAL OFFICES

(Address Regional Director, U.S. Fish and Wildlife Service)

States	Address	Telephone No
California, Hawaii, Idaho, Nevada, Oregon, Washington	Lloyd 500 Bldg., Suite 1692, 500 NE Multnomah Street, Portland, OR 97232	503/231-6118
Arizona, New Mexico, Oklahoma, Texas	P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103	505/766-2321
Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin	Federal Building, Fort Snelling, Twin Cities, MN 55111	612/725-3563
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee	Richard B. Russell Federal Bldg., Room 1200, 75 Spring Street SW., Atlanta, GA 30303	404/331-3588
Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia	One Gateway Center, Suite 700, Newton Corner, MA 02158	617/965-5100
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming	P.O. Box 25486, Denver Federal Center, Denver, CO 80225	303/236-7920
Alaska	1011 E. Tudor Road, Anchorage, AK 99503	907/786-3542

Authorship

The primary author of this Notice of Intent is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually may be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended.

Date: January 15, 1988.

Marvin P. Duncan,

Acting Director.

[FR Doc. 88-1127 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Community Service Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of funds; Student Community Service Projects.

The Division of VISTA/Student Community Service Programs, ACTION, announces the availability of funds for fiscal year 1988 for new VISTA/Student Community Service grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.)

Application kits and technical assistance on grant application preparation are available from the ACTION State Office. Two completed application forms, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 PM local standard time on March 21, 1988. Any application received after that date will not be considered for Fiscal Year 1988 funding. However, applications post-marked 5 days before the deadline date will be accepted for consideration.

Background of Notice of Final Guidelines of Student Community Service Program

The following Notice sets out the final guidelines under which Student Community Service Projects operate. This Notice replaces Student Service-Learning Program Guidelines which were published in the **Federal Register**, dated May 22, 1986 and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The Guidelines are divided into seven parts which deal with the overall program philosophy, as well as responsibilities of the sponsor, staff, volunteers and volunteer placement sites. It also includes basic data on the administration of a Student Community Service Project.

DATES: These guidelines took effect January 11, 1988. These guidelines are noted in the catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions.

These guidelines supersede Student Service-Learning Program Guideliens published in the **Federal Register**, dated May 22, 1986, and instructions and technical assistance provided to grants previously awarded under Title I, Part B of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

II. Purpose

Student Community Service Projects are authorized under Title I, Part B, section 111 and section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made avaliable to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours

of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in Part VI.

J. The grantee must ensure compliance with the restrictions outlined in Part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Availability of volunteer activities to students from all segments of society;

3. Applicants' accessibility to alternate resources, both technical and financial;

4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. Contact the ACTION State Office for specific instructions on how to fulfull this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedures for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA-Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewals for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR Part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, *Grants Management Handbook for Grantees*, which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

2. The number of volunteers participating in the project during the quarter.

3. The number of volunteer hours generated during the quarter.

4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteers assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A variable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged throught he utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognitioin and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Community Service Project Grantees

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) in any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) in connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff

member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested to required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of **ACTION Regional Offices**, along with the addresses of **ACTION State Offices** under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103–3002
ACTION State Office, Federal Bldg., Rm 306, 76 Pearl Street, Portland, ME 04101–4188
ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301–3939
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048–0206
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608–1507

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206

(Upstate New York)

ACTION State Office, U.S. Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207–2923

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106–2912
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd, Columbus, OH 43215–2888
ACTION State Office, US Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2998

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION Regional Office, 101 Marietta St., N.W., Suite 1003, Atlanta, GA 30323–2301
ACTION State Office, 2121 8th Avenue North, Rm 722, Birmingham, AL 35203–2307
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750
ACTION State Office, 75 Piedmont Ave., NE., Suite 412, Atlanta, GA 30303–2527
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capitol Street, Jackson, MS 39269–1092
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601–1739

Region V

ACTION Regional Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3889
ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604–3964
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis IN 46204–1922
ACTION State Office, Federal Building, Rm 339, 210 Walnut, Des Moines, IA 50309–2195

Region VI

ACTION Regional Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242–0696
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226–2799
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202–4507
ACTION State Office, Federal Building, Room 2508, 700 West Capitol Street, Little Rock, AR 72201–3291
ACTION State Office, Federal Building, Room 248, 444 S.E. Quincy, Topeka, KS 66603–3501
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009
ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026
ACTION State Office, 300 NW 5th, Suite 912, Oklahoma City, OK 73102–6093
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349
ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626–0101
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198

Region IX

ACTION Regional Office, 211 Main Street, Rm 530, San Francisco, CA 94105–1914
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671

(Hawaii/Guam/American Somoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1206

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103
ACTION State Office, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209–3416
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103.

(42 U.S.C. 4974)

Dated in Washington, DC on January 15, 1988.

Donna M Alvarado,

Director, ACTION.

[FR Doc. 88–1153 Filed 1–20–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 15, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Order 989—Raisins Produced From Grapes Grown in California
On occasion; Weekly; Annually
Businesses or other for-profit; Small businesses or organizations; 11,543 responses; 1,727 hours; not applicable under 3504(h)
Patricia Petrella, (202) 475–3920

New

• Farmers Home Administration
Request for Certification/State Mediation Loan Program
On occasion
State or local governments; 5 responses; 40 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Reinstatement

• Food and Nutrition Service
• Issuance Reconciliation Report
FNS–46
Monthly
State or local governments; 3,706 responses; 29,990 hours; not applicable under 3504(h)
Paul Jones, (703) 756–3385

Revision

• Agricultural Stabilization and Conservation Service
7 CFR Part 1430, Dairy Products—Dairy Termination Program
Annually
Farms; 15,800 responses; 2,633 hours; not applicable under 3504(h)
Clarence Domire, (202) 447–7673

• Animal and Plant Health Inspection Service
Brucellosis Program (9 CFR 51, 71, 78 and Cooperative Agreements)
VS 1–68, 4–1, 4–1D, 4–4, 4–6, 4–33D, 4–54D, 4–59, 4–108, A, B, C, 6–35, 1–23
Recordkeeping; On occasion; Monthly
State or local governments; Farms; Businesses or other for-profit
17,727,780 responses; 68,429 hours; not applicable under 3504(h)
Dr. Hobbs, (301) 436–5861

• Farmers Home Administration
7 CFR 1944–A, Section 502 Rural Housing Policies, Procedures and Authorizations
440–34, 1944–3, –4, –5, –6, –A6, –12, and –36
On occasion
Individual or households; Businesses or other for-profit; Small businesses or organizations; 818,600 responses; 457,640 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–1160 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–01–M

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Date, Time and Place: February 1 and 2, 1988, 8:00 a.m. at the Sheraton National Hotel Columbia Pike and Washington Boulevard, Arlington, Virginia.

Status: Open.

Matters To Be Considered:

On February 1 and 2 the Commission will begin the process of drafting recommendations.

Written Statements May Be Filed Before or After the Meeting With:

Contact person named below.

Contact Person for More Information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington, DC 20005 (202) 638–6222.

Signed at Washington, DC., this 13th day of January 1988.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 88–1079 Filed 1–20–88; 8:45 am]

BILLING CODE 3410–05–M

Commodity Credit Corporation

1987 Minor Kinds of Tobacco Price Support Levels

ACTION: Notice of determination of 1987 tobacco price support levels.

SUMMARY: The purpose of this Notice of Determination is to affirm the announcement made by press release on September 14, 1987 of the levels of price support for all eligible kinds of tobacco (except flue-cured and burley) for the 1987 marketing year. The levels of price support for these six kinds of tobacco are made in accordance with section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Kenneth M. Robison, (202) 447–5188. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more: (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistant Program to which this notice applies are: Title-Community Loans and Purchases; Number 10.051, as set forth in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR, Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views and recommendations received from tobacco producers and other interested persons pursuant to a Notice of Proposed Determinations which was published on April 21, 1987 (52 FR 13112).

Discussion

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1987 crop of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44; 54–55) and Puerto Rican filler (type 46) tobaccos, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1987 crop of a kind of tobacco shall be the level in cents per pound at which the 1986 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1987 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1986 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii). Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1987 crop of such kind of tobacco will be the 1986 level, adjusted by the difference between (plus or minus) the 1987 "basic support level" and the 1986 "basic support level." See calculations published at 52 FR 13112.

In addition, section 106(f)(6)(B) provides that to the extent requested by the Board of Directors of an association through which price support is made available to producers (producer association) the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve and marketability of tobacco.

During the comment period, which ended May 21, 1987, a total of 13 comments were received from producer associations, a State ASC committee, and individuals relating to the level of support for these six kinds of tobacco. There were seven comments recommending the price support levels be set at the proposed level (about 0.3 percent below the 1986 support level). One comment for Kentucky-Tennessee fire-cured and one comment for dark air-cured recommended the price support level be set at the proposed level tied to adjustments in the grade loan rates. One comment for Wisconsin binder tobacco recommended setting the price support level at 87.7 cents per pound. Two comments for Ohio filler tobacco recommended the price support level be set at 87.7 cents per pound, or lower, if a reasonable no net cost assessment fee was announced.

The 1987 production of these six kinds of tobacco is forecast to be significantly lower than in 1986 due to reduced acreage allotments. Growing conditions have been generally favorable but an early dry spring in the Kentucky-Tennessee region lead to variable setting dates. Thus, the fire-cured and dark-air cured crops are maturing at variable times. Use of these tobaccos are projected to decrease 5 to 7 percent below 1986, largely due to increased excise taxes and declining demand for smokeless tobacco products. Supplies of fire-cured, dark air-cured and cigar-binder and filler tobaccos are expected to remain excessive.

An analysis of the key factors used in determining the support level for each kind of tobacco for the 1987 marketing year follows the discussion of comments received.

Comments Received

Virginia Fire-cured Tobacco (Type 21)—The proposed level of support announced for Virginia Fire-cured tobacco (Type 21) was 119.6 cents per pound. Two comments were received, including one from the loan association recommending that the price support level be set at the proposed level (a 0.3 percent decrease from the 1986 support level).

The support use ratio of 1.7 for 1987 remains below normal because 2.5 million pounds of tobacco stocks were destroyed by a 1985 flood. The acreage allotment factor was reduced 10 percent and production is expected to be down about 5 percent. Due to declining production, market prices are expected to average more than 7 cents per pound above the support level. Accordingly, the level of support has been determined to be 119.6 cents per pound.

Kentucky-Tennessee Fire-cured Tobacco (Types 22–23)—The proposed level of support that was announced for Kentucky-Tennessee Fire-cured tobacco (types 22–23) was 123.8 cents per pound. Three comments were received. Two loan associations recommended setting the support level at the proposed level (a 0.3 percent decrease from the 1986 support level). One loan association recommended setting the support level at the proposed level with an adjustment of the grade loan rates.

The supply-use ratio of 4.0 is excessive. The acreage allotment factor was reduced 40 percent and production is expected to be down about 35 percent from 1986. Market prices were expected to be 17 percent above the support level. The inventory of the two Kentucky-Tennessee fire-cured tobacco associations represents approximately 0.9 year's use. Accordingly, the level of support has been determined to be 119.6 cents per pound.

Dark Air-cured Tobacco (Types 35–36)—The proposed level support that was announced for Dark Air-cured tobacco (types 35–36) was 195.4 cents per pound. Three comments were received. Two associations recommended setting the price support level at the proposed level (a 0.3 percent reduction from the 1986 support level). One association recommended setting the price support level at the proposed level with an adjustment of the grade loan rates.

The supply-use ratio of 4.5 is excessive. Declining demand has persisted and the acreage allotment factor was reduced 35 percent this year. Production in 1987 is expected to be down 30 percent from 1986. This reduction is expected to improve the supply-use ratio but it is likely to remain excessive. Inventories of the three associations through which price support is made available with respect to dark air-cured tobacco (types 35–36) are equal to almost two years' use (The Eastern Dark Fire-cured Association has 51.8 percent of CCC's loan stocks and its members accounts for 55 percent of production; the Western Dark Fire-cured Association has 17.7 percent of CCC's loan stocks and its members account for 14 percent of the production; and the Stemming District has 30.5 percent of CCC's loan stocks and accounts for 30 percent of the production). Accordingly, the level of support has been determined to be 105.4 cents per pound.

Virginia Sun-cured (Type 37)—The proposed level of support that was announced for Virginia sun-cured tobacco (type 37) was 105.6 cents per pound. Two comments were received recommending that the support level be set at the proposed level (a 0.3 percent reduction from the 1986 level).

The supply-use ratio of 2.3 is slightly below normal. The acreage allotment factor was held constant in 1987, but production is expected to be down 50 percent from last year due to low prices over the last few years. Based upon these conditions it has been determined that a tightening supply situation exists. Accordingly, the level of support has been determined to be 105.6 cents per pound.

Cigar Filler and Binder Tobacco (Types 42–44, 53–55)—The proposed level of support that was announced for cigar filler and binder tobaccos (types 42–44, 53–55) was 91.4 cents per pound. Three comments were received. One loan association recommended the support level be set at 87.7 cents per pound. Two comments from the Ohio loan association recommended reducing the support level if it is tied to a reduction in the no net cost fee.

CCC has determined that the excessive inventory of the association will necessitate an increased assessment. This kind of tobacco is largely bought from each producer at a flat price for the entire crop. Although the trade purchased 65 percent of the 1986 Southern Wisconsin tobacco (type 54) production at a premium above the support level 76 percent of the Northern Wisconsin tobacco (type 55) was pledged as collateral for CCC price support loans and 67 percent of the Ohio filler (types 42–44) was pledged as collateral for CCC price support loans. Even with a 5 percent acreage reduction, the 1987 supply-use ratio at 3.6 years use is still expected to remain excessive. Accordingly, the level of support has been determined to be 91.4 cents per pound.

Puerto Rican Filler Tobacco (Type 46)—The proposed level of support that was announced for Puerto Rican filler tobacco (type 46) was 75.0 cents per pound. No comments were received.

The supply-use ratio is 12.4, which is excessive. There is only one buyer who has usually purchased the loan tobacco by bid sale at less than the association's costs. In the face of declining demand, the poundage production quota, which is set by the Commonwealth, has not sufficiently restricted production so as to reduce loan stocks. To discourage production and to ensure no-net-cost to the taxpayer, the level of price support was sharply lowered in 1984 and a no-net-cost assessment of 52 cents per pound was initiated. However, since the Commonwealth subsidizes growers, the anticipated production response associated with lower grower returns is negated. Accordingly, the level of support has been determined to be 74.7 cents per pound.

MINOR KINDS OF TOBACCO: ESTIMATED PRODUCTION, SUPPLY, AND LOAN ACTIVITY 1987/88

(Million pounds)

Kind and type	1987/88 Production	1987/88 Total supply	1987/88 reserve supply	1987 Crop CCC loan collateral	1987/88 CCC loans as percent of production
Virginia fire-cured type 21	3.6	10.0	8.3	0.1	3
Kentucky-Tennessee fire-cured types 22–23	23.2	127.3	116.7	1.5	6
Dark air-cured, types 35–36	7.5	57.3	54.9	1.0	13
Virginia sun-cured, type 37	.1	.7	1.0	[1]	[1]
Cigar-filler and binder, types 42–44, 53–55	10.1	64.2	63.8	4.3	43
Puerto Rican type 46	.2	6.1	1.5 [2]	.2	100

[1] Negligible.
[2] Three times annual disappearance.

As noted in the above table, the supplies of four of these kinds of tobacco (Kentucky-Tennessee fire-cured, dark air-cured, cigar-filler and binder, and Puerto Rican) are currently in excess of the supply deemed adequate to meet domestic use and export needs. As a result of these excess supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans has also become ample to excessive. Supplies of Virginia fire-cured and Virginia sun-cured are not excessive.

Determinations

Accordingly, it has been determined that the following support levels will be applicable for the following kinds of 1987-crop tobacco:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	119.6
Kentucky-Tennessee fire-cured, types 22-23	123.8
Dark air-cured, types 35-36	105.4
Virginia sun-cured, type 37	105.6
Cigar filler and binder, types 42-44, 53-55	91.4
Puerto Rican filler, type 46	74.7

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, 15 U.S.C. 714b, 714c, secs. 101, 106, 401, 403, 408, 63 Stat. 1051, as amended, 74 Stat. 6 as amended, 63 Stat. 1054, as amended, 1055 (7 U.S.C. 1441, 1445, 1421, 1423, 1428).

Signed at Washington, DC, on January 14, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-1094 Filed 1-20-88; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Georgia State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia State Advisory Committee to the Commission will convene at 8:30 p.m. and adjourn at 9:30 p.m. on February 8, 1988, at the Omni Hotel, One CNN Center, Atlanta, Georgia, 30355. The purpose of the meeting is to review topics for program activities, and to receive a staff report on the status of the Commission and state advisory committees.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Elaine Alexander or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1071 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Special Education Subcommittee of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on February 17, 1988, at Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to review information concerning minority suspension rates and the placement of minorities in Special Education in selected school districts in Iowa. The Subcommittee will also discuss future programs plans.

Persons desiring additional information should contact Committee Chairperson, Ralph S. Scott, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1072 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m., on February 10, 1988, at the Amway Grand Plaza Hotel, 187 Monroe, Grand Rapids, Michigan. The purpose of the meeting is to conduct orientation for a newly rechartered Advisory Committee, conduct program planning for the balance of FY 1988 and be briefed by city officials and community leaders regarding the status of civil rights in Grand Rapids.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Dennis L. Gibson, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1073 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules of Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 2:00 p.m., on February 18, 1988, at the Sheraton Regency, 750 North State Street, Jackson, Mississippi. The purpose of the meeting is to orient new members of the Committee, discuss civil rights issues of interest and concern among the membership and select projects for Fiscal Year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Catherine Palmquist, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1074 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on January 29, 1988, in Court Room 300 of the U.S. Customs House, 2 Chestnut St., Philadelphia, Pennsylvania. The purpose of the meeting is to discuss the status of the Commission; the Committee's draft report on the State law requiring the collection of data on bias-related incidents; and plans for two forums—one forum on special education in public schools, and a later forum on transportation barriers faced by the disabled.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1075 Filed 1-20-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA)
Title: Capital Construction Fund Deposit/Withdrawal Report
Form Number: Agency—NOAA 34-82; OMB—0648-0041
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,000 respondents; 500 reporting hours
Needs and Uses: The Fishing Vessel Capital Construction Fund allows participating fishermen to defer the tax on income into a fund for the purpose of constructing, acquiring, or reconstructing a fishing vessel. Fishermen participating in this program must submit annual information on their deposits to and withdrawals from their accounts. The information is used to check compliance with NOAA and IRS regulations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen 395-7340

Copies of the above information collection proposal can be otained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-1099 Filed 1-20-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00001." A summary of the application follows.

Applicant: Michael R. Mace d/b/a Mutual Trade Services (MTS), P.O. Box 20821, Billings, Montana 59104, Telephone: (406) 252-9700
Application No.: 88-00001
Date Deemed Submitted: January 7, 1988
Members (in addition to applicant): none
Summary of the Application:

Export Trade

Products

All products.

Related Services

Consulting, international market research, advertising, marketing, insurance, product research and design, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States

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(the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

MTS seeks certification to:

1. Enter into exclusive and/or nonexclusive agreements with Suppliers individually to act as an Export Intermediary wherein:

a. MTS agrees not to represent any competitors of such Supplier of Products or Related Services in any Export Market unless authorized by the Supplier; and/or

b. The Supplier agrees not to sell, directly or indirectly, through any other Export Intermediary into any Export Market in which MTS exclusively represents the Supplier as an Export Intermediary.

2. Enter into exclusive and/or nonexclusive agreements with other Export Intermediaries for the sale of Products or Related Services in any Export Market wherein:

a. MTS agrees to deal in Products or Related Services in any Export Market only through that Export Intermediary; and/or

b. The Export Intermediary agrees not to deal in particular Products or Related Services in any Export Market with any Export Intermediary other than MTS.

3. Contact Suppliers (including competing Suppliers) on a one-to-one basis to elicit price, volume, estimated delivery schedules, and other information relating to sales in the Export Markets.

4. Enter into exclusive and/or nonexclusive agreements with individual buyers in any Export Market to act as a purchasing agent with respect to particular transactions.

ACTION: Notice of Name Change by Holder of Export Trade Certificate of Review No. 86–00003.

On July 11, 1986, The Department of Commerce, with the concurrence of the Department of Justice, issued an export trade certificate of review to the International Shippers Association (51 FR 26031, July 18, 1986). The International Shippers Association has changed its name to First International Shippers Association. The Export Trade, Export Trade Activities, and Methods of Operation covered by the certificate of review are unchanged. The certificate of review remains in effect under the holder's new name.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

Date: January 5, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88–1162 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, application #87–00015.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Aluminum Recycling Export Association (AREA). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Unwrought alloys of aluminum ("aluminum alloys"), in the form of pig, ingot, rod, shot, drops, waffle or sows, made from aluminum base scrap or primary aluminum to conform to any or all specifications for the aluminum casting and steel making industries.

Export Trade Facilitation Services (as They Relate to the Export of Goods and Services)

Consulting, management, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, packing and crating, transportation, wharfing and handling, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, taking title to goods, and customs clearance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and Mexico.

Members (In Addition to Applicant)

Aluminum Smelting and Refining Co., Inc., Maple Heights, OH; Batchelder-Blasius, Inc., Spartanburg, SC; Roth Brothers Smelting Corp., East Syracuse, NY; and Gettysburg Foundry Specialties Co., Gettysburg, PA.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, AREA is certified to:

1. Enter into exclusive agreements with its Members to act as their Export Intermediary by providing Export Trade Facilitation Services. These agreements may include any or all of the following provisions:

a. Each Member independently will provide AREA with an estimate of what quantities and specifications of aluminum alloys it will make available for export through AREA, provided, however that each Member agrees to commit a minimum of 40,000 pounds per year for export through AREA.

b. AREA can agree to purchase aluminum alloys from its Members.

c. AREA will market and sell the aluminum alloys, either directly or through Export Intermediaries other than AREA, to such purchasers in the Export Markets, at such prices, and on such terms as AREA shall determine.

2. Purchase aluminum alloys from, and determine the prices of aluminum alloys which AREA will pay to, Member (and other) suppliers.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of aluminum alloys in the Export Markets.

4. Participate in meetings with one or more Member suppliers to deliver and discuss, or otherwise exchange, information with Member suppliers regarding:

a. The prices that AREA has charged or will charge in the Export Markets for each Member supplier's aluminum alloys;

b. The type, quality, and quantity of aluminum alloys available from Member suppliers for export;

c. For specific transactions and on a transaction-by-transaction basis, delivery dates, terms of sale, and other information necessary to arrange and complete export sales of the aluminum alloys;

d. General economic or business conditions in the Export Markets, including supply and demand conditions, prices and terms of sale in the Export Markets, and transportation and other costs incurred in exporting to the Export Markets;

e. AREA's sales results in the Export Markets, including orders shipped, costs of doing business, and other information relating to AREA's business in the Export Markets;

f. For specific transactions and on a transaction-by-transaction basis, quantities and prices of aluminum alloys purchased from each Member supplier for export, and the terms and conditions under which such purchases were made;

g. Matters concerning AREA's organization, governance, financial condition and membership;

h. Market strategies for the Export Markets, and other issues relating to sales and Export Trade Facilitation Services in the Export Markets and AREA's export business;

i. Information about U.S. and foreign legislation and regulations, including Federal programs affecting sales and Export Markets.

5. Participate with all Member suppliers for the exclusive use of Member suppliers in statistical programs covering AREA's shipments, future orders, inventories and prices, provided, however, information disseminated to Members suppliers will be in an aggregated form.

6. Enter into agreements with customers in the Export Markets wherein AREA may agree in each case to sell aluminum alloys in the Export Markets only to such customers, and/or such customers may agree not to purchase the alloys from any competitor of AREA.

7. Act as a shippers association to negotiate favorable transportation rates and other terms with individual ocean common carriers and individual conferences.

8. Prescribe the following conditions of membership to and termination from AREA:

a. AREA shall have the right to exclude firms or companies from membership in its organization.

b. AREA shall have the right to admit additional producers of aluminum alloys from time to time who:

(1) Receive a majority vote of AREA's Board of Directors;

(2) Make such capital contribution in the purchase of common shares of stock as is determined in good faith by AREA's Board of Directors. A fee shall be charged to cover initial start-up costs, including attorney's fees incurred by AREA's Members; and

(3) Agree not to compete with AREA, during the period of membership in AREA and for two years thereafter, in the export of aluminum alloys to particular Export Markets, except as shall be specifically agreed upon in writing between the new member and AREA.

c. Each member shall have the right to withdraw its membership from AREA by giving 180 days' prior written notice ot the remaining members. The remaining members shall then have the option to terminate AREA or pay the withdrawing member the value of its stock, as adjusted, on the date of its withdrawal.

d. Any member of AREA may be removed by a two-thirds vote of the Board of Directors with prior notice of the vote given to the member. Removal shall be for due cause, including, but not limited to, violation of AREA's Bylaws or agreements entered into by and between members, and loss of creditworthiness.

e. The withdrawing or removed member shall remain responsible for commitments made by such member and by AREA on behalf of such member prior to the effective date of such member's withdrawal or removal. The withdrawing or removed member shall reimburse AREA for all costs, including attorney's fees, incurred as a result of withdrawal or removal.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230

Date: January 14, 1988.

John E. Stiner,

Director, Officer of Export Trading Company Affairs.

[FR Doc. 88–1162 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600), to discuss the Surf Clam and Ocean Quahog Fishery Management Plan, as well as other fishery management and administrative matters. The public meeting will convene January 20, 1988, at 10:00 a.m., and will adjourn in the afternoon of January 21. The public meeting may be lengthened or shortened depending upon progress on the agenda, and the Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: January 15, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–1174 Filed 1–20–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Request for Modification; Mr. Brent S. Stewart, Hubbs Marine Research Center (P278C)

Notice is hereby given that the Applicant has applied in due form for a Modification Permit No. 579 to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:*
   Mr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109
2. *Type of Permit:* Scientific Research

3. *Name and Number of Marine Mammals:*
Northern elephant seal (*Mirounga angustirostris*) California sea lion (*Zalophus californianus*) Harbor seals (*Phoca vitulina*)

4. *Type of Take and Number Requested:*
The Applicant has requested authorization to (a) take by tagging, using numbered plastic cattle ear tags, an additional 2000 elephant seal pups annually on San Nicolas and San Miguel Islands (1000 each); (b) apply hot or cold brands (angles or numbers) on 2900 elephant seals and 60 harbor seals annually. Over a 4-year period, apply hot or cold brands to 3000 California sea lions; (c) conduct brief observations of the behavioral response of adult northern elephant seals to seismic impulses.

5. *Location of Activity:*
San Miguel, San Nicolas California.

6. *Period of Activity:*
4 Years

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: January 13, 1988.

[FR Doc. 1095– Filed 1–20–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Mapping Agency; Change in Date of Advisory Committee Meeting

SUMMARY The meeting of the Defense Science Board Task Force on Defense Mapping Agency scheduled for March 8–9, 1988 as published in the **Federal Register** (Vol. 52, No. 242, Page 47958, Thursday, December 17, 1987, FR Doc. 87–28978) will be held on March 9–10, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1123 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Cancellation of Meeting

SUMMARY The meeting notice for the Defense Science Board Task Force on Low Observable Technology for January 13–14, 1988 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87–21957.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1119 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Change in Date of Advisory Committee Meeting

SUMMARY The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for February 17–18, 1988 as published in the **Federal Register** (Vol. 52, No. 184, Page 35755, Wednesday, September 23, 1987, FR Doc. 87–21957) will be held on February 23–24, 1988. This notice supersedes the change previously submitted in **Federal Register** (Vol. 52, No. 203, Page 39264, Wednesday, October 21, 1987, FR Doc. 87–24307).

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense, January 14, 1988.

[FR Doc. 88–1122 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on March 23–24, May 4–5, and June 22–23, 1988 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1120 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Change in Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Military System Applications of Superconductors scheduled for January 19–20, February 24–25, March 17–18, and April 14–15, 1988 as published in the **Federal Register** (Vol. 52, No. 224, Page 44825, Friday, November 20, 1987, FR Doc. 87–26805) will be held at the Systems Planning Corporation, Arlington, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1120 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Military System Applications of Superconductors; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Military System Applications of Superconductors will meet in closed session on May 25–26, 1988 at the Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will enumerate and evaluate military system applications that may be enabled by the recent progress in high temperature superconductors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense, January 14, 1988.

[FR Doc. 88–1125 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force Subgroup to the Strategic Air Defense; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force Subgroup to the Strategic Air Defense will meet in closed session on February 1–2, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate and make recommendations on the use of technology for the extension of the Strategic Air Defense mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88–1121 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise; Change in Date of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on Technological and Operational Surprise scheduled for January 5–6, 1988 as published in the **Federal Register** (Vol. 52, No. 220, Page 43785, Monday, November 16, 1987, FR Doc. 87–26400) will be held on February 1–2, 1988.

January 14, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–1118 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet February 4, 1988 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 15, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–1097 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on February 2–3, 1988. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:30 p.m. on February 2; and commence at 9:00 a.m. and terminate at 4:00 p.m. on February 3, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide for the Navy an assessment of the potential military value of laser technology for weapon applications. The agenda will include technical briefings and discussions addressing military laser weapon programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: January 15, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–1098 Filed 1–20–88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.097]

Notice Inviting Applications for New Awards Under the Law School Clinical Experience Program for FY 1988

Purpose: Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

Deadline for Transmittal of Applications: March 31, 1988.

Applications Available: January 29, 1988.

Available Funds: The Congress appropriated $3,830,000 for this program for Fiscal Year 1988. The program legislation would permit the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for Fiscal Year 1988.

Priorities: The Secretary has chosen an absolute priority under 34 CFR 75.105(c)(3) and 34 CFR 639.11. Each application under this competition must:

1. Propose projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

2. Propose activities to provide service to persons who have difficulty in gaining access to legal representation.

The following estimates are based upon the FY 1988 appropriation:

Estimated Range of Awards: $25,000 to $72,000.

Estimated Average Size of Awards: $66,034.

Estimated Number of Awards: 58.

Project Period: 12 months.

Applicable Regulations: (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639. The amendments to these regulations were published in the **Federal Register** on April 16, 1987 (Vol. 52, FR 12508). (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732-4395 or Mrs. Barbara J. Harvey on (202) 732-4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB-3, Washington, DC 20202.

Program Authority: 20 U.S.C. 1134s-1134t

Dated: January 12, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88-1158 Filed 1-20-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Revised Draft Long Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of revised policy, announcement of public meetings, and request for comment. *BPA File:* LTIAP. BPA requests that all comments submitted in response to this notice contain the file designation LTIAP.

SUMMARY: BPA is announcing availability of its Revised Draft Long Term Intertie Access Policy (Draft LTIAP) for public review and comment. This policy revises the 1986 Proposed Long Term Intertie Access Policy (Proposed LTIAP) (57 FR 39904, November 3, 1986). This policy was distributed on December 15, 1987, but is referred to in this notice as the 1988 Draft).

BPA has revised the Proposed LTIAP as a result of the many comments received and additional discussions about the Intertie Access Policy. The Draft LTIAP reflects the results of these activities, and is a final phase of a multi-year process to determine the best long-term management of access to BPA's portion of the Intertie system between the Pacific Northwest and the Pacific Southwest.

A policy governing Intertie access will contribute to BPA's fiscal stability by ensuring that BPA has reliable access to its own transmission lines to sell and transmit surplus power from the Federal hydroelectric system. It will also provide fair and equitable distribution of excess Intertie capacity to Pacific Northwest utilities.

BPA anticipates the final Long Term Intertie Access Policy to be implemented on or about May 1, 1988.

Responsible Official: Mr. John A. Cameron, Jr., Intertie Access Policy Project Manager, is the official responsible for developing the policy.

DATES: Initial written comments are requested by 5 p.m. on February 5, 1988. Copies of these comments will then be mailed to those who have submitted initial comments. The written comments will also be made available to others who request them through BPA's document request line (see below for telephone number). Final comments on the policy and on the initial comments submitted to BPA should be received no later than 5 p.m. on February 19, 1988.

Public comment forums, at which BPA will discuss the Revised Draft LTIAP and receive oral comments, will be held in the following locations:

January 6-7, 1988, Holiday Inn—Airport, Portland, Oregon.
January 12, 1988, Holiday Inn—Airport, Portland, Oregon.
January 20, 1988, Sheraton Inn—Airport, Portland, Oregon.
January 27, 1988, Holiday Inn—Airport, Portland, Oregon.
February 3, 1988, Clarion Hotel—401 E. Millbrae, San Francisco, California.

All forums will begin at 9:00 a.m. and will continue until 4:00 p.m.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Cameron, Jr., Intertie Access Policy Project Manager, P.O. Box 3621, Portland, OR 97208, 503-230-5151. Or contact the Public Involvement office at the address listed above, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551
Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952
Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060
Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379
Mr. Terry Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, North, Seattle, Washington 98109, 206-442-4130
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6228
Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706
Mr. Tom Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

Part I. Explanation of BPA's Revised Draft Long Term Intertie Access Policy

Introduction

The proposed Long Term Intertie Access Policy ("LTIAP" or "1988 draft") included in this document reflects major changes in direction on provisions defining Assured Delivery, Formula Allocation, and Fish and Wildlife protection. The changes are intended to serve two primary purposes. First, the LTIAP as revised is designed to provide greater specificity to give utilities in the Northwest and California greater planning certainty. Second, the LTIAP as revised is designed to provide more revenue protection for BPA, while providing Assured Delivery for a wider variety of transactions than the 1986 draft LTIAP.

This narrative summarizes the issues raised by the proposed LTIAP and the current revision. Appendices containing more detailed information and examples follow the narrative. The revised LTIAP is presented for public comment, which BPA will consider in developing the final Long Term Intertie Access Policy in April 1988.

Assured Delivery. To address the needs of Northwest utilities and to protect BPA's revenue recovery, BPA has determined an amount of capacity for Assured Delivery transactions that will include an amount for Firm Sales based on a utility's Average Firm Surplus as computed in each utility's Exhibit B to the LTIAP. The amount includes 105 megawatts for Montana Power Company pursuant to section 9(i)(3) of the Northwest Power Act. An amount also will be set aside for Seasonal Exchanges. Provisions for capacity contracts and capacity-energy exchanges have been deleted because little interest has been expressed regarding these transactions.

Formula Allocation. Allocating access under Condition 1 based on the size of the California market is the major change BPAS made to the Formula Allocation proposal. This change responds to analyses BPA conducted of the impacts on BPA under Condition 1 of allocating to the available Intertie capacity versus allocating to the identified market. BPA would lose $16 million annually by allocating to Intertie Capacity rather than to the market.

Fish and Wildlife Protection. BPA included fish and wildlife provisions in the 1988 draft LTIAP to protect BPA's investments in facilities to protect, mitigate, and enhance fish and wildlife. The revised provisions reduce a utility's access to the Intertie for any new hydroelectric projects developed within "Protected Areas." The provisions also will apply to existing projects in Protected Areas as their licenses expire.

BPA will rely on intervention in Federal Energy Regulatory Commission hydro licensing proceedings under the Federal Power Act to resolve problems associated with its fish and widlife investments which may arise from existing projects prior to expiration of their licenses.

I. Assured Delivery

Amount. The 1988 draft policy determines an Assured Delivery maximum on the basis of both Northwest utility system operations and revenue impacts on BPA. In contrast to 1986 draft LTIAP which provided 420 MW for firm power sales only, BPA is now accommodating Seasonal Exchanges as well as firm power sales by providing 800 MW of Assured Delivery service. The figure of 800 MW is the approximate sum of Exhibit B firm energy surpluses for listed Scheduling Utilities (361 MW) [1] and an estimate of surplus summertime Firm Energy Load Carrying Capability (FELCC) that can be generated by the same utilities (440 MW). This amount of Assured Delivery has a deleterious, but tolerable, effect of $14 million on BPA annual revenues. Later in this document, we discuss proposed mitigation measures that help contain these revenue effects.

The summertime FELCC estimate is still subject to debate. Seasonal Exchanges could reduce the need for capacity additions in both the Northwest and the Southwest. However, BPA is concerned about the availability of FELCC for the critical month of August when the Northwest faces hydro operation problems. A strategy of using Seasonal Exchanges to defer Northwest capacity additions for wintertime loads could backfire if it resulted in a need for new firm resources in August. Seasonal Exchanges should not be allowed beyond the point where they begin to have negative effects on Northwest coordinated system operations. The definition of Seasonal Exchanges, appearing on page 3 of the 1988 revised draft policy, reflects these operational concerns.

To the extent ongoing studies demonstrate that 440 MW is too high an estimate of summertime surplus FELCC, the Assured Delivery maximum will be reduced in the final policy. However, if we have underestimated summertime FELCC, BPA revenue impacts may constrain may increase in the Assured Delivery maximum unless more rigorous mitigation measures are adopted.

Ideally, the final policy will include a set of firm energy surplus and summertime surplus FELCC numbers for each utility which reasonably balance BPA's revenue concerns with that utility's desire to exchange its summer surplus. Then, there would be little need for rationing provisions, described below, and utilities might not feel a need to conclude transactions quickly under the pressure of a first-come first-served policy.

However, to the extent revenue concerns cause BPA to limit Assured Delivery to an amount less than the combined total of firm sales and Seasonal Exchanges allowed on a utility by utility basis, some form of rationing would be required. Although no rationing provision is included in the 1987 revised draft, the final policy may contain such a provision.[2]

[1] This figure is the 1986-88 Pacific Northwest Utility Conference Committee estimated firm energy surplus, plus an additional amount made available to Montana Power Company in proposed settlement of any obligation under Northwest Power Act section 9(i)(3). See Exhibit B.

[2] The final policy may contain rationing provisions like the following:

"If timely requests for Assured Delivery exceed the maximum amounts specified in section 4(d), BPA will ration available capacity. Assured Delivery will be made available to Scheduling Utilities that meet all conditions for Assured Delivery and lack transmission interconnections with the Southwest, according to the following priorities:

(i) existing BPA firm transmission contracts for their remaining term,;

(ii) transactions involving section 9(i)(3) resources,

(iii) Seasonal Exchanges, and

(iv) firm power sales.

"For a given priority, if there is insufficient capacity available to satisfy all requests, each request will be reduced pro rata. No request in any lower priority will be satisfied. Once a request has been satisfied, in whole or part, with an Assured Delivery contract, that contract becomes an "existing BPA firm transmission contract" for purposes of determining priorities in any subsequent rationing exercise. After assured Delivery has been made available to Scheduling Utilities lacking Southwest interconnections, any remainder will be made available for Exhibit B transactions of utilities that come within the limitation of section 4(a).

"If Assured Delivery capacity is insufficient to satisfy demands of Scheduling Utilities for Seasonal Exchanges, BPA may offer to substitute itself for a Southwest utility and perform the Seasonal Exchange with the Scheduling Utility."

Other Firm Sale Provisions. A utility may increase its Exhibit B amount by purchasing surplus firm power either from another regional utility (which would reduce the selling utility's exhibit B amount) or from BPA. BPA may adjust a utility's Exhibit B amount to reflect a reduction in the utility's firm surplus power and may revoke any uncommitted Assured Delivery amount. *See* section 4(d)(2)(B)(ii). The definition of Qualified Northwest Resources includes new resources that are necessary to support sales receiving Assured Delivery service.

To allow for maximum use of the Intertie, section 4(d)(2)(C) permits a utility granted Assured Delivery to shape its firm power sale into the months of September through December by delivering up to 1.8 times its Exhibit B amount. During those fall months, spot market energy sales to the Southwest tend to be less than in the spring when the region's hydroelectric dams are more often near or in a spilling condition. If a utility shapes Assured Delivery energy into the fall, less firm energy may be shaped into remaining months of the operating year so that the total energy delivered does not exceed its annual Exhibit B energy maximum for firm sales.

Additional Assured Delivery. BPA concerns about the adverse revenue effects of Assured Delivery is lessened when the transaction involves a joint venture between itself and another utility. Section 4(c) of the 1988 draft imposes no capacity limits on Assured Delivery for transactions in which BPA is able to increase sales of its surplus firm power through transactions with other sellers. Assured Delivery for these types of joint sale transactions would not be rationed, even if limits were placed on transactions which did not include BPA as a seller.

One type of joint venture is the firm displacement sale in which a BPA sale of firm power displaces a Northwest generating utility's generating resources for sale to the Southwest. Another possible transaction, on which BPA invites comment, is a sale in lieu of exchange (section 4(c)(2)) in which BPA would use its winter surplus to satisfy Northwest seasonal power requirements.

The list of possible joint ventures is not intended to be exhaustive. This provision of the policy holds potential promise for utilities like Montana Power Company, which has surplus firm power in excess of its Exhibit B amount.

Mitigation. The 1986 draft LTIAP made MW of Assured Delivery service available to Northwest Scheduling Utilities with firm surpluses. The policy objective underlying this proposal was BPA's desire to assist Northwest utilities in disposing of their surpluses through long-term firm power sales to the Southwest. Assured Delivery was to be made available without regard to any adverse impact on BPA's ability to sell firm power or nonfirm energy to the same Southwest utilities. We now believe that there is a greater demand in the Northwest for Assured Delivery to facilitate Seasonal Exchanges than for firm power sales. In a major change of policy proposals, BPA is now proposing to accommodate Seasonal Exchanges and firm sales in a manner that reduces adverse revenue impacts on the agency.

Mitigation refers to conditions imposed on a utility for an Assured Delivery contract. Intertie Capacity not available to BPA because of Assured Delivery contracts executed between a Northwest utility and a Soutwest utility reduces BPA revenues and can inhibit BPA's ability to make its Treasury payments. During the operating year BPA often has power available to load the Intertie fully. Assured Delivery granted under these circumstances would reduce BPA's revenues. BPA recognizes the interest of utilities in gaining firm access to the Intertie. BPA is not willing, however, to jeopardize its fiscal responsibilities to the Treasury.

The first mitigation measure, contained in section 4(d)(4)(A), is to require that during any hour in which prescheduled energy sales are made under Condition 1 Formula Allocation procedures, a utility must deduct its Assured Delivery amount from its Formula Allocation amount. The total amount of Intertie access granted to each utility is equal to its Condition 1 formula allocation. If a utility's Assured Delivery amount is greater than its Formula Allocation, then that utility must purchase enough energy from BPA to make up the difference. BPA believes that this mitigation measure will partially offset the spot market revenues BPA will lose by granting Assured Delivery. The measure is based on comments received on the 1986 draft LTIAP.

The second mitigation measure, contained in section 4(d)(4)(B), focuses on Seasonal Exchanges by requiring all energy returns at prescheduled levels (South-to-North counterscheduling on the Intertie) be delivered to the point of interconnection with the Northwest at either the California-Oregon border or the Nevada-Oregon border. Furthermore, if BPA has invoked Condition 1 or Condition 2 Formula Allocations, cash out provisions [3] of Seasonal Exchange contracts become inoperative. This mitigation measure has the effect of increasing the North-to-South capability of the Intertie during Conditions 1 and 2 when energy is being returned and increasing the size of the market for BPA and Scheduling Utility sales.

These mitigation measures especially tend to reduce the adverse revenue impacts of Seasonal Exchanges on BPA and are critical to our decision to provide Assured Delivery for such transactions.

II. Formula Allocation

The 1988 draft policy continues the Formula Allocation methodology used in the Near Term Intertie Access Policy (NTIAP) of allocating adcess to the Intertie based on three possible conditions. Provisions for Condition 1 reflect the expiration of the Exportable Agreement at the end of 1988, the public comment received on the 1986 draft LTIAP, and the analyses completed by BPA.

In section 5(a) of the 1988 draft, BPA continues the special limitation on Formula Allocations when necessary to protect fish and wildlife. This provision was originally included in the 1986 draft LTIAP to address situations when BPA may wish to provide flows above those allowed under its own hourly allocation in order to address a specific fishery concern, or example on Vernita Bar, in the Hanford reach of the Columbia. BPA and several public utility districts are arranging, under specified circumstances, to provide increased flows between December and April to protect hatching and emerging fall chinook. Without increased flows, some redds (egg nests) would be left uncovered when flows are reduced to reflect lower demand for electricity. Section 5(a) allows BPA to market the additional electricity produced as a result of the flows BPA may provide to protect fish and wildlife.

Condition 1

Condition 1 under the NTIAP incorporated the pre-existing Exportable Agreement, which expires on December 31, 1988. Parties to the Agreement declare amounts of exportable energy—surplus energy available for export at the applicable BPA rate. If total declarations of exportable energy exceeds the available Intertie Capacity or the size of the Pacific Southwest market, whichever is smaller, each party to the Agreement is allocated access to the smaller amount based on its share of total declarations.

[3] Cash out provisions of Seasonal Exchange contracts allow a Northwest utility to accept dollar payments from a Southwest utility in lieu of actual energy returns.

The 1988 draft LTIAP proposed that upon expiration of the Exportable Agreement a condition of spill or likelihood of spill on the Federal Columbia River power system would trigger Condition 1. BPA and Northwest scheduling utilities could declare surplus energy available for export and BPA would allocate access to the Intertie by approximating the ratio of each declaration to the sum of all declarations multiplied by the available Intertie Capacity. Each Scheduling Utility's allocation would be limited by the ratio of its regional hydroelectric capacity to the total regional hydroelectric capacity of the Scheduling Utilities multiplied by the total of all declarations (the "Hydro Cap").

Subsequent to releasing the 1986 draft LTIAP for public review, BPA received and considered many comments and suggestions for allocation under Condition 1. The majority of respondents either favored continuing the provisions of the Exportable Agreement by negotiating a new agreement or implementing a similar Condition 1 allocation policy. The comments identified the Exportable Agreement as an equitable means of allocating access to the Intertie. Others recommended that the Exportable Agreement be allowed to terminate after December 31, 1988, and a similar agreement not be negotiated. A few commenters suggested that Condition 1 be eliminated upon expiration of the Exportable Agreement, identifying Condition 2 as an equitable means to allocate access to the Intertie. One commenter suggested that BPA pursue a policy wherein BPA would receive an allocation sufficient to market its surplus energy and allow access to others scheduling utilities on a first-come first-served basis.

The 1988 draft now incorporates provisions from both the Exportable Agreement and the 1986 draft LTIAP for allocation under Condition 1. A condition of spill or likelihood of spill on the Federal Columbia River Power System will determine Condition 1. In Condition1, BPA must be especially concerned with protecting its own sales, because sales foregone during spill conditions cannot be stored and made later. BPA and Scheduling Utilities will declare surplus energy available for export at the applicable BPA rate and receive a share of available Intertie Capacity approximating the ratio of each Scheduling Utilitiy's hydroelectric capacity to the region's hydroelectric capacity multiplied by the quantity of available Intertie Capacity. To the extent that the market for Pacific Northwest energy at BPA's price is less than the available Intertie Capacity, BPA will allocate access to the Intertie to equal that market. Once a utility receives an allocation it is free to negotiate a sale with any purchaser.

BPA believes that once the Exportable Agreement expires, these provisions for Condition 1 will balance BPA's long-term objectives of: (1) Managing the Intertie in a manner that provides sufficient access for BPA to market its surplus energy and ensures its ability to meet its financial obligations, including repayment to the Treasury; and (2) providing Intertie access for the region's scheduling utilities to market surplus electricity.

Allocating To The Market. Allocating access under Condition 1 based on the size of the Southwest market, as under the Exportable Agreement, constitutes the major change BPA made from the 1986 draft LTIAP Formula Allocation proposal. This change comes in response to analyses identifying the impacts on BPA under Condition 1 of allocating to the available Intertie Capacity or to the identified market. Appendix A shows an example of the difference in transmission capacity for BPA between allocating to the market or the Intertie.

The market for power in California is often less than available Intertie capacity because of minimum generation requirements. As the Intertie is expanded and Southwest utilities bring on new generation that cannot be displaced with spot market purchases, the frequency of this situation is expected to grow.

The heart of BPA's revenue problem in this situation is the Northwest Regional Preference Act, 16 U.S.C. 837, *et seq.*, which requires BPA to quote an energy price to Northwest utilities before making any sale to the Southwest. This creates a problem in which Northwest utilities, which are both BPA's customers and competitors, know BPA's price but we do not know theirs. In the Condition 1 situation where the size of the Southwest market is less than available Intertie Capacity, Northwest utilities are able to use this information to undercut the BPA price and use their allocations to reduce BPA hourly sales to a small Southwest market. If a "real time" BPA pricing iteration were even possible, BPA would still be required to announce its new price to the Northwest. Regional preference makes BPA a "sitting duck" for its competitors. Allocating according to market size reduces BPA's vulnerability by reducing the size of Scheduling Utility allocations.

In reviewing the allocation procedure, BPA set out to determine the revenue impacts of allocating Condition 1 access to the market or to the size of the available Intertie Capacity. Analyses indicate that BPA would lose approximately $16.4 million in 1989 by allocating to the Intertie rather than the market. This loss would decrease to $10.7 million in fiscal year 1992. Beyond 1992 the difference would increase, mainly due to projected fuel price increases.

Allocation to the market will not necessarily cause the Intertie to go unloaded. Purchasers with low decremental costs may choose to displace those resources with additional energy purchased at BPA's market expansion rates after the first allocations are made.

The Hydro Cap. BPA received comment on the provision to allocate to a Scheduling Utility based on its hydroelectric capacity ("Hydro Cap"). Allocating access to the Intertie based on a utility's hydroelectric capacity is consistent with the definition of Condition 1. When the Federal Columbia River power system is spilling or likely to spill, the maximum allocation to utilities with greater hydroelectric resources increases, thus decreasing the probability of wasting the resources by spilling. Under this provision, BPA's share of allocations would tend to increase due to its large hydroelectric capacity. BPA believes this will contribute to proper management of the Columbia River system and to efficient use of the region's resources. The specific wording for the provision has been changed from the 1986 draft LTIAP to reflect the allocation procedure more accurately.

The Hydro Cap is also a necessary element of Assured Delivery mitigation provisions and the Protected Area program, described below. Hydro Cap numbers give BPA and scheduling utilities a predictable, practical way of anticipating the amount of energy to be purchased under Condition 1 mitigation provisions (policy section 4(d)(4)(A)). Also, Hydro Caps appear to be the only practical way in which BPA can enforce the prohibition against hydroelectric development in Protected Areas (policy section 7(c)).

Conditions 2 and 3

Conditions 2 and 3 are similar to those in the NTIAP and the 1986 draft LTIAP.

Under Condition 2, when Condition 1 is not in effect and BPA and Scheduling Utilities declare amounts of surplus energy available for sales on the Intertie that exceed the available Intertie Capacity, a utility's allocation will approximate the ratio of its declaration to the sum of all declarations multiplied by the available Intertie Capacity.

Under Condition 3, when Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA's and Scheduling Utilities' allocations will equal their declarations. The remaining available Intertie capacity will be offered to extraregional utilities.

Policy Section 5(d)

BPA believes that there are sound justifications for pro rata allocation of Intertie capacity among Northwest sellers of surplus energy, which we describe below. However, section 5(d) of the 1988 draft proposes to end Condition 2 and 3 pro rata allocations for nonfederal utilities when the third AC Intertie expansion is completed, provided anticompetitive problems in the Southwest are cured by that time. BPA will explore the practicality of this proposal during the public process on the 1988 draft policy.

Revenue Justification. Anyone who has participated in a BPA rate case knows that the Northwest Power Act ties BPA's revenues and costs to the revenues and costs of Northwest utilities. Actions that depress utility revenues tend to reduce BPA revenues or increase BPA costs. This is a major concern for BPA, which lost $199 million in fiscal 1987 and $65 million in fiscal 1986.

The first concern relates to scheduling utilities that annually receive $160 million in residential exchange subsidies under Northwest Power Act section 5(c). *See Pacificorp* v. *FERC*, 795 F.2d 816 (9th Cir. 1986). Surplus energy sales are used as a credit in calculating a subsidy recipient's "average system cost" (ASC). A change in formula allocation procedures that reduces the revenues of exchanging utilities lowers the ASC credits and increases the subsidies paid by BPA.

The second concern relates to scheduling utilities which purchase some of their power requirements as preference customers of BPA. A change in formula allocation procedures that reduces the sales of BPA preference customers causes the latter to displace purchases from BPA with their own unsold energy. The so-called "availability charge" has been an incomplete and very controversial remedy to this displacement problem even after BPA's adoption of the charge was upheld in *City of Seattle* v. *Johnson*, 813 F.2d 1384 (9th Cir. 1987). Two more challenges to the availability charge are now pending before the court.

Antitrust Concerns. BPA records of decisions on earlier versions of the IAP speak to the problems of California utility market concentration and the resulting anticompetitive burdens placed on utilities that lack ownership interests in the southern portion of the Intertie. Certainly no California utility has an Intertie policy that provides anything near the access given by BPA.

Judge Norris' dissent in *CEC* v. *BPA* suggests that a remedy may be had through a treble-damage antitrust action against California Intertie owners. *California Energy Commission* v. *BPA*, Ninth Cir. Nos 84–7836, et al. (slip op. at 25, November 6, 1987). However, this course of action seems terribly impractical. Fifteen years after the Federal Energy Regulatory Commission initiated an investigation of anticompetitive transmission restrictions by California Intertie owners and four years after Administrative Law Judge Howe found the existence of anticompetitive problems, the case still awaits resolution and no remedies have been put into effect. *Pacific Gas & Electric Company*, FERC Docket No. E–7777. We do not believe that a district court treble damage action would move to any quicker resolution. BPA cannot wait 14 years for a cure to problems in its critical California market when BPA's average losses run to $100 million per year.

BPA's response is to put California concerns about competition to a test. When the third AC interconnection goes into commercial operation, the market power of existing California Intertie owners should be reduced because other California utilities will gain the access now denied them because of the absence of any California Intertie access policy. BPA seeks public comment on a proposal to cease allocating individual Intertie capacity amounts to non-Federal utilities during Conditions 2 and 3 after commercial operation of the third AC Intertie. However, this provision would not be operative if the Administrator determines that:

(1) even after commercial operation of the third AC, Intertie access continues to be impaired for California utilities presently lacking ownership in the southern portion of the Intertie, or

(2) Southwest utilities utilize some pro rata scheme to allocate energy purchases over the Intertie.

Formula allocations would continue for Condition 1 because they are necessary to enforce Assured Delivery mitigation measures and the 1988 draft policy's Protected Area program. *See* page 12, above.

During the remaining course of this proceeding, BPA is particularly concerned about quantifying any adverse impact on BPA revenues that might be associated with adoption of section 5(d).

Alternatively, commenters are encouraged to address the question of whether section 5(d) might be implemented sooner. Anyone commenting on this option should also address ways in which BPA might resolve its revenue and California transmission problems.

III. Fish and Wildlife Protection

"Protected Areas." BPA would prohibit Intertie access for new hydroelectric projects licensed within "Protected Areas," which are designated river reaches withdrawn from hydro development due to the presence of anadromous or high value resident fish, or wildlife. BPA also has designated areas where we have determined that investments in habitat, hatchery, passage, or other projects may result in the presence of anadromous fish. The Northwest Power Planning Council (Council) is developing a Protected Area program that may cover the entire Northwest. However, BPA's Protected Area designations would cover only the Columbia River basin.

Our focus is on hydro developments which may frustrate BPA investments of ratepayer funds to achieve the goals of the Council's Fish and Wildlife Program. The Northwest Federal power system expends over $100 million per yer on fish and wildlife, in actual expenditures and lost revenues. The policy would ensure that those expenditures and that existing productive habitat will not be harmed by future hydro development.

Initially, BPA would designate Protected Areas by using information collected through the Council's Hydro Assessment Study. This information includes:

- Anadromous fish data collected by state and Federal fish and wildlife agencies and tribes under Council direction.
- Resident fish and wildlife data collected by state and Federal fish and wildlife agencies, tribes, and interested parties such as hydro developers as part of the BPA-funded Pacific Northwest Rivers Study.
- The Pacific Northwest Hydropower Data Base and Analysis System which includes detailed information about 4,000 potential and existing hydro projects. This information was obtained using FERC data through a joint effort by BPA, the Council, and the Corps.

The Council's Hydro Assessment Study examined the effect of Protected Area designations on proposed hydro projects with license or permit applications pending before the Federal Energy Regulatory Commission (FERC).

According to Council staff, of a total 190 Columbia Basin hydro applications pending before FERC, 118 (62 percent) fall within Protected Areas. If constructed, the total capacity of those Protected Area projects would be 847 MW, 35 percent of the total Basin Hydro Capacity pending FERC license. The Council's analysis assumed that all projects in Protected Areas would be developed. Thus, the study tends to overestimate the power impacts because many of these potential projects might be frustrated by financing, engineering, environmental, or other barriers.

IF the Council adopts its proposed Protected Area program, the proposed policy would provide BPA consistency with the Fish and Wildlife Program—subject to BPA's review of Council changes. The 1988 draft policy largely eliminates utility fears that they never know with certainty whether a hydro resource will qualify, or continue to qualify, for access to the Intertie. However, some uncertainty remains because BPA or the Council may change Protected Area designations as the program evolves through completion of the Council's sub-basin and system planning efforts. Upon completion of the planning process, BPA will evaluate the fish and wildlife investments contemplated in the plans and may consider revisions to its Protected Area designations. These revisions may add or delete areas from the designations.

The 1988 proposed policy would not necessarily stop hydro development in Protected Areas. However, Protected Area designations would send an unambiguous, self-enforcing message to FERC, other regulator, and hydro developers that no Intertie access will be provided for projects constructed in areas of greatest concern to BPA and the Council. Southwest market access could not be reflected in any accurate assessment of need for a project. Neither could Southwest utility avoided costs be used in calculating the "avoided cost" rate for a small hydro facility under the Public Utility Regulatory Policies Act (PURPA). A utility purchasing a Protected Area PURPA resource may have a very low avoided cost to the extent lost revenues associated with reduced Intertie access are reflected in its calculation.

If a Scheduling Utility still proceeds to acquire a license or purchase power from a hydro project within a Protected Area, BPA will reduce the amount of that utility's power transmitted over the Intertie under both Assured Delivery and Formula Allocation provisions. These reductions will take place regardless of whether project power is transmitted on the Intertie. There is no need to trace power flows from a Protected Area resource.

Assured Delivery provisions affect long-term contracts, including Seasonal Exchanges, for transmission of firm power. If a Scheduling Utility builds or purchases power from a new hydro project located in a Protected Area, BPA will decrement that utility's Exhibit B by an amount equal to the nameplate capacity of the project. If the utility has already utilized its Exhibit B amounts, Assured Delivery contracts of that utility will be decremented.

Formula Allocations under Condition 1 depend on the amount of Northwest hydro resources owned or acquired by each utility. BPA will decrement the utility's "Hydro Cap" if a utility builds or purchases a hydro project in a Protected Area.

When FERC licenses expire on existing projects located within Protected Area, BPA will offer recommendations to assist the licensee in developing any necessary protective conditions to mitigate damage to BPA's fish and wildlife investments so that Intertie access may continue.

For all hydro—new or existing—*outside* Protected Area, BPA will intervene in FERC proceedings to protect its fish and wildlife investments.

BPA believes that the revised fish and wildlife provisions are consistent with its statutory authority. The United States Court of Appeals recently cited Northwest Power Act section 4(h)(10) as authority for BPA to restrict Intertie access for hydro projects adverse to fish and wildlife resources. *California Energy Commission* v. *BPA*, Ninth Cir. Nos 84–7836, et al. (slip op. at 22, November 6, 1987).

Major Differences From The 1986 Draft Policy. The Interim and Near-Term IAPs addressed fish and wildlife concerns by prohibiting access for new power resources completed after September 7, 1984. The 1986 draft policy was more selective in its approach. Assured Delivery could be denied prospectively if BPA determined that a resource was harmful. Utilities were required to declare which resources were used to support an Assured Delivery contract. However, there were no enforcement provisions to ensure that the resources listed were, in fact, those being used. BPA did not propose to decrement the amount of power transmitted under an existing assured delivery contract. Formula Allocations would be decremented only by an amount equal to the power produced by a new resource—damage caused by existing resources would not result in decrements to Formula Allocations.

The 1986 draft policy contained a presumption that existing hydro projects were not harmful to BPA's investments in fish or wildlife. To rebut that presumption, complaints were accorded a process by which BPA would consider challenges on a case-by-case basis. For a new project, challengers were asked to show that it was harmful to fish and wildlife regardless of potential effect on BPA fish and wildlife investments. If BPA determined that an existing project was harming its investments, BPA could enter into negotiations to address the problem, and ultimately deny access.

The utility community generally opposed the inclusion of such quasi-regulatory provisions, citing their belief that FERC should be the exclusive Federal regulator. Even if existing resources complied with applicable FERC license conditions, BPA could prohibit access if those resources detracted from fish and wildlife measures under the Northwest Power Act. Utility commenters suggested that if BPA continued to exercise regulatory oversight, it should adopt procedural protections akin to those in a Northwest Power Act section 7(i) hearing

Fish and wildlife interests claimed the provisions should be much broader and more detailed, providing a regional alternative and supplement to FERC regulation. In addition, they believe the sanctions did not adequately prohibit new and existing resources from damaging fish and wildlife since decrements applied to Formula Allocations did not prevent damage due to existing operations.

BPA considered removing all fish and wildlife provisions from the LTIAP and relying entirely on intervention in the FERC licensing proceedings. Under this approach, BPA would intervene in proceedings concerning both new and existing projects. Statutes governing FERC's review of the fish and wildlife effects have been revised since earlier IAPs were drafted. The Electric Consumers Protection Act (ECPA), enacted in 1986, increased FERC's responsibility for reviewing fish and wildlife issues and providing mitigation. Section 3(a) of ECPA amends Federal

Power Act provisions relevant to hydro licensing—including relicensing existing projects—as follows:

> In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, *shall give equal consideration to* the purposes of energy conservation, *the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat)*, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. [Emphasis supplied.]

Section 8(a) of ECPA effectively terminates the exemption of PURPA small-hydro projects from environmental regulation by FERC. Any small hydro project utilizing a "new dam" [4] must satisfy fairly rigorous conditions in order to claim an exemption from further regulation. PURPA section 210 does not apply to any new dam or diversion unless FERC finds that (1) the project will not have substantial adverse effects on the environment, including recreation and water quality; (2) the project would not be located on a protected river; and (3) the project meets the terms and conditions set by fish and wildlife agencies.

ECPA should increase FERC's attention to BP's fish and wildlife investments if BPA chooses to intervene in FERC proceedings. However, we believe that exclusive reliance on FERC intervention may not provide sufficient protection for BPA fish and wildlife investments. FERC has no explicit statutory authority to protect those investments and may ultimately license projects that could negatively affect those investments. The Protected Area concept provides an acceptable balance between the statutory perogatives of each Federal agency. It allows BPA to send a clear message to FERC and hydro developers, before the licensing process commences, about fish and wildlife matters of greatest fiscal concern to BPA. The potential fish and wildlife effects of new hydro projects will be considered at the time BPA designates its Protected Areas. The provisions give developers more certainty as they consider the economics for potential projects, without lengthy case-by-case BPA administrative process and without overlapping FERC's licensing activities.

An "existing project" is defined as one licensed before the date the policy would take effect. The 1988 draft IAP considers fish and wildlife effects attributable to existing projects within Protected Areas only at the time licenses for those projects expire. BPA may restrict Intertie access only when FERC initiates relicensing procedures and BPA and the project operator cannot agree to structural and operational modifications to mitigate potential damage to BPA fish and wildlife investments directly attributable to that project. The 1988 draft IAP also does not provide a means to prevent Intertie access to projects located outside Protected Areas.

To address concerns that enforcement provisions in the Draft LTIAP would not provide a significant deterrent, the revised LTIAP applies decrements to existing assured delivery contracts. This provision seeks to prevent utilities from developing potentially harmful resources in the future to support assured delivery contracts signed today. Consequently, assured delivery contracts between utilities and their customers likely would need to provide for a reduction in the power delivered if BPA determines that the utility has built or purchased power from a project located in a Potected Area.

The Draft LTIAP sought to decrement Formula Allocations if a utility operated a project harmful to BPA's fish and wildlife investments. Since utilities could overdeclare their Formula Allocation needs in an effort to blunt any decrements BPA might apply to their Formula Allocations, BPA determined that decrements applied to Formula Allocations were not an effective enforcement mechanism. Consequently, the 1988 draft IAP does not apply decrements to Formula Allocations under Conditions 2 and 3.

BPA has restructed the provisions affecting existing hydro projects because BPA believes the Council's Program and the FERC process adequately addressed BPA's investment concerns. Since adopting the Near Term IAP in 1985, BPA has received only one challenge concerning the operation of an existing project. That challenge, brought by the National Marine Fisheries Service (NMFS), concerned the Sullivan plant operated by Portland General Electric on the Willamette River. NMFS presented no data indicating how the Sullivan Plant could harm BPA's investments in fish and wildlife facilities. The reason BPA ultimately rejected the challenge, however, was that BPA determined that the project's power was not sold on the Intertie.

Appendix A—Allocation to Market vs. Intertie under Condition 1: The Difference in BPA's Available Capacity

Assumptions	
Intertie Capacity	4,000 MW
BPA price	15 m/kWh
Market estimate	3,000 MW
Hydro Capacities:	
BPA	20,000 MW
Non-Federal utilities.	10,000 MW
Allocate to Intertie	
Allocation:	
BPA	2,667 MW
Non-Federal utilities.	1,333 MW
Likely sales:	
BPA	1,667 MW @ 16 m/kWh
Non-Federal utilities.	1,333 MW @ 15.5 m/kWh

- Because BPA must announce its price first, the difference between the market and Intertie all comes out of BPA allocation.
- Note that because BPA's price is known, non-Federal utilities have no incentive to lower their price further than just below BPA's (unless the market at BPA's price is less than total non-Federal utilities' allocation).

Allocate to Market	
Allocations:	
BPA	2,000 MW
Non-Federal utilities.	1,000 MW
Likely Sales:	
BPA	2,000 MW @ 16 m/kWh
Non-Federal utilities.	1,000 MW @ 16 m/kWh

- Actual sales may differ from allocations. However sales above allocations by non-Federal utilities in any particular hour are subtracted from subsequent allocations.

Part II. Revised Draft Long Term Intertie Access Policy

Table of Contents

1. Definitions
2. Intertie Capacity Reserved for BPA
3. Conditons for Intertie Access
4. Assured Delivery for Intertie Access
5. Formula Allocation Methods
6. Access for Qualified Extraregional Resources
7 Fish and Wildlife Protection
8. Other Enforcement Provisions

Exhibit

A "Formula Allocation"
B "Intertie Capacity Available for Assured Delivery"
C "Existing Agreements for Intertie Capacity"
D "Protected Areas"

Section 1 Definitions.

1. "Administrator" means the Administrator of Bonneville Power Administration (BPA) and is used interchangeably with BPA.

[4] "New dam or diversion" means a dam requiring any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar devices).

2. "Administrator's Power Marketing Program" refers to all marketing actions taken and policies developed to fulfill BPA's statutory obligations. These actions and policies are based on exercises of broad authority to act, consistent with sound business principles, to recover revenue adequate to amortize Federal investments in the Federal Columbia River power and transmission systems, while encouraging diversified use of electric power at the lowest practical rates. In the Northwest, the Administrator's Power Marketing Program includes BPA's power supply obligations and programs to market surplus power in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power. In the Southwest, the Administrator's Power Marketing Program includes the Administrator's programs to market surplus Federal power at equitable prices and to assist in marketing the Northwest's non-Federal power surplus.

3. "Assured Delivery" means firm Intertie transmission service provided by BPA under a transmission contract to wheel power covered by a contract between a Scheduling Utility and a Southwest utility. Assured Delivery contracts may not exceed 20 years' duration. The service is interruptible only in the event of an uncontrollable force or a determination made pursuant to sections 7 or 8 of this policy. Assured Delivery service will be reduced only by the amount of transmission capacity of the Southwest later acquired by a Scheduling Utility through ownership or contract.

4. "BPA Resources" means Federal Columbia River Power System hydroelectric projects; resources acquired by BPA under long-term contracts, including resources acquired pursuant to sections 5(c) and 6 of the Northwest Power Act; and resources acquired pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act.

5. "Extraregional Utilities" are generating utilities, or divisions thereof, that do not provide retail electric service and own or operate significant amounts of generating capacity in the Northwest.

6. "FD Supported Sale" means that portion of a Scheduling Utility's firm sale equal, in amount and shape, to the utility's purchase of BPA Firm Displacement power.

7. "Formula Allocation" means the shares of Intertie Capacity made available to Scheduling Utilities and, under certain conditions, Extraregional Utilities for short-term sales of energy.

8. "Intertie" means the two 500-kilovolt (kV) alternating current (AC) transmission lines and one 1,000-kV direct current (DC) line, which extend from Oregon into California or Nevada, and any additions thereto identified by BPA as Pacific Northwest-Pacific Southwest Intertie facilities.

9. "Intertie Capacity" means the North to South transmission capacity of the Intertie controlled by BPA through ownership or contract; increased by power scheduled South to North, decreased by loop flow, outages, and other factors that reduce transmission capacity; and further decreased by Pacific Power & Light Company's schedules, under its scheduling rights at the Main substation (BPA Contract Nos. DE-MS79-86BP92299 and DE-MS79-79BP90091).

10. "Mitigation" refers to the conditions, other than rate schedule provisions, imposed by BPA on a Scheduling Utility in return for an Assured Delivery contract. Mitigation helps offset operational and economic problems, attributable to a Scheduling Utility's power transaction, that inhibit BPA's ability to meet its existing firm load obligations or to generate revenues. The Mitigation measures specified in this policy must be included in all Assured Delivery contracts, unless substitute measures are negotiated with BPA on a case-by-case basis.

11. "Nonscheduling Utility" means a non-Federal Northwest utility that owns a generating resource, but does not operate a generation control area within the Pacific Northwest. A Nonscheduling Utility requesting Intertie access for its resource must do so through the Scheduling Utility (or BPA) in whose control area the resource is located.

12. "Pacific Northwest" (or "Northwest") is defined in the Northwest Power Act, 16 U.S.C. 839e, as the states of Oregon, Washington, and Idaho; the portion of Montana west of the Continental Divide; portions of Nevada, Utah, and Wyoming within the Columbia River drainage basin; and any contiguous service territories of rural electric cooperatives serving inside and outside the Pacific Northwest, not more than 75 air miles from the areas referred to above, that were served by BPA as of December 1, 1980.

13. "Protected Area" means a stream reach within the Columbia River drainage basin specially protected from hydroelectric development because of the presence of anadromous or high value resident fish, or wildlife. Protected areas may also include stream reaches which could support anadromous fish if investments were made in habitat, hatcheries, passage, or other projects. This policy contemplates that BPA will implement, after review and possible modification, a comprehensive protected area program adopted by the Pacific Northwest Electric Power and Conservation Planning Council.

14. "Qualified Extraregional Resources" means:

(a) A generating unit located outside the Northwest that was in commercial operation on the effective date of this policy. However, the term excludes the portions of units covered as Qualified Northwest Resources.

(b) After the Administrator has determined that the capacity of the Intertie is rated at approximately 7,900 MW, all resources located outside of the Northwest, other than the portions of extraregional resources covered as Qualified Northwest Resources.

15. "Qualified Northwest Resources" exclude BPA Resources, but include:

(a) Generating resources located inside the Northwest that were in commercial operation on the effective date of this policy. Regarding generating resources owned or controlled by Nonscheduling Utilities, it must be demonstrated that a relationship had been established by that date with a Scheduling Utility or BPA to serve Northwest loads.

(b) Scheduling Utility extraregional generating resources dedicated to Northwest loads on the effective date of this policy. This term includes pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of the Colstrip No. 4 generating station, based on the ratio of their respective regional loads to their respective total loads; and Idaho Power Company's share of Valmy No. 2.

(c) New regional resources of Scheduling Utilities, except for hydroelectric resources located in Protected Areas, needed to support power contracts receiving Assured Delivery service under this policy.

16. "Resource" means an identified electric generating unit or stack of particular electric generating units identified to supply power or capacity for sale over the Intertie.

17. "Scheduling Utility" means the Northwest portion of a non-Federal utility that operates a generation control area within the Northwest.

18. "Seasonal Exchange" means a transaction that takes advantage of seasonal diversity between Northwest and Southwest loads through transfers of firm power, at a prespecified delivery rate, from North to South during the Southwest's summer load season and

from South to North during the Northwest's winter load season. Seasonal Exchanges may involve payments of additional consideration to reflect the relative seasonal values of power throughout the western United States. Seasonal Exchange schedules of Northwest utilities will be referred to as "deliveries," and schedules of Southwest utilities will be referenced as "returns." A Scheduling Utility must be able to support its summertime firm power deliveries with generating resources that are surplus to its Northwest requirements. The sum of a Scheduling Utility's energy resources for each month in which deliveries are made (with special concern for August) must exceed its corresponding Northwest loads by an amount sufficient to support the Seasonal Exchange.

19. "Section 9(i)(3) resource" means a Scheduling Utility resource that BPA has granted priority in receiving BPA transmission, storage and load factoring services.

Section 2. Intertie Capacity Reserved for BPA.

The Administrator reserves for BPA's use Intertie Capacity sufficient to:

(a) Deliver the full amount of BPA's surplus firm power,

(b) Perform obligations under existing BPA transmission contracts listed in Exhibit C, to the extent such obligations differ from the conditions specified in this policy, and

(c) Provide Assured Delivery service for transactions not subject to limits under Exhibit B to this policy.

Section 3. Conditions For Intertie Access.

(a) All Intertie access will be granted pursuant to the conditions and procedures of this policy, unless otherwise specified in the three existing BPA transmission contracts listed in Exhibit C.

(b) BPA will provide Intertie access only for BPA Resources and the Qualified Northwest Resources of Scheduling Utilities, except to the extent that Qualified Extraregional Resources are permitted access under this policy.

(c) BPA will provide Assured Delivery and allocate remaining Intertie Capacity when providing such access will not substantially interfere with operating limitations of the Federal system. Examples of these limitations, which reflect BPA's obligation to operate in an economical and reliable manner consistent with prudent utility practices, include:

(1) The BPA reliability criteria and standards,

(2) Western Systems Coordinating Council minimum operating reliability criteria,

(3) North American Electric Reliability Council Operating Committee minimum criteria for operating reliability, and

(4) Coordination agreements among BPA, scheduling utilities and other Federal agencies regarding resource and river operations.

(d) Any utility that has contractual or ownership rights to transmission capacity to Southwest utilities must be fully utilizing such capacity prior to receiving any access to BPA Intertie Capacity.

Section 4. Assured Delivery for Intertie Access

Subject to the limitations and other conditions in this section and in other sections of this policy, BPA has determined that it can provide Assured Delivery to Scheduling Utilities without causing substantial interference with the Administrator's Power Marketing Program.

(a) *Access For Utilities Owning Or Controlling Southwest Interconnections.* Assured Delivery is intended primarily for Scheduling Utilities which lack interconnections with the Southwest. A utility with transmission access to Southwest utilities, through contract or ownership, must utilize all such capacity on a firm basis before receiving any Assured Delivery. A utility is eligible for Assured Delivery only to the extent that the sum of its Exhibit B amounts exceeds its own transmission capacity to the Southwest.

(b) *Waiver Of BPA Service Obligation.* Assured Delivery contracts must contain a waiver of BPA's obligation under the Scheduling Utility's power sales contract, up to the amount of power for which firm Intertie access is provided.

(c) *Transactions Not Subject To Exhibit B Limits Under This Policy*—(1) *Joint Ventures.* Joint ventures between BPA and utilities, such as firm displacement contracts, which allow BPA to increase its sales of surplus power qualify for Assured Delivery.

(2) *Sales In Lieu Of Exchanges.* BPA may offer to satisfy Scheduling Utility demands for Seasonal Exchanges by selling them incremental amounts of surplus firm power during winter months. Upon committing to purchase such incremental firm power at negotiated prices that reflect BPA's lost opportunities for summer sales, a Scheduling Utility will qualify for Assured Delivery (with mitigation) to wheel an equal amount of firm capacity and energy over the Intertie during summer months.

(3) *Conditions.* A Scheduling Utility may request at any time the Assured Delivery of transactions identified in sections 4(c)(1) and 4(c)(2). Relevant contracts must be presented for review when Assured Delivery is requested. BPA will satisfy a request within 60 days after a Scheduling Utility has demonstrated satisfaction of the requirements of this policy.

(d) *Transactions Subject To Exhibit B Limits Under This Policy*—(1) *Maximum Amounts Of Assured Delivery.* BPA will provide 800 MW of Assured Delivery for transactions, limited by Exhibit B amounts, that are identified in this policy. BPA will determine the amount of any additional Assured Delivery increment after conclusion of the Third AC participation process. Moreover, the 800 MW amount may be subject to some reduction if the DC terminal expansion project is not completed on schedule.

(2) *Firm Power Sales*—(A) *Existing Transmission Contracts.* BPA will provide Assured Delivery for the remaining term of the firm power sale contract identified in Exhibit C to this policy.

(B) *Exhibit B amounts*—(i) *Current maximum.* Each Scheduling Utility's maximum Assured Delivery amount for firm sales equals its average firm energy surplus, shown in Exhibit B to this policy. Except for Montana Power Company (MPC), Exhibit B represents projected Scheduling Utility surpluses for the 1988–89 operating year. In satisfaction of all obligations to MPC under Northwest Power Act section 9(i)(3), MPC's Exhibit B amount is set at 105 MW to facilitate long-term sales of firm power from its share of the Colstrip No. 4 coal-fired generating station.

(ii) *Future changes.* BPA may, at its discretion, revise Exhibit B to reflect changes in the firm power surpluses of individual utilities; however, the 361 MW Exhibit B average firm surplus total is not subject to increase. Any unutilized Assured Delivery amount is revoked if, upon revision, a utility's individual Exhibit B amount has declined or if a utility has sold firm power to another utility seeking to increase its Exhibit B average firm surplus amount. A Scheduling Utility may increase its individual Exhibit B amount by purchasing surplus firm power from BPA or any Scheduling Utility with an Exhibit B amount.

(iii) *Nature Of Transactions.* BPA will not provide Assured Delivery for transactions which a Scheduling Utility cannot demonstrate to be other than an advance arrangement to sell nonfirm energy. Nonfirm energy transactions

may receive Intertie access only under section 5 of this policy.

(C) *Shaping.* Firm power sales eligible for Assured Delivery may be shaped within the following ranges. During the months of September through December, a Scheduling Utility may deliver firm energy at a rate up to 1.6 times its Exhibit B average firm surplus amount. During the months of January through August, a Scheduling Utility may deliver firm energy at a rate no greater than 1.0 times its Exhibit B amount. However, total delivered energy may not exceed the Exhibit B annual firm energy maximum.

(3) *Seasonal Exchanges*—(A) *Existing Contracts.* BPA will provide Assured Delivery for the remaining term of the Seasonal Exchange contracts identified in Exhibit C to this policy.

(B) *Exhibit B Amounts.* Subject to the individual utility Seasonal Exchange maximums in Exhibit B, BPA will provide Assured Delivery to facilitate Seasonal Exchanges of Qualified Northwest Resources. The current Exhibit B (representing Intertie Capacity Available for Assured Delivery) is subject to revision at the discretion of BPA.

(4) *Mitigation*—(A) *Firm Sales And Seasonal Exchange Deliveries.* During any hour in which BPA has invoked Condition 1 allocation procedures to preschedule energy deliveries, each utility's Assured Delivery amount shall be deducted from its formula allocation to determine its share of energy scheduled on the Intertie. If the remainder is negative for a given utility, then that utility must pruchase sufficient energy from BPA, at BPA's then-applicable rate, to make up the difference.

(B) *Seasonal Exchange Returns*—(i) *Returns.* Exchange contracts must specify that all return energy be scheduled to either the AC Intertie point of interconnection at the California-Oregon border ("COB") or the DC Intertie point of interconnection at the Nevada-Oregon border ("NOB"). Exchange contracts must also specify prescheduled determinations of hourly energy returns.

(ii) *Cash out.* During any hour in which BPA has invoked Condition 1 or Condition 2 allocation procedures to preschedule energy deliveries, a utility may not utilize the cash-out provisions of a Seasonal Exchange contract. The rate of a cash out during Condition 3 shall not exceed the rate at which the exchange return could have been scheduled.

(5) *Satisfying Requests For Assured Delivery.* To allow sufficient time for contract negotiation, initial requests under this policy will be accepted until February 1, 1989. Thereafter, BPA will negotiate and execute Assured Delivery contracts. If Intertie Capacity remains available for Assured Delivery of transactions limited by Exhibit B amounts, subsequent requests must be received no later than 120 days before commencement of the next BPA operating year. All relevent power contracts must be presented for review no later than the date on which a request for Assured Delivery is made. BPA will not entertain Assured Delivery requests for firm power sales in excess of a utility's Exhibit B maximum.

Section 5. Formula Allocation Methods.

(a) *Limits On Intertie Capacity Available For Formula Allocation.* Generally, BPA will determine Intertie Capacity available for Formula Allocations after first taking into account the amount of Intertie Capacity necessary to satisfy requirements of the Administrator's Power Marketing Program, existing transmission contracts listed in Exhibit C, and Assured Delivery contracts executed by BPA pursuant to this policy. However, during Condition 1, BPA will not consider the Assured Delivery contracts subject to mitigation requirements in determining available Intertie capacity. BPA may reduce any allocation, if additional Intertie Capacity is required to minimize revenue losses associated with actions taken to protect fish in the Columbia River drainage basin.

(b) *Northwest Scheduling Utility Requirements.* BPA will make utilities aware of scheduling requirements before the policy is implemented.

(c) *Allocation Methods.*—(1) *Condition 1*—(A) *Until December 31, 1988.* Intertie Capacity will be allocated pursuant to the Exportable Agreement (BPA Contract No. 14–03–73155), when applicable.

(B) *After December 31, 1988.* Condition 1 will be in effect when the Federal system is in spill or in likelihood of spill, as determined by BPA. Available Intertie capacity will be allocated pursuant to the following procedure:

(i) Each hour, the maximum Condition 1 allocations for BPA and each Scheduling Utility will be based on the ratio of their respective hydroelectric generating capacities to the Northwest's total hydroelectric generating capacity, multiplied by the available Intertie capacity (the "Hydro Cap"). To the extent that the declarations of some Scheduling Utilities are less than their respective Hydro Caps, BPA will allocate the remainder, pro rata, to itself and to other Scheduling Utilities whose declarations are greater than, or equal to, their respective Hydro Caps. Examples of allocations under Condition 1 are shown in Exhibit A.

(ii) During Condition 1, whenever the Southwest market at BPA's applicable rate is less than the available Intertie capacity, BPA will allocate no more capacity than that market amount.

(iii) In calculating each Scheduling Utility's Hydro Cap, BPA will reduce the hydroelectric generating capacities of individual utilities by any Protected Area decrements determined pursuant to section 7.

(2) *Condition 2.* When Condition 1 is not in effect, but BPA and Scheduling Utilities declare amounts of energy that exceed available Intertie capacity, Formula Allocations for BPA and each Scheduling Utility will approximate, by hour, the ratio of each declaration to the sum of all declarations, multiplied by the available Intertie capacity. An example of an allocation under Condition 2 is shown in Exhibit A.

(3) *Condition 3.* When Condition 1 is not in effect and when the total surplus energy declared available by BPA and Scheduling Utilities is less than the total available Intertie Capacity, BPA and Scheduling Utilities' allocations will equal their declarations. The remaining Intertie capacity will be made available to Extraregional Utilities. Examples of the two possible allocation procedures under Condition 3 are shown in Appendix A.

(d) *Modified Allocations Upon Commercial Operation of the Third A.C. Interconnection.* When the market power of California Intertie owners is reduced upon commercial operation of the third AC interconnection, BPA will cease allocating individual Intertie capacity amounts to non-Federal utilities during Conditions 2 and 3. Instead, after allocating sufficient capacity to itself, BPA will to the extent practicable make the remaining Intertie Capacity available as a block to Scheduling Utilities, and make any residual amount under Condition 3 available to Extraregional Utilities. However, this provision will not be operative if the Administrator determines that:

(1) Even after commercial operation of the third AC, Intertie access continues to be impaired for California utilities presently lacking ownership in the southern portion of the Intertie, or

(2) Southwest utilities utilize some pro rata scheme to allocate energy purchases over the Intertie.

Section 6. Access for Qualified Extraregional Resources.

(a) *Assured Delivery.* Any request for Assured Delivery of power from a Qualified Extraregional Resource would be granted only by contract which, in addition to the Mitigation measures specified in section 4(d)(4)(B), must include benefits to BPA such as increased storage, improved system coordination or operation, or other consideration of value commensurate with the services provided. However, Canadian Extraregional Utilities will not be provided Assured Delivery service until the Administrator has determined that the capability of the Intertie is rated at approximately 7,900 MW. Proposed contracts would be evaluated by BPA and reviewed publicly to determine whether it would cause substantial interference with the Administrator's Power Marketing Program. An environmental review would also be conducted.

(b) *Formula Allocation.* Under Condition 3, energy from Canadian Qualified Extraregional Resources will have access to the Intertie to the extent that Intertie Capacity is available in excess of the amount used by BPA, Scheduling Utilities, and energy from U.S. Qualified Extraregional Resources. BPA may provide Qualified Extraregional Resources with some additional Formula Allocation, if the utility owner agrees by contract either to increased participation in the Pacific Northwest's coordinated planning and operation, or to provide other consideration of value, apart from the standard BPA wheeling rate, commensurate with the services provided.

Section 7. Fish and Wildlife Protection.

(a) *Purpose.* Hydroelectric projects constructed in Protected Areas may substantially decrease the effectiveness of, or substantially increase the need for, expenditures and other actions by BPA, under Northwest Power Act section 4(h), to protect, mitigate or enhance fish and wildlife resources. Intertie access will not be provided to facilitate the transmission of power generated by any new hydroelectric projects located in Protected Areas, licensed after the effective date of this policy. Upon expiration of a Federal Power Act license for an existing project located within a Protected Area, BPA will assist the licensee in developing any necessary protective conditions so that the project may continue to qualify for Intertie access.

(b) *Implementation.* This policy contemplates that BPA will implement, after review and possible modification, a comprehensive protected area program adopted by the Pacific Northwest Electric Power and Conservation Planning Council. In the meantime, BPA will adopt the Protected Area designations compiled by the Council staff. Exhibit D lists those stream reaches, using Environmental Protection Agency stream reach codes, currently designated by BPA as protected areas.

(c) *Enforcement.* If a Scheduling Utility or Nonscheduling Utility owns, or acquires the output from, a hydroelectric project covered under the restrictions of section 7(a), BPA will reduce that utility's Assured Delivery capacity and the Formula Allocation made available to it under the Condition 1 Hydro Cap by either the nameplate rating of the project (in the case of ownership), or the amount of capacity acquired.

Section 8. Other Enforcement Provisions.

Whenever the terms of this policy are not being met, BPA will inform the appropriate utility of the nature of the noncompliance and actions that may be taken to achieve compliance. If noncompliance is not corrected within a reasonable period, BPA may impose an appropriate sanction. Sanctions include denial of access for a resource and refusal to accept schedules.

Exhibit A—Formula Allocation Example of Formula Allocation Under Condition 1

Assumptions Used in This Example

1. The Exportable Agreement has expired (post-12/31/88) and Condition 1 as proposed is in effect.
2. The available Intertie Capacity for Formula Allocations is 3300 MW.
3. No assured Delivery contracts under the LTIAP have been negotiated.
4. Extraregional utilities are not allowed to declare or to receive an allocation under this condition.

Example of a Declaration and Allocation

(1) Util.	(2) Hydro capacity[1]	(3) Max. allocation	(4) Formula declaration	(5) Initial allocation	(6) Declarations allocation	(7) Adjusted allocation	(8) Final allocation
IPC	1,660	171	1,000	171	171	16	187
MPC	193	20	400	20	20	2	22
PP&L	1,250	129	1500	129	129	12	141
PGE	1,150	119	0	0			0
PSP&L	1,800	186	700	186	186	17	203
WWP	1,140	119	600	119	119	11	130
CHN	270	28	25	25			25
CLOK	290	31	0	0			0
GRT	620	64	50	50			50
DGLS	200	21	100	21	21	2	23
COW	154	16	0	0			0
P.O.	0	0	0	0			0
SNO	103	10	0	0			0
SCL	1,820	188	850	188	188	17	205
TCL	684	71	0	0			0
EWEB	81	8	0	0			0
BPA	20,485	2,119	9,500	2,119	2,119	195	2314
	31,900	3,300	14,725	3,028	2,953	272	3,300

[1] Utility's regional hydro capacity amounts are tentative pending release of the 1987 Pacific Northwest Coordination Agreement data.

Description

Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Utility's total regional Hydroelectric Capacity.
Column 3 = Utility's maximum initial allocation computed on the

$$\text{Formula: } \frac{\text{Utility's regional hydro}}{\text{Intertie total regional hydro}} \times \text{available capacity}$$

Column 4 = Utility's declaration for Formula Allocation.
Column 5 = Initial allocation based on lesser of declaration (column 4) or allocations based on regional hydro capacity (column 3).
Column 6 = Utilities eligible for allocation adjustment due to other utilities not declaring energy available up to the amount of their column 3 allocations.
Column 7 = The pro rata adjustment to each initial allocation.

$$\text{Formula: } \frac{\text{eligible util. initial alloc.}}{\text{avail. total elig. util. initial. alloc. allocation}} \times \text{total capacity for adjusted}$$

Column 8 = Utility's final allocation, limited to column 2.

Example of Formula Allocation Under Condition 2

Assumptions used in this example:
1. Condition 1 is not in effect.
2. The hourly energy from Scheduling Utilities available at any price is greater than the available Intertie Capacity.
3. Available Intertie Capacity equals 3100 MW.

Assumptions:

Beginning total Intertie Capacity.	5200 MW
PGE capacity	700 MW
PPL capacity	300 MW
Loop flow and capacity reduction.	500 MW
Assured Delivery	600 MW
Available Intertie Capacity	3100 MW

4. Extraregional Utilities are not able to declare or receive an allocation in this condition.

Example of the declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	2,000	904
IOU$_1$	1,300	587
IOU$_2$	1,980	896
IOU$_3$	400	181
PA$_1$	100	45
PA$_2$	200	90
PA$_3$	900	407
Total	6,880	3,100

Description

Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Utility's energy declaration.
Column 3 = Final Formula Allocation for available Intertie Capacity.

$$\text{Formula: } \frac{\text{Utility's declaration}}{\text{X available Intertie Capacity Total declarations}}$$

Two Examples of Formula Allocation Under Condition 3

Assumptions used in example #1:
1. Scheduling Utilities do not declare enough energy to cover the available Intertie Capacity.
2. Scheduling Utilities and Extraregional Utilities (EXR) together declare energy in excess of available Intertie Capacity.
3. Available Intertie capacity equals 3100 MW. (Same assumptions as in Condition 2.)

Example #1 of the hourly declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	200	200
IOU$_1$	500	500
IOU$_2$	1,200	1,200
IOU$_3$	100	100
PA$_1$	50	50
PA$_2$	0	0
PA$_3$	250	250
Subtotal	2,300	2,300
EXR	1,200	800
Total	3,500	3,100

Assumptions used in example #2:
1. Scheduling Utilities and Extraregional Utilities together declare energy less than the available Intertie Capacity.
2. Available Intertie Capacity equals 3100 MW. (Same assumptions as in example for Condition 2.)

Example #2 of the hourly declaration and allocation:

(1)	Energy declaration (2)	Formula allocation (3)
BPA	0	0
IOU$_1$	500	500
IOU$_2$	600	600
IOU$_3$	100	100
PA$_1$	0	0
PA$_2$	0	0
PA$_3$	150	150
Subtotal	1,350	1,350
EXR	1,000	1,000
Total	2,350	2,350

Description for both example #1 and #2:
Column 1 = Utility declaring energy for Formula Allocation.
Column 2 = Each utility's energy declaration.
Column 3 = Final formula Allocation for Available Intertie Capacity.

Exhibit B—Intertie Capacity Available for Assured Delivery

A. Average Firm Surplus Allocations:

Utility	Average firm surplus (MW)
Chelan County PUD #1	10
Cowlitz County PUD #1	8
Douglas County PUD #1	[1] 0
Eugene Water and Electric Board	14
Grant County PUD #1	26
Seattle City Light	23
Snohomish County PUD #1	0
Tacoma City Light	[2] 3
Idaho Power Company	87
Montana Power Company	[3] 105
Puget Sound Power and Light	0
Washington Water Power	93
	361

NOTE: The Average Firm Surplus is taken directly from the PNUCC Northwest Regional Forecast of March 1987 except as noted below. It includes resources operational on the effective date of this policy. Export contracts are included as loads.

[1] Douglas County PUD is 2; but Douglas has previously requested to a show zero Average Firm Surplus.

[2] Tacoma Average Firm Surplus is shown in the Northwest Regional Forecast is in error.

[3] Montana Power Company's surplus was increased from 80 MW to 105 MW in settlement of obligations under Northwest Power Act section 9(b)(3).

B. Intertie Capacity Available for Seasonal Exchanges:

BPA will add numbers for utility Seasonal Exchange allocations when studies are completed on utility summer surplusses.

Exhibit C—Existing Agreements for Intertie Capacity

This is a list of existing BPA transmission contracts that were signed before the implementation of the Near-Term IAP and will continue to receive Intertie access under the Long-Term IAP.

Utility	BPA contract No.	Expiration date
Washington Water Power Co	DE-MS79-81BP90185	07/01/91
Washington Water Power Co	14-03-791101	08/01/88
Western Area Power Administration	DE-MS79-84BP91627	10/31/98

Exhibit D—Protected Areas

Exhibit D corresponds to the Northwest Power Planning Council protected area designations within the Columbia Basin, as specified in the Columbia River Basin Fish and Wildlife Program. Stream reaches designated as protected areas are identified by Environmental Protection Agency stream reach codes. Information about designations are contained on hard copy computer printouts or computer diskette copies which are available to the public upon request from the BPA Public Information Center—ALP, P.O. Box 3621, Portland, OR 97208. Toll-free numbers for the document request line are: 800-841-5867 for Oregon; 800-624-0496 for the other Western states; other areas may use commercial number 503-230-7334.

Issued in Portland, Oregon, on January 11, 1988.

Edward W. Sienkiewicz,

Acting Administrator.

[FR Doc. 88-1131 Filed 1-19-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Interest Rates on Violations; Policy

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice confirming and clarifying agency policy concerning manner of compounding interest on violations and other aspects of interest computation; schedule of interest rates.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives notice confirming and clarifying the manner of compounding interest and other aspects of interest computation described in an earlier Notice (46 FR 21412, April 10, 1981) (1981 Notice) in connection with remedial actions to eliminate or compensate for the effects of violations of the Mandatory Petroleum Price and Allocation Regulations, 10 CFR Parts 210, 211, and 212; and, for informational purposes, provides a comprehensive schedule of interest rates through March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert G. Heiss, Economic Regulatory Administration, Department of Energy, Room 5B-168, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5033.

SUPPLEMENTARY INFORMATION:

A. Introduction

The purpose of this notice is to meet the Federal Register publication requirements of section 552(a)(1) of the Administrative Procedure Act (APA), applicable to statements of general policy and rules of procedure.

B. 1981 Notice

On April 6, 1981, the Office of Enforcement (OE), ERA, issued a Notice of Change in Agency Policy Concerning Interest Rates on Violations. It announced that the agency had adopted a new interest rate policy, more nearly reflective of changes in commercial lending rates than its previous policy of computing interest charges on DOE regulatory violations at the rates used by the Internal Revenue Service (IRS) in assessing interest on delinquent federal income taxes, which by law could not be revised more frequently than every two years. The Notice stated that the new policy "should fully compensate for the value of funds unlawfully retained and deny to violators the benefit of the use of such funds over extended periods of time." The policy uses the rates employed by the Federal Energy Regulatory Commission (FERC), except in cases involving small gasoline retailers, for which another rate was prescribed. Beginning October 1, 1979, interest accrued on violation amounts is to be adjusted every quarter, based on the prime rate charged by commercial banks on short term loans, and compounded quarterly. The rate for future periods is determined every calendar quarter based on prime rate values determined by the Federal Reserve Board.

C. Compound Interest

1. Background

The 1981 Notice provided a detailed description of the interest policy in an Appendix to the Notice:

In those cases where full interest is computed as part of a CO [Consent Order] [1] or specified in an NOPV [Notice of Probable Violation] or a PRO [Proposed Remedial Order], interest should be computed as follows:

(1) At a rate of seven percent simple interest per annum prior to October 10, 1974;

(2) At a rate of nine percent simple interest per annum between October 10, 1974, and September 30, 1979; and

(3)a. At an average prime rate for each calendar quarter on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent of the prime rate value published in the Federal Reserve Bulletin for the fourth, third and second months preceding the first month of the calendar quarter.

b. The interest paid under clause (3)a. should be compounded quarterly.

Only subparagraph (3)b of the detailed description addresses the employment of the compound method of calculating interest. Pursuant to subparagraph (3)b, only interest accrued

[1] Consent Orders which allow payments to be made over a period of time, however, utilize the interest rate in effect on the date the Consent Order is signed by the firm, as stated elsewhere in the Appendix.

under (3)a (*i.e.*, interest accruing during the period commencing with the calendar quarter beginning October 1, 1979) is subject to compounding.

In a 1982 decision, *Twin Montana, Inc.*, 9 DOE Par. 82,576 (1982), on remand from FERC, the DOE's Office of Hearings and Appeals (OHA) recognized that the existing FERC interest policy applied compounding to all accumulated interest, including interest accumulated at the rates applicable prior to October 1, 1979. Nevertheless, OHA recognized that subparagraph (3)b of the Appendix to the 1981 Notice

> * * * makes clear that notwithstanding the FERC policy, the present DOE policy is that compounding is to apply only to the interest imposed for the period beginning October 1, 1979, coinciding with the application of the prime rate of interest.

Id. at 85,389. Furthermore, the Federal Energy Regulatory Commission subsequently upheld the rationality of ERA's different method of compounding. In *Propane Gas and Appliance Co. et al.*, 23 FERC Par. 61,113 at 61,264 (1983), FERC approved the Secretary of Energy's request that the Commission order the compounding only of interest accruing on or after October 1, 1979, in accordance with ERA's interest policy.

> The Commission finds that this proposed change should be adopted. Under the Commission's regulations, compound interest rates based on the prime were adopted for refunds by utilities, natural gas producers and pipelines beginning October 1, 1979, and the compound rates are applied to all interest prior to October 1, 1979, as well as interest accruing on or after that date. (footnote omitted) As DOE now explains, DOE has chosen not to compound interest accrued prior to application of the prime rate. While we have chosen differently with regard to refunds by utilities, producers, and pipelines, the time for the commencement of compounding can rationally be drawn at several points. Since DOE generally applies this date in all remedial orders * * *, we modify the proposed order accordingly.

Moreover, ERA has consistently applied this aspect of its interest policy in enforcement proceedings. *E.g., United States* v. *Exxon Corp.*, 561 F. Supp. 816 (D.D.C. 1983), *Aff'd*, 773 F.2d 1240 (Temp. Emer. Ct. App. 1985), *cert denied*, 474 U.S. 1105 (1986); *United States* v. *Sutton*, 795 F.2d 1040 (Temp. Emer. Ct. App. 1986), *cert. denied*, 107 S. Ct. 873 (1987); *Citronelle-Mobile Gathering, Inc.* v. *Herrington*, 826 F.2d 16 (Temp. Emer. Ct. App.), *cert. denied*, 106 S.Ct. 327 (1987); *Energy Reserves Group, Inc. et al.* v. *DOE, et al.*, Civ 77-1146, M.D.L. 378 (D. Kan., August 17, 1987). In *Exxon*, the District Court for the District of Columbia asssessed interest at the rates that would have applied to Exxon's overcharges had they been assessed in a DOE Remedial Order following administrative adjudication, 561 F. Supp. at 858; and, in an appendix to its opinion, quoted the Appendix to the 1981 Notice, including the compounding provision in subparagraph (3)b, as the applicable method of computation of interest adopted for purposes of the case, 561 F. Supp. at 864.

Three recent OHA decisions, however, *E.B. Brooks, Jr.*, 16 DOE Par. 83,020 (October 27, 1987) (*Brooks*), *Intercoastal Operating Co., et al.*, 16 DOE Par. 83,021 (October 29, 1987) (*Intercoastal*), and *R.P. Trading Co., et al.*, Case No. HRO-0231 (January 6, 1988), hold that ERA's interpretation of its interest policy was "inadvertent error" to the extent that it did not compound pre-October 1, 1979 interest. *Brooks*, 16 DOE at 86,224; *Intercoastal*, 16 DOE at 86,241; *R.P. Trading*, slip op. at 24-25.

2. Clarification

Because these recent decisions issued by OHA call into question the intended meaning of ERA's 1981 enforcement policy statement, ERA now confirms and clarifies its intent in this Notice in order to eliminate any uncertainty. ERA's intent as to the manner of compounding was expressed in subparagraph (3)b of the Appendix to the 1981 Notice. It was then, and remains now, ERA's policy that interest accruing prior to October 1, 1979, shall not be compounded, and thereafter compounding shall be employed on a quarterly basis.

The apparent source of OHA's conclusion that ERA misinterpreted its own policy is confusing about the interplay of two related but different concepet, namely, the rates to be applied, and the methods of computation of those rates. As the full text of the statement in the summary section of the 1981 Notice makes clear, ERA adopted the *rates* of interest employed by FERC. The 1981 Notice, however, does not say that ERA adopted the *method of computation* of interest employed by FERC. Indeed, subparagraph (3)b of the Appendix to the 1981 Notice sets forth a method of compounding which is different from the FERC method. Notwithstanding this difference, FERC ruled that ERA's method is rational, as discussed above.

Moreover, even if ERA's intent had not been clearly stated in the 1981 Notice, ERA's subsequent practice has created a consistent policy which ERA would only reconsider at this time in the face of exceptional circumstances. At the time ERA formulated its policy, many possible options existed which were not adopted, for example, compounding interest on a basis other than the calendar quarter, to name only one. An agency, however, should consider modification of a policy established many years earlier, and consistently adhered to since then, only if such action is compelled by a significant change in circumstances or other unusual situation which is not present in this circumstance.

ERA's intent, embodied in the 1981 Notice, was to seek interest computed in a manner and at rates which would achieve appropriate restitution. That intent was effected by the interest rates and methodology described in the Appendix, which continue to reflect a fair measure of restitutionary value.

Accordingly, in contested orders, ERA will continue to request that the OHA assess interest compounded in the manner specifically set forth in the 1981 Notice and as confirmed in this Notice.

D. Number of Days in Each Quarter

In computing interest, ERA has generally determined the number of days in each calendar quarter by using a year consisting of 365 days with no variation for leap years. The respective calendar quarters contain the following numbers of days:

Quarter	No. of days
Jan 1-Mar 31	90
Apr 1-June 30	91
July 1-Sept 30	92
Oct 1-Dec 31	92

E. Commencement Dates for Interest Calculations

In the Appendix to the 1981 Notice, ERA indicated that interest would be "computed from the date of the violations to the date of restitution * * *." For purposes of simplifying the computation, and in order to avoid possible disputes as to the exact date of occurrence of each regulatory violation, however, ERA has generally used the first day of the month following the month in which the alleged overcharges occurred as the commencement date, for refunds sought as restitution for overcharges alleged in a proposed remedial order. In contrast, payments made pursuant to remedial orders or consent orders accrue interest from the date payment was due or as specifically provided for in the particular order. Such orders generally specify a date certain or set forth a method by which a date certain can be determined.

F. Schedule of Interest Rates

In this Notice, for informational purposes, ERA is also providing a comprehensive schedule of interest rates through the end of calendar year 1987, as follows:

Violation period	Interest rate (per-cent)
Prior to October 10, 1974	7.00
Oct. 10, 1974–Sept. 30, 1979	9.00
Oct. 1, 1979–Dec. 31, 1979	11.70
Jan. 1, 1980–Mar. 31, 1980	14.28
Apr. 1, 1980–June 30, 1980	15.39
July 1, 1980–Sept. 30, 1980	16.22
Oct. 1, 1980–Dec. 31, 1980	11.74
Jan. 1, 1981–Mar. 31, 1981	14.03
Apr. 1, 1981–June 30, 1981	19.98
July 1, 1981–Sept. 30, 1981	18.27
Oct. 1, 1981–Dec. 31, 1981	20.31
Jan. 1, 1982–Mar. 31, 1982	18.46
Apr. 1, 1982–June 30, 1982	16.02
July 1, 1982–Sept. 30, 1982	16.50
Oct. 1, 1982–Dec. 31, 1982	15.72
Jan. 1, 1983–Mar. 31, 1983	12.82
Apr. 1, 1983–June 30, 1983	11.21
July 1, 1983–Sept. 30, 1983	10.50
Oct. 1, 1983–Dec. 31, 1983	10.83
Jan. 1, 1984–Mar. 31, 1984	11.00
Apr. 1, 1984–June 30, 1984	11.00
July 1, 1984–Sept. 30, 1984	11.84
Oct. 1, 1984–Dec. 31, 1984	12.87
Jan. 1, 1985–Mar. 31, 1985	12.44
Apr. 1, 1985–June 30, 1985	10.72
July 1, 1985–Sept. 30, 1985	10.44
Oct. 1, 1985–Dec. 31, 1985	9.59
Jan. 1, 1986–Mar. 31, 1986	9.56
Apr. 1, 1986–June 30, 1986	9.50
July 1, 1986–Sept. 30, 1986	8.81
Oct. 1, 1986–Dec. 31, 1986	8.19
Jan. 1, 1987–Mar. 31, 1987	7.50
Apr. 1, 1987–June 30, 1987	7.50
July 1, 1987–Sept. 30, 1987	7.80
Oct. 1, 1987–Dec. 31, 1987	8.25
Jan. 1, 1988–Mar. 31, 1988	8.85

G. Procedural Considerations

1. This Notice Is a Statement of Policy Within the Meaning of the Administrative Procedure Act, 5 U.S.C. 553 "General statements of policy," like interpretative rules and rules of agency organization, procedure, or practice, are excepted from the notice-and-comment requirements of section 553 of the APA by section 553(b)(A). The methods of determining interest set forth here are employed in consent orders, and in enforcement proceedings for the restitution of overcharges.

In addition, the methods of computing interest described in this notice are only imposed on firms by their consent or by order entered after agency adjudication, including notice and opportunity for hearing. Accordingly, they are matters of agency "policy", within the meaning of 5 U.S.C. 553(b)(A) both by their subject matter and by the manner in which they are employed, and the agency is also free to modify the policy relating to interest rates without following formal rulemaking procedures pursuant to 5 U.S.C. 553.

2. Applicability of Sections 501 (a), (b), and (c) of the DOE Organization Act

The rulemaking procedures imposed by Section 501 of the DOE Organization Act in addition to the requirements of 5 U.S.C. 553 do not apply to statements of policy such as that set forth herein. Congress, in the enactment of Section 501, did not intend to eliminate "the long-standing and judicially-approved APA exemption for rules of agency procedure." *Mobil Oil Corp.*, 4 DOE par. 83,014 at 86,189 (1979) (amendments to procedural rule governing issuance of remedial order), *aff'd*, 1981–1984 FERC Appeals Decision par. 46,093 (1980). *See also Amerada Hess Corp.*, 4 DOE par. 83, 021 (1979). Statements of policy, which are exempted from APA notice-and-comment requirements in the same clause as are rules of agency procedure, are likewise not subject to the public participation requirements of sections 501 (b) and (c).

Issued in Washington, DC, January 14, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88–1136 Filed 1–20–88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87–680–000 et al.]

Central Illinois Light Co. et al.; Electric Rate and Corporate Regulation Filings

January 12, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER87–680–000]

Take notice that on January 6, 1988, Central Illinois Light Company (CILCO) tendered for filing an amendment to its original filing of this Docket with regard to § 35.27 of the Commission's Regulations. The original filing was made to revise CILCO's Wholesale Rate MW–4, applicable to the Village of Riverton, Illinois, to reflect changes in CILCO's tax structure due to the Tax Reform Act of 1986. CILCO made this filing in voluntary compliance with the Federal Energy Regulatory Commission (FERC) Order No. 475.

Comment date: January 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Power and Light Company

[Docket No. ER88–24–000]

Take notice that on January 6, 1988, Kansas Power and Light Company (KPL) tendered for filing pursuant to deficiency letter dated December 9, 1987, additional workpapers to reflect projected reductions in revenue credits from off-system sales. These additional workpapers show the calculated impact of the changed Federal tax rate on the otherwise applicable rate for the off-system customers.

Comment date: January 26, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions, or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1102 Filed 1–20–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88–131–001]

Northwest Arkansas Resource Recovery Authority; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 13, 1988.

On November 30, 1988, Northwest Arkansas Resource Recovery Authority (Applicant), of 113 W. Mountain St., Fayetteville, Arkansas 72701 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Washington County, Arkansas. The electric power production capacity will be approximately 2.8 megawatts. The primary energy source will be municipal solid waste. The facility will be owned entirely by the Northwest Arkansas Resource Recovery Authority.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1103 Filed 1–20–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI71–714–003 et al.]

APX Corp. (Formerly Pan Eastern Exploration Co.) Corporate Name Change

January 13, 1988.

Take notice that on January 4, 1988, APX Corporation (APX), of P.O. Box 1330, Houston, Texas 77251–1330 filed an application pursuant to section 7(c) of the Natural Gas Act and § 154.94 of the Federal Energy Regulatory Commission's Regulations, notifying the Commission that Pan Eastern Exploration Company has changed its name to APX Corporation.

Effective November 2, 1987, the corporate name of Pan Eastern Exploration Company was changed to APX Corporation as evidenced by the Certificate of Amendent of Certificate of Incorporation dated October 22, 1987.

Notice is hereby given that all the certificates and related rate schedules as listed in the attached Exhibit "A" are hereby redesignated to reflect the corporate name change from Pan Eastern Exploration Company to APX Corporation.

Lois D. Cashell,

Acting Secretary.

EXHIBIT "A".—APX CORPORATION

Formerly Pan Eastern Exploration Company, FERC Gas Rate Schedule No. Now APX Corporation FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser	State	County/Parish
1	CI 71–714	Panhandle Eastern Pipe Line Company	Kansas	Morton.
2	CI 71–714	Panhandle Eastern Pipe Line Company	Texas	Carson
3	CI 71–714	Panhandle Eastern Pipe Line Company	Texas	Meade
			Kansas	Morton
4	CI 71–714	Panhandle Eastern Pipe Line Company	Kansas	Morton
5	CI 71–714	Panhandle Eastern Pipe Line Company	Oklahoma	Stevens
				Beaver
				Cimarron
6	CI 71–714	Panhandle Eastern Pipe Line Company	Kansas	Texas
				Grant
				Morton
7	CI 71–714	Panhandle Eastern Pipe Line Company	Oklahoma	Seward
8	CI 71–714	Northern Natural Gas Company	Kansas	Texas
9	CI 71–714	Colorado Interstate Gas Corporation	Texas	Stevens
10	CI 71–714	Northern Natural Gas Company	Oklahoma	Carson
11	CI 71–714	Panhandle Eastern Pipe Line Company	Oklahoma	Beaver
			Texas	Roger Mills
12	CI 78–342	Panhandle Eastern Pipe Line Company	Oklahoma	Hemphill
13	CI 77–136	Panhandle Eastern Pipe Line Company	Oklahoma	Woodward
14	CI 77–531	Panhandle Eastern Pipe Line Company	Oklahoma	Beaver
15	CI 77–816	Panhandle Eastern Pipe Line Company	Louisiana	Offshore
16	CI 78–725	Panhandle Eastern Pipe Line Company	Oklahoma	Woods
17	CI 78–1264	Panhandle Eastern Pipe Line Company	Texas	Offshore
18	CI 79–446	Panhandle Eastern Pipe Line Company	Texas	Offshore
19	CI 79–475	Panhandle Eastern Pipe Line Company	Texas	Offshore
20	CI 80–303	Panhandle Eastern Pipe Line Company	Louisiana	Offshore
21	CI 80–485	Panhandle Eastern Pipe Line Company	Louisiana	Offshore
22	CI 81–380	Panhandle Eastern Pipe Line Company	Louisiana	Offshore
23	CI 81–428	Panhandle Eastern Pipe Line Company	Louisiana	Offshore
24	CI 85–103–000	Panhandle Eastern Pipe Line Company	Texas	Offshore
25	CI 83–357–000	Panhandle Eastern Pipe Line Company	Texas	Offshore
26	CI 85–169–000	Panhandle Eastern Pipe Line Company	Texas	Offshore

[FR Doc. 88–1104 Filed 1–20–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL88–6–000]

Boston Edison Co. v. City of Holyoke Gas and Electric Department; Filing

January 13, 1988.

Take notice that on December 28, 1987, Boston Edison Company (Edison) tendered for filing pursuant to sections 205 and 307(a) of the Federal Power Act (16 U.S.C. 842d and 825f(a)) and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a Complaint against City of Holyoke Gas and Electric Department. Edison states that the Complaint was filed because Holyoke violated section 205 of the Federal Power Act and its contract with Edison, which is a filed Commission rate schedule, by its refusal to pay the monthly charges for the Pilgrim 1 nuclear unit in which Holyoke has a long-term entitlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the

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complaint shall also be due on or before February 13, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1105 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-142-000]

Columbia Gas Transmission Corp. Petition for Declaratory Order, Complaint and Request for Order Directing Compliance

In the matter of Columbia Gas Transmission Corp., Complainant v. Louisiana Intrastate Gas Corp., Respondent.

January 14, 1988.

Take notice that on December 17, 1987, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia, 25325-1273, filed in Docket No. CP88-142-000 pursuant to §§ 385.206, 385.207, 385.212, and 385.217 of the Commission's Rules of Practice and Procedure a petition for declaratory order, and complaint alleging that Louisiana Intrastate Gas Corporation (LIG) has failed to provide nondiscriminatory transportation as mandated by the Commission's regulations and to honor its contract with Columbia, and requesting that the Commission order LIG to provide such transportation for Columbia under the contract for certain reasons, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that on June 29, 1981, Columbia entered into a gas transportation agreement with LIG, an intrastate pipeline company,[1] whereby LIG agreed to transport gas for Columbia for a term of 15 years. It is stated that this agreement enabled Columbia to have delivered into its system gas which it purchased from certain of its producer/suppliers in the Moore-Sams Field in Point Coupee Parish, Louisiana. It is stated that on July 14, 1981, LIG filed the transportation agreement with the Commission in Docket No. CP81-416-000 and requested the Commission's authorization to perform the transportation service thereunder. It is further stated that transportation for Columbia was initiated by LIG on July 26, 1981, pursuant to the interim authorization of Section 311 of the NGPA, and subsequently the Commission on July 22, 1982, issued an order pursuant to section 311(a)(2) of the NGPA and § 284.127 of the Commission's Regulations authorizing LIG to transport up to 125,000 Mcf of gas per day for Columbia for the requested 15 year term.

Columbia states that after Commission authorization was granted, LIG continued to transport gas to Columbia under the 1981 agreement until October 9, 1987, when LIG summarily terminated the transportation. It is stated that on November 11, 1987, LIG wrote a letter to Columbia advising that the 1981 agreement was terminated as of October 9, 1987, and maintaining its position that this termination was in accordance with § 284.125(a) of FERC regulations, as the "grandfathered status" of the agreement terminated on October 9, 1987. Columbia states that LIG further represented that it was an open access transporter under the provisions of Order No. 436 and, accordingly, the transportation agreement became subject to the terms and conditions of Order No. 436 as of October 9. It is stated that LIG further advised that LIG would be willing to enter into an interim transportation agreement.

Columbia stated that by letter dated November 13, 1987, Columbia submitted to LIG a request for transportation under an interim agreement. It is stated that on November 16, 1987 Columbia and LIG executed the interim service agreement whereby LIG would provide essentially the same service as it provided under the 1981 agreement, except that the interim agreement was for a two-year term and included a provision under which LIG would have the right to terminate the agreement upon 30 days notice. It is further stated that on November 20, 1987, LIG recommended transporting gas for Columbia under the interim agreement.

Columbia requests that the Commission:

(1) Find that LIG illegally terminated transportation for Columbia.

(2) Find that the 1981 transportation agreement is in full force and effect and properly authorized under the Commission's Regulations.

(3) Order that LIG provide the transportation under the 1981 agreement for its full 15-year term.

(4) Order such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). LIG also is ordered to file its answer by that date. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Answers to the complaint shall be made under Rules 206 and 213. (18 CFR 385.206 and 385.213(1986)), subject to the time limitation stated above.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1106 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-45-033]

Inter-City Minnesota Pipelines; Filing

January 14, 1988.

Take notice that on January 6, 1988, Inter-City Minnesoa Pipelines (Inter-City) tendered for filing Substitute Thirtieth Revised Sheet NO. 4 to its FERC Gas Tariff, Origional Volume No. 1 pursuant to the Commission's November 20, 1987 letter order. The proposed effective date is November 1, 1987. Inter-City states that this revised tariff sheet reflects a one-part rate for Rate Schedule SG-1 in Inter-City's Western (GL-28) Zone.

Inter-City states that a copy of this filing has been served on all customers of Inter-City and on the Minnesota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before January 22, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1107 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-48-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 14, 1988.

Take notice that on January 6, 1988, Transcontinental Gas Pipe Line Corporation ("Transco") tendered for filing First Revised Sheet Nos. 113, 114, 126, 178, 318, 322, 364 and Original Sheet Nos. 114A, 126A and 178A to its FERC Gas Tariff, Second Revised Volume No. 1.

The proposed effective date of the revised tariff sheets is May 1, 1988.

Transco states that the purpose of the filing is to revise its currently effective Rate Schedules GSS, LGA and LSS to include provisions which allow the Buyer under such Rate Schedules to inject certain quantities of gas purchased from third party sellers into storage pursuant to the provisions of each such storage Rate Schedule.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR, 385.211 and 385.214). All such motions or protests should be filed on or before January 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1108 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP88-7-000]

Transcontinental Gas Pipe Line Corp.; Complaint

January 14, 1988.

In the matter of Transcontinental Gas Pipe Line Corp. v. Challenger Minerals, Inc., LGS Exploration Inc., et al., Decalta International Corp., et al., Santa Fe International Corp., and Enstar Corp., et al.

Take notice that on December 18, 1987, Transcontinental Gas Pipe Line Corporation (Transco) filed with the Commission a complaint against five independent producers, namely Challenger Minerals, Inc.; LGS Exploration, Inc., et al.; Decalta International Corporation, et al.; Santa Fe International Corporation, et al.; and Enstar Corporation, et al. (hereinafter referred to as Respondents). Respondents sell gas to Transco under five separate contracts. The complaint alleges that certain take-or-pay provisions as well as specific minimum take provisions contained in these contracts are unjust, unreasonable and unduly discriminatory under section 5 of the Natural Gas Act (NGA), and therefore are inoperative and of no force or effect. Transco requests the Commission to exercise its authority under section 5 of the NGA to determine the quantity and take provisions which would be just and reasonable for each contract, and to include as part of the makeup provisions of each contract the requirement that the seller deliver prepaid volumes at times and in quantities acceptable to the buyer, and repay all unrecoupable take-or-pay payments.

Transco asserts that the five contracts are objectionable because their high take-or-pay requirements coupled with their high prices restrain competition and prevent the free operation of supply and demand. Transco argues that four Respondents seek a windfall by seeking to be paid more than once for their gas, and that one Respondent (Challenger Minerals, Inc.) seeks a windfall in that it demands 100% takes of its gas because of alleged drainage, while demanding a price which makes the gas unmarketable. Transco urges the Commission to invalidate the take-or-pay provisions as it did with minimum commodity bills, asserting that take-or-pay provisions, like minimum commodity bills, serve to block the transmission of price signals to producers and to raise prices higher than the market would otherwise support. Transco argues that the adverse consequences of take-or-pay provisions have resulted directly from the elimination of minimum bills. According to Transco the elimination of the obligation of local distribution companies to maintain their traditional supply arrangements has made it impossible for pipelines to meet their take-or-pay commitments to producers.

Transco claims that respondents have refused to negotiate reasonable settlements of the take-or-pay provisions, and argues that if the problems presented by these provisions are not dealt with, the cost will fall not only on Transco and its customers but also on the vast majority of producers with whom Transco has settled. Transco argues that such a result would be unduly discriminatory. Transco requests that the complaint be set for an expedited hearing, with an initial decision to be issued within six months.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. Answers to the complaint are due within the same time period. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the complaint are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1109 Filed 1-20-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3317-8]

State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy; extension of public comment period.

SUMMARY: On November 24, 1987, EPA proposed its policy for approval of post-1987 ozone and carbon monoxide plan revisions for areas not attaining the national ambient air quality standards (52 FR 45044). The public comment period for that notice began on the date of publication and was scheduled to end on January 25, 1988. The EPA has received written request to extend the public comment period. The EPA has evaluated this request and is hereby granting a sixty (60)-day extension to the public comment period for the proposed policy notice.

DATES: Comments may now be submitted up to March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Brock Nicholson, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina, 27711, (919) 541-5517 or (FTS) 629-5517.

[1] LIG is managed and operated by Tenngasco Corporation, a Division of Tenneco, Inc.

Date: January 13, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-1114 Filed 1-20-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3318-2]

Florida; Marine Sanitation Device Standard for Destin Harbor (aka Old Pass Lagoon) Within the State

On October 9, 1987 (52 FR 37839), notice was published that the State of Florida has petitioned the Administrator, U.S. Environmental Protection Agency, to determine that adequate facilities for the safe and sanitory removal and treatment of sewage from all vessels are reasonably available for the waters of Destin Harbor. The petition was filed pursuant to section 312(f)(3) of Pub. L. 92-500.

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Florida certified that there are five pumpout facilities available to service vessels in Destin Harbor.

Pumpout Facility No. 1 is located on the dock of the East Pass Towers Yacht Club and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m. seven days a week and has a $2.00 fee per pumpout. Pumpout Facility No. 2 is on the dock at the Waterview Towers and will accommodate vessels with a draft of eight feet. This facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday and has a $2.00 fee per pumpout. Pumpout Facility No. 3 is on the dock at the Destin Harbor Resort and accommodates vessels with 10 feet drafts. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. There is no charge per pumpout at this facility. Pumpout Facility No. 4 is on the dock at the Sandestin Yacht Club and accommodates vessels with 15 feet drafts. The facility is open from 6:30 a.m. to 6:00 p.m. seven days a week. There is no charge per pumpout at this facility. Pumpout Facility No. 5 is on the dock at the Dolphin Point Condominium, and accommodates vessels with a draft of six feet. The facility is open from 8:00 a.m. to 4:00 p.m. each day except Sunday. The pumpout service at this facility is free. All five pumpout facilities discharge into the city sewage system.

Vessel usage of Destin Harbor includes 125 charter fishing vessels, 21 commercial fishing vessels and 190 recreational boats for a total of 336 vessels. The channel depth into Destin Harbor is currently 12 feet; therefore, the City is certifying that all vessels can be accommodated by the five pumpout facilities.

There were no comments received by the Agency on the merits of the petition prior to the deadline for receipt of comments.

Following an examination of the petition and its supporting formation, and the fact that no comments on the petition were received prior to the closing date stated in the October 9, 1987, **Federal Register** notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Destin Harbor, within the State of Florida. This determination is made pursuant to section 312 (f)(3) of the Pub. L. 92-500.

Lee A. DeHihns III,

Acting Regional Administrator.

January 11, 1988.

[FR Doc. 88-1115 Filed 1-20-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3319-3]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Science Advisory Board's Environmental Health Committee will be held on January 28-29, 1988, at the One Washington Circle Hotel, NW., Washington, DC 20037. The meeting will begin at 8:30 a.m. on January 28th and adjourn no later than 4:00 p.m. on January 29th. Based on the quick turnaround time the Agency needs on this review and the availability of the members, it is necessary to call this meeting on these datres.

The Committee will discuss draft reports on scientific reviews conducted by its Halogenated Organics Subcommittee on six health criteria and/or assessment documents including those for: para-dichlorobenzene, trichloroethylene, dichloramethane, polychlorinated biphenyls, 1-2-dichloropropane, and cis- and trans-dichloroethylene. The Committee will also receive four reports from the Drinking Water Subcommittee including: a review of the xylene health criteria document, an evaluation of the Office of Drinking Water's report to Congress on treatment technologies, a review of the scientific basis for filtration and coliform standards and an assessment of the water distribution research program. EPA staff will brief the Committee on a request for Science Advisory Board review of issues related to inorganic arsenic. The Committee will also hear reports of activities of the Office of Research and Development and conduct other committee business.

An agenda for the workshop is available from Ms. Renee Butler, Staff Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2552.

The meeting will be open to the public. Any member of the public wishing to attend, obtain information or otherwise participate in these meetings must contact Dr. C. Richard Cothern, Executive Secretary, Environmental Health Committee, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. on January 22, 1988.

Date: January 17, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 88-1268 Filed 1-20-88; 8:45a.m.]

BILLING CODE 6560-50-M

[FRL-3318-3; Public Notice No. 87FL115]

Extension of Comment Period and Period for Regional Action on Proposed 404(c) Determination To Prohibit, Deny, or Restrict the Specification or Use of Three East Everglades Areas as Disposal Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension or public hearing comment period and period for regional action on proposed 404(c) determination.

SUMMARY: On November 18, 1987, a public hearing was held in Homestead, Florida, pursuant to Public Notice No. 87FL115 issued October 16, 1987, 52 FR 38519. This hearing concerned a Proposed Determination by EPA Region IV published in that Notice to prohibit, deny, or restrict specification or three East Everglades wetlands properties described therein as disposal sites for dredged or fill materials under authority of section 404(c) or the Clean Water Act (33 U.S.C. 1344(c). At the request of the attorney representing the Henry Rem Estate, the owner of one of these wetlands properties, the post-hearing comment period provided for in 40 CFR 231.4(f) was extended until the close of business, December 21, 1987. Also the time period provided in 40 CFR 231.5(a) for Regional Action on the Proposed Determination was extended until January 22, 1988. To allow further time for Regional consideration of the administrative record, the time Period for Regional Action is now being further extended, under authority of 40 CFR 231.6, until close of business February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert F. McGhee, Chief Marine and Estuarine Branch, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347-2127.

Date: January 14, 1988.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88-1142 Filed 1-20-88; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Organization; Farm Credit System Financial Assistance Corp.

AGENCY: Farm Credit Administration.

ACTION: Notice; charter and articles of incorporation of the Farm Credit System Assistance Corporation.

SUMMARY: On January 11, 1988, the Farm Credit Administration (FCA) chartered the Farm Credit System Financial Assistance Corporation (the Financial Assistance Corporation) pursuant to § 6.20, Title VI, Subtitle B of the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987, Pub. L. 100-233 (1987). The purpose of the Financial Assistance Corporation is to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulties. The texts of the Charter and Articles of Incorporation are set forth below:

Charter—Farm Credit System Financial Assistance Corporation

The Farm Credit Administration hereby charters a corporation pursuant to § 6.20, Title VI, Subtitle B of the Farm Credit Act of 1971, as amended (the Act), to be known as the Farm Credit System Financial Assistance Corporation (the Financial Assistance Corporation). The Financial Assistance Corporation is an institution of the Farm Credit System and a Federally chartered instrumentality, the purpose of which is to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

By this Federal charter incorporating the attached original of the Articles of Incorporation of the Financial Assistance Corporation, the Farm Credit Administration hereby authorizes the Financial Assistance Corporation to exercise all powers duly conferred under the Act and the applicable regulations of the Farm Credit Administration promulgated thereunder, and the Articles of Incorporation of the Financial Assistance Corporation, as same shall be in effect.

In witness whereof, the Chairman of the Farm Credit Administration Board has executed this charter and caused the seal of the Farm Credit Administration to be affixed hereto, this 11th day of January, 1988.

Farm Credit Administration.

Frank W. Naylor, Jr.,

Chairman of the Board.

Articles of Incorporation of Farm Credit System Financial Assistance Corporation

Article I

Name

The name of the corporation is "Farm Credit System Financial Assistance Corporation," herein referred to as "the Corporation."

Article II

Duration and Office

1. *Duration.* The corporate existence of the Corporation shall commence on the approval of these Articles of Incorporation and the issuance of a charter by the Farm Credit Administration and shall continue until dissolved in accordance with law.

2. *Principal Office.* The principal office of the Corporation shall be located in the coterminous United States as determined by the Board of Directors.

Article III

Statutory Authority

The Corporation is established pursuant to § 6.20 of the Farm Credit Act of 1971, as amended (Act), and is an institution of the Farm Credit System and an instrumentality of the United States subject to regulation and examination by the Farm Credit Administration.

Article IV

Purposes and Powers

1. *Purposes.* The Corporation is formed for the sole purpose of carrying out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty.

2. *Powers.* To achieve the purpose stated above, the Corporation shall have the powers provided in the Act, including the following:

(a) To operate under the direction of its Board of Directors; and

(b) To adopt, alter, and use a corporate seal, which shall be judicially noted; and

(c) To provide for such officers, employees, and agents, including joint employees with the Funding Corporation, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons; and adopt a salary scale for officers and employees of the Corporation in accordance with the directives of the Board; and

(d) To prescribe by the Board its bylaws, not inconsistent with law, which shall provide for the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its general business is conducted; and the privileges granted by law are exercised and enjoyed; and

(e) To enter into contracts and make advance, progress, or other payments with respect to such contracts; and

(f) To sue and be sued in its corporate name and complain and defend, in courts of competent jurisdiction; and

(g) To acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership or property necessary and convenient to its business; and

(h) To obtain insurance against loss; and

(i) To modify or consent to modification of any contract or agreement to which it is a party or in which it has an interest under the Act; and

(j) To borrow from any commercial bank on its own individual responsibility on such terms and conditions as it may determine with the approval of the FCA; and

(k) To deposit its securities and its current funds with any member of the Federal Reserve System or any insured

State nonmember bank as defined in section 3(b) of the Federal Deposit Insurance Act and pay fees therefor and receive interest thereon as may be agreed; and

(l) To exercise such incidental powers as may be necessary to carry out its powers, duties, and functions in accordance with the Act.

Article V

Shareholders

1. *Qualifications.* The shareholders of this Corporation shall be the institutions of the Farm Credit System.

2. *Capital Stock.* Stock shall be issued with a par value of $5.00 to System Institutions in accordance with section 6.29 of the Act. Such stock shall not be transferable.

Article VI

Board of Directors

1. *Authority.* Subject to the reservations of authorities expressed in these Articles and applicable law, the entire business and affairs of the Corporation shall be directed by a Board of Directors.

2. *Membership.*

(a) The Board of Directors shall consist of the Board of Directors of the Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act.

(b) The Board of Directors shall elect annually a Chairman from among the members of the Board.

3. *Quorum.* No business may be transacted at a meeting of the Board of Directors unless a quorum of the members of the Board is present, and a vote to approve an action requires a majority vote of the members voting.

4. *Rules and Records.* The Board of Directors shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

5. *Compensation.* The members of the Board of Directors shall receive compensation for the time devoted to meetings and other activities of the Board and reasonable allowances for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors in amounts not exceeding levels set by the Farm Credit Administration Board.

6. *Chief Executive Officer.* A Chief Executive Officer of the Corporation shall be selected by the Board of Directors and shall serve at the pleasure of the Board.

7. *Bylaw Provision.* The Board of Directors may prescribe bylaws, not inconsistent with law or these Articles, that shall provide for the manner in which:

(a) Its officers, employees and agents are selected;

(b) its property is acquired, held and transferred;

(c) its general business is conducted; and

(d) the privileges granted by law are exercised and enjoyed.

Article VII

Amendments

These Articles of Incorporation may be amended from time to time provided no such amendment shall be effective until it has been approved by the Farm Credit Administration.

January 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-1143 Filed 1-20-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service, Planning Subcommittee Meeting

1. The Planning Subcommittee will hold its second meeting on:

February 2, 1988, 9:30 a.m., 1919 M Street, NW., Room 856 Washington, DC 20554.

2. The purpose of this meeting is to receive progress reports from the various working parties and discuss the schedule of upcoming activities.

3. The agenda of the meeting is as follows:

a. Call to order by the Chairman
b. Adoption of the minutes of the first meeting
c. Reports by the Chairmen of Working Parties 1 through 6 and Advisory Group 2.
d. Discussion of procedures
e. Schedule of future activities
f. Other business
g. Date and location of next meeting
h. Adjournment

4. This meeting is open to the public.

5. Parties may submit written statements prior to or at the time of the meeting. Oral Statements and discussion will be permitted under the direction of the Chairman.

6. For further information please contact:

Chairman J.A. Flaherty (212) 975-2213 or
William Hassinger (202) 632-6460.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1083 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-31]

Window Notice for the Filing of FM Broadcast Applications

Released: January 11, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning January 11, 1988 and ending February 17, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—282 A

Eutaw, AL
Gonzales, CA
Shafter, CA
Pinckneyville, IL
Charlestown, IN
Williamsburg, KY
Bunkie, LA
Two Harbors, MN
Bonne Terre, MO
State College, MS
Murphy, NC
Old Fort, NC
Surgoinsville, TN
Seymour, WI

Channel—259 A

Palmyra, NY
Paulding, OH
Commerce, OK
Mt Carmel, PA
Wakefield-Peacedale, RI
Black River Falls, WI
Mayville, WI

Channel—226 A

Clinchco, VA

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1092 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1706]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

January 13, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and coping in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed February 8, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: An Indefinite Extension of the Part 15 Interim Provisions for Cordless Telephones. (RM-5320).

Number of petitions received: 1.

SUBJECT: Review of Technical and Operational Requirements: Part 73-C Noncommercial Educational FM Broadcast Stations. (MM Docket No. 87-140).

Number of petitions received: 1.

SUBJECT: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Terrell, Texas and Daingerfield, Texas).

Number of petitions received: 1.

Application for Review

SUBJECT: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Woodstock and Broadway, Virginia).

Number of applications received: 1.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1091 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Hartke Communications Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Hartke Communications Corporation, Rockledge, FL	BPH-861103MA	87-556
B. Rockledge Community Broadcasters, Inc., Rockledge, FL	BPH-861104MA	
C. Rockledge Radio, Ltd., Rockledge, FL	BPH-861104MB	
D. Stunner Broadcasting, Inc., Rockledge, FL	BPH-861104MC	
E. T.C. Broadcasting, Inc., Rockledge, FL	BPH-861105MA	
F. Ben L. Umberger, Rockledge, FL	BPH-861105MB	
G. Space Coast Communications, Inc., Rockledge, FL	BPH-861105MC	
H. Peace FM Limited Partnership, Rockledge, FL	BPH-861105MD	
I. Shaw Enterprises, Inc., Rockledge, FL	BPH-861105ME	
J. Rockledge Broadcasting Associates Limited Partnership, Rockledge, FL	BPH-861105MF	
K. Michael H. Kahn d/d/a Onon Communications, Ltd., Rockledge, FL	BPH-861105MH	
L. Leslie E. Green, Rockledge, FL	BPH-861105MI	
M. Roberta Roe Johnson d/b/a Buttercup Broadcasting Company, Rockledge, FL	BPH-861105MJ	
N. D.V.R. Broadcasting (A General Partnership), Rockledge, FL	BPH-861105MK	
O. Brevard Broadcasting Company, Rockledge, FL	BPH-861105ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, B, M, O
2. Comparative, All
3. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1090 Filed 1-20-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009831-008.

Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement.

Parties:

Pacific America Container Express Line (PACE Line);
Columbus Line.

Synopsis: The proposed amendment would expand the geographic scope of the agreement to include U.S. Pacific ports and all U.S. interior and coastal points via such ports. The parties have requested a shortened review period.

Agreement No.: 217-010051-014.

Title: Mediterranean Force Majeure Agreement.

Parties:

Compania Trasatlantica Espanola;
Costa Container Line;
Farrell Lines, Inc.;
Italia di Navigazione, S.p.A.;
Jugolinija;
Lykes Bros. Steamship Co., Inc.;
A.P. Moller Maersk Line;
Nedlloyd Lijnen, B.V.;
Sea-Land Service, Inc.;
Zim Israel Navigation Co., Inc.

Synopsis: The proposed amendment would admit Trans Freight Lines as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 203-011063-004.

Title: U.S./Jamaica Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.;
R.B. Kirkconnel & Bro. Ltd.;
Sea-Land Service, Inc.;
Zim Israel Navigation Co.

Synopsis: The proposed amendment would add Calypso Container Lines as a

party to the agreement. The parties have requested a shortened review period.

Agreement No.: 207–011144–001.
Title: Australia-New Zealand Direct Line Service Agreement.
Parties:
Pacific Australia Direct Line;
Australia-New Zealand Container Line Limited (ANZCL).

Synopsis: The proposed amendment would substitute as a party ANZCL in place of its parent company, The Shipping Corporation of New Zealand. It would exclude certain additional cargoes from carriage, clarify provisions governing the duration of the agreement, change the governing law and make other miscellaneous changes.

Agreement No.: 203–011164.
Title: U.S./Middle East Discussion Agreement.
Parties:
The "8900" Lines;
Jugolinija Line.

Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates, charges, rules, regulations, service contracts and other matters in the trade from U.S. Pacific coastal points and U.S. and Canadian inland points via U.S. Atlantic and Gulf ports, Canadian Atlantic or St. Lawrence River ports, and from such ports to Saudi Arabian ports on the Red Sea, ports in the Arabian Gulf and adjacent waters in the range west of Karachi, and northeast of Aden, but excluding both Aden and Karachi, and to all inland points in Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates via such ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: January 15, 1988.

[FR Doc. 88–1154 Filed 1–20–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bankers Advisory Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 29, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bankers Advisory Corp.*, Washington, DC, and Federal Bancorp Systems, Ltd, Washington, DC; to become bank holding companies by acquiring 100 percent of the voting shares of Central Banc Corporation, Balch Springs, Texas, and thereby indirectly acquire First Bank, Balch Springs, Texas, and Central National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–1062 Filed 1–20–88; 8:45 am]
BILLING CODE 6210–01–M

Chemical New York Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 5, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York; to acquire Chemical Futures, Inc., New York, New York, and thereby act as a futures commission merchant pursuant to § 225.25(b)(18), and providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation*, Birmingham, Alabama; to acquire ATM Network, Inc., Panama City, Florida, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by February 12, 1988.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–1063 Filed 1–20–88; 8:45 am]
BILLING CODE 6210–01–M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Donald J. Parks et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Donald J. Parks*, North Little Rock, Arkansas, and Frances Parks, North Little Rock, Arkansas; to acquire 13.83 percent of the voting shares of National Banking Corp., North Little Rock, Arkansas, and thereby indirectly acquire National Bank of Arkansas in North Little Rock, North Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, January 14, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–1064 Filed 1–20–88; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, February 1–3, 1988, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, to discuss the 1989 Presidential Budget.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summmary of the meeting and rosters of the Board members, upon request.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, Maryland 20892 (301/496–5147)
Date of Meeting: February 1 and 3, 1988
Place of Meeting: Building 31C, Conference Room 6
Open:
February 1, 8:30 a.m. to recess
February 3, 8:00 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 6
Closed Session: February 1—following adjournment of the NCAB meeting this subcommittee meeting will be closed to the public for approximately 30 minutes.
Closure Reason: Discussion of the FY 89 Presidential Budget.
Open: February 1—immediately following the closed session of the subcommittee meeting.
Agenda: Discussion of Budget issues and the biennial report.

Name of Committee: Subcommittee on Cancer Information
Executive Secretary: Mr. Paul Van Nevel, Building 31, Room 10A29, Bethesda, MD 20892 (301/496–6631)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of NCAB meeting.
Agenda: Discussion of the NCI Information Programs.

Name of Committee: AIDS Subcommittee
Executive Secretary: Dr. Maryann Roper, Building 31, Room 11A48, Bethesda, MD 20892 (301/496–1927)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 8
Open: 7 p.m. to adjournment
Agenda: The Subcommittee will discuss specific issues regarding AIDS which were raised at the previous NCAB meeting.

Name of Committee: Subcommittee on Innovations in Surgical Oncology
Executive Secretary: Dr. Michael A. Friedman, Landow Building, Room 4A04, Bethesda, MD 20892 (301/496–6056)
Date of Meeting: February 1
Place of Meeting: Building 31C, Conference Room 7
Open: 7 p.m. to adjournment
Agenda: Discussion of the research initiatives in surgical oncology.

Name of Committee: Subcommittee on Special Actions for Grants
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Closed: 8:30 a.m. to adjournment
Agenda: Review and discussion of individual grant applications.

Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Open: Following adjournment of the Subcommittee on Special Actions for Grants.
Agenda: Discussion of the ongoing review of the Cancer Centers Program.

Name of Committee: Subcommittee on Environmental Carcinogenesis
Executive Secretary: Dr. Richard Adamson, Building 31, Room 11A03, Bethesda, MD 20892 (301/496–6618)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 8
Open: 6:30 p.m. to adjournment
Agenda: Overview of Changes in the NCI Chemical and Physical

Carcinogenesis Program and the Prevention Program.

Name of Committee: Subcommittee on Cancer Control for the Year 2000
Executive Secretary: Dr. Peter Greenwald, Building 31, Room 10A52, Bethesda, MD 20892 (301/496-6616)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 7
Open: 6:30 p.m. to adjournment
Agenda: Discussion of issues on cancer control.

Name of Committee: Subcommittee on Organ Systems Program
Executive Secretary: Dr. Andrew Chiarodo, Blair Building, Room 722, Bethesda, MD 20892 (301/427-8818)
Date of Meeting: February 2
Place of Meeting: Building 31C, Conference Room 6
Open: 7 p.m. to adjornment
Agenda: Discussion of issues regarding the Organ Systems Program.

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

Catalog of Federal Domestic Assistant Program Nos.: (13.392, Project grants in cancer construction: 13.393, Project grants in cancer cause and prevention: 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower and 13.399; Project grants and contracts in cancer control)

[FR Doc. 88-1132 Filed 1-20-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council and its Research Subcommittee and Training Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 11-12, 1988, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet on February 10; the Research Subcommittee at 1 p.m. in Building 31, Conference Room 9 and the Training Subcommittee at 8 p.m. in Building 31, Conference Room 10.

The Council meeting will be open to the public on February 11 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. on February 11 to adjournment on February 12 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 10, will be closed from 1 p.m. and 8 p.m., respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Frances A. Pitlick, Director, Division of Extramural Affairs, Westwood Building, Room 7A-17, National Institutes of Health, Bethesda, MD 20892, (301) 496-7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Research Research, National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1133 Filed 1-20-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on March 24, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on March 24 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-1134 Filed 1-20-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 24-25, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 24 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 24 from approximately 10 a.m. until adjournment on March 25 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, MD 20892, (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: January 11, 1988.

Betty J. Beveridge,

Committee, Management Officer, NIH.

FR Doc. 88-1135 Filed 1-20-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-030-08-4212-12]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of postponement of meeting.

SUMMARY: This notice announces the postponement of the Las Cruces District Advisory Council meeting previously scheduled for February 9, 1988, and announced in the **Federal Register** January 7, 1988 (53 FR 450). The new date for the meeting is March 22, 1988. The agenda for the meeting remains the same as previously announced. The times for the meeting also remain unchanged: 10:00 a.m. to approximately 3:30 p.m. with a public comment period at 1:00 p.m.

ADDRESS: The meeting will be held in the conference room of the Las Cruces District Office, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Jim Fox, District Manager, (505) 525-8228.

H. James Fox

District Manager.

January 8, 1988.

[FR Doc. 88-1077 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-940-4212-12; A-22098]

Exchange of Mineral Estate With the State of Arizona and Partial Opening Orders; Correction

January 12, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice provides a correction regarding a partial opening order of reconveyed mineral estate to the United States from the State of Arizona. The mineral estate in 1,240 acres lie within an existing withdrawal application and is closed to the operation of the general mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office (602) 241-5534.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 87-15020 on page 25084 in the issue of Thursday, July 2, 1987, the following mineral estate was erroneously opened to entry:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 7 W.,
Sec. 32, N½, SW¼, N½SE¼.
T. 5 N., R. 14 W.,
Sec. 32, SW¼SW¼.
T. 6 N., R. 15 W.,
Sec. 16, all.

The reconveyed mineral estate described above shall remain closed to the general mining laws and mineral leasing laws. The land is currently under withdrawal application for the Central Arizona Project, serial numbers AR-031307 and A-997, and shall remain segregated until an appropriate opening order is issued by the Bureau of Land Management authorized officer.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-1076 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-41-5410-10-ZAEC; A-22598]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Dennis G. and Marilyn A. Gnau have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 2 E.
Sec. 17, Lots 2, 3, 4, SW¼NE¼, W½SE¼.
Containing 227.64 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, February 18, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88-1065 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-41-5410-10-ZAEB; A-23133]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Michael and Gloria Pollack have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E.
Sec. 10, W½NE¼.
Containing 20.6 acres, more or less.

Information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The

segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 9, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88-1066 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ 020-41-5410-10-ZAEK; A-22887]

Receipt of Conveyance of Mineral Interest Application; Arizona

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Saddlebrooke Development Company has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.
Sec. 23, E½;
Sec. 26, All;
Sec. 27, E½.

Containing approximately 1,100 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patient or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 10, 1987, whichever occurs first.

Henri R. Bisson,

District Manager.

Date: January 7, 1988.

[FR Doc. 88-1067 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Report on Implementation of Title VIII of the Alaska National Interest Lands Conservation Act; Availability

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a draft report on implementation of the subsistence management and use provisions of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3121, for eventual submission to the President of the Senate and the Speaker of the House of Representatives. In accordance with the provisions of section 813, the report is being made available to the public for comment.

DATE: Comments on the report must be submitted on or before March 7, 1988.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, [Attn: Ron Thuma].

FOR FURTHER INFORMATION CONTACT: Ron Thuma, Subsistence Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3371.

Copies of the section 813 report have been sent to all participating Federal and State agencies, local advisory committees and regional council members. Additionally, all others who have already requested copies have been added to the mailing list. Individuals wanting copies of the draft report for review should contact Mr. Thuma. Copies of the report are also available for review in the Anchorage regional office of the Service at the above address, and at the following other Service locations:

U.S. Fish and Wildlife Service, Public Affairs, 18th and C Streets NW., Room 2347, Department of the Interior, Washington, DC 20240
U.S. Fish and Wildlife Service, Public Affairs, Lloyd 500 Building, 500 NE Multnomah Street, Portland, OR 98232
U.S. Fish and Wildlife Service, Public Affairs, 500 Gold Avenue SW, Room 1306 Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Public Affairs, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Public Affairs, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Public Affairs, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Public Affairs, 134 Union Bulevard, Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has produced a draft of the 1987 periodic report to Congress on subsistence management and use of fish and wildlife on Federal lands, as required by section 813 of ANILCA. The Service produced this comprehensive document in consultation with other Federal land managing agencies in Alaska, and with the Alaska Department of Fish and Game. The report provides an overview of subsistence management and use in Alaska, based on consultations with various public agency personnel and information from existing literature and studies.

As required by section 813, the report includes

(1) An evaluation of the results of the monitoring undertaken by the Secretary pursuant to section 806 of ANILCA.

(2) The status of fish and wildlife populations on public lands that are subject to subsistence uses.

(3) A description of the nature and extent of subsistence uses and other uses of fish and wildlife on public lands.

(4) The role of subsistence uses in the economy and culture of rural Alaska.

(5) Comments on the Secretary's report by the State, the local advisory committees and regional advisory councils and other appropriate persons and organizations.

(6) A description of those actions taken, or which may need to be taken, to permit the opportunity for continuation of subsistence activities on public lands.

(7) Such other recommendations the Secretary deems appropriate.

During the public review period it is hoped that reviewers will provide additional information and documentation where appropriate. Public comments that point out substantive errors, misconceptions or mischaracterizations in the draft will be considered for incorporation into the final report. Other comments received will be included as a supplement to the report.

Date: December 31, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88-1126 Filed 1-20-88; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-18788]

ConAgra, Inc.; Purchase Exemption; Longmont Transportation Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ConAgra, Inc. (ConAgra), a noncarrier, seeks an exemption from the requirement of prior regulatory approval for its purchase of the assets and motor common and contract carrier operating authority of Longmont Transportation Co., Inc. (LTC) (MC-141668). ConAgra has filed a separate application seeking transfer of LTC's broker authority. (MC-FC-83123).

Under the terms of the transaction, ConAgra will purchase certain assets of Longmont Turkey Processors Inc., a noncarrier, and of its wholly owned subsidiary, LTC. ConAgra intends to operate the newly acquired carrier under the same name and, thus, has created a new subsidiary with the same name, Longmont Transportation Co., Inc., (Longmont) to receive LTC's assets and operating authority.

The rights being transferred authorize: (1) The common carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), and (2) the contract carrier transportation of general commodities (except classes A and B explosives, household goods, and commodities in bulk, between points in the United States (except Alaska and Hawaii), under continuing contracts with shippers and receivers of such commodities.

ConAgra presently controls, directly or indirectly, eight motor carriers: Armour Food Express Company (MC-14036 and MC-152245); Balcom Chemicals, Inc. (MC-174324); Lynn Transportation Company, Inc. (MC-133604), U.S. Tire, Inc. (MC-170511); Yellowstone Valley Chemicals, Inc. (Yellowstone) (MC-185117); ConAgra Transportation Inc. (Transportation) (MC-150422); Monfort Transportation Co., (Monfort) (MC-144572); and Miller Bros. Co., Inc. (Miller) (MC-117699). Yellowstone also holds property broker authority and Transportation holds water carrier authority in No. W-1333.

Under 49 U.S.C. 11343 (a)(5), the Commission's prior approval is required for the acquisition of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra already controls eight carriers. Therefore, its purchase of LTC's operating authority is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or exemption from regulation.

ConAgra argues that its purchase of LTC's authority and creation of Longmont will promote the national transportation policy enabling Longmont to continue to provide quality transportation services within the ConAgra family. ConAgra asserts that the transaction is of limited scope in that it involves the addition of only a single carrier to an existing system whose affiliation already has been approved by the Commission. Finally, petitioner states that the transaction will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

DATES: Comments must be received by February 22, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC-F-18788 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: Peter A. Greene, Esq., Thompson, Hine and Flory, 1920 N. Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 275-7974, [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: January 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1145 Filed 1-20-88; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18750]

ConAgra, Inc.; Control Exemption; Sipco Truck Line, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: ConAgra, Inc. (ConAgra), a noncarrier, seeks an exemption from the requirement of approval and authorization for its indirect acquisition of control, through stock ownership, of Sipco Truck Line, Inc. (Sipco) (MC-194964). Sipco is a wholly-owned subsidiary of Swift Independent Packing Company, which, in turn, is a wholly-owned subsidiary of Swift Independent Corporation (SIC). ConAgra proposes to achieve control of Sipco by acquiring at least a 50 percent stock interest in Swift Independent Holding Corporation (Swift), the majority shareholder of SIC, and the right to purchase or to designate a third party to purchase Swift's remaining outstanding common stock.

ConAgra presently controls, directly or indirectly, eight motor carriers: Armour Food Express Company (MC-140364 and MC-152245); Balcom Chemicals, Inc. (MC-174324); Lynn Transportation Company, Inc. (MC-133604); U.S. Tire, Inc. (MC-170511); Yellowstone Valley Chemicals, Inc. (Yellowstone) (MC-185117); ConAgra Transportation, Inc. (Transportation) (MC-150422); Monfort Transportation Company (Monfort) (MC-144572); and Miller Bros. Co., Inc. (Miller) (MC-117699). Yellowstone, Monfort, and Miller also hold property broker authority, and Transportation holds water carrier authority in No. W-1333. Sipco holds motor contract and Texas intrastate authority.

Under 49 U.S.C. 11343(a)(5), the Commission's approval and authorization are required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra already controls eight carriers. Therefore, its proposed acquisition of Sipco is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or an exemption from regulation.

ConAgra argues that its acquisition of control of Sipco will promote the National Transportation Policy by bringing Sipco into a corporate family possessing a well established identity and already providing high quality specialized motor carrier service. ConAgra asserts that the transaction is of limited scope in that it involves the addition of only a single carrier to an existing system whose affiliation already has been approved by the Commission. Finally, petitioner states that the transportation will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

DATE: Comments must be received by February 22, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC-F-18750, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: Peter A. Greene, Thompson, Hine, and Flory, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:
Richard L. Gagnon (202) 275–7711 [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION:
Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: January 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1146 Filed 1–20–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31201]

The Baltimore Belt Railroad Co. et al., and CSX Transportation, Inc.; Merger Exemption

The Baltimore Belt Railroad Company, Curtis Bay Railroad Company, The Lancaster, Cecil and Southern Railroad Company, Metropolitan Southern Railroad Company, Washington County Railroad Company, The Winchester and Potomac Railroad Company, and The Winchester and Strasburg Railroad Company (the subsidiaries), CSX Transportation, Inc. (CSXT), and CSX Corporation (CSX) have filed a notice of exemption for the merger of the subsidiaries into CSXT, with CSXT as the surviving corporation. The merger was expected to be consummated on December 29, 1987.

Each of the subsidiaries is a nonoperating company whose properties are being operated by, in the name of, and for the account of CSXT, a Class 1 rail common carrier. CSXT owns 100 percent of the voting equity securities of all of the subsidiaries except Washington County (of which it owns 99.69 percent) and the Winchester and Potomac (of which it owns 98.32 percent). The voting equity securities of CSXT, in turn, are 100 percent owned by CSX. CSX will thus control the merged entity.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201, and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, P.O. Box C–32222, Richmond, VA 23219.

Decided: January 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1006 Filed 1–20–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act; Empresa Lineas Maritimas Argentinas, S.A., et al.

In accordance with Departmental policy, 28 CFR 50.7, section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that on December 23, 1987 a proposed consent decree in *United States* v. *Empresa Lineas Maritimas Argentinas, S.A., et al.*, Civil Action No. H–87–2396 was lodged with the United States District Court for the Southern District of Texas. The proposed consent decree involves claims by the United States for recovery of response costs incurred in response to releases and threatened releases of hazardous substances from the vessel M/V RIO NEUQUEN while the vessel was moored at Port of Houston Authority Dock Number Nine during July and August, 1984. These claims were brought against defendants Empresa Lineas Maritimas Argentinas, S.A.; Bernardo Chemical Ltd.; Casa Bernardo Ltd; and Strachan Shipping Company pursuant to RCRA and CERCLA.

The proposed consent decree requires the defendants to pay $500,000 in reimbursement of the United States' response costs of $537,313.65. In return the defendants are given a release from claims for past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Empresa Lineas Maritimas Argentinas, S.A., et al.*, D.J. Ref. No. 90–11–3–82.

The proposed consent decree may be examined at the Office of the United States' Attorney for the Southern District of Texas, Courthouse and Federal Building, 515 Rusk Avenue, Houston, Texas 77002 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–1070 Filed 1–20–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; Sulphur Springs, TX, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Sulphur Springs and The State of Texas* was lodged in the United States District Court for the Eastern District of Texas on December 30, 1987.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, during the operation of a sewage treatment plant which is owned and operated by the City of Sulphur Springs, Texas ("City"). The proposed decree contains interim control measures and effluent limitations and requires the City to comply with its NPDES permit by July 1, 1988. The proposed decree further requires the City to implement an EPA-approved pretreatment program and to enforce all industrial user permits. It also contains a $30,000 civil penalty for past violations.

The Department of Justice will recieve for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Sulphur Springs and The States of Texas*, D.J. Ref. No. 90–5–1–1–2734.

The proposed decree may be examined at the Office of the United States Attorney, 110 North College, Suite 600, Tyler, Texas, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Ave., NW., Washington DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–1069 Filed 1–20–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Tr e Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: February 9, 1988, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT:
Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC this 13th day of January 1988.

Christopher Hankin,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 88–1140 Filed 1–20–88; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket No. 88–04]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter (NGF).

DATE AND TIME: February 9, 1988, 9:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:
Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 9, 1988

9:30 a.m.—Welcome.
9:45 a.m.—Opening Remarks.
10 a.m.—NASA High Performance Aircraft Overview.
10:30 a.m.—Overviews from United States Air Force, United States Navy, and Industry.
1 p.m.—Overviews (Continued).
4 p.m.—Adjourn.

January 12, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88–1053 Filed 1–20–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88–02]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. (2–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Propulsion.

DATE AND TIME: February 10, 1988, 9 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 225, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT:
Mr. Gregory Reck, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Advanced Propulsion, chaired by Dr. Eugene Covert, is comprised of seven members. The meeting will be open to the public up to the seating

capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 10, 1988

9 a.m.—Review Sensitivity Analysis.
11 a.m.—Development Rate Index.
1:30 p.m.—Proposed Gas Turbine Research.
3 p.m.—Adjourn.

January 12, 1988.

Ann Bradley,

Advisory committee Managment Officer, National Aeronautics and Space Administration.

[FR Doc. 87-1051 Filed 1-20-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-03]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on High Temperature Superconductivity.

DATE AND TIME: February 10, 1988, 8:30 a.m. to 5 p.m..

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Martin M. Sokoloski, Office of Aeronautics and Space Administration, Washington, DC 20546, 202/453-2748.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology problems. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on High Temperature Superconductivity, chaired by Mr. Steven Dorfman, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

February 10, 1988

8:30 a.m.—Welcome.
9:15 a.m.—Other Agency Programs.
11 a.m.—Proposed NASA Program.
1:30 p.m.—Industrial Programs.
2:30 p.m.—Team Deliberations.
5 p.m.—Adjourn.

January 12, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-1052 Filed 1-20-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Hearing

AGENCY: National Commission To Prevent Infant Mortality.

ACTION: Notice of an open hearing.

SUMMARY: In accordance with Pub. L. 99-660, notice is given of the second hearing of the National Commission to Prevent Infant Mortality. The title of the hearing is "International Infant Mortality Comparisons".

DATE: February 1, 1988.

TIME: 9:30 a.m.-12:30 p.m.

ADDRESS: The United Nations, 46th and 1st Avenues—New York Visitors Entrance.

FOR FURTHER INFORMATION CONTACT: Anne B. Hockett, 202-472-1364.

Rae K. Grad,

Executive Director.

[FR Doc. 88-1100 Filed 1-20-88; 8:45 am]

BILLING CODE 6820-SK-M

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-325/324

Carolina Power & Light Co.; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, located in Southport, North Carolina.

Environmental Assessment

Identification of Proposed Action:

The exemption would grant relief from 10 CFR Part 50, Appendix J, paragraph III.A.3, which requires that all Type A (Containent Integrated Leak Rate) tests be performed in accordance with ANSI N45.4-1972, Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4 requires that leakage calculations be performed using the Point to Point Method or the Total Time method. The licensee would rely, instead, on the Mass-Point method described in ANSI/ANS 56.8-1981, "Containment System Leakage Testing."

The licensee's request for exemption and the bases therefor are contained in a letter dated August 5, 1987.

The Need for the Proposed Action:

The proposed exemption is from the Standard (ANSI N45.4-1972) referenced in 10 CFR Part 50, Appendix J, which requires the containment leakage calculations be performed using either the Point-to-Point or Total Time method. The licensee has performed the calculations using the Mass-Point method, a newer method that has been accepted by the NRC staff. Additionally, the revised Standard (ANSI/ANS 56.8-1981, "Containment Leakage Testing") specifies the use of the Mass-Point method exclusively; and the new Standard is proposed to be incorporated into a planned revision of Appendix J.

Evironmental Impacts of Proposed Action:

The proposed exemption would permit the use of the Mass-Point method in performing leakage calculations. The Mass-Point method has been accepted by the NRC staff as a more accurate technique that will increase confidence in the integrity of the containment. This exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action:

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative to the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Brunswick Unit 1 and 2 operations and would result in reduced operational flexibility.

Alternative Use of Resources:

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Brunswick Steam-Electric Plant, Units 1 and 2," dated January 1974.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for exemption previously listed, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Bethesda, Maryland this 14th day of January 1988.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Director, Project Directorate II-1, Division of Reactor Projects-I/II.

[FR Doc. 88-1150 Filed 1-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for an amendment to Facility Operating License No. NPF-47 issued to Gulf States Utilities Company (GSU), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana. The notice of Consideration of Issuance of Amendment was published in the **Federal Register** on September 9, 1987 (52 FR 30410).

The amendment, as proposed by the licensee, would modify Section 3.8.1.1 and Bases Section 3/4.8.1 of the River Bend Station, Unit 1, Technical Specifications by (1) deleting the requirements to demonstrate that the diesel generators (DGs) are operable by starting and running them loaded for a period of one hour when one or both offsite circuits are inoperable; and (2) modify the current requirement that with one diesel generator inoperable "due to any cause other than preplanned preventative maintenance or testing "the remaining diesel generators be demonstrated operable by starting and running loaded for a period of one hour. The proposed amendment would delete the phrase "due to any cause other than preplanned preventative maintenance or testing" and add the phrase "as the result of a valid failure."

With regard to item (1), above, the licensee contends that adequate assurance of DG operability is maintained by the diesel generator testing frequencies specified in the normal Technical Specification surveillance requirements. In addition GSU references IE Information Notice No. 84-69 and Supplement 1 which warn against the danger of losing both the diesel generator and an offsite power supply when they are operated in parallel. They are especially vulnerable in this mode to grid disturbances when the offsite power system is in a degraded mode such as may be the case when an offsite power source is lost. In order to meet the present River Bend Technical Specification which requires loading of the diesel generators for a period of an hour when an offsite power source is lost, a diesel generator must be operated in parallel with a remaining offsite power source to achieve the required loading.

While the staff agrees there is a danger of losing both the diesel generator and an offsite power supply when they operated in parallel, the staff also concludes that it is necessary to provide additional assurance of diesel generator operability when an offsite power source is lost, since there is a greater likelihood of needing the diesel generators during this period. The staff therefore concludes that GSU's proposal to completely delete the operability test requirement of the diesel generators when offsite power supplies are lost is not acceptable.

With regard to item (2), above, the revised Action statements would require that with a diesel generator inoperable as a result of a valid failure the remaining diesel generators be demonstrated operable by starting and running loaded for a period of one hour.

GSU's reason for proposing this change is to reduce the number of unnecessary test starts on redundant diesel generators when the cause for inoperability on the original diesel generator is clearly not a common mode or generic type failure which could also affect the availability of the redundant diesel generators. The licensee states that if a DG was discovered inoperable while in the standby service mode (i.e., no failure during a valid test) then the potential common-mode/generic failure can be investigated and operability of the remaining diesel generators verified without increased testing. According to GSU's discussion, therefore, a valid failure is only one that occurs to a diesel generator while it is operating during a valid test, and any inoperability of a diesel generator discovered while it is in the standby mode would not be a valid failure and would not require testing of the redundant diesel generators under the proposed technical specification.

The staff does not agree that inoperability of a diesel generator discovered while it is in standby versus inoperability as a result of a failure during operation forms a correct basis for determining the action to be taken with regard to whether the inoperability has common-mode/generic implications. The same cause for inoperability could be discovered while the diesel generator is in the standby mode or undergoing a test based solely on circumstance, and yet in one case a test of the remaining diesel generators would be required and in the other the test would not be required. Further, the testing of the remaining diesel generators is needed not only to verify there is no common-mode problem but also to provide added assurance of the availability of the remaining onsite AC source when one of them is lost. The staff concludes that this additional assurance is necessary regardless of whether the initial failure has common-made implications and further concludes that the proposed technical specification change is not acceptable.

With regard to the above testing to provide added assurance of the availability of the remaining onsite AC sources, GSU references IE Information Notice 84-69 and Supplement 1 which warn that when a diesel generator is

operated connected to offsite or nonvital loads, the emergency power system is not independent of disturbances on the nonvital and offsite power systems that can adversely affect emergency power availability. GSU states that assurance of availability is therefore lessened by a demonstration of operability requiring connection of the diesel generators to offsite and nonvital loads at a time when one other diesel generator is already inoperable. The staff agrees there is an increased danger of losing both the diesel generator and an offsite power supply when they are operated in parallel; however, the staff still concludes that it is necessary to provide added assurance of the remaining onsite AC sources when one of them is lost.

By February 22, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may fill a written petition for leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 7, 1987, and (2) the Commission's Safety Evaluation forwarded to the licensee by letter dated January 14, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland, this 14th day of January, 1988.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Acting Project Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-1148 Filed 1-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. et al; Application

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the corporate reorganization of Wisconsin Power and Light Company (WPL), one of the co-owners and co-licensees for the Kewaunee Nuclear Plant.

By letter dated December 28, 1987, WPL advised the Commission they are in the process of implementing a corporate restructuring which will result in the creation of a holding company, WPL Holdings, Inc., which will own all of the outstanding common stock of WPL. WPL would continue to be the co-owner of Kewaunee. WPL is authorized to possess but not to operate the facility; facility operation is carried out by another NRC licensee. Pursuant to the proposed reorganization, WPL Holdings, Inc., would become the sole holder of WPL's common stock and the current holders of WPL's common stock would become holders of shares of the common stock of WPL Holdings, Inc., on a share-for-share basis.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects.

[FR Doc. 88-1149 Filed 1-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Prior Hearing: Arkansas Power and Light Company; Correction

The United States Nuclear Regulatory Commission issued a notice in the **Federal Register** on January 14, 1988 (53 FR 968) that it is considering issuance of an amendment to Facility Operating License No. NPF-6, issued to Arkansas Power and Light Company for operation of the Arkansas Nuclear One, Unit 2 (ANO-2) located in Russellville, Arkansas. The date in the first line of the last paragraph of the first column on page 969 of the earlier notice is changed from February 11, 1988 to February 16, 1988, for the deadline by which the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to particiapte as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-1151 Filed 1-20-88; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing: Northeast Nuclear Energy Company; Correction

The United States Nuclear Regulatory Commission issued a notice in the **Federal Register** on January 12, 1988 (53 FR 766) that it is considering issuance of an amendment to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company for operation of the Millstone Nuclear Power Station, Unit, 2, located in New London County, Connecticut. The date on page 766 of the earlier notice is changed from February 10, 1988 to February 11, 1988, for the deadline by which the licensee may file a request for hearing with respect to

issuance of the amendment to the subject facility operating license. This is also the date by which any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-1152 Filed 1-20-88; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on Tuesday, February 2, 1988, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The full commission will convene its meeting at 8:30 a.m. in Regency Rooms A and B on the second concourse, and is open to the public.

Donald A. Young,

Executive Director

[FR Doc. 88-1252 Filed 1-20-88; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16226; File No. 812-6858]

Application for Exemption; Nationwide Life Insurance Co. et al.

January 14, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of amended application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Nationwide Life Insurance Company and Nationwide VLI Separate Account-2.

Relevant 1940 Act Sections: Exemption under Section 6(c) from Sections 2(a)(35), 26(a)(2), 27(a)(1) and 27(c)(2) and paragraphs (b)(1), (b)(13)(i)(B) and (c)(4)(ii) of Rule 6e-3(T) under the 1940 Act.

Summary of Application: Applicants seek an order exempting them from certain sections of the 1940 Act and Rule 6e-3(T) to permit the offer of flexible premium variable life insurance policies as described in the application.

Filing Date: The application was filed on August 29, 1987, and an amendment thereto was filed on November 25, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemptions will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney (202) 272-2058, or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Nationwide Life Insurance Company ("Nationwide") is a stock life insurance company incorporated under the laws of the State of Ohio and admitted to do business in all states and the District of Columbia. The Nationwide VLI Separate Account-2 ("Separate Account") is a separate investment account of Nationwide, established under the laws of the State of Ohio and registered as a unit investment trust under the 1940 Act. It was established for the purpose of funding flexible premium variable life insurance policies ("Policy or Policies") issued by Nationwide.

2. The Policies will be distributed through Nationwide Financial Services, Inc. ("NFS"). NFS, a registered broker-dealer under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers. The Policies will be sold by licensed insurance agents who are registered representatives of broker-dealers.

3. The assets of the Separate Account will consist of shares of the Nationwide Separate Account Trust, Fidelity Variable Insurance Products Funds, American Life/Annuity Series and Advisers Management Trust ("Funds").

4. The owner of a Policy pays a premium for life insurance coverage on the person insured. The Policies may provide for a cash value which is payable if a Policy is surrendered during the insured's lifetime. The death benefit and cash value of the Policies, however, may increase or decrease to reflect the investment performance of the Separate Account sub-accounts to which premium is allocated. There is no guaranteed cash value.

5. Upon issuance, a Policy will immediately provide for the payment of life insurance proceeds in excess of any initial premium paid. Death benefit proceeds will exceed the Policy's cash value so long as the Policy remains in force.

6. A Policy owner may choose one of two death benefit options. Under Option 1, the death benefit will be the greater of the specified amount or the applicable percentage of the cash value. Under Option 2, the death benefit will be the greater of the specified amount plus the cash value, or the applicable percentage of cash value. The actual proceeds payable on the insured's death will be the death benefit less any outstanding Policy loans, less any unpaid Policy charges.

7. At the time of application, a Policy owner elects to have the cash value allocated among one or more of the Separate Account sub-accounts. Such election is subject to any minimum contribution limitations which may be imposed by the Funds. Shares of the Funds, as specified by a Policy owner, are purchased at net asset value for the respective sub-accounts. No less than 10% of Cash Value may be allocated to any one sub-account.

8. At the time a Policy is issued, its cash value is based on the Nationwide Separate Account Trust-Money Market Fund sub-account as if the Policy had been issued and the premium invested on the date the premium was received in good order by Nationwide. When a Policy is issued, the cash value will be held in the Nationwide Separate Account Trust-Money Market Fund sub-account until the expiration of the period in which a Policy owner may exercise his or her short term right to cancel the Policy. At the expiration of that period, the Cash Value will be allocated among the sub-accounts of the Separate Account in accordance with a Policy owner's instructions. On any date, the Cash Value of a Policy equals the Cash Value on the preceding valuation date, plus any premium

applied since the previous valuation date, plus or minus any investment results, and less any Policy charges.

9. Nationwide makes a monthly deduction equal to the Policy Administration Charge, if any, plus the cost of insurance charge from the cash value of each Policy. The deductions are allocated among the sub-accounts of the Separate Account in the same proportion that a Policy owner's cash value in that sub-account bears to a Policy owner's total cash value, exclusive of any Policy loan.

10. A monthly Policy Administration Charge is deducted to reimburse Nationwide for expenses related to the underwriting, issuance, and maintenance of the Policies. Currently, no Policy Administration Charge is deducted from the cash value for any Policy for which the total of premiums paid is $25,000 or more. For Policies for which the total of premium payments made is less than $25,000, the current Policy Administration Charge is $10 per month; however, for all Policies, the Policy Administration Charge is guaranteed not to exceed $20 per month. Applicants represent that the Policy Administration charge is not discriminatory and will never be taken at a level in excess of Nationwide's actual cost in administering any Policy to which such charge applies. Applicants further represent that the current charge of $10 per month on Policies for which the total of premium payments made is less than $25,000, will not subsidize the cost of administering Policies on which total premium payments exceed $25,000.

11. A separate monthly cost of insurance is used to obtain the monthly cost of insurance for the insured's initial specified amount and for each subsequent increase in the specified amount. Each rate is based on the insured's sex, attained age, and rate class. The rates for a standard rate class will never be greater than the guaranteed maximum monthly cost of insurance rates, which are based on the 1958 Commissioner's Standard Ordinary Mortality Table, Age Last Birthday ("1958 CSO Mortality Table"), with appropriate increase for rate classes other than standard.

12. Nationwide will deduct, on a daily basis, from the assets of the Separate Account, an amount equivalent on an annual basis to .95%, for the first 10 policy years, and .50% thereafter, consisting of a mortality and expense risk charge, a distribution expense charge, a premium tax recovery charge, and an income tax charge.

13. The mortality risk assumed by Nationwide under the Policies is that the insured will not live as long as expected under the guaranteed 1958 CSO Mortality Table. The expense risk assumed is that actual expenses incurred in issuing and administering the Policies will exceed the expenses assumed and charges assessed.

14. Nationwide assumes risks associated with the non-recovery of expenses due to the Policies which lapse or are surrendered during the first 10 policy years. To compensate Nationwide for assuming these risks, a daily charge is deducted from the assets of the sub-accounts of the Separate Account which is computed daily, and is equal on an annual basis to .50% of the assets of the Separate Account for all policy years.

15. Nationwide pays any state premium taxes attributable to a particular Policy when incurred by Nationwide. Nationwide expects to pay an average state tax rate of 2.5% of premium for all states. To reimburse Nationwide for the payment of state premium taxes associated with the Policies, during the first 10 policy years, Nationwide deducts a daily charge computed on a daily basis from the assets of the sub-accounts, which is equal on an annual basis to .20% of the assets of the Separate Account during the first 10 policy years and 0% thereafter. Applicants represent that premium tax charges assessed will not exceed the actual cost of premium taxes paid and will not include any interest element.

16. Nationwide incurs sales and distribution expenses in marketing and issuing the Policies. Some of these expenses will be recovered from the Deferred Sales Charge on Policies surrendered during the first 9 policy years. Nationwide will deduct a daily distribution Expense Charge from the assets of the sub-accounts of the Separate Account during the first 10 policy years. This charge will be computed and deducted on a daily basis, and equal on an annual basis to .25% of the assets of the Separate Account during the first 10 policy years and 0% thereafter.

17. Nationwide does not currently assess any charge for income taxes incurred as a result of the operations of the Separate Account, but reserves the right to assess a charge for such taxes if Nationwide determines that such taxes may be incurred.

18. If a Policy is surrendered at any time during the first 9 policy years, a deferred sales charge will be assessed. For Policy years 10 and thereafter, no deferred sales charge will be assessed on surrender of the Policy. In no event will the deferred sales charge exceed 8% of the initial premium paid; nor will the sum of any deferred sales charge actually deducted and the cumulative total of the Distribution Expense Charge collected on any Policy exceed 9% of premiums paid for that policy.

Cost of Insurance Charge:

19. Applicants seek relief from section 2(a)(35) and paragraphs (b)(1)(and (c)(4)(ii) of Rule 6e-3(T).

20. As indicated in representation 11 above, the maximum cost of insurance rates allowable under the Policies is based on the 1958 Commissioner's Standard Ordinary Mortality Table (hereinafter "1958 CSO Table"), even though the current cost of insurance rates for some insureds may be based on the 1980 Commissioner's Standard Ordinary Table (hereinafter "1980 CSO Table"). Rates based on the 1958 CSO Table will be shown in the Table of Guaranteed Maximum Insurance Rates contained in the Policy filed with the insurance departments of the jurisdictions in which the Policies will be offered. The current cost of insurance rates for some insureds may be lower than or equal to the 1980 CSO Table rates based upon Nationwide's current expectations of future experience. Rates may be increased in the future, up to the maximums permitted under the Policy, as determined by Nationwide, based upon expectations of future experience.

21. Applicants request the above exemptions to the extent that paragraph (c)(4)(ii) prescribes that the amount excluded from sales load for cost of insurance is limited to the "cost of insurance for the period based upon the 1980 Commissioner's Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule." Applicants seek an exemption to the extent necessary to permit the exclusion of amounts for the actual cost of insurance charges deducted under the Policy, which for standard underwriting risk classes is guaranteed never to exceed amounts based on the 1958 CSO Table.

22. Applicants believe that the regulation of cost of insurance rates more appropriately rests with the jurisdiction of the state insurance departments of those states in which the Policies will be sold. Furthermore, prior to the adoption of Rule 6e-3(T), the Commission had not taken a position that the cost of insurance charges for variable life insurance products must be based on the 1980 CSO Table rather than the 1958 CSO Table. In its original form, Rule 6e-2 permits companies to demonstrate compliance with the sales load provisions of the 1940 Act by excluding from the definition of "sales load" cost of insurance charges based on the 1958 CSO Table. However, in Rule 6e-3(T), the Commission took the position that the 1980 CSO Table must be used for the same purposes. Subsequently, the Commission amended Rule 6e-2 to permit cost of insurance rates to be based on either the 1958 or 1980 CSO Table, depending on which table relates to the rates guaranteed by the Policy. Applicants submit that the relief sought is identical to relief sought and obtained by other companies now issuing variable life insurance policies and is consistent with the position recently taken by the Commission in its amendment of Rule 6e-2.

Sales Load:

23. Applicants seek relief from section 27(a)(1) of the 1940 Act and sections (b)(13)(i)(B) of Rule 6e-3(T).

24. Nationwide deducts no front-end sales load from premiums paid for the Policies. The sole sources of recovery of sales and distribution expenses incurred are the assessment of a Distribution Expense Charge during the first 10 policy years and a Deferred Sales Charge against certain surrenders occurring during the first 9 years after issuance of a Policy. The Deferred Sales Charge, when applicable, is assessed as a percentage of the initial premium paid, ranging from 8% in year 1, to 4% in year 9, and 0% thereafter. If additional premium payments are made, as permitted by the Policies, no Deferred Sales Charge attaches to such premium payments. The Distribution Expense Charge is equal on an annual basis to .25% of the assets of the Separate Account, during the first 10 Policy years.

25. Applicants submit that the cumulative level of sales charges will be monitored on a Policy basis so that the sum of the Deferred Sales Charge deducted on surrender and the cumulative Distribution Expense Charges collected can never exceed 9% of the total premiums paid, as provided in section 27(a)(1) of the 1940 Act. Therefore, the total sales load under the Policies will remain in full compliance with section 27(a)(1), and thus no exemptive relief from that section appears needed.

26. Paragraph (b)(13)(i) of Rule 6e-3(T) affords automatic relief from section 27(a)(1), "to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either subparagraph (A) or (B) below * * *" Applicants made an election in their S-6 registration statement, in a supplemental letter filed on September 16, 1987, to rely on subparagraph (B), which limits sales load to "9 per centum of payments made * * *" Because of the reference in paragraph (c)(4)(ii) of the Rule to the 1980 CSO Table, for sales load computation purposes, Applicants are concerned that their use of the 1958 CSO Table, for certain insureds, may make the Policies ineligible to rely on the automatic relief from section 27(a)(1) that is afforded by paragraph (b)(13)(i), if any such relief is needed at all. Applicants submit that, for purposes of sales load computation and compliance with paragraph (b)(13)(i)(B), as elected, Applicants should be permitted to utilize the mortality table guaranteed in the Policies, which fully complies with state insurance laws.

Income Tax Charge:

27. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit Nationwide to deduct any Income Tax Charge from the assets of the Separate Account.

28. Applicants submit that the exemptions afforded by Rule 6e-3(T)(b)(13)(iii) from sections 26(a) and 27(c)(2) could be narrowly interpreted to include only administrative fees associated with the operation of the Separate Account. Applicants, therefore, seek exemptive relief to the extent necessary to deduct fees for any income taxes incurred by Nationwide and properly chargeable against the assets of the Separate Account, in addition to the premium tax deduction specifically permitted by the Rule. Applicants assert that if any Income Tax Charge, presently unanticipated, is imposed in the future, it will be limited to the tax liability actually incurred on such gains, with no interest element. If any Income Tax Charge is ever implemented, it will be deducted from the Separate Account only as taxes become due, and will not be deducted and accumulated in Nationwide's general account prior to the time and taxes are due. Such charge, if any, will be permitted by the policies and by state insurance laws, and will be fully disclosed in the prospectus if the charge is implemented.

29. Applicants submit that all other charges under the Policies are permitted by, and in conformance with the requirements of, subsection (b)(13)(iii) of Rule 6e-3(T). Applicants further submit that the relief requested by the Application is identical to that requested by Nationwide Life Insurance Company and its Nationwide VLI Separate Account (File No. 812-6234) on October 25, 1985, as amended February 25, 1986 and March 4, 1986, and granted by an Order in Release No. IC-15057, on April 23, 1986.

Applicants' Undertakings:

Applicants agree that if the requested Order is granted it will be expressly conditioned on Applicants, compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-1169 Filed 1-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24560]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 14, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 8, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70-7393)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its wholly owned subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company and The Peoples Natural Gas Company, each located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199, Consolidated Gas Transmission Corporation and Consolidated System LNG Company,

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both located at 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, CNG Trading Company, both located at One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, both located at 1717 East Ninth Street, Cleveland Ohio 44115, and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

By order dated June 12, 1987 (HCAR No. 24412), the Commission authorized the Consolidated system companies to engage in intra-system financings through June 15, 1988. Consolidated now proposes, in addition, to issue and sell Euro-commercial notes to dealers in commercial paper from time to time through June 15, 1988 of up to $100 million at any one time outstanding, pursuant to an exception from competitive bidding. Consolidated also seeks to have the five percent short-term debt limitation under section 6(b) of the Act raised to 42% through June 15, 1988. Such an increase would permit Consolidated to have outstanding at any time up to $400 million aggregate principal amount of short-term notes.

For the Commission, by the Division of Investment management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-1168 Filed 1-20-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2305]

Hawaii; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 8, 1988, I find that the City and County of Honolulu in the State of Hawaii constitute a disaster loan area due to damages from severe storms, flooding, and mudslides beginning on or about December 11, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 10, 1988 and for economic injury until the close of business on October 11, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230506 for physical damage and for economic injury the number is 659400.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 14, 1988.

Michael R. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-1137 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2306]

South Dakota; Declaration of Disaster Loan Area

The City of Deadwood, South Dakota, constitutes a disaster loan area because of damages from a fire which occurred on December 15, 1987. Applications for loans for physical damage may be filed until the close of business on March 14, 1988, and for economic injury until the close of business on October 14, 1988, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230605 for physical damage and for economic injury the number is 659500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 14, 1988.

James Abdnor,

Administrator.

[FR Doc. 88-1138 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Wednesday, February 3, 1988, at 9:00 a.m. until 3:00 p.m., at the Holiday Inn, West Memorial Highway, Bismarck, North Dakota.

At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government. This hearing will focus on the particular issues facing small American Indian owned businesses.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Minority Small Business Outreach, U.S. Small Business Administration, 1441 L Street NW., Room 602, Washington, DC 20416, telephone (202) 653-6528.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 7, 1988.

[FR Doc. 88-1139 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0345]

Queneska Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Queneska Capital Corporation (Applicant), 123 Church Street, Burlington, Vermont 05401, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors, manager, and shareholder of the Applicant are as follows:

Name and address	Position	Percentage of ownership
Albert W. Coffrin, III, 37 Colonial Square, Burlington, VT 05401	President, Manager, Director	0
Susan D. Struble, 33 South Bay Circle, Colchester, VT 05446	Vice President, Director	0
Ethan A. Allen, Jr., 99 Van Sicklen Road, Williston, VT 05495	Director, Assistant Secretary, Assistant Treasurer	0
Gaete L. Marcoux, 196 Roosevelt Highway, No 2, Colchester VT 05446	Secretary	0
Edward W. Hasse, 39 Stirling Place, Burlington, VT 05401	Treasurer	0
Dudley W. Dave, Sunset Cliff, Burlington, VT 05401	Director	0
Michael R. Tuttle, 3 Martindale Road, Shelburne, VT 05482	Director	0
The Merchants Bank, 123 Church Street, Burlington, VT 05401	Investment Advisor	100

The Applicant will begin operations with a capitalization of $1,500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business in the states of Vermont, Massachusetts, New York and New Hampshire.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Burlington, Vermont.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 12, 1988.

[FR Doc. 88-1078 Filed 1-20-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1155]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct a special meeting on February 3, 1988, at 9:30 am in Room 3200 of the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC.

The purpose of this special meeting will be to receive comments from the public to ascertain the desirability of U.S. ratification of Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating thereto (MARPOL 73/78). Previous U.S. positions on Annex III including the draft revised text (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form), the potential for U.S. ratification, and its eventual entry into force internationally will also be discussed.

Annex III of MARPOL 73/78 Requirements: The Draft Revised Annex III Regulations would apply to all ships carrying harmful substances in packaged form. For the purposes of the Annex, "harmful substances" are those substances identified as marine pollutants in the International Maritime Dangerous Goods (IMDG) Code, and "packaged form" is defined as forms of containment specified in the schedules for marine pollutants in the IMDC Code.

The Annex would establish detailed requirements concerning packaging, marking/labelling, documentation, stowage, and if necessary quantity limitations for preventing or minimizing pollution of the marine environment by harmful substances. Jettisoning of harmful substances in packaged form would be prohibited except when necessary for the purposes of securing safety of the ship or saving life at sea. The washing of leakages overboard would be regulated provided that compliance would not impair the safety of the ship and persons onboard.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G-MER-3), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202) 267-0419.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1297 Filed 1-20-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1156]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on February 4, 1988 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to prepare for the 40th Session of IMO Subcommittee on the Carriage of Dangerous Goods (CDG/40), scheduled for February 22 through 26, 1988.

The tentative agenda for CGD/40 includes the following:

1. Amendments to the International Dangerous Goods (IMDG) Code:
   a. Review of technical details of the implementation of the IMDG Code.
   b. Carriage of dangerous goods on short sea voyages.
   c. Revision of Class 7—Radioactive materials.
   d. Revision of Class 1—Explosives.
   e. Revision of Class 3—Flammable Liquids.
   f. Revision of Class 5.1—Oxidizers.
   g. Revision of Class 4—Flammable Solids.
   h. Revision of Class 2—Gases.
2. Amendments to:
   a. The Emergency Procedures for Ships Carrying Dangerous Goods (EmS).
   b. The Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).
3. Intermediate Bulk Containers (IBCs) for dangerous goods.
4. Portable tanks and road tank vehicles for dangerous goods.
5. Inclusion of provisions on marine pollutants in the IMDG Code:
   a. Revision of the individual schedules of the IMDG Code to cover the marine pollution aspect.

b. Development of new schedules for marine pollution for inclusion in the IMDG Code.

c. Amendments to the existing provisions of the IMDG Code to cover the marine pollution aspect.

d. Development of new provisions necessary for inclusion in the IMDG Code to cover the marine pollution aspect.

e. Establishment of criteria for immersion testing of packages containing marine pollutants.

6. Revision of the list of substances annexed to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973.

7. Safety aspects of section 2 on search and recovery of packaged goods lost at sea of the Manual on Chemical Pollution.

8. Requirements for the carriage of irradiated nuclear fuel in purpose-built and non-purpose-built ships.

9. Development of guidelines to ensure the reporting to IMO of incidents involving dangerous goods on board ship or in a port area.

10. Revision of MSC/Circ. 360/ Rev. 1.

11. Relations between CDG and other organizations.

Members of the public may attend up to the seating capacity of the room. Persons wishing to discuss any of the above agenda items or other subjects dealing with the IMDG Code should attend or otherwise contact the Coast Guard.

For further information, contact either Commander Ronald W. Tanner or Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593-0001; Telephone: (202) 267-1577.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1296 Filed 1-20-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-086]

Rules of the Road Advisory Council; Meeting Cancellation

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: On December 4, 1987, (52 FR 233) a notice was published in the **Federal Register** announcing meetings to be held by the Rules of the Road Advisory Council in Seattle, Washington scheduled for January 25-27, 1988. Due to budgetary constraints, the Coast Guard has cancelled the meetings. A notice will be published in the **Federal Register** announcing future meetings of the Council. Members of the public may present written statements to the Council at any time.

Additional information may be obtained from Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSS-2), Washington, DC 20593-0001, Telephone (202) 267-0414.

Dated: January 15, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88-1128 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-14-M

[CGD 88-005]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on March 2, 1988, in Room 3442-44-46 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street SW., Washington, DC. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:
(a) Port Facilities and Operations;
(b) Tankbarge-Construction, Certification, Operations;
(c) Personnel Manning and Licensing;
(d) Personnel Safety and Workplace Standards;
(e) Existing Regulations Review and Restructure;
(f) IMO/MARPOL Initiatives;
(g) Miscellaneous:
(1) Air Quality/Vapor Control;
(2) Bridge to Bridge Radiotelephone Issues;
(3) NAV Rules Update.
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001 or by calling (202) 267-1477.

Dated: January 15, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88-1129 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-04-M

[CGD 88-006]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on March 3, 1988, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. The agenda, which includes docketed rulemakings where indicated, is expected to be as follows:

1. Approval of minutes from October 1987 TSAC meeting.
2. Reports on the following items:
(a) Licensing of Pilots (CGD 84-060);
(b) Inland Radar Observer Courses;
(c) Assistance Towing Licensing (CGD 87-017);
(d) Licensing of Maritime Personnel (CGD 81-059);
(e) Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks (CGD 85-061);
(f) Drydock and Tailshaft Requirements;
(g) Hazardous Substances Regulations (CGD 86-034);
(h) Tankerman Requirements (CGD 79-116);
(i) IMO Status Report Annex V of MARPOL 73/78;
(j) ABS Rules for Towing Vessels;
(k) IMO Status Report: Global Maritime Distress and Safety System;
(l) Operating A Commercial Vessel While Intoxicated (CGD 84-099);
(m) Drug Detection for Merchant Marine Personnel (CGD 86-067);
(n) Mandatory Alcohol and Drug Testing Following Serious Marine Incidents (CGD 88-080);
(o) OSHA's Proposed Benzene Standard;
(p) Air Quality Vapor Control;
(q) Bridge to Bridge Radiotelephone Issues;
(r) NAV Rules Update;
(s) Any other matter properly brought before the Committee. Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.
3. Summary of Action Items.
4. Adjournment.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 25 copies of written material should be submitted to the Executive Director no later than March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Capt. J.J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, DC 20593-0001, (202) 267-1477.

Dated: January 15, 1988.

J.J. Smith,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 88-1130 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 046CE; Petition Notice PE 88-1]

Petition of the British Aerospace Public Limited Company for Exemption From Certain Ground Load and Landing Gear Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for exemption.

SUMMARY: This notice publishes for public comment the petition of the British Aerospace Public Company (BAe). The petitioner requests exemption from certain ground load and landing gear requirements of the Federal Aviation Regulations (FAR), Part 23, to permit certification of the Jetstream Model 3201 in the Commuter Category with the landing gear and associated structure complying with the design standards of Part 25.

The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before March 21, 1988.

ADDRESS: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ACE-7), Docket No. 046CE, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition notice number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments received will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of their comments in response to this notice should submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 046CE." The postcard will be date stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for exemption for publication in the **Federal Register**. In the case of this petition by the British Aerospace Public Limited Company (BAe), however, the FAA has elected to publish the petition verbatim. As Exhibit A of their petition, BAe provided a comparison between Part 23 and Part 25 relative to ground loads and landing gear requirements. That exhibit is not published in this notice but is available as a part of the docket file. The FAA further wishes commenters to provide comments on material and discussions provided by British Aerospace Public Limited Company. This discussion will assist the FAA in evaluating of the merits of the petition.

Although this notice sets forth the contents of the petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for exemption; it does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of FAR Part 11 and reach a conclusion on the merits of the proposals after it has had an opportunity to evaluate the petition carefully in light of the comments received and other relevant matters presented. A summary of the disposition of this exemption will be published in the **Federal Register**.

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for exemption from the British Aerospace Public Limited Company dated November 24, 1987.

Issued in Washington, DC, on January 12, 1988.

John H. Cassady,

Associate Chief Counsel.

[FR Doc. 88-1061 Filed 1-20-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The New Sweden Colony," (see list [1]) imported

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the New Jersey State Museum in Trenton, New Jersey, beginning on or about February 6, 1988, to on or about May 15, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: January 19, 1988.

[FR Doc. 88-1342 Filed 1-20-88; 10:10 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 13

Thursday, January 21, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 26, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 28, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987-31—Terry L. Claasen on behalf of the Chicago Board of Options Exchange.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-1269 Filed 1-19-88; 2:28 pm]

BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m. on Friday, January 29, 1988, and continue until 10:00 a.m.

PLACE: The Loews L'Enfant Plaza Hotel, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—Meeting of December 17, 1987
3. Review of FY 1988 Appropriations
4. Presentation of the Corporation's Audit Report
5. Review of FY 1987 Budget Interest & Expenses
6. Allocation of FY 1987 Carryover Funds
7. Review of Monthly Expenditures for October and November
8. Schedule of Expenditures for Training Programs

Discussion and Public Comments follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1303 Filed 1-19-88; 4:06 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 1:00 p.m. on Thursday, January 28, 1988, and continue until all official business is completed.

PLACE: The Loews L'Enfant Plaza Hotel, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—Meeting of December 17-18, 1987
3. Consideration of Proposed Revisions to Part 1607, Governing Bodies

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1304 Filed 1-19-88; 4:06 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board or Directors; Meeting

TIME AND DATE: A closed Executive Session will commence at 8:00 p.m. on Thursday, January 28, and continue until 11:00 p.m. in the Lasalle Room. The open meeting will commence at 8:30 a.m. on Friday, January 29, 1988, until 9:00 a.m. and then continue at 10:30 a.m. until all official business is completed.

PLACE: The Loews L'Enfant Hotel, (Executive Session) Lasalle Room, Marquette Room, 480 L'Enfant Plaza, Washington, DC 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

Executive Session (Closed)

1. Personnel and Personal Matters.
2. Kitigation and Investigation Matters.

Board of Directors Meeting (Open)

1. Approval of Agenda.
2. Election of Chairman and Vice Chairman.
3. Approval of Minutes—Meeting of December 19, 1987.
4. Report from the Audit and Appropriations Committee.
5. Report from the Operations and Regulations Committee and Consideration of Part 1607, Governing Bodies.
6. Consideration of Proposed Resolution Regarding Denial of Access to Information.
7. Report by Douglas J. Besharov of the American Enterprise Institute on "Maximizing Access to Justice".

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: January 19, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88-1337 Filed 1-19-88; 5:07 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 18, 25, February 1, and 8, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Wednesday, January 20

10:00 a.m.
Briefing on Status of Sequoyah Restart (Public Meeting)
2:00 p.m.
Briefing on NRC Technical Training Program (Public Meeting)

Thursday, January 21

2:00 p.m.
Briefing on Regulation of Transportation of Radioisotopes and Results of the Modal Study (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 25—Tentative

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 1—Tentative

Tuesday, February 2

10:00 a.m.
Briefing on NRC Human Factors Programs (Public Meeting)
2:00 p.m.
Status of NRC Research Initiatives in Response to NAS Report (Public Meeting)

Wednesday, February 3

2:00 p.m.
Briefing on Status of State, Local, and Indian Tribe Programs (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Thursday, February 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634–1410.

Andrew L. Bates,

Office of the Secretary, January 14, 1988.

[FR Doc. 88–1182 Filed 1–19–88; 9:30 am]

BILLING CODE 7590–01–M

federal register

Thursday
January 21, 1988

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3258-1]

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct primary tungsten operations. EPA proposed these amendments on January 22, 1987 (52 FR 2480) in accordance with a settlement agreement which resolved a lawsuit challenging the final nonferrous metals manufacturing phase I regulation for this subcategory. The challenged regulation was promulgated by EPA on March 8, 1984, 49 FR 8742.

These final amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BAT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES).

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on Feburary 4, 1988. This regulation shall become effective March 7, 1988.

The compliance date for the BAT regulations is as soon as possible, but in any event, no later than March 31, 1989. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is February 22, 1988.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in a United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The record for the final rule will be available for public review not later than March 28, 1988.

ADDRESSES: Address question on the final rule to Mr. Ernst P. Hall, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention Nonferrous Metals Manufacturing Rules (WH-552). The basis for this amendment is detailed in the record.

The record for the final rule will be available for public review in EPA's Public Information Reference Unit, Room 2904 (Rear) (EPA Library), 401 M Street, SW., Washington DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of this notice:

I. Legal authority
II. Background
  A. Rulemaking and Settlement Agreement
  B. Effect of the Settlement Agreement for Primary Tungsten
III. Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
IV. Environmental Impact of the Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
V. Economic Impact of the Amendments
VI. Public Participation and Response to Major Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 421

I. Legal Authority

The regulation described in this notice is promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217).

II. Background

A. Rulemaking and Settlement Agreement

On February 17, 1983, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals manufacturing phase I point source category (48 FR 7032). EPA published the final nonferrous metals manufacturing phase I regulation on March 8, 1984 (49 FR 8742). Those regulations affected 80 direct dischargers and 85 indirect dischargers. The preambles to the proposed and final nonferrous metals manufacturing phase I regulation describe the history of the rulemaking.

After publication of the nonferrous metals manufacturing phase I regulation, the Aluminum Association, Inc., Kaiser Aluminum and Chemical Corp., Reynolds Metals Company, the Aluminum Recycling Association, the American Minimg Congress, Kennecott, Amax, St. Joe Minerals, ASARCO Inc., Mallinckrodt, Inc., NRC Inc., and the Secondary Lead Smelters Association filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit (*Kennecott* v. *EPA*, 4th Cir. No. 84-1288 and Consolidated Cases). On December 26, 1985 the Fourth Circuit denied petitions to review the regulations for the primary lead, primary zinc, primary copper, metallurgical acid plants, secondary lead and the columbium-tantalum subcategories (780 F. 2d 445). The Supreme Court denied two petitions for a writ of certiorari on October 7, 1986. 107 U.S. 67.

Earlier in November of 1985 four aluminum parties in the consolidated lawsuits entered into two settlement agreements with EPA which resolved issues raised by the petitioners related to the primary aluminum and secondary aluminum subcategories. In accordance with the Settlement Agreements, EPA published a notice of proposed rulemaking on May 20, 1986 and solicited comments regarding certain amendments to the final nonferrous metals manufacturing phase I regulation for these subcategories (50 FR 18530). EPA has issued a final rule promulgating these amendments (52 FR 25552).

Similarly, EPA entered into another agreement on June 26, 1986 with AMAX, Inc. and GTE Products Corp., two companies affected by the regulations for the primary tungsten subcategory.

B. Effect of the Settlement Agreement for Primary Tungsten

As part of this latest Settlement Agreement, on June 26, 1986 the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of those portions of 40 CFR Part 421 which EPA is amending. The Court granted this request on July 9, 1986.

Copies of the Settlement Agreement have been sent to all EPA Regional Offices and to applicable State permit-issuing authorities. All limitations and standards contained in the final nonferrous metals manufacturing phase I regulation published on March 8, 1984 which are not specifically listed in the attached final amendments are not affected by today's rulemaking.

III. Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

Below are descriptions of today's amendments to the nonferrous metals manufacturing phase I regulation. The amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on March 8, 1984. See the preamble to the regulation at 49 FR 8742, for the Agency's findings with respect to these technologies.

1. Treatment Effectiveness Concentration for Ammonia Steam Stripping of High Sulfate Wastewater

EPA is amending the BPT and BAT limitations and NSPS, PSES and PSNS for ammonia in §§ 421.102(d), 421.103(d), 421.104(d), 421.105(d), and 421.106(d), when ammonia is treated under a specific set of circumstances. EPA promulgated treatment effectiveness concentration values for ammonia steam stripping that applied regardless of the composition of the influent being treated (49 FR 8812, March 8, 1984). The petitioners indicated that although they could meet these values for most of their streams, the wastestream from the ion-exchange raffinate process step could not be treated to this level because it contains unusually high concentrations of sulfates. Sulfates at such high concentrations, they stated, could interfere with steam stripping performance by plugging the stripper column.

As part of the settlment, EPA is suspending, under limited circumstances, the ammonia treatment effectiveness concentration value for the ion-exchange raffinate building block. These circumstances are: (a) Where influent (called "mother liquor") to or effluent (called "raffinate") from this process contains sulfates at concentrations exceeding 1000 ppm ("high sulfate influent or effluent"); (b) where the high sulfate influent or effluent is treated by ammonia steam stripping; and (c) where this high sulfate raffinate or mother liquor is not commingled with other wastestreams before treatment for steam stripping for ammonia removal.

In the event a plant satisfies all three of these conditions, mass limitations would be established on a Best Professional Judgement ("BPJ") basis by a permit writer pursuant to 40 CFR 125.3(c)(2) and (3) using the regulatory flows used as the basis for the promulgated effluent limitation guidelines and standards established in this proceeding and treatment effectiveness concentration values determined by the permit writer.

EPA is taking this action because of engineering concerns that the treatment effectiveness concentrations for ammonia may not be achievable for these high sulfate wastestreams in this subcategory. This is because sulfates (particularly calcium sulfate) at this concentration could interfere with the ammonia steam stripper by plugging the column. This could necessitate more frequent column cleaning and downtime than the Agency anticipated in promulgating the rule, and prevent achieving the concentration values.

EPA lacks operating data on ammonia steam stripping of wastewater where sulfate concentrations exceed 700 ppm, and has been informed in the phase II nonferrous manufacturing rulemaking that sulfate plugging problems would interfere with steam stripper performance should sulfate concentrations exceed 1000 ppm. (Comments of Teledyne Wah Chang, Sept. 28, 1984, pg. 5). Petitioners in the phase I primary tungsten litigation made the same points to the Agency. Thus, at least on an interim basis, EPA believes that 1000 ppm sulfates is a reasonable level to differentiate high sulfate and low sulfate streams.

The only building block in the primary tungsten subcategory that contains these high sulfate concentrations is ion exchange raffinate. Thus, today's action is limited to that building block. In addition, since commingling this stream would dilute sulfates to levels which do not interfere with steam stripper performance, EPA is suspending the ammonia concentration value only for uncommingled ion-exchange raffinate wastewater.

Due to the absence of ammonia treatment data under these conditions, EPA is unable to establish an alternative concentration for ammonia at this time. Tungsten industry petitioners expressed their belief to the Agency that they could achieve a one-day maximum of 351.8 mg/l and a monthly average of 154.7 mg/l under these conditions. Based on these representations, this should be the outer bound of any BPJ limitation.

As part of the settlement agreement, the petitioners agreed that any of their primary tungsten facilities treating the ion-exchange raffinate wastestream or mother liquor to the ion-exchange process under these conditions will provide the Agency with one year of operating data (daily observations), beginning from the time the steam stripper is in full-scale, steady state operation. These data shall include at a minimum: (a) Sulfate and ammonia concentrations and pH levels in the feed to, and effluent from, the steam stripper unit; (b) the sulfate and ammonia concentrations and pH levels in the effluent from the ion-exchange process if the mother liquor is being treated and not the raffinate; (c) the total suspended solids concentrations in the feed to and the effluent from the steam stripper unit; (d) the wastewater feed rate to the steam stripper unit; (e) the steam rate of the steam stripper unit (pounds of process steam/gallon of wastewater processed); (f) steam flux through the column (pounds of steam on column only per gallon of feed), (g) steam stripper unit back pressure in the various column sections, and (h) date and time of operation including dates and times for disruption of operation for cleaning or repair. These companies will also monitor for total dissolved solids in the feed to and effluent from the steam stripper unit once a week for the first month and monthly thereafter for the following five months, and submit the data to EPA. If these companies elect to treat high sulfate mother liquor, they agreed that treatment effectiveness concentrations from such treatment can be applied when determining the ammonia mass allowance for the ion-exchange raffinate building block.

The Agency notes that today's action is limited to situations where sulfates are present in high concentrations. The Agency is not taking any action for situations where other compounds (for instance phosphates; carbonates, or chlorides) are present.

2. Regulatory Flows for the Alkali Leach Condensate Building Block

EPA is adding a new building block for this process. This building block was omitted in the promulgated rule because the Agency believed this condensate would be accounted for through other building blocks, primarily the raffinate building block. The petitioners indicated that the flow allowance for the raffinate building block does not represent long-term performance and as such is inadequate because alkali leach condensate is a discrete process stream. Today's notice regulates the same

pollutants regulated in other primary tungsten building blocks. The flow basis for this building block is the flow at the sole plant with this unit operation.

3. Change in Production Normalizing Parameter ("PNP")

EPA is modifying the production basis for determining the amount of pollutant which may be discharged to the amount of the element tungsten produced or processed. In the final regulation, EPA used the chemical salt form of tungsten which was believed appropriate for the processing step or building block being regulated. However, the petitioners stated that the chemical formulas were incorrect and confusing. Using the element tungsten produced or processed, rather than a chemical compound, as a PNP makes the production basis clear and unambiguous. This proposed change will affect all of the building blocks except for § 421.102(i)–(k), 421.103(i)–(k), 421.104(i)–(k), 421.105(i)–(k) and 421.106(i)–(k) which were already based on the amount of elemental tungsten produced.

IV. Environmental Impact of the Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

The amendments described above affect two facilities in the primary tungsten subcategory. These amendments would allow a greater discharge of ammonia, lead and zinc for these facilities than was allowed by the March 1984 regulation. EPA estimates that the increase above the promulgated limits in the amount of ammonia will be no greater than 11.3 kkg at these two facilities. Lead and zinc discharges would increase by approximately 18.6 kg/yr from the one affected facility. The change in the production basis for the regulation would not result in any increase in pollutants discharged.

V. Economic Impact of the Amendments

These amendments do not alter the model technologies for complying with the nonferrous metals manufacturing phase I regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 8742). EPA concluded at that time that the regulation was economically achievable.

Since today's amendments are based on the same model technologies, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Since proposal of these amendments, two commenters have submitted comments on the proposal. The most significant of these comments are summarized below:

1. All commenters supported the Agency's proposed changes to the promulgated nonferrous metals manufacturing phase I regulation, and recommend they be promulgated as proposed.

2. One commenter pointed out certain typographical errors in the proposal. The Agency appreciates these corrections and has made these revisions to the final amendments.

3. Limitations for existing indirect discharges are essentially unaffected by these amendments since (to the Agency's knowledge) no indirect discharger operates either of the building blocks principally affected by the amendments. The Agency also did not receive comment from any indirect discharges. Consequently, the Agency is adopting the earliest compliance date provided by the Administrative Procedures Act.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 8, 1984 final nonferrous metals manufacturing phase I regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (40 FR 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: January 10, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA amends 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 421.102 is amended by revising paragraphs (a)—(1) and by adding new paragraphs (m) and (n) to read:

§ 421.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	17.230	8.205
Zinc	59.900	25.030
Ammonia (as N)	5,469.000	2,404.00
Total suspended solids	1,682.000	800.000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(b) Subpart J—Acid Leach Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	15.040	7.162
Zinc	52.280	21.840
Ammonia (as N)	4,773.000	2,098.000
Total suspended solids	1,468.000	698.300
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(c) Subpart J—Alkali Leach Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(d) Subpart J—Alkali Leach Wash Condensate.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	6.057	3.837
Zinc	26.011	11.700
Ammonia (as N)	2,557.000	1,124.000
Total suspended solids	786.200	374.100
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	37.160	17.700
Zinc	129.200	53.970
Ammonia (as N)	11,790.000	5,185.000
Total Suspended solids	3,627.000	1,726.000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	37.160	17.700
Zinc	129.200	53.970
Ammonia (as N) (2)	11,790.000	5,185.000
Total suspended solids	3,627.000	1,726.000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(2) The effluent limitation guideline for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	31.000	14.760
Zinc	107.800	45.020

BPT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	9,838.000	4,325.000
Total suspended solids	3,026.000	1,439.000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0 000
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	11.600	5.523
Zinc	40.320	18.850
Ammonia (as N)	3,681.000	1,618.000
Total suspended solids	1,132.000	538.500
pH	(1)	(1)

(1) Within the range of 7.0 to 10.0 at all times.

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.026	0.013
Zinc	0.092	0.038
Ammonia (as N)	8.398	3.692
Total suspended solids	2.583	1.229
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	12.940	6.161
Zinc	44.970	18.790
Ammonia (as N)	4,106.000	1,805.000
Total suspended solids	1,263.000	600.700
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(l) Subpart J—Reduction to Tungsten Water of Formation.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.205	.098
Zinc	.714	.298
Ammonia (as N)	65.190	28.660
Total suspended solids	20.050	9.536
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	1.008	0.48
Zinc	3.504	1.464
Ammonia (as N)	319.900	140.700
Total suspended solids	98.400	46.800
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.000	.000
Zinc	.000	.000
Ammonia (as N)	.000	.000
Total suspended solids	.000	.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

3. Section 421.103 is amended by revising paragraphs (a)—(1) and by adding new paragraphs (m) and (n) to read:

§ 421.103 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N) [1]	11,790.000	5,185.000

[1] The effluent limitation for this pollutant does not apply if a) the motor liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/1; b) this mother liquor or raffinate is treated by ammonia steam stripping; and c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungsten metal produced	
Lead	0.862	0.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of tungsten metal produced	
Lead	0.137	0.064
Zinc	0.499	0.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	0.672	0.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

4. Section 421.104 is amended by revising paragraphs (a)—(1) and by adding new paragraphs (m) and (n) to read:

§ 421.104 Standards of performance for new sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000
Total suspended solids	615.400	492.300
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(b) Subpart J—Acid Leach Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900
Total suspended solids	53.720	42.970
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(c) Subpart J—Alkali Leach Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(d) Subpart J—Alkali Leach Wash Condensate.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000
Total suspended solids	287.800	229.600
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000
Total suspended solids	1,327.000	1,062.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N) [2]	11,790.000	5,185.000
Total suspended solids	1,327.000	1,062.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.
[2] The new source standard for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000
Total suspended solids	1,107.000	885.600
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900
Total suspended solids	41.430	33.150
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692
Total suspended solids	0.945	0.756
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500
Total suspended solids	46.200	36.960
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(l) Subpart J—Reduction to Tungsten Water of Formation.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660
Total suspended solids	7.335	5.868
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(m) Subpart J—Tungsten Power Acid Leach and Wash.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700
Total suspended solids	36.000	26.800
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.00	.000
Zinc	.000	.000
Ammonia (as N)	.000	.000
Total suspended solids	.000	.000
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

5. Section 421.105 is amended by revising paragraphs (a)–(l) and by adding new paragraphs (m) and (n) to read:

§ 421.105 Pretreatment standards for existing sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)[1]	11,790.000	5,185.000

[1] The pretreatment standard for this pollutant does not apply if (a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; (b) this mother liquor or raffinate is treated by ammonia steam stripping; and (c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

Subpart J—Reduction to Tungsten Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

6. Section 421.106 is amended by revising paragraphs (a)–(l) and by adding new paragraphs (m) and (n) to read:

§ 421.106 Pretreatment standards for new sources.

* * * * *

(a) Subpart J—Tungstic Acid Rinse.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungstic acid (as W) produced	
Lead	11.490	5.333
Zinc	41.850	17.230
Ammonia (as N)	5,469.000	2,404.000

(b) Subpart J—Acid Leach Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic acid (as W) produced	
Lead	1.003	0.466
Zinc	3.653	1.504
Ammonia (as N)	477.400	209.900

(c) Subpart J—Alkali Leach Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of sodium tungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000

PSNS—Continued

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
Ammonia (as N)	0.000	0.000

(d) Subpart J—Alkali Leach Wash Condensate.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of sodium tungstate (as W) produced	
Lead	5.372	2.494
Zinc	19.570	8.057
Ammonia (as N)	2,557.000	1,124.000

(e) Subpart J—Ion Exchange Raffinate (Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)	11,790.000	5,185.000

(f) Subpart J—Ion Exchange Raffinate (Not Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium tungstate (as W) produced	
Lead	24.780	11.500
Zinc	90.240	37.160
Ammonia (as N)[1]	11,790.000	5,185.000

[1] The pretreatment standard for this pollutant does not apply if a) the mother liquor feed to the ion exchange process or the raffinate from the ion exchange process contains sulfates at concentrations exceeding 1000 mg/l; b) this mother liquor or raffinate is treated by ammonia steam stripping; and c) such mother liquor or raffinate is not commingled with any other process or nonprocess waters prior to steam stripping for ammonia removal.

(g) Subpart J—Calcium Tungstate Precipitate Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of calcium tungstate (as W) produced	
Lead	20.670	9.594
Zinc	75.280	31.000
Ammonia (as N)	9,838.000	4,325.000

(h) Subpart J—Crystallization and Drying of Ammonium Paratungstate.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of ammonium paratungstate (as W) produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

(i) Subpart J—Ammonium Paratungstate Conversion to Oxides Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic oxide (as W) produced	
Lead	0.773	0.359
Zinc	2.817	1.160
Ammonia (as N)	368.200	161.900

(j) Subpart J—Ammonium Paratungstate Conversion to Oxides Water of Formation.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungstic oxide (as W) produced	
Lead	0.018	0.008
Zinc	0.064	0.026
Ammonia (as N)	8.398	3.692

(k) Subpart J—Reduction to Tungsten Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (pounds per million) of tungsten metal produced	
Lead	.862	.400
Zinc	3.142	1.294
Ammonia (as N)	410.600	180.500

(l) Subpart J—Reduction to Tungsten Water of Formation.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/ million lbs) of tungsten metal produced	
Lead	.137	.064
Zinc	.499	.205
Ammonia (as N)	65.190	28.660

(m) Subpart J—Tungsten Powder Acid Leach and Wash.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (parts per million) of tungsten metal produced	
Lead	.672	.312
Zinc	2.448	1.008
Ammonia (as N)	319.900	140.700

(n) Subpart J—Molybdenum Sulfide Precipitation Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (parts per million) of tungsten metal produced	
Lead	0.000	0.000
Zinc	0.000	0.000
Ammonia (as N)	0.000	0.000

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January 21, 1988

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Notice of Proposed Rulemaking

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3280-1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to revise the regulation codified in Subpart L of 40 CFR Part 86, that makes nonconformance penalties (NCPs) available for specific Federal emission standards, to include a provision which will waive payment of penalties to EPA for those heavy-duty vehicles and engines (hereinafter collectively referred to as HDVs) which are certified under the Federal NCP process and entered into commerce in the State of California under a California NCP program. EPA proposes to waive the amount due under 40 CFR 86.1113(g) provided the identical nonconformance penalty is paid to the State of California. However, EPA would reserve the right to collect any penalties which have been waived if a manufacturer fails to pay the quarterly penalty to the State of California when due, or if the amount of the penalty paid to the State of California is less than that which would have been due to EPA under the regulations.

DATES: *Public Hearing:* EPA will hold a public hearing on this notice on February 23, 1988 beginning at 9:00 a.m. Any person desiring to testify at the hearing must notify the Agency by February 3, 1988. In the event no requests to testify are received, the hearing will be cancelled and notice given in the **Federal Register**. Requests for or questions about the hearing should be directed to the EPA contact person listed below. Any person desiring to participate in the hearing should, prior to the hearing, submit an outline of the points to be discussed and the time needed to discuss these points. Pursuant to section 307 of the Clean Air Act, the record of the hearing, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal and other information.

Public Comment: All comments should be received within 30 days of the publication of this notice, within 30 days following the conclusion of the public hearing if held, or by February 23, 1988, whichever is later. Comments should be submitted to the Public Docket Number A-87-14 at the address provided below.

ADDRESSES: The hearing, if held, will take place at the Holiday Inn Embarcadero, 1355 Harbor Drive, San Diego, California 92101. Copies of materials relevant to this rulemaking are contained in and written comments should be submitted to Public Docket Number A-87-14, Central Docket Section, U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-132), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 am and 3:00 pm on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Tesoriero or Mr. Anthony Erb, Manufacturers Operations Division (EN-340F), Office of Mobile Sources, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-2487 or (202) 382-2536, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 206(g) of the Clean Air Act (Act) requires EPA to issue a certificate of conformity for HDVs which exceed a section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by EPA by regulation. Congress intended NCPs as a temporary relief for perceived problems with technology-forcing heavy-duty emission standards which othewise might force some manufacturers out of the market place.

On August 30, 1985 (50 FR 35374) EPA published a final rule promulgating the administrative aspects of the NCP program. On December 31, 1985 (50 FR 53454), EPA promulgated a final rule making NCPs available for specific emission standards taking effect in model years 1987 and 1988. The regulations are codified in Subpart L of 40 CFR Part 86. These regulations did not specifically prohibit or allow NCPs and HDVs destined for the California market. However, since California HDV emission standards are the same or more stringent than EPA's and its regulations do not allow for NCPs, a manufacturer currently cannot obtain a California certificate of conformity for a nonconforming vehicle based on payment of an NCP to EPA.

On December 8, 1986 the Executive Director of the State of California Air Resources Board (CARB) sent to EPA a letter describing a proposed California NCP program. A copy of this letter is available in the Public Docket Number A-87-14. It pointed out that the availability of NCPs for Federal HDVs has created a disparity between California and Federal HDV requirements. Unless the California NCP program is implemented, beginning with the 1988 model year, fewer HDV models will be available for sale in California than in neighboring states and California consumers may be encouraged to purchase and register higher emitting HDVs in other states. Assuming this occurs, these HDVs, along with other Federally certified vehicles engaging in interstate commerce, would travel a substantial number of miles on California highways each year and contribute to emissions within the State.

The December 8, 1986 letter also stated that to address this situation, the California Legislature had enacted Assembly Bill 3683 (AB 3683). This new law authorizes CARB to implement an NCP program applicable to sales of HDVs in California which do not meet CARB emission standards, but which have already been certified under the Federal NCP program, contingent upon the following factors:

(1) That Federal emission standards and test procedures applicable to the specified HDVs are identical to the emission standards adopted by the CARB; [1] and

(2) that it is established that payment of nonconformance fees to the State of California may substitute for payment of nonconformance fees to the Federal Government.

The law (AB 3683) specifies that the fees to be established are to be identical to those established by EPA for the same HDVs. All fees collected pursuant to AB 3683 are to be deposited in the State of California Air Pollution Control Fund and will provide a mechanism for funding measures to mitigate emission increases within the State from HDVs certified under the NCP process, thereby ensuring protection of California's ambient air quality.

In the December 8, 1986 letter, the CARB requested that EPA provide assistance in establishing a California NCP program. In such a program, manufacturers desiring to enter nonconforming HDVs into commerce in the State of California under the NCP process would be charged only a single fee and that fee would be remitted to the State of California for the purpose of mitigating any resultant emission increases that would occur within the State of California.

General Motors Corporation has stated its desire to utilize certain NCPs for HDVs it desires to sell in California during the 1988 model year in order to avoid lost sales and the resultant hardships placed on consumers and secondary manufacturers. Other manufacturers may have the same needs and concerns.

[1] The CARB has interpreted this requirement to mean that the specific pollution standards for which California will make NCPs available and test procedures for those individual pollutants must be identical in order for the CARB to implement an NCP program. Thus, under California's interpretation, the state would not necessarily offer NCPs for every standard for every HDV, since California standards are not all identical to Federal standards. However, California would offer NCPs for each standard which is identical to the corresponding Federal standard

II. Proposed Action

This action proposes to revise 40 CFR Part 86, Subpart L in order to allow California to collect and retain NCPs applicable to HDVs being distributed in commerce in California. As provided in the regulations in 40 CFR Part 86, Subpart L, EPA would assess NCPs on nonconforming HDVs for which the manufacturer seeks Federal certification but which are intended for sale in California. EPA would waive its collection of the NCP for HDVs entered into commerce in California and for which the manufacturer has paid the appropriate amount of penalty (as discussed later in this notice) to the State of California.[2] (EPA's authority to revise the NCP regulations in this manner is discussed in section VI of this notice.)

The intent of this proposed action is to ensure continued availability of all models of HDVs for consumers in the State of California, and provide a mechanism whereby the effect of increased emissions from HDVs which are certified using the Federal NCP process and used principally in the State of California may be mitigated.

This allowance is to be made only for those HDVs for which California has:

(1) Adopted emission standards and test procedures which are identical to the corresponding Federal emission standards and test procedures for which Federal NCPs are currently available, and

(2) Adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures.

Further, the manufacturer must submit to EPA adequate documentation quarterly of the amount claimed to be subject to waiver. As adequate demonstration of payment to California, EPA would accept a copy of a bank draft (or equivalent) to the State of California, along with the cover letter to California from the manufacturer explaining the purpose of the payment. As adequate demonstration that the HDVs are introduced in commerce for California, EPA would accept a statement on the emissions label of the HDVs that the vehicle or engine is designated for introduction in commerce for the State of California only. Other forms of demonstration of either the payment or the HDV destination could be acceptable and should be approved by EPA in advance of the required payments. EPA would reserve the right to collect any waived penalty if the manufacturer has not paid the amount due to California for any quarter or, to collect the difference between the California and the Federal penalty if the amount paid to California is less than that which would be due to EPA for the number of HDVs entered into commerce in the State of California during that quarter.

III. Anticipated Effects

The CARB has stated that it can have regulations in effect as early as January 1988. However, the CARB regulations cannot be implemented until it is established that EPA will waive its collection of the NCP for California HDVs upon payment of a equal sum to California. EPA's final rule, assuming EPA adopts one, likely would not be published before April 1988. Therefore, there may be an interim period of approximately three months between California's and EPA's promulgation of their respective final rules.

The CARB has indicated it would allow HDVs which were certified under the Federal NCP process to enter commerce in California during the interim period provided the NCP payment is not collected by EPA and California is allowed to collect the appropriate NCP payment for those HDVs when and if the final EPA rule is promulgated.

At the manufacturer's request, the Administrator could temporarily waive collection of the NCP as provided in § 86.1113-87(g)(1), for vehicles which are introduced in commerce in California prior to the conclusion of rulemaking on this matter. If the final rule allows EPA to waive collection of the NCP payment, the appropriate NCP payment for the interim period would then be made to California. If the final rule does not permit EPA to waive the NCP payment, EPA would collect the NCP for the interim period.

Beginning with the 1991 model year, the Federal averaging program will allow an HDV manufacturer to use averaging to determine compliance with the Federal NO_x and Particulate standards. Averaging allows manufacturers to control some vehicles more and others less, so long as the average emissions comply with the standards. Calculation of California NCPs may become more difficult beginning in the 1991 model year due to the implementation of the Federal averaging program for HDVs.[3] However, the issue of how to calculate NCPs with averaging will be addressed in the NCP Phase III rulemaking, for which the notice of proposed rulemaking is expected to be published in the **Federal Register** this year. EPA is deferring all averaging issues to the NCP Phase III rulemaking.

IV. Description of Proposed Regulation Revisions

The specific areas proposed to be revised in Chapter 1 of Title 40, Code of Federal Regulations are described in the following paragraphs.

In § 86.1113-87 (Calculation and payment of penalty) the language would be amended to specify that, for the purpose of NCP calculations and assessment, Federal and California HDVs of the same model year are to be considered together and the production for each should be combined to determine the total production for a model year.

The indexes "i" and "n" in the NCP formula (representing a year, and the number of model years for which the NCP has been available for an HDV subclass, respectively) have the same value for Federal and California HDVs of the same model year. This ensures that the California NCP rate will be the same as the Federal NCP rate, even though the manufacturer begins to use California NCPs in a different model year than the model year in which NCPs first became available under the Federal NCP program.

Paragraph (g)(1) would be revised to allow waiver of payment of a portion of the amount of the NCP assessed by EPA, provided the manufacturer pays the

[2] This entire proposal is contingent upon California requesting, and EPA approving, a waiver of Federal preemption under section 209(b) of the Act for the California NCP program. Such a waiver request and EPA decision under section 209(b) will be addressed in future Federal Register notices.

[3] Under certain scenarios, it may be difficult to calculate the portion of the NCP that will be waived to California. This difficulty may arise due to a manufacturer's use of the Federal averaging program and the possible inclusion of averaging data in the calculation of the NCP amount.

waived amount to California under a California NCP program for those HDVs introduced into commerce in the State of California. The waiver of the portion of the amount of the NCP assessed would be contingent upon EPA approving a waiver of Federal preemption for California's NCP program under section 209(b) of the Clean Air Act. Such a waiver would be applicable only if the Administrator finds that for the pollutants for which NCPs are currently available: (1) California emission standards, test procedures, NCP rates and NCP requirements are identical to corresponding Federal emission standards, test procedures, NCP rates and NCP requirements; and (2) the criteria for granting a waiver under section 209 of the Act have been met.

EPA would reserve the right to collect a waived amount (in full or in part, as appropriate) if the manufacturer has not demonstrated either that it has paid California an amount equal to the penalty which has been assessed under the Federal NCP rule, or that the HDVs claimed to have been introduced into commerce in California were, in fact, introduced into commerce in California.

The formula for determining the waived portion of any penalty is described in § 86.1113–87(g)(1)(iii). The following example is based on that formula. Assume for a particular HDV subclass that in the second year the NCP is available, the penalty is calculated by the formulas of § 86.1113–87(a) to be $200 per HDV (i.e., $NCP_2 = \$200$). Also, assume that in the first production quarter of the second year, a manufacturer distributes into commerce in California 50 HDVs of that subclass under the NCP provisions. The waived amount for the first quarter of that second year is:

$W_{1,2} = 50 \times 200 = \$10.000$

In this example, $10.000 of the Federal NCP payment for the first quarter is waived if the manufacturer demonstrates to EPA that the 50 HDVs were, in fact, distributed in commerce in California and that the manufacturer paid the State of California a $10.000 NCP payment for those same HDVs.

Section 86.1113–87(g)(3)(i) would be revised to expand the list of information to be submitted quarterly by the manufacturer. It would be expanded to include the identification, quantity and evidence of introduction of any HDVs subject to California NCPs, and documentation of the NCP payment to California.

The existing NCP regulations also provide for a partial refund to the manufacturer of the engineering and development component of the penalty. This would occur if the manufacturer certifies a conforming configuration, as demonstrated by conducting a Production Compliance Audit (PCA), to replace a configuration for which NCPs have been paid. The proposed revised regulations at § 86.1113–87(h) would specify that EPA would be responsible only for a portion of any such refund for a configuration sold in both California and other states, in proportion to the amount of NCP payment for HDVs of that configuration paid to EPA.[4] Formulas are provided in the proposed revised regulations to clarify the calculation of the refund(s) [5].

For example, assume a manufacturer produced 1,00 HDVs of a particular subclass in the first year NCPs were available and paid NCPs to EPA for 900 HDVs and to California for 100 HDVs. Assume the NCP for the first year (NCP_1) was $200. Assume the manufacturer produced 100 engines of the subclass in the second year and paid NCPs (assume $NCP_2 = \$250$) to EPA for 90 HDVs and to California for 10 HDVs, after which the manufacturer certified a conforming replacement configuration for the second year. As provided in the proposed regulatory language in section 86.1113(h), the discount factor for the second model year (D_2) = 0.79. The F_E and $_D$ is specified to be 0.06 for purposes of this example.

$R_{tot} = 0.79 \times 0.06 \times \$$
$200 \times 1,100 = \$10,428.00$

$R_{Cal} = (110/1,100) \times (10,428.00) = \$1,042.80$

$R_{EPA} = \$10.428.00 - \$1,042.80 = \$9,385.20$

In the example, the total refund that is due to the manufacturer would be $10.428.00. Of this, $1,042.80 would be refunded by the State of California and $9,385.20 would be refunded by EPA.

[4] EPA anticipates that California's NCP regulations would provide that the state would pay a share of the refund, proportionate to the number of vehicles of that configuration sold in California.

[5] It should be noted that the base penalty amount, "NCP," is the appropriate factor for calculation of the refund of a portion of the engineering and development component of the penalty regardless of the model year the certification and PCA of the replacement configuration takes place. The engineering and development factors described in § 86.1105–87 were derived based on the ratio of the engineering and development component of the estimated cost of compliance with the standard compared to the total estimated cost of compliance with the standard. Therefore, an accurate estimate of the engineering and development component is determined by using NCP, as the base penalty amount. If NCP_n were used as the penalty amount then the calculated engineering and development portion of the penalty would be erroneously inflated by the usage and yearly adjustment factors. These factors were included in the NCP formula to increase the penalty with time and usage, but they do not relate to the actual costs, including the engineering and development costs, of complying with the standard.

V. Potential Impacts of the Proposed Rule Revisions

A. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility to choose whether or not to use NCPs for California HDVs based on their ability to comply with emission standards. If manufacturers elect not to use NCPs to introduce HDVs into California, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The use of NCPs may provide some direct cost savings to HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer that desires to market in California and has difficulty certifying HDVs in conformance with emission standards, or fails an emissions audit, has only two alternatives: Fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce upon payment of a penalty for each HDV that exceeds the standard until an emission conformance is achieved.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to introduce HDVs into commerce in California. Hence, this proposed rule may be considered to have a favorable economic impact on some manufacturers.

The CARB has pointed out that many of the HDVs marketed in California are incomplete vehicles and are completed by secondary manufacturers based on specific customer needs. Without California NCPs, these secondary manufacturers and their customers within the State of California will likely suffer adverse economic impacts due to the inability of the primary manufacturer to deliver the required HDVs and the resulting inability of the secondary manufacturers within the State of California to produce the product the consumers require.

B. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used for HDVs entered in commerce in California.

If manufacturers are able to market all their engines in California without using NCPs, all HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the Federal rulemakings that established the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDVs will be introduced into commerce in California that will be emitting pollutants above applicable standards. However, Congress contemplated such a possibility when it mandated that EPA provide Federal NCPs. The magnitude of this reduced environmental benefit is proportional to the number of HDVs subject to NCPs and their degree of nonconformance; the upper limits on the availability of NCPs exclude gross emitters from being introduced into commerce. In previous rulemakings concerning NCPs, EPA estimated that an NCP would not be used for more than 10 percent of the HDVs for which NCPs are available in the first year that they were available and that they would be used for less than one percent in the third year. These percentages are not expected to be different for the State of California. The long-term environmental impact from NCP usage is expected to be very small, if any, due to the high penalty rates and the annual adjustment factor that rapidly increases penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from previous levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Because the emission impacts of the NCPs in the State of California are anticipated to be very small, compared to the total emissions of California HDVs which in fact comply with emissions of California HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time, no specific air qualify impact analysis has been made regarding this proposal.

Further, the NCP payment to the State of California will be used to mitigate any emission increases that occur as a result of NCPs. This may lead to some improvement over the potential situation wherein consumers, in order to meet their specific vehicle needs, may purchase vehicles certified under the existing Federal NCP process in bordering states for primary use on California roadways.

VI. Public Participation

EPA solicits comments from all interested parties. Whenever applicable, full supporting data should be submitted to allow EPA to make maximum use of the comments.

VII. Statutory Authority

Section 206(g) of the Act, 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking.[6] The provision authorizes Federal NCP regulations. The purposes of section 206(g), in general, are to encourage EPA to promulgate stringent HDV standards while giving those manufacturers unable to meet certain standards a temporary means of continuing to market nonconforming HDVs, while creating incentives for such manufacturers to bring the HDVs into conformance or to discontinue their manufacture. Since the California NCPs and HDV standards would be identical to the Federal NCP's and standards for the pollutants for which NCPs are currently available, waiving payment of NCPs to EPA based on payment of identical NCPs to California will continue to carry out the purpose and intent of section 206(g). Moreover, EPA would retain authority to collect NCPs in any case in which the California NCP program did not result in the manufacturer actually paying adequate penalty to California. Thus, the proposed amendment is within the scope of the authority granted by section 206(g).

VIII. Compliance With Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to prepare an initial regulatory flexibility analysis or to certify that this proposed regulation would not have a significant economic impact on a substantial number of small business entities. None of the affected HDV primary manufacturing entities meet the requirements for classification as a small business. Moreover, as already discussed, the NCP waiver program can be expected to have salutary effects on manufacturers, both primary and secondary. Thus, I certify that this proposed rule would not have a significant adverse impact on a substantial number of small entities.

[6] Section 206(g) of the Act does not expressly require that NCPs be paid to EPA.

IX. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been submitted to OMB. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

X. Administrative Designation

Under Executive Order 12991, the Administrator has determined that this proposed regulation is not "major" and therefore not subject to the requirement of a draft Regulatory Impact Analysis.

(A) The proposed NCP waiver program for the California HDVs would not result in an annual adverse effect on the economy of $100 million or more. NCPs, in general, merely provide a temporary, economically viable, alternative to other possible actions at least as costly as NCPs that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the Economic Impact section.

(B) The proposed NCP waiver program for California HDVs will not result in adverse cost or price impacts above those that would otherwise occur from compliance with the emission standards themselves.

(C) The proposed NCP waiver program will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Air pollution control, Environmental protection, Gasoline, Diesel, Motor vehicles.

Dated: January 7, 1988.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Part 86, Subpart L, Chapter 1 of the Title 40, Code of Federal Regulations is proposed to be amended as follows:

PART 86—[AMENDED]

1. The authority citation for Part 86 is revised to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, 301(a) of the Clean Air Act, as amended: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. In § 86.1113–87 of Subpart L, paragraphs (a)(4), (g)(1), (g)(3)(i), and (h) are revised to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(4) The terms in the above formulas have the following meanings and values, which may be determined separately for each subclass and pollutant for which an NCP is offered. The production of Federal and California designated engines or vehicles shall be combined for the purpose of this section in calculating the NCP for each engine or vehicle.

NCP_n = NCP for year n for each applicable engine or vehicle

CL = Compliance level for year n for applicable engines or vehicles

S = Emission standard

UL = Upper limit as determined by § 86.1104–87. Except, if the upper limit is determined by § 86.1104–87(c), the value of UL in paragraph (a)(2) of this section shall be the prior emission standard for that pollutant.

UL' = Upper limit as determined by § 86.1104–87(c). This value is not used in the above formulas.

X = Compliance level above the standard at which NCP_i equals COC_{60}

$$X = \left(\frac{COC_{60}}{(F)(MC_{60})} \right) + S$$

PR_1 = Penalty rate when CL ≤ X

PR_2 = Penalty rate when X < CL ≤ applicable upper limit n

If AAF_i = Running product, i.e., $\prod_{i=1} (AAF_1)X(AAF_2)X \ldots X(AAF_n)$

i = An index representing a year. It represents the same year for both Federal and California designated engines or vehicles of the same production model year.

n = Index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n = 1 for the first year that the NCP is available, and so on until n = n for the nth year that the NCP is available). The factor "n" is based on the model year the NCP is first available, as specified in section 86.1105–87 for the engine or vehicle subclass and pollutant for both Federal and California designated engines and vehicles.

COC_{60} = Estimate of the average total incremental cost to comply with the standard relative to complying with the upper limit

COC_{90} = Estimate of the 90th percentile total incremental cost to comply with the standard relative to complying with the upper limit

MC_{60} = Estimate of the average marginal cost of compliance (dollars per emission unit) with the standard

F = Factor used to estimate the 90th percentile marginal cost based on the average marginal cost (the minimum value of F is 1.1, the maximum value of F is 1.3)

AAF_i = Annual adjustment factor for year i

$frac_{i-1}$ = Fraction of engines or vehicles of a subclass using NCPs in previous year (year i–1)

A_i = Usage adjustment factor in year i: A_i = 0.10 for i = 2; A_i = 0.08 for i > 2

I_i = Percentage increase in overall consumer price index in year i

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid as follows:

(i) By the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter.

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251, except as provided in paragraph (g)(1)(iii) of this section.

(iii) Payment of a portion of the amount due each quarter under this section for any vehicle(s) or engine(s) is waived equal to the amount which the manufacturer has paid the State of California as a nonconformance penalty for nonconforning vehicle(s) or engine(s) introduced into commerce into the State of California, provided that the Administrator has approved a waiver of Federal preemption under section 209(b) of the Clean Air Act permitting the State of California to collect NCPs for those vehicle(s) or engine(s). Such a waiver of preemption would be applicable only if the Administrator finds that:

(A) California has adopted emission standards and test procedures for heavy-duty vehicles or engines which are identical to the corresponding Federal emission standards and test procedures for which NCPs are available,

(B) California has adopted nonconformance penalty fees, requirements and other procedures identical to corresponding Federal nonconformance penalty fees, requirements and other procedures, and

(C) All criteria for a waiver under section 209(b) have been met.

The nonconformance penalty for which payment is waived by EPA and due to the State of California shall be payable in accordance with California regulations and is calculated for each engine or vehicle subclass as follows:

$W_{q,n} = (Cal_{q,n})(NCP_n)$

where

n = Index representing the number of model years for which the NCP has been available (same as "n" in paragraph (a)(4)

q = calendar quarter for which a NCP payment is due

$W_{q,n}$ = Waivered portion of the NCP payment for calendar quarter q of year n

$Cal_{q,n}$ = number of engines or vehicles of the subclass distributed into commerce into the State of California during calendar quarter q of year n

NCP_n = the NCP for year n for the subclass (same as "NCP_n" in paragraph (a)(4)).

(iv) EPA reserves the right to collect any nonconformance penalties previously waived under paragraph (g)(1)(iii) if:

(A) The manufacturer has not adequately demonstrated that it has paid the amount due to California for any quarter; or

(B) The payment be the manufacturer to California is less than that which would be due to EPA for the number of HDVs entered into commerce in California in that quarter; or

(C) The manufacturer has not adequately demonstrated that all vehicles claimed to have been introduced into commerce into the State of California were in fact introduced into commerce into the State of California.

In the situation described in (a) of this paragraph, EPA reserves the right to collect the entire NCP amount assessed under this Subpart. In the situations described in (B) and (C) of this paragraph, EPA reserves the right to collect the difference between the amount that is due to EPA for the vehicles in question and the lesser amount (if any) paid to the State of California.

A statement on the emissions label required under Subpart A of 40 CFR Part 86 that the engine or vehicle is designated for introduction in commerce only for the State of California will constitute adequate demonstration that the engine or vehicle was introduced in commerce for the State of California, for the purpose of this section.

* * * * *

(g)(3)(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, identification and quantity and proof of introduction in commerce for the State of California for any engines or vehicles subject to California NCPs and documentation of the NCP paid to the State of California under paragraph (g)(1)(iii) of this section, certificate identification (number and date), and NCP payment calculations, if applicable.

* * * * *

(h) A manufacturer that certifies as a replacement for the nonconforming configuration, a configuration that is in conformance with applicable standards, and that performs a production compliance audit (PCA) in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard, will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development by multiplying the base penalty amount by the engineering and development factor for the appropriate subclass and pollutant in § 86.1105–87. The amount refunded will depend on in which model year the certification and PCA take place. In cases where payment of penalties has been waived by EPA in accordance with paragraph (g)(1)(iii) of this section, EPA will refund a portion of the engineering and development component. The proportionate refund to be paid by EPA will be based on the proportion of vehicles or engines of the nonconforming configuration for which NCPs were paid to EPA. The refund is calculated as follows:

$R_{tot} = D_n \times F_{E\&D} \times NCP_i \times Prod_{tot}$

$R_{Cal} = (Prod_{Cal}/Prod_{tot}) \times (R_{tot})$

$R_{EPA} = R_{tot} - R_{Cal}$

Where:

n = index representing the number of model years for which the NCP has been available for an engine or vehicle subclass (i.e., n = 1 for the first year that NCPs are available, . . .

n = n for the nth year the NCPs are available; same as "n" in paragraph (a)(4)).

D_n = discount factor depending on the model year (n) certification and PCA take place for the replacement configuration, and its value is as follows:

D_1 = 0.90

D_2 = 0.79

D_3 = 0.67

D_4 = 0.54

D_5 = 0.39

D_6 = 0.23

D_7 = 0.05

D_n = 0.00 for n = 8 or larger

$F_{E\ and\ D}$ = the engineering and development factor specified in § 86.1105–87 for the appropriate subclass and pollutant

NCP_i = the penalty for each engine or vehicle during the first (base) year the NCP is available as calculated in paragraph (a)

$Prod_{tot}$ = total number of engines or vehicles produced in the subclass for which NCPs were paid to EPA or to the State of California

$Prod_{Cal}$ = number of engines or vehicles in the subclass demonstrated to have been introduced into commerce in the State of California and for which NCPs were paid to the State of California under paragraph (g)(1)

R_{tot} = Total refund due to the manufacturer for the engineering and development component of the NCP

R_{Cal} = Refund due to the manufacturer from the State of California for the engineering and development component of the NCP

R_{EPA} = Refund due to the manufacturer from EPA for the engineering and development component of the NCP.

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53
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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Proposed Rule and Notice of Hearing

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-200B]

Occupational Exposure to Ethylene Oxide

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: By this notice, the Occupational Safety and Health Administration (OSHA) is proposing to amend its existing standard that regulates occupational exposure to ethylene oxide (29 CFR 1910.1047) to include an excursion limit for ethylene oxide (EtO) of 5 parts of EtO per million parts of air (5 ppm) averaged over a maximum sampling period of 15 minutes.[1]

OSHA requests comment on whether an excursion limit is feasible and would reduce the significant risk faced by workers at the current 8-hour time-weighted average (TWA) permissible exposure limit for ethylene oxide.

Where the excursion limit is exceeded, employers would be obligated to reduce exposure through implementation of feasible engineering controls and work practices, supplemented by the use of respirators where necessary. In addition, employers would be required to establish and implement a written compliance program to achieve the excursion limit, establish exposure monitoring and training programs for employees subjected to EtO exposure above the excursion limit and identify as regulated areas any locations where airborne concentrations of EtO exceed the excursion limit.

This proposal is issued in response to the decision of the U.S. Court of Appeals for the District of Columbia circuit (Ex. 202) in *Public Citizen Health Research Group* v. *Tyson*, 796 F. 2d 1479, which remanded the EtO standard to the Agency for further proceedings on the need for a short-term exposure limit.

DATES: Comments in response to this notice, hearing requests, and notices of intention to appear at the tentatively scheduled informal rulemaking hearing on the proposal must be postmarked by February 22, 1988. Documentary evidence and witness statements for the hearing must also be received by February 22, 1988. The public hearing on the proposed standard, if convened in response to request from the public, will commence on March 3, 1988.

ADDRESSES: Comments on the proposed standard should be submitted in quadruplicate to the Docket Officer, Docket No. H-200, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-8615. The hearing will be held in Washington, DC beginning March 3, 1988 at 10:00 a.m. in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
Proposal: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3649, 200 Constitution Avenue, NW., Washington, DC 20210; (202)523-8615.

SUPPLEMENTARY INFORMATION:

I. Events Leading to This Action

On January 26, 1982, OSHA published an Advance Notice of Proposed Rulemaking (47 FR 3566) announcing its intention to reevaluate its existing EtO standard of 50 ppm as an 8-hour TWA. In addition to a request for public comment on the adequacy of 50 ppm as a TWA, comment was also solicited on the question of the necessity of a short-term limit as follows:

> Is a short-term or ceiling limit for EtO exposures necessary and why, and what would be the technological and economic feasibility of complying with that limit? (48 FR 3566)

On April 21, 1983, OSHA published a Notice of Proposed Rulemaking for EtO that proposed to reduce the permissible 8-hour TWA from 50 ppm to 1 ppm (48 FR 17284). Although a specific short-term limit for EtO was not included in the proposed regulatory text, public comment on that issue was solicited by the following questions:

> Is a short-term or ceiling exposure limit for EtO exposure necessary for the PEL or action level in view of recent information regarding increased spontaneous abortions and chromosome changes in workers exposed to EtO? What monitoring methods and control technology are available to meet such a short-term limit and what would be the economic burdens, if any, of such a limit? (48 FR 17284)
>
> and,
>
> What are the most suitable methods for determining compliance with EtO permissible exposure limits (PEL's) of 0.5 and 1 ppm as 8-hour time-weighted averages and for ceilings ranging from 5 to 50 ppm for 30 minutes or less? What are the problems associated with such monitoring methods? Do they require special training or experience? Are there serious limitations as to the accuracy or precision of the available sampling techniques? (48 FR 17284)

Numerous comments and data were received by OSHA in response to the short-term limit questions set forth in the ANPR and NPRM (Ex. 168). However, the final EtO rule published on June 22, 1984, which lowered the permissible 8-hour TWA from 50 ppm to 1 ppm (49 FR 25734) reserved decision on the question of whether the standard should contain a short-term limit (Ex. 167A). In the June 22, 1984 final rule, OSHA stated that upon its review of comments submitted by the Office of Management and Budget (OMB) pursuant to Executive Order 12291 (Ex. 162), OSHA determined that certain issues relating to a short-term limit were important and merited further consideration. To develop the fullest possible administrative record, all exhibits in the docket relating to the short-term limit (compiled as Ex. 168), were submitted to a number of scientifically qualified peer reviewers for comment, analysis, and criticism. The peer reviewers filed statements that were placed in the public docket. Public comments on the statements filed by the peer reviewers on the issues raised by OMB on the June 14, 1984 draft standard were solicited by a **Federal Register** notice published September 19, 1984 (49 FR 36659).

[1] OSHA is adopting the term "excursion limit" to refer to the short term permissible exposure limit adopted here. The term "STEL", previously used by OSHA, is used by the American Conference of Governmental Industrial Hygienists (ACGIH) to refer to a short term limit dictated by specific toxicologic or hazard data (ACGIH Threshold Limit Values and Biological Exposure Indices for 1988-1989, 3).

Because OSHA is not basing the short term permissible limit for EtO on such data, OSHA instead is using the distinctive term, "excursion limit". OSHA notes that ACGIH also uses the term "excursion limit" to refer to a limitation on short term exposures which are called for by industrial hygiene considerations, where toxicological data are unavailable (*Id* at 4-5). This preamble, in some places, uses the terms "STEL" and "excursion limit" interchangeably, mostly in quoting from previous discussions where the distinction had not been made.

After a review of the rulemaking record pertaining to the short-term limit, OSHA published a **Federal Register** notice on January 3, 1985 (50 FR 84) announcing its determination that the available health data did not necessitate the establishment of a short-term limit to supplement the 8-hour TWA of 1 ppm. OSHA's decision not to issue a short-term limit for EtO centered on three findings: First, the available health data did not demonstrate the risks from EtO exposure to be dose rate-dependent. In other words, the studies did not indicate that the risk from exposure to a given dose of EtO are greater when that dose is distributed at high concentrations over a short period of exposure during a workday rather than at a lower concentration during a longer period of time. Second, since the effects of EtO are assumed to be *dose* dependent rather than dose-*rate* dependent, OSHA concluded that reduction of the total dose was the critical factor in dealing with the significant risks of EtO exposure. Therefore, the Agency believed that the 1 ppm TWA was sufficient to minimize significant risk, within the bounds of feasibility. Third, in terms of industrial hygiene and methods of controlling EtO, it was felt that compliance with the TWA would in itself necessitate the control of short-term exposures, particularly for employees whose exposure consists primarily of short-term bursts.

Petition for review of OSHA's decision not to adopt a short-term limit for EtO subsequently was filed by the Public Citizen Health Research Group, pursuant to section 6(f) of the OSH Act (29 U.S.C. 655(f)). In its decision in *Public Citizen Health Research Group* v. *Tyson* (796 F. 2d 1479), the United States Court of Appeals for the District of Columbia determined that OSHA had not demonstrated substantial evidence to support its decision not to adopt a short-term limit, and remanded the case to OSHA for further proceedings on the short-term limit issue. The opinion of the Court leading to the remand is discussed below.

II. The Court Decision

On July 25, 1986, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on the ethylene oxide standard (*Public Citizen Health Research Group* v. *Tyson*, 796 F. 2d 1479). In that decision, the Court upheld OSHA's permissible exposure limit of 1 ppm as an 8-hour time-weighted average, finding that OSHA had "complied with the relevant legal standards in promulgating the 1 ppm PEL." 796 F. 2d at 1503. In addition, the Court upheld OSHA's determination that the evidence in the rulemaking record did not establish the existence of a dose-rate relationship for the health effects of EtO. However, the Court rejected OSHA's argument that the lack of such an established dose-rate effect rendered it unnecessary for the Agency to promulgate a short-term limit for EtO. The Court noted:

> The agency recognized that EtO exposures at 1 ppm still allowed a significant health risk * * * If in fact a STEL would further reduce a significant health risk and is feasible to implement, then the OSH Act *compels* the agency to adopt it (barring alternative avenues to the same result). 796 F. 2d at 1505.

Therefore, the Court said, in order for OSHA to avoid issuing a short-term limit for EtO, the Agency must find either that a short-term limit would have no effect on the significant risk which is still present at 1 ppm TWA, or that a short-term limit is not feasible. If the Agency cannot make either of these two findings, then a short-term limit must be issued. The Court proceeded to remand the EtO standard to the Agency for further proceedings on these issues, specifically directing OSHA to "either adopt a short-term limit or explain why empirical or expert evidence on exposure patterns makes a short-term limit irrelevant to controlling long-term exposures". 796 F. 2d at 1507.[2]

The present proceeding on the need for an excursion limit for EtO does not reopen the various other issues which were resolved by the Court in upholding the PEL of 1 ppm. In particular, the Agency's risk assessment is not at issue in this proceeding. The only matters open for consideration in this rulemaking are those which center on the efficacy and feasibility of an excursion limit, on the interrelationship of the PEL and the excursion limit in reducing the health risks of EtO, and on the appropriateness of the proposed new requirements pertaining to the excursion limit such as exposure monitoring and training.

OSHA's argument that a short-term limit was not "reasonably necessary" centered on two basic findings: first, the lack of an established "dose-rate" for EtO; second, the efficacy of the PEL alone at reducing short-term exposures. The Court upheld the former determination, but rejected the latter as not being supported by substantial evidence on the record as a whole. Neither of the two findings by OSHA involved an analysis of whether a short-term limit would be "feasible." Because OSHA determined as a threshold finding that a short-term limit was not "reasonably necessary," there was no need at that time to determine whether implementation of a short-term limit would have been "feasible." The Court recognized that OSHA made no findings on the feasibility of a short-term limit as part of its determination not to issue one. The Court did assume "that a 10 ppm short-term limit is feasible because no party has contested the issue at this point." 796 F. 2d at 1506. However, this constituted neither an explicit finding of feasibility, nor a rejection of any findings of infeasibility by the Agency, because no such feasibility findings were made for the establishment of a short-term limit.

With the Court's rejection of OSHA's stated rationale for not promulgating a short-term limit, in addition to determining whether an excursion limit will be effective in reducing significant risks below those remaining at a 1 ppm TWA, the feasibility of an excursion limit will need to be addressed at this stage of the EtO rulemaking; if an excursion limit is determined to have an effect on the significant risk that persists at a 1 ppm PEL, the Agency will then need to determine that the given limit is feasible. Further, the Court decision does not foreclose the Agency from determining that a short-term limit will not affect the risk, or that a short-term limit is not feasible, based on substantial evidence on the record.

On July 21, 1987 the Court of Appeals for the district of Columbia Circuit issued a further decision on the ethylene oxide rulemaking, in *Public Citizen Health Research Group* v. *Brock*, 823 F. 2d 626. In that decision, the Court clarified its mandate to OSHA by ordering that "OSHA's final decision on the EtO short-term exposure limit is to issue no later than March 1988." 823 F. 2d at 629.

The comment period and hearing schedule established in this proposal have been developed to enable the Agency to comply with the Court's mandate.

III. Pertinent Legal Authority

Authority for this action is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and

[2] While OSHA believes that a short-term limit is relevant to controlling long-term EtO exposures, adding an excursion limit may not always be effective in reducing average long-term exposures, depending, for example, on the patterns of background. It has been suggested that mandating short-term exposures may result in the shifting of resources from controls on background exposures to controls on short-term exposures. Thus, while exposure peaks may be reduced, background exposure could increase in a way that may, depending on the pattern of exposures, adversely affect average long-term exposures. OSHA does not believe that this possibility pertains to the proposed EtO excursion limit.

Health Act of 1970 (the Act), 29 U.S.C. 655(b), 657(c), and 657(g)(2). Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as:

(A) standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980).

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed regulatory action, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health * * *" (Section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981).

Authority for this action is also found in section 8(c)(3) of the Act. In general, this section empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employees exposure to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this proposed amendment is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act"—in this case as part of or ancillary to, a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));

Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce (29 U.S.C. 651(b)(3));

Building upon advance already made through employer and employee initiative for providing safe and health working conditions (29 U.S.C. 651(b)(4));

Providing for the development and promulgation of occupational safety and health standards; (29 U.S.C. 651(b)(9));

Providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem (29 U.S.C. 651(b)(12));

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13)), and

Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because this amendment to the ethylene oxide standard is reasonably related to these statutory goals, the Secretary finds that this proposed action is necessary to carry out his responsibilities under the Act.

In addition, section 4(b)(2) of the Act provides that standards issued under OSHA apply to construction and maritime employment where the secretary determines these standards to be more effective than existing standards which otherwise apply to that employment. (As set forth in 29 CFR 1910.19(h), the current EtO standard applies to construction and maritime employment, in addition to its coverage of general industry).

IV. Justification for the Proposed Adoption of an Excursion Limit

Section 6(b)(5) of the OSH Act requires the Agency to set health standards which most adequately assure protection against significant risk of material health impairment, to the extent feasible. OSHA established its 8-hour TWA of 1 ppm for EtO (49 FR 25734) based upon considerations of feasibility, and determined that significant cancer risk would persist even below that level. As discussed above, the U.S. Court of Appeals has directed that OSHA reconsider further means of reducing that risk and "either adopt a STEL or explain why empirical or expert evidence on exposure patterns makes a STEL irrelevant to controlling long-term average exposures." 796 F. 2d at 1507. The Agency believes that additional protection against continuing significant risk could be provided by a limitation on short-term exposures of 5 ppm over a maximum 15 minute period. This additional protection is believed to be feasible in the affected industries (see discussion under "Regulatory Flexibility and Impact Analysis"). For industry sectors whose exposure patterns involve periods of intermittent, burst-type exposures to EtO, the excursion limit may result in TWA exposures well below 1 ppm. For example, a single daily exposure at the proposed excursion limit of 5 ppm, with no other exposures during the day, would result in an 8-hour TWA of 0.16 ppm. Since an employee would likely have other background and residual exposures as well, the actual exposure would likely be higher than 0.16 ppm as an 8-hour TWA. In this regard, the use of an excursion limit will supplement the 1 ppm TWA in controlling significant risks, as mandated by Section 6(b)(5).

OSHA previously concluded that a short-term limit was not needed since "the compliance program designed to maintain exposure at or below the 1 ppm * * * limit * * * will also substantially reduce the magnitude of short-term exposures" (50 FR 64). The Agency also argued to the Court in *Public Citizen*, that "the record clearly indicates that for a number of reasons the benefits that would be achieved by a short-term limit will be almost entirely achieved by the PEL". Respondents brief at 55. The Court disagreed with these assertions. In the opinion of the Court, the Agency's conclusions were not supportable since it had not been demonstrated that "in attempting to meet the 1 ppm PEL, employers will *in every case* reduce short-term exposures * * *" 796 F. 2d at 1505.

The Court concluded that:

The evidence in this record * * * does not demonstrate that employers will necessarily reduce short-term exposures below 10 ppm in order to meet the PEL. For example, an employer might measure a very low background level of EtO exposure, a level significantly below the 1 ppm PEL. Conceivably, such an employer could allow short-term exposures to exceed 10 ppm over a fifteen-minute period but still have cumulative exposure fall below the 1 ppm PEL, which is an eight-hour average. 796 F. 2d at 1505.

The 8-hour TWA for EtO of 1 ppm was established because OSHA believed that this new exposure limit would substantially reduce the significant risk associated with EtO exposures at the previous TWA of 50 ppm, and that the 1 ppm level would be feasible for most operations in most workplaces that use EtO. However, as OSHA's quantitative risk assessment shows, an excess EtO-related cancer mortality risk of 12 to 23 deaths per 10,000 workers persists even at the 1 ppm 8-hour TWA level. Congress has mandated that reducing significant occupational health risks to the lowest feasible level clearly lies within OSHA's authority under the Act. The Court of Appeals remand on this issue in the EtO context further supports this position. If an excursion limit would, in fact, supplement the current 8-hour TWA to further reduce average long-term employee exposures to below the existing significant risk, OSHA believes that promulgation of a 5 ppm excursion limit for EtO would be consonant with the intent of the Act.

The available data on current exposure patterns and control measures indicate that compliance with a 5 ppm, 15-minute excursion limit may indeed augment the employee protection provided by the 8-hour TWA in many cases. For example, in the unlikely but theoretically simple situation where an employee is exposed to 24 ppm of EtO for a single 15-minute interval and to absolutely no other EtO for the remainder of the working day, that employee's 8-hour TWA exposure would be 0.75 ppm. As noted above, a 15-minute excursion limit of 5 ppm would reduce this 8-hour TWA to 0.16 ppm. The Agency's risk assessment indicates that the excess cancer risk associated with this EtO dosage would be 2 to 4 cases per 10,000 workers, substantially below the significant risk posed by a 1 ppm PEL. Since the likehihood of encountering a zero background level of EtO in any EtO-using, handling, or storing workplace is essentially nil, and since many workers are exposed to more than one episode of EtO exposure during the working day, it is possible that an employee's daily dose of EtO, and, therefore, that employee's cancer risk, will be generally higher than calculated using the short-term total dose alone.

In more typical workplaces, where short-term peak exposures are the major sources of exposures, two or more exposure episodes per day are common. Examples of operations associated with exposures of this type are cylinder changing, unloading of small sterilizers, and moving sterilized products to aeration rooms.

The written and oral comments of several expert witnesses that were made during OSHA's previous rulemaking on EtO suggest that the 8-hour TWA and 15-minute excursion limit may well work hand-in-hand to achieve effective control over exposures of this nature. [Exs. 11–68, 11–83, 11–113, 11–142, 78, Tr. 216]. Based on the current record, OSHA believes that the excursion limit/TWA combination will act to minimize both the number and the magnitude of excursions occurring during the working day in many EtO workplaces, resulting in a reduction in risk that persists with the TWA alone.

It is important to draw a distinction between reducing short term exposures to reach the mandatory 1 ppm TWA (the issue addressed by OSHA in its decision with regard to the need for an EtO STEL), and reducing short term exposures to reduce average exposures below the TWA (the issue raised by the Court in its decision).

There is no question that many employers have sought to reduce total dose by reducing short-term exposures, as discussed earlier. This strategy is clearly an easy and cost-effective way to reduce average exposures. The report by Meridian Research Inc., as well as other evidence in the record (Exs. 11–68, 11–83, 11–142, 78, 112, TR. 216) support this strategy. There is as yet no evidence in the record to the contrary. OSHA, therefore, is inviting comments and specific data on which an excursion limit would fail to further reduce total dose and therefore the risk that would persist at the 1 ppm TWA. OSHA would also like to know if there are specific situations in which the incorporation of an excursion limit would result in work practices which would be counterproductive in reducing residual risk.

A second issue is the reduction in risk which would be achieved by controlling short-term exposures where employees are exposed to short bursts, i.e. when and excursion limit would be most likely to reduce total dose. The Court cited a hypothetical case in which a very low background exposure would allow short-term exposures to exceed 10 ppm over a 15-minute period "but still have a cummulative exposure fall below the 1 ppm TWA, which is an eight-hour average." A once-per-day exposure at the proposed excursion limit of 5 ppm would result in an 8-hour TWA of 0.16 ppm. The Court's example illustrates what may be generally true: an excursion limit will reduce average exposures further in situations where employees are exposed to burst exposures and where average exposures are already below the TWA. In its final rule on EtO, OSHA concluded that a significant risk remained at the 1 ppm TWA. The extent to which this significant risk would be reduced by an excursion limit is an issue on which OSHA request comment.

V. Regulatory Flexibility and Impact Analysis

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires OSHA to consider the impact of the proposed regulation on small entities.

The Secretary has determined that this action would not be "major" as defined by section 1(b) of Executive Order 12291. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. This determination is based upon cost and feasibility data provided to OSHA in a report prepared by Meridian Research, Inc. (Ex. 204, *Assessment of Short-Term Exposures to Ethylene Oxide*).

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for collection of information requirements in proposed and final rules. In particular, § 1320.13 requires agencies to submit information requirements contained in proposed rules to OMB not later than the date of publication of the proposal in the **Federal Register**. It also requires agencies to include a statement in the notice of proposed rulemaking, indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In accordance with the above mentioned provisions of both the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the

information collection requirements contained in its proposed rule on occupational exposure to ethylene oxide to OMB for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested persons to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for OSHA; 726 Jackson Place, NW., Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA Docket Office, as part of the record of this rulemaking.

Summary of Exposure, Technological Feasibility, and Cost Data

In response to the Court's remand discussed above, OSHA has evaluated short-term employee exposures to EtO in the sectors which would principally be affected by promulgation of an excursion limit, assessed the technological feasibility of achieving compliance with the excursion limit alternatives under consideration, and developed cost-of-compliance data for firms in the affected sectors. In particular, OSHA has made a preliminary determination as to the portion of an employee's full-shift exposure that is accounted for by short-term peaks.

For this effort, OSHA contracted with Meridian Research, Inc., to gather the information specified above and to conduct a total of nine site visits to selected facilities in four industry sectors: EtO producers, EtO ethoxylators (i.e., facilities using EtO as a chemical feedstock), hospitals, and firms that use EtO to sterilize medical and other products and devices. Meridian was unable to arrange a site visit to a facility in the fifth potentially affected sector, spice manufacturing, because no spice manufacturing firm was willing to permit a site visit. Meridian's final report appears in the docket as Exhibit 204. For the purposes of this analysis, OSHA considered two regulatory alternatives: A 10 ppm excurison limit (15 minutes) and a 5 ppm excursion limit (15 minutes). OSHA's principal findings are discussed below.

The five sectors listed above were identified for further study by OSHA based on the information available in the rulemaking record (see the Regulatory Impact Assessment for the final rule for ethylene oxide, Ex. 184, and the report entitled *Economic and Environmental Impact Study of Ethylene Oxide*, written by JRB Associates, 1984, Ex. 6–22). In two of these sectors—chemical production and ethoxylation—a total of approximately 50 U.S. firms produce or use EtO as a chemical feedstock in closed systems in an outdoor environment. In the three other sectors—hospitals, spice manufacturing, and medical products sterilizing—EtO is used as a sterilant gas to sterilize medical equipment and devices, paper and other products, and spices. OSHA estimated (49 FR 25767, June 22, 1984) that there were as many as 6,300 hospitals, 125 medical products sterilizers, and fewer than 30 spice manufacturers in the United States. Medical and other product sterilization firms can be divided into two groups of companies: Those that have a sterlization department within a larger facility that produces the medical devices or other products to be sterilized, and small firms that provide sterilization services exclusively, generally on a contract basis. At the time of the 1984 rulemaking, OSHA estimated that a total of 71,196 directly exposed employees and 69,175 incidentally exposed employees were exposed to EtO in these five sectors (49 FR 25767, June 22, 1984).

Short-term Exposure Data

On the site visits conducted in connection with this analysis, Meridian took 8-hour TWA personal samples on all potentially exposed employees at eight of the sites visited. Using passive dosimeters, these long-term breathing zone samples were taken over the full shift of the employees sampled. In addition, whenever these employees initiated an activity having the potential for a short-term peak exposure, Meridian's Certified Industrial Hygienist took short-term (15-minute) breathing zone samples using hydrogen-bromine-treated charcoal tubes, as specified by OSHA's Method 50. Short-term samples were taken during all activities during the working day that were associated with episodic exposures. The specific activities characterized by such short-term peaks varied according to sector. For example, in production and ethoxylation facilities, peaks were associated with activities such as quality control sampling and railcar unloading, while high, short-duration exposures occurred in the sectors that use EtO as a sterilant during such activities as sterilizer loading and unloading and removal of biological indicators from freshly sterilized goods. Meridian believes that the sites visited represent the "better" firms in their respective sectors (i.e., firms that have active safety and health programs and/or have expended considerable time and effort to attempt to achieve the 1 ppm PEL).

OSHA's employee sampling results showed that implementation of engineering and work practice controls have reduced employee exposure to below that anticipated by OSHA when promulgating the final standard in June, 1984. In addition, almost without exception, where employers had achieved compliance with the final rule's 1 ppm 8-hour permissible exposure limit (PEL), controlling short-term employee exposures to either 10 ppm or 5 ppm would neither be difficult nor expensive. OSHA therefore believes that a 5 ppm excursion limit is feasible.

The results of OSHA's data gathering on short-term exposures were as follows: in the EtO-producing sector, 8-hour employee exposures ranged from 0.21 to 0.78 (TWA), while 15-minute short-term exposures did not exceed 2.2 ppm. (In this sector, no samples were taken by OSHA because of inclement weather during the site visit; these results were given to OSHA by the EtO-producing company itself). In the ethoxylator sector, 8-hour TWAs were nondetectable, while 15-minute short-term exposures ranged from nondetectable to 1.07 ppm.

In the sterilant-using sectors, short-term exposures tend to be higher because of the episodic exposure pattern characteristic of these sectors. Samples taken by Meridian at three hospitals showed that the 8-hour TWA exposures of sterilizer operators in these facilities ranged from 0.14 to 0.34 ppm, while their 15-minute short-term exposures never exceeded 0.95 ppm. The hospitals selected for this analysis included a large, private-sector facility, a small rural hospital, and a large public-sector institution.

EtO exposures in the medical products sterilization sector appear to be strikingly dependent on the size of the facility in question. In large sterilization facilities owned by firms that manufacture medical products and sterilize them before shipping them off site, employee exposures in the facilities studied by Meridian have been reduced to levels well below the 1 ppm TWA, and short-term exposures are correspondingly low. The full-shirt samples taken at two large facilities in this sector ranged from 0.08 to 0.36 ppm, and the 15-minute short-term exposures at these plants ranged from 0.24 to 4.1 ppm. At two small sterilization facilities in this sector, however, full-shift exposure levels were measured that were considerably above the 1 ppm PEL promulgated in the final rule. At one of these small facilities, the sterilizer operator had an 8-hour TWA of 3.97 ppm, and at the other small contract-sterilization plant, the sterilizer's full-shift exposure was 2.84 ppm, while that of the laboratory technician was 2.27 ppm. The short-term exposures of these employees were correspondingly high. At the first small facility, the short-term exposures (approximately 15 minutes) of the sterilizer operator ranged from 2.15 to 7.89 ppm, while the sterilizer operator's short-term exposures at the second facility ranged as high as 32.2 ppm (15 minutes) and those of the laboratory technician were as high as 7.21 ppm.

As stated earlier, no spice manufacturing firm was willing to permit Meridian to visit a spice facility; consequently, OSHA was unable to obtain any current data on short-term exposures of employees in this sector. However, information obtained during the rulemaking for the final EtO standard shows that the sterilization technology used in the spice manufacturing industry is similar to the technologies used in the sterilization of medical products (JRB Associates, Ex. 6–22). Short-term exposures in the spice sterilization operation may occur during the unloading of sterilized spices from the sterilizer, the handling of newly sterilized product, and the changing of EtO cylinders. OSHA has no data to suggest that short-term exposures in the spice manufacturing industry are substantially different from those in other EtO sterilant-using industry sectors. Therefore, by analogy to the exposure data obtained from medical product sterilizer facilities, OSHA believes that it will be possible to control the short-term exposures of employees in the spice manufacturing sector at or below 5 ppm.

The pattern that emerged at all the sites visited was thus consistent across sectors: where employers have achieved compliance with the 1 ppm PEL, their facilities would already be in compliance with either a 5- or a 10-ppm short-term limit or could feasibly achieve these levels with minor changes in work practices. There was only a single exception to this finding among all sites visited by Meridian: at one facility, the evening-shift sterilizer operator's short-term (approximately 15 minutes) exposures were 3.56, 10.97, 8.49, and 0.39 ppm; no full-shift measurement was taken on this operator, and thus it is possible that his 8-hour TWA exceeded 1 ppm. However, because 87 percent of the 8-hour TWA exposure level of the day-shift operator at the same facility was accounted for by his four short-term exposures, OSHA considers it unlikely that the evening shift operator's 8-hour TWA actually exceeded 1 ppm. (As described below, OSHA believes that this employee's short-term exposure could be reduced to 5 ppm by a modification in work practices). OSHA therefore believes that firms that have achieved compliance with the 1 ppm TWA promulgated in the final rule in 1984 should be able to lower employee exposures to a 10- or 5-ppm short-term level, at minimal cost.

Technological Feasibility

Site visit observations, exposure data, and reports from the trade literature have shown that, in the producer, ethoxylator, hospital, and medical product sterilizer sectors (and, by analogy, the spice manufacturing sector), achieving compliance with a 5 or 10 ppm STEL is feasible with the use of the same engineering and work practice controls determined by OSHA at the time of the final rule to be feasible to achieve the 1 ppm PEL. The engineering controls implemented by those employers who had achieved compliance with the 1 ppm PEL were standard and widely available controls: local exhaust and general dilution ventilation, the use of closed-loop sampling devices, vapor recovery systems at railcar loading racks, and enclosure/ventilation of aeration and Guarantine areas. In addition, at least one spice manufacturing firm is planning to adopt a substitute for EtO, thus eliminating employee exposures (Meridian Research personal communication, spice company representative, November 21, 1986). OSHA believes it likely that other spice manufacturers will also be able to use a substitute sterilant.

Work practice controls used by employers at the sites visited to reduce exposures include: Opening ("cracking") sterilizer doors for 15 minutes before unloading the sterilizer, pulling rather than pushing carts containing offgassing goods, and performing manual leak detection.

The use of respiratory protection was observed during a few short-term activities: During railcar loading at the EtO producer facility and when entering walk-in sterilizers at medical product sterilization facilities.

In addition to exposure data obtained from site visits, a number of submissions to the EtO docket (Exs. 4–13, 11–132, 139, 179, 198A) indicate that a 5 ppm excursion limit can be achieved during operation of EtO sterilizers in hospitals. Several articles submitted by T. Joel Loving of the University of Virginia's Environmental Health and Safety Office show that the use of vacuum purge systems and exhaust hoods can reduce the 8-hour TWA to or below 1 ppm and the short-term limit to or below 5 ppm for 15 minutes.

OSHA's findings thus demonstrate that it is likely to be feasible to comply with either a 5 ppm or 10 ppm excursion limit. The major engineering controls in use at the sites visited to achieve the excursion limits, are the same controls that OSHA determined in the Regulatory Impact Assessment (Ex. 163) and JRB Associates' report (Ex. 6–22) to be necessary to achieve compliance with the current 1 ppm PEL. OSHA's analysis shows that, in some instances, employers may need to implement additional work practice controls, such as extending the period of offgassing in the sterilizer, to achieve compliance with a 5 ppm excursion limit. OSHA requests comment on this analysis and on the feasibility of meeting a 10 ppm or 5 ppm excursion limit.

Summary of Costs

To assess the magnitude of the costs that might be incurred by employers to comply with a short-term limit, OSHA estimated the costs potentially associated with achieving a 10 ppm or 5 ppm short-term limit at each of the nine facilities visited by Meridian Research. OSHA's analysis shows that both the 10 ppm and 5 ppm short-term limit, were already being achieved at the EtO producer site, the ethoxylator site, one large medical product sterilizer facility, and three hospital sites. Therefore, no additional costs would be incurred at any of these sites to comply with a 10 ppm or 5 ppm excursion limit.

At the remaining large medical product sterilizer site visited by Meridian, exposure data collected on the day-shift sterilizer operator show that both the 10 ppm and 5 ppm short-term limits, were achieved. However, samples taken on the night-shift operator at this site showed that his 15 minute short-term exposures exceeded 5 and 10 ppm. OSHA believes that this operator's short-term exposure could be reduced by allowing the sterilizer load to offgas inside the sterilizer for four hours before sterilized product is removed by the operator. This practice would not interfere with the work schedule currently being used at this site and would thus be unlikely to result in an increase in costs. If allowing the load to offgas for 4 hours did not reduce this operator's short-term exposures to below 5 ppm, OSHA believes that the sterilization unit's work schedule could be adjusted so that the load could offgas for 8 hours before the operator unloaded the sterilizer.

Neither of the two small medical product sterilizer facilities was currently achieving the 5 ppm excursion limit, and one short-term sample taken at one site

(Company F, Ex. 204) exceeded 10 ppm for a sterilizer operator. However, at both of these sites, sterilizer operators and a laboratory technician also had 8-hour TWA exposures that exceeded the current 1 ppm PEL. Area samples taken at these sites indicate that high ambient levels of EtO were present as a result of the offgassing of sterilized product. OSHA believes that installing ventilated, enclosed quarantine areas and modifying existing ventilation systems are necessary in order to comply with the existing 1 ppm PEL and that these changes would substantially aid in achieving compliance with a 5 ppm excursion limit. Therefore, OSHA believes that employers at these sites will incur no (or at most nominal) additional costs over those of the current standard to comply with either a 10 ppm or 5 ppm excursion limit.

OSHA's findings thus demonstrate that employers are not likely to incur significant costs to comply with an excursion limit. These findings reflect site visit observations and evidence in the record (Ex. 11–132) that the engineering controls that are necessary to achieve the 1 ppm 8-hour TWA also can be implemented to reduce short-term exposures to 5 ppm, although some minor work practice changes may be necessary in some activities.

The proposed excursion limit will be associated with an increased cost burden primarily in connection with the provision dealing with exposure monitoring. The requirement for the monitoring of excursion levels will increase the burden of affected employers because the type of sampling required to evaluate short-term exposures is different from the type of monitoring required to monitor the final standard's 8-hour TWA PEL or the action level. Because methods for monitoring short-term exposures to EtO have only recently been developed and become commercially available, OSHA assumes that employers in the affected sectors will not have been able to perform short-term employee monitoring and thus, that all affected firms will need to perform initial STEL monitoring. This assumption is a worst-case analysis, in that some firms in the principally affected sectors are likely to be performing some short-term sampling. Because the method for evaluating short-term exposures requires some specialized training and equipment, OSHA has based the cost estimate for initial monitoring on the assumption that each firm will retain the services of an industrial hygiene consultant for 8 hours, at a cost of $35.00 per hour, to collect the necessary short-term samples. The effect of using this assumption is also to overstate costs somewhat, because many facilities have in-house industrial hygiene personnel and laboratory facilities to collect and analyze their monitoring samples. The sectors principally affected by OSHA's EtO standard are: EtO producers: EtO ethoxylators (i.e., who use EtO as a feedstock chemical); sterilizers of heat- and moisture-sensitive medical products and devices; hospitals; and spice manufacturers. The number of short-term samples to be collected will depend on the number of activities occurring during the day that may cause elevated short-term exposures to EtO. The pattern of exposure varies from sector to sector; for example, sterilizer operators using EtO to sterilize medical devices are generally exposed to elevated short-term exposures four or five times per shift, while the unit operator in an ethoxylation facility performs activities having the potential for short-term exposures two or three times in a working day.

To estimate the average number of short-term samples that employers in each of these sectors would collect to comply with an initial excursion limit monitoring requirement, OSHA relied on the feasibility study conducted by Meridian Research, Inc. [Ex. 204]. While conducting sites visits to facilities in the affected sectors, Meridian collected from 30 to 10 short-term (15 minute) samples at each facility. For the purpose of monitoring cost estimation, OSHA therefore assumes that employers at each facility will need to collect an average of six short-term samples to fulfill his or her initial excursion limit monitoring obligation.

OSHA estimates that, under a worst-case scenario, employers in the five principally affected EtO sectors will incur a total cost of $3,161,480 to comply with the proposed initial excursion limit monitoring. Individual sector cost are: $6,370 for EtO producers; $24,500 for ethoxylators, $61,250 for medical products sterilizers; $3,056,130 for hospitals; and $13,230 for spice manufacturers.

Economic Impact and Regulatory Flexibility Analyses

Based on the preceding cost analysis, OSHA has determined that the additional costs of complying with the proposed 5 ppm excursion limit are likely to be negligible for employers that are in compliance with the existing 1 ppm PEL. Thus the promulgation of a 5 ppm excursion limit is not likely to have a significant economic impact on typical firms in each sector or cause adverse differential impacts on small entities in each sector. Comment is requested on this issue.

Relationship Between Short-Term and 8-Hour TWA Exposures to EtO

To address the Court's request that OSHA examine the impact of controlling short-term employee exposures on the residual health risks that remain at the 1 ppm TWA PEL, OSHA assessed the contribution of employees' short-term exposures to their 8-hour TWA exposures. To accomplish this analysis, Meridian obtained concurrent personal 8-hour TWA and short-term air samples during visits to sites in several sectors. Meridian then calculated each employee's total EtO exposure from short-term activities (in ppm-minutes) and each employee's total full-shift exposure in ppm-minutes (determined from the 8-hour TWA). This analysis permitted OSHA to determine the extent to which an employee's 8-hour TWA would be reduced by controlling that employee's short-term exposures. While some employers have chosen to control short-term exposures to meet the 1 ppm TWA, OSHA seeks comment on the extent to which average long-term exposures would be reduced below the TWA by an excursion limit.

For example, exposure data were obtained at one ethoxylator facility. The top operator had a non-detectable 8-hour TWA exposure and a single 15-minute exposure of 1.07 ppm that occurred while the operator was collecting a quality control sample from a railcar. Even assuming that this employee's 8-hour TWA was 0.05 ppm (i.e., the limit of detection), the exposure to EtO that occurred during railcar sampling contributed 67 percent of the operator's total exposure for the day. These results show that controlling the operator's 15-minute exposure during this activity (i.e. close loop sampling system) had a significant impact on reducing the employee's 8-hour TWA to well below 1 ppm (see Site Visit Report for Company A, Ex. 204). In addition, short-term and 8-hour TWA exposure data collected at three medical product sterilizer facilities show that reducing the short-term exposures of sterilizer operators and forklift drivers contributed significantly to reducing their 8-hour TWA exposures to below 1 ppm (see Site Visit Reports for Companies C, D, and F, Ex. 204).

This analysis of the contribution of exposures experienced during short-duration, high-exposure activities has shown that controlling short-term exposures has had a substantial impact on reducing employees' 8-hour exposures to EtO. Although most of the sites visited by Meridian will not need to implement additional controls to achieve compliance with an excursion limit of 5 ppm, one site may need to change its work schedule to extend the amount of offgassing time before removal of the load from the sterilizer or of biological indicators from sterilized product. OSHA believes other firms in the affected sectors may also need to implement additional work practices or alter their work schedules to accommodate longer offgassing times.

Summary of Benefits

To the extent an excursion limit reduces average long-term exposures, then the cancer deaths prevented by adoption of an excursion limit represent the primary benefit derived from this action. As discussed previously in this preamble, it is not possible to quantify the number of deaths prevented by compliance with the excursion limit since data do not reveal the precise incremental EtO dose reduction that will result from limiting 15-minute short-term exposures to 5 ppm. However, OSHA has estimated the risk from a lifetime exposure, assuming exposure only once a day to a 5 ppm short-term limit, with no other exposure or background levels of EtO, to be approximately 2 to 4 excess deaths per 10,000 workers. The calculated risks, 2 per 10,000 to 4 per 10,000 are probably low estimates, because it has been established that short-term exposures often occur more than once per day and that background EtO concentration during the day is above zero, additionally contributing to worker exposure. Thus, OSHA believes that the risk at 5 ppm will not be insignificant (*See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980)).

OSHA believes that implementation of this proposed amendment will act to reduce the number of EtO-related cancer cases, although the number of additional lives saved cannot be quantified.

Environmental Assessment-Finding of No Significant Impact

During OSHA's previous rulemaking on EtO, information was solicited from the public on a variety of issues including possible environmental impacts of a revised standard which might contain both a TWA and short-term limit. The information and comments submitted have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary has determined that this proposed action will not have a significant impact on the external environment.

EtO is used primarily as an intermediate in the production of several industrial products, such as antifreeze, polyester fibers, films, and bottles. EtO is also used as a pesticide, fumigant, and antimicrobial sterilant for medical products and spices, and in limited applications for items such as cosmetics, books, railcars, etc.

Adoption of an excursion limit is not anticipated to affect the external environment because: (1) The process equipment containing EtO generally consists of tightly closed and highly automated system; (2) any emissions that occur to the external atmosphere would dissipate and disperse rapidly; and (3) no solid waste is directly associated what EtO fumigation and sterilization.

Although the removal of increased amounts of EtO from the workplace air might seem to contribute to the pollution of ambient air surrounding EtO operations and applications, this is not anticipated because direct exhaust to the external environment is regulated under EPA air quality standards. In cases where worker exposure is reduced by the use of improved control methods such as chamber ventilation and purge systems, atmospheric emissions of EtO would remain constant, having an insignificant impact on the external environment.

Only minimal amounts of EtO are released from manufacturing processes as wastewater effluents. Treatment of EtO containing wastes usually involves degradation in water (producing ethylene glycol). Wastewater treatment must comply with the requirements of the Clean Water Act of 1977, and under this standard, conventional biological wastewater treatment would effectively remove EtO from water effluents.

In cases where liquid EtO is transported or stored, there may be some potential for spills or leaks. Because of the nature of EtO, however, such occurrences are not anticipated to impact on the environment, since EtO quickly volatilizes and dissipates. Although instances of waste disposal have not been presented to the record, such disposal would be covered by EPA regulations and transportation would be regulated by the Department of Transportation. The requirements of the proposed standard will not alter present methods for waste disposal or transportation of EtO.

Based on this discussion, OSHA concludes that there will be no significant impact on the general quality of the human environment outside the workplace, particularly in terms of ambient air quality, water quality, or solid waste disposal. OSHA, of course, reserves the right to perform additional environmental analyses based on the information and comments received in response to this Notice.

VI. Summary and Explanation of the Proposed Requirements

The proposed requirements set forth in this notice are those which, based on currently available data, OSHA believes are necessary and appropriate to provide additional protection to employees who are now exposed to airborne concentrations of EtO at levels that pose a significant risk of material impairment to their health. OSHA has considered all data and recommendations on the short-term limit issue contained in the EtO docket (H-200), as well as reference works, journal articles and other data accumulated by OSHA since initiation of this rulemaking.

OSHA believes that compliance obligations with respect to the excursion limit may need to be set forth in several paragraphs of the present EtO standard in order for the maximum benefit to be derived from adoption of this limit. Proposed requirements pertaining to adoption of the excursion limit are set forth in the following paragraphs of section 1910.1047: Scope and application (a)(2); Permissible exposure limit, (c) (2); Exposure monitoring, (d)(1)(i), (d)(1)(ii), (d)(2)(iii), (d)(3), (d)(4), and (d)(7)(ii); Regulated areas, (e)(1); Methods of compliance, (f)(1)(i), (f)(1)(ii), (f)(2)(i), and (f)(2)(iv); Respiratory protection and personal protective equipment, (g)(1)(iii); Communication of EtO hazards to employees, (j)(1)(ii), (j)(3)(i); and Dates, (m)(1)(i) and (m)(2)(iii). The following discussion describes how the proposed requirements in each of these paragraphs would modify employers current obligations under the EtO standard.

Scope and Application, Paragraph (a)(2)

This paragraph specifies that the EtO standard does not apply to products containing EtO where data demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the 8-hour TWA action level of 0.5 ppm. OSHA believes that it would be appropriate to require the employer to demonstrate that the product is also not capable of releasing EtO concentrations above the excursion limit

in order for that product to be exempt. The Agency proposes this modification based on its conclusion that risk can be reduced by additionally specifying that product exemption is acceptable only if exposures also will not exceed the excursion limit. To illustrate this proposition, it can be calculated that under the present standard a product is exempt if emitted dose remains below 240 ppm/minutes (0.5 ppm × 480 minutes). Thus, for products which may by nature initially emit relatively high EtO concentrations over a short time span, the current standard would exempt such products only if they are not capable of releasing 16 ppm EtO over a 15 minute period (16 ppm × 15 min = 240 ppm-minutes). Imposition of the excursion limit would not allow exemption in this example (e.g. for product exemption emitted dose could not exceed 75 ppm-minutes [5 ppm × 15 minutes], rather than 240 ppm-minutes). Thus, imposition of the STEL, under worst case exposure conditions, would theoretically reduce the allowable release of EtO for products to be exempted from the standard.

Permissible Exposure Limit Paragraph (c)(2)

Proposed paragraph (c)(2) would establish the excursion limit as follows: "The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as determined over a maximum sampling period of fifteen (15) minutes."

OSHA has determined that exposure to EtO under the present standard still presents a significant risk of material impairment to employees. Based on the current record, OSHA believes that compliance with the excursion limit as set-forth in this paragraph will further reduce such significant risk.

As noted earlier, OSHA must also give consideration to the economic and technological feasibility of the proposed excursion limit in this phase of the EtO rulemaking. In order to obtain the information necessary to allow the Agency to perform such a feasibility analysis, OSHA contracted for the services of Meridian Research, Inc. of Silver Spring, Maryland, to perform site visits and exposure monitoring in representative EtO-using facilities (Ex. 204). Based on these data, and data previously provided to the EtO record, OSHA believes that compliance with the excursion limit is likely to be both technologically and economically feasible (see "Regulatory Flexibility and Impact Analysis" section).

Exposure Monitoring, Paragraphs (d)(1)(i), (d)(i)(ii), (d)(2)(ii), (d)(3)(iv), (d)(4)(iii), (d)(4)(iv), and (d)(7)(ii)

The proposed amendment to paragraph (d)(1)(i) would require that the employer perform breathing zone sampling that is representative of the 15-minute short-term exposure of each employee. Paragraph (d)(1)(ii), as amended, would require that representative 15-minute short-term employee exposures be determined on the basis of one or more samples representing 15-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

While these exposure monitoring provisions would require that the employer determine the short-term exposure for each employee exposed to EtO, it does not necessarily require separate measurements for each employee. If a number of employees perform essentially the same job under the same conditions, it may be sufficient to monitor a fraction of such employees. Representative personal sampling for employees engaged in similar work and exposed to similar short-term EtO levels can be achieved by measuring the exposure of that member of the exposed group who can reasonably be expected to have the highest exposure. This result would then be attributed to the remaining employees of the group.

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the exposures of affected employees. However, employers may use any monitoring strategy that correctly identifies the extent to which their employees are exposed.

Existing paragraph (d)(2)(i) would apply to the excursion limit, and would require employers to perform initial monitoring to determine accurately the short-term airborne concentrations of EtO to which employees are exposed. However, proposed paragraph (d)(2)(iii) contains a provision designed to eliminate unnecessary and redundant exposure monitoring. It would permit employers who have monitored short-term employee exposures to EtO within a one-year period immediately preceding publication of a final rule in the **Federal Register** to forego the initial monitoring required by paragraph (d)(2)(i) if the results of monitoring within this period have shown that their employees are not exposed to EtO levels above the excursion limit.

This provision makes clear that OSHA does not intend to require employers who have voluntarily performed employee monitoring to repeat such monitoring if they have reliable and objective data showing that their employees are not exposed to EtO above the excursion limit. Thus, OSHA believes that proposed paragraph (d)(2)(iii) will enhance the cost effectiveness of the standard's monitoring requirements without compromising employee protection. The frequency of monitoring and termination of monitoring requirements regarding the excursion limit are found in proposed paragraphs (d)(3)(iv), (d)(4)(iii) and (d)(4)(iv). The excursion limit itself would not change the current frequency and termination of monitoring provisions as they apply to the TWA.

With the adoption of an excursion limit the final rule would contain a TWA, a excursion limit, and an action level. The interrelationship among these three exposure levels would determine the frequency at which employers are obligated to monitor employee exposures. There would be six possible exposure scenarios, or combinations of TWA and short-term exposures, that would determine the frequency of required monitoring if an excursion limit were promulgated. The table below lists these six exposure scenarios, along with the monitoring frequency for each. As indicated previously, the frequency provisions dictated by the action level and TWA would not be changed by adoption of the excursion limit. However, these levels are included in the Table below to clarify what the overall monitoring obligations would be if all three triggering levels existed. (Note: "EL" means "excursion limit" in the table below).

Exposure scenario	Required monitoring activity
—Below the action level and at or below the EL.	No monitoring required.
—Below the action level and above the EL.	No TWA monitoring required; monitor short-term exposures 2 times per year.
—At or above the action level, at or below the TWA, and at or below the EL.	Monitor TWA exposures 2 times per year.
—At or above the action level, at or below the TWA, and above the EL.	Monitor TWA exposures 2 times per year and monitor short-term exposures 2 times per year.
—Above the TWA and at or below the EL.	Monitoring TWA exposures 4 times per year.
—Above the TWA and above the EL.	Monitor TWA exposures 4 times per year; monitor excursion limit exposures 2 times per year.

As is shown by the table above, the action level trigger largely determines whether employers must monitor employee exposure to EtO; the only exception would be the scenario in which 8-hour TWA exposures are below the action level and short-term exposures are above the excursion limit. In this particular case, the existence of an excursion limit would obligate employers to monitor short-term exposures two times per year at those job locations where the excursion limit is exceeded, but employers would not be obligated to monitor 8-hour TWA exposures at those job locations. Although OSHA has proposed that excursion limit monitoring be performed semiannually where overexposure is found, comment is solicited on the adequacy of this monitoring frequency. The Agency considered requiring quarterly or even more frequent periodic monitoring where the excursion limit is exceeded due to the potential variability in burst type exposure levels from day to day, week to week, or month to month. Comment is sought on whether semiannual monitoring of employees who are likely to receive short-term exposures above the excursion limit is sufficiently representative of expected exposures throughout the year.

Paragraph (d)(4)(iii), would permit termination of excursion limit monitoring where initial monitoring required under paragraph (d)(2)(i) reveals employee exposure to be at or below the excursion limit. Likewise, paragraph (d)(4)(iv) would permit termination of the proposed periodic excursion limit monitoring under paragraph (d)(3), if at least two consecutive excursion limit measurements taken at least 7 days apart, are at or below the excursion limit. These are the same termination of monitoring requirements applicable to the existing action level (i.e. TWA monitoring not required where exposures are below the action level). OSHA believes that incorporating some monitoring termination mechanisms with respect to the excursion limit, is reasonable and may be appropriate as proposed. Comment is requested on these proposed amendments. Based on the nature of the occurrence of short-term EtO exposures, however, comment is particularly requested on the degree of confidence that can be placed in assuming that short-term exposures will remain below the excursion limit, if initial monitoring or two specific periodic measurements indicate such. The Agency is seeking data on whether short-term EtO exposures in industry today can be expected to consistently remain below a given limit, or whether the magnitude of short-term exposures fluctuates so frequently and widely that more stringent demonstration of short-term exposure stabilization is necessary, prior to permitting the termination of excursion limit monitoring.

Existing paragraph (d)(5) or OSHA's EtO standard requires additional monitoring for TWA exposures whenever there has been a change in production, process, control equipment, personnel or work practices that may result in new or additional EtO exposures. If an excursion limit is adopted, the current requirement would also require additional excursion limit monitoring where the employer suspects that workplace changes also may increase short-term exposures. The Agency requests comments both on the appropriateness of requiring such additional excursion limit monitoring as described above and on specific workplace changes and situations that might result in an increase in short-term exposures.

Paragraphs (d)(6) of the current EtO standard requires that monitoring methods be accurate to within plus or minus 25% for EtO concentrations at the 1 ppm TWA, and plus or minus 35% at the action level of 0.5 ppm. These accuracy specifications were based on data in the record that showed that several EtO measurement methods and devices were available to employers on a widespread basis that could meet the specified accuracy requirements for compliance determinations. OSHA believes that a number of measurement methods and devices are also available to employers that can accurately determine compliance with the EtO excursion limit. These include the Qazi-Ketcham method (Ex. 11–133), direct reading instruments such as infrared detection units, photoionization detection units and gas chromatographs, and the recently developed OSHA method 50 (Ex. 203). Other devices, such as passive dosimeters, may also prove to be suitable in determining short-term exposures. Presently available data indicate, however, that dosimeters may not yet be capable of accurately measuring short-term EtO levels. The Agency is aware that dosimeter manufacturers are attempting to develop their products for this purpose. Because of the wide range of methods and the developmental work currently being conducted, OSHA is not proposing specific accuracy limitations with respect to STEL monitoring. The Agency may incorporate accuracy requirements in the final standard but believes that additional data will result in a more appropriate determination on this issue.

OSHA requests the submission of data identifying available STEL monitoring methods, levels that can be measured, accuracy, availability for use by the EtO industry, degree of expertise needed to perform excursion limit monitoring, and costs.

Paragraph (d)(7), as amended, would require that employers notify employees of the results of excursion limit monitoring performed pursuant to the standard, and inform employees of corrective action being taken by the employer to reduce exposure to or below the excursion limit where the excursion limit has been exceeded. These notification requirements have been determined to be appropriate where TWA monitoring is performed, and are also believed to be appropriate where excursion limit monitoring is performed.

Regulated areas, paragraph (e)(1)

This paragraph, as amended, would require employers to identify as regulated areas any locations in their workplaces where there may be occupational exposures to airborne concentrations of EtO above either the excursion limit or as is specified currently, above the TWA.

OSHA believes that additionally designating areas where the excursion limit is exceeded as regulated areas will further reduce EtO exposure to employees currently permitted in these areas. For example, regulated areas need not be established for EtO dosages below 480 ppm-minutes (1 ppm x 480 minutes). This permits an exposure of up to 32 ppm over 15-minutes prior to the need for regulated area designation. Adoption of the excursion limit will also require regulated area designation for areas in which EtO levels exceed 5 ppm for 15-minutes, or a dose of 75 ppm-minutes.

Methods of Compliance, Paragraphs (f)(1)(i), (f)(1)(ii), (f)(2)(i) and (f)(2)(ii)

As discussed previously (see section on Summary of Regulatory Flexibility and Impact Analysis) OSHA believes that compliance with the proposed excursion limit can be accomplished by the majority of the EtO industry through implementation of feasible engineering and work practice controls. OSHA, therefore, proposes to require in paragraph (f)(1)(i) of the existing EtO standard, that the employer institute engineering and work practice controls to reduce and maintain employee exposure to or below the excursion limit except to the extent that such controls are not feasible. OSHA further proposes, in paragraph (f)(1)(ii), to require that wherever feasible engineering controls and work practices that can be instituted are not sufficient to reduce employer exposure to or below the excursion limit the employer shall use

them to reduce exposure to the lower levels achievable by those controls, and shall supplement them by the use of respirators. Based on available evidence, OSHA believes that the use of engineering and work practices controls will reduce employer exposure to or below the excursion limit for practically all situations. OSHA recognizes in paragraph (f)(1)(iii) of the existing standard, however, that there are some situations where engineering controls are not generally feasible, especially as they pertain to control of short-term exposures. These EtO activities include: collection of quality assurance samples from sterlized materials; removal of biological indicators from sterilized materials; loading and unloading of tank cars; changing of EtO tanks on sterilizers; and vessel cleaning. These operations generally result in short-term high exposures. Thus, considering that the existing standard permits the use of respirators during these difficult to control activities, OSHA has greater confidence that it is feasible to control virtually all other short-term exposure activities through implementation of engineering and work practice controls. Nevertheless, OSHA seeks comments on whether employers should be permitted to use respirators to achieve compliance with the excursion limit in any situation where the TWA is being complied with.

Amended paragraph (f)(2)(i) would require, where the excursion limit, is exceeded, that the employer establish and implement a written program to reduce employer exposure to or below the excursion limit, by means of engineering and work practice controls, and by the use of respirators when permitted.

OSHA believes that the written plan for achieving the excusion limit, is as essential as the written plan requirement adopted for achieving the TWA, in ensuring that the employer implement the necessary controls to reduce exposure. The plan also provides the information that would allow OSHA, the employer, and employees to examine the excursion limit control methods chosen and to evaluate the extent to which these planned controls are being implemented. As with the TWA written plan, the excursion limit compliance plan will be accessible to individuals designated in paragraph (f)(2)(ii) for inspection and copying.

Paragraph (f)(2)(iv), as amended, would prohibit employee rotation as a means of compliance with the excursion limit for the same reasons that employee rotation is not permitted for compliance with the TWA. This prohibition is consistent with OSHA's view that this control strategy is not appropriate in occupational environments involving exposure to potential carcinogens. It results in exposure of a larger number of employees to levels of EtO which still present a significant risk.

Respiratory Protection and Personal Protective Equipment, Paragraph (g)(1)(iii)

The final standard, with adoption of an excursion limit would provide that respirators be used to limit short-term employee exposure to EtO in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls to achieve the excursion limit;

(ii) In-work operations such as maintenance and repair activities or vessel cleaning or other activities for which the employer establishes that engineering and work practice controls are not feasible to achieve the excursion limit; and

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the excursion limit.

These same requirements apply under the current standard with respect to respirator use in complying with the TWA, and are based on OSHA's established policy on compliance methodology (see preample discussion in the current EtO standard, 49 FR 25734).

Other requirements under this paragraph (g) dealing with "Respirator selection" and "Respirator program", would remain unchanged and would apply where respirators are used to achieve the excursion limit.

Communication of EtO Hazards to Employees, Paragraphs (j)(1)(ii), (j)(3)(i)

The existing EtO standard requires, in paragraph (j)(1)(ii), that employers ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level. OSHA also proposes to include in this paragraph a requirement for labeling of containers of EtO whose contents are capable of causing employee exposure above the excursion limit.

Existing paragraph (j)(3)(i) requires that information and training on EtO be provided to employees exposed above the action level. OSHA also proposes to include in this paragraph a requirement that information and training on EtO be provided to employees exposed above the excursion limit.

The basis for these proposed actions is that regulation of short-term exposures will act to reduce further the significant risk of excess death to EtO employees that persists under the current rule. Additionally, informing employees through labeling and training that high levels of hazardous materials can be released into the workplace may better enable affected employees to take precautionary measures to protect themselves.

Effective Date, Paragraph (m)

As proposed, the final amendments to the EtO standard would become effective thirty (30) days following publication in the **Federal Register**. In order to establish appropriate start-up dates from the effective date, OSHA requests comment on the length of time employers believe will be required in order to achieve compliance with the proposed excursion limit, and the time necessary to establish additional exposure monitoring, respirator, and training programs that would be required by adoption of an excursion limit for EtO.

VII. References

The studies and other data referred to in this document represent the primary sources upon which this proposed action is based. A complete set of the references is available for examination and copying at the OSHA Docket Office, Room N-3670, U.S Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, between 8:30 am and 4:30 pm, Monday through Friday, legal holidays excepted.

VIII. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed amendment. These comments must be postmarked on or before February 22, 1988 and submitted in quadruplicate to the Docket Officer, Docket No. H-200, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3670, Washington, DC 20210, (202)523-7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be part of the record of the proceeding.

Public Hearing

OSHA has tentatively scheduled an informal public hearing to begin at 10:00 a.m. on Thursday, March 3, 1988, depending on whether any hearing requests are received by the Agency. The hearing will be held in the Auditorium, Francis Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. Interested persons who wish to request a hearing must file such request by February 22, 1988.

Requests for Hearings

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11 interested persons who desire that OSHA hold an oral hearing on the proposal may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
3. Each objection must be separately stated and numbered; and
4. The objections must be accompanied by a detailed summary of the evidence proposed to be introduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course, make those objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" if the interested persons desire to request an oral hearing.

Requests for a hearing should be submitted in quadruplicate, postmarked on or before February 22, 1988 and addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-200B, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615.

Notice of Intention to Appear

Persons desiring to participate at the hearing, including the right to question witnesses, must file a notice of intention to appear postmarked by February 22, 1988. The notice of intention to appear must contain the following:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed;
6. A statement as to whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

This notice of intention to appear is to be sent to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3649, 200 Constitution Avenue, NW., Washington, DC 20210.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later than February 22, 1988 and sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, at the address just specified.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact. Any party who has not substantially complied with the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket H-200, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3670, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-7894.

The hearing is scheduled to commence at 10:00 a.m. on March 3, 1988 in Washington, DC. The hearing will be presided over by an Administrative Law Judge who will have the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. To limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

If no hearing requests are submitted by interested persons by the deadlines set forth above, no hearing will be held. OSHA will then publish a notice in the **Federal Register**, indicating that there will be no hearing. The Agency will also contact all persons who submitted comments in response to this proposal, to inform them of this fact.

The proposal will be reviewed in light of the comments received, additional comments and testimony received and all other relevant material in the record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

IX. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Pursuant to sections 4, 6(b), 8(c) and 8(g)(2) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), it is hereby proposed to amend 29 CFR 1910.1047 as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational Safety and Health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, this 19th day of January.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of 29 CFR Part 1910 would continue to, in pertinent part, read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657, Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

* * * * *

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

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2. Paragraphs (a)(2), (c), (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (d)(4), (d)(7)(ii), (e)(1), (f)(1)(i), (f)(1)(iii), (f)(2)(i), (f)(2)(iv), (g)(1)(iii), (j)(1)(ii) introductory text, and (j)(3)(i) of § 1910.1047 would be revised, (m)(1) is redesignated as (m)(1)(i), and new paragraphs (d)(3)(iv), (m)(1)(ii), and (m)(2)(iii) would be added to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide

(a) * * *

(2) This section does not apply to the processing, use, or handling of products containing EtO where objective data are reasonably relied upon that demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the action level, or in excess of the excursion limit, under the expected conditions of processing, use, or handling that will cause the greatest possible release.

* * * * *

(c) *Permissible exposure limits*—(1) *8-hour time weighted average (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of one (1) part EtO per million parts of air (1ppm) as an 8-hour time-weighted average (8-hour TWA).

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as determined over a maximum sampling period of fifteen (15) minutes.

(d) * * *

(1) * * *

(i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and maximum 15-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift for each job classification in each work area. Representative 15-minute short-term employee exposures shall be determined on the basis of one or more samples representing 15-minutes exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

* * * * *

(2) * * *

(ii) Where the employer has monitored for the excursion limit after (insert date one-year prior to final FR notice) and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(3) * * *

(iv) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 15-minute excursion limit, the employer shall repeat such monitoring for each such employee at least every 6 months.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure to be below the action level, the employer may dscontinue TWA monitoring for those employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue TWA monitoring for those employee whose exposures are represented by such monitoring.

(iii) If the initial monitoring required by paragraph (d)(2)(i) of this action reveals employee exposure to be at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by the initial monitoring.

(iv) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by such monitoring.

* * * * *

(7) * * *

(i) * * *

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit has been exceeded.

(e) *Regulated areas.* (1) The employer shall establish a regulated area wherever occupational exposure to airborne concentrations of EtO may exceed the TWA or excursion limit.

* * * * *

(f) * * *

(1) * * *

(i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and to or below the excursion limit, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and to or below the excursion limit, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

* * * * *

(2) *Compliance program.* (i) Where the TWA or excursion limit is exceeded, the employer shall establish and implement a written program to reduce exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls, as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

* * * * *

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the TWA or excursion limit.

(g) * * *

(1) * * *

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA or excursion limit; and

* * * * *

(j) * * *

(1) * * *

(ii) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level or above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purpose of this paragraph, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of 29 CFR 1910.1200(f) of OSHA's Hazard Communication standard, and shall include the following legend:

* * * * *

(3) * * *

(i) The employer shall provide employees who are potentially exposed to EtO at or above the action level or above the excursion limit with information and training on EtO at the time of initial assignment and at least annually thereafter.

* * * * *

(m) * * *

(1) * * *

(ii) The requirements in the amended paragraphs in this section which pertain only to or are triggered by the excursion limit shall become effective thirty (30) days from the date of publication in the Federal Register.

(2) * * *

(iii) The start-up dates for compliance with the excursion limit requirements in this section shall be (period to be determined).

* * * * *

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VOL
53
ISS
13
JA
21
988
UMI

Reader Aids

Federal Register
Vol. 53, No. 13
Thursday, January 21, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–106	4
107–230	5
231–398	6
399–486	7
487–608	8
609–732	11
733–772	12
773–854	13
855–998	14
999–1330	15
1331–1466	19
1467–1600	20
1601–1738	21

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5760	855
5761	1464

Executive Orders:

12537 (Amended by EO 12624)	489
12578 (Superseded by EO12622)	222
12622	222
12623	487
12624	489

Administrative Orders:

Presidential Determinations:

No. 88–2 of Oct. 30, 1987	399
No. 88–4 of Dec. 17, 1987	773
No. 88–6 of Jan. 19, 1988	1601

Presidential Findings:

Jan. 12, 1988	999

5 CFR

353	857
551	1331
890	1, 860

Proposed Rules:

330	408
351	408
890	898

7 CFR

1	1001
7	1441
272	1603
275	1603
301	733
353	1332
400	2
401	1001
405	1467
614	1605
704	733
724	1605
905	401, 860
907	6, 491, 1333
910	7, 492, 1333
911	402
928	862
959	401
971	401
987	401
1430	107
1902	231

Proposed Rules:

68	411
301	140
401	505, 507
451	1640
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1048	902
1068	1360
1097	1369
1106	1370
1126	256
1136	686
1260	509
1701	140

9 CFR

77	1002

10 CFR

73	403

Proposed Rules:

2	415
430	30
730	1594

11 CFR

Proposed Rules:

109	416
114	416

12 CFR

206	492
208	492
226	467
337	597
501	1003
525	312
561	324, 338
563	324, 338, 354, 363, 372, 385, 1004
563c	324
571	338, 372, 385
583	312, 1003
584	312
614	775
795	1005

Proposed Rules:

226	467

13 CFR

108	1468
140	1606

14 CFR

39	8–14, 232, 493–495, 1334, 1468, 1608–1613
71	496, 497, 619, 1335, 1336, 1614

75.....497, 1336–1339
91.....233
95.....1005
97.....499
Proposed Rules:
Ch. I.....1038
39.....258, 514, 515, 1371–1374
71.....516, 517, 666, 670, 674, 907–910, 1375
73.....517, 991

15 CFR

372.....1614
374.....1614
399.....108, 1618
806.....1015
Proposed Rules:
379.....418

16 CFR

13.....609
Proposed Rules:
13.....141, 1039

17 CFR

1.....609, 615
211.....109, 865, 1341

18 CFR

3.....1469
154.....867
270.....867
271.....15
273.....867
375.....867, 1469
381.....867, 1469
388.....1469
1301.....405

19 CFR

4.....1103
24.....615
Proposed Rules:
132.....1376
141.....30
142.....1376
178.....30

20 CFR

Proposed Rules:
361.....143
901.....147

21 CFR

81.....19
176.....97
193.....20, 233
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233
606.....111
610.....111
640.....111
884.....1554
892.....1554
1308.....500
Proposed Rules:
193.....259
561.....259
864.....1574
866.....1574
868.....1574
870.....1574
876.....1574
880.....1574
882.....1574
884.....1574
890.....1574
892.....1574
1308.....743

23 CFR

655.....236

24 CFR

200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122
Proposed Rules:
115.....260

26 CFR

1.....117, 238, 1103, 1441
Proposed Rules:
1.....153, 261

27 CFR

Proposed Rules:
9.....1492

28 CFR

55.....735
541.....196

29 CFR

2676.....1018
2702.....737
Proposed Rules:
1910.....1724

30 CFR

202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994
Proposed Rules:
210.....1039
216.....1039

31 CFR

103.....776

32 CFR

45.....1341
104.....1343
374.....1345
887.....876
Proposed Rules:
199.....1378

33 CFR

110.....878
117.....119, 406
165.....616, 878
166.....1347

34 CFR

Proposed Rules:
303.....1461

36 CFR

5.....739
404.....120
1254.....1348
Proposed Rules:
223.....519

37 CFR

201.....122, 123
Proposed Rules:
203.....153

38 CFR

4.....21, 1441
21.....616, 879
36.....1349
Proposed Rules:
21.....620, 1040
36.....1378

39 CFR

111.....124, 125
232.....126

40 CFR

2.....214
51.....392, 480
52.....392, 501, 1019, 1020, 1354
61.....777
86.....470
180.....241, 243, 657
271.....126–128, 244, 1358
421.....1704
763.....1021
Proposed Rules:
52.....261, 779, 1043
86.....1716
156.....1494
170.....1494
180.....262, 263, 1495
192.....1641
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR

101–20.....129
105–60.....1478
114–51.....741
Proposed Rules:
Ch. 201.....620
51–7.....1379
141.....31
142.....31
261.....31

42 CFR

405.....1617
412.....1621
413.....1621
418.....1621
431.....657
435.....657
440.....657
441.....657
Proposed Rules:
410.....1383
434.....744
435.....744

43 CFR

2.....24
3100.....1184
3160.....1184
Public Land Orders:
6661.....1359
6662.....1359
Proposed Rules:
3160.....1039

44 CFR

64.....1485
Proposed Rules:
7.....922
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR

95.....26
233.....467
Proposed Rules:
1215.....1496

46 CFR

Proposed Rules:
588.....624

47 CFR

Ch. I.....502
0.....1022
64.....27
65.....1027
68.....1103
73.....28, 29, 504, 1030, 1629, 1630
90.....1022
Proposed Rules:
1.....625
63.....625
73.....426, 1386–1388
74.....529
76.....625
78.....529
95.....779

48 CFR

7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
501.....130, 132, 1441, 1540
513.....132, 1441
836.....1630
852.....1630

Proposed Rules:
215.....625
225.....626
232.....931
252.....626, 931
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR

24.....467
31.....880
190.....1633
192.....1633
541.....133
544.....1641
565.....1032
661.....617
Proposed Rules:
3.....100
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
544.....1635
571.....426, 780, 934, 936, 1643
1041.....155
1048.....155
1049.....155

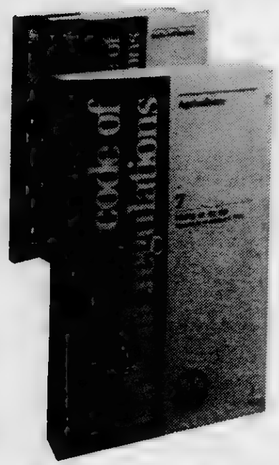
50 CFR

33.....1487
216.....1638
611.....134, 741, 890, 894
653.....244
663.....246, 248
672.....890, 991
675.....894, 991
Proposed Rules:
20.....42, 1645
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



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53

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13

JA
21

988

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VOL
53

ISS
14

JA
22

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1-22-88
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Pages 1739-1908

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Friday
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Contents

Federal Register
Vol. 53, No. 14
Friday, January 22, 1988

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list; toxicological profiles availability; correction, 1845

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 1742
Limes and avocados grown in Florida, 1742
Oranges (navel) grown in Arizona and California, 1741
PROPOSED RULES
Milk marketing orders:
Southwest Plains, 1790

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Rural Telephone Bank

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 1740

Antitrust Division
NOTICES
National cooperative research notifications:
Microelectronics & Computer Technology Corp., 1859

Army Department
RULES
Military reservations and national cemeteries:
Fort Stewart/Hunter Army Airfield; firearms and weapons, 1752
NOTICES
Meetings:
Armed Forces Epidemiological Board, 1816
(2 documents)

Census Bureau
NOTICES
Surveys, determinations, etc.:
Service industries; annual, 1809

Commerce Department
See Census Bureau; Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 1888

Defense Department
See also Army Department
RULES
Veterans:
Educational entitlement transfer to dependents, 1779
NOTICES
Committees; establishment, renewal, termination, etc.:
Defense Manufacturing Board, 1814
Meetings:
Electron Devices Advisory Group, 1814
(2 documents)
Science Board task forces, 1815
(4 documents)
Women in Services Advisory Committee, 1815

Delaware River Basin Commission
RULES
Basin regulations:
Comprehensive plan and water code; amendments, 1751

Economic Regulatory Administration
NOTICES
Natural gas importation and exportation:
Colony Natural Gas Corp., 1823

Employment and Training Administration
NOTICES
Adjustment assistance:
Bogen Communications, Inc. et al., 1866

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 1867

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Applications for exception:
Decisions and orders, 1816, 1818
(3 documents)
Environmental statements; availability, etc.:
Superconducting super collider, 1821
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Los Alamos National Laboratory, NM, 1820

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 1780
NOTICES
Agency information collection activities under OMB review, 1834
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region VI, 1834
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 1835
Weekly receipts, 1836
Grants, State and local assistance:
Financial assistance program; Resource Conservation and Recovery Act integrated training and technical assistance initiative, 1836

Health risk assessment: guidelines, etc.:
Ingested inorganic arsenic; skin cancer/nutritional essentiality, 1835
Meetings:
State-FIFRA Issues Research and Evaluation Group, 1837
Water pollution control:
Drinking water priority list; contaminant substitutes, 1892

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
Airworthiness standards, etc.:
Special conditions—
Petersen Aviation, Inc. (modified Beech), 1745
Petersen Aviation, Inc. (modified Bellanca), 1746
NOTICES
Advisory circulars; availability, etc.:
Airplanes, small, structural substantiation of modifications involving increased engine power, 1880
Normal, utility, and acrobatic category airplanes, certification; flight test guide, 1881
Exemption petitions:
Fairchild Aircraft Corp., 1880
Meetings:
Aeronautics Radio Technical Commission, 1879
(3 documents)

Federal Communications Commission
RULES
Communication equipment:
Cordless telephones; indefinite extension, 1781
Radio stations; table of assignments:
North Carolina, 1782
PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 1807
Kansas, 1807
(2 documents)
Texas, 1808
NOTICES
Common carrier services:
Caribbean Region; common carrier facilities, construction and use; policies and guidelines, 1839
Meetings:
Advanced Television Service Advisory Committee, 1838
Applications, hearings, determinations, etc.:
Day Broadcasting et al., 1838
Harvest Broadcasting et al., 1838
Neville, Steve P., et al., 1839
Underwood, Sue A., et al., 1839

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Hawaii, 1841
Meetings:
Emergency Management Institute Board of Visitors, 1841

Federal Energy Regulatory Commission
RULES
Annual charges; gas and oil pipelines and electric utilities, 1748
National Environmental Policy Act; implementation, 1750
NOTICES
Electric rate and corporate regulation filings:
Florida Power Corp. et al., 1824
Natural gas certificate filings:
Black Marlin Pipeline Co. et al., 1825
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 1829
Columbia Gulf Transmission Co., 1829
Florida Power & Light Co., 1830
Natural Gas Pipeline Co. of America, 1830
New England Power Co., 1831
Pacific Gas & Electric Co., 1831
Pennsylvania Power & Light Co., 1833
Sabine Pipe Line Co., 1832
Southern California Edison Co., 1832
Tennessee Gas Pipeline Co., 1832
Texas Eastern Transmission Corp., 1832
Transwestern Pipeline Co., 1833

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Berks County, PA, 1881

Federal Home Loan Bank Board
NOTICES
Receiver appointments:
First Savings Association of East Texas, 1841

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
A.J. Murray & Co., Inc., et al., 1841
Universal Transport Corp. et al., 1842

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 1888
(2 documents)
Applications, hearings, determinations, etc.:
CoreStates Financial Corp., 1843
Harrison Bankshares, Inc., et al., 1842

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 1888
Premerger notification waiting periods; early terminations, 1843, 1844
(2 documents)

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Privacy Act; systems of records, 1885

Fish and Wildlife Service
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Arctic National Wildlife Refuge, AK—, 1854

Food and Drug Administration
PROPOSED RULES
Drug labeling:
Oral and rectal aspirin and aspirin-containing products (OTC); Reye syndrome warning, 1796

Food for human consumption:
Fruit or vegetable juice beverages other than orange juice, diluted; revocation of common or usual names for nonstandardized food, 1795
NOTICES
Committees; establishment, renewal, termination, etc.:
Center for Devices and Radiological Health advisory panels and committees; nomination requests for voting members; correction, 1890
Human drugs:
Patent extension; regulatory review period determination—
Hytrin; correction, 1890
Medical devices:
Condoms; defects, criteria for direct reference seizure; compliance policy guide availability; correction, 1890

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Delaware—
General Foods Processing Plant, 1809
Mississippi, 1809

General Services Administration
PROPOSED RULES
Federal Information Resources Management Regulation:
Miscellaneous amendments, 1805
NOTICES
Procurement:
Multiple award schedules; requote procedures for orders exceeding maximum order limitation, 1844

Government Printing Office
NOTICES
Meetings:
Depository Library Council, 1845

Health and Human Services Department
See also Agency for Toxic Substances and Disease Registry; Food and Drug Administration; Human Development Services Office; Public Health Service
NOTICES
Meetings:
Secretary's Commission on Nursing, 1845

Health Resources and Services Administration
See Public Health Service

Human Development Services Office
PROPOSED RULES
Native American programs; Native Hawaiians, 1806

Immigration and Naturalization Service
PROPOSED RULES
Aliens:
Excludable aliens, custody and detention; immigration user fee, 1791

Indian Affairs Bureau
PROPOSED RULES
Land acquisitions:
Trust restrictions for off reservation lands used in bingo or other gaming enterprises, 1797
NOTICES
Land transfers:
Wind River Indian Reservation, WY, 1854

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 1888

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service

Internal Revenue Service
NOTICES
Organization, functions, and authority delegations:
Director, Disclosure Litigation Division, 1886

International Trade Administration
NOTICES
Applications, hearings, determinations, etc.:
Russell Research Center et al., 1810

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 1859
(2 documents)

Justice Department
See also Antitrust Division; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Jenkins, KY et al., 1860
Johnstown, PA, 1860
Tower Chemical Co. et al., 1860
Privacy Act; systems of records, 1861, 1864
(3 documents)
U.S. Trustee System; judicial districts certification:
Illinois and Indiana, 1866

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Federal mineral ownership and public domain lands, FL, 1855
Motor vehicles; off-road vehicle designations:
Oregon, 1856
Oil and gas leases:
Alaska, 1856, 1857
(2 documents)
Wyoming, 1857
Realty actions; sales, leases, etc.:
Montana, 1857
Survey plat filings:
Montana, 1857

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Consolidation Coal Co., 1868
(2 documents)
Eastern Associated Coal Corp., 1868
M & G Coal Co., Inc., 1869
Perkins Coal Co., Inc., 1869

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Mid-Atlantic OCS; lease sale; public scoping meetings, 1858
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 1859
Mobile Exploration & Producing U.S., Inc., 1858

National Archives and Records Administration
NOTICES
Nixon administration presidential historical materials; preservation, protection and access procedures; opening of files, 1870

National Bureau of Standards
NOTICES
Information processing standards, Federal:
Data encryption standard, 1813

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Child restraint systems—
Add-on child (portable) restraints, 1783
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Center for Auto Safety et al., 1881

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 1813, 1814
(2 documents)

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 1888

Nuclear Regulatory Commission
RULES
Organization, functions, and authority delegations, 1744
NOTICES
Environmental statements; availability, etc.:
Cleveland Illuminating Co. et al., 1871
Meetings:
Reactor Safeguards Advisory Committee, 1871
Applications, hearings, determinations, etc.:
Long Island Lighting Co., 1870
Public Service Co. of New Hampshire et al., 1871

Pension and Welfare Benefits Administration
PROPOSED RULES
Employee Retirement Income Security Act of 1974; fiduciary responsibility:
Loans; plan participants and beneficiaries who are parties in interest, 1798

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Pension Protection Act; single-employer plan terminations, 1904
Premium plans (new Form 1-ES), 1904
NOTICES
Agency information collection activities under OMB review, 1873
Multiemployer and single-employer plans:
Premium due dates, 1907

Personnel Management Office
RULES
Pay administration:
Fair Labor Standards Act; exemptions, 1739
PROPOSED RULES
Excepted service and qualification requirements:
Cooperative education program students; conversion and sons and daughters restriction, 1789
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 1872

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 1889

Postal Service
RULES
Practice and procedure rules:
Mail withheld from delivery, 1780
NOTICES
Meetings; Sunshine Act, 1889

Public Health Service
See also Agency for Toxic Substances and Disease Registry; Food and Drug Administration
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Wet tissues disposal, 1846

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 1882
Pipeline safety; waiver petitions:
Southern Natural Gas Co., 1884

Rural Telephone Bank
RULES
Loan policies; prepayment premium, temporary waiver, 1743

Securities and Exchange Commission
PROPOSED RULES
Securities Investor Protection Corporation rules; claims satisfaction, uniform procedure, 1793
NOTICES
Applications, hearings, determinations, etc.:
MacKay-Shields MainStay Tax Free Bond Fund, 1874
Trident Mortgage Securities Co., 1874

State Department
NOTICES
Meetings:
International Radio Consultative Committee, 1878
Shipping Coordinating Committee, 1878

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

NOTICES
Aviation proceedings:
Hearings, etc.—
Executive Air Charter, Inc., 1879

Treasury Department
See also Fiscal Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 1885

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 1889

Veterans Administration
RULES
Medical benefits:
Claimants and beneficiaries transportation, 1755
Vocational rehabilitation and education:
Veterans education—
All volunteer force educational assistance program, 1756
Entitlement transfer to dependents, 1779

Separate Parts In This Issue

Part II
Environmental Protection Agency, 1892

Part III
Pension Benefit Guaranty Corporation, 1904

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
551 ... 1739
Proposed Rules:
213 ... 1789
338 ... 1789
7 CFR
354 ... 1740
907 ... 1741
910 ... 1742
911 ... 1742
915 ... 1742
1610 ... 1743
Proposed Rules:
1106 ... 1790
8 CFR
Proposed Rules:
232 ... 1791
233 ... 1791
235 ... 1791
237 ... 1791
238 ... 1791
239 ... 1791
280 ... 1791
299 ... 1791
10 CFR
1 ... 1744
14 CFR
21 (2 documents) ... 1745, 1746
23 (2 documents) ... 1745, 1746
17 CFR
Proposed Rules:
300 ... 1793
18 CFR
154 ... 1748
375 ... 1748
382 ... 1748
389 ... 1750
410 ... 1751
21 CFR
Proposed Rules:
102 ... 1795
201 ... 1796
25 CFR
Proposed Rules:
151 ... 1797
29 CFR
2610 ... 1904
2616 ... 1904
2617 ... 1904
2618 ... 1904
Proposed Rules:
2550 ... 1798
32 CFR
552 ... 1752
38 CFR
17 ... 1755
21 (2 documents) ... 1756, 1779
39 CFR
233 ... 1780
40 CFR
52 ... 1780
41 CFR
Proposed Rules:
201-11 ... 1805
201-30 ... 1805
201-31 ... 1805
201-32 ... 1805
45 CFR
Proposed Rules:
1336 ... 1806
47 CFR
15 ... 1781
73 ... 1782
Proposed Rules:
73 (4 documents) ... 1807, 1808
49 CFR
571 ... 1783

Rules and Regulations

Federal Register
Vol. 53, No. 14
Friday, January 22, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act; Exemptions

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is publishing an interim rule to revise its Fair Labor Standards Act overtime regulations to bring them into conformity with a court decision. The revisions will: (1) Eliminate the sections concerning the presumption that employees in positions classified at GS–11 and above are exempt (not covered by the overtime provisions of the Act) and the agency-proposed exceptions to the presumption of exemption, and (2) change the criteria for determining whether a Federal employee is an executive under the Act (i.e., an exempt supervisor or manager) to make them more consistent with pertinent aspects of the Department of Labor's criteria for determining that a nonFederal employee is an executive.

DATES: *Effective date:* January 22, 1988.
Comment date: Comments must be received on or before February 22, 1988.

ADDRESS: Send written comments to Michael Clogston, Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, Room 5459, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jack Tapping, (202) 632–4530.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1987, the United States Court of Appeals for the District of Columbia Circuit vacated two sections of the regulations in 5 CFR Part 551, as follows:

1. 5 CFR 551.203(c) which provides: (a) For a presumption that any employee in a position classified at GS–11 or above (or the equivalent level in other white collar pay systems) is exempt, and (b) that any agency which properly classifies a position in this grade range has satisfied the burden of proof that the incumbent is exempt.

The Court found that this provision was inconsistent with the meaning, scope, and application of the Act because it places an unwarranted and confusing burden on the employee, who must take the initiative to challenge his exemption.

Consequently, 5 CFR 551.203(c) and a related section, 5 CFR 551.207 (providing for agency-proposed exceptions to the presumption of exemption), are eliminated.

2. 5 CFR 551.204 which provides executive exemption criteria. (The issues the Court raised involve only the introductory text and paragraph (a) of this section.) This section says the requirement that the primary duty of management or supervision is met if an employee meets or exceeds the definition of "supervisor" in the Supervisory Grade Evaluation Guide or meets or exceeds the "Foreman range of responsibility" in the Job Grading Standard for Supervisors. Thus, the executive exemption criteria were tied to, and dependent on, classification under the supervisory classification standards.

The Court found that § 551.204 was "susceptible to a more expansive interpretation" (indicating that exemption was easier to reach) than is possible when applying the comparable Department of Labor (Labor) regulation (29 CFR 541.1). The Court indicated that Labor's executive exemption criteria more narrowly limit the possibility of an "exempt" finding than OPM's executive exemption criteria do. The Court said, for example, that under Labor's executive exemption criteria, an exempt employee must "customarily and regularly" direct the work of others and must manage the entire "enterprise" in which he is employed or at least a "department" thereof.

Although criteria as limiting as Labor's criteria are stated or implied in the supervisory classification standards to which 5 CFR 551.204 refers, these criteria are not stated in the regulation itself.

Consequently, the revised § 551.204 contains criteria for determining that the primary duty of an employee's work is "executive," without reference to the classification standards or other sources of information. The criteria include language the Court used to exemplify factors it concluded were omitted in the previous regulation, and are more directly consistent with Labor's description of its regulatory criteria for executive exemption.

Waiver of Notice of Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because a court decision vacating certain sections in 5 CFR Part 551 requires immediate implementation.

Waiver of 30-day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately because of the need to implement the Court decision mentioned above.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is issuing interim amendments to Part 551 as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

1. The authority citation for Part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204(f).

§ 551.203 [Amended]

2. Section 551.203 is amended by: (1) Removing the semicolon at the end of paragraph (b) and adding a period in its place; and (2) by removing paragraph (c).

3. Section 551.204 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 551.204 Executive exemption criteria.

An "executive" employee is a supervisor, foreman, or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and regularly and customarily directs the work of at least three subordinate employees (excluding support employees) and meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. The primary duty requirement is met if the employee—

(1) Has authority to select or remove, and advance in pay and promote, or make any other status changes of subordinate employees, or has authority to suggest and recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

* * * * *

§ 551.207 [Removed]

§§ 551.208 and 551.209 [Redesignated as §§ 551.207 and 551.208 and Amended]

4. Section 551.207 is removed and §§ 551.208 and 551.209 are redesignated §§ 551.207 and 551.208, respectively. The reference in the new § 551.208(a) to 551.207 is revised to read "551.206". The reference in the new § 551.208(c) to 551.209 is revised to read "551.208". The two references in the new § 551.208(d) to § 551.209 are revised to read "551.208".

[FR Doc. 88–1249 Filed 1–21–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87–174]

7 CFR Part 354

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances in Florida. A commuted traveltime allowance is the time necessary for PPQ employees to travel from their headquarters to their place of duty and return. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, National Administrative and Planning Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into or exportation from the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for PPQ employees to travel to and from their headquarters and the place where they perform the overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances between certain locations in Florida. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural Commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered		Served from—	Metropolitan area	
			Within	Outside
Add				
FLORIDA				
Fort Myers		Fort Myers		2
Fort Myers		Palmetto		6

Done in Washington, DC, this 14th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–1246 Filed 1–21–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 669]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 669 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 22 through January 28, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 669 (§ 907.969) is effective for the period January 22 through January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issues thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and aproximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 19, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8 to 1 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is steady.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.969 is added to read as follows:

(This section will not appear in the Code of Federal Regulations.)

§ 907.969 Navel Orange Regulation 669.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 22, 1988, through January 28, 1988, are established as follows:

(a) District 1: 1,470,000 cartons;

(b) District 2: 280,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: January 20, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-1407 Filed 1-21-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 597]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 597 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period January 24 through January 30, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 597 (§ 910.897) is effective for the period January 24 through January 30, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on January 19, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is weak.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.897 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.897 Lemon Regulation 597.

The quantity of lemons grown in California and Arizona which may be handled during the period January 24, 1988, through January 30, 1988, is established at 250,000 cartons.

Dated: January 20, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-1408 Filed 1-21-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 911 and 915

Limes and Avocados Grown in Florida; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will require Florida lime and avocado handlers to report to the Florida Lime and Avocado Administrative Committees the daily packout of selected sizes of containers sold and delivered in the State of Florida. The information collected will provide these committees with data on the quantities of Florida limes and avocados sold and delivered in Florida. The committees need this information to determine if it is economically beneficial to promote limes and avocados in Florida. The committees work with the Department in administering the marketing agreement and order programs.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-3918.

SUPPLEMENTARY INFORMATION:

This rule is issued under Marketing Order No. 911, as amended [7 CFR Part 911], regulating the handling of limes grown in Florida, and Marketing Order No. 915, as amended [7 CFR Part 915], regulating the handling of avocados grown in South Florida. These orders are effective under the Agricultural Marketing Agreement Act, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3507], the information collection provisions

that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB). Handlers will not be required to comply with them until OMB approval is obtained.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 283 lime producers in Florida. There are approximately 34 handlers of Florida avocados subject to regulation under the Florida avocado marketing order, and approximately 300 avocado producers in Florida. The majority of these handlers and producers may be classified as small entities.

Notice of this action was contained in a proposed rule issued November 18, 1987, and published in the **Federal Register** [52 FR 44917, November 23, 1987]. Interested persons were invited to submit written comments until December 23, 1987. No comments were submitted.

The reporting requirements were unanimously recommended by the Florida Lime and Avocado Administrative Committees. Such requirements are designed to provide the committees with information necessary to determine the quantity of Florida limes and avocados sold and delivered in Florida. An analysis of such data would be used by the committees to help them decide whether advertising and promotion programs for limes and/or avocados would be cost effective.

The reporting requirements will require all lime and avocado handlers to report their daily packout of limes and avocados, by container type, sold and delivered in Florida. The committees need such information to make a decision on whether or not to implement intrastate promotion and advertising programs for Florida limes and/or avocados. The committees believe that such programs may have the potential to generate new markets for limes and avocados, but they need to know the quantities of these fruits currently sold and delivered in Florida to decide whether the benefits of such programs would outweigh the costs. They also could use the information to help them maximize the benefits derived from any funds spent on any such promotion and advertising programs.

The actual cost to handlers for complying with this change is expected to be minimal. Lime handlers already are required to report similar information on lime shipments. Hence, this additional requirement that they report intrastate shipments is expected to have little effect on their reporting burden or cost. Likewise, avocado handlers' costs are expected to be affected minimally because most of them already keep information on intrastate avocado shipments for use in making marketing decisions. Conversely, additional sales resulting from advertising and promotion programs would have the potential of generating increased returns for lime and avocado growers and handlers. On the basis of the foregoing, the impact of these changes on growers and handlers is expected to be beneficial.

The reporting requirements are authorized under § 911.60 of Marketing Order 911, and § 915.60 of Marketing Order 915.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, including the recommendations of the committees and the proposal set forth in the notice, it is hereby found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Limes (Florida), Avocados (Florida).

For the reasons set forth in the preamble, 7 CFR Parts 911 and 915 continues to read as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 911.111 [52 FR 24134, June 29, 1987] is amended by designating the existing paragraph as paragraph (a), and adding a new paragraph (b) to read as follows:

PART 911—LIMES GROWN IN FLORIDA

§ 911.111 Pack-out reports.

* * * * *

(b) Each handler shall, at the end of each day's operation, report to the committee the number of containers of limes sold and delivered in the State of Florida in the following containers: (1) ⅕ Bushel, (2) ⅗ Bushel, and (3) ⅘ Bushel. Upon request by the committee, such reports shall be confirmed in writing on a weekly basis on a form prescribed by the committee.

3. Section 915.150 is amended by adding a new paragraph (d) to read as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.150 Reports.

* * * * *

(d) Each handler shall, at the end of the day's operation, report to the committee the number of containers of avocados sold and delivered in the State of Florida in the following containers: (1) ¼ Bushel, (2) ½ Bushel, and (3) ⅘ Bushel. Upon request by the committee, such reports shall be confirmed in writing on a weekly basis on a form prescribed by the committee.

Dated: January 15, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-1318 Filed 1-21-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

AGENCY: Rural Bank, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Telephone Bank (RTB) hereby amends Part 1610 Loan Policies, Chapter XVI in Title 7 of the Code of Federal Regulations by adding one new subsection, 1610.9. Subsection 1610.9 waives the prepayment premium on any RTB loan (or part of a loan) which is prepaid on or after December 22, 1987, but no later than September 30, 1988. This action implements section 1411(b)(2) of Pub. L. 100-203, the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330), signed into law December 22, 1987, which amends section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*). Under present RTB policies and

procedures the mortgage note on RTB loans requires a prepayment premium.

All borrowers prepaying RTB loans on or after December 22, 1987, but no later than September 30, 1988, are affected by this action.

DATES: This interim rule is effective January 21, 1988. Public comments concerning this interim rule must be received by REA no later than February 22, 1988.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2823 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et. seq.*).

Background

Current RTB policies and procedures require a prepayment premium on all RTB loans if a prepayment of principal is made prior to 24 full years from the date of the mortgage note. The amount of the premium is a base amount equal to the interest rate on the note times the prepayment amount, less one twenty-fourth of the base amount for each full year from the date of the mortgage note to the date of the prepayment. The above formula is for 35-year notes. Notes for less than 35 years have a proportionately shorter prepayment premium period. Additional information on prepayments is included in REA Bulletin 320–12 (or 7 CFR Part 1785).

Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987, approved December 22, 1987, amended the Rural Electrification Act to waive the prepayment premium on any RTB loan (or part thereof) prepaid on or after December 22, 1987, but no later than September 30, 1988.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications, Telephone.

PART 1610—[AMENDED]

Therefore, the authority citation for 7 CFR Part 1610 is revised to read as follows:

Authority: 85 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended at Pub. L. 93–32, 87 Stat. 70 et seq. and Pub. L. 100–203, 101 Stat. 1330, et seq.

Therefore, REA hereby amends 7 CFR Chapter XVI, Part 1610 by adding the following new § 1610.9:

§ 1610.9 Temporary waiver of prepayment premium.

(a) A borrower may prepay any Bank loan (or any part thereof) by paying the outstanding principal balance thereof, with interest accrued to the date of payment, without being required to pay the prepayment premium set forth in the note covering such loan, if such prepayment is made on or after December 22, 1987, but no later than September 30, 1988. In accordance with the Rural Electrification Act, no loans may be made or guaranteed by REA or the Bank for the purpose of prepaying Bank loans. This subsection does not affect any requirements of the mortgage between the borrower and the Bank (the "Bank mortgage") providing for ratable payment of loans made by other creditors.

(b) A borrower shall notify the appropriate Area Office in REA when a prepayment is planned, specifying the date for prepayment and the amount of principal involved. This will enable REA to determine the amount of accrued interest. The borrower should allow sufficient time for the transmittal of the prepayment.

(c) A borrower proposing to prepay only a portion of the loans secured by the Bank mortgage should contact the Bank at its earliest opportunity, and in any event, before making the prepayment, if the borrower anticipates that:

(1) Funds for the prepayment will be obtained from another lender and

(2) The lender will request a lien accommodation to secure its loans.

(d) Borrowers are advised that in accordance with current procedures, if a borrower shall elect to rescind all or a portion of an unadvanced Bank loan, the amount of Class B stock held by the borrower in connection with such loan shall be reduced to reflect such rescission and the outstanding balance of such loan shall be adjusted accordingly. Borrowers may consider rescinding Bank loans in connection with prepayment under this subsection.

Dated: January 15, 1988.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 88–1247 Filed 1–21–88; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

Revision of Headquarters Office Locations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to its statement of organization and general information to amend the name of one of its Headquarters Office Buildings and to add two new office locations to its list of offices. This amendment is being made to inform NRC licensees and members of the public of these changes.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On December 29, 1987 (52 FR 49100), the NRC published a general notice announcing that as of December 21, 1987, several of the NRC's Headquarters Offices (i.e., the Office of Enforcement, the Office of Special Projects, and the Bethesda-based portion of its Office of the General Counsel) had relocated to a new building at One White Flint North in Rockville, Maryland. In addition, a recent reconsolidation of the NRC's Office of Nuclear Regulatory Research (RES) resulted in the acquisition of a portion of a new building and a slight change in the name of the building that formerly housed all of RES. This amendment codifies those changes.

Because this amendment deals solely with the revised location of some of NRC's Headquarters Offices, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). This amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because this amendment is of a minor and administrative nature, dealing with the revised location of some of the NRC's Headquarters Offices.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 1

Organization and functions.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 1.5, paragraphs (a)(1) through (a)(9) are revised and (a)(10) and (a)(11) are added to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) * * *

(1) Air Rights III Building, 4550 Montgomery Avenue, Bethesda, Maryland.

(2) East West/South Towers Building, 4340 East West Highway, Bethesda, Maryland.

(3) East West/West Towers Building, 4350 East West Highway, Bethesda, Maryland.

(4) Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland.

(5) Matomic Building, 1717 H Street NW, Washington, DC.

(6) Nicholson Lane/North Building, 5620 Nicholson Lane, Rockville, Maryland.

(7) Nicholson Lane/South Building, 5650 Nicholson Lane, Rockville, Maryland.

(8) One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland.

(9) Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

(10) Willste Building, 7915 Eastern Avenue, Silver Spring, Maryland.

(11) Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland.

* * * * *

Dated at Bethesda, Maryland, this 12th day of January 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–1277 Filed 1–21–88; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 019CE, Special Conditions No. 23–ACE–18A]

Special Conditions; Petersen Aviation, Inc., Modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions; Amendment to Special Conditions No. 23–ACE–18.

SUMMARY: This special condition amendment is issued to become part of the type certification basis for Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. Special conditions were issued April 10, 1987 (52 FR 11627), to provide the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes. This amendment adds a requirement inadvertently omitted from the previously issued special condition.

EFFECTIVE DATE: February 22, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an applicaiton for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Bonanza Series Airplanes. This installation incorporates ADI tanks, pumps, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI

independently of the airplane installation certification.

Special conditions for the certification of this ADI system were proposed in Notice No. 23-ACE-18, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986. Two comments were received. The special conditions were adopted essentially as proposed on April 1, 1987, and published in the **Federal Register** on April 10, 1987 (52 FR 11627) to be effective May 11, 1987.

Subsequent certification activity revealed that one special condition paragraph previously coordinated between the FAA and the applicant had inadvertently been omitted from the special condition package. The purpose of this adoption is to correct that omission.

Type Certification Basis

The certification basis for the Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series Airplanes (TC 3A15) is Part 3 of the Civil Air Regulations, as amended to May 15, 1956, and Amendment 3-8; in addition, for the Models A36TC and B36TC only, §§ 23.909, 23.1043, 23.1527(b), and 23.1583(a), as amended by Amendment 23-7 and § 23.959, 23.967(a)(5), and 23.1121(b) as amended by Amendment 23-18 of the Federal Aviation Regulations, Part 23, dated February 1, 1965, and for the Model B36TC only, § 23.1545(a) as amended by Amendment 23-23.

For Model/Serial Numbers F33A (S/N CE-891 and after), V35B (S/N D-10313 and after), F33C (S/N CJ-156 and after), A36 (S/N E-1609 and after), A36TC (S/N EA-1 through EA-241 and EA-243 through EA-272), and B36TC (S/N EA-242, EA-273 and after), Part 36 through Amendment 36-10 of the Federal Aviation Regulations is applicable.

For Model V35B (S/N D-9948 and after), A36 (S/N E-927 and after), F33A (S/N CE-874 and after), F33C (S/N CJ-129 and after), A36TC (all serials) findings of equivalent level of safety for CAR 3.664 and CAR 3.757 are applicable.

For Model V35B (all serials), A36 (all serials), F33A (all serials), F33C (all serials), A36TC (all serials), and B36TC (all serials), findings of equivalent level of safety for CAR 3.387 are applicable.

For all models, Special Conditions No. 23-ACE-18 and this adopted amendment, are applicable when Petersen ADI systems are installed.

Discussion of Comments

The FAA received no comments in response to Notice No. 23-ACE-18A published in the **Federal Register** on August 31, 1987. The closing date for comments was September 30, 1987.

Conclusion

This action affects only the Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these amended final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions Amendment

In consideration of the foregoing, the following special conditions amendment is issued as a part of the type certification basis for the Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

A new paragraph (1) is added to Special Condition 2 to read as follows:

(1) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition * * *"

Issued in Kansas City, Missouri on December 29, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-1231 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 025CE, Special Conditions No. 23-ACE-25]

Special Conditions; Petersen Aviation, Inc., Modified Bellanca Model 17-30 Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Bellanca, Incorporated, Model 17-30 Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Bellanca Model 17-30 Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplane was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The type certification basis (TC 1A3) for the Bellanca, Incorporated, Model 17-30 Airplane is Part 03 of the Civil Air Regulations dated December 15, 1946 as amended by Amendments 03-1 through 03-4; §§ 3.80, 3.84a, 3.85a, 3.87, 3.112(c), 3.120, and 3.124(a) of Amendment 3-4, Amendments 3-6 and 3-7, and § 3.74 of Amendment 3-13 to Part 3 of the CAR dated November 1, 1949; and § 3.75(c) of Amendment 3-2 to Part 3 of the CAR dated May 15, 1956.

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two coments in response to Notice No. 23-ACE-25, published in the **Federal Register** on August 28, 1986. The closing date for comments was September 29, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23-ACE-18, and stated that the "* * * comments are applicable to all such special conditions concerning ADI system installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 3 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11027).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some changes in the terminology must be incorporated to exclude nonflammable fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12-43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a Supplemental Notice for public comment in the **Federal Register** on August 31, 1987 (52 FR 32805). The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(1).

Conclusion

This action affects only the Bellanca Model 17-30 Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, and Tires. The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for Bellanca Model 17-30 Airplanes modified to incorporate the Petersen Aviation, Inc. Anti-Detonation Injection (ADI) system, as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954, § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967(a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975(a) (1), (2), (3), (5), (6), and (7); § 23.977(a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23-30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.995(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid

tank must be drainable in the normal ground attitude". Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) and "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph, "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777 which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *"

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI fluid tank filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri on December 29, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-1230 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 375, and 382

[Docket No. RM87-3-019, et al.]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

Issued January 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing and clarifying final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule and an order on rehearing of the final rule which promulgated and then refined the regulations establishing annual charges required by the Omnibus Budget Reconciliation Act of 1986 (Act of October 21, 1986, Pub. L. No. 99-509, Title III, Subtitle E, Section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1890-91 (to be codified at 42 U.S.C. 7178), I FERC Statutes & Regulations, ¶ 6253)). This order is clarifying several portions of the Commission's final rule and order on rehearing of the final rule.

EFFECTIVE DATE: January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

[Docket Nos. RM87-3-019 through 20; Order No. 472-C]

Order Granting Rehearing and Clarifying Final Rule

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is clarifying several portions of its final rule and its order on rehearing of the final rule.[1] The Commission offers these clarifications in response to filings by KN Energy, Inc. (KN), ANR Pipeline Company and Colorado Interstate Gas Company (collectively ANR), Washington Natural Gas Company as project manager of the Jackson Prairie Storage Project (Jackson Prairie), Eureka Pipe Line Company (Eureka), Natural Transit Company (Natural Transit), and Central Illinois Public Service Company (CIPSCo).

II. Background

In the final rule and the order on rehearing, the Commission promulgated, and then refined, regulations establishing annual charges required by the Omnibus Budget Reconciliation Act of 1986.[2] In the process, the Commission provided that any natural gas pipeline may pass through to its customers the annual charge assessment by use of a per-Mcf surcharge (annual charge adjustment, or ACA) and that a pipeline may avoid double assessment of certain gas which was included in both the storage volumes and the sales or transportation volumes of the pipeline's Annual Report Form No. 2.

The order on rehearing also gave oil pipelines the opportunity to revise their 1987 annual charge bills by altering the revenue figures upon which those bills are based. The Commission agreed to reduce the total revenue figures by the amount of any intrastate revenues received by the oil pipelines.

In the order on rehearing, the Commission stated that capacity participation sales between an electric utility and its customers should not automatically be included in the adjusted coordination sales category for

[1] Order No. 472, "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987), III FERC Statutes & Regulations ¶ 30,748, *clarified*, Order No. 472-A, 52 FR 23650 (June 24, 1987), III FERC Statutes & Regulations ¶ 30,750, *rehearing granted in part*, Order No. 472-B, 52 FR 36013 (Sept. 25, 1987), III FERC Statutes & Regulations ¶ 30,767.

[2] Act of October 21, 1986, Pub. L. 99-509, Title III, Subtitle E, Section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-91 (to be codified at 42 U.S.C. 7178), I FERC Statutes & Regulations ¶ 6253.

annual charges purposes. The Commission determined that capacity participation sales are actually made up of separate, distinct transactions and that the utility must scrutinize each transaction within the overall capacity participation sale and categorize the transaction as either an adjusted sale for resale or an adjusted coordination sale, as defined in Order No. 472, for annual charge purposes.

III. Discussion

A. Assessment of ACA Unit Charge on Gas Subject to the Commission's Transportation, but not Sales, Jurisdiction

KN seeks clarification of § 154.38(d)(6) of the Commission's regulations. It argues that KN's should not be assessed on its non-jurisdictional local distribution sales. KN also requests that, if the Commission's regulations require that KN use an ACA unit charge based on KN's non-jurisdictional local distribution sales and if Order No. 472 is reversed on appeal, the Commission should protect KN from any undercollections of its annual charges from its customers which would result from using the ACA mechanism.[3] KN asserts that it is currently being assessed on annual charges bill based on all of its sales, of which 64 percent are non-jurisdiction local distribution companies (LDC) sales.[4]

KN's annual charges bill is based not only on its jurisdictional sales volumes but also on the volumes of gas which it transports through its certificated facilities. The gas volumes transported are subject to annual charge assessment whether or not their sale is subject to the Commission's jurisdiction. Since the Commission incurs expenses related to the regulation of transportation volumes, it assesses annual charges based on those volumes. Therefore, KN's local distribution sales volumes, which are transported through KN's jurisdictional facilities, can be included to compute KN's annual charges. However, KN is incorrect when it claims that the annual charges rule requires it to pass through such costs using an ACA unit charge.[5] KN may recoup its annual charge expenses in its next Natural Gas Act Section 4 rate case.

B. Double Assessment of Contract Storage Volumes

ANR asks the Commission to clarify that no storage volumes that are also sold or transported by the storing pipeline would be counted twice in computing annual charges. The Commission's order on rehearing gave assessed gas companies the opportunity to avoid double assessment of all storage volumes of gas, except contract storage volumes. In Order No. 472-A, the Commission precluded double assessment of system supply storage volumes delivered into storage by the reporting pipeline and reported as sales or transportation and compression volumes by the reporting pipeline during the same reporting year. In Order No. 472-B, the Commission precluded double assessment of system supply storage volumes of gas delivered into storage by the reporting pipeline during the reporting year and which the reporting pipeline intends to sell or transport in future years. ANR would have the Commission expand these exemptions still further to include not only system supply gas but also contract storage gas.

The Commission is granting ANR's request. The Commission intended to include storage volumes in its annual charges computation only if those volumes were delivered into contract storage and were not already included in the reporting company's sales and transportation figures.

The Commission will therefore give each natural gas pipeline which provides storage services the opportunity to indicate how much of its FY 1986 storage volumes are gas placed into storage by the pipeline during that year and (i) also reported as sales, transportation or compression volumes by the pipeline during the same year, or (ii) intended for sale or transport in a subsequent year, or (iii) not intended for sale or transport.[6]

The Commission will give natural gas pipelines which provide storage service the opportunity to provide such data for calendar year 1986. By close of business, February 23, 1988, any interstate natural gas pipeline may provide the Commission with a sworn statement that separates its reported storage volumes into the three categories listed above.[7] Pipelines should file the data with the Office of the Secretary, Attn: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges in order to reflect the Commission's actual FY 1987 expenses, it will also consider these data and will revise the natural gas pipelines' bills to remove assessments based on all but those volumes in the third category listed above.[8] If a pipeline does not file the data, it will be unable to benefit from the recalculation of storage volumes for the 1987 annual charges bills.

Jackson Prairie filed certain volumetric data related to its 1987 annual charges bill, and complained that a large portion of the gas it stores is being double assessed. It argues that if its storage facility were owned 100 percent by one of its co-owners, Northwest Pipeline Corp., the volumes would only be subject to single assessment. The Commission rejects this argument. Jackson Prairie is not owned solely by Northwest. In fact, it is a separate entity co-owned by three companies and has its own rate schedule on file with the Commission.

C. Request for Lump-Sum Refunds for Overpayment of 1987 Annual Charges

Eureka and Natural Transit filed interstate and intrastate oil pipeline

[3] Letter from Hassel M. Sanders to Kenneth F. Plumb accompanying tariff filing in Docket No. RP88-7-000, dated September 30, 1987.

[4] In its September 11, 1987 order in Docket No. RP87-88, the Commission rejected tariff sheets proposed by KN seeking to increase the otherwise-applicable ACA unit charge applicable to jurisdictional sales rate schedules. Through these tariff sheets, KN proposed to recover all its 1987 annual charges bill solely from jurisdictional sales. The September 11 order in effect required that, if KN chose to recoup its annual charges expenses through the ACA option, it must apply the ACA unit charge against both sales and transportation gas volumes which are subject to the Commission's jurisdiction.

[5] Because the Commission's regulations do not require the use of an ACA unit charge, it is not necessary to respond to KN's second request for protection from undercollections in the event that the ACA provision is overturned on appeal. However, the Commission notes that if Order No. 472 were overturned on appeal, the Commission would expect to reimburse the annual charges payments, so that KN's concerns about underpayment would be groundless.

[6] The FERC Form No. 2 instructions listed in footnote 44 of Order No. 472-B are therefore modified as follows:

Also indicate by footnote (1) the volumes of gas that the reporting pipeline placed into storage during the reporting year and reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year, (2) the volumes of gas that the reporting pipeline placed into storage during the reporting year and that the reporting pipeline intends to sell or transport in a subsequent reporting year, and (3) the volumes of gas that the reporting pipeline placed into storage during the reporting year and that the reporting pipeline does not intend to sell or transport in the present or future reporting year.

These instructions replace in their entirety the instructions added in the first paragraph of footnote 44 of Order No. 472-B to pages 530-531 of Form No. 2 and pages 18-19 of Form No. 2-A. Revised pages 530-531 and 18-19 are attached as Appendices A and B to this order and contain all instructions added to those pages as a result of this rulemaking proceeding.

[7] To facilitate such natural gas pipelines' timely filing of this data, the Commission is sending a copy of this order to each pipeline listed in Appendix B of the final rule that either reported storage volumes in its 1986 annual report or filed a 1986 Form No. 2-A. This service is provided by United States Mail.

[8] *See* 52 FR at 21289. Any adjustments will be reflected by credits to the 1988 annual charges bills of those companies filing the data specified above.

VOL 53 ISS 14 JA 22 1988 UMI

revenue data relevant to their 1987 annual charges bills. They request to be reimbursed by lump-sum cash refunds for the amount by which their July 1987 annual charges payments exceed the revised bills as adjusted to remove intrastate transportation revenues. Eureka paid $5,656 on a total revenue base of $7,707,786 (as required by the final rule) rather than on the interstate revenue base of only $143,779 (a corrected requirement set forth in the rehearing order). National Transit paid $1,026 on a total revenue base of $1,398,413 rather than the interstate revenue base of $829,630. Eureka and National Transit argue that they should receive their refunds in a lump sum now because it would take them a long time to recoup these overpayments through credits to future annual charges bills (the method established in this proceeding for reimbursement of overpayments).

The Commission agrees that some lump-sum payment is appropriate for oil pipelines whose 1987 annual charges will be drastically reduced by the adjustment to the revenue base used to compute annual charges. However, the Commission does not believe that a lump-sum payment for the entire overpayment is appropriate. The 1987 annual charges bills will be recomputed by July 1988 to take into account both the new data received from the companies in response to the data requests in the rehearing order, and also to take into account the Commission's own actual year-end cost. This recomputation will result in oil pipelines receiving credits or debits to their 1988 annual charge bills equal to their overpayment or underpayment of their share of the Commission's 1987 expenses. The Commission will, at that time, make a lump-sum payment to each oil pipeline whose overpayment exceeds its 1988 annual charge bill.[9] The refund will be for the amount by which the overpayment exceeds the 1988 bill. These oil pipelines will recoup the remainder of the overpayment through credits to their 1988 annual charges bills, just as other pipelines do.

Based on tentative data currently available to the Commission, nine companies (including Eureka) will receive refund checks.[10] National Transit would not be eligible for such a refund check because its estimated overpayment amount ($291) would not exceed its estimated 1988 annual charge bill ($735). National Transit will therefore recoup its entire overpayment through a credit to its 1988 annual charges bill.

D. Central Illinois Public Service Company

CIPSCo seeks clarification that the Commission did not preclude CIPSCo's capacity participation sales from being designated entirely as adjusted coordination sales for annual charges purposes. In the order on rehearing (Order No. 472–B), the Commission stated that capacity participation sales between an electric utility and its customers should not automatically be included in the adjusted coordination sales category for annual charges purposes. It used Central Illinois Public Service Company (CIPSCo) as an example. CIPSCo asks the Commission to clarify whether the decision on capacity participation sales applies only to CIPSCo's specific arrangements or instead to any electric utility's capacity participation sales. CIPSCo misconstrued the order. It did not intend to exclude all capacity participation sales from the adjusted coordination category for annual charges purposes. The Commission intended that all utilities with these types of transactions examine each component separately in light of the definitions of adjusted sales for resale and adjusted coordination sales and must place those components in the appropriate categories for annual charge purposes. The Commission was merely using CIPSCo's capacity participation sales for illustrative purposes.

IV. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [11] and OMB's regulations.[12] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

If the information collection provisions in this rule do not receive OMB approval before the January 23, 1988 effective date, the information collection requirements will be suspended pending OMB approval. The public will be notified by notice in the **Federal Register** if suspension of the information collection requirements is necessary.

V. Effective Date

This order is effective immediately. The filing requirement becomes effective on January 23, 1988.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1302 Filed 1–21–88; 8:45 am]

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[9] The volumetric data currently available to the Commission indicates that only two natural gas pipelines and no electric entities' estimated overpayments exceed their 1987 estimated revised annual charges bills. Those two pipelines, listed in Appendix C, will receive refund checks based on the same principles as the refunds made to oil pipelines.

[10] These companies are listed in Appendix C to this order. Actual refund amounts will not be known until the bills are recalculated.

[11] 44 U.S.C. 3501–3502 (1982).

[12] 5 CFR 1320.13 (1987).

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18 CFR Part 389

[Docket No. RM87–15–000; Order No. 486]

Regulations Implementing the National Environmental Policy Act of 1969

Issued: January 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control numbers.

SUMMARY: On December 10, 1987 the Federal Energy Regulatory Commission issued a final rule (Order No. 486) in Docket No. RM87–15–000, 52 FR 47897 (Dec. 17, 1987). The rule amended the Commission's regulations to adopt and supplement the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 486.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On January 11, 1988, the OMB approved the information collection requirements of 18 CFR Parts 2, 157, and 380 as amended by this rule under Control Numbers 1902–0060 and 1902–0128. Therefore, the final rule in Docket No. RM87–15–000 is effective January 16, 1988.

Accordingly, Part 389, Chapter X, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,

Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by removing "2.82" in the Section Column and "0128" in the corresponding OMB Control Number Column and by adding in the Section Column "Part 380" below the existing entry "361.103" and adding in the corresponding OMB Control Number Column "0128".

[FR Doc. 88–1299 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its January 13, 1988 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment requires that all such standards adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates are specified as are certain specialized fixtures and fittings not covered by the regulation. The regulation also requires certification by manufacturers that their plumbing fixtures and fittings comply with the adopted water conservation performance standards. Periodic review of the performance standards and testing requirements will also be required to allow for incorporation of more stringent water conservation performance standards as technology advances. Finally, Pennsylvania municipalities seeking Commission approval or renewal must document that water conservation performance regulations consistent with this regulation have been adopted within their area of jurisdiction.

EFFECTIVE DATE: January 13, 1988.

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission; Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on this amendment on October 26, 1987 as noticed in the August 25, 1987 and October 21, 1987 issues of the **Federal Register** (52 FR 32024 and 52 FR 39286). Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan and Water Code of the Delaware River Basin.

List of Subjects in 18 CFR Part 410

Water pollution control.

The Commission's Comprehensive Plan and Water Code of the Delaware River Basin, which are referenced in 18 CFR Part 410, are amended as follows:

PART 410—[AMENDED]

Article 2 of the Water Code of the Delaware River Basin is hereby amended by the addition of a new subsection 2.1.5 to read as follows:

2.1.5 *Water Conservation Performance Standards for Plumbing Fixtures and Fittings*

(1) (a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) For sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) For shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) For water closets and associated flushing mechanism, maximum volume shall not exceed an average of three and one-half gallons of water, but no more than four gallons per flushing cycle, when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M;

(iv) For urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1990.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1989. In the absence of such regulations, municipalities within the Pennsylvania portion of the Basin that have not adopted regulations to enforce water conservation performance standards for plumbing fixtures and fittings shall be required to adopt regulations that comply with the provisions of (a) by January 1, 1990.

(2) (a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) Manufacturers shall certify that their plumbing fixtures and fittings comply with the water conservation performance standards specified in subsection (1). Such certification shall be based on independent test results.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission. An initial review shall be completed within one year of the effective date of this regulation. This initial review shall consider the revision of subsection (1)(a)(iii) to require that effective January 1, 1990, maximum volume for water closets shall not exceed one and six-tenths gallons (six liters) per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been

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adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval of renewal.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary.

January 14, 1988.

[FR Doc. 88-1183-Filed 1-21-88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Regulations Affecting Military Reservations: Firearms and Weapons

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule establishes the criteria for possessing, carrying, concealing, and transporting firearms and/or other deadly or dangerous weapons on the Fort Stewart/Hunter Army Airfield installations. The installation commander is required to enact this rule due to 32 CFR Part 552. This rule provides guidance on prohibited items and the requirements for possession, use, and storage under certain conditions for anyone (military or civilian) employed on, visiting, or traveling through or on the above installations.

DATE: Effective January 22, 1988.

ADDRESS: Comments should be sent to: Commander, 24th Infantry Division (Mechanized) and Fort Stewart, Attention: AFZP-JAA, Fort Stewart, Georgia 31314-5019.

FOR FURTHER INFORMATION CONTACT: CPT Richard Lubke (Principal Attorney), 912-767-2953, or CPT Dennis Wilde (Operations Officer), 912-767-4801.

SUPPLEMENTARY INFORMATION: The installation commander is responsible for the efficient and economical operation, service, and supply of personnel, units, and activities assigned to or under the jurisdiction of the 24th Infantry Division (Mechanized) and Fort Stewart, and for ensuring that reasonable precautions are taken to safeguard personnel and property within his command. The purpose of this rule is to establish guidelines for possessing, carrying, concealing, using, and transporting firearms and/or other deadly or dangerous weapons at Fort Stewart and Hunter Army Airfield. This rule specifically addresses what weapons or devices are prohibited, the penalties for noncompliance, the requirements for possession and use, those persons subject to the rule, the disposition of confiscated/seized weapons, and those persons exempt from the rule. This rule is authorized by 10 U.S.C. 3012, 32 CFR Part 552, and Army Regulation 210-10, 1 November 1977, Installations Administration. The requirements of the rule will be monitored by installation law enforcement personnel, commanders, supervisors, and managers. One comment was received on the proposed rule published in the **Federal Register** December 16, 1986 (51 FR 44997). This final rule encompasses consideration thereof.

List of Subjects in 32 CFR Part 552

Guns, Weapons, Military reservations.

For the reasons set out in the preamble, Title 32, Chapter V, Part 552 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 3012, 15 U.S.C. 1601, 18 U.S.C. 1382, 31 U.S.C. 71, 40 U.S.C. 258a, 41 U.S.C. 14, 50 U.S.C. 797.

2. Subpart G consisting of section 552.105 to 552.111 is redesignated as Subpart H.

3. A new Subpart G is added to read as follows:

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

. . . . . .

Subpart G—Firearms and Weapons

Sec.

552.98 Purpose.
552.99 Applicability.
552.100 Definitions.
552.101 Prohibitions.
552.102 Requirements for possession and use.
552.103 Requirements for carrying and use.
552.104 Disposition of confiscated/seized weapons.

Subpart G—Firearms and Weapons

§ 552.98 Purpose.

This regulation establishes the criteria for possessing, carrying, concealing, and transporting firearms and/or other deadly or dangerous weapons and instruments on Fort Stewart/Hunter Army Airfield (AAF) installations.

§ 552.99 Applicability.

(a) The provisions of this regulation apply to all Department of Defense (DOD) military; civilian personnel; U.S. Army Reserve/National Guard (USAR/NG) personnel on post for active duty training or inactive training in conjunction with Active Army elements, military family members; civilians employed on, visiting, or traveling through or on the Fort Stewart/Hunter AAF installation.

(b) This regulation will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

(c) This regulation is punitive. Military violators of the regulations may be prosecuted under the Uniform Code of Military Justice or may be subject to administrative action. Civilian violators may be subject to administrative or judicial action under Title 18, United States Code, or Title 16, Criminal Code of Georgia.

§ 552.100 Definition.

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, tracer, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullets and primer.

(b) *BB and pellet guns.* Any type rifle, pistol or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO2 or any other compressed gas cartridge.

(c) *Dangerous instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon, designed or redesigned, made or remade, modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Black jacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord or chain and normally used as a martial arts weapon. "Shuriken", a disc or any geometrical object designed to be thrown as a weapon. "Manrikigusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* Any type of weapon which is designed or redesigned, made or remade, modified or remodified to expel a projectile by action of any explosion, and the frame or receiver of any such weapon. This does not include antique frearms, antique replicas, and those modern firearms which have been rendered permanently incapable of being fired.

(f) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(g) *Machine gun and automatic weapon.* A weapon designed or redesigned, made or remade, modified or remodified to automatically fire more than one shot by a single pull of the trigger.

(h) *Public gathering.* Shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, rallies, or establishments at which alcoholic beverages are sold for consumption on the premises.

(i) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(j) *Sawed-off shotgun.* A shotgun or any weapon made from a shotgun whether by alteration, modification, or otherwise having one or more barrels less than 18 inches in length or if such weapon as modified has an overall length of less than 20 inches.

(k) *Sawed-off rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only as a single projectile through a rifle bore for each single pull of the trigger; and which has a barrel or barrels of less than 16 inches or has an overall length of less than 26 inches.

(l) *Silencer.* Any device used for suppressing or diminishing the report of any firearm.

(m) *Weapon.* An instrument used in an offensive or defensive manner.

§ 552.101 Prohibitions.

(a) *Prohibited items.* It is prohibited to possess, carry, conceal, transport, store, transfer or sell any of the following weapons or devices on, through or within the confines of Fort Stewart and Hunter AAF installations unless specifically allowed elsewhere in this regulation:

(1) Sawed-off shotgun.

(2) Sawed-off rifle.

(3) Machine gun and automatic weapons.

(4) Silencers.

(5) Dangerous instruments as defined in § 552.100(c).

(6) Explosives, Incendiary and Pyrotechnic Devices, as defined in § 552.100(d).

(7) Knives with automatic blade openers (i.e., switch blades, gravity knives, stilettos) of any blade length. Folding or fixed bladed knives with a blade length of more than 3 inches. Swords, sabers, and machetes with sharpened blades.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, "taser" or "public defenders."

(b) *Carrying a concealed weapon.* A person commits the offense of carrying a concealed weapon when he/she knowingly has or carries about his/her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside of his/her home or place of business.

(c) *Carrying Deadly Weapons to or at Public Gatherings.* A person commits an offense under this section when he/she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense. This paragraph shall not apply to competitors participating in organized sporting events, military personnel in a formation when a weapon is required, or to police/security personnel while in performance of their duties.

(d) *Prohibited Possession and Storage.* It is prohibited for a person, military or civilian, to possess or store ammunition, firearms, knives with blades more than 3 inches, bows and arrows, crossbows, and BB and pellet guns, in locations other than those locations specified in § 552.102, except under conditions specified in § 552.103. Prohibited locations for these items include, but are not limited to, living spaces and common areas of billets, squad rooms, privately-owned vehicles, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, the Staff Duty Officer (SDO) will ensure the weapon is secured in accordance with (IAW) this regulation. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate.

(e) *Exemptions.* Nothing in this regulation shall prohibit:

(1) Military members or DOD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties or for training or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DOD civilian personnel, while in the performance of official law enforcement duties, from possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, IAW the provisions of their contract and as determined by the Contracting Officer.

(5) Individuals with Federal Firearms Licenses (Class III) from possessing, carrying, and transporting Class III weapons IAW Federal regulations; however, they are prohibited from concealing, storing, transferring, or selling Class III weapons within the confines of Fort Stewart and Hunter AAF.

(6) Individuals from possessing, carrying, transporting, or storing decorative, ornamental, and ceremonial swords and sabers within the confines of Fort Stewart and Hunter AAF when used strictly for display and ceremonies. When used as a cutting instrument, they become a prohibited item.

(7) Individuals and agencies from possessing, transporting, storing, selling, or using fixed bladed knives with a blade length of more than 3 inches when used for their lawful purpose (i.e., steak knives, cooking knives, hunting knives) and when in compliance with all other requirements in this regulation.

§ 552.102 Requirements for possession and use.

DOD military and civilian personnel, their family members, USAR/NG personnel and civilians employed on, visiting or traveling through this installation may possess legally-defined and privately-owned firearms, ammunition, BB and pellet guns, knives, bows and arrows, and crossbows under the following conditions:

(a) Privately-owned firearms, crossbows, BB and pellet guns possessed or stored on the installation must be registered at the installation Provost Marshal's Office within three working days after arrival on the installation, or after obtaining the weapon, except:

(1) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(2) Firearms carried by federal, state, county or local law enforcement personnel when in the performance of official law enforcement duties.

(3) Firearms carried or transported, in full compliance with Georgia State Laws, on Georgia State Highways 119 and 144 by personnel traveling through the installation only. Travel off of these state highways or stopping, other than for emergency purposes, while on the installation is prohibited.

(b) Personnel residing in family housing, BOQ, BEQ/VOQ and guest housing, may store legally-acquired, authorized ammunition, knives with a blade measuring more than 3 inches, bows and arrows, registered crossbows, registered BB and pellet guns and registered firearms within their quarters.

(c) Personnel residing in troop billets may store legally-acquired authorized ammunition, knives and blades measuring more than 3 inches, bows and arrows, registered crossbows, registered BB and pellet guns and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(d) Persons using weapons borrowed from another must have the documentation required in § 552.103(a) as applicable in their possession when carrying, transporting or using the weapon on the installation.

(e) Persons under the age of 17 must be accompanied by a person over the age of 21 who will be responsible for compliance with the requirements of this regulation while hunting or target shooting on the installation and when purchasing legal arms (including knives with blades over 3 inches) and ammunition from installation retail outlets.

(f) Persons must be in compliance with federal and state laws regarding possession (i.e., age, criminal record restrictions, etc.)

(g) Storage, accountability and registration procedures will be IAW Army Regulation 190–11 and supplements.

§ 552.103 Requirements for carrying and use.

Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 inches), bows and arrows, and crossbows, may carry or transport legally possessed and registered (if required) weapons under the following conditions.

(a) For purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area or Pass and Permit Office and return. Stopping at other installation facilities while enroute is prohibited (i.e., Post Exchange, Club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Stewart hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while enroute is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned knife with a blade over 3 inches to field duty, provided it is carried IAW Victory Standard and exposed in a sheath/scabbard. The Provost Marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

(2) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (i.e., locked tool box secured to bed of a truck). Firearms will be unloaded and the ammunition physically separated from the firearms. The glove compartment of a vehicle is *NOT* an authorized compartment for storing pistols.

(3) Firearms, bows and arrows, crossbows, BB and pellet guns will not be loaded, fired or used within the cantonment areas of the installation; within 50 yards of any public highway, street or Fort Stewart numbered road or across same; within 100 yards of any designated recreation area, managed waters, building or similar structures; any aircraft landing facility (to include currently used landing or stage fields); any ammunition storage area (except on approved firing range when properly authorized).

(4) Persons not affiliated with DOD or this installation must remain on Georgia State Highways 119 and 144 when carrying or transporting weapons through the installation and must be in full compliance with Georgia State Law governing possession, use and transportation of said weapons. Travel off of these highways or stopping, for other than emergency purposes, while on the installation, is prohibited.

§ 552.104 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives or other devices defined in this regulation, that are confiscated pursuant to the commission of a crime or violation of this or other regulation or found unsecured/unattended on the installation, will be immediately turned over to the military police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other lawful disposition. When retention for investigation or evidence is no longer required by military police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of

under the provisions of AR 195–5, Evidence Procedures.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–1154 Filed 1–21–88; 8:45 am]

BILLING CODE 3710-08-M

VETERANS ADMINISTRATION

38 CFR Part 17

Transportation of Claimants and Beneficiaries

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its medical regulations (38 CFR Part 17) by deleting references to the 100-mile radius for beneficiary travel. In place of the 100-mile radius provision, an $11.00 deductible will be instituted for one way travel and a $22.00 deductible will be imposed for round trip transportation. The VA is making this change to improve access to VA health care for veterans living in areas remote from VA facilities.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Karen O. Walters, Chief, Policies and Procedures Division (136F), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2143.

SUPPLEMENTARY INFORMATION: Under the VA's beneficiary travel regulations, as amended on March 12, 1987, VA limited payments for beneficiary travel primarily to those requiring a special mode of transportation to get to a VA health care facility (e.g. ambulance) and to veterans residing more than 100 miles from a VA health care facility. The regulations provide that all travel payments to eligible veterans residing more than 100 miles from a VA facility will be subject to a deductible equal to 100 times the mileage rate established under 38 U.S.C. 111(e)(1) for a one-way trip, and 200 times the rate for a round trip. The mileage rate is 11 cents per mile resulting in a one-way deductible of $11.00 and a round trip deductible of $22.00. After implementation of the amended regulations, VA became aware of an inequitable situation in Hawaii in which veterans living less than 100 miles from a VA health care facility are unable to get to that facility without using costly public transportation, primarily commercial airlines. Thus, in Hawaii, veterans who live on outer islands less than 100 miles from a source of VA health care must fly to receive health care. For many this is prohibitively expensive.

This amendment continues to place application on the deductible to beneficiary travel payments, but would eliminate the requirement that to be eligible for travel payments a veteran must reside more than 100 miles from a VA facility. It permits veterans living less than 100 miles from a facility to be reimbursed, subject to the deductible, for the costs of expensive public transportation which is necessary for them to get to a VA health care facility. For example, a veteran living on a small island in Hawaii 80 miles from the source of VA health care, could purchase a $50.00 airline ticket to get to the source of VA health care, and be reimbursed for $39.00, the cost of the ticket less the $11.00 one-way deductible.

The VA has determined that compliance with 5 U.S.C. 553(b) as to prior publication for notice and public comment is, pursuant to 5 U.S.C. 553(b)(B), impracticable and contrary to the public interest. There exists good cause for making these regulations effective without further delay; the existing situation is inequitable for the few veterans who must incur expensive public transportation costs in order to obtain VA health care benefits. Accordingly, the amendment is being published as a final regulation.

This final regulation is considered non-major under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will result in no signficant increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. It will have no adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. This certification can be made because this regulation affects only individual veterans and VA beneficiaries concerning VA payment for, or reimbursement of, their expenses for travel to or from VA medical facilities in certain circumstances.

The Catalog of Federal Domestic Assistance Numbers are 62.011 and 64.009.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: July 22, 1987.

Thomas K. Turnage,

Administrator.

PART 17—[AMENDED]

38 CFR Part 17, *Medical*, is amended by revising the introductory text of § 17.100 to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

Transportation at Government expense may be authorized for an individual who is eligible under this section when a VA physician has determined that a specialized mode of transportation is medically required. Special modes of transportation which may be determined to be medically required include: ambulance, ambulette, air ambulance, wheelchair van, and other modes of transportation which are specially designed to transport certain types of medically disabled individuals. The term "special mode" does not include: public transportation such as bus, subway, train, airplane, or any automobile or similar conveyance. A hired car or taxi may be authorized as a special mode only for interfacility transfers, as authorized in paragraph (e) of this section, if use of such mode of transportation is less expensive than other authorized specialized modes of transportation. For veterans who must travel over 100 miles to reach a Veterans Administration medical care facility and for veterans for whom VA medical care is inaccessible via land transportation, transportation at government expense may also be authorized for eligible persons by application of a deductible. That deductible amount will be the product of the mileage reimbursement rate established under 38 U.S.C. 111(e)(1), multiplied by a factor of 100 for each one-way trip, or 200 for a round trip. Transportation will not be authorized for the cost of travel by privately owned vehicle in any amount in excess of the cost of such travel by public transportation unless public transportation is not reasonably accessible or would be medically inadvisable. Transportation will not be authorized for the cost of travel in

excess of the actual expense incurred by any person as certified by that person in writing. Transportation will not be authorized unless the person claiming the reimbursement is a service-connected veteran; a nonservice-connected veteran in receipt of VA pension benefits; or a person whose annual income, as determined under the provisions of 38 U.S.C. 503, is less than or equal to the maximum annual base pension rates provided in 38 U.S.C. 521. Travel expenses of all other claimants will not be authorized unless the claimant can present convincing evidence, in a form prescribed by the Administrator, to show the inability to defray the cost of transportation; or except when medically indicated ambulance transportation is claimed and an administrative determination is made regarding the claimant's ability to bear the cost of such transportation. Travel expenses will be authorized for the following purposes:

(Authority: 38 U.S.C. 111)

* * * * *

[FR Doc. 88-1166 Filed 1-21-88; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

Veterans Education; All Volunteer Force Educational Assistance Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations are designed to implement those provisions of the Veterans' Educational Assistance Act of 1984 which established a new educational assistance program for veterans and servicemembers, and the provisions of the Department of Defense Authorization Act, 1986, which affect that program. This new program is designed to replace the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) for those who enter the Armed Forces after June 30, 1985. These regulations implement this new program. These regulations do not implement those provisions of the Veterans' Benefits Improvement and Health Care Authorization Act of 1986 which affect this program. Neither do they implement the provisions of the New GI Bill Continuation Act. To implement these Acts the Veterans Administration (VA) intends to amend the appropriate regulations and incorporate the amendments at a later date.

EFFECTIVE DATE: In accordance with Pub. L. 99-145, § 21.7044 (a) and (c) are effective November 8, 1985. In accordance with Pub. L. 98-525, the remaining regulations are effective October 19, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 25736 through 25757 of the **Federal Register** of July 8, 1987, there was published a notice of intent to amend 38 CFR Part 21, to provide regulations which will permit the proper administration of the Montgomery GI Bill, Active Duty. Interested people were given the opportunity to submit comments, suggestions or objections. The VA received no comments, suggestions or objections. Accordingly, the VA is making those regulations final.

The VA realizes that it will have to amend these regulations at a later date to implement some provisions of the Veterans' Benefits Improvement and Health Care Authorization Act of 1986 and the New GI Bill Continuation Act. However, in the interest of providing regulations which will permit the VA to make payments at the proper rates, etc., the Agency believes that it is important to have regulations in place now.

In reviewing the proposed regulations prior to final publication, the VA noted that the proposed wording of § 21.7044(b), pertaining to eligibility based on combined active duty and Selected Reserve service, while correct in and of itself, does not discuss application of the minimum active-duty service requirements of 38 U.S.C. 3103A. Under certain conditions § 3103A provides that a veteran who is discharged or released from active duty before completing at least 2 years of continuous active duty service still may be eligible for benefits under laws administered by the VA. Accordingly, the Agency intends to propose a clarifying change covering this issue as soon as possible after these regulations are made final. Thus, the public may separately comment on that change without delaying the promulgation of these regulations, which are essential to administration of the program.

As proposed, § 21.7072(c) contained internal inconsistencies. In the final regulation, paragraph (c)(4) of that section appears with different wording than the proposed wording in order to eliminate those inconsistencies.

In the proposed regulation, in § 21.7112, paragraph (a)(2) was inadvertently omitted and has been inserted into the final regulation.

The VA finds that good cause exists for making § 21.7044 (a) and (c), like the section of the law they implement, retroactively effective on November 8, 1985. There is also good cause for making the remainder of these regulations, like the sections of the law they implement, retroactively effective on October 19, 1984. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA has determined that these regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. Although it is possible that in the future this program will have a $100 million annual effect on the economy, the effect will be caused by the underlying law, not the regulations themselves. These regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made even though some small entities will have to make the reports required in §§ 21.7152, 21.7154 and 21.7156. The records needed to make the reports are maintained by educational institutions in the normal course of business. Hence, the regulations will not impose any additional recordkeeping costs on the small entities.

Some costs will result from making the reports. However, the reports themselves are required by law either in 38 U.S.C. 1784(a) or 38 U.S.C. 1434(b). While the law allows some leeway in setting the frequency of these reports, in those instances where the VA has chosen a frequency greater than that required by law, the Agency does not believe the economic impact of the regulations to be significant. Furthermore, part of the cost of making these reports is offset by the reporting fee which the law requires the VA to make to educational institutions.

The regulations will have no economic impact on other small entities such as small government units.

The information collection requirement contained in § 21.7152 has been assigned OMB control number 2900-0073. The information collection requirements contained in § 21.7154 have been assigned OMB control numbers 2900-0465 and 2900-0354. The information collection requirement contained in § 21.7156 has been assigned OMB control number 2900-0156.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.125.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 7, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by adding a new Subpart K, containing §§ 21.7000 through 21.7310 to read as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

Sec.

21.7000 Establishment of educational assistance program.

Definitions

21.7020 Definitions.

Claims and Applications

21.7030 Applications, claims and informal claims.
21.7032 Time limits.

Eligibility

21.7040 Eligibility for basic educational assistance
21.7042 Basic eligibility requirements.
21.7044 Persons with 38 U.S.C. ch. 34 eligibility.
21.7046 Eligibility for supplemental educational assistance.
21.7050 Ending dates of eligibility.
21.7051 Extended period of eligibility.

Entitlement

21.7070 Entitlement.
21.7072 Entitlement to basic educational assistance.
21.7074 Entitlement to supplemental educational assistance.
21.7076 Entitlement charges.

Counseling

21.7100 Counseling.
21.7103 Travel expenses.

Programs of Education

21.7110 Selection of a program of education.
21.7112 Programs of education combining two or more types of courses.
21.7114 Change of program.

Courses

21.7120 Courses included in programs of education.
21.7122 Courses precluded.
21.7124 Overcharges.

Payments—Educational Assistance

21.7130 Educational assistance.
21.7131 Commencing dates.
21.7133 Suspension or discontinuance of payments.
21.7135 Discontinuance dates.
21.7136 Rates of payment of basic educational assistance.
21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.
21.7138 Rates of supplemental educational assistance.
21.7139 Conditions which result in reduced rates.
21.7140 Certifications and release of payments.
21.7142 Nonduplication of educational assistance.
21.7144 Overpayments.

Pursuit of Courses

21.7150 Pursuit.
21.7152 Certification of enrollment.
21.7153 Progress and conduct.
21.7154 Pursuit and absences.
21.7156 Other required reports from educational institutions.
21.7158 False, late or missing reports.
21.7159 Reporting fee.

Course Assessment

21.7170 Course measurement.

State Approving Agencies

21.7200 State approving agencies.

Approval of Courses

21.7220 Course approval
21.7222 Courses and enrollments which may not be approved.

Administrative

21.7301 Delegations of authority.
21.7302 Finality of decisions.
21.7303 Revision of decisions.
21.7305 Conflicting interests.
21.7307 Examination of records.
21.7310 Civil rights.

Authority: 38 U.S.C. chapter 30, Pub. L. 98-525; 38 U.S.C. 210(c)).

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

§ 21.7000 Establishment of educational assistance program.

(a) *Establishment.* An educational assistance program for certain veterans and servicemembers is established.

(Authority: 38 U.S.C. 1401(1); Pub. L. 98-525)

(b) *Purpose.* The purposes of the program are:

(1) To assist in the readjustment of members of the Armed Forces to civilian life after their separation from military service;

(2) To promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(3) To give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces.

(Authority: 38 U.S.C. 1401; Pub. L. 98-525)

Definitions

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 of this part and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. ch. 30, the following definitions apply.

(a) *Definitions of participants.*—(1) *Servicemember.* The term "servicemember" means anyone who:

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044 of this part, and

(ii) Is on active duty with the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service or National Oceanographic and Atmospheric Administration.

(Authority: 38 U.S.C. 1416; Pub. L. 98-525)

(2) *Veteran.* The term "veteran" means anyone who—

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044 of this part, and

(ii) Is not on active duty. The term "veteran" includes an individual who is actively participating in the Selected Reserve.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98-525)

(b) *Other definitions*—(1) *Active duty.*

(i) The term "active duty" means—

(A) Full-time duty in the Armed Forces, other than active duty for training.

(B) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service,

(C) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and

(D) Authorized travel to or from such duty or service.

(ii) The term "active duty" does not include any period during which an individual:

(A) Was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,

(B) Served as a cadet or midshipman at one of the service academies, or

(C) Served under the provisions of 10 U.S.C. 511(d) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(Authority: 38 U.S.C. 101(21), 1402(6); Pub. L. 98–525)

(2) *Attendance.* The term "attendance" means the presence of a veteran or servicemember.

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) Any other place of instruction, training or study designated by the educational institution where the veteran or servicemember is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 1434, 1780(g); Pub. L. 98–525)

(3) *Audited course.* The term "audited course" has the same meaning as provided in § 21.4200(i) of this part.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(4) *Basic educational assistance.* The term "basic educational assistance" means a monetary benefit payable to all individuals who meet basic requirements for eligibility under ch. 30, title 38, United States Code, for pursuit of a program of education.

(Authority: 38 U.S.C. 1402(1); Pub. L. 98–525)

(5) *Break in service.* The term "break in service" means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty.

(Authority: 38 U.S.C. 1421; Pub. L. 98–525)

(6) *Continuous active duty.* (i) The term "continuous active duty" means active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(ii) Time lost while on active duty will not interrupt the continuity of service. See § 3.15 of this chapter.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

(7) *Cost of course.* The term "cost of course" means the total cost for tuition and fees for a course which an educational institution charges to nonveterans whose circumstances are similar to veterans enrolled in the same course. "Cost of course" does not include the cost of supplies which the student is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 1432; Pub. L. 98–525)

(8) *Deficiency course.* The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a postsecondary program of education.

(Authority: 38 U.S.C. 1434; Pub. L. 98–525)

(9) *Dependent.* The term "dependent" means:

(i) A spouse as defined in § 3.50(c) of this chapter,

(ii) A child who meets the requirements of § 3.57 of this chapter, or

(iii) A parent who meets the requirements of § 3.59 of this chapter.

(Authority: 38 U.S.C. 1415(d); Pub. L. 98–525)

(10) *Divisions of the school year.* The term "divisions of the school year" has the same meaning as provided in § 21.4200(b) of this part.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(11) *Drop-add period.* The term "drop-add period" has the same meaning as provided in § 21.4200(l) of this part.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(12) *Educational assistance.* The term "educational assistance" means basic educational assistance, supplemental educational assistance, and all additional amounts payable, commonly called "kickers."

(Authority: 38 U.S.C. 1402; Pub. L. 98–525)

(13) *Educational objective.* An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 1402(3), 1652(b); Pub. L. 98–525)

(14) *Enrollment.* The term "enrollment" has the same meaning as provided in § 21.4200(n) of this part.

(Authority: 38 U.S.C. 1434, 1780(g); Pub. L. 98–525)

(15) *Enrollment period.* The term "enrollment period" has the same meaning as provided § 21.4200(p) of this part.

(Authority: 38 U.S.C. 1434, 1780(g); Pub. L. 98–525)

(16) *Holiday vacation.* The term "holiday vacation" means a customary, reasonable vacation period connected with a Federal or State legal holiday which is identified as a holiday vacation in the educational institution's approved literature. Generally, the VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(17) *In residence on a standard quarter- or semester-hour basis.* The term "in residence on a standard quarter- or semester-hour basis" has the same meaning as provided in § 21.4200(r) of this part.

(Authority: 38 U.S.C. 1434, 1788(c); Pub. L. 98–525)

(18) *Institution of higher learning.* The term "institution of higher learning" has the same meaning as provided in § 21.4200(h) of this part.

(Authority: 38 U.S.C. 1434, 1788; Pub. L. 98–525)

(19) *Mitigating circumstances.* The term "mitigating circumstances" means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which the VA considers to be mitigating. This list is not all-inclusive.

(i) An illness of the veteran or servicemember,

(ii) An illness or death in the veteran's or servicemember's family,

(iii) An unavoidable change in the veteran's conditions of employment,

(iv) An unavoidable geographical transfer resulting from the veteran's employment,

(v) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment,

(vi) Discontinuance of the course by the educational institution,

(vii) Unanticipated active duty military service, including active duty for training.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(20) *Nonpunitive grade.* The term "nonpunitive grade" has the same meaning as provided in § 21.4200(j) of this part.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(21) *Normal commuting distance.* The term "normal commuting distance" has the same meaning as provided in § 21.4200(m) of this part.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(22) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, these courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 1402(3); Pub. L. 98–525)

(23) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of courses or subjects pursued by a veteran or servicemember at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field.

(Authority: 38 U.S.C. 1402(3), 1652(b); Pub. L. 98–525)

(24) *Punitive grade.* The term "punitive grade" has the same meaning as provided in § 21.4200(k) of this part.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(25) *Pursuit.* (i) The term "pursuit" means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar courses which the VA considers to be resident training),

(B) Independent study courses,

(C) A graduate program of research in absentia, or

(D) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses.

(ii) The VA will consider a veteran who qualifies for payment during an interval between terms or school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 38 U.S.C. 1434, 1780(g); Pub. L. 98–525)

(26) *Refresher course.* The term "refresher course" means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(Authority: 38 U.S.C. 1434; Pub. L. 98–525)

(27) *Remedial course.* The term "remedial course" means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 38 U.S.C. 1434, 38 U.S.C. 1691(a)(2); Pub. L. 98–525)

(28) *Secretary.* The term "Secretary" means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 1402(5); Pub. L. 98–525)

(29) *School, educational institution, institution.* The terms "school, educational institution, and institution" means any vocational school, business school, junior college, teacher's college, college, normal school, professional school, university, or scientific or technical institution. They also mean any public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma or their equivalents.

(Authority: 38 U.S.C. 1434, 1652; Pub. L. 98–525)

(30) *School year.* The term "school year" means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 38 U.S.C. 1434; Pub. L. 98–525)

(31) *Selected Reserve.* The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b), 10 U.S. Code.

(Authority: 38 U.S.C. 1402(4); Pub. L. 98–525)

(32) *Standard class session.* The term "standard class session" has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 38 U.S.C. 1434; 1788(c); Pub. L. 98–525)

(33) *Standard college degree.* The term "standard college degree" has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 38 U.S.C. 1434, 1788; Pub. L. 98–525)

(34) *Supplemental educational assistance.* The term "supplemental educational assistance" means a benefit payable to a veteran or servicemember as a supplement to his or her basic educational assistance for pursuit of a program of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 1402(2); Pub. L. 98–525)

Claims and Applications

§ 21.7030 Applications, claims and informal claims.

(a) *Applications.* (1) An individual must file all claims for educational assistance with the VA. The claims must be in the form prescribed by the Administrator.

(2) An individual on active duty must consult with his or her service education officer before applying for educational assistance.

(Authority: 38 U.S.C. 1434(a), 1671; Pub. L. 98–525)

(b) *Informal claim.* The VA will consider any communication from an individual, an authorized representative or a Member of Congress to be an informal claim if it indicates an intent to apply for educational assistance. Upon receipt of an informal claim, if a formal claim has not been filed, the VA will provide an application form to the claimant. If the VA receives the application form within one year from the date the VA provided it, the VA will consider the claim to have been filed on the date the VA received the informal claim.

(Authority: 38 U.S.C. 1434(a), 1671; Pub. L. 98–525)

(c) *Enrollment is not an informal claim.* The act of enrolling in an approved school does not in itself constitute an informal claim.

(Authority: 38 U.S.C. 1434(a), 1671; Pub. L. 98–525)

§ 21.7032 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal, and to reopened claims.

(Authority: 38 U.S.C. 1434(a), 1671; Pub. L. 98–525)

(b) *Abandoned claim.* The VA will consider a claim to be abandoned when the VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year of the date of the request. After the expiration of one year, the VA will not take further action unless a new claim is received.

(Authority: 38 U.S.C. 3003(a))

(c) *New claim.* When a claim has been abandoned, the VA will consider any subsequent communication which meets the requirements of an informal claim to be a new claim. The VA will consider the date of receipt of the subsequent communication to be the date of the new claim.

(Authority: 38 U.S.C. 1434(a), 1671; Pub. L. 98–525)

(d) *Failure to furnish form or notice of time limit.* Failure by the VA to furnish the veteran or servicemember any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions.

(Authority: 38 U.S.C. 1434(a), 1671, Pub. L. 98–525)

(e) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in § 21.7051 of this part must be received by the VA by the later of the following dates:

(1) One year from the date on which the veteran's original period of eligibility ended.

(2) One year from the date on which the physical or mental disability ceased to prevent the veteran from beginning or resuming his or her chosen program of education.

(Authority: 38 U.S.C. 1431(d), Pub. L. 98–525)

Eligibility

§ 21.7040 Eligibility for basic educational assistance.

Eligibility for basic educational assistance can be established by:

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces during the period beginning on July 1, 1985, and ending on June 30, 1988, and

(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section or § 21.7044 of this part in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, the VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15 of this chapter.

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements.

(1) The individual must during the period beginning on July 1, 1985, and ending on June 30, 1988, either

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) Except as provided in paragraph (a)(5) of this section the individual must

(i) Serve at least three years of continuous active duty in the Armed Forces, or

(ii) In the case of an individual whose initial period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph; and

(4) After completing the service requirements of this paragraph the individual must

(i) Continue on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be placed on the retired list, or

(iv) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(5) An individual who does not meet the requirements of paragraph (a)(2) of this section is eligible for basic educational assistance when he or she is discharged or released from active duty—

(i) For a service-connected disability, or

(ii) Under 10 U.S.C. 1173 (hardship discharge), or

(iii) For convenience of the government—

(A) After completing at least 20 months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 months of active duty if his or her initial obligated period of active duty is at least three years.

(Authority: 38 U.S.C. 1411; Pub. L. 98–525)

(b) *Eligibility based on active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must, during the period beginning on July 1, 1985, and ending on June 30, 1988, either

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(3) The individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(8) of this section, after completion of active duty service the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(5) The individual must, after completion of all service described in this paragraph

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves a continuous period of service in the Selected Reserve and is discharged or released from service in the Selected Reserve

(A) For a service-connected disability, or

(B) Under 10 U.S.C. 1173 (hardship discharge); or

(ii) After completion of the active duty service required by this paragraph the individual

(A) Serves at least three and one-half years continuous service in the Selected Reserve, and

(B) Is discharged for convenience of the government.

(7) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragrpah (b)(7)(i) of this section.

(8) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(7) of this section shall be binding upon the VA.

(Authority: 38 U.S.C. 1411, 1412, Pub. L. 98–525)

(c) *Dual eligibility.* An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an initial obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

(d) *Eligibility requirements for people on active duty.*

(1) An individual on active duty who does not have sufficient active duty service to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she

(i) During the period beginning on July 1, 1985, and ending on June 30, 1988 either

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;

(ii) Receives a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) The VA will consider an individual to have met the requirements of paragraph (b) this section, when he or she

(i) Has met the active duty requirements of paragraph (b) this section,

(ii) Is committed to serve four years in the Selected Reserve, and

(iii) Has obtained a high school diploma (or equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 98–525)

(e) *Restrictions on establishing eligibility.* Notwithstanding any other provision of this section, an individual described in either paragraph (e) (1) or (2) of this section is not eligible for basic educational assistance.

(1) An individual who, during the period beginning on July 1, 1985, and ending on June 30, 1988, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30.

(2) An individual is not eligible for educational assistance under 38 U.S.C. ch. 30, after December 31, 1976, if he or she receives a commission as an officer in the Armed Forces upon

(i) Graduation from

(A) The United States Military Academy, or

(B) The United States Naval Academy, or

(C) The United States Air Force Academy, or

(D) The Coast Guard Academy; or

(ii) Completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

(f) *Reduction in basic pay.* (1) The basic pay of any individual described in paragraphs (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

(2) The basic pay of any individual who makes the election described in paragraph (d)(1) of this section will not be subject to the reduction described in paragraph (1) of this section.

(3) If through administrative error or other reason the basic pay of an individual described in paragraph (a), (b), or (c) of this section is not reduced as provided in paragraph (f)(1) of this section, the failure to make the reduction will have no effect on his or her eligibility.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

Certain individuals with 38 U.S.C. ch. 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. ch. 30. In determining whether an individual has met the service requirements of this section, the VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15 of this chapter.

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational assistance based on service on active

duty under the following terms, conditions, and requirements—

(1) The individual must have met the requirements of § 21.1040 of this part establishing eligibility for educational assistance allowance under 38 U.S.C. ch. 34;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. ch. 34;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(4) After June 30, 1985—

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) Be discharged or released from active duty—

(A) For a service-connected disability,

(B) Under 10 U.S.C. 1173 (hardship discharge), or

(C) For the convenience of the government provided the individual completes at least 30 months of active duty;

(5) Upon completion of the requisite active duty service the individual must either—

(i) Remain on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be placed on the retired list, or

(iv) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 1411; Pub. L. 98–525, Pub. L. 99–145)

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must have met the requirements of § 21.1040 of this part establishing eligibility for educational assistance allowance under 38 U.S.C. ch. 34;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. ch. 34;

(3) The individual must receive a secondary school diploma (or an equivalency certificate) before completing the service requirements of this paragraph;

(4) After June 30, 1985, the individual must

(i) Serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(ii) Except as provided in paragraph (b)(6) of this section, after completion of this active duty service, the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(5) The individual also must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when after completion of the active duty service required by this paragraph he or she—

(i) Serves a continuous period of service in the Selected Reserve, and

(A) Is discharged for a service-connected disability, or

(B) Is discharged under 10 U.S.C. 1173 (hardship discharge); or

(ii) After having served at least three and one-half years continuous service in the Selected Reserve, is discharged for convenience of the government

(7) For veterans who wish to pursue a program of education before completing four years service in the Selected Reserve, the VA will consider that the four-year requirement is met if the veteran has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve.

(8) For the purpose of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.

(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (7) or (8) of this section shall be binding upon the VA.

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 98–525)

(c) *Eligibility requirements for people on active duty.* (1) An individual on active duty who does not have sufficient active duty service after June 30, 1985, to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she

(i) During the period beginning on July 1, 1985, and ending on June 30, 1988, either—

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;

(ii) Receives a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) The VA will consider an individual to have met the requirements of this section, when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section,

(ii) Is committed to serve four years in the Selected Reserve, and

(iii) Has obtained a high school diploma (or equivalency certificate) before beginning the training for which he or she wishes to receive educational assistance.

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(Authority: 38 U.S.C. 1411, 1412, 1416; Pub. L. 98–525, Pub. L. 99–145)

(d) *Restrictions on establishing eligibility.* Notwithstanding any other provision of this section an individual is not eligible for educational assistance under 38 U.S.C. ch. 30 if he or she after December 31, 1976, receives a commission as an officer in the Armed Forces—

(1) Upon graduation from—

(i) The United States Military Academy, or

(ii) The United States Naval Academy, or

(iii) The United States Air Force Academy, or

(iv) The Coast Guard Academy; or

(2) Upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

§ 21.7046 Eligibility for supplemental educational assistance.

The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) *Service requirements: eligibility based only on active duty service.* The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either—

(i) Continue on active duty without a break,

(ii) Be discharged from service with an honorable discharge,

(iii) Be placed on the retired list,

(iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 1421(a); Pub. L. 98–525)

(b) *Service requirements: eligibility based on service in the Selected Reserve.* The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

(1) The individual must serve—

(i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and

(ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

(2) The individual after completion of the service described in paragraph (b)(1) must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(iv) Be placed on the temporary disability retired list, or

(v) Continue on active duty, or

(vi) Continue in the Selected Reserve.

(3) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy.

(4) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is not attached to a unit of the Selected Reserve for any reason (also to be prescribed by the Secretary concerned by regulation) other than those stated in paragraph (b)(3) of this section.

(5) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (3) or (4) of this section shall be binding upon the VA.

(Authority: 38 U.S.C. 1421(a); Pub. L. 98–525)

§ 21.7050 Ending dates of eligibility.

The ending date of eligibility will be determined as follows:

(a) *Ten-year time limitation.* Except as provided in § 21.7051 of this part the VA will not provide basic education assistance or supplemental educational assistance to a veteran or servicemember after the later of the following:

(1) Ten years from the date of the veteran's last discharge or release from active duty, or

(2) Ten years from the last day on which the individual becomes entitled to educational assistance.

(Authority: 38 U.S.C. 1431(a); Pub. L. 98–525)

(b) *Correction of military records.* A veteran may become eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by competent military authority. When this occurs, the VA will not provide educational assistance later than 10 years from the date his or her dismissal or discharge was changed, corrected or modified (except as provided in § 21.7051 of this part).

(Authority: 38 U.S.C. 1431(b); Pub. L. 98–525)

(c) *Periods excluded.* The VA will not include in computing the 10-year period of eligibility for educational assistance under this section, any period during which the veteran after his or her last discharge or release from active duty—

(1) Was captured and held as a prisoner of war by a foreign government or power, or

(2) Immediately following the veteran's release from this detention during which he or she was hospitalized at a military, civilian or VA medical facility.

(Authority: 38 U.S.C. 1431(c); Pub. L. 98–525)

§ 21.7051 Extended period of eligibility.

(a) *Period of eligibility may be extended.* The VA shall grant an extension of the applicable delimiting period, as otherwise determined by § 21.7050 of this part provided:

(1) The veteran applies for an extension within the time specified in § 21.7032(e) of this part.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. It must be clearly established by medical evidence that such a program of education was medically infeasible. The VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling

in the chosen program or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 1431(d); Pub. L. 98–525)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7050 of this part, and

(2) Must either be—

(i) On or before the 90th day following the date on which the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the commencing date of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by the VA, if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 1431(d); Pub. L. 98–525)

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original eligibility period that his or her training became medically infeasible to the earliest of the following date.

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically infeasible,

(ii) The last date of the veteran's delimiting date as determined by § 21.7050 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.7050 of this part.

(Authority: 38 U.S.C. 1431(d); Pub. L. 98–525)

Entitlement

§ 21.7070 Entitlement.

An eligible servicemember or veteran is entitled to a monthly benefit for periods of time during which he or she is enrolled in, and satisfactorily pursuing, an approved program of education.

(Authority: 38 U.S.C. 1414; Pub. L. 98–525)

§ 21.7072 Entitlement to basic educational assistance.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c) and (d) of this section, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).

(Authority: 38 U.S.C. 1413; Pub. L. 98–525)

(b) *Entitlement: individual discharged for service-connected disability or hardship.* (1) An eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044 of this part,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 months of continuous active duty service after June 30, 1985, if his or her initial obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either for a service-connected disability, or under 10 U.S.C. 1173 (hardship discharge).

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(Authority: 38 U.S.C. 1413(a); Pub. L. 98–525)

(c) *Entitlement based on service in the Selected Reserve.*

(1) An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service after June 30, 1985, and one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve (other than a month in which the individual serves on active duty) when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044 of this part, and

(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in § 21.7042(b) and § 21.7044(b) of this part.

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(4) A veteran described in this paragraph is not entitled to any basic educational assistance for service in the Selected Reserve in excess of the number of months of service in the Selected Reserve which is evenly divisible by four.

(5) The VA will consider a veteran to be entitled to 36 months of basic educational assistance when he or she—

(i) Initially enters on active duty after June 30, 1985;

(ii) Is attempting to establish eligibility through service in the Selected Reserve;

(iii) Has completed the active duty service required in § 21.7042 of this part; and

(iv) Is participating in the Selected Reserve, but has not participated for the length of time required in § 21.7042 of this part.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

(d) *Entitlement affected by failure to complete required Selected Reserve service.* If a veteran attempts to establish eligibility through a combination of active duty service and service in the Selected Reserves, but fails to do so, his or her entitlement shall be the number of months to which he or she is entitled on the basis of his or her active duty service.

(Authority: 38 U.S.C. 1411, 1412; Pub. L. 98–525)

(e) *Repayment of an education loan affects entitlement.* A period of service counted for the purpose of repayment under section 902 of the Department of Defense Authorization Act, 1981, of an education loan may not also be counted for the purposes of determining the number of months of the veteran's or servicemember's entitlement to basic educational assistance. Therefore, in determining a veteran's or servicemember's entitlement, the VA will—

(1) Determine his or her entitlement as provided in paragraph (a), (b), (c) or (d) of this section, as appropriate, and

(2) Subtract from the figure determined in paragraph (e)(1) of this section the number of months of service counted for the purposes of repayment of an educational loan under section 902 of the Department of Defense Authorization Act, 1981.

(Authority: 38 U.S.C. 1433(b); Pub. L. 98–525)

(f) *Limitation on entitlement.* Except as provided in § 21.7135(s) of this part no one is entitled to more than 36 months of full-time basic educational assistance (or its equivalent in part-time educational assistance).

(Authority: 38 U.S.C. 1413(c); Pub. L. 98–525)

§ 21.7074 Entitlement to supplemental educational assistance.

In determining the entitlement of a veteran or servicemember who is eligible for supplemental educational assistance the VA shall—

(a) Calculate the veteran's or servicemember's entitlement to basic educational assistance on the day he or she establishes eligibility for supplemental educational assistance, and

(b) Credit the veteran or servicemember with the same number of months and days entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 1423; Pub. L. 98–525)

§ 21.7076 Entitlement charges.

(a) *Overview.* The VA will make charges against entitlement as stated in this section. Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. ch. 30. After December 31, 1989, there will be a charge (for record purposes only) against the entitlement, if any, which he or she may have under 38 U.S.C. ch. 34. The charges against entitlement under 38 U.S.C. ch. 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chs. 30 and 34 to which the veteran or servicemember may be entitled. (See § 21.4020(a) of this part). Charges are based upon the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. The provisions of this section apply to—

(1) Veterans and servicemembers training under 38 U.S.C. ch. 30, and

(2) Veterans training under 38 U.S.C. ch. 31 who make a valid election under § 21.21 of this chapter to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 1413; Pub. L. 98–525)

(b) *Determining entitlement charge.* (1) The VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) The VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, the VA will—

(i) Divide the enrollment period into separate periods of time during which the veteran's or servicemember's training time remains constant, and,

(ii) Compute the elapsed time separately for each time period.

(Authority: 38 U.S.C. 1413; Pub. L. 98–525)

(c) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived, and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,

(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement which represents the whole overpaid period.

(Authority: 38 U.S.C. 1413; Pub. L. 98–525)

(d) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember is enrolled for the entire term, quarter or semester. The VA will make a charge against entitlement for the entire period of certified enrollment, if the veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;

(4) The veteran or servicemember requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and the VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial.

(Authority: 38 U.S.C. 1413; Pub. L. 98–525)

Counseling

§ 21.7100 Counseling.

A veteran or servicemember may receive counseling from the VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an educational institution appropriate for the attainment of the educational objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 98–525)

(b) *Counseling not required.* Counseling is never required for those individuals eligible for educational assistance established under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 98–525)

(c) *Availability of counseling.* Counseling is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans and making sound decisions about the changes.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 98–525)

(d) *Requested counseling.* The VA shall provide counseling as needed for the purpose identified in paragraphs (a) and (c) of this section upon request of the individual. The VA shall take appropriate steps (including individual notification where feasible) to acquaint veterans and servicemembers with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 98–525)

§ 21.7103 Travel expenses.

The VA will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 111)

Programs of Education

§ 21.7110 Selection of a program of education.

(a) *General requirement.* An individual must be pursuing an approved program of education in order to receive educational assistance.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(b) *Approval of a program of education.* The VA will approve a program of education under 38 U.S.C. ch. 30 selected by an eligible veteran or servicemember if—

(1) It meets the definition of a program of education found in § 21.7020(b)(22) of this part,

(2) It has an objective as described in § 21.7020(b) (13) or (21) of this part,

(3) The courses and subjects in the program are approved for VA training, and

(4) The veteran or servicemember is not already qualified for the objective of the program.

Authority: 38 U.S.C. 1402(3), 1434, 1671; Pub. L. 98–525)

§ 21.7112 Programs of education combining two or more types of courses.

An approved program may consist of courses offered by two educational institutions concurrently, or courses offered through class attendance and by television concurrently. An educational institution may contract the actual training to another educational institution or entity, provided the course is approved by the State approving agency having approval jurisdiction of the educational institution or entity which actually provides the training.

(a) *Concurrent enrollment.* When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, the VA may approve a program of concurrent enrollment. When requesting such a program the veteran or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the extent of the course will be determined by converting the measurement of courses in the second educational institution to its equivalent in value to measurement required for full-time courses in the primary educational institution; e.g., school courses on a clock-hour basis converted to its equivalent in value to semester hours of credit will be .58 semester credits (14/25) or .46 semester credits (14/30), as applicable, for each clock hour of attendance.

(2) The veteran or servicemember must submit the monthly certification of attendance and pursuit. Each educational institution where concurrent enrollment is approved must either endorse that certification, or submit a separate certification showing the veteran's or servicemember's enrollment and pursuit.

(Authority: 38 U.S.C. 1434(b); Pub. L. 98–525)

(b) *Courses offered under contract.* In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4233(e) of this part in the same manner as they are applied under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434(a); Pub. L. 98–525)

(c) *Television.* In determining whether a veteran or servicemember may pursue part of a program of education under 38 U.S.C. ch. 30 by television, the VA will apply the provisions of § 21.4233(c) of this part in the same manner as they are applied in making similar determinations for people training under 38 U.S.C. ch. 34 and 36.

(Authority: 38 U.S.C. 1434, 1673(c); Pub. L. 98–525)

§ 21.7114 Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4234 of this part in the same manner as they are applied in making similar determinations for veterans training under 38 U.S.C. ch. 34. The VA will not consider programs of education a veteran or a servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 1434, 1791; Pub. L. 98–525)

Courses

§ 21.7120 Courses included in programs of education.

(a) *General.* Generally, the VA will approve, and will authorize payment of educational assistance, for the individual's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7220 of this part and which forms a part of a program of education as defined in § 21.7020(b)(22) of this part. Restrictions on this general rule are stated in § 21.7222(b) of this part, however.

(Authority: 38 U.S.C. 1402(3), 1652; Pub. L. 98–525)

(b) *Avocational and recreational courses are restricted.*

(1) The VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) The VA presumes that the following courses are avocational or recreational in character unless the veteran or servicemember justifies their pursuit to the VA as provided in paragraph (b)(3) of this section. The courses are:

(i) Any photography course or entertainment course, or

(ii) Any music course, instrumental or vocal, public speaking course or courses in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(iii) Any other type of course which the VA determines to be avocational or recreational.

(3) To overcome the presumption that a course is avocational or recreational in character, the veteran or servicemember must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(Authority: 38 U.S.C. 1434, 1673; Pub. L. 98–525)

(c) *Flight training.* The VA may pay educational assistance for an enrollment in a flight training course only if an institution of higher learning offers the course for credit toward the standard college degree the veteran or servicemember is pursuing. The VA will not otherwise approve an enrollment in a flight training course.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

§ 21.7122 Courses precluded.

(a) *Unapproved courses.* The VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by the VA when that agency acts as a State approving agency. The VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date the State approving agency disapproves a course. See § 21.7220 of this part.

(Authority: 38 U.S.C. 1434, 1772; Pub. L. 98–525)

(b) *Courses outside a program of eduction.* The VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education.

(Authority: 38 U.S.C. 1402(3), 1652(b); Pub. L. 98–525)

(c) *Erroneous, deceptive, misleading practices.* The VA will not pay educational assistance for an enrollment in any course offered by an educational institution which uses advertising, sales or enrollment practices which are erroneous, deceptive or misleading by actual statement, omission or intimation. The VA will apply the provisions of § 21.4252(h) of this part in making these decisions with regard to enrollments under 38 U.S.C. ch. 30 as it does in making similar decisions with regard to enrollments under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434, 1796; Pub. L. 98–525)

(d) *Restrictions on enrollment: percentage of students receiving financial support.* Except as otherwise provided the VA shall not approve an enrollment in any course for a veteran or servicemember, not already enrolled for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the VA pursuant to title 38, United States Code. This restriction may be waived in whole or in part. In determining which courses to apply this restriction to and whether to waive this restriction, the VA will apply the provisions of § 21.4201 of this part to enrollments under 38 U.S.C. ch. 30 in the same manner as it does to enrollments under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434, 1673(d); Pub. L. 98–525)

(e) *Other courses.* The VA shall not pay educational assistance for—

(1) An audited course (see § 21.4252(i) of this part),

(2) A course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j) of this part),

(3) New enrollments in a course where approval has been suspended by a State approving agency,

(4) Certain courses being pursued by nonmatriculated students as provided in § 21.4252(l) of this part,

(5) A course from which the veteran or servicemember withdrew without mitigating circumstances,

(6) Correspondence courses, or

(7) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly verifications of pursuit, an owner or an operator.

(Authority: 38 U.S.C. 1402(3), 1434, 1772(a), 1780(a); Pub. L. 98–525)

§ 21.7124 Overcharges.

The VA may disapprove an educational institution for further enrollments, when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges which the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98–525)

Payments-Educational Assistance

§ 21.7130 Educational assistance.

The VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§ 21.7136, 21.7137 and 21.7139 of this part.

(Authority: 38 U.S.C. 1415, 1422, 1432; Pub. L. 98–525)

§ 21.7131 Commencing dates.

The commencing date of an award or increased award of educational assistance will be determined under this section.

(a) *Entrance or reentrance including change of program, training time, or educational institution.* When an eligible veteran or servicemember enters or reenters into training, the commencing date of his or her award of educational assistance shall be the latest of the following dates.

(1) The date the educational institution certifies under paragraph (b) or (c) of this section.

(2) The date one year before the VA receives the veteran's or servicemember's application or

enrollment certification, whichever is the later. (See § 21.7032 of this part)

(3) The effective date of the approval of the course, or one year before the date the VA receives the approval notice, whichever is later.

(4) The date of reopened application under paragraph (d) of this section.

(Authority: 38 U.S.C. 1414, 1423, 1434, 1772; Pub. L. 98–525)

(b) *Certification by the educational institution—the course or subject leads to a standard college degree.* (1) When the student enrolls in any course or subject other than one described in paragraph (b) (2) or (3) or (c) of this section, the commencing date of the award or increased award of educational assistance will be—

(i) The date of registration in the term, quarter or semester, or

(ii) The date of reporting when the individual is required by the published standards of the educational institution to report in advance of registration.

(2) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes does not occur before the end of the first regularly scheduled calendar week of classes during a term, quarter or semester, the commencing date of the award or increased award of educational assistance will be the first day of classes.

(3) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(c) *Certification by educational institution—course does not lead to a standard college degree.* When a veteran or servicemember enrolls in a course not leading to a standard college degree, the commencing date of the award of educational assistance shall be the first date of the individual's class attendance.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(d) *Reopened application after abandonment (§ 21.7032).* When the veteran or servicemember reopens his or her claim after abandoning it, the commencing date of the award of educational assistance shall be the date the VA receives the individual's application or enrollment certificate, whichever is later.

(Authority: 38 U.S.C. 1434, 1671(a); Pub. L. 98–525)

(e) *Increase for a dependent.* A veteran who was eligible for educational assistance allowance under 38 U.S.C. ch. 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.

(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) The VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) The VA receives any necessary evidence within 1 year of its request.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if—

(A) The VA receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) The VA receives the necessary evidence within 1 year of its request.

(iii) The effective date will be the date the VA receives all necessary evidence, if that evidence is received more than 1 year from the date the VA requests it.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of claim. This term means the following in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(B) The date the VA receives notice of the dependent's existence if evidence is received within 1 year of the VA request.

(C) The date the VA receives evidence if this date is more than 1 year after the VA request.

(ii) The date the dependency arises.

(iii) The date the law permits for benefits for dependents generally.

(Authority: 38 U.S.C. 3010 (f), (n); Pub. L. 98–525)

(See § 3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school)

(f) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(g) *Correction of military records (§ 21.7050(b)).* The eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases the commencing date of educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 1431(b); Pub. L. 98–525)

(h) *Individuals in a penal institution.* If a veteran or servicemember is paid a reduced rate of educational assistance under § 21.7139 (c), (d), (e), (f) and (g) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(i) *Commitment to service in the Selected Reserve.* If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she—

(1) Is committed to serve four years in the Selective Reserve, and

(2) Is attached to a unit of the Selected Reserve.

(Authority: 38 U.S.C. 1412; Pub. L. 98–525)

§ 21.7133 Suspension or discontinuance of payments.

The VA may suspend or discontinue payments of educational assistance, and in such cases the VA will apply §§ 21.4133, 21.4134 and 21.4207 of this part in the same manner as they are applied in the administration of chapters 34 and 36.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98–525)

§ 21.7135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. ch. 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or servicemember.* When a veteran or servicemember dies, the effective date of discontinuance of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(b) *Death of dependent.* When a veteran's dependent dies, and the veteran has been receiving additional educational assistance based on the dependent, the effective date of reduction of the veteran's educational assistance shall be the last day of the month in which the death occurs.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(c) *Divorce.* If the veteran becomes divorced, the effective date of reduction of his or her educational assistance is the last day of the month in which the divorce occurs.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(d) *Dependent child.* If the veteran's award of educational assistance must be reduced because his or her dependent child ceases to be dependent, the effective date of reduction will be as follows.

(1) If the veteran's child marries, the effective date of reduction will be the last day of the month in which the marriage occurs.

(2) If the veteran's child reaches age 18, the effective date of reduction will be the day preceding the dependent child's 18th birthday.

(3) If the veteran is receiving additional educational assistance based on a child's school attendance between the child's 18th and 23rd birthdays, the effective date of reduction of the veteran's educational assistance will be the last day of the month in which the dependent child stops attending school, or the day before the dependent child's 23rd birthday, whichever is earlier.

(4) If the veteran is receiving additional educational assistance because his or her child is helpless, the effective date of reduction will be the last day of the month following 60 days after the VA notifies the veteran that the dependent child's helplessness has ceased.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(e) *Course discontinued, course interrupted, course terminated, course not satisfactorily completed or withdrawn from.* (1) If the veteran or servicemember withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances, the VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which grades are assigned.

(2) If the veteran or servicemember withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses, the VA will terminate educational assistance for—

(i) Residence training: last date of attendance; and

(ii) Independent study official date of change in status under the practices of the educational institution.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(f) *Reduction in the rate of pursuit of the course.*

(1) If the veteran or servicemember reduces training by withdrawing from part of a course with mitigating circumstances, but continues training in part of the course, the VA will reduce the veteran's or servicemember's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except that the VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the veteran or servicemember reduces training by withdrawing from a part of a course without mitigating circumstances, the VA will reduce the veteran's or servicemember's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) A veteran or servicemember, who enrolls in several subjects and reduces his or her rate of pursuits by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7140(b) of this part are met. If those requirements are not met, the VA will reduce the individual's educational assistance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(g) *End of course or period of enrollment.* If a veteran's or servicemember's course or period of enrollment ends, the effective date of reduction or discountinuance of his or her award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 1434(b), 1780; Pub. L. 98–525)

(h) *Nonpunitive grade.* (1) If the veteran or servicemember does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, the VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies, when no mitigating circumstances are found.

(2) If an individual does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, the VA will reduce his or her educational assistance effective the last date of attendance when mitigating circumstances are found.

(3) If an individual receives a nonpunitive grade through nonattendance in a particular course, the VA will reduce the individual's educational assistance effective the last date of attendance when mitigating circumstances are found.

(4) If an individual receives a nonpunitive grade through nonattendance in a particular course, the VA will reduce the individual's educational assistance effective the first date of enrollment in which the grade applies, when no mitigating circumstances are found.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(i) *Discontinued by VA.* If the VA discontinues payment to a veteran or servicemember following the procedures stated in § 21.4207 of this part, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA field station as provided in § 21.4134 of this part, if the discontinuance was preceded by such a suspension.

(2) End of the month in which the decision to discontinue, made by the VA under § 21.7133 or § 21.4207 of this part, is effective, if the Director of a VA field station did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(j) *Disapproval by State approving agency.* If a State approving agency disapproves a course in which a veteran

or servicemember is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the director of a VA field station as provided in § 21.4134 of this part, if disapproval was preceded by such a suspension.

(2) End of the month in which disapproval is effective or the VA receives notice of the disapproval, whichever is later, provided that the Director of a VA field station did not suspend payments before the disapproval

(Authority: 38 U.S.C. 1434, 1772(a), 1790; Pub. L. 98–525)

(k) *Disapproval by VA.* If the VA disapproves a course in which a veteran or servicemember is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA field station first suspended payments, as provided in § 21.4134 of this part, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA field station did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 1434, 1771(b), 1772(a), 1790; Pub. L. 98–525)

(l) *Unsatisfactory progress.* If a veteran's or servicemember's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the veteran's or servicemember's enrollment, or

(2) The date on which the veteran's or servicemember's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.

(Authority: 38 U.S.C. 1434–1674; Pub. L. 98–525)

(m) *Required certifications not received after certification of enrollment.* If the VA does not timely receive the veteran's or servicemember's certification of attendance or does not timely receive the educational institution's endorsement of the certification or the educational institution's certification of attendance or pursuit, the VA will assume that the veteran or servicemember has withdrawn. The VA will apply the provisions of paragraph (e) of this section. The VA considers the receipt of a certificate of attendance to be timely if it is received within 60 days of the last day of the month for which attendance is to be certified.

(Authority: 38 U.S.C. 1434(b); Pub. L. 98–525)

(n) *False or misleading statements.* If educational assistance is paid as the result of false or misleading statements, see § 21.7158 of this part.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98–525)

(o) *Conflicting interests (not waived).* If an educational institution and the VA have conflicting interests as provided in § 21.4005 and § 21.7305 of this part, and the VA does not grant the veteran a waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the veteran.

(Authority: 38 U.S.C. 1434, 1783, Pub. L. 98–525)

(p) *Incarceration in prison or penal institution for conviction of a felony.*

(1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7139 (c) , (d), (e), (f), or (g) of this part.

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or servicemember's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or servicemember is incarcerated in prison or penal institution, or

(iii) The comencing date of the award as determined by § 21.7131 of this part.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(q) *Active duty.* If a veteran reenters on active duty, the effective date of reduction of his or her award of educational assistance shall be the day before the veteran's entrance on active duty. (This reduction does not apply to brief periods of active duty for training if the educational institution permits absence for active duty for training without considering the veteran's pursuit of a program of education to be interrupted. If the course does not lead to a standard college degree, absence for active duty for training must be reported as required by § 21.7154 of this part).

(Authority: 38 U.S.C. 1432, Pub. L. 98–525)

(r) *Record-purpose charge against entitlement under 38 U.S.C. ch. 34 equals entitlement that remained on December 31, 1989.* A veteran who is receiving basic educational assistance at the rates stated in § 21.7137(a) of this part, will have his or her award reduced to the rates found in § 21.7136(a) of this part effective the date the total of the veteran's record-purpose charges against his or her entitlement under 38 U.S.C. ch. 34 equals the entitlement to that benefit which the veteran had on December 31, 1989.

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

(s) *Exhaustion of entitlement under 38 U.S.C. ch. 30.* (1) If an individual who is enrolled in an educational institution regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30, the discontinuance date shall be the last day of the quarter or semester in which entitlement is exhausted.

(2) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30 after more than half of the course is completed, the discontinuance date shall be the earlier of the following:

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. ch. 30 before completing the major portion of the course, the discontinuance date will be the date the entitlement is exhausted.

(Authority: 38 U.S.C. 1431(e); Pub. L. 98–525)

(t) *Eligibility expires.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under § 21.7050 or § 21.7051 of this part the VA will discontinue educational assistance effective the day preceding the end of the eligibility period.

(Authority: 38 U.S.C. 1434(a); Pub. L. 98–525)

(u) *Veteran fails to participate satisfactorily in the Selected Reserve.* If a veteran is attempting to establish eligibility through service on active duty combined with service in the Selected Reserve, and he or she fails to participate satisfactorily in the Selected Reserve before completing the required service in the Selected Reserve, the effective date of reduction of the award of educational assistance will be the date the Secretary determines that he or she failed to participate satisfactorily.

(Authority: 38 U.S.C. 1412; Pub. L. 98–525)

(v) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the date on which the award would have ended had the act not occurred.

(2) When an administrative error or error in judgment results in an erroneous award, the award will be reduced or terminated effective the date of last payment.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(w) *Forfeiture for fraud.* If a veteran's or servicemember's educational assistance must be forfeited due to fraud, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3503; Pub. L. 98–525)

(x) *Forfeiture for treasonable acts or subversive activities.* If a veteran's or servicemember's educational assistance must be forfeited due to treasonable acts or subversive activities, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The date before the date the veteran or servicemember committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 3504, 3505; Pub. L. 98–525)

(y) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Veterans Administration's application of the law or VA issue, the VA will use the provisions of §3.114(b) of this chapter to determine the date of discontinuance of the veteran's or servicemember's educational assistance.

(Authority: 38 U.S.C. 3012, 3013; Pub. L. 98–525)

(z) *Except as otherwise provided.* If a veteran's or servicemember's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, the VA will determine the date of discontinuance of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 3012(a), 3013; Pub. L. 98–525)

§ 21.7136 Rates for payment of basic educational assistance.

(a) *Rates.* Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran other than one to whom § 21.7137 of this part applies, or one to whom paragraph (b) of this section applies, is at least the rate stated in this table. The rate also applies to a veteran who formerly was eligible under 38 U.S.C. ch. 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training	Monthly rate
Full-time	$300
¾ time	225
½ time	150
Less than ½ but more than ¼ time	150 See § 21.7139(d)
¼ time or less	75 See § 21.7139(d)

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated and is not committed to serve in the Selected Reverve for a period of four years is at least the amount stated in this table.

Training	Monthly rate
Full-time	$250.00
¾ time	187.50
½ time	125.00
Less than ½ but more than ¼ time	125.00 See § 21.7136(d)
¼ time or less	62.50 See § 21.7139(d)

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

(c) *Increase in basic educational assistance rates ("Kicker").* The Secretray concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $400 per month for full-time training,

(2) $300 per month for three-quarter time training,

(3) $200 per month for one-half time training or for training which is less than one-half, but more than one-quarter time, or

(4) $100 per month for one-quarter time training or less.

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

(d) *Less than one-half time training and rates for servicemembers.* The monthly rate for a veteran who is pursuing a course on a less than one-half time basis or the monthly rate for a servicemember who is pursuing a program of education is the lessor of—

(1) The monthly rate stated in either paragraph (a) or (b) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (c) of this section, or

(2) The monthly rate of the cost of the course.

(Authority: 38 U.S.C. 1415, 1432; Pub. L. 98–525)

§21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* Effective January 1, 1990, the VA will pay basic educational assistance at an increased rate to veterans who were eligible for educational assistance allowance under 38 U.S.C. ch. 34. The veterans must establish eligibility for educational assistance under § 21.7044 of this part, and must still have remaining entitlement under 38 U.S.C. ch. 34. Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$488.00	$524.00	$555.00	$16.00
¾ time	366.50	393.00	416.00	12.00
½ time	244.00	262.00	277.00	8.50
Less than ½ but more than ¼ time	244.00	(1)	(1)	(1)
¼ time or less	122.00	(1)	(1)	(1)

[1] See § 21.7136.

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

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(b) *Less than one-half-time training.* The monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of—

(1) The monthly rate stated in paragraph (a) of this section, or

(2) The monthly rate of the cost of the course.

(Authority: 38 U.S.C. 1432; Pub. L. 98–525)

(c) *Rates for servicemembers.* The monthly rate for a servicemember may not exceed the lesser of the following rates (except as provided in paragraph (d) of this section):

(1) The monthly rate of the cost of the course.

(2) The following monthly rates—

(i) $488.00 for full-time training.

(ii) $366.50 for three-quarter time training.

(iii) $244.00 for one-half time training and training that is less than one-half, but more than one-quarter time training, and

(iv) $122.00 for one-quarter time training.

(Authority: 38 U.S.C. 1415(d); Pub. L. 98–525)

(d) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel, or for which it is difficult to recruit. The increase may not be applied to a servicemember whose monthly rate is determined by paragraph (c)(1) of this section, but it can serve to raise the ceiling on monthly rates stated in paragraphs (b) and (c)(2) of this section. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $400 per month for full-time training,

(2) $300 per month for three-quarter time training,

(3) $200 per month for one-half time training or for training which is less than one-half but more than one-quarter time, or

(4) $100 per month for one-quarter time training or less.

(Authority: 38 U.S.C. 1415, 1432; Pub. L. 98–525)

(e) *Concurrent benefits.* The VA may pay additional educational assistance to a veteran for a dependent concurrently with additional pension or compensation for the same dependent.

(Authority: 38 U.S.C. 1415(d); Pub. L. 98–525)

(f) *Two veteran cases.* The VA may pay additional educational assistance to a veteran for a spouse who is also a veteran. This will not bar the payment of additional educational assistance or subsistence allowance under § 21.260 of this part to the spouse for the veteran. If the veteran is paid additional educational assistance for a child, that will not bar payment of additional educational assistance or subsistence allowance under § 21.260 of this part to the spouse for the same child.

(Authority: 38 U.S.C. 1415(d); Pub. L. 98–525)

§ 21.7138 Rates of supplemental educational assistance.

In addition to basic educational assistance, a veteran or servicemember who is eligible for supplemental educational assistance and entitled to it shall be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.7139 of this part.

(a) *Rates for veterans.* The rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table:

Training	Monthly rate
Full-time	$300
¾ time	225
½ time	150
Less than ½ but more than ¼ time	150 See § 21.7138(c)
¼ time or less	75 See § 21.7138(c)

(Authority: 38 U.S.C. 1415(c); Pub. L. 98–525)

(b) *Increase in supplemental educational assistance rates ("kicker").* The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but it may not exceed—

(1) $300 per month for full-time training,

(2) $225 per month for three-quarter time training,

(3) $150 per month for one-half time training and for training which is less than one-half time, but more than one-quarter time, or

(4) $75 per month for one-quarter time training or less.

(Authority: 38 U.S.C. 1422(b); Pub. L. 98–525)

(c) *Less than one-half time training and rates for servicemembers.* The monthly rate of supplemental educational assistance payable to a veteran who is training less than half-time or to a servicemember is determined as follows:

(1) The monthly rate of the veteran's or servicemember's basic educational assistance is determined as provided in §§ 21.7136(d), and 21.7137 (b), (c) and (d) of this part.

(2) If the monthly rate of basic educational assistance equals or is greater than the monthly rate of the cost of the course, no supplemental educational assistance is payable.

(3) If the monthly rate of basic educational assistance is less than monthly rate of the cost of the course, the monthly rate of supplemental educational assistance is the lesser of—

(i) The monthly rate provided in paragraph (a) of this section, plus the monthly rate provided in paragraph (b) of this section, if appropriate, or

(ii) The difference between the monthly rate of the cost of the course and the monthly rate of the veteran's or servicemember's basic educational assistance.

(Authority: 38 U.S.C. 1422, 1432; Pub. L. 98–525)

§ 21.7139 Conditions which result in reduced rates.

The monthly rates established in §§ 21.7136, 21.7137 and 21.7138 of this part shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *Absences.* A veteran or servicemember enrolled in a course not leading to a standard college degree will have his or her educational assistance reduced for any day of absence which exceeds the maximum allowable absences permitted in this paragraph.

(1) Absence will be charged for a full day when the veteran or servicemember did not attend any scheduled class on that day. A partial day of absence will be charged for any period of absence during or at the end of a day. Partial days of absence during a month will be converted to full days in accordance with the following formula.

(i) The average hours of daily attendance will be computed by dividing the hours of required attendance per week by the days of required attendance per week.

(ii) The absences of less than a full day which occurred during the month will be totaled.

(iii) The total hours of absence for the month as determined by paragraph (a)(1)(ii) of this section will be divided by the average hours of daily attendance as determined by paragraph (a)(1)(i) of this section to determine the veteran's or servicemember's full days of absence. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(iv) An occasional period of nonattendance (not more than two per week) of one-half hour or less will not be counted if it is excused by the educational institution. Any period of nonattendance which is not excused and a period of nonattendance of more than one-half hour, whether excused or not, will be counted as 1 or more hours of absence. Except for an occasional period of nonattendance of one-half hour or less which is excused by the institution of higher learning any absence of less than an hour will be counted as a full hour of absence.

(2) Maximum allowable absences are as follows:

(i) For a 12-month course requiring attendance for 5 or more days per week, 30 days.

(ii) For a 12-month course requiring attendance for less than 5 days per week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(iii) If the length of the course is not 12 months or a multiple of 12, allowable absences will be figured separately for each 12-month period and pro rata for any period which is less than 12 months.

(iv) In computing pro rata allowable absences, a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(v) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(3) Absences will be charged for—

(i) Days when the veteran or servicemember is scheduled to attend (including Saturday and Sunday if classes are normally scheduled for those days), but he or she does not attend.

(ii) Days when the educational institution is closed for local and school holidays.

(iii) If reported enrollment is on an ordinary school year basis, intervals between terms, quarters and semesters.

(4) Absences will not be charged for—

(i) Days when the educational institution is closed for a weekend period provided classes normally are not scheduled for Saturday or Sunday.

(ii) Days when the educational institution is closed for Federal or State legal holidays or customary, reasonable vacation periods connected with them which are identified as a holiday vacation in the educational institution's approved literature. Generally, the VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(iii) Days (not to exceed five in any 12-month period) when the educational institution is not in session because of teacher conferences or teacher training sessions.

(iv) At the discretion of the Director of the VA field station of jurisdiction, days of nonattendance within a certified period of enrollment during which the school is closed under an Executive Order of the President or due to an emergency situation.

(5) The reduction in educational assistance payable will be determined by deducting from the month's educational assistance due the veteran or servicemember that portion of the educational assistance otherwise payable as determined by the following table:

Days of scheduled attendance per week	Rate of reduction for each day of excessive absence
5 or more	1/25th
4	1/20th
3	1/15th
2	1/10th
1	1/5th

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(b) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. The VA will not pay benefits to a veteran or servicemember for a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(1) There are mitigating circumstances, and

(2) The veteran or servicemember submits the circumstances in writing to the VA within 1 year from the date the VA notifies the veteran or servicemember that he or she must submit the mitigating circumstances.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(c) *No educational assistance for some incarcerated servicemembers.* As with servicemembers who are not incarcerated, the VA will not pay educational assistance to an incarcerated servicemember enrolled in a course for which there are no tuition and fees. Furthermore, the VA will not pay educational assistance to a servicemember who—

(1) Is enrolled in a course where his or her tuition and fees are being paid for by a Federal program (other than one administered by the VA) or by a State or local program, and

(2) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(d) *No educational assistance for some incarcerated veterans.* The VA will pay no educational assistance to a veteran who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(e) *Reduced educational assistance for some incarcerated servicemembers.*

(1) The VA will pay reduced educational assistance to a servicemember who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for

entirely or partly by a Federal program (other than one administered by the VA) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by the VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;

(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in § 21.7136(d) or § 21.7137(c) of this part, as appropriate.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(f) *Reduced educational assistance for some incarcerated veterans.* (1) The VA will pay reduced educational assistance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for tuition and fees, or for which a Federal program (other than one administered by the VA) or a State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a one-half time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by the VA) or a State or local program plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) If the veteran has remaining entitlement under 38 U.S.C. ch. 34, monthly rate stated in § 21.7137(a) of this part for a veteran with no dependents and the increase provided in § 21.7137(d) of this part, if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) of this part for a veteran if the veteran is entitled to supplemental educational assistance, or

(iii) If the veteran has no entitlement under 38 U.S.C. ch. 34, the monthly rate stated in § 21.7136 (a) or (b) of this part, as appropriate, and the increase provided in § 21.7136(c) of this part, if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) of this part for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by § 21.7136(d) or § 21.7137(b) of this part, as appropriate, plus the monthly rate stated in § 21.7138(c) of this part if the veteran is entitled to supplemental educational assistance.

(Authority: 38 U.S.C. 1434, 1682(g); Pub. L. 98–525)

(g) *Payment for independent study.* The VA shall pay to a veteran, who is pursuing only independent study, educational assistance based on the training time determined in § 21.4272(h) of this part at the rate prescribed in § 21.7136(d) or § 21.7137(b) of this part, as appropriate. If the veteran is entitled to supplemental educational assistance, he or she will be paid at the rate prescribed in § 21.7138(c) of this part. If a veteran completes his or her course before the designated completion time, his or her award will be recomputed using the actual length of the course.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(h) *Payment for independent study-resident training.* A veteran who is pursuing independent study-resident training shall be paid based on the training time determined in § 21.7170(g) of this part at the same rate he or she would have been paid had he or she been pursuing resident training.

(Authority: 38 U.S.C. 1415; Pub. L. 98–525)

§ 21.7140 Certifications and release of payments.

(a) *Payments are dependent upon certifications.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) The VA will pay educational assistance to a veteran or servicemember only after—

(i) The educational institution has certified his or her enrollment;

(ii) The VA has received from the individual a certification as to his or her actual attendance;

(iii) The VA has received from the educational institution a certification, or an endorsement of the veteran's or servicemember's certificate, that he or she was enrolled in and pursuing a program of education during the period for which payment is to be made; and

(iv) In the case of a veteran or servicemember pursuing a course not leading to a standard college degree, a report from the veteran or servicemember of each day of absence from scheduled attendance. The report will be endorsed by the educational institution. For a discussion of each of these certifications see § 21.7152, and § 21.7154 of this part.

(2) Since the VA will permit an individual to certify his or her attendance only once each month, this procedure usually will result in monthly payment of educational assistance.

(Authority: 38 U.S.C. 1434(b); Pub. L. 98–525)

(b) *Payment for intervals between terms.* (1) In administering 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4138(f) of this part in the same manner as they are applied in the administration of chapter 34 when determining whether a veteran is entitled to payment for an interval between terms. References to § 21.4205 in § 21.4138(f) of this part shall be deemed to refer to § 21.7136 of this part.

(2) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.

(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(ii) An educational institution, which disagrees with a decision made under this paragraph by a Director of a VA field station, has one year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Education Service, shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Education Service, has the authority either to affirm or reverse a decision of the Director of a VA field station.

(3) A veteran, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved educational institution to another for the purpose of enrolling in, and pursuing, a similar course at the second educational institution. If the interval between terms does not exceed 30 days, the VA shall, for the purpose of paying educational assistance, consider the veteran to be enrolled in the first educational institution during the interval.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(c) *Payee.* (1) The VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 of this part to 38 U.S.C. ch. 30 in the same manner as they are applied in the administration of chapters 34 and 36.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

(d) *Limitations on payments.* (1) The VA will not pay educational assistance in advance.

(2) The VA will not apportion educational assistance.

(3) The VA will make lump sum payments of educational assistance only in those instances where the veteran's or servicemember's enrollment or attendance is first certified after he or she completes his or her enrollment period.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 98–525)

§ 21.7142 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. ch. 34, who establishes eligibility under 38 U.S.C. ch. 30, shall not receive payment under 38 U.S.C. ch. 30 before January 1, 1990. An individual who is eligible for educational assistance under 38 U.S.C. ch. 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for each program of education he or she wishes to pursue. The provisions of law are:

(1) 38 U.S.C. ch. 31,
(2) 38 U.S.C. ch. 35,
(3) 10 U.S.C. ch. 106, and
(4) 10 U.S.C. ch. 107.

(Authority: 38 U.S.C. 1433; Pub. L. 98–525)

(b) *Election of benefits.* The veteran must elect in writing which benefit he or she wishes to receive. The veteran may make a new election at any time, but may not elect more than once in a calendar month.

(Authority: 38 U.S.C. 1433; Pub. L. 98–525)

§ 21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4008 of this part in the same manner as they are applied in the administration of 38 U.S.C. ch. 34. See § 21.7133 of this part.

(Authority: 38 U.S.C. 1434, 1790(b); Pub. L. 98–525)

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.

(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if the VA determines that the overpayment was made as the result of willful or negligent—

(i) Failure of the educational institution to report, as required by § 21.7140 and § 21.7154 of this part, excessive absences from a course by a veteran or servicemember, or

(ii) False certification by the educational institution, or

(iii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.

(Authority: 38 U.S.C. 1434, 1785; Pub. L. 98–525)

(c) *Recovery of overpayments.* In determining whether an overpayment should be recovered from an educational institution, the VA will apply the provisions of § 21.4009 of this part except paragraph (a)(1) to overpayments of educational assistance under 38 U.S.C. ch. 30 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434, 1785; Pub. L. 98–525)

Cross-Reference: Entitlement charges. See § 21.7076(c) of this part.

Pursuit of Courses

§ 21.7150 Pursuit.

The veteran's or servicemember's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 1434(b); Pub. L. 98–525)

§ 21.7152 Certification of enrollment.

As stated in § 21.7140 of this part, the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance.

(a) *Content of certification of entrance or reentrance.* The certification of entrance or reentrance must clearly specify—

(1) The course;

(2) The starting and ending dates of the enrollment period;

(3) The credit hours or clock hours being pursued by the veteran or servicemember;

(4) The amount of tuition and fees charged to—

(i) The veteran who is training less than one-half time,

(ii) The servicemember,

(iii) The veteran who is pursuing independent study, or

(iv) The veteran who is incarcerated in Federal, State or local prison or jail for conviction of a felony;

(5) The amount charged for books to a veteran or servicemember who is incarcerated in a Federal, State or local prison or jail for conviction of a felony; and

(6) Such other information as the Administrator may find is necessary to determine the veteran's or servicemember's monthly rate of educational assistance.

(Authority: 38 U.S.C. 1432, 1434, 1682(g), 1780, Pub. L. 98–525)

(b) Length of the enrollment period covered by the enrollment certification. (1) Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month or if the veteran elects not be paid for the intervals between terms. The educational institution must submit a separate enrollment certification for

each term, quarter or semester when the certification is for—

(i) A servicemember, or

(ii) A veteran who—

(A) Is training on a less than one-half time basis, or

(B) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When a veteran enrolls in independent study leading to a standard college degree, the educational institution's certification will include—

(i) Enrollment date,

(ii) Established charges for tuition and fees, and

(iii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98–525)

(Approved by the Office of Management and Budget under control number 2900–0073

§ 21.7153 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory progress. The VA will discontinue educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the educational institution he or she is attending.

(Authority: 38 U.S.C. 1434, 1674; Pub. L. 98–525)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the individual will be no longer retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, the VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 38 U.S.C. 1434, 1674; Pub. L. 98–525)

(c) *Reentrance after discontinuance.* (1) An individual may be reentered following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(i) The cause of unsatisfactory conduct or progress has been removed, and

(ii) The VA determines that the program which the individual now proposes to pursue is suitable to his or her aptitudes, interests and abilities.

(2) Reentrance may be for the same program, for a revised program, or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 1434, 1674; Pub. L. 98–525)

§ 21.7154 Pursuit and absences.

As stated in § 21.7140(a) of this part an individual must certify to the VA each month his or her actual attendance during the period for which the individual is to be paid. The educational institution either must endorse the individual's certificate or must separately certify that the individual was enrolled in, and in pursuit of, a program of education during the period being certified.

(a) *Requirements for all veterans and servicemembers.* (1) The monthly certification for all veterans and servicemembers will include a report on the following items when applicable:

(i) Actual attendance,

(ii) Continued enrollment in and pursuit of the course,

(iii) The individual's unsatisfactory conduct or progress,

(iv) Date of interruption or termination of training,

(v) Changes in the number of credit hours or in the number of clock hours of attendance,

(vi) Nonpunitive grades, and

(vii) Any other changes or modifications in the course as certified at enrollment.

(2) The certification of attendance and pursuit must—

(i) Contain the information required for release of payment,

(ii) Be signed by the veteran or servicemember and an official of the educational institution (except that the veteran or servicemember need not sign if he or she has interrupted the enrollment and is not available for signature),

(iii) Be signed on or after the final date of the reporting period, and

(iv) Clearly show the date on which each person signed.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98–525)

(b) *Additional requirments when the course does not lead to a standard college degree.* When the veteran or servicemember is enrolled in a course or courses which do not lead to a standard college degee, he or she must include a report of each day of absence from scheduled attendance. Only those days defined as absences in § 21.7139(a) of this part will be reported. The educational institution will—

(1) Convert partial days of absence to full days of absence as provided in § 21.7139(a) of this part.

(2) Verify the full days of absence reported, and

(3) Endorse the report.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98–525)

(Approved by the Office of Management and Budget under control numbers 2900–0465 and 2900–0354)

§ 21.7156 Other required reports from educational institutions.

Each veteran or servicemember must report without delay any change in his or her hours of credit or attendance, any change in his or her pursuit and any interruption or termination of his or her attendance. Each educational institution must report without delay the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or servicemember enrolled in an approved course. The fact that a veteran or servicemember may fail to present his or her monthly certification of attendance and pursuit for endorsement by the educational institution does not relieve the educational institution of its responsibility.

(a) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or servicemember interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to the VA.

(1) If the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (a) (2) or (3) of this section, the educational institution will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. The educational institution may include the information on the monthly certification of attendance and pursuit.

(2) If the educational institution has certified the veteran's or servicemember's enrollment for more than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to the VA in time for the VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester. The educational institution may use the monthly certification of attendance and pursuit to make this report provided the VA will receive the report within the time period stated in this paragraph.

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to the VA in time for the VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first. The educational institution may use the monthly certification of pursuit to make this report provided the VA will receive the report within the time period stated in this paragraph.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98–525)

(b) *Nonpunitive grades.* An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in time for the VA to receive it before the earlier of the following dates is reached:

(1) Thirty days from the date on which the educational institution assigns the grade, or

(2) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned. The educational institution may use monthly certification of attendance and pursuit to report nonpunitive grades provided the VA will receive the report within the time period stated in this paragraph.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98–525)

(Approved by the Office of Management and Budget under control number 2900–0156)

§ 21.7158 False, late or missing reports.

(a) *Veteran.* Payments may not be based on false or misleading statements, claims or reports. The VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a veteran or servicemember or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 38 U.S.C. ch. 30 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. ch. 34 or 36.

(Authority: 38 U.S.C. 1434, 1780, 1790, 3503; Pub. L. 98–525)

(b) *Educational institution.* (1) The VA may hold an educational institution liable for overpayments which result from the educational institution's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or negligent false certification by the educational institution. See § 21.7144(b) of this part.

(2) When an educational institution willfully and knowingly submits a false report or certification, the VA may disapprove a course for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. The VA will apply the provisions of §§ 21.4202(b), 21.4207 and 21.4208 of this part in the same manner as they are applied in making similar determinations regarding enrollments under 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98–525)

§ 21.7159 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions for furnishing required reports, the VA will apply the provisions of § 21.4206 (except paragraph (c)) of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98–525)

Course Assessment

§ 21.7170 Course measurement.

In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply the following sections in the same manner as they are applied for the administration of chapters 34 and 36.

(a) Section 21.4270 (except those portions of paragraph (a) and footnotes dealing with high school, cooperative, farm cooperative, apprentice and other on-job training)—Measurement of courses,

(b) Section 21.4271 (except paragraph (c))—Trade or technical-high schools,

(c) Section 21.4272 (except paragraph (e)(4))—Collegiate course measurement,

(d) Section 21.4273—Collegiate graduate,

(e) Section 21.4274—Law course,

(f) Section 21.4275—Practical training courses-measurement, and

(g) Section 21.4280—Independent study leading to a standard college degree.

(Authority: 38 U.S.C. 1434, 1788; Pub. L. 98–525)

State Approving Agencies

§ 21.7200 State approving agencies.

State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. ch. 30 as they do for approving courses for training under 38 U.S.C. ch. 34. Accordingly, in administering 38 U.S.C. ch. 30, the VA will apply the provisions of the following sections in the same manner, as they are applied for the administration of 38 U.S.C. chs. 34 and 36.

(a) Section 21.4150 (except paragraph (e))—Designation,

(b) Section 21.4151—Cooperation,

(c) Section 21.4152—Control by agencies of the United States,

(d) Section 21.4153—Reimbursement of expenses, and

(e) Section 21.4154—Report of activities.

(Authority: 38 U.S.C. 1434, 1770, 1771, 1772, 1773, 1774; Pub. L. 98–525)

Approval of courses

§ 21.7220 Course approval.

(a) *Courses must be approved.* (1) A course of education, including the class schedules of a resident course not leading to a standard college degree, offered by an educational institution must be approved by—

(i) The State approving agency for the State in which the educational institution is located, or

(ii) The State approving agency which has appropriate approval authority, or

(iii) The VA, where appropriate. In determining when it is appropriate for the VA to approve a course, the VA will apply the provisions of § 21.4250(b)(3) and (c) of this part.

(2) A course approved under 38 U.S.C. ch. 36 is approved for the purposes of 38 U.S.C. ch. 30 unless it is one of the types of courses listed in § 21.7222 of this part.

(Authority: 38 U.S.C. 1434, 1772; Pub. L. 98–525)

(b) *Courses approval criteria.* In administering benefits payable under 38 U.S.C. ch. 30, the VA and, where appropriate, the State approving agencies, shall apply the following sections in the same manner as they are

applied for the administration of 38 U.S.C. chs. 34 and 36:

(1) Section 21.4250 (except paragraphs (a), (c)(1) and (c)(2)(v))—Approval of courses.

(2) Section 21.4251—Period of operation of course.

(3) Section 21.4253 (except that portion of paragraph (f)(3) which permits approval of a course leading to a high school diploma)—Accredited courses.

(4) Section 21.4254—Nonaccredited courses.

(5) Section 21.4255—Refund policy—nonaccredited courses.

(6) Section 21.4258 (except paragraph (c))—Notice of approval.

(7) Section 21.4259—Suspension or disapproval.

(8) Section 21.4260—Courses in foreign countries.

(9) Section 21.4265 (except paragraphs (c)(4), (f)(1) and (g))—Practical training approved as institutional training.

(10) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1434, 1678, 1772, 1775, 1776, 1778, 1779, 1789, 1789(c); Pub. L. 98-525)

§ 21.7222 Courses and enrollments which may not be approved.

The Administrator may not approve an enrollment by a veteran or servicemember in, and a State approving agency may not approve for training under 38 U.S.C. ch. 30—

(a) A bartending or personality development course;

(b) A flight training course unless the course is offered by an institution of higher learning for credit toward a standard college degree;

(c) A course offered by radio;

(d) A correspondence course;

(e) A course, or combination of courses, consisting of instruction offered by an education institution alternating with instruction in a business or industrial establishment, commonly called a cooperative course;

(f) A course, or combination of courses, consisting of institutional agricultural courses and concurrent agricultural employment, commonly called a farm cooperative course;

(g) An independent study course which does not lead to a standard college degree;

(h) An apprenticeship or other on-job training; or

(i) A refresher, remedial or deficiency course.

(Authority: 38 U.S.C. 1434, 1673; Pub. L. 98-525)

Administrative

§ 21.7301 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Chief Benefits Director of the VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of the VA designated by him or her, to make findings and decisions under 38 U.S.C. ch. 30 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter.

(Authority: 38 U.S.C. 212(a))

(b) *Other delegations of authority.* In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply § 21.4001(b), (c)(1) and (2) and (f) of this part in the same manner as those paragraphs are applied in the administration of 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 212(a), 1434, 1796; Pub. L. 98-525)

§ 21.7302 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of a VA field station of original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7303 of this part. (See §§ 19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 211)

(b) *Decisions of an activity within the VA.* Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 211)

(c) *Character of discharge determinations.* (1) A determination of the character of a veteran's discharge made by a competent military or naval authority or by the Coast Guard is binding upon the VA.

(2) Any determination of the character of a veteran's discharge made by the VA in connection with the veteran's eligibility for a benefit other than educational assistance under 38 U.S.C. ch. 30, shall not affect his or her eligibility for educational assistance.

(Authority: 38 U.S.C. 1411(a), 1412(a); Pub. L. 98-525)

§ 21.7303 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 211; Pub. L. 98-525)

§ 21.7305 Conflicting interests.

In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4005 of this part in the same manner as they are applied in the administration of 38 U.S.C. ch. 34.

(Authority: 38 U.S.C. 1434, 1783; Pub. L. 98-525)

§ 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. ch. 30, the VA will apply the provisions of § 21.4209 of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98-525)

§ 21.7310 Civil rights.

(a) *Delegations of authority concerning Federal equal opportunity laws.*

(1) The Chief Benefits Director is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See § 18.1 et seq. of this chapter. These equal opportunity laws are:

(i) Title VI, Civil Rights Act of 1964,

(ii) Title IX, Education Amendments of 1972, as amended,

(iii) Section 504, Rehabilitation Act of 1973, and

(iv) The Age Discrimination Act of 1975.

(2) In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Chief Benefits Director may use the State approving agencies as provided in § 21.4258(d) of this part.

(Authority: 42 U.S.C. 2000)

(b) *Nondiscrimination in educational programs.* In administering benefits payable under 38 U.S.C. ch. 30, the VA shall apply the following sections in the same manner as they are applied to the administration of 38 U.S.C. chs. 34 and 36:

(1) Section 21.4300—Civil rights assurances—Title VI, Pub. L. 88-352,

(2) Section 21.4301—Institutions of higher learning; elementary and secondary schools; medical institutions,

(3) Section 21.4302 (with the exception of the reference to training establishments)—Proprietary vocational schools and training establishments,

(4) Section 21.4304 (with the exception of references to elementary and secondary schools)—Assurance of compliance received—i.h.l.'s; elementary and secondary schools; medical facilities,

(5) Section 21.4305—Noncompliance—complaints—initial action,

(6) Section 21.4306—Payments after final agency action, and

(7) Section 21.4307—Posttermination compliance.

(Authority: 42 U.S.C. 2000)

[FR Doc. 88-979 Filed 1-21-88; 8:45 am]

BILLING CODE 8320-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Transfer of Entitlement Under the Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Department of Defense Authorization Act, 1986, contains a provision which affects some people who are eligible to receive educational assistance and subsistence allowance under the Educational Assistance Test Program (EATP). This provision makes it easier for some members or veterans of the Navy or Marine Corps to transfer their educational entitlement to their dependents. This final regulation implements this provision of law.

EFFECTIVE DATE: November 8, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 26026 and 26027 of the Federal Register of July 10, 1987, there was published a notice of proposed rulemaking to amend 38 CFR Part 21 to implement the provisions of the Department of Defense Authorization Act, 1986, which liberalized a portion of the Educational Assistance Test Program. Interested persons were given 31 days to submit comments, suggestions, or objections. The Veterans Administration (VA) and the Department of Defense received one letter. The letter writer questioned why the regulation was limited to members and veterans of the Navy and Marine Corps. This limitation is the result of specific wording of the law which allows only the Secretary of the Navy to make the transfer of entitlement under the conditions stated in the proposed regulation. Therefore, the VA and the Department of Defense are making this final.

The VA and the Department of Defense find that good cause exists for making this regulation, like the section of the law it implements, retroactively effective on November 8, 1985. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of this provision of law; and might result in denial of a benefit to a dependent of a member or veteran of the Navy or Marine Corps who is entitled by law to it.

The VA and the Department of Defense have determined that this final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 606(b), the final regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the final regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final regulation.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 10, 1987.

Thomas K. Turnage,

Administrator.

Approved: December 15, 1987.

A. Lukeman,

Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower & Personnel Policy).

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.5743(a) is revised to read as follows:

§ 21.5743 Transfer of entitlement.

(a) *Entitlement may be transferred.* (1) A veteran or servicemember may transfer all or part of his or her entitlement to educational assistance and subsistence allowance to a spouse or dependent child. He or she may not transfer entitlement to more than one person at a time.

(2) The Secretary of the Navy may authorize a member or veteran of the Navy or Marine Corps to make a transfer described in paragraph (a)(1) of this section provided:

(i) The servicemember or veteran has entitlement to educational assistance as provided in § 21.5742;

(ii) The enlistment that established the servicemember's or veteran's entitlement was his or her second reenlistment as a member of the Armed Forces;

(iii) The servicemember or veteran has completed at least four years of active service of that second reenlistment; and

(iv) The servicemember's or veteran's second reenlistment was for a period of at least six years.

(3) No transfer, other than one described in paragraph (a)(2) of this section, may be made until the veteran or servicemember—

(i) Has completed the enlistment upon which his or her entitlement is based or has been discharged for reasons described in § 21.5740(b)(2), and

(ii) Has thereafter reenlisted.

(4) The servicemember or veteran may revoke at any time a transfer described in either paragraph (a) (2) or (3) of this section.

(5) If a veteran attempts to transfer entitlement after 10 years have elapsed from the date he or she has retired, has been discharged or has otherwise been

separated from active duty, the transfer shall be null and void.

(Authority: 10 U.S.C. 2147(a), 2148; Pub. L. 99-145)

* * * * *

[FR Doc. 88-1165 Filed 1-21-88; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 233

Mail Withheld From Delivery

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule supplements the Postal Inspection Service procedures dealing with mail withheld from delivery because it bears a fictitious name or address. The rule adds a procedure to govern mail withheld because it is addressed to a place not the residence or regular business address of the person for whom it is intended to enable such person to escape identification. A procedure is also added to require the Chief Postal Inspector to notify persons whose mail has been withheld from delivery and to advise them what steps must be taken to secure return of their mail. This rule brings these procedures into harmony with recently changed procedures of the Postal Service's Judicial Officer on this subject.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 233

Crime, Postal Service.

PART 233—[AMENDED]

1. The authority citation for Part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 2254.

§ 233.4 [Amended]

2. Paragraph (b) of § 233.4 is revised to read as follows:

* * * * *

(b) *Fictitious name or address and not residents of the place of address orders—(1) Issuance.* Pursuant to 39 U.S.C. 3003, 3004, when there is satisfactory evidence that mail is addressed to a fictitious name, title, or address used for any unlawful business, and no one has established a right to have the mail delivered to him, or that mail is addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification, the Judicial Officer may, pursuant to Part 964, order that the mail be returned to the sender.

(2) *Notice.* (i) The Chief Postal Inspector or his delegate must give notice to the addressee of mail withheld from delivery pursuant to 39 U.S.C. 3003, 3004 that such action has been taken and advise him that he may:

(A) Obtain such mail upon presenting proof of his identity and right to receive such mail, or

(B) Petition the Judicial Officer for the return of such mail. (ii) The notice must be in writing and served by personal service upon the addressee or by Certified Mail (Return Receipt Requested) and by First Class Mail.

(3) *Enforcement.* Notice of any order issued pursuant to 39 U.S.C. 3003, 3004, and any necessary implementing instructions, are published in the Postal Bulletin.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-1265 Filed 1-21-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3317-9]

Approval and Promulgation of Implementation Plans; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces EPA's final disapproval of the California State Implementation Plan (SIP) for ozone and carbon monoxide (CO) in the South Coast Air Basin (SCAB) which includes Orange County and portions of the counties of Los Angeles, Riverside, and San Bernardino. This final action is being taken under court order because the SIP for the SCAB does not provide for attainment of the ozone and CO national ambient air quality standards (NAAQS) by the statutory deadline of December 31, 1987, or even by any other fixed date in the near term, as required by section 172(a) the Clean Air Act ("the Act") (42 U.S.C. 7502(a)). Pursuant to section 110(a)(2)(I) of the Act and EPA's implementing regulations, this approval results in the imposition of a moratorium on the construction and modification of major stationary sources of CO and volatile organic compounds (VOC) in the SCAB. (See 40 CFR 52.24 and 42 U.S.C. 7410(a)(2)(I).) Pursuant to Pub. L. 100-202, signed into law December 22, 1987, EPA is designating August 31, 1988, as the effective date for the ban on construction or modification of such major stationary sources.

DATES: EPA's disapproval of the South Coast SIP is effective February 22, 1988. The ban on construction or modification of major sources is effective August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974-7634; (FTS) 454-7634.

SUPPLEMENTARY INFORMATION:

A. Background

A brief background of the Act and the history of the SCAB SIP is provided here. For a more comprehensive description of the relevant requirements of the Act and EPA's regulatory actions on the SIP for the SCAB, see the proposed disapproval of the SIP for the South Coast and three other areas in California (52 FR 26431, July 14, 1987) and the General Preamble accompanying that notice (52 FR 26404).

The Clean Air Act mandates a system of state implementation plans as the chief mechanism for meeting the NAAQS. Section 110(a)(1) directs the state to submit, within nine months from the promulgation of primary NAAQS, a plan for implementing those NAAQS. Section 110 lays out the criteria for the plan and provides a mechanism for revision of the plan where the Administrator finds that the plan is substantially inadequate to achieve the NAAQS by the relevant deadline.

Recognizing that numerous areas had not been able to attain the NAAQS within the initial timeframe, Congress added Part D to the Act in 1977 which allowed certain "nonattainment" areas to apply for time extensions to December 31, 1982, with the exception that certain areas, in which it was "not possible" to meet that deadline for ozone and CO, could apply for a further extension to December 31, 1987.

California requested, and EPA approved, extensions of the statutory attainment date for the relevant pollutants in SCAB to December 31, 1987. The state then submitted 1982 Plan updates for the ozone and CO SIPS in the SCAB. In 1983, EPA proposed to disapprove these revisions and impose a construction ban. 48 FR 5074 (Feb. 3, 1983). On July 30, 1984, after the state had submitted further revisions, EPA took final action to approve the CO and ozone control measures submitted by the state, but held open the question of whether to approve the attainment demonstration in the SIP submittal. 49 FR 30300, 30305 (July 30, 1984).

In September 1984, a citizen filed a petition in the Ninth Circuit Court of Appeals for review of EPA's July 30, 1984 decision, contending that EPA violated the Act by approving the SCAB control measures without determining whether those measures would attain the NAAQS by the statutory deadline (*Mark Abramowitz v. United States Environmental Protection Agency*, No. 84-7642 (9th Cir. Nov. 3, 1987)). In July 1987, prior to a decision in that case, EPA reproposed to disapprove the ozone and CO SIP for the SCAB. 52 FR 26408-26409 (July 14, 1987). In that notice, EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstrating attainment by the deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction ban under section 110(a)(2)(I).

On November 3, 1987, the Ninth Circuit Court of Appeals issued its opinion in *Abramowitz*, holding that EPA lacked authority to defer action on whether the SCAB plan meets all of the Part D requirements of the act when the agency approved the individual control measures. The Court vacated EPA's approval of the control measures and ordered EPA to "disapprove the relevant SIP provisions." Slip op. at 19.

B. Discussion

Pursuant to the Ninth Circuit Court's instructions in *Mark Abramowitz v. United States Environmental Protection Agency*, EPA is hereby taking final action to disapprove the SIP for the SCAB. As in the case of EPA's July 14, 1987, proposal, the ground for EPA's final disapproval is that it does not demonstrate attainment of the ozone and CO NAAQS by December 31, 1987, or even by any other fixed date in the near term. Under the terms of the Act and EPA's regulations, such final plan disapproval results in the imposition of the construction ban in the South Coast Air Basin for major new sources and major modifications of existing sources of CO and VOC.

Today's action is mandated by the Court's order, and is not an independent Agency final action based on EPA's July 14, 1987, proposal. The Court's decision establishes that EPA has no discretion under the law to postpone the final disapproval. Thus, EPA is not responding directly to public comments on the EPA's July 14, 1987, proposal. EPA may respond to some of the comments in the future, perhaps in connection with EPA's final policy on how areas like the South Coast should correct their SIPS after December 31, 1987.

Under EPA's interpretation of the Clean Air Act 110(a)(2)(I) and 40 CFR 52.24(a), EPA's disapproval of a Part D SIP triggers a ban on construction or modification of major sources in the area concerned. However, Pub. L. 100-202, signed into law December 22, 1987, prohibits EPA from imposing certain sanctions under the Clean Air Act, including the construction ban, during a moratorium extending through August 30, 1988. Accordingly, while EPA is today taking final action to comply with the Court's order, it is designating August 31, 1988 as the effective date for the construction ban.[1]

C. Final Action

In response to the Court's order, EPA is today taking final action to disapprove the ozone and CO SIP for the SCAB. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this disapproval is effective February 22, 1988. Pursuant to Pub. L. 100-202, the effective date for the construction ban is August 31, 1988.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. EPA does not have sufficient information to determine the impacts that the construction moratorium announced in today's notice may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Act, the imposition of a construction moratorium is mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Act, and that determination, in turn, is required by the Ninth Circuit's decision.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollutin control, Ozone, Carbon monoxide, Intergovernmental relations.

Dated January 13, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart F, is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.237 is amended by adding paragraph (a)(1) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(1) The ozone and CO attainment demonstrations for the South Coast Air Basin. No major stationary source, or major modification of a stationary source, of carbon monoxide or volatile organic compounds may be constructed in the South Coast Air Basin unless the construction permit application is complete on or before August 30, 1988.

[FR Doc. 88-1305 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

An Indefinite Extension of the Part 15 Interim Provisions for Cordless Telephones

AGENCY: Federal Communications Commission.

[1] Any major source for which the construction permit application is complete (as explained in 52 FR 26404, 26409 n. 18 (July 14, 1987)) on or before August 30, 1988 will not be subject to the section 110(a)(2)(I) construction ban.

EPA has historically read section 110(a)(2)(I) as exempting from the construction ban a source whose "complete" application predates the effective date of the disapproval triggering the construction ban. *See id.* and 40 CFR 52.24(a). Under this practice, EPA's disapproval of the South Coast Part D SIP would ordinarily result in a ban on construction of any source whose permit application is not "complete" as of [thirty days from publication], the effective date for the disapproval. However, Pub. L. 100-202 directs that no Clean Air Act 110(a)(2)(I) sanction shall be "imposed or take effect" during the period prior to August 31, 1988 in any of three circumstances, including a state's failure to attain the ozone or CO NAAQS or to submit a SIP meeting the requirements of Part D. Accordingly, EPA's disapproval of the South Coast SIP does not constitute a prohibition on permitting of any source whose permit application is completed prior to August 31, 1988.

ACTION: Final rule.

SUMMARY: This action will permit continued manufacture, importation, and marketing of cordless telephones that operate near frequencies at 46 and 49 MHz beyond the dates indicated in the rules. Current rules require the manufacturing and importation of cordless telephones to end by February 15, 1989, while, marketing is to end by February 15, 1990. Hence, this action is intended to allow cordless telephones continued operation at frequencies near 46 and 49 MHz. Furthermore, in order to lessen he chances of interference between cordless telephones, the rules are revised to ease the channeling requirements.

EFFECTIVE DATE: March 1, 1988.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph P. Husnay, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION: Cordless telephones have been operating under interim provisions that are soon to expire. The cordless telephone industry, therefore, asked the Commission to extend the rules and to increase the number of channels they could communicate on. The Commission agreed to extending the current rules but could not provide additional channels. Instead of providing additional channels the Commission relaxed the rules so that the industry may use advanced technology to split the channels currently available. Although the industry is not forced to divide the channels, they may do so to increase the number of channels cordless telephones use.

Ordering Clauses

1. This action is taken pursuant to 47 U.S.C. sections 154(i), 302, 303(r), and section 553 of the Administrative Procedure Act, 5 USC 553.

2. Accordingly, *It is ordered*, that Part 15 of the Commission's Rules is amended as specified below.

3. *It is further ordered* that this proceeding *is terminated*.

List of Subjects in 47 CFR Part 15

Telephone.

Rule Changes

Part 15 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. Section 15.231 is amended by revising the title and removing the last sentence.

§ 15.231 Provisions for cordless telephones.

* * * * *

3. The title and first sentence of § 15.232 are revised to read:

§ 15.232 Frequencies for cordless telephones.

A cordless telephone shall be operated on any frequency within 10 kHz of the following frequences.

* * * * *

4. Section 15.233 is amended as follows: Paragraph (a) is amended by revising the first sentence. Paragraph (b) is amended by revising the first and second sentences. Paragraph (d) is amended by revising the first sentence up to the colon. Revisions are as follows:

§ 15.233 Technical specifications.

* * * * *

(a) Frequency tolerance of the carrier shall not be greater than ± 0.01%.

* * * * *

(b) The fundamental emission shall be confined within a 20 kHz band centered on the frequencies listed in § 15.232. Modulation products outside of this 20 kHz band shall be attenuated at least 26 dB below the level of the unmodulated carrier.

* * * * *

(d) Harmonics and other out-of-band emissions, on any frequency more than 20 kHz removed from the frequencies listed in § 15.232 shall comply with the field strength limitations in the following table:

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–1209 Filed 1–21–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–27; RM–5364]

Radio Broadcasting Services; Wilmington, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants the request of Woolfson Broadcasting Corporation of Wilmington, Inc. to substitute Channel 286C2 for Channel 285A at Wilmington, North Carolina, and the modification of its license for Station WWQQ–FM to specify the higher powered channel. Channel 286C2 can be allocated to Wilmington with a site restriction of 28.7 kilometers south to accommodate petitioner's desired site. The Commission found that grant of the mutually exclusive application of Winfas of Belhaven specifying Channel 286C2 for Station WJKA at Belhaven, North Carolina, not to be in the public interest. Rather, it found that WJKA could specify a site which would not conflict with the requested upgrade at Wilmington, thus permitting a more efficient use of the spectrum by allowing increased service to be provided to the residents of both the Belhaven and Wilmington areas. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 86–27, adopted December 10, 1987, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Wilmington, North Carolina, is amended by adding Channel 286C2 and deleting Channel 285A.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–05; Notice 2]

Federal Motor Vehicle Safety Standards—Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration [NHTSA], DOT.

ACTION: Final rule.

SUMMARY: This document amends Federal motor vehicle safety standard 213, *Child Restraint Systems*, to permit installing built-in child restraint systems in passenger cars. The agency initiated this action in response to a petition for rulemaking submitted by Mr. Verne L. Freeland. As amended, Standard 213 sets performance requirements both for add-on child restraints systems, and for child restraint systems that form an integral part of a vehicle seat (built-in restraints).

DATE: This final rule is effective on January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4924).

SUPPLEMENTARY INFORMATION: On March 23, 1987, NHTSA published a notice of proposed rulemaking (NPRM) in response to a petition from Mr. Verne L. Freeland. (52 FR 9194). Mr. Freeland asked that the agency amend Standard 213, *Child Restraint Systems*, to permit the production and installation of a child restraint system that forms an integral part of a vehicle seat (built-in child restraint system). Standard 213 was issued by the agency under the National Traffic and Motor Vehicle Safety Act. (15 U.S.C. 1392 et seq.) When Mr. Freeland submitted his petition, the Standard set out performance requirements for a child restraint system that is placed on a vehicle seat and held in position by a vehicle lap belt (add-on child restraint system).

Because add-on child restraint systems were the only type of child restraint system produced when the agency issued Standard 213 in 1970, the Standard addressed that kind of restaint, although some specifications would have been appropriate for built-in restraints. Recognizing that some Standard 213 provisions might apply either to built-in or add-on restraints, the agency proposed to amend the Standard only to the extent necessary to accommodate built-in restraints. In those instances where specifications would not accommodate built-in restraints, the agency proposed creating a separate requirement for each kind of restraint. NHTSA is adopting the amendments set out in the NPRM without change.

The agency received two comments on the proposed rule. A private citizen favored the amendment, stating that the convenience of a built-in child restraint might increase system use, and that instruction and labeling would facilitate appropriate use. The second commenter was Volvo Cars of North America (Volvo). Volvo generally favored the proposed amendment because the agency would be removing restrictions that inhibit innovation in child restraint systems design.

However, the company suggested that NHTSA delete the knee excursion requirement in subparagraph S5.1.3.1(b). The knee excursion requirement exists to preclude a child restraint system design that controls unacceptable forward head movement under test conditions by allowing excessive forward and down movement of the lower body. When a test dummy slides excessively forward and down, legs first, under crash test conditions, the phenomenon is called "submarining."

The company gave two reasons for its suggestion that the agency delete the knee excursion requirement for built-in child restraint systems. The first was that because section S5.4.3.3 of the Standard requires a 5-point harness (including a crotch strap), the risk of submarining is minimal; therefore, the knee excursion requirement is unnecessary. The second reason is the difficulty in filming knee excursion during a crash test given that a manufacturer must test a built-in restraint in a complete vehicle or body shell. (One tests an add-on child restraint by securing it to a special test platform traveling at an equivalent vehicle speed of 30 miles per hour.) NHTSA rejects Volvo's suggestion for the following reasons.

The 5-Point Harness and Reduced Submarining Risk. First, contrary to Volvo's comment, S5.4.3.3 allows child restraint systems other than a 5-point harness system. Because those systems may not include a crotch strap, the risk of submarining is significant and the need for a knee excursion requirement is indisputable. However, Volvo correctly observes that the risk of submarining is "very small" for current child restraint systems that use a 5-point harness. On the other hand, a critical reason that the agency has a knee excursion requirement is to discourage a manufacturer's permitting excessive knee excursion in order to achieve acceptable head excursion or injury limitations. NHTSA wishes to preclude this kind of trade-off in any type of restraint system, and therefore declines to eliminate the knee-excursion requirement.

Difficulty in Filming Knee Excursion During a Crash Test. NHTSA finds this argument without merit. The technology of photographing events occurring in actual or simulated vehicle crashes is well-developed. To record events inside a vehicle during a crash, it is common practice both in research and compliance testing to mount a camera facing inward either on a stationary bracket, or on a bracket attached to the automobile or sled-structure. A built-in child restraint systems manufacturer can use a similar procedure to record knee excursion.

NHTSA recognizes that it may not be easy to combine the knee excursion test with other vehicle tests; therefore, installing a built-in restraint in a vehicle may add to development costs. On the other hand, the agency does not require that a manufacturer install such a system, and these added costs may be avoided simply through the manufacturer's election not to offer built-in restraints. A manufacturer which chooses to provide a built-in restraint system must be willing to make a reasonable assessment of the system's safety.

Conclusion. NHTSA concludes that built-in child restraint systems can provide a level of safety at least equal to that provided by add-on child restraint systems. Additionally, the agency notes that a built-in child restraint system may encourage system use because these systems will be available as an integral part of the vehicle.

Therefore, the agency adopts the changes to Federal motor vehicle safety standard 213 set out in the NPRM published on March 23, 1987.

Effective Date. This rule will make manufacturing child restraint systems less restrictive by permitting production and installation of a new type of system. Further, the Standard as amended does not require a manufacturer to include the system in its product line, but rather expands manufacturer options. Because the rule relieves a restriction, there is good cause for making it effective immediately, i.e., on the publication date.

Impact Assessments

A. Executive Order 12291

NHTSA has considered costs and other factors associated with providing built-in child restraints, and concludes that this rule is non-major under Executive Order 12291. Increased consumer costs for passenger cars equipped with built-in systems will be a consequence of production volume, and design engineering and development costs. For a large vehicle manufacturer, the costs of testing a built-in child restraint system probably would be minimal when averaged over large production volumes. On the other hand, such testing could be a signficant cost for low volume vehicle manufacturers.

While NHTSA has no data on the cost of a built-in child restraint system, the agency notes that this amendment does not require installing these restraints. Rather, a manufacturer now may exercise an option to provide built-in child restraint systems and incur the cost of testing the product or otherwise exercise due care in certifying compliance, or decline to intall built-in child restraint systems.

For these reasons, the rule imposes no new costs on manufacturers, and therefore is not likely to have an annual effect on the economy of $100 million; to result in a major increase either in motor vehicle production costs or prices; or to have significant adverse impacts on competition or market incentives.

B. Department of Transportation Order 2100.5: Improving Government Regulations

For the reasons set out in the preceding discussion, and further because the Administrator has determined that this final rule does not involve the non-economic concerns set out in DOT Order 2100.5, the agency finds that this rule is not significant with the meaning of DOT Order 2100.5.

C. Small Business Impact

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. The built-in child safety seat is an innovative product that may be installed in a vehicle at the vehicle manufacturer's discretion. Some manufacturers of add-on child restraints are small businesses under SBA guidelines. If motor vehicle manufacturers begin offering built-in child restraints in passenger cars and consumers start to purchase them in large numbers, there could be a negative impact on add-on child restraint sales. However, this scenario may not materialize. NHTSA cannot evaluate with certainty the economic future or potential effects of these devices on small businesses, and the agency did not receive comments on the proposed rule addressing these potential effects. Further, neither the Regulatory Flexibility Act nor the Vehicle Safety Act was intended to limit the opportunity of businesses to develop and market new safety devices.

D. Environmental Impact

Under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this rule, and has determined that this rule would not be a major Federal action significantly affecting the quality of the human environment.

E. Paperwork Reduction Act

The requirement that manufacturers include instructions in the vehicle owner's manual on using built-in restraints is a collection of information requirement under the Paperwork Reduction Act. OMB approved this requirement through April 1990, under the Act (44 U.S.C. 3501, *et seq.*). The OMB control number is 2127–0542.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends Title 49, Part 571.213, *Child Restraint Systems*, as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

Standard No. 213

§ 571.213 [Amended]

2. S4 of 49 CFR 571.213 is amended to add three new definitions in alphabetical order as follows:

"Add-on child restraint system" means any portable child restraint system.

"Built-in child restraint system" means any child restraint system which is an integral part of a passenger car.

"Specific vehicle shell" means the actual vehicle model part into which the built-in child restraint sytem is fabricated, including the complete surroundings of the built-in system. If the built-in child restraint system is manufactured as part of the rear seat, these surroundings, include the back of the front seat, the interior rear side door panels and trim, the rear seat, the floor pan, the B and C pillars, and the ceiling. If the built-in system is manufactured as part of the front seat, these surroundings include the dashboard; the steering wheel, column, and attached levers and knobs; the "A" pillars; any levers and knobs installed in the floor or on a console; the interior front side door panels and trim; the front seat; the floor pan; and the ceiling.

3. The introductory paragraph of S5 of 49 CFR 571.213 is revised to read as follows:

S5 *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint system certified for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

4. S5.1.3.1 of 49 CFR 571.213 is revised to read as follows:

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds.* Each child restraint system, other than a rear-facing child restraint system or a car bed, shall retain the test dummy's torso within the system.

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical transverse plane that is 32 inches forward of point z on the standard seat assembly, measure along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plan that is 36 inches forward of point z on the standard seat assembly, measured along the center SORL.

(b) In the case of a built-in child restraint system, neither knee pivot shall pass through a vertical, transverse plane that is 36 inches forward of the hinge point of the specific passenger car seat into which the system is built, measured along a horizontal line parallel to the vehicle's longitudinal center line and the center line of the passenger car seat.

5. S5.2.1.2 of 49 CFR 571.213 is revised to read as follows:

S5.2.1.2 A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

(a) The standard seat assembly, in the case of an add-on child restraint system, when the dummy is positioned in the system and the system is installed on the assembly in accordance with S6.1.2.

(b) the passenger car seat, in the case of a built-in child restraint system, when the system is activiated and the dummy is positioned in the system in accordance with S6.1.2.

6. S5.2.2.2 of 49 CFR 571.213 is revised to read as follows:

S5.2.2.2 Each forward-facing child restraint system shall have no fixed or movable surface—

(a) Directly forward of the dummy and intersected by a horizontal line—

(1) Parallel to the SORL, in the case of the add-on child restraint system, or

(2) Parallel to a vertical plane through the longitudinal center line of the passenger car seat, in the case of the built-in child restraint system, and

(b) Passing through any portion of the dummy, except for surfaces which restrain the dummy when the system is tested in accordance with S6.1.2.1.2, so that the child restraint system shall conform to the requirements of S5.1.2 and S5.1.3.1.

7. S5.3.1 and S5.3.2 of 49 CFR 571.213 is revised to read as follows:

S5.3.1 Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion and vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

S5.3.2 When installed on a vehicle seat, each add-on child restraint system, other than child harnesses, shall be capable of being restrained against forward movement solely by means of a Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208), or by means of a Type I seat belt assembly plus one additional anchorage strap that is supplied with the system and conforms to S5.4.

8. S5.4.3.2 of 49 CFR 571.213 is revised to read as follows:

S5.4.3.2 *Direct restraint.* Each belt that is part of a child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system, or

(a) in the case of an add-on child restraint system, for the mass of the seat back of the standard seat assembly specified in S7.3, or

(b) in the case of a built-in child restraint system, from the mass of any part of the vehicle into which the child restraint system is built.

9. S5.5.1 of 49 CFR 571.213 is revised to read as follows:

S5.5.1 Each add-on child restraint system shall be permanently labeled with the information specified in S5.5.2 (a) through (l).

10. S5.5.3 of 49 CFR 571.213 is revised to read as follows:

S5.5.3 The information specified in S5.5.2 (g) through (k) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1.

11. A new paragraph S5.5.4 is added to 49 CFR 571.213 to read as follows:

S5.5.4 Each built-in child restraint system shall be permanently labeled with the information specified in S5.5.5 (a) through (j), so that it is visible when the system is activated for use as specified in S5.6.2.

12. A new paragraph S5.5.5 is added to 49 CFR 571.213 to read as follows:

S5.5.5 The information specified in paragraphs (a) through (j) of this section shall be stated in the English language and lettered in letters and numbers which are not smaller than 10-point type and are on a contrasting background. This information shall be printed in the vehicle owner's manual.

(a) The model name or number of the system.

(b) The manufacturer's name. A distributor's or dealer's name may be used instead if the distributor or dealer assumes responsibility for all duties and liabilities imposed on the manufacturer with respect to the system by the National Traffic and Motor Vehicle Safety Act, as amended.

(c) The statement: "Manufactured in ———," inserting the month and year of manufacture.

(d) The place of manufacture (city and State, or foreign country). However, if the manufacturer uses the name of the distributor or dealer, then it shall state the location (city and State, or foreign country) of the principal offices of the distributor or dealer.

(e) The statement: "This child restraint system conforms to all applicable Federal motor vehicle safety standards."

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum weight and height of children who can safely occupy the system:

(i) This infant restraint is designed for use by children who weigh —— pounds or less and whose height is —— inches or less;

(ii) This child restraint is designed for use only by children who weigh between —— and —— pounds and whose height is —— inches or less and who are capable of sitting upright alone; or

(iii) This child restraint is designed for use by children who weigh between —— and —— pounds and are between —— and —— inches in height.

(g) The following statement:

WARNING! FAILURE TO FOLLOW THE MANUFACTURER'S INSTRUCTIONS ON THE USE OF THIS CHILD RESTRAINT SYSTEM CAN RESULT IN YOUR CHILD STRIKING THE VEHICLE'S INTERIOR DURING A SUDDEN STOP OR CRASH.

(h) In the case of each built-in child restraint system that has belts designed to restrain children using them:

SNUGLY ADJUST THE BELTS PROVIDED WITH THIS CHILD RESTRAINT AROUND YOUR CHILD.

(i) In the case of each built-in child restraint which can be used in a rear-facing position, the following statement:

PLACE AN INFANT IN A REAR-FACING POSITION IN THIS CHILD RESTRAINT.

(j) A diagram or diagrams showing the fully activated child restraint system in infant and/or child configurations.

13. S5.6 of 49 CFR 571.213 is revised to read as follows:

S5.6 *Printed Instructions for Proper Use.*

S5.6.1 *Add-on child restraint systems.* Each add-on child restraint system shall be accompanied by printed installation instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child.

S5.6.1.1 In a vehicle with rear designated seating positions, the instructions shall alert vehicle owners that, according to accident statistics, children are safer when properly restrained in the rear seating positions than in the front seating positions.

S5.6.1.2 The instructions shall specify in general terms the types of vehicles, the types of seating positions, and the types of vehicle safety belts with which the add-on child restraint system can or cannot be used.

S5.6.1.3 The instructions shall explain the primary consequences of not following the warnings required to be labeled on the child restraint system in accordance with S5.5.2 (g) through (k).

S5.6.1.4 The instructions for each car bed shall explain that the car bed should position in such a way that the child's head is near the center of the vehicle.

S5.6.1.5 The instructions shall state that add-on child restraint systems should be securely belted to the vehicle, even when they are not occupied, since in a crash an unsecured child restraint system may injure other occupants.

S5.6.1.6 Each add-on child restraint system shall have a location on the restraint for storing the manufacturer's instructions.

S5.6.2 *Built-in Child restraint systems.* Each built-in child restraint system shall be accompanied by printed instructions

in the English language that provide a step-by-step procedure, including diagrams, for activating the built-in child restraint system, positioning a child in the system, adjusting the restraint and, if provided, the restraint harness to fit the child. This information and the information specified in S5.5.5, shall be included in the vehicle owner's manual.

S5.6.2.1 The instructions shall explain the primary consequences of not following the manufacturer's warnings for proper use of the child restraint system in accordance with S5.5.5(f) through (i).

14. S5.7 of 49 CFR 571.213 is revised to read as follows:

S5.7 *Flammability.* Each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302). In the case of a built-in child restraint system, the requirements of S4 of FMVSS No. 302 shall be met in both the "in-use" and "stowed" positions.

15. S6.1.1.1 of 49 CFR 571.213 is revised to read as follows:

S6.1.1.1 (a) The test device for add-on child restraint systems is the standard seat assembly specified in S7.3. The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented. The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle. The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement between the base of the shell and the platform is prevented.

(b) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel class as specified in Society of Automotive Engineers Recommended Practice J211 JUN80 "Instrumentation for Impact Tests." The accelerometer sensitive axis is parallel to the direction of test platform travel.

(c) For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. Activate the system in accordance with the manufacturer's instructions provided in the vehicle owner's manual in accordance with S5.6.2. When the complete vehicle traveling longitudinally forward at any speed up to and including 30 mph, impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, the built-in child restraint system shall meet the injury criteria of S5.1.2. The following test conditions apply to this alternate test device.

(i) The vehicle is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the appropriate child test dummy and, at the option of the manufacturer, an anthropomorphic test dummy which conforms to the requirements of Subpart B or Subpart E of Part 572 of this title for a 50th percentile adult male dummy placed in the front outboard seating position. If the built-in child restraint system is installed at one of the seating positions otherwise requiring the placement of a Part 572 test dummy, then in the frontal barrier crash specified in S6.1.1.2, the appropriate child test dummy shall be substituted for the Part 572 test dummy, but only at that seating position. The fuel tank is filled to any level from 90 to 95 percent of capacity.

(ii) Adjustable seats are in the adjustment position midway between the forward-most and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forward-most and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

(iii) Adjustable seat backs are in the manufacturer's nominal design riding position. If a nominal position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an anthropomorphic test dummy is used, the accelerometer surfaces in the test dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(iv) Movable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position.

(v) Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

(vi) Doors are fully closed and latched but not locked.

(vii) All instrumentation and data reduction is in conformance with SAE J211 JUN80.

15*a*. S6.1.1.2 is revised to read as follows:

S6.1.1.2 The tests are frontal barrier impact simulations of the test platform or frontal barrier crashes of the specific vehicles as specified in S5.1 (571.208) and for:

(a) Test Configuration I specified in S6.1.2.1.1, are at a velocity change of 30 mph with the acceleration of the test platform entirely within the curve shown in Figure 2, or for the specific vehicle test with the deceleration produced in 30 mph frontal barrier crash.

(b) Test Configuration II specified in S6.1.2.1.2 are set at a velocity change of 20 mph with the acceleration of the test platform entirely within the curve shown in Figure 3, or for the specific vehicle test with the deceleration produced in 20 mph frontal barrier crash.

16. S6.1.1.3 of 49 CFR 571.213 is revised to read as follows:

S6.1.1.3 In the case of add-on child restraint systems, Type 1 seat belt assemblies meeting the requirements of Standard No. 209 (§ 571.209) and having webbing with a width of not more than 2 inches are attached, without the use of retractors or reels of any kind, to the seat belt anchorage points (illustrated in Figure 1B) provided on the standard seat assembly.

17. S6.1.2.1 of 49 CFR 571.213 is revised to read as follows:

S6.1.2.1 *Test configuration.*

S6.1.2.1.1 *Test configuration I.* (a) In the case of each add-on child restraint system other than a child harness, a booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children, install a new add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1.

(b) In the case of each built-in child restraint system, activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in the vehicle owner's manual in accordance with S5.6.2.

S6.1.2.1.2 *Test configuration II.* (a) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a booster seat with a top anchorage strap, install a new add-on child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

(b) In the case of each built-in child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a built-in booster seat with a top anchorage strap, activate the system in the specific vehicle shell or the specific vehicle in accordance with the manufacturer's instructions provided in the vehicle owner's manual in accordance with S5.6.2.

18. S6.1.2.2 of 49 CFR 571.213 is revised to read as follows:

S6.1.2.2 Tighten all belts used to attach the add-on child restraint system to the standard seat assembly to a tension of not less than 12 pounds and not more than 15 pounds, as measured by a load cell used on the webbing portion of the belt. Tighten all manual vehicle belts used to secure the built-in child restraint system or a child to the specific vehicle shell or specific vehicle to one of the following tensions:

(a) For a seat equipped with a manual adjuster or automatic locking retractor, not less than 12 pounds and not more than 15 pounds, as measured by a load cell used on the webbing portion of the belt;

(b) For a seat equipped with an emergency locking retractor, as specified in S4.3 of Standard 209.

19. S6.1.2.3.1 of 49 CFR 571.213 is revised to read as follows:

S6.1.2.3.1 When placing the 3-year-old test dummy in add-on or built-in child restraint systems other than car beds, position the test dummy according to the instructions for child positioning provided by the manufacturer with the system in accordance with S5.6.1 or S5.6.2 while conforming to the following:

(a) Holding the test dummy torso upright until it contacts the system's design seating surface, place the test dummy in the seated position within the system with the midsagittal plane of the test dummy head—

(1) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(2) Vertical and parallel to the longitudinal center line of the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system.

(b) Extend the arms of the test dummy as far as possible in the upward vertical direction. Extend the legs of the dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the centerline of the lower legs.

(c) Using a flat square surface with an area of 4 square inches, apply a force of 40 pounds, perpendicular to:

(i) The plane of the back of the standard seat assembly in the case of an add-on child restraint system, or

(ii) The back of the vehicle seat in the specific vehicle shell or the specific vehicle in the case of a built-in child restraint system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2.4. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2.2. Position each movable surface in accordance with the manufacturer's instructions provided in accordance with S5.6.1 or S5.6.2.

(d) After the steps specified in paragraph (c) of this section, rotate each dummy limb downwards in the plane parallel to the dummy's midsagittal plane until the limb contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on system, or the specific vehicle shell or specific vehicle in the case of a built-in system, as appropriate. Position the limbs, if necessary, so that limb placement does not inhibit torso or head movement in tests conducted under S6.

20. S6.1.2.3.2 of 49 CFR 571.213 is revised to read as follows:

S6.1.2.3.2 When placing the 6-month-old dummy in add-on or built-in child restraint systems other than car beds, position the test dummy according to the instructions for child positioning provided with the system by the manufacturer in accordance with S5.6.1 or S5.6.2 while conforming to the following:

(a) With the dummy in the supine position on a horizontal surface, and while preventing movement of the dummy torso by placing a hand on the center of the torso, rotate the dummy legs upward by lifting the feet until the legs contact the upper torso and the feet touch the head, and then slowly release the legs but do not return them to the flat surface.

(b) Place the dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2.4. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2.2. Position each movable surface in accordance with the manufacturer's instructions provided in accordance with S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, it shall be taped against the front of the seat back surface of the system by means of a single thickness of ¼-inch-wide paper masking tape placed across the center of the dummy's face.

(c) Position the dummy arms vertically upwards and then rotate each arm downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle in the case of a built-in child restraint system, ensuring that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific vehicle shell, or the specific vehicle.

21. S6.1.2.6 of 49 CFR 571.213 is revised to read as follows:

S6.1.2.6 For add-on child restraint systems, measure dummy excursion and determine conformance with the requirements specified in S5.1 as appropriate. For built-in child restraint systems, measure dummy knee excursion and determine conformance with the requirements specified in S5.1 as appropriate.

22. S6.2.3 of 49 CFR 571.213 is revised to read as follows:

S6.2.3 Pull the sling horizontally in the manner illustrated in figure 4 and parallel to the center SORL of the standard seat assembly, in the case of an add-on child restraint system, or parallel to the longitudinal center line of either the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system, and apply a force of 20 pounds in the case of a system tested with a 6-month-old dummy and 45 pounds in the case of a system tested with a 3-year-old dummy.

23. S7.3 of 49 CFR 571.213 is revised to read as follows:

S7.3 *Standard test devices.*

(a) The standard test devices used in testing add-on child restraint systems under this standard are:

(1) For testing for motor vehicle use, a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 (consisting of drawings and a bill of materials); and

(2) For testing for aircraft use, a standard seat assembly consisting of a representative aircraft passenger seat.

(b) The standard test devices used in testing built-in child restraint systems under this standard are either a specific vehicle shell or a specific vehicle.

Issued on: January 15, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88–1171 Filed 1–21–88; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 53, No. 14
Friday, January 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 338

Conversion of Cooperative Education Program Students; Restriction on Sons and Daughters

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing the use of Schedule B appointing authorities to permit the noncompetitive conversion of qualified Cooperative Education Program (Co-op) students into clerical, administration support, technician, helper and preapprentice occupations in the Federal service. OPM is also proposing the use of employment of relatives restrictions in lieu of sons and daughters restrictions. These changes will strengthen the Federal service by providing simplified career entry for Co-op students based on their demonstrated performance in study-related work assignments in Federal agencies.

DATE: Comments must be received on or before February 22, 1988.

ADDRESS: All comments concerning these proposed regulations should be addressed to Fran Lopes, Assistant Director for Recruiting and Special Personnel Programs, Office of Personnel Management, 1900 E Street, NW., Room 6355 Attn: CO-OP, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marsha E. Frost, (202) 632–0498.

SUPPLEMENTARY INFORMATION:

Cooperative Education Program: Cooperative education is a method of education which includes full-time or part-time periods of study and paid employment related to a student's academic study or career goals in order to qualify for permanent employment upon graduation. It is a planned and progressive educational program designed to attract quality students into the labor force. A working agreement dealing with education and work requirements must exist between the educational institution, employer, and student at the time of appointment. A key feature of the program is the noncompetitive conversion of a student from the excepted service into the competitive service after satisfactory completion of educational and work requirements as authorized under Executive Order 12015, dated October 22, 1977. Currently, Federal Co-op students in baccalaureate, graduate, and associate degree-granting programs are eligible for noncompetitive conversion under 5 CFR 213.3202 (a), (b), and (c), respectively, if they satisfactorily complete degree requirements combined with study-related work assignments in a Federal agency.

Recently, a Federal Task Force comprised of representatives from Federal agencies, educational institutions, the Department of Education and the Office of Personnel Management reviewed regulations pertaining to Co-op Programs in an effort to simplify guidance, grant more flexibility to Federal agencies, and increase the quality of student employment programs Governmentwide. Concurrently, a study was undertaken of clerical and administrative support occupations and of the need to identify proactive approaches to alleviate recruiting shortages in major metropolitan areas in order to meet future work force demands. Recommendations to establish the proposed regulations and simplify processes were strongly endorsed by both task groups. The proposals basically apply the same requirements to high school and undergraduate certificate program students as exist in the higher education Co-op programs.

In 1986, there were 2,080 students in the High School Co-op Program. Currently, high school students, upon graduation, have their appointments terminated in the Co-op program and they must recompete for Federal service positions. This usually occurs after students have performed successfully and for a substantial period of time on the job in a Federal agency. Through noncompetitive conversion of high school Co-op students, we can improve the efficiency and effectiveness of Federal staffing programs and the Government can gain trained personnel in clerical, administrative support, technician, helper and preapprentice occupations. The same concept applies to students in undergraduate certificate programs, who previously have not been eligible for participation in Co-op programs. These revisions also eliminate the use of § 213.3102(g) and (q), Schedule A appointing authorities, for Co-op students, since Schedule B will be used for Co-op students at all educational levels of study.

Restriction on Hiring of Sons and Daughters: In line with program simplification efforts, OPM is recommending removal of § 213.3201(b) and 338.202(d) "Restriction on sons and daughters," for student employment programs conducted under Executive Order 12015. These regulations are already covered under § 310.103 (a), (b), and (c), "Restrictions on the Employment of Relatives," which state that a "public official shall not advocate one of his/her "relatives" and/or appoint, employ, promote, or advance them to a position in his/her agency or in an agency over which he/she exercises jurisdiction or control." The definition of relative as contained in § 310.102, means "father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister." In today's environment students, in addition to being sons and daughters, are also husbands, wives, mothers, fathers, etc., and are adequately covered under Part 310.

In addition, students are referred to Federal agencies for work assignments by the educational institution based on their academic standing and eligibility in the school's Co-op program. Sufficient controls, built into the referral process, along with existing "Employment of Relatives" restrictions, will ensure against the hiring of relatives over which a public official has control or jurisdiction. Agencies will have the flexibility to apply any additional controls they feel are necessary.

Proposed Amendments: The proposed regulations will: (1) revise § 213.3102(q)(2)(ii), Schedule A authority, deleting references to Co-op students; (2) revise Schedule B authority, § 213.3202(e) to include all high school Co-op students for noncompetitive

conversion, instead of only the positions in skilled trades and craft occupations; (3) add a new Schedule B authority as § 213.3202(g) for noncompetitive conversion of Federal Co-op students earning undergraduate certificates in an accredited college, technical, trade, vocational, or business school; and (4) remove restrictions on sons and daughters in §§ 213.3201(b) and 338.202(d) with the understanding that restrictions under "Employment of Relatives" regulations in § 310.103 (a), (b), and (c) will prevail, along with any additional controls an agency may feel are necessary.

Because of shortages of quality and quantities of candidates available through student employment recruiting sources and the inability to meet agency staffing needs, it was determined that these regulations were needed to meet Federal work force demands. Appointments will be permitted under both of the new appointing authorities by any Federal agency without prior OPM approval. OPM will monitor use of these special appointing authorities through the Central Personnel Data File (CPDF) reports.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order (E.O.) 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to appointment procedures for certain employees in Federal agencies.

List of Subjects

5 CFR Part 213

Government employees.

5 CFR Part 338

Government employees, Nepotism, Aged.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Parts 213 and 338 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h) and 8457.

2. In § 213.3102(q), the fourth sentence is revised and the fifth sentence is removed to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(q) * * * No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. * * *

3. In § 213.3201, paragraph (b) is removed and reserved.

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

* * * * *

(b) [Reserved]

4. In § 213.3202, paragraph (e) is revised and paragraph (g) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(e) Student positions established in support of the Cooperative Education (vocational education) Program for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into clerical, administrative support, technician, helper and preapprentice occupations of the Federal career service upon the students' graduation.

* * * * *

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate program in an accredited college, technical, trade, vocational, or business school which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate and provide experience for career or career-conditional appointment into clerical, administrative support, technician, helper and preapprentice occupations of the Federal career service upon the students' graduation.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

5. The authority citation for Part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

6. In § 338.202, paragraph (d) is removed and revised.

§ 338.202 Restriction on sons and daughters.

* * * * *

(d) [Reserved]

* * * * *

[FR Doc. 88–1248 Filed 1–21–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of a Certain Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of a rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of February–July 1988 a portion of the "producer" definition of the Southwest Plains order. Such provision was suspended for the months of April–July 1987. The provision proposed for suspension prevents dairy farmers from being considered producers under the order during the months of February–July if they have not sufficiently supplied the market during the previous fall months when fluid milk needs are seasonally greater. The suspension was requested by Southern Milk Sales, Inc. (SMS), a cooperative association that represents producers who supply milk for the Southwest Plains market. SMS contends that the action is necessary to permit the efficient use of advantageously located supplies of milk in supplying the fluid milk needs of the market's bottling plants.

DATE: Comments are due on or before January 29, 1988.

ADDRESS: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers by promoting hauling efficiencies and would tend to ensure that dairy farmers who supply the market's fluid milk needs would have their milk priced under the order and thereby receive the benefits that accure from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provision of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of February–July 1988:

In § 1106.12, paragraph (b)(5) in its entirety.

All persons who want to send written data, views or arguments about the proposal should send two copies of them to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include February in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Southern Milk Sales, Inc. (SMS), a cooperative association that represents dairy farmers who supply milk to the Southwest Plains market, has requested that a portion of the producer definition be suspended for 1988. The provision proposed for suspension prevents dairy farmers from being considered producers under the order during months when supplies are abundant if they have not sufficiently supplied the market during previous fall months when fluid milk needs are seasonally greater. Specifically, the order provides that a dairy farmer cannot be a producer under the Southwest Plains order during the months of February–July unless during each of the immediately preceding months of September–November more than two-thirds of the producer's milk was pooled and priced under the order. This provision was suspended for the months of April–July 1987.

SMS states that the proposed suspension is warranted because of changes in marketing conditions under this and other Federal orders. Proponent contends that this provision would, in some cases, not permit the cooperative and other market suppliers to ship the milk of the most advantageously located producers in supplying the fluid milk needs of the market's distributing plants and therefore should be suspended for 1988.

SMS states that the shortage of milk for fluid uses in Federal order markets to the south during the fall of 1987 resulted in a considerable amount of the cooperative's milk that is normally associated with the Southwest Plains market being regulated under orders covering Texas, Louisiana and more-distant markets in the Southwest. Hence, these producers did not establish the required prior association with the Southwest Plains market during September–November 1987 to be considered producers under such order for the months of February–July 1988.

In addition, SMS contends that the whole-herd buyout program has affected the overall milk supply arrangements under the involved orders. SMS states that such program has necessitated a general restructing of hauling routes as market suppliers under the Southwest Plains order have attempted to fulfill their supply commitments efficiently by moving the milk from the farms of the most advantageously located producers.

SMS asked that the provision be suspended for 1988. However, since the provision is applicable only during February through July, comments are invited on a proposal to suspend the provision for such months of 1988.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: January 19, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–1320 Filed 1–21–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 232, 233, 235, 237, 238, 239, 280, and 299

[INS Number: 1037–88]

Immigration User Fee, Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to set forth conforming amendments to existing regulations. These provisions relate to the Department of Justice Appropriation Act, 1987, concerning the collection and remittance of the Immigration User Fee.

The proposed rule addresses the change from carrier responsibility to INS responsibility for the custody and detention of excludable aliens. The rule would also amend present regulations to conform to statutory deletions and amendments.

DATES: Written comments must be received by March 22, 1988.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–4705.

SUPPLEMENTARY INFORMATION: Section 101(b) Subsection 205 of the Department of Justice Appropriation Act, 19897 (Pub. L. 99–591) establishes the collection, payment, and remittance of a specific user fee (fee) for the immigration inspection or preinspection of passengers (with certain exceptions) arriving in the United States (U.S.) aboard commercial aircraft or commercial vessels. Subsection 206 of Pub. L. 99–591 places the responsibility for physical custody of excludable aliens pursuant to former section 233 of the Immigration and Nationality Act of

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1952, as amended (the "Act"), on the INS.

8 CFR 232.1 is amended to eliminate the language requiring detention on board the vessel or aircraft at the expense of the carrier.

8 CFR 233.1 is deleted pursuant to the repeal of section 233 of the Act.

8 CFR 235.3 is amended to address conditions of INS responsibility for custody and to incorporate a new form, I–259C, which will be used for the purpose of notifying the agent of the carrier that a passenger may be excludable and, if subsequently ordered excluded and deported, the carrier will be responsible for providing detention and transportation to the last foreign port of embarkation.

8 CFR 235.5(c) is deleted as it has been superceded by section 286(h)(2)(A) of the Act.

8 CFR 237.4 is amended by deleting the reference to section 233 of the Act, which has been repealed.

8 CFR 237.5 is amended to provide for carrier responsibility for costs associated with a failure to comply with the provisions of section 237 of the Act.

8 CFR 237.6 is amended by adding a definition for "next available flight".

8 CFR 238 is amended by adding a new paragraph (c) for the purpose of clarifying that the responsibilities of the carrier for transit without visa (TWOV) passengers remains unchanged by the enactment of section 286 of the Act.

8 CFR 239.2 is amended by deleting paragraph (b), the provisions of which have been superceded by section 286 (g) of the Act.

8 CFR 280.6 is amended by deleting the reference to section 233 of the Act, which has been repealed.

8 CFR 280.52 has been added to provide for deposit of fines assessed pursuant to sections 271 (a) and 273 of the Act into the Immigration User Fee Account.

8 CFR 299.1 has been amended to add the new form I–259C as set forth in § 235.3.

In compliance with 5 U.S.C. 605b, the Commissioner of INS certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Parts 232 and 233

Aliens, Immigration, Security measures, Aircraft, Vessels

8 CFR Parts 235

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses

8 CFR Parts 237 and 238

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses, Transportation

8 CFR Parts 239

Aliens, Immigration, Security measures, Aircraft

8 CFR Parts 280 and 299

Aliens, Immigration, Aircraft, Vessels, Accounting, Reporting and recordkeeping requirements

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 232—DETENTION FOR EXAMINATION TO DETERMINE MENTAL OR PHYSICAL DEFECTS

1. The authority citation for Part 232 is revised to read as follows:

Authority: 8 U.S.C. 1103 and 1222.

2. Section 232.1 is revised to read as follows:

§ 232.1 Detention.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he/she shall, after consultation with the United States Public Health Service at the port of entry, notify the master or agent of the arriving vessel or aircraft of his/her intention to effect such detention by serving on the master or agent the Form I–259C in accordance with § 235.3(e) of this Chapter.

PART 233—[REMOVED AND RESERVED]

3. Part 233 would be removed and reserved.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

4. The authority citation for Part 235 is revised to read as follows and all other authority citations which appear in Part 235 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

5. In § 235.3(a) is amended by adding at the end of the existing text a new sentence to read as set forth below; by revising (d) and adding new paragraphs (e) and (f) to read as follows:

§ 235.3 Detention and deferred inspection.

(a) * * * The Service will not be liable for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissability by a Service officer.

* * * * *

(d) *Service custody.* The Service will assume custody of any alien subject to detention under § 235.3(b) or (c) of this section.

(e) *Notice to carriers.* If in the opinion of the examming immigration officer, it is not practical to resolve a question of admissability at the time of arrival of an alien passenger on a vessel or aircraft, the officer shall execute a Form I–259C to notify the agent, master, or commanding officer of the vessel or aircraft, if applicable, that the alien passenger may be excludable from the United States and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for providing detention and transportation to the last foreign port of embarkation as provided in § 237.5 of this chapter.

(f) *Detention in Non-Service facility.* Whenever an alien is placed in Service custody at other than a Service Processing Center, the public or private entities contracted to oversee detention shall adhere to the Service's minimum standards for a non-Service operation detention facility.

§ 235.5 [Amended]

6. Section 235.5 *Preinspection,* is amended by removing the entire paragraph (c).

PART 237—DEPORTATION OF EXCLUDED ALIENS

7. The authority citation for Part 237 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1255, and 1330.

§ 237.4 [Amended]

8. Section 237.4 *Imposition of penalty* is amended by removing the words "sections 233 and", and inserting the word "section." * * *

9. Section 237.5 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 237.5 Notice to transportation line of alien's exclusion.

* * * * *

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Immigration and Nationality Act and this paragraph (b).

10. Section 237.6 is amended by adding a new paragraph (a)(5) to read as follows:

§ 237.6 Deportation.

(a) * * *

(5) Next available flight—is to be the carrier's next regularly scheduled departure to the alien's point of embarkation regardless of seat availability.

* * * * *

PART 238—CONTRACTS WITH TRANSPORTATION LINES

11. The authority citation for Part 238 continues to read as follows:

Authority: 8 U.S.C. 1103 and 1228.

12. Section 238.3 is amended by adding a new paragraph (c) to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

* * * * *

(c) *Carrier responsibility.* Nothing contained with the provisions of section 286 of the Act shall be deemed to waive the carrier's liability for detention, transportation, and other expenses incurred in the bringing of aliens to the United States under the terms of this section.

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

13. The authority citation for Part 239 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, and 1229.

§ 239.2 [Amended]

14. Section 239.2 *Landing requirements* is amended by removing paragraph (b) and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d).

PART 280—IMPOSITION AND COLLECTION OF FINES

15. The authority citation for Part 280 is revised to read as follows and all other authority citations which appear in Part 280 are removed:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330.

§ 280.6 [Amended]

16. Section 280.6 *Bond to obtain clearance form* is amended by removing the reference to Section "233.".

17. A new § 280.52 is added to read as follows:

§ 280.52 Payment of fines.

(a) *Procedure.* All fines assessed pursuant to section 271(a) of the Act shall be made payable to the Immigration User Fee Account in accordance with the provisions of § 286.6 of this Chapter.

(b) *Deposit to the Immigration User Fee Account.* All fines assessed pursuant to section 271(a) of the Act and all penalties paid to the collector of customs pursuant to section 273 of the Act shall be remitted to the Immigration user Fee Account.

PART 299—IMMIGRATION FORMS

18. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR Part 2.

19. Section 299.1 is amended by adding, in proper numerical sequence, new Form I–259C as follows:

§ 299.1 Prescribed forms.

* * * * *

I–259C (7–1–87) Notice to Carrier.

* * * * *

Dated: December 31, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88–1205 Filed 1–21–88; 8:45 am]

BILLING CODE 4410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA—141; File No. SIPC 87–1]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Securities Investor Protection Corporation's (SIPC) proposed rule change establishes a uniform procedure for the satisfaction of claims for cash and claims for securities in a liquidation proceeding under the Securities Investor Protection Act of 1970. The Commission is publishing the proposed rule change for public comment. Within thirty-five days of publication of notice, the Commission must (absent an extension) by order approve the proposed rule change or institute disapproval proceedings. Because SIPC rules approved by the Commission have the force and effect as if promulgated by the Commission, those rules are published in title 17 of the Code of Federal Regulations.

DATE: Comments must be received on or before February 12, 1988.

ADDRESS: Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the SIPC submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will be available for inspection and copying at the principal office of SIPC. All submissions should refer to File No. 87–1.

FOR FURTHER INFORMATION CONTACT: Harry Melamed, Division of Market Regulation (202/272–2412), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Pursuant to section 3(e)(2)(A) of the Securities Investor Protection Act of 1970, 15 U.S.C. 78ccc(e)(2)(A), notice is hereby given that on September 23, 1987 as amended on November 16, 1987, the Securities Investor Protection Corporation filed with the Securities and Exchange Commission a proposed rule change as described below, which description has been prepared by the Securities Investor Protection Corporation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SIPC's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SIPC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. SIPC's Statements in this regard are as follows:

The purpose of the proposed rule change is to establish a uniform procedure for the satisfaction of claims for cash and claims for securities in either a liquidation proceeding pursuant to the Securities Investor Protection Act of 1970 as amended ("SIPA"), or a direct payment procedure pursuant to section 10 of SIPA.

SIPC is authorized to adopt rules relating to procedures for the liquidation of SIPC members and for direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds, under SIPA section 3(b)(4)(B), 15 U.S.C. 78ccc(b)(4)(B). SIPC is also authorized, pursuant to SIPA section 3(b)(4)(A), 15 U.S.C. 78ccc(b)(4)(A), to adopt rules relating to the definition of terms used in SIPA, unless those terms are defined in SIPA section 16, 15 U.S.C. 78*lll*. The Proposed Rules may be adopted pursuant to either or both of these SIPA sections relating to rulemaking authority.

SIPC and trustees appointed under SIPA have frequently litigated questions concerning whether a customer with a claim in a SIPA proceeding is entitled to a "claim for cash" or a "claim for securities." *See In re Weis Securities, Inc.; Gans v. Reddington*, CCH Fed. Sec. L. Rep. ¶ 94,780, p. 96,576 (S.D.N.Y. 1974); *SIPC, SEC v. Morgan, Kennedy & Co., Inc.*, 3 B.C.D. 15 (S.D.N.Y. 1977); *In re June S. Jones Co.*, 52 B.R. 610 (Bkrtcy. D. Oregon, 1985); *In re Bell & Beckwith; Murray v. McGraw*, 821 F.2d 333 (6th Cir. 1987). In each instance, SIPC has successfully proposed that a customer be satisfied based upon the customer's legitimate expectation of what the customer had in his or her account at the time of the demise of the SIPC member firm. One of the goals of SIPA is to allow a trustee to "purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities," where it is possible for the trustee to do so in a fair and orderly market. See SIPA section 8(d); 15 U.S.C. 78fff–2(d). This permits the trustee to fulfill one of the enumerated duties of a trustee under SIPA to "deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer" under SIPA section 7(b)(1), 15 U.S.C. § fff–1(b)(1).

Customers have sometimes objected to having their claim deemed a "claim for cash", particularly when, as a claim for cash, the claim exceeds the maximum amount SIPC may advance to a trustee to satisfy a claim for cash. That limit is currently $100,000, while the limit on a claim for securities is $500,000. See SIPA section 9(a)(1), 15 U.S.C. 78fff–3(a)(1). Conversely, customers have sometimes objected to having their claims treated as a "claim for securities" when the underlying value of the security in question has declined.

SIPC believes that the Proposed Rules submitted herewith will provide both nationwide uniformity and reasonable certainty for customers as to how their claims will be treated in the event of the failure of a SIPC member, and will provide an objective standard for determining each claimant's legitimate expectations. The Proposed Rules are in complete accord with all final judicial decisions on this subject, including cases decided prior to SIPA's enactment. *See cases, supra; see also, Tepper v. Chichester*, 285 F.2d 309 (9th Cir. 1960); *In re Stanley B. Young & Co.*, 33 F. Supp. 444 (W.D. Ky., 1940).

The Proposed Rules also give full effect to the Congressional intent to "satisfy the customers' legitimate expectations" and "restore the customer to his position prior to the broker-dealer's financial difficulties." S. Rep. No. 763, 95th Cong., 2d Sess. 2, 3 U.S. Code Cong. & Admin. News, 95th Cong., 2d Sess., at 765 (1867). Indeed, the results reached under the Proposed Rules will affirmatively effectuate the Commission's previously stated view on this subject. In 1978, during hearings on extensive amendments to SIPA, Commissioner Philip A. Loomis stated that *"[w]hen a customer sells securities, his claim from that time until settlement and delivery of the funds is a claim for cash."* "Hearings Before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 233 (1977), emphasis supplied. Commissioner Loomis was presenting the views of the Commission. *Id.* at 227. This is the precise result which the Proposed Rules will reach.

In an effort to reach a different result, customers seeking to disavow securities purchased for their account have sometimes argued that a purchase of securities for their accounts has not occurred until their broker has actually delivered cash to a "contra" broker and the "contra" broker has, in turn, actually delivered the securities to their broker. Similarly, customers seeking to disavow a sale of securities have sometimes argued that a sale for their accounts has not occurred until their broker has actually delivered the securities to a "contra" broker and the "contra" broker has in turn delivered cash to their broker. Courts have invariably rejected this argument based upon an analysis of the Uniform Commercial Code. Thus, sections 8–301 and 8–314(a) of the Uniform Commercial Code, as enacted in most states, hold that a customer selling securities loses his rights to those securities simply by delivering the securities to his or her broker.

At two places [Rule 501(a)(2) and Rule 502(b)(2)] the Proposed Rules use the phrase "completed or executory contract for sale for or purchase from the account". At two other places [Rule 501(b)(2) and Rule 502(a)(2)] the Proposed Rules use the phrase "completed or executory contract for purchase for or sale to the account." These phrases are designed to have the Proposed Rules cover any authorized purchase or sale of securities. The Proposed Rules thus apply in situations where the Debtor is acting as either agent or principal. The Proposed Rules also apply whether or not the purchase or sale transaction has been completed as between the Debtor acting as agent and any "contra" broker. Thus, for example the selling customer is entitled only to the contract price, regardless of the fact that, as between the customer's broker and another broker, the agreement for the sale is "executory," that is, not yet complete. The Proposed Rules are thus in complete harmony with the results which would obtain under the Uniform Commercial Code.

The Proposed Rules will apply to Standardized Options transactions (as well as other securities transactions) but are not intended to affect the satisfaction of customer claims for such options as provided in SIPC's Series 400 Rules, 17 CFR 300.400.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

To allow public access to SIPC's rules, SIPC rules that are approved by the Commission are published under Part 300 of 17 CFR Chapter II.

List of Subjects in 17 CFR Part 300

Brokers, Securities, Securities Investor Protection Corporation.

III. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

1. The authority citation for Part 300 continues to read as follows:

Authority: Sec. 3, 84 Stat. 1638, as amended; 15 U.S.C. 78ccc.

2. By adding §§ 300.500—300.503 as follows:

Rules Relating to Satisfaction of a "Claim for Cash" or a "Claim for Securities"

Sec.
300.500 General.
300.501 Claim for cash.
300.502 Claim for securities.
300.503 Voidable securities transactions.

Rules Relating to Satisfaction of a "Claim for Cash" or a "Claim for Securities"

§ 300.500 General.

These rules will be applied in determining whether a securities transaction gives rise to a "claim for cash" or a "claim for securities" on the filing date of either a liquidation proceeding pursuant to the Securities Investor Protection Act (hereinafter referred to as "the Act") or a direct payment procedure pursuant to section 10 of the Act.

§ 300.501 Claim for cash.

(a) Where a SIPC member ("Debtor") held securities in an account for a customer, the customer has a "claim for cash" with respect to any authorized securities sale:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held cash in an account for a customer, the customer has a "claim for cash", notwithstanding the fact that the customer has ordered securities purchased for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

§ 300.502 Claim for securities.

(a) Where the Debtor held cash in an account for a customer, the customer has a "claim for securities" with respect to any authorized securities purchase:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

(b) Where the Debtor held securities in an account for a customer, the customer has a "claim for securities", notwithstanding the fact that the customer has ordered securities sold for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not written confirmation of the purchase has been sent, if the securities in question have become the subject of a completed or executory contract for sale for or purchase from the account.

§ 300.503 Voidable securities transactions.

(a) Nothing in these Series 500 Rules (§§ 300.500 through 300.503) shall be construed as limiting the rights of a trustee in a liquidation proceeding under the Act to avoid any securities transaction as fraudulent, preferential, or otherwise voidable under applicable law.

(b) Nothing in these Series 500 Rules (§§ 300.500 through 300.503) shall be construed as limiting the right of the Securities Investor Protection Corporation, in a direct payment procedure under section 10 of the Act, to reject a claim for cash or a claim for securities if such claim arose out of a securities transaction which could have been avoided in a liquidation proceeding under the Act.

By the Commission.

Shirley E. Hollis,
Assistant Secretary.
January 19, 1988.
[FR Doc. 88–1323 Filed 1–21–88; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N–0140]

Diluted Fruit or Vegetable Juice Beverages Other Than Diluted Orange Juice Beverages; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the period for submitting comments on its proposal to revoke the common or usual name regulation for diluted fruit or vegetable juice beverages other than diluted orange juice beverages (21 CFR 102.33). FDA is reopening the comment period based on a request for extension from the Center for Science in the Public Interest (CSPI).

DATES: Written comments by January 27, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry Troxell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1987 (52 FR 36046), FDA granted a 90-day extension of the comment period on the proposal to revoke the regulation establishing the common or usual name for diluted fruit or vegetable juice beverages other than diluted orange juice beverages (21 CFR 102.33) that the agency published in the **Federal Register** of July 16, 1987 (52 FR 26690). The July 16, 1987, proposed action also withdrew the proposed amendment published in the **Federal Register** of June 1, 1984 (49 FR 22831), which among other things, would exempt cranberry juice products from percentage ingredient labeling requirements. The September 25, 1987, notice provided until December 13, 1987, for interested persons to submit written comments on the July 16, 1987, proposal.

The CSPI now has submitted a request for an additional 90-day extension of the comment period based on the need for additional time to systematically obtain and compile data regarding consumer awareness of the

juice content of diluted juice beverages. The agency has also received comments from several members of the U.S. Senate requesting that the comment period not be extended further. The agency has considered both viewpoints and believes that the data being obtained by CSPI are relevant to the evaluation of the proposal but that an additional 45 days beyond December 13, 1987, the current closing date for comments, should be sufficient. Accordingly, the agency is reopening the comment period for that additional length of time.

Interested persons may, on or before January 27, 1988, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-1355 Filed 1-20-88; 12:33 pm]

BILLING CODE 4160-01-M

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21 CFR Part 201

[Docket No. 87N-0371]

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Reye Syndrome Warning

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations that require the labeling of oral and rectal over-the-counter preparations containing aspirin to bear a Reye syndrome warning by deleting the provision that the regulation shall expire on June 6, 1988, unless extended by FDA. The agency is proposing that this labeling provision be made permanent. This action is based on the results of a study by the Public Health Service Reye Syndrome Task Force and the report of the Institute of Medicine's Committee on Reye Syndrome and Medication Use which confirm the association between Reye syndrome and the ingestion of aspirin and aspirin-containing drug products.

DATE: Comments by March 22, 1988.

ADDRESS: Written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Room 4-62, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 17, 1985 (50 FR 51400), FDA proposed to require that the labeling of oral over-the-counter (OTC) aspirin and aspirin-containing drug products for human use bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome. FDA proposed this rule in order to bring uniformity and consistency to the labeling of aspirin and aspirin-containing products in the marketplace and to aid in increasing the public awareness of the apparent association between the use of aspirin and Reye syndrome.

In the December 17, 1985, proposal, FDA described the scientific studies that had been conducted to examine the possible association between the use of aspirin and the occurrence of Reye syndrome. The agency noted that the Public Health Service (PHS) planned further research into the possible association between Reye snydrome and various exposure factors, including the use of aspirin.

The main PHS study, conducted under the direction of the PHS Reye Syndrome Task Force from 1984 to 1986, was preceded by a pilot phase (methodology study) to determine the study feasibility and to establish the appropriate methodology for a full-scale investigation. The methodology study, which is summarized in the December 17, 1985, proposal (50 FR 51401), reported an association between the use of aspirin and the occurrence of Reye syndrome in children and teenagers.

In the **Federal Register** of March 7, 1986 (51 FR 8180), FDA published a final regulation requiring the following labeling statement on orally or rectally administered OTC aspirin and aspirin-containing drug products: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness."

In addition to certain other provisions, the final rule required that this warning precede any additional warnings that may appear on the product labeling in order to assure the prominence of the message.

The final rule also included the provision that the regulation would expire 2 years from the effective date unless the agency acted to extend it. This 2-year period was to allow completion and evaluation of the PHS main study noted above.

The PHS main study has now been completed. The study results provide convincing evidence of a strong association between Reye syndrome and the ingestion of aspirin. The PHS report, entitled "Reye Syndrome and Medications—Report of the Main Study," was prepared by the PHS Reye Syndrome Task Force and is dated November 12, 1986 (Ref. 1). The PHS report was evaluated by the Institute of Medicine (IOM) of the National Academy of Sciences in a separate report dated February 1987, and entitled "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications." (Ref. 2) A report of the main PHS study was published in the *Journal of the American Medical Association* on April 10, 1987 (Ref. 3). These reports have been placed on display with the Dockets Management Branch (address above) under Docket No. 87N-0371. Additional background information may be found in Docket Nos. 82N-0158 and 85N-0553.

The PHS study findings reported a large, statistically significant association between Reye syndome and the infestion of aspirin during previous illnesses. The study concluded that the association between Reye syndrome and aspirin is consistent with estimates of risk determined in earlier studies and reflects the strength of the epidemiologic association observed in those studies. The study reinforced the importance of reducing the use of aspirin in the treatment of children and teenagers with chicken pox and flu-like illness.

Because of the evidence developed from the PHS study and the evaulation of that study by the IOM of the National Academy of Sciences, FDA proposed that the warning statement in the labeling of orally or rectally administered OTC aspirin and aspirin-containing drug products be a permanant requirement. The available evidence supports the continuing need to maintain a high level of public awareness of the association between the use of aspirin in children and teenagers and the incidence of Reye syndrome; continuation of the requirement for the warning in the labeling of over-the-counter aspirin and aspirin-containing drug products will contribute to this goal. Therefore, the agency is proposing to amend § 201.314 of the regulations (21 CFR 201.314) by removing paragraph (h)(5), thereby removing the expiration date of the labeling requirement.

The agency is aware that some interested individual may have questions about the precise wording of the warning statement or other aspects of the rule (Ref. 4). The agency believes that it is of the utmost importance that there be no time gap in requiring a Reye syndrome warning statement on aspirin and aspirin containing products. This proposal, therfore, is focused on extending the current warning statement. The agency will, of course, consider comments on related issues as part of the rulemaking process.

Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The proposal would simply require the continued use of labeling already prepared under the March 1986 final rule. Thus, no additional costs associated with labeling changes would result from this proposed rule. Therefore, the agency has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

(1) "Reye Syndrome and Medications—Report of the Main Study," Public Health Service Reye Syndrome Task Force, November 12, 1986.

(2) "The PHS Study of the Reye Syndrome: Review of a Continuing Study—Report Number 6—Review of the PHS Continuing Study by the Committee on the Reye Syndrome and Medications," Institute of Medicine of the National Academy of Sciences, February 1987.

(3) Hurwitz, E.S., et al. "Public Health Service Study of Reye's Syndrome and Medications. Report of the Main Study." *Journal of the American Medical Association*, 257(14):1905-1911, 1987.

(4) Letter from Richard M. Narkewicz, President, American Academy of Pediatrics, to Frank E. Young, Commissioner, FDA, dated November 13, 1987.

Comments

Interested persons may, on or before March 22, 1988, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 continues to read as follows:

Authority: Secs. 501, 502, 701, 52 Stat. 1049-1061 as amended (21 U.S.C. 351, 352, 371); 5 CFR 5.10; § 201.21 also issued under secs. 301, 505, 52 Stat. 1042-1043 as amended, 1052-1053 as amended (21 U.S.C. 331, 355).

§ 201.314 [Amended]

2. Section 201.314 *Labeling of drug preparations containing salicylates* is amended by removing paragraph (h)(5).

Dated: December 18, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-1200 Filed 1-21-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

Land Acquisitions

January 6, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: On Tuesday, June 23, 1987, the Bureau of Indian Affairs published a proposed rule in the **Federal Register** (52 FR 23580) concerning the acquisition in trust status of lands located outside the boundaries of Indian reservations. The proposed rule would have amended 25 CFR Part 151, Land Acquisitions, by adding a new section (c) to 25 CFR 151.3. The new rule would have had the effect of prohibiting all acquisitions of off-reservation lands in trust status for Indian tribes and individuals if the proposed purpose of the acquisition was to establish a bingo operation or gaming enterprise.

A public comment period on the rule was given from June 23 to August 7, 1987. In general, comments received were overwhelmingly in opposition to the rule. A total of 30 responses were received, 25 from various Indian tribes and tribal attorneys who felt that such a regulation would be an "unwarranted constraint on economic development" and would be in direct contravention of the Federal policy of self-determination and self-sufficiency through economic development.

Additional concerns expressed by the tribes were that such a provision would be "overregulation" and, in light of future budget reductions, the Bureau would be depriving tribes of a legitimate economic enterprise. Of the five remaining responses which supported the proposed provision, three were from various horse racing associations, one from county officials in California, and the fifth from the Law Enforcement Branch of the Bureau of Indian Affairs' Billings Area Office.

Upon reconsideration, the Assistant Secretary finds that the proposed rule is not warranted at this time and hereby formally withdraws the rulemaking action. The Assistant Secretary further finds that, in unique instances, a bingo enterprise, even though established on trust land outside the reservation boundaries, may be essential to the economic well being of a tribe which has a very limited natural or financial resource base. Off-reservation land acquisition requests for bingo enterprises will continue to be considered on a case-by-case basis purusant to the existing guidelines found in 25 CFR Part 151.

This notice of proposed rule withdrawal is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

EFFECTIVE DATE: The effective date of withdrawal is January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Maytubby on (202) 343-3837; U.S. Department of the Interior, Bureau of Indian Affairs, Division of Real Estate Services, Room 4520—Main Interior, 18th & C Streets NW., Washington, DC 20240, or Mr. Michael Cox on (202)

343–9331; U.S. Department of the Interior, Office of the Solicitor, Room 6554—Main Interior, 18th & C Streets NW., Washington, DC 20240.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 88–1258 Filed 1–21–88; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Administration

29 CFR Part 2550

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974 (the Act) relating to loans to plan participants and beneficiaries who are parties in interest with respect to the plan. The proposed regulation is intended to clarify the scope of section 408(b)(1) of the Act, and to define certain terms used therein. Section 408(b)(1) provides an exemption from certain prohibitions of section 406 of the Act for loans to plan participants and beneficiaries. If adopted, the regulation will affect employee benefit plans, their sponsors and fiduciaries, and participants and beneficiaries engaging in such loan transactions.

DATE: Written comments and requests for a public hearing concerning the proposed regulation must be received by March 22, 1988.

EFFECTIVE DATE: The regulation, if adopted, generally will be effective January 1, 1975. Paragraph (d)(2) of the regulation relating to specific plan provisions would be effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. *Attention:* Participant Loans. All submissions will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9141; or Katherine D. Lewis, Office of Regulations and Interpretations, U.S. Department of Labor, (202) 523–8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation which provides guidance on the scope of the statutory exemption under section 408(b)(1) of the act. The Department's reasons for using the proposed regulation are set forth below, followed by a discussion of the provisions of the proposal.

A. Background

Section 406(a) of the Act generally prohibits a fiduciary[1] with respect to an employee benefit plan from causing the plan to engage in certain types of transactions with a party in interest.[2] Specifically, section 406(a)(1)(B) prohibits a fiduciary with respect to a plan from causing the plan to engage in the direct or indirect lending of money or other extension of credit with a party in interest. In addition, section 406(b) of the act generally prohibits a fiduciary with respect to a plan from engaging in transactions in which the fiduciary has a conflict of interest. All of these prohibitions apply in the absence of either a statutory or administrative exemption.

One such statutory exemption is contained in section 408(b)(1) of the Act. Section 408(b)(1) states that the prohibitions contained in section 406 of the act shall not apply to any loans made by a plan to parties in interest who are participants and beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees; [3] (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured. Congress indicated that it had adopted this provision "[f]ollowing current practice" under the Code preceding the enactment of the Act. H.R. Rep. No. 1280, 93rd Cong., 2d Sess. 311 (1974) [hereinafter Conf. Rpt.]

Despite both the availability of information regarding the pre-ERISA status of participant loans, and the specificity of the terms of section 408(b)(1) itself, the Department has received numerous requests for advisory opinions which have indicated uncertainty with respect to the scope of relief provided by section 408(b)(1) and the meaning of the terms used therein.[4] Upon consideration of the degree of public interest in utilizing appropriately designed and administered participant loan programs, the Department has decided to propose a regulation under section 408(b)(1) to provide guidance to fiduciaries of employee benefit plans.

Proposed regulation 29 CFR 2550.408b–1, discussed in detail below, addresses the scope of the coverage of section 408(b)(1). If the proposed regulation is adopted, the Department will not regard transactions as coming within the term of section 408(b)(1) unless such transactions come within the terms of regulation § 2550.408b–1.

[1] Section 3(21)(A) of the Act provides in part that a person is a fiduciary with respect to a plan to the extent: (i) He exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets; (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of such plan, or has any authority or responsibility to do so; or (iii) he has any discretionary responsibility in the administration of such plan.

[2] The term "party in interest" is defined in section 3(14) of the Act to include persons providing services to the plan; employers any of whose employees are covered by the plan; an employee organization any of whose members are covered by the plan; persons or other entities having specified relationships with the plan; and employees, officers or directors of any of the foregoing. The term "party in interest" also includes fiduciaries.

[3] Section 1114(b)(15)(B) of the Tax Reform Act of 1986 (Pub. L. 99–514) amends section 408(b)(1)(B) by deleting the phrase "highly compensated employees, officers, or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)" for years beginning after December 31, 1988.

[4] In response to most of these inquiries, the Department has declined to issue the requested advisory opinions because the applications presented issues which were inherently factual in nature or which could not reasonably be resolved prior to the issuance of a regulation. Section 5 of ERISA Procedure 76–1 (41 FR 36281, August 27, 1976) provides, among other things, that the Department will generally not issue advisory opinions under such circumstances. See, *e.g.*, letter to William G. Dallavo (No. F–1400) (November 28, 1979); letter to James R. Fei (No. F–1486) (June 12, 1980); letter to Thomas R. Hoecher, Esq. (No. F–1767) (February 6, 1981, Washington Service Bureau File No. 91–027). The primary exception to this policy is Advisory Opinion 81–12A (letter to Robert Georgine, January 15, 1981) regarding the "reasonable rate of interest" requirement in section 408(b)(1)(D) of the Act. This requirement will be discussed, *infra*.

B. Discussion of Proposed Regulation

1. *Scope.* Proposed regulation § 2550.408b–1(a)(1) contains a general rule which is substantially identical to the terms of section 408(b)(1) of the act. Thus, the proposed regulation states that the relief provided under section 408(b)(1) is available if loans made by a plan to participants and beneficiaries who are parties in interest with respect to the plan: (A) Are available to all such participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees; [5] (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured.

The proposal indicates that, if these conditions are met, section 408(b)(1) will provide relief, with regard to the loans to participants, from the prohibitions of section 406(a) of the act (which prohibits a fiduciary from causing a plan to engage in certain transactions with a party in interest), section 406(b)(1) of the act (which prohibits a fiduciary from dealing with plan assets in his own interest or for his own account) and section 406(b)(2) (which prohibits fiduciaries in their individual or in any other capacity from acting in any transaction involving the plan on behalf of, or representing a party whose interests are adverse to those of the plan, its participants, or its beneficiaries). Proposed § 2550.408b–1(a)(2) states, however, that section 408(b)(1) does not provide relief from section 406(b)(3) of the act (which prohibits fiduciaries from receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving plan assets).

If adopted, proposed § 2550.408b–1(a)(1) and (2) would have several effects. By stating that section 408(b)(1) of the act contains relief from the prohibitions of sections 406(b)(1) and 406(b)(2), a fiduciary who is also a plan participant would be permitted to receive a loan under the participant loan program. In this regard, the Department notes that section 408(b)(1) was designed to provide relief on a nondiscriminatory and equitable basis to all plan participants who are parties in interest with respect to the plan.[6] Section 3(14)(A) of the act includes fiduciaries within the definition of the term "party in interest". Nothing contained in section 408(b)(1) or its legislative history suggests that Congress intended to limit the availability of such loans because of a participant's fiduciary status. Proposed § 2550.408b–1(a)(3) recognizes such Congressional intent.

The exemption under section 408(b)(1) includes within its coverage certain transactions in which the potential for self-dealing by fiduciaries exists and in which the interests of fiduciaries may conflict with the interests of participants. To guard against potential abuses, the Department will subject these transactions to special scrutiny to ensure that the conditions of section 408(b)(1) have been met in connection with a fiduciary receiving a loan under a participant loan program. The regulations, and accompanying examples, make it clear that a fiduciary may only receive a loan from a plan if: (1) The program is administered under strict objective criteria which assure the equitable availability of the assets committed to the program among qualified participants, and (2) the borrowing fiduciary does not receive more favorable consideration or terms than other plan participants requesting a loan.

In the event of default upon an exempt loan by a plan fiduciary, the Department expects that appropriate action will be taken in accordance with the strict objective criteria developed under the loan program to assure the preservation of plan assets.

Fiduciaries are cautioned to scrupulously exercise their discretion in approving loans to themselves or other fiduciaries and should be prepared to demonstrate that the borrowing fiduciary received the same consideration or terms as other plan participants seeking a loan. In order to avoid potential conflicts of interest and appearances of impropriety, the Department strongly encourages those programs under which loans to fiduciaries are granted and administered by fiduciaries or loan committees who are independent of the borrowing fiduciary.

Proposed § 2550.408b–1(a)(3) further provides that a loan will not be exempt under section 408(b)(1) unless it is arranged and approved by the fiduciary administering the loan program primarily in the interest of the participants and otherwise satisfies the conditions set forth in section 408(b)(1) of the act. In the Department's view, Congress did not intend to sanction a participant loan program that was established and operated for the benefit of parties in interest other than participants and their beneficiaries. Thus, no relief would be available under section 408(b)(1) for a loan program which in form or in operation limits loans to those participants who agree or acknowledge to the fiduciary administering the program that their loan proceeds will be used in furtherance of an employer's or other party in interest's business enterprise. Similarly, consideration by a plan fiduciary of factors which are not related to the merits of the loan as an investment, such as a potential borrower's prior agreement with the fiduciary to reloan the proceeds to a party in interest, would also fail to comply with the proposed regulations. In this regard, a participant loan program will not fall outside the scope of the regulations merely because the program, by its express terms, limits loans to certain stated purposes, e.g. hardship, medical or college education, which are not inconsistent with the interests of plan participants and beneficiaries.

Moreover, a participant loan program which limits the availability of loans to those participants who agree to apply the loan proceeds for the benefit of other parties in interest, such as the employer, calls into question whether loans made under such program satisfy the exclusive purpose requirements of section 403(c) and 404(a) of the Act.[7]

Conversely, in the absence of any inappropriate precondition or other facts and circumstances indicating that the loan program is not administered primarily for the benefit of participants, the proposed regulation contains no restrictions on the uses that plan participants may make of the borrowed money. Nothing in this regulation should be interpreted as limiting the subsequent use by the borrowing plan participant of the proceeds of a bona fide loan. In the Department's view, the subsequent use by or transfer to non-participant parties

[5] See note 3, supra.

[6] The Department particularly notes that section 408(b)(1)(A), discussed in more detail, *infra*, provides that loans must be made available to "*all* such participants and beneficiaries on a reasonably equivalent basis." (Emphasis added.) *See also* Senate Comm. on Finance, Private Pension Plan Reform, S. Rep. No. 383, 93d Cong., 1st Sess. 98 (1973), *reprinted in* Subcomm. on Labor, Senate Comm. on Labor and Pub. Welfare, Legislative History of the Employee Retirement Income Security Act of 1974, 94th Cong., 2d Sess. 1198 (Comm. Print 1976).

[7] Section 403(c) provides, in part, that the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan. Section 404(a) requires, among other things, that a fiduciary discharge his duties respecting the plan solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries.

in interest at the unfettered discretion of the borrower is destinguishable from a precondition established by the fudiciaries administering the loan program which requires the plan participant to use the loan proceeds to benefit a party in interest.

In addition, under the proposal, no relief will be available for transactions which, although formally executed as loans, are made with the understanding that the borrower has no intention to repay. Such a transaction would not constitute a participant loan, but merely a transfer of plan assets to or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the act. All the surrounding facts and circumstances will be considered in determining whether a loan satisfies the requirements under the proposal. Proposed § 2550.408b–1(a)(4) contains examples designed to illustrate these requirements.

Similarly, the Department recognizes that fiduciaries may find it necessary on occasion to dispose of property securing a participant loan in the event of default on the loan. Under those circumstances, the Department believes that the relief provided by section 408(b)(1) encompasses the sale, foreclosure or other disposal of the plan's security interest to satisfy a participant's outstanding obligation in the event of default. However, section 408(b)(1) does not provide an exemption for the sale or other disposal of the plan's security interest to a party in interest in the event of default. The Department further cautions that, in circumstances other than default, the transfer of property by a party in interest in repayment of a participant loan will be viewed as a prohibited sale or exchange of property between a plan and a party in interest under section 406 of the act.

2. *Reasonably Equivalent Basis.* Section 408(b)(1)(A) of the act states that the relief contained in section 408(b)(1) applies only if the loans are available on a reasonably equivalent basis to all participants and beneficiaries who are parties in interest with respect to the plan. Proposed regulation § 2550.408b–1(b) is designed to explain this provision. In accordance with applicable legislative history, the proposal first indicates that such loans must be made available to all plan participants and beneficiaries without regard to an individual's race, color, religion, age, sex or national origin.[8] Further, the proposal would require that, in making a loan, the plan may consider only those factors which would be considered in a normal commercial setting by an entity in the business of making similar loans. Such factors could include, among others, the applicant's creditworthiness or financial need.[9] Both the form and operation of the participant loan program will determine whether loans are actually made on a reasonably equivalent basis. Proposed § 2550.408b–1(b)(2) contains examples designed to illustrate these considerations.

3. *Highly Compensated Employees.* Section 408(b)(1)(B) states that the relief provided in section 408(b)(1) is available only if participant loans are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees. With regard to this provision, Congress stated:

> The conferees intend that this will allow a plan to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits. (However, the percentage is to be consistent with the requirements of adequate security.) The conferees also intend that a plan may provide that the same dollar amounts may be loaned to participants and beneficiaries without regard to the amount of their vested benefits if adequate security is otherwise provided. For example, a plan could provide for loans to participants and beneficiaries in an amount up to, e.g., $30,000 to buy a house (even if the $30,000 is greater than the amount of the participant's or beneficiary's vested benefits) if the loan is adequately secured by, e.g., a first mortgage on the house.

Conf. Rpt., *supra*, at 312. In light of this, proposed regulation § 2550.408b-1(c)(2) states that a participant loan program will not fail to meet this requirement if the plan documents specifically governing the participant loan program set forth either: (1) A maximum dollar limitation, or (2) a maximum percentage of vested accrued benefit which no loan may exceed. Section 2550.408b-1(c)(3) of the proposal goes on to state that if the second alternative (maximum percentage of vested accrued benefit) is chosen, a loan program will not fail to meet this requirement solely because maximum loan amounts will vary directly with the size of the participant's vested accrued benefit.[10] However, no loan program will satisfy this requirement if the program operates to exclude large numbers of plan participants from receiving loans.[11] Proposed section 2550.408-1(c)(4) contains examples of the application of these provisions.

4. *Specific Plan Provisions.* Section 408(b)(1)(C) of the Act states that the relief provided by section 408(b)(1) will be available only for loans made in accordance with specific provisions regarding such loans set forth in the plan. In the Department's view, this requirement seeks to assure that the safeguards otherwise afforded by section 408(b)(1) to the plan and those participants seeking loans are not compromised by informal arrangements which could serve as a basis for improper discrimination or arbitrarily determined terms. The Department believes that a formal decisionmaking process based on detailed loan provisions contained in the plan or in a written document forming part of the plan is necessary to accomplish this underlying purpose.

However, the Department is aware that participant loan programs may already be operating pursuant to a variety of provisions in plan documents. The Department does not intend to call into question the validity of such programs where the plan provisions governing participant loans are reasonably calculated to apprise potential borrowers of the existence and scope of the loan program. As a result, proposed regulation § 2550.408b-1(d)(1) states that, in the case of a participant

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[8] 120 CONG. REC. 4728 (Feb. 28, 1974) *as reprinted in* Subcomm. on Labor, U.S. Senate Comm. on Labor and Pub. Welfare, 94th CONG., 2d SESS., Legislative History of the Employee Retirement Income Security Act of 1974 3518 (Remarks of Rep. Abzug and Rep. Dent) Comm. Print 1976; Conf. Rpt. *supra*, at 311.

[9] *See* Conf. Rpt., *supra*, at 311.

[10] The Department notes that the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–428) places a number of restrictions on participant loans for certain tax purposes. In addition, the Department notes that the Tax Reform Act of 1986 (Pub. L. 99–514) places further restrictions on participant loans. For example, section 236 of TEFRA and section 1134 of the Tax Reform Act amend section 72 of the Code to state that a participant loan will be treated as a distribution under the plan unless such loan does not exceed the lesser of: (i) $50,000 (which amount must be reduced by the outstanding balances for any previous participant loans from the plan in accordance with section 72(p)(2)(A)); or (ii) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000). In the Department's view, a participant loan program administered pursuant to plan provisions which have been amended to preclude the making of loans which would be considered distributions under section 72(p) of the Code will not fail to satisfy the condition in section 408(b)(1)(B) of the Act and proposed § 2550.408-1(c).

[11] The Department notes the amendment to section 408(b)(1)(B) contained in section 1114(b)(15)(B) of the Tax Reform Act of 1986, discussed in note 3, *supra*. In the Department's view, this amendment merely clarifies the categories of persons in whose favor a loan program may not discriminate while not affecting the requirement contained in section 408(b)(1)(B) that a loan program must be operated in a nondiscriminatory manner so as not to exclude large numbers of plan participants. Accordingly, the Department has decided not to propose a special effective date for proposed § 2550.408b-1(c).

loan granted or renewed at any time prior to the last day of the first plan year beginning on or after January 1, 1989, the Department will consider the loans are made in accordance with specific provisions regarding such loans set forth in the plan if the plan contains an explicit authorization for the establishment of a participant loan program.

In the case of a participant loan granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989, proposed regulation § 2550.408b-1(d)(2) states that the participant loans must be governed by provisions in the plan or in a written document forming part of the plan which include, but need not be limited to: (1) The identity of the person or position authorized to administer the participant loan program; (2) a procedure for applying for loans; (3) the basis on which loans will be approved or denied; (4) limitations (if any) on the types and amounts of loans offered; (5) the procedure under the program for determining a reasonable rate of interest; (6) the types of collateral which may secure a participant loan; and (7) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default. The Department does not intend this to be an exhaustive list. Rather, the provisions in the plan documents should be sufficiently complete so as to apprise all possible borrowers of the scope and procedures of the loan program. If the plan fails either to contain such specific provisions or to administer participant loans in accordance with a written program, loans made under such a program will fail to qualify for the relief extended in section 408(b)(1). In this regard, the Department intends that loans to fiduciaries will be administered in accordance with objective criteria developed in conjunction with a written participant loan program.

5. *Reasonable Rate of Interest.* Section 408(b)(1)(D) of the Act states that, in order for a loan to be covered by the relief provided by section 408(b)(1), such loan must bear a reasonable rate of interest. Since it is the view of the Department that a participant loan is a plan investment, the Department believes this statutory exemption contemplates that loans involving parties in interest, which otherwise would be prohibited under ERISA, would be permitted only if plans receive the rate of interest that professional lenders exercising sound investment practices would charge on similar arms-length loans. Thus, under proposed regulation § 2550.408b–1(e), a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. This objective prevailing rate standard was described in Advisory Opinion 81–12A, *supra*, after an examination of the relevant legislative history and the practice under the Code prior to enactment of ERISA. In that letter, the Department stated that the prevailing rate standard permits a fiduciary to consider those factors pertaining to the opportunity for gain and the risk of loss that professional lenders would consider in setting the rate of interest on a similar arm's-length loan.[12] The prevailing rate, of course may vary with the creditworthiness of the borrower and the security given for the loan. Moreover, the prevailing rate will ordinarily represent a narrow range of rates offered by similarly situated lenders making similar loans in the marketplace. Although the Department views the prevailing rate concept as a flexible standard, the advisory opinion emphasizes that a participant loan or program of loans, as a plan investment, would not be prudent if the investment provided a plan with less return, relative to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

While the Department believes, as stated above, that the prevailing rate standard is the appropriate interpretation of the "reasonable rate of interest" requirement of section 408(b)(1)(D), it also believes that such an interpretation is also necessary to further the primary policy objective of ERISA—to protect and enhance the retirement income of participants and beneficiaries. Accordingly, the Department views a participant loan as an investment subject to the same standards of ERISA as any other investment, *e.g.*, the prudence and exclusive benefit rules. Thus, where a plan is acting, in effect, as a lender, there is no rationale under ERISA for permitting the plan to assume a risk at a lesser return than the return that market forces would have set for assuming such a risk.

The prevailing rate standard is also supported by another strong policy consideration. By defining "reasonable rate" as the "prevailing rate", the regulation is also consistent with the Department's objective of providing guidance to plan fiduciaries that will facilitate the establishment and operation of participant loan programs.

Proposed regulation § 2550.408b–1(e) contains examples of the application of these provisions.

6. *Adequate Security.* Section 408(b)(1)(E) of the Act states that the relief provided by section 408(b)(1)(will apply only to loans that are adequately secured. Prior to the enactment of ERISA, section 503(a) of the Code provided that certain organizations

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[12] The Department acknowledges that the approach taken in A. O. 81–12A was not adopted by the court in *Brock v. Walton*, No. 85–5641 (11th Cir., July 21, 1986). Loans under the participant loan program in *Walton* were made on the average at interest rates 2¼ percentage points lower than prevailing rates in the community. Loans made on these terms, however, provided the plan with returns higher than those of other plan assets and in excess of the plan's actuarial and funding requirements.

The Department contended that by making below prevailing rate loans, the trustees had violated the fiduciary duty provisions of section 404(a)(1) (A) and (B). Further, the Department argued that loans made below the prevailing rate would fail to bear a reasonable rate of interest and would therefore be ineligible for the statutory exemption provided in section 408(b)(1).

In rejecting the Department's position, the court in *Walton* held the interest rate differential was not alone sufficient to show that the trustees had acted imprudently, or that the loans failed to bear a reasonable rate of interest. However, the court did state that there could be cases in which the rate of interest could depart so far from the prevailing rate that a loan could not be justified as prudent or in the best interest of plan participants.

After a careful review of the court's opinion, it continues to be the Department's position that the law of trusts establishes an objective standard of fiduciary conduct which has been incorporated by Congress in ERISA and applied in numerous cases thereunder. *See, e.g., Donovan v. Cunningham*, 716 F.2d 1455, 1467–68 (5th Cir. 1983), *cert. denied* 104 S. Ct. 3533 (1984); *Donovan v. Mazzola*, 716 F.2d 1226, 1231–32 (9th Cir. 1983), *cert. denied* 464 U.S. 1040 (1984); *Freund v. Marshall & Ilsley Bank*, 485 F. Supp. 629, 635 (W.D. Wisc. 1979). Further, the legislative history clearly indicates that Congress provided an exemption from the prohibited transaction rules for participant loans in section 408(b)(1) "following current practice." Conf. Rpt., *supra*, at 311. In discussing the state of the law prior to the passage ERISA, Congress noted:

> Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets, including a requirement that cost must not exceed fair market value at the time of purchase, *there must be a fair return commensurate with the prevailing rate*, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present.

Id. 302. [Emphasis added.] *See* 26 U.S.C. 503(b)(1)(B) [1970]; Treas. Reg. § 1.503(b)–1(c) [1960].

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[13] In view of this, the Department believes there is sufficient basis to conclude that both sections 404 and 408(b)(1) require participant loans to provide the plan with a fair return commensurate with the prevailing rate. As a result, the Department has determined to include its longstanding interpretation of the reasonable rate of interest standard in section 408(b)(1)(D) in this proposal.

would lose their tax exempt status if they engaged in a prohibited transaction. Section 503(b) of the Code listed as one such prohibited transaction certain loans made without receipt of adequate security or a reasonable rate of interest. Pursuant to this requirement, the Internal Revenue Service adopted regulation 26 CFR 1.503b–1(b)(1) to define the term "adequate security". The Department proposes to adopt a similar approach in proposed regulation 2550.408b–1(f), which states that a loan will be considered to be adequately secured if the security posted for such loan is something in addition to and supporting a promise to pay, which is so pledged to the plan that it may be sold, foreclosed upon, or otherwise disposed of in default of the loan, the value and liquidity of which security is such that it may be anticipated that loss of principal or interest will not result from the loan. To the extent that there are restrictions under applicable Code provisions against reduction or disposal of a participant's vested accrued benefit to satisfy a participant's outstanding obligation in the event of a default, such security may not be adequate for purposes of section 408(b)(1)(E) of the act. Under such circumstances, additonal security must be pledged.[18]

The proposal also states that a determination as to the adequacy of security will be made in light of the type and amount of security which would be required in the case of a comparable transaction in a normal commercial (arm's-length) setting between unrelated parties.

Executive Order 12291 Statement

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers; individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action will impose some costs on employee benefit plans. These costs have been estimated to be one-time costs of just under $18 million and subsequent annual costs of less than $150,000.

Regulatory Flexibility Act Statement

The Department does not believe that this regulation would have a significant economic effect on small plans. In conducting the analysis required under the Paperwork Reduction Act of 1980, it was estimated that the one-time cost to each pension plan of implementing the regulation would be approximately $100. The only burden attributable to this regulation is the one-time burden of amending the plan documents to include the specific plan provisions describing the participant loan program which are required by the regulation and amending the summary plan description in order to apprise participants of the required provisions. Further, it should be noted that the Tax Reform Act of 1986 (Pub. L. 99–154) requires that plan amendments be made generally within the same time frame as that proposed in these regulations. This regulation would not increase reporting requirements for private pension plans, and would not affect competition within any particular industry.

The number of small entities estimated to be affected by this regulation is substantial. An estimated 163,000 small plans may have to be amended to incorporate the specific plan provisions required by these regulations. Annually, the number of new loan programs instituted by small plans that will require specific provisions to be included in the plan is estimated to be 8,000.

The Department chose not to make any distinction between requirements for small and large plans. The requirements imposed by ERISA and this regulation are designed to insure that participant loan programs are administered fairly and do not favor those individuals who have control over the plans. There are no characteristics of small plans that would make their loan programs less susceptible to abuse than loan programs of large plans.

Paperwork Reduction Act Statement

Section 2550.408b–1(d) of the proposed regulation contains a paperwork requirement. The regulation has been forwarded for approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). A control number has not yet been assigned.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to sections 408(b)(1) (Pub. L. 93–406, 88 Stat. 877, 29 USC 1108) and 505 (Pub. L. 93406, 88 Stat. 894, 29 USC 1135) of the Act and under Secretary of Labor's Order No. 1–86.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee retirement income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts, Trustees.

In view of the foregoing, the Department proposes to amend Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for Part 2550 is revised to read as set forth below.

Authority: 29 U.S.C. 1135.

Section 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

Section 2550.407c–3 also issued under 29 U.S.C. 1107.

Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

Section 2550.412–1 also issued under 29 U.S.C. 1112.

Section 2550.414b–1 also issued under 29 U.S.C. 1114.

Secretary of Labor's Order No. 1–86.

2. Part 2550 is amended by adding a new § 2550.408b–1, to read as follows:

§ 2550.408b–1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.

(a)(1) *In general.* Section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act) exempts from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) loans by a plan to parties in interest who are participants or beneficiaries of the plan, provided that such loans:

(i) Are available to all such participants and beneficiaries on a reasonably equivalent basis;

(ii) Are not made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees;

(iii) Are made in accordance with specific provisions regarding such loans set forth in the plan;

(iv) Bear a reasonable rate of interest; and

(v) Are adequately secured.

The Internal Revenue Code (the Code) contains parallel provisions to section 408(b)(1) of the Act. Effective, December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type proposed herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(1) of the Act should be read to include reference to the parallel provisions of section 4975(d)(1) of the Code.

(2) *Scope.* Section 408(b)(1) of the Act does not contain an exemption from acts described in section 406(b)(3) of the Act (prohibiting fiduciaries from receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving plan assets). If a loan from a plan to a participant who is a party in interest with respect to that plan involves an act described in section 406(b)(3), such an act constitutes a separate transaction which is not exempt under section 406(b)(1) of the Act. The provisions of section 408(b)(1) are further limited by section 408(d) of the Act (relating to transactions with owner-employees and related persons).

(3) *Loans.* (i) Section 408(b)(1) of the Act provides relief from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) for the making of a participant loan. The term "participant loan" refers to a loan which is arranged and approved by the fiduciary administering the loan program primarily in the interest of the participant and which otherwise satisfies the criteria set forth in section 408(b)(1) of the Act. The existence of a participant loan or participant loan program will be determined upon consideration of all relevant facts and circumstances. Thus, for example, the mere presence of a loan document appearing to satisfy the requirements of section 408(b)(1) will not be dispositive of whether a participant loan exists where the subsequent administration of the loan indicates that the parties to the loan agreement did not intend the loan to be repaid. Moreover, a loan program containing a precondition designed to benefit a party in interest (other than the participant) is not afforded relief by section 408(b)(1) or this regulation. In this regard, section 408(b)(1) recognizes that a program of participant loans, like other plan investments, must be prudently established and administered for the exclusive purpose of providing benefits to participants and beneficiaries of the plan.

(ii) For the purpose of this regulation, the term "loan" will include any renewal or modification of an existing loan agreement, provided that, at the time of each such renewal or modification, the requirements of section 408(b)(1) and this regulation are met.

(4) *Examples.* The following examples illustrate the provisions of *2550.408b–1(a).*

Example (1). T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. As a result, T is a fiduciary with respect to P under section 3(21)(A) of the Act and a party in interest with respect to P pursuant to section 3(14)(A) of the Act. T is also a participant in P. Among T's duties as fiduciary is the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. Pursuant to strict objective criteria stated under the program, T, who participates in all loan decisions, receives a loan on the same terms as other participants. Although the exercise of T's discretion on behalf of himself may constitute an act of self-dealing described in section 406(b)(1), section 408(b)(1) provides an exemption from section 406(b)(1). As a result, the loan from P to T would be exempt under section 408(b)(1), provided the conditions of that section are otherwise satisfied.

Example (2). P is a plan covering all the employees of E, the employer who established and maintained P. F is a fiduciary with respect to P and an officer of E. The plan documents governing P give F the authority to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to an arrangement with E, F establishes such a program but limits the use of loan funds to investments in a limited partnership which is established and maintained by E as general partner. Under these facts, the loan program and any loans made pursuant to this program are outside the scope of relief provided by section 408(b)(1) because the loan program is designed to operate for the benefit of E.

Example (3). Assume the same facts as in Example 2, above, except that F does not limit the use of loan funds. However, E pressures his employees to borrow funds under P's participant loan program and then reloan the loan proceeds to E. F, unaware of E's activities, arranges and approves the loans. If the loans meet all the conditions of section 408(b)(1), such loans will be exempt under that section. However, E's activities would cause the entire transaction to be viewed as an indirect transfer of plan assets between P and E, who is a party in interest with respect to P, but not the participant borrowing from P. By coercing the employees to engage in loan transactions for its benefit, E has engaged in separate transactions that are not exempt under section 408(b)(1). Accordingly, E would be liable for the payment of excise taxes under section 4975 of the Code. Under the circumstances described, the diversion of plan assets for E's benefit would also violate sections 403(c)(1) and 404(a) of the Act.

Example (4). Assume the same facts as in Example 2, above, except that, in return for structuring and administering the loan program as indicated, E agrees to pay F an amount (in addition to F's normal fiduciary fee) equal to 10 percent of the funds loaned under the program. Such a payment would result in a separate transaction not covered by section 408(b)(1). This transaction would be prohibited under section 406(b)(3) since F would be receiving consideration from a party in connection with a transaction involving plan assets.

Example (5). F is a fiduciary with respect to plan P. D is a party in interest with respect to plan P. Section 406(a)(1)(B) of the act would prohibit F from causing P to lend money to D. However, F enters into an agreement with Z, a plan participant, whereby F will cause P to make a participant loan to Z with the express understanding that Z will subsequently lend the loan proceeds to D. An examination of Z's credit standing indicates that he is not credit worthy and would not, under normal circumstances, receive a loan under the conditions established by the participant program. F's decision to approve the participant loan to Z on the basis of Z's prior agreement to lend the money to D violates the exclusive purpose requirements of sections 403(c) and 404(a). In effect, the entire transaction is viewed as an indirect transfer of plan assets between P and D, and not a loan to a participant exempt under section 408(b)(1). Z's lack of credit standing would also cause the transaction to fail under section 408(b)(1)(A) of the act.

Example (6). F is fiduciary with respect to Plan P. Z is a plan participant. Z and D are both parties in interest with respect to P. F approves a participant loan to Z in accordance with the conditions established under the participant loan program. Upon receipt of the loan, Z intends to lend the money to D. If F has approved this loan solely upon consideration of those factors which would be considered in a normal commercial setting by an entity in the business of making comparable loans, Z's subsequent use of the loan proceeds will not affect the determination of whether loans under P's program satisfy the conditions of section 408(b)(1).

Example (7). A is the trustee of a small individual account plan. D, the president of the plan sponsor, is also a participant in the plan. Pursuant to a participant loan program meeting the requirements of section 408(b)(1), D applies for a loan to be secured by a parcel of real property. D does not intend to repay the loan; rather, upon eventual default, he will permit the property to be foreclosed upon and transferred to the plan in discharge of his legal obligation to repay the loan. A, aware of

[18] In this regard, the Department notes that participant loans are generally subject to the Retirement Equity Act of 1984 (Pub. L. 98–397). Specifically, a reduction in an accrued benefit to satisfy a participant's loan obligation to the plan is treated as a distribution from the plan and is generally subject to the applicable consent requirement of ERISA section 205 and Code sections 401(a)(11) and 417(e) (see 26 CFR 1.417(e)–1T(d)). If the plan does not obtain the required consent prior to the making a loan secured by the participant's accrued benefit, the plan may not be able to execute on the security by reducing the participant's accrued benefit without violating Code section 417(e). Thus, under the above circumstances, the plan may have made a loan that is not adequately secured within the meaning of this proposed regulation.

D's intention, approves the loan. D fails to make two consecutive quarterly payments of principal and interest under the note evidencing the loan thereby placing the loan in default. The plan then acquires the real property upon foreclosure. Such facts and circumstances indicate that the payment of money from the plan to D was not a participant loan eligible for the relief afforded by section 408(b)(1). In effect, this transaction is a prohibited sale or exchange of property between a plan and a party in interest from the time D receives the money.

Example (8). Plan P establishes a participant loan program. All loans are subject to the condition that the borrowed funds must be used to finance home purchases. Interest rates on the loans are the same as those charged by a local savings and loan association under similar circumstances. A loan by P to a participant to finance a home purchase would be subject to the relief provided by section 408(b)(1) provided that the conditions of 408(b)(1) are met. A participant loan program which is established to make loans for certain stated purposes (e.g., hardship, college tuition, home purchases, etc.) but which is not otherwise designed to benefit parties in interest (other than plan participants) would not, in itself, cause such program to be ineligible for the relief provided by section 408(b)(1). However, fiduciaries are cautioned that operation of a loan program with limitations may result in loans not being made available to all participants and beneficiaries on a reasonably equivalent basis.

(b) *Reasonably Equivalent Basis.* (1) Loans will not be considered to have been made available to participants and beneficiaries on a reasonably equivalent basis unless:

(i) Such loans are available to all plan participants and beneficiaries without regard to any individual's race, color, religion, sex, age or national origin;

(ii) In making such loans, consideration has been given only to those factors which would be considered in a normal commercial setting by an entity in the business of making similar types of loans. Such factors may include the applicant's creditworthiness and financial need; and

(iii) An evaluation of all relevent facts and circumstances indicates that, in actual practice, loans are not unreasonably withheld from any applicant.

(2) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(b)(1):

Example (1). T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. T's duties include the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. T receives a participant loan at a lower interest rate than the rate made available to other plan participants of similar financial condition or creditworthiness. The loan by P to T would not be covered by the relief provided by section 408(b)(1) because loans under P's program are not available to all plan participants on a reasonably equivalent basis.

Example (2). Same facts as in example 1, except that T is a member of a committee of trustees responsible for approving participant loans. T pressures the committee to refuse loans to other qualified participants in order to assure that the assets allocated to the participant loan program would be available for a loan by P to T. The loan by P to T would not be covered by the relief provided by section 408(b)(1) since participant loans have not been made available to all participants and beneficiaries on a reasonably equivalent basis.

Example (3). T is the trustee of plan P, which covers the employees of E. A, B and C are employees of E, participants in P, and friends of T. The documents governing P provide that T, in his discretion, may establish a participant loan program meeting certain specified criteria. T institutes such a program and tells A, B, and C of his decision. Before T is able to notify P's other participants and beneficiaries of the loan program, A, B, and C file loan applications which, if approved, will use up substantially all of the funds set aside for the loan program. Approval of these applications by T would represent facts and circumstances showing that loans under P's program are not available to all participants and beneficiaries on a reasonably equivalent basis.

(c) *Highly Compensated Employees.* (1) Loans will not be considered to be made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees if, upon consideration of all relevant facts and circumstances, the program does not operate to exclude large numbers of plan participants from receiving loans under the program.

(2) A participant loan program will not fail to meet the requirement in paragraph (1), above, merely because the plan documents specifically governing such loans set forth either: (i) A maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed.

(3) If the second alternative in paragraph (2) above (maximum percentage of vested accrued benefit) is chosen, a loan program will not fail to meet this requirement solely because maximum loan amounts will vary directly with the size of the participant's accrued benefit.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(c).

Example (1). The documents governing plan P provide for the establishment of a participant loan program in which the amount of any loan under the program (when added to the outstanding balances of any other loans under the program to the same participant) does not exceed the lesser of (i) $50,000, or (ii) one-half of the present value of that participant's vested accrued benefit under the plan (but not less than $10,000). P's participant loan program does not fail to meet the requirement in section 408(b)(1) of the Act, provided the other conditions of that section are met.

Example (2). The documents governing plan T provide for the establishment of a participant loan program in which the minimum loan amount would be $25,000. The documents also require that the only security acceptable under the program would be the participant's vested accrued benefit. A, the plan fiduciary administering the loan program, finds that because of the restrictions in the plan documents only 20 percent of the plan participants, all of whom earn in excess of $75,000 a year, would meet the threshold qualifications for a loan. Most of these participants are high-level supervisors or corporate officers. Based on these facts, it appears that loans under the program would be made available to highly compensated employees in an amount greater than the amount made available to other employees. As a result, the loan program would fail to meet the requirement in section 408(b)(1)(B) of the Act and would not be covered by the relief provided in section 408(b)(1).

(d) *Specific Plan Provisions.* For the purposes of section 408(b)(1) and this regulation, the Department will consider that participant loans granted or renewed at any time prior to the last day of the first plan year beginning on or after January 1, 1989, are made in accordance with specific provisions regarding such loans set forth in the plan if:

(1) The plan provisions regarding such loans contain (at a minimum) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish a participant loan program; and

(2) For participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989, the participant loan program which is contained in the plan or in a written document forming part of the plan includes, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for loans;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations (if any) on the types and amounts of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

Example (1). Plan P authorizes the trustee to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to this explicit authority, the trustee establishes a written program which contains all of the information required by § 2550.408b–1(d)(2). Loans made pursuant to this authorization and the written loan program will not fail under section 408(b)(1)(C) of the Act merely because the specific provisions regarding such loans are contained in a separate document forming part of the plan. The specific provisions describing the loan program, whether contained in the plan or in a written document forming part of a plan, do affect the rights and obligations of the participants and beneficiaries under the plan and, therefore, must in accordance with section 102(a)(1), be disclosed in the plan's summary plan description.

(e) *Reasonable Rate of Interest.* A loan will be considered to bear a reasonable rate of interest if such loan provides the plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

Example (1). Plan P makes a participant loan to A at the fixed interest rate of 8% for 5 years. The trustees, prior to making the loan, contacted two local banks to determine under what terms the banks would make a similar loan taking into account A's creditworthiness and the collateral offered. One bank would charge a variable rate of 10% adjusted monthly for a similar loan. The other bank would charge a fixed rate of 12% under similar circumstances. Under these facts, the loan to A would not bear a reasonable rate of interest because the loan did not provide P with a return commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. As a result, the loan would fail to meet the requirements of section 408(b)(1)(D) and would not be covered by the relief provided by section 408(b)(1) of the Act.

Example (2). Pursuant to the provisions of plan P's participant loan program, T, the trustee of P, approves a loan to M, a participant and party in interest with respect to P. At the time of execution, the loan meets all of the requirements of section 408(b)(1) of the Act. The loan agreement provides that at the end of two years M must pay the remaining balance in full or the parties may renew for an additional two year period. At the end of the initial two year period, the parties agree to renew the loan for an additional two years. At the time of renewal, however, A fails to adjust the interest rate charged on the loan in order to reflect current economic conditions. As a result, the interest rate on the renewal fails to provide a "reasonable rate of interest" as required by section 408(b)(1)(D) of the Act. Under such circumstances, the loan would not be exempt under section 408(b)(1) of the Act from the time of renewal.

Example (3). The documents governing plan P's participant loan program provide that loans must bear an interest rate no higher than the maximum interest rate permitted under State X's usury law. Pursuant to the loan program, P makes a participant loan to A, a plan participant, at a time when the interest rates charged by financial institutions in the community (not subject to the usury limit) for similar loans are higher than the usury limit. Under these circumstances, the loan would not bear a reasonable rate of interest because the loan does not provide P with a return commensurate with the interest rates charged by persons in the business of lending money under similar circumstances. In addition, participant loans that are artificially limited to the maximum usury ceiling then prevailing call into question the status of such loans under sections 403(c) and 404(a) where higher yielding comparable investment opportunities are available to the plan.

(f) *Adequate Security.* A loan will be considered to be adequately secured if the security posted for such loan is something in addition to and supporting a promise to pay, which is so pledged to the plan that it may be sold, foreclosed upon, or otherwise disposed of in default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan. The adequacy of such security will be determined in light of the type and amount of security which would be required in the case of an otherwise identical transaction in a normal commercial setting between unrelated parties on arm's-length terms. A participant's vested accrued benefit under a plan may be used as security for a participant loan to the extent of the plan's ability to satisfy the participant's outstanding obligation in the event of default.

(g) *Effective date.* This section is effective January 1, 1975, except with respect to paragraph (d)(2) relating to specific plan provisions. Paragraph (d)(2) is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

Date signed: January 15, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 88-1141 Filed 1-21-88; 8:45 am]

BILLING CODE 4510-29-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–11, 201–30, 201–31, and 201–32

Revision To Remove Additional Redundant and Nonregulatory Provisions

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This revision is the second of two amendments to streamline and simplify the FIRMR by immediately removing redundancies and nonregulatory provisions. The first amendment removed and updated provisions without change to regulatory requirements, policies, or procedures. This amendment consolidates provisions and removes additional provisions not requiring regulatory coverage. Although the amendment results in no policy revisions, some changes have been made to reporting requirements and procedures. The intent is to streamline and simplify provisions to facilitate useability.

DATE: Comments are due February 22, 1988.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Project 87.47A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Regulations Branch, Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194. The full text of the Project 87.47A proposed rule is available upon request, by telephoning (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) In Part 201–11, Competition, § 201–11.003 will be amended to remove redundant provisions on full and open competition as the basic procurement objective of the Government. Part § 201–11 will be further amended by consolidating in § 201–11.003 provisions from § 201–30.008 related to agency responsibilities for managing and planning for full and open competition in subsequent procurements.

(2) The proposed changes for Part 201–30, Management of ADP Resources, are explained in the following paragraphs.

(a) Section 201–30.007, paragraph (c), which contains provisions on the use of specifications, will be removed. Pertinent provisions from paragraph (c) will be consolidated in § 201–30.013 (subject: specifications).

(b) Section 201–30.007, paragraphs (d)(5) and (d)(6) will be removed as

factors to be considered in the determination of need and requirements analysis. Paragraph (d)(5) will be consolidated with § 201–30.009 (subject: analysis of alternatives for satisfying a requirement) since the provisions contained in that paragraph are more appropriate as factors to be considered when analyzing alternatives.

(c) In § 201–30.008, paragraph (a) will be revised to clarify use of the determination of need and requirements analysis in determining the system/item life and to remove provisions related to unplanned augmentations. Paragraph (d) will be revised to remove and consolidate in § 201–11.003, provisions related to agency responsibilities for managing and planning for full and open competition for subsequent procurements. A new paragraph (e) will be added to expand upon and clarify provisions related to unplanned augmentations and the need for a new system/item life.

(d) In § 201–30.009, paragraph (a) will be revised to remove the cross-reference to § 201–16.002 and paragraph (b) will be revised to remove the cross-reference to § 201–30.009–2(a). Paragraph (a)(2) will be revised to remove and consolidate in § 201–31.001, information related to the requirements of OMB Circular A-130 when sharing ADP resources. A new paragraph (a)(3) will be added to include provisions removed from § 201–30.007 (see paragraph 2b).

(e) In § 201–30.013, paragraph (a) will be revised to remove the parenthetical listing of responsible sources for obtaining full and open competition and paragraph (b) will be revised to remove the cross-reference to § 201–11.002–1. Paragraph (a) will also be revised to include provisions removed from § 201–30.007 (see paragraph 2a).

(3) The proposed changes for Part 201–31, Sharing of ADP Resources, are explained in the following paragraphs.

(a) Section 201–31.001 will be revised to include provisions removed from § 201–30.009 (see paragraph 2d).

(b) Section 201–31.006, paragraph (b) requiring agencies to report to GSA on services obtained from commercial sources will be removed.

(4) The proposed changes in Part 201–32, Contracting for ADP Resources, are explained in the following paragraphs.

(a) Section 201–32.103, requiring agencies to report to GSA when contracting for major system acquisitions under OMB Circular A-109 will be removed.

(b) Section 201–32.106, paragraph (a) serving to cross-reference FAR provisions on synopsizing will be removed.

(c) In § 201–32.206, paragraphs (g)(2)(iii)(A) through (g)(2)(iii)(C) will be removed. These paragraphs provide special procedures for issuing solicitations when the results of a schedule order synopsis indicates that ordering from a GSA nonmandatory ADP schedule may not result in the lowest overall cost alternative to the Government.

(5) The General Services Administration (GSA) has determined that the proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201–11, 201–30, 201–31, and 201–32

Information resources activities, Competition.

Dated: December 31, 1987.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 88–1187–Filed 1–21–88; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1336

Administration for Native Americans

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of intent to develop regulations and request for comment.

SUMMARY: The Administration for Native Americans (ANA) announces that it plans to amend its regulations at 45 CFR Part 1336 to implement a new requirement in the Native American Programs Act, as amended. This Act now establishes a 5-year demonstration program to manage a revolving loan fund to promote economic development for Native Hawaiians.

ANA requests comments from the public, and particularly from appropriate agencies of the State of Hawaii and community-based Native Hawaiian organizations, on all aspects of establishing such a revolving loan fund.

DATE: Comments are requested by February 28, 1988.

ADDRESS: Comments in writing should be addressed and submitted to:

William Lynn Eagles, Commissioner, Administration for Native Americans, 300 Independence Avenue, SW., Room 5300, Washington, DC 20201, Attention: Jan Phalen.

FOR FURTHER INFORMATION CONTACT: Jan Phalen or Martin Koenig, ANA, (202) 245–7714.

SUPPLEMENTARY INFORMATION: The Native American Programs Act was reauthorized and amended by Pub. L. 100–175 on November 29, 1987.

One new provision of this legislation, section 803A, requires the Secretary to award grants to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians. These grants will fund a 5-year demonstration project in the State of Hawaii to establish a revolving loan fund. The purpose of the loan fund is to make loans to Native Hawaiian organizations and individual Native Hawaiians in order to promote economic development in the State of Hawaii.

The statute specifies several requirements and conditions the prospective grantee must meet in administering the loan fund. ANA plans to propose regulations that closely follow the statutory provisions.

Section 803A also requires that the Department consult with appropriate agencies of the State of Hawaii and community-based Native Hawaiian organizations in the development of these regulations. ANA solicits and will consider all comments, suggestions, and recommendations that will assist in implementing these requirements. Comments are requested by February 28 as section 803A requires that regulations be published by the end of March.

(Catalog of Federal Domestic Assistance Program No. 13.612: Native American Programs—Financial Assistance Grants)

Date: January 15, 1988.

William Lynn Eagles,

Commissioner, Administration for Native Americans.

[FR Doc. 88–1202 Filed 1–21–88; 8:45 am]

BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–598, RM–5801]

Radio Broadcasting Services; Camden, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of KJWH, Inc., which seeks the allotment of Channel 283A to Camden, Arkansas, as that community's third local FM service.

DATES: Comments must be filed on or before March 7, 1988, and reply comments on or before March 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Eugene T. Smith, Esq., Law Offices of Eugene T. Smith, 715 G St. SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–598, adopted December 14, 1987, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1220 Filed 1–21–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No.87–595, RM–5857]

Radio Broadcasting Services; Beloit, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Solomon Valley Broadcasting, Inc., licensee of Station KVSV–FM, Channel 288A, Beloit, Kansas, proposing to modify its license from Class A facilities to Class C2 facilities operating on the same Channel 288.

DATES: Comments must be filed on or before March 7, 1988, and reply comments on or before March 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Charles K. Frodsham, President, Solomon Valley Broadcasting, Inc., Post Office Box 7, Beloit, Kansas 67420 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 87–595, adopted December 14, 1987, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1219 filed 1–21–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–596, RM–5975]

Radio Broadcasting Services; El Dorado, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KIKZ, Inc., proposing the substitution of FM Channel 256C2 for Channel 257A at El Dorado, Kansas and modification of its license for Station KSPC–FM to specify operation on Channel 256C2.

DATES: Comments must be filed on or before March 7, 1988, and reply comments on or before March 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esq., 715 G Street SE., Washington, DC 20003 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–596, adopted December 14, 1987, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1218 Filed 1-21-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-594, RM-6100]

Radio Broadcasting Services; Huntsville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Don Werlinger, d/b/a The Broadcast Development Group, Inc. proposing the allotment of Channel 278A to Huntsville, Texas, as that community's second FM service. A site restriction of 2.3 kilometers (1.4 miles) southwest of the community is required.

DATES: Comments must be filed on or before March 7, 1988, and reply comments on or before March 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Don Werlinger, P.O. Box 1223, Lockhart, Texas 78644 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-594, adopted December 14, 1987, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mary N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1217-Filed 1-21-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 53, No. 14

Friday, January 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of the Census

Service Annual Survey; Determination

In accordance with Title 13, United States Code, sections 131, 182, 224, and 225, and due Notice of Consideration having been published November 10, 1987 (52 FR 217), I have determined that 1987 data on receipts and revenues for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include hotels and motels; personal, business, automotive, and repair services; motion pictures and amusement services; health, legal, and other professional services; real estate services; arrangement of passenger transportation; and selected social services. This survey will yield 1987 estimates of receipts/revenues for these service industries, in addition to sources of receipts/revenues for nursing and personal care facilities, outpatient care facilities, personnel supply services, and arrangement of passenger transportation. Also, information on number of beds, discharges, and average length of stay per discharge for nursing and personal care facilities will be provided along with annual payroll and operating expenses, for firms engaged in the arrangement of passenger transportation.

The Census Bureau will require a selected sample of service firms in the United States (with payroll size determining the probability of selection) to report in the 1987 Service Annual Survey. The sample will provide, with measurable reliability, statistics on the above items for these service industries.

We will furnish report forms to the firms covered by this survey and will require their submission within 15 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: January 15, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-1280 Filed 1-21-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 2-88]

General Foods Processing Plant (Food Products/Sugar) Dover, DE; Application for Subzone

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the State of Delaware, grantee of FTZ 99, through the Delaware Development Office, requesting special-purpose subzone status for the food products/sugar processing plant of General Foods Corporation (subsidiary of Philip Morris Companies, Inc.) located in Dover, Delaware, adjacent to the Wilmington Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 11, 1988.

The General Foods plant (126 acres) is located on West North Street in Dover. The facility employs 1,100 persons and is used to produce a wide variety of food products, including gelatin desserts and other dessert mixes, syrups, instant dry drink mixes, chocolate products and other sugar-containing products.

General Foods wishes to use zone procedures to avoid quota restrictions on foreign sugar. The company is aware that certain sugar-containing products would be subject to quotas, if imported. Zone procedures would also exempt the company from Customs duty payments on foreign sugar used in its export products, and would allow duty payments to be deferred on products entered for domestic consumption. The applicant indicates that zone procedures will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC. 20230; Edward A. Goggin, Deputy Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110; and Lt. Colonel G. William Quinby, District Engineer, U.S. Army Engineer District Philadelphia, 2nd and Chestnut Streets, Philadelphia, Pennsylvania 19106.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 4, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, New Federal Building, Room 1218F, 844 King Street, Wilmington, Delaware 19801

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: January 15, 1988.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 88-1310 Filed 1-21-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 1-88]

Proposed Foreign-Trade Zone; Vicksburg and Jackson, MS; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign-Trade Zone, Inc. (VJFTZ), a nonprofit corporation, requesting authority to establish a general-purpose foreign-trade zone at sites near Vicksburg and in Jackson, Mississippi, within and adjacent to the Vicksburg Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 11, 1988. VJFTZ is authorized to make the proposal under Section 59-3-35 of the Mississippi Code.

The proposal requests general-purpose zone status for two sites. Site 1 (26 acres) is located in the Emmitte W. Haining Industrial Center within the Port of Vicksburg Public Terminal on the Yazoo River Division Canal in Warren County, one mile northwest of Vicksburg. Initially, a 21,000 sq. ft. warehouse will be available for zone activity. Site 2 (27 acres) consists of two parcels at the Jackson Municipal Airport, in the City of Jackson. Parcel A (17 acres) includes a 36,000 sq. ft. air cargo building between the terminal access road and the west parallel taxiway. Parcel B (10 acres) is on airport property adjacent to Mississippi Highway 475.

The application contains evidence of the need for zone services in the Vicksburg and Jackson areas. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity involving such products as commerical food equipment, electrical components, furniture, and wood products. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John L. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Pat M. Stevens, IV, District Engineer, U.S. Army Engineer District Vicksburg, P.O. Box 60, Vicksburg, Mississippi 39180-0060.

As part of its investigation, the examiners committee will hold a public hearing on March 2, 1988, beginning at 10 a.m., in the Board of Directors Room, Vicksburg Chamber of Commerce, 2020 Mission 66, Vicksburg, Mississippi 39180.

Interested parties are invited to present their views at the hearing, leaving written copies of their testimony with the committee. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by February 26, 1988. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 4, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 328 Jackson Mall Office Center, 300 Woodrow Wilson Boulevard, Jackson, Mississippi 39213

Office of the Port Director, U.S. Customs Service, Harbor Project Road, Vicksburg, Mississippi 39180

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230

Dated: January 15, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

(FR Doc. 88-1311 Filed 1-21-88; 8:45 am)

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No: 88-031. *Applicant:* Russell Research Center, ARS, USDA, P.O. Box 5677, Athens, GA 30613. *Instrument:* Single-Kernel Grain Moisture Tester. *Manufacturer:* Shizuoka Seiki Co., Ltd., Japan. *Intended Use:* The instrument will be used to investigate the moisture content of corn kernels. The experiments to be conducted will consist of comparisons of tester indications and standard oven tests and other experimental methods. *Application Received by Commissioner of Customs:* November 10, 1987.

Docket No: 88-047. *Applicant:* Florida State University, Department of Physics, Tallahassee, FL 32306. *Instrument:* Arc Melter. *Manufacturer:* Edmund Buhler, West Germany. *Intended Use:* The instrument will be used to prepare alloys of high temperature refractory metal by means of arc melting. The metals to be prepared are Zr, Nb, Mo, Hf, Ta, and W. The high temperature properties of thin films of these alloys will be studied as possible heaters in the preparation of superlattice structures in high temperature superconductors. *Application Received by Commissioner of Customs:* November 30, 1987.

Docket No: 88-048. *Applicant:* Carnegie-Mellon University, Mellon Institute, 4400 Fifth Avenue, Pittsburgh PA 15213. *Instrument:* Crystal Growth Furnace. *Manufacturer:* Crystalox, Ltd., United Kingdom. *Intended Use:* The instrument will be used to melt rare earth-transition metal alloys in inert atmosphere for processing the intermetallics. *Application Received by Commissioner of Customs:* December 1, 1987.

Docket No: 88-049. *Applicant:* University of Rochester, Purchasing Services, Goler House, Rochester, NY 14620. *Instrument:* Mass Spectrometer, Model VG Sector. *Manufacturer:* VG Isotopes, Ltd., United Kingdom. *Intended Use:* The instrument will be used for carrying out research on geological materials (minerals and rocks), particularly to measure precisely the isotopic ratios of several elements. The proposed research will be in the fields of geochemistry, geochronology, cosmochronology, and isotope geology. The materials to be studied will include terrestrial rocks, minerals, and extra-terrestrial samples of lunar rocks and meteorites. *Application Received by Commissioner of Customs:* December 1, 1987.

Docket No: 88-050. *Applicant:* State University of New York at Buffalo, Department of Oral Biology, 3435 Main Street, 160 Foster Hall, Buffalo, NY 14214. *Instrument:* Spectropolarimeter, Model J-600C. *Manufacturer:* JASCO, Inc., Japan. *Intended Use:* Studies of biological macromolecules isolated from the human oral cavity, including proteins, glycoproteins and oligosaccharides. The experiments conducted will involve measuring the effect(s) of salt, pH, solute concentration and solvent on the secondary structure of the biology marcomolecules being tested. These studies will be done to make correlations between the structure and function of selected oral macromolecules. The instrument will be used for education purposes in the courses Independent Study and Degree Research in which clinical scientists are trained in the use of the equipment for the purpose of macromolecular structure determination and to obtain structural information concerning selected marcomolecules for the student dissertations. *Application Received by Commissioner of Customs:* December 1, 1987.

Docket No: 88-051. *Applicant:* Texas A & M University, Department of Chemistry, College Station, TX 77843-3255. *Instrument:* Fluorescence Lifetime Spectrometer. *Manufacturer:* Edinburgh Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used to provide luminescence probe techniques in studies of ion conducting polymers, particularly the two systems of: Nafion and Zirconium phenylsulphophosphonate. *Application Received by Commissioner of Customs:* December 2, 1987.

Docket No: 88-052. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. *Instrument:* Nuclear Magnetic Resonance (NMR) Spectrometer. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Intended Use:* Studies of solutions of organic, inorganic, and biological molecules and solid state materials such as polymers, composites and geological samples providing rapid, nondestructive analysis of high sensitivity for this broad spectrum of materials. *Application Received by Commissioner of Customs:* December 2, 1987.

Docket No: 88-053. *Applicant:* University of Georgia, Center for Advanced Ultrastructural Research, 151 Barrow Hall, Athens, GA 30602. *Instrument:* Electron Microscope, Model JEM-100CX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to teach the theory and hands on use of electron microscopes in the Biological and Physical Sciences. *Application Received by Commissioner of Customs:* December 7, 1987.

Docket No: 88-054. *Applicant:* The University of Texas Medical Branch, Galveston, TX 77550. *Instrument:* Inductively Coupled Polasma/Mass Spectrometer, Model VG PlasmaQuad. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for analyses of biological fluids and tissues and environmental substances to provide information with regard to the trace metal and mineral composition of biological fluids and tissues in health and disease. In addition, the instrument will be used to provide education in the principles and practice of ICP/MS for a maximum of two graduate level students. *Application Received by Commissioner of Customs:* December 7, 1987.

Docket No: 88-055. *Applicant:* National Bureau of Standards, Electricity Division, Building 220, Room B258, Gaithersburg, MD 20899. *Instrument:* Superconducting Magnet. *Manufacturer:* Cryogenic Consultants, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of the Quantum Hall Effect in an effort to develop it as a new resistance standard. *Application Received by Commissioner of Customs:* December 8, 1987.

Docket No: 88-056. *Applicant:* Scott and White Memorial Hospital, Scott, Sherwood and Brindley Foundation, 2401 South 31st Street, Temple, TX 76508. *Instrument:* Lithotripter, Model HM4. *Manufacturer:* Dornier Medizentechnik, GmbH, West Germany. *Intended Use:* The instrument will be used for studies of kidney stones in investigations conducted to develop safer and more effective means of urinary stone treatment, and to assess the biological effects of shock waves on normal and abnormal tissues. In addition, the instrument will be used for expanding urological education in the treatment of urinary stone disease. *Application Received by Commissioner of Customs:* December 9, 1987.

Docket No: 88-057. *Applicant:* University of Alabama at Birmingham, Department of Materials Engineering, University Station, Birmingham, AL 35294. *Instrument:* Electron Microscope, Model JEM-2000FX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for morphological, microstructural, and micro-area chemical composition analyses of individual samples of metals and alloys semiconductors, ceramics and glasses, polymers and composite materials. The objective of the investigations is complete characterization of the materials on a sub-micron sale as a function of the processing parameter to which materials will be exposed. *Application Received by Commissioner of Customs:* December 10, 1987.

Docket No: 88-058. *Applicant:* The Pennsylvania State University, Department of Chemistry, University Park, PA 16802. *Instrument:* Langmuir Trough (Balance). *Manufacturer:* Joyce Loebl, United Kingdom. *Intended Use:* The instrument will be used to investigate the behavior of polymers in monofilm layers using langmuir monolayer techniques. *Application Received by Commissioner of Customs:* December 11, 1987.

Docket No: 88-059. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Preparative Quench and Stopped Flow Spectrometer, Model PQ/SF-53. *Manufacturer:* Hi Tech Ltd., United Kingdom. *Intended Use:* Intermediates in chemical and biochemcial reactions will be generated within msec's and their kinetic properties examined. Some will be aqueous buffer solutions of enzymes, and others nonaqueous solution (e.g. dimethlsulfoxide) of strongly basic compounds and heterocyclic compounds. The experiments conducted will consist of rapid mixing of reactants and monitoring by spectrometry/rapid mixing and quenching for other studies to determine the fundamental chemical mechanism of enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* December 14, 1987.

Docket No: 88-060. *Applicant:* Morehouse School of Medicine, 720 Westview Drive S.W., Atlanta, GA 30310-1495. *Instrument:* Electron Microscope, Model JEM 1200EX. *Manufacturer:* JEOL, Japan. *Intended Use:* Study of the ultrastructure and physiological phenomena of various cell types including lens cells, retinal pigment epithelial cells, amoebae, intestinal cells, bacteria and several other cultured cells. The instrument will also be used to train some postdoctoral fellows and medical students. *Application Received by Commissioner of Customs:* December 14, 1987.

Docket No: 88-061. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Radio Direction Finder, Model R-7DH. *Manufacturer:* Orion Electronics, Ltd., Canada. *Intended Use:* The instrument will be used for locating transmitting deepwater wave buoys that have either broken their mooring or are in need of some repair. *Application Received by Commissioner of Customs:* December 14, 1987.

Docket No: 88-062. *Applicant:* University of Alabama, 362 Administration Bldg., Mobile, AL 36688. *Instrument:* GC/Mass Spectrometer Data System, Model MM70-250. *Manufacturer:* VG Analytical, United Kingdom. *Intended Use:* The instrument will be used for investigating biological compounds in samples obtained from various biomedical research projects or synthetic compounds of biomedical interest. The investigations will be conducted to provide mass spectra and/or ion intensity information which are necessary to determine the nature and/or the amounts of the various materials which are introduced into the mass spectrometer. This information will be used to elucidate the biochemical, pathological, pharmacological or synthetical chemical problems being investigated. Instrumental and methodological developments will steadily be pursued. *Application*

BEST COPY AVAILABLE

Received by Commissioner of Customs: December 15, 1987.

Docket No.: 88–063. *Applicant:* Saint Louis University, Department of Earth and Atmospheric Sciences, P.O. Box 8099, Laclede Station, St. Louis, MO 63156. *Instrument:* Seismograph System, Model STS–IV/STS–IH. *Manufacturer:* G. Streckeisen AG, Switzerland. *Intended Use:* The instrument will be used for continuous monitoring of earthquake activity in the central United States and around the world. In addition, the instrument will be used for educational purposes in the course GEO–140–472: Seismological Instrumentation. Students will learn how to calibrate instruments and observe the data produced. *Application Received by Commissioner of Customs:* December 15, 1987.

Docket No.: 88–064. *Applicant:* University of Pennsylvania, School of Medicine, Department of Physiology, B402 Richards Bldg., 37th and Hamilton Walk, Philadelphia, PA 19104–6085. *Instrument:* Flash Photolysis Device. *Manufacturer:* Gert Rapp, West Germany. *Intended Use:* The instrument will be used for rapid initiation of contractions in smooth and striated muscles. *Application Received by Commissioner of Customs:* December 17, 1987.

Docket No.: 88–065. *Applicant:* University of Michigan, Department of Geological Sciences, C. C. Little Building, Ann Arbor, MI 48109. *Instrument:* Electron Microscope, Model CM125. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study a variety of solid state materials as synthesized by all authorized engineering and science research faculty, but with emphasis on natural geological materials. The latter are primarily shales and slates containing clays and other minerals that are studied as part of a research program. *Application Received by Commissioner of Customs:* December 24, 1987.

Docket No.: 88–066. *Applicant:* The Biomechanics Institute Inc. and Harvard School of Public Health, P.O. Box 429, Kenmore Station, Boston, MA 02215. *Instrument:* Mass Spectrometer, Model MGA 2000. *Manufacturer:* Airspec, Ltd., United Kingdom. *Intended Use:* The instrument will be used to track cyclic variations in intro-airway water vapor concentration within canine intrapulmonary airways during tidal breathing. Experiments will be conducted to determine the sites and magnitudes of respiratory heat and water exchange within canine airways as anesthetized, intubated dogs are mechanically ventilated with inspired gas of various air temperature and water content, and with varying breathing pattern. In addition, the instrument will be used for post doctoral training providing sound research experience in a productive academic environment while preparing fellows for anticipated careers in academic medicine. *Application Received by Commissioner of Customs:* December 23, 1987.

Docket No.: 88–067. *Applicant:* Boston University, Department of Chemistry, 590 Commonwealth Avenue, Boston, MA 02215. *Instrument:* GC Mass Spectrometer/DS, Model MAT 90. *Manufacturer:* Finnigan Corp. West Germany. *Intended Use:* The instrument will be used for the analysis and identification of naturally occurring compounds, chemically synthesized materials and byproducts from these syntheses, and reaction intermediates. *Application Received by Commissioner of Customs:* December 24, 1987.

Docket No.: 88–068. *Applicant:* University of Illinois at Chicago, Purchasing Division, P.O. Box 6998, 833 South Wood Street, Chicago, IL 60680. *Instrument:* Gas Chromatograph Mass Spectrometer with Data System, Model MAT 90. *Manufacturer:* Finnigan MAT GmbH, West Germany. *Intended Use:* Mass analysis of a variety of peptides, prostaglandins, DNA-adducts, natural products and synthetic derivatives falling in these categories. The instrument will be used to obtain (1) nominal mass measurements of high molecular weight substances using fast atom bombardment techniques and (2) accurate mass measurements of unknown compounds. The instrument will also be used for educational purposes in general research courses in medicinal chemistry and pharmacognosy and mass spectrometry training. *Application Received by Commissioner of Customs:* December 23, 1987.

Docket No.: 88–069. *Applicant:* University of South Carolina, School of Medicine, Columbia, SC 29208. *Instrument:* Electron Microscope, Model JEM 100 CX. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to study the interaction between extracellular matrix components and the cell surface of muscle cells in normal and diseased animals. Other phenomena to be investigated are the origin and formation of foam cells in atherosclerosis, organization of calcium deposits in the pineal gland, and Herpes virus infection of lung and heart. The instrument will also be used for educational purposes in the course "Electron Microscopy in Pathology" which involves the theoretical and practical aspects of electron microscopy in pathology, examination of tissue and cells by electron microscopy and the presentation of results. *Application Received by Commissioner of Customs:* December 23, 1987.

Docket No.: 88–070. *Applicant:* University of California, Department of Chemistry, 2405 Bowditch Street, Berkeley, CA 94720. *Instrument:* Turbomolecular Pump with Accessories, Model STP–300. *Manufacturer:* Seiko Seiki, Japan. *Intended Use:* The instrument will be used in studies of elementary chemical processes by improving the ultra high vacuum mass spectrometer's ability to handle rare gases and hydrocarbons thereby providing much more information about such processes as radical-radical reactions, the decomposition of energetic materials and combustion related work in oxygen atom reactions. *Application Received by Commissioner of Customs:* December 24, 1987.

Docket No.: 88–071. *Applicant:* Arizona State University, Center for Solid State Science, Tempe, AZ 85287–1704. *Instrument:* Electron Microscope, Model JEM–200 FX/SEG/SIP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for studies of the atomic and chemical structure of metallic, covalent and ionic inorganic solids. High resolution imaging and microdiffraction methods will be used to determine the geometric distribution of atoms in the materials and electron energy loss and x-ray emission spectroscopy to determine local chemical composition and electronic structure. The instrument will be used in part for research in the courses MSE 556, 557, 558 and 559, graduate electron microscopy, materials science courses. *Application Received by Commissioner of Customs:* December 24, 1987.

Docket No.: 87–110R. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Stopped-Flow Spectrophotometer, Model SF–51 with Accessories. *Manufacturer:* Hi-Tech Scientific Instrument Division, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of March 18, 1987.

Docket No.: 87–283R. *Applicant:* Naval Hospital San Diego, Park Boulevard, San Diego, CA 92134–5000. *Instrument:* Electron Microscope, Model EM 109T. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used to train resident physicians in the application principles, operation, and interpretation of electron microscope determinations. *Original of this Resubmitted Application Was Received by Commissioner of Customs:* September 8, 1987.

Docket No.: 88–081R. *Applicant:* Baptist Hospital Inc., 200 Church Street, Nashville, TN 37236. *Instrument:* Lithotripter. *Manufacturer:* Dornier Medical Systems Inc. West Germany. Original notice of this resubmitted application was published in the **Federal Register** of April 15, 1987.

Docket No.: 87–045R–2. *Applicant:* The University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. *Instrument:* CD Spectropolarimeter, Model J–600A. *Manufacturer:* JASCO, Japan. Original notice of this resubmitted application was published in the **Federal Register** of December 12, 1986.

Docket No.: 87–267R. *Applicant:* Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96813. *Instrument:* Field Portable Remote Radar, Model Alphameter. *Manufacturer:* Alpha Nuclear Corporation, Canada. Original notice of this resubmitted application was published in the **Federal Register** of August 31, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–1312 Filed 1–21–88; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

[Docket No. 78109–7242]

Reaffirmation of Federal Information Processing Standard 46, Data Encryption Standard

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that Federal Information Processing Standard (FIPS) 46, Data Encyption Standard, has been reaffirmed for five years.

SUMMARY: The Data Encyption Standard (DES), issued as Federal Information Processing Standard 46 on January 15, 1977, specified that a review would be performed by the National Bureau of Standards (NBS) within five years to assess it adequacy. The first review was completed in 1983 and the standard was reaffirmed for Federal government use [48 FR 41062 dated September 13, 1983]. In 1987, NBS announced the second review of the standard (52 FR 7008 dated March 6, 1987), and solicited comments from Government, industry, and the public on the adequacy of the standard to protect computer data. Comments were requested on the costs and benefits of three alternatives: reaffirmation of the standard for five years; withdrawal of the standard; revision of the applicability of the standard.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the reaffirmation of FIPS 46 in its present form, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Waivers to the provisions of FIPS 46 may be granted by the heads of agencies after the conditions and justification for the waiver have been coordinated with NBS. Waivers will be considered for devices by the National Security Agency as complying with its commercial COMSEC Endorsement Program when such devices offer equivalent cost/performance features when compared with devices conforming with FIPS 46.

DATE: After considering all available information and the comments and recommendations received, the Secretary of Commerce has reaffirmed the standard in its present form. The standard will be reviewed again beginning on or before January 1992.

ADDRESS: Interested parties may purchase copies of FIPS 46 from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Branstad, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975–2913.

Dated: January 13, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–1201 Filed 1–21–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification, Dr. Richard H. Lambertsen (P277A); Modification No. 2 to Permit No. 393

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 220.24 of the regulations governing endangered species (50 CFR Part 217–227), Scientific Research Permit No. 393 (47 FR 41413) issued to Dr. Richard H. Lambertsen, Department of Physiological Sciences, College of Veterinary Medicine, Box J–144, J. Hillis Miller Health Center, University of Florida, Gainesville, Florida 32610 on September 13, 1982, and modified on June 21, 1985 (50 FR 25733), is further modified as follows:

Section B.10 is replaced with:

10. This permit is valid with respect to the activities authorized herein until December 31, 1988.

This modification became effective on December 31, 1987. As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger

Boulevard, St. Petersburg, Florida 33702; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

Date: January 14, 1988.

[FR Doc. 88-1280 Filed 1-21-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Sea-Arama, Inc. (P84D)

On November 4, 1987, notice was published in the **Federal Register** (52 FR 42331) that an application had been filed by Sea-Arama, Inc., P.O. Box 3068, Galveston, Texas 77532 for a permit to import two (2) false killer whales for the purpose of public display.

Notice is hereby given that on January 11, 1988 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: January 14, 1988.

[FR Doc. 88-1281 Filed 1-21-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Defense Manufacturing Board

AGENCY: Department of Defense.

ACTION: Establishment of the Defense Manufacturing Board.

SUMMARY: Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Defense Manufacturing Board has been established as being in the public interest.

The Defense Manufacturing Board will advise the Secretary of Defense and other key officials in the Department of Defense (DoD) on the proper directions to take in maintaining technological leadership in the areas of manufacturing, industrial productivity, quality control, and the industrial base. The Board will be comprised of top-notch leaders from industry and the academic community who will help to assure that DoD can be instrumental in fostering a national environment in which there is a strong and vital U.S. technological and manufacturing base.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 15, 1988.

[FR Doc. 88-1242 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, February 3, 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 15, 1988.

[FR Doc. 88-1240 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 9 February 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Project Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88-1241 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Mapping Agency; Cancellation of Meeting

AGENCY: Department of Defense.

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Defense Mapping Agency for February 2-3, 1988 as published in the **Federal Register** (Vol. 52, No. 242, Page 47958, Thursday, December 17, 1987, FR Doc 87-28978.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 19, 1988.

[FR Doc. 88-1313 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures will meet in closed session on February 9, February 23, March 1-2, March 8-10, and April 5-7, 1988 at the Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review verification aspects with regard to US programs, facilities, technologies and defense contractors and determine which START verification approaches are most appropriate from the acquisition viewpoint.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 19, 1988.

[FR Doc. 88-1314 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment; Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in closed session on March 11, May 11, and June 17, 1988 at the TRW Corporation, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive classified briefings on military acquisition programs and systems availability and the affect of increased use of commercial items on force posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 19, 1988.

[FR Doc. 88-1315 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Advisory Committee Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on February 16, March 22, April 12-13, and May 17, 1988 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 19, 1988.

[FR Doc. 88-1315 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the recommendations, requests for information, and continuing concerns made by the Committee at the 1987 Fall Meeting; review the Subcommittee Issue Agenda; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual meeting scheduled for April 24-28, 1988.

All meeting sessions will be open to the public.

DATE: February 8, 1988, 9:30 a.m.-5:00 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769,

Washington DC 20301-4000; telephone (202) 697-2122.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 19, 1988.

[FR Doc. 88-1317 Filed 1-21-88; 8:45 am]

BILLING CODE 3810-01-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: February 25, 1988.

Time: 0900-1600.

Place: Walter Reed Army Institute of Research, Washington, D.C.

Proposed Agenda: Results of Army Hepatitis B Immunization testing in Korea, Non-A/Non-B Hepatitis in Pakistan, review of service data on HIV/AIDS and consideration of related questions by the Board. Peruvian febrile illnesses.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg, Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: January 12, 1988.

Robert A. Wells,

Col, USA, MSC, Executive Secretary.

[FR Doc. 88-1185 Filed 1-21-88; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: February 25, 1988.

Time: 0830-1530.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Service Preventive Medicine Reports. Experiences with Lyme Disease in the Army and Navy. a model for loss of Military Job Performance by Underlying Neurological Impairment, AIDS Update, Leishmaniasis in Honduras, Report on *ad hoc* meeting on Cardiovascular Screening of Soldiers Aged 40 and over and status of the Medical Followup Agency.

This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: January 12, 1988.

Robert A. Wells,

Col, USA, MSC, Executive Secretary.

[FR Doc. 88-1186 Filed 1-21-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of October 12 Through December 18, 1987

During the period of October 12 through December 18, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

January 14, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Harvin Petroleum Oil Co., Inc., Sumter, SC; KEE-0154, Reporting Requirements

Harvin Petroleum Oil Co., Inc. filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On December 15, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Triangle Gasoline Co. of Butler, Butler, PA; KEE-0140, Reporting Requirements

Triangle Gasoline Company of Butler filed an Application for Exception from the requirement to complete and file Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." On December 15, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 88-1243 Filed 1-21-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 21 Through December 25, 1987

During the week of December 21 through December 25, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Natural Resources Defense Council, Inc., 12/23/87; KFA-0010

The Natural Resources Defense Council, Inc. (NRDC) filed an Appeal from a partial denial by the Director Programs, of a Request for Information submitted under the Freedom of Information Act. On review, the OHA adopted the determination by the Office of Policy and Program Operations that some of the material previously deleted under Exemptions 1 and 3 should now be released to NRDC because the deletions either have been determined to be unclassified or have been revised in order to release the maximum information possible.

The Seattle Times, 12/22/87, KFA-0143

The Seattle Times filed an Appeal from a denial by the Freedom of Information Authorizing Official of the Bonneville Power Administration (BPA) of the Department of Energy (DOE) of a Request for Information which the firm submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, DOE found that portions of the documents requested contained material which was deliberative in nature and was properly withheld. However, the matter was remanded to the Authorizing Official to release all reasonably segregable factual material in the documents.

Refund Applications

Caudle Farms, Inc., et al., 12/21/87, RF272-2018, et al.

The Department of Energy (DOE) issued a Decision approving thirty Applications for Refund in the Crude Oil Subpart V refund proceedings. The thirty claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they used during the August 1973 to January 1981 period. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,417 was approved in this Decision and Order.

Cranston Oil Service Company, Inc./ Ralph A. Pecchia et al., 12/23/87, RF276-22 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order with Cranston Oil Service Company Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $524 representing $457 in principal and $67 in interest.

Dover Garage II, Inc., 12/22/87, RR270-23

The DOE issued a Decision and Order concerning the Motion for Modification filed by Dover Garage II, Inc. in the Surface Transporter refund proceeding established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Dover's original Surface Transporter claim was denied on the grounds that Dover did not utilize the gasoline for surface transportation, but acted as a retailer of the product. Dover's Motion for Modification included a copy of its agency agreement, which demonstrated that Dover did in fact operate the vehicles and was responsible for fuel costs. DOE therefore granted Dover's Motion and approved a volume of 5,888,805 gallons for Dover. The DOE will determine a per gallon refund amount and establish the amount of the company's refund after it completes its analysis of all Surface Transporter claims.

Duane Hageman, et al., 12/21/87, RF272-3435, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 35 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,679. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

E.E. Hinton, Jr., et al., 12/21/87, RF272-3121, et al.

The DOE issued a Decision and Order granting 33 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $980.

Gulf Oil Corporation/Tenneco Oil Company, 12/21/87, RF40-3330

The DOE issued a Decision granting a refund from the Gulf Oil Corporation escrow account to Tenneco Oil Company, a purchaser of Gulf xylene. The applicant demonstrated its purchase volume and that as a purchaser of Gulf product it had been injured. A refund was granted on the full volumetric amount. The total refund approved was $27,383, representing $21,553 in principal and $5,830 in interest.

Howard Oil Co., Inc./Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., 12/23/87, RF288-1 and RF288-3

The DOE issued a Decision and Order granting refunds to two public utilities which filed Applications for Refund from the fund which Howard Oil Co., Inc. remitted to the DOE pursuant to a Settlement Agreement. In accordance with the procedures set forth in *Howard Oil Co.*, 15 DOE ¶ 85,072 (1986), each firm certified that it would pass the refund through to its customers. The total amount of refunds approved in this decision was $412,478, representing $348,282 in principal and $64,196 in interest.

Howard Oil Co., Inc./Defense Logistics Agency et al., 12/22/87, RF288-2 et al.

The DOE issued a Decision and Order granting refunds to four firms which filed Applications for Refund from the fund which Howard Oil Co., Inc. remitted to the DOE pursuant to a Settlement Agreement. The Applications were evaluated in accordance with the procedures set forth in *Howard Oil Co.*, 15 DOE ¶ 85,072 (1986). The total amount of refunds approved in this decision was $307,458, representing $252,817 in principal and $54,641 in interest.

Pyrofax Gas Corporation/Columbia Hydrocarbon Corporation et al., 12/22/87, RF277-8 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by purchasers of Pyrofax propane. Each firm applied for a refund based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) (*Pyrofax*), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. The applications were submitted by two end users and two retailers claiming refunds under the small claims presumption. In *Pyrofax*, we found that all end users and retailers applying for small claims refunds were presumed to be injured. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $121,644 representing $87,210 in principal and $54,434 in accrued interest.

Royce v. Lee, et al., 12/23/87, RF272-1238, et al.

The DOE issued a Decision and Order granting 34 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973

through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,482.

Stroehmann Bakeries, Inc. and Central Soya Company, Inc., 12/23/87, RF270-2498, et al

The Department of Energy (DOE) issued a Decision and Order concerning the Applications for Refund from the Surface Transporters Escrow and the Applications for Refund from the Subpart V crude oil refund proceeding filed by Stroehmann Bakeries, Inc. and Central Soya Company, Inc. In the Decision, the DOE found that when Stroehmann and Central Soya submitted Surface Transporter refund applications, both companies waived their rights to any claim to monies from the Subpart V crude oil refund proceeding. Accordingly, the DOE dismissed their Subpart V refund applications and proceeded with an analysis of their Surface Transporter claims. As Surface Transporters, Stroehmann will receive a refund based on purchases of 5,809,286 gallons and Central Soya will receive a refund based on purchases of 27,335,287 gallons of petroleum products. A per gallon refund amount and the total amount of both companies' refund will be determined after the DOE completes its analysis of all Surface Transporter claims.

Suburban Propane Gas Corporation/ Johnson County Unified Wastewater District et al., 12/21/87, RF299-22 et al.

The DOE issued a Decision granting seven Applications for Refund from the Suburban Propane Gas Corporation escrow account filed by retailers and end-users of Suburban propane, butane, and natural gasoline during the period November 1, 1973 through October 31, 1978. Each applicant elected to apply for a refund based upon the presumptions set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987). The DOE granted refunds totalling $3,930 ($3,545 principal plus $385 interest).

Virgil Heeren, et al. 12/21/87, RF272-707, et al.

The DOE issued a Decision and Order granting 32 Applications for Refund filed in the Subpart V crude oil refund proceeding. Since all the applicants were end-users of the products, their claims were granted without proof of injury. The total amount of refunds granted in this Decision and Order was $1,162.

Dismissals

The following submissions were dismissed:

Name	Case No.
Arkansas Electric Cooperatives Corp.	RF225-10092
City of New Bedford Water Dept.	RF225-8988
Gilchrist Marine Docks	RF225-2117
Lehigh Valley Railroad Co.	RF225-7654
State of Oregon Div. of State Lands	RF225-2525
The Hanford Educational Action League	KFA-0148
Williams & Connolly	KFA-0147

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 14, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-1244 Filed 1-21-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of November 23 through November 27, 1987

During the week of November 23 through November 27, 1987 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Dr. Keith Consani, 11/25/87, KFA-0133

On October 27, 1987, Dr. Keith Consani filed a Freedom of Information Act (FOIA) Appeal from a determination issued to him by the Authorizing Official of the San Francisco Operations Office of the DOE on October 6, 1987. The Determination withheld certain documents pursuant to FOIA Exemptions 5 and 6. In considering the Appeal, the DOE found that the determination to withhold records related to correspondence between Dr. Consani and the DOE pursuant to Exemptions 5 and 6, was consistent with the FOIA and the DOE's implementing regulations. However, the DOE ordered the Authorizing Official to review a telecommunication slip attached to a withheld document dated December 23, 1986 and promptly release the telecommunication slip if the Authorizing Official determines that it contains no exempt information. In all other respects, the Appeal was denied.

Interlocutory Order

Consolidated Edison Co., et al., State of California, 11/25/87; KRZ-0520 and KRZ-0521

Consolidated Edison and other end-users of petroleum products filed a joint Request to Participate in the liability stage of the enforcement action against the Kern Oil Refining Company, Case No. KRO-0520. In considering the request, the DOE found that each end-user's interest in the enforcement action is fully protected by its right to participate in the remedial stage when a Subpart V refund proceeding is convened. Accordingly, the request was denied.

The State of California also filed a Request to Participate in the liability stage of the Kern enforcement proceeding. The DOE found that the participation sought by California would assist the Office of Hearings and Appeals to explore matters in dispute. Accordingly, California's Request to Participate was granted.

Refund Applications

Conoco Inc./ Fischer oil Co., et al., 11/25/87; RF220-359, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by purchasers of Conoco Inc. refined petroleum products. Each firm applied for a refund based on the procedures outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985), governing the disbursement of settlement funds received from Conoco pursuant to a 1962 Consent Order. All of the applicants are retailers of Conoco refined petroleum products who claimed refunds of less than $5,000. Using the small claims presumption for retailers, we concluded that they were injured. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $2,549, representing $1,795 in principal and $754 in accrued interest.

Getty Oil Co./General Biscuit Brands, Inc., 11/23/87, RF265-922

The DOE issued a Decisinn and Order approving an Application for Refund filed by General Biscuit Brands, Inc., an end-user of products covered by a consent order that the agency entered into with Getty Oil Company. The Application was evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). Accordingly, General Biscuit will receive a refund of $6,406, representing $3,184 in principal and $3,222 in interest.

Inland Partners, 11/24/87; RF270-2490 and RF271-239

The Department of Energy (DOE) issued a Decision and Order reinstating the applications submitted by Inland Partners (Inland) for a refund from the Rail and Water Transporters (RWT) Escrow and the Surface Transporters (ST) Escrow established as a result of the Stripper Well Settlement Agreement. Inland had applied for a refund from these escrows as the successor to U.S. corporations which were eligible for a refund for their respective purchases of petroleum products during the Settlement Period. The DOE had originally denied Inland's applications because it had previously received a refund from the Resellers Escrow as the successor to a separate corporation than those for which it sought RWT and ST refunds. The DOE reinstated Inland's claim based on the principles set forth in the case of *Union Pacific Railway Co.*, 16 DOE ¶ 85,526 (1987). In that case, the DOE determined that separately incorporated affiliates could file for refunds from different M.D.L. 378 Escrows. The corporations for which Inland sought an RWT refund were different than the corporation for which Inland sought an ST refund, therefore, the DOE found that Inland was eligible for a refund from both escrows. The DOE considered the merits of Inland's claim and determined that it be granted in full. The total number of gallons approved in this Decision for an RWT refund is $57,457,123 and the total number of gallons approved for an ST refund is 1,006,832.

Keller Oil Co./Beck's Shell et al., 11/24/87, RF298-1 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by 16 firms in the Keller Oil Company (Keller) special refund proceeding. Each firm was a retailer of Keller motor gasoline during the Keller consent order period. Following the procedures outlined in *Keller Oil Co.*, 16 DOE ¶ 85,147 (1987), each applicant demonstrated that it was eligible for a refund based on the $5,000 small claims presumption. Accordingly, the firms were granted refunds totaling $12,612, representing $8,134 in principal and $4,478 in accrued interest.

Marathon Petroleum Co./Globe Oil Co., 11/25/87, RF250-2067, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed in the name of Globe Oil Company by its current and previous owners. Each applicant sought a portion of the Marathon consent order funds based on product purchased by Globe, a Marathon retailer. The DOE denied the application filed by Emro Marketing Company, the current owner, because Emro is a wholly-owned subsidiary of Marathon. The DOE approved the application filed by R. Ellis Godshall, the previous owner, and granted Godshall a refund based on Marathon purchases made by Globe during the period in which he owned 100 percent of the firm. The total refund granted Godshall is $17,418, representing $15,401 in principal and $2,017 in interest.

Mobil Oil Corp./Pennsylvania Power & Light Co., Tucson Electric Power Co., 11/23/87, RF225-579, et al.

The DOE issued a Decision and Order granting two public utilities, Pennsylvania Power & Light Company and Tucson Electric Power Co. refunds from the Mobil Oil Corporation consent order fund. Both firms purchased No. 2 fuel oil directly from Mobil for use in the production of electricity and are thus considered to be end-users. Under the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), an end-user who was directly supplied by Mobil is entitled to a refund equivalent to the amount as its documented purchase volumes times 100 percent of the per gallon volumetric refund amount. As public utilities, the two firms certified that they would pass any refund through to their customers, and stated that they would notify the appropriate regulatory agency of the receipt of refund money. The total amount of refunds approved in this Decision and Order is $20,910 ($16,948 principal plus $3,962 interest).

Petro-Lewis Corp./Enterprise Products Co., 11/27/87, RR63-1

Enterprise Products Company filed a Motion of Reconsideration of a Decision and Order the DOE issued on April 5, 1985, seeking an increase in the amount of refund that it received in the Petro-Lewis refund proceeding. Enterprise argued that its purchase costs of the Petro-Lewis products should have included transportation and fractionation expenses that Enterprise incurred after the delivery of the products. The DOE denied Enterprise's request on the grounds that (1) the firm failed to demonstrate that its transportation expense was significantly higher than that incurred by the average NGLP reseller in normal circumstances, and (2) the firm provided no information to substantiate the fractionation costs.

Standard Oil Co. (Indiana)/Georgia Coline Gasoline Corp./Georgia, 11/25/87, RQ251-389 and RQ2-390

The DOE issued a Decision and Order approving the second-stage refund applications filed by the State of Georgia in the Standard Oil Co. (Indiana) (Amoco II) and Coline Gasoline Corp. (Coline) refund proceedings. Georgia will use all its remaining Amoco II funds ($70,000 plus interest) for an agricultural "no-till" program and all its Coline funds ($999 plus interest) for the publication of several residential energy conservation pamphlets. In evaluating Georgia's plans, the DOE found that they would help conserve energy and provide restitutionary benefits to consumers who were injured by the oil overcharges during the period 1973-1981.

Standard Oil Co. (Indiana)/Idaho, 11/23/87, RM21-85

The DOE issued a Decision and Order approving a Motion for Modification submitted by the State of Idaho. In its Motion, Idaho indicated that it was unable to implement the Diesel Truck Fuel Efficiency Clinics and requested that it be permitted to reprogram the $10,000 plus accrued interest previously approved for this program in *Standard Oil Company (Indiana)/Idaho*, 12 DOE ¶ 85,152 (1984). The State instead wishes to fund a series of small commercial diesel truck fuel efficiency clinics. The OHA determined that the State's motion be approved because the clinics will educate small commercial diesel truck drivers about methods of reducing their energy consumption and fuel costs.

Standard Oil Co. (Indiana)/South Dakota, 11/24/87, RM21-89 et al.

The DOE issued a Decision approving motions for modification and second-stage refund plans filed by the State of South Dakota. In its submission, South Dakota proposed to produce and air a documentary film on energy conservation in the State and to develop a series of "energy conservation information kits" on topics discussed in the film for distribution to South Dakota energy users. South Dakota also proposed to use $16,454 of its second-stage refund monies to fund an Automatic Thermostat Set-Back Rebate Program. The DOE found that the film and information packets would promote energy conservation in the State and

that the Thermostat Rebate Program would provide financial incentives for energy conservation to homeowners and businesses. Accordingly, South Dakota was granted $223,281 ($202,983 principal plus $20,298 interest) in Standard Oil Company (*Amoco II*) monies for the programs.

Dismissals

The following submissions were dismissed:

Name	Case No.
Emgn, Inc.	RF250-2220
Fox Bus Lines, Inc	RF225-5349
Great Lakes Dredge & Dock Co	RF225-7522
Harrisburg Steam Works, Ltd	RF272-398
Henry Dubois & Sons, Co	RF225-7521
Long Star Gas Co	RF225-6708
Natco Limited Partnership, Inc	RF225-7523
NGL Supply, Inc	RF220-487
R. Newman Machinery Movers, Inc	RF225-302

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commerically published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 14, 1988.

[FR Doc. 88-1245 Filed 1-21-88; 8:45 am]

BILLING CODE 6450-01-M

Floodplain/Wetlands Involvement Notification for Selected Rubble Landfill at the Los Alamos National Laboratory, New Mexico

AGENCY: Department of Energy.

ACTION: Floodplain/wetlands involvement notification.

SUMMARY: The Department of Energy (DOE) proposes to construct and operate a selected rubble landfill in Sandia Canyon at the Los Alamos National Laboratory (LANL). Pursuant to the regulations of 10 CFR Part 1022 (DOE's "Compliance with Floodplains/Wetlands Environmental Review Requirements"), the DOE has determined this action would involve activities within a floodplain/wetlands area, and, therefore, the following notice is submitted for public review and comment.

DATES: February 8, 1988.

ADDRESS: Address comments or requests to the Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115. All comments should refer to the project by title.

FOR FURTHER INFORMATION CONTACT: Harold E. Valencia, Area Manager, Los Alamos Area Office, Department of Energy, Los Alamos, New Mexico 87544, (505) 667-5105.

SUPPLEMENTARY INFORMATION:

I. Project Description

The Los Alamos National Laboratory proposes to construct and operate a selected rubble landfill within a floodplain/wetlands area at Los Alamos National Laboratory. The purpose of the landfill is to provide space to dispose of non-biodegradable construction rubble as the current landfill site is non-expandable, and the expected life of the landfill dictates the need for a new site.

The proposed landfill will be located in the head of Sandia Canyon approximately 0.1 mile south of East Jemez Road. It will be an extension of the present Los Alamos County sanitary landfill. The landfill will occupy an area approximately 2.5 acres in size. Once the proposed site has been filled, it will be compacted and leveled to the existing grade to allow future expansion of Laboratory facilities. The characteristics of the local terrain and the need for future facility expansion were factors used in determining the size and the location of the proposed landfill. Once this proposed site has been filled, a new site would be selected using similar selection criteria. No building facilities will be needed to complete the proposed landfill project. A road to the site will be constructed by extending the access road to the present sanitary landfill. Materials to be buried at the site are defined as solid waste or excavated materials from laboratory construction operations that have been culled of organic, hazardous, or other degradable or deformable materials. No materials that would lead to subsidence of the fill over an extended period or impact the air or water quality of the landfill site will be allowed. Approximately 85% of the volume needed for the proposed landfill is readily available in the immediate area.

II. Floodplain/Wetlands Effects

Sandia Canyon has a seven-to-eight acre marsh and a perennial stream filled by snowmelt, seasonal storms and effluent releases. The area meets the criteria for floodplain/wetlands as described in Executive Orders 11990 and 11988. The proposed location of the landfill is in the head of a canyon typical in terrain of most of the canyons dissecting the Laboratory, i.e., shallow soils underlain by bedrock. The canyons generally have insufficient streamflow to maintain year-round surface flow. Sandia Canyon, however, has perennial base flow primarily because of up-canyon effluent releases from a steam plant and a sewage treatment plant. There is also an indication that portions of the canyon below the site may prehistorically have been a small marsh which has been considerably extended because of increased surface runoff from parking lots, roads and effluent releases.

The primary plant community types within the canyon are consistent with ponderosa pine and marshland communities of the surrounding area. This project will require little removal of existing vegetation. Areas disturbed by construction will be reseeded by native grasses, shrubs, and trees in consultation with the Los Alamos National Laboratory-U.S. Forest Service Liaison Officer. In addition to reseeding areas to minimize sheet erosion, structural measures such as rock rip-rap surfacing, gravel surfacing, and earthberm construction will be done. Landfill operations may temporarily increase sediment transport, but this activity is not expected to permanently alter the marsh.

A hydrological analysis performed by the Los Alamos National Laboratory has established drainage patterns to Sandia Canyon. The object of this analysis was to size a closed-conduit or open channel drainage structure that would have sufficient capacity to convey the runoff from a 100-year storm through the reach of Sandia Canyon adjacent to the landfill operation. The estimated design flow is 339 cubic feet per second (cfs) at the head of the canyon, which would be handled by the placement of a 400 foot long, seven-foot diameter culvert. The culvert would serve the two-fold purpose of diverting floodwaters, and maintaining stream flow under normal conditions to protect the marsh.

III. Alternatives

Placement of a selected rubble landfill at Los Alamos National Laboratory is limited by the availability of land, space requirements, archaeological resources, drainage, accessability, and aesthetics. Although several sites were considered, the proposed site is adjacent to an operating sanitary landfill which allows for easy access and provides for cost-effective bural of rubble for up to five years. In addition, this location will provide valuable space for location of new facilities. Streamflow within the proposed site and the integrity of the marsh below the site can be maintained by means of the seven-foot diameter culvert. The present location of the Laboratory rubble landfill is not expandable because of the presence of adjacent buildings and an airport; thus, making a no-action alternative inoperable.

Date: January 15, 1988.

Troy E. Wade III,

Acting Assistant Secretary, Defense Programs, Department of Energy.

[FR Doc. 88-1335 Filed 1-21-88; 8:45 am]

BILLING CODE 6450-01-M

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings for the Superconducting Super Collider

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) proposes to build and operate a Superconducting Super Collider (SS) accelerator for the study of high energy particle physics. DOE announced its intent to prepare an Environmental Impact Statement (EIS) in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) on the siting, construction, operation, and decommissioning of the SSC in an Advanced Notice of Intent published in the **Federal Register** (52 FR 16304, May 4, 1987). The purpose of this Notice of Intent (NOI) is to invite public participation in the process which the DOE will follow to comply with the NEPA and to solicit further public comment on the proposed scope and content of the EIS. Today's notice repeats pertinent information provided in the May 4 notice and provides additional information developed since its publication. The site for the SSC has not been determined. However, DOE has announced the list of best qualified sites which, consistent with the approach defined in the Advanced Notice of Intent, comprises the reasonable siting alternatives that will be evaluated in detail in the EIS. In alphabetical order, the best qualified sites are:

Arizona/Maricopa
Colorado
Illinois
Michigan/Stockbridge
North Carolina
Tennessee
Texas/Dallas-Fort Worth

DATES: Written comments or suggestions to assist DOE in identifying significant issues to be covered in the EIS will be considered in preparing the draft EIS and should be submitted by March 15, 1988, to Dr. Wilmot Hess at the address listed below. Written comments post-marked after March 15, 1988, will be considered to the degree praticable.

The DOE will also hold public scoping meetings to receive oral comments. Locations, dates, and times for the scoping meetings are provided in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

ADDRESS: Written comments or suggestions on the scope and content of the EIS should be addressed as follows: SSC EIS SCOPING, Dr. Wilmot Hess, Chairman, SSC Site Task Force, ER-65, GTN, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545.

Interested parties who do not wish to submit comments or suggestions at this time but would like to receive a copy of the draft EIS for review and comment also should notify Dr. Wilmot Hess.

FOR FURTHER INFORMATION CONTACT: General information on the procedures followed by DOE in complying with the requirements of NEPA may be obtained from: Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Attn: Robert Strickler, EH-25, Room 3E-080 Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585.

General information on the SSC project may be obtained from: Dr. Robert E. Diebold, Director, SSC Division, ER-24, F-337, GTN, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545.

SUPPLEMENTARY INFORMATION:

Scoping

DOE invites interested agencies, organizations, and the general public to submit written comments or suggestions for consideration in connection with the preparation of the EIS by March 15, 1988. Public scoping meetings to receive oral comments will also be held as follows:

(1) Tempe, Arizona, on February 9, 1988, from 1 to 5:30 p.m. and from 7 to 10 p.m., at the Great Hall, Arizona State University College of Law, intersection of McAllister and Orange, Tempe, Arizona.

(2) Butner, North Carolina, on February 9, 1988, from 1 to 5:30 p.m. and from 7 to 10 p.m., at the Butner Public Safety Building, 611 Central Avenue, Butner, North Carolina.

(3) Murfreesboro, Tennessee, on February 12, 1988, from 1 to 5:30 p.m. and from 7 to 10 p.m., at the Tennessee Room of the James Union Building Middle Tennessee State University, East Main Street, Murfreesboro, Tennessee.

(4) Fort Morgan, Colorado, on February 12, 1988, from 1 to 5:30 p.m. and from 7 to 10 p.m., at the Fort Morgan High School Auditorium, 709 East Riverview Avenue, Fort Morgan, Colorado.

(5) Waxahachie, Texas, on February 16, 1988, 1 to 5:30 p.m. and from 7 to 10 p.m., at the National Guard Armory, 629 North Grand Avenue, Waxahachie, Texas.

(6) Stockbridge, Michigan, on February 16, 1988, fromn 1 to 5:30 p.m. and from 7 to 10 p.m., at the Stockbridge High School, 416 North Clinton Street, Stockbridge, Michigan.

(7) Batavia, Illinois, on February 18, 1988, from 1 to 5:30 p.m. and from 7 to 10 p.m., at the auditorium at Fermi National Accelerator Laboratory. The main entrance to the Laboratory is at Kirk Road and Pine, batavia, Illinois.

Individual's desiring to comment orally at one of these meetings should notify Dr. Hess at the address above as soon as possible so that the Department may arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register at the meetings if they wish to speak. Those who register at the meetings will be called on to present their comments as time permits. In order to assure that everyone who wishes to present oral comments has the opportunity to do so, five minutes will be allotted to individuals, and ten minutes will be allotted to individual's representing groups. Comments received at these scoping meetings will be considered in the preparation of the draft EIS. Transcripts of the scoping meetings will be prepared by the DOE and subsequently made available to members of the public along with other NEPA documents and major references used in the preparation of the EIS normal business hours at the DOE Reading Rooms and local libraries identified in this Notice. Site specific information, including maps, will be available for inspection in the local libraries identified in this Notice and at the scoping meetings.

Upon completion of the draft EIS, its availability will be announced in the **Federal Register** and local news media, and public comments will be solicited. Comments received on the draft EIS will be considered in preparing the final EIS.

Conceptual Design

The SSC will be one of the largest scientific instruments ever considered. Its major feature will be a race-track shaped tunnel approximately 53 miles in

circumference. Two beams of protons will be accelerated in opposite directions to near the speed of light and then made to collide at energies of up ot 40 trillion electron volts.

When completed in the mid-1990's, the surface structures will present the appearance of a research center having a central office building, an auditorium, and various support and industrial buildings configured in a campus arrangement. Some 3,000 men and women will be working at the SSC facility-scientists, engineers, technicians, and adminstrative staff-including an estimated 500 visiting scientists annualy taking part in research projects.

The tunnel will be constructed with its cenerline at least 35 ft. underground. Service areas will be located approximately every five miles, consisting of a cluster of surface buildings containing cryogenic refrigerators, helium compressors, power supplies, support facilities, and points of access to the tunnel. Midway between each of the service areas will be a small building enclosing an access shaft to the collider tunnel.

The conceptual design described above of the result of substantial research and development (R&D) for the SSC, which has formally initiated in 1983. The R&D was conducted at high energy physics laboratories and other institutions as a coordinated national effort under the guidance of the SSC Central Design Group (CDG) formed by the University Research Association, Inc., at the request of the Department of Energy (DOE). A detailed Reference Designs Study, completed in March 1984, established the basis feasibility of the SSC, provided a preliminary cost estimate, and identified R&D needs. Following this, a significant amount of R&D was done to verify the assumptions of the Reference Designs Study. In 1986, the CDG completed the SSC Conceptual Design Report (CDR) which was reviewed by the DOE with the aid of indenpenent experts. This process led to the conclusion that the project was technically feasible and that the cost and schedule estimates were acceptable. The total estimated cost for the project is $4.4 billion in fiscal year 1988 dollars.

Site Selection Process

DOE issued an Invitation for Site Proposals on April 1, 1987. A pre-proposal conference was held in Washington, DC, on April 29, 1987. Forty-three proposals were received by September 2, 1987, and screened by DOE to determine whether they were qualified for further consideration utilizing the qualification criteria listed in the Invitation for Site Proposals.

Thirty-six proposals were determined by DOE to be qualified for further consideration and were provided to the Super Collider Site Evaluation Committee (SSEC) of the National Academy of Sciences (NAS) and the National Academy of Engineering (NAE) in September 1987 for more detailed evaluation using the technical evaluation criteria and cost considerations described in the amended Invitation. One proposal was withdrawn from further consideration by its proposer. In December 1987, a report and recommended list of the best qualified sites was provided by the SSEC to the DOE. After reviewing and validating the SSEC report and recommendations, DOE announced the best qualified list of sites. Subsequent to the Academies report, the State of New York withdrew its Rochester site proposal and, accordingly, the Department will not consider this site further. The remaining best qualified sites comprise the reasonable siting alternatives which will be evaluated in detail in the EIS. DOE will conduct further analyses of the best qualified sites using the technical evaluation criteria and cost considerations contained in the Invitation. No sooner than 30 days after the final EIS is distributed, the DOE will issue a Record of Decision (ROD) announcing the selected site. The ROD is expected in January 1989.

The NEPA Process

The DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR Parts 1500 through 1508) and the DOE's Guidelines for "Compliance with the National Environmental Policy Act" (52 FR 47662, December 15, 1987).

The DOE issued an Advanced Notice of Intent May 4, 1987, that announced its intent to prepare an EIS and encouraged early public involvement in the NEPA process. That notice solicited comments on the generic issues related to the project and EIS preparation. A preliminary EIS Implementation Plan, which recorded the results of that initial scoping, has been prepared.

Consistent with the approach identified in the Advanced Notice, the list of best qualified sites will be considered as the reasonable siting alternatives which will be evaluated in detail in the EIS.

A comment period for EIS scoping has been established to encourage public involvement. The comment period will close on March 15, 1988. After the close of the public comment period, DOE will revise the preliminary EIS Implementation Plan as appropriate.

As preparation of the EIS continues, the preliminary findings of the EIS will be used by DOE in its identification of a preferred site for the SSC. The preferred site will be identified in the draft EIS which is scheduled for issuance in late August 1988.

There will be a 45-day public comment period on the draft EIS and public hearings to receive oral comments will be held approximately one month after distribution of the draft EIS. Availability of the draft EIS, the public comment period, and information on the public hearings will be announced in the **Federal Register** and in local news media at the time that the draft EIS is distributed.

DOE will revise the draft EIS in response to comments received during the comment period and plans to distribute the final EIS in December 1988. No sooner than 30 days after the distribution of the final EIS, DOE will issue its Record of Decision announcing the selected site for the SSC.

Alternatives

The DOE anticipates that this EIS will provide environmental information for project and site selection decisions. Alternatives under consideration are:

(1) Proposed action. Construct and operate the SSC at one of the sites identified as a best qualified site. The potential impacts of construction, operation and decommissioning of the SSC will be evaluated for each site, and detailed comparisons will be made.

Design alternatives to the SSC as presented in the Conceptual Design Report as appropriate will also be considered. The alternative sites are listed in alphabetical order by state as follows:

(a) *Arizona*—The proposed site is located approximately 30 miles southwest of Phoenix, Arizona in the southern portion of Maricopa County. Ninety-two percent of the tunnel would be constructed by tunneling techniques and 8 percent by cut and cover in unsaturated materials (principally fanglomerates, granite, and interbedded volcanic and sedimentary rocks). The entire tunnel would lie completely above the water table.

(b) *Colorado*—The proposed site is located approximately 65 miles northeast of Denver and includes portions of Adams, Morgan and Washington Counties. The entire tunnel would be constructed by tunneling techniques in Pierre shale below the water table.

(c) *Illinois*—The proposed site is located approximately 40 miles west of Chicago in the northeastern portion of Illinois and includes portions of Kane, DuPage, and Kendall Counties. The entire tunnel would be constructed by tunneling techniques in dolomite below the water table.

(d) *Michigan*—The proposed site is located approximately 35 miles northwest of Ann Arbor in the southern portion of Michigan. It includes portions of Ingham and Jackson Counties. The entire tunnel would be constructed by tunneling techniques thru shales, limestone, dolomites, and sandstone below the water table.

(e) *North Carolina*—The proposed site is located in the north central portion of North Carolina, approximately 10 miles north of Durham. It includes portions of Person, Granville and Durham Counties. The entire tunnel would be constructed by tunneling techniques in interlayered metamorphosed volcanic and sedimentary rocks below the water table.

(f) *Tennessee*—The proposed site is in the central portion of Tennessee, approximately 30 miles southeast of Nashville. It includes portions of Bedford, Marshall, Rutherford and Williamson Counties. The entire tunnel would be constructed by tunneling techniques in a homogenous bed of limestone below the water table.

(g) *Texas*—The proposed site is located in the northeastern portion of Texas, approximately 25 miles south of Dallas and 35 miles southeast of Fort Worth. It is entirely within Ellis County. The entire tunnel would be constructed by tunneling techniques in chalk and marl above the water table.

(2) No Action. The no action alternative will consider the state of science without the SSC. Delay alternatives as appropriate will be evaluated in the EIS as a subset of no action.

Identification of Environmental Issues: The following issues associated with the construction and operation of the SSC are considered by the Department to be the most significant at this time. These issues will be analyzed in detail for each of the siting alternatives. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions or deletions to this list may occur as a result of the scoping process.

(1) Socioeconomics,
(2) Endangered Species,
(3) Groundwater and Dewatering,
(4) Radiological Health and Safety,
(5) Hazardous and Toxic Materials,
(6) Spoils Placement,
(7) Decommissioning.

Issues that are not considered significant will be discussed in less detail or as appropriate to clearly distinguish impacts among alternatives.

Additional SSC Information: A variety of SSC technical reports, press releases, and design reports pertinent to the SSC project and other information which may be referenced in the EIS has been sent to a local library in the vicinity of each site and to DOE Public Reading Rooms at Operations offices near the sites. Members of the public may inspect these documents and other documents to be used in preparing the EIS during normal business hours. The locations where SSC related documents are available are as follows:

DOE Reading Rooms:

Freedom of Information Reading Room, Room 1E-190, U.S. DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585

Public Reading Room, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

Public Reading Room, Oak Ridge Operations Office, Federal Building, P.O. Box E, Oak Ridge, TN 37831.

Public Libraries:

Arizona

Noble Science and Engineering Library, Arizona State University, Tempe, Arizona 85287-1506

Phoenix Public Library, 12 E. McDowell Road, Tempe, Arizona 85004.

Colorado

Fort Morgan Public Library, 414 Main Street, Fort Morgan, Colorado 80701.

Illinois

Illinois SSC Project Office, c/o Illinois State Water Survey, 101 North Island Avenue, Batavia, Illinois 60510

Aurora Public Library, 1 East Benton Street, Aurora, Illinois 60506

St. Charles Public Library, 1 South 6th Avenue, St. Charles, Illinois 60185

Kaneville Township Library, c/o Kaneville Civic Center, P.O. Box 5 Main Street and Harter Road, Kaneville, Illinois 60144.

Michigan

Ingham County Library System, Library Service Center, 407 North Cedar Street, Mason, Michigan 49201.

North Carolina

Richard H. Thorton Library, P.O. Box 339, Oxford, North Carolina 27565.

Tennessee

Linebaugh Public Library, 110 West College, Murfreesboro, Tennessee 37130

Tennessee Department of Economic and Community Development Library, 320 6th Avenue, North, 8th Floor—Rachel Jackson Building, Nashville, Tennessee 37219-5306.

Texas

Sims Library 515 West Main Street, Waxahachie, Texas 75165

Ennis Public Library, 501 West Ennis Avenue, Ennis, Texas 75119.

Dated in Washington, DC, this 20th day of January, 1988, for the United States Department of Energy.

Garry W. Gibbs,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 88-1410 Filed 1-21-88; 9:33 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-72-NG]

Colony Natural Gas Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 16, 1987, of an application from Colony Natural Gas Corporation (Colony) for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in various markets in the United States. Authorization is requested to import up to 73 Bcf over a two-year term beginning on the date of the first delivery. Colony, a Texas corporation with its principal place of business in Midland, Texas, is a wholly owned subsidiary of Colony Energy Corporation. Colony proposes to purchase natural gas from various Canadian suppliers on a short-term basis, for its own account and for the account of others, for resale to local distribution companies, pipelines, and industrial and commercial end users in the United States. Colony intends to use existing pipeline facilities for the transportation of the proposed imports. Colony will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 22, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Colony requests consideration of its application on an expedited basis, including dispensing with the procedure of providing an opportunity for additional comments. An ERA decision on Colony's request for expedited treatment, particularly with respect to whether additional written comments or other procedures will be necessary in this case, will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 22, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Colony's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., January 14, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1336 Filed 1–21–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–180–000, et al.]

Florida Power Corp., et al.; Electric Rate and Corporate Regulation Filings

January 13, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER88–180–000]

Take notice that on January 6, 1988, Florida Power Corporation (Company) tendered for filing Supplemental Agreement No. 5, dated July 2, 1979 to the contract dated July 19, 1957 between the Southwestern Power Administration (SEPA) and the Company providing for bilateral exchange of services.

The Company states that Supplemental Agreement No. 5 was previously filed by SEPA under the Flood Control Act of 1944 in Docket No. EF80–3031. The Company recently became aware that the supplemental agreement should be separately filed as a rate schedule under the Federal Power Act. It requests the Commission to allow the supplemental agreement to become effective as of October 20, 1979, the effective date assigned in the proceeding under the Flood Control Act, and asks waiver of the notice requirements under the Federal Power Act to allow such effective date.

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER88–181–000]

Take notice that on January 6, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during November 1987, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Gas & Electric Co., Supplement No. 28

Los Angeles Water & Power Co., Supplement No. 38

Sierra Pacific Power Co., Supplement No. 70

Utah Power & Light Co., Supplement No. 72

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88–184–000]

Take notice that on January 7, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp tendered for filing Twelfth Revised Sheet No. 5C (Index of Purchasers), superseding Eleventh Revised Sheet No. 5C, and Twelfth Revised Sheet No. 5D, superseding Eleventh Revised Sheet No. 5, of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff); a Service Agreement between Pacific and Cowlitz County Public Utility District dated December 1, 1987; and a Service Agreement between Pacific and Public Utility District No. 1 of Snohomish County dated December 15, 1987.

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL–3 under Pacific's Tariff.

Pacific requests, pursuant to Section 35.11 of the Commission's Regulations, that a waiver of prior notice be granted and that an effective date of November 1, 1987 be assigned to each of the Service Agreements tendered for filing.

Copies of this filing have been supplied to Cowlitz County Public Utility District, Public Utility District No. 1 of Snohomish County and the Washington Utilities and Transportation Commission.

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER88–185–000]

Take notice that on January 7, 1988, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. S–A1–8702). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective May 15, 1987, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commission of Oregon and Bonneville's District Service Industrial Customers.

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Tampa Electric Company

[Docket No. ER88–182–000]

Take notice that on January 6, 1988, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the firm interchange of 100 megawatts of capacity and energy between Tampa Electric and the City of Lakeland, Florida. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Lakeland, designated as Tampa Electric's Rate Schedule FERC No. 21.

Tampa Electric proposes an effective date of January 1, 1988 for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER88–183–000]

Take notice that on January 6, 1988, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the firm interchange of 250 megawatts of capacity and energy between Tampa Electric and Florida Power Corporation (Florida Power). Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing contract for interchange service between Tampa Electric and Florida Power, designated as Tampa Electric's Rate Schedule FPC No. 6 and Florida Power's Rates Schedule FPC No. 80. Tampa Electric's filing includes a certificate of concurrence submitted by Florida Power in lieu of an independent filing.

Tampa Electric proposes an effective date of January 1, 1988 for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: January 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1283 Filed 1–21–88; 8:45am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–139–000 et al.]

Black Marlin Pipeline Company et al.; Natural Gas Certificate Filings

January 13, 1988.

Take notice that the following filings have been made with the Commission:

1. Black Marlin Pipeline Company

[Docket No. CP88–139–000]

Take notice that on December 21, 1987, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88–139–000 an application pursuant to Section 7(c) of the Natural Gas requesting authorization for transportation of natural gas, on an interruptible basis, for Cities Service Oil and Gas Corporation (Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin seeks authorization to transport volumes of natural gas owned by Cities which are produced from either or both High Island Block 199 (HI Block 199), offshore Texas and Galveston Area Block 144 (GALV Block 144), offshore Texas and delivered to

Black Marlin at an existing point or points of receipt located on Black Marlin's pipeline in High Island Block 171 (HI Block 171), offshore Texas and Galveston Area Block 99 (GALV Block 99), offshore Texas. Black Marlin states that it would receive, transport and deliver, on an interruptible basis, pursuant to proposed Rate Schedule T–4, a daily contract quantity of up to 25,000 Mcf of Cities' HI Block 199 gas and Cities' GALV Block 144 gas. It is stated that Cities would deliver or cause the delivery of its HI Block 199 gas to Black Marlin at HI Block 171 through existing facilities connecting the HI Block 199 reserves to HI Block 171, and that Cities would deliver or cause the delivery of its GALV Block 144 gas to Black Marlin through existing facilities connecting the GALV Block 144 reserves to GALV Block 99, and that Black Marlin would redeliver such gas at an existing point or points of delivery located near the terminus of Black Marlin's system in Texas City, Texas to Houston Pipe Line Company (HPL) for Cities' or its designee's account. HPL would subsequently transport such volumes of Cities' HI Block 199 gas and Cities' GALV Block 144 gas which it receives under Section 311 of the Natural Gas Policy Act of 1978 (NGPA), it is stated.

Black Marlin further states that in order to permit the receipt, transportation and delivery of volumes of gas on an interruptible basis for Cities as proposed by its application and in order to ensure that Black Marlin would be protected against adverse claims to or applicable to all gas delivered to it for transportation, it is proposing certain revisions to its FERC Gas Tariff, Original Volume No. 1: (1) In the General Terms and Conditions, Black Marlin would eliminate reference to Rate Schedule T–1 in Section 9 and provide for deliveries of Cities' HI Block 199 gas Cities' GALV Block 144 gas in the table of receipt and delivery points; and (2) Black Marlin would file a new Rate Schedule T–4 covering interruptible service pursuant to Section 7(c) of the Natural Gas Act and amend the Form of Service Agreement to include T–4 service.

Black Marlin proposes to render service to Cities at the proposed T–4 rate, which is 5.0 cents per Mcf of gas transported. Black Marlin states that the service agreement between it and Cities would specify an intial term of five years commencing on the date of first deliveries, and thereafter remain in force and effect unless terminated by either party. The service agreement would also specify a daily contract quantity of up to 25,000 Mcf, it is stated.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Black Marlin Pipeline Company

[Docket No. CP88–140–000]

Take notice that on December 21, 1987, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP88–140–000 an application pursuant to section 7(c) of the Natural Gas requesting authorization for transportation of natural gas for Brandywine Industrial Gas, Inc. (Brandywine), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Black Marlin seeks authorization to transport volumes of natural gas owned by Brandywine which are produced from either or both High Island Block 134 (HI Block 134), offshore Texas and delivered to Black Marlin at an existing point or points of receipt located on Black Marlin's pipeline in High Island Block 171 (HI Block 171), offshore Texas. Black Marlin states that it would receive, transport and deliver, pursuant to its Rate Schedule T–1, a daily contract quantity of up to 15,000 Mcf of Brandywine's HI Block 199 and HI Block 134 gas (subject to adjustment up to 20 percent within one year of the effective date of the services agreement) and additional volumes of such gas under the effective excess quantity provisions contained in Rate Schedule T–1. It is stated that Brandywine would deliver or cause the delivery of Brandywine's HI Block 199 and HI Block 134 gas to Black Marlin at HI Block 171 through existing or future facilities connecting the HI Block 199 reserves and the HI Block 134 reserves to HI Block 171, and that Black Marlin would redeliver such gas at an existing point or points of delivery located near the terminus of Black Marlin's system in Texas City, Texas to Houston Pipe Line Company (HPL) for Brandywine's or its designee's account. HPL would subsequently transport such volumes of Brandywine's HI Block 199 and HI Block 134 gas which it receives under section 311 of the Natural Gas Policy Act of 1978 (NGPA), it is stated.

Black Marlin further states that in order to permit the receipt, transportation and delivery of volumes of gas on an firm basis for Brandywine as proposed by its application, it is proposing certain revisions to its FERC Gas Tariff, Original Volume No. 1: (1) In Rate Schedule T–1 Black Marlin would provide for Brandywine's firm volumes in the index of daily quantities to be utilized for billing under Section 3 of Rate Schedule T–1; and (2) in the General Terms and Condutions, Black Marlin would provide for deliveries of Brandywine's HI Block 199 and HI Block 134 gas in the table of receipt and delivery points.

Black Marlin proposes to render service to Brandywine at the currently effective T–1 rate, which is 5.0 cents per Mcf of daily contract quantity with an overrun charge during any month of 5.0 cents per Mcf of gas transported. Black Marlin states that the service agreement between it and Brandywine would specify an initial term of five years commencing on the date of first deliveries, and thereafter remain in force and effect unless terminated by either party. The service agreement would also specify a daily contract quantity of up to 15,000 Mcf, it is stated.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Consolidated Gas Transmission Corporation

[Docket No. CP88–128–000]

Take notice that on December 11, 1987, Consolidated Gas Transmission Corporation (Consolidated) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88–128–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increased firm natural gas services for Baltimore Gas and Electric Company (BG&E) and Washington Gas Light Compnay (WGL) and the construction of related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Consolidated states that it was previously authorized to provide firm gas services to BG&E and WGL in an order issued on September 12, 1986, (36 FERC ¶ 61,273) in Docket Nos. CP85–756–000 *et al.* These authorizations permitted Consolidated to provide up to a maximum daily quantity of 60,000 dekatherms (dt) each under Consolidated's Rate Schedule CD, it is further explained. Consolidated notes that to facilitate the above services, the Commission also granted to Texas Eastern Transmission Corporation (TETCO) authorization to transport on behalf of Consolidated up to 120,000 dt, on a firm basis, to be delivered to Consolidated's system near Perulack, Pennsylvania and to construct approximately 21.63 miles of 36-inch loop. It is also noted that the Commission denied Columbia Gas Transmission Corporation's (Columbia Gas) application in Docket No. CP86–454–000 to transport 60,000 dt on a firm basis for BG&E and WGL at the discounted transportation rate proposed therein and that Columbia Gas has appealed the Commission's determination in Docket No. CP86–454–000 to the United States Court of Appeals for the District of Columbia Circuit. As a result Consolidated's authorized gas sale services to BG&E and WGL have not yet commenced, it is stated.

By Docket No. CP88–128–000, Consolidated proposes to (1) increase the firm gas service from 60,000 dt to 100,000 dt to both BG&E and WGL; (2) construct and operate interconnections between Consolidated's existing pipeline No PL–1 and the facilities which would be constructed by BG&E and WGL at Tuscarora, Maryland and Leesburg, Virginia, respectively; and (3) waive its sales lateral policy.

For the proposed firm gas sales services, Consolidated would charge both customers the effective rate as set forth in Rate Schedule CD in its FERC Gas Tariff as required by the Commission's September 12, 1986, order in Docket No. CP85–756–000, it is stated. For firm transportation services, Consolidated would charge both customers the effective rate as set forth in Rate Schedule TF in its FERC Gas Tariff. Consolidated estimates that the total cost to construct the interconnections would be $2,680,000 exclusive of filing fees. Consolidated's firm services to BG&E and WGL are proposed to continue for a primary term of twenty years.

Consolidated also indicates that in order to implement the proposed expanded services, TETCO would file an application with the Commission requesting authorization to render an upstream transportation service for Consolidated at the increased levels proposed herein and to construct and operate the additional looping facilities on TETCO's system in order to accommodate the proposed level of services. In addition, Consolidated explains that BG&E and WGL would be required to construct extensions of their distribution systems in order to connect with Consolidated's pipeline No. PL–1. Consolidated asserts that BG&E would construct 37 miles of 20-inch pipeline from its existing distribution system at Linden Church, Maryland to a point on Consolidated's pipeline No. PL–1 at Tuscarora, Maryland. Consolidated asserts that WGL would construct 13 miles of 24-inch pipeline from its existing distribution system at Darnesville, Virginia to a point on Consolidated's pipeline No. PL–1 at Leesburg, Virginia. Consolidated explains that it would contribute up to $8,590,000 each to BG&E and WGL for their respective extension projects.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Great Lakes Gas Transmission Company

[Docket No. CP88–145–000]

Take notice that on December 24, 1987, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88–145–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessary authorizing Great Lakes to transport natural gas, on a firm basis, for the account of ADA Cogeneration (ADA), a Michigan Limited Partnership, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Hydro Engineering, Inc. (Hydro), a general partner of ADA, has requested that Great Lakes transport up to 7,000 Mcf per day of natural gas for ADA, from a point on the International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipe Lines Limited, to a point where Great Lakes' facilities interconnect with those of ANR Pipeline Company (ANR) at Fortune Lake, Michigan. Great Lakes further states that the term of the proposed arrangement would commence on May 1, 1990, unless an earlier date is requested by ADA, and would end fifteen years thereafter. Great Lakes indicates that Hydro and Great Lakes entered into a Precedent Agreement (Agreement) dated September 20, 1987, which implemented these arrangements. Great Lakes further indicates that upon receipt of all regulatory approvals, a service agreement would be executed by Great Lakes and ADA. Great Lakes states that the service agreement would provide for a rate for the transportation service with a demand charge of $2.022 per Mcf of contract quantity and a commodity charge of $0.19289 per Mcf. Great Lakes further states that these charges would be adjusted to reflect the transportation components of the base tariff rates of Great Lakes' Rate Schedule CQ–2 in effect at the time of execution of the service agreement. Great Lakes indicates that no new facilities would be required to provide the proposed service.

Great Lakes states that Hydro has entered into transportation arrangements with ANR for subsequent transportation to points of interconnection between the facilities of ANR and Michigan Consolidated Gas Company (MichCon) and with MichCon for transportation of the subject volumes of natural gas to a point of interconnection between the facilities of MichCon and ADA.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. MIGC, Inc.

[Docket No. CP88–147–000]

Take notice that on December 30, 1987, MIGC, Inc. (MIGC) 10701 Melody Drive, Denver, Colorado 80234, filed in Docket No. CP88–147–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a 1,000 horsepower (hp) compressor unit and related accessory facilities located at MIGC's Recluse Compressor Station in Campbell County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC states that as a result of physical deterioration, its 1,000 hp compressor unit at the Recluse Compressor Station has become nonoperational and that it would not be economically advisable to attempt further repair of the unit. MIGC further states that a grant of the abandonment authorization requested will have no adverse impact on any of the services it presently performs or is authorized to perform due to MIGC's installation of replacement facilities pursuant to the authority granted under its blanket certificate.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP88–152–000]

Take notice that on December 31, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP88–152–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval authorizing the abandonment by Southern of the compressor units and appurtenant facilities located at its Perryville Compressor Station (Perryville) in Ouachita Parish, Louisiana, all as more fully set forth in the application which is

on file with the Commission and open to public inspection.

Southern proposes to abandon the compression and certain appurtenant facilities located at Perryville including, specifically, two 1,300-horsepower Worthington horizontal reciprocating compressor units, six 800-horsepower vertical Cooper Bessemer reciprocating compressor units, engine foundations, the building which houses the units, a warehouse, auxiliary building, and miscellaneous valves and piping. It is stated that Southern no longer operates the facilities at Perryville because it does not take any natural gas reserves from Monroe Field in Ouachita parish, Louisiana. It is stated that the subject compressor units are not required by Southern to compress the gas available to Southern on its Logansport and North Main Lines. Southern further states that abandonment of the facilities would have no affect on the salable capacity of its pipeline system. Accordingly, Southern submits that the abandonment of the facilities would enable Southern to reduce its operation and maintenance costs without resulting in any termination or deterioration of service to its customers.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company South Georgia Natural Gas Company

[Docket No. CP88-132-000]

Take notice that on December 16, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP88-132-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity with pre-granted abandonment, authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport on an interruptible basis up to 20,000 MMBtu of gas per day for Atlanta, for a term expiring on October 31, 1988. Atlanta is purchasing the gas from SNG Trading Inc., Chevron U.S.A. Inc., Mobil Oil Company and Shell Offshore Inc.

Specifically, South Georgia has agreed to transport Atlanta's gas and to act as agent in arranging for the transportation of the gas through Southern's pipeline system, it is explained. It is further explained that South Georgia will cause gas to be delivered to Southern for transportation at various existing points of its system and redelivery to South Georgia at existing interconnecting points between Southern's and South Georgia's facilities in Lee County, Alabama. The quantity redelivered would be an equivalent of gas less 3.25 percent of the volume transported for fuel use, it is stated.

It is further explained that Atlanta will cause gas to be delivered to South Georgia for transportation at the South Georgia Redelivery Point and to be delivered to Atlanta at Valdosta Meter Stations No. 1, 2 and 3 in Lowndes County, Georgia. South Georgia will redeliver an equivalent volume less 0.5 percent of the volume transported for fuel use, it is indicated.

Southern proposes to charge South Georgia each month following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia does not exceed the daily contract demand of South Georgia, the transportation rate shall be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia exceeds the daily contract demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

It is stated that South Georgia would pay Atlanta each month a transportation rate of 28.33 cents per MMBtu redelivered by South Georgia and reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern.

In addition, Southern and South Georgia will collect the GRI surcharge, it is stated.

Applicants state that the proposed transportation arrangement will enable Atlanta to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern may obtain take-or-pay credit on the gas Atlanta will obtain from its suppliers.

Comment date: February 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP88-149-000]

Take notice that on December 31, 1987, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-149-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign the maximum daily quantity of gas delivered to New York State Electric & Gas Corporation (NYSGE) at the existing Wallace Sales Meter Station, under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes that NYSEG's Daily Quantity Limit at the Wallace Sales Meter Station be reassigned from 1,000 to 3,200 Dth to meet the needs of the Wallace franchise area. Tennessee states that the Daily Quantity Limit at the remaining NYSEG delivery points would not be changed.

Tennessee does not propose to increase or decrease the total daily and/or annual quantities that NYSEG is entitled to purchase from Tennessee. Tennessee explains that the reassignment is not prohibited by its current effective tariff. Tennessee further explains that the reassignment of daily quantities can be accomplished without detriment or disadvantage to any of Tennessee's other customers.

Comment date: February 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP88-151-000

Take notice that on December 31, 1987, K N Energy (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88-151-000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act for permission and approval to abandon certain metering and regulating facilities, and service to certain direct-sales customers, under the certificate issued in Docket Nos. CP83-140-000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

K N proposes to abandon by removal the metering stations and appurtenant facilities which were installed to deliver natural gas to the following direct sales customers:

Name	Docket No.
Consolidated Blenders, Inc. (Stanton Co., NE)	CP71-143
Gomenberg Feed Products Co. (Lincoln Co., NE)	G-1857
Platte Valley Products, Inc. (Dawson Co., NE)	G-1180
Viking Alfalfa Products Co. (Knox Co., NE)	CP67-116
Western Alfalfa Corporation (Knox Co., NE)	CP70-228

K N states that deliveries to these customers have ceased and that each customer has notified K N that the facilities at the respective delivery point are no longer needed and has consented to the abandonment of these facilities by K N.

Comment date: February 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1284 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-15-035]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 15, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia), on January 11, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

April 1, 1987

Second Revised Sheet No. 22
Second Revised Sheet No. 22A
Second Revised Sheet No. 22B
Second Revised Sheet No. 22C
Third Revised Sheet No. 22D
Third Revised Sheet No. 22E
First Revised Sheet No. 22E1
Second Revised Sheet No. 22G
Second Revised Sheet No. 22H
Second Revised Sheet No. 22I
Second Revised Sheet No. 22J
Second Revised Sheet No. 22K
Original Sheet No. 22K1
Second Revised Sheet No. 22L
Second Revised Sheet No. 22M
Second Revised Sheet No. 22N
Third Revised Sheet No. 22O
Third Revised Sheet No. 22P
First Revised Sheet No. 22P1
Second Revised Sheet No. 22R
Second Revised Sheet No. 22S
Second Revised Sheet No. 22T
Second Revised Sheet No. 22U
Second Revised Sheet No. 22V
First Revised Sheet No. 22W
First Revised Sheet No. 54A
First Revised Sheet No. 54B

November 1, 1987

Second Revised Sheet No. 22E2
Second Revised Sheet No. 22E3
Third Revised Sheet No. 22F
First Revised Sheet No. 22P2
Second Revised Sheet No. 22P3
Fourth Revised Sheet No. 22Q

Columbia states that the proposed changes were filed pursuant to Commission orders issued on June 18, 1987 and December 9, 1987 in this proceeding, and amend its open-access firm (FTS) and interruptible (ITS) transportation rate schedules to comply with these Commission orders.

Copies of the filing were served upon the persons on the official service list in this proceeding, wholesale customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1285 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-14-035]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

January 15, 1988.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on January 11, 1988 tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

April 1, 1987

Second Revised Sheet No. 157
Second Revised Sheet No. 158
Second Revised Sheet No. 159
Second Revised Sheet No. 160
Second Revised Sheet No. 164
Second Revised Sheet No. 165
Second Revised Sheet No. 166
Second Revised Sheet No. 167
Second Revised Sheet No. 168
Second Revised Sheet No. 169
Second Revised Sheet No. 170
Second Revised Sheet No. 171
Second Revised Sheet No. 172

Second Revised Sheet No. 173
Second Revised Sheet No. 174
Second Revised Sheet No. 196
Second Revised Sheet No. 197
Second Revised Sheet No. 198
Second Revised Sheet No. 199
Second Revised Sheet No. 204
Second Revised Sheet No. 205
Second Revised Sheet No. 206
Second Revised Sheet No. 207
Second Revised Sheet No. 208
Second Revised Sheet No. 209
Second Revised Sheet No. 210
Second Revised Sheet No. 211
Second Revised Sheet No. 212
Second Revised Sheet No. 213
Original Sheet No. 214
Second Revised Sheet No. 233
Second Revised Sheet No. 234
Second Revised Sheet No. 235
Second Revised Sheet No. 236
Second Revised Sheet No. 240
Second Revised Sheet No. 241
Second Revised Sheet No. 242
Second Revised Sheet No. 243
Second Revised Sheet No. 244
Second Revised Sheet No. 245
Second Revised Sheet No. 246
Second Revised Sheet No. 247
Second Revised Sheet No. 248
Second Revised Sheet No. 249
Second Revised Sheet No. 250
Second Revised Sheet No. 281
Second Revised Sheet No. 282
Second Revised Sheet No. 283
Second Revised Sheet No. 284
Second Revised Sheet No. 288
Second Revised Sheet No. 289
Second Revised Sheet No. 290
Second Revised Sheet No. 291
Second Revised Sheet No. 292
Second Revised Sheet No. 293
Second Revised Sheet No. 294
Second Revised Sheet No. 295
Second Revised Sheet No. 296
Second Revised Sheet No. 297
Second Revised Sheet No. 298

Effective November 1, 1987

Third Revised Sheet No. 161
Third Revised Sheet No. 162
First Revised Sheet No. 162A
First Revised Sheet No. 162B
Second Revised Sheet No. 162C
Second Revised Sheet No. 162D
First Revised Sheet No. 162E
Third Revised Sheet No. 163
Third Revised Sheet No. 200
Third Revised Sheet No. 201
First Revised Sheet No. 201A
Second Revised Sheet No. 201B
Second Revised Sheet No. 201C
First Revised Sheet No. 201D
Third Revised Sheet No. 202
Second Revised Sheet No. 203
Third Revised Sheet No. 237
Third Revised Sheet No. 238
First Revised Sheet No. 238A
First Revised Sheet No. 238B
Second Revised Sheet No. 238C
Second Revised Sheet No. 238D
First Revised Sheet No. 238E
Third Revised Sheet No. 239
Third Revised Sheet No. 285
Third Revised Sheet No. 286
First Revised Sheet No. 286A
First Revised Sheet No. 286B
Second Revised Sheet No. 286C
Second Revised Sheet No. 286D
First Revised Sheet No. 286E
Third Revised Sheet No. 287

Columbia Gulf states that the proposed changes were filed pursuant to Commission orders issued on June 18, 1987 and December 9, 1987 in this proceeding, and amend Columbia Gulf's open-access firm (FTS–1 and FTS–2) and interruptible (ITS–1 and ITS–2) transportation Rate Schedules to comply with these Commission orders.

Copies of the filing were served upon the persons on the Official service list in this proceeding, wholesale customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1286 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–187–000]

Florida Power & Light Co.; Filing

January 15, 1988.

Take notice that on January 11, 1988, Florida Power & Light Company tendered for filing a Partial Requirements Service to the City of Lake Worth (Lake Worth) under Florida Power & Light Company's (FPL) FERC Electric Tariff, Second Revised Volume No. 1 that will be terminated.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed termination of service be made effective on February 20, 1988.

FPL states that at copy of the filing was served on the City of Lake Worth.

Any person desiring to be heard or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1287 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–135–000]

Natural Gas Pipeline Co. of America; Application

January 14, 1988.

Take notice that on December 18, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88–135–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of Applicant's sales service to an existing customer, Interstate Power Company (Interstate), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is asserted that Interstate requested a reduction in its contract demand by 9,500 Mcf/day to benefit one of its customers and later requested fifteen percent reduction in its contract demand or anything in excess of that amount up to 20,000 Mcf/day as provided by Section 284.10(c) of the Regulations.

It is stated that on October 28, 1986, in Docket No. RP87–72–000, Interstate filed a request for a rehearing of Applicant's order in Docket No. RP86–97–003, issued September 28, 1986, granting a limited term waiver of former Section 284.10(a)(1). It is further stated that the Commission denied the request for rehearing but undertook review of the complaint by Interstate that Interstate was not given the full 45 days after Applicant became subject to order No. 436 to nominate reductions. Applicant points out that in an order issued October 30, 1987, the Commission ordered Applicant to honor Interstate's request for contract demand reduction of up to fifteen percent of Interstate's contract demand on September 4, 1986, to become effective 150 days from the date the 45-day nomination period ended.

Applicant also points out that on November 30, 1987, it filed a request for rehearing of the order issued in Docket No. RP87–72–000. Applicant maintains that if such request for rehearing is denied, a certificate filing under Section 7(b) of the Natural Gas Act is required for permission to abandon, in part, the sale of gas to Interstate. Therefore, Applicant proposes to reduce, by fifteen percent, the level of Interstate's firm sales contract quantity from 68,272 MMBtu per day to 58,031 MMBtu per day. It is stated that this reduction of 10,241 MMBtu per day would take effect upon approval by the Commission or such date established by the Commission in its consideration of this matter.

Applicant alleges that Interstate, in a letter dated November 30, 1987, indicates its intention to "discontinue payment on the 10,241 Mcf of contract demand and its equivalent monthly quantity entitlement" starting November 1987. Applicant states that it strongly objects to this action because Applicant believes that Interstate should not receive any adjusted billing until Applicant receives permission and approval of this partial abandonment from the Commission. Further, Applicant believes that Interstate is incorrect in adjusting its billing entitlements for its contract reduction.

Finally, Applicant states, as more fully described in its request for rehearing of the order issued in Docket No. RP87–72–000, Applicant does not agree with the Commission's finding that Interstate is entitled to a contract reduction. Therefore, Applicant concludes that it is making the instant proposal subject to Commission action on rehearing.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1288 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–188–000]

New England Power Co.; Notice of Filing

January 15, 1988.

Take notice that on January 12, 1988, New England Power Company (NEP) tendered for filing an executed amendment to the Service Agreement of the Town of Norwood, Massachusetts (Norwood) who receives all-requirements power service under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP states that the amendment modifies the terms of NEP's service to Norwood in order to facilitate Norwood's receipt of the benefits of its allocation of power from the New York Power Authority. NEP requests waiver of the Commission's notice requirements so that the amendment may become effective, in accordance with its terms, May 1, 1987. As good cause for this request, NEP states that extensive negotiations delayed the timely filing of the amendments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1289 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER88–189–000]

Pacific Gas and Electric Co.; Notice of Filing

January 15, 1988.

Take notice that on January 11, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a supplement to its previous December 29, 1987 filing. PG&E states that "the Cancellation of Extension Agreement included in the previous filing mistakenly was worded such that it appeared PG&E was cancelling Rate Schedule FERC No. 53 when it correctly should have stated that PG&E was cancelling the four-party Extension Agreement between PG&E, the City and County of San Francisco, the Modesto Irrigation District and the Turlock Irrigation District."

PG&E states that copies of this filing have been served upon all parties affected by this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1290 Filed 1–21–88; 8:45 am]

BILLING CODE 6717–01–M

BEST COPY AVAILABLE

[Docket No. RP88-3-001]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 15, 1988.

Take notice that Sabine Pipe Line Company (Sabine) on January 8, 1988 tendered for filing the following proposed change to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1987:

Fifth Revised Sheet No. 20

Sabine states that the listed tariff sheet sets forth the transportation rates and applicable tariff provisions required to place the rates into effect, applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472 and 472-A issued May 29, 1987 and June 17, 1987, respectively.

Copies of the filing were served upon the Sabine customers, the Louisiana Department of Natural Resources and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 30426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Sabine's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1291 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-365-002]

Southern California Edison Co.; Filing

January 15, 1988.

Take notice that on January 7, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to Commission Order dated October 21, 1987 a refund report. Edison refunded to its resale customers a total of $1,672,172.24, including interest.

Copies of this filing have been served upon all parties affected by this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1292 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-26-023]

Tennessee Gas Pipeline Co.; Filing Revised Tariff Sheets

January 15, 1988.

Take notice that on January 11, 1988 Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff to be effective as indicated below:

Tariff sheet	Effective date
Second Substitute First Revised Sheet No. 114	Aug. 21, 1987
Second Revised Sheet No. 206	Feb. 7, 1988
Second Revised Sheet No. 207	Feb. 7, 1988
Second Substitute Original Sheet No. 208A	Aug. 21, 1987
Substitute First Revised Sheet No. 211	Aug. 21, 1987
Substitute First Revise Sheet No. 339	Aug. 21, 1987
Substitute First Revised Sheet No. 339 No. 346	Aug. 21, 1987
Substitute First Revised Sheet No. 347	Aug. 21, 1987

Tennessee states that this filing is in compliance with the Commission's Order in this proceeding issued December 15, 1987.

Tennessee states that copies of the filing have been mailed to all affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1293 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-148-000 and CP88-153-000]

Texas Eastern Transmission Corp.; Emergency Petitions for Clarification or Waiver of the Commission's Regulations

January 15, 1988.

Take notice that on January 5, 1988,[1] Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, filed under Sections 284.271 and 385.207 of the Commission's Regulations in Docket Nos. CP88-148-000 and CP88-153-000, respectively, for clarification or waiver of a certain portion of the Commission's Regulations to permit TETCO to make emergency sales of natural gas to two customers, commencing on December 31, 1987, without fear that it is violating the Natural Gas Act, all as more fully set forth in the petitions which are on file with the Commission and open to public inspection.

Specifically, TETCO indicates in Docket Nos. CP88-148-000 and CP88-153-000, that it plans to initiate emergency sales to Arkansas Louisiana Gas Company (Arkla) and Texas Southeastern Gas Company (TSGC), respectively, pursuant to the provisions of Subpart I of Part 284. TETCO indicates that it plans to cease all self-implementing transportation under Order Nos. 436 and 500 at 7:00 a.m. Central Standard Time on December 31, 1987, because of uncertainties surrounding the status of certain filings made by TETCO in Docket Nos. RP85-177, *et al.*, relating to the terms and conditions under which TETCO may provide such self-implementing transportation.

TETCO asserts in Docket No. CP88-148-000 that officials of Arkla have indicated that (1) Arkla is the only supplier of gas to the town of McRae, Arkansas, (2) the gas is supplied to 80 residential customers, many of whom have no alternate fuel for heating and (3) that Arkla's sole source of gas supply is gas supplied by TETCO at the existing delivery point. Likewise, TETCO has included in its application filed in Docket No. CP88-153-000 an affidavit indicating that without the receipt of self-implementing gas from TETCO, TSGC would not have sufficient supplies to service its residential and small commercial requirements.

TETCO indicates that to meet the shortfall, it indicated that it has or was about to commence emergency sales of gas to Arkla and TSGC as provided by § 284.261, *et seq.*, on December 31, 1987. TETCO quotes Section 284.262(a)(1)(iii) of the Commission's Regulations which defines an emergency as to include

> any situation in which participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

TETCO believes that the circumstances in these two instances fall within the definition. However, TETCO notes that § 284.262(a)(2) of the Commission's Regulations provides the definition of an "emergency" does not include any situation "resulting solely from a failure by any person to transport natural gas" under Subpart B, C, G, or H of Part 284 of the Commission's Regulations. TETCO states that arguably this would exclude TETCO from making the emergency sales to Arkla and TSGC.

TETCO states that it is interpreting the relevant regulations that it can make the two emergency sales. However, TETCO requests that the Commission clarify that the regulations permit such action. In addition, TETCO also requests that in the event the Commission interprets § 284.262(a)(2) or any other regulation to preclude these circumstances from qualifying as an emergency under Subpart I of Part 284, that the Commission waive any and all such provisions as contemplated by § 284.271 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said petitions should on or before January 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1294 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The applications were tendered for filing *December 30, 1987, and December 31, 1987*; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until *January 5, 1988*. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[Docket No. TA88-3-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 15, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on January 11, 1988, tendered for filing as part of its FERC Gas Tariff Second Revised Volume No. 1, the following alternate tariff sheets:

Primary Revised Tariff Sheet:

42nd Revised Sheet No. 5

Alternate Revised Tariff Sheet:

Alternate 42nd Revised Sheet No. 5

Transwestern states that the above mentioned tariff sheets were filed to reflect an increase in its cost of gas from $2.1031/dth to $2.2941/dth or $0.1910/dth. In addition, 42nd Revised Sheet No. 5 reflects an increase in the Surcharge Adjustment of $0.0528/dth. The increase in current purchased gas cost reflected in the instant out-of-cycle PGA filing is a result of increased prices paid to producers under contracts with market-out provisions; Transwestern's largest producer of Section 104 gas exercising its right to price redetermination pursuant to Order 451; and an increase of jurisdictional deliveries over the level projected in Transwestern's most recent semi-annual PGA filing. The increase in the Surcharge Adjustment included in its jurisdictional sales rates is due to the impact of a significant increase in jurisdictional sales deliveries from those utilized in the development of the current surcharge in Docket No. TA88-1-42-000. Transwestern states that the proposed rates shown on 42nd Revised Sheet No. 5 are more reflective of the level of service being provided and will avoid the unnecessary shift of known gas purchase costs to future PGA rate periods.

Transwestern states that it has requested the Federal Energy Regulatory Commission (Commission) to waive any of its Regulations and Transwestern's tariff as may be necessary to approve the instant filing to become effective February 1, 1988.

Transwestern states that it also filed an alternate tariff sheet (Alternate 42nd Revised Sheet No. 5) which adjusts the jurisdictional sales rates for the change in the average cost of gas per unit of sales established in Docket No. TA88-1-42-000 but maintains the current Surcharge Adjustment in the event that the Commission denies Transwestern's request for reestablishment of such surcharge.

Copies of this filing were served on Transwestern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-1295 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-173-000]

Pennsylvania Power & Light; Notice of Submittal

January 12, 1988.

Take notice that on December 28, 1987, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff), Pennsylvania Power & Light Company (PP&L), Atlantic City Electric Company (AC), and the Public Advocate of New Jersey, Division of Rate Counsel (Public Advocate) was filed with the Commission. The consent Settlement Agreement would lower the specified return on common equity in the formula rate contained in the Capacity and Energy Sales Agreement dated September 24, 1979, between PP&L and AC (Rate Schedule FERC No. 74) to 12.75 percent. During the term of the Consent Settlement Agreement, AC, Public Advocate, and Staff have agreed that they will not seek to make operative a clause that would require the utility to periodically justify its equity component under a procedure which affords refund protection.

The signatories request an effective date of October 1, 1987.

Copies of this filing were served upon PP&L, AC, Public Advocate, and the New Jersey Board of Public Utilities.

Any person desiring to be heard regarding said submittal should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such comments should be filed on or before February 22, 1988. All signatories to the Consent Settlement Agreement may file reply comments on or before March 14, 1988. Comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1298 Filed 1-21-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.), this notice announces that the information collection requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review, and are available to the public for review and comment. These ICRs describe the nature of the information collections and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only/Final Reports on EUPs. (EPA ICR #0276).

Abstract: This form is used to apply for a permit to ship and use and experimental or developmental pesticide chemical generally for the purpose of developing data necessary to support an application for registration. Final reports are for monitoring the outcome of the experiment.

Respondents: Pesticides Manufacturers

Estimated Burden: 2,980 hours.

Frequency of Collection: On occasion.

Office of Solid Waste

Title: Letter to Governors of 50 States Requesting Review of Summaries of State Mining Waste Regulations. (EPA ICR #1437). (This is a new collection).

Abstract: To support the development of a regulatory program for mining wastes under Subtitle D of RCRA, EPA has prepared summaries of existing State mining waste regulatory programs, based on available literature. Each Governor is asked to review the accuracy of his or his State's summary and submit comments by letter. This information collection will help EPA to bring the State summaries up to date and generate a model State program.

Respondents: State Governors.

Estimated Burden: 800 hours.

Frequency of Collection: One time.

Comments on the ICRs should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St. S.W., Washington, DC 20460

and

Tim Hunt (ICR #0276) and Marcus Peacock (ICR #1437), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW, Washington, DC 20503, (Telephone # (202) 395-3084).

Date: January 13, 1988.

David Fiske,

Director, Information Regulatory Systems Division.

[FR Doc. 88-1279 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3319-6]

Region VI; Approvals of PSD Permits and Extensions of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. *PSD-TX-709M-1—Shell Western E & P, Incorporated:* Gas Processing plant located approximately five miles southwest of Sheridan, Colorado County, Texas. PSD-TX-709-M-1 modifies PSD-TX-709 to increase the allowable nitrogen oxide emission rate from 16.3 to 21.0 pounds per hour. The modified permit was issued on July 10, 1987.

2. *PSD-TX-721—Gentex/TSG Joint Venture:* This permit, issued on July 10, 1987, authorizes the construction of a gas turbine cogeneration facility to be located at 12801 Bay Area Boulevard, La Porte, Harris County, Texas.

3. *PSD-TX-717—City of Austin:* This permit issued on July 17, 1987, authorizes the construction of eight natural gas and coal fired turbine units at the existing Decker Creek Power Station located at 8003 Decker Lane, Austin, Travis County, Texas.

4. *PSD-TX-714—Texas-New Mexico Power Company:* This permit, issued on August 6, 1987, authorizes the construction of lignite-fired electric generating plant to be located on State Highway 6, approximately eight miles northeast of Calvert, Robertson County, Texas.

5. *PSD-TX-704—Koch Refinery Company:* This permit issued on September 28, 1987, authorizes the construction of a 37 MW gas turbine cogeneration facility at the existing refinery located on Suntide Road in Corpus Christi, Nueces County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of January 22, 1987. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: January 5, 1988.

Robert E. Layton Jr.,

Regional Administrator, Region VI.

[FR Doc. 88-1272 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3319-5]

Risk Assessment Forum Draft; Special Report on Ingested Inorganic Arsenic: Skin Cancer/Nutritional Essentiality; Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Availability of Risk Assessment Forum Draft Report.

SUMMARY: This notice announces the availability of an EPA Risk Assessment Forum draft document entitled "Special Report on Ingested Inorganic Arsenic: Skin Cancer/Nutritional Essentiality." EPA has asked the Science Advisory Board (SAB) to review a policy statement that recommends modification of the Forum's skin cancer risk estimate. The date, time, and place of the SAB review meeting will be announced in a future Federal Register notice.

ADDRESSES: To obtain a single copy of this document, interested parties should contact: ORD Publications Office, CERI-FRN, U.S. Environmental Protection Agency (EPA), 26 Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 569-7562 [FTS: 684-7562].

Please provide your name, mailing address, and the EPA document number (EPA-625/3-87/013A). The document will be distributed from the Cincinnati office only. It will be available for public inspection and copying at the: EPA Public Information Reference Unit (PIRU), EPA Headquarters, Waterside Mall, 401 M Street SW., Washington, DC 20460.

DATES: Comments on the policy issue referred to the Science Advisory Board may be sent to: Project Manager for Arsenic, Risk Assessment Forum (RD-689), 401 M Street SW., Washington DC 20460. All comments must be postmarked by March 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Tuxen, (202 or FTS) 475-6743.

SUPPLEMENTARY INFORMATION: A variety of chemical sources may pose health risks to humans, including emissions from automobile exhausts, leachate from dumpsites, and contaminants in pesticides. EPA decisions on managing a particular chemical from these various sources should be founded on an assessment of risk that is applied consistently across the Agency.

The Risk Assessment Council (Council), an Agencywide management level committee, was formed to help achieve this goal by identifying cross-cutting risk assessment issues that need resolution. The Risk Assessment Forum (Forum), an Agencywide group of senior scientists, examines the science that underlies a particular issue and produces a report that articulates a scientific position on the subject. The Council reviews the Forum product and, as appropriate, recommends to the Administrator a science policy position, which then can be applied consistently to related Agency problems.

As an example of this process, the Agency has been confronting a number of issues associated with the carcinogenic potential of ingested inorganic arsenic. Scientific issues that have been investigated and resolved by the Forum are found in the Risk Assessment Forum's "Special Report on Ingested Inorganic Arsenic: Skin Cancer/Nutritional Essentiality." This technical document was forwarded to the Council, which reviewed it favorably and developed a science policy position on the significance of certain aspects of arsenic carcinogenesis. The Council's statement is presented in the Forum report and will be the primary subject of the SAB review.

The Forum's preliminary scientific analysis benefitted from intensive discussion of an early draft of the Forum report at a peer-review workshop in December 1986 (see 51 FR 42135, November 21, 1986). The Administrator is currently seeking additional views from various EPA offices, and has requested Science Advisory Board review of the basis for the Council's recommended modification of the risk estimate in the Forum report. Final action is expected in 1988.

Date: January 12, 1988.

Vern A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 88-1271 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3319-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 4, 1988 through January 8, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the rating assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-AFS-L65111-WA, Rating EC2, Colville National Forest, Land and Resource Management Plan, Implementation, Perry, Pend Oreille and Stevens Counties, WA.

Summary: EPA believes this document, was written, does not clearly preclude the possibility of adverse environmental impacts. Our primary concerns are that this document did not clearly provide the necessary protection for water quality and sensitive beneficial uses.

ERP No. D-FHW-D40229-MD, Rating EC2, MD-228 Extension, US 301 to MD-210 and MD-210 Improvement, MD-228 Extended to Old Fort Road, Funding, Charles and Prince Georges Counties, MD.

Summary: EPA has concerns regarding secondary development in the study area and its impacts on wetlands and wildlife. EPA suggests that potential wetland mitigation sites be presented in the final FIS.

ERP No. D-FHW-J40115-ND, Rating LO, Columbia Road Overpass Widening, Gateway Drive to 32nd Avenue South, Funding, Grand Forks County, MD.

Summary: EPA does not anticipate any significant environmental impacts with the proposed action.

Final EISs

ERP No. F-AFS-L65097-00, Sawtooth National Forest, Land and Resource Management Plan and Wilderness Recommendations, Implementation, Blaine, Boise, Camas, Cassia, Custer, Elmore, Oneida, Power, and Twin Falls Counties, ID and Box Elder County, UT.

Summary: EPA continues to have environmental concerns with this document. The level of detail and commitment for monitoring is not commensurate with the sensitivity of the resources. A feedback mechanism needs to be made clear so that standards and guidelines, best management practices, standard operating procedures, intensity of monitoring, timber sale administration, and grazing allotment management and modelling are adjusted when monitoring indicates a need.

ERP No. F-BLM-J70012-WY, Pinedale Resource Area, Resource Management Plan, Implementation, Rock Springs District, Sublette and Lincoln Counties, WY.

Summary: EPA concerns on the draft EIS were only partially resolved. Changes to the draft included insufficiently defined riparian area objectives. More specificity was requested for management of aquatic resource under the Clean Water, Federal Land Policy and Management, and Colorado River Salinity Control Acts; management for Areas of Critical Environmental Concern, municipal watershed; herbicide spraying; monitoring; and implementation coordination (including the Clean Water Act section 319 nonpoint source control program).

Dated: January 19, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-1325 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3318]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed January 11, 1988 Through January 15, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880008, Draft, AFS, OR, Mount Hood National Forest, Land and Resource Management Plan, Implementation, Clackamas, Hood River, Jefferson, Marion, Multnomah and Wasco Counties, OR, Due: April 15, 1988, Contact: William Geurds (503) 666-0795. This DEIS should have appeared in the January 15, 1988 FR. The Official comment period stated as of January 15, 1988.

EIS No. 880009, DSuppl, EPA OH, Columbus Metropolitan Area, Wastewater Treatment Facilities, Modifications and Updated Information, Grant, Franklin, Delaware, Fairfield, Madison and Pickaway Counties, OH, Due: March 7, 1988, Contact: Harlan D. Hirt (312) 353-2315.

EIS No. 880010, Draft, FHW, SC, Cross Island Expressway Construction, US 278 to Palmetto Bay Road, Hilton Head Island, Funding and section 10 and 404 Permits, Beaufort County, SC, Due: March 7, 1988, Contact: William H. Rice (803) 765-5411.

EIS No. 880011, FSuppl, COE, CA, Sacramento River Bank Protecton Project, Butte Basin Reach (River Miles 178 to 194) Stabilization, Updated Information, Butte and Glenn Counties, CA, Due: February 22, 1988, Contact: Mike Welsh (916) 551-1861.

EIS No. 880012, Draft, FHW, TX, US 65 Bypass Construction, near FM-1434 to near Spur 102, Cleburne, Funding, Johnson County, TX, Due: March 7, 1988, Contact: William Hall (512) 463-0284.

EIS No. 880013, DSuppl, COE, TX, Lake Wichita-Holliday Creek Flood Control Project, Mo Grath Creek Flood Control Plan, Implementation, Wichita County, TX, Due: March 7, 1988, Contact Buell Atkins (918) 581-7857.

EIS No. 880014, Draft, BLM, NM, Socorro Resource Area Management Plan, Implementation, Las Cruces District, Socorro and Catron Counties, NM, Due: April 22, 1988, Contact: Harlen Smith (505) 835-0412.

EIS No. 880015, Final, BOP, PA, Schuylkill Federal Correctional Institution Complex, Construction and Operation, Schuylkill County, PA, Due: February 22, 1988, Contact: William J. Patrick (202) 274-3232.

Amended Notices

EIS No. 870439, Draft, MMS, Northern California Oil and Gas Sale No. 91, Lease Offerings, Humboldt and Mendocino Counties, CA, Due: February 12, 1988, Contact: Steven Alcorn (213) 894-6741. Published FR 12-18-87—Review period extended.

EIS No. 870458, Draft, AFS, Shasta and Trinity Units, Revised Operation and Development Plan, Whiskeytown-Shasta-Trinity National Recreation Area, Implementation, Shasta and Trinity National Forests, Shasta and Trinity Counties, CA, Due: March 8, 1988, Contact: Pam Gardiner (916) 275-1587. Published FR 1-8-88—Review period extended.

Dated: January 19, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-1326 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3318-8]

RCRA Integrated Training and Technical Assistance Program; Financial Assistance Program; Availability for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability for review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER) is announcing the availability of a new financial assistance program, the RCRA Integrated Training and Technical Assistance (RITTA) initiative. The RITTA initiative is a grant (cooperative agreement) program designed to provide assistance to a limited number of States to plan and implement hazardous waste training and technical assistance activities in support of the State's Resource Conservation and Recovery Act (RCRA) program. While only State agencies currently receiving funds under RCRA section 3011 (Authorization of Assistance to States) are eligible to apply for RITTA funds, the agencies are authorized to enter into subagreements with organizations (e.g., universities, other agencies, training centers, etc.). The objective of the RITTA grant program is to assist States in achieving environmental improvement and implementing RCRA program goals through the use of training and technical assistance techniques. The State program activities funded and required under the RITTA initiative will include three components: (1) Development of a long-term plan for training and technical assistance activities; (2) delivery of RCRA program training activities for State environmental regulators; and (3) implementation of an initial pilot technical assistance project in waste minimization for the industrial/regulated community.

FOR FURTHER INFORMATION CONTACT: Kate Connors, Office of Solid Waste and Emergency Response (WH-562A), Office of Program Management and Technology, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-6647.

SUPPLEMENTARY INFORMATION: In fiscal year 1987, the U.S. Congress issued a directive and provided an add-on appropriation of three million dollars to EPA "to undertake a concerted RCRA training initiative" using the "model for operator training developed and proven in the wastewater program, which integrates technical assistance outreach activities, and State program development." EPA, in particular the Office of Solid Waste and Emergency Response (OSWER), is responding to this mandate, as well as to the findings of the Administrator's Task Force on Technology Transfer and Training, by implementing the RCRA Integrated Training and Technical Assistance (RITTA) initiative. OSWER's Office of Program Management and Technology is, in fact, supplementing the Congressional appropriation of three million dollars with an additional $200,000 as an expression of commitment to State hazardous waste training and technical assistance. Through this program, State environmental protection agencies that are currently receiving RCRA section 3011 (Authorization of Assistance to States) grant monies will be eligible to compete for RITTA cooperative agreement funds. These funds are to be used to: (1) Develop a State Training Action Plan (STAP); (2) develop and implement RCRA training programs for State environmental personnel as called for in the STAP; and (3) develop and implement a pilot technical assistance project in waste minimization for the industrial/regulated community.

State Training Action Plan (STAP)

The first component of the RITTA cooperative agreement program calls for States to develop a State Training Action Plan (STAP)—a comprehensive, long-term plan to achieve RCRA program goals using training and technical assistance techniques. Each State STAP will include:

(1) An evaluation of existing State programs;
(2) A needs assessment; and
(3) A plan to improve environmental progress and achieve RCRA program goals by developing and implementing State training and technical assistance programs.

The plan will address such issues as building administrative structures, generating fiscal support, integrating training and technical assistance and enforcement activities to achieve environmental compliance goals, institutionalizing training and technical assistance efforts at the State level, and building public awareness and support.

RCRA Training for State Environmental Personnel

The second component of the RITTA cooperative agreement program calls for State grant recipients to develop and implement hazardous waste training programs for State personnel charged with managing environmental programs (e.g., State D.E.P., D.E.R., or E.P.A. etc. personnel, State Siting Commission or Board members, State Health Department personnel, etc.). These training efforts will be directed towards: (1) Achieving the goals of the State RCRA program through workforce development, and (2) training State employees to develop and deliver technical assistance programs for the industrial (or regulated) community, working towards the goal of an improved environment.

Technical Assistance Pilot Project for the Industrial/Regulated Community

The third component of the RITTA cooperative agreement program calls for State grant recipients to develop and implement an initial demonstration technical assistance project for the State industrial community. The demonstration project will be a pilot for additional technical assistance efforts as planned under the STAP. It is anticipated that the pilot project will demonstrate the effectiveness of training and technical assistance techniques, and through this demonstration, generate support for subsequent projects. In accordance with the 1984 HSWA amendments to RCRA, which identified reduction of hazardous waste as a national goal, the focus of the pilot and technical assistance project will be waste minimization. The goal of the pilot project will be to achieve a quantifiable reduction of hazardous waste generated within the State.

In order to be eligible to participate in the open competition for RITTA grant awards a State environmental agency must:

(1) Currently be receiving State program grants under section 3011 of RCRA;
(2) Submit a Letter of Intent to participate, signed by the State Environmental Agency Commissioner or Secretary, to EPA OSWER by March 15, 1988; and
(3) Submit a complete grant application package to EPA OSWER by May 15, 1988.

While only States currently receiving funds under RCRA Section 3011 (Authorization of Assistance to States) are eligible to apply for RITTA funds, the agencies are authorized to enter into subagreements with other organizations (e.g., universities, colleges, other agencies, training centers, etc.).

A RITTA grant application package will be available in mid-January, 1988. The package will contain further information on the RITTA program, a grant application, and instructions for completing the application. Copies of the application package will be sent to each State environmental agency. Additional copies will be available from Kate Connors of OSWER at the address listed in the further information section.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460.

Applicants (State agencies) must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or Regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 410 M Street SW., Washington DC, 20460, no later than sixty days after receipt of an application/other required material for review.

James G. Cruickshank,

Training Officer, Office of Program Management and Technology.

Margaret M. Kelly,

Director, Technology Staff, Office of Program Management and Technology.

Thomas W. Devine,

Director, Office of Program Management and Technology.

[FR Doc. 88-1267 Filed 1-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00253; FRL-3319-6]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State-FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Monday, February 8, and Tuesday, February 9, 1988, beginning at 8:30 a.m. each day and concluding by 4:30 p.m., Tuesday, February 9.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, [703-486-1234].

FOR FURTHER INFORMATION CONTACT:
By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St. SW., Washington, DC
Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson David Highway, Arlington, Virginia, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the sixth meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of ground water protection and disposal of pesticide waste, excess pesticides and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The focus of the meeting will be primarily on ground water topics on February 8 and on disposal matters on February 9. The following topics are currently on the agenda.

1. The National survey of pesticides in drinking water wells.
2. Health Advisories—problems of practical application.
3. Agricultural chemicals in groundwater strategic plan.
4. Problems of groundwater contamination and pesticide disposal at pesticide mixing/loading sites.
5. Status of Part 165 Rule (Disposal).
6. Discussion of state questions on pesticide disposal previously submitted to EPA, together with the Agency's responses.
7. SARA Title III Issue.
8. Status of EDB, 2,4,5-T/Silvex and dinoseb disposal efforts.
9. Other topics as appropriate.

Dated: January 11, 1988.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 88-1380 Filed 1-21-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Announcement of First Meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service

The first meeting of the Implementation Subcommittee of the FCC Advisory Committee on Advanced Television Service will be held on February 11, 1988, and will start at 1:00 p.m. in the Commission Meeting Room (Room 856) at 1919 M Street, NW., Washington, DC. All interested persons are invited to attend. Those interested may also submit written statements at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

The agenda for the first meeting will consist of:

1. Introductory Remarks,
2. Objectives and Organization,
3. Administrative Matters,
4. Working Party 1—Policy and Regulation,
5. Working Party 2—Transition Scenarios,
6. Other Business,
7. Date and Location of Next Meeting,
8. Adjournment.

Any questions regarding this meeting should be directed to the Implementations Subcommittee Chairman Dr. James J. Tietjen (609) 734-3237 or Mr. Steve Bailey (202) 632-5414.

Federal Communications Commission.

H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88-1212 Filed 1-21-88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM Docket No.
A. Jonnifer Day d/b/a Day Broadcasting; Lawton, OK.	BPCT-870304KG	87-560
B. Barton W. Ratliff; Lawton, OK.	BPCT-870421KH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, B
Minimum Separations, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88-1213 Filed 1-21-88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM docket No.
A. Brian Dodge, d/b/a Harvest Broadcasting, Haverhill, NH.	BPH-870327KG	87-572
B. Puffer Broadcasting, Inc., Haverhill, NH.	BPH-870331PC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(S)

1. Comparative, Both
2. Ultimate, Both

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay, Assistant Chief,
Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1214 Filed 1-21-88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutaully exclusive applications for a new FM station:

Applicant and city/state	File No	MM Docket No
A. Steve P. Neville and Judy Crabtree, Cave City, KY	BPH-861118MA	87-571
B. Bernice Faye Greene, Cave City, KY	BPH-861124MJ	
C. Hometown Broadcasting of Cave City, Inc., Cave City, KY	BPH-861125MF	
D. Cave Country Communications, Inc., Cave City, KY	BPH-861126MD	
E. Steven W. Newberry; Cave City, KY	BPH-861126MQ	
F. John F. X. Broome et al., d/b/a Bronnco Broadcasting, Cave City, KY	BPH-861126NC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C, D, E, F
2. Ultimate, A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1215 Filed 1-21-88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No	MM Docket No.
A. Sue A. Underwood and Brenda Stroud, a General Partnership; Charleston, SC	BPH-860203NK	87-573
B. Kuhl Partnership; Charleston, SC	BPH-860203NL	87-573
C. Lowcountry Women Communications, Inc.; Charleston, SC	BPH-860203NW	87-573
D. Innovative Broadcasting, Inc.; Charleston, SC	BPH-860203NY	87-573
E. Opportunity Broadcasting, Inc.; Charleston, SC	BPH-860203OA	87-573
F. Radio Charleston Partners; Charleston, SC	BPH-860203OB	87-573
G. John A. Fitz; Charleston, SC	BPH-860203OC	87-573
H. FM Charleston Limited Partnership; Charleston, SC	BPH-860203OD	87-573
I. Meredith M. Steel; Charleston, SC	BPH-860203OE	87-573
J. Charleston Associates; Charleston, SC	BPH-860203OF	87-573
K. Charleston FM Group Limited Partnership; Charleston, SC	BPH-860203OI	87-573
L. Shore Communications; Charleston, SC	BPH-860203OJ	87-573
M. Second Equimedia Limited Partnership; Charleston SC	BPH-860203OK	87-573
N. Allen A. Jenkins; Charleston, SC	BPH-860203OL	87-573
O. Charleston Radio Associates; Charleston, SC	BPH-860203OM	87-573
P. Gemini Broadcasters, Inc.; Charleston, SC	BPH-860203ON	87-573
Q. Minority Broadcasting Corporation; Charleston, SC	BPH-860203OO	87-573
R. Clear Channel Communications, Inc. Charleston, SC	BPH-860203OP	87-573
S. 80-90 Limited; Charleston, SC	BPH-880131MU	(Dismissed)
T. Teresa H. Vause; Charleston, SC	BPH-860203NX	(Dismissed)
U. William Saunders and Juanita W. LaRoche d/b/a La-Saun Communications; Charleston, SC	BPH-860203NZ	(Dismissed)
V. Dot Broadcasting, Limited Partnership; Charleston, SC	BPH-860203OH	(Dismissed)

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19.347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1(a). Financial Qualifications, H
1(b) Misrepresentation, H
1(c) Qualifications, H
2. Air Hazard, E,P,R
3. Comparative, A–R
4. Ultimate, A–R

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1216 Filed 1-21-88; 8:45 am]
BILLING CODE 6712-01-M

[Common Carrier Docket 83-525, FCC 87-386]

Inquiry Into Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Caribbean Region Telecommunications Needs During the 1985–1995 Period

AGENCY: Federal Communications Commission.

ACTION: Report and order adopting guidelines.

SUMMARY: This Report and Order concludes the first phase of the facilities planning process in the Caribbean region in which policies and guidelines have been developed for the construction and use of common carrier transmission facilities in the Caribbean region during the period 1985–1995. The Commission adopts guidelines to be followed in authorizing the construction of a Transcaribbean digital optical fiber cable system (Revised TCS–1) linking Florida, Puerto Rico, Jamaica, the Dominican Republic and Colombia. The Revised TCS–1 Plan will introduce digital fiber optic cable technology to the region for the first time, maintain media and route diversity, enhance existing restoration ability, is consistent with national security and will promote intramodal and intermodal competition.

EFFECTIVE DATE: February 22, 1988.

ADDRESS: Federal Communications Commission, 1919 M street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Angela Burnett, International Facilities Division, Common Carrier Bureau, (202) 632-7285.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report

and Order in Common Carrier Docket 83–525, FCC 87–386, adopted December 10, 1987, and released January 8, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission initiated this proceeding June 7, 1983, with the release of a Notice of Inquiry (NOI), FCC 83–525. That NOI stated that the Commission sought to develop policies and guidelines for the construction and use of common carrier transmission facilities in the Caribbean region during the 1985–1995 period. Six alternative plans were proposed by the United States International Service Carriers (USISCs) and Communications Satellite Corporation (Comsat) for consideration. The USISCs proposed the introduction of digital or analog cables linking the region, while Comsat offered two No New Cables plans.

2. On February 5, 1986, the Commission released a Notice of Proposed Rulemaking (NPRM) narrowing the range of alternative plans which should receive further consideration to the USISCs Plan 2A Modified and Comsat's No New Cables plans. The USISCs subsequently changed the routing of Plan 2A Modified and redesignated it as "Plan 2A Modified, as amended". Following comments by the Commonwealth of Puerto Rico (the Commonwealth) which urged the inclusion of Puerto Rico via an additional fiber optic cable connecting Puerto Rico to the U.S. Mainland, the Commission requested additional comments from AT&T and others concerning the feasibility of this proposal.

3. On July 16, 1987, additional comments were sought in response to the Further Planning Update submitted by AT&T which proposed to include Puerto Rico in the Transcaribbean cable. This configuration would use the capacity of the Florico-2 fiber optic cable to link Puerto Rico to the U.S. Mainland and then extend to the Dominican Republic, Jamaica, and Colombia.

4. In evaluating plans concerning the possible construction of a Transcaribbean cable, we applied the criteria enumerated in our NPRM: forecasted demand and demand flexibility for the Carribean region during the planning period; the need for media and route diversity; restoration capabilities; the introduction of digital optical fiber technology and the attendant benefits of intermodal and intramodal competition; the costs of the proposed alternative plans; and foreign correspondents' acceptance.

5. We find that the USISC's Revised TCS–1 Plan, which proposes the construction of a Transcarribbean Cable system in 1989, linking Florida, Puerto Rico, the Dominican Republic, Jamaica and Colombia, the most acceptable plan. It will introduce new digital fiber optic cable technology to the region for the first time and will maintain media and route diversity, enhance restoration options, be consistent with national security considerations, promote intramodal and intermodal competition, and enable Puerto Rico to connect the U.S. mainland and other points in the Caribbean region. This plan also has the approval of the carriers' foreign correspondents.

6. The Transcarribbean cable will allow growth traffic to cable as well as satellite media. The cable will establish for the first time a meaningful level of media diversity on the United States-Colombia route. Construction of the Transcaribbean Cable will also provide direct media diversity to Colombia, one of the larger traffic routes in the Carribean area.

7. It will also extend the benefits of digital optical fiber submarine cable technology to Haiti, Antigua, Barbados, Dominica, the French Antilles, Grenada, Guyana, Montserrat, St. Kitts, St. Lucia, Tortola, Trinidad and St. Vincent through the extension of circuits in the cable by digital microwave systems. It will promote technological development for the region and enhance customer choice. The Transcarribbean cable will provide the region with terrestrial digital communication with other parts of the world through connections with digital optical fiber cables in the Atlantic and Pacific Ocean regions.

8. Attendant with the introduction of new technology are the benefits of intermodal and intramodal competition. In the Carribbean region, access to digital cable facilities could increase intermodal competition, promote efficiency, and create a downward pressure on rates. Intramodal competition will be increased because those carriers desiring cable circuits but presently unable to obtain them will have them available for use. It will also improve intermodal competition to those points by permitting services now provided exclusively by satellite to be provided by cable as well. We also believe that intramodal competition in the Carribean region will be increased with the introduction of the Transcaribbean cable, since those carriers desiring new digital cables, rather than the existing analog cables, will have them available for use.

9. We do not reach any conclusion as to cost benefits associated with these plans because their costing methodologies and the support data are vastly different, rendering a comparison meaningless. Further, we postpone consideration of the Central America cable to a later portion of this proceeding. Finally, because the Commission is developing post-1988 circuit distribution guidelines on a wordwide, rather than region-by-region basis, we will resolve that issue in the circuit distribution proceeding, CC Docket No. 87–87. Notwithstanding the Commonwealth's reservations, we conclude that construction of the Transcarribbean cable is consistent with our policy in promoting global telecommunications through international cooperation and comity.

10. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

11. According, it is ordered, pursuant to sections 4(i), 4(j), 201–205, 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976) that we adopt the following policy guidelines for the Carribbean Ocean Region:

(1) We find that a Transcaribbean submarine fiber optic cable, Revised TCS–1, as described in the Further Planning Update with a ready for service date as early as the fourth quarter of 1989 is in the public interest.

(2) We defer consideration of the Central American Cable to a future phase of this proceeding.

12. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605, it is ordered, that sections 603 and 604 of the Act do not apply because the policy guidelines adopted herein is a rule of particular applicability and economic impact on AT&T and other members of USISCs who are not small entities, and is, hence, not subject to the Regulatory Flexibility Act.

13. It is further orded that CC Docket 83–525 remains open for additional proceedings upon further order of the Commission.

14. It is further ordered that the Secretary of the Commission shall cause a summary of this Report and Order to be published in the Federal Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission
H. Walker Feaster III,
Acting Secretary.

[FR Doc. 88–1210 Filed 1–21–88; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–808–DR]

Hawaii, Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–808–DR), dated January 8, 1988, and related determinations.

DATED: January 8, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice

Notice is hereby given that, in a letter dated January 8, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Hawaii resulting from severe storms, flooding, and mudslides beginning on or about December 11, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I, therefore, declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the affected areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster. I do hereby determine the following areas of the State of Hawaii to have been affected adversely by this declared major disaster: The city and County of Honolulu for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

[FR Doc. 88–1233 Filed 1–21–88; 8:45 am]
BILLING CODE 6718–02–M

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: February 22–24, 1988.

Ploce: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: February 22—7:00 p.m. to 9:00 p.m., February 23—8:30 a.m. to 5:00 p.m., February 24—8:30 a.m. to Agenda Completion.

Proposed Agenda: Calendar Year 1988 Appointments to the Board; 1987 Annual Report.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1251) on or before February 10, 1988.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Caesar A. Roy,
Acting Director, Office of Training.

Dated: January 11, 1988.

[FR Doc. 88–1234–Filed 1–21–88; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

First Savings Association of East Texas, Houston, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(1)(B) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for First Savings Association of East Texas, Houston, Texas on January 14, 1988.

Dated: January 18, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,
Secretary.

[FR Doc. 88–1235 Filed 1–21–88; 8:45 am]
BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 564
Name: A. Judson Murray & Co., Inc. dba A.J. Murray & Co., Inc.
Address: 111 John Street, New York, N.Y. 10038
Date Revoked: July 30, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2829
Name: O.V.I. Project Transport Corp.
Address: 179–14 149th Road, Jamaica, NY 11434
Date Revoked: September 3, 1987
Reason: Failed to maintain a valid surety bond

License Number: 561

Name: Charles L. Rini dba Empire Forwarding Company
Address: 74 W. Fairview Avenue, Valley Stream, NY 11580
Date Revoked: November 2, 1987
Reason: Surrendered license voluntarily
License Number: 2921R
Name: Columbia Industries Corporation
Address: 1400 Fashion Island Blvd., San Mateo, CA 94404
Date Revoked: November 6, 1987
Reason: Surrendered license voluntarily
License Number: 2618
Name: Total Transportation Corporation
Address: 429 Moon-Clinton Road, Coraopolis, PA 15108
Date Revoked: November 10, 1987
Reason: Surrendered license voluntarily
License Number: 1709
Name: Ki Tai Chang dba K–C International Freight Forwarders
Address: 3410 Geary Boulevard, Suite 101, San Francisco, CA 94118
Date Revoked: November 11, 1987
Reason: Failed to maintain a valid surety bond
License Number: 1570
Name: Specialty Forwarding Services, Inc.
Address: 353 Coral Circle, El Segundo, CA 90245
Date Revoked: November 13, 1987
Reason: Failed to maintain a valid surety bond
License Number: 2925
Name: Endicott International, Inc.
Address: 4000 West Side Avenue, North Bergen, NJ 07047
Date Revoked: November 18, 1987
Reason: Failed to maintain a valid surety bond
License Number: 395
Name: F.B. Vandegrift & Co., Inc.
Address: 320 Walnut Street, Philadelphia, PA 19106
Date Revoked: November 18, 1987
Reason: Failed to maintain a valid surety bond
License Number: 2253
Name: Aurora International Forwarding, Inc.
Address: 5060 Shaw Line Drive, San Diego, CA 92111
Date Revoked: November 18, 1987
Reason: Failed to maintain a valid surety bond
License Number: 2984
Name: Intersped Systems, Inc.
Address: 496 S. Airport Blvd. So. San Francisco, CA 94080
Date Revoked: November 25, 1987
Reason: Failed to maintain a valid surety bond
License Number: 902
Name: Export-Import Service Co., Inc.
Address: 28265 Beverly Road, Romeius, MI 48174
Date Revoked: November 25, 1987
Reason: Failed to maintain a valid surety bond
License Number: 1120R
Name: Inter-Continental Corporation
Address: 5465 N.W. 36th Street, P.O. Box 592413, Miami, Florida 33159
Date Revoked: November 30, 1987
Reason: Failed to maintain a valid surety bond
License Number: 2212
Name: Gedenk Shipping, Inc.
Address: 17 Battery Place, New York, N.Y. 10004
Date Revoked: December 1, 1987
Reason: Surrendered license voluntarily
License Number: 1129
Name: Dickinson, Mikell and Comar, Inc.
Address: 4 North Atlantic Wharf, P.O. Box Drawer 1540, Charleston, S.C. 29402
Date Revoked: December 1, 1987
Reason: Surrendered license voluntarily
License Number: 2959–R
Name: Leslie Enterprises, Inc.
Address: 1123 Wilso Drive, Baltimore, MD 21223
Date Revoked: December 23, 1987
Reason: Failed to maintain a valid surety bond

Bryant L. VanBrakle,
Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 88-1276 Filed 1-21-88; 8:45 am]
BILLING CODE 6730-01-M

Reissuance of Ocean Freight Forwarder License; Universal Transport Corp. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No	Name/Address	Date reissued
732	Universal Transport Corporation, 70 West 36th Street, New York, NY 10018	Nov. 13, 1987
88	W.L. Richeson & Sons, Inc., 442 Canal Street, P.O. Box 50248, New Orleans, LA 70150	Nov. 16, 1987
3024	S.A. Charella, dba S.A. Charella Forwarding Company, 1233 Redina, San Mateo, CA 94402	Nov. 18, 1987

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 88-1275 Filed 1-21-88; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Harrison Bankshares, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writting to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 11, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Harrison Bankshares, Inc.*, Lost Creek, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the Harrison County Bank, Lost Creek, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First American Corporation*, Noxville, Tennessee; to acquire 100 percent of the voting shares of American Bancshares, Inc., Cookeville, Tennessee, and thereby indirectly acquire American Bank & Trust Company, Cookeville, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *West Iowa Banc Corp.*, Marcus, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers State Bank, Marcus, Iowa.

Board of Governors of the Federal Reserve System, January 15, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-1199 Filed 1-21-88; 8:45 am]
BILLING CODE 6210-01-M

CoreStates Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 5, 1988.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to acquire through its indirect subsidiary, Congress Financial Corporation, all or substantially all of the assets of First Interstate Commercial Corporation, and thereby engage in commercial financing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88-1422 Filed 1-21-88; 8:44 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15, U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individuals cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notificaiton rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12-03-87 AND 12-04-87

Name of Acquiring Person, Name of Acquired Person, Name of Acquiring Entity	PMN No.	Date terminated
(1) International Paper Company, Colgate-Palmolive Company, The Kendall Company	88-0299	12/03/87
(2) International Paper Company, Arvey Corporation, Arvey Corporation	88-0318	12/03/87
(3) General Electric Company, Holiday Corporation, Embassy Suites, Inc	88-0340	12/03/87
(4) Georgetown Industries, Inc., McCown De Leeuw & Co., Western Lumber Company, Inc	88-0385	12/03/87
(5) Mateo Nargelia, a natural (person), John B. Anderson, a natural (person), M&R Investment Co., Inc	88-0123	12/04/87
(6) Louis J. Rousset, Kaufman and Broad, Inc., Coastal States Life Insurance Company	88-0194	12/04/87
(7) S.E. McCrates Trust, Vernon Savings & Loan Association, FSA, State Reserve	88-0247	12/04/87
(8) CSR Limited, Samuel A. Horvitz Testamentary Trust, Mack Industries, Inc	88-0312	12/04/87
(9) Freeman's Fund Corporation, Sabine Royalty Trust, Sabine Royalty Trust	88-0336	12/04/87
(10) Freeman's Fund Corporation, Mesa Royalty Trust, Mesa Royalty Trust	88-0347	12/04/87
(11) The Fulcrum III Limited Partnership, CMW Corporation, CMW Corporation	88-0379	12/04/87
(12) Pitney Bowes Inc., Baldwin Cooke Company, Baldwin Cooke Company	88-0403	12/04/87
(13) Mentadison S.p.A., BMF Services, Inc., BMF Services, Inc	88-0407	12/04/87
(14) Ford Motor Company, Imperial Corporation of America, ICA Mortgage Corporation	88-0410	12/04/87
(15) Phillips Beverage Company, Alco Standard Corporation, Ed Phillips & Sons Co. and Phillips Products Company	88-0411	12/04/87
(16) K.A.C., Inc., Richard Hunsley, Dayton Extruded Plastics, Inc. and Sandin Properties	88-0412	12/04/87
(17) K.A.C., Inc., Robert Bultsman, Dayton Extruded Plastics, Inc. and Sandin Properties	88-0422	12/04/87
(18) R.T. Holding S.A., International Cheese Co., Inc., International Cheese Co., Inc	88-0439	12/04/87
(19) Coeur d'Alene Mines Corporation, Royal Apex Silver, Inc., Royal Apex Silver, Inc		

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1206 Filed 1-21-88; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12-24-87 AND 12-31-87

Name of Acquiring Person, Name of Acquired Person, Name of acquired Entity	PMN No.	Date terminated
(1) Joshyn Corporation, Roy Coats Family Trust, Sunbank Family of Companies, Inc	88-0348	12/24/87
(2) Southmark Corporation, Mercury Savings Association of Texas, Mercury Savings Association of Texas	88-0478	12/24/87
(3) Eastman Kodak Company, Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0513	12/24/87
(4) Fagus Industries, Inc., Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0514	12/24/87
(5) Donald G. Jones, First Carolina Cable TV, L.P., Big River Cablevision, Inc. and Denmark Cablevision	88-0515	12/24/87
(6) FPL Group, Inc., Citrus World, Inc., Citrus World, Inc	88-0532	12/24/87
(7) MAI Basic Four, Inc., Bell Atlantic Corporation, Sorbus Inc	88-0563	12/24/87
(8) Cincorp, Santa Fe Southern Pacific Corporation, Bankers Leasing and Financial Corporation	88-0582	12/24/87
(9) Snyder Oil Partners, L.P., Graham-McCormick Oil & Gas Partnership, Graham-McCormick Oil & Gas Partnership	88-0397	12/28/87
(10) Las Vegas Investors Ltd., Carma Ltd., Bourbon Street Hotel & Casino, Inc	88-0425	12/28/87
(11) IC Industries, Inc., PepsiCo, Inc., PepsiCo, Inc	88-0458	12/28/87
(12) Pepsico, Inc., IC Industries, Inc., Pepsi-Cola General Bottlers, Inc	88-0459	12/28/87
(13) The Edward W. Scripps Trust, American Cable TV Investors 3, American Cable TV Investors 3	88-0494	12/28/87
(14) Mutual of America Life Insurance Company, Allied Investment Corporation, Allied Investment Corporation	88-0497	12/28/87
(15) Reebok International Ltd., Leonardo Servadio, Etienne U.S.A. Inc./Etienne International S.p.A	88-0535	12/28/87
(16) The St. Paul Companies, Inc., Minet Holdings PLC, Minet Holdings PLC	88-0549	12/28/87
(17) Margaret Ellard, Estate of Howard R. Hughes, Jr., Summa Corporation	88-0588	12/28/87
(18) Atang Latief, American Realty Trust, American Realty Trust	88-0591	12/28/87
(19) Franklin Savings Corporation, Federal Savings and Loan Insurance Corporation as receiver, Bowman & Company, Incorporated	88-0593	12/28/87
(20) Gannett Co., Inc., HHC Holding, Inc., Television 12 of Jacksonville, Inc. & WFMY Television	88-0598	12/28/87
(21) Carena Holdings Limited, JMB Income Properties, LTD-VI, JMB Income Properties, LTD-VI	88-0610	12/28/87
(22) Carena Holdings Limited, JMB Income Properties, LTD-V, JMB Income Properties, LTD-V	88-0611	12/28/87
(23) Carena Holdings Limited, JMB Income Properties, LTD-III, JMB Income Properties, LTD-III	88-0612	12/28/87
(24) Mirka International N.V., The Cannon Group, Inc., Commonwealth Theatres, Inc	88-0310	12/29/87
(25) CBC Associates, Antonia A. Johnson, I.D.E. Corporation	88-0550	12/29/87
(26) Lucas Industries plc, Lear Siegler Holdings Corp., Lear Siegler Power Equipment Corp	88-0551	12/29/87
(27) Kirin Brewery Company, Limited, Charles E.F. Millard, The Coca-Cola Bottling Company of Northern New England	88-0558	12/29/87
(28) Hadson Corporation, Ultrasystems, Incorporated, Ultrasystems, Incorporated	88-0566	12/29/87
(29) Franciscan Sisters Hearth Care Corporation, Missionary Sisters Hearth Care Corporation, St. Therese Medical Center & Neotenic Enterprises	88-0583	12/29/87
(30) Memorex International N.V., The Telex Corporation, The Telex Corporation	88-0584	12/29/87
(31) E-II Holdings, Inc., American Brands, Inc., American Brands, Inc	88-0501	12/30/87
(32) Cental Corporation, Voting Trust of The Providence Journal Company, Virginia Metronet, Inc	88-0539	12/30/87
(33) George S. Mann, PCL Industries Limited, PCL Industries Limited	88-0587	12/30/87
(34) Western Digital Corporation, Tandon Corporation, Tandon Corporation	88-0606	12/30/87
(35) Datum Check Printers, Incorporated, Primenca Corporation, Locart Press, Inc	88-0421	12/31/87
(36) Craig O. McCaw, Voting Trust for MFC, Inc. Voting Trust, Voting Trust of The Providence Journal Company, Providence Journal Cellular Radio, Inc	88-0541	12/31/87
(37) Voting Trust of The Providence Journal Company, Craig O. McCaw, Voting Trustee for MFC, Inc. Voting Trust, Craig O. McCaw, Voting Trustee for MFC, Inc. Voting Trust	88-0542	12/31/87
(38) Burlington Northern, Inc., Sun Company, Inc., Sun Exploration and Production Company	88-0574	12/31/87
(39) Kenneth R. Thomson, Thomas E. Worrell, Jr., two newspapers in WV	88-0575	12/31/87
(40) Kenneth R. Thomson, c/o The Thomson Corp., Limited, HHC Holding Inc., Eagle Publications	88-0578	12/31/87
(41) Thomas E. Worrell, Jr., Kenneth R. Thomson, Eagle Printing Company	88-0579	12/31/87

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1207 Filed 1-21-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Requote Procurement Procedures for Orders Exceeding the Maximum Order Limitation on Multiple Award Schedules

AGENCY: Federal Supply Service, GSA.

ACTION: Requote procurement procedures for orders exceeding the maximum order limitation (MOL) on multiple award schedules.

SUMMARY: A new procedure for Multiple Award Federal Supply Schedules has been developed. This procedure named "requote" will be used in selected schedules and allows for requirements exceeding the Maximum Order Limitations (MOL) to be competed between existing schedule contractors. Current contractors on the Federal Supply Schedule will be given exclusive rights to compete under the contract for requirements which exceed the largest maximum order limitation for the applicable special item number. Agencies may either elect to submit the requirement which exceeds the MOL to Federal Supply Service (FSS) for procurement action or conduct the requote procedure themselves pursuant to the procedures established in the schedule.

ADDRESS: General Services Administration, Federal Supply Service, Office of Commodity Management (FC), Procurement Management Division (FCP), 1941 Jefferson Davis Highway, Crystal Mall Building #4, Room 724, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:
Walter L. Eckbreth, Director, Procurement Management Division on (703) 557-1936.

SUPPLEMENTARY INFORMATION:
Requirements exceeding the MOL have been obtained through separate definite quantity procurements. While savings (lower prices) were obtained as a result of the separate contract actions, there was a significant administrative burden as a result of the process. There was also a delay in providing the needed supplies and services to the agency users.

Date: January 12, 1988.

Walter L. Eckbreth,

Director, Procurement Management Division.

[FR Doc. 88-1263 Filed 1-21-88; 8:45 am]

BILLING CODE 6820-61-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will hold its Spring meeting March 9-11, 1988, at the Sheraton Charleston Hotel, Charleston, South Carolina. Reservations: (803) 723-3000

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office 20401. Telephone: (202) 275-2255.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Ralph E. Kennickell, Jr.,

Public Printer.

[FR Doc. 88-1188 Filed 1-21-88; 8:45 am]

BILLING CODE 1836-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Commission on Nursing; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of February 1988:

Name: Secretary's Commission on Nursing

Date: February 5, 1988

Time: 8:30 a.m.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: This is the first meeting of the Secretary's Commission on Nursing. The agenda will include an overview of current information on the supply of nurses, preliminary discussions of key issues affecting nurse recruitment and retention, identification of next steps in the Commission's deliberations, a tentative schedule for future meetings and other topics at the pleasure of the Commission.

Agenda items are subject to change as priorities dictate. Anyone wishing information regarding the Commission should contact the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616E, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245-0409.

Date: January 19, 1988.

Lillian K. Gibbons, R.N., Dr. P.H.

Executive Director, Secretary's Commission on Nursing.

[FR Doc. 88-1366 Filed 1-20-88; 11:50 am]

BILLING CODE 4160-04-M

Agency for Toxic Substances and Disease Registry

[ATSDR-2; FRL-3269-7]

Correction to Public Comment Period for Certain Toxicological Profiles

AGENCY: Department of Health and Human Services (DHHS); Agency for Toxic Substances and Disease Registry (ATSDR).

ACTION: Notice.

SUMMARY: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the Agency for Toxic Substances and Disease Registry (ATSDR) of DHHS with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance previously included on the first priority list of 100 chemicals. The list identifying the first 100 chemicals determined to pose the most significant potential threat to human health was published in the **Federal Register** on April 17, 1987 (52 FR 12866), as required by CERCLA 104(i)(2)(A). The dates when the first 25 draft toxicological profiles were expected to be available for public review and comment were published in the **Federal Register** on October 15, 1987 (52 FR 38340), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. The close of the comment period for each draft profile was to be indicated on the front of each profile.

This notice announces corrections to the dates indicated on 9 of the first 25 draft toxicological profiles.

Revised Dates for End of Public Comment Period

The revised dates indicated below will supersede those which are stamped on the front cover of the specified profiles. These corrections allow a 90-day public comment period starting from the actual release date.

ATSDR Toxicological Profile Public Comment Periods

Chemical	CAS No.	End of public comment period	
		Original date	Revised date
Aldrin/Dieldrin	309-00-2/60-5	1-26-88	2-17-88
Arsenic	7440-38-2	1-26-88	2-09-88
Benzo(a)pyrene	50-32-8	1-16-88	1-23-88
Benzo(b)fluoranthene	205-99-2	1-26-88	2-03-88
Beryllium	7440-41-7	1-16-88	1-23-88
Chloroform	67-66-3	1-16-88	1-30-88
Heptachlor/Heptachlor epoxide	76-44-8/1024-57-3	1-16-88	2-02-88
Nickel	7440-02-0	1-16-88	1-30-88
N-Nitrosodiphenylamine	7440-02-0	1-16-88	1-23-88

The public comment period for the remaining profiles is correct as printed on the front cover.

As indicated in the **Federal Register** announcement of October 15, 1987 (52 FR 38340), five copies of all comments are required. The comments should be submitted to: Ms. Georgi Jones, Director, Office of External Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mail Stop F-38, Atlanta, Georgia 30333.

Dated: January 19, 1988.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-1373 Filed 1-21-88; 8:45 am]

BILLING CODE 4160-70-M

Public Health Service

National Toxicology Program; Notification of the Disposal of Wet Tissues From Toxicology and Carcinogenesis Studies Stored in the National Toxicology Program Archives

The National Toxicology Program (NTP) Archives currently maintains records and pathology materials for over 300 National Cancer Institute (NCI) and NTP toxicology and carcinogenesis studies, some of which were started and completed more than ten years ago. The storage space for the wet tissues (animal organs and carcasses in formalin), paper data and paraffin blocks is no longer adequate and additional storage space would be required. Since most of these studies were completed ten or more years ago, and for most studies histological slides and microfiche copy of paper data are available, we plan to discard the wet tissues, paper data and paraffin blocks from selected studies where it is anticipated that there is either little current interest or the tissues are considered no longer viable. The histological slides and microfiche copy of paper data will remain available for these studies.

Attached is the fourth list of studies for which the wet tissues, paper data and paraffin blocks are to be discarded. (The first list was published in the **Federal Register** on September 19, 1986, 51 FR 33303–33304; the second list on February 9, 1987, 52 FR 4060–4062; and the third list on September 21, 1987, 52 FR 35483–35486.) The chemicals are from studies conducted at laboratories under contract to NCI or NTP and where the final sacrifice occurred prior to 1977. Anyone who has questions about the studies listed should contact Dr. Gary A. Boorman, Project Offier for the NTP Archives, by telephone at (919) 541–3440, FTS 629–3440, or in writing at NIEHS, MD C2–01, P.O. Box 12233, Research Triangle Park, NC 27709.

If no objections are received by 30 days after publication of this notice, the formalin fixed wet tissues, paper data and paraffin blocks from these studies will be discarded.

Dated: January 12, 1988.

David P. Rall,

Director, National Toxicology Program.

Proposed Disposal of Wet Tissues for Toxicology and Carcinogenesis Studies

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
C02108 Acetamide	11/00/70A		01/00/71A		02/00/71A	08/00/71A	01/00/72A	08/00/73A
TR-162.								
C03247 Acetohexamide	09/00/72A		11/00/72A		12/00/72A	06/00/73A	09/00/73A	10/00/75A
TR-050 P It is concluded that under the conditions of this bioassay, acetohexamide was not carcinogenic for either Fischer 344 rats or B6C3F1 mice.								
C00384A 2-Acetylaminofluorene							09/15/69A	03/15/71A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384B 2-Acetylaminofluorene							01/15/71A	03/15/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384C 2-Acetylaminofluorene	09/00/70A		11/00/70A		12/00/70A	06/00/71A	09/00/71A	12/00/73A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384D 2-Acetylaminofluorene	02/00/71A		04/00/71A		05/00/71A	10/00/71A	02/00/72A	04/00/73A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384E 2-Acetylaminofluorene	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	06/00/74A
Ref. No. 21 Positive controls and studies with studies with inadequate data. Positive control—No Technical Report issued.								
C00384F 2-Acetylaminofluorene	03/00/72A		05/00/72A		06/00/72A	11/00/72A	02/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384G 2-Acetylaminofluorene							03/15/73A	02/15/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C00384H 2-Acetylaminofluorene	11/00/70A		01/00/71A		02/00/71A	08/00/71A	03/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								
C04739 1-Acetyl-2-Picolinoly hyd	05/00/68A		06/00/68A		09/00/68A	03/00/69A	06/00/69A	07/00/71A
Ref. No. 21 Positive controls and studies with inadequate data. Data inconclusive—No Technical Report issued.								
C03190 N-(4-(9-Acridinylamino)-3	10/00/72A		12/00/72A		01/00/73A	06/00/73A	10/00/73A	02/00/76A
Ref. No. 21 Positive controls and studies with inadequate data. Data inadequate, no report. DEG 12/16/76, Recommends no report: (1) Inadequate survival in treated groups. (2) No statistically significant occurrence of tumors.								
C01536 Acronycine	02/00/71A		04/00/71A		05/00/71A	12/00/71A	02/00/73A	02/00/76A

Proposed Disposal of Wet Tissues for Toxicology and Carcinogenesis Studies—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-049 P Under the conditions of this bioassay, the low survival of the dosed and control mice and the possible procedural problems associated with intraperitoneal injection of the chemical do not allow a determination to be made of the carcinogenicity of acronycine in this species. In Sprague-Dawley rats, acronycine in the vehicle of 0.05% polysorbate 80 in phosphate-buffered saline was carcinogenic, producing tumors of the mammary gland in females, osteosarcomas in males, and sarcomas and other related tumors of the peritoneum in both males and females.								
C04682 Actinomycin D				03/00/68A		05/00/68A		08/00/68A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.							11/00/68A	03/00/69A
								03/00/71A
C02095 Adipamide			11/00/70A		01/00/71A		02/00/71A	08/00/71A
Ref No 21 Positive controls and studies with inadequate data. Data inconclusive—No Technical Report issued.							11/00/71A	04/00/73A
C01867 3-Amino-4-ethoxyacetanil			05/00/71A		07/00/71A		08/00/71A	02/00/72A
TR-112 P Under the conditions of this bioassay, 3-Amino-4-ethoxyacetanilide was carcinogenic in male B6C3F1 mice, causing follicular-cell carcinomas of the thyroid gland. Evidence provided by the bioassay was insufficient to establish the carcinogenicity of 3-Amino-4-ethoxyacetanilide in female mice or in Fischer 344 rats of either sex.								05/00/72A
								03/00/75A
C03043 3-Amino-9-ethylcarbazole			07/00/71A		09/00/71A		10/00/71A	11/00/72A
TR-093 P It is concluded that under the conditions of this bioassay, 3-Amino-9-Ethylcarbazole (Hydrochloride) was carcinogenic for the liver, inducing hepatocellular carcinomas in Fischer 344 rats and B6C3F1 mice of both sexes. Other tumors induced in the rats were carcinomas or papillomas of the integumentary system in males, carcinomas of the Zymbal's gland of the ear in males and females, and adenocarcinomas of the uterus.								03/00/72A
								03/00/75A
C01898 3-Amino-9-Ethylcarbazole Materials present in archives from Mason Lab.								
C01901 1-Amino-2-Methylanthraqui			09/00/71A		11/00/71A		12/00/71A	05/00/72A
TR-111 P Carcinomas in rats of both sexes, and kidney tumors in male rats. The compound was carcinogenic in female B6C3F1 mice, producing liver—hepatocellular carcinoma, neoplastic nodule-F344 rats female, B6C3F1 mouse female. Kidney—adenocarcinoma(nos), tubular-cell adenoma & adenocarcinome-F344 rat male an increased combined incidence of hepatocellular carcinomas and neoplastic nodule.								09/00/72A
								10/00/74A
C03963 4-Amino-2-Nitrophenol			03/00/73A		05/00/73A		06/00/73A	12/00/73A
TR—094 P Under the conditions of this bioassay, technical-grade 2,4-Diaminoanisole sulfate was carcinogenic to both sexes of both species. In Fischer 344 rats dietary administration of the chemical induced increased incidences of malignant tumors of the skin and its associated glands and malignant thyroid tumors in each sex. In B6C3F1 mice, dietary administration of 2,4-Diaminoanisole sulfate induced thyroid tumors in each sex.								03/00/74A
								04/00/76A
C00373A 3-Aminotriazole			10/00/70A		12/00/70A		01/00/71A	10/00/71A
Ref No 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								10/00/71A
								02/00/74A
C00373B 3-Aminotriazole			09/00/71A		11/00/71A		12/00/71A	05/00/72A
Ref No 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								08/00/72A
								10/00/74A
C00373C 3-Aminotriazole			08/00/71A		10/00/71A		11/00/71A	05/00/72A
Ref No 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								08/00/72A
								11/00/74A
C00373D 3-Aminotriazole			11/00/71A		01/00/72A		02/00/72A	10/00/72A
Ref No 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								11/00/72A
								11/00/74A
C00373E 3-Aminotriazole			11/00/71A		01/00/72A		02/00/72A	07/00/72A
Ref No 21 Positive controls and studies with inadequate data. Positive control—No Technical Report issued.								11/00/72A
								03/00/75A
C03736 Aniline Hydrochloride			07/00/72A		09/00/72A		10/00/72A	03/00/73A
TR-130 P Under the conditions of this bioassay, dietary administration of Aniline Hydrochloride was carcinogenic to male and female Fischer 344 rats, inducing hemangiosarcomas and a combination of fibrosarcomas and sarcomas nos of the spleen and a combination of fibrosarcomas and sarcomas nos of multiple body organs. There was no evidence of compound-induced carcinogenicity in B6C3F1 mice of either sex.								07/00/73A
								07/00/75A
C03747 O-Anisidine Hydrochloride			03/00/73A		05/00/73A		06/00/73A	11/00/73A
TR-089 P Under the conditions of this bioassay, O-Anisidine Hydrochloride was carcinogenic for Fischer 344 rats and B6C3F1 mice, inducing transitional-cell carcinomas or papillomas of the bladder in both rats and mice and in both sexes of each species, transitional-cell carcinomas of the pelvis of the kidney in male rats, and follicular-cell tumors of the thyroid male rats.								03/00/74A
								03/00/78A
C03758 P-Anisidine Hydrochloride			03/00/72A		05/00/72A		06/00/72A	11/00/72A
TR-118 P Although, under the conditions of the bioassay, there appeared to be an association between chemical administration and the increased incidence of preputial gland tumors in low dose male rats, and evidence was insufficient to establish the carcinogenicity of P-Anisidine Hydrochloride in Fischer rats. The compound was not carcinogenic in B6C3F1 mice								03/00/74A
								03/00/76A
C01730 O-Anthranilic Acid			01/00/72A		03/00/72A		04/00/72A	11/00/72A
TR-036 P It is concluded that under the conditions of this bioassay, Anthranilic Acid was not carcinogenic for either Fischer 344 rats or B6C3F1 mice								01/00/73A
								03/00/75A
C02120 1-Arginine Glutamate			10/00/70A		12/00/70A		01/00/71A	06/00/71A
Ref No 21 Positive controls and studies with inadequate data. Data inadequate—No Technical Report issued.								10/00/71A
								02/00/73A
C02697 Aspirin, Phenacetin, And			06/00/71A		08/00/71A		09/00/71A	03/00/72A
TR-067 P Under the conditions of the bioassay evidence was not sufficient for the carcinogenicity of APC in Fischer 344 rats or in B6C3F1 mice.								08/00/72A
								06/00/74A
C06393 Avadex Old Litton contract 69/1074 from Litton Lab.								
C03474 Azathioprine				06/00/68A		08/00/68A		09/00/68A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compound were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								02/00/69A
								06/00/69A
								06/00/71A
C02926 Azobenzene								06/15/73A
TR-154 P It is concluded that under the conditions of this bioassay, Azobenzene was carcinogenic (sarcomagenic) for F344 rats, inducing various types of sarcomas in the spleen and other abdominal organs of both males and females. The test chemical was not carcinogenic for B6C3F1 mice of either sex.								07/15/75A
C03521 1,2,3-Benzotriazole				05/00/72A		07/00/72A		08/00/72A
TR-088 P In female B6C3F1 mice there was an increased incidence of alveolar/bronchiolar carcinomas, suggesting a possible carcinogenic effect of 1H-Benzotriazole in Fischer 344 rats there was an increased incidence of brain tumors, suggesting a possible carcinogenic effect. However, there was no convincing evidence that under the conditions of the bioassay 1H-Benzotriazole was carcinogenic in B6C3F1 mice or Fischer 344 rats of either sex.								03/00/73A
								05/00/73A
								07/00/75A
C04773 1,3-Bis(Chloroethyl)-1-Ni				04/00/68A		06/00/68A		07/00/68A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								12/00/68A
								04/00/69A
								04/00/71A
C06382 Bis (2-Hydroxyethyl) Dithiocarbamic Acid Old Litton contract 69/1052, 69/1053 from Litton Lab.								
C03598 Butylated Hydroxytoluene								11/15/73A
								03/15/76A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-150 P It is concluded that under the conditions of the bioassay, BHT was not carcinogenic for F344 rats or B6C3F1 mice.								
C02131 N-Butylurea		05/00/71A		07/00/71A		08/00/71A	02/00/72A	05/00/72A 03/00/74A
TR-167.								
C02937 Calcium Cyanamide								03/15/74A 06/15/76A
TR-163 P It is concluded that under the conditions of this bioassay, the test formulation of calcium cyanamide was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C00452A Carbon Tetrachloride		06/00/71A		06/00/71A		09/00/71A	08/00/72A	06/00/72A 11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data.								
Positive control—No Technical Report issued.								
C00452B Carbon Tetrachloride								
Ref. No. 19 Chemicals withdrawn.								
Withdrawn by TDC Meeting 2/19/86								
C03605 Carbromal		05/00/72A		07/00/72A		08/00/72A	04/00/73A	05/00/73A 09/00/75A
TR-173 P Under the conditions of the bioassay, dietary administration of Carbromal was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
B03605 Carbromal.								
Bowed with C02175 from Litton Lab.								
C03485 Chlorambucil		04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A 04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C03770 4-(Chloroacetyl)Acetanil		11/00/72A		01/00/73A		02/00/73A	10/00/73A	11/00/73A 02/00/76A
TR-177 P Under the conditions of this bioassay, 4-(Chloroacetyl)-Acetanilide was not carcinogenic when administered in the diet to Fischer 344 rats of B6C3F1 mice of either sex.								
C00408 Chlorobenzilate		05/00/70A		07/00/70A		08/00/70A	03/00/71A	05/00/71A 06/00/73A
TR-075 P Under the conditions of this bioassay, orally administered Chlorobenzilate was carcinogenic in male and female B6C3F1 mice, causing an increased incidence of hepatocellular carcinomas. The results do not, however, provide sufficient evidence for the carcinogenicity of Chlorobenzilate in Osborne-Mendel rats.								
C02960 2-Chloroethyltrimethylamm								07/15/73A 02/15/76A
TR-158 P It is concluded that under the conditions of the bioassay, (2-Chloroethyl)Trimethylammonium chloride was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C02686 Chloroform		02/00/71A		04/00/71A		05/00/71A	01/00/72A	02/00/72A 04/00/74A
TR-00C P Significant increase in kidney epithelial tumors in male rats, highly significant increase in hepatocellular carcinoma observed in both sexes of mice, nodular hyperplasia of liver in many low dose male mice which had not developed hepatocellular.								
C03907 2-Chloromethylpyridine Hy		11/00/72A		01/00/73A		02/00/73A	12/00/73A	11/00/73A 04/00/76A
TR-178 Under the conditions of this bioassay administration of 2-(Chloromethyl) Pyridine Hydrochloride was not carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C03838 3-Chloromethylpyridine Hy		10/00/72A		12/00/72A		01/00/73A	07/00/73A	10/00/73A 11/00/75A
TR-095 P Under the conditions of this bioassay, 3-(Chloromethyl)Pyridine hydrochloride was carcinogenic in male Fischer 344 rats and B6C3F1 mice of both sexes, producing papillomas and carcinomas of the forestomach, neoplastic lesions related to chemical administration were restricted to the site of topical application, the stomach.								
C03305 4-Chloro-M-Phenylenediami		04/00/72A		06/00/72A		07/00/72A	12/00/72A	04/00/73A 04/00/75A
TR-085 P Dietary administration of 4-Chloro-M-Phenylenediamine was carcinogenic to the experimental animals, causing an increased incidence of hepatocellular tumors in female B6C3F1 mice, and an increased incidence of adrenal pheochromocytomas in male Fischer 344 rats.								
C03292 4-Chloro-O-Phenylenediami		03/00/72A		05/00/72A		06/00/72A	11/00/72A	03/00/73A 03/00/75A
TR-083 P It is concluded that under the conditions of this bioassay 4-Chloro-O-Phenylenediamine was carcinogenic in Fischer 344 rats and B6C3F1 mice, inducing tumors of the urinary bladder and forestomach in both sexes of rats and hepatocellular carcinomas in both sexes of mice.								
C03316 2-Chloro-P-Phenylenedia		06/00/72A		10/00/72A		11/00/72A	04/00/73A	06/00/73A 05/00/75A
TR-113 P Under the conditions of this bioassay there was insufficient evidence that dietary administration of 2-Chloro-P-Phenylenediamine Sulfate was carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C00533 Chloropicrin		03/00/71A		05/00/71A		06/00/71A	01/00/72A	03/00/72A 04/00/74A
TR-066 P The bioassay of Chloropicrin using Osborne-Mendel rats did not permit an evaluation of carcinogenicity because of the short survival time of dosed animals. The bioassay of Chloropicrin using B6C3F1 mice did not provide conclusive statistical evidence for the carcinogenicity of this compound.								
C02048 3-Chloro-P-Toluidine		07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A 08/00/74A
TR-145 P Under the conditions of the bioassay there was no convincing evidence for the carcinogenicity of 3-Chloro-P-Toluidine in Fischer 344 rats or B6C3F1 mice.								
C02051 5-Chloro-O-Toluidine		08/00/71A		10/00/71A		11/00/71A	06/00/72A	08/00/72A 12/00/74A
TR-187 P Under the conditions of this bioassay, 5-Chloro-O-Toluidine was carcinogenic to B6C3F1 mice, inducing hemangiosarcomas and hepatocellular carcinomas in both males and females. There was no conclusive evidence of the carcinogenicity of the compound in Fischer 344 rats.								
C01752 Chlorpropamide		07/00/72A		09/00/72A		10/00/72A	03/00/73A	07/00/73A 07/00/75A
TR-045 P It is concluded that under the conditions of the bioassay, Chlorpropamide was not carcinogenic for Fisher 344 rats or B6C3F1 mice.								
C03565 C I VAT YELLOW 4								09/15/73A 09/15/75A
TR-134 P It is concluded that under the conditions of the bioassay, the formulated product containing C.I. Vat Yellow 4 was not carcinogenic for male or female Fischer 344 rats or for female B6C3F1 mice, but was carcinogenic for male B6C3F1 mice, causing an increased incidence of lymphomas.								
C03510 Cinnamyl Anthranilate				10/00/73A		12/00/73A	03/00/73A	02/00/75A 10/00/74A 12/00/76A
TR-196 P Carcinogenic for Male F344 rats inducing low incidence of two rare tumors, acinar cell carcinomas or adenomas of the pancreas (1/42, 0/49, 3/45), and adenocarcinomas or adenomas of the renal cortex (0/48, 0/50, 4/49) not carcinogenic for female F344 rats. Carcinogenic for B6C3F1 mice, inducing hepatocellular adenomas in males (8/48, 23/50*, 29/47*; carcinomas were increased also 8/48, 7/50, 12/47) and in females causing hepatocellular carcinomas (1/50, 8/49*, 14/49*) and adenomas (2/50, 14/49*, 19/49*)								
C00431 Clonitralid		11/00/70A		01/00/71A		02/00/71A	11/00/71A	11/00/71A 12/00/73A
TR-081 P Under the conditions of the bioassay there was no convincing evidence that Clonitralid was carcinogenic to Osborne-Mendel rats or to female B6C3F1 mice. Poor survival of male mice did not permit an evaluation of carcinogenicity in these animals.								
C02993 M-Cresidine		01/00/72A		03/00/72A		04/00/72A	09/00/72A	01/00/73A 02/00/75A
TR-105 P Under the conditions of this bioassay, M-Cresidine was carcinogenic to Fischer 344 rats, causing papillary transitional-cell carcinomas of the urinary bladder in both sexes. No convincing evidence was provided for carcinogenicity in female B6C3F1 mice. Poor survival of male B6C3F1 mice receiving M-Cresidine precluded evaluation of the possible carcinogenicity of the compound in these animals.								
C02982 P-Cresidine		05/00/72A		07/00/72A		08/00/72A	01/00/74A	08/00/73A 05/00/75A
TR-142 P Under the conditions of the bioassay, P-Cresidine was carcinogenic to Fischer 344 rats, causing increased incidences of carcinomas and of papillomas of the urinary bladder in both sexes, increased incidences of olfactory neuroblastomas in both sexes, and of liver tumors in males. P-Cresidine was also carcinogenic in B6C3F1 mice, causing carcinomas of the urinary bladders in both sexes and hepatocellular carcinomas in females.								
C04900 Cyclophosphamide		05/00/68A		07/00/68A		08/00/68A	01/00/69A	06/00/69A 09/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04726 Cytarabine		06/00/68A		08/00/68A		09/00/68A	09/00/69A	06/00/69A 10/00/72A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04922 Cytoxal Alcohol				09/00/68A		11/00/68A		12/00/68A 05/00/69A 09/00/69A 90/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly Active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual compounds.								
C04717 Decarbazine				07/00/68A		09/00/68A		10/00/68A 07/00/69A 07/00/69A 11/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04893 Daunomycin				04/00/68A		05/00/68A		07/00/68A 12/00/68A 04/00/69A 40/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04933 O,P'-DDD				09/00/68A		11/00/68A		12/00/68A 05/00/69A 09/00/69A 09/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C03894 2'-Deoxy-5-Fluoro-Uridine.								
1 Box wet tissue from Litton Lab.								
C04808 (4,4'-Diacetyldiphenylure				08/00/68A		10/00/68A		11/00/68A 05/00/69A 08/00/69A 09/00/71A
Ref. No. 21 Positive controls and studies with inadequate data.								
Data inadequate—No technical report issued.								
C01969 2,4-Diaminoanisole Sulfat				04/00/71A		06/00/71A		07/00/71A 03/00/72A 04/00/72A 03/00/75A
TR-084 P Under the conditions of this bioassay, technical-grade 2,4-Diaminoanisole Sulfate was carcinogenic to both sexes of both species. In Fischer 344 rats dietary administration of the chemical induced increased incidences of malignant tumors of the skin and its associated glands and malignant thyroid tumors in each sex. In B6C3F1 mice, dietary administration of 2,4-Diaminoanisole Sulfate induced thyroid tumors in each sex.								
C02302 2,4-Diaminotoluene								10/15/73A 02/15/76A
TR-162 P Under the conditions of the bioassay, 2,4-Diaminotoluene was carcinogenic for F344 rats, inducing hepatocellular carcinomas or neoplastic nodules in both males and females and carcinomas or adenomas of the mammary gland in females. The test chemical was also carcinogenic for female B6C3F1 mice, inducing hepatocellular carcinomas. The incidence of lymphomas in the female mice suggested that these tumors also may have been related to administration of the test chemical.								
C03269 Diarylanilide Yellow				03/00/72A		05/00/72A		08/00/72A 11/00/72A 03/00/73A 03/00/75A
TR-030 P The results of this study did not provide evidence for the carcinogenicity of Diarylanilide Yellow in Fischer 344 rats or B6C3F1 mice.								
C03658A Dibenzo-P-Dioxin								01/00/72A 09/00/75A
TR-122 P It is concluded that under the conditions of this bioassay, UDD was not carcinogenic for Osborne-Mendel rats or B6C3F1 mice.								
C03656B Dibenzo-P-Dioxin								01/15/72A 09/15/75A
Ref. No. 21 Positive controls and studies with inadequate data.								
Data inadequate—No technical report issued. Additional study completed by dosed-feed (C03656A).								
C04795 Dibromodulcitol				07/00/68A		09/00/68A		10/00/68A 04/00/69A 07/00/69A 08/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C04762 Dibromomannitol				08/00/68A		10/00/68A		11/00/68A 07/00/69A 08/00/69A 11/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C02028 Dibutyltin Diacetate				08/00/72A		09/00/72A		09/00/72A 04/00/73A 08/00/73A 08/00/75A
TR-183 P Under the conditions of this bioassay, there was no conclusive evidence for the carcinogenicity of Dibutyltin Diacetate in male Fischer 344 rats or B6C3F1 mice of either sex. The loss of tissues taken from high dose female rats in the bioassay precluded an evaluation of the carcinogenicity of Dibutyltin Diacetate to female Fischer 344 rats.								
C03667A 2,7-Dichlorodibenzo-P-Dio								11/15/71A 09/15/75A
Ref. No. 21 Positive controls and studies with inadequate data.								
Data inadequate—No technical report issued. Additional study completed by dosed feed (C03667B).								
C03667B 2,7-Dichlorodibenzo-P-Dio								05/00/72A 09/00/75A
TR-123 P It is concluded that under the conditions of this bioassay, DCDD was not carcinogenic for Osborne-Mendel rats of either sex or for female B6C3F1 mice. The marginal increased incidences of combinations of leukemias and lymphomas, of hemangiosarcomas and hemangiomas, and of hepatocellular carcinomas and adenomas in male B6C3F1 mice are, however, considered as suggestive of a carcinogenic effect of 2,7-Dichlorodibenzo-P-Dioxin in these animals.								
C00555 P,P'-Dichlorodiphenoldich				07/00/70A		09/00/70A		10/00/70A 10/00/71A 07/00/71A 11/00/73A
TR-131 P Under the conditions of this bioassay there was no evidence for the carcinogenicity of P,P'-DDE in Osborne-Mendel rats, although P,P'-DDE was hepatotoxic in Osborne-Mendel rats. The findings suggest a possible carcinogenic effect of TDE in male Osborne-Mendel rats, based on the induction of combined follicular-cell carcinomas and follicular-cell adenomas of the thyroid. Because of the variation of these tumors in control male rats in the study, the evidence does not permit a more conclusive interpretation of these lesions. P,P'-DDE was carcinogenic in B6C3F1 mice, causing hepatocellular carcinomas in both sexes.								
C00464 Dichlorodiphenyltrichloro				06/00/70A		08/00/70A		09/00/70A 10/00/71A 06/00/71A 11/00/73A
TR-131 P Under the conditions of this bioassay there was no evidence for the carcinogenicity of DDT in Osborne-Mendel rats or B6C3F1 mice.								
C00511A 1,2-Dichloroethane				03/00/71A		05/00/71A		06/00/71A 03/00/72A 03/00/72A 05/00/74A
TR-056 P Under the conditions of this study, 1,2-Dichloroethane was carcinogenic to Osborne-Mendel rats, causing squamous-cell carcinomas of the forestomach, hemangiosarcomas, and subcutaneous fibromas in male rats and causing mammary adenocarcinomas in female rats. This compound was also found to be carcinogenic to B6C3F1 mice, causing mammary adenocarcinomas and endometrial tumors in female mice, and causing alveolar/bronchiolar adenomas in mice of both sexes.								
C00511B 1,2-Dichloroethane								08/06/86A 08/17/87E
Ref. No. 5 Prechronic studies in progress.								
No mice. M: 0, 30, 61, 122, 243, 487 MG/KG. F: 0, 18, 37, 74, 148, 296 MG/KG								
C00511C 1,2-Dichloroethane								11/04/86A 08/17/87E
Ref. No. 5 Prechronic studies in progress.								
R & M: 0, 500, 1,000, 2,000 4,000, 8,000 PPM								
C00511D 1,2-Dichloroethane								11/11/86A 08/17/87E
Ref. No. 6 Prechronic studies completed; chemicals in review for further testing.								
No mice: R: 0, 500, 1,000, 2,000, 4,000, 8,000 PPM.								
C00511E 1,2-Dichloroethane								12/02/86A 08/17/87E

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
Ref. No. 6. Prechronic studies completed, chemicals in review for further testing. No mice. R. 0, 500, 1,000, 2,000, 4,000, 8,000 PPM.								
C04875 Dichloromethotrexate	06/00/68A	08/00/68A	09/00/68A	02/00/69A	06/00/68A	06/00/71A		
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C00486 Dicofol	09/00/70A		11/00/70A		12/00/70A	09/00/71A	09/00/71A	10/00/73A
TR-090 P. Under the conditions of this bioassay, technical-grade Dicofol was carcinogenic in male B6C3F1 mice, causing hepatocellular carcinomas. No evidence for carcinogenicity was obtained for this compound in Osborne-Mendel rats of either sex or in female B6C3F1 mice.								
C02998 DdP-ethylphenyl)Dichloro							06/15/73A	07/15/75A
TR-156 P. It is concluded that under the conditions of this bioassay, P,P' Ethyl-DDD Was not carcinogenic for male or female F344 rats or male B6C3F1 mice. However, the occurrence of hepatocellular carcinomas and adenomas in female mice was suggestive of a carcinogenic effect.								
C03816 N,N'-Diethylthiourea	07/00/72A		09/00/72A		10/00/72A	05/00/73A	07/00/73A	11/00/75A
TR-149 P. Under the conditions of the bioassay, N,N'-Diethylthiourea was carcinogenic to Fischer 344 rats, causing follicular-cell carcinomas of the thyroid in males and follicular-cell neoplasms of the thyroid in female. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C02255 2,4-dimethoxyaniline Hydr	01/00/73A		03/00/73A		04/00/73A	09/00/73A	01/00/74A	01/00/76A
TR-171 P. Under the conditions of this bioassay there was no convincing evidence for the carcinogenicity of 2,4-Dimethoxyaniline HCl in Fischer 344 rats or B6C3F1 mice. Liver—hepatocellular carcinoma and adenoma-B6C3F1 mouse male.								
C02175 3,3-Dimethoxybenzidine-4	05/00/72A		07/00/72A		08/00/72A	01/00/73A	05/00/73A	06/00/75A
TR-128 P. Under the conditions of this bioassay, administration of 3,3-Dimethoxybenzidine-4,4-Diisocyanate was carcinogenic to Fischer 344 rats, causing neoplasms of the skin (excluding skin of the ear) in males, endometrial stromal polyps in females, and leukemia and malignant lymphoma in both sexes. The compound was also associated with the development of a combination of squamous-cell carcinomas and sebaceous adenocarcinomas of the Zymbal'S gland and skin of the ear in rats of both sexes. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C02175 3,3'-Dimethoxybenzidine-4,4'-Diisocyanate Boxed with C03805 from Litton Lab.								
C01821 N,N-dimethyl-P-Nitrosani	02/00/71A		04/00/71A		05/00/71A	02/00/72A	02/00/72A	02/00/75A
TR-176								
C01865 2,4-Dinitrotoluene	02/00/71A		04/00/71A		05/00/71A	02/00/72A	02/00/72A	02/00/75A
TR-054 P. Under the conditions of this bioassay dietary administration of 2,4-Dinitrotoluene to Fischer 344 rats induced benign tumors (i.e., fibroma of the skin and subcutaneous tissue in males and fibroadenoma of the mammary gland in females). No evidence was provided for the carcinogenicity of the compound in B6C3F1 mice of either sex.								
C03889A 1,4-Dioxane							12/15/71A	08/15/75A
Ref. No. 21. Positive controls and studies with inadequate data. Data inconclusive-No technical report issued. Additional study performed by water (C03889B).								
C03889B 1,4-Dioxane							04/00/72A	08/00/75A
TR-080 P. Under the conditions of this bioassay, 1,4-Dioxane induced hepatocellular adenomas in female Osborne-Mendel rats. 1,4-Dioxane was carcinogenic in both sexes of rats, producing squamous-cell carcinomas of the nasal turbinates, and in both sexes of B6C3F1 mice, producing hepatocellular carcinomas.								
U00395 Dioxathion	05/00/70A		08/00/70A		09/00/70A	05/00/71A	08/00/71A	07/00/73A
TR-125 P. Under the conditions of this bioassay, dietary administration of Dioxathion was not carcinogenic in Osborne-Mendel rats or B6C3F1 mice.								
C03350 2,2-Dioxide-1,2-Oxathiolane Old Litton Contract 68/1052, 68/1063 from Litton Lab.								
C03008 2,5-Dithiobiurea	12/00/71A		02/00/72A		03/00/72A	08/00/72A	12/00/72A	01/00/75A
TR-121 P. Under the conditions of this bioassay, the evidence suggested, but was insufficient to establish the carcinogenicity of 2,5-Dithiobiurea for female B6C3F1 mice. The compound was not carcinogenic to male B6C3F1 mice or to male or female Fischer 344 rats.								
C06439 Dithoxysuccide Old Litton contract 68/1078, 68/1071 from Litton Lab.								
C02073 Dulcin	10/00/70A		12/00/70A		01/00/71A	08/00/71A	10/00/71A	08/00/73A
TR-079 Publication withdrawn								
C01605 Emetine Hydrochloride	05/00/71A		08/00/71A		09/00/71A	05/00/72A	08/00/72A	10/00/74A
TT-043P. It is concluded that the results of this study do not allow evaluation of the possible carcinogenicity of Emetine.								
C00566 Endosulfan	01/00/71A		03/00/71A		04/00/71A	12/00/71A	01/00/72A	02/00/74A
TR-062 In both species high mortality was observed in the male groups and no conclusions concerning the carcinogenicity of Endosulfan can be drawn from this part of the bioassay. However, survival among females of both species was sufficient for meaningful statistical evaluation of the incidence of late-developing tumors. It is concluded that under the conditions of this bioassay, technical-grade Endosulfan was not carcinogenic in female Osborne-Mendel rats or in female B6C3F1 mice.								
C01694 Ethonamide	04/00/72A		06/00/72A		07/00/72A	12/00/72A	04/00/73A	04/00/75A
TR-046 P. It is concluded that under conditions of this bioassay, Ethonamide was not carcinogenic in either Fischer 344 rats or B6C3F1 mice.								
C00602 Ethyl Carbamate 1 Box wet tissue from Alton-Ochner Lab.								
C06417 Ethylene Carbonate Old Litton contract 68/1060, 68/1061 from Litton Lab.								
C00974 Ethylenediamine Tetraacet	07/00/72A		09/00/72A		10/00/72A	04/00/73A	07/00/73A	08/00/75A
TR-011 P. There was no evidence of carcinogenicity of EDTA at the concentrations administered, and no tumors or lesions of the kidney or other organs were related to the treatment. Survival of all groups of animals of both species was good; thus, the lack of appearance of treatment-related tumors could not be attributed to early mortality. It should be noted that the confidence intervals for all tumor sites exclude a positive value; this indicates that the possibility of tumorigenicity is not theoretically precluded. However, under the conditions of this study, using concentrations of 31500 PPM and 7,500 PPM in feed, NA3EDTA.3H20 was not demonstrated to be carcinogenic in rats or mice.								
C03372 Ethylene Thiourea	07/26/78A	09/00/78A	10/04/78A	10/00/79A	02/21/80A	01/00/82A	10/18/82A	02/08/85A
Ref. No. 8. Two year studies; histopathology in progress.								
C02857 Ethyl Tellurac							07/15/73A	11/15/75A
TR-16152 P. It is concluded that under the conditions of this bioassay, Ethyl Tellurac was not carcinogenic for F344 rats or B6C3F1 mice of either sex. The incidence of mesotheliomas in dosed male rats and the incidence of adenomas of the lacrimal (Harderian) gland of the eye in dosed mice of either sex provided evidence which was suggestive but under the conditions of the bioassay insufficient to establish the carcinogenicity of Ethyl Tellurac in these animals.								
C00305/A00975 Fez-Benzo (A) Pyrene Gelatin/Saline Materials present in Archives from IITRI Lab.								
C00293/A00964 FEZ03(14-30U)-Benzo Galabon/Saline Materials present in Archives from IITRI Lab.								
C03010 Formulated Fenamnosulf	12/00/71A		02/00/72A		03/00/72A	08/00/72A	12/00/72A	05/00/75A
TR-10 P. Under the conditions of this bioassay, dietary administration of formulated Fenamnosulf was not carcinogenic in either Fischer 344 rats or B6C3F1 mice.								
C04819 Guanazole	05/00/68A		07/00/68A		08/00/68A	04/00/69A	05/00/69A	08/00/71A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C02142 Hexadecanide			11/00/70A		01/00/71A		02/00/71A	08/00/71A	11/00/71A	03/00/74A
Ref. No. 21. Positive controls and studies with inadequate data. Data inconclusive—No technical report issued.								
C01854 Hydrazobenzene			04/00/71A		06/00/71A		07/00/71A	04/00/72A	04/00/72A	03/00/75A
TR-092 P. Under the conditions of this bioassay, Hydrazobenzene was carcinogenic to Fischer 344 rats of both sexes, causing increased incidences of hepatocellular carcinomas and Zymbal's gland squamous-cell neoplasms in male rats, neoplastic nodules of the liver in female rats and mammary adenocarcinomas in female rats. Hydrazobenzene was also carcinogenic to female B6C3F1 mice, causing an increased incidence of hepatocellular carcinomas. The compound was not carcinogenic to male B6C3F1 mice.								
D04831 Hydroxyurea			04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01547 IPD (3,3'-IMINODIS-1-PROP			05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	12/00/74A
TR-018 P. Conclusions from this study are limited by early deaths and toxicity, the appearance of tumors in the peritoneum near the injection sites in both Sprague-Dawley rats and B6C3F1 mice indicate carcinogenic potential of IPD.								
C01638 Isophosphamide			02/00/71A		04/00/71A		05/00/71A	12/00/71A	02/00/72A	10/00/73A
TR-032 P. Under the conditions of the bioassay, Isophosphamide was not carcinogenic in male Sprague-Dawley rats or in male B6C3F1 mice. The incidence of leiomyosarcomas of the uterus indicated that Isophosphamide was carcinogenic in female Sprague Dawley rats, and the incidence of fibroadenoma of the mammary gland in female rats was associated with the treatment with Isophosphamide. Isophosphamide was carcinogenic in female B6C3F1 mice, producing malignant lymphomas of the hematopoietic system.								
C02891 Lead Dimethyldithiocarbam							11/15/73A	01/15/75A
TR-151 P. It is concluded that under the conditions of this bioassay, lead Dimethyldithiocarbamate was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C03861 Lithocholic Acid			06/00/72A		08/00/72A		09/00/72A	06/00/73A	06/00/73A	10/00/75A
TR-175 P. Under the conditions of this bioassay, Lithocholic Acid was not carcinogenic when administered by gavage to Fischer 344 rats or B6C3F1 mice.								
C04740 Lomustine			02/00/68A		04/00/68A		05/00/68A	11/00/68A	02/00/70A	05/00/72A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C04886 6-mercaptopurine			08/00/68A		09/00/68A		09/00/68A	02/00/69A	05/00/69A	05/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C04944 Merphalan			09/00/68A		11/00/68A		12/00/68A	05/00/69A	09/00/69A	09/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
C04671 Methotrexate			03/00/68A		05/00/68A		06/00/68A	11/00/68A	03/00/69A	08/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01627 (-)-4,4'-(1-Methyl-1,2-E			05/00/71A		07/00/71A		08/00/71A	01/00/72A	08/00/72A	01/00/74A
TR-078 P. Under the conditions of this bioassay, ICRF-159 was carcinogenic for female Sprague-Dawley rats, producing uterine adenocarcinomas, and was also carcinogenic for female B6C3F1 mice, producing lymphomas.								
C04784 6-Methylmercaptopurine Ri			04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01923A 2-Methyl-1-Nitroanthraqu			02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	03/00/75A
TR-029 P. Under the conditions of this bioassay, the results indicate that 2-Methyl-1-Nitroanthraquinone is carcinogenic in male Fischer 344 rats, producing hepatocellular carcinomas. Increased incidences of subcutaneous fibromas in both male and female rats were also associated with administration of the compound. Tumors of the forestomach and bladder in these animals may also have been related to administration of the test chemical.								
C01923B 2-Methyl-1-Nitroanthraqu			02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	11/00/74A
TR-00D P. Subcutaneous hemangiosarcomas developed in 97% of 172 B6C3F1 mice of both sexes fed either 0.03 or 0.06% 2-Methyl-1-Nitroanthraquinone in the diet. There was no significant relationship to dose or sex in addition, similar vascular tumors occurred in the mesentery of 14 mice. 2-methyl-1-Nitroanthraquinone I Carcinogenic in B6C3F1 mice when given in food. One of 97 control mice had a splenic hemangiosarcoma.								
C02971 Methyl Parathion										07/15/73A	05/15/75A
TR-157 P. It is concluded that under the conditions of this bioassay, Methyl Parathion was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C06549 Mexacarbate			01/00/71A		03/00/71A		04/00/71A	12/00/71A	01/00/72A	03/00/74A
TR-147 P. Under the conditions of the bioassay, sufficient evidence was not obtained for the carcinogenicity of Mexacarbate for Osborne-Mendel rats or B6C3F1 mice.								
C06428A Mirex										08/03/77A	07/05/79A
C06428B Mirex											01/22/80A
Only cash to dispose of Mirex materials from old Litton contract—68/1068, 68/1067.											
C04786 Mitomycin C			05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	08/00/71A
TR-00A P. Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01582 Myleran			07/00/71A		09/00/71A		10/00/71A	06/00/72A	07/00/72A	11/00/74A
Ref. No. 21. Positive controls and studies with inadequate data. Data inadequate-No report. DEG recomm no report 12/16/76 due to (1) indeq. Survival in treated groups. (2) No statistically significant occurrence of tumors.								
C00021 1,5-Naphthalenediamine			06/00/72A		08/00/72A		09/00/72A	02/00/73A	06/00/73A	08/00/75A

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PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-143 P Under the conditions of this bioassay, 1,5-Naphthalenediamine was carcinogenic in female Fischer 344 rats, causing clitoral and uterine neoplasms. 1,5-Naphthalenediamine was also carcinogenic for B6C3F1 mice, producing thyroid neoplasms in males and neoplasms of the thyroid, liver, and lung in females. Insufficient evidence was provided for the carcinogenicity of the compound in male Fischer 344 rats.								
C03281 N-(1-Naphthyl)Ethylenedia		07/00/72A		09/00/72A		10/00/72A	03/00/73A	07/00/73A 08/00/75A
TR-168 P Under the conditions of this bioassay, dietary administration of N-(1-NaphthyI)Ethylenediamine Dihydrochloride was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C00882 Nickel (II) Oxide						01/21/86A	04/28/86A	07/01/86A 05/01/87A 01/00/88E
Ref. No. 5 Prechronic studies in progress.								
C05845 Nicotinamide								
Materials present in Archives C# had been listed incorrectly as C05485.								
C03792 Nithiazide		10/00/72A		12/C0/72A		01/00/73A	11/00/73A	10/00/73A 03/00/76A
TR-146 P Under the conditions of this bioassay, Nithiazide was carcinogenic in male and probably female B6C3F1 mice, causing a combination of hepatocellular carcinomas and hepatocellular adenomas. Nithiazide was also carcinogenic in female Fischer 344 rats, causing an increased incidence of a combination of skin and mammary neoplasms. The compound was not carcinogenic in male Fischer 344 rats.								
C01967 5-Nitroacenaphthene		11/00/76A		01/00/77A		02/00/77A	07/00/77A	08/00/72A 02/00/75A
TR-118 P Under the conditions of this bioassay, 5-Nitroacenaphthene was carcinogenic to Fischer 344 rats, causing increased incidences of malignant tumors of the ear canal and lung in both sexes, and of the clitoral gland and mammary gland in females. 5-Nitroacenaphthene was also carcinogenic to female but not male B6C3F1 mice, causing carcinomas of the liver and ovarian tumors.								
C01979 3-Nitro-P-Acetophenetide		09/00/71A		11/00/71A		12/00/71A	05/00/72A	09/00/72A 10/00/74A
TR-133 P Under the conditions of this bioassay, dietary administration of 3-Nitro-P-Acetophenetide was not carcinogenic in Fischer 344 rats of either sex or in female B6C3F1 mice. The compound, however was considered Carcinogenic in male B6C3F1 mice based on a significant increase in the combined incidence of hepatocellular carcinomas and hepatocellular adenomas in these animals.								
C01934 5-Nitro-O-Anisidine		08/00/71A		10/00/71A		11/00/71A	04/00/72A	08/00/72A 03/00/75A
TR-127 P Under the conditions of this bioassay, dietary administration of 5-Nitro-O-Anisidine was carcinogenic in Fischer 344 rats, causing tumors of the integumentary system in males and females and of the clitoral gland in females. The compound was also carcinogenic to female B6C3F1 mice, causing hepatocellular carcinomas.								
C01945 4-Nitroanthranilic Acid		02/00/71A		04/00/71A		05/00/71A	02/00/72A	02/00/72A 10/00/74A
TR-109 P Under the conditions of this bioassay evidence was not provided for the carcinogenicity of 4-Nitroanthranilic Acid in Fischer 344 rats or B6C3F1 mice.								
C01912 5(6)-Nitrobenzimidazole		03/00/71A		05/00/71A		06/00/71A	04/00/72A	03/00/72A 03/00/75A
TR-117 P Under the conditions of this bioassay, dietary administration of 5-Nitrobenzimidazole was not carcinogenic to Fischer 344 rats. However, the compound was carcinogenic to B6C3F1 mice, causing hepatocellular carcinomas in both sexes.								
C00420A Nitrofen		09/00/71A		11/00/71A		12/00/71A	06/00/72A	09/00/72A 12/00/74A
TR-184 P Under the condition of this bioassay, dietary administration of Nitrofen was carcinogenic to B6C3F1 mice, causing hepatocellular carcinomas in both sexes. There was no evidence for carcinogenicity in Fischer 344 rats.								
C00420B Nitrofen		12/00/70A		02/00/71A		03/00/71A	12/00/71A	12/00/71A 01/00/74A
TR-026 P The results of this study indicate that Nitrofen is a liver carcinogen, causing hepatocellular carcinomas in B6C3F1 mice of both sexes and hemangiosarcoma of the liver in male mice. In addition, the compound is carcinogenic to female Osborne-Mendel rats, causing an increased incidence of pancreatic carcinomas. Survival of the high dose male rats was not adequate for meaningful statistical analysis of tumor incidence.								
C01956 1-Nitronaphthalene		03/00/71A		05/00/71A		06/00/71A	03/00/72A	03/00/72A 02/00/75A
TR-084 P Under the conditions of this bioassay 1-Nitronaphthalene was not demonstrated to be carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C02880 N-Nitrosodiphenylamine								02/15/74A 09/15/76A
TR-154 P It is concluded that under the conditions of this bioassay, N-Nitrosodiphenylamine was carcinogenic for both sexes of F344 rats, inducing transitional-cell carcinomas of the urinary bladder, but was not carcinogenic for B6C3F1 mice of either sex.								
C01843 5-Nitro-O-Toluidine		04/00/71A		06/00/71A		07/00/71A	05/00/72A	04/00/72A 07/00/74A
TR-107 P Under the conditions of the bioassay 5-Nitro-O-Toluidine was carcinogenic in B6C3F1 mice, causing hepatocellular carcinomas in both sexes, and increase in the combined incidence of hemangiomas and hemangiosarcomas in male mice, and an increased incidence of hemangiosarcomas in female mice. The compound was not carcinogenic in Fischer 344 rats.								
C03678A Octachlorodibenzodioxin								08/00/72A 10/00/75A
Ref. No. 21 Positive controls and studies with inadequate data. Data inadequate—No technical report issued. Additional studies under consideration (C03678)								
C03678 Octachlorodibenzodioxin.								
Ref. No. 18 Chemicals deferred.								
C00419A Pentachloronitrobenzene		09/00/70A		11/00/70A		12/00/70A	08/00/72A	09/00/71A 10/00/73A
TR-081 P It is concluded that under the conditions of the bioassay PCNB was not carcinogenic in either Osborne-Mendel rats or B6C3F1 mice.								
C00419B Pentachloronitrobenzene	NR		NR		05/06/80A	11/00/80A	06/09/81A	06/10/83A
TR-325 P There was no evidence of carcinogenicity for male or female B6C3F1 mice. Only wish to dispose of older study.								
C01672 Phenazopyridine Hydrochlo		10/00/71A		12/00/71A		01/00/72A	09/00/72A	10/00/72A 01/00/75A
TR-099 P Under the conditions of this bioassay, Phenazopyridine Hydrochloride was carcinogenic in Fischer 344 rats, inducing adenocarcinomas of the colon in both males and females. Although administration of Phenazopyridine Hydrochloride was not carcinogenic in male B6C3F1 mice, the chemical was carcinogenic in females, including hepatocellular adenomas and carcinomas.								
C01558 Phenesterin		08/00/71A		08/00/71A		08/00/71A	04/00/72A	05/00/72A 02/00/76A
TR-080 P Under the conditions of this bioassay, Phenesterin was carcinogenic in female Sprague-Dawley rats, producing adenocarcinomas of the mammary gland, and in both sexes of B6C3F1 mice, producing alveolar/bronchiolar carcinomas, hematopoietic tumors, and myocardial sarcomas.								
C01741 Phenformin Hydrochloride		02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A 02/00/75A
TR-007 P No evidence for carcinogenicity under the conditions of this bioassay of Phenformin. Stability of test material in feed not determined, however, test performed in male mice may be inconclusive. Confidence intervals for all tumor sites in rats and mice which were subjected to statistical analysis include a positive value indicating the theoretical possibility of tumor induction by Phenformin which could not be detected under the conditions of this test.								
C01661 Phenoxybenzamine Hydrochl		07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A 07/00/76A
TR-072 P Under the conditions of this bioassay, Phenoxybenzamine Hydrochloride was carcinogenic for the peritoneum of both sexes of Sprague-Dawley rats and B6C3F1 mice.								
C03930 P-Phenylenediamine Dihydr		02/00/72A		04/00/72/A		05/00/72A	01/00/74A	02/00/73A 05/00/76A
TR-174 P Under the conditions of this bioassay, there was no convincing evidence that dietary administration of P-Phenylenediamine Dihydrochloride was carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C02233 N-Phenyl-P-Phenylenedi		11/00/71A		01/00/72A		02/00/72A	08/00/72A	11/00/72A 12/00/74A
TR-082 P It a concluded that under the conditions of this bioassay, N-Phenyl-P-Phenylenediamine was not carcinogenic for Fischer 344 rats or for B6C3F1 mice.								
C03612 Phthalamide								11/15/73A 11/15/75
TR-161 P It is concluded that under the conditions of this bioassay, Phthalamide was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C03601 Phthalic Anhydride								10/15/73A 10/15/75
TR-159 P It is concluded that under the conditions of this bioassay, Phthalic Anhydride was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C02813 Piperonyl Butoxide								07/15/73A 08/15/75

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp. No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
TR-120 P It is concluded that under the conditions of this bioassay, Piperonyl Butoxide was not carcinogenic for Fisher 344 rats or B6C3F1 mice.								
C02824 Piperonyl Sulfoxide								06/15/73A 10/15/75
TR-124 P It is concluded that under the conditions of this bioassay, technical-grade Piperonyl Sulfoxide was not carcinogenic for male or female Fisher 344 rats or for female B6C3F1 mice, but was carcinogenic for male B6C3F1 mice, producing an increased incidence of hepatocellular carcinomas.								
C04697 Prednisone				05/00/68A		07/00/68A		08/00/68A 01/00/88A 05/00/89A 05/00/71A
TR-80A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens, while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01810A Procarbazine Hydrochlorid				06/00/68A		08/00/68A		09/00/68A 07/00/89A 05/00/88A 11/00/71A
TR-80A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens, while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C01801B Procarbazine Hydrochlorid				05/00/71A		07/00/71A		08/00/71A 01/00/72A 05/00/72A 01/00/74A
TR-019 P It is concluded that under the conditions of this bioassay, Procarbazine was carcinogenic for both Sprague-Dawley rats and B6C3F1 mice, producing several types of tumors in both sexes of these two species.								
C01683 Pyrimethamine			01/00/72A		03/00/72A		04/00/72A 09/00/72A 01/00/73A 01/00/76A	
TR-027 P It is concluded that under the conditions of this bioassay, Pyrimethamine was not carcinogenic for male or female Fischer 344 rats or for female B6C3F1 mice. The carcinogenic potential of Pyrimethamine for male B6C3F1 mice cannot be assessed by this bioassay, because of the markedly reduced life span.								
C03101 Rosaren Blue								
1 Blue wall tissue from Dow Lab.								
C02506 Saccharin I								
C# had been listed incorrectly as C02056 from Litton Lab.								
C03098A Scopolamine Hydrobromide								
C03098B Scopolamine Hydrobromide								
Only wish to dispose of older 'scopos' study by Dow Lab. One box of wet tissue.								
C06482 Sodium Azide								
Only wish to dispose of Sodium Azide materials from old Litton contract 68/1058, 68/1059.								
C02835 Sodium Diethyldithiocarba								09/15/73A 05/15/76A
TR-172 P It is concluded that under the conditions of this bioassay, Sodium Diethyldithiocarbamate was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C02084 Sodium Nitrite				11/00/70A		01/00/71A	02/00/71A	08/00/71A 11/00/71A 03/00/73A
TR-187								
C06473 Sodium Sulfhydrate								
Old Litton contract 68/1066, 68/1067 from Litton Lab.								
C03167 Streptozotocin						12/00/88A		08/00/88A 08/00/88A 12/00/88A 12/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens, while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
C03453 Sulfallate						06/00/70A		08/00/70A 08/00/70A 05/00/71A 05/00/71A 07/00/73A
TR-115 P Under the conditions of this bioassay dietary administration of Sulfallate was carcinogenic to Osborne-Mendel rats and to B6CF1 mice, inducing mammary gland tumors in females of both species, tumors of the forestomach in male rats, and lung tumors in male mice.								
C01718 4,4'-Sulfonyldianiline				05/00/71A		07/00/71A		08/00/71A 01/00/72A 05/00/72A 05/00/74A
TR-020 P It is concluded that under the conditions of this bioassay, Dapsone (4,4'-Sulfonyldianiline) was not carcinogenic for female Fischer 344 rats or B6C3F1 mice of either sex. Dapsone was carcinogenic (leiomyosarcoma) for male Fischer 344 rats causing mesenchymal tumors of the spleen and peritoneum.								
C00475 Tetrachlorodiphenylethane					08/00/70A	10/00/70A		11/00/70A 08/00/71A 08/00/71A 08/00/73A
TR-131 P Under the conditions of this bioassay, there was no evidence for the carcinogenicity of TDE in female Osborne-Mendel rats or B6C3F1 mice of either sex.								
C03554A 1,1,2,2-Tetrachloroethane				02/00/71A		04/00/71A		05/00/71A 12/00/71A 02/00/72A 03/00/74A
TR-027 P Under the conditions of this study, there was inconclusive evidence for carcinogenicity of 1,1,2,2-Tetrachloroethane in rats. There was positive evidence in mice of both sexes.								
C03554B 1,1,2,2-Tetrachloroethane.								
Ref. No. 3 Chemicals approved for toxicology study.								
C03032 2,3,5,6-Tetrachloro-4-NIT				05/00/72A		07/00/72A		08/00/72A 01/00/74A 05/00/73A 05/00/76A
TR-114 P Under the conditions of this bioassay, dietary administration of 2,3,5,6-Tetrachloro-4-Nitroanisole was not carcinogenic to male or female Fischer 344 rats or B6C3F1 mice or either sex.								
C02859 Tetraethylthiuram Disulfi								11/15/73A 06/15/76A
TR-305 P It is concluded that under the conditions of this bioassay, Tetraethylthiuram Disulfide was not carcinogenic for F344 rats or B6C3F1 mice of either sex.								
C01702 4,4'-Thiodianiline						09/00/71A		11/00/71A 12/00/71A 05/00/72A 09/00/72A 09/00/74A
TR-047 P Under the conditions of this bioassay, 4,4'-Thiodianiline was carcinogenic for Fischer 344 rats, inducing tumors in the liver, thyroid, colon, and ear canal of male rats, and the thyroid, uterus, and ear canal of female rats. 4,4'-Thiodianiline was carcinogenic for B6C3F1 mice, inducing tumors in the liver and thyroid of both males and females.								
C01561 Beta-Thioguanine Deoxyr						07/00/73A		09/00/73A 10/00/73A 03/00/74A 07/00/73A 04/00/75A
TR-057 P Under the conditions of this bioassay, the low survival of the dosed and vehicle-control groups of mice, as well as the possible procedural problem that may have affected the incidences of tumors in these groups, does not allow a determination to be made of the carcinogenic potential of B-TGDR in this species. B-TGDR in the vehicle of 0.05% Polysorbate 80 was, however, carcinogenic in rats, producing carcinomas of the ear canal in the females and possibly also in the males.								
C06451 Thiosemicarbazide								
Old Litton contract 68/1068, 68/1069 from Litton Lab.								
C06708 Thyroid Extract.								
Old Litton contract 68/1065, 68/1067, boxed with C06473 from Litton Lab.								
C01503 Tobacco Smoke								
Materials present in Archives from Hazleton Lab.								
C00327 Tolazamide						10/00/72A		12/00/72A 01/00/73A 07/00/73A 10/00/73A 11/00/75A
TR-059 P It is concluded that under the conditions of this bioassay, Tolazamide was not carcinogenic for Fischer 344 rats or B6C3F1 mice.								
C01703 Tolbutamide						03/00/72A		05/00/72A 06/00/72A 01/00/73A 03/00/73A 05/00/75A
TR-031 P It is concluded that under the conditions of this bioassay, Tolbutamide was not carcinogenic for either Fischer 344 rats or B6C3F1 mice.								
C01832 2,5-Toluenediamine Sulfat				03/00/71A		05/00/71A		06/00/71A 03/00/72A 02/00/72A 08/00/75A
TR-126 P Under the conditions of this bioassay, sufficient evidence was not obtained to demonstrate the carcinogenicity of 2,5-Toluenediamine Sulfate in either Fisher 344 rats or B6C3F1 mice.								
C02335 O-Toluidine Hydrochloride								10/15/73A 08/15/76A
TR-153 P Under the conditions of this bioassay, O-Toluidine Hydrochloride was carcinogenic in both male and female F344 rats and B6C3F1 mice, producing a significant increased incidence of one or more types of neoplasms.								
C02153 P-Toluenes						12/00/70A		02/00/71A 03/00/71A 08/00/71A 12/00/71A 03/00/74A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENESIS STUDIES—Continued

Exp No./Chemical	Single dose study		14-Day study		90-Day study		2-Year study	
	Start	End	Start	End	Start	End	Start	End
Ref. No. 21 Positive controls and studies with inadequate data. Data inadequate—No technical report issued.								
CO2904 2,4,6-Trichlorophenol							08/15/73A	07/15/75A
TR-155 P It is concluded that under the conditions of this bioassay, 2,4,6-Trichlorophenol was carcinogenic in male F344 rats, inducing lymphomas or leukemias. The test chemical was also carcinogenic in both sexes of B6C3F1 mice, including hepatocellular carcinomas or adenomas.								
CO0442 Trifluralin	05/00/70A		07/00/70A		08/00/70A	02/00/71A	05/00/71A	06/00/73A
TR-034 Evaluation of the results of this bioassay indicates that technical-grade Trifluralin is a carcinogen in female B6C3F1 mice, being associated in these animals with an elevated incidence of hepatocellular carcinomas, alveolar/bronchiolar adenomas and squamous-cell carcinomas of the forestomach. Sufficient evidence was not provided for the carcinogenicity or tumorigenicity of Trifluralin in male B6C3F1 mice or in Osborne-Mendel rats of either sex.								
CO2299 2,4,5-Trimethylaniline							02/15/74A	02/15/76A
TR-160 P It is concluded that under the conditions of this bioassay, 2,4,5-Trimethylaniline was carcinogenic for male and female F344 rats and female B6C3F1 mice, inducing hepatocellular carcinomas or neoplastic nodules in the rats of each sex, alveolar/bronchiolar carcinomas in the female rats, and hepatocellular carcinomas in the female mice.								
CO1649 Tris(Aziridinyl)-Phosphin	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	03/00/75A
TR-058 P Under the conditions of this bioassay, Thio-Tepa was carcinogenic in both Sprague-Dawley rats and B6C3F1 mice. In the rats, the chemical induced squamous-cell carcinoma of the skin or ear canal in both males and females, and hematopoietic neoplasms in the males. In the mice, it induced lymphoma or lymphocytic leukemia in both sexes and squamous-cell carcinoma in the skin and associated glands of males.								
CO1729 L-Tryptophan	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	02/00/75A
TR-071 P It is concluded that under the conditions of this bioassay, L-Tryptophan was not carcinogenic for Fischer 344 rats or B6C3F1 mice.								
CO4820 Uracil Mustard	04/00/68A		06/00/68A		07/00/68A	12/00/68A	04/00/69A	04/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual component.								
CO2119 Urea	10/00/70A		12/00/70A		01/00/71A	05/00/71A	10/00/71A	02/00/73A
Ref. No. 21 Positive controls and studies with inadequate data. Data inadequate—No technical report issued.								
CO4842 Vinblastine	05/00/68A		07/00/68A		08/00/68A	01/00/69A	05/00/69A	05/00/71A
TR-00A P Various compounds and combinations thereof, of promise in the treatment of neoplastic diseases, were tested for possible carcinogenicity in Swiss mice and Sprague-Dawley rats. Some of the compounds were fairly active carcinogens while others showed little or no evidence of carcinogenicity. The carcinogenicity of the drug combinations was generally less than that of the individual components.								
CO8537 Zinc Acetate. 9 bowes wet tissue from Litton Lab.								

[FR Doc. 88-1204 Filed 1-21-88; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

The Shoshone and Arapahoe Tribes; Wind River Indian Reservation, Fort Washakie, WY; Transfer of Federally Owned Lands

January 5, 1988.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On December 3, 1986, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 as amended by Pub. L. 93-599 dated January 2, 1975 (88 Stat. 1954), the below-described property was transferred by the General Services Administration to the Secretary of the Interior, without reimbursement, to be held in trust by the United States for the benefit and use of the Shoshone and Arapahoe Tribes of the Wind River Indian Reservation, Fort Washakie, Wyoming:

Township 8 North, Range 1 West, Wind River Meridian, Wyoming

Section 24, N½SW¼, NW¼SE¼ containing 120.00 acres.

These lands are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Shoshone and Arapahoe Tribes. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 88-1259 Filed 1-21-88; 8:45 am]
BILLING CODE 4310-02-M

Fish and Wildlife Service

[DES 88-3]

Availability of Draft Environmental Impact Statement; Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a draft environmental impact statement for the proposed Comprehensive Conservation Plan, Wilderness Review, and Wild River Plan for Arctic National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a Draft Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Arctic National Wildlife Refuge, Alaska, pursuant to section 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980; section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes seven alternatives for managing the refuge and the environmental consequences of implementing each alternative. The document also reviews the suitability of all the federal lands in the refuge for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATES: During the public-review period, formal public hearings on the Plan will be held in Anchorage and Fairbanks. Also, public meetings will be held in Kaktovik, Arctic Village, and Fort Yukon. The Service will provide public notices and make announcements through the news media in Alaska prior to any hearings or meetings. In addition, the Service will inform residents of these communities adjacent to the refuge and other interested parties when arrangements for the public meetings have been completed.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTAL INFORMATION: A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Written and oral testimony will be accepted at the formal public hearing and will be transcribed for the official record. Written and oral comments also will be accepted at the public meetings. To be considered in the preparation of the final plan all comments and testimony, both oral and written, should be received by no later than April 21, 1988.

Copies of the Plan are available for public review at the office of the Regional Director, at the above address; at the Arctic National Wildlife Refuge Office, Room 228, Federal Bldg. & Courthouse, 101 12th Ave., Fairbanks, Alaska 99701, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets, NW, Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: January 15, 1988.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-1239 Filed 1-88; 8.45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

Intention To Prepare a Planning Analysis/Environmental Assessment for the State of Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Jackson District of the Eastern States Office is starting the preparation of a Planning Analysis-Environmental Assessment (PA/EA) for the Federal Mineral Ownership (FMO) and Public Domain (PD) lands under BLM jurisdiction in Florida. The document will consist of an environmental assessment, plus any other data necessary to analyze the environmental consequences of alternative management prescriptions on resources affected by or affecting actions approved in Florida by BLM's Jackson District. A resources as used in this context means a natural or human resource including physical resources such as air, soil, and water and human resources such as socio-economic resources. Any hazards associated with a resource will also be considered. While not a resource, the presence of hazardous waste on PD lands will be considered in the Analysis.

The Analysis will propose several alternate management practices including a preferred alternative. It will be used as a basis for selection of a Plan. The document will be developed in accordance with the mandates of the Federal Land Policy and Management Act of 1976 (FLPMA), the guidance provided in 43 CFR Part 1600, the BLM Planning Manual and the State Director Guidance for Planning in the Eastern States Office (1987).

Scope of the Analysis

In the State of Florida, the Bureau is responsible for the management of PD lands and FMO. PD lands are lands and interests in lands which never left the ownership of the United States, lands which were obtained by the United States in an exchange for other PD lands or which were originally PD lands that have reverted to the United States through operation of the public land laws. FMO includes all minerals interests held by the Federal Government except certain mineral interests excluded by legislative mandate for environmental or national security reasons. In Florida and FMO includes oil, gas, and phosphate. These minerals are located primarily under Forest Service, Department of Defense, State and private lands. The PD lands and FMO are scattered throughout the State.

Since consultation and/or consent is required prior to leasing FMO under surface managed by other Federal agencies, planning decisions are made by those agencies. Hence the Florida PA/FA will not formulate planning decisions on lands managed by other Federal agencies. The management authority of the State or private land owners on their respective lands is fully recognized by BLM. Planning decisions formulated on State and private lands will be confined strictly to BLM's mineral interests and the protection of resources affected by actions approved by BLM. These decisions will represent BLM's standards only and will have no bearing on the planning decisions or requirements made by other agencies or individuals. The Analysis will identify the existence or absence of other Federal and State agencies planning decisions and adopt such decisions as appropriate.

Anticipated Issues and Concerns

BLM is responsible for making public lands available of orderly and efficient development of minerals under the principle of balanced multiple use management. In accordance with national guidance, the Analysis will designate the types of areas open with standard resource protection requirements, areas open with special requirements, which may include no surface occupancy, and areas closed to mineral development.

Most of the PD land in Florida occurs as small and widely scattered tracts which are difficult and uneconomical to manage. FLPMA allows the disposal of such lands following consideration in the planning process.

Any development of FMO and disposal of PD lands must be done in a manner that recognizes the environmental impact to other resources. The methods used to carry out these programs and the degree of environmental protection versus resource development varies according to management emphasis. The Analysis will identify issues and concerns on a resource by resource basis. Each resource or associated hazards potentially affected by or affecting the development of FMO or disposal of PD lands will be identified. Resources that have been identified for consideration in the Analysis include, but are not limited to, the following: (1) Mineral Occurrence and Geologic Hazards (2) Soils including Prime and Unique Farmland (3) Cultural and Historical Resources (4) Paleontological Resources (5) Water

Resources (6) Wetlands, Floodplains and Coastal Management Zones (7) Wild and Scenic Rivers (8) Air Quality (9) Wildlife including Threatened and Endangered Species (1) Vegetation including Threatened and Endangered Plant Species (11) Socio-economic Conditions (12) Recreation Areas (13) Environmentally Sensitive Areas and (14) Hazardous Waste.

Public Participation

The intent of this notice is to request the ideas, opinions, and factual information of persons or organizations outside the Bureau. Any individual, organization, group, or agency that wishes to comment on issues, suggest other areas of concern, or have their name put on the mailing list should summit their comments to: District Manager, Bureau of Land Management, Jackson District Office, 300 Woodrow Wilson Ave., Suite 328, Jackson, Mississippi 39213.

Suggestions for additional items of concern to be considered during the planning process should be received as soon as possible but no later than 90 days after publication of this notice to receive maximum consideration.

Further public participation will be a continuous effort. Following completion of the PA/EA the document will be made available for a 60 day public review and comment period. This will be followed by a Record of Decision (ROD)/Plan scheduled for early 1989. All comments will be addressed in the ROD/Plan. If the comments require additional analysis of alternatives or consequences, this will also be contained in the ROD/Plan along with any other revisions additions or deletions made as a result of public input.

The Jackson District will maintain a log and public input file. The log will be used to record any input to the Analysis. All letters, phone calls, minutes of meetings, or any other records of public involvement will be recorded. The log will be used to establish a District mailing list. Copies of the PA/EA will be sent to everyone on the mailing list and anyone who requests a copy.

Copies of the ROD/Plan will be sent to everyone that received the PA/EA and anyone who requests a copy. All information including analysis and background information will be retained in the Jackson District Office.

Additional Information: For information about BLM Planning in Florida, contact: Bob Schoolar, Team Leader, or Chuck Campbell, Environmental Coordinator, Jackson District Office, Telephone (601) 965-5854 or 965-5951 or at the address above.

Henry Bennchamp,

District Manager.

[FR Doc. 88-1189 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-GJ-M

Oregon, Lakeview District Office; Off-Highway Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Lakeview District Office; notice given relating to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on certain public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under the administration of the Bureau of Land Management are changed from the existing open designation and are hereby redesignated as limited, under Interim Management Policy and Guidelines for Lands under Wilderness Review with regard to off-highway use.

The areas affected by the designations are managed by the Lakeview District and are located in Lake and Harney Counties, Oregon.

These designations are published as final until such time that changes in resource management warrant modifications. For further information contact: Doug Troutman, Outdoor Recreation Planner, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, telephone (503) 947-2177.

Limited Designations

Twelve Wilderness Study Areas (WSA's), comprising 423,270 acres, will be managed in accordance with the nonimpairment criteria of the Wilderness Interim Management Policy which allows off-highway vehicle use of continue in the manner and degree on ways and trails where such use was occurring on October 21, 1976. The Sand Dunes WSA, 1-24, will remain open to vehicles designed for travel across sand dunes under this limited designation, except where closed to vehicles by prior designations.

WSA unit No	WSA name	Acres
1-2	Devils Garden	89,860
1-3	Squaw Ridge	28,340
1-22	Four Craters	12,800
1-24	Sand Dunes	16,440
1-58	Diablo Mountain	113,120
1-78	Orejana Canyon	24,800
1-101	Albert Rim	23,760
1-117	Fish Creek Rim	16,680
1-132	Guano Creek	10,350
1-139	Spalding	89,530
1-146	Hawk Mountain	68,640
1-1468	Sage Hen Hills	8,520

The limited vehicle use designations will remain in effect until Congressional release of WSA's, or if actual or unforseeable use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made.

The designations become effective upon publication in the Federal Register and will remain in effect until rescinded or modified by the Lakeview District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Lakeview District Office, 1000 South 9th Street, Lakeview, Oregon 97630, telephone (503) 947-2177.

Richard Harlow,

Acting District Manager.

[FR Doc. 88-1257 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-33-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48337-W has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 20 S., R. 5 E.,
Sec. 31 NW¼NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48337-W as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1987, subject to the terms and conditions cited above.

Dated: January 15, 1988.

Kay Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 88-1253 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-08-4111-15; W-84956]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 14, 1988.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-84956 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice.

The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Minerals Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-84956 effective August 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 88-1254 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-22-M

[Alaska AA-48578-C]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48578-C has been received covering the following lands:

Copper River Meridian, Alaska

T. 6 S., R. 1 E.,
Sec. 18, NE¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from August 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48578-C as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1987, subject to the terms and conditions cited above.

Kay Kletka,

Chief, Branch of Mineral Adjudication.

Dated: January 15, 1988.

[FR Doc. 88-1261 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-JA-M

[MT-075-08-4212; M74179]

Realty Action; Lease; Jefferson County, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of realty action; proposed lease of public lands in Jefferson County, Montana.

SUMMARY: The following described lands have been determined to be available for a commercial lease for a radon health mine under section 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 6 N., R. 4 W.,
Sec. 30, Portion of Mineral Survey M10871 in NW¼ NW¼.

DATES: For a period of up to and including January 22, 1988, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate, sustain, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this proposed lease is available at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The Elkhorn Mining Company of Boulder, Montana has proposed to lease the above described public lands in order to expand their existing radon health mine business. The facilities would include an existing adit, utilities, a service building, parking area, campsites, and an existing access road. The season of use would be from May through October. Whereas, the Elkhorn Mining Co. holds the unpatented mining claim, Valid on which the radon mine will be located, and, controls the existing access to the mine, a non-competitive lease will be considered. All existing rights and uses will be protected.

Date: January 15, 1988.

J.A. Moorhouse,

District Manager, Butte District.

[FR Doc. 88-1251 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-DN-M

[MT-920-07-4520-11]

Land Resource Management; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted December 21, 1987, will be officially filed in the Montana State Office effective 10 a.m. on February 29, 1988.

Principal Meridian, Montana

T. 1 S., R. 6 E.

The plat, in three sheets, represents the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 1, 5, 9, 21, and 34, Township 1 South, Range 6 East, Principal Meridian, Montana. The area described is in Gallatin County.

Principal Meridian, Montana

T. 1 N., R. 6 E.

The plat represents the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 6, 13, 21, 29, and 31, Township 1 North, Range 6 East, Principal Meridian, Montana. The area described is in Gallatin County.

Principal Meridian, Montana

T. 2 N., R. 6 E.

The plat, in two sheets, represents the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines; and the survey of the subdivision of sections 11, 24, and 25, Township 2 North, Range 5 East, Principal Meridian, Montana. The area described is in Gallatin County.

Principal Meridian, Montana

T. 2 N., R. 6 E.

This plat, in three sheets, represents the dependent resurvey of portions of the west boundary of Township 3 North, Range 7 East, a portion of the south boundary of Township 3 North, Range 6 East, and a portion of the south boundary and subdivisional lines; and the survey of the subdivision of sections 3, 11, 24, and 31, Township 2 North, Range 6 East, Principal Meridian, Montana. The area described is in Gallatin County.

Principal Meridian, Montana

T. 3 N., R. 5 E.

The plat, in two sheets, represents the dependent resurvey of a portion of the south boundary, Township 4 North, Range 5 East, and a portion of the east boundary and

subdivisional lines; and the survey of the subdivision of section 4, Township 3 North, Range 5 East, Principal Meridian, Montana. The area described is in Gallatin County.

These surveys were executed at the request of the U.S. Forest Service.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Marvin LeNoue,

Acting State Director.

Dated: January 13, 1988.

[FR Doc. 88-1190 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Proposed Outer Continental Shelf Oil and Gas Lease Sale 121; Mid-Atlantic Planning Area; Public Scoping Meetings

AGENCY: Minerals Management Service, Atlantic OCS Region, Department of the Interior.

ACTION: Notice of public scoping meetings for proposed Outer Continental Shelf Oil and Gas Lease Sale 121, Mid-Atlantic Planning Area, and the close of the written comment period for scoping.

SUMMARY: This notice announces three public scoping meetings to be held regarding proposed Outer Continental Shelf Oil and Gas Lease Sale 121, Mid-Atlantic Planning Area. The purpose of these scoping meetings is to indicate the area to be studied in an Environmental Impact Statement (EIS), gather public information, identify issues and concerns related to the proposed sale, review the offshore leasing process, and assist in the development of reasonable alternatives for the EIS. The meetings will take place in Charlotte, North Carolina; Newark, New Jersey; and Chantilly, Virginia. In addition, this notice identifies February 12, 1988, as the close of the written comment period of the scoping process.

ADDRESSES:

February 3, 1988: Ramada Inn-South Airport, 515 Clanton Road, Charlotte, NC 28210, Phone: (704) 527-3000.

February 4, 1988: Howard Johnson Hotel and Conference Center, Route 1 South & Haines Ave., Newark, NJ 07114, Phone: (201) 824-4000.

Scoping meetings will have two sessions. The first session will begin at 1 p.m. and will continue until all present have had an opportunity to speak. A second session will begin at 6 p.m. and will continue until 8 p.m. or until all present wishing to speak have been heard.

A meeting of the Mid-Atlantic Regional Technical Working Group (MARTWG) Committee also open to the public, will be held at the following location.

February 5, 1988: Renaissance Ballroom, Washington/Dulles Ramada Renaissance, 13869 Park Center Road, Chantilly, VA 22021, Phone: (703) 471-9500.

Scoping comments will be taken at 1 p.m. There will not be a second session.

Directions to these locations can be obtained by calling the hotels at the numbers listed above.

Any written scoping comments should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Barry R. Clark, Minerals Management Service, Atlantic OCS Region, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180, Phone: (703) 285-2165 or FTS 285-2165.

SUPPLEMENTARY INFORMATION: On September 30, 1987, the Minerals Management Service (MMS) published a notice in the **Federal Register** (Volume 52, Number 189) announcing the Call for Information and Nominations and the Notice of Intent to prepare an EIS for proposed OCS oil and gas Lease Sale 121, Mid-Atlantic Planning Area. This began the prelease process leading to the lease sale tentatively scheduled for October 1989, and opened the public scoping period. To ensure that public concerns and issues are identified and addressed in the EIS, three public scoping meetings are scheduled. At these meetings concerned citizens, interest groups, representatives of Government Agencies, and the oil and gas industry will have the opportunity to meet with the MMS staff to discuss issues of concern. Additionally, a presentation on the Sale 121 Area Identification and a brief overview of the offshore leasing program will be made. Although the written comment portion of the scoping period formally ends on February 12, 1988, there will be several other opportunities for public comment on the draft EIS.

Date: January 15, 1988.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 88-1203 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobil Exploration and Producing, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7635, Block 629, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 11, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2878.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 14, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-1202 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-MR-M

Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 12, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-1191 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron, U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2444, Block 899, Vioska Knoll Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from existing onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on January 13, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 14, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-1192 Filed 1-21-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b) (1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation: Maytag Corporation, 403 West 4th Street North, Newton, Iowa 50208

2. Divisions
(i) Maytag Company
(ii) Jenn-Air Company
(iii) Magic Chef Company
(iv) Magic Chef Air Conditioning
(v) Admiral Company
(vi) Norge Company
(vii) Heatube Company
(viii) MAYCOR

3. Subsidiaries:
(i) Ardac, Inc.—Ohio
(ii) Dixie-Narco, Inc.—West Virginia
(iii) Jenn Industries, Inc.—Delaware
(iv) Holland Distributors, Inc.—Delaware

B. 1. Parent corporation and address of principal office: USPCI, Inc., 2000 Classen Center, Suite 400 South, Oklahoma City, OK 73106

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:
a. United States Pollution Control, Inc. Incorporated—Oklahoma
b. P P M, Inc. of Georgia Incorporated—Georgia
c. Hydrocarabon Recyclers, Inc. Incorporated—Oklahoma
d. Hydrocarbon Recyclers of Wichita, Inc. Incorporated—Kansas
e. Cantro, Inc. Incorporated—Missouri
f. Ninth Street Properties, Inc. Incorporated—Missouri
g. P P M Canada, Inc. Incorporated—Canada
h. Materials Energy Research and Recovery Corporation Incorporated—Utah
i. Multial Corporation Incorporated—Georgia
j. Mineral Byproducts, Inc. Incorporated—Georgia
k. K B K Enterprises, Inc. Incorporated—Pennsylvania
l. J T M Industries, Inc. Incorporated—Texas
m. Ash Management Corporation Incorporated—Georgia
n. Resource Materials Corporation Incorporated—Wyoming.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1144 Filed 1-21-88; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Quarex Industries, Inc. (a Del. corp.), 47-05 Metropolitan Avenue, Ridgewood Queens, N.Y. 11385.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
(i) Ranber, Inc. (a New York corp.), 44 College Point Blvd. Flushing, N.Y. 11355.
(ii) Western Beef East Orange New Jersey, Inc. (a New Jersey corp.), 1A Dr. Martin Luther King Blvd., East Orange, N.J. 07018.
(iii) Quarex Elmont, Inc. (a New York corp.), 45-05 Metropolitan Avenue, Ridgewood Queens, N.Y. 11385.
(iv) Western Beef Supermarket, Inc. (a Delaware corp.), 47-05 Metropolitan Avenue, Ridgewood Queens, N.Y. 11385.
(v) Awesome Transportation, Inc. (a New York corp.), 47-05 Metropolitan Avenue, Ridgewood Queens, N.Y. 11385.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1147 Filed 1-21-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the

Attorney General and the Federal Trade Commission disclosing a new area of planned activity of MCC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs of actual damages under specified circumstances. The notification identifying the original parties to the project, and the nature and objectives of that project, is published at 50 FR 2633 (January 17, 1985).

MCC will conduct research and development activities in the area of the electronic applications of high temperature superconductors.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-1222 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; City of Jenkins et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 4, 1988, a proposed Consent Decree in *United States* v. *City of Jenkins, et al.*, Civil Action No. 87-1, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Jenkins ("City") and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations, poor operation and maintenance, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *City of Jenkins, et al.*, D.J. Ref. 90-5-1-1-2885.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, U.S. Post Office and Federal Building, Room 305, 7th and Scott Sts., Covington, Kentucky 41011, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-1192 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Consent Decree Pursuant to the Clean Water Act; City of Johnstown, PA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 1987, a proposed Consent Decree in *United States v. City of Johnstown, Pennsylvania*, Civil Action No. 86-815, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint filed by the United States alleged violations of its National Pollutant Discharge ("NPDES") permit and the Publicly Owned Pretreatment Works ("POTW") regulations. In July 1974, EPA issued to Johnstown a NPDES permit which set effluent limitations for the discharge of pollutants based on secondary treatment requirements. In June 1980, EPA granted another NPDES permit which contained final secondary effluent limitations that were applicable immediately and contained a requirement that Johnstown submit a schedule of implementing actions to achieve compliance with secondary effluent limitations. The proposed consent decree requires the defendants to construct a secondary sewage treatment plant, meet stringent interim effluent limitations and immediate submission and implementation of a POTW Pretreatment Program. The defendants are also required to pay civil penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Johnstown, Pennsylvania*, Department of Justice Reference #90-5-1-1-2588.

Copies of the proposed Consent Decree may be examined at the following locations: Office of the United States Attorney, United States Courthouse, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Avenue, Pittsburgh, Pennsylvania 15219-1955; and, at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6220, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. When requesting a copy, please refer to *United States v. City of Johnstown, Pennsylvania*, Department of Justice Reference #90-5-1-1-2588 and enclose a check in the amount of $3.10 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-1193 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action To Recover Response Costs for Cleanup of Tower Chemical Company Site

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, *as amended*, ("CERCLA"), 42 U.S.C. 9622(i), and Departmental policy, 28 CFR 50.7, notice is hereby given that on November 30, 1987, a proposed consent decree in *United States* v. *Tower Chemical Company, et al.* (M.D. Fla., No. 85-100-Civ-Oc-16), was lodged with the United States District Court for the Middle District of Florida. This consent decree settles the claims of the United States against certain defendants to the above-referenced action for response costs incurred or to be incurred under CERCLA arising out of releases of hazardous substances at the Tower Chemical Company site. The settling defendants are the Tower Land Trust, also known as the Gallagher Land Trust, James Gallagher as trustee of the Trust, James Gallagher (individually), Louis Branding, John Atwater, Charles Nau, Alan Parker and Bobby Duncan as beneficiaries of the Trust and O.T. Enterprises, Inc. These defendants bought portions of the site from Tower Chemical Company after polluting operations by the company ceased.

The proposed consent decree requires these defendants to pay the United States $110,000 within one year from the entry of the decree and interest on any sum not paid within 30 days from entry of the decree. Additionally, the beneficiaries of the Trust have assigned to the United States the net proceeds from sale of the site property they still own. In return, these defendants will receive a release from the claims of the United States in the above-referenced action or from any possible claims under the Resource Conservation and Recovery Act of 1976. Excepted from the release extended to these defendants are other claims under CERCLA, and claims for response costs incurred as the result of new information (sections 122(f)(3) and (f)(6)(c); section 127(c)) and conditions unknown at the time the consent decree is entered (section 122(f)(3) and (6)).

The proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1527, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. There is a copying charge of $1.20 reflecting a rate of $.10 per page for the 12-page decree. Checks should be made payable to the Treasurer of the United States.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Tower Chemical Company* (M.D. Fl., No. 85-100-CIV-Oc-16), D.O.J. Ref. No. 90-11-3-64.

Rodger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-1194 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 1-88]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the United States Marshals Service, Department of Justice, is eliminating a system of records entitled "Special Detail System, Justice/USM-005." Special detail records consist of logistical information generated to ensure that a particular high-risk operational activity, *e.g.*, civil disturbance, special trial, etc., is staffed by the necessary personnel, equipment and skills required to accomplish the safety and protection of those persons involved in or exposed to danger because of the particular activity. Upon review, it has been determined that these records are in fact retrieved by subject matter or case number and thus do not constitute a system of records within the definition of the Privacy Act. Accordingly, the system, as published in the Federal Register on January 28, 1986 (51 FR 3696), is removed from the Department's compilation of Privacy Act systems.

Dated: January 8, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-1255 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 2-88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Executive Office for United States Attorneys (EOUSA) proposes to modify its system of records entitled "Criminal Case Files, JUSTICE/USA-007," which was last published on August 23, 1983 (48 FR 38326).

In addition to changes which will more accurately describe the record system, EOUSA is adding three new routine uses (identified as (s), (t), and (u)), as well as notice of disclosure under subsection (b)(12) of the Privacy Act (identified as (v)). Routine uses (s) and (t) will support the litigation interests of the Department and the United States by allowing release of information to the courts and other adjudicative bodies during litigation. Routine use (u) will facilitate the collection of overdue debts to the United States by permitting the release of information to Federal, State, local and foreign agencies; to organizations, including consumer reporting agencies; and to individuals, private counsel, and collection agencies, where necessary and appropriate. In addition, disclosure under subsection (b)(12) of the Privacy Act will assist efforts to encourage the payment of overdue debts. Changes have been italicized for public convenience.

Title 5 of the U.S. Code, Sections 552a(e) (4) and (11), require that the public be given 30 days in which to comment on new routine uses. Therefore, the public is invited to submit written comments by February 22, 1988 to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street, NW., Washington, D.C. 20530.

The revised system notice is reprinted below.

Dated: January 5, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/USA—007

SYSTEM NAME:

Criminal Case Files.

SYSTEM LOCATIONS:

Ninety-*four* United States Attorneys' Offices (See Appendix identified as Justice/USA-999), Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue NW., Washington, D.C. 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals charged with violations; (b) Individuals being investigated for violations; (c) Defense Counsel(s); (d) Information Sources; (e) Individuals relevant to development of Criminal Cases; (f) Individuals investigated, but prosecution declined; (g) Individuals referred to in potential or actual cases and matters of concern to a U.S. Attorney's Office; (h) Individuals placed into the Department's Pretrial Diversion program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) All case files (USA-33); (b) Docket Cards (USA-175); (c) Criminal Debtor Cards (USA-117a); (d) Criminal Case Activity Card (USA-163); (e) Criminal Debtor Activity Card (USA-164); (f) 3 × 5 Index Cards; (g) Caseload Printouts; (h) Attorney Assignment Sheets; (i) General Correspondence re: Criminal Cases; (j) Reading Files re: Criminal Cases; (k) Grand Jury Proceedings; (l) Miscellaneous Investigative Reports; (m) Information Source Files; (n) Parole Recommendations; (o) Immunity

Requests; (p) Witness Protection Files; (q) Wiretap Authorizations; (r) Search Warrants; (s) Telephone records; (t) Criminal Complaints; (u) Sealed Indictment Records; (v) Files unique to a District; (w) Criminal Miscellaneous Correspondence File; (x) Prosecution Declined Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 5 U.S.C. 301, 28 U.S.C. 547 and 44 U.S.C. 3101

PURPOSE OF THE SYSTEM: Records are maintained for the purpose of prosecuting or otherwise resolving criminal cases or matters handled by the United States Attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In the course of investigating the potential or actual violations of any law, criminal, civil, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a Federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person;

(h) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(i) A record may be disseminated to a Federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(j) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of any employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi: Provided That the record does not contain any information identifiable to a specific individual other than such modus operandi;

(l) A record may be disseminated to a foreign country through the United States Department of State of directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return;

(m) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in a accordance with the provisions codified in 28 CFR 17.96;

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title;

(o) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(p) Information not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(q) A record may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 290.4 and 2906;

(r) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(s) *A record, or facts derived thereform, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office or the Executive Office for U.S. Attorneys is authorized to appear when i. the United States Attorney's office or the Executive Office for U.S. Attorneys, or any Subdivision thereof, or ii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her official capacity, or iii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States, where the United States Attorney's office or the Executive Office for U.S. Attorneys determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office or the Executive Office for U.S. Attorneys to be arguably relevant to the litigation;*

(t) A record, or facts derived thereform, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's Office is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's Office to be arguably relevant to the litigation;

(u) Records relating to an individual who owes an overdue debt to the United States may be disseminated to (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary, (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the United States Attorney in the collection of the overdue debt, (3) a collection agency or private counsel to enable them to collect the overdue debt, and (4) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate; and

(v) Notice of disclosure under Subsection (b)(12) of the Privacy Act: Records relating to individuals who owe a past-due debt to the United States may be disseminated to consumer reporting agencies to encourage payment of the past-due debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case number, compliant number of court docket number. Information within this system of records may be accessed by various U.S. Attorney's offices and the Executive Office for United States Attorneys by means of catho-ray tube terminals (CRTs).

SAFEGUARDS:

Information in the system is both confidential and non-confidential and located in file cabinets in the United States Attorney offices. *Confidential* materials are in locked file drawers and safes, and *nonconfidential materials are* in unlocked file drawers. Offices are locked during non-working hours and are secured by either Federal Protective Service, United States Postal Service, or private building by CRTs within various U.S. Attorney's offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.

RETENTION AND DISPOSAL:

Case files involving no sentence, or sentences of ten years or less, are destroyed ten years after case in closed. Case files involving sentences of more than ten years are destroyed one year after the date of termination of sentence. Both are in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the Administrative Office/ Asssitant, for the U.S. Attorney for each district (See Appendix).

NOTIFICATION PROCEDURE:

Address inquires to the System Manager for the judicial district in which the case or matter is pending (See Appendix).

RECORD ACCESS PROCEDURE:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request. "Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requester will also provide *his or her notarized signature and* a return address for transmitting the information. Access requests will be directed to the System Manager (See Appendix).

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (See Appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include, but are not limited to investigative reports of federal, state and local law enforcement agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of Grand Jury and court proceedings; data, memoranda and reports from the Court and agencies

thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 88-1195 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 2-88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Executive Office for United States Attorneys (EOUSA) proposes to modify its system of records entitled "Civil Case Files, [JUSTICE/USA-005," which was last published on August 23, 1983 (48 FR 38326).

In addition to changes which will more accurately describe the record system, EOUSA is adding three new routine uses (identified as (o), (p) and (q)), as well as notice of disclosure under subsection (b)(12) of the Privacy Act (identified as (u)). Routine uses (o) and (p) will support the litigation interests of the Department and the United States by allowing release of information to the courts and other adjudicative bodies during litigation. Routine use (q) will facilitate the collection of overdue debts to the United States by permitting the release of information of Federal, State, local and foreign agencies; to organizations, including consumer reporting agencies; and to individuals, private counsel, and collection agencies, where necessary and appropriate. In addition, disclosure under subsection (b)(12) of the Privacy Act will assist efforts to encourage the payment of overdue debts. Changes have been italicized for public convenience.

Title 5 of the U.S. Code, Sections 552a(e) (4) and (11), require that the public by given 30 days in which to comment on new routine uses. Therefore, the public is invited to submit written comments by Feburary 22, 1988 to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530.

The revised system notice is reprinted below.

Dated: January 5, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/USA—005

SYSTEM NAME:

Civil Case Files.

SYSTEM LOCATION:

Ninety-four United States Attorneys' Offices (See Appendix *identified as Justice/USA-999*), Executive Office for United States Attorneys, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals being investigated in anticipation of Civil suits; (b) Individuals involved in Civil suits; (c) Defense Counsel(s); (d) Information sources; (e) Individuals relevant to the development of Civil suits.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) All Civil Case Files (USA-34); (b) Docket Cards (USA-116); (c) Civil Debtor Cards—(USA-117b); (d) Civil Case Activity Card (USA-164); (e) Civil Debtor Activity Card (USA-166); (f) 3 x 5 Index Cards; (g) Caseload Printouts; (h) General Correspondence re: Civil Cases; (i) Reading Files re: Civil Cases; (j) Information Source File; (k) Attorney Assignment sheets; (l) Telephone records; (m) Miscellaneous Investigative files; (n) Lands condemnation files (Appraisal and Negotiator Reports); (o) Tax Case Resource File; (p) Material in Civil File related to Criminal cases arising out of Civil Proceedings; (q) Search Warrants; (r) Files unique to District; (s) Civil Miscellaneous Correspondence File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 5 U.S.C. 301, *28 U.S.C. 547* and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM: Records are maintained for the purpose of litigating or otherwise resolving civil cases or matters handled by the United States Attorneys or the Executive Office for United States Attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, civil, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating, defending or pursuing such violation, civil claim or remedy, or charged with enforcing, defending or implementing such law;

(b) In the course of investigating the potential or actual violation or civil liability of any government action or law, civil, or regulatory in nature or during the course of a trial or hearing or the preparation for a trial or hearing for such civil action, a record may be disseminated to a Federal, State, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation or civil action trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, civil action, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a case or matter may be disseminating to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;

(h) A record may be disseminated to a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency or to assist in general civil matters or cases;

(i) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance as is required, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(j) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of types or courses of action or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than such modus operandi;

(k) A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in general crime prevention, the pursuit of general civil, regulatory or administrative civil actions or to provide investigative leads to such country, or assist in the location and/or returning of witnesses and other evidence;

(l) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policymaking positions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.96;

(m) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title;

(n) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(o) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's office or the Executive Office for U.S. Attorneys is authorized to appear when i. the United States Attorney's office or the Executive Office for U.S. Attorneys, or any subdivision thereof, or ii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her official capacity, or iii. any employee of the United States Attorney's office or the Executive Office for U.S. Attorneys in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States, where the United States Attorney's office or the Executive Office for U.S. Attorneys determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's office or the Executive Office for U.S. Attorneys to be arguably relevant to the litigation;

(p) A record, or facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the United States Attorney's Office is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Attorney's Office to be arguably relevant to the litigation;

(q) Records relating to an individual who owes an overdue debt to the United States may be disseminated to (1) a Federal agency which employs the individual to enable the employing agency to offset the individual's salary, (2) a Federal, State, local or foreign agency, an organization, including a consumer reporting agency, or individual to elicit information to assist the United States Attorney in the collection of the overdue debt, (3) a collection agency or private counsel to enable them to collect the overdue debt, and (4) the Internal Revenue Service (IRS) to enable that agency to offset the individual's tax refund. Records provided to the IRS may be used in a computer matching program to identify individuals who are entitled to refunds against which such offset for overdue debts would be appropriate;

(r) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal priavacy;

(s) Information not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of this record;

(t) A record may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and

(u) Notice of disclosure under Subsection (b)(12) of the Privacy Act: Records relating to individuals who owe a past-due debt to the United States may be disseminated to consumer reporting agencies to encourage payment of the past due debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

RETRIEVABILITY:

Information is retrieved primarily by name of person, case number, complaint number or court docket number. Information within this system of records may be accessed by various U.S. Attorneys' offices, and the Executive Office for United States Attorneys by means of cathode-ray tube terminals (CRT's).

SAFEGUARDS:

Information in the system is both confidential and nonconfidential and located in file cabinets in the United States Attorney offices. *Confidential* materials are in locked file drawers and safes, and *nonconfidential materials* are in unlocked file drawers. Offices are locked during nonworking hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards. Information that is retrievable by CRT's within various U.S. Attorney's offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.

RETENTION AND DISPOSAL:

Records are destroyed ten years after case is closed in accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office is the Administrative Officer/Assistant, for the U.S. Attorney for each district. (See appendix.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case or matter is pending. (See appendix.)

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this sytem is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to examination shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requestor will also provide *his or her notarized signature and* a return address for transmitting the information. Access requests will be directed to the System Manager. (See appendix.)

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552(a)(j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include, but are not limited to investigative reports of Federal, State, and local law enforcement, civil litigation, regulatory and administrative agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of deposition and court proceedings; data, memoranda and reports from the court and agencies thereof; and the work product of Assistant United States Attorneys, Department of Justice attorneys and staff, and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

[FR Doc. 88-1196-Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

United States Trustee System; Certification; Seventh Circuit

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Public Law No. 99-554, hereby certifies to the United States Court of Appeals for the Seventh Circuit on this date that, in the region specified in paragraph 581(a)(10) of Title 28, United States Code, composed of the federal judicial districts for Central and Southern Illinois and those established for the State of Indiana, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under Chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of Title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: January 15, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-1301 Filed 1-21-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 8th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Bogen Communication, Inc. (IUE)	Ramsey, NJ	1/11/88	1/4/88	20,382	Public Address Products.
Dingo Lumber, Co. (Workers)	Greenville, Jct., ME	1/11/88	12/28/87	20,383	Lumber.
WRM Industries, Inc. (USWA)	Meriden, CT	1/11/88	12/13/87	20,384	Brass Products.
Wean Industries, Inc. (Workers)	Youngstown, OH	1/11/88	12/14/87	20,385	Machinery.

[FR Doc. 88-1327 Filed 1-21-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC, 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT88-1 (Jan. 8, 1988)—p. 65
New York:
NY88-3 (Jan. 8, 1988)—p. 702
NY88-11 (Jan. 8, 1988)—p. 782
NY88-17 (Jan. 8, 1988)—pp. 820, 822
West Virginia:
WV88-2 (Jan. 8, 1988)—p. 1185

Volume II

Iowa:
IA88-4 (Jan. 8, 1988)—p. 38
IA88-5 (Jan. 8, 1988)—pp. 43, 46
Michigan:
MI88-1 (Jan. 8, 1988)—pp. 409-424d
MI88-12 (Jan. 8, 1988)—pp. 506-510, 513
MI88-17 (Jan. 8, 1988)—pp. 524-525
Ohio:
OH88-2 (Jan. 8, 1988)—pp. 738-756b

Volume III

California:
CA88-1 (Jan. 8, 1988)—pp. 34-35, 38
CA88-3 (Jan. 8, 1988)—pp. 66-86
Montana:
MT88-2 (Jan. 8, 1988)—pp. 189-206
Nevada:
NV88-4 (Jan. 8, 1988)—pp. 272, 274, 277
Oregon:
OR88-1 (Jan. 8, 1988)—pp. 302-305
Washington:
WA88-2 (Jan. 8, 1988)—pp. 386-387
WA88-9 (Jan. 8, 1988)—p. 424

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts., including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 15th day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–1176 Filed 1–21–88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M–87–287–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. On June 29, 1984, petitioner was granted a modification of 30 CFR 75.1103–4 to use an early warning fire detection system using a low-level carbon monoxide detection system (docket number M–83–136–C).

2. This petition concerns paragraph 1(d) of the Decision and Order which states that the velocity of the air current in the belt conveyor entry not exceed 300 feet per minute.

3. Conditions in the mine require a velocity of air greater than 300 feet per minute to dilute and carry away large amounts of methane liberated during mining and from the mine surfaces after mining.

4. Petitioner states that to restrict the air current in the belt conveyor entries at the mine to 300 feet per minute would allow methane to accumulate above 1.0 volume, and would result in a diminution of safety to the miners.

5. For these reasons, petition requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 12, 1988.

[FR Doc. 88–1329 Filed 1–21–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–87–288–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. On July 9, 1984, petitioner was granted a modification of 30 CFR 75.326 to use belt haulage entries as intake aircourses to ventilate active working places (docket number M–83–135–C).

2. This petition concerns paragraph 1(d) of the Decision and Order which states that the velocity of the air current in the belt conveyor entry not exceed 300 feet per minute.

3. Conditions in the mine require a velocity of air greater than 300 feet per minute to dilute and carry away large amounts of methane liberated during mining and from the mine surfaces after mining.

4. Petitioner states that to restrict the air current in the belt conveyor entries at the mine to 300 feet per minute would allow methane to accumulate above 1.0 volume, and would result in a diminution of safety to the miners.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 12, 1988.

[FR Doc. 88–1330 Filed 1–21–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–87–293–C]

Eastern Associated Coal Corp.; Petition for Modification Safety Standard

Eastern Associated Coal Corporation, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Federal No. 2 Mine (I.D. No. 46–04156) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located in by the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining sections will increase in width. This increase in width will require 2300 horsepower to power the longwall system. In order to supply such power to a longwall system from a power system limited to 1000 volts, the following problems arise:

(a) The ampacity requirements at 1000 volts are such that very heavy cables are required. These large, heavy cables can cause congested work space, handling problems, and the accidents associated with sprains and strains;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor; and

(c) At 1000 volts, the interrupting limits of the available circuit breakers is approached, resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to use high-voltage (2,400 volt) cables to supply power to permissible longwall face equipment in or in by the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 12, 1988.

[FR Doc. 88–1331 Filed 1–21–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–87–271–C]

M & G Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

M & G Coal Company, Inc., Route 1, P.O. Box 20, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 1 (I.D. No. 15–16215) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 12, 1988.

[FR Doc. 88–1332 Filed 1–21–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–87–267–C]

Perkins Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Perkins Coal Company, Inc., General Delivery, Bryant Store, Kentucky 40921 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Mine No. 1 (I.D. No. 15–14188) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor

immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 12, 1988.

[FR Doc. 88-1333 Filed 1-21-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Files

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of files.

SUMMARY: Opening of selected subject categories of the Nixon White House Central Files (WHCF). Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access selected integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning March 22, 1988.

Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before March 15, 1988.

ADDRESSES: The file segments will be made available to the public at the National Archives' Alexandria facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration (N), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Acting Director, Nixon Presidential Materials Project Staff, 703-756-6498.

SUPPLEMENTARY INFORMATION: The integral file segments that have been prepared for public access consist of 138.6 cubic feet of textual materials that were maintained by the White House Central Files Unit during the Presidency of Richard M. Nixon. This is the second of a series of openings of Central Files; the previous opening was on December 1, 1986.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. White House staff members and offices, except those offices which function as permanent housekeeping operations, use the Central Files as a repository for documents that are generated or received by the President and his staff during the normal course of business.

The materials designated for opening to the public were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories, which are further divided into numerous sub-categories. Eight of these subject categories have been prepared for opening on March 22, 1988.

The Subject Files reflect the diverse activities of the President and his staff and include considerable correspondence with the general public and Government officials, policy-making and policy-implementation documents, routine administrative documents, and materials relating to social events and the ceremonial aspects of the Nixon Presidency.

Documents in the Subject Files were segregated into two major divisions, "Executive" and "General," with no cross-references between them. "Executive" material consists of correspondence and other documents of particular importance based on the item's source or nature. These include letters and other documents received from or sent to Federal agencies, Members of Congress, State Governors and local officials, foreign heads of state, and other prominent correspondents. It also includes official documents that were acted upon by the President or one of his staff assistants. "General" material comprises those items received from the general public and other sources, which usually were not handled at as high a level as "Executive" material.

Listed below are the eight primary subject categories of the Central Files that have been processed and will be made available to the public on March 22.

Subject category	Volume (cubic feet)
Countries (CO)	30
Federal Aid (FA)	12.6
Federal Government (FG):	
Office of Economic Opportunity (FG 6-7)	1.8
Office of Emergency Preparedness (FG 6-8)	1
Council on Environmental Quality (FG 6-17)	0.6
National Energy Office (FG 6-23)	0.3
Energy Policy Office (FG 6-25)	1
Federal Energy Office (FG 6-26)	0.3
Department of State (FG 11)	4.6
Department of the Interior (FG 19)	2.6
Indian Claims Commission (FG 142)	0.3
Federal Energy Administration (FG 377)	0.3
Proposed Departments, Agencies, Boards, and Commissions (FG 999)	5.3
Finance (FI)	24
Foreign Affairs (FO)	28
International Organizations (IT)	9
Meetings and Conferences (MC)	6
White House Administration (WH)	10.6

Public access to some of the items in these integral file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: January 19, 1988.

Claudine J. Weiher,

Deputy Archivist of the United States.

[FR Doc. 88-1278 Filed 1-21-88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-322-OL]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Reconstitution of Atomic Safety and Licensing Appeal Board

On January 4, 1988, the Chairman of the Atomic Safety and Licensing Appeal Panel reconstituted the Atomic Safety and Licensing Appeal Board for the emergency planning phase (OL-5) of this operating licensing proceeding to consist of the following members.

Christine N. Kohl, Chairman
Alan S. Rosenthal
Dr. W. Reed Johnson

Notice is given that, in accordance with the action of the Chairman taken under the authority of 10 CFR 2.787(a), the jurisdication of this Board has been extended to all phases of this operating licensing proceeding.

Dated: January 13, 1988.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 88-1160 Filed 1-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL & 50-444-OL]

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for the offsite emergency planning phase of this operating license proceeding:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

Dated: January 13, 1988.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 88-1161 Filed 1-21-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on TVA Organizational Issues; Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on February 2 and 3, 1988, TVA Chattanooga Office Complex, 1101 Market Street, Chattanooga, TN.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 2, 1988—8:30 a.m. until the conclusion of business
Wednesday, February 3, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the safety issues associated with TVA management reorganization and the Sequoyah restart.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practical so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 14, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-1179 Filed 1-21-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Illuminating Co. et al; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of Appendix J to 10 CFR Part 50 to The Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) for the Perry Nuclear Power Plant, Unit No. 1, located at the licensees' site in Lake County, Ohio. The exemption was requested by the licensees by letter from CEI dated September 11, 1987.

Environmental Assessment

Identification of Proposed Action

The exemption will provide, for 14 containment isolation valves, a one-time relief from the requirement of Section III.D.3 of Appenxix J, 10 CFR Part 50, to perform Type C local leak rate tests (LLRTs) at each plant shutdown for refueling but in no case at intervals greater than two years. The licensees have proposed to conduct these tests prior to startup from the first refueling outage currently scheduled for January 1989.

The Need for the Proposed Action

The end of the initial 24-month testing intervals for most of the Perry Nuclear Power Plant containment isolation valves is approaching in early 1988. With the exception of these 14 valves, the licensees either have, or plan to perform the required Type C tests. Many of the tests were conducted during the maintenance outage in July/August 1987. The licensees have stated that due to plant constraints it was not possible to perform the testing of these 14 valves without extending the outage solely for the purpose of these tests.

The licensees have further indicated that it is not desirable for them to schedule an additional outage, nor to extend other scheduled outages, for the sole purpose of performing these LLRTs, as this would result in a net increase in overall outage time or would subject the plant equipment and systems to the detrimental effects inherent in an additional shutdown and startup operation.

Testing of the valves covered by the requested exemption would require one or more of the following plant conditions:

1) Drywell head removal.

2) Both Residual Heat Removal (RHR) shutdown cooling loops rendered inoperable.

3) Reducing the number of Emergency Core Cooling System (ECCS) and or shutdown cooling loops below the Technical Specification required systems (when taken in conjunction with other planned necessary outage work).

The licensees do not plan to remove the drywell head until the first refueling outage. To render both loops of RHR shutdown cooling inoperable, the licensees would either be required to remove the drywell and reactor heads and flood the vessel, or wait until decay heat is reduced such that ambient losses are sufficient to maintain cold shutdown. The next scheduled outage of this duration is the first refueling outage.

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Environmental Impacts of the Proposed Action

The licensees have indicated that Type C LLRTs will have been completed for the valves covered by the requested exemption prior to their exposure to an operating environment of greater than 24 months due to the low power testing environment the valves were exposed to prior to January 1987. Further, the licensees have surveyed industry LLRT data for valves of this type and have determined that for all types of valves identified in the requested exemption, the failure rates were low (on the order of 5-6%, worst case). In cases where one-time extensions had been granted at other nuclear power plants, the majority of valves subject to the extensions exhibited the same or lower leakage rates as had been identified in previous tests. Therefore, the licensees have concluded that the granting of the requested exemption would not present a significantly increased probability of containment leakage other than contemplated in Appendix J.

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected containment leakage and that containment integrity would thus be maintained. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no signficant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in an outage of considerable duration with attendant costs and would result in an unnecessary loss to power to the grid when the distribution system's need for power is high.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the Perry Nuclear Power Plant, Units 1 and 2," dated August 1987.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons. The State of Ohio was consulted with regard to a related Technical Specification change to the Perry Nuclear Power Plant Facility Operating License.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated September 11, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, DC, and the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 19th day of January, 1988.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director Project Directorate III-1 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-1415 Filed 1-21-88; 8:20 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, February 10, 1988
Wednesday, February 24, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

January 13, 1988.

[FR Doc. 88-1250 Filed 1-21-88; 8:45 am]

BILLING CODE 6325-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for the Office of Management and Budget Review of Public Information Collection; PBGC Form 1-ES, Estimated Premium Payment

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of information request submitted for OMB review and approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested review and approval by the Office of Management and Budget of PBGC Form 1-ES, which form will be used by certain pension plan administrators to make estimated premium payments to the PBGC. PBGC Form 1 has been used by administrators of plans with 500 or more participants to determine the amount of premiums (a flat rate per capita amount) due to be paid to the PBGC by the Original Filing Due Date, *i.e.*, on or before the last day of the second month following the close of the prior plan year, and to pay the amount finally determined to be due on the Reconciliation Due Date, *i.e.*, the last day of the seventh month following the close of the prior plan year. The Pension Protection Act ("PPA") (Subtitle D of Title IX Of the Omnibus Budget Reconciliation Act of 1987) establishes a new premium structure for single-employer plans, consisting of a flat rate per capita assessment plus an additional assessment based on the value of a plan's unfunded vested benefits. While the PBGC plans to extend the premium due dates for the new variable rate portion of the premium, the due date for payment of the flat rate assessment by large plans (both single-employer and multiemployer) will remain unchanged. The PBGC has determined that a simplified premium estimate form will facilitate the filing and payment of the flat rate assessment by the two-month deadline applicable to the large plans. This new form, PBGC Form 1-ES, rather than the full PBGC Form 1, will be used by large plans to meet their initial filing deadline—the Original Filing Due Date. The effect of this notice is to advise the public that the PBGC has requested OMB approval of PBGC Form 1-ES, and that, for the reasons set forth below, the PBGC has requested expedited consideration by OMB.

ADDRESSES: All written comments (at least three copies) should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street NW., Washington, DC 20006. The information request will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), 2020 K Street NW., Washington, DC 20006; telephone 202-778-8851 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. Under the provisions of the Act and its implementing regulations, agencies are required to submit information collection requests to the Office of Management and Budget for review and approval, and to publish a notice in the **Federal Register** notifying the public of the submission.

The Pension Benefit Guaranty Corporation ("PBGC") is required by 29 U.S.C. 1306 and 1307 to collect premiums from pension plans covered under the termination insurance program that it administers. The collection of information to determine the amount of, and to collect, such premiums is necessary for the PBGC to fulfil that legal requirement. Premiums currently are paid with the filing of PBGC Form 1, approved for use through December 31, 1990 (OMB No. 1212-0009). Under the PBGC's regulation on Payment of Premiums, 29 CFR Part 2610, PBGC Form 1 is due to be filed by plans with 500 or more participants on the Original Filing Due Date, *i.e.*, no later than the last day of the second month following the close of the prior plan year. If the premium is based on an estimated participant count or is otherwise determined to be inaccurate, a "reconciliation" PBGC Form 1 is to be filed by these plans, reporting and paying the premium finally determined to be due, no later than the Reconciliation Due Date, *i.e.*, the last day of the seventh month following the close of the prior plan year. Smaller plans file their PBGC Form 1 on or before the latter date.

The Pension Protection Act ("PPA") (Subtitle D of Title IX of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (Dec. 22, 1987)) amended 29 U.S.C. 1306 and 1307 to establish a new premium structure for single-employer plans, consisting of a flat rate per capita assessment (as under prior law) plus an additional assessment based on the value of a plan's unfunded vested benefits (a new variable rate assessment). In order to alleviate the burden related to the computation and payment of the variable rate assessment, the PBGC plans to extend the due date for payment of the variable rate premium assessment by single-employer plans until a day 8½ months after the close of the prior plan year. The due date for payment of the flat rate assessment by all plans with fewer than 500 participants also will be extended to that date, but the due date for payment of the flat rate assessment by large plans (both single-employer and multiemployer plans) is unchanged.

Although many plans that must file by the Original Filing Due Date have accurate participant figures permitting a final filing by that two-month deadline, others must estimate the number of participants as of the close of the prior plan year. Under 29 CFR Part 2610, penalties are imposed for late payment of premiums, but PBGC Form 1 currently provides a "safe harbor" estimation procedure whereby plans that must file by the Original Filing Due Date may avoid the late payment penalties. The PBGC has determined that such an estimate is sufficient for purposes of the initial filing required by large plans, and that much of the information that is, or will be, collected on PBGC Form 1 under the new law is unrelated to that estimate. Accordingly, a simplified form providing for estimated premiums to be paid by the Original Filing Due Date by such plans will facilitate their filing by the due date and avoiding the imposition of penalties for late payment. The PBGC Form 1, which is being revised to conform with the provisions of PPA and the Notice of Revised Premium Due Dates, will no longer be used for the initial filing by large plans.

This notice advises the public that the PBGC has requested OMB review and approval of PBGC Form 1-ES. This notice further advises the public that, because the PPA is effective for plan years beginning in 1988, and because the Original Filing Due Date is February 29, 1988, for large plans with a calendar year plan year, the PBGC has requested expedited consideration by OMB.

PBGC Form 1-ES will be filed annually by the plan administrators of plans with 500 or more participants as of the close of the prior plan year. The form will be used to determine the amount of the flat rate per capita

premium assessment owed by such plans on or before the second month following the end of the prior plan year, and to report and pay such premium assessment to the PBGC. The PBGC estimates that the aggregate annual burden imposed on plan administrators in filing the PBGC Form 1–ES is 1,500 hours, based on an estimated 9,000 annual filings. The new form will not result in an actual increase in burden in burden hours because it will be filed on the Original Filing Due Date in lieu of the PBGC Form 1 that is currently required to be filed on or before that date.

Issued at Washington, DC, this 15th day of January 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–1177 Filed 1–21–88; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16227; 811–4549]

MacKay-Shields MainStay Tax Free Bond Fund; Investment Company Deregistration

January 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: MacKay-Shields MainStay Tax Free Bond Fund.

Relevant 1940 Act Section: Order requesting deregistration under Section 8(f) and Rule 8f–1.

Summary of Application: Applicant seeks an order declaring that Applicant has ceased to be an investment company.

Filing Date: The application was filed on November 19, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. MacKay-Shields MainStay Tax Free Bond Fund, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272–3026 or Brion R. Thompson, Special Counsel, (202) 272–3018, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. On January 9, 1986, the Applicant was organized as a Massachusetts business trust and registered as an open-end, diversified management investment company under the 1940 Act. Applicant commenced the initial public offering of its shares on May 1, 1986. MacKay-Shields MainStay Series Fund, a Massachusetts business trust ("Trust"), was created and registered as an open-end, diversified investment company under the 1940 Act (File No. 811–4550).

2. On January 27, 1987, the Board of Trustees of the Applicant, including a majority of Trustees who were not interested persons of the Applicant, unanimously (i) approved the transfer of the Applicant's assets and liabilities to KacKay-Shield Tax Free Bond Fund (the "Series"), a series of the Trust (the "Reorganization"), (ii) determined that the Reorganization was in the best interest of the existing shareholders of the Applicant and that the interests of the existing shareholders of the Applicant would not be diluted as a result of the Reorganization and (iii) recommended that the Applicant's shareholders approve the Reorganization. Also, at a meeting of shareholders of the Applicant held on April 27, 1987, a majority of the shareholders present at such meeting, in person or by proxy, approved the Reorganization. An Agreement and Plan of Reorganization dated March 13, 1987, was entered into between the Applicant and the Trust ("Agreement").

3. On May 29, 1987 and pursuant to the Agreement, the Applicant transferred all of its assets and liabilities to the Series in exchange, at their respective net asset values, for a number of shares of beneficial interest of the Series equal to the number of shares of beneficial interest of the Applicant outstanding immediately before the effective time of the Reorganization. The Series assumed all obligations and liabilities of the Applicant and thereafter the Applicant distributed the shares of the Series to its shareholders in complete liquidation. Upon completion of the Reorganization, each shareholder of the Applicant owned as many full and fractional shares of the Series with the same net asset value, as the number of shares of the Applicant owned by such shareholder immediately prior to the Reorganization.

4. Applicant has not retained any assets other than for the purpose of paying expenses and there are no investment securities retained by the Applicant. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security-holders of the Applicant. Applicant has outstanding expenses which amount to approximately $85,000 relating to the Reorganization. These expenses include legal and accounting fees and other expenses which will be borne by the Applicant. No brokerage commissions were incurred with the Reorganization.

5. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant has no other outstanding liabilities, and is not a party to any litigation or administrative proceeding. Applicant is dissolved under Massachusetts State law.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–1321 Filed 1–21–88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–16228; 813–6780]

Trident Mortgage Securities Co.; Application

January 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Trident Mortgage Securities Company.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional exemptive order to permit it to engage in mortgage-backed financing, including issuing and selling, or establishing trusts ("Trusts"), or partnerships ("Partnerships") (collectively, "Issuing Affiliates") to issue and sell, one or more series of bonds ("Bonds") collateralized principally by Mortgage Certificates (defined below), and selling residual interests ("Residual Interests") in Applicant and Issuing Affiliates ("Issuers").

Filing Dates: The application was filed on April 30, 1987, and amended on October 14, 1987, December 9, 1987, and December 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 6, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Trident Mortgage Securities Company, 4601 Six Forks Road, Raleigh, North Caroline 27609.

FOR FURTHER INFORMATION CONTACT: Carson G. Frailey, Staff Attorney (202) 272–3015, or Karen L. Skidmore, Special Counsel (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct wholly-owned, limited purpose subsidiary of Trident Financial Corporation. Applicant was formed for the purpose of issuing and selling, or establishing Trusts, or Partnerships to issue and sell, series of Bonds, and of purchasing, owning, or selling to such Issuing Affiliates, Mortgage Certificates (defined below), either owned by Applicant or an Issuing Affiliate, or pledged to Applicant or an Issuing Affiliate by others pursuant to funding agreements ("Funding Agreements"), together with other collateral (e.g., certain collection accounts and reserve funds as specified in the related indenture) (collectively, "Mortgage Collateral"), and pledging such Mortgage Collateral to a trustee (as described below) to secure a series of Bonds.[1] Issuers will not engage in any business or investment activities unrelated to such purpose.

2. Each Issuing Affiliate will be created under the laws of one of the states of the United States pursuant to a separate agreement (each an "Organizational Agreement"). For each Trust, the Organizational Agreement will be between Applicant, acting as depositor, and an independent bank, trust company, or other fiduciary acting as owner trustee ("Indenture Trustee"). For each Partnership, the Organizational Agreement will be between Applicant (or a limited purpose subsidiary thereof), as general partner, and one or more limited partners. Each Partnership will be formed under the provisions of the Revised Uniform Limited Partnership Act as in effect in the state of its organization. Applicant will not organize a Partnership Issuer in any state unless the laws of such state provide for the limited liability of the limited partners. Each Partnership will be authorized under its Organizational Agreement and applicable state law to conduct its business as contemplated herein, and its contemplated activities will be permissible under the Internal Revenue Code of 1986 ("1986 Code").

3. Each series of Bonds will be issued pursuant to an indenture between an independent trustee (the "Bond Trustee") and the Issuer, as supplemented by one or more supplemental indentures for such series (the "Indenture"). Each Organizational Agreement will provide that Issuing Affiliates will enter into a Management Agreement under which Trident Financial Corporation, or an independent company, will provide certain management services in connection with the issuance of Bonds.

4. For each series of Bonds: (a) Each Issuer will hold no substantial assets other than the Mortgage Certificates; (b) the Mortgage Certificates will have a bond value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) scheduled available principal and interest payments on the Mortgage Certificates (together with any required payments from any reserve funds with respect to the Bonds), plus income received thereon at the assumed reinvestment rate, will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturities; and (d) the Mortgage Certificates will be pledged in their entirety by each Issuer to the Bond Trustee, and will be subject to the lien of the related Indenture.

5. Certain series of Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Certificates cannot be re-invested at a rate that will provide sufficient income to pay interest on the Bonds. A series of Bonds may also be subject to redemption at the option of the Applicant on or after a certain date specified in the Indenture. In addition, the Bonds may also provide that at the Applicant's option, Bonds may be redeemed in the event the aggregate principal amount of the Bonds outstanding is less than the percentage specified in the related indenture, or in other circumstances specified in such Indenture. Other series of Bonds may provide for optional redemptions by the holders of such Bonds to the extent payments on the underlying Mortgage Certificates and related reserve funds are available to pay the principal of, and interest on, the Bonds so redeemed. Except in limited circumstances arising upon an event of default of the Bonds under the Indenture, Bondholders cannot liquidate Mortgage Certificates to redeem the Bonds prior to maturity. Until such Bonds are paid, the Mrotgage Collateral pledged to secure a series of Bonds will not be released from the lien of the Indenture, except that the Trustee may release Mortgage Certificates (1) if new Mortgage Certificates are substituted in accordance with the conditions set out herein or, (2) upon redemption of Bonds in certain

[1] Each series of Bonds for which an order is requested will be separately secured directly, or indirectly, by collateral consisting principally of mortgage pass-through certificates ("GNMA Certificates"), which are fully guaranteed as to principal and interest by the Government National Mortgage Association, Mortgage Participation Certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation, and/or Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") issued and guaranteed by the Federal National Mortgage Association (collectively, "Mortgage Certificates"). Mortgage Certificates pledged to secure a series of Bonds may or may not represent the entire beneficial interest in the mortgage pools related to such Mortgage Certificates. Applicant anticipates that the Mortgage Certificates securing each series of Bonds will be obtained by the Issuer thereof, using the net proceeds of the sale of such Bonds.

circumstances specified in the Indenture. Applicant contemplates that the Bonds will be sold pursuant to a prospectus or private placement memorandum containing all material disclosures required by the terms of the Securities Act of 1933 (the "Securities Act"). The Indenture for each public offering will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available.

6. In addition to the issuance and sale of the Bonds, the Issuers may sell some or all of the cash flow remaining after paying the amounts due on the Bonds and certain expenses (the "Residual Interests") to one or more sophisticated institutional investors, or to non-institutional "accredited investors" as defined in Rule 501(a) of the Securities Act (collectively, "Residual Interest Holders," or "Eligible Investors") who customarily engage in the purchase or origination of mortgages, or mortgage collateral.

7. Neither, the Issuers, the Residual Interest Holders, the Bond Trustee, the Indenture Trustee, nor the general partners will be able to impair the security afforded by the Mortgage Certificates to the Bondholders because, without the consent of each affected Bondholder, none of the Issuers, the Residual Interest Holders, the Indenture Trustee nor the Bond Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal amount, or the rate of interest on any Bond; (c) change the priority of repayment on any class of any series of Bonds; (d) impair or adversely affect the Mortgage Certificates securing a series of Bonds; (e) permit the creation of a lien ranking prior to, or on parity with, the lien of the related Indenture with respect to the Mortgage Certificates; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

8. The sale of Residual Interests will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collection account, or in any reserve fund created pursuant to an Indenture to support payment of principal and interest on the Bonds.

9. The interests of the Bondholders will not be compromised or impaired by the ability of an Issuer to sell Residual Interest, nor will there be a conflict of interest between the Bondholders and the Residual Interest Holders, because (a) the Mortgage Collateral that will be deposited to secure each series of Bonds will not be speculative in nature because it will directly, or indirectly, consist principally of GNMA Certificates, FNMA Certificates and/or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will be issued only if an independent, nationally-recognized statistical rating agency has rated such Bonds in one of its two highest rating categories, which by definition means that the capacity of the Issuer to repay principal and interest on the Bonds is extremely strong; (c) the relevant Indenture subjects the Mortgage Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first-priority, perfected security interest in the name of the Bond Trustee on behalf of the Bondholders;[2] and (d) the Residual Interest Holders are entitled to receive only current distributions representing the residual payments on the collateral from the relevant Issuer. Furthermore, unless the Issuer elects to be treated as a "real estate mortgage investment conduit" under the 1986 Code, the Residual Interest Holders (or the general partner if the Issuing Affiliate is a Partnership) of a particular series of Bonds will be liable for the administrative expenses in respect of such series of Bonds (other than the principal and interest on such Bonds) to the extent not previously paid form the trust estate.

10. Neither the choice of the form of Issuer, nor the identity of the Residual Interest Holders in such Issuer, will alter the payments to be made to Bondholders, which payments are governed by the Indenture. The value of the interests to Residual Interest Holders will be much less than the value of the bonds to Bondholders. Applicant does not intend to deposit, in respect of any series of Bonds, Mortgage Certificates with a collateral value that exceeds 110% of the aggregate principal amount of the related Bonds.

11. Except for the limited right to substitute Mortgage Collateral, it will not be possible for the Residual Interest Holders to alter the Mortgage Certificates initially deposited, and, in no event will such right to substitute Mortgage Certificates result in a diminution in the value or quality of the Mortgage Collateral. Therefore, although substituted Mortgage Certificates may have a different prepayment experience than the original Mortgage Certificates, the interests of the Bondholders will not be impaired because: (a) The prepayment experience will be determined by market conditions beyond the control of the Residual Interest Holders, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the Residual Interest Holders are not likely to be greatly different from those of the Bondholders with respect to Mortgage Certificate prepayment experience; and (c) to the extent that it may be possible for the Residual Interest Holders to cause the substitution of Mortgage Certificates which have a different prepayment experience than the original Mortgage Certificates, this situation is no different from the standpoint of the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity which is a single purpose finance subsidiary.

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the Issuer (or any Residual Interest Holder) until (i) the Bond Trustee has made the scheduled payments of principal and interest on the Bonds, (ii) the Bond Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Each Issuer is obligated to collect, or cause to be collected, all amounts released from the lien of the Indenture by the Bond Trustee and to pay the balance remaining after expenses to the Residual Interest Holders in accordance with their interests. For Issuing Affiliates, once amounts have been released from the lien of the Indenture, Trustee, the Organizational Agreements will provide that the Indenture Trustee or general partner, as the case may be, has a lien superior to that of the Residual Interest Holders in and to the remaining cash flow.

Applicant's Legal Conclusions

The requested order is necessary or appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Issuers may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Issuers' activities are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act, and thereafter by the Bond Trustee (or Indenture Trustee), representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by the Applicant, or offered only to a limited number of sophisticated investors through private placements.

Conditions to Order

Applicant agrees that the requested order may be expressly conditioned on the following:

A. Conditions Relating to the Mortgage Collateral for the Bonds

(1) Each series of Bonds will be registered under the Securities Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage-related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral securing the Bonds will consist principally of GNMA Certificates, FNMA Certificates, and/or FHLMC Certificates, and/or Funding Agreements and promissory notes secured by GNMA Certificates, FNMA Certificates, and/or FHLMC Certificates.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged directly, or indirectly, as security for a series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in Conditions A. (2) and (4). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Certificate be substituted for any substitute Mortgage Certificates.

(4) All Mortgage Collateral securing a series of Bonds will be held by the Bond Trustee, or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee, the Indenture Trustee nor any custodian, will be an "affiliate" (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of any Issuer. The Bond Trustee will be provided with a first-priority perfected security, or lien interest, in and to all Mortgage Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally-recognized statistical rating agency that is not affiliated with any Issuer. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

(6) At least annually, an independent public account will audit the books and records of the Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee.

B. Conditions Relating to Variable Rate Bonds

(1) Each Series of adjustable, or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Mortgage Certificates and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Mortgage Certificates, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable, or floating interest rate Bonds.[3] Such Mortgage Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds with respect thereto.

C. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests in an Issuer will be offered and sold only to Eligible Investors. Institutional Eligible Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional Eligible Investors will be limited to not more than 35, will purchase at least $200,000 of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional Eligible Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing a Residual Interest in such Issuer and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Residual Interest Holders will be limited to mortgage lenders, thrift institutions, commerical and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts, and other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities. Mutual funds will continue to be required to satisfy themselves that purchases of such obligations comply with the provisions of section 12(d)(1) of the 1940 Act.

(2) Each sale of a Residual Interest will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the Securities Act.

(3) Each sale of a Residual Interest will prohibit the transfer of a Residual Interest if there would be more than 100 beneficial owners of Residual Interests in an Issuer at any time.

[3] In the case of a Series of Bonds that contains a class or classes of variable or floating interest rate Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable or floating interest rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the variable or floating interest rate Bonds; (ii) "inverse" floating interest rate Bonds (which will pay a lower rate of interest as the rate increases on the corresponding "normal" floating interest rate Bonds); (iii) variable or floating rate collateral (such as variable rate FNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements to a counterparty at a fixed rate of interest based on a stated notional principal amount, such as the principal amount of Bonds in the variable or floating interest rate class of such series, in exchange for receiving corresponding periodic payments from the counterparty at a variable or floating rate of interest based on the same notional principal amount; and (v) hedge agreements (including interest rate futures and options contracts, under which the Issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the variable or floating interest rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of Investment Management ("Staff") of the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

(4) Each sale of a Residual Interest will require each ultimate purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell its Residual Interests except to other Eligible Investors in a private placement, and subject to the same representations and undertakings as bind it.

(5) Each sale of a Residual Interest will provide that (i) no holder of such Residual Interest may be affiliated with the Indenture Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405) Residual Interest in any Issuer may be affiliated with either the custodian of the Mortgage Certificates, or the agency rating the Bonds of the relevant Series.

(6) If the sale of the Residual Interests or equity interests (in the case of a trust, certificate of beneficial interests; in the case of a partnership, partnership interests; in the case of a corporation, stock certificates) results in the transfer of control (as the term "control" is defined in Rule 405) of the Issuer, the relief afforded by any Commission order granted on the application would not apply to subsequent Bond offerings by that Issuer; if the transfer of control is of Applicant, the relief afforded will not apply to subsequent Bond offerings by the Applicant, or by any Issuer established by the Applicant.

D. Conditions Relating to REMICs

(1) The election by an Issuer to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by the Issuer. If such an election is made, the Issuer will provide that all administrative fees and expenses in connection with the administration of the REMIC will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. The Issuer will provide for the payment of administrative fees and expenses in connection with the issuance of Bonds and the administration of the REMIC by one or more of the methods set forth in the application.

(2) The Issuer will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by the Issuer to provide for the payment of such fees and expenses.

E. Special Condition

Applicant undertakes to secure from each Trust and Partnership its consent to comply with all of the applicable representations and conditions set forth hereinabove, and more specifically described in the application. The Organizational Agreement for each Issuer will contain appropriate covenants regarding the Issuer's compliance with such representations and conditions.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-1322 Filed 1-21-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1153]

National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) (Chairman's Special Ad Hoc Subcommittee); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the CCIR National Committee will meet on February 10, 1988 at 1:30 p.m. in Room 3524, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to identify issues and begin the development of U.S. positions on matters related to the CCIR that will be addressed at the 1989 Plenipotentiary Conference of the International Telecommunication Union.

Members of the general public may attend the meeting and join in the discussion subject to instruction of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact Warren Richards, Department of State (telephone (202) 647-0049). All attendees must use the C Street entrance to the building.

Dated: January 7, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-1197 Filed 1-21-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1152]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Lifesaving, Search, and Rescue; Meeting

The Working Group on Lifesaving, Search, and Rescue, of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on February 11, 1988 at 10:00 a.m. in Room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to finalize preparations for the 20th Session of the Lifesaving, Search, and Rescue Subcommittee (LSR) of the International Maritime Organization (IMO) which is scheduled for June 13-17, 1988 in London. In particular, the working group will discuss development of U.S. positions dealing with, inter alia, the following topics:

—Clarification of 1983 Amendments to the 1974 Safety of Life at Sea Convention (SOLAS), Chapter III.
—Maximum stowage height of survival craft.
—Free-fall lifeboats including requirements for oars and acceleration protection.
—Hyperbaric lifeboats.
—Guidance for fast rescue boats.
—Compatibility of SOLAS Chapter III provisions with the Global Maritime Distress and Safety System (GMDSS).
—Review of Assembly resolutions relating to lifesaving appliances, which may require revision or revocation as a result of the coming into force of the 1983 SOLAS Amendments.
—Survival in cold water.
—Review and amendment of lifesaving provisions of international instruments relating to safety of fishing vessels.
—Review of SOLAS regulation V/17 (Pilot Ladders and Mechanical Pilot Hoists).
—Inflatable liferafts.
—Matters concerning search and rescue, including those related to the 1979 SAR Conference and the introduction of the GMDSS.
—Compatibility of lifesaving appliances with search and rescue operations.

Members of the public may attend up to the seating capacity of the room.

For further information or for documentation pertaining to the meeting, contact Mr. Robert Markle, U.S. Coast Guard Headquarters (C-MVI-3), 2100 Second Street SW., Washington, DC 20593-0001, Telephone: (202) 267-1444.

Date: January 6, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-1256 Filed 1-21-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Executive Air Charter, Inc., for Certificate Authority Under Subpart Q

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 88-1-39), Dockets 45173 and 45174.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Executive Air Charter, Inc., fit and awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than February 3, 1988.

ADDRESSES: Objections and answers should be filed in Dockets 45173 and 45174 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2338.

Dated: January 15, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-1286 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160 (7th Meeting); 406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given for the 7th meeting of the RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on February 17-19, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of sixth meeting; (3) review and discussion of EUROCAE 29 working group activities; (4) report on problems of frequency interference in 406 MHz band; (5) review of task assignments from last meeting; (6) continued review of third draft MOPS; (7) task assignments; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 12, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-1224 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147 (24th Meeting); Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on February 9-11, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of twenty-third meeting held on October 27-29, 1987; (3) TCAS Program status reports; (4) review of proposed change #5 to RTCA DO-185 TCAS II MOPS; (5) review of proposed change #6 to RTCA DO-185 TCAS II MOPS; (6) TCAS II invalid logic working group meets in separate session; (7) discussion of configuration control procedures; (8) review of TCAS III activities; (9) other business; (10) closing discussion; (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 12, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-1226 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 163 (4th Mtg.); Unintentional or Simultaneous Transmissions That Adversely Affect Two-Way Radio Communications; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.I), notice is hereby given to a meeting of RTCA Special Committee 163 on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on February 24-26, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of third meeting's minutes; (3) review task assignments; (4) further development of the MOPS; (5) assignment of tasks; (6) other business; and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 14, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-1227 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-34-M

[Docket No. 045CE; Petition Notice PE 88-2]

Petition of the Fairchild Aircraft Corp.; Exemption

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for exemption.

SUMMARY: This notice publishes for public comment the petition of the Fairchild Aircraft Corporation dated December 4, 1987. The petitioner requests exemption from the requirements of Federal Aviation Regulations (FAR) §§ 23.53(c)(6), 23.53(c)(7), and 23.67(e)(1)(i) of Amendment 23-34 of Part 23 to apply to the certification of the SA227-CC METRO IIIC Airplane. The petitioner contends that such action would recognize the validity of the prior FAA approval per the ICAO Annex 8 provisions of Special Federal Aviation Regulation (SFAR) SFAR 41.

The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Publication of this notice is not intended to affect the legal status of the petition or its final disposition.

DATE: Comments must be received on or before March 22, 1988.

ADDRESS: Send comments on this petition in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ACE-7), Docket No. 045CE, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected in Room 1558 weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5886.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition as they may desire. Communications should identify the docket and petition notice number and be submitted in triplicate to the address indicated above. All communications received on or before the closing date for comments will be considered before taking action on the petition. All comments received will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of their comments in response to this notice should submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 045CE." The postcard will be date stamped and returned to the commenter.

Normally, the FAA only summarizes petitions for exemption for publication in the Federal Register. In the case of this petition by the Fairchild Aircraft Corporation, however, the FAA has elected to publish the petition verbatim. The FAA further wishes commenters to provide comments on material and discussions provided by Fairchild Aircraft Corporation. This discussion will assist the FAA in evaluating of the merits of the petition.

Although this notice sets forth the contents of the petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing petitions for exemption; it does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the FAA on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of FAR Part 11 and reach a conclusion on the merits of the proposal after it has had an opportunity to evaluate the petition carefully in light of the comments received and other relevant matters presented. A summary of the disposition of this exemption will be published in the Federal Register.

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for exemption from the Fairchild Aircraft Corporation, Inc., dated December 4, 1987.

Issued in Washington, DC, on January 14, 1988.

John H. Cassady,

Assistant Chief Counsel.

[FR Doc. 88-1229 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular; Structural Substantiation of Small Airplane Modifications Involving Increased Engine Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This AC provides information and guidance concerning an acceptable means of compliance with Part 23 of the Federal Aviation Regulations (FAR) applicable to the structural substantiation of modifications involving increased engine power.

DATE: Commenters must identify File AC 23-XX-15; Subject: Structural Substantiation of Small Airplane Modifications Involving Increased Engine Power, and comments must be received on or before March 22, 1988.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, ATTN: Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri, 64106.

FOR FURTHER INFORMATION CONTACT: Edward A. Gabriel, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited: Interested parties are invited to submit comments on the proposed AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background: The Federal Aviation Administration (FAA) has become aware of the need for guidance material concerning structural substantiation of small airplanes for increased engine power. In the past, some FAA approvals involving increased engine power have required complete structural substantiation regardless of the magnitude of the engine power or weight increase. Other approvals have been made on the basis of appendix A of the Civil Aeronautics Manual (CAM) 8 which permits engine changes with no additional structural substantiation, provided the engine weight increase is not greater than 10 percent of the originally certificated engine weight and the torque increase does no exceed 20 percent of the original torque corresponding to the originally certificated engine power. The guidance provided by this AC is intended to promote uniformity of application of the certification rules.

Issued in Kansas City, Missouri, December 28, 1987.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 88-1229 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

[Advisory Circular 23-8]

Advisory Circular; Flight Test Guide for Certification of Normal, Utility, and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Issuance of Advisory Circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23-8, Flight Test Guide for Certification of Normal, Utility, and Acrobatic Category Airplanes.

Advisory Circular 23-8 provides information and guidance concerning acceptable means, but not the only means, of showing compliance with Part 23 of the Federal Aviation Regulations (FAR) concerning flight tests and pilot judgments.

DATE: Advisory Circular 23-8 was issued by the Central Region, Aircraft Certification Division, on October 20, 1987.

ADDRESSES: *How to obtain copies:* A copy of AC 23-8 may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as AC 23-8, Flight Test Guide for Certification of Normal, Utility, and Acrobatic Category Airplanes, Stock Number SN 050-007-00773-6. The cost of AC 23-8 is $10.00. Send check or money order with your request, made payable to the Superintendent of Documents. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No C.O.D. orders are accepted.

Issued in Kansas City, Missouri, January 6, 1988.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 88-1232 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Berks County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Berks County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Phil Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-4422. Matthew Mazza, P.E., District Engineer, Pennsylvania Department of Transportation, 1713 Lehigh Street, Allentown, Pennsylvania 18103. James B. Wilson, P.E., Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 8531, Harrisburg, Pennsylvania 17105.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Turnpike Commission (PTC) and the Pennsylvania Department of Transportation (PADOT), will prepare an environmental impact statement for a proposed project to construct a connector between Pennsylvania Turnpike (I-76) Interchange #22 and I-176 near Morgantown, Berks County, Pennsylvania. The length of the connector is approximately 2.0 miles. The northern terminus and study area limit will be the northernmost end of the proposed ramps or mainline connecting I-176, south of the Shiloh Road overpass. The southern terminus and study area limit will be the connector with the proposed Turnpike Interchange #22, and PA Route 10. The project area will also include proposed ramps to Mineview Drive (T-333) and Mineview Drive reconstruction between PA Route 10 and T-306.

Alternates under consideration include: (1) No action; and (2) the construction of a four-lane limited access connector between I-176 and Turnpike Interchange #22. The purpose of the connector is to provide direct access to the Pennsylvania Turnpike and I-176 which will relieve the existing traffic congested area on Routes 23 and 10.

For each alternative under consideration, the following areas will be investigated: socioeconomics and land use; air quality; noise; energy; flooding; wetlands; archaeological and historical resources; section 4(f) resources; aquatic biology; terrestrial vegetation and wildlife; farmlands, groundwater and private supplies; visual; hazardous wastes; soils; and geology; construction impacts; and vibration.

Letters describing the proposed EIS plan of study and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express interest in the project. Public meetings will be held in the area during the winter and spring of 1988. Public notices of the time and place of these meetings and any required public hearings will be given. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and federally assisted programs and projects apply to this program.)

Issued on January 13, 1988.

Manuel A. Marks,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 88-1198 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Center for Auto Safety; Denial of Petition for Defect Remedy Hearing

This notice sets forth the reasons for the denial of a petition by Center for Auto Safety, Washington, DC, and others, to conduct a hearing to determine whether a manufacturer had reasonably met its obligation to remedy a safety related defect (15 U.S.C. 1416).

On September 14, 1987, the Center for Auto Safety, New York Public Interest Research Group, and Audi Victims Network, through their attorney Evan W. Johnson, petitioned the National Highway Traffic Safety Administration for a hearing on whether Volkswagen of America (VWoA) had reasonably met its obligation to remedy a safety related defect under section 154 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1414). With respect to Campaign 87V-008 petitioner alleged that it was clear in the eight months following

VWoA's notification to NHTSA that the manufacturer had failed "to repair adequately the defect of sudden acceleration in 1978–86 Audi 5000 automatics". In support of its argument, petitioner noted that 125 reports of "sudden acceleration" had been forwarded to NHTSA by owners whose vehicles had been equipped with the shift lock device intended to eliminate such incidents. According to petitioner, 58 accidents appear to have occurred in such vehicles, resulting in 23 injuries. In the alternative, the petition requests that the Administrator order VWoA to replace or repurchase the vehicles since the manufacturer has failed to repair the defect.

On November 30, 1987, the petition was denied. The agency concluded that a hearing would not contribute any information relevant to the effectiveness of the campaign that it would not be able to obtain through its ongoing investigation of the matter (File C86–01). The petitioner was informed that NHTSA has begun two additional information-gathering activities directly relevant to the issues raised, the first, a study of the occurrence of unintended acceleration in a number of different vehicles including those that were the subject of the petition, and the second, an audit of Campaign 87V–008 involving contacting 100,000 vehicle owners and inquiring about their experiences with sudden acceleration both before and after vehicle repair.

In addition, subsequent to the filing of the petition, VWoA informed the agency it would replace electronic idle speed control units on specific 5000 models, i.e., all vehicles of the 1984 model year, and all Turbos of the 1985 model year. Because this additional action is directed at preventing unexpected excessive engine idle speed, it is likely to have a bearing on the agency's evaluation of the effectiveness of Campaign 87V–008, and the petitioner was informed that it would not be advisable to conduct a hearing on that recall before obtaining some information on the effect that the more recent campaign will have on the incidence of sudden unintended acceleration. Further, the facts do not warrant an order requiring replacement or repurchase of the vehicles.

(Sec. 156, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 19, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88–1236 Filed 1–21–88; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in November 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
3415–X	DOT–E 3415	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	To authorize alternative mounting and securing procedures for shipping rocket motors, classed as Class A explosives or Class B explosive, on flat-bed highway vehicles. (Mode 1.)
3415–X	DOT–E 3415	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	To authorize shipment of rocket motors, containing certain Class A or Class B explosives, without overpackings. (Mode 1.)
4661–X	DOT–E 4661	Foote Mineral Co., Exton, PA	49 CFR 173.34(e)(7)	To authorize transport of butyl lithium in petroleum solvent in DOT Specification 4BA240 cylinders with alternative retest procedures. (Modes 1, 2, and 3.)
5112–X	DOT–E 5112	Austin Powder Co., Cleveland, OH	49 CFR 173.62(a), 177.834(f)(1), 177.835(b)	To authorize use of specially designed bottle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5112–X	DOT–E 5112	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(f)(1), 177.835(b)	To authorize use of specially designed bottle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
6325–X	DOT–E 6325	J.H. Van Ambaugh Explosives, Inc., Dallas, TX	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC–306, MC–307 or MC–312 cargo tanks. (Mode 1.)
6614–P	DOT–E 6614	Clearwater Chemical Corp., Clearwater, FL	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to exemption 6614. (Mode 1.)
6671–X	DOT–E 6672	Chandler Evans, Inc., West Hartford, CT	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of welded or seamless nonrefillable non-DOT specification steel cylinders, for transportation of certain nonliquefied compressed gases. (Mode 1, 2, and 4.)
7072–X	DOT–E 7072	Container Corp., of America, Wilmington, DE	49 CFR Part 173, Subparts D, E, F	To authorize manufacture, marking and sale of non-DOT specification 34 type of containers, for transportation of certain liquid organic peroxides, oxidizers and corrosive, flammable and poison B liquids. (Modes 1, 2, and 3.)
7087–X	DOT–E 7087	UNITEX Corp., Monrovia, CA	49 CFR 173.266(b), 175.3	To authorize shipment of small quantities of certain hazardous materials in non-DOT specification glass, polyethylene or other plastic containers. (Modes 1, 2, 3, 4, and 5.)
7280–X	DOT–E 7280	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.905(c), 176.905(d)	To authorize fuel tanks to be ¼ full instead of ⅛ full and vehicles to be transported with batter cables connected if the holds or compartments of a vessel to which vehicles are loaded are mechanically ventilated. (Mode 3.)
7538–X	DOT–E 7538	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29–41	To authorize an increase in the maximum allowable draft weights for five and ten ton rated booms, for shipment of military explosives. (Mode 3.)
7542–X	DOT–E 7542	U.S. Cylinders, Inc., Citronelle, AL	49 CFR 173.303(a)	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, for transportation of certain flammable gases. (Modes 1, 2.)
7616–P	DOT–E 7616	Wesanman Control, Ltd., Rosemont, IL	49 CFR 172.204(a), 172.204(d)	To become a party to exemption 7616 (Mode 2.)
7694–X	DOT–E 7694	Borg-Warner Fluid Controls, Van Nuys, CA	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, for shipment of non-liquefied compressed gases. (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
7753–X	DOT–E 7753	Stauffer Chemical Co., Westport, CT	49 CFR 173.190(b)(2)	To authorize shipment of yellow phosphorous in a light-head 55-gallon DOT Specification 17C drum. (Modes 1, 2, and 3.)
7835–X	DOT–E 7835	Wilson Oxygen & Supply, Inc., Austin, TX	49 CFR 177.848, Part 107 Appen. B(a)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1.)
7835–P	DOT–E 7835	Airweld Inc., Farmingdale, NY	49 CFR 177.848, Part 107 Appen. B(1)	To become a party to exemption 7835. (Mode 1.)
7915–X	DOT–E 7915	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.93(b)	To authorize transport of certain propellant explosives in water in DOT Specification MC–307 or MC–312 cargo tanks. (Mode 1.)
7943–X	DOT–E 7943	Grow Group, Inc., Montebello, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(d)(12), 173.277(a)(1)	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, comprying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7963–X	DOT–E 7963	Stauffer Chemical Co., Westport, CT	49 CFR 173.245, 173.356, 173.360(a)(5)	To authorize transport of perchloromethyl mercaptan and thiophene-2 acetyl chloride in monel tanks constructed in accordance with DOT Specification 51, with certain exceptions. (Modes 1, 2, and 3.)
8248–X	DOT–E 8248	AT&T Technologies, Inc., Greensboro NC	49 CFR 173.245, 173.247, 173.271, 178.170	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four (4) glass bottles, each secured in an aluminum shipping canister. (Mode 1.)
8354–X	DOT–E 8354	VTG, Hamburg, West Germany	49 CFR 173.123, 173.315	To authorize butane-1 and vinyl chloride, classed as flammable gas, as additional commodities. (Modes 1, 2, and 3.)
8465–X	DOT–E 8465	C-I-L, Inc., Brampton, Ontario, Canada, PA.	49 CFR 173.182(b)(6)(i), 173.234, 178.241	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44p), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8465–X	DOT–E 8465	Chase Bag Co., Greenbach, CT	49 CFR 173.182(b)(6)(i), 173.234, 178.241	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44p), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8539–X	DOT–E 8539	Aero Tan-Rockford, Inc., Rockford, IL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize pentaerythrite tetranitrate, Class A explosive, as an additional explosive for shipment in accordance with the provisions of DOT-E 8556. (Mode 3.)
8602–X	DOT–E 8602	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, marking and sale of non-DOT specification vacum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8602–X	DOT–E 8602	Minnesota Valley Engineering Inc., New Prague, MN.	49 CFR 173.320	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipment of nonflammable gases. (Mode 3.)
8814–X	DOT–E 8814	Structural Composites Industries, Inc., Pomona, CA.	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, and 4.)
8837–X	DOR–E 8837	Fabricated Metals, Inc., San Leandro, CA	49 CFR 173.245(a)(38), 173.256(b)(1), 173.263(a)(8), 173.277(c)	To authorize manufacture, marking and sale of non-DOT specification steel jacketed polyethylene tanks, for transportation of certain corrosive liquids. (Modes 1, 2, and 3.)
8839–X	DOT–E 8839	Poly Processing Co., Inc., Monroe, LA	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.266, 178.415, 178.83, 178.19, Part 173, Subpart D, F	To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks. (Modes 1, 2, and 3.)
8888–X	DOT–E 8888	Nalco Chemical Co., Naperville, IL	49 CFR 172.101 Column 5(b), 173.119, 173.245(a)(17), 175.30	To authorize shipment of compound cleaning, liquid, as drums having a capacity exceeding the net quantity limitations for cargo only aircraft. (Mode 4.)
8942–X	DOT–E 8942	Poly Processing Co., Inc., Monroe, LA	49 CFR 173.114a(h)(3), 173.266 173.268, 178.415, 178.83, 178.19, 178.251, 178.253, Part 173, Subpart D, F	To authorize shipment of 10% nitric acid solution, classed as oxidizer, in non-DOT specification polyethylene portable tanks. (Modes 1, 2, and 3.)
9047–X	DOT–E 9047	Union Carbide Corp., Danbury, CT	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, and 5.)
9066–P	DOT–E 9066	Allied-Signal Inc., Bendix Safety Restraints Division, Mt. Clemens, MI	49 CFR 173.154, 175.3	To become a party to exemption 9066 (Modes 1, 2, 3, and 4.)
9072–X	DOT–E 9072	Morton Thiokol, Inc., Brigham City, UT	49 CFR 173.92	To authorize shipment of additional rocket motors, Class B explosives, in an alternative non-DOT packaging design. (Mode 1.)
9114–X	DOT–E 9114	AT&T Technologies, Inc., Lee's Summit, MO	49 CFR 172.203(d)(1)(ii), 172.203(1)(iii), 172.403(b), 172.403(g)(2), 173.415(a)	To authorize AT&T Technologies to provide packaging to be used for highway transport to the Kansas City Works of electron tubes containing small amounts of radioactive material (85Kr and 226Ra) without specific determination of total activity or Transport Index for the package. (Mode 1.)
9144–X	DOT–E 9144	Cajun Bag & Supply Co., Crowley, LA	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b	To renew and to authorize cargo vessel as additional mode of transportation. (Modes 1, 2, and 3.)
9150–X	DOT–E 9150	Hoover Group, Inc., Bastrice, NE	49 CFR 173.118a, 173.119, 173.256, 173.266, 178.346, 178.19, 178.253, Part 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification rotationally molded cross-linked polyethylene portable tanks with bottom outlet, for shipment of corrosive and flammable liquids or an oxidizer. (Modes 1, 2, and 3.)
9164–X	DOT–E 9164	Fabricated Metals, Inc., San Leandro, CA	49 CFR 173.119(b)(6)	To authorize manufacture marking and sale of a non-DOT specification steel portable tank of 345 gallon capacity, with removable head for shipment of waste paint and waste paint sludge. (Modes 1 and 2.)
9198–X	DOT–E 9198	U.S. Department of the Interior, Boise, ID	49 CFR 175.5(a)(2)	To authorize exception from 49 CFR 175.5(a)(2) whereby DOI, and other government agencies under contract to DOI may use aircraft which are under exclusive direction and control of DOI for periods of less than 90 days. (Mode 4.)
9256–X	DOT–E 9256	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.20–13, 173.86, 175.30, Part 107, Subpart B	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 3, and 4.)
9281–X	DOT–E 9281	GOTEX, Inc., Cleburne, TX	49 CFR 172.101, 173.100	To authorize DOT Specification 12H–65, 22F–65 adn 23H–65 fiberboard boxes as alternate packaging for certain Class C explosives. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No.	Applicant	Regulation(s) affected	Nature of Exemption thereof
9346-X	DOT-E 9346	Pennzoil Products Co., Rouseville, PA	49 CFR 174.67(a)(2)	To authorize setting of the brakes and blocking the wheels of the first and last tank cars on up to a twelve tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum (Mode 2.)
9363-X	DOT-E 9363	Columbia Astrophysics Laboratory, New York, NY	49 CFR 173.302(a)(1)	To authorize use of non-DOT specification cylinders manufactured from monel to DOT Specification 3A with certain exceptions for transportation of certain flammable and nonflammable gases. (Mode 1.)
9393-X	DOT-E 9393	Sexton Can Co., Inc., Cambridge, MA	49 CFR 173.304(a), 178.65	To authorize manufacture, marking and sell non-DOT specification nonreusable steel containers, patterned after DOT Specification 2Q, for shipment of (mono) chlorodifluoromethane (R-22) classed as nonflammable gas. (Mode 1.)
9400-X	DOT-E 9400	Poly Processing Co., Inc., Monroe, LA	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 178.415, 178.83, 178.19, 178.253 Part 173, Subpart F	To authorize shipment of 10% nitric acid solution classed as oxidizer, in non-DOT specification polyethylene portable tanks. (Modes 1, 2, and 3.)
9478-X	DOT-E 9478	Systron Donner Corp., Concord, CA	49 CFR 173.304, 175.3, 178.46	To authorize manufacturer, marking and sale of non-DOT specification cylinders conforming with DOT Specification 3AL in shape and for certain tests for shipment of nonflammable gases. (Modes 1, 2, and 4.)
9490-X	DOT-E 9490	National Refrigerants, Inc., Radnor, PA	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of flammable and nonflammable liquefied compressed gases (Modes 1, 2, and 3.)
9498-P	DOT-E 9498	Rentokil Inc., Norcross, GA	49 CFR 173.367, 173.370	To become a party to exemption 9498 (Modes 1, 2, and 3.)
9530-X	DOT-E 9530	National Refrigerants, Inc., Radnor, PA	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9552-X	DOT-P 9552	IRECO Inc., Salt Lake City, UT	49 CFR 178.218-11	To authorize testing of DOT Specification 23G cylindrical fiberboard box once a year instead of once every six months. (Mode 1.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9648-N	DOT-E 9648	Morton Thiokol, Inc., Elkton, MD	49 CFR 173.92(c)	To authorize transport of a rocket motor with igniter installed in a non-DOT specification wooden box. (Modes 1, 3, and 4.)
9781-N	DOT-E 9781	The Chlorine Institute, Inc., Washington, DC	49 CFR 173.304(a)(2), 173.34(d), (e).	To authorize use of a non-DOT specification full opening head, steel salvage cylinder for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
9828-N	DOT-E 9828	Mobay Corp., Kansas City, MO	49 CFR 173.365(a)(7)	To authorize shipment of azinphos methyl, mixture, solid, classed as Poison B, in water soluble packets (PVA) inside lined chipboard cartons overpacked in DOT Specification 12B65 fiberboard boxes. (Modes 1 and 2.)

EMERGENCY EXEMPTIONS

Application No	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4990-X	DOT-E 4990	Joseph E. Seagram & Sons, Inc., New York, NY	49 CFR 173.124	To authorize use of AAR Specification 206W tank car, for transportation of a certain flammable liquid. (Mode 2.)
EE 9796-X	DOT-E 9796	Heavylift Cargo Airlines Ltd., Stansted Essex, England.	49 CFR 172.101	To authorize a one-time shipment of rocket ammunition with explosive projectile (Mode 4.)
EE 9855-X	DOT-E 9855	Korean Air Lines Co., Ltd., Los Angeles, CA.	49 CFR 172.101, column 9(b), 175.30	To authorize shipment of certain Class A, B and C explosives which are forbidden for transportation by air or are in quantities greater than prescribed for air transportation. (Mode 4.)
EE 9878-N	DOT-E 9878	Tennessee Eastman Co., Kingsport, TN	49 CFR 173.365(a)(2)	To authorize shipment of a solid waste, classed as a Class B poison, contained in approximately 300 DOT Specification 55 gallon capacity 17C drums. (Mode 1.)
EE 9879-N	DOT-E 9879	Comet Rice, Inc., Houston, TX	49 CFR 173.315	To authorize a one-time shipment of sulfur dioxide for disposal in a non-DOT specification steel portable tank. (Mode 1.)

Denials

7052-X Request by Moli Energy, Limited Burnaby, B.C., Canada to authorize shipment of secondary (rechargeable) lithium batteries containing cells and series of cells connected in parallel without diodes denied November 2, 1987.

9600-N Request by Western Executive Air Santa Ana, CA to authorize transport of various Class A, B and C explosives by cargo-aircraft only denied November 6, 1987.

9687-N Request by American Cyanamid Company Wayne, NJ to install and use modified safety vents on DOT Specification 111A100W2 tank car tanks in sulfuric acid service denied November 2, 1987.

Issued in Washington, DC, on January 7, 1988.

J. J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-1237 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 87-3W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Southern Natural Gas Company (Southern) had petitioned the Office of Pipeline Safety for a waiver from compliance with 49 CFR 192.553(d), which prohibits, when uprating a pipeline, the establishment of a maximum allowable operating pressure (MAOP) greater than would be permitted for a new pipeline segment constructed of the same materials in the same location. Anticipating increased demand for gas, Southern requested a waiver to permit the MAOP of 7 pipeline segments to be uprated from 500 to 650 psig. The seven segments are all in Class 3 locations, which are generally characterized as areas with 46 or more occupied buildings per mile of pipeline (see § 192.5). The segments are located in St. Clair and Talladega Counties of Alabama, and they are shown on vicinity plat drawing MD-472-1, site plat drawing MD-472, and class location surveys O-NSE-34, 35, and 36, which are available in the docket.

The segments are part of Southern's 24-inch Second North Main Line. Five of the segments were constructed in 1953; the other two were constructed in 1963. The MAOP's on the Second North Main Line are 750 and 650 psig, moving west to east (MP 0.0 to MP 231.0) and 500 psig in the remaining 6 miles. They were established in 1970 under § 192.619(a)(3) as the highest actual operating pressure in the preceding five years. The segments in question are located in the last six miles (MP 231.795 to MP 236.646) and comprise a total of 3.4 miles. The construction of these segments is substantially the same as the rest of the Second North Main Line, which operates at a higher MAOP.

In response to his petition, the Office of Pipeline Safety (OPS) issued a Notice of Petition for Waiver, inviting interested parties to comment (Notice 1) (52 FR 32986; September 1, 1987). In that notice, OPS explained why granting a waiver from § 192.553(d) to permit uprating of the seven specified pipeline segments would not affect safety.

Comments were received from three pipeline operators and one industry organization, each of whom endorsed the petition and recommended granting the waiver.

In accordance of the foregoing, OPS, by this order, finds that compliance with § 192.553(d) is unnecessary for the reasons explained in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, Southern Natural Gas Company is granted a waiver from compliance with § 192.553(d) regarding the seven segments of the Second North Main Line described above for the purpose of uprating to 650 psig.

(49 U.S.C. 1672(d); 49 CFR 1.53, and Appendix A of Part 106)

Issued in Washington, DC, on January 19, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-1324 Filed 1-21-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: January 15, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8703
Type of Review: New Collection
Title: Annual Certification by Operator of a Qualified Residential Rental Project
Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code section 142(d). Operators are required to file this certification under section 142(d)(7).
Respondents: Businesses or other for-profit
Estimated Burden: 3,277 hours
OMB Number: 1545-0916
Form Number: None
Type of Review: Extension
Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984
Description: These temporary regulations provide rules relating to effective dates and other issues arising under sections 91, 223 and 511-561 of the Tax Reform Act of 1984.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Burden: 6,450 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-1211 Filed 1-21-88; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Privacy Act of 1974; Routine Uses

ACTION: Notice of new routine uses for the systems of records Treasury/BPD.002—United States Savings-Type Securities, and Treasury/BPD.003—United States Securities (Other than Savings-Type Securities).

SUMMARY: The Bureau of the Public Debt, Department of the Treasury, proposes to add two new routine uses by amendment to two of its Privacy Act systems of records: Treasury/BPD.002—United States Savings-Type Securities, last published on July 25, 1985, at 50 FR 30387; and Treasury/BPD.003—United States Securities (Other than Savings-Type Securities), last published on June 10, 1986, at 51 FR 21047.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has determined that it should be prepared to undertake two kinds of computer matching. The first kind of matching will enable the Bureau to participate in the Government-wide Federal Salary Offset Program. Under this program, the Bureau would furnish data on individuals who are delinquent in debts arising out of transactions in Treasury securities to a central facility at the Department of Defense. The facility would computer match the data against active and retired civilian and military employees' files of the Office of Personnel Management, the Department of Defense, other Executive, Legislative and Judicial agencies, and the U.S. Postal Service. The Debt Collection Act of 1982 provides authority to offset payments made to current and former Federal employees who are delinquent in debts owed to the Federal Government. Government regulations issued under that Act provide for strict due process procedures that must be followed prior to making any offset against current payments.

The second routine use is proposed to enable the Bureau to participate with other Federal agencies in efforts to assure the integrity of benefits programs. At the request of such agencies, the Bureau would undertake computer matches of its records on the ownership of Treasury marketable securities and savings bonds with records maintained by other agencies for recipients of Federal benefits programs where eligibility for the programs requires a limit on assets that may be held by or available to the benefit recipient. Once this routine use is in effect, the Bureau would enter into written agreements under current Office

of Management and Budget guidelines before any disclosure of information would be made. Additionally, before the Bureau performed any such match, it would publish the appropriate notice in the **Federal Register**. The notice would describe the limitations on the use of any information disclosed as a result of that particular match.

DATE: The proposed new routine uses will become effective, without further notice on February 22, 1988, unless comments dictate otherwise.

ADDRESS: Comments may be sent to: Information Officer, Room 553, E Street Building, Bureau of the Public Debt, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT: Volney M. Taylor, Room 553, E Street Building, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 376–4307.

Dated: January 14, 1988.

Jill E. Kent,

Acting Assistant Secretary of the Treasury (Management).

Treasury/BPD.002

SYSTEM NAME:

United States Savings-Type Securities—Treasury/BPD.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of the change: Remove the "and" following the semicolon at the end of item (12), remove the period at the end of item (13) and substitute a semicolon, and add the following new routine uses:

(14) To disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; and (15) to disclose through computer matching information on holdings of savings-type securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies.

* * * * *

Treasury/BPD.003

SYSTEM NAME:

United States Securities [Other than Savings-Type Securities]—Treasury/BPD.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of the change: Remove the "and" following the semicolon at the end of item (12), remove the period at the end of item (13) and substitute a semicolon, and add the following new routine uses:

(14) To disclose through computer matching information on individuals owing debts to the Bureau of the Public Debt to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset; and (15) to disclose through computer matching information on holdings of Treasury securities to requesting Federal agencies under approved agreements limiting the information to that which is relevant in making a determination of eligibility for Federal benefits administered by those agencies.

* * * * *

[FR Doc. 88–1309 Filed 1–21–88; 8:45 pm]

BILLING CODE 4810–40–M

Internal Revenue Service

[Delegation Order No. 220 (Rev. 1)]

Delegation of Authority; Director, Disclosure Litigation Division

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority (revised).

SUMMARY: Delegation of Authority to Claim Executive Privilege in Matters before the United States Claims Court, the United States Tax Court, and other United States Federal Courts. The text of the revised delegation order appears below.

EFFECTIVE DATE: December 20, 1987.

FOR FURTHER INFORMATION CONTACT: Margo L. Stevens, CC:D, Room 3560, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566–3074 (not a toll-free telephone number).

Martha Seeman,

Chief, Information and Productivity Improvement Branch.

Delegation Order No. 220 (Rev. 1)

Effective Date: December 20, 1987.

Authority to Claim Executive Privilege in Matters Before the Claims Court, the Tax Court and other Federal Courts

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order 150–10 to claim executive privilege with respect to Internal Revenue Service records and information in matters before the United States Claims Court, the United States Tax Court, and other Federal Courts is hereby delegated, through the Chief Counsel and the Associate Chief Counsel (Litigation), to the Director, Disclosure Litigation Division. In the absence of or at the request of the Director, the Assistant Director, may exercise this authority in his/her name for the Director. This authority may not be redelegated.

The Claims Court and certain other federal courts only recognize agency claims of executive privilege as the sole basis for protecting internal or inter-agency records that reflect recommendations, advisory opinions, and deliberations, comprising the process by which governmental decisions and policies are formulated. Executive privilege doers not encompass those records whose disclosure would harm our national security or the conduct of international relations. These records fall within the government's states secrets privilege which is not delegated herein. With respect to these records, the Commissioner of Internal Revenue will claim the states secrets privilege.

Executive privilege may only be claimed for those Internal Revenue Service records and information that are predecisional and deliberative, the disclosure of which would significantly impede or nullify Internal Revenue Service actions in carrying out a responsibility or function, or would constitute an unwarranted invasion of personal privacy. Prior to asserting the claim of executive privilege with respect to the records described herein, coordination with the interested function(s) (including but not limited to the office of the Commissioner of Internal Revenue) shall be affected.

Dated: December 20, 1987.

Approved.

Lawrence Gibbs,

Commissioner.

[FR Doc. 88–1282 Filed 1–21–88; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 14
Friday, January 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Tuesday, January 26, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report

The staff will brief the Commission on a compliance status report.

2. Enforcement Matter OS #3222

The staff will brief the Commission on Enforcement Matter OS #3222.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

January 19, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-1375 Filed 1-20-88; 12:54 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 27, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues related to the Board's capital adequacy guidelines. (Proposed earlier for public comment; Docket No. R-0567)
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1343 Filed 1-20-88; 10:08 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 27, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1344 Filed 1-20-88; 10:08 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, January 25, 1988.

PLACE: Room 432, Federal Trade Commission Building 6th Street and Pennsylvania Avenue NW., Washington, DC 20580

STATUS: Open.

MATTER TO BE CONSIDERED:

Budget Review Session.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Beck,

Secretary.

[FR Doc. 88-1300 Filed 1-20-88; 2:54 pm]

BILLING CODE 6750-01-M

INTER-AMERICAN FOUNDATION BOARD

Meeting

TIME AND DATE:

February 1, 1988—6:00-9:00 p.m.
February 2, 1988—9:00 a.m.-12:00 noon

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open except for the portion to be held as closed session to discuss personnel matters as defined in § 1004.4(b) of 22 CFR Chapter 10.

MATTERS TO BE CONSIDERED:

February 1, 1988

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of September 17-18, 1987
4. Closed Session

February 2, 1988

5. Continuation of Closed Session if necessary
6. Report of the Committees of the Board
7. Other Business

CONTACT PERSONS FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812

Date: January 19, 1988.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 88-1334 Filed 1-19-88; 5:02 pm]

BILLING CODE 7025-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Meeting

TIME AND DATE: 2:00 p.m., Wednesday, January 27, 1988 (postponed from December 2, 1987).

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street NW., suite 800, Washington, DC 20005.

STATUS: The portion of this meeting addressing personnel matters may be closed; the rest of the meeting will be open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Communications Director, 376-2623.

AGENDA:

I. Call to Order and remarks of the Chairman
II. Approval of minutes, October 6, 1987
III. Executive Director's activity report
IV. Personnel Committee report
—Recommendation on officers' performance awards
V. Audit Committee report
VI. Treasurer's Report
VII. Resolution: Tenth annual meeting
VIII. Resolution: Regular meetings of the board

Carol J. McCabe,

Secretary.

[FR Doc. 88-1361 Filed 1-20-88; 11:29 am]

BILLING CODE 7570-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m. and 2:00 p.m. on January 22, 1988.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Two meetings to discuss evidence in Docket No. R87-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission Room 300, 1333 H Street NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88-1358 Filed 1-20-88; 10:50 am]

BILLING CODE 7715-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Vote To Close Meeting

By telephone vote on January 13 and 15, 1988, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for February 1, 1988, at United States Postal Service headquarters, 475 L'Enfant Plaza SW., Washington, DC. The meeting will involve consideration of a management proposal for a new major postal facility in Westchester, New York.

The meeting is expected to be attended by the following persons: Governors Griesemer, Hall, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-1350 Filed 1-20-88; 10:27 am]

BILLING CODE 7710-12-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.-5:00 p.m., January 28, 1988.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue NW., Washington, DC 20036.

STATUS: Open.

PURPOSE AND AGENDA: The sixth colloquium of the intellectual mapping project focusing on the role of international organizations and third party dispute settlement in securing and maintaining peace among nations: problems and prospects. Invited participants include Sir Brian Urquhart, Dr. Harlan Cleveland, Amb. Tommy T.B. Koh, Prof. Lincoln Bloomfield, Prof. Jeffrey Rubin, William L. Ury, Esq., Richard Bilder, Esq., and Michael Reisman, Esq.

CONTACT: Richard N. Smith (202) 457-1700.

Dated: January 20, 1988.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 88-1359 Filed 1-20-88; 11:04 am]

BILLING CODE 3155-01-M

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Corrections

Federal Register
Vol. 53, No. 14
Friday, January 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87E-0365]

Determination of Regulatory Review Period for Purposes of Patent Extension; Hytrin

Correction

In notice document 88-269 beginning on page 572 in the issue of Friday, January 8, 1988, make the following corrections:

1. On page 572, in the second column, the subject heading should read as set forth above.

2. On the same page, in the same column, under **SUMMARY**, in the fourth line, "published" should read "publishing".

3. On the same page, in the third column, in the fourth line from the top, "the" should read "that".

4. On the same page, in the same column, in the second complete paragraph, in the 3rd line, "hydrochloride" was misspelled, and in the 21st line, "permit" should read "permitted".

5. On page 573, in the first column, in the third line, "claim" should read "claimed".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0110]

Medical Devices; Revision of Compliance Policy Guide Regarding Condoms; Defects—Criteria for Direct Reference Seizure; Availability

Correction

In notice document 88-271 appearing on page 573 in the issue of Friday, January 8, 1988, make the following correction:

In the second column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "6727" should read "8757".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees or Panels

Correction

In notice document 88-206 beginning on page 447 in the issue of Thursday, January 7, 1988, make the following correction:

On page 447, in the second column, under **ADDRESSES**, in the 11th line, the name should read "Sharon Kalokerinos".

BILLING CODE 1505-01-D

federal register

Friday
January 22, 1988

Part II

Environmental Protection Agency

Drinking Water; Substitution of Contaminants and Drinking Water Priority List of Additional Substances Which May Require Regulation Under the Safe Drinking Water Act

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL 3304-5]

Drinking Water; Substitution of Contaminants and Drinking Water Priority List of Additional Substances Which May Require Regulation Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of substituted contaminants and first Drinking Water Priority List.

SUMMARY: The Safe Drinking Water Act ("SDWA" or "Act") was amended in 1986 to require EPA to regulate 83 contaminants in drinking water by June, 1989. The SDWA allows EPA to substitute up to seven contaminants on the list of 83 contaminants if regulation of the substitutes is more likely to be protective of public health. The Act also requires EPA to establish a priority list of contaminants which may have any adverse effect on the health of persons and are known or anticipated to occur in public water systems and which may require regulation under the Act ("drinking water priority list"). In this notice, EPA is publishing the seven substituted contaminants and publishing the first drinking water priority list.

DATES: This notice is effective immediately.

ADDRESSES: References, supporting documentation, and comments received on the proposal are in the public docket. The docket clerk's office is located in the Criteria and Standards Division, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. Please call Ms. Pat Minami at 202–382–7575 for an appointment to inspect the docket. In addition, certain supporting documents cited in this notice will be available for inspection at the Drinking Water Branches in EPA's Regional Offices (see addresses below).

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791, or (202) 382–5533 in the Washington, DC metropolitan area; or Arthur H. Perler, Chief, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 382–3022.

SUPPLEMENTARY INFORMATION:

I. Background
II. Substitutes
A. Criteria Used to Select Substitute Contaminants
B. List of Contaminants Removed and Substituted
III. Drinking Water Priority List
A. Contaminants Considered for the Drinking Water Priority List
B. Contaminants Considered for the Drinking Water Priority List but Deleted due to Lack of Exposure or Data Availability
1. Exposure Potential and/or Physical-Chemical Properties
2. Data availability
C. Contaminants Added to the Drinking Water Priority List
1. Pesticides
2. Additional Substances
D. First Drinking Water Priority List
E. First Drinking Water Priority Lists
IV. References
V. Other Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

EPA Regional Offices

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617) 853–3610, Jerome Healy
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–9873, Jon Capacasa
IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404) 257–4450, Robert Jourdan
V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312) 353–2650, Joseph Harrison
VI. Allied Bank Tower, Dallas, TX 75202, Phone: (214) 767–2656, James Graham
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 234–2815, Gerald R. Foree
VIII. One Denver Place, 999 18th Street, Suite 300, Denver, CO 80202–2413, Phone: (303) 293–1424, Marc Alston
IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974–8076, William Thurston
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 399–4092, Richard Thiel

Abbreviations Used in This Notice

ANPRM: Advance Notice of Proposed Rulemaking
BAT: Best Available Technology
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)
CWSS: Community Water Supply Survey
DWPL: Drinking Water Priority List
GWSS: Ground Water Supply Survey
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
NAS: National Academy of Sciences
NIPDWR: National Interim Primary Drinking Water Regulation
NIRS: National Inorganics and Radionuclides Suvery
NOAEL: No Observed Adverse Effect Level
NOMS: National Organics Monitoring Survey
NORS: National Organics Reconnaissance Survey
NPDWR: National Primary Drinking Water Regulation (includes both Interim and Revised National Primary Drinking Water Regulations)
NPL: National Priorities List (Superfund)
NPS: National Pesticide Survey
NSP: National Screening Program
NTP: National Toxicology Program
RMCL: Recommended Maximum Contaminant Level
RWS: Rural Water Suvery
SDWA: The Safe Drinking Water Act, also referred to as "the Act," as amended in 1986
SMCL: Secondary Maximum Contaminant Level
SOC: Synthetic Organic Chemical
VOC: Volatile Organic Chemical

I. Background

The Safe Drinking Water Act ("SDWA" or "Act") (42 U.S.C. 300f, *et seq.*) was passed in 1974. The Act required EPA to establish national interim primary drinking water regulations (NIPDWRs) that applied to public drinking water systems and that "specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons" [section 1401(1)]. The NIPDWRs were to be revised based upon a comprehensive assessment of potential adverse effects of contaminants in drinking water. In the course of developing the revised regulations, EPA was to publish recommended maximum contaminant levels (RMCLs).

The Act was amended in 1986. RMCLs were renamed "maximum contaminant level goals" (MCLGs) without changing the definition. The amended Act specifies a list of 83 specific drinking water contaminants for which EPA must publish MCLGs and promulgate National Primary Drinking Water Regulations (NPDWRs) on a specified schedule ("list of 83 contaminants"; see Appendix A) [section 1412(b)(1)].

Under the Act, EPA may make up to seven substitutions to the list of 83 contaminants [section 1412(b)(2)]. In order to make substitutions to the list, the Administrator must determine (after notice and opportunity for comment) that "regulation of the substitutes * * * is more likely to be protective of public health (taking into account the schedule for regulation) * * *" than regulation of the originally listed contaminants that would be removed from the list of 83 contaminants [*Id.*].

The Act also requires EPA to publish a list of additional contaminants that are known or anticipated to occur in drinking water and which may require regulation under the Act ("drinking water priority list" or "DWPL") [section 1412(b)(3)]. EPA must publish the first list by January 1, 1988, and subsequent lists every three years thereafter [*Id.*]. EPA must propose NPDWRs for at least 25 contaminants on the DWPL within 24 months of publication of each triennial list, and promulgate 25 NPDWRs within 36 months of publication of each triennial list [*Id.*]. In selecting contaminants for the list, EPA must consider, at a minimum, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund") and pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) [section 1412(b)(3)(B)]. As required by the Act, EPA formed an advisory group to assist in developing the DWPL. This group is to include, but is not limited to, participants from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides and Toxic Substances, Ground Water, and Solid Waste and Emergency Response, and other offices deemed appropriate by the Administrator [*Id.*]. As required by the Act, EPA proposed the list of substitutes (52 FR 25720, July 8, 1987). EPA published a draft DWPL for comment in the same notice.

This notice publishes the final list of substitute contaminants along with the list of contaminants being replaced and responses to significant comments received [section 1412(b)(2)(B)]. Under the Act, EPA's selection of substitutions to the list of 83 contaminants is not subject to judicial review [section 1412(b)(2)(D)]. This notice also publishes the final DWPL [section 1412(b)(3)(A)].

EPA held a public hearing on August 4, 1987 in Washington, DC. In addition, EPA received 22 written comments. The comments received are available in the public docket. Summaries of the significant comments and the responses are presented in the text below. Additional responses are in the record.

EPA believes that, with the promulgation of regulations for the SDWA list of 83 contaminants (with the seven substitutions), many of the significant drinking water contaminants will have been regulated. With few exceptions, the remaining anticipated drinking water problems are primarily in the area of disinfection by-products and pesticides. The triennial DWPL will be the primary vehicle by which EPA considers substances for future regulation (as noted above, MCLGs and NPDWRs are to be set for at least 25 contaminants from the list every three years).

II. Substitutes

A. Criteria Used to Select Substitute Contaminants

The criteria which EPA used to select substitute contaminants were described in detail in the earlier notice (52 FR 25720). As noted above, the 1986 amendments to the SDWA allow for substitutions to the list of 83 contaminants to be regulated if the Administrator determines that regulation of the substitutes is more likely to be protective of public health than regulation of the contaminants being replaced. To make this determination, EPA considered several factors associated with both the contaminants to be substituted and the contaminants being replaced on the list. The most important of these factors were the severity of the human health hazards posed by the contaminants and the occurrence or potential for occurrence of the contaminants in drinking water. For each contaminant, EPA specifically considered the following:

- Are there sufficient health effects data upon which to select an MCLG?
- Are there potential adverse health effects from exposure to the contaminant via ingestion?
- Does the contaminant occur in drinking water? Has the contaminant been widely detected in significant frequencies?
- If data on the frequency and nature of contaminants are limited, is there a significant potential for drinking water contamination?

Each of these factors is discussed in more detail in the earlier notice (52 FR 25720).

EPA believes it is not appropriate to use any specific formula to apply selection criteria because of the many variables associated with contaminants in drinking water. Given the variability associated with human health and exposure aspects of drinking water contaminants and the directives of the SDWA, EPA believes the decision criteria must remain flexible, so that a case-by-case decision whether regulation is appropriate can be made for each contaminant.

In reviewing contaminants for possible removal from the list of 83 contaminants, EPA first considered the available health effects data and data on occurrence or potential occurrence in drinking water. The health information necessary for development of national primary drinking water regulations is normally either adequate human data or data from an adequate subchronic or chronic toxicity study in an appropriate test animal. For each contaminant reviewed, if such data were available and they suggested that the contaminant would not be expected to cause any adverse health effects, the contaminant was a candidate for replacement. If no such data were available and none were expected to be available in time to be considered in developing regulations, the contaminant was also considered as a candidate for replacement. In addition, EPA considered contaminants for removal from the list if the available monitoring data indicated little or no occurrence of that contaminant in drinking water supplies and little occurrence in drinking water was anticipated. All of the contaminants removed from the list have one or more of these characteristics.

EPA evaluated candidates to be substituted onto the list using the same criteria applied to the candidates for removal from the list. Adequate health effects and data on occurrence or anticipated occurrence are available to demonstrate potential public health risk for all of the contaminants EPA is substituting on the list. In fact, EPA has already proposed MCLGs for all of the contaminants proposed for substitution (50 FR 46936, November 13, 1985).

The following is a summary of the significant public comments EPA received on the contaminants proposed to be removed and the contaminants to be substituted on the list of 83 contaminants and EPA's final action in this notice.

Contaminants EPA Proposed to Remove

This section addresses the contaminants EPA proposed to remove from the list of 83 contaminants.

Zinc. Three commenters supported EPA's proposed removal of zinc from the list of contaminants to be regulated; no commenters objected.

Response. No response is necessary. EPA is removing zinc from the list of 83 contaminants.

Silver. Four commenters discussed EPA's proposed removal of silver from the list. Three commenters supported the Agency's proposal to remove silver from the list. One commenter objected to this proposal, stating that silver is associated with multiple toxic effects. In addition, this commenter objected to EPA's categorization of argyria as not being an adverse health effect.

Response. While it is true that effects from silver other than argyria have been observed in animal studies, these adverse effects, such as neurotoxicity, kidney damage, cardiotoxicity, and death, occur at extremely high doses which would not be expected to occur from drinking water exposure. EPA, as stated in the proposal, believes that argyria (a discoloration of the skin associated with more realistic doses) is not as adverse health effect since it does not impair functioning of the body or cause other physiological problems. In addition, there are no known cases of argyria due to exposure to silver through drinking water. Therefore, EPA is removing silver from the list of 83 contaminants.

Aluminum. Two commenters presented information concerning aluminum. One commenter agreed with EPA that is unlikely that aluminum in drinking water will cause health problems. The other commenter thought that there are sufficient data to indicate that aluminum poses an adverse health effect and that it should be regulated at this time. This commenter stated that there is evidence from both human and animal studies that aluminum is associated with a variety of central nervous systems (CNS) disorders.

Response. While EPA acknowledges that it has been suggested that aluminum may be associated with CNS disorders, the data do not indicate a cause-effect relationship. Exposure to aluminum in water is very small (approximately 1 percent of total human exposure), and there is no evidence at this time that aluminum ingested in water poses a health threat. Therefore, EPA is removing aluminum from the list of 83 contaminants. However, EPA is continuing research on the health effects of aluminum, including participation in international studies, and has placed it on the first DWPL (see below).

Sodium. Five commenters discussed EPA's proposed removal of sodium from the list. Four commenters thought that the Agency's decision to remove sodium from the list was appropriate. One commenter disagreed with the proposal, however, stating that there is a large body of studies which support a correlation between increased dietary sodium intake and elevated blood pressure. This commenter stated that given that such a large percentage of Americans suffer from hypertension and that so many of the nation's drinking water supplies have levels of sodium that contribute to the problem, EPA should not remove sodium from the list of contaminants for regulation.

Response. There is a significant body of information on the relationship between total sodium intake and hypertension for certain individuals. Drinking water supplies can contain sodium at varying levels, with the National Inorganics and Radionuclides Survey (NIRS) showing a median level of 16.6 mg/L. However, the vast majority of sodium intake comes from other sources in the diet. The typical American diet contains several thousand milligrams per day of sodium, and the contribution from drinking water is unlikely to exceed a few percent of that total intake. To assist those who, for medical reasons, require a restricted-sodium diet, EPA recommends a sodium limit in drinking water of 20 mg/L (45 FR 57332, August 27, 1980). For persons on the most restrictive sodium diet, 20 mg/L would likely represent less than 10 percent of their total recommended sodium intake, approximately 400 mg/day (American Heart Association, see 50 FR 46980, August 27, 1980). There is currently an EPA regulation requiring all public water supplies to monitor the sodium levels in their drinking water and to report the level to local health authorities (40 CFR 141.41). Thus, physicians treating individuals on sodium restricted diets may determine the sodium levels in drinking water and advise their patients accordingly. The patients may then adjust their total sodium intake accordingly.

Regarding the relationship between sodium in drinking water and elevated blood pressure, there is a large amount of epidemiologic data. Most of this data consists of studies on school-age children. Based on this data, there is no compelling evidence that sodium levels up to several hundred mg/L significantly affect the blood pressure on school-age children. In discussing the possible relationship of sodium in drinking water to blood pressure, Colditz and Willet (in Calabrese et al., 1985 Proceedings of Conference on Inorganics in Drinking Water and Cardiovascular Disease, Amherst, Massachusetts, May, 1984) concluded that, ". . . experimental interventions on humans have shown small effects of sodium intake on blood pressure, 0.28 mm Hg/gram sodium (Fitzgibben et al., 1982) and 0.48mm Hg/gram sodium (Luft et al., 1979). In view of this small response, it is not surprising that many studies with few subjects have inadequate power to detect this apparently small effect."

In addition, referring to studies by Tuthill and Calabrese (1981 Drinking Water Sodium and Blood Pressure in Children: A Second Look, American Journal of Public Health, 71:722–729) and Gleiberman (1973 Blood Pressure and Dietary Salt in Human Populations, Ecology of Food and Nutrition, 2:143–156), Colditz and Willet concluded that, "the magnitude of the effect of drinking water sodium originally reported is biologically implausible, which adds additional doubt regarding the reported association."

Thus, given this inconclusive evidence, and considering that most people's sodium intake comes from other sources in the diet, EPA believes it is appropriate to remove sodium from the list of 83 contaminants.

Molybdenum. Two commenters supported EPA's proposed removal of molybdenum from the list of contaminants to be regulated. They believed that molybdenum has not been shown to have adverse health effects at concentrations found in drinking water.

Response. No response is necessary. EPA is removing molybdenum from the list of 83 contaminants.

Vanadium. Two commenters supported EPA's proposed removal of vanadium from the list, stating that the compound is rarely found in drinking water.

Response. No response is necessary. EPA is removing vanadium from the list of 83 contaminants.

Dibromomethane. No comments were received on dibromomethane. Therefore, EPA is removing dibromomethane from the list of 83 contaminants.

Sulfate. Three commenters urged EPA to remove sulfate from the list of 83 substances. These commenters believed that sulfate meets the criteria concerning potential health effects and occurrence of the contaminant that EPA established for selecting substitutes.

Response. While EPA agrees that there are not a great deal of data concerning the health risks from exposure to sulfate in drinking water, EPA believes that there is sufficient information to indicate that transient exposure to sulfate may result in adverse health effects (i.e., diarrhea and dehydration) at levels found in drinking water (see the Criteria Document on Sulfate). In addition, sulfate commonly occurs in drinking water. Thus, EPA is not removing sulfate from the list of 83 contaminants.

Additional Contaminants Suggested for Removal

This section addresses the contaminants that commenters requested EPA to remove from the list of 83 contaminants in place of the seven EPA proposed to remove.

Phthalates. One commenter stated that butylbenzyl phthalate (BBP) should not be included on a general listing of phthalates for regulation since, unlike other phthalates, BBP has not been found in hazardous waste sites and BBP has not been shown to be teratogenic, genotoxic or neurotoxic. Another commenter thought that EPA should remove all phthalates from the list based upon the absence of human cancer risk from exposure to diethyl hexylphthalate (DEHP) in drinking water and the lack of occurrence of phthalates in drinking water.

Response. The Agency believes that BBP and DEHP are the phthalates of health concern. The Agency has concluded that BBP is a possible human carcinogen (Group C) and concern over the possible health effects of BBP has led the National Toxicology Program to schedule additional carcinogenicity studies on this chemical. The Agency will consider the results of these studies, when available, along with all other available data in regulating BBP. In addition, DEHP currently is classified as a probable human carcinogen (Group B2).

EPA agrees that the occurrence of phthalates in drinking water at significant levels is likely to be rare. However, EPA believes that there is sufficient evidence concerning the health effects of these compounds to warrant their regulation. Therefore, EPA is not removing phthalates from the list of 83 contaminants. However, EPA will consider regulating these two phthalate compounds only, rather than all phthalates, as a category.

Glyphosate. One commenter suggested that EPA remove glyphosate from the list of 83 contaminants because: (1) Glyphosate has not been detected in drinking water and is unlikely to reach public water supply wells, and (2) glyphosate causes minimal signs of toxicity and then only at very high concentrations.

Response. EPA agrees with the commenter that glyphosate is not a high priority chemical for regulation, due to health and occurrence considerations. However, glyphosate is a widely used, nonselective herbicide for the control of grasses and weeds. Therefore, EPA believes that, due to the high usage of the compound, the potential for contamination of drinking water exists; data from future studies may well indicate contamination from this chemical. EPA recognizes that the toxicity of glyphosate is low, with adverse health effects evident only at relatively high doses. However, adverse effects have been demonstrated; in a three-generation rat reproduction study, renal tubular dilation was found in kidneys of male pups. NTP has selected glyphosate for in-depth toxicological evaluation. In addition, EPA is limited to seven substitutes; EPA believes that there is a stronger basis for removing the other seven chemicals it is removing instead. Therefore, EPA is not removing glyphosate from the list of 83 contaminants.

Asbestos. One commenter stated that asbestos should be deleted from the list of 83 contaminants because, "the studies conducted to date do not provide any convincing evidence of an association between asbestos in public water supplies and cancer induction."

Response: EPA disagrees. Although most of the carcinogenicity data on ingested asbestos fibers is negative, there is some evidence that asbestos fibers of lengths greater than 10 um may be carcinogenic to animals through ingestion exposure. In addition, there is potential for drinking water contamination from natural sources of asbestos and from asbestos-cement pipe which is commonly used in public water supply systems. Such contamination has been demonstrated. A NPDWR would limit exposure to asbestos. Therefore, EPA is not removing asbestos from the list of 83 contaminants.

Beryllium. One commenter thought that beryllium should be removed from the list of 83 contaminants. The major reason stated was that "there are no significant risks to human health from the ingestion of beryllium, and this is particularly true with respect to potential exposures at the levels in which beryllium is found in drinking water."

Response: Beryllium has been associated with an increased risk of cancer in animals exposed via inhalation and injection. While the totality of ingestion studies do not support a link between ingestion of beryllium and cancer, there is a rat study which showed a possible increase in lung cancer after ingestion of beryllium in drinking water. Results of mutagenicity studies were positive and contact dermatitis has been demonstrated with dermal exposure. Beryllium was detected in 0.3 percent of the sites studied in the NIRS. Because there is equivocal evidence regarding the carcinogenicity of beryllium from oral exposure, EPA believes that beryllium should not be removed from the list of 83 contaminants. Accordingly, beryllium remains on the list.

Heterotrophic Plate Count (HPC). One commenter urged EPA to delete HPC from the list of 83 contaminants to be regulated based on a perceived lack of data regarding the correlation between HPC levels and waterborne disease.

The commenter especially questioned the link between opportunistic pathogens in drinking water and nosocomial (hospital-acquired) infections. In addition, this commenter stated that HPC measurement requirements should not be included in the monitoring requirements for total coliforms since EPA's contention that high HPC levels interfere with the laboratory enumeration of coliform bacteria is not justified by the data presented in the literature.

Response: EPA believes that it would be inappropriate to remove HPC from the list of 83 contaminants, and, in fact, the Agency has incorporated certain HPC requirements in the proposed NPDWR for total coliforms (52 FR 42224, November 3, 1987). The data do support the contention that high HPC levels interfere with enumeration of coliform bacteria (see the Criteria Document for Heterotrophic Bacteria). Although no strong association has yet been demonstrated between the density of heterotrophic bacteria in drinking water and the rate of waterborne disease outbreaks, it is known that a number of species of heterotrophic bacteria implicated in human disease can often be found in drinking water. In addition, heterotrophic plate count, a measure of heterotrophic bacteria, is widely used as an indicator of the quality of treatment of drinking water by the drinking water industry. Therefore, EPA is retaining HPC on the list of 83 contaminants.

Additional contaminants. Two commenters stated that the following contaminants do not meet the criteria established for regulation and, therefore, EPA should consider them for removal from the list of 83 contaminants: inorganic mercury, cyanide, acrylamide, 2,4-D, epichlorohydrin, PCBs, pentachlorophenol, *Legionellae*, *Giardia*, viruses, and total coliforms.

Response: EPA believes that the above contaminants meet the criteria established for regulation. The commenters provided no data to support their contention that these contaminants should be removed from the list of 83 contaminants. Therefore, these contaminants remain on the list of 83 contaminants.

Contaminants EPA Proposed to Substitute on the List of 83 Contaminants

This section addresses the contaminants EPA proposed to substitute for the seven contaminants removed from the list of 83 contaminants.

Aldicarb Sulfoxide and Aldicarb Sulfone. Two commenters addressed the proposed substitution of aldicarb sulfoxide and aldicarb sulfone on the list of 83 contaminants. One commenter supported EPA's proposal. The other commenter thought that EPA should address these two contaminants (and aldicarb, which is already on the list of 83 contaminants) as a group with one MCLG and NPDWR.

Response: EPA believes that it is appropriate to regulate aldicarb, aldicarb sulfoxide, and aldicarb sulfone separately. These are three distinct chemicals. Both aldicarb and aldicarb sulfone are individual pesticides used for pest control and aldicarb sulfoxide is a transformation product of aldicarb. These three compounds do not always appear together. In addition, the toxicity of these chemicals is not identical. Therefore, EPA is substituting aldicarb sulfoxide and aldicarb sulfone and listing them separately.

Ethylbenzene. Two commenters stated that ethylbenzene should not be substituted on the list of 83 contaminants due to limited occurrence.

Response: EPA believes that there is a potential for contamination from ethylbenzene because the compound has been detected at 111 hazardous waste sites and in the aquifer in at least one of these sites. Therefore, EPA is substituting ethylbenzene on the list of 83 contaminants.

Heptachlor and Heptachlor Epoxide. Two commenters addressed the proposed substitution of heptachlor and heptachlor epoxide in the list of 83 contaminants. One commenter stated that these chemicals should not be regulated due to their low occurrence and the other commenter thought that these two contaminants should be listed and regulated as a single contaminant.

Response: Heptachlor and heptachlor epoxide have been detected in drinking water and at seven hazardous waste sites in several states. Thus, EPA believes there is sufficient occurrence and potential for occurrence to warrant regulation.

EPA believes that it is appropriate to regulate heptachlor and heptachlor epoxide separately since these are distinct chemicals and the two compounds have been shown to have relatively different toxicities in animal studies. In addition, the two compounds are not always detected together. Therefore, EPA is substituting both chemicals on the list of 83 contaminants.

Nitrite. Two commenters stated that nitrite should not be substituted on the list of 83 contaminants. One commenter stated that nitrite's instability in public water supplies makes the need for regulation questionable. This commenter also questioned whether there has been any documented evidence of nitrite in drinking water supplies being the cause of methemoglobinemia in infants. The other commenter believed that the occurrence data for nitrite did not warrant regulation.

Response: EPA is not aware of any cases of methemoglobinemia in infants due to consumption of nitrite in a public water supply. However, as it is clear that the toxicity of nitrate is due to the conversion of nitrate to nitrite in the human body, EPA believes that a nitrite standard (in addition to a nitrate standard which EPA has already proposed) is warranted to protect against the possible conversion of nitrate to nitrite in public water supplies (in drinking water, under anaerobic reducing conditions in the presence of certain bacteria, nitrate can be reduced to nitrite).

EPA is aware that limited monitoring data are available for nitrite in drinking water. This is because water that is disinfected contains only nitrate and most monitoring data have been gathered from disinfected systems. However, EPA believes that a standard for nitrite is warranted, especially since many groundwater systems are anaerobic and many remain undisinfected.

While EPA's proposed disinfection regulations would require most systems to disinfect, a number of systems will likely receive variances from the requirement. Therefore, EPA is substituting nitrite on the list of 83 contaminants.

Styrene. One commenter stated that the occurrence data on styrene is not sufficient to warrant regulation.

Response: EPA recognizes that styrene has historically been infrequently found in drinking water. However, this may be, in part, due to analytical and sample preservation difficulties.

Considering the high production levels, the fact that it is a frequent contaminant of resins commonly used in water treatment, and the fact that it has been frequently detected at hazardous waste sites, indicating the potential for groundwater contamination, EPA believes that regulation is justified. Thus, EPA is substituting styrene on the list of 83 contaminants.

B. List of Contaminants Removed and Substituted

Based on the reasons and analyses provided in the proposal and the response to comments described above, the seven contaminants EPA is removing from the list of 83 contaminants mandated for regulation by Congress are as follows:

- zinc
- silver
- aluminum
- sodium
- dibromomethane
- molybdenum
- vanadium

Based on the reasons and analyses provided in the proposal and the response to comments described above, the seven contaminants which EPA is substituting for the seven removed are:

Substance	CAS No.	CAS Name
Aldicarb sulfone	1646884	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl]oxime.
Aldicarb sulfoxide	1646873	Propanal, 2-methyl-2-(methylsulfinyl)-, O-[(methylamino)carbonyl]oxime.
Ethylbenzene	100414	Benzene, ethyl-
Heptachlor	76448	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024573	2,5-Methano-2H-indeno[1,2-b]oxirene,
Nitrite	14797650	Nitrite
Styrene	100425	Benzene, ethenyl-

EPA has already proposed RMCLs (now MCLGs) for each of the seven drinking water contaminants. There are adequate health effects and occurrence data to demonstrate that these seven contaminants have a greater potential to pose public health risks than the contaminants EPA is removing from the list of 83 contaminants. This information is presented in detail in the November 13, 1985 notice (50 FR 46936) and in the July 8, 1987 proposal (52 FR 25270). Detailed technical data on these contaminants, including health effects criteria documents, are available for each contaminant and can be found in the docket for the November 1985 proposal.

III. Drinking Water Priority List

A. Contaminants Considered for the Drinking Water Priority List

As described earlier, the Safe Drinking Water Act requires EPA to compile a priority list of contaminants ("Drinking Water Priority List" or "DWPL"). EPA is to publish this list by January 1, 1988 (and a new list every three years thereafter) [section 1412(b)(3)(A)]. EPA must propose MCLGs and NPDWRs for 25 contaminants on the DWPL within two years after publishing it [section 1412(b)(3)(C)] and publish 25 MCLGs and NPDWRs for these contaminants within three years [section 1412(b)(3)(D)]. To establish the DWPL, the Act specifies that:

- Each contaminant removed from the list of 83 contaminants specified in the SDWA and replaced with another must be included on the DWPL [section 1412(b)(2)(C)].
- The DWPL must contain substances which are known or anticipated to occur in public water systems, and which may require regulation under the Act (e.g., may have any adverse effect on the health of persons) [section 1412(b)(3)(A)].
- EPA must consider certain lists of substances in compiling the DWPL [section 1412(b)(3)(B)]. These are:
  —"Hazardous substances," as defined in CERCLA, section 101(14); and
  —Pesticides registered under FIFRA.
- The Agency must form an advisory working group including members from the National Toxicology Program and EPA's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response, and any other members the Administrator deems appropriate to assist in developing the DWPL [section 1412(b)(3)(B)].

Based on the requirements of the SDWA and the statutory timeframe for rulemaking (i.e., 25 contaminants on the list are to be regulated within three years of publication of the DWPL), EPA used the following general criteria to select substances for the first DWPL:

1. The contaminant must occur in public water systems, or its characteristics or use patterns must be such that it has strong potential to occur in public water systems at levels of concern.
2. The contaminant must have a documented or suspected adverse human health effect.
3. There must be sufficient information available on the contaminant (including health effects data, analytical methods, and treatability studies) so that a regulation could likely be developed within the statutory timeframe. Substances for which insufficient information to regulate in the next three years is available will be candidates for subsequent DWPLs (to be published triennially, beginning in 1991).

In general, EPA sought to select substances for the first DWPL which represent a significant cross-section of the most important or potentially important drinking water contaminants. To achieve that end, EPA applied the above criteria to the following groups of contaminants to derive the first DWPL:

Group 1: The seven contaminants proposed for removal from the statutory list of 83 contaminants that EPA is to regulate by June, 1989 (the Act requires EPA to include these contaminants on the DWPL, regardless of the application of the above criteria [section 1412(b)(2)(C)]);

Group 2: Disinfectants and contaminants formed as a result of the disinfection process ("disinfection by-products");

Group 3: The first 50 contaminants on the priority list that EPA is required to compile under section 110 of the Superfund Amendments and Reauthorization Act of 1986 (SARA);

Group 4: Design-analytes of the EPA National Pesticides Survey (NPS) and pesticides reported to be present in drinking water in certain federal and state surveys;

Group 5: Unregulated contaminants to be monitored under section 1445 of the SDWA; and

Group 6: Certain other substances reported frequently and/or at high concentrations in other recent surveys.

Several commenters expressed concern that the DWPL may become inflexible and that contaminants, once listed, may not be deleted even when EPA determines that there is no merit to regulating the contaminant. This is not EPA's intent. The DWPL is a flexible tool which is reviewed and revised every three years. Substances from previous lists that are not regulated need not be automatically included on subsequent lists. EPA believes that it was the clear intent of Congress that the DWPL be simply a "candidate" list for regulation consisting of substances which EPA believes may pose a threat to drinking water and that "*may* require regulation under the Act" (emphasis added). Some substances are placed on the list because they clearly present risks; others are placed on the list for further investigation to determine the need for regulation. After listing, EPA will determine which substances (no less than 25) require regulation. Hence, there is no separate official procedure for "delisting" substances from the DWPL; rather, each new triennial DWPL is independently constituted, with unregulated contaminants carried over from previous lists only as determined necessary by EPA.

Several commenters questioned the advisability of listing substances which have not been demonstrated to contaminate public water supplies. The SDWA requires EPA to consider for the list substances which are "known or *anticipated* to occur in drinking water * * *," (emphasis added). Each of the groups of contaminants evaluated for inclusion on the DWPL contains both substances which are known to occur in public water supplies and substances which, for the reasons stated below, are anticipated to occur in public water supply. EPA's selection of significant environmental contaminants (as determined under various EPA programs), and contaminants which have been demonstrated to be potential problems in research studies, meets the statutory standard.

EPA discussed its specific rationale for selecting these particular groups of substances as candidates for the DWPL in the July 1987 notice (52 FR 25720). The significant public comments received, and EPA's final selections for inclusion on the first DWPL, are presented below.

Group 1: Substitutes From the SDWA List of 83 Contaminants

As described above, EPA has removed seven substances from the statutory list of 83 contaminants which EPA is required by the SDWA to regulate. EPA is including these seven contaminants on the first DWPL, as required by the Act. Public comments relating to the selection of these seven contaminants are summarized and addressed earlier in this notice. The seven contaminants are:

Zinc
Silver
Aluminum
Sodium
Dibromomethane
Molybdenum
Vanadium

Group 2: Disinfectants and Their By-Products

Chlorination is the most widely used method of disinfecting drinking water in the United States. It is convenient to use, effective in destroying or inactivating pathogens, and continues to disinfect in the distribution system. Other disinfectants include chlorine dioxide, chloramine, ammonia, and ozone. Congress has mandated that EPA promulgate regulations requiring disinfection as a treatment technique requirement for all public water systems (unless they obtain a variance or exemption) by June, 1989 [section 1412(b)(8)]. EPA has already proposed the disinfection requirement for surface water supplies (52 FR 42178, November 3, 1987). For ground-water supplies, EPA plans to combine the disinfection

requirement with regulations limiting disinfectant levels and levels of their toxic by-products. Therefore, EPA is placing the disinfectants and disinfectant by-products listed in Table 1 on the first DWPL. A complete discussion of the rationale for selecting specific substances in this group appears in the July 1987 notice (52 FR 25720). In today's notice, EPA has added chlorate and cyanogen chloride to the list in the July 1987 notice. These were not included on the list in the proposal, because of possible analytical methodology problems (July 1987 notice). However, EPA believes that an acceptable method is available for cyanogen chloride and that it is likely that methods will be available for chlorate by 1991 when EPA must promulgate regulations for 25 contaminants on the DWPL.

A number of commenters expressed concern about listing disinfectants on the DWPL, stating that these chemicals are beneficial and that EPA is likely to require their use in future regulations. Although EPA has proposed to require that surface water systems disinfect their water supplies (see 52 FR 42178, November 3, 1987), and the Agency plans to require many ground water systems to disinfect as well, EPA does not expect to specify which particular disinfectant must be used. Instead, EPA will provide a list of several disinfectants and appropriate concentrations. Some disinfectants are suspected or known human toxicants at certain dose levels. EPA is conducting a significant amount of research on the health effects of disinfectants at various concentrations. EPA strongly believes that the primary potential threat to public health from drinking water is disease caused by microbiological contamination and that disinfection is the most appropriate means of protecting the public from these risks. Yet some limits on the concentration of disinfectants that the public consumes may be necessary in order to protect the public from certain other potential health effects. EPA will consider both of these risks when regulating these substances.

EPA is conducting research on the occurrence, identification, and health effects of ozone by-products. Few of the by-products have been conclusively identified. However, as one commenter pointed out, while ozone is not likely to be present in water delivered to users in ozonated systems, ozone by-products are. Therefore, EPA is placing ozone by-products on the DWPL rather than ozone itself.

Some commenters suggested that analytical methodologies were not sufficiently available for many of the disinfection by-products listed. For several years, EPA has been conducting research on measuring the listed by-products. Several methods are currently being tested in the laboratory and field and are expected to be ready in time for promulgation of regulations for these contaminants by 1991. In addition, it is important to note that EPA also has the authority to regulate substances for which no analytical method is available by promulgating a treatment technique requirement under sections 1401(1)(D) and 1412(b)(7) of the SDWA. Because of the relationship between required disinfection and regulated by-products, some type of treatment technique requirement may be appropriate.

EPA believes that consumers are likely to be exposed to the listed disinfectants and by-products of those disinfectants; available information indicates that the selected by-products are a useful subset of the by-products that people are exposed to most and which may present health concerns. Many of the listed disinfection by-products occur frequently in drinking water and generally are found at higher concentrations than those not listed and which have been detected but not at frequent or high levels. Furthermore, EPA believes that the listed by-products can be controlled, and that their control will also limit exposure to related by-products.

EPA currently regulates four of the principal trihalomethane disinfectant by-products under one regulation (44 CFR 141.12). In addition, certain contaminants are listed by group (and presumably may be regulated by group) on the statutory list of 83 contaminants EPA is to regulate by June, 1988 (i.e., PAHs, PCBs, Phthalates, Adipates, Toxaphene, Viruses, and Total coliforms). As described in the July 1987 notice, EPA may regulate other disinfection by-products in groups also, in part because reduction of certain by-products or classes of by-products often results in the reduction of other by-products as well. In addition, the analyses of samples for these substances can often be performed together. Therefore, for listing on the DWPL, EPA has consolidated certain by-products into contaminant-groups or contaminant-classes, which are listed in Table 1. EPA will determine which contaminants, including THMs, require individual regulations and which should be regulated as a group, as in the current THM regulation. Listing by groups will allow EPA to regulate some or all of the contaminant-classes listed in Table 1, as well as any specific substances in these groups. Each regulated contaminant or contaminant group will count toward the minimum of 25 substances that must be regulated under the Act. If EPA individually regulates certain contaminants in a listed contaminant group, EPA will count each individual contaminant, rather than the group, toward the minimum of 25 required regulations. Because of the significance of exposure to the intentionally added disinfectants themselves, they are listed separately. Unlike the July 1987 proposal, this final DWPL lists the various halonitriles and trihalomethanes individually.

Table 1.—Disinfectants and Disinfection By-Products

Chlorine
Hypochlorite
Chlorine dioxide
Chlorate
Chlorite
Chloramine
Ammonia
Ozone by-products
Chloroform
Bromodichloromethane
Chlorodibromomethane
Bromoform
Dichloroacetonitrile
Dibromoacetonitrile
Bromochloroacetonitrile
Trichloroacetonitrile
Halogenated Acids, alcohols, aldehydes, ketones, and other nitriles
Chloropicrin
Cyanogen chloride

Group 3: SARA Priority List

The Superfund Amendments and Reauthorization Act of 1986, [Pub. L. 99-499 (SARA)], amended CERCLA [42 U.S.C. 9601 *et seq.*]. SARA requires the Agency for Toxic Substances and Disease Registry (ATSDR) of the Department of Health and Human Services and EPA to prepare a priority-ordered list of hazardous substances covered by CERCLA which are most commonly found at hazardous waste sites on the CERCLA National Priority List (NPL), and which the agencies determine pose the most significant potential threat to human health. The two agencies must base their determination of the potential human health threat posed by these substances on their known or suspected toxicity to humans and the potential for human exposure to such substances. The first list of 100 substances was published in the Federal Register on April 17, 1987 (52 FR 12866).

ATSDR and EPA used three criteria for determining the degree to which each substance poses a potential human health risk: (1) Chemical toxicity; (2) frequency of occurrence of chemicals at NPL sites or certain other facilities; and (3) potential for human exposure to the substances (Final Support Document for the SARA List, U.S.E.P.A., 1987).

The list of 100 substances was separated into four priority groups of 25 substances each. The first group of 25 is the highest priority group, the second is the next highest priority, and so on. For a complete discussion of the basis and development of the SARA section 110 priority list, see 52 FR 12866, the background document on the SARA section 110 list, and the July 1987 notice (52 FR 25720).

EPA used modified Reportable Quantity (RQ) determinations when ranking the toxicity of the candidates for the SARA priority list. EPA has promulgated RQ values for most CERCLA section 101(14) hazardous substances, and most of the substances were considered in developing the SARA section 110 priority list. Accordingly, EPA believes that using the SARA section 110 list in the development of the first DWPL fulfills the SDWA requirement to consider CERCLA section 101(14) substances. In addition, the basic analyte list for the laboratory program which generated the site-specific data used in estimating the potential for human exposure to various contaminants at NPL sites was the Priority Pollutant list compiled under section 307(a) of the Clean Water Act. EPA has reviewed the findings from Agency-sponsored data-gathering projects at specific surface water supplies. These surface water data indicate that nearly all substances that were found at concentrations greater than one part per billion have already been considered by EPA in the development of the DWPL. Therefore, EPA believes that, by using the SARA section 110 list in the manner described in the July 1987 notice (52 FR 25720), the Agency has considered the key substances that are likely to be of concern in public water systems both from waste disposal and from other releases to surface and ground waters.

EPA has decided to consider the two highest priority groupings of chemicals under SARA for the DWPL. As a group, these fifty priority substances present the most significant concerns at Superfund sites and, hence, may pose significant risks of exposure via drinking water supplies. Furthermore, these two groups also include all substances on the SARA list with an RQ value of less than 10 pounds (the more toxic the substance, the lower the RQ number).

EPA has deleted from the list of fifty high priority SARA substances all substances which are included in the statutory list of 83 contaminants which EPA is to regulate under the SDWA. The remaining substances to be considered for inclusion on the DEPL appear in Table 2. These substances which are included in one or more Tables in this section have not been deleted from Table 2. EPA will consider substances from the second group of fifty on the SARA section 110 list for listing on the next DWPL, which the Agency must publish by January 1, 1991. Because use of the SARA section 110 list necessarily excludes consideration of certain additional CERCLA section 101(14) substances, i.e., those for which the RQ is based on the Resource Conservation and Recovery Act (RCRA) hazardous waste characteristics (e.g., ignitability, reactivity, aquatic toxicity), EPA intends to evaluate the remaining section 101(14) substances, as well as other substances on various lists established by the Agency pursuant to legislative mandate, in the course of developing subsequent DWPLs.

Table 2.—Substances on the SARA Section 110 Priority List (From the First Two Priority Subgroups) Not Included in the Statutory List of 83 Compounds Required to be Regulated by EPA

Dieldrin/Aldrin
Chloroform
Heptachlor/Heptachlor epoxide
N-nitrosodiphenylamine
N-nitrosodimethylamine
4,4'-DDE,DDT,DDD
Chloroethane
Bromodichloromethane
Isophorone
1,1,2,2,-Tetrachloroethane
3,3'-Dichlorobenzidine
Benzidine
Phenol
Bis(2-chloroethyl)ether
2,4-Dinitrotoluene
Bis(chloromethyl)ether
N-nitrosodi-n-propylamine

Group 4: Pesticides Registered Under FIFRA

The National Pesticides Survey (NPS) is a joint venture of the Office of Drinking Water and the Office of Pesticide Programs. The purpose of this survey and the criteria used to select analytes for the NPS makes these analytes logical candidates for inclusion on the DWPL from the universe of pesticides regulated by EPA.

As described in the July 1987 notice, EPA selected the design-analytes for the NPS from pesticide chemicals which are either known to have occurred in groundwater as a result of agricultural uses, have certain physical/chemical characteristics which make them likely to end up in drinking water supplies, such as high water solubility, or are members of potential problem classes of chemicals with potential risks, such as triazines, substituted ureas, carbamates, substituted acetanilides, and aromatic acids. Also, EPA included nematocides because, in general, they are mobile, persistent, and are applied directly to the soil. In the NPS, EPA will also analyze for other pesticides that are quantifiable under an analytical method already being employed for a design analyte. While the NPS selection scheme, unlike the SARA section 110 priority list ranking scheme, did not explicitly consider toxicity, EPA is assuming, for purposes of developing this DWPL, that all of the analyte pesticides are of sufficient toxicity to be considered for listing on the DWPL. EPA believes this is a reasonable assumption, considering that pesticides are specifically developed for their toxicity to certain organisms. The NPS design-analytes appear in Table 3, except for substances which are already on the statutory list of 83 contaminants which the SDWA requires EPA to regulate or which are otherwise covered in this notice.

Table 3.—NPS Design-Analytes List, With Substances on the Statutory List of 83 Contaminants or Otherwise Covered in This Notice Deleted

Acifluorfen
Ametryn
Baygon
Bentazon
Bromacil
Butylate
Carbaryl
Carboxin
Carboxin sulfoxide
Chlorambea
Chlorothalonil
Cyanazine
Cycloate
DCPA
DCPA acid metabolites
Diazanon
Dicamba
3,5-Dichlorobenzoic acid
1,3-Dichloropropene
Diphenamid
Disulfoton and sulfone
Diuron
ETU
Fenamiphos sulfone
Fenamiphos sulfoxide
Fluometuron
Hexachlorobenzene
Hexazinone

5-Hydroxydicamba
Methomyl
Methyl paraoxon
Metolachlor
Metribuzin
Metribuzin DA, DADK, DK
Prometon
Prometryn
Pronamide
Pronamide metabolite
Propachlor
Propazine
Propham
Tebuthiuron
Terbacil
Trifluralin
2,4,5-T

EPA expects that the National Pesticide Survey, which should be completed in 1990–1991, will provide the information needed to evaluate additional pesticides for possible inclusion on the next DWPL (January 1, 1991).

Group 5: Monitored, But Currently-Unregulated Contaminants

Under Section 1445 of the Safe Drinking Water Act, EPA may require public water systems to conduct monitoring and provide other information necessary to establish regulations, evaluate the health risks of unregulated contaminants, or advise the public of such risks [section 1445(a)(1)]. Section 1445 requires EPA to publish a list of unregulated contaminants (i.e., contaminants for which there is no national primary drinking water regulation specifying an MCL or treatment technique requirement). Generally, each system must monitor for each contaminant on the list once every five years unless the Administrator requires more frequent monitoring. EPA promulgated monitoring requirements for 51 unregulated volatile organic contaminants (VOCs) on July 8, 1987 (52 FR 25690). These contaminants were generally selected based on their capability of being detected by the methodology specified in the July 1987 NPDWRs for eight VOCs.

In developing the monitoring requirements for these 51 unregulated VOCs, EPA evaluated the likelihood of widespread occurrence, the cost of monitoring, the availability of reliable analytical methods, the availability of laboratories to perform these analyses, and the experience of EPA and several States in conducting monitoring surveys. A more complete discussion of these analyses appears in the notice promulgating the monitoring requirements (52 FR 25690) and the July 1987 notice proposing the first DWPL (52 FR 25720).

In the monitoring regulations for the 51 unregulated contaminants (52 FR 25690), these volatile organic chemicals are divided into three categories. EPA is including, on the first DWPL, the unregulated contaminants listed in Categories 1 and 2 (see 52 FR 25690, July 8, 1987). These are the substances for which all systems (in the case of Category 1) or many systems (in the case of Category 2) will be monitoring in the next five years. It is likely that States will not require many systems to monitor for Category 3 VOCs (unless their supplies are particularly vulnerable to contamination by these VOCs), so EPA is not including them on the first DWPL. EPA believes that compliance data on the eight regulated VOCs and monitoring data for the VOCs in the two categories of unregulated VOCs will not only identify the VOCs that appear in drinking water, but also provide a useful surrogate for industrial contamination in general.

Some of the 35 contaminants in these two categories are already included in the statutory list of 83 contaminants EPA is to regulate under the SDWA. EPA considered the remaining contaminants for listing on the DWPL. They are listed in Table 4. Those contaminants which are included in another table(s) in this section have not been deleted from Table 4.

Table 4.—Contaminants Listed in the Monitoring Requirements for 51 Unregulated Contaminants (52 FR 25690)

Chloroform
Bromodichloromethane
Chlorodibromomethane
Bromoform
1,1,2,2-Tetrachloroethane
Ethylbenzene
1,3-Dichloropropane
Bromobenzene
Chloromethane
1,1-Dichloroethane
Bromomethane
1,2,3-Trichloropropane
1,1,1,2-Tetrachloroethane
Chloroethane
2,2-Dichloropropane
o-Chlorotoluene
p-Chlorotoluene
1,1-Dichloropropane
1,3-Dichloropropane

Group 6: Substances Reported Frequently and/or at High Concentrations in Recent Surveys or From Other Sources

The National Inorganics and Radionuclides Survey (NIRS) is a project of the EPA Office of Drinking Water. This recently completed survey indicated relatively widespread occurrence of strontium and boron in public water supplies (NIRS, 1987). While EPA believes that these substances are not likely to pose a significant health threat to consumers of water from public water systems, EPA is including these two substances on the first DWPL because the Agency plans to evaluate the need for MCLGs and NPDWRs for these contaminants.

Cryptosporidium is a protozoan which has recently been identified as a waterborne disease agent. In 1984, it was implicated in a disease outbreak in Texas, in which 117 cases of gastroenteritis were reported. The community in question was supplied by groundwater, and treatment was identified as being deficient (CDC, 1985). Another reported waterborne disease outbreak occurred in January 1987 in Carrollton, Georgia. Over 20,000 cases were reported. Although some protection from *Cryptosporidium* would be provided by compliance with the proposed filtration and disinfection rules published on November 3, 1987 (52 FR 42178), EPA is including *Cryptosporidium* on the first DWPL because the Agency plans to determine whether specific regulation of this contaminant is necessary. For a more complete discussion of the rationale for this selection, see the July 1987 notice.

One commenter suggested that "corrosivity" be added to the DWPL. Corrosivity itself is not toxic, but the corrosivity of water generally indicates the potential for the water to leach lead, copper, asbestos, and other toxic substances from distribution and plumbing systems. Corrosivity is already covered in the National Secondary Drinking Water Regulations. When EPA promulgates NPDWRs for corrosion byproduct chemicals, the regulations will be based, in part, on corrosion control.

One State commented that EPA should consider the regulatory agendas of the States when choosing substances for the DWPL. The commenter provided a survey of state regulatory activities. EPA has incorporated many of the survey's recommendations in the final DWPL. For instance, as described below, EPA has added several pesticides to the DWPL that EPA did not include in the proposed DWPL because of perceived data gaps.

B. Contaminants Considered for the Drinking Water Priority List but Deleted due to Lack of Exposure or Data Availability

1. Exposure Potential and/or Physical-chemical Properties

EPA stated in the July 1987 notice (52 FR 25720) that it believes that there is little or no potential for either adverse health effects or exposure through drinking water to certain candidates for the DWPL because of physical-chemical properties or other reasons. Having received no comments on this conclusion and no countervailing data since proposal, EPA is therefore not including the following substances on the DWPL:

- Aldrin/Dieldrin
- DDT, DDE, and DDD
- Benzidine
- 3,3'-Dichlorobenzidine
- Bis(chloromethyl)ether
- Bis(chloroethyl)ether
- Naphthalene
- Acrolein
- Aniline
- Phenol
- N-nitrosodimethyl amine
- N-nitrosodi-n-propylamine

2. Data Availability

In the July 1987 notice, EPA proposed to eliminate a number of candidate contaminants because sufficient data to regulate them is not expected to be available to the Agency in time to meet the statutory deadline for regulating contaminants from this list (i.e., January 1, 1991). Several commenters agreed with the concept of listing substances only when there was a reasonable expectation that there would be data to write a regulation within three years. However, even though there are significant data gaps for most of the candidate pesticides, for countervailing reasons (see the July 1987 notice), the Agency proposed to include a subset of these pesticides (isophorone, ETU, and 1,3-dichloropropene) on the DWPL in spite of data availability concerns.

C. Contaminants Added to the Drinking Water Priority List

1. Pesticides

In response to comments, EPA has decided to include on the final DWPL several additional pesticides which it did not include on the proposed DWPL because of likely data gaps. Several commenters urged EPA to add the pesticide metolachlor to the DWPL. In addition, a State commenter, which surveyed all the other States, suggested listing several additional pesticides because they are of significant concern to many States (i.e., a significant number of States are writing regulations or developing other restrictions on these pesticides). Also, the National Drinking Water Advisory Council commented that EPA should, "* * * add a few pesticides for which high occurrence potential exists, but for which data may not yet be available to set regulations. The DWPL would then serve as a mechanism to accelerate data collection for these compounds." Based on the comments, EPA believes it is important to move quickly to develop the necessary information on these chemicals because of the concern they pose. Therefore, EPA has added these pesticides to the first DWPL:

- Cyanazine
- Dicamba
- Metolachlor
- Metribuzin
- Trifluralin

EPA will consider for placement of future lists all candidate pesticides which it considered including on the first DWPL but did not because of data limitations. In addition, if EPA determines that any of these substances, or any other substances, pose a potential risk to public health, the Agency may regulate those substances whether or not they are on the DWPL.

2. Additional Substances

EPA is adding methyl-tertiarybutyl-ether (MTBE) to the first DWPL. This substance was not included in the July 1987 notice. However, the Agency has recently identified MTBE as a high-risk chemical for contamination of drinking water supplies and their sources. MTBE is used widely as a gasoline component, and as such is stored, transported, and used all over the country. MTBE has been detected in a number of groundwaters, probably as a result of leaking underground storage tanks, disposal facilities, or spills. Manufacturers of MTBE have initiated a battery of toxicological evaluations for MTBE. Because of the potential for widespread contamination, EPA is listing MTBE on the first DWPL.

D. First Drinking Water Priority List

Table 5 is the final Drinking Water Priority List of 53 contaminants and contaminant groups. This list is a compilation of substances from the six groups discussed in this notice. EPA removed duplicate contaminants and contaminants that are inappropriate for listing at this time based on exposure considerations and/or physical-chemical properties, or lack of data.

TABLE 5—PRIORITY LIST OF DRINKING WATER CONTAMINANTS

Substance	CAS No	CAS Name
1,1,1,2-Tetrachloroethane	630206	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2- Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-
1,1-Dichloroethene	75343	Ethene, 1,1-dichloro-
1,1-Dichloropropene	563586	1-Propene, 1,1-dichloro-
1,2,3-Trichloropropane	96184	Propane, 1,2,3-trichloro-
1,3-Dichloropropane	142289	Propane, 1,3-dichloro-
1,3-Dichloropropene	542756	1-Propene, 1,3-dichloro-
2,2-Dichloropropane	594207	Propane, 2,2-dichloro-
2,4,5-T	93765	Acetic Acid (2,4,5-trichlorophenoxy)-
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-
Aluminum	7429905	Aluminum
Arsenic	7664417	Ammonia
Boron	7440428	Boron
Bromobenzene	108861	Benzene, bromo-
Bromochloroacetonitrile	83463621	Acetonitrile, bromochloro-
Bromodichloromethane	75274	Methane, bromodichloro-
Bromoform	75252	Methane, tribromo-
Bromomethane	74839	Methane, bromo-
Chloramines		Chloramines
Chlorate	14866683	Chlorate
Chlorine	7782505	Chlorine
Chlorine dioxide	10049044	Chlorine oxide
Chlorite	14998277	Chlorite
Chloroethane	75003	Ethane, chloro-
Chloroform	67663	Methane, trichloro-
Chloromethane	74873	Methane, chloro-
Chloropicrin	76062	Methane, trichloronitro-
Cryptosporidium		
Cyanazine	21725462	Propanenitrile, 2-[[4-chloro-6-(ethylamino)-1,3,5-triazin-2-yl]amino]-2-methyl-
Cyanogen chloride	506774	Cyanogen chloride
Dibromoacetonitrile	3252436	Acetonitrile, dibromo-
Dibromochloromethane	124481	Methane, dibromochloro-
Dibromomethane	74953	Methane, dibromo-
Dicamba	1918009	Benzoic acid, 3,6-dichloro-2-methoxy-
Dichloroacetonitrile	3018120	Acetonitrile, dichloro-
ETU	96457	2-Imidazolidinethione
Hypochlorite ion	14380811	Hypochlorite
Isophorone	78591	2-Cyclohexen-1-one, 2,6,6-trimethyl-
Methyl tert-butyl ether	1634044	Propane, 2-methoxy-2-methyl-
Metolachlor	51218452	Acetamide, 2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)-
Metribuzin	21087649	1,2,4-Triazin-5(4H)-One,4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
Molybdenum	7439987	Molybdenum
Ozone byproducts		
Silver	7440224	Silver

TABLE 5—PRIORITY LIST OF DRINKING WATER CONTAMINANTS—Continued

Substance	CAS No.	CAS Name
Sodium	7440235	Sodium
Strontium	7440246	Strontium
Trichloroacetonitrile	545082	Acetonitrile, trichloro-
Trifluralin	1582098	Benzenamine, 2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-
Vanadium	7440622	Vanadium
Zinc	7440666	Zinc
o-Chlorotoluene	95498	Benzene, 1-chloro-2-methyl-
p-Chlorotoluene	106434	Benzene, 1-chloro-4-methyl-
Halogenated acids, alcohols, aldehydes, ketones, and other nitriles.		

E. Future Drinking Water Priority Lists

The six groups of substances described above were the basis for the development of the first DWPL. EPA will consider substances in these categories not included in this DWPL as well as other substances in developing subsequent DWPLs. Other substances to be considered for future lists will include but are not limited to those listed pursuant to section 1428 of the Act (wellhead protection), other CERCLA section 101(14) substances, and other hazardous substances.

IV. References

The docket for the removal and substitution portion of this notice includes the public comments received pursuant to the July 1987 notice. EPA discussed in its November 13, 1985 proposal (50 FR 46936) all of the contaminants proposed for removal from and substitution on the list of 83 contaminants (except dibromomethane). Data on these contaminants are in the public docket for that rulemaking located at EPA Headquarters, at the address listed at the beginning of this notice. These data include references on the occurrence in drinking water, analytical methods, and health effects for the seven contaminants proposed for substitution on the list of 83 contaminants. The technical support documents prepared by EPA are included in these references. Dibromomethane is discussed in the July 1987 notice. Data on the seven substitutes are also in the public docket. EPA is currently preparing technical assessment documents for these contaminants. These include health effects Criteria Documents or Health Advisories for each of the seven contaminants. Individuals should contact the Drinking Water Regulations Docket Manager (Ms. Pat Minami, 202–382–7575) for access to the public docket.

References for the DWPL portion of this notice consist of the public comments received and EPA's response to those comments. This docket is located at EPA Headquarters, at the address listed at the beginning of this notice. Individuals should contact the Drinking Water Regulations Docket Manager (Ms. Pat Minami, 202–382–7575) for access to the public docket.

V. Other Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This notice is not a regulation and will not have a major financial or economic impact on any party. Therefore, EPA has not prepared an Economic Impact Analysis (EIA). EPA will prepare an EIA, if appropriate, at the time of regulation of any contaminant substituted on the list of 83 contaminants or listed on the DWPL.

The Office of Management and Budget (OMB) has reviewed this notice.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires EPA to explicitly consider the effect of proposed regulations on small entities. This notice does not promulgate any regulations. Therefore, the Regulatory Flexibility Act requires no such analysis. As EPA prepares regulations for contaminants under section 1412 of the SDWA for substances substituted on the list of 83 contaminants or selected from the Drinking Water Priority List, EPA will consider the effect of the proposed regulations on small entities.

C. Paperwork Reduction Act

There are no information collection requirements in this notice (44 U.S.C. 3501 *et seq.*).

D. Technical Review

The National Drinking Water Advisory Council reviewed the July 1987 proposal at its meeting on November 5–6, 1987 and, "* * * concurred in the approach used for listing * * * and encouraged EPA to add a few pesticides for which high occurrence potential exists * * *." The Council also generally supported the Agency's decisions regarding contaminants for removal from the list of 83 and substitutes for those removed.

Date: January 13, 1988.

Lee M. Thomas,

Administrator.

Appendix A—83 Contaminants Required to be Regulated under the SDWA of 1986

Volatile Organic Chemicals

Trichloroethylene	Benzene
Tetrachloroethylene	Chlorobenzene
Carbon tetrachloride	Dichlorobenzene
1,1,1-Trichloroethane	Trichlorobenzene
1,2-Dichloroethane	1,1-Dichloroethylene
Vinyl chloride	trans-1,2-Dichloroethylene
Methylene chloride	Cis-1,2-Dichloroethylene

Microbiology and Turbidity

Total coliforms	Viruses
Turbidity	Standard plate count
Giardia lamblia	Legionella

Inorganics

Arsenic	Molybdenum
Barium	Asbestos
Cadmium	Sulfate
Chromium	Copper
Lead	Vanadium
Mercury	Sodium
Nitrate	Nickel
Selenium	Zinc
Silver	Thallium
Fluoride	Beryllium
Aluminum	Cyanide
Antimony	

Organics

Endrin	1,1,2-Trichloroethane
Lindane	Vydate
Methoxychlor	Simazine
Toxaphene	PAH's
2,4-D	PCB's
2,4,5-TP	Atrazine
Aldicarb	Phthalates
Chlordane	Acrylamide
Dalapon	Dibromochloropropane (DBCP)
Diquat	1,2-Dichloropropane
Endothall	Pentachlorophenol
Glyphosate	Pichloram
Carbofuran	Dinoseb
Alachlor	Ethylene dibromide (EDB)
Epichlorohydrin	Dibromomenthane
Toluene	Xylene
Adipates	Hexachlorocyclopentadiene
2,3,7,8-TCDD (Dioxin)	

Radionuclides

Radium 226 and 228	Gross alpha particle activity
Beta particle and photon radioactivity	
Uranium	Radon

[FR Doc. 88-1274 Filed 1-21-88; 8:45 am]

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federal register

Friday
January 22, 1988

Part III

Pension Benefit Guaranty Corporation

29 CFR Part 2610

Payment of Premiums; Final Rule

29 CFR Parts 2616, 2617 and 2618

Single-Employer Plan Terminations; Notice of Revised Termination Rules

Payment of Premiums; Guidelines on Premium Due Dates

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Payment of Premiums, 29 CFR Part 2610, to authorize the use of a new form, in addition to the PBGC Form 1, for premium payments to the PBGC. The Pension Protection Act, a part of the Omnibus Budget Reconciliation Act of 1987, amends section 4006 of the Employee Retirement Income Security Act of 1974 to establish a two-part premium structure for covered single-employer plans, *i.e.*, a flat per capita assessment and a variable rate assessment, effective for plan years beginning after December 31, 1987. As part of its implementation of these new premium rules, the PBGC has determined that it can simplify the payment of the flat per capita assessment for certain large plans (which is due on or before the last day of the second month of a plan year beginning in 1988) by prescribing a new form for that purpose, the PBGC Form 1–ES, to be used in lieu of the Form 1. The effect of this rule is to modify the regulation, which currently provides for only the Form 1, to permit the use of Form 1–ES for this filing.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") entitled Payment of Premiums, 29 CFR Part 2610, prescribes the rules and procedures for the payment of premiums by pension plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Section 2610.6 of the regulation provides that the form to be used "for the declaration, payment and reconciliation of premiums is PBGC Form 1."

The Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, amends ERISA by establishing a two-part premium structure for covered single-employer plans, *i.e.*, a flat per capita assessment and a variable rate assessment, effective for plan years beginning after December 31, 1987. In a Notice of Revised Premium Due Dates, published concurrently with this final rule, the PBGC advises contributing sponsors and plan administrators that certain due dates under the regulation are being suspended in order to facilitate a transition to the new premium structure that is less costly for the affected plans. However, the due date for the filing and payment of the estimated amount of the flat per capita assessment by plans with 500 or more participants is unchanged. Under § 2610.3(a) of the regulation, that due date is the last day of the second month following the close of the prior plan year. Thus, for many large plans (those with calendar plan years) the 1988 per capita portion of the premium is due by February 29, 1988. The PBGC has decided to simplify and, hopefully, make less expensive the timely estimation and payment of this per capita assessment by large plans by prescribing a new, shorter PBGC Form 1–ES. The new PBGC Form 1–ES, together with a revised PBGC Form 1 and filing instructions (to be issued later), will be part of a new PBGC Annual Premium Payment Package. This Package will be used by contributing sponsors and plan administrators to fulfill their premium filing and payment obligations. Accordingly, § 2610.6 of the regulation is being amended to substitute a reference to the PBGC Annual Premium Payment Package for the specific reference to PBGC Form 1.

The collection of information requirements contained in the premium regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and the regulations thereunder (5 CFR Part 1320) for use through December 31, 1990, OMB No. 1212–0009. The collection of information requirements in PBGC Form 1–ES are the subject of a Notice of Information Request Submitted for OMB Review and Approval published previously.

Because this rule pertains to agency procedure, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. Moreover, because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act of 1980, 5 U.S.C. 601(2), does not apply.

The PBGC has determined that this is not a "major rule" within the meaning of Executive Order 12291, February 17, 1981 (46 FR 13193), because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2610, Subchapter B, Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 11005, Pub. L. 99–272, 100 Stat. 82, 240, and sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Section 2610.6 is revised to read as follows:

§ 2610.6 Forms.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC Annual Premium Payment Package.

3. Paragraphs (a)(6)(ii) and (a)(8)(iii)(B) of § 2610.3 are amended by adding a footnote 1 at the end of the respective paragraphs to read as follows:

§ 2610.3 Filing requirements.

* * * * *

[1] This paragraph shall not apply with respect to the variable rate portion of the premium due for a plan year beginning on or after January 1, 1988.

4. Paragraphs (a)(6)(i), (a)(7), (a)(8)(iii)(A) and (b)(5) of § 2610.3 are suspended.

Issued at Washington, DC this 19th day of January, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–1308 Filed 1–21–88; 8:45 am]

BILLING CODE 7708–01–M

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29 CFR Parts 2616, 2617, and 2618

Single-Employer Plan Terminations Under the Pension Protection Act

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of revised termination rules.

SUMMARY: This notice advises contributing sponsors and plan administrators of single-employer plans of certain new statutory requirements relating to the termination of such plans. The Pension Protection Act, a part of the Omnibus Budget Reconciliation Act of 1987, amends Title IV of the Employee Retirement Income Security Act of 1974 in several significant respects. These amendments apply generally to plan terminations for which notices of intent to terminate are issued after December 17, 1987. The effect of this new notice is to advise contributing sponsors of their new obligations with respect to terminating single-employer plans and to advise plan administrators of changes in the termination procedures effected by these new rules.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Pension Benefit Guaranty Corporation, Coverage and Inquiries Branch, IOD, Code 25410, 2020 K Street NW., Washington, DC 20006; or call 202–778–8820 or, for TTY and TDD only, 202–778–8859 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, includes the Pension Protection Act ("PPA"), which amends the pension plan funding and termination, as well as other miscellaneous provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This notice describes the amendments to the plan termination rules in Title IV of ERISA and is intended to alert interested persons to the changes in the law. The new termination rules apply (with one exception discussed below) to voluntary terminations for which a notice of intent to terminate is issued to affected parties (pursuant to ERISA section 4041(a)(2)) after December 17, 1987, and to involuntary terminations initiated by the Pension Benefit Guaranty Corporation ("PBGC") under section 4042 after that date. Plan administrators initiating standard or distress terminations on or after the effective date of the amendments should still, in general, follow the rules and procedures set forth in the PBGC's Notice of Interim Procedures (51 FR 12491 (April 10, 1986)). (The PBGC's new termination regulations, issued in proposed form for public comment on September 2, 1987 (52 FR 33318), are not yet in effect. When the final regulations are issued, they will reflect the PPA amendments discussed herein.) Those rules and procedures that are modified by the PPA are discussed below. This notice does not address all of the Title IV amendments in the PPA; nor is it intended as an exhaustive discussion of the plan termination amendments. Pension plan practitioners should familiarize themselves with the PPA. (Statutory citations below are to sections of the Budget Reconciliation Act, except where otherwise noted.)

Standard Terminations

The major change in the law with respect to standard terminations is the increase in plan benefits that must be paid in order for a plan to terminate in a standard termination. The prior rule that a plan be able to discharge all benefit commitments under the plan has been replaced by the requirement that a plan pay all "benefit liabilities" under the plan (in section 9313(a)). The term "benefit liabilities" is synonymous with pre-PPA termination liability and includes all fixed and contingent liabilities to plan participants and beneficiaries, including liability for benefits in effect on the date of termination that are not protected under section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of ERISA. (Conference Report on H.R. 3545, Budget Reconciliation Act of 1987, H.R. Rep. No. 100–495, 100th Cong., 1st Sess.) Therefore, in order to terminate in a standard termination, a plan will have to purchase irrevocable commitments that preserve all benefits and benefit forms in effect on the date of termination or pay lump sum benefits that include the value (as of the distribution date) of all such benefits.

In order to reflect this change, the notice to participants and beneficiaries of the benefits they will receive on plan termination, referred to under prior law as the "notice of benefit commitments" (ERISA section 4041(b)(2)(B)), should now be referred to as the "notice of plan benefits" and should include a statement of the participant's (or beneficiary's) full benefit under the plan. The other information required in the notice (e.g., the specific data used to compute a person's benefit) must still be provided.

The information filed with the PBGC pursuant to ERISA section 4041(b)(2)(A) and the Notice of Interim Procedures must also be modified slightly. The "Enrolled Actuary Certification" (PBGC Form 444) must now include the actuarial present value of all benefit liabilities (rather than benefit commitments) (see item 1A) and a statement that the plan is projected to be sufficient for all benefit liabilities as of the proposed distribution date. The enrolled actuary should make these changes in ink on the form; the form should *not* be re-typed. Finally, as part of the notice to PBGC, the plan administrator must state the date on which the section 4041(b)(2)(B) notices of plan benefits were issued. (The PBGC is in the process of revising the termination forms, i.e., Forms 444 and 445 and the PBGC portion of Form 5310. They will be combined into a single PBGC termination form that PBGC hopes to issue at the same time as the final termination regulations.)

The PPA also makes important changes in ERISA section 4044(d), which deals with the distribution of so-called "excess" or "residual" assets upon plan termination. (It should be noted that the PPA does not change the Joint Implementation Guidelines issued by the PBGC, Treasury Department and Department of Labor on May 24, 1984.) Under section 9311(a), a plan amendment to permit an employer to recover the residual assets left after satisfaction of all plan benefit liabilities or to increase the amount of such assets that may be distributed to the employer may not be effective before the end of the fifth calendar year following the adoption date of the amendment. Any such amendment adopted on or before December 17, 1987 is not subject to this rule. A plan that has contained an employer reversion provision since the effective date of the plan is also excluded from this 5-year rule, even if the plan was not in effect on December 17, 1987. If, as of December 17, 1987, a plan has no provision relating to the distribution of residual assets to the employer, any such amendment adopted prior to December 18, 1988 will also be excluded from the 5-year rule; amendments to such plans adopted after December 17, 1988 will be subject to the rule.

In light of these new rules, for terminations that will involve a reversion to the employer, the plan administrator must state in the standard termination notice to the PBGC that the plan contains a provision permitting a reversion to the employer and give the adoption date of the provision.

A second change to ERISA section 4044(d) concerns the method used in a contributory plan for computing the portion of the excess assets that is attributable to mandatory employee contributions. That portion of the residual assets must be distributed to participants and their beneficiaries in every case (ERISA section 4044(d)(3), as amended). Under the PPA, the "presumptive method" for calculating this amount in the PBGC's allocation of assets regulation (29 CFR 2618.31(b)) is

made the mandatory method for all cases, with one modification relating to the definition of participants. This rule applies to terminations for which notices of intent to terminate are issued after December 17, 1987.

Under the rule in § 2618.31(b), "participants" for purposes of this calculation are all individuals who are plan participants on the date of plan termination. Under § 2618.31(a), the persons who share in this portion of the residual assets are those entitled to benefits under priority category 2 (ERISA section 4044(a)(2)), determined as of the asset distribution date (§ 2618.2). Under the rule as codified in amended ERISA section 4044(d)(3), the same group of participants is used for both purposes and "participant" is defined to include both an individual who is a participant on the date of termination and an individual who, within the 3-year period ending on the termination date, received a distribution from the plan of his entire nonforfeitable benefit either in the form of a lump sum distribution (paid to the individual or to another plan on the individual's behalf) or as an irrevocable commitment purchased from an insurer to provide such nonforfeitable benefit (section 9311(b)(2)). Those individuals who had been previously cashed out are included in the computation under amended ERISA section 4044(d)(3) by adding in the numerator of the fraction (amended section 4044(d)(3)(B)(ii)(I)) each such person's accumulated mandatory employee contributions with interest to the date of the distribution to the individual, and by adding to the denominator (amended section 4044(d)(3)(B)(ii)(II)) the amount of the lump sum or the cost of the insurance contract distributed to the individual.

As under prior law, the portion of the excess assets attributable to employee contributions is to be "equitably distributed" among the participants. Plan administrators should continue to use the rule in § 2618.32(b) (ignoring the reference to an allocation method under § 2618.31(c)(3)) for this purpose.

For plans that are subject to this new rule, item 5 on the Enrolled Actuary Certification and item 1.C. on the Plan Administrator Certification are no longer appropriate as written. Therefore, item 1.C. should be deleted, and the enrolled actuary should strike the words "PBGC regulations, 29 CFR 2618.31(b)" in item 5 and insert in their place "amended ERISA section 4044(d)(3)." As mentioned before, changes on the forms should be made in ink; the forms should not be re-typed.

Plan administrators should note one final change with respect to standard terminations (and, if applicable, distress terminations as well): For plans described in section 412(i) of the Internal Revenue Code of 1986, the Enrolled Actuary Certification is no longer required (section 9314(a)).

Distress Terminations

Consistent with the new requirement for standard terminations that all plan benefit liabilities be satisfied, a contributing sponsor that terminates a plan in a distress termination is now liable (along with the members of its controlled group) for all unfunded benefit liabilities (section 9312(b)(2) amending ERISA section 4062(b)(1)(A)). (In a technical change, the 30-percent of net worth limitation has been moved from section 4062(b) to section 4068; under the new employer liability rules, the net worth limitation is relevant only for determining the amount subject to PBGC's statutory lien and the status of PBGC's claim in bankruptcy.)

In addition, the full employer liability now runs solely to the PBGC. The existing mechanism for collecting and paying employer liability to plan participants and beneficiaries introduced by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"), the section 4049 trust, has been repealed (section 9312(a)). In the future, the PBGC will pay participants and beneficiaries a portion of their outstanding benefit liabilities (i.e., unfunded benefit liabilities that are not guaranteed benefits) from the PBGC's employer liability recovery. The amounts paid by the PBGC will be based on a "recovery ratio", which is, in general, the ratio of the value of an employer liability recovery to the total employer liability claim for unfunded benefit liabilties. (After a transition period, this ratio will be determined from the data for prior plan terminations, except for large cases where the actual ratio for the particular termination will be used.) The amounts paid to participants and beneficiaries will be allocated in accordance with ERISA section 4044(a). These rules apply to distress terminations for which the notices of intent to terminate are issued after December 17, 1987 and to involuntary terminations under ERISA section 4042 initiated by the PBGC after that date.

The PPA also effects several changes to the distress termination tests in ERISA section 4041(c)(2)(B) (section 9313(b)). As amended, the liquidation test (clause (i)) now includes proceedings that were commenced as reorganization proceedings and subsequently converted to liquidation proceedings. Both the liquidation and reorganization tests now require that a person seeking to qualify under either test be in the proceeding as of the *proposed* termination date. Persons seeking to qualify under the reorganization test must give the PBGC advance written notice that the person intends to ask the bankruptcy (or other appropriate) court to approve the plan termination; the notice must include a copy of the request. Finally, in order to approve a termination under the reorganization distress test, the court must make a determination that "unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process." The addition of this standard for approval of a termination should provide useful guidance to contributing sponsors seeking distress terminations and to the bankruptcy courts and foster consistent application of the second distress test. These amendments have the same effective date as the others.

One final change for distress terminations is that every member of the contributing sponsor's controlled group must now meet one of the criteria for distress; the SEPPAA rule that only "substantial" members of the controlled group had to satisfy one of the distress criteria has been repealed. This amendment, too, has the same effective date.

Issued in Washington, DC, this 19th day of January, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-1306 Filed 1-21-88; 8:45 am]

BILLING CODE 7708-01-M

PENSION BENEFIT GUARANTY CORPORATION

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Guidelines on premium due dates.

SUMMARY: This notice describes the new premium rates and related rules for single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974 and advises contributing sponsors and plan administrators of certain planned revisions in the premium due dates applicable to such plans. (These changes would also affect the premium due dates for multiemployer plans.) The Pension Protection Act, a part of the Omnibus Budget Reconciliation Act of 1987, establishes a new premium structure for covered single-employer plans that is effective with respect to plan years beginning after December 31, 1987. Under the new rules, the premium includes a flat per capita assessment (as under prior law), plus an additional assessment based on the value of a plan's unfunded vested benefits. Because the variable rate portion of the premium is based upon a plan's unfunded vested benefits, the Pension Benefit Guaranty Corporation has determined that it would be unduly burdensome and costly to require plans to pay this portion of the premium by the due dates established in the premium regulation (for plans with 500 or more participants, the last day of the second month following the close of the prior plan year, and for smaller plans, the last day of the seventh month following the close of the prior plan year). Accordingly, in another document in this issue of the **Federal Register**, plan sponsors and plan administrators (of both single-employer and multiemployer plans) are advised of the suspension of certain of the premium due dates for plan years beginning on or after January 1, 1988.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick Devereux, Corporate Policy and Research Department (Code 35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD only.) (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203 (the "Budget Act"), includes the Pension Protection Act, which amends the pension plan funding and plan termination and related provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). One of the major changes under the law is in the premium rules applicable to single-employer plans covered under Title IV of ERISA. Under section 9331 of the Budget Act, the premiums paid to the Pension Benefit Guaranty Corporation ("PBGC") for single-employer plans will be composed of a flat per capita assessment (as under prior law) (Budget Act section 9331(a)) and a variable rate assessment based on the value of a plan's unfunded vested benefits (section 9331(b)). The amount of the per capita assessment is raised to $16 per participant (amended ERISA section 4006(a)(3)(A)(i)); the variable rate assessment (which is also determined on a per participant basis) is $6 for each $1,000 (or fraction thereof) of unfunded vested benefits divided by the number of plan participants (amended ERISA section 4006(a)(3)(E) (i) and (ii)). The variable rate portion of the premium may in no event exceed $34 per participant. (This ceiling is further reduced for plans with respect to which the contributing sponsor has made the maximum deductible contributions (under Internal Revenue Code section 404) during at least one plan year of the five plan years immediately preceding the effective date of the new premium rules (section 4006(a)(3)(E)(iv)(II)). The new premium rates apply for plan years beginning after December 31, 1987.

Finally, the Budget Act (in section 9331(c)) also expands liability for the payment of premiums by providing that a plan's contributing sponsor and each member of the contributing sponsor's controlled group are jointly and severally liable for premiums required to be paid by the contributing sponsor.

The procedures (including due dates) for the payment of premiums are established by the PBGC pursuant to ERISA section 4007(a). Under its payment of premiums regulation (29 CFR Part 2610), the premium owed for a plan year is based on the participant count for the prior plan year. The premium due date for large plans, i.e., those with 500 or more participants, is the last day of the second month following the close of the prior plan year. (Thus, for a calendar year plan, the 1988 premium is based on the participant count for 1987 and is due by February 29, 1988.) However, because an accurate participant count for the prior plan year is frequently not available by the due date, large plans may also make a reconciliation filing (paying an additional amount or requesting a refund of an overpayment) no later than the last day of the seventh month following the close of the prior plan year. For small plans—those with fewer than 500 participants—the premium is due by the last day of the seventh month following the end of the prior plan year.

This payment schedule is not well-suited to the new variable rate assessment. Calculation of the variable rate portion of the premium requires a determination of a plan's unfunded vested benefits for the prior plan year. In order to avoid making plans obtain a special actuarial valuation for this purpose, the PBGC has instead decided to permit plans to use the data used in preparing the Form 5500. (It is noted that the unfunded vested benefits figure used for premium purposes will generally be different from that reported on the 5500, Schedule B, because, *inter alia*, a different interest rate will be used.) In order to make this possible, it is necessary to revise the premium payment schedule to conform to the Form 5500 filing date used by many plans.

In considering modifications to the premium payment schedule, the PBGC was also mindful of its obligation under Title IV of ERISA "to maintain premiums established * * * under section 4006 at the lowest level consistent with carrying out [the PBGC's] obligations under this title" (ERISA section 4002(a)(3)). On this basis, the PBGC concluded that the deferral of the premium due dates is only warranted when it results in significant savings in administrative costs for the public or the PBGC. Therefore, at present the PBGC has decided that it would not be appropriate to revise the current premium due dates for larger plans with respect to the $16 per capita premium charge. Paying this portion of the 1988 premium entails no greater administrative costs than such plans incurred in prior years, while retaining the economic benefit for the PBGC and other premium payors of the current premium due date for large plans.

In order to revise the premium due dates to better accommodate the new variable rate portion of the premium, the PBGC will undertake a rulemaking to amend the premium regulation. This notice, however, advises plan sponsors and administrators of certain interim steps the PBGC is taking to effectuate such revision and to provide some guidance with respect to the new rules being considered by the PBGC.

Accordingly, the PBGC hereby advises contributing sponsors and plan administrators of large plans (500 or more participants) that for plan years

beginning on or after January 1, 1988, the per capita portion of the premium continues to be due in accordance with the existing rule in § 2610.3(a)(6)(ii); that due date is suspended with respect to the variable rate portion of the premium. The due date for any reconciliation of the per capita portion is similarly suspended. For plans with fewer than 500 participants, the due date for the entire premium (set forth in § 2610.3(a)(6)(i)) is suspended. The PBGC currently contemplates changing all of the foregoing due dates that are suspended to the date 8½ months after the close of the prior plan year.[1]

For new plans or plans newly covered under Title IV, and for plans for which the plan year that began in 1987 was a short plan year, the PBGC is also suspending the due dates for the initial premium payment and the 1988 premium payment, respectively. For a plan for which the first plan year beginning after December 31, 1987 is a short plan year, the due dates applicable to large plans and small plans, as modified herein, would continue to apply (§ 2610.3(a)(8)). The amended regulation will provide additional guidance to all such plans.

The PBGC plans to make parallel changes to the premium due dates for multiemployer plans. Although the new premium rate structure does not apply to multiemployer plans, it would be more costly for the PBGC to administer different payment schedules for multiemployer and single-employer plans. Therefore, with respect to multiemployer plans for plan years beginning after December 31, 1987, the PBGC is suspending each payment due date under § 2610.3 that is seven months after the close of the prior plan year; the two-month deadline generally applicable to large plans is not affected.

The PBGC recognizes that the public has many questions concerning the new variable rate premium, and the PBGC is committed to responding to those questions as fully and promptly as possible. The PBGC is still developing many of the details of the new rules. The PBGC can provide some guidance, however, on the valuation of vested benefits for premium purposes.

Under amended ERISA section 4006 (a)(3)(E)(iii)(II), vested benefits are valued using an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the first month of the plan year for which the premium is being paid. The PBGC contemplates using for this 30-year yield the interest rate for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 or H.15.

In calculating unfunded vested benefits, the value of plan assets is substracted from the value of vested benefits. The PBGC currently plans to permit the use, for the purpose of this calculation, of the actuarial value of the plan assets held in the trust without reducing this value by the credit balance (if any) in the funding standard account. This reduction has significance only for purposes of the minimum funding standards, and it would unduly increase the amount of unfunded vested benefits, thus increasing the variable rate portion of the premium.

Along with revising the premium regulation, the PBGC will also revise the PBGC Form 1, Annual Premium Payment. The PBGC intends to issue the amended regulation and from in time to enable plan sponsors and administrators to calculate and pay 1988 premiums in accordance with the new due dates to be established. (A new short form for large plans to use with their initial payment of the $16 per capita charge is being sent out by the PBGC this week.) As noted above, the amended regulation will set forth new payment due dates, as well as the specific rules for determining unfunded vested benefits for premium calculation purposes.

Issued in Washington, DC, the 20th day of January, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-1307 Filed 1-21-88; 8:45 am]

BILLING CODE 7708-01-M

[1] The PBGC would use an 8½ month deadline because, in practice, that is the Form 5500 filing deadline for many plans.

Reader Aids

Federal Register

Vol. 53, No. 14

Friday, January 22, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19
1467-1600	20
1601-1738	21
1739-1908	22

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
5760	855
5761	1464
Executive Orders:	
12537 (Amended by EO 12624)	489
12578 (Superseded by EO12622)	222
12622	222
12623	487
12624	489
Administrative Orders:	
Presidential Determinations:	
No. 88-2 of Oct. 30, 1987	399
No. 88-4 of Dec. 17, 1987	773
No. 88-6 of Jan. 19, 1988	1601
Presidential Findings:	
Jan. 12, 1988	999

5 CFR

353	857
551	1331, 1739
890	1, 860
Proposed Rules:	
213	1769
330	408
336	1769
351	408
890	888

7 CFR

1	1061
7	1441
272	1603
275	1603
301	733
353	1332
354	1740
400	2
401	1001
405	1467
614	1605
704	733
724	1605
905	401, 860
907	6, 491, 1333, 1741
910	7, 492, 1333, 1742
911	402, 1742
915	1742
928	862
959	401
971	401
987	401
1430	107
1610	1743
1902	231
Proposed Rules:	
66	411
301	140
401	505, 507
451	1640
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370, 1790
1126	256
1136	686
1260	509
1701	140

8 CFR

Proposed Rules:	
232	1791
233	1791
235	1791
237	1791
238	1791
239	1791
280	1791
299	1791

9 CFR

77	1002

10 CFR

1	1744
73	403
Proposed Rules:	
2	415
430	30
730	1594

11 CFR

Proposed Rules:	
109	416
114	416

12 CFR

206	492
208	492
226	467
337	597
501	1003
525	312
561	324, 338
563	324, 338, 354, 363, 372, 385, 1004
563c	324
571	338, 372, 385

583 ..... 312, 1003
584 312
614 775
795 1005

Proposed Rules:
226 467

13 CFR
108 1468
140 1606

14 CFR
21 ..... 1745, 1746
23 ..... 1745, 1746
39 ..... 8–14, 232, 493–495, 1334, 1468, 1608–1613
71 ..... 496, 497, 619, 1335, 1336, 1614
75 ..... 497, 1336–1339
91 233
95 1005
97 499

Proposed Rules:
Ch. I 1038
39 ..... 258, 514, 515, 1371–1374
71 ..... 516, 517, 666, 670, 674, 907–910, 1375
73 ..... 517, 991

15 CFR
372 1614
374 1614
399 ..... 108, 1616
806 1015

Proposed Rules:
379 418

16 CFR
13 609

Proposed Rules:
13 ..... 141, 1039

17 CFR
1 ..... 609, 615
211 ..... 109, 865, 1341

Proposed Rules:
300 1793

18 CFR
3 1469
154 ..... 867, 1748
270 867
271 15
273 867
375 ..... 867, 1469, 1748
381 ..... 867, 1469
382 1748
388 1469
389 1750
410 1751
1301 405

19 CFR
4 1103
24 615

Proposed Rules:
132 1376
141 30
142 1376
178 30

20 CFR

Proposed Rules:
361 143
901 147

21 CFR
81 19
176 97
193 ..... 20, 233
540 234
546 235
558 ..... 235, 236, 1017
561 ..... 20, 233
606 111
610 111
640 111
884 1554
892 1554
1308 500

Proposed Rules:
102 1795
193 259
201 1796
561 259
864 1574
866 1574
868 1574
870 1574
876 1574
880 1574
882 1574
884 1574
890 1574
892 1574
1308 743

23 CFR
655 236

24 CFR
200 842
203 868
215 ..... 842, 1122
221 615
235 842
236 ..... 615, 842
247 842
812 842
880 ..... 842, 1122
881 ..... 842, 1122
882 ..... 842, 1122
883 ..... 842, 1122
884 ..... 842, 1122
886 ..... 842, 1122
904 1122
905 1122
912 842
960 1122

Proposed Rules:
115 260

25 CFR

Proposed Rules:
151 1797

26 CFR
1 ..... 117, 238, 1103, 1441

Proposed Rules:
1 ..... 153, 261

27 CFR

Proposed Rules:
9 1492

28 CFR
55 735
541 198

29 CFR
2610 1904
2616 1904
2617 1904
2618 1904
2676 1018
2702 737

Proposed Rules:
1910 1724
2550 1798

30 CFR
202 ..... 1184, 1230
203 1184
206 ..... 1184, 1230
207 1184
210 1184
241 1184
800 994

Proposed Rules:
210 1039
216 1039

31 CFR
103 776

32 CFR
45 1341
104 1343
374 1345
552 1752
887 876

Proposed Rules:
199 1378

33 CFR
110 878
117 ..... 119, 406
165 ..... 616, 878
166 1347

34 CFR

Proposed Rules:
303 1481

36 CFR
5 739
404 120
1254 1348

Proposed Rules:
223 519

37 CFR
201 ..... 122, 123

Proposed Rules:
203 153

38 CFR
4 ..... 21, 1441
17 1755
21 ..... 616, 879, 1756, 1779
36 1349

Proposed Rules:
21 ..... 620, 1040
36 1378

39 CFR
111 ..... 124, 125
232 126
233 1780

40 CFR
2 214
51 ..... 392, 480
52 ..... 392, 501, 1019, 1020, 1354, 1780
61 777
86 470
180 ..... 241, 243, 657
271 ..... 126–128, 244, 1358
421 1704
763 1021

Proposed Rules:
52 ..... 261, 779, 1043
86 1716
156 1494
170 1494
180 ..... 262, 263, 1495
192 1641
261 519
373 850
795 911
796 911
799 ..... 911, 913

41 CFR
101–20 129
105–60 1478
114–51 741

Proposed Rules:
Ch. 201 620
51–7 1379
141 31
142 31
201–11 1805
201–30 1805
201–31 1805
201–32 1805
261 31

42 CFR
405 1617
412 1621
413 1621
418 1621
431 657
435 657
440 657
441 657

Proposed Rules:
410 1383
434 744
435 744

43 CFR
2 24
3100 1184
3160 1184

Public Land Orders:
6661 1359
6662 1359

Proposed Rules:
3160 1039

44 CFR
64 14855

Proposed Rules:
7 922
61 419
62 419
80 621
82 621
83 621

45 CFR
95 26
233 467

Proposed Rules:
1215 1496

1336 1806

46 CFR

Proposed Rules:
588 624

47 CFR
Ch. I 502
0 1022
15 1781
64 27
65 1027
68 1103
73 ..... 28, 29, 504, 1030, 1629, 1630, 1782
90 1022

Proposed Rules:
1 625
63 625
73 ..... 426, 1386–1388, 1807, 1808
74 529
76 625
78 529
95 779

48 CFR
7 660
8 660
13 660
14 660
19 660
22 660
25 660
26 660
28 660
29 660
33 660
42 660
45 660
52 660
501 ..... 130, 132, 1441, 1540
513 ..... 132, 1441
836 1630
852 1630

Proposed Rules:
215 625
225 626
232 931
252 ..... 626, 931
404 749
407 749
409 749
410 749
412 749
414 749
415 749
416 749
417 749
419 749
422 749
424 749
425 749
428 749
432 749
436 749
437 749
439 749
442 749
445 749
446 749
447 749
452 749

49 CFR
24 467
31 880
190 1633
192 1633
541 133
544 1641
565 1032
571 1783
661 617

Proposed Rules:
3 100
7 100
10 100
192 ..... 1043, 1045
383 265
391 42
544 1635
571 ..... 426, 780, 934, 936, 1643
1041 1555
1048 155
1049 155

50 CFR
33 1487
216 1638
611 ..... 134, 741, 890, 894
653 244
663 ..... 246, 248
672 ..... 890, 991
675 ..... 894, 991

Proposed Rules:
20 ..... 42, 1645
226 530
301 156
652 265
658 266
672 627

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Last List January 14, 1988

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1-25-88
Vol. 53 No. 15
Pages 1909-1996

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Monday
January 25, 1988

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Contents

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

Agricultural Marketing Service
See also Packers and Stockyards Administration
RULES
Pork promotion, research, and consumer information, 1909

Agriculture Department
See Agricultural Marketing Service; Cooperative State Research Service; Packers and Stockyards Administration

Army Department
NOTICES
Meetings:
Science Board, 1936

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Manual lifting, work practices guide; NIOSH meeting, 1941

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Voting age population, 1987; estimates, 1931

Cooperative State Research Service
NOTICES
Meetings:
Agricultural Research and Extension Users National Advisory Board, 1931
Science and Education Research Grants Program Policy Advisory Committee, 1931

Defense Department
See also Army Department
RULES
Acquisition regulations:
Sources other than central supply system, 1924
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Military-civilian health services partnership program, 1928
NOTICES
Meetings:
Wage Committee, 1935

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Davis, Irving, MD, 1948

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Cogen Energy Technology, Inc., et al., 1936

Employment and Training Administration
NOTICES
Federal State unemployment compensation program:
Employment Security Manual; experience rating report revision, 1948

Energy Department
See also Economic Regulatory Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Innovative clean coal technology program, 1936
Meetings:
National Petroleum Council, 1937

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate), 1916
Cyfluthrin, 1923

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
Aircraft registration:
Conveyances affecting title to or interest in aircraft; recordation, 1911

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 1978
(2 documents)

Federal Emergency Management Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 1938

Federal Highway Administration
RULES
Engineering and traffic operations:
Convict labor and materials, 1922
Physical construction authorization, 1920

Federal Maritime Commission
NOTICES
Tariffs, inactive; cancellation; correction, 1938

Federal Railroad Administration
NOTICES
Wheel test program, 1974

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
AmeriTrust Corp. et al., 1938
First Commercial Bancshares, Inc., et al., 1939
Sheik, Margie A., 1939
Southold Bancorp. Inc.; correction, 1939
West Bancshares, Inc., 1939

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 1940

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Spreading wild-buckwheat, 1929

Food and Drug Administration
RULES
Human drugs:
Antibiotic drugs—
Erythromycin estolate bulk, 1918
Investigational new drug applications; amendments, serial numbering requirements, 1917
NOTICES
Human drugs:
Export applications—
Cytovene (ganciclovir), 1941
Human drugs;
New drug applications—
U.S. Products, Inc., et al., 1942

General Services Administration
RULES
Acquistion regulations:
Foreign acquisitions; dollar threshold for applicability of Trade Agreements Act, 1925
NOTICES
Agency information collection activities under OMB review, 1941

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration
RULES
Medicaid:
Intermediate care facilities for mentally retarded; correction and reduction plans, 1984

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 1943
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Greensboro, 1944
Seattle, 1944
Privacy Act; systems of records, 1942

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Blackfeet, Crow, Fort Belknap, Fort Peck, and Wind River agencies, MT, 1945

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service

International Trade Administration
NOTICES
Adjustment assistance:
Exact Machine Co., Inc., et al., 1932
Antidumping:
Brass sheet and strip from—
Netherlands, 1933
Red raspberries from Canada, 1934

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Buffalo, Rochester & Pittsburgh Railway Co. et al., 1947

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Management framework plans, etc.:
Idaho, 1945
Meetings:
Salt Lake District Grazing Advisory Board, 1945
Opening of public lands:
Nevada, 1946
Resource management plans, etc.:
Box Elder Resource Area, UT, 1946

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 1967
Meetings:
Humanities Panel, 1967

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Geophysical Service Inc., 1935

National Park Service
NOTICES
Concession contract negotiations:
Akers Ferry Canoe Rental, Inc., 1946
Meetings:
Acadia National Park Advisory Commission, 1947

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 1967

National Transportation Safety Board
NOTICES
Aircraft accidents; hearings, etc.:
Stapleton International Airport, Denver, CO; Continental Airlines, Inc./McDonnell Douglas, 1967

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive waste, low level; emergency access to non-federal and regional disposal facilities; criteria and procedures
Correction, 1928
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 1968
Reports; availability, etc.:
Standard review plan—
Branch technical position, 1968
Applications, hearings, determinations, etc.:
Duquesne Light Co. et al., 1968
Tennessee Valley Authority, 1970

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Limestone Co. Feeder Pig Assn., Inc., AL, et al., 1931

Presidential Documents
PROCLAMATIONS
Special observances:
American Heart Month (Proc. 5762), 1960

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 1978
Applications, hearings, determinations, etc.:
Boettcher Venture Capital Partners II, L.P., et al., 1972

Small Business Administration
NOTICES
License surrenders:
Camden Investments, Inc., 1974
Meetings:
National Small Business Development Center Advisory Board, 1974

Transportation Department
See also Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 1974

Treasury Department
NOTICES
Agency information collection activities under OMB review, 1977

Urban Mass Transportation Administration
NOTICES
Environmental statements; availability, etc.:
Austin, TX, 1976

Veterans Administration
NOTICES
Agency information collection activities under OMB review, 1977

Separate Parts In This Issue

Part II
The President, 1980

Part III
Department of Health and Human Services, Health Care Financing Administration, 1984

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5762 1980

7 CFR
1230 1909

10 CFR
Proposed Rules:
62 1926

14 CFR
47 1911
49 1911

21 CFR
193 1916
312 1917
436 1918
452 1918
561 1916

23 CFR
635 (2 documents) 1920, 1922

32 CFR
Proposed Rules:
199 1926

40 CFR
180 1923

42 CFR
442 1984

48 CFR
208 1924
525 1925

50 CFR
Proposed Rules:
17 1929

Rules and Regulations

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the order issued thereunder, this final rule (1) increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1988 seven-market average price for domestic barrows and gilts and (2) changes the schedule for remitting monthly assessments of less than $25 on domestic porcine animals to the National Pork Board (Board) from monthly to quarterly.

DATE: Effective February 24, 1988.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610 South; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447–2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the order would not have a significant effect upon a substantial number of small entities. Many producers, importers, and collecting persons may be classified as small entities.

Increasing the assessments per pound on imported pork and pork products by two- to three-hundredths of a cent-per-pound will result in about $200,000 more in assessments over a 12-month period. Changing the schedule for remitting and reporting monthly assessments of less than $25 to the Board from monthly to quarterly will promote greater efficiency and cost-effectiveness. Modifying the remittance schedule for assessments on domestic porcine animals will benefit those persons who remit less than $25 per month to the Board. Any additional costs will be outweighed by the benefits from the improved operation of the pork promotion, research, and consumer information program. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the Office of Management and Budget (OMB) has reviewed and approved the information collection requirements contained in this final rule. The information collection requirements have been assigned OMB control number 0851–0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The order requires importers of porcine animals to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the animal's declared value. The order also requires importers of pork and pork products to pay to the Customs Service, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products. The initial schedule of assessments was listed in a table in the order for each type of pork and pork products identified by a Tariff Schedule of the United States (TSUS) number.

The order requires purchasers of domestic porcine animals or in some special cases producers of such animals to remit all assessments due at the time of sale to the Board by the 10th day of the month following the month in which the animals were marketed.

On October 22, 1987, the Agricultural Marketing Service (AMS) published in the **Federal Register** (52 FR 39538) a proposed rule which would (1) increase the per-pound assessments on imported pork and pork products consistent with increases in the 1988 average price of domestic barrows and gilts to provide comparability between importer and domestic assessments and (2) establish a quarterly schedule for remitting to the National Pork Board domestic assessments of less than $25 monthly. Additionally, the proposed rule provided for removing the section of the order—§ 1230.91—containing the OMB control number assigned pursuant to the Paperwork Reduction Act of 1980 (49 U.S.C. Chapter 35) and adding it to the regulations implementing the order. The proposed rule was published with a request for comments by November 22, 1987. Sixteen comments were received—one from a national pork producers organization, one from a national organization representing importers of pork and pork products, one from the Board, one from a national farm organization, two from State farm organizations, one from a national livestock marketing association, six from State pork producer associations, and three from national swine breeder's associations. All commentors were in favor of the proposed increase in the assessments on imported pork and pork products and the proposed change in the schedule for remitting small domestic assessments. Commentors expressed the

opinion that the increase in assessments for pork and pork products was fair and equitable and would promote comparability between import and domestic assessments. Additionally, commentors believed that the change in the schedule for remitting domestic assessments from monthly to quarterly for amounts of less than $25 per month would result in a reduction in the paperwork for small producers and operators thus saving them time and money. No comments were received on the proposal to delete the Paperwork Reduction Act assigned control number from the order and include it in the regulations.

When the order was first published, the initial per-pound assessment on imported pork and pork products listed in the table in § 1230.71 of the order was calculated using the conversion formula, described in the supplementary information accompanying the order and published in the September 5, 1986, Federal Register at 51 FR 31901 and the 1985 annual seven-market average price of $44.50 per hundredweight for domestic barrows and gilts. The discussion of the conversion formula noted that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products. The 1986 annual seven-market average price per hundredweight was $50.59—an increase of slightly more than 13 percent over the comparable 1985 per hundredweight price. Accordingly, the per-pound assessment for each type of pork and pork products subject to assessment under the order is increased proportionately. It is estimated that a corresponding increase in the per-pound assessment for pork and pork products would result in about $200,000 more in importer assessments over a 12-month period.

Since it is anticipated that adjustments, if necessary, will be made on a yearly basis, the table for assessments on imported pork and pork products, which presently appears in § 1230.71(e) of the order, is removed from that section and added to a new subpart containing regulations implementing the order.

The procedures and schedule for the collection and remittance of domestic assessments are specified in § 1230.71 of the order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals if an assessment is due and remit such assessment to the Board by the 10th day of the month following the month in which porcine animals were marketed. As referenced in § 1230.71(b)(1) of the order, a purchaser is any person buying feeder pigs or market hogs; and, for purposes of collection and remittance of assessments, also includes any person engaged as a commission merchant, as well as an auction market, or livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a producer. However, in certain situations, producers are required to pay assessments directly to the Board. Those instances are seed stock producers and producers who slaughter their porcine animals for sale or who sell porcine animals to consumers for custom slaughter. Based on the Board's experience since collection of assessments began November 1, 1986, most purchasers collecting assessments collect and remit substantial amounts of assessments to the Board each month. However, the producers described above who are responsible for remitting assessments to the Board upon sale of their porcine animals may have only a limited number of sales per month and therefore owe relatively small amounts of assessments at the end of each month (i.e., $5 to $10). The time and the costs involved with reporting and remitting these small amounts monthly and the cost of processing them are disproportionally greater than for remitting and processing larger amounts. Establishing a different remittance date for such small volume purchasers and producers based on a minimum monthly dollar amount can facilitate collection and remittance and reduce processing costs.

Accordingly, this rule establishes a quarterly remittance schedule to permit purchasers and producers whose total assessments are less than $25 per month to accumulate such assessments for a designated 3-month period. If, during any month of the quarter, assessments totaled $25 or more, they must be remitted to the Board, together with any previously unremitted assessments, by the 10th day of the following month. A purchaser or producer is required to remit all assessments collected during the quarter by the 10th day of the month following the end of the applicable quarter. Purchasers and producers whose monthly assessment amounts total $25 or more must continue to submit such assessments by the 10th day of the month following the month in which porcine animals were marketed. No change is needed concerning those reporting requirements. Reports are due at the time for remitting assessments to the Board as required by § 1230.80 of the order.

The control number assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) is displayed in § 1230.91 of the order. That section is being deleted. The OMB control number will be included in § 1230.120 of the regulations. Paperwork Reduction Act assigned control numbers are more appropriately included in the regulations.

List of Subjects in 7 CFR Part 1230

Administrative Practice and Procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§§ 1230.100–1230.102 (Subpart B) [Redesignated as §§ 1230.400–1230.402 (Subpart C)]

2. Sections 1230.100–1230.102 (Subpart B) are redesignated as §§ 1230.400–1230.402 (Subpart C).

3. Amend Subpart A—Pork Promotion, Research, and Consumer Information Order by revising § 1230.71(b)(3) and (e) to read as follows:

§ 1230.71 [Amended]

* * * * *

(b) * * *

(3) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the "National Pork Board," which, together with the reports required by § 1230.80, shall be sent to the address designated by the Board in accordance with the following remittance schedule:

(i) Monthly assessments totaling $25 or more shall be remitted to the Board by the 10th day of the month following the month in which the porcine animals were marketed.

(ii) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 10th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(iii) Assessments totaling $25 or more during any month of a quarter must be remitted in accordance with paragraph (b)(3)(i) of this section, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(iv) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b)(3) (i), (ii), or (iii) of this section, must be remitted by the 10th day of the month following the end of the quarter regardless of the amount.

* * * * *

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

§ 1230.94 [Removed]

4. Section 1230.94 is removed.

5. A new Subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec
1230.100 Terms defined.

Assessments

1230.110 Assessments on imported pork and pork products.

Miscellaneous

1230.120 OBM control number assigned pursuant to the Paperwork Reduction Act.

Subpart B—Rules and Regulations

Definitions

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

Assessments

§ 1230.110 Assessments on imported pork and pork products.

The following imported pork and pork products are subject to assessment in the amount per pound as follows:

Pork and pork products (U.S. Tariff Schedule No.)	Assessment (dollars per pound)
106.4020	0.0018
106.4040	.0018
106.6000	.0018
106.8500	.0018
107.1000	.0025
107.1500	.0025
107.3020	.0018
107.3040	.0018
107.3060	.0021
107.3515	.0027
107.3525	.0027
107.3540	.0019
107.3560	.0025

Miscellaneous

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Done at Washington, DC on: January 19, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-1319 Filed 1-22-88; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47 and 49

[Docket No. 20349; Amdt. Nos. 47-23 and 49-9]

Recordation of Conveyances Affecting Title to, or an Interest in, Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: These amendments adopt rules affecting aircraft registration and the recordation of conveyances, by eliminating the requirement for a conditional sales vendee to have the consent or a release from the conditional sales vendor before transferring the ownership of the aircraft. The amendments are in keeping with the express language of the Uniform Commercial Code. The amendments are in response to petitions for rulemaking filed by Cessna Finance Corporation and the Aircraft Finance Association.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Agnes M. Jones, Aircraft Registration Branch, (AAC–250), Airmen and Aircraft Registry, Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125; Telephone (405) 686–2284.

SUPPLEMENTARY INFORMATION:

Background

A Federal system for recordation of instruments transferring or affecting interests in aircraft was first established by Congress in 1938. Currently section 503 of the Federal Aviation Act of 1958 (the Act) requires the FAA to establish and maintain a system for recording conveyances affecting title to, or interest in, civil aircraft. These documents include bills of sale, contracts of conditional sale, mortgages, and other security agreements. The Act also provides that no conveyance shall be valid against any person other than the persons involved in the conveyance, or a person who has actual notice, until the conveyance affecting the aircraft is recorded with the FAA.

Under the Act, an aircraft may only be registered by its owner. Since 1939, as a result of the O'Conner decision (1 C.A.A. 5, 1939), the regulations have recognized the buyer of an aircraft under a contract of conditional sale as the owner for registration purposes. This is true even though the conditional seller retains legal title until the buyer meets the conditions of the contract. The FAA considers certain leases with option to purchase, and bailment leases, as defined in 49 U.S.C. 1301(19), "conditional sales", to be equivalent to conditional sales and wherever the terms "conditional sales" or "conditional sales contract" are used, they include those leases with option and bailment leases.

Parts 47 and 49 of the Federal Aviation Regulations (FARs) historically have recognized this special character of a contract of conditional sale. Section 47.11, Evidence of Ownership, requires the transferee under a contract of conditional sale to submit the contract (unless it is already recorded at the FAA Aircraft Registry (Registry)) and the transfer from the original buyer, bailee, lessee, or prior transferee. The transfer must bear the written assent of the seller, bailor, lessor, or transferee thereof under the original contract. To obtain a certificate of aircraft registration under § 47.31, the applicant must submit evidence of ownership acceptable under § 47.11.

In addition, §§ 47.11 and 49.17 provide that a transfer of the conditional buyer's interest cannot be recorded and the aircraft cannot be registered to the buyer's transferee without the consent of the conditional seller. However, if a person holds any other kind of security interest in an aircraft, such as a security agreement, or a chattel mortgage, the consent of the secured party is not required for recordation of the transfer

and registration of the aircraft to the transferee.

The Uniform Commercial Code (U.C.C. or the code) makes no distinction between contracts of conditional sale and other security agreements. Section 1–201(37) of the code states that the retention or reservation of title by a seller, notwithstanding delivery of the property to the buyer, is limited in effect to a reservation of a "security interest". As provided in section 9–306 of the U.C.C., a perfected security interest continues in the collateral regardless of sale or exchange by the debtor. Section 9–311 further states that the debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment, or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer of making the transfer constitute a default.

ANPRM

On August 11, 1975, the Cessna Finance Corporation (CFC) submitted a petition for rulemaking to the FAA. The CFC petition asks that Parts 47 and 49 be changed to remove the distinction between the FAA's handling of conditional sales contracts and its handling of other security instruments. This would be done by requiring consent of the holder of every outstanding recorded security interest prior to recording any bill of sale or other transfer from the debtor to a third party, as a prerequisite to issuing a certificate of aircraft registration to the transferee.

The CFC petition prompted the FAA to issue an advance notice of proposed rulemaking (ANPRM) on October 20, 1977 (Notice No. 77–24; 42 FR 55897). This notice, in keeping with the intent of the U.C.C. proposed to abolish the distinction between contracts of conditional sale and other security interests recorded with the FAA. The FAA proposed to accomplish this, not in the manner requested by CFC, but by eliminating the requirement of written consent of the conditional vendor to the transfer of the original buyer's interest before recording the transfer and registering the aircraft. The FAA explained in the ANPRM that an amendment similar to the one proposed by CFC would discourage transfer of the buyer's interest in the aircraft and thus be contrary to the intent of the U.C.C. In addition, the amendment would involve a substantial increase in the administrative costs and workload of the Registry. The ANPRM further solicited suggestions of alternative courses of action which would be consistent with the U.C.C., administratively reasonable, and also afford protection to persons who hold security interests in aircraft.

Subsequent to the publication of the ANPRM, the Aircraft Finance Association (AFA) filed a petition for rulemaking, dated March 16, 1979, proposing the same requirement as CFC requested. It did not specify, however, when the burden would fall upon the buyer of the aircraft to obtain the consent or release of the security interest by the creditor and when it would fall upon the seller.

NPRM

In response to the AFA petition and in further response to the CFC petition, the FAA published notice of proposed rulemaking (NPRM) No. 80–9 on May 22, 1980 (45 FR 34286). The notice proposed to delegate regulations affording special consideration to conditional sales contracts in view of modern state statutes which, in accordance with the U.C.C., treat alike all instruments executed for security purposes as they concern the rights, duties, and remedies of the parties. Specifically, the notice proposed to amend § 47.11(a) by eliminating the requirement that the transferee under a contract of conditional sale submit with an Aircraft Registration Application, written assent of the seller, bailor, lessor, or assignee thereof, under the original contract, to the assignment. It also proposed to amend § 49.17 to eliminate the consent of the conditional seller and consolidate the recording requirements for instruments executed for security purposes.

In support of the proposal, the FAA made the following observations. For many years, the special character of the contract of conditional sale, i.e., the retention of legal title by the vendor, was thought to have warranted the special protection of consent to transfer. However, the Act does not specifically authorize the Administrator to refuse to record a conveyance affecting title to, or an interest in, aircraft in the absence of a secured creditor's assent to that conveyance. Section 503(c) of the Act leaves the determination of the substantive validity of any conveyance to state law, specifically, the law of the state where the instrument is delivered. To the extent that the Act does not regulate the rights of parties to, and third parties affected by, these transactions, security interests in aircraft are controlled by Article 9 of the U.C.C., which has been adopted in 49 of the 50 states.

The NPRM noted that the CFC, the AFA, and the commenters to the ANPRM had pointed out that the U.C.C. has eliminated the distinction between conditional vendors and other secured creditors. In view of this virtually uniform policy of state law, the FAA stated, as it did in the ANPRM, that the distinction should be abolished for purposes of aircraft registration and recordation. The NPRM pointed to the policy of the U.C.C. that debtor's rights in collateral be freely transferable notwithstanding a provision in a security agreement making such a transfer a default. The notice concluded that it would be contrary to the policy of the U.C.C. to restrain such transfers by requiring, as a condition of aircraft registration and recordation, the assent of the secured creditor to a conveyance of the aircraft. The FAA stated that it is improper to override these state laws, in the absence of specific Federal statutory authority, unless it is necessary to carry out the provisions of a Federal statute or treaty.

Response to the NPRM

Forty-seven comments were received in response to the NPRM. Thirty-seven commenters oppose the FAA proposal. Twenty of those 37 commenters ask that CFC's proposal be implemented.

Six commenters point out that insurance becomes invalid if ownership is transferred without the lienholder's knowledge. However, maintenance of appropriate insurance is the responsibility of the owner of the aircraft and is not an FAA requirement. While operation of aircraft with appropriate insurance coverage is desirable, and aircraft transfers do affect insurance coverage and the security of the aircraft as collateral, the proposed regulations would not affect the owner's responsibilities as to insurance.

Twenty-four commenters contend that the proposed amendments would adversely affect aircraft financing and commerce. They contend that implementation of the changes proposed in the NPRM would relieve the mortgagor (conditional buyer, lessee, bailee, etc.) of the responsibility of providing either a release of the security agreement or a consent from the security holder, allowing the free transfer of the debtor's interest. The commenters believe that the effect would be that the security holder might then not be aware of the impending transfer, and might not be able to protect its interests or be assured of the continued safety of its collateral.

Although the NPRM invited interested persons to submit data concerning any possible impact, no commenter did so.

As stated in the NPRM, approximately 15 percent of the security transactions filed with the Registry are contracts of conditional sale. The majority of these which require a release or consent to the sale of such aircraft have the required release or consent attached. Sellers who do not submit a release or consent with other documentation of the sale must be advised of the requirement, and this places an additional burden on the Registry. This process impedes expeditious registration to a new buyer. By removing the requirement, a significant amount of time will be saved by the seller, the security holder, and the FAA in documenting and processing such sales and the registration to subsequent buyers.

Nothing the FAA can do will change the prospect that collateral may be sold out of trust, with or without the security holder's consent. While this final rule may remove an obstacle to a sale out of trust, the agency is not persuaded that this will have an appreciable effect on secured transactions generally. Some commenters suggest that removing the release or consent requirement would increase the amount of down payment required in secured sales, or increase the amount of interest charged the buyer, or increase secured party losses, or all three. However, no information in terms of actual increases or events of transfer which result in loss were provided by the commenters, so these anticipated losses must be considered speculative at this time.

One commenter states that the proposed rule will affect a $6 billion industry. Other banks and aircraft financing concerns also commented that their respective involvement may total over one-half billion dollars a year. Many of these concerns state that they are currently carrying $50–100 million in outstanding obligations. However, no commenter states what proportion of their transactions were conditional sales, if any, or how many conditional sales were affected by sales out of trust.

One commenter, citing section 9–104 of the U.C.C., stated that the U.C.C. does not apply to aircraft because a security interest in aircraft is subject to a statute of the United States which governs the rights of the parties to, and third parties affected by, the transaction. Section 9–103(3)(a) specifically names airplanes as one of the mobile goods covered by the code. The Act provides a central location whereby recorded conveyances and instruments shall be valid as to all persons without further or other recordation; however, it does not prescribe the rights, obligations, and remedies of the parties to the transactions.

Three commenters stated that they did not believe security interests in aircraft were covered by the U.C.C. because section 9–302(3) specifies that the filing of a financing statement, otherwise required by Article 9 of the code, is not necessary or effective to perfect a security interest in property subject to a statute or treaty of the United States which provides for a national or international registration or specifies a different place for filing a security interest. The FAA does not have a provision for the filing of a "notice" of interest in aircraft (the financing statement), but rather section 503(a)(1) of the Act provides for the recording of the conveyance which contains all of the terms and provisions of the transaction affecting an interest in aircraft. The Act provides a preempted location for recording security interests, but otherwise does not displace the U.C.C. as to any substantive or procedural rights. *Philko* v. *Shacket*, 103 S.Ct. 2476 (1983), *In re Gary Aircraft*, 681 F.2d 365 (5th Cir. 1982), *In re Holiday Airlines*, 620 F.2d 731 (9th Cir. 1980). The validity of any instrument is determined by state law, and in the event of default, remedies are in accordance with the provisions of the security instrument and state law.

The FAA does not expect the adoption of the amendment to have an appreciable effect on the choice of security formats available to financers and their customers. The relations, obligations, and rights of the parties are matters of mutual agreement. The agency action in treating all security transactions alike should not have been an adverse affect on the reciprocal duties of the parties. Most security agreements, by whatever name they are called, contain provisions restricting transfers, perhaps restricting the base or home location of the aircraft, and specifying events of default. FAA regulations and this amendment do not change these provisions; the obligations of the parties remain the same. It should not be the responsibility of the FAA to participate in enforcing the terms of a financing transaction, but rather the parties themselves should select the security format, with its concomitant default and redress clauses, most appropriate to the wishes and needs of the parties.

It appears that only the FAA has the requirement for submission of a consent or release prior to recognition of a sale. Such a requirement would seem to be unenforceable under any state law. The final rule does not change the holder's right to have the security in the collateral continue notwithstanding the sale, nor change specific contract language, if the contract contains any language to the effect that a sale may be an event of default. The FAA recognizes that a sale by a conditional purchaser may result in the seller losing track of the collateral, but since the Registry records are open to the public, the seller or other security holder can check on the current registration at any time. The FAA places its records at the disposal of the public free of charge and in as expeditious a manner as possible.

As a less sweeping alternative, some commenters suggest that notification be made to all lienholders when registration is transferred (as opposed to a refusal to transfer). However, the implementation of such an alternative would be almost identical to implementation of the complete CFC proposal insofar as increased workload is concerned, with questionable gain to the lienholder, to whom an after-the-fact notification may be untimely.

Three commenters favor the proposal offered in the NPRM. All three oppose the cost of implementing and maintaining the procedures requested by CFC, and two object to the Government taking over the responsibility of furnishing information or a service presently available from the private sector, i.e., the services of aviation title search companies.

Finally, five commenters favor continuing the present procedure. Two state that maintaining the "status quo" is preferable to the "halfway" measure requested by the CFC and changes should be made only if issuance of a "clear and absolutely clean" title replaced the present system. Two others want no change only if CFC procedures could not be implemented. The fifth advocates no change, saying the CFC proposal would only increase the backlog and prolong the time span required to issue a certificate of aircraft registration.

The FAA has carefully considered all comments. However, since the U.C.C. has virtually eliminated any distinction between forms of security interests and the Act provides no basis for such a distinction, the FAA is not justified in perpetuating by regulation, one distinction in one singular type of transaction. The FAA is now fully persuaded that, since the validity of the instruments is governed by state law, and since state law prescribes that collateral shall be fully transferable, regulations should be changed to reflect this law. Without an amendment to the Act specifically authorizing it to do so,

the agency cannot continue an archaic practice that has been specifically changed in intent and in fact by the U.C.C.

The expressed purpose of the Administration's regulatory program is to place less, not more, responsibility on the Government for levying requirements on the public and enforcing those requirements. By requiring less documentation for an aircraft transfer, which is subject to a conditional sales contract, the amendment will place all transferors and all holders of security interests on an equal footing; that is, nothing more will be required of persons selling an aircraft subject to a conditional sales contract than of persons selling an aircraft subject to a chattel mortgage or deed of trust. Similarly, a person holding a security interest called a conditional sales contract will be in no different a position than the holder of any other agreement.

Without specific statutory authority to continue the current practice, the FAA has concluded that Parts 47 and 49 should be amended by deleting the requirement for a release or consent of the holder of a conditional sales security interest prior to registration of an aircraft to a buyer who purchases from a conditional sales vendee, or to record a transfer from the same individual.

Paragraph (a)(2) of § 47.47, *Cancellation of Certificate for Export Purposes*, is being revised to eliminate an unnecessary distinction between contracts of conditional sale and other security agreements. These amendments, however, do not change the requirement for a release or consent from the holders of all recorded rights when the aircraft registration is to be cancelled for export purposes. This requirement implements the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830) (Convention), and is set out in § 47.47 of the FARs. In 1985, over 2,000 U.S. registered aircraft were exported, and consents or releases were provided in all cases where the aircraft were subject to recorded rights. This requirement is placed on all exported aircraft regardless of whether the aircraft is being exported to a country which is also a signatory to the Convention.

Editorial Changes From the NPRM

Editorial changes have been made to the Part 49 amendment from the language of the NPRM in the following manner: all references to "mortgage", or "chattel mortgage", have been changed to the more generic term, "security agreement". This is the term generally accepted by the U.C.C. to refer to such instruments, regardless of the historical name; names are not critical for recording purposes. Similarly, wherever reference is made to "FAA recorded document number", that is changed to "FAA recorded conveyance number" in accordance with current Registry practice.

Although the NPRM stated that the proposed amendment would not affect § 47.47(a), which deals with the requirements of the Convention on International Recognition of Rights in Aircraft (4 U.S.T. 1830), editorial changes are made to remove those requirements in that section that distinguish conditional sales contract from other security instruments. Under § 47.47(a) the requirement remains exactly the same: All recorded security instruments must be released or have the consent to cancel registration from the holder of the instrument. This is meant to be an editorial change only, and no substantive change is intended.

Benefit-Cost Analysis

The FAA is amending Parts 47 and 49 of the FAR's to eliminate the current requirement for a release or consent from the holder of a conditional sales security interest to registration of an aircraft to a conditional sales buyer. These amendments would treat conditional sales contract the same as other security agreements in which the FAA does not require the consent of the secured party to record the transfer and registration of the aircraft to the buyer. A conditional sales contract is one in which the buyer and seller agree to fulfill certain conditions; e.g., observe warranties, provide proper maintenence, meet a payment schedule. The buyer takes possession of the aircraft and registers it with the FAA even though the seller retains legal title until all the conditions of the contract are satisfied.

Registry experience is that about 15 percent of aircraft security documents are conditional sales contracts, generally involving 4,725 aircraft on an annual basis. Although this proportion is small, it appears that some of the major lenders in the industry rely heavily on this type of financial arrangement. Both Cessna Finance and Chase Manhattan Aircraft Finance, which acquired Piper Acceptance Corporation in 1985, have indicated that the bulk of their aviation lending consists of conditional sales contracts. Both of those companies also indicated that 20 percent of these contracts were to the dealer for inventory financing and 80 percent went to the end user. In the case of an end user conditional sales contract, the dealer will "assign" the contract to the lender. Although information on individual aviation lenders' use of this type of contract format is very sketchy, it appears that perhaps about half a dozen aviation lenders have significant volume of conditional sales contracts.

The FAA expects that adoption of the proposal would facilitate the sale of used aircraft by requiring less documentation for an aircraft transfer subject to a previously recorded conditional sales contract. As noted above, approximately 15 percent of all security contracts are conditional sales which require the additional documentation. Another expected benefit of this amendment is a reduced workload for the Registry because it would eliminate the need for returning and resubmitting transfer documents when the necessary consents are lacking. This saving in time is not expected to be very significant, however, in view of the fact that only 5 percent of all conditional sales transfer documents (or less than 250 per year) must be returned by the FAA because the required releases have not been obtained.

Another benefit of this rule is consistent treatment of loan collateral involved in conditional sales of aircraft between Federal regulation and the state U.C.C.'s. The U.C.C. makes no distinction between contracts of conditional sale and other forms of security agreements. The validity of the loan instruments is governed by state law and because state law prescribes that collateral shall be fully transferable, the Federal regulation should be consistent.

A half dozen conditional sales lenders were contacted by the FAA. They prefer conditional sales contracts because of the additional protection of the collateral in the form of "registration around liens", under which the FAA will not change registration of an aircraft without the consent of the lienholder. Under a standard loan arrangement, the FAA does not require such a consent prior to registering the aircraft in the name of the purchaser. Some lenders are critical of the proposed rule, claiming it would increase their risk exposure. The lenders assert that they would otherwise have no indication that the borrower was attempting to sell or had sold the collateral and would therefore be forced to search the Registry records to determine if a sale had in fact occurred. Also lenders might lose their collateral insurance because policies terminate with the sale of aircraft. Lenders assert they would be forced to change the terms on aircraft loans by increasing rates and down payment requirements which would ultimately reduce the overall volume of their aviation loan portfolios. They indicated that the degree of this change would depend largely on their loss experience which cannot be predicted at this time.

The FAA does not expect the adoption of the amendment to have a significant effect on the risk exposure of aviation lenders using the conditional sales format, however. In the first place, the protection of collateral afforded by the FAA requirement for the consent of the lien-holder is not available in the case of conditional sales contract to dealers for inventory financing because the lien would not be enforceable under the state U.C.C.'s after the dealer sells to an end user. Under the U.C.C., a person who buys an aircraft from a dealer takes title to the aircraft free and clear of any security interest in the aircraft. [U.C.C. 9-307(1).]

On the other hand, a person who purchases an aircraft from a person who is not in the business of selling aircraft, i.e., the original purchaser would be legally obligated to release the collateral to the lender in the event the conditional buyer of the aircraft, i.e., the debtor, defaulted on his payments. Effects of this proposal therefore appear limited to "end user" loans.

Conditional sales lenders have expressed concern that implementation of the proposal would force them to institute replevin proceedings (which would take up to 2 years) to recover the collateral in the event of a default, thereby delaying the process and increasing their cost and risk exposure. The FAA maintains that the lenders would not generally be required to follow this protracted course because state laws entitle them to repossess property on which they hold a lien without breaching the peace. Replevin proceedings are not likely to increase since the law presumes that the buyer has knowledge of any debt or security agreement recorded by the Registry that may encumber any purchased aircraft.

In summary, the adoption of the proposal is not expected to have a significant impact on the risk exposure of the lenders. Even if the aircraft is sold out of trust, the lender retains a lien of record on the aircraft in the case of nondealer sales and remains in the same priority with respect to other persons asserting rights in the aircraft. While the possibility exists that FAA may register aircraft to buyers from conditional vendees, thereby creating legal problems for some lenders, lenders can adequately protect rights to the collateral by specifying the obligations of the parties in the loan agreements. The FAA is not persuaded that the terms of loans will be adversely affected by the implementation of this proposal.

Regulatory Flexibility Analysis

The FAA has determined that the rulemaking action will not have a significant economic impact on a substantial number of small entities.

As noted above, the risks of conditional sales agreements involving aircraft dealers would probably not be affected. The cost of new aircraft to commercial operators of all sizes, which to some extent reflects the financing costs of dealers, would therefore not be affected. Any possible effects on the cost of used aircraft are likely to be minimal in view of the prevalence of the standard "chattel" loan format in the aircraft purchase financing industry which would not be affected by this action.

International Trade Impacts

The Registry is aware of only one foreign aircraft manufacturer which specifically selected the conditional sale format for sales to its U.S. distributors in order to take advantage of the requirement for a release or consent before further transfer would be recognized. However, since a purchaser from a dealer takes possession free and clear of any dealer financing, regardless of FAA's requirements, no impact can be shown other than in those situations where the distributor transfers the aircraft to another dealer. This manufacturer did not comment on the proposed rule change. Accordingly, the FAA has determined that the economic impact of the amendment on international trade would be minimal and imposes no significant barrier.

Conclusion

This amendment will provide consistent treatment of aircraft subject to security agreements and result in a minimal cost benefit by requiring less documentation for the registration of certain used aircraft. It is not expected to have a significant impact on the risk exposure of lenders. For these reasons, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the same reasons, it is certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, on a substantial number of entities. A copy of the final regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects

14 CFR Part 47

Aircraft, Registration, Security agreements, Transportation.

14 CFR Part 49

Aircraft, Recordation, Security agreements, Transportation.

Denial of Petitions and Adoption of Amendment

For the reasons set out in the preamble, the petitions of Cessna Finance Corporation and Aircraft Finance Association are denied, and 14 CFR, Parts 47 and 49 are amended as set forth below.

PART 47—AIRCRAFT REGISTRATION

1. The authority citations following sections in Part 47 are removed and the authority citation for Part 47 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1401, 1403, 1405, 1408, and 1502; 4 U.S.T. 1830.

§ 47.11 [Amended]

2. Section 47.11(a) is amended by removing the phrase ", that bears the written assent of the seller, bailor, lessor, or assignee thereof, under the original contract."

3. Section 47.47(a)(2) is revised to read as follows:

§ 47.47 Cancellation of certificate for export purposes.

(a) * * *

(2) Evidence satisfactory to the Administrator that each holder of a recorded right has been satisfied or has consented to the transfer.

* * * * * *

PART 49—RECORDATION OF AIRCRAFT TITLE AND SECURITY DOCUMENTS

4. The authority citation for Part 49 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1401, 1403, 1405, 1408, and 1502; 4 U.S.T. 1830.

5. Section 49.17 is amended by removing paragraph (e) and revising paragraph (d) to read as follows:

§ 49.17 Conveyances recorded.

* * * * * *

(d) The following rules apply to conveyances executed for security purposes and assignments thereof:

(1) A security agreement must be signed by the debtor. If the debtor is not the registered owner of the aircraft, the

security agreement must be accompanied by the debtor's Application for Aircraft Registration and evidence of ownership, as prescribed in Part 47 of this chapter, unless the debtor—

(i) Holds a Dealer's Aircraft Registration Certificate and submits evidence of ownership as provided in § 47.67 of this chapter (if applicable);

(ii) Was the owner of the aircraft on the date the security agreement was signed, as shown by documents recorded at the FAA Aircraft Registry; or

(iii) Is the vendor, bailor, or lessor under a contract of conditional sale.

(2) The name of a cosigner may not appear in the security agreement as a debtor or owner. If a person other than the registered owner signs the security agreement, that person must show the capacity in which that person signs, such as "cosigner" or "guarantor".

(3) An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(4) An amendment of, or a supplement to, a conveyance executed for security purposes that has been recorded by the FAA must meet the requirements for recording the original conveyance and must describe the original conveyance in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(5) Immediately after a debt secured by a conveyance given for security purposes has been satisfied, or any of the encumbered aircraft have been released from the conveyance, the holder shall execute a release on AC Form 8050-41, Part II—Release, provided to him by the FAA when the conveyance was recorded by the FAA, or its equivalent, and shall send it to the FAA Aircraft Registry for recording. If the debt is secured by more than one aircraft and all of the collateral is released, the collateral need not be described in detail in the release. However, the original conveyance must be clearly described in enough detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

(6) A contract of conditional sale, as defined in section 101(19) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(19)), must be signed by all parties to the contract.

(Issued in Washington, DC, on January 12, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-1376 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 4H5427/R931; FRL-3319-7]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl 3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish a food additive and a feed additive regulation to permit residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on cottonseed hulls and cottonseed oil. These regulations to establish maximum permissible levels of the insecticide in or on cottonseed hulls and cottonseed oil were requested in a petition by Mobay Chemical Corp.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Written objections, identified by the document control number [FAP 4H5427/R930], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 25, 1984 (49 FR 17809), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorne Rd., Kansas City, MO 64120, has filed a food/feed additive petition (FAP 4H5427), proposing that 21 CFR Parts 193 and 561 be amended by establishing regulations permitting tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl]methyl 3-(2,2-dichlorethenyl]-2,2-dimethyl-cyclopropanecarboxylate) in or on the food commodities cottonseed oil at 2.0 parts per million (ppm) and soybean oil at 0.09 ppm and in or on the animal feed commodities cottonseed hulls at 2.0 ppm and soybean hulls at 0.3 ppm resulting from application of the insecticide to cottonseed.

On May 14, 1984, Mobay Chemical Corp. amended the food/feed additive petition by deleting the proposed tolerances on soybean oil and soybean hulls.

There were no comments received in response to the notice of filing.

EPA is granting Mobay Chemical Corp. a tolerance for the pesticide in or on the food additive commodity cottonseed oil and the feed additive commodity cottonseed hulls in conjunction with a permanent tolerance petition for cottonseed, PP4F3406. This regulation appears elsewhere in the Federal Register.

The data submitted in the petition and other relevant material have been evaluated.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat chronic feeding study and a safety factor of 100, is 0.025 mg/kg/body weight/day. The theoretical maximum residue contribution resulting from the established tolerances of 1.0 ppm for residues in or on cottonseed, 0.05 ppm in meat, fat, and meat by-products of cattle, goats, horses, and sheep, and 0.01 ppm in milk is 0.000258 mg/kg body weight/day; this is equivalent to about 1.0 percent of the ADI.

The pesticide may be safely used in the prescribed manners when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) et seq.). It has further been determined that since residues of the pesticide may result in cottonseed oil and cottonseed hulls from the agricultural use provided for in the permanent tolerance, the food and feed additive regulations should be established and should include tolerance limitations. In accordance with the provisions for the establishment of the permanent tolerance on cottonseed, the food and feed additive tolerances will expire on July 31, 1991.

The metabolism of the insecticide is adequately understood for these uses, and the analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Vol. II. No actions are currently pending against registration of the insecticide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the

prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135 et seq.) and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the Federal Register, file written objections with the Hearing Clerk (address above). Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

The Office of Management and Budget (OMB) has exempted this regulation from OMB requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601-612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(c), 72 Stat. 1786 (21 U.S.C. 346(c))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: January 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. Part 193 is amended as follows:

PART 193—[AMENDED]

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.98, paragraph (a), which is currently designated "reserved," is added to read as follows:

§ 193.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate).

(a) A tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

2. Part 561 is amended as follows:

PART 561—[AMENDED]

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 561.98, paragraph (a), which is currently designated "reserved," is added to read as follows:

§ 561.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate).

(a) A tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

[FR Doc. 88-1381 Filed 1-22-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 82N-0394]

Technical Revision in Requirement for Serial Numbering of Amendments to Investigational New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting revised procedures for numbering amendments to investigational new drug applications (IND's). Previously, IND amendments were required to be numbered serially by scientific discipline. Under the new system, a single, three-digit sequential numbering system will apply to all submissions relating to an IND. This action is intended to assist both IND sponsors and FDA in processing IND amendments.

DATE: Effective January 25, 1988. Comments by March 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 19, 1987 (52 FR 8798), FDA adopted new regulations governing the submission and review of investigational new drug applications. The new regulations are called the IND Rewrite. Among other changes, the IND Rewrite adopted new regulations for the format and content of IND amendments. The agency is now revising formatting requirements for IND amendments.

The amendment procedures adopted in the IND Rewrite divided amendments into two classes—protocol amendments and information amendments. Protocol amendments include new protocols, changes in existing protocols, and new investigators added to existing protocols; information amendments cover new information pertinent to each of the scientific disciplines involved in IND review. To assist FDA in processing amendments, the final rule required that both information and protocol amendments prominently identify their contents (e.g., "Information Amendment: Pharmacology-Toxicology," "Protocol Amendment: New Protocol"). In addition, the final regulation required that all amendments be numbered and that all information amendments be serially numbered by discipline (21 CFR 312.31(b)). In numbering amendments, sponsors were expected to adopt separate and unique numbering sequences for chemistry, pharmacology, and clinical information amendments and for protocol amendments. This meant that each IND could have at least four separate sequences of amendment numbers.

Serial numbering was adopted to give the agency a method of assuring that all IND amendments are properly received, identified, and processed. However, both drug firms and the agency have found that serial numbering of amendments by discipline is confusing and difficult to implement, creates unnecessary work, and adds complexity to a system that was intended to be simple. The agency has, therefore, decided to abandon serial numbering by discipline. In its place, FDA is establishing a single, three-digit sequential numbering system.

Under the new numbering system that is being adopted in this final rule, each initial IND will be numbered "000." The

first submission to the established IND (amendment, report, or other correspondence) will be numbered "001." Subsequent submissions will be numbered consecutively in the order in which they are submitted. Numbers will be entered on the IND cover sheet (Form FDA–1571). This new system should significantly improve the agency's ability to track amendments.

Sponsors who are already serially numbering their submissions with a three-digit number may either continue or restart at 001. Prior submissions should not be renumbered. Sponsors who have adopted separate numbering sequences to identify protocol and information amendments should combine future submissions into a single numbering sequence, either by restarting the next new submission at 001 or by continuing in one of the prior numbering sequences.

Although previously only protocol and information amendments were expressly required to be numbered, under the new system all submissions relating to an IND, including reports and correspondence, will be required to be numbered. This action is intended to enhance processing of IND's by improving the identification and tracking of all submissions.

A letter discussing FDA's new policy on numbering of amendments has been sent to all current applicants and holders of new drug applications (NDA's). This technical revision is intended to clarify FDA's policy, and to make all current and future IND sponsors and other interested persons fully aware of the agency's requirements.

Notice and comment is not necessary before issuing this technical revision (see 5 U.S.C. 553(b)(B), 21 CFR 10.40(e)(1)). The requirement for the numbering of all amendments was proposed in the IND Rewrite proposal of June 9, 1983 (48 FR 26720), and adopted in the IND Rewrite final rule (52 FR 8798). This regulation, therefore, does not impose new substantive requirements but merely represents a minor technical revision of the numbering system already in place. The revision is intended to assist both IND sponsors and FDA in processing IND amendments. No purpose would be served by notice and comment or by delaying the effective date. Under FDA's procedural regulations at 21 CFR 10.40(e)(1), the agency has determined for good cause that notice and comment are impracticable, unnecessary, and contrary to the public interest.

This technical revision becomes effective on January 25, 1988, for all new IND submissions.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(9) that this technical revision is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this final rule. This final rule is merely a technical revision of an existing rule which will have no economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the agency certifies that this clarifiction will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

The rule relates to sections that contain collection of information requirements already submitted to the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. Sections 312.23, 312.30, and 312.31 have been previously approved under OMB control number 0910–0014.

Interested persons may, on or before March 25, 1988, submit to the Dockets Management Branch (address above), written comments about this clarification. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments, modifications, or revisions to the final rule are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, 21 CFR Chapter I, Part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR Part 312 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1063 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

2. Section 312.23 is amended by adding new paragraph (e) to read as follows:

§ 312.23 IND content and format.

* * * * *

(e) *Numbering of IND submissions.* Each submission relating to an IND is required to be numbered serially using a single, three-digit serial number. The initial IND is required to be numbered 000; each subsequent submission (e.g., amendment, report, or correspondence) is required to be numbered chronologically in sequence.

§ 312.30 [Amended]

3. Section 312.30 is amended in paragraph (d) introductory text by removing the phrase "to be serially numbered.".

§ 312.31 [Amended]

4. Section 312.31 is amended in paragraph (b) introductory text by removing the phrase "to be numbered serially by discipline.".

Dated: December 24, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1352 Filed 1–22–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 436 and 452

[Docket No. 87N–0154]

Antibiotic Drugs; Erythromycin Estolate Bulk; Thin-Layer Chromatographic, pH, and Identity Testing Methods

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the accepted standards for erythromycin estolate bulk to add a thin-layer chromatographic (TLC) test method to identify and limit unesterified erythromycin, and by revising the pH and the identity test methods. These actions are being taken to provide better quality control of this product.

DATES: Effective January 25, 1988; comments, notice of participation, and request for hearing by February 24, 1988; data, information, and analyses to justify a hearing by March 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1987 (52 FR 25252), FDA proposed to amend the antibiotic drug regulations for erythromycin estolate bulk to: (1) Add a TLC test for free (unesterified) erythromycin content with an upper limit of not more than 3 percent, (2) revise the quantity of sample used in the pH assay procedure from 100 milligrams per milliliter (mg/mL) to 10 mg/mL, and (3) revise the sample preparation method used in the identity test by infrared spectrophotometry from a 1 percent solution of the sample in chloroform to a 1 percent mixture of sample in potassium bromide.

As discussed in the proposal, the TLC test method is intended as a specific test for the detection of an unwanted impurity (unesterified erythromycin) in erythromycin estolate bulk. It has been demonstrated that the proposed test method employs common laboratory equipment and solvents, requires minimal sample preparation, has excellent sensitivity and separation, and can be completed in less than 30 minutes. The agency has determined that the TLC test method provides a fast, sensitive, easily performed inexpensive test that would allow a limit to be set for an unwanted impurity.

The current pH assay procedure for erythromycin estolate bulk uses an aqueous suspension of the sample at a concentration of 100 mg/mL. Because the solubility of erythromycin estolate in water is 0.024 mg/mL, the current sample concentration of 100 mg/mL is excessive for purposes of the test. The agency has determined that a sample concentration of 10 mg/mL would be sufficient for the pH determination of erythromycin estolate bulk.

The current sample preparation method for the identity test by infrared spectrophotometry for erythromycin estolate bulk is a 1 percent solution of the sample in chloroform. It has been determined, however, that erythromycin estolate samples diluted in chloroform show changes in the 1,500 to 2,000 centimeters^{-1} region of the infrared spectrum with time. The agency has determined that a change to a 1 percent mixture of the sample in potassium bromide for the sample preparation method will improve the stability of the erythromycin estolate sample.

Interested persons were given until September 24, 1987, to submit written comments on this proposal and until August 5, 1987, to submit requests for an informal conference. No comments or requests for an informal conference were received in response to the proposal.

Economic Impact

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule imposes an insubstantial amendment to existing requirements and refines existing technical provisions without imposing more stringent requirements. Accordingly, the agency certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Submitting Comments and Filing Objections

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before February 24, 1988, a written notice of participation and request for hearing, and (2) on or before March 25, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this order, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 436 and 452 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.362 is added to read as follows:

§ 436.362 Thin-layer chromatographic test for free erythromycin content in erythromycin estolate bulk.

(a) *Equipment*—(1) *Chromatography tank.* A rectangular tank approximately 23 centimeters long, 23 centimeters high, and 9 centimeters wide, equipped with a glass solvent trough in the bottom and a tight-fitting cover for the top.

(2) *Plates.* Use a 20- by 20-centimeter precoated silica gel 60 F–254 thin-layer chromatography plate. Before using, place the plate in an unlined developing chamber containing approximately 100 milliliters of anhydrous methanol and allow the solvent front to travel to the top of the plate, marking the direction of travel. Remove the plate and allow to drip dry. Store in a dry place.

(b) *Reagents*—(1) *Developing solvent.* Mix 15 milliliters of chloroform and 85 milliliters of anhydrous methanol. Use fresh developing solvent for each test.

(2) *Spray solution.* Dissolve 150 milligrams of xanthydrol in a mixture of 7.5 milliliters of glacial acetic acid and 92.5 milliliters of 37 percent hydrochloric acid.

(c) *Preparation of spotting solutions*—(1) *Sample solution.* Prepare a solution of the sample in anhydrous methanol to contain 10 milligrams per milliliter.

Note.—It is advisable to prepare the sample and standard solutions immediately before spotting to minimize the possibility of degradation in solution.)

(2) *Standard solution.* Prepare a solution of erythromycin base reference standard in anhydrous methanol to contain 1 milligram per milliliter. Weigh 99.5, 99.0, and 97.0 milligrams of erythromycin estolate (propionyl erythromycin lauryl sulfate) reference standard and transfer to separate 10-milliliter volumetric flasks. To these flasks add 0.5, 1.0, and 3.0 milliliters, respectively, of the 1-milligram-per-milliliter solution of erythromycin base reference standard and dilute to volume with anhydrous methanol. These solutions contain, respectively, 0.5 percent, 1.0 percent, and 3.0 percent erythromycin base in erythromycin estolate. Prepare a solution of erythromycin estolate reference standard in anhydrous methanol to contain 10 milligrams per milliliter. Prepare a solution of erythromycin base reference standard in anhydrous methanol to contain 0.1 milligram per milliliter.

(d) *Procedure.* Pour 100 milliliters of developing solvent into the glass trough on the bottom of the unlined chromatography tank. Cover and seal the tank. Allow it to equilibrate while the plate is being prepared. Prepare a plate as follows: On a line 2.0 centimeters from the base of the thin-layer plate, apply 1.0 microliter of each of the following solutions:

(1) 10-milligrams-per-milliliter solution of erythromycin estolate reference standard, equivalent to 10 micrograms of erythromycin estolate;

(2) 0.5 percent base-in-estolate solution, equivalent to 0.05 microgram of base and 9.95 micrograms of estolate;

(3) 1.0 percent base-in-estolate solution, equivalent to 0.10 microgram of base and 9.90 micrograms of estolate;

(4) 3.0 percent base-in-estolate solution, equivalent to 0.30 microgram of base and 9.70 micrograms of estolate;

(5) 0.1-milligram-per-milliliter solution of erythromycin base reference standard, equivalent to 0.1 microgram of erythromycin base; and

(6) Sample solution, equivalent to 10 micrograms of erythromycin estolate. Allow the spots to dry. Place the plate directly in the chromatograph tank. Cover and seal the tank. Allow the solvent front to travel a distance of 7 centimeters (about 27 minutes). Remove the plate from the tank, and allow it to air dry under a hood. With the plate still under the hood, spray uniformly with the spray solution. Heat the sprayed plate in an oven at 100 °C for 5 minutes. (CAUTION: Avoid exposure to the acid fumes while removing the plate from the oven.)

(e) *Evaluation.* Erythromycin base and erythromycin estolate appear as reddish-violet spots on the sprayed and heated plate. Better visualization of the erythromycin base spots may be gained by viewing the plate under long-wavelength (366 nanometers) ultraviolet light, erythromycin base appearing as dark spots on a yellow-green fluorescent background. Erythromycin base has an R_f value of about 0.3. Erythromycin estolate has an R_f value of about 0.7. Compare the size and intensity of any erythromycin base spots in the sample lane with the erythromycin base spots in the erythromycin base reference standard lane and in the 0.5 percent, 1.0 percent, and 3.0 percent base-in-estolate lanes, and report the percentage of erythromycin base (free erythromycin) in the sample. For a more accurate determination of free erythromycin content, it may be necessary to repeat the test using a different set of standards.

PART 452—MACROLIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 452 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357); 21 CFR 5.10.

4. In § 452.15, paragraph (a)(1)(ii) is added, (a)(3)(i) is revised, (b)(2) is added, and (b)(4) and (6) are revised to read as follows:

§ 452.15 Erythromycin estolate.

(a) * * *

(1) * * *

(ii) Its free erythromycin content is not more than 3.0 percent.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for potency, free erythromycin content, moisture, pH, crystallinity, and identity.

* * * * *

(b) * * *

(2) *Free erythromycin content.* Proceed as directed in § 436.362 of this chapter.

* * * * *

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous suspension containing 10 milligrams per milliliter.

* * * * *

(6) *Identity test.* Proceed as directed in § 436.211 of this chapter, preparing the sample as described in paragraph (b)(1) of that section.

Dated: January 12, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-1354 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Physical Construction Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation regarding the erection of certain signs on Federal-aid construction projects to implement Section 154 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. Section 154 mandates that those States that currently have a practice of erecting signs identifying funding sources on construction projects without Federal-aid highway assistance shall be required to erect signs displaying sources and amounts of funds on all Federal-aid highway projects. The current regulations provide for the erection of only those signs that conform to the standards developed by the Secretary of Transportation. The FHWA must determine that the States' plans, specifications, and estimates meet these conditions before authorization to advance a Federal-aid project to the physical construction stage. This amendment will allow erection of funding source signs that do not presently conform to standards developed by the Secretary. Furthermore, this amendment requires that provisions be included in the plans, specifications, and estimates, where applicable, that require erection of funding source signs, during the life of the construction project, prior to authorization for physical construction.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392 or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 154 of the STURAA of 1987 (Pub. L. 100-17, 101 Stat. 132, 209) provides as follows:

If a State has a practice of erecting on projects under actual construction without Federal-aid highway assistance signs which indicate the source or sources of any funds used to carry out such projects, such State shall erect on all projects under actual construction with any funds made available out of the Highway Trust Fund (other than the Mass Transit Account) signs which are visible to highway users and which indicate each governmental source of funds being used to carry out such federally assisted projects and the amount of funds being made available by each such source.

This provision is intended to require those States that have adopted innovative funding strategies using a mixture of funds to provide the public with a factual statement of the funding sources. It is not intended to require those States that do not have a practice of erecting such signs at construction sites to begin such a practice. The FHWA believes that those States that desire to initiate such a practice, however, may do so under specifications and provisions developed by the State and approved by the FHWA.

The regulation at 23 CFR 635.309 prescribes the policies and procedures under which a State highway agency (SHA) may be authorized to advance a Federal-aid highway project to the physical construction stage. Paragraph (n) of § 635.309 places explicit restrictions on the erection of signs on Federal-aid highway construction projects. Signs that currently may be erected are information signs and traffic control devices that conform with the standards developed by the Secretary of Transportation and not construction identification or other informational signs regarding such State matters as the identification of responsible State officials. This final rule amends paragraph (n) of § 635.309 to allow the erection of signs mandated by Federal law. Furthermore, this final rule adds paragraph (o) to § 635.309 to ensure that provisions are included in the plans, specifications, and estimates to require the erection of funding source signs in accordance with section 154 of the STURAA of 1987 prior to authorization for physical construction. Funding source signs are temporary signs that shall be erected for the life of the construction project.

The FHWA believes that specifications and provisions for erecting funding source signs on Federal-aid projects should be developed by the States based on their existing practices and approved by the FHWA. These specifications and provisions should consider the physical characteristics, location, and number of signs to be placed on a project as well as traffic control and safety issues. Only essential information regarding the sources and amounts of funding shall be included on funding source signs. Promotional information, such as identification of public officials, contractors, organizational affiliations, and related symbols or logos shall be prohibited.

The FHWA has determined that the cost of furnishing, erecting, maintaining, or removing funding source identification signs is eligible for Federal-aid participation as part of a Federal-aid construction contract. Signs may be considered an incidental item to the construction or bid as a separate pay item. Cost will be reimbursed at the same pro rata share as the construction.

In compliance with paragraphs (n) and (o) of 23 CFR 635.309, the FHWA Division Administrator shall determine that funding source signs are in conformance with the regulation and the intent of section 154 of the STURAA of 1987.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document are being issued for the purpose of literally complying with statutory language mandated by Section 154 of the STURAA of 1987, public comment is impracticable and unnecessary. The revisions provide additional information to the public and require no change in FHWA procedures concerning authorization for physical construction. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. It is anticipated that the economic impact of this rulemaking, although mandated by the statutory provisions themselves, will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under authority of the STURAA of 1987 (Pub. L. 100-17), the FHWA is amending Part 635, Subpart C, Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—Transportation, Highways and roads, Signs and symbols.

Issued on January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The Federal Highway Administration hereby amends 23 CFR Part 635, Subpart C as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

Subpart C—Physical Construction Authorization

2. In § 635.309(k), a technical correction is necessary. Amend the reference "§ 645.116(b)" to read "§ 645.119(b)."

3. In § 635.309, paragraph (n) is revised and paragraph (o) is added to read as follows:

§ 635.309 Authorization.

* * * * *

(n) The FHWA Division Administrator has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA Division Administrator has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs, for the life of the construction project, in accordance with section 154

of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

[FR Doc. 88-1395 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-22-M

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23 CFR Part 635

Convict Labor and Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation on the use of convict labor and convict produced materials on Federal-aid highway projects to implement provisions mandated by section 112 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. Section 112 amended 23 U.S.C. 114(b) by prohibiting the use of materials produced by convict labor on Federal-aid highway projects unless (1) produced by convicts who are on parole, supervised release, or probation or (2) if produced by convicts in a prison facility, the quantity is limited to prior usage levels. The regulations implementing 23 U.S.C. 114(b) are revised to reflect the statutory amendment.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-1548, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation and Uniform Relocation Assistance Act (STURAA) became law on April 2, 1987, (Pub. L. 100-17, 101 Stat. 132). Section 112 of the STURAA amends 23 U.S.C. 114(b) to include limitations on convict produced materials. The section as amended will continue the limitation on convict labor and limit the use of materials produced by convict labor for use in Federal-aid highway construction (1) to materials produced by convicts who are on parole, supervised release, or probation from a prison or (2) to materials produced in a qualified prison facility with the amount of such materials produced during any 12-month period not exceeding the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

On January 6, 1983, the President signed into law the Surface Transportation Assistance Act (STAA) of 1982 (Pub. L. 97-424, 96 Stat. 2097). Section 148 of the STAA of 1982 amended 23 U.S.C. 114(b) which provided that convict labor could not be used in the construction of any highway or portion of highway located on a Federal-aid system unless it was performed by convicts who were on parole or probation. Section 148 extended this restriction to materials produced by convict labor. Subsequently, section 202 of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, 1984 (Pub. L. 98-166, 97 Stat. 1071, 1085) essentially repealed section 148 and again permitted materials to be produced by convict labor for use in the construction of any highway or portion of highway located on the Federal-aid systems, as described in section 103 of Title 23, United States Code. Section 112 of the STURAA repeals section 202 of the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriation Act, 1984.

Section 112 of the STURAA identifies the construction activities affected by its provisions as "construction of any highway or portions of highways located on a Federal-aid system." This is identical to the terminology used in 23 U.S.C. 114(a) in prescribing requirements applicable to Federal-aid highway construction. Based on this and the language contained in the conference report, it was the clear intent of Congress that the limitations and application of section 112 were addressed to Federal-aid highway construction projects. For this reason, "Federal-aid highway construction" and "Federal-aid construction projects" are the terms used in the regulation.

To implement section 112 of the STURAA, the revised regulation will include the following changes:

1. Section 635.124 will be revised to include language conforming to section 112 of the STURAA permitting convicts on parole, supervised release, or probation to be employed on Federal-aid highway projects. This was previously addressed only in section 114 of Title 23 U.S.C.

2. Section 635.417 will be added to include requirements conforming to section 112 of the STURAA for the use of convict produced materials in construction of Federal-aid highway construction projects. Standard Federal-aid contract procedures will be used to assure compliance with the requirements of this section.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions in this document substantially reflect statutory language mandated by section 112 of the STURAA, public comment is unnecessary. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation (DOT) because it is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation and provide for no discretion.

Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, Part 635 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Convict labor and materials, Grant programs—Transportation, Highways and roads.

Issued on: January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Part 635 as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for Part 635 is revised to read as follows:

Authority: 23 U.S.C. 112-114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

2. Section 635.124 is amended by revising paragraph (a) to read as follows:

§ 635.124 Labor and employment.

(a) No convict labor, unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purpose at the site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the State highway agency.

* * * * *

3. Section 635.417 is added to read as follows:

§ 635.417 Convict produced materials.

(a) Materials produced by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

(b) "Qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

[FR Doc. 88-1396 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3046/R9 30; FRL-3319-8]

Pesticide Tolerance for Cyfluthrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the synthetic pyrethroid cyfluthrin in or on the commodity cottonseed. This regulation to establish maximum permissible levels for the combined residues of cyfluthrin was requested pursuant to a petition by Mobay Corp.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of April 25, 1984 (49 FR 17809), which announced that Mobay Corp., P.O. Box 4913, Hawthorne Rd., Kansas City, MO 64120, had submitted a pesticide petition, PP 4F3046, proposing to establish tolerances in or on the raw agricultural commodities cottonseed, peanuts, and soybeans, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and milk for the combined residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropanecarboxylate).

No comments were received in response to the notice of filing.

On May 14, 1984, Mobay Chemical Corp. amended the pesticide petition by deleting the proposed tolerances for peanuts and soybeans.

On December 30, 1987 the Agency issued a conditional registration for cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropanecarboxylate) on cotton with a final expiration date of March 31, 1990. One of the conditions for registration is the submission of a simulated and/or actual field test (72-7) to determine the effect of cyfluthrin on aquatic organisms. This study must be submitted to the Agency by March 31, 1990. Another condition of the registration is the submission of a fish life-cycle test (72-5). This study must be submitted to the Agency March 31, 1990. Owing to the lack of field studies, the Agency is establishing the tolerance for this pesticide on cottonseed with an expiration date of July 31, 1991 to cover residues expected to be present from use during the period of conditional registration.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a 12-month oral toxicity study in dogs with a no-observed-effect level (NOEL) of 4.0 mg/kg/day; 24 month rat and mouse chronic feeding study with a systemic NOEL of 2.5 mg/kg/day with no oncogenic effects observed at dose levels up to and including 22.5 and 120 mg/kg/day, the highest dose levels tested for rats and mice, respectively. No teratogenic effects were observed in rats at dose levels up to and including 30 mg/kg/day, or in rabbits at doses levels up to and including 45 mg/kg/day (the highest dose levels tested). The following genotoxicity tests were negative: a gene mutation assay (CHO/HGPRT), a sister chromatid exchange assay, and an unscheduled DNA synthesis assay.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg body weight/day from a 2-year rat feeding study and a safety factor of 100, is 0.025 mg/kg body weight/day. The theoretical maximum residue contribution from the proposed tolerances is 0.000258 mg/kg body weight/day; this is equivalent to about 1.0 percent of the ADI.

The metabolism of the chemical in plants for this cotton use is adequately understood. An analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement. The methodology is being made available to anyone who is interested in pesticide enforcement when requested from: By mail:

Information Service Section (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-3262.

The tolerances established by amending 40 CFR Part 180 will be adequate to cover residues in or on cottonseed.

There are currently no actions pending against the registration of this product. This pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the above information and data considered, the Agency concludes that the tolerance would protect the public health. Therefore, as proposed below, the tolerance would be established for a period extending to July 31, 1991.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances

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or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: January 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.436 is added, to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

Tolerances are established for the combined residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, meat	.05
Cattle, mbyp	.05
Cottonseed	1.0
Goats, fat	0.05
Goats, meat	.05
Goats, mbyp	.05
Hogs, fat	.05
Hogs, meat	.05
Hogs, mbyp	.05
Horses, fat	.05
Horses, meat	.05
Horses, mbyp	.05
Milk	0.1
Sheep, fat	.05
Sheep, meat	.05
Sheep, mbyp	.05

[FR Doc. 88-1382 Filed 1-22-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Part 208

Department of Defense, Federal Acquisition Regulation Supplement; Acquisition From Sources Other Than the Central Supply System

AGENCY: Department of Defense (DoD).

ACTION: Final Rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved revisions to section 208.470-2 and section 208.7100 of the Defense Federal Acquisition Regulation Supplement (DFARS) to allow greater flexibility to use sources other than the central supply system when such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best satisfies the requirement. This change increases the ability of buying activities to take advantage of local market conditions, as well as emphasize value rather than just cost in making purchases.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Carter, ODASD(L)SD-DSIO, Room 3B740, The Pentagon, Washington, DC 20301-8000, telephone (202) 695-8357.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS to provide increased flexibility to use sources other than the central supply system (DLA, GSA, and the Military Departments) when such action is judged to be in the best interest of the Government. This increased flexibility will implement DoD Directive 4001.1, which provides that, with few exceptions, installation commanders should be allowed to purchase from sources offering the combination of quality, timeliness, and cost that best meets the requirement.

The revisions also implement key recommendations of the Packard Commission dealing with the need to consider value instead of just price, and the need to give greater authority to DoD acquisition personnel. In addition, the revisions include safeguards that will meet other important acquisition system goals, such as the maintenance of an effective mobilization and wartime capability and proper file documentation so that prospective quality, timeliness, or cost deficiencies of the central supply system may be identified and corrected.

Publicizing is not required as the rule will not have a significant cost or administrative impact on the public since it affects only the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

Since publicizing is not required, the provisions of the Regulatory Flexibility Act do not apply.

C. Paperwork Reduction Act

This rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and OMB approval of this final rule is not required pursuant to 5 CFR Part 1320 *et seq.*

List of Subjects in 48 CFR Part 208

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority for 48 CFR Part 208 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 208.470-2 is revised to read as follows:

208.470-2 Acquisition From General Services Administration Stock.

Items available from the stock system of the General Services Administration which are in Federal Supply Classes (FSCs) assigned to GSA for management should be acquired in accordance with the requirements of Subpart 208.71. DoD policy regarding use of GSA stock items in classes other than those assigned to GSA for management is that maximum use of such items should be made *except* in cases where requirements are met by items managed by DLA or the Military Departments. In addition, other sources may be used, provided:

(a) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement;

(b) For purchases exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file;

(c) For purchases exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer;

(d) For purchases exceeding $5,000 per line item, a waiver request is forwarded to and approved by GSA prior to initiation of the purchase action.

3. Section 208.7100-1 is revised to read as follows:

208.7100-1 Exclusions—Military Department Assignments (Except DLA).

Except for the types of items excluded below, requiring Departments may purchase locally at their option any centrally managed, commercially available item assigned to a Military Department; provided, such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. Excluded are:

(a) Items that have war reserve requirements, are necessary for the wartime mission, are required to execute the unit deployment mission or are required to support the industrial mobilization base;

(b) Items directly related to the operation of a weapon system or its support equipment;

(c) Items with special security characteristics;

(d) Items of a dangerous nature (e.g., explosives, munitions).

4. Section 208.7100-2 is amended by revising paragraph (a)(9); by revising paragraph (d); and by adding paragraph (e); to read as follows:

208.7100-2 Exclusions—DLA and GSA Assignments.

(a) * * *

(9) Acquisitions of military service-managed or noncataloged items not in excess of $25,000 per line item—This exception permits the Military Departments to acquire a line item (excluding items identified in 208.7100-1 or included in a Federal Supply Schedule mandatory for use by DoD activities) which does not exceed a value of $25,000; provided, the contracting officer judges such action to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement.

* * * * *

(d) *Exclusions for local purchase of integrated materiel managed items.* While maximum use should be made of DLA and GSA centrally managed items, requiring Departments may purchase locally at their option any DLA or GSA centrally managed, commercially available item, provided: (1) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement; (2) purchases are not made of those types of items identified in section 208.7100-1; (3) for local purchases of DLA and GSA stock items exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file; (4) for local purchases of DLA and GSA items exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer; (5) for local purchases of DLA and GSA items exceeding $5,000 per line item, a waiver request is forwarded to and approved by the applicable manager prior to initiation of the purchase action. These restrictions on local purchases of DLA and GSA items do *not* apply to items coded by DLA and GSA as authorized for local procurement (AACL).

(e) *Addresses for submission of waiver requests.* Requests for waivers under paragraph (d)(5) of this section for making local purchases of DLA and GSA centrally managed items exceeding $5,000 per line item shall be sent to:

For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

For DLA: Director (DLA-OS), Defense Logistics Agency, Alexandria, VA 22304-6100.

[FR Doc. 88-1362 Filed 1-22-88; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[Acquisition Circ. AC-86-8, Supp. 2]

General Services Administration Acquisition Regulation; Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-86-8 extends the expiration date to February 15, 1988. The intended effect is to extend the policies and procedures as established in AC-86-8, which revised Section 525.402 to provide the new dollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representatives under E.O. 12260.

DATES: *Effective date:* January 1, 1988.

Expiration date: February 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Majorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC-86-8 was originally issued, the GSA certified under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* that the document would not have a significant economic effect on a substantial number of small entities. Therefore, no regulatory analysis was prepared. The circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 525

Government procurement.

PART 525—[AMENDED]

1. The authority citation for 48 CFR Part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 525 is amended by the following supplement to Acquisition Circular AC-86-8:

General Services Administration Acquisition Regulation Acquisition Circular AC-86-8; Supplement 2

January 15, 1988.

To: All GSA contracting activities.

Subject: Threshold for Application of Trade Agreements Act.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC-86-8.

2. *Effective date.* January 1, 1988.

3. *Expiration date.* Acquisition Circular AC-86-8 and this supplement will expire on February 15, 1988, unless cancelled earlier.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-1338 Filed 1-22-88; 8:45 am]

BILLING CODE 6820-61-M

VOL 53 ISS 15 JA 25 1988 UMI

Proposed Rules

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 62

Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Nuclear Regulatory Commission (NRC) published on December 15, 1987 (52 FR 47578) a proposed rule to establish criteria and procedures for emergency access to non-Federal and regional low-level waste disposal facilities. This notice makes one minor correction to the proposed rule by changing erroneous language used in § 62.26 of the rule. The comment period for the proposed rule remains unchanged.

DATES: Comments should be submitted on or before February 12, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received and the regulatory analysis may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Janet Lambert, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3804.

SUPPLEMENTARY INFORMATION: The NRC published on December 15, 1987 (52 FR 47578) a proposed rule to establish a new Part 62 that would provide the criteria and procedures for emergency access to non-Federal and regional low-level waste disposal facilities. The NRC is correcting erroneous language used in one sentence of the proposed rule.

PART 62—[AMENDED]

In § 62.26, the introductory text of paragraph (b) is correctly added to read as follows:

§ 62.26 Criteria for designating a disposal facility.

* * * * *

(b) The Commission will exclude a disposal facility from consideration if:

* * * * *

Dated at Bethesda, Maryland, this 19th day of January, 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-1416 Filed 1-22-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); the Military-Civilian Health Services Partnership Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010.8–R (32 CFR Part 199), to incorporate revisions resulting from section 1096, Chapter 55, Title 10, United States Code, which establishes a Military-Civilian Health Services Partnership Program. Under this program, CHAMPUS beneficiaries can receive inpatient and outpatient care from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. Combining military and civilian health care resources is expected to best utilize available facilities and staff, to provide increased access to health care and to reduce individual incident cost for the CHAMPUS beneficiary and program cost for the Government.

DATE: Written public comments must be received on or before February 24, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Rose M. Sabo, Office of Program Development, OCHAMPUS, telephone (303) 361–4014.

SUPPLEMENTARY INFORMATION: Congress has provided the Department of Defense with a major aid in expanding the concept of a military-civilian partnership program. The Department of Defense Authorization Act for Fiscal Year 1987 contains a provision that permits the sharing of staff, equipment, and resources between the civilian and military health care systems in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. The sharing agreements authorized under section 1096, Chapter 55, Title 10, United States Code, provide for the sharing of personnel, including support personnel, equipment, supplies, and any other item or facility necessary for the provision of health care services. The provider must be otherwise authorized under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The authorized provider must bill for the services rendered by any support personnel and related supplies, equipment, and other resources. Such charges represent an overhead expense incurred by the provider in his or her professional practice. The services rendered by support personnel must be otherwise covered under CHAMPUS and not of a type usually performed only by a physician or other authorized provider, e.g., minor surgery performed by a physician assistant would be excluded even if performed under the direct supervision of a physician.

For care rendered by a civilian health care provider in a military treatment facility, the beneficiary's cost-share shall be the same as that for military treatment facility patients under the care of a military health care provider. Care received in a civilian facility will continue to be cost-shared under the normal CHAMPUS cost-sharing provisions.

The Secretary of Defense has issued implementing instructions for the Partnership Program specifically designating individual commanders of military treatment facilities, through their respective Surgeons General of the military departments, as responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical to the Government than referring the need for health care services to the civilian community under the normal operation of CHAMPUS.

There will be two types of partnership agreements—the external and internal. The external agreement is between a military treatment facility and a CHAMPUS authorized institution, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be paid through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

The internal agreement will permit the use of authorized CHAMPUS civilian health care providers and other resources under their supervision to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS. Beneficiary cost-share under internal agreements will be the same as charges prescribed for care in military treatment facilities. Currently, there are no charges for outpatient care provided in military treatment facilities, and there are no charges for inpatient care provided to retired enlisted members of the uniformed services. All other CHAMPUS beneficiaries are charged a subsistence rate for inpatient care as prescribed by the Secretary of Defense. Because the Department of Defense Appropriation Act annually restricts payment for professional charges to no more than the 80th percentile of the customary charges made for similar services in the same locality where the medical care was furnished, it will be necessary for the Secretary of Defense, or designee, to specifically determine that expenditures overall for services under the Partnership Program do not exceed what would have been expended under the CHAMPUS Basic Program reimbursement methodology. This approach provides the Secretary, or designee, the flexibility to use alternatives to the 80th percentile reimbursement methodology for internal agreements when such an alternative is determined more economical in accord with the goals of the Partnership Program.

We feel that the proposed rule will not have a significant economic impact on a substantial number of small entities. Its impact will be limited to catchment areas, which is the geographic area of approximately 40 miles in radius surrounding U.S. medical treatment facilities. The impact within the catchment area will be further limited to specifically identified categories of care determined to be necessary to ensure optimal utilization of Government resources in the most effective, efficient and economical manner. The impact of the program is primarily that of increasing availability of health care services to CHAMPUS beneficiaries. Beneficiaries will be encouraged, but not required, to use the services available under the partnership agreements. No additional requirements for approval as an authorized provider will be imposed. Existing requirements concerning providers and nonavailability statements remain the same. The Partnership Program provides an equal opportunity for any authorized provider to enter into a voluntary agreement, taking into account the needs of, and staffing shortages at, the particular military treatment facility. It does not restrict access to any provider by any beneficiary. Accordingly, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, it is proposed to amend 32 CFR Part 199, Subchapter M, as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1096, 5 U.S.C. 301.

2. Section 199.1(p) is redesignated as § 199.1(q).

3. Add a new paragraph (p) to § 199.1 to read as follows:

§ 199.1 General provisions.

* * * * *

(p) *Military-Civilian Health Services Partnership Program.* The Secretary of Defense, or designee, may enter into an agreement (external or internal) providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers if the Secretary determines that such an agreement would result in the delivery of health care in a more effective, efficient or economical manner. This partnership allows CHAMPUS beneficiaries to receive inpatient and outpatient services through CHAMPUS from civilian personnel providing health care services in military treatment facilities and from uniformed service professional providers in civilian facilities. The policies and procedures by which partnership agreements may be executed are set forth in Department of Defense Instruction (DoDI) 6010.12, "Military-Civilian Health Services Partnership Program." The Director, OCHAMPUS, or a designee, shall issue policies, instructions, procedures, guidelines, standards, or criteria as may be necessary to: Provide support for implementation of DoDI 6010.12; to promulgate and manage benefit and financial policy issues; and to develop a program evaluation process to ensure the Partnership Program accomplishes the purpose for which it was developed.

(1) *Partnership agreements.* Military treatment facility commanders, based upon the authority provided by their

respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. All such agreements are subject to the review and approval of the Director, OCHAMPUS, or designee, and the appropriate Surgeon General.

(i) *External partnership agreements.* The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS. Savings will be realized under this type agreement by using available military health care personnel to avoid the civilian professional provider charges which would otherwise be billed to CHAMPUS.

(ii) *Internal partnership agreements.* The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources. In addition to allowing the military treatment facility to achieve maximum use of available facility space, the internal agreement will result in savings to the Government by using civilian medical specialists to provide inpatient care in Government-owned facilities, thereby avoiding the civilian facility charges which would have otherwise been billed to CHAMPUS.

(2) *Beneficiary cost-sharing.* Beneficiary cost-sharing under the Partnership Program is outlined in § 199.4(f)(5) of this part.

(3) *Reimbursement.* Reimbursement under the Partnership Program is outlined in § 199.14(f) of this part.

(4) *Beneficiary eligibility and authorized providers.* Existing requirements of this Regulation remain in effect as concerns beneficiary eligibility and authorized providers.

(5) *Range of benefits.* Health care services provided CHAMPUS beneficiaries under the terms of the Partnership Program must be consistent with the CHAMPUS range of benefits outlined in this Regulation. The services rendered must be otherwise covered. Charges allowed for professional services provided under the Partnership Program may include costs of support personnel, equipment, and supplies when specifically outlined in the partnership agreement. However, all CHAMPUS coverage and provider requirements must be met.

* * * * *

4. Section 199.2(b) is amended by adding, in alphabetical order, definitions for the internal and external partnership agreements to read as follows: § 199.2 Definitions.

* * * * *

(b) *Specific definitions.* * * *

External partnership agreement. The external partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized institutional provider, enabling military health care personnel to provide otherwise covered medical care to CHAMPUS beneficiaries in a civilian facility under the Military-Civilian Health Services Partnership Program. Authorized costs associated with the use of the facility will be financed through CHAMPUS under normal cost-sharing and reimbursement procedures currently applicable under the basic CHAMPUS.

* * * * *

Internal partnership agreement. The internal partnership agreement is an agreement between a military treatment facility commander and a CHAMPUS authorized civilian health care provider which enables the use of civilian health care personnel or other resources to provide medical care to CHAMPUS beneficiaries on the premises of a military treatment facility under the Military-Civilian Health Services Partnership Program. These internal agreements may be established when a military treatment facility is unable to provide sufficient health care services for CHAMPUS beneficiaries due to shortages of personnel and other required resources.

* * * * *

5. Section 199.4 paragraphs (f)(5) and (6) are redesignated as § 199.4 paragraphs (f)(6) and (7).

6. Add a new paragraph (f)(5) to § 199.4 to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) *Beneficiary or Sponsor Liability.*

* * *

(5) *Cost-sharing under the Military-Civilian Health Services Partnership Program.* Cost-sharing is dependent upon the type of partnership program entered into, whether external or internal. (See paragraph (p) of § 199.1, for general requirements of the Military-Civilian Health Services Partnership Program.)

(i) *External partnership agreement.* Authorized costs associated with the use of the civilian facility will be financed through CHAMPUS under the normal cost-sharing and reimbursement procedures applicable under CHAMPUS.

(ii) *Internal partnership agreement.* Beneficiary cost-share under internal agreements will be the same as charges prescribed for care in military treatment facilities.

* * * * *

7. Section 199.14, paragraphs (f) and (g) are redesignated as § 199.14, paragraphs (g) and (h).

8. Add a new paragraph (f) to § 199.14, to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(f) *Reimbursement under the Military-Civilian Health Services Partnership Program.* The Military-Civilian Health Services Partnership Program, as authorized by Section 1096, Chapter 55, Title 10, provides for the sharing of staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professional and other non-institutional health care providers shall be based upon the specific terms of the individual partnership agreements. If the agreement does not sepecifically address payment, reimbursement shall be based upon the provisions of § 199.14(e).

* * * * *

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1988.

[FR Doc. 88-1117-Filed 1-22-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of the Proposed Rule To List Eriogonum humivagans (Spreading Wild-Buckwheat) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule (51 FR 11880; April 7, 1986) to list *Eriogonum humivagans* as an endangered species. Additional botanical collections made in the vicinity of the species' habitat have provided new information on the taxonomic validity and distribution of *Eriogonum humivagans*. An analysis of the specimens demonstrates that the *Eriogonum* population named as *Eriogonum humivagans* lies within the range of morphological variation of *Eriogonum lonchophyllum*. The Service has thus determined that *Eriogonum humivagans* does not meet the definition of species under Section 3(16) of the Endangered Species Act (Act) of 1973, as amended, and therefore does not qualify for protection under the Act.

ADDRESSES: The file for this notice is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Salt Lake City Field Office, Fish and Wildlife Enhancement, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104 or at the Service's Grand Junction Field Office, Fish and Wildlife Enhancement, Independence Plaza, Suite B113, 529 25½ Road, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John L. Anderson, Botanist, at the Grand Junction address above (303/241-0563 or FTS 322-0348), or John L. England at the Salt Lake City address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule to list *Eriogonum humivagans* as endangered was published on April 7, 1986 (51 FR 11880). On September 8, 1987, the Service published a 6-month Extension of the Proposed Rule for *Eriogonum humivagans* (52 FR 33849). With this 6-month extension, the new deadline for a final determination of status was October 7, 1987. A new comment period commenced with the publication of this notice and closed on October 8, 1987.

The proposal to list *Eriogonum humivagans* as an endangered species was based on its rarity and the loss of much of its habitat from cultivation of the surrounding area for dry land farming. Previous surveys for *Eriogonum humivagans* were concentrated in Utah and showed it to have a narrow distribution in the vicinity of the type locality east of Monticello in San Juan County, Utah (Anderson 1982). Potential habitat of heavy clay soils of the Mancos Shale formation is limited in that part of Utah; but the type locality is only 5 miles from the Colorado State line, and large outcrops of potential habitat extend eastward in Colorado.

In the type description, Reveal (1988) related *Eriogonum humivagans* to *E. scoparium* Small of western Colorado and *E. nudicaule* (Torrey) Small of northern New Mexico. These two species have subsequently been combined with *E. lonchophyllum* Torrey & Gray, a highly variable suffrutescent species of western Colorado and northern New Mexico, whose type locality is on the Rio Blanco River south of Pagosa Springs, Colorado (Reveal 1976, Torrey and Gray 1870). At about the same time as publication of *E. humivagans*, Reveal (1987) stated that little fall botanizing had been done in the area from Monticello southeast to Cortez, Colorado. *E. humivagans* was then apparently thought to be disjunct by at least 50 miles from the nearest known occurrences of *E. lonchophyllum* in Colorado. In the fall of 1986, after the proposal had been published, a Service botanist made extensive *Eriogonum* collections between the type locality and Cortez (Mesa Verde) and Naturita, Colorado, approximately 50 miles to the southeast and northeast, respectively. These collections narrowed the geographic gap between *E. humivagans* and *E. lonchophyllum* and raised questions about the relationship of these two species and regarding taxonomic distinction, overall distribution, and ecology.

One hundred specimens of suffrutescent to shrubby individuals of *Eriogonum* attributed to *E. corymbosum* Bentham, *E. humivagans* Reveal, *E. leptophyllum* (Torrey) Wooten & Standley, and *E. lonchophyllum* Torrey & Gray from southeastern Utah and southwestern Colorado were analyzed. They consisted of the new specimens collected in 1986 and additional specimens examined at the herbaria of Brigham Young University, Utah State University, Colorado State University, and the University of Colorado, including the holotype of *E. humivagans* at Utah State University and an isotype at Brigham Young University. These herbaria contained no collections nearer to the type locality of *E. humivagans* than the Naturita/Nucla and Cortez/Mesa Verde areas. Eighteen morphological characters were scored, based on those used to distinguish *E. humivagans* (Reveal 1968) or in various keys to *Eriogonum* (Reveal 1967, 1973, and 1976).

The specimens were then analyzed by principal components analysis using the SYSTAT FACTOR program (Wilkinson 1986). While the three other *Eriogonum* species, which are recognized as distinct species in area floras (Goodrich and Neese 1986, Weber 1987, Welsh *et al.* 1987), were separated from each other, the results showed that *E. humivagans* was not separated, but was included within *E. lonchophyllum*.

Most edaphic endemics in the Colorado Plateau are believed to have evolved through the isolation from their nearest relatives provided by different geological strata. Although the *Eriogonum* specimens collected in 1986 were found on various geological formations, they were always on shale-derived soils, and those nearest to the type locality of *E. humivagans* were growing on Mancos Shale. The population named as *E. humivagans* is thus interpreted as the westernmost population of *Eriogonum lonchophyllum* in the Four Corners area and not a separate species.

Based on a review of these new data, the Service concludes that *Eriogonum humivagans* does not appear to be distinct from *E. lonchophyllum* morphologically, geographically, or ecologically, and does not represent a taxon at any rank. Therefore, the Service has determined that *E.*

humivagans does not meet the definition of species in Section 3(16) of the Act and that the withdrawal of the proposed rule to list *E. humivagans* as endangered is consistent with the Act.

A Service botanist is preparing a publication to document these conclusions in the scientific literature. Even though this population is not a separate species, it is of scientific interest in the study of plant geography as the southwesternmost population of *Eriogonum lonchophyllum*, and its management could be considered important from standpoints other than the Act.

References Cited

Anderson, J.L. 1982. Unpublished field trip report for *Eriogonum humivagans*, November 1982. U.S. Fish and Wildlife Service, Denver, Colorado. 12 pp.

Goodrich, S. and E. Neese. 1986. Uinta Basin Flora. U.S. Forest Service-Intermountain Region *et al.*, Ogden, Utah. 320 pp.

Reveal, J.L. 1967. Notes on Eriogonum–V. A revision of the *Eriogonum corymbosum* complex. Great Basin Naturalist 27:183–229.

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Reveal, J.L. 1973. *Eriogonum* (Polygonaceae) of Utah. Phytologia 25:169–217.

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Torrey, J. and A. Gray. 1870. A Revision of the *Eriogoneae*. Proceeding of the American Academy of Arts and Sciences 8:173.

Weber, W.A. 1987. Colorado Flora: Western Slope. Colorado Associated University Press, Boulder, Colorado. 530 pp.

Welsh, S.L., N.D. Atwood, L.C. Higgins and S. Goodrich (editors). 1987. A Utah Flora. Great Basin Naturalist Memoirs No. 9. 894 pp.

Wilkinson, L. 1986. SYSTAT: The System for Statistics. SYSTAT, Inc., Evanston, Illinois.

Author

The primary author of this notice is John Anderson, Botanist, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Grand Junction, Colorado. John England, Botanist, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Salt Lake City, Utah, served as editor (see addresses section above).

Accordingly, the proposed rule to list *Eriogonum humivagans* as endangered, published April 7, 1986 (51 FR 11880), is hereby withdrawn.

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-1403 Filed 1-22-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 53, No. 15

Monday, January 25, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: February 29–March 1–2, 1988.

Time: 8:00 a.m.–5:00 p.m., February 29, 1988. Pierre Room; 8:00 a.m.–5:00 p.m., March 1, 1988, Pierre Room; 8:00 a.m.–12:00 Noon, March 2, 1988, Pierre Room.

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, D.C.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1989 budget for agricultural research and extension agencies.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 15th day of January 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88-1404 Filed 1-22-88; 8:45 am]

BILLING CODE 3410-22-M

Policy Advisory Committee for the Science and Education Research Grants Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Cooperative State Research Service announces the following meeting:

Name: Policy Advisory Committee for the Science and Education Research Grants Program.

Date: March 25, 1988.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 104–A Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact Person For Agenda and More Information: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Cooperative State Research Service, U.S. Department of Agriculture, Room 112, J.S. Morrill Building, Washington, DC 20251, telephone: 202–475–5022.

Done at Washington, DC this 7th day of January 1988.

Anne Holiday Schauer,

Executive Secretary, Policy Advisory Committee.

[FR Doc. 88-1405 Filed 1-22-88; 8:45 am]

BILLING CODE 3410-22-M

Packers and Stockyards Administration

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below:

Facility No., name, and location of stockyard	Date of posting
AL-168 Limestone Co. Feeder Pig Assn. Inc., Athens, Alabama.	May 22, 1987
AL-169 Northeast Ala. Feeder Pig Assn., Inc., Section, Alabama.	Do.
AL-170 Upper Coastal Plains Feeder Pig Assn., Fayette, Alabama.	June 4, 1987
AL-172 Northwest Alabama Feeder Pig Assn., Russellville, Alabama.	June 8, 1987
AL-173 Sand Mountain Feeder Pig Assoc., Albertville, Alabama.	Do.
AL-174 Central Ala. Feeder Pig Assn., Clanton, Alabama.	May 27, 1987
AL-175 Sand Mountain Horse Auction, Horton, Alabama.	June 2, 1987
AL-176 Bynum Livestock & Commission Co., Inc., Attalla, Alabama.	Sept. 10, 1987
AL-177 Taylor's Stockyard, Nauvoo, Alabama.	Sept. 5, 1987
GA-195 Hwy 20 Horse Auction, Canton, Georgia.	Dec. 8, 1987
GA-197 Southeastern Livestock Co., Quitman, Georgia.	Nov. 19, 1987
IN-163 White Livestock Auction, Brookville, Indiana.	Sept. 2, 1987
NC-157 Farmers Livestock Market of Mount Airy, Mount Airy, North Carolina.	July 24, 1987
SC-141 Oconee Livestock, Westminster, South Carolina.	Sept. 16, 1987
SC-142 Hendrix Horse Auction, Hartsville, South Carolina.	Sept. 11, 1987
TN-184 Beech River Feeder Pig Sale, Inc., Parsons, Tennessee.	Dec. 2, 1987
VA-158 Farmers Livestock Market, Inc. of Tazewell, Virginia, Tazewell, Virginia.	Dec. 12, 1987

Done at Washington, DC, this 15th day of January, 1988.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 88-1411 Filed 1-22-88; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1987

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1987, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam, and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Date: January 20, 1988.

C. William Verity,

Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE, THE DISTRICT OF COLUMBIA AND SELECTED OUTLYING AREAS: JULY 1, 1987

(In thousands)

Area	Population 18 and over
United States	179,658
Alabama	2,966
Alaska	354
Arizona	2,467
Arkansas	1,741
California	20,382
Colorado	2,422
Connecticut	2,454
Delaware	482
District of Columbia	486
Florida	9,319
Georgia	4,486
Hawaii	797
Idaho	693
Illinois	8,547
Indiana	4,061
Iowa	2,102
Kansas	1,825
Kentucky	2,731
Louisiana	3,145
Maine	884
Maryland	3,410
Massachusetts	4,519
Michigan	6,740
Minnesota	3,135
Mississippi	1,833
Missouri	3,794
Montana	585
Nebraska	1,171
Nevada	755
New Hampshire	791
New Jersey	5,841
New Mexico	1,053
New York	13,464
North Carolina	4,786
North Dakota	485
Ohio	7,947
Oklahoma	2,379
Oregon	2,038
Pennsylvania	9,085
Rhode Island	757
South Carolina	2,484
South Dakota	513
Tennessee	3,604
Texas	11,805
Utah	1,051
Vermont	408
Virginia	4,444
Washington	3,369
West Virginia	1,407
Wisconsin	3,537
Wyoming	342
Outlying Areas	
Puerto Rico	2,027
Guam	77
Virgin Islands	83
American Samoa	20

[FR Doc. 88-1412 Filed 1-22-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Exact Machine Company, Inc., 2502 Preston Street, Rockford, Illinois 61102, producer of machine tool parts (August 20, 1987); (2) International Marketing Group, Inc., 13726 Saticoy Street, Van Nuys, California 91402, producer of pet doors, aluminum extrusion, aluminum sheet, glass, vinyl extrusion for flap assembly (August 17, 1987); (3) J. Kossar Industries, Inc., P.O. Box 605, Woodridge, New York 12789, producer of wood brooms, maps, brushes, rake handles and dowels (August 24, 1987); (4) Cleartone Reproductions Corporation, 23–14 College Point Boulevard, College Point, New York 11356, producer of diamond styli (needles) (August 24, 1987); (5) The R&R Manufacturing Company, Inc., P.O. Box 49, Auburn, Georgia 30203–0049, producer of men's slacks (August 27, 1987); (6) Marks Polarized Corporation, 25–B Jefryn Boulevard West, Deer Park, New York 11729, producer of optical filters, 3–D glasses & polarized film (August 27, 1987); (7) Black and Webster, Inc., 291 Bear Hill Road, Waltham, Massachusetts 02254, producer of grinding machines (August 28, 1987); (8) Durex, Inc., 5 Stahuber Avenue, Union, New Jersey 07083, producer of stamped metal parts for eyebrow curlers, venetian blinds and office supplies (September 4, 1987); (9) Broyhill, Inc., North Market Square, Dakota City, Nebraska 68731, producer of agricultural sprayers, lawn & garden sprayers, refuse collection systems (September 4, 1987); (10) Atlas Crankshaft Corporation, P.O. Box 846, Fostoria, Ohio 44830, producer of crankshafts, camshafts and valves (September 14, 1987); (11) Golden's Foundry & Machine Company, P.O. Box 96, Columbus, Georgia 31993, producer of compressors, valves and pumps (September 17, 1987); (12) OEMMCCO, Inc., 1800 White Boulevard, Libertyville, Illinois 60048, producer of industrial pins and bushings and other miscellaneous fabricated parts (September 15, 1987); (13) Kings Electronics Company, Inc, 40 Marbledale Road, Tuckahoe, New York 10707, producer of electric connectors (September 25, 1987); (14) Rockford Drop Forge Company, 2031 Ninth Street, Rockford, Illinois 61108–5327, producer of forged metal parts for farm equipment (October 5, 1987); (15) DiFini Sportswear Company, Inc. 395 Brook Avenue, Bronx, New York 10454, producer of men's & women's slacks and women's skirts (October 5, 1987); (16) Kalmus and Associates, Inc., 2424 South 25th Avenue, Broadview, Illinois 60153, producer of printed circuit boards (October 6, 1987); (17) CONMED Corporation, 310 Broad Street, Utica, New York 13501, producer of electrodes and medical devices (October 7, 1987); (18) Richter Aero Equipment, Inc., Ridge Road, Essex, New York 12936, producer of motion picture cameras and reflex auto-collimater instruments, aircraft visual approach indicators and testing probes for carburators (October 7, 1987); (19) Garland-Haswell Foundry Company, 430 W. Park Street, Sidney, Ohio 45265, producer of iron castings for pumps, valves, bearings and transmission housings (October 13, 1987); (20) American Portfolio Company, Inc., 3134 Jerome Avenue, Bronx, New York 10468, producer of leather and vinyl brief cases and folders (October 13, 1987); (21) Alexander and Sawyer, Inc., 471 Cortlandt Street, Belleville, New Jersey 07109, producer of fabricated metal parts for computers and copy machines and bins and caddies for food processing (October 15, 1987); (22) Camtec, Inc., 1628 Keystone Road, Traverse City, Michigan 49684, producer of plastic injection molds, aluminum gravity molds and die cast dies (October 20, 1987); (23) Advance Foundry Company, 107 Seminary Avenue, P.O. Box 1411, Dayton, Ohio 45401, producer of automobile stamping dies, smelting pots, blanks and value bodies (October 20, 1987); (24) Eagle Grinding Wheel Corporation, 2519 West Fulton, Chicago, Illinois 60612, producer of grinding wheels and stones of aluminum oxide and silicon carbide (October 20, 1987; (25) H & H Atlas, Inc., 385 Gerard Avenue, Bronx, New York 10451, producer of women's swimsuits (October 20, 1987); (26) Hammond Candy Company, 2550 West 29th Avenue, Denver, Colorado 80211, producer of candies and confections (November 3, 1987); (27) Palama Shoe Company, Ltd., 961 Akepo Lane, Honolulu, Hawaii 96817, producer of men's and women's sandals (November 5, 1987); (28) Electonic Metal Products, Inc., 21000 East 32nd Parkway, Aurora, Colorado 80011, producer of metal enclosures and fabricated metal parts (November 5, 1987); (29) Graphic Press Corporation, 501–A Cooke Street, Honolulu, Hawaii 96813, producer (November 5, 1987); (30) Plasti-Glas Molded Products, Inc., 720 Sloan Avenue, Trenton, New Jersey 08625, producer of fiberglass parts for medical equipment, office furniture and equipment steel molds and machine metal parts (November 6, 1987); (31) Wrightco Motorcycle Accessories, Inc., 17580 S.E. Sunnyside Road, Boring, Oregon 97009, producer of motorcycle accessories (November 9, 1987); (32) Suffolk Etched Products, Inc., 1556 W. Main Street, Riverhead, New York 11901, producer of etched electronic parts, Christmas decorations and ornaments and awards (November 10, 1987); (33) Planet Corporation, 2150 Apollo Drive, Lansing, Michigan 48906, producer of material handling machinery and sand and mold systems (November 13, 1987); (34) Hicks U.S.A., P.O. Box 703, Broomfield, Colorado, 80020, producer of luggage (November 16, 1987); (35) Advanced Technologies, Inc., 2490 East Midland Road, Bay City, Michigan 48706, producer of welding, vacuum testing, refrigeration, and miscellaneous equipment (November 16, 1987); (36) Bonanza Investments, Inc., East 4103 Mission Avenue, Spokane, Washington, 99202, processor of beef and pork sausage (November 20, 1987); (37) Woodward Research Company, Inc., 45 Calton Avenue, East Rutherford, New Jersey 07073, producer of jogger-aerator and skid turner machines (November 27, 1987); (38) The Oeser Company, P.O. Box 156, Billingham, Washington 98225, producer of poles and lumber (December 1, 1987); (39) Verticals, Inc., 704 East 133rd Street, Bronx, New York 10454, producer of vertical blinds (December 2, 1987); (40) Honolulu Connection, Ltd., 826 Queen Street, Honolulu, Hawaii 96813, producer of men's swim wear (December 2, 1987); (41) Paramount Manufacturing Company, 1125 West Elizabeth Avenue, Linden, New Jersey 07036, producer of golf ball retrievers, steel tubing and other miscellaneous sports products (December 3, 1987); (42) Malihini Sportswear, Inc., 431 Kuwili Street, Honolulu, Hawaii 96819); (43) American Manufacturing and Technology, Inc., 3841 Buffalo Road, Rochester, New York 14624, producer of parts for automobile body and power system, photo copying machines and blood analyzers (December 7, 1987); (44) Martin Industries, Inc., P.O. Box 128, Florence, Alabama 35631, producer of room dehumidifiers, heaters, furnaces, fireplaces and water coolers (December 7, 1987); (45) Taylor & Friend Enterprises, 1101 South Emerson Avenue, Indianapolis, Indiana 46203, producer of plastic, injection and compression molds and medical and automotive components (December 7, 1987); (46) Hope's Architectural Products, Inc., 84 Hopkins Avenue, Jamestown, New York 14701, producer of security and aluminum windows (December 10, 1987); (47) Park Avenue Design Center, Inc., 4045 Cheyenne Court, Chino, California 91710, producer of bedroom furniture (December 10, 1987); (48) Super Glass Corporation 1020 East 48th Street, Brooklyn, New York 11203), producer of glass vases, lamp & lighting fixture parts (December 10, 1987); (49) Chivas Products, Ltd., 42555 Merrill Road, Sterling Heights, Michigan 48078, producer of automotive components for interior lighting assemblies, interior and exterior trim, etc. (December 11, 1987); (50) Commercial Air Conditioning Company, Inc., 11018 Palmer Avenue, South Gate, California 90280, producer of paint spray booths (December 14, 1987); (51) Hoyt & Worthern Tanning Corporation, 60 Railroad Street, Haverhill, Massachusetts 01820, producer of leather (December 14, 1987); (52) Atlas Crankshaft Corporation, P.O. Box 846, Fostoria, Ohio 44830, producer of valves, crankshafts, camshafts, etc. (December 14, 1987); (53) WFI Industries, Inc., 1441 Northlake Way, Seattle, Washington 98103, producer of ships and commerical fishing vessels (December 16, 1987); (54) Microwave Systems Engineering, Inc., 4221 East Raymond Street, #102, Phoenix, Arizona 85040, producer of signal amplifiers (December 22, 1987); (55) Pincor Power Corporation, 3700 N. Acorn Lane, Franklin Park, Illinois 60131, producer of portable electric generators and metal boxes (December 24, 1987); (56) General Machine Company of New Jersey, 301 Smalley Avenue, Middlesex, New Jersey 08846, producer of industrial blenders, dryers and valves (December 30, 1987); (57) D.H. Thompson, Inc., 11 North Union Street, Elgin, Illinois 60123, producer of fishing gear, tackle and flies (December 30, 1987); (58) Process Timber Sales, Creamery Lane, Ellenville, New York 12428, producer of knock down oak furniture (January 5, 1988); (59) Lore Lingerie, Inc., 1706 West Pico Boulevard, Los Angeles, California 90015, producer of women's pants, bras, slips, gowns, pajamas and robes (January 5, 1988); (60) G.K. Heller Corporation, 7 Mayflower Place, Floral Park, New York 11001, producer of electric motors, controllers, and stirrers (January 7, 1988).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–85 regarding review by clearinghouses do not apply.

S. Cassia Muir,

Acting Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 88-1504 Filed 1-22-88; 8:45 am]

BILLING CODE 3510-DR-M

[A-421-701]

Postponement of Preliminary Antidumping Duty Determination: Brass Sheet and Strip From the Netherlands

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of brass sheet and strip from the Netherlands have occurred at less than fair value until not later than February 2, 1988.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–3965.

SUPPLEMENTARY INFORMATION: On August 14, 1986, we published a notice of initiation (52 FR 30416) of an antidumping duty investigation to determine whether brass sheet and strip from the Netherlands are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by December 28, 1987.

As detailed in the initiation notice, the petition alleged that imports of brass sheet and strip from the Netherlands are being, or are likely to be sold in the United States at less than fair value.

On December 1, 1987, counsel for petitioners, American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and United Steelworkers of America (AFL–CIO/CLC), requested that pursuant to 19 CFR 353.39(b) the Department extended the period for the preliminary determination until not later than 190 days after the date of receipt of the petition in accordance with section 773(c)(1)(A) of the Act. Accordingly, the period for the determination in this case was extended to not later than January 26, 1988.

On January 19, petitioners requested that pursuant to 19 CFR 353.39(b) the Department extend the period for the preliminary determination an additional 7 days until not later than 197 days after the date of receipt of the petition in accordance with section 773(c)(1)(A) of the Act. Accordingly, the period for the determination in this case is hereby extended. We intend to issue our preliminary determination not later than February 2, 1988. This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 20, 1988.

[FR Doc. 88–1401 Filed 1–22–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–401]

Red Raspberries From Canada; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on fresh and frozen red raspberries from Canada. The review covers three processors/exporters of this merchandise to the United States and the period December 18, 1984 through May 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Dionne C. Calloway or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1985, the Department of Commerce, ("the Department") published in the **Federal Register** (50 FR 26019) the antidumping duty order on certain red raspberries from Canada. Clearbrook Packers, Inc., Jesse Processing, Ltd., and Mukhtiar & Sons, Ltd. requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on July 17, 1986 (51 25923).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States* ("TSUS") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUS, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. These products are currently classifiable under HS item numbers 0810.20.90, 0810.20.10, 0811.20.20.

The review covers three processors/exporters of fresh and frozen red raspberries to the United States, Jesse Processing, Ltd., Mukhtiar & Sons, Ltd., Clearbook Packers, Inc., and the period December 18, 1984 through May 31, 1986.

United States Price

As provided in Section 772(b) of the Tariff Act of 1930 ("The Act"), we used the purchase price of certain sales of red raspberries to represent the United States price, when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the f.o.b. cold storage packed price. We made deductions, where applicable, for U.S. customs duties, brokerage and handling, and foreign inland freight.

As provided in section 772(c) of the Act, we used the exporter's sales price of certain sales of red raspberries to represent the United States price when the merchandise was sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the f.o.b. cold storage, packed price. We made deductions, where applicable, for brokerage and handling, U.S. and foreign inland freight, credit expenses, commissions to unrelated agents, and indirect selling expenses.

Foreign Market Value

In accordance with section 773(b) of the Act, as applied to Mukhtiar and Sons Packers, Ltd. ("M&S") and Jesse Processing, Ltd. ("Jesse"), certain home market sales at prices below the cost of production were disregarded when they constituted more than ten percent of total home market sales quantity. Only the remaining sales above the cost of production were used to represent FMV. When these above-cost-sales made by M&S were not contemporaneous with any U.S. sales, construction value was used. No cost of production information was requested from Clearbrook Packers, Inc. ("Clearbrook") since there was no allegation that its sales were below the cost of production. For M&S and Jesse, the cost of production consisted of the processors' materials and fabrication costs plus their actual general, selling and administrative (GS&A) expenses. Since in both cases the processors purchased some unprocessed berries from related as well as unrelated growers, the cost of production also included a weighted average of berry costs and berry prices respectively.

The constructed value was calculated by adding the cost of materials, labor, factory overhead, packing, general expenses and profit. Actual costs for GS&A and actual profit figures were used in the constructed value since they exceeded the 10 percent and eight percent statutory minimums. The costs of the unprocessed berries produced by M&S Growers were used in the constructed value calculation instead of their prices, because these prices were less than unprocessed berry prices paid to unrelated growers. Only commissions were deducted from the constructed value, and no adjustments were made to offset U.S. selling expenses since there were no selling expenses on those U.S. sales the prices of which were compared to the constructed value.

With respect to all sales made by Clearbrook and Jesse, and with respect to all contemporaneous sales made by M&S, home market price was used in calculating foreign market value. Home market price was based on the f.o.b. plant or cold storage delivered packed price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, credit expenses, brokerage and handling, commissions, discounts, and differences in packing costs. When exporter's sales price was used as United States price, we also made adjustments to the home market for indirect selling expenses to offset U.S. indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period December 18, 1984 through May 31, 1986:

Processor/exporter	Margin (per cent)
Jesse Processing, Ltd.	7.65
Mukhtiar & Sons Packers, Ltd.	.00
Clearbrook Packers, Inc.	1.30

Interested parties may request disclosure and/or an administrative protective order within 5 days of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the antidumping duty order (50 FR 26019, June 24, 1985) for each of those firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 7.65 percent shall be required.

These deposit requirements are effective for all shipments of Canadian fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88–1402 Filed 1–22–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Incidental Taking of Marine Mammals; Issuance of Letter of Authorization

Notice is given that on January 19, 1988, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking and the Ringed Seals Incidental to On-Ice Seismic Activities, to the following: Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502.

This Letter of Authorization is valid for 1988 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subpart A and B).

Issuance of this letter is based on a finding that the total taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC.

and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 19, 1988.

Nancy Foster,

Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 88–1279 Filed 1–22–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 2, 1988; Tuesday, February 9, 1988; Tuesday, February 16, 1988; and Tuesday, February 23, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibilities to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency." (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considerd by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 20, 1988.

[FR Doc. 88–1363 Filed 1–22–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9–11 February 1988.

Times of Meetings: 0800–1700 hours, 9 and 10 February 1988; 0800–1200 hours, 11 February 1988.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for briefings by personnel from HQ TRADOC, U.S. Navy and others on technological developments and potential applications of directed energy. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–1442 Filed 1–22–88; 8:45am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–04; Certification Notice–9]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant To Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Cogen Energy Technology, Inc., Shaker Heights, OH	Dec. 18, 1987	Combined cycle	49.5	Castleton-on-Hudson NY.
MidSun Partners, L.P., Radnor, PA	Dec. 30, 1987	Combined cycle	26	Kern County, CA.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on January 19, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1365 Filed 1–22–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Innovative Clean Coal Technology Program Opportunity Notice

AGENCY: Office of Fossil Energy, DOE.

SUMMARY: The United States Department of Energy (DOE), Office of Fossil Energy (FE), is issuing a Program Opportunity Notice (PON) (Number DE–PS01–88FE61530) in response to Pub. L. No. 100–202, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1988, and for Other Purposes." This Act, among other things, provides funds to conduct cost-shared Innovative Clean Coal Technology (ICCT) projects to demonstrate emerging clean coal technologies that are capable of retrofitting and repowering existing coal burning facilities. The purpose of this PON is to solicit proposals to demonstrate technologies that are capable of being commercialized in the 1990's, more cost effective than current technologies, and capable of achieving significant reduction of SO_2 and/or NO_x emissions from existing coal burning facilities, particularly those that contribute to transboundary pollution.

Pub. L. No. 100–202 provides that the Secretary of Energy shall not finance more than 50 percent of the total costs of each innovative clean coal technology project as estimated by the Secretary of Energy as of the date of award of financial assistance. The PON will contain qualification criteria, and each offeror will need to demonstrate ability to meet these qualification criteria.

There are three objectives of this announcement. First, this announcement is to request written public comment on the draft PON for this program. For those on the DOE mailing list, copies of the draft PON will be mailed on January 28, 1988. Instructions for being placed on the mailing list to receive copies of the draft PON are contained below. In addition, copies can be picked up at DOE Headquarters on or after January 28, 1988.

DOE is requesting input from all interested parties to have the benefit of a broad range of public viewpoints as guidance in developing the final PON. Included in the draft PON will be DOE's proposed strategy for compliance with the National Environmental Policy Act. Oral or written responses to, or acknowledgement by DOE, of public comments received with respect to the draft PON will not be possible due to the limited time available to issue the final PON. The final PON will contain no discussion of the responses received. However, all timely comments received will be considered in finalized the PON.

Second, this announcement also serves as notice that the final PON for the Innovative Clean Coal Technology program will be mailed no later than February 22, 1988. In addition, a copy can be picked up at DOE Headquarters on or after February 22, 1988. Proposals in response to this PON will be due on May 23, 1988.

Third, this announcement is to give notice that a preproposal conference for the innovative Clean Coal Technology program will be held on March 15, 1988, to provide prospective offerors the opportunity to gain a better understanding of the objectives of this PON and to receive answers in response to written questions submitted regarding the PON.

All persons receiving the draft PON should retain their copies of this draft since the issuance of the final PON may be accomplished through substitution of pages, if needed. In order to have a complete PON, offerors may therefore need copies of the draft PON and the substitution pages.

Date of Preproposal Conference: March 15, 1988 at 10 a.m., e.s.t.

Location of Preproposal Conference: U.S. Department of Commerce Auditorium, Herbert C. Hoover Building, 14th and Constitution Ave., NW., (Enter through Main Lobby) Washington, DC 20004.

Date for Submission of Public Comment on Draft PON: The deadline date for receipt of comments at the address identified below is 3:30 p.m., e.s.t., on February 5, 1988.

Address for Submission of Public Comment on Draft PON: Comments must be submitted in writing to the U.S. Department of Energy, Office of Procurement Operations, Attn: Mr. Herbert D. Watkins, MA–452.1, Room 11–065, 1000 Independence Avenue, SW., Washington, DC 20585.

For Copies of the Draft and Final PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA–451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft and final PON should be received by January 28, 1988. Also, copies of the draft and final PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays. The draft PON is anticipated to be available on or after January 28, 1988, and the final PON on February 22, 1988. Requests for copies of the draft and final PON after February 22, 1988, will be filled only to the extent that copies are available.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel (202) 586–1026.

Issued in Washington, DC, January 19, 1988.

Edward T. Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88–1364 Filed 1–22–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy; Coordinating Subcommittee on Petroleum Storage & Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Friday, February 26, 1988, 9 am.

Place: Unocal Corporation, Conference Room 1401, 911 Wilshire Boulevard, Los Angeles, California.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of The Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of The Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda

Opening remarks by the Chairman and Government Cochairman.

Discuss study assignment.

Review task group assignments.

Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 88-1409 Filed 1-22-88; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Senior Performance Review Board Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: January 12, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis E. Owens, Chief, Program Division, Office of Personnel, 500 C Street, SW., Washington, D.C. 20472, 202-646-3966.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:

Members: Frank H. Thomas, William K. Chipman, John D. Hwang, Caesar A. Roy, Joe D. Winkle, George H. Orrell, John R. Curran, Sr.

Spence W. Perry,

General Counsel.

[FR Doc. 88-1360 Filed 1-22-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Cancellation of Inactive Tariffs

AGENCY: Federal Maritime Commission.

ACTION: Order cancelling inactive tariffs; correction.

SUMMARY: The Federal Maritime Commission is correcting the listing of inactive tariffs to be cancelled as shown in Attachment B to the Order which appeared in the Federal Register on December 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, 202/523-5796.

SUPPLEMENTARY INFORMATION: In the Order cancelling inactive tariffs published in the **Federal Register** on December 9, 1987 (52 FR 46660), Attachment B listed those common carriers whose tariffs were to be cancelled. Through inadvertant error, that listing included TIC Line. TIC Line should have been shown on Attachment A as a carrier responding to the Federal Maritime Commission's notice of intent to cancel. Therefore, the tariff of TIC Line will be retained in the Commission's active files.

This correction is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation, by § 9.04 of Commission Order No. 1 (Revised), dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-1400 Filed 1-22-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

AmeriTrust Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AmeriTrust Corporation*, Cleveland, Ohio; to acquire AT Investment Services Corp., Cleveland, Ohio, and thereby engage in the purchase and sale of gold and silver bullion and gold coins for the account of its customers and for its own account; to underwrite and deal in government obligations and money market instruments and to provide financial or investment advice to relation thereto pursuant to §§ 225.25(b)(16) and 225.25(b)(4) of the Board's Regulation Y through its wholly-owned subsidiary, AT Investment Services Corp., Cleveland, Ohio, which is currently engaged in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. *National City Corporation*, Cleveland, Ohio; to acquire National City Financial Corporation, Cleveland, Ohio, and thereby engage in making acquiring, or servicing loans or other extensions of credit for NCFC's account or the account of others as permitted under § 225.25(b)(1); acting as investment of financial advisor pursuant to § 22.525(b)(4); providing management consulting advice pursuant to § 225.25(b)(11); and performing appraisals of real estate and tangible and intangible personal property pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Baldi Bros. Construction Co.*, Beaumont, California; to engage in making and servicing loans pursuant to § 225.25(b)(1); and leasing of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *Baldi Bros. Construction Co. Retirement Trust*, Beaumont, California; to engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1345 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

First Commercial Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The Companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 12, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commercial Bancshares, Inc.*, Jasper, Alabama; to acquire 100 percent of the voting shares of the Bank of Tuscaloosa, Tuscaloosa, Alabama, a *de novo* bank.

2. *Sea Island Bankshares, Inc.*, Statesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Sea Island Bank, Statesboro, Georgia.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1348 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 9, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Margie A. Sheik*, Bern, Kansas; to acquire an additional 30.5 percent of the voting shares of Bern Bancshares, Inc., Bern, Kansas, and thereby indirectly acquire State Bank of Bern, Bern, Kansas.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1348 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

Southold Bancorp, Inc., Correction of Previous Document

This notice corrects a previous **Federal Register** notice (FR Doc. 87-27757) published at page 46004 of the issue for Thursday, December 3, 1987.

Under the **Federal Reserve Bank of New York**, the entry for Southold Bancorp, Inc. is revised to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Southold Bancorp, Inc.*, Southold, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Southold Savings Bank, Southold, New York, which engages directly in the sale of Savings Bank Life Insurance and through a subsidiary in activities which will, following consummation of the proposal, be permissible under section 4(c)(8)(C) of the Bank Holding Company Act.

Comments on this application must be received by February 9, 1988.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1347 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

West Bancshares, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *West Bancshares, Inc.*, West, Texas; to engage *de novo* in providing individual, business and non-profit organizations tax planning and tax preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. This activity will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1349 Filed 1-22-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 01/04/88 AND 01/13/88

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
(1) Consolidated Electrical Distributors, Inc.; Robert D. Fink, Sr.; Elangee Electrical Supply Co., Inc.	88-0509	01/04/88
(2) Consolidated Electrical Distributors, Inc.; Raymond E. Fink, Sr.; Elangee Electrical Supply Co., Inc.	88-0510	01/04/88
(3) Ronald O. Perelman; TW Services, Inc.; TW Services, Inc.	88-0521	01/04/88
(4) Florida Rock Industries, Inc.; The Arundel Corp.; The Arundel Corp.	88-0560	01/04/88
(5) Applebee's International, Inc.; W. R. Grace & Co.; W. R. Grace & Co.	88-0603	01/04/88
(6) Thomas & Betts Corp.; Nevada Western Supply, Inc.; Nevada Western Supply, Inc.	88-0624	01/05/88
(7) Intercontinental Affiliates; United Technologies Corp.; DC-97-1, Inc., et al.	88-0625	01/05/88
(8) Jet Florida, Inc.; United Technologies Corp.; DC-9A-1, Inc. et. al. and UT Credit Corp.	88-0627	01/05/88
(9) Koninklijke Royal Ahold N.V.; FNS Holding Co.; FNS Holding Co.	88-0628	01/05/88
(10) Minnesota Power & Light Co.; Capital Re Corp.; Capital Re Corp.	88-0639	01/05/88
(11) Baltimore Gas and Electric Co.; Capital Re Corp.; Capital Re Corp.	88-0640	01/05/88
(12) USF&G Corp.; Capital Re Corp.; Capital Re Corp.	88-0641	01/05/88
(13) N.V. Bekaert S.A.; Bekaert Dyersburg Steel Cord Co.; Bekaert Dyersburg Steel Cord Co.	88-0540	01/06/88
(14) U.S. Cable Television Group, L.P.; Essex Communication Corp.; Essex Communication Corp.	88-0544	01/06/88
(15) U.S. Cable Television Group, L.P.; Essex 1984-1 Investment Limited Partnership; Essex 1984-1 Operating Partnership	88-0545	01/06/88
(16) U.S. Cable Television Group, L.P.; Essex 1985-1 Limited Partnership; Essex 1985-1 Limited Partnership	88-0546	01/06/88
(17) U.S. Cable Television Group, L.P.; Essex 1985-2 Limited Partnership; Essex 1985-2 Limited Partnership	88-0547	01/06/88
(18) U.S. Cable Television Group, L.P.; Essex 1986-1 Limited Partnership; Essex 1986-1 Limited Partnership	88-0548	01/06/88
(19) George S. Mann; Robert S. Howard; H & H Energy Services, Inc.	88-0556	01/06/88
(20) Bridgestone Corp.; Bekaert Dyersburg Steel Cord Co.; Bekaert Dyersburg Steel Cord Co.	88-0557	01/06/88
(21) Eastman Kodak Co.; NeoRx Corp.; NeoRx Corp.	88-0558	01/06/88
(22) Barry Diller, The News Corp. Limited; The News Corp. Limited	88-0564	01/06/88
(23) Meyer International, plc; Charles E. Stottlemeyer; Stottlemyer & Shoemaker Lumber Co.; Stottlemyer	88-0505	01/07/88
(24) Meyer International, plc; John W. Shoemaker; Stottlemyer & Shoemaker Lumber Co.; Stottlemyer	88-0506	01/07/88
(25) American Continental Corp.; Media General, Inc.; Media General, Inc.	88-0577	01/07/88
(26) Jungfrau Trust, Wickes Companies, Inc.; Wickes-Leath Furniture Division	88-0647	01/07/88
(27) Heco, Inc.; Bernard R. Kossar; Home Quarters Warehouse, Inc.	88-0594	01/11/88
(28) Hook-SupeRx, Inc.; Compact Video, Inc.; Brooks Drug, Inc.	88-0595	01/11/88
(29) Stephen Adams; Lewis Manderson, Jr.; Turner Outdoor Advertising, Ltd.	88-0600	01/11/88
(30) Sisters of the Resurrection; John F. Kennedy Health Care Corp.; John F. Kennedy Medical Center	88-0621	01/11/88
(31) Beverly Enterprises, Inc.; Richard D. Segal; Beverly Healthcare Properties Limited	88-0637	01/11/88
(32) Peter W. May; CJI Industries, Inc.; CJI Industries, Inc.	88-0653	01/11/88
(33) Nelson Peltz; Avery, Inc.; Avery, Inc.	88-0654	01/11/88
(34) CJI Industries, Inc.; Avery, Inc.; Avery, Inc.	88-0655	01/11/88
(35) Nelson Peltz; CJI Industries, Inc.; CJI Industries, Inc.	88-0656	01/11/88
(36) CJI Industries, Inc.; Nelson Peltz; Triangle Industries, Inc.	88-0657	01/11/88
(37) Beverly Enterprises, Inc.; Richard D. Segal; Encore Retirement-Naples, Ltd.	88-0659	01/11/88
(38) Noranda Inc.; Arthur Hale; American Mag, Inc.	88-0676	01/11/88
(39) Noranda Inc.; Linda Rodman; Metal Products of California, Inc.	88-0677	01/11/88
(40) C4corp Inc.; Emerson Electric Co.; Emerson Leasing Ventures, Inc.	88-0685	01/11/88
(41) William G. Benton, Forum Group, Inc.; Exceptcon of Kentucky, Inc., RLI, Inc. and Forum Group	88-0687	01/11/88
(42) Fireman's Fund Corp.; Donald F. Clarke, Jr.; Central Pacific Mortgage Co.	88-0708	01/11/88
(43) Thomson S.A.; Northrop Corp.; Wilcox Electric, Inc.	87-1994	01/12/88
(44) Thomas W. Wathen; American Brands, Inc.; Pinkerton's, Inc.	88-0525	01/12/88
(45) Donald G. Jones; North American Communications Corp.; North American Communications Corp.	88-0585	01/12/88
(46) Saul Levy; Guarantee Auto Stores, Inc.; Guarantee Auto Stores, Inc.	88-0620	01/12/88
(47) Caralco Investments B.V.; The Vista Organization Partnership, L.P.; The Vista Organization Home Video Corp.	88-0631	01/12/88
(48) Industri AB Euroc; Transtech Industries, Inc.; Allentown Cement Co., and Chester Cement Co., Inc.	88-0667	01/12/88
(49) A/S Norcem; Transtech Industries, Inc.; Allentown Cement Co. & Chester Cement Co., Inc.	88-0668	01/12/88
(50) Farm House Foods Corp.; Frederick Goldberger and Edythe Goldberger; Protmex Corp.	88-0688	01/12/88
(51) Attwoods plc; Eastern Waste Industries, Inc.; Eastern Waste Industries, Inc.	88-0581	01/13/88
(52) Procordia AB; The Sidelfi Group, Inc.; The Sidelfi Group, Inc.	88-0604	01/13/88
(53) Tele-Communications, Inc.; CVN Companies, Inc.; CVN Companies, Inc.	88-0614	01/13/88
(54) J.P. Industries, Inc.; Aluminum Company of Americas, TRE-Modern, Inc. and The Weslock Corp.	88-0622	01/13/88
(55) The Beltfonte Co.; PepsiCo, Inc.; Pepsi-Cola Bottling Co. of Estherville, Inc., et al.	88-0650	01/13/88
(56) Imperial Sugar Co.; Holly Sugar Corp.; Holly Sugar Corp.	88-0695	01/13/88
(57) Indian L.P.; Mourvay Holdings, Inc.; Mourvay Holdings, Inc.	88-0703	01/13/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1371 Filed 1-22-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reauthorize expiring information collection 3090-0080, General Services Administration Acquisition Regulation (GSAR), Part 532, Contract Financing, requiring contractors to submit a release of claims before they receive final payment.

AGENCY: Office of Acquisition Policy, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Number of respondents, 2,000; responses per respondent, 1; 6 minutes per response, on average; burden hours, 200.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, 202-523-4765.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0608.

Dated: January 14, 1988

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 88-1339 Filed 1-22-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of the Work Practices Guide for Manual Lifting; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: January 29, 1988.

Time: 8:30 a.m.—3:00 p.m.

Place: Room B-32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To discuss revisions to the formula for calculating Action and Maximum Permissible Limits and factors for non-sagittal plane lifting tasks. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Donald W. Badger, Ph.D., Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, *Telephones:* FTS: 684-8291; commercial 513/533-8291

Dated: January 20, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-1552 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 88N-0018]

Drug Export; Cytovene ™ (Ganciclovir)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Syntex Laboratories, Inc., has filed an application requesting approval for the export of the human drug Cytovene ™ (ganciclovir) to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolph Apodaca, Center for Drug Evaluation and Research (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Syntex Laboratories, Inc., 3401 Hillview Ave., P.O. Box 10850, Palo Alto, CA 94303, has filed an application requesting approval for the export of the drug Cytovene ™ (ganciclovir) to the United Kingdom. Ganciclovir has been used for the treatment of sight-threatening and life-threatening cytomegalovirus infections. The application was received and filed in the Center for Drug Evaluation and Research on December 28, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 4, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated 21 CFR 5.44.

Dated: January 5, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-1379 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0015]

U.S. Products, Inc., et al.; Proposal To Withdraw Approval of New Drug Applications; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of five new drug applications because the applicants have failed to submit required annual reports.

DATE: Requests for hearing are due by February 24, 1988; and the data, information, and analyses relied on to justify a hearing are to be submitted by March 25, 1988.

ADDRESS: Requests for hearing in response to this notice should be identified with Docket No. 88N-0015, and directed to: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drug Evaluation and Research (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-43200.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to FDA concerning each of its approved new drug applications (NDA's) in accordance with 21 CFR 314.81. Although in the past some exemptions from these reporting requirements have been granted, all such exemptions were rescinded (43 FR 20556; May 12, 1978). The holders of the following NDA's have not submitted annual reports and have not responded to the agency's requests by certified mail for submission of the reports. Four of the certified letters were returned because the firm is either out of business or did not leave a forwarding address:

NDA	Drug name	Applicant's name and address
6-611	Parasal Calcium Capsules and Tablets, Parasal Sodium Enteric Coated Tablets, Tablets and Capsules, and Parasal Tablets	U.S. Products Inc., 16636 N.W. 54th Ave., Miami Lakes, FL 33014.
8-428	Isonazid Tablets	U.S. Products Inc.
9-678	Isonazid Tablets	Vitarine Pharmaceuticals, Inc., 5051 Lancaster Ave., Philadelphia, PA 19131
13-234	Nitrofurantoin Tablets	Arlin Chemicals Inc., P.O. Box 137, Carlstadt, NJ 07072
13-473	Pas-C Tablets	Herbing Pharmaceuticals, 5626 W. 117th Pl., Worth, IL 60482.

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications and all amendments and supplements thereto on the grounds that the applicants have failed to submit the reports required under 21 CFR 314.81.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants are hereby given an opportunity for a hearing to show why approval of their new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above.

An applicant who decides to seek a hearing shall file (1) on or before February 24, 1988, a written notice of appearance and request for hearing, and (2) on or before March 25, 1988, the data, information, and analyses relied on to justify a hearing as specified in 21 CFR 314.200.

The failure of the applicant to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and constitutes a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will begin appropriate regulatory action to remove it from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accord with 21 CFR 314.81. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (see 21 CFR 5.82).

Dated: December 31, 1987.

Gerald F. Meyer,

Acting Deputy Director, Center for Drugs and Biologics.

[FR Doc. 88-1353 Filed 1-22-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-88-1768]

Privacy Act of 1974; Deletion of Systems of Records

AGENCY: Office of the Secretary, HUD.

ACTION: Deletion of Privacy Act systems of records.

SUMMARY: Notice is given that Privacy Act systems of records are deleted.

EFFECTIVE DATE: January 25, 1988.

ADDRESS: Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has determined that the following systems do not meet the Privacy Act criteria and will no longer be maintained as Privacy Act systems of records: (1) HUD/DEPT-17, Experimental Housing Allowance Program—Participant Files; (2) HUD/DEPT-18, Fellowship Files, Urban Studies; (3) HUD/DEPT-55, Executive Personnel Files; (4) HUD/DEPT-60, Employee Emergency Reference Files; (5) HUD/PD&R-1, Urban Homesteading Evaluation Data; (6) PD&R-2, Solar Energy Demonstration Survey Files; (7) HUD/PD&R-3, Urban Reinvestment Task Force Data; (8) HUD/PD&R-4, Prepurchase Counseling Demonstration and Evaluation Records; (9) HUD/PD&R-5, HUD Community Development Block Grant Evaluation Files; (10) HUD/PD&R-9, Elderly Home Maintenance Demonstration Evaluation Data Files; (11) HUD/PD&R-10, Home Repair Service for the Elderly: Baltimore Sample Data File; (12) HUD/PD&R-11, Community Development Block Grant State Transfer Evaluation Files. Previously, the systems and a prefactory statement containing the general Routine Uses applicable to most of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1986 Compilation, Volume II."

Authority: 5 U.S.C. 552a, 88 Stat. 1896; section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Issued at Washington, DC on January 15, 1988.

Judith L. Hofmann,

Assistant Secretary for Administration.

[FR Doc. 88-1389 Filed 1-22-88; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-88-1767]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 14, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Preference Rule
Office: Housing
Description of the Need for the Information and its Proposed Use: The information will be used by owners and PHAs to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily placed, or paying more than 50 percent of income for rent. This information is needed by HUD to determine if owners and PHAs are properly administering the program.
Form Number: None
Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit
Frequency of Respondents: On Occasion
Estimated Burden Hours: 828.417
Status: New
Contact: Eugene R. Fogel, HUD, (202) 755-6887; John Allison, OMB, (202) 395-6880

Date: January 5, 1988.

Proposal: Evaluation of Housing Voucher Portability
Office: Housing
Description of the Need for the Information and its Proposed Use: This form is needed to evaluate the degree to which the housing voucher portability is utilized, i.e., families moving from one public housing authority's (PHA's) jurisdiction to another, taking their portable voucher with them. It is used to record vital information on administrative and other costs to the PHAs.
Form Number: None
Respondents: State or Local Governments
Frequency of Respondents: On Occasion
Estimated Burden Hours: 250
Status: New
Contact: Gerald J. Benoit, HUD, (202) 755-6477; John Allison, OMB, (202) 395-6880

Date: December 30, 1987.

Proposal: Request for Financial Information
Office: Housing
Description of the Need for the Information and its Proposed Use: The information provided on this form is needed and used to help evaluate a mortgagor's eligibility for assistance under HUD's mortgage assignment program.
Form Number: HUD-92068F
Respondents: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Frequency of Respondents: On Occasion
Estimated Burden Hours: 38,000
Status: Extension
Contact: Thomas H. Hitchcock, HUD, (202) 755-6664; John Allison, OMB, (202) 395-6880

Date: December 22, 1987.

Proposal: Community Development Block Grant (CDBG) Entitlement Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The need for the submission requested from entitlement grantees is based on statutory requirements. The law specifically requires submission of the final statement of the housing assistance plan and the annual report. The records are necessary for the

BEST COPY AVAILABLE

Secretary of HUD to make his annual statutory review of performance and compliance.
Form Number: SF–424 and Narrative; HUD–4949.1 thru 4949.7, 7091.1, and 7091.2
Respondents: State and Local Governments
Frequency of Respondents: Annually
Estimated Burden Hours: 251,625
Status: Revision
Contact: James R. Broughman, HUD, (202) 755–5977; John Allison, OMB, (202) 395–6880

Date: January 5, 1988.

Proposal: Title I Monthly Statement Reconcilement of Insurance Charges
Office: Administration
Description of the Need for the Information and its Proposed Use: Title I of the National Housing Act provides authority for HUD to coinsure loans made by private institutions for the purpose of financing property improvements, purchasing a manufactured home, or preserving historic structures. The information is used by HUD-approved lending institutions as a vehicle for reconciling the differences that occur between the lender's records and HUD's monthly billing statement.
Form Number: HUD–646
Respondents: Businesses or Other For-Profit
Frequency of Respondents: On Occasion and Monthly
Estimated Burden Hours: 2,085
Status: Extension
Contact: Cynthia H. Palmer, HUD, (202) 755–5264; John Allison, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 10, 1987.

Proposal: Compilation of Data on Low-Income Housing Tax Credit
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: This data collection will inform HUD, Treasury, OMB, Congress, and other interested parties how extensively and in what ways the new low-income housing tax credit is being used. HUD needs the results of this data collection to assess the housing needs of low-income families and to administer housing assistance programs.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: Semi-annually
Estimated Burden Hours: 558
Status: New
Contact: Arthur J. Reiger, HUD (202) 755–5537; John Allison, OMB, (202) 395–6880

Date: December 14, 1987.

Proposal: Performance Funding System Data Collection Forms
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: These forms are needed by the Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate the annual operating subsidy eligibility under the Performance Funding System. These forms are used by HUD to evaluate the PHAs'/IHAs' annual operating budgets.
Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B and 52723
Respondents: State or Local Governments
Frequency of Submission: Annually
Estimated Burden Hours: 13,331
Status: Reinstatement
Contact: Joan DeWitt, HUD (202) 426–1872; John Allison, OMB, (202) 395–6880

Date: December 8, 1987.

Proposal: Low-Rent Public Housing Construction Report
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: This form is needed and used by HUD to identify problem areas and/or inadequacies of a public housing project under construction so that corrective action can be taken in a timely manner.
Form Number: HUD–5378
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: Other (Semimonthly)
Estimated Burden Hours: 720
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880

Date: December 18, 1987.

[FR Doc. 88–1386 Filed 1–22–88; 8:45 am]
BILLING CODE 4210-01-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D–88–671]

Acting Manager, Region IV (Atlanta); Designation for Greensboro Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Greensboro Office.

EFFECTIVE DATE: November 18, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Greensboro Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager.
2. Director, Housing Development Division.
3. Director, Housing Management Division.
4. Director, Community Planning and Development Division.
5. Director, Administration Division.

This designation supersedes the designation effective February 25, 1987, (52 FR 17480, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of November 18, 1987.

Larry J. Parker,
Manager, Greensboro Office.

James W. Mills,
Acting Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88–1387 Filed 1–22–88; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. D–88–670]

Seattle Regional Office, Region X, Washington; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator—Regional Housing Commissioner of Region X (Seattle is designating officials who may serve as Acting Regional Administrator—Regional Housing Commissioner, Region X (Seattle), during the absence, disability, or vacancy in the position of Regional Administrator—Regional Housing Commissioner.

EFFECTIVE DATE: December 28, 1987.

FOR FURTHER INFORMATION CONTACT: Waller Taylor, III, Regional Counsel, Seattle Regional Office, Department of Housing and Urban Development, 1321 Second Avenue, Seattle, Washington 98101 (206) 442–4970. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator—Regional Housing Commissioner, Region X (Seattle) during the absence, disability, or vacancy in the position of the Regional Administrator—Regional Housing Commissioner with all the powers, functions, and duties redelegated or assigned to the Regional Administrator—Regional Housing Commissioner; provided that no official is authorized to serve as Acting Regional Administrator—Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position.

1. Deputy Regional Administrator.
2. Director, Office of Administration.
3. Regional Counsel.
4. Director, Operational Support.
5. Director, Office of Community Planning and Development.

Authority: Delegation of Authority, 27 FR 4319 (1962); Section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Dated: December 23, 1987.

William Y. Nishimura,
Regional Administrator—Regional Housing Commissioner, Seattle Regional Office.

[FR Doc. 88–1388 Filed 1–22–88; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Withdrawal of public notice.

SUMMARY: The Bureau of Indian Affairs is withdrawing a public notice published in the Wednesday, September 9, 1987, issue of the Federal Register (52 FR 33994).

The public notice did not receive the proper administrative clearance required by Executive Order 12291 and the Bureau of Indian Affairs headquarters guidelines. The public notice announced a significant revision in policy and practice requirements of program management. The announcement involved bureau-wide policy considerations requiring the review and approval of the Assistant Secretary—Indian Affairs.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mort S. Dreamer, Irrigation and Power Engineer, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245, Telephone Number (202) 343–5696.

Dated: January 14, 1988.

Joe C. Christie,
Acting Deputy to the Assistant Secretary: Indian Affairs (Trust and Economic Development.

[FR Doc. 88–1413 Filed 1–22–88; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

(ID–060–08–4410–08)

Coeur d'Alene District, ID; Planning Activity

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of planning activity; Amendment to the Emerald Empire Management Framework Plan and Chief Joseph Management Framework Plan.

SUMMARY: The Coeur d'Alene District, Bureau of Land Management proposes to amend the Emerald Empire and Chief Joseph Management Framework Plans to establish Research Natural Areas (RNAs) and/or Areas of Critical Environmental Concern (ACECs). The areas under consideration are:

Name	Acreage	Proposed designation	County
1. Hideaway Islands.	170	RNA/ACEC	Boundary.
2. Lund Creek.	2,905	RNA/ACEC	Shoshone.
3. Wapshilla Ridge	320	RNA/ACEC	Nez Perce.
4. Lower and Middle Cottonwood Islands.	14	RNA/ACEC	Nez Perce.
5. Captain John Creek.	1,520	RNA/ACEC	Nez Perce.
6. Long Gulch.	45	RNA/ACEC	Idaho.
7. Lucile Caves.	436	RNA/ACEC	Idaho.
8. Steamboat-chuck.	28	RNA/ACEC	Idaho.
9. Craig Mountain.	3,500	ACEC	Nez Perce.
10. Elk City Dump/ Arsenic Lake.	15	ACEC	Idaho.
11. Lower Lolo Creek.	3,200	ACEC	Idaho, Clearwater, Idaho, Lewis, Nez Perce.
12. Lower Salmon River Canyon (Hammer Ck. to confluence).	13,000	ACEC	

The main issues identified in this planning activity to date are: (1) Whether the study areas exhibit unique or special qualities to warrant special management consideration as an RNA and/or ACEC, and (2) what limitations or restrictions are appropriate.

An interdisciplinary team including wildlife, hydrology, soils, recreation, minerals, forestry, range and archeology specialists will prepare the amendment and environmental analysis.

SUPPLEMENTARY INFORMATION: Affected publics are invited to provide pertinent comments to the planning team. Comments will be accepted for 60 days following publication of this notice.

ADDRESS: Comments or requests for information should be addressed to: Ted Graf, Planning Team Leader, Bureau of Land Management, Coeur d'Alene District Office, 1808 North 3d Street, Coeur d'Alene, Idaho 83814.

Date: January 15, 1988.

Fritz U. Rennebaum,
District Manager.

[FR Doc. 88–1367 Filed 1–22–88; 8:45 am]
BILLING CODE 4310-GG-M

[UT–020–08–4322–02]

Salt Lake District, UT; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on March 8, 1988.

The Board will meet at 10:00 a.m. at the Salt Lake District, Bureau of Land Management Office, at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to obtain input from the Board on the following:

1. FY–1988 Range Improvement Projects.
2. Change in Kind of Livestock Policy.
3. Big Creek and New Canyon Allotment Adjustment Agreements.
4. Proposed Elimination of the Box Elder County Sheep Trail.
5. Policy of Use of 8100 and 7121 Funds.
6. Possible Adjustments from Proposed Land Exchanges.
7. Salt Lake District Sub-Leasing Policy.

The meeting is open to the public and interested persons may make oral statements to the Board between 10:00 a.m. and 10:30 a.m., or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to March 1, so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade W. Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 300 West, Salt Lake City, Utah 84119, (801) 524–5348.

Deane H. Zeller,
Salt Lake District Manager.
[FR Doc. 88–1340 Filed 1–22–88; 8:45am]
BILLING CODE 4310–DQ–M

[NV–930–08–4212–13; N–33989]

Opening of Public Lands in Nevada

AGENCY: Bureau of Land Management.

ACTION: Order providing for opening of public lands.

SUMMARY: This notice opens 10,063.12 acres to the operation of the public land laws.

EFFECTIVE DATE: (February 24, 1988).

SUPPLEMENTARY INFORMATION: The following described non-Federal lands were acquired by the United States in an exchange transaction and title was accepted on January 24, 1985.

Mount Diablo Meridian, Nevada.

T. 36 N., R. 56 E.,
Sec. 5, All.
T. 37 N., R. 56 E.,
Sec. 2, lot 1, SW¼NE¼;
Sec. 3, All;
Sec. 5, lots 1 and 2, S½NE¼;
Sec. 9, NE¼;
Sec. 15, NE¼;
Sec. 29, All;
Sec. 33, All;
Sec. 35, W½, SE¼.
T. 38 N., R. 56 E.,
Sec. 11, S½;
Sec. 13, S½;
Sec. 14, SW¼NE¼;
Sec. 15, All;
Sec. 21, All;
Sec. 23, All;
Sec. 24, SW¼SE¼, SE¼SW¼;
Sec. 25, All;
Sec. 27, All;
Sec. 31, NE¼;
Sec. 33, All;
Sec. 34, S½SW¼, SW¼SE¼;
Sec. 35, All;
Sec. 36, W½SW¼, SE¼SW¼.
T. 38 N., R. 57 E.,
Sec. 6, lot 7;
Sec. 8, N½SW¼, S½SE¼;
Sec. 31, All

comprising 10,063.12 acres in Elko County, Nevada.

The lands contain demonstrated wildlife values and recreation potential.

At 10 a.m. on February 24, 1988, the above described lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications recieved at or prior to 10 a.m. on February 24, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The mineral estates in the subject lands are in private ownership.

Date: January 13, 1988.

Maria B. Bohl,
Acting Deputy State Director, Operations.
[FR Doc. 88–1368 Filed 1–22–88; 8:45 am]
BILLING CODE 4310–HC–M

[UT–020–08–4352–10]

Salt Lake District; Intent To Amend the Box Elder Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Salt Lake District, proposes to amend two decisions within the Box Elder Resource Management of April 1985.

The first is Decision 3 of the Minerals Program which would be amended to include an additional 3,807 acres of public land, located in Township 10 North, Range 5 West, Sections 22 through 26 and Township 10 North, Range 5 West, Section 18, in Category 3 (no surface occupancy) for fluid mineral leasing. The amendment would increase the total acres within Category 3 from 3,861 acres to 7,668 acres and decrease the total acres within Category 1 (open) from 800,732 acres to 796,925 acres.

The second is Decision 1 of the Recreation Program which would be amended to designate 3,807 acres of public land located in Township 10 North, Range 5 West, Sections 22 through 26 and Township 10 North, Range 5 West, Section 18, as closed to off-road vehicle (ORV) use. This would increase the number of acres of land closed to ORV use to 3,807 acres and decrease the number of acres of land open to ORV use from 999,634 acres to 995,872 acres.

The BLM also proposes to add an additional decision to the Recreation Program, Decision 2, of the Box Elder Resource Management Plan which would close the above described lands to public use during the months of March through June of each year.

The above described amendments are proposed to better facilitate management of these lands as a waterfowl management area and to also use this area for reintroduction of the peregrine falcon.

An environmental assessment will be prepared by the BLM to address any impacts of the proposed amendments. Public participation is requested to identify issues or concerns on the proposed amendments. Oral and/or written comments should be made by February 29, 1988, to Mr. Leon Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 524–5348.

January 15, 1988.

C. Kemp Conn,
Acting State Director.
[FR Doc. 88–1341 Filed 1–22–88; 8:45 am]
BILLING CODE 4310–DQ–M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, 79 Stat. 969; 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Akers Ferry Canoe Rental, Inc., authorizing it to continue to provide canoe rental and shuttle service, merchandising sales, ferry boat service, and firewood sales for the public at Ozark National Scenic Riverways, Missouri, for a period of five (5) years from January 1, 1988, through December 31, 1992.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an extension of its contract of January 7, 1980, which will expire on December 31, 1987, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, MO 63965, for information as to the requirements of the proposed contract.

Edward D. Carlin,
Acting Regional Director, Midwest Region.
November 2, 1987.
[FR Doc. 88–1420 Filed 1–22–88; 8:45 am]
BILLING CODE 4310–70–M

Acadia National Park Advisory Commission; Two Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold meetings on Tuesday, February 16, 1988 and Monday, April 4, 1988.

The Commission was established pursuant to Pub. L. 99–420, sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The two scheduled Acadia National Park Advisory Commission meetings will convene at the Mount Desert Town Office Building, Sea Street, Northeast Harbor, Maine.

The meeting on February 16 will begin at 10:00 a.m. and consider the following agenda:

1. Review of Loop Road Proposal.
2. Old business.
3. New business.
4. Public comments.
5. Proposed agenda for next Commission Meeting.

The Monday, April 4, 1988, meeting will begin at 1 p.m. and consider the following agenda:

1. Review of Land Protection Plan issues.
2. Old business.
3. New business.
4. Public comments.
5. Proposed agenda and date of next Commission meeting.

The Acadia National Park Advisory Commission meetings are open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning these meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609 tel: (207) 288–3338.

Steven H. Lewis,
Acting Regional Director.
Date: January 14, 1988.
[FR Doc. 88–1421 Filed 1–22–87; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 274 (Sub-18); Docket No. AB–19 (Sub-110B)]

Buffalo, Rochester & Pittsburgh Railway Co. and the Baltimore & Ohio Railroad Co.; Abandonment and Discontinuance of Service in Indiana County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Institution of policymaking proceeding and request for comments.

SUMMARY: The Commission is seeking public comment on: (1) Whether the possibility that a shipper could purchase of subsidize a rail line should be considered in our analysis of an application for abandonment under 49 U.S.C. 10903; and (2) if so, how the issue should be factored into the decision on whether to grant or deny an abandonment.

DATES: Comments are due February 24, 1988.

ADDRESSES: Send pleadings referring to Ex Parte No. 274 (Sub-No. 18) to: Office of The Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: In Docket No. AB–19 (Sub-No. 110B), we denied the application under 49 U.S.C. 10903 for Buffalo, Rochester and Pittsburgh Railway Company to abandon and for The Baltimore and Ohio Railroad Company to discontinue service over a 7.19-mile line of railroad between milepost 34.26 near Indiana and milepost 44.45 near Coral in Indiana County, PA.

In *Baltimore and Ohio Railroad Company* v. *ICC*, 828 F.2d 1125 (D.C. Cir. 1987) the court vacated our decision and remanded the proceeding for further consideration. The court found that our refusal to consider as part of our abandonment balancing analysis the possibility that the shippers could purchase or subsidize the line "as an offset to the shippers' alleged prospective economic harm" could not be justified on grounds of a statutory prohibition. The proceeding was remanded for us to decide, as a policy matter (absent statutory constraints), whether the possible purchase or subsidy should be considered in our abandonment analysis of the merits of an abandonment application under 49 U.S.C. 10903.

The line involved in Docket No. AB–19 (Sub-No. 110B) is among the lines that are proposed for acquisition as indicated in a Notice of Exemption published and served October 26, 1987, in Finance Docket No. 31116, *Buffalo & Pittsburgh Railroad, Inc.—Exemption of Acquisition and Operation of Rail Lines—CSX Transportation, Inc. and Buffalo, Rochester and Pittsburgh Railway Company*, 52 FR 40000. Sale of the line will render the abandonment application moot. However, the court remand involves broader policy considerations.

Accordingly, we are opening a new proceeding in Ex Parte No. 274 (Sub-No. 18) and consolidating it with the remanded abandonment to decide whether the possible purchase or subsidy should be considered and, if so, how. Since the issue remanded by the Court could affect the handling of other abandonments under 49 U.S.C. 10903, we are inviting public comment from all potentially affected interests. Comments may be submitted as scheduled above.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: January 19, 1988.
by the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley, and Simmons.

Noreta R. McGee,
Secretary.
[FR Doc. 88–1370 Filed 1–22–88; 8:45 am,
BILLING CODE 7035–01–M

STATE DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-92]

Irving Davis, M.D.; Denial of Application

On October 16, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Irving Davis, M.D., 3505 20th Street, San Francisco, California 94110 (Respondent). The Order to Show Cause sought to deny Respondent's application for a DEA Certificate of Registration executed on June 6, 1986, because Respondent's registration would be inconsistent with the public interest as evidenced by his conviction on December 10, 1976, in the United States District Court for the Northern District of California of 20 counts of illegal distribution of controlled substances, felonies relating to controlled substances. Respondent requested a hearing by letter dated October 23, 1986. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in San Francisco, California on July 7, 1987. Judge Young issued his opinion and recommended decision on November 2, 1987.

The Administrative Law Judge found that on June 30, 1976, Respondent was indicted by a grant jury in the United States District Court for the Northern District of California of 20 counts of knowingly and intentionally and unlawfully prescribing, and causing to be distributed, quantities of controlled substances. On December 10, 1976, Respondent was convicted, following a jury trial, of all 20 counts. During the investigation of Respondent by the California Board of Medical Quality Assurance three undercover operatives went to Respondent's office and obtained various prescriptions from him for no legitimate medical purpose.

On June 7, 1976, the California Board of Medical Quality Assurance filed a complaint against the Respondent alleging that he had written prescriptions for 16 or 17 individuals for controlled substances without prior good faith examination and medical indication. One of these individuals, Sharyn Dalton, received five prescriptions for the Schedule II controlled substances Ritalin and Seconal from the Respondent during February and March, 1976.

Following a hearing in June 1977, the then-Administrator of the Drug Enforcement Administration revoked Respondent's DEA Certificate of Registration. Effective May 12, 1978, the California Board of Medical Quality Assurance, after finding that Respondent issued prescriptions for Ritalin, Seconal and Tuinal without good faith examination and medical indication, revoked Respondent's license to practice medicine in California. Respondent's medical license was restored in May 1981 with the provision that Respondent be on probation with the board for five years. Included in the terms of probation was that Respondent be prohibited from prescribing, administering, dispensing, ordering or possessing controlled substances. The period of probation terminated on May 25, 1986.

Respondent currently spends many hours making rounds and taking part in professional education programs at a teaching hospital in San Francisco. He has no medical practice, but assists another physician by seeing patients in his office three afternoons a week.

Respondent's testimony at the hearing indicates that he does not appear to understand the wrongful nature of the conduct which gave rise to his conviction, nor does he comprehend the reason why certain substances are classified as controlled substances. During the hearing, Respondent testified that he had never prescribed Ritalin, when in fact he issued several Ritalin prescriptions to one of the undercover operatives during the 1976 investigation. Respondent further testified that his prescribing practices in 1976 were due to lack of awareness of the harmful nature of the drugs that he was prescribing, and that all physicians were prescribing as he was. This does not explain how Respondent's prescriptions for Schedule II controlled substances accounted for 19%, or almost 4,000 prescriptions, at selected San Francisco pharmacies during a three month period prior to 1977, while the remaining 81% of the prescriptions were prescribed by over 900 different physicians.

The Administrative Law Judge concluded that Respondent had been convicted of a felony relating to controlled substances, and that based upon that conviction his previous DEA Certificate of Registration was revoked. The Administrative Law Judge further stated that while that conviction was over ten years ago, Respondent does not seem to have, even now, an understanding of the wrongful nature of his previous conduct in prescribing controlled substances; nor does he have a clear perception of the inherent dangers of substances which are controlled. Based upon these conclusions, the Administrative Law Judge found that Respondent's registration with the Drug Enforcement Administration would be inconsistent with the public interest. The Administrative Law Judge recommended that the Administrator deny Respondent's application for a DEA Certificate of Registration.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the denial of Respondent's application for a DEA Certificate of Registration, and that such registration would be inconsistent with the public interest. Respondent's felony conviction relating to the prescribing of controlled substances, his failure to appreciate the severity of his prior conduct with respect to controlled substances, and his current lack of understanding regarding the proper handling of controlled substances demonstrate that Respondent's registration with DEA would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by Irving Davis, M.D., dated June 6, 1986, be, and it hereby is, denied. The Administrator further orders that any other outstanding applications for registration submitted by Respondent are also denied. This order is effective January 25, 1988.

John C. Lawn,

Administrator.

Dated: January 15, 1988.

[FR Doc. 88-1357 Filed 1-22-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program, Revision of Employment Security Manual, Part III, Sections 0800-0879, ETA-204, Experience Rating Report

The National Office recently has reviewed the ETA 204, Experience Rating Report, and made revisions reflective of current national and State needs and data uses. Changes include reconfiguration of data in Section B and the addition of data elements to Section C. Additional changes of a minor nature were made throughout the manual section. Accordingly, this manual section is being reissued in its entirety and is published below.

Date: January 15, 1988.

Carolyn M. Golding,

Director, Unemployment Insurance Service.

Classification: UI
Correspondence Symbol: TEURA

Date: January 4, 1988.

Directive: Manual Transmittal Letter No. 1460

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator, for Regional Management

Subject: Employment Security Manual, Part III, Sections 0800-0879, ETA 204, Experience Rating Report

1. *Purpose.* To transmit revised reporting instructions for the ETA 204, Experience Rating Report.

2. *Background.* The National Office recently has reviewed the subject report and made revisions reflective of current national and State needs and data uses. changes include reconfiguration of data in Section B and the addition of date elements to Section C. Additional changes of a minor nature were made throughout the section. Accordingly, this manual section is being reissued in its entirety.

The new data elements required in Section C of the ETA 204 form provide the basis for determining an experience rating index (ERI); the index will allow for the evaluation of the extent to which benefits or benfit wages in States are effectively charged. Specifically, the ERI represents the percentage of benefits which are effectively charged to taxable employer accounts and is calculated as follows, using the revised ETA 204:

$(1-((IEC+IAC+NNC)/BEN))*100$

where,

IEC = Ineffective Charges: Section C, Column 6, Total All Subject Accounts
IAC = Inactive Charges: Section B, item 6(a)(2)
NNC = Noncharges: Section B, Item 6(b) plus item 7(b)
BEN = Benefits: Section B, item 5 minus item 7(a)

The ERI will be calculated by the National Office on an annual basis. The ERI will be published in the Handbook of Financial Data, an Unemployment Insurance Program Letter, the Quarterly Unemployment Insurance Compilation and Characteristics (QUICC), and any other publication deemed appropriate.

3. *Effective Date.* The changes are effective with the report for rate year 1988, due to the National Office the 30th day of the fifth month of such rate year.

4. *OMB Approval.* These reporting requirements have been approved by the Office of Management and Budget according to the Paperwork Reduction Act of 1980 under OMB No. 1205-0164, expiring September 30, 1990.

5. *Instructions for Manual Maintenance.*

Remove and Destroy:

0800-0850	R-11/82
0824-0830	R-03/83
0830-0860	R-11/82

Insert:

0800-0860	R-12/87
0861-0874	12/87

BILLING CODE 4510-30-M

TABLE OF CONTENTS

INTRODUCTION..... 0800-0814

Form ETA-204, Experience-Rating Report..... 0800
Purpose of the Report..... 0802
Submittal of Data and Due Date..... 0804
Definitions..... 0806
Assignment of Standard Rate to All Employers..... 0810
General Reporting Instructions..... 0814

SECTION A. ALL SUBJECT ACCOUNTS: NUMBER AND AMOUNTS OF TOTAL AND TAXABLE PAYROLL..... 0820-0824

General Instructions..... 0820
Item 1. Taxable Accounts..... 0821
Item 2. Reimbursable Accounts..... 0822
Item 3. Subject Accounts with Positive Balance..... 0823
Item 4. Subject Accounts with Negative Balance..... 0824

SECTION B. SUMMARY OF BENEFITS (OR BENEFIT WAGES) PAID, CHARGED, AND NONCHARGED..... 0830-0832

Item 5. Benefits (or Benefit Wages) Paid, During 12 Months Ending on Computation Date..... 0830
Item 6. Taxable Employer Accounts..... 0831
Item 7. Reimbursable Employer Accounts..... 0832

FACTORS AFFECTING DATA REPORTED..... 0850

Comments..... 0850

SECTION C. ALL TAXABLE SUBJECT ACCOUNTS: SELECTED DATA..... 0860-0867

Column 1. Experience Factor..... 0860
Column 2. Tax Rate..... 0861
Column 3. Number of Accounts..... 0862
Column 4. Total Payroll..... 0863
Column 5. Taxable Payroll..... 0864
Column 6. Benefits Charged..... 0865
Column 7. Estimated Contributions..... 0866
Column 8. Ineffective Charges..... 0867

CHECKING THE REPORT..... 0870-0874

General Check..... 0870
Section A..... 0871
Section B..... 0872
Comments..... 0873
Section C..... 0874

0800-0814 INTRODUCTION

0800 Form ETA 204, Experience Rating Report

A. Facsimile of page 1, Form ETA 204

Experience Rating Report — U.S. Department of Labor, Employment and Training Administration

Date | Base Year Ending Date | Computation Date | Type of Rating System | OMB No. 1205-0154, Expires 06/30/90

Section A. All Subject Accounts: Number and amounts of total and taxable payroll

	Number as of:	Amount of total payroll for 12 months ending:	Amount of taxable payroll for 12 months ending:
1. Taxable Accounts		$	$
a. Eligible			
b. Ineligible			
2. Reimbursable Accounts			
3. Subject Accounts with positive or zero balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			
4. Subject Accounts with negative balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			

Section B. Summary of Benefits Paid, Charged, and Noncharged

	Amount
5. Total Benefits (or Benefit Wages) Paid, during 12 months ending	$
6. Taxable Employer Accounts	
a. Charged	
1. Active	
2. Inactive	
b. Noncharged	
7. Reimbursable Employer Accounts	
a. Charged	
b. Noncharged	

8. Comments

Signature | Title | Date

ETA 204 (Rev. 10/87)

EMPLOYMENT SECURITY MANUAL MTL 1460

Part III Reports and Analysis 0800(2)

0800-0999 Experience Rating Report, ETA 204 R-12/87

0800 Form ETA 204, Experience Rating Report--continued

B. Facsimile of page 2, Form ETA 204

State: _____ Rate Year Ending Date: _____ Schedule Used: _____
Taxable Wage Base, during 12 months ending on computation date (if changed during the period, so indicate): $ _____
Taxable Wage Base, during rate year: $ _____
Employee Contributions, 12 months ending with the computation date: $ _____
If an add-on tax or surtax is included in the tax rate below, show the rate (_____) and indicate (by circling) if the tax is: Uniform / Variable / Credited to employer accounts / Non-credited to employer accounts. Comments: _____

SECTION C. ALL TAXABLE SUBJECT ACCOUNTS, SELECTED DATA BY EXPERIENCE FACTOR

EXPERIENCE FACTOR (1)	TAX RATE (2)	NO. OF ACCOUNTS (3)	TOTAL PAYROLL (000) (4)	TAXABLE PAYROLL (000) (5)	BENEFITS CHARGED (000) (6)	EST. CONTRIBUTIONS (000) (7)	INEFFECTIVE CHARGES (000) (8)
ELIGIBLE-REGULARLY RATED BY FACTOR							
(LIST RATES STARTING FROM LOWEST TO HIGHEST. USE AS MANY LINES AS NEEDED. SEE SECTIONS 0850-0859 FOR DETAILS.)							
SUBTOTAL							
ELIGIBLE-SPECIALLY TAXED BY FACTOR							
SUBTOTAL							
TOTAL ELIGIBLE							
TOTAL INELIGIBLE							
TOTAL ALL SUBJECT ACCOUNTS							

Experience Rating Report

U.S. Department of Labor
Employment and Training Administration

State | Rate Year Ending Date | Computation Date | Type of Rating System | OMB No. 1205-0164 Expires 09/30/90

Section A. All Subject Accounts: Number and amounts of total and taxable payroll

	Number as of:	Amount of total payroll for 12 months ending:	Amount of taxable payroll for 12 months ending:
1. Taxable Accounts		$	$
a. Eligible			
b. Ineligible			
2. Reimbursable Accounts			
3. Subject Accounts with positive or zero balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			
4. Subject Accounts with positive or negative balance (States using reserve ratio)			
a. Eligible			
b. Ineligible			

Section B. Summary of Benefits Paid, Charged, and Noncharged

	Amount
5. Total Benefits (or Benefit Wages) Paid, during 12 months ending:	$
6. Taxable Employer Accounts	
a. Charged	
1. Active	
2. Inactive	
b. Noncharged	
7. Reimbursable Employer Accounts	
a. Charged	
b. Noncharged	

8. Comments

Signature Title Date

ETA 204
(Rev. 10/87)

0802 Purpose of the Report. The data submitted annually on the ETA 204 will enable the Employment and Training Administration (ETA) to project revenues for the Unemployment Insurance (UI) program on a State by State basis and to measure the variations in assigned contribution rates which result from different experience rating systems. When used in conjunction with data from the ES 202 report, "Employment, Wages, and Contributions", the ETA 204 data will assist in determining the effects of various factors (e.g., seasonality, stabilization, expansion, or contraction in employment and payroll, etc.) on the employment experience of various groups of employers.

Also to States and the National Office, the data will provide an early signal for potential solvency problems, be useful in analyzing factors which give rise to the potential problems, and permit an evaluation of the effectiveness of the various approaches available to correct the problems detected. Moreover, the data are required as a basis for estimating State average tax rates for the rate year. Finally, the data are the basis for determining an experience rating index; the index will allow for the evaluation of the extent to which benefits in States are effectively charged, noncharged, and ineffectively charged. Comparisons among States and in a single State over time will be possible.

Thus, the foregoing information is of value to ETA in analyzing statutory provisions regarding experience rating, in preparing recommendations or advising States on proposed legislation involving experience rating, and in responding to inquiries from State agencies, employer groups, unions and others. Further, the data are a vital part of a State's management information system and a tool for the administrator and legislators to assess the State experience rating system.

0804 Submittal of Data and Due Date

A. All States permitting rate variations based on experience rating (i.e., have experience rating systems in place) should submit a completed ETA 204 report. If experience rating is suspended for a given year, only page 1 of the report needs to be submitted (See section 0810).

0804 Submittal of Data and Due Date--continued

B. Computer printed output may be used in place of the supplied report form if the output is set up in the same format and data items are clearly labeled.

C. The ETA 204 report is due in the National Office of ETA on the 30th day of the fifth month of the rate year to which it relates.

D. The original of each report should be sent to the National Office of ETA, addressed to:

U.S. Department of Labor
Employment and Training Administration
Attn: TSVR, Room S-5306
200 Constitution Avenue, N.W.
Washington, D.C. 20210

A copy also should be sent to the appropriate Regional Office.

0806 Definitions. Following are definitions of terms as used for purposes of the ETA 204 report:

A. All subject accounts

1. The accounts referred to in the ETA 204 report should consist only of the accounts of those active employers (see H below) who were declared accountable or subject prior to either the beginning of the new rate year or the date designated by law as the computation date. Accounts of State or local governments, or their instrumentalities, or other units which make payments in lieu of contributions on a reimbursable basis should be included only in Sections A.2., B.5., and B.7. of the report. These reimbursable accounts should be excluded from all other entries. If selection of the accounts in terms of either of the above dates is not procedurally feasible, an alternate date may be chosen, as described in 2 below. Thus, all accounts for employers who were declared accountable or subject to the State law prior to the date chosen, and who were active in all

0806 Definitions--continued

or part of the 12-month period covered by the report and were charged or chargeable for benefits (or benefit wages) during that period, should be included. All subject accounts for active employers declared accountable or subject on or subsequent to the date chosen should be excluded.

2. If any date other than the effective date of the new rate year or the legal computation date is used as a basis for counting the active accounts for this report, or if the 12-month period used in counting benefit payments ends on a date other than the computation date, a notice to that effect should be forwarded to the ETA National Office (Attn: TSVR) for approval at least 30 days prior to the preparation of the report. A statement should be included as to why the effective date of the rate year or the legal computation date will not be used, and a justification should be given of the adequacy of the selected date.

B. Total payroll. Total payroll is the total amount of wages paid or payable (depending on the wording of the State law) to covered workers by employers subject to the provisions of the State unemployment insurance law for services performed during the 12 months ending with the computation date. Total wages includes both taxable wages, defined in C below, and the amount of wages which is in excess of the wages subject to the contribution provisions of the State law.

C. Taxable payroll. Taxable payroll is the part of total payroll defined in B above, which is subject to the contribution provisions of the State unemployment insurance law.

D. Eligible accounts. An account (see A above) is termed eligible if it has had a sufficient period of experience as of the computation date to qualify for an experience rating computation under State law. Accounts delinquent in paying contributions

0806 Definitions--continued

and accounts which have been suspended from coverage (but not inactivated) because of the temporary cessation of operations should be included in the "eligible" category. Examples would include accounts with sufficient experience which have been assigned a special rate, such as delinquent accounts to which the maximum rate has been assigned, or seasonal employers who qualify for special rates as well as accounts which qualify by reason of rates assigned as a result of formula computations under the regular experience rating provisions of a State law.

E. Ineligible accounts. An account (see A above) which does not meet the definition for eligible accounts in D above should be considered ineligible. Therefore, an ineligible account is one which has had an insufficient period of experience as of the computation date to qualify for an experience rating computation.

F. Benefits (or benefit wages) charged. The total amount of benefit payments (or benefit wages) charged to an employer account is termed "benefits (or benefit wages) charged".

G. Benefits (or benefit wages) not charged. The total amount of benefit payments (or benefit wages) not charged to the account of any employer is termed "benefits (or benefit wages) not charged".

H. Active employers. An active employer is an employing unit (single or multiple) which has been declared subject to the State unemployment insurance law and which has not been subsequently inactivated (see I below) or declared no longer subject as the result of a legal termination of coverage.

I. Inactive employers. An inactive employer is one for which contribution reports are no longer receivable because the employing unit has ceased business in the State. (Note that suspensions of coverage for seasonality are not inactivations.) If a State has no specific guideline as to when an

0806 Definitions--continued

employer is to be considered inactive, it may assume that suspension of operation for more than 12 months is sufficient to declare an employer inactive.

J. Amount of account balances. (Reserve ratio States only.) The balance shown on each employer's account, i.e., total contributions minus total benefit charges, is termed a positive balance if the figure is positive or zero and a negative balance if the figure is negative.

K. Tax rates. The rates under which the accounts are to be classified in section C should be the final assigned rates upon which contributions will be paid (including solvency and other rate adjustments, where applicable, but excluding employee contributions) after all adjustments, both individual and overall, have been made, and which (1) reflect the effect of employer voluntary contributions on such tax rates, and (2) are effective at the beginning of the rate year.

L. Regularly rated accounts. An eligible account is termed "regularly rated" in section C if the rate assigned to the account resulted from a formula computation (of an experience factor) under regular experience-rating provisions of the State law.

M. Specially taxed accounts. An eligible account is termed specially taxed in section C if the rate assigned to the account did not result directly from a formula computation under regular experience-rating provisions of the State law. Examples would be (1) an account which has shown a negative balance for a specified period of time and to which a special rate has been assigned, (2) an account of a seasonal employer which has been given a special rate provided by law or regulation, or (3) a State or local government entity taxed at a rate not resulting directly from experience. A brief citation of applicable law should appear on the face or the back of the table.

N. Computation Date. The date as of which employers' experience is measured for the purpose of

0806 Definitions--continued

determining tax rates.

O. Rate Year. The year for which the rates that were determined on the computation date apply. For example, a State that computes its experience rates as of June 30, 1987 (the computation date) to be applied beginning January 1, 1988, would show a 1988 rate year.

0810 Assignment of Standard Rate to All Employers. If a State agency does not, for any reason for any specific rate year, permit rate variations based on experience rating, a notice to that effect should be submitted to ETA. Page 1 of the ETA 204 report should be completed and submitted with the notice.

0814 General Reporting Instructions. At the top of page 1 of the report, enter the State name, rate year ending date, computation date, and type of experience rating system (reserve ratio, benefit ratio, benefit wage ratio, or payroll declines). At the top of page 2, enter the State name, rate year ending date, schedule used (if applicable), taxable wage base in effect during 12 months ending with the computation date (indicate if base changed during the 12 months), the taxable wage base in effect during the rate year, employee contributions (if any), and information on surtaxes.

The data required in sections A, B, and C should follow the format set forth in section 0800, but may be submitted on larger sheets if additional space is required. If more than one page for Section C is needed, each page should be identified as to State and rate year. The layout in section 0800 may be modified to meet the requirements of State ADP equipment. Any additional detail already programmed for State agency use may be included in these tabulations. If additional detail is already programmed for any of the items included in sections A and B, copies of tabulations containing this detail may also be submitted with the report on form ETA 204. Specific instructions are given in the following sections only to the extent necessary to supplement the titles of items, sections, and columns on the report.

0820-0824 SECTION A. ALL SUBJECT ACCOUNTS: NUMBER AND AMOUNTS OF TOTAL AND TAXABLE PAYROLL

0820 General Instructions. Entries in columns 1, 2, and 3 for items 1, 2, 3 and 4 and their subitems should be made in accordance with definitions in section 0806. Enter at the top of columns 1, 2, and 3, respectively, the date when subject accounts were counted for this report, the ending date of the 12-month period used in measuring total wages, and the ending date of the 12-month period used in measuring taxable wages. The latter two dates should be the same.

0821 Item 1. Taxable Accounts. Entries in item 1, columns 1-3, should relate to taxable subject accounts. (See section 0806 A 1.)

A. Item 1.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 1 which meet the definition of eligible accounts in section 0806 D.

B. Item 1.b. Ineligible accounts. Entries in this item should relate to those subject accounts included in item 1 which meet the definition of ineligible accounts in section 0806 E.

0822 Item 2. Reimbursable Accounts. Entries in item 2, columns 1-3 should relate to reimbursable subject accounts only as defined in section 0806 A 1.

0823 Item 3. Subject Accounts with Positive Balance. Entries in this item, applicable only to States using reserve ratio systems, should relate to accounts with positive (or zero) balance as defined in section 0806 J.

A. Item 3.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 3 which meet the definition of eligible accounts.

B. Item 3.b. Ineligible accounts. Entries in this item relate to those subject accounts included in item 3 which meet the definition of ineligible accounts.

0823 Item 3. Subject Accounts with Positive Balance --continued

The sum of the entries in items 3.a. and 3.b. should equal the entry in item 3.

0824 Item 4. Subject Accounts with Negative Balance. Entries in this item, applicable only to States using reserve ratio systems, should relate to accounts with negative balance as defined in section 0806 J.

A. Item 4.a. Eligible accounts. Entries in this item should relate to those subject accounts included in item 4 which meet the definition of eligible accounts.

B. Item 4.b. Ineligible accounts. Entries in this item should relate to those subject accounts included in item 4 which meet the definition of ineligible accounts.

The sum of the entries in items 4.a. and 4.b. should equal the entry in item 4.

The sum of the entries in items 3 and 4 should equal the entry in item 1, for States using reserve ratio system only.

0830-0832 SECTION B. SUMMARY OF BENEFITS (OR BENEFIT WAGES) PAID, CHARGED, AND NONCHARGED

0830 Item 5. Benefits (or Benefit Wages) Paid, During 12 Months Ending: on Computation Date. Enter the ending date (usually computation date) of the last 12-month period used in the formula to measure benefit charges, and the total amount paid (both charged and noncharged) during the period. Include any benefits paid which impact the State trust fund accounts, (e.g. benefits under regular State UI, the State portion of Extended Benefits, and the State's liability for combined wage claim (CWC) payments). Exclude benefits paid under any program other than the State unemployment insurance program (e.g., benefits paid to Puerto Rican sugar workers). Exclude CWC payments for which other States are liable. In States using the benefit wage ratio system of experience rating, total benefit wages should be entered instead of total benefits. This entry should include items 6 and 7.

0831 Item 6. Taxable Employer Accounts. Enter the amount of benefits (or benefit wages) included in item 5 which is attributable to taxable employer accounts.

A. Item 6.a. Charged. Enter the amount of benefits (or benefit wages) included in item 6 which were shown as a charge to any taxable employer's account. Exclude amounts which were charged during the 12-month period but removed before computing the experience rate.

1. Item 6.a.1. Active. Enter the amount of benefits (or benefit wages) included in item 6.a. which, as of the date shown in item 5, were charged to the account of an active employer. (See section 0806 H.)

2. Item 6.a.2. Inactive. Enter the amount of benefits (or benefit wages) included in item 6.a. which, as of the date shown in item 5, were charged to the account of an inactive employer (see section 0806 I); i.e., that part of item 6.a. which is not included in item 6.a.1.

B. Item 6.b. Noncharged. Enter the amount of benefits (or benefit wages) included in item 6 which is attributable to taxable employer accounts but is not charged to such accounts. Exclude CWC payments for which other States are liable.

0832 Item 7. Reimbursable Employer Accounts. Enter the amount of benefits (or benefit wages) included in item 5 which is attributable to reimbursable employer accounts.

A. Item 7.a. Charged. Enter the amount of benefits (or benefit wages) included in item 7 which, as of the date shown in item 5, is charged to reimbursable employer accounts. See section 0806 F.

B. Item 7.b. Noncharged. Enter the amount of benefits (or benefit wages) included in item 7 which, as of the date shown in item 5, is attributable to reimbursable employer accounts, but

0832 Item 7. Reimbursable Employer Accounts--continued

is noncharged, i.e., that part of item 7 which is not included in item 7.a. See section 0806 G.

0850 FACTORS AFFECTING DATA REPORTED

0850 Comments. Comments should be provided to explain any significant administrative, legal, or economic factors which may affect the data reported. If necessary, these comments may be continued on the reverse side of page 1 of the report or on a separate page.

A. Administrative factors affecting data reported on the tabulation. Describe any administrative factors such as rules and regulations which may affect the data reported in such a way that they will lack comparability with data submitted on prior reports or on current reports submitted by other State agencies. Also, note variations in the date of mailing contribution rate notices to employers. If a State agency has alternative rate schedules applicable under different conditions of the fund, it should describe the statutory provisions imposing the rate schedule in effect for the year covered by the report and indicate, if possible, how the effective rate schedule ranks in "favorableness" with alternative schedules provided by the law. If, for any specific rate year, no reduced rates are assigned, the reason for such action should be reported.

B. Legal factors affecting data reported on tabulations. Describe any legal factors such as new laws or amendments to the State unemployment insurance law which may affect the data reported in such a way that they will lack comparability with the data submitted on prior reports or on current reports submitted by other State agencies.

C. Economic factors affecting data reported on tabulations. Describe any economic factors, such as recession in key industries or major plant closings, which may affect the data reported.

BEST COPY AVAILABLE

0860-0867 SECTION C. ALL TAXABLE SUBJECT ACCOUNTS: SELECTED DATA

0860 Column 1. Experience Factor. Enter the experience factor or combination of experience factors (e.g., solvency factor or State experience factor, etc.) which determines the tax rate shown in column 2. List the experience factors such that the corresponding tax rates in column 2 start with the lowest rate first. If experience factor intervals and corresponding tax rates exceed 30 in number, two section C tabulations should be submitted. The first tabulation, to be labeled section C-1, should use the actual tax rate in column 2. The second tabulation, to be labeled section C-2, should use tax rate intervals of not less than 0.20 percent in column 2. Only the lower value of the range should be displayed. The upper value will be assumed from the lower value of the next range.

0861 Column 2. Tax Rate. Enter the employer tax rate (see section 0806 K) which corresponds with the experience factor shown in column 1, lowest rate first.

0862 Column 3. Number of Accounts. Self explanatory.

0863 Column 4. Total Payroll. See 0806 B.

0864 Column 5. Taxable Payroll. See 0806 C.

0865 Column 6. Benefits Charged (Adjusted Benefit Wages Charged). In reserve ratio and benefit ratio States, for each rate group including the ineligible accounts, enter actual benefits charged during the 12 months ending with the computation date. Since benefits charged by rate group are not available in benefit wage ratio States, a proxy for benefits charged should be developed as follows: for each rate group including ineligible accounts, the proxy for benefits charged should equal total benefit outlays attributable to active taxable employer accounts times the ratio of benefit wages charged for the group to total benefit wages charged. In States using payroll decline formulas, columns 6 through 8 should be blank.

0866 Column 7. Estimated Contributions. Estimated contributions due for each rate group, including ineligible accounts, should equal column 2 times column 5. This column and ineffective charges in column 8 will be adjusted by the National Office if the taxable wage base for the 12 months ending on the computation date differs from the taxable wage base for the 12 months ending for the rate year. Also, this column total and the ineffective charges total will be adjusted at a later date based on actual contributions due shown in the ES 202 report for the relevant period.

0867 Column 8. Ineffective Charges. For each rate group including ineligible accounts, ineffective charges should equal column 6 minus column 7. If the remainder is zero or less, enter zero.

0870-0874 CHECKING THE REPORT

0870 General Check

A. The State name, rate year ending date, and other required data should be entered in the appropriate spaces at the top of both pages of the report form.

B. The name and title of the State agency head or his/her designated representative should be typed in the appropriate spaces at the bottom of page 1 of the report, and the signature should be placed immediately above the typed name. Only the original need bear a handwritten signature.

0871 Section A

A. A date should be entered in the heading of each of columns 1, 2, and 3.

B. The entry in item 1 for each of columns 1, 2, and 3 should equal the sum of the entries in items 1.a. and 1.b.

C. Dashes should be entered in each of columns 1, 2, and 3 for items 3 and 4 and each of the subitems in reports from States which do not use a reserve ratio system. There should be numerical entries in

EMPLOYMENT SECURITY MANUAL MTL 1460

Part III Reports and Analysis 0871(2)-0874
0800-0999 Experience Rating Report, ETA 204 12/87

0871 Section A--continued

each of these items and subitems in reports from States using a reserve ratio system. The entry in item 3 in each column should equal the sum of the entries in items 3.a. and 3.b. The entry in item 4 in each column should equal the sum of the entries in items 4.a. and 4.b.

D. Entries in column 2 should be greater than or equal to entries for the corresponding items in column 3.

E. The sum of the entries in items 3 and 4 should equal the entry in item 1 (for States using reserve ratio systems only.)

0872 Section B

A. There should be a date as well as a dollar amount entered in item 5.

B. The sum of the entries in items 6 and 7 should equal the entry in item 5.

C. The sum of the entries in items 6.a. and 6.b. should equal the entry in item 6.

D. The sum of the entries in items 6.a.1. and 6.a.2. should equal the entry in item 6.a.

E. The sum of the entries in items 7.a. and 7.b. should equal the entry in item 7.

0873 Comments. If necessary, explanatory comments may be continued on the reverse side of page 1 of the report or on a separate page.

0874 Section C

A. Data for columns 4 through 8 should be shown in thousands.

B. Subtotals and totals are not required for columns 1, 2, 6, and 7.

[FR Doc. 88-1328 Filed 1-22-88; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on these information collections must be submitted by February 24, 1988.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection and the revision of a currently approved collection. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Visual Artists Fellowships Application Guidelines FY 1989 & 1990.

Frequency of Collection: One-time.

Respondents: Individuals.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 5,300.

Estimated Hours for Respondents to Provide Information: 5,300.

Title: Visual Arts Grants to Organizations Application Guidelines FY 1989.

Frequency of Collection: One-time.

Respondents: Individuals, state or local governments and non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 470.

Estimated Hours for Respondents to Provide Information: 13,600.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-1399 Filed 1-22-88; 8:45 am]
BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to advise the Chairman of the National Endowment for the Humanities on the condition of the humanities in American life. In each meeting a group of scholars, publishers, librarians, and television and museum administrators will assemble to discuss the condition of the humanities in American life. The meetings will be held February 28, March 22, and April 26, 1988 from 9:00 a.m. to 3:00 p.m. The February meeting will be in Room 528.

The March and April meetings will be in Room M-14.

These meetings will be open to the public.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-1374 Filed 1-22-88; 8:45 am]
BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Issuance of Permit Under the Antarctic Conservation Act of 1978

January 15, 1988.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On December 9, 1987, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on January 12, 1988: Werner Zehnder.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 88-1369 Filed 1-22-88; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Denver, Colorado; Aircraft Accident

In connection with its investigation of the accident involving Continental Airlines, Inc./McDonnell Douglas DC-9-14, N626TX, at the Stapleton International Airport, on November 15, 1987, the National Transportation Safety Board will convene a public hearing at 9:30 a.m. (local time), on March 8, 1988, in the Golden Ballroom (Salons E, F, G, & H) at the Denver Marriott West, 1717 Denver West Marriott Boulevard, Golden, Colorado. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW.,

Washington, DC 20594, telephone (202) 382-6605.

Bea Hardesty,

Federal Register Liaison Officer.

January 19, 1988.

[FR Doc. 88-1377 Filed 1-22-88; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on February 9, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 9, 1988—1:00 p.m. until the conclusion of business

The Subcommittee will discuss the near-final draft of the Staff's proposed Implementation Plan for the Safety Goal Policy Statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 20, 1988

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-1425 Filed 1-22-88; 8:45 am]

BILLING CODE 7590-01-M

Standard Review Plan Revision

The Nuclear Regulatory Commission (NRC) is revising section B.1.a.(1) of Branch Technical Position ASB 3-1 in Standard Review Plan (SRP) 3.6.1. The revision is effective immediately. This action is estimated as a negligible value-impact revision made only for regulatory efficiency and to introduce more realistic technical requirements. The text of section B.1.a.(1) which was deleted is as follows:

Even though portions of the main steam and feedwater lines meet the break exclusion requirements of item B.1.6. (sic) of BTP MEB 3-1, they should be separated from essential equipment. In order for essential equipment to be properly separated, the essential equipment must be protected from the jet impingement and environmental effects of an assumed longitudinal break of the main steam and feedwater lines. Each assumed longitudinal break should have a cross sectional area of at least one square foot and should be postulated to occur at a location that has the greatest effect on essential equipment.

The deleted text erroneously wrote B.1.6 instead of B.1.b.

The new text of section B.1.a.(1) which is now effective is indicated below:

Even though portions of the main steam and feedwater lines meet the break exclusion requirements of item B.1.b. of BTP MEB 3-1, they should be separate from essential equipment. Designers are cautioned to avoid concentrating essential equipment in the break exclusion zone. Essential equipment must be protected from the environmental effects of an assumed nonmechanistic longitudinal break of the main steam and feedwater lines. Each assumed nonmechanistic longitudinal break should have a cross sectional area of at least one square foot and should be postulated to occur at a location that has the greatest effect on essential equipment.

The essential difference is that jet impingement effects associated with the arbitrary one square foot break are no longer postulated in the break exclusion zone of main steam and feedwater piping outside the containment. Evironmental qualification effects and pressurization effects for structural design resulting from the arbitrary one square foot break are retained in the revision; however, other postulated pipe rupture requirements may control environmental qualification and structural evaluation. The NRC will continue to enforce separation and isolation of essential equipment in the break exclusion zone as the preferred method of providing protection without, however, postulating jet impingement effects in the break exclusion zone.

The regulatory analysis prepared by Lawrence Livermore National Laboratory for this action is available for inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC.

For additional information concerning this revision to SRP 3.6.1 telephone: John A. O'Brien, Office of Nuclear Regulatory Research, (301) 492-3928.

Dated at Rockville, Maryland, this 19th day of January 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-1417 Filed 1-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

Duquesne Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-73, issued to Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the licensee), for operation of the Beaver Valley Power Station, Unit 2, located in Shippingport, Pennsylvania.

The proposed amendment would incorporate a temporary change to Technical Specification 3.3.3.2 to relax the required number of incore detector thimbles from 75% to 50% for the remainder of Cycle 1. In addition, for compensatory measures the peaking factor surveillance requirements would be revised to increase the uncertainty factors applied to the peaking factors when a flux map is performed with less

than 75% of the thimbles. These changes are similar to those approved for Beaver Valley Power Station Unit 1 (January 19, 1983), and a number of other plants.

The incore detection system is used for core power distribution measurements. These measurements are used to determine the peak linear heat generation rate, which helps establish operating limits such that safety analysis assumptions are satisfied. Sufficient coverage of detectors is needed such that the core power distribution is properly monitored. A factor is applied to the measurement to account for uncertainty. With the proposed changes, the core would still have sufficient coverage, and a larger (more stringent) uncertainty factor would be applied.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

This change is requested in order to provide flexibility in plant operation with significant data gathering capability to ensure operation within licensed limits. As such, this proposed change would not:

(1) Involve a significant increase in the probability of consequences of an accident previously evaluated—This change merely increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, the change cannot increase the probability or consequences of an accident, as the core will continue to be adequately monitored by existing fixed incore monitors.

(2) Create the possibility of a new or different kind of accident from any previously analyzed—This modification only increases the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles. Therefore, it does not create the possibility of a new or different kind of accident since it does not modify plant operation or components.

(3) Involve a significant reduction in a margin of safety—This modification of increasing the measurement uncertainty for a reduced complement of operable incore neutron detector thimbles will add sufficient additional margin to the power distribution measurements such that this change does not impact the safety margins which currently exist. Thus, this change does not involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 24, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 20th day of January 1988.

For the Nuclear Regulatory Commission

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–1418 Filed 1–22–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Exemption

I.

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating Licenses No. DPR–77 and DPR–79 which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2, respectively. These licenses provide that, among other things, the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Sequoyah facility consists of two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR Part 50 Appendix J. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests. Specifically, Type C tests are intended to measure containment isolation valve leakage rates.

A. Residual Heat Removal System

Containment isolation for the Sequoyah Residual Heat Removal (RHR) System injection lines into the reactor coolant system (RCS) consists of primary and secondary check valves on the three primary branch lines inside containment, a remote manual motor-operated valve outside containment on each of the two cold leg discharge lines (valves 63–93 and 63–94), and a remote manual motor-operated valve inside containment on the hot leg discharge line (valve 63–172). During the cold leg injection and recirculation phases, valves 63–93 and 63–94 are normally open to provide cooling flow to the core. Valve 63–172 is normally open during the hot leg recirculation phase. Both the primary and secondary check valves inside containment are leak tested with water as pressure isolation valves to a requirement of less than or equal to 1 gpm at a nominal RCS pressure of 2235 psig. The piping outside containment meets the requirements for a closed system outside containment as presented in section 6.2.4 of the Sequoyah Final Safety Analysis Report. Testing to verify integrity of this piping includes annual inspections in accordance with NUREG–0737 position III.D.1.1, in-service pressure testing in accordance with ASME Section XI, and quarterly ASME Section XI pump tests.

Remote manual motor-operated valves 63–93, 63–94, and 63–172 in the RHR System cannot be Type C tested according to the requirements set forth in 10 CFR Part 50, Appendix J, in their present configuration. The RHR injection lines must be available to provide water to the core post-accident to prevent fuel damage. The addition of in-line block valves to permit leak rate testing in accordance with 10 CFR Part 50, Appendix J, would reduce the reliability of these lines to perform their primary safety function following a LOCA. The staff concludes that the combination of leak tested primary and secondary check valves inside containment, a safety grade closed system into which leakage, if any, would flow, and inspection and testing to verify system integrity, provide an adequate basis to assure that the isolation valves in the RHR line will not be a source of leakage of containment atmosphere in the event of an accident, even though the valves are not tested in accordance with 10 CFR 50 Appendix J.

B. Upper Head Injection System

The Upper Head Injection (UHI) System at Sequoyah is normally filled with water from the accumulator up to the primary check valves going into the reactor head. Remote manual valves 87–21, 87–22, 87–23, and 87–24 are open during normal operation. When the RCS pressure falls below approximately 1200 psig, the UHI System begins to discharge into the reactor. When the accumulator reaches low level, valves 87–21, 87–22, 87–23, and 87–24 close. The remaining water level in the UHI water accumulator and the pressure acting upon this water head from the UHI gas accumulator act to provide a water seal on the outboard side of these valves. Any leakage of containment atmosphere through valves 87–21, 87–22, 87–23, or 87–24 into the UHI System volume would be contained by the closed, seismically qualified UHI system outside containment.

Valves 87–21, 87–22, 87–23, and 87–24 cannot be Type C tested according to the requirements set forth in 10 CFR Part 50, Appendix J, with the UHI System as currently configured. The licensee has requested an exemption from Appendix J Type C testing requirements. The staff concludes that the combination of a water seal resulting from the accumulator head and accumulator gas pressure, a safety grade closed system into which leakage, if any, would flow, and inspection and testing to verify system integrity, provide an adequate basis to assure that the isolation valves in the accumulator line will not be a source of leakage of containment atmosphere in the event of an accident, even though the valves are not tested in accordance with 10 CFR Part 50 Appendix J.

The licensee has also requested an exemption from the Type C testing requirements of Appendix J for the UHI line to the floor drain collector tank (containment isolation valves 87–10 and 87–11). TVA proposes to perform a Type C leak rate test of these two valves with the pressure applied in the opposite direction of the containment pressure that would be experienced as a result of a postulated event that would actuate the UHI System. The licensee stated that an exemption was warranted on the basis that its proposed test was equivalent to the Type C test and that further modification of the design was not cost effective.

The staff has reviewed the Appendix J exemption request for the floor drain collector tank line and concludes it is justified on the grounds that the potential leakage across the valves is greater in the reverse direction than in the accident pressure direction, and thus this provides an acceptable test for the valves. Therefore, the staff concludes that the exemption should be granted.

C. Pressure Relief Piping

Pressure relief is provided for the Safety Injection (SI) System, Chemical and Volume Control System (CVCS), and the Containment Spray System by means of vent lines running to a common line outside containment. The common line then passes through containment penetration X–24 and exhausts into the pressurizer relief tank inside containment. Containment isolation is accomplished by a single check valve in the common line inside containment, and by the pressure relief value in each individual vent line. A water seal is provided on the check valve in the common line inside containment. Any throughline leakage that may occur through the pressure relief valves would be contained within a closed, seismically qualified system outside containment. In addition, the containment pressure would tend to further ensure that the check valve and pressure relief valves set tightly. The licensee has requested an exemption from the requirement to perform Type C leak rate testing on the common check valve and all nine relief valves associated with penetration X–24.

Type C leak rate testing presently cannot be performed for the valves in the line associated with penetration X–24 because there are no manual or remote-manual block valves in the line that would allow such testing of those relief valves. Furthermore, ASME section III, Class 2, NC–2677.3, states that there shall be no intervening stop valves between pressure relief valves and their relief points to ensure those lines cannot be inadvertently isolated.

The licensee has requested an exemption from the Appendix J Type C testing requirements for the common check valve and the nine relief valves associated with containment penetration X–24 on the basis that installation of block valves in the line that would allow such testing conflicts with the requirements of ASME Section III, Class 2, NC–3677.3. The staff has reviewed the licensee's request and concludes that an exemption from the Appendix J Type C testing requirements for the pressure relief lines in the SI, CVCS, and Containment Spray Systems is justified on the basis that the isolation capability of the pressure relief line closed system with a water seal is a superior means of isolation and that modifications to permit testing may adversely affect system reliability.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are presently justifiying the exemption from Appendix J Type C testing for the RHR and UHI Systems—namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule which is to assure the valves and other penetrations of containment would not be a source of leakage of containment atmosphere into the environment in the event of an accident. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(i) are present justifying the exemption from Appendix J Type C testing requirements for the pressure relief piping in the SI, CVCS, and Containment Spray Systems—namely, that application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission. Specifically, application of the Appendix J Type C testing requirements conflicts with the requirements of ASME Code Section III, Class 2, NC–3677.3.

The Commission hereby grants an exemption from the requirements of 10 CFR Part 50 Appendix J to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, in that the RHR, UHI, and the pressure relief piping for the SI, CVCS and Containment Spray Systems can be acceptably isolated using the present configuration, as described in Section II above, in the event of a Design Basis Accident.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will be no significant impact on the environment (52 FR 9224, March 23, 1987).

For further details with respect to this action, see the request for exemption dated December 31, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H. Street NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

Stewart D. Ebneter,

Director, Office of Special Projects

[FR Doc. 88–1419 Filed 1–22–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16224; File No. 812-6867]

Boettcher Venture Capital Partners II, L.P., et al.; Application

January 13, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: Boettcher Venture Capital Partners II, L.P. ("Partnership"), Boettcher Venture Management, L.P. ("Managing General Partner") and Boettcher & Company, Inc. ("Management Company").

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners of the Partnership are not "interested persons" of the Partnership, the Managing General Partner or the Management Company solely by reason of their status as general partners of the Partnership or independent general partners of Boettcher Venture Capital Partners I, L.P. ("BVCP I"); (ii) service as an Independent General Partner of the Partnership will not cause an independent general partner of BVCP I to be an "interested person" of BVCP I; and (iii) persons who become limited partners (the "Limited Partners") of the Partnership who own less than 5% of the units of limited partnership interest (the "Units") will not be "affiliated persons" of the Partnership or its other partners solely by reason of their status as Limited Partners.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 2(a)(19) and 2(a)(3)(D).

Filing Date: The application was filed on September 10, 1987, and amended on December 4, 1987, and December 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 828 Seventeenth Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Special Counsel, (202 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a recently formed business development company organized as a Delaware limited partnership on September 9, 1987, pursuant to a Certificate of Limited Partnership dated September 8, 1987; the Partnership has elected to be a business development company and therefore will be subject to sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by section 59 thereof. The investment objective of the Partnership is to seek capital appreciation by making venture capital investments. The Partnership is to terminate in ten years (unless extended for up to four additional one-year terms in order to permit an orderly liquidation) and thus will be an investment vehicle of limited duration which will have definite stages of development.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-16889) with respect to a public offering of up to 20,000 Units at a price of $1,000 per unit. The registration statement includes a copy of the proposed Agreement of Limited Partnership ("Partnership Agreement"). Over a period of several years Applicants anticipate making 15 to 25 venture capital investments ("Portfolio Securities") with the proceeds of the offering, each of which investment will be liquidated once it reaches a state of maturity, which typically will be four to eight years from the date of investment. Proceeds from the sale of Portfolio Securities generally will not be reinvested except in limited circumstances, but will be distributed to the partners.

3. The Managing General Partner, a Delaware limited partnership, will be responsible for the venture capital investments which are made by the Partnership, but its actions will be subject to the supervision of the Individual General Partners. Pursuant to a management agreement with the Partnership, the Management Company, a Delaware corporation which is the general partner of the Managing General Partner, will perform the management and administrative services necessary for the operation of the Partnership in accordance with the terms of the Partnership Agreement. Both the Managing General Partner and the Management Company will be registered as investment advisers under the Investment Advisers Act of 1940. The Management Company is also a registered broker-dealer and will serve as the dealer manager for the offering under a "best efforts" selling agreement.

4. The General Partners of the Partnership will consist of from four to nine Individual General Partners and the Managing General Partner. Only natural persons may serve as Individual General Partners. Of the four persons who will become Individual General Partners prior to the public offering of the Units, three will be Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the Act), and one Individual General Partner will be an individual who is affiliated with the Managing General Partner and the Management Company. The Partnership Agreement provides that if at any time the number of Independent General Partners is reduced to less than a majority of the General Partners, the remaining Individual General Partners, within 90 days, shall designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

5. The Partnership Agreement provides that the General Partners are elected at the annual meeting of the Limited Partners and serve for annual terms. It also provides that an Individual General Partner may be removed (i) for cause by the action of two-thirds of the remaining Individual General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units then outstanding. The Managing General Partner may be removed (i) for cause by a majority of the Independent General Partners, which removal shall be confirmed within 60 days thereafter by Limited Partners holding a majority of the Units outstanding; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of Limited Partners holding a majority of the Units outstanding.

6. The Managing General Partner may withdraw from the Partnership only upon 60 days prior notice, which notice must name a successor Managing General Partner. The successor Managing General Partner must certify that (i) it has sufficient experience in the performance of such activities; (ii) it has sufficient net worth such that the Partnership will not fail to be classified as a partnership for federal income tax purposes; and (iii) it is willing to serve as Managing General Partner on the terms provided in the Partnership Agreement. Finally, Limited Partners holding a majority of the outstanding Units must have consented to the appointment of the successor Managing General Partner.

7. The Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Individual General Partners, is responsible for the management of the Partnership's venture capital investments and the admission of additional, assignee or substitute Limited Partners to the Partnership. The General Partners will otherwise act by majority vote of the Individual General Partners. The Individual General Partners will perform the same functions as directors of a corporation and the Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on the non-interested directors of a "business development company."

8. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and the giving of consents and approvals as provided by the Partnership Agreement and as required by the Act. It is the opinion of counsel for the Partnership, which is relying upon an opinion of Delaware counsel, that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not presently have an errors and omissions insurance policy; however, the General Partners intend to periodically review the question of the appropriations of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Conclusion

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership within the meaning of section 2(a)(3) of the Act and, consequently, "interested persons" of the Partnership. The Independent General Partners could also be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser of the Partnership. Furthermore, the Managing General Partner is under "common control" with the Management Company, an investment adviser to the Partnership and the principal underwriter with respect to the sale of the Partnership's Units, which makes the Managing General Partner an "affiliated person" of the Management Company. Each person who becomes a Limited Partner will be a partner of the Partnership and of each other Limited Partner, as well as of each Individual General Partner and the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership as well as of each other Limited and General Partner merely by having purchased a Unit and become a Limited Partner.

2. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner or the Management Company solely because such Independent General Partners are general partners of the Partnership and "co-partners" with the Managing General Partner in the Partnership. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

3. Certain of the Independent General Partners may be deemed to be "interested persons" of the Partnership by virtue of their service as independent general partners of BVCP I, insofar as BVCP I might be considered to be under common control with the Partnership and thus, be deemed an "affiliated person" of the Partnership. BVCP I is a business development company organized in 1984. Its managing general partner is the Management Company (which is also the general partner of the Managing General Partner of the Partnership). *See In The Matter of Boettcher Venture Capital Partners, L.P., et al.*, Investment Company Act Release No. 13774 (February 15, 1984) (order determining that such individual general partners are not "interested persons" of BVCP I). Applicants believe that service as an independent general partner of both the Partnership and BVCP I, a relationship similar to one in which an individual serves as a director of multiple investment companies in same complex, will be beneficial to the Partnership. Thus, applicants further request that the Independent General Partners be exempted from the provisions of section 2(a)(19) to the extent that they would otherwise be deemed to be "interested persons" of the Partnership solely by virtue of their service as independent general partners of BVCP I. Moreover, since BVCP I might be considered an "affiliated person" of the Partnership, applicants also request that an independent general partner of BVCP I not be deemed an "interested person" of BVCP I solely by virtue of serving as an Independent General Partner of the Partnership.

4. Applicants request further that under section 2(a)(3)(D) of the Act any Limited Partner owning less than 5% of the Units not be deemed as "affiliated person" of the Partnership, any other Limited Partner, any of the Individual General Partners, the Managing General Partner or the Management Company solely because such Limited Partner is a partner of the Partnership or a partner with any of such other persons in the Partnership. Since such Limited Partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

5. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of sections 2(a)(19) and 2(a)(3)(D).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1408 Filed 1-22-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0349]

Camden Investments, Inc.; License Surrender

Notice is hereby given that Camden Investments, Inc., 9560 Wilshire Blvd., Los Angeles, California 90212, has surrendered its license to operate as a small business investment company under section 301(c) the Small Business Investment Act of 1958, as amended (the Act). Camden Investments, Inc. was licensed by the Small Business Administration on November 8, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 23, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 19, 1988.

[FR Doc. 88-1424 Filed 1-22-88; 8:45 am]

BILLING CODE 8025-01-M

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, March 7, 1988, from 8:30 a.m. to 11:30 a.m. in the Administrator's Conference Room on the tenth floor, at the Small Business Administration, 1441 L Street, NW., Washington, DC 20416. From 1:00 p.m. to 5:00 p.m., the meeting will be held in the Terrace Ballroom of the Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005. On March 8th, from 8:30 a.m. to 5:00 p.m., the meeting will move back to the Administrator's Conference Room.

The purpose of the meetings is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 20, 1988.

[FR Doc. 88-1423 Filed 1-22-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 15, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45390

Date Filed: January 12, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 9, 1988.

Description: Application of Alaska Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity, to operate scheduled service between Nome, Alaska and Provideniya, Siberia, U.S.S.R.

Docket No. 45391

Date Filed: January 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 9, 1988.

Description: Application of Sun Country Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity for permanent authority to engage in foreign charter air transportation of persons, property and mail on a permissive basis: Between a point or points in the United States and a point or points in Central America and South America.

Docket No. 45392

Date Filed: January 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 11, 1988.

Description: Amendment to the Application of Zambia Airways Corporation, Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations for foreign air carrier permit to substitute Banjul, The Gambia, for Abidjan, Ivory Coast, as an intermediate point.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-1372 Filed 1-22-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-88-1]

Wheel Test Program

In accordance with 49 CFR 211.51, notice is hereby given that the Federal Railroad Administration (FRA) proposes to conduct a limited in-service wheel test program, which would require a temporary waiver of compliance with certain provisions of the Freight Car Safety Standards (49 CFR Part 215). The regulatory provision involved is the portion of the defective wheel rule, § 215.103(h), which prohibits a freight car from being placed in service or continued in service if a wheel on the car shows signs of being overheated as evidenced by discoloration on the wheel rim faces extending more than 4 inches into the plate region.

The current discoloration provision does not differentiate between wheels of curved plate and straight plate design. Curved plate wheel designs have been developed and introduced over the past several years in an effort to reduce the maximum wheel stress levels associated with thermal and mechanical loads below those identified with older straight plate wheel designs. In the recent past, the Association of American Railroads (AAR), along with individual railroads, has sought elimination of the discoloration criterion with respect to curved plate wheels or, alternatively, a waiver of the criterion to permit field testing of wheels with curved plates. The specifics of these earlier requests were described in the **Federal Register** (49 FR 23645, 48952 and 50 FR 9148, 9753, 13381, 19838) and were the subject of both written comments and public hearings.

Results from a recently completed FRA/AAR Wheel Safety Research Program indicate that certain curved plate wheel designs, namely those which have been rim heat treated, have better fatigue and crack resistant characteristics than do untreated designs or straight plate designs with either heat treated or untreated rims. Both saw cutting and drag braking research results strongly suggest that heat treated curved plate wheels are the most resistant to thermal and mechanical damage and, therefore, more resistant to failure. To better quantify the relative performance of heat treated curved plate wheel designs and assess the effectiveness of the current discoloration rule under actual revenue conditions, FRA proposes to sanction a carefully controlled in-service test program, which incorporates the measures and controls needed to produce scientifically valid results, while ensuring safe operations during the testing period. The purpose of the field testing is to determine the correlation, if any, between wheel discoloration and thermal damage in heat treated curved plate wheels. This will be accomplished by determining whether the rate of thermal crack development is greater for discolored wheels than non-discolored wheels.

A summary of test plans proposed by the AAR is set forth as Appendix 1 to this notice. FRA is prepared to approve the AAR proposal, but will impose as a condition to the granting of the temporary waiver a requirement that each participating railroad adhere to the guidelines and conditions contained in Appendix 2 to this notice. Failure to adhere to this provision would serve as the basis for termination of the test program on any particular railroad.

FRA is seeking the comments of all interested parties on the test program and waiver request prior to taking final action. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling any additional hearings for oral comment.

All written communications concerning this petition should reference "FRA General Docket No. H86-1" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by March 3, 1988, will be considered before final action is taken in this proceeding. All comments received will be available for examination during regular working hours in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC, on January 19, 1988.

John H. Riley,

Administrator.

Appendix 1—Summary of Test Plans Proposed by the AAR

- The ARR has proposed that qualified freight cars fully equipped with heat treated curved plate wheels be allowed to continue to operate in the interchange service after one or more wheels have discolored beyond the 4-inch rule limit.
- A staggered start up has been proposed beginning with an initial sample of approximately 30,000 cars fully equipped with heat treated curved plate wheels. A portion of the initial car sample shall be used as a pilot to test the validity of the wheel inspection and data collection procedures. The overall start-up period is estimated to be about 6 months. Additional candidate test cars will be added continually after the completion of this period.
- A test program is being planned for up to 5 years with in-depth reviews after each 12-month period.
- A minimum test sample of 60,000 curved plate heat treated wheels, discolored 4 inches or more, is planned. Each member road of the AAR and Trailer Train Corporation (to allow the inclusion of high mileage TOFC/COFC flatcars) will be offered participation in the test in proportion to their ownership of the fleet. All roads choosing to participate must agree to abide by all the rules and requirements of the test.
- Each participating road will be required to designate at least one location where test cars passing through will receive attention to detect thermal cracks in wheels.
- All railroads will be alerted to ensure intensified efforts to find thermal cracks on any wheel.
- Each candidate test car will be clearly stenciled on both sides as follows:

"AAR TESTS"

"HEAT TREATED CURVED PLATE WHEELS ONLY"

- No cars will be stenciled that are tank cars, that have any straight plate wheels or untreated curved plate wheels, or that would create serious anomalies in sample representativeness of the national fleet.
- For the duration of the waiver, the replacement of a heat treated curved plate wheel with any other type wheel will not be permitted. This change will be included in the AAR Interchange Rules, making this an improper repair and thus not billable.
- A suitable "trigger mechanism" based on the percent difference of proportions of thermally cracked wheels removed which are discolored and non-discolored will be monitored continually. If at any time during the test the percentage difference in the proportion of wheels removed due to thermal cracks exceeds established bounds, a careful examination is required to determine if there is a basis for the test to be safely continued.
- The participating roads will be required to submit the car/wheel set inventory initially to the AAR on magnetic tape. Subsequent wheel set removal reports will be submitted to the AAR within 5 days of removal. AAR shall submit a summary of this data to FRA on a monthly basis. Raw data received by AAR shall be kept available for review by FRA at all times.

Appendix 2—Wheel Test Program, FRA Imposed Guidelines and Conditions

- The test sample size shall include a minimum of 60,000 discolored curved plate heat treated wheels. The population car mix should be in reasonable proportion to the type and capacity of the total car population in the U.S. rail industry. The following information for all candidate test cars to be included in the program shall be furnished to the FRA prior to entering the test:

—Car number
—Type of car
—Capacity of car
—Type of brake shoe—composition or hi-phos cast iron
—Type of air valve—AB, ABD, ABDW
—Type of wheel—cast steel or wrought steel
—Size of wheel—36", 33", 30", 28" diameter
—MFG of wheel—ID number
—Wear—multi or two or single
—Installation of wheels-date and facility
—Class of wheel—A, B or C

- All test cars must fully equipped with heat treated curved plate wheels and shall operate throughout the test period with necessary tracking, control, and monitoring procedures.
- Test cars must be operated in representative service requiring moderate to heavy braking conditions in reasonable proportion to that experienced by the total fleet. In judging representative service, consideration should also include:

—Train consist—unit/designated, general
—Terrain
—Speed

—Annual mileage
—Climate—temperature, percipitation, etc.

• Adequate safety measures, inspections and controls, including an effective "trigger index for removal from service," must be established and maintained throughout the test period.

• Test cars must not be used to haul any commodity requiring placarding as a hazardous material.

• The test program shall be planned for up to a 5-year period of operation with progress evaluations every 12 months. FRA reserves the right to suspend the program at any time.

• Failure of any of the participating railroads to meet these general conditions throughout the test period shall be sufficient grounds for immediate termination of this waiver in whole or in part.

• Test cars shall be routed to avoid operation on NEC between Washington and New York to the extent possible or shall be operated during the hours of 11 p.m. to 6 a.m.

• The participating roads will be required to submit the car/wheel set inventory initially to the AAR on magnetic tape. Subsequent wheel set removal reports will be submitted to the AAR within 5 days of removal. AAR shall submit a summary fo this data to FRA on a monthly basis. Raw data received by AAR shall be kept available for review by FRA at all times.

[FR Doc. 88-1378 Filed 1-22-88; 8:45 am]
BILLING CODE 4910-06-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Austin, TX, Region

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This Notice announces that the Urban Mass Transportation Administration (UMTA) and the Capital Metropolitan Transportation Authority are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Northwest/North Central corridor of the Austin, Texas metropolitan area. The EIS is being prepared in conformance with 40 CFR Parts 1500–1508, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, as amended; and 49 CFR Part 622, as amended, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Herrera, Regional Engineer, UMTA Region VI, 819 Taylor Street, Suite 9A32, Fort Worth, Texas 76102; telephone (817) 334-3787.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Public scoping meetings will be held on February 9, 1988, at 12:00 noon in the Capital Metro Board Room, 1005 Congress Avenue, on the 10th floor, and February 10, 1988, at 7:00 p.m. at Burnet Junior High School cafeteria, 8401 Hathaway. The meetings will be held to help establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, a presentation will be made which will provide a description of the proposed scope of the study using maps and visual aids, as well as a plan for citizen involvement, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and the evaluation approach to be used to arrive at a decision. Comments may be made either orally at the meetings or in writing, to Celia Goldstucker, P.O. Box 1943, Austin, TX 78767, (512) 476-7400. Written Comments must be postmarked no later than February 26, 1988.

The Northwest/North Central Corridor is a major travel corridor which includes the Central Business District, the State Capitol Complex and the University of Texas (UT) campus as well as several major activity/employment centers. Major transportation facilities in the corridor include U.S. 183, portion of IH-35, MoPac Expressway, the Austin and Northwestern Railroad (AU&NW) right-of-way, Lamar Boulevard and Gaudalupe Street. The corridor boundaries are approximately Barton Springs Road on the south; MoPac and U.S. 183 on the west; RM 620/AU&NW on the north/northeast; and North Lamar Boulevard/IH-35/AU&NW on the east.

Alternatives

Transportation alternative proposed for consideration in the corridor are the following:

1. *The Null-Expanded All-Bus Alternative*—involves an expansion of the existing bus route network.
2. *The Null plus TSM Alternative*—includes all the improvements in the null alternative plus dedicated bus lanes on North Lamar and South Congress and transit improvements in CBD.
3. *Light Rail Transit (LRT)/Core-Braker*—construction and operation of light rail transit along Braker Lane, portions of the Austin & Northwestern Railroad right-of-way (AU&NW), North Lamar Boulevard to Guadalupe Street and Guadalupe to 28th Street. From Guadalupe and 28th Street, several alternative sub-alignments through the core area of Austin are suggested.
4. *Light Rail Transit/Core—RM 620*—construction and operation of the extension of the LRT/Core-Braker, north along U.S. 183 to RM 620 with the same UT and CBD sub-alignments.
5. *LRT/AU&NW Exclusive—Wells Branch*—LRT along the AU&NW from Wells Branch Parkway to Brazos/3rd Street; circling through the CBD, using Brazos Street to 10th Street to Colorado Street to 3rd Street.
6. *Busway/IH-35 Frontage—RM 620*—A busway that would follow U.S. 183 from RM 620 to the AU&NW right-of-way south to the IH-35 frontage road; it continues south along with IH-35 frontage to 11th street.
7. *Busway/North Lamar—RM 620*—a busway that would follow U.S. 183 from RM 620 to the AU&NW to North Lamar continuing south to Guadalupe. The busway would be along Guadalupe through the core area.
8. *Automated Guideway Transit (AGT)/Core-Braker*—AGT following the same alignment as Alternative 3, Light Rail Transit (LRT)/Core-Braker.

Comments on the alternative should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis are potential changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, development patterns, neighborhoods), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments on the probable effects should focus on the completeness of the proposed sets of impacts and the evaluation approach. Other impacts or criteria judged relevant to local decision-making should be identified.

Wilbur E. Hare,
Regional Administrator.

[FR Doc. 88-1414 Filed 1-22-88; 8:45 am]
BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 19, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: ATF F 5630.5 Supplemental 1, ATF F 5630.5 Supplemental 2, ATF F 5630.5 Supplemental 3.
Type of Review: New Collection.
Title: Supplemental Special Tax Return and Registration.
Description: The Revenue Act of 1987, Pub. L. 100-203, amended 26 USC Chapters 51, 52 and 53 increasing tax rates for special occupational tax and requiring the collection of special tax from tobacco, distilled spirits, alcohol fuel plants, tax-free and experimental alcohol businesses that had been previously exempt from the tax. Supplemental 1 will be used to collect from delinquent taxpayers, Supplement 2 will bill current taxpayers for higher rates, Supplemental 3 is for new taxpayers.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small Businesses or organizations.
Estimated Burden: 302,500 hours.
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88-1356 Filed 1-22-88; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Survey of Disabled Veterans Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the survey, (2) survey title, (3) the agency form number, (4) a description of the need and its use, (5) frequency of survey, (6) who will be required or asked to respond, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to complete the survey, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the survey and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 18, 1988.

By direction of the Administrator:

Frank E. Lalley,
Director, Office of Information Management and Statistics.

New Collection

1. Office of Information Management and Statistics.
2. Survey of VA Medial System Users.
3. VA Form SMSU-1.
4. This survey will assist VA in policy and planning decisions for VA medical facilities, programs, and services.
5. One time.
6. Individuals or households.
7. 3,000 responses.
8. 3,500 hours.
9. Not applicable.

[FR Doc. 88-1398 Filed 1-22-88; 8:45 am]
BILLING CODE 8320-01-M

VOL
53
ISS
15
JA
25
988
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Sunshine Act Meetings

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, January 19, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director C.C. Hope, Jr. (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding reserves for losses.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: January 20, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-1452 Filed 1-21-88; 10:14 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 19, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Report of the Director, Office of Corporate Audits and Internal Investigations:
Trend Analysis Report Re:
Analysis of Regional/Consolidated Office Audit Results (Memo dated January 8, 1988)

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), and (c)(9)(A)(ii)).

Dated: January 20, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-1453 Filed 1-21-88; 10:14 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 25, 1988:

Open meetings will be held on Wednesday, January 27, 1988, at 2:00 p.m. and on Thursday, January 28, 1988, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Wednesday, January 27, 1988, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss various issues of securities regulation. The agenda will include topics such as revisions to the rules under section 16 of the Securities Exchange Act of 1934, revisions to Form S-8, tender offers, and one share-one vote. The participants will include representatives from the Society and its 2,100 member companies. For further information, please contact Brian J. Lane at (202) 272-2580.

The subject matter of the open meeting scheduled for Thursday, January 28, 1988, at 10:00 a.m., will be:

1. Consideration of whether to publish two releases relating to Regulation D, the limiting offering exemptions from the registration requirements of the Securities Act of 1933. The first release would in effect: (1) Revise the definition of "accredited investor"; (2) raise the dollar ceiling for offerings pursuant to Rule 504; (3) expand the availability of general solicitation in connection with Rule 504 offerings; and (4) make general technical amendments to the regulation as generally proposed by the Commission in January, 1987.

The second release would request public comment on additional proposals to Regulation D. The new proposals would: (1) Add "accredited investors" to the regulation; (2) delete certain conditions to the exemptions; and (3) institute a disqualifying provision for persons found to have violated the notification requirements of the regulation. For further information, please contact Karen O'Brien at (202) 272-2644.

2. Consideration of whether to issue a Memorandum Opinion and Order with regard to Sierra Pacific Resources ("Resources"), an exempt intrastate holding company under the Public Utility Holding Company Act of 1935, authorizing Resources to acquire a 14.5% common stock interest in a new company that will construct an electric generating unit to sell electric energy at wholesale. For further information, please contact Robert F. McCulloch at (202) 272-7699.

3. Consideration of whether to adopt new rules and amendments to rules and forms relating to advertising by investment companies. For further information please contact Robert E. Plaze at (202) 272-2107.

4. Consideration of whether to adopt amendments to Form N-1A, the registration form for open-end management investment companies, under the Investment Company Act of 1940 and the Securities Act of 1933 and publish related revisions to the staff guidelines for form N-1A. The amendments would (1) require mutual funds to consolidate all expense-related information in a table located near the front of the prospectus, and (2) expand the narrative disclosure requirements regarding Rule 12b-1 plans. For further information, please contact John McGuire at (202) 272-2107.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272-3065.

Jonathan G. Katz,

Secretary.

January 19, 1988.

[FR Doc. 88-1496 Filed 1-21-88; 1:28 pm]

BILLING CODE 8010-01-M

federal register

Monday
January 25, 1988

Part II

The President

Proclamation 5762—American Heart Month, 1988

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

Presidential Documents

Title 3—

The President

Proclamation 5762 of January 21, 1988

American Heart Month, 1988

By the President of the United States of America

A Proclamation

For more than half of this century, diseases of the heart and blood vessels, collectively called cardiovascular diseases, have been our Nation's most serious health problem. Last year, these diseases claimed 973,000 lives, and they caused serious and sometimes permanent illness or disability in still more Americans. Within this family of diseases, the leading killers remained coronary heart disease, which accounted for 524,000 deaths, and strokes, which accounted for 148,000 deaths.

Grim though these statistics may be, other statistics indicate that a corner may have been turned in 1965. Since then, mortality rates for all cardiovascular diseases, and especially for the two leading killers—coronary heart disease and stroke—have been moving steadily downward. For example, since 1972, mortality rates for all cardiovascular diseases combined have fallen by 34 percent, and those for coronary heart disease and stroke have declined by 35 percent and 50 percent respectively.

One major reason for the decline in cardiovascular mortality rates is that more and more Americans are modifying their habits in the direction of better cardiovascular health. Research has identified factors that increase vulnerability to premature coronary heart disease or stroke, and millions of Americans are acting on that knowledge to eliminate or ameliorate the risk factors that can be modified. These include high blood pressure, diabetes, obesity, and sedentary living. The National Heart, Lung, and Blood Institute, encouraged by the success of its National High Blood Pressure Education Program, has now launched similar programs against two other major risk factors: cigarette smoking and elevated blood cholesterol.

Today, the person stricken with a heart attack has a much better chance of surviving the acute episode, thanks to continued improvement in diagnosis and treatment. More and more of the stricken are reaching the hospital alive, thanks to better recognition of ominous symptoms, widespread teaching of cardiopulmonary resuscitation by the American Red Cross and the American Heart Association, and better-equipped emergency vehicles with better-trained crews.

Many individuals and organizations have contributed to the past four decades of progress against cardiovascular diseases. However, two organizations—the federally funded National Heart, Lung, and Blood Institute and the privately supported American Heart Association—have been in the forefront of this national effort. Since 1948, the two have worked in close cooperation to foster and support increased basic and clinical research in the cardiovascular field, to train new research scientists and clinicians, and to participate in a wide variety of community service and public and professional information activities. Through their efforts, Americans have become more aware of what they can do to live healthier lives.

Much has already been accomplished, but much more remains to be done. Recognizing the need for all Americans to take part in the continuing battle against heart disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February 1988 as American Heart Month. I invite all appropriate government officials and the American people to join with me in reaffirming our commitment to finding new or improved ways to prevent, detect, and control cardiovascular diseases.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-1559
Filed 1-22-88; 10:16 am]
Billing code 3195-01-M

VOL
53

ISS
15

JA
25

988

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federal register

Monday
January 25, 1988

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 442

Medicaid Program; Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[HSQ-127-F]

Medicaid Program; Correction and Reduction Plans for Intermediate Care Facilities for the Mentally Retarded

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations provide States options under which an intermediate care facility for the mentally retarded (ICF/MR) found to have substantial deficiencies only in physical plant and staffing (or physical plant, staffing, and other minor deficiencies) that do not pose an immediate threat to the clients' health and safety may remedy those deficiencies. The regulations provide the State Medicaid agency with options to submit written plans either to correct the necessary staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

These regulations implement section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and section 4217 of the Omnibus Budget Reconciliation Act of 1987. The purpose of the correction plan provision is to promote correction of deficiencies without having to exclude ICFs/MR from the Medicaid program. The reduction plan provision is intended to move Medicaid clients out of deficient ICFs/MR into licensed or certified (as applicable) community settings while maintaining the clients' quality of life and retaining their Medicaid eligibility.

EFFECTIVE DATES: These final regulations are effective as of April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Pratt, (301) 594-0005.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(d) of the Social Security Act (the Act) permits Medicaid coverage for services provided by intermediate care facilities for the mentally retarded (ICFs/MR). The primary purpose of an ICF/MR is to provide health or rehabilitative services for mentally retarded individuals.

ICFs/MR participate in the Medicaid program under provider agreements with State Medicaid agencies. In order to enter into a provider agreement, an ICF/MR must first be certified by a State survey agency as complying with standards set forth in 42 CFR Part 442, Subpart G. Facilities are surveyed at least annually by State survey agencies to ascertain their continued compliance with these requirements. Section 1910(c) of the Act authorizes the Secretary to conduct validation (direct Federal) surveys to determine the correctness of Medicaid certification actions taken by the designated State survey agency. In addition, if the Secretary finds that an ICF/MR substantially fails to meet the requirements of participation in the Medicaid program, the Secretary may terminate the ICF/MR's participation in the Medicaid program.

Section 1910(c)(2) of the Act sets forth the appeals procedures available when we terminate a facility's participation in the program. Under that provision, ICFs/MR have a right to a full evidentiary hearing before the effective date of termination of the provider agreement unless the Secretary makes a written determination that the facility's deficiencies pose an immediate and serious threat to the recipients.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, was enacted on April 7, 1986. Section 9516 of Pub. L. 99-272 amended title XIX of the Act by adding section 1919. Section 1919 of the Act provides States options under which ICFs/MR that are found by the Secretary to have substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. The statute provides the State Medicaid agency with options to submit written plans to the Secretary either to make all necessary staff and physical plant corrections and correct all other minor deficiencies as well, within 6 months of the approval date of the plan, or to reduce permanently the number of beds in certified units within 36 months of the approval date of the plan.

If, at the conclusion of a 6-month plan of correction, the Secretary determines that the State has substantially failed to correct the cited deficiencies, the Secretary may terminate the cited ICF/MR's provider agreement in accordance with section 1910(c) of the Act. In the case of a reduction plan, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of the reduction plan, the Secretary may terminate the ICF/MR's provider agreement in accordance with section 1910(c) of the Act, or if the State has failed to meet the reduction plan requirements despite good faith efforts, disallow Federal financial participation (FFP) equal to five percent of the cost of care for all eligible individuals in the ICF/MR for each month for which the State fails to meet the reduction plan requirements.

In accordance with the provisions of section 1919 of the Act, we published a proposed rule on July 25, 1986 (51 FR 26718). Section III of the preamble to the proposed rule (51 FR 26719) provides a detailed explanation of the provisions of section 1919 of the Act.

On December 22, 1987, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 4217(b) of Pub. L. 100-203 specifies that the regulations promulgated under section 1919 of Pub. L. 99-272 shall be effective as if promulgated on the date of enactment of Pub. L. 99-272 (that is, April 7, 1986).

II. Current Alternatives to Termination From Medicaid

As we stated in the proposed rule, current Medicaid regulations permit State survey agencies to provide an alternative to termination for ICFs/MR found to have deficiencies that do not pose immediate jeopardy to clients' health and safety. Sections 442.105 through 442.111 specify the conditions under which a facility found by a State survey agency to have deficiencies that do not jeopardize clients' health and safety may continue to be certified under Medicaid for a period of up to 12 months while the facility corrects the deficiencies.

In addition, we published a final rule on July 3, 1986 (51 FR 24484) that permits a Medicaid agency to deny payment for new admissions to an ICF/MR that no longer meets the standards for ICFs and ICFs/MR specified under 42 CFR Part 442, Subparts D through G, if the ICF/MR's deficiencies do not pose immediate jeopardy to clients' health and safety (§ 442.118(a)(1)). The Medicaid agency may deny payment for 11 months after the month the denial was imposed.

III. Provisions of the Proposed Regulations

In order to implement section 1919 of the Act, we proposed to amend the Medicaid regulations in 42 CFR Part 442. A complete discussion of the proposed changes is provided below:

A. Basis and Purpose (§ 442.1)

We proposed to add to § 442.1 the statutory authority for permitting State Medicaid agencies to submit to us correction and reduction plans for deficient ICFs/MR. Although the statute refers generally to the State, we believe it is necessary to specify the agency that would be accountable for compliance with the statute and these regulations.

B. Terms (§ 442.2)

We proposed to add to the definition of "immediate jeopardy" in § 442.2, the term "immediate threat". We believe Congress did not intend any substantive differences between the two terms. We believe that we should apply the same meaning to both terms, so that we may avoid needless confusion in attempting to discern the qualitative difference between the two terms.

C. Correction and Reduction Plans: General Provisions (§ 442.114)

We proposed to add a new § 442.114 that would provide States additional options under which ICFs/MR that we find have substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to clients' health and safety may remedy those deficiencies. Generally, such findings would result from validation surveys under section 1910(c) of the Act, but these findings could also result from direct Federal investigation of a complaint or other circumstances. We would provide the State Medicaid agency with options to submit to us, within specified time frames, written plans to either correct all necessary staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan in accordance with new § 442.115, or reduce permanently the number of beds in certified units within 36 months of the approval date of the plan in accordance with new § 442.116. While the statute and legislative history clearly provide these options for ICFs/MR with substantial deficiencies only in physical plant and staffing, we recognize that ICFs/MR with these deficiencies will likely have other deficiencies as well. As long as these other deficiencies are minor, the ICF/MR may still be eligible for a correction or reduction plan. We expect that if a correction plan is chosen, *all* physical plant and staffing as well as other remaining minor deficiencies will be corrected within 6 months. Similarly, if an ICF/MR chooses a reduction plan, all other minor deficiencies must be addressed as well.

On the other hand, facilities having substantial deficiencies in areas other than physical plant and staffing (for example, active treatment), will not be eligible for correction or reduction plans regardless of whether they also have physical plant and staffing deficiencies. We reach this conclusion because we believe that Congress made it clear that the focus of section 1919 of the Act is the correction of major physical plant or staffing deficiencies or, failing that, the elimination of those beds that are in the noncomplying part of the facility. As such, correction plans and reduction plans are designed to provide alternative solutions to those facilities that have only major physical plant and staffing deficiencies. Since the scope of reduction plans is unambiguously limited to physical plant and staffing deficiencies, we believe that correction plans are similarly limited.

Although the statute refers to States as having the option to elect correction and reduction plans offered by section 1919 of the Act, nothing in the statute prohibits ICFs/MR from requesting Medicaid agencies to make application on their behalf. A Medicaid agency may permit an ICF/MR to do so, but the agency retains the right to concur with the ICF/MR's preference or not, and to convey its election to us in accordance with § 442.114.

While section 1919 of the Act does not specify requirements to be followed if a Medicaid agency failed to submit either a correction or reduction plan, we believe that the statute does not implicitly repeal other remedies available to us. Section 1919 provides remedies that are in addition to, and do not supersede, existing authorities. Should the Medicaid agency elect not to submit either of these plans, we may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. Similarly, the Medicaid agency may prefer to terminate the facility's provider agreement on its own. Likewise, if we find, as a result of a follow-up visit, complaint investigation, or other activity, that conditions at an ICF/MR have deteriorated while operating under an approved plan, we may terminate the ICF/MR's participation in accordance with section 1910(c) of the Act. Also, if we find that conditions exist that pose an immediate threat to the clients' health and safety, we must terminate the ICF/MR's participation in accordance with section 1910(c) of the Act.

The provisions of new §§ 442.114 through 442.116 would apply only to correction and reduction plans that we approve within 3 years after the effective date of final regulations. Medicaid agencies would be able to continue implementation of permanent reduction plans approved during this 3-year period beyond the expiration date of our authority to approve such plans, provided that the agencies continue to comply with the terms and conditions of the approved plans. Our responsibility to monitor and enforce compliance by the agencies with the terms of the approved plans would not lapse with the expiration of our authority to approved new plan applications.

D. Correction Plans: Specific Requirements (§ 442.115)

1. Medicaid agency requirements (§ 442.115(a))

We proposed to require that if a Medicaid agency chooses to submit a plan of correction based on findings of substantial deficiencies only in physical plant and staffing, the plan must include—

- An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in 42 CFR Part 442, Subpart G, including all other minor deficiencies identified during the direct Federal survey, and
- A timetable for completing the necessary steps to correct all staff and physical plant deficiencies, and all other minor deficiencies, within 6 months of the approval date of the plan. The statute provides no indication that a time period of greater than 6 months to correct deficiencies, other than staff and physical plant deficiencies, is intended. Thus, if a Medicaid agency would choose to submit a correction plan, we believe it would be reasonable to expect the deficient ICF/MR to correct all deficiencies within 6 months of the approval date of the plan.

2. HCFA Policies (§ 442.115(b))

Upon receipt of a correction plan, we would review the correction plan to ensure that the plan is feasible and would remedy all deficiencies timely. If we would question any aspect of the plan and the Medicaid agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. We would forward in writing to the agency our approval or disapproval of the plan within 30 days of receipt of the proposed plan.

3. Termination of ICF/MR (§ 442.115(c))

If the Medicaid agency submitted a correction plan that we found to be unacceptable, and after we unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval and terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

VOL
53
ISS
15
JA
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If, at the conclusion of the 6-month period specified in an approved plan of correction, we determine that the agency has substantially failed to correct the deficiencies identified, we would terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act. We note that the Conference Report (H.R. Rep. No. 453, 99th Cong., 1st Sess. 554 (1985)) indicates that Congress expects the Secretary to act promptly to terminate an ICF/MR if the Medicaid agency fails to make the necessary corrections within the 6-month period.

E. Reduction Plans: Specific Requirements (§ 442.116)

1. Conditions of Approval: State Requirements (§ 442.116(a))

Before submitting a reduction plan based on findings of substantial deficiencies in physical plant and staffing, we would require a Medicaid agency to—

- Outline the reduction plan and the process for submitting the plan and receiving public comments in a public hearing held at the affected ICF/MR at least 35 days before submitting the reduction plan;
- Provide written notice of the hearing to staff, clients and their parents or guardians at least 10 days prior to the hearing date;
- Announce to advocacy and other interested groups and agencies, and the general community, through local media notices at least 10 days prior to the hearing date—
- The exact date, time and location of the hearing; and
- The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, local protection and advocacy agencies and any other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.
- Demonstrate that it has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid; and
- Provide us with assurances that the reduction plan would be completed by fulfilling the content requirement of the reduction plan.

We interpret the statutory language of "reasonable notice" of the hearing as meaning written notice of the hearing to staff, clients and their parents or guardians; and local media notices (for example, local newspaper announcements) to advocacy and other interested groups and agencies, and the general community.

If, after the public hearing, an agency decides a reduction plan would not be appropriate, the agency could follow the requirements for submitting a correction plan provided the plan is submitted within 30 days of receipt of the list of deficiencies.

2. Submittal Date of Plan (§ 442.116(c))

On the day that the Medicaid agency submits a reduction plan, the agency would be required to announce through local media notices—

- That the plan has been submitted;
- That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Development Disabilities Council, the local protection and advocacy agency and other agencies that serve potentially interested parties (for example, State and local associations for retarded citizens); and
- The address of the appropriate HCFA office for forwarding comments on the reduction plan and the closing date for receipt of those comments.

We proposed to require the agency to meet these public notice provisions because ICF/MR clients typically come from wide geographical areas, making broad notification necessary to ensure that all representatives of the clients are informed of the proposed impending changes. In addition, special interest groups and protection and advocacy agencies are not routinely informed of circumstances at an ICF/MR, yet have an important role in determining, as well as implementing, residential services and policies within the State.

3. Contents (§ 442.116(d))

We proposed to require a Medicaid agency to submit a reduction plan within 65 days of receipt of the list of deficiencies that meets the following content requirements.

- Use of an interdisciplinary team approach to identify the number of clients and their service needs on a client-by-client basis for home or community services, and establish a timetable for providing these services, in 6-month intervals, within the 36-month period beginning on the date that we approve the reduction plan.
- Describe the methods used to—
- Select clients for home or community services, and
- Develop alternative home and community services to effectively meet the clients' needs.
- Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—
- Adequate standards for participation by clients, clients' families and providers; and
- Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements.
- Provide that clients who are eligible for Medicaid while in the ICF/MR, at their (or their legal guardians') option, are placed in another setting (or another part of the affected ICF/MR) that is in full compliance with Federal Medicaid requirements and allows them to retain their eligibility. If a client would have remained eligible for Medicaid regardless of what action the Medicaid agency took concerning the deficient ICF/MR, then the agency may not, at any time, place the client involuntarily in a setting where he or she loses entitlement to Medicaid. The client would be able to elect to be placed in a setting where he or she does not retain entitlement to Medicaid. If the client, or the client's guardian, voluntarily would choose to move to a setting (for example, back home with his or her family) that causes the client's countable income or resources to exceed the Medicaid agency's eligibility standards, then the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid recipients.
- Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect. An agency would be prohibited from using the reduction plan option to delay making needed facility improvements for an additional 3 years.
- Provide that the staff-to-client ratio at the ICF/MR will be the higher of—
- The ratio described in the standards for ICFs and ICF/MR (§ 442.445); or
- The ratio which was in effect at the time the direct Federal survey was conducted.
- Provide for the protection of the staff affected by the reduction plan, including—
- Arrangements to preserve staff rights and benefits;
- Training and retraining of staff where necessary;
- Redeploying staff to community settings under the reduction plan; and
- Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

In the proposed rule, we stated that we would review carefully the experience of the mentally retarded and developmentally disabled under the State's overall community services program, including the Medicaid agency's relevant home and community based services waivers, if any. The alternative home and community based services need not be funded under a Medicaid home and community based services waiver program. However, should a Medicaid agency wish to utilize the waiver program to fund these services, all provisions of the statute and regulations applicable to that program must be met and we must approve the proposal prior to granting Medicaid waiver funding.

4. HCFA Policies (§ 442.116(e))

We proposed to consider reduction plans submitted on a first come, first served basis. Medicaid agencies would submit reduction plans within 65 days of receipt of the list of deficiencies that would be identified through a direct Federal survey. We would provide the public at least 30 days after the Medicaid agency submits a reduction plan to comment on the proposed plan. We would review the proposed plan to assure that the plan is well conceived; that it has had the benefit of client and family, staff and public input; and that the quality of life for both the clients remaining in the ICF/MR and those receiving community placements is adequately protected. If we would question any aspect of the plan and the agency's ability to fulfill the requirements of the plan, we would communicate with the agency to try to resolve our concerns. After we have carefully considered all public comments received by the close of the comment period, we would respond in writing to the agency within 60 days of receipt of the plan. We would also take care to assure that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

While the statute allows a Medicaid agency a maximum of 36 months to reduce the number of beds in certified units, we believe that there could be situations in which it would be appropriate to limit the amount of time to implement a reduction plan. For example, a facility with 200 beds seeking to eliminate 50 beds would probably not need a full 36 months to implement its reduction plan. Under our authority to approve a plan, we believe we may limit the time provisions proposed in a plan, as a condition of approval, to avoid situations in which Medicaid agencies attempt to use the maximum allowable time period to delay making the necessary improvements in a timely manner. We would negotiate timeframes on a case-by-case basis.

In accordance with section 1919(d)(2) of the Act, if we would approve more than 15 reduction plans in any fiscal year, any reduction plans approved after the first 15 approved plans, could be only for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as would be demonstrated by the agency to our satisfaction). After we have approved 15 reduction plans in any fiscal year, we would indicate in our transmittal to all subsequent Medicaid agencies found to have ICFs/MR with substantial deficiencies that they must demonstrate that the costs of correcting the substantial deficiencies would equal $2 million or more. Medicaid agencies could demonstrate costs of $2 million or more by providing evidence of contractor estimates of renovations, cost allocation reports for increasing staff, and any other evidence that supports the costs of correcting the cited deficiencies. There would be no limit on the number of qualified plans that we could approve where the costs of correction are equal to or greater than $2 million.

5. Termination of an ICF/MR (§ 442.116(f))

If the Medicaid agency submits a reduction plan that we found to be unacceptable, and after we have unsuccessfully attempted to resolve our concerns with the agency, we would notify the agency of our disapproval. We would consider terminating the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

If, at the conclusion of the initial 6-month period or any 6-month interval thereafter of an approved reduction plan, we determined that the Medicaid agency substantially failed to meet the requirements of the reduction plan, we would—

- Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or
- Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it might have made.

D. Technical Amendments

To allow for placement in 42 CFR Part 442 of the regulation provisions proposed by these regulations, we proposed to redesignate §§ 442.110 through 442.115 as §§ 442.109 through 442.113, respectively.

IV. Analysis Of and Responses To Public Comments

In developing this final regulation, we considered the 19 items of correspondence that were received within the prescribed comment period from State Medicaid agencies, professional organizations, Medicaid providers, and interested individuals. The major comments and our responses to those comments are discussed below.

General Provisions

Comment: Two commenters believe that Congress intended that regulations implementing the provisions of section 1919 of the Act be effective as of April 7, 1986 (the date of enactment of (COBRA)). The commenters believe that had Congress wished to delay implementation of section 1919 of the Act pending the release of final rules, they would have established an effective date later than the date of enactment (April 7, 1986).

Response: Since the publication of the proposed rule, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Section 4217(b) of Pub. L. 100-203 specifies that the regulations promulgated under section 1919 of Pub. L. 99-272 shall be effective as if promulgated on the date of enactment of Pub. L. 99-272 (that is, April 7, 1986). Therefore, these final regulations are effective as of April 7, 1986.

Comment: One commenter understood that the options of deficient facilities to submit correction or reduction plans were available only to facilities found deficient as a result of an *initial* look-behind survey.

Response: These options are not limited to initial look-behind surveys. The option to submit a reduction plan will also be extended by the State to a facility that fails to meet standards on a resurvey.

Comment: Several commenters requested changes that would require legislative changes. The commenters requested that—

- HCFA permit a State Medicaid agency to submit a correction plan that has an implementation period of longer than 6 months when the improvements are subject to special legislative authorization (for example, increased staffing authorization) or capital construction.
- HCFA initiate punitive action for failure to meet correction and reduction plans only after an ICF/MR fails to act

within a timeframe that is longer than a 6-month interval.

• HCFA allow an additional 6 months (a total of 12 months) for remedying major physical plant deficiencies that are specified in an approved plan of correction.

• The process relating to State requirements for approval of reduction plans is rather cumbersome. This may act as a deterrent to prevent some States from choosing to submit a reduction plan instead of a correction plan for the affected ICF/MR.

Response: The recommendations made by these comments extend beyond the provisions of the statute, and we cannot implement changes that exceed our statutory authority.

Comment: One commenter stated that throughout the proposed rule there appeared to be an underlying attempt to reduce the size of large ICFs/MR and a stated *expectancy* that "generally, [HCFA] would find an ICF/MR to have substantial deficiencies as a result of a validation survey." The commenter requested that we explain the basis for this expectancy.

Response: As stated in the regulatory flexibility analysis for the proposed regulation, it is clear that the reduction plan option may not be appropriate for smaller facilities found to have substantial deficiencies in physical plant and staffing. States would be more likely to elect the reduction plan for large ICFs/MR with substantial deficiencies. The statement that we would find an ICF/MR to have substantial deficiencies as a result of a validation survey is based on the fact that when we initiate most Federal adverse actions against ICFs/MR, we base them on onsite Federal surveys, though only about 15 percent of all validation surveys result in the threat of an adverse action.

Terms (§ 442.2)

Comment: Several commenters stated that we should define "substantially failed to meet requirements" and asked why good-faith efforts are not considered substantial compliance if the facility is unable to correct all of the deficiencies in the required time period.

Response: We have not defined the phrase "substantially failed to meet requirements" because we recognize that, with the wide diversity of facilities and clients served, it is not possible to define in a fair and accurate way criteria for making this determination. Rather, we will rely on the Federal surveyors' findings and recommendations to our regional office officials, who have the delegated authority to make determinations, as an effective way of both enforcing Federal rules and providing facilities with the benefit of a flexible enforcement system. Providing for a flexible enforcement system will enable us, if at all possible, to respond to local circumstances without resorting to adverse actions. If detailed criteria were established, regional offices would not be able to consider any extenuating circumstances in a determination decision except the failure of the facility to meet the pre-set criteria for "substantial failure to meet requirements."

We also recognize that any adverse action we do not take must withstand the scrutiny of the appeals process. Thus, we will not take adverse actions based on substantial non-compliance unless we are convinced that the ICF/MR is functioning so poorly on behalf of its clients that it should not receive Federal payments.

"Good faith efforts" will not be considered under the correction plan option because the result of such efforts may still result in non-compliance with Federal requirements. Either the State substantially meets its approved correction plan for an ICF/MR or we will initiate termination actions. In the case of reduction plans that are not being met, the Secretary has the option to terminate the ICF/MR's provider agreement or to disallow statutorily-prescribed amounts of FFP.

Correction and Reduction Plans: General Provisions (§ 442.114)

Comment: One commenter argues that ICFs/MR do not need to be validated by another set of standards or regulations. The commenter interpreted the regulations as suggesting that validation surveys would only be directed at large ICFs/MR and that we would impose reduction plans.

Response: The statute does not require ICFs/MR to be surveyed under a new set of standards. The existing standards set forth in 42 CFR Part 442, Subpart G, are used for validation (direct Federal) surveys. A reduction plan will not be imposed on a facility. Both the correction and reduction plans are two additional *options* available to a State when an ICF/MR has substantial deficiencies only in physical plant and staffing and other remaining minor deficiencies that do not pose an immediate threat to clients' health and safety are found during a direct Federal survey.

Comment: Commenters requested that we clarify how the proposed regulations would affect the current regulations, especially in relation to § 442.113(b), which allows 12 months for correction of cited deficiencies. Some commenters believe that the proposed rules are not sufficiently explicit regarding the applicability of the additional options to ICFs/MR.

Response: Current regulations (§§ 442.105 through 442.111 and 442.113) are not related to the implementation of section 1919 of the Act, because they regulate only the actions of the State survey agencies and not those of the Secretary that are discretely authorized by section 1919. If a facility is notified of substantial deficiencies in physical plant and staffing and the State fails to choose either option provided by the statute, we will exercise our authority under section 1910(c) of the Act by notifying the facility that its participation in the Medicaid program may be terminated.

Comment: One commenter requested that we require that "substantial deficiencies" be submitted for review and approval by a panel of experts who have no interest in, or relationship with either HCFA, the State Medicaid agency, or the ICF/MR under review.

Response: Section 1910(c) of the Act grants us the authority to make a determination that a facility failed to meet the requirements for participation in the Medicaid program. Section 1919 of the Act provides no authority for the type of review suggested by the commenter.

Comment: One commenter requested clarification of the option to "reduce permanently the number of beds in certified units" within 36 months of the approval date of the plan, to determine if it pertains to all certified beds Statewide, or exclusively to a developmental center, or only to a single facility.

Response: The regulation refers only to the number of beds in the specific ICF/MR that will be operating under a reduction plan and does not pertain to all certified beds Statewide.

Comment: One commenter requested that, in addition to the right of an ICF/MR whose participation has been terminated from the Medicaid program to appeal the action under 1910(c)(2) of the Act, we allow clients, their parents and guardians, or interested organizations to initiate evidentiary hearings and legal proceedings to the same extent as provided in section 1910(c)(2) of the Act.

Response: Section 1910(c)(2) of the Act is very specific about the rights of a facility to appeal a determination to terminate the facility from Medicaid participation. The statute does not permit other parties to initiate evidentiary hearings and other proceedings under section 1910(c)(2) of the Act, and we have no other authority to do so.

Comment: Several commenters requested that the time frames for submitting correction plans and reduction plans be extended to allow more time for the preparation of such plans that is, approvals and resource commitments. It was also noted that there is virtually no time if, after the hearing, the State decides the reduction plan would not be appropriate and opts to submit a correction plan, given the 30-day deadline for submitting correction plans.

Response: We believe the time frames are adequate with the exception noted below. The provisions of the statute and this regulation are available to a facility operating with deficiencies in physical plant and staffing of such a substantial nature that the facility faces potential termination from the Medicaid program. Under conditions that pose potential harm to program beneficiaries, we believe it would be most unwise to delay corrective action by extending the time frames. Moreover, the statute links the time frame for submission of a reduction plan *directly* to the time frame for correction plans, and we believe that 30 days is the most time we should allow a facility with serious deficiencies to submit a correction plan. The provisions of the statute dictate that a reduction plan be submitted within 65 days of a notice of deficiencies because of the additional 35 days that must be added to the correction plan time frame set by the Secretary. Thus, we have no statutory flexibility to alter the reduction plan time frames independent of the correction plan time frames. In our experience, when a facility is facing the loss of Federal funds as a result of termination actions, facilities have been able to locate needed resources to avoid termination.

After considering the comment that under the proposed rule (51 FR 26721) little, if any, time, is available if, as a result of the public hearing, a State decides that a reduction plan is not appropriate and chooses to submit a correction plan, we have revised § 442.115(c) to permit a State to submit a proposed correction plan to us within 20 days from the date of the public hearing. We will apply this additional time frame only when a State decides to submit a correction plan after it has conducted a public hearing to announce a reduction plan and the State decides the reduction plan is not appropriate. Otherwise, the time frames remain unchanged.

Comment: One commenter suggested the public comment period be extended to 90 days instead of the proposed 30 days.

Response: We believe that 30 days is adequate time for the public to formally submit comments to us. The public will have had an opportunity to review the proposed plan (before the formal 30-day comment period begins) at the time of the public hearing. We believe that extending the public comment period beyond 30 days would unnecessarily delay action to correct the serious deficiencies at the affected facility.

Correction Plans: Specific Requirements (§ 442.115) Termination of an ICF/MR (§ 442.115(c))

Comment: Several commenters stated that the proposed rule does not address any timetable for determining how long the process can last if HCFA does not accept an agency's plan of correction.

Response: In order to make our original intent clear that we will not delay the process of making a final determination on submitted correction plans beyond the specified 30-day review period, we have revised § 442.115(c)(1). Section 442.115(c)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a correction plan until after we attempt to resolve our concerns with the agency. It is not our intention to delay our response to the agency beyond the specified 30-day period from the date the agency submits a correction plan. Because of the serious nature of the deficiencies that these regulations address, we must avoid delaying action to correct the deficiencies. However, we will do everything possible to assist States in the preparation of a plan prior to the submission of the plan. As we stated in the preamble to the proposed rule (51 FR 26721), if we question any aspect of a submitted plan or the Medicaid agency's ability to fulfill the requirements of the plan, we will try to resolve our concerns with the agency. However, we will not delay our determination to approve or disapprove a correction plan. We will forward our written approval or disapproval of the plan to the agency within 30 days of receipt of a proposed plan. If we do not accept an agency's plan of correction, we will exercise our authority under section 1910(c) of the Act to terminate the deficient ICF/MR's participation in the Medicaid program at the same time we notify the State that the plan of correction is not accepted.

Comment: One commenter was concerned that there does not appear to be any appeals process open to the States in cases of dispute.

Response: The statute does not provide for an appeals process if the plan of correction is not approved. However, if the facility's participation in Medicaid is terminated, the usual appeals procedures are available to the ICF/MR. If we terminate an ICF/MR's participation under section 1910(c) of the Act, the ICF/MR may file an appeal with the Office of Hearings and Appeals through the HCFA regional office. At the time that we notify an ICF/MR of our decision to terminate, we provide the ICF/MR with instructions for filing an appeal.

Reduction Plans: Specific Requirements (§ 442.116)

Conditions of Approval: State Requirements (§ 442.116(a))

Comment: While one Medicaid agency strongly supported the holding of a public hearing, the agency requested that the final regulations reflect a simple hearings process and related activities that are easily accomplished given the brief time frame allowed for completion.

Response: We believe that we have outlined a hearings process that is uncomplicated and can easily be accomplished in the allowable time frame. The commenter did not suggest any specific recommendations for us to consider.

Comment: One commenter suggested that we require States to develop approved guidelines for evaluation of all Medicaid eligible providers; establish limitations of their ability to discharge or transfer clients; and develop on behalf of the Medicaid recipients an independent due process procedure in problematic cases.

Response: In accordance with 42 CFR Part 442, Subpart G, we prescribe standards for ICF services in ICFs/MR, including standards for the release and transfer of clients at the ICF/MR (§§ 442.424 and 442.425). There is no prohibition to the establishment of an independent due process procedure in problematic cases if the State Medicaid agency wishes to do so, but we do not believe it is necessary to impose such a procedure on the States by regulation.

Comment: In order to ensure that a State does not simply create another institution "with just a new name" when it elects to implement a reduction plan, one commenter believes that group homes or other facilities should house between six to ten individuals with direct supervision or house eight individuals with minimal supervision.

Response: We have no authority to specify the maximum number of clients living in an ICF/MR defined as "small," especially if the facility is not certified.

Comment: One commenter requested written notice of the State Medicaid agency's reduction plan to include the nearest family members of the retarded person since many parents of mentally

retarded adults are sometimes deceased or too infirm to respond.

Response: We have accepted this recommendation and have revised § 442.116(a)(2) to request the participation of the party or family member nearest to, or most interested or involved with the client.

Comment: One commenter believes that the written notice should be mailed "Return Receipt Requested" in order to ensure that the agency gives sufficient notification time to interested parties.

Response: We do not believe it is necessary to interpret the statutory language of "reasonable notice" of the hearing to mean more than written notice of the hearing. We accept written notice and local media notices as sufficient notification under other requirements of the Medicaid program and we have not experienced any problems in these other areas. However, States could choose to mail notices of hearings "Return Receipt Requested".

Comment: One commenter suggested that "written notice" of a public hearing on a proposed reduction plan should not be interpreted as requiring individual notice to staff and clients of the affected ICF/MR.

Response: We believe that clients or their parents, legal guardians and/or interested parties require individual written notice. An ICF/MR may choose not to give individual written notice to facility staff if the ICF/MR provides written notice through established channels of communication within the ICF/MR. That is, the ICF/MR may notify facility staff through routine written memoranda to all facility staff, posted notices in areas frequented by all staff, or through other methods commonly used at the ICF/MR. We will further delineate the requirements of written notice in our instructions to the States.

Comment: One commenter thought that advocacy and volunteer organizations directly associated with the ICF/MR and the relevant courts should be added to the list of community organizations and institutions to be notified of the reduction plan.

Response: Section 442.116(a)(3) specifies that advocacy groups and other interested groups and agencies be notified and we believe that volunteer organizations are adequately represented as part of these groups. However, we will add to § 442.116(a)(3) "the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation" as part of the groups to be notified of the hearing.

Comment: Several commenters suggested that we increase the time period for providing written notice of the hearing to assure involvement of all interested parties.

Response: We believe that the requirement for an agency to forward written notice of the hearing at least ten days prior to the hearing provides adequate notice. Again, we do not want to unnecessarily delay taking actions against a facility that is found to have substantial deficiencies.

Comment: One commenter requested that we provide for review of the proposed reduction plan by qualified consumer representatives and a selected team of disinterested experts.

Response: We agree, and the regulations (§ 442.116(a)(3)) allow all interested parties, including consumer representatives and disinterested experts, the opportunity to review the plan. The regulations require public notice of the locations where the plan is displayed for review. Moreover, § 442.116(a)(1) provides interested parties the opportunity to comment on the plan.

Comment: One commenter suggested that the requirement for proposed reduction plans be placed on display at "any other agencies that serve potentially interested parties" is overly broad and vague and therefore unduly burdensome on States.

Response: We have accepted this comment because we recognize that the word "any" could mean "all". We have revised §§ 442.116 (a)(3)(ii) and (c)(2) to require that proposed reduction plans be displayed at other agencies, which in the State's judgment, serve potentially interested parties.

Comment: One commenter requested that we provide for sufficient copies of the plan to be reproduced and made available on request to all members of the public who have a reasonable interest in these proceedings.

Response: We believe that display of the plan at various locations provides an acceptable method of meeting the intent of the law. However, the option to provide copies of the plan is available to the agencies displaying the plan.

Contents (§ 442.116(d))

Comment: Several commenters expressed confusion over the intent of proposed § 442.116(d)(4), as required by section 1919(c)(4) of the Act, and stated that our translation of the law is beyond the intent of the statute, though the commenters did not state how. One commenter recommended that the preamble language about involuntary transfers be substituted for the language currently in proposed § 442.116(d)(4). Another commenter requested that we revise § 442.116(d)(4) to require that the provision of home and community services be "comparable" to the services proposed instead of services being "similar" to the services proposed.

Response: We believe the preamble language describes accurately the provisions of the statute in section 1919(c)(4) of the Act and the regulation corresponds to the intent of the law. However, in order to ensure that there is no confusion, we have revised § 442.116(d)(4) to reflect exactly the language of section 1919(c)(4).

Comment: One commenter stated that is appears that taking a developmentally disabled person back into the family home would penalize the family by the loss of benefits. The commenter believes that making a distinction between voluntary and involuntary placement in the home is subject to manipulation by the State. The commenter stated that the alternatives offered the client may be inhumane or otherwise unacceptable. The commenter suggested that we encourage the development of extended family ties rather than discourage them.

Response: The law states that a reduction plan must not impair the Medicaid eligibility of affected clients without their consent. If the client would have remained eligible for Medicaid regardless of what action the Medicaid agency took concerning the deficient ICF/MR, then the agency may not, at any time, involuntarily place the client where he or she loses entitlement to Medicaid. The client, however, may elect to be placed in a setting where he or she does not retain entitlement to Medicaid. For example, the client may choose to move back home with his or her family, thus causing the client's countable income or resources to exceed the Medicaid agency's eligibility standards, so the client's Medicaid eligibility would be subject to termination under the same terms and procedures that apply to all Medicaid recipients.

The reduction plan imposes a number of requirements on States to assure that any plan to reduce is well conceived; that it has had the benefit of client, family, staff, and public input; and that the quality of life for both the clients remaining in the facility and those receiving community placements is adequately protected. The intention of these requirements is to assure that approved reduction plans do not lead to the "dumping" of affected clients into substandard settings.

HCFA Policies (§ 442.116(e))

Comment: Commenters would like clarification of the 30-day public comment period provided by HCFA when there has been an opportunity for public comment at the State level. One commenter suggested extending the 30-day public comment period to 90 days. Commenters requested that we explain our process for handling public comments that we receive and the impact of the comments on our approval of reduction plans.

Response: We will allow a comment period providing interested clients, family, staff, and members of the public the opportunity to comment directly to us on a State's proposal. We believe the 30-day time frame for receiving public comments allows adequate time for individuals and organizations to respond to the proposed plan. We will give careful consideration to these comments in connection with our decision to approve or disapprove the proposed plan.

Comment: One commenter stated that the example used in the preamble to illustrate situations in which it would be appropriate to limit the amount of time to implement a reduction plan was "dubious".

Response: We acknowledge that many factors influence the decision to grant an amount of time for the implementation of the reduction plan. We used a simple example for illustrative purposes only.

Comment: Several commenters argued that HCFA has no monitoring authority outside of the ICF/MR program. If clients choose to be placed in a non-ICF/MR setting as part of the reduction plan, HCFA will be unable to monitor that placement and, therefore, compliance with this standard.

Response: We have no authority to monitor non-certified facilities and other non-participating settings into which clients may be placed.

Comment: One commenter believes that the usefulness of a reduction plan for an ICF/MR that has staff deficiencies is unclear. Proposed § 442.116(d)(6) requires staffing consistent with current ICF/MR standards (§ 442.445). The commenter questioned whether the facility must meet all ICF/MR staff requirements, or whether compliance with resident living staff, and staffing for other functions, (for example, habilitation, nutrition, nursing, medical) is sufficient to guarantee resident health and safety.

Response: Clients must still receive active treatment, which means the facility must provide adequate staff to provide needed care and services in safe and healthful environments.

Comment: Several commenters requested clarification concerning when termination would occur if we disapprove a State's reduction plan. Commenters questioned whether or not negotiations could occur before terminating a facility.

Response: If we do not accept a State's reduction plan, we will exercise our authority under section 1910(c) of the Act to terminate the deficient ICF/MR's participation in the Medicaid program at the same time we notify the State that the reduction plan is not accepted. In order to make our original intent clear that we will not delay the process of making a final determination on submitted reduction plans beyond the specified 60-day period (that allows for the statutorily mandated 30-day public comment period) from receipt of a plan, we have revised § 442.116(f)(1). Section 442.116(f)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a reduction plan until after we attempt to resolve our concerns with the agency. It is not our intention to delay our response to the agency beyond the specified 60-day period from the date the agency submits a reduction plan. Because of the serious nature of the deficiencies that these regulations address, we must avoid delaying action to remedy the deficiencies. However, we will do everything possible to assist States in the preparation of a plan prior to the submission of the plan. As we stated in the preamble to the proposed rule (51 FR 26722), if we question any aspect of a submitted plan or the Medicaid agency's ability to fulfill the requirements of the plan, we will try to resolve our concerns with the agency. However, we will not delay our determination to approve or disapprove a reduction plan. We will forward in writing to the agency within 60 days of receipt of a proposed plan our approval or disapproval of the plan.

Comment: One commenter contends it is unclear what conditions would trigger either termination of the ICF/MR or disallowance of FFP, if any six-month interval time frame for reduction is not met.

Response: If, after any six-month period, we determine that a State failed to meet the reduction plan provisions of § 442.116, and we determine the State has not made a good faith effort to meet those requirements, we will initiate termination procedures. If we determine failure to comply with the requirements resulted despite the State's best efforts, we will apply a five-percent FFP disallowance penalty.

If substantial noncompliance with the reduction plan requirements continues to be found, or if conditions worsen irrespective of "good faith efforts", the statute gives us the *option* of terminating the facility's participation. It is our policy to terminate the facility's participation in such cases. (Good faith efforts apply only to the reduction plan. In the case of the correction plan, we will make a substantial compliance or noncompliance determination based on actual conditions in the facility and not based on the "good faith efforts" of the provider.)

Comment: Several commenters emphasized the importance of ensuring that a reduction plan meet all the health care service delivery needs and active treatment requirements of the clients selected for community placement.

Response: The provisions of the statute are explicit about the specific requirements of a reduction plan and we have included those requirements in § 442.116.

Comment: One commenter believes that aside from his or her family, guardian and friends, a retarded person's best safeguard for ensuring the delivery of services is access to legal services. The commenter suggested that we provide money through the Legal Services Corporation for legal representation (including consultant fees) for retarded people and their families and guardians who advocate on their behalf.

Response: We have no statutory authority to provide for the financing of legal services for clients or their families and guardians. Protection and advocacy agencies funded under the Developmental Disabilities Act have the authority to provide legal assistance in matters of this type.

Comment: One commenter stated that many mentally retarded clients leaving long term care facilities will need assistance from numerous health, educational, and human service agencies in the public and private sectors. The commenter stated that many will have multiple handicaps and suggested that a task force be established to coordinate the various services needed by these individuals upon re-entry into the community.

Response: There is no statutory authority for us to establish such a task force. States, however, may choose to form such task forces.

IV. Summary of Changes in the Final Regulations

As stated in our discussion of the comments and responses, we have made some changes to the approach we had proposed in the regulations published on July 25, 1986. With the exception of the changes identified below, the final regulations reflect the proposals made in the July 25, 1986 proposed rule.

Medicaid Agency Options (§ 442.114 (a) and (b))

We have clarified that correction and reduction plans will be available to States that have ICFs/MR found to have substantial deficiencies *only* in physical plant and staffing (or physical plant, staffing, and other *minor* deficiencies) that do not pose an immediate threat to the clients' health and safety.

Effective Date (§ 442.114(d))

Since the publication of the proposed rule, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Section 4217(b) of Pub. L. 100–203 specifies that the regulations promulgated under section 1919 of Pub. L. 99–272 shall be effective as if promulgated on the date of enactment of Pub. L. 99–272 (that is, April 7, 1986). Therefore, these final regulations are effective for any Federal survey of an ICF/MR initiated on or after April 7, 1986 in which substantial deficiencies in physical plant and staffing that did not pose an immediate threat to the clients' health and safety were found.

Correction Plans for ICFs/MR: Specific Requirements (§ 442.115)

We have revised § 442.115 by adding an exception to our policy for receiving proposed correction plans (§ 442.115(c)). If a State chooses to submit a reduction plan and after conducting a public hearing decides that a reduction plan is not appropriate, the State may submit to us a correction plan within 20 days from the date of the public hearing. Under these circumstances, we must receive the correction plan within 20 days from the date of the public hearing. We will advise States that if they choose to submit a reduction plan, they may wish to consider preparing a preliminary correction plan at the same time so that if, as a result of the public hearing, they decide to submit a correction plan, they will have already begun preparing it.

In order to make our original intent clear that we will not delay the process of making a final determination on submitted correction plans beyond our 30-day review period, we have revised § 442.115(d)(1). Section 442.115(d)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a correction plan until after we attempt to resolve our concerns with the agency. We have revised § 442.115(d)(1) to clarify that we will not delay our response to an agency beyond the specified 30-day period from the date the agency submits a correction plan.

Reduction Plans for ICFs/MR: Specific Requirements (§ 442.116)

- We have revised § 442.116(a)(2) to require that the "nearest, most interested, or involved family member or party" receive written notice of a State Medicaid agency's reduction plan.
- We have revised § 442.116(a)(3) to include "the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation" as one of the groups to be notified of the public hearing.
- We have revised § 442.116 (a)(3)(ii) and (c)(2) to require that proposed reduction plans be displayed at other agencies, which in the State's judgment, serve potentially interested parties.
- We have removed from §§ 442.116 (a)(3)(ii) and (c)(2) the word "any" so that the regulations cannot be interpreted to mean that a proposed reduction plan must be displayed at *all* advocacy agencies and other agencies that serve potentially interested parties.
- To clarify § 442.116(d)(4), we have revised that section to reflect the statutory language concerning retaining clients' Medicaid eligibility.
- We have added to the regulations the provision that we may approve reduction plans for a shorter period than 36 months, where appropriate (§ 442.116(e)(3)).
- We have added a requirement to the regulations that clarifies that HCFA approval of a reduction plan does not constitute approval of any request for a home and community-based waiver (§ 442.116(e)(4)). Home and community based waiver requests are subject to a separate HCFA review and approval process under 42 CFR 441.300. Disapproval of a request for a home and community-based waiver constitutes disapproval of a request for a reduction plan that is dependent upon approval of the request for a home and community-based waiver. ICFs/MR that submit reduction plans that are dependent upon receipt of HCFA approval of home and community-based waiver requests may choose to develop contingency plans to avoid disruptions in the event that HCFA denies a waiver request.
- In order to make our original intent clear that we will not delay the process of making a final determination on submitted reduction plans beyond the 60-day period from receipt of a plan, we have revised § 442.116(f)(1). Section 442.116(f)(1) of the proposed rule could be interpreted to mean that we could delay approval or disapproval of a reduction plan until after we attempt to resolve our concerns with the agency. We have revised § 442.116(f)(1) to clarify that we will not delay our response to an agency beyond the specified 60-day period from the date the agency submits a reduction plan.

Corrections

We have made some minor changes to the final regulations to correct typographical errors that appeared in the proposed rule.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any final regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic impact of this regulation will not exceed $100 million or meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepared and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all ICFs/MR to be small entities. Since these regulations potentially could have a signficient impact on a substantial number of ICFs/MR, we prepared an initial regulatory flexibility analysis for the proposed rule published July 25, 1986. The following discussion constitutes our final regulatory flexibility analysis.

There are 3,340 Medicaid-participating ICFs/MR nationwide. We cannot determine exactly how many ICFs/MR might be affected by the provisions of these regulations.

Generally, we make our own determination of ICF/MR compliance with pertinent Federal requirements as a result of a validation survey. For FY 1987, we plan to perform 459 validation surveys of ICFs/MR. A direct Federal survey might also be performed as the result of a complaint or other circumstances, but such surveys are conducted in response to immediate problems, rather than as part of a planned process.

The requirements for correction and reduction plans will apply to all ICFs/MR, large and small, State or other government operated, private, nonprofit, or for-profit. However, it is clear that the reduction plan option may not always be appropriate for smaller facilities. States will be more likely to elect the reduction plan for large ICFs/MR with substantial deficiencies.

Many large facilities are State-owned. Whether large or small, a State-owned ICF/MR that came under these requirements could have difficulties, within the constraints of a State's budget and appropriations process, in complying with the 6-month time limit of the correction plan option.

Because we are unable to predict the decisions States will make when given the options provided by this regulation, we are unable to quantify the potential effect it will have. Section 9516(c) of Pub. L. 99–272 requires that the Secretary report to Congress on the implementation and results of the correction and reduction plans approved by the Secretary. We expect to assess the effects on terminations, deficiences, and clients through the monitoring activities necessary for the completion of that report.

VII. Waiver of 30-Day Delay of Effective Date

We usually publish our rules not less than 30 days before their effective dates unless we find good cause and publish that rationale with the rule. Since section 4217(b) of Pub. L. 100–203 specifies that the regulations promulgated under section 1919 of Pub. L. 99–272 shall be effective as if promulgated on the date of enactment of Pub. L. 99–272 (that is, April 7, 1986), we find good cause to waive the 30-day delay of the effective date for these final regulations.

VIII. Paperwork Reduction Act of 1980

(Pub. L. 96–511)

Sections 442.114(a), 442.115(a), and 442.116 (a) and (d) of this final rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980. A notice will appear in the Federal Register when approval is obtained.

List of Subjects in 42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by revising the title of Subpart C, redesignating §§ 442.110 through 442.113 as §§ 442.109 through 442.112, respectively, and § 442.115 as § 442.113; revising the titles of newly redesignated §§ 442.111 through 442.113; and adding new §§ 442.114 through 442.116, to read as follows:

Subpart C—Certification of SNFs, ICFs, and ICFs/MR

* * * * *

Sec.

442.111 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.

442.112 Extended period for correcting deficiencies: ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.

442.113 Correction plans for ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.

442.114 Correction and reduction plans for ICFs/MR: General provisions.

442.115 Correction plans for ICFs/MR: Specific requirements.

442.116 Reduction plans for ICFS/MR: Specific requirements.

* * * * *

3. Section 442.1 is amended by revising the introductory text of paragraph (a) and the paragraph citing Section 1910, adding the word "and" at the end of the paragraph citing Section 1913 and adding a new paragraph citing Section 1919 at the end to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements, facility certification, and facility standards relating to the provision of services furnished by skilled nursing facilities and intermediate care facilities, including intermediate care facilities for the mentally retarded, to Medicaid recipients. The requirements apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

* * * * *

Section 1910, certification and approval of SNFs and of RHCs;

* * * * *

Section 1919, correction and reduction plans for intermediate care facilities for the mentally retarded.

* * * * *

4. In § 442.2, the introductory text is republished, and the section is amended by revising the definition of "Immediate jeopardy" to read as follows:

§ 442.2 Terms.

In this part—

* * * * *

"Immediate jeopardy" or "immediate threat" for Medicaid certified facilities means a situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses a serious threat to patients' or clients' health or safety such that immediate corrective action is necessary. There is no substantive difference between "immediate jeopardy" and "immediate threat".

* * * * *

§ 442.105 [Amended]

5. Section 442.105(e) is amended by removing the phrase "§ 442.112 or § 442.113" and inserting in its place the phrase "§ 442.111 or § 442.112".

6. The heading of Subpart C is revised, sections 442.110 through 442.113 are redesignated as §§ 442.109 through 442.112, respectively and § 442.115 as § 442.113; and the titles of newly redesignated §§ 442.111 through 442.113 are revised to read as follows:

Subpart C—Certification of SNFs, ICFs, and ICFs/MR

§ 442.111 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.

§ 442.112 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.

§ 442.113 Correction plans for ICFs/MR: Life Safety Code and living/dining/therapy area deficiencies.

§ 442.110 [Amended]

7. Newly redesignated § 442.110(a) is amended by removing the phrase "§§ 442.112 and 442.113" and inserting in its place the phrase "§§ 442.111 and 442.112".

§ 442.112 [Amended]

8. Newly redesignated § 442.112(c)(5) is amended by removing the references to "§ 442.115" and inserting in their places the reference "§ 442.113".

§ 442.113 [Amended]

9. Newly redesignated § 442.113(a) introductory text is amended by removing the reference "§ 442.113" and inserting in is place the reference "§ 442.112".

10. New §§ 442.114 through 442.116 are added to read as follows:

§ 442.114 Correction and reduction plans for ICFs/MR: General provisions.

(a) *Options of Medicaid agency.* If HCFA finds substantial deficiencies only in physical plant and staffing that do not pose an immediate threat to the clients' health and safety in an ICF/MR, HCFA will forward the list of deficiencies to the Medicaid agency and the agency may elect to—

(1) Submit to HCFA within 30 days of receipt of the list of deficiencies a written plan of correction in accordance with § 442.115, as permitted by § 442.105; or

(2) Submit to HCFA within 65 days of receipt of the list of deficiencies a written plan to reduce permanently the number of beds in certified units in accordance with § 442.116. The purpose of the reduction plan is to vacate any noncomplying buildings (or distinct parts thereof) and correct any staff deficiencies within 36 months of the approval of the plan.

(b) *Option limitation for Medicaid agency.* An ICF/MR found to have substantial deficiencies in physical plant and staffing, and substantial deficiencies in other areas of care is not eligible for either a correction or reduction plan under this section.

(c) *HCFA options.* (1) If the Medicaid agency does not comply with paragraph (a) of this section, HCFA may cancel approval of the deficient ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) HCFA will respond in writing to the agency within 30 days from receipt of a proposed correction plan submitted under paragraph (a)(1) of this section.

(d) *Duration.* The provisions of this section and §§ 442.115 and 442.116 apply only to correction and reduction plans approved by HCFA within 3 years after Federal surveys initiated in ICF/MRs on or after April 7, 1986.

§ 442.115 Correction plans for ICFs/MR: Specific requirements.

(a) *Contents.* A correction plan under § 442.114(a)(1) must include—

(1) An explanation of the extent to which the ICF/MR currently complies with the standards for ICFs/MR in Subpart G including all deficiencies identified during a direct Federal survey, and

(2) A timetable for completing the necessary steps to correct staff and physical plant deficiencies on which the request for a correction plan is based, and all other minor deficiencies, within 6 months of the approval date of the plan.

(b) *HCFA policies.* HCFA considers a correction plan only if HCFA received it within 30 days of receipt by the Medicaid agency of the list of deficiencies referred to in § 442.114(a). After consideration of the plan, HCFA will forward in writing its approval or disapproval within 30 days of receipt of the proposed correction plan.

(c) *Exception.* If, as a result of a public hearing, the Medicaid agency decides that a reduction plan is not appropriate, and instead decides to submit a correction plan, the correction plan must be received by HCFA within 20 days from the date of the public hearing.

(d) *Termination of an ICF/MR.* (1) If the Medicaid agency submits a correction plan that HCFA finds to be unacceptable, HCFA will notify the agency of its disapproval and will terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, as the conclusion of the 6-month period specified in the plan of correction described in paragraph (a) of this section, HCFA determines that the agency has substantially failed to correct the deficiencies identified, HCFA may terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act.

§ 442.116 Reduction plans for ICFs/MR: Specific requirements.

(a) *Conditions of approval: Agency requirements.* Before submitting a reduction plan under § 442.114(a)(2) to HCFA, the Medicaid agency must—

(1) Conduct a public hearing at the affected ICF/MR at least 35 days before submitting the reduction plan to HCFA that outlines the—

(i) Contents of the reduction plan,

(ii) Process for submitting the plan to HCFA, and

(iii) Process for submitting public comments to HCFA within 30 days of receipt of the reduction plan by HCFA.

(2) Provide written notice of the hearing to staff, clients and their parents or guardians, and the nearest, most interested, or involved family member or party, as appropriate, at least 10 days prior to the hearing date.

(3) Announce to advocacy and other interested groups and, agencies; the courts with which the ICF/MR is involved in litigation (if any) arising out of its Medicaid participation; and the general community; through local media notices, at least 10 days prior to the hearing date—

(i) The exact date, time and location of the hearing; and

(ii) The locations (that is, the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, State and local protection and advocacy agencies and other agencies, which in the State's judgment, serve potentially interested parties (for example, State and local associations for retarded citizens)) where the proposed plan is displayed.

(4) Demonstrate that it has successfully provided home and community services similar to those services proposed to be provided under the reduction plan for similar individuals eligible for Medicaid by including—

(i) Documentation of existing programs and level of funding, and

(ii) Projections for growth and how the growth will be funded to accommodate the clients being displaced by the reduction plan.

(5) Provide assurances to HCFA that the reduction plan will be completed by fulfilling the content requirements of the reduction plan contained in paragraph (d) of this section.

(b) *Withdrawal by a Medicaid agency of a proposed reduction plan.* If, after the public hearing, a Medicaid agency decides a reduction plan would not be appropriate, the agency may choose to proceed with a plan of correction in accordance with the requirements contained in §§ 442.115 (a) and (c).

(c) *Submittal date of plan.* On the day that the Medicaid agency submits a reduction plan, the agency must announce through local media notices—

(1) That the plan has been submitted to HCFA;

(2) That the plan is on display at the affected ICF/MR, the State mental retardation administration, State survey agency, State Developmental Disabilities Council, State and local protection and advocacy agencies, and other agencies, which in the State's judgment, serve potentially interested parties (for example, State and local associations for retarded citizens); and

(3) The address of the appropriate HCFA office for forwarding comments on the reduction plan and the closing date for receipt of those comments.

(d) *Contents.* A reduction plan must—

(1) Identify the number of clients and their service needs on a client-by-client basis for home or community services, and a timetable for providing such services, in 6-month intervals, within the 36-month period beginning on the date that the reduction plan is approved by HCFA;

(2) Describe the methods used to—

(i) Select clients for home or community services, and

(ii) Develop alternative home and community services to effectively meet the clients' needs;

(3) Describe the safeguards that will be applied to protect the clients' health and welfare while receiving home or community services, including—

(i) Adequate standards for participation by clients, clients' families and providers; and

(ii) Assurances that the community residences in which the affected clients are placed meet all applicable State and Federal licensure and certification requirements;

(4) Provide that clients who are eligible for medical assistance while in the ICF/MR will, at their option, be placed in another setting (or another part of the ICF/MR) so as to retain their eligibility for medical assistance.

(5) Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect;

(6) Provide that the staff-to-client ratio at the ICF/MR will be the higher of—

(i) The ratio described in the standards for ICFs and ICFs/MR (§ 442.445); or

(ii) The ratio which was in effect at the time the direct Federal survey was conducted; and

(7) Provide for the protection of the staff affected by the reduction plan, including—

(i) Arrangements to preserve staff rights and benefits;

(ii) Training and retraining of staff where necessary;

(iii) Redeploying staff to community settings under the reduction plan; and

(iv) Making maximum efforts to secure employment (without necessarily guaranteeing the employment of any staff).

(e) *HCFA policies.* (1) HCFA will consider approval of reduction plans on a first come, first served basis. HCFA will provide the public at least 30 days after the Medicaid agency submits a reduction plan to comment on the proposed plan. After the close of the public comment period, HCFA will forward in writing its approval or disapproval of the reduction plan to the agency within 30 days.

(2) If HCFA approves more than 15 reduction plans in any fiscal year, any reduction plans approved in addition to the first 15 approved plans, will be for an ICF/MR (or distinct part thereof) for which the costs of correcting the substantial deficiencies are $2 million or greater (as demonstrated by the Medicaid agency to the satisfaction of HCFA).

(3) HCFA may approve reduction plans for a shorter period than 36 months, where applicable.

(4) HCFA approval of a reduction plan does not constitute approval of any request for a home and community-based waiver. Home and community-based waivers are subject to HCFA review and approval under § 441.300 of this chapter. Disapproval of a request for a home and community-based waiver constitutes disapproval of a request for a reduction plan that is dependent upon approval of the request for a home and community-based waiver.

(f) *Termination of an ICF/MR.* (1) If the Medicaid agency submits a reduction plan that HCFA finds to be unacceptable, HCFA will notify the agency of its disapproval and terminate the ICF/MR's participation in the Medicaid program in accordance with section 1910(c) of the Act.

(2) If, at the conclusion of the initial 6-month period or any 6-month interval thereafter of the reduction plan, HCFA determines that the Medicaid agency has substantially failed to meet the requirements of paragraph (a) of this section, HCFA will—

(i) Terminate the ICF/MR from participating in the Medicaid program in accordance with section 1910(c) of the Act, or

(ii) Disallow FFP equal to 5 percent of the cost of care for all eligible clients for each month for which the agency failed to meet the requirements despite good faith efforts it may have made.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: July 30, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 23, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-1555 Filed 1-22-88; 12:07 pm]

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VOL
53
ISS
15
JA
25
988
UMI

Reader Aids

Federal Register
Vol. 53, No. 15
Monday, January 25, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-864	13
865-998	14
999-1330	15
1331-1466	19
1467-1600	20
1601-1738	21
1739-1908	22
1909-1996	25

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5760	855
5761	1464
5762	1980

Executive Orders:

12537 (Amended by EO 12624)	489
12578 (Superseded by EO12622)	222
12622	222
12623	487
12624	489

Administrative Orders:

Presidential Determinations:

No. 88-2 of Oct. 30, 1987	399
No. 88-4 of Dec. 17, 1987	773
No. 88-6 of Jan. 19, 1988	1601

Presidential Findings:

Jan. 12, 1988	999

5 CFR

353	857
551	1331, 1739
890	1, 860

Proposed Rules:

213	1789
330	408
338	1789
351	408
890	898

7 CFR

1	1001
7	1441
272	1603
275	1603
301	733
353	1332
354	1740
400	[illegible]
401	1001
405	1467
614	1605
704	733
724	1605
905	401, 860
907	6, 491, 1333, 1741
910	7, 492, 1333, 1742
911	402, 1742
915	1742
928	862
959	401
971	401
987	401
1230	1909
1430	107
1610	1743
1902	231

Proposed Rules:

68	411
301	140
401	505, 507
451	1640
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370, 1790
1126	256
1136	686
1260	509
1701	140

8 CFR

Proposed Rules:

232	1791
233	1791
235	1791
237	1791
238	1791
239	1791
280	1791
299	1791

9 CFR

77	1002

10 CFR

1	1744
73	403

Proposed Rules:

2	415
62	1926
430	30
730	1594

11 CFR

Proposed Rules:

109	416
114	416

12 CFR

206	492
208	492
226	467
337	597
501	1003
525	312

561.....324, 338
563.....324, 338, 354, 363, 372, 385, 1004
563c.....324
571.....338, 372, 385
583.....312, 1003
584.....312
614.....775
795.....1605

Proposed Rules:
226.....467

13 CFR
108.....1468
140.....1606

14 CFR
21.....1745, 1746
23.....1745, 1746
39.....8–14, 232, 493–495, 1334, 1468, 1608–1613
47.....1911
49.....1911
71.....496, 497, 619, 1335, 1336, 1614
75.....497, 1336–1339
91.....233
95.....1005
97.....499

Proposed Rules:
Ch. I.....1038
39.....258, 514, 515, 1371–1374
71.....516, 517, 666, 670, 674, 907–910, 1375
73.....517, 991

15 CFR
372.....1614
374.....1614
399.....108, 1616
806.....1015

Proposed Rules:
379.....418

16 CFR
13.....609

Proposed Rules:
13.....141, 1039

17 CFR
1.....609, 615
211.....109, 865, 1341

Proposed Rules:
300.....1793

18 CFR
3.....1469
154.....867, 1748
270.....867
271.....15
273.....867
375.....867, 1469, 1748
381.....867, 1469
382.....1748
388.....1469
389.....1750
410.....1751
1301.....405

19 CFR
4.....1103
24.....615

Proposed Rules:
132.....1376
141.....30
142.....1376
178.....30

20 CFR

Proposed Rules:
361.....143
901.....147

21 CFR
81.....19
178.....97
193.....20, 233, 1916
312.....1917
436.....1918
452.....1918
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233, 1916
606.....111
610.....111
640.....111
884.....1554
892.....1554
1308.....500

Proposed Rules:
102.....1795
193.....259
201.....1796
561.....259
864.....1574
866.....1574
868.....1574
870.....1574
876.....1574
880.....1574
882.....1574
884.....1574
890.....1574
892.....1574
1308.....743

23 CFR
635.....1920, 1922
655.....236

24 CFR
200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122

Proposed Rules:
115.....260

25 CFR

Proposed Rules:
151.....1797

26 CFR
1.....117, 238, 1103, 1441

Proposed Rules:
1.....153, 261

27 CFR

Proposed Rules:
9.....1492

28 CFR
55.....735
541.....196

29 CFR
2610.....1904
2616.....1904
2617.....1904
2618.....1904
2676.....1018
2702.....737

Proposed Rules:
1910.....1724
2550.....1798

30 CFR
202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994

Proposed Rules:
210.....1039
216.....1039

31 CFR
103.....776

32 CFR
45.....1341
104.....1343
374.....1345
552.....1752
887.....876

Proposed Rules:
199.....1378, 1926

33 CFR
110.....878
117.....119, 406
165.....616, 878
166.....1347

34 CFR

Proposed Rules:
303.....1461

36 CFR
5.....739
404.....120
1254.....1348

Proposed Rules:
223.....519

37 CFR
201.....122, 123

Proposed Rules:
203.....153

38 CFR
4.....21, 1441
17.....1755
21.....616, 879, 1756, 1779
36.....1349

Proposed Rules:
21.....620, 1040
36.....1378

39 CFR
111.....124, 125
232.....126
233.....1780

40 CFR
2.....214
51.....392, 480
52.....392, 501, 1019, 1020, 1354, 1780
61.....777
86.....470
180.....241, 243, 657, 1923
271.....126–128, 244, 1358
421.....1794
763.....1021

Proposed Rules:
52.....261, 779, 1043
86.....1716
156.....1494
170.....1494
180.....262, 263, 1495
192.....1641
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR
101–20.....129
105–60.....1478
114–51.....741

Proposed Rules:
Ch. 201.....620
51–7.....1378
141.....31
142.....31
201–11.....1805
201–30.....1805
201–31.....1805
201–32.....1805
261.....31

42 CFR
405.....1617
412.....1621
413.....1621
418.....1621
431.....657
435.....657
440.....657
441.....657
442.....1984

Proposed Rules:
410.....1383
434.....744
435.....744

43 CFR
2.....24
3100.....1184
3160.....1184

Public Land Orders:
6661.....1359
6662.....1359

Proposed Rules:
3160.....1039

44 CFR
64.....14855

Proposed Rules:
7.....922

61.....419
62.....419
80.....621
82.....621
88.....621

45 CFR
95.....26
238.....467

Proposed Rules:
1215.....1496
1336.....1806

46 CFR

Proposed Rules:
588.....624

47 CFR
Ch. I.....502
0.....1022
15.....1781
64.....27
65.....1027
68.....1103
73.....28, 29, 504, 1030, 1629, 1630, 1782
90.....1022

Proposed Rules:
1.....625
63.....625
73.....426, 1388–1388, 1807, 1808
74.....529
76.....625
78.....529
95.....779

48 CFR
7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
208.....1924
501.....130, 132, 1441, 1540
513.....132, 1441
525.....1925
836.....1630
852.....1630

Proposed Rules:
215.....625
225.....626
232.....931
252.....626, 931
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749

49 CFR
24.....467
31.....880
190.....1633
192.....1633
541.....133
544.....1841
565.....1032
571.....1783
661.....817

Proposed Rules:
3.....160
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
544.....1635
571.....426, 780, 934, 936, 1643
1041.....1555
1048.....155
1049.....155

50 CFR
33.....1487
216.....1636
611.....134, 741, 890, 894
653.....244
663.....246, 248
672.....890, 991
675.....894, 991

Proposed Rules:
17.....1929
20.....42, 1645
226.....530
301.....156
652.....265
658.....266
672.....627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988

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210–299	22.00	Jan. 1, 1987
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1945–End	26.00	Jan. 1, 1987
8	[1].50	Jan. 1, 1987
9 Parts:		
1–199	18.00	Jan. 1, 1987
200–End	16.00	Jan. 1, 1987
10 Parts:		
0–199	29.00	Jan. 1, 1987
200–399	13.00	Jan. 1, 1987
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11	11.00	July 1, 1987
12 Parts:		
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200–299	27.00	Jan. 1, 1987
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500–End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1–59	21.00	Jan. 1, 1987
60–139	19.00	Jan. 1, 1987
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1200–End	11.00	Jan. 1, 1987
15 Parts:		
0–299	10.00	Jan. 1, 1987
300–399	20.00	Jan. 1, 1987
400–End	14.00	Jan. 1, 1987
16 Parts:		
0–149	12.00	Jan. 1, 1987
150–999	13.00	Jan. 1, 1987
1000–End	19.00	Jan. 1, 1987
17 Parts:		
1–199	14.00	Apr. 1, 1987
200–239	14.00	Apr. 1, 1987
240–End	19.00	Apr. 1, 1987
18 Parts:		
1–149	15.00	Apr. 1, 1987
150–279	14.00	Apr. 1, 1987
280–399	13.00	Apr. 1, 1987
400–End	8.50	Apr. 1, 1987
19 Parts:		
1–199	27.00	Apr. 1, 1987
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500–End	24.00	Apr. 1, 1987
21 Parts:		
1–99	12.00	Apr. 1, 1987
100–169	14.00	Apr. 1, 1987
170–199	16.00	Apr. 1, 1987
200–299	5.50	Apr. 1, 1987
300–499	26.00	Apr. 1, 1987
500–599	21.00	Apr. 1, 1987
600–799	7.00	Apr. 1, 1987
800–1299	13.00	Apr. 1, 1987
1300–End	6.00	Apr. 1, 1987
22 Parts:		
1–299	19.00	Apr. 1, 1987
300–End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0–199	14.00	Apr. 1, 1987
200–499	26.00	Apr. 1, 1987
500–699	9.00	Apr. 1, 1987
700–1699	18.00	Apr. 1, 1987
1700–End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0–1.60	12.00	Apr. 1, 1987
§§ 1.61–1.169	22.00	Apr. 1, 1987
§§ 1.170–1.300	17.00	Apr. 1, 1987
§§ 1.301–1.400	14.00	Apr. 1, 1987
§§ 1.401–1.500	21.00	Apr. 1, 1987
§§ 1.501–1.640	15.00	Apr. 1, 1987
§§ 1.641–1.850	17.00	Apr. 1, 1987
§§ 1.851–1.1000	27.00	Apr. 1, 1987
§§ 1.1001–1.1400	16.00	Apr. 1, 1987
§§ 1.1401–End	20.00	Apr. 1, 1987
2–29	20.00	Apr. 1, 1987
30–39	13.00	Apr. 1, 1987
40–49	12.00	Apr. 1, 1987
50–299	14.00	Apr. 1, 1987
300–499	15.00	Apr. 1, 1987
500–599	8.00	[2] Apr. 1, 1980
600–End	6.00	Apr. 1, 1987
27 Parts:		
1–199	21.00	Apr. 1, 1987
200–End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
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Title	Price	Revision Date
1926	10.00	July 1, 1987
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30 Parts:		
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31 Parts:		
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32 Parts:		
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33 Parts:		
1–199	27.00	July 1, 1987
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61–80	12.00	July 1, 1987
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190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
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1–100	10.00	July 1, 1987
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42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	5.50	Oct. 1, 1987
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
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*200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
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70–89	7.00	Oct. 1, 1987
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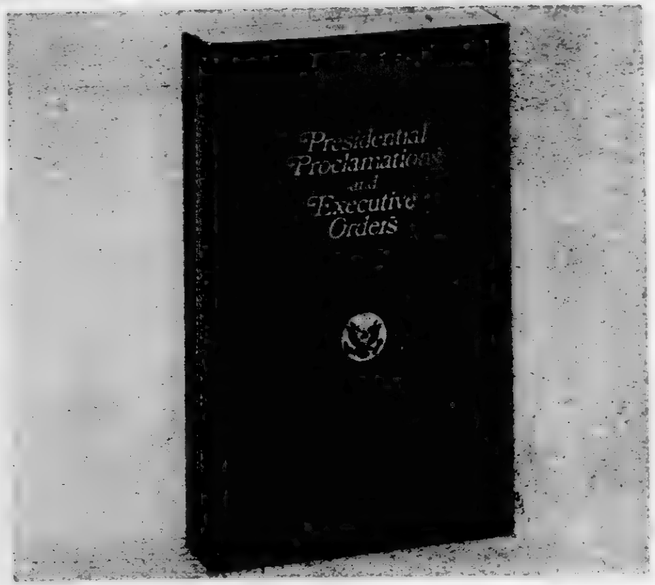
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SAN FRANCISCO, CA

WHEN: February 12; at 9:00 a.m.
WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.
RESERVATIONS: Call the San Francisco Federal Information Center, 415–556–6600

WASHINGTON, DC

WHEN: February 19; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Roy Nanovic, 202–523–3187

Contents

Federal Register
Vol. 53, No. 16
Tuesday, January 26, 1988

ACTION
NOTICES
Grants; availability, etc.:
Drug Alliance of Action demonstration grants, 2065

Agriculture Department
See Commodity Credit Corporation; Farmers Home Administration; Forest Service; National Agricultural Statistics Service; Soil Conservation Service

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Drawbridge operations:
Georgia, 2034
NOTICES
Aquatic resources trust fund, boat safety account; financial assistance availability, 2140

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Grain, etc.; warehouse approval standards, 2037

Defense Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Active duty dependents dental plan, 2018

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Presser, Harvey, M.D., 2098

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Continental Natural Gas, Inc., 2071

Education Department
NOTICES
Agency information collection activities under OMB review, 2070

Employment and Training Administration
NOTICES
Adjustment assistance:
Producto Machine Co., 2101

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

Environmental Protection Agency
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Deltamethrin; correction, 2147
NOTICES
Air pollution control:
Stack height requirements, 2086
Air programs; fuels and fuel additives:
AM Laboratories, Inc., 2088
Meetings:
Science Advisory Board, 2089

Executive Office of the President
See Management and Budget Office; Trade Representative, Office of United States

Export Administration
See International Trade Administration

Farmers Home Administration
RULES
Loan and grant programs:
Construction and repair; planning and performing construction and other development
Correction, 2147
Rural housing—
Rental housing loan policies, procedures, and authorizations, 2150
NOTICES
Loan and grant programs:
Housing preservation program, 2066
Organization, functions, and authority delegations:
State Directors, 2067

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 2005
Jet routes, 2014–2017
(3 documents)
VOR Federal airways, 2006–2013
(6 documents)
PROPOSED RULES
Airworthiness standards, etc.:
Special conditions—
British Aerospace Jetstream Series 3200, Model 3201 airplanes, 2039
Cessna Model 172 Series airplanes, 2037
NOTICES
Exemption petitions; summary and disposition, 2141

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Florida and Alabama, 2061
Illinois, 2062
Louisiana, 2062, 2063
(2 documents)
Oregon, 2063
Tennessee, 2063
Texas, 2064

NOTICES
Applications, hearings, determinations, etc.:
Calhoun County Broadcasters, Inc., et al., 2089
Dove Inc., et al., 2089
Olney Broadcasting Co. et al., 2090
Pittsburg Radio et al., 2090
Tele-Communications of Key West, Inc., et al., 2090

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Marshall Islands, 2091

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Carolina Power & Light Co. et al., 2074
Meetings; Sunshine Act, 2143
Natural Gas Policy Act:
Self-implementing transactions, 2076
Applications, hearings, determinations, etc.:
Enogex, Inc., 2071
Fillmore City Corp., 2072
Phillips 66 Natural Gas Co., 2073
(2 documents)
Phillips Gas Marketing Co., 2072
Phillips Petroleum Co., 2072
Volkswagen of America, Inc., 2073
Williams Natural Gas Co., 2086

Federal Highway Administration
RULES
Motor carrier safety regulations:
Organization, functions, and authority delegations, 2035
PROPOSED RULES
Engineering and traffic operations:
Highways; pavement policy, 2041

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2091

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 2145
Applications, hearings, determinations, etc.:
Brooks, Max G., et al., 2091
Continental Illinois Bancorp, Inc., et al., 2092
First Interstate of Iowa, Inc., 2092
Northern Trust Corp.; correction, 2093

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 2145

Food and Drug Administration
PROPOSED RULES
Human drugs:
Boil treatment drug (OTC); tentative final monograph, 2198
NOTICES
Color additives:
Carbazole violet, 2093
Food additive petitions:
Pfizer Central Research, Pfizer, Inc., 2093
Meetings:
Advisory committees, panels, etc., 2093

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Saline Bayou National Wild and Scenic River, LA, 2067

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health; Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Decisions and orders (3 documents) [**Editorial Note:** These documents, appearing at pages 1816 and 1818 in the **Federal Register** of January 22, 1988, were incorrectly listed under Energy Department in that issue's table of contents.]

Indian Affairs Bureau
NOTICES
Land transfers:
Pueblos in Albuquerque, NM; correction, 2095

Interior Department
See Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service

Internal Revenue Service
NOTICES
Income taxes:
Electronic filing program (1988); Forms 1040, 1040A, and 1040EZ, test transmissions from Panama Canal Zone, 2142

International Trade Administration
NOTICES
Short supply determinations:
Semi-finished steel slabs, 2068
Applications, hearings, determinations, etc.:
Masters, Mates & Pilots MATES program, 2069

Interstate Commerce Commission
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
National Motor Freight Traffic Association, 2098

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Arizona et al., 2098
Privacy Act; systems of records, 2098

Labor Department
See also Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefits Administration; Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Agency information collection activities under OMB review, 2099

Land Management Bureau
PROPOSED RULES
Mineral leasing:
Solid minerals (other than coal) exploration and mining operations; streamlining amendments, 2055
NOTICES
Resource management plans, etc.:
Yuma District, AZ, 2095

Management and Budget Office
NOTICES
Agency information collection activities under OMB review, 2116

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Drummond Co., Inc., 2101
Loose Jaw Coal No. 4, Inc., 2101

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Lease sales, 2095
Gulf of Alaska/Cook Inlet OCS—
Lease sales, 2208

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 2109
Meetings:
Aeronautics Advisory Committee, 2109
Privacy Act; systems of records, 2110

National Agricultural Statistics Service
NOTICES
Barley production and stocks reports; reinstatement, 2068

National Communications System
NOTICES
Federal telecommunications standards:
Telecommunications; interoperability requirements for encrypted, digitized voice utilized with 25 kHz channel FM radios operating above 30 MHz, 2111

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 2111, 2112
(2 documents)

National Institutes of Health
NOTICES
Meetings:
National Institute of Dental Research, 2094

National Mediation Board
NOTICES
Meetings; Sunshine Act, 2145

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; correction, 2147
NOTICES
Marine mammals:
Taking incidental to commercial fishing operations, 2069
Permits:
Endangered and threatened species, 2070
Marine mammals, 2070

National Park Service
NOTICES
Meetings:
Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission, 2096
Upper Delaware Citizens Advisory Council, 2096
National Register of Historic Places:
Pending nominations—
Alabama et al., 2096

National Science Foundation
NOTICES
Meetings:
Physics, Astronomy and Mathematical Sciences Advisory Committees, 2112

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Memphis State University, 2112
Westinghouse Electric Corp., 2113
Meetings:
Reactor Safeguards Advisory Committee, 2114
Meetings; Sunshine Act, 2146
Applications, hearings, determinations, etc.:
Vermont Yankee Nuclear Power Corp., 2114, 2115
(2 documents)

Occupational Safety and Health Administration
PROPOSED RULES
Construction health and safety standards:
Scaffolds, fall protection, and stairways and ladders, 2048
Safety and health standards:
Electrical safety-related work practices
Correction, 2047
NOTICES
Safety and health standards:
Voluntary protection programs; Try Program name change to Merit Program, 2101

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Chattanooga Electrical Joint Apprenticeship & Training Trust Fund et al., 2102
Philip Specialty Co. et al., 2104

Personnel Management Office
RULES
Privacy Act; implementation, 1997
NOTICES
Agency information collection activities under OMB review, 2116
Excepted services:
Schedules A, B, and C; positions placed or revoked—
Update, 2118

Privacy Act; systems of records, 2118

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 2146

Postal Service
NOTICES
Meetings; Sunshine Act, 2145
(2 documents)

Public Health Service
See also Food and Drug Administration; National Institutes of Health
NOTICES
Health education assistance loan (HEAL) program:
Insurance premium rate and interest rates, 2094
Inventions:
Developing and marketing; solicitations, 2093

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 2124
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 2125, 2126
(2 documents)
Philadelphia Stock Exchange, Inc., 2126, 2127
(2 documents)
Applications, hearings, determinations, etc.:
BRT Realty Trust, 2127

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Friendship Park, NY, 2068

State Department
NOTICES
International conferences:
Private-sector representatives on U.S. delegations, 2127
Meetings:
International Telegraph and Telephone Consultative Committee, 2139
Senior Executive Service:
Performance Review Board; membership, 2139

Statistical Reporting Service
See National Agricultural Statistics Service

Trade Representative, Office of United States
NOTICES
Federal public works procurements prohibitions; compliance determination (P.L. 100-202), 2140

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration

Treasury Department
See also Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 2141

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Crossroads of Continents: Cultures of Siberia and Alaska, 2142

Veterans Employment and Training, Office of Assistant Secretary
NOTICES
Grants; availability, etc.:
Job Training Partnership Act—
Employment and training programs operation, 2109

Separate Parts In This Issue

Part II
Department of Agriculture, Farmers Home Administration, 2150

Part III
Department of Health and Human Services, Food and Drug Administration, 2196

Part IV
Department of the Interior, Minerals Management Service, 2208

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
297 1997

7 CFR
1924 2150
1930 2150
1933 2150
1943 2147
1944 1997
1951 1997
1965 1997
Proposed Rules:
1421 2037

14 CFR
39 2005
71 (6 documents) 2006–2013
75 (3 documents) 2014–2017
Proposed Rules:
21 (2 documents) 2037–2039
23 (2 documents) 2037, 2039

21 CFR
Proposed Rules:
358 2196

23 CFR
Proposed Rules:
625 2041
626 2041

29 CFR
Proposed Rules:
1910 2047
1926 2049

32 CFR
199 2018

33 CFR
117 2034

40 CFR
Proposed Rules:
180 2147

43 CFR
Proposed Rules:
3590 2055

47 CFR
Proposed Rules:
73 (7 documents) 2061–2064

49 CFR
301 2035
386 2035
389 2035

50 CFR
611 2147
675 2147

VOL
53
ISS
16
JA
26
988
UMI

Rules and Regulations

Federal Register
Vol. 53, No. 16
Tuesday, January 26, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

Privacy Procedures for Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Under the authority of the Privacy Act of 1974, the Office of Personnel Management (Office) is adopting regulations regarding privacy procedures for personnel records. These regulations will provide for more effective management of records maintained by the Office and, for records under the Office's control and ownership, by other Federal agencies. These regulations also promulgate exemptions for a new system of records.

EFFECTIVE DATE: These regulations become effective February 25, 1988.

FOR FURTHER INFORMATION CONTACT: John Sanet, (202) 632-4455.

SUPPLEMENTARY INFORMATION: These regulations were proposed in the Federal Register on August 4, 1987, at 52 FR 28833. The 60-day comment period ended on October 5, 1987. Four written comments were received. Two letters received from labor organizations stated that they had no comments or recommendations to submit regarding the proposed regulations. An analysis of the other two written comments and the Office's decision on each appears below.

One labor organization suggested that a time frame be included in the regulations (§ 297.306) for appealing an agency denial of a request by the subject of a record to amend that record. While the Privacy Act does have a statutory time limit regarding how long an agency has to decide an appeal from an initial amendment decision, the law is silent on the time frame a requester has to file such an appeal. The experience of the Office indicates that most individuals appeal within 30 days from the initial decision. However, the Office does not find that imposing a strict regulatory requirement will assist the individuals in exercising their appeal rights; therefore, the suggestion was not adopted.

The same labor organization expressed concern that the suggested time frame of "as soon as practicable" in § 297.402(b) and § 297.403(g) for providing notice to the subject of a record of a compulsory legal process is too vague; it was suggested that the Office furnish the employee with such notice "immediately upon its receipt." Additionally, it was recommended that the employee be furnished with a copy of the materials subject to the compulsory legal process no later than seven days after such information has been forwarded to the court, thereby assuring an employee of a full exercise of his or her legal rights. In responding to compulsory legal process for records it maintains, the Office first must try to locate the last known address of the individual; when that can be done (usually by retrieving the Official Personnel Folder or retirement file), the Office then immediately provides the employee with a *copy of the notice* of the compulsory legal process. The term "as soon as practicable" is necessary to allow the Office an opportunity to locate the record containing the last address of the employee. At that time, notification is immediately provided. Therefore, the office believes that a reading of the entire § 297.402(b) accomplishes the objectives of the suggestion and meets the statutory requirement of 5 U.S.C. 552a(e)(8). With respect to providing the data subject copies of the requested material, as required by the Privacy Act, the Office will provide such material if the data subject makes a specific request for it. The Office does not believe that providing the material without a specific request is appropriate or necessary. Therefore, these two suggestions are not adopted.

One agency suggested that § 297.204, regarding access to records by a representative of a data subject, include a specific reference to union representatives and that the regulations state whether the general designation of a union as the employee's representative will grant access by any union official, or whether the employee must specify the names of the union officials who are authorized to access the records. The Privacy Act requires that an individual be provided access to records or information contained within a system of records that pertains to that individual. The Act further provides that an individual can designate "a person of his own choosing" to either assist or act for the individual in this regard. That representative can be a union, a law firm, a relative, or anyone the individual designates in writing. If the individual wants a union or any specifically-named union representatives (or to any other specific category or person), as written authorization. The Office does not find it appropriate to include in these regulations a specific reference to union representatives § 297.20s (or to any other specific category of person). To do so would lead to confusion over whether other categories of representatives, not specifically mentioned, are precluded from acting in a representative capacity. Similarly, the term "representative" is understood to mean one who stands for or acts as an agent for the individual. This can mean an individual or it can mean a group of individuals, like a union or law firm, if the individual has chosen the group as the representative. Therefore, the suggestion is not adopted.

The same agency also commented on § 297.206(a) regarding fees charged by the Office. The agency requested clarification of the phrase "produce a record" in § 297.206(a). The Office agrees the clarification is needed and has modifed that section to state that the phrase "produce a record" encompasses providing a photostatic copy of the record. In addition, the agency noted that, while the Privacy Act permits an agency to charge a fee when the data subject requests copies of records, the Freedom of Information Reform Act provides for the first 100 pages of reproduction of documents without charge; therefore, the last sentence of § 297.206(a) needs clarification. The Office is aware that the Privacy Act has always permitted an agency to charge a data subject for copies of records provided to the individual; however, it has always been the policy of the Office not to charge

individuals who request the first copy of the records. The Office's fee schedule is published at 5 CFR 294.109 and was modified in April of this year to reflect the requirements of the Freedom of Information Act. As stated at 5 CFR 294.109(g), there will be no charge for the first 100 pages of paper copies for requesters. This will include data subjects making requests for access to their own records whether they submit a Privacy Act request or a Freedom of Information Act request for access to their records. It should be noted that § 297.206 applies only to fees charged by the Office and does not place any restrictions on agencies in this regard. Since the Office as a matter of policy does not charge for the first copy of producing records to a data subject, no matter how many pages are provided, the Office does not believe this section warrants change. In those rare instances where an individual requests duplicate copies of records and the total number of pages is less than 100, the Office as stated § 297.206(a) will follow the established fee shedule and provide the total number of pages free of charge. Therefore, the suggestion was not adopted.

Finally, the agency suggested that § 297.404(g) be amended to include a statement "Notice of the issuance of an ex parte order or subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the **Federal Register**." The Office agrees with that suggestion and has changed § 297.403(g) accordingly.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of personnel records for certain civilian employees.

List of Subjects in 5 CFR Part 297

Privacy, Records, Government employees.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is revising Part 297 of Title 5 of the Code of Federal Regulations to read as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Subpart A—General Provisions

Sec.
297.101 Purpose and scope.
297.102 Definitions.
297.103 Designations of authority by system manager.
297.104 Types of records.
297.105 Agency and Office responsibilities for systems of records and applicability of the regulations.
297.106 Contact point for Privacy Act matters.

Subpart B—Request for Access

297.201 General provisions.
297.202 Methods of access.
297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.
297.204 Access by the representative of the data subject.
297.205 Access to medical records.
297.206 Fees charged by the Office.
297.207 Denials of access and appeals with respect to such denials.
297.208 Judicial review.

Subpart C—Amendment of Records

297.301 General provisions.
297.302 Time limits.
297.303 Applicability of amendment provisions.
297.304 Approval of requests to amend records
297.305 Denial of requests to amend records.
297.306 Appeal of a denial of a request to amend a record.
297.307 Statement of disagreement.
297.308 Judicial review.

Subpart D—Disclosure of Records

297.401 Conditions of disclosure.
297.402 Disclosure pursuant to compulsory legal process served on the Office.
297.403 Disclosure pursuant to a subpoena served on the Office.
297.404 Accounting of disclosure.

Subpart E—Exempt Records

297.501 Exemptions.

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A—General Provisions

§ 297.101 Purpose and scope.

This part sets forth the regulations of the U.S. Office of Personnel Management (the Office) to govern the maintenance, protection, disclosure, and amendment of records within the systems of records as defned by the Privacy Act of 1974 (5 U.S.C. 552a), Pub. L. 93–579.

§ 297.102 Definitions.

In this part, the terms "agency," "individual," "maintain," "record," "statistical records," and "systems of records" have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by, the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a, as amended;

"Agency" means any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation, of Government-controlled corporation, except those specifically excluded from the Office recordkeeping requirements by statute, this title, or formal agreement between the Office and the agency.

"Amendment" means the correction, addition, deletion, or destruction of a record or specific portions of a record;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing personal review of a record, or a copy thereof, to someone other than the data subject or the data subject's authorized representative, parent, or legal guardian;

"Office" means the U.S. Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System manager" means the Office or agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by the Office.

§ 297.103 Designations of authority by system manager.

The responsible Office system manager having jurisdiction over a system of records may designate in writing an Office employee to evaluate and issue the Office's decision on Privacy Act matters relating to either internal, central, or Governmentwide systems of records.

§ 297.104 Types of records.

The Office manages three generic types of personnel records systems:

(a) Internal systems of records are under the Office's physical control and are established and maintained by the Office solely on its own employees and, when appropriate, on others in contact with the Office regarding matters within its authority.

(b) Centralized systems of personnel records are physically established and maintained by the Office with regard to most current and former Federal employees and some applicants for Federal employment.

(c) Governmentwide systems of personnel records are maintained by the Office, and through Office delegations of authority, by Federal agencies with regard to their own employees or applicants for employment. Although they are Office records, they are in the physical custody of those agencies. Though in the physical custody of agencies, the Office retains authority under its record management authority and under the Privacy Act to decide appeals of initial agency determinations regarding access to and amendment of material in these systems.

§ 297.105 Agency and Office responsibilities for systems of records and applicability of the regulations.

(a) These regulations apply to processing requests from both current and former Office employees for records contained in internal, central, and Governmentwide systems of records managed by the Office.

(b) Agencies are solely and totally responsible for processing requests regarding records maintained in their internal systems of records. Agency regulations, and not these Office regulations, govern the implementation of the Privacy Act for agency internal systems; there is no right of appeal to the Office from an agency's determination regarding its internal agency records.

(c) For records maintained in the Office's central systems of records, the data subject should contact the appropriate Office system manager concerning Privacy Act matters. These regulations will apply to inquiries regarding records located in the central systems of records.

(d) For records maintained within the Office's Governmentwide systems of records, each agency is responsible, unless specifically excepted by the Office, for responding to initial Privacy Act access and amendment requests from its own current employees. For records in Office Governmentwide systems, including those in Official Personnel Folders, Employee Performance Folders, and Employee Medical Folders, the Office is responsible for responding to initial Privacy Act access and amendment requests from former Federal employees.

(e) The procedures in this part apply to all such requests. The procedures in this part also apply to appeals from an agency initial determination regarding access to or amendment of records contained in the Office's Governmentwide systems of records.

(f) The Office follows the procedures in this part when—

(1) Processing initial requests regarding access to or amendment of records by its own employees and others that the Office is maintaining information on in its systems of records, including requests from former employees of an agency whose records properly reside in an Office Governmentwide system of records.

(2) Processing Privacy Act appeals regarding access to and amendment of records generated by another Federal agency, but which are contained in the Office's Governmentwide systems of records, after an agency has issued the initial decision.

(3) Processing initial requests and appeals concerning access to and amendment of records contained in the central systems of records.

(g) For requests concerning records and material of another agency that are in the custody of the Office, but not under its control or ownership, the Office reserves the right to either refer the request to the agency primarily responsible for the material or to notify the individual of the proper agency that should be contacted.

§ 297.106 Contact point for Privacy Act matters.

To determine what records the Office maintains in its system of records, requesters must write to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Using the Office's response, requesters can contact the particular system manager indicated in the Office's notices of its systems published in the **Federal Register** for further assistance in determining if the Office maintains information pertaining to them.

Subpart B—Request for Access

§ 297.201 General provisions.

(a) Individual's requesting access to records pertaining to them that are maintained in a system of records should submit a written request to the appropriate system manager and state that the request is being made pursuant to the Privacy Act of 1974.

(b) The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate and,

(4) Date and place of birth.

(c) An individual may be represented by another when requesting access to records.

§ 297.202 Methods of access.

(a) The methods for allowing access to records, when such access has been granted by the Office or agency, are:

(1) Inspection in person in the designated office during the hours specified by the Office or agency; or

(2) Transfer of records at the option of the Office or agency to another more convenient Federal facility.

(b) Generally, Office of Personnel Management offices will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by the Office and may require payment of any fee levied in accordance with the Office's established fee schedule.

(c) When the requester seeks to obtain original documentation, the Office reserves the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the system manager or designee. An agency should consult with the Office when it receives a request for original documentation. Section 2701(a) of title 18 of the United States Code makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

§ 297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.

(a) A parent, legal guardian, or custodian of a minor, upon presentation of suitable personal identification, may access on behalf of a minor any record pertaining to the minor in a system of records maintained by the Office.

(b) A legal guardian, upon presentation of documentation establishing guardianship, may access on behalf of an individual declared to be incompetent by a court of competent jurisdiction, any record pertaining to that individual in a system of records maintained by the Office.

(c) Minors are not precluded from exercising personally those rights provided them by the Privacy Act.

§ 297.204 Access by the representative of the data subject.

A record may be disclosed to a representative of the individual to whom the record pertains after the system manager receives written authorization from the individual who is the subject of the record.

§ 297.205 Access to medical records.

When a request for access involves medical or psychological records that the system manager believes requires special handling, the requester should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to the data subject when appropriate.

§ 297.206 Fees charged by the Office.

(a) No fees will be charged for search and review time expended by the Office to produce a record, or for making a photostatic copy of the record, or for having it personally reviewed by the data subject, when a record is retrieved from a system of records pertaining to that data subject. Additional copies provided may be charged under the Office's established fee schedule.

(b) When the fees chargeable under this section will amount to more than $25, the requester will be notified and payment of fees may be required before the records are provided.

(c) Remittance should be made by either a personal check, bank draft, or a money order that is made payable to the U.S. Office of Personnel Management and addressed to the appropriate system manager.

§ 297.207 Denials of access and appeals with respect to such denials.

(a) If an access request is denied, the Office or agency response will be in writing and will include a statement of the reasons for the denial and the procedures available to appeal the denial, including the name, position title, and address of the Office official responsible for the review.

(b) Nothing in this part should be construed to entitle a data subject the right to access any information compiled in reasonable anticipation of a civil action or proceeding.

(c) For denials of access made under this subpart, the following procedures apply:

(1) For initial denials made by an agency, when the record is maintained in an Office Governmentwide system of records, a request for adminstrative review should be made only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(2) For denials initially made by an Office official, when a record is maintained in an internal or central system of records, a request for administrative review should be made to the Information and Privacy Appeals Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(3) Any administrative review decision that either partially or fully supports the initial decision and denies access to the material the individual originally sought should state the requester's right to seek judicial review of the final administrative decision.

§ 297.208 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date on which the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart C—Amendment of Records

§ 297.301 General provisions.

(a) Individuals may request, in writing, the amendment of their records maintained in an Office system of records by contacting the appropriate system manager. The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate; and

(4) Date and place of birth.

(b) An individual may be represented by another party when requesting amendment of records.

(c) A request for amendment should include the following:

(1) The precise identification of the records to be amended;

(2) The identification of the specific material to be deleted, added, or changed; and

(3) A statement of the reasons for the request, including all available material substantiating the request.

(d) Requests for amendment of records should include the words "PRIVACY ACT AMENDMENT REQUEST" in capital letters on both the envelope and at the top of the request letter.

(e) A request for administrative review of an agency denial to amend a record in the Office's systems of records should be addressed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(f) A request for administrative review of a denial to amend a record by an Office official should be addressed to the Information and Privacy Appeals Counsel, Office of the General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

(g) The burden of proof demonstrating the appropriateness of the requested amendment rests with the requester; and, the requester must provide relevant and convincing evidence in support of the request.

§ 297.302 Time limits.

The system manager should acknowledge receipt of an amendment request within 10 working days and issue a determination as soon as practicable. This timeframe begins when the request is received by the proper Office or agency official.

§ 297.303 Applicability of amendment provisions.

(a) The amendment procedures are not intended to allow a challenge to material that records an event that actually occurred nor are they designed to permit a collateral attack upon that which has been or could have been the subject of a judicial, quasi-judicial, or administrative proceeding. The amendment procedures are also not designed to change opinions in records pertaining to the individual.

(b) The amendment procedures apply to situations when an occurrence that is documented was challenged through an established judicial, quasi-judicial, or administrative procedure and found to be inaccurately described; when the document is not identical to the individual's copy; or when the document is not created in accordance with the applicable recordkeeping requirements. (For example, the amendment provisions are not designed to allow a challenge to the merits of an agency adverse action that is documented in an individual's Official Personnel Folder.)

§ 297.304 Approval of requests to amend records.

(a) If the system manager determines that amendment of a record is appropriate, the system manager will take the necessary steps to have the necessary changes made and will see that the individual receives a copy of the amended record.

(b) When practicable and appropriate, the system manager will advise all prior recipients of the fact that an amendment of a record has been made.

§ 297.305 Denial of requests to amend records.

(a) If the Office or agency system manager decides not to amend the record in the manner sought, the requester should be notified in writing of the reasons for the denial.

(b) The decision letter should also include the requester's right to appeal the denial and the procedures for appealing the denial to the appropriate official.

§ 297.306 Appeal of a denial of a request to amend a record.

(a) An individual who disagrees with an initial denial to amend a record may file a written appeal of that denial to the appropriate official. In submitting an appeal, the individual should provide a copy of the original request for amendment, a copy of the initial denial decision, and a statement of the specific reasons why the initial denial is believed to be in error. Any appeal should be submitted to the official designated in the initial decision letter. The appeal should include the words "PRIVACY ACT APPEAL" in capital letters on the envelope and at the top of the letter of appeal.

(b) The reviewing official should complete the review and make a final determination in writing no later than 30 working days from the date on which the appeal is received. When circumstances warrant, this timeframe may be extended.

(c) If the Office grants the appeal, it will take the necessary steps either to amend the record itself or to require the originating agency to amend the record. When appropriate and possible, prior recipients of the record should be notified of the Office's action.

(d) The Office reserves the right to hold in abeyance any Privacy Act appeal concerning a record when an individual is involved in challenging an action involving that record in another administrative, judicial, or quasi-judicial forum. At the conclusion of such a challenge, the individual can resubmit the appeal.

(e) If the Office denies the appeal, it will include in the decision letter notification of the appellant's right to judicial review.

§ 297.307 Statement of disagreement.

(a) Upon receipt of a final administrative determination denying a request to amend a record, the requester may file a concise statement of disagreement. Such a statement should be filed with the appropriate system manager and should include the reasons why the requester believes the decision to be incorrect.

(b) The statement of disagreement should be maintained with the record to be amended and any disclosure of the record must include a copy of the statement of disagreement.

(c) When practicable and appropriate, the system manager should provide a copy of the statement of disagreement to any individual or agency to whom the record was previously disclosed as noted by the disclosure accounting.

§ 297.308 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which—

(a) The requester resides;

(b) The requester has his or her principal place of business; or

(c) The agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart D—Disclosure of Records

§ 297.401 Conditions of disclosure.

An official or employee of the Office or agency should not disclose a record retrieved from a Governmentwide system of records to any person, another agency, or other entity without the express written consent of the subject individual unless disclosure is—

(a) To officers or employees of the Office who have a need for the information in the performance of their duties.

(b) Required by the provisions of the Freedom of Information Act.

(c) For a routine use as published in the **Federal Register**.

(d) To the Bureau of the Census for uses pursuant to Title 13 of the United States Code.

(e)(1) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record will be transferred in a form that is not individually identifiable. The written statement should include as a minimum:

(i) A statement of the purpose for requesting the records; and

(ii) Certification that the records will be used only for statistical purposes.

(2) These written statements should be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will reasonably ensure that the identity of the individual cannot be deduced by combining various statistical records.

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or his or her designee to determine whether the record has such value.

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Office or agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(h) To a person showing compelling circumstances affecting the health and safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification should be sent to the last known address of the subject individual.

(i) To the Congress or to a Congressional committee, subcommittee, or joint committee to the extent that the subject matter falls within its established jurisdiction.

(j) To the Comptroller General or any authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to the order of a court of competent jurisdiction.

(l) To a consumer reporting agency in accordance with section 3711 (f) of Title 31 of the United States Code.

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

(a) The Office may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order signed by the appropriate official of a court of competent jurisdiction or quasi-judicial agency. In this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order will be provided to the data subject by the Office as soon as practicable after service of the order. The notice should be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart should consult legal counsel to ensure that the response is appropriate.

§ 297.403 Disclosure pursuant to a subpoena served on the Office.

(a) The Office may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to a subpoena signed by the appropriate official and issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, should consult, as appropriate, with legal counsel to ensure that—

(1) The requested materials are relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of the time allowed for response, if necessary.

(c) If a subpoena for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records.

(d) If oral testimony is requested by the subpoena, an explanation, which sets forth the testimony desired, must be furnished to the Office system manager. The individual who has been subpoenaed to testify should consult with legal counsel to determine the matters about which the individual may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the subpoena, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee should not provide the information without prior approval of the appropriate Office official.

(f) If it is determined that the information should not be provided, the individual subpoenaed should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(g) When the records for an individual residing in an Office system of records are subpoenaed, the disclosing Office official should notify the individual whose records are sought of the subpoena's issuance. Notice should be mailed to the last known address of the individual and contain the following information: the date the subpoena is returnable; the name and number of the case or proceeding; and the nature of the record sought. Such notice should be accomplished within 10 working days after receipt of the subpoena or as soon as practicable. Notice of the issuance of an ex parte order or subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) pursuant to 5 U.S.C. 552a(j) by a Notice of Exemption published in the **Federal Register**.

§ 297.404 Accounting of disclosure.

(a) The Office or agency will maintain a record of disclosures in cases where records about the individual are disclosed from an Office system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of the Office or agency who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for at least 5 years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the purpose, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the Office's exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart E—Exempt Records

§ 297.501 Exemptions.

(a) Several of the Office's internal, central, and Governmentwide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6) may be claimed. The systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) *Specific exemptions*— (1) *Inspector General Investigations Case File Records (OPM/CENTRAL–4).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Inspector General investigations may contain properly classified information that pertains to national defense and foreign policy obtained from other systems or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to or amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Inspector General investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records under 5 U.S.C. 552(a)(3) and (d).

(iii) Inspector General investigations may contain information obtained from another system or Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Inspector General case files may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). This exemption is claimed because this system contains investigatory material that if disclosed may reveal the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence or, prior to September 27, 1975, under an implied promise. The application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d) relating to access to and amendment of records by the data subject. This exemption is claimed because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Inspector General case files may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(2) *Administrative Law Judge Applicant Records (OPM/CENTRAL–6).* (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirement of 5 U.S.C. 552(c)(3) and (d). The exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentialty should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing and examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examing process.

(3) *Litigation and Claims Records (OPM/CENTRAL–7).* (i) When litigation or claim cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file, the appropriate exemption (5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), or (7)) shall also apply to the material as it appears in this system. The exemptions will be only from those provisions of the Act that were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k)(1), (2), (3), (4), (5), (6), and (7). Such material is exempt from the requirement of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are:

(A) Such investigations may contain properly classified information that pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of suh classified information under 5 U.S.C 552a(d).

(B) Such investigations may contain investigatory material compiled for law enforcement purposes othe than material within the scope of 5 U.S.C. 552a(j)(2), e.g., administration of the merit system, obtained from another Federal agency. All information about individuals in these records that meets the criteria of 5 U.S.C 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records.

(C) Such investigations may contain information obtained from another agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records.

(D) Such investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(E) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the

accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source.

(F) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examining process.

(G) Such investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Privacy Act/Freedom of Information Case Records (OPM/CENTRAL–6).* In this subpart, the Office has claimed exemptions for its other systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6) and (7). During the processing of a Privacy Act/Freedom of Information Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(5) *Personnel Investigations Records (OPM/CENTRAL–9).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may contain properly classified information which pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amended of such records under 5 U.S.C. 552a (c)(3) and (d).

(iii) Personnel investigations may contain information obtained from another Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Personnel investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Personnel investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(6) *Presidential Management Intern Program Records (OPM/CENTRAL–11).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(7) *Recruiting, Examining, and Placement Records (OPM/GOVT–5).* (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject

request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(K)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(8) *Personnel Research Test Validation Records (OPM/GOVT–6).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(c) The Office also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. The Office may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-135-AD; Amdt. 39-5836]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires the inspection for cracking, and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis to prevent possible separation of the pylon and engine from the wing. This amendment increases the repetitive inspection interval from 10,000 flight hours to 12,000 flight hours or 4,000 landings, whichever occurs first. In addition, this amendment deletes certain airplanes from applicability of the AD. This action is prompted by additional service experience and further assessment which indicates that these relieving actions will not have an adverse effect on safety.

DATE: Effective March 1, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 87-04-13, Amendment 39-5546 (52 FR 3420; February 4, 1987), applicable to Boeing Model 747 series airplanes, to increase the interval for repetitive inspections of the pylon midspar attach fitting horizontal clevis from 10,000 flight hours to 12,000 flight hours or 4,000 landings, whichever occurs first, and to delete certain airplanes from the applicability of the AD, was published in the Federal Register on October 20, 1987 (52 FR 38934). The period for public comment closed on December 18, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the Air Transport Association (ATA) of America on behalf of its members, expressed support for the proposed revision to AD 87-04-13.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 160 airplanes of U.S. registry will be affected by this AD. Since this action will decrease the number of airplanes affected by the AD and increase the repetitive inspection interval, there is no additional cost impact to U.S. operators.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, either positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 87-04-13, Amendment 39-5546 (52 FR 3540; February 4, 1987), to revise the applicability statement and paragraph A. as follows:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-54-2118, Revision 1, dated May 21, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of engine pylon midspar attach fittings, accomplish the following:

A. Within 5,000 flight hours after the effective date of this AD (March 13, 1987) or prior to the accumulation of 20,000 flight hours, whichever occurs later, unless accomplished within the last 5,000 flight hours, and at intervals thereafter not to exceed 12,000 flight hours or 4,000 landings, whichever occurs first, perform an ultrasonic inspection for cracks initiating at the aft-most two fastener holes in both pylon midspar fittings on the inboard nacelle pylons on airplanes listed in Groups 1 through 5, and on the outboard nacelle pylons on airplanes listed in Group 1, in accordance with Boeing Service Bulletin 747-54-2118, dated July 25, 1986, or later FAA approved revisions.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 1, 1988.

Issued in Seattle, Washington, on January 13, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1437 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-9]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corrider. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26485). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under the order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) requires an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileage on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-1, V-3, V-14, V-16, V-31, V-33, and V-34 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 38909 and 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-1 [Amended]

By removing the words "to Coyle," and substituting the words "Coyle; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Madison, CT; to Hartford, CT;"

V-3 [Amended]

By removing the words "Linden, VA; Shawnee, VA; Martinsburg, WV; Westminster, MD; Modena, PA;" and substituting the words "INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena, PA;" and also by removing the words "INT Hartford 044° and Boston, MA, 251° radials;" and substituting the words "INT Hartford 084° and Boston, MA, 224° radials; Boston;"

V-14 [Amended]

By removing the words "INT Gardner 195° and Norwich, CT, 351° radials; Norwich," and substituting the words "to Norwich, CT."

V-16 [Amended]

By removing the words "Kennedy, NY;" and substituting the words "INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy;"

V-31 [Amended]

By removing the words "Harrisburg, PA;" and substituting the words "INT Baltimore 004° and Harrisburg, PA, 147° radials; Harrisburg;"

V-33 [Amended]

By removing the words "Harrisburg, PA;" and substituting the words "INT Baltimore 004° and Harrisburg, PA, 147° radials; Harrisburg;"

V-34 [Revised]

From Rochester; Hancock, NY; INT Hancock 091° and Delancey, NY, 119° radials; INT Delancey 119° and Pawling, NY, 281° radials; Pawling; Madison, CT; INT Madison 142° and Sandy Point, RI, 269° radials; Sandy Point; to Nantucket, MA. The airspace within R-5202 and R-4105 is excluded during times of use.

Issued in Washington, DC, on January 7, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1435 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-10]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26351). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

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Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routes were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestions. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–39, V–44 and V–58 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–39 [Amended]

By removing the words "Linden, VA; Shawnee, VA; Martinsburg, WV;" and substituting the words "INT Cordonsville 331° and Martinsburg, WV, 212° radials; Martinsburg;" and also by removing the words "Carmel, NY; From Chester, MA;" and substituting the words "Carmel, NY; INT Carmel 045° and Bridgeport, CT, 343° radials; INT Bridgeport 343° and Chester, MA, 223° radials; Chester;"

V–44 [Amended]

By removing the words "Baltimore, MD; INT Baltimore 093° and Kenton, DE, 262° radials; Kenton; INT Kenton 086° and Atlantic City, NJ, 236° radials; Atlantic City; INT Atlantic City 048° and Deer Park, NJ, 209° radials; to Deer Park." and substituting the words "INT Martinsburg 094° and Baltimore, MD, 300° radials; Baltimore; INT Baltimore 122° and Sea Isle, NJ, 267° radials; Sea Isle; INT Sea Isle 040° and Deer Park, NY, 209° radials; Deer Park; INT Deer Park 041° and Bridgeport, CT, 133° radials; Bridgeport; INT Bridgeport 324° and Pawling, NY, 160° radials; Pawling, NY; INT Pawling 342° and Albany, NY, 181° radials; to Albany."

V–58 [Amended]

By removing the words "INT Lake Henry 078° and Kingston, NY, 274° radials; Kingston; INT Kingston 100° and Hartford, CT, 268° radials; Hartford; INT Hartford 130° and Providence, RI, 212° radials." and substituting the words "INT Lake Henry 078° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 289° radials; Hartford; Groton, CT; Sandy Point, RI; to Nantucket, MA. The airspace within R–4105 is excluded during times of use."

Issued in Washington, DC, on January 7, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Divison

[FR Doc. 88–1436–Filed 1–25–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–11]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26486). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–91, V–93, V–99 and V–106 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were

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implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 36912 and 39904) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-81 [Amended]

By removing the words "INT Calverton 332° and Pawling, NY, 139° radials; Pawling; INT Pawling 342° and Albany, NY, 181° radials; Albany;" and substituting the words "Bridgeport, CT; Albany, NY;"

V-93 [Amended]

By removing the words "INT Baltimore 004° and Lancaster, PA 284° radials;" and substituting the words "INT Baltimore 004° and Lancaster, PA, 314° radials;" and also by removing the words "INT Lake Henry 056° and Pawling, NY, 274° radials; Pawling;" and substituting the words "INT Lake Henry 078° and Kingston, NY, 270° radials; Kingston; Pawling, NY;"

V-99 [Amended]

From LaGuardia, NY, via INT LaGuardia 043° and Hartford, CT, 245° radials; Hartford; INT Hartford 040° and Boston, MA, 252° radials.

V-106 [Amended]

By removing the words "INT Lake Henry 056° and Pawling, NY, 274° radials; Pawling; Barnes, MA; Gardner, MA;" and substituting the words "INT Lake Henry 068° and Pawling, NY, 281° radials; Pawling; Barnes, MA; Gardner, MA;"

Issued in Washington, DC, on January 13, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1431 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-12]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26490). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-123, V-130, V-139 and V-143 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-123 [Amended]

By removing the words "INT Woodstown 042° and Robbinsville, NJ, 239° radials; Robbinsville;" and substituting the words "Robbinsville, NJ;" and also by removing the words "INT LaGuardia 034° and Carmel, NY, 188° radials; Carmel," and substituting the words "INT LaGuardia 032° and Carmel, NY, 157° radials; Carmel; INT Carmel 344° and Kingston, NY 129° radials; Kingtson; Albany, NY; Cambridge, NY; to Glens Falls, NY."

V-130 [Revised]

From Albany, NY; Bradley, CT; Norwich, CT; INT Norwich 114° and Martha's Vineyard, MA, 267° radials; to Martha's Vineyard.

V-139 [Amended]

By removing the words "INT Hampton 059° and Providence, RI, 212° radials; Providence; INT Providence 043° and Kennebunk, ME, 180° radials; Kennebunk," and substituting the words "Providence, RI; INT Providence 079° and Sandy Point, RI, 031° radials; INT Sandy Point 031° and Kennebunk, ME, 180° radials; to Kennebunk," and also by removing the words "and the airspace within R-6604 are excluded," and substituting the words "and the airspace within R-5202 and R-6604 are excluded."

V-143 [Amended]

By removing the words "Shawnee, VA; Martinsburg, WV;" and substituting the words "INT Montebello 031° and Martinsburg, WV, 216° radials; Martinsburg."

Issued in Washington, DC, on January 13, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1428 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-13]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendent alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14.

1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 URC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26487). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–146, V–151, V–153 and V–157 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This ammendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–146 [Amended]

By removing the words "From Putnam, CT;" and substituting the words "From Albany, NY; Chester, MA; Barnes, MA; Putnam, CT;"

V–151 [Amended]

By removing the words "Providence; Gardner, MA;" and substituting the words "Providence; Putnam, CT; Gardner, MA;"

V–153 [Revised]

From Lake Henry, PA; Georgetown, NY; Syracuse, NY.

V–157 [Amended]

By removing the words "Dupont, DE; Robbinsville, NJ; Colts Neck, NJ;" and substituting the words "Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 209° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 328° radials; INT Deer Park 328° and Kingston, NY, 191° radials;"

Issued in Washington, DC, on January 13, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–1429 Filed 1–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–14]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26492). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of these studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow

has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-162, V-167, V-188, V-203 and V-205 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 27328, 38748, 38751 and 39904) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-162 [Amended]

By removing the words "From INT Martinsburg, WV, 130° and Harrisburg, PA, 201° radials;" and substituting the words "From INT Martinsburg, WV, 056° and Harrisburg, PA, 191° radials;" and also by removing the words "Huguenot, NY; INT Huguenot 032° and Pawling, NY, 274° radials; Pawling," and substituting the words "to Huguenot, NY."

V-167 [Amended]

By removing the words "From Kingston, NY; INT Kingston 100° and Hartford, CT, 288° radials; Hartford, CT;" and substituting the words "From Hancock, NY; INT Hancock 117° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 289° radials; Hartford;"

V-188 [Amended]

By removing the words "to Carmel," and substituting the words "Carmel; INT Carmel 078° and Groton, CT, 276° radials; to Groton."

V-203 [Revised]

From Albany, NY; Saranac Lake, NY; Massena, NY; INT Massena 045° and Montreal, Canada, 188° radials; Montreal. The airspace within Canada is excluded.

V-205 [Revised]

From INT Sparta, NJ, 300° and Huguenot, NY, 196° radials; Huguenot; INT Huguenot 008° and Lake Henry, PA, 068° radials; INT Lake Henry 068° and Bradley, CT, 286° radials; Bradley; to Putnam, CT.

Issued in Washington, DC, on January 13, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1430 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-AWA-3]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of several jet routes located in the vicinity of New York (52 FR 25243). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11034) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J-37, J-40, J-42, J-48, J-55, J-60 and J-62 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 38913) is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-37 [Amended]

By removing the words "Kenton, DE; Coyle, NJ; Kennedy, NY;" and substituting the words "Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY;"

J-48 [Amended]

By removing the words "Richmond, VA; INT Richmond 009° and Gordonsville, VA, 059° radials; INT Gordonsville 059° and DUPONT, DE, 223° radials, to Dupont," and substituting the words "to Richmond, VA."

J-42 [Amended]

By removing the words "Casanova, VA; INT Casanova 051° and Westminster, MD, 080° radials; INT Westminster 080° and

Robbinsville, NJ; 239° radials: Robbinsville; INT Robbinsville 073° and Hampton 223° radials: to Hampton." and substituting the words" Montebello, VA; Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Robbinsville, NJ; LaGuardia, NY; INT LaGuardia 043° and Hartford, CT, 236° radials; Hartford; Providence, RI."

J–48 [Amended]

By removing the words "Casanova, VA; to Pulaski, VA." and substituting the words "Casanova, VA; Montebello, VA; to Toccoa, GA."

J–55 [Amended]

By removing the words "Raleigh-Durham, Flat Rock, VA; INT of the Flat Rock 025° and the Gordonsville, VA, 059° radials; INT of the Gordonsville 059° and Sea Isle, NJ, 253° radials; Sea Isle;" and substituting the words "Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ;"

J–60 [Amended]

By removing the words "to Robbinsville, NJ." and substituting the words "to Sparta, NJ."

J–62 [Amended]

By removing the words "From Kennedy, NY, via the INT of Kennedy 080° and the Nantucket, MA, 255° radials; Nantucket;" and substituting the words "From Robbinsville, NJ; Nantucket, MA;"

Issued in Washington, DC, on January 7, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–1432 Filed 1–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–7]

Alteration of Jet Routes; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several jet routes located in the vicinity of New York. These jet routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of several jet routes located in the vicinity of New York (52 FR 25610). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the descriptions of Jet Routes J–222, J–225, J–228, J–518, J–573 and J–581 located in the vicinity of New York. These routes are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (52 FR 39904) is further amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–222 [New]

From Robbinsville, NJ; INT Robbinsville 039° and Kennedy, NY, 253° radials; Kennedy; INT Kennedy 022° and Cambridge, NY, 179° radials; Cambridge; to Plattsburgh, NY.

J–225 [New]

From Cedar Lake, NJ; INT Cedar Lake 037° and Kennedy, NY, 232° radials; Kennedy; INT Kennedy 038° and Hartford, CT, 236° radials; Hartford; Putnam, CT; to Boston, MA.

J–228 [Amended]

By removing the words "Lancaster, PA; INT Lancaster 239° and Linden, VA, 042° radials; Linden; INT Linden 234° and Beckley, WV, 070° radials; to Beckley." and substituting the words "to Lancaster, PA."

J–518 [Revised]

From Dryer, OH; Indian Head, PA; to Baltimore, MD.

J–573 [Amended]

By removing the words "From Providence, RI, via INT Providence 045° and Kennebunk, ME, 180° radials; Kennebunk;" and substituting the words "From Kennebunk, ME;"

J–581 [Amended]

By removing the words "From Kennedy, NY, via INT of Kennedy 042° and Putnam, CT, 236° radials; Putnam;" and substituting the words "From Putnam, CT;"

Issued in Washington, DC, on January 7, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–1434 Filed 1–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–AWA–8]

Alteration of Jet Route; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–213 located in the vicinity of New York. This jet route is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1987, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J–213 located in the vicinity of New York (52 FR 25609). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process."

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of jet Route J-213 located in the vicinity of New York. This route is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-213 [New]

From Armel, VA; INT Armel 252° and Beckley, WV, 000° radials; to Beckley.

Issued in Washington, DC, on January 7, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1433 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 7 [1]]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Active Duty Dependents Dental Plan

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends Part 199 of Title 32, the Regulation implementing CHAMPUS programs, by adding a new section to implement Chapter 55, Title 10, section 1076a U.S.C., which authorizes the Active Duty Dependents Dental Plan. The rule defines the benefits and eligibility requirements, provides for insurance or prepayment contracting for benefit administration and payment, provides for Government and Uniformed Services member sharing in the cost of premiums for the insurance or prepayment contract, defines authorized providers, provides for benefit communications and implementation, establishes alternative delivery systems criteria and requirements, and provides an appeals procedure. Eligibility for the program is limited to Uniformed Services active duty members' dependents residing in the 50 United States, District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Benefits of the program are limited to diagnostic services, oral examinations, scaling deposits from teeth, polishing of teeth, topical application of fluoride to teeth, space maintenance, minor palliative emergency services, amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs. Benefits are further limited by the limitations and exclusions established for these benefits by the Director, OCHAMPUS or designee to assure quality of care and appropriate cost constraints. Authorized providers are dentists and dental hygienists practicing within the scope of their licenses.

EFFECTIVE DATE: August 1, 1987.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph C. Rhea, Office of Program Development, OCHAMPUS, telephone (303) 361-3278.

SUPPLEMENTARY INFORMATION: Chapter 55, Title 10, section 1076a U.S.C. provides that "the Secretary of Defense may establish dental benefit plans for spouses and children (as described in section 1072(2)(D) of this title) of members of the uniformed services who are on active duty for a period of more than 30 days. "This provision further requires that enrollment of participants be voluntary and include provisions for premium-sharing between the Department of Defense and members enrolling in the program." The law also specifies that the "member's share of the premium shall be paid by deductions from the basic pay of the member."

Eligibility is further limited by Congressional guidance to dependents of active duty members residing within the continental United States. This limitation was interpreted to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Two categories of dental benefits are provided: "(1) Diagnostic, oral examination, and preventive services and palliative emergency care; and (2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs."

Proposed Rule and Comments

In FR Doc. 87-12288 appearing in the **Federal Register** on May 29, 1987 (52 FR 103), the Office of the Secretary of Defense published for public comment a proposed amendment regarding the implementation of the Active Duty Dependents Dental Plan. We received comments from government agencies, two national associations related to dental care providers, and a dental insurer. We express our appreciation to all commenters for their substantive comments. The following summarizes the comments, suggestions, and the actions taken.

Most commenters felt that the provisions for implementing the two-year enrollment requirement were unduly restrictive with respect to potential termination at the end of an initial enlistment. The two-year enrollment is consistent with Congressional guidance and is deemed essential by the insurer for financial long-term viability of the Dependents Dental Plan. Agreement has been reached on retaining the two-year enrollment requirement, but substituting in § 199.13(c)(3) a more general provision that active duty members are to enroll with the intent of remaining on active duty for at least the two-year period, and in § 199.13(c)(5) a provision that termination from active duty at any time results in termination of enrollment at the end of the month in which active duty ceases. This simplifies the administrative process of enrollment and delegates to the active duty members and their supervisors the responsibility for assuring compliance with the intent of two-year enrollment.

Uniformed Services commenters requested that an exception provision be included, similar to that in CHAMPUS, permitting claims to be processed in the absence of direct verification through DEERS of the dependent's enrolled status. This recommendation was not adopted since, unlike CHAMPUS, the Dependents Dental Plan does not produce a presumption of eligibility based on entitlement of dependents as a result of active duty status of the Uniformed Service member. Some active duty members voluntarily decline enrollment in the Dependents Dental Plan. Premiums paid to the contractor at the beginning of each month of coverage also require a direct verification of eligibility with no presumption of eligibility possible as long as the plan includes the opportunity to voluntarily decline enrollment. Consequently, the suggestion could not be adopted because of its legal and technical infeasibility.

Concern was also expressed by some Uniformed Service commenters with the provision for continuing coverage until the end of the month in which termination of enrollment occurs as a result of termination of active duty status. While it is recognized that other benefits terminate upon termination of active duty status, the standard practice of whole month premium payments in dental insurance and the small amount deducted from the active duty member's pay each month for partial payment of the premium do not provide a cost-effective basis for reimbursement of partial month premium payments. Neither is it reasonable to deny the enrollee the benefit eligibility for the remaining days of the month in which termination from active duty occurs since the individual and the Government must pay for the full month. Therefore, this suggestion was not adopted.

Other comments received concerning eligibility and enrollment were adopted. An implementing instruction includes provisions for disenrollment at the active duty member's election within 90 days following a permanent change of duty station where dependent dental care from a military facility is available. Disenrollment also may occur where the active duty member provides evidence of coverage under another employment-based private sector dental plan. And, the member may initiate disenrollment when the member no longer has eligible dependents or no eligible dependents residing within the jurisdiction of the Dependents Dental Plan. Title 10, U.S.C. 1056(a) prohibits dependents enrolled in the Dependents' Dental Plan from receiving the services authorized as benefits from military dental care facilities, except for emergency treatment and diagnostic services required for delivery of services not covered by the plan. These provisions have been added in § 199.13(c)(5)(iii) and (iv) of the final rule.

One commenter proposed changes with respect to the explanation of coverage for dental hygienists as authorized providers, suggesting that language identifying that dental hygienists are not authorized as independent practitioners except in a

[1] The amendments inadvertently published unnumbered on September 3, 1987 (52 FR 33692) and October 19, 1987 (52 FR 38763) are assigned amendment numbers 5 and 6 respectively.

small number of states should be deleted as redundant to the statement that dental hygienists are authorized providers only within the scope of their licenses. A purpose of the rule is to clearly communicate to the Dependents' Dental Plan beneficiaries who is authorized to provide what benefits. After careful review, we believe that a modified version of this statement is essential to beneficiary understanding of the limitations on the availability of services by dental hygienists in independent practice.

A commenter identified that about fourteen percent of currently licensed dental hygienists are qualified by a certificate in dental hygiene that is accepted by accrediting and licensing bodies as comparable to the associate degree. The language of § 199.13(b) has been changed to include these dental hygienists within the terms of those provisions.

A commenter suggested that § 199.13(f)(1) be clarified to assure that services of dental lab technicians were covered. This suggestion was not adopted since these services are rendered under varying licensure and certification requirements. The extent of coverage must be determined by the contractor where the services are ordered by the dentist in connection with other primary covered services under the Dependents Dental Plan.

Two commenters recommended that dental sealants be included within the definition of preventive services covered by the Dependents' Dental Plan. The commenters suggest that the initial cost of these services would result in program savings over the long term as well as in savings to beneficiaries who would not incur more extensive, uncovered restorative services in future years. The short-term costs of dental sealants were not included in the benefit design or funding request, and cannot be added at this time. However, we will study the feasibility and long-term cost effectiveness of adding this benefit, and report recommendations in July, 1988.

Several commenters expressed concern that the limitations on coverage of diagnostic tests were not clearly communicated in the benefits section. In § 199.13(e)(2)(A) (2) and (3), commenters felt there was a need to be more explicit with respect to which radiologic and laboratory services were covered. Diagnostic services are covered when they are necessary and appropriate to the dental condition and to the necessary and appropriate performance of covered preventive and restorative services. In addition, some procedures such as an arthrogram (90320) would never be covered because the procedures are performed only in the management and treatment of non-covered conditions.

We agree that clarification is required. Further investigation has identified several infrequently used procedures that are not covered by the Dependents' Dental Plan because they are employed only in the management and treatment of non-covered conditions. Consequently, it is not appropriate for them to be covered by the Dependents' Dental Plan. These procedures have been listed in § 199.13(e)(2)(i) and (iii)(A) of the final rule as exclusions. Reference to these procedures in the dental benefits brochure issued by the contractor is in conflict with this clarification and will be corrected in the next annual issuance of the brochure. It is not possible to identify in the final rule the large number of combinations of circumstances and conditions in which other diagnostic procedures would be covered and not covered. Instead, we have clarified the general provisions of § 199.13(e), and will rely on the expertise of the Plan's insurer to make the detailed adjudication decisions in compliance with the general provision.

One commenter noted that the proposed rule did not include the provision of law which excludes availability to enrolled beneficiaries of military dental care for benefits covered by the Plan. A provision has been added in § 199.13(e)(2)(vii) to correct this oversight.

A commenter recommended that subsections § 199.13(f)(6)(i) and (ii) be changed to provide the same level of reimbursement to participating and non-participating providers. The commenter argued that some state insurance regulations prohibit private programs from making a distinction in level of reimbursement between participating and non-participating providers, and that publication of a list of participating dentists is an adequate incentive to encourage participation. We have reviewed this provision and determined that the reimbursement distinction is frequently used by dental insurers and results in increased numbers of participating providers. The state insurance regulations prohibiting such distinctions include only a few states and do not include a prohibition of such distinctions for public programs. We believe that the distinction provides a small but highly visible and necessary incentive for participation and have accordingly made no change in this provision.

A commenter recommended elimination of the provision for exclusive provider arrangements in order to assure that beneficiaries receive the same opportunities to receive treatment from dentists of their choice as employed by the public at large. While this is the present practice of the Dependents Dental Plan, it has been determined that this provision should be retained in order to provide a potential, future alternative form of contracting for benefits in the event that beneficiaries and the government should encounter adverse pricing or participation practices by most providers in given localities. In addition, this provision is considered necessary in assuring a wide range of competition in future solicitation of the Plan.

Other comments received offered minor technical and editorial changes which were duly considered. Based on one technical comment, § 199.13 (a)(7) and (a)(1)(iii) have been revised since records by contract are retained by the insurer as business records, subject to inspection by the government and transfer to another insurer in the event of a change in contractor. Enrollment records are government-furnished property and are maintained by the insurer. The government receives management reports and does not maintain a system of records for the Dependents' Dental Plan.

List of Subjects in 32 CFR Part 199

Dental insurance, Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 is revised to read as follows:

Authority: 10 U.S.C. 1076a, 1079, 1086; 5 U.S.C. 301.

2. Section 199.13 is added to read as follows:

§ 199.13 Active duty dependents dental plan.

(a) *General provisions*—(1) *Purpose.* This section prescribes guidelines and policies for the delivery and administration of the Active Duty Dependents Dental Plan of the Uniformed Services for the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS), and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(2) *Applicability*—(i) *Geographic.* This section is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(ii) *Agency.* The provisions of this section apply throughout the Department of Defense (DoD), the Coast Guard, the Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

(3) *Authority and responsibility*—(i) *Legislative authority*—(A) *Joint regulations.* 10 U.S.C. Chapter 55, 1076a authorizes the Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation, to prescribe regulations for the administration of the Active Duty Dependents Dental Plan.

(B) *Administration.* 10 U.S.C. Chapter 55 also authorizes the Secretary of Defense to administer the Active Duty Dependents Dental Plan for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer the Active Duty Dependents Dental Plan for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer the Active Duty Dependents Dental Plan for the Commissioned Corps of the NOAA and the USPHS.

(ii) *Organizational delegations and assignments*— (A) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR Part 367, delegated authority to the ASD(HA) to provide policy guidance, management control, and coordination as required for all DoD health and medical resources and functional areas including health benefit programs. Implementing authority is contained in 32 CFR Part 367. For additional implementing authority see § 199.1 (c) of this part.

(B) *Evidence of eligibility.* The Department of Defense, through the defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under the Active Duty Dependents Dental Plan.

(4) *Active duty dependents dental benefit plan.* This is a program of dental benefits provided by the U.S. Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services, and their voluntary decision to accept enrollment in the program and cost share with the Government in the premium cost of the benefits. The Dependents Dental Plan is an insurance, service, or prepayment plan involving a contract guaranteeing the indemnification or payment of the enrolled member's dependents against a specified loss in return for a premium paid. Where state regulations, charter requirements, or other provisions of state and local regulation governing dental insurance and prepayment programs conflict with Federal law and regulation governing this Program, Federal law and regualtion shall govern. Otherwise, this Program shall comply with state and local regulatory requirements.

(5) *Plan funds*—(i) *Funding sources.* The funds used by the Active Duty Dependents Dental Plan are appropriated funds furnished by the Congress through the annual appropriation acts for the Department of Defense and the Department of Health and Human Services and funds collected by the Uniformed Services monthly through payroll deductions as premium shares from enrolled members.

(ii) *Disposition of funds.* Plan funds are paid by the Government as premiums to an insurer, service, or prepaid dental care organization under a contract negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR).

(iii) *Plan.* The Director, OCHAMPUS or designee provides an insurance policy, service plan, or prepaid contract of benefits in accordance with those prescribed by law and regulation; as interpreted and adjudicated in accord with the policy, service plan, or contract and a dental benefits brochure; and as prescribed by requirements of the dental plan organization's contract with the government.

(iv) *Contracting out.* The method of delivery of the Active Duty Dependents Dental Benefit Plan is through a competitively procured contract. The Director, OCHAMPUS, or a designee is responsible for negotiating, under provisions of the FAR, a contract for dental benefits insurance or prepayment which includes responsibility for (A) development, publication, and enforcement of benefit policy, exclusions, and limitations in compliance with the law, regulation, and the contract provisions; (B) adjudicating and processing claims; and conducting related supporting activities, such as eligibility verification, provider relations, and beneficiary communications.

(6) *Role of Health Benefits Advisor (HBA).* The HBA is appointed (generally by the commander of a Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving the Active Duty Dependents Dental Plan. The HBA may assist beneficiaries or sponsors in applying for benefits, in the preparation of claims, and in their relations with OCHAMPUS and the dental plan insurer. However, the HBA is not responsible for the plan's policies and procedures and has no authority to make benefit determinations or obligate the plan's funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on OCHAMPUS or the insurer.

(7) *Disclosure of information to the public.* Records and information acquired in the administration of the Active Duty Dependents Dental Plan are not records of the Department of Defense. The records are established by the Dependents Dental Plan insurer in accordance with standard business practices of the industry, and are used in the determination of eligibility, program management and operations, utilization review, quality assurance, program integrity, and underwriting in accordance with standard business practices. By contract, the records and information are subject to government audit and the government receives reports derived from them. Records and information specified by contract are provided by an outgoing insurer to a successor insurer in the event of a change in the contractor.

(8) *Equality of benefits.* All claims submitted for benefits under the Active Duty Dependents Dental Plan shall be adjudicated in a consistent, fair, and equitable manner, without regard to the rank of the sponsor.

(9) *Coordination of benefits.* The dental plan insurer shall conduct coordination of benefits for the Active Duty Dependents Dental Plan in accordance with generally accepted business practices.

(10) *Information on participating providers.* The Director, OCHAMPUS or designee, shall develop and make available to Uniformed Services Health Benefits Advisors and military installation personnel centers copies of lists of participating providers and providers accepting assignment for all localities with significant numbers of dependents of active duty members. In addition, the Director, OCHAMPUS or designee, shall respond to inquiries regarding availability of participating providers in areas not covered by the lists of participating providers.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to section § 199.2. The following definitions apply only to this section.

Assignment. Acceptance by a nonparticipating provider of payment directly from the insurer while reserving

VOL 53 ISS 16 JA 26 1988 UMI

the right to charge the beneficiary or sponsor for any remaining amount of the fees for services which exceeds the prevailing fee allowance of the insurer.

Authorized Provider. A dentist or dental hygienist specifically authorized to provide benefits under the Active Duty Dependents Dental Plan in paragraph (f) of this section.

Beneficiary. A dependent of an active duty member who has been enrolled in the Active Duty Dependents Dental Plan, and has been determined to be eligible for benefits, as set forth in paragraph (c) of this section.

Beneficiary Liability. The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of dental care or treatment received. Specifically, for the purposes of services and supplies covered by the Active Duty Dependents Dental Plan, beneficiary liability includes cost-sharing amounts for restorative services, and, any amount above the prevailing fee determination by the insurer for either preventive or restorative services where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. Beneficiary liability also includes any expenses for services and supplies not covered by the Active Duty Dependents Dental Benefit Plan, less any discount provided as a part of the insurer's agreement with an approved alternative delivery system.

By report. Dental procedures which are authorized as benefits only in unusual circumstances requiring justification of exceptional conditions related to otherwise authorized procedures. For example, a house call might be justified based on an enrolled dependent's severe handicap which prevents visits in the dentist's office for traditional prophylaxis. Alternatively, additional drugs might be required separately from an otherwise authorized procedure because of an emergent reaction caused by drug interaction during the performance of a restoration procedure. These services are further defined in paragraph (e) of this section.

Cost-Share. The amount of money for which the beneficiary (or sponsor) is responsible in connection with otherwise covered dental services (other than disallowed amounts) as set forth in paragraphs (d) (6) and (e) of this section. Cost-sharing may also be referred to as "co-payment."

Defense Enrollment Eligibility Reporting System (DEERS). The automated system that is composed of two phases:

(1) Enrolling all active duty and retired service members, their dependents, and the dependents of deceased service members, and

(2) Verifying their eligibility for health care benefits in the direct care facilities and through the Active Duty Dependents Dental Plan.

Dental hygienist. Practitioner in rendering complete oral prophylaxis services, applying medication, performing dental radiography, and providing dental education services with a certificate, associate degree, or bachelor's degree in the field, and licensed by an appropriate authority.

Dentist. Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

Diagnostic services. Category of dental services including: (1) Clinical oral examinations, (2) radiographic examinations, and (3) diagnostic laboratory tests and examinations provided in connection with other dental procedures authorized as benefits of the Active Duty Dependents Dental Plan and further defined in paragraph (e) of this section.

Emergency palliative services. Minor procedures performed for the immediate relief of pain and discomfort as further defined in paragraph (e) of this section. This definition excludes those procedures other than minor palliative services which may result in the relief of pain and discomfort, but constitute the usual initial stage or conclusive treatment in procedures not otherwise defined as benefits of the Active Duty Dependents Dental Plan.

Initial Determination. A formal written decision on an Active Duty Dependents Dental Plan claim, a request by a provider for approval as an authorized provider, or a decision disqualifying or excluding a provider as an authorized provider under the Active Duty Dependents Dental Plan. Rejection of a claim or a request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding Active Duty Dependent Dental Plan benefits are not initial determinations.

Laboratory and Pathology Services. Laboratory and pathology examinations (including machine diagnostic tests that produce hard-copy results) ordered by a dentist when necessary to, and rendered in connection with other covered dental services.

Nonparticipating provider. A dentist or dental hygienist that furnished dental services to an Active Duty Dependents Dental Plan beneficiary, but who has not agreed to participate or to accept the insurer's fee allowances and applicable cost share as the total charge for the services. A nonparticipating provider looks to the beneficiary or sponsor for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or sponsor, not the provider.

Participating Provider. A dentist or dental hygienist who has agreed to accept the insurer's reasonable fee allowances or other fee arrangements as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or sponsor) of the twenty percent cost-share for restorative services.

Party to a Hearing. An appealing party or parties, the insurer, and OCHAMPUS.

Party to the Initial Determination. Includes the Active Duty Dependents Dental Plan, a beneficiary of the Active Duty Dependents Dental Plan and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, a provider who has been denied approval as an authorized Active Duty Dependents Dental Plan provider is a party to that initial determination, as is a provider who is disqualified or excluded as an authorized provider, unless the provider is excluded under another federal or federally funded program. See paragraph (h) of this section for additional information concerning parties not entitled to administrative review under the Active Duty Dependents Dental Plan appeals procedures.

Preventive Services. Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth as further defined in paragraph (e) of this section.

Provider. A dentist or dental hygienist as specified in paragraph (f) of this section.

Representative. Any person who has been appointed by a party to the initial determination as counsel or advisor and who is otherwise eligible to serve as the counsel or advisor of the party to the initial determination, particularly in connection with a hearing.

Restorative services. Restoration of teeth including those procedures commonly described as amalgam restorations, resin restorations, pin retention, and stainless steel crowns for primary teeth as further defined in paragraph (e) of this section.

(c) *Enrollment and eligibility*—(1) *General.* Sections 1076a and 1072(2)(D) of 10 U.S.C., Chapter 55 set forth those persons who are eligible for voluntary enrollment in the Active Duty Dependents Dental Benefit Plan. A determination that a person is eligible for voluntary enrollment does not entitle such a person automatically to benefit payments. The active duty member must enroll his or her dependents as defined in this section, and other sections of this part set forth additional requirements that must be met before eligibility for the plan is extended.

(2) *Persons eligible—Dependent.* A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of 30 days or less).

(i) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty member.

(ii) *Child.* To be eligible, the child must be unmarried and meet one of the requirements of this section.

(A) A legitimate child.

(B) An adopted child whose adoption has been completed legally.

(C) A legitimate stepchild.

(D) An illegitimate child of a male member whose paternity has been determined judicially, or an illegitimate child of record of a female member who has been directed judicially to support the child.

(E) An illegitimate child of a male active duty member whose paternity has not been determined judicially, or an illegitimate child of record of a female active duty member who—

(*1*) Resides with or in a home provided by the member and

(*2*) Is and continues to be dependent upon the member for over 50 percent of his or her support.

(F) An illegitimate child of the spouse of an active duty member (that is, the active duty member's stepchild) who—

(*1*) Resides with or in a home provided by the active duty member or the parent who is the spouse of the member and

(*2*) Is and continues to be dependent upon the member for over 50 percent of his or her support.

(G) In addition to meeting one of the criteria (A) through (F) of this paragraph (c)(2), the child:

(*1*) Must not be married.

(*2*) Must be in one of the following three age groups:

(*A*) Not passed his or her 21st birthday.

(*B*) Passed his or her 21st birthday, but incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and dependent on the member for over 50 percent of his or her support. Such incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity recurs subsequently, eligibility cannot be reinstated on the basis of the incapacity. If the child was not handicapped mentally or physically at his or her 21st birthday, but becomes so incapacitated after that time, no eligibility exists on the basis of the incapacity.

(*C*) Passed his or her 21st birthday, but not his or her 23rd birthday, dependent upon the member for over 50 percent of his or her support, and pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapters 34 and 35.

Note: Courses of education offered by institutions listed in the "Education Directory, Part 3, Higher Education" or "Accredited Higher Institutions," issued periodically by the Department of Education meet the criteria approved by the Secretary of Defense or the Department of Education. (refer to § 199.3(b)(2)(iv)(C)(*1*) of this section). For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to Chapters 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, DC 20202.

(3) *Enrollment*—(i) *Initial enrollment.* Eligible dependents of members on active duty status as of August 1, 1967 are automatically enrolled in the Active Duty Dependents Dental Benefit Plan, except where any of the following conditions apply:

(A) Remaining period of active duty at the time of contemplated enrollment is expected by the active duty member of the Uniformed Service to be less than two years, except that such members' dependents may be enrolled during the initial enrollment period for benefits beginning August 1, 1967 provided that the member has at least six months remaining in the initial enlistment term. Enrollment of dependents is for a period of two years, subject to the exceptions provided in (c)(5).

(B) Active duty member has completed an election to disenroll his or her dependents from the Active Duty Dependents Dental Plan.

(C) Active duty member has only one dependent who is under four years of age as of August 1, 1967, and the member does not complete an election to enroll the child.

(ii) *Subsequent enrollment.* Eligible active duty members may elect to enroll their dependents for a period of not less than two years, provided there is an intent to remain on active duty for a period of not less than two years by the member and the Uniformed Service.

(iii) *Inclusive family enrollment.* All eligible dependents of the active duty member must be enrolled if any are enrolled, except that a member may elect to enroll only those dependents who are remotely located from the member (e.g., a child living with a divorced spouse or a child in college).

(4) *Beginning dates of eligibility*—(i) *Initial enrollment.* The beginning date of eligibility for benefits is August 1, 1967.

(ii) *Subsequent enrollment.* The beginning date of eligibility for benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and received by the active duty member's Service representative, except that the date of eligibility shall not be earlier than September 1, 1967.

(5) *Changes in and termination of enrollment*—(i) *Changes in status of active duty member.* When an active duty member's period of active duty ends for any reason, his or her dependents lose their eligibility as of 11:59 p.m. of the last day of the month in which the active duty ends.

(ii) *Termination of eligibility for basic pay.* When a member ceases to be eligible for basic pay, eligibility of the member's dependents for benefits under the Dependents Dental Plan terminates as of 11:59 p.m. of the day the member became ineligible for basic pay and the Uniformed Service must notify the Plan of disenrollment based on termination of eligibility for basic pay. The member whose eligibility for basic pay is subsequently restored may enroll his or her dependents for a minimum of two years in accordance with § 199.13(c)(3)(ii).

(iii) *Changes in status of dependent*—(A) *Divorce.* A spouse separated from an active duty member by a final divorce decree loses all eligibility based on his or her former marital relationship as of 11:59 p.m. of the last day of the month in which the divorce becomes final. The eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 11:59 p.m. of the last day of the month in which the divorce becomes final.

(B) *Annulment.* A spouse whose marriage to an active duty member is dissolved by annulment loses eligibility as of 11:59 p.m. of the last day of the

month in which the court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of eligibility. When there are children, the eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 11:59 p.m. of the last day of the month in which the court grants the annulment order.

(C) *Adoption.* A child of an active duty member who is adopted by a person, other than a person whose dependents are eligible for the Active Duty Dependents Dental Plan benefits while the active duty member is living, thereby severing the legal relationship between the child and the sponsor, loses eligibility as of 11:59 p.m. of the last day of the month in which the adoption becomes final.

(D) *Marriage of child.* A child of an active duty member who marries a person whose dependents are not eligible for the Active Duty Dependents Dental Plan, loses eligibility as of 11:59 p.m. on the last day of the month in which the marriage takes place. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes eligible for enrollment as a dependent as of 12:00 a.m. of the first day of the month following the month in which the occurrence takes place that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of eligibility.

(E) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child 21 or 22 years old who is pursuing a full-time course of higher education and who, either during the school year or between semesters, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for dental benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, dental benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility related to mental or physical incapacity as described in § 199.3(b)(2)(iv)(C)(*2*) of this section.

(iv) *Disenrollment because of no eligible dependents.* When an active duty member ceases to have any eligible dependents residing within the Plan's jurisdiction, the member must disenroll.

(v) *Option to disenroll as a result of a change in active duty station.* When an active duty member makes a permanent change in duty station resulting in a move of more than 50 miles of his or her dependents to a new locality, the member may elect within 90 days of the change to disenroll from the Plan if dental care for these benefits is available from a local military dental clinic available to the member's dependents.

(vi) *Option to disenroll as a result of electing other dental insurance coverage.* When an active duty member's dependents become enrolled in another employment-based dental insurance plan, the member may elect to disenroll from the Active Duty Dependents Dental Plan. Proof of other employment-based dental insurance coverage must be provided to the appropriate Service representative prior to approval of disenrollment.

(vii) *Option to disenroll after an initial two-year enrollment.* When an active duty member's enrollment of his or her dependents has been in effect for a continuous period of two years, the member may disenroll his or her dependents at any time. Subsequently, the member may enroll his or her dependents for another minimum period of two years.

(6) *Eligibility determination and enrollment*—(i) *Eligibility determination and enrollment responsibility of Uniformed Services.* Determination of a person's eligibility and processing of enrollment in the Active Duty Dependents Dental Benefit Plan is the responsibility of the active duty member's Uniformed Service. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(ii) *Procedures for determination of eligibility.* Uniformed Services identification cards do not distinguish eligibility for the Active Duty Dependents Dental Plan. Procedures for the determination of eligibility are identified in § 199.3(f)(2) of this part, except that Uniformed Services identification cards do not provide evidence of eligibility for the dental plan.

(7) *Evidence of eligibility required.* Eligibility and enrollment in the Active Duty Dependents Dental Plan will be verified through the DEERS (DoD 1341.1–M, "Defense Enrollment Eligibility Reporting System (DEERS) Program Manual," May 1982).

(i) *Acceptable evidence of eligibility and enrollment.* Eligibility information established and maintained in the DEERS files is the only acceptable evidence of eligibility.

(ii) *Responsibility for obtaining evidence of eligibility.* It is the responsibility of the active duty member, or Active Duty Dependent Dental Plan beneficiary, parent, or legal representative, when appropriate, to enroll with a Uniformed Service authorized representative and provide adequate evidence for entry into the DEERS file to establish eligibility for the Active Duty Dependents Dental Plan, and to ensure that all changes in status that may affect enrollment and eligibility are reported immediately to the appropriate Uniformed Service for action. Ineligibility for benefits is presumed in the absence of prescribed enrollment and eligibility evidence in the DEERS file.

(d) *Premium sharing*— (1) *General.* Active duty members enrolling their dependents in the Active Duty Dependents Dental Plan shall be required to pay a share of the premium cost for their dependents.

(2) *Premium classifications.* Premium classifications are established by the Secretary of Defense, or designee, and provide for a minimum of two classifications, single and family.

(3) *Premium amounts.* The premium amounts to be paid for the Active Duty Dependents Dental plan are established by the Secretary of Defense or designee.

(4) *Proportion of member's premium share.* The proportion of premium share to be paid by the member is established by the Secretary of Defense or designee, at not more than 40 percent of the total premium.

(5) *Pay deduction.* The member's premium share shall be deducted from the basic pay of the member.

(e) *Plan benefits*—(1) *General*—(i) *Scope of benefits.* The Active Duty Dependents Dental Plan provides coverage for certain basic dental diagnostic, minor palliative emergency,

preventive, and restorative services to eligible, enrolled dependents of active duty members as set forth in paragraph (c) of this section.

(ii) *Authority to act for the plan.* The authority to make benefit determinations and authorize plan payments under the Active Duty Dependents Dental Plan rests primarily with the insurance, service plan, or prepayment dental plan contractor, subject to compliance with federal law and regulation and government contract provisions. The Director, OCHAMPUS, or designee, provides required benefit policy decisions resulting from changes in federal law and regulation and appeal decisions. No other persons or agents (such as dentists or Uniformed Services health benefits advisors) have such authority.

(iii) *Right to information.* As a condition precedent to the provision of benefits hereunder, the Director, OCHAMPUS, or designee, shall be entitled to receive information from an authorized provider or other person, institution, or organization (including a local, state, or U.S. Government agency) providing services or supplies to the beneficiary for which claims for benefits are submitted. While establishing enrollment and eligibility, benefits, and benefit utilization and performance reporting information standards; the government has not established and does not maintain a system of records and information for the Dependents Dental Plan. By contract, the government audits the adequacy and accuracy of the dental contractor's system of records and requires access to information and records to meet program accountabilities. Such information and records may relate to attendance, testing, monitoring, examination, or diagnosis of dental disease or conditions; or treatment rendered; or services and supplies furnished to a beneficiary; and shall be necessary for the accurate and efficient administration and payment of benefits under this plan. Before a determination will be made on a claim of benefits, a beneficiary or active duty member must provide particular additional information relevant to the requested determination, when necessary. Failure to provide the requested information may result in denial of the claim. The recipient of such information shall in every case hold such records confidential except when—

(A) Disclosure of such information is necessary to the determination by a provider or the Plan contractor of beneficiary enrollment or eligibility for coverage of specific services;

(B) Disclosure of such information is authorized specifically by the beneficiary;

(C) Disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions; or

(D) Disclosure constitutes a standard and acceptable business practice commonly used among dental insurers which is consistent with the principle of preserving confidentiality of personal information and detailed clinical data. For example, the release of utilization information for the purpose of determining eligibility for certain services, such as the number of dental prophylaxis procedures performed for a beneficiary, is authorized.

(E) Disclosure by the Director, OCHAMPUS, or designee, is for the purpose of determining the applicability of, and implementing the provisions of, other dental benefits coverage or entitlement.

(iv) *Dental insurance policy, prepayment, or dental service plan contract.* The Director, OCHAMPUS, or designee, shall develop a standard insurance policy, prepayment agreement, or dental service plan contract designating OCHAMPUS as the policyholder or purchaser. The policy shall be in the form customarily employed by the dental plan insurer, subject to its compliance with federal law and the provisions of this Regulation.

(v) *Dental benefits brochure*—(A) *Content.* The Director, OCHAMPUS, or designee, shall establish a dental benefits brochure explaining the benefits of the plan in common lay terminology. The brochure shall include the limitations and exclusions and other benefit determination rules for administering the benefits in accordance with the law and this part. The brochure shall include the rules for adjudication and payment of claims, appealable issues, and appeal procedures in sufficient detail to serve as a common basis for interpretation and understanding of the rules by providers, beneficiaries, claims examiners, correspondence specialists, employees and representatives of other government bodies, health benefits advisors, and other interested parties. Any conflict which may occur between the dental benefits brochure and law or regulation shall be resolved in favor of law and regulation.

(B) *Distribution.* The dental benefits brochure shall be printed and distributed with the assistance of the Uniformed Services to all active duty members enrolling their dependents, health benefits advisors, major personnel centers at Uniformed Services installations, and authorized providers of care.

(vi) *Utilization review and quality assurance.* Claims submitted for benefits under the Active Duty Dependents Dental Plan are subject to review by the Director, OCHAMPUS or designee for quality of care and appropriate utilization. The Director, OCHAMPUS or designee is responsible for appropriate utilization review and quality assurance standards, norms, and criteria consistent with the level of benefits.

(vii) *Alternative course of treatment policy.* The Director, OCHAMPUS or designee may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and beneficiary select a more expensive service, procedure, or course of treatment than is customarily provided. The benefit policy must meet the following conditions:

(A) The service, procedure, or course of treatment must be consistent with sound professional standards of dental practice for the dental condition concerned.

(B) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by this plan for the dental condition.

(C) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits for the alternative procedure, the prevailing limits or scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(2) *Benefits*—(i) *Diagnostic, preventive, and emergency palliative services.* Benefits may be extended for those dental services described as oral examination, diagnostic, emergency minor palliative, and preventive services defined as traditional prophylaxis (i.e., scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth) when performed directly by dentists or dental hygienists as authorized under paragraph (f) of this section. Diagnostic and by report services are covered only when they are necessary to covered preventive and restorative procedures. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules approved by OCHAMPUS and provided in the dental benefits brochure) using the American

Dental Association, The Council on Dental Care Programs' Code On Dental Procedures and Nomenclature as follows:

(A) *Diagnostic.* (*1*) Clinical oral examinations including initial (00110), periodic (00120), and emergency (00130).

(*2*) Radiographs appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. Subject to the dental plan's exclusions and limitations approved by OCHAMPUS, these procedures are included within the range of 00210 to 00340. Procedures 00290 (posterior-anterior or lateral skull and facial bone survey film), 00315 (sialography), 00320 (temporomandibular joint arthrogram), 00321 (other temporomandibular joint films), and 00340 (cephalometric film) are excluded.

(*3*) Tests and laboratory examinations appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. These procedures are included within the range of 00410 to 00999, subject to the dental plan's exclusions and limitations as adopted by OCHAMPUS. Procedures 00415 (bacteriologic studies to determine pathologic agents), 00470 (diagnostic casts), 00471 (diagnostic photographs), 00501 (histopathologic examinations), 00502 (other oral pathology procedures), and 00999 (unspecified diagnostic procedures) are excluded.

(B) *Preventive.* (*1*) Dental prophylaxis, including adult (01110) and child (01120).

(*2*) Topical fluoride treatment, including prophylaxis for a child (01201) and an adult (01205), and (where the Director, OCHAMPUS or designee determines to be appropriate) without prophylaxis for a child (01203) and an adult (01204).

(*3*) Space maintenance with passive appliances for those procedures included within the range of 01510 and 01550.

(C) *Emergency palliative.* Minor palliative procedure for immediate and temporary relief of pain and suffering (09110).

(ii) *Restorative.* Benefits may be extended for basic restorative services of amalgam, composite restorations, and stainless steel crowns for primary teeth when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code On Dental Procedures and Nomenclature as follows:

(A) Amalgam restorations, including polishing of one to four or more surfaces for primary and permanent teeth and included within the range of 02110 and 02161.

(B) Silicate restorations (02210).

(C) Resin restorations (subject to accepted dental practice) of one to four surfaces and included within the range of 02330 and 02387.

(D) Stainless steel crown for primary tooth (02930).

(E) Pin retention (02951).

(iii) *Dental appliance repairs.* Benefits may be extended for repairs to completely removable dentures when performed directly by dentists, or under orders and supervision by dentists as authorized under paragraph (f) of this part; subject to the dental plan's exclusions and limitations as adopted by OCHAMPUS. These procedures are included within the range of 05510 and 05660.

(iv) *Services "By Report."* The following procedures are authorized when performed directly by dentists or dental hygienists only in unusual circumstances requiring justification of exceptional conditions directly related to otherwise authorized procedures. They are generally reserved for use where mental or physical impairments prevent the rendering of otherwise authorized procedures of this dental plan without one or more of these additional services. Use of the procedures may not result in the fragmentation of services normally included in a single procedure. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code On Dental Procedures and Nomenclature as follows:

(A) Consultation (09310).

(B) House call (09440).

(C) Hospital call (09420).

(D) Office visit (after hours—09440).

(E) Drug injection (09610).

(F) Other prescription drugs (09630).

(v) *Exclusion of adjunctive dental care.* Under limited circumstances, benefits are available for dental services and supplies under CHAMPUS when the dental care is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition; or is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic). These benefits are excluded under the Active Duty Dependents Dental Plan. For further information on adjunctive dental care benefits under CHAMPUS, see § 199.4 (e)(10)(i) and (ii) of this part.

(vi) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment and services incidental to non-covered services, dependents enrolled in the Active Duty Dependents Dental Plan may not obtain those services which are benefits of the Plan in military dental care facilities. Enrolled dependents may continue to obtain non-covered services from military dental care facilities subject to the provisions for space available care.

(vii) *Benefit limitations and exclusions.* The Director, OCHAMPUS or designee may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by this dental plan.

(3) *Beneficiary or sponsor liability—*(i) *Diagnostic, preventive, and emergency palliative services.* Enrolled dependents of active duty members or their sponsors are responsible for the payment of only amounts for services rendered by nonparticipating providers of care which exceed the equivalent of the statewide or regional prevailing fee levels as established by the insurer. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, the dental plan will reimburse the dependent, or sponsor, or the nonparticipating provider selected by the dependent within 35 miles of the dependent's place of residence at the level of the provider's usual fees.

(ii) *Restorative services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of 20 percent of the amounts determined by the insurer for services rendered by participating providers of care or 20 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(iii) *Dental appliance repairs.* Enrolled dependents of active duty members are responsible for payment of the cost sharing amounts as provided in paragraph (e)(4)(ii) of this section.

(iv) *Services "By report."* Enrolled dependents of active duty members or their sponsors are responsible for payment of these services in accordance with their relationship to the otherwise authorized benefit procedures. For example, home visit charges which occur primarily for the purpose of rendering restorative services require payment of the 20 percent, while a home visit for purposes of dental prophylaxis do not require payment of the 20 percent. Payment of any remaining amount in excess of the prevailing charge limits established by the insurer would be required for services rendered by nonparticipating providers in either of the examples given, subject to the exceptions for dependent lack of access to participating providers as provided in paragraphs (e)(3)(i) and (ii) of this section. The contracting dental insurer may recognize a "by report" condition by providing an additional allowance to the primary covered procedure instead of recognizing or permitting a distinct billing for the "by report" service.

(v) *Amounts over the dental insurer's established allowances for charges.* It is the responsibility of the dental plan insurer to determine allowable charges for the procedures identified as benefits of this plan. All benefits of the plan are based on the insurer's determination of the allowable charges, subject to the exceptions for lack of access to participating providers as provided in paragraphs (e)(3)(i) and (ii) of this section.

(f) *Authorized providers—* (1) *General.* This section sets forth general policies and procedures that are the basis for the Active Duty Dependents Dental Plan cost sharing of dental services and supplies provided by or under the direct supervision or prescription by dentists, and by dental hygienists, within the scope of their licensure.

(i) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that the Active Duty Dependents Dental Plan will pay automatically a claim for services or supplies provided by such a provider. The Director, OCHAMPUS or designee also must determine if the patient is an eligible beneficiary, whether the services or supplies billed are authorized and medically necessary, and whether any of the authorized exclusions of otherwise qualified providers presented in this section apply.

(ii) *Conflict of interest.* See § 199.9(d)(2)(iv) of this part.

(iii) *Fraudulent practices or procedures.* See § 199.9(c) of this part.

(iv) *Utilization review and quality assurance.* Services and supplies furnished by providers of care shall be subject to utilization review and quality assurance standards, norms, and criteria established by the dental plan. Utilization review and quality assurance assessments shall be performed by the dental plan consistent with the nature and level of benefits of the plan, and shall include analysis of the data and findings by the dental plan insurer from other dental accounts.

(v) *Provider required.* In order to be considered benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of an Active Duty Dependents Dental Plan authorized provider practicing within the scope of his or her license.

(vi) *Participating provider.* An authorized provider may elect to participate and accept the fee or charge determinations as established and made known to the provider by the dental plan insurer. The fee or charge determinations are binding upon the provider in accordance with the dental plan insurer's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept within one day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider, and the participating provider may charge the beneficiary only for the 20 percent cost share of the allowable charge for authorized restorative services in addition to the charges for any services not authorized as benefits.

(vii) *Nonparticipating provider.* An authorized provider may elect for all beneficiaries not to participate and request the beneficiary or sponsor to pay any amount of the provider's billed charge in excess of the dental plan insurer's determination of allowable charges. Neither the government nor the dental plan insurer shall have any responsibility for any amounts over the allowable charges as determined by the dental plan insurer, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(A) *Assignment.* A nonparticipating provider may accept assignment of claims for beneficiaries certifying their willingness to make such assignment by filing the claims completed with the assistance of the beneficiary or sponsor for direct payment by the dental plan insurer to the provider.

(B) *Nonassignment.* A nonparticipating provider for all beneficiaries may request the beneficiary or sponsor to file the claim directly with the dental plan insurer, making arrangements with the beneficiary or sponsor for direct payment by the beneficiary or sponsor.

(2) *Dentists.* Subject to standards of participation provisions of this part, the following are authorized providers of care:

(i) Doctors of Dental Surgery (D.D.S.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(ii) Doctors of Dental Medicine (D.M.D.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(3) *Dental hygienists.* Subject to state licensure laws and standards of participation provisions of this part, dental hygienists having an associate degree, certificate, or baccalaureate degree from an accredited school of dental hygiene, licensed to practice dental hygiene by a state board, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

Note: Dental hygienists may independently bill and receive payment only in the few states where the state licensure laws authorized them as independent providers of care. In nearly all states at the present time, the dental hygienist performs services under the supervision of a dentist and the Dependents Dental Plan will pay for such services in these states only when supervised and billed by a dentist.

(4) *Alternative delivery system*—(i) *General.* Alternative delivery systems may be established by the Director, OCHAMPUS or designee as authorized providers. Only dentists and dental hygienists shall be authorized to provide or direct the provision of authorized services and supplies in an approved alternative delivery system.

(ii) *Defined.* An alternative delivery system may be any approved arrangement for a preferred provider organization, capitation plan, dental health maintenance or clinic organization, or other contracted arrangement which is approved by OCHAMPUS in accordance with requirements and guidelines.

(iii) *Elective or exclusive arrangement.* Alternative delivery systems may be established by contract or other arrangement on either an elective or exclusive basis for beneficiary selection of participating and authorized providers in accordance with contractual requirements and guidelines.

(iv) *Provider election of participation.* Otherwise authorized providers must be provided with the opportunity of applying for participation in an alternative delivery system and of achieving participation status based on reasonable criteria for timeliness of application, quality of care, cost containment, geographic location, patient availability, and acceptance of reimbursement allowance.

(v) *Limitation on authorized providers.* Where exclusive alternative delivery systems are established, only providers participating in the alternative delivery system are authorized providers of care. In such instances, the dental plan shall continue to pay beneficiary claims for services rendered by otherwise authorized providers in accordance with established rules for reimbursement of nonparticipating providers where the beneficiary has established a patient relationship with the nonparticipating provider prior to the dental plan's proposal to subcontract with the alternative delivery system.

(vi) *Charge agreements.* Where the alternative delivery system employs a discounted fee-for-service reimbursement methodology or schedule of charges or rates which includes all or most dental services and procedures recognized by the American Dental Association, Council on Dental Care Programs "Code on Dental Procedures and Nomenclature (6th Revision)," the discounts or schedule of charges or rates for all dental services and procedures shall be extended by its participating providers to beneficiaries of the Active Duty Dependents Dental Plan as an incentive for beneficiary participation in the alternative delivery system.

(5) *Billing practices.* The Director, OCHAMPUS, or designee, approves the dental plan's procedures governing the itemization and completion of claims for services rendered by authorized providers to enrolled beneficiaries of the Active Duty Dependents Dental Plan consistent with the insurer's existing procedures for completion and submittal of dental claims for its other dental plans and accounts.

(6) *Reimbursement of authorized providers.* The Director, OCHAMPUS or designee, approves the dental plan methodology for reimbursement of services rendered by authorized providers consistent with law, regulation, and contract provisions, and the benefits of the Active Duty Dependents Dental Plan. The following general requirements for methodology shall be met, subject to modifications and exceptions approved by the Director, OCHAMPUS or a designee.

(i) Nonparticipating providers (or the dependents or sponsors for unassigned claims) shall be reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calender days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(ii) Participating providers shall be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state as to constitute a significant financial incentive for participation, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services.

(g) *Benefit payment*—(1) *General.* Active Duty Dependent Dental Plan benefit payments are made either directly to the provider or to the beneficiary or sponsor, depending on the manner in which the claim is submitted or the terms of the subcontract of an alternative delivery system with the dental plan insurer.

(2) *Benefit payments made to a participating provider.* When the authorized provider has elected to participate in accordance with the arrangement and procedures established by the dental plan insurer, payment is made based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider as payment in full, less the 20 percent cost share of the allowable charge for any of the restorative services authorized as benefits. The beneficiary or sponsor is responsible only for any required cost-sharing.

(3) *Benefit payments made to a nonparticipating provider.* When the authorized provider has elected not to participate in accordance with the arrangement and procedures established by the dental plan, payment is made by the insurer based on the lower of the actual charge or the insurer's determination of the allowable charge. The beneficiary is responsible for payment of the 20 percent cost-share of the allowable charge for any restorative services authorized as benefits, and any amount of the charge for all services above the allowable charge. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(i) Assigned claims are claims submitted directly by the nonparticipating provider and are paid directly to the provider.

(ii) Nonassigned claims are claims submitted by the beneficiary, provider, or sponsor and are paid directly to the claimant.

(4) *Dental Explanation of Benefits (DEOB).* An explanation of benefits is sent to the beneficiary or sponsor and provides the following information:

(i) Name and address of the beneficiary.

(ii) Social Security Account Number (SSAN) of the sponsor.

(iii) Name and address of the provider.

(iv) Services or supplies covered by the claim for which the DEOB applies.

(v) Dates the services or supplies were provided.

(vi) Amount billed; allowable charge; and amount of payment.

(vii) To whom payment, if any, was made.

(viii) Reasons for any denial.

(ix) Recourse available to beneficiary for review of claim decision (refer to paragraph (h) of this section).

(5) *Fraud*—(i) *Federal laws.* 18 U.S.C. 287 and 1001 provide for criminal penalties for submitting knowingly or making any false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of any department or agency of the United States. Examples of fraud include situations in which ineligible persons not enrolled in the Active Duty Dependents Dental Plan obtain care and file claims for benefits under the name and identification of an enrolled beneficiary; or when providers submit claims for services and supplies not rendered to enrolled beneficiaries; or when a participating provider bills the beneficiary for amounts over the dental plan insurer's determination of allowable charges; or fails to collect the specified patient copayment amount.

(ii) *Suspected fraud.* Any person, including the dental plan insurer, who becomes aware of a suspected fraud shall report the circumstances in writing, together with copies of any available documents pertaining thereto, to the Director, OCHAMPUS, or a designee, who shall initiate an official investigation of the case.

(h) *Appeal and hearing procedures*—(1) *General.* This action sets forth the policies and procedures for appealing decisions made by the dental plan adversely affecting the rights and liabilities of beneficiaries, participating providers, and providers denied the status of authorized provider under the Active Duty Dependents Dental Plan. An appeal under the Active Duty Dependents Dental Plan is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law and regulation.

(i) *Initial determination*—(A) *Notice of initial determination and right to appeal.* (*1*) The dental plan contractor shall mail notices of initial determinations to the Active Duty Dependents Dental Plan beneficiary at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent or guardian constitutes notice to the beneficiary.

(*2*) The dental plan contractor shall notify providers of an initial determination on a claim only if the providers participated in the claim or accepted assignment.

(*3*) Notice of an initial determination on a claim by the dental plan contractor shall be made in the contractor's explanation of benefits (beneficiary) or with the summary of payment (provider).

(*4*) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized provider, or a decision to disqualify or exclude a provider, or a decision to disqualify or exclude a provider as an authorized provider under the Active Duty Dependents Dental Plan shall state the reason for the determination and the underlying facts supporting the determination.

(*5*) In any case when the initial determination is adverse to the beneficiary or participating provider or to the provider seeking approval as an authorized provider, the notice shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing the appeal also shall be explained.

(B) *Effect of initial determination.* The initial determination is final, unless appealed in accordance with this section or unless the initial determination is reopened by OCHAMPUS or the dental plan contractor.

(ii) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination, including OCHAMPUS, the dental plan contractor, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS and the dental plan contractor, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(A) *Parties to the initial determination.* For purposes of these appeal and hearing procedures, the following are not parties to an initial determination and are not entitled to administrative review under this section.

(*1*) A provider disqualified or excluded as an authorized provider under the Active Duty Dependents Dental Plan based on a determination under another Federal or federally funded program is not a party to the OCHAMPUS action and may not appeal under this section.

(*2*) A sponsor or parent of a beneficiary under 18 years of age or guardian of an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party, although such persons may represent the appealing party in an appeal.

(*3*) A third party other than the dental plan contractor, such as an insurance company, is not a party to the initial determination and is not entitled to appeal, even though it may have an indirect interest in the initial determination.

(*4*) A nonparticipating provider is not a party to the initial determination and may not appeal.

(B) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary.

(*1*) The representative shall have the same authority as the party to the appeal, and notice given to the representative shall constitute notice required to be given to the party under this part.

(*2*) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a OCHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of a Uniformed Service who represents an immediate family member. In addition, the Director, OCHAMPUS, or designee, may appoint an officer or employee of the United States as the OCHAMPUS representative at a hearing.

(iii) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of the Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any cost or fee associated with the production or submission of information in support of an appeal may not be paid by OCHAMPUS.

(iv) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the dental plan contractor, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no

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practical control. Each request for an exception to the filing requirement will be considered on its own merits.

(v) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this section. Examples of issues that are not appealable under this chapter include:

(A) A dispute regarding a requirement of the law or regulation.

(B) The amount of the dental plan contractor-determined allowable charge since the methodology constitutes a limitation on benefits under the provisions of this part.

(C) Certain other issues on the basis that the authority for the initial determination is not vested in OCHAMPUS. Such issues include but are not limited to the following examples:

(*1*) Determination of a person's eligibility as an enrolled beneficiary in the Active Duty Dependents Dental Plan is the responsibility of the appropriate Uniformed Service. Although OCHAMPUS and the dental plan contractor must make determinations concerning a beneficiary's enrollment, ultimate responsibility for resolving a beneficiary's eligibility and enrollment rests with the Uniformed Services. Accordingly, a disputed question of fact concerning a beneficiary's enrollment or eligibility will not be considered an appealable issue under the provisions of this section, but shall be resolved in accordance with paragraph (c) of this section.

(*2*) The decision to disqualify or exclude a provider because of a determination against that provider under another Federal or federally funded program is not an initial determination that is appealable under this part. The provider is limited to exhausting administrative appeal rights offered under the Federal or federally funded program that made the initial determination. However, a determination to disqualify or exclude a provider because of abuse or fraudulent practices or procedures under the Active Duty Dependents Dental Plan is an initial determination that is appealable under this part.

(vi) *Amount in dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth in the following:

(A) The amount in dispute is calculated as the amount of money the dental plan contractor would pay if the services and supplies involved in dispute were determined to be authorized benefits of the Active Duty Dependents Dental Plan. Examples of amounts of money that are excluded by this part from payments for authorized benefits include, but are not limited to:

(*1*) Amounts in excess of the dental plan contractor-determined allowable charge.

(*2*) The beneficiary's cost-share amounts for restorative services.

(*3*) Amounts that the beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(B) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized provider or the determination to disqualify or exclude a provider as an authorized provider.

(C) Individual claims may be combined to meet the required amount in dispute if all of the following exist:

(*1*) The claims involve the same beneficiary.

(*2*) The claims involve the same issue.

(*3*) At least one of the claims so combined has had a reconsideration decision issued by the dental plan contractor.

Note: A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (h)(1)(v)(A) of this section) or does not involve a sufficient amount in dispute (paragraph (h)(1)(vi) of this section) may not be rejected at the reconsideration level of appeal. However, an appeal shall involve an appealable issue and sufficient amount in dispute under these subsections to be granted a formal review or hearing.

(vii) *Levels of appeal.* The sequence and procedures of an Active Duty Dependents Dental Plan appeal are contained in the following:

(A) Reconsideration by the dental plan contractor.

(B) Formal review by OCHAMPUS.

(C) Hearing.

(2) *Reconsideration.* Any party to the initial determination made by the dental plan contractor may request a reconsideration.

(i) *Requesting a reconsideration*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination made by the dental plan contractor, such as the explanation of benefits.

(B) *Where to file.* The request shall be submitted to the dental plan contractor's office as designated in the notice of initial determination.

(C) *Allowed time to file.* The request must be mailed within 90 days after the date of the notice of initial determination.

(D) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by the dental plan contractor.

(ii) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time the provider requested approval as an authorized provider. The reconsideration is performed by a member of the dental plan contractor's staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or the dental plan contractor may obtain.

(iii) *Timeliness of reconsideration determination.* The dental plan contractor normally shall issue its reconsideration determination no later than 60 days from the date of its receipt of the request for reconsideration.

(iv) *Notice of reconsideration determination.* The dental plan contractor shall issue a written notice of the reconsideration determination to the appealing party at his or her last known address. The notice of the reconsideration determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the reconsideration upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(E) A statement of the right to appeal further in any case when the reconsideration determination is less than fully favorable to the appealing party and the amount in dispute is $50 or more.

(v) *Effect of reconsideration determination.* The reconsideration determination is final if either of the following exist:

(A) The amount in dispute is less than $50.

(B) Appeal rights have been offered, but a request for formal review is not received by OCHAMPUS within 60 days of the date of the notice of the reconsideration determination.

(3) *Formal review.* Any party to the initial determination may request a formal review by OCHAMPUS if the party is dissatisfied with the reconsideration determination and the reconsideration determination is not final under the provisions of paragraph (b)(5) of this section. Any party to the initial determination made by OCHAMPUS may request a formal review by OCHAMPUS if the party is dissatisfied with the initial determination.

(i) *Requesting a formal review*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination) being appealed, and shall include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045–6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination being appealed.

(D) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, at the time the provider requested approval as an authorized provider, or at the time of the action by OCHAMPUS to disqualify or exclude a provider. The formal review is performed by the Chief, Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination or reconsideration determination was based and any additional information the appealing party or the dental plan contractor may submit or OCHAMPUS may obtain.

(iii) *Timeliness of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, normally shall issue the formal review determination no late than 90 days from the date of receipt of the request for formal review by the OCHAMPUS.

(iv) *Notice of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(E) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is $300 or more.

(v) *Effect of formal review determination.* The formal review determination is final if one or more of the following exist:

(A) The issue is not appealable. (See paragraph (1)(v) of this section.)

(B) The amount in dispute is less than $300. (See paragraph (h)(1)(vi) of this section.)

(C) Appeal rights have been offered, but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

(4) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(5) of this section.

(i) *Requesting a hearing*—(A) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the formal review determination, and include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045–6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the formal review determination being appealed.

(D) *Official filing date.* A request for hearing shall be deemed filed on the date it is mailed and postmarked. If a request for hearing does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The hearing process.* The hearing shall be conducted as a nonadversary, administrative proceeding to determine the facts of the case and to allow the appealing party the opportunity personally to present the case before an impartial hearing officer. The hearing is a forum in which facts relevant to the case are presented and evaluated in relation to applicable law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time the provider requested approval as an authorized provider.

(iii) *Timeliness of hearing*—(A) Except as otherwise provided in this section, within 60 days following receipt of a request for hearing, the Director, OCHAMPUS, or a designee, normally will appoint a hearing officer to hear the appeal. Copies of all records in the possession of OCHAMPUS that are pertinent to the matter to be heard or that formed the basis of the formal review determination shall be provided to the hearing officer and, upon request, to the appealing party.

(B) The hearing officer, except as otherwise provided in this section, normally shall have 60 days from the date of written notice of assignment to review the file, schedule and hold the hearing, and issue a recommended decision to the Director, OCHAMPUS, or designee.

(C) The Director, OCHAMPUS, or designee, may delay the case assignment to the hearing officer if additional information is needed that cannot be obtained and included in the record within the time period specified above. The appealing party will be notified in writing of the delay resulting from the request for additional information. The Director, OCHAMPUS, or a designee, in such circumstances, will assign the case to a hearing officer within 30 days of receipt of all such additional information or within 60 days of receipt of the request for hearing, whichever shall occur last.

(D) The hearing officer may delay submitting the recommended decision if, at the close of the hearing, any party to the hearing requests that the record remain open for submission of additional information. In such circumstances, the hearing officer will have 30 days following receipt of all such additional information including comments from the other parties to the hearing concerning the additional information to submit the recommended decision to the Director, OCHAMPUS, or a designee.

(iv) *Representation at a hearing.* Any party to the hearing may appoint a representative to act on behalf of the party at the hearing, unless such person currently is disqualified or suspended from acting in another Federal administrative proceeding, or unless otherwise prohibited by law, this part, or any other DoD regulation (see paragraph (a)(2)(ii) of this section). A hearing officer may refuse to allow any person to represent a party at the hearing when such person engages in unethical, disruptive, or contemptuous conduct, or intentionally fails to comply with proper instructions or requests of the hearing officer or the provisions of this part. The representative shall have the same authority as the appealing party, and notice given to the representative shall constitute notice required to be given to the appealing party.

(v) *Consolidation of proceedings.* The Director, OCHAMPUS, or a designee, may consolidate any number of proceedings for hearing when the facts and circumstances are similar and no substantial right of an appealing party will be prejudiced.

(vi) *Authority of the hearing officer.* The hearing officer, in exercising the authority to conduct a hearing under this part, will be bound by 10 U.S.C., Chapter 55 and this part. The hearing officer in addressing substantive, appealable issues shall be bound by the dental benefits brochure, policies, procedures, and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend the dental benefits brochure, policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(vii) *Disqualification of hearing officer.* A hearing officer voluntarily shall disqualify himself or herself and withdraw from any proceeding in which the hearing officer cannot give fair or impartial hearing, or in which there is a conflict of interest. A party to the hearing may request the disqualification of a hearing officer by filing a statement detailing the reasons the party believes that a fair and impartial hearing cannot be given or that a conflict of interest exists. Such request immediately shall be sent by the appealing party or the hearing officer to the Director, OCHAMPUS, or a designee, who shall investigate the allegations and advise the complaining party of the decision in writing. A copy of such decision also shall be mailed to all other parties to the hearing. If the Director, OCHAMPUS, or a designee, reassigns the case to another hearing officer, no investigation shall be required.

(viii) *Notice and scheduling of hearing.* The hearing officer shall issue by certified mail, when practicable, a written notice to the parties to the hearing of the time and place for the hearing. Such notice shall be mailed at least 15 days before the scheduled date of the hearing. The notice shall contain sufficient information about the hearing procedure, including the party's right to representation, to allow for effective preparation. The notice also shall advise the appealing party of the right to request a copy of the record before the hearing. Additionally, the notice shall advise the appealing party of his or her responsibility to furnish the hearing officer, no later than 7 days before the scheduled date of the hearing, a list of all witnesses who will testify and a copy of all additional information to be presented at the hearing. The time and place of the hearing shall be determined by the hearing officer, who shall select a reasonable time and location mutually convenient to the appealing party and OCHAMPUS.

(ix) *Dismissal of request for hearing—*(A) *By application of appealing party.* A request for hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of the final decision, upon the application of the appealing party. A request for dismissal must be in writing and filed with the Chief, Appeals and Hearings, OCHAMPUS, or the hearing officer. When dismissal is requested, the formal review determination in the case shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section.

(B) *By stipulation of the parties to the hearing.* A request for a hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of notice of the final decision under a stipulation agreement between the appealing party and OCHAMPUS. When dismissal is entered under a stipulation, the formal review decision shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section.

(C) *By abandonment.* The Director, OCHAMPUS, or a designee, may dismiss a request for hearing upon abandonment by the appealing party.

(*1*) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with paragraph (h)(4)(xi)(m) of this section, if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for hearing that an appearance could not be made.

(*2*) An appealing party shall be deemed to have abandoned a request for hearing if, before assignment of the case to the hearing officer, OCHAMPUS is unable to locate either the appealing party or an appointed representative.

(*3*) An appealing party shall be deemed to have abandoned a request for hearing if the appealing party fails to prosecute the appeal. Failure to prosecute the appeal includes, but is not limited to, an appealing party's failure to provide information reasonably requested by OCHAMPUS or the hearing officer for consideration in the appeal.

(*4*) If the Director, OCHAMPUS, or a designee, dismisses the request for hearing because of abandonment, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section.

(D) *For cause.* The Director, OCHAMPUS, or a designee, may dismiss for cause a request for hearing either entirely or as to any stated issue. If the Director, OCHAMPUS, or a designee, dismisses a hearing request for cause, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section. A dismissal for cause may be issued under any of the following circumstances:

(*1*) When the appealing party requesting the hearing is not a proper party under paragraph (1)(ii)(A) of this section or does not otherwise have a right to participate in a hearing.

(*2*) When the appealing party who filed the hearing request dies, and there is no information before the Director, OCHAMPUS, or a designee, showing that a party to the initial determination who is not an appealing party may be prejudiced by the formal review determination.

(*3*) When the issue is not appealable (See paragraph (h)(1)(v) of this section.)

(*4*) When the amount in dispute is less than $300 (See paragraph (h)(1)(vi) of this section.)

(*5*) When all appealable issues have been resolved in favor of the appealing party.

(E) *Vacation of dismissal.* Dismissal of a request for hearing may be vacated by the Director, OCHAMPUS, or a designee, upon written request of the appealing party, if the request is received within 6 months of the date of the notice of dismissal mailed to the last known address of the party requesting the hearing.

(x) *Preparation for hearing—*(A) *Prehearing statement of contentions.* The hearing officer may on reasonable notice, require a party to the hearing to submit a written statement of contentions and reasons. The written statement shall be provided to all parties to the hearing before the hearing takes place.

(B) *Agency records—*(A) *Hearing officer.* A hearing officer may ask OCHAMPUS to produce, for inspection, any records or relevant portions of records when they are needed to decide the issues in any proceeding before the hearing officer or to assist an appealing party in preparing for the proceeding.

(*2*) *Appealing party.* A request to a hearing officer by an appealing party for disclosure or inspection of OCHAMPUS or the dental plan contractor records shall be in writing and shall state clearly what information and records are required.

(C) *Witnesses and evidence.* All parties to a hearing are responsible for producing, at each party's expense, meaning without reimbursement of payment by OCHAMPUS, witnesses and other evidence in their own behalf, and for furnishing copies of any such documentary evidence to the hearing officer and other party or parties to the hearing. The Department of Defense is not authorized to subpoena witnesses or records. The hearing officer may issue invitations and requests to individuals to appear and testify without cost to the Government, so that the full facts in the case may be presented.

(D) *Interrogatories and depositions.* A hearing officer may arrange to take interrogatories and depositions, recognizing that the Department of Defense does not have subpoena authority. The expense shall be assessed to the requesting party, with copies furnished to the hearing officer and other party or parties to the hearing.

(xi) *Conduct of hearing—*(A) *Right to open hearing.* Because of the personal nature of the matters to be considered, hearings normally shall be closed to the public. However, the appealing party may request an open hearing. If this occurs, the hearing shall be open, except when protection of other legitimate Government purposes dictates closing certain portions of the hearing.

(B) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to produce and examine witnesses, to introduce exhibits, to question opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party to the hearing first called the witness to testify, and to rebut any evidence presented. Except for those witnesses employed by OCHAMPUS at the time of the hearing or records in the possession of OCHAMPUS, a party to a hearing shall be responsible, that is to say no payment or reimbursement shall be made by CHAMPUS for the cost or fee associated with producing witnesses or other evidence in the party's own behalf, or for furnishing copies of documentary evidence to the hearing officer and other party or parties to the hearing.

(C) *Burden of proof.* The burden of proof is on the appealing party affirmatively to establish by substantial evidence the appealing party's entitlement under law and this Regulation to the authorization of Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any part of the cost or fee associated with producing or submitting in support of an appeal may not be paid by OCHAMPUS.

(D) *Taking of evidence.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Before taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(E) *Questioning and admission of evidence.* A hearing officer may question any witness and shall admit any relevant evidence. Evidence that is irrelevant or unduly repetitious shall be excluded.

(F) *Relevant evidence.* Any relevant evidence shall be admitted, unless unduly repetitious, if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.

(G) *Active Duty Dependents Dental Plan determination first.* The basis of the Active Duty Dependents Dental Plan determinations shall be presented to the hearing officer first. The appealing party shall then be given the opportunity to establish affirmatively why this determination is held to be in error.

(H) *Testimony.* Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(I) *Oral argument and briefs.* At the request of any party to the hearing made before the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted, and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(J) *Continuance of hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as otherwise provided here, shall be in accordance with this part. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to the hearing who is present at the hearing.

(K) *Continuance for additional evidence.* If the hearing officer determines, after a hearing has begun, that additional evidence is necessary for the proper determination of the case, the following procedures may be invoked:

(*1*) *Continue hearing.* The hearing may be continued to a later date in accordance with paragraph (d)(11)(x) of this section.

(*2*) *Closed hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional evidence. Any evidence submitted after the close of the hearing shall be made available to all parties to the hearing, and all parties to the hearing shall have the opportunity for comment. The hearing officer may reopen the hearing if any portion of the additional evidence makes further hearing desirable. Notice thereof shall be given in accordance with paragraph (d)(8) of this section.

(L) *Transcript of hearing.* A verbatim taped record of the hearing shall be made and shall become a permanent part of the record. Upon request, the appealing party shall be furnished a duplicate copy of the tape. A typed transcript of the testimony will be made only when determined to be necessary by OCHAMPUS. If a typed transcript is made, the appealing party shall be furnished a copy without charge. Corrections shall be allowed in the typed transcript by the hearing officer

solely for the purpose of conforming the transcript to the actual testimony.

(M) *Waiver of right to appear and present evidence.* If all parties waive their right to appear before the hearing officer for presenting evidence and contentions personally or by representation, it will not be necessary for the hearing officer to give notice of, or to conduct a formal hearing. A waiver of the right to appear must be in writing and filed with the hearing officer or the Chief, Appeals and Hearings, OCHAMPUS. Such waiver may be withdrawn by the party by written notice received by the hearing officer or Chief, Appeals and Hearings, no later than 7 days before the scheduled hearing or the mailing of notice of the final decision, whichever occurs first. For purposes of this section, failure of a party to appear personally or by representation after filing written notice of waiver, will not be cause for finding of abandonment and the hearing officer shall make the recommended decision on the basis of all evidence of record.

(N) *Recommended decision.* At the conclusion of the hearing and after the record has been closed, the matter shall be taken under consideration by the hearing officer. Within the time frames previously set forth in this section, the hearing officer shall submit to the Director, OCHAMPUS, or a designee, a written recommended decision containing a statement of findings and a statement of reasons based on the evidence adduced at the hearing and otherwise included in the hearing record.

(*1*) *Statement of findings.* A statement of findings is a clear and concise statement of fact evidenced in the record or conclusions that readily can be deduced from the evidence of record. Each finding must be supported by substantial evidence that is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

(*2*) *Statement of reasons.* A reason is a clear and concise statement of law, regulation, policies, or guidelines relating to the statement of findings that provides the basis for the recommended decision.

(5) *Final decision*—(i) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(A) *Final action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no further agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under this paragraph (h)(5)(i) will not be relied on, used, or cited as precedent by the Department of Defense or the dental plan contractor in the administration of the Active Duty Dependents Dental Plan.

(B) *Referral for review by ASD(HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(ii) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (h)(5)(ii) may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 20, 1988.

[FR Doc. 88-1488 Filed 1-25-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-87-76]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for the Memorial (US 80) bridge across the Wilmington River, mile 582.8 at Thunderbolt, Georgia, because the bridge has been replaced by a high level fixed span. Notice and public procedure have been omitted from this action due to removal of the bridge.

EFFECTIVE DATE: This rule becomes effective on January 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Pruitt, Bridge Administration Specialist, Seventh Coast Guard District, (305) 536-4103.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that no longer exists at mile 582.8, Thunderbolt, Georgia.

Consequently, this action is considered to be non-major under Executive order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). This action will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Mr. Gary Pruitt, Bridge Administration Specialist, Project Officer, and Lieutenant Commander S.T. Fuger, Jr., Project Attorney.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.353 [Amended]

2. Section 117.353(c) is removed.

Dated: January 6, 1988.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88-1459 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

49 CFR Parts 301, 386, and 389

Rules of Practice and Rulemaking Procedures for Motor Carriers; Technical Amendments

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to various sections of the Motor Carrier regulations: To make the handling of the delegations of authority relating to motor carrier safety consistent with other delegations of authority within the FHWA; to clarify the authority of the administrative law judge to dismiss a case; to reflect a recent internal agency reorganization with new responsibilities and terminology given to the Office of Motor Carrier Standards; to provide nomenclature changes; and to add new authority provided by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170.

EFFECTIVE DATE: January 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-4019; or Ms. Julie A. White, Office of Chief Counsel, (202) 366-1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170 (the Act), was signed into law by the President. This final rule adds the Act to the Sources of authority for Part 386, Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, and Part 389, Rulemaking Procedures—Federal Motor Carrier Safety Regulations.

The FHWA has undergone an internal reorganization in which the functions of the Bureau of Motor Carrier Safety were transferred to the Office of Motor Carriers. This final rule removes § 301.60, which delegated certain authority of the Federal Highway Administrator to the Associate Administrator for Motor Carriers and to the Director, Bureau of Motor Carrier Safety. Delegations of authority relating to motor carrier safety are now contained in the FHWA Organization Manual. This change is consistent with delegations of other types of authority within the FHWA.

In addition, changes have been made to §§ 386.11(a) and 386.48 reflecting the transfer of authority concerning commencement of driver qualification proceedings and waiver of service from the Bureau of Motor Carrier Safety to the Office of Motor Carrier Standards. Section 386.54(b)(6) has been clarified to state explicitly the authority of the administrative law judge to dismiss a case where a hearing was requested. Changes have also been made to § 386.72 to reflect a transfer of authority concerning out of service orders from the Bureau of Motor Carrier Safety to the Office of Motor Carrier Safety Field Operations and the Regional Directors of Motor Carrier Safety. Part 389 has been changed to reflect that rulemaking procedures for the Federal Motor Carrier Safety Regulations are now conducted by the Federal Highway Administrator. Formerly, they were conducted by the Director, Bureau of Motor Carrier Safety.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendments in this document are primarily technical in nature and are needed solely to update the regulations to reflect current statutory changes as well as revisions relating to the agency's reorganization. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. Accordingly, this final rule is effective upon publication in the **Federal Register.**

Since the changes in this document are primarily nonsubstantive in nature and relate to internal agency management and procedures, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA hereby amends Chapter III of 49 CFR as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR Parts 301, 386, and 389

Authority delegations (government agencies), Administrative practice and procedure, Civil forfeiture, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA hereby amends 49 CFR Chapter III as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 49 U.S.C. 104, 307, 501 *et seq.*, 1801 *et seq.*, 3101 *et seq.*, 10925, 10927 note, 42 U.S.C. 4917; 49 CFR 1.48.

§ 301.60 [Removed]

1a. Section 301.60 entitled "Delegations of authority relating to motor carrier safety" is removed from Part 301.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

2. The authority citation for Part 386 is revised to read as follows:

Authority: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); the Motor Carrier Safety Act of 1984, Pub. L. 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et seq.*); the recodification of Title 49, U.S. Code, Transportation, Pub. L. 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); the Hazardous Materials Transportation Act, Pub. L. 93–633, 88 Stat. 2156 (49 U.S.C. 1801 *et seq.*); the Bus Regulatory Reform Act of 1982, Pub. L. 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); the Motor Carrier Act of 1980, Pub. L. 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

§ 386.1 [Amended]

3. Section 386.1 is amended by amending the first sentence to add as the first statute citation, the following words: "the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et. seq.*);".

§ 386.2 [Amended]

4. Section 386.2 is amended by amending the definition of "civil forfeiture proceedings" to add as the first statute citation, the following words: "the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*);".

§§ 386.11 and 386.48 [Amended]

5. Sections 386.11(a) and 386.48 are amended by substituting the words "Office of Motor Carrier Standards" for "Bureau of Motor Carrier Safety" each time they appear in the text.

§ 386.54 [Amended]

6. Section 386.54 is amended by revising paragraph (b)(6) to read as follows:

* * * * *

(b) * * *

(6) To consider and rule upon all procedural and other motions, including motions to dismiss, except motions which, under this part, are made directly to the Associate Administrator;

* * * * *

§ 386.72 [Amended]

7. In § 386.72 revise the first sentence of paragraph (b)(1) to read as follows:

* * * * *

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 3102 or the Motor Carrier Safety Act of 1984 or the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such section or Acts, or combination of such violations, poses an imminent hazard to safety, the Director, Motor Carrier Safety Field Operations or the Regional Directors of Motor Carrier Safety, or his or her delegate, shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations as provided by section 218(b) of the Motor Carrier Safety Act of 1984 and section 12013(d) of the Commercial Motor Vehicle Safety Act of 1986. (49 U.S.C. 521(b)(5)). * * *

8. In § 386.72 amend paragraph (b)(2) by adding the words ", and section 12012(d) of the Commercial Motor Vehicle Safety Act of 1986" before the period and after the last statute citation.

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

9. The authority citation for Part 389 is revised to read as follows:

Authority: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); 49 U.S.C. 104 and 3102; sec. 20 of the Motor Carrier Act of 1980 (Pub. L. 96–296, 94 Stat. 820), as amended by sec. 108(b)(5) of Pub. L. 96–510, 94 Stat. 2787; sec. 406 of Pub. L. 97–424, 96 Stat. 2097; sec. 222 of Pub. L. 98–554, 98 Stat. 2846 (49 U.S.C. 10927 note); secs. 18 and 25(c) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, 96 Stat. 1102, 1120, 49 U.S.C. 10927 note); and 42 U.S.C. 4917.

§ 389.1 [Amended]

10. Section 389.1 is amended by adding the following citation "the Commercial Motor Vehicle Safety Act of 1986" after the words "the Motor Carrier Safety Act of 1984;".

§ 389.3 [Amended]

11. Section 389.3 is amended by amending the definition of "Act" by adding the following citations "the Motor Carrier Safety Act of 1984," and "the Commercial Motor Vehicle Safety Act of 1986" after the words "Act of 1980,"; removing the definitions of "Bureau" and "Director,", and adding a new definition to read "Administrator" means the Federal Highway Administrator.

* * * * *

§ 389.5 [Amended]

12. Section 389.5 is amended by substituting the word "Administrator" for the word "Director" and replacing the address at the end of the paragraph with the following: "Headquarters, Federal Highway Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590."

§ 389.7 [Amended]

13. Section 389.7 is amended by substituting the word "Administrator" for the word "Bureau".

§ 389.11 [Amended]

14. Section 389.11 is amended by substituting the word "Administrator" for the word "Director" and by adding the citation "the Commercial Motor Vehicle Safety Act of 1986" after the words "Motor Carrier Safety Act of 1984;".

§§ 389.13, 389.17, 389.25, 389.27, 389.29, and 389.31 [Amended]

15. Sections 389.13, 389.17(b), 389.25, 389.27(b), 389.29, and 389.31(a) are amended by substituting the word "Administrator" for the word "Director" each time that it appears in the text, and in § 389.31(b)(1) removing the address and replacing it with "Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590;".

§ 389.33 [Amended]

16. Section 389.33 is amended by: (1) Substituting the word "Administrator" for the word "Director" each time that it appears in the section, and (2) by revising paragraph (a) to read as follows:

(a) Unless the Administrator otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

* * * * *

§ 389.35 [Amended]

17. Section 389.35 is amended by substituting the word "Administrator" for the word "Director" each time that it appears in the text, and the address in paragraph (a) is revised to read "Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590".

§ 389.37 [Amended]

18. Section 389.37 is amended by substituting the word "Administrator" for the word "Director" each time that it appears in the text.

§ 389.38 [Removed]

19. Section 389.38 entitled "Saving provision" is removed from Part 389.

[FR Doc. 88–1394 Filed 1–25–88; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 53, No. 16
Tuesday, January 26, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards of Approval of Warehouses For Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of meeting.

SUMMARY: The Commodity Credit Corporation published a proposed rule in the Federal Register on October 8, 1987, regarding warehouse bonding. Several State warehouse licensing authorities expressed concern about the proposed rules and requested additional time to respond. Accordingly, a notice was published in the Federal Register on November 16, 1987, which extended the comment period for the proposed rule from November 9, 1987, to January 8, 1988. In addition, several State warehousing authorities have requested that a meeting be held in Washington, DC to further clarify and explain their concerns about the proposed rule. The Commodity Credit Corporation agrees that such a meeting would be beneficial for State warehousing authorities to explain their objections and concerns. The meeting would be held to further clarify and explain comments that were received during the comment period and would not reduce or detract from the positions listed in the submitted comments. The comment period will be further extended until February 12 to allow further written comments to be submitted after the meeting.

DATES: The meeting will be February 2, 1988 at 9:00 am.

ADDRESSES: South Agriculture Building, Room 4960, 12th and Independence SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven R. Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

Signed at Washington, DC, on January 19, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–1404 Filed 1–25–88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 044CE, Notice No. 23–ACE–37]

Special Conditions; Modified Cessna Model 172 Series Airplanes With Porsche PFM3200No3 Engines Installed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for modified Cessna Model 172 Series Airplanes with Porsche PFM3200No3 Engines installed. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of the Porsche PFM3200No3 Engine, which incorporates an electronic ignition system and a unique single-lever power control, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATE: Comments must be received on or before February 25, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 044CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 044CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 044CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On February 19, 1987, Porsche Aviation Products, Inc., Rural Route 2, Box 118A, Galesburg Municipal Airport, Galesburg, Illinois 61401, made application to the FAA for supplemental type certificate (STC) approval of the design changes necessary to incorporate the Porsche PFM3200No3 Engine in the Cessna Model 172M, N, P, and Q airplanes. The Porsche engine installation incorporates an electronic ignition system and a single-level power control.

Type Certification Basis

Proposed Certification Basis: Part 23 through Amendment 23–7 for engine, fuel system and electrical system installation related items. For Noise Regulations, Part 36, Appendix F, through Amendment 36–12. Also, §§ 21.50 and 23.1529 with Appendix G for Instructions for Continued Airworthiness. For all other aspects of the airplane, the following:

For Models 172 through 172Q, Part 3 of the Civil Air Regulations, effective November 1, 1949, as amended by Amendment 3–12. In addition, for S/N 17271035 and on, § 23.1559, effective March 1, 1978; for S/N 17276280 and on, and all Model 172Q, § 23.1545(a), Amendment 23–23 effective December 1, 1978.

Equivalent Safety Findings for airspeed indicator and operating limitations as set forth in CAR 3.757 and 3.778(a) for serial numbers 17261445, 1721578, 17285685 and on.

Exemption No. 4838; and any special conditions that may result from this notice.

Discussion

Electronic ignition systems and single-lever power controls were not envisaged by the applicable CAR 3/Part 23 airworthiness standards. These features are considered novel and unusual design features and, as such, will require special conditions to provide adequate airworthiness standards.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

The Porsche PFM3200No3 Engine's electronic ignition system consists of two independent microprocessor controlled circuits, each of which is capable of maintaining full engine performance. Both of the engine ignition control circuits, including the microprocessors and software programming, may be susceptible to malfunction due to a single lightning strike on any part of the airplane.

The regulations incorporated by reference include standards for protection from ignition of fuel vapor by lightning (§ 23.954). The airworthiness standards do not, however, provide for protection of an electronic ignition system from the influence of lightning that is inherently provided by traditional designs, such as engine-driven magnetos. Therefore, a special condition is proposed.

The Porsche engine installation manual requires lighting protection for the ignition system if induced power spikes, caused by a lightning strike, exceed 600 volts and/or a duration time of 10 microseconds. The special condition will assure that the ignition system will be protected from induced power spikes in excess of the level for which the system was certificated.

The lightning current waveforms defined in the Society of Automotive Engineers (SAE), AE4L Committee Report AE4L–87–3, dated February 4, 1987, along with the voltage waveforms in Advisory Circular 20–53A, Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, under these special conditions, tests (including tests on the completed airplane or an adequate simulation) and/or a verified analysis must be conducted in order to determine the resultant internal threat to installed systems. The individual systems must then be evaluated with this internal threat in order to determine their susceptibility to malfunction.

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of radio frequency (RF) energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic propulsion system components, the immunity of the airplane to RF energy must be established. Therefore, a special condition is proposed.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed upon level of RF energy representative of that to which the airplane will be exposed in service. These special conditions require that the airplane be evaluated under an interim standard for the protection of the electronic engine control system and its associated wiring harness, exclusive of airframe shielding.

The applicant has requested approval of a unique, single-level power control to provide simultaneous control of the engine throttle and propeller governor and, to a limited extent, the mixture. The single-level control incorporates standard industry components to drive both the throttle plate and propeller governor through one level. Two control cables are connected to the lever and routed to the throttle and governor. In addition, for takeoff power, the lever closes a switch which activates the fuel injection system to provide the best power mixture for the engine. For all other operations, the fuel injection system provides the best economy mixture automatically.

The FAA has determined that this unique design feature requires an evaluation of the effect on engine performance and control in the event of a control level system failure. A failure analysis of the interconnecting components would enhance confidence in the engine control system. Therefore, a special condition is proposed to require the single-lever system to have the same level of integrity and reliability as currently provide by the regulations for individual controls.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the propulsion system of the Model 172 Series Airplanes, with Porsche PFM3200 Engines installed, under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Cessna Model 172 Series Airplanes with Porsche PFM3200 Engines installed:

1. *Lightning Protection.* In addition to compliance with other applicable requirements relative to lighting protection, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

2. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* In the absence of specific requirements for protection from the unwanted effects of RF energy, each electronic propulsion control system component, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not adversely affected when the airplane is exposed to externally radiated radio frequency.

3. *Propulsion Control System.* In addition to the requirements applicable to throttle, mixture and propeller controls, components of the propulsion control system, both airframe and engine manufacturer furnished, that affect thrust and that are required for continued safe operation, must be shown to have the level of integrity and reliability of the typical Cessna Model 172 Series propulsion control system with independent throttle, mixture, and propeller controls.

Issued in Kansas City, Missouri, on December 21, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–1428 Filed 1–25–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 23

[Docket No. 043CE, Notice No. 23–ACE–36]

Special Conditions; British Aerospace Jetstream Series 3200, Model 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace (BAe) Jetstream Series 3200, Model 301 Airplanes. The affected airplanes will have novel and unusual design features associated with turbopropeller engine installations incorporating automatic power reserve (APR) systems and alcohol-water injection (AWI) systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice proposes the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the affected airplanes.

DATE: Comments must be received by February 25, 1988.

ADDRESS: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attn: Rules Docket Clerk, Docket No. 043CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No.043CE. Comments may be inspected in the Docket File between 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Oscar E. Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both, before and after the closing date, in the rules docket for examination by interested persons.

Background

On June 1, 1987, the British Civil Aviation Authority (CAA), on behalf of British Aerospace Scottish Division, made application for commuter category type certification of its Jetstream Series 3200, Model 3201 Airplanes. BAe plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. The features include turbopropeller engines with automatic power reserve (APR) systems and alcohol-water injection (AWI) systems installed.

Type Certification Basis

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. The certification basis for the BAe Jetstream Series 3200, Model 3201 Airplane is as follows: Federal Aviation Regulations § 21.29 and Part 23, effective February 1, 1965, including Amendments 23–1 through 23–34; exemptions as appropriate; SFAR No. 27, effective February 1, 1974, including Amendments 27–1 through 27–6; Part 36, effective December 1, 1969, including Amendments 36–1 through 36–12; and any special conditions which may result from this proposal.

Special conditions may be issued, and amended as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features. Special conditions, as appropriate, are issued in accordance with §§ 21.16 and 21.101(b)(2); and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The APR system is similar to the system presented for approval on the BAe Jetstream Series 3100, Model 3101 Airplanes. That system was the subject of the special conditions issued to BAe on December 17, 1984. They were published in the Federal Register on January 2, 1985 (52 FR 2). The proposed special conditions for the Jetstream Series 3200, Model 3201 Airplane will be substantively equivalent to those issued for the Model 3101 Airplane.

The FAA recognizes that alcohol-water injection systems have been used for many years in both reciprocating and turbine engines. These systems have been approved through the limited standards of § 25.945 or on the basis of a "no hazard" installation on the airplane. In recent times, special conditions have been issued. As the system becomes necessary to airplane operation and performance; i.e., planned for use on every takeoff, it is incumbent upon the FAA to assure the safety and reliability of the system for everyday use.

The applicant proposes to use a mixture of methanol and water for the AWI fluid. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, page 12–43,

methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75°F for a 30 percent solution of methanol in water; therefore, the FAA must consider the AWI fluid a flammable fluid and treat the AWI system the same way as the airplane fuel system. The proposed special conditions will provide airworthiness standards for the AWI system which parallel the fuel system requirements.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the BAe Jetstream Series 3200, Model 3201 Airplane under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 121.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the British Aerospace Jetstream Series 3200, Model 3201 Airplane.

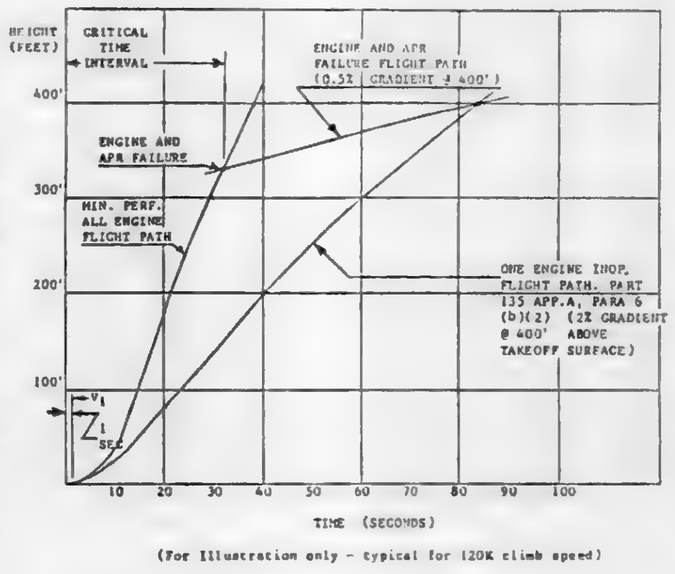
1. *Automatic Power Reserve (APR) System.*

(a) *General.* All references in this special condition to specific sections of Part 23 are to those sections in effect as defined in the certification basis for Jetstream Model 3201 Airplane.

(b) *Definitions*—(1) *Automatic Power Reserve System.* An automatic power reserve (APR) system is defined as the entire automatic system used only during takeoff, including all devices both mechanical and electrical that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines, including power sources, to achieve the scheduled power increase and furnish cockpit information on system operation.

(2) *Selected Takeoff Power.* Notwithstanding the definition of "Takeoff Power" in Part 1 of the Federal Aviation Regulations, "Selected Takeoff Power" means each power obtained from each initial power setting approved for takeoff under this special condition.

(3) *Critical Time Interval.* The critical time interval is that period starting at V_1 minus one second and ending at the intersection of the "engine and APR failure flight path" line with the "minimum performance all-engine flight path" line. The "engine and APR failure flight path" line intersects the "one-engine-inoperative flight path" line at 400 feet above the takeoff surface. The critical time interval is illustrated in the following figure:



(c) *Reliability and Performance Requirements.* With the APR system and associated systems functioning normally, all applicable requirements of the certification basis previously established, except as provided in this special condition, must be met without requiring any action by the crew to increase power. In addition:

(1) It must be shown that, during the critical time interval, an APR failure which increases or does not affect power on either engine will not create a hazard to the airplane, or it must be shown that such failures are improbable.

(2) It must be shown that, during the critical time interval, there are no failure modes of the APR system that would result in a failure that will decrease the power on either engine, or it must be shown that such failures are extremely improbable.

(3) It must be shown that, during the critical time interval, there will be no failure of the APR system in combination with an engine failure, or it must be shown that such failures are extremely improbable.

(4) All applicable performance requirements must be met with an engine failure occurring at the most critical point during takeoff with the APR system functioning normally.

(d) *Power Setting.* The selected takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

(1) The power necessary to attain, at V_1, ninety (90) percent of the maximum takeoff power approved for the airplane for the existing conditions;

(2) That required to permit normal operation of all safety-related systems and equipment that are dependent upon engine power or power lever position; and

(3) That shown to be free of hazardous engine response characteristics when power is advanced from the selected takeoff power level to the maximum approved takeoff power.

(e) *Powerplant Controls—General.* (1) In addition to the requirements of § 23.1141, no single failure or malfunction or probable combination thereof, of the APR, including associated systems, may cause the failure of any powerplant function necessary for safety.

(2) the APR must be designed to:

(i) Provide a means to verify to the flightcrew before takeoff that the APR is in a condition to perform its intended function;

(ii) Apply power on the operating engine, following an engine failure during takeoff, to achieve the maximum attainable takeoff power without exceeding engine operating limits;

(iii) Provide that, following an engine failure with the APR operating normally, manual adjustments of the power levers by the crew shall not deactivate the APR;

(iv) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation; and

(v) Allow normal manual decrease or increase in power up to the maximum takeoff power approved for the airplane under the existing conditions through the use of power levers, as stated in § 23.1141(c), except as provided under paragraph (e)(3) below.

(3) For airplanes equipped with limiters which automatically prevent engine operating limits from being exceeded, other means may be used to increase the maximum level of power controlled by the power levers in the event of an APR failure. In this case, the means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 23.777 (a), (b), and (c).

(f) *Powerplant Instruments.* In addition to the requirements of § 23.1305—

(1) A means must be provided to indicate when the APR system is in the armed or ready condition.

(2) If the inherent flight characteristics of the airplane do not provide warning that an engine has failed, a warning system that is independent of the APR must be provided to give the pilot a clear warning of any engine failure during takeoff.

(3) Following an engine failure at V_1, or above, there must be means for the crew to readily and quickly verify that the APR system has operated satisfactorily.

2. *Alcohol-Water Injection (AWI) System*

(a) Each AWI system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b), § 23.953, § 23.954, § 23.955 (a) and (c)(1), § 23.959, § 23.961, § 23.963 (a), (d), and (e), § 23.965 (a)(1), § 23.967 (a)(1) and (2), (b), (c), (d), and (e), § 23.969, § 23.971, 23.973 (a), (b), (c), § 23.975 (a)(1), (2), (3), (5), (6), and (7), § 23.977 (a)(2), (b), (c), and (d), § 23.991, § 23.993, § 23.994, § 23.995, § 23.997 (a), (b), (c), and (d), § 23.999, § 23.1141, § 23.1143 (a), (e), and (f), § 23.1189 (a) and (c), and § 23.1337 (a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations Part 23, dated February 1, 1965, as amended through Amendment 23-34 except as set forth in sections 2(b) through 2(c) of these special conditions.

(b) For AWI sysems, replace the word "fuel" with the words "AWI fluid" in all Part 23 sections listed in Special Conditions No. 2(a), as appropriate. In addition, certain Part 23 requirements listed in Special Condition No. 2(a) are reworded for AWI systems as follows:

(1) In § 23.955(a), General, replace "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with "The ability of the AWI system to provide AWI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *"

(2) In § 23.955(c)(1), replace the entire paragraph with "This flow rate is required for each primary pump and each alternate pump, when the pump is supplied with normal voltage."

(3) In § 23.967(d), the first sentence is not applicable to AWI systems. In the second sentence, the phrase "of a single-engine airplane" is not applicable for AWI systems.

(4) In § 23.971, for AWI systems, replace paragraph (a) with "(a) Each AWI fluid tank must be drainable in the normal ground attitude." Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(5) In § 23.991, replace paragraph (a) with "(a) Primary Pumps. (1) The pump which supplies AWI fluid to the engines during normal (nonfailure) operation of the system is a primary pump. (2) It must be possible to bypass or flow AWI fluid through each primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of AWI fluid to the engines in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate."

(6) In § 23.997, replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the AWI system) to ensure that AWI system functioning is not impaired, with the AWI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the AWI system," and add a new paragraph "(e) Be located with respect to any pressure or flowing sensing devices such that blockage of the filter will be detected by this device."

(7) In § 23.999, paragraph (b)(1) is not applicable to AWI systems.

(8) In § 23.1141(a), paragraphs (d) and (e) of 23.777, which are incorporated by reference, are not applicable to AWI systems.

(9) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference is not applicable to AWI systems.

(10) In § 23.1143, as applies to the control and shutoff of the AWI system, add "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the AWI system."

(11) In § 23.1337(b), for AWI systems, replace the lead-in paragraph with "There must be a means to indicate the quantity of AWI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition * * *"

(c) The AWI filler openings must be conspicuously marked at or near the filler cover with:

(1) The words "AWI fluid", and

(2) the capacity of the tank in either pounds or gallons consistent with other AWI system markings.

Issued in Kansas City, Missouri, on December 23, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-1427 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Parts 625 and 626

[FHWA Docket No. 87-16]

Pavement Policy for Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) is requesting comments on a proposal to amend its regulation on pavement design policy and procedures. The revisions will require the States to establish a Pavement Management System (PMS). As part of its PMS each State Highway Agency (SHA) shall have a comprehensive process for the type selection and design of new, reconstructed and rehabilitated pavement structures. The revisions will replace the existing regulation to assure that appropriate practices and procedures are utilized by the States in order to promote safety and cost-effective pavement life cycles. Also, in order to be consistent with recently published policy on reference citations, the FHWA is proposing to redesignate the revised version of the publication entitled "AASHTO Interim Guide for Design of Pavement Structures, 1972," Chapter III Revised, 1981, which is currently incorporated by reference in 23 CFR 626.5(a), as a guide and reference. The revised publication is entitled "AASHTO Guide for Design o. Pavement Structures," 1986.

DATE: Comments must be received on or before April 25, 1988.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 87-16, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:
Mr. Norman J. Van Ness, Chief, Pavement Division, Office of Highway Operations, (202) 366–1324 or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Pavement design policy and procedures for Federal-aid highway projects are contained in 23 CFR Part 626. The standards, policies, standard specifications, guides, and references (publications) that are approved by the FHWA for application on all Federal-aid highway projects are listed in 23 CFR Part 625. The standards, policies, and references for pavement design are contained in Part 626 and are generally cited in § 625.4(a)(11). Part 626 currently approves and incorporates by reference the publication entitled the "American Association of State Highway and Transportation Officials (AASHTO) Interim Guide for Design of Pavement Structures, 1972," Chapter III Revised 1981 for application on Federal-aid projects. On May 7, 1986 (51 FR 16830), the list of publications contained in Part 625 was revised and updated. In order to accurately reflect a publication list which differentiates between publications establishing Federal standards and publications containing guidance and information materials, a new section entitled "Guide and references" was added to Part 625. For those publications that provide informational and guidance material only, the incorporation by reference was withdrawn and the publication citation was placed in the new guide and reference section. By the May 7, 1986, final rule, an additional publication entitled "Guidelines on Pavement Management, AASHTO 1985" (Management Guide) was added as a reference at § 625.5(a)(7). To be consistent with the May 7, 1986, policy on reference citations, the FHWA proposes to add the 1986 publication entitled "AASHTO Guide for Design of Pavement Structures" (1986 Guide) to § 625.5, "Guides and references." The AASHTO views the Management Guide and the 1986 Guide as informational and guidance materials and not as technical policies and standards. The FHWA shares this view and proposes to revise Part 626.

The primary reasons for development of the 1986 Guide by AASHTO include: To incorporate the latest available research findings on design concepts; to include the latest design methods for pavement rehabilitation; and to provide a more definitive and complete document on pavement design. The 1986 Guide presents a wide range of pavement design principles and methodologies and addresses the many geographical, environmental, and climatic factors which influence the preparation of pavement designs. In addition, the 1986 Guide includes the latest technical data on pavement factors such as reliability, soil support/erosion, drainage, layer coefficients, traffic volume, etc.

Because of the number of regional and technical factors that are necessarily involved in the preparation and selection of particular pavement designs, the design engineers are provided sufficient flexibility in determining when and to what extent each of the factors is to be used. This flexibility allows the design engineer to consider design criteria within the context of local or regional needs, conditions, and past pavement performance.

The selection of a particular pavement design is intended to provide a pavement that adequately meets the existing and probable traffic needs and withstands environmental conditions in a manner conducive to highway safety. The design principles and methodologies contained in the Management Guide and the 1986 Guide provide a framework of design parameters which can be organized into a system approach to obtain consistent and rational design recommendations.

The FHWA's existing policy states that pavement design may be based on other procedures and practices of individual agencies that by past performance have proved to be satisfactory for the relative conditions. Since the Management Guide and the 1986 Guide are proposed to be cited as guidance and informational material, they will only be used as references for evaluating the adequacy of the pavement design. In order to assure that appropriate standards and procedures are utilized by the States to protect the Federal investment in safety and cost-effective pavement life cycles, the FHWA is proposing to revise existing policy. The FHWA is also proposing to require that State highway agencies (SHA's) establish a pavement management system (PMS) which includes the selection and design of new pavement structures and rehabilitation strategies. The SHA's would have the flexibility to establish a PMS to include methodologies and procedures recognizing the need for local variations by providing ranges of acceptable values and alternative procedures for use under varying conditions.

The FHWA believes that sufficient guidance and reference material are available upon which a PMS can be established by the SHA's without undue burdens being placed on the State's resources. The SHA's will be able to take advantage of available expertise contained in the Management Guide, the 1986 Guide, other appropriate design guides, and performance experience in the State. It is the intention of the FHWA that if this proposed policy is implemented, the pavement needs of the individual States can be met while maintaining consistency within geographical areas.

Section-by-Section Analysis

This analysis discusses the proposed revisions to 23 CFR Part 626.

Section 626.1 Purpose.

The proposed revision of this section adds the program elements of pavement management and federal-aid funding eligibility to the pavement design purpose statement.

Section 626.3 Definitions.

The current definitions for "Stage construction" and "Ultimate structural design" would be deleted as unnecessary. Definitions for "Analysis Period", "Life Cycle Cost", "Low Volume Road", "Pavement Design", "Pavement Maintenance", "Pavement Management", "Pavement Performance Period", "Pavement Reconstruction", "Pavement Rehabilitation" and "Pavement Structure" would be added to define elements of the Pavement Policy.

"Analysis Period" would be the period of time over which life cycle costs are assessed in the study of pavement design alternatives.

"Life Cycle Cost" would be all ownership and user costs necessary to provide a serviceable pavement over the analysis period. These include construction, maintenance, rehabilitation, traffic disruption costs, and salvage value, etc.

"Low-Volume Road" would be a road where the structural design is based on less than 1,000,000 18–Kip Equivalent Single Axle Loads (ESAL's).

"Pavement Design" would be that portion of the pavement management system which determines the material properties and the load carrying capacity of the pavement structure.

"Pavement Maintenance" would be the preservation of the pavement structure, including joints, drainage,

surface, and shoulders, as necessary for its safe and efficient utilization.

"Pavement Management" would encompass all the activities involved in the planning, design, construction, maintenance, evaluation, and rehabilitation of pavements. A pavement management system (PMS) is a set of tools or methods that assist decision-makers in finding optimum strategies for providing, evaluating and maintaining pavements in a serviceable condition.

"Pavement Performance Period" would be the period of time that a newly constructed, rehabilitated or reconstructed pavement will perform before reaching its terminal serviceability. Also referred to as service life.

"Pavement Reconstruction" would be construction of the equivalent of a new pavement structure which usually involves complete removal and replacement of the existing pavement structure including new and/or recycled materials.

"Pavement Rehabilitation" would be Resurfacing, Restoration, and Rehabilitation (3R) work undertaken to restore serviceability and to extend the service life of an existing facility. This may include partial recycling of the existing pavement, placement of additional surface materials or other work necessary to return an existing pavement, including shoulders, to a condition of structural or functional adequacy.

"Pavement Structure" would be a combination of a subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

Section 626.5 Policy.

This section is being revised to provide for the requirement of establishing a Pavement Management System (PMS) to be implemented within a reasonable length of time, not to exceed 4 years from the effective date of this regulation. The PMS would be a procedure adopted by the SHA's which would include planning, construction, maintenance, rehabilitation, and evaluation criteria to assist decision-makers in finding the optimum strategy for providing, evaluating and maintaining pavements in a serviceable condition. The procedure adopted will provide for a system encompassing current technology and procedures, local conditions, materials, and performance experience.

This section will also be revised to include the citations to the reference publications discussed above (Management Guide and the 1986 Guide). The Guide will be recommended for guidance and reference to be used by the SHA's in the adoption of a PMS process. The FHWA will use the Guides and other appropriate criteria as a basis for approval of the SHA's PMS. Each SHA's PMS should be based on the concepts described in the Management Guide which includes the following components:

(1) Inventory

An inventory of the Federal-aid System with early emphasis on high volume roads should be established. This inventory should include all necessary data (materials, structural composition, etc.) to assure that location and composition of each section of pavement can be readily accessed.

(2) Database

There should be a collection, storage, processing, and retrieval of pavement condition and serviceability data for the Federal-aid System. This data should not only be adequate to satisfy determinations of need but should form the basis of an historical data bank which can be used for establishing criteria for design, construction, maintenance and/or rehabilitation of pavements.

(3) Assessment of Pavement Performance

A measurement should be made of the change in condition and/or serviceability over time. History of pavement performance indicating the serviceability of various materials, structure layers, and pavement composition for use in determining trends and capabilities of various design, construction, maintenance and/or rehabilitation standards should be accumulated.

(4) Network Needs Assessment

There should be an ability to provide current and projected network needs with consideration of budget and other constraints.

(5) Analysis

(a) There should be an ability to provide and analyze performance data over time for construction, reconstruction and rehabilitation alternates and strategies.

(b) There should also be an ability to analyze project alternatives and strategies including cost effectiveness and prioritization with consideration of restraints.

(c) An ability to provide and consider feedback should be included. Reliable performance data on rehabilitation techniques is necessary in the rehabilitation design process.

(6) Design

Design and rehabilitation strategies should be guided by the 1986 AASHTO "Guide for Design of Pavement Structures" or other practices and procedures that based on past performance have proven satisfactory in that locale.

It is recognized that most SHA's are well along in the development of a PMS or have a PMS in operation that includes the basic components listed above. The FHWA Division Administrator will work closely with those agencies that are in the early stages of developing a PMS to ensure compliance with the 4 year time frame for full implementation.

This section will further be revised to require each SHA to have a comprehensive process for the type selection and design of a new, reconstructed or rehabilitated pavement structure as part of its PMS. The SHA's are strongly encouraged to use the 1986 Guide in developing their comprehensive process for pavement type selection and pavement structure design. It will, however, be acceptable for SHA's to design pavement structures based upon other procedures and practices that by past performance have proven satisfactory for the pertinent conditions. If a SHA elects to use procedures other than AASHTO, the procedures will require FHWA approval. The FHWA will check or review pavement design in accordance with procedures approved for use by the SHA. No minimum pavement design period (now referred to as the performance period) will be specified for new construction.

The SHA's will be required to perform economic analyses that consider alternate design strategies. The principles of economic analyses dictate that all economic design strategies be analyzed over the same time period, now referred to as the analysis period. An analysis period of at least 30 years shall be used for all projects except that a shorter period may be used for low-volume roads. The minimum 30 year analysis period restarts with each planned project for new construction, reconstruction or major pavement rehabilitation work. The analysis period should include an initial performance period plus at least one rehabilitation strategy. If an existing pavement structure is sound and the cost to restore serviceability is minor when compared to the cost of a new pavement structure or major rehabilitation, a 30 year

analysis period may not be necessary and an exception may be granted.

An engineering and an economic analysis (life cycle cost) of an appropriate range of strategies shall be performed. For existing pavements the analysis should include both reconstruction and rehabilitation alternatives.

A final revision to this section includes a requirement that each project involving construction of a pavement shall have a skid resistant surface. Pavement rehabilitation and reconstruction projects shall also incorporate other cost-effective opportunities to enhance safety as required by 23 CFR 625.2.

Section 626.7 Eligibility.

This section is being revised to establish criteria to be used in determining eligibility of proposed projects. The current provisions contained in § 626.7, addressing the process of stage construction and Federal-aid Interstate Construction funding, are being deleted in their entirety. Stage construction, as previously defined, will no longer be used as a funding mechanism.

The first revision requires that the design of new and reconstructed pavements shall be a cost-effective solution based on the approved PMS. This cost-effective solution should include an analysis of the life cycle costs. It is essential that a SHA have sufficient data to document the life cycle costs and performance of each pavement type.

The second revision requires that the design of rehabilitated pavements shall provide for a minimum performance period of 8 years and be a cost-effective solution. The granting of exceptions is permissible when historical performance data and economic analyses indicate a lesser performance period would be appropriate. Any type of rehabilitation work may be eligible, providing that the SHA can document that the proposed design will perform satisfactorily over the performance period. As a minimum, this documentation should be supported by historical performance data.

The third revision requires that pavement maintenance not be eligible. The importance of adequate pavement maintenance of the pavement structure, including incidental items, is recognized as essential to satisfactory pavement performance. SHA's are expected to perform satisfactory maintenance with their own funds.

On April 24, 1985, the FHWA published a notice at 50 FR 16103 outlining the rulemaking procedures that would be taken to effectuate Federal adoption of the 1986 Guide, including an independent review by the FHWA and provisions for public comment. At the time of the April 24, 1985, notice, only a draft of the 1986 Guide had been completed by AASHTO. Since the publication for which the 1986 Guide was prepared to replace was incorporated by reference in Part 626, it was the intention of FHWA at that time to also incorporate by reference the 1986 Guide. As discussed above, the May 7, 1986, final rule announced a new publication citation policy which would differentiate between publications establishing Federal standards and publications containing guidance and informational material. Since the April 24, 1985, notice, the FHWA has determined that the 1986 Guide should be redesignated and placed in the "Guide and reference" section of § 625.5 and the incorporation by reference withdrawn. Although the incorporation by reference for the 1986 Guide is being withdrawn, the FHWA will still consider comments on the contents of the 1986 Guide as well as the Management Guide in the interests of public involvement and participation. Therefore, summaries of the 1986 Guide and Management Guide are being provided. Copies of the Guides may be purchased from AASHTO, 444 North Capitol Street NW., Suite 225, Washington, DC 20001 or copies of the Guides may be inspected in the Docket room as listed in the "ADDRESS" section above.

Summary of AASHTO Guide for Design of Pavement Structures (1986 Guide)

The following discussion provides a synopsis of the contents of the 1986 Guide and, as appropriate, any significant additions, revisions, or deletions made to the Interim Guide. The 1986 Guide outlines the procedures and guidelines for the structural design and rehabilitation of flexible (asphalt concrete) and rigid (portland cement concrete) highway pavements. The 1986 Guide is divided into four parts.

Part I is entitled "Pavement Design and Management Principles." Chapter 1 contains a general description of concepts and principles of pavement design as applied in the 1986 Guide. Chapter 2 introduces pavement management principles for the organization of design parameters into a systematic approach to obtain consistent and rational design recommendations. Chapter 3 examines the economic aspects of pavement design and rehabilitation. Chapter 4 provides a general description of the concept of pavement design reliability. Chapter 5 is a summary.

Part II is entitled "Pavement Design Procedures for New Construction and Reconstruction." Chapter 1 deals with introductory, background, and organization material while Chapter 2 identifies all the design requirements and inputs that will be required by the design procedure. Chapters 3 and 4 present the design methodology for highway pavements and low-volume roads, respectively.

Part III is entitled, "Pavement Design Procedure for Rehabilitation of Existing Pavements." Chapter 1 presents basic introductory, background, and organizational material and Chapter 2 discusses the alternative rehabilitation methods available and provides a basis for identifying feasible alternatives. Chapter 3 discusses the field data collection program. Chapter 4 discusses the details of evaluating rehabilitation methods other than overlays while Chapter 5 deals directly with the evaluation of overlay alternatives.

Part IV is entitled "Mechanistic-Empirical Design Procedures." The main objective of this part is to provide guidelines for use by agencies interested in developing and implementing improved and comprehensive design concepts for both new construction and for rehabilitation of in-service pavements.

The major changes which have been included in the 1986 Guide include the following considerations:

1. *Reliability*—The procedure for design of both rigid and flexible pavement provides a common method for incorporating a reliability factor into the design based on a shift in the design traffic.

2. *Soil support value*—The AASHTO test method T274 (resilient modulus of roadbed soils) is recommended as the definitive test for characterizing soil support. The soil property is recommended for use both with flexible and rigid pavement design.

3. *Layer coefficients (flexible pavements)*—The resilient modulus test has been recommended as the procedure to be used in assigning layer coefficients to both stabilized and unstabilized material.

4. *Drainage*—Provision has been made in the 1986 Guide to improve guidance in the design of subsurface drainage systems and for modifying the design equations to take advantage of improved performance attributed to good drainage design.

5. *Environment*—Improvements in the 1986 Guide have been made in order to account for the affects of environmental factors, e.g., forest heave, and swelling soils. Major emphasis is given to thaw weakening and the effect that seasonal variations have on performance.

6. *Tied shoulder and widened lanes (rigid pavements)*—A procedure is provided for the design of rigid pavements with tied shoulders or widened outside lanes.

7. *Subbase erosion*—A method for adjusting the design equations to represent possible soil erosion under rigid pavements is provided.

8. *Life cycle costs*—Information has been added relative to economic analysis and comparisons of alternate designs based on life cycle costs. Present worth and/or equivalent uniform annual cost evaluations during a specified analysis period are recommended for making economic analyses.

9. *Rehabilitation*—A major addition contained in the 1986 Guide is the inclusion of a section on rehabilitation. Information is provided for rehabilitation with or without overlays.

10. *Pavement management*—Background information is provided regarding pavement management and the role of the 1986 Guide in the overall scheme of pavement management.

11. *Load equivalency values*—Load equivalency values have been extended to include heavier loads, more axles, and terminal serviceability levels of up to 3.0.

12. *Traffic*—Extensive information concerning methods for calculating equivalent single axle loads and specific problems related to obtaining reliable estimates of traffic loading are provided.

13. *Low volume roads*—A special category for design of pavements subjected to a relatively small number of heavy loads is provided in the design section.

14. *Mechanistic-Empirical design procedure*—The state of the knowledge concerning mechanistic-empirical design concepts is provided in the 1986 Guide. While the actual design procedures have not, as yet, been incorporated into the 1986 Guide, extensive discussion is provided as to how such methods could be applied in the future.

Summary of AASHTO Guidelines on Pavement Management (Management Guide)

The publication defines the terms associated with pavement management. Both the network and project levels of pavement management activities are discussed. An approach to improved pavement management is provided as well as steps for implementing a new or enhanced pavement management system.

The FHWA, through this notice of proposed rulemaking, is requesting comments on the proposed policy revision and effect on the Federal-aid highway program, as well as comments on specific elements of the criteria contained in the 1986 Guide and Management Guide. A final rule will be issued on the proposed policy revision after careful analysis and consideration of public comments received. If at the time of issuance of the final rule, the 1986 Guide or Management Guide contain material not acceptable to the FHWA, such material would be noted and excluded, and as required, alternative critieria will be adopted for use on Federal-aid projects.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of these proposed revisions will be minimal. This determination is based on the fact that the SHA's will be required to merely formalize the pavement management processes that are currently being followed. In addition, the basic design criteria for pavement design remains essentially unchanged. The material contained in the publications "Guidelines on Pavement Management, AASHTO 1985" and the 1986 "AASHTO Guide for Design of Pavement Structures" is not in fact a policy or standard, but simply provides guidance for use at the discretion of the designer. The SHA's will be allowed to continue to use the same basic pavement design procedures based on past performances. Variations from present practices and technical criteria will not be significant. As stated in the preamble, the preparation of a Pavement Management System (PMS) should not place any undue burdens on the States' resources. As a practical matter, most SHA's have informally been establishing a procedure for the selection and design of new pavement structures and rehabilitation strategies. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), it is hereby certified that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping requirements that are included in the proposed regulation will be submitted for approval to the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Parts 625 and 626

Design standards, Grant programs—transportation, Highways and roads, Reporting requirements.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Chapter I of Title 23, Code of Federal Regulations, Parts 625 and 626 as set forth below.

Issued on: January 19, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA proposes to amend 23 CFR Part 625 and revise 23 CFR Part 626 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.5, amend paragraph (a)(7) by adding a footnote number three at the end of the sentence and add a new paragraph (a)(11) to read as follows. The text of paragraph (a)(7) is reprinted without change.

§ 625.5 Guides and references.

* * * * *

(a) * * *

(7) Guidelines on Pavement Management, AASHTO 1985.[3]

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(11) AASHTO Guide for Design of Pavement Structures, ASSHTO 1986.[3]

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3. Part 626 is revised to read as follows:

PART 626—PAVEMENT POLICY

Sec.
626.1 Purpose.
626.3 Definitions.
626.5 Policy.
626.7 Eligibility.

Authority: 23 U.S.C. 101(e), 109, and 315; 49 CFR 1.48(b).

[3] American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street N.W., Washington DC 20001.

§ 626.1 Purpose.

The purpose of this regulation is to set forth a policy to select, design and manage Federal-aid highway pavements in a cost-effective manner and identify pavement work eligible for Federal-aid funding.

§ 626.3 Definitions.

(a) *Analysis period.* The period of time over which life cycle costs are assessed in the study of pavement design alternatives.

(b) *Life cycle cost.* All ownership and user costs necessary to provide a serviceable pavement over the analysis period. These include construction, maintenance, rehabilitation, traffic disruption costs, and salvage value, etc.

(c) *Low-volume road.* A road where the structural design is based on 18-kip Equivalent Single Axle Loads (ESAL's) less than 1,000,000.

(d) *Pavement design.* That portion of the pavement management system which determines the material properties and the load carrying capacity of the pavement structure.

(e) *Pavement maintenance.* The preservation of the pavement structure, including joints, drainage, surface, and shoulders, as necessary for its safe and efficient utilization.

(f) *Pavement management.* Pavement management encompasses all the activities involved in the planning, design, construction, maintenance, evaluation, and rehabilitation of payments. A pavement management system (PMS) is a set of tools or methods that assist decision-makers in finding optimum strategies for providing, evaluating and maintaining pavements in a serviceable condition.

(g) *Pavement performance period.* The period of time that a newly constructed, rehabilitated or reconstructed pavement will perform before reaching its terminal serviceability. Also referred to as service life.

(h) *Pavement reconstruction.* Construction of the equivalent of a new pavement structure which usually involves complete removal and replacement of the existing pavement structure including new and/or recycled materials.

(i) *Pavement rehabilitation.* Resurfacing, Restoration, and Rehabilitation (3R) work undertaken to restore serviceability and to extend the service life of an existing facility. This may include partial recycling of the existing pavement, placement of additional surface materials or other work necessary to return an existing pavement including shoulders, to a condition of structural or functional adequacy.

(j) *Pavement structure.* A combination of a subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

§ 626.5 Policy.

(a) *Pavement Management.* Each State highway agency shall have a pavement management system approved by FHWA. The pavement management system is to be implemented within a reasonable length of time, not to exeed 4 years from the effective date of this regulation.

(b) *Pavement design.* Each State highway agency shall have a comprehensive process for the type selection and design of a new, reconstructed or rehabilitated pavement structure as part of its pavement management system. An analysis period of at least 30 years shall be used for all projects except that a shorter period may be used for low-volume roads. An engineering and an economic analysis (life cycle cost) of an appropriate range of strategies shall be performed. For existing pavements the analysis should include both reconstruction and rehabilitation alternatives.

(c) *Safety.* Each project involving construction of a pavement shall have a skid resistant surface. Pavement rehabilitation and reconstruction projects shall also incorporate other cost-effective opportunities to enhance safety as required by 23 CFR 625.2.

§ 626.7 Eligibility.

(a) *New and reconstructed pavements.* To be eligible for Federal-aid funding, the design of new and reconstructed pavements shall be a cost-effective solution based on the approved pavement management system required by 23 CFR 626.5.

(b) *Rehabilitated (3R) pavements.* To be eligible for Federal-aid funding, the design of rehabilitated pavements shall provide for a performance period of a least 8 years and be a cost-effective solution based on the approved pavement management system required by 23 CFR 626.5. Longer performance periods should be provided on high type, high volume facilities especially where traffic disruption costs are significant. The FHWA may approve exceptions to the recommended performance periods when historical performance data and economic analyses indicate that a lesser performance would be appropriate.

(c) *Pavement maintenance.* Pavement maintenance as defined under 23 CFR 626.3(e) is not eligible for Federal-aid funding.

[FR Doc. 88-1397 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-016]

Electrical Safety-Related Work Practices; Correction

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Proposed rule; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting the proposed standard on electrical safety-related work practices published in the **Federal Register** on November 30, 1987 (52 FR 45530).

DATE: Written comments and requests for a hearing on these proposed rules must be postmarked by February 29, 1988.

ADDRESS: All comments, objections, and hearing requests should be sent in quadruplicate to Docket Officer, Docket S-016, Rm. N3670, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210 (202-523-8148).

SUPPLEMENTARY INFORMATION: The **Federal Register** published on November 30, 1987, contained OSHA's proposed standard on electrical safety-related work practices. The notice, as published, contained some errors and inaccuracies. The following table lists these errors and the corresponding corrections.

There are also three clarifications that must be made with respect to the proposed miscellaneous changes as they were published in the **Federal Register**. The affected provisions of the General Industry Standards are: Sections 1910.67(b)(4), 1910.178(c)(2), and 1910.181(j)(5). In each case, the paragraph being proposed for amendment contains subparagraphs designated (i), (ii), (iii), etc. as well as an introductory paragraph at the level specified in the amendatory language. With respect to § 1910.178(c)(2), OSHA is proposing to change the introductory paragraph only; current paragraphs (c)(2)(i) through (c)(2)(xii) would remain unchanged. However, under the proposal, all of §§ 1910.67(b)(4) and 1910.181(j)(5) would be revised; current paragraphs (b)(4)(i) through (b)(4)(iv) of § 1910.67 and paragraphs (j)(5)(i) through (j)(5)(iv) of § 1910.181 would be deleted in the process.

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

This document is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 19th day of January, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

The following corrections are made to the proposed electrical safety-related work practices standard as it appeared in the **Federal Register** on November 30, 1987 (52 FR 45530-45549):

Section	FR page	Column and line	Correction
Preamble	45530	1st, 9th from bottom	Change "S-110" to "S-016."
Do	45531	3d, 2d from top	Add "s" to the word "brie".
Do	45534	1st, 32d from top	Change the word "become" to "because"
Do	45538	1st, 6th from bottom	Change "§1910.333(c)(3)(i)" to "§1910.333(c)(3)(ii)"
Do	45539	2d, 6th from top	Change "contract" to "contact".
Do	45539	2d, 26th from bottom	do
Do	45539	3d, 10th from bottom	Change "too" to "to".
Do	45539	3d, 17th from bottom	Change "of" to "or"
Do	45539	3d, 27th from bottom	Change "opasben" to "operation"
Do	45540	1st, 12th from top	Change "the" to "defective".
Do	45540	1st, last 2 lines (before the footnote); and 2d, first 4 lines, and the following table.	Add to footnote 4.
Do	45542	1st, 2d paragraph, 2d and 3d sentences	Change to read "For example, of 208 serious electrical injury and death reports, Electricians accounted for 47; Line Installers/Cable Splicers accounted for 16, and Powerline Troubleshooters accounted for 36; these occupations were identified as high risk. Crane Operators accounted for 26 injuries and deaths; these were placed in the elevated risk category."
Do	45544	3d, 24th and 25th from bottom	Change these two lines to read "13. The introductory language in paragraph (c)(2) of § 1910.178 would be revised to read as follows:"
1910.252 (a)(6)(iv)(c)(2)Do	45545	1st, 32d from top	Delete second "electric".
1910.333(b)(2)(i)	45546	2d, 14th from bottom	"Deenergizing equipment" should not be in italics.
1910.333(b)(2)(ii)	45546	3d, 12th from top	"Application of locks and tags" should not be in italics.
1910.333(b)(2)(iv)	45547	1st, 16th from top	"Reenergizing equipment" should not be in italics.
1910.333(b)(2)(iv)	45547	1st, 19th from top	Change "re-energized" to "reenergized"
1910.333(c)(3)(i)	45547	2d, 10th from top	"Unqualified persons" should not be in italics.
1910.333(c)(3)(ii)	45547	2d, 35th from top	"Qualified persons" should not be in italics.
1910.333(c)(3)(iii)	45547	3d, after table	"Vehicular and mechanical equipment" should not be in italics.
1910.335(a)(1)	45548	1st, 15th from top	"Personal protective equipment" should be in italics.
1910.335(a)(2)(ii)	45549	2d, 14th from bottom	Change "unqualified" to "unqualified".
1910.339	45549	3d, 7th from bottom	Add the word "a" after the word "with".

[FR Doc. 88-1391 Filed 1-25-88; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1926

[Docket Nos. S-205, S-206 and S-207]

Safety Standards for Scaffolds, Fall Protection and Stairways and Ladders in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of informal public hearing; limited reopening of written comment period.

SUMMARY: This notice schedules an informal public hearing concerning the notices of proposed rulemaking which OSHA issued on November 25, 1986, on scaffolds (51 FR 42680), fall protection (51 FR 42718) and stairways and ladders (51 FR 42750) used in the construction industry. This notice also reopens the comment period for written responses to OSHA's proposal on fall protection (51 FR 42718) for the limited purpose of obtaining additional information on appropriate fall protection coverage for workers engaged in steel erection activities. The Agency will use that information in developing a separate proposed rule covering fall protection in steel erection.

DATES: The hearing will begin at 9:30 a.m. on March 22, 1988, in Washington, DC, and continue beyond that day as necessary.

A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear, so parties will know more specifically when issues which concern them are to be raised at the hearing. Notices of intention to appear at the informal public hearing must be postmarked by March 8, 1988. Testimony and all evidence which will be offered into the hearing record must be postmarked by March 8, 1988. Written comments on the appropriate fall protection requirements for steel erection workers must be received by March 8, 1988.

ADDRESS: Four copies of the notice of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615.

Four copies of the written comments on the appropriate fall protection requirements for steel erection workers must be sent to the Docket Office, Docket No. S-206, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210.

The hearing will be held in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615. For additional information on how to submit notices of intention to appear see section on public participation below.

Proposal and Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On November 25, 1986, OSHA published Notices of Proposed Rulemaking (NPRM) which proposed to revise the safety standards in 29 CFR Part 1926 for scaffolds (51 FR 42680), fall protection (51 FR 42718) and stairways and ladders (51 FR 42750) used in construction work. Interested persons were initially given until February 23, 1987, to comment on the proposal and to request a hearing.

The comment period and the time for requesting an informal public hearing were extended twice, first to June 1, 1987 (52 FR 5790) and then to August 14, 1987 (52 FR 20616). In the last notice (52 FR 20616), OSHA also clarified the scope of the proposed fall protection standard and its application to steel erection work.

On June 9-10, 1987, OSHA consulted with the Advisory Committee On Construction Safety And Health (ACCSH) regarding the issues raised in the NPRMs. OSHA had consulted with the ACCSH before publishing the proposals, but granted the committee's request for further consultation. In addition to making recommendations regarding the issues raised in the proposals, the ACCSH suggested certain changes to the proposed regulations. In particular, the ACCSH recommended that OSHA delete the sentence in proposed § 1926.500(a)(1) which would exempt employers from proposed Subpart M "when employees are only inspecting, investigating or assessing workplace conditions." OSHA intended the sentence in question to apply only *before* construction work had been initiated at a workplace. The final rule will clarify the scope of any exemption.

OSHA is considering several ACCSH suggestions for inclusion in the revised standards. These suggestions are presented as hearing issues in order to generate additional information. OSHA will use that information to decide if it should adopt the ACCSH suggestions. These suggestions, discussed in more detail below, are summarized as follows:

- Locating scaffolds to avoid energized power lines contacting conductive materials used on the scaffolds (Issue L-5);
- Banning the use of manila rope and plastic rope as top rails and midrails in scaffold guardrail systems (Issue L-10);
- Defining the terms "ramp" and "runway" which appear in proposed § 1926.451(c)(4) (Issue L-12);
- Specifying in proposed § 1926.451(f)(2)(v) that a scaffold canopy shall not be more than nine feet above the working surface of the scaffold (Issue L-13);
- Replacing the proposed requirement in § 1926.502(c)(2) that safety nets extend at least 15 feet out from the structure with the following requirement taken from draft ANSI A10.11, Safety Nets Used During Construction, Repair and Demolition Operations (Issue M-4):

Perimeter net systems shall extend outward horizontally from the outermost working surface of the structure a distance equal to or greater than the distance listed in the following table for the applicable fall distance:

Distance of working level to horizontal plane of personnel net	Minimum required horizontal distance of outer edge of net from the edge of the working surface (Feet)
Up to 5 feet	8
More than 5 feet to 10 feet	10
More than 10 feet	13

- Making the note in § 1926.1053(b)(7), which covers placement of ladders on slippery surfaces, part of the standard. (Issue X-1).

The comments and objections received during the comment period focused on several concerns regarding the provisions and the clarified scope of the proposed fall protection standards. In addition, OSHA received several requests for a public hearing.

Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled an informal public hearing to begin on March 22, 1988, to receive testimony and other information pertinent to the issues raised in the hearing requests and at OSHA's initiative. Therefore, OSHA solicits testimony, with supporting information, on the issues presented below.

Subpart L

Issue L-1

In its NPRM of November 25, 1986, OSHA solicited publi comment (51 FR 42698, Issue Number 15) concerning proposed rule § 1926.460(d) which would require training and retraining, as necessary, for all employees using scaffolds. In particular, OSHA asked whether the training requirements should be less specific, following § 1926.21, or more specific than proposed. One commenter (Ex. 2-368) stated that employers should be required, at least, to furnish employees working on scaffolds with printed safety rules, require those employees to read the rules in the employer's presence and question the employees to see if they understand the rules. That commenter also suggested that "due to the extreme hazard associated with the use of suspended scaffolds, a written training program should be required" and that only employees certified to have completed the training program should be allowed to work on suspended scaffolds. Another commenter [Ex. 2-34], who requested a hearing, shared the belief that workers should be required to complete the appropriate training and "to carry a certificate or license which evidences completion" of the training, prior to working on suspended scaffolds. Also, one commenter (Exs. 2-2 & 2-34), who requested a hearing, recommended that OSHA establish a "licensing procedure" for employees who construct or install scaffolding higher than five feet. OSHA requests testimony and related information on any programs currently operating, whereby certificates or licenses are issued which indicate that employees have been adequately trained to erect, use or dismantle specific types of scaffolds.

Based on the comments discussed above, OSHA is considering whether or not it should change the proposal by adding a new section on certification to read as follows:

§ 1926.461 Certification.

(a) The employer shall certify that all employees who are erecting, maintaining and dismantling scaffolds, have been adequately trained in the appropriate

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precautions and safe practices before they are allowed to perform any such scaffold work.

(b) The employer shall certify that the employee has been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training or retraining was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health or designee.

OSHA believes that such a certification would not require the collection of "information" as defined in 5 CFR 1320.7(k)(1). Therefore, OSHA has determined that, under the terms of the Paperwork Reduction Act and the implementing regulations, the above language would not impose a paperwork burden on the employer. OSHA solicits testimony and other information on the language set forth above.

Issue L–2

OSHA solicited comment (51 FR 42897, Issue Number 11) on the possibility of lowering the 10 foot (3.0 m) maximum height, where work would be allowed without fall protection. The 10 foot limit is in existing § 1926.451(a)(3) and in proposed § 1926.451(e)(1).

In response to this issue, the ACCSH, at its meeting on June 9, 1987, (Tr. 115–116), recommended that OSHA replace the 10 foot limit with a requirement to have fall protection on all scaffolds regardless of their height. OSHA solicits testimony and related information on the ACCSH recommendation.

Issue L–3

OSHA proposed (51 FR 42898) to delete the paragraph on "Elevated and Rotating Work Platforms" currently in § 1926.451(f) because this paragraph was redundant with the requirements of existing § 1926.556, "Aerial lifts," in Subpart N, "Cranes, Derricks, Hoists, Elevators, and Conveyors". Both current regulations incorporate ANSI A92.2–1969 by reference. One commenter (Ex. 2–368) stated that OSHA should not delete this section but should instead, "recognize" the ANSI A92 series of provisions currently under development, in a subsequent rulemaking proceeding. OSHA requests testimony and related information on this recommendation.

Issue L–4

In the proposal, (51 FR 42899, Issue Number 20) OSHA asked if the Agency should prohibit or regulate the use of stilts. The Agency also asked what regulation would be appropriate if the use of stilts were permitted. OSHA was aware that some contractors feel they may not presently use stilts because the existing construction standards do not specifically mention them (EX. 2–66). Many contractors, however, interpreted Issue 20 as the first step towards a ban on the use of stilts for construction work. As a result, OSHA received over 460 comments in favor of allowing the use of stilts as a means of extending a worker's reach to do painting, finishing and other work on ceilings and walls. The comments stated that prohibiting the use of stilts would cause employees to sustain injuries from over-reaching and falling from ladder, stools, platforms, homemade benches, boards, inverted buckets and other devices they would otherwise use to elevate themselves to do painting, finishing and ceiling work. Many of the comments also indicated that some safety provisions, such as debris control, are necessary.

On June 9, 1987, the Advisory Committee on Construction Safety and Health considered prohibiting the use of stilts in all situations. However, the ACCSH deferred any recommendations on Issue 20 pending the receipt of information on the use of stilts in construction (Tr. 158–161).

Most of the comments reflect concern that OSHA plans to ban the use of stilts. While OSHA concedes that the wording of Issue 20 may have caused some confusion, the Agency intended the Issue to generate input solely on the question of what regulations, if any, should be developed for the use of stilts. OSHA's concern is with the proper use of stilts in all situations and not just when they are used on top of another scaffold. Therefore, OSHA is considering whether or not, based on the comments received, the proposed standard should contain the following provisions:

(1) Employees shall be prohibited from wearing stilts on scaffolds except when the employees are on large area scaffolds.

(2) When employees are on large area scaffolds where guardrail systems meeting the requirements of § 1926.451(e) are used to provide fall protection, or the employees are on walking/working surfaces where guardrail systems meeting the requirements of Subpart M are used to provide fall protection, the guardrail system shall be increased in height an amount equal to the height of the stilts.

(3) The surfaces on which stilts are used shall be flat and free of pits, holes and obstructions, such as debris, as well as all other tripping and falling hazards.

(4) Stilts shall be properly maintained and all alterations of the original equipment shall be approved by the manufacturer.

OSHA would be particularly interested in information which would help it define a "large area scaffold" and any other information bearing on the need to use stilts while on a scaffold and on the appropriate safety measures when using stilts. Therefore, OSHA solicits information on this issue.

Issue L–5

Proposed § 1926.451(d)(6) addresses the distance to be maintained when scaffolds are used in proximity to energized power lines. One commenter (Ex. 2–103) suggested that OSHA require the employer to notify the power company when scaffolds are to be erected near energized power lines and request the power company to de-energize the line or provide protective covering to prevent accidental contact. This suggestion is similar to OSHA's existing Subpart P requirement for employees to notify utility companies prior to excavating. Therefore, OSHA is considering whether or not, based on the comment received, the proposed standard should contain the following provision:

> Prior to erecting scaffolds in proximity to energized power lines, the employer shall notify the utility company of the proposed work, and shall request that the lines be de-energized or that protective coverings be provided to prevent accidental contact with the power line.

OSHA envisions that the above language would provide primary employee protection from electrical shock hazards. In that case, OSHA would need to clarify that proposed § 1926.451(d)(6) would apply if the affected employer could not obtain assurances from the utility company that the lines had been deenergized or adequately protected from contact. OSHA solicits testimony and other information on the above language.

In addition, on June 9, 1987, the ACCSH suggested (Tr. 204) that OSHA revise proposed § 1926.451(d)(6) to reflect concern that conductive material handled on a scaffold might contact exposed and energized lines even if the scaffold itself did not. To this end, the ACCSH recommended that proposed § 1926.451(d)(6) read as follows:

> Scaffolds shall not be erected, used or moved in such a way that they or any conductive material handled on them can come closer to exposed and energized power lines than as follows:"""

OSHA solicits testimony and related information on the above language.

Issue L–6

Proposed § 1926.451(c)(5)(ii) requires that integral prefabricated scaffold rungs shall have a minimum rung length of 11½ inches. OSHA has received a comment (Ex. 2–303) which states that scaffolds with integral prefabricated scaffold rungs which are eight inches, rather than the proposed 11½ inches, "provide safe access [to a work platform] equivalent to that of a ladder." Further, the commenter states that the 8-inch rungs "provide surer footing and a better climb than does or can a ladder." OSHA is considering whether or not, based on this comment, § 1926.451(c)(5)(ii) should read as follows:

> (ii) Have sufficient rung length to permit safe use as a means of access. Rungs less than 11½ inches in length shall be used for access only and not as work platforms.

OSHA solicits testimony and other specific information on the above language.

Issue L–7

In proposed § 1926.451, OSHA sets forth "General requirements" which apply to all scaffolds, including scaffolds used in smoke stack hoists (stack hoist scaffolds). OSHA is aware of ongoing efforts to update the ANSI standard A10.22, Safety Requirements for Rope Guided and Non-Guided Workmen's Hoists, and is concerned that revised provisions may also be needed in the OSHA standard to address the hazards unique to stack hoist scaffolds. For example, the platform and suspension systems that currently are being designed for use with stack hoists require design factors as high as 8.5 for imposed work loads and hoisting loads, as opposed to the design factor of 4 required under proposed § 1926.451(a)(1). Therefore, the Agency solicits testimony and related information on the extent to which proposed § 1926.451 adequately covers stack hoists. OSHA also requests testimony and information on any stack hoist hazards, or other scaffold hazards, not addressed by the general requirements.

Issue L–8

OSHA received two comments (Ex. 2–367 and 2–368) which suggested that the Agency add language to proposed § 1926.452(c)(5) to specify that side brackets on fabricated frame scaffolds "shall be used to support personnel only and shall not be used for storage or support of materials." However, no reason was given for this suggested limitation. The Agency believes that this area is adequately covered by proposed § 1926.451(a)(1), which sets forth capacity requirements, and proposed § 1926.451(d)(1), which prohibits overloading. However, OSHA solicits testimony and supporting information as to whether the suggested change is necessary.

Issue L–9

OSHA received a comment (Ex. 2–23) which suggested that proposed § 1926.452(i), outrigger scaffolds, be revised to add requirements that outrigger beams "extend not more than 6 feet beyond the face of the building" and that "open sides of the scaffold platform over 7½ feet above the ground shall be enclosed by a standard guardrail." OSHA notes that the commenter cites ANSI A10.8–1977 in support of its suggestion. OSHA solicits testimony and related information regarding this suggestion.

Issue L–10

On June 9, 1987, the ACCSH (Tr. 212) recommended that OSHA bar the use of manila rope and plastic rope as top rails and mid rails of guardrail systems used on scaffolds. This recommendation reflected ACCSH concern that manila rope and plastic rope lose strength quickly when exposed to water and sun. OSHA solicits testimony and related information on this recommendation.

Issue L–11

A commenter (Ex. 2–585), who requested a hearing, has suggested that the number of injuries and fatalities from falls would be reduced by using "tightly hung netting, which is both layered and wrapped around the scaffold." The commenter noted that such netting "is inexpensive and can be used for several projects." The commenter also noted that such nets are "clearly visible at construction sites of any Japanese city." OSHA is not familiar with this practice and solicits testimony and related information regarding the use of netting on scaffolding systems.

Issue L–12

On June 9, 1987, the ACCSH suggested [Tr. 208] that OSHA add definitions for "ramp" and "runway" to the proposed standard so that the requirements of § 1926.451(c)(4) would be clearly understood. In particular, a member of the ACCSH recommended that the Agency use the definition of ramp developed by the National Safety Council. OSHA solicits testimony and related information on these suggestions.

Issue L–13

On June 9, 1987, the ACCSH noted [Tr. 214–15] that the requirements for a canopy which would protect employees below a scaffold from falling objects, as provided by proposed § 1926.451(f)(2)(v), did not specify how far above the employees the canopy could be. The

ACCSH was concerned that a canopy set at 15 or 20 feet would not protect employees below. Therefore, the ACCSH recommended that OSHA specify nine feet as the proper height for a canopy. OSHA solicits testimony and related information on this suggestion.

Subpart M

Issue M-1

Steel Erection

OSHA has consistently maintained that fall protection for steel erection workers, except to the extent expressly regulated by Subpart R, is covered by existing §§ 1926.28(a), 1926.104, 1926.105 and Subpart M. OSHA proposed, in the NPRM for fall protection (51 FR 42718), to consolidate the provisions of §§ 1926.104, 1926.105 and Subpart M into a revised Subpart M. That proposal would not have amended the specific fall protection provisions contained in Subpart R. The Agency has received comments which indicate some disagreement and confusion regarding the application of proposed Subpart M to steel erection work. OSHA recognizes that these comments are due, in part, to the manner in which the proposal and the second comment period extension notice discussed this issue.

In the NPRM (52 FR 42736), OSHA set forth two provisions under § 1926.500 *Scope, application and definitions applicable to this subpart*, that contained exceptions to the proposed rule for employees performing steel erection work. The first provision, § 1926.500(a)(2)(iv) reads as follows:

(2) Section 1926.501 sets forth those workplaces, conditions, operations, and circumstances for which fall protection shall be provided except as follows:

* * * * *

(iv) Requirements relating to fall protection for connectors performing steel erection and requirements for fall protection for workers on derrick and erection floors during steel erection, are provided in 29 CFR 1926.750–1926.752 (Subpart R).

The second provision, § 1926.500(a)(3)(iii) reads as follows:

(3) Section 1926.502 sets forth the requirements for the installation, construction, and use of fall protection required by § 1926.501 and by other subparts of Part 1926, except as follows:

* * * * *

(iii) Specific requirements for safety railings used on derrick and erection floor during steel erection are provided in 29 CFR 1926.750 (Subpart R).

The intent of these proposed provisions was only to exclude connectors, while they were making initial connections of steel framing members, from coverage under proposed Subpart M. Commenters, however, apparently did not clearly understand which of the employees engaged in steel erection activities were to be covered by proposed Subpart M and which were to continue to be covered by Subpart R, Steel Erection.

Indeed, one commenter (Ex. 2–17) stated what its view of proposed Subpart M would be if it were intended to apply to steel erection work and, also, what its position would be if Subpart M were not to cover steel erection work. Other commenters (Exs. 2–45 and 2–53) requested that OSHA more clearly state the extent to which proposed Subpart M applied to steel erection work.

In an effort to dispel the apparent confusion, OSHA included a discussion of the application of Subpart M to steel erection work when the Agency extended the comment period on Subpart M for the second time (June 2, 1987, 52 FR 20616). In that notice, OSHA stated that the Agency intended the proposed fall protection requirements published in the NPRM, to cover all workers engaged in skeleton steel erection activities, except for those workers identified as connectors who worked on the derrick or erection floor making initial connections of steel framing members. OSHA further stated that the provisions of Subpart R would continue to cover fall protection for connectors as well as requirements related to the erection process. As OSHA stated in that notice, and repeats here, Subpart R only addresses fall hazards at elevations of 30 feet and over; the Agency has consistently maintained that falls from under 30 feet for steel erection employees are regulated by §§ 1926.28(a) and 1926.105(a). Indeed, on July 18, 1983, OSHA issued an instruction to the field, STD 3–3.1, which outlined how the fall protection requirements in §§ 1926.28(a) and 1926.105(a) applied to construction work, including steel erection work.

OSHA observed in the June 2, 1987 notice that the Advisory Committee on Construction Safety and Health (ACCSH) at its meeting on March 31 and April 1, 1987, agreed that the general fall protection requirements should be the same for steel erection as for other construction activities. However, the ACCSH believed that an exemption was necessary for the making of initial connections of steel framing members. (Tr. 200). OSHA also noted that the Agency was considering draft proposed revisions of the fall protection provisions for connectors as part of an anticipated separate rulemaking effort for Subpart R.

OSHA again met with the ACCSH on August 4, 1987, to discuss draft Subpart R revisions which were based, in part, on suggestions voted at the April 1, 1987 ACCSH meeting. In particular, as discussed above, the ACCSH had recommended that OSHA apply the proposed Subpart M provisions, which would require fall protection for employees working six feet above lower levels, to steel erection employees, except connectors performing initial connection work. For connectors, ACCSH recommended that OSHA not require connectors or other steel erection employees moving from point to point (one work location to another) to tie-off (use body belt/harness systems). OSHA notes that under proposed Subpart M, the use of body belt/harness systems (tying off) is not the only option available for fall protection. The use of nets, in particular, is perfectly acceptable. While OSHA raised the existence of other such fall protection equipment with the Advisory Committee, the ACCSH declined to make any recommendations to OSHA regarding use of that fall protection equipment by steel erection workers (Tr. 134–144).

OSHA has received a comment (Ex. 2–145) from the Safety Advisory Committee for the Structural, Ornamental, Rigging and Reinforcing Steel Industry (SAC), a labor-management group with the following membership: The International Association of Bridge, Structural, and Ornamental Ironworkers; the National Erectors Association; the National Association of Reinforcing Steel Contractors; the National Association of Miscellaneous, Ornamental and Architectural Steel Contractors; the Specialized Carriers and Rigging Association; the National Constructors Association; Institute of the Ironworking Industry; American Institute of Steel Construction; and the Allied Building Metal Industry, Inc. The comment stated that connectors should not be required to tie off when erecting steel structures at heights of 30 feet or less. The SAC supported its suggestion as follows:

> While the danger from falls obviously exists at heights above and below 30 feet, this committee feels that for purposes of establishing some type of arbitrary standard, 30 feet is appropriate.
>
> Fall from a height greater than 30 feet may pose a significantly greater danger of severe injury which would justify the use of a safety belt or harness at those heights. At heights of 30 feet or less, we feel that the iron worker is generally more safe being unencumbered. Thirty feet is an arbitrary number which we feel sets a reasonable limit of allowing freedom of movement up to a certain height at which the potential degree of injury increases and then justifies requiring the iron worker connector to be tied off.

The SAC also mentioned weather hazards, human error, and mechanical or equipment failures as considerations which supported its viewpoint.

The comment also stated that nets could not be used when working at 30 feet or less, explaining, as follows:

> * * * it is understood that the utilization of safety nets requires a secure framework for attachment. Therefore, until a framework has been completed and secured, safety nets could not be attached. A two story structure (30 feet) could not be reasonably secured for safety nets until the second story framework is adequately secured. The utilization of safety nets would not apply until the second story framework was secured or until additional stories were erected to which the safety net system could be attached below. It is also understood that erecting the perimeter framework above a 30 foot fall distance, or exposure to falls over 30 feet, would require the iron worker to either be tired off or be provided safety net protection. It is recognized by this Committee that the erection of safety nets under 30 feet, may expose the connectors who would erect the safety nets, to a falling hazard for a longer length of time than not using the net system at all. In these instances, rather than expose the safety net erector to a falling hazard, fall protection in the form of perimeter safety rail and temporary or permanent flooring would provide greater protection and less exposure to falls to the employees.

In addition to recommending an exemption from proposed Subpart M for initial connection work, the SAC recommended that workers moving from point to point be exempt from fall protection until they reached a position where they could tie-off or otherwise have fall protection, because, according to the SAC, "There is a great need for iron workers engaged in the erection, assembly, and placement of structural steel to have freedom of movement from one work place to another due to the particular requirements of the iron working industry." The SAC provided a list of 16 point-to-point tasks where it considered fall protection inappropriate. The list was as follows:

1. Bolt-up man moving from one location to another to install bolts.
2. Welder moving from one location to another to weld.
3. Plumb-up crew moving from one location to another to align the steel members.
4. Supervisors (foreman and pushers) moving from one location to another to supervise iron workers.
5. Decking crew moving from one location to another to place, align, and install metal decking.
6. Iron workers moving from one location to another to install perimeter safety cable.
7. Raising gang members moving from one location to another to erect structural steel.
8. Iron workers moving from one location to another to spread, lay or pick up and remove planking for temporary flooring.
9. Iron workers moving from one location to another to install and align grating and checker plate.
10. Iron workers moving from one location to another to install perimeter angles in connection with decking and bridge work.
11. Iron workers moving from one location to another to place, set and adjust sag rods or girts.
12. Iron workers moving from one location to another to distribute and align bar joists.
13. Iron workers moving from one location to another to install and weld bar joists.
14. Iron workers moving from one location to another to install stairways.
15. Iron workers moving from the top of a sheer wall or a column to another work area to install reinforcing steel.
16. Iron workers in a detail gang moving from one location to another in connection with various operations involved in steel erection.

OSHA solicits input regarding the exemption requests and supporting information submitted by the SAC.

In the course of this rulemaking, OSHA has become aware that some steel erection employers currently require all employees, including connectors, to tie off, except that connectors are permitted to disengage from their protective devices while a steel member is being hoisted into position. When the member is seated at its connection point, the connectors reattach their lifelines and complete the initial connection. OSHA observes that a public participant at the August 4, 1987 ACCSH meeting (Tr. 169) stated that he, as an employer, requires connectors to "tie off" when they're not in the actual process of connecting the iron. The participant explained that he felt connectors should be provided with body belts and lanyards for use when performing work where the probability of falling is increased. OSHA notes that one such case would be where a worker is using both hands to tighten a bolt and suddenly loses his balance. OSHA is particularly interested in learning more about the types and methods of fall protection currently available for steel erection.

OSHA has also received a comment (Ex. 2–137) which stated that:

> Connectors should have fall protection when fall hazards exceed six feet. Waist height perimeter cables can act as horizontal lifelines, can be installed without fall hazard and can provide continuous protection past intermediate columns.

OSHA would appreciate comment or testimony from any employers who are using this or similar systems.

OSHA has received comments in response to Issue #2 of the NPRM on fall protection (51 FR 42729) regarding the need for all protection during operations such as erecting roof trusses and steel erection on other than tiered buildings. For example, one commenter (Ex. 2–92) stated:

> Providing fall protection in these specific areas would be too restrictive and unfeasible. These operations require frequent movement, generally for short periods. Providing the necessary fall protection in these instances would expose those employees who are installing the equipment to more of a hazard than those doing the actual work.
>
> Additionally, any fall protection equipment installed becomes obstructive to the erection operation.

OSHA solicits testimony and related information on the concerns raised by the commenter. The Agency also requests testimony and information which would further help OSHA determine what fall protection would be appropriate during operations such as erecting roof trusses and steel erection on other than tiered buildings.

The rulemaking record developed to date indicates that the Agency needs more information in order to develop a revised standard covering fall protection for employees engaged in steel erection activities. The comments received to date have convinced the Agency to develop a separate proposed rule which will provide comprehensive coverage for fall protection in steel erection. OSHA intends, therefore, that the consolidation and revision of fall protection provisions in Subpart M not apply to steel erection and that the current fall protection requirements of Part 1926 continue to cover steel erection until the steel erection rulemaking is completed. Accordingly, in order to maintain coverage under existing fall protection standards pending completion of the separate steel erection fall protection rulemaking, OSHA plans to redesignate existing §§ 1926.104, 1926.105, 1926.107(b), 1926.107(c), 1926.107(f), 1926.500 (with Appendix A), 1926.501, and 1926.502 into Subpart R when the Agency issues the final rule for the Subpart M rulemaking. OSHA is raising questions in this hearing notice in order to obtain information regarding current and suggested fall protection practices in the steel erection industry. The Agency will use the information obtained through the hearing and the reopened comment period in drafting a notice of proposed rulemaking which would require the necessary fall protection for steel erection workers. OSHA solicits information, including testimony or written comments, regarding the fall protection necessary for steel erection employees.

OSHA seeks, in particular, input responsive to the following questions.

—What feasibility concerns arise regarding the use of ladders, scaffolds, or elevating and rotating work platforms, such as "cherrypickers," during erection work?
—How feasible is the use of waist height perimeter cables as horizontal lifelines or similar fall protection measures during steel erection work?
—As discussed above, OSHA has been asked to exempt connectors working at less than 30 feet from the proposed fall protection requirements. What basis is there for a 30 foot exemption?
—Is there a basis for setting the exemption at an elevation other than 30 feet? Please provide supporting information for any suggested alternative.
—How often do employees have to escape to lower levels to avoid incoming beams making contact with columns or employees? How do they escape?
—Have there been situations where framing members have been dislodged because they were struck by an incoming member? Please provide information on any such incidents.
—Do employers require employees to straddle ("coon") the beam when moving from point to point to perfom work? Please describe the circumstances where such straddling would take place.
—Do employers have employees descend to a lower level where they can walk on a safe surface from one work station to the next (point to point) and then ascend to the work location instead of "walking the beam" to reach the next work location, regardless of the distance between the two work locations? If not, should they?

Issue M–2

Concrete Erection

The Prestressed Concrete Institute (PCI) (Ex. 2–44) has commented that fall protection for employees erecting precast concrete components is "not appropriately covered by the proposed regulations" in Subpart M, because, according to the PCI, concrete erectors, like steel erectors, need more freedom of movement than proposed Subpart M would permit. Therefore, the PCI suggested that OSHA revise proposed Subpart M so that precast concrete erection would be regulated under Subpart R, Steel Erection. At the August 4, 1987 ACCSH meeting, a PCI representative reiterated the view that connectors of precast concrete members should be provided the same considerations as connectors of steel members, saying [Tr. 212]: "We feel that the erection procedures and exceptions for steel are basically the same as those for precast concrete * * * Basically, the fall protection of the steel connector, again, would be the same as that for the precast connector." The PCI subsequently submitted comments (Ex. 2–106 and 2–107) which requested that OSHA exempt concrete erectors from proposed leading edge protection requirements in Subpart M and that OSHA exempt hollow core slab erectors from perimeter protection provisions, except for those in proposed § 1926.502(h), Safety monitoring systems. OSHA requests testimony and other information on PCI's comments and suggestions.

Issue M–3

Manila and Plastic Rope

On June 9, 1987, the ACCSH recommended that OSHA add a ban on the use of manila rope or plastic rope for a toprail or midrail to the ban on the use of steel or plastic banding in proposed Subpart L, § 1926.451(e)(4)(xiii), which covers scaffold guardrail systems. ACCSH expressed concern that manila rope and plastic rope lose strength quickly when exposed to water and sun and, therefore, would be inappropriate for use as top rails or midrails of scaffold guardrail systems. While the ACCSH did not repeat this recommendation in the course of reviewing Subpart M, OSHA believes the same concern applies to guardrail systems covered by proposed Subpart M. Therefore, OSHA is considering whether or not, based on the ACCSH recommendation, it should revise the proposed fall protection requirements by adding the following language to paragraph (b) of § 1926.502: Manila rope and plastic rope shall not be used as top rails or midrails of quardrail systems. OSHA solicits testimony and other information on this language.

Issue M–4

On June 10, 1987, the ACCSH noted [Tr. 198–199] that proposed § 1926.502(c)(2), which requires that safety nets extend 15 feet out from the structure, was based on a National Bureau of Standards (NBS) study which indicated that nets which extended 8 feet from a structure, as required under existing § 1926.105(c)(1), would not catch someone who had fallen 25 feet. The ACCSH also noted that the ANSI A10.11 Committee, which develops consensus standards for safety nets, had reviewed the NBS study and determined that it was appropriate to account for the distance from the working surface to the net when setting new net requirements. The ACCSH agreed with the ANSI A10.11 Committee recommendation that nets be set out 8 feet when employees are 5 feet, or less, above them, 10 feet when the employees are between 5 and 10 feet above, and 13 feet when employees are more than 10 feet above the nets. Therefore, the ACCSH suggested that OSHA replace the proposed 15 foot requirement with the draft ANSI A10.11 provisions. The Agency requests testimony and related information on this recommendation

Subpart X

Issue X–1

At its June 10, 1987, meeting, the Advisory Committee on Construction Safety and Health (ACCSH) recommended that OSHA make the "Note" in proposed § 1926.1053(b)(7) a part of the standard. (Tr. 45). OSHA is considering, based on that recommendation, whether or not it should change the proposal to read as follows:

Section 1926.1053(b)(7) Ladders, including those with slip-resistant feet, shall not be used on slippery surfaces unless they are secured to prevent accidental displacement.

OSHA solicits comments on the above language.

Issue X–2

The ACCSH at its June 10, 1987, meeting raised an issue concerning the safe method of climbing ladders and the need for employees to carry materials or equipment up and down on ladders [Tr. 13–19]. An Advisory Committee member suggested that whenever a worker needed to take an item up a ladder, he should attach it to his belt or attach it to a hand line so that when he climbed to his work station he could pull it up. The committee thereupon recommended that "Nothing shall be carried up a ladder which will prevent the employee from having one hand on the ladder at all times." (Tr. 18). OSHA is considering, based on the ACCSH recommendation and existing § 1910.25(2)(vii) and 1910.28(3)(v), if it should change the proposal by adding new provisions to read as follows:

Section 1926.1053(b)(18) When ascending or descending a lader, the user shall be directed to face the ladder.

Section 1926.1053(b)(19) Employees shall be prohibited from carrying anything up or down a ladder which prevents the climber from having at least one hand on the ladder at all times.

OSHA solicits comments on the above language.

Public Participation

Comments

Written comments regarding the fall protection requirements appropriate for employees performing steel erection work must be postmarked by March 8, 1988. Four copies of these comments must be submitted to the Docket Office, Docket No. S–205, S–206 and S–207, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210 (202) 523–7894. All materials submitted will be available for inspection and copying at the above address.

Docket No. S–206, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–7894. All materials submitted will be available for inspection and copying at the above address.

Notice of Intention to Appear

Persons desiring to participate at the hearing must submit a notice of intention to appear, postmarked no later than March 8, 1988. The notice of intention to appear must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence and, if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing. Any party requesting more than 10 minutes for presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615, and must be postmarked no later than March 8, 1988.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the hearing.

Any party who has not substantially complied with the above requirement may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office, Docket Nos. S–205, S–206 and S–207, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210 (202) 523–7894.

The hearing will commence at 9:30 a.m., on March 22, 1988, in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will begin with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notices of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and a determination will be made to modify or not to modify the requirements based on the entire record of the proceeding.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under section 6 of the Occupational Safety and Health Act (29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911.

Signed at Washington, DC, this 19th day of January, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–1392 Filed 1–25–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–660–87–4133–02]

43 CFR Part 3590

Solid Minerals (Other Than Coal) Exploration and Mining Operations; Streamlining Amendment;

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the provisions of 43 CFR Part 3590 concerning solid minerals (other than coal) exploration and mining operations to streamline and clarify the existing regulations and to reduce the regulatory burden imposed on the public. The proposed rulemaking also would eliminate duplication of regulations which are currently under the authority of the Minerals Management Service. The proposed rulemaking makes no substantive changes to the existing regulations and requirements.

DATE: Comments should be submitted by March 28, 1988. Comments postmarked or received after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Paul Politzer, (202) 343–7722
or
Vance Greer, (202) 343–7722

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3590 were promulgated in 1972 as 30 CFR Part 231, and were recodified in 1983 as 43 CFR Part 3570 as a result of the transfer of solid minerals operations functions from Minerals Management Service to the Bureau of Land Management under

Secretarial Order 3087. Finally, 43 CFR Part 3570 was renumbered 43 CFR Part 3590 by the final rulemaking on 43 CFR Group 3500 published in the **Federal Register** on April 12, 1988 (51 FR 15204).

Throughout the proposed rulemaking, minor changes would be made in the organization, sentence structure, and wording of the text for the purpose of clarifying and streamlining the regulations. Additionally, and for the same reasons, the proposed rulemaking would add definitions of the terms "established requirements" and "ultimate maximum recovery" to § 3590.0–5. The term "established requirements" would be defined to mean all legal conditions, such as, applicable laws and regulations, lease, license, or permit terms, conditions and special stipulations, approved mine or exploration plan requirements, and order issued by the authorized officer which are binding on the operator/lessee. The use of this term is designed to streamline the regulations by avoiding repetition of all the applicable legal requirements throughout the text. The term "ultimate maximum recovery" is not new since it was included in the existing regulations, but the term has not been previously defined. It would be defined in the proposed rulemaking, using as its basis standard industry operating practices.

The proposed rulemaking would expand Subpart 3592, entitled *Maps and Plans*. This expansion would not increase the amount of information requested from an operator/lessee because the Bureau of Land Management currently obtains this information during its mine plan review. However, the proposed rulemaking would add to the regulations a more detailed listing of mine plan requirements which will be used by the operator/lessee and will facilitate the transmittal of a complete mine plan package. The required material is necessary for use by the authorized officer in reviewing and approving the plan and is not expected to cause an undue burden on the operator/lessee. The provisions in the proposed rulemaking are designed to speed the mine plan approval process by ensuring that the operator/lessee is aware of the information that must be submitted, thus avoiding, in most cases, requests by the authorized officer for additional information. However, the proposed rulemaking would not remove the authority of the authorized officer to require any additional information deemed necessary for approval of a plan. The public is specifically requested to review and comment on the expanded requirements in Subpart 3592.

The principal author of this proposed rulemaking is W. Vance Greer, Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management and staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

It has been determined that the likely impact per lease of the changes made by this proposed rulemaking will not exceed the economic threshold set forth in Executive Order 12291. Further, the impact of the proposed rulemaking will impact equally all operators/lessees, whether large or small.

The information collection requirements contained in this proposed rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004—0142.

List of Subjects 43 CFR Part 3580

Administrative practice and procedure, Indian lands—mineral resources, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); section 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2–460mm–4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), it is proposed to amend Part 3590, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 3590 is revised to read:

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

Note: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal leases which specifically refer to the United States Geological Survey, Minerals Management Service or the Conservation Division. These leases and agreements also often specifically refer to various officers as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR Part 231 or specific sections thereof. Those references shall now mean the Bureau of Land Management of Minerals Management Service, as appropriate.

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General

Sec.

3590.0–1 Purpose.
3590.0–2 Policy.
3590.0–3 Authority.
3590.0–5 Definitions.
3590.0–7 Scope.
3590.1 Confidentiality of information.
3590.2 Responsibility of the authorized officer.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

3591.1 General obligations of lessees, licensees and permittees.
3591.2 Forms and reports.

Subpart 3592—Maps and Plans

3592.1 Operating plans.
3592.2 Maps of underground workings and surface operations.
3592.3 Production maps.

Subpart 3593—Bore Holes and Samples

3593.1 Core or test hole, cores, samples, cuttings.

Subpart 3594—Mining Methods

3594.1 Ultimate maximum recovery.
3594.2 Support pillars.
3594.3 Boundary pillars and isolated blocks.
3594.4 Development on leased lands through adjoining mines as part of a mining unit.
3594.5 Minerals soluble in water; brines; minerals taken in solution.

Subpart 3595—Protection Against Mining Hazards

3595.1 Surface openings
3595.2 Abandonment of underground workings.

Subpart 3596—Waste From Mining or Milling

3596.1 Milling.
3596.2 Disposal of waste

Subpart 3597—Production Records

3597.1 Books of account.
3597.2 Value basis for royalty computation.
3597.3 Audits.

Subpart 3598—Inspection and Enforcement

3598.1 Inspection of underground and surface conditions; surveying, estimating and study.
3598.2 Issuance of orders.
3598.3 Service of notices, instructions and orders.
3598.4 Enforcement orders.
3598.5 Appeals.

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2–460mm–4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General

§ 3590.0–1 Purpose.

The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize or correct damage to the environment—land, water and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

§ 3590.0–2 Policy.

The regulations in this part are administered under the direction of the Director, Bureau of Land Management.

§ 3590.0–3 Authority.

Authority for carrying out the regulations in this part is set out in § 3500.0–3 of this title, unless otherwise noted.

§ 3590.0–5 Definitions.

As used in this part, the term:

(a) "Established requirements" means applicable law and regulations, lease, license or permit terms, conditions and special stipulations; approved mine or exploration plan requirements; and orders issued by the authorized officer.

(b) "General mining order" means a formal numbered order issued in a rule-making procedure by the Department of the Interior which implements the regulations in this part and applies to mining and related operations.

(c) "Lessee" means any person, partnership, association, corporation or municipality to whom a mineral lease has been issued, which lease is subject to the provisions of this part, or an assignee or sublessee of such lease under a transfer approved by the Bureau of Land Management.

(d) "Licensee" means any person, partnership, association, corporation or municipality to whom a mineral license has been issued, which license is subject to the provisions of this part, or an assignee of such license under an assignment approved by the Bureau of Land Management.

(e) "Permittee" means any person, partnership, association, corporation or municipality to whom a mineral prospecting permit has been issued, which permit is subject to the provisions of this part, or an assignee of such permit under an assignment approved by the Bureau of Land Management.

(f) "Operator" means anyone authorized to conduct operations pursuant to the regulations in this part.

(g) "Reclamation" means the measures undertaken to bring about the necessary reconditioning or restoration of lands or water affected by exploration, mining, on-site processing operations or waste disposal in a manner which, among other things, will prevent or control on-site or offsite damage to the environment.

(h) "Ultimate maximum recovery" means that all portions of a leased Federal mineral deposit shall be mined, based on standard industry operating practices. The requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the conservation of the mineral resource and protection of the other resources.

§ 3590.0–7 Scope.

The regulations in this Part govern operations for the discovery, testing, development, mining and processing of all minerals under lease, license or permit issued for Federal lands under the regulations in Group 3500 of this title or Part 3140 of this title. For operations involving the extraction of hydrocarbon from tar sands or oil shale by in-situ methods utilizing boreholes or wells, Part 3160 of this title is applicable. These regulations also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR Parts 211 and 212. Further, when the regulations in this part relate to matters included in 25 CFR Part 215 or 216 the regulations in this Part shall be considered as supplemental and the regulations in 25 CFR Part 215 or 216 shall govern to the extent of any inconsistencies.

§ 3590.1 Confidentiality of information.

(a) Information obtained under this Part and on file shall be open for public inspection and copying during regular office hours, pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 522(b)) and Part 2 of this title. Upon termination of a lease, license, or permit, whether by expiration of its terms or otherwise, such information shall become available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the lessee, licensee or permittee by marking each page of documents submitted with the words "CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" shall be available for public inspection.

(c) Confidential and privileged information obtained from a lessee under this Part on a restricted Indian lease shall be available only to the Tribe or allotted Indian lessor, their designated agent or authorized Department of the Interior officials. Such information shall not be made available to any other party without the express authorization of the Tribe or allotted Indian lessor.

§ 3590.2 Responsibility of the authorized officer.

The authorized officer is authorized under this part to regulate prospecting, exploration, testing, development, mining, processing operations, and reclamation authorized under this part. The duties of the authorized officer include, but are not limited to, the following:

(a) Inspection, at least quarterly, of leased, licensed or permitted lands where operations for discovery, testing, development, mining, reclamation, or processing of minerals are being conducted.

(b) Inspection and regulation of such operations for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits or nonmineral resources affected by the operations.

(c) Inspecting exploration and mining operations to determine the adequacy of water management and pollution control measures for the protection and control of the quality of surface and groundwater resources and the adequacy of emission control measures for the protection and control of air quality.

(d) Requiring operators to conduct operations in compliance with established requirements, including the law, regulations, the terms and conditions of the lease, license or permit, the requirements of approved exploration or mining plans, notices and orders and special stipulations.

(e) Obtaining the records of production of minerals in order to verify that production reported for royalty purposes is an accurate accounting of minerals produced.

(f) Acting on applications for suspension of operations and production filed under § 3503.3 of this title and terminating such suspensions when conditions warrant. The authorized officer shall, upon request, assist in review of applications for suspension of operations and production on Indian lands which are filed under the provisions of 25 CFR Parts 211 and 212.

(g) Upon receipt of a written request for cessation or abandonment of operations, inspecting the operations and determining whether they are in compliance with established requirements. The authorized officer shall, in accordance with applicable procedures, consult with, or obtain the concurrence of the State or Federal agency having jurisdiction over the lands with respect to the surface protection and reclamation requirements of the lease, license or permit and the exploration or mining plan.

(h) Reporting any mineral trespass to the agency having administrative jurisdiction over the lands in accordance with Part 9230 of this title.

(i) Implementing General Mining Orders and issuing other orders, making determinations and providing concurrence and approvals as necessary to implement or assure compliance with the regulations in this part. Any verbal orders, approvals or concurrences shall be promptly confirmed in writing.

(j) Prior to approving an exploration or mining plan, the authorized officer shall consult with the agency having administrative jurisdiction over the lands with respect to the surface protection and reclamation aspects of such plan.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

§ 3591.1 General obligations of lessees, licensees and permittees.

(a) Operations for the discovery, testing, development, mining or processing of minerals shall conform to the established requirements.

(b) The surface of lease, license or permit lands shall be reclaimed in accordance with established requirements. Lessees, licensees or permittees shall take such action as may be needed to avoid, minimize or repair:

(1) Waste and damage to mineral-bearing formations;

(2) Soil erosion:

(3) Pollution of the air;

(4) Pollution of surface or ground water;

(5) Damage to vegetation:

(6) Injury to or destruction of fish or wildlife and their habitat;

(7) Creation of unsafe or hazardous conditions;

(8) Damage to improvements; and

(9) Damage to recreation, scenic, historical and ecological values of the lands.

(c) All operations conducted under this part shall be consistent with Federal and State water and air quality standards.

(d) When the authorized officer determines that a water pollution problem exists, the lessee, licensee or permittee may be required to maintain records of the use of water, quantity and quality of waste water produced and disposed of, including mine drainage discharge, process wastes and associated wastes. In order to obtain this information, the lessee, licensee or permittee may be required to install a suitable monitoring system.

(e) Inundations, fires, fatal accidents, accidents threatening damage to the mine, the lands or the deposits, or conditions which could cause water pollution shall be reported promptly to the authorized officer. The notice required by this section shall be in addition to any notice or reports required by 30 CFR Part 56 or 57, or other applicable regulations.

§ 3591.2 Forms and reports.

The operator shall submit production and royalty forms and reports as prescribed by the Service.

Subpart 3592—Maps and Plans

§ 3592.1 Operating plans.

(a) Before conducting any operations under a lease, license or permit, the operator shall submit to the authorized officer an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease, license or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The authorized officer shall consult with any other agency involved, and shall promptly approve the plans or indicate what modifications of the plans are necessary to conform to the provisions of the established requirements. No operations shall be conducted except as provided in an approved plan.

(b) The exploration plan shall be submitted in accordance with mineral specific regulations in Group 3500 of this title (See Subparts 3512, 3522, 3532, 3542, 3552 and 3562) and in accordance with 25 CFR 216.6 for Indian lands.

(c) The lessee/operator shall submit 2 copies of the mining plan to the authorized officer for approval. The mining plan shall contain, at a minimum, the following:

(1) Names, addresses and telephone numbers of those responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered, names and addresses of lessees, Federal lease serial numbers and names and addresses of surface and mineral owners of record, if other than the United States;

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted;

(3) Two copies of a suitable map or aerial photograph showing the topography, the area covered by the lease, the name and location of major topographic and cultural features and the drainage plan away from the affected area;

(4) A statement of proposed methods, of operating, including a description of the surface or underground mining methods, the proposed roads, the size and location of structures and facilities to be built, mining sequence, production rate, estimated recovery factors, stripping ratios and number of acres to be affected;

(5) An estimate of the quantity and quality of the mineral resources, proposed cutoff grade and, if applicable, proposed blending procedures for all leases covered by the mining plan;

(6) An explanation of how ultimate maximum recovery of the resource will be achieved for the Federal lease(s). If a mineral deposit, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval;

(7) Appropriate maps and cross sections showing:

(i) Federal lease boundaries and serial numbers;

(ii) Surface ownership and boundaries;

(iii) Locations of existing and abandoned mines;

(iv) Typical structure cross sections;

(v) Location of shafts or mining entries, strip pits, waste dumps, and surface facilities; and

(vi) Typical mining sequence, with appropriate timeframes;

(8) A narrative which addresses the environmental aspects associated with the proposed mine which includes, at a minimum, the following:

(i) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(ii) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(iii) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety; and

(9) A reclamation schedule and the measures to be taken for surface reclamation which will ensure compliance with the established requirements. In those instances in which the lease requires the revegetation of an area affected by operations, the mining plan shall show:

(i) Proposed methods of preparation and fertilizing the soil prior to replanting;

(ii) Types and mixtures of shrubs, trees or tree seedlings, grasses or legumes to be planted; and

(iii) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees or tree seedlings, or combinations of grasses and trees;

(10) The method of abandonment of operations proposed to protect the unmined recoverable reserves and other resources, including the method proposed to fill in, fence or close all surface openings which are a hazard to people or animals. Abandonment of operations also is subject to the provisions of Subpart 3595 of this title; and

(11) Any additional information that the authorized officer deems necessary for approval of the plan.

(d)(1) Approved exploration and mining plans may be modified at any time to adjust to changed conditions or to correct an oversight. To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modification(s) shall not be implemented unless previously approved by the authorized officer.

(2) The authorized officer may require a modification to the approved exploration or mining plan if conditions warrant. Such modification may be appealed under Part 4 of this title.

(e) If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator/lessee shall not, however, perform any operation except under an approved plan.

§ 3592.2 Maps of underground workings and surface operations.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the authorized officer. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the authorized officer, vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys and certified by a professional engineer, professional land surveryor or other professionally qualified person. Accurate copies of such maps or reproductive material or prints thereof shall be furnished the authorized officer when and as required.

§ 3592.3 Production maps.

(a) The operator shall prepare maps which show mineral production from the leased lands. All excavations in each separate bed or deposit shall be shown in such a manner that the production of minerals for any royalty period can be accurately ascertained. Production maps shall be submitted to the authorized officer at the end of each royalty reporting period or on a schedule determined by the authorized officer. As appropriate or required by the authorized officer, production maps also shall show surface boundaries, lease boundaries and topography, including subsidence resulting from mining activities.

(b) In the event of failure of the operator to furnish the maps required by this section, the authorized officer shall employ a licensed mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator/lessee.

(c) If the authorized officer believes any map submitted by an operator/lessee is incorrect, the authorized officer may cause a survey to be made, and if the survey shows the map submitted by the operator/lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator/lessee.

Subpart 3593—Bore Holes and Samples

§ 3593.1 Core or test hole, cores, samples, cuttings.

(a) The operator/lessee shall submit promptly to the authorized officer a signed copy of records of all core or test holes made on the lands covered by the lease, license or permit. The records shall be in a form that will allow the position and direction of the holes to be located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas or unusual conditions. Copies of analyses of all samples shall be transmitted to the authorized officer as soon as obtained or as requested by the authorized officer. The operator/lessee shall furnish the authorized officer a detailed lithologic log of each drill hole and all other in-hole surveys, such as electric logs, gamma ray neutron logs, sonic logs or any other logs produced. The core from test holes shall be

retained by the operator/lessee for 1 year or such other period as may be directed by the authorised officer, and shall be available for inspection by the authorized officer. The authorized officer may cut such cores and receive samples as appropriate. Upon the request of the authorized officer, the operator/lessee shall furnish samples of strata, drill cuttings and mill products.

(b) Drills holes for development or holes for prospecting shall be abandoned to the satisfaction of the authorized officer by cementing and/or casing or by other methods approved in advance by the authorized officer and in a manner to protest the surface and not endanger any present or future underground operation or any deposit of oil, gas, other mineral substances or water strata.

(c) Logs and analyses of development holes shall not be required unless specifically requested by the authorized officer. Drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality or pressure of ground water or mine gases. Such conversion may be required by the authorized officer or requested by the operator/lessee and approved by the authorized officer. Prior to the termination of the lease, license or permit term, all surveillance wells shall be reclaimed unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation shall be approved in writing by the authorized officer.

(d) When drilling on lands with potential for encountering high pressure oil, gas or geothermal formation, drilling equipment shall be equipped with blowout control devices acceptable to the authorized officer.

Subpart 3594—Mining Methods

§ 3594.1 Ultimate maximum recovery.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water and air. All shafts, main exits and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the authorized officer.

(b) Information obtained regarding the mineral deposit being worked and other mineral deposits on the lease, license or permit shall be fully recorded and a copy of the record furnished to the authorized officer.

§ 3594.2 Support pillars.

Sufficient pillars shall be left during first mining to ensure the ultimate maximum recovery of mineral deposits prior to abandoment. All boundary pillars shall be 50 feet thick unless otherwise specified in writing by the authorized officer. Boundary and other main pillars shall be mined only with the written consent or by order of the authorized officer.

§ 3594.3 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to the regulations in this part has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the operator's/lessee's adjacent operations, and if no other hazards exists, the operator/lessee shall, on the written demand of the authorized officer, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the authorized officer determines that such ore can be mined without undue hardship to the operator/lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to the regulations in this part and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions of paragraphs (a) and (b) of this section.

§ 3594.4 Development on leased lands through adjoining mines as part of a mining unit.

An operator/lessee may mine a leased tract from an adjoining underground mine on lands privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) The only connections between the mine on lands privately owned or controlled and the mine on leased lands shall be the main haulageways, the ventilationways and the escapeways. Substantial concrete frames and fireproof doors that can be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The authorized officer may waive any of the requirements of this paragraph when it is determined such waiver will not conflict with the regulations in 30 CFR Part 57 and will not entail substantial loss of ore.

(b) Free access for inspection of said connecting mine on lands privately owned or controlled shall be given at any reasonable time to the authorized officer.

(c) If an operator/lessee is operating on a lease through a mine on lands privately owned or controlled does not maintain the mine access in accordance with the safety regulations, operations on the leased lands may be stopped by order of the authorized officer.

§ 3594.5 Minerals soluble in water; brines; minerals taken in solution.

In mining or prospecting deposits of sodium, potassium or other minerals soluble in water, all wells, shafts, prospecting holes and other openings shall be adequately protected with cement or other suitable materials against the coursing or entrance of water. The operator/lessee shall, when ordered by the authorized officer, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water. On leased, license or permit lands containing brines, due precaution shall be exercised to prevent the deposit from becoming diluted or contaminated by the mixture of water or valueless solution. Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of the leased lands without the written permission of the authorized officer.

Subpart 3595—Protection Against Mining Hazards

§ 3595.1 Surface openings.

(a) The operator/lessee shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, license or permit. Before abandonment of operations, all openings, including water discharge points, shall be closed to the satisfaction of the authorized officer.

(b) Reclamation or protection of surface areas no longer needed for operations will commence without delay. The authorized officer shall designate such areas where restoration or protective measures, or both, shall be taken.

§ 3595.2 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance, written approval of the authorized officer.

Subpart 3596—Waste from Mining or Milling

§ 3596.1 Milling.

The operator/lessee shall conduct milling operations under the terms of the established requirements. The operator/lessee shall use due diligence in the reduction, concentration or separation of mineral substances by mechanical or chemical processes or other means so that the percentage of salts, concentrates, or other mineral substances recovered and waste generated shall be in accordance with the established requirements.

§ 3596.2 Disposal of waste.

The operator/lessee shall dispose of all wastes resulting from the mining, reduction, concentration or separation of mineral substances in accordance with the terms of the lease, approved mining plan, applicable Federal, State and local law and regulations and the directions of the authorized officer.

Subpart 3597—Production Records

§ 3597.1 Books of account.

(a) Operators/lessees shall maintain records which show a correct account of all ore and rock mined, of all ore put through the processing plant, of all mineral products produced and of all ore and mineral products sold. The records shall show all relevant quality analyses or ore mined, processed or sold and the percentage of the mineral products recovered or lost.

(b) Production records shall be made available for examination by the authorized officer during regular business hours. For the purpose of production verification, the authorized officer may request, and the operator/lessee shall submit a copy of any portion of the production records not submitted to the Service as part of the operator's/lessee's royalty reporting.

§ 3597.2 Value basis for royalty computation.

The gross value for royalty purposes shall be determined by the Service.

§ 3597.3 Audits.

(a) An audit of the operator's/lessee's accounts and books may be made or directed by the Service in accordance with the provisions of Title 30 of the Code of Federal Regulations.

(b) An audit of the operator's/lessee's accounts and production records by the Service may be requested by the authorized officer if, during the process of verification of production, it is determined that an irregularity exists between reported production and production calculated by the authorized officer. Such audits shall be requested when the irregularity cannot be resolved between the operator/lessee and the authorized officer.

Subpart 3598—Inspection and Enforcement

§ 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.

Operators/lessees shall provide means at all reasonable hours, either day or night, for the authorized officer to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or other mineral product mined; to study the methods of prospecting, exploration, testing, development, processing and handling; to determine the volumes, types, and composition of wastes generated; to determine the adequacy of measures for minimizing the amount of such wastes and the measures for treatment and disposal of such wastes; to determine reclamation procedures and progress; production records; environmental concerns; and to determine whether the operator/lessee is in compliance with established requirements.

§ 3598.2 Issuance of orders.

Orders and notices issued by the authorized officer shall be mailed by certified mail, return receipt requested, to the operator/lessee at the address furnished in the exploration or mining plan. The operator/lessee shall notify the authorized officer of any change of address or operator/lessee name.

§ 3598.3 Service of notices, instructions and orders.

The operator/lessee shall be considered to have received all notices and orders that are mailed by certified mail and a receipt received by the authorized officer. Verbal orders and notices may be given to officials at the mine but shall be promptly confirmed in writing in accordance with § 3598.2 of this title.

§ 3598.4 Enforcement orders.

(a) If the authorized officer determines that an operator/lessee has failed to comply with established requirements, and such noncompliance does not threaten immediate, serious or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the authorized officer shall serve a notice of noncompliance upon the operator/lessee by delivery in person or by certified mail, return receipt requested. Failure of the operator/lessee to take action in accordance with the notice of noncompliance shall be grounds for the authorized officer to issue an order to cease operations or initiate legal proceedings to cancel the lease under § 3509.4 of this title.

(b) A notice of noncompliance shall specify how the operator/lessee has failed to comply with established requirements, and shall specify the action which shall be taken to correct the noncompliance and the time limits within which such action shall be taken. The operator/lessee shall notify the authorized officer when noncompliance items have been corrected.

(c) If, in the judgment of the authorized officer, the failure to comply with the established requirements threatens immediate, serious or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the authorized officer may, either in writing or orally with written confirmation, order the cessation of operations without prior notice.

§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 4 of this title. Orders issued under § 3598.4(c) of this Title shall be effective during the pendency of any appeal.

J. Steven Griles,

Assistant Secretary of the Interior.

August 24, 1987.

[FR Doc. 88-1475 Filed 1-25-88; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-470, RM-5440, RM-5762, and RM-5763]

Radio Broadcasting Services; Lake Lorraine and Niceville, FL, and Evergreen, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests additional information in the above docketed proceeding. The *Notice*, issued

at the request Michael J. Pollack, proposed allotting Channel 227A to Lake Lorraine, Florida. This *Further Notice* is necessary to request additional information regarding the community status of Lake Lorraine, before the requested channel can be allocated. The counterproposal of Emerald Coast Broadcasting proposed Channel 227A for use at Niceville, Florida, instead. In a *First Report and Order* we have allotted alternate Channel 262A to Niceville in lieu of Channel 227A. (53 FR 1629, January 21, 1988) The counterproposal of Wolff Broadcasting, licensee of Station WEGN–FM, Evergreen, Alabama, proposing to upgrade its Class A facility (Channel 228A) to operate on Channel 227C2 (RM–5763), is being considered in a separate proceeding (Docket 87–451).

DATES: Comments must be filed on or before February 29, 1988, and reply comments on or before March 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lewis I. Cohen, Cohen and Berfield, P.C., 1129—20th Street N.W., Washington, DC 20036. (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–470, adopted December 8, 1987, and released January 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter if no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1099 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–605, RM–6037]

Radio Broadcasting Services; Bismarck, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Randolph V. Bell, which proposes to allot Channel 225A to Bismarck, Illinois, as a first FM service.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Randolph V. Bell, 4314 Cherry Court, Evansville, Indiana 47715.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–605, adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1461 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[Docket No. 87–593, RM–6049]

Radio Broadcasting Services; Baker, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This document requests comments on a petition by Jeffrey G. Welsh proposing the allotment of FM Channel 297A to Baker, Louisiana as that community's first FM service.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–593, adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1462 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–601, RM–5990]

Radio Broadcasting Services; Galliano, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Callais Broadcasting, Inc., licensee of Station KBAU(FM), Galliano Louisiana, proposing to modify its license from Channel 232A to Class C2 facilities operating on the same Channel 232.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communication Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Esq., Hardy, Popham & Wirpel, 700 Camp Street, New Orleans, Louisiana 70130 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–601 adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 88–1462 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–602, RM–6091]

Radio Broadcasting Services; Roseburg, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Michael R. Wyatt proposing the substitution of Channel 276C2 for Channel 276A at Roseburg, Oregon, and the modification of his license for Station KRSB-FM to specify the higher powered channel. Channel 276C2 can be allocated to Roseburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) west to accommodate petitioner's desired transmitter site. In accordance with section 1.420(g), the Commission will not accept competing expressions of interest in the use of this co-channel at Roseburg nor require petitioner to demonstrate the availability of an additional equivalent channel.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rainer K. Kraus, Esq., Peter M. Connolly, Esq., Koteen & Naftalin, 1150 Connecticut Avenue NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–602, adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1464 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–604, RM–6089]

Radio Broadcasting Services; Waynesboro, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Pioneer Radio, Inc., licensee of AM Station WTNR at Waynesboro, Tennessee, proposing the allotment of Channel 235A to Waynesboro, as that community's first FM broadcast service. A site restriction of 3.9 kilometers (2.4 miles) south of the community is required.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should reserve the petitioners, or their counsel or consultant, as follows: Eugene F. Mullin, Esquire, Rhyne, Emmons, and Topel, P.C., 1000 Connecticut Avenue, Suite 500, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–604, adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1465 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–603, RM–6064]

Radio Broadcasting Services; Brownfield, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule

SUMMARY: This document requests comments on a petition by Brownfield Broadcasting Corp., licensee of Station KKTC (FM), Channel 280A, Brownfield, Texas, proposing the substitution of Channel 282C2 for Channel 280A at Brownfield and modification of its station's license to reflect the higher class channel, as that community's first wide coverage area FM station.

DATES: Comments must be filed on or before March 11, 1988, and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James D. Denison, General Manager, Brownfield Broadcasting Corp., 110 S. 5th Street, Brownfield, Texas 79316 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–603, adopted December 14, 1987, and released January 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1466 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 53, No. 16

Tuesday, January 26, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs; Demonstration Grants; Funds Availability

AGENCY: ACTION.

ACTION: Notice of availability of funds, demonstration grants.

SUMMARY: The Drug Alliance of ACTION announces the availability of approximately $545,000 to fund two demonstration grants under the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 570). Eligible applicants are public and private non-profit organizations and agencies, such as service organizations, religious institutions, foundations, national federations and councils, fraternities and sororities, associations, civic organizations, and research organizations.

Two grants will be awarded under a competitive selection process. One grant will be awarded in an amount up to $300,000 to conduct a series of up to 52 State conferences—up to one each in the 50 states, Puerto Rico and the District of Columbia—and a capstone symposium to be held in Washington, DC; another grant will be awarded in an amount up to $245,000 to conduct an at-risk youth initiative in nine urban cities and a community-based youth demonstration project in one city. Preference will be given to applicants who can match ACTION funds with private sector funds.

The purpose of these grants is to mobilize communities (parent and youth groups, businesses, service clubs, schools, churches, law enforcement, the print and broadcast media and state/local government agencies) toward positive drug prevention activities by providing them with the necessary information, resources, and tools to enable the creation of long-term local public/private coalitions working towards drug-free communities.

Applications are due by 5:00 p.m. EST on February 29, 1988. All applications that are complete and conform to the requirements of the program announcement will be considered.

A. Objectives

ACTION, the Federal Domestic Volunteer Agency, has been directed by the President and the Congress to respond to a national crisis: The proliferation of drug abuse across all sectors of our society. The Agency, historically a principal source of volunteer leadership in the United States, reaches out to those in need through the selfless efforts of families, friends, neighbors and fellow citizens. The insidious nature of drug abuse in this country, and its particular threat to young people, requires innovative and enduring programs of prevention and education—programs ACTION is uniquely prepared to foster through its demonstrated ability to encourage and sustain the spirit of voluntarism.

Recognizing the extent of the drug abuse problem, ACTION seeks to encourage the full mobilization of public and private organizations to pool their financial resources for drug abuse prevention programming. ACTION is interested in providing funding for one grant for eight months focusing on creating effective long-term local public and private coalitions among service organizations, youth organizations, parent/youth groups, businesses, the print and broadcast media, foundations, schools, and community-based volunteer agencies via a series of up to 52 state conferences, including up to one conference each for the 50 states, District of Columbia and Puerto Rico, and a capstone symposium to be held in Washington, DC. The conferences should arm participants with the necessary information, resources, and tools to enable them to form local coalitions working towards drug-free communities. The conferences should use a hands-on approach in showing how coalitions are formed. Commitments of support from the private sector should be solicited at the conferences. The involvement of governmental and community leaders should also be emphasized.

The conferences should be conducted at locations within the state where the majority of those working on drug abuse prevention and education will have the opportunity to participate. Applicants are not required to cover the cost of conference attendees; but, should describe their strategy plans for ensuring attendance of the low-income community at the conferences. All invitations should be personalized. Applicants should submit plans on the development of an instrument to measure the extent to which conference participants have met coalition-building objectives at their local level. The instrument will be implemented by the Agency as a follow-up to the conferences. Applicants should show plans to encourage state and local affiliates of national service organizations to participate in the conferences.

The capstone symposium should focus on the accomplishment of effective coalitions resulting from the state conferences and the results of the at-risk and youth demonstration projects described hereinafter. The symposium should include the top leadership of major national organizations. The symposium should offer each organization the opportunity to communicate and share the results of successful local public/private coalitions.

ACTION is also interested in providing funding for another grant for eight months to support at-risk youth projects in nine urban cities and a community-based youth demonstration project in one city. Applicants may elect to add or enhance components in existing projects in the localities rather than creating new projects. The at-risk youth program should develop and launch a broad-based volunteer effort to reach the young people in these localities who, due to a variety of economic and social circumstances, are most "at-risk" of becoming involved with drugs and alcohol.

The projects should be operated in close proximity to the areas where the abuse exists and should include those in the community working on the problem as well as those capable of providing financial, in-kind, and moral support to the community effort. The initiative should also assist local coalitions to develop a comprehensive program for the healthy development of urban youth, through the creation of positive alternative activities for youth as a tool to prevent drug usage. The selected sites

will be decided jointly by the selected grantee and ACTION.

The community-based youth project should guide young people to use their leisure time productively through community service activities. The project should consist of a leadership training workshop for both teen and adult volunteers, including the elderly, who will be selected by various community organizations to attend the workshop. Using a community needs assessment process learned during the training workshop, the volunteers should form teams to determine what kinds of projects would be helpful in their communities. The teenagers should select, plan, and implement the projects with minimal guidance from the adult leaders.

ACTION encourages the maximizing of private sector support through continuation and/or expansion of the at-risk youth projects. One of the criteria that applicants will be rated on is their plans to assist the nine at-risk projects and the one youth demonstration project in pursuing private sector funds.

ACTION requires that voluntarism be an integral part of project planning and that service delivery and activities be projected beyond the expiration of the ACTION grant through non-ACTION support. Project proposals under this announcement must reflect a clear understanding that ACTION funding is limited to a single, non-renewable grant.

B. Conditions

ACTION Drug Alliance grants are directed at programs of drug abuse prevention through public awareness and education, and are not intended to address intervention or treatment issues. Programs may not advocate the responsible use of any illegal drugs.

Applicants may submit proposals for ACTION funding up to $300,000 for the "conferences" grant and up to $245,000 for the "at-risk youth and community-based youth projects" grant.

Public agencies, and public and private non-profit organizations are eligible.

Applicants must provide a written statement indicating a willingness to participate in an evaluation conducted by ACTION.

C. Review Criteria

In addition to the conditions set forth above, all applications will be reviewed according to the following criteria to determine the extent to which:

1. The applicant's strategies and goals, private sector support strategy, and likelihood that the applicant will create lasting and effective state and/or local coalitions continued beyond the conferences;

2. Project goals and objectives are time-phased, quantifiable, measurable, and amenable to interim and final analysis;

3. The budget items are justified in terms of the proposed cost of project operation;

4. The proposed staff is capable of fulfilling the goals and objectives of the grant;

5. The project will be completed within the proposed timetable; and

6. The likelihood of private sector support. Preference will be given to applicants who can match ACTION funds with private sector funds.

Applications for the at-risk and youth demonstration projects grant will also be reviewed according to two additional criteria.

1. Target population will be included in implementing the planned model;

2. The applicant justifies the selection of the project goals and objectives and demonstrates a coherent plan for mobilizing volunteers and other resources to achieve a determined impact on the community's ability to prevent drug abuse.

D. Award Criteria

The following criteria will be considered in the decision to fund applications:

1. The overall quality of the project as determined by the Agency review process (Part C);

2. The significance of the project in terms of increasing knowledge of successful strategies to volunteer drug abuse prevention and education projects; and

3. Large geographical impact.

E. Available Funds and Scope of the Grant

ACTION announces that $545,000 is available for two grants under this announcement. Publication of this announcement does not obligate ACTION to award a grant, or any specific number of grants, or to obligate any specific amount of money for a grant.

F. Application Screening and Review Process

ACTION's Program Demonstration and Development Office will review and evaluate all eligible applications submitted under this announcement. The final selection from among the highest-rated applications will be made by the Associate Director for Domestic Operations.

ACTION reserves the right to ask for evidence of any claims of past performance of future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Drug Alliance Office, ACTION, Room M-513, 806 Connecticut Avenue NW., Washington, DC 20525. The deadline for receipt of applications is February 29, 1988. Only those applications received by 5:00 p.m. EST on this date will be eligible.

All applications must be submitted on OMB Form 3001-0091. In addition, applicants should submit: Endorsements from business partners and a written statement acknowledging that ACTION's funding role is limited to a maximum eight months for "conferences" applicants and eight months for "at-risk and community-based youth project" applicants and that the grants are non-renewable.

To receive an application form, please contact the Drug Alliance Office, ACTION, Room M-513, 806 Connecticut Avenue NW., Washington, DC 20525, (202) 634-9759.

Signed in Washington, DC, this 20th day of January, 1988.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 88-1439 Filed 1-25-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. FmHA hereby announces that it will receive preapplications January 26, 1988, and for 90 days thereafter.

DATES: The closing date for preapplication is April 25, 1988. Preapplication must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to FMHA field offices; applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris, Loan Officer, Multi-Family Housing Processing Division, FmHA, USDA, Room 5137, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1660 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: 7 CFR Part 1944, Subpart N provides details on what information must be contained in the preapplication package. See 51 FR 17443. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433-Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grantee can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1986 and 1987 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for a one-year proposal. For FY 1988, $19,140,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR Part 1940, Subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds.

Applications will be reviewed and rated on the project selection criteria contained in the regulations for the program.

Decisions on funding will be based on the preapplications; and, notices of action on the preapplications should be made within 60 days of the closing date.

Authority: (42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Date: January 20, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-1533 Filed 1-25-88; 8:45 am]

BILLING CODE 3410-07-M

Redelegation of Authority To Approve Debt Settlements and Releases of Liability in Connection With Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: The Farmers Home Administration (FmHA) gives notice that on September 25, 1987, the Administrator redelegated certain authorities to all State Directors dealing with the settlement of and/or release of liability to FmHA debts, owed by borrowers, who make application to settle their FmHA debts or request release of liability together with a voluntary liquidation of loan security. The redelegation authority granted on September 25, 1987, expired on December 31, 1987 and the Administrator now gives notice to extend that redelegation through September 30, 1988. This action is taken to expedite the processing of debt settlement applications/requests, to provide debt relief to borrowers leaving farming, who are unable to repay all of their FmHA debt. The effect of the extension of the redelegation of the Administrator's authority, is the continued expediting of the administrative review process for debt settlements and releases of liability, permitting more timely debt relief to FmHA borrowers, and correspondingly reduce the Agency's portfolio of inactive accounts.

EFFECTIVE DATES: September 25, 1987, through September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Darrow E. Strain, Farmer Programs Loan Servicing and Property Management Division, Direct Loans and Property Management Branch, FmHA, USDA, Room 5445, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-8293.

SUPPLEMENTARY INFORMATION:

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans, 10.406—Farm Operation Loans, 10.407—Farm Ownership Loans, 10.410—Low Income Housing Loans, 10.416—Soil and Water Loans, 10.417—Very Low Income Housing Repair Loans and Grants and 10.428—Economic Emergency Loans.

Notice

The notice of the delegation of authority for approving debt settlement/release of liability cases reads as follows:

This extends the authority given under the unnumbered memorandum dated September 25, 1987, entitled "Delegation of Authority for Approving Debt Settlement/Release of Liability Cases."

Pursuant to authority delegated to me as Administrator, Farmers Home Administration (FmHA), I hereby redelegate to State Directors authority to approve the following:

1. Debt settlement cases in accordance with § 1956.58(a)(3) of FmHA Instruction 1956-B "Debt Settlement-Farmer Programs and Single Family Housing," (revised 7-28-87, PN 59).

2. Releases of liability in accordance with § 1955.10(f)(2), and 1955.20(b)(2) of FmHA Instruction 1955-A, "Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property."

3. Releases of Liability in accordance with § 1962.34(b) of FmHA Instruction 1962-A, "Servicing and Liquidation of Chattel Security," and §§ 1965.26(f)(5)(ii) and 1965.27(f) of FmHA Instruction 1965-A, "Servicing of Real Estate Security For Farmer Programs Loans and Certain Note-only Cases."

This authority DOES NOT extend to debt settlement of Non-Program (NP) loans, Economic Opportunity (EO) loans and claims against third party converters. These should be prepared and submitted in accordance with FmHA AN No. 1710(1956) dated December 30, 1987.

This extension of the redelegation shall be effective through September 30, 1988, unless revoked or otherwise modified, in writing.

Date: January 20, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-1532 Filed 1-25-88; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Saline Bayou National Wild and Scenic River Classification and Boundary Delineation for Saline Bayou, Natchitoches and Winn Parishes, LA; Availability

AGENCY: Forest Service, USDA.

ACTION: Notice of the availability of the boundaries and classification of Saline

Bayou, Louisiana; Natchitoches and Winn Parishes, Louisiana.

SUMMARY: Public Law 99–590, containing amendments to the Wild and Scenic Rivers Act which were enacted by Congress and signed into law on October 30, 1986, designated Saline Bayou from Saline Lake to the Kisatchie National Forest boundary as a component of the National Wild and Scenic Rivers system to be administered by the Secretary of Agriculture. The USDA Forest Service has classified Saline Bayou as scenic and has delineated the river corridor boundaries as required by the Wild and Scenic Rivers Act as amended. Detailed boundaries establish the area that will be addressed in a comprehensive management plan for the river.

ADDRESSES: River boundaries have been prepared and are available for review at the following offices:

USDA Forest Service, Recreation, South Building, 12th and Independence Avenue SW., Washington, DC 20250.
Southern Regional Office, 1720 Peachtree Road NW., Atlanta, Georgia 30367
Kisatchie National Forest, 2500 Shreveport Highway, Pineville, Louisiana 71360
Winn Ranger District, Winnfield, Louisiana 71483

FOR FURTHER INFORMATION CONTACT: Gerald Barnett, Forest Planner, 2500 Shreveport Highway, Pineville, Louisiana 71360, telephone (318) 473–7160.

John L. Rich,
Acting Regional Forester.

[FR Doc. 88–1440 Filed 1–25–88; 8:45 am]
BILLING CODE 3410-11-M

National Agricultural Statistics Service

Reinstatement of Barley Production and Stocks Reports

Notice is hereby given that the National Agricultural Statistics Service (NASS) will reinstate July 1 and September 1 barley production estimates. Currently, only an August 1 production forecast is made. Also, barley stocks reports for September 1, December 1, and March 1 will be restored effective September 1, 1988. Since the June 1 stocks report is currently being published, this change will provide barley stocks reports for all four quarters to data users. These changes bring the barley estimating program to the level prior to the program reductions made in 1986.

Funding for increasing the barley production and stocks estimating program was included in the 1988 appropriation for NASS.

Comments from interested persons regarding these changes should be addressed to Richard D. Allen, Deputy Administrator for Programs, NASS/USDA, Room 4133–S, Washington, DC 20250.

Dated: January 21, 1988.

Charles E. Caudill,
Administrator.

[FR Doc. 88–1482 Filed 1–25–88; 8:45 am]
BILLING CODE 3410-20-M

Soil Conservation Service

Friendship Park Critical Area Treatment RC&D Measure, Allegany County, NY

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Friendship Park Critical Area Treatment RC&D Measure, Allegany County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for stabilization of a degrading stream channel which is undermining a wall at the edge of a part in the Village of Friendship. The critical erosion, which occurs during high runoff events, threatens the continued existence of the park as well as an adjacent road bridge and village water and sewer lines. The integrity of the park, bridge, and adjacent utilities will be assured through the installation of project measures. The planned works of improvement include the installation of three rock riprap sills and aprons across the stream channel, and seeding and mulching of all disturbed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Paul A. Dodd,
State Conservationist.

Date: January 11, 1988.

[FR Doc. 88–1441 Filed 1–25–88; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel slabs.

EFFECTIVE DATE: Comments must be submitted no later than February 6, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products * * *."

We have received a short-supply request for certain low carbon steel slabs, eight to nine inches in thickness, 30 to 38 inches in width, 285 inches in length, continuously cast and vacuum degassed, free of sub-surface inclusions with a cleanliness requirement of 250 inclusions per square meter maximum, for use in the manufacture of draw redraw food containers.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than February 5, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central records Unit, Import Administration, U.S. Department of Commerce, Room B-099, at the above address.

January 19, 1988.

Gilbert B. Kaplan,
Acting Assistant Secretary for Import Administration.

[FR Doc. 88–1529 Filed 1–25–88 8:45am]
BILLING CODE 3510-DS-M

Masters, Mates, and Pilots Mates Program; Consolidated Decision on Application for Duty-Free Entry of Scientific Instruments

This is a consolidated decision made pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897, 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Numbers: 82–194 and 82–332.
Applicant: Masters, Mates and Pilots MATES Program, The Maritime Institute of Technology and Graduate Studies (MITAGS), 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090.
Instruments: Two (2) Navigational Simulator Systems, one (82–332) with a Motion Platform.
Manufacturer: Vereinigte Flugtechnische Werke-Fokker GmbH (VFW), West Germany.
Intended Use: See notice at 47 FR 25396.
Comments: None received within the regulatory time frame. We received additions to the record from several individuals experienced in navigation and one from a domestic manufacturer of navigational simulator systems.
Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for such purposes as they are intended to be used, is being manufactured in the United States.
Reasons: We denied these applications on April 25, 1983 (48 FR 17632), on the ground that the articles possessed no scientific value for the purposes for which they were intended to be used. The applicant appealed.

On March 5, 1984, the United States Court of Appeals for the Federal Circuit (CAFC), 727 F2d 748 (1984), reversed and remanded our decision. The CAFC directed us to "perform a proper scientific equivalency evaluation in order to determine whether simulators can be imported duty-free."

We have now completed this evaluation. To give greater reliability to our findings, we visited two sites of operational navigational simulator systems. The first visit was to CAORF, the U.S. -made simulator facility operated by the National Maritime Research Center of the U.S. Department of Transportation located at Kings Point, New York. We then visited the MITAGS facility at Linthicum Heights, Maryland, where the foreign systems have been in operation since 1982–83.

The law requires us to find that the foreign article possesses at least one feature needed for the applicant institution's scientific or scientific education purposes and that no domestic article possesses a similar feature permitting the satisfaction of these purposes. We conclude that a particular specification is "pertinent" when the applicant demonstrates a necessary connection between the instrument's capability and the achievement of its purpose. The applicant's simulator will be used to give experienced ship officers advanced training in the principles of shiphandling in a variety of environmental settings.

The applicant claimed the following specifications pertinent to its purposes:

- 360-degree field of view,
- A continuous, seamless presentation,
- A high degree of resolution (one minute of arc),
- Full color day or night presentation.

The applicant also alleged that its need for reasonable costs of operating the facility was pertinent, but the regulations do not permit our consideration of such factors.

The result of our review is that the applicant has shown that at least one of these required features is not satisfied by the domestic system. Our consultant advises that the best resolution available on a CGI system of the type manufactured by the domestic firm is approximately 1.8 minutes of arc. The foreign system achieves resolution of one minute of arc. Our visual observation of the two systems confirmed the superior acuteness of image (lights) in the foreign system.

Frank W. Creel,
Director, Statutory Import Programs Staff.

[FR Doc. 88–1550 Filed 1–25–88; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Scoping/Planning Meeting for the Development of an Environmental Impact Statement Governing the Incidental Take of Marine Mammals During Domestic Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of intent to prepare an EIS and hold a scoping meeting.

SUMMARY: The National Marine Fisheries Service (NMFS) intends to prepare an Environmental Impact Statement (EIS) governing the incidental taking of marine mammals during commercial fishing operations within the U.S. exclusive economic zone. This NMFS is convening a scoping meeting to ensure that all interested parties have an opportunity to advise on the issues which need to be considered in developing the EIS.

DATE: The Scoping Meeting will be held in Washington, DC, on March 22, 1988; 9:00 a.m.–Noon.

ADDRESS: Universal Building South, Room 928, 1825 Connecticut Avenue NW., Washington, DC.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead or R.B. Brumsted (202/673–5351).

SUPPLEMENTARY INFORMATION: The general permits issued under section 104 of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*: MMPA) for 1984–88 to domestic commercial fishermen (except yellowfin tuna purse seine fishermen) will expire on December 31, 1988. In anticipation of receiving new applications during 1988, NMFS is initiating the consultation process under the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) to consider reissuance of five-year domestic general permits and annual foreign general permits for the period January 1, 1989–December 31, 1993.

An EIS will be prepared to present information on the status of marine mammal species involved, the impact of various commercial fisheries on marine mammals, and the impact of any alternatives to issuing permits on the impacted marine mammal stocks. The public scoping meeting will be held to ensure full opportunity for interested members of the public and government agencies to advise NMFS on the issue, alternatives, and impacts which should be addressed in the EIS.

Date: January 15, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–1512 Filed 1–25–88; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Issuance of Permit; North Gulf Oceanic Society (P351B)

On August 28, 1987, notice was published in the **Federal Register** (52 FR 32500) that an application had been filed by North Gulf Oceanic Society, P.O. Box 156, Cordova, Alaska 99674, to inadvertently harass humpback whales (*Megaptera novaeanglice*) during photo-identification studies for the purpose of scientific research.

Notice is hereby given that on January 14, 1988, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to North Gulf Oceanic Society subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the permit are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802, and;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: January 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88–1510 Filed 1–25–88; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; The Ocean Reef Club (P383)

On August 26, 1987, notice was published in the **Federal Register** (52 FR 32157) that an application had been filed by the Ocean Reef Club, Key Largo, Florida 33037, for a permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display at the Ocean Reef facility.

Notice is hereby given that on January 15, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20009;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: January 15, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–1511 Filed 1–25–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 25, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 21, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Performance and Financial Status Reports for the Cooperative Education Program
Agency Form Number: ED 411, 411–1.
Frequency: Annually.
Affected Public: Non-profit institutions.

Reporting Burden

Responses: 195
Burden Hours: 1024

Recordkeeping

Recordkeepers:
Recordkeepers: 0
Burden Hours: 0
Abstract: Non-profit institutions of higher education that have participated in the Cooperative Education Program are required to submit these reports to the Department. The Department uses the information collected to assess the accomplishments of program goals and objectives, and to close out grants.

Office of Vocational and Adult Education

Type of Review: Extension
Title: Reporting Requirements Under the Carl D. Perkins Vocational Education Act of 1984
Agency Form Number: C30–1P
Frequency: Biennually
Affected Public: State and local governments

Reporting Burden

Responses: 4212
Burden Hours: 1,638,712

Recordkeeping

Recordkeepers: 0
Burden Hours: 0
Abstract: States are required to report on organizations and local educational agencies that participate in the State-administered programs under the Carl D. Perkins Vocational Education Act of 1984, as amended. The Department uses the information to determine compliance with the Act and effectiveness of vocational education programs.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Services for Deaf-Blind Children and Youth
Agency Form Number: B20–10P
Frequency: Annually
Affected Public: State or local governments

Reporting Burden

Responses: 22
Burden Hours: 176

Recordkeeping

Recordkeepers: 22
Burden Hours: 198
Abstract: These forms will be used by State agencies that have received funds under the Services for Deaf-Blind Children and Youth Program. The Department uses the information in preparing the Annual Report to Congress.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Library Services and Construction Act Financial, Performance and Completion Report for State Administered Programs Titles I, II, and III.
Agency Form Number: ED 921–1, 921–2, 915–1
Frequency: Annually
Affected Public: State or local governments

Reporting Burden

Responses: 54
Burden Hours: 2160

Recordkeeping

Recordkeepers: 54
Burden Hours: 54
Abstract: These forms are used by State library administrative agencies that receive funds under the Library Services and Construction Act, as amended. The Department uses the information collected to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 88–1535 Filed 1–25–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–45–NG]

Continental Natural Gas, Inc., Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Continental Natural Gas, Inc. (CNG), blanket authorization to export natural gas. The order issued in ERA Docket No. 87–45–NG authorizes CNG export up to 47.5 of Bcf of natural gas over two-year period to Canada beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 12, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 88–1528 Filed 1–25–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ST81–260–011]

Enogex, Inc.; Petition for Declaratory Order

January 21, 1988.

Take notice that on December 18, 1987, Enogex, Inc., Post Office Box 24300, Oklahoma City, Oklahoma, 73124–0300, filed in Docket No. ST81–260–011 a petition for clarification of an order issued May 20, 1982, in Docket No. ST81–260 [1] authorizing transportation service on behalf of El Paso Natural Gas Company (El Paso) for a term of 15 years, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Enogex, a successor in interest to Mustang Fuel Company (Mustang), is an intrastate pipeline engaged in the

[1] 19 FERC ¶ 61,168 (1982).

transportation of natural gas owned by El Paso within Oklahoma. In 1981, Mustang entered into a transportation agreement pursuant to section 311 of the Natural Gas Policy Act of 1978 to transport gas purchased by El Paso. On May 1, 1981, Mustang filed in Docket No. ST81–269 a petition for Commission approval of Mustang's proposed transportation rate. On February 17, 1982, Mustang filed in Docket No. CP82–206 for authorization to continue the transportation for El Paso for a primary term of 15 years. In a letter filed February 17, 1982, Mustang proposed a settlement of the issues in these proceedings. The Commission approved the settlement by order issued May 20, 1982. The approved settlement agreement provided for a term of 15 years.

Subsequent to the issuance of the order approving the settlement, the Commission issued Order Nos. 436 and 500.[2]

These orders restricted continuance of prior intrastate transportation agreements. Transportation by intrastate pipelines on behalf of interstate pipelines was to expire October 9, 1987, at the latest. However, this transaction authorized in 1982 was not, like most arrangements under section 311, a two-year self-implementing transaction. Because the 1982 order authorized transportation for 15 years, Enogex contends that Order Nos. 436 and 500 appear to contradict the prior authorization. Enogex requests that the Commission determine the status of its authority to transport gas for El Paso.

Any person desiring to be heard or to protest said filing should on or before February 11, 1988, file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1522 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01

[Project No. 6876–003]

Fillmore City Corp.; Surrender of Conduit Exemption

January 21, 1988.

Take notice that Fillmore City Corporation, exemptee for the proposed Chalk Creek Project No. 6876 requested that its exemption be terminated. The exemption was issued on May 28, 1985. Construction of the project has not commenced. The project would have been located on Chalk Creek in Millard County, Utah.

The exemptee filed the request on November 17, 1987, and the exemption for Project No. 6876 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1523 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–729–001]

Phillips Gas Marketing Co.; Application for Extension

January 20, 1988.

Take notice that on January 4, 1988, Phillips Gas Marketing Company (Phillips GMC), 800 Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act requesting extension of the blanket limited-term certificate authorization issued in Docket No. CI87–729 for a period of three years effective April 1, 1988.

Phillips GMC states that it needs the authorization requested to permit the purchase and resale of gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, and any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries to the previous purchasers.

Phillips GMC also requests waiver of Part 154 of the Commission's regulations as to the establishment and maintenance of rate schedules and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) and Part 271 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Phillips GMC to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1517 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–229–000]

Phillips Petroleum Co.; Application for Extension

January 20, 1988.

Take notice that on January 4, 1988, Phillips Petroleum Company (Phillips), 800 Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act requesting consolidation and extension of the blanket limited-term abandonment and certificate authorizations issued in Docket Nos. CI86–429 and CI87–384 for a period of three years effective April 1, 1988.

Phillips requests consolidation of the authorizations granted in Docket No. CI86–429, for NGA gas priced higher than the NGPA section 109 ceiling price, and in Docket No. CI87–384, for NGA gas priced at or lower than the NGPA section 109 ceiling price.

Phillips also requests waiver of Part 154 of the Commission's regulations as to the establishment and maintenance of rate schedules and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) and Part 271 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Phillips to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1518 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–785–001]

Phillips 66 Natural Gas Co.; Application for Extension

January 20, 1988.

Take notice that on January 4, 1988, Phillips 66 Natural Gas Company (Phillips 66 NGC), 800 Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act requesting extension of the blanket limited-term certificate authorization issued in Docket No. CI87–785 for a period of three years effective April 1, 1988.

Phillips 66 NGC states that it needs the authorization requested to permit the purchase and resale of gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, and any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries to the previous purchasers.

Phillips 66 NGC also requests waiver of Part 154 of the Commission's regulations as to the establishment and maintenance of rate schedules and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) and Part 271 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Phillips 66 NGC to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1519 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–385–002]

Phillips 66 Natural Gas Co.; Application for Extension

January 20, 1988.

Take notice that on January 4, 1988, Phillips 66 Natural Gas Company (Phillips 66 NGC), 800 Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act requesting extension of the blanket limited-term abandonment and certificate authorization issued in Docket No. CI87–385 for a period of three years effective April 1, 1988.

Phillips 77 NGC also requests waiver of Part 154 of the Commission's regulations as to the establishment and maintenance of rate schedules and the filing of blanket affidavits pursuant to §§ 154.94(h) and 154.94(k) and Part 271 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 3, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Phillips 66 NGC to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1520 Filed 1–25–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–8–000]

Volkswagen of America, Inc.; Petition for Declaratory Order

January 21, 1988.

On December 23, 1987, Volkswagen of America, Inc. (Volkswagen), P.O. Box 3951, Troy, Michigan 48007–3951, filed in Docket No. CP88–8–000 a Petition for Declaratory Order pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission (18 CFR 385.207) requesting that the Commission determine and declare that Westmoreland Pipeline Company (Pipeline), a subsidiary of Volkswagen, qualifies as an intrastate pipeline within the meaning of section 2(16) of the Natural Gas Policy Act of 1978 (NGPA) and that Texas Eastern Transmission Corporation (Texas Eastern), as an interstate pipeline, may transport natural gas on behalf of the Pipeline on a self-implementing basis under section 311 of the NGPA, all as more fully described in the Petition.

The Petition states that Volkswagen, an industrial end-user, has executed a valid sales contract with The Resource Group (TRG), pursuant to which TRG has agreed to sell, and Volkswagen has agreed to purchase, certain quantities of natural gas which will be consumed at Volkswagen's plant in the State of Pennsylvania (the Plant).

The Petition states that the subject gas supply shall be produced from wells located in the States of Louisiana or Texas and such wells are classified under sections 102(c), 103(c), or 107(c)(1)–(4) of the NGPA. The Petition indicates that TRG shall purchase such gas from the producer or producers thereof and resell such gas directly to Volkswagen.

The Petition states that the Pipeline has constructed pipeline facilities located solely within the State of

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[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436 [Reg. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,665 (1985), *modified*, Order No. 436-A, [Reg. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,675 (1985), *modified further*, Order No. 436-B, III FERC Stats. & Regs. ¶ 30,888, *reh'g denied*, Order No. 436-C, 34 FERC ¶ 61,406, *reh'g denied*, Order No. 436-D, 34 FERC ¶ 61,405, *reconsideration denied*, Order No. 436-E, 34 FERC ¶ FERC ¶ 61,403 (1986), *vacated and remanded, sub nom.*, Associated Gas Distributors v. FERC, No. 85-1811 (D.C. Cir. June 23, 1987) (AGD). In AGD, the court generally upheld the substance of Order No. 436 and the procedures employed in adopting it, but found problems with certain issues and vacated and remanded the matter for further proceedings. On August 7, 1987, the Commission issued Order No. 500, which promulgated interim regulations in response to the court's remand. *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 40 FERC ¶ 61,172 (1987) (Interim Rule and Statement of Policy, Docket No. RM87–34–000.) These interim regulations become effective on September 15, 1987.

Pennsylvania for the delivery of natural gas to the Plant and that the Pipeline owns and will operate the newly constructed facility. According to the Petition, the Pipeline is approximately six inches in diameter and approximately six miles in length, extending directly from a point which will, once a tap is constructed, be located on the mainline transmission facilities of Texas Eastern, an interstate pipeline, where it will accept gas from Texas Eastern at Texas Eastern's mainline operating pressure for delivery to the Plant. Volkswagen states that the subject gas shall be delivered from the wellhead to the facilities of Texas Eastern either through gathering facilities or other intrastate or interstate pipelines and that Texas Eastern, in turn, would thereafter transport the gas from that point to the point of interconnection with the facilities of the Pipeline in the State of Pennsylvania. It is stated that the Pipeline would transport the gas to the Plant and would not charge a fee for such service.

Volkswagen states that the Pipeline's only two points of interconnection would be with the Plant and Texas Eastern. Volkswagen states that the Pipeline facilities do not run through a processing plant and are not connected to any producing wells.

By its Petition, Volkswagen seeks an emergency Declaratory Order from the Commission because it is anticipated that a prospective purchaser of the Plant may require some assurance as to the viability of the Pipeline, as a mechanism or medium for the reduction of operating costs prior to and after the acquisition of the Plant, should said facilities be acquired, and assurance as to Texas Eastern's transportation of natural gas on behalf of the Pipeline.

In its Petition, Volkswagen contends that the Pipeline is an "intrastate pipeline" within the definition of NGPA section 2(16) by virtue of the application of NGPA section 601(a)(2)(A). Accordingly, Volkswagen asserts that Texas Eastern, an interstate pipeline, may transport natural gas on behalf of the Pipeline on a self-implementing basis pursuant to section 311 of the NGPA. Volkswagen, therefore, requests that the Commission declare the same.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice ad Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1524 Filed 1-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-195-000 et al.]

Carolina Power & Light Company et al.; Electric Rate and Corporate Regulation Filings

January 19, 1988.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER88-195-000]

Take notice that on January 13, 1988, Carolina Power & Light Company tendered for filing proposed changes in its Service Agreement FERC No. T1R1.S6. with the Halifax Electric Membership Corporation and Service Agreement FERC No. T1R1.S14. with the Randolph Electric Membership Corporation.

The Halifax EMC's Warrenton 12 kV point of delivery is being filed to reflect a mutually agreed upon capacity limitation of 2,850 kW or less for this point of delivery. Company and Customer agreed to this capacity limitation to avoid a transformer change at this point of delivery and to ensure continued service reliability.

The Randolph EMC's Spero 115 kV point of delivery is being filed to reflect the relocation of this point of delivery to the Spero 115 kV Switching Station, the changing of this point of delivery's metering voltage to 115 kV, and the installation of special metering facilities to provide metering pulse information as provided under Carolina Power & Light Company's additional facilities plan.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Cliffs Electric Service Company, et al.

[Docket No. ER88-182-000]

Take notice that on January 12, 1988, Cliffs Electric Service Company, et al. (Cliff Electric), tendered for filing two notices canceling the certificates of concurrence filed with respect to the 1978 Basic Agreement (Upper Peninsula Power Company Rate Schedule FERC No. 22) which was canceled pursuant to one of the notices filed in this Docket on December 24, 1987. Cliff Electric and Upper Peninsula Generating Company have both filed the Notices of Cancellation of Concurrence in filing of the 1978 Basic Agreement. Cliff Electric states that these notices will be effective on the same date as the Notice of Cancellation filed by the signatories to the 1978 Basic Agreement.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Detroit Edison Company

[Docket No. ER88-189-000]

Take notice that on January 12, 1988, Detroit Edison Company (DEC) tendered for filing a rate schedule in the form of a contract agreement between DEC and Wolverine Power Supply Cooperative, Inc. (Wolverine), dated December 14, 1987, and entitled "Power Supply Agreement Between Wolverine Power Supply Cooperatives, Inc. and the Detroit Edison Company" (Agreement).

DEC requests that this proposed rate schedule be made effective on January 1, 1988.

DEC states that the Agreement provides that DEC shall sell Wolverine firm capacity and associated energy at 100% load factor in accordance with a predetermined schedule. DEC further states that it is the intent of the parties to the Agreement that DEC will supply Wolverine with its full requirements for purchased firm capacity and energy and that DEC will make available additional capacity and energy to Wolverine on an interruptible basis. The rates contained in the Agreement for service commencing on January 1, 1988, are the same rates currently in effect for service to the Power Pool. The rates contained in the Agreement for service commencing with the commercial operation of Fermi 2 are the same as the rates currently on file and that will become effective for service to the Power Pool on the commercial operation of Fermi 2.

DEC also states that copies of the filing were served upon Wolverine and the Michigan Public Service Commission.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Detroit Edison Company

[Docket No. ER88-190-000]

Take notice that on January 12, 1988, Detroit Edison Company (Detroit Edison) tendered for filing proposed

changes in its FERC Electric Service Tariff Original Volume No. 1, and a notice of cancellation of its FERC Rate Schedule No. 14.

Detroit Edison states that the proposed changes in the tariff sheets do not provide for rate increases, but instead reflect a resolution of all outstanding service and rate matters with respect to jurisdictional sales, as evidenced by an Amendment to the Settlement Agreement between Detroit Edison and its jurisdictional customers which was submitted to and accepted for filing by this Commission in Docket No. ER85-513-000. Detroit Edison also states that the notice of cancellation of rate schedule No. 14 is issued as a result of the voluntary termination of an electric supply agreement by Southeastern Michigan Rural Electric Cooperative, the only customer taking service under the rate schedule.

Detroit Edison states that the service and rate matters resolved by the Amendment to the Settlement Agreement result in an extension of an interruptible service option to November 1, 1992, an administrative cost and line loss step-up charge associated with the option, an agreement to fix rates for firm service at the levels currently accepted and on file with the Commission until November 1, 1992, a recognition of additional expense associated with nuclear decommissioning costs, a recognition of expense reduction relating to the Tax Reform Act of 1986, and the availability of a new demand charge deferral and repayment option.

Copies of the filing were served upon the public utility's jurisdictional customers and the Michigan Public Service Commission.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Fitchburg Gas and Electric Light Company

[Docket No. ER88-191-000]

Take notice that on January 12, 1988, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing as an initial rate schedule its Rate Schedule No. ____, pursuant to section 205 of the Federal Power Act and 18 CFR 35.12.

Fitchburg states that the purpose of its rate filing is to authorize Fitchburg to engage in short-term coordination transactions with other public utilities involving the purchase of capacity and energy produced by a combustion turbine owned and operated by Fitchburg. The rate filing provides for a negotiated rate for generation and transmission from the combustion turbine, subject to a maximum of $18.65 per kilowatt-year for generation and $27.48 per kilowatt-year for transmission. Charges for energy shall be the prorated actual fuel costs for the unit.

Fitchburg requests waiver of the Commission's notice requirements and an effective date of November 1, 1986, to account for the fact that several coordination transactions have already taken place.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket No. ER88-120-000]

Take notice that on January 14, 1988, Kansas Gas and Electric Company (KG&E) tendered for filing an amendment of the agreement between the City of Savonburg, Kansas and KT&E. This executed agreement replaces the unexecuted agreement originally filed on November 27, 1987. KG&C states that the only difference between the unexecuted and executed agreement is a reduction in the initial term, specified in Article X, Section 10.1, from 10 years to 5 years.

Copies of this filing have been served upon all recipients of the November 27, 1987 filing.

KG&E requests waiver of the 60-day minimum filing requirement of 18 CFR 35.3 to permit the executed agreement to become effective February 1, 1988, the same day as the unexecuted agreement it replaces.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER88-193-000]

Take notice that on January 13, 1988, Montaup Electric Company (Montaup) tendered for filing an agreement under which Montaup has agreed to sell to Taunton Municipal Lighting Plant 1.7123% of the capacity and energy of the Canal No. 2 generating unit, in which Montaup holds a 50% joint ownership interest, for the 12 months beginning November 1, 1987. The sale is to be made in exchange for a reciprocal sale by Taunton to Montaup of 18.1818% of Taunton's Cleary No. 9 generating unit under another agreement. The arrangement represents a two-for-one exchange of intermediate and peaking capacity for base load capacity: 20 megawatts of Cleary No. 9 (18.1818% times the 110 megawatt net capability of that unit) in exchange for 10 megawatts of Canal No. 2 (1.7123% times the 584 megawatt net capability of Canal No. 2). The energy from each unit is to be sold at its actual cost. Since the 10 megawatts of Canal No. 2, a base load generating unit, and the 20 megawatts of Cleary No. 9, an intermediate and peaking unit, are considered by the parties to be of equal value the parties have agreed that there is to be no capacity charge for power sold from either unit.

Montaup requests waiver of the 60-day notice requirement in order to permit the filing to be effective on November 1, 1987 as the parties have agreed. The filing could not be made until both the Canal No. 2 and Cleary No. 9 agreements were executed, which did not occur until too late to meet the requirement. Granting the waiver will have no adverse effect on customers served under other rate schedules.

Copies of the filing have been served on Taunton and the Massachusetts Department of Public Utilities.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Montana Power Company

[Docket No. ER88-194-000]

Take notice that on January 12, 1988, Montana Power Company tendered for filing summaries of sales made under the Company's FERC Electric TARIFF, 2nd Revised Volume No. 1, during January 1987 through June 1987 with cost justifications for the rates charged.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER88-177-000]

Take notice that on January 11, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a supplement of calculations to SWEPCO's December 31, 1987 filing. SWEPCO states that on December 31, 1987 SWEPCO filed an Electric System Interconnection Agreement (Agreement), dated January 1, 1988, between SWEPCO and Cajun Electric Power Cooperative, Inc. (Cajun). SWEPCO also states that in the transmittal letter accompanying the filing, SWEPCO committed to providing Cajun and the Commission with calculations of the rates to be used temporarily in the first three months of 1988 pending the determination of estimated rates and charges for calendar year 1988 in accordance with the Agreement. Therefore, SWEPCO is filing the calculations made pursuant to the formulas included in the Agreement of

the estimated rates for service to be used in the first quarter of 1988.

Copies of this filing have been served upon Cajun and the Louisiana Public Service Commission.

SWEPCO respectfully requests that the Commission waiver its notice requirements and permit the Agreement to become effective as of January 1, 1988.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Company

[Docket No. ER88-186-000]

Take notice that on January 11, 1988, Puget Sound Power & Light Company (Puget) tendered for filing pursuant to 18 CFR 35.30(c) Appendix 1 to the Residential Purchase and Sale Agreement between Puget Sound Power & Light Company and Bonneville Power Administration. Puget states that this filing is also pursuant to the revised ASC methodology which was approved by the Federal Energy Regulatory Commission effective October 1, 1984.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Tapoco, Incorporated

[Docket No. ER88-192-000]

Take notice that on January 13, 1988, Tapoco, Inc. (Tapoco) tendered for filing a document entitled Amendatory Agreement Between Tennessee Valley Authority and Tapoco, Inc. [Tapoco Rate Schedule No. 6]. The proposed modification consists of a new energy exchange agreement between Tapoco, Inc. and Tennessee Valley Authority (TVA) to replace in its entirety the current Tapoco Rate Schedule No. 6.

Tapoco states that under the Amendatory Agreement, Tapoco and the Aluminum Company of America (Alcoa) will reimburse TVA for a large negative energy bank balance through a combination of cash payments and energy paybacks, and the energy exchange arrangement between Tapoco and TVA will terminate in June 1990. Notwithstanding termination of the energy exchange arrangement, the Amendatory Agreement provides that TVA will retain rights to use certain Tapoco transmission facilities to provide service to other utilities.

Tapoco requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendatory Agreement be made effective retroactively to January 1, 1988.

Copies of the filing were served upon the TVA, the Tennessee Public Service Commission and the North Carolina Utilities Commission.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this document.

12. Union Electric

[Docket No. ER84-560-004]

Take notice that on January 14, 1988, Union Electric tendered for filing revised tariff sheets in compliance with Commission Opinion No. 279-A in Docket Nos. ER84-560-002 and 003 issued December 21, 1987 and the Opinion and Order Establishing Just and Reasonable Rates (Opinion 279) issued July 20, 1987 in Docket No. ER84-560-000. Also pursuant to Commission Order various schedules and workpapers have been filed.

Comment date: February 2, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1515 Filed 1-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST88-464-000 et al.]

Natural Gas Policy Act; Transcontinental Gas Pipe Line Corp.; Self-Implementing Transactions

January 20, 1988.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interestate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations or pursuant to blanket certificate authority granted under § 284.225 or § 284.226 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before February 9, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST88-0464	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-02-87	B		
ST88-0465	Transcontinental Gas Pipe Line Corp	City of Bessemer City	11-02-87	B		
ST88-0466	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-02-87	B		
ST88-0467	Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority.	11-02-87	B		
ST88-0468	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-02-87	B		
ST88-0469	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	11-02-87	B		
ST88-0470	Transcontinental Gas Pipe Line Corp	City of Lexington	11-02-87	B		
ST88-0471	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-02-87	B		
ST88-0472	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	11-02-87	B		
ST88-0473	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-02-87	B		
ST88-0474	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp.	11-02-87	B		
ST88-0475	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-02-87	B		
ST88-0476	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-02-87	B		
ST88-0477	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-02-87	B		
ST88-0478	Transcontinental Gas Pipe Line Corp	Virginia Natural Gas Co	11-02-87	B		
ST88-0479	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-02-87	B		
ST88-0480	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-02-87	B		
ST88-0481	Transcontinental Gas Pipe Line Corp	Comm. of Public Works, City of Greer.	11-02-87	B		
ST88-0482	Transcontinental Gas Pipe Line Corp	Virginia Natural Gas Co	11-02-87	B		
ST88-0483	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-02-87	B		
ST88-0484	Transcontinental Gas Pipe Line Corp	City of Alexander	11-02-87	B		
ST88-0485	Transcontinental Gas Pipe Line Corp	City of Covington	11-02-87	B		
ST88-0486	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-02-87	B		
ST88-0487	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-02-87	B		
ST88-0488	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	11-02-87	B		
ST88-0489	Transcontinental Gas Pipe Line Corp	City of Elberton	11-02-87	B		
ST88-0490	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-02-87	B		
ST88-0491	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-02-87	B		
ST88-0492	Transcontinental Gas Pipe Line Corp	Orange and Rockland Utilities, Incc.	11-02-87	B		
ST88-0493	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-02-87	B		
ST88-0494	Transcontinental Gas Pipe Line Corp	Louisiana Resources Co	11-02-87	B		
ST88-0495	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	11-02-87	B		
ST88-0496	Transcontinental Gas Pipe Line Corp	Bridgeline Gas Dist. Co., et al	11-02-87	B		
ST88-0497	Transcontinental Gas Pipe Line Corp	City of Bowman	11-02-87	B		
ST88-0498	Arkansas Western Gas Co	Associated Natural Gas Co	11-02-87	C		
ST88-0499	Arkla Energy Resources	Arkansas Western Gas Co	11-02-87	B		
ST88-0500	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co	11-02-87	C		
ST88-0501	Houston Pipe Line Co	Northern Natural Gas Co	11-02-87	C		
ST88-0502	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp.	11-02-87	C		
ST88-0503	Houston Pipe Line Co	Connecticut Light & Power Co	11-02-87	C		
ST88-0504	Houston Pipe Line Co	Boston Gas Co	11-02-87	C		
ST88-0505	Houston Pipe Line Co	Brooklyn Union Gas Co	11-02-87	C		
ST88-0506	Houston Pipe Line Co	Northern Natural Gas Co	11-02-87	C		
ST88-0507	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	11-02-87	B		
ST88-0508	Oasis Pipe Line Co	El Paso Natural Gas Co	11-02-87	C		
ST88-0509	Oasis Pipe Line Co	Transcontinental Gas Pipe Line Corp.	11-02-87	C		
ST88-0510	Oasis Pipe Line Co	Southwest Gas Corp	11-02-87	C		

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0511	Panhandle Gas Co	Connecticut Light & Power Co	11-02-87	D		
ST88-0512	Panhandle Gas Co	Southwest Gas Corp	11-02-87	D		
ST88-0513	Panhandle Gas Co	Boston Gas Co	11-02-87	D		
ST88-0514	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-02-87	G		
ST88-0515	Tennessee Gas Pipeline Co	Orange and Rockland Utilities, Inc.	11-02-87	B		
ST88-0516	Tennessee Gas Pipeline Co	Colonial Gas Company	11-02-87	B		
ST88-0517	Tennessee Gas Pipeline Co	Connecticut Light & Power Co	11-02-87	B		
ST88-0518	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	11-02-87	G		
ST88-0519	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al.	11-02-87	B		
ST88-0520	Tennessee Gas Pipeline Co	Cent. Hudson Gas & Electric Co., et al.	11-02-87	B		
ST88-0521	Tennessee Gas Pipeline Co	Peoples Nat. Gas Co., et al	11-02-87	B		
ST88-0522	Tennessee Gas Pipeline Co	Long Island Lighting Co	11-02-87	B		
ST88-0523	Texas Eastern Transmission Corp	City of Lawrenceburg	11-02-87	B		
ST88-0524	Trunkline Gas Co	Philadelphia Gas Works	11-02-87	B		
ST88-0525	Trunkline Gas Co	Indiana Gas Co., Inc	11-02-87	B		
ST88-0526	Trunkline Gas Co	Northern Indiana Public Service Co.	11-02-87	B		
ST88-0527	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co.	11-03-87	B		
ST88-0528	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	11-03-87	B		
ST88-0529	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-03-87	B		
ST88-0530	Panhandle Eastern Pipe Line Co	Southeastern Michigan Gas Co	11-03-87	B		
ST88-0531	Panhandle Eastern Pipe Line Co	Union Electric Co	11-03-87	B		
ST88-0532	Panhandle Eastern Pipe Line Co	Eastex Gas Transmisaion Co	11-03-87	B		
ST88-0533	Panhandle Eastern Pipe Line Co	Cabot Pipeline Corp	11-03-87	B		
ST88-0534	Panhandle Eastern Pipe Line Co	Eastex Gas Transmission Co	11-03-87	B		
ST88-0535	Panhandle Eastern Pipe Line Co	Olympic Pipeline Co	11-03-87	B		
ST88-0536	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-87	B		
ST88-0537	Panhandle Eastern Pipe Line Co	Richmond Gas Corp	11-03-87	B		
ST88-0538	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-87	B		
ST88-0539	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-87	B		
ST88-0540	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-87	B		
ST88-0541	Tennessee Gas Pipeline Co	Colonial Gas Company	11-03-87	B		
ST88-0542	Tennessee Gas Pipeline Co	Commonwealth Gas Co	11-03-87	B		
ST88-0543	Tennessee Gas Pipeline Co	Cent. Hudson Gas & Electric Co., et al.	11-03-87	B		
ST88-0544	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	11-03-87	B		
ST88-0545	Tennessee Gas Pipeline Co	Boston Gas Co	11-03-87	B		
ST88-0546	Tennessee Gas Pipeline Co	Natural Gas Clearinghouse, Inc	11-03-87	G-S		
ST88-0547	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	11-03-87	B		
ST88-0548	Valero Transmission, L.P.	El Paso Natural Gas Co	11-03-87	C		
ST88-0549	Transcontinental Gas Pipe Line Corp	Hudson Pipeline Co., et al	11-03-87	B		
ST88-0550	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-03-87	B		
ST88-0551	Transcontinental Gas Pipe Line Corp	City of Greenwood	11-03-87	B		
ST88-0552	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co., et al	11-03-87	B		
ST88-0553	Transcontinental Gas Pipe Line Corp	National Fuel Gas Distribution Corp.	11-03-87	B		
ST88-0554	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	11-03-87	B		
ST88-0555	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	11-03-87	B		
ST88-0556	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-03-87	B		
ST88-0557	Transcontinental Gas Pipe Line Corp	Valero Transmission Co	11-03-87	B		
ST88-0558	Transcontinental Gas Pipe Line Corp	UGI Corp	11-03-87	B		
ST88-0559	Transcontinental Gas Pipe Line Corp	Yankee Taft Co	11-03-87	B		
ST88-0560	Transcontinental Gas Pipe Line Corp	City of Union	11-03-87	B		
ST88-0561	Transcontinental Gas Pipe Line Corp	Texas Gas Corp	11-03-87	B		
ST88-0562	Transcontinental Gas Pipe Line Corp	City of Shelby				
ST88-0563	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	11-03-87	B		
ST88-0564	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	11-03-87	B		
ST88-0565	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	11-03-87	B		
ST88-0566	Natural Gas Pipeline Co. of America	Neches Pipeline System	11-03-87	B		
ST88-0567	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-03-87	B		
ST88-0568	Natural Gas Pipeline Co. of America	Tristar Energy, Inc	11-03-87	B		
ST88-0569	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	11-03-87	B		
ST88-0570	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-03-87	B		
ST88-0571	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	11-03-87	B		
ST88-0572	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-03-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0573	Natural Gas Pipeline Co. or America	Southern California Gas Co	11-03-87	B		
ST88-0574	Northern Natural Gas Co	Llano, Inc	11-04-87	B		
ST88-0575	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-04-87	C	04-02-88	10.00
ST88-0576	Panhandle Eastern Pipe Line Co	Union Electric Co	11-04-87	B		
ST88-0577	Tennessee Gas Pipeline Co	Loutex Energy, Inc	11-04-87	G-S		
ST88-0578	Tennessee Gas Pipeline Co	Eastex Gas Transmission Co	11-04-87	B		
ST88-0579	Tennessee Gas Pipeline Co	Llano, Inc	11-04-87	B		
ST88-0580	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp.	11-04-87	B		
ST88-0581	United Gas Pipe Line Co	Wellhead Ventures Corp.	11-04-87	B		
ST88-0582	United Gas Pipe Line Co	Louisiana State Gas Corp	11-04-87	B		
ST88-0583	United Gas Pipe Line Co	Louisiana State Gas Corp	11-04-87	B		
ST88-0584	United Gas Pipe Line Co	Houston Pipe Line Co	11-04-87	B		
ST88-0585	Acadian Gas Pipeline System	Columbia Gulf Transmission Co	11-05-87	C	04-03-88	15.50
ST88-0586	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	11-05-87	B		
ST88-0587	Algonquin Gas Transmission Co	City of Norwich	11-05-87	B		
ST88-0588	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM).	11-05-87	B		
ST88-0589	El Paso Natural Gas Co	Southern Union Gas Co	11-05-87	B		
ST88-0590	El Paso Natural Gas Co	Southern Union Gas Co	11-05-87	B		
ST88-0591	El Paso Natural Gas Co	Intratex Gas Co	11-05-87	B		
ST88-0592	El Paso Natural Gas Co	Pacific Gas and Electric Co	11-05-87	B		
ST88-0593	El Paso Natural Gas Co	Southwest Gas Corp	11-05-87	B		
ST88-0594	El Paso Natural Gas Co	City of Socorro	11-05-87	B		
ST88-0595	El Paso Natural Gas Co	Citizens Utilities Co	11-05-87	B		
ST88-0596	El Paso Natural Gas Co	El Paso Hydrocarbons Co	11-05-87	B		
ST88-0597	El Paso Natural Gas Co	Rio Grande Natural Gas Assoc.	11-05-87	B		
ST88-0598	El Paso Natural Gas Co	EMW Gas Association	11-05-87	B		
ST88-0599	El Paso Natural Gas Co	Black Mountain Gas Co	11-05-87	B		
ST88-0600	El Paso Natural Gas Co	City of Las Cruces	11-05-87	B		
ST88-0601	El Paso Natural Gas Co	City of Deming	11-05-87	B		
ST88-0602	El Paso Natural Gas Co	City of Lordsburg	11-05-87	B		
ST88-0603	El Paso Natural Gas Co	Navajo Tribal Utility Authority	11-05-87	B		
ST88-0604	El Paso Natural Gas Co	City of Mesa	11-05-87	B		
ST88-0605	El Paso Natural Gas Co	City of Willcox	11-05-87	B		
ST88-0606	Natural Gas Pipeline Co. of America	UGI Corp	11-05-87	B		
ST88-0607	Natural Gas Pipeline Co. of America	Winnie Pipeline Co	11-05-87	B		
ST88-0608	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-05-87	B		
ST88-0609	Panhandle Eastern Pipe Line Co	Peoples Gas Light Co., et al	11-05-87	B		
ST88-0610	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	11-05-87	B		
ST88-0611	Panhandle Eastern Pipe Line Co	Union Electric Co	11-05-87	B		
ST88-0612	Panhandle Eastern Pipe Line Co	NGC Intrastate Pipeline Co	11-05-87	B		
ST88-0613	Tennessee Gas Pipeline Co	Connecticut Light & Power Co	11-05-87	B		
ST88-0614	Tennessee Gas Pipeline Co	Wellhead Ventures Corp	11-05-87	B		
ST88-0615	Tennessee Gas Pipeline Co	Granite State Gas Transmission, Inc.	11-05-87	G		
ST88-0616	Tennessee Gas Pipeline Co	Wellhead Ventures Corp	11-05-87	B		
ST88-0617	Tennessee Gas Pipeline Co	Atlanta Gas Light Co., et al	11-05-87	B		
ST88-0618	Tennessee Gas Pipeline Co	Tejas Power Corp	11-05-87	G-S		
ST88-0619	Trunkline Gas Co	Consumers Power Co	11-05-87	B		
ST88-0620	Trunkline Gas Co	Consumers Power Co	11-05-87	B		
ST88-0621	Trunkline Gas Co	Consumers Power Co	11-05-87	B		
ST88-0622	Trunkline Gas Co	Consumers Power Co	11-05-87	B		
ST88-0623	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-10-87	C	04-08-88	10.00
ST88-0624	Texas Gas Transmission Corp	Gulf South Pipeline Co	11-10-87	B		
ST88-0625	Transok, Inc	Phillips Gas Pipeline Co	11-10-87	C	04-08-88	21.75
ST88-0626	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	11-09-87	G		
ST88-0627	Channel Industries Gas Co	Tennessee Gas Pipeline Co	11-09-87	C		
ST88-0628	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	11-09-87	C		
ST88-0629	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp.	11-09-87	C		
ST88-0630	Houston Pipe Line Co	Northern Natural Gas Co	11-09-87	C		
ST88-0631	Houston Pipe Line Co	Northern Natural Gas Co	11-09-87	C		
ST88-0632	Houston Pipe Line Co	Northern Natural Gas Co	11-09-87	C		
ST88-0633	Houston Pipe Line Co	Florida Gas Transmission Co	11-09-87	C		
ST88-0634	Houston Pipe Line Co	American Distribution Co., Inc	11-09-87	C		
ST88-0635	Houston Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		
ST88-0636	Houston Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		
ST88-0637	Houston Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		
ST88-0638	Oasis Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0639	Oasis Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		
ST88-0640	Oasis Pipe Line Co	Northern Natural Gas Co	11-09-87	C		
ST88-0641	Oasis Pipe Line Co	Northern Natural Gas Co	11-09-87	C		
ST88-0642	Oasis Pipe Line Co	El Paso Natural Gas Co	11-05-87	C		
ST88-0643	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11-09-87	C		
ST88-0644	Oasis Pipe Line Co	El Paso Natural Gas Co	11-09-87	C		
ST88-0645	Panhandle Eastern Pipe Line Co	UGI Corp., et al	11-09-87	B		
ST88-0646	Panhandle Eastern Pipe Line Co	Transok, Inc	11-05-87	B		
ST88-0647	Panhandle Eastern Pipe Line Co	Ohio Gas Co	11-09-87	B		
ST88-0648	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	11-09-87	B		
ST88-0649	Panhandle Eastern Pipe Line Co	Union Gas Limited	11-09-87	B		
ST88-0650	United Gas Pipe Line Co	Caddo Natural Gas Co	11-09-87	B		
ST88-0651	United Gas Pipe Line Co	Louisiana State Gas Corp	11-09-87	B		
ST88-0652	Colorado Interstate Gas Co	Southern Union Gas Co	11-06-87	B		
ST88-0653	Colorado Interstate Gas Co	Peoples Natural Gas Co	11-06-87	B		
ST88-0654	Colorado Interstate Gas Co	Northern Illinois Gas Co	11-06-87	B		
ST88-0655	Colorado Interstate Gas Co	Central Illinois Light Co	11-06-87	B		
ST88-0656	Colorado Interstate Gas Co	Associated Interstate Pipeline Co.	11-06-87	B		
ST88-0657	Lear Gas Transmission Co	Texas Eastern Transmission Corp.	11-06-87	C	04-04-88	21.50
ST88-0658	Lear Gas Transmission Co	Mississippi River Transmission Corp.	11-06-87	C	04-04-88	21.50
ST88-0659	Lear Gas Transmission Co	Texas Gas Transmission Corp	11-06-87	C	04-04-88	21.50
ST88-0660	Lear Gas Transmission Co	United Gas Pipe Line Co	11-06-87	C	04-04-88	21.50
ST88-0661	Lear Gas Transmission Co	Southern Natural Gas Co	11-06-87	C	04-04-88	21.50
ST88-0662	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	11-06-87	B		
ST88-0663	Trunkline Gas Co	Consumers Power Co	11-06-87	B		
ST88-0664	Trunkline Gas Co	Consumers Power Co	11-06-87	B		
ST88-0665	Trunkline Gas Co	Consumers Power Co	11-06-87	B		
ST88-0666	Trunkline Gas Co	Consumers Power Co	11-06-87	B		
ST88-0667	Trunkline Gas Co	Consumers Power Co	11-06-87	B		
ST88-0668	Westar Transmission Co	Northern Natural Gas Co	11-06-87	C		
ST88-0669	Westar Transmission Co	El Paso Natural Gas Co	11-06-87	C		
ST88-00670	Colorado Interstate Gas Co	NGC Intrastate Pipeline Co	11-12-87	B		
ST88-0671	DOW Pipeline Co	Phillips Gas Pipeline Co	11-12-87	C	04-10-88	07.31
ST88-0672	Northern Natural Gas Co	Westar Transmission Co	11-12-87	B		
ST88-0673	Northern Natural Gas Co	Southern California Gas Co	11-12-87	B		
ST88-0674	Tennessee Gas Pipeline Co	TransAmerican Gas Transmission Corp.	11-12-87	B		
ST88-0675	Tennessee Gas Pipeline Co	TransAmerican Gas Transmission Corp.	11-12-87	B		
ST88-0676	Tennessee Gas Pipeline Co	TransAmerican Gas Transmission Corp.	11-12-87	B		
ST88-0677	Hill Transportation Co., Inc	Florida Gas Transmission Co	11-12-87	C	04-15-88	18.00
ST88-0679	Trunkline Gas Co	Consumers Power Co	11-12-87	B		
ST88-0680	Valero Transmission, L.P	Tennessee Gas Pipeline Co	11-12-87	C		
ST88-0681	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp.	11-12-87	C		
ST88-0682	Valero Transmission, L.P	Texas, Eastern, Transmission Corp.	11-12-87	C		
ST88-0683	El Paso Natural Gas Co	Pacific Gas and Electric Co	11-13-87	B		
ST88-0684	El Paso Natural Gas Co	Pacific Gas and Electric Co	11-13-87	B		
ST88-0685	El Paso Natural Gas Co	El Paso Hydrocarbons Co	11-13-87	B		
ST88-0686	El Paso Natural Gas Co	Peoples Natural Gas Co	11-13-87	B		
ST88-0687	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM).	11-13-87	B		
ST88-0688	Delhi Gas Pipeline Corp	Peoples Natural Gas Co	11-13-87	C		
ST88-0689	Trunkline Gas Co	Consumers Power Co	11-13-87	B		
ST88-0690	Trunkline Gas Co	Consumers Power Co	11-13-87	B		
ST88-0691	ANR Pipeline Co	Wisconsin Southern Gas Co., Inc.	11-13-87	B		
ST88-0692	ANR Pipeline Co	Wisconsin Natural Gas Co	11-13-87	B		
ST88-0693	ANR Pipeline Co	Baltimore Gas and Electric Co	11-13-87	B		
ST88-0694	ANR Pipeline Co	Wisconsin Natural Gas Co	11-13-87	B		
ST88-0695	ANR Pipeline Co	Wisconsin Gas Co	11-13-87	B		
ST88-0696	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	11-13-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0697	Taft Pipeline Co	Northern Natural Gas Co	11-13-87	C	04-11-88	09.60
ST88-0698	Taft Pipeline Co	Northern Natural Gas Co	11-13-87	C	04-11-88	09.60
ST88-0699	Tennessee Gas Pipeline Co	Baltimore Gas and Electric Co	11-13-87	B		
ST88-0700	Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp.	11-13-87	G		
ST88-0701	Tennessee Gas Pipeline Co	North Penn Gas Co	11-13-87	B		
ST88-0702	Tennessee Gas Pipeline Co	Cameron Natural Gas Corp	11-13-87	G-S		
ST88-0703	Tennessee Gas Pipeline Co	City of Lexington	11-13-87	B		
ST88-0704	Texas Gas Transmission Corp	Cokinos Natural Gas Co	11-13-87	B		
ST88-0705	Texas Gas Transmission Corp	Indiana Natural Gas Corp	11-13-87	B		
ST88-0706	Texas Gas Transmission Corp	Central Illinois Public Service Co	11-13-87	B		
ST88-0707	Algonquin Gas Transmission Co	City of Norwich, Dept. of Public Util.	11-16-87	B		
ST88-0708	ANR Pipeline Co	Wisconsin Public Service Co	11-16-87	B		
ST88-0709	ANR Pipeline Co	Fountaintown Gas Co	11-16-87	B		
ST88-0710	Colorado Interstate Gas Co	Coastal States Gas Transmission Co.	11-16-87	B		
ST88-0711	Colorado Interstate Gas Co	Acacia Pipeline Corp., et al	11-16-87	B		
ST88-0712	Colorado Interstate Gas Co	Panda Reeources, Inc	11-16-87	B		
ST88-0713	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	11-16-87	B		
ST88-0714	Tennessee Gas Pipeline Co	Columbia Gas of Virginia, Inc	11-16-87	B		
ST88-0715	Tennessee Gas Pipeline Co	Colonial Gas Company	11-16-87	B		
ST88-0716	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-16-87	G		
ST88-0717	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co.	11-16-87	G		
ST88-0718	Tennessee Gas Pipeline Co	Southern Gas Pipeline Co	11-16-87	B		
ST88-0719	Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	11-16-87	B		
ST88-0720	Transcontinental Gas Pipe Line Corp	South Caroline Pipeline Corp	11-16-87	B		
ST88-0721	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	11-16-87	B		
ST88-0722	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-16-87	B		
ST88-0723	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	11-16-87	B		
ST88-0724	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	11-16-87	B		
ST88-0725	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	11-16-87	B		
ST88-0726	Western Transmission Corp	Southern California Gas Co	11-16-87	B		
ST88-0727	Cabot Pipeline Corp	El Paso Natural Gas Co	11-17-87	C		
ST88-0728	Natural Gas Pipeline Co. of America	Monarch Gas Co	11-17-87	B		
ST88-0729	Tennessee Gas Pipeline Co	CNG Trading Co	11-17-87	G-S		
ST88-0730	Tennessee Gas Pipeline Co	Bay State Gas Co., et al	11-17-87	B		
ST88-0731	Tennessee Gas Pipeline Co	South Carolina Pipeline Corp	11-17-87	B		
ST88-0732	Texas Eastern Transmission Corp	New York State Electric and Gas Co.	11-17-87	B		
ST88-0733	Texas Eastern Transmission Corp	Central Illinois Public Service Co	11-17-87	B		
ST88-0734	Texas Eastern Transmission Corp	Allied Gas Co	11-17-87	B		
ST88-0735	Texas Eastern Transmission Corp	Elizabethtown Gas Co	11-17-87	B		
ST88-0736	Texas Eastern Transmission Corp	Columbia Gas of Ky, Inc., et al	11-17-87	B		
ST88-0737	Texas Eastern Transmission Corp	American Distribution Co., Inc	11-17-87	B		
ST88-0738	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	11-17-87	B		
ST88-0739	Texas Eastern Transmission Corp	New York State Electric and Gas Co.	11-17-87	B		
ST88-0740	Texas Eastern Transmission Corp	Southern Indiana Gas & Electric Co.	11-17-87	B		
ST88-0741	Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	11-17-87	B		
ST88-0742	Trunkline Gas Co	Consumers Power Co	11-17-87	B		
ST88-0743	Trunkline Gas Co	Consumers Power Co	11-17-87	B		
ST88-0744	Trunkline Gas Co	Consumers Power Co	11-17-87	B		
ST88-0745	Trunkline Gas Co	Consumers Power Co	11-17-87	B		
ST88-0746	Trunkline Gas Co	Consumers Power Co	11-17-87	B		
ST88-0747	Tennessee Gas Pipeline Co	Delhi Gas Pipeline Corp	11-18-87	B		
ST88-0748	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	11-18-87	G		
ST88-0749	Tennessee Gas Pipeline Co	Columbia Gas of Ohio, Inc	11-18-87	B		
ST88-0750	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas & Water Co., et al.	11-18-87	B		
ST88-0751	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp.	11-18-87	B		
ST88-0752	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-18-87	B		
ST88-0755	Transcontinental Gas Pipe Line Corp	Bridgeline Gas Distribution Co., et al.	11-18-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0754	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-18-87	B		
ST88-0755	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-18-87	B		
ST88-0756	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	11-18-87	B		
ST88-0757	Transcontinental Gas Pipe Line Corp	Corpus Christi Industrial Pipeline Co.	11-18-87	B		
ST88-0758	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-18-87	B		
ST88-0759	Transcontinental Gas Pipe Line Corp	City of Roanoke	11-18-87	B		
ST88-0760	Transcontinental Gas Pipe Line Corp	Dayton Power & Light Co., et al.	11-18-87	B		
ST88-0761	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co.	11-18-87	B		
ST88-0762	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	11-18-87	B		
ST88-0763	Transcontinental Gas Pipe Line Corp	Vanbus Corp	11-18-87	B		
ST88-0764	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-18-87	B		
ST88-0765	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-18-87	B		
ST88-0766	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	11-18-87	B		
ST88-0767	Transcontinental Gas Pipe Line Corp	Tristar Energy, Inc.	11-18-87	B		
ST88-0768	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co.	11-18-87	B		
ST88-0769	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	11-18-87	B		
ST88-0770	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp.	11-18-87	B		
ST88-0771	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System.	11-18-87	B		
ST88-0772	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-18-87	B		
ST88-0773	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-18-87	B		
ST88-0774	Transcontinental Gas Pipe Line Corp	City of Linden	11-18-87	B		
ST88-0775	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-18-87	B		
ST88-0776	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-18-87	B		
ST88-0777	Transcontinental Gas Pipe Line Corp	Columbia Gas Dist. Co. of Ohio, Inc., et al.	11-18-87	B		
ST88-0778	Transcontinental Gas Pipe Line Corp	Frederick Gas Co	11-18-87	B		
ST88-0779	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-18-87	B		
ST88-0780	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-18-87	B		
ST88-0781	Colorado Interstate Gas Co	Coastal States Gas Transmission Co.	11-18-87	B		
ST88-0782	Blue Dolphin Pipe Line Co	Dow Chemical Co	11-19-87	G-S		
ST88-0783	Delhi Gas Pipeline Corp	Anr Pipeline Co	11-19-87	C	04-17-88	35.00
ST88-0784	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	11-19-87	B		
ST88-0785	Northern Natural Gas Co	NGP Pipeline Co	11-19-87	B		
ST88-0786	Sea Robin Pipeline Co	United Cities Gas Co	11-19-87	B		
ST88-0787	Tennessee Gas Pipeline Co	Coastal States Gas Transmission Co.	11-19-87	B		
ST88-0788	Tennessee Gas Pipeline Co	Providence Gas Co	11-19-87	B		
ST88-0789	Tennessee Gas Pipeline Co	Mid Louisiana Gas Co	11-19-87	G		
ST88-0790	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-19-87	G		
ST88-0791	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	11-19-87	B		
ST88-0792	United Gas Pipe Line Co	Wellhead Ventures Corp	11-19-87	B		
ST88-0793	United Gas Pipe Line Co	Bishop Pipeline Corp	11-19-87	B		
ST88-0794	Arkla Energy Resources	Madison Gas & Electric Co	11-20-87	B		
ST88-0795	Arkla Energy Resources	Louisiana Gas Service Co	11-20-87	B		
ST88-0796	Dow Pipeline Co	Neches Gas Distribution Co	11-20-87	C	04-18-88	07.31
ST88-0797	El Paso Natural Gas Co	Southern Union Gas Co	11-20-87	B		
ST88-0798	Northern Natural Gas Co	Northern States Power Co., et al.	11-20-87	B		
ST88-0799	Northern Natural Gas Co	Rural Energy Systems, Inc	11-20-87	B		
ST88-0800	Northern Natural Gas Co	Southern Union Gas Co	11-20-87	B		
ST88-0801	Northern Natural Gas Co	Hutchinson Utility Commission	11-20-87	B		
ST88-0802	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	11-20-87	B		
ST88-0803	Texas Eastern Transmission Corp	UGI Corp	11-20-87	B		
ST88-0804	Texas Eastern Transmission Corp	City of Richmond	11-20-87	B		
ST88-0805	Texas Eastern Transmission Corp	Associated Natural Gas Co	11-20-87	B		
ST88-0806	Texas Eastern Transmission Corp	Smyrna Natural Gas System	11-20-87	B		
ST88-0807	Texas Eastern Transmission Corp	Midwest Natural Gas Corp	11-20-87	B		
ST88-0808	Texas Eastern Transmission Corp	City of New Roads Gas System	11-20-87	B		
ST88-0809	Texas Eastern Transmission Corp	Lawrenceburg Gas Co., Brookville Div.	11-20-87	B		
ST88-0810	Texas Eastern Transmission Corp	Mt. Carmel Public Utility Co	11-20-87	II		
ST88-0811	Texas Eastern Transmission Corp	Red Bay Water Works and Gas Board.	11-20-87	B		
ST88-0812	Transcontinental Gas Pipe Line Corp	Union Gas Co	11-20-87	II		
ST88-0813	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System.	11-20-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0814	Transcontinental Gas Pipe Line Corp	New York State Electric and Gas Co.	11-20-87	B		
ST88-0815	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-20-87	B		
ST88-0816	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-20-87	B		
ST88-0817	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-20-87	B		
ST88-0818	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	11-20-87	B		
ST88-0819	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	11-20-87	B		
ST88-0820	Transcontinental Gas Pipe Line Corp	Union Gas Co	11-20-87	B		
ST88-0821	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	11-20-87	B		
ST88-0822	Transcontinental Gas Pipe Line Corp	City of Danville	11-20-87	B		
ST88-0823	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	11-20-87	B		
ST88-0824	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-20-87	B		
ST88-0825	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-20-87	B		
ST88-0826	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co.	11-20-87	B		
ST88-0827	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-20-87	B		
ST88-0828	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-20-87	B		
ST88-0829	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp.	11-20-87	B		
ST88-0830	ANR Pipeline Co	Michigan Consolidated Gas Co	11-20-87	B		
ST88-0831	ANR Pipeline Co	Consumers Power Co	11-20-87	B		
ST88-0832	ANR Pipeline Co	Madison Gas & Electric Co	11-20-87	B		
ST88-0833	ANR Pipeline Co	Madison Gas & Electric Co	11-20-87	B		
ST88-0834	ANR Pipeline Co	Madison Gas & Electric Co	11-20-87	B		
ST88-0835	ANR Pipeline Co	Madison Gas & Electric Co	11-20-87	B		
ST88-0836	ANR Pipeline Co	Madison Gas & Electric Co	11-20-87	B		
ST88-0837	ANR Pipeline Co	Great River Gas Co	11-20-87	B		
ST88-0838	ANR Pipeline Co	Associated Intrastate Pipeline Co.	11-20-87	B		
ST88-0839	Columbia Gas Transmission Corp	Northeast Ohio Natural Gas Corp.	11-20-87	B		
ST88-0840	Louisiana Intrastate Gas Corp	Columbia Gas Transmission Corp.	11-20-87	C	04-18-88	27.40
ST88-0841	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	11-20-87	G		
ST88-0842	Tennessee Gas Pipeline Co	Cabot Corp	11-20-87	B		
ST88-0843	Tennessee Gas Pipeline Co	Public Service Electric & Gas Co., et al.	11-20-87	B		
ST88-0844	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	11-23-87	C		
ST88-0845	Delhi Gas Pipeline Corp	New York State Electric and Gas Co.	11-23-87	C		
ST88-0846	Natural Gas Pipeline Co. of America	Panhandle Gas Co	11-23-87	B		
ST88-0847	Natural Gas Pipeline Co. of America	Eastex Gas Transmission Co	11-23-87	B		
ST88-0848	Natural Gas Pipeline Co. of America	Midwest Gas Co	11-23-87	B		
ST88-0849	Sabine Pipe Line Co	Bridgeline Gas Distribution Co	11-23-87	B		
ST88-0850	Tennessee Gas Pipeline Co	Mountainer Gas Co	11-23-87	B		
ST88-0851	Tennessee Gas Pipeline Co	Amalgamated Pipeline Co	11-23-87	B		
ST88-0852	Tennessee Gas Pipeline Co	Cranberry Pipeline Corp	11-23-87	B		
ST88-0853	Tennessee Gas Pipeline Co	Quivira Gas Co	11-23-87	H		
ST88-0854	Tennessee Gas Pipeline Co	Polaris Corp	11-23-87	II		
ST88-0855	Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	11-23-87	B		
ST88-0856	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	11-23-87	B		
ST88-0857	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	11-23-87	B		
ST88-0858	Texas Eastern Transmission Corp	Dayton Power and Light Co	11-23-87	B		
ST88-0859	Texas Eastern Transmission Corp	Consumers Power Co	11-23-87	B		
ST88-0860	Texas Eastern Transmission Corp	Community Natural Gas Co., Inc	11-23-87	B		
ST88-0861	Texas Eastern Transmission Corp	Columbia Gas of Maryland, Inc	11-23-87	B		
ST88-0862	Texas Eastern Transmission Corp	Columbia Gas of Pennsylvania, Inc.	11-23-87	B		
ST88-0863	Texas Eastern Transmission Corp	Boston Gas Co	11-23-87	B		
ST88-0864	Texas Eastern Transmission Corp	Indiana Gas Co., Inc	11-23-87	B		
ST88-0865	Texas Eastern Transmission Corp	Columbia Gas of New York, Inc	11-23-87	B		
ST88-0866	Texas Eastern Transmission Corp	Columbia Gas of Kentucky, Inc	11-23-87	II		
ST88-0867	Texas Eastern Transmission Corp	Columbia Gas of Virginia, Inc	11-23-87	II		
ST88-0868	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-23-87	II		
ST88-0869	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	11-23-87	II		
ST88-0870	Transcontinental Gas Pipe Line Corp	Baltimore Gas & Electric Co., et al.	11-23-87	B		
ST88-0871	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-23-87	II		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0872	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-23-87	B		
ST88-0873	Transcontinental Gas Pipe Line Corp	Baltimore Gas & Electric Co., et al.	11-23-87	B		
ST88-0874	Transcontinental Gas Pipe Line Corp	City of Bessemer City	11-23-87	B		
ST88-0875	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-23-87	B		
ST88-0876	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	11-23-87	B		
ST88-0877	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp.	11-23-87	B		
ST88-0878	Transcontinental Gas Pipe Line Corp	Orange and Rockland Utilities, Inc.	11-23-87	B		
ST88-0879	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-23-87	B		
ST88-0880	Transcontinental Gas Pipe Line Corp	North Carolina Gas Service Co	11-23-87	B		
ST88-0881	Trunkline Gas Co	Consumers Power Co	11-23-87	B		
ST88-0882	Trunkline Gas Co	Consumers Power Co	11-23-87	B		
ST88-0883	Trunkline Gas Co	Consumers Power Co	11-23-87	B		
ST88-0884	Trunkline Gas Co	Victoria Gas Corp	11-23-87	B		
ST88-0885	Trunkline Gas Co	Philadelphia Elect. Co., et al	11-23-87	B		
ST88-0886	Trunkline Gas Co	Consumers Power Co	11-23-87	B		
ST88-0887	Columbia Gulf Transmission Co	LGS Intrastate, Inc	11-23-87	B		
ST88-0888	Columbia Gulf Transmission Co	Brooklyn Union Gas Co., et al	11-23-87	B		
ST88-0889	Columbia Gulf Transmission Co	Transcontinental Gas Pipe Line Corp.	11-23-87	B		
ST88-0890	Colorado Interstate Gas Co	Energy Pipeline Co	11-23-87	B		
ST88-0891	Colorado Interstate Gas Co	Central Illinois Light Co	11-23-87	B		
ST88-0892	Colorado Interstate Gas Co	Kansas Power and Light Co	11-23-87	B		
ST88-0893	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-24-87	B		
ST88-0894	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0895	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	11-24-87	B		
ST88-0896	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	11-24-87	B		
ST88-0897	Panhandle Eastern Pipe Line Co	Consumers Power Co	11-24-87	B		
ST88-0898	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	11-24-87	B		
ST88-0899	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0900	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	11-24-87	B		
ST88-0901	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-24-87	B		
ST88-0902	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	11-24-87	B		
ST88-0903	Panhandle Eastern Pipe Line Co	Kansas Power and Light Co	11-24-87	B		
ST88-0904	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0905	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	11-24-87	B		
ST88-0906	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0907	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0908	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	11-24-87	B		
ST88-0909	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	11-24-87	B		
ST88-0910	El Paso Natural Gas Co	Iowa Illinois Gas & Elect. Co., et al.	11-25-87	B		
ST88-0911	El Paso Natural Gas Co	Southern California Gas Co	11-25-87	B		
ST88-0912	El Paso Natural Gas Co	Southern California Gas Co	11-25-87	B		
ST88-0913	El Paso Natural Gas Co	Lear Gas Transmission Co	11-25-87	B		
ST88-0914	El Paso Natural Gas Co	Sunshine Energy Co	11-25-87	B		
ST88-0915	El Paso Natural Gas Co	Pacific Gas and Electric Co	11-25-87	B		
ST88-0916	ONG Transmission Co	Natural Gas Pipeline Co. of America.	11-25-87	C	04-23-88	10.00
ST88-0917	Phillips Gas Pipeline Co	Phillips Natural Gas Co	11-25-87	B		
ST88-0918	Phillips Gas Pipeline Co	Phillips Natural Gas Co	11-25-87	B		
ST88-0919	Tennessee Gas Pipeline Co	Alabama-Tennessee Natural Gas Co.	11-25-87	G		
ST88-0920	Tennessee Gas Pipeline Co	Tenneco Oil Co	11-25-87	G-S		
ST88-0921	Tennessee Gas Pipeline Co	Dayton Power and Light Co	11-25-87	B		
ST88-0922	Tennessee Gas Pipeline Co	Creole Gas Pipeline Co	11-25-87	B		
ST88-0923	Tennessee Gas Pipeline Co	Baltimore Gas & Electric Co., et al.	11-25-87	B		
ST88-0924	Tennessee Gas Pipeline Co	National Fuel Gas Distribution Corp.	11-25-87	B		
ST88-0925	Tennessee Gas Pipeline Co	Tenngasco, Inc	11-25-87	G-S		
ST88-0926	Tennessee Gas Pipeline Co	East Ohio Gas Co., et al	11-25-87	B		
ST88-0927	Tennessee Gas Pipeline Co	Gulf Coast Energy, Inc	11-25-87	B		
ST88-0928	Tennessee Gas Pipeline Co	Dayton Power and Light Co	11-25-87	B		
ST88-0929	Tennessee Gas Pipeline Co	Warrior Basin Gas Co	11-25-87	B		
ST88-0930	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-25-87	G		
ST88-0931	Texas Eastern Transmission Corp	City of Pulaski	11-25-87	B		
ST88-0932	Texas Eastern Transmission Corp	Texas Gas Corp	11-25-87	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST88-0933	Texas Eastern Transmission Corp	Philadelphia Electric Co	11-25-87	B		
ST88-0934	Texas Eastern Transmission Corp	City of Liberty	11-25-87	B		
ST88-0935	Texas Eastern Transmission Corp	Equitable Gas Co	11-25-87	B		
ST88-0936	Texas Eastern Transmission Corp	Consolidated Edison Co. of NY, Inc.	11-25-87	B		
ST88-0937	Texas Eastern Transmission Corp	Mt. Carmel Public Utility Co	11-25-87	B		
ST88-0938	Texas Eastern Transmission Corp	Quivira Gas Co	11-25-87	B		
ST88-0939	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	11-25-87	B		
ST88-0940	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	11-25-87	B		
ST88-0941	Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	11-25-87	B		
ST88-0942	Texas Eastern Transmission Corp	City of Utica	11-25-87	B		
ST88-0943	Texas Eastern Transmission Corp	Consumers Gas Co., et al	11-25-87	B		
ST88-0944	Texas Eastern Transmission Corp	City of Thompkinsville	11-25-87	B		
ST88-0945	Valero Transmission, L.P	Natural Gas Pipeline Co. of America.	11-25-87	C		
ST88-0946	United Gas Pipe Line Co	Eastex Gas Transmission Co	11-25-87	B		
ST88-0947	Texas Gas Transmission Corp	Niagara Mohawk Power Corp	11-25-87	B		
ST88-0948	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co.	11-30-87	B		
ST88-0949	Texas Gas Transmission Corp	Louisville Gas & Electric Co	11-25-87	B		
ST88-0950	Texas Gas Transmission Corp	City of Hamilton	11-25-87	B		
ST88-0951	United Gas Pipe Line Co	Bishop Pipeline Corp	11-25-87	B		
ST88-0952	United Gas Pipe Line Co	Richardson Fuels, Inc	11-25-87	B		
ST88-0953	Tennessee Gas Pipeline Co	Peoples Natural Gas Co	11-27-87	B		
ST88-0954	Tennessee Gas Pipeline Co	Iowa Southern Utilities Co., et al	11-27-87	B		
ST88-9055	El Paso Natural Gas Co	Southern California Gas Co	11-30-87	B		
ST88-0956	El Paso Natural Gas Co	Southern California Gas Co	11-30-87	B		
ST88-0957	Natural Gas Pipeline Co. of America	Reynolds Pipeline Systems, Inc	11-30-87	B		
ST88-0958	Natural Gas Pipeline Co. of America	Victoria Gas Corp	11-30-87	B		
ST88-0959	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	11-30-87	B		
ST88-0960	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	11-30-87	B		
ST88-0961	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	11-30-87	B		
ST88-0962	Panhandle Eastern Pipe Line Co	Union Electric Co	11-30-87	B		
ST88-0964	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-30-87	B		
ST88-0965	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	11-30-87	B		
ST88-0966	Panhandle Eastern Pipe Line Co	Union Electric Co	11-30-87	B		
ST88-0967	Seagull Energy Corp	El Paso Natural Gas Co	11-30-87	C		
ST88-0968	Trunkline Gas Co	Valero Transmission, L.P	11-30-87	B		
ST88-0969	Trunkline Gas Co	Central Illinois Light Co	11-30-87	B		

Below are seventeen filings noticed out of sequence. The first filing, ST87-2399, is a revised petition for rate approval. It is noticed at this time to give interested parties the appropriate 150-day comment period. The other sixteen filings are initial reports filed by Transcontinental Gas Pipeline Corp., Docket Nos. ST88-1342 thru ST88-1357.

ST88-2399	Acadian Gas Pipeline System	Texas Eastern Transmission Corp.	11-13-87	C	04-11-88	15.
ST88-1342	Transcontinental Gas Pipe Line Corp	Consumer Power Corp	11-30-87	B		
ST88-1343	Transcontinental Gas Pipe Line Corp	Corpus Christi Indust. Pipeline Co., et al.	11-30-87	B		
ST88-1344	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-30-87	B		
ST88-1345	Transcontinental Gas Pipe Line Corp	Utilities Board, City of Linden	11-30-87	B		
ST88-1346	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp.	11-30-87	B		
ST88-1347	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	11-30-87	B		
ST88-1348	Transcontinental Gas Pipe Line Corp	North Carolina Gas Service	11-30-87	B		
ST88-1349	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	11-30-87	B		
ST88-1350	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-30-87	B		
ST88-1351	Transcontinental Gas Pipe Line Corp	Louisiana Natural Gas Pipeline, Inc.	11-30-87	B		
ST88-1352	Transcontinental Gas Pipe Line Corp	Public Service Elect. and Gas Co.	11-30-87	B		
ST88-1353	Transcontinental Gas Pipe Line Corp	Public Service Elect. and Gas Co.	11-30-87	B		
ST88-1354	Transcontinental Gas Pipe Line Corp	Alabama Gas Corp., et al	11-30-87	B		
ST88-1355	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-30-87	B		
ST88-1356	Transcontinental Gas Pipe Line Corp	Public Service Co of N. Carolina	11-30-87	B		
ST88-1357	Transcontinental Gas Pipe Line Corp	Louisiana Gas Marketing Co	11-30-87	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 88-1521 Filed 1-25-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-32-006 [1]]

Williams Natural Gas Co.; Compliance Filing and Offer of Settlement

January 19, 1988.

Take notice that on January 4, 1988, Williams Natural Gas Company (WNG) filed in these dockets a compliance filing pursuant to the Commission's orders of February 20, 1987 (38 FERC ¶61,170) and November 4, 1987 (41 FERC ¶61,141) in Docket Nos. RP86-32, et al.

WNG states that it accepts the July 18, 1986 Order No. 436 open-access Stipulation and Agreement as modified and conditioned by the Commission's orders in Docket Nos. RP86-32, et al., as specifically provided in the Revised Stipulation and Agreement (January 4, 1988) submitted as its compliance filing.

WNG states that the Revised Stipulation and Agreement explicity sets forth in a clear and concise governing document various modifications in the July 18, 1986 Stipulation and Agreement consistent with the requirements of the Commission's orders. The Company further states that such Revised Stipulation and Agreement resolves or addresses certain interrelated matters which have arisen subsequent to the submission of the original July 18, 1986 Stipulation and Agreement.

WNG states that copies of its compliance filing have been mailed to its authorized purchasers and interested state commissions, and have also been served on all participants in the above-referenced dockets.

Any person desiring to be heard or to protest said filing or to comment on WNG's offer of settlement should file comments or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.602 and 385.211 of the Commission's Rules of Practice and procedure (18 CFR 385.602, 385.211). All such comments or protests should be filed on or before February 2, 1988, with reply comments due on or before February 12, 1988. Comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene pursuant to § 385.214. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-1527 Filed 1-25-88; 8:45 am]
BILLING CODE 6717-01-M

[1] The filing submitted January 4, 1988, also includes Docket Nos. RP86-68, CP86-631, CI86-594, CI86-595, RP86-155, RP87-33, CP87-171, CP87-172, CI87-239, TA87-3-43, and TA88-1-43.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3318-7]

Notification of Proposed Approval of Declarations of Exemptions for Review of Stack Height Rules, Philadelphia and Allegheny Counties; Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Notification of proposed approval of Stack Height negative declarations and opportunity for public comment.

SUMMARY: This Notice announces the availability of documentation to support declaration of exemptions of certain sources from further review under the revised stack height regulations. Philadelphia and Allegheny Counties, of the Comonwealth of Pennsylvania, have declared that the emission limits for certain sources need not be reviewed because of revised stack height regulations because those sources were constructed before December 31, 1970, (grandfathered), have stacks less than formula height, or have emission limits unaffected by stack height. This Notice will list the sources, briefly describe the exemption and invite public comment on the proposed actions. No change in the State Implementation Plan (SIP) or applicable emission limits is contemplated as a result of this Notice.

DATE: Comments must be received on or before February 25, 1988.

ADDRESSES: Copies of the documentation supporting the negative determinations are available for public inspection during normal business hours at: U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Denis M. Lohman.

All comments on the proposed approval of the negative declarations of applicability submitted within 30 days of publication of this Notice will be considered. Comments should be directed to Mr. Joseph Kunz, Chief PA/WV Section, EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Denis Lohman (3AM11) at the EPA, Region III address above or telephone (215) 597-8375.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act (Act) requires EPA to promulgate rules to assure that the degree of emission limitations required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding good engineering practice (GEP) height or by any other dispersion technique. The EPA promulgated revised final regulations to implement section 123 on July 8, 1985 (50 FR 27892). Pursuant to section *406(d)(2)* of the Act, all States are required to review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP.

The local Air Pollution Control Agencies representing the counties of Philadelphia and Allegheny in Pennsylvania have each submitted inventories of all stacks within their respective jurisdictions, exceeding the de minimis GEP height of 65 meters. Allegheny County, on April 7, 1986, and Philadelphia on April 9, 1986, submitted documentation of evidence to demonstrate that the stacks listed on their respective inventories were not subject to review because they were in existence before the applicable date specified in section 123 (December 31, 1970), at or below GEP height determined in accordance with the EPA regulation, or had emission limits not affected by stack height. The proposed approval of the documentation is in the subject of this Notice.

Philadelphia

Within Philadelphia, there are 22 stacks with heights greater than the de minimis height of 65 meters. All but one of these stacks were in existence prior to December 31, 1970. The description and summary of the documentary evidence for 20 of the stacks is contained in Table 1. Ten of the stacks listed in Table 1 are at Philadelphia Electric Company (PECO) facilities. The last three (3) companies listed in Table 1, with a total of seven (7) stacks, have discontinued operation. The reactivation of any of those stacks would require analysis for new source review and the source(s) would be regulated in conformance with the EPA stack height regulation.

In addition to these 20 stacks described above one stack, at PGW-Station-A, is a flare not subject to the stack height regulation. Finally, the only tall stack in Philadelphia constructed after 1970 is identified as stack 6 at the PECO-Schuylkill Plant. The boilerhouse near that stack has a height (H) of 139 feet and a projected width (L) of 88 feet. The EPA formula for determining GEP height (H_g) based upon building dimension sets $H_g = H + 1.5L$. For stack 6 at PECO-Schuylkill, the GEP height is 271 feet (82.6 meters). The actual stack height of 255 feet (77.7 meters) is less than the GEP height and no review of the emission limitations is required by the stack height rule.

In addition to the Philadelphia stacks, there is one facility, Chevron U.S.A., Inc. (formerly Gulf Oil Co.), with an allowable sulfur dioxide (SO_2) limit greater than 5000 tons per year. At Chevron, there are three groups of sources which have utilized the "potentially" prohibited dispersion technique of merged gas streams. Chevron has provided documentation, in the form of permit applications and a contractor report, showing that these sources were installed with the merged gas streams prior to December 31, 1970.

TABLE 1

PHILADELPHIA, PA

[Stack heights Greater than 65m in existence prior to 12/31/70]

Company	Stack	Height(m)	Documentation evidence
PECO-Edison	1	114	Permit dated 8/29/67.
PECO-Schuylkill	1-2	69	Identified on property plan revision dated 10/5/64.
	3	84	
	4-5	71	Permit dated 1/22/68.
PECO-Southwark	1-4	84	Permit applications dated 11/5/70.
Sears	1	69	Aerial photo dated 4/14/65.
Strawbridge & Clothier	1	78	Permit dated 10/18/69.
Park Town Place	1	67	Permit applications dated 11/25/64.
Amstar	1-5	98	Operation discontinued.
Phila. Coke	1	91	Do.
National Sugar	1	67	Do.

Allegheny County

There are 23 stacks in Allegheny County which are greater than 65 meters in height and were in existence prior to December 31, 1970. The documentation provided for these stacks is summarized in Table 2. Eleven of the stacks are at the United States Steel Corporation (USSC) Clairton Works and range in height from 69 to 76 meters. The USSC-Duquesne Works, USSC-Homestead Works and Allegheny County Steam Heat are all shut down. If any of these shutdown stacks were to be reactivated, they would be subject to new source review procedures.

There are three (3) stacks greater than 65 meters constructed after 1970. The Pittsburgh Allegheny County thermal steam plant, located at Ft. Duquesne and Stanwick Streets, has a stack height of 365 feet (111 meters) approved June 1983. The stack is on a building 165 feet in height. Since the location is in downtown Pittsburgh, the projected width of all nearby buildings is greater than the building height so L is equal to 165 feet. The formula GEP height (165 + (1.5 × 165)) is 412 feet (126 meters). The actual stack height is less than GEP height. The Duquesne Light-Philips Station has an actual stack height of 341 feet (104 meters). A nearby building, located 490 feet away, is 144 feet in height and 200 feet in width. The formula GEP height (144 + (1.5 X 144)) is 360 feet (110 meters) or slightly above the actual stack height. The Battery B stack at USSC-Clairton Works, the exception in the USSC affidavit, has a height of 95 meters approved July 1980. The height of the surge bin building, approximately 160 feet from Battery B, is 137 feet and the projected width (L) is 130 feet. The formula GEP height (137 + (1.5x130)) is 332 feet (101 meters). The actual stack height is six (6) meters less than GEP height.

There are six (6) facilities in Allegheny County with allowable SO_2 emissions greater than 5000 tons per year. The facilities are:

(1) Duquesne Light Company, Cheswick Power Station;

(2) Duquesne Light Company, Philips Power Station;

(3) USX Corporation, Clairton Works;

(4) USX Corporation, Edgar Thomson Works;

(5) USX Corporation, Irvin Works; and

(6) USX Corporation, National Works.

For each of these facilities documentation, in the form of an affidavit, has been submitted affirming that no dispersion technique has been implemented at any time. The Engineering Section of Allegheny County Bureau of Air Pollution Control has concurred with the affidavits.

TABLE 2

ALLEGHENY COUNTY, PA

[Stack heights greater than 65m prior to 12/31/70]

Company	Stack	Height (m)	Documentation
All. Co. Sanitary Auth.	S2	92	Contract Report 11/10/56.
All. Co. Steam Heat	S31	82	Shut down.
Bellefield Boiler Plant	S2	78	Drawing dated 4/6/56.
Duquesne Light-Cheswick	S31	229	News Article 11/24/68.
H.J. Heinz	S1	76	Drawing & Picture 1918.
H.J. Heinz	S2	76	Drawing dated 5/1/54.
LTV Steel	S5	69	Permit indicating 1953.

TABLE 2—Continued

[Stack heights greater than 65m prior to 12/31/73]

Company	Stack	Height (m)	Documentation
Shenango, Inc., Battery 1.	S1	69	Affidavit/Permit.
Shenango, Inc., Battery 4.	S2	69	Indicating 1952.
USSC–Duquesne	All but SD13 11 Stacks	<76	Affidavit attesting to pre-1976 dates 1930–1960.
USSC-Duquesne	S07	70	Shut down.
USSC-Homestead	S01	69	Do.
USSC-Homestead	S09	70	Do.

Conclusion:

The EPA is proposing to approve the determination by Philadelphia and Allegheny Counties in Pennsylvania that there are no stacks located in those respective counties for which a revised emission limit is required in order to conform with the July 8, 1985 stack height regulation. Interested persons are invited to submit comments on this proposed approval to the EPA, Region III address cited above. This is not a rulemaking action. No emission limitation will be changed as the result of the approval as proposed.

Authority: 42 U.S.C. 7401–7642.

Date: September 22, 1986.

James M. Self,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register January 19, 1988.

[FR Doc. 1273 Filed 1–25–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL No. 3316–4]

Fuels and Fuel Additives; Waiver Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act (Act), the Administrator of EPA is denying an application for a fuel waiver involving methanol and cosolvent alcohols submitted by AM Laboratories, Inc.

ADDRESS: Copies of documents relevant to this waiver application, including the Administrator's decision document, are available for inspection in public docket EN–87–05 at the Central Docket Section (LE–131) of the EPA, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Clean Air Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case by January 19, 1988), the statute provides that the waiver shall be treated as granted.

AM Laboratories, Inc. submitted a waiver application for a gasoline-alcohol fuel blend, referred to as AM 5/5, on July 23, 1987. AM 5/5 is composed of a gasoline blend containing a maximum of 4.4 weight percent fuel oxygen, a maximum of 5 volume percent methanol, a minimum of 5 volume percent cosolvents and specified amounts of certain corrosion inhibitors. *See* 52 FR 33281 (September 2, 1987).

For reasons specified in the Administrator's decision document (available as described above), EPA has decided to deny AM laboratories' waiver application. This decision is based on the determination that AM Laboratories has not demonstrated that the fuel, when used as specified above, will not cause or contribute to a failure of 1975 or subsequent model year vehicles or engines to comply with the emission standards with respect to which they were certified under section 206 of the Act.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrator Procedure Act, 5 U.S.C. section 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this section on small entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of the action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of January 26, 1988. Under section 307(b)(2) of the Act, today's action may not be challenged later in separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: January 19, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88–1502 Filed 1–25–88; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3320–7]

Science Advisory Board, Environmental Health Committee, Drinking Water Subcommittee

Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on February 4–5, 1988 at the One Washington Circle Hotel, Washington, DC. The meeting will start at 8:30 a.m. on February 4th and adjourn no later than 4:00 p.m. on February 5th.

The Drinking Water Subcommittee of the Environmental Health Committee will review the health criteria documents prepared by the Office of Research and Development for the Office of Drinking Water for styrene, ethylbenzene, and acrylamide.

An agenda for the meeting is available for Ms. Reneé Butler, Staff Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2552. The health criteria documents are available from the Health Effects Branch, Office of Drinking Water, USEPA, Washington, DC 20460, (202) 382–7571.

The meeting will be open to the public. Any member of the public wishing to attend, obtain information or otherwise participate in these meetings must contact Dr. C. Richard Cothern, Executive Secretary, Environmental Health Committee by telephone at (202) 382–2552 or by mail to: Science Advisory Board (A–101–F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. on January 25, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

Date: January 21, 1988.

[FR Doc. 88–1625 Filed 1–25–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87–578]

Applications for Consolidated Hearing; Calhoun County Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/State	File No.	MM Docket No.
A. Calhoun County Broadcasting, Inc., Oxford, AL.	BPH–860902MD	87–578
B. Daystar Broadcasting Network, Inc., Oxford, AL.	BPH–860912MA	
C. Elks J. Parker and Mignon C. Smith d/b/a Oxford, Radio Joint Venture, An Alabama General Partnership, Oxford, AL.	BPH–860917MB	
D. Woodard Broadcasting Co., Inc., Oxford, AL.	BPH–860918MA	
E. Marbs E. Phillips *et al.*, d/b/a Mountain Broadcasting, An Alabama Partnership, Oxford, AL.	BPH–860918MC	
F. Oxford Broadcasting, Ltd., Oxford, LA.	BPH–860918NA	
G. Thomas Sims Potts, Oxford, AL.	BPH–860918NC	
H. Mavis Gardner, Ronald Windsor and George Salmon d/b/a Cheaha Associates, Oxford, AL.	BPH–860918NF	
I. Oxford Broadcasting Service, Inc., Oxford, AL.	BPH–860918OM	
J. William E. Bussey, Jr., Oxford, AL.	BPH–860918OR	
K. Julie N. Frews, Oxford, AL.	BPH–860918OX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicant(s)

1. Financial, J
2. Air Hazard, F,J,K
3. Comparative, all applicants
4. Ultimate, all applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1467 Filed 1–25–88; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87–574]

Applications for Consolidated Hearing; Dove, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No.	Docket No.
Dove, Inc., Maryville, TN.	BPH–860729MA	87–574
Chilhowee Communications, Ltd., Maryville, TN.	BPH–860730MA	
Elizabeth F. Nicholson, Maryville, TN.	BPH–860730MB	
Blount County Broadcasting Corp., Maryville, TN.	BPH–860730MD	
Gateway Broadcasting Corp., Maryville, TN.	BPH–860730MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

BEST COPY AVAILABLE

Issue heading and applicant(s)
1. Air Hazard, A,B,D
2. Comparative, A,B,C,D,E
3. Ultimate, A,B,C,D,E.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1468 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–575]

Applications for Consolidated Proceeding; Olney Broadcasting Co., and Wes-Tex Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File no.	MM Docket No.
A. Olney Broadcasting Co., Olney, TX.	BPH–860905MB	87–575
B. Wes-Tex Broadcasting, Inc., Olney, TX.	BPH–860908MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicant(s)

1. Air Hazard, B
2. Comparative, Both
3. Ultimate, Both.

3. If there in any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1469 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–577]

Applications for Consolidated Proceeding; Pittsburg Radio, and Don H. Barden

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File no.	MM Docket No.
A. Jane A. Filler d/b/a Pittsburg Radio, Pittsburg, TX.	BPH–860123MH	87–577
B. Don H. Barden, Pittsburg, TX.	BPH–860123MI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicant(s)

1. Comparative, Both
2. Ultimate, Both.

3. It there in any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1470 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 87–576; File No. 3282–CM–P–80, and File No. 2751–CM–P–80]

Tele-Communications of Key West, Inc. and Robert A. Gordon, d/b/a The BA Co.; for Construction Permits in the Multipoint Distribution Service for a new Station on Channel 1 at Key West, FL

Memorandum Opinion and Order

Adopted: December 11, 1987.

Released: January 15, 1988.

By the Common Carrier Bureau:

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Key West, Florida. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, *it is hereby ordered*, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are *designated for hearing*, in a *consolidated proceeding*, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. *It is further ordered*, that Tele-Communications of Key West, Inc, Robert A. Bordon d/b/a The BA Company and the Cheif of the Common Carrier Bureau, are made parties to this proceeding.

5. *It is further ordered*, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules, 47 CFR 1.221.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division Common Carrier Bureau.

FR Doc. 88–1471 Filed 1–25–88; 8:45 am]

BILLING CODE 6712–01–M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–809–DR]

Major Disaster and Related Determinations; Republic of the Marshall Islands

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Republic of the Marshall Islands (FEMA–809–DR), dated January 16, 1988, and related determinations.

DATED: January 16, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated January 16, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Republic of the Marshall Islands from severe winds, high waves, and flooding caused by Tropical Storm Roy on January 9, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288. I, therefore, declare that such a major disaster exists in the Republic of the Marshall Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the Republic its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the Republic when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joseph G. Del Monte of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Republic of the Marshall Islands to have been affected adversely by this declared major disaster: Kwajalein Atoll for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88–1476 Filed 1–21–88; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement Nos.: (1) 202–008054–027; (2) 202–009502–020.

Titles: (1) South and East Africa/U.S.A. Conference; (2) United States/South and East Africa Conference.

Parties (1) & (2):

The Bank Line, Limited
Lykes Bros. Steamship Co., Inc.
P & O Container Line
South African Marine Corp. Ltd.

Synopsis: The proposed amendments would restate the agreements and would add language to also preclude the parties from issuing bills of lading for the carriage of cargo in contravention of conference tariffs.

Agreement No.: 203–011165.

Title: SENATOR/AEL Reciprocal Space Charter and Sailing Agreement.

Parties:

Senator Linie GmbH & Co., KG
Atlantik Express Linie Thien + Heyenger Schiffahrts GmbH & Co.

Synopsis: The proposed agreement would permit the parties to agree upon rates and charges, to charter space from one another and to rationalize sailings in the trade between United States Atlantic Coast ports and ports in North Europe.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 21, 1988.

[FR Doc. 88–1497 Filed 1–25–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; Max G. Brooks et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than February 10, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Max G. Brooks*, Denver, Colorado; to acquire an additional 2.92 percent of the voting shares of C.C.B., Inc., Denver, Colorado, and thereby indirectly acquire New Central Colorado Company, Denver, Colorado; Central Bancorporation, Inc., Denver, Colorado; Central Bank of East Aurora, N.A., Aurora, Colorado; First National Bank in Aspen, Aspen, Colorado; Central Bank of Aurora, Aurora, Colorado; Central Bank of Broomfield, Broomfield, Colorado; Central Bank of Academy Boulevard, Colorado Springs, Colorado; Central Bank of Colorado Springs, Colorado Springs, Colorado; Central Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; Central Bank of Chapel Hills, N.A., Colorado Springs, Colorado; First National Bank in Craig, Craig, Colorado; Central Bank of Denver, Denver, Colorado; Central Bank of North Denver, Denver, Colorado; Central Bank of Inverness, N.A., Englewood, Colorado; Central Bank of Glenwood Springs, N.A., Glenwood Springs, Colorado; Central Bank of Grand Junction, N.A., Grand Junction, Colorado; Central Bank of Greeley, West Greeley, Colorado; Central Bank of Chatfield, Littleton, Colorado; Central Bank at Centennial, N.A., Littleton, Colorado; Central Bank of Pueblo, N.A., Pueblo, Colorado; Rocky Ford National Bank, Rocky Ford, Colorado; and Central Bank of Westminster, N.A., Westminster, Colorado.

2. *Christian K. Keesee*, John E. Kirkpatrick, and Eleanor B. Kirkpatrick, all of Oklahoma City, Oklahoma; to each acquire 29.58 percent of the voting shares of American Bancorp of Edmond, Inc., Edmond, Oklahoma, and thereby indirectly acquire American Bank and Trust, Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1448 Filed 1-25-88; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Continental Illinois Bancorp, Inc. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 12, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Bancorp, Inc.*, Chicago, Illinois, and Continental Illinois Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Grand Canyon State Bank, Scottsdale, Arizona.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Napa Valley Bancorp*, Napa, California; to acquire at least 50.01 percent of the voting shares of Sonoma Valley Bank, Sonoma, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1449 Filed 1-25-88; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de Novo in Permissible Nonbanking Activities; First Interstate of Iowa, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate of Iowa, Inc.*, Des Moines, Iowa; to engage *de novo* through its subsidiary, First Interstate Trust of Iowa, N.A., Des Moines, Iowa, in acting as a trustee for testamentary and living trusts; and acting as agent, custodian, and executor and administrator with regard to trusts. As trustee, Applicant will provide services with regard to farm management, employee benefit service, financial planning, tax planning, trustee under bond indenture, registrar, transfer agent, conservator, and real estate management pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1450 Filed 1-25-88; 8:45 am]

BILLING CODE 6210-01-M

Northern Trust Corp.; Application To Engage de Novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-29135) published at page 48323 of the issue for Monday, December 21, 1987.

Under the Federal Reserve Bank of Chicago, the entry for Northern Trust Company is revised to read as follows:

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago Illinois; to engage do novo as a futures commission merchant through its subsidiary Northern Futures Corporation, Chicago, Illinois, on the Bond Buyer Municipal Index, Standard & Poor's 500 Stock Price Index, Major Market Index, New York Stock Exchange Composite Index. These activities have been approved previously by Board Order. *See e.g. Sabar, S.A., Republic New York Corporation* 73 Federal Reserve Bulletin 224 (1987).

Comments on this application must be received by February 12, 1988.

Board of Governors of the Federal Reserve System, January 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1451 Filed 1-25-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Solicitation for Interest in Developing and Marketing Inventions

The Department of Health and Human Services hereby solicits expressions of interest from commercial organizations in developing and marketing two inventions by Drs. Stephen B. Leighton and Jay A. Bernfsky who are employees of the National Institutes of Health. The first invention is a device for delivering one cell in a suspension containing a variety of cells into the well of a microtitre tray. The second invention is a device for indexing the movement of a microtitre tray under a dispensing nozzle, suction device, optical monitor, radiation detector, etc.

Descriptions of the invention disclosures will be provided to qualified applicants who agree to receive the disclosures in confidence so that the Government's patent rights will not be compromised. Parties interested in reviewing the invention disclosures should submit written requests within sixty (60) days to: Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A03, Westwood Building, Bethesda, Maryland 20892.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this solicitation.

Authority: 45 CFR 6.4 and 7.9.

Robert E. Windom,

Assistant Secretary for Health.

Dated: January 20, 1988.

[FR Doc. 88-1516 Filed 1-25-88; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 87C-0379]

Wesley-Jessen; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wesley-Jessen has filed a petition proposing that the color additive regulations be amended to provide for the safe use of carbazole violet (CAS Reg. No. 6358-30-1, Colour Index No. 51319) to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 7C0210) has been filed by Wesley-Jessen, 400 West Superior St., Chicago, IL 60610, proposing that Part 73 of the color additive regulations be amended to provide for the safe use of carbazole violet (CAS Reg. No. 6358-30-1, Colour Index No. 51319) to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 14, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-1456 Filed 1-25-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0388]

Pfizer Central Research, Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer Central Research, Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the use of polydextrose in peanut butter spread.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3998) has been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42d St., New York, NY 10017, proposing that § 172.841 *Polydextrose* (21 CFR 172.841) be amended to provide for the safe use of polydextrose in peanut butter spread.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 15, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-1457 Filed 1-25-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meetings; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal

Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESS: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I, as amended)), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period July 1, 1986, through September 30, 1987:

Center for Biologics Evaluation and Research

Allergenic Products Advisory Committee, Blood Products Advisory Committee, Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research

Anti-Infective Drugs Advisory Committee.

Center for Devices and Radiological Health

Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology-Urology Devices Panel, General and Plastic Surgery Devices Panel, General Hospital and Personal Use Devices Panel, Immunology Devices Panel, Ophthalmic Devices Panel.

Center for Veterinary Medicine

Veterinary Medicine Advisory Committee.

Annual reports are available for public inspection at: (1) The Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., Second and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library, Rm. 1436, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., and (3) the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1514 Filed 1–25–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Dental Research, Dental Research Programs Advisory Committee; Meeting Change

Notice is hereby given of a change in the meeting of the Dental Research Programs Advisory Committee originally scheduled for January 27–28, 1988, 8:30 a.m., in Building 30, Room 117, National Institutes of Health, which was published in the **Federal Register** on December 3, 1987, 52 FR 460004.

This Dental Research Programs Advisory Committee was to have convened at 8:30 a.m. on January 27–28, 1988. The meeting has been rescheduled for February 29-March 1, 1988, in Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland, from 8:30 a.m. to recess on February 29 and from 8:30 a.m. to adjournment on March 1, 1988.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies: 13–845-Dental Research Institutes, National Institutes of Health.)

Dated: January 21, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1569 Filed 1–25–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1988

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1988, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9¾ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (6.17 percent), and rounding the result (9.67 percent) upward to the nearest ⅛ percent (9¾ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1988, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable intertest at the annual rate was as follows: 9¼ percent for the quarter ending June 30, 1987; 9⅛ percent for the quarter ending September 30, 1987; and 9⅞ percent for the quarter ending December 31, 1987.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9¾ percent. Using the regulatory formula (42 CFR 60.13(a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.17 percent); adding 3.50 percent (9.67 percent); and rounding that figure to the next higher one-eighth of 1 percent (9¾ percent).

3. For fixed rate loans executed during the period of January 1, 1988 through March 31, 1988, and for variable rate loans executed on or after October 22, 1985, the interest rate is 9¼ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a) (2) and (3)) with the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (6.17 percent); adding 3.0 percent (9.17 percent) and rounding that figure to the next higher one-eighth of 1 percent (9¼ percent)

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 20, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–1458 Filed 1–25–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblos in New Mexico; Transfer of Indian Owned Land

January 11, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of notice.

SUMMARY: In 52 FR 42351 for Wednesday, November 4, 1987, the following Pueblos are to be included: Appearing on page 42351, in the second paragraph, on the ninth line before the Pueblo of San Ildefonso, insert "Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Felipe".

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 88–1443 Filed 1–25–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AZ–050–08–4212–13]

Arizona; Resource Management Planning; Yuma District Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to file Category I amendment to Yuma District Resource Management Plan, Yuma District, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael R. Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86402, 602–855–8017 (for Needles lands), and Sue Richardson, Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma Arizona 85365, 602–726–6300 (for Yuma lands).

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c), and 1610.3–1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7).

1. *Description of the proposed planning policy:* The proposed action is to amend the Yuma District Resource Management Plan (RMP) completed in May 1986. The Category I planning amendment will be based upon existing statutory requirements and policies, and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The RMP Amendment and accompanying Environmental Assessment (EA) will provide the basis for changing the RMP Land Ownership Adjustment Section (issue 4) to allow for the disposal through exchange of approximately 425 acres of public land not previously identified for disposal. The Amendment and EA are scheduled for completion by February 1, 1988.

2. *Identification of the geographic area involved:* The lands to be available for disposal through exchange are in the following locations: Within the city limits of Needles, California, on the south side of the town described as T. 8 N., R. 23 E., SBM, sec. 4, lot 4, SW¼NW¼, N½SW¼, SE¼SW¼, N½SW¼SW¼, SE¼SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼S W¼SW¼, W¼SW¼SE¼; approximately 10 miles south of Yuma, Arizona, described as T. 10 S., R. 23 W., G&SRM, sec. 18, lot 10, SE¼SW¼N W¼, E½NW¼SW¼, SW¼NE¼SW¼; approximately 15 miles east of Yuma along Highway 95 described as T. 8 S., R. 21 W., G&SRM, sec. 16, lot 7 and 9, E½SE¼SW¼; approximately 6 miles east of Ehrenberg, Arizona, just south of Interstate 10, described as T. 3 N., R. 21 W., G&SRM, sec. 3, lot 9.

3. *General types of issues anticipated:* The proposed Amendment addresses the changes to the Land Tenure Adjustment Section only.

4. *Disciplines to be represented and used to prepare the amendment:* Topography and soils, vegetation, wildlife, minerals, land use, visual resources, floodplains, threatened and endangered species, cultural resources, and socio-economic factors.

5. The kind and extent of public participation will be carried out through several comment periods to be announced in the **Federal Register** and local newspaper. There is a specific comment period for the Governor to inform and seek comment from State and local agencies.

6. *Times, dates and locations scheduled for any public meetings, hearings, conferences, or gatherings as known:* At this time, no scheduling for any public meetings has been planned. All public input will be handled through written comments.

7. *The location and availability of documents relevant to the planning process:* Documents will be available for public review at the Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona, and Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85364.

Date: January 15, 1988.

J. Darwin Snell,

District Manager.

[FR Doc. 88–1444 Filed 1–25–88; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Alaska Outer Continental Shelf; Date, Time, and Location of Public Scoping Meetings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale 101, St. George Basin

The October 8, 1987 **Federal Register** contained a Notice of Intent to prepare an Environmental Impact Statement (EIS) for proposed Oil and Gas Lease Sale 101, St. George Basin. The Notice of Intent announced the scoping process that will be followed for the preparation of the EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding the Minerals Management Service in determining the significant

issues, alternatives, and mitigating measures to be analyzed in the EIS. This will be done through written scoping comments and public scoping meetings. Scoping meetings will be held as follows:

February 1, 1988

City Hall Recreation Center, St. Paul, Alaska (7:00 p.m.)

February 2, 1988

Community Hall, St. George, Alaska (7:00 p.m.)

February 3, 1988

City Council Chambers, Unalaska, Alaska (7:00 p.m.)

February 9, 1988

Kuskokwim Community College, Room 146, Bethel, Alaska (6:30 p.m.)

Written scoping comments will be accepted through February 15, 1988, and should be submitted to: Regional Director, Alaska OCS Region, Minerals Management Service, Attention: Paul Dubsky, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508–4302.

Additional information can be obtained from Paul Dubsky at the above address, telephone (907) 261–4655.

Rodney A. Smith,

Acting Regional Director, Alaska OCS Region, Minerals Management Service.

[FR Doc. 88–1554 Filed 1–25–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Upper Delaware Scenic and Recreational River; Citizens Advisory Council Meeting

AGENCY: National Park Service, Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 22, 1988, 7:00 p.m.[1]

Inclement weather reschedule date: February 12, 1988.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764–0159; 717–729–8251.

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround the statistical report for the NPS-funded law enforcement and trash removal program for the 1987 season.

The meeting will be open to the public.

Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Maureen Finnerty,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88–1488 Filed 1–25–88; 8:45 am]

BILLING CODE 4310–70–M

Martin Luther King, Jr., National Historic Site; Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: February 10, 1988.

ADDRESS: The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE., Atlanta, Georgia 30312, Telephone (404) 331–4979.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Art Clement
Mr. Dan Nall
Mrs. Valena Henderson
Mr. William Allison
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include: (1) An update of park development and interpretive activities at the park.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Date: January 13, 1988.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 88–1513 Filed 1–25–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations, Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 16, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 10, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Baldwin County

Battles Wharf, *Battles Wharf Historic District*, US 98, Eastern Shore Blvd. roughly between Woolworth Ave. and Buerger La.

Mobile County

Kushla vicinity, *Magee, Jacob, House*, CR 45 N of Kushla McLeond Rd.
Mobile, *Azalea Court Apartments*, 1820 Old Government St.
Mon Louis Island vicinity, *Austin, Hiram B., House*, AL 163 at 12 mi. maker

CONNECTICUT

Middlesex County

Chester, *Daniels, Charles, House*, 43 Liberty St.
Middlefield, *Ward, William, Jr., House*, 137 Powder Hill Rd.

KENTUCKY

Campbell County

Bellevue, *Fairfied Avenue Historic District (Bellevue MRA)*, Fairfield Ave. between Lafayette Ave. and O'Fallon
Bellevue, *Foote-Fister Mansion (Bellevue MRA)*, 801 Lincoln Rd.
Bellevue, *Taylor's Daughters Historic District (Bellevue MRA)*, Roughly bounded by O'Fallon Ave., Locust St., Retreat St., Clark St., Chen Ave., and Fairfield Ave.

LOUISIANA

DeSoto Parish

Grand Cane, *Bank of Grand Cane*, US 171
Mansfield vicinity, *Guy House*, Off LA 513, S mi. S of Mansfield

East Baton Rouge Parish

Zachary vicinity, *Foirhoven Plantation House*, 18630 Samuel Rd.

Natchitoches Parish

Robeline, *Robeline Methodist Church*, Texas St., LA 6

Vermilion Parish

Abbeville, *St. Mary Magdalen Church, Rectory, and Cemetery*, Pere Megret and Main St.

Webster Parish

Minden, *Bonk of Minden*, 605 Main St.

MINNESOTA

St. Louis County

Archaeological Site 21SL82

MISSISSIPPI

Monroe County

Aberdeen, *Aberdeen City Hall (Aberdeen MRA)*, 125 W. Commerce St.
Aberdeen, *Adams-French House (Aberdeen MRA)*, N. Meridian and Marshall Sts.
Aberdeen, *Building at 133 East Commerce Street (Aberdeen MRA; Commercial Buildings of Aberdeen TR)*, 133 E. Commerce St.
Aberdeen, *Buildings at 110–122 East Commerce Street (Aberdeen MRA; Commercial Buildings of Aberdeen TR)*, 110–122 E. Commerce St.
Aberdeen, *Buildings at the Northwest Corner of Commerce and Meridian Streets (Aberdeen MRA; Commercial Buildings of Aberdeen TR)*, 100–104 W. Commerce St. and 107 N. Meridian St.
Aberdeen, *Day, C. C., House (Aberdeen MRA)*, 517 S. Meridian St.
Aberdeen, *Dunklin, William A., House (Aberdeen MRA)*, 301 High St.
Aberdeen, *Harmon Subdivision Historic District (Aberdeen MRA)*, 933–939 and 943 W. Commerce St.
Aberdeen, *Holliday John, House (Aberdeen MRA)*, 609 S. Meridian St.
Aberdeen, *Johnson-Butler House (Aberdeen MRA)*, 210 High St.
Aberdeen, *North Aberdeen Historic District (Aberdeen MRA)*, Roughly bounded by Meridian, Marshall, Long, and Commerce Sts.
Aberdeen, *Old Homestead (Aberdeen MRA)*, 503 W. Commerce
Aberdeen, *South Central Aberdeen Historic District (Aberdeen MRA)*, Roughly bounded by Locust, Washington, Franklin, and High Sts.
Aberdeen, *West Commerce Street Historic District (Aberdeen MRA)*, 721–919 and 730–900 W. Commerce St.

NEW YORK

Delaware County

Roxbury, *Main Street Historic Distric*, Main St.

Franklin County

Saranac Lake, *Berkeley Square Historic District*, 30–84 Main St., 2–29 Broadway

Nassau County

Glen Cove, *Sea Cliff Railrood Station (Sea Cliff Summer Resort TR)*, Sea Cliff Ave.
Sea Cliff, *Central Hall (Sea Cliff Summer Resort TR)*, 93 Central Ave.
Sea Cliff, *Crowell House (Sea Cliff Summer Resort TR)*, 375 Littleworth La.

Yates County

Dresden, *Ingersoll, Robert, Birthplace*, Main St.

NORTH CAROLINA

Forsyth County

Kernersville, *First Baptist Church (Kernersville MPS)*, 128 N. Main St.
Kernersville, *Harmon—Reid Mill (Kernersville MPS)*, 208 Bodenhamer St.
Kernersville, *Kernersville Depot (Kernersville MPS)*, 121 Railroad St.
Kernersville, *McKaughan, Isaac Harrison, House (Kernersville MPS)*, 506 Salisbury St.
Kernersville, *North Cherry Street Historic District (Kernersville MPS)*, 100 blk. N. Cherry St.
Kernersville, *Roberts—Justice House (Kernersville MPS)*, 133 N. Main St.
Kernersville, *South Main Street Historic District (Kernersville MPS)*, 100—600 blks. of S. Main St.
Kernersville, *Stuart Motor Company (Kernersville MPS)*, 109—111 E. Mountain St.

OHIO

Delaware County

Ostrander vicinity, *Felkener—Anderson House*, 9716 Fontanelle Rd.

Franklin County

Canal Winchester, *West Mound Street Historic District*, 10—54 W. Mound St. and 28 Elm St.

Greene County

Cedarville, *Harper Mausoleum and Harper, George W., Entrance*, North Cemetary, OH 72

Hamilton County

Cincinnati, *123—137 East Fourth Street Historic District*, 123, 127 and 135—137 E. Fourth St.

Muskingum County

Zanesville, *US Post Office and Federal Building-Zanesville*, 65 S. Fifth St.

OREGON

Deschutes County

Bend, *New Toggart Hotel*, 215 NW Greenwood Ave.

Hood River County

Hood River, *Roe—Parker House*, 416 State St.

Multnomah County

Portland, *Campbell Hotel*, 530 NW Twenty-third Ave.
Portland, *Druhot, Alice, House*, 1903 SW Cable St.
Portland, *Envoy Apartment Building*, 2336 SW Osage
Portland, *Jones, Dr. Noble Wiley, House*, 2187 SW Market St. Dr.
Portland, *Landenberger, C. A., House*, 1805 NW Glisan St.
Portland, *Otis Elevator Company Building*, 230 NW Tenth Ave.

Polk County

Independence, *Cooper, James S., and Jennie M., House*, 487 S. Third St.

Umatilla County

Athena, *Watts, M. L., House*, Fourth at Jefferson St.

Yamhill County

Carlton, *Carlton State and Savings Bank*, 109 W. Main St.
Dayton vicinity, *Bertram, Henry, Sr., House*, 6160 SE Webfoot Rd.

WASHINGTON

Snohomish County

Darrington, *Green Mountain Lookout (USDA Forest Service Fire Lookouts on Mt. Baker—Snoqualmie National Forest TR)*, Darrington Ranger District

WISCONSIN

Columbia County

Fall River vicinity, *Nashold 20-sided Barn*, Trunk Z, 0.4 mi. E of WI 148

Dane County

Madison, *Wakeley—Giles Commercial Building*, 117—119 E. Mifflin St.

Milwaukee County

Milwaukee, *Burnham, J. L., Block*, 907—911 W. National Ave.
Milwaukee, *New Coeln House*, 5905 S. Howell Ave.
Milwaukee, *Pythian Castle Lodge*, 1925 W. National Ave.
Milwaukee, *South Branch Library*, 931 W. Madison St.

Correction: All the properties listed under Sea Cliff Summer Resort TR should be listed under Nassau County instead of Livingston County. These properties were listed on the Federal Register list dated January 20, 1988.

[FR Doc. 88-1487 Filed 1-25-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Investigation and Suspension Docket No. M-29788]

Charge for Shipments Moving on Order, Notify Bills of Lading: National Motor Freight Traffic Association

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceedings; modification and clarification of decision.

SUMMARY: The Commission modifies and clarifies certain findings in *Charge—Shipments Moving on Order-Notify Bill of Lading*, 367 I.C.C. 330 (1983) [*Order-Notify II*]. Based upon comments filed in response to *Order-Notify II*, we affirm the general holding in that decision that publication in freight classifications of a proposed order-notify rule and accessorial charge, as well as other rules and charges unrelated to classification, exceeds the appropriate scope of section 5(a) agreements of motor freight classification publishers, and specifically of the National Motor Freight Traffic Association (NMFTA). The prior decision is modified in certain respects.

DATE: This decision will be effective on January 26, 1988.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins O'Malley, (202) 275-7181

or

Mark Shaffer, (202) 275-7691

[TDD assistance for the hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan Area). (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.)

Energy and Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1481 Filed 1-25-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 13-87]

Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Equal Employment Opportunity Staff, Justice Management Division, Department of Justice, is eliminating a system of records entitled "Volunteer Representatives Roster, JUSTICE/JMD-015." The Staff is eliminating the system because the Volunteer Representatives Program is no longer in existence. The index has been destroyed in accordance with General Records Schedule 23, item 2.c., as approved by the Archivist of the United States. Accordingly, the system, as published in the **Federal Register** on November 17, 1980 (45 FR 75931), is removed from the Department's compilation of Privacy Act systems.

Date: December 21 1987.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 88-1549 Filed 1-25-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Arizona et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 7, 1988, proposed Consent Decree in *United States v. State of Arizona, et la.*, Civil No. 86-1059 PHX RGS was lodged with the United States District Court for the District of Arizona. The proposed Consent Decree concerns the prevention of the discharge of pollutants by the State of Arizona Department of Corrections and the State of Arizona without a National Pollutant Discharge Elimination System permit and in violation of the Clean Water Act. The proposed Consent Decree requires the State of Arizona Department of Corrections and the State of Arizona to achieve compliance with the Act and to jointly pay a civil penalty of $75,000. The other defendant in the case, the Town of Florence has already entered into a consent decree to resolve the matter as to them.

The Department of Justice will receive for a period of thirty (30) days the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to State of Arizona Department of Corrections, D.J. Ref. 90-5-1-1-2649.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Arizona, 230 North First Avenue, Phoenix, Arizona 85025, and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case.

January 5, 1988.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-1548 Filed 1-25-88; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-51]

Harvey Presser, M.D.; Denial of Application

On March 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harvey Presser, M.D., 10014 Commerce Avenue, Tujunga, California 91042 (Respondent). The Order to Show Cause sought to deny Respondent's application for a DEA Certificate of Registration executed on June 6, 1986, because Respondent's registration would be inconsistent with the public interest as evidenced by his conviction on September 17, 1982, in the Superior Court of California in and for the County of Los Angeles of 22 counts of prescribing controlled substances for persons not under treatment, felonies relating to controlled substances.

Respondent requested a hearing by letter dated May 28, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in San Francisco, California on July 8, 1987. Judge Young issued his opinion and recommended decision on October 29, 1987.

The Administrative Law Judge found that in 1980 Respondent was the subject of an investigation initiated by the California Board of Medical Quality Assurance. As part of that investigation, an undercover operative was sent to Respondent's office requesting controlled substances. On July 31, 1980, the undercover operative went to Respondent's office and told him she wished to establish herself with a doctor so she could get drugs. After spending 50 minutes with the physician, the operative left with a prescription for 100 tablets of Dexedrine. On August 7 and 14, 1980, the operative returned to Respondent's office and on each occasion received a prescription for 100 dexedrine. On September 11, 1980, the undercover operative again returned to Respondent's office; this time receiving a prescription for 100 Dexedrine tablets and a prescription for 100 Biphetamine tablets. Both these substances are Schedule II stimulant controlled substances. The operative returned again on September 25, 1980, receiving three prescriptions from Respondent: a prescription for herself for 100 Dexedrine tablets, a prescription for 100 Biphetamine for a fictitious friend "Leslie Sanders", and a third prescription for 60 Seconal capsules for a fictitious boyfriend "Eric Jones." Neither of the fictitious individuals were present in Respondent's office on September 25, 1980, nor had Respondent ever met these individuals.

On October 23, 1980, the undercover operative returned to Respondent's office accompanied by an investigator from the California Board of Medical Quality Assurance who posed as Eric Jones. At the conclusion of the visit, the operative and the investigator left Respondent's office with six prescriptions for controlled substances. Two prescription, each for 100 Dexedrine, were issued by Respondent to the operative. Respondent issued two prescriptions, each for 100 Biphetamine for the fictitious Leslie Sanders. Respondent issued two prescriptions to Eric Jones, one for 100 Dexedrine and one for 60 Seconal. The undercover operative and the investigator returned to Respondent's office once again on November 6, 1980. On this occasion the operative received a prescription for 100 Dexedrine and one for 100 Biphetamine, while the investigator received a prescription for 100 Dexedrine and one for 60 Seconal. On no occasion were the previously described prescriptions issued for a legitimate medical purpose.

On February 11, 1982, Respondent was convicted, after a jury trial, in a California State court of 22 counts of prescribing controlled substances to persons not under treatment. These were felonies relating to controlled substances. As part of his sentence, Respondent was prohibited from practicing medicine for two years. The California Board of Medical Quality Assurance placed Respondent's license to practice medicine on probation for 10 years in January 1983, and suspended his license for one year. One of the conditions of Respondent's probation was that he surrender his DEA Certificate of Registration and not reapply until receiving written permission from the Board. The Board terminated Respondent's probation on May 22, 1986. Respondent is currently employed by the Los Angeles County Department of Mental Health, which is unaware that he is not currently registered with DEA.

The Administrative Law Judge concluded that Respondent had been convicted of a felony relating to controlled substances, and that he had unlawfully prescribed substantial quantities of Schedule II controlled substances over an extended period of time for no legitimate medical purposes. Respondent prescribed controlled substances for an individual that he did not know, and whom he had never seen as a patient. The Respondent provided no explanation for his prescribing practices other than that he was depressed and easily manipulated by his patients. Letters which Respondent submitted from a psychiatrist and physician were somewhat vague and conditional concerning Respondent's rehabilitation. Respondent has provided no further explanation for his prescribing practices, and no assurance that his behavior may not be repeated. The Administrative Law Judge recommended that the Administrator deny Respondent's application for a DEA Certificate of Registration.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the denial of Respondent's application for a DEA Certificate of Registration, and that such registration would be inconsistent with the public interest. Respondent's past conduct with respect to controlled substances and the lack of evidence demonstating that such conduct was unlikely to recur requires that Respondent remain without a DEA registration, even in Schedules IV and V.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration submitted by Harvey Presser, M.D., dated June 6, 1986, be, and it hereby is, denied. The Administrator further orders that any other outstanding applications for registration submitted by Respondent are also denied. This order is effective January 28, 1988.

John C. Lawn,

Administrator.

Dated: January 20, 1988.

[FR Doc. 88-1505 Filed 1-25-88 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will

Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Department Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6800).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

Biennially
State or local governments
1,792 respondents; 19,110 burden hours; no forms

The Management Review System is a biennial joint Federal and State review of the operation and administration of the JTPA program to enhance the effectiveness of the operation of a State or SDA in achieving program goals, developing quality programs through effective planning and management, and efficiently utilizing available resources.

have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental

Revision

Bureau of Labor Statistics

Supplementary Data System
1220–0083
Annual
State or local governments
21 responses, 113,560 hours, no forms

As a supplement to the Annual Survey of Occupational Injuries and Illnesses, the Supplementary Data System (SDS) develops information on characteristics of work-related injuries and illnesses. The SDS fills major needs for information which cannot be supplied by the annual survey needed by the Occupational Safety and Health Administration in program direction, compliance, and standards setting.

Revision

Pension and Welfare Benefits Administration

Class Exemption 86–128
On Occasion
Businesses or other for profit; Small businesses or organizations
327,000 responses, 64,719 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Extension

Occupational Safety and Health Administration

Ionizing Radiation, OSHA 253
1218–0103
Recordkeeping; On occasion
Businesses or other for profit; Federal agencies or employees; Small businesses or organizations
210,000 respondents; 133,756 burden hours; 0 forms

This information is to be collected by employers to protect the health of employees exposed to ionizing radiation in the workplace.

Signed at Washington, DC, this 21st day of January, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–1536 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–24–M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Grant Application: Job Training Partnership Act, Title IV, Part C, Program Year 1988

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures for the Solicitation for Grant Application (SGA) for the operation of employment and training programs in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations contained at 20 CFR Part 635 provide guidance for the development and administration of programs authorized under this part.

FOR FURTHER INFORMATION CONTACT: (Mr. Ronald Bachman) Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave. NW., Rm. S1316, Washington, DC 20210. Telephone (202) 523–9110, or the appropriate Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor announces the availability, subject to congressional appropriation, of approximately $8,062,000 for Program Year (PY) 1988. Award of these funds will implement programs authorized under Title IV, Part C of JTPA.

For PY 1988 the SGA will also contain provisions which will authorize States to submit new program proposals or extend existing programs for one year provided those programs have been successful during their current operation period.

This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam-era, and veterans who are recently separated from military service.

On or about February 19, 1988, the Assistant Secretary for Veterans' Employment and Training will mail to all eligible applicants a Solicitation for Grant Application package.

No Solicitation for Grant Application packages will be issued prior to February 19, 1988.

Eligible applicants are limited to State Governors utilizing the JTPA administrative entity in each State.

The Solicitation for Grant Application will contain proposed funding levels for each State ranging from $55,000 to approximately $823,000. Award of funds will be made utilizing the criteria for award specified in the Solicitation. No grant will be awarded prior to July 1, 1988.

Applications for funds must be received by the appropriate Director for Veterans' Employment and Training (DVETS) not later than 4:30 p.m., on April 15, 1988.

Consultation and technical assistance relative to the development of an application under the SGA is available upon request from the appropriate Director for Veterans' Employment and Training for the particular State involved.

Signed at Washington, DC, this 20th day of January, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88–1540 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–79–M

Employment and Training Administration

[TA–W–20,216]

The Producto Machine Co., Bridgeport, CT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Producto Machine Company, Bridgeport, Connecticut. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–20,216; The Producto Machine Company, Bridgeport, Connecticut (January 15, 1987)

Signed at Washington, DC, this 15th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–1537 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–87–220–C]

Drummond Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mary Lee No. 1 Mine (I.D. No. 01–00515), its Mary Lee No. 2 Mine (I.D. No. 01–00821), both located in Walker County, Alabama, and its Chetopa Mine (I.D. No. 01–00323) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mines range from 48 to 54 inches in height.

3. Petitioner states that the use of cabs or canopies on the mines' electric face equipment would result in a diminution of safety because the cabs or canopies would limit the equipment operator's visibility, which would result in more collisions between equipment, brattice cloths, timbers, etc. There would also be more frequent cases of damaged trailing cables and water hoses as a result on impaired visibility. The cabs or canopies would limit the available passenger space causing the operators to leave parts of their bodies outside of the protection of the cabs or canopies, thereby often causing injuries to themselves. The cabs or canopies could also damage roof support due to rough and uneven roadways.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 25, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: January 14, 1988.

[FR Doc. 88–1538 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–223–C]

Loose Jaw Coal No. 4, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Loose Jaw Coal No. 4, Inc., P.O. Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 3 (I.D. No. 44–06292) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to two unintentional roof falls certain areas of the mine cannot be safely traveled. The volume of air over the fall is 8,200 c.f.m. Both sides of the fall have been supported with timbers. To remove these timbers for the purpose of cleaning up the falls would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish check points on each side of the fall to measure the rate of air flow over the fall.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 25, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: January 14, 1988.

[FR Doc. 88–1539 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Voluntary Protection Programs To Supplement Enforcement and To Provide Safe and Healthful Working Conditions; Name Change

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of change of the name of the Try Voluntary Protection Program to Merit.

SUMMARY: OSHA announces that the Try Program designation has been changed to the Merit Program. Program

requirements and OSHA responsibilities remain unchanged.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Room N3637, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210 (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Try Program was one of the original Voluntary Protection Programs (VPP) initiated by OSHA on July 2, 1982. At that time, the program served two separate and distinct purposes: one as an avenue to work with OSHA while improving the site safety and health program to qualify for Star participation and the other to provide an opportunity to examine other effective safety and health programs not meeting Star specifications. On October 29, 1985, major revisions were announced in the VPP as a result of three years' experience operating the programs. One of those changes separated the two previous functions of Try into separate programs. The testing option became the Demonstration Program. Try remained as a stepping-stone to Star.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 (the "Act" and the "OSH Act"), was enacted "to ensure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs.

• • • (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safer and healthful working conditions;

• • • (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

• • • (5) by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

• • • (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Rationale for Change

OSHA staff responsible for promoting the VPP have, for some time, noted the reluctance of some companies to consider participation in the Try Program because the name, to them, did not adequately signify the considerable achievements that are prerequisite to participation in the program. The name can appear to imply that a company is only beginning its efforts toward outstanding safety and health protection. It can be read to suggest that the company is "trying" without confidence of success; it does not, therefore, reflect the fact that approval for the program indicates OSHA's judgment that the company has the commitment and resources necessary for success. A variety of VPP participants have expressed this same concern. One corporation implemented an internal self-improvement program to quality all their sites for Star rather than participate in the Try Program in the interim.

During the life of the Try Program, 25 sites have participated in the program. As of January 1, 1988, six sites were actively participating in Try. Of the 25 sites approved for Try, six sites have successfully used the Try Program to qualify for Star participation. Four construction sites have been in Try. Three of these have completed construction, and participation of one was terminated. Eleven other sites were approved for Try but later withdrew from participation: six of those closed as a result of business reverses.

Approval for the Try Program is not intended to be renewable since its objective is to improve a company's current program so that it meets the remaining requirements to qualify for Star. Participation ends within a finite period of time if Star qualification is not achieved. Because it allows for the completion of unifinished steps, however, it has the potential of being a much larger program than it is. The population of sites that could qualify immediately for Try is considerably larger than the population that could qualify immediately for Star.

The VPP are not designed to meet the needs of every worksite; but for those companies with a strong management commitment to safety and health, a good working relationship with their employees, a good basic safety and health program, and willingness to work with OSHA while strengthening their program, an interim-type program can be very effective. It is in a program of this nature that OSHA may effect the greatest positive change in worker protection.

While there is a myriad of reasons why companies do not choose to participate in the VPP, OSHA does not want one of the limitations to be a negative perception of the program name. After considering a variety of suggested alternatives, OSHA has chosen the new name "Merit" as the one that most clearly expresses OSHA's philosophy toward this program and most nearly describes a program which recognizes significant achievement while providing a framework for the completion of the remaining steps necessary for participation in Star. The "Try" designation seems to emphasize only effort while the connotation of "Merit" includes a sense of accomplishment. OSHA considers this difference important because those work sites qualifying for the stepping-stone program must have a good level of safety and health management before approval.

Program requirements and OSHA responsibilities remain unchanged.

Signed at Washington, DC, this 19th day of January, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–1393 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88–8; Exemption Application No. L–6926 et al.]

Grant of Individual Exemptions; Chattanooga Electrical Joint Apprenticeship & Training Trust Fund et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Chattanooga Electrical Joint Apprenticeship and Training Trust Fund (the Plan) Located in Chattanooga, TN

[Prohibited Transaction Exemption 88–8; Exemption Application No. L–6926]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the construction loan and to the permanent financing in the amount of $370,000 made to the Plan by IBEW Local Union No. 175, a party in interest with respect to the Plan, provided that the terms of the transactions were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transactions were consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1987 at 52 FR 39724.

EFFECTIVE DATE: September 1, 1960.

FOR FURTHER INFORMATION CONTACT: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Garrison Company Employees Profit Sharing Plan (the Plan) Located in Farmington Hills, Michigan

[Prohibited Transaction Exemption 88–9; Exemption Application No. D–7066]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of improved real property (the Property) to KRG Investments, a party in interest with respect to the Plan, and to the transfer of an outstanding lease and mortgage on the Property to KRG Investments, provided KRG Investments pays no less than fair market value for the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 1987 at 52 FR 42744.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

James R. Plihal, D.D.S., P.S. Fixed Benefit Pension Plan (the Plan) Located in Edmonds, Washington

[Prohibited Transaction Exemption 88–10; Exemption Application No. D–7158]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property from the Plan to James R. Plihal, D.D.S., a party in interest with respect to the Plan, provided the Plan receives no less than fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 23, 1987, at 52 FR 39726.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Manhattan Mutual Life Insurance Company Home Office Employees' Pension Plan (the Plan) Located in Manhattan, Kansas

[Prohibited Transaction Exemption 88–11; Exemption Application No. D–7175]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the December 1, 1985 transfer of $524,639 in securities to the Plan by the Manhattan Mutual Life Insurance Company, provided such amount constituted the fair market value of the securities on the date of the transfer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 27, 1987 at 52 FR 45403.

EFFECTIVE DATE: This exemption is effective December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Linton Industries, Inc. Retirement Plan and Trust (the Plan) Located in Lynnwood, WA

[Prohibited Transaction Exemption 88–12; Exemption Application No. D–7222]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plan of $240,000 to Linton Industries, Inc., a party in interest with respect to the Plan, provided the terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 23, 1987 at 52 FR 39726.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Figtown, Incorporated Profit Sharing Plan (the Plan) Located in Fresno, CA

[Prohibited Transaction Exemption 88–13; Exemption Application No. D–7253]

Exemption

The restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed loan (the Loan) of a maximum of 25% of Plan assets as of the date of disbursement of the Loan proceeds by the Plan to First Herndon Properties (FHP), a party in interest with respect to the Plan, provided the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and (2) the personal guarantee of the Loan to the Plan by Mr. Larry Mesple and Mr. Randy J. Hill, parties in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 27, 1987 at 52 FR 45404.

Written Comments: The notice of proposed exemption states that the Loan would be in amount of $58,406, which amount constituted 25% of Plan assets at the time of the proposal. The applicant has advised the Department that the value of the Plan's total assets has increased to $259,967.25. The applicant has requested that, in consideration of the greater value of Plan assets, the exemption permit the loan to be increased to a maximum of 25% of Plan assets as of the date of the disbursement of the Loan proceeds. The independent fiduciary, Robert D. Coverdale, has been informed of the applicant's request for an increase in the amount of the Loan and has determined that such increase is in the Plan's best interest. Accordingly, the Department has determined to grant an exemption for the Loan not to exceed 25% of Plan assets as of the date of the disbursement of the Loan proceeds.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

M.E.F., Inc. Money Purchase Pension Plan and Trust and M.E.F., Inc. Profit Sharing Plan and Trust (collectively, the Plans) Located in Bellefontaine, OH

[Prohibited Transaction Exemption 88–14; Exemption Application No. D–7303]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the individually-directed accounts in the Plans of Dr. Michael E. Failor (Dr. Failor) of certain farm property (the Farm), for the total cash consideration of $175,000, from the Estate of Pearl Lutz, of whom some of the beneficiaries are disqualified persons with respect to the Plans, provided the amount paid for the Farm is not more than the fair market value at the time the transaction is consummated.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 27, 1987 at 52 FR 45405.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Tai-Hee Kang, M.D., P.C. Employees Profit Sharing Plan (the Plan) Located in Charlevoix, Michigan

[Prohibited Transaction Exemption 88–15; Exemption Application No. D–7317]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of unimproved real estate located in Charlevoix, Michigan to Tai-Hee Kang, M.D., a disqualified person with respect to the Plan; provided that the terms and conditions of the Sale are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 27, 1987 at 52 FR 45406.

[1] Since Dr. Failor is the sole shareholder of M.E.F., Inc., the employer sponsoring the Plans, as well as the sole participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Betsy Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subect to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of January, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–1525 Filed 1–25–88; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6762] et al.

Proposed Exemptions: Philip Specialty Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Philip Specialty Company Restated Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Application No. D–6762]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by the Plan to Philip Specialty Company (the Employer) for $119,000 in cash, provided that all of the terms of the proposed sale are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transaction is consummated.

Summary Of Facts And Representations

1. The Plan is a profit sharing plan with 51 participants and total net assets of approximately $2,395,203 as of September 30, 1986. Republic Bank Dallas, N.A. is the trustee of the Plan (the Trustee). The Employer operates a machine shop and engages in the business of making machine parts for various industries.

2. The Plan owns real property which contains a 51,000 square foot tract of land and improvements located in Dallas County, Texas, described as lots 319, 320, 321 and 322 of Burbank Gardens, City of Grand Prairie, Texas (the Property). The Property, which is a small strip shopping center and two small rental houses built in the late 1930's was conveyed to the Plan by the Employer on December 21, 1970 in lieu of a cash contribution to the Plan. The value of the Property on December 21, 1970 was $95,000. The Property has been leased to unrelated parties since it was acquired by the Plan.

3. The Plan proposes to sell the Property to the Employer for its appraised value of $119,000 in cash. An independent appraisal of the Property was performed by G.H. Jaynes and Associates located in Dallas, Texas (the Appraisal). The Appraisal established the fair market value of the Property at $107,000 as of November 28, 1974. The Appraisal was updated by Wendell Pyles, M.A.I. of Wendell Pyles & Company located in Dallas, Texas. This update to the Appraisal established the fair market value of the Property at $119,000 as of August 14, 1986.

4. The applicant represents that the Trustee is unrelated to the Plan, the Employer and the Board of Directors of the Employer. The Trustee believes that the sale of the Property by the Plan is prudent and is in the best interest of the Plan and its participants and beneficiaries. The Trustee represents that real estate in the area in which the Property is located, particularly for retail use, is not easily sold or leased. The outlook for finding an unrelated buyer for the Property is not expected to improve because the real estate market in the Dallas-Ft. Worth area is very depressed. Approximately one-fifth of the Property's retail space has been vacant for more than one year. In order to attract new tenants, the Property would need at least $12,500 in improvements, and the Trustee does not consider it wise to invest additional Plan assets on the Property.

5. As of September 30, 1986, the Property constituted approximately 5% of the total assets of the Plan. Based on the Appraisal, the applicant represents that the Property has appreciated only at an average annual rate of .8% per year. Further, the sale of the Property to the Employer will avoid payment of a substantial commission to a listing broker which would be paid if the Property was sold to an unrelated party.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The proposed sale will be a one-time transaction for cash;

(2) The Plan will receive the fair market value for the Property;

(3) The Plan will pay no real estate commissions;

(4) The Plan will be able to dispose of an asset which would be difficult to sell or lease to an unrelated party; and

(5) The Trustee has determined that the proposed sale is in the interests of and protective of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Individual Retirement Account of Robert R. Black (the IRA) Located in Dallas, Texas

[Application No. D-6866]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of a parcel of real property (the Property) located in Keller, Texas, by the IRA to Mr. Robert R. Black (Mr. Black) for $333,000 in cash, provided such amount is not less than the fair market value of the property on the date of the sale.[1]

Summary of Facts and Representations

1. The IRA is a self-directed IRA described in section 408(a) of the Code with RepublicBank Dallas, N.A. as the trustee. The IRA was adopted by Mr. Black on December 24, 1981. As of July 16, 1986, the IRA consisted of the Property and approximately $32,000 in cash.

2. The Property consists of approximately 27.38 acres of unimproved, non-income producing land located at the intersection of F.M. 1709 and Pate Orr Road in the City of Keller, Tarrant County, Texas. The Property was previously an asset of the profit sharing plan of Mr. Black's prior employer, Southwest Foam Molding, Inc. The Property was distributed from that plan upon Mr. Black's separation from service, whereupon the Property was rolled over into the IRA.

3. Since its acquisition by the IRA, the Property, which is zoned for residential purposes, has been vacant and represents an illiquid and non-income producing asset of the IRA. Mr. Black proposes to purchase the Property from the IRA for cash at its appraised fair market value. No commissions will be paid by the IRA with respect to the sale.

4. Messrs. Kenneth L. Huffman, MAI, and James E. Hogg, Consulting Appraiser, of Appraisal Services, Inc., independent appraisers in Fort Worth, Texas, have appraised the Property as having a fair market value of $333,000 as of December 3, 1987. Accordingly, Mr. Black proposes to purchase the Property from the IRA at that price.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code because: (1) The sale is a one-time transaction for cash; (2) no commissions will be paid upon the sale; (3) the sales price for the Property has been determined by a qualified, independent appraiser; and (4) Mr. Black is the only participant in the IRA and he has determined that the transaction is appropriate for and in the best interests of the IRA and desires that the transaction be consummated.

Notice of Interested Persons: Because Mr. Black is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

People's Bank (People's) Located in Bridgeport, Connecticut

[Application No. D-7187]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale by People's of its subsidiary's stock to the Keogh Plans (the Keoghs) for which People's services as custodian, as part of an initial issue of such stock, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale by People's of its subsidiary's stock to the individual retirement accounts (the IRAs) for which People's serves as custodian, as part of an initial issue of such stock, provided the Keoghs and IRAs pay no more than the fair market value of the stock on the date of the sale.[2]

Summary of Facts And Representations

1. People's is a mutual savings bank organized under the laws of the State of Connecticut. People's is in the process of reorganizing (the Reorganization) pursuant to Connecticut Public Act 85-330 (the Reorganization Act) from its current form as a mutual savings bank to a mutual holding company with a capital stock subsidiary bank (the Bank) which will assume substantially all of the operations of People's. The majority of the Bank's stock will be held by People's in its reorganized form as a mutual holding company.

2. In connection with, and as part of the Reorganization, the Bank proposes to offer between 20% and 30% of its stock to the public. The Reorganization Act prohibits the Bank from selling or offering to sell its common stock or securities convertible into common stock unless it first gives to each "eligible account holder" subscription rights to acquire Bank stock pursuant to a subscription offering. Regulations issued by the Department of Banking of the State of Connecticut clearly establish that the IRAs and the Keoghs, held in time deposits by People's as custodian, are eligible accounts requiring that the holders of those accounts receive subscription rights to purchase Bank stock. Accordingly, People's intends to grant to its IRA and Keogh depositors subscription rights to Bank stock in connection with the Reorganization. After the Reorganization, the Bank stock will be traded publicly on the Over-the-Counter market.

3. People's currently acts as custodian for approximately 64,000 IRA customers and 2,000 participants in custodial Keoghs with assets, in the aggregate, of approximately $500 million. These assets represent approximately 12% of total deposits held by People's. People's as custodian has no discretionary authority with respect to the investment of IRA or Keogh assets. All investments are made at the direction of the account holder within the range of investment choices permitted by the plan documents. The applicants represent that no single IRA or Keogh account will be permitted to invest more than 25% of the assets of such account in stock of the Bank in connection with this initial offering.

4. In accordance with the provisions of the Reoganization Act, People's must submit to the Connecticut Banking Commissioner (the Commissioner) a plan outlining the terms of the subscription offering. Within 15 days from the date of that submission, People's will be required to mail to each eligible account holder, including holders of IRAs and Keoghs, a notice that the Board of Trustees has approved the sale of a certain number of shares of common stock or securities convertible into common stock, a description of the rights of such depositors to subscribe to such stock and various other information concerning rights of stockholders. Subscription rights must be exercised within a period ending no sooner than 60 days from the date the subscription plan is submitted to the Commissioner, or they will expire. Pursuant to the terms of the proposed transaction, the IRA and Keogh customers would notify People's within that subscription period of their direction to invest the assets of their IRA and Keogh accounts in Bank stock. Since the purchase of stock will be made in connection with an initial issue, no broker will be involved and purchases will be made by the IRA or Keogh directly from the Bank. Since no broker is involved in the transaction, no commissions will be paid with respect to the purchase.

5. As part of the subscription plan submitted to the Commissioner, People's will include an appraisal prepared by an independent firm of the estimated market value of the Bank and the Bank stock to be issued. The valuation will be based on financial information relating to People's and the economic environment in which it operates, a comparison of People's with selected publicly held thrift institutions and with other thrift institutions located in Connecticut, and any other factor as the independent appraiser may deem to be appropriate. The valuation will be stated in terms of a subscription price range, the maximum of which will be no more than 15% above the average of the minimum and maximum of such price range, and the minimum of which will be no more than 15% below such average. After the subscription plan is approved by the Commissioner, the independent appraiser will review, prior to the subscription offering, all developments subsequent to its initial valuation in order to confirm or amend its determination of the initial subscription price range. The subscription price will be no less than the minimum of the price range, nor any greater than the maximum of the price range.

6. Concurrently with the subscription offering, People's may offer the opportunity to purchase all shares not subscribed for in the subscription offering to: (a) Certain other customers of People's who may not have qualified as eligible account holders; (b) trustees, officers or employees of People's or its affiliates, and (c) residents of Fairfield, New Haven, Tolland, Hartford and Litchfield Counties, Connecticut (the Community Offering). If all shares of Bank stock are sold through the exercise of subscription rights and through the Community Offering, the independent appraiser will re-examine its estimate of the market value of the Bank and of the shares of Bank stock as of the last day of the subscription offering and the Community Offering. If at that time the independent appraiser's estimate of the value of Bank stock is less than the subscription price (but not less than the minimum of the originally estimated price range), then that estimated value will become the final purchase price for Bank stock and the Bank will refund to all purchasers the difference between the subscription price and the independent appraiser's final estimated value of Bank stock. If, however, the independent appraiser's final estimate of the value of Bank stock exceeds the subcription price (or is less than the minimum of the originally estimated price range), then with the approval of the Commissioner, People's will either terminate the subscription plan, establish a new subscription price range or adjust the total number of shares of the Bank so that the market value per share will be within the subscription price range.

7. If all the shares of Bank stock to be sold are not sold through the exercise of subscription rights or through the Community Offering, the remaining shares will be sold to the public after approval of a public offering circular by the Commissioner. The independent appraiser will again update its prior appraisal of the estimated market value of Bank stock. If there is any change in that appraisal, the number of shares of the Bank may be adjusted to reflect the increase or decrease of the appraised value of the Bank stock. That number of shares will then be sold to or through the underwriters of the public offering pursuant to the terms of an underwriting agreement. In the event the sale price of Bank stock pursuant to the public offering is less than the price paid for exercise of subscription rights or pursuant to the Community Offering, the difference will be refunded to those who paid the higher price.

8. The applicants represent that the entire process is designed to ensure that the price paid for Bank stock is its fair market value. In any event, the determination as to the price to be paid for Bank stock will be subject to approval by the Commissioner.

9. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The decision to purchase the Bank stock will be made by IRA and Keogh customers out of a range of investment choices, and People's has no discretion over such decision; (2) no fees or commissions will be paid with respect to the transaction; (3) no more than 25% of the assets of any IRA or Keogh account will be invested in Bank stock in connection with the initial offering; and (4) the purchase price of the stock will be determined by independent appraisal, and must be approved by the Commissioner.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

William H. Kimball, Inc. Profit Sharing Plan (the Plan) Located in Orinda, California

[Application No. D-7238]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).[3] If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan for cash of certain real property from William H. Kimball (Mr. Kimball), a disqualified person with respect to the Plan, provided the price paid is no more than the fair market value of the property on the date of sale.

Summary of Facts And Representations

1. The plan is a profit sharing plan with Mr. Kimball as the sole participant. As of September 4, 1987, total Plan assets were approximately $564,000. Mr. Kimball is the Plan trustee and the sole shareholder of the Plan sponsor.

2. Mr. Kimball purchased a 40 acre ranch (the Real Property) in Imperial Valley, California in 1981. The Real Property has a fully operational undergound irrigation system and was planted with jojoba plants in 1982. The

[1] Because the IRA does not meet the conditions described in 29 CFR 2510.3-2(d), there is not jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] Because the IRAs do not meet the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[3] The applicant represents that William H. Kimball is the sole shareholder of William H. Kimball, Inc., the Plan sponsor, and the sole participant in the Plan. Accordingly, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

jojoba plant grows well in the desert and produces a bean containing an oil utilized widely in lubricants, cosmetics, and soaps. The applicant represents that the total cost of acquiring the ranch, adding the irrigation system, planting the permanent crop, and maintaining agricultural activities for the past 5 year period has been in excess of $200,000.

3. On October 1, 1987, Donald Rosson (Mr. Rosson), an independent qualified appraiser, of Donald Rosson Appraisals, real estate appraisers doing business in El Centro, California, estimated the fair market value of the Real Property to be $138,000.

4. The applicant proposes that the Plan purchase the Real Property for the cash consideration of $138,000, the fair market value set by Mr. Rosson. The Real Property will be held in Mr. Kimball's account in the Plan, so that if there are ever any other participants in the Plan their accounts will be unaffected by the proposed transaction.

5. The applicant represents that the Real Property has excellent long-term income potential and that the proposed transaction offers the Plan the opportunity to purchase an operational ranch for significantly less than the actual cost of development.

6. The applicant represents that the Real Property will either be leased to an unrelated third party or operated for the Plan by an independent manager. Neither Mr. Kimball nor any other disqualified person will lease or otherwise have use of or profit from the Real Property.

7. In summary, the applicant represents that the proposed transaction satisfies the terms and conditions of section 4975(c)(2) of the Code because: (a) The Real Property has excellent long-term income potential; (b) the appraised fair market value of the Real Property is significantly lower than the cost of acquiring and improving a comparable ranch; (c) the Real Property represents less than 25% of the Plan's assets; and (d) Mr. Kimball, the Plan's trustee, and the only participant to be affected by the transaction, desires that the transaction be consummated.

Notice to Interested Persons: Because Mr. Kimball is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Knoxville Anesthesia Group, P.C. Money Purchase Plan (the Plan) Located in Knoxville, Tennessee

[Application No. D–7310]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an art print from the individual account in the Plan of Robert Harris, M.D. (Harris), a party in interest with respect to the Plan, to Harris, provided the Plan receives no less than fair market value for the print at the time of sale and provided further that the Plan experiences no loss in connection with the acquisition and holding of the print.

Summary of Facts and Representations

1. The Plan is a money purchase plan sponsored by the Knoxville Anesthesia Group (the Employer) which is a professional corporation. As of March 31, 1987, the Plan had 30 participants and total assets of $3,056,755. The Plan provides individual, segregated accounts for each participant and permits each participant to direct the investments of his or her account.

2. Harris is a member of the Knoxville Anesthesia Group and a participant in the Plan. The assets in Harris' individual account in the Plan as of the date of the application totaled $316,196. In April 1980 Harris had purchased for his previous plan, an H.R. 10 plan, a print by Joan Miro entitled "Montroig No. 3," dated 1973. The print was purchased for $5,000 from Cory Galleries in San Francisco, an unrelated entity. Subsequently, the print was rolled over from the H.R. 10 plan to Harris' account in the Plan in March 1983. The applicant notes that the original purchase of the print was made prior to the provisions of section 408(m) of the Code which concern the purchase of collectibles for individually directed accounts of plans qualified pursuant to Code section 401(a).[1] Since the time of its acquisition by the Plan, the print has been held in the vault of the Valley Fidelity Bank and Trust Co. of Knoxville, Tennessee. The related storage costs and insurance premiums have been paid by Harris.

3. An appraisal was made on the print on April 3, 1987, by Elaine Altman Evans (Evans), the curator of collections for the Frank H. McClung Museum of the University of Tennessee at Knoxville. The applicant represents that Evans is independent of Harris and the Plan. According to Evans, the print is an original lithograph printed in color in an edition of 75. Evans described the condition of the print as excellent and estimated its fair market value to be $2,200.

4. The Plan has held the print for sale to unrelated third parties, but has been unable to obtain an offer equal to or above the original purchase price. According to the applicant, the cost of appropriate storage facilities has become too high in regard to the continued holding of the print as a Plan investment. Accordingly, the Plan proposes to sell the print from Harris' individual account in the plan to Harris. The transaction will be entirely for cash and the Plan will pay no fees or commissions in regard to the sale. Harris will pay either the acquisition cost of $5,000 for the print or fair market value at the time of sale, based on an updated independent appraisal, whichever is higher. The Plan will invest the proceeds of the sale in assets which should produce more appreciation and income for Harris' individual account.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the print will be entirely for cash; (2) Harris will pay either the acquisition cost of the print or its fair market value at the time of sale, whichever is higher; (3) the transaction will involve only Harris' individual account in the Plan; and (4) the proceeds of the sale will be invested in assets which should produce more appreciation and income for Harris' account.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[1] Section 408(m) of the Code provides that the acquisition after December 31, 1981, by an individually directed account under a plan described in Code section 401(a) of a collectible (including any work of art) shall be treated as a distribution from the account in an amount equal to the cost to the account of the collectible. The Department expresses no opinion herein as to whether the roll-over of the print from the H.R. 10 plan to Harris' account in the Plan constituted an acquisition for proposes of section 408(m) of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of January, 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–1526 Filed 1–25–88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–07]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by February 25, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Locator and Information Services Tracking System (LISTS).

Type of Request: New.

Frequency of Report: As required.

Type of Respondent: Individuals or households, Federal agencies or employees.

Annual Responses: 7,250.

Annual Burden Hours: 800.

Abstract-Need/Uses: The proposed establishment of LISTS would identify, protect and maintain the field of privacy information housed in the Goddard Space Flight Center (GSFC) database. This system will also serve as a tool for performing short- and long-term institutional planning.

Rayburn A. Metcalfe,

Acting Director, General Management Division.

January 7, 1988.

[FR Doc. 88–1472 Filed 1–25–88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88–06]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

DATE AND TIME: February 16, 1988, 8:30 a.m. to 5 p.m., and February 17, 1988, 8:30 a.m. to 5 p.m.

ADDRESS: McDonnell Douglas Helicopter Company, 5000 East McDowell Street, Building 530, Executive Conference Room, Mesa, AZ 85201.

FURTHER INFORMATION CONTACT: Dr. Randolph A. Graves, Jr., Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance of the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team of Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

February 16, 1988:

8:30 a.m.—Survey of Wind Tunnel Acoustic Test Requirements, Summary and Discussion.

5 p.m.—Adjourn.

February 17, 1988:

8:30 a.m.—Existing and Proposed

BEST COPY AVAILABLE

Acoustic Wind Tunnel Test Capability.

5 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

January 19, 1988.

[FR Doc. 88-1473-Filed 1-25-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-05]

Privacy Act of 1974; Notice of New System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (Pub. L. 93-579), as amended, NASA is proposing to establish a new system of records, "Locator and Information Services Tracking System, LISTS." Background information about the proposed system is in the **SUPPLEMENTARY INFORMATION** section.

DATE: NASA filed a report of a new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Administrator, Office of Management and Budget (OMB). The new system will become effective on March 28, 1988, unless NASA receives comments which would result in a contrary determination.

ADDRESS: Comments should be addressed to the Head, Administrative Support Branch, Code 231 O, Logistics Management Division, NASA Goddard Space Flight Center, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Mark E. Walther, 301-286-8823, or Richard L. Daniels, 202-453-2975.

SUPPLEMENTARY INFORMATION: NASA proposes to establish a new system of records for LISTS to properly identify, protect, and maintain the fields of privacy information housed in Goddard's data base. The Goddard Space Flight Center (GSFC) is authorized to maintain the information because of the responsibilities it has to provide quality institutional services to meet facility needs. Specifically, the absence of the LISTS privacy fields would greatly handicap security and library operations who depend on the privacy information contained in LISTS to perform their respective duties. Certain elements of the privacy sub-data base are also used for long-term institutional planning. The ability to use such fields as date of birth and citizenship are key components of an effective demographic trend analysis of GSFC's workforce. Beyond these programmatic authorities, GSFC is also authorized to maintain this system under the governing statutes of 5 U.S. Code 301, 42 U.S. Code 2473, and 44 U.S. Code 3101.

There is no known adverse effect of this proposal on the privacy of individuals information about which is contained in LISTS. The data are adequately protected in their electronic medium (main frame computer disk storage) by various levels of password controls and access rights. Collection of the information on hard copy forms is controlled by a privacy act statement of use and by limited handling of the forms by "need to know" individuals only.

There is no known relationship of this proposal to other branches of the Federal Government and to State and local governments. Unauthorized access to the system of records is controlled at five levels: first, pre-approved assignment of a user ID and password to enter the Customer Information Control System (CICS) under which LISTS exists; second, a second ID/password authorization to enter the programming language region within CICS (NATURAL/ADABASE); third, a separate authorization table on which a user must appear to be granted access to LISTS, fourth, a certain access rights designation must be given on the authorization table to allow visibility to the privacy data; and fifth, a separate password must be known and used in combination with the above criteria to achieve access to the privacy data.

Richard L. Daniels,

NASA Privacy Officer.

January ?, 1988.

NASA 51 Lists

SYSTEM NAME:

Locator and Information Services Tracking System (LISTS)—NASA.

SYSTEM LOCATION:

Goddard Space Flight Center, Greenbelt, MD 20771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All on-site and off-site NASA/GSFC civil servants and on-site and near-site contractors, tenants, and other guest workers possessing or requiring badge identifications.

CATEGORIES OF RECORDS IN THE SYSTEM:

In order to achieve the goal for LISTS of a comprehensive and accurate source of information for institutional services and planning, general and personal information as noted below must be collected.

General information: (1) Last Name; (2) First Name; (3) Middle Initial; (4) Nickname; (5) Title/Degree; (6) Position/Job Title; (7) Skill Classification; (8) Administrative Level; (9) Organization Code; (10) Mail Code; (11) Telephone Extension; (12) Alternate Telephone Extension; (13) Building; (14) Room; (15) Use of Office Space; (16) Shift Worked; (17) Off-Site Telephone Number; (18) Off-Site Location; (19) Contract Number; (20) Authorization Type if Non-Contractor/Civil Servant; (21) and (22) Acronym of Contractor and/or Host Organization; and (23) Goddard Identification Number.

Personal information: (1) Social Security Number; (2) Birth Date; (3) Sex; (4) Citizenship; (5) If Not U.S. Citizen, Immigration Alien Number; (6) Street Residence; (7) City Residence; (8) County Residence; (9) State Residence; (10) Zip Code Residence; (11) Residence Telephone; (12) Name of Emergency Contact; (13) Relationship of Emergency Contact; (14) Telephone Number of Emergency Contact; and (15) Address of Emergency Contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The intended official uses of the privacy and personal information are: To assist the Security Office in issuing picture badge identifications and coordinating clearance requests; to establish for the Library an authorization for use of its printed materials; to identify the listed emergency contact in case of an emergency to a center employee or guest worker; and to provide a home address in case an employee or guest worker must be contacted during off hours or for official mailings to a home address.

Other official uses of the general (non-privacy/personal) records are: To locate individuals working for or at the Goddard Space Flight Center; to improve services provided to the center including mailroom operations, space utilization, identification of potentially hazardous work environments, scheduling of annual physical examinations, and maintenance of electronic mail user identification names; and as a tool for performing short- and long-term institutional planning.

The information contained in this system of records is used by officials and employees within NASA for preview, planning, review, and management decisions regarding personnel and institutional services related to the records.

In addition to the internal uses of the information contained in this system of records the following are routine uses outside of NASA: (1) Disclosures may be made to organizations or individuals having contract, legal, administrative, or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, non-profit organizations, and contractors; and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) Statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (4) Disclosure may be made to a Congressional office from the record of an individual in response to written inquiry from the Congressional office made at the request of that individual; and (5) Standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A single copy of each record is maintained in file folders. The records are also stored on computer storage discs and tapes hardware and ADABASE/Natural software.

RETRIEVABILITY:

General fields are indexed by any one or combination of choices to authorized users. Personal fields are not retrievable except by designees in the Security and Library Offices and the System Manager. For the Library the retrievability is for Social Security Number, Immigration Alien Number, and Name only.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR Part 1212 and through the password and access protections built into the data base management software system.

RETENTION AND DISPOSAL:

Records are retained for varying periods of time depending on the need for use of the files, and are destroyed or otherwise disposed of when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Administrative Support Branch, Code 231.0, Logistics Management Division, Goddard Space Flight Center, Greenbelt, MD 20771.

NOTIFICATION PROCEDURE:

Apply to the System Manager at the appropriate location above. In addition to personal identification (name, social security number, etc.) indicate the specific type of record, the appropriate date or period of time, and the specific kind of individual applying (current employee, former employee, civil servant, contractor, etc.).

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain.

[FR Doc. 88-1474 Filed 1-25-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards; Solicitation for Comments

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1023; "Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice Utilized with 25 kHz Channel FM Radios Operating Above 30 MHz."

DATE: Comments are due by April 25, 1988.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the January 14, 1988 draft of FED-STD 1023 should be directed to the National Communications System, Office of Technology and Standards, Washington DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 88-1553 Filed 1-25-88; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before February 25, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-786-01233) and Ms. Elaina Norden, Office of Management and Budget, New

Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instruction Forms for the Translations Category
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Humanities researchers and institutions
Use: Application for funding
Estimated Number of Respondents: 115
Estimated Hours for Respondents to Provide Information: 60 per respondent.

Susan Metts,
Assistant Chairman for Administration.
[FR Doc. 88–1498 Filed 1–25–88; 8:45 am]
BILLING CODE 7536–01–M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 25, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202–786–0233) and Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506. (202) 786–0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instruction Forms for the Humanities, Science and Technology Category
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Humanities researchers and institutions
Use: Application for funding
Estimated Number of Respondents: 43
Estimated Hours for Respondents to Provide Information: 52 per respondent.

Susan Metts,
Assistant Chairman for Administration.
[FR Doc. 88–1499 Filed 1–25–88; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committees for Physics, Astronomy and Mathematical Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committees for Physics, Astronomy and Mathematical Sciences; Subcommittee for the Review of Support in Cosmology.

Date and Time: February 8, 1988; 9:00 a.m. to 5:00 p.m. February 9, 1988; 9:00 a.m. to 1:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550. February 8: Room 642; February 9: Room 341.

Type of Meeting: Open.

Contact Person: Dr. M. Kent Wilson, Executive Officer, Directorate for Mathematical and Physical Sciences, Room 512, National Science Foundation, Washington, DC 20550, (202) 357–9744.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice on the need for, value of, and scale of Foundation support of cosmology.

Agenda: Both days of the meeting will involve discussions of the needs and potential of the field.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 88–1477 Filed 1–25–88; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–538]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; Memphis State University

The Nuclear Regulatory Commission is considering issuance of an Order authorizing Memphis State University (MSU) to dismantle their AGN–201 reactor facility in Memphis, Shelby County, Tennessee and to dispose of the reactor components in accordance with the application dated November 10, 1986, as supplemented.

Environmental Assessment

Identification of Proposed Action

By application dated November 10, 1986, as supplemented, Memphis State University requested authorization to decontaminate and dismantle the AGN–201 research reactor, to dispose of its component parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R–127. Following the reactor shutdown the fuel was removed from the core tank and shipped to an authorized Department of Energy facility.

Opportunity for hearing was afforded by the notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on February 13, 1987 (52 FR 4693).

Need for Proposed Action

In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by MSU must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previsouly reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The staff has calculated that the collective dose equivalent for the project will be less than 2 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the MSU facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the University intends to use the area for other academic purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated November 10, 1986, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Maryland this 20th day of January 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,
Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 88–1543 Filed 1–25–88; 8:45 am]
BILLING CODE 7590–25–M

[Docket No. 50–87]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; Westinghouse Electric Corp.

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Westinghouse Electric Corporation (Westinghouse) to dismantle the Nuclear Training Reactor Facility in Zion, Illinois and to dispose of the reactor components in accordance with the application dated July 8, 1987, as supplemented.

Environmental Assessment

Identification of Proposed Action

By application dated July 8, 1987, as supplemented, Westinghouse requested authorization to dismantle the 10 kilowatt (thermal) Westinghouse Nuclear Training Reactor (WNTR), to dispose of its components parts and radioactive material, and decontaminate the facility in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R–119. The WNTR was shut down in February 1987, and has not been operated since then. Subsequently, the reactor fuel elements, including control rod followers were removed from the core tank and placed in storage. The fuel, control rod followers and neutron sources were shipped to a Department of Energy Facility prior to receipt of a possession-only license, which was issued on October 5, 1987.

Opportunity for hearing was afforded by the notice of "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on September 14, 1987 (52 FR 34732). No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by Westinghouse must be accomplished.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The operations are calculated to result in a total radiation exposure of less than 2 person-rem to facility staff and the public.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on their review of the specified proposed activities associated with the dismantling and decontamination of the WNTR facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

Alternative Use of Resources

The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the facility management intends to use the area for other purposes.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conlcude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated July 8, 1987, as supplemented and the Safety Evaluation

prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland this 20th day of January 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-1544 Filed 1-25-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a seminar on February 10, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 10, 1988—8:30 a.m. until the conclusion of business.

Dr. Richard Pew of Bolt, Beranak and Newmon, Inc., will discuss with the Subcommittee topics of interest regarding Human Factors.

Questions may be asked only by members of the Subcommittee.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Following the presentation by Dr. Pew, there will be a brief period to allow Subcommittee discussion of the topics.

Further information regarding topics to be discussed or whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 20, 1988.

M. W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-1545 Filed 1-25-88; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the Licensee) for operation of Vermont Yankee Nuclear Power Station located in Windham County, Vermont.

The amendment would change the Technical Specifications to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC Systems when one train has a component out of service, in lieu of the possibly non-conservative alternative testing program presently required by the Technical Specifications when systems are determined to be inoperable, the licensee proposes that the "alternate" system be determined operable based on the Vermont Yankee In-Service Testing Program results and verification that the system is in an operable status. The licensee's application for amendment is dated December 7, 1987.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 25, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing on an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given DATAGRAM Identification Number 3737 and the following message addressed to Richard Wessman, petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esquire, Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.71(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland this 19th day of January, 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Acting Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-1546 Filed 1-25-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of Vermont Yankee Nuclear Power Station, located in Windham County, Vermont.

This amendment, in accordance with the licensee's application for amendment dated November 30, 1987, revises surveillance frequency requirements for trip system logic testing and calibration from once every six months to once per operating cycle and requires more detailed testing then is presently required by Technical Specifications. The following systems are affected by this change:

Core Spray System
Low Pressure Coolant Injection System
High Pressure Coolant Injection System
Automatic Depressurization System
Recirculation Pump Trip Actuation System
Primary Containment Isolation
High Pressure Coolant Injection System Isolation
Reactor Core Isolation Cooling System Isolation
Reactor Building Ventilation System Isolation and Standby Gas Treatment System Isolation
Off-Gas System Isolation
Control Rod Block System

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 25, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made of the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Vernon Rooney, Petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Council-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Brooks Memorial Library, 2324 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland, this 20th day of January, 1988.

Vernon L. Rooney,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-1547 Filed 1-25-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Forms Under Review by Office of Management and Budget

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), this notice announces forms which have been submitted to OMB's Office of Information and Regulatory Affairs for clearance:

SF-269, Financial Status Report—Long Form
SF-269a, Financial Status Report—Short Form
SF-424, Application for Federal Assistance (Facesheet)
SF-424a, Budget Information—Nonconstruction Programs
SF-424b, Assurances—Nonconstruction Programs
SF-424c, Budget Information—Construction Programs
SF-424d, Assurances—Construction Programs

The forms revise and will replace standard application and financial expenditure forms currently prescribed in OMB Circular A-102, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments". Public comment on the proposed revisions was solicited in a **Federal Register** Notice May 29, 1987 (52 FR 20178). Federal agencies use the applications to qualify and select grantees and the financial expenditure forms to monitor the status of grant funds.

Reporting Estimates: Following are the reporting estimates for each of the revised forms:

Form	Average burden (hours)	Annual forms submitted
SF-269	.5	200,000
SF-269a	1.5	300,000
SF-424	.35	400,000
SF-424a	3	360,000
SF-424b	.28	360,000
SF-424c	3	48,000
SF-424d	.25	40,000

FOR FURTHER INFORMATION CONTACT: For copies of the request or revised forms, call (202) 395-3650 or write: Jonathan D. Breul, Financial Management Division, Office of Management and Budget, Room 10215, New Executive Office Building, Washington, DC 20503.

ADDRESSES: Written comments should be sent to: Edward Springer, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503.

Gerald R. Riso,

Associate Director for Management and Chief Financial Officer.

[FR Doc. 88-1483 Filed 1-25-88; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Public Information Request Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a request to clear a public information collection. RI 30-3, Information Necessary for a Competency Determination, is used to provide information to an individual applying to be a representative payee for a Civil Service Retirement annuitant/survivor annuitant who is incapable of handling his or her own funds. It is used in conjunction with FI 20-7, Representative Payee Questionnaire, and provides information on the documents required before OPM will appoint a representative payee due to incompetency. There are 2,360 individuals who respond annually for a total public burden of 4,160 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received by February 5, 1988.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-1507 Filed 1-25-88; 8:45 am]

BILLING CODE 6325-01-M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 653-0404.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on December 22, 1987 (52 FR 45035). Individual authorities established or revoked under Schedule A, B, or C between December 1, 1987, and December 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during December.

Schedule B

No Schedule B exceptions were established or revoked during December.

Schedule C

Department of Agriculture

One Southeast Area Director to the Deputy Administrator for State and County Operations. Effective December 7, 1987.

One Confidential Assistant to the Administrator for Agricultural Stabilization and Conservation Service. Effective December 10, 1987.

One Director, Legislative and Public Affairs to the Administrator for Animal and Plant Health Inspection Service. Effective December 22, 1987.

Department of Commerce

One Congressional Liaison Specialist to the Under Secretary for International Trade Administration. Effective December 3, 1987.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective December 3, 1987.

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective December 7, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective December 9, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Grant Programs. Effective December 18, 1987.

Department of Defense

One Private Secretary to the General Counsel. Effective December 1, 1987.

One Staff Assistant to the Chairman for Joint Chiefs of Staff. Effective December 1, 1987.

One Staff Assistant to the Assistant to the Chairman for Joint Chiefs of Staff. Effective December 1, 1987.

One Secretary (Steno) to the General Counsel. Effective December 7, 1987.

One Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense. Effective December 11, 1987.

One Personal and Confidential Assistant to the Director for Operational Test and Evaluation. Effective December 18, 1987.

Department of Education

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective December 4, 1987.

One Staff Assistant to the Deputy Under Secretary for Management. Effective December 8, 1987.

One Special Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services. Effective December 8, 1987.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective December 9, 1987.

One Confidential Assistant to the Secretary's Senior Special Assistant for Scheduling and Briefing Staff. Effective December 18, 1987.

Department of Energy

One Secretary (Confidential Assistant) to the Secretary of Energy. Effective December 4, 1987.

One Secretary (Confidential Assistant) to the Special Assistant to the Secretary. Effective December 4, 1987.

One Confidential Assistant to the Commissioner. Effective December 7, 1987.

One Secretary (Confidential Assistant to the Deputy Secretary. Effective December 14, 1987.

One Confidential Assistant (Secretary) to the Assistant Secretary for Defense Programs. Effective December 17, 1987.

One Senior Policy Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective December 24, 1987.

One Staff Assistant to the Assistant Secretary for Management and Administration. Effective December 24, 1987.

Department of Health and Human Services

One Confidential Assistant to the Director for Office of Legislation and Policy. Effective December 10, 1987.

One Speech Writer, Public Affairs to the Secretary. Effective December 18, 1987.

One Director, Office of Public Liaison to the Associate Administrator for Communications. Effective December 22, 1987.

One Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Human Development Services. Effective December 29, 1987.

Department of Housing and Urban Development

One Special Assistant to the General Deputy Assistant Secretary for Policy Development and Research. Effective December 10, 1987.

One Special Assistant (Indian Programs) to the Special Assistant to the Secretary for Indian and Alaska Native Programs. Effective December 11, 1987.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective December 11, 1987.

One Executive Assistant to the Regional Administrator for Regional Housing Commissioner. Effective December 11, 1987.

Department of Justice

One Confidential Assistant to the Deputy Assistant Attorney General for Legislative Affairs. Effective December 1, 1987.

One Special Assistant to the Director for National Institute of Justice. Effective December 30, 1987.

Department of Labor

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective December 14, 1987.

One Special Assistant to the Assistant Secretary for Employment and Training. Effective December 14, 1987.

Department of State

One Special Assistant to the Assistant Secretary. Effective December 10, 1987.

Department of Transportation

One Staff Assistant to the Deputy Administrator for Federal Railroad Administration. Effective December 22, 1987.

Department of Treasury

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective December 4, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective December 4, 1987.

One Legislative Manager to the Assistant Secretary for Legislative Affairs. Effective December 4, 1987.

One Staff Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective December 15, 1987.

One Staff Assistant to the Deputy Assistant Secretary for Department Finance and Management. Effective December 30, 1987.

Action

One Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations. Effective December 11, 1987.

One Special Assistant to the Director. Effective December 24, 1987.

Arms Control and Disarmament Agency

One Staff Assistant to the Director. Effective December 1, 1987.

Environmental Protection Agency

One Deputy Director to the Director for Office of Congressional Liaison. Effective December 18, 1987.

Equal Employment Opportunity Commission

One Special Assistant to the Chairman. Effective December 1, 1987.

One Legislative Affairs Specialist to the Director for Office of Communications and Legislative Affairs. Effective December 4, 1987.

One Director, Communications Staff to the Director for Office of Communications and Legislative Affairs. Effective December 10, 1987.

One Media Contact Specialist to the Director for Office of Communications and Legislative Affairs. Effective December 14, 1987.

Federal Home Loan Bank Board

One Staff Assistant to the Executive Director for Federal Savings and Loan Insurance Corporation. Efffective December 18, 1987.

General Services Administration

One Special Assistant to the Commissioner for Public Buildings Service. Effective December 8, 1987.

Office of Management and Budget

One Secretary to the Associate Director for Economic Policy. Effective December 10, 1987.

One Legislaive Assistant to the Associate Dirctor for Legislative Affairs. Effective December 16, 1987.

One Special Assistant to the Associate Director for Legislative Affairs. Effective December 17, 1987.

Office of Personnel Management

One Staff Assistant to the Dirctor for Office of Executive Administration. Effective December 4, 1987.

One Executive Assistant to the Director for Office of Government Ethics. Effective December 11, 1987.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator. Effective December 1, 1987.

One Deputy Assistant Administrator to the Assistant Administrator for Congressional and Legislative Affairs. Effective December 1, 1987.

One Special Assistant to the Associate Administrator for Procurement Assistance. Effective December 11, 1987.

One Special Assistant to the Administrator. Effective December 24, 1987.

One Confidential Assistant to the Administrator. Effective December 24, 1987.

United States Information Agency

One Editorial Writer to the Director for Office of Policy. Effective December 10, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88–1508 Filed 1–25–88; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Proposed Changes to Two System Notices

AGENCY: Office of Personnel Management.

ACTION: Notice; proposed changes to two systems notices.

SUMMARY: The purpose of this notice is to propose changes to two Office of Personnel Management (Office) Privacy Act System Notices identified as OPM/GOVT–5, Recruiting, Examining, and Placement Records and OPM/GOVT–10, Employee Medical File System Records. The changes result from the passage of the Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Public Law 100–71.

DATE: The changes will become effective March 28, 1988.

FOR FURTHER INFORMATION CONTACT: John Sanet, Office of Workforce Information, (202) 632–4455.

ADDRESSES: Comments to Assistant Director for Workforce Information, Room 5415, U.S. Office of Personnel Management, Washington, DC 20415.

SUPPLEMENTARY INFORMATION: On June 12, 1987 in the **Federal Register** (52 FR 2564), the Office modified the two systems of records cited above to incorporate records created under Executive Order 12564, "Drug-Free Federal Workplace." The modifications included adding a routine use ("i" for the OPM/GOVT–5 and "d" for the OPM/GOVT–10) that permit, but not require, the disclosure to the Department of Justice of records arising from the drug-testing of applicants and employees under E.O. 12564. Disclosure of these records was limited to the very specific language as stated in the routine use. In addition, routine use "o" for the OPM/GOVT–10 system of records permitted disclosing information about an individual, when that individual is mentally incompetent or under other legal disability, to a person who is responsible for caring for that individual.

Subsequent to the Office's amending the two systems of records, Congress passed Pub. L. 100–71, which further narrows the disclosure of drug-test results and prohibits the disclosure to the Department of Justice as contemplated by the routine uses. Therefore, the Office is proposing to eliminate the routine uses cited in the **Federal Register** for the two systems of records as they pertain to drug-test records created under the Executive Order. The routine uses will remain applicable for other records *not* associated with the drug-test area.

Public Law 100–71 does permit the disclosure of the results of a drug test of a Federal employee if the disclosure would be: (1) To the employee's medical review official (as defined in the Department of Health and Human Service's scientific and technical guidelines referred to in subsection (a)(1)(A)(ii)) of Pub. L. 100–71; (2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; (3) to any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or (4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. Therefore, the Office is establishing a new routine use "p" for the OPM/GOVT–5 system and a new routine use "u" for the OPM/GOVT–10 system of records that will permit, but not require, the disclosure of drug-test results of Federal employees in accordance with the limitations expressed in Pub. L. 100–71 as reflected in point (4) above. The Office also believes that, in view of Congressional interest and as well as the requirements of Pub. L. 100–71, a "Report on New System" should be made within the meaning of the Privacy Act guidelines established by the Office of Management and Budget. Such a report has been filed. To provide a greater understanding of the process connected with the collection of drug-test results, the Office is publishing the entire texts of the two Government-wide systems of records that will contain such information. This action in amending the two systems of records and publishing the entire systems notices should ensure a more comprehensive understanding of the

Office's safeguarding of drug test records.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office proposes the following changes to the OPM/GOVT–5, system (Recruiting, Examining, and Placement Records) and the OPM/GOVT–10, (Employee Medical File System File Records) as indicated by *italicized text* in those notices reprinted here in their entirety:

OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examination, and Placement Records.

SYSTEM LOCATION:

Associate Director, Career Entry Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and to certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases. This system includes such records as—

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results and copies of notices to applicants of their being rated ineligible for Federal employment because of the confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1: *Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.*

Note 2: The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personal identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3: To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3308, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None of the Routine Uses apply to records identified in paragraph 1 of the Categories of Records in the System section of this notice. Otherwise, records and information in this system may be used—

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to officials of the Merit Systems Protection Board, including its Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, list, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years; e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Career Entry Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

Note: In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.
g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.
h. Item analyses and similar data that contain test keys.
i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT-10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, with another agency providing such services for the employing agency, or with private sector contractors.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include:

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) *or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who has been tested, who failed to report for testing, and related documents.*

Note.—Records maintained by an agency dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence.

d. Agency maintained files containing reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file, physically being maintained by the Department of Labor's Office of Workers' Compensation Program (OWCP) is part of that agency's system of records and not covered by this notice.)

e. All other medical records, forms, and reports created on an employee during his or her period of employment, including records retained on a short-term/temporary basis (i.e., those designated to be retained only while the employee is with that agency) and records designated for long-term retention (i.e., those retained for the employee's duration of Federal Service and for some period of time after).

Note: Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Programs established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12107 and 12564 and 5 U.S.C. Chapters 11, 31, 33, 43, 61, 63, and 83.

PURPOSES:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal discount describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with the decisions reached by OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

Note: *Except for Routine Use a, no other Routine Use for this system of records applies to records included in paragraph c in the Categories of Records in the System section of this notice.* Further, agencies are reminded that Routine Use disclosures are permissive in nature and should be limited to only those records/portions of a record that meet the requirements of the requester.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable diseases.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose of which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

i. To disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet JCAH standards.

k. To disclose information to the National Archives and Records Service in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. To disclose information to health insurance carriers contracting with the Office of Personnel Management (hereafter referred to as "the Office") to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the ensurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. Chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, X-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

Safeguards:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records.

Retention and Disposal:

Some records are retained for the duration of employment with a given agency. Other records are retained for the duration of Federal employment, plus 30 years. Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years. Records are destroyed by shredding, burning, or by erasing the disk.

System Manager and Address:

Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 5415, 1900 E Street, NW., Washington, DC 20415.

Notification Procedure:

Individuals wishing to inquire whether this system of records contains record on them should follow the appropriate procedure listed below.

a. *Current employees.* Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. *Former employees.* Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to the Office's regional office nearest their residence. Individuals submitting requests to the Office's regional and area offices must submit the following information for the records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employeed and dates of employment.
5. Signature.

Records Access Procedure:

a. Current employees should contact the appropriate agency office as indicated in the "Notification Procedure" section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's regional or area office nearest their residence for access to their EMF. When submitting a request to the Office, the individual must furnish the following information to locate and indentify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employeed and dates of employment.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should:

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit such a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Name and location of agency where last employed and dates of employment.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. The individual to whom the records pertain.

b. Agency employee health unit staff.

c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

[FR Doc. 88-1509 Filed 1-25-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25272; File No. SR-DTC-87-09]

Self-Regulatory Organizations; Depository Trust Co.; Order Approving a Proposed Rule Change

On June 2, 1987, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-87-09), with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] to authorize a service for changing payment modes on certain securities. On September 15, 1987, DTC filed a description of the Change of Mode of Payment (CMOP) service and related procedures. On October 6, 1987, DTC filed a proposed fee schedule for this service. As discussed in the Notice of Filing of Proposed Rule Change concerning CMOPs the fees for CMOPs are to be the same as the fees for conversions. On October 15, 1987, the Commission published notice of this proposed rule change in the Federal Register to solicit comments from the interested persons.[2] No comments were received. As discussed below, this Order approves the proposal.

I. Description

The proposal institutes a new service, called the Change of Mode Payment ("CMOP") Service. DTC states in its filing that CMOP will enable Participants to change, during specific periods, the frequency with which they receive dividend payments on certain investment company and corporate preferred securities. Only certain Unit Investment Trust (UIT) and Variable Mode Preferred (VMP) stock issues will be eligible for the CMOP Service. In accordance with the terms of the security, dividend payments may be made monthly, quarterly, semi-annually, annually, or on another regular frequency, and investors may change the frequency of such payments. CMOP is designed to centralize and automate the process for effecting such changes. Only certain Unit Investment Trust (UIT) and Variable Mode Preferred (VMP) stock issues will be eligible for the CMOP Service.

[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 25002 (October 7, 1987), 52 FR 38282 (October 15, 1987).

In order to use the CMOP Service, a Participant would communicate the CMOP instructions to DTC by automated means through DTC's Participant Terminal System (PTS). Due to provisions in the documents which created the UITs and VMPs, participants may submit CMOP changes only during certain specified time periods. Accordingly, if a participant attempts to make a change outside of the permissible time periods, PTS will reject the transaction and display an error message. Participants receive an additional notification of transactions not completed by comparing the transactions they submitted with the completed transactions reported on their daily activity statement.

In addition to instructing DTC about a VMP change, a participant who wants to make a VMP change must notify the VMP remarketing agent directly of the change two business days before the dividend payment date. Each afternoon DTC will submit that day's CMOP VMP changes to the appropriate VMP remarketing agents. The VMP remarketing agents will have until the close of business to inform DTC of changes that must be reversed because the participant failed to notify it of the change at the appropriate time. If a change must be reversed, or is rejected for another reason, DTC will notify the participant's coordinator by telephone, and send the participant a written notice of the adjustment. After a participant has completed a valid CMOP instruction, DTC will issue the necessary instructions to the appropriate transfer agent to transfer DTC's position from one mode of payment to another, and mark its books accordingly. Because UIT and VMP are FAST issues,[3] DTC will transmit the instructions to the FAST transfer agent via DTC's Computer-to-Computer Facility.

DTC also has filed fees for this service. It will charge the same fees as it currently charges for conversions. For each CMOP instruction DTC will charge two deliver order charges of $0.50 each, (one for deducting the issue which the Participant no longer wishes to hold and one for adding the issue which the Participants wishes to hold) plus a charge based on the number of shares transferred. This charge will be:

From 1 to 400 shares ...	$20 minimum per transaction
401 to 2,000 shares ...	$0.05 per share
Over 2,000 shares	$100 maximum per transaction

II. DTC's Rationale

DTC believes the rule change is consistent with the requirements of the Act because using CMOP to make the desired change will eliminate the need for Participants to withdraw certificates from DTC, exchange them at the transfer agent, and then deposit new certificates. In addition, the proposed rule change would facilitate the timely settlement of these transactions, reduce fails, and decrease financing costs.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act, and in particular, the requirement that depositories safeguard securities which are in its custody or control. The proposed rule change will allow participants to change the mode of payment as their business needs require and provides the benefit of an immobilized securities issue. The CMOPs service will allow DTC to provide more efficient FAST-issue service to participants and to use DTC's FAST-instruction accounting controls. Because many CMOPS-eligible issues will not be available to investors in certified form, DTC has worked with the VMP agent to structure appropriate controls over instructions, including independent verification of the participant's instructions. Moreover, the CMOPS service will reduce the need for cancelling the reissuing UIT certificates each time a Participant wishes to change the frequency with which it receives its dividend payments.

The Commission also believes the proposal is consistent with section 17A's directive to promote the prompt and accurate clearance and settlement of securities. The CMOP service appears to provide an efficient, automated system for processing changes in the mode of payment for UITs and VMPs, which otherwise would need to be processed manually and exposed to the risks of error inherent in manual processing.

The Commission also believes that the fees DTC proposes to charge for its CMOPs service are consistent with section 17A(b)(3)(D) as they provide for the equitable allocation of reasonable dues, fees and other charges among DTC's participants. As stated in the Notice of Filing of Proposed Rule Change,[4] CMOP fees are the same as conversions fees. Because the tasks DTC must perform to provide the CMOP service are similar to the tasks they must perform to provide the conversion service charging participant the same fees appears to be reasonable. In addition, the Commission has received no comments from the public concerning the fees.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-87-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 20, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1494 Filed 1-25-88; 8:45 am]

BILLING CODE 8010-01-M

[3] FAST, which stands for FAST Automated Securities Transfer, provides an expeditious method for transferring certificates. Under the FAST program, DTC leaves certificates with the appropriate transfer agents ("TA") representing the balance of DTC's nominee position in issues handled by those TA's. When FAST issues are transferred, DTC does not need to withdraw the certificates from its vault, submit them to the TA for processing, receive new certificates from the TA, and place them in the vault. Instead, DTC merely notifies the TA of the change to be made; processing occurs more quickly because the FAST certificates are already in the TA's custody.

[4] Securities Exchange Act Release No. 25002 (October 7, 1987), 52 FR 38282 (October 15, 1987), page 1.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 20, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

A L Laboratories, Inc.
Class A Common Stock, $.20 Par Value (File No. 7-1085)
Charter Medical Corporation
Class B Common Stock, $.25 Par Value (File No. 7-1086)
Commtron Corporation
Class A Common Stock, $.01 Par Value (File No. 7-1087)
CMI Corp.
Common Stock, $.10 Par Value (File No. 7-1088)
Crown Central Petroleum Corp.
Class A Common Stock, $5.00 Par Value (File No. 7-1089)
Crown Central Petroleum Corp.
Class B Common Stock, $5.00 Par

Value (File No. 7–1090)
Cohu Inc.
Common Stock, $1.00 Par Value (File No. 7–1091)
Crowley, Milner & Co.
Common Stock, $1.00 Par Value (File No. 7–1092)
Connelly Containers Inc.
Common Stock, $.50 Par Value (File No. 7–1093)
Copley Properties, Inc.
Common Stock, $1.00 Par Value (File No. 7–1094)
Courtaulds, PLC
Regular Stock American Depositray Shares, P 25 Par Value (File No. 7–1095)
Colorado Prime
Common Stock, $.01 Par Value (File No. 7–1096)
Consolidated Energy Partners L.P.
Units of Limited Partnership Interest, No Par Value (File No. 7–1097)
Conquest Exploration Company
Units (File No. 7–1098)
Care Enterprises
Class A Common Stock, No Par Value (File No. 7–1099)
Care Enterprises
Class B Common Convertible, No Par Value (File No. 7–2000)
Coast R.V., Inc.
Common Stock, No Par Value (File No. 7–2001)
Crown Crafts, Inc.
Common Stock, $1.00 Par Value (File No. 7–2002)
CSS Industries, Inc.
Common Stock, $.10 Par Value (File No. 7–2003)
Cubic Corporation
Common Stock, No Par Value (File No. 7–2004)
Continental Materials Corp.
Common Stock, $.50 Par Value (File No. 7–2005)
Custom Energy Service Inc.
Common Stock, $.01 Par Value (File No. 7–2006)
Castle Convertible Fund Inc.
Common Stock, $.01 Par Value (File No. 7–2007)
Chicago Rivet & Machine Co.
Common Stock, $2.00 Par Value (File No. 7–2008)
Canadian Occidental Petroleum Ltd.
Common Stock, No Par Value (File No. 7–2009)
Conston Corp.
Class A Common Stock, $.12 Par Value (File No. 7–2010)
Carmel Container Systems Limited
Ordinary Shares, NIS 1 Par Value (File No. 7–2011)
Barry (R.G.) Corp.
Common Stock, $1.00 Par Value (File No. 7–2012)
Ark Restaurants Inc.
Common Stock, $.01 Par Value (File No. 7–2013)
Audiovox Corporation
Class A Common Stock, $.10 Par Value (File No. 7–2014)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1988, written data, views and arguments concening the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1490 Filed 1–25–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 20, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Angell Real Estate Company, Inc.
Common Stock, $.01 Par Value (File No. 7–1077)
Catalyst Energy Corporation (Louisiana)
Common Stock, $.10 Par Value (File No. 7–1078)
Times Mirror Company
Common Stock, No Par Value (File No. 7–1079)
Universal Corporation
Common Stock, Par Value (File No. 7–1080)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1491 Filed 1–25–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 20, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Environmental Treatment & Technologies Corp.
Common Stock, $0.10 Par Value (File No. 7–2016)
IBP, Inc.
Common Stock, $0.05 Par Value (File No. 7–2017)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1492 Filed 1–25–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 20, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Acton Corporation (New)
Common Stock, $0.33⅓ Par Value (File No. 7–1081)
Champion Enterprises, Inc.
Common Stock, $1.00 Par Value (File No. 7–1082)
Cyclops Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–1083)
Tubos de Acero de Mexico, S.A.
Common Stock, No Par Value (File No. 7–1084)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1493 Filed 1–25–88; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; BRT Realty Trust (Shares of Beneficial Interest, $3.00 Par Value) File No. 1–7172

January 20, 1988.

BRT Realty Trust ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's beneficial shares are also listed on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these beneficial shares from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its beneficial shares on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its beneficial shares and believes that dual listing would fragment the market for its beneficial shares.

Any interested person may, on or before February 9, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1495 Filed 1–25–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1046]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its June–December 1987 list of U.S. accredited Delegations which included private sector representatives.

Publication of this list is required by Article III (c) 5 of the guidelines published in the **Federal Register** on March 23, 1979.

Date: January 19, 1988.

Frank R. Provyn,

Director, Office of International Conference Programs.

United States Delegation to the International Telecommunication Union (ITU) International Telegraph and Telephone Consultative Committee (CCITT), Hamburg, Germany, June 29–July 17, 1987

Representative

Gary Fereno, Office of Technical Standards and Development, Bureau of International Communications and Information Policy, Department of State

Advisers

Jack E. Cole, Office of Industrial Analysis, National Telecommunications and Information Administration, Department of Commerce

Fred H. Nolke, International Conference Staff, Common Carrier Bureau, Federal Communications Commission

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

Rodney J. Boehm, Rockwell International, Richardson, Texas

Stephanie M. Boyles, Bell South International, Atlanta, Georgia

David R. Cairns, Jr., Northern Telecom Inc., Research Triangle Park, North Carolina

Gary Fishman, AT&T Communications, Bedminster, New Jersey

David L. Howard, Southwestern Bell Telephone Company, St. Louis, Missouri

Ivor N. Knight, COMSAT, Clarksburg, Maryland

Demosthenes J. Kostas, GTE Service Corporation, Stamford, Connecticut

Anthony M. Rutkowski, Research Associate, Massachusetts Institute of Technology, Cambridge, Massachusetts

Marshall G. Schachtman, Bell Communications Research, Inc. Red Bank, New Jersey

United States Delegation to the 33rd Session of the Subcommittee on Radiocommunications International Maritime Organization (IMO), London, July 13–17, 1987

Representative

Dana W. Starkweather, Captain, Chief, Telecommunications Systems Division, United States Coast Guard, Department of Transportation

Alternate Representative

Joseph D. Hersey, Jr., Chief, Marine Radio Policy Branch, United States Coast Guard, Department of Transportation

Advisers

William Luther, Field Operation Bureau, Federal Communications Commission

Robert C. McIntyre, Engineer, Private Radio Bureau, Federal Communications Commission

Richard L. Swanson, Office of International Affairs, Department of Commerce

Private Sector Advisers

Don Derryberry, Exxon Company, Houston, Texas

John Fuechsel, Maritime Services, Comsat Space Communications Division, Clarksburg, Maryland

Ronald J. Lepkowski, Consultant, Geostar Corporation, Washington, DC

United States Delegation to the Steel Committee Working Party Organization for Economic Cooperation and Development (OECD), Paris, July 22–23, 1987

Representative

Ralph F. Thompson, Jr., Director, Iron and Steel Division, Office of Basic Industries, Department of Commerce

Adviser

Appropriate USOECD, Mission Officer, Paris

Private Sector Adviser

John J. Sheenhan, Assistant to the President and Director for Legislative Affairs, United Steel Workers of America, Washington, DC

United States Delegation to the Sixth Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Ottawa, July 12–24, 1987

Representative

Ronald E. Lambertson, Assistant Director for Fish and Wildlife Enhancement, United States Fish and Wildlife Service, Department of the Interior

Alternative Representative

Clark Bavin, Chief, Division of Law Enforcement, United States Fish and Wildlife Service, Department of the Interior

Congressional Staff Advisers

Donald Barry, General Counsel for Fisheries and Wildlife, Committee on Merchant Marine and Fisheries, United States House of Representatives

Robert P. Davison, Staff Member, Committee on Environment and Public Works, United States Senate

Gina DeFerrari, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives

Thomas O. Melius, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

Earl Baysinger, Special Assistant to the Assistant Director, Fish and Wildlife Enhancement, United States Fish and Wildlife Service, Department of the Interior

Charles Dane, Chief, Office of Scientific Authority, United States Fish and Wildlife Service, Department of the Interior

Nancy Foster, Director, Office of Protected Species, National Marine Fisheries Service, Department of Commerce

Richard Jachowski, Acting Chief, Federal Wildlife Permit Office, United States Fish and Wildlife Service, Department of the Interior

Arthur Lazarowitz, Regulatory Staff Specialist, Office of CITES Management Authority, United States Fish and Wildlife Service, Department of the Interior

Bruce MacBryde, Staff Botanist, Office of the CITES Scientific Authority, United States Fish and Wildlife Service, Department of Interior

Edward McKeon, International Wildlife Officer, Office of Ecology and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Dick Mitchell, Staff Biologist, Office of the CITES Scientific Authority, United States Fish and Wildlife Service, Department of the Interior

Don Thompson, Staff Officer, Field Operations Support Staff, Animal and Plant Health Inspection Service, Department of Agriculture

Private Sector Adviser

William S. Huey, International Association of Fish and Wildlife Agencies, Washington, DC

United States Delegation to the Organization of American States/Inter-American Telecommunications Commission (OAS/CITEL) Inter-American Telecommunications Fifth Plenipotentiary Conference, Lima, Peru, August 10–14, 1987

Representative

Wiliam H. Jahn, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy Department of State

Advisers

Wilson La Follette, Assistant Chief (International), Policy and Rules Division, Mass Media Bureau, Federal Communications Commission

William Moran, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

William M. Borman, Motorola, Incorporated, Washington, DC

Cecil R. Crump, District Manager, AT&T Communications, Morristown, New Jersey

United States Delegation to the 27th Session of the Group of Experts on Explosives UN Economic and Social Council (ECOSOC), Geneva, August 17–21, 1987

Representative

Charles W. Schultz, Chief, Sciences Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation

Alternate Representative

Charles H. Ke, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation,

Advisers

Raymond B. Sawyer, Explosives Safety Board, Department of Defense

Richard W. Watson, Pittsburgh Explosives Laboratory, Bureau of Mines, Department of the Interior, Pittsburgh, Pennsylvania

Private Sector Advisers

Clyde W. Eilo, Institute of Makers of Explosives, New York, New York

A.B. Opperman, Institute of Makers of Explosives, New York, New York

United States Delegation to the International Telecommunication Union (ITU) International Telegraph and Telephone Consultative Committee (CCITT) Study Group XI (ISDN and Telephone Network Switching and Signaling) Geneva, Switzerland, August 17–September 4, 1987

Representative

Otto J. Gusella, Exchange Carriers Standards Association, Parsippany, New Jersey

Alternate Representative

Frank M. McClelland, National Communications System, Defense Communications Agency

Private Sector Advisers

Bernard Harris, GTE Service Corporation, Shelton, Connecticut

Benjamin C. Levitan, Communications Satellite Corporation, Clarksburg, Maryland

Yi-Shang Shen, MCI Telecommunications, McLean, Virginia

Michael E. Varrassi, Federal Express, Memphis, Tennessee

United States Delegation to the Group of Rapporteurs on Pollution and Energy 16th Session Economic Commission for Europe (ECE), Geneva, August 31—September 2, 1987

Representative

Merrill Korth, Senior Technical Advisor, Office of Mobile Sources, Environmental Protection Agency, Ann Arbor, Michigan

Private Sector Advisers

Louis Broering, Engine Manufacturers Association, Chicago, Illinois

Harry Weaver, Motor Vehicle Manufacturers Association, Detroit, Michigan

United States Delegation to the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobile Services Geneva, Switzerland, September 14–October 16, 1987

Representative

David Markey, BellSouth Corporation, Washington, DC

Alternate Representatives

Michael Fitch, Chief, Private Radio Bureau, Federal Communications Commission

John T. Gilsenan, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Leonard R. Raish, Fletcher, Heald and Hildreth, Washington, DC

Francis Urbany, National Telecommunications and Information Administration, Department of Commerce

Advisers

Brian Fontes, Special Assistant to the Commissioner, Federal Communications Commission

Jerome Freibaum, National Aeronautics and Space Administration

Tomas E. Gergely, Electromagnetic Spectrum Manager, National Science Foundation

John Grimes, Director, National Security Communications, National Security Council, The White House

Wendell Harris, Common Carrier Bureau, Federal Communications Commission

Earl J. Holliman, Army Spectrum Manager, Office of the Assistant Chief of Staff for Information Management, Spectrum Management Office, Department of Defense

Joseph Hersey, United States Coast Guard, Department of Transportation

Henry W. Holsopple, Navy Electromagnetic Spectrum Center, United States Navy, Department of Defense

Edward Jacobs, Special Assistant to the Chairman, Federal Communications Commission

William Luther, Field Operations Bureau, Federal Communications Commission

Gerald J. Markey, Manager, Spectrum Engineering Division, Federal Aviation Administration, Department of Transportation

Robert C. McIntyre, Private Radio Bureau, Federal Communications Commission

Harry Montgomery, United States Mission, Geneva, Switzerland

William Moran, National Telecommunications and Information Administration, Department of Commerce

Allen Overmyer, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Lawrence Palmer, National Telecommunications and Information Administration, Department of Commerce

Walter A. Pappas, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Larry Reed, Private Radio Bureau, Federal Communications Commission

Laird Robertson, Economic, Business and Communications Affairs, Office of the Legal Adviser, Department of State

Philip Sheldon, United States Coast Guard, Department of Transportation

Richard E. Shrum, Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Michael S. Singer, Federal Aviation Administration, Department of Transportation

Richard Swanson, National Telecommunications and Information Administration, Department of Commerce

James Vorhies, National Telecommunications and Information Administration, Department of Commerce

Francis K. Williams, Office of Engineering and Technology, Federal Communications Commission

Private Sector Advisers

Martin W. Bercovici, Keller and Heckman, Washington, DC

Herbert T. Blaker, Rockwell International, Arlington, Virginia

William H. Borman, Motorola, Incorporated, Washington, DC

James R. Carroll, Senior Engineer, Sachs-Freeman Associates, Landover, Maryland

Cecil Crump, District Manager, AT&T Communications, Morristown, New Jersey

Robert S. Foosaner, Jones, Day, Reavis, and Pogue, Washington, DC

Richard Gould, Telecommunications Systems, Washington, DC

Kris E. Hutchinson, Aeronautical Radio, Incorporated, Annapolis, Maryland

Jan King, Skylink Corporation, Boulder, Colorado

Ronald Lepkowski, GEOSTAR, Washington, DC

Edward Reinhart, Communications Satellite Corporation, Clarksburg, Maryland

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United States Delegation to the Committee on Housing, Building, and Planning Economic Commission for Europe (ECE) Geneva, September 15–18, 1987

Representative

The Honorable Theodore R. Britton, Jr., Assistant to the Secretary for International Affairs, Department of Housing and Urban Development

Private Sector Advisers

Bruce S. Hardy, Area Housing Manager, Housing Authority of the County of Cook, Chicago Heights, Illinois

Angus T. Olson, Executive Director, Alexandria Redevelopment and Housing Authority, Alexandria, Virginia

Carolyn G. Olsen, Lewis and Silverman, Vienna, Virginia

Mary E. Paumen, Urban Planner, Anthony J. Dunleavy Associates, Inc., Upper Darby, Pennsylvania

United States Delegation to the Council and Executive Board Session International Coffee Organization (ICO), London, September 20–October 1, 1987

Representative

Jon Rosenbaum, Assistant U.S. Trade Representative, Office of the U.S. Trade Representative, Executive Office of the President

Alternative Representatives

Carl Cundiff, Director, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State

Ralph F. Ives, III, International Economist, Primary Commodities Division, Department of Commerce

Advisers

Milton Anderson, International Economist, Department of Commerce

Martin J. Bailey, Economic Advisor to the Under Secretary for Economic Affairs, Department of State

James Burkart, U.S. Embassy, London

Bruce McMullen, U.S. Embassy, London

Private Sector Advisers

John M. Bederka, Woodhouse, Drake & Carey Trading Inc., New York, New York

George E. Boecklin, National Coffee Association, New York, New York

David A. Brown, Maxwell House Corporation, New York, New York

John C.K. Buckley, Nestle Food Corporation, White Plains, New York

Kenneth R. Dunnivant, The Folger Coffee Company, Cincinnati, Ohio

John Heuman, Dine-Mor Foods, Inc., Fenton, Missouri

Howard C. Katz, J. Aron & Company, New York, New York

Andrew A. Scholtz, ACLI Coffee, Division of Cargill, Inc., New York, New York

John Sutherland, Continental Coffee Products Company, Division of Stanley Continental, Inc., Chicago, Illinois

H. Grady Tiller, Foods Division, The Coca-Cola Company, Houston, Texas

Dean Wood, National Coffee Services Association, Vienna, Virginia

United States Delegation to the Working Party on Facilitation of International Trade Procedures, Economic Commission for Europe (ECE), Geneva, September 21–25, 1987

Representative

Bruce R. Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Advisers

William H. Kenworthey, Jr., Data Systems Manager, Office of the Deputy Assistant Secretary of Defense for Management Systems, Department of Defense

James H. Hatter, Chief, External Interface and Trade Programs Branch, Office of Data Systems, United States Customs Service

Alice Rigdon, Customs Attache, U.S. Embassy, Brussels

Private Sector Advisers

Michael W. Gerus, Standards Coordinator, Automotive Industry Action Group, Southfield, Michigan

Eugene A. Hemley, Executive Director, National Council on International Trade Documentation, New York, New York

Dennis McGinnis, Corporate Project Manager, North American Philips Corporation, New York, New York

Daniel C. Walk, Director of Information Systems, Eikem Metals Company, Pittsburgh, Pennsylvania

Thomas Warner, Senior Business Consultant, McDonnell Douglas EDI Systems Co., St. Louis, Missouri

United States Delegation to the International Civil Aviation Organization (ICAO) 11th Meeting of the Dangerous Goods Panel, Montreal, Quebec, Canada, September 21–October 2, 1987

Representative

Elaine Economides, International Standards Coordinator, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation

Alternate Representative

Walter G. Greiner, Hazards Materials Program Manager, Office of Civil Aviation Security, Federal Aviation Administration, Department of Transportation

Private Sector Adviser

Samuel S. Elkind, Manager, Cargo Services, Secretary, Restricted Articles Board, Air Transport Association of America, Washington, DC

United States Delegation to the World Tourism Organization (WTO) Seventh Session of the General Assembly, Madrid, Spain, September 22–October 1, 1987

Representative

The Honorable Donna Tuttle, Under Secretary of Commerce for Travel and Tourism, Department of Commerce

Alternate Representatives

Adrian Basora, Deputy Chief of Mission, American Embassy, Madrid, Spain

Robert Bentley, Staff Director for Policy, Office of the Ambassador-at-Large for Counterterrorism, Department of State

Clark Crook-Castan, Alternate Permanent Representative of the United States to the World Tourism Organization, American Embassy, Madrid, Spain

Jean O'Brien, United States Travel and Tourism Administration, Department of Commerce

Adviser

J. Anthony Allitto, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Private Sector Adviser

Chuck Gee, Dean, School of Travel Industry Management, University of Hawaii, Honolulu, Hawaii

United States Delegation to the International Rubber Study Group (IRSG), Hamburg, September 28–October 2, 1987

Representative

Frederic W. Siesseger, Director International Commodities Division, Department of Commerce

Alternate Representative

Jeffrey R. Cunningham, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Peter Bierrie, President, United Baltic Corporation, New York, New York

Thomas E. Cole, Vice President, Rubber Manufacturers Association, Washington, DC

James F. Hegarty, Firestone International Technical Center, Rome, Italy

Warren Heilbron, Alan L. Grant Rubber Division, Imperial Commodities Corporation, New York, New York

Frank J. Raniolo, President, Alcan Rubber & Chemical Company, New York, New York

Thomas F. Will, Director, Management Information, The Goodyear Tire & Rubber Company, Akron, Ohio

United States Delegation to the International Council for the Exploration of the Sea (ICES) 75th Statutory Meeting, Santander, Spain, October 1–9, 1987

Representatives

Joseph W. Angelovic, Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service, Department of Commerce

Brian Rothschild, Chesapeake Biological Laboratory, University of Maryland, Solomons, Maryland

Advisers

Vaughn C. Anthony, Chief, Utilization and Conservation, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts

Richard C. Hennemuth, Chief, Research Planning and Coordination, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts.

Robert Murchelano, Chief, Environmental Process Division, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts

John Pearce, Deputy Director, Northeast Fisheries Center, Woods Hole Laboratory, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts.

Michael Reeve, Section Head, Ocean Sciences Research, National Science Foundation

Kenneth Sherman, Director, Narragansett Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Narragansett, Rhode Island

Michael Sissenwine, Chief, Fisheries Econlogy Division, Woods Hole Laboratory, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts

James Weaver, United States Fish and Wildlife Service, Department of the Interior, Newton Corner, Massachusetts

Private Sector Advisers

Judith Capuzzo, Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts

Vance Holiday, Tracor, Incorporated, San Diego, California

Edward Houde, Chesapeake Biological Laboratory, University of Maryland, Solomons Maryland

Thomas Osborn, Chesapeake Bay Institute, Johns Hopkins University, Baltimore, Maryland

Charles H. Peterson, Institute of Marine Science, University of North Carolina, Chapel Hill, Morehead City, North Carolina

Carlton Ray, Department of Environmental Sciences, University of Virginia, Charlottesville, Virginia,

United States Delegation to the International Telecommunication Satellite Organization (INTELSAT) Twelfth Assembly of Parties, Buenos Aires, Argentina, October 5–9, 1987

Representative

The Honorable Diana Lady Dougan, United States Coordinator and Director, International Communications and Information Policy, Department of State

Alternate Representative

Dean Olmstead, INTELSAT Program Officer, Office of Regulatory and Treaty Affairs, International Communications and Information Policy, Department of State

Advisers

Emil Castro, American Embassy, Buenos Aires, Argentina

James Ball, Deputy Chief, International Affairs, Federal Communications Commission

James Earl, Economic, Business and Communications Affairs, Office of the Legal Adviser, Department of State

Robert Frieden, Satellite Policy Manager, National Telecommunications and Information Administration, Department of Commerce

Joel Pearlman, Attorney, International Operations, Federal Communications Commission

Private Sector Advisers

Bruce Crockett, President, World Systems Division, Communications Satellite Corporation, Clarksburg, Maryland

Maury Mechanick, INTELSAT Affairs Director, Communications Satellite Corporation, Clarksburg, Maryland

United States Delegation to the Fourteenth Antarctic Treaty Consultative Meeting, Rio de Janeiro, Brazil, October 5–16, 1987

Representative

R. Tucker Scully, Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Raymond Arnaudo, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Robert Hofman, Scientific Program Director, Marine Mammal Commission

Brad Laubach, Minerals Management Service, Department of the Interior

Thomas Laughlin, National Oceanic and Atmospheric Administration, Department of Commerce

Eugene M. Pinkelmann, Office of the Legal Adviser, Department of State

Darold Silkwood, Chief, Defense Program Analysis Division, U.S. Arms Control and Disarmament Agency

Jack Talmadge, Division of Polar Programs, National Science Foundation

Norman A. Wulf, Deputy Assistant Director, Bureau of Nuclear Weapons and Control, U.S. Arms Control and Disarmament Agency

Private Sector Adviser

Lee Kimball, International Institute for Environment and Development, Washington, DC

United States Delegation to the International Telecommunication Union (ITU) International Telegraph and Telephone Consultative Committee (CCITT) Study Group I (Working Parties I/1, I/2, I/3, I/4 and Question 1/I Rapporteur Group), Geneva, Switzerland, October 5–16, 1987

Representative

Douglas V. Davis, Senior Attorney, Common Carrier Bureau, International Conference Staff, Federal Communications Commission

Private Sector Advisers

Donald P. Casey, ITT World Communications, Inc., Secaucus, New Jersey

Joseph T. Morris, Western Union Telegraph Company, Mahwah, New Jersey

Herman R. Silbiger, AT&T—Bell Laboratories, Holmdel, New Jersey

United States Delegation to the 21st Session of the Administrative and Legal Committee of the Union for the Protection of New Plant Varieties (UPOV), Geneva, October 8–9, 1987

Representative

Stanley D. Schlosser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Private Sector Advisers

Benjamin Bolusky, Director, Office of Government Affairs, National Association of Nurserymen, Washington, DC

William Schapaugh, Executive Director, American Seed Trade Association, Washington, DC

United States Delegation to the International Institute for Cotton (IIC), Brussels, October 10, 1987

Representative

William L. Davis, Assistant Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

Geron E. Rathell, Tobacco, Cotton and Seeds Division, Foreign Agricultural Service, Department of Agriculture

Advisers

Cornelia Bryant, American Embassy, Brussels

Charles V. Cunningham, Deputy Director, Analysis Division, Agricultural Stabilization and Conservation Service, Department of Agriculture

Roger S. Lowen, Agricultural Counselor, American Embassy, Brussels

Private Sector Advisers

Earle N. Billings, Executive Vice President, American Cotton Shippers Association, Memphis, Tennessee

Donald B. Conlin, Chairman, Board of Managers, New York Cotton Exchange, New York, New York

George C. Cortright, Adviser to the Board, National Cotton Council of America, Rolling Fork, Mississippi

M. Dean Ethridge, Director, Economic Services Division, National Cotton Council of America, Cordova, Tennessee

Kenneth Adrian Hunnings, Director, Foreign Operations, National Cotton Council of America, Washington, DC

William Coleman Tharp, American Cotton Shippers Association, Washington, DC

Charles Aven Whittington, President, National Cotton Council of America, Memphis, Tennessee

United States Delegation to the International Cotton Advisory Committee (ICAC), Brussels, October 12–16, 1987

Representative

William L. Davis, Assistant Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, Department of Agriculture

Alternate Representative

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Charles V. Cunningham, Deputy Director, Analysis Division, Agricultural Stabilization and Conservation Service, Department of Agriculture

Private Sector Advisers

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George C. Cortright, Adviser to the Board, National Cotton Council of American, Rolling Fork, Mississippi

M. Dean Ethridge, Director, Economic Services Division, National Cotton Council of America, Cordova, Tennessee

Kenneth Adrian Hunnings, Director, Foreign Operations, National Cotton Council of America, Washington, DC

William Coleman Tharp, American Cotton Shippers Association, Washington, DC

Charles Aven Whittington, President, National Cotton Council of America, Memphis, Tennessee

United States Delegation to the 58th Session of the Legal Committee International Maritime Organization (IMO) London, October 12–16, 1987

Representative

Frederick F. Burgess, Jr., Captain, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representatives

Robert Blumberg, Deputy Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Frederick M. Rosa, Jr., Lieutenant Commander, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Adviser

Robert L. Storch, Captain, Office of Marine Environment & Systems, United States Coast Guard, Department of Transportation

Private Sector Advisers

Neal D. Hobson, Maritime Law Association, New Orleans, Louisiana

Edward C. Kalaidjian, Maritime Law Association, New York, New York

Sam V. Tranchina, Vice President, Great American Insurance Company, New York, New York

United States Delegation to the Committee for the Coordination of Offshore Prospecting for Mineral Resources in the South Pacific (CCOP/SOPAC) 16th Session Economic and Social Commission for Asia and the Pacific (ESCAP), Lae, Papua New Guinea, October 12–23, 1987

Representative

William A. Erb, Director, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Adviser

H. Gary Greene, Branch of Pacific Marine Geology, United States Geological Survey, Menlo Park, California

Private Sector Advisers

Charles E. Helsley, Director, Hawaiian Institute of Geophysics, University of Hawaii, Honolulu, Hawaii

Jacqueline Mesmerlcx, Geological Research Division, Scripps Institution of Oceanography, La Jolla, California

United States Delegation to the 5th Session of the Assembly of the International Maritime Satellite Organization (INMARSAT), London, October 13–15, 1987

Representative

Randolph Earnest, Director, Office of Regulatory and Treaty Affairs, Bureau of International Communications and Information Policy, Department of State.

Advisers

John Barnes, United States Embassy, London

Hilary Cunningham, Office of Regulatory and Treaty Affairs, Bureau of International Communications and Information Policy, Department of State

James Earl, Office of the Legal Adviser, Department of State

Robert Frieden, National Telecommunications and Information Administration, Department of Commerce

Wendell Harris, Assistant Director, Common Carrier Division, Federal Communications Commission

Larry Martinez, National Telecommunications and Information Administration, Department of Commerce

Joel Pearlman, Legal Adviser, Common Carrier Division, Federal Communications Commission.

Private Sector Advisers

Elizabeth Young, Vice President, Communications Satellite Corporation, Washington, DC

Robert J. Oslund, Director, INMARSAT Relations, Communications Satellite Corporation, Washington, DC

John Hannon, Deputy Director, INMARSAT Relations, Communications Satellite Corporation, Washington, DC.

United States Delegation to the International Natural Rubber Agreement Council, United National Conference on Trade and Development (UNCTAD), Kuala Lumpur, October 13–22, 1987

Representative

Frederic Siesseger, Director, Primary Commodities Division, Department of Commerce.

Alternate Representative

Jeffrey Cunningham, Industrial & Strategic Materials Division, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State.

Adviser

Steven Olsen, U.S. Embassy, Kuala Lumpur.

Private Sector Advisers

Howard G. Chapell, Managing Director, Goodyear Orient Private Ltd., Singapore

Harold Ross Miller, Managing Director, Goodrich Company Private Ltd., Singapore

Charles B. Pettit, Managing Director, Firestone Singapore Private Ltd., Singapore.

United States Delegation to the International Telecommunication Union (ITU) International Telegraph and Telephone Consultative Committee (CCITT) Study Group III: Working Parties III/2, III/5, III/6, and III/8, Ottawa, Canada, October 19–23, 1987

Representative

Earl S. Barbely, Director, Office of Technical Standards and Development, International Communications and Information Policy, Department of State

Alternate Representative

Gary M. Fereno, Deputy Director, Office of Technical Standards and Development, International Communications and Information Policy, Department of State

Adviser

Wendell R. Harris, Assistant Bureau Chief, Common Carrier Bureau, Federal Communications Commission

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Wendell Lind, Division Manager, Network, Rates, AT&T Communications, Bedminster, New Jersey

William Motherway, MCI International, Inc., Ryebrook, New York

John O'Boyle, Vice President, ITT World Communications, Secaucus, New Jersey

Philip Onstad, Director, Telecommunications Policy, Control Data Corporation, Edison, New Jersey

Denis O'Shea, Telecommunications Consultant, International Business Machines, Purchase, New Jersey

Beverly Sincavage, Senior Product Manager, Telenet Communications Corporation, Reston, Virginia

Edward Slack, COMSAT Maritime Services, Clarksburg, Maryland

Deborah Tumey, CITIBANK, N.A., New York, New York

United States Delegation to the 14th Session North American Forestry Commission Food and Agriculture Organization (FAO), Sault Sainte Marie, Ontario, Canada, October 14–17, 1987

Representative

F. Dale Robertson, Chief, U.S. Forest Service, Department of Agriculture

Alternate Representatives

Henry Noldan, Chief of Forestry, Bureau of Land Management, Department of the Interior

John H. Ohman, Deputy Chief for Research, U.S. Forest Service Department of Agriculture

Adviser

Samuel H. Kunkle, International Forestry Staff, U.S. Forest Service, Department of Agriculture

Private Sector Advisers

Larry W. Tombaugh, Chairman, Department of Forestry, Michigan State University, East Lansing, Michigan

Henry Webster, State Forester, Michigan Department of Natural Resources, Lansing, Michigan

United States Delegation to the Steel Committee Working Party Organization for Economic Cooperation and Development (OECD), Paris, October 20[3]21, 1987

Representative

Ralph F. Thompson, Jr., Director, Iron and Steel Division, Bureau of Industrial Economics, Internnational Trade Administration, Department of Commerce

Advisers

Jorge Perez-Lopez, Director, Office of International Economic Affiars, Bureau of International Labor Affairs, Department of Labor

Angus T. Simmons, Special Trade Activities Division, Office of International Trade, Bureau of Economic and Business Affiars, Department of State

Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frank Fenton, Vice President, International Trade and Economics, American Iron and Steel Institute, Washington, DC

Peter B. Mulloney, Vice President and Assistant to the Chairman, United States Steel Corporation, Pittsburgh, Pennsylvania

Clifford D. Nelsen, President, Nelsen Steel Company, Franklin Park, Illinois

John J. Sheehan, Assistant to the President and Director of Legislative Affairs, United Steel Workers of America, Washington, DC

United States Delegation to the 4th Intergovernmental Meeting on the Action Plan for the Caribbean Environment Program United Nations Environmental Program (UNEP), Guandeloupe, October 26–28, 1987

Representative

William A. Nitze, Deputy Assistant Secretary for, Environment, Health and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affiars, Department of State

Alternate Representative

Scott A. Hajost, Office of the Legal Adviser, Department of State

Advisers

Robert Baker, Regional Director, National Park Service, Department of the Interior

Robert Blumberg, Deputy Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affiars, Department of State

Eileen Cooney, Deputy General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce

Pedro A. Gelabert, Director, Caribbean Field Office, Environmental Protection Agency

Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affiars, Department of State

Arthur Paterson, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce

David Pascoe, Commander, Environmental Coordination Branch, Marine Environmental Response Division, United States Coast Guard, Department of Transportation

Rebecca S. Rootes, Office of International Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Thomas Henderson, General Land Office, State of Texas, Austin, Texas

Andrew Palmer, President, Coast Alliance, Tacoma Park, Maryland

United States Delegation to the Sixth Session of the Commission for the Conservation of Antarctic Marine Living Resources and the Scientific Committee, Hobart, Tasmania, October 26–November 6, 1987

Representative

R. Tucker Scully, Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Raymond Arnaudo, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Polly Penhale, Manager, Biology and Medicine Program, Division of Polar Programs, National Science Foundation

Robin Tuttle, Office of International Fisheries Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Bruce S. Manheim, Environmental Defense Fund, Washington, DC

United States Delegation to the 34th Annual Meeting of the International North Pacific Fisheries Commission (INPFC), Vancouver, November 2–6, 1987

Commissioners

The Honorable (Head of Delegation), Clement V. Tillion, Fisherman, Halibut Cove, Alaska

The Honorable Dayton L. Alverson, Managing Partner, Natural Resources Consultants, Inc., Seattle, Washington

The Honorable Richard B. Lauber, Vice President and Alaska Manager, Pacific Seafood Processors Association, Juneau, Alaska

The Honorable Robert W. McVey, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Adviser

Robert J. Ford, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

George J. Easley, Pacific Fisheries Council, Portland, Oregon

William S. Gilbert, Washington Fish Co., Seattle, Washington

Charles H. Meachum, Sr., Pacific Rim Consultants, Anchorage, Alaska

Jane Arliss Sturgulewski, Senator, Alaska State Legislature, Anchorage, Alaska

Fred Zharoff, Senator, Alaska State Legislature, Kodiak, Alaska

United States Delegation to the First Session of the Joint World Meteorological Organization (WMO)/ Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), UN Educational, Scientific and Cultural Organization (UNESCO), Geneva, November 2–6, 1987

Representative

J. Michael Hall, Director, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Representative

Richard Lambert, Associate Program Director, National Science Foundation

Adviser

Kenneth Mooney, Assistant Program Director, Tropical Ocean and Global Atmosphere, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

John Young, Department of Atmospheric Physics, Oxford University, Oxford, England

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee/International Telegraph and Telephone Consultative Committee (CCIR/CCITT), Joint Study Group for Television and Sound Transmission (CMTT), Geneva, Switzerland, November 2–13, 1987

Representatives

David Carson, Bell Communications Research, Morristown, New Jersey

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Advisers

John Reiser, Mass Media Bureau, Federal Communications Commission

John W. Kiebler, Head, Technical Consultation Services, National Aeronautics and Space Administration

Private Sector Advisers

Ronald J. Gnidziejko, Director, On-Air Operations, NBC Television Network, New York, New York

George Knowlson, Jr., AT&T Communications, Bedminster, New Jersey

John J. McGrath, GE Americon, New York, New York

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Interim Study Group 11, Geneva, Switzerland, November 2–18, 1987

Representatives

John Reiser, Mass Media Bureau, Federal Communications Commission

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Private Sector Advisers

Corey P. Carbonara, Telecommunications Division, Baylor University, Waco, Texas

Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee/International Telegraph and Telephone Consultative Committee (CCIR/CCITT), Joint Study Group for Television and Sound Transmission (CMTT), Geneva, Switzerland, November 2–13, 1987

Representatives

David Carson, Bell Communications Research, Morristown, New Jersey

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Advisers

John Reiser, Mass Media Bureau, Federal Communications Commission

John W. Kiebler, Head, Technical Consultation Services, National Aeronautics and Space Administration

Private Sector Advisers

Ronald J. Gnidziejko, Director, On-Air Operations, NBC Television Network, New York, New York

George Knowlson, Jr., AT&T Communications, Bedminster, New Jersey

John J. McGrath, GE Americon, New York, New York

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Interim Study Group 11, Geneva, Switzerland, November 2–18, 1987

Representatives

John Reiser, Mass Media Bureau, Federal Communications Commission

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Private Sector Advisers

Corey P. Carbonara, Telecommunications Division, Baylor University, Waco, Texas

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Bernard Dickens, CBS, Inc., New York, New York

Richard R. Green, Public Broadcasting Service, Alexandria, Virginia

E. William Henry, Ginsberg, Feldman and Bress, Washington, DC

George Hrycenko, Chief Scientist, Hughes Aircraft Co., Los Angeles, California

Robert S. Hopkins, Executive Director, Advance Television Systems Committee, Washington, DC

Donald H. Jansky, President, Jansky Telecommunications, Inc., Washington, DC

Bronwen L. Jones, Consultant, Norwalk, Connecticut

George F. Knights, CBS, Inc., New York, New York

Martin H. Meaney, Director, Allocations Engineering, National Broadcasting Co., Inc., New York, New York

Kerns H. Powers, Staff Vice President, David Sarnoff Research Center, Inc., RCA Corp., Princeton, New Jersey

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) Interim Study Group 10, Geneva, Switzerland, November 3–17, 1987

Representatives

John Reiser, Mass Media Bureau, Federal Communications Commission

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications, and Information Policy, Department of State

Advisers

Dexter Anderson, Voice of America, United States Information Agency

William A. Luther, Field Operations Bureau, Federal Communications Commission

Steven Selwyn, Mass Media Bureau, Federal Communications Commission

Private Sector Advisers

Donald Jansky, President, Jansky Telecommunications, Inc., Washington, DC

Ralph H. Justus, Staff Engineer, Department of Science and Technology, National Association of Broadcasters, Washington, DC

Martin H. Meaney, Director, Allocations Engineering, National Broadcasting Company, Inc., New York, New York

Emil L. Torick, Broadcast Technology Partners, Greenwich, Connecticut

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) Joint Interim Study Group 10–11/S (Broadcasting Satellites), Geneva, Switzerland, November 3–17, 1987

Representatives

Edward E. Reinhart, Director, Techno-Regulatory Matters, Communications Satellite Corporation, Washington, DC

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Advisers

Dexter Anderson, Voice of America, United States Information Agency

John W. Kiebler, Head, Technical Consultation Services, National Aeronautics and Space Administration

Steven Selwyn, Mass Media Bureau, Federal Communications Commission

Private Sector Advisers

Richard G. Gould, President, Telecommunications Systems, Washington, DC

George Hrycenko, Chief Scientist, Hughes Aircraft Company, Los Angeles, California

John E. Miller, Senior Principal Scientist, ORI, Inc., Landover, Maryland

United States Delegation to the 14th Extraordinary Session of the Council, 15th Session of the Assembly and the 59th Session of the Council of the International Maritime Organization (IMO), London, November 6–20, 1987

Fourteenth Extraordinary Session (November 6–7, 1987)

Representatives

J. Anthony Allitto, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Alternate Representatives

G.T. Morgan, Captain, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Adviser

Jean Neitzke, Shipping Attache, United States Embassy, London

Fifteenth Session of the Assembly (November 9–19, 1987)

Representative

Paul A. Yost, Jr., Admiral, Commandant, United States Coast Guard, Department of Transportation

Alternate Representative

J. Anthony Allitto, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Advisers

James C. Card, Captain, Chief, Merchant Vessel Inspection Division, United States Coast Guard, Department of Transportation

J.W. Kime, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

G.T. Morgan, Captain, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Jean Neitzke, Shipping Attache, United States Embassy, London

Dana W. Starkweather, Captain, Chief, Telecommunications Systems Division, United States Coast Guard, Department of Transportation

Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Private Sector Adviser

Donald C. Hintze, Captain, USCG (Ret.), National Ocean Industries Association, Washington, DC.

Fifty-Ninth Session of the Council (November 20, 1987)

Representative

J. Anthony Allitto, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State

Alternate Representatives

G.T. Morgan, Captain, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Gerard P. Yoest, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation

Adviser

Jean Neitzke, Shipping Attache, United States Embassy, London

Private Sector Adviser

Donald C. Hintze, Captain, USCG (Ret.), National Ocean Industries Association, Washington, DC

United States Delegation to the International Telecommunication Union (ITU) International Telegraph and Telephone Consultative Committee (CCITT) Study Group XVIII (Digital Networks, Including ISDN) Experts Meeting on Broadband Interface Aspects, Geneva, Switzerland, November 9–11, 1987

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce

Adviser

Fred H. Nolke, International Conference Staff, Common Carrier Bureau, Federal Communications Commission

Private Sector Advisers

Rodney J. Boehm, Rockwell International, Richardson, Texas

David R. Cairns, Northern Telecom, Inc., Mountain View, California

Gary Fishman, AT&T Communications, Bedminster, New Jersey

Thomas K. Pickles, Siemens Transmission Systems, Phoenix, Arizona

Marshall Schachtman, Bell Communications Research, Red Bank, New Jersey

United States Delegation to the Committee on Tungsten, 19th Session UN Conference on Trade and Development (UNCTAD), Geneva, November 9–13, 1987

Representative

Frederick W. Siesseger, Director, International Resources Division, Department of Commerce

Alternate Representative

Gerald R. Smith, Bureau of Mines, Department of the Interior

Adviser

Dorothy Dwoskin, Office of the Deputy U.S. Trade Representative, Geneva

Private Sector Advisers

Peter K. Johnson, Administrative Director, Refractory Metals Association, Princeton, New Jersey

Philip T. Stafford, Marketing Manager, Curtis Tungsten Inc., Upland, California

United States Delegation to the 12th Meeting of the All Weather Operations Panel (AWOP) of the International Civil Aviation Organization (ICAO), Montreal, Canada, November 9–27, 1987

Panel Member

Seymour Everett, Assistant Manager, Navigation and Landing Division, Federal Aviation Administration

Advisers

Dennis B. Cooper, International Technical Staff, Federal Aviation Administration

James Enias, Flight Technical Program Branch, Federal Aviation Administration

Thomas Laginja, Flight Inspection Policy and Standards Branch, Federal Aviation Administration

Donald Pate, Manager, Standards Development Branch, Federal Aviation Administration

Rial Sloan, Manager, MLS and Lighting Systems Branch, Federal Aviation Administration

Private Sector Advisers

Richard L. Bowers, Air Transport Association of America, Washington, DC

Gilbert Philip Christiana, MSI Services, Incorporated, Washington, DC

Michael F. DiBenedetto, Ohio University, Athens, Ohio

James H. Dargue MSI Services, Incorporated, Washigton, DC

Lawrence H. Hogle, MITRE Corporation, McLean, Virginia

Robert J. Kelly, Allied Bendix, Towson, Maryland

Kelly R. Markin, MITRE Corporation, McLean, Virginia

Michael L. Moore, Airline Pilots Association, Herndon, Virginia

Douglas B. Vickers, MSI Services, Incorporated, Washigton, DC

United States Delegation to the Third Session of the Council Meeting and First Meetings of its Permanent Committees, International Tropical Timber Organization (ITTO), Yokohama, November 11–20, 1987

Representative

John Medeiros, Acting Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Clinton Shaw, Office of Primary Commodities, Department of Commerce

Advisers

Stephanie Caswell, Office of Ecology and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Hans Klemm, United States Embassy, Tokyo

Private Sector Advisers

Warren C. Jimerson, President, Contact International, Inc., Portland, Oregon

Richard C. Newman, President, Plywood Tropics USA, Inc., Portland, Oregon

James Campbell Plowden, President, TERRA—Tropical Ecosystem Research and Rescue Alliance, Washington, DC

United States Delegation to the Preparatory Meeting on Copper, United Nations Conference on Trade and Development (UNCTAD), Geneva, November 16–20, 1987

Representative

Betsy Stillman, Director for Tropical Products, Commodities, and Andean Affairs, Office of the U.S. Trade Representative, Executive Office of the President

Alternate Representative

Robert Reiley, Director, Office of Metals, Minerals, and Commodities, Department of Commerce

Congressional Staff Advisers

Denise Greenlaw, Legislative Director, Office of Senator Pete Domenici, United States Senate

Richard Yeates, Administrative Assistant, Office of Congressman Jim Kolbe, United States House of Representatives

Advisers

Stephen Brundage, Industrial and Strategic Materials Division, Bureau of Economic and Business Affairs, Department of State

V.A. Cammarota, Assistant Director—Minerals Information, Bureau of Mines, Department of the Interior

Dorothy Dwoskin, Attache, Office of the U.S. Trade Representative, Geneva

Private Sector Advisers

Benjamin J. Bowdon, Vice President, Metals Management, UTC/ESSEX, Fort Wayne, Indiana

Emil Romagnoli, Manager, Regulatory Affairs, ASARCO Incorporated, New York, New York

Douglas C. Yearly, Senior Vice President for Government Relations, Phelps Dodge Corporation, New York, New York

United States Delegation to the 10th Regular Meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), Ponta Delgada, November 17–24, 1987

Commissioners

The Honorable Carmen J. Blondin (Head of Delegation), Special Associate for Trade, National Oceanic and Atmospheric Administration, Department of Commerce

The Honorable Michael B. Montgomery, San Marino, California

The Honorable Leon J. Weddig, National Fisheries Institute, Washington, DC

Advisers

Bradford E. Brown, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

David Crestin, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Brian S. Hallman, Deputy Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Barry Kefauver, Executive Director, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Rebecca Rootes, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Richard Stone, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gordon C. Broadhead, Living Marine Resources, Incorporated, San Diego, California

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) Interim Study Group 4 Geneva, Switzerland, November 17–December 3, 1987

Representatives

Hans J. Weiss, Senior Director, Communications Satellite Corporation, Washington, DC

Richard D. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce

Advisers

William Hatch, National Telecommunications and Information Administration, Department of Commerce

Harold G. Kimball, Chief Scientist, National Telecommunications and Information Administration, Department of Commerce

Alex C. Latker, Federal Communications Commission

Steven W. Lett, Common Carrier Bureau, Federal Communications Commission

William G. Long, Defense Communications Agency, Department of Defense, Arlington, Virginia

Vernon I. McConnell, Department of Defense, Fort George G. Meade, Maryland

Edward Miller, Lewis Research Center, National Aeronautics and Space Administration, Cleveland, Ohio

Harry Ng, National Telecommunications and Information Administration, Department of Commerce, Annapolis, Maryland

Thomas S. Tycz, Common Carrier Bureau, Federal Communications Commission

Private Sector Advisers

Jeffrey Binckes, Manager, Spacecraft Studies and Technology, COMSAT Laboratories, Clarksburg, Maryland

George Campbell, A&T Bell Laboratories, Holmdel, New Jersey

Robert F. McLaughlin, A&T Communications, Bedminster, New Jersey

Michael W. Mitchell, Consultant, Vienna, Virginia

James B. Potts, Consultant, Gaithersburg, Maryland

John L. Robinson, District Manager, AT&T Communications, Bedminster, New Jersey

David E. Weinreich, Department Manager, COMSAT Laboratories, Clarksburg, Maryland

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) Interim Study Group 9 Geneva, Switzerland, November 19–December 4, 1987

Representative

Alex C. Latker, Federal Communications Commission

Richard D. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce

Adviser

Gerald F. Hurt, National Telecommunications and Information Administration, Department of Commerce, Annapolis, Maryland

Private Sector Advisers

Adolf J. Giger, AT&T Bell Laboratories, North Andover, Massachusetts
John J. Kenny, AT&T Bell Laboratories, North Andover, Massachusetts
Robert F. McLaughlin, AT&T Communications, Bedminster, New Jersey
Michael J. Pagones, AT&T Bell Laboratories, Holmdel, New Jersey
William D. Rummler, AT&T Bell Laboratories, Holmdel, New Jersey

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Interim Study Group 2, Geneva, Switzerland, November 23-December 4, 1987

Representative

John J. Kelleher, Consultant, National Aeronautics and Space Administration
Richard D. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce

Advisers

John W. Kiebler, Head, Technical Consultation Services, National Aeronautics and Space Administration
Harold G. Kimball, National Telecommunications and Information Administration, Department of Commerce
Donald B. Miller, Chief, Systems Planning Group, National Oceanic and Atmospheric Administration, Department of Commerce
Russell W. Slye, National Telecommunications and Information Administration, Department of Commerce
David Strubs, Manager, NASA Spectrum Management Program, National Aeronautics and Space Administration
Robert Taylor, National Aeronautics and Space Administration

Private Sector Advisers

Norman F. de Groot, Technical Staff, Jet Propulsion Laboratory, California
Institute of Technology, Pasadena, California
John Postelle, Systematics General Corporation, Sterling, Virginia
Thomas M. Sullivan, Senior Program Director, ORI, Inc., Landover, Maryland
Thomas Tillotson, Systematics General Corporation, Sterling, Virginia
Anthony R. Thompson, Systems Engineer and Frequency Coordinator, National Radio Astronomy Observatory, Charlottesville, Virginia

United States Delegation to the 25th Session of the Marine Environment Protection Committee of the International Maritime Organization (IMO), London, November 30-December 4, 1987

Representative

John W. Kime, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Joseph J. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Brian J. Hoyle, Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Gregory T. Jones, Lieutenant, Assistant Chief, Environmental Coordination Branch, Marine Environmental Response Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Timothy R. Keeney, Deputy General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce
David B. Pascoe, Commander, Chief, Environmental Coordination Branch, Marine Environmental Response Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
William L. Schachte, Captain, Acting Representative for Ocean Policy, Joint Chiefs of Staff, Department of Defense
Thaddeus A. Wastler, Office of Marine and Estuarine Protection, Environmental Protection Agency
Frits Wybenga, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

William Griffin, Phillips Petroleum, Bartlesville, Oklahoma
B. Thomas Henderson, State of Texas, Austin, Texas
Sally Ann Lentz, Staff Attorney, Oceanic Society, Washington, DC
Donald Liu, Senior Vice President, American Bureau of Shipping, Paramus, New Jersey

United States Delegation to the Third Session, Working Group on Liens and Mortgages International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD), Geneva, November 30-December 11, 1987

Representative

Frederick F. Burgess, Captain, Chief, Maritime and International Law Division, United States Coast Guard, Department of Transportation

Alternate Representative

Frederick M. Rosa, Jr., Lieutenant Commander, Maritime and International Law Division, United States Coast Guard, Department of Transportation

Private Sector Adviser

Emery W. Harper, Maritime Law Association of the United States, New York, New York

United States Delegation to the Committee on Information, Computers and Communications Policy (ICCP) High Level Meeting Organization for Economic Cooperation and Development (OECD), Paris, December 3-4, 1987

Representative

The Honorable Diana Lady Dougan, Director, Bureau of International Communications and Information Policy, Department of State

Advisers

Frederick R. Crupe, Director, Information Industries Division, Office of Service Industries, International Trade Administration, Department of Commerce
Robert Deutsch, Deputy Director, Office of OECD, European Community and Atlantic Political-Economic Affairs, Bureau of European and Canadian Affairs, Department of State

Lucy H. Richards, Director, Office of Planning and Analysis, Bureau of International Communications and Information Policy, Department of State
Amy Winton, Developed Country Trade Division, Office of International Trade, Bureau of Economic and Business Affairs, Department of State
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Jeffrey P. Cunard, Debevoise and Plimpton, Washington, DC
P. Michael Nugent, Counsel, Office of Government Affairs, Electronic Data Systems Corporation, Washington, DC
Cathy L. Slesinger, Director of Government Relations, NYNEX Government Company, Washington, DC

Congressional Staff Adviser

Frederick Weingarten, Program Manager, Office of Information Technologies, Office of Technology Assessment, United States Congress

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) Joint Interim Working Party [IIWP/ORB(2)] CCIR Intersessional Work for WARC ORB (2), Geneva, Switzerland, December 7-18, 1987

Representative

Warren G. Richards, Deputy Director, Office of International Radio Communications, Bureau of International Communications and Information Policy, Department of State

Alternate Representatives

Harold G. Kimball, National Telecommunications and Information Administration, Department of Commerce
Thomas S. Tycz, Common Carrier Bureau, Federal Communications Commission

Advisers

Dexter Anderson, Voice of America, United States Information Agency
William Hatch, National Telecommunications and Information Administration, Department of Commerce
Raymond D. Jennings, Institute for Telecommunications Sciences, National Telecommunications and Information Administration, Boulder, Colorado
John W. Kiebler, Head, Technical Consultation Services, National Aeronautics and Space Administration
Alex C. Latker, Federal Communications Commission
Steven W. Lett, Common Carrier Bureau, Federal Communications Commission
William G. Long, Assistant for Spectrum Utilization, Defense Communications Agency, Department of Defense, Arlington, Virginia
Robert F. May, Air Force Frequency Management Center, Department of the Air Force.
Vernon I. McConnell, Frequency Manager, Department of Defense, Fort George G. Meade, Maryland
Edward Miller, Lewis Research Center, National Aeronautics and Space Administration, Cleveland, Ohio
Richard D. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce
Norbert Schroeder, Voice of America, United States Information Agency
Steven Selwyn, Mass Media Bureau, Federal Communications Commission
Robert Taylor, National Aeronautics and Space Administration

Private Sector Advisers

Perry G. Ackerman, Manager, Systems, Engineering Laboratory, Hughes Aircraft Company, Los Angeles, California
Jeffrey Binckes, Manager, Spacecraft Studies and Technology, COMSAT Laboratories, Clarksburg, Maryland
Richard G. Gould, President, Telecommunications Systems, Washington, DC
Robert A. Hedinger, Technical Supervisor, Advanced Communications Systems, AT&T Bell Laboratories, Holmdel, New Jersey
Donald M. Jansky, President, Jansky Telecommunications, Inc., Washington, DC
David Long, GTE Spacenet, McLean, Virginia
Robert Mazer, Chadbourne, Parke, Whiteside, and Wolff, Washington, DC
Robert F. McLaughlin, AT&T Communications, Bedminster, New Jersey
John E. Miller, Senior Principal Scientist, ORI, Inc., Landover, Maryland
Michael Mitchell, Consultant, Vienna, Virginia
James B. Potts, Consultant, Gaithersburg, Maryland
Samuel E. Probst, Senior Associate, Systematics General Corporation, Sterling, Virginia
Edward E. Reinhart, Director, Techno/Regulatory Matters, Communications Satellite Corporation, Washington, DC
Hans J. Weiss, Senior Director, Communications Satellite Corporation, Washington, DC

[FR Doc. 88-1445-Filed 1-25-88; 8:45 am]
BILLING CODE 4710-19-M

[Public Notice CM-8/1154]

Study Group D of the U.S. Organization, for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 3, 1988, at 9:30 a.m. in Room 5114B of the GSA Building, 18th and F Streets, NW., Washington, DC.

Study Group D deals with data communications.

The purpose of the meeting will be to review and approve U.S. Contributions and consider nomination of delegates to upcoming meeting of Study Group VII scheduled to begin on March 24, 1988, and to consider any other issues related to Study Group D interests.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102.

Dated: January 5, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 88-1446 Filed 1-25-88; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice 1045]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Member

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following member to the State Department Performance Review Board Register and

in so doing amends accordingly Department of State Public Notice No. 1028, effective September 15, 1987:

Joseph H. Linnemann, Associate Comptroller, Office of the Comptroller.

Date: January 13, 1988.

George S. Vest,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 88-1447 Filed 1-25-88; 8:45 am]

BILLING CODE 4710-15-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination in Compliance with Section 109 of Public Law 100-202

ACTION: Notice.

SUMMARY: The United States Trade Representative has made the following determination in compliance with the requirements of section 109 of the continuing resolution on the Fiscal Year 1988 budget, H.J. Res. 395 (Pub. L. 100-202, 101 Stat. 1329).

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: (for procurement policy issues) Beverly Vaughan, Director for Procurement Trade Policy, Office of the U.S. Trade Representative ("USTR"), 600 17th St. NW., Washington, DC 20506, (202) 395-3063; (for legal issues) Amelia Porges, Associate General Counsel, USTR, (202) 395-7305. Written comments or submissions from interested parties or the public may be directed to the USTR.

Discussion

The continuing resolution on the Fiscal Year 1988 Budget, H.J. Res. 395, was signed and enacted as Pub. L. 100-202 on Dec. 22, 1987. Section 109(a) of Pub. L. 100-202 sets forth certain requirements and prohibitions applicable to Federal public works procurement. Section 109(c) requires the USTR to maintain a list of certain foreign countries ("Section 109 List"). This list was published initially on Dec. 30, 1987 (52 FR 49244).

Section 109(b) provides that not later than 30 days after enactment of Pub. L. 100-202, the USTR shall determine whether other foreign countries deny fair and equitable market opportunities for products and services of the United States in bidding and procurement for certain construction projects. The relevant such projects are those that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled directly or indirectly by such foreign country. If a foreign country is found to deny such opportunities, the USTR must then include that country on the Section 109 List.

In making his determination under section 109(b), the USTR is required to take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information or evidence as is available concerning discrimination in construction projects against United States products and services. The legislative history of section 109 directs the USTR to pay special attention to information which is supplied either informally or formally by U.S. architecture, construction, and engineering companies.

In the short time available since enactment of Pub. L. 100-202, we have gathered and reviewed such information as is available concerning public construction procurement practices and market access for United States products and services in major public construction projects in foreign countries not yet listed under section 109. On the basis of the information available to us, including information submitted to us by construction industry associations and United States construction companies active in international construction, it is clear that many countries maintain objectionable practices regarding construction procurement. However, insufficient information is available to permit me at this time to make a broad, formal determination with respect to any foreign country other than Japan that such country is denying such fair and equitable market opportunities. Therefore, the list published on December 30, 1987 at 52 FR 49244 will remain in effect as the Section 109 List.

The USTR will add to the Section 109 List at any time if sufficient information indicates that another country is denying such fair and equitable market opportunities. In view of the shortness of the time period for review and analysis of information thus far, we will continue actively to review the available information, will consult additionally with the U.S. architect, construction, and engineering industries and other relevant industries, and will obtain followup information on construction procurement practices for this purpose. No later than 180 days from January 21, we will revisit this issue and will add to the Section 109 List if it is appropriate based on such an assessment of the information available at that time.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-1609 Filed 1-22-88; 1:40 pm]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[OGD 88-003]

The Boat Safety Account of the Aquatic Resources Trust Fund; Availability of Fiscal Year 1988 Financial Assistance

AGENCY: U.S. Coast Guard DOT.

ACTION: Notice of availability of FY 88 financial assistance.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1988 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATE: Proposals must be submitted to the following address by March 31, 1988.

ADDRESS: Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF 424) may be obtained from Commandant (G-BP/42), U.S. Coast Guard, 2100 Second Street, SW. Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes by telephone at (202) 267-0954 or at U.S. Coast Guard Headquarters (G-BP/42), 2100 Second Street, SW. Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, Section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,000,000 is available for the fiscal year ending September 30, 1988. Fifteen awards totaling $900,000 were made in fiscal year 1987; awards ranged from $8,970 to $168,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by Chief, Office of Boating, Public and Consumer Affairs, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope.

Some project areas of particular interest include: Development of educational/informational materials that will promote increased wearing of personal flotation devices (PFDs); Production of training films/videos on various boating activities, including water-skiing, boating safety for sportsmen, sailboard safety, navigation (coastal, beginning, advanced), and personal watercraft safety; Production of video/slide presentations on recreational boating regulations to be used in educating boat manufacturers; Conducting a national survey to obtain a wide variety of current information on boat and boater populations; Conducting a survey/study on the suitability and problems with permanently installed plastic gasoline fuel tanks; and Production of training films/videos for boating safety instructors. This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome.

The Boating Safety Financial Assistance Program is listed in Section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 19, 1988.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 88-1480 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-88-3]

Petitions for Exemption; Summary of Petitions Received, and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 17, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 7, 1988.

Denise D. Hall,

Acting Manager, Program Manager Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25426	Vieques Air Link, Inc.	14 CFR 135.243(b)(3)	To allow petitioner to operate without the requirement that its pilots hold an airline transport certificate. In the alternative, petitioner requests an exemption from § 135.293(a)(4) to allow its pilots to be exempt from the instrument approach procedures required for tests and checks.
23821	FlightSafety International	14 CFR 61.57(c) and (d)	To permit pilots contracting with petitioner to make the takeoffs and landings required by § 61.57 (c) and (d) in petitioner's Phase I and Phase II simulators in lieu of the aircraft in flight. Grant, December 20, 1987
25254	Omniflight Helicopters, Inc.	14 CFR 43.3(g)	To allow certificated pilots who are employed by petitioner to replace medical oxygen cylinders installed in aircraft operated by petitioner after such cylinders have been depleted. Denial, December 31, 1987
25258	American Airlines Flight Academy	14 CFR 121.411 and 121.413	To allow petitioner to use Aeroformation pilot simulator/flight instructors for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A300-600R type airplane in Toulouse, France, without those instructors holding appropriate U.S. certificates and ratings and without their meeting all of the applicable training requirements of Subpart N of Part 121. Further, to provide that all additional ratings be conducted by an FAA airman certification inspector. Grant, December 31, 1987

[FR Doc. 88-1438 Filed 1-25-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 20, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224.

15th and Pennsylvania Avenue N.W., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0913
Form Number: None
Type of Review: Extension
Title: Below-market Loans
Description: Section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1 hour
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-1531 Filed 1-25-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Income Taxes; Test Transmissions of Electronic Forms 1040, 1040A, and 1040EZ from Panama Canal Zone

AGENCY: Internal Revenue Service, Treasury.

ACTION: Electronic Filing Program.

SUMMARY: During the 1988 filing season the Internal Revenue Service will conduct a test in which U.S. Individual Income Tax Returns, Forms 1040, 1040A, and 1040EZ, may be filed electronically from U.S. Army bases in the Panama Canal Zone.

The Department of the Army will be the electronic filer for these test returns. The Pentagon will transmit them to the Cincinnati Service Center.

Parties interested in learning the results of the test should contact the Electronic Filing Project Office after April 15, 1988.

SUPPLEMENTARY INFORMATION: In 1988 Forms 1040, 1040A, and 1040EZ can be filed electronically from certain areas of the continental United States. Electronically-filed Forms 1040 can include Schedules A, B, C, D, E, R, SE, and Forms W-2, W-2P, W-2G, 2106, 2119, 2441, 3903, 4562, 6198, 6251, 6252, 8283, 8582, 8598, and 8606.

As a test, the Internal Revenue Service will accept electronic returns transmitted from U.S. Army bases in the Panama Canal Zone. The same forms and schedules will be accepted in this test that are accepted in the general electronic filing program.

The U.S. Department of the Army will be the electronic filer for the returns filed in the test. The Pentagon will transmit them to the Cincinnati Service Center for processing.

If the test is successful, it may be expanded to include other overseas areas for the 1989 filing season. The results of the test will be available after the 1988 filing season ends. After April 15, 1988, interested parties can obtain the test results by contacting the Internal Revenue Service, Electronic Filing Project Office, TR:E:O, 1111 Constitution Ave. NW., Washington, DC 20224.

Dick Moran,

Electronic Filing Project Officer.

[FR Doc. 88-1503 Filed 1-25-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Crossroads of Continents: Cultures of Siberia and Alaska

On October 13, 1987, notice was published at page 38038 of the Federal Register (52 FR 38038) by the United States Information Agency pursuant to Pub. L. 89-259 relating to the exhibit "Crossroads of Continents: Cultures of Siberia and Alaska." Temporary exhibit of the additional imported culturally significant objects listed [1] is in the national interest.

Date: January 20, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88-1489 Filed 1-25-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 16
Tuesday, January 26, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

January 20, 1988.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: January 27, 1988, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 870th Meeting—January 27, 1988, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 10002-002, American Power Products, Inc.
CAP-2.
Project No. 3239-007, Puget Sound Power and Light Company and McMaster and Schroder.
CAP-3.
Project No. 2512-003, Elkem Metals Company
CAP-4.
Project No. 233-023, Pacific Gas and Electric Company
CAP-5.
Project No. 2785-002, Wolverine Power Corporation
CAP-6.
Project No. 2758-006, Burlington Electric Department and Winooski One Partnership
CAP-7.
Project No. 2307-011, Alaska Electric Light and Power Company of Juneau
CAP-8.
Project No. 2739-012, Utilities Commission and City of Vanceburg, Kentucky
CAP-9.
Project No. 516-027, South Carolina Electric and Gas Company
CAP-10.
Project No. 3865-005, Guadalupe-Blanco River Authority
CAP-11.
Project No. 4182-006, Shorock Hydro, Inc.
CAP-12.
Project No. 6939-006, City of Jackson, Ohio
CAP-13.
Project No. 6842-003, City of Aberdeen, Washington, and City of Tacoma, Washington
CAP-14.
Project No. 6178-000, Eveready Machinery Company and McCallum Enterprises, Inc.
Project No. 8794-000, New Haven Copper Company
CAP-15.
Docket No. ER82-616-035, System Energy Resources, Inc.
Docket No. ER82-483-029, MSU System Services, Inc.
CAP-16.
Docket No. ER87-639-001, Gulf States Utilities Company
CAP-17.
Docket No. ER87-561-001, Arizona Public Service Company
CAP-18.
Docket Nos. ER87-581-001 and ER84-705-007, Boston Edison Company
CAP-19.
Docket No. ER87-488-001, Consolidated Edison Company of New York, Inc.
CAP-20.
Docket No. ER87-506-001, Sierra Pacific Power Company
CAP-21.
Docket No. ER85-108-000, Niagara Mohawk Power Corporation
CAP-22.
Docket No. EL87-61-000, Wabash Valley Power Association, Inc. v. Public Service Company of Indiana, Inc.
CAP-23.
Docket No. EL87-45-000, The Cities of Marshall, Blue Earth, Mountain Lake, St. James, and Sauk Centre, Minnesota and Hillsboro, North Dakota v. Northern States Power Company-Minnesota
CAP-24.
Docket No. EL87-62-000, American Municipal Power-Ohio, Inc. v. Ohio Edison Company
CAP-25.
Docket No. QF81-16-001, Trenton District Energy Company
CAP-26.
Docket No. EC88-2-001, Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-35-000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM-2.
Docket No. RM87-25-000, Regulations Delegating Authority
CAM-3.
Docket No. RM87-15-001, Regulations Implementing the National Environmental Policy Act of 1969
CAM-4.
Docket No. RM79-27-001, Petition for Rulemaking in the Matter of Determinations Whether Wells Drilled in More Than 500-Foot Water Depth Should be Determined to be "High Cost Gas" Under section 107(c) (5) of the Natural Gas Policy Act of 1978
Docket Nos. RM79-76-253 and 254, Petition of Montana-Dakota Utilities Company to Reopen Order No. 99
Docket No. RM80-12-001, New, Onshore Production Wells: Proposed Rulemaking Amending Final Regulations Implementing the Natural Gas Policy Act of 1978
Docket Nos. RM80-38-001 and 002, High-Cost Natural Gas Produced from Wells Drilled in Deep Water
Docket No. RM81-30-001, Petition for Rulemaking to Restrain Prices for Deregulated Gas
Docket No. RM81-35-001, Petition for Rulemaking for Implementation of the Commission's Rulemaking Authority to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act
Docket No. RM82-1-001, Petition for Rulemaking to Establish Revised Policies Under the Natural Gas Policy Act Respecting the Purchases and Use of Gas
Docket No. RM82-8-001, High-Cost Natural Gas Produced from Intermediate Deep Drilling
Docket No. RM82-17-001, Petition for Rulemaking to Investigate and Establish Rules Mitigating Market Distortions Under the Natural Gas Policy Act
Docket No. RM82-19-001, Petition to Institute a Proceeding, Pursuant to the Natural Gas Policy Act, sections 104(b) and 106(c), to Increase the Price of Flowing Interstate Natural Gas
Docket No. RM82-20-001, Petition for Rulemaking to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act
Docket No. RM82-26-001, Impact of the Natural Gas Policy Act on Current and Projected Natural Gas Markets
Docket Nos. RM82-32-001 and 002, Limitation on Incentive Prices for High-Cost Gas to Commodity Values
Docket Nos. RM82-33-001 and 002, Comments in Opposition to Proposed Rulemaking in the Matter of High-Cost Gas Produced from Tight Formations, Docket No. RM79-76 (Ohio-2)
Docket No. RM83-46-001, Petition for Rulemaking in the Matter of Take-or-Pay Clauses in Producer/Pipeline Contracts
Docket No. RM84-7-001, Impact of Special Marketing Programs and Natural Gas Companies and Consumers

Docket No. RM84-13-001 Petition for Rulemaking on the Effect of Price Escalator Clauses
Docket No. RM84-17-001, Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses
CAM-5.
Docket Nos. RM83-72-011 and 012, First Sales of Pipeline Production Under section 2(21) of the Natural Gas Policy Act of 1978
Docket Nos. RM82-16-011 and 012, First Sales by Affiliates
CAM-6.
Docket No. RM87-29-000, State Corporation Commission of the State of Kansas
CAM-7.
Docket No. GP86-40-000, Railroad Commission of Texas, Paramount Petroleum Corporation, David Pilot Gas Unit No. 1 Well NGPA Section 108 Determination, FERC No. JD82-27133, NGPA Section 108—Enhanced Recovery, FERC No. JD82-29588
CAM-8.
Docket No. GP86-15-000, Jeems Bayou Production Corporation
CAM-9.
Docket No. SA80-40-006, RJB Gas Pipeline Company

Consent Gas Agenda

CAG-1.
Docket No. RP88-44-000, El Paso Natural Gas Company
CAG-2.
Docket Nos. RP88-41-000, RP85-13-000 and RP87-27-000, Northwest Pipeline Corporation
CAG-3.
Docket No. RP88-47-000, Northwest Pipeline Corporation
CAG-4.
Docket Nos. RP88-45-000 and RP88-46-000, Arkla Energy Resources, a Division of Arkla Inc.
CAG-5.
Docket No. TA88-1-14-000, Lawrenceburg Gas Transmission Corporation
CAG-6.
Docket No. TA88-1-52-000, Western Gas Interstate Company
CAG-7.
Docket No. TA88-1-61-000, Bayou Interstate Pipeline System
CAG-8.
Docket No. TA88-2-16-000, National Fuel Gas Supply Corporation
CAG-9.
Docket No. TA88-2-17-000, Texas Eastern Transmission Corporation
CAG-10.
Docket No. TA88-2-18-000, Texas Gas Transmission Corporation
CAG-11.
Docket No. TA88-4-59-000, Northern Natural Gas Company, Division of Enron Corporation
CAG-12.
Docket No. TA87-4-49-004, Williston Basin Interstate Pipeline Company
CAG-13.
Docket Nos. RP87-33-004 and 005, Williams Natural Gas Company
CAG-14.
Docket No. TA87-3-17-002, Texas Eastern Transmission Corporation
CAG-15.
Docket No. RP88-106-009, Arkla Energy Resources
CAG-16.
Docket No. TA87-3-18-000, Texas Gas Transmission Corporation
CAG-17.
Omitted
CAG-18.
Docket Nos. TA88-2-8-000 and 001, South Georgia Natural Gas Company
CAG-19.
Docket Nos. RP85-178-025, RP81-54-035 and RP87-26-022, Tennessee Gas Pipeline Company
CAG-20.
Docket Nos. RP87-21-001, 002 and 003, Northern Natural Gas Company
CAG-21.
Omitted
CAG-22.
Docket Nos. RP82-55-031 and RP87-7-000, Transcontinental Gas Pipe Line Corporation
CAG-23.
Docket No. RP88-10-003, Consolidated Gas Transmission Corporation
CAG-24.
Docket No. RP88-5-001, Transcontinental Gas Pipe Line Corporation
CAG-25.
Omitted
CAG-26.
Docket Nos. TA87-5-21-002, 003 and 004, Columbia Gas Transmission Corporation
CAG-27.
Docket Nos. TA88-1-51-000 and 001, Great Lakes Gas Transmission Company
CAG-28.
Docket No. TA85-2-37-021, Northwest Pipeline Corporation
CAG-29.
Docket Nos. TA84-2-49-001 and TA85-1-49-002, Williston Basin Interstate Pipeline Company
CAG-30.
Omitted
CAG-31.
Docket Nos. TA87-1-37-010, 011 and 009, Northwest Pipeline Corporation
CAG-32.
Docket Nos. TA83-1-32-000, TA84-1-32-004, TA85-1-32-003, TA85-5-32-000, RP79-59-000 and RP82-54-018, Colorado Interstate Gas Company
CAG-33.
Docket No. RP87-15-000, Trunkline Gas Company
CAG-34.
Docket Nos. RP87-43-000 and 002, MIGC, Inc.
CAG-35.
Docket No. ST87-4118-000, Delhi Gas Pipeline Corporation
CAG-36.
Docket Nos. ST82-95-002, ST82-442-001, ST83-288-000, ST84-628-000 and ST84-628-001, Red River Pipeline
CAG-37.
Docket No. ST87-1986-000, ONG Transmission Company
CAG-38.
Docket No. CI85-513-008, Tenngasco Gas Supply Company, *et al.* v. Southland Royalty Company, *et al.*
CAG-39.
Docket Nos. CI86-418-000 and CI86-424-000, El Paso Natural Gas Company
CAG-40.
Docket Nos. CI87-788-000 and CI87-797-000, Transwestern Pipeline Company
Docket Nos. CI87-911-000 and CI87-943-000, Mountain Fuel Resources, Inc.
CAG-41.
Docket Nos. CI73-334-000, CI73-476-000, CI74-610-000 and CI80-133-001, Mobil Exploration and Producing North America, Inc. (formerly The Superior Oil Company) and Mobil Oil Exploration and Producing Southeast, Inc.
CAG-42.
Docket No. CP85-912-006, Colorado Interstate Gas Company
CAG-43.
Docket Nos. CP87-57-003, CP87-166-003, CP87-316-003, CP87-386-004 and CP87-406-003, Florida Gas Transmission Company
CAG-44.
Docket Nos. CP81-225-003 and CP87-164-001, Great Lakes Gas Transmission Company
CAG-45.
Docket No. CP86-708-000, Midwestern Gas Transmission Company
CAG-46.
Docket No. CP87-141-001, Colorado Interstate Gas Company
CAG-47.
Omitted
CAG-48.
Omitted
CAG-49.
Docket No. CP87-221-000, Southwest Gas Corporation v. Pipeline Corporation
CAG-50.
Docket No. CP87-502-000, Northwest Pipeline Corporation
Docket No. CI87-899-000, Mobil Oil Corporation
CAG-51.
Docket No. CP87-515-000, Trunkline Gas Company
CAG-52.
Docket No. CP87-474-000, Great Lakes Gas Transmission Company
CAG-53.
Docket Nos. CP86-337-000 and 002, Algonquin Gas Transmission Company
CAG-54.
Docket No. CP85-090-000, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CAG-55.
Docket Nos. CP85-190-000, CP85-264-000 and CP85-294-000, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP87-37-000 and 001, Columbia Gas Transmission Corporation v. Transcontinental Gas Pipe Line Corporation
CAG-56.
Docket No. RP86-43-000; Columbia Gas Transmission Corporation
CAG-57.
Docket No. RP82-55-033, Transcontinental Gas Pipe Line Corporation
CAG-58.
Docket Nos. RP86-14-036 and RP86-108-017, Columbia Gulf Transmission Company
Docket Nos. RP86-15-036 and RP86-112-016, Columbia Gas Transmission Corporation
CAG-59.
Docket No. RP87-93-001, Columbia Gas Transmission Corporation
CAG-60.
Docket No. RP85-122-006, Colorado Interstate Gas Company
CAG-61.
Docket No. CP88-17-001, Natural Gas Pipeline Company of America

I. Licensed Project Matters

P-1.
Reserved

II. Electric Rate Matters

ER-1.
Omitted

Miscellaneous Agenda

M-1.
Omitted
M-2.
Omitted
M-3.
Omitted
M-4.
Docket No. RM87-5-000, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Notice of inquiry into alleged anticompetitive practices related to marketing affiliates of interstate pipelines. Final rule

I. Pipeline Rate Matters

RP-1.
Docket Nos. RP86-119-000, TA84-2-9-007 and TA85-1-9-004, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. Opinion on initial decision concerning take-or-pay buyout and buydown cost passthrough mechanism.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1
Docket No. CP85-437-006, Mojave Pipeline Company
Docket No. CP87-552-000, Kern River Gas Transmission Company
Docket No. CP87-479-001, Wyoming-California Pipeline Company. Order on rehearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1570 Filed 1-22-88; 11:27 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, February 1, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of check processing equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 22, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7628 Filed 1-22-88; 3:27 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, January 26, 1988.

PLACE: Room 532, (open); Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public

(1) Oral Argument in Removatron International Corporation, Docket 9200.

Portions Closed to the Public

(2) Executive Session to follow Oral Argument in Removatron International Corporation, Docket 9200.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179; Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 88-1620 Filed 1-22-88; 1:13 pm]

BILLING CODE 6750-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, February 3, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: January 22, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-1617 Filed 1-22-88; 1:12 pm]

BILLING CODE 7550-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment To Vote To Close Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 838, January 13, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: February 1, 1988.

CHANGES:

1. Change first sentence of third paragraph to read:

"The Board determined that, pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations the meeting is exempt from the open meeting provisions of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39 (having to do with postal rate making, classification, and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code."

2. Change last three lines of fourth paragraph to read:

"(3) and (10) of Title 5 and section 410(c)(4) of Title 39, United States Code, and § 7.3 (c) and (j) of Title 39, Code of Federal Regulations."

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-1645 Filed 1-22-88; 3:45 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 12:15 p.m. on Monday, February 1, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, February 2, 1988, in the Benjamin Franklin Room, U.S. Postal

Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC. As indicated in the following paragraph, the February 1 meeting is closed to the public. The February 2 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

By telephone vote on January 21, 1988, the Board voted to add consideration of a personnel matter to the closed session agenda, citing exemptive provision 5 U.S.C. 552b(c)(6) and 39 CFR 7.3(f). At its meeting on January 4, 1988, the Board voted to close to public observation its meeting scheduled for February 1, 1988, to consider a proposed filing with the Postal Rate Commission. [See 53 FR 838, January 13, 1988 (as subsequently amended.)] By telephone vote on January 13 and 15, 1988, the Board voted to add consideration of a proposed capital investment to the closed session agenda. (See 53 FR 1889, January 22, 1988.)

Agenda

Monday Session

February 1, 1988, 12:15 p.m. (Closed)

1. Consideration of a new Postmaster General.
2. Consideration of a proposed filing with the Postal Rate Commission regarding Express Mail Service.
3. Capital Investment: Westchester, NY, CMF/VMF.

Tuesday Session

February 2, 1988, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 4–5, 1988.
2. Remarks of the Postmaster General.
3. Wrap-up Report on CSRS/FERS.
4. Quarterly Report on Financial Performance.
5. Annual Report of the Postmaster General.
6. Status Report on Automation Program.
7. Tentative Agenda for March 7–8, 1988, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 87-1846 Filed 1-22-87; 3:46 pm]

BILLING CODE 7710-12-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 25, February 1, 8, and 15, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: .

Week of January 25

Tuesday, January 26

2:00 p.m.
Briefing by GE on New Standardized Plants (Public Meeting)

Thursday, January 28

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 1—Tentative

Wednesday, February 3

2:00 p.m.
Briefing on Status of State, Local, and Indian Tribe Programs (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Thursday, February 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Thursday, February 18

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission voted on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

January 21, 1988.

[FR Doc. 88-1644 Filed 1-22-88; 3:44 pm]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

TIME AND DATE: Periodic meetings will be held between February 10, 1988 and March 4, 1988.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss evidence in Docket No. R87–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88-1557 Filed 1-22-88; 9:12 am]

BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 53, No. 16
Tuesday, January 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1943

Provisions for Planning and Performing Construction and Other Development

Correction

In rule document 87-5182 beginning on page 7998 in the issue of Friday, March 13, 1987, make the following correction:

On page 8035, in the second column, in amendatory instruction 30, in the third line, "1942-1" should read "1924-1".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands

Correction

In rule document 88-698 beginning on page 894 in the issue of Thursday, January 14, 1988, make the following correction:

On page 896, in the third column, in the third complete paragraph, in the last line, after "effectiveness" insert "provision is also waived. However, interested persons are invited to submit comments in writing on the reapportionment to the above address".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2E2663/P432; FRL 3308-6]

Pesticide Tolerance for Deltamethrin

Correction

In proposed rule document 87-29873 beginning on page 49177 in the issue of Wednesday, December 30, 1987, make the following correction:

§ 180.435 [Corrected]

On page 49178, in the second column, in § 180.435, in the table, in the right hand column, ".02" should read "0.2".

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Part II

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1924, 1930, 1933, 1944, 1951 and 1965

Rural Rental Housing Loan Policies, Procedures and Authorizations; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1930, 1933, 1944, 1951 and 1965

Rural Rental Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation for processing section 515 rural rental housing (RRH) loans. This action is necessary to comply with the Rural Housing Amendments of 1983. In addition, FmHA clarifies existing policies and procedures. The intended effect is to be consistent with the Rural Housing Amendments of 1983 and to provide clearer instructions for processing RRH loans.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Eileen Nowlin, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, Room 5337, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 382-1604.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Vance L. Clark, Administrator, Farmers Home Administration, has determined that this action will not have a significant impact on a substantial number of small entities because the revisions provide clarification of existing regulations and the annual volume of the program is expected to continue to decline. FmHA anticipates funding approximately 850 applications nationwide.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

General Information

Numerous editorial and clarifying changes were made to the regulation. For example, references to Section 8 Plan I and Plan II loans were deleted since there has been no Section 8 available for several years. The likelihood of Section 8 being available in the future is remote. Some exhibits were removed because they are no longer applicable to the program and some were transferred to more appropriate regulations. In addition, some paragraphs were deleted because they already are addressed in other regulations; in those cases a citation to the proper regulation has been made. Some paragraphs were deleted because they appeared elsewhere in the regulation and some paragraphs were moved to a more appropriate sequence in this regulation.

Discussion of Comments

A proposed rule was published in the **Federal Register** (52 FR 7584) on March 12, 1987, and invited comments for 60 days ending May 11, 1987.

Comments were received from 58 different developers, legal services organizations, trade associations, nonprofit organizations, architects, FmHA employees and other individuals.

The following summarizes the comments and the actions taken.

A. Initial Operating Capital and Borrower Contribution

These comments refer to § 1944.211.

Several respondents were concerned that FmHA was requiring the initial operating capital and the borrower contribution to be in the form of cash, readily convertible securities or land. The respondent felt that the language should allow the applicant to be able "to obtain" the needed funds. They commented that prudent developers do not keep cash sitting around and that evidence of the ability to be able to obtain the cash could be evidenced by irrevocable letters of credit, scrutiny of financial statements, firm receivables, etc. One respondent felt that the applicant should have cash for the initial operating capital and the borrower contribution. *Response:* We agree with the majority of the respondents and changed the wording to allow the borrower to be able "to obtain" the initial operating capital and borrower contribution, although we are concerned that the project not be encumbered in any way.

Two respondents do not agree that FmHA should be able to lend initial operating capital to nonprofit groups and public agencies. *Response:* The Agency is concerned that nonprofit groups and public agencies might not have operating capital available to them and will continue to consider initial operating capital as an eligible loan purpose.

Several respondents felt that the requirement that limited partnerships must show the borrower contribution and initial operating capital as unencumbered and freely owned should be eliminated. *Response:* The Agency has agreed with the suggestion and removed this requirement.

One respondent felt that this section should be clarified to state that the initial operating capital cannot be from anticipated future syndication proceeds. *Response:* The Agency has determined that if documentation is provided that confirms syndication proceeds are due and payable under existing contracts, they can be used to provide the initial operating capital and borrower equity.

B. Ownership Interest

These comments refer to § 1944.211.

Several respondents were concerned about the requirement that general partners would be required to maintain 5 percent financial interest in both the partnership and the current losses, profits and cash distribution. They suggested that this be changed.

Response: The Agency has agreed with the suggestion and revised the wording to require only a 5 percent ownership interest in the partnership entity.

C. Certified Audited Financial Statements and Number of Preapplications, Applications and Loans

These comments refer to § 1944.211.

Many respondents were concerned about § 1944.211 that required applicants to submit certified audited financial statements and limited the number of preapplications, applications and loans that any one applicant could have. *Response:* The Agency considered the comments and decided that requiring the certified audited financial statements and limiting the number of preapplications, applications and loans was not the best way to provide controls on the program. These controls have been replaced by entering in Exhibit A-6 the requirement that when multiple applications are involved, or when the State Director feels it necessary, the applicant will be asked to submit additional financial information such as a six to twelve month pro no statement.

D. Conversion of 502 Housing to Rental

These comments refer to § 1944.212.

Several respondents felt that participation in this effort should not be limited to public agencies and nonprofit organizations. One respondent each was concerned that the units must be rehabilitated prior to conversion and that the term "community" should be defined. *Response:* The Agency is required by statute to limit participation to public agencies and nonprofit organizations. Applicants will not be expected to rehabilitate the 502 units prior to conversion; they will be rehabilitated while still in FmHA inventory. The definition of community has been included.

E. Limitations on Cost Increases

These comments refer to § 1944.213.

Two respondents felt that we should define "loan approval", one felt that requiring nonprofits to cover cost overruns is not realistic, one felt that "unforeseen factors" should be defined, one felt that the section should be clarified regarding preexisting conditions and one felt that we should allow additional funds when overruns were anticipated. *Response:* The Agency reviewed all comments and is not changing this section. It is felt that the section is clearly understandable and that no one issue was raised enough to merit change. In addition, loan approval is discussed in another section and additional funds can be approved for many unanticipated reasons.

F. Size of Units

These comments refer to § 1944.215.

Many respondents were concerned that square foot guidelines have been reduced and made mandatory. They are concerned about livability, marketability and local handicapped regulations requiring larger size and feel that cost should be the overriding factor. Two respondents supported the size reduction. *Response:* After considering all comments, we have decided to increase the size guidelines for 0-bedroom units. All other units will remain as shown in the prior rule. The requirement that the units "will" be within the guidelines remains.

G. Cost Containment Features

These comments refer to § 1944.215.

Many comments were received on various aspects of the cost containment features in the proposed rule. Due to the importance of cost containment, a new paragraph (a) was added to guide applicants and FmHA employees. As shown below in the responses to comments, many specific cost containment items are now covered in the new cost containment standards paragraph, and the importance of the subject is not to be diminished. Shown below are the specific areas that were commented on.

Limitation on Use of Loan Funds for Nonessential Facilities: Many respondents were concerned about not being able to use loan funds to finance carports, covered parking, garages and basements. They believe that in some areas these things are essential and that if needed because of weather conditions, storage requirements or zoning requirements, they should be allowed. *Response:* The Agency has considered these comments and has agreed to allow the financing of covered parking or garages only when they are required by local zoning.

Sliding Glass Doors: Many respondents were concerned that sliding glass doors were restricted to south walls and they felt that local conditions should govern if and where doors should be placed. Many respondents were concerned that insurance rates would increase since sliding glass doors often serve as a second means of egress. One respondent did not want sliding glass doors to be permitted in any case. *Response:* The Agency has removed this specific provision and, as discussed above, dealt with cost containment through the new cost containment standards paragraph.

Marshall Swift "fair quality": Four comments were received concerning the requirement that comments such as kitchen cabinets and bathroom fixtures not exceed Marshall Swift "fair quality" and three comments were received concerning the requirement that building designs and/or materials not exceed "fair quality". *Response:* After considering all the comments, we have decided to remove the references to Marshall Swift entirely. The issue of quality is an important aspect of cost containment and is addressed in the new cost containment standards paragraph.

Privacy fences, patios and porches: Two respondents were concerned about the restriction on privacy fences, patios and porches. They felt that these items add to the livability of the unit while not costing much. *Response:* The Agency has removed this specific provision and, as discussed above, dealt with cost containment through the new cost containment standards paragraph.

Density: One comment was received supporting the density recommendations and one comment was received suggesting that we have two ranges, one for family and one for elderly. *Response:* The Agency feels that the minimum of 14 units per acre in the proposed rule provides enough latitude and has not changed this section.

H. Donated Sites

These comments refer to § 1944.215.

Several respondents were concerned that large developers would "donate" sites (raising other costs to compensate) to receive more priority points. They felt this would be unfair to the smaller, less well-financed developer. Two respondents felt that the term "others" needed to be defined. *Response:* The Agency has changed the wording to state that preference will be given for land donated by States, units of local government, public bodies and nonprofit organizations.

I. More Than One Site Within a Community

These comments refer to § 1944.215.

One respondent questioned why separate promissory notes are needed when only one mortgage is being taken. One respondent was concerned that we would allow scattered sites only when an adequate site was not available. Two respondents felt scattered sites should be allowed not only within the same community, but also within a larger area. *Response:* The Agency has considered the comments and revised the section to allow for scattered sites in different communities when a small community cannot cost effectively support a project or when 502 inventory units are involved. The reference to one adequate site and the requirement that separate promissory notes should be taken has been removed.

J. Processing Preapplications and Priority Processing System

These comments refer to § 1944.231.

Comments were received on many different aspects of this section. We will address the different aspects separately.

General Processing: Several respondents felt that a time limit should be established for the district and state office. *Response:* Processing times are addressed in Subpart A of Part 1910–A; therefore, they will not be included in Subpart A of Part 1944–E.

Priority Processing System Criteria:

Substandard Housing: One respondent wants information supplied to the states on a more regular basis. *Response:* The Agency distributes information as available and, in addition, has given States the leeway to use better and more specific local data.

Household Income: One respondent wants information supplied to the states more regularly. Two respondents felt that alternative data should be allowed for subcounty jurisdictions provided the data is available on a state-wide basis. This would allow for service to lower income areas within a higher income county. Two respondents felt that the income criteria is in direct conflict with the Tax Reform Act of 1986 and one respondent felt that the income criteria should be disposed of entirely. Those areas getting priority points are the areas that are not feasible when using tax credits. *Response:* The Agency has changed the language to allow the use of better and more specific state-wide data when available. The use of reliable data on sub-county jurisdictions is also permitted. The Agency has the responsibility to finance rural housing that will benefit the lowest income tenants possible; therefore, we are not eliminating the income element from the priority processing system.

Distance from Ineligible Areas: Several respondents were concerned that in highly populated states few projects with viable markets are far from urban areas. They proposed that the mileage criteria be eliminated. One respondent felt that sites close to suburban areas will have utilities and services which reduce project costs and will have more employment centers. They felt that this criteria is reinforcing the existing trend of giving greater priority to poorer markets, 8 to 10 unit towns. *Response:* The Agency has reviewed the comments and decided to keep the criteria, but to eliminate the new mileage distances and go back to the distances that are currently being used. Concerning the comment regarding suburban areas, the agency has the responsibility to finance projects to reach the rural, lowest income tenants possible and we will continue to strive to reach that goal.

No Existing Subsidized Housing: One respondent felt that subsidized housing should not be a criteria, and that the market study should determine the need. One respondent suggested that it be made clear that elderly and congregate housing are different types. *Response:* The Agency has made the administrative decision that it wants to reach the most communities possible and will continue to use this criteria. The language has been changed to make it clear that elderly and congregate are considered different types of housing.

Deep Rental Subsidy: One respondent recommended adding language to ensure recognition from sources other than FmHA. *Response:* The language has been changed to give priority for deep subsidy from sources other than FmHA.

Elderly Projects: Several respondents felt that 10 points place too much emphasis on elderly and that 10 points can make the difference of whether a project gets funded or not. One respondent felt that the priority discriminates against low-income families. One respondent felt that the current 5 point preference generally makes the proposal competitive enough to be reached for funding. *Response:* The Agency has reviewed this issue and administratively decided to leave the priority points at 10.

Donated Land: Several respondents felt that 10 points place too much emphasis on donated land and that large developers who could afford to donate land would have a preference.

Response: After considering the comments, the Agency has decided to reduce the priority points for donated land to 5 points. In addition, an earlier section was revised to define who can donate land, limiting donors to States, units of local government, public bodies and nonprofit organizations.

Public Bodies and nonprofit Corporations: One respondent felt that giving preference to public bodies and nonprofit corporations is unfair and unfounded. *Response:* The Agency has administratively decided that if priorities are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

Priority Point Implementation Date: Several respondents were wondering if "grandfathering" would take place for existing preapplications. *Response:* Normally, the implementation date of a new regulation will apply to all preapplications received after that date. Although it has not yet been determined, a cut-off date will probably be established for old preapplications to be switched over to the new priority point system if not yet funded.

K. Rental Assistance From Sources Other Than FmHA

These comments refer to § 1944.232.

Several respondents were concerned, for various reasons, about the formula included in the proposed rule. Two respondents were concerned about the special conditions for small communities. *Response:* The Agency has considered all the comments and has rewritten this section removing the formula and the restrictions for small communities.

Several respondents were concerned about the requirement that there must be a market for the project, after the rental subsidy is no longer available, for the life of the loan. *Response:* This is required by statute.

L. Related Costs

These comments refer to § 1944.212.

Three respondents felt that language should be added to permit loan funds to be used to pay loan packaging fees for nonprofit applicants. Two respondents felt that costs of market studies should be allowed as an eligible loan purpose and one respondent felt that costs of syndication should be allowed. *Response:* The costs for nonprofit packaging and market studies have been accepted as eligible loan purposes. The cost of syndication has not been adopted as an eligible loan purpose.

M. Market Surveys

Exhibit A–6, II B—One respondent felt that the regulation should state what qualifications a market analyst should have before a study is acceptable. *Response:* The regulation does state that the analyst should have housing or demographic experience.

Exhibit A–6, II B, D (i)—Several respondents have stated that public and private nonprofit organizations have the ability and experience to prepare their own market studies and market surveys. They were also concerned that the professional surveys are costly and an inhibiting factor. *Response:* FmHA has changed its regulation to allow the cost of market studies to be included as an eligible loan purpose. Therefore, the price of professionally prepared market studies will not have to be borne by nonprofit organizations but will be spread out over the life of the loan. Those organizations also will be permitted to perform their own market surveys.

Exhibit A–6, II D—One respondent suggested that adding the statement of methodology within the market study would convolute the study and wants, instead, to have the analyst present this type of information in person to the local FmHA offices. *Response:* Persons other than those in local FmHA offices also review market studies. It is not possible to personally interview the analysts and including the statement of methodology is the only practical way of following the mathematical calculations.

Exhibit A–6, II D (i)—Several respondents objected to having to employ someone outside the applicant organization to conduct surveys to determine the need for new rental units. *Response:* This requirement has been removed and now allows developers to prepare market surveys. If the need is questionable, FmHA may request that a full market study be prepared.

Exhibit A–6, II D (ii)—One respondent recommended that the word "will" be changed to "may" when addressing the need to establish feasibility for projects of less than 20 units through the use of market surveys. *Response:* The word "will" has been changed to "may."

Exhibit A–6, II D (iii)—One respondent questioned the need for a statement of truthfulness and accuracy since the market study is being prepared by a professional and that person should certify as to its accuracy. *Response:* This section refers only to market surveys, not professional market studies. Since applicants are responsible for surveys we feel they must also provide a certification.

Exhibit A–6, II G—One respondent felt that the requirement that all market analysts must be members of an association of professional market analysts failed to recognize other organizations and groups which are capable of analyzing housing markets. *Response:* This requirement has been deleted from the regulation.

Exhibit A–7—One respondent felt that the market study guidelines should require the analyst to include details of the community peculiar to the elderly population. *Response:* Language has been added to the guidelines to require the analyst to include information about the elderly population.

Exhibit A–7—One respondent suggested that FmHA maintain a list of persons who have been approved to prepare market studies. *Response:* Each state should maintain a list of those marketing firms which have provided acceptable studies in support of loan requests. The market study guidelines now inform the analyst that he or she will have to be approved in order to participate in the program. No provision has been made at this time to maintain a master list of analysts in the National Office of FmHA.

Exhibit A–7—One respondent suggested that the market analysts be required to submit references, evidence of experience, and samples to FmHA prior to completing a study. *Response:* The market study guidelines now inform the analyst that a completed sample study or a statement of qualifications will be required by FmHA before that analyst, or company, will be acceptable.

Exhibit A–7—One respondent recommended that all requests for market studies come from FmHA and not the applicant. The respondent also recommends that, after review of the study and the determination that the preapplication can be authorized, FmHA would then order a market study from an approved market analyst with the concurrence of the applicant. If the preapplication could not be authorized, FmHA would, with the concurrence of the applicant, withdraw its request for the study. The respondent further recommends that FmHA maintain an acceptable schedule or range of fees for studies. FmHA would do the contracting for the analyst with the fee being paid by the applicant. *Response:* While FmHA is at the present time moving toward contracting for some market studies, complete plans have not been worked out for implementing this course of action. The foregoing comments will be taken into consideration.

Exhibit A–7—One respondent recommended that a professionally prepared market study be required for all projects of 20 and more units. *Response:* Although the **Federal Register** refers to market "surveys" for projects of 20 units or more, it was intended that a market "study" be required for 20 or more units.

Exhibit A–7—One respondent felt that a market study should not be acceptable to FmHA if it is prepared by someone who has an identity of interest with the applicant. *Response:* FmHA carefully considered this point and rejected it because disallowing those studies could cast an appearance of distrust and suspicion on legitimate and honest market analysts. It is FmHA's opinion that disallowing the identity of interest analysts would not ensure an accurate and truthful study from other analysts. We see no reason to disallow an identity of interest in this area when we allow identity of interest relationships such as architects and contractors.

Exhibit A–7—One respondent pointed out the need for data on existing housing units. *Response:* The survey of existing rental housing form was inadvertently omitted from this publication. This omission has been corrected.

Exhibit A–7—One respondent does not feel trending incomes can be correctly accomplished by a market analyst. *Response:* The use of income data within a market area is to establish whether there are sufficient incomes to justify feasibility and to measure the economic fluctuations of the community. Changes in median income can act as a barometer in portraying the economic flexibility of a market area. A market analyst should be able to evaluate this type of data and incorporate the findings into the market study.

Exhibit A–7—One respondent felt that there was no need to include information on 1970 employment, labor, and age characteristics in a study. *Response:* We agree that some 1970 data are not necessary and have changed the guidelines to reflect this.

Exhibit A–7, I—One respondent stated that to exclude "established communities" as required by the market study guidelines would lead to an unrealistic market area. *Response:* This word "other" (other established communities) was omitted in error in the printing of the **Federal Register** notice.

Exhibit A–7, III B (3)—One respondent felt that a market study should include a discussion of vacant rental units within the market area and those within nearby communities. *Response:* The market study guidelines in the regulation now include additional language concerning the evaluation of existing vacancies within the market area. While vacancies in the entire market must be included, vacancies in other established communities outside the market area will not be considered.

Exhibit A–7, III B 5 (b)—One respondent questioned the reason an applicant would request HUD income data from a local FmHA office instead of from a local HUD office. *Response:* This income information was furnished to local FmHA offices to assist the preparers of market studies with obtaining the needed data. Income information may also be obtained from Sales and Marketing Management Magazine.

Exhibit A–8, (5)—One respondent objected to FmHA's requirement that a new market study be obtained after the study is more than 12 months old. *Response:* Even though census data will not change within that time, changes in local housing and employment conditions certainly may. For that reason, FmHA requires updated information to supplement the material contained in a market study.

One respondent asked if a market study is an eligible loan purpose. *Response:* The new regulation will allow the cost of a market study to be included as an eligible loan purpose.

N. Exhibit A-6

Test for Other Credit—One respondent felt that FmHA should delete the requirement that applicants must explain why other lenders are not willing to extend credit. *Response:* We agree and have removed this requirement.

Environmental Impact—One respondent pointed out that we requested a duplication of environmental information. *Response:* We agree and have removed this duplication.

Measuring Square Footage—One respondent felt that we should not measure square footage from the outside walls. *Response:* We agree and have removed this requirement.

Cost Overruns—One respondent felt that applicants should not have to sign a statement agreeing to pay all cost overruns. *Response:* We have considered this and do not agree. In addition, the law requires that this statement be signed.

Competitive Bidding—One respondent felt that competitive bidding requirements are too strict and that Subpart A of Part 1924 requirements for exception to competitive bidding are very difficult. *Response:* We considered this comment and feel that the exception authority in Subpart A of Part 1924 is appropriate. We are not changing this section.

O. Other Comments

Section 1944.205—One respondent suggested that our definition of handicapped and disabled persons should be changed to better reflect reality and to remove the discrimination. *Response:* This definition is used in other regulations and cannot be changed only in the 515 rural rental housing regulation. We feel the respondent has made some valid points and we will consider the change in a future revision.

Section 1944.211—One respondent recommended that the eligibility criteria requiring that the applicant have the ability to maintain and operate the project for the purposes for which the loan was made be strengthened. *Response:* The Agency has decided that the criteria achieves the intended purpose as is and will not be changed.

Section 1944.211—One respondent felt that restricting long-term leasing of privately owned land to areas where it is a well established practice is too restrictive and that removing the requirement could make the program more flexible. *Response:* The Agency agrees with the suggestion and has changed the wording.

Section 1944.211—One respondent felt that we should not allow the return of the initial 2 percent operating capital because borrowers defer expenses and shield the 2 percent. One respondent felt that the borrower should be able to have the 2 percent returned even after 5 years. *Response:* The Agency has considered both comments and determined that no change will be made.

Section 1944.211—Two respondents felt that the section stating that borrowers or principals of borrower organizations who sell or transfer loans less than five years old will not be considered for participation in the program for at least five years is only punitive in nature and should be eliminated. *Response:* The Agency has determined that no change will be made.

Section 1944.212—One respondent felt the requirement that rehabilitated housing be substantially equivalent to new construction in quality, livability, design and all other respects can be interpreted too literally. *Response:* The Agency agrees and has changed the wording.

Section 1944.212—One respondent felt that the language requiring that rehabilitation costs be equal to or less than new construction is too rigid. They felt that exceptions should be made when the project is on farmland at the edge of town and when other subsidies are used. They also felt that the term "area" should be clarified. *Response:* The Agency has removed this requirement; however, the Agency feels that the definition of community is adequate and is not further clarifying "area".

Section 1944.212—Two respondents recommended that we allow loan funds to be used to purchase land from an applicant. One respondent felt that the wording should be clarified. *Response:* After reviewing the comments the Agency has decided not to change this section.

Section 1944.212—One respondent felt that related facilities such as tot lots create major liability problems for borrowers and that they should have the discretion to choose whether to provide the facilities. The respondent also was concerned that this section made no reference to laundry rooms. One respondent was concerned that we required related facilities such as stoves and refrigerators in central cooking facilities to be attached to the real estate. *Response:* The Agency has not changed its requirement to provide tot lots in family projects. We feel this is an important part of a family project. Laundry rooms are addressed in another part of the text. In congregate projects where there are central cooking facilities, we feel that the stoves, refrigerators, etc. should be attached to prevent easy removal.

Section 1944.212—One respondent felt that language should be clarified to allow interest on multiple advances to be part of the loan. *Response:* The Agency has determined that a change will not be made. We feel the language is clear in stating that interest will be capitalized when construction is substantially complete and the project is ready for occupancy.

Section 1944.212—One respondent felt that it should be made clear that loan funds can be used for interest and customary charges necessary to obtain interim financing. *Response:* The Agency agrees and has changed the wording.

Section 1944.213—One respondent pointed out that one section in loan limitations required rental leases to be for not less than 30 days and that this conflicts with proposed rule FmHA Instruction 1930-C. *Response:* This section has been revised to be consistent with FmHA Instruction 1930-C.

Section 1944.213—One respondent felt that FmHA should broaden the instances under which we will finance partially completed projects. *Response:* The Agency has considered the comments and finds merit in them. They will be considered in a subsequent FmHA regulation revision.

Section 1944.215—Two respondents felt that we should require master metering instead of individual because tenants would not have to pay deposits for the services, rates are generally less and construction cost would be reduced because an outside water loop would not be needed. *Response:* After reviewing these comments the Agency has decided to continue with individual metering.

Section 1944.215—One respondent was concerned about requiring a market survey completed by a local or State government agency or by independent organizations serving handicapped people in order to modify the percentage of handicapped units. *Response:* The market survey requirement has been removed.

Section 1944.215—Two comments were received suggesting that we allow appraisals to be done by FmHA employees authorized to make appraisals and by contract appraisers. *Response:* Language has been added allowing for contract appraisers.

Section 1944.221—One respondent suggested that when bonds are used in lieu of promissory notes submission to the National Office and OGC is not necessary. *Response:* The Agency's experience dictates that this requirement is needed, especially in some states. We will be keeping this requirement.

Section 1944.221—Two respondents suggested that the requirement for personal liability be removed for all types of entities. *Response:* The Agency has considered this recommendation and decided not to change our requirements.

Section 1944.231—One comment was received suggesting that FmHa set timetables for itself, as well as for the applicant, after issuance of an AD-622. *Response:* The Agency has not changed this section.

Section 1944.235—One respondent felt that obligations should be allowed to be transferred when there is a change from profit to nonprofit applicant. *Response:* Our legal advisors have said that we cannot transfer obligations when entity types change.

Section 1944.240—One respondent felt that applicants and/or advocates should be able to request exception authority directly from FmHA's Administrator. *Response:* The Agency does not agree with this suggestion and has not changed the wording to allow applicants and/or advocates to request exception authority from the Administrator.

Section 1944.215—One respondent felt that the refinancing requirement is unnecessary when considering percent and proposed prepayment regulations. *Response:* The Agency has not changed this section.

One respondent asked us to define "builder's fee". *Response:* This reference has been removed and readers are referred to Subpart A of Part 1924.

Section 1944.215—One respondent felt the requirement that the housing be designed to meet the needs of the types of occupants who will likely occupy it is in conflict with Subpart C of Part 1930 which allows elderly to occupy family units. *Response:* This has not been changed. The units should still be designed for the type of occupant most likely to live in it.

One respondent was concerned that the proposed rule did not contain an exhibit for rural cooperative housing. *Response:* Regulations governing rural cooperative housing are being worked on under a separate revision and will be published at a later date.

Section 1944.212—One respondent felt that Section 514, as well as Section 502, housing should be allowed to be converted to rental housing. *Response:* The statute specifically refers to Section 502 being converted to Section 515 so no change will be made.

Exhibit A, paragraph IV. B. 4—One respondent felt that the marketing of units should be in accordance with the AFHMP and public advertising. Other methods should not be permitted. *Response:* We agree and have changed the paragraph.

Finally, the Agency received several comments of an editorial nature. We have evaluated these comments and have made changes in the Final Rule as appropriate.

Typographical errors noted in the Proposed Rule have been corrected.

List of Subjects

7 CFR Part 1924

Agriculture, Construction and repair

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant Programs—Housing and community development, Loan programs—Housing and community development, Low and moderate housing—Rental, reporting requirements

7 CFR Part 1933

Grant programs—Housing and community development

7 CFR Part 1944

Administrative practice and procedure, Aged, handicapped loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, and Rural housing.

7 CFR Part 1951

Account servicing.

7 CFR Part 1965

Administrative practice and procedure.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. § 1924.13 (e)(1)(iv), (e)(1)(vi)(A), and (e)(2)(ix)(A) are revised to read as follows:

§ 1924.13 Supplemental requirements for more complex construction

* * * * *

(e) * * *

(1) * * *

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of Subpart E of Part 1944 of this chapter and § 1924.6 (a)(3) of this subpart, or cost certification fee will be included in the proposed contract amount. Form FmHA 1924-13, which is available in all FmHA offices, may be used for this purpose.

* * * * *

(vi) * * *

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit B of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project.

Upon presentation of proper partial payment estimates approved by the applicant and accepted by FmHA, the interim lender may advance construction funds in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

* * * * *

(2) * * *

(ix) * * *

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit B of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for work completed on the

project, all inspections have been completed and all required approvals have been obtained from any governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the applicant's architect, and accepted by FmHA, the interim lender may advance construction funds in accordance with the provisions of this section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

* * * * *

3. Exhibit J to Subpart A of Part 1924 is amended by revising the definition for related facilities in Part A, paragraph III and revising Part B, paragraph IV C 1 to read as follows:

Exhibit J—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-up

* * * * *

Part A * * *

III. Definitions. * * *

Related Facilities. Any nonresidential structure or building used for rental housing related purposes.

* * * * *

Part B * * *

IV. * * *

C. * * *

1. This includes those facilities as defined in § 1944.212(e) of Subpart E of Part 1944 of this chapter.

* * * * *

PART 1930—GENERAL

4. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 223; 7 CFR 2.70

5. § 1930.102(h) is revised to read as follows:

§ 1930.102 Definitions.

* * * * *

(h) *Project.* A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under § 1965.68 of Subpart B of Part 1965 of this chapter.

* * * * *

6. § 1930.141 (e) is revised to read as follows:

§ 1930.141 Materials to be provided borrower/applicant.

* * * * *

(e) Exhibits H and H–1 of this subpart.

* * * * *

7. Exhibit B Subpart C of Part 1930 is amended by redesignating paragraphs II AA through II LL as II CC through II NN respectively, II Z as II AA and II Y as II Z; and by adding new paragraphs II Y and II BB and revising new paragraph II CC and paragraphs IV A introductory text, IV A 2 e, IV C and V E 1 introductory text to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

II. *Definitions.* * * *

Y. *Nonprofit Corporation.* A corporation which (1) is organized and operated for purposes other than making gains or profits for the corporation or its members; (2) is legally precluded from distributing to its members any gains or profits during its existence; and (3) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

* * * * *

BB. *Profit Basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford, and whose return on their initial investment will not be limited to a certain percentage per year.

CC. *Project.* A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project according to § 1965.68 of Subpart B of Part 1965 of this chapter.

* * * * *

IV. * * *

A. *FmHA Interest Credit—RRH and RCH Loans.* Regulations are contained in Exhibit H to this subpart and include:

* * * * *

2. * * *

e. RRH borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit agreement according to Exhibit H of this subpart.

* * * * *

C. *Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments Program.* This subsidy program is administered by HUD or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD will also be subject to the requirements of the Housing Assistance Payments (HAP) Contract executed by the borrower. Projects accepting tenants utilizing Section 8 assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases, tenants receiving Section 8 assistance must meet the eligibility requirements specified in paragraph VI B of this Exhibit. Requirements that conflict with FmHA requirements should be referred to the District Director for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.)

* * * * *

V. * * *

E. * * *

1. *Calculation of rental rate for site manager or caretaker.* The rental rate for the unit occupied by the site manager or caretaker will always be reflected in the project budget the same as the cost for other non-revenue producing portions of the project. When the unit for the site manager or caretaker was authorized by the State Director according to the requirements of § 1944.212 (f) of Subpart E of Part 1944, the unit may or may not be designated as part of the non-revenue producing facilities. This determination will be reflected in the project's management plan. The rental rate will then be determined as follows:

* * * * *

Exhibit B–6 of Subpart C—Miscellaneous Reports or Submittals

8. Exhibit B–6 to Subpart C of Part 1930 is amended under the column headed "Examples and notes" by removing the reference, "Exhibit C to Subpart E, Part 1944" and inserting in its place, "Exhibit E to Subpart C, Part 1930".

9. Exhibit C to Subpart C of Part 1930 is amended by revising paragraphs V B 1 b, V B 2 c and V B 2 d to read as follows:

Exhibit C of Subpart C—Rent Changes

* * * * *

V. * * *

B. * * *

1. * * *

b. When the borrower's project is operated on a profit basis and the purpose of the rent change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. * * *

c. The borrower's project is operated on a profit basis and the proposed rent change is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is to allow excessive profits and the proposed rent change will result in rental rates in excess of what eligible tenants can afford.

d. The State Director is able to provide RA to the project and the borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205 of Subpart E of Part 1944; but the borrower has not applied for RA within the most recent

period of 180 days prior to the rent change request.

* * * * *

10. Exhibit E to Subpart C of Part 1930 is amended by revising paragraphs I and II B 1 b to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

I. *General.* The objective of the rental assistance (RA) program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. RA will supplement the benefits available to tenants under the interest credit program outlined in Exhibit H of this Subpart.

II. *Definitions.* * * *

B. * * *

1. * * *

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205 of Subpart E to Part 1944 of this chapter, or

11. Exhibit H is added to Subpart C of Part 1930 to read as follows:

Exhibit H of Subpart C—Interest Credits on Insured RRH and RCH Loans

Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This Exhibit outlines the policies and conditions under which interest credits will be made on insured rural rental housing (RRH) and rural cooperative housing (RCH) loans.

II. *Definitions:* As used in this Exhibit:

A. *Interest Credit* is the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. *Interest Credit and Rental Assistance Agreement* is an agreement between FmHA and the borrower providing for interest credits and/or rental assistance for RRH or RCH loans. This agreement will be on Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

C. *Project* is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution.

D. *Basic Rental* means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum.

E. *Market Rental* is a unit rental charge determined on the basis of operating the project with the payments of interest which the borrower is obligated to pay under the terms of the promissory note.

F. *Overage* is the amount by which total rental payments paid or to be paid by the tenants of a project exceed the total basic monthly charge.

G. *Surcharge* is 25 percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant.

III. *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 30 years or more; and (3) meets the other requirements of this exhibit subject to the following limitations:

A. Plan I will be only to broadly based nonprofit corporations and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit will no longer be available for new loans after October 27, 1980. All borrowers operating on Plan I as of October 27, 1980, may continue operating under it according to the applicable requirements of this exhibit and of this subpart.

B. Plan II will be available to broadly based nonprofit corporations, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

IV. *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated:

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to very low- or low-income nonelderly and very low-, low- and moderate-income elderly, disabled or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, including elderly, disabled and handicapped persons of very low, low and moderate incomes. Under Plan II, interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare two budgets, one on the basis of a 1 percent interest rate loan to determine basic rental, and a second budget on the basis of a loan at the interest rate shown in the promissory note to determine market rental.

b. Determine both basic rental and market rental for the different units based on the two budgets. (See Exhibit H–1.)

c. Determine adjusted personal income of each tenant and have each tenant complete Form FmHA 1944–8, "Tenant Certification." Determine the monthly rent to be paid by each tenant household.

d. Determine the required monthly payment on the loan at 1 percent interest plus overage for the month for the total units developed with any one loan. The amount of payment will be computed separately for each loan using Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

V. Determining The Amount of Payment

A. *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a 3 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a 1 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overage.

VI. Special Conditions:

A. *Leases.* Borrowers participating in the interest credit program must have an FmHA approved lease with the assisted household. Leases must comply with the requirements of paragraph VIII of Exhibit B to this subpart.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI A of this exhibit to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $60 per month, this ineligible tenant would pay $75 per month. The 25 percent surcharge, or $15 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the market rental.

C. *Vacancies.* When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the rental of these completed units to eligible tenants at the rent they would be paying should the FmHA loan be closed. A prerent-up conference is required. All income generated must be deposited in the General Operating Account and used for management and operation of the units.

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD) Housing Assistance Payment Program or FmHA Rental Assistance.* When rental units in an RRH project are leased under the Section 8 program, Form HUD 50059, "Certification and Recertification of Tenant Eligibility," will be completed for new construction. Borrowers with projects authorized to utilize rental assistance will complete Form FmHA 1944–7 in accordance with Exhibit E to Subpart C of Part 1930.

E. *Special Cases.* Situations not covered by this Exhibit or Exhibit E to this subpart, will be handled on an individual basis with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant eligibility are in paragraph VI B of Exhibit B to this subpart.

VII. Execution of Agreements:

A. *Interest Credit and Rental Assistance Agreement.*

1. *Multiple Advance Loans.* Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the District Director determines that the project is ready for full operation, the borrower and the District Director should execute Form FmHA 1944–7. A separate Form FmHA 1944–7 will be executed for each loan on the project.

2. *Interim Financing and Servicing.* Effective dates for interim financed loans and servicing action will be according to the FMI for Form FmHA 1944–7.

B. *Change in Interest Credit Plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement.

C. *Borrowers Who Are Not Receiving Interest Credit.* If an eligible borrower did not execute a Form FmHA 1944–7 according to paragraph VII A of this Exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944–7 and this Exhibit. When Form FmHA 1944–7 is executed, it will be effective for the next monthly payment due.

VIII. *Tenant Certification:* Tenant certification and recertification for interest credit borrowers will be performed in accordance with paragraph VII of Exhibit B to this subpart.

IX. *Loan Payments:* With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative handling the transmittal to the Finance Office will complete Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal." The forms will be executed in accordance with the requirements of the Forms Manual Insert. The transmittal of these will be handled in accordance with FmHA Instruction 1951–B.

A. *Plan I.*

1. The borrower will make monthly payments in an amount necessary to repay the loan as if the loan carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this exhibit.

2. When a payment is made for any month that involves a rental surcharge, Forms FmHA 1944–29 and FmHA 1944–9 will be completed with the amount of the surcharge being inserted in the spaces provided. These forms will be completed and the amount shown and transmitted regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II:* The borrower will make monthly payments as though the note was written at a 1 percent interest note plus any overage due and payable whether or not collected from the tenant.

X. *Servicing:* Any unusual case that cannot be serviced in accordance with this Exhibit should be submitted to the National Office with the State Director's recommendations.

12. Exhibit H–1 is added to Subpart C of Part 1930 to read as follows:

Exhibit H–1 of Subpart C—Example of Interest Credit Determination for RRH or RCH Projects (Plan II)

$100,000 RRH LOAN—APPROVED DURING 1972 FISCAL YEAR, PROJECT CONTAINS FOUR 1-Bedroom Units (600 SQ. FT. EACH) AND FOUR 2-BEDROOM UNITS (700 SQ. FT. EACH)

Budget for market rent		Budget for basic rent [a]	
Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable.	$5,277	Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable.	$5,277
Loan repayment at 9% interest $100 M × $91.23 [b]	9,123	Loan repayment at 1% interest $100 M × $25.52 [b]	2,552
Total annual cost	$14,400	Total annual cost	$7,829
One bedroom rent: 600/5200 = .11538 × 1200 = 138.46		One bedroom rent: 600/5200 = .11538 × 652 = 75.23	
Two bedroom rent: 700/5200 = .13462 × 1200 = 161.54		Two bedroom rent: 700/5200 = .13462 × 87.77	
(138.46 × 4) + (161.54 × 4) = $1,200 monthly income		(75.23 × 4) + (87.77 × 4) = $692 monthly income	
$14,440 ÷ 12 = $1200[c] cost/mo.		$7829 ÷ 12 = $652[c] cost/mo.	

[a] Two complete and accurate budgets must be prepared, one for the market rent and one for the basic rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized.)

[b] Factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

[c] Rounded to the nearest dollar.

* * * * *

13. Exhibit I is added to Subpart C of Part 1930 to read as follows:

Exhibit I of Subpart C—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)

I. *General.* This exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of *existing Section 515 rural rental housing (RRH) units* for leasing under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program.

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Section 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882 (as amended). To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 30 percent of its income for rent. Therefore, RRH borrowers should advise tenants who are paying more than 30 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. *Section 8 assistance for existing housing is administered by local housing agencies* authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. FmHA Policies Concerning Rental Rates and Payments.

A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 30 percent of the household's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the market rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments; (2) for borrowers operating without interest credit, the contract rent will be the market rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments; (3) for borrowers operating in accordance with interest credit Plan II, the contract rent will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit H of this subpart.

IV. Responsibilities.

A. *Household.* A household must obtain a Certificate of Family Participation to obtain Section 8 assistance. A household receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Family Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Family Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.*

1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Subpart C of Part 1802 of this chapter (FmHA Instruction 430.2).

b. Review and approval of budgets and rental rates.

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

V. Special Conditions.

A. *Eligibility.*

1. The PHA will determine a household's eligibility before the Certificate of Family Participation is issued. To be eligible for Section 8 assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments under the Section 8 program will continue until the amount payable by the household equals or is greater than the gross rental rate. However, when 30 percent of the household's income equals or is greater than the gross rental rate charged for the unit, the household may still be able to occupy a rental unit under FmHA interest credit program if 30 percent of the family's income is greater than the lowest established rental rate for the unit.

2. Form FmHA 1944–8, "Tenant Certification," will not be required for tenants who have obtained a Certificate of Household Participation from the PHA. A copy of the Certificate of Household Participation will, however, be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. *Security deposits.* According to HUD regulations, the owner may require a household to pay a security deposit. The maximum amount will be the greater of the amount of rent payable by the household towards one month's total tenant payment or $50. Under HUD regulations, if a household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. *Payment for vacated units.* According to HUD regulations, if a household vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payments for the month in which the family vacates and then in the amount of 80 percent of the contract rent for a vacancy period not exceeding an additional months or the expiration or other termination of the lease, whichever comes first.

D. *Limitation of owner's participation in the program.* HUD's regulations provide that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office.

E. *Special problems.* Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

14. The authority citation for Part 1933 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart I—Self-Help Technical Assistance Grants

15. § 1933.404 (a)(4)(iii) is revised to read as follows:

§ 1933.404 Eligibility

* * * * *

(a) * * *

(4) * * *

(iii) Adopt, if it is being newly organized, Articles of Incorporation and Bylaws that generally conform to Exhibits C and D of Part 1944 of Subpart E which are available in FmHA offices, with changes appropriate to include the purposes and powers of an eligible applicant under this Subpart. The Office of the General Counsel (OGC) should be requested by FmHA to review and adapt the exhibits for use in the respective States.

* * * * *

16. § 1933.416 (b) is revised to read as follows:

§ 1933.416 Approval and closing.

* * * * *

(b) *Approval of grant.* Follow the provisions of § 1944.246 (b)(1) and (2) (available in any FmHA office) of Subpart E of Part 1944 of this chapter.

* * * * *

PART 1944—HOUSING

17. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

18. Subpart E of Part 1944 is revised to read as follows:

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.201 General.
1944.202 Objective.
1944.203 1944.204 [Reserved]
1944.205 Definitions.
1944.206 1944.210 [Reserved]
1944.211 Eligibility requirements.
1944.212 Loan purposes.
1944.213 Limitations.
1944.214 Rates and terms.
1944.215 Special conditions.
1944.216–1944.220 [Reserved]
1944.221 Security.
1944.222 Technical, legal and other services.
1944.223 Supplemental requirements for manufactured home rental project development.
1944.224–1944.230 [Reserved]
1944.231 Processing preapplications.
1944.232 Rental assistance (RA) from sources other than FmHA.
1944.233–1944.234 [Reserved]
1944.235 Actions subsequent to loan approval.
1944.236 Loan closing.
1944.237 Subsequent RRH loans.
1944.238 [Reserved]
1944.239 Complaints regarding discrimination in use and occupancy of RRH.
1944.240 Exception authority.
1944.241–1944.249 [Reserved]
1944.250 OMB control number.
Exhibit A of Subpart E—How to Bring Rental Housing to Your Town.
Exhibit B of Subpart E—Guide Letter for use in Informing Interim Leader of FmHA's Commitment
Exhibit C of Subpart E—Articles of Incorportion (Not for Profit)
Exhibit D of Subpart E—Bylaws

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objective.

The basic objective of RRH loans is to provide eligible tenants with economically designed and constructed rental housing and related facilities suited to their living requirements.

§ 1944.203–1944.204 [Reserved]

§ 1944.205 Definitions.

(a) *Amortization effective date (AED).* A date established by the accounting system on which advanced principal and any accrued interest is combined and amortized to establish a schedule of payments. This date is always the first day of a month.

(b) *Board and directors.* The governing body and members of the governing body of an organization.

(c) *Community.* Cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings located in rural areas as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

(d) *Congregate housing.* Housing that affords an assisted independent living environment that offers the elderly, handicapped or disabled, person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and support service(s) required to achieve, maintain, or return to a semi-independent lifestyle and prevent premature or unnecessary institutionalization as he/she grows older.

(e) *Consumer cooperative.* A corporation which:

(1) Is organized as a cooperative;

(2) Will operate the housing on a nonprofit basis solely for the benefit of the occupants; and

(3) Is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose, any patronage refunds to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(f) *Dealer-contractor.* A person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractors will be qualified as shown in paragraphs IX and X of Exhibit F of Subpart A of Part 1944 of this chapter, except all processing will be handled by the District Director rather than the County Supervisor.

(g) *Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. Costs that can be paid for with RRH loan funds are detailed in § 1944.212 of this subpart.

(h) *Elderly, handicapped or disabled person.* A person who is at least 62 years old. The term elderly (senior citizen) also means persons with the following handicap or disabilities, regardless of age:

(1) *Handicapped.*

(i) Inability to enage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which:

(A) Has lasted or can be expected to last for a continuous period of not less than 12 months; or which can be expected to result in death;

(B) Substantially impedes the ability to live independently; and

(C) Is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) In the case of a blind person who is at least 55 years old (within the meaning of "blindness" as determined in Section 223 of the Social Security Act), and who is unable because of the blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(2) *Disabled.* In the case of developmental disability, a person with a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental or physical impairment;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self-direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

(i) *Elderly household.* A household where the tenant or co-tenant is at least 62 years of age, handicapped, or disabled as defined in § 1944.205(h) of this subpart. An elderly household may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped, or disabled person's care and well-being. (To receive an elderly household deduction, the elderly, handicapped, or disabled person must be the tenant or co-tenant.)

(j) *Eligible tenants.* Elderly, handicapped, or disabled persons and very low-, low-, or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of Exhibit B to Subpart C of Part 1930 of this chapter. In the case of cooperative housing projects, all members (occupants) must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

(k) *Gains or profits.* For the purpose of paragraph (y) of this section, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

(l) *Group living.* A type of congregate housing that is occupied by one or more elderly, handicapped or disabled person sharing living space within a rental unit in which a resident assistant is required.

(m) *Household.* One or more persons who maintain or will maintain residency in one rental unit, but not including a resident assistant or chore service worker.

(n) *Individual.* A natural person.

(o) *Limited partnership.* A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the

common stock, who are not liable for the debts of the partnership beyond the funds contributed.

(p) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215(l) of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

(q) *Low-income household.* A household having an adjusted annual income within the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office.)

(r) *Manufactured home (unit).* A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and Farmers Home Administration (FmHA) thermal requirements. Manufactured homes are described further in Exhibit J of Subpart A of Part 1924 of this chapter.

(s) *Manufactured home rental project.* A parcel(s) of land located in the same community which contain two or more manufactured home units on each parcel for rental occupancy and operated under one management plan with one loan agreement/resolution.

(t) *Maximum debt limit (MDL).* The maximum amount that FmHA will lend for a project based on the lesser of appraised value or total development cost multiplied by 95 percent for a limited profit operation or 102 percent for a nonprofit operation.

(u) *Moderate-income household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

(v) *OGC.* The Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(w) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State, or local public agency, trust, partnership, or limited partnership.

(x) *Owner-builder.* A qualified builder-applicant who has experience and has demonstrated the ability and capability to build an RRH project.

(y) *Private nonprofit corporation.* A corporation which:

(1) Is controlled by private persons or interests;

(2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;

(3) Is legally precluded from distributing to its members any gains or profits during its existence; and

(4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

(z) *Project.* The total number of rental housing units that are operated under one management plan with one loan agreement/resolution.

(aa) *Resident assistant.* A person(s) residing in a housing unit who is essential to the well-being and care of the elderly, handicapped, or disabled person(s) residing in the unit and who is not related by blood, marriage, or operation of the law to these tenants. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant. The resident assistant receives compensation from sources other than FmHA. A resident assistant is not a chore service worker as defined in Exhibit B of Subpart C of Part 1930 of this chapter.

(bb) *Rural area.* Open country or rural places as defined in § 1944.10 of Subpart A of Part 1944 of this chapter.

(cc) *Rural rental housing.* Structures in a rural area which are or will be suitable for, and available to, eligible tenants on a rental basis for dwelling use. The structures may include related facilities where appropriate.

(dd) *Security value.* The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

(ee) *Very low-income household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

§§ 1944.206–1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in § 1944.205 of this subpart; or an American Indian tribe, band, group, or nation (including Alaskan Indians, Aleuts, Eskimos, and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

(2) With the exception of a State or local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow the applicant to rent the units for amounts that are within the payment ability of eligible tenants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For nonprofit organizations, the assets of the individual members will not be considered.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) With the exception of a nonprofit organization, consumer cooperative or public body, have or be able to obtain the 5 percent borrower contribution required by § 1944.213(a)(2) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(5) Own the housing and related land or become the owner when the loan is closed. In addition to the owner of full marketable title, an owner may be a lessee of a tract of land owned by a nonpublic body, State, political subdivision, public body, or public agency, or American Indian tribal lands which are not available for purchase. The State Director must determine that leaseholds are fully marketable in the area. The following conditions must be met when considering leasehold interests:

(i) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(ii) The amount of the RRH loan against the property will not exceed the estimated market value determined in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office).

(iii) The unexpired term of the lease on the date of loan approval must be at least 25 percent longer than the repayment period of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(iv) The borrower's interest must not be subject to summary foreclosure or cancellation.

(v) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA to occupy or sublet the property and sell the leasehold for cash or credit if the leasehold is acquired through foreclosure (or voluntary conveyance in lieu of foreclosure), or if the borrower abandons the property.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vi) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, he/she should request National Office evaluation and instruction.

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. The initial operating capital will be at least 2 percent of the total development cost of the project. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings, and equipment, printing lease forms and other initial operating expenses. It will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution prior to the start of construction or loan closing (whichever is first) and will be used for authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital will be increased sufficiently to cover the cost of these items.

(iii) If the borrower provided the initial 2-percent operating capital from its own funds, after 2 years, but before 5 full budget years of project operation, the State Director may authorize the borrower to make a one-time withdrawal from project funds in accordance with Subpart C of Part 1930 of this chapter.

(7) Possess the ability, experience, and the legal and financial capacity to incur and carry out the obligations required for the loan.

(8) Agree to comply with all FmHA requirements, such as those set forth in the loan resolution, loan agreement, the form of note, the mortgage and FmHA regulations.

(9) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm or an agent. Management will be handled in accordance with Exibit B to Subpart C of Part 1930 of this chapter.

(10) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements:

(A) The organization must maintain a broadly-based membership reflecting a variety of interests in the community. The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(B) Each member must be limited to one vote in the affairs of the organization.

(C) A majority of the members must reside in the community or the trade area where the housing will be located.

(D) At least five of the members must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(E) There must be at least five people on the board of directors and they must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(F) The directors must be members of the organization.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in Exhibits C and D, modified as appropriate in accordance with State law. The State Director, with the assistance of OGC, may develop a model set of articles of incorporation and bylaws for the State which are consistent with Exhibits C and D and publish an appropriate State supplement.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) except for (a)(9)(i)(C) of this section:

(A) The membership base should be representative of the area being served with at least five members representing a variety of interests from each community where the housing will be located.

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(9)(ii)(A) of this section.

(11) In the case of a limited partnership:

(i) The general partners must be able to meet the financial requirements of § 1944.211(a)(4) of this subpart if the partnership is not able to when the preapplication is filed.

(ii) The general partners must maintain a minimum 5 percent financial interest in the partnership. For this purpose, the minimum 5 percent requirement will be deemed to have been met if the general partner has a minimum 5 percent interest in the residuals or refinancing proceeds. The general partner will not be required to have a minimum 5 percent interest in current profits, losses, and cash distributions of the partnership. For example, an agreement where the general partners have such a 5 percent interest in a limited partnership and receive only 1 percent of the profits while the limited partners receive 99 percent of the profits would be allowable.

(iii) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of FmHA.

(12) Be willing to honor the long-term commitment associated with receipt of a Section 515 loan. Borrowers or principals of borrower organizations who sell or transfer loans less than 5 years old will not be considered eligible for further participation in the program as borrowers or principals (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan or assumption closing. The State Director may make an exception to this provision only if the transfer or sale meets the hardship provisions of § 1965.65(a)(4) of Subpart B of Part 1965 and the applicant meets all other eligibility requirements.

(b) *Authorized representative of an applicant.* FmHA will deal only with the applicant or its authorized representative and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment or the purchase of the land for the housing site.

§ 1944.212 Loan purposes.

RRH Loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing buildings only when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

(1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined in Exhibit K of Subpart A to Part 1924 of this chapter.

(2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.

(3) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the applicable development standards as provided for in § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter and any applicable historic preservation requirements.

(ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality and livability.

(4) The applicant must submit complete plans and specifications for rehabilitation for FmHA's review and acceptance.

(5) The rehabilitated project must generally meet the provisions of § 1944.215(b) of this subpart.

(6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with the commercial space. In order to determine the correct RRH loan amount for the residential portion of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) The costs that can be easily and appropriately identified as being part of either the commercial or residential portion of the structure should be separated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential tenants will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

(iv) For the purposes of the loan limitations in § 1944.213(a) (1) and (2) of this subpart, the term "development cost" means the development costs associated with or prorated to the residential use of the structure, and the term "security value" is the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221 of this subpart.

(7) The applicant may not lease any authorized commercial space without the prior written consent of the State Director. Prior to loan closing, the advice of OGC will be obtained as to any modifications needed in the mortgage, loan agreement or loan resolution to enforce this requirement. The State Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises if FmHA withdraws its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure.

(iii) The terms of the lease and the proposed use of the leased space do not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with Subpart B of Part 1922 of this chapter (available in any FmHA office). Purchase price in excess of estimated market value will not be used in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant/organization or from another organization in which any member of the applicant/organization has an interest except that, with prior approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, only when:

(i) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land; and

(ii) The cost of the excess land is a reasonable portion of the loan.

(d) Develop and install streets, a water supply, and sewage disposal, heating, cooling, and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legal right to use the facility for a period of at least 25 percent longer than the life of the loan and the title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation (such as outdoor seating) for elderly projects and active facilities (such as tot lots) for family projects will be provided.

(3) Central cooking and dining in congregate and group living housing when the project is large enough to justify them to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables, should be attached to the land or buildings in a manner regarded in law as part of the real estate. The applicant must provide a long range plan for the

benefit of the tenants which addresses the long-term availability of assistance from the Area Agency on Aging, the local office of the State Vocational Rehabilitation Agency, or State developmental disabilities or mental health agency. If assistance is not available from local organizations or other State or Federal agencies, the applicant must be able to operate the facilities for the benefit of the tenants with its own funds. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt services and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services. If needed in the community, FmHA may permit facilities in the project larger than those required solely by the tenants provided other sources of funds are available to pay a pro rata share of the cost. When the facilities are provided with loan funds, the following conditions must be met:

(i) The meals must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, the charges must be separate from their rental charges.

(ii) If the entity that operates the facility is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA), the entity must be authorized by FNS to accept food stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) must be fully documented by a signed statement from the applicant if it will provide the services, or in a lease agreement if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement:

> This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

(4) Space for a small infirmary for emergency care only when justified by the size of the project. An infirmary will not be justified if facilities for emergency care expected to be needed by the tenants are readily accessible elsewhere.

(f) Construct office and living quarters for the resident manager and other operating personnel if the facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Purchase and install ranges, refrigerators, drapes, drapery rods and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual rental units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(h) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Pay related costs such as fees and charges for market studies, tax credit fees, and legal, archeological, architectural, engineering, environmental and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, to assist it in the formation or incorporation and for the development and packaging of its loan docket and project and to pay legal, technical and professional fees incurred in the formation or incorporation of the applicant entity. The State Director must determine that:

(1) Either—

(i) The applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services; or

(ii) The services would permit significant financial savings to the Government, either directly or by reducing the workload involved in processing applications.

(2) The charges are reasonable in amount, considering the cost of similar services and the amount and the purpose of the loan.

(k) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete, loan funds are fully advanced and the project is ready for full operation or when advances plus accrued interest reach the maximum debt limit (MDL). When requested by the borrower, each month the District Director will provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) In the case of interim financed construction, interest accrued and customary charges necessary to obtain interim financing may be included in the loan amount.

(l) Purchase housing from an interim lender that holds fee simple title to an RRH project upon which construction commenced pursuant to § 1944.235(c)(1) and after issuance of a letter of commitment to the interim lender in accordance with Exhibit B of this subpart, when all of the following conditions exist.

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown in Exhibit B to this subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see § 1944.235(c)(1)(vi) of this subpart), all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with Subparts A and C of Part 1924 of this chapter.

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(m) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(t) of this subpart.

(n) Construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural rental housing. Only the Administrator may authorize loan funds to be used for this purpose.

(o) Finance the conversion of Section 502 units in inventory to a Section 515 project in accordance with the requirements of this subpart and Subpart C to Part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to Section 515 housing.

§ 1944.213 Limitations

(a) *Loan limits.* The amount of the RRH loan(s) on each project is limited to the maximum amount of the State Director's loan approving authority unless the National Office provides prior written authorization. To request National Office authorization, the State Director must submit the preapplication, detailed information on the need and market for the project, and his/her recommendations. This must be done before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan has been determined eligible. Additional loans to the same applicant entity may be made on the same or contiguous site without regard to this limitation if the previous project is completed and is being successfully operated. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For nonprofit corporations, consumer cooperatives, and State or local public agencies, the amount of the RRH loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(t) of this subpart.

(2) For all other applicants, the amount of the RRH loan(s) will be limited to no more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less.

(3) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (a) (1) and (2) of this section. However, Predetermined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month.

(4) All borrowers must agree in writing to provide funds from their own resources to pay any cost for completing planned construction after the MDL is reached.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) Specialized equipment for training and therapy.

(2) Commercial facilities except essential service-type facilities for tenants when such facilities are not conveniently available.

(3) Housing to serve primarily temporary and transient residents.

(4) Nursing homes, special care facilities, or institutional-type homes.

(5) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables, and chairs, etc.

(6) Nonessential facilities such as fireplaces, saunas, whirlpools, gyms, and swimming pools.

(7) Refinancing debts of the applicant except:

(i) As authorized in § 1944.235(c) and § 1944.213(c)(1) of this subpart; or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes will be limited to the amount necessary to obtain the release but will not exceed this "as is" value of the land as determined in accordance with FmHA Instruction 1922–B (available in any FmHA office).

(8) Payment of any fee, charge or commission to any broker, negotiator or other person for the referral of a prospective applicant or solicitation of a loan.

(9) Payment of any fee, salary, commission, profit, or compensation to an applicant or to any officer, director, trustee, stockholder, member, or agent of an applicant except as provided in § 1944.212(j) of this subpart.

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, except as authorized in § 1944.212(c)(2).

(11) Compensation to an applicant for value of land contributed in excess of the initial 5 percent contribution.

(c) *Obligations incurred before loan closing.* When an applicant files a preapplication for a loan, the District Director will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist:

(1) The debts were incurred:

(i) After the applicant filed a written preapplication for a loan with FmHA;

(ii) Prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and the State Director secures prior concurrence from the National Office; or

(iii) Prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and the State Director secures prior concurrence from the National Office.

(2) The applicant is unable to pay the debts from its own resources or to obtain credit from other sources and failure to authorize the use of loan funds to pay the debts would impair the applicant's financial position.

(3) The debts were incurred for eligible loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment of the debts will remove any liens which have attached and any basis for liens that may attach to the property on account of such debts.

(d) *Limitations on cost increases.* After loan approval of a project involving new construction or major rehabilitation:

(1) No increase in per unit development cost will be approved.

whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control, such as:

(i) Design changes required by FmHA or State or local government having jurisdiction over the development of the project; or

(ii) Changes in financing approved by FmHA.

(2) Any cost increase which cannot be approved for funding by FmHA must be satisfied by the owner from its own resources. Whenever there is doubt as to the resulting effect of a cost increase upon per unit development cost, the cost increase request may be conditionally approved provided:

(i) The owner agrees in writing to provide any funds necessary in excess of its initial contribution and the loan amount to complete the project; and

(ii) The owner furnishes surety that guarantees payment under the assurance agreement in the form of a surety bond, unconditional and irrevocable letter of credit or cash which is put into an interest or noninterest bearing supervised bank account. Such funds will not result in a lien on the project or its operating income.

(3) Under no circumstances will a cost increase request be approved without concurrent agreement between FmHA and the applicant/borrower as to how the cost increase will be funded.

§ 1944.214 Rates and terms.

(a) *Interest.* Upon request of the borrower, the interest rate charged by FmHA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice at the time of loan approval, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note, except as provided in § 1944.223 for manufactured housing.

§ 1944.215 Special conditions.

(a) *Cost containment.* To help assure low affordable rental rates, RRH projects must be economical in construction and not of elaborate design or materials. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants.

Cost containment challenges us to consider the cost/benefit ratio when evaluating, recommending or requiring specific design features or construction techniques. The following guidelines should be followed when developing RRH projects:

(1) Each State architect/engineer should compile and maintain data or spreadsheets on cost/sq. ft., cost/unit, and cost/acre, A/E fees, etc., which are reasonable and customary for the State. Any proposal that exceeds those costs should be carefully evaluated for possible cost reductions. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents should be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications should be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which encourage standard building material dimensions and reduce waste will be used as much as possible.

(5) State Directors should encourage the use of sites that require a minimum amount of site development. State Directors should also encourage projects with a minimum of 14 units per acre unless the applicant provides documentation supporting a change, such as local zoning requirements requiring a different density.

(6) Items such as covered parking and garages can be included in the FmHA loan only when they are required by local codes or ordinances.

(7) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs.

(8) When evaluating RRH projects, life cycle costs will be considered. These costs include: Initial costs, future replacement costs and operation and maintenance costs. The economic lives of alternative design and materials will be considered. Reductions in initial costs may result in higher life cycle costs.

(9) Management, maintenance and community rooms should not exceed the limitations described in the FmHA Manual of Acceptable Practices (available in any FmHA office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation and areas for sorting and folding clothes.

(b) *Type of housing.* All housing should be designed to:

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. As a general rule, the gross square foot living area of new rental units and related facilities to be constructed with RRH loan funds will be within the ranges listed below. Living area does not include outdoor storage space when unfinished or space for heating and cooling equipment.

Type of unit	Minimum/ maximum living area
0-Bedroom Unit	350–500 sq. ft.
1-Bedroom Unit	500–650 sq. ft.
2-Bedroom Unit	650–800 sq. ft.
3-Bedroom Unit	800–950 sq. ft.
4-Bedroom Unit	950–1100 sq. ft.

(i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living area is on two floor levels of the rental unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the applicable development standard. Minimum room sizes may be determined by the minimum areas in Guide 2 of Subpart A of Part 1924 of this chapter.

(iv) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size

guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) Consist of multi-unit type housing with two or more units and appropriate related facilities except for the conversion of Section 502 inventory housing as covered in § 1944.232(o) of this subpart, manufactured homes and group living arrangements. Group-type single household dwellings, if financed, must meet the following requirements:

(i) In most cases, consist of single household dwellings that can be economically converted to a rental or homeownership unit for a family if the need for this type housing ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule, the support services must be provided by a State or local public agency. However, a nonprofit organization with a successful history and an ongoing program may be considered capable of providing these support services.

(3) Be residential in character and be designed to meet the needs of eligible tenants. Generally, RRH structures should not be more than three stories high. However, low-rise structures with elevators can be considered when the following conditions exist:

(i) There is a serious shortage of suitable building sites, the number of units needed cannot be built due to lack of space on available suitable sites and other building sites are not available.

(ii) Land costs are such that one- to three-story construction would result in a unit cost and rental rates in excess of what eligible tenants can afford.

(iii) The number of stories proposed for the structure is compatible with other rental structures in the community.

If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures.

(iv) The cost of the units should compare favorably with one- to three-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State architect or engineer has reviewed the plans, specifications and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the applicable development standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Provide kitchen and bath facilities consistent with the size of the unit. For example, units with three or less bedrooms typically can be designed with one bath. However, townhouse units with three or more bedrooms where living area is on two floors may contain bath facilities on both levels. Kitchen facilities are required in all units; however, in congregate housing, some or all of the units may have limited facilities, such as a cooktop with a small oven and refrigerator.

(5) Give maximum consideration to energy conservation. To keep operating costs at a minimum, units should be individually metered for utilities unless adequate justification is provided to show that it would be infeasible.

(6) Meet the needs of handicapped tenants. At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for physically handicapped persons. The percentage of the units provided may be modified if an applicant shows, through information obtained from a State, local or independent agency or organization serving handicapped people, that a different percentage of accessible or adaptable units is appropriate. However, at least one accessible unit will be provided. Adaptable units must be constructed in accordance with the uniform Federal Accessibility Standards, Sections 4.34.3 through 4.34.6.

(c) *Determination of per unit rental rates for group living arrangements.* To determine the amount of rental payment to be collected per unit for housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (line 38 of Form FmHA 1930–7, "Statement of Budget and Cash Flow") will be divided by the total square footage to be occupied by the tenant. If the project also includes conventional rental apartment units (1, 2, 3, etc. bedroom units), the square footage of those *units* (not bedrooms) will be added to the square footage of the other units (bedrooms) contained in the housing involving group arrangement, and the total square footage of all the units will be divided into line 38 of Form FmHA 1930–7. The number arrived at by dividing the total square footage into line 38 of Form FmHA 1930–7 then will be multiplied by the square foot area of each *unit* to determine the rental rate of the particular *unit*. In the case of housing involving a group living arrangement, each bedroom will be counted as if it were one rental unit. However, the bedroom occupied by the resident assistant will be excluded from this number and will not be counted in making the determination of rental payment to be charged to all the other bedrooms occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(d) *Deferred principal payments.*

(1) When construction is funded by multiple advances from FmHA, principal payments on the loan will be deferred for the period of construction.

(2) When an interim financed loan is closed other than the first day of the month, principal payments will be deferred for the remaining period of the month in which the loan is closed.

(3) When construction is substantially complete and the project is ready for full operation, or the total of principal advances plus accrued interest reaches the MDL, interest on the advances will be accrued to the Amortization Effective Date (AED) and will be capitalized, establishing a new principal (loan) amount.

(4) At loan obligation, the MDL will be established according to § 1944.213(a) of this subpart. When the final advance on the loan is issued or the MDL is reached, the Finance Officer will:

(i) Accrue interest on all advances through the last day of the month and capitalize the interest as of the AED. When there is a remaining obligation balance, it will be canceled by the Finance Office.

(ii) Establish the new loan amount and the borrower's monthly payments computed over the remaining term of the loan.

(5) The District Office will:

(i) Contact the applicant and complete Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) Implement Form FmHA 1944–7, "Interest Credit and Rental Assistance Agreement," at AED or when the project is substantially complete and ready for full operation, whichever is later.

(e) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of FmHA when it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible tenants at rental rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart and Subpart F of Part 1951 of this chapter.

(f) *Loan resolution or loan agreement.* The loan resolution or loan agreement

contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. If any provisions are not appropriate to a particular case, proposed substitute language must be approved by FmHA and OGC. Subpart C of Part 1930 provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."

(2) Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."

(3) Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to a Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."

(g) *Interest credits and rental assistance (RA).*

(1) Borrowers may receive interest credits if they meet the requirements outlined in Exhibit B of Subpart C to Part 1930 of this chapter.

(2) RA may be provided to eligible tenants in eligible projects in accordance with Exhibit E to Subpart C of Part 1930 of this chapter.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants. Up to 5 percent can be used for low-income tenants.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital status, handicap or national origin, in accordance with Subpart E of Part 1901 of this chapter.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible tenants as defined in § 1944.205 of this subpart. Eligible tenants must meet the requirements of Exhibit B of Subpart C of Part 1930 of this chapter.

(1) A group living arrangement may limit occupancy to eligible developmentally disabled persons. This limitation will be outlined in the applicant/borrower's management plan. The following will apply to group living homes:

(i) In many cases, tenants of group homes will be paying more than 30 percent of their adjusted income towards shelter costs. Group homes are unique, serve a special need or purpose and tenants residing in them normally have fewer expenses than typical RRH tenants. Most receive social security and/or other benefits provided by the State. Many also receive small incomes from jobs or training centers.

Therefore, group home tenants can usually afford to pay more than 30 percent of their income towards shelter costs. Tenants should have enough income to pay for shelter costs, personal needs and other needs not covered by the State or organization. This policy of acknowledging prospective tenants who will most likely be paying more than 30 percent of their income towards shelter costs in determining project feasibility and size is only in reference to group homes and is not applicable to the regular RRH and congregate housing programs.

(ii) Tenants of group homes may be encouraged but not required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

(iii) The prospective tenants may be selected from the local, regional and/or statewide market area, in that order.

(2) In congregate housing, and housing involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves determining the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competence in the activities of daily living, or it can be made by social or medical sources. The functional impairments of tenants should be verified by one of the following methods:

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with assistance from service(s).

(ii) By the use of any objective guide, such as the guides in Exhibit B–10 of Subpart C of Part 1930, and Exhibit B10A of Subpart C of Part 1930, "Type of Living Environment Needed in Relation to Nature and Degree of Disability." These guides can be used by management to assess a person's capacity for personal care and independent or semi-independent living.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 1944–8, "Tenant Certification," in accordance with Exhibit B to Subpart C of Part 1930 of this chapter.

(k) *Supervision of borrowers.* Supervision will be provided borrowers under Subpart C of Part 1930 and Subpart B of Part 1965 of this chapter.

(l) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 5 percent in § 1944.213(a)(2) of this subpart and may include the following:

(1) Cash contributions made by the applicant which, when added to the FmHA loan amount, are not in excess of the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the FmHA loan amount, is not in excess of the security value of the project. An appraisal will be done by an FmHA employee authorized to make appraisals or an FmHA authorized representative in accordance with applicable FmHA regulations. Value of the applicant's contribution will be determined on an "as is" basis less any amount owed on the property.

(m) *Intergovernmental review.* FmHA will consider comments received in accordance with 7 CFR Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities," when making decisions on loan applications. (See FmHA Instruction 1940–J, available in any FmHA office.)

(n) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects will comply with Subpart G of Part 1940 of this chapter.

(o) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will apply.

(p) *Location of housing.*

(1) The location of the project should expand the supply of decent, safe, and sanitary housing for very low-, low- and moderate-income elderly persons and families in a nondiscriminatory way. The location should promote a greater choice of housing opportunities in the housing market area.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status or physical or mental handicap thereby opening up nonsegregated housing opportunities for minorities.

(3) Except as otherwise permitted by paragraph (p)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project. (See FmHA Instruction 1922–B, § 1922.55.)

(4) In order to provide housing at the lowest cost possible, preference will be given to loan requests in which specific tracts of land will be donated by States, units of local government, public bodies and nonprofit organizations. The land must be suitable for the proposed housing and meet all FmHA site criteria. In addition, affording such preference must be cost effective.

(5) Noncontiguous sites.

(i) Noncontiguous sites within the same community may be considered if feasible. Each site must meet all FmHA site criteria and an appraisal must be made on each site in accordance with § 1922.55(a)(7) of Subpart B to Part 1922 of this chapter (available in any FmHA office). The units must be managed under one management plan with one loan agreement/resolution.

(ii) If a small community cannot support a project containing enough units to make it cost effective or in cases involving conversion of 502 inventory units, FmHA will consider a project which includes more than one site in the same or different communities. The State Office and applicant must mutually agree that the location of the sites will not adversely effect the efficiency of management and servicing of the projects. The requirements of paragraph (p)(5)(i) of this section will also apply.

(6) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with § 1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehensive strategy for meeting their community development and housing needs. That strategy must include the redevelopment, rehabilitation, restoration or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefiting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization:* The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing:* The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development:* The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (p)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed RRH project.

(v) Prior review and concurrence must be received from the National Office before the State Director or District Director authorizes the applicant to develop a complete application. All of the information required in paragraph (p)(6) of this section must be provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in § 1944.10 of Subpart A of Part 1944 of this chapter. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, preapplications received before the date the area was determined nonrural will be processed

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as expeditiously as possible and loans closed if the applicants are otherwise eligible.

(q) *Clean Air Act and Water Pollution Control Act Requirements.* When the contract exceeds $100,000, the contractor will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15 which prohibit the awarding of nonexempt Federal contracts, grants or loans to facilities included on EPA's list of violating facilities. The contractor will report violations to the EPA.

(r) *Concurrence with construction contracts.* A construction contract between the borrower and contractor for development of an RRH project will contain a provision that it is not in full force and effect until the State Director concurs in writing in the form, content and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director of his/her delegate will concur with the contract form, content and execution by including the following paragraph at the end of the contract:

> The Farmers Home Administration, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby concurs with the form, content, and execution of this contract.
> Date ———
> Farmers Home Administration
> By: ———
> Title: ———

(s) *Historic preservation requirements.* The District Director must take the necessary action to assure that the applicant will comply with the provisions of Subpart F of Part 1901 of this chapter. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291), and Executive Order 11593 dated May 13, 1971.

(t) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which an RRH project will be located. FmHA loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at Part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(u) *Rental assistance (RA) and market feasibility.*

(1) As evidence of market feasibility, an applicant that proposes a project which is expected to use FmHA RA units will only be required to demonstrate that a market exists for tenants eligible for the RA.

(2) To evidence market feasibility for projects which are expected to use RA from sources other than FmHA, applicants will be required to demonstrate that:

(i) The assistance will be provided for at least 5 years.

(ii) A market exists for persons and families eligible for the assistance. The amount of the RA to be provided must be considered when determining the number of families that would be income eligible for the project.

(iii) For the term of the loan remaining after RA is no longer available, an adequate rental market exists for the project without the assistance.

(iv) During the term of the RA contract, the provider will make available the amounts required at least annually.

§§ 1944.216–1944.220 [Reserved]

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a)(1) and (3) of this section, will be taken on the property purchased or improved with the loan.

(1) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish out units on the site or when a second initial loan is made to develop units on a contiguous site.

(2) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships, the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the promissory note and mortgage.

(3) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(b) *Financing Statement.* To secure the FmHA loan, each borrower will execute Form FmHA 440–25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA RA payments, State or private RA payments and/or tenant rent payments.

(c) If a bond is used in lieu of a promissory note to evidence a loan, it must be sent to the National Office for review prior to loan closing. OGC must also review the proposed bond.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by the multiple housing appraiser or a designated appraiser authorized to make real estate appraisals. If the security involves two or less rental units, the property will be appraised under Subpart C of Part 1922 of this chapter. For security involving more than two rental units, the appraisal will be made under Subpart B of Part 1922 of this chapter (available in any FmHA office). Form FmHA 426–1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Architectural and engineering services.*

(1) Housing and related facilities will be planned and developed in accordance with Subparts A and C of Part 1924 of this chapter. The housing will be designed to meet the needs of the types of tenants who will likely occupy it.

(2) A written contract for architectural services will be required as outlined in Subpart A of Part 1924 of this chapter.

(c) *Construction and development policies.* Construction and development will be performed in accordance with Subpart A of Part 1924 of this chapter (FmHA Instruction 1924–A), available in any FmHA office.

(d) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all applicable laws and statutes pertaining to the operation of a facility in which some of the tenants may require some supervision and central services.

(e) *Contracts for legal services.* On projects requiring extensive legal services, the applicant must have a written contract if loan funds will be use for these services. All contracts will be subject to review and concurrence by FmHA and should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(f) *How to apply for a rural rental housing loan.* Exhibit A may be used as a guide for applicants applying for loans. Extra copies may be obtained from FmHA.

(g) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant must obtain an option on the parcel to be purchased. Form FmHA 440–34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440–34 is used, a provision should be included indicating that it is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440–35, "Acceptance of Option," or other appropriate form of acceptance completed, signed and mailed to the seller.

(h) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Subpart A of Part 1944 and Part 1807 of this chapter (FmHA Instruction 427.1) regarding title clearance and legal services will apply.

(i) *Use of and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of Subpart A to Part 1902 and Subpart C to Part 1930. Collateral for deposit of funds will be pledged in accordance with § 1902.7 of Subpart A of Part 1902 of this chapter. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds cannot be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for eligible loan purposes.

(j) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1) and Subpart C of Part 1930 of this chapter.

(2) Suitable worker's compensation insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged or required, when appropriate, to obtain liability insurance.

(4) Flood insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart B of Part 1806 (FmHA Instruction 426.2).

(k) *Bonding.*

(1) The provisions of Subpart A of Part 1924 of this chapter pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the officials, employees and/or management agents entrusted with the receipt, custody and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will likely have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(l) *Previous participation certification.* All principals and affiliates are required to submit a properly completed Form HUD–2530/FmHA 1944–37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The forms will be completed and processed in accordance with instructions attached to the form.

§ 1944.223 Supplemental requirements for manufactured home rental project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible tenants will also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* When a loan is closed on a manufactured home rental project, the borrower will have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(1) of this subpart, or will be obligated to construct and complete, pursuant to § 1944.235(c)(2) of this subpart, such project designed principally for rental use for manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(1) The borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more continguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided in § 1944.212(l) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount will be determined in accordance with § 1944.213(a) (1) or (2) of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan will not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance will

the amortization period for a loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the project is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Property requirements.*

(1) Construction and developoment of the project, including related facilities constructed or erected on the security property, will be in accordance with § 1944.222(d) of this subpart and Exhibit J to Subpart A of Part 1924 of this chapter.

(2) Manufactured home rental projects will be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony will be avoided. All property improvements will relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently, and conveniently arranged in relation to the topography and the shape of the property.

(3) The borrower will not use or permit the use of any portion of the security property for demonstrating mobile home models for sale promotion purposes.

(4) The manufactured home, when placed on site, will have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA adopted standards which are identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(iii) Be constructed in compliance with FmHA thermal performance construction standards as specified in Exhibit D to Subpart A of Part 1924 of this chapter. The unit must have an affixed label as specified in paragraph XIV(c)(3) of Exhibit F to Subpart A of Part 1944 of this chapter indicating that the unit is constructed to FmHA thermal requirements for the appropriate winter degree days.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA as evidenced in Part A, paragraph V of Exhibit J to Subpart A of Part 1924 of this chapter. All units must conform to the HUD "Federal Manufactured Home Construction and Safety Standards," and be identified by an affixed certification label according to Exhibit J to Subpart A of Part 1924 of this chapter.

(f) *Special warranty requirements.* The general contractor or dealercontractor, as applicable, must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924 of this chapter.

(1) The warranty will provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty will also include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the borrower may have.

(4) The seller of the manufactured homes will deliver to the borrower the manufacturer's warranty. The warranty will identify the units by serial number.

§§ 1944.224–1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible tenants in need of adequate housing. Preapplication information is used to determine the applicant's eligibility, project feasibility and priority for available funds, thereby eliminating proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all additional information and material outlined in Exhibit A–6.

Preapplications should be filed in the FmHA District Office.

(a) *Actions by the District Office.*

(1) The District Director should handle initial inquiries and provide basic information about the program. He/she should provide the preapplication form (Form AD–621), Exhibit A–6 to this subpart and Form FmHA 1940–20, "Request for Environmental Information." The District Director may assist applicants in completing Form AD–621 and the information required in Exhibit A–6. He/she should advise the applicant not to prepare or develop an application until notified by FmHA to proceed.

(2) Upon receipt of the Form AD–621 and all other required information and materials, the District Director will thoroughly review the package for completeness, accuracy, eligibility, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. In cases where the District Director determines the applicant not eligible, he/she will inform the applicant by issuing Form AD–622, "Notice of Preapplication Review Action," and include the applicant's appeal rights in accordance with Subpart B to Part 1900 of this chapter.

(3) The District Director should check the Multi-Family Housing Information Status Tracking and Retrieval System (MISTR) to see if the applicant has pending preapplications in other districts or States. If so, the District Director should be sure that the applicant's pro forma statement shows that the applicant has the financial strength to meet the requirements of all preapplications.

(4) All preapplications determined eligible and feasible by the District Director will immediately be rated in accordance with the priority processing system established in this subpart. Processing of loan requests within annual allocations will be based on the priority points received.

(i) *Projects in areas or communities having a high percentage of substandard housing.* For this purpose, each State will use the county data based on the latest published census unless better and more specific statewide data is available. Some counties with a low percentage of substandard housing have areas with a substantially higher percentage of substandard housing. In these cases, you may use reliable income data for those specific communities/areas for assigning points. If the State mean of substandard housing exceeds 15 percent, use Chart A. If the State mean is 15 percent or less, use Chart B. Forty points to be distributed in the following manner:

A	B	Points
Over 34 pct	Over 18 pct	40 points.
31–34 pct	17–18 pct	35 points.
27–30 pct	15–16 pct	30 points.
23–26 pct	13–14 pct	25 points.
19–22 pct	11–12 pct	20 points.
15–18 pct	9–10 pct	15 points.
11–14 pct	7–8 pct	10 points.
7–10 pct	5–6 pct	5 points.
0–6 pct	0–4 pct	0 points.

(ii) *Projects in areas or communities having the lowest median rural household income.* For this purpose, each State will use county data based on the latest published census unless better and more specific Statewide data is available. Some counties with high median incomes have areas of substantially lower income. In these cases, you may use reliable income data for those specific communities/areas for assigning points. Thirty points to be distributed in the following manner:

Less than 75% of State household income—30 points
75–79.....25
80–84.....20
85–89.....15
90–94.....10
95–100.....0

(iii) *Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line around urban areas considered ineligible for FmHA housing loans as determined by § 1944.10 of Subpart A of Part 1944 of this chapter.* Twenty points to be distributed based on map mileage from project site to urban area line over normally traveled roads in the following manner:

20 or more miles—20 points
15–19.....15
10–14.....10
5–9.....5
0–4.....0

(iv) *Projects located in communities or market areas which do not have subsidized rental housing in operation or authorized.* Ten points to be distributed in the following manner:

No subsidized rental housing project—10 points
No subsidized rental housing project of the same type (elderly, congregate, group type living, or family) as proposed—5
Existing or authorized rental project of the same type as proposed—0

(v) *Projects assured of having National Office approved rental subsidy from sources other than FmHA.* Twenty points will be distributed in the following manner:

51–100 percent of units—20 points
21–50 percent of units—15
10–20 percent of units—10
0–9 percent of units—0

(vi) *Projects designed and planned for elderly persons.* Ten points will be distributed in the following manner:

Elderly projects—10 points
Other type projects—0

(vii) *Projects in which specific tracts of land will be donated in accordance with § 1944.215(p)(4) of this subpart.* Five points will be distributed in the following manner:

Projects with donated land—5 points
Other type projects—0

(viii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations.

(ix) In other cases where requests are essentially equal, preference will be given to preapplications based on preapplication date.

(5) The District Director must compare the rated preapplications with other rated preapplications on hand. He/she must make a conscientious analysis of which loans will be able to be funded and document his/her analysis.

(6) Preapplications with an exceptionally low priority rating which are not likely to be funded within the next 12 months will be returned to the applicant with an indication of eligibility and informed that the priority rating is too low for processing. The District Director may, if appropriate, indicate ways to increase the priority rating.

(7) The District Director will fully review the remaining rated preapplications to determine feasibility. In cases where the application is determined to be infeasible, he/she will inform the applicant by using Form AD–622 and include the applicant's appeal rights in accordance with Subpart B to Part 1900 of this chapter.

(8) After determining the priority ranking of the preapplication, the District Director should record the points earned on Form FmHA 1905–11, "Application and Processing Card—Association," in column 1 immediately following the applicant's name.

(9) After completing the review and ranking in accordance with the priority processing system established in this subpart, the District Director will proceed as follows based on the application processing levels prescribed by the National Office:

(i) In States that allocate funds to districts:

(A) The District Director will select the highest ranking preapplications up to the prescribed processing levels for the district. Applicants having eligible preapplications that do not rank high enough and future applicants having eligible preapplications will be notified using Form AD–622 of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplication at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(B) Preapplications within the District Director's approving authority will be reviewed in accordance with the provisions in § 1944.231(b) of this subpart. Applicants with the selected preapplications will be notified using Form AD–622 of their eligibility and feasibility and advised to develop an application. At this point, the District Director should provide the applicant with a copy of the Multiple Housing Management Handbook, Exhibit B of Subpart C of Part 1930 of this chapter.

(C) Selected preapplications in excess of the District Director's approval authority will be submitted to the State Office for review. The applicant will be notified in writing of this action.

(ii) In States that do not allocate funds to districts:

(A) The District Director will assemble the preapplication in a case file and forward the following to the State Director:

(*1*) Form AD–621.

(*2*) All information and material listed in Exhibit A–6.

(*3*) Original and one copy of Form FmHA 1940–21, "Environmental Assessment for Class I Action," or Exhibit H, depending on whether the assessment is a Class I or Class II action in accordance with Subpart G of Part 1940 of this chapter.

(*4*) The District Director's comments on eligibility and his/her recommendations.

(*5*) Comments and recommendations concerning the proposed project site resulting from an onsite visit to determine its overall desirability and conformance with the site location requirements indicated in § 1944.215(p) of this subpart.

(*6*) An updated copy of Form FmHA 1905–11.

(B) No Form AD–622 will be issued by the District Director until notified by the State Director.

(b) *Actions by the State Office.*

(1) Unless the applicant is an individual or an organization adopting without change the articles and bylaws prescribed by Exhibits C and D of this subpart or by State supplements or has received clearance from OGC for the same type of financing, the documentation necessary to make an eligibility determination and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(2) The State Director will evaluate the preapplication and the District Director's eligibility and feasibility determination and recommendation. The evaluation will include a review of the proposed development by the State Office architect who will advise the State Director on the acceptability of the proposed development.

(3) Selected preapplications that exceed the State Director's approving authority will be sent to the National Office for evaluation, authorization and guidance. When preapplications are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary drawings and specifications, together with the architectural comments and recommendations of the State Office architect.

(iii) The information required by § 1944.213(a) of this subpart.

(iv) The District Director's comments and recommendations.

(v) The State Director's comments and recommendations.

(4) In States that allocate funds to districts, the State Director will notify the District Director of the review results. The State Director will return the preapplication and the executed original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the District Office with authorization for the District Director to prepare and issue Form AD–622.

(5) In States that do not allocate funds to districts, the State Director should proceed as follows:

(i) After reviewing the priority rating of the preapplication, the State Director should rank and record the points earned on Form FmHA 1905–11. This form will be maintained in the State Office.

(ii) The State Director will select the highest ranking preapplications up to the prescribed processing levels for the State. Applicants having eligible preapplications that do not rank high enough and future applicants having eligible preapplication will be notified through the district office, using Form AD-622, of their eligibility but advised that processing priorities and current funding levels will not permit further processing of their preapplications at this time. These preapplications will be ranked numerically based on their rating. As applications are approved, withdrawn or rejected and/or annual allocations increased which permit further authorizations, the applicant having the preapplication with the next highest numerical ranking will be contacted. If the factors supporting the ranking still exist, authorization to develop an application will be given.

(iii) The State Director will return the preapplication and the review results to the district office. For selected preapplications, the State Director will execute the original Form FmHA 1940–21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, with authorization for the District Director to prepare and issue Form AD–622.

(c) *Summary.* The District Director will prepare Form AD–622, stating the results of the review. The original will be signed and delivered to the applicant, with a copy to the applicant's case file and a copy to the State Director.

(1) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered and informed in accordance with Subpart B of Part 1900 of this chapter that they may request a further review of this decision.

(2) Applicants with preapplications which are eligible and feasible, but are unable to be selected for further processing, will be notified that their preapplications were determined eligible but lacked sufficient priority to authorize further processing at the present time. Applicants should be advised that their preapplication will be retained and considered for future funding based on its rating. If funding is not authorized within one year from the date of the Form AD–622, applicants will be notified in writing that their preapplication will no longer be considered unless it is resubmitted or updated. In addition, until loan funds are available, applicants will be advised against incurring obligations for legal, architectural and engineering work, perfecting interests in land rights and inviting construction bids or making other commitments which cannot be fulfilled without loan funds.

(3) When an applicant is notified to proceed with an application, the District Director should establish specific deadlines for developing the proposal to avoid unreasonable delays by applicants not prepared to proceed. In addition, the following paragraph should be contained on or attached to Form AD–622:

(i) "The review action taken by FmHA is based on representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant must be reported to and approved by FmHA in writing."

(ii) "Any changes not approved by FmHA will be cause for FmHA to discontinue processing the application." All applicant requesting changes will be required to give full justification for each change and, if FmHA approval is not given, written reasons should be provided along with a 30-day negotiation period to resolve the differences."

(iii) "This action is not to be considered as loan approval or as a representation of the availability of funds."

(iv) "The loan docket may be completed on the basis of a loan not to exceed the amount on Form AD–622."

(v) "If a complete application has not been developed in approvable condition by the date specified on Form AD–622, FmHA reserves the right to discontinue processing the application."

§ 1944.232 Rental assistance (RA) from sources other than FmHA.

RA from sources other than FmHA may be used in new or existing RRH projects. It may be used alone or may be combined with FmHA RA.

(a) *Provisions of memorandum of understanding.* FmHA will consider entering into a memorandum of understanding with other providers of RA, such as State or local public entities, profit or nonprofit organizations, individuals or other providers acceptable to FmHA. The memorandum of understanding will be executed between FmHA and the provider prior to the State Director issuing Form AD–622 for new projects. At a minimum, the memorandum of understanding must contain the following provisions:

(1) The dollar amounts of RA per unit and the length of time of RA will be provided.

(2) A copy of the proposed RA agreement, which is the instrument of agreement involving the tenants, owner and provider of assistance. FmHA will not be a party to the RA agreement nor have any responsibilities under the agreement. The RA agreement must state that:

(i) The payments should be paid directly to the tenants or the owner, who must advise the tenants of the amount and source of the assistance through the lease or a supplement to the lease.

(ii) Sufficient funds will be set aside in a way that assures availability of RA for the life of the RA agreement, which must be for at least 5 years. The method of supplying the funds must be clearly set forth.

(b) FmHA will provide reasonably required information including the tenant eligibility certification needed to execute the provisions of the RA Agreement and the memorandum of understanding.

(c) The memorandum of understanding (including the RA agreement) must be submitted by the State Director to the National Office for concurrence prior to execution with the provider of the RA. If the memorandum of understanding encompasses multiple projects and/or multiple borrowers, you must request blanket authorization for all projects covered by the memorandum of understanding instead of submitting each preapplication to the National Office.

§§ 1944.233–1944.234 [Reserved]

§ 1944.235 Actions subsequent to loan approval.

(a) *Precommitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) The applicant must execute the appropriate loan agreement or loan resolution required in accordance with § 1944.215(f) of this subpart.

(2) FmHA will obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this chapter (FmHA Instruction 427.1) and § 1944.236(a) and § 1944.246(b)(4) of this subpart.

(3) Unless initial operating and maintenance capital is included in the loan, the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(4) The applicant will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Transfer of obligations.* The transfer of fund obligations may occur only when:

(1) *Organizational entity remains the same.* The entity remains legally the same but a substitution of the members occurs. All or part of the membership may change as long as eligibility is not affected. The project site location and market must remain the same.

(2) *Organizational entity changes.* The membership and their interests remain identical, the project site location and market are the same, but the legal entity changes.

(c) *Financing during the construction period.*—(1) *Interim financing.* When the amount of the RRH loan exceeds $50,000, the applicant should obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will proceed as if FmHA funds had been advanced from the standpoint of approving construction contracts, inspection of construction and assuring compliance with applicable equal opportunity and nondiscrimination.

(ii) The guide letter shown as Exhibit B of this subpart will be used to inform a proposed interim lender that a specified amount of funds have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the applicant is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213(a)(2) of this subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will be handled in accordance with § 1944.213(c).

(v) A supervised bank account need not be established for funds obtained through interim financing except for any small amounts held to complete construction so loan funds can be fully advanced and AED can be established. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payments will be submitted through the District Director on Form FmHA 1924–18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant and FmHA representative shown on Form FmHA 1924–18. For recordkeeping purposes, Form FmHA 402–2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender and payments of estimates where FmHA has approved the estimate.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible, in accordance with any contract documents, applicable State or local codes or ordinances and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. To evidence that there are no unpaid obligations outstanding in connection with the project, the applicant must submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer and attorney indicating that obligations for material, labor or services have been paid in full in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 1924–10, "Release by Claimants," or other similar form may be used for this purpose. If these statements cannot be obtained, the loan may be closed if all of the following can be met:

(A) Statements to the extent possible are obtained.

(B) The interests of FmHA can be adequately protected and its security position is not impaired.

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(2) *Multiple advances of RRH loan funds.* If interim financing is not available and the applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for these purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing these loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (c)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, there should be no more than 24 advances. These advances should generally be used within 2 years of loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering or architectural costs, interest and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing _____," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or his/her designee.

(iii) After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals in accordance with the MFH user procedure. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	$40,000

An advance of $40,000 would then be available on July 1, the date of loan closing.

(iv) The second advance is also based on the borrower's estimate prepared on Form FmHA 440–11 which must be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	$21,000

(v) When the project is substantially complete in accordance with § 1944.235(c)(i)(vi), schedule final payment to the contractor for disbursement. Withhold funds over the amount needed to cover the costs for correcting or completing the minor items identified from the contractor's final payment in accordance with the requirements of Subpart A to Part 1924 of this chapter until full performance. Any funds withheld should be deposited in the supervised bank account so the loan can be fully advanced and AED can be established.

(vi) If funds remain after the loan is fully disbursed and AED has been reached, they must be put into a supervised bank account. The funds cannot be returned on the loan to be drawn later since AMAS will treat as a refund.

(vii) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(d) *Requesting the check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with paragraph (c)(1) or (c)(2) of this section. The District Director or his/her designee will then order the loan check through field office terminals so that it will be available on or just before the date set for loan closing.

(e) *Increase or decrease in the amount of the loan.*

(1) If it is necessary to increase the amount of the loan within *the same fiscal year* but before loan closing, the loan approving official or District Director will request that all distributed docket forms be returned to the district office. The loan docket will be revised accordingly and reprocessed provided no funds have been disbursed. The State Office, through a field office terminal, must deobligate the existing obligation and enter the new amount to be obligated.

(2) If it is necessary to increase the amount of the loan in *the next fiscal year* but before loan closing, the District Director must process a subsequent loan for the amount of increase.

(3) If it is necessary to decrease the amount of the loan before closing, the deobligation will be processed through field office terminals.

(f) *Cancellation of the loan.* Loans may be canceled after approval and before loan closing in accordance with instructions on the Form Manual Insert (FMI) for Form FmHA 1944–53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation."

(1) *Treasury check method.* If the loan check is received in the District Office, the District Director will return the check to the Finance Office with an original and one copy of Form FmHA 1944–53, unless it was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instruction 2024–P (available in any FmHA Office).

(2) *Electronic wire transfer method.* The District Director should request the financial institution to mark it "void" and issue a check payable to FmHA. This check will be endorsed and deposited through the concentration banking system. An original and one copy of Form FmHA 1944–53 will be sent to the Finance Office.

(3) *Notification.* Notify all interested parties of cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, notify the applicant that the decision may be appealed in accordance with Subpart B to Part 1900 of this chapter.

(g) *Handling the loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office and Subpart A of Part 1902 of this chapter.

(h) *Prerent-up conference.* To promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant and management firm, if any, soon after loan approval. Among the items that should be discussed are the advertisement of available units, the affirmative fair housing marketing practices, tenant eligibility and tenant selection criteria.

(1) The District Director will review the applicant's marketing plan to determine that it is complete and all supplemental information is provided. If the plan needs to be modified before marketing activity begins, approval must be granted from the official authorized to approve the loan. The District Director will review the approved operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, a rent change will be made according to Exhibit C of Subpart C to Part 1930 of this chapter.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an effort to attract applications for housing from all groups in the market area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex or national origin, outreach efforts will be extended to persons who would not be expected to apply for the housing. The efforts will be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy by any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective and/or if there are changes in the housing markets, the applicant may be required to modify the marketing plan for the project. If the District Director determines that the applicant is in noncompliance with the plan and a modification to the plan is not warranted, the matter will be referred to the FmHA Administrator, attention Equal Opportunity Staff Director, through the State FmHA compliance officer.

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any State supplements. Loan dockets for organization and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, Form FmHA 427–1 (State), "Real Estate Mortgage for _____," will be used. For loans to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address and other identification of the borrower, the style of execution and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for as long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for as long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, include an additional paragraph in the mortgage to read as follows:

This instrument also secures the obligations and convenants of borrower set forth in borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference.

(3) For a loan to an individual when a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

(i) "Occupancy of the housing and related facilities on the property will be limited to eligible tenants as defined in the regulations of the Farmers Home Administration unless the Government gives prior written approval to other occupancy."

(ii) "As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of borrower; submit regular and special reports pertinent to the purpose of the loan or the Government's financial interest; subject rents and charges and other terms of rental agreements with tenants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing will be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan."

(4) For a loan to a limited partnership, the following nonrecourse language should be inserted, subject to modification by the OGC:

No partner, either general or limited, will have any personal liability for the payment of all or any part of the indebtedness.

(5) For all section 515 RRH loans, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this _____ (15 years for unsubsidized and 20 years for subsidized loans) year period beginning _____ (the date the last loan on the project is closed). No person occupying the housing will be required to vacate prior to the close of such _____ (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

(c) *Promissory note.*

(1) Form FmHA 1944–52, "Multiple Housing Promissory Note," will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be obligated amount as shown on Form FmHA 1944–51, "Multiple Family Housing Obligation-Fund Analysis." The note will be dated the date of loan closing except as authorized in Part 1807 of this chapter (FmHA Instruction 427.1). If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI and as provided in § 1944.215(d) of this subpart.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(5) All loans will be closed on PASS as described in Subpart K of Part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All RRH loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be sent to the National Office prior to loan approval with all necessary information for review and further instructions.

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy, including the recording data showing the date and place of recordation and book and page number, will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.*

(1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established at the district office following the requirements of FmHA Instructions 1905–A and 2033–A (available in any FmHA office).

§ 1944.237 Subsequent RRH loans.

(a) A subsequent RRH loan is a loan made to an applicant/borrower to complete, improve, repair and/or expand the project initially financed by FmHA.

(b) If the designation of an area changed from rural to nonrural after the initial FmHA loan was made, a subsequent loan can be made, only to make necessary improvements and repairs to the property.

(c) In case where the loan is to complete the original housing under the initial FmHA loan:

(1) If the applicant/borrower provided an initial investment greater than the 5 percent required under the intial FmHA loan, the excess may be credited toward the required 5 percent initial investment of the subsequent loan; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial O and M requirements.

(2) If the initial 5 percent investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, the applicant/borrower must provide the additional 5 and 2 percent amounts to cover the subsequent loan.

(d) If the loan is to repair and/or improve an existing project which has been in operation for some time, then:

(1) The applicant/borrower should not be required to provide the initial 2 percent O and M amount since its purpose is to cover project start-up costs.

(2) The applicant/borrower must provide the initial 5 percent investment unless it provided more than the required 5 percent when the initial loan was made. When the applicant/borrower has more than 5 percent invested in the initial loan, the excess may be credited toward the required 5 percent investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA loan.

(e) A subsequent loan will be subject to the restrictive use provisions cited in § 1944.236(b)(5) if this subpart. The cited language for the subsequent loan only must be appended to the mortgage referencing all notes for a term beginning on the date of loan closing. The advice of OGC should be sought in carrying out the provisions of this paragraph.

§ 1944.238 [Reserved]

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH.

Any tenant or applicant for occupancy or use of RRH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, martial status, handicap or national origin may file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA County, District or State Office, it should be directed to the Office of Equal Opportunity (USDA–OEO) by the FmHA employee in charge of that office. If the complaint is sent to USDA–OEO by a County or District Office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA district office. The complainant should provide the following information:

(1) The name and address (including telephone number) of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly send it to the USDA OEO, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the District Director or State Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA OEO will determine whether discrimination occurred. Appropriate steps will be taken to ascertain the essential facts. The USDA OEO will handle complaints in accordance with Department regulations, which are found at 7 CFR 15.8.

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such findings and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower fails to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such

requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the RRH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

§§ 1944.241–1944.249 [Reserved]

§ 1944.250 OMB control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575–0047.

Exhibit A of Subpart E—How To Bring Rental Housing To Your Town

I Introduction
II Applying for a Loan
III Review of the Preapplication
IV Developing the Loan Docket
V Review of the Complete Docket
VI Construction
VII Open House
VIII Exhibits
A–1 Legal Services Agreement (For Nonprofit Organizations)
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Rental Housing Survey Summary
A–5 Housing Allowances for Utilities and Other Public Services
A–6 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) Loan
A–7 Outline of Professional Market Study
A–8 Information to be Submitted with Application for a Rural Rental Housing (RRH) Loan

I. Introduction

A. Most areas in rural America need more adequate rental housing. Some people with modest incomes live in impoverished housing that is cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Other households that prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities.

B. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for loans. Information about these loans is available at the local FmHA office.

C. This handbook will assist interested persons and groups in applying for a Rural Rental Housing (RRH) loan. It also briefly explains requirements regarding the construction and operation of the rental housing.

D. The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization or an individual.

E. The objective of the RRH loan program is to provide credit for rental housing that serves the needs of eligible very low-, low-, and moderate-income permanent tenants.

F. Successful rental housing depends on the existence of the following three important conditions:

1. There must be a need for the rental housing to be built.

2. The housing must fit the needs of prospective tenants from the standpoint of location, design and cost.

3. The applicant must provide good management.

G. An applicant for a loan must provide adequate information to FmHA to show that these basic conditions can be met.

II. Applying For a Loan

A. An individual, organization or group organizing to provide housing may apply for an RRH loan through the local FmHA District Director serving the area where the housing will to be located.

B. The applicant should read Subpart E of Part 1944 of this chapter before applying for a loan. The applicant also should discuss the proposed housing with the District Director before completing a preapplication.

C. Applying for a loan with Form AD–621, "Preapplication for Federal Assistance." Included with the preapplication form should be the supporting material or information listed in Exhibit A–6. This information will enable FmHA to determine:

1. The eligibility of the applicant;

2. The feasibility (economic, environmental and architectural) of the proposed housing; and

3. Whether the proposed housing can appropriately be financed by FmHA.

D. This information usually can be furnished by the applicant without hiring extensive professional services. It should be factual and specific based on objective investigations and realistic estimates.

III. Review of the Preapplication

A. If the proposal exceeds the District Director's approval authority, he/she will submit the docket to the FmHA State Director for consideration. If the proposal exceeds the State Director's approval authority, he/she will send the docket, including comments and recommendations of the District and State Office staffs, to the FmHA National Office in Washington, DC for review.

B. The completeness and accuracy of information submitted with the preapplication is especially important when reviews are necessary by FmHA offices remote to the proposed site and without direct knowledge of conditions and circumstances involved with the project. The description of the planned housing must be clear, complete, and concise to ensure timely reviews by FmHA.

C. When the reviews are completed, the District Director will notify the applicant, using Form AD–622, "Notice of Preapplication Review Action," of FmHA's decision.

If it appears a loan can be made, the District Director will explain the additional steps that will be required. If favorable action cannot be taken on the preapplication, the District Director will explain why and may be able to suggest changes to permit a loan to be made.

IV. Developing the Loan Docket

A. When an applicant is authorized to submit a formal application, the District Director will review the items required in Exhibit A–8. The amount of information required will vary based on the complexity and size of the proposed project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required.

The District Director will assemble this information and complete the docket.

B. The following information will be helpful in developing a loan docket. The first two items are applicable only to nonprofit organizations. The other items apply to any applicant. In addition, the requirements of Exhibit A–6 of this instruction must be met when developing a preapplication and the requirements of Exhbit A–8 must be met with developing an application.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.*

a. *Sterring committee.* The group may choose a steering committee to act for it. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. *Articles of incorporation and bylaws.* FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

c. *Attorney's fees.* Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A–1 for a sample copy of an agreement.

d. *Board of directors.* The steering committee usually selects the incorporators for the corporation. The board of directors is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. *Obtaining broadly based membership.*

a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership, including leaders in the community, representing a variety of interests in the community. The members may be individuals or organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support of the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) *Number of members required.* The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(2) *Contributions by members.* Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupany of the housing.

3. The applicant should communicate with officials of the community early in the development of the proposal to explain the benefits of the proposed housing to the community. This meeting will serve to remove the uncertainty of the impact of the housing on the community and may aid in a timely processing of the preapplication. The support of community officials is helpful in obtaining environmental clearances, possible zoning changes, favorable taxation, etc.

4. *Initial operating capital.*

a. All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in a loan made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when the applicant is an organziation, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

b. At least 2 percent of the total development cost of the project is required for initial operation and maintenance costs. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupany and rental income will be available. The actual budget may indicate that more than 2 percent is needed.

5. *Anclysis of market to determine demand for rental housing.*

a. Applicants should discuss with the Distict Director the type of market analysis that will be needed. Applicants must comply with paragraph II of Exhibit A–6 when preparing market information.

b. Exhibits A–3 and A–4 are sample forms which may be modified by the applicant to assist in the assembly of the information for the market analysis.

6. *Planning to serve the market.*

a. Planning the housing to serve the market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent, living at a cost eligible tenants can afford. Well planned housing is:

(1) Convenient, attractive, safe, and comfortable.

(2) Easily maintained.

(3) Located where its tenants can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Priced to rent for no more than the prospective tenants can afford.

(6) Energy efficient and complies with FmHA's thermal performance standards.

b. The District Director and State Office architect can provide information that will help the applicant in planning the housing.

7. *Selecting an architect.*

a. The services of an architect are required for all housing projects which have more than five units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA architect/engineer and the District Director should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the rental housing program.

(2) Design requirements that will produce good housing at reasonable cost.

(3) States at which FmHA must review plans and specifications.

(4) Services the architect will be expected to perform.

(5) Agreement between architect and applicant.

8. *Selecting a site.*

a. The location of the housing is an important part of planning to serve the market. Tenants should have easy access to required services. A desirable residential setting within the rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan. However, loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The applicant must consider the site requirements detailed in paragraph III of Exhibit A–6 of this subpart. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA loan without consulting with the District Director and prior to the Agency's completion of the environmental impact review.

9. *Drawings, specifications and cost estimates.*

The size, complexity, and cost of rental housing projects can vary from a duplex located on a small building lot to a complex of buildings located on a site containing several acres. The applicant must provide drawings and specifications in accordance with paragraph IV of Exhibit A–6 of this instruction.

10. *Budgets.*

a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation after the project is occupied. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and accompanying Exhibit A–5 of this subpart are a sample budget form and utility allowance form.

11. *Loan resolution or loan agreement.* When the applicant is a corporation or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

12. *Management plan.* A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of Subpart C to Part 1930 of this chapter.

13. *Manager and caretaker.*

a. A comprehensive management program is essential to the successful operation of the project. A carefully written plan should be developed in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

b. The use of an onsite manager should be based on the size of the project. The manager should be readily available to the tenants. The manager might be one of the tenants or a member of the board of directors of a nonprofit corporation. The manager's duties should be specified in the management plan.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that enterprise is being managed successfully.

14. *Occupancy policies.*

a. Applicants should review carefully the occupancy requirements with the District Director. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible tenants regardless of race, color, religion, sex, National origin, age, handicap or marital status.

(2) The incomes of tenants must be within the maximum income limits approved by FmHA.

b. Additional guidance concerning occupancy in congregate housing projects can be found in Exhibits B–10 and B–10A to Subpart C of Part 1930 of this chapter.

15. *Rules and regulations.* The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

16. *Lease.* The applicant should develop an application form for occupancy and a lease agreement form in accordance with the requirements of Subpart C of Part 1930 of this chapter. Copies of these forms should be included in the loan docket.

17. *Affirmative Fair Housing Marketing.* In order to promote proper planning for initial rent-up and occupancy, the District Director will meet with the applicant after loan approval, preferably at the preconstruction and/or the prerent-up conference to discuss the Affirmative Fair Housing Marketing Plan or other similar agreement approved for the project.

V. Review of The Complete Docket

A. When the applicant has developed the complete loan docket, it should furnish and discuss the information with the District Director. Form AD–625, the information and materials listed in Exhibit A–8 plus FmHA forms provided by the District Director become the loan docket.

B. If the docket is submitted to the State Office for consideration, the State Director will indicate any special requirements that need to be met before loan approval or loan closing.

C. Commercial financing should be used during the interim construction period if available at reasonable rates and terms. FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA District Director.

D. In other cases FmHA can make advances of loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

VI. Construction

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. *Starting construction.* Construction should not be started until the FmHA loan is closed or the FmHA commitment has been made to the interim lender.

B. *Competitive bidding.*

1. Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the District Director to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, a qualified FmHA representative and the applicant and its architect will inspect the work to protect their respective interests in the project. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

C. *Construction without competitive bidding.* When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract concurred with by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, inspection of the work will be performed by the architect's staff. The applicant and FmHA will inspect the construction to protect their respective interests in the project. Payments will be made to the contractor in accordance with the terms of the contract.

VII. Open House

Promotion of the housing availability should start at least 90 days prior to completion. The applicant may want to create interest in the housing and build up the list of prospective tenants by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. Exhibits

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit

A–1 Legal Services Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Rental Housing Survey Summary
A–5 Housing Allowances for Utilities and Other Public Services
A–6 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) Loan
A–7 Outline of Professional Market Study
A–8 Information to be Submitted with Application for a Rural Rental Housing (RRH) Loan

Exhibit A–1—Legal Services Agreement (For Nonprofit Organizations)

(SAMPLE)

Agreement made this _____ day of _____ 19 ____ between the _____, hereinafter called the owners, and _____, hereinafter called the attorney, witnesseth:

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in

_____

(Town)

_____

(County)

_____

(State)

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for and furnish advice and assistance to the owners, and to the board of directors and officers of the corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the corporation or financing, constructing, and initially operating the proposed housing project.

3. Review construction contract, bid-letting procedure, and surety and performance bonds.

4. Examine real estate titles and prepare, review and record deeds and any other instruments.

5. Cooperate with the architect employed by the owners or the corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Render legal opinions as required by the owners or the corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay the attorney for professional services in accordance with this agreement, as follows:

_____

The fees to be payable in the following manner and at the following times:

The attorney states and agrees that of the above total fees, _____, represents fees for services in connection with the organization and incorporation of the corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the corporation fails or refuses to adopt and ratify this agreement by appropriate resolution within _____ days, this agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____ 19 ____.

Attorney: _____

Owners: _____

_____

_____

_____

EXHIBIT A–2—SURVEY OF EXISTING RENTAL HOUSING

Name	No. of units	BR mix	Type	Year built	Rent	Vacancies	Location	Amenities
								Drapes Carpet Central cooling Dishwasher Garbage disposal TV cable

Exhibit A–3—Rental Housing Survey

(SAMPLE)

A rental housing project is being planned for (name of community.) The project would provide comfortable living at monthly rental rates of (Indicate proposed basic rent by number of bedrooms.) Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–61 [ ] 35–49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? yes [ ] no [ ]

3. Number of person(s) in your household: _____.

4. Approximate annual income from all sources including any social security pension, payments made on behalf of minor children, public assistance, etc.: $_____.

5. Do you own [ ] or rent [ ] present residence?

6. Do you live in house [ ] apartment [ ] room [ ] mobile home [ ] on a farm [ ] in town [ ]?

7. Is your present housing modern [ ] not modern, but adequate [ ] inadequate [ ]. If inadequate, in what respect? _____.

8. What amount of monthly rent do you pay with utilities included? $_____.

9. Would you pay 30 percent of your monthly income for modern housing for your family? yes [ ] no [ ]

10. Would you be willing to move in if an apartment were available_____, 19____? yes [ ] no [ ]

11. Do you have a car? No. 1, 2, 3 (circle)

Name _____

Address _____

(including city/town)

Telephone Number _____

Location of employment _____

For Elderly and Congregate Housing

12. Number of meals you would like prepared for you per day _____

13. What other services would you like to have available to you?

	Yes	No
a. Housekeeping services		
b. Personal care services		
c. Social and recreational activities services.		
d. Linen and laundry services.		
e. Health and medical related services.		
f. Beauty and barber services.		
g. Transportation or access services.		
h. Other (specify)		

14. List any hobbies or organizational membership you have.

Note to Applicant: This sample survey form is for your use in evaluating the need for new rental units in the community and its market area. You should be prepared to explain the methodology of the survey since FmHA will be spotchecking the respondents' answers. How the survey is performed can influence the outcome; therefore, it is encumbent upon you to see that the manner in which it is conducted is suitable and acceptable to FmHA. For instance, compensation being paid to someone for survey work should not be dependent upon the number of respondents who would be willing to move into the project. The survey should be based on a random sampling of persons now residing in the market area. Things to avoid are surveying from the telephone book listing or a door-to-door canvass of a certain segment of the community. We want the development of rental units to be based upon actual circumstances prevailing in the market area in order that the housing development will present a secure and economical living arrangement for the persons in need of the housing.

Exhibit A4—Rental Housing Survey Summary.

(SAMPLE)

Item	Age—Head of household			
	62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes				
No				
Household Size (Bedrooms Needed)				
1 or 2 persons (1 bedroom)				
3 to 4 persons (2 bedrooms)				
5 to 6 persons (3 bedrooms)				
7 to 8 persons (4 bedrooms)				
Annual Income:				
Less than $3,420				
$3,421–4,925				
$4,926–6,440				
$6,441–7,960				
$7,961–9,475				
$9,476–10,990				
$10,991–12,505				
$12,506–14,020				
$14,021–15,537				
$15,538–17,053				
Over $17,054				
Present Housing:				
House				
Apartment				
Room				
Rent				
Own				
Modern				
Not modern, but adequate				
Inadequate				
Rent:				
Less than $55				
$55–85				
$86–115				
$116–145				
$146–175				
$236–265				
$266–295				
$296–325				
$176–205				
$206–235				
Over $325				
Willing to move into housing when completed:				
Yes				
No				

Exhibit A–5—Housing Allowances For Utilities And Other Public Services

Name of Borrower _____ Location and Identification of Project _____

Part I

Utility or service	Monthly dollar allowances					
	0–BR	1–BR	2–BR	3–BR	4–BR	5–BR
Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Air Conditioning						
Cooking:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
Other electric (lighting, refrigeration, etc.)						
Water Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Water						
Sewer						
Trash Collection [2]						
Other (specify)						
Total allowance						
(Round to next highest dollar)						

Prepared by: _____

Borrower or Agent _____

Title _____

Signature _____

Date _____

Approved by Farmers Home Administration

Name _____

Title _____

Signature _____

Date _____

Part II

Block A

To: _____

Name of Tenant

_____

Address of Tenant

No. of Bedrooms _____

You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities

_____

Signature of Borrower or Agent

_____

(Date)

Block B

Allowance for utilities and services billed directly to and paid by tenant	Per month
Heating	$
Air Conditioning	
Cooking	
Other Electric	
Water Heating	
Water	
Sewer	
Trash Collection	
Other (Specify)	

Allowance for utilities and services billed directly to and paid by tenant	Per month
Total (Round to next highest dollar)	

Instructions for Preparation and Use of Housing Allowances for Utilities and Other Public Services

I. *General.* These instructions are for completing Exhibit A–5 for the establishment and use of approved utility allowances for tenants. The objective will be to establish allowances at levels that will apply to the majority of the households assigned to the specified size unit.

II. *Determining allowances.*

A. *Existing construction.* The borrower will provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases will be used to estimate utility allowances. The following local sources should be contacted as appropriate:

1. Electric utility suppliers.
2. Natural gas utility suppliers
3. Water and sewer suppliers.
4. Fuel oil and bottle gas suppliers.
5. Public service commissions.
6. Real estate and property management firms.
7. State and local agencies including public housing authorities.

In cases where a project uses a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors will be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit	Factor
0–BR	0.5
1–BR	0.7
2–BR	0.9
3–BR	1.1
4–BR	1.4
5–BR	1.6

Example: An 8–plex structure containing four 1–bedroom apartments and four 2–bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated as follows:

Four (one-bedroom) @ .7 = 2.8

Four (two-bedroom) @ .9 = 3.6

Total 6.4

Total use total of factors ——x cost per kilowatt-hour (kwh)-average billing (assume $.04 per kwh)

42,000/6.4 x .04 = 262.50

unit factor x average billing = unit allowance

(one bedroom)/.7 x 262.50 = $183.75/yr.

(two bedroom)/.9 x 262.50 = $236.25/yr.

B. *New construction.* The applicant, with assistance from its architect, mechanical engineer or other heating and cooling system specialists, will provide heating and cooling load calculations for each type and size of

unit. Heating and/or cooling costs will be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments," or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. *Type of allowance.*

1. Separate heating and cooling allowances will be estimated for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, or for garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether the tenants will have responsibility for lawn care.

2. Allowances for air-conditioning will be established only for projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the tenants know beforehand what the combination of utilities for any unit rented will be, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity, the rates used for lighting, refrigeration and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. *Preparation by borrower or applicant.*

A. *Applicable projects.* Except for projects operating on a profit basis, Exhibit A–5 will be completed in an original and three copies in all instances where the tenants pay utilities or authorized services directly. When the borrower pays all utilities, Part I of Exhibit A–5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowances will be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Backup data and necessary documentation should be included with the submission.

B. *Submission of supporting data to FmHA.* The applicant will submit to FmHA adequate data to justify the utility allowances for the project. The data will include the following:

1. Completed Exhibit A–5.

2. List of local sources contacted for information and copies of any data provided by such sources.

3. Any data on allowances already established for the area.

4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA.* If FmHA finds the allowances acceptable, the approval portion of Part I will be completed. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent action by borrower.* After approval by FmHA, the borrower will complete Part II of Exhibit A–5 and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each utility and service which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A–5 need not be attached to the lease.

Exhibit A–6—Information To Be Submitted With Preapplication for a Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–621, "Preapplication For Federal Assistance:"

I. *Eligibility.*

A. Financial Statements—Each applicant must submit a current, signed and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site or a combination of both as an equity contribution.

(1) For a corporation (other than a nonprofit corporation) or a trust, financial statements will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent.

(2) For a partnership, financial statements will be required from each general partner who holds an interest in the organization.

(3) For limited partners in a limited partnership who will have 10 percent or more ownership, a certificate of net worth will be required.

(4) For applicants that are not legally organized at the time of filing the preapplication, financial statements will be required from all of the proposed parties in proportion to the proposed ownership interest of each part. However, the applicant must be legally organized prior to loan approval and must submit financial statements.

(5) For cases in which financial statements are required from an individual, the financial statements must also include the financial interest and signature of the spouse.

(6) When the applicant and/or general partner(s) have multiple applications pending and/or when the State Director is uncertain of the applicant's ability to provide the necessary 5 percent borrower contribution, 2 percent initial capital contribution and/or other assets needed for a sound loan, the State Director may request the applicant to submit additional financial information relative to its financial position. This information may be obtained from 6- to 12-month projected pro forma statements with supporting schedules.

(7) All financial statements or net worth certifications submitted must contain the following statement immediately preceding the signature line:

(A) In new projects in which the loan has not been closed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan preapplication or application of which this statement is a part.

(B) For projects in which the loan has been closed and the applicant has been formed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of enabling the United States of America to make a determination of continued eligibility of the borrower organization for a loan as requested in the application of which this statement is a part.

B. Evidence Concerning the Test for Other Credit—Applicants other than States or local public agencies must show that other credit is not available at rates and terms that will enable the units to be rented to eligible tenants at rates within their payment ability. The applicant should provide letters from local real estate lenders stating the amount of loan funds they would be willing to extend and the rates and terms at which the loans would be available.

C. Statement of applicant's experience in operating rental housing and related business, including a statement on the proposed method of operation and management.

D. For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to be organized; a certified copy of the applicant's actual, or a copy of the applicant's proposed charter, articles of incorporation, bylaws, partnership agreement, certification of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors and officers; and, if a member of a subsidiary of another organization, its name, address, and principal business, if available.

E. FmHA requires that applicants disclose identities of interests that will exist related to the development of the proposed housing. A written, dated, and signed statement from the applicant stating the following:

(1) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider an identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder or partner of the party of the second part; (3) when any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services or interim financing other than those of a survey, general superintendent or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending or canceling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors or any of their members, directors, officers, stockholders, partners or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

F. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the required social security or tax identification number.

(1) In the case of an individual, the social security number of the applicant must be provided. The spouse's social security number must also be provided when they have joint responsibility for the loan.

(2) In the case of a partnership, the tax identification number of the partnership must be provided if available and also the social security numbers of all the general partners and their spouses.

(3) In the case of a limited partnership, the tax identification number of the limited partnership is required. The social security number of all the general partners and their spouses should be secured if possible.

(4) In the case of a company, corporation or nonprofit organization, the tax identification number of the organization is required. The social security number of the officers should be secured if possible.

(5) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

G. All known principals and affiliates are required to submit a properly completed Form HUD 2530/FmHA 1944–37, "Previous Participation Certification." Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed according to the instructions attached to the form.

II. *Need and demand.*

A. Economic justification and project size should be based on the housing need and demand from eligible prospective tenants who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) should be discounted in determining need and project size.

B. For projects of 20 units or more, a detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories or chambers of commerce is required. The study should include:

(1) A complete description of the proposed site, including at least the location with respect to city boundary lines and residential developments and the location of services and their distances from the site.

(2) Major employment data to portray the names of major employers within the community and/or market area, the product or service of each employer, the number of employees at each employer, the location of each employer within the community and/or market area, and the year the employer was established at the location. If certain income data cannot be obtained from individual employers, salary information for the community can be provided by the state employment commission.

(3) Population by year, number, total increase/decrease, percentage, annual increase/decrease and percentage.

(4) Population characteristics by age.

(5) The household data by number, year and number of persons per household.

(6) A breakdown of households by owners and renters.

(7) Households by income group.

(8) Building permits issued by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may have to be substituted with number of requests for electric service connections, number of water/sewer hookups, etc., obtained from local suppliers.

(9) Housing stock as defined by total number of units, one unit buildings, two or more unit buildings, mobile homes and number lacking some or all plumbing facilities.

(10) A survey of existing rental housing by name, number of units, bedroom mix, family or elderly type, year built, rent, vacancies, location and amenities.

(11) A projection of housing demand based on household growth, units constructed since last census, number of owned and rented units, number of replacements and the number of persons in the eligible income range.

C. Exhibit A–7 is a guide to be used in preparing professional market studies which provides more specifics as to study content. The qualifications of the person preparing the market study should include some housing or demographic experience.

D. A table of contents, the analyst's statement of qualifications, and certification of accuracy of study should be placed at the beginning of the study. The context of the study must be in clear, understandable language—not written to confuse or to camouflage. All mathematical calculations must be expressed in actual numbers and may also be accompanied by percentages. Each table and/or section should identify the *source* of the data. A brief statement of the methodology used in the study should be included in the foreward and in other sections where necessary for clarity.

E. The market analyst must affirm that he/she will receive no fees which are contingent upon approval of the project by FmHA, before or after the fact, and that he/she will have no interest in the housing project. A study prepared by an analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

F. For projects of less than 20 units, the need for the housing may be established by obtaining signed expressions of interest from 50 percent more eligible prospective tenants than the number of proposed units. Exhibits A–3 and A–4 or similar forms may be used for this analysis. Statements evidencing a continued need for the units must be included in the analysis of market. These statements should be based on historical population growth taken from census reports or a current housing evaluation by the county. If this type of analysis does not adequately support the need for housing in a questionable market area, FmHA will request that a full market study be prepared. The applicant will provide a written, signed certification that the survey was performed in a manner acceptable to FmHA and that the results are a true portrayal of the survey.

G. In the case of a proposal involving congregate housing with central dining area or housing involving a group living arrangement, a narrative statement from local, State and/or Federal Government agencies supporting the current and long-range need for the facilities in the community and its trade area is required.

H. A schedule of proposed rental rates and, in the case of a congregate housing proposal, a separate schedule listing the proposed cost of any nonshelter service to be provided

should be included with the market information.

III. Site.

A. Size of tract and a plot map identifying its boundaries.

B. A map showing the location and other supporting information on the neighborhood and existing facilities, such as distance to shopping areas, churches, schools, available transportation, drainage, sanitation facilities, water supply and access to essential services such as doctors, dentists, pharmacies and hospitals. The map should also show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site should also be indicated.

C. The applicant should provide evidence of having control of the proposed site either by ownership or by executing an option to buy.

IV. General description of the housing planned. A brief narrative description of the housing planned should include the following items:

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low- and moderate-income persons; or congregate housing for senior citizens and handicapped persons.

B. The size of each type of rental unit measured in square feet of living area.

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc.

D. The total number of units and the number of each type of unit proposed.

E. The type of construction proposed and the method of construction, i.e., owner/builder, negotiated bid or public bid.

F. The estimated total development cost, the cost per unit and the estimated loan amount.

G. Type of utilities such as water, sewer, gas and electricity and whether each is publicly, community or individually owned.

H. The comments and recommendations of any professional consultants regarding on- or off-site conditions that could affect the proposed project should be submitted, if available. Any comments addressing an adverse condition should include recommended corrective actions. Any special regulation waivers or variances that may be necessary should also be identified.

I. Schematic design drawings should be included with the narrative description and contain, as a minimum:

(1) Site plan, including significant ground contour lines.

(2) Floor plans of each living unit type and other type spaces.

(3) Building exterior elevations.

(4) Typical building exterior wall section.

J. A plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the tenants and their visitors. Other facilities, such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

V. The applicant must submit a signed statement agreeing to pay cost overruns from its own resources.

VI. *Form FmHA 1940-20, "Request for Environmental Information".*

VII. *Intergovernmental consultation.* Comments must be submitted in accordance with 7 CFR, Part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J (available in any FmHA office).

Exhibit A-7.—Outline of Professional Market Study

This outline is to be used by analysts as the basis for preparing market studies for the 515 housing program. It generally contains the type of depth of information which FmHA requires for evaluating the feasibility of prospective housing developments. In addition to these specifications, the analyst will be responsible for including data pertinent to the elderly population if the proposed design is for elderly housing. The guidelines provide for the demonstration of historical trends and allows the analyst to project into the two years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline.

If you have not previously participated in this program, you will have to obtain approval from FmHA before your study is accepted. To do this, a sample of a prior market analysis which you have prepared will need to be submitted to the local FmHA office for review. If this is to be your first market study, you will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

I. *Market area—General.*

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Any deviation from this definition must be coordinated with the district office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1970, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,629 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1980, the (Name) market area population of 7,603 represented 6.7 percent of the county population of 113,066. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. *Site.*

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings.

B. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office and town hall. Other shopping is available .2 mile south at (Town) Plaza.

C. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large City) and (City).

D. All public services are available at the site.

III. *Demographic characteristics.*

A. *Economic profile.*

1. *Labor force and employment trends* presents trends between 1970 and 1980, provides current year estimates and projected changes at the county level.

CIVILIAN LABOR FORCE AND EMPLOYMENT TRENDS AND FORECASTS, COUNTY, 1970–1987

	1970	1980	198–[1]	19—
Civilian Labor Force: [2]				
Unemployment				
Rate of Unemployment				
Employment				

[1] Preliminary—based on monthly data through ——.
[2] Data based on place of residents.
Source:

CHANGE IN TOTAL EMPLOYMENT

	Number	Percent		
		Total	Annual	Total	Annual
1970–1980					
1980–198					
198 –19 (2-year projection)					

2. *Employment data.* In order to determine how employment affects the market area, it will be necessary to show the number of employed persons between 1980 and the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example:

Year	County		
	Number	Change	Unemployment (percent)
1980			
1981			
1982			
1983			
1984			
1985			
1986			
1987 (or through current year)			

Source:

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, number of employees at each employer, salary range of each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also helpful to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

4. It should not be difficult to obtain some of the above data from the employers themselves. However, some employers may be reluctant to divulge certain information regarding their businesses, such as the salary range of their employees. In those cases, the analyst will have to obtain averages, by job type, from the State Employment Commission using job classifications from the Standard Industrial Classification Manual. The data should be shown as follows:

Example:

Employer	Product/Service	Employees	Salary		Location	Year established
			Weekly	Yearly		
Washington Aircraft	Crop dusting	5	$200	$10,000	Town	1957

Source:

B. *Demographic Profile.*

1. *Population.* The analyst will need to show population changes between 1970 and 1980, the current year estimate and projected change. The annual changes will need to be shown also. We also want percentages along with the figures, as follows:

	Year [1]	Number	Total change	Percent	Annual change	Percent
Town:	1970					
	1980					
	198 (current estimate)					
Projected:	19 (2 years)					
County:	1970					
	1980					
	198 (current estimate)					
Projected:	19 (2 years)					

[1] April 1 of each year.

2. *Age Characteristics.*

Age	Town, 1970–80 [1]			County, 1970–80		
	1970	1980	Change	1970	1980	Change
Under 18						
18–29						
30–61						
62 +						

[1] Available for places of 2,500 or more only.

3. *Households.* A breakdown by town and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year [1]	Population	In group quarters	Households	Persons per household
Town:				
1970				
1980				
198				
Projected: 19 (2 years)				
County:				
1970				
1980				
198				
Projected: 19 (2 years)				

[1] April 1 of each year.

4. *Households by Tenure.* This section is one of the more important aspects of the market analysis. This information will enable us to more closely pinpoint the number of households which would comprise the target group of our evaluation.

Year	Total households	Owner	Percent	Renter	Percent
Town:					
1970					
1980					
198					
Estimate: 198					
Projected: 19 (2 years)					
County:					
1970					
1980					
Estimate: 198					
Projected: 19 (2 years)					

5. *Households by Income Group.* This section is also vital to the evaluation of the market because of the low income ranges which exist in the rural areas and the lack of deep subsidy. For this reason, close attention must be paid to the number of persons whose incomes will allow them to pay the rent plus utilities and still remain within the 30 percent criterion. In some cases, persons with incomes in the upper range of the eligible income group have displayed a lack of interest since they would be required to pay the full market rent. Also persons with lower incomes will move into projects even though they will pay more than 30 percent of their incomes. Irrespective of these considerations, the study will need to show the entire scale of incomes from lowest to highest. The number of renters who fall within the feasibility range can then be estimated. Income data should be shown for total and renter households, updated to the current year.

a. Rent for a 1-bedroom apartment is $250 with a $30 utility allowance (which can include electric or gas heat, air conditioning, lighting, cooking, water heating and trash collection, water, sewer). The amount of income needed to pay the total bill and stay within 30 percent of income would be:

Example:

$280 divided by .30 × 12 = $11,088 income.

Household Income Profile, ——— County, 1984 [1]

[1] Income information may also be obtained from Sales and Marketing Management Magazine and used in conjunction with the HUD data.

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than $10,000				
$10,000 to $14,999				
$15,000 to $19,999				
$20,000 to $24,999				
$25,000 to				
Total				
Median				

Source:

b. HUD has furnished its information on owner/renter by income group by number of persons in the household. This type of information will further enhance evaluation of the affordability issue by allowing the examination of the number of renters in the affordability range. For the present time, the analyst should make a request for this data through the District Office.

C. *Housing supply profile.*

1. *Building permits issued.* The Housing Units Authorized by Building Permits and Public Contracts (C–40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually.

Example:

Year	Town			County		
	Single family	Multi-Family	Total	Single family	Multi-Family	Total
1980						
1981						
1982						
1983						
Through current year						

2. *Housing stock.* The study must include the number of units within the county and town (where available), both single family type and multi-family, along with the number of substandard units and the quantity of mobile homes, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example:

Inventory change profile	Town	County
1970 Stock		
1980 Stock		
Change:		
Number:		
Total		
Annual		
Percent		

Plumbing Facilities [1]
Complete—Exclusive Use
Lacking Complete Facilities
Number of Units [1]
1
2–9
10 or more
Mobile Home

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. The rent levels, number of bedrooms, type of project, age, vacancy rate, location and amenities available will have to be compared. This will enable FmHA to judge how many of the existing units: (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey should include both subsidized and nonsubsidized rentals and have photographs as backup. The survey should include the description in Exhibit A–2 of this subpart. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general.

IV. *Housing Demand Forecasts.*

A. The analyst must give a projection of the housing needs for a specified forecast period. The information may be presented in chart form in other formats with other types of information but should include the following as a minimum:

[1] Data available for incorporated places of 2,500 or more only.

Sources of demand	Town		County	
	Owner	Renter	Owner	Renter
New households				
Plus replacements				
Plus vacancy (of 5%)				
Total demand				

BEST COPY AVAILABLE

B. The demand forecast should be adjusted for rental units already provided (if any) within the market area. The residual demand represents the market from which the proposed project will attract tenants.

Exhibit A–8—Information To Be Submitted With Application for a Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)."

1. Drawings and specifications, including any cost containment considerations and special design features for elderly or handicapped persons.

2. A detailed cost breakdown of the project for such items as land and rights-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services included in the proposal.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations. This could be an indication of approval to proceed with the development of the project rather than final approval of plans and specifications.

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require an updated one if he/she determines it necessary.

6. For all projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with § 1901.203 of Subpart E to Part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

7. If more than 90 days have transpired since the applicant submitted the dated financial statement, the State Director may require a new one if he/she determines it necessary.

8. Detailed operating budgets showing a schedule of proposed rental rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA 1930–7, "Statement of Budget and Cash Flow," and Exhibit A–5 of this subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent and contingency expenses. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of 1 percent per annum of the amount of the loan until a minimum reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the reserve account is to provide funds for this purpose.

c. All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c)(4) of the Internal Revenue Code.

9. A description and justification of any related facilities to be financed wholly or in part with loan funds.

10. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be submitted. It must contain the clause stating that it is not in full force and effect until approved by FmHA.

11. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project in accordance with the requirements of paragraph V of Exhibit B of Subpart C to Part 1930 of this chapter. Copies of the proposed application for occupancy, sample waiting lists, lease or rental agreement, and rules and regulations governing administration, occupancy and pet policies should be included. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 of this chapter.

12. A schedule of any separate charges for the use of any related facilities and, in the case of congregate housing, a schedule of any separate charges for nonshelter services (such as meals, personal care and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

13. A satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

Exhibit B of Subpart E—Guide Letter For Use in Informing Interim Lender of FmHA's Commitment

(Name and Address of Private Lender)

Dear Mr./Ms.: _____

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.)

through

(John Smith),

its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request for (John Jones)

for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final drawings, specifications and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and FmHA have determined that the conditions of loan closing can be met. Funds have been obligated for the project.

FmHA has required the applicant to deposit $_____ with your firm to be used before any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant and FmHA District Director.

We have scheduled the FmHA loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved (contract documents), drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents] [1] and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract] [1] based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least three or four joint inspections at critical points during construction, including the final inspection, can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible or if the FmHA loan applicant becomes unable or unwilling to continue with the project, FmHA will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements) to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified, FmHA may make subsequent loans when necessary to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director

Exhibit C of Subpart E—Articles of Incorporation

(Not for Profit)

(SAMPLE)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of _____

First: The name of the corporation is _____

Second: The location of its principal place of business in this State is _____ _____ County.

Third: The location of its registered office in the State is _____ _____ County.

Fourth: The name and address of its resident agent in this State is _____ _____ County.

Fifth: This corporation is organized not for profit under _____ and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for the purpose: _____

To acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to age, race, color, religion, sex, marital status, physical or mental handicap (must possess capacity to enter into a legal contract) or national origin;

To acquire, improve, and operate any real or personal property or interest or right herein or appurtenant thereto;

To sell, convey, assign, mortgage, lease any real and personal property;

To borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall not be less than five.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due shall be used to make advance payments on a _____ owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators

_____

_____

Directors

_____

_____

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purposes to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.[2]

In Testimony Whereof, We have hereunto subscribed our names on _____, 19____.

_____

_____

_____

(Insert acknowledgment or other form if required by State law.)

Exhibit D of Subpart E—Bylaws

(Sample)

Bylaws of

A Nonprofit Corporation

Article I

Office

Section 1.01. *Principal Office.*

The principal office of the corporation in the State of _____, shall be located at _____, County of _____ Section 1.02. Registered Office and Agent. The corporation shall have and continuously maintain in the State of _____ a registered office and a registered agent whose office is identical with such registered office.

Article II

Members

Section 2.01. *Eligibility for membership.*

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the town of _____ or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. *Approval of Applications.*

All applications for membership shall be approved at: (1) Any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of

[1] These words may be omitted for projects constructed by the owner-builder method of construction with a construction contract.

[2] Duration should be perpetual, or long enough to cover the period of the loan plus 5 years, or for the longest period permitted by the State law.

the existing membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. *Voting Rights.*

. Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. *Termination of Membership.*

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. *Resignation.*

Any member may resign by filing a written resignation with the secretary.

Section 2.06. *Reinstatement.*

Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. *Transfer of Membership.*

Membership in this corporation is not transferable or assignable.

Section 2.08. *Membership—Fees.*

The membership fee shall be $_____ or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. *Membership—Liability for Corporation's Obligations.*

Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. *Membership—Minimum Number.*

The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.

Section 2.11. *Membership—Residence.*

A majority of the members shall be residents of the community where the housing is or will be located.

Article III

Meetings of Members.

Section 3.01. *Annual Meeting.*

An annual meeting of the members shall be held at _____, on the _____ of the month of _____ each year, beginning with the year 19____, at the hour of _____ o'clock, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special Meetings.*

Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03 *Place of Meeting.*

The board of directors may designate any place within or not more than ____ miles from _____ as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. *Notice of Meetings.*

Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. *Informal Action by Members.*

Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.*

At such meeting, a quorum shall consist of 30 percent of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.*

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be canceled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day of such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

Board of Directors

Section 4.01. *General Powers.*

The affairs of the corporation shall be managed by its board of directors.

Section 4.02. *Number, Tenure, and Qualifications.*

The number of directors shall be _____. The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number of directors, at least five must be among the leaders in such community.

Section 4.03. *Regular Meetings.*

A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than _____ miles from _____ for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. *Special Meetings.*

Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 4.05. *Notice.*

Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the director's address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. *Quorum.*

A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. *Manner of Acting.*

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. *Vacancies.*

Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. *Compensation.*

Directors shall not receive any compensation for their services as directors.

Section 4.10. *Director—Absence From Meetings.*

Any director who is absent from _____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. *Directors—Residuary Powers.*

The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except those specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested to the board.

Section 4.12. *Directors—Removal From Office.*

A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

Officers

Section 5.01. *Officers.*

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and Term of Office.*

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.*

Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. *Vacancies.*

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.*

The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of these bylaws or statutes to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.*

In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Treasurer.*

The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or the board.

Section 5.08. *Secretary.*

The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

Order of Business

Section 6.01. *Order of Business.*

The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. *Parliamentary Procedure.*

On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

Committee

Section 7.01. *Committees of Directors.*

The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board, or any individual director, by law.

Section 7.02. *Other committees.*

Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the member thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. *Term of Office.*

Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member to be removed from such committee,

or unless such member shall cease to qualify as a member thereof.

Section 7.04. *Chairman.*

One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. *Vacancies.*

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. *Quorum.*

Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.*

Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

Contracts, Checks, Deposits, and Funds

Section 8.01. *Contracts.*

The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.02. *Checks, Drafts, etc.*

All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation shall be signed by the officer or officers, agent or agents of the corporation, and in a manner as shall from time to time be determined by resolution of the board. In the absence of determination by the board, these instruments shall be signed by the treasurer and countersigned by the president of the corporation.

Section 8.03. *Deposits.*

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. *Gifts.*

The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

Article IX

Certificates of Membership

Section 9.01. *Certificates of Membership.*

The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, mutilated or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. *Issuance of Certificates.*

When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X

Books and Records

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or member's agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

Fiscal Year

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

Seal

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII

Waiver of Notice

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

Repeal or Amendment of Bylaws

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however, no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without any express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the _____ day of _____, 19_____ at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

_____

Secretary

(Corporate Seal)

PART 1951—SERVICING AND COLLECTIONS

19. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Accounting Servicing

20. In § 1951.504(i), change the reference from "Exhibit B to Subpart E of Part 1944" to "Exhibit H to Subpart C of Part 1930".

PART 1965—REAL PROPERTY

21. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

22. In § 1965.65, paragraphs (a)(4), (c)(2) and (c)(11) are revised to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(a) * * *

(4) The transfer of projects as defined in § 1944.205 of Subpart E of Part 1944 of this chapter, in which the FmHA loan transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond the borrower's control, such as:

* * * * *

(c) * * *

(2) All necessary repairs to assure that the housing will be decent, safe and sanitary should be made prior to the transfer whenever possible. When repairs cannot be completed prior to closing, the necessary funds will be escrowed and the repairs will be identified, agreed upon prior to closing and documented as specified in § 1924.5 of Subpart A of Part 1924 of this chapter. Also, any improvements required by FmHA to meet the accessibility requirements of Section 15b.41 of Subpart F of Part 15b of Subtitle A (see § 1944.215(b)(6) of Subpart E of Part 1944 of this chapter) should be considered part of any substantial rehabilitation work undertaken as part of the transfer. All repairs will be in accordance with the provisions of Subpart A of Part 1924 of this chapter. Funds for such improvements or repairs will be from sources in the following priority: Transferor's equity payment; contributions by the transferee; reserve account being transferred provided the amount remaining in the reserve account will be adequate to meet the repairs and expenses in the immediate or near future; if loan funds are available, from the use of an RRH or LH loan when appropriate.

* * * * *

(11) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA 1944–7 or 444–7, "Interest Credit and Rental Assistance Agreement," in effect, the transferee may also receive interest credit by executing a new Form FmHA 1944–7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a nonsubsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to Exhibit H to Subpart C of Part 1930 of this chapter. A new Form FmHA 1944–7 will be executed by the transferee, attached to Form FmHA 1965–9, "Multiple Family Housing Assumption Agreement," and a copy of Form FmHA 1944–50, "Multiple Family Housing Borrower/Project Characteristics," and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form FmHA 1944–50 should have been established when the transfer was approved.

* * * * *

23. Section 1965.68(a)(1)(x) is revised to read as follows:

§ 1965.68 Consolidation.

(a) * * *

(1) * * *

(x) After consolidation, the project will be a "project" as defined in § 1944.205 of Subpart E of Part E 1944 of this chapter.

* * * * *

Dated: January 13, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–1042 Filed 1–25–88; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 358

Boil Treatment Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 82N-0054]

Boil Treatment Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) boil treatment drug products (drug products for the temporary relief of pain an discomfort of boils) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by (March 28, 1988). New data by January 26, 1989.

Comments on the new data by March 27, 1989. Written comments on the agency's economic impact determination by May 25, 1988.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1982 (47 FR 28306), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC boil ointment drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based upon the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by September 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by October 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, one manufacturer and one consumer submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regualtions (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart E of Part 358 (21 CFR Part 358, Subpart E), FDA states for the first time its position on the establishment of a monograph for OTC boil treatment drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC boil treatment drug products.

This proposal constitutes FDA's tentative conclusions on OTC boil treatment drug products based on the comments received and the agency's independent evaluation of the Panel's report. Although the Panel limited its deliberations to boil ointments, the agency believes that this rulemaking appropriately should apply to any OTC drug product labeled for the treatment of boils. Accordingly, the agency is now using the term "boil treatment" throughout this rulemaking rather than "boil ointment."

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking, the agency stated that if it proposed to adopt the Panel's recommendations it would propose that OTC boil ointment drug products be eliminated from the OTC market effective 6 months after the date of publication of a final rule in the **Federal Register**. However, in this document the agency is proposing a monograph that would establish conditions under which OTC boil treatment drug products would be generally recognized as safe and effective and not misbranded. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling

to be in effect before 12 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

In the event that no new data are submitted to the agency during the allotted 12-month new data period or if submitted data are not sufficient to establish "monograph conditions" for OTC boil treatment drug products, the final rule will declare these products to be new drugs under section 201(p) of the act for which applications approved under section 505 of the act (21 U.S.C. 355) and 21 CFR Part 314 are required for marketing. Such rule will also declare that in the absence of an approved application, these products would be misbranded under section 502 of the act (21 U.S.C. 352). The rule will then be incorporated into 21 CFR Part 310, Subpart E—Requirements for Specific New Drugs or Devices, instead of into an OTC drug monograph in Part 358.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

1. One comment questioned the rationale for the agency's denial of its petition dated July 21, 1982 (Ref. 1) for an extension of time for submitting comments on the advance notice of proposed rulemaking. The petition was filed so that the results of testing and supporting information could be submitted together with its comments. The comment stated that other petitions for extension of time to comment on other advance notices of proposed rulemakings have been granted and cited the rulemaking for OTC weight control drug products in which an extension of 60 days was granted (47 FR 17576; April 23, 1982). The comment also cited the granting of extensions of the comment periods in the rulemaking for OTC relief of oral discomfort drug products (60 days) and for OTC oral health care drug products (90 days). The comment contended that the Agency provided no reason for granting those petitions while denying its request. The comment regarded this as arbitrary treatment and objected to the unexplained denial which came almost 2 months after the petition was filed and less than 2 weeks before the comment period ended.

The agency acknowledges that extensions of the comment period have been granted in other OTC drug rulemakings. In the three instances cited by the comment, the request for extension of the comment period was for the purpose of providing additional time to evaluate existing data and not to await test results as the comment indicated was its reason for needing more time. In each instance, the agency provided reasons for granting the extension. (See the **Federal Register** of April 23, 1982 (47 FR 17576) and July 30, 1982 (47 FR 32952 and 32953).) Likewise, the agency provided the comment reasons why its petition was denied. The agency stated that it is more appropriate to consider reopening the administrative record for the inclusion of test data when the data are actually available for submission to the agency (Ref. 2). The agency also suggested that when the company is prepared to submit the new data and information, it could then petition the agency to reopen the administrative record.

Neither the comment nor the company has petitioned the agency to reopen the administrative record since it closed on September 27, 1982. The agency points out that under 21 CFR 330.10(a)(7), any comments on this tentative final monograph may be submitted within 60 days of the publication date in the **Federal Register**, and new data may be submitted within 12 months.

References

(1) Comment coded EXT, Docket No. 82N-0054, Dockets Management Branch.

(2) Letter to P.S. Reichertz from J.P. Hile, FDA, coded ANS, Docket No. 82N-0054, Dockets Management Branch.

2. One comment contended that the proposed regulation in the advance notice of proposed rulemaking is not based on any fact in the administrative record and is therefore arbitrary and capricious. The comment stated that the Panel's evaluation, which is the basis of the proposed rule, was limited to three short paragraphs at 47 FR 28308 and that there is nothing in the administrative record that supports the Panel's conclusion that OTC boil ointment drug products are not safe and effective. The comment stated that the Panel did not at any point in its evaluation cite or refer to an instance—a study, report, consumer complaint, or any other item of evidence—which would support its position. The comment concluded that the Panel's finding is conclusory and without any support whatsoever in the administrative record. The comment stated its belief that a rule based upon such an evaluation is arbitrary and capricious and would not withstand judicial scrutiny. The comment cited a number of court cases to support its position that a rule will not be sustained where there are inadequate facts in the record to support it, and thus the matter should be remanded to the agency for further consideration (Ref. 1).

The Panel evaluated boil ointment drug products over the course of seven meetings (47 FR 28307). In its evaluation, the Panel mentioned that it received three submissions for this type of product (47 FR 28308) and that there were eight labeled ingredients contained in the marketed products submitted (47 FR 28307). The Panel classified these 8 ingredients, plus 16 other active ingredients in boil treatment drug products, in Category II, not because of a disregard of the evidence in the administrative record, but because of its belief that the self-treatment of boils is not desirable because improper treatment or a delay in receiving proper professional treatment may cause the infection to spread. The agency has

considered the Panel's recommendations and has thoroughly evaluated all three submissions that were made to the Panel (Refs. 2, 3, and 4), as well as the comments received in response to the advance notice of proposed rulemaking and is tentatively concluding that there may be a need for such products. (See comment 5 and Part II below.) Based on that evaluation, the agency is proposing in this tentative final monograph to reclassify certain ingredients from Category II to Category III and is encouraging the submission of additional data and information to support the claims of safety and efficacy for currently marketed OTC boil treatment drug products. (See comment 5 and Part II below.) The comment's concerns that the final rule be supported by the facts in the administrative record will be addressed as the rulemaking proceeds through its subsequent steps.

References

(1) Comment No. C00001, Docket No. 82N–0054, Dockets Management Branch.
(2) OTC Volume 160005.
(3) OTC Volume160182.
(4) OTC Volume 160214.

3. One comment was against "putting more control of pharmaceutical disbursements in the hands of physicians than is necessary." The comment argued that physicians are "hard to get into see," are costly, and "do not want to be bothered until something is major." The comment contended that removal of boil ointment drug products from the OTC market would require that individuals see a doctor for relief. The comment recommended that the physician be taken out of prescribing "simple medication care" because it is time consuming, expensive, a misuse of physician resources, and a cause of unnecessary health care expense.

The purpose of the OTC drug review is to ensure that OTC drug products are safe and effective. Accordingly, the review will result in the removal of unsafe or ineffective drug products from the OTC market. Also, some products may be reformulated to contain ingredients that are found to be generally recognized as safe and effective. Products already on the market which contain ingredients that are generally recognized as safe and effective will remain available to consumers.

In some cases, entire classes of OTC products such as daytime sedatives and anticholinergics used in cough-cold drug products have been removed from the OTC market because the agency concluded that these products were not appropriate for OTC use. (See the **Federal Register** of June 22, 1979 (44 FR 36378) and November 8, 1985 (50 FR 46582).) However, in the case of boil treatment drug products, after reviewing the Panel's recommendations and the comments received, the agency questions the Panel's recommendations and believes that there may be a need for OTC boil treatment drug products. However, because no ingredients are in Category I at this time and because more data are needed, the agency is unable to determine until this rulemaking is completed whether boil treatment drug products will remain available OTC.

4. One comment, from the manufacturer of an OTC anesthetic and antiseptic ointment drug product marketed for the temporary relief of discomfort of boils, noted that if the agency accepts the Panel's Category II recommendation for all OTC boil treatment drug products, then its product would be eliminated from the OTC market (Ref. 1). The comment stated that marketing experience of its product has not indicated any safety problem associated with the OTC treatment of boils and this marketing experience shows that the product is safe for OTC use within the meaning of 21 CFR 330.10(a) (4) (i), which permits the use of marketing experience in the evaluation of the safety of an OTC drug product. The comment stated that its product has been marketed for over 27 years with over 1½ million units sold in the last 6 years and demand is increasing for the product. The comment also stated that only 18 complaints were received during the last 6 years—10 concerning mild irritation caused by the product and 8 claiming lack of effectiveness.

As discussed in comment 5 below, the agency believes that there may be a need for OTC boil treatment drug products. Even though the agency is upgrading several ingredients to Category III, there are no Category I ingredients at this time. (See Part II below.) Unless one or more of the Category III ingredients are upgraded to Category I in the final rule, the comment is correct in stating that OTC boil treatment drug products will be eliminated from the market.

The agency has considered the marketing experience of the product, which contains ichthammol, camphor, benzocaine, sulfur, phenol, and juniper tar, and evaluated the manufacturer's previous submission to the Panel (Ref. 2). (See Part II below.) The agency agrees with the comment that marketing experience can be used to support the safety of a product; nevertheless, the manufacturer did not provide sufficient information to support the safety and effectiveness of its product in the treatment of boils. As discussed in Part II below, the agency is classifying the ingredients listed above in Category III at this time and is inviting the submission of additional data and information to substantiate the safety and effectiveness of these ingredients for the treatment of boils.

References

(1) Comment Nos. C00001 and CR, Dockets Management Branch, Docket No. 82N–0054.
(2) OTC Volume 160005.

5. One comment (Ref. 1) disagreed with the Panel's conclusion that self-treatment of boils is not in the best interest of the consumer because improper treatment or a delay in receiving proper professional treatment for boils may cause the infection to spread. The comment stated that there is no safety problem associated with the treatment of boils with OTC drugs based upon marketing experience, scientific evidence, and the conclusions of leading experts in the field of dermatology and infectious diseases. The comment contended that the Panel had not cited any incidence of systemic infection which resulted from the temporary use of OTC boil ointment products. The comment added that it has received no complaints that use of its product, which has been marketed for over 27 years, has resulted in a delay in treatment that caused an infection to spread. The comment claimed that the Panel's conclusion was based on a hypothetical safety concern for which it could provide no reference and that the scientific evidence shows that human skin is difficult to infect experimentally with virulent staphylococci and/or streptococci and that, once infected, it is equally difficult to maintain the infection without seriously altering or compromising the skin of the host (Refs. 2 through 6).

The comment contended that the Panel ignored evidence (Ref. 7) that showed there is a need for a product directly available to consumers which is properly formulated to provide temporary relief from pain of boils which at the same time prevents further infection. The comment submitted a survey (Ref. 8) and contended that more than 83 percent of patients with boils suffer pain along with a boil. The comment added that relief of pain will prevent a consumer from attempting to manipulate or needle a boil and thus prevents further topical spread of infection.

The comment provided affidavits containing the views of experts in the field of dermatology and infectious diseases regarding the safe and effective use of OTC boil ointments (Refs. 9, 10, and 11). The comment stated that the experts believe that most persons with boils never seek medical attention and that they do not require the sophisticated and expensive services of a physician because the vast majority of boils are well managed by normal host defenses and are thus self-limited. The experts referred to and agreed with the Panel's statement on boils at 47 FR 28308 that "these infections are usually minor." The comment added that the experts recognize that it can be argued that neglect of boils may lead to a need for surgery or systemic antibiotics that might not otherwise have been required; however, it cannot be argued convincingly that topical boil preparations are more likely to lead to this eventuality than hot compresses or other home remedies.

The agency agrees that the marketing experience described by the comment is supportive of the safety and effectiveness of OTC boil treatment drug products, but this experience cannot be used as the sole criterion for determining that these products are safe and effective for OTC use. After reviewing the Panel's recommendations, the data and information submitted by the comment, and the affidavits of experts in the field of dermatology and infectious diseases, the agency is tentatively concluding that there may be a need for OTC boil treatment drug products.

The agency finds that the references cited by the comment (Refs. 2 through 6) show that human skin is remarkably resistant to staphylococcal and streptococcal infection.

Duncan, McBride, and Knox (Ref. 2) state that streptococci could rarely be recovered from the skin 24 hours after removing an occlusion of the skin of children with clinical impetigo. In another experiment, *Staphylococcus pyogenes* (*S. pyogenes*) disappeared completely from the skin within 5 hours in 50 percent of their adult subjects. The authors pointed out that occlusion has been requisite in all methods of inducing infection whether the organism is yeast, dermatophyte, or bacteria, and that occlusion to the degree required for successful experimental infection rarely, if ever, occurs naturally so that the conditions of natural infection have yet to be defined.

In another study, Duncan, McBride, and Knox (Ref. 3) describe a technique of applying staphylococcus and streptococcus in the form of an overnight broth culture, stabbing through the drop of inoculum with a blood lancet, and covering the site with nonporous plastic tape. Four areas on each subject were inoculated in an identical manner. This experiment was conducted to find a reproducible experimental skin infection so that further studies could be undertaken on the pathogenesis of cutaneous infections. Successful infection of the back in 15 percent, the arm in 13 percent, the thigh in 21 percent, and the leg in 38 percent of the attempts provided further evidence that skin is difficult to infect.

Foster and Hutt (Ref. 4) introduced staphylococci into artificial skin lesions to try to determine whether local conditions influenced multiplication of organisms or the course of the subsequent lesion, whether different types of staphylococci varied in pathogenicity, and what was the smallest infecting dose. Covered lesions showed a considerable increase in the numbers of organisms between 2 and 8 hours, followed by a slower increase over the next 14 hours; whereas, there was virtually no increase in numbers in the uncovered lesions even after 24 hours.

Singh, Marples, and Kligman (Ref. 5) reported that *Staphylococcus aureus* (*S. aureus*) infections have been consistently induced in normal human skin by applying large inocula to areas degermed with ethanol and kept moist under occlusive dressing. The organisms were confined to the surface and did not proliferate within the living portion of the skin. Removal of the dressing was followed by swift death of almost all organisms, followed by immediate resolution of the lesion within a few days.

Elek (Ref. 6) discusses a number of experiments on man that were conducted to establish whether or not differences in the resulting lesions could be demonstrated (by pus formation) between randomly selected nasal strains of *S. pyogenes* and other strains obtained from human lesions, which were therefore presumed to be virulent. Elek concluded that man appears to possess a high degree of natural resistance to *S. pyogenes*. No differences in the virulence of known pyogenic strains and nasal strains from unselected carriers could be demonstrated by accepting pus formation in man as the criterion of virulence.

Although the studies above show the difficulty in producing skin infection, none of the references specifically discusses the relationship of staphylococcal and streptococcal infection to the occurrence of boils. However, Bynoe (Ref. 12) comments on Elek's suggestion (Ref. 6) that there is no difference in the virulence of different strains of coagulase-positive staphylococci, whether from pyogenic lesions or from nasal carriers. Bynoe referred to a specific case in which a nurse came on duty with a boil on her face, and, within a few days, there were two severe infections in the nursery. Cultures from the nurse with the boil and from the two infected babies were all the same type.

The specific case cited by Bynoe (Ref. 12) would support the possibility that infection from boils can occur. However, in light of the other studies (Refs. 2 through 6) that support the difficulty of producing skin infection, the agency believes that a safety concern that infection may spread may not be a major problem. However, the agency concludes that additional information is needed before the agency can fully address the Panel's concerns that improper treatment or a delay in receiving professional treatment for boils may cause the infection to spread.

The results of the survey submitted by the comment (Ref. 8) can be summarized as follows: The rate of furunculosis (occurrence of boils) remains low in the United States with regional variations from 1.4 to 3.0 percent; persons plagued with boils average 2.89 attacks per year with males being more susceptible than females; symptoms that disturbed boil sufferers most were primarily pain (219 out of 257) and secondly cosmetic appearance (32 out of 257); approximately 72 percent of boil sufferers did not visit a physician; patients with boils visited a physician more frequently as the number of boils increased, indicating that patients know when to contact a physician; in self-medication approximately 49 percent of sufferers used medication, 45 percent used compresses, and 12 percent did nothing at all; and the majority of sufferers were satisfied with the treatment used while only 11 percent felt the treatment was not satisfactory. In addition, the survey indicated that 175 subjects were satisfied with their treatment as opposed to 28 subjects who were dissatisfied. For drugs being evaluated in the OTC drug review, the number of very satisfactory and somewhat satisfactory treatment evaluations compared to the number of not very satisfactory and not at all satisfactory treatment evaluations was 16 to 2 for the comment's product, 6 to 0 for a product containing ichthammol, and 8 to 0 for an unspecified drawing salve. The survey also indicated that patients visited a physician more frequently as the number of boils

increased, suggesting that patients are alerted to contact a physician if the condition is more than something minor or if the treatment is ineffective.

In one of the affidavits submitted by the comment, Ulrich (Ref. 9) concluded that the data above are convincing proof of the need for OTC boil ointment drug products. Ulrich stated that boils last from several days to several weeks and are generally defined as an infection of the hair follicle which produces a painful cellulitis with *S. aureus* as the most common infecting organism, but other pyogenic cocci and bacilli or gram negative bacteria may also be involved.

In another affidavit, Duncan (Ref. 10) stated that over a 15-year practice many patients "present with their second or third inflammatory episode with a boil—the initial episode(s) having resolved to the patients' satisfaction, with or without OTC medicament, demonstrating the basic tendency of boils not to spread." Duncan also discussed the studies (Refs. 2 through 6) described above and concluded that human skin is difficult to experimentally infect with virulent staphylococci and/or streptococci and that the spread of infection from a boil is remote.

In the third affidavit, Drutz (Ref. 11) stated that most persons with boils never seek medical attention and that most patients do not require the sophisticated and expensive services of a physician because the vast majority of boils are well managed by normal host defenses and are thus self-limited. Drutz also states that local spread of boils may occur from one locus to another, or spread may be hematogenous with septicemia, metastatic abscess formation, or even endocarditis. However, Drutz contends that evidence that topical preparations increase the risk of spread in patients with chronic recurring boils is lacking.

Based on the information provided in the affidavits, the results of the survey, and the references to support the suggestion that the spread of infection may not be a serious problem, the agency tentatively concludes that there may be a need for OTC boil treatment drug products. Although there appears to be minimal safety problems in the self-treatment of boils, the agency believes that these products should be used only for a limited amount of time and that if the boil worsens, then the labeling of the product should direct the consumer to see a doctor. Accordingly, the agency is proposing that these products contain warning information not to use the product for more than 7 days and if the condition worsens, to consult a doctor. The warning is based on the results listed in Table 6 of the survey (Ref. 8) in which the number of sufferers who had a doctor treat a boil is compared to the number of days the sufferer had the boil before seeing the doctor. The comparison includes groups of sufferers from various geographic areas as well as groups segmented by sex and age. The average number of days before sufferers saw a doctor was 6.32. The agency is therefore proposing 7 days to be consistent with a number of other OTC drug rulemakings which provide for a 7-day limitation for use. (See, for example, the tentative final monograph for OTC external analgesic drug products (48 FR 5852; February 8, 1983) and the tentative final monograph for OTC skin protectant drug products (48 FR 6820; February 15, 1983).)

Based upon the results of this survey and the additional references, the agency has upgraded some of the ingredients used in OTC boil treatment drug products from Category II to Category III. The agency is interested in receiving additional public comment on the usefulness of these products and on whether self-treatment of boils is appropriate. The agency is also requesting additional clinical data from studies conducted in the target population demonstrating that the ingredients used in OTC boil treatment drug products are safe and effective for this use.

References

(1) Comment Nos. C00001, CR, CR0002, CR0003, and SUP, Docket No. 82N–0054, Dockets Management Branch.

(2) Duncan, W.C., M.E. McBride, and J.M. Knox, "Experimentally Induced Cutaneous Infections in Man," *in* "Skin Microbiology. Relevance to Clinical Infection," Edited by H.I. Maibach and R. Aly, Springer-Verlag, New York, pp. 220–230, 1981.

(3) Duncan, W.C., M.E. McBride, and J.M. Knox, "Experimental Production of Infection in Humans," *Journal of Investigative Dermatology*, 54:319–323, 1970.

(4) Foster, W.D., and M.S.R. Hutt, "Experimental Staphylococcal Infections in Man," *Lancet*, 2:1373–1375, 1960.

(5) Singh, C., R.R. Marples, and A.M. Kligman, "Experimental *Staphylococcus Aureus* Infections in Humans," *Journal of Investigative Dermatology*, 57:149–162, 1971.

(6) Elek, S.D., "Experimental Staphylococcal Infections in the Skin of Man," *Annals of the New York Academy of Sciences*, 65:85–89, 1956.

(7) OTC Volume 160006.

(8) Home Testing Institute, "Boil-Ease Study No. 7034," Unpublished study in Comment No. SUP, Docket No. 82N–0054, Dockets Management Branch.

(9) Ulrich, J.A. Affidavit contained in Comment No. SUP, Docket No. 82N–0054, Dockets Management Branch.

(10) Duncan, W.C., Affidavit contained in Comment No. SUP, Docket No. 82N–0054, Dockets Management Branch.

(11) Drutz, D.J., Affidavit contained in Comment No. SUP, Docket No. 82N–0054, Dockets Management Branch.

(12) Bynoe, E.T., Discussion of the Paper, "Experimental Staphylococcal Infections in the Skin of Man," *Annals of the New York Academy of Sciences*, 65:89–90, 1956.

II. The Agency's Evaluation of the Submissions

Because the Panel did not review specific ingredients or products for use in OTC boil ointment drug products, the agency has reviewed all the submissions to the Panel and has the following specific comments:

1. One submission to the Panel contained information on a marketed product containing 40 to 43 percent magnesium sulfate labeled as a drawing ointment for external application to pimples and blemishes associated with acne and also for boils and carbuncles (Ref. 1).

The submission did not contain any clinical data or information on the use of magnesium sulfate for the relief of boils, but did contain a very brief overview of the historical use of magnesium sulfate and a discussion regarding osmotic pressure and the resulting drawing action of magnesium sulfate. A brief summary of the submission follows.

Magnesium sulfate (epsom salts) has been used for many years to alleviate local inflammatory conditions by using concentrations of 20 to 50 percent in warm water to reduce common inflammation by virtue of an osmotic gradient action. Magnesium sulfate provides a drawing action using the mechanism of osmotic pressure which brings about diffusion between solutions of different concentrations or between a solute and the fluid in which it is dissolved. A concentration of the magnesium ion on the skin surface causes fluid of the skin tissue to move the skin surface. The greatest concentrations of magnesium sulfate needed to bring about osmotic pressure sufficient to withdraw tissue fluids would be absorbed by the skin in only a small amount, and the body would tolerate even larger quantities without side effects. The submission pointed out that the marketed product is a saturated solution of magnesium sulfate incorporated into a hydrophilic ointment base, and that the effectiveness of the product as a drawing ointment for boils and carbuncles is due to the fact that there is twice as much saturated solution of magnesium sulfate as there is ointment base and, as a result, the product works by the principle of osmotic pressure. The submission added that magnesium sulfate in a wet dressing or hot pack relieves pain by its local anesthetic effect and relieves swelling by withdrawing fluid from the tissues.

Regarding safety, the submission stated that magnesium sulfate can be taken internally as a saline cathartic in doses of 15 grams (g) and is not absorbed from the intestinal tract. (FDA supported the safety of taking large doses of magnesium sulfate internally when the agency issued a tentative final monograph for OTC laxative drug products in the **Federal Register** of January 15, 1985 (50 FR 2124) and proposed Category I status for magnesium sulfate in doses of 10 to 30 g as a saline laxative.) The submission contended that very little, if any, magnesium sulfate is absorbed from its ointment product because, in the principle of osmotic pressure, the fluid comes toward the surface of the skin or the area at the greatest concentration of the magnesium ion, with very little magnesium sulfate being absorbed.

Another submission to the Panel contained a label for a product containing magnesium sulfate 18.3 g (61 percent) and benzocaine 150 milligrams (mg) (0.5 percent) in each 30 g of propylene glycol base (Ref. 2). The label stated that the product was a local anti-inflammatory agent to be used as a topical dressing for minor infections such as boils and pimples. The submission did not contain any additional information.

These two submissions did not contain sufficient information to support the effectiveness of magnesium sulfate and benzocaine for the labeled claims. However, the agency concludes that 40 to 61 percent magnesium sulfate is safe when used externally. Based on the information submitted, the agency cannot determine whether magnesium sulfate is effective in treating boils and is classifying this ingredient in Category III at this time. The use of benzocaine is discussed below. (See paragraph 2(c) below.)

References

(1) OTC Volume 160214.

(2) OTC Volume 160182.

2. The third submission (Ref. 1) to the Panel contained information on a product claiming to be a pain-relieving drawing salve for boils and an anesthetic-antiseptic. Because the submission was dated January 10, 1974, the agency obtained a package of the currently marketed product; it listed the active ingredients as ichthammol 1.86 percent, camphor 1.8 percent, benzocaine 0.5 percent, sulfur 0.44 percent, phenol 0.42 percent, and juniper tar 0.11 percent and was labeled as an antiseptic drawing salve and for fast relief from painful boils. The list of ingredients in the submission and in the currently marketed product differ (rosin and thymol have been deleted and sulfur has been added); accordingly, the agency is discussing and classifying only the ingredients in the currently marketed product.

[Note.— The agency recently became aware that the product has been reformulated again and has also been relabeled (Ref. 2). Nevertheless, none of the agency's tentative conclusions discussed in this document are affected by these changes because the administrative record lacks sufficient information regarding the use of the product's ingredients for the treatment of boils. The agency invites the submission of additional information.]

(a) *Ichthammol.* This ingredient has been used for the treatment of boils (Refs. 3 and 4) and has been used for a variety of skin disorders because of its anti-inflammatory, vasoconstrictive, astringent, irritant, antibacterial, emollient, demulcent, and antiseptic properties (Refs. 3 through 7). It has also been reported to cause hyperepithelialization (Ref. 4) and to produce a local stimulant effect which tends to improve peripheral circulation (Ref. 7). Although historically ichthammol has been commonly referred to as a "drawing" salve for the treatment of boils, the submission did not include any clinical data that demonstrate such an effect. Because of insufficient information at this time, the agency cannot determine whether this ingredient is safe and effective in a concentration of 1.86 percent as an antiseptic or for its "drawing" action for the treatment of boils. Therefore, the agency is classifying ichthammol in Category III.

(b) *Camphor.* Camphor has been classified as a Category I analgesic, anesthetic, and antipruritic in the tentative final monograph for OTC external analgesic drug products. (See the **Federal Register** of February 8, 1983; 48 FR 5867 to 5868.) In that publication, the agency concurred with the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products that camphor in concentrations of 0.1 to 3 percent is safe and effective for the temporary relief of pain, itching, or pain and itching associated with minor burns, sunburn, minor cuts, scrapes, insect bites, or minor skin irritations. Because the tentative final monograph for OTC external analgesic drug products does not specifically discuss the use of camphor for the treatment of boils and because the submission to this rulemaking contained insufficient information, the agency is classifying camphor in a concentration of 1.6 percent in Category III.

(c) *Benzocaine.* While the submission to this rulemaking (Ref. 1) contained published articles regarding the safety and effectiveness of benzocaine, none involved the use of benzocaine on boils. Benzocaine was also classified in Category I in the external analgesic tentative final monograph for the temporary relief of pain, itching, or pain and itching in concentrations of 5 to 20 percent. Because the submission contained insufficient information that benzocaine in a concentration of 0.5 percent is safe and effective for the treatment of boils, the agency is classifying this ingredient in Category III.

(d) *Sulfur.* The only discussion of sulfur in the submitted information was a brief reference to its use in the treatment of scabies in a naval hospital (Ref. 8); there is no mention of its use in the treatment of boils. The agency assumes the intended use of sulfur in the product relates to the antiseptic claim in the products' labeling. In this light, the agency notes that in the advance notice of proposed rulemaking for OTC antifungal drug products that was published in the **Federal Register** of March 23, 1982 (47 FR 12480), sulfur was described as an antifungal agent due to its keratolytic effect and was classified in Category III. (See 47 FR 12549.) Similarly, in the same issue of the **Federal Register** (47 FR 12430), the advance notice of proposed rulemaking for OTC acne drug products discusses the rationale for the use of sulfur in acne because of its keratolytic and antibacterial effects. (See 47 FR 12447.) Sulfur was classified in Category I in that rulemaking. However, because there is insufficient information for the use of sulfur in a concentration of 0.44 percent to treat boils, the agency is placing this ingredient in Category III at this time.

(e) *Phenol.* In the **Federal Register** of January 6, 1978 (43 FR 1210), the Advisory Review Panel for OTC Antimicrobial Drug Products classified phenol in Category III for several antimicrobial uses in concentrations of 1.5 percent or less. In the **Federal Register** of February 8, 1983 (48 FR 5852), phenol 0.5 to 1.5 percent was classified in Category I as an analgesic, anesthetic, and antipruritic. (See 48 FR 5867.) Because these rulemakings do not address the use of phenol in the treatment of boils and because there is insufficient information to make a determination at this time, the agency is classifying phenol in Category III.

(f) *Juniper tar.* In the tentative final monograph for OTC external analgesic drug products, juniper tar in concentrations of 1 to 5 percent was classified in Category I as an analgesic, anesthetic, and antipruritic (48 FR 5867). However, because that rulemaking did not specifically address the use of juniper tar for the treatment of boils and because there is insufficient information in the submission to this rulemaking, the agency cannot make a determination on the safety and effectiveness of juniper tar in a concentration of 0.11 percent at this time. Therefore, the agency is classifying juniper tar in Category III at this time.

The submission did not contain any safety or effectiveness data on the use of any of the ingredients above individually in treating boils. Clinical data are needed to establish the safety and effectiveness of using these ingredients to provide relief from the pain and discomfort of boils. The "drawing" action of ingredients such as magnesium sulfate or ichthammol and the antiseptic action of sulfur and phenol on a boil needs to be shown clinically. Without such information, the agency is unable to determine that any of these ingredients are generally recognized as safe and effective for these uses.

References

(1) OTC Volume 160005.

(2) Letter from H.W. Gordon, Commerce Drug Co., Inc., to W.E. Gilbertson, FDA, is contained in OTC Volume 16LTFM.

(3) Wilkinson, D.S., "Topical Therapy," *in* "Textbook of Dermatology," 2d Ed., Volume II, edited by A. Rook, D.S. Wilkinson, and F.J.G. Ebling, Blackwell Scientific Publications, Oxford, p. 2072, 1972.

(4) Harvey, S.C., "Topical Drugs," *in* "Remington's Pharmaceutical Sciences," 17th Ed., edited by A.R. Gennaro, Mack Publishing Co., Easton, PA, p. 781, 1985.

(5) Reynolds, J.E.F., and A.B. Prasad, editors, "Martindale. The Extra Pharmacopeia," 28th Ed., The Pharmaceutical Press, London, p. 498, 1982.

(6) Harvey, S.C., "Antiseptics and Disinfectants," *in* "Goodman and Gilman's The Pharmacological Basis of Therapeutics," 7th edition, edited by L.S. Goodman and A. Gilman, Macmillan Publishing Co., New York, p. 972, 1985.

(7) Osol, A. and R. Pratt, The United States Dispensatory, 27th edition, J.B. Lippincott Co., Philadelphia, p. 610, 1973.

(8) Carpenter, C.C., et al., "Scabies and Pediculosis Treated with Benzyl Benzoate, DDT, Benzocaine Emulsion," *The Journal of Investigative Dermatology*, 14:93–98, 1946.

III. The Agency's Tentative Conclusions on OTC Boil Treatment Drug Products

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of Ingredient Categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made some changes in the categorization of boil treatment active ingredients recommended by the Panel. As a convenience to the reader, the following list is included as a summary of the categorization of boil treatment active ingredients recommended by the Panel and the proposed categorization by the agency.

Boil ointment active ingredients	Panel	Agency
Aminoacridine hydrochloride	III	III
Benzocaine	III	III
Bismuth subnitrate	III	III
Camphor	III	III
Cholesterol	III	III
Extract of ergot	III	III
Hexachlorophene	III	III
Ichthammol	III	III
Isobutamben[1]	III	III
Juniper tar (oil of cade)	III	III
Lanolin	III	III
Magnesium sulfate	III	III
Menthol	III	III
Mercurous chloride	III	III
Methyl salicylate	III	III
Oil of sassafras	III	III
Oxyquinoline sulfate	III	III
Petrolatum	III	III
Phenol	III	III
Pine tar	III	III
Rosin	III	III
Rosin cerate	III	III
Sulfur	NA	III
Thymol	III	III
Zinc oxide	III	III

[1] Although "isobutyl-p-aminobenzoate" was the name designated by the Panel for the ingredient, "isobutamben" is the official title for the ingredient in the "USAN and the USP dictionary of drug names, 1987."

2. Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any boil treatment ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Based on submitted information not available to the Panel, the agency tentatively concludes that there may be a need for OTC boil treatment drug products and that manufacturers should be afforded an opportunity to provide additional data to support continued marketing of these drug products. In addition, the agency is proposing the following warning, "Do not use this product for more than 7 days. If condition worsens or does not improve, consult a doctor." (See Part I. paragraph 5. above.) The agency is also proposing two additional warnings, "For external use only" and "Avoid contact with the eyes." Use of both statements is consistent with the warnings included in a number of other OTC drug monographs for topical drug products. (See, example, the tentative final monograph for OTC external analgesic drug products (48 FR 5852; February 8, 1983); the tentative final monograph for OTC skin protection drug products (48 FR 6820; February 15, 1983); and the final monograph for OTC topical otic drug products (51 FR 28856; August 8, 1986).)

2. The agency is aware that a manufacturer of an OTC boil treatment drug product filed comments following the publication of the tentative final monograph for OTC external analgesic drug products (Ref. 1). The manufacturer raised two basic issues involving labeling of boil treatment products. One issue was a request to revise the labeling indication for local anesthetics used as external analgesics to include relief of pain and itching associated with boils. This request will be considered within the context of the external analgesic rulemaking at a later date. The other issue, which concerned an additional warning for boil treatment drug products, will be addressed in this document. The manufacturer suggested the additional warning as follows: "Do not use on boils on the lips, nose, cheeks, or forehead. Seek professional assistance for treatment of boils in these areas." The manufacturer also stated that an additional warning statement is needed to warn consumers to consult a doctor "if fever or redness around the boil develops."

The agency notes that the Panel stated that the use of systemic antimicrobial therapy is indicated for boils associated with a surrounding redness or those associated with fever, or located on the upper lip, nose, cheeks, or forehead. (See 47 FR 28308). After reviewing the Panel's comments, the agency agrees with the manufacturer that the additional warnings are needed. Accordingly, the agency is including the warning recommended by the manufacturer but is making a minor revision to make the wording more consistent with other tentative final monographs. The agency is revising the limitation for use warning discussed in paragraph 1 above to include the manufacturer's suggested warning statement regarding the development of fever or redness around a boil but is revising the statement for clarity. The revised warnings will read, "Do not use on boils on the lips, nose, cheeks, or forehead: Consult a doctor for treatment of boils in these areas" and "Do not use this product for more than 7 days. If condition worsens or does not improve, if fever occurs, or if redness around the boil develops, consult a doctor."

Reference

(1) Comment No. C00081, Docket No. 78N–0301, Dockets Management Branch.

3. The agency is proposing that magnesium sulfate, benzocaine, camphor, ichthammol, juniper tar, and phenol be reclassified from Category II to Category III and that sulfur be classified in Category III. (See Part II. paragraphs 1. and 2. above.)

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the final rule revising the labeling policy.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC boil ointment drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC boil ointment drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC boil ointment drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by May 25, 1988. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before March 28, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before May 25, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before January 26, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before March 27, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on March 27, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs, Boil treatment drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 358 (proposed in the **Federal Register** of September 3, 1982; 47 FR 39108), by adding new Subpart E, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart E—Boil Treatment Drug Products

Sec.

358.401 Scope.
358.403 Definition.
358.410 Boil treatment active ingredients. [Reserved]
358.450 Labeling of boil treatment drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart E—Boil Treatment Drug Products

§ 358.401 Scope.

(a) An over-the-counter boil treatment drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.403 Definition.

As used in this subpart:

Boil treatment drug product. A drug product for the temporary relief of pain and discomfort of boils.

§ 358.410 Boil treatment active ingredients. [Reserved]

§ 358.450 Labeling of boil treatment drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "boil treatment."

(b) *Indications.* The labeling of the product states under the heading "Indications," the following: "For the temporary relief of pain and discomfort of boils." Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Do not use on boils on the lips, nose, cheeks, or forehead. Consult a doctor for treatment of boils in these areas."

(2) "For external use only."

(3) "Avoid contact with the eyes."

(4) "Do not use this product for more than 7 days. If condition worsens or does not improve, if fever occurs, or if redness around the boil develops, consult a doctor."

(d) *Directions.* [Reserved]

Dated: October 30, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-1454 Filed 1-25-88; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
January 26, 1988

Part IV

Department of the Interior

Minerals Management Service

Request for Interest; Gulf of Alaska/ Cook Inlet, Lease Sale 114; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Request for Interest
Gulf of Alaska/Cook Inlet
Lease Sale 114

Purpose

The Gulf of Alaska/Cook Inlet proposed Outer Continental Shelf (OCS) Oil and Gas Lease Sale has been designated as a Frontier Exploration Sale in the Final 5-Year OCS Oil and Gas Leasing Program for Mid-1987 to Mid-1992, dated July 1987. Sale 114 is being reviewed by the Secretary of the Interior to determine whether the OCS presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring within the Gulf of Alaska/Cook Inlet Planning Areas.

If a decision is made to begin the OCS presale process for this sale, a Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement would be issued in May 1988 with a sale proposed for September 1990. If interest is determined to be insufficient to justify proceeding with the presale process, the sale can be canceled or delayed and a Request for Interest (RFI) reissued on an annual or other basis until interest is determined to be sufficient to hold the sale or the sale is canceled.

Use of Information from Request

The responses will assist the Secretary of the Interior to determine if the presale process for the proposal should be started, delayed, or canceled. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geological data, economic, or other conditions could create bidding interest in the future in areas that now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could make an area presently unattractive to potential bidders one that could be of interest to them at a future date. Other information of interest would include new geophysical data, new geological data, new interpretations of existing data, and new estimates of costs of production. By receiving information on industry interest prior to the issuance of the Call, the Federal Government and other parties can avoid unnecessary expenditures on the lengthy and costly presale process.

The presale process includes the following steps: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearings, final EIS, proposed Notice of Sale, Governor's Comments, and final Notice of Sale. For Alaska sales, the entire process takes approximately 28 months.

Description of Area

The Gulf of Alaska Planning Area is located south from approximately 151° 55' W. longitude at 59° 05' N. latitude to the Submerged Lands Act (SLA) limit at approximately 59° N. latitude, thence east to 148° W. longitude, thence south to 58° N. latitude, thence east to 147° W. longitude, thence south to 53° N. latitude, thence east to 141° W. longitude, thence generally northeast along the limit of U.S. jurisdiction to the SLA limit, thence along the SLA limit to point of origin. The planning area includes approximately 23,900 blocks and partial blocks covering approximately 132.4 million acres.

The Cook Inlet Planning Area is located east from approximately 56° 57' N. latitude at 156° 25' W. longitude to the intersection with the SLA limit, thence generally northeast along the SLA limit to approximately 152° 27' W. longitude, thence north to the SLA limit, thence around the SLA limit to approximately 59° N. latitude at 152° W. longitude, thence north to the SLA limit, thence following the SLA limit to the point of origin. The planning area includes approximately 1,100 blocks and partial blocks covering approximately 5.4 million acres.

The total area open for comment at this time consists of approximately 25,000 blocks and partial blocks (approximately 137.7 million acres) and is outlined on the attached map. A larger scale map of the Gulf of Alaska/Cook Inlet Planning Areas is available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621.

Previous Sale-Related Activities

Gulf of Alaska

There have been two previous lease sales and one reoffering sale held in the Gulf of Alaska area: Sale 39 held in April 1976, Sale 55 held in October 1980, and Sale RS-1 held in June 1981. As a result of those sales, over $669.7 million was collected in bonuses for the 112 leases issued. All of those leases have been relinquished or have expired. Sale 88, Gulf of Alaska/Cook Inlet, was originally to have been held in December 1984 but, after a long postponement, was canceled

BEST COPY AVAILABLE

May 2, 1986. A Gulf of Alaska sale (March 1988) appeared on the March 1985 Draft Proposed 5-Year OCS Oil and Gas Leasing Schedule. An RFI was published October 31, 1985, in the Federal Register at 50 FR 45574 which included the entire Gulf of Alaska Planning Area. However, industry interest was insufficient to justify proceeding with the sale process. This sale did not appear on subsequent schedules.

A Deep Stratigraphic Test well has been drilled in this area. In addition, 12 exploratory wells were drilled without commercial discovery of oil and gas. All 12 wells have been plugged and abandoned.

Cook Inlet

There have been two previous lease sales and one reoffering sale held in the Cook Inlet area: Sale CI held in October 1977, Sale 60 held in September 1981, and Sale RS-2 held in August 1982. As a result of those sales, over $402.8 million was collected in bonuses for the 100 leases issued. All of those leases have been relinquished or have expired. The last scheduled lease sale for this area, Sale 88, Gulf of Alaska/Cook Inlet, was originally to have been held in December 1984. After a long postponement, Sale 88 was canceled May 2, 1986, due to lack of industry interest.

One Deep Stratigraphic Test well has been drilled in this area. In addition, 13 exploratory wells were drilled without commercial discovery of oil and gas. All 13 wells have been plugged and abandoned.

Instruction on Request for Interest

Information regarding leasing and exploring in the Gulf of Alaska/Cook Inlet Planning Areas may be provided by mail, telephone, or, alternatively, informal meeting with the Regional Director or a designated representative. General or detailed information may be submitted. Specific responses are requested on the advisability of selecting one of the following options for the planning areas: proceed with the OCS presale process, cancel the OCS presale process, or delay the sale process pending publication of a future RFI.

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the Federal Register. Receipt of the information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale 114, Gulf of Alaska/Cook Inlet." The telephone number and name of a person to contact in the respondent's organization for additional information should be included.

Letters should be mailed or hand delivered to the Regional Supervisor for Leasing and Environment, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302. Telephone responses may be made to Mr. Tom Warren at (907) 261-4691 or to Mr. Kent Dirlam at (202) 343-5121. A copy of the response should be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230 (Mail Stop 645), Washington, D.C. 20240. Hand deliveries to the headquarters office may be made at 18th and C Streets, NW., Room 2523, Washington, D.C.

Approved:

Wm. D. Bettenberg

Director, Minerals Management Service

Wm. D. Bettenberg

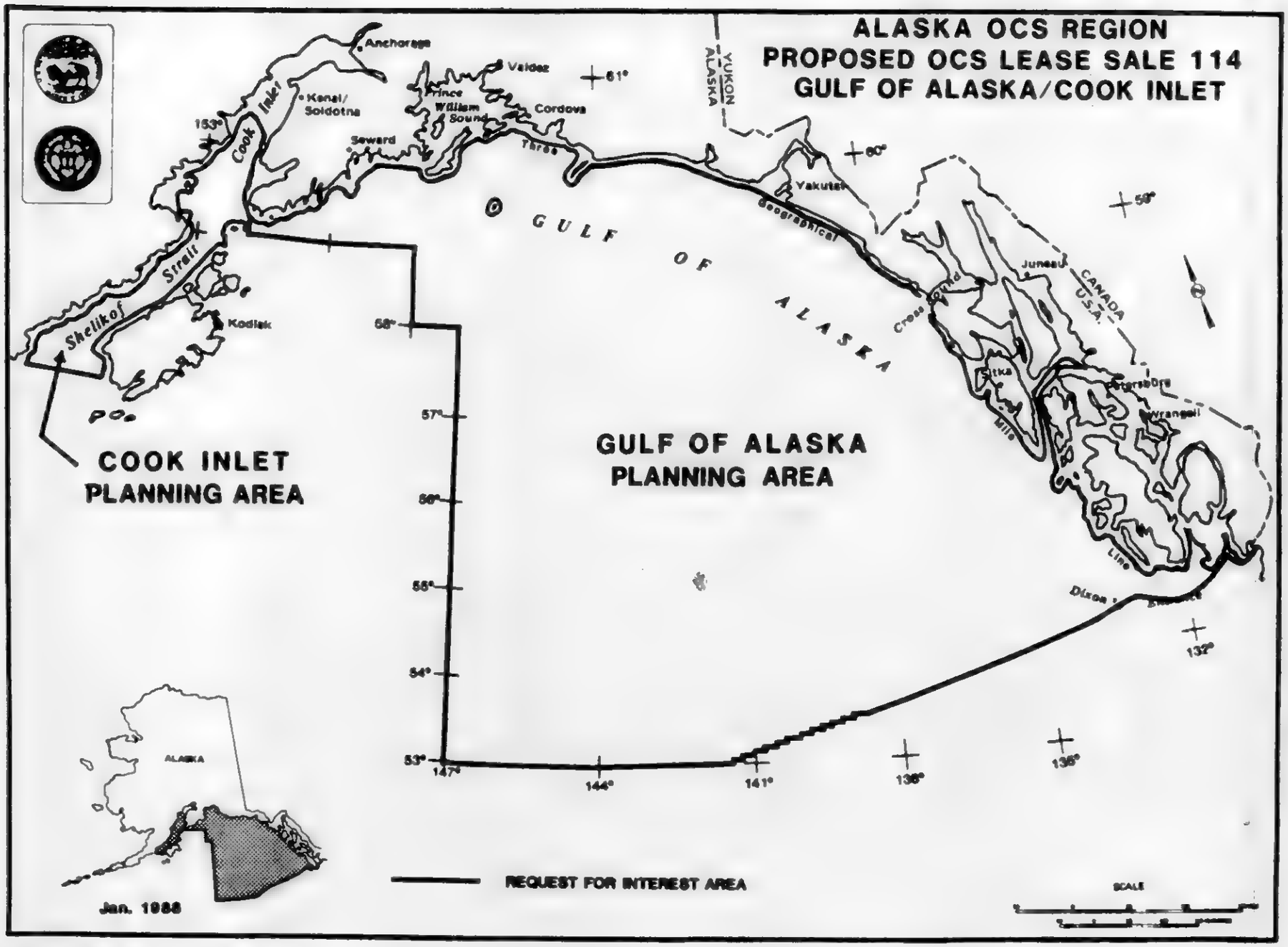
James E. Cason

ACTING Assistant Secretary - Land and Minerals Management

James E. Cason

Date 1/20/88

Attachment (map)



[FR Doc. 88-1551 Filed 1-25-88; 8:45 am]

BILLING CODE 4310-MR-C

Reader Aids

Federal Register

Vol. 53, No. 16

Tuesday, January 26, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106.....4
107-230.....5
231-398.....6
399-486.....7
487-608.....8
609-732.....11
733-772.....12
773-854.....13
855-998.....14
999-1330.....15
1331-1466.....19
1467-1600.....20
1601-1738.....21
1739-1908.....22
1909-1996.....25
1997-2212.....26

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5760.....855
5761.....1464
5762.....1980

Executive Orders:
12537 (Amended by EO 12624).....489
12578 (Superseded by EO 12622).....222
12622.....222
12623.....487
12624.....489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987.....399
No. 88-4 of Dec. 17, 1987.....773
No. 88-6 of Jan. 19, 1988.....1601
Presidential Findings:
Jan. 12, 1988.....999

5 CFR

297.....1997
353.....857
551.....1331, 1739
890.....1, 860

Proposed Rules:
213.....1789
330.....408
338.....1789
351.....408
890.....898

7 CFR

1.....1001
7.....1441
272.....1603
275.....1603
301.....733
353.....1332
354.....1740
400.....
401.....1001
405.....1467
614.....1605
704.....733
724.....1605
905.....401, 860
907.....6, 491, 1333, 1741
910.....7, 492, 1333, 1742
911.....402, 1742
915.....1742
928.....862
959.....401
971.....401
987.....401
1230.....1909
1430.....107
1610.....1743
1902.....231
1924.....2150
1930.....2150
1933.....2150
1943.....2147
1944.....2150
1951.....2150
1965.....2150

Proposed Rules:
68.....411
301.....140
401.....505, 507
451.....1640
905.....898
907.....412
908.....412
910.....255
979.....413
981.....414
982.....900
1006.....1035
1012.....1035
1013.....1035
1033.....902
1046.....902
1068.....1360
1097.....1369
1106.....1370, 1790
1126.....256
1136.....686
1260.....509
1421.....2037
1701.....140

8 CFR

Proposed Rules:
232.....1791
233.....1791
235.....1791
237.....1791
238.....1791
239.....1791
280.....1791
299.....1791

9 CFR

77.....1002

10 CFR

1.....1744
73.....403

Proposed Rules:
2.....415
62.....1926
430.....30
730.....1594

11 CFR

Proposed Rules:
109.....416

114 ... 416

12 CFR

206 ... 492
208 ... 492
226 ... 467
337 ... 597
501 ... 1003
525 ... 312
561 ... 324, 338
563 ... 324, 338, 354, 363, 372, 385, 1004
563c ... 324
571 ... 338, 372, 385
583 ... 312, 1003
584 ... 312
614 ... 775
795 ... 1005

Proposed Rules:

226 ... 467

13 CFR

108 ... 1468
140 ... 1606

14 CFR

21 ... 1745, 1746
23 ... 1745, 1746
39 ... 8–14, 232, 493–495, 1334, 1468, 1608–1613, 2005
47 ... 1911
49 ... 1911
71 ... 496, 497, 619, 1335, 1336, 1614, 2006–2013
75 ... 497, 1336–1339, 2014–2017
91 ... 233
95 ... 1005
97 ... 499

Proposed Rules:

Ch. I ... 1038
21 ... 2037, 2039
23 ... 2037, 2039
39 ... 258, 514, 515, 1371–1374
71 ... 516, 517, 666, 670, 674, 907–910, 1375
73 ... 517, 991

15 CFR

372 ... 1614
374 ... 1614
399 ... 108, 1616
806 ... 1015

Proposed Rules:

379 ... 418

16 CFR

13 ... 609

Proposed Rules:

13 ... 141, 1039

17 CFR

1 ... 609, 615
211 ... 109, 865, 1341

Proposed Rules:

300 ... 1793

18 CFR

3 ... 1469
154 ... 867, 1748
270 ... 867
271 ... 15
273 ... 867
375 ... 867, 1469, 1748
381 ... 867, 1469
382 ... 1748
388 ... 1469
389 ... 1750
410 ... 1751
1301 ... 405

19 CFR

4 ... 1103
24 ... 615

Proposed Rules:

132 ... 1376
141 ... 30
142 ... 1376
178 ... 30

20 CFR

Proposed Rules:

361 ... 143
901 ... 147

21 CFR

81 ... 19
176 ... 97
193 ... 20, 233, 1916
312 ... 1917
436 ... 1918
452 ... 1918
540 ... 234
546 ... 235
558 ... 235, 236, 1017
561 ... 20, 233, 1916
606 ... 111
610 ... 111
640 ... 111
884 ... 1554
892 ... 1554
1308 ... 500

Proposed Rules:

102 ... 1795
193 ... 259
201 ... 1796
358 ... 2198
561 ... 259
864 ... 1574
866 ... 1574
868 ... 1574
870 ... 1574
876 ... 1574
880 ... 1574
882 ... 1574
884 ... 1574
890 ... 1574
892 ... 1574
1308 ... 743

23 CFR

635 ... 1920, 1922
655 ... 236

Proposed Rules:

625 ... 2041
626 ... 2041

24 CFR

200 ... 842
203 ... 868
215 ... 842, 1122
221 ... 615
235 ... 842
236 ... 615, 842
247 ... 842
812 ... 842
880 ... 842, 1122
881 ... 842, 1122
882 ... 842, 1122
883 ... 842, 1122
884 ... 842, 1122
886 ... 842, 1122
904 ... 1122
905 ... 1122
912 ... 842
960 ... 1122

Proposed Rules:

115 ... 260

25 CFR

Proposed Rules:

151 ... 1797

26 CFR

1 ... 117, 238, 1103, 1441

Proposed Rules:

1 ... 153, 261

27 CFR

Proposed Rules:

9 ... 1492

28 CFR

55 ... 735
541 ... 196

29 CFR

2610 ... 1904
2616 ... 1904
2617 ... 1904
2618 ... 1904
2676 ... 1018
2702 ... 737

Proposed Rules:

1910 ... 1724, 2047
1926 ... 2049
2550 ... 1798

30 CFR

202 ... 1184, 1230
203 ... 1184
206 ... 1184, 1230
207 ... 1184
210 ... 1184
241 ... 1184
800 ... 994

Proposed Rules:

210 ... 1039
216 ... 1039

31 CFR

103 ... 776

32 CFR

45 ... 1341
104 ... 1343
199 ... 2018
374 ... 1345
552 ... 1752
887 ... 876

Proposed Rules:

199 ... 1378, 1926

33 CFR

110 ... 878
117 ... 119, 406, 2034
165 ... 616, 878
166 ... 1347

34 CFR

Proposed Rules:

303 ... 1461

36 CFR

5 ... 739
404 ... 120
1254 ... 1348

Proposed Rules:

223 ... 519

37 CFR

201 ... 122, 123

Proposed Rules:

203 ... 153

38 CFR

4 ... 21, 1441
17 ... 1755
21 ... 616, 879, 1756, 1779
36 ... 1349

Proposed Rules:

21 ... 620, 1040
36 ... 1378

39 CFR

111 ... 124, 125
232 ... 126
233 ... 1780

40 CFR

2 ... 214
51 ... 392, 480
52 ... 392, 501, 1019, 1020, 1354, 1780
61 ... 777
86 ... 470
180 ... 241, 243, 657, 1923
271 ... 126–128, 244, 1358
421 ... 1704
763 ... 1021

Proposed Rules:

52 ... 261, 779, 1043
86 ... 1716
156 ... 1494
170 ... 1494
180 ... 262, 263, 1495, 2147
192 ... 1641
261 ... 519
373 ... 850
795 ... 911
796 ... 911
799 ... 911, 913

41 CFR

101–20 ... 129
105–60 ... 1478
114–51 ... 741

Proposed Rules:

Ch. 201 ... 620
51–7 ... 1379
141 ... 31
142 ... 31
201–11 ... 1805
201–30 ... 1805
201–31 ... 1805
201–32 ... 1805
261 ... 31

42 CFR

405 ... 1617
412 ... 1621
413 ... 1621
418 ... 1621
431 ... 657
435 ... 657
440 ... 657
441 ... 657
442 ... 1984

Proposed Rules:

410 ... 1383
434 ... 744
435 ... 744

43 CFR

2 ... 24
3100 ... 1184
3160 ... 1184

Proposed Rules:

3590 ... 2055

Public Land Orders:

6661 ... 1359
6662 ... 1359

Proposed Rules:

3160 ... 1039

44 CFR

64 ... 14855

Proposed Rules:

7 ... 922
61 ... 419
62 ... 419
80 ... 621
82 ... 621
83 ... 621

45 CFR

95 ... 26
233 ... 467

Proposed Rules:

1215 ... 1496
1336 ... 1806

46 CFR

Proposed Rules:

588 ... 624

47 CFR

Ch. I ... 502
0 ... 1022
15 ... 1781
64 ... 27
65 ... 1027
68 ... 1103
73 ... 28, 29, 504, 1030, 1629, 1630, 1782
90 ... 1022

Proposed Rules:

1 ... 625
63 ... 625
73 ... 426, 1386–1388, 1807, 1808, 2061–2064
74 ... 529
76 ... 625
78 ... 529
95 ... 779

48 CFR

7 ... 660
8 ... 660
13 ... 660
14 ... 660
19 ... 660
22 ... 660
25 ... 660
26 ... 660
28 ... 660
29 ... 660
33 ... 660
42 ... 660
45 ... 660
52 ... 660
208 ... 1924
501 ... 130, 132, 1441, 1540
513 ... 132, 1441
525 ... 1925
836 ... 1630
852 ... 1630

Proposed Rules:

215 ... 625
225 ... 626
232 ... 931
252 ... 626, 931
404 ... 749
407 ... 749
409 ... 749
410 ... 749
412 ... 749
414 ... 749
415 ... 749
416 ... 749
417 ... 749
419 ... 749
422 ... 749
424 ... 749
425 ... 749
428 ... 749
432 ... 749
436 ... 749
437 ... 749
439 ... 749
442 ... 749
445 ... 749
446 ... 749
447 ... 749
452 ... 749

49 CFR

24 ... 467
31 ... 880
190 ... 1633
192 ... 1633
301 ... 2035
386 ... 2035
389 ... 2035
541 ... 133
544 ... 1641
565 ... 1032
571 ... 1783
661 ... 617

Proposed Rules:

3 ... 100
7 ... 100
10 ... 100
192 ... 1043, 1045
383 ... 265
391 ... 42
544 ... 1635
571 ... 426, 780, 934, 936, 1643
1041 ... 1555
1048 ... 155
1049 ... 155

50 CFR

33 ... 1487
216 ... 1638
611 ... 134, 741, 890, 894, 2147
653 ... 244
663 ... 248, 248
672 ... 890, 991
675 ... 894, 991, 2147

Proposed Rules:

17 ... 1929
20 ... 42, 1645
226 ... 530
301 ... 156
652 ... 265
658 ... 266
672 ... 627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988

Public Laws

are now available for the 100th Congress, 2nd Session, 1988

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 100th Congress, 2nd Session, 1988.

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Vol. 53 No. 17
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Contents

Federal Register
Vol. 53, No. 17
Wednesday, January 27, 1988

African Development Foundation
NOTICES
Meetings; Sunshine Act, 2347

Agricultural Marketing Service
RULES
Cotton:
Classification, testing, and standards
User fees, 2213

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Rural Electrification Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
National Arboretum Advisory Council, 2261

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products:
Brucellosis—
State and area classifications, 2221

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Nebraska, 2261

Coast Guard
PROPOSED RULES
Outer Continental Shelf activities:
Manual OCS facilities; emergency evacuation plan, 2236

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

Defense Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Health care services, nonpersonal services contracts, 2464
NOTICES
Agency information collection activities under OMB review, 2265, 2266
(2 documents)
Meetings:
Science Board task forces, 2266

Drug Enforcement Administration
RULES
Schedules of controlled substances:
3,4-Methylenedioxymethamphetamine, 2225
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 2301
DuPont Pharmaceuticals, 2301
Norac Co., Inc., 2301
Philadelphia Seed Co., 2301

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
North Canadian Resources, Inc., 2269
Northwest Pipeline Corp., 2270
Windward Energy & Marketing Co., 2272

Education Department
NOTICES
Meetings:
Education Statistics Advisory Council, 2266

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Privacy Act; systems of records, 2266

Environmental Protection Agency
PROPOSED RULES
Pesticide, food, and feed additive petitions:
Paper fiber, 2238
Water pollution control:
State underground injection control programs—
Mississippi, 2238
NOTICES
Pesticides; emergency exemptions, etc.:
Harmony, 2285
Hydrogen cyanamide, 2284

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 2347

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Airplane operation and foreign air carrier security rules; correction, 2223
PROPOSED RULES
Airworthiness directives:
Cessna, 2227
DeHavilland, 2228

Federal Communications Commission
NOTICES
Common carrier services:
North Atlantic Region; common carrier transmission facilities, construction and use; policies and guidelines, 2285

Federal Crop Insurance Corporation
NOTICES
Meetings:
Board of Directors, 2261

Federal Deposit Insurance Corporation
RULES
Unsafe and unsound banking practices:
Insured nonmember banks; subsidiary securities activities; correction, 2223

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Hydroelectric projects; fish and wildlife agencies reimbursement fees, 2224
NOTICES
Hydroelectric applications (STS Engineers Ltd. et al.), 2272
Natural gas certificate filings:
Columbia Gas Transmission Corp. et al., 2275
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 2277
Small power production and cogeneration facilities; qualifying status:
General Mills, Inc., et al., 2280
Applications, hearings, determinations, etc.:
Equitable Gas Co., 2282
Florida Gas Transmission Co., 2282
Maryland People's Counsel et al., 2282
Metropolitan Edison Co., 2283
Placid Oil Co., 2283
Williston Basin Interstate Pipeline Co., 2284

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—Amendments, 2233
NOTICES
Environmental statements; notice of intent:
Bartow County, GA, 2345

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2287, 2288 (2 documents)
Investigations, hearings, petitions, etc.:
Marine terminal facilities; rates, charges, and services, 2288

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
CNB Bancorp, Inc., et al., 2288
Williams, Claudine, 2289

Federal Trade Commission
RULES
Prohibited trade practices:
Albertson's, Inc., 2223
Commodore Corp., 2224
PROPOSED RULES
Prohibited trade practices:
Silver Group, Inc., 2230

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Chilton Insurance Co., 2346
Van Tol Surety Co., Inc., 2346

Fish and Wildlife Service
NOTICES
Alaska Land Bank agreements, 2296
Environmental statements; availability, etc.:
Andean condors in Ventura County, CA; experimental release and recapture; proposal and meeting, 2297

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Center for Veterinary Medicine, division directors, 2225
PROPOSED RULES
Human drugs:
Oral health care drug products (OTC); tentative final monograph, 2436
NOTICES
Committees; establishment, renewal, termination, etc.:
Vaccines and Related Biological Products Advisory Committee, 2289
Meetings:
Advisory committees, panels, etc., 2289

Food and Nutrition Service
RULES
Child nutrition programs:
Women, infants, and children—
Special supplemental food program; funding formula, 2213

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Tennessee
Komatsu Construction/Industrial Equipment Plant, 2261

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Health care services, nonpersonal services contracts, 2464

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; National Institutes of Health

Health Care Financing Administration
NOTICES
Medicare:
Ambulatory surgical centers—
Covered surgical procedures; list; correction, 2291

Immigration and Naturalization Service
PROPOSED RULES
Immigration:
Marriage fraud, 2428

Indian Affairs Bureau
NOTICES
Claims settlement:
Wampanoag Tribal Council of Gay Head, Inc., 2295

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau

International Broadcasting Board
NOTICES
Meetings; Sunshine Act, 2347

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 2262
Committees; establishment, renewal, termination, etc.:
Trade Policy Matters Industry Policy Advisory Committee, 2263

International Trade Commission
NOTICES
Import investigations:
Buoyant metallic balloons, 2299
High geometric surface area catalysts and components, 2299
High intensity retroreflective sheeting, 2297
Marine automatic pilots, 2299
Plastic light duty screw anchors, 2298
Recloseable plastic bags and tubing, 2298
Meetings; Sunshine Act, 2347

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Benton Central Railroad Co., 2300

Justice Department
See also Drug Enforcement Administration; Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Youngstown Thermal Corp., 2300

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Phoenix District, AZ, 2296

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground coal mining—
Roof, face, and rib support, 2354
PROPOSED RULES
Coal mine safety and health:
Underground coal mining—
Ventilation standards, escapeways, and boreholes in advance of mining, 2382

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Health care services, nonpersonal services contracts, 2464

National Bureau of Standards
NOTICES
Information processing standards, Federal:
Calendar date, representations of local time of the day for information interchanges, etc., 2263

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities National Council, 2301

National Highway Traffic Safety Administration
PROPOSED RULES
Anthropomorphic test dummy; side impact, 2254
Motor vehicle safety standards:
Occupant crash protection—
Side impact protection, 2239
NOTICES
Meetings:
Rulemaking, research, and enforcement programs, 2345

National Institutes of Health
NOTICES
Meetings:
Animal Resources Review Committee, 2291
National Cancer Institute, 2292, 2293 (4 documents)
National Institute of Child Health and Human Development, 2293
National Institute of Diabetes and Digestive and Kidney Diseases, 2294, 2295 (4 documents)
National Institute on Aging, 2293
National Library of Medicine, 2295

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Experimental fishing, 2285

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 2347

Nuclear Regulatory Commission
NOTICES
Nuclear Waste Policy Act:
High-level waste program; toll free telephone recording change, 2302
Operating licenses, amendments; no significant hazards considerations:
Biweekly notices, 2305
Applications, hearings, determinations, etc.:
Mississippi Power & Light Co. et al., 2302
Toledo Edison Co. et al., 2303

Postal Service
PROPOSED RULES
Practice and procedure rules:
Stolen mail matter and property acquired by Postal Inspection Service for use as evidence, disposition, 2236

President's Commission on Privatization
NOTICES
Meetings, 2346

Privatization, President's Commission
See President's Commission on Privatization

Public Health Service
See Food and Drug Administration; National Institutes of Health

Rural Electrification Administration
RULES
Federal Financing Bank loans, REA guaranteed; prepayment, 2468

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., et al., 2333
Municipal Securities Rulemaking Board, 2335
Applications, hearings, determinations, etc.:
College Retirement Equities Fund et al., 2336
Institutional Investors Tax-Advantaged Income Fund, Inc., 2339
Public utility holding company filings, 2342

Small Business Administration
NOTICES
Disaster loan areas:
Marshall Islands, 2344
Puerto Rico, 2345
Meetings; regional advisory councils:
North Carolina, 2344
Texas, 2344
Applications, hearings, determinations, etc.:
Revelation Resources, Ltd., 2345

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See Fiscal Service

Separate Parts In This Issue

Part II
Department of Labor, Mine Safety and Health Administration, 2354

Part III
Department of Labor, Mine Safety and Health Administration, 2382

Part IV
Department of Justice, Immigration and Naturalization Service, 2426

Part V
Department of Health and Human Services, Food and Drug Administration, 2436

Part VI
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 2464

Part VII
Department of Agriculture, Rural Electrification Administration, 2468

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
27 2213
28 2213
61 2213
246 2213
1786 2468

8 CFR
Proposed Rules:
1 2426
204 2426
205 2426
211 2426
212 2426
214 2426
216 2426
223 2426
223a 2426
235 2426
242 2426
245 2426

9 CFR
78 2221

12 CFR
337 2223

14 CFR
108 2223
129 2223
Proposed Rules:
39 (2 documents) 2227, 2228

16 CFR
13 (2 documents) 2223, 2224
Proposed Rules:
13 2230

18 CFR
389 2224

21 CFR
5 2225
1308 2225
Proposed Rules:
201 2436
356 2436
369 2436

23 CFR
Proposed Rules:
655 2233

30 CFR
75 2354
Proposed Rules:
75 2382

33 CFR
Proposed Rules:
140 2236
143 2236
146 2236

39 CFR
Proposed Rules:
946 2236

40 CFR
Proposed Rules:
145 2238
180 2238

48 CFR
Proposed Rules:
28 2464
37 2464
52 2464

49 CFR
Proposed Rules:
571 2239
572 2254

VOL
53
ISS
17
JA
27
988
UMI

Rules and Regulations

Federal Register
Vol. 53, No. 17
Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as final rule the provisions of an interim rule which increased the user fees charged for cotton classification, testing, and standards. The revision in fees reflects the recent amendment to the Cotton Statistics and Estimates Act and is necessary to recover the costs of providing services.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, Cotton Division, AMS, USDA, Washington, DC 20090-6456, (202) 447-2145.

SUPPLEMENTARY INFORMATION: An interim rule which detailed the increased user fees for cotton classification, testing, and standards was published in the **Federal Register** on September 18, 1987 (52 FR 35215). This interim rule stated the reasons for revising classification user fees due to a recent amendment on August 20, 1987, to section 3a of the Cotton Statistics and Estimates Act (7 U.S.C. 473a) and the need to increase other user fees to recover, as nearly as practicable, the costs of providing these services. A 45-day comment period was given to interested persons to submit their views on the proposed user fee increases. The comment period ended November 2, 1987, with no comments having been received. Therefore, based upon the above the interim rule is adopted as a final rule as originally published.

This rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect only a modest increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increases will not affect competition in the marketplace; (3) the amounts of the increase in fees are needed to continue to provide services at the levels desired by the industry; and (4) the use of the services is voluntary. The secretary is authorized by statute to recover the costs of the services.

The information collection requirements contained in the rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Pursuant to 5 U.S.C. 533, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because a sufficient comment period was included in the interim rule with no comments received, the interim rule is adopted as a final rule without change, and no useful purpose would be served by such a delay.

List of Subjects

7 CFR Part 27

Cotton classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseed, Chemists, Samplers, Grades.

Accordingly, the interim rule amending 7 CFR Parts 27, 28, and 61 which was published at 52 FR 35217-35221 on September 18, 1987, is adopted as a final rule without change.

Dated: January 22, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-1652 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children, Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program Regulations concerning the formula through which the Department shall allocate funds for administrative and program services to State agencies. The formula prescribed by this rule differs from the one currently in use. In accordance with this rule, the Department shall henceforth allocate funds for administrative and program services to State agencies on the basis of previous fiscal year funding levels and on the basis of the number of participants served. The intent of this formula is to preserve a reasonable measure of funding stability while promoting funding levels necessary to provide equivalent service to participants. With the administrative and program services funds tied more closely to participation, the Department expects that the formula will more equitably allocate available funds to meet the administrative and program services costs in State agencies and will remove disincentives for achieving economies in food costs that allow service to greater numbers of participants.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, VA 22302. (703) 756-3748.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been classified to be *not major*. The Department does not anticipate that this

rule would have an annual effect on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor would this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. Section 17(i) requires the Department to "* * * divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Legislative directives for the distribution of administrative and program services funds to State agencies are provided in section 17 (h)(1) and (h)(2). Section 17(h)(1) reads in part, "The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration." This paragraph further stipulates that not less than one-sixth of the funds State agencies expend for nutrition services and administration are to be used for nutrition education activities, unless a State agency requests authorization to spend less than the required amount and provides documentation that funding from other sources will be used for such activities. Section 17(h)(2) further requires the Secretary to "* * * allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies." In summary, the CNA directs the Department to allocate to State agencies 20 percent of the total Federal funds available for the WIC Program (minus funds expended for evaluation and pilot projects under subsection (g)) for administrative and program services according to a formula that provides a minimum amount and that considers the varying needs of State agencies.

Current Funding Formula

On July 2, 1987, a final rule was published (52 FR 25182) that set forth the formulas for allocating both WIC food and administrative and program services funds. While this rule made revisions to the formula for allocating food funds, the rule did not make any changes to the existing administrative and program services funding formula. The current formula for allocating administrative and program services funds, in use since fiscal year 1984, provides funds in two ways. First, a guaranteed grant amount is calculated which is the lesser of: (a) 21 percent of a State agency's food grant, or (b) the State agency's ratio of administrative and program services funds to food funds allocated in the previous year, multiplied by the current year's food grant. Second, a discretionary fund is available for allocation by each Food and Nutrition Service (FNS) regional office. The purpose of the discretionary fund is to provide for the varying needs of State agencies. The amount of discretionary funds available to each regional office for allocation to its respective State agencies is determined based on each of its State agencies' ratio of administrative and program services funds to food funds from the previous fiscal year. The difference between the product of the State agency's ratio and its current year's food grant and the State's guaranteed administrative and program services grant represents the State's contribution to the regional discretionary fund. The sum of all States' contributions forms the regional discretionary fund.

FNS regional offices determine the amount each State agency will receive of the discretionary fund. The underlying premise of these discretionary allocations by the regional offices is that their close working relationships with the State agencies afford them greater awareness of the State agencies' varying needs.

Regional offices have allocated discretionary funds using factors such as the State agency's ratio of administrative and program services funds to food funds from the previous year, administrative and program services cost per participant, service to high risk participants and funding for special projects. In fiscal year 1987, approximately 17 percent of total administrative and program services funds were awarded through the discretionary grant component. Nationally, however, most State agencies received the amount of discretionary funds they "contributed" to the regional fund, and only 3 percent of the total discretionary funds were actually redistributed to other State agencies.

Concerns About the Existing Formula

Establishing each State agency's administrative and program services funding level as a percentage of its food funding level has been a stable and straightforward method of funding. The Department is concerned, however, that this method may entail some inequity in the distribution of funds under the formula among State agencies and regions of the country.

There is a general recognition that the use of these ratios in calculating the grant amounts available for distribution to State agencies does not yield fully equitable results.

Additionally, the Department is concerned that the current formula is a disincentive to a State agency's reduction of food costs per participant. Such lower food costs permit service to a greater number of participants. However, under the current formula, State agencies must provide administration and program services for each additional participant with no increase in administrative funding.

- *Alternative Formula Proposed*

A proposed rule containing an alternative funding formula was published for comment in the **Federal Register** (52 FR 27005) on July 17, 1987. In the development of the proposed formula, the Department consulted with members of the WIC community, particularly the National Association of WIC Directors (NAWD). Discussions with the NAWD representatives centered on the formulation of funding principles, the consideration of factors affecting administrative and program services costs, and the critique of specific formula options under development. These discussions proved to be pivotal in the design of the proposed formula, whose fundamental difference from the current formula was use of participation levels instead of ratios to food funds as a basis for allocating administrative and program services funds.

- *Description of the Proposed Formula*

The objectives of the proposed formula were to give all State agencies the opportunity to provide equivalent service to participants and equivalent management oversight and to remove existing disincentives to reducing food costs in order to serve more participants. To accomplish these objectives within the context of ongoing program operations, the Department proposed to implement change in funding levels gradually. Thus, the proposed formula would allocate funds to maintain previous funding levels while promoting a gradual movement toward a funding level that represents each State agency's "fair share", or parity, funding level. The purpose of the parity grant component was to reflect the funding levels State agencies would receive if all available administrative and program services funds were allocated primarily on the basis of participation. The Department proposed two methods for determining parity grant levels, both of which recognized the higher per participant costs associated with smaller participation levels. The fundamental difference between the two methods was that one (Option A) made no adjustment for differing salary costs among States, while the other (Option B) did.

The implementation of the formula was designed to ensure gradual movement toward the parity level. Each State agency would receive a stability funding level equal to the total amount received in the previous fiscal year *provided* that participation levels did not decrease. If FNS projected a decrease in participation for a State agency, that State agency would receive its previous year funding level decreased by an amount commensurate with the projected decrease in participation. The purpose of stability funding is to maintain a measure of funding stability from year to year, and most funds available for administrative and program services would be allocated through this component of the formula. Any funds remaining after stability funding is satisfied would be allocated as residual funds on the basis of participation levels. State agencies could qualify for residual funds in two ways: (1) Projected participation increases over the levels of participation in the previous year, or (2) parity grant levels which exceeded stability funding levels.

Although the goal of the proposed funding formula was eventually to fund all State agencies at their parity grant levels, a two-pronged approach to residual funding was proposed to provide further encouragement to State agencies to increase participation levels. Thus, State agencies which otherwise might not qualify for residual funding under the parity grant component of the formula would still qualify for some additional funding if they could increase participation.

The final step under the proposed funding formula was to provide for discretionary funding by FNS regional offices. The Department proposed to retain the discretionary funding concept, which is part of the current formula, in order to allow some flexibility in the funding process for meeting the varying needs of State agencies. The Department proposed to accomplish this by subtracting 10 percent of each State agency's total grant (stability grant plus any residual funds for which the State agency qualified) and aggregating those amounts for all State agencies within each FNS region. The FNS regional office would then distribute the funds based on the needs of State agencies within the region.

- *Comments Received on the Proposed Formula*

A total of 234 letters were received which provided comments on the proposed formula. The commentors represented 48 State agencies, 155 local agencies, and 31 interested groups. The Department considered the comments received in formulating this final rule. Following is a discussion of the major issues raised by commentors in response to the proposed rule for allocating WIC administrative and program services funding.

General Issues: Formula Concepts and Concerns

- *Support for the Proposal*

A total of 228 commentors provided comments supporting or opposing the proposal to revise the formula used to allocate funds for administrative and program services. Basic approval or disapproval could not be determined for six comment letters received. Of the 228 comment letters, 74 percent generally supported the proposal. Their support was conditional on one or more recommended modifications; 103 commentors limited their comments to support for the adoption of either Option A or Option B as the preferred method for determining parity grants. Sixty commentors (26 percent) opposed the proposed rule in its entirety. The common elements of the objections raised by these commentors include the need for additional research into the costs of administering the WIC Program, the complexity of the proposal and the perception that certain State agencies or regions of the country would be disadvantaged by the adoption of the proposed formula.

- *Participation—Based Funding*

A smaller number of commentors (43) specifically addressed the concept of participation-based funding. Of this number, 71 percent supported the concept, and 29 percent opposed. Those who opposed the use of participation as a basis for allocating administrative and program services funds cited problems which they believe are inherent in this funding approach, such as the lack of predictability in funding levels from year to year and reduced per participant funding without significant increases in funds appropriated by Congress (since participation-based funding would be expected to promote increases in participation). While such outcomes could result from funding based solely on participation, most of the funds will, in fact, be allocated on the basis of prior year funding levels. However, the ultimate objective of the new funding formula is to provide funds primarily on the basis of the number of participants served. The Department continues to believe that this is a fair method of allocating funds.

A related issue raised by 26 commentors was the concern that participation-based funding may encourage some State agencies to serve more eligible persons by reducing the quantity and quality of food packages. With regard to food cost economies, it is the Department's intent that State agencies will review current policies and practices on food package design, food delivery systems, and vendor selection and monitoring practices to determine potential cost-saving measures. However, State agencies should not contemplate measures detrimental to the nutritional integrity of food packages. Any changes to food packages will be reviewed carefully by FNS in accordance with guidelines

outlined in FNS Instruction 804–1, *WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring.* If FNS determines that a State agency has improperly reduced the nutritional content of food packages such State agency will risk the imposition of funding sanctions, as described in Section 246.19(a)(2) of the WIC Program Regulations.

• *Gradual Change*

A basic featue of the proposed formula was the gradual change from funding levels determined by the current formula to funding levels which are primarily based on participation. Most commentors who addressed this feature of the proposal supported the need for gradual change, and some commentors recommended consideration of placing a cap on the amount of change allowed for funding levels from one year to the next. Other commentors were opposed to limiting the amount of change in funding levels because this would impede the movement toward parity funding. While recognizing the concern expressed on behalf of State agencies which will receive a lesser share of funding under the new formula, the Department believes that the new formula fairly balances the need for funding stability with the need to promote funding which emphasizes equivalent service to participants throughout the country. The first priority under the new formula will be to allocate funds on the basis of State agencies' previous year grant levels; it is only after stability funding is fully satisfied that any remaining funds will be allocated on the basis of participation. Given the fact that most funds available for allocation for administrative and program services will be allocated through the formula's stability component, the Department does not believe that further restrictions on changes to funding levels are warranted.

• *Interaction with the Food Funding Formula*

Thirty-nine commentors, representing a broad spectrum of State agencies and interested groups, expressed concern that the objectives of the proposed formula conflict with those of the formula by which food funds are allocated to State agencies. A new food funding formula which was published as a final rule in the **Federal Register** (52 FR 25182) on July 2, 1987, provides funding incentives to State agencies based on their service to participants who are at the greatest risk due to nutritional deficiences or medical conditions. The objective of this funding policy is to encourage State agencies to target benefits to eligible persons who are at the greatest nutritional risk and who therefore have a greater need for program benefits. However, the proposed administrative and program services funding formula would provide funding incentives to State agencies to increase participation without regard to the nutritional risk status of the additional participants. Since the number of participants that a State agency can serve is directly related to the cost of the food packages provided to participants, lower food expenditures result in the ability to serve more people. However, commentors pointed out that high risk participants, particularly infants, tend to require more expensive food packages, and thus State agencies which serve a greater percentage of high risk participants are likely to have higher per participant food expenditures. Commentors contended that a State agency could be rewarded under the food formula for targeting benefits to high risk participants and penalized under the proposed administrative and program services funding formula for having higher per participant food expenditures.

The Department agrees that the two formulas differ with regard to funding objectives. In an effort to determine whether these differences could produce the conflict predicted by commentors, the Department conducted computer simulations of the two formulas with results projected into fiscal year 1989. Based on these simulations, it appears that well-targeted State agencies would receive slightly less in funding compared to State agencies which are less well-targeted. Although the reduction of administrative and program services funding for well-targeted State agencies was slight (less than 1 percent reduction of the administrative grant per participant), the Department believes that it is prudent to provide a targeting incentive in the administrative and program services funding formula. Therefore, a specific targeting factor has been incorporated into the final formula which will reward State agencies for service to high risk participants. In doing so, the Department reaffirms the important program goal of targeting WIC benefits to those in greatest need.

Stability Funding

Forty-two commentors addressed issues related to the stability component of the proposed funding formula. Six commenters supported the proposal as stated or with some modifications; 36 commentors opposed the provision. Those who opposed objected to the proposed methodology of reducing a State agency's previous year funding level by an amount commensurate with projected participation decreases. Commentors stated that stability funding should at least equal the amount of funds received in the previous year. A majority of the opposing commentors also recommended that an adjustment for inflation should be added to the previous year grant levels when computing stability grants under the new formula.

The Department concurs with the recommendation that stability funding should equal the previous year's total administrative and program services funding level with no reductions for projected participating decreases. The State agency's stability funding level is based on a known, objective value—the preceeding year administrative and program services funding level—although the exact amount of that level may not be final until well into the succeeding fiscal years. Preclusion of an adjustment for projected decreases in participation will improve predictability of funding levels for the State agencies. An appropriate change has been incorporated into the final rule. However, the Department decided not to include an inflation adjustment for determining stability grants. The Department's reasoning on this matter is that the introduction of an inflation factor into the formula would severely limit the amount of funds available for residual funding, thus hampering the movement toward parity funding.

Residual Funding

• *Projected Participation*

Due to the revised method of determining stability funding as discussed in the preceding paragraph, use of projected participation in the final rule is limited to calculating the amount of residual funding for which a State agency qualifies. The Department proposed to project participation by dividing each State agency's current fiscal year food grant by its food expenditures per participant (FEP) averaged over the most recent closed-out 12 months. That quotient would be divided by 12 to arrive at a monthly participation level. The FEP is derived from participation and food expenditures reported by State agencies to FNS on the Form FNS–498, WIC Monthly Financial and Program Status Report. To account for increased costs in the current fiscal year, the FEP would be increased by the same base anticipated rate of inflation that would be applied in determining current year food grants.

A total of 33 commentors addressed issues related to projected participation. Half of these commentors generally supported the concept of projecting participation, although most suggested modifications to the proposed methodology. The other half opposed the use of projections, and many recommended, instead, the use of average monthly participation levels from the previous year. State agencies which have initiated or plan to initiate infant formula rebate programs or other competitive bidding systems designed to reduce food costs were particularly concerned about this issue.

Commentors generally felt that the proposed methodology would result in inaccurate projections. Specific recommendations to improve the accuracy of the projections included using more recent data to calculate each State agency's FEP and adjusting the FEP for prospective food cost savings and for the additional cost of serving high risk participants.

While acknowledging certain limitations to the proposed method of projecting participation, the Department believes that it represents a fair and reasonable approach to forecasting participation. With the exception of the computations used to determine an inflation adjustment for FEP, the Department intends to project participation as proposed. The Department's reasons for retaining the proposed methodology for projecting participation are summarized below.

• The projections are based on the most objective information available—final (closed-out) food expenditure and participation data, as reported by State agencies, and current year food grant levels. Use of data that is not closed-out could result in preliminary FEP's that may be inaccurate.

• The use of a 12 month average of final (closed-out) food expenditures and participation captures the full picture of State agency activity regarding participation and food expenditures. Use of a shorter time period to average food expenditures and participation could result in an average FEP that reflects temporary or seasonal fluctuations in food prices or participation levels.

• Prospective consideration of food cost savings or other action that might increase participation (e.g., elimination of sales tax on WIC food purchases) would introduce an unacceptable level of unreliability into participation projections. The projection methodology adopted in this rule will recognize participation increases due to cost savings actually achieved. While there will be a brief time lag between actual participation increase and the subsequent influx of administrative funding to manage these increases, the Department believes this is a more prudent and objective manner in which to allocate administrative resources.

• A specific targeting factor has been incorporated into the parity grant component of the formula. Addition of a specific targeting factor more clearly reinforces the program goal of targeting benefits to high risk participants.

One change that will be made concerns the calculations of the inflation factor to be applied to each State agency's average FEP. As several commentors correctly pointed out, the rate of inflation used should match the period of time used to calculate the FEP through the current fiscal year. Therefore, an inflation factor will be applied to the FEP which will accomplish that objective.

•*Residual Funding Based on Projected Participation Increases*

As proposed, State agencies may qualify for residual funds based on participation increases projected by FNS. The amount of residual funds would be determined by applying a multiplier to the projected increase in participation from the previous year. The multiplier would equal an administrative expenditure per participant (AEP) averaged from the lowest quartile of AEP's from the previous fiscal year.

Eighteen commentors addressed this aspect of the proposed funding formula. Four commentors opposed the allocation of residual funds based on projected participation increases. These commentors stated that all residual funds should be allocated only on the basis of the parity grant component. Another issue that concerned several commentors was the proposed method of comparing projections from year to year as a basis for determining changes in participation levels. Commentors felt that without some comparison to actual average annual participation levels beyond the first year, the projections would lose any similarity to actual participation levels. A third issue addressed was the proposed use of an average AEP drawn from the lowest quartile of AEP's. In general, commentors felt that it was not equitable to use the same multiplier for all State agencies because their costs in serving each additional participant vary. The position taken was that the smallest State agencies, in particular, would not be adequately compensated for their comparatively higher expenditures on a per participant basis.

The Department has retained this provision of the new funding formula as proposed. The Department believes that it is appropriate to recognize efforts undertaken by higher cost State agencies to reduce food costs and increase participation. Many such State agencies would not otherwise receive residual funds through the parity component of the formula. Regarding the concern about comparing projections from year to year, this method will ensure that any changes in participation or food expenditures per participant not accounted for in the previous year's projections will be considered in the current year's projections. Also, it should be noted that projected participation decreases from one year to the next year will not affect funding levels as this procedure was deleted due to the revised method of determining stability grants.

Regarding the concern that the use of one standard AEP multiplier will not adequately compensate all State agencies for the cost of serving additional participants, the Department is reluctant to make additional adjustments. To do so would reduce the amount of residual funds available to State agencies based on the parity grant component of the new formula. This would considerably slow the movement toward fair share funding based on participation, which is the ultimate objective of the new formula.

•*Residual Funding Based on Parity Grant Determinations*

As proposed, the purpose of the parity grant component of the new funding formula is to reflect "fair share" funding levels for State agencies based primarily on participation. Parity grant calculations provide another means by which State agencies may qualify for residual funding; the difference between the stability funding level and the parity funding level equals the amount of residual funds for which a State agency qualifies. The Department offered two approaches to determining parity funding levels, Option A and Option B. Option A would provide funds on the basis of a per participant rate. Option B would provide funds on the basis of a constructed salary budget which computes the number of State and local staff according to staff to participant ratios and salaries paid within the State; the balance of funds would be paid out on a flat administrative grant per person. Both options would recognize the higher costs associated with smaller participation levels on a per participant basis.

A total of 191 commentors addressed the proposed options of determining parity grants. Of this number, 119 (62 percent) supported Option A, 35 (18 percent) supported Option B, and 37 (19

percent) opposed both options. The majority of commentors supporting Option A were from one region of the country; over two-thirds of the commentors represented one State from that region. Similarly, most supporters of Option B were from a single region, and those opposing both options most frequently represented 2 other regions of the country. The regional split in preferences for the proposed options, as well as for the new formula itself, is understandable due to the shift in funds allocations on a regional basis. The inclusion of salary costs was the most divisive issue. State agencies with higher than average salary costs tended to support Option B, while State agencies with lower than average salary costs supported Option A.

The Department has selected a modified Option A as the method used to determine parity grant levels. A number of factors and issues were considered in reaching this decision. The Department considered the relative merits of the methodologies used in both options, exclusive of the controversy surrounding the use of salary costs as a factor in the formula. Compared to Option A, the methodology used in Option B had several drawbacks. First, the formula was more complex. A second and perhaps more important consideration was the concern raised by commentors regarding assumptions used to determine staffing levels at the local level. Ultimately, the Department concluded that Option A provided a more objective means of allocating funds based on participation.

However, the commentors supporting Option B had valid reasons for recommending the consideration of salary costs in determining parity grant levels. In addition, some commentors pointed out the need to consider the additional costs of serving high risk participants. Taking all of these arguments into consideration, the Department has revised the proposed Option A method of determining parity grant levels to include factors which recognize differential salary costs among State agencies and the relative success in targeting benefits to high risk participants.

Parity grant levels will be computed in 2 parts: first, 80 percent of available administrative and program services funds will be allocated on the basis of administrative grant per participant (AGP) rates adjusted for caseload size as proposed in Option A; and second, the remaining 20 percent of available funds will be allocated on the basis of salary and targeting factors. The salary and targeting factors will be determined as follows:

(1) Each State agency's average annual salary level will be indexed to the national average salary;

(2) Each State agency's share of imputed priority I participants compared to its total average monthly participation level will be indexed to the national average share of imputed priority I participants;

(3) Each State agency's salary index and targeting index will be added together and multiplied against its projected participation level; and

(4) Each State agency's share of the national total determined in step 3 will be determined and then multiplied by 20 percent of the total amount of funds available for administrative and program services.

Following is an example showing the calculations used to determine the amount of funds a State agency would receive based on the salary and targeting factors.

Step 1:

$$\frac{\text{State A average salary (\$25,000)}}{\text{National average salary (\$20,000)}} = \text{State A salary index (1.25)}$$

Step 2:

$$\frac{\text{State A ratio of priority I participation (.50)}}{\text{National ratio of priority I participation (.40)}} = \text{State A targeting index (1.25)}$$

Step 3:

$$(\text{State A salary index (1.25)} + \text{State A targeting index (1.25)}) \times \frac{\text{State A projected participation (22,000)}}{} = \text{State A salary and targeting factor (55,000)}$$

Repeat this step for all State agencies to arrive at a National total (7,000,000)

Step 4:

$$\frac{\text{State A (55,000)}}{\text{National total (7,000,000)}} \times \text{20 percent of total administrative funds (74,000,000)}$$

State A funds for Salary and Targeting = $581,428

Each State agency's parity grant level will equal the funds generated by these computations plus the funds generated using the size-adjusted AGP rates. Further discussions of comments received on these cost factors follow:

• *Use of Size-Adjusted Factors in Parity Component*

Although the Department lacked complete information on the effect of the economy of scale phenomenon on WIC administrative and program services costs, a methodology was proposed to account for the higher participation costs associated with small participation levels. The use of size-adjusted factors in the parity grant component was proposed in order to avert severe reduction in funding levels for State agencies with average monthly participation levels under 15,000.

Thirty-one commentors addressed the economy of scale issue and the proposed use of size-adjusted factors in the new funding formula. There was unanimous support among these commentors for recognizing the special funding needs of State agencies with average monthly participation levels below 5,000; there was less agreement about the proposed method used to compensate the higher per participant costs of these State agencies or that State agencies with participation levels over 5,000 require special consideration. Although a majority of commentors (58 percent) agreed with the proposed methodology of using size-adjusted factors based on reported administrative expenditures per participant (AEP), most commentors suggested modifications to the approach. Commentors most frequently suggested that the first size band containing State agencies with participation levels up to 5,000 should be broken into smaller size bands containing either the first 500 or 1,000 participants. Other commentors opposed the use of size-adjusted factors as a means of compensating State agencies with small participation levels; some recommended that State agencies with fewer than 5,000 participants should be funded outside the formula through the use of minimum grants. Other commentors criticized the data used or the methods by which the size-adjusted factors were determined. Several commentors pointed out that the relative size and number of local agencies affect a State agency's AEP as significantly as the overall participation level.

In response to suggestions to adjust the first size band downward, the Department explored several possible adjustments using the same database used to determine the proposed size-adjusted factors (FY 1986 final AEP's). However, none of the proposed revisions provided the intended effect of appropriately increasing compensation for the smallest State agencies without inappropriately reducing compensation for the larger State agencies. Finally, the Department concluded that it is not in the best interest of the Program to reduce the parity funding levels for the larger State agencies which serve the majority of WIC participants. The relatively small amounts of additional compensation sought by the smallest State agencies to meet unfunded legitimate costs of operations can be attained more easily through negotiations with FNS regional offices for discretionary funds. This would not be the case for larger State agencies whose additional funding needs resulting from reducing parity grant levels could exceed the amount of available discretionary funds. The Department considered the comments concerning the relative size and number of local agencies but concluded that it would not be appropriate to include this factor in the formula, since it is under the control of the State agencies. Further, inclusion of the numbers of local agencies in the formula would be a disincentive for State agencies to economize administration by consolidating services.

For these reasons, the proposed size-adjusted factors have been retained in the final funding formula as proposed. The Department believes that the use of size-adjusted factors in the new funding formula adequately accommodates the needs of smaller State agencies which have higher than average administrative expenditures on a per participant basis. On a periodic basis, the Department will review the actual costs differences between the size bands to determine whether the size-adjusted factors need to be revised.

• *Adjustments to Parity Component for Salary Costs*

The Department considered the issue of salary costs separately from the choice of options used to determine parity grant levels. In proposing Option B as one approach to account for salary costs, the Department specifically requested comments on the appropriateness of including salary costs in the funding formula and suggestions of a methodology. Ninety-two comments were received on the issue of including salary costs in the funding formula. Of this number, 24 commentors (26 percent) favored the inclusion of salary costs in the formula, 7 commentors (8 percent) opposed the inclusion of salaries for theoretical reasons, and 61 (67 percent) commentors opposed the inclusion of salaries for practical reasons, citing concerns about the proposed salary database. Those who favored the consideration of salary costs in the funding formula stated that salary costs significantly affect administrative and program services costs in the WIC Program and are not under the control of State agencies. Other commentors opposed the use of a salary factor in the formula on the grounds that this would represent an unwarranted departure from FNS funding policies for food and nutrition programs. These commentors also believed that it is unfair to certain regions in the country to include salary costs without also including other factors affecting administrative and program services costs, such as rurality and geographical factors. Finally, those commentors who opposed the inclusion of salary costs on practical grounds faulted the database that the Department proposed to use in determining average salary levels for WIC staff. As described in the preamble to the proposed rule, the database for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands would be supplied by the Bureau of Labor Statics (BLS). The BLS data represents the most recent average annual salaries for State and local government workers as reported by each States's employment security agency. Commentors felt that the BLS averages are not appropriate for WIC staff who tend to receive higher than average salaries. They also objected to the age of the database which reflected salaries paid two years ago.

The Department recognizes that this issue represents one of the most controversial aspects of the proposed

rule. The Department believes that strong sentiments expressed by commentors on the issue tend to reflect concern about the appropriateness of shifting funds among State agencies due to inclusion of salary costs in the formula. Notwithstanding these concerns, the Department continues to believe that salary costs represent the most significant factor in WIC administrative and program services costs. Based on the budgeted expenditures submitted by State agencies for Fiscal Year 1987, a national average of 72 percent of all administrative and program services funds were budgeted for salaries and fringe benefits. Furthermore, a State agency which must pay higher than average salaries is unlikely to be able to hire as many staff as a State agency with lower salaries. Thus, State agencies which must pay the higher salary levels due to prevailing economic conditions within the State may be understaffed, and WIC participants may receive reduced quality of service.

Regarding concerns expressed about the proposed database for salary costs, the Department notes that a disproportionate number of commentors who raised these concerns were from one region of the country and almost all of these commentors represent one State in that region. While recognizing the concerns raised by these commentors, the Department continues to believe that the BLS data represents a reliable national database. As described in the preamble to the proposed rule, the BLS database represents a virtual census of private and public employment and wage data in the United States.

Given the influence of salary costs on WIC administrative and program services and the access to a reliable national database, the Department concludes that it would be incongruous to exclude from the formula a factor which recognizes the differential salary costs of State agencies. Therefore, the formula contained in this final rule includes a factor which recognizes the different salary costs among State agencies. The most recent data available from BLS will be used for the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. The proposed use of a salary level for Indian State agencies which equals the salary of a grade 9, step 1 in the Federal government's general schedule pay scale will be retained. The salary level used for Guam will equal the BLS salary level used for Hawaii. For most years, these salary levels will reflect average salaries paid two years prior to the applicable fiscal year for which funds are allocated.

• Rurality and Geographic Considerations as Cost Factors

A total of 24 commentors addressed issues related to rurality and geographical considerations as affecting administrative and program services costs. Almost all of these commentors stated the new funding formula should include both factors because of the significiant impact on the costs of serving WIC participants. Commentors did not, however, suggest any national database to be explored in determining an objective and verifiable method of accounting for costs associated with these factors. Because the Department was unable to allocate objectives and verifiable data on these factors which could be meaningfully applied to WIC costs, these factors were not included in the final rule.

Discretionary Funding

Sixty-four commentors addressed the discretionary funding provision of the proposed funding formula. Although almost all of these commentors supported the continuation of discretionary funding by FNS regional offices, a majority of the commentors criticized the proposed methodology for determining each State agency's contributions to its respective regional discretionary "pot." A substantial number of commentors who opposed the proposed methodology expressed concern that a 10 percent contribution of each State agency's total grant level to the regional discretionary fund could result in a final guaranteed grant level for some State agencies equalling only 90 percent of the previous year's grant level. Other commentors representing large State agencies stated that discretionary funding perpetuates funding inequities and penalizes large State agencies whose contributions to the discretionary pots are used to provide additional funding to smaller State agencies. The most frequent suggestion for improving this provision of the proposed funding formula was to provide guidelines for discretionary allocations by regional offices. While most commentors suggested the establishment of broad guidelines, some commentors recommended the use of specific factors in the guidelines. Examples of suggested factors included funding for movement toward parity grant levels, service to high risk participants, rurality and geographic considerations, and breast-feeding initiatives. Many commentors also suggested that the amount of funds made available for discretionary funding should be reduced from 10 percent to 5 percent or less of State agencies' total funding levels.

The Department has adopted the suggestion to provide guidelines to regional offices in the allocation of discretionary funds. Guidelines will be established prior to each fiscal year's funding allocation. The establishment of annual guidelines through normal policy communication channels with the regional offices rather than through the regulations is intended to permit a greater responsiveness to national program goals which may change over time.

The Department considered reducing the amount of funds available for discretionary funding in response to comments received. However, the Department has retained the proposed provision to allocate 10 percent of the total amount of administrative and program services funds available for allocation. This provision already represents a reduction in discretionary funding amounts used under the current funding formula. In fiscal year 1987, 17 percent of the total administrative and program services funds were allocated to State agencies as discretionary funding.

Summary of Revisions Made in the Final Rule

A summary of revisions made to the proposed rule which have been incorporated into the final rule is provided below.

PROVISION OF NEW WIC ADMINISTRATIVE AND PROGRAM SERVICES FUNDING FORMULA—

Provision	Proposed rule	Final rule
Stability Funding	Previous year grant level adjusted for projected participation decreases.	Previous year grant level
Parity Grant Component	Option A based on a grant per person, or Option B based on a constructed salary budget.	Option A modified to include salary and targeting factors
Discretionary funding	Ten percent of final grant level subtracted and allocated by FNS regional offices based on State agency needs.	Same ten percent level used. Allocations will be based on national guidelines established annually and on State agency need.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reason set forth in the preamble, 7 CFR 246.16, is amended by revising paragraph (c) to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation from Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 96–499, 94 Stat. 2599; Sec. 815, Pub. L. 95–37, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.16, paragraphs (c)(3)(i) and (c)(3)(ii) are revised, and new paragraph (c)(3)(iii) is added to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(3) * * *

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(3)(iii) of this section, each State agency shall receive an amount equal to the final amount of funds received for administrative and program services in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(3)(iii) of this section, any funds remaining available for allocation for administrative and program services after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds.

(A) FNS shall allocate residual funds to each State agency according to a method that determines the *higher* of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(3)(i) of this section *plus* an amount commensurate with the projected increase in participation from the preceding year as determined by FNS *or* the amount of funds generated by the formula set forth in paragraph (c)(3)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if *all* available administrative and program services funds were allocated on the basis of the average monthly participation levels, as projected by FNS. Each State agency's projected participation level shall be adjusted to account for the higher costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by FNS, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by FNS.

(iii) *Discretionary funds.* Each State agency's final administrative and program services grants shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. FNS shall distribute these funds according to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

* * * * *

Dated: January 22, 1988.

Anna Kondratas,

Administrator.

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BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87–186]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by setting forth the criteria used for classifying a state as two different brucellosis areas and classifying the state of Virginia, except for Clarke County, as Class Free. We have determined that, with the exception of Clarke County, this state now meets the standards for Class Free status. Classifying the state of Virginia, except for Clarke County, as Class Free relieves certain restrictions on the interstate movement of cattle from all portions of the state except Clarke County. The criteria for classifying a state as two different brucellosis areas has been and is used to make these decisions under the regulations.

DATES: Interim rule effective: January 27, 1988. We will consider only comments postmarked or received on or before March 28, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket No. 87–186. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of *brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis, with Class B and Class A in between. Restrictions are more stringent for the interstate movement of cattle from Class A than for Class Free states or areas; more stringent for interstate movement from Class B than from Class A states or areas, and so on.

The basic standards for the different classifications of states or areas entail maintaining: (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of burcellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds

from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

In most instances, brucellosis classification is by state. However, because rates of infection may vary widely in different parts of a state, we established, in a document published in the **Federal Register** on December 13, 1982 (47 FR 55636–55656), that a state may be divided into two areas for brucellosis classification, with movement between the two areas controlled by the state. To reflect current policy, we are including in the regulations the criteria for dividing one state into two brucellosis classification categories. These criteria require that a state have both legal authority and practical means (geographic, economic, and personnel) for enforcing intrastate movement of certain animals between the two areas. Also, each area must meet the standards for the classification being sought.

More specifically, the Administrator of the Animal and Plant Health Inspection Service may grant approval for two classification areas within a state in accordance with the following criteria: (1) The state must have legislative and regulatory authority for maintaining separate areas; (2) The state must have resources committed to enforcing the different requirements in each area; (3) The state must have an effective method for monitoring and controlling movement of cattle across the boundary between the two areas; (4) The state must define the boundary between the two areas by county lines or by recognizable geographic features, such as a river or a highway; and (5) Each area of the state must meet the standards for the brucellosis classification for which it is applying.

Virginia now meets the criteria set forth above. We are therefore reclassifying the state, with the exception of Clarke County, as Class Free.

Before the publication of this interim rule, the entire state of Virginia was classified as a Class A state because of the herd infection rate and the MCI reactor prevalence rate. However, a review of the brucellosis program establishes that, excluding Clarke County, Virginia should be reclassified as Class Free. Because of the presence of a quarantined herd in Clarke County, that county retains its Class A status.

To attain and maintain Class Free status, a state or area must: (1) Remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer and; (2) must maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent). With the exception of Clarke County, which remains classified as Class A, the state of Virginia now meets the criteria for classification as Class Free.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Virginia, except for Clarke County, reduces certain testing and other requirements governing the interstate movement of cattle from all portions of Virginia, except for Clarke County. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change. We have determined that the change in brucellosis status effected in this interim rule will not significantly affect market patterns and will not have a significant economic impact on the small cattle operations for which certain restrictions are being relieved.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

James Glosser, Acting Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from the state of Virginia, excluding Clarke County.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.40 [Amended]

2. In § 78.40, the term "Deputy Administrator" is changed to read "Administrator" each time it appears.

3. Section 78.40 is amended by adding a sentence after the first sentence to read as follows: "The Administrator may approve the division of a state into two brucellosis classification areas upon finding that: (a) The state has legislative and regulatory authority for maintaining separate areas; (b) The state has committed resources to enforcing the different requirements in each area; (c) The state has an effective method for monitoring and controlling movement of cattle across the intrastate boundary; (d) The state has defined the intrastate boundary by county lines or by recognizable geographic features, such as rivers and highways; and (e) Each area of the state meets the standards for the brucellosis classification requested."

§ 78.41 [Amended]

4. Section 78.41, paragraph (a), is amended by adding "Virginia (except Clarke County)," after "Virgin Islands".

5. Section 78.41, paragraph (b) is amended by adding "(Clarke County)" after "Virginia".

Done in Washington, DC, this 22nd day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–1651 Filed 1–26–88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects five of the cross references appearing in § 337.4(h), as published on page 47387 of the December 14, 1987 edition of the **Federal Register** (52 FR 47387).

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898–3730, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Accordingly:

§ 337.4 [Corrected]

1. In the first column, in paragraph (h)(1), in the fourth line from the bottom of the page, "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

2. In the second column:

a. In the next to the last line of paragraph (h)(1), "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

b. In paragraph (h)(2), fifth line, "paragraph (h)(1)(i)" should read "paragraph (h)(1);"

c. In paragraph (h)(3), fourth and fifth lines, "paragraph (h)(1)(i)" and "paragraph (h)(2)(ii)" should read "paragraph (h)(1)" and "paragraph (h)(2)" respectively.

Dated: January 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88–1621 Filed 1–26–88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket 25502; Amdt. Nos. 108–5 and 129–16]

Airplane Operator and Foreign Air Carrier Security Rules; Correction

January 21, 1988.

AGENCY: Federal Aviation Administration.

ACTION: Final rule; request for comments; correction.

SUMMARY: FAA is correcting errors in Amendment Number 129–15, Airplane Operator and Foreign Air Carrier Security Rule. In FR Doc. 87–29424, published Tuesday December 22, 1987, on page 48508, please correct the amendment number "129–15" to read "129–16".

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, 202–267–8058.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88–1505 Filed 1–26–88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3084]

Albertson's, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1981 consent order with Albertson's, Inc., thus removing the Commission's prior approval requirement because there no longer appears to be a trend toward concentration in the relevant market.

DATES: Consent Order issued April 21, 1981. Set Aside Order issued July 1, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S–3302, Eugene Kaplan, Washington, DC 20580, (202) 326–2836.

SUPPLEMENTARY INFORMATION: In the Matter of Albertson's, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 46 FR 25289, are deleted.

List of Subjects in 16 CFR Part 13

Retail grocery stores, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

Order Reopening and Setting Aside Order Issued on April 21, 1981

[Docket No. C–3084]

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Albertson's, Inc., a corporation.

On March 3, 1987, Albertson's, Inc. ("Albertson's") filed a "Petition To Reopen And Set Aside Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and set aside the consent order issued on April 21, 1981 ("the order"). Albertson's Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act and alleged anticompetitive effects arising from Albertson's acquisition of Fazio's, the California Division of Fisher Foods, Inc., in July 1978. According to the complaint, the relevant product line in which to assess the acquisition was retail sales by retail grocery stores and the relevant geographic market was Los Angeles County and Orange County, California. The order prohibits Albertson's for a ten-year period from acquiring, without prior Commission approval, five or more retail grocery stores in fifteen designated states and certain other geographic areas. *Albertson's, Inc.*, 97 F.T.C. 343, 345, 347–348 (1981).

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows

that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. To obtain review on this ground, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1984), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2.

After reviewing Albertson's Request, the Commission has concluded that respondent has not made a satisfactory showing that changed circumstances require that the order be set aside. The only real change that respondent has shown is that there is no longer a trend toward concentration in the relevant market. That change by itself does not establish that there is no further need for the order.

The Commission has concluded, however, that it is in the public interest to reopen and set aside the order. Albertson's has shown that the prior approval requirements of the order impose costs on respondent and put it at a disadvantage with respect to its competitors who are not under similar restraints. This affirmative need to modify the order must be weighed against the need for continuing the order. The costs shown by Albertson's were foreseeable at the time rspondent agreed to the order and would not ordinarily provide a sufficient basis to justify termination of the order. However, respondent has also demonstrated that there is no continuing competitive need for the order in the Los Angeles/Orange County market that was the focus of the Commission's complaint. The respondent has shown that the relevant market is relatively unconcentrated and that any trend toward concentration that may have existed at the time the order issued appears to have been arrested. Accordingly, the reasons for setting aside the order outweigh the reasons for retaining the order.

The Commission has likewise concluded that it is in the public interest to set aside the prior approval requirements of the order with respect to the fifteen states and other geographic areas which are designated therein. The allegations of the complaint relate exclusively to the Los Angeles/Orange County market and with the setting aside of the primary relief, the ancillary relief should also be set aside.

Accordingly, it is ordered that this matter be, and it hereby is reopened and that the Commission's order issued on April 21, 1981, shall be set aside as of the effective date of this order.

By the Commission. Commissioner Bailey was recorded as voting in the negative.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-1561 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-2643]

The Commodore Corp.; Prohibited Trade Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: The Commodore Corporation, a corporate respondent in the order in Docket No. C-2643, has petitioned the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is February 14, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2643 was published at 40 FR 18979 on May 1, 1975. The petitioner, The Commodore Corporation, manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Commodore to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Commodore intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Commodore enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified timeframes.

List of Subjects in 16 CFR Part 13

Mobile homes, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 88-1562 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 389

[Docket No. RM87-6-000; Order No. 487]

Fees for Hydroelectric Project Applications To Reimburse Fish and Wildlife Agencies

Issued: January 20, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control numbers.

SUMMARY: The Federal Energy Regulatory Commission, on December 16, 1987, issued a final rule (Order No. 487) in Docket No. RM87-6-000, 52 FR 48398 (December 22, 1987). The rule established fees to be paid by certain hydroelectric license or exemption applicants to reimburse fish and wildlife agencies for their costs in setting mandatory terms and conditions for those projects. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 487.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On January 11, 1988, the OMB approved the information collection requirements of 18 CFR Part 2 as amended by this rule under Control Number 1902-0136. Therefore, the final rule in Docket No. RM87-6-000 is effective January 21, 1988.

Accordingly, Part 389 Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,

Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "Part 4 Subpart M" below "Part 4 Subpart L" in the Section Column and inserting "0136" in the corresponding OMB Control Number Column and by revising the OMB Control Number Column corresponding to "4.32" in the Section Column to read "0058, 0073, 0115, 0136."

[FR Doc. 88-1637 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to approval of new animal drug applications and their supplements. This amendment authorizes specified division directors in the Center for Veterinary Medicine (CVM) to approve certain supplemental new animal drug applications.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.83 *Approval of new animal drug applications and their supplements* (21 CFR 5.83) by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to authorize the Directors of the Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, CVM, and the Division of Surveillance, Office of Surveillance and Compliance, CVM, to perform all the functions of the Commissioner of Food and Drugs with regard to approval of certain supplemental applications to new animal drug applications. The supplements covered by § 5.83(c) are the chemistry, manufacturing, and controls supplements described at 21 CFR 514.8(a)(4) (iii), (iv), and (v), and (d)(3). This redelegation of authority will expedite the handling and approval of such supplemental new animal drug applications.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a) 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. In § 5.83, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

* * * * *

(c) The following officials are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of supplemental applications to new animal drug applications that are described by § 514.8(a)(4) (iii), (iv), and (v), and (d)(3) of this chapter.

(1) The Director, Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, CVM.

(2) The Director, Division of Surveillance, Office of Surveillance and Compliance, CVM.

* * * * *

Dated: January 21, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-1632 Filed 1-26-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Deletion of 3,4-Methylenedioxymethamphetamine (MDMA) From Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: By order of the the United States Court of Appeals for the First Circuit, the previous order of the Administrator of the Drug Enforcement Administration (DEA) placing 3,4-Methylenedioxymethamphetamine (MDMA) into Schedule I was vacated effective December 22, 1987. This rule will delete 3,4-Methylenedioxymethamphetamine (MDMA) from Schedule I.

EFFECTIVE DATE: The effective date of this order is January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Telephone: (202) 633-1366.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: On October 8, 1986, the Administrator of DEA signed a final order placing 3,4-Methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act pursuant to a rulemaking proceeding. This order was published as a final rule in the **Federal Register**, on October 14, 1986. (51 FR 36552). The effective date of the order was November 13, 1986.

Dr. Lester Grinspoon, a party to the rulemaking proceedings, appealed the Administrator's order to the United States Court of Appeals for the First Circuit. On September 18, 1987, the Court issued its opinion vacating the Administrator's order and remanding the case to him for further proceedings. (828 F.2d 881). Following denial of the agency's petition for rehearing *en banc*, the Court issued its mandate on December 22, 1987.

This rule will delete MDMA from Schedule I until such time as the Administrator reconsiders the record in the scheduling proceeding and issues another final rule. While this rule removes MDMA from Schedule I, the illegal manufacture, distribution and possession of MDMA with intent for human consumption is a violation of the Controlled Substances Act. (21 U.S.C. 813).

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the removal of MDMA from Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act. (Pub. L. 96-354). This action removes a substance from control under the Controlled Substances Act.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this decontrol action is part of a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to provisions of the Administrative Procedures Act, 5 U.S.C. 556 and 557, and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), and pursuant to the order of the United States Court of Appeals for the First Circuit, the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations, be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 871(b).

§ 1308.11 [Amended]

2. Section 1308.11 is amended by removing paragraph (d)(7), and redesignating existing paragraphs (d)(8) through (d)(25) as (d)(7) through (d)(24).

Dated: January 20, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-1592 Filed 1-26-88; 8:45 am]

BILLING CODE 4410-09-M

Proposed Rules

Federal Register
Vol. 53, No. 17
Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-CE-09-AD]

Airworthiness Directives; Cessna 140A, 150, A150, 170, 172, R172, 175, P172, 177, 180, 182, 185/A185, 188/A188, 205, 206, U206/TU206, P206/TP206, 207/T207, 210/T210, 336, and 337/T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to revise and reissue Airworthiness Directive (AD) 79-10-14, Amendment 39-3475, applicable to certain Cessna single and twin engine airplanes to include current design fuel caps that can be installed as an alternate or equivalent means of compliance with the venting requirements of this AD. There have been several instances of fuel tank vent system obstruction by foreign material and/or sticking of the fuel vent valve in the existing fuel tank vent system. This proposed action would reduce the possibility of fuel tank vent obstruction and resulting engine power loss.

DATES: Comments must be received on or before February 28, 1988.

ADDRESSES: Cessna Service Letters No. SE77-6 dated March 4, 1977, and ME78-47 (Rev. 1) dated February 12, 1979, and Cessna Single Engine Service Kit SK182-85 dated September 21, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 79-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316-946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 79-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 79-10-14, Amendment 39-3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), required that certain single and twin engine Cessna airplanes be provided with an alternate (redundant) fuel tank vent. The Light Single Engine (LSE) Cessna airplanes, which were all manufactured with raised fuel tank filler necks, complied with AD 79-10-14(a) by installing vented fuel caps (like those used on later production airplanes) to replace the original non-vented caps, or (b) by incorporating the provisions of Supplemental Type Certificate (STC) approved designs to add venting in the original non-vented fuel cap.

High performance single engine Cessna airplanes were originally manufactured with recessed fuel filler openings and flush non-vented fuel caps. These airplanes initially complied with AD 79-10-14 by applying methods similar to a. or b. above. At the time of issuance of AD 79-10-14, hardware was not available to adapt the LSE style fuel caps to high performance single engine Cessna airplanes. Cessna currently provides adapters for installation of the LSE style fuel caps on most of the high performance single engine airplanes affected by AD 79-10-14. These caps were originally provided by Cessna in support of a fleet campaign to restrict the diameter of the fuel filler opening on gasoline powered airplanes to prevent misfueling. However, the ability of the LSE style fuel caps to prevent the entrance of rain water into the fuel tanks has been recognized for some time. Therefore, the FAA proposes to reduce the regulatory burden that presently prohibits the installation of the LSE fuel caps on high performance single engine Cessna airplances by allowing the installation of these fuel caps as an equivalent means of compliance with the AD.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 79-10-14, Amdt. 39-3475 (44 FR 29435; May 21, 1979) as corrected (44 FR 36168; June 21, 1979), as follows:

Cessna: Applies to the following Models and serial numbered airplanes, certificated in any category:

Models	Serial Numbers
140A	15200 through 15724.
150	617; 625; 648; 17001 through 17998; 59001 through 59818; 15059019 through 15077005.
A150	15064970; A1500001 through A1500609.
170	609; 18729 through 27169.
172	610; 612; 615; 622; 625; 630; 636; 28000 through 29998; 36008 through 36899; 46081 through 47746; 17247747 through 17265684.
175	619; 28700A; 55001 through 56777; 17556778 through 17557119.
P172	P17257120 through P17257188.
R172	P17257189; R1720001 through R1720617.
177	661; 17700001 through 17701471; 17701473 through 17701597.
180	604; 624; 645; 30000 through 32999; 50801 through 50911; 18050912 through 18052202.
182	613; 631; 634; 33000 through 34999; 51001 through 53607; 18253008 through 18260668.
185/A185	632; 185-0001 through 185-1598; 18501600 through 18501896.
188/A188	With wing tanks; serials; 653; 188-0448 through 188-0572; 18800573 through 18800762.
205	641; 205-0001 through 205-0577.
206	206-0001 through 206-0275.
U206/TU206	U206-0276 through U206-1444; U20601445 through U20601666.
P206/TP206	P206-0001 through P206-0603; P20600604 through P20600647.
207/T207	20700001 through 20700206.
210/T210	616; 618; 57001 through 57575; 21057576 through 21059361; T210-0001 through T210-0454.
336	336-0001 through 336-0195.
337/T337	337-0001 through 337-1193; 33701194 through 33701405.
M337B	337-0001 and up.

Compliance: Required as indicated unless already accomplished.

To provide an alternate source of fuel tank venting in case of fuel tank vent obstruction by foreign material and/or sticking of the fuel vent valve, within the next 100 hours time-in-service after the effective date of this AD, accomplish the following:

(A) Install applicable vented fuel cap(s) with related adapters and fuel servicing placards in accordance with Cessna Service Letter SE77-6 dated March 4, 1977; or as an alternative for fuel bladder equipped airplanes, Cessna Service Kit SK182-86 dated September 21, 1986, or modify existing fuel tank caps in accordance with STC SA728NW or STC SA2967SW; and for 336 and 337/T337 Series airplanes, in accordance with Cessna Service Letter ME78-47 (Rev. 1) dated February 12, 1979.

Note 1: On those airplanes having two fuel tank caps in each fuel tank, only one vented cap is required in each tank. A vented cap must be installed in the outboard filler opening of each tank.

(B) The modification required by this AD may be accomplished by those owner/operators authorized to perform preventive maintenance under FAR 43 provided only installation of a different fuel tank cap is necessary. The person accomplishing this modification must make an entry in the aircraft maintenance record indicating compliance with this AD; i.e., "AD 79-10-14 complied with by installing replacement fuel filler cap; Cessna P/N _____ this date _____ Signature."

(C) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 2: Supplemental Type Certificate SA728NW is held by Mr. Dennis H. Ward, Venting Engineering, 5429 A Street, Tacoma, Washington, 98408, Phone (206) 474-6458. Supplemental Type Certificate SA2967SW is held by Mr. Charles M. Seibel, Flight Bonus Inc., P.O. Box 665, Hurst, Texas 76053, Phone (817) 285-1650.

This amendment revises AD 79-10-14, Amdt. 39-3475, effective May 29, 1979, which superseded AD 78-26-09, Amdt. 39-3379.

Issued in Kansas City, Missouri, on January 14, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-1567 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-02-AD]

Airworthiness Directives; de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to de Havilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes which would require initial and repetitive inspections of both wing main spar lower cap angles for exfoliation corrosion and repair or replacement if necessary. The proposal is prompted by reports of such corrosion on high time airplanes. If not corrected, this condition could result in a weakened wing which, eventually, could cause catastrophic failure of the wing. The proposed actions will detect and correct any corrosion damage before it can lead to wing failure.

DATES: Comments must be received on or before March 28, 1988.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/492 dated December 12, 1986, S/B No. 6/486 (Mod. No 6/1869) dated December 12, 1986, S/B No. 6/362 (Mod. No. 6/1630) Rev. A, dated January 18, 1985, and Technical Advisory Bulletin (TAB) No. 626/1, dated November 1979, applicable to this AD, may be obtained from the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone (416) 633-7310. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 5 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, AN-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION:

Comments invited.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received eleven reports of high time de Havilland DHC-6 series airplanes with exfoliation corrosion on the wing main spar lower cap angles. This corrosion, if not corrected, could result in a weakened wing which, eventually could cause catastrophic failure of the wing. As a result, de Havilland Aircraft Company of Canada has issued Service Bulletin (S/B) No. 6/492 (6-57-11) dated December 12, 1986, which requires initial and repetitive inspections of the parts, internally and externally, for wings that have 10 years-in-service from the date of manufacture, or 12,000 hours time-in-service (TIS). The S/B also requires inspections of airplanes which have incorporated Modification No. 6/1630 (S/B No. 6/362) and on wings which have incorporated Modification No. 6/1869 (S/B No. 6/486). de Havilland Technical Advisory Bulletin (TAB) No. 626/1 outlines some general procedures to prevent corrosion, rectification, and reprotection of affected areas. Replacement of the wing main spar lower cap angles will become necessary if excessive material is removed due to corrosion. Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified these S/B's and the actions recommended therein by the manufacturer as mandatory by issuance of Transport Canada AD CF-87-02 to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B No. 6/492 dated December 12, 1986, including the other related de Havilland Service Bulletins, and the mandatory classification of these documents by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 6/492 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

Consequently, the proposed AD would require initial and repetitive inspections for exfoliation corrosion, and repair or replacement, if necessary, of the wing main spar lower cap angles. It also proposes that all corrosion removed at each location be recorded and the details reported to de Havilland for evaluation before the airplane may be returned to service. Due to the complexity of the installation, the FAA has determined that it is not realistic to set allowable limits of corrosion for all areas. Therefore, it is proposed that de Havilland evaluate the extent of corrosion removed on an individual airplane basis. The FAA would then be informed of the results of de Havilland's evaluation and make official notification to the operator. Although S/B No. 6/492 specifies an initial compliance time of 6 months from the issue date of the S/B, this proposed AD has an initial compliance time of 90 days or 400 hours time-in-service, whichever occurs first after the effective date of the AD. This approach is considered appropriate since the possibility exists that high-time aircraft are in the field that may not have had these parts inspected for corrosion.

The FAA has determined there are approximately 179 airplanes affected by the proposed AD. For airplanes that will have the wing bottom skins removed and re-attached periodically, the cost of inspecting these airplanes as presented in the proposed AD is estimated to be $97,920 per airplane over the anticipated life span of the airplane. The total cost to the private sector is estimated to be $20,448,960 for the fleet over the anticipated life span of the fleet, or $2,858 per airplane per year. For airplanes incorporating Modification No. 6/1869, the cost of inspecting these airplanes as presented in the proposed AD is estimated to be $1920 per airplane over the anticipated life span of the airplane. The total cost to the private sector, including kit costs, is estimated to be $1,751,515 for the fleet over the anticipated life span of the fleet, or $245 per airplane per year.

The cost of compliance with the most economical alternative of the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

De Havilland: Applies to Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes certificated in any category which have accumulated either:

(1) Ten (10) years-in-service from the date of manufacturer or 12,000 hours time-in-service (TIS), or:

(2) Incorporated de Havilland Service Bulletin (S/B) No. 6/362, Wing Box Replacement Modification No. 6/1630, Revision A, dated January 18, 1985, and have 10 years-in-service or 12,000 hours TIS on the new wing box, or:

(3) Replaced the wings with used wings which have a total of 10 years-in-service from the date of manufacture or 12,000 cumulative hours TIS.

Compliance: Required initially within the next 90 days or 400 hours TIS, whichever occurs first after the effective date of this Airworthiness Directive (AD), unless previously accomplished within the last five years or 6,000 hours TIS, whichever occurred first.

To prevent catastrophic failure of the wing due to corrosion accumulated on the wing main spar lower cap angles, accomplish the following:

(a) Visually inspect the wing main spar and lower spar cap extrusions for corrosion using a high intensity light in accordance with the "ACCOMPLISHMENT INSTRUCTIONS", Paragraph A, of de Havilland S/B No. 6/492 (6-57-11), dated December 12, 1986.

(b) Evaluate the severity of corrosion found as outlined under "COMPLIANCE" in the above referenced S/B.

(c) Repeat the inspection in Paragraph (a) and the actions required in paragraph (b) of this AD at intervals not to exceed 6000 hours TIS or five years, whichever occurs first from the last inspection.

(d) Remove all surface corrosion and replace the cap angles, if necessary, in accordance with "ACCOMPLISHMENT INSTRUCTIONS", Paragraph B. of S/B No. 6/492.

(e) Conduct a dye penetrant inspection of parts where corrosion is removed to demonstrate freedom from corrosion, and reprotect reworked areas in accordance with instructions specified in de Havilland Technical Advisory Bulletin (TAB) No. 626/1, dated November 1970.

(f) Report details of all reworked areas to de Havilland for their evaluation. de Havilland will contact the Manager, New York Aircraft Certification Office, FAA New England Region, who will provide instructions to the owner and authorize return to service.

(g) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791-6220 may adjust the intervals between the repetitive inspections specified in this AD.

(i) An equivalent means of compliance with the AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 12, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88-1566 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 882-3013]

The Silver Group, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a San Francisco-based marketer of artificial tanning devices from misrepresenting that its devices do not pose for users a risk of any harmful side effect associated with sun exposure. Respondent would be required to have reliable and competent scientific evidence for any health or safety claim it makes in any advertisement.

DATE: Comments must be received on or before March 28, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-4002, C. Lee Peeler, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Suntanning devices, Trade practices.

Before Federal Trade Commission

In the matter of The Silver Group, Inc., a corporation.

[File No. 882-3013]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Silver Group, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between The Silver Group, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Siver Group Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 379 Oyster Point Boulevard, South San Francisco, California 94080.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the compliant attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirements that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement;

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For the purpose of this Order, the following definition shall apply:

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I

It is ordered that respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting directly or by implication that:

a. Use of any such device does not pose a risk of the harmful side effects associated with exposure to the sun's radiation;

b. Use of any such device does not increase the risk of developing skin cancer;

c. Use of any such device does not contribute to skin aging.

II

It is further ordered that for one year after the date of service of this Order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

Notice—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

III

It is further ordered that commencing one year after the date of service of this Order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

Notice—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV

It is further ordered that respondent The Silver Group, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making directly or by implication, any health or safety representation, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for each such representation.

consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

V

It is further ordered that respondent shall distribute a copy of this Order to each current officer, employee, agent and or representative having sales or promotional responsibilities with respect to the subject matter of this Order, and to each current dealer, distributor and purchaser or lessee for commercial use, of its tanning devices, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers. A dealer, distributor, purchaser, or lessee is "current" for purposes of this paragraph it holds a device on consignment for sale; purchased a device for resale or other commercial purpose within the two-year period preceding service of this Order; received from respondent, within that two-year period, either directly or indirectly, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support; or leases a device for commercial purposes from respondent.

VI

It is further ordered that for three (3) years from the date that the representations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VII

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain for three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

VIII

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's tanning devices to whom respondent provided, directly or indirectly through a distributor or other representative, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support.

IX

It is further ordered that respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

X

It is further ordered that respondent shall, within sixth (60) days after service of this Order upoin it and at such other times as the Commission may require, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commision has accepted subject to final approval an agreement to a proposed consent order from The Silver Group, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for The Silver Group's tanning devices which use lamps emitting ultraviolet (UV) radiation to cause tanning of the user's skin.

The Commission's complaint in this matter charges The Silver Group with disseminating advertisements containing false and unsubstantiated representations regarding the safety of its tanning devices. According to the complaint, advertisements for The Silver Group's tanning devices falsely claimed that the devices cannot contribute to skin aging, can be sued without the risk of any harmful side effect associated with the sun, and cannot increase the risk of skin cancer. The complaint alleges that these claims are, in fact, false and The Silver Group's tanning devices can contribute to skin aging, cannot be used without the risk of any harmful side effect, and can increase the risk of developing skin cancer.

The complaint also alleges that the advertisements contained false representations that The Silver Group had a reasonable basis for the claims that its devices cannot contribute to skin aging, can be used without the risk of any harmful side effect associated with the sun, and that its devices cannot increase the risk of skin cancer when, in fact, The Silver Group did not have a reasonable basis for these representations.

The consent order contains provisions designed to remedy the advertising violations charged as well as to prevent The Silver Group from engaging in similar acts and practices in the future. Part I of the consent order prohibits The Silver Group from misrepresenting, directly or by implication, that its devices do not pose a risk of the harmful side effects associated with sun exposure, do not increase the risk of developing skin cancer, and do not contribute to skin aging.

Part II of the consent order requires that for one year The Silver Group include in all advertisements and promotional materials a notice statement alerting users to read the mandatory FDA warning label found on all tanning devices for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

Part III of the consent order requires that commencing one year after the date of service of this order The Silver Group include a notice statement in any advertisement making a claim that its tanning devices are safe or safer than other devices or methods of tanning or that the device has health benefits. The statement alerts users to read the mandatory FDA warning label for important information on potential eye injury, skin cancer, skin aging and photosensititive reactions.

Part IV of the consent order requires that The Silver Group to have reliable and competent scientific evidence to support any health or safety representation contained in an advertisement.

Part V of the consent order requires the The Silver Group to send a copy of the consent order to each of its current dealers, distributors and purchasers or lessees for commercial use, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers.

Parts VI through X of the consent order are standard order provisions requiring The Silver Group to retain certain business records, report to the Commission certain corporate changes and provide a report to the Commission on its compliance with the provisions of the consent order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-1563 Filed 1-26-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 87-21]

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The FHWA is inviting comments on proposed amendments to the MUTCD. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATE: Comments must be received on or before July 22, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-21, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based upon comments received in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I-8(C)—Responsibility for Maintaining Traffic Control Devices.

Signs (Part II)

(2) Request II-119(C)—Standard Sign to Implement Mandatory Seat Belt Laws.

(3) Request II-161(C)—LOGO Signing—Number of LOGO's on Sign Panels.

Markings (Part III)

(4) Request III-35(C)—Warrants for Centerline Pavement Markings.

(5) Request III-48(C)—Lane Lines in Cloverleaf Interchanges.

Signals (Part IV)

(6) Request IV-85(C)—Revision of Warrant 7, System Warrant.

Traffic Control Systems for Street and Highway Construction and Maintenance Operations (Part VI)

(7) Request VI-56(C)—Work Zone Lane Shift Tapers.

(8) Request VI-57(C)—Temporary Pavement Markings in Construction and Maintenance Areas.

(9) Request VI-59(C)—Section 6G-8, Control of Traffic.

(10) Request VI-60(C)—Color and Design of Work Zone Vests.

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration, Office of Traffic Operations (HTO-21), 400 Seventh Street SW., Washington, DC 20590 or contact Mr. Philip O. Russell (202) 366-2184.

Discussion of Requests

The FHWA proposes to act on the requests for change to the MUTCD as noted below:

General Provisions (Part I)

(1) *Request I-8(C)—Responsibility for Maintaining Traffic Control Devices.* The National Transportation Safety Board (NTSB) investigated an accident where traffic control devices had been removed by an agent of a highway agency. The missing traffic control devices may have had a direct bearing on the cause of the accident and on the severity of the accident. The NTSB has requested that responsibility for maintaining traffic control devices be clarified in the MUTCD.

The FHWA proposed to amend the first sentence of Section 1A-3 to read. "The responsibility for the installation, operation and effective maintenance of traffic control devices rests with the

governmental body or official having jurisdiction."

The amendment imposes no additional costs on highway agencies, therefore, no implementation period is proposed.

Signs (Part II)

(2) *Request II–119(C)—Standard Sign to Implement Mandatory Seat Belt Laws.* The National Association of Governor's Highway Safety Representatives has requested that a standard sign be developed and adopted for use by States having mandatory safety seat belt laws. Because of the variations that exist among the seat belt laws of the several States, it is not possible to adopt a standard sign. However, it does appear to be practical to develop and adopt a standard symbol that can be used on regulatory signs that notify vehicle occupants of mandatory seat belt laws.

The FHWA and the Symbols Task Force of the National Committee on Uniform Traffic Control Devices (NCUTCD) have reviewed and evaluated many existing and proposed symbol designs. The symbol shown below has emerged as the most favored at this time. Therefore, the FHWA is proposing to amend the MUTCD to require that the standard symbol be used, if a State determines that a seat belt symbol is to be shown on the regulatory signs that implement its mandatory safety seat belt laws. The FHWA is also soliciting comments on both the concept of using a standard symbol for this purpose and on the details of the proposed symbol. The FHWA plans to use the comments received regarding the details of the proposed symbol to guide its final design.



This amendment may have some financial impact in those States that have already installed signs for mandatory safety seat belt laws. To offset these costs, an implementation period of 7 years (the average life of a sign) is proposed.

(3) *Request II–161(C)—LOGO Signing—Number of LOGO's on Sign Panels.* The rules and regulations for Specific Service (LOGO) Signing were transferred from 23 CFR Part 655, Subpart C and incorporated into the MUTCD by Final Rule, FHWA Docket No. 83–26 (50 FR 10001, March 13, 1985). There are now over 30 States using LOGO signs on some or all of their rural freeway systems. Since the initial installations of LOGO signs in 1968, the number of LOGOs on a sign panel has been limited to six for GAS and four each for FOOD, LODGING, and CAMPING. More than 30 States now have experience with LOGOs and LOGO programs. The FHWA proposes to allow each State to determine the maximum number of logos that it will permit for each of the LOGO panel categories. In addition, this amendment will allow the background of the LOGO to be other than blue, at each State's discretion; the paragraph discussing LOGO signing on ramps will be clarified; and several minor editorial changes will be made.

Because changes to existing or future LOGO signing with regard to the number of LOGOs that will be used on each panel will be at the State's discretion, no implementation period is necessary.

Markings (Part III)

(4) *Request III–35(C)—Warrants for Centerline Pavement Markings.* The Center for Auto Safety (CAS) has petitioned the FHWA to initiate rulemaking to establish warrants for centerline pavement markings. A review and evaluation of the FHWA research and development program to improve the effectiveness of highway delineation techniques was conducted by Messrs. Richard N. Schwab and Donald G. Capelle. Their conclusions were reported in the June 1980 issue of the Institute of Transportation Engineers Journal.

Their conclusions are: (1) Centerline markings can be cost beneficial at average daily traffic volumes (ADT) as low as 50 vehicles and (2) centerlines should be used on any paved roadway surface that will retain pavement markings and that carries two-way traffic.

The FHWA proposes to amend the fifth paragraph of Section 3B–1 to read as follows:

Center lines shall be placed on all paved roadway surfaces that will retain pavement markings under the following conditions:

1. In rural districts on all two-way roadways 18 feet or more in width when the prevailing off-peak 85 percentile speed or posted speed limit, whichever is higher, is 35 MPH or greater.

2. In residence or business districts on all through highways with an ADT of 50 or greater, and on other streets where the ADT is 500 or greater.

This amendment will impose some costs on State and local highway agencies. To offset these costs, an implementation period of 5 years is proposed.

(5) *Request III–48(C)—Lane Lines in Cloverleaf Interchanges.* Mr. Richard I. Kahl has pointed out a need to illustrate the desirable pavement marking pattern to be used to separate the mainline from a cloverleaf's combined acceleration/deceleration lane. The FHWA proposes to add a figure to section 3B–11 that will show the typical installation of these pavement markings.

There are many tasks to be accomplished by the drivers in the weaving section between cloverleaf ramps. Defining the lane line throughout the entire length of the combined acceleration/deceleration lane, with standard skip stripe markings, is desirable so that drivers can better determine their lateral position.

It is possible to design a more complex set of coded pavement markings to inform the drivers of their longitudinal position within the weaving area. Because of the high degree of pavement marking wear that occurs in weaving areas, the FHWA finds that it is not practical to attempt to maintain such a system in the field.

This amendment adds a figure that clarifies a provision of the MUTCD. No implementation period is needed.

Signals (Part IV)

(6) *Request IV–85(C)—Revision to Warrant 7, Systems Warrant.* The Systems Warrant (existing Warrant 7) is intended to provide for signalization of planned major routes in order to encourage concentration and organization of traffic flow networks. Typically, it is used in intermediate or outlying areas of developing density but may also have application elsewhere in an urban area. Selected traffic signal installations can permit desirable location of traffic signals, reduce the total number of signals and improve progression within the highway (street) system.

The NCUTCD reviewed the warrant and recommended several revisions to remedy minor deficiencies and to make the warrant more realistic for today's traffic characteristics while still meeting the original intent:

1. Increase the required volume of existing or immediately projected traffic entering the intersection to be 1,000 vehicles (now 800) during the peak hour of a typical weekday or for each of any 5 hours of a Saturday and/or Sunday.

2. Relative to application of the peak hour criteria, that for 5 year projected traffic volumes based on an engineering study, one or more of the volume based warrants would be met.

3. The existing version of the warrant lists five characteristics of a major route and stipulates that a route, to be considered major in applying the warrant, must have one or more of these characteristics. It is recommended that characteristic (2) (It connects areas of principal traffic generation.) be deleted as it is subject to varying definitions and it is already covered in the other characteristics. It is also recommended that characteristic (4) (It has surface street freeway or expressway ramp terminals.) be deleted as it is covered in the other characteristics. The FHWA proposes to amend Section 4C–9 [Warrant 7, Systems Warrant) to provide for these changes.

The proposed amendment will provide a more realistic warrant and does not impose additional costs on State and local highway agencies. No compliance date is needed to implement this change.

Traffic Control Systems for Street and Highway Construction and Maintenance Operations (Part VI)

(7) *Request VI–56(C)—Work Zone Lane Shift Tapers.* The NCUTCD has requested that Part VI of the MUTCD be amended by adding length standards for work zone lane shift tapers. Most manuals and other publications do not differentiate between the length of taper required for different taper applications. Often the same taper length is recommended for a merge application and for a lane shift application. The NCUTCD also found that there is no standard use of terms for describing the various taper applications.

The FHWA proposes to adopt the recommendations of the NCUTCD. Section 6C–2 will be separated into two separate sections. The first will address the length of tapers and will include the following table. The second section will include the channelization issues that are currently presented in section 6C–2.

TABLE VI–2—TAPER LENGTH CRITERIA FOR WORK ZONES

Type of taper	Taper length
Upstream tapers:	
Merging taper	L minimum.
Shifting taper	½ L minimum.
Shoulder taper	⅓ L minimum.
Two-way traffic taper.	100 feet maximum.
Downstream tapers (Use is optional).	100 feet minimum.

Formulas for L

Speed limit	Formula
40 MPH or less	L=(W×S×S)÷60.
45 MPH or greater	L=W×S.

L=Taper length in feet.
W=Width of offset in feet.
S=Posted speed or off-peak 85 percentile speed in MPH.

In addition, Figures 6–5, 6–6, and 6–7 will be revised to reflect the above changes.

The amendment will impose some additional costs on State and local highway agencies, therefore, an implementation period of 1 year is proposed.

(8) *Request VI–57(C)—Temporary Pavement Markings in Construction and Maintenance Areas.* Request VI–3 as published in the MUTCD implemented requirements for minimum pavement marking treatments for traffic control in work zones. That revisions provided for minimum stripe to gap ratios, allowed raised pavement markers, and other changes.

It is proposed to further amend section 6D to clarify and provide further guidance. Section 6D–1 is being revised to provide further guidance for the use of permanent pavement markings in accordance with sections 3B, 7C, 8B–4, and 9C on any permanent pavement surfaces and final lifts as well as on temporary pavements, detours, runarounds, or interim lifts open to traffic and when the project work is suspended for the winter or other extended periods of time.

Section 6D–3 Exception Number 1 is being revised to further describe temporary lanes and center lines. Also, the provisions for the use of signs rather than pavement markings in short-term operations is being expanded to apply to low-volume roadways.

Section 6D–3 is being further revised to include a recommendation that each highway agency should have a policy that will, within the scope of this section, provide more detailed criteria and describe the conditions where temporary pavement markings will be used. This policy should include, but not be limited to, criteria, definitions of extended periods of time and a traffic volume threshold for low-volume roads.

The changes are being made to clarify the amendments made by the Final Rule on March 9, 1987, at 52 FR 7128, provide more guidance for pavement markings on permanent pavement surfaces and interim or temporary pavements open to traffic for extended periods of time, and allow flexibility for the use of signs rather than pavement marking for low volume roads.

It is the policy of the FHWA that full standards for pavement markings are desirable for all pavements and the minimums should be used when full standards are not practical or possible.

The Final Rule on March 9, 1987, at 52 FR 7126, has a compliance date of December 31, 1988. This amendment adds some flexibility to the provisions adopted in the March 9, 1987, Final Rule. Therefore, the same compliance date of December 31, 1988 is proposed for this amendment.

(9) *Request VI–59(C)—Section 6G–6, Control of Traffic.* The NCUTCD has requested that the sentence, "The use of traffic control signs should be discouraged." be deleted from the first paragraph of MUTCD section 6G–6. The NCUTCD requests this change because the sentence is potentially misleading. While the objective on freeways is to keep traffic in a free-flowing condition as much as possible, this sentence, taken out of context, can be easily misinterpreted and is misleading to those responsible for traffic control on freeways. The statement has little value in this section.

The FHWA supports this amendment. This amendment will impose no additional costs on highway agencies, therefore, it is proposed that the change would become effective upon the issuance of a final rule. No implementation period is required.

(10) *Request VI–60(C)—Color and Design of Work Zone Vests.* Section 6F–3 of the MUTCD includes the following provision: "The use of orange clothing such as a vest, shirt, or jacket shall be required for flaggers. For nighttime conditions, similar outside garments shall be reflectorized." The MUTCD does not include provisions that would describe or provide details on the color, design, or extent of the retroreflection. The FHWA has interpreted section 6F–3 to mean that only orange colored retroreflective material will satisfy the standard. In practice, vests have had a variety of designs, patterns, and colors for the retroreflective portion of the vests. Accordingly, it is proposed to amend section 6F–3 by adding two sentences to the end of the second paragraph to read as follows: "The retroreflective material shall be either orange, white, or yellow. The design of the retroreflective portions including stripe width, extent, design and type of material shall be determined by the

contracting agency, or purchaser of the vest."

The term "reflection" as used throughout Section 6F-3 will be changed to "retroreflection."

This amendment will have no financial impact on State and local agencies. No implementation period is needed.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of the inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on January 20, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88-1568 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Parts 140, 143, and 146

[CGD 84-098b]

Emergency Evacuation Plan for Manned OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking, extension of comment period.

SUMMARY: This notice extends the comment period for the notice of proposed rulemaking that would require a comprehensive, site specific contingency plan for the emergency evacuation of all personnel from manned fixed facilities and Mobile Offshore Drilling Units on the Outer Continental Shelf (OCS facilities). The extension was requested by seven commentors, three of whom are industry associations. All seven commentors cited the importance of this regulatory initiative, the delays created by the Christmas 1987 holidays, and their difficulty in providing meaningful responses within the original 30 day comment period. Two commentors requested a 30 day extension, one commentor a 45 day extension, three commentors a 60 day extension, and one commentor requested an extension of an unspecified length. Because of these requests for additional time to comment on the notice of proposed rulemaking, the deadline for receipt of comments is extended to February 25, 1988.

DATE: The comment period on the notice of proposed rulemaking is extended to February 25, 1988.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 84-098b), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Anthony Dupree, Offshore Activities Branch, (202) 267-2307.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on December 24, 1987 in the Federal Register (52 FR 48717).

Dated: January 22, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-1622 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 946

Disposition of Property Acquired by the Postal Inspection Service

AGENCY: Postal Service.

ACTION: Proposed Rule.

SUMMARY: This proposal would revise existing procedures for the disposition of: (a) Property stolen from the mails and recovered by Postal Inspectors and (b) property obtained by the Postal Inspection Service for use as evidence, after the need to retain such property no longer exists. A claims procedure would be established whereby such property, except contraband, would be returned to its owner. Apparent owners would be notified of their right to claim such property and, where no apparent owner is known and the value of the property in question exceeds $200, notice would be published inviting the owner to submit a claim for its return.

DATE: Comments must be received on or before February 26, 1988.

ADDRESS: Written comments should be directed to the Program Manager, Forfeiture and Property Management Unit, Postal Inspection Service, Room 3526, 475 L'Enfant Plaza, SW., Washington, DC 20260-2160. Copies of all written comments will be available at that address for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Postal Inspector P.M. Renzulli, (202) 268-5478.

SUPPLEMENTARY INFORMATION: In the course of conducting official investigations, Postal Inspectors frequently recover property lost or stolen from the mails and obtain custody of property needed for use as evidence in proceedings to enforce various provisions of the United States Code. In most cases, such property is returned to the owner at the conclusion of the investigation or any resulting administrative or judicial proceedings. However, in some cases the owners fail to claim such property and it therefore remains in the custody of the Postal Inspection Service after it is no longer needed. The proposed rule would establish a fair and uniform procedure for identifying the owners of such property, affording them an opportunity to claim its return and, in the event a valid claim is not received, treating such property as abandoned and directing that it be sold or put to official use.

List of Subjects in 39 CFR Part 946

Administrative practice and procedure, Claims, Currency, Law enforcement, Postal Service.

In view of the considerations discussed above, the Postal Service invites comments on 39 CFR Part 946 which the Postal Service proposes to revise to read as follows:

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

Sec.

946.1 Scope of part.
946.2 Disposition of property of apparent owners.
946.3 Contraband and property subject to court order.
946.4 Disposition of property of unknown owners.
946.5 Disposition of property having a value of less than $200.
946.6 Disposition of abandoned property; additional period for filing claims.
946.7 Submission of claims.
946.8 Determination of claims.
946.9 Reconsideration of claims.
946.10 Record retention.
946.11 Proceeds of sale.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 3001.

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Mail Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§ 946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in § 946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds $200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

(1) A description of the property including model or serial numbers, if known;

(2) The name, address, and telephone number of the Postal Inspector in Charge who has custody of the property; and

(3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice. (See § 946.7.)

(b) The notice under § 946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§ 946.5 Disposition of property having a value of less than $200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is $200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in § 946.6.

§ 946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United States Postal Service. However, if the owner satisfies the requirements of § 946.6(b), except for property described in § 946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the amount of proceeds realized from the sale of such property less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which resonably precluded his access to the published notice.

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followed by the claimant to obtain return of the property, or its determined value, must be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such

requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Proceeds of sale.

Proceeds from the sale of property subject to this part must be deposited in the fund established by 39 U.S.C. 2003 as miscellaneous receipts.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-1571 Filed 1-26-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL-3320-5]

State Oil and Gas Board of Mississippi; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that (1) the Environmental Protection Agency (EPA) has received a complete application from the State Oil and Gas Board of Mississippi requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying and public comments are requested; and a public hearing will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the State's complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application from the State Oil and Gas Board to regulate oil and natural gas related injection wells (Class II) in Mississippi.

DATES: Requests to present oral testimony should be filed by February 22, 1988; the Public Hearing will be held on March 8, 1988 at 10:30 a.m. and 7:00 p.m. The Hearing will be held in the 1400 Walter Sillers Building, State Oil and Gas Board, Jackson, Mississippi 39201. The morning session will be held in the 14th Floor Hearing Room. The evening session will be held in the 2nd Floor Conference Room. Comments will be accepted until March 18, 1988.

ADDRESSES: Comments and requests to testify may be mailed to James S. Kutzman, Chief, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the application and pertinent material are available for public inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region IV, Library, Ground Floor, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-4216;

State Oil and Gas Board of Mississippi, 1400 Walter Sillers Building, Jackson, Mississippi 39201, (601) 359-3725.

The cost to purchase a copy of the application is thirty-five dollars ($35.00).

FOR FURTHER INFORMATION CONTACT: James S. Kutzman, Chief, Ground-Water Protection Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (404) 347-3866. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The application from the State Oil and Gas Board of Mississippi is for the regulation of all class II oil and natural gas related injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority and a memorandum of agreement between the State Oil and Gas Board of Mississippi and the Region IV Office of the Environmental Protection Agency.

Date: January 20, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-1626 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300175; FRL-3319-9]

Paper Fiber; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that paper fiber be exempted from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc.

DATE: Written comments, identified by the document control number [OPP-300175], must be received on or before February 26, 1988.

ADDRESS: By mail, submit comments to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Lynn M. Bradley, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St, SW., Washington, DC 20460.

Office location and telephone number:

Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: At the request of Jellinek, Schwartz, Connolly, and Freshman, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for paper fiber when used as a carrier in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Paper fiber.

Name and address of requestor. Jellinek, Schwartz, Connolly, and Freshman, Inc., 1350 New York Ave., NW., Suite 400, Washington, DC 20005.

Bases for approval of paper fiber. 1. Several similar cellulosic materials are cleared under 40 CFR 180.1001(c) for use as carriers in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. These include alpha-cellulose, oat hulls, shells (almond, cocoa, coconut, and walnut), wood flour, etc.

2. Pulp is cleared under 21 CFR 186.1673 as an indirect food substance affirmed as generally recognized as safe (GRAS).

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support these regulations.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendment to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300175]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 14, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes.	———	Carrier

[FR Doc. 88-1383 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06; Notice 1]

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 214, *Side Door Strength*, to upgrade its test procedures and performance requirements for passenger cars. The standard currently measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. Today's proposed amendments would require an additional test in which a passenger car must protect its occupants in a full-scale crash test in which the car is struck in either side by a moving barrier simulating another vehicle. Newly-developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. (In another notice in today's Federal Register, the agency is proposing the specifications and performance requirements for the new side impact test dummy.)

DATES: Comments must be received by October 24, 1988. If adopted, the proposed amendments would be phased-in to provide manufacturers sufficient time to achieve compliance. This notice proposes to phase-in compliance with the new requirements by progressively higher percentages of annual production, beginning with the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule. Compliance by 100 percent of new cars would be required for cars manufactured on or after the beginning of the fourth full year after that 24-month period.

ADDRESS: Comments should refer to the docket and notice numbers of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic

Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours 8 a.m.–4 p.m.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366–4916).

SUPPLEMENTARY INFORMATION:

I. The Existing Standard

The National Highway Traffic Safety Administration's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*. The standard specifies performance requirements for each side door in a passenger car to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. The standard does not attempt to regulate directly the level of crash forces experienced by an occupant when striking the car interior in such an impact. Since the standard became effective on January 1, 1973, vehicle manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of real-world crash data has shown that the strengthening of the side doors with the beams is indeed effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214," (DOT HS 806–314) estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car collisions. (The agency evaluation report (DOT HS 806–314) analyzing the effectiveness of the current standard and other relevant information have been filed in the agency's Docket 82–19, Notice 1. Other information on the agency's side impact protection program is also available in Docket 79–04, General Reference and Notices 1 and 2. Docket 82–11, General Reference, and Docket 82–19, Notice 1.)

II. Summary of the Proposed Amendments

Because of the large number of fatalities and injuries which continue to result from side impact crashes, the agency initiated a research program to upgrade the current standard. This effort focused primarily on thoracic protection since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities.

The agency has conducted research on improved side impact protection since the late 1970's. Much information has been acquired not only from agency research but also from industry and research groups throughout the world. The agency has presented its findings and has communicated with groups in numerous meetings and conferences such as Society for Automotive Engineers (SAE), Stapp Car Crash Conferences, Experimental Safety Vehicle Conferences (ESV), International Research Council on Biokinetics of Impacts (IRCOBI), and NHTSA sponsored public meetings (1979 and May 1986). NHTSA has sought to address all pertinent aspects of the side impact problems which cover the test procedure, side impact dummy, injury criteria, and crashes as they occur in the real world.

The agency has tentatively concluded that the available information is sufficient to proceed with a proposed upgrade of the current side impact regulation FMVSS No. 214—Side Door Strength.

Based on that research, today's notice proposes to upgrade the standard by using a test procedure which simulates a two-vehicle side crash representative of the real-world side crashes that occur most frequently today. The proposed test uses a moving deformable barrier, weighing approximately 3,000 pounds, to represent a vehicle which is traveling at 30 mph and strikes the side of another vehicle which is traveling at 15 mph. To measure the magnitude of injury threat resulting from the side impact collision, the agency is proposing to use a specially developed side impact dummy. Two of these dummies would be used in a test, with one being placed on the front outboard seat and the other on the rear outboard seat on the struck side of the car.

This proposal would complement the current standard, which is primarily effective in single vehicle side impact accidents, by providing additional protection in multi-vehicle side impacts. The current standard does not directly assess the injury probabilities associated with different vehicle designs in a specific impact. Instead, it uses the ability of the side doors to resist intrusion as a surrogate measure of the potential for injury. Today's notice would set specific performance criteria which must be met to reduce the possibility of thoracic side impact injuries without increasing harm to the pelvis. The notice would require passenger cars not to exceed specified performance limits for the thorax and the pelvis. For the thorax, the performance limits are based on a combination of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. This notice seeks comments on the appropriateness of the proposed acceleration limits ranging from 80 g's to 115 g's. In addition, the notice seeks comments on the appropriateness of the proposed limits, ranging from 130 to 190 g's, on the peak acceleration that the pelvis should experience during the impact. Finally, to reduce the possibility of occupant ejection, the proposal would require that each door in the struck vehicle remain closed during the crash test.

To provide manufacturers with sufficient leadtime to design their passenger cars to meet the proposed performance requirements, the standard would be phased-in in accordance with the following implementation schedule:

10 percent of all cars manufactured during the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule;

25 percent of all cars manufactured during the second full year beginning after that 24-month period;

40 percent of all cars manufactured during the third full year after that 24-month period; and

100 percent of all cars manufactured on or after the beginning of the fourth full year after that 24-month period.

The basis for each of those proposals is discussed in the remaining sections of the notice, which present a review of the fatality and injury experience in side impacts involving current cars, the rationales and research supporting the proposed test procedures and performance requirements, the estimated benefits of the standard, and the potential costs. A more detailed discussion of those issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice.

III. The Safety Problem

The agency has separately analyzed the fatality and injury experience of

passenger car occupants involved in side impact crashes. As discussed below, the data show that side impacts account for an average of almost 8,000 fatalities and more than 23,000 serious injuries annually. These figures represent 30 percent of all passenger car occupant fatalities and 34 percent of the serious injuries that occur in passenger cars.

A. Fatalities

NHTSA reviewed available crash data from 1978 to the present to determine the number of fatalities in side impact crashes. That review showed that side impacts resulted in an average of 7,676 fatalities per year over that eight year period. The review further showed that while side impact fatalities declined steadily from about 8,300 in 1978 to about 7,000 in 1982, they increased again to about 7,400 in 1985. The percentage of all car occupants killed in side impacts averaged 30.3 percent over this eight year period. Side impact fatilities as a percentage of all occupant fatalities remained fairly constant from 1978–1982, at about 29 percent, but increased to about 32 percent in 1985.

The agency also examined the data on fatal crashes to identify the first harmful event in fatal side impact accidents. Based on a review of data from crashes in 1982–1985, the agency found that 66 percent of all side impact fatalities are due to vehicle-to-vehicle side impacts. Pole type impacts (poles, posts, fire hydrants, and trees) make up an additional 18 percent and other fixed objects (boulders, culverts, embankments, bridge abutments, guard rails, etc.) together comprise approximately 10 percent of all side impact fatalities.

The agency also examined its data files to determine what areas of the body were being injured in side impacts. Since the Fatal Accident Reporting System (FARS) does not provide information on the body region injured or the contact points, the agency examined data from the 1979–1985 National Accident Sampling System (NASS) and the 1977–1979 National Crash Severity Study (NCSS) on fatalities in which the most severe impact to the fatal occupant's vehicle was a left side or right side deformation. Only model year 1973 and later vehicles were included in this analysis to ensure that the data reflected the effect of side door beams, which were required beginning January 1, 1973, and appeared in many cars prior to that date. The data show that, for all types of side impact accidents including occupant ejections, head injuries are the most frequent sources of side impact fatalities (47%), followed by chest (29%), neck/spine (11%), and abdomen (8%).

Many head injuries occur as a result of a person being ejected from a vehicle. Because of the increase in the usage of manual safety belts and the introduction of automatic safety belts, the agency expects that there will be a reduction in the number of persons ejected from a vehicle. Thus, the performance criteria proposed in today's notice are meant to address crashes in which an occupant is retained within the car.

NHTSA then examined the accident data to determine what type of injuries were occurring during a side impact in which there was no ejection or rollover and in which the injury-producing contact points in the vehicle's interior were known. NHTSA found that the major injury categories in side impact accidents involved impacts between a person's chest or abdomen and the vehicle's interior. Thus, NHTSA's research has focused on developing countermeasures for these types of injuries.

Today's proposal should also help reduce head and other injuries resulting from complete ejections, since it would require that all doors of a tested car remain closed during the crash test, thus reducing the possibility of ejection. In addition, NHTSA is also preparing to publish an ANPRM on a somewhat related topic. The ANPRM will request comments on several means of reducing the risk of head and neck injuries and ejections through side doors and side windows in cars. The ANPRM and this notice are related in that both address injury reduction to car occupants involved in side crashes. However, NHTSA believes they are not interdependent in that potential vehicle modifications to reduce thorax injuries (e.g., lower door padding) are not related to those that might be made to reduce head and/or neck injuries (e.g., A-pillar padding). NHTSA is not now prepared to make specific proposals on head and neck injuries and will be seeking more information and data in the ANRPM.

B. Injuries

In addition to examining the data on side impact related fatalities, the agency also reviewed data on the number of injuries in non-fatal crashes. NHTSA estimated the average number of injuries, by deformation location and the maximum Abbreviated Injury Scale (AIS) level per occupant survivor, that would have occurred in 1982–85 if all cars in the fleet were MY 1973 and later cars—that is, if they all had side door beams. (The Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal.) The total estimated number of AIS 3–5 injuries (serious to critical injuries) from all crash modes is about 68,600 annually, which is based on data from the 1982–85 NASS file. That analysis showed that side impacts resulted in a total of about 23,500 AIS 3–5 injuries annually, 34 percent of all AIS 3–5 injuries. This is consistent with the fatality experience in these four years. In that time, side impacts accounted for 32 percent of all fatalities. The analysis also shows that the side interior and side hardware/armrests account for almost 52 percent of the maximum AIS 3–5 injuries for front seat occupants sitting near the struck side of the vehicle, and nearly 59 percent of the maximum AIS 3–5 injuries for rear seat occupants sitting near the struck side of the vehicle.

IV. The Proposed Test Procedure

This section discusses the size, weight, geometry, and stiffness of the moving deformable barrier that would be used in a barrier-to-car crash test. In some respects, the barrier is more representative of a car, while in others, more representative of a light truck. NHTSA requests comments whether the barrier should be more consistently representative of the population of either cars or light trucks.

A. Moving Deformable Barrier

1. General Description of the Moving Deformable Barrier

NHTSA is proposing a test procedure which simulates a typical two-vehicle side impact. The notice proposes to use the moving deformable barrier (MDB) developed by the agency in that test. The MDB is a steel structure with a 102 inch wheelbase, 63 inch track width, and has two aluminum honeycomb blocks on the front to simulate the energy absorption characteristics of a striking automboile. One block has a high compression strengh of 245 psi, is 4 inches thick and is mounted 21 inches above the ground to simulate the bumper/frame of the striking vehicle. The other block has considerably lower compressive strength, i.e., 45 psi, is 15 inches thick, and is used to simulate the softer, front end structure of the striking vehicle. The front and rear wheels of the MDB can be turned to accommodate the impact angle specified below.

Complete design drawings for the MDB have been placed in Docket No. 79–04–General Reference (Item 052). NHTSA notes that while the proposed regulatory test does not include detailed

specifications for the MDB, specifications along the lines of drawings included in the docket would be included in the final rule.

2. Barrier Weight

NHTSA set the weight of the barrier to be representative of the weight of future vehicles expected to be involved as the striking vehicles in side impact crashes in the United States. Thus, NHTSA derived the weight of the barrier from the median curb weight of impacting vehicles involved in serious to fatal injury side impact cases. In multiple vehicle accidents resulting in serious injuries and fatalities, passenger cars and light/medium/heavy trucks are about equally likely to be the striking vehicle.

In 1986, the average curb weight for new passenger cars was 2820 pounds and for light trucks about 3,500 pounds. Because the overall weight of vehicles is expected to decline in the 1990's, the time when this proposed rule would be implemented, the agency set the weight of the barrier at 3,000 pounds, which represents a 2,700 pound curb weight vehicle with 300 pounds of occupants and cargo.

3. Barrier Stiffness

In developing the MDB, NHTSA originally designed the barrier to have the stiffness or crush characteristics of a 1981 Chevrolet Citation striking another vehicle in the side at an angle of 60 degrees. The stiffness or crush characteristics are controlled by the two aluminum honeycomb blocks. Together, these blocks give NHTSA's MDB an average stiffness of about 10,000 lbs. per inch for a large magnitude of crush at the proposed 90 degree impact angle. This value is at the upper end of the passenger vehicle scale (similar to an AMC Concord). Many light trucks (e.g., GMC Astro, Chevy Blazer, and Mazda B-2000), which represent a significant portion of the striking vehicles, are within this range of stiffness as well. The agency believes that the MDB front face stiffness should be higher than typical passenger car front structures and more like light trucks because trucks (as striking vehicles) are currently responsible for nearly as many serious injuries and fatalities as are passenger cars. Serious injuries and fatalities are expected to increase in the future without safety improvements because of a continuing increase in light truck popularity and increased number of smaller sized passenger cars.

4. Barrier Geometry

When NHTSA designed the barrier in 1979, the agency set the maximum and minimum bumper heights to represent the 50th percentile values for 1979 sales-weighted, two-door sedans. All other barrier dimensions were selected by direct measurement of four 1979 model passenger cars, i.e., the Ford Fairmont, Oldsmobile Cutlass, Chevrolet Citation, and the Chevrolet Impala. In 1979, these make/models had the highest sales volumes. The bumper heights (distance between the upper and lower edges) of these 1979 cars range from about 4.6 inches to about 7.5 inches. As would be expected from the facts that the bumper height of passenger cars is regulated by the bumper standard (Part 581), this agrees well with the bumper heights of the ten best selling make/models in 1984 which range from about 4.9 inches to 7.5 inches.

5. Harmonization

There are two other side impact barriers that the agency considered in developing this proposal. One of those barriers was developed by the Committee of Common Market Automobile Constructors (CCMC) and the other was developed by the European Experimental Vehicles Committee (EEVC). The agency is concerned about using either of those barriers because it believes that they are not representative of the U.S. vehicles that are involved as the striking vehicles in side impacts. Compared to the NHTSA barrier, the CCMC and EEVC barrier weigh approximately ⅓ less, are less stiff in crash tests by a factor of approximately 5, and have a lower and narrower barrier face. As stated above, NHTSA believes the NHTSA MDB stiffness and weight are appropriate because they approximate the properties found in vehicles that cause a significant number of serious injuries and fatalities. The European barriers, as currently configured, are based on the typical or average European car. The weight and front end stiffness of a typical European car is considerably lower than the weight and front end stiffness of typical U.S. cars and light trucks. NHTSA invites commenters to address these concerns and to advise the agency whether it is possible to achieve international harmonization of safety standards by modifying one or more of the above-mentioned barriers.

B. Impact Speed and Angle

NHTSA examined the data in the National Crash Severity Study (NCSS) to determine the appropriate impact velocities and impact point to be used in the crash test. By using the NCSS data, the agency determined the median speed of all side impact accidents (28 mph striker/13 mph struck), and the median speed of the serious injury accidents (35/17.5 mph). Based on its analysis of accident data and its judgment about the threshold speed of serious injury accidents, NHTSA tentatively decided that the threshold speed of serious injury (30/15 mph) was the most appropriate test speed.

The agency also reviewed the angle of orientation between the longitudinal axis of the striking and struck vehicles and determined that 90 degree impacts were the most frequent. In view of the potential difficulty of conducting tests in which both the target and striking vehicles would be moving and in which first contact must be made at the same specified spot, the agency has devised a test in which only the striking "vehicle" is moving. Using vector analysis, the agency combined the impact speed and impact angle data and determined that the dynamics and forces of a crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph could be represented by a test configuration in which:

- The test vehicle is stationary;
- The longitudinal centerline of the MDB is perpendicular to the longitudinal centerline of the test vehicle;
- The front and rear wheels of the MDB are crabbed at an angle of 27 degrees to the right of its longitudinal centerline in a left side impact and to the left of that centerline in a right side impact; and
- The MDB moves at that angle and at a speed of 33.5 mph into the side of the struck vehicle.

C. Impact Point

The agency examined crashes involving serious to fatal injuries to determine the median value of the impact points. The impact reference point describes the relative positions of the striking vehicle and the struck vehicle at the time of impact. In particular, NHTSA defined the impact reference point, for the purpose of a left side impact, as the position of the left forward edge (corner) of the striking vehicle when contact is first made with the left side of the struck vehicle. This definition is based on accident data which contained documentation of the damage that occurred to the side of the struck vehicle. Based on the crash data, NHTSA found that the average impact reference point was 37 inches forward of the center of the wheelbase for all car sizes. This means that for a left side impact, the left edge of the striking vehicle would be 37 inches forward of the mid-point of the wheelbase of the struck vehicle at the time of initial contact.

V. Performance Requirements

A. Thorax

1. Development of the Performance Criterion

To assess the probability of an injury to the thorax in a side impact, the agency has developed a new injury measure called the Thoracic Trauma Index (TTI). The TTI was developed from and evaluated with test data obtained from 84 cadaver tests that have been conducted over the past 10 years. The results from those tests represent the largest biomechanical data base that has been used to support an NHTSA rulemaking action. In these instrumented cadaver tests, NHTSA was able to compare the acceleration measured on the cadaver's ribs and spine and the severity of thoracic injury received during each impact. These tests showed that the occurrence of injuries to the thorax, which includes both the ribs and the internal organs protected by the ribs, is strongly related to the peak lateral acceleration experienced by the struck side rib cage and the lower thoracic spine.

The TTI is a formula which uses the age and weight of each test subject, along with the lower thoracic spine and maximum rib accelerations to determine the probability of injury. While the calculation of benefits requires the use of the TTI, performance requirements can be specified in terms of a combination of peak rib and spine accelerations called the Thoracic Trauma Index (dummy) or TTI(d). TTI(d) is further defined in S4.1 of the proposed amendment. The benefits associated with a given TTI(d) requirement can be predicted using the TTI to assess changes across the entire vehicle fleet. The TTI(d) may be considered as the TTI where the age is zero and the weight is 165 lbs. (which is approximately the weight of the side impact dummy).

When the agency first developed the TTI, only the acceleration of the fourth rib (termed the upper rib in the TTI calculation) was measured in cadaver testing. Since then, the lateral acceleration of the eighth rib (termed the lower rib) has generally been recorded during cadaver testing. Because of this, NHTSA has revised the method of calculating the TTI and the TTI(d) by using the higher of the acceleration responses from the upper and lower rib. One beneficial effect of this change in the calculation of the TTI(d) is that it will promote the development of more balanced countermeasures that provide protection to the upper and lower thorax and the abdomen as well.

NHTSA has recently had an opportunity to evaluate further the ability of the TTI injury measure to distinguish between different AIS injury levels. The Forschungsvereinigung Automobiltechnik (FAT), an association of some 30 German motor vehicle and equipment manufacturers, sponsored a number of tests at the University of Heidelberg. These tests, (which are included in the total of 84 tests mentioned above) were designed to study lateral impacts of human cadavers, as well as three different designs of side impact dummies, seated in actual car bodies. Using the cadaver injury data, NHTSA evaluated the performance of TTI in predicting the injury severity level resulting from a lateral impact.

In the FAT tests, which were conducted on a sled, the deformable barrier developed under the auspices of the Committee of Common Market Automobile Constructors' was propelled into an Opel Kadett "body in white" in which the test subject (a human cadaver) was seated in the front seat on the struck side. Each car body was struck twice at an angle of 90°, once in the left side, and once in the right side. The speed of the barrier was either 40, 45, 50, or 60 km/hr. Each cadaver was exposed to one crash test. NHTSA's review of the test results, which is contained in the Society of Automotive Engineers paper entitled "Side Impact—The Biofidelity of NHTSA's Proposed ATD and Efficacy of TTI," (SAE Report No. 861877, Oct., 1986), again showed that TTI effectively distinguished between different levels of injury. That is, the higher the value of TTI calculated for the test, the greater was the probability of serious injury experienced by the cadaver.

2. Estimated Benefits of the Thorax Criterion

As a part of its side impact protection research program, NHTSA has conducted crash tests of 12 production passenger cars (20 crash tests) using the test conditions and anthropomorphic test dummy (side impact dummy or SID) proposed today. (The tests of the production cars are discussed in more detail in section VII of this notice.) To evaluate the effects of meeting a specified thorax performance criterion, the agency analyzed the probability of thoracic injury for each of the cars in the 20 tests using the TTI and other factors and compared this to the level of injury that would occur for each of the alternative values of the proposed TTI(d) thorax criterion. Assuming the production vehicles tested by NHTSA are representative of the total fleet of new cars, the estimated benefits for the different levels of the proposed TTI(d) thoracic injury criterion were calculated. That is, all cases exceeding a particular chosen maximum TTI(d) were reduced to the specified level while all vehicles having lower values retained their original values. Injury distributions were then recalculated using the altered TTI(d) values. Results are shown in Table 1.

TABLE 1—THORAX BENEFITS FOR DIFFERENT MAXIMUM LEVELS OF TTI (D) PERFORMANCE IN THE BASELINE FLEET

(Reductions in injuries/fatalities)

TTI(d)	AIS 3	AIS 4	AIS 5	Total AIS 3-5	Fatals
80	3,582	364	175	4,122	1,239
85	3,056	303	136	3,498	1,001
90	2,510	240	118	2,867	866
95	1,921	179	97	2,197	718
100	1,360	127	75	1,565	563
105	931	83	54	1,068	397
110	539	47	39	625	285
115	247	21	22	291	162

Since restraint system usage reduces fatalities and injuries in side impacts, the agency also examined how increased safety belt usage, as a result of either state safety belt use laws or automatic restraints, would affect the estimated benefits expected from the use of structural modification and increased padding to improve side impact protection. In determining the effect of restraint system usage on side impact protection, the agency made a number of assumptions, which are discussed in detail on pages IV-43 through IV-55 of the PRIA.

The agency assumed that manual or automatic safety belt usage would be in the 40-70 percent range. NHTSA also examined the available accident data and estimated the effectiveness of restraint systems in reducing torso injuries in side impacts. That review showed that safety belts are less effective in reducing torso injuries in sied impacts than they are in reducing injuries to other portions of the body in side impacts. Based on the accident data, NHTSA estimated that, for the occupant on the struck side, manual safety belts would be 19-26 percent effective in reducing upper torso related side impact fatalities and 23-30 percent effective in reducing AIS 3-5 injuries. NHTSA further estimated that automatic safety belts would be 18-25 percent effective in reducing upper torso related side impact fatalities and 21-28 percent effective in reducing AIS 3-5 injuries. Applying these estimates, NHTSA determined that approximately 5-14 percent of the potential reduction in fatalities and 6-16 percent of the

potential benefit in reducing AIS 3–5 injuries would already be achieved by increases in safety belt usage before in final side impact rule was fully implemented. Thus, the agency reduced the estimated effectiveness of the proposed side impact requirements by the expected benefits of increased restraint use and derived the final benefit estimates shown in Table 2. As with any requirements for new vehicles, the benefits accrue over the 10–15 year life of the model year fleets affected.

TABLE 2—ESTIMATED THORACIC BENEFITS RESULTING FROM THE SIDE IMPACT PROPOSAL AFTER MAKING ADJUSTMENTS FOR RESTRAINT USAGE

(Thoracic Benefits)

TTI(d)	AIS 3–5	Fatals
80	3,503–3,913	1,072–1,185
85	2,967–3,319	865–957
90	2,428–2,718	747–828
95	1,885–2,082	618–686
100	1,343–1,510	476–529
105	897–1,010	341–379
110	524–591	244–272
115	244–275	139–155

3. Alternative Thoracic Injury Criterion

General Motors has developed what is known as the viscous injury criterion (VC) for use in analyzing soft tissue injuries in frontal impacts. This injury criterion is based on the product of the instantaneous thorax compression (C) and its rate of compression (V) that occurs during impact. At the agency's 1986 public meeting on side impact protection, GM urged the adoption of a VC criterion for measuring the potential for injury in side impacts.

Although NHTSA believes that the work GM has done in frontal impacts using the VC criterion shows that such an approach may be promising, there are, at this time, not data to support adopting the VC as a criterion for assessing vehicle safety in side impacts. A further drawback to the use of the VC criterion at this time is that there are no dummies (including the agency's existing SID) that have been designed with biofidelity for measurement of lateral VC. Although the side impact dummy (known as the EUROSID) being developed by the European safety community will be able to measure chest compression, this dummy is still undergoing evaluation. Further, it is not known whether these measured displacements will be appropriate with respect to biofidelity. For additional discussion of the EUROSID dummy, see today's Federal Register notice on the agency's proposed new side impact test dummy.

In contrast to the VC criterion, the agency has a substantial amount of cadaver impact tests that indicate that the TTI(d) proposed in this notice is a reliable predictor for thoracic injuries. In addition, the agency has developed a reliable test dummy (SID) that can be used to measure performance using the acceleration based criterion (TTI(d)). At this time, NHTSA believes that the TTI(d) is fully adequate for use in this proposal and that much more additional information is needed before the agency can evaluate the effectiveness and reliability of the viscous injury criterion in assessing side impact injuries. When and if additional biomechanical information is available of the adequacy of the VC criterion in side impacts, theagency will consider that information to determine whether it should be proposed.

B. Pelvis

NHTSA has done research to develop criteria to limit pelvic injury in side impacts. The research, which has been published in a paper, "Synthesis of Pelvic Fracture Criteria for Lateral Impact Loading," presented at the Tenth International Technical Conference of Experimental Safety Vehicles, reviewed data from the above-mentioned 84 cadaver impact tests which measured the acceleration of the pelvis. (The agency used the same cadaver data in setting the proposed injury criterion for the thorax.) As a result of that review, the agency developed estimates of the probability of pelvic fracture for different acceleration levels measured in the pelvis of the cadavers.

The agency is concerned that certain design modifications could reduce thoracic response by shifting the load path into the pelvis. A pelvic injury criterion has been proposed to prevent worsening of pelvic protection.

To evaluate the effects of requiring cars to meet various maximum pelvis acceleration levels, the agency estimated the probability of pelvic injury for each of the 12 production passenger cars that were crash tested by the agency in one of its research programs. The test results showed that approximately 17 percent of the front seat occupants and 11 percent of the rear seat occupants would receive a fractured pelvis as a result of the acceleration experienced in those crash tests. The agency then calculated the expected benefits derived from having vehicles comply with various limits on pelvic acceleration levels. Those results are shown in Table 3.

TABLE 3—ESTIMATED PELVIC FRACTURE INJURY REDUCTION

Alternative levels of peak pelvic G's	Front seat near side	Front seat far side	Rear seat near side	Total
130	959	31	35	1,025
150	718	25	7	750
170	486	17	7	510
190	30	1	0	31

As was done with the estimates of the potential thoracic benefits, the agency then recalculated the pelvic benefit estimates to take into account the effects of increased safety belt usage. The agency used the same restraint system usage estimates and effectiveness estimates used in the thorax analysis. The recalculated benefits are shown in Table. 4.

TABLE 4—ESTIMATED PELVIC BENEFITS RESULTING FROM THE SIDE IMPACT PROPOSAL AFTER MAKING ADJUSTMENTS FOR RESTRAINT USAGE

Alternative levels of peak pelvic G's	Non-fatal fractures
130	864–971
150	629–709
170	428–482
190	26–29

C. Prohibiting Door Openings

The potential benefits of requiring the doors to remain closed during the side impact consist of reducing the number of persons who are ejected from a car through a door and strike an object outside the car. After reviewing the results of the 12 vehicle crash tests, the agency found that four of the vehicles had a door open during the crash. NHTSA then estimated the number of ejections that occur in side impacts and evaluated the potential effectiveness of keeping the door closed in reducing occupant deaths and injuries. The agency estimates that the proposed requirement has the possibility of reducing 106 fatalities and 167 serious to critical injuries annually.

As with its other benefit estimates, the agency then calculated the effect of increased restraint system usage on the level of benefits to be derived from the proposed door requirement. Since the prevention of ejection is one of the prime benefits of safety belt use, an increase in restraint system use would have a larger effect on reducing the estimated benefits of the door retention requirement than on reducing the benefits of the proposed thorax or pelvis requirements. Taking into account the effect of increased safety belt usage, the agency estimates that the proposed door retention requirement would reduce 59–85 fatalities and 88–131 AIS 3–5 injuries annually.

D. Test Procedure

The proposed test procedures provide that a test dummy is to be restrained during a test only if that dummy is located in a seating position equipped with an automatic belt. This provision is proposed because, although belt usage is increasing, through the passage of mandatory use laws and a growing awareness of safety on the part of consumers, manual restraint usage is unlikely to reach 100 percent. Thus, the agency desires to assure protection for unrestrained occupants. Recent accident data analyses indicate that belt type restraints may be somewhat beneficial in side impacts. Unrestrained testing should, therefore, be on the conservative side. Also, the unrestrained dummy is generally propelled to the far side of the vehicle in a side impact test, thus creating the potential of causing the far side door to open. Allowing this to occur would aid in evaluating the capability of the far side door to remain closed during a side impact crash, which is a requirement in this proposal. For manual belt systems, or manual belts used to supplement automatic restraint systems, the agency's limited testing leads to uncertainty whether such restraint use affects compliance with the proposed requirements. Thus, the agency seeks comments on whether compliance testing should be conducted with restrained or unrestrained dummies and the reasons therefore.

Component test procedures may eventually be possible alternatives to the agency's proposed side impact test which uses a moving deformable barrier and the side impact dummy to measure vehicle safety. The agency is aware that various industry organizations have conducted considerable research toward the development of devices and procedures for side component tests. Particularly prominent in this area is the recent work sponsored by the Motor Vehicle Manufacturers Association (MVMA) which used the 1985 Ford LTD as the base vehicle. See "Status and Update of MVMA Component Testing," SAE Report No. 871116. Although this program essentially demonstrated the feasibility of the MVMA component approach for the Ford LTD, the problems which still remain indicate that it may not be possible to develop a component test procedure utilizing a single set of requirements (involving specified ram face dimensions to achieve a prescribed magnitude of side structure pre-crush coupled with the impact speed of a simulated thorax) that would be adequately applicable to all vehicles considering the wide range of vehicle sizes and side structural characteristics.

Volkswagen AG recently reported results from their studies on a component procedure which is considerably different from the MVMA approach. See "Component Test Procedure For Side Impact Protection," SAE Report No. 871117. This procedure is a composite of test and analysis, but is subject to the same problem of appropriate application to all vehicles as noted above.

It is apparent that the component approach has some potential beneficial features (particularly for the use by a manufacturer in the early stages of vehicle design). While the agency believes that the concept needs additional research, it encourages the further development of this approach. Comments on this subject are specifically solicited.

VI. Feasibility of the Countermeasures

NHTSA has performed a substantial number of vehicle crash tests to examine the existing side impact performance for many cars, as determined by the TTI(d) and pelvis acceleration measured on the side impact test dummy, and to evaluate the effectiveness of various techniques to improve side impact performance. In particular, the research programs have concentrated on making production feasible structural changes and adding additional padding to the interior surface of the vehicle's side door to improve side impact protection. As discussed in more detail below, this research has shown that the use of structural modifications in combination with padding or the use of padding alone can reduce the probability of thoracic and pelvic injuries.

The following discussion highlights several of the more important side impact research programs conducted by NHTSA. The details of these and other agency research programs are discussed more fully in the Preliminary Regulatory Impact Analysis. In 1977, NHTSA began a program to improve the side structure integrity for lightweight subcompact cars using a 2-door Volkswagen Rabbit. The agency decided to concentrate its research efforts on light vehicles, because it anticipated having the greatest difficulty in improving the level of side impact protection in those vehicles. The agency also believes that any countermeasures developed for those vehicles could more easily be adapted for use in larger and heavier vehicles. NHTSA chose the VW Rabbit after testing the side impact performance of three small front wheel drive vehicles. The peak thoracic and pelvic accelerations measured on the side impact test dummy seated in the Rabbit indicated the Rabbit to be an "average" performer in its class.

The research program devloped four levels of structrual modifications to the 2-door VW Rabbit to investigate the effect of increased side strength on intrusion. Those levels were categorized by the weight that the modifications added to the car and were designated as lightweight, middleweight, heavyweight and "optimized" (the "optimized" version used parts that had performed well in tests of the three other designs, but had been reduced in weight). These structural additions focused on the front seat area; no structure was added to the rear quarter panel or C-pillar areas. Intrusion was reduced by a factor of nearly 50 percent (from approximately 20 inches to 10 inches) with the heavy and optimized weight designs, but the dummary peak accelerations were not significantly altered.

Concurrently with the programs to improve the structural integrity of the vehicle, NHTSA also conducted research at its Vehicle Research and Test Center in East Liberty, Ohio to select and evaluate interior padding. The interior padding was an "add-on" feature so that the door structure did not require alteration to accommodate the padding. The agency assumed that manufacturers would incorporate these features in production vehicles by using the door structure itself and part of the door thickness so as to minimize the space taken from the occupant compartment.

In January 1981, NHTSA began another research effort conducted in two parts. This was called the modified integrated vehicle (MIV) program. One part was conducted by VW to improve the side impact protection of a 4-door VW Rabbit and the other part was conducted by MCR Technology Inc. using the Chevrolet Citation. The program evaluated both structural modifications and padding changes, independently and combined. The first phase of the research effort concentrated on developing "production feasible" improvements, which would add little weight to the vehicle. To evaluate the performance of the modifications, the agency conducted a series of tests on the Rabbit simulating a vehicle moving at 22 mph striking another vehicle moving at 11 mph. The

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impact angle was 60 degrees. The agency's MDB was used as the striking vehicle. These tests involved an unmodified VW Rabbit, a structurally unmodified Rabbit with additional interior padding, a structurally modified Rabbit with no additional interior padding, and finally a structurally modified Rabbit with additional interior padding.

In the second phase of the MIV program, the agency tested the structurally modified and padded Rabbit in two additional impact configurations. The configurations simulated a vehicle moving at 30 mph striking another vehicle moving at 15 mph at impact angles of 60 degrees and 90 degrees. In these tests, a Chevrolet Citation was used as the striking vehicle.

In summary, NHTSA's testing shows that it is possible to develop "production feasible" countermeasures that can reduce potential thorax and pelvic injuries in side impacts. Based on the results obtained in this testing, NHTSA has, as discussed below, developed estimates of the effectiveness of different side impact countermeasures in reducing injuries.

VII. Estimate of Needed Improvement in the Vehicle Fleet

In addition to the testing which was done on the modified and unmodified Rabbits and Citations, NHTSA has also conducted a series of 20 tests on 12 different unmodified passenger cars. (In some cases, a 2-door and 4-door version of the same model were tested and, in other cases, there were repeat tests of the same models. One test was for a completely redesigned vehicle.) The agency tested these vehicles in the impact configuration and test speed proposed in this notice. The vehicles tested were the AMC Concord, Chevrolet Celebrity, Chevrolet Citation (2-door and 4-door models), Chevrolet Spectrum, Dodge 400, Dodge Omni 2-door/Plymouth Horizon 4-door, Ford Granada (2-door and 4-door models), Honda Civic, Mazda 626, Nissan Sentra, including its MY 1987 redesign, and VW Rabbit.

NHTSA used the results from the tests of the production vehicles to estimate the percentage of the passenger car fleet that currently meets the proposed alternative levels of the standard. In assessing the changes needed in current vehicles to meet the standard, the agency has not calculated the effectiveness for modifications that only involve structural changes. There were six cases of comparable baseline versus structure alone tests. In three of these tests for the driver, the TTI(d) went up and in three tests, the TTI(d) went down. A number of other tests have shown relatively little or no benefit from structure alone countermeasures. Because of these results, the agency does not consider the structural countermeasure it developed as a consistent means to reduce side impact injuries. This does not mean that countermeasures using only structural modifications will not work. It simply means that the approaches evaluated by the agency did not consistently work.

Table 5 shows the percentage of the current passenger car fleet meeting the various alternative levels of thorax acceleration at different seating positions in a car. The agency requests manufacturers to provide additional side impact test results so that the agency can refine its analysis of the percentage of the fleet currently meeting the alternatives. The agency has examined the effects of setting the TTI(d) limit between the values of 80 and 115 g's for the thorax.

TABLE 5—PERCENT OF THE FLEET MEETING ALTERNATIVE LEVELS FOR THE THORAX

TTI(d)	(In percent)		
	Driver	Rear passenger	Both positions
80	16.7	25.0	8.3
85	25.0	25.0	8.3
90	25.0	41.7	8.3
95	41.7	58.3	25.0
100	50.0	66.7	33.3
105	50.0	83.3	50.0
110	58.3	91.6	58.3
115	66.7	100.0	66.7

Table 6 presents estimates of the percentage of the fleet that would need various countermeasures to meet the various levels of the TTI(d) being considered for the standard. The percentage of the fleet is derived by assuming the effectiveness of the countermeasures as follows: for drivers—padding is approximately 21 percent effective, structure and padding is about 30 percent effective, and heavyweight structure and padding is 43 percent effective. For rear passengers, padding alone is also assumed to be 35 percent effective. The agency derived these effectiveness estimates based on the performance improvements resulting from the use of various side impact protection countermeasures in cars. The agency then applied these effectiveness estimates to the thoracic acceleration results of each of the 12 production cars and the results were then compared to the alternative level of the standard being proposed to determine which countermeasure is needed for each vehicle.

TABLE 6—PERCENT OF THE FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR THE THORAX

TTI(d)	Driver (In percent)				Rear passenger (In percent)	
	None	Padding	Structure and padding	Heavyweight structure and padding	None	Padding
80	16.7	33.3	16.7	33.3	25.0	75.0
85	25.0	33.4	33.3	8.3	25.0	75.0
90	25.0	41.7	25.0	8.3	41.7	58.3
95	41.7	50.0	8.3	0.0	58.3	41.7
100	50.0	41.7	8.3	0.0	66.7	33.3
105	50.0	50.0	0.0	0.0	83.3	16.7
110	58.3	41.7	0.0	0.0	91.6	8.3
115	66.7	33.3	0.0	0.0	100.0	0.0

Table 7 indicates the percentage of the fleet meeting various alternative standards for pelvic g's.

TABLE 7—PERCENT OF FLEET MEETING ALTERNATIVE LEVELS FOR PELVIC ACCELERATION

Pelvic acceleration	(In percent)		
	Driver	Rear passenger	Both
130	0	33.3	0
150	27.3	91.7	27.3
170	54.5	91.7	45.5
190	72.7	100.0	72.7

Table 8 presents the percentage of the fleet that would need various countermeasures to meet the alternative levels of the pelvic g's standard being analyzed. The perecentage of the fleet needing each countermeasure is derived by assuming effectiveness as follows: for drivers—padding is approximately 35 percent effective, structure and padding is approximately 40 percent effective, and heavyweight structure and padding is 57 percent effective. For rear passengers, padding is approximately 33 percent effective. These effectiveness estimates are applied to each of the 12 cars' pelvic acceleration levels (except for the missing driver's pelvic acceleration reading in the Celebrity) and the results are compared to the alternative level of the standard being examined to determine which countermeasure is needed for each vehicle.

TABLE 8—PERCENT OF FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR PELVIC ACCELERATION

	Driver			Rear passenger	
	Pelvic acceleration (In percent)			(In percent)	
	None	Padding	Structure and padding	None	Padding
130	0	90.9	9.1	33.3	66.7
150	27.3	72.7	-	91.7	8.3
170	54.5	45.5	-	91.7	8.3

TABLE 8—PERCENT OF FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR PELVIC ACCELERATION—Continued

	Driver			Rear passenger	
	Pelvic acceleration (In percent)			(In percent)	
	None	Padding	Structure and padding	None	Padding
190	72.7	27.3	———	100.0	0.0

VIII. Costs

As a part of its research program on side impacts, NHTSA has done several major studies of the potential costs associated with improving side impact protection. The first cost study was based on the work begun in 1980 with the Budd Company to develop several structural modifications for improving the side impact design of subcompact two-door sedans. As discussed earlier in this notice, the Budd Company developed four alternative side structure designs based on the 1976/1977 VW Rabbit two-door passenger sedan. The production version VW Rabbit was used as a baseline for comparing the weight, cost, and crash impact performance of the four modified design versions.

The four design concepts were categorized by the total added weight of the modifications to the car and were designated as a lightweight design, middleweight design, heavyweight design and an "optimized" design. The crash test results for the lightweight and middleweight designs showed that none of the structural modifications described above sufficiently improved side impact protection as measured by reductions in thoracic acceleration. The heavyweight and optimized designs showed some promise of reducing side impact injuries and consequently, the agency used those designs in calculating the cost associated with this proposed rulemaking.

Subsequent to completion of the work by Budd, NHTSA sponsored several studies to analyze the costs and manufacturing feasibility of structural modifications and increased padding to improve side impact protection. Those studies have concentrated on examining approaches that would support the type of vehicle construction techniques that would be used in efficient high-volume production using more sophisticated tools. Those studies found that the types of modification examined by the agency could be simplified if a vehicle manufacturer planned to incorporate the side impact features into a new vehicle design. In particular, the studies found that many of the parts used by the agency in its original research program could be modified, combined, eliminated, or incorporated into the basic original structural members using the original tools. In addition to examining the costs of structural improvements, the agency has also analyzed the costs associated with the addition of padding.

The costs and weight changes derived using the modified vehicle tests conducted several years ago, where the primary purpose of the modifications was to reduce intrusion, represent relatively high values for both costs and weights. As discussed earlier, the test results showed that structural improvements alone did not necessarily result in significant reductions in thoracic acceleration, an injury criterion being proposed by the agency in this notice.

The agency believes that a more effective and efficient approach for reducing occupant thorax and pelvis injury in side impacts is to provide equivalent padding (either actual padding or modified, energy-absorbing sheet-metal structure) as necessary in the door area. This should be more efficient for these types of injuries, and have much lower associated costs. This has been demonstrated by actual production vehicles. For example, the 1987 Nissan Sentra incorporated significant improvements, at a cost of apparantly less than $100 over the earlier version of this model, to considerably improve both the frontal and side forces on vehicles occupants. Also, there are some designs of small and other cars tested by NHTSA that already have relatively good side impact performance for the dirver (e.g., Concord 4-door with TTI(d) of 72.5, Spectrum 2-door with TTI(d) of 83.5, Celebrity with TTI(d) of 79.0. In addition, 25 percent of the rear seat passengers of the cars tested by NHTSA had TTI(d) values below 85 g's. Since a number of cars demonstrate very good side impact performance without special addition of countermeasures (i.e., only configurational differences), the agency believes that other vehicles could also be redesigned to improve performance at little increase in consumer costs. The agency's judgment is that individual models can have overall lifetime costs of meeting requirements down to the 85 TTI(d) level of somewhere between zero and $100 (additional fuel and secondary weight costs included). The overall fleet-weight costs of the 85 TTI(d) level, for example, could be less than $50 per vehicle, if sufficient leadtime is provided such that most vehicles can be designed with the side impact requirements in mind.

NHTSA combined the estimates of the vehicle modification costs, including the fuel economy and secondary weight costs, associated with different types of side impact protection modifications and the estimates of the percentage of the fleet that would need modifications to meet various thorax and pelvis accelaration levels. These total costs range from fleet averages of $8 to averages of over $100 per car, depending on the injury level selected and assumptions on secondary weight factors.

NHTSA wants to emphasize that the costs of the proposed requirements are expected to be significantly lower than the estimates derived from its outdated cost studies. The NHTSA tests showed that some existing vehicles could meet various proposed levels of safety with little modifications. This suggests there are less costly ways of upgrading side impact protection. The improved performance of some existing cars appears to be due to the larger cross-sectional thickness of the door and quarter panels of those particular vehicles. This would create better performance due to the outer and inner panels not being completely crushed together as the door is being pushed into the passenger compartment, prior to dummy contact. This also allows the inner panel to absorb some of the dummy's energy before being crushed into the outer panel and the ensuing rigid barrier.

The agency believes that future model designs, by manufacturers who do not have this cross-sectional thickness feature, can incorporate this design concept, resulting in lower safety improvement costs for most vehicles.

Considering that most of the vehicles NHTSA has tested are not likely to be in the fleet 5 years after implementation of the final rule when the standard becomes fully effective, and that a phase-in procedure is proposed, the agency believes that it is reasonable to assume that manufacturers would incorporate safety improvements in their clean-sheet design of most new models to comply with the standard prior to and at the time of full implementation. This approach will entail research and development, engineering, and testing expenses in order to meet the standard, but perhaps, with very little added cost per vehicle.

The agency has not designed and tested countermeasures to prevent door openings during the compliance tests. Thus, specific cost estimates for measures to meet this provision of the

proposal are not available. However, based on its November 1982 evaluation of Standard No. 214, the agency believes that reductions in the possibility of door openings are feasible through structural improvements made to reduce the TTI(d) and pelvic g's. The 1982 evaluation found that the inclusion of side door beams reduced the incidence of door openings by 20–40 percent in single vehicle crashes and 10–30 percent in multi-vehicle crashes. The agency believes that further reductions are possible as a by-product of measures adopted to comply with the proposed injury criteria. Thus, the costs of reducing door openings are believed to be included in the above-mentioned costs, or, in the alternative, are estimated to be relatively small, on the order of $2–$4 per vehicle affected. It is estimated that only a small portion of the fleet would be so affected. Comments are specifically requested on these assumptions.

In addition to the costs associated with designing and producing the countermeasures needed to meet the proposed performance requirements, today's proposed rule also would result in some test equipment costs. The SID dummy is basically a Part 572 dummy with a modified thorax that uses thoracic and pelvic acceleration to measure impact loads. NHTSA estimates that buying a complete new SID dummy would cost approximately $22,000. However, with the phase-in implementation of the Hybrid III Dummy required to meet FMVSS 208 compliance certification in the future, many of the existing Part 572 dummies could be modified to meet the SID requirements at a substantial savings to the manufacturers.

In addition to the cost of the dummy, there are costs associated with calibrating the dummy, purchasing replacement parts and performing the dynamic crash test. NHTSA estimates the total incremental cost per dummy per test application to be approximately $2,500. In addition, the estimated cost of the NHTSA MDB is approximately $23,000 with instrumentation. This does not include expendable aluminum honeycomb face and bumper, which, at present, has to be replaced after each test, and is estimated to be an additional $2,100 per test.

IX. Leadtime

The leadtime needed to comply with the proposed range of requirements might vary markedly from manufacturer to manufacturer. As discussed earlier, depending on the level of the performance requirements adopted in the final rule, some manufacturers may need little change in some of their models. In addition, for manufacturers that only need to adopt padding countermeasures, the leadtime is relatively short. Based on engineering judgment, the agency believes the normal leadtime to design, tool and test new interior trim panels and arm rests is approximately 14 to 18 months. However, manufacturers needing to adopt either the optimized or heavyweight structural modifications and padding could need significant amounts of leadtime.

In instances where a manufacturer can make the needed structural modifications by making minor design changes to such vehicle structures as the door and the "A" and "B" pillars, it is possible to make those changes with approximately two years of leadtime. However, unlike approaches that use padding only or minor alterations to existing vehicle parts, some passenger cars may need significant improvement to the vehicle body shell to comply with the standard. Thus, if significant revisions are necessary, some vehicle models may require as much as five years of leadtime to develop, design, and produce the needed changes. The agency believes that the best approach to addressing the varying leadtime requirements is to phase-in the standard. This will allow manufacturers that can use the relatively straightforward padding approach in some of their models, to adopt that countermeasure in the early years of the phase-in. A phase-in approach will also provide sufficient time for manufacturers to design, develop, and produce significant structural modifications for those vehicles that need major changes.

X. Effect on the Current Version of Standard No. 214 and Other Standards

As discussed in the beginning of this notice, agency research has shown that the requirements of current Standard No. 214 have been effective in reducing fatalities and injuries in single vehicle impacts. The agency believes that the primary reason for the effectiveness of the current standard is that it reduces intrusion into the vehicle. The amendments proposed today do not include any limits on intrusion, but instead place limits on the acceleration experienced by a side impact test dummy in a simulated side impact.

Given the effectiveness of the current requirements, NHTSA is proposing to retain them even if it adopts the new performance requirements being proposed today. The agency notes that, for convenience, the proposed regulatory text does not repeat the existing requirements, but instead sets forth the new performance requirements as a new Standard No. 214 which would replace the existing requirements. If the agency decides to adopt the proposed new requirements, it would issue a final rule combining the new and existing requirements into Standard No. 214. However, the agency requests comments on retaining the existing requirements of Standard No. 214, if the proposed new performance requirements are adopted.

The agency also requests commenters to address whether the agency should adopt a separate limitation on intrusion that occurs during the simulated side impact test proposed today.

Standard No. 201, *Occupant Protection in Interior Impact*, also contains requirements that are aimed at reducing injuries in side impacts. Section 5.3 of that standard sets requirements for the armrests used in vehicles. The purpose of those requirements is to reduce the potential for thoracic and pelvic injuries. Since the amendments proposed today include limits on pelvic and thoracic acceleration, the agency requests comments on whether the final rule should delete the Standard No. 201 requirements insofar as they apply to (a) armrests built into the interior surface of the side doors, and (b) folding armrests

XI. Phase-in of New Requirements

As discussed above, NHTSA is proposing to phase-in the new requirements. While the proposed regulatory text does not specify the phase-in requirement, the agency contemplates adding regulatory text along the lines used to express the phase-in of automatic restraint requirements of Standard No. 208, *Occupant Crash Protection*. See § 4.1.3 through § 4.1.3.5.2 of Standard No. 208 and 49 CFR Part 585. NHTSA requests comments on this approach. Specific regulatory text would be set forth in a final rule.

XII. Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential increases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements proposed in section XI of the preamble of this notice in connection with the phase-in of the new requirements are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. Accordingly, those proposed requirements are being submitted to OMB for its review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Office for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

XIII. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited to 15 pages in length. (49 CFR Part 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.214 would be revised to read as follows:

§ 571.214 Side impact protection.

S1 *Scope.* This standard specifies performance requirements for protection of passengers in side impacts.

S2 *Purpose.* The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars in side crashes by specifying vehicle crashworthiness requirements in terms of accelerations measured on anthropomorphic dummies in test crashes and by other means.

S3 *Applicability.* This standard applies to passenger cars.

S4 *Performance requirements.* When tested under the conditions of S5, each passenger car shall meet the requirements of 4.1, 4.2, and 4.3 in a 33.5 mile per hour impact in which the car is struck in either side by a moving deformable barrier, Part 572, Subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car.

S4.1 *Thorax.* The Thoracic Trauma Index shall not exceed [a range of values between 80 and 115 is being considered] when calculated in accordance with the following formula:

$$TTI(d) = \tfrac{1}{2}(G_R + G_{LS})$$

The term "G_R" is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term "G_{LS}" is the lower spine peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S5.12.5.

S4.2 *Pelvis.* The peak lateral acceleration of the pelvis, as measured in accordance with S5.12.5, shall not exceed [a range of values between 130 and 190 is being considered] g's.

S4.3 *Door opening.*

S4.3.1 Any side door, which is struck by the moving deformable barrier, shall not separate totally from the car.

S4.3.2 Any door (including a rear hatchback or tailgate), which is not struck by the moving deformable barrier, shall meet the following requirements:

S4.3.2.1 The door shall not disengage from the latched position;

S4.3.2.2 Neither the latch nor the hinge systems of the door shall separate; and

S4.3.2.3 Neither the latch nor the hinge systems of the door shall pull out of the anchorage.

S5 *Test conditions.*

S5.1 *Test weight.* Each passenger car is loaded to its unloaded vehicle weight, plus its rated cargo and luggage capacity, secured in the luggage area, plus the weight of the necessary anthropomorphic test dummies. The car's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel

tank through the engine's induction system.

S5.2 *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its "as delivered" condition. The "as delivered" condition is the vehicle as received at the test site, with 100 percent fo all fluid capacities and all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's "fully loaded condition." The "fully loaded condition" is the test vehicle loaded in accordance with S5.1. The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude is equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

S5.3 *Adjustable seats.* Adjustable seats are placed in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

S5.4 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place each adjustable head restraint in its highest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S5.5 *Adjustable steering wheels.* Adjustable steering controls are adjusted so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions.

S5.6 *Windows.* Movable vehicle windows and vents are placed in the fully closed position on the struck side of the vehicle.

S5.7 *Convertible tops.* Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S5.8 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S5.9 *Transmission and brake engagement.* The transmission is placed in neutral and the parking brake disengaged.

S5.10 *Moving deformable barrier.* The moving deformable barrier conforms to the dimensions shown in Figure 1.

S5.11 *Impact reference line.* On the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 37 inches forward of the center of the vehicle's wheelbase.

S5.12 *Impact configuration.* The test vehicle (vehicle A in Figure 2) is stationary. The line of forward motion of the moving deformable barrier (vehicle B in Figure 2) forms an angle of 63 degrees with the centerline of the test vehicle. The longitudinal centerline of the moving deformable barrier is perpendicular to the longitudinal centerline of the test vehicle when the barrier strikes the test vehicle. In a test in which the test vehicle is to be struck on its left (right) side: all wheels of the moving deformable barrier are positioned at an angle of 27 ± 1 degrees to the right (left) of the centerline of the moving deformable barrier; and the left (right) forward side of the moving deformable barrier is aligned so that a longitudinal plane tangent to that side passes through the impact reference line when the barrier strikes the test vehicle.

S5.13 *Anthropomorphic test dummies.*

S5.13.1 The anthropomorphic test dummies used for evaluation of a vehicle's side impact protection conform to the requirements of Subpart F of Part 572 of this Chapter.

S5.13.2 Each Part 572, Subpart F test dummy specified is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EE shoe which meets the configuration size, sole, and heel thickness specifications of MIL–S–131192 and weighs 1.25 ± 0.2 pounds.

S5.13.3 Limb joints are set at lg. Leg joints are adjusted with the torso in the supine position.

S5.13.4 The stabilized temperature of the test dummy at the time of the side impact test shall be at any temperature between 68 degrees F. and 78 degrees F.

S5.13.5 The acceleration data from the accelerometers mounted on the ribs, spine and pelvis of the test dummy are processed in the following manner:

S5.13.5.1 Filter the data with a 300 Hz, SAE Class 180 filter;

S5.13.5.2 Subsample the data to a 1800 Hz sampling rate; and

S5.13.5.3 Filter the data with a Finite Impulse Response (FIR) filter having the following characteristics—

S5.13.5.3.1 Passband frequency, 100 Hz.

S5.13.5.3.2 Stopband frequency, 180 Hz.

S5.13.5.3.3 Stopband gain, −30 db.

S5.13.5.3.4 Passband ripple, 0.0225 db.

S6 *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a test dummy, conforming to Subpart F of Part 572 of this Chapter, in the left front outboard seating position on the struck side of the test vehicle and another conforming test dummy in the left rear outboard position on the same side of the vehicle, as specified in 6.1 through 6.4. Each test dummy is restrained only in seating positions for which there is an automatic belt restraint. In addition, any folding armrest is retraced.

S6.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree.

S6.2 *Torso*

S6.2.1 *Driver's torso.*

(a) *In vehicles equipped with bench seats.* The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the test dummy shall be vertical and parallel in the vehicle's longitudinal centerline, and pass through the center of the steering wheel rim at the surface of the hub.

(b) *In vehicles equipped with bucket seats.* The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the driver shall be verticle and shall coincide with the longitudinal centerline of the bucket seat.

S6.2.2 *Passenger's torso.* The upper torso of the test dummy shall rest against the seat back. The midsagittal plane of the test dummy shall be verticle and parallel to the vehicle's longitudinal centerline. Place the test dummy so that there is one inch between the outermost point of the skin of the upper torso and the innermost interior surface of the vehicle next to test dummy.

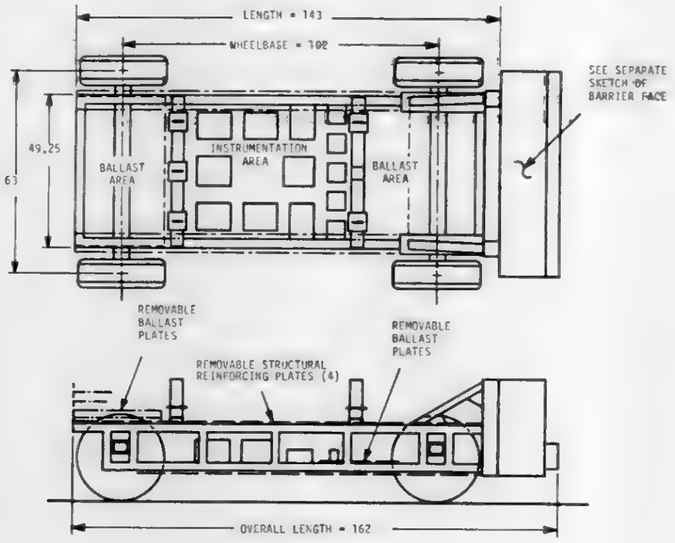
S6.3 *Legs.* The upper legs of the driver and passenger test dummies shall rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces shall be 14.5 inches. To the extent practicable, the left leg of the driver dummy and both legs of the passenger dummy shall be in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S11.8 of Standard No. 208 (49 CFR 571.208) for various passenger compartment configurations is permitted.

S6.4 *Feet.*

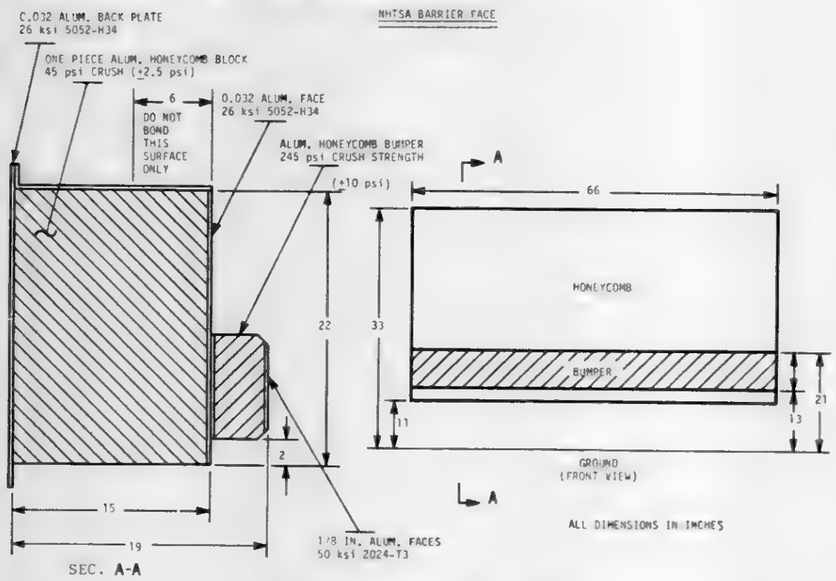
S6.4.1 The right foot of the driver test dummy shall rest on the undepressed accelerator with the rearmost point of the heel on the floor surface in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it shall be positioned perpendicular to the tibia and placed as far forward as possible in the direction of the centerline of the pedal with the rearmost point of the heel resting on the floor surface. The heal of the left foot shall be placed as far forward as possible and shall rest on the floor surface. The left foot shall be positioned as flat as possible on the floor surface. The longitudinal centerline of the left foot shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

S6.4.2 The heels of both feet of the passenger test dummy shall be placed as far forward as possible and shall rest on the floor surface. Both feet shall be positioned as flat as possible on the floor surface. The longitudinal centerline of the feet shall be placed as parallel as possible to the longitudinal centerline of the vehicle.

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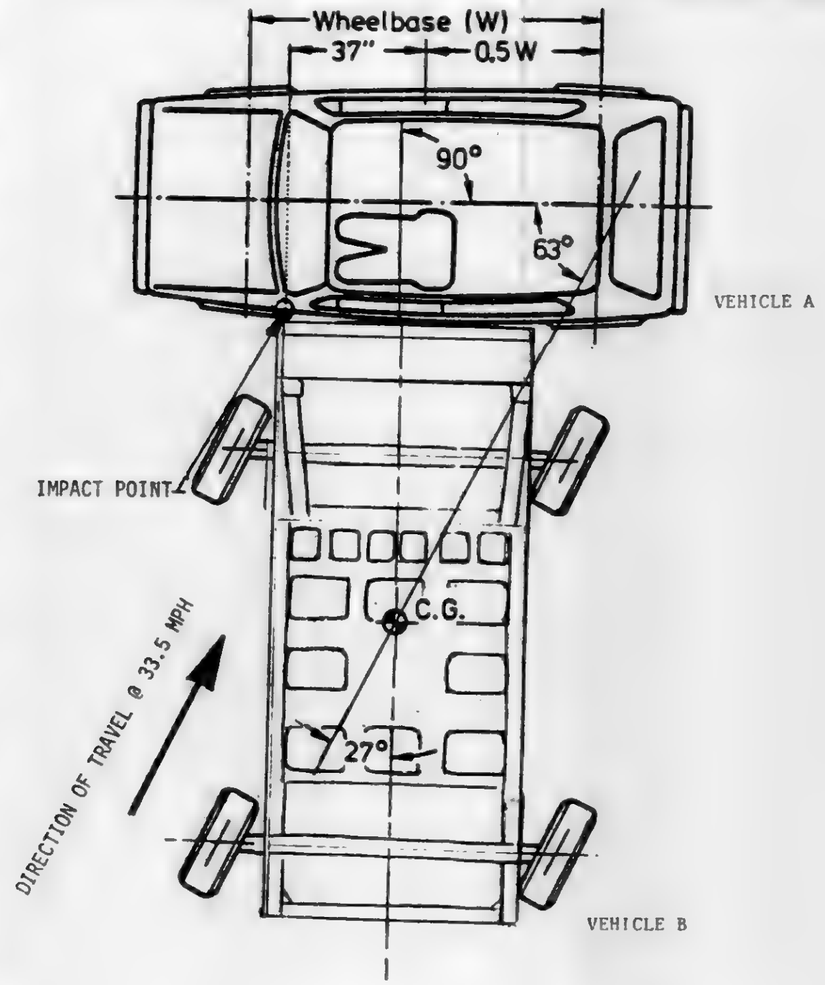


NHTSA VEHICLE CONFIGURATION - MOVING BARRIER SIDE IMPACTOR CONCEPT
(4-WHEELED VEHICLE SIMULATOR)



NHTSA side impactor - moving deformable barrier

Figure 1



TEST CONFIGURATION

Figure 2

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3. Section 571.201 would be amended by removing S3.5 through S3.5.2.

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.)

Issued on January 21, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1541 Filed 1-22-88; 2:10 pm]

BILLING CODE 4910-59-M

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49 CFR Part 572

[Docket No. 88-07; Notice 1]

Side Impact Anthropomorphic Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is being issued in conjunction with a proposal to amend Standard No. 214, *Side Door Strength*, by establishing a dynamic crash test requirement for passenger cars. The proposed amendment to Standard 214 would require passenger cars to pass several performance requirements in tests using a newly-developed anthropomorphic test dummy. This notice proposes the specifications and qualification requirements for that dummy.

DATES: Comments must be received on or before October 24, 1988. Proposed effective date is 30 days after the date of publication of the final rule.

ADDRESS: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590 [Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202 366-4916)

SUPPLEMENTARY INFORMATION:

Background

This proposal supplements a separate proposal being published elsewhere in this issue of the **Federal Register** that would amend Standard No. 214, *Side Door Strength*, to establish a new dynamic test requirement for passenger cars. The proposed amendment would require passenger cars to meet several performance requirements when struck in the side by a moving deformable barrier. In the test, an anthropomorphic test dummy would be placed in the outboard front and rear seats on the struck side of the vehicle. This notice proposes the specifications and calibration requirements for that test dummy.

As described in detail later in this notice, the agency has conducted a substantial number of tests to develop a side impact test dummy (SID) that would be appropriate for use in the upgraded side impact standard. The test dummy proposed in this notice is based on the Part 572, Subpart E anthropomorphic test device that is used in existing occupant protection safety standards. The agency believes the SID to be operational and adequate for use in the proposed rule.

Summary of the Proposed Rule

The specifications for the side impact dummy would consist of the following two elements: a drawing package containing all of the technical details of the dummy parts and dummy assembly; and a set of master patterns for all molded and cast parts of the dummy. Those patterns make possible the rapid reproduction of those parts. In addition, there would be an SID user's manual containing instructions for assembly, disassembly, use, adjustments, calibration procedures, seating procedures and maintenance of dummies. These drawings and specifications would ensure that the dummies would vary little in their construction. Performance criteria would serve as calibration checks and further assure the uniformity of dummy assembly, construction, and instrumentation. As a result, the repeatability of performance in dynamic testing would be ensured.

The dummy would be instrumented with accelerometers for measurement of accelerations in the chest and pelvis during impacts. The rule would specify the manner and location of installation of the instrumentation to reduce variability in their measurements resulting from differences in location and mounting.

Drawings and specifications for the side impact test dummy are available for examination in the NHTSA Docket Section. Copies of those materials and an operation and maintenance manual can be obtained from the Rowley-Scher Reprographics, Inc., 1216 K Street NW., Washington, DC 20002, telephone (202) 628-6667. In addition, patterns for all cast and molded parts are available on a loan basis from the NHTSA Office of Vehicle Safety Standards.

Description

The proposed side impact dummy (SID) is identical to the existing Part 572, Subpart B test dummy used in Standard No. 208, with several exceptions. The thorax and knees have been redesigned to produce human-like acceleration responses in the lateral direction. This includes accelerometers for ribs, spine and pelvis; a shock absorber between the ribcage and the spine; and a rubber hinge where the ribs attach to the spine. Further, to keep the design of the SID as simple as possible, the test device does not have articulating arms or shoulders. Instead, the mass of the arms has been incorporated into the mass of the thorax, and urethane foam 'stump' arms have been added for the appropriate biofidelity characteristics. The agency determined early in the development and testing of the SID that the presence of physical arms introduce considerable response variability into the test results. In addition, the use of an articulating arm and shoulder sub-assembly might introduce unnecessary mechanical complications in the construction and assembly of the test dummy.

Biofidelity

Biofidelity is a measure of how well a test dummy duplicates the responses of a cadaver in an impact. During the development of the SID, NHTSA examined the biofidelity of the SID's thorax (rib/spine) and pelvic acceleration responses in simulated vehicle crash tests. In addition, the agency compared the impulse loading (force versus time relationship) responses of the SID's thorax and pelvis to those of cadavers.

One primary set of data used by NHTSA in evaluating the biofidelity of the SID was from a series of tests sponsored by the Forschungsvereinigung Automobiltechnik (FAT), a group of German vehicle manufacturers (SAE paper 861877). In those tests, a moving barrier was attached to the sled buck and accelerated down a track so that it impacted the side of a subcompact automobile. A total of 35 three-point belt restrained cadavers and 5 SID test devices were used in this test series. Vehicles using cadaver test subjects were struck at speeds ranging from 40-60 kmh (25-37 mph), while tests using the SID were conducted at 50 kmh (31 mph).

In analyzing the results of those tests, the agency compared the cumulative variance of the test dummy responses to the cumulative variance of the cadaver responses. The results, which are discussed in more detail on pages IIIB-8-9 of the Preliminary Regulatory Impact Analysis, show that the responses of the upper and lower ribs, the lower spine and the pelvis of the SID correspond well with the responses of the cadavers in similar impacts.

The agency also compared average peak acceleration values of cadavers and the SID in sled tests where the occupant impacted a padded or rigid wall. These results showed that, for the rigid wall impact condition, the SID thorax and pelvis values were significantly greater than those of a cadaver, which reflects the lower compliance compared to a cadaver. However, for the padded wall impact condition, the SID responses are closer to the cadaver's.

In the process of developing the side impact test procedure, NHTSA also compared the impulse-loading characteristics of the SID to cadavers in rigid and padded wall impact tests. In those tests, the agency found that for rigid wall impacts at 23 mph, the SID thorax and pelvis responded with higher force levels compared to cadavers, but that for padded wall impact conditions, the responses were very similar. The overresponse of the SID for the rigid wall occurs because the SID structure is a composite structure containing steel components, damping materials, and lead ballast and is, naturally, less compliant than the human skeletal structure.

Although the testing shows that, in a rigid wall impact, the SID experiences higher accelerations than a cadaver, it is important to note that such a test environment is not typical of the occupant-to-door interior impacts experienced in side crashes. In tests with a padded structure, which will be more typical of the interior of a vehicle, the SID responses are very close to those of cadavers. Based on all of the testing, the agency believes that the SID has adequate biofidelity.

Durability and Reliability

The agency has gained considerable experience regarding the SID's durability and reliability from 20 full scale production vehicle tests conducted for the agency by the Transportation Research Center (TRC) of Ohio and from 16 modified 1985 Ford LTD tests, also conducted by TRC of Ohio for the Motor Vehicle Manufacturers Association (MVMA) (Society of Automotive Engineers (SAE) paper 871115). These full scale vehicle tests were conducted with the SID unrestrained, at an impact angle of 90 degrees and a MDB speed of 33.5 mph. In NHTSA's tests, the relative velocity of the SID and the inner door surface at contact ranged from 20 mph to 27 mph, based on analysis of the door and SID accelerometer responses. These tests, in combination with rigid wall sled tests, cover what is considered to be the range of impact environments to be encountered by the SID when it is used by vehicle manufacturers in upgrading the side impact performance of their automobiles. At one end of the scale, the rigid wall sled tests conducted at 23 mph are considered to be the most severe of impact environments as are some of the small, subcompact production vehicle tests. At the other end of the scale, the modified full size 1985 Ford LTD tests conducted by MVMA represent what is considered to be the least severe test condition (with respect to the thorax and pelvis) as were most of the rear seat 20 production vehicle tests conducted by TRC of Ohio.

While NHTSA's test program covering the first 19 production vehicles was underway, NHTSA identified several changes that would increase the durability of the SID. Those changes, which were incorporated into the dummy, included: (1) Replacing the leather rib hinge of the SID with a rubber transmission belt to eliminate a fatigue failure problem, (2) adding a universal joint to the end of the thorax shock absorber to prevent shock absorber piston rod bending as the chest rotated about the spine box, and (3) building plastic hinges into the femurs to stop the breakage of the aluminum knee castings caused by lower leg bending moment during side structure deformation. Since changing the rib hinges could potentially affect the acceleration measurements made with the SID, the agency studied the influence of the new rubber hinge material on thoracic response. The agency determined that although some differences occurred, they were insignificant.

The agency has also done considerable work to overcome two other durability problems that developed during the first 19 production vehicle tests. Those two problems involved the delamination of the damping material from the ribs of the SID thorax and the presence of approximately one-half inch of permanent deflection in the rib cage following a severe impact test, such as a 23 mph sled test. Delamination of the rib damping material could allow mechanically generated signals to interfere with rib acceleration signals and permanent deflection set within the rib cage could significantly alter the geometry of the SID so that errors could occur in the thorax responses. NHTSA has studied the influence of both of these failure modes on the production vehicle test results and found that the thorax responses were not significantly altered by either damping material delamination or the permanent set of the ribs. However, to reduce the possibility of any adverse effects, the agency has developed a new method of attaching the damping material to the ribs to reduce delamination. Further, NHTSA has adopted the United-McGill damping material used in the Hydrid III dummy. In addition, NHTSA is proposing an overall pre-test chest configuration envelope requirement that must be met to ensure that the test dummy's ribs have not experienced excessive permanent deflection after repeated uses.

Overall, the agency expects the durability of the SID to equal or exceed that of the Hybrid III test dummy. One of the primary reasons for this expectation is that the SID is based on the existing Part 572 Subpart B test dummy, which is durable enough to be used in 70 full scale, unrestrained, 30 mph frontal crash tests. Because the thorax is the prime durability constraint, NHTSA anticipates that the number of unrestrained SID full scale side impact crash applications will exceed at least 30 tests without needing major repairs.

Reliability

Reliability is closely related to durability in that both affect the ability of the tester to achieve valid and repeatable test results. NHTSA considers reliability to be a measure of the ability of the dummy to achieve valid test results when the dummy is properly calibrated and in good working order. NHTSA considers the term durability, on the other hand, to mean the longer term ability of the dummy to remain in calibration, coupled with the ability of the individual dummy components to resist failure.

For the 20 production vehicle tests, there were a total of 160 primary channels of test data collected. In those tests, there were only 3 cases of lost data used for TTI(d) computations and 5 cases of data missing in pelvis acceleration readings. These test results indicated an overall SID data acquisition reliability of 93 percent for TTI(d) and a reliability of 88 percent with respect to pelvis acceleration. In reviewing the results of the NHTSA and MVMA full scale tests, the agency has tentatively concluded that SID is just as reliable as the Hybrid III dummy or the Part 572, Subpart B dummy.

Repeatability and Reproducibility

NHTSA has carefully studied the repeatability and reproducibility of the SID using two methods. The control of the variation of dummy responses for the same device (called repeatability) and among SID devices made by

different manufacturers (called reproducibility) has been a primary goal of the agency during development of the side impact test dummy.

The agency has used a number of methods to evaluate the repeatability and reproducibility of the SID. In work done for the agency by Calspan, the agency used a statistically-based approach called the Normalized Integrated Squared Error Method in which the amplitude, phase, and shape of the deviations of each individual acceleration-time response curve of the SID is compared to the man value for all the curves (SAE Paper 831624). The second method used by the agency involved comparing the coefficient of variation for a sample of pendulum data and 23 mph sled test data (Safety Research Laboratory (SRL)—102).

In its study, Calspan established a 6 percent range of acceptable variance for repeatability and an 8 percent range of acceptability for reproducibility for the phase, amplitude, and shape of the response acceleration-time curves (SAE Paper 831624). Calspan evaluated a group of six SIDs in a series of 14 and 20 fps pendulum impacts. The results obtained in those tests are representative of the SID test devices used in the early development phases of the agency's side impact program. The results showed that the repeatability and reproducibility of the test dummies were well within the two ranges of variability.

NHTSA's Vehicle Research and Test Center conducted a series of 14 fps pendulum impacts and 23 mph sled tests with some of the SID dummies being used in the 19 full scale production vehicle test program. The coefficients of variance for the 14 fps pendulum qualification tests conducted on two of the test dummies ranged from 4.8 percent to 6.9 percent for one test dummy and 3.8 percent to 4.1 percent for the other, well within the range of acceptability.

The agency also examined the repeatability and reproducibility of the test dummies in 23 mph sled tests. Those tests showed that, for the thorax, spine, and pelvis responses, the repeatability is very high, with coefficient of variation values of 2.9 percent maximum for the ribs, 7.7 percent for the lower spine and 1.7 percent for the pelvis. With respect to reproducibility, the coefficients of variance values for the same three responses among the three SIDs tested were maximums of 2.4, 6.2 and 2.5 percent, respectively. By comparison, the Hybrid III repeatability coefficient of variation values ranged from 2.7 percent to 6.2 percent while reproducibility coefficient of variation values varied from 3.4 percent to 5.2 percent. In summary, the SID appears to be very close to the Hybrid III with respect to repeatability and reproducibility.

The agency has also reviewed test data collected by MVMA in its side impact test series using 16 1985 Ford LTD's. MVMA conducted these tests to determine the influence of structural and padding modifications on dummy response variability and to determine the repeatability of a full vehicle systems test. NHTSA conducted an analysis of the variance of the MVMA's rib/spine/pelvis response data and determined that the coefficient of variance values for the most part were well within the 6–8 percent range, with the upper boundary being exceeded in only two cases.

Temperature Sensitivity

The agency developed the side impact test procedure, and the application of the SID dummy, around a 66°F to 78°F interior occupant temperature range, the same as required for the Part 572 Subpart B dummy used in Standard No. 208 tests. The similarity in construction of the chests of the SID, Part 572, Subpart B, and Hybrid III have made the agency particularly aware of response variations due to changes in temperature and of the importance of a practicable test temperature range for side impact compliance tests.

The test procedure specifies that the SID be placed in a controlled temperature environment for at least four hours within a 66–78°F temperature range prior to each crash test. In addition, the SID is to be maintained within this temperature range during the crash test. NHTSA has found in its crash testing of production vehicles that it is possible to maintain the temperature of the test dummy within the required range prior to the test by using a portable air conditioning unit. In cases of extremely low or high temperatures, the agency has found that the use of a portable garage can provide a controlled ambient temperature of approximately 72°F.

Symmetry

ATD symmetry is concerned with the variability of percentage change of measured response of off-angle positions from the designed impact direction. This accounts for the real world where impacts may not occur precisely at 90 degrees. The agency has closely examined the films for its side impact tests to determine the angle at which the dummy strikes the interior of the vehicle at the moment of impact. Although the moving barrier hits the test vehicle at 90 degrees, it is extremely difficult to identify the contact angle of the inner door and the test dummy. Close examination of side impact crash films, however, show that the kinematics of the test dummy are such that an angle of 90 degrees appears to be the prevalent angle of impact between the inner door and the SID.

The agency has however examined the symmetry of the SID thorax to identify how the responses at 80 degrees differ from those at 90 degrees. 80 degrees represents an off-angle of 10 degrees from the ideal lateral direction. NHTSA found that for the three prime thorax responses used to calculate the TTI(d), the rib responses increased by 8.8 percent maximum while the lower spine response decreased by 5.8 percent. The TTI(d) calculation for that off-angle impact increased by 4.0 percent from 97.9 to 101.8. Thus, the agency believes that the symmetry of the side impact dummy is more than sufficient to perform adequately in 90 degree impacts and also when it is struck in reasonably expectable variations from the 90 degree impact.

Reversibility

NHTSA also has examined whether the performance of the side impact dummy is affected depending on which side of the dummy is struck. The side impact test dummy's thorax is designed so that the test dummy can be used in either left hand (driver side) or right hand (passenger) side crash tests. All of the MVMA tests were satisfactorily conducted with the test dummy seated on the right hand side of the car and thus the right hand side of the test dummy received the primary impact. In all of NHTSA's production vehicle side impact tests, the side impact dummy was placed on the driver's side and thus the left hand side of the dummy received the primary impact. As discussed earlier in this notice, the repeatability and reproducibility data from those two test series show that the test dummy performed adequately regardless of which side of the test dummy was impacted.

Qualification Tests

Before a test dummy can be used in a vehicle crash test, it must be examined to determine whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to make sure that it has been correctly assembled. Finally, the test dummy must pass a series of qualification tests. The purpose of a qualification test is to measure the performance of the test dummy in a well-controlled laboratory

impact test to detemine whether the test dummy's responses are within specifications and thus the test dummy will provide objective results.

The agency is proposing two qualification tests for the side impact test dummy. The first is a 14 fps pendulum impact to the center of side of the thorax. The purpose of that test is to measure the response of the upper and lower rib and the lower spine. The proposed qualification limits in those tests are that the upper rib must experience an acceleration that is not less than 37 g's and not more than 46 g's, the lower rib must experience between 37 and 46 g's and the lower spine 15 to 22 g's. The other test involves a 14 fps pendulum impact to the pelvis to measure the pelvic responses. The proposed limits are that the acceleration measured in the pelvis shall be not less than 40 g's and not more than 60 g's. In addition, the acceleration-time curve must be unimodal and lie at or above the + 20 g level for not less than 3 milliseconds and not more than 7 milliseconds.

With one exception, both tests utilize readily available compliance test equipment, instrumentation and procedures that are already used in qualification testing of other test dummies. The one exception is the use of a Finite Impulse Response (FIR) filter to process the acceleration data measured in the test. The agency is proposing the use of the FIR filtering methodology to process acceleration signals, rather than the standard SAE practice, since the FIR filtering technique was used with the cadaver impact data and with the sled and vehicle test data. Some additional steps are needed in handling the thorax response data. A special Fortran software package developed by the agency is required to process the data (See Docket No. 79–04–NO2–018). Based on its experience, NHTSA does not anticipate that crash data processing would be significantly affected by requiring the use of the FIR filter by the manufacturers and compliance test laboratories.

The two qualification tests proposed for the SID require less labor and are less expensive compared to the tests used with the Part 572 Subpart B and the Hybrid III in a Standard No. 208 compliance test. The Part 572, Subpart B test dummy must pass 10 qualification tests and the Hybrid III must pass 9 tests. Although the SID has significantly fewer qualification requirements, hence lower labor costs per test, some of that benefit may be offset, for example, in replacing ribs or sections of ribs if the qualification corridors are not met. The SID chest appears to be more complicated than the Hybrid III thorax and could be more labor intensive if repairs are needed.

Alternative Test Dummy

Another side impact dummy called EUROSID has been considered by the agency. This dummy was developed by a group of European research organizations under the auspices of the European Experimental Vehicles Committee (EEVC). It has undergone extensive testing and evaluation in the process of its development. This evaluation involved component parts (neck, thorax, abdomen, and pelvis) validation tests; sensitivity, repeatability, reproducibility, and certification tests; as well as full scale crash tests. The major results of these tests are summarized in the document "The European Side Impact Dummy–EUROSID," proceedings of the siminar held in Brussels on December 11, 1986 (Docket 79–04–GR–080).

The agency has recently conducted a limited number of evaluation sled tests with a prototype version of EUROSID. The results of these tests are contained in the agency report "Evaluation of The Prototype EUROSID and Comparison With The U.S. SID," Project Number VRIC–87–0037, available from Docket 79–04. The EUROSID was designed to measure thoracic injury on the basis of chest deflection (rib-to-spine), but in the agency evaluation tests of the prototype, the ribs "bottomed" in all tests, indicating that the chest deflection measurement was not able to distinguish differences in impact intensities such as between rigid and padded surfaces. However, the EUROSID thorax peak acceleration responses compared reasonably well with the SID's for the same impact conditions when its arm was positioned next to the ribs. Although the safety performance criteria for the EUROSID have not yet been specifically defined, it has been suggested in the above document that a tentative limit on the rib deflection be 25–35 mm in order to avoid chest injuries of severity greater than AIS3.

More recently, the EUROSID has been upgraded and two "production" versions have been acquired by the agency for further sled test evaluation with subsequent full scale car crash testing. These are needed for the agency to ascertain the feasibility of use of EUROSID for side impact protection rulemaking. The production version has flexible arms, which represent a significant change from the rigid arm design. The type of arm used and its position (recommended to be placed in the "hands on steering wheel" position) can be critical considering the impact response variabilities that result with arm positioning, and the different arm positions that exist between the driver and passenger. The production version has also been modified with ballast weight added to compensate for the weight difference between flexible and rigid arms. The agency does not have data regarding the relationship between the EUROSID production version and the data previously reported in the December 1986 seminar held in Brussels.

The Motor Vehicle Manufacturers Association (MVMA) has sponsored a program in which the EUROSID is to be evaluated in car crash tests. It is expected that the MVMA will make the results available at a later date.

While the agency does not possess sufficient data on the EUROSID to propose its use as a side impact test device at this time, it is nevertheless optimistic that EUROSID can be used in such a crash mode. The agency encourages manufacturers and governmental agencies to supply it with additional data on the EUROSID's capabilities. If at some later data, the EUROSID is found to equal or exceed the U.S. SID in its capability for measuring vehicle occupant side impact responses, the agency will consider adopting the EUROSID in its side impact rulemaking. It should be noted that the agency is committed to international harmonization where practical, and believes that adoption of the EUROSID, when feasible, would promote this goal. The agency is not committed to the SID dummy and remains open to the use of other test devices which can measure improved side impact protectin.

For additional discussion on the EUROSID, see the Preliminary Regulatory Impact Analysis (pages IIIB–80 to 87).

Impact Analyses

As indicated at the beginning of this preamble, this proposal supplements a separate proposal being published elsewhere in this issue of the **Federal Register** that would amend Standard No. 214 to establish a new dynamic test requirement for passenger cars. This proposal for the specifications and qualification requirements for the new side impact test dummy is part of that rulemaking. As such, it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a single Preliminary Regulatory Impact Analysis

(PRIA) which describes the economic and other effects of both proposals. The analysis is availble in the docket for the dynamic test requirement proposal.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis. Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential increases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

As indicated in the separate proposal, the reporting and recordkeeping requirements proposed in that notice (associated with the proposed phase-in) are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. However, this notice does not propose any information collection requirements that must be submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions wtihout regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing it is proposed to amend 49 CFR Part 572 Anthropomorphic Test Dummies, as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. A new Subpart F, consisting of sections 572.40 through 572.44, would be added to read as follows:

Subpart F—Side Impact Dummy 50th Percentile Male

Sec.
572.40 Incorporated materials.
572.41 General description.
572.42 Thorax.
572.43 Lumbar spine and pelvis.
572.44 Test conditions and instrumentation.

Subpart F—Side Impact Dummy 50th Percentile Male

§ 572.40 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the Federal Register. As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings, specifications, and assembly manual incorporated in this part by reference are available for examination in the general reference section of Docket 79–04, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington DC. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street NW., Washington, DC 20002, telephone (202) 628–6667.

§572.41 General description.

(a) The dummy consists of component parts and component assemblies which are described in approximately 250 drawings and specifications that are set forth in § 572.5(a) of this chapter with the following changes and additions which are described in approximately 60 drawings and specifications:

(1) The head assembly consists of the assembly specified in § 572.6(a) and conforms to each of the drawings subtended under drawing SA 150 M 010 and drawings specified in SA SID M 010 of this subpart.

(2) The neck assembly consists of the assembly specified in § 572.7(a) and conforms to each of the drawings subtended under drawing SA 150 M 020.

(3) The thorax assembly consists of the assembly shown as number SID–053 and conforms to each applicable drawing subtended by number SA SID M 030.

(4) The lumbar spine consists of the assembly specified in § 572.9(a) and conforms to drawing SA 150 M 060 and drawings subtended by SA SID M 060 specified by this part.

(5) The abdomen and pelvis consist of the assembly specified in Subpart b (§ 572.9) and conform to the drawings subtended by SA 150 M 060 and drawings subtended by SA SID M 060 specified by this subpart.

(6) The lower limb assemblies consist of the assemblies shown as numbers SA 150 M 060 and SA 150 M 061 in Figure 1 and SA SID M 060 and SA SID M 061 and conform to the drawings subtended by those numbers.

(b) The structural properties of the dummy are such that the dummy conforms to the requirements of this subpart in every respect both before and after being used in vehicle tests specified in Standards No. 214 § 571.214 of this chapter).

§ 572.42 Thorax.

(a) When the thorax of a completely assembled dummy is impacted by a test probe conforming to § 572.44(a) at 14 fps. in accordance with paragraph (b) of this section, the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

(1) for the accelerometer at the top of the Rib Bar (LUR) not less than 37g and not more than 46g.

(2) for the accelerometer at the bottom of the Rib Bar (LLR) not less than 37g and not more than 46g.

(3) for the lower thoracic spine not less than 15g and not more than 22g.

(b) *Test procedure* (1) With the dummy seated and positioned on a seating surface as specified in § 572.44(h), adjust the dummy legs at any setting between 1g and 2g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the chest side at the intersection of the centerlines of the third rib and the Rib Bar. The probe's centerline is perpendicular to thorax's midsagittal plane.

(3) Align the test probe so that its longitudinal ceterline coincides with the line formed by the intersection of the transverse and frontal planes perpendicular to the chest's midsagittal plane passing through the designated impact point.

(4) Position the dummy so that the thorax's midsagittal plane and tangential plane to the Hinge Mounting Block (Drawing SID–034) are vertical.

(5) Impact the thorax with the test probe so that at the moment of impact at the designated impact point, the probe's longitudinal centerline falls within 2 degrees of a horizontal line perpendicular to the dummy's midsagittal plane and passing through the designed impact point.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical or rotational movement.

(7) Allow a time period of at least 20 minutes between successive tests of the chest.

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps. in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

(b) *Test procedure.* (1) With the dummy seated and positioned on a surface as specified in § 572.44(h), adjust the dummy's leg joints at any setting between 1g and 2g, which just supports the limbs' weight when the limbs are extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the pelvis side at a point 3.9 inches vertical from the seating surface and 4.8 inches ventral to the transverse vertical plane perpendicular to the dummy's midsagittal plane and tangential to the dummy's buttocks.

(3) Align the test probe so that at impact its longitudinal centerline coincides with the line formed by intersection of the horizontal and vertical planes perpendicular to the midsagittal plane passing through the designated impact point.

(4) Adjust the dummy so that its midsagittal plane is vertical and the rear surfaces of the thorax and buttocks are tangent to a transverse vertical plane.

(5) Impact the pelvis with the test probe so that at the moment of impact the probe's longitudinal centerline falls within 2 degrees of the line specified in (3) above.

(6) Guide the test probe impact so that it moves with no significant lateral, vertiacal or rotational movement.

(7) Allow a time period of at least 2 hours between successive tests of the pelvis.

§ 572.44 Test conditions and instrumentation.

(a) The test probe used for lateral thoracic and pelvis impact tests is a 6 inch diameter cylinder that weights 51.5 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.5 inches.

(b) Three accelerometers are mounted in the thorax for measurement of lateral accelerations with each accelerometer's sensitive axis aligned to be closely perpendicular to the thorax's midsagittal plane. The accelerometers are mounted in the following locations:

(1) One accelerometer is mounted on the Thorax to Lumbar Adaptor (SID–005) by means of a T12 Accelerometer Mounting Platform (SID–009) and T12 Accelerometer Mount (SID–038) with its seismic mass center at any distance up to .4 inches from a surface point on the Thorax or Lumbar Adaptor where two perpendicular planes aligned with the adaptor's vertical and horizontal center lines intersect.

(2) Two accelerometers are mounted, one on the top and the other at the bottom part of the Rib Bar (SID–024). Their seismic mass centers are at any distance up to .4 inches from a point on the Rib Bar surface located on its longitudinal center line .75 inches from the top for the top accelerometer and .75 inches from the bottom, for the bottom accelerometer.

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane. The accelerometer is mounted on the inside surface of the Pelvic Instrument Cover Plate (Drawing ATD–3047), with its seismic mass center located up to .25 inches from the point of intersection of the cover plate center lines and .25 inches forward of the inside cover plate surface.

(d) Instrumentation and sensors used must conform to the SAE J–211 (1980) requirements. The outputs of the accelerometers installed in the dummy, and of test apparatus specified by this part, are processed in the following manner:

(1) Filter the data with a 300 Hz. SAE Class 180 filter;

(2) Subsample the data to a 1600 Hz sampling rate; and

(3) Filter the data with a Finite Impulse Response (FIR) filter having the following characteristics—

(i) Passband frequency, 100 Hz.
(ii) Stopband frequency, 189 Hz.
(iii) Stopband gain, −50 db.
(iv) Passband ripple, 0.0225 db.

(4) The digital computer program for the FIR filter is contained in Docket 79–04, Notice 02–018.

(e) The mountings for the spine and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(f) Limb joints of the test dummy are set at the force between 1–2g, which just supports the limbs' weight when the limbs are extended horizontally forward. The force required to move a limb segment does not exceed 2g throughout the range of limb motion.

(g) Performance tests are conducted at any temperature from 66° F to 78° F and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to these conditions for a period of not less than 4 hours.

(h) For the performance of tests specified in §§ 572.42 and 572.43, the dummy is positioned as follows:

(1) The dummy is placed on a flat, rigid, clean, dry, horizontal surface of teflon sheeting with a smoothness of 10 micro inches and whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. The dummy's head is positioned so that the head's horizontal bulkhead on which accelerometer are installed is horizontal. The seating surface is without the back support and the test dummy is positioned so that the dummy's midsagittal plane is vertical and centered on the seat surface and that the rear surface of the Hinge Mounting Block is vertical.

(2) The legs are positioned so that their centerlines are in planes parallel to the midsagittal plane.

(3) Performance tests of the assembled dummy are separated in time by a period of not less than 20 minutes unless otherwise specified.

(4) Surfaces of the dummy components are not painted except as specified in this part or in drawings subtended by this part.

Issued on January 21, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1542 Filed 1-22-88; 2:11 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 17
Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Arboretum Advisory Council; Intent To Reestablish an Advisory Council

Notice is hereby given that the Secretary of Agriculture intends to reestablish the National Arboretum Advisory Council. The purpose of the Council will be to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations and other sectors of U.S. agriculture. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191–194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council will meet annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, program development, and long-range goals. The Council's findings will be reported in writing to the Secretary of Agriculture.

It has been determined that the reestablishment of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to Dr. Howard J. Brooks, National Program Staff, Agricultural Research Service, USDA, Room 234, Building 005, BARC–West, Beltsville, Maryland 20705, within fifteen (15) days of publication.

Done at Washington, DC, this 22nd day of January 1988.

John J. Franke, Jr.,

Assistant Secretary of Agriculture.

[FR Doc. 88-1607 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-88-M

Federal Crop Insurance Corporation

Board of Directors; Meeting

Notice is hereby given that a meeting of the Board of Directors of the Federal Crop Insurance Corporation (FCIC) has been scheduled, as follows:

Date: January 29, 1988.
Place: Room 0204, South Building, U.S. Department of Agriculture, Washington, DC.
Time: 9:00 a.m.

Dated: January 15, 1988.

Edward D. Hewa,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-1556 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-08-M

COMMISSION ON CIVIL RIGHTS

Nebraska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m., on February 26, 1988, at the University of Nebraska, College of Law, Lincoln, Nebraska. The purpose of the meeting is to discuss topics for future community forums to be held in Nebraska during fiscal year 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 14, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-1572 Filed 1-26-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3-88]

Foreign-Trade Zone 134—Chattanooga, TN; Application for Subzone Komatsu Construction/Industrial Equipment Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Partners for Economic Progress, Inc., grantee of FTZ 134, requesting special-purpose subzone status for the construction equipment and industrial machinery manufacturing plant of Komatsu America Manufacturing Corporation (a subsidiary of Komatsu, Ltd., Japan), located in Chattanooga, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 18, 1988.

The Komatsu plant (47 acres) is located at Signal Mountain Road and Runyon Drive in Chattanooga. The facility employs 125 persons and is used to produce heavy duty construction equipment and industrial machinery such as exavators, motror graders, motor scrapers, crawler tractors, off-road dump trucks, wheel loaders, industrial robots, presses, and laser machining devices. At the outset, about half of the value of components will be sourced abroad, such as engines, transmissions, axles, hydraulic components, brakes, steering cases, torque connectors, valves, tanks, and track and revalve frames.

Zone procedures would exempt Komatsu from duty payments on the foreign components used in its exports. On its domestic sales, the company will be able to elect the duty rate that applies to finished equipment. The duty rate on the major components averages 4.2 percent, whereas the rates for the finished equipment range from 2.0 to 4.0 percent. The application indicates that zone procedures will help improve the Chattanooga plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli

(Chairman). Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Engineer, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District Nashivile, P.O. Box 1070, Nashville, Tennessee 37202.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 11, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 900 Georgia Avenue, Room 209, Chattanooga, Tennessee 37401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvaina Avenue, NW., Washington DC 20230.

Dated: January 21, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-1647 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than January 31, 1989.

Antidumping duty proceedings and firms	Periods to be reviewed
Elemental Sulphur From Canada:	
BP	12/01/86-11/30/87
Burza Resources	12/01/86-11/30/87
Cises Service	12/01/86-11/30/87
Cornwall Chemicals	12/01/86-11/30/87
Home Oil	12/01/86-11/30/87
Imperial Oil	12/01/86-11/30/87
InterRedec	12/01/86-11/30/87
Koch Sulphur	12/01/86-11/30/87
Mobil Oil Canada	12/01/86-11/30/87
Petro-Canada	12/01/86-11/30/87
Petrogas	12/01/86-11/30/87
Suncor	12/01/86-11/30/87
Texaco Canada	12/01/86-11/30/87
Timshell	12/01/86-11/30/87
Photo Albums and Photo Album Filler Pages from Hong Kong:	
Berniaxe	12/01/86-11/30/87
Climax Paper Converters	12/01/86-11/30/87
Far East Metal & Plastic	12/01/86-11/30/87
General Trading	12/01/86-11/30/87
Graphics International	12/01/86-11/30/87
Great China Industrial	12/01/86-11/30/87
Hang Fat	12/01/86-11/30/87
Hip Sing Leather Products	12/01/86-11/30/87
Hoi Kun	12/01/86-11/30/87
Lee Tung	12/01/86-11/30/87
Northvale	12/01/86-11/30/87
Pavri Bros	12/01/86-11/30/87
Perfect Industrial	12/01/86-11/30/87
Sincere	12/01/86-11/30/87
Tai Shun Plastic	12/01/86-11/30/87
Union Paper Box	12/01/86-11/30/87
Unique Stationery	12/01/86-11/30/87
Wah Luen	12/01/86-11/30/87
Wing Shing	12/01/86-11/30/87
Wiseman Plastic Products	12/01/86-11/30/87
Zamford Enterprises	12/01/86-11/30/87
Cellular Mobile Telephones and Subassemblies from Japan:	
Mitsubishi Electric	12/01/86-11/30/87
Nihon Dengyo	12/01/86-11/30/87
Steel Wire Strand for Prestressed Concrete from Japan:	
Kokoku Steel Wire	12/01/86-11/30/87
Mitsubishi Corp.	12/01/86-11/30/87
Nissho Iwai	12/01/86-11/30/87
Shinko Wire	12/01/86-11/30/87
Suzuki Metal	12/01/86-11/30/87
Tokoko Sangyo	12/01/86-11/30/87
Tokyo Rope	12/01/86-11/30/87
Tuners (of the type used in consumer electronic products) from Japan:	
Toa Electric	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from Mexico:	
CINSA	05/20/86-11/30/87
Troqueles y Esmaltes	05/20/86-11/30/87
Low-Fuming Brazing Copper Wire & Rod from New Zealand:	
McKechnie	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from the People's Republic of China:	
China National Light Industrial Products	05/20/86-11/30/87
Photo Albums and Photo Album Filler Pages from the Republic of Korea:	
Ace Trading	12/01/86-11/30/87
Ahjun	12/01/86-11/30/87
Atico Korea	12/01/86-11/30/87
Bowon	12/01/86-11/30/87
Chinsung	12/01/86-11/30/87
Chungwoo	12/01/86-11/30/87
Cobra	12/01/86-11/30/87
Co-Prosperity	12/01/86-11/30/87
Costco Wholesale	12/01/86-11/30/87
Daechun Selup	12/01/86-11/30/87
Daelim	12/01/86-11/30/87
Daewoo	12/01/86-11/30/87
Dae Young	12/01/86-11/30/87
Daiho Industries	12/01/86-11/30/87
Donam	12/01/86-11/30/87
Dong Bang	12/01/86-11/30/87
Dong In	12/01/86-11/30/87
Dong Won	12/01/86-11/30/87
Dongwoo	12/01/86-11/30/87
Eun Jeong Trading	12/01/86-11/30/87
Eunjin	12/01/86-11/30/87
Eun Sung	12/01/86-11/30/87
G.I. Corp.	12/01/86-11/30/87
Gyeongjin	12/01/86-11/30/87
Hae Gang Marine Food	12/01/86-11/30/87
Hando	12/01/86-11/30/87
Han Duk Mul San	12/01/86-11/30/87
Hankook Trading	12/01/86-11/30/87
Hansang	12/01/86-11/30/87
Han Yung	12/01/86-11/30/87
Honey Stationery	12/01/86-11/30/87
Hyoeung	12/01/86-11/30/87
Hyundai	12/01/86-11/30/87
Hyupdong Chemical	12/01/86-11/30/87
J & C International	12/01/86-11/30/87
Jin Yang	12/01/86-11/30/87
Jung Ang Export	12/01/86-11/30/87
KMB	12/01/86-11/30/87
Kang Gyung	12/01/86-11/30/87
Kenny Trading	12/01/86-11/30/87
Keum Nam Trading	12/01/86-11/30/87
Keysung	12/01/86-11/30/87
Korea Binder Metal	12/01/86-11/30/87
Korea Enterprise	12/01/86-11/30/87
Korea Export & Import	12/01/86-11/30/87
Korea Merchandise Export	12/01/86-11/30/87
Korea Trading	12/01/86-11/30/87
Korea Trading Int'l	12/01/86-11/30/87
Kuil	12/01/86-11/30/87
Kukje-KOC	12/01/86-11/30/87
Kuksan	12/01/86-11/30/87
Lee Tung	12/01/86-11/30/87
Little Prince Gift	12/01/86-11/30/87
Lotte Shopping	12/01/86-11/30/87
Lotte Trading	12/01/86-11/30/87
Metro Industrial	12/01/86-11/30/87
Mi-Ji	12/01/86-11/30/87
Mi Sung	12/01/86-11/30/87
The More Stationery	12/01/86-11/30/87
Nam Doo Trading	12/01/86-11/30/87
Nam Du Sang	12/01/86-11/30/87

Antidumping duty proceedings and firms	Periods to be reviewed
New Frontier	12/01/86-11/30/87
Ref Korea	12/01/86-11/30/87
Royal Trading	12/01/86-11/30/87
Sam Bang Trading	12/01/86-11/30/87
Sammi	12/01/86-11/30/87
Sam Sung	12/01/86-11/30/87
Sam Wang	12/01/86-11/30/87
Sam Young	12/01/86-11/30/87
Sang Ah	12/01/86-11/30/87
Sang Kyung Mulsan	12/01/86-11/30/87
Scandecor	12/01/86-11/30/87
Seokyung	12/01/86-11/30/87
Seoul Agabang	12/01/86-11/30/87
Seoul Enterprise	12/01/86-11/30/87
Seoul General Stationery	12/01/86-11/30/87
Shin La	12/01/86-11/30/87
Shin Song	12/01/86-11/30/87
Shin Won	12/01/86-11/30/87
Sinhan Trading	12/01/86-11/30/87
Sooter Studios	12/01/86-11/30/87
Ssangyong	12/01/86-11/30/87
Sung Il	12/01/86-11/30/87
Sung Jin	12/01/86-11/30/87
Sung Pung	12/01/86-11/30/87
Sungshim	12/01/86-11/30/87
Sunkyong	12/01/86-11/30/87
Three Leaf	12/01/86-11/30/87
Tradepower	12/01/86-11/30/87
Universal	12/01/86-11/30/87
Woomi	12/01/86-11/30/87
Yangjisa	12/01/86-11/30/87
Young Stationery	12/01/86-11/30/87
Yuhan	12/01/86-11/30/87
Yu Shin Enterprise	12/01/86-11/30/87
Carton-Closing Staples and Staple Machines from Sweden:	
Kihlberg	12/01/86-11/30/87
Porcelain-on-Steel Cooking Ware from Taiwan:	
First Enamel Industrial	05/20/86-11/30/87
Countervailing duty proceedings:	
Litharge, Red Lead and Lead Stabilizers from Mexico	01/01/86-12/31/86
Pectin from Mexico	01/01/86-12/31/86
Porcelain-on-Steel Cookware from Mexico	03/07/86-12/31/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 19, 1988.

[FR Doc. 88-1649 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DS-M

Industry Policy Advisory Committee for Trade Policy Matters

SUMMARY: In accordance with subsection 135(c) of the Trade Act of 1974, 19 U.S.C. 2155, as amended by the Trade Agreements Act of 1979, (Pub. L. 96-39), the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Subpart 101-6.10 (1987), Federal Advisory Committee Management Rule, it has been determined by the Secretary of Commerce (the Secretary) and the United States Trade Representative (the USTR) that the reestablishment of the Industry Policy Advisory Committee for Trade Policy Matters is in the public interest.

Industry Policy Advisory Committee for Trade Policy Matters

The committee was established in 1980, and renewed in 1982 and 1984, to provide policy advice and information to the Secretary and the USTR on trade policy matters, including factors relevant to U.S. positions in trade negotiations, and on other matters arising in connection with the administration of U.S. trade policy. Members of the committee are appointed by and serve at the discretion of the Secretary and the USTR. It is proposed that the committee will meet at least semi-annually at the request of the Secretary and the USTR, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Trade Advisory Center, in the International Trade Administration of the Department of Commerce, administers the program.

Copies of the Committee's charter will be filed with appropriate committees of the Congress and copies will be forwarded to the Library of Congress.

EFFECTIVE DATE: March 8, 1988.

Membership: Representatives from industry or industry associations wishing to be considered for appointment to serve on this committee are requested to make application in writing to the Trade Advisory Center, Room H-4012, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3268. Comments and inquiries may be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Clare Soponis, Director, Trade Advisory Center, telephone (202) 377-3268.

Date: January 21, 1988.

Michael R. Czinkota,

Deputy Assistant Secretary for Trade Information and Analysis.

[FR Doc. 88-1650 Filed 1-26-88; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 70222-7229]

Approval of Federal Information Processing Standards Publications 4-1, Representation for Calendar Date and Ordinal Date for Information Interchange, and 58-1, Representations of Local Time of Day for Information Interchange

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved two revised standards, which will be published as FIPS Publications 4-1 (a revision to FIPS 4) and 58-1 (a revision to FIPS 58).

SUMMARY: On April 20, 1987, notice was published in the **Federal Register** (52 FR 12953) that three Federal Information Processing Standards (revisions to FIPS 4, 58, and 59) were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve two standards as Federal Information Processing Standards (FIPS) 4-1 and 58-1, and prepared a detailed justification document for the Secretary's review in support of that recommendation. NBS has decided not to propose standardization of FIPS PUB 59-1 at this time, pending revision of ANSI X3.51-1986.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Each approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

EFFECTIVE DATE: These standards are effective July 30, 1988. Use by Federal agencies is encouraged when such use

contributes to operational benefits, efficiency or economy.

ADDRESS: Interested parties may purchase copies of these revised standards, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of each standard.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975–2833.

Ernest Ambler,

Director.

Date: January 19, 1988.

Federal Information Processing Standards Publication 4–1, 1987 Month Day

Announcing the Standard for Representation for Calendar Date and Ordinal Date for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representation for Calendar Date and Ordinal Date for Information Interchange (FIPS PUB 4–1).

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides a means of representing calendar date and ordinal date to facilitate interchange of data among information systems.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 58–1, Representations of Local Time of Day for Information Interchange.

b. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

c. American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange.

d. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

e. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplications and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective July 30, 1988. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange. The latter was approved on July 30, 1985 as a revision of ANSI X3.30–1971, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 4–1 (FIPS PUB 4–1) and title. When microfiche is desired, this should be specified.

Federal Information Processing Standards Publication 58–1, 1987 Month day

Announcing the Standard for Representations of Local Time of Day for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Representations of Local Time of Day for Information Interchange (FIPS PUB 58–1).

2. *Category of Standard.* Federal General Data Standard, Representations and Codes.

3. *Explanation.* This standard provides uniform time representations based upon both the 12– and 24–hour timekeeping systems. It provides a means for representing local time of the day in digital form for the purpose of interchanging information among data systems. It specifies the time elements and their sequencing, the use of separators between time elements and the representation of the meridiem designator.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. *Cross Index.* a. FIPS PUB 4–1, Representation for Calendar Date and Ordinal Date for Information Interchange.

b. American National Standard ANSI X3.30–1985, Representation for Calendar Date and Ordinal Date for Information Interchange.

c. American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange.

d. International Standard ISO 3307–1975, Information Interchange—Representations of Time of the Day.

e. International Standard ISO 4031–1978, Information Interchange—Representation of Local Time Differentials.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplication and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability.* This Federal Data Element and Representation Standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* This standard becomes effective July 30, 1988. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications.* This standard adopts American National Standard ANSI X3.43–1986, Representations of Local Time of Day for Information Interchange. The latter was approved on June 23, 1986 as a revision of ANSI X3.43–1977, and is published by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

11. *Where to Obtain Copies.* Copies of this publication and the adopted specifications are available for sale by the National Technical Information Service, Springfield, VA 22161. (Sale of the specifications is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 58–1 (FIPS PUB 58–1) and title. When microfiche is desired, this should be specified.

[FR Doc. 88–1599 Filed 1–26–88; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to U.S. fishermen to harvest groundfish as an incidental catch to a directed fishery for white croaker (*Genyonemus lineatus*) in the U.S. exclusive economic zone (EEZ) between Pt. Reyes and Franklin Point off the Coast of California. The permit authorizes the use of experimental fishing gear which is otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and its implementing regulations.

EFFECTIVE DATES: December 1, 1987 to December 31, 1988.

ADDRESSES: E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Chief, Fisheries Management Division, Southwest Region, NMFS, 213–514–6202, or William L. Robinson (Fisheries Management Division, Northwest Region, NMFS), 206–526–6142.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that is otherwise prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

An EFP application submitted by the Vietnamese Fishermen Association of America to use a pair trawl off the California coast to harvest groundfish incidentally to a directed fishery for white croaker was received on November 2, 1987. A notice describing the proposal and requesting public comment was published in the Federal Register on November 25, 1987 (52 FR 45217). The application was considered by the Pacific Fishery Management Council (Council) at its November 1987 public meeting in Portland, Oregon. The testimony received by the Council supported issuing the permit, and the Council recommended that NMFS issue the permit with appropriate restrictions. No public comments were received.

The experimental fishery will test the feasibility of conducting a successful fishery for white croaker with gear that replaces gill nets. If successful, the potential harm to marine birds and mammals will be greatly diminished. The applicant will be permitted to harvest groundfish incidental to a directed harvest for white croaker until December 31, 1988, with a pair trawl net of two- to three-inch mesh. Two domestic vessels will be involved in the fishery, which will operate in the EEZ off the coast of California between Point Reyes and Franklin Point. The Federal permit is contingent upon the applicant's possession of a California permit for the same purpose.

Not more than 1000 pounds of groundfish species regulated by 50 CFR Part 663 may be taken and retained, or landed from a fishing trip. The experimental fishing permit will be suspended if total landings reach 30,000 pounds of groundfish, though the Regional Director may restore the permit if he determines that adjustment of the operation will reduce bycatch sufficiently to conduct a relatively homogeneous croaker fishery. The permit includes data recording and reporting requirements and allows the Regional Director to place an observer on the permitted vessels.

Details or a copy of the permit may be obtained from either Regional Director (see **ADDRESSES**).

(16 U.S.C. 1801 et seq.)

Dated: January 21, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–1618 Filed 1–26–88; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

DIS Courtesy Letter; DIS FL 2a and 2b

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSIs) to determine an individual's suitability for a position of trust. This form is sent to references interviewed by the agent as a follow-up device to ascertain the professionalism and integrity of the investigative work force. The information collected serves to identify problem areas, the investigation of which may lead to administrative, disciplinary, or additional training actions. The increase in "responses" and "burden" hours are the consequences of an increased agency work force.

Responses: 14,670; Burden Hours: 1,467.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at the Office of Management and Budget, Desk Officer.

BEST COPY AVAILABLE

Room 32235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Pearl Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1988.

[FR Doc. 88-1014 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

Reason for This Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: CHAMPUS/CHAMPVA Claim Form 500; CHAMPUS Form 500; 0704-0084 OMB Control Number.

Type of Request: Extension.

Annual Burden Hours: 2,408,000.

Needs and Uses: The CHAMPUS Form 500 is used by CHAMPUS beneficiaries and health care providers to file for reimbursement of health care services. The requested information is used to determine eligibility, appropriateness and cost of care, and whether services received are benefits.

Affected Public: Individuals or Households, State or Local Governments, Businesses or Other for Profit, Federal Agencies or Employees, Non-Profit Institutions and Small Businesses or Organizations.

Frequency: As Required to Obtain Benefits.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

OMB Desk Officer: Mr. Edward Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

Linda M. Bynum,

Alternate OSD Federal Register, Department of Defense.

January 21, 1988.

[FR Doc. 88-1015 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit; Closed Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Tactical Directed Energy Weapons—Revisit will meet in closed session on February 24–25, 1988 at the LTV Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the original Task Force recommendations in light of changes in technology, threat, and requirements, and in the context of DOD and/or Congressional actions that may have affected the status of the original study effort.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended [5 U.S.C. App. II, (1982)], it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1988.

[FR Doc. 88-1016 Filed 1-26-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics (ACES); Meeting.

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 25–26, 1988.

ADDRESS: February 25, 1988—Room 326, 555 New Jersey Avenue NW., Washington, DC 20208;

February 26, 1988—9th Floor Meeting Room, [AFT), 555 New Jersey Avenue NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400], Washington, DC 20208. Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- Forecasting and Early Estimates,
- Postsecondary Educational Longitudinal Studies Program,
- Statistical Standards Program,
- Toward An Integrated Elementary-Secondary Data System,
- Council Business—Development of the Annual Report.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400], Washington, DC 20208.

Date: January 20, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary, Office of Educational Research and Improvement.

[FR Doc. 88-1577 Filed 1-26-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Privacy Act of 1974; Amendment of System Notices and New Routine Use Statement

AGENCY: U.S. Department of Energy.

ACTION: Proposed Revision: Establishment of New Routine Use for DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records."

SUMMARY: Federal agencies are required by the Privacy Act of 1974, to publish in the **Federal Register** a notice of a change to an existing routine use of a primary system of records. The U.S. Department of Energy (DOE) proposes to change a rountine use of DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records" to permit the disclosure of records maintained in these systems to the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services. Currently, NIOSH is permitted access to records maintained in these systems only for the purpose of conducting health hazard evaluations and epidemiological studies of workers at DOE's Feed Materials Production Center located at Fernald, Ohio and DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. This notice will permit disclosure of records maintained in these systems to NIOSH for health hazard evaluations and epidemiological studies of workers at any DOE facility.

Comment procedures: Comments must be received by February 26, 1988.

Written comments should be sent to: John H. Carter, MA-232.1, Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955.

If no comments to the contrary are received with respect to a particular proposed system, it is the intent of the DOE to operate any such system as proposed at the expiration of the 60-day advance notice period for informing Congress and the Office of Management and Budget of proposed systems changes.

FOR FURTHER INFORMATION CONTACT:

John H. Carter, MA-232.1, Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5955

Abel Lopez, Office of General Counsel, GC-43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6618.

SUPPLEMENTARY INFORMATION: Under the routine uses currently established for DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records", NIOSH may obtain access to these records for the purpose of conducting health hazard and epidemiological studies of workers only at DOE's Feed Materials Production Center located at Fernald, Ohio and DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. The purposes of these studies are to determine whether there are health effects from occupational exposure to chemical, radiation and physical hazards. The DOE, therefore, is amending the current routine use to permit NIOSH to obtain access to exposure records maintained in DOE-33 and DOE-35 for the purpose of conducting health hazard evaluations of workers at any DOE facility.

The Privacy Act provides that, a record may be disclosed, without the prior written consent of the individual to whom the record pertains, pursuant to a routine use. A routine use, with respect to disclosure of a record, is a use which is compatible with the purpose for which the record was collected. It has been determined that the proposed routine use is compatible because the records are maintained for purposes of assessing workers' health and safety and conducting health and mortality studies.

Issued in Washington, DC on January 21, 1988.

Harry L. Peebles,

Director of Administration.

DOE-33

SYSTEM NAME:

Personnel Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Allied Bendix Corporation, Kansas City Division, P.O. Box 1159, Kansas City, MO 64141

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, West Mifflin, PA 15122-0079.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35the Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403-2068.

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former U.S. Department of Energy (DOE) employees and contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, Washington, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examinations and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patients at Kadlec Hospital. Results of monitoring individuals for exposure to chemical agents (not covered in DOE-35) and physical stress and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; U.S. Department of Energy Organization Act, including authorities incorporated by reference in Title III of the U.S. Department of Energy Organization Act; 5 U.S.C. 7901; Executive Order 12009; OMB Circular A-72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicians, U.S. Department of Labor, various States' departments of labor and industry groups, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

A record from this system of records may be disclosed to officials of the National Institute for Occupational Safety and Health, for the purpose of conducting a health hazard evaluation of workers.

Additional routine use listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are rendered illegible and destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters:

U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH-30, Germantown, MD 20545.

Field Offices:

The managers and directors of field locations identified as items 2 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name requester, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, pay and leave records, and Office of Personnel Management retirement life insurance and health benefits records system and personnel management records system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 30030, Amarillo, TX 79120-0030.

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014.

U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, CF-690, 785 DOE Place, Idaho Falls, ID 83402.

U.S. Department of Energy, Kansas City Area Office, P.O. Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Reactors Representative Office, General Delivery, Naval Base Branch, P.O., Charleston, SC 29408.

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 21, Groton, CT 06340 U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Vallejo, CA 94592

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding and Dry Dock Company, P.O. Box 973, Newport News, VA 23607.

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705-0848

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, P.O. Box 128, Pearl Harbor, HI 96860.

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, P.O. Box 2008, Portsmouth, NH 03801

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard, P.O. Box 1A, Bremerton, WA 98314

U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Pinellas Area Office, P.O. Box 2900, Largo, FL 34294

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80402-0928

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Department of Energy, (DOE) employees and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Department of Energy and contractor personnel and other individuals' radiation exposure records and other records in connection with registeries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act and Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Department of the Navy uses these records to monitor radiation exposure at Naval activities of Naval and other personnel.

Nuclear Regulatory Commission uses these records to monitor radiation exposure of contractor personnel. U.S. Department of Energy and its contractors and consultants, other contractors, and organizations, including various States' departments of labor and industry groups, use these records to monitor radiation exposure of personnel.

U.S. Department of Defense uses these records for the limited purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing; and for conducting epidemiological studies of radiation effects on individuals so identified.

National Academy of Sciences and the Center for Disease Control (and appropriate management personnel of the U.S. Department of Health and Human Services) use these records for conducting epidemiological studies of the effects of radiation on individuals exposed to ionizing radiation.

National Institute for Occupational Safety and Health, for the purpose of conducting a health hazard evaluation of workers.

Additional routine uses 1, 2, 4, 7, 8, 9, and 10 listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tapes, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within DOE are rendered illegible and destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters:

U.S. Department of Energy, Deputy Assistant Secretary for Safety, Health and Quality Assurance, EH-30, Germantown, MD 20545.

Field Offices:

The managers and directors of field locations 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, and the additional locations listed above under System Location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief of Freedom of Information and Privacy Acts, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, geographic location(s) and organization(s) where requester believes such records may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-1659 Filed 1-26-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-74-NG]

North Canadian Resources, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 16, 1987, of an application filed by North Canadian Resources, Inc. (North Canadian), for blanket authorization to import up to 200,000 Btu's per day of Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 146 Bcf for a two year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, electric utilities, and commercial and industrial end-users. North Canadian would import natural gas for its own account, as well as for the accounts of its foreign supplier clients. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. North Canadian intends to utilize existing pipeline facilities in the United States and Canada. North Canadian agrees to notify ERA of the date of first delivery and to file quarterly reports.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 26, 1988.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4523.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. Further, ERA will condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 26, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of North Canadian's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 21, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1660 Filed 1–26–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–60–NG]

Northwest Pipeline Corp.; Application to Import Natural Gas Imports From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on October 26, 1987, of the application of Northwest Pipeline Corporation (Northwest) to amend Northwest's authority to import Canadian gas from its Canadian supplier, Westcoast Transmission Company Limited (Westcoast), at Kingsgate, British Columbia, to increase its currently authorized import volume from 100 MMcF to up to 152 MMCF per day through October 31, 1989.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are due to be filed no later than 4:30 p.m. on February 26, 1988.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076 , 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–6162.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Ave. SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized under DOE/ERA Opinion and Order No. 56 (Order 56), issued July 5, 1984, to import up to 100 MMcf per day of Canadian natural gas at Kingsgate through October 31, 1989, at a price not to exceed $4.94 per MMBtu.[1]

Northwest requests an amendment to its existing import authority to increase the import volume during the balance of the primary import term from 100 MMcf per day to up to 152 MMcf per day at Kingsgate. The incremental gas volumes, like current volumes imported by Northwest at Kingsgate, would be delivered directly into the facilities of Pacific Gas Transmission Company (PGT) and then transported by PGT to Northwest at an interconnecting point near Spokane, Washington, and at secondary points along PGT's system in Idaho, Washington, and Oregon.

The gas imported by Northwest from Westcoast at Kingsgate is purchased under a contract dated September 23, 1960, as amended (Kingsgate sales agreement). The Kingsgate sales agreement provides for purchases of up to 152 MMcf per day, effective November 1, 1987, under specific terms and conditions which have most recently been amended by a letter agreement dated September 16, 1987 (Kingsgate amendment). The Kingsgate amendment modifies the take provisions and the two-part rate structure contained in a letter agreement dated October 27, 1986, amending both the Kingsgate sales agreement and the Fourth Service Agreement that covers the Huntingdon point of entry imports. The Kingsgate amendment, effective November 1, 1987, applies to the gas, including the incremental volumes requested here, sold under the Kingsgate sales agreement as amended, during the final two contract years, November 1987 through October 1989.

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[1] Order 56 is the most recent in a series of import orders related to Northwest's Kingsgate authority. This authority originated in a Federal Power Commission order issued September 21, 1973 (Docket CP73–332). Subsequent orders amended Northwest's import authority in response to changes both in its contractural arrangements with Westcoast and in related National Energy Board (NEB) export authorizations. In particular, ERA Opinion and Order No. 38 (Order 38), issued December 21, 1981, continued Northwest's authority to import natural gas at a price not to exceed the Canadian border price of $4.94 per MMBtu. The order extended the Kingsgate import authority in accordance with the terms of Northwest's gas purchase agreement with Westcoast and included a phased-in reduction of volumes conforming to Westcoast's NEB Export License GL–4. Order 56 continued the pricing authority and granted Northwest authority to shift up to 100 MMcf per day of Canadian gas authorized for import at Sumas, Washington, to the Kingsgate point of entry. That authority continues through October 31, 1989.

Under the Kingsgate amendment, the two-part rate includes a demand charge for gas purchased at the Kingsgate delivery point equal to an aggregate, determined monthly, of the following fixed cost components of the four cost of service elements for transporting the gas sold by Westcoast to Northwest to the Kingsgate delivery point: (i) The Alberta Natural Gas Company Ltd. (Alberta Natural) fixed cost component net of credits applicable to certain interruptible transportation services provided by Alberta Natural to third parties and several other specified adjustments; (ii) the Kingsgate demand charge representing the fixed administrative costs incurred by Westcoast and allocated to the gas sold to Northwest; (iii) The Pan-Alberta Gas Ltd. fixed cost component applicable to the cost of transporting through its system the gas delivered to Northwest at Kingsgate and; (iv) the NOVA, an Alberta Corporation, fixed cost component for transportation of gas sold to Northwest by Westcoast. Northwest estimates this demand charge to be less than seven million dollars annually.

The commodity rate will be $1.50 per MMBTu initially. This rate is to be recalculated quarterly beginning January 1, 1988, under a formula that adjusts this September/October 1987, base period rate to reflect subsequent changes in two different fuels. The first is Westcoast's sale price of gas to British Columbia Hydro and Power Authority (Hydro) for residential and commercial customers. The second is the sales price of Bunker C fuel oil in the Seattle and Portland areas. The factor of change by which the base price is to be adjusted is weighted at 55 percent for gas and 45 percent for fuel oil. The price of the comparable gas is to be the average purchase price paid by Hydro during the three calendar months immediately preceding the effective date of the recalculated charge. The price of the fuel oil is to be similarly averaged from prices reported in the *Bunkerfuels Report* for the agreed upon areas.

Additionally, either party may initiate renegotiation of the commodity charge at any time under certain conditions, including relevant pricing considerations such as changes in alternate fuel price or availability, changes in price of Northwest's domestic supply or Northwest permanently becoming an open-access transporter.

According to the terms of the agreement, deficient annual purchases of three percent or less in a contract year will be added to the minimum annual volume for the following contract year and paid for when actually taken. Conversely, up to three percent of any excess purchases in one contract year, if total purchases do not exceed 105 percent of the minimum annual volume, will be subtracted from the minimum annual volume in the subsequent year. Deficiency volumes in excess of three percent must be paid for but can be made up in a subsequent year.

Under this amendment, Northwest agrees to take or pay for, at the commodity rate, a minimum annual volume of gas which, together with those volumes of gas purchased from Westcoast during the same contract year under the Fourth Service Agreement, shall equal 45 percent of Northwest's actual system gas sales made during each such year. This represents an increase of two percent of the system gas sales over its previous commitment. Purchases from Westcoast for resale under its rate schedules X–36 and X–46 are not to be included as a part of this minimum annual volume. Northwest's actual system sales are to be increased by certain qualifying displacement gas volumes and released domestic gas volumes including any volume of Westcoast's or Northwest's firm system supply gas that is sold, either by Westcoast, or by a third party to whom such gas has been temporarily released, to one of Northwest's distribution or pipeline sales customers or to any end-user that could be served by such a distribution or pipeline customer and which, by mutual agreement between Northwest and Westcoast, constitutes a market sale that could have been made by Northwest at its posted tariff rates. However, in calculating the take-or-pay obligation, the qualifying displacement gas volumes are to be subtracted from the 45 percent take-or-pay portion of the system gas sales. Northwest claims the modified take-or-pay provision ultimately will reduce its take-or-pay obligation over the remainder of the term.

The minimum annual volume provisions are subject to renegotiation if Canadian or U.S. regulatory policies or rulings change or Northwest becomes an open-access transporter of gas on a permanent basis.

In support of its application, Northwest asserts that authorization of the requested additional daily volumes will enable it to meet system supply requirements, particularly in light of a concurrent reduction in its contract demand for purchases from Westcoast at Sumas, Washington. Further, Northwest claims that the Kingsgate amendment provides its most import arrangement with flexibile market responsive terms ensuring that the gas will be priced competitively in the markets served.

In sum, Northwest submits that the provisions for quarterly adjustments in the commodity price, the inclusion in its pricing formula of the prevailing price of Bunker C fuel oil in its market area and the linking of its minimum annual volume requirements to the actual level of its annual pipeline sales are within its existing authorization and makes its proposed amended Kingsgate import arrangement more responsive to its changing market situations and more competitive with alternate fuels.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the proposed amended import arrangement is competitive and will be market responsive over the remaining term of the import authority. Parties opposing the amended arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protest and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., February 26, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, as conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 21, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-1661 Filed 1-26-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-52-NG]

Windward Energy and Marketing Co.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Windward Energy & Marketing Company (Windward Energy) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-52-NG authorizes Windward Energy to import up to 450 Bcf of natural gas over two-year period.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 21, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-1662 Filed 1-26-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 6873-002, et al.]

Hydroelectric Applications (STS Engineers Ltd., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. **Type of Application:** Surrender of License.

b. **Project No.:** 6873-002

c. **Date Filed:** November 9, 1987.

d. **Applicant:** STS Engineers Ltd.

e. **Name of Project:** Southside II.

f. **Location:** On the U.S. Bureau of Reclamation's Collbran Project Southside Canal in Mesa County, Colorado.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** Mark J. Sundquist, STS Consultants Ltd., 3340 Ranger Road, Lansing, MI 48906, (517) 321-4964

i. **FERC Contact:** Hector M. Perez, (202) 376-1669.

j. **Comment Date:** February 18, 1988.

k. **Description of Project:** The license for this project was issued on June 30, 1986, for an installed capacity of 3,219 project would be economically infeasible. Construction has not commenced.

l. This notice also consists of the following standard paragraphs: B and C.

2 a. **Type of Application:** Amendment of License.

b. **Project No.:** 2216-001.

c. **Date Filed:** November 29, 1984, and amended on September 30, 1987.

d. **Applicant:** Power Authority of the State of New York.

e. **Name of Project:** Niagara.

f. **Location:** On the Niagara River in the Towns of Lewiston and Niagara, Niagara County, New York.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Contact Person:** Mr. Charles M. Pratt, Senior Vice President and General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, NY 10019, (212) 397-6200.

i. **FERC Contact:** Thomas Owen Murphy (202) 376-9829.

j. **Comment Date:** February 17, 1988.

k. **Description of Project:** The license for the Niagara Project was issued on January 30, 1958, and consists of two intake structures on the Niagara River, two water supply conduits, a forebay, the Lewiston Pump-Generating Plant with a rated capacity of 240 MW, the Lewiston Reservoir, the Robert Moses Plant with a rated capacity of 1950 MW, and associated facilities. The forebay serves as the tailrace for the Robert Moses Plant. The licensee proposes: (1) A new intake/outlet structure at the Lewiston Reservoir; (2) two new 22-foot-diameter steel lined and concrete-reinforced power tunnels approximately 700 and 725 feet long connecting the new intake structure to the proposed powerhouse; (3) two new 30-MW pump-turbine units in a common trench installed in a low-profile powerhouse, 96 feet wide by 310 feet long; (4) a new tailrace channel, approximately 140 feet deep and varying in width from 60 feet at the powerhouse to 140 feet deep at the forebay; (5) upgrading of each of the existing 175 MW generating units at the Robert Moses Niagara Plant with new units capable of 200 MW; (6) a new 1,500-foot-long, 230-kV overhead transmission line crossing the forebay and connecting to the existing 230-kV switchyard; and (7) other appurtenances. The licensee estimates that this expansion would generate an additional 965 GWh of peak daytime energy, a reduction of off-peak energy, and total annual energy could vary between an increasing of 30 GWh to a reduction of 120 GWh depending on the actual efficiency of the new runners.

l. **Purpose of Project:** The additional project energy would be sold to the licensee's customers.

m. This notice also consists of the following standards paragraphs: B and C.

3 a. **Type of Application:** Surrender of Exemption.

b. **Project No.:** 6938-003.

c. **Date Filed:** September 18, 1987.

d. **Applicants:** Thomas W. Weathers II, Wilson B. Humphries, Jr., and Roland M. Webb.

e. **Name of Project:** Pinecrest Lake Project.

f. **Location:** On South Fork Stanislaus River, within the Stanislaus National Forest, in Tuolumne County, California.

g. **Filed Pursuant to:** Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 *as amended.*

h. **Applicant Contact:** Mr. Thomas W. Weathers II, 3188 Highway 108, P.O. Box 68, Strawberry, CA 95375.

i. **FERC Contact:** Ahmad Mushtag, (202) 376-1900.

j. **Comment Date:** February 17, 1988.

k. **Description of the Proposed Action:** Applicants request surrender of their exemption for the Pinecrest Lake Project that would have utilized the existing Pacific Gas and Electric Company's (PG&E) Strawberry Dam and would have consisted of: (1) A 21-inch-diameter, 727-foot-long penstock; (2) a powerhouse containing four generating units with a total installed capacity of 600 kW operating under a head of 118 feet; (3) an afterbay located adjacent to the powerhouse; and (4) a 1,400-foot-long, 17.2-kV transmission line connecting with an existing PG&E transmission line.

l. This notice also consists of the following standard paragraphs: B, C and D2.

4 a. **Type of Application:** Surrender of License.

b. **Project No.:** 7944-004.

c. **Date Filed:** December 3, 1987.

d. **Applicant:** Great Western Power & Light, Inc.

e. **Name of Project:** Mike Unit Project.

f. **Location:** On the San Pitch River, Sanpete County, Utah.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** Michael J. Graham, Great Western Power & Light, Inc., P.O. Box 1929, 1930 Mesquite Avenue, Suite 12, Lake Havasu City, AZ 86403, (602) 855-1615.

i. **FERC Contact:** Mr. Don Wilt, (202) 376-9807.

j. **Comment Date:** February 17, 1988.

k. **Description of Proposed Action:** On September 24, 1985, a license was issued to Great Western Power & Light, Inc. to construct, operate, and maintain the Mike Unit Project No. 7944. The project would have consisted of a small diversion structure, a penstock, a powerhouse with a total capacity of 1,500 kW, a tailrace, a transmission line, and appurtenant facilities.

Licensee states that it has decided to surrender the license due to the bankruptcy of the financing firm for the project. No construction has begun at the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. **Type of Application:** Major License (over 5 MW).

b. **Project No.:** 10098-000.

c. **Date Filed:** September 25, 1986.

d. **Applicant:** City of Point Pleasant, WV, and WV Hydro, Inc.

e. **Name of Project:** Gallipolis.

f. **Location:** Ohio River, Mason County, West Virginia and Gallia County, Ohio.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** James B. Price, Ph.D., WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 642-2749.

i. **FERC Contact:** Dean Wight, (202) 376-9821.

j. **Comment Date:** February 17, 1988.

k. **Competing Application:** Project No. 9042-000.

Date Filed: March 22, 1985.

l. **Description of Project:** The proposed project would use the existing Gallipolis Locks and Dam, owned and operated by the U.S. Army Corps of Engineers, Huntington Distict, P.O. Box 2127, Huntington, WV 25721, and would consist of (1) a proposed reinforced concrete powerhouse 250 feet long and 62 feet wide housing two proposed turbine-generators of 24.4 MW capacity each (during the first stage of construction), and a similar powerhouse with two proposed turbine-generators of 8 MW capacity each (during the second stage of construction proposed for 1996); (2) a proposed 138-kV transmission line two miles long; and (3) appurtenant facilities. The estimated annual energy production is, upon completion of the first phase of construction, 228 GWh; upon completion of the second phase, 293 GWh. Project power would be sold to Virginia Power. The net hydraulic head would be 23 feet.

m. This notice also consists of the following standard paragraphs: A4, B, and C.

6 a. **Type of Application:** Preliminary Permit.

b. **Project No.:** 10469-000.

c. **Date Filed:** September 4, 1987.

d. **Applicant:** Gem Irrigation District.

e. **Name of Project:** Dike Hydroelectric Project.

f. **Location:** Occupies in part, lands administered by the Bureau of Land Management on the Snake River, near the town of Glenns Ferry, in Elmore County, Idaho.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 792(a)-825(r).

h. **Applicant Contact:** Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712 (208) 336-1425.

i. **FERC Contact:** Thomas A. Dean, (202) 376-9275.

j. **Comment Date:** February 17, 1988.

k. **Competing Application:** P-10465-000. *Date Filed:* Sept. 1, 1987.

l. **Description of Project:** The proposed project would consist of: (1) A 100-foot-high roller compacted concrete dam; (2) a 460-acre reservoir with a storage capacity of 12,500 acre-feet and a water surface elevation of 2,572 feet msl; (3) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 50 MW operating at 46 feet of hydraulic head; and (4) a 3.2-mile-long, 138-kV transmission line.

The applicant estimates the average annual energy production to be 263 GWh. The approximate cost of the studies under the permit would be $750,000.

m. **Purpose of Project:** Applicant intends to sell the power generated at the proposed facility.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

7 a. **Type of Application:** Conduit Exemption.

b. **Project No.:** 10500-000.

c. **Date Filed:** November 2, 1987.

d. **Applicant:** The City of Wichita Water Department.

e. **Name of Project:** Wichita Water Department.

f. **Location:** City of Wichita, Sedgwick County, Kansas.

g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. **Applicant Contact:** Ms. Anne F. Harris, Black & Veatch, P.O. Box 8405, Kansas City, MO 64114, (913) 339-7060.

i. **FERC Contact:** Dean Wight, (202) 376-9821.

j. **Comment Date:** February 18, 1988.

K. **Description of Project:** The proposed project would use the existing 66-inch water supply conduit located at the existing water treatment plant, and would consist of: (1) A proposed 36-inch-diameter steel penstock; (2) a proposed masonry powerhouse; (3) two proposed turbine-generators of 468 kW combined capacity; (4) a proposed 480-volt underground transmission line 500 feet long; and (5) appurtenant facilities. The estimated annual energy production is 2.9 GWh. Project power would be used by the applicant. The net hydraulic head is 90 feet.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

8 a. **Type of Application:** Transfer of License.

b. **Project No.:** 2614–009

c. **Date Filed:** November 4, 1987.

d. **Applicants:** City of Vanceburg, Kentucky and City of Hamilton, Ohio.

e. **Name of Project:** Greenup.

f. **Location:** Ohio River in Scioto County, Ohio.

g. **Filed Pursuant to:** Section 38 of the Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. **Applicant Contact:** Mr. Kirk Howard Betts, Esq., Dickinson, Wright, Moon, Van Dusen & Freeman, 1901 L Street NW., Washington, DC 20036, (202) 457–0160.

i. **FERC Contact:** Peter K. Lyse, (202) 376–9479.

j. **Comment Date:** February 22, 1988.

k. **Description of Proposed Action:** On March 29, 1976, a major license was issued to the City of Vanceburg, Kentucky for the Greenup Project No. 2614, which has been constructed and is in commercial operation. Applicants propose to transfer the project license to the City of Hamilton, Ohio, pursuant to a settlement agreement negotiated by the parties to settle litigation and to cure an existing default on the bond issue to finance construction of the project.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 [1985]). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214, in determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the Particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project. Federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 10 U.S.C. 825l(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

Dated: January 19, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1587 Filed 1–26–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–154–000, et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

January 21, 1988.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP88–154–000]

Take notice that on January 5, 1988, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S. E. Charleston, West Virginia 25314, filed in Docket No. CP88–154–000 an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the firm sale of natural gas to three new wholesale customers, an increase in firm sales of natural gas to an existing customer and for the construction and operation of pipeline facilities for the proposed sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas proposes the following sales services and either the use of existing facilities or the construction and operation of new facilities for the delivery of gas to these customers:

(1) The firm sale of up to 100 decatherms of gas per day (Dth/d) to Northeast Ohio Natural Gas Corporation (Northeast) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and the use of an existing delivery point located in Wayne County, Ohio. Northeast has reimbursed Columbia Gas $8,000 for this facility. The delivery point was originally installed to accommodate an interruptible transportation service under Part 284 of the Commission's Regulations.

(2) The firm sale of up to 2,000 Dth/d to Ohio Cumberland Gas Company (Ohio Cumberland) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and the construction and operation of an interconnection and measuring facility for the delivery of gas in Knox County, Ohio. Estimated cost of these facilities is $12,200.

(3) The firm sale of up to 2,000 Dth/d to Orwell Natural Gas Company

(Orwell) pursuant to Columbia Gas' Rate Schedule SGS in Zone 4 and construction and operation of an interconnecting and measuring facility for the delivery of gas in Ashtabula County, Ohio. The estimated cost of these facilities is $18,700.

(4) An increase of 500 Dth/d of firm sales to Suburban Fuel Gas, Inc. (Suburban) in Zone 4 from 6,598 under Columbia Gas' Rate Schedule G to 7,098 Dth/d under Columbia Gas' Rate Schedule CDS and the use of a delivery point that is presently under construction to provide an interruptible transportation service under Part 284 of the Commission's Regulations. Estimated cost of these facilities is $30,600.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Transcontential Gas Pipe Line Corporation

[Docket No. CP88-156-000]

Take notice that on January 6, 1988, Transcontential Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-156-000 an application pursuant to section 7(b) of the Natural Gas Act permission and approval to abandon in place 0.85 mile of dual 18-inch diameter pipelines and appurtenant facilities comprising a trenched underwater crossing of the Atchafalaya River on Transco's main line in St. Landry and Pointe Coupee Parishes, Lousiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the erratic nature of the Atchafalaya River has resulted in river-bank erosion at the crossing site of the dual 18-inch diameter pipelines that Transco proposes to abandon, causing the rupture of one of the pipelines and threatening the integrity of the other. According to Transco both of the 18-inch diameter pipeline have been taken out of service.

Transco further states that in anticipation of the potential for such a rupture occurring to the 18-inch diameter pipelines, it has recently constructed and placed in service, pursuant to Commission authorization in Docket No. CP86-388-000, a 36-inch diameter bored crossing of the Atchafalaya River at the same location as the pipelines Transco proposes to abandon. Additionally, Transco states that an aerial crossing of dual 30-inch diameter pipelines supported by a suspension bridge is in service at the same location.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-157-000]

Take notice that on January 6, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 pursuant to section 7(b) of the Natural Gas Act, filed in Docket No. CP88-157-000 an application requesting an order permitting and approving a partial abandonment of service to Willmut Gas & Oil Company (Willmut), related to a Service Agreement dated June 1, 1983, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United requests authorization to reduce Willmut's contractual Maximum Daily Quantity from 49,688 Mcf/d to 30,000 Mcf/d of natural gas and Willmut's Minimum Billing Demand from 23,918 Mcf/d to 21,918 Mcf/d of natural gas. United states that both arrangements will provide Willmut and its customers with an opportunity of obtaining supplies of natural gas at a competitive price from other sources and is, therefore, in the public interest.

Comment date: February 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP86-631-001]

Take notice that on January 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-631-001 an amendment to its pending application filed July 18, 1986, in Docket No. CP86-631-000 pursuant to section 7(c) of the Natural Gas Act so as to revise its original proposal to become an open-access pipeline under Order No. 436, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Williams states that its proposal in Docket No. CP86-631-000 was filed in conjunction with and predicated on a proposed Stipulation and Agreement filed in Docket No. RP86-32-000. Williams further states that it has now filed a revised Stipulation and Agreement in Docket No. RP86-32-000 *et al.* which would involve a number of changes in the manner in which it would restructure its services to enable it to become an open access transporter. Consistent with the revised settlement proposal, Williams explains, it has also revised its certificate proposal by filing the instant amendment.

Specifically, Williams requests (1)(a) certificate authorization under section 7 of the NGA to provide partial requirements sales service under new Rate Schedule PR(A); (b) certificate authorization under section 7 of the NGA to modify its requirements service obligations under existing Rate Schedules F, G and I provide revised requirements service under a new Rate Schedule F in conjunction with partial requirements service to certain former C and I Rate Schedule consumers under new Rate Schedule PR(B); (c) certificate authorization under section 7 of the NGA for a new, experimental interruptible deferred delivery service under Rate Schedule IDDS for shippers under Rate Schedules FTS and ITS; (d) blanket authorization under section 7 of the NGA, with pre-granted abandonment, for shippers under Rate Schedules FTS and ITS to utilize such service under Rate Schedule IDDS; (e) blanket authorization under section 7 of the NGA for all existing sales customers from time to time to elect or convert to service under new Rate Schedule PR(A) or new Rate Schedules F and PR(B), as appropriate, and to convert and/or reduce the level of service under those rate schedules, as provided under the new sales service agreements executed under those rate schedules; and (f) pregranted abandonment of its presently authorized service levels under the NGA to the extent of such conversions and/or reductions under Rate Schedules PR(A), F, or PR(B); and (g) authority to abandon service under Rate Schedule P to the level of any reduced contract demand under any new sales service agreement under Rate Schedule P; and (2) blanket certificate authorization for the transportation of gas on behalf of others with pre-granted abandonment authorization, pursuant to Section 7 of the NGA and Order Nos. 436 and 500 under new Rate Schedules FTS and ITS.

Williams states that it would provide blanket transportation for others in compliance with the conditions in § 274.221(c) of the Commissions' Regulations on the basis of its Order Nos. 436 and 500 transportation proposal as described in the amended application and in Article II and Appendix C of the Revised Stipulation in Docket Nos. RP86-32, *et al.* Williams further states that it would provide firm and interruptible transportation under proposed Rate Schedules FTS and ITS as set forth in the tariff sheets in Appendix C of such Revised Stipulation and that the rates for such service would be in full compliance with the provisions of § 284.7 of the Commission's Regulations.

Comment date: February 11, 1988, in accordance with the first subparagraphs of Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1588 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-303-001, et al.]

Sun Exploration and Production Company, et al.; Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

January 21, 1988.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 8, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be representated at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI87-303-001, A, Dec. 17, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Various Purchasers, Edinburg Unit, Hidalgo County, Texas.	(1)	
CI87-304-001, (G-3884), B, Dec. 17, 1987.	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Edinburg Unit, Hidalgo County, Texas.	(2)	
CI88-178-000, B, Dec. 9, 1987.	Alfred C. Glassell, Jr., Suite 2300, First City National Bank Bldg., 1021 Main Street, Houston, Texas 77002.	Natural Gas Pipeline Company of America, C.P. Taylor, et al. Well No. 1 Unit, JGS Field, Panola County, Texas.	(3)	
CI88-225-000 (CI76-241), B, Jan. 4, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Ca. 94120-7309.	Natural Gas Pipeline Company of America, Spearman East Field Hansford County, Texas.	(4)	
CI188-205-000 (CI63-918), B, Dec. 28, 1987.	....do	Williams Natural Gas Company, Panhandle Field, Gray County, Texas.	(4)	
CI88-203-000 (CI67-1174), B, Dec. 28, 1987.	....do	Northern Natural Gas Company, a Division of Enron Corp., Killebrew Field, Roberts County, Texas.	(4)	
CI88-224-000 (CI68-1316), B, Jan. 14, 1988.	....do	Panhandle Eastern Pipe Line Company Waynoka N.E. Field, Woods County, Oklahoma.	(5)	
CI88-199-000, A, Dec. 31, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Transco Energy Marketing Company Vermilion 46 Field, (Block 35 South Half), Offshore Louisiana.	(6)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI88-198-000, A, Dec. 17, 1987.	....do....	South Pelto Area Blocks 9 & 10 and Ship Shoal Area Block 68 (East Half), Offshore Louisiana.	(6)	
CI88-212-000 (CI76-238), B, Dec. 21, 1987.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Texas Eastern Transmission Corporation, S/4 West Cameron Block 522 (Block 543 Field), OCS-G-2009, Offshore Louisiana.	(7)	
CI88-210-000 (CI72-157), B, Dec. 21, 1987.	....do....	Arkla Energy Resources, a division of Arkla, Inc. N.W. O'Keene Field, Blaine County, Oklahoma.	(8)	
CI88-214-000 (G-6635), B, Dec. 21, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Chesterville Field, Colorado County, Texas.	(9)	
CI88-197-000, F, Dec. 30, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77252.	El Ebanito Field, Starr County, Texas	(10)	
CI88-206-000 (CI84-266), B, Dec. 23, 1987.	....do....	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	(11)	
CI88-213-000 (G-13330), B, Dec. 21, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	W.M. Laughlin, Premont Field, Jim Wells County, Texas.	(12)	
CI88-223-000 (G-14127), B, Jan 4, 1988.	....do....	Southern Natural Gas Company, Napoleonville Field, Assumption Parish, Louisiana.	(14)	
CI88-218-000, B, Jan. 22, 1987.	Bogert Oil Company, 2601 N.W. Expressway, Suite 1000W, Oklahoma City, Okla. 73112.	ANR Pipeline Company, NW/4 Sec. 5-21N-13W, Cheyenne Valley Field, Major County, Oklahoma.	(15)	
CI88-217-000, B, Dec. 22, 1987.	....do....	ANR Pipeline Company, NW/4 Sec. 32-22N-13W, Cheyenne Valley Field, Major County, Oklahoma.	(16)	
CI88-202-000, B, Dec. 28, 1987.	Kirkpatrick Oil & Gas Co., 1300 N. Broadway Drive, Oklahoma City, Okla. 73118.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	(17)	
CI88-207-000, B, Dec. 21, 1987.	Holmac Oil Company, P.O. Box 5370, Hobbs, New Mexico 88241.	El Paso Natural Gas Company, Delaware Field, Ward County, Texas.		(18)
CI88-208-000, B, Jan. 21, 1987.	Midland Resources, Inc., 300 West Texas Suite 601, Midland, Texas 79701.	El Paso Natural Gas Company, Pecos Valley, North Field, Pecos County, Texas.	(19)	
CI88-204-000 (CI66-1329), B, Dec. 28, 1987.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, a Division of Enron Corp., Starbuck Unit, Lots 1 and 2, E/2 NE/4 Sec. 5, and SE/4 Sec. 5-21N-33W, Ellis County, Oklahoma and E/2 Sec. 17-20N-22W, NE/4 Sec. 4-22N-22W, Woodward County, Oklahoma.	(20)	
CI88-209-000, B, Dec. 21, 1987.	Midland Resources, Inc....	West Lake Natural Gasoline Company, Nena Lucia (Strawn Reef) Field, Nolan County, Texas.	(21)	
CI88-226-000 (CI71-473), B, Jan. 5, 1988.	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, Calif. 90051.	Transcontinental Gas Pipe Line Corp., Fresh Water Bayou Field, Vermilion Parish, Louisiana.	(22)	
CI88-221-000 (CI61-1436), B, Jan. 4, 1988.	Mobil Exploration & Producing North America Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, N. Turtle Bayou Field, Terrebonne Parish, Louisiana.	(24)	
CI88-201-000 (CI86-123-000), B, Dec. 28, 1987.	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Texas Eastern Transmission Corporation, East Cameron 118 Field, Offshore Louisiana.	(25)	
CI88-219-000, B, Dec. 22, 1987.	Horseshoe Operating, Inc., 511 West Texas, Midland, Texas 79701.	K N Energy, Inc., Bradshaw Field, Greenley County, Kansas.	(26)	
CI88-216-000 (CI73-309), B, Dec. 22, 1987.	Phillips 66 Natural Gas Company, 990-G Plaza Office Bldg., Bartlesville, Okla. 74004.	Transwestern Pipeline Company, Panhandle-Hugoton Area in various counties in Texas.	(27)	
CI88-215-000 (CI75-620), B, Dec. 22, 1987.	Perry R. Bass, 201 Main Street, Fort Worth, Texas 76102.	Williams Natural Gas Company, Hobart Ranch-Buffalo Wallow Area, Hemphill County, Texas.	(28)	
CI88-79-000 (CI68-39)....	Mesa Limited Partnership, One Mesa Square, P.O. Box 2009, Amarillo, Texas 79189-2009.	Northern Natural Gas Company, Division of Enron Corp., Reiswig #1-36 Well, Como Field, Beaver County, Oklahoma.	(29)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI60-739)....	....do....	Northern Natural Gas Company, Division of Evins #1-20 and Evins #2-20 Hanna Lake Field, Ochiltree County, Texas.	(29)	
CI64-1531, B, Oct. 30, 1987.	....do....	Lone Star Gas Company, a Division of ENSERCH Corporation, Benedum Lease #1-7 Washington East Field, McClain County, Oklahoma.	(29)	
CI87-884-000, B, Nov. 9, 1987.	Perkins Energy Co., P.O. Drawer 878, Duncan, Okla. 73534.	Arkla Energy Resources, a division of Arkla, Inc., Northwest Okeene Field, Blaine County, Oklahoma.	(30)	
CI87-625-001, B, Dec. 22, 1987.	Questa Energy Corporation, P.O. Box 19297, Amarillo, Texas 79114.	Northern Natural Gas Company, Division of Enron Corp., Breitenbach #1, Edwards County, Kansas.	(31)	
CI87-695-000, B, Dec. 22, 1987.	....do....	Transwestern Pipeline Company, Sam Reger #1, Lipscomb County, Texas.	(32)	
CI88-164-000, B, Dec. 7, 1987.	DYCO Petroleum Corporation, 7130 So. Lewis Ave., Suite 300, Tulsa, Okla. 74136.	Natural Gas Pipeline Company of America, Buffalo Wallow Field and Washita Creek Field, Hemphill County, Texas.	(33)	
CI88-167-000, B, Dec. 7, 1987.	Nielson Enterprises Inc., P.O. Box 370, Cody, Wyoming 82414.	ANR Pipeline Company, Clayton #1 Well Sec. 29-T21N-R17W, Woodward County, Oklahoma.	(34)	
CI88-179-000, B, Dec. 10, 1987.	J.C. Barnes Jr., et al., P.O. Box 505, Midland, Texas 79702.	El Paso Natural Gas Company, Superior Federal No. 3 Well, Sec. 4-T20S-R29E, Burton Field, Eddy County, New Mexico.	(35)	

[1] Sun requests a three-year blanket limited-term certificate with pregranted abandonment to make sales for resale in interstate commerce of gas which is related and subject to the limited-term abandonment in Docket No. CI87-304-001. Sun filed on February 11, 1987, in Docket No. CI87-303-000 requesting the same authorization for seven other sales and omitted this contract from its application.

[2] Sun requests a three-year blanket limited-term abandonment of sales to Tennessee under an April 1, 1952, contract which is on file as Sun Exploration and Production Company FERC G.R.S. No. 258.

In support of its application Sun states that Tennessee has reduced its takes of gas and projects that reduced takes will continue through the next three years; thus Sun is subject to substantially reduced takes without payment. Sun states that Tennessee has agreed to release for three years all NGA gas not needed by Tennessee. Sun avers that Tennessee will receive take-or-pay credit for the gas released by Tennessee and sold by Sun. According to Sun all released gas will be surplus gas that Tennessee does not need to meet its current marketing demands and the gas will remain subject to recall by Tennessee. Sun states that the deliverability is approximately 1,500 Mcf/day and that the gas is NGPA section 106(a) rollover gas. Sun plans to sell the gas to other parties under certificate authorization in Docket No. CI87-303-001.

[3] Applicant requests permanent abandonment of its sale of gas to Natural.

In support of its application, Applicant states that Natural has heretofore relied upon Lone Star Gathering Company (Lone Star) to gather the gas in question and transfer it to Natural's own facilities. Lone Star sought and received Commission authorization to abandon these gathering facilities by order of the Commission dated November 18, 1987 (41 FERC ¶ 61,182). The order was conditioned upon the producers of the gas dedicated to Natural obtaining abandonment of their obligations to continue sales to Natural. Applicant states that the deliverability is approximately 35 Mcf/day of minimum rate gas. Applicant plans to sell the gas in the intrastate market or pursuant to its small producer certificate issued in Docket No. CS71-708.

[4] Certain acreage has been assigned to Atlantic Energy (USA) Corporation, effective 7-1-87.

[5] Certain acreage has been assigned to Cross Timbers Oil Company, effective 7-1-87.

[6] Applicant is filing for authorization to initiate sales under Gas Purchase Contract dated 12-1-87.

[7] Buyer has exercised its right under the contract to terminate the Agreement dated 9-1-75, as delivery is less than 1,000 Mcf per day

[8] Contract terminated.

[9] By Assignment effective 10-1-87, Sun assigned its interest in Property No. 447840, Chesterville Unit (B.P. No. 85890) to Mobil Exploration and Producing U.S. Inc.

[10] By Assignment effective 12-1-86, Tenneco acquired certain acreage from Champlin Petroleum.

[11] Tenneco sold certain acreage to Beresco Properties, Inc., effective 8-1-86.

[12] Acreage is depleted. No production has occurred from dedicated Singer Sand since 1970.

[13] Not used.

[14] ARCO assigned all its interest subject to Rate Schedule No. 480 to Jolen Production Company, effective 4-1-87.

[15] ANR Pipeline Company has agreed to release the NW/4 and the Ramon Jordon 1-5 Well from its gas contract so that Bogert Oil Company can get the well connected to a low pressure gathering system. ANR Pipeline's high pressure system and constant curtailment has caused the well to be shut-in the majority of the time.

[16] ANR Pipeline Company has agreed to release the SW/4 and the Ethel Jordon #32-1 Well from its gas contract so that Bogert Oil Company can get the well connected to a low pressure gathering system. ANR Pipeline's high pressure system and constant curtailment have caused the well to be shut-in the majority of the time.

[17] The expired gas purchase contracts for the two wells contained a low price and Kirkpatrick desires the opportunity to obtain the current market price for its gas. The wells have also been subjected to reduced takes.

[18] El Paso discontinued purchasing the casinghead gas. In the absence of a purchaser of the gas, the oil wells will have to be shut-in with the damage or permanent loss of oil and gas reserves.

[19] Lease has been subject to substantially reduced takes. Applicant has secured an alternative gas purchase proposal with improved takes. Applicant also requests a pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

[20] By Assignment of Oil and Gas Leases, and Term Mineral Conveyance and Bill of Sale both executed 6-23-87, effective 4-1-87, Cities assigned leases to Amoco Production Company attributable to the Starbuck Unit, Ellis County, Oklahoma, and the producing well located thereon, with certain depth limitations. There is no anticipated drilling on the remaining leases under this contract insofar as depths above the base of Mississippian System.

[22] Applicant requests permanent abandonment. Lease has been subject to substantially reduced takes. Applicant has secured an alternative gas purchase proposal with improved takes. Applicant also requests a pregranted abandonment for a term of three years for sales of the abandoned gas under its small producer certificate.

[22] Only one well has produced gas under the "deep" Contract dated 11-20-70. The reservoir was depleted in 1976. This well was recompleted up the hole and came under the jurisdiction of another Gas Sales Agreement which covers depths above 12,600 feet. Since there are no remaining reserves dedicated to the "deep" contract both parties have agreed to terminate the contract.

[23] Not used.

[24] Reserves depleted and leases released.

[25] As of 1-1-87 all wells located on offshore leases OCS-G-0938 and OCS-G-1974, East Cameron Block 118, Offshore Louisiana were plugged and abandoned. Ownership in the leases reverted to the lessor and ENSTAR and ENSTAR Corporation no longer own a working interest in the leases dedicted to the contract filed in Docket No. CI86-123-000 and was designated ENSTAR Rate Schedule No. 34.

[26] Applicant proposes to abandon the sale of gas to K N Energy, Inc. for economic reasons due to buyer's alleged refusal to honor the contract price.

[27] Applicant alleges that existing exchange is uneconomical and both parties have agreed to terminate the contract.

[28] Applicant no longer has leasehold interests in acreage within the dedicated contract area and production from this acreage has ceased.

[29] Applicant is seeking abandonment due to depletion of reserves. Such sales of gas were from acreage covered under Applicant's small producer certificate issued in Docket No. CS67-82, and were previously covered under Docket Nos. CI86-39, CI60-739 and CI64-1531. Applicant also mentions in its filing certain other sales which were once covered under certificates issued in Docket Nos. CI66-828, CI67-669, CI67-877 and CI61-272 for which abandonment authorization has already been granted.

[30] By order issued October 22, 1987, Applicant was granted permanent abandonment authorization in Docket No. CI87-884-000 for its sale of gas to Arkla from the Northwest Okeene Field, Blaine County, Oklahoma. Applicant now requests pregranted abandonment for a period of three years for sales for resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS72-43. Deliverability is approximately 991 Mcf/d. The gas is NGPA section 104 flowing Gas (17%) and 106(a) (83%).

[31] By order issued September 15, 1987, Applicant was granted permanent abandonment authorization in Docket No. CI87-625-000 for its sale of gas to Northern from the Brentenbach #1, West Wil Field, Edwards County, Kansas. Applicant now requests pregranted abandonment for a period of three years for sales for resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS87-82-000. Deliverability is approximately 20 Mcf/d. The gas is NGPA section 104 flowing gas.

[32] By order issued September 15, 1987, Applicant was granted permanent abandonment authorization in Docket No. CI87-695-000 for its sale of gas to Transwestern from the Sam Reger #1, South Follett (Morrow) Field, Lipscomb County, Texas. Applicant now requests pregranted abandonment for a period of three years for sales of resale in interstate commerce of the released gas under its small producer certificate in Docket No. CS87-82-000. Deliverability is approximately 50 Mcf/d. The gas is NGPA section 106(a) gas.

[33] Applicant requests permanent abandonment of sales of gas to Natural. The contracts terminated effective October 13, 1987, by mutual agreement. Applicant also requests pregranted abandonment for a period of three years. Deliverability is approprimately 293 Mcf/d. The gas is NGPA section 104 flowing gas.

[34] Applicant requests limited-term abandonment with pregranted abandonment through November 30, 1989, for one sale of gas to ANR. The purchaser cannot purchase gas dua to market constraints. Deliverability is approximately 250 Mcf/d. The gas is NGPA section 104 minimum rate gas.

[35] Applicant requests one-year limited-term abandonment with pregranted abandonment of one sale of gas to El Paso. Applicant states gas production from the Superior Federal No. 3 Well has been curtailed for an indefinite period of time. Current deliverability is 400 Mcf/d. The well produces NGPA section 104 1973-1974 biennium gas.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-1589 Filed 1-26-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF88-179-001, et al.]

General Mills, Inc. et al., Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 21, 1988.

Take notice that the following filings have been made with the Commission.

1. General Mills, Inc.

[Docket No. QF88-179-001]

On December 22, 1987, General Mills, Inc. (Applicant), of 54 South Michigan Avenue, Buffalo, New York 14203, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Buffalo, New York. The facility will consist of a combustion turbine generator unit and a heat recovery steam generator. The electric power production capacity of the facility will be 3.8 MW. The primary energy source will be natural gas. The facility is scheduled to begin operation on December 1, 1988.

2. Union Carbide Corporation

[Docket No. QF88-137-000]

On December 28, 1987, Union Carbide Corporation (Applicant), of 1 River Road, P.O. Box 670, Bound Brook, New Jersey 08805 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bound Brook, New Jersey. The facility will consist of one combustion turbine generator and one heat recovery steam generator. Steam recovered from the facility will be used for chemical process requirements. The net electric power production capacity will be 5,400 kilowatts. The primary energy source will be natural gas. Construction of the facility will begin in the second quarter of 1988.

3. Pawtucket Power Associates

[Docket No. QF88-166-000]

On December 22, 1987, Pawtucket Power Associate, c/o Energy Management, Inc., 200 Boylston Street, Chestnut Hill, Maine 02167 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pawtucket, Rhode Island. The facility will consist of one combustion turbine generator, one heat recovery steam generator and one extraction condensing steam turbine generator. Thermal energy recovered from the facility will be used by Colfan, Inc. for manufacturing of food products. The net electric power production capacity will be 53,538 kilowatts. The primary energy source will be natural gas. The facility is expected to be on-line in January 1991.

4. HL Power Company

[Docket No. QF88-189-000]

On January 11, 1988, the HL Power Company (Applicant), c/o GeoProducts Corporation of 1330 Broadway, Oakland, California 94612, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lassen County, California. The electric power production capacity will be approximately 32 megawatts, net. The facility will consist of a waste wood-fired steam generator and an extraction/condensing steam turbine generator. The primary energy source will be wood waste consisting of shredded and/or chipped logging waste, unmerchantable timber and precommercial thinnings. Natural gas will be used for start-up purposes, however, such fossil fuel use will not exceed one percent of the total energy input to the facility during any calendar year period. Installation of the facility is expected to begin in February 1988.

5. Methane Resource Associates, Inc.

[Docket No. QF87-639-001]

On December 21, 1987, Methane Resource Associates, Inc. (Applicant), of 225 Frances Lane, Barrington, Illinois 60010, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Albion, New York. The facility will consist of gas-fired internal combustion engine generators. The electric power production capacity will be 3 megawatts. The primary energy source will be biomass in the form of landfill gas. There are no plans to use natural gas, oil, or coal.

The original application was filed September 3, 1987 and granted on October 28, 1987 (41 FERC ¶62,096).

The recertification is requested due to a change of ownership from Methane Resource Development, Inc. to Methane Resource Associates, Inc. All other facility characteristics remain the same.

6. City of Watsonville

[Docket No. QF88-177-000]

On December 28, 1987, City of Watsonville (Applicant), of 250 Main Street, Watsonville, California 95076, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Wastewater Treatment Plant in Santa Cruz County, California. The facility will consist of a gas-fired engine generator unit and necessary heat recovery system. Thermal energy recovered from the facility will be used to heat digesting sludge. The electric power production capacity of the facility will be 600 kW. The primary energy source will be sludge gas produced by anaerobic digestion process of wastewater sludge supplemented by natural gas. The facility is scheduled to begin operation in mid-1988.

7. LaChute Hydro Company, Inc., et al

[Docket No. QF88-171-001]

On December 31, 1987, LaChute Hydro Company Inc., et al. (Applicant), c/o Olof S. Nelson, Consolidated Hydro, Inc., 2 Greenwich Plaza, Greenwich, Connecticut 06830, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.9 MW hydroelectric facility (FERC P. 5760) will be located on the LaChute River in Ticonderoga, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing, and pollution abatement.

8. LaChute Hydro Company, Inc., et al

[Docket No. QF88-172-001]

On December 31, 1987, LaChute Hydro Company, Inc., et al. (Applicant), c/o Olof S. Nelson, Consolidated Hydro, Inc., 2 Greenwich Plaza, Greenwich, Connecticut 06830, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.6 MW hydroelectric facility (FERC P. 5762) will be located on the LaChute River in Ticonderoga, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State, or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Procter & Gamble Paper Products Co.

[Docket No. QF88-175-000]

On December 28, 1987, Proctor & Gamble Paper Products Co. (Applicant), of 1 Proctor & Gamble Plaza, Cincinnati, Ohio 45202-3315, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used in paper manufacturing process. The electric power production capacity of the facility will be approximately 20 MW. The primary source of energy will be natural gas.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-1590 Filed 1-26-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-102-004 and RP86-102-005]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Compliance Filing

January 22, 1988.

Take notice that on January 11, 1988 Equitable Gas Company, a Division of Equitable Resources, Inc. (Equitable) tendered for filing the following tariff sheets to its FERC Gas Tariff in compliance with the Commission's Letter Order of July 23, 1987, and Order Denying Rehearing issued November 5, 1987, in this docket.

Original Volume No. 3

Second Revised Sheet No. 3
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 9
Second Revised Sheet No. 13
Second Revised Sheet No. 14
Second Revised Sheet No. 18
Second Revised Sheet No. 19
Second Revised Sheet No. 20
Second Revised Sheet No. 21
Second Revised Sheet No. 22
Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25
Second Revised Sheet No. 26
Second Revised Sheet No. 27
Second Revised Sheet No. 31
Second Revised Sheet No. 38

On December 23, 1987, Equitable submitted certain tariff sheets unaccompanied by a fee in this proceeding which were inadvertently incomplete and should be disregarded. Equitable further states that the January 11, 1988 compliance filing replaces and substitutes for that filing of December 23, 1987.

Equitable states that copies of this filing have been served on all its jurisdictional customers and affected state regulatory commissions. Equitable requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective December 23, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1638 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-49-000]

Florida Gas Transmission Co.; Petition for a Limited Waiver

January 22, 1988.

Take notice that on January 11, 1988, Florida Gas Transmission Company (FGT) filed a petition for a limited waiver of § 154.38(d)(4) of the Federal Energy Regulatory Commission's (Commission) regulations. FGT requests that the Commission grant to FGT a limited waiver of § 154.38(d)(4) to allow FGT to treat as "natural gas" and to flow through its purchased gas adjustment (PGA) clause the costs of ethane, or any mixture of ethane, butane, or propane, purchased by FGT and injected into its system supply during a limited one-year period.

FGT states that it may have an opportunity to purchase from various suppliers quantities of ethane and/or some ethane-propane-butane mixture and inject such products into its system. Since such products do not appear to fall within the above-referenced regulations, FGT has requested a limited one-year waiver of the PGA regulations, or alternatively, that the Commission clarify that ethane and ethane mixtures fall within the definition of "purchased gas costs."

FGT asserts that granting the requested limited waiver or clarification would allow it to reduce its overall weighted average cost of gas, that all its customers will benefit therefrom, and that granting the relief requested on an expedited basis is in the public interest. FGT would modify facilities to receive the ethane mixtures under its blanket certificate granted in Docket No. CP82-553 and pursuant to 18 CFR Part 157.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 2, 1988. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1639 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL88-8-000]

Maryland People's Counsel, et al.; Filing

January 20, 1988.

Take notice that on January 12, 1988, the Maryland People's Counsel (MPC) and the Consumer Advocate Division of the West Virginia Public Service Commissions (WVa Consumer Advocate) (joint complainants) tendered for filing pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982), and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR § 385.206) a joint Complaint against Allegheny Generating Company (AGC). The joint complainants request that the Commission condition any further collection by AGC of rates pursuant to its formula rate upon the inclusion of an annual equity reopener provision in its tariffs.

Copies of this filing have been served upon all parties affected by this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1640 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-139-000]

Metropolitan Edison Co.; Filing

January 22, 1988.

Take notice that on December 10, 1987, Metropolitan Edison Company (Met-Ed) tendered for filing pursuant to Commission Order dated June 18, 1987 revised rate sheets to reflect an agreed upon reduction in Met-Ed's rates effective as of January 1, 1988. Met-Ed states that the rate sheets reflect a $147,000 reduction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1641 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-146-000]

Placid Oil Co.; Petition for Declaratory Order Disclaiming Jurisdiction

January 21, 1988.

Take notice that on December 24, 1987, Placid Oil Company (Placid), 3900 Thanksgiving Tower, Dallas, Texas 75201, filed in Docket No. CP88-146-000 a petition for an order declaring that Green Canyon gas line and Ship Shoal Platform 207 in offshore Louisiana are respectively gathering and production facilities pursuant to section 1(b) of The Natural Gas Act and thereby, are exempt from the jurisdictional of the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Placid states that the Green Canyon gas line is a 51-mile, 16-inch gathering line, commencing at its floating production platform located on Green Canyon Block 29 and terminating at the interconnection with a jurisdiction pipeline on Ship Shoal Block 207, all in offshore Louisiana. It is stated that oil and gas accumulations have been found underlying Green Canyon Blocks 29, 31 and Ewing Bank Block 999. It is further stated that the Green Canyon area is located in water depths of 1,500 to 2,200 feet or deeper and more than 80 miles offshore Louisiana. It is also stated that the floating production platform is located in a water depth of 1,540 feet. Because of this water depth, it is explained, it is not possible to install the customary fixed production platform and it is also not possible to have all of the customary separation and treatment facilities on the floating production platform that are normally found on fixed platforms.

Placid notes that at the floating production, the full well stream would be a mixture of natural gas, entrained liquids and liquefiables, crude oil, condensate and saltwater. It is stated that in order to separate the crude oil and condensate from the gas and to bring the natural gas production up to the quality specifications of the interstate pipeline purchasers and transporters, it is necessary, before the gas component and crude oil and condensate components are in marketable conditions, for the full well stream to undergo a series of production-related activities, namely, separation, treatment and processing. Placid states that the Green Canyon floating production platform, in contrast to fixed platforms, is of limited size and even more limited load-bearing capabilities. Placid states that the platform must accommodate the required drilling, workover and well maintenance facilities and, because of its limited size, is able to accommodate only limited separation and treatment facilities required for gathering the mixture to the Ship Shoal Block 207 platform. Placid states that it intends to perform limited separation functions upon the floating production platform which are required to permit the natural gas, condensate and crude oil to be gathered from the wells to the Ship Shoal Block 207 platform where the customary separation and treatment facilities are to be installed.

Placid states that the floating production platform separation process would result in two streams—one, gas which still contains amounts of water, condensate and entrained liquefiables, which will be gathered through a 51-mile, 16-inch gathering line extending from the floating production platform to Ship Shoal Block 207 platform, also referred to as the Green Canyon gas gathering line. It is stated that the line's design capacity is 200 MMcf of natural gas per day. Placid states that the Green Canyon gas production is projected to peak at 140 MMcf of natural gas per day. It is explained that the 16-inch gathering line and the floating production platform would have excess capacity to gather gas from surrounding Green Canyon and Ewing Bank leases. Placid states that the other stream would consist of oil, condensate, water and varying amounts of gas and be gathered through a parallel 51-mile, 14-inch pipeline from the floating production platform to the Ship Shoal Block 207 platform. Placid further states that the continuous operation of the field would necessitate the movement of gas, oil, condensate and water to the Ship Shoal Block 207 platform without interruption, explaining, that any time either pipeline has to be shut in for any reason, the remaining line, liquid or gas, would be operated as a two-phase flowline, that is, gas, oil and condensate, and water would be transported through a single line in order to maintain production.

Placid states that the production process will be continued on the Ship Shoal Block 207 platform where the final separation of liquids (oil and condensate) from gas and water and the necessary treating and dehydration of gas will occur. It is stated that the pipeline quality oil and condensate would be delivered to a common carrier pipeline for transmission onshore. It is also stated that the pipeline quality gas would be delivered to an interstate gas pipeline on Ship Shoal Block 207. The gas will be transported by the interstate gas pipeline to an onshore gas processing plant for the extraction of ethane, butane, propane and heavier liquefiables. Therefore, Placid states that the production process would not be completed until the gas is finally processed at the onshore processing plant.

Placid further states that it is apparent that both the 51-mile 16-inch gas line and the parallel 51 mile 14-inch liquid line perform the primary function of flowlines and gathering lines because the customary separation and treatment processes are performed at the terminus of the pipelines at the Ship Shoal Block 207 platform. Placid maintains that the sole purpose of the 16-inch diameter line is to gather gas produced from the Green Canyon Block 29 field to the Ship Shoal Block 207 platform located in shallow water where the production functions of treating, dehydration processing and measuring can be completed upon the platform for delivery to the interstate pipeline. Therefore, Placid concludes that the Green Canyon line and the Ship Shoal Block 207 platform facilities should be exempt from the jurisdiction of the Commission pursuant to section 1(b) of the Natural Gas Act as the

primary function of the so-stated facilities is gathering and production.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 11, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1642 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-120-000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

January 21, 1988.

Take notice that on December 9, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP88-120-000 a request pursuant to § 157.205 and § 157.216(b) [1] of the Commission's Regulations under the Natural Gas Act for authorization to abandon a sales tap and appurtenant facilities under its blanket certificate authorization issued in Docket Nos. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a sales tap located on its Elk Basin-Billings Red Line, Yellowstone County, Montana. It is stated the customer, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., no longer requires service through this tap because the retail customer previously receiving service through this tap is no longer in business. Williston Basin further states that the sales tap will be abandoned on its existing transmission right-of-way.

[1] This notice was erroneously issued under section 7(b) on January 6, 1988, with the notice period to expire January 27, 1988.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1643 Filed 1-26-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180753; FRL-3320-1]

Arizona Commission of Horticulture and Agriculture; Receipt of Application for Emergency Exemption To Use Hydrogen Cyanamide and Notification of Issuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and issuance.

SUMMARY: EPA has received a request for an emergency exemption from the Arizona Commission of Agriculture and Horticulture (hereafter referred to as the "Applicant") to use the active ingredient hydrogen cyanamide (Dormex ™) to promote uniform bud break in 7,500 acres of table grapes grown in Arizona. Dormex contains an unregistered active ingredient. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether or not to grant the exemption. Due to the critical nature of the emergency situation, there was insufficient time to solicit public comments. The Agency has granted a specific exemption to Arizona for this use of Dormex.

FOR FURTHER INFORMATION CONTACT:

By mail:

Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant requested the Administrator to permit the use of an unregistered plant regulator, hydrogen cyanamide (CAS 420-04-2), manufactured as Dormex™, by SKW Trostberg Aktiengesellschaft, to promote uniform bud-break in table grapes grown in Arizona. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicated that Arizona growers of early market table grapes are facing economic losses due to increasing competition from foreign imports, particularly from Mexico. The Applicant states that table grapes may not experience adequate winter chilling to promote uniform budbreak and fruit ripening in the spring. Urban expansion is reaching the areas where vineyards are located. The vineyards are now under the influence of the urban heat island effect. As a result, cane growth can be delayed and uneven, causing the harvest to be late and allowing foreign competition to dominate the market. Currently there are no registered materials to promote uniform bud-break in grapes.

Dormex will be applied by ground at a maximum rate of 4 gallons (16 pounds active ingredient) per acre. Application will be made once in dormancy after pruning sometime between December 25 and January 31, 1988 to approximately 7,500 acres of table grapes in Arizona.

The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Dormex™ contains an active ingredient which has not yet been registered by the Agency.

The Applicant submitted the exemption request close to the time applications of the pesticide were to be made. Consequently, there was not adequate time to allow for the opportunity for public comment. The Agency decided to grant the exemption after determining that an emergency situation existed and that the proposed use would not pose adverse effects to

man and the environment. The specific exemption was granted on December 21, 1987, and expires on January 31, 1988.

Dated: January 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-1384 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180752; FRL-33195]

Receipt of Application for Specific Exemption to Use Methyl 3-[[[[(4-Methoxy-6-Methyl-1,3,5-Triazin-2-YL)Amin] Carbonyl] Amino] Sulfonyl]-2-Thiophenecarboxylate; Solicitation of Public Comment

AGENCY: Environmental Protection agency (EPA)

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Ohio Department of Agriculture (hereafter referred to by State or as "Applicant") for use of the unregistered product Harmony, to control wild garlic in wheat in Ohio. Harmony, manufactured by E.I. duPont de Nemours and Company, contains the unregistered active ingredient methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amin] carbonyl] amino]sulfonyl]-2-thiophnecarboxylate. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before February 11, 1988.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180752," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part of all or that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Robert A. Forrest, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the unregistered product, Harmony, to control wild garlic in wheat. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant has requested a maximum of one postemergence application of Harmony. Applications will be made between the two-leaf and boot stage of wheat when wild garlic is 6 to 12 inches high. A maximum of 0.67 ounce of product is proposed to be applied per acre in Ohio. A maximum of 50,000 acres of wheat is proposed to be treated in Ohio. If all of the acreage were treated, a maximum of 2,094 pounds of product would be needed in Ohio.

Applications are proposed to be made using ground equipment only. All applications are proposed to be made by or under the direct supervision of certified applicators. Ohio requested authorization to make treatments through April 1988.

The Applicant claims that emergency conditions exist due to the presence of wild garlic bulblets in harvested wheat. Grain sold with garlic bulblets present is generally docked on a per-bulblet basis. The Applicant claims that the new regulations under the U.S. Grain Standards Act which lower by two-thirds the amounts of wild garlic allowable in marketed wheat have contributed to the need for a better means of controlling garlic. If these new standards cannot be met, prices will be docked severely or the grain may be refused altogether. In either event, the economic consequences could be substantial if growers are unable to control wild garlic in wheat.

The Applicant claims that the registered alternatives currently available do not provide a sufficient level of control of wild garlic. The applicant claims that wheat growers have traditionally used 2,4-D and dicamba to control this weed. Specifically, the Applicant claims that these pesticides only provide 20 to 75 percent control of wild garlic.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before February 11, 1988 and should bear the identifying notation "OPP-180752." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Ohio Department of Agriculture.

Dated: January 7, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-1385 Filed 1-26-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Common Carrier Docket 79-184, FCC 88-15]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs During the 1991-2000 Period

AGENCY: Federal Communications Commission.

ACTION: Proposed rule of particular applicability.

SUMMARY: This Notice of Proposed Rulemaking proposes tentative policies and guidelines for the construction and use of common carrier transmission facilities in the North Atlantic Region during the 1991-2000 planning period.

BEST COPY AVAILABLE

The United States International Service Carriers submitted a single plan, calling for the introduction of a TAT–9 fiber optical cable in 1991, while Comsat submitted three alternative plans which do not contemplate the need for additional cable facilities during the planning period. The Commission tentatively adopted guidelines which conclude, inter alia, that the introduction of a TAT–9 optical fiber cable as early as 1991 will serve the public interest. As currently proposed, the cable would land in the United States, Canada, the United Kingdom, France and Spain. The TAT–9 cable will provide restoration capability for the TAT–8 cable, provide digital connectivity with the Mediterranean region via the MAT–2 and EMOS–1 cables, promote national security interests, enhance media and route diversity, provide further technological innovations and promote intermodal and intramodal competition.

DATES: Comments are due on or before February 16, 1988 and reply comments are due on March 2, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodi Cooper, International Facilities Division, Common Carrier Bureau, (202) 632–3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in Common Carrier Docket 79–184, FCC 88–15, adopted January 14, 1988, and released January 15, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Summary of Notice of Proposed Rulemaking

1. The Commission initiated this proceeding on April 10, 1987, (52 FR 15986; May 1, 1987), with the release of a Fourth Notice of Inquiry (NOI), CC Docket No. 79–184. That NOI stated that the Commission sought to develop policies and guidelines for the construction and use of cable and satellite transmission facilities to meet demands for common carrier service in the North Atlantic Region during the 1991–2000 period. The Commission requested the United States International Service Carriers (USISCs) and Comsat to submit planning data including traffic forecasts, available technological facilities options, service reliability information, cost information and alternative facilities plans which assume use of different facilities and vary the time of introduction of new facilities.

2. The service carriers submitted a single plan which calls for the introduction of a TAT–9 optical fiber cable in 1991, landing in the United States, Canada, the United Kingdom, France and Spain. The TAT–9 cable will employ 1.55 micron laser technology on two transatlantic fiber optic pairs, each operating at a speed of 565 Mb/s and will also utilize wet multiplex technology. The proposed cable will cost approximately $400 million, plus $5 million for land and buildings and $48 million for interest during construction.

3. The service carriers argue the need to implement TAT–9 by October, 1991, on the basis of: (1) Their projections of increased demand in the North Atlantic Region, attributed in particular to anticipated growth of wideband digital services; (2) the need for compatible digital restoration capability for TAT–8; (3) providing digital connectivity with the MAT–2 and EMOS–1 cables, thereby extending the system's configuration into the Mediterranean Region; (4) improving media and route diversity to points served by the TAT–9 cable; and (5) promoting intramodal and intermodal competition between and among cable and satellite entities in the North Atlantic Region.

4. Comsat submitted three alternative plans which do not contemplate the need for additional cable facilities during the planning period. Comsat asserts that the cable and satellite facilities already authorized will be sufficient to carry all projected traffic in the North Atlantic at least into the mid-1990's. The plan differ only in the number of follow-on-satellits that will be launched when the INTELSAT V series reach the end of their useful lives. The number of satellites to be deployed varies from six under Plan 1 to five under Plan 2 and four under Plan 3.

5. In evaluation the alternative plans and relpy comments submitted by the U.S. carriers and Comsat, the Commission applied the following criteria: demand flexibility, cost, service reliability, foreign correspondent acceptance, digital connectively, furtherance of the Commission's pro-competitive policies, satisfaction of defense communications requirements and other relevant factors.

6. After evaluating the planning data submitted, the Commission tentatively concluded that introduction of a TAT–9 cable as early as 1991 would be in the public interest. Although adequate demand flexibility (i.e., the ability of a particular facility or combination of transmission facilities to accommodate unforecasted increases in demand) appears to be provided by existing and planned facilities for a substantial portion of the planning period, the Commision noted that some uncertainty exists as to whether the Department of Defense's (DoD) substantial circuit projections were included in the forecasts submitted by the service carriers. In addition, the service carriers note the importance of the unique capabilities of fiber optic technology in meeting a perceived demand for digital terrestrial services. The Commission invited further comment on DoD's circuit projections and the degree to which planned fiber optic cable facilities will be sufficient to meet the demand for digital terrestrial services.

7. Desite the uncertainty as to demand flexibility, the Commission relied on several other factors which justify introduction of a TAT–9 cable as early as 1991. Specifically, the Commission noted that introduction of the TAT–9 fiber optic cable will: (1) Provide restoration of the TAT–8 optical fiber cable and other facilities while increasing both media and path diversity; (2) provide digital connectively with the MAT–2 and EMOS–1 cable systems, resulting in an integrated digital network between North America and the Mediterranean; (3) promote national security interests by satisfying the operational requirements of the Department of Defense in the Atlantic and Mediterranean Regions; (4) provide further technological innovations, thereby providing users with the widest range of technological alternatives to meet their specific service requirements; and (5) further enhance intermodal and intramodal competition between and among cable and satellite entities. The plan also has the approval of the carriers' foreign correspondents.

8. The Commission reached no tentative conclusion on the specific configuration for the TAT–9 cable, particularly with regard to the question of whether a Portugal landing point should be provided in addition to the other three European landing points. The Commisison noted that there was insufficient information pertaining to INTELSAT follow-on-satellites to reach any tentative conclusion regarding the number, capacity and parameters of such satellites to be deployed. Finally, since the Commission did not reach any conclusions on circuit distribution guidelines, that issue will be resolved in the context of the circuit distribution proceeding in CC Docket No. 87–67.

9. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

10. Accordingly, pursuant to sections 4(i), 4(j), 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. section 154(i), 154(j), 214 and 403 (1976) and section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. section 721(c) (1976), it is ordered that a rulemaking is hereby *instituted* into the above described issues.

11. *It is further ordered* that American Telephone Telegraph Company, the Communications Satellite Corporation, FTC Communication, Inc., ITT World Communications, Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, US Sprint Communications Company and Western Union Telegraph Company are made parties respondent to the rulemaking initiated herein.

12. *It is further ordered*, pursuant to applicable procedures set forth in §§ 1.411, 1.412, 1.415, 1.419 and 1.421 of the Commission's Rules and Regulations, 47 CFR 1.411, 1.412, 1.415, 1.419 and 1.421 (1986), that, all parties shall and other interested persons may file comments on the issues in this proceeding on or before February 16, 1988 and that reply comments will be due on or before March 2, 1988. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching a decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

15. Pursuant to section 650(b) of the Regulatory Flexibility Act (Pub. L. 96–354), *it is certified*, That Sections 603 and 604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances thereof or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. section 601(2).

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–1208 Filed 1–26–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Agreement No: 224–200083.

Title: Orange County Navigation and Port District Terminal Agreement.

Parties:

Orange County Navigation and Port District.

Ryan-Walsh Gulf, Inc.

Synopsis: The proposed agreement provides that Ryan-Walsh Gulf, Inc. will provide freight handling services at the Port of Orange.

Agreement No: 244–200084.

Title: City of Los Angeles Settlement Agreement.

Parties:

City of Los Angeles (City).

Crowley Maritime Corporation.

Synopsis: The proposed settlement agrement provides that payment of the specified settlement amount releases Delta Steamship Company and Crowely Maritime Corporation from any claims by the City resulting from damages to the premises occupied by Delta at Berths 153–155 in the Port of Los Angeles pursuant to preferential Berth Assignment No. 77–10.

By Order of the Federal Martime Commission.

Dated: Jnsuary 21, 1988.

Joseph C. Polking,

Secretory.

[FR Doc. 88–1558 Filed 1–26–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008650–014.

Title: Calcutta, East Coast of Indian and Bangladesh/U.S.A. Conference.

Parties:

Bangladesh Shipping Corporation
The Scindia Steam Navigation Co., Ltd.
The Shipping Corporation of India, Ltd.
Waterman Isthmian Line

Synopsis: The proposed amendment would increase the conference admittance fee from $5,000 to $25,000.

Agreement No.: 202–010637–028.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the conference, whether by exercise of independent action or otherwise. The amendment will not be implemented until September 1, 1988. An earlier filing by the parties to effect this action was withdrawn.

Agreement No.: 202–010636–031.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the conference, whether by exercise of independent action or otherwise. The amendment will not be implemented until September 1, 1988. An earlier filing by the parties to effect this action was withdrawn.

Agreements No.: (1) 202–010270–026; (2) 202–010656–026.

Titles: (1) Gulf-European Freight Association; (2) North Europe-U.S. Gulf Freight Association.

Parties (1) and (2):

Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Co., Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, In.
Hapag-Lloyd AG
P&O Containers (TFL) Limited
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendments would permit the parties to use loyalty contracts in conformity with U.S. antitrust laws and would provide that no member may use such a contract except as agreed by the associations, whether by exercise of independent action or otherwise. The amendments will not be implemented until the parties give their unanimous consent and the agreements are further revised to reflect their actions. Previous filings by the parties to effect this action were withdrawn.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 22, 1988.

[FR Doc. 88–1623 Filed 1–26–88; 8:45 am]

BILLING CODE 6730–01–M

[Fact Finding Investigation No. 17]

Rates, Charges and Services Provided at Marine Terminal Facilities

The hearing scheduled for 9:00 a.m., February 9, 1988 in this proceeding will take place in the multimedia room at the Naval Reserve Readiness Center, 1902 Old Spanish Trail, Houston, Texas. The format for this hearing and the issues to be addressed are the same as previously announced.

A local point of contact for those desiring to participate in the Houston hearing is FMC District Director, Mr. Donald Butler at (713) 229–2841.

Thomas F. Moakley,

Commissioner.

January 21, 1988.

[FR Doc. 88–1624 Filed 1–26–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1832(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 18, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNB Bancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Potomac Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire Goodwine State Bank, Potomac, Illinois.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Sahara Bancorp, Inc., New Brighton, Minnesota, and thereby indirectly acquire First State Bank of New Brighton, New Brighton, Minnesota.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire 100 percent of the voting shares of The Bank of Elizabethtown, Inc., Elizabethtown, Kentucky.

2. *Union Planters Corporation*, Memphis, Tennessee; to acquire at least 90 percent of the voting shares of CBC Bancorp, Inc., Cookeville, Tennessee, and thereby indirectly acquire Citizens Bank, Cookeville, Tennessee.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Fairbury Corporation*, Fairbury, Nebraska; to acquire 100 percent of the voting shares of DeWitt State Bank, DeWitt, Nebraska, which engages in the sale of general insurance in a town of less than 5,000.

Board of Governors of the Federal Reserve System, January 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1597 Filed 1–26–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Claudine Williams*, Las Vegas, Nevada; to acquire 15.91 percent of the voting shares of American Bancorp of Nevada, Las Vegas, Nevada, and thereby indirectly acquire American Bank of Commerce, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 21, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1598 Filed 1–26–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on December 31, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: January 19, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1564 Filed 1–26–88; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Microbiology Devices Panel

Date, time, and place. February 8, 1988, 9 a.m., Hubert H. Humphrey Bldg., Rm. 503A–529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will have a general discussion of Over-the-Counter (OTC) Group A Streptococci detection devices. The second item is a discussion of a premarket approval (PMA) for hepatitis B anti-core. The third item is a discussion of a PMA for rapid fluorogenic MIC antimicrobial susceptibility panels.

Obstetrics-Gynecology Devices Panel

Date, time, and place. February 24, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 12, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time required to make their comments.

Open committee discussion. The Panel will discuss a PMA for a contraceptive cervical cap and provide FDA with its recommendation.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 25 and 26, 1988, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 25, 1988, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; February 26, 1988, 9 a.m. to 12 m.; John R. Short, Center for Drug Evaluation and Research (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contract person.

Open committee discussion. The committee will discuss: (1) The approvability of Eulexin (flutamide) as an adjuvant treatment of metastatic prostate on February 25, 1988, and (2) the approvability of Transdermal Therapeutic System (testosterone) for treatment of hypogonadism on February 26, 1988.

Dental Devices Panel

Date, time, and place. February 26, 1988, 9 a.m., Hubert H. Humphrey Bldg., Rm. 703–727A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. open committee discussion, 10 a.m. to 4 p.m.; to 10 a.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may persent data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss an enzyme test kit designed to measure neutral proteolytic enzyme activity in gingival fuild, and thus aid in the diagnosis of periodontal disease.

Hematology and Pathology Devices Panel

Date, time, and place. February 29, 1988, 12 m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will take the form of a telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 12 m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 2 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440) Food and Drug Administration, 8757 Georgia Ave., Sliver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 15, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss one petition for reclassification of automated heparin analyzers.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearings, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory ccommittee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 21, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1633 Filed 1–26–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–274–CN]

Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final notice.

SUMMARY: This document corrects technical errors that appeared in the final notice that was published in the **Federal Register** on April 21, 1987 (52 FR 13176) on additions and revisions to the current list of surgical procedures for ambulatory surgical centers (ASCs).

FOR FURTHER INFORMATION, CONTACT: Jacqueline M. Greene, (301)–597–2989.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 87–8930, beginning on page 13176 in the issue of April 21, 1987, make the following corrections:

1. The following code is deleted from the list of additions to the covered ASC services. The code was listed twice and is correctly listed as an excluded procedure in section IV. B of the notice (52 FR 13176):

Page No.	Code	Payment group	Description
13196	31526	2	Respiratory System, Larynx, Endoscopy, Laryngoscopy direct; with dilatation, initial

2. The following procedures were inadvertently omitted from the **Federal Register** notice, but are currently being paid for by Medicare. The codes are inserted, in code number order, in the list of additions to covered ASC services. All codes except 40652 appear in the most recent Medicare Carriers Manual instruction.

Page No	Code	Payment Group	Description
13194	28222	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, flexor, multiple (through same incision)
13194	28225	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, extensor, single
13194	28226	3	Musculoskeletal System, Foot, Repair, Revision, or Reconstruction, Tenolysis, extensor, multiple (through same incision)
13197	40652	3	Digestive System, Lips, Repair (Cheiloplasty), Repair lip, full thickness, up to half vertical height
13197	41000	1	Digestive System, Tongue, Floor of Mouth, Incision, intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; lingual
13197	41005	1	Digestive System, Tongue, Floor of Mouth, Incision, intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial
13197	42000	1	Digestive System, Palate, Uvula, Incision, Drainage of abscess of palate, uvula

3. On page 13193, the first column, revise code "2227552" to read "27552".

4. On page 13193, the first column, revise code "27666" to read "27566".

5. On page 13199, the first column, code 49303, revise the payment group to read "4".

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 20, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88–1619 Filed 1–26–88; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, March 3–4, 1988, National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 4, 1988 from 10:00 a.m. to approximately 12:30 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meetings will be closed to the public on March 3, 1988 from approximately 1:00–5:30 p.m. and March 4, 1988, from 8:00 a.m. until approximately 10:00 for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland

20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Authur D. Schaerdel, Executive Secretary of the Animal Resources Review committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, Natinal Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1574 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Board of Scientific Counselors, Division of Etiology; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on February 25–26, 1988. On February 25 the meeting will be held in Building 31, C Wing, Conference Room 10 and on February 26 the meeting will be held in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on February 25 and from 9 a.m. to adjournment on February 26 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on February 25 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institue, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–8927) will furnish substantive program information.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1575–Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute, Cancer Clinical Investigation Review Committee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, March 28–29, 1988, at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on March 28 from 8:30 a.m. to 9 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigation Review Committee. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 28 from approximately 9 a.m. until recess and on March 29 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications and cooperative agreements. These grant applications and cooperative agreements and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7481) will provide substantive program information upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1576–Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, Linden Hill Hotel & Racquet Club, Forest Hill Conference Room, 5400 Pooks Hills Road, Bethesda, Maryland 20814.

This meeting will be open to the public on February 5 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 5, 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7575) will provide substantive program information, upon request.

Dated: January 19, 1988.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 88–1579 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, on February 17–19, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on February 17 from 8 p.m. to 8:30 p.m., to review administrative details and other cancer control review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 17 from approximately 8:30 p.m. to recess; on February 18 from 8 a.m. to recess; and again on February 19 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Street, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496–2378) will furnish substantive program information.

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1578 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Review Committees; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1988.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6CO8, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 6CO8, Landow Building, Telephone: 301, 496–1485.

Date of Meeting: March 8–9, 1988.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open: March 8, 1988, 9:00 a.m.–10:00 a.m.

Closed:

March 8, 1988, 10:00 a.m.–5:00 p.m.

March 9, 1988, 9:00 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 6CO8, Landow Building, Telephone: 301, 496–1696.

Date of Meeting: March 9–11, 1988.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

Open: March 8, 1988, 9:00 a.m.–10:00 a.m.

Closed:

March 9, 1988, 10:00 a.m.–5:00 p.m.

March 10, 1988, 9:00 a.m.–5:00 p.m.

March 11, 1988, 9:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1580 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institute of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 9–11, 1988.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 9, 8:30–9:00 a.m.

Closed: March 9, 9:00 a.m. to recess March 10–11, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B

Executive Secretary: Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 15–16, 1988.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: March 15, 8:30 to 9:00 a.m.

Closed: March 15, 9:00 a.m. to recess. March 16, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C.

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 18, 1988.

Place of Meeting: Omni Hotel, 101 W. Fayette Street, Baltimore, Maryland 21201.

Open: March 18, 8:30–9:00 a.m.

Closed: March 18, 9:00 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1585 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 10 and 11, 1988, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 10 from 8:30 a.m. to 12 noon and again on February 11 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisons set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the subcommittee and full Council meetings will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 10 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 11 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 88–1581 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 24–25, 1988, at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. This meeting will be open to the public on February 24 from 7:30 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 24 from 8:30 p.m. to adjournment and February 25 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patenable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of pesonal privacy.

Ms. Edith Wnykoop, Committee Management, Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–1584 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Publ. L. 92–463, notice is hereby given of a meeting of Subcommittee C of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 22–23, 1988, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on February 22 from 7:30 p.m. to 8:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 22 from 8:30 p.m. to adjournment and February 23 from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–1583 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 16, 1988, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on February 16 from 1:30 p.m. to 2:30 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 16 from 2:30 p.m. to adjournment for the review, discussion and evaluation of individual grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

Dated: January 19, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–1582 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 9–10, 1988, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 8 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 9 will be open to the public from 8:30 to 11:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 9 from 11:30 a.m. to 5 p.m., and on March 10, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 8 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: January 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1586 Filed 1–26–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Compliance With Section 5 of Pub. L. 100–95, the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987

January 22, 1988.

AGENCY: Eastern Area Office, Bureau of Indian Affairs, Interior.

ACTION: Notice of compliance of Section 5 of Pub. L. 100–95.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior of the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Section 5 of the Act states that no action shall be taken by the Secretary regarding the purchase and transfer of settlement lands until:

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(a) the Town of Gay Head, Massachusetts, is authorized to convey to the Secretary to be held in trust for the Wampanoag Tribal Council of Gay Head Inc., the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement; and

(b) the Wampanoag Tribal Council of Gay Head, Inc., shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbows to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement.

(2) the Wampanoag Tribal Council of Gay Head, Inc., has submitted to the Secretary and executed waiver or waivers of the claims covered by the Settlement Agreement all claims extinguished by this Act, and all claims arising because of the approval of transfers and extinguishment of titles and claims under this Act, and

(3) the Town of Gay Head, Massachusetts, has authorized the conveyance of the public settlement lands and the Cook Lands to the Secretary in trust for the Wampanoag Tribal Council of Gay Head, Inc.

Notice is hereby given that the Secretary of the Interior has determined that the requirements of section 5 of Pub. L. 100–95, an Act "To settle Indian land claims in the Town of Gay Head, Massachusetts, and for other purposes" have been met.

FOR FURTHER INFORMATION CONTACT: B.D. Ott, Area Director, Eastern Area Office, BIA–EAO–MS–711 Broyhill, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number: (703) 235–2571.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–1604 Filed 1–26–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[INT DES–88–2, AZ–020–4410–08]

Phoenix Draft Resource Management Plan, Environmental Impact Statement, Phoenix District, AZ; Availability and Public Hearings

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Draft Resource Management Plan/ Environmental Impact Statement and public hearings.

SUMMARY: Notice is hereby given of the availability of the draft Phoenix Resource Management Plan/ Environmental Impact Statement (RMP/ EIS). The draft RMP/EIS addresses land use on 911,000 acres of public land in eight Arizona counties. These Arizona counties include Apache, Navajo, Yavapai, Maricopa, Pima, Pinal, Gila and Santa Cruz.

SUPPLEMENTARY INFORMATION: The issues addressed in the RMP/EIS are: land tenure adjustment, utility corridors and communication sites, areas of critical environmental concern (ACECs), off-road vehicle designations, recreation management and land classifications.

The RMP/EIS identifies and analyzes four alternative management strategies for the planning area's 911,000 acres of public land and 2.1 million acres of federal subsurface estate.

Under the preferred alternative, the BLM would establish seven resource conservation areas (RCAs) where 450,000 acres of public land would be retained and intensively managed and 470,000 acres of state and private land would be considered for acquisition. Also under this alternative, 380,000 acres would be made available for disposal through exchange and 45,000 acres for disposal through exchange or sale.

The preferred alternative also identifies seven utility corridors and five communication sites. The corridors represent the BLM's preferred utility corridor routings across the planning area's public land.

The preferred alternative identifies six areas of critical environmental concern (ACECs) encompassing 9,970 acres. An additional ACEC encompassing 9,400 acres is recommended and would be designated upon the BLM's acquisition of state land within the ACEC boundaries.

The proposed ACEC's and resource use limitations are:

(1) Baboquiviari Peak, 2,070 federal acres—close to motorized vehicles, initiate a mineral withdrawal, prohibit land use authorizations and surface occupancy for oil and gas lease development.

(2) Waterman Mountains, 1,960 federal acres—limit motorized vehicles to existing roads and trails, limit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(3) White Canyon, 1,920 federal acres—close White and Walnut canyons to motorized vehicles, prohibit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(4) Larry Canyon, 80 federal acres—close to motorized vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit domestic livestock grazing, prohibit surface occupancy for oil and gas lease development.

(5) Tanner Wash, 640 federal acres—close 30 acres to motorized vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(6) Appleton-Whittell, 2,341 federal acres—close to motorized vehicles and land use authorizations, prohibit surface occupancy for oil and gas lease development.

(7) Perry Mesa, 960 federal acres—designate as an ACEC upon the acquisition of 8,480 state acres, limit motorized vehicle to existing roads and trails.

The preferred alternative recommends the closure of 11,760 acres to vehicular travel. On the planning area's remaining public land, vehicular travel would be limited to existing roads and trails.

The preferred alternative provides a framework for managing the area's recreation resources through the designation of two special recreation management areas, five cooperative recreation management areas and five recreation and public purpose areas. In addition, establishing seven resource conservation areas would provide extensive open space recreation opportunities throughout the planning area.

The planning area is currently encumbered by five multiple use classifications. Under the preferred alternative, these classifications would be terminated.

The RMP/EIS considers three other alternatives in addition to Alternative B, the preferred alternative. These are: (1) Alternative A, No Action, in which the BLM would maintain all public land in its current status with no change in management, (2) Alternative C, which calls for the establishment of six resource conservation areas which are boundary adjustments to those identified in the preferred alternative and (3) Alternative D, which calls for the total disposal through exchange or sale of all public land.

DATES AND ADDRESSES: The public is invited to comment on the draft RMP/ EIS. The public comment period will end Friday, April 29, 1988. Written comments should be mailed to the Bureau of Land Management, Arthur E. Tower, Phoenix Resources Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Comments must be postmarked by April 29, 1988 to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral comments on the draft RMP/EIS. They will be held at Tucson, Arizona on February 23, 1988 at 7:00 p.m. at the Tucson Convention Center, Coconino Room, 260 South Church Avenue, and in Phoenix, Arizona on February 25, 1988 at 7:00 p.m. at the Embassy Suites Hotel, Lavista Room, 3210 Northwest Grand Avenue.

FOR FURTHER INFORMATION CONTACT: Tim Sanders, team leader, or Don Ducote, assistant team leader, Bureau of Land Management, Phoenix Resource Area, telephone commercial (602) 863–4464, FTS 764–0501.

Filed with Environmental Protection Agency January 22, 1988.

Herman Kast,

Associate District Manager.

Date: January 21, 1988.

[FR Doc. 88–1603 Filed 1–26–88; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Alaska Land Bank Agreements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service executed agreements to include 98 percent of the land conveyance entitlement for Alaska Peninsula Corporation and 100 percent of the land conveyance entitlements for Bay View, Incorporated, Becharof Corporation, and Manokotak Natives, Limited, in the Alaska Land Bank Program during 1987. This notice is issued pursuant to section 907 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, Stat. 2371.

FOR FURTHER INFORMATION CONTACT: William H. Mattice, Deputy, Division of Realty, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907) 786–3379.

Date: January 19, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88–1636 Filed 1–26–88; 8:45 am]

BILLING CODE 4310–AN–M

Preparation of an Environmental Assessment on a Proposed Experimental Release and Recapture of Andean Condors (Vultur gryphus) in Ventura County, CA; Research Proposal and Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to release 16 to 20 female captive-born Andean condors (3 to 9 months of age) within the recent historical range of the California condor (*Gymnogyps californianus*) in Ventura County, California. After 2 to 3 years, the birds would be recaptured. One proposed release site is within the Service's Hopper Mountain National Wildlife Refuge; a second proposed release site is within the Sespe Condor Sanctuary, Los Padres National Forest. The Service intends to prepare an Environmental Assessment (EA).

It is anticipated that the document will be a joint Federal EA/State of California Environmental Impact Report with the U.S. Forest Service serving as a Federal Cooperating Agency. This notice describes the proposed action, tentative issues, concerns, and opportunities, and outlines the scoping process that will be employed in preparing the EA. This notice also identifies the Service officials to whom questions and comments concerning the proposed action and the EA may be directed.

DATES: A public scoping meeting will be held at the following location on the date and time indicated: Fillmore High School Cafeteria, 555 Central Avenue, Fillmore, California; Thursday, February 25, 1988, at 7:30 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, Ventura Field Office, 2291–A Portola Road, Ventura, California 93003, and U.S. Fish and Wildlife Service, Regional Office, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Joseph J. Dowhan at the Ventura Field Office regarding the proposed experimental release; telephone 805/ 644–1766 or FTS 983–6039. Written comments related to the EA should be transmitted to Jackie Campbell in the Regional Office; telephone 503/231–6150 or FTS 429–6150. Persons desiring to participate in the facilitated scoping meeting should contact the Field Office as soon as possible. Interested persons are encouraged to attend the meeting to identify and discuss major issues, concerns, and opportunities that should be addressed in the EA. Written comments may also be submitted. The end of the public comment period will be March 11, 1988. Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than debate, the significant issues related to the proposed action. Additional public meetings will be held, if warranted, on later dates in order to provide opportunities to comment on the draft EA.

SUPPLEMENTARY INFORMATION:

Background

Andean condors (captive-bred in United States zoos and research facilities) have for many years served as an important research surrogate species for captive and field studies of the California condor, including radio-telemetry, trapping methods, and various husbandry techniques. In view of the fact that captive-born Andean condors have also been used in experimental release projects in South America, it is proposed that they would also be an ideal surrogate on which to test both potential sites of future California condor releases as well as release techniques. The use of captive-born Andean condors would be instrumental in assessing mortality and other risks associated with proposed release sites and in determining the most effective techniques for releasing birds to the wild. Moreover, the hands-on experience gained by biologists involved in Andean condor releases would be extremely valuable in later releases of California condor and would, in turn, serve to minimize losses of the already severely depleted California condor population.

These purposes are consistent with and directly support the principal recovery objective of releasing captive California condors to the wild at the earliest biologically feasible time and reestablishing one or more free-flying, self-maintaining wild populations of California condors within the species' recent historical range.

The implementation of the research proposal would involve the construction of 2 elevated release/hacking platforms and from 8 to 10 feeding platforms. The young Andean condors would feed on carcasses provided by the research team. Their activities would be monitored through obervations and radio-telemetry. Research personnel would be on-site, 24 hours a day, for the entire duration of the project. A greater flexibility of recapture techniques would be available to the team than was used in the capture of the California condors.

A tentative list of issues and concerns that will be addressed in the EA is as follows:

1. potential effect of the release of an exotic species on the natural ecosystem;
2. potential effect of the release of Andean condors on native species, especially federally- or State-listed birds.
3. effectiveness of recapture methodology; and
4. need for surveys to assure no adverse effect to cultural resources from proposed minor surface disturbance.

Dated: January 21, 1988.

Holf L. Wallenstrom,

Regional Director.

[FR Doc. 88–1605 Filed 1–26–88; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–268]

Certain High Intensity Retroreflective Sheeting

Notice is hereby given that the prehearing conference in this matter is presently scheduled to commence at 9:30 a.m. on February 1, 1988, in Hearing Room A Room 100 at the new International Trade Commission Building at 500 E Street SW., Washington, DC, and the hearing will commence immediately thereafter. This date is subject to change through order of the administrative law judge; non-parties wishing to attend should contact Mr. McKie at 202–252–1701 as to whether there have been any changes made in this schedule by the judge.

The Secretary shall publish this notice in the **Federal Register**.

Paul J. Luckern,

Administrative Law Judge.

Issued: January 20, 1988.

[FR Doc. 88–1667 Filed 1–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-256]

Certain Recloseable Plastic Bags and Tubing; Commission Determination Not To Review Initial Determination Finding Respondents in Default

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding three respondents in default.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondents C.A.G. Enterprise Pte. Ltd. (C.A.G.), Lim Tai Chin Pahathet Co. Ltd. (Lim Tai), and Rol-Pak Sdn Bhd (Rol-Pak) in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1102.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 19, 1987, the ALJ ordered (Order No. 46) respondents C.A.G., Lim Tai, and Rol-Pak to show cause why each should not be held in default. No responses were received.

On December 9, 1987, the ALJ issued an ID (Order No. 56) finding respondents C.A.G., Rol-Pak, and Lim Tai in default pursuant to Commission rule 210.25 (19 CFR 210.25). No petitions for review of the ID were received nor were any Government agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1802. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 14, 1988.

[FR Doc. 88–1668 Filed 1–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-278]

Certain Plastic Light Duty Screw Anchors; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on December 11, 1987, under section 337 of the Tariff Act of 1930, (19 U.S.C. 1337), on behalf of Mechanical Plastics Corp., Castleton Street, Pleasantville, New York 10570. The complaint was supplemented on December 28, 1987, and December 29, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain plastic light duty screw anchors, and in their sale, by reason of alleged (1) direct and induced infringement of claim 1 of U.S. Letters Patent 3,651,734, (2) infringement of U.S. Registered Trademark No. 928,123, (3) infringement of U.S. Registered Trademark No. 1,248,999, (4) palming off, and (5) false designation of origin. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, and temporary cease and desist orders. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation

Having considered the supplemented complaint, the U.S. International Trade Commission, on January 6, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain plastic light duty screw anchors, or in their sale, by reason of alleged (1) direct or induced infringement of claim 1 of U.S. Letters Patent 3,651,734, (2) infringement of U.S. Registered Trademark No. 928,123, (3) infringement of U.S. Registered Trademark No. 1,248,999, (4) palming off, or (5) false designation of origin, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed with the complaint, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Mechanical Plastics Corp., Castleton Street Pleasantville, New York 10570.

(b) The respondents are the following individual and companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Saul Rubinstein, 21 Sparks Street, Melville, New York 11747;

HWally Products Corp., Ltd., P.O. Box 1743, Kaohsuing, Taiwan

Taiwan Hawk Industrial, Ltd., P.O. Box 3514, Taipei, Taiwan

Linkwell Industry Co., Ltd., P.O. Box 58743, Taipei, Taiwan

(c) T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 210.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint.

Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 12, 1988.

Note.—Effective January 10, 1988, the Office of the Secretary of the U.S. International Trade Commission will be located at 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802 and the Commission's TDD terminal will be 202–252–1810.

[FR Doc. 88–1669 Filed 1–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-277]

Certain Marine Automatic Pilots; Notice of Change of The Commission Investigate Attorney

Before John J. Mathias, Administrative Law Judge.

Notice is hereby given that, as of this date, David A. Guth, Esq., of the Office of Unfair Import Investigations will be the Commission Investigative Attorney in the above-cited investigation instead of Ralph A. Mittelberger, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted, Arthur Wineburg,

Director, Office of Unfair Import Investigations, 500 E Street SW., Washington, DC 20436.

Dated: January 11, 1988.

[FR Doc. 88–1670 Filed 1–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-271]

Certain Buoyant Metallic Balloons; Commission Decision Not To Review Initial Determination Granting Complainants' Motion To Terminate the Investigation With Prejudice

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination granting complainants' motion to terminate the above-captioned investigation with prejudice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 13) granting a motion of complaints Continental American Corporation and Gerald L. Hurst to terminate the investigation with prejudice.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1088.

SUPPLEMENTARY INFORMATION: On June 26, 1987, Continental American Corporation and Gerald L. Hurst filed a complaint with the Commission pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts in the importation and sale of certain buoyant metallic balloons. The Commission issued a notice of investigation on July 28, 1987, naming as respondents Pacific Balloon Manufacturing Co., Bernhardt-Case, Inc., and You Chang Balloon Manufacturing Co. Subsequently, CTI Industries Corporation was permitted to intervene as a fully participating respondent.

On December 1, 1987, complainants filed a motion to terminate the investigation with prejudice. All parties supported the motion. The ALJ issued his ID granting the motion on December 10, 1987. No petitions for review nor comments from other government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1802.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 12, 1988.

[FR Doc. 88–1671 Filed 1–26–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-280]

Certain High Geometric Surface Area Catalysts and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 24, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of United Catalysts Inc., 1800 Meidinger Tower, Louisville, Kentucky 40202. A supplement and amended and supplemental exhibits were filed on January 12 and January 13, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain high geometric surface area catalysts and components thereof, and in their sale, by reason of alleged direct, contributory, and induced infringement of claims 1, 3, 4, and 6 of U.S. Letters Patent Re. 32,044. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 21, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain high geometric surface area catalysts and components thereof, or in their sale, by reason of alleged direct, contributory, or induced infringement of claims 1, 3, 4, or 6 of U.S. Letters Patent Re. 32,044, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—United Catalysts Inc., 1600 Meidinger Tower, Louisville, Kentucky 40202.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Haldor Topsoe Inc., P.O. Box 58767, 17629 El Camino Road, Suite 302, Houston, Texas 77058

Haldor Topsoe, A/S., P.O. Box 213, Nymollerej 55, DK 2800 Lyngby, Copenhagen, Denmark

(c) Cheri M. Taylor, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Room 401J, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 21, 1988.

[FR Doc. 88–1672 Filed 1–26–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31179]

The Benton Central Railroad Co.; Acquisition and Operation Exemption; Demeter, Inc.

The Benton Central Railroad Company (BCR), has filed a notice of exemption to acquire by purchase and operate 7.24 miles of rail line owned as industrial siding by Demeter, Inc., a regional grain company.[1] The property extends from milepost 192.44 at Templeton, IN, to mileport 199.68, at Swanington, IN.[2] The transaction is expected to be consummated January 19, 1988.

Any comments must be filed with the Commission and served on Carl M. Miller, Miller & Miller, P.O. Box 248, 407 Broadway, New Haven, IN 46774–0248.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1480 Filed 1–26–88; 8:45 am]

BILLING CODE 7035-01-M

[1] 49 U.S.C. 10907 exempts from Commission authority under 49 U.S.C. 10901 the acquisition of industrial track. Consequently, this notice of exemption will only be considered as pertaining to operation of the subject track as a line of railroad.

[2] Consolidated Rail Corporation holds an operating easement over the northernmost .18 mile line of track.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Youngstown Thermal Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Youngstown Thermal Corp.*, Civil Action No. C83–808–Y was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged that Youngstown Thermal Corp. ("Youngstown Thermal") has violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Ohio State Implementation Plan ("SIP") regulating the particulate context and opacity of emissions to the ambient air.

The proposed Decree establishes deadlines for installing air pollution control equipment and for achieving compliance with Ohio Administrative Code Rules 3745–17–07 and 3745–17–10 (part of the Ohio particulate SIP) by reducing the particulate content and the opacity of emissions from defendant's facility. The proposed Decree also includes a requirement for annual testing of particulate emissions from defendant's facility as well as a requirement for installation and operation of continuous opacity monitors. Particulate test results and opacity monitoring data are required to be submitted to the United States Environmental Protection Agency.

The proposed Decree provides that defendant's future coal procurement contracts must include specified limits on the permissible ash and fines content of the coal supplied to defendant. Further, the proposed Decree requires defendant to obtain a weekly coal analysis indicating the percent ash, ash fusion temperature, heating value, percent moisture and percent sulfur of the coal used by defendant.

In addition, the proposed Consent Decree requires defendant to pay a civil penalty of $110,000.

The proposed Consent Decree may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–1618 Filed 1–26–88; 10:38 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importation of Controlled Substances Registration; Arenol Chemical Corp.

By notice dated July 22, 1987, and published in the **Federal Register** on July 28, 1987; (52 FR 28201), Arenol Chemical Corporation of New Jersey, a New Application, 40–33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regualtions, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 19, 1988.

[FR Doc. 88–1593 Filed 1–26–88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Du Pont Pharmaceuticals

By notice dated September 16, 1987, and published in the **Federal Register** on September 24, 1987; (52 FR 35973), Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 20, 1988.

[FR Doc. 88–1584 Filed 1–26–88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Norac Company, Inc.

By notice dated August 3, 1987, and published in the **Federal Register** on August 7, 1987; (52 FR 29450), Norac Company, Inc., 405 South Motor Avenue, P.O. Box F, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as an importer of ibogaine (7260), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated January 19, 1988.

[FR Doc. 88–1595–Filed 1–26–88; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Philadelphia Seed Co.

By Notice dated June 22, 1987, and published in the **Federal Register** on June 30, 1987, (52 FR 24353), Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 19, 1988.

[FR Doc. 88–1596–Filed 1–26–88; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

January 13, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 11–12, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on February 11–12, 1988, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of

a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on February 11, 1988, will be as follows:

Committee Meetings

8:30–9:30 a.m.—Coffee for Council Members—Room 526 (Open to the Public)
9:30–10:30 a.m.—Committee Meetings—Policy Discussion
Education Programs—Room M–14
Fellowship Programs—Room 315
General Programs—Room 415
Research Programs—Room 316–2
State Programs—Room M–07 East
10:30 a.m. until Adjourned—(Closed to the Public for the reasons stated above) Consideration of specific applications
(Open to the Public) Policy Discussion
2:00 p.m. until Adjourned—Jefferson Lecture—Room 430, (Closed to the Public)—Discussion of Jefferson Lecture Nominees.

The morning session on February 12, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows: (Coffee for Staff and Council members attending the meeting will be served from 8:30–9:00 a.m.)
Minutes of the Previous Meeting
Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Application Report and Matching Report
E. Status of Fiscal Year 1988 Funds
F. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Research Programs
4. General Programs
5. State Programs
6. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 88–1604 Filed 1–26–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Change in Toll Free Telephone Recording for the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of change in toll free telephone recording for NRC's high-level waste (HLW) program.

SUMMARY: On June 28, 1984, the Nuclear Regulatory Commission (NRC) published a **Federal Register** Notice (49 FR 26655) regarding the establishment of a toll free telephone recording for the announcement of upcoming technical meetings between NRC and the Department of Energy related to the HLW program.

This recording has been expanded to include the announcement of upcoming NRC data reviews to DOE facilities and upcoming Commission meetings and Advisory Committee on Reactor Safeguards (ACRS) meetings in which topics concerning the high-level waste program will be discussed.

Effective January 11, 1988, the Division of High-Level Waste Management relocated to the agency's new office building located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, which effected a new telephone number for the toll free recording. This number is now 1/800/368–5642, Ext. 20436, or 492–0436 for Washington, DC area callers. The agency's mailing address remains unchanged.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Tana, Division of High-Level Waste Management, Nuclear Regulatory Commission, Washington, DC 20555, Telephone 1/800–368–5642, Ext. 20438, or 492–0438 for Washington, DC area callers.

Dated at Rockville, Maryland, this 21st day of January 1988.

For the Nuclear Regulatory Commission.

B. J. Youngblood,
Chief, Operations Branch, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 88–1629 Filed 1–26–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power & Light Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, System Energy Resources, Inc., and South Mississippi Electric Power Association, for operation of the Grand Gulf Nuclear Station, Unit 1, (GGNS or the facility) located in Claiborne County, Mississippi.

Systems Energy Resources, Inc. (SERI or the licensee), requested a license amendment by letter dated December 16, 1987. The proposed license amendment would delete a condition in the facility operating license (OL) and revise provisions in the Technical Specifications (TS) related to the qualifications and training of operating personnel for the facility. These changes are intended to implement an amendment to 10 CFR Part 55, "Operators' Licenses," which became effective May 26, 1987. The specific proposed changes are described as follows:

1. OL Condition 2.C.(30) states, "Permanent training center instructors and consultants assigned to training who, after initial criticality will teach systems, integrated repsonses, transients, and simulator courses to license candidates or NRC-licensed personnel, shall either demonstrate or have previously demonstrated their competence to the NRC staff by successful completion of a senior operator examination prior to teaching licensed operators."

SERI proposes to delete this condition, since the Grand Gulf Nuclear Station (GGNS) Operators Training Program is now accredited by the Institute of Nuclear Power Operations (INPO).

2. TS 6.3 states, "Each member of the unit staff shall meet or exceed the minimum qualifications of ANSI N18.1–1971 for comparable positions and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees. * * *."

SERI proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees" from the above TS, since 10 CFR Part 55, as amended, supersedes the March 28, 1980 NRC

letter. The reference to the footnote (*) would be retained.

3. TS 6.4 states, "A retraining and replacement training program for the unit staff * * * shall meet or exceed the requirements and recommendations of Section 5.5 of ANSI N18.1–1971 and Appendix "A" of 10 CFR Part 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees, * * *."

SERI proposes to delete the reference to "Appoendix A" since the revision to 10 CFR Part 55 deleted this appendix. SERI also proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter* to all licensees" since 10 CFR Part 55, as amended, supersedes the March 28, 1980 NRC letter. The reference to the footnote (*) would be retained.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Leiberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 21st day of January 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,
Project Manager, Project Directorate II–1, Division of Reactor Projects I/II.
[FR Doc. 88–1630 Filed 1–26–88; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The amendment would permit an extension of the due date for surveillance testing to demonstrate the operability of the required independent circuits between the offsite transmission network and the onsite Class 1E distribution system by automatically and manually transferring the unit power supply to each of the 345 KV transmission lines. This surveillance is required by Technical Specification (TS) Section 4.8.1.1.1.b at least once each 18 months during unit shutdown. The

amendment would extend the due date to April 1, 1988, from March 11, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have evaluated the proposed change against the above criteria as required by 10 CFR 50.91(a). We have reviewed the licensees' evaluation, and agree with it. The licensees concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the manual and automatic transfer capability will still be available, and deferral of the surveillance test has no impact on the probability of a loss of offsite power, load rejection, or station blackout. Also, adequate power sources known to be operable such as the diesel generators are available.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because proper operation of the 13.8 KV transfer bus is still assured, and all failure modes are the same as previously analyzed. No changes to the physical arrangement or operational limits are involved.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because all the assumptions used for the accident analyses in the Updated Safety Analysis Report remain unchanged, and the consequences of a malfunction of the 13.8 KV bus transfer remain within the bounds previously analyzed.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 26, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes of intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up of fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating a shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secertary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (In Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth Perkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory, Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 21st day of January, 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager Project Directorate III–I, Division of Reactor Projects-III, IV, V & Special Projects.

[FR Doc. 88–1631 Filed 1–26–88; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 4, 1988 through January 14, 1988. The last biweekly notice was published on January 13, 1988 (53 FR 817).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 26, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

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the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: December 4, 1987

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.5.1, "Safety Injection Tanks," and its associated Bases by (1) changing the lower limit boron concentration from 2000 to 2300 ppm, (2) revising the time for performing additional surveillances of boron concentration from "within 6 hours after each solution level increase of greater than or equal to 7 percent of tank narrow range level" to "whenever the tank is drained to maintain the contained borated water level within the limits of Specification 3.5.1.b, and (3) changing the RCS pressure level above which surveillances are performed on the isolation valve operator from 700 psig to 430 psia so as to be consistent with the footnote in Specification 3/4.5.1. These changes would make Specification 3/4.5.1 for Palo Verde, Unit 1 consistent with Specification 3/4.5.1, previously approved by the staff for Palo Verde, Units 2 and 3, which are of the same design as Palo Verde, Unit 1.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed changes, as they relate to these standards is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The only accident that could be affected by the proposed changes is the loss-of-coolant accident (LOCA). The combination of the first two proposed changes (i.e., increase to 2300 ppm for the lower limit boron concentration and the time for performing additional surveillances of the boron concentration) would assure that the boron concentration does not decrease below 2000 ppm (value assumed in the accident analysis) as a result of any back leakage from the RCS. The third change (i.e., RSB pressure limit for performing surveillances on the isolation valve operators) is more restrictive and is proposed for consistency in Specification 3/4.5.1. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed changes do not result in any changes to plant design or to plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed changes would provide the same degree of protection against a postulated LOCA since the boron concentration in the safety injection tank would be maintained above 2000 ppm. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station (PVNGS), Unit 2, Maricopa County, Arizona

Date of amendment request: December 2, 1987

Description of amendment request: The proposed amendment consists of a number of proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-51) in support of Cycle 2 operation for the plant. The specific proposed changes are discussed below:

(1) Specification 3.1.1.2 - propose to change Figure 3.1-1A, "Shutdown Margin Versus Cold Leg Temperature," by changing the Hot Zero Power endpoint from 6.0 to 8.5% delta k/k to maintain plant operation during Cycle 2 within the bounds of safety analysis.

(2) Specification 3.1.1.3 - propose to change Figure 3.1-1, "Allowable MTC Modes 1 and 2," by broadening the operating bounds of the Moderator Temperature Coefficient (MTC) to accommodate Cycle 2 operation, and by revising the x axis parameter from average moderator temperature to core power level. The change to the Figure is proposed to ensure that the assumptions used in accident and transient analyses remain valid through each fuel cycle.

(3) Specification 3.2.8 - propose to change the operational pressure band of the pressurizer from 1815 - 2370 psia to 2025 - 2300 psia to ensure that the actual value of the pressurizer pressure is maintained within the range of values used in safety analyses.

(3) Specifications 3.1.3.1, 3.1.3.2, 3.1 3.7, 3.10.2 and 3.10.4 - propose to add a new specification (3.1.3.7) to specify insertion limits for part length Control Element Assemblies (CEA), and to delete the part length CEA insertion limits from Specifications 3.1.3.1 and 3.1.3.2. The proposed change would add a more explicit limiting condition for operation of the part length CEAs to clarify the allowable duration for these CEAs to remain within the defined ranges of axial position. The proposed changes to Specifications 3.10.2 and 3.10.4 would reference the new Specification 3.1.3.7 to continue to permit the required special test exceptions to part length CEA insertion limits during certain reactor core tests.

(5) Specification 3.3.1 - propose to change Table 3.3-2 in this specification by decreasing the response time, from 0.75 to 0.30 seconds, for the DNBR - Low Reactor Coolant Pump Shaft Speed Trip. The proposed change would be consistent with the faster response time assumed in the Cycle 2 safety analysis.

(6) Specification 3.1.3.6 - propose to make the insertion limits for the full length CEAs in Figures 3.1-3 and 3.1-4 more restrictive due to the proposed changes in Cycle 2 core physics. The revised insertion limits are proposed to ensure that there is sufficient margin to mitigate the effects of a dropped CEA or an ejected CEA.

(7) Specification 3/4.3.1 - propose to change Table 3.3-2 by excluding an allowance to enter Core Protection Calculator (CPC) penalty factors to compensate for Resistance Temperature Detector (RTD) response times greater than 8 seconds. Table 3.3-2a, which specifies the amounts of the allowable CPC penalty factors, would be deleted. The proposed change would be required since the Cycle 2 safety analyses do not consider RTD response times greater than 8 seconds and, therefore, allowances for longer response times would not be permissable during Cycle 2 operation.

(8) Specification 2.1.1.1 and Table 2.2-1 - propose to change the Departure from Nucleate Boiling Ratio (DNBR) limitation from 1.231 to 1.24; delete references to the calculation of additional rod bow penalties into the DNBR limit; and change the pressurizer pressure floor incorporated into the DNBR limit from 1861 to 1860 psia. The propose changes would be required to acccount for the core changes in Cycle 2.

(9) Specification 3.2.5 - propose to change the minimum Reactor Coolant System (RCS) total flow rate in Mode 1 from 164.0×10^6 to 155.8×10^6 lbm/hr. The proposed value of 155.8×10^6 lbm/hr is higher than the value used in the safety analysis (i.e., is more conservative). The proposed change would eliminate ambiguity regarding compensation for instrument uncertainty.

(10) Specification 3.2.1 - propose to change the Linear Heat Rate (LHR) limit for the fuel assemblies from 14.0 to 13.5 kw/ft and to delineate how LHR is to be monitored. The change is proposed to ensure that the peak fuel clad temperature does not exceed safety limits during Cycle 2 operation.

(11) Specifications 3.2.4 and 3.3.1 - propose to change Specification 3.2.4 as follows: (a) provide a new format which would address the specific conditions for monitoring DNBR with or without the Core Operating Limit Supervisory System (COLSS) and/or the CEA Calculators (CEACs), (b) provide a new format which would delineate the Actions that should be taken, (c) remove reference to the DNBR Penalty Factor table used in Specification 4.2.4.4, and (d) replace the present graph Figures 3.2-1 and 3.2-2 for the DNBR limits with graph Figures 3.2-1, 3.2-2 and 3.2-2a which would address the DNBR operating limits for the conditions mentioned in (a) above. Propose to change Specification 3.3.1 by: (a) removing references to the operation of the reactor with both CEACs inoperable with or without COLSS in service, and (b) deleting the graph of DNBR margin operating limit based on COLSS for both CEAs inoperable (Figure 3.3-1) since these changes would be incorporated into the proposed changes in Specification 3.2.4. The changes are proposed to ensure operation of Cycle 2 within safety analysis limits and to improve these Specifications from a human factors point of view.

(12) Specification 3.2.3 - propose to change the action value for the Azimuthal Power Tilt allowance, when reactor power level is above 20% and COLSS is in service, from 0.10 to a range of values (i.e., 0.20 for a reactor power level of 20-30%, 0.15 for a reactor power level of 30-40%, and 0.10 for power levels above 40%). The proposed change would reduce the delay in power resumption (in order to burn out xenon buildup) following a reactor power cutback, while staying within the bounds of the safety analyses.

(13) Specification 3.3.2 - propose to change Table 3.3-4 by removing the "greater than" sign from the Refueling Actuation Signal (RAS) trip value in order to ensure optimal protection of the Refueling Water Storage Tank pumps by maintaining adequate margin for the RAS trip value within the allowable values specified in Table 3.3-4.

(14) Administrative Changes - propose to change the Bases Sections for Specifications 3/4.3.1, 3/4.3.2 and 2.2.1

to ensure clarity and conciseness. The proposed changes to the Bases Sections for 3/4.3.1 and 3/4.3.2 would update, to the latest approved revision, the report used for controlling changes to the CPC software, and remove Cycle 1 specific information. The proposed changes to the Bases Section for 2.2.1 would refer to the appropriate CE reports to be used for calculating trip setpoint values.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (51 FR 7751). Examples of amendments that are not likely to involve a significant hazards consideration are as follows:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel asemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

The staff considers the first 12 items of the proposed amendment to be similiar to example (iii) since they are directly related to a reactor core reloading and the fuel assemblies are not significantly different than those previously found acceptable for reload cores at Palo Verde. In addition, no significant changes are being made to the previously approved acceptance criteria for the technical specifications or to the analytical methods used to demonstrate conformance with the specifications and regulations.

Items (1) and (3) through (8) are also similar to example (ii) since they involve more restrictive limitations in the technical specifications to ensure that operation of the facility during Cycle 2 remains within the bounds of the safety analyses. Items (9), (10) and (11) are also similar to example (i) since they involve certain clarifications to the technical specification as well as a proposed new format for Specifications 3.2.4 and 3.3.1.

The staff considers item (13) to be similar to example (ii) since it imposes a more stringent limitation to the RAS trip value.

The staff considers item (14) to be similar to example (i) since it involves a clarification and administrative changes to the technical specifications.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530 Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: December 4, 1987

Description of amendment request: The proposed amendments would revise the Technical Specifications for Palo Verde Unit Nos. 1, 2, and 3 to incorporate a change to the Licensee's organization. Figures 6.2-1 and 6.2.2, "Offsite Organization" and "Onsite Organization", respectively, would be changed to have the Manager of Nuclear Fuels report to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested change does not involve a significant hazards consideration.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not alter the current design or operation of the facility. The change will only be to have the Manager of Nuclear Fuels reporting to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not vary, effect, or provide any physical changes to the facility. The change is being made to enhance management effectiveness with regards to fuels management.

The Nuclear Fuels Department is responsible for fuels management and core analysis for PVNGs. The Manager of Nuclear Fuels provides nuclear fuel design, contracting and utilization expertise, nuclear fuel core and plant transient and accident analysis and alternative core operating strategies. These areas of responsibility will remain the same.

Therefore, the possibility of a different type of accident than previously analyzed will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not impact the framework or responsibilities which currently exist in the Technical Specifications for conducting safe operations at PVNGS. The change is administrative in that the Manager of Nuclear Fuels will report directly to the Vice President of Nuclear Production in lieu of reporting to the Director of Engineering and Construction. Consequently, no reduction in the margin of safety will occur.

The proposed change is similar to one of the examples given in 51 FR 7751 of amendments that do not involve a significant hazards consideration. Specifically, the proposed amendment is a change which is an adminstrative change to the Technical Specifications to reflect a change in the organization. (example i).

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the proposed change to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket Nos. STN 50-528, 50-529 and 50-530 Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: December 22, 1987

Description of amendment request: The proposed amendments would revise the Technical Specifications for Palo Verde Units Nos. 1, 2, and 3, Section 6.9.1.4 to change the due date for the annual reports described in Technical Specification 6.9.1.5. The amendment is necessary to make the Technical Specification requirements consistent with the requirements of 10 CFR 20.407 and to eliminate the potential for reports to be sent in late due to an inconsistency in the reporting requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided the following discussion regarding the above criteria. The proposed change does not involve a significant hazards consideration because operation of Palo Verde Units 1, 2, and 3 in accordance with this change would not:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not alter the current design or operation of the facility. The change is administrative in nature, making the reporting requirements in the Technical Specifications consistent with the reporting requirements in 10 CFR 20.407. This does not affect any accident analyses. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not vary, effect, or provide any physical changes to the facility. The change modifies the due date for certain reports required by the Technical Specifications and has no impact on any FSAR Accident Analyses.

Therefore the possibility of an accident or malfunction of a different type than previously evaluated in the FSAR will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

The proposed change does not impact the framework or responsibilites which currently exist in the Technical Specifications for conducting safe operations at PVNGS. The change is administrative in nature and does not affect any limiting conditions for operation or surveillance requirements in the Technical Specifications, thereby, maintaining the margin of safety they provide. Consequently, no reduction in a margin of safety will occur.

The proposed change is similar to one of the examples given in 51 FR 7751 of amendments that do not involve a significant hazards consideration. Specifically, the proposed amendment is a change which is an administrative change to the Technical Specifications, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature (example i).

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Russellville, Arkansas

Date of amendment request: December 4, 1987

Description of amendment request: The proposed change revises the Technical Specifications to reflect changes in the licensee's organization. The proposed changes include both title changes and some organizational restructuring. The request supersedes the proposed organization change submitted by letter dated December 12, 1986.

Major changes include a new design engineering function reporting directly to the Vice President, Nuclear Operations and the consolidation of all licensing activities under a Licensing Manager reporting directly to the Executive Director, ANO Site Operations. The positions of Nuclear Service General Manager, and Special Projects Manager have been deleted. Functions formerly included with these two positions have been allocated to other parts of the organization.

A new department, The Nuclear Oversight/Support Department will be reporting directly to the Vice President, Nuclear Operations. The principal functions of the department will be to provide staff support for the Safety Review Committee and to provide corporate management oversight of various line functions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the technical specifications for Arkansas Nuclear One, Unit 1 are associated with a recent licensee reorganization. Although personnel assignments are revised and reporting requirements are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. These proposed changes are administrative in nature and do not change management controls presently in the Technical Specifications and, therefore, involve no significant hazards. These requests do not involve a significant increase in the probability or consequence of an accident or other adverse condition over previous evaluations; or create the possiblity of a new or different kind of

accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed change does not present a significant hazard.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Russellville, Arkansas

Date of amendment request: December 4, 1987

Description of amendment request: The proposed change revises the Technical Specifications to reflect changes in the licensee's organization. The proposed changes include both title changes and some organizational restructuring. The request supersedes the proposed organization change submitted by letter dated December 12, 1986.

Major changes include a new design engineering function reporting directly to the Vice President, Nuclear Operations and the consolidation of all licensing activities under a Licensing Manager reporting directly to the Executive Director, ANO Site Operations. The positions of Nuclear Service General Manager, and Special Projects Manager have been deleted. Functions formerly included with these two positions have been allocated to other parts of the organization.

A new department, The Nuclear Oversight/Support Department will be reporting directly to the Vice President, Nuclear Operations. The principal functions of the department will be to provide staff support for the Safety Review Committee and to provide corporate management oversight of various line functions.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the technical specifications for Arkansas Nuclear One, Unit 2 are associated with a recent licensee reorganization. Although personnel assignments are revised and reporting requirements are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. These proposed changes are administrative in nature and do not change management controls presently in the Technical Specifications and, therefore, involve no significant hazards. The request does not involve a significant increase in the probability or consequence of an accident or other adverse condition over previous evaluations; or create the possiblity of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed change does not present a significant hazard.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Carolina Power & Light Company, et al., Docket 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 4, 1987, supplemented October 2, 1987

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to (1) incorporate the operating limits (Average Power Range Monitor (APRM) setpoints, Minimum Critical Power Ratio (MCPR) values, Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) values, and Linear Heat Generation Rate (LHGR) requirements) for all fuel types for Cycle 8 operation of the Brunswick Steam Electric Plant, Unit 2, and (2) modify the Bases associated with the new reload fuel. The values of mu and sigma found in Specification 3.2.3.2 have been revised to conform to the advanced GEMINI/ODYN analysis methods. Revisions are also provided to the existing definitions for Critical Power Ratio and Physics Tests.

The MCPR values reflected in the proposed Technical Specifications include a conservative adder of 0.02 to the MCPR values provided in the Supplemental Reload Licensing Report. On occasion, operational conditions, such as a main steam line isolation valve out-of-service or a feedwater heater out-of-service event, have arisen. During past occurrences of these events, analyses of the impact on MCPR to support extended periods of operation with such conditions have been conservatively bounded by an adder value of 0.02. Thus, this adder will be included to preclude the need to request emergency/exigent TS relief that might otherwise be needed in the event of a similar operational condition.

The Technical Specification changes relate to the inclusion of new and/or revised MCPR limits, APRM setpoints, MAPLHGR limits, and LHGR limits for all fuel types using Cycle 8 core and transient parameters.

The new reload fuel for Cycle 8 is the GE extended burnup barrier fuel, GE8x8EB. This fuel type has been approved by the NRC in the Safety Evaluation Report for Amendment 10 to the General Electric Standard Application for Reactor Fuel (GESTAR II) (NEDE-24011-P-A).

The values for mu and sigma found in Specification 3.2.3.2 reflect the GESTAR II (NEDE-24011-P-A) requirement to conform with the advanced GEMINI/ODYN analysis methods for the Option B scram time insertion. Use of the GEMINI method has been previously reviewed and approved by the NRC for evaluation of operating limit MCPR values in the Safety Evaluation Report for Amendment 11 to GESTAR II (NEDE-24011-P-A). The revised mu and sigma values are appropriate for 20% scram insertion time requirements (defined as the time from de-energization of the scram pilot valve solenoid to pickup of the control rod notch position 36 reed switch). In addition, a reference to notch 36 has been added to the Specification 3.2.3.2 limiting condition for operation (LCO) for consistency. Notch 36 has already been established in this LCO as the control rod position corresponding to the 20% scram time position.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes are bounded by the analyses provided in the Updated Final Safety Analysis Report (FSAR). Operational transients analyzed in the Updated FSAR have been re-evaluated in detail. The Supplemental Reload Licensing Report provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The 8x8 fuel assemblies to be installed in the core are not significantly different from the 8x8 fuel assemblies they are replacing. The NRC Staff has previously approved the design of the GE8x8EB fuel assemblies in Amendment 10 of GESTAR II(NEDE-24011-P-A). The NRC Staff has also approved in GESTAR II the analytical methods used to evaluate the effects of the replacement fuel on thermal-hydraulic limits and transients.

2. The proposed amendment does not create the possibility of a new or different accident for the same reasons as stated in item 1. This reload merely changes the initial conditions and/or final condition used in the existing analyses and does not create any new accident mode.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the plant will be operated under the same Safety Limits with Minimum Critical Power Ratio (MCPR), maximum Average Planar Linear Heat Generation Rate (MAPLHGR), and Linear Heat Generation Rate (LHGR) operating limits comparable to those currently established. The Supplemental Reload Licensing Report provides a summary of the limiting operating transient, stability, and selected accident analyses for the proposed core arrangement. The MCPR, MAPLHGR, and LHGR limits have been revised to assure the margin of safety is maintained as demonstrated in the "Supplemental Reload Licensing Report for Brunswick Steam Electric Plant Unit 2, Reload 7, Cycle 8."

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposed to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for the licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, NC 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit No. 2, Brunswick County, North Carolina

Date of application for amendment: November 18, 1987

Description of amendment request: The proposed amendment would change Item 2 of Technical Specification (TS) Tables 3.3.5.6-1, 3.3.5.6-2 and 4.3.5.6-1 to replace instrument tag number TS-CR-863 with TS-CIT-863-3. This change is needed as a result of upgrading instrumentation during a planned plant modification during the Brunswick Steam Electric Plant, Unit 2, refueling outage of January 1988. Item 2 lists chloride leak detection instrumentation in the condensate pump discharge. This instrumentation provides indication of chloride intrusion in the feedwater and condensate systems. Chlorides pose a long-term threat to the integrity of stainless steel piping systems. The change is necessary due to a plant modification that will replace the instrument represented by TS-CR-863-3 with an upgraded conductivity cell and analyzer represented by tag number TS-CIT-863-3. The upgraded components are capable of detecting and compensating for temperature transients that may occur in the sample being analyzed. The new conductivity analyzer will provide a direct and continuous reading without relying on a recorder, and will also provide an output to a recorder for trending purposes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The accidents analyzed in Chapter 14 of the FSAR are not affected by the chloride leak detection instrumentation change because the function of the instrument is not altered, and the chloride limits established in TS 3/4.4.4 are not being changed. In addition, the new instrument being installed is capable of detecting and compensating for temperature transients which may occur in the sample being analyzed. The current system requires additional data processing to achieve the same results. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. As stated above, the chloride leak detection instrumentation provides protection from long-term piping degradation in the feedwater and condensate systems caused by chloride intrusion. No possibility of a new or different kind of accident is created because the new instruments perform the same basic function as the ones they are replacing. Also, the reactor coolant system chloride limits established in TS 3/4.4.4 are not being changed. The new instrument has enhanced capabilities; it processes the data into a more useful form prior to readout. Based on the above reasoning, CP&L has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The margin of safety is not reduced because, as stated above, the new instrument performs the same basic function as the one it is replacing and the chloride limits established in TS 3/4.4.4 is not being changed. In fact, the new instrument has enhanced capabilities which may provide the user with better data, thereby providing earlier indication of chloride intrusion, and perhaps avoiding long-term problems with pipe degradation due to chloride intrusion. Based on this reasoning, CP&L has determined that the proposed amendment does not involve a significant reduction in margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for the licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, NC 27602

NRC Project Director: Elinor G. Adensam

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 3, 1987

Description of amendment request: The proposed amendments would increase the containment overall

integrated leakage rate in Technical Specification 3.6.1.2 from its current L_a value of 0.20% per day to 0.30% per day (See Appendix J to 10 CFR Part 50 for definition of L_a corresponding at Catawba to a containment pressure of 14.68 psig).

Basis for proposed no significant hazards consideration determination: The licensee provided revised radiation exposure calculations for a design basis LOCA using the methodology from Revision 1 of the Standard Review Plan (SRP), Section 6.5.2, which recognizes that containment spray systems with boric acid spray solutions have been shown to be effective for removal of elemental and particulate iodine. The revised analyses demonstrate for thyroid doses that the proposed 50% increase in the containment leakage rate would be nearly offset by the effect of the spray system. This permits the licensee to take credit for the iodine removal effect of the boric acid which is contained in containment spray water for other reasons. Since noble gases are unaffected by containment sprays, an increased containment leakage rate would result in increased whole body and skin doses. However, for the Catawba Nuclear Station, thyroid radiation exposure is the limiting criterion, and the licensee's calculations show that the whole body and skin doses would remain well below the acceptance criteria in Appendix A of SRP Section 15.6.5 for offsite exposure (i.e., 10 CFR 100.11 values) and acceptance criteria in SRP 6.4 (i.e., GDC 19) for control room personnel.

The results of the licensee's calculations of onsite dose inside the control room are as follows: The whole body dose increase from .46 to .70 rem, which is less than the allowable limit of 5 rems; the skin dose increases from 9 to 14 rems, which is less than the allowable limit of 30 rems; and the thyroid dose decreases from 25.9 to 18.9 rems, which is less than the allowable limit of 30 rems.

The results of the licensee's calculations of offsite dose at the exclusion area boundary are as follows: The whole body dose increases from 2.99 to 4.47 rems, which is less than the allowable limit of 25 rems; and the thyroid dose increases from 115 to 131 rems, which is less than the allowable limit of 300 rems. The results of the licensee's calculations of offsite dose at the low population zone are as follows: The whole body dose increases from 0.761 to 0.863 rem, which is less than the allowable limit of 25 rems; and the thyroid dose decreases from 50.8 to 29.7 rems, which is less than the allowable limit of 300 rems.

It should be noted that in the revised analyses, containment sprays are assumed to remove iodine from the post-accident containment atmosphere exponentially with time over the initial 116 minutes following the occurrence of a potential accident. Therefore, the effect of boric acid solutions in containment spray would reduce iodine release rates more during time periods approaching 116 minutes with the greatest reductions in release rates occurring after the initial 116 minutes. As an iodine removal result, the low population zone thyroid dose is substantially reduced because containment spray would more than offset the 50% increase in containment leakage over the 30 day time period for which the calculations are performed. However, for the offsite dose at the exclusion area boundary it is higher by slightly more than 10% in the revised analyses because containment spray iodine removal would only partially offset the 50% increase in containment leakage over the 2 hour time period for which the calculations are performed.

Preliminary review by the NRC supports these results and statements by the licensee. The Commission has provided guidance concerning the application of the standards in 10 CFR Part 50.92 by providing certain examples (51 FR 7144) of actions involving no significant hazards considerations. One of the examples (vi) involves a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The proposed amendments match the example because, as noted above, the doses after a design basis LOCA with the increased containment leakage rate, but with allowance for the containment spray system, would remain below the acceptance criteria for radiological exposure in Appendix A of SRP 15.6.5 and in SRP 6.4. Other criteria in the SRP sections would not be affected by the proposed change. Therefore, the Commission proposes to determine that the change involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Kahtan N. Jabbour, Acting Director

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 16, 1987, as supplemented December 30, 1987.

Description of amendment request: The amendment would upgrade the technical specifications (TS) dealing with the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. In addition, the amendment would make the Unit No. 1 TS similar to the Unit No. 2 TS, as well as to the Combustion Engineering-Standard Technical Specifications (CE-STS), thereby promoting consistency between the units.

The licensee proposed to delete from the TS those pump surveillance requirements that are already contained in the licensee's inservice testing (IST) program. The licensee's IST program is a licensee-controlled document. In addition, the licensee proposed to add to the TS those pump surveillance requirements that are not contained in the licensee's IST program. For example, the licensee proposed to change the charging pump-operating surveillance requirement (TS 4.1.2.4) in the following manner: delete the periodic start and run requirement from the TS because this requirement is contained in the IST program; add the pump discharge requirement to the TS (40 gpm in this case) as well as the requirement to test the pump pursuant to proposed TS 4.0.5. Proposed TS 4.0.5 is a surveillance requirement which requires the licensee to follow the Commission's IST Regulations, ASME Code, Section XI, and the licensee's IST program. TS 4.0.5 will be explained in more detail later. Similar changes are proposed to the following TS: TS 4.1.2.3 (Charging Pump-Shutdown); TS 4.1.2.5 (Boric Acid Pumps-Shutdown); TS 4.1.2.6 (Boric Acid Pumps-Operating); TS 4.5.2b (ECCS Pumps); TS 4.6.2.1 (Containment Spray Pumps); TS 4.7.1.2 (Auxiliary Feedwater Pumps); TS 4.7.3.1 (Component Cooling Water Pumps); and TS 4.7.4.1 (Intake Cooling Water Pumps). The licensee's proposed changes identified above would make the pump testing requirements similar to the pump testing requirements contained in the CE-STS and the Unit 2 TS.

The licensee proposed to delete from the TS those valve surveillance requirements that are already contained in the licensee's IST program. In addition, the licensee proposed to add to the TS those valve surveillance requirements that are not contained in the licensee's IST program. For example, the licensee proposed to change the main steam safety valve surveillance requirement (TS 4.7.1.1) in the following manner: delete the test requirement per the ASME Boiler and Pressure Vessel Code, 1974 Edition; add the requirement that no additional surveillance requirements are required other than those specified per the new TS 4.0.5. Similar changes are proposed to the following TS: TS 4.1.2.1 (Flow Paths-Shutdown); TS 4.1.2.2 (Flow Paths-Operating); TS 4.4.2 (Safety Valves-Shutdown); TS 4.4.3 (Safety Valves-Operating); TS 4.5.2 (ECCS Valves); TS 4.6.2.1 (Containment Spray Valves); TS 4.6.3.1.1 (Containment Isolation Valves); TS 4.6.5.1 (Vacuum Relief Valves); TS 4.7.1.2 (Auxiliary Feedwater Valves); TS 4.7.1.5 (Main Steam Isolation Valves); TS 4.7.3.1 (Component Cooling Water System Valves); and TS 4.7.4.1 (Intake Cooling Water System Valves). The licensee's proposed changes identified above would make the valve testing requirements similar to the valve testing requirements contained in the CE-STS and the Unit 2 TS.

In order to reference the IST program as a licensee-controlled document, the licensee proposed a new TS 4.0.5, which consists of five sections. Section a. will reference 10 CFR 50.55a(g) (Codes and Standards - Inservice Testing Requirements), which in turn references the ASME Code/IST program. Section b. will illustrate the surveillance intervals. Section c. will provide for interval extensions. Section d. will state that the IST activities are in addition to other specified surveillance requirements. Section e. will specify that nothing in the Code shall be construed to supersede the requirements of any technical specification. The new TS 4.0.5 is the same as what is contained in the Unit 2 TS and the CE-STS.

The licensee proposed other changes that are not strictly under the IST program. The licensee proposed to stroke the containment sump isolation valves and the recirculation valve to the refueling water tank via recirculation actuation signal on an 18 month frequency, versus a monthly frequency. Thus, TS 4.5.2b.3 would be deleted, and TS 4.5.2e.3 would be added. Similarly, the licensee proposed to stroke the containment sump isolation valves and ensure that a recirculation mode flow path via an operable shutdown cooling heat exchanger is ensured via the recirculation actuation signal on an 18 month frequency, versus a monthly frequency. Thus, TS 4.6.2.1a.5 would be deleted, and TS 4.6.2.1c.3 would be added. These proposed requirements are the same as the CE-STS and Unit 2 TS requirements. In addition, the licensee proposed changes to the main steam safety valve limiting condition of operation (LCO) TS (TS 3.7.1.1). Table 4.7-1 contains the lift settings for these valves. The licensee proposed to reference the table in the LCO statement instead of the surveillance requirement statement. The licensee also proposed to add a new action statement which would read, "The provisions of specification 3.0.4 are not applicable." These proposed requirements are the same as the CE-STS and Unit 2 TS requirements.

Lastly, because of the above proposed changes, the surveillance requirements currently contained in the TS will need to be renumbered.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed. The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications[,] which have been previously approved by the staff. Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Testing (IST) of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The addition of a new Specification 4.0.5 will establish the relationship between the Technical Specifications and the Code of Federal Regulations that deal with IST and the ASME Code. The pump and valve surveillance activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program. The IST program will remain in effect as a licensee-controlled document referenced in the Technical Specifications[,] instead of the program itself being a Technical Specification.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. The St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1.

The surveillance activity of verifying electrical power from an operable emergency bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program[,] the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in

that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety Valves action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specifications, in that Startup and/or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

In connection with the second standard, the licensee provided the following:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed. The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications[,] which have been previously approved by the staff.

Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Testing of ASME Code Class 1, 2, and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The pump and valve surveillance activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program. The IST program will still be governed by the Commission's rules and regulations.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. The St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1.

The surveillance activity of verifying electrical power from an operable emergency bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specification, in that Startup and/or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensee addressed the third standard as follows:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The addition to Technical Specification Section 4.0, Surveillance Requirements, is a change to achieve consistency between the St. Lucie Unit 1 Technical Specifications and the St. Lucie Unit 2 Technical Specifications. The intent of the Specifications has not been changed.

The change incorporates the format/wording of the Combustion Engineering-Standard Technical Specifications and the St. Lucie Unit 2 Technical Specifications which have previously been approved by the staff.

Reference to Surveillance Requirements of a specific Edition and Addenda of Section XI of the ASME Boiler and Pressure Vessel Code have been removed. A new Specification 4.0.5 has been added to provide Surveillance Requirements for Inservice Testing of ASME Code Class 1, 2 and 3 Components in accordance with Section XI of the Code and applicable addenda as required by 10 CFR 50.55a(g). The pump and valve surveillance activities which have been removed from the Technical Specifications are contained in Section XI of the ASME Code and, therefore, are included in the St. Lucie Unit 1 Pump and Valve Program.

Requirements of the ASME Section XI Inservice Testing Program and, therefore, the St. Lucie Unit 1 Inservice Testing Program, provide for measurement and evaluation of pump mechanical characteristics as well as additional measurement and evaluation of pump hydraulic characteristics. These activities are performed to determine pump operational readiness. Also, requirements of the ASME Section XI Testing Program provide for additional measurement and evaluation for determining valve operational readiness. This St. Lucie Unit 1 Inservice Testing Program provides a level of quality in testing of pumps and valves consistent with recent versions of the ASME Section XI Code and, therefore, the removal of certain pump and valve surveillance activities from the Technical Specifications does not involve a reduction in the level of quality in testing of pumps and valves at St. Lucie Unit 1.

The surveillance activity of verifying electrical power from an operable emergency bus has been removed from individual specifications in that the operability requirements for electrical power sources are maintained as required for the Electrical Power System portion of the St. Lucie Unit 1 Technical Specifications.

The surveillance activity of verifying that the containment sump isolation valves open upon a Recirculation Actuation Signal has been changed from a 31 day surveillance activity to an 18 month surveillance activity. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications and the St. Lucie Technical Specifications. As required by the St. Lucie Unit 1 Technical Specifications, the manual recirculation actuation signal feature is tested on an 18 month frequency as are the other manual engineered safety features. Also, as required by the ASME Valve Program [,] the containment sump isolation valves are tested on a quarterly basis. A review of the surveillance activity sheets for verifying that the containment sump isolation valves open upon a recirculation actuation signal has been completed for an 18 month period from May 1986 to October 1987 and no failures were observed. The containment sump isolation valves on St. Lucie Unit 1 are similar to the valves on St. Lucie Unit 2 in that they are 24 inch valves manufactured by Henry Pratt.

An addition to the Turbine Cycle-Safety Valves action statement has been made to show that the provisions of Specification 3.0.4 are not applicable for entry into an Operational Mode. This change is being made to achieve consistency with the Combustion Engineering-Standard Technical Specifications. This is consistent with the Technical Specifications in that Startup and/or Power Operation is allowable with safety valves inoperable within the limitations of the Action requirements.

Therefore, based on the above, the changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because:

(1) The IST program will remain in effect as a licensee-controlled document referenced in the TS instead of a portion of the program itself being a TS,

(2) The IST program will still be governed by the Commission's rules and regulations,

(3) The addition of a new TS 4.0.5 will establish the relationship between the TS and the Code of Federal Regulations that deal with IST and the ASME Code itself,

(4) Valve stroking under receipt of a recirculation actuation signal on an 18 month frequency has been found acceptable on similar plants with similar system configurations,

(5) Main steam safety valve surveillance requirement changes have been found acceptable on similar plants with similar system configurations, and

(6) The proposed TS are basically those contained in the Unit 2 TS and CE-STS, which have been previously approved by the staff.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 22, 1987

Description of amendment request: The proposed amendment would change the action statement of technical specification 3.7.1.6 to allow 72 hours to restore to operable an inoperable open main feedwater isolation valve. The current return to operability requirement is 4 hours.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed 72 hour Action statement with an inoperable Main Feedwater Isolation Valve (MFIV) is consistent with other safeguards equipment outage times. The likelihood of a feedline or steamline break with a concurrent failure of the second valve in the same feedline is remote during the outage time. Thus, the proposed 72 hour allowable outage time will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change will not create the possibility of a new or different kind of accident from any previously analyzed because it does not introduce a new mode of normal or emergency plant operation. In addition the proposed change does not involve a physical modification to the plant.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

Because of failure of the second MFIV in the same feedline with a simultaneous feedline or steamline break during the seventy-two (72) hour allowable outage time is unlikely, this change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because failure of a second main feedwater isolation valve in the same feedline with a simultaneous feedline or steamline break during a 72 hour allowable outage time is highly unlikely. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 22, 1987

Description of amendment request: The amendment would change certain surveillance requirements dealing with moderator temperature coefficient (MTC). The allowable range of MTC, as defined in the limiting condition for operation (LCO), will not change. The MTC for each unit is addressed in TS 3/4 1.1.4.

In order to demonstrate that the MTC is within allowable values, Surveillance Requirement 4.1.1.4.2 requires MTC measurement three times during a cycle: at beginning of cycle, at equilibrium boron concentration of 800 ppm and at equilibrium boron concentration of 300 ppm. The licensee proposed changes to this surveillance requirement.

The Unit 1 surveillance requirement requires the first measurement of MTC prior to initial operation above 5% rated thermal power, after each refueling (TS 4.1.1.4.2.a). The Unit 2 surveillance requirement requires the first measurement of MTC prior to initial operation above 5% rated thermal power, after each fuel loading (TS 4.1.1.4.2). The licensee proposes to make both surveillance requirements identical, using the wording of Unit 2 as the standard wording. For purposes of this specification, the word "refueling" can be interchanged with the words "fuel loading". The Unit 2 wording is the same wording as contained in the Combustion Engineering (CE) Standard Technical Specifications.

The Unit 1 surveillance requirement requires the second measurement of MTC at any thermal power, within 7 effective full power days (EFPD) after initially reaching a rated thermal power equilibrium boron concentration (TS 4.1.1.4.2.b). The Unit 2 surveillance requirement requires the second measurement of MTC at any thermal power, within 7 EFPD after reaching a rated thermal power equilibrium boron concentration of 800 ppm (TS 4.1.1.4.2.b). The licensee proposes to make the wording of both surveillance requirements identical by using the wording of Unit 2 as the standard wording. The addition of the precise

boron concentration (800 ppm) for the Unit 1 second MTC measurement clarifies when the second measurement would be made. The Unit 2 wording is the same wording as contained in the CE-Standard Technical Specifications.

The surveillance requirements for both Units 1 and 2 require the third measurement of MTC at any thermal power, within 7 EFPD after reaching a rated thermal power equilibrium boron concentration of 300 ppm (TS 4.1.1.4.2.c). This is the same surveillance requirement contained in the CE-Standard Technical Specifications. The licensee is proposing a change to this requirement to the extent that this third measurement would not be made if the results of the previous two measurements are within a tolerance of ±2.0 pcm/° F from corresponding design values. The licensee believes that if the calculated values of MTC at the beginning of cycle life and at an equilibrium boron concentration of 800 ppm are within ±2.0 pcm/° F of the measure values per Surveillance Requirements 4.1.1.4.2.a and b, then there is no need to take the third measurement at equilibrium boron concentration of 300 ppm. It is assumed that the calculated value of MTC at equilibrium boron concentration of 300 ppm would be the actual value or very close to it, thereby assuring that the LCO is being met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to these standards, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Under the proposed changes, adequate assurances of compliance with current MTC limitations are maintained by the modified surveillance program. In addition to the MTC tests which will still be required during each cycle, the factors that affect the MTC will be monitored during the cycle as required by Technical Specification Surveillance Requirement 4.1.1.1.2. This ensures that the reactivity behavior of the core has been accurately calculated and that the MTC will remain within Technical Specification Limiting Condition for Operations (LCO's).

Consequences of accidents previously evaluated will not be increased because this change will not require the modification of any assumption used in the input to the current safety analysis. The current safety calculations will remain valid because the allowed range of MTC values in Technical Specification 3.1.1.4. will not be changed.

The change to St. Lucie Unit 1 Surveillance Requirement 4.1.1.4.2.b will change the time in the cycle when the second MTC surveillance is required, so that this requirement will be consistent with Combustion Engineering Standard Technical Specifications (NUREG 0212 Rev. 2). This will not increase the probability of or consequences of any accident previously evaluated.

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident initiators are created by the incorporation of the modified surveillance requirements. The change will not result in any change to the methods of operating the plant.

Use of the modified specification would not involve a significant reduction in a margin of safety.

The margin of safety will not be reduced as a result of this change because the range of allowed MTC values are defined by Technical Specification LCO's, which will not be changed. The modified surveillance program will maintain the requirement to perform the EOC MTC test in the event the reactivity behavior during the cycle does not perform as predicted by design calculations. The modified surveillance program will continue to provide adequate assurance that the MTC characteristics are as predicted by design calculations and are within the range of accepted values.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards of 10 CFR 50.92 because: (1) under the proposed change to Surveillance Requirement 4.1.1.4.2.c, adequate assurances of compliance with current MTC limitations for both units are maintained by the modified surveillance and the continued use of the overall core reactivity balance surveillance (TS 4.1.1.1.2), (2) the wording change for Unit 1 associated with Surveillance Requirement 4.1.1.4.2.b introduces a more precise definition when the second MTC measurement will be made, and (3) the wording change for Unit 1 associated with Surveillance Requirement 4.1.1.4.2.a is insignificant from a safety viewpoint.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 16, 1987 (TSCR 165)

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.B to allow out of service time for the 125 VDC Motor Control Center "DC-2" to 7 days. The current Technical Specification requires that the plant be shut down within 30 hours if the 125 VDC Motor Control Center "DC-2" becomes unavailable.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazard. The change does not:

1. Involve an increase in the probability or consequences of an accident previously evaluated. Increasing the allowable out of service time to 7 days for the 125 VDC MCC "DC-2" does not alter the plant response to an accident nor reduce the availability of the Isolation Condenser System below that which is currently addressed in the Technical Specifications. The 125 VDC MCC "DC-2" supplies power only to the isolation valves of the Isolation Condenser System.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Increasing the allowable out of service time for the 125 VDC MCC "DC-2" does not alter the existing plant response. The availability of plant systems is unchanged from that which is currently addressed in the Technical Specifications.

3. Involve a significant reduction in margin of safety. Changing the allowable out of service time for 125 VDC MCC "DC-2" to agree with the allowable out of service time for an inoperable Isolation Condenser System

availability and the isolation requirements associated with an inoperable condenser are currently addressed in the Technical Specifications and remain unchanged. The staff has reviewed the licensee's submittal and concurs with its no significant hazards determination.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 13, 1987.

Description of amendment request: The proposed amendment would revise Section 4.7.1.2, Surveillance Requirements, Ultimate Heat Sink (UHS) of the Technical Specifications (TSs) to reflect the upgraded UHS temperature monitoring system installed during the first refueling outage. The upgraded system provides temperature indication and alarm in the main control room and local indication. The proposed changes to the TSs are as follows:

(1) Add a footnote to Specification 4.7.1.2.b, that specifies that the average water temperature shall include at least four operable temperature sensors of which at least half shall be located above elevation 94 feet;

(2) Clarify that the average water temperature is the arithmetical average water temperature;

(3) Modify specifications 4.7.1.2.b.2. and 4.7.1.2.b.3 regarding increased surveillance of the UHS basin water temperature if the temperature is 75° F or above to indicate that increased surveillance is required when the control room alarm is inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because: The UHS basin water temperature is monitored to assure the plant is within the bounds of the initial conditions assumed in the Safety Analysis and has no post accident functions. This does not change any previous safety analysis. The previous surveillance intervals when the temperature exceeds 75° F were to assure operator awareness and to maintain the plant within the initial conditions of the SAR. The Control Room indication and alarm functions replace the previous manual actions and are supplemented by the increased surveillance when the instrumentation is unavailable. The addition of the minimum equipment to implement the surveillance is to assure a representative indication of basin temperature to confirm the basin temperature is within the initial conditions of the Safety Analysis.

Since the system has been previously found to support Safety Analysis and the present Limiting Conditions for Operation (LCO) will continue without change, no increase in the probability or consequences of an accident previously evaluated results from this change.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because: The system has been found to support the functions assumed in the Safety Analysis Report (SAR) and the use is functionally identical to the original design with the enhancements of remote indications and an alarm. A review of Regulatory Guide 1.47, NUREG-0800 and other available information found no specific requirements for UHS temperature monitoring. Since the monitoring of the temperature exceeds the guidance and the proposed surveillance establishes additional assurance, the plant will respond as described in the SAR. In addition, the LCO and Actions required by the TS are unchanged. Thereby maintaining the UHS operation and performance within all accident conditions previously evaluated.

3. This change would not involve a significant reduction in the margin of safety because: The UHS temperature is maintained within the present safety analysis by the new system and the specific requirement of monitoring the heat sink temperature will be maintained by the once per 24 hour surveillance requirements. The temperature received by the operators will conservatively reflect the actual water temperature. The configuration of the sensors even when at the minimum number will indicate a temperature which is above the true average. Therefore, the design and surveillance requirements are conservative with respect to the safety analysis. In addition, this change does not reduce the margin of safety identified in the Bases in the River Bend Technical Specifications.

The proposed amendment, as discussed above, has not changed the system design, function and operation contained in the SAR and therefore, will not increase the probability or the consequences of a previously evaluated event or will not create a new or different event. Since the ability to perform, as described in the SAR, is maintained by this change, the proposed change does not result in a significant reduction in the margin of safety. Gulf States Utilities proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration and agrees with the analysis.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These amendments would revise Technical Specification Sections 6.3, 6.4, 6.8.2 and 6.8.3.c, and Figures 6.2.1-1 and 6.2.2-1 in order to achieve consistency with previously approved changes or to update or clarify existing requirements. Technical Specification 6.3 currently specifies an exemption to ANSI/ANS 3.1-1978 Section 4.4.2 "Instrumentation and Control" qualification requirements for the Clinton Supervisor - Control and Instrumentation. The exemption should be deleted since this individual now fills the position of Supervisor - Control and Instrumentation and fully meets the ANSI/ANS 3.1-1978 qualification requirements. Technical Specification 6.3 currently specifies the title "Radiation Protection Supervisor". This title was previously changed to "Director - Radiation Protection" during the licensing process. Thus the phrase "and the Radiation Protection Supervisor" should be deleted in order to be consistent with the previously approved change. The last sentence of Specification 6.3 should also be deleted since it has been superseded by the 1987 version of 10 CFR 55, "Operators Licenses". Specification 6.4 should also be modified in order to delete material that has been superseded by the 1987 version of 10 CFR 55. The requirements of the March 28, 1980 letter were incorporated as appropriate into the 1987 version of 10 CFR 55. Specification 6.4 and Figure 6.2.1-1 should be revised in order to reflect a recent management change by the utility where the position of Director - Nuclear Training was upgraded to Manager - Nuclear Training.

In addition, the word "Operations" under the Manager - Scheduling and Outage Management should be replaced with the word "Staff" in Figure 6.2.1-1 in order to be consistent with the rest of the organization chart. Technical Specifications 6.8.2 and 6.8.3.c currently state that each procedure of Specification 6.8.1, and changes thereto (including temporary changes), shall be "approved by the Power Plant Manager." However, not all of the procedures that meet the criteria of Specification 6.8.1 are Plant Staff procedures; some procedures are associated with support organizations or programs for which managers other than the Power Plant Manager are directly responsible. Thus the words "Power Plant Manager" should be replaced in Specifications 6.8.2 and 6.8.3.c with the words "appropriate responsible manager" in order to clarify the requirements for approval of these procedures. Since the Power Plant Manager has overall responsibility for operation of the facility, his signature for concurrence, as a minimum, would still be required. Figure 6.2.2-1 currently uses asterisks to indicate qualification requirements for various unit staff personnel. These asterisks could be deleted since the qualifications are addressed in Specification 6.3 and in Chapter 13 of the FSAR. This proposed change does not affect the utility's commitments regarding the qualifications and training of unit staff personnel. Also, the positions of Director - Plant Maintenance and Assistant Manager - Startup should be deleted from Figure 6.2.2-1 due to an organizational restructuring.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes are administrative in nature. These changes do not affect any previous analyses nor do they alter the intent or implementation of the applicable Technical Specifications.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes are administrative in nature and thus do not affect the plant design or operation.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and thus do not alter the intent of the existing Technical Specification requirements. The proposed changes do not impact plant design and therefore do not affect a margin of safety.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These amendments would revise Technical Specification Sections 3.4.2.2, 3.9.12 and 6.9.1.8, Figure 3.2.3-1, and Tables 3.3.2-1 and 3.3.7.1-1 in order to achieve consistency with previously approved changes or to clarify existing requirements. Technical Specification 3.4.2.2 currently specifies a tolerance of ±2% for the Low-Low Set Function Setpoint associated with the safety/relief valves (SRVs). However, the General Electric (GE) design specifications specify a tolerance of ±15 psi, which represents a tighter tolerance than the current value of ±2% and is the value specified in the plant calibration procedure. Thus the tolerance specified in the "Low-Low Set Function Setpoint" column in Technical Specification 3.4.2.1 should be changed from "±2%" to "±15 psi" in order to be consistent with current design specifications and plant calibration procedures. The footnote to Technical Specification 3.9.12 currently contains wording from the Low Power Operating License regarding the transfer of irradiated fuel from the reactor vessel. This wording should be revised in order to be consistent with the current wording contained in License Condition 2.D.(b) of the Full Power Operating License. Technical Specification 6.9.1.8, "Monthly Operating Reports", should be revised in order to be consistent with the 1987 update to 10 CFR 50.4 "Written Communications" which changed the address to which these reports are to be sent. Figure 3.2.3-1 ($MCPR_f$ Versus Core Flow) contains graphical errors. There are small but noticeable differences between the plotted values of Required $MCPR_f$ versus Core Flow (% Rated) and the values determined from the process computer equations. A more accurate figure for determining the minimum required $MCPR_f$ (as a function of core flow) is required in order to clarify existing requirements. Actions 21, 25, and 29 for Technical Specification 3.3.2, Table 3.3.2-1, which are applicable to Item 3.e of the table, were revised in the Clinton Full Power License Technical Specifications. These approved changes consisted of applying Action 29 to Item 3.e for Operational Conditions 1, 2, and 3 and applying Action 25 to Item 3.e for Operational Condition "*". These Actions were to replace Action 21. Thus, the Action numbers identified for Item 3.e (Reactor Vessel Water Level - Low Low, Level 2 channels for Reactor Water Cleanup System isolation) should be revised in order to be consistent with the approved changes documented in Appendix Q of Supplement 8 to the Clinton Safety Evaluation Report. Part "a" of Action 70 of Technical Specification Table 3.3.7.1-1 currently erroneously states, "with one of the required monitors inoperable, place the inoperable channel in the (downscale) tripped condition within 1 hour..." Since a trip can be effected in a number of ways, including disconnecting the detector (which is essentially equivalent to a downscale trip) or interrupting power to the monitor, the word "downscale" and the associated parenthesis should be deleted in order to avoid confusion. Part "b" of Action 70 currently erroneously uses the term "recirculation" in describing the mode of operation initiated by an air intake high radiation condition. This term is misleading since several of the modes of operation specified in Technical Specification 3/4.7.2 involve a recirculation path. The high radiation mode, as referred to in Specification 4.7.2.e.5, is the mode of operation initiated by a high radiation condition sensed by the air intake radiation monitors. Thus "recirculation" should be replaced by "high radiation" in order to avoid confusion.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes do not affect any previous analyses nor do they alter the intent or implementation of the applicable Technical Specifications. The proposed change to Specification 3.4.2.2 establishes conformance with the GE design specification values specified for the setpoint tolerance of the Safety/Relief Valve Low-Low Set function. The proposed change to Specification 3.9.12 is an administrative change which reflects the revised wording of this license condition in the Full Power License from that in the Low Power Operating License. The proposed change to Specification 6.9.1.8 is an administrative change which reflects the 1987 update to 10 CFR 50.4. The proposed change to Figure 3.2.3-1 does not involve a significant increase in the probability or consequences of an accident previously evaluated since no changes to the MCPR analyses and the associated required $MCPR_f$ limits are involved. The purpose of this change is to clarify existing requirements by providing a more accurate figure for determining the minimum required $MCPR_f$ (as a function of core flow). Past performance under the existing figure has been acceptable since the proposed curve bounds all of the values that could possibly be determined from the original figure. The proposed change to Table 3.3.2-1 is an administrative change in order to achieve consistency with previously approved changes in the Full Power License Technical Specifications. The proposed change to Table 3.3.7.1-1 is an administrative change that clarifies but does not change the intent of the Specification.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. None of the changes affects the plant design or operation. The proposed change to Specification 3.4.2.2, changing the tolerance for the Low-Low Set Function Setpoint associated with the SRVs to match the intended design value, does not create a new accident scenario. The proposed changes to Specifications 3.9.12 and 6.9.1.8 and Tables 3.3.2-1 and 3.3.7.1-1 are administrative changes that do not create a new accident scenario. The proposed change to Figure 3.2.3-1 is limited to the correction of graphical errors and the clarification of existing requirements and does not involve any design changes, new requirements, or new modes of operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing Technical Specification requirements would remain unchanged. The proposed change to Figure 3.2.3-1 does not involve a significant reduction in a margin of safety because the MCPR analysis remains unchanged and because the new curve allows the determination of a $MCPR_f$ limit that is still consistent with the analysis. No setpoint, design or analytical limit assumed or required by any analysis is affected by this change. The other proposed changes are administrative changes that do not affect a margin of safety.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1 DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These amendments would revise Technical Specification Sections 3.4.1.1 and 4.6.6.3 and Tables 3.3.2-1, 3.3.7.4-1 and 3.6.4-1 in order to correct typographical errors and to clarify existing requirements. Action a.1.g under Specification 3.4.1.1 currently erroneously refers to Surveillance Requirement 4.4.1.1.2 instead of 4.4.1.1.4. Surveillance Requirement 4.6.6.3.c currently erroneously contains the heading "Make Up Filter System" which is not applicable to the Standby Gas Treatment System. Table 3.3.2-1 currently refers to note "(a)" after the column heading "Minimum Operable Channels per Trip System". Since note "(a)" is only applicable in some cases, the "(a)" should be removed from the column heading and placed adjacent to the trip channels having a "2" listed in this column. Table 3.3.7.4-1 currently erroneously identifies the Remote Shutdown Panel upper and lower drywell temperature instruments as 1C61-R502 and 1C61-R501, respectively. These instrument equipment numbers should be transposed to correct this typographical error. Table 3.6.4-1 currently inadvertently repeats the maximum isolation time value (41 seconds) twice for valve 1E51-F064. The extra "41" should be deleted to correct this typographical error. There are three typographical errors associated with Note (a) of Table 3.6.4-1. Since Note (a) is applicable to all of the test connection, vent and drain valves and their corresponding applicable Operational Conditions listed in Table 3.6.4-1, Note (a) can be attached to the "Test Connections, Vents, and Drains" heading rather than to each applicable Operational Condition number or symbol listed for every valve. The wording of Note (a) should be modified by adding "during applicable OPERATIONAL CONDITIONS" to clarify that the note is applicable during any and all of the applicable Operational Conditions for these valves. The heading "Test Connections, Vents, and Drains" currently erroneously has Note (b) attached to it where it is intended to insert Note (a). This is a typographical error since Note (b) does not apply to the test connection, vent and drain valves.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes do not affect any previous

analyses nor do they alter the intent or implementation of the applicable Technical Specifications. The purpose of these changes is to clarify existing requirements by correcting existing typographical errors.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because the scope of these proposed changes is limited to the correction of typographical errors and the clarification of existing requirements. None of the changes affects the plant design or operation.

The proposed changes do not involve a significant reduction in a margin of safety because no setpoint, design or analytical limit assumed or required by any analysis is affected by these proposed changes. The intent of the existing Technical Specification requirements would remain unchanged since the proposed changes would only correct typographical errors.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendments: October 30, 1987

Description of amendments request: These proposed amendments would revise Technical Specification Sections 3.6.1.4 and 3.6.4 and Table 3.6.4-1. The proposed change to Specification 3.6.1.4 consists of the addition of a provisional footnote to the operability requirements specified in the Limiting Condition for Operation for the MSIV Leakage Control System (MSIV-LCS). This note, which is only applicable to MSIV-LCS instrumentation, states that "An MSIV leakage control system instrumentation channel may be placed in an inoperable status for up to 2 hours for required surveillance without placing the channel in the tripped condition provided the other channel or channels monitoring that parameter are OPERABLE." Illinois Power Company has proposed a plant modification to add test connections upstream of certain excess flow check valves (1CM002B, 1SM008, 1SM011, 1E22-F332, 1E51-F377B) in order to facilitate the testing of these valves as required by Technical Specification 4.6.4.4. The new test connections to be added would contain isolation valves which must be added to the Test Connections, Vents and Drains section of Table 3.6.4-1. In order to ensure compliance with the Technical Specifications, and yet provide some flexibility in the schedule for completing the modification, Illinois Power Company has proposed that footnotes be added to pages 3/4 6-29 and 3/4 6-61 to allow the proposed Technical Specification changes to become effective once the modification is complete. At that time, the operability requirements and provisions of the Technical Specifications would be in effect for the subject valves.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated these proposed amendments and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

These proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated nor do they alter the intent or implementation of the applicable Technical Specifications. The proposed amendment to Specification 3.6.1.4 does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change to the operability requirements for the MSIV-LCS instrumentation has negligible impact on the availability of the system based on the premise, as stated in IEEE 279, that the time allowed for the channel under test to be inoperable is so short that the probability of failure of the active channel(s) would be commensurate with the probability of failure of all redundant system channels during the normal interval between tests. Because the proposed change has no significant impact on the design or operability of the system, the system will remain fully capable of performing its function to mitigate the consequences of the accident for which it was designed. The licensee has stated the following reasons why the proposed changes to Specification 3.6.4 and Table 3.6.4-1 do not involve a significant increase in the probability or consequences of an accident previously evaluated:

(a) With respect to maintaining containment integrity, the addition of the test connections supports testing required to verify the capability of the excess flow check valves to check the flow at a particular differential pressure assumed for accident conditions;

(b) The added test connections are double-valved, capped, and meet the applicable design/safety requirements in order to ensure containment integrity;

(c) Adding the valves to Table 3.6.4-1 also makes all of the applicable Technical Specification requirements associated with containment integrity applicable to the new valves as well; and

(d) The addition of the test connections does not affect the functional characteristics of the excess flow check valves and therefore does not affect operation of the associated systems.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, nor do they affect plant design or operation. The proposed change to Specification 3.6.1.4 only applies to the MSIV-LCS system and it does not significantly impact the operability of this system. The proposed changes to Specification 3.6.4 and Table 3.6.4-1 concern the addition of test connections upstream of certain excess flow check valves. The licensee determined that this change should be evaluated with respect to containment integrity and the operability of the excess flow check valves, including their impact on the associated systems (Containment Monitoring, Suppression Pool Makeup, High Pressure Core Spray and Reactor Core Isolation Cooling). Since this impact had already been evaluated by the licensee, no further consideration of a new or different kind of accident is required.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed change to Specification 3.6.1.4 does not affect the actuation instrumentation trip setpoints. Also, under the current action statement, an inoperable MSIV-LCS subsystem must be returned to operable status within 30 days. If not, the plant must be in hot shutdown within the next 12 hours and cold shutdown within the following 24 hours. Thus, the time allowed for the channel to be inoperable for testing (subject to the provisions of the note) is insignificant relative to the out-of-service time allowed for the subsystem under the action statement. The proposed changes to Specification 3.6.4 and Table 3.6.4-1 do not involve a change to any trip setpoints, analytical values, or design limits required or assumed in any safety analysis.

For the reasons stated above, the staff believes these proposed amendments involve no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 11, 1987

Description of amendment request: The proposed change revises Technical Specification 3.3.3.8, Fire Detection Instrumentation, and its associated Table 3.3-11, to change the number of detection instruments and zones of detection providing indication of fire in the annulus. This Technical Specification (TS) change will implement a proposed change in method of fire detection for the annulus wherein the current system will be replaced with fire detection instruments mounted on the Annulus Negative Pressure System (ANPS) ductwork.

The proposed change to Table 3.3-11 consists of reducing the number of Function A detection instruments from 69 to two, the number of zones from two to one; and indicating detection at elevation +46 only. Further, a footnote will be added to the table to clarify that the fire detection instruments for the annulus are physically installed on the ANPS ductwork in the RAB. The change to Statement c of TS 3.3.3.8 does not change the intent of the statement, but rather modifies the wording to be consistent with the proposed system configuration. As a result of moving the detection instruments to a location outside the annulus, the surveillance interval requirements of TS 4.3.3.8.1 and 4.3.3.8.2 will change from "each COLD SHUTDOWN exceeding 24 hours unless performed in the previous 6 months" to "at least once per 6 months." However, this occurs within the context of the existing surveillance requirement language.

The existing annulus fire detection system consists of 69 ionization type smoke detectors circling the annulus in three vertical loops at elevations -4, +21 and +46. These three loops comprise two zones of detection for alarm purposes. The proposed fire detection system consists of two photoelectric smoke detectors mounted on the ANPS ductwork with sample tubes penetrating into the duct. The ANPS operates continuously during normal plant operation to maintain the annulus negative pressure greater than five inches water gauge in accordance with TS 3.6.6.2. A number of alternatives to the existing system were evaluated by the licensee, and the duct mounted detectors were determined to be the best choice for this application. In addition to providing an adequate level of fire protection for the annulus:

1. The detectors will be accessible during all modes of operation;

2. Entries into the annulus will not be required except for fire watch patrols in the event of loss of operability of the detectors; and

3. Surveillances will be more easily performed, and without the personnel hazards associated with scaling the annulus wall.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration. As required by 10 CFR 50.92(c), a proposed change to an Operating License involves no Significant Hazards Consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis from this proposed finding is given below.

(1) The probability of a previously evaluated accident will not be significantly increased because the proposed change will not alter conditions within the annulus. Neither will there be an increase in the consequences of a previously evaluated accident as the proposed change will still provide adequate fire detection capability for the annulus. In particular, the intake duct of the ANPS is located directly above the electrical penetrations traversing the annulus, thereby insuring that the level of fire protection maintained for the annulus is commensurate with the attendant hazards.

(2) The proposed change maintains fire detection capability for the annulus when a fire watch is not required. It is only the method and configuration that is changed, and this method was demonstrated to provide detection capability during a field test of a mock-up system. No combustible or ignition sources are introduced by the change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change preserves the capability to detect fire in the annulus. In addition, the proposed change will increase system reliability through the elimination or significant reduction in spurious alarms, and the accessibility of detection instruments for maintenance activities and surveillance testing. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: January 6, 1988

Description of amendment request: The proposed amendment would modify the Technical Specifications to update Figure 5.2.-1 and Figure 5.2-2 in Technical Specification 5.2 "Organization" depicting the Maine Yankee Atomic Power Company offsite and facility organization, respectively.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications to depict the revisions to the organizational structures and title nomenclature have been evaluated against the standards of 10 CFR 50.92 and have been determined to not involve a significant hazards consideration. These proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change to the organizational charts in TS 5.2 are administrative in nature and have no effect on the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in plant design or operation, inclusion of the proposed changes in the technical specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

For the reasons previously stated, adoption of the proposed change would not involve a significant reduction in safety margin for the plant.

Maine Yankee has concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration as defined by 10 CFR 50.92. We have reviewed the licensee's analysis and have agreed with it. Accordingly, the Commission proposes to determine that this change does not involve a significant hazard.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 287, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Richard H. Wessman, Acting Director

Pennsylvania Power and Light Company, Docket No. 50-388 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: December 23, 1987

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station, Unit 2 Technical Specifications in support of the forthcoming fuel reload for Cycle 3 operation. Specifically, the licensee has requested to change the following parts of the Technical Specifications:

- Technical Specifications Index
- Specification 3/4.2.1 related to Average Planar Linear Heat Generation Rate
- Specification 3/4.2.2 related to APRM Setpoints
- Specification 3/4.2.3 related to Minimum Critical Power Ratio
- Specification 3/4.2.4 related to Linear Heat Generation Rate
- Specification 3/4.3.6 related to Control Rod Block Instrumentation
- Specification 3/4.4.1 related to Recirculation System
- Specification B 2.1 related to Safety Limits
- Specification B 3/4.2.1 related to Average Planar Linear Heat Generation Rate
- Specification B 3/4.2.2 related to APRM Setpoints
- Specification B 3/4.2.3 related to Minimum Critical Power Ratio
- Specification B 3/4.4.1 related to Recirculation System

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusions provided by the licensee in its December 23, 1987 submittal.

The following three questions are addressed for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

- *Specification 3/4.2.1, Average Planar Linear Heat Generation Rate* The changes to this specification reflect editorial changes to correct misarranged wording that was issued with Amendment 31, and the replacement of references to "Exxon" with "ANF." A change to increase the allowed exposure for GE 2.33% enriched fuel to 40,675 MWD/MTU is also proposed.

I. No. The editorial changes to correct misarranged wording and the vendor reference are wholly editorial in nature and therefore have no impact on any safety analysis.

The change to the GE limit is based on a GE LOCA analysis. This new curve was previously approved by the NRC in Amendment 64 to the Unit 1 Operating License, it is a fuel-dependent limit, and is being applied to the same type of GE fuel in this Unit 2 proposal. As stated in the staff safety evaluation for Amendment 64, "The resulting peak cladding temperature (PCT) limit and local oxidation fraction were calculated by GE based on the same plant conditions and systems analysis used to derive the current MAPLHGR limits defined in the SSES FSAR. The calculated values are well within the 10 CFR 50.46 Appendix K limits." These conclusions still apply.

II. No. The editorial changes cannot create new concerns; based on the methods and results of the GE analysis discussed above, no new events are postulated due to the extended burn-up limit.

III. No. The editorial changes have no safety impact. The previously approved methods and results of the GE analysis ensure that the margin of safety is not reduced due to the change in the GE fuel MAPLHGR limit.

- *Specification 3/4.2.2, APRM Setpoints* All proposed changes to this specification are editorial.

I. No. The proposed changes correct the vendor reference from "Exxon" to "ANF." This has no impact on safety analyses since it is entirely administrative in nature.

II. No. See I above (vendor reference change is unlikely to create a possibility of a new or different kind of accident from any previously evaluated);

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

- *Specification 3/4.2.3, Minimum Critical Power Ratio* The changes to this specification reflect the results of the cycle-specific transient analyses.

I. No. Limiting core-wide transients were evaluated with ANF's COTRANSA code and this output was utilized by the XCOBRA-T methodology to determine delta CPRs. Both COTRANSA and XCOBRA-T have been approved by the NRC in previous license amendments. All core-wide transients were analyzed deterministically (i.e., using bounding values as input parameters).

Two load events, Rod Withdrawal Error and Fuel Loading Error, were analyzed in accordance with the methods described in XN-NF-80-19 (A) Vol. 1. This methodology has been approved by the NRC.

Based on the above, the methodology used to develop the new operating limit MCPRs for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. No. The methodology described can only be evaluated for its affect on the consequences of analyzed events; it cannot create new ones. The consequences of analyzed events were evaluated in I above.

III. No. As stated in I above, and in greater detail in the attached Summary Report, the methodology used to evaluate core-wide and local transients is consistent with previously approved methods and meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

- *Specification 3/4.2.4, Linear Heat Generation Rate* All proposed changes to this specification are editorial.

I. No. The proposed changes correct the vendor reference from "Exxon" to "ANF." This has no impact on safety since it is entirely administrative in nature.

II. No. See I above (vendor reference change is unlikely to create the possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

- *Specification 3/4.3.6, Control Rod Block Instrumentation* The proposed change to this specification is editorial and was previously submitted to the NRC via proposed amendment 52, dated June 30, 1987.

I. No. The proposed change restores footnote "*" to Trip Function 2a. This footnote was always meant to apply in this location. This change has no impact on safety since it is entirely editorial in nature.

II. No. See I above (vendor reference change is unlikely to create the possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (vendor reference change is unlikely to involve a significant reduction in a margin of safety).

- *Specification 3/4.4.1, Recirculation System*

a. Two Loop Operation: The changes to these requirements are due to the cycle specific stability analysis. The new analysis resulted in a varying "detect and suppress" region flow boundary, which in turn resulted in the need for the editorial changes to the action statements.

I. No. CONTRAN core stability calculations performed for U2C3 predict stable reactor operation outside of the detect and suppress region of operation in SSES Unit 2. The detect and suppress region is defined by the area above and to the left of the 80% Rod Block line, the 45% constant flow line, and the line connecting the 66% Power/45% Flow, 69% Power/47% Flow points extrapolated to the APRM Rod Block line. Operation outside or on the boundary of this region is supported by COTRAN calculations which result in decay ratios of less than or equal to 0.75 as required by the NRC SER on COTRAN. This region is slightly larger than the region previously specified for SSES Unit 2. The results of this analysis are presented in Summary Report Reference 4 (see licensee's December 23, 1987 application). PP&L has performed a stability startup test in SSES Unit 2 during initial startup of Cycle 2 to demonstrate stable reactor operation with ANF 9X9 fuel. The test results (see Summary Report Reference 7) show very low decay ratios with a core containing 324 ANF 9X9 fuel assemblies.

Based on the above, operation within the limits specified by the proposed Technical Specifications will not significantly increase the probability or consequences of unstable operation.

II. No. The methodology described above can only be evaluated for its (e)ffect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in I above.

III. No. The methodology used to determine the regions of potentially unstable operation and stable operation were based on the guidance provided in the NRC SER for COTRAN. Also, SSES Unit 2 Technical Specifications have implemented surveillances for detecting and suppressing power oscillations. This along with the tests and analyses described in I above assures SSES Unit 2 complies with General Design Criteri(on) 12, Suppression of Reactor Power Oscillations. Therefore, the proposed change will not result in a significant decrease in safety margin.

b. Single Loop Operation: The proposed changes reflect the changes submitted in support of Cycle 2 operation (reference proposed amendment 52 to License No. NPF-22, dated June 30, 1987), which is still pending with the NRC. The only change not explicitly evaluated in that submittal was the cycle-specific single loop MCPR limit, and an administrative change to the Single Loop Operation (SLO) figure on Thermal Power Limitations.

I. No. The new MCPR limit is a result of the SLO analysis discussed in the attached ANF report, ANF-87-125. The 0.01 MCPR penalty during SLO is still proposed. The change to the figure number is entirely editorial in nature and therefore has no impact on safety.

II. No. See I above (editorial change is unlikely to create a possibility of a new or different kind of accident from any previously evaluated).

III. No. See I above (editorial change is unlikely to involve a significant reduction in a margin of safety).

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 6, 1987, as revised December 16, 1987.

Description of amendment request: The proposed amendment would revise the Bases for Technical Specification (TS) Section 3/4.4.6.2 regarding Pressure Boundary Leakage by deleting the provision for continued plant operation, and by adding a statement requiring that the unit be placed promptly in cold shutdown following the occurrence of Pressure Boundary Leakage. The proposed language is consistent with that of the Westinghouse Standard Technical Specifications (W-STS) and resolves an editorial inconsistency between B 3/4.4.6.2 and the definition of Pressure Boundary Leakage as defined in TS Section 1.16.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) is a purely administrative change to technical

specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change corrects an internal inconsistency in the TS. It does not propose a plant modification or any change in the way the Trojan Nuclear Plant is to be operated. The probability or consequences of an accident are unaffected because the TS will continue to require that leakage (except steam generator tube leakage) through a nonisolable fault in an RCS component body, pipe wall or vessel wall, be classified as Pressure Boundary Leakage.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The possibility of a new or different kind of accident is not created by this change, because it corrects an inconsistency in the TS. Changing the Bases to TS 3/4.4.6.2 to be consistent with the definition in TS Section 1.16 is an administrative change that does not result in any change to the facility, and does not alter the TS requirement to shut down the unit in the event of Pressure Boundary Leakage.

3. The proposed change would not involve a significant reduction in a margin of safety.

The proposed change does not alter a margin of safety because the TS will continue to require prompt reactor shutdown upon occurrence of Pressure Boundary Leakage. This change eliminates potential confusion caused by the wording of TS Bases 3/4.4.6.2 which provides for continued Plant operation if Pressure Boundary Leakage is isolated. It is incorrect to refer to RCS leakage that can be isolated as Pressure Boundary Leakage. This change merely corrects that error.

The proposed change is an editorial change to achieve consistency within the Technical Specifications, and is considered to fall within the scope of the Commission's Example (i) cited above.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: May 15, 1987 (TS 229)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications to delete the requirement to perform a partial closure test on the main steam isolation valves (MSIVs) denoted in Surveillance Requirement 4.7.D.1.c. Deletion of the test requirement would allow the partial closure test to be performed quarterly, consistent with the requirement denoted in Table 4.1.A for the Reactor Protection System (RPS) scram on MSIV closure, rather than the twice per week test currently specified. Since 1977, the Browns Ferry Nuclear Plant has experienced five scrams attributable to equipment used during this test. The proposed change would remove excessive testing requirements for the MSIVs and decrease the probability of accidental plant transients caused during the performance of the surveillance test.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application and has determined that the proposed change:

1. Would not involve a significant increase in the probability or consequence of an accident previously evaluated. The proposed change to eliminate Surveillance Requirement 4.7.D.1.c discusses the frequency of partial closure surveillance testing of the MSIVs. However, the decrease in surveillance is limited by the requirement to perform a quarterly test to partially close the MSIVs consistent with the requirements in Table 4.1.A [Reactor Protection System (Scram) Instrumentation Functional Test Minimum Functional Test Frequencies For Safety Instrumentation and Control Circuits]. The decrease in testing frequency is offset by the decrease in the probability of inadvertent scrams and plant transients. The MSIVs have demonstrated a high degree of reliability in closing and failure of the mechanical portion of the valve has not been a dominant failure mode. This proposed change does not result in any modification to the plant or system operation and no safety-related equipment or function would be altered.

2. Would not create the possibility of a new or different kind of accident from any accidents previously evaluated. As stated in (1) above, the proposed change only decreases the frequency for partial closure testing from twice per week to once per quarter which is offset by the increase in plant safety. The proposed change does not modify any plant equipment, provide any new operational conditions, or create any new accident modes.

3. Would not involve a significant reduction in a margin of safety. The proposed change to reduce the frequency of partial closure testing of the MSIVs from twice per week to quarterly would decrease the probability of accidental transients which have previously occurred during the performance of this test. The proposed change is consistent with the guidance provided in NUREG-0737, Item II.K.3.16, which indicates that one way to reduce challenges to the relief valves is by reducing MSIV testing.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 16, 1987 (TS 238)

Description of amendment requests: The proposed amendments would modify the Technical Specifications (TS) of Browns Ferry Nuclear Plant, Units 1, 2 and 3 to:

A. Require that primary containment isolation valves be operable whenever primary containment integrity is required to be maintained.

B. Permit a primary containment isolation valve(s) to be inoperable for up to 4 hours without placing a redundant valve in the isolated position provided that at least one isolation valve in the same line is operable.

C. Revise the definition 1.0.0.3, Primary Containment Integrity, to be consistent with Item B.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 50.92, the licensee has performed and provided the following analysis.

1. This proposed amendment does not involve an increase in the probability or consequences of an accident previously evaluated. (A) The change to increase the requirements for having the primary containment isolation valves operable for all the operating conditions when primary containment integrity is required, rather than just during reactor power operation, is an upgrade in required valve operability which does not influence the probability of any accident initiating events. The consequences of any accident previously evaluated would not be increased since the primary containment isolation valves would still be operable for isolating any previously analyzed release pathway. (B) The action to specify a time period (four hours) for a primary containment isolation valve(s) to be inoperable without placing a redundant isolation valve in the isolated position, provided that a redundant isolation valve is operable, would not involve a significant increase in the probability or consequences of an accident previously evaluated. This change does not influence the probability of any accident initiating event. In order for the change to result in adverse consequences to the plant, all of the following events would have to occur sequentially within a four hour time period:

a. A primary containment isolation valve would have to be declared inoperable and be in an unisolated state.

b. An accident would have to occur which would require the isolation of the primary containment.

c. The second primary containment isolation valve in the affected line would have to suffer a failure which would leave it in an unisolated state.

This sequence of events is considered to be highly improbable. The probability of an accident and a single failure of the operable primary containment isolation valve occurring during the four hour time period is negligible. This change is consistent with Technical Specifications recently approved for other facilities. (C) The change to the definition of primary containment integrity has no impact on the probability of consequences of an accident as described in B above.

2. (A) The possibility of a new or different kind of accident from an accident previously evaluated is not created by conservatively requiring the primary containment isolation valves be operable over a broader range of operating conditions.

(B) and (C) This Technical Specification change will still require one operable primary containment isolation valve be available to mitigate the consequences of an accident. Reliance on a single operable isolation valve for a short (four hour) time frame is sufficient to assure the affected line will isolate as previously analyzed. Allowing a primary containment isolation valve to be inoperable for four hours does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. (A) The TS revision will broaden the operating conditions under which primary containment isolation valves are required to be operable. This change does not affect any margin of safety.

(B) and (C) The change to allow a primary containment isolation valve to be inoperable for four hours deals only with the reliability of the affected line to isolate. A safety margin is not affected if isolation of the affected line is assumed to occur as in Item 2 above.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 27, 1987 (TS 235)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications to reference the ASME Section XI Pump and Valve Program definition and to revise various surveillance test frequencies consistent with the specified ASME program. Existing monthly pump and valve surveillance testing frequencies were based upon earlier editions of the ASME Code which required once per month operability testing of some components. The ASME Code of record referenced in the recently committed Browns Ferry Nuclear Plant pump and valve program specifies an edition of the Code which requires these components to be tested quarterly.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operation license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application and has determined that the proposed change:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would reference the new ASME Section XI Pump and Valve Program definition and would revise various surveillance test frequencies to be consistent with the ASME program. The current ASME testing program referenced in the Technical Specification results in excessive testing requirements, potentially causing unnecessary wear to pumps and valves. Referencing the new ASME Section XI program in the Technical Specifications will effectively improve the reliability of these components by the use of a more optimum testing frequency. Therefore, the probability of any previously evaluated accident will not increase and may in fact slightly decrease due to the decrease in unnecessary wear to pumps and valves during testing. The proposed change does not result in any modification to the plant or system operation and no safety-related equipment or function will be altered and, thus, the consequences of such accidents will not be affected.

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2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change in test frequencies for applicable pumps and valves are intended to meet 10 CFR 50.55a requirements. The proposed change does not alter the intent of the Technical Specifications or change the method of testing, nor change the acceptance criteria for the applicable equipment. No methods or limits of operations are being altered; therefore, no new accident possibilities are created.

3. Would not involve a significant reduction in a margin of safety. The proposed change will result in an optimum testing interval consistent with the ASME testing requirements. The earlier edition of the ASME Code specified greater testing frequencies. The Code was revised because the existing monthly frequency requirements caused unnecessary wear to pump and valve components. Therefore, the margin of safety has not been reduced, and could be slightly increased due to the decrease in unnecessary wear to pumps and valves during testing.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Assistant Director: Gary G. Zech

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 30, 1987

Description of amendment request: The proposed amendment would modify the Kewaunee Technical Specifications to permit sleeving of the steam generator tubes. Currently, the Kewaunee Technical Specifications have requirements only for removal from service by plugging those steam generator tubes with eddy current indications showing greater than 50 percent through-wall degradation. Plugging removes the tube from service by eliminating reactor coolant flow through the tube.

Sleeving is a process by which a smaller, shorter tube (sleeve) is placed inside the existing steam generator tube. This sleeve extends a distance beyond the tube sheet region and is sealed to the original tube effectively forming a new barrier. Thus, if a defect were to exist in the steam generator tube in this area, the sleeving process is a viable alternative to plugging the tube and removing it from service.

Kewaunee has experienced some steam generator tube degradation and the use of sleeving will allow the life of the steam generators to be extended by allowing tubes with defects to be repaired and remain in service.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of a facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided a discussion regarding the above three criteria as summarized below:

Criterion 1: The creation of the option to sleeve defective steam generator tubes has no effect on either the probability or consequences of any accident previously evaluated. The integrity of the steam generator tubes will be consistent with the original design basis. Thus, since the structural integrity of the tubes will not be affected by sleeving, there is no increase in the probability of any accident previously evaluated.

In addition, the steam generator will remain capable of performing its required heat transfer function. The act of placing a sleeve in the steam generator tube actually results in more reactor coolant flow through the generator than if the tube were plugged. Thus, the consequences of any accident previously evaluated is unaffected because the heat transfer capability of the steam generators will not be significantly altered.

Criterion 2: As discussed above, both the structural integrity and the heat transfer capability of the Kewaunee steam generators will not be significantly affected by the use of sleeves. Repair of the tubes does not provide a mechanism resulting in an accident outside of the sleeved area. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube would be bounded by the existing tube rupture accident analysis.

Criterion 3: The heat transfer capabilities of the Kewaunee steam generators will be improved by utilizing the sleeving process rather than the currently required plugging process. The sleeving process will allow a repaired steam generator tube to remain in service, rather than completely blocking the tube's flow with plugs. The safety factors used in the design of the sleeves for the repair of degraded tubes are consistent with the safety factors used in the steam generator design. Since the structural integrity of the steam generators will be unaltered, the net effect of utilizing a steam generator tube sleeving process rather than a plugging procedure will be an increase in margin of safety. This increase is due to the relatively improved heat transfer characteristics of the steam generator.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: January 8, 1987 as supplemented June 8 and October 16, 1987.

Description of amendments request: These amendment requests were originally noticed April 22, 1987 (52 FR 13353). This notice identified the part of the amendments concerning the change in the number of containment hydrogen monitors as administrative. Further review indicates that this change is not administrative because the number of containment monitor channels is changed, and new Limiting Conditions for Operation (LCO's) are proposed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Regarding (1) and (2) above, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated. Hydrogen monitors are installed in the containment to detect post-accident hydrogen. Hydrogen monitors are not contributors to accidents, but are installed to ensure post-accident hydrogen detection capability. Regarding (3) above, the proposed amendments do not involve a significant reduction in a margin of safety because no design basis safety analyses or limiting settings are being changed by the proposed amendment. As stated above, the hydrogen monitors are installed in order to provide post-accident hydrogen detection capability. The monitors are not contributors to accidents, but are installed for use in response to accidents; therefore, the margin of safety is not affected by the proposed amendments.

On this basis, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this biweekly notice. They are repeated here because the biweekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: December 3, 1987

Description of amendment request: This amendment would modify the D.C. system technical specifications to address operation of the D.C. crosstie between units for the following two situations:

With both units operating and one battery charger fails, the D.C. crosstie may be used, for up to 24 hours, to maintain the D.C. bus in an operable status while the battery charger is being repaired.

With one unit operating and the other unit shutdown with a battery and its associated battery charger out of service, the D.C. crosstie may be used for up to 7 days, to maintain the D.C. bus in an operable status.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment controls the use of the D.C. crosstie between opposite unit D.C. buses. Accidents previously evaluated assume a certain load profile on a D.C. bus. The D.C. bus loading, when using the crosstie, will be restricted so the capacity of the operating unit's battery will not be exceeded in the event of a single failure and simultaneous accident and loss of offsite power condition. A single failure and simultaneous accident and loss of offsite power are the conditions assumed for a D.C. bus in previously evaluated accidents. As a result, the probability or consequences of accidents previously evaluated are not changed by this proposed amendment. Therefore, based upon the previous analysis, the staff concludes that this change to the D.C. system Technical Specifications results in no reduction in the margin of safety and does not involve significant hazards consideration.

Local Public Document Room Location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to Licensee: Michael Miller, Esq., Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: November 18, 1987

Brief description of amendment request: The proposed amendment would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure and (III) a revised composition of the Plant Operations Review Committee.

Date of publication of individual notice in **Federal Register:** December 23, 1987 (52 FR 48589)

Expiration date of individual notice: January 22, 1988

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: November 19, 1987

Brief description of amendment request:

The proposed amendments would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes.

Date of publication of individual notice in **Federal Register:** December 23, 1987 (52 FR 48593)

Expiration date of individual notice: January 22, 1988

Local Public Document Room location: Government Publications

Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 30, 1987, as supplemented October 3, 1987

Brief description of amendment: The proposed amendment consists of changes to the Radiological Effluent Technical Specifications associated with the liquid, gaseous, and solid radwaste systems. The proposed changes are predominantly an upgrade of the existing specifications to current regulatory criteria.

Date of publication of individual notice in **Federal Register:** December 28, 1987 (52 FR 48889) and January 12, 1988 (53 FR 768)

Expiration date of individual notice: January 27, 1988

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin

Date of application for amendment: April 17, 1986, March 24, 1987 and August 18, 1987

Brief description of amendment: This amendment revises the Technical Specifications (TS) to: (1) reduce the required size of the fire brigade from five persons to three persons and; (2) reflect the reorganization of the managements staff and update the offsite organization chart. Also, an exemption grants relief from 10 CFR Part 50, Appendix R, Section III.H with respect to requirements on the size of the fire brigade.

Date of issuance: January 4, 1988

Effective Date: January 4, 1988

Amendment No.: 58

Facility Operating License No. DPR-45. This Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16927) and September 23, 1987 (52 FR 35790). The Commission's related evaluation of the amendment is contained in Safety Evaluation dated January 4, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 27, 1987

Brief description of amendment: This amendment revises Table 4.8.2.1-1 entitled, "Battery Surveillance Requirements," of Plant Technical Specification 3/4.8.2.1 (Appendix A to Facility Operating License No. NPF-43) to delete Table Notations (7) and (8) and the applicable Bases which specify battery surveillance parameters for a nominal specific gravity electrolyte of 1.250.

Date of issuance: January 11, 1988

Effective date: January 11, 1988

Amendment No.: 13

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24547) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 31, 1987

Brief description of amendments: The amendments change Technical Specification 3/4.7.4 "Nuclear Service Water System" and its Bases to reflect that portions of the system are shared between the two McGuire units, but that the system is not shared in its entirety.

Date of issuance: January 4, 1988

Effective date: January 4, 1988

Amendment Nos.: 78 and 59

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34003) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: October 19, 1987

Brief description of amendment: This amendment deleted License Conditions 2.C(4) and 2.C(5). License Condition 2.C(4) required the licensee to use an approved method to show that Combustion Engineering fuel would not experience creep collapse unless the new Exxon Corporation methodology

had been approved for use by the staff and the results were valid for Cycle 6. License Condition 2.C(5) required the licensee to provide a supplement to XN-NF-85-117, "St. Lucie Unit 1 Revised LOCA ECCS Analysis with 15% Steam Generator Tube Plugging," that would provide the complete large-break LOCA spectrum results to demonstrate full compliance with the criteria of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the Commission staff's review and approval. Both license conditions had been satisfied.

Date of Issuance: January 13, 1988

Effective Date: January 13, 1988

Amendment No.: 88

Facility Operating License No. DPR-67: Amendment revised the License.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45886) The Commission's related evaluation of the amendment is contained in a letter dated January 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: March 20, 1987, as supplemented November 23, 1987

Description of application for amendment: The amendment modified the Technical Specifications to permit a temporary increase in the main steam line high radiation scram and isolation setpoints to facilitate the testing of hydrogen addition water chemistry.

Date of issuance: January 13, 1988

Effective date: January 13, 1988

Amendment No.: 88

Facility Operating License No. NPF-5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26586) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: October 5, 1987.

Brief description of amendments: The amendments revised the license conditions to change the name of the licensee from the Indiana and Michigan Electric Company to the Indiana Michigan Power Company.

Date of issuance: January 13, 1988

Effective date: January 13, 1988

Amendment Nos.: 114, and 98

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Licenses.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42363). The Commission's related evaluation of the amendments is contained in a letter dated January 13, 1988 and an environmental assessment dated December 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by changing the limits for Axial Shape Index.

Date of issuance: January 5, 1988

Effective date: January 5, 1988

Amendment No.: 28

Facility Operation License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37547) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 25, 1987

Brief description of amendment: The amendment changes the Technical Specifications to reflect changes to the divisional power supplies and associated primary containment penetration conductor overcurrent protective devices for two isolation valves in the reactor water cleanup system.

Date of issuance: January 4, 1988

Effective date: January 4, 1988

Amendment No. 43

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1987 (52 FR 46134) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: December 22, 1986

Brief description of amendment: The amendment changes the expiration date for the Millstone Unit 2, Facility Operating License, DPR-65, from December 11, 2010 to July 31, 2015.

Date of issuance: January 12, 1988

Effective date: January 12, 1988

Amendment No.: 123

Facility Operating License No. DPR-65: Amendment changes the expiration date of the Facility Operating License.

Date of initial notice in **Federal Register:** February 26, 1987 (52 FR 5864) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1988 and Environmental Assessment dated January 12, 1988.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: December 5, 1986, as supplemented March 26, July 31 and November 6, 1987.

Brief description of amendment: The amendment revised criteria related to the auxiliary feedwater system and added specific requirements associated

with the emergency feedwater instrumentation and control system.

Date of issuance: January 5, 1988
Effective date: January 5, 1988
Amendment No.: 93
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35804). The November 6, 1987 submittal consists of administrative restructuring of the operability requirements table and a clarification of system testing constraints. The submittal does not change the substance of the amendment as previously noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 2, 1987 (TS 234)

Brief description of amendments: The amendments correct a minor deficiency in technical specification 6.8.3.1, page 6.0-21, concerning high radiation areas. They change the upper limit of one set of requirements from "less than 1000 mrem/hr" to "less than or equal to 1000 mrem/hr" to clarify any time the radiation intensity of exactly 1000 mrem/hr is achieved in any area of the plant.

Date of issuance: December 31, 1987
Effective date: December 31, 1987, and shall be implemented within 30 days
Amendments Nos.: 139, 135, 110
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39307) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 22, 1987 (TS 87-20)

Brief description of amendments: The amendment revises several functions for reactor trip system and engineered safety features actuation system instrumentation: the channel calibration requirements for the P-4 function is deleted, clarification for manual actuation is added, a response time correction is made, and automatic actuation logic requirements are added.

Date of issuance: December 31, 1987
Effective date: December 31, 1987
Amendment Nos.: 63, 55
Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1987 (52 FR 29931) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 11, 1987 (TS 87-32)

Brief description of amendments: The amendments revise the diesel generator continuous and two-hour ratings in the surveillance requirements.

Date of issuance: January 7, 1988
Effective date: January 8, 1988
Amendment Nos.: 64, 58
Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39309) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 22, 1987 (TS 87-11)

Brief description of amendments: The amendments revise Section 3/4 11.2 to require sampling using the containment noble gas activity monitors rather than the Shield Building stack monitor.

Date of issuance: January 11, 1988
Effective Date: January 11, 1988
Amendment Nos.: 65, 57
Facility Operating Licenses Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 19, 1987 as supplemented by letter dated October 30, 1987.

Brief description of amendment: The amendment revised the License and Technical Specifications in order to remove certain fire protection requirements from the Technical Specifications and place them in plant procedures under the control of the plant's on-site review committee, and place them in the Final Safety Analysis Report.

Date of issuance: January 13, 1988.

Effective date: January 13, 1988 and shall be implemented upon the licensee's completion of the necessary procedural changes. The licensee will notify the Commission in writing when the necessary procedural changes have been completed.

Amendment No. 30.

Facility Operating License No. NPF-30. Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7897). The October 30, 1987 submittal contained only minor changes to, and clarification of, the original application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of applications for amendments: October 7, 1986, as supplemented June 8, 1987; April 1, 1987; and May 28, 1987.

Brief description of amendments: These amendments revise Section 3.12 of the Surry Technical Specifications (TS) by revising the actions to be taken by the licensee while operating with an inoperable, misaligned or dropped control rod. Also, the fully withdrawn position of all rod cluster control assembly (RCCA) banks to minimize localized RCCA wears is redefined. Finally, these amendments permit the operation of Surry Units 1 and 2 with 15 x 15 Surry Improved Fuel Assemblies, in addition to the Westinghouse Low Parasitic 15 x 15 (LOPAR) Fuel Assemblies during Cycle 10. The LOPAR fuel assemblies will eventually be replaced by the SIF assemblies.

Date of issuance: January 6, 1988
Effective date: January 6, 1988
Amendment Nos. 116 and 116
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notices in **Federal Register:** August 12, 1987 (52 FR 29934), September 23, 1987 (52 FR 35809), and July 15, 1987 (52 FR 26602) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1988.

No significant hazards consideration comments received: No

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397 Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: September 27, 1985, as supplemented November 6, 1985 and September 17, 1986.

Brief description of amendment: The amendment revises Section 6.4.1 of the Technical Specifications and the organization charts in Figures 6.2.2-1a and 6.2.2-1b to reflect organizational and other administrative changes.

Date of issuance: December 24, 1987
Effective date: December 24, 1987
Amendment No.: 49
Facility Operating License No. NPF-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37522) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 10, 1986 as revised July 17, 1987.

Brief description of amendments: The amendments modified Technical Specification 15.6.10, "Plant Operating Records", to make it consistent with the Westinghouse Standard Technical Specifications, and corrected minor administrative and typographical errors in numerous other TS.

Date of issuance: January 5, 1988
Effective date: January 5, 1988
Amendment Nos.: 110, and 113
Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18098). The information provided by the July 17, 1987 letter revises certain changes requested in the April 10, 1986 amendment application to achieve consistency with 10 CFR Part 55. Additionally, the July 17, 1987 letter revises the amendment application to reflect the issuance of a number of amendments to the Technical Specifications since the April 10, 1986 amendment application was submitted. The July 17, 1987 submittal does not change the previous determination that the application for amendment involves no significant hazards consideration. The amendment application was renoticed October 21, 1987 (52 FR 39310) to note a revision to the amendment application required by 10 CFR Part 55, which became effective May 26, 1987, after the original amendment application had been submitted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 6, 1988 (NRC-88-0001)

Brief description of amendment: This amendment revises Table 3.4.3.2-2 of the Technical Specifications to correct alarm setpoints for the reactor coolant system interface valves leakage pressure monitors.

Date of Issuance: January 12, 1988

Effective date: January 12, 1988

Amendment No.: 14

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 12, 1988.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

NRC Project Director: Martin J. Virgilio

Dated at Bethesda, Maryland this 21st day of January 1988.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects - III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[Doc. 88-1534 Filed 1-26-88; 8:45 am]

BILLING CODE 7590-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25276; File Nos. SR-Amex-87-11; SR-NYSE-87-8]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. Relating to Fines and Disciplinary Proceedings

I. Introduction

The American and New York Stock Exchanges ("Amex" and "NYSE," collectively, "Exchanges") submitted copies of proposed rule changes pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder [2] to amend their rules to eliminate the maximum limit on the amount of fines that may be imposed in connection with an exchange disciplinary action.[3] Currently, NYSE Rule 476 permits a maximum fine per charge of $25,000 for natural persons and $100,000 for other than natural persons, while the Amex Constitution [4] limits fines to $25,000 for members, and $100,000 for member organizations, and $5,000 per offense for employees, with a $25,000 aggregate employee limit.

In its filing, the NYSE offered two basic rationales for its proposal: (1) To keep pace with the rise in inflation and member capitalization and the dollar amount of business conducted by NYSE members since the Exchange last amended its fine maximum in 1978;[5] and (2) to serve as a greater deterrent to violations and lax compliance procedures by NYSE members. The Amex cited basically similar justifications, also noting that the new rule would allow an Amex Disciplinary Panel to ensure that a rule violator would not retain illegal profits gained as a result of serious violations.

Notice of the proposals, together with their terms of substance, were provided by the issuance of Commission releases and by publication in the **Federal Register**.[6] As described below, one commentator responded to both proposals.

II. Summary of Comments

The Securities Industry Association ("SIA") submitted two comment letters, one opposing the NYSE proposal and another one opposing the Amex proposal.[7] The SIA suggested in its letters that removal of the fine limitation would deprive the exchanges' disciplinary procedures of "fairness, predictability and consistency," resulting in the imposition of unreasonably large fines.[8] In support of this position, the SIA noted that federal and state statutes that contain the authority to fine also establish a maximum fine that can be levied.[9] The SIA also claimed that the right to appeal fines to an Exchange's Board of Directors would not adequately safeguard against unreasonable fines.

For the reasons noted above, the SIA in its letter concluded that some "appropriate limit" must be placed on the amount an NYSE or Amex member can be fined in a disciplinary proceeding, and proposed a level of $100,000 for natural persons and $250,000 for others.[10] The SIA expressed confidence that these limits would assuage the stated concerns of the Amex and NYSE and would be more than adequate for the Exchanges' needs. In particular, the SIA noted that the increase would compensate for the rise in inflation and member capitalization, and the per charge provision would allow the Exchanges to assess substantial penalties commensurate with significant disciplinary actions.[11] Finally, the SIA contended that the larger limits, coupled with the existing range of disciplinary sanctions, such as suspensions, would serve a sufficient deterrent purpose, thereby making the complete elimination of limits unnecessary.

II. Discussion

The Commission has reviewed carefully the filings in light of the Act, particularly sections 6(b), 6(d)(1), and 19(e)(2) of the Act. Sections 6(b)(7) and 6(d)(1) establish those standards to which the rules of a national securities exchange must adhere in order to conform its activities "to fundamental standards of due process." [12]

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[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1986).

[3] The Amex filing also contained a proposal relating to the fine structure of its minor rule violation plan, which was approved separately. *See* Securities Exchange Act Release No. 25108 (November 9, 1987), 52 FR 43958. The NYSE filing contains a proposal relating to a procedural aspect of its disciplinary proceedings. That proposal will amend NYSE Rule 476 to require that, to the extent reasonably possible, at least one member of an NYSE Disciplinary Panel be engaged in activities similar to those of the respondent.

[4] Article V, section 4(n).

[5] The NYSE's maximum fine levels were last raised in 1986. In 1978, the limits were amended, however, to permit fines on a per charge rather than a per disciplinary action basis, which essentially increased the maximum fine in multiple charge disciplinary actions.

[6] Securities Exchange Act Release Nos. 24435 (May 7, 1987), 52 FR 18301 (NYSE notice); and 24709 (July 16, 1987), 52 FR 27803 (Amex notice).

[7] *See* letters from Dennis H. Greenwald, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, SEC, dated July 10, 1987, ("SIA-NYSE Letter") and August 3, 1987 ("SIA-Amex Letter"). Both letters make essentially the same arguments.

[8] SIA-NYSE Letter at 2; SIA-Amex Letter at 2.

[9] The SIA did not cite any statutes for this proposition. The Securities Exchange Act and Commodities Exchange Act, however, each included dollar limits on fines. *See* section 32 of the Act; section 8(c) of the Commodities Exchange Act. The rules of the Chicago Board Options Exchange (a national securities exchange registered with the Commission) do not, however, contain maximum levels on disciplinary fines. *See* CBOE Rule 17.11(a).

[10] As noted above, the Amex fine schedule places a $5,000 limit on fines assessed employees. The SIA suggested that the employee limit be raised to $20,000.

[11] This point is not pertinent to the Amex rule which presently does not have a per charge provision.

[12] *See* S. Rep. No. 75, 94th Cong. 1st Sess. 25 (1975). The Senate Report explained the intent behind the enactment of sections 6(b)(7) and 6(d)(1), as well as the review provisions contained in sections 19(d) and 19(e) of the Act, as follows:

The Exchange Act presently requires that the NASD's [National Association of Securities Dealers] disciplinary actions be conducted in accordance with rules which provide "a fair and orderly procedure," including the obligation that the self-regulatory organization bring "specific charges," give notice, provide an opportunity for hearing, and identify in any adverse determination the act or practice which constitutes the violation of a "specific rule or rules." The Exchange Act also provides for Commission review of NASD disciplinary actions both on the Commission's own motion and by petition of an aggrieved person. In contrast to the provisions under which the NASD must operate, the Exchange Act contains no requirements as to an exchange's disciplinary procedures and no provision for Commission review of an exchange's enforcement actions. Sections 6(b)(7), 15A(b)(8) [parallel section to section 6(b)(7).

Continued

Pursuant to section 6(d)(1), an exchange, when disciplining a member, must at a minimum bring specific charges, notify the member, provide an opportunity to defend, maintain a record, and, if a sanction is imposed, provide a statement setting forth the specific act or practice, the rule or regulation violated and the sanction imposed and the reasons therefor.[13] Section 6(b)(7) provides that an exchange must ensure that its rules are "in accordance with the provisions of subsection (d) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members[.]" [14] The legislative history of section 6(b)(7) notes that section 6(d)(1) is intended to "provide the minimum due process appropriate in each particular case." [15] Neither the language of section 6(d) nor its legislative history provide any indication that the lack of a fine limit would violate the minimum standard of due process required under the Act.

The legislative history of section 6(b)(7) likewise provides no indication as to whether a lack of a fine limit would violate the "fair procedure for disciplining of members" provision of that section. As noted previously, the provisions of section 6(b)(7) are intended to apply to exchange members the identical procedural safeguards afforded members of a registered securities association.[16] Further, a review of the legislative history of the 1938 Amendments to the Act (which added provisions governing national securities associations), and specifically sections 15A(b)(8) and 15A(h)(1), which parallel sections 6(b)(7) and 6(d)(1), indicate that Congress did not specifically intend the "fair procedure" language to include anything more than the specific criteria delineated in sections 6(d)(1) and 15A(h)(1). Moreover, the legislative history noted that "[i]t is contemplated that the exact procedure [for disciplining members] will be defined by the rules of the association, within the framework set forth in this paragraph [section 15A(b)(6)/section 6(b)(7)]." [17]

Accordingly, neither the Act nor its legislative history support the proposition that the NYSE and Amex proposals would violate the Act's standards for fair disciplinary procedures if there was no limit on the potential size of fines.

Nevertheless, the Commission also considered the SIA's allegation that the NYSE's and Amex's proposals do not provide "adequate safeguards against the imposition of unreasonable and egregious fines." [18] In addition to the various due process protections in its disciplinary process, the NYSE has specific procedural rules pertaining to penalties. During the course of a hearing, either party may request the Hearing Panel to permit the presentation and introduction of evidence, including character or other witnesses, solely on the issue of penalty. In addition, in a disciplinary proceeding involving a written consent as to sanction, the Hearing Panel has the option of accepting or rejecting the consent, or imposing a penalty less severe than the penalty to which the respondent consented.[19] In either situation, the Exchange is required to keep a record of the proceeding, and issue a statement setting forth, among other things, the sanction imposed and the reasons therefor.[20] Article IX, section 6 of the NYSE Constitution further provides that any person found guilty pursuant to a disciplinary proceeding can request the Board of Directors to review both the decision and the sanction imposed. The Board can sustain, modify, reverse, increase, decrease, or eliminate the penalty imposed by the Hearing Panel.

The disciplinary procedures of the Amex, including its review procedures, are substantially similar to the procedures of the NYSE.[21] The Amex review procedures permit the Board of Governors to reverse, modify, decrease or eliminate the penalties imposed by the Disciplinary Panel. Moreover, unlike the NYSE procedures, the Amex Board may decrease, but cannot increase a sanction on its own, but can only remand the proceeding to the Disciplinary Panel to consider an increase in sanction.[22]

In addition to the safeguards provided by exchange procedures, disciplined persons have the right to petition the Commission for review of a sanction imposed by a self-regulatory organization ("SRO") pursuant to section 19(d)(2) of the Act.[23] Section 19(e)(2) of the Act further grants the Commission the authority to cancel, reduce, or require the remission of an SRO-imposed sanction, if it determines that the sanction is excessive or oppressive, or if the sanction imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24]

The Commission also finds that the NYSE and Amex proposals to eliminate fine limits will enable the Exchanges to perform more effectively their regulatory responsibilities under sections 6(b)(5), 6(b)(6) and 6(b)(8) of the Act. The flexibility allowed by the proposal will help the Exchanges to ensure that members are appropriately disciplined pursuant to section 6(b)(6). The Commission's own settlement of various enforcement matters pursuant to the Insider Traders Sanctions Act demonstrate that fixed fine limits may be inadequate in certain circumstances. Moreover, a suspension or expulsion may not be an appropriate (or in some cases sufficient) sanction in certain cases, yet the Exchanges may be constrained by fine limits in fashioning a sanction commensurate with the gravity of the violation.[25] Finally, the Commission believes that the procedural and appeal protections contained in the Amex and NYSE rules combined with the section 19(e) review procedures are sufficient checks on excessive SRO sanctions and an effective means of ensuring the rights of SRO respondents as envisioned by the Act.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. Specifically, the Commission has concluded that the removal of maximum limits on fines is not *per se* violative of the due process protections mandated by sections 6(b)(7) and 6(d)(1) of the Act and that the proposal is consistent with sections 6(b)(5), 6(b)(6), and 6(b)(8) of the Act. The Commission believes that the removal of fine limitations will provide the exchanges the flexibility necessary to discipline effectively their members. Further, the Commission is convinced that the review provisions of section 19 provide sufficient oversight of SRO compliance procedures and will prevent the NYSE or Amex from using their increased fine authority in a manner contrary to the purposes of the Act.[26]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule changes be, and hereby are, approved.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: January 20, 1988.

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applying to securities associations, which was unchanged by the 1975 Amendments), 19(d) and 19(e) would eliminate these statutory anomalies and establish uniform standards to which both exchange and NASD rules would be required to conform and in accordance with which SEC review would be available.

[13] 15 U.S.C. 78f(d)(1).

[14] 15 U.S.C. 78f(b)(7).

[15] *See* S. Rep. No. 75 at 98.

[16] *See note* 12 *supra*; *Sen. Rep.* No. 75 at 98.

[17] *See* S. Rep. No. 1455, 75th Cong., 3d Session. 7 (1938).

[18] NYSE letter at 4; Amex letter at 4.

[19] *See* NYSE Art. IX, section 8.

[20] *See* NYSE Rule 476(a). The requirements of Rule 476(a) mirror the requirements imposed on exchanges by section 6(d)(1) of the Act.

[21] *See generally* Article V of the Amex Constitution.

[22] *See* Amex Article V, section (1)(b)(5).

[23] *See* 15 U.S.C. 78s(d)(2). Section 19(d)(2) also grants the Commission the authority to review disciplinary decisions of the SROs on its own motion.

[24] 15 U.S.C. 78s(e)(2).

[25] While the Commission agrees with the Exchanges that increasingly larger fines may be appropriate in today's marketplace, such a determination does not lead to the conclusion that future specific fines or established fine levels for certain violations cannot be found, in specific cases, to be unreasonable or burdensome or inappropriate in light of the Act.

[26] The Commission simultaneously approves, as consistent with section 6(b)(7) of the Act, the NYSE proposal to require that, when reasonably possible, at least one member of an NYSE Disciplinary Panel be engaged in activities similar to the respondent.

[Release No. 34-25269; File No. SR-MSRB-87-15]

Self-Regulatory Organizations; Order Approving on an Accelerated Basis Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Nomination and Election of Board Members

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on December 23, 1987, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to Board rule A-3 on the nomination and election of Board members. The proposed rule change would delegate more authority to the Board's Nominating Committee and would delete the ability of 20 percent of municipal securities dealers to nominate an additional candidate for each industry position to be filled.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Board rule A-3(c) contains procedures for the nomination and election of Board members. The Board has adopted revisions to these procedures which delegate more authority to the Nominating Committee. The Board believes that these revisions will retain the Board's primary goals in its selection of new Board members: providing equal representation on the Board by bank dealers, securities firms, and public members within the framework of staggered terms of office; assuring broad diversity in the background of Board members; establishing a workable democratic procedure for the nomination and election of Board members; and tailoring a suitably deliberative framework for the election process.

Membership of the Nominating Committee

Under rule A-3(c) (ii), the Nominating Committee currently consists of five senior class members of the Board and six persons who are not members of the Board consisting of two representatives each of securities firms, bank dealers and the public. The proposed rule change provides that the Nominating Committee will consist of six Board members and three persons who are not members of the Board. Of the six Board members, two each will represent securities firms, bank dealers and the public. The Board has concluded that it is appropriate to provide some continuity from year-to-year of Board member representatives on the Nominating Committee. Therefore, the six Board members may be chosen from any of the three member classes. Of the three non-Board members, one each will represent securities firms, bank dealers and the public, respectively.

Nominations Procedure

Under current rule A-3(c) (iv), the Nominating Committee nominates three persons for each of the Board positions to be filled. The Board elects one of the three nominees. The proposed rule change provides that the Nominating Committee will submit only one nominee for each available Board position. Under this approach, the Board will communicate with the Nominating Committee the qualifications of individuals the Committee should consider and later may review the list of all possible nominees. When the Committee determines its slate of nominees, it will contact these individuals and ask them if they wish to serve on the Board, subject to the Board's approval. If they agree, their names will be presented to the Board. The Board will accept or reject the slate of nominees. It is anticipated that the Board will vote to accept the nominees. In the event a nominee is rejected, however, the Nominating Committee must hold a meeting to choose another nominee. The Board believes that this non-competitive election process will ensure that highly qualified individuals are nominated to become members of the Board.

Industry Nomination Process

Under current rule A-3(c) (vi), (vii) and (viii), 20 percent of municipal securities dealers may nominate an additional candidate for each of the industry positions to be filled. When the Board adopted this procedure it indicated that it was intended as a "safety valve" in the event there was substantial industry disagreement with the candidates nominated by the Board. In the ten years the rule has been in effect, there have been no industry candidates nominated in this fashion. Moreover, as a practical matter, it appears that this procedure would be difficult to implement. The Board believes that its nomination and election process has resulted in industry candidates that are able and representative of municipal securities dealers and, as a result, this alternative nomination procedure should be deleted from the rule.

Miscellaneous

The proposed rule change deletes from rule A-3 references to specific dates in the rule. The Board anticipates that its revised nominations process will require frequent meetings of its Nominating Committee and it does not appear practical to confine Committee action by imposing the time frames currently provided for in the rule.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the Federal Register under section 19(b)(2) of the Act if the approval date would not occur prior to February 12, 1988. The Board wishes to approve the members of the Nominating Committee at its February 17–19, 1988 meeting. The Nominating Committee, under the proposed rule change, will be constituted differently than under the current rule. In addition, the Committee will be required to meet more frequently in order to ensure that the nominations procedure is completed in time for a Board vote on the nominee slate to take place prior to the expiration of the term of the current senior class on September 30, 1988. If the proposed rule change is not effective by February 12, 1988, it will be difficult for the Board to discuss a list of possible committee members at the February 17–19 meeting and to begin the nominations process. Therefore, the Board believes that good cause exists to accelerate the effectiveness of the proposed rule change under section 19(b)(2) of the Act if such acceleration is necessary to obtain effectiveness of the proposed rule change on or prior of February 12, 1988.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1988.

Jonathan G. Katz,

Secretary.

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[Release No. IC-16235; File No. 812-6808]

College Retirement Equities Fund and Teachers Insurance and Annuity Association of America; Order for Hearing on Application and Order of Temporary Relief With Conditions

I.

On July 10, 1987, the Commission issued a notice ("July Notice") (Investment Company Act Release No. 15866) of an application filed by College Retirement Equities Fund ("CREF") and Teachers Insurance and Annuity Association of America ("TIAA") for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting CREF and TIAA ("Applicants") from the provisions of sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d), and 32(a) of the Act and Rules 0–1(e), 2a–4, 12b–1, 17f–2, 18f–2, 22c–1, and 27e–1 thereunder, and pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting certain transactions. The application would permit CREF to, among other things, restrict redemptions, limit the voting rights of its participants, bear distribution costs, and value its annuity units annually. The July Notice, which is incorporated here by reference, gave any interested person until August 4, 1987, to file a request in writing for a hearing on the application accompanied by a statement of the nature of his interest, the reason for the request, and the issues of fact or law proposed to be controverted.

The Commission has received 20 hearing requests and 22 other letters opposing the granting of the application (particularly the redeemability and voting relief), urging a hearing, requesting notification if a hearing is ordered and/or requesting that the Commission grant CREF temporary relief to allow CREF to implement its money market account. The hearing requests and letters, which are available in the Commission's Public File No. 3–6854, may be grouped as follows: (1) CREF participants,[1] (2) competitors of CREF,[2] (3) colleges [3] (Stanford University in its hearing request asks to be made a party to any proceeding and also asks that the period during which a hearing may be requested be extended) and, (4) others.[4]

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application. Accordingly,

It is ordered, pursuant to section 40(a) of the Act, that a hearing on the application under the applicable provisions of the Act and Rules of the Commission thereunder be held on March 16, 1988, at 10:00 a.m., in Room 1C30, 450 Fifth Street NW., Washington, DC 20549, and that an Administrative Law Judge to be designated by further order preside at said hearing. Any person, other than the Applicants, desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission, on or before March 14, 1988, an application as provided by Rule 9 of the Commission's Rules of Practice (17 CFR 201.9), setting forth the nature and extent of his interest in the proceeding and any issues of fact or law which he desires to controvert, or any additional issues that he deems raised by this Notice and Order or by said application. A copy of that request shall be served personally upon the Applicants [5], and proof of such service (by affidavit or in the cases of an attorney-at-law, certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing, and any adjournments thereof, as well as other actions of the Commission involving the subject matter of this proceeding.

[1] CREF participants requesting a hearing include: Professors Schotland and Bernbaum of Georgetown University Law Center; Professors Shreve, Stake and Bradley of the Indiana University School of Law; Mr. Massey, Vice Chancellor of Texas A&M; Thomas Sweet of the Upland Country Day School; Professor Gordon of Denison University; Frederick DeKuyper, Esq.; Hans H. Jenny, Executive V.P., Chapman College; the American Association of University Professors and United University Professions (Professor Hollis of the California State Polytechnic University, Professor Thompson of the University of Pittsburgh School of Medicine, Richard L. Silva, employed by Yale University, and Mr. Neil Wright each submitted a letter).

[2] The competitors of CREF requesting a hearing include: the Investment Company Institute; Scudder Fund Distributors, Inc.; Fidelity Investments Institutional Services Company; T. Rowe Price Associates, Inc., and Putnam Financial Services Inc. (the Vanguard Group of Investment Companies submitted a letter).

[3] The colleges requesting a hearing include Stanford University, Louisville University, and Whitman College. Comment letters were submitted by the University of Vermont, Harvard University, the University of Tennessee, Purdue University, the University of Nebraska, the State University of New York, the University of Maryland, the University of Alabama, the University of Notre Dame, Tuskegee University, the University of Michigan, and Brown University.

[4] The Commission on College Retirement, the American Association of State Colleges and Universities, the American Council on Education, and a TIAA trustee each submitted a letter

[5] Applicants' address for service is 730 Third Avenue New York, NY 10017.

II.

The Commission finds that the following matters and questions are presented for consideration at the hearing without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the restrictions on redeemability of CREF's Retirement Unit-Annunity Certificates are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(2) Whether CREF's procedure for electing trustees is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(3) Whether any exemption from the provisions of Rule 12b-1 under the Act for CREF's financing of distribution is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act;

(4) Whether it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant the Applicants the other exemptions they seek from the various provisions of the Act and the relevant rules and regulations thereunder.

It is further ordered that at the hearing attention should be given to the foregoing matters.

It is further ordered that the Division of Investment Management, pursuant to 17 CFR Part 201(a), shall be a party to the proceeding.

III.

Stanford University, in its hearing request, asks to be made a party to any hearing. The Commission's Rules of Practice provide that, subject to certain exceptions not here relevant, no person shall be admitted as a party to a proceeding by intervention unless the Commission is satisfied that, on the basis of a written application, that person's participation as a party would be in the public interest, and that leave to be heard as a participant would be inadequate to protect that person's interest (17 CFR 201.9(e)). Stanford University has advanced no compelling arguments that either (1) leave to be heard would be inadequate for the protection of its interests or (2) its participation as a party would be in the public interest.

It is further ordered that Stanford University's request to be made a party to the proceeding is denied, without prejudice to Stanford University's filing an application to participate as a limited participant in the proceeding pursuant to Rule 9(c) of the Commission's Rules of Practice, as provided above.

Stanford University has also requested that the period during which a hearing may be requested be extended. The Commission having ordered a hearing, the request is moot. As provided by Rules of Practice, 17 CFR 201.9, a person's failure to submit a request for hearing during the notice period would not prevent the person from seeking to take part in the hearing.

It is further ordered that the period during which a hearing may be requested is not extended.

IV.

The first of the participants to request a hearing raised the possibility of granting CREF temporary relief to cause it to implement a money market account whose interests would be exchangeable for interests in the existing CREF stock account and *vice versa*.[6] Many subsequent hearing requests and letters by participants and colleges strongly supported temporary relief.[7] CREF made its own request for temporary relief in a statement dated August 21, 1987, and later stated that it would not proceed with the money market account without a temporary exemptive order.[8]

On October 20, 1987, the Commission issued a notice ("October Notice") that Applicants had requested temporary relief.[9] The October Notice gave interested persons an opportunity to comment on the request for temporary relief or request a hearing on whether temporary relief should be ordered. The Commission received 22 responses opposing temporary relief and/or requesting a hearing. Nine of these submissions were submitted by CREF participants,[10] five were submitted by competitors,[11] and eight were submitted by colleges and universities.[12]

The hearing requests and letters opposing temporary relief raised many arguments against granting Applicants the requested relief on a temporary basis. Most of these arguments, however, are ones that more appropriately address whether permanent exemptive relief should be granted. The primary arguments raised by the hearing requests that relate solely to the question of temporary relief involve allegations that temporary relief will prejudice the final outcome of the exemptive application and that, by conditioning the introduction of its money market account upon receipt of a

[6] Professor Schotland, hearing request dated July 30, 1987. Subsequently, Professor Schotland changed his position and opposed temporary relief unless that relief were restricted and conditioned. (Letter from Professor Schotland, dated November 9, 1987).

[7] American Association of State Colleges and Universities; American Council on Education; American Association of University Professors; University of Nebraska; Tuskegee University; The University of Maryland; The University of Alabama System; University of Notre Dame; The University of Tennessee; Purdue University; State University of New York; Harvard University; The University of Michigan; Brown University; Professor Craig M. Bradley, Indiana University School of Law; Professor Jeffrey Evans Stake, Indiana University School of Law; Professor Gene R. Schreve, Indiana University School of Law; Mr. Neil Wright; Mr. Richard L. Silva employed by Yale University; and Mr. David Alexander, President, Pomona College, Trustee of TIAA.

[8] Letter from CREF's counsel to the Office of Insurance Products and Legal Compliance, Division of Investment Management, dated October 6, 1987.

[9] Investment Company Rel. No. 16082.

[10] Michael Gordon, Denison University; Marvin Murray, University of Louisville; Frederick DeKuyper; Roy Schotland, Georgetown University Law Center (two letters); Ronald Knight, University of Maine (two letters); Mark Thompson, University of Pittsburgh, and Vicki Shidel, University of Pittsburgh.

[11] Fidelity Investments; Investment Company Institute; The Vanguard Group (two letters); and T. Rowe Price.

[12] Stanford University (two submissions); Duke University; Johns Hopkins University; Georgetown University; University of Louisville; University of Vermont; and University of Southern California.

temporary exemptive order. CREF is not acting in the best interests of its participants.

The Commission also receive 22 letters from colleges, universities, other institutions and one professional association [13] that expressed support for temporary relief. These respondents support temporary relief because it would allow CREF to institute the money market account which they repeatedly cite as a much-needed investment option for CREF participants. CREF also submitted two statements in support of its request for temporary relief.

In its "Supplemental Statement" dated December 2, 1987 CREF announced its intention to offer transferable money market and equity options for new premium contributions in the form of a new product, the CREF Group Annuity.[14] The introduction of the Group Annuity, which CREF represents to be "imminent,"[15] would allow participants to transfer their CREF accumulation under that Annuity to other pension funding vehicles approved by the participating institution for its retirement plan, or to receive their accumulations when they terminate employment.

The Commission has considered the requests for a hearing submitted in responses to the October Notice and concludes, in accordance with the requirements of Rule 0–5(c) (17 CFR 270.0–5(c)), that a full evidentiary hearing on temporary relief is neither necessary nor appropriate in the public interest or for the protection of investors. In making this determination, the Commission has considered a number of factors. Interested persons, including CREF, have submitted extensive written comments concerning the issues raised by the October Notice. The Commission has carefully reviewed these comments and has taken them into account in fashioning this grant of temporary relief.

An important factor considered by the Commission is the real benefits to current CREF participants resulting from the new investment alternatives contemplated by this order, including the availability of a money market account as a new investment option for CREF participants. Participants and others argue that this option is appropriate to permit investors to protect their funds from market fluctuations. Conducting a hearing on temporary relief would delay the offering of a CREF money market account and deprive CREF participants of these benefits for the duration of such a hearing.

The Commission believes that this grant of temporary relief will not prejudice its consideration of CREF's request for permanent relief. The Commission notes that it has ordered a hearing on the request for permanent relief and that its disposition of that request will be based upon the record developed in that proceeding. There should be no assumption that the determination reached in that proceeding will be affected by this determination concerning temporary relief. Moreover, if the Commission ultimately determines to deny permanent relief or to grant it under substantially different terms than CREF has sought, the Commission expects that CREF can and will comply with the Commission's final determination. Because it is possible that CREF or its participants may be adversely affected by a Commission determination not to grant permanent relief, CREF is required, under the terms of this order, to disclose in its registration statement its alternative courses of action if it is denied a permanent order.

It is further ordered, that the requests for a full evidentiary hearing on the question of temporary relief for Applicants are denied.

Under section 6(c) of the Act the Commission may "conditionally or unconditionally" grant exemptions from the Act if they are "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." The matter of temporary relief has been considered by the Commission, and it finds that under the foregoing circumstances temporary relief in the form of exemptions upon stated conditions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Commission has determined, first, that temporary relief will be conditioned on CREF's offering a money market account with interests exchangeable for interests in the CREF equity account in the manner described in the application. The Commission has determined, second, that temporary relief also will be conndditioned upon CREF's introduction of an investment option that permits transfers of new premium contributions [16] to competing funds, to the extent permitted by employers. A transferable investment option could be the Group Annuity that CREF plans to introduce, or some other alternative—permitting transferability of existing CREF certificates, for example. Under this condition, the requested temporary exemptions will not become effective until the transferable investment option for new premium payments is offered to the institutions served by CREF.[17] This condition on temporary relief is appropriate to protect the interests of interested persons during the pendency of the hearing on the application. The condition is further warranted because CREF is apparently able to introduce a transferable investment option for new premium payments,[18] and because conditioning temporary relief on CREF's introduction of a transferable investment option would respond, at least in part, to objections to restrictions on transferability.

The availability of temporary relief will, therefore, depend on CREF giving participants (1) the opportunity to exchange their previously accumulated interests in the CREF equity account for interests in a CREF money market account and *vice versa*, and (2) an investment option to transfer accumulated new premiums, with the approval of their respective employers, to the investment products of other providers.

It is further ordered, pursuant to section 6(c) of the Act, that the application to permit exemptions from the provisions of sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(2), 27(d), and 32(a) of the Act and Rules 0–1(e), 2a–4, 12b–1, 17f–2, 18f–2, 22c–1, and 27e–1 thereunder, and pursuant to section 17(d) of the Act and Rule 17d–1 thereunder permitting certain transactions be, and hereby is, granted pending a final Commission determination on the application. This order is given only to the extent necessary to permit CREF's existing methods of operation to be applied to its money market account and stock account during the pendency of the hearing. This order shall in no way affect the final determination of this matter. This order is expressly conditioned on: (1) CREF offering an investment option which permits transfers of new premium contributions to non-TIAA-CREF investment vehicles to the extent permitted by an employer; the transferable investment option must be offered to those institutions served by CREF with the understanding that the institution will make the determination whether to offer the new option to its employees in accordance with its retirement plan; and (2) CREF restructuring itself as described in its Registration Statement on Form N–3 (Registration No. 33–480; 811–4415) to allow transfers between its money market account and stock account before the start of annuity payments. CREF is also required to include in its registration statement, amount other things, complete disclosure on CREF's alternative courses of action if it is denied a permanent order.

V.

A number of hearing requests in response to the October Notice also claim that the scope of the requested relief is unnecessarily broad and propose alternative forms of temporary relief for CREF.[19] Restricting relief as suggested, or conditioning it as requested, however, might result in delaying CREF's offering to its participants interests in a money market account. In particular, the Commission has considered suggestions that exemptive relief be limited to the money market account alone. Currently, CREF's stock account and the proposed money market account constitute a single entity for purposes of the Act and for purposes of the Securities Act of 1933, and both accounts are covered by a single registration statement. Consequently, granting relief only to the money market account would raise significant practical problems.

In addition to these substantive proposals, a number of opponents make requests regarding the procedural conduct of these proceedings.[20] These matters are appropriately within the competence of the administrative law judge before whom the proceedings will be held.

Therefore, with respect to the numerous requests for alternative forms of temporary relief and instructions regarding the conduct of the proceedings, the Commission notes that it has considered each of these requests and finds that they are neither necessary nor appropriate in the public interest or for the protection of investors.

It is further ordered, that the various requests for alternative forms of temporary relief are denied.

It is further ordered, that the various requests for special instructions regarding the conduct of the hearing on permanent relief are denied.

VI.

Stanford University submitted a separate memorandum dated December 17, 1987 objecting to CREF's filing the Supplemental Statement after the November 9, 1987, deadline without serving copies on interested persons. CREF's Supplemental Statement was placed in the public files when received, as have been all other filings. Stanford requests that the Commission publish a notice of CREF's Supplemental Statement so that interested persons may have an opportunity for comment. In the alternative, Stanford requests that the Commission refrain reaching a final decision on the question of temporary relief until January 8, 1988, so that interested persons will have an adequate period of time to prepare and submit comments on this subject.

CREF's Supplementary Statement does not request any different relief from the relief it has previously requested. For that reason, renotification of the matter is neither necessary nor appropriate. Moreover, neither the Commission's Rules of Practice nor the Administrative Procedure Act provide a basis for Stanford's request. Furthermore, while the Commission may, in its discretion, consider a communication received after the end of a comment period, including an applicant's response to the comments received, or a commenter's answer to such a response, the Commission does not believe that it should defer considering a matter until no one wishes to make any further comment. In any event, Stanford submitted a second memorandum, dated January 6, 1988, commenting fully on CREF's Supplemental Statement. Stanford's submission, as well as five other letters specifically commenting on CREF's Supplemental Statement,[21] were fully considered by the Commission.

It is further ordered, that Stanford's request that the matter be renoticed is denied.

VII.

It is further ordered that the Secretary of the Commission shall give notice of the aforesaid hearing on the application by mailing a copy of this Notice and Order by certified mail to the Applicants at the address noted above and to the petitioners and various other persons who have written to the Commission expressing their views on this matter; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket;" and that an announcement of the aforesaid hearing shall be included in the "SEC News Digest." By the Commission.

Jonathan G. Katz,

Secretary.

January 21, 1988.

[FR Doc. 88–1612 Filed 1–26–88; 8:45 am]

BILLING CODE 8010–01–M

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[13] University of Missouri; Rockefeller University; Boston College; George Washington University; University System of New Hampshire; University of Miami; Brookings Institution; University of South Alabama; Wake Forest; Bush Foundation; Furman University; SRI International; University of Iowa; Cornell University; Utah State University; Iowa State University; Brandeis University; University of Nebraska; University of Maine; Texas Christian University; University of Chicago; Johns Hopkins Applied Physics Lab; and American Association of University Professors.

[14] On November 18, 1987, CREF's Board of Trustees unanimously accepted a recommendation by a special study committee to introduce the Group Annuity. *See* Supplemental Statement on Behalf of CREF and TIAA, dated December 2, 1987, at 3.

[15] *Id.* at 13.

[16] "New premium contributions" refers to participant and employer contributions, and earnings on those contributions, made after the Commission's order providing temporary relief becomes affective.

[17] The Commission acknowledges that, typically it is the employer's decision whether to offer a particular investment option under its retirement benefits plan.

[18] Supplemental Statement on Behalf of CREF and TIAA, dated December 2, 1987 (disclosing CREF's plan to implement a new group annuity).

[19] The hearing requests of Professor Schotland, (letter dated November 9, 1987), the Investment Company Institute (letter dated November 9, 1987), and Stanford University (Memorandum dated November 9, 1987) offer a number of alternatives for temporary relief.

[20] *E.g.*, Professor Schotland's letter dated November 9, 1987, includes a request that the Commission require "regulatory negotiation" for these proceedings.

[21] These letters were submitted by Professor Schotland, Georgetown University; the University of Vermont; Ronald Knight, the University of Maine; The Vanguard Group; and the University of Southern California.

[Rel. No. IC–16237; 812–7990]

Institutional Investors Tax-Advantaged Income Fund, Inc.; Application

January 21, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Company Act of 1940 ("1940 Act").

Applicant: Institutional Investors Tax-Advantaged Income Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) and 17(b) from sections 10(a), 15(c), 17(a)(1), 20(a), 22(d), 22(e) and 24(d) of the 1940 Act and Rules 17f–2 and 20a–1 thereunder.

Summary of Application: Applicant, a New York Corporation registered under the 1940 Act as an open-end investment company, seeks an order of the Commission to permit it to operate in the manner proposed, as a mutual

investment vehicle for New York State savings banks.

Filing Date: The application was filed on October 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 16, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicant, 330 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272–3046, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations: 1. Applicant has been created by certain New York savings banks as part of their effort to improve profitability in today's economic climate. The investment objectives and policies of Applicant are: (1) To obtain a high level of current income constituting dividends for Federal income tax purposes which are eligible for the 80% dividends-received deduction for corporations and (2) to seek capital appreciation when consistent with its primary objective. To achieve its objectives, the Applicant will invest principally in a diversified portfolio of preferred and common stocks. Applicant will also seek to protect the value of its assets by using various risk management strategies, including government securities, financial futures contracts, stock and financial index futures contracts, options and other hedging techniques.

2. Applicant's shares may not be sold or be transferable to or be owned by, any person other than: A savings bank or savings and loan association which is organized under the laws of the State of New York; a savings bank organized under the laws of the United States or a savings and loan association organized under the laws of the State of New York or of the United States which has been converted from a savings bank organized under the laws of the State of New York or results from the merger of such a converted institution to the extent permitted by the New York State Banking Department; or a pension trust, fund, plan or agreement participated in by one or more such savings banks or savings and loan associations to provide retirement benefits, death benefits or disability benefits and any or all of such benefits for any or all of its or their active officers and employees (the "Eligible Savings Institutions"). There are currently approximately 100 Eligible Savings Institutions in existence, with assets ranging from approximately $50 million to approximately $5 billion.

3. The Commission has previously granted the exemptions requested by Applicant to Institutional Investors Capital Appreciation Fund ("Capital Fund"), formerly known as Institutional Investors Mutual Fund, Inc., by orders dated April 14, 1953, August 8, 1955, and July 5, 1960 (Investment Company Act Releases No. 1856, No. 2213, and No. 3065, respectively), and to Institutional Investors Capital Reserve Fund, Inc., Institution Investors Fixed Income Fund, Inc., and Institutional Investors Option Income Fund, Inc., by order dated August 18, 1983 (Investment Company Act Release No. 13445). This group of funds, referred to as the Institutional Investors Mutual Funds or IIMF, will include the Applicant. The Commission's staff took a no-action position with respect to Institutional Investors Mutual Fund's arrangement whereby the assets of the IIMF funds were maintained in the custody and safekeeping of the investment adviser (Institutional Investors Mutual Funds (publicly available 2/10/86)). Applicant believes that substantially the same circumstances which have made these exemptions appropriate in the case of the above-reference entities are present in the case of Applicant and thus warrant the extension of those exemptions to Applicant as requested.

4. Applicant will operate under the same circumstances and be subject to the same restrictions which currently apply to the IIMF funds: (a) Applicant's board of directors shall consist exclusively of trustees or senior officers of eligible savings institutions, or officers of Applicant or Savings Banks Trust Company ("SBTC"); (b) Pursuant to its by-laws, Applicant submits itself to supervision and periodic examination by the New York Banking Department at such times and in such manner as the Superintendent of Banks shall provide; and (c) Applicant will enter into contracts for investment advisory, transfer agency and registrar services, and custodial services, respectively, with SBTC.

5. SBTC is a New York commercial bank organized under the Banking Law of the State of New York. SBTC was founded under the auspices of the Savings Banks Association of New York State, pursuant to specific statutory authority in the New York Banking Law, to provide commercial banking, trust services and liquidity to New York savings banks. All the capital stock of SBTC is owned exclusively by Eligible Savings Institutions,and historically SBTC's business has been directed almost exclusively at such institutions. SBTC's board of directors consists entirely of officers or trustees or such institutions and officers of SBTC. SBTC does not conduct a banking business with the public.

6. Section 24(d) of the 1940 Act provides that the instrastate offering exemption contained in section 3(a)(11) of the Securities Act of 1933 (the "1933 Act") shall not apply in the case of securities issued by an investment company. In the absence of section 24, the intrastate offering exemption would apply to sales of Applicant's shares, since Applicant is incorporated in New York State, will do business only within New York State, and may in practice sell its securities only to savings institutions or their branches located within New York State. Applicant will distribute to each eligible savings institution which invests in its shares, a copy of the Applicant's registration statement filed with the Commission on Form N–1A, which contains the information which the Applicant would be required to furnish were it to be registered under the 1933 Act. This fact, combined with the relative sophistication of the savings institutions eligible to purchase shares of Applicant, outweighs any advantage of additional registration under the 1933 Act. The private placement exemption also may be available to Applicant in light of the small number of Eligible Savings Institutions and their size and sophistication.

7. Applicant does not propose to issue a prospectus to investors nor to sell its shares to or through a principal underwriter, as required by section 22(d) of the 1940 Act. Only approximately 100 savings institutions are eligible investors and it is estimated the actual number of shareholders in Applicant at any time will be substantially less than that number. As noted above, Applicant will provide Eligible Savings Institutions with copies of its registration statement. In light of the sophisticated character and limited number of the eligible savings institutions, as well as the supervisory powers of the State Banking Department over Applicant's affairs, Applicant believes that the cost of preparation of a prospectus would constitute an unnecessary burden on Applicant and its shareholders with no material benefit to the Eligible Savings Institutions. Also, for the reasons noted above in connection with the requests for exemption from section 22(d), compliance with the provisions of section 20(a) of the 1940 Act and Rule 20a–1 thereunder, with respect to solicitation of proxies, consents or authorizations from shareholders, would impose an undue and unnecessary expense on Applicant and its shareholders without commensurate benefit.

8. SBTC, Applicant's adviser, is effectively owned and managed by the shareholders of Applicant. Moreover, the investments which Applicant is mandated to pursue comport with the restrictions set by the New York State Banking Law and the State Banking Department acting thereunder. Given these safeguards, Applicant believes that it should be exempt from the provisions of section 10(a) of the 1940 Act, to permit more than 60% of Applicant's board of directors to be composed of persons affiliated with SBTC and from the provisions of section 15(c) of the 1940 Act concerning annual approval of Applicant's advisory contract with SBTC.

9. As part of its sales and investment efforts, Applicant wishes to be free from time to time to acquire, from Eligible Savings Institutions that may own 5% or more of its outstanding shares, securities of a character in which it may legally invest, in exchange for shares of Applicant having a net asset value equal to the market value of the securities. (Any necessary cash adjustment for fractional shares shall be paid by the Eligible Savings Institution.) Such "swaps" of securities for fund shares may permit Applicant and shareholders alike to avoid brokerage commissions. Any transfer taxes will be paid by the institution making the exchange. The various limits on the organization and operation of Applicant, as described above, will prevent any affiliated person from using this exchange provision to the detriment of Applicant or its shareholders generally. Moreover, during the nearly 30 years of operation of Capital Fund it has been the practice of the Eligible Savings Institutions to elect no more than one director from among the officers or trustees of any one such institution. It is fully expected that this practice will continue with respect to Applicant hereunder. While it is not anticipated in the near term that exchanges will occur frequently where a holder of more than 5% of Applicant's shares will be involved, Applicant does not believe that, if the occasion arises, Applicant should be barred from such a transaction. Indeed, the need for a general exemption form section 17(a)(1) may become increasingly important if the current trend of savings bank mergers and reorganizations lead to fewer institutions holding an increased percentage of the shares of Applicant.

10. SBTC, which serves as investment adviser to Applicant, will assume the safekeeping of Applicant's assets. This arrangement would subject Applicant and its custody arrangement to the provisions of Rule 17f–2 under the Act. SBTC and the Applicant have a special relationship to the institutions that will invest in the Applicant, and that relationship warrants special consideration in this case. Applicant was established for the benefit of and is owned by Eligible Savings Institutions and their employee benefit plans. Applicant is managed by representatives of such banks, and the day-to-day operation of Applicant is administered by SBTC, another instrumentality of the Eligible Savings Institutions. Also, Applicant, like SBTC, is subject to periodic examination by the New York State Banking Department.

11. Applicant's by-laws provide that the computation of the asset value of each of Applicant's shares as of the close of the New York Stock Exchange next succeeding receipt of a request for redemption shall apply only to the extent of 2,500 shares or 10% of the total number of shares owned on the date of giving such notice by the holder presenting shares for redemption, whichever is greater, with continuing like computations on each succeeding business day of any excess number of shares, as to which notice was received, subject to the same maximum, until the asset value of the total number of shares tendered has been computed. Payment is required to be made within seven business days after each such computation. Applicant's by-laws further limit the right of redemption and payment by vesting in the board of directors power to fix other periods if it is contrary to the best interest of Applicant and its shareholders to commit Applicant to an earlier repurchase. However, such determination is to be made by the board of directors only when a prior offer remains unaccepted or when by reason of the number of shares offered or the condition of the securities markets, there is doubt as to the ability of Applicant to liquidate sufficient assets to raise the necessary funds within an earlier time without undue sacrifice, and the existence of extraordinary conditions require adoption of an emergency measure.

12. The proposed limitations on redemption of Applicant's shares are necessary because the Eligible Savings Institutions, by virtue of the business they conduct, have a natural similarity of reaction to market conditions and thus may be influenced toward a common investment policy as a result of prevailing conditions or unusual occurrences. Under such circumstances the possibility exists that substantial requests for redemption may be made at or about the same time. The Eligible Savings Institutions have recognized that it is in their common interest to prevent any unnecessary sacrifice of assets, by granting Applicant's board of directors some discretion with respect to the liquidation of assets to meet redemptions where the existence of extraordinary conditions requires adoption of emergency measures. Applicant submits that redemption of shares in installments, as indicated, or the right to defer redemptions under extraordinary conditions, would not be prejudicial to the protection of the investors or the policies of the 1940 Act.

Applicant's Conclusions of Law: Given the relationship of Applicant to its shareholders and to its adviser, there can be little, if any, risk of conflict of interest between them. Applicant will be wholly-owned and managed by Eligible Savings Institutions, and will conduct its operations within the statutory limitations and under the supervision of the New York State Banking Department. Moreover, the limited number and the investment expertise and sophistication of the Eligible Savings Institutions will minimize the need for certain forms of regulation required of widely-held investment companies. Applicant believes that the successful history of operations of Capital Fund during the past three decades demonstrates that it is appropriate, in the public interest and consistent with the protection of investors and the purposes of the 1940 Act, for the Commission to grant an order extending similar relief to Applicant.

Applicant's Conditions: 1. Applicant undertakes that it will advise Eligible Savings Institutions that a condition of purchase of shares of Applicant is that the purchasing Eligible Savings Institution not advertise to the depositing public that any individual depositor will receive the benefits of investment in a mutual fund by reason of the Eligible Savings Institution having invested in Applicant.

2. Applicant agrees that the following conditions may be imposed by any order of the Commission granting exemptive relief from section 17(a)(1) of the Act:

(a) The investment adviser will prepare a written report for the board of directors of Applicant evaluating any securities which may be offered in exchange for shares of Applicant prior to authorization of such transaction by the board of directors of Applicant;

(b) Each such transaction will be specifically approved by the board of directors of Applicant prior to execution of such transaction;

(c) Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any such transaction occurs, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the securities purchased, the identity of the person on the other side of the transaction, the terms of the transaction, and the information of materials upon which the board of directors' actions was taken;

(d) The acquisition of any security by Applicant pursuant to any such transaction will be consistent with the investment objectives and policies of Applicant and, in the opinion of the board of directors, with the interests of Applicant and its shareholders;

(e) The terms of each such transaction will be reasonable and fair to the shareholders of Applicant in the opinion of its board of directors and will not involve overreaching on the part of any person concerned; and

(f) No commission, fee, spread or other remuneration will be received by any party in connection with the transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1611 Filed 1-26-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24561]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 21, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 16, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company, et al. (70-7058)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, and Energy Initiatives, Incorporated ("EII"), 95 Madison Avenue, Morristown, New Jersey 07960, a wholly owned subsidiary of JCP&L, have filed a post-effective amendment to the application-declaration previously filed pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45, 50(a)(3) and 50(a)(5) thereunder.

By order dated September 4, 1986 (HCAR No. 24164), EII was authorized, among other things, to effect secured and unsecured borrowings during the period ending December 31, 1987 from vendors and suppliers of equipment, institutional lenders and commercial banks. Such borrowings were not to exceed $2 million outstanding at any one time and were to bear interest at rates not in excess of 125% of the prime rate generally in effect at the time of such borrowing.

EII now proposes to make the previously authorized secured and unsecured borrowings from time to time through December 31, 1988, but in a reduced aggregate amount not to exceed $1 million outstanding at any one time. In all other respects, the transactions as previously approved herein will remain unchanged.

Western Massachusetts Electric Company (70-7417)

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, Springfield, Massachusetts 01089, a subsidiary of Northeast Utilities, a registered holding company, has filed a post-effective amendment to its application pursuant to 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated November 10, 1987 (HCAR No. 24498), WMECO was authorized to issue and sell up to 2,400,000 shares of Class A money market preferred stock ("Preferred"), at $25 par value per share, on or before December 31, 1987, with an aggregate par value of $60 million, under an exception from competitive bidding.

To date WMECO has not sold any of the Preferred. WMECO now proposes to issue and sell the Preferred on or before June 30, 1988.

Northeast Utilities (70-7458)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, has filed an application pursuant to section 9(c)(3) of the Act.

The State of Connecticut ("State") is empowered by statute to make investments, in concert with private investors, for the purpose of providing venture capital to companies based in Connecticut. Connecticut Seed Ventures Limited Partnership ("Partnership") has been formed by the State and certain Connecticut businesses to administer a $10 to $15 million fund to be used for venture capital investments.

The initial capitalization of the Partnership is $10 million, of which amount $5 million will be provided through the Connecticut Product Development Corporation, a State agency created for the purpose of sponsoring economic development in Connecticut. The remainder will be contributed by Connecticut based private-sector businesses. The Connecticut Light & Power Company, an operating-utility subsidiary of Northeast, is the largest electric and gas utility company in Connecticut.

Northeast proposes to invest $250,000 to acquire a 2.5% share in the Partnership. Although Northeast's initial share may be subject to variation, its voting share may never exceed 4.9% of the votes eligible to be cast on any matter. Northeast further will not, directly or indirectly, own, control or hold with power to vote 5% or more of the voting securities of the Partnership.

The Connecticut Light & Power Company (70-7459)

The Connecticut Light & Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a wholly owned electric and gas subsidiary of Northeast Utilities ("Northeast"), a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act and Rule 16 thereunder.

CL&P proposes to acquire 159 shares of the initial 1,000 shares of Class A common stock ("Class A"), at $1.00 (Canadian) per share, of Alberta Northeast Gas Limited ("Alberta"), a Canadian corportion organized by Northeast Gas Markets, Inc., a nonassociated corporation. Alberta was organized for the purpose of purchasing Canadian gas for resale and export to United States utilities.

Alberta includes as its members CL&P and 18 other utility companies serving customers in New York, New Jersey and New England (collectively, "Participants") and Canadian natural gas producers and suppliers (collectively, "Suppliers"). Alberta will enter into gas purchase contracts with the Suppliers and gas sales agreements with the Participants for the purpose of facilitating and intergating gas supply transactions between the parties. It is anticipated that these gas supplies will be shipped to the Participants primarily through the Iroquois Gas Transimission System, a proposed pipeline which is intended to extend from the U.S.-Canada border through the northeastern United States. The remainder of the gas will be delivered by the Tennessee Gas Pipeline System, a division of Tenneco, Inc., also a nonassociated corporation. Alberta will not construct, own or operate any physical facilities.

Northeast has announced publicly that it plans to divest CL&P's gas business on or before December 31, 1992 by means of a spin-off to Northeast shareholders. The divestiture will provide for CL&P interest in Alberta to be transferred to the company acquiring CL&P gas business which is not retained by CL&P.

The Connecticut Light and Power Company (70-7469)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric and gas subsidiary of Northeast Utilities, a registered holding company, has filed an application pursuant to section 6(b) under the Act and Rules 50 and 50(a)(5) promulgated thereunder.

CL&P proposes to issue and sell up to $350 million principal amount of its first and refunding mortgage bonds ("Bonds"), in one or more series, from time to time through December 31, 1989. Each series of Bonds will have a maturity of five to thirty years. The interest rate and the price of the Bonds will be determined by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). In addition CL&P may amend its application-declaration to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or private placement.

System Energy Resources, Inc. (70-7467)

System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225-3070, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

SERI has, pursuant to prior Commission authorization, entered into a Restated and Amended Fuel Lease dated as of August 7, 1987 ("Fuel Lease"), with Port Gibson Energy, Inc., ("Port Gibson") under which SERI leases from Port Gibson the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), used to satisfy a portion of the fuel requirements of Unit No. 1 at SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"), (HCAR No. 24439; August 12, 1987). The Fuel Lease is currently scheduled to terminate on February 29, 1988.

Port Gibson has financed these obligations under a Restated and Amended Credit Agreement, dated as of August 7, 1987 ("Credit Agreement"). Port Gibson, has advised SERI that it is willing to enter into a new Restated and Amended Credit Agreement ("Amended Credit Agreement") with Union Bank of Switzerland ("UBS"), certain other banks ("Banks") and UBS, as agent ("Agent") for the Banks. The Amended Credit Agreement will terminated on August 31, 1988. The Amended Credit Agreement provides that the current maximum obligation of Port Gibson to make payments for Nuclear Fuel is $164 million at any one time outstanding, however, up to $165 million of Nuclear Fuel may be paid for at Port Gibson's option. The Credit Agreement currently provides for a commitment of $174 and $175 million, respectively.

Upon execution and delivery of the Amended Credit Agreement, Port Gibson is willing to enter into a new Restated and Amended Fuel Lease ("Restated and Amended Fuel Lease") in order to extend the term of the leasing arrangement with Port Gibson to August 31, 1988. Under the terms of the Restated and Amended Fuel Lease, Port Gibson will make payments to suppliers, processors and manufactuers, necessary to carry out the terms of SERI's contracts for Nuclear Fuel for Grand Gulf 1 or SERI will make such payments and be reimbursed by Port Gibson. The Agent and the Bank will continue to receive an assignment of the rents and certain other obligations under the Restated and Amended Fuel Lease. The Agent and the Banks will also continue to receive a security interest in the Nuclear Fuel under a new Restated Amended Security Agreement.

SERI may terminate the Restated and Amended Fuel Lease at any time. Port Gibson may terminate the Restated and Amended Fuel Lease under certain circumstances. The Fuel Lease requires that SERI consent to Port Gibsn's entry into the Amended Credit Agreement.

Middle South Utilities, Inc. (70-7468)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration pursuant section 12(b) of the Act and Rule 45 thereunder.

Pursuant to prior Commission authorization, Middle South entered into a Restated and Amended Guaranty, dated as of August 7, 1987 ("Guaranty"), with Port Gibson Energy, Inc. ("Port Gibson"), under which it unconditionally guaranteed the performance of the obligations of System Energy Resources, Inc. ("SERI"), subsidiary of MSU, with respect to a lease of nuclear fuel ("Nuclear Fuel"), used to satisfy a portion of the fuel requirements of Unit No. 1 at SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1"), under the terms of a Restated and Amended Fuel Lease ("Fuel Lease"), dated as of August 7, 1987, between SERI and Port Gibson. (HCAR No. 24441, August 12, 1987).

The maximum commitment of Port Gibson to make payments in respect of Nuclear Fuel is currently $174 million at

any one time outstanding; however, up to $175 million of Nuclear Fuel may be paid for at Port Gibson's option. It is now proposed by SERI and Port Gibson in a companion filing (File No. 70–7467) to decrease such commitments to $164 and $165 million, respectively. MSU has been advised that Port Gibson proposes to enter into a new Credit Agreement ("Amended Credit Agreement") with Union Bank of Switzerland, ("UBS") and certain other banks ("Banks"), and UBS, as Agent for the Banks, ("Agent"). Upon execution and delivery of the Amended Credit Agreement, Port Gibson is willing to enter into a Restated and Amended Fuel Lease in order to extend the terms of the leasing arrangement of Port Gibson to coincide with the expiration of the Amended Credit Agreement which is August 31, 1988. Pursuant to the terms of the Amended Credit Agreement, the Banks will continue to receive an assignment of Port Gibson's rights under the Guaranty pursuant to a new Restated and Amended Assignment Agreement.

MSU proposes to enter into a new Restated and Amended Guaranty ("Restated and Amended Guaranty") with Port Gibson to continue to guarantee the obligations of SERI. MSU will also acknowledge notice and consent to the assignment of Port Gibson's rights under the Restated and Amended Guaranty to the Agent.

The Columbia Gas System, Inc. (70–7480)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration pursuant to section 6(a), 7, 9(a), 10, and 12 of the Act and Rules 43 and 50(a)(5) thereunder.

Columbia proposes to issue and exchange an amount of its common stock, $10 par value, valued at $11,017,020 for the 262,310 outstanding shares of Lynchburg Gas Company's ("Lynchburg") common stock. For purposes of the transaction, Lynchburg's common stock will be valued at $42 per share and Columbia's common stock will be valued at its average closing price on the New York Exchange Composite Tape for the five days ending with the Friday preceding closing.

The consummation of the proposed transaction is conditioned upon the prior occurrence of certain events including the execution and delivery by Columbia and Lynchburg, prior to February 1, 1988, of a definitive agreement covering the transaction, approval by Lynchburg's shareholders, receipt of all appropriate governmental and/or contractual consents and orders and receipt by Lynchburg's Board of Directors of a "Fairness" opinion from an investment banking firm.

National Fuel Gas Company (70–7482)

National Fuel Gas Company ("National Fuel"), 30 Rockefeller Plaza, New York, New York 10020, a registered holding company, has filed a declaration pursuant to section 12(c) of the Act and Rule 42 thereunder.

National Fuel proposes to purchase up to $25 million of its issued and outstanding shares of common stock, no par value, in open market transactions from time to time during a two-year period beginning as of the date an order is granted. Purchases would be made only if National Fuel determined that it was in its best interest to do so. Funds for such purchases would be obtained solely from internal sources.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1613 Filed 1–26–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area No. 2307]

Republic of the Marshall Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 16, 1988, I find that Kwajalein Atoll in the Republic of the Marshall Islands constitutes a disaster loan area because of damage from severe winds, high waves, and flooding caused by Tropical Storm Roy which occurred on or about January 9, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 18, 1988 and for economic injury until the close of business on October 17, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 230706 for physical damage and for economic injury the number is 659800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: January 20, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–1600 filed 1–26–88; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of North Carolina, will hold a public meeting at 2:00 p.m. on Friday, February 26, 1988, at the Charlotte Chamber of Commerce, 129 West Trade Street, Charlotte, North Carolina 28202, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, Suite 300, Charlotte, North Carolina 28202, (704) 371–6561.

January 15, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–1601 Filed 1–26–88; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley of Texas, will hold a public meeting at 1:30 p.m. Tuesday, February 16, 1988, at the Board Room of Pan American University, Edinburg, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Carlos Martinez, Jr., Acting District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas—(512) 427–8625.

January 15, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88–1602 Filed 1–26–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2301; Amendment No. 2]

Declaration of Disaster Loan Area; Puerto Rico

The above-numbered Declaration (52 FR 49243), as amended (52 FR 1534), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated January 6, 1988, to include the Municipality of Santa Isabel in the Commonwealth of Puerto Rico because of damage from severe storms and flooding beginning on November 24, 1987. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 16, 1988 and for economic injury until the close of business of September 19, 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: January 12, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–1657 Filed 1–26–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0294]

Issuance of License To Operate as a Small Business Investment Company; Revelation Resources, Ltd.

On October 7, 1987, a notice was published in the **Federal Register** (52 FR 37568), stating that Revelation Resources, Ltd. (RR Ltd.), located at 2929 Allen Parkway—Suite 1705, Houston, TX 77019 had filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired November 6, 1987, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA had issued License No. 06/06–0294 to RR Ltd. effective January 12, 1988.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 21, 1988.

[FR Doc. 88–1656 Filed 1–26–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intent To Prepare an Environmental Impact Statement; Bartow County, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Bartow County, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas D. Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, NW., Atlanta, Georgia 30367, telephone (404) 347–3041, or Frank L. Danchetz, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environment/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696–4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a new location proposal for U.S. Route 411 beginning at the U.S. 411/ S.R. 20 interchange with U.S. 41 and extending easterly to a point on I–75 approximately 1.0 mile south of the existing U.S. 411 interchange with I–75.

The proposed roadway would be four lanes (two lanes in each direction of travel separated by a median). The project is proposed to be constructed on a minimum right-of-way width of 400 feet and would be designed as a fully controlled access facility. The existing U.S. 411/S.R. 20 interchange with U.S. 41 would be reconstructed to provide access to and from the proposed new U.S. 411 highway section. Also, at the I–75 terminus, a full-directional interchange would be constructed, thus providing access to and from I–75 and the new U.S. 411 highway section. Total length of the proposed new section of U.S. 411 is approximately 6.7 miles.

Alternatives under consideration include: (1) The new location proposal for U.S. 411 as described above and (2) the no-build alternative.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and the U.S. Army Corps of Engineers has been requested as a cooperating agency. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. A draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.250, *Highway Research Planning and Construction.* The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Tom Myers,

District Engineer, Federal Highway Administration, Atlanta, Georgia.

[FR Doc. 88–1573 Filed 1–26–88; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by February 26, 1988. If sufficient time is available, questions received after the February 26 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the

BEST COPY AVAILABLE

questions submitted by February 26, and the issues to be discussed, will be mailed to interested persons by March 4, 1988, and will be available at the meeting.

ADDRESS: Questions for the March 10 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on March 10, 1988. The meeting will begin at 9:45 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Issued on: January 22, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-1665 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Chilton Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Chilton Insurance Company under the United States Code, Title 31, sections 9304 to 9308, to quality as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24608, July 1, 1987.

With respect to any bonds currently in force with Chilton Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: January 22, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88-1634 Filed 1-26-88; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1987 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Van Tol Surety Co., Inc.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 23954 to reflect this addition:

Van Tol Surety Company, Incorporated. Business Address: 424 Fifth Street, Brookings, SD 57006. *Underwriting Limitation* [b]: *$136,000. Surety License* [c]: SD. *Incorporated in*: South Dakota. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3918.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: January 15, 1988.

[FR Doc. 88-1635 Filed 1-26-88; 8:45 am]

BILLING CODE 4810-35-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: January 28 and 29, 1988. Business Meeting—January 28 beginning at 10:00 a.m. Hearings January 28 beginning at 2:00 p.m. and January 29 beginning at 9:30 a.m.

ADDRESS: Room 1100 Longworth House Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW, Suite 310, Washington, D.C. 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in contracting out (A-76), Agency for International Development Programs, Health Delivery and other matters. The purpose of the hearings is to hear witness testimony relating to asset sales, including Naval Petroleum Reserves, AMTRAK, and Postal Service. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget

[FR Doc. 88-1631 Filed 1-26-88; 11:34 am]

BILLING CODE 3110-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 17

Wednesday, January 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 1:00-3:00 p.m.

PLACE: African Development Foundation, 1625 Massachusetts Avenue NW., Suite 600, Washington, DC 20036.

DATE: Thursday, February 4, 1988.

STATUS: Open.

Agenda

1. Chairman's Report
2. President's Report
3. OTA Assessment
4. New Business
5. Old Business
6. Other

CONTACT PERSON FOR MORE INFORMATION: Mrs. Janis McCollim, 673-3916.

Leonard H. Robinson, Jr.,

President.

[FR Doc. 88-1742 Filed 1-25-88; 1:35 pm]

BILLING CODE 6116-01-M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., March 18, 1988.

PLACE: The Forbes Building, 60 Fifth Avenue, New York, NY 10011.

STATUS: Closed, pursuant to 5 U.S.C. 552 (b)(c)(1) 22 CFR 1302.4) (c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Bruce D. Porter, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Bruce D. Porter,

Executive Director.

[FR Doc. 88-1725 Filed 1-25-88; 10:44 am]

BILLING CODE 8155-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 11, Tuesday, January 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., (eastern time) Monday, January 25, 1988.

CHANGE IN THE MEETING:

The *Open Session* of the Meeting has been Rescheduled to 9:30 a.m., (eastern time) Tuesday, January 26, 1988.

The *Closed Session* of the Meeting has been Canceled.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Office (Acting), Executive Secretariat, (202) 634-6748.

Date: January 22, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued January 22, 1988.

[FR Doc. 88-1729 Filed 1-25-88; 11:02 am]

BILLING CODE 6750-06-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, January 21, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain High Geometric Surface Area Catalysts (Docket Number 1427).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

January 12, 1988.

[FR Doc. 88-1673 Filed 1-25-88; 9:31 am]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, February 2, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last three items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

4761—Aircraft Summary Report: Israel Aircraft Industries IAI-1124A, N50SK, Operated by Singer Corporation-Kearfott Division, Redwater, Texas, April 4, 1986. (Calendared by Vice Chairman Goldman and Member Kolstad.)

4766—Marine Accident Report: Collision of the Commuter Ferries JACK W and JAMEY DOWNEY, Lower New York Bay, June 22, 1987

4674A—Highway Accident Report: Tractor-Semitrailer/ Intercity Bus Headon Collision, Interstate 10, Beaumont, Texas, May 4, 1987

4740—Opinion and Order: Administrator v. Gentile, Docket SE-7550; disposition of the appeals of both parties. (Calendared by Chairman Burnett.)

4771—Opinion and Order: Administrator v. McHugh and El Wazzan, Docket SE-7513; disposition of the appeals of the Administrator and Respondent McHugh. (Calendared by Member Nall.)

4748—Opinion and Order: Administrator v. Nazimek, Docket SE-6759; disposition of appeals of both parties. (Recalendared from discussion at December 8 Board Meeting)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 22, 1988.

[FR Doc. 88-1675 Filed 1-25-88; 9:32 am]

BILLING CODE 7533-01-M

VOL
53

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federal register

Wednesday
January 27, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support

January 4, 1988.

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This rule revises the Mine Safety and Health Administration's existing safety standards for roof, face and rib support in underground coal mines. The revisions update existing provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, provide alternative methods of compliance and reduce paperwork requirements where possible.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration (MSHA) is revising its existing safety standards for roof, face and rib support at underground coal mines. These revisions are promulgated pursuant to section 101 of the Federal Mine Safety and Health Act of 1977, Pub. L. 91–173 as amended by Pub. L. 95–164, 91 Stat. 1291 (30 U.S.C. 811).

This final rule is part of MSHA's comprehensive review of the underground coal mining standards in 30 CFR Part 75. On September 2, 1983, MSHA published a notice in the **Federal Register** which announced the availability of its preproposal draft and scheduled public conferences (48 FR 40165). Public conferences were held October 25, 1983, in Salt Lake City, Utah, and October 27, 1983, in Charleston, West Virginia. These conferences were well-attended by representatives of the mining community. MSHA received written comments regarding its preproposal draft from all segments of the coal mining community.

After reviewing the comments received in response to the preproposal draft, MSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (50 FR 41784) on October 15, 1985. On January 17, 1986, MSHA published a notice in the **Federal Register** which outlined major issues raised by commenters to the proposed rule and scheduled public hearings (51 FR 2525). Public hearings were held on February 24, 1986 in Pittsburgh, Pennsylvania, February 25, 1986 in Lexington, Kentucky, and February 27, 1986 in Denver, Colorado. All three hearings were well-attended. A transcript of the proceedings was made available for public inspection. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on March 21, 1986. During this rulemaking process, MSHA received written or oral statements from all segments of the mining community. The Agency's final rule addresses the comments received and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Discussion of Final Rule

A. General Discussion

Falls of roof, face and rib are the leading cause of injuries and death in underground coal mines. For the years 1979–1986, there were 630 fatalities in underground workings of coal mines of which 294, or 47 percent, were the result of falls of roof, face, and rib. For those same years, there were 90,534 total injuries of which 8,415, or 9.3 percent, were due to falls of roof, face, and rib. MSHA has determined that injuries from falls of roof, face, and rib are over eight times as likely to be fatal as underground injuries from other causes. Prevention or control of roof falls continues to be a difficult task because of the variety of conditions encountered in coal mines that can affect the stability of various types of strata. However, technological advancements have aided in reducing the hazards associated with falls of roof, face and ribs. This final rule reflects these advancements and requires certain measures and practices that will increase the safety protection afforded to miners. The rule also simplifies existing standards and reduces paperwork requirements where possible.

The final rule revises the existing standards for roof control in 30 CFR Part 75, and addresses hazards related to roof falls by establishing: (1) Safety standards for roof support that apply to all underground coal mines; and (2) requirements for a roof control plan for each mine which specifies the roof control practices appropriate for the unique conditions of the mine. As structured in this rule, each roof control plan is subject to approval by the appropriate MSHA District Manager, based on criteria contained in the final rule.

The existing roof control standards contain extensive criteria for evaluating and approving roof control plans which resulted in unduly complex roof control plans. Although the final rule retains the roof control plan concept, it reduces the roof support practices required to be addressed in each plan. Criteria no longer necessary are deleted and criteria that are generally applicable to all mines are changed to mandatory standards. When applicable to most or all mines, matters previously addressed by MSHA policy have also been included in the final rule as mandatory standards. With these changes, roof control plans will be less complex.

B. Section-by-Section Discussion

Section 75.200 Scope.

In response to commenters, the final rule includes a scope provision which clarifies that roof support systems installed prior to the effective date of the new standards will not have to be changed, so long as they continue to safely control the roof, face and ribs. This provision assists in defining operator compliance responsibilities under the new standards.

Section 75.201 Definitions.

The term "automated temporary roof support (ATRS) system" is defined in the final rule to clarify the provisions of § 75.209. ATRS systems are devices that provide temporary roof support for persons who would otherwise be exposed to unsupported roof during the process of installing roof supports. One commenter suggested that this term be changed to "remote mechanical roof support," indicating that this more accurately describes the equipment. The term "automated temporary roof support system" has been used throughout the mining industry since the mid-1970's to distinguish between manually installed temporary supports and those temporary supports established by a machine operated from a protected location.

The definition of "pillar recovery," which is derived from existing § 75.200–11, is "any reduction in pillar size during retreat mining." Some commenters suggested that splitting pillars to gain access to an otherwise inaccessible pillar should not be considered pillar recovery since this activity does not create the conditions addressed by standards governing pillar recovery. This suggested exception is not adopted in the final rule because it is overly broad. In some circumstances, splitting a pillar to gain access to an inaccessible one does involve the danger of roof falls intended to be addressed by the pillar

recovery standards of § 75.207. However, MSHA recognizes that this is not always the case. For example, if a pillar is split in a location away from a mined-out area, it may be unnecessary to have all the breaker posts and roadside radius posts required by the pillar recovery standards. To account for such exceptions, the pillar recovery standards allow this situation to be addressed in mine roof control plans.

The proposed definition for notching is not retained since this term is not used in the final rule.

Section 75.202 Protection from falls of roof, face and ribs.

The final rule retains the requirement of existing § 75.200 that persons be protected from the hazard of falls from the roof, face or ribs. Historically, falling material from the roof, the point of extraction, and the walls of entries in coal mines has been the leading cause of fatalities in the industry. For clarity, the final rule applies to all "areas where persons work or travel," replacing the existing requirement that this protection be afforded in all "active underground roadways, travelways and working places."

One commenter suggested that the phrase "coal or rock outbursts" be added to this standard because this problem can be controlled. MSHA agrees that the frequency and seriousness of coal or rock bursts, which are violent releases of energy from rock or coal, can be minimized through mining methods such as proper pillar design or prefracturing areas before they are mined. The phrase "coal or rock bursts" is included in the final rule to clarify that persons are to be protected from coal or rock bursts as well as hazards related to falls of roof, face, or ribs. The more general term "burst" has been adopted in the final rule since the term "outbursts" refers to eruptions of coal or rock associated with gas pressures. In coal mines, the explosive breaking of coal or rock can be related to ground pressure as well as sudden releases of gas. The term "burst" includes both of these conditions.

Paragraph (b) clarifies the existing general prohibition against work or travel under unsupported roof. The final rule specifies that this is done only in accordance with the new standards.

One commenter recommended that the standard prohibit persons from going beyond permanent supports for any reason, suggesting that any language providing for an exception be deleted. Accident and fatality statistics continue to indicate that the majority of fatalities from roof, face and rib falls occur under unsupported roof and in temporarily supported areas. A primary objective of the final rule is to reduce the incidence of these accidents by prohibiting miner exposure to unsupported roof to the extent possible. However, a prohibition against all exposure to unsupported roof would be impractical since some exposure is inherent when temporary supports are manually installed in unsupported areas.

Section 75.203 Mining methods.

This section establishes basic safety requirements for mining methods. Paragraphs (a), (c) and (e) of this section are derived from existing §§ 75.200–7(c)(2), 75.201 and 75.201–1 while paragraphs (b) and (d) are new.

Paragraph (a) prohibits mining methods that expose persons to unusual dangers from falls caused by excessively wide openings or improper pillar recovery and requires that pillar dimensions be compatible with effective control of the roof, face and ribs and coal or rock bursts. One commenter suggested that the design of pillars, as well as their dimensions be referenced by the standard. MSHA's intention is that the requirement for compatible pillar dimensions include pillar design.

Paragraph (b) requires that a sightline or other method of directional control be used to maintain conformance with mining projections in entries, rooms, crosscuts and pillar splits. This practice helps ensure that openings are developed as planned and pillar dimensions are accurately maintained. The use of these controls also minimizes the possibility of unintentionally cutting into abandoned areas in the mine or adjacent mines, either of which may contain dangerous accumulations of gas or water.

In response to commenters, the proposed phrase "a method of directional control" has been replaced with the phrase "a sightline or other method of directional control." The addition of the term "sightline" will provide for a defined means of directional control, while the standard will continue to provide flexibility for the use of other types of directional controls that are as effective as sightlines.

Paragraph (c) requires that sidecuts be started only from areas that are supported in accordance with the roof control plan. Starting sidecuts in areas not yet supported can unnecessarily expose miners to unsupported roof and result in excessively wide openings which increase the potential for a roof fall.

Several commenters stated that the proposed provision which specified that the area from which sidecuts are started be permanently supported would prohibit use of safe mining systems such as continuous-mining machines with integral roof bolters and remote-control mining machines. These commenters suggested that because of the variety of situations that can arise, the proposed phrase, "permanent support" should be replaced with the phrase "supported in accordance with the roof control plan." The final rule adopts this approach to accommodate the situations where the installation of permanent supports would not be necessary before beginning a side cut. Consistent with this change, the proposal to permit "notching" if roof supports would be damaged when starting a sidecut has also been deleted, since this situation will also be addressed in the roof control plan.

Paragraph (d) prohibits mining into an unsupported area of active workings of a mine, except when the area being mined into is inaccessible. This exception recognizes that when a fall has made an area inaccessible it may be more hazardous to clean up and support the fall area then it would be to mine around it.

One commenter suggested that mining into unsupported areas be permitted whenever necessary to facilitate ventilation, regardless of accessibility to the unsupported area. This exception, in MSHA's view, would be too broad. The Agency's intention is to allow mining into unsupported areas only when these areas are inaccessible.

Paragraph (e) specifies where additional roof support must be installed in openings that are wider than specified in the approved roof control plan. The final rule requires additional supports to be installed when the planned width of an opening is exceeded by more than 12 inches for a distance greater than 5 feet. This approach differs from the proposed rule, which related the need for additional supports in excessively wide openings to the spacing of permanent roof supports used in the area. Upon reconsideration, the Agency has concluded that linking the need for additional supports in wide openings to the spacing of permanent supports may result in excessively wide openings in which additional supports would not be required. The final rule reflects MSHA practice, which is to require additional support when the planned width is exceeded by more than 12 inches. This standard recognizes that errors occasionally occur during mining, while requiring excessively wide and potentially dangerous conditions to be corrected by installing additional

support. The final rule is not to be interpreted to allow a general practice of mining openings wider than specified in the roof control plan.

Commenters suggested that the final rule specify the type of support to be installed for excessively wide openings. Some recommended that only posts or other conventional supports be used as additional roof support, while others stated that roof bolts should be used. Experience indicates that either roof bolts, conventional supports or equivalent supports can be effectively used. Therefore, the final rule specifies only that additional roof support be installed, but does not limit the operator's method of compliance.

Commenters also suggested that additional roof support only be required when the "mined" width is exceeded, so that additional supports would not be required where sloughing of ribs has occurred. Due to the lack of support, excessively wide openings, whether unintentionally mined or caused by deterioration, present similar hazards from roof falls. Therefore, the standard requires that additional roof support be installed wherever excessively wide openings exist.

A provision which appeared in this section of the proposed rule would have required support to be installed across the openings at intersections. Commenters suggested that as a standard, this would have been too restrictive. Because the roof conditions and methods of controlling mine roofs at intersections vary from mine to mine, MSHA agrees that the proposed requirement for one row of posts installed on 5-foot centers across the opening may not be appropriate for all situations. Therefore in the final rule, this provision appears in § 75.222(e) as a criterion to be used in the formulation and approval of roof control plans.

Section 75.204 Roof bolting.

This standard is derived from existing § 75.202 and the existing criteria in § 75.200–7, except for paragraphs (b)(2), (f)(6), and (g) which are new. The standard sets out requirements for the design, use and testing of tensioned roof bolts and nontensioned grouted roof bolts. The standard also provides measures to protect against the introduction of untested roof bolting systems or ineffective roof bolts into underground coal mines.

Paragraph (a) provides that when the roof bolts and accessories to be used at a mine are of a type addressed in ASTM F432–83, "Standard Specification for Roof and Rock Bolts and Accessories," the operator must obtain a certification from the manufacturer. The certification must verify that the roof bolts and accessories were manufactured and tested in accordance with the ASTM standards. The ASTM standards for roof bolts and accessories are consensus standards used throughout the United States for the design of roof bolt assemblies.

Requiring that the operator obtain a certification from the manufacturer eliminates the concern that mine operators would need to have the same knowledge of ASTM standards as manufacturers. Compliance with the final rule requires operators to have available for inspection a certification from the manufacturer that the bolts being used in the mine meet the ASTM specifications. This approach is consistent with the industry practice of manufacturers routinely furnishing such certification to the mine operator when requested to do so in a contract or purchase order. In addition, ASTM F432–83 specifies that the manufacturer is to provide such a certification upon request. Interested persons may obtain ASTM F432–83 from the publisher, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. It may also be examined at any Coal Mine Safety and Health District or Subdistrict Office.

Paragraph (b) of this standard permits the use of roof bolts and accessories not addressed in ASTM F432–83, provided that they are effective. The effectiveness of alternative bolts or accessories must be demonstrated by their successful use under mining conditions similar to those where these bolts or accessories are to be used, or by their installation in a representative area of the mine under controlled conditions. Testing must be conducted in an area with conditions that are representative of those where the materials are expected to be used. Until testing demonstrates the effectiveness of these materials, access to the area must be controlled to permit entry only by those persons necessary for the testing process. This provision differs from the proposal which specified that roof bolts and accessories not meeting the ASTM standard could be used only if approved by the District Manager. Instead of this approach, the final rule more clearly reflects MSHA's intention that all roof bolts and accessories be tested, evaluated, and proven to be effective for the prevailing geological conditions in the mine before they can be used.

Several commenters suggested that roof bolts and accessories not addressed in the ASTM standards be prohibited, stating that no exception should be made to the requirement that roof bolts be manufactured in accordance with the ASTM standards. An important objective of the final rule is to assure the quality and effectiveness of roof bolts. Consistent with this objective, as technology evolves the standard will allow for the use of materials which have been proven to be reliable and effective in controlling the mine roof. The final rule serves this purpose by maintaining flexibility for the introduction of improvements that can enhance miner safety.

Paragraph (c) requires that bearing plates be used with all roof bolts. MSHA experience indicates that bearing plates installed firmly against the roof or other bearing material are necessary to adequately support the roof when roof bolts are used in underground coal mines. Some commenters suggested that bearing plates not be required for grouted bolting systems and roof trusses because they are unnecessary. However, data gathered by MSHA and the Bureau of Mines, U.S. Department of the Interior, indicate that bearing plates are necessary to fully utilize the support capabilities of both tensioned and grouted roof bolts. While roof trusses do not utilize the normal donut, bell or embossed types of bearing plate, a truss bracket, which serves as a bearing plate, is used with these systems and would meet the requirements of this standard.

The final rule also addresses bearing plate size according to use. When bearing plates are used directly against the mine roof they must be at least 6 inches square or the equivalent. However, bearing plates 5 inches square or the equivalent are permitted under the final rule where the roof is firm and not susceptible to sloughing. When used with wood or metal, bearing plates at least 4 inches square or the equivalent are required. Experience indicates that 6-inch square bearing plates are necessary to provide sufficient load bearing surface in areas where the roof is susceptible to sloughing. The exception allowing the use of 5-inch square bearing plates has been added to the final rule in response to commenters who stated that such bearing plates are being successfully used throughout the industry where roof conditions permit. Bearing plates 4-inch square have proved to be effective when used in conjunction with wood or metal materials which assist in distribution of the load on roof bolts.

The final rule also specifies that when wooden materials are used between the bearing plate and the mine roof, and the areas to be supported have a life expectancy of 3 years or more, the wood must be treated to minimize

deterioration. This provision, which is derived from an existing criterion, has been included in the final rule as a mandatory provision. Commenters pointed out that untreated wooden materials used in long term use entries can deteriorate and cause a loss of roof support.

Paragraph (d) requires that washers, when used, conform to the shape of the roof bolt head and bearing plate. When washers do not conform to the shape of the roof bolt head and the bearing plate, the proper torque-tension relationship cannot be consistently obtained.

One commenter suggested that washers should be required to be used with all roof bolts. MSHA's experience indicates that washers are not necessary in all cases. For example, washers would not improve the performance of most grouted roof bolts nor the performance of bolts used with a bearing plate having a hole of one inch diameter or less.

Paragraph (e) requires the diameter of finishing bits to be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used. This final rule adds a minus margin to the existing tolerance permitted for these bits, and makes the existing criterion a mandatory standard. Studies have shown that roof bolt anchorage is sound within these tolerances.

Some commenters stated that the lower tolerance for roof bolt hole diameters need not be addressed by these standards. However, an undersized hole can prevent proper setting of an expansion shell. In addition, the pressure generated by roof bolting machines can force a roof bolt into an undersized hole, leading to possible damage of the anchor.

Several commenters suggested that the standard for roof bolt hole diameter tolerance not be applicable to resin-grouted bolting systems. These commenters indicated that tolerances are critical for mechanically anchored systems but not resin-grouted bolting systems. Although not as essential, hole diameter tolerances are important for resin-grouted bolts. For example, too large a hole can result in an insufficient amount of grouting material around the bolt and, consequently, an inadequate bond. Too small a hole would have the same result since there would be inadequate space for the grouting material.

In response to commenters, the final rule uses the phrase "manufacturer's recommended hole diameter" to clarify the phrase "required hole diameter' which was used in the proposal.

This section also requires that finishing bits be distinguishable from other roof drill bits when separate finishing bits are used. Existing criterion in § 75.200–7(b)(1) provides that finishing bits should be "easily identifiable by sight or feel." The final rule, however, emphasizes the performance objective of the standard rather than requiring a specific type of design for compliance.

Paragraph (f)(1) requires tensioned roof bolts to be at least 30 inches long when they are used to provide support by creating a beam of laminated strata. The final rule reflects experience which indicates that for a beam of laminated strata to be effective for roof support, the beam needs to be at least 30 inches thick. This standard also requires roof bolts that provide support by suspending the roof from overlying stronger strata to anchor at least 12 inches into the stronger strata.

One commenter suggested that all roof bolts be required to be at least 36 inches long. While roof bolts at least 36 inches long may be necessary in some cases, proper beam thickness and secure anchorage to overlying strata can be achieved with roof bolts that are less than 36 inches. Bolt lengths for each mine will be established in the roof control plan.

Paragraph (f)(2) specifies requirements for testing overlying roof strata when tensioned roof bolts are installed. The requirement for test holes to be drilled above the anchorage horizon provides a means of identifying changes in the overlying strata that may affect roof bolt anchorage. In response to commenters, and to clarify the Agency's intention, this section has been changed from the proposal to clearly indicate that this requirement for test holes applies only to mechanically-anchored tensioned bolts and that roof bolts may be installed in the test holes. Mechanically anchored bolts have an expansion shell at or near the bolt top which, when the bolt is turned, expands to anchor into surrounding strata, permitting the bolt to be tightened and thus binding the roof strata together. If the strata around the shell is soft, the support effects are lost. However, with resin-type bolts the length of the bolt is bound to the various layers of roof strata by the resin mix. Thus, the competency of the strata at the top of the bolt is less important.

The proposal would have required a test hole to be drilled in each bolting cycle. However, the depth of a cycle varies with the mining system. For example, the roof bolting cycle for conventional mining systems normally progresses for about 10 feet while mining systems using continuous mining machines with integral roof bolters may have bolting cycles which progress for 100 feet or more. To be responsive to these variations, the interval between test holes is required by the final rule to be addressed in each mine's roof control plan. Consistent with this approach, a provision has been added to the roof control plan information provisions which requires specification of the interval between test holes.

Some commenters suggested that test holes be conspicuously marked to assure that they have been drilled. The purpose of drilling test holes is to determine the competency of the strata. Once this has been accomplished, no additional safety benefit is gained from marking these holes.

Paragraph (f)(3) specifies performance standards for the installed torque or tension range of tensioned bolts. This standard requires that, as specified in the roof control plan, the installed torque or tension range for bolts must maintain the integrity of the support system and not exceed the yield point of the bolt or the anchorage capacity of the strata. The effectiveness of tensioned roof bolting systems is dependent upon maintaining the tension on the bolts within the proper range.

Paragraphs (f)(3) and (4) use the terms "torque" and "tension" when referring to installation ranges and integrity measurements. The addition of the word "tension" permits the use of tension-indicating devices instead of torquing devices to evaluate the integrity of the installation. This change also allows for the use of devices resulting from technological advancements in measuring the integrity of roof bolt installations.

Paragraph (f)(4) provides procedures for measuring the actual torque or tension on tensioned bolts installed during each roof bolting cycle. This standard requires that the first roof bolt installed and one out of every four bolts installed thereafter be measured immediately after installation. The final rule also clarifies that these intervals are independently applicable to each boom on a roof bolting machine. This provision addresses the need to assure that, for each drilled head in use, roof bolts are installed with proper torque or tension. The two primary causes of failure to achieve proper torque or tension on tensioned roof bolts are changes in overlying strata and improperly adjusted roof bolting machines. Taking measurements on these bolts and drilling test holes during each roof bolting cycle provides the sampling necessary to detect changes in

geological conditions or in adjustments to roof bolting machines.

When the specified torque or tension range for tensioned roof bolts is not achieved, corrective action is required by the final rule. This revises the existing criterion which provides for "supplemental support" to be installed when the specified torque range is not achieved, recognizing that, for example, repairs or adjustments to roof bolting equipment may also be the action necessary to correct the problem. Corrective action includes adjustment or replacement of bolts with improper torque or tension, changes or adjustments to the roof bolting equipment, using different length bolts or using other roof support systems.

The final rule deletes the existing criterion calling for particular types of torque wrenches to be used for the measurement of roof bolt torque, and retains the proposed requirement that the actual torque or tension on tensioned roof bolts be measured. This results in a more performance-oriented standard and allows for the introduction of new technology in this area.

Consistent with this approach, the final rule also deletes the existing criterion which provides that a torque wrench should be on each roof bolting machine. Several commenters suggested that torque wrenches be required to measure torque, and that they be supplied on each roof bolting machine so that they are readily available. The concern of these commenters was that the right tool be available for testing the torque of roof bolts. As noted above, MSHA believes that the final rule should not inhibit the use of any effective method for evaluating roof bolt torque or tension, which may be something other than a torque wrench. For example, the Agency is aware that devices now exist which can be installed with tensioned roof bolts and provide a constant read-out of the tension on the bolts. Thus, instead of specifying a tool for evaluating the torque or tension on bolts, the final rule requires torque or tension to be measured, permitting the mine operator to determine the most effective method, the type of equipment to be used, and the storage location.

One commenter suggested that a provision be added which would require damaged or dislodged roof bolts to be replaced before any work or travel is permitted in the affected area. When roof bolts are damaged or dislodged, the surrounding roof is no longer supported. Thus, the concern of this commenter is addressed by § 75.202(b), which prohibits persons from traveling in unsupported areas. In addition, § 75.211(c) requires that hazardous conditions be corrected, or that each entrance to such area be posted with a warning or a physical barrier installed.

The final rule also deletes the existing criterion which provides that a "qualified person designated by the operator" should perform roof bolt torque measurements. Under MSHA standard 30 CFR 48.7, miners who are assigned to new tasks are required to be instructed in the safety and health aspects of the job, including safe work procedures.

Paragraph (f)(5) requires the actual torque or tension on mechanically anchored tensioned roof bolts to be periodically measured in advancing sections from the outby corner of the last open crosscut to the face. These measurements are required to be made at least once during each 24-hour period in which coal is mined in these places. For example, if coal is mined in only 2 of 6 working places on a section during a 24-hour period, these measurements would be required only in the places where coal is mined. The standard also requires "corrective action" to be taken when the majority of bolts tested are not within the specified torque or tension range. Corrective action would include installing supplemental supports such as additional roof bolts, crossbars, cribs or posts, or prohibiting persons from working or traveling in the affected area.

Several commenters suggested deletion of this requirement, stating that since the distribution of mine stresses change continually without adversely affecting the support system, subsequent torque or tension measurements are not necessary. MSHA agrees that changes in the distribution of mine stresses continually occur, particularly beyond the last open crosscut where mining is being conducted. While these changes do not always adversely affect the roof bolting system, such changes can result in excessive loading of the bolts. In addition, the strata at the anchorage horizon of the bolts could be weak, which can cause the bolts to lose torque or tension. Subsequent torque or tension measurements provide a means for determining if roof bolts are maintaining adequate torque or tension and whether changes in the distribution of mine stresses have adversely affected the support systems.

The final rule replaces the recordkeeping provision in the existing criterion with a requirement that the operator or a person designated by the operator certify by signature and date that subsequent torque or tension measurements have been made. These certifications should be made within a reasonable time after the measurements have been completed. As proposed, certifications must be maintained for one year and must be made available to the representatives of the miners as well as authorized representatives of the Secretary.

One commenter was concerned that persons employed by the mine operator could not certify that the subsequent measurements have been made since the proposed provision only mentioned the mine operator. In response to this commenter and to clarify MSHA's intention, the final rule specifies that the mine operator or a person designated by the operator must make the certifications required by this section.

Paragraph (f)(7) prohibits tensioned roof bolts, installed as roof support, from being used to anchor trailing cables or for any other purpose that will place a sudden load on the bolts. Under these conditions, roof bolts can lose support capacity through vibration and other stress effects.

In response to commenters, and to clarify this standard, the preamble language used in the proposed rule to identify the types of devices that could be installed on roof bolts without affecting the torque or tension have been included in the final rule. MSHA recognizes that hanging trailing cables, line brattice, telephone lines, or other similar devices, which do not place sudden loads on bolts, should not be prohibited by the final rule.

Paragraph (f)(8) requires angle compensating devices to be used with tensioned roof bolts when these bolts are installed at angles greater than 5 degrees from the perpendicular to the bearing plate. Without the use of a compensating device under these conditions, the roof bolt head is stressed and failure could occur.

The final rule is changed from the proposal, which referred to angle compensating devices being used with bolts that are installed at angles greater than 5 degrees from the "perpendicular to the roof line." Commenters pointed out that the relationship of the roof bolt to the bearing plate, and not the roof line is the relevant consideration. The final rule also deletes the specific types of angle compensating devices which are identified in the existing criterion. Instead, the final rule emphasizes the result required, specifying that the device compensate for the angle at which the bolt is installed.

Paragraph (g) establishes requirements for testing the integrity of installed non-tensioned grouted roof bolts, specifying that a test be conducted on the first bolt in each

bolting cycle to determine if the installed bolt can withstand 150 foot-pounds of torque. The final rule permits this to be done immediately after the first row of bolts is installed or, as suggested by commenters, during installation of the first row. The standard also requires that corrective action be taken if the grouting material of these bolts has not created a sufficient bond to withstand the specified torque. Corrective action would include making adjustments to the quantity or quality of grouting material being used, assuring that the method of installation is proper, or use of a different type of support system.

The existing criterion for spot roof bolting is deleted by the final rule because § 75.204 of the final rule addresses all roof bolting applications, including spot bolting.

Section 75.205 Installation of roof support using mining machines with integral roof bolter.

This standard, which is derived from existing § 75.200–12(b), establishes requirements for the installation and spacing of roof supports when using mining machines with integral roof bolters. It requires that crossbars or planks be used when roof bolts are installed more than 8 feet apart, and prohibits the installation of bolts greater than 10 feet apart. These distances are unchanged from the proposal and in MSHA's experience, have been effective in supporting the roof in areas where continuous mining machines with integral bolters are used. If the particular conditions at a mine are such that installing roof bolts on the spacings specified in this section of the final rule would be inadequate to maintain roof control, the District Manager is authorized through the plan approval process to require that roof bolts be installed closer together.

Provisions in this section of the proposal which addressed natural roof support (arched roof) have been deleted. As stated in the proposal, this method of roof control has been discontinued in the mining industry.

Section 75.206 Conventional roof support.

The standards in this section are derived from existing criteria in § 75.200–8, except paragraphs (c) and (d) which are new. The standards address the use of conventional roof support, which includes the use of support materials such as wood or metal posts, beams, crossbars and planks.

Several commenters recommended that conventional roof support be prohibited as the sole means of roof support and that "full roof bolting" be required in all mines. These commenters suggested that conventional support should be permitted only as additional support in conjunction with roof bolting systems. They maintained that conventional roof support methods are outdated, can be unsafe, and that technology is available to provide full roof bolt support in all mines. These commenters also referred to accidents which they linked to the use of conventional support systems. In contrast, other commenters stated that conventional supports can be used safely and that a requirement for roof bolting as the primary means of support in all mines would eliminate some mining methods which have been used safely.

The final rule permits the use of conventional support and establishes safety standards which apply when conventional supports are used as the sole means of support. Under certain mining conditions, conventional support systems, when properly used, are safe and effective. Also, due to the various compositions of roof strata encountered in underground coal mines, no single support system is appropriate for all mines. For example, where the strata affords little anchorage capacity or where the support of massive strata is not effected by the tensile properties of roof bolts, roof bolting may be neither practical nor functional. Under these circumstances, conventional roof support systems provide a safe alternative.

However, as stated in the proposal, the use of conventional roof support as the only means of support should have limited application in the coal mining industry today. Roof bolting systems which provide full overhead support and allow the use of large and more productive mining equipment are being used safely in mines with a wide variety of roof conditions.

Paragraph (a) of the final rule contains standards for the use of conventional supports as the sole means of support. These standards, derived from existing criteria, set minimum requirements for the width of entries and roadways, as well as the spacing of supports. Under the final rule, the width of all openings must be limited to 20 feet and the spacing of roadway supports is not permitted to exceed 5 feet. Where full overhead support is used, such as beams or crossbars, straight roadways can be no wider than 16 feet, and must be limited to 14 feet wide where supports such as posts or jacks are used. Curved roadways are not permitted to exceed 16 feet wide, regardless of the type of conventional support used. In the face area, conventional supports must be set within 5 feet of the uncut face. This will provide openings and roadway widths that afford safety to miners by maintaining roof stability and also allow sufficient space to maneuver mining equipment so that the occurrence of supports being inadvertantly knocked out is minimized. Paragraphs (a) (2), (3), (4) and (5) of this section were included in the proposal as criteria provisions. Upon further consideration MSHA has determined that these provisions are generally applicable at all mines that use conventional supports as the only means of roof support and should be included in the final rule as standards. However, if the particular conditions at a mine are such that maintaining the widths of openings and roadways and the spacing of supports consistent with paragraph (a) of this section would be inadequate to maintain roof control, the District Manager is authorized through the approval process to require the width of openings and roadways and the spacing of supports to be less than specified in this standard.

The requirement that width of openings be limited to 20 feet wide when using only conventional supports is derived from the existing criterion in § 75.200–8. The proposal would have deleted this, but retained the related existing criterion in § 75.200–9, which provides that any place driven over 20 feet wide should be supported by a combination of conventional supports and roof bolts.

When conventional supports are used as the sole means of support, a span of roof corresponding to the width of roadways is left with no overhead supports. When a combination of conventional supports and roof bolts is used, bolts are installed in the roof over the roadways, providing overhead support.

Wider openings inherently create greater stresses on the roof span, which can cause roof separation or shearing along the ribs, possibly leading to failure of the roof. When openings are maintained no wider than 20 feet, conventional supports can, in favorable conditions, provide adequate support.

For openings wider than 20 feet, however, MSHA has concluded that a combination of roof bolts and conventional supports is necessary for reliable roof control. A survey conducted by MSHA indicates that 71 working sections are currently mining openings more than 20 feet wide with conventional supports as the only means of roof support. To continue mining in this fashion, roof bolts must be used in conjunction with the conventional supports.

The requirement that supports be installed to within 5 feet of the uncut face will assure that supports are installed as close as practicable to the face before further roof is exposed by the mining process.

The final rule also retains the proposed provision that each opening along a travelway be supported by extending the line of supports across openings when they are no longer needed for storing supplies or for equipment to travel into the area. This minimizes the potential for a roof fall at the intersection of entries, rooms and crosscuts.

Paragraph (b) sets forth specifications for conventional roof support materials, which are retained from the proposal. Paragraph (b)(1) specifies the size requirements for posts, addressing the diameter of round posts and the cross-sectional area of split posts as a function of their length. For purposes of clarity, these requirements are set forth in a table. The final rule revises the specifications in existing criteria to make the support capacity for posts of varying lengths more equivalent, particularly those used in higher coal seams. For example, an existing criterion specifies that the diameter of posts be increased 1 inch for each 15 inches of length. However, with this approach, posts used in a 12-foot coal seam would be required to have a support capacity approximately six times that of posts used in a 5-foot seam. Therefore, the final rule specifies more equal support capacity for posts longer than 60 inches by requiring the diameter to be increased 1 inch for each 24 inches of length greater than 60 inches.

One commenter suggested that split posts be prohibited, except for use as breaker posts. This commenter indicated that split posts do not provide the same support as round posts. The strength of a support post is influenced by the integrity of the material, its cross-sectional area, and its length. Each of these factors is addressed in the final rule. The cross-sectional area requirements for split posts are derived from the cross-sectional area of round posts of the same length.

Paragraph (b)(2) sets out dimensions for wooden cap blocks, footings, crossbars and planks. This standard requires that each wooden cap block and footing have flat sides and be at least 2 inches thick, 4 inches wide and 12 inches long. The existing criteria section calling for cap blocks to have flat parallel sides is deleted by the final rule, recognizing that flat sides are the important feature of these materials to be effective for use as headers and footers. In addition, paragraph (e) of this section requires that posts and jacks be tightly installed on solid footing.

One commenter suggested that cap blocks and footings be required to have a width which is at least equal to the diameter of the post being used in order to take better advantage of the load bearing capacity of each post. The final rule does not adopt this comment. Under the final rule, cap blocks and footings are required to be at least 4 inches wide, which is the smallest diameter of the post that may be used for support. However, when a minimum post diameter is ordered, various larger diameter posts are frequently provided, some of which may exceed the size of the cap blocks and footings to be used. This variation would make the suggested revision impractical. In addition, the rule provides for substantial bearing surface by requiring cap blocks and footers to be at least 12 inches long.

Under the final rule, crossbars are required to have a minimum cross-sectional area of 24 square inches and be at least 3 inches thick. Planks used for roof support must have a minimum width of six inches and be at least 1 inch thick. The existing criterion, which specifies that a plank should have a minimum cross-sectional area of 8 square inches, is revised by the final rule to a minimum width of 6 inches. A minimum width of 6 inches provides a bearing surface for planks which are normally used to control sloughing type roof conditions and recognizes that 2" x 4" lumber should not be used as a plank.

One commenter suggested that planks be at least 2 inches thick because they are normally used in roof fall areas in conjunction with crossbars to form a canopy to protect against roof and rib sloughing. Although planks may be used in conjunction with crossbars, MSHA's experience indicates that planks are more commonly used in conjunction with roof bolts to assist in the control of sloughing. Planks that are at least 1 inch thick have been successfully used for this purpose.

The final rule deletes the criterion in existing § 75.200–8(a)(5), which specifies that cribs be made with wood having parallel flat sides and that cribs be not less than 30 inches square. Paragraph (b)(3) of the final rule replaces this criterion with the requirement that cribbing materials have at least two parallel flat sides. Parallel flat sides are important to cribbing materials since these support structures are built by stacking these materials. No crib dimensions, however, are specified because this could prevent the use of cribbing materials in confined areas where they may have application.

One commenter suggested that crib materials need to be at least 6 inches thick and 6 inches wide to provide sufficient support. The final rule does not include this suggestion. Cribs are commonly used where roof control is difficult and inadequate materials would fail and need to be replaced. Under the existing standards, dimensions for crib blocks are chosen by the operator consistent with the conditions under which they will be used. MSHA has not experienced problems with this approach.

Paragraph (c) allows the use of two or more posts set in a cluster if their total strength meets that required by paragraph (b)(1) for a single post of the same length. This provision is intended to allow a number of posts to be used together, rather than requiring that wider posts be ordered when mining heights vary. In response to commenters and for clarity, the final rule includes minimum dimensions for posts used in a cluster. MSHA experience indicates that posts narrower than those permitted by the final rule are subject to buckling and that installing the number of such narrow posts necessary to provide equivalent strength would be impractical.

Paragraph (d) allows the use of materials other than wood for conventional roof support if these materials are at least as strong as wood. Cribbing materials and other supports made from non-wood materials which provide support capacity equal to wood are currently available. For example, concrete crib blocks and fiberglass beams have been successfully used as conventional support materials.

Paragraphs (e) through (g) specify requirements for the firm installation of posts, spacing of blocks used for lagging between the roof and crossbars, and jacks used for roof support.

Several commenters suggested that the final rule include a requirement that a maximum of two wedges be used with each post to produce a tight fit of posts between the mine bottom and roof. These commenters indicated that such a requirement would avoid stacking wedges over posts which are too short and provide for secure installations. MSHA agrees that excessive use of wedges can result in unstable posts. However, uneven roof conditions or other irregularities may require additional wedges to properly install a post. For this reason, the final rule does not specify a maximum number of wedges that can be used, but instead specifies that each post be tightly installed.

Paragraph (h) requires jacks set for roof support to be used with at least 36 square inches of roof bearing surface. Several commenters suggested that the bearing surface for jacks be reduced to 25 square inches in order to be consistent with the bearing surface for roof bolt bearing plates that are 5 inches square. MSHA believes that 36 square inches is appropriate because jacks are used and reused under varying conditions and can exert heavy loads against the roof due to mechanical leverage. Other commenters suggested that the bearing surface be slip resistant. When properly set, jacks exert pressure that is sufficient to maintain placement due to the friction between the mine bottom and roof and the bearing surfaces of the jack.

The final rule deletes existing § 75.202 which requires that dislodged supports be replaced promptly. Several commenters indicated that replacement of dislodged supports is not immediately necessary in all areas of a mine. Instead, replacement should depend on the area of the mine affected. MSHA agrees that an area not being used for work or travel need not be a high priority for replacement of support. The hazards associated with dislodged supports are addressed by § 75.202(b), which prohibits persons from traveling in unsupported areas, and § 75.211(c) which requires that hazardous conditions be corrected, or a warning posted or barrier installed to impede travel into the area.

Section 75.207 Pillar recovery.

This final rule is derived from existing § 75.201–2 and existing criteria in § 75.200–11. It establishes safety standards for the extraction of pillars during retreat mining.

In the proposal, MSHA included as standards, existing criteria that were considered applicable to all mines. Several commenters stated that while these provisions would be applicable most of the time, there are situations when they would not be appropriate. For example, remote control continuous-mining machines and mobile roof support systems may eliminate the need for installation of some breaker posts, which would reduce miner exposure to roof fall hazards while installing such supports. To provide flexibility and to address these situations, a provision has been added to the final rule that permits alternative methods to be addressed through the roof control plan process.

Paragraph (a) prohibits conducting full and partial pillar recovery on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place. Full and partial pillar recovery on the same pillar line can create conditions which cause roof pressures to override into active working places. However, situations can occur during full pillar recovery which require some pillars or parts of pillars to be left intact for safety reasons. The final rule recognizes these circumstances, but prohibits a general practice of full and partial pillar recovery on the same pillar line.

Paragraph (b) requires that at least two rows of breaker posts or equivalent means of support be installed as close to the initial breakline as practicable and across each opening leading into an area where full or partial pillar extraction has been completed. Breaker posts are used to prevent a roof fall in a mined-out area from continuing into an area where miners work or travel.

Several commenters suggested that the proposed requirement for breaker posts across each opening leading to an area where pillar extraction has been completed be deleted because these areas would be addressed by the requirement that breaker posts be set as close to the intended breakline as practicable. MSHA's intention is that these provisions be applicable in two different situations. The first is that breaker posts be installed as close as practicable to the initial intended breakline after development of the section has been completed and before any recovery work has started. The second is that breaker posts be installed across each opening leading into an area where pillar recovery has been completed. The term "initial" has been added to the phrase "intended breakline" to clarify that this provision is applicable before any pillars have been extracted.

This standard also requires that a row of roadside-radius (turn) posts or equivalent support be installed leading into any split or lift of a pillar prior to the start of mining. Roadside-radius posts reduce the width of the roadway.

Several commenters suggested that mobile roof support (MRS) systems are available and should be used as breaker posts rather than requiring the miners to manually set the breaker posts. The MRS system is currently being developed by the Bureau of Mines, U.S. Department of the Interior. Preliminary results obtained from experiments conducted in mines where the seam heights were between 7 and 15 feet indicate that the MRS system may have positive application in higher coal seams. However, this project is still in the developmental stage, and research is still being conducted by the Bureau. For these reasons, the final rule does not require the use of these devices at this time.

Paragraph (c) requires at least two rows of posts, or equivalent support, to be set on each side of the roadway on not more than 4-foot centers, and permits only one open roadway not more than 16 feet wide from the solid pillars to a final stump. A provision has been added to this section of the final rule which limits the roadway width to the final stump to 14 feet where posts are used as the only means of support. This provision is consistent with § 75.206(a)(4), which limits the width of roadways to 14 feet when posts are used. However, a 16-foot roadway could be used where cross bars or other means of overhead support are used in conjunction with posts. The "final stump," sometimes referred to as a "pushout," is the last portion of a pillar providing roof support. When it is removed, the possibility of a roof fall is greatly increased.

Paragraph (d) sets out requirements for open-end pillar extraction. Open-end pillar extraction is mining a pillar when no portion of the pillar is left between the mined-out area and the section of the pillar being mined. Under the final rule, the width of the roadway is not permitted to exceed 16 feet and at least two rows of breaker posts on 4-foot centers or equivalent support must be installed between the lift to be started and the area where pillars have been extracted. The breaker posts or equivalent support must be maintained to within 7 feet of the face. Where open-end pillar recovery is conducted, these are the only means of support between the mined-out area and the persons extracting the pillar.

Several commenters suggested that open-end pillar extraction be prohibited because this method is outdated and presents too great a hazard for miners. Open-end pillaring has been done safely and effectively in some mines where proper procedures are used. Therefore, the final rule continues to recognize this mining method.

As proposed, existing standard § 75.201–2(h), which addresses recovery of adjacent pillars left and right from the same opening, is deleted by the final rule. Under the final rule, this element of pillar mining would be addressed in each mine's roof control plan in which the operator is required to address the sequence of mining pillars.

Section 75.208 Warning devices.

This standard, which is new, requires that areas where permanent support ends be identified to minimize the risk

of miners unintentionally going into unsupported areas. In the mine environment, the location where permanent support ends is often difficult to detect. Therefore, under the final rule, the end of permanent support must be marked with a readily visible warning or, alternatively, a physical barrier installed to impede passage into areas where the roof is unsupported. A visible warning could include reflective devices hung, for example, on the last row of roof bolts or other permanent roof support. A barrier could be constructed of posts across the entry at the end of permanent roof support.

In response to commenters, the phrase "except during the installation of roof supports" has been added to the final rule to clarify that this standard is not applicable during the installation of roof supports. Persons installing supports would normally be aware of where the permanent supports have been installed and are working to advance the support system. The proposal that the end of permanent support be "conspicuously identified" has been changed to "posted with a readily visible warning" in the final rule to more clearly state MSHA's intention that the device be readily seen in the mine atmosphere.

A commenter suggested that this standard require a reflective marker and a physical barrier, stating that both methods are necessary to prevent miners from unintentionally entering unsupported areas. The commenter also pointed out that the cost of installing both methods would be minimal compared to the protection they would provide to miners. The purpose of this requirement is to provide a means of warning persons when they are approaching an area that is not supported so that they do not inadvertently travel into the unsupported area. The Agency believes that this can be accomplished by either a visible warning or a physical barrier. A requirement that all markers have a reflective surface could prohibit other effective methods that will provide the necessary warning.

Several commenters suggested that a provision be added to the final rule requiring devices to be installed that would monitor and signal movement of the mine roof. These commenters stated that roof movement indicators are currently available and that their regular use could save miners' lives. Roof movement indicators give a signal when the roof moves more than the amount to which the device is set to respond. The objective is to set the device to detect roof movement that indicates an impending fall, as distinguished from normal roof movements.

The final rule does not require the use of roof movement indicators. As discussed in the proposal, MSHA has followed the development of these devices and believes that roof movement indicators can measure roof sag with reasonable accuracy. However, at their current stage of development, the Agency does not believe that these devices can reliably forecast the failure of mine roof. Roof conditions vary substantially from mine to mine, and in many cases, from section-to-section within the same mine. Some roof strata can sag considerably while remaining stable and supported. Other roof strata will sag only a fraction of an inch before falling.

The Bureau of Mines, U.S. Department of the Interior, has designed an experimental ultrasonic distance-measuring device that measures roof and floor convergence, as well as the convergence rate. Laboratory tests conducted on these devices under controlled conditions indicate that they can reliably measure differences in the distance between the mine floor and roof. However, when field tested at two underground mines, some instability in the readings were observed. Most of the errors were traced to heavy equipment vibrations, temperature variations, and changes in ventilation. This experience indicates that further research is needed to address these problems, as well as the problem of determining how much roof sag is indicative of a roof failure.

Section 75.209 Automated Temporary Roof Support (ATRS) systems.

This new provision requires the use of automated temporary roof support (ATRS) systems with roof bolting machines and continuous-mining machines equipped with integral bolters. The purpose of these safety devices is to protect persons from roof falls when installing roof bolts in working sections.

Under the final rule, ATRS systems are required to be used with all new roof bolting equipment ordered after March 28, 1988, regardless of the mining height in which the equipment will be operated. The standard also requires existing roof bolting machines and continuous-mining machines with integral roof bolters being operated in mining heights of 30 inches or more to be used with ATRS systems in accordance with a graduated compliance schedule. Roof bolting equipment being operated in working sections where the mining height is 36 inches or more must be provided with ATRS systems by March 28, 1989 and roof bolting equipment being operated in mining heights below 36 inches to 30 inches must be provided with ATRS systems by March 28, 1990. After this date, the use of ATRS systems with existing roof bolting equipment in mining heights below 30 inches must be addressed in the roof control plan on a mine-to-mine basis.

Mining height will be measured from the mine floor to the mine roof, without regard to roof support materials. Measurements to establish mining height will be made only in areas where good mining practices have been followed.

As stated throughout this rulemaking, a primary objective of the final rule is to minimize hazards associated with persons working beyond permanently supported roof during the installation of supports. Roof falls are the leading cause of fatalities in underground coal mines. These accidents most frequently occur near the face area where coal is extracted and often involve activities related to the installation of roof supports.

The use of ATRS systems should significantly reduce the number of fatalities and injuries that occur when miners work or travel beyond permanently supported roof. However, ATRS systems will not produce optimum effectiveness unless training programs continue to emphasize the importance of remaining under supported roof at all times. MSHA accident records show that in 1985 and 1986 five fatalities occurred when miners advanced beyond the ATRS into areas where the roof was unsupported. As the use of ATRS systems grows, it is essential that miners be properly trained in accordance with the provisions of 30 CFR Part 48, to work or travel only within the areas being protected by ATRS systems.

Through the combined efforts of the mining community, a variety of ATRS systems has been developed for use in underground coal mines over the past decade. As a result, a large number of these devices are in use today. MSHA estimates that nearly 74 percent of roof bolting machines, which includes almost all continuous miners with integral roof bolters, are currently equipped with an ATRS system.

ATRS systems typically are mounted on roof bolting machines and continuous-mining machines with integral roof bolting equipment. Some ATRS system designs, however, are free-standing machines. Either type can be used to comply with the final rule, which requires ATRS systems to be used with machines that perform roof bolting operations.

ATRS systems are usually composed of one or more hydraulically-actuated cylinders with a bar, ring, or other support device that can be lifted and pressed against the mine roof. ATRS system controls are typically located so that they can be operated from under permanently supported roof. However, some existing designs require the equipment operator to be temporarily positioned a short distance beyond the last row of permanent supports to set the ATRS. Because of this, these designs include structures to protect the equipment operator.

At the present time three States, West Virginia, Virginia and Kentucky, have requirements for the use of ATRS systems. MSHA's final rule differs from the Virginia and Kentucky requirements, which call for ATRS systems on all roof bolting machines and continuous-mining machines with integral roof bolters operated in mining heights of 42 inches or more. The final rule also differs from the West Virginia standard, which requires ATRS systems on roof bolting equipment in all mining heights, unless a waiver of compliance is granted. MSHA's final rule addresses the use of ATRS systems in mining heights below 30 inches on a mine-by-mine basis.

The proposal provided that ATRS systems be used to the extent practicable and as technology became available to protect persons working or traveling beyond permanent roof support. Some commenters objected to this approach, stating that it was too general and that the standard should more clearly specify operators' compliance responsibilities. These commenters recommended that requirements for ATRS systems only apply during the installation of roof bolts. In support of this, they stated that currently available ATRS systems have been designed for use during the installation of roof bolts and have not generally been used during the installation of conventional support.

MSHA recognizes that ATRS systems have been designed predominantly for use in roof bolting operations. In part, this is because ATRS systems were developed as alternatives to canopies or cabs on roof bolting equipment. Under 30 CFR 75.1710, substantially constructed canopies or cabs are required on all self-propelled electric face equipment to protect the operators of these machines from roof falls. Because of the mechanical articulation necessary in roof bolting operations, and the close proximity of the equipment operator to this part of the machine, devices which provide equal or greater protection to canopies or cabs were developed and approved under 30 CFR 75.1710–1(f).[1]

After reviewing existing applications for ATRS systems, the Agency has concluded that the adaptability of ATRS systems for use during the installation of conventional supports has not been established at this time. Therefore, the final rule specifies the use of ATRS systems in conjunction with roof bolting operations, and provides a compliance schedule for the introduction of ATRS system technology in progressively lower mining heights. MSHA will continue, however, to encourage the development of ATRS systems for use during the installation of conventional supports and during installation of supports for purposes such as extending line curtain and taking gas checks.

Commenters expressed divergent views about the use of ATRS systems in various mining heights. Some suggested that ATRS systems should be required in all mines, regardless of mining height. These commenters stated that ATRS systems have been successfully used in mining heights of 30 inches and that ATRS systems have been designed to work in mining heights as low as 26 inches. Other commenters recommended that ATRS systems should be required only where the mining height is 42 inches or more. These commenters pointed to problems with the use of ATRS systems in lower mining heights involving clearance, obstruction of the equipment operator's vision, and difficulty with retrofitting existing machines.

Adapting ATRS system technology to use in coal mines is primarily influenced by the design of the equipment with which the ATRS system is to be used, and the mining height the equipment is to be used in. For machine-mounted ATRS systems, these two related factors are most readily addressed in the manufacturing stage. As roof bolting machines and continuous-mining machines with integral bolters are built, the ATRS system can be made part of the machine, with consideration given to weight distribution, operator visibility and other design elements. The success of this approach is illustrated by the roof bolting machines and continuous-mining machines with integral bolters built over approximately the past 11 years, the vast majority of which have been designed to accommodate ATRS systems. Based on these considerations, all new roof bolting equipment and continuous-mining machines with integral roof bolters ordered after the effective date of the final rule are required to be used with ATRS systems.

Existing roof bolting equipment and continuous-mining machines with integral bolters will also be required to be used with ATRS systems. The standard's two year phase-in schedule for this equipment recognizes the expanding application of ATRS system technology. For practical reasons, and because ATRS systems were developed as alternatives to canopies or cabs on mining equipment, retrofitting ATRS systems to existing machines began in mines with mine floor to mine roof measurements of 42 inches or more.[2] As applications of ATRS technology improved and the benefits of this safety equipment became known, ATRS systems have been consistently developed for a greater variety of machines and for use in lower mining heights.

A recent MSHA survey shows that out of approximately 2,976 roof bolting machines and continuous-mining machines with integral roof bolters in service, about 2,191 are equipped with ATRS systems. Of these, an estimated 380 are machines that were retrofitted with ATRS systems. The majority of this equipment operates in mining heights of 36 inches or more. Currently, 43 machines which were retrofitted with ATRS systems are operating in mining heights between 30 and 36 inches, and 4 in mining heights below 30 inches.

As these data indicate, today's ATRS systems technology is being applied to equipment in lower mining heights. From this trend and Agency experience with ATRS systems, MSHA has concluded that current ATRS system technology can be applied to roof bolting machines and continuous-mining machines now operating in mining heights of 30 inches or more. At mining heights below 30 inches, experience with applying ATRS system technology to existing equipment is still limited.

Several commenters stated that the the proposed 2-year compliance schedule for the use of ATRS systems was too long and that ATRS systems standards should be effective no later than six months after the effective date of the final rule. Other commenters recommended that ATRS systems requirements be effective 3 years after the final rule. They indicated that a 3-year period was necessary to allow

[1] Section 75.1710–1(f) provides for MSHA approval of devices to be used in lieu of canopies or cabs on self-propelled electric face equipment to protect equipment operators from roof falls.

[2] Under 30 CFR 75.1710–1, cabs or canopies have been required since January 1, 1976 on self-propelled electric face equipment operating where the mine floor to mine roof measurement is 42 inches or more.

mine operators to acquire ATRS systems and achieve compliance.

MSHA has informally reviewed the availability of ATRS systems and found that currently there are eight major manufacturers of roof bolting equipment that make ATRS systems. Primarily, these manufacturers make ATRS systems for the equipment that they manufacture, including ATRS system retrofitting kits for their equipment. In addition, there are eight independent shops of which MSHA is aware that make ATRS systems for application with a variety of roof bolting equipment. Some coal mining companies also make their own ATRS systems. From the recent MSHA survey noted above, the Agency also estimates that there are 495 roof bolting machines and continuous-mining machines with integral bolters operating in mining heights of 36 inches or more than are not yet being used with ATRS systems. In mines with mining heights of 30 inches up to 36 inches, approximately 173 pieces of roof bolting equipment are operating without ATRS systems.

Based on this information, MSHA has concluded that a one-year compliance schedule following the effective date of the final rule provides a reasonable opportunity for operators of coal mines with mining heights of 36 inches or more to acquire ATRS systems and implement the use of these devices with all roof bolting machines and continous-mining machines with integral bolters. Recognizing that ATRS system technology has been applied to a lesser degree in the class of roof bolting equipments used in mining heights of 30 to 36 inches, an additional 12-month period is permitted for operators of these mines to achieve compliance with the ATRS system standard. This should also ease the initial demand for ATRS systems.

In addition, MSHA anticipates that ATRS system technology will continue to be adapted for use with existing roof bolting equipment in mining heights below 30 inches. To provide for the introduction of these ATRS systems in mines where they can be practicably used, the final rule requires operators of mines with mining heights below 30 inches to address the use of ATRS systems with existing equipment in the mine roof a control plan. This aspect of the ATRS system standards will apply two years after the effective date of the final rule. Where ATRS systems can be adapted for use with existing equipment in these low mining heights, revisions to the mine's roof control plan will be required to specify the use of ATRS systems. In making decisions about whether ATRS system technology can be practicably implemented in low mining heights the district manager will take into consideration factors such as mining conditions and difficulties associated with retrofitting, including machine mobility and visibility.

Some exceptions to the use of ATRS systems are included in the final rule. In addition to conventional support mines, ATRS systems are not required by the final rule in anthracite mines because this method of mining coal is incompatible with ATRS systems. In anthracite mines, the coal is generally mined from pitching coal seams where roof is supported primarily by conventional methods and the use of roof bolting machines is impractical.

In mines that are required to have an ATRS system, the standard also authorizes District Managers to approve the use of alternative methods of temporary roof support as part of the mine's roof control plan. Commenters pointed out that it is necessary to allow alternatives to the use of an ATRS system when use of the device is unworkable. For example, in an area where a roof fall has occurred, the mine roof may be above the height capacity of the ATRS system being used at the mine, even if extension devices are used. The final rule would permit alternative support measures to be included in the mine's approved roof control plan to address such situations.

The final rule also permits the use of temporary supports in conjunction with an ATRS system. This provision recognizes that manually set temporary supports may be necessary to reduce the span of the unsupported roof in some circumstances. For example, when supporting a side cut it may not be practicable to set the ATRS system within 5 feet of the rib. Here again, the final rule permits circumstances such as this to be addressed in the mine's approved roof control plan.

Some commenters asked whether ATRS systems provided in accordance with this section would automatically be considered an approved alternative to a canopy or cab. As stated in the proposal, MSHA will continue to evaluate the use of ATRS systems as alternatives to canopies or cabs in accordance with 30 CFR 75.1710–1(f). ATRS systems conforming with the final rule will not be automatically approved as alternatives to the use of canopies or cabs.

The final rule prescribes where miners can safely work or travel to the left, right or beyond the support device of an ATRS system. It prohibits work or travel to the left, right or beyond the ATRS system unless support is provided within 5 feet of the support device of the ATRS system. This requirement is derived from Agency experience with the area of support provided by other types of temporary and permanent support, and experience with ATRS systems. If the particular conditions at a mine are such that a 5-foot distance between supports would be inadequate to maintain safety for the miners, the District Manager is authorized through the approval process to require the distance between supports to be less than 5 feet.

This aspect of the final rule is unchanged from the proposal, except that separate standards for work or travel to the left or right of an ATRS system, and work or travel beyond the support device are consolidated into one standard. The phrase in the proposal which stated that the coal rib is considered support is not included in the final rule, since it is commonly understood in the industry that the coal ribs and face provide roof support.

The distance an ATRS system can be set beyond the last row of support is required by the final rule to be addressed in the roof control plan for each mine. Some commenters suggested the final rule specify that the distance between the ATRS system and the last row of installed roof bolts not exceed the bolt spacing specified in the mine roof control plan, plus 12 inches. They stated that an additional distance of 12 inches would accommodate the installation of bolts in the next row of the roof bolting pattern without any mechanical interference with the support device of the ATRS system. The distance an ATRS system is to be set beyond permanent support should be the minimum that is necessary to install the next row of supports. This distance will vary due to such factors as the lengthwise spacing of the supports, the roof conditions at the mine, and mechanical interference of the ATRS system with equipment used to install the roof bolts in accordance with the bolting pattern. MSHA believes that these factors can be more appropriately addressed in the roof control plan on a mine-by-mine basis, rather than by a general standard.

The final rule sets out performance features for ATRS systems which are broad enough to accommodate a wide range of technologies. ATRS systems are required to be capable of elastically supporting a deadweight load that is 450 times each square foot of roof area intended to be supported, but in no case less than 11,250 pounds. This minimum strength specification is currently used

to evaluate ATRS systems that are proposed to be used instead of a canopy or cab under 30 CFR 75.1710. It is derived from data gathered from fatal roof fall accident reports, which indicate that a majority of roof fall fatalities involve rock and other material approximately 3 feet thick or less. Taking this into account, the final rule requires that an ATRS system be capable of supporting a volume of rock 3 feet thick over the roof area intended to be supported by the ATRS system. Rock weighs approximately 150 pounds per cubic foot, and a column of rock 1-foot square and 3 feet thick weighs approximately 450 pounds. Applying these factors to an ATRS system designed to support, for example, a 5x5-foot area of roof, the ATRS system is required to elastically support a static load of at least 11,250 pounds (5' x 5'x 3' x 150-lb/cu ft).

The standard requires the controls that position and set the supports of an ATRS system to be operable from under permanently supported roof when positioning and setting the ATRS system. A vast majority of existing ATRS systems are designed this way. Alternatively, the controls can be operable from a position beyond permanent support, so long as they are located in a compartment that provides protection for the equipment operator. This alternative permits the continued use of certain existing ATRS systems that provide overhead and lateral protection for the equipment operator while at the ATRS system controls. Although this latter type of ATRS system briefly exposes the equipment operator to unsupported roof, the Agency has taken into consideration the safety advantages of this type of design which includes protection from rib or face rolls and roof falls that may override into the permanently supported area. In some cases, this design also permits total operation of the equipment while the operator remains in a protected compartment, affording continuous protection from roof falls and other hazards.

In response to commenters and to clarify MSHA's intention, the phrase "equipment operator's entire body be protected," which was included in the proposal, has been changed to the phrase "overhead and lateral protection." These commenters stated that it would be impossible to protect the equipment operator's entire body since arms or legs could be extended beyond the protection of the compartment. MSHA agrees. The purpose of this requirement is to provide overhead and lateral protection that will allow the equipment operator to remain within the confines of the compartment while operating the controls.

The final rule sets a basic strength requirement for the compartment that protects the operator while at the ATRS system controls. The proposal, which would have required a 20,000-pound support capacity, is changed by the final rule to require that the operator's compartment be capable of elastically supporting a deadweight load of 18,000 pounds. This strength factor has proven to be effective for protecting persons under canopies from significant impact loads during actual roof falls.

Under the final rule, all jacks affecting the capacity of an ATRS system or a compartment must have check valves, or equivalent protection, to prevent support failure in the event of a sudden loss of pressure. This provision is changed from the proposal which referred to loss of pressure in hydraulic jacks. While current ATRS systems primarily use hydraulically operated jacks, other systems such as those pneumatically or mechanically actuated could be used, presenting the same hazard of support failure.

The final rule specifies that, except for the main tram controls, the controls which position and set the ATRS system must limit the speed of the equipment to 80 feet-per-minute. This provision addresses the potential hazards associated with tramming ATRS systems too quickly or abruptly into position, which may result in injury to the equipment operator or cause the equipment operator to be exposed to unsupported roof. This aspect of the final rule was developed based on underground observations and discussions with representatives of the mining community and equipment manufacturers regarding specifications for use of ATRS systems in lieu of canopies or cabs. A tramming speed of 80 feet-per-minute is slow enough to allow the equipment to be maneuvered safely while positioning and setting the ATRS system and yet fast enough to facilitate the bolting or other support operation. Virtually all existing ATRS systems incorporate this basic feature.

The final rule retains the proposed requirement that the support capacity of an ATRS system be certified by a registered engineer. Also under the final rule, a compartment provided in accordance with paragraph (e)(2)(ii) is required to be certified by a registered engineer as meeting the required minimum structural capacity. A certification from the manufacturer's registered engineer would constitute one method of compliance with this requirement. These certifications are required to be made available to an authorized representative of the Secretary and representatives of the miners upon request. This provision has been added to the final rule to clarify MSHA's intention with respect to the availability of these certifications.

A common practice for evaluating the support capability of a structure is to consult a registered engineer. The final rule incorporates this practice with respect to the capacity of ATRS systems and compartments. The engineer's certification provides assurance and evidence that each system and related compartment meets the required structural specifications.

Section 75.210 Manual installation of temporary supports.

MSHA recognizes that the manual installation of temporary supports will continue to have application due to the variety of mining methods and mining conditions. The final, rule, therefore, includes requirements for this method of roof control. These standards are derived from § 75.200 and criteria § 75.200–13.

The final rule permits only those persons installing temporary supports to proceed beyond the last permanent support until the supports have been installed. In addition, the final rule sets out requirements for the spacing and sequence of installing temporary supports and addresses work or travel in areas that are temporarily supported.

The procedures and precautions required for the manual installation of temporary roof support are based on industry experience and are designed to minimize the exposure of persons to unsupported roof. The final rule requires that persons manually installing temporary roof support position themselves between the temporary support to be set and two other sources of roof support. These other sources of support could be permanent supports, temporary supports already installed, or the coal face or rib. From this position, persons setting temporary support would be permitted to proceed up to five feet beyond supported roof to install the next support.

Several commenters suggested that temporary supports be installed at arms length. Except when adverse roof conditions are present, MSHA's experience indicates that 5 feet of space between temporary supports is generally adequate for controlling the roof and that this spacing is compatible with the subsequent installation of permanent roof support. The temporary roof support pattern should allow sufficient

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room for maneuvering roof support installation equipment without dislodging temporary supports. The support pattern should also permit the installation of permanent supports without necessitating the removal or relocation of temporary supports, which can be dangerous. For these reasons, the final rule retains the proposed requirement that temporary supports, when manually installed, be set on no more than 5-foot centers. However, if the particular conditions at a mine are such that setting temporary supports on 5-foot centers would be inadequate to maintain roof control, the District Manager is authorized through the approval process to require the supports to be set closer together.

Section 75.211 Roof testing and scaling.

This final rule is derived from §§ 75.202, 75.205 and criteria in § 75.200–13 regarding examination and testing of the roof, face and ribs. It sets out requirements for making a visual examination for hazards, and conducting sound and vibration tests of the roof. The standard also requires precautions to be taken when hazardous conditions are detected.

Paragraph (a) of the standard requires a visual examination in any area where work is to be started and thereafter as conditions warrant. Changes in geological and atmospheric conditions can cause instability and deterioration of the roof, face and ribs in underground mines. These examinations and tests are necessary to identify hazards that may result from such changes before persons work or travel in the affected areas.

Paragraph (b) requires that sound and vibration tests or equivalent tests be conducted in areas where roof supports are to be installed, if the mining height permits and the visual examination has not disclosed a hazardous condition. The final rule differs from the proposal in that it permits tests other than sound and vibration tests to be conducted provided that these tests are as effective as sound and vibration tests. This change recognizes that new techniques for testing the roof may be developed.

When sound and vibration tests are made, they must be made after the ATRS system has been set against the mine roof and before other supports are installed. If an ATRS system is not yet in use at the mine, these tests must be made before each support is manually installed.

The mining height exception in the standard recognizes that in high coal seams sound and vibration tests may be impractical. Under the final rule, sound and vibration tests are not required in these circumstances.

Several commenters suggested that sound and vibration tests not be required at all, stating that these tests involve additional exposure of miners to unsupported roof with no corresponding safety benefit. Sound and vibration tests are the primary method used in underground coal mines for identifying hazardous roof conditions, such as unstable or fractured strata just above the roof surface, which cannot be detected visually. MSHA believes roof testing enhances safety of the miners by providing more information for evaluating the condition of the roof. Failure to properly examine or evaluate roof, face, and rib conditions has been the cause or contributing factor in numerous roof fall fatalities that occurred in underground coal mines.

Paragraph (c) requires hazardous roof, face, and rib conditions to be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, the standard requires each entrance to the area to be posted with a readily visible warning. Alternatively, the final rule requires a physical barrier to be installed to impede travel into the area. These precautions will alert persons entering the area of the dangerous condition.

The final rule revises the existing standard that requires "loose roof and overhanging or loose faces and ribs" to be taken down or supported. The final rule specifies that when a "hazardous roof, face and rib condition" is detected, the condition must be corrected. This change recognizes that all overhangs may not be hazardous. The proposed requirement that corrective action be taken "immediately" under these circumstances has been changed in the final rule to require corrective action "before any other work or travel in the area." Corrective action would include taking down or supporting the material posing the hazard. These changes are intended to simplify the final rule, while maintaining the purpose of the standard, which is that miners not be exposed to hazardous roof, face, and rib conditions.

As proposed, paragraph (d) requires a bar for taking down loose material to be provided in the working place or on all face equipment except haulage equipment. This bar is required to be of a length and design that would permit the removal of loose material so that the person using the bar is not exposed to the falling material when it is removed. Appropriate tools need to be readily available to perform safe removal of loose material.

Commenters suggested that a provision be added to this standard which would require that loose materials be manually taken down only if the miner works from a location that is permanently supported or is supported by an ATRS system. This recommendation was not included in the final rule because loose materials can also be safely removed from areas that are supported by posts or jacks that are manually installed. Therefore, paragraph (d) of this section specifies that the bar used for taking down loose material be of a length and design that allows the removal of loose material from a position that does not expose the person performing this work to injury from falling material.

Section 75.212 Rehabilitation of areas with unsupported roof.

These standards are new and set forth the requirements for rehabilitating areas with unsupported roof created by mining machines, a fall or blasting. Rehabilitating unsupported areas has proven to be especially hazardous to miners. The roof is often broken, loose and difficult to control.

Paragraph (a) requires that, on a site-by-site basis, the mine operator establish clean-up and support procedures to be followed during rehabilitation of any areas where a roof fall has occurred or the roof has been removed by mining machines or by blasting. It requires that persons who perform the rehabilitation work at each individual site be instructed in these procedures before rehabilitation is started. Normally, such instructions would be given by a representative of mine management at the rehabilitation site. Establishing clean-up and support installation procedures on a site-by-site basis allows the particular conditions present to be assessed, and a safe approach to rehabilitating the area to be developed.

The final rule further requires that ineffective, damaged or missing roof support at the edge of a rehabilitation area be replaced or equivalent support provided before rehabilitation work is started. The roof supports at the edges of a roof fall frequently are damaged, loosened or dislodged by the fall and must be replaced or equivalent support installed to secure the roof before rehabilitation can be safely started.

Some commenters suggested that provisions be included in the final rule that would require a rehabilitation plan to be developed for approval by the MSHA District Manager and, after approval, posted at the rehabilitation site. These commenters expressed the view that it was MSHA's responsibility to evaluate the plan and that posting it at the work site would provide a quick reference in the event of questions or problems.

The basic purpose of a rehabilitation program is to assure development of safe work procedures for the persons performing rehabilitation work before such work is begun. The final rule reflects this purpose by requiring that the operator establish clean-up and support procedures to be followed during rehabilitation work and instruct the persons who perform such work in these procedures before rehabilitation work is started. Adding requirements for MSHA evaluation and approval of rehabilitation plans before they are implemented would not always be in the best interest of the safety of miners, and may impose unnecessary delay in rehabilitating unsupported areas. The final rule, therefore, does not adopt this approach.

Paragraph (b) requires that persons performing rehabilitation work be experienced in this work or that they be supervised by a person, designated by the mine operator, who has experience in rehabilitation work. Because of the hazardous nature of rehabilitation work, it is essential that inexperienced persons not perform such work without proper supervision.

Some commenters suggested that the person designated by the operator to supervise the rehabilitation work be required to be a "certified person." The fact that persons are certified does not always mean that they possess skills related to rehabilitation work. In addition, such a requirement would exclude persons who are experienced and knowledgeable in rehabilitation work but are not certified.

Paragraph (c) addresses the supports to be installed where rehabilitation work is not being performed. The standard applies to the active workings of mines, and requires that posts be set on at least 5-foot centers across each entry to the location. Equally effective supports are also permitted to be used. This precaution controls expansion of the unsupported area, and alerts persons to the hazard of unsupported roof.

The proposed requirement for a readily visible warning to be posted or a physical barrier installed at the entrance to areas not being rehabilitated is deleted from the final rule. The requirement for posts on 5-foot centers will provide a visible indicator of the unsupported area and prevent inadvertent entry by alerting persons to the hazards in the area.

The term "mining machines" has been added to this standard to clarify that the standard applies to roof removed by mining machines, as well as to roof removed by blasting. In addition, the final rule specifies the Agency's intention that the standard apply to active workings to avoid the possible interpretation that these supports may be required in abandoned areas.

Section 75.213 Roof support removal.

This standard, which is derived from existing § 75.204 and existing criteria in § 75.200–14, establishes requirements for removing permanent roof supports. It sets forth precautions to minimize the hazards involved in the removal of roof supports and identifies circumstances under which roof supports cannot be removed. These requirements replace the existing criterion which provided that operators who intend to recover roof supports should include a detailed plan for such recovery in the roof control plan.

Paragraph (a) specifies that the removal of permanent roof supports be done either by persons experienced in this work or by persons under the supervision of a person designated by the operator, who is experienced in removing roof supports. Also, persons performing this work are required to have at least one year of underground mining experience so that they are aware of the general hazards associated with underground mining.

The proposal provided for persons removing permanent roof supports to perform this work in the presence of a "supervisor," and assigned the supervisor certain tasks. Some commenters opposed the use of terms in safety standards which suggest job titles or classifications. In response, the final rule requires that permanent roof support removal be done by experienced persons, or that persons performing this work be supervised by an experienced person designated by the operator. The purpose of this requirement is to assure that at least one person who is knowledgeable and experienced in the removal of permanent roof support is present when this work is performed.

Some commenters suggested that the removal of permanent roof supports be prohibited, except where necessary to remove broken crossbars along travelways or haulageways. They stated that the dangers miners are exposed to in doing this type of work outweigh the benefits gained by removing the supports.

The primary purpose for removing roof supports is to accommodate blasting of the mine roof to obtain additional height for the installation of an overcast or belt conveyor drive. Crossbars, beams, and other similar supports are also removed to allow the mine roof to cave, relieving roof pressures. MSHA believes that this work can be performed safely by following the practices specified in this standard. The Agency recognizes, however, that the removal of roof bolts is particularly hazardous where full pillar extraction is conducted or adverse roof conditions are present. Indicators such as roof bolt torque readings or the condition of conventional support may show excessive loading, roof fractures or other signs that the roof is weak. The removal of permanent roof supports under these conditions is addressed by the final rule as discussed below.

Paragraph (b) requires a person designated by the operator to examine the roof conditions in the area where the supports are to be removed before this work is started. The roof conditions in these areas must be evaluated to determine whether it is safe to remove the supports.

Paragraph (c) requires at least one row of temporary supports on not more than 5-foot centers or equivalent support, to be installed prior to the removal of crossbars, beams or similar supports. These supports must be installed across the opening from which the supports are to be removed. If one row of temporary supports is not sufficient to assure safe removal, the standard requires additional supports to be installed across the opening. This provision revises the existing criterion which specified that at least 2 rows of posts on not more than 4-foot centers be installed across the opening within 4 feet of the location where the supports are to be removed. This revision was made in response to commenters who stated that the supports required by the existing standard was excessive in most applications. The purpose of installing these temporary supports is to prevent a roof fall that may be induced by removal of the crossbars, beams, or similar supports, from extending beyond the area from which the supports are removed. MSHA recognizes that the number of temporary supports necessary to accomplish this goal can vary depending on the number of crossbars, beams, or similar supports that are to be removed. For example, when only one crossbar is being removed, one row of temporary supports may be sufficient to prevent a roof fall from extending beyond the location where the support is being removed. On the other hand, when multiple supports are being removed, two or more rows of breaker posts may be necessary. In addition, other factors, such as the condition of the roof in the area where supports are to be removed, would

influence the number of supports that should be installed.

Paragraph (d)(1) addresses the removal of roof bolts. The standard requires a temporary support to be installed as close as practicable to each roof bolt being removed. After the bolts are removed, if the temporary supports are also removed, this work must be done from a location under permanent supports which has not been disturbed. The temporary supports provide protection for persons removing the roof bolts. Once the bolts have been removed, the temporary supports are the only means of support. Therefore, the final rule prohibits the removal of these temporary supports unless they are removed remotely from a location under permanent supports.

Paragraph (d)(2) prohibits the removal of roof bolts in areas where full pillar extraction is conducted. Full pillar recovery is designed to result in total caving of the area after the pillars have been removed. Removing roof bolts in these areas would, therefore, be extremely hazardous.

Paragraph (e) specifies that each entrance to an area where roof supports have been removed shall be posted with a readily visible warning or a physical barrier installed to impede travel into the area. Some commenters suggested that this standard require both a visible warning and a physical barrier to prevent miners from unintentionally entering these areas. They also stated that the cost of installing both methods would be justified by the protection they would provide to miners. The purpose of this standard is to provide a warning for persons approaching an area where the roof is hazardous. The Agency believes that this can be accomplished either by a visible warning or a physical barrier, and that requiring both methods is unnecessary.

Paragraph (f) outlines the conditions under which removal of permanent roof supports is prohibited. Under the final rule, supports cannot be removed where roof bolt torque or tension measurements or the condition of conventional roof supports indicate excessive loading, where roof fractures are present, or where there is any other indication that the roof is structurally weak. In these areas, any disturbance of the roof supports may trigger a roof fall with resultant injuries or fatalities. An exception has been added to this standard to allow the removal of supports if the persons involved in such removal are in a remote location under supported roof. For example, roof supports could be removed through the use of cables pulled from a safe distance so that no miners are exposed to roof fall hazards.

Paragraph (g) is new and specifies that the provisions of this section do not apply when removing conventional support for starting crosscuts and pillar splits or lifts. This provision reflects Agency practice of not considering removal of supports in these situations in the same context as other types of roof support removal. However, the standard requires that the roof conditions be determined before the supports are removed.

Section 75.214 Supplemental support materials, equipment and tools.

This section is derived from existing §§ 75.202 and 75.202–1 and requires supplies of supplementary support materials, equipment and tools in the event adverse roof conditions are encountered or a roof fall occurs. These materials must be available in a quantity sufficient to support the roof if adverse roof conditions are encountered or a roof fall accident occurs. The purpose of the standard is to assure that supplemental support materials and the necessary tools for their installation are available on or near each working section. These supplies will expedite recovery operations in the event of an accident, and provide for the installation of supplemental supports when adverse roof conditions are encountered.

These provisions were not included in the proposal although provisions for supplementary support materials did appear in the preproposal draft. Several commenters objected to this proposed deletion suggesting that supplementary support materials are necessary in emergency situations. Upon reconsideration, the Agency has concluded that provisions for supplies of supplementary support materials, equipment and tools should be retained in the final rule.

However, the final rule deletes existing standards in §§ 75.202 and 75.202–1 which address the regular supply of support materials for areas exposed during the mining cycle. This change is responsive to the concerns of several commenters who suggested that operators be allowed the flexibility to decide how support materials are supplied to each section. It also recognizes that the installation of supports in areas where persons work or travel is the important element that should be addressed by the final rule, not how the supports are supplied to the working section.

Section 75.215 Longwall mining systems.

This new provision provides that for each longwall mining section the roof control plan must specify the support methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall. In addition, the plan must set forth the procedures that the operator will follow should a fall occur that prevents travel out of the section through the tailgate side of the longwall, despite the support measures taken.

These provisions are derived from a study undertaken by MSHA and Agency experience. On January 28, 1985, MSHA established a task force to study two-entry mining systems in underground coal mines. On June 12, 1985, MSHA issued its report, Two-Entry Longwall Mining—A Technical Evaluation, which contained 35 recommendations directed at safe operation of these mining systems. Following the report, on July 18, 1985, MSHA held a meeting in Denver, Colorado, to brief the public on the Agency's task force report. At that meeting and in subsequent response to the report, members of the mining public suggested that the MSHA include the recommendations in the appropriate coal mine safety standards under review to afford opportunity for comment through the rulemaking process. Consistent with these suggestions, the Agency included the four recommendations that were applicable to roof control in the preamble discussion of the proposed rule.

For mines using longwall mining systems, the report specifically recommended that: (1) Systematic supplemental support be installed throughout the tailgate entry prior to mining a panel; (2) systematic supplemental support for tailgate entries of subsequent longwall panels be installed in advance of frontal abutment stresses of the adjacent panel being mined; (3) an examination of these entries be made at least once every seven days; and (4) procedures be formulated by the operator that address the actions to be taken should the tailgate travelway on a longwall panel be closed due to a ground failure. The term "longwall panel" refers to the block of coal isolated by the development entries, which is to be removed by the longwall mining unit.

MSHA specifically solicited comment and data on the merits of these provisions, the applicability of the provisions to all longwall mining systems, and whether the provisions would be more appropriate as criteria for approval of mine roof control plans for longwall mining or as standards applicable to all mines using longwalls.

The Agency received a wide range of comments. Some commenters suggested that the provisions be included in the final rule as standards applicable to all longwall mining systems. They stated that the recommendations were in the nature of existing standards and to include them as plan-approval criteria provisions would diminish protections currently afforded miners. Other commenters suggested that the recommendations be included in the final rule as criteria and be applicable only to longwall panels developed with two entries. They stated that mining conditions at various depths, different coalbeds, and differences in equipment demand the site-specific approach afforded by mine roof control plans.

The travelways on all longwall panels are through the headgate entries, the tailgate entries, and the bleeder entries inby the face. Travelways are more easily maintained on the headgate side of longwall panels since these entries are adjacent to solid coal, while the tailgate entries are adjacent to mined-out areas. Therefore, additional supports in tailgate entires are frequently necessary to maintain a safe travelway from this side of the longwall panel. In the event of life-threatening conditions, such as a fire in the intake aircourse or an outburst of the longwall face which impedes passage, egress from the longwall panel for persons working inby the affected areas may be limited to one side of the longwall. Keeping both the headgate and tailgate entries open also assures that adequate ventilation can be maintained for the longwall mining unit.

In longwall panels developed with two entries, a roof fall in the tailgate entry often poses an immediate obstruction to travel along that side of the longwall panel and can impair ventilation of the longwall face, unless a travelway is available adjacent to the gob through the bleeder entries. In longwall panels developed with more than two entries, a roof fall on the tailgate side may not initially impede passage, as a route bypassing the obstruction through the adjoining tailgate entries or bleeder entries may be available. Similarly, ventilation may not initially be adversely affected since an aircourse through other tailgate entries may still be intact. However, when mining progresses to a point where the longwall face abuts the failed area, exit from the panel on the tailgate side can be blocked and ventilation of the longwall face may be impaired.

Recognizing that falls along tailgate entries of longwalls can present similar hazards, the final rule applies to all mines. The final rule also acknowledges the concern of commenters that variation among mining conditions and other such factors warrant an individualized approach. This is accomplished by requiring that support methods for tailgate entries and safety procedures in the event of a blocked tailgate travelway be set forth in the roof control plan of each mine.

Consistent with this approach, § 75.222(g) of the final rule provides criteria for evaluating support in longwall tailgate entries, and the factors that should be addressed when a fall prevents travel on the tailgate side of a longwall. These provisions, based on the recommendations of MSHA's task force report, provide guidance as to when additional support should be installed and describe the safety issues that should be addressed if travel through the tailgate side of a longwall panel is blocked. Among the issues to be addressed are communication systems, monitoring of the ventilation system and reinstruction of miners on the availability and use of self-contained self-rescue devices (SCRS).

The term "travelway" as used in this final rule, is not to be construed to mean "escapeway." Existing MSHA standards, 30 CFR 75.1704, 75.1704–1, 75.1704–2, and 75.1707, establish requirements for escapeways. These standards are also being reviewed as part of a separate rulemaking to revise and update the Agency's standards for ventilation of underground coal mines.

The task force recommendation that examinations be made of tailgate entries at least every seven days is not included in the final rule. Examination of these entries is already required by existing standards at 30 CFR 75.305, which require at least one entry for each intake and return aircourse to be examined each week for hazardous conditions. Tailgate entries are either intake or return aircourses.

Section 75.220 Roof control plan.

This standard revises and consolidates existing §§ 75.200 through 75.200–4, which address roof control plans and programs. It narrows the scope of roof control plans, while retaining the basic requirement that each mine be operated in accordance with a roof control plan approved by the District Manager.

The roof control plan concept, which has been used effectively throughout the coal mining industry, grew out of a need for flexibility to address the unique conditions of each mine. Under the plan approach, roof conditions and experience with such conditions in the mine are addressed on a mine-by-mine basis. For this reason, the majority of commenters endorsed continuing the use of approved plans.

Currently, roof control plans address nearly all aspects of roof control practice at mines. As a result, many roof control plans have become unnecessarily voluminous and complex. To make roof control plans more relevant and less burdensome, existing criteria generally applicable to all mines are included in the final rule as mandatory standards. Roof control plans will therefore contain only the particular roof control measures necessary to address the unique conditions of the mine, making them less complex and more useful to the persons responsible for implementing these plans.

The requirement of a roof control plan for each mine in addition to compliance with the standards set forth in the final rule recognizes that standards of general applicability cannot be developed to address all necessary aspects of roof support for all mines. While standards applicable to all mines can be formulated, they fall short of addressing the particular hazards and problems of roof, face and rib control presented by complex combinations of variables such as coal seam composition, surrounding geological conditions and the mining system employed. Thus, in addition to establishing standards that have general application, the final rule also requires a roof control plan for each mine. In this plan, the roof control safety measures not specified by the standards are defined on a mine-by-mine basis.

Under the final rule, each operator is required to develop and follow a roof control plan approved by the District Manager. The operator's plan must be suitable to the prevailing geological conditions and the system of mining to be used at the mine. The operator is also required to take additional measures if unusual hazards are encountered.

The final rule retains the existing procedure that the operator submit the proposed roof control plan, or revisions to an existing approved plan, to the District Manager for approval. Added to this is a new provision which specifies that when revisions to an approved roof control plan are proposed by the operator, only the revised pages need to be submitted unless otherwise specified by the District Manager. Therefore, the entire plan need not be submitted when, for example, the operator proposes a small addition or the replacement of a few pages. However, the District Manager has the discretion to require that the entire plan be resubmitted when

the submission of revised pages would prevent effective evaluation of the plan.

Consistent with current practice, the operator's roof control plan and any revisions to it will be evaluated independently for approval. The focus of the District Manager's evaluation will be on whether the plan's provisions, if implemented, will result in adequate support and control of the roof, face and ribs under the particular conditions at the mine. In the course of this evaluation, the applicable criteria in § 75.222 of the final rule will be considered. As described below, plans not conforming with these criteria may be approved, provided that safe and effective roof, face and rib control can be achieved.

Paragraph (b) sets out the procedure for notification of approval or denial of approval of roof control plans, retaining the existing requirement that the operator be given written notice of approval actions. With clarifying changes, the rule also retains the existing procedure for exchanging information when approval of a proposed plan or revision is denied. Under the final rule, the operator will be advised of the deficiencies of the proposed plan or revision for which approval is denied, together with changes recommended for approval. The operator will then be given an opportunity to discuss with the District Manager the problems identified and potential solutions. The revised language of the rule is intended to clarify the operator's responsibility for developing an appropriate roof control plan and MSHA's role in evaluating the plan for approval.

The final rule authorizes the District Manager to require that the effectiveness of new support materials, devices or systems, other than roof bolts and accessories, be demonstrated by experimental installations. The phrase "other than roof bolts or accessories" has been added to the final rule because testing and evaluation of new types of roof bolts and accessories are addressed in § 75.204 of the final rule.

Consistent with the existing rule, the final rule provides the operator with the opportunity to discuss the deficiencies and changes in a proposed roof control plan with the District Manager.

Paragraph (c) retains the proposed requirement that roof control plans or revisions not be implemented until approved.

Paragraph (d) specifies that before implementing a revision to an approved roof control plan, all persons who are affected by the revision must be instructed in its provisions. Complete understanding of the requirements of the approved roof control plan for the mine is essential to effective implementation. For clarity, the terms "supervisors and miners," which appeared in the proposal, have been replaced in the final rule by the phrase "all persons."

Paragraph (e) requires that the roof control plan and any revisions be made available to the miners and representatives of miners at the mine. Making the plan and revisions available to the miners and their representatives will assure that all workers and their representatives at the mine are informed of provisions in the roof control plan.

In response to commenters, the proposed provision specifying that roof control plans and revisions be posted is not included in the final rule. These commenters stated that posting the plan is an impractical way to provide miners access to it and that the plan is made available to the miners in other ways, including through training. MSHA agrees that the purpose of this provision is to make plans available to miners. Therefore, the final rule requires roof control plans to be made available to miners and their representatives and does not contain a posting requirement.

Paragraph (f) revises the proposed requirement that all roof control plans be revised to meet the requirements of this new Subpart C within 6 months from the effective date of the final rule. This provision will only affect roof control plans which contain provisions in conflict with the final rule. Revising conflicting provisions in plans will assure that miners are aware of the requirements in effect and will eliminate any ambiguities that may arise.

Some commenters suggested that a provision be added to the final rule that would require mine management, at the start of each shift, to review with the miners in each working section the roof control measures that are needed to effectively control the roof. These commenters stated that because the roof conditions can change from shift to shift, the supervisors and miners working on each oncomming shift should be made aware of the changes and any materials needed to control the roof. MSHA recognizes that this is a good safety practice that is often followed in the mining industry. However, since the final rule establishes operator responsibility for controlling the mine roof, face and ribs, together with safety standards for certain support and control techniques, the Agency does not believe that such a provision needs to be included in the final rule.

Several commenters recommended that a separate set of regulations be developed as part of this rulemaking which would establish comprehensive new procedures for approving all mine plans. These commenters recommended procedures which would establish an appeal process to resolve issues regarding plan provisions upon which the operator and the District Manager cannot agree. Based on MSHA experience with the current plan-approval process, the vast majority of issues raised during plan-approval are resolved through staff discussion between the mine operator and District Manager. Issues that cannot be resolved in this manner are normally raised to the District Manager level. However, if a mine operator disagrees with a decision of the District Manager, the existing plan-approval process inherently allows the mine operator to appeal the decision to the Administrator for Coal mine Safety and Health for final resolution. The Agency will address the formalization of this appeal procedure in the forthcoming proposed rule for Ventilation of Underground Coal Mines. When the ventilation rule is finalized, the Agency will propose revisions to this final rule to formalize appeal procedures for roof control plans.

A commenter suggested that the final rule should provide miners, through their representatives, to have the right to participate in the approval process for roof control plans. This recommendation and the issues which it raises will be addressed by the Agency in the proposed rule for Ventilation. When the Ventilation proposal is finalized, the Agency will propose appropriate amendments to the roof control regulations to reflect the approach developed during the ventilation rule-making with respect to miners participation.

Section 75.221 Roof control plan information.

This final rule is derived from existing §§ 75.200–5, 75.201–1, and criteria in §§ 75–200–7, 75.200–12 and 75.200–15, except paragraphs (a)(6), (7), and (10) which are new. It specifies the information that is required in roof control plans.

The information required by this standard forms a basis for MSHA evaluation on operators' plans. The information required to be submitted with each plan includes identifying information, data related to the strata in which mining is to be conducted, and descriptions of the mining methods and support materials to be used. New requirements of the rule address the use of ATRS systems, tunnel liners, and methods of protecting persons from falling materials at drift openings and when mining within 150 feet of an outcrop. Flexibility is needed in these areas to address the particular conditions at each mine.

In response to commenters, the proposed requirement for the "signature" of the company official responsible for the roof control plan has been changed to require this person's "name." Commenters suggested this change would clarify the purpose of the rule which is to identify a company official that MSHA may contact to resolve any issues that arise during evaluation of the plan.

In response to commenters, the final rule retains the existing requirement that roof control plans show the thickness of each stratum up to and including the main roof over the coalbed and for a distance of 10 feet under the coalbed. These commenters stated, and MSHA agrees, that this information is necessary to determine the widths of entries, size of pillars, and other measures necessary to provide effective roof control.

Commenters suggested that the final rule require that the "planned" width of openings be specified in roof control plans, noting that the width of openings cannot be predicted with precision. MSHA agrees and the final rule includes this suggestion. MSHA recognizes that the width of openings can at times be inadvertently exceeded for various reasons. This issue is also addressed in § 75.203(e) which requires additional roof support when planned widths are exceeded by specified distances.

To clarify the final rule and in response to comments, paragraph (a)(9) provides that the list of support materials specified in proposed roof control plans include all the support materials that are "required" be used in the support system described by the roof control plan. Support materials that may be installed in addition to the supports specified by the roof control plan are not required to be listed.

The final rule requires that the roof control plan identify the method of protecting miners from falling material at drift openings and when mining approaches within 150 feet of an outcrop. The support needed at drift openings can vary substantially from mine to mine. Mining near an outcrop can present unique roof control hazards due to roof fractures caused by surface blasting and other conditions created by water seepage and geological irregularities.

Some commenters suggested that roof control plans identify coalbeds above and below the mine that are being or have been mined. These commenters stated that this information was necessary to properly evaluate roof control plans. MSHA agrees that this is useful information. However, this information is already available to the Agency under 30 CFR 75.316–1(a)(1) and need not be duplicated by the requirements of these standards.

As discussed in § 75.204(f)(2) of the final rule, a provision has been added to this section that requires mine operators to specify the intervals at which test holes will be drilled when mechanically anchored tensioned bolts are used. Consistent with the removal of standards addressing arched roof, a provision which appeared in this section of the proposal that would have required the method and frequency of evaluating the coal roof thickness for natural roof support created by means of an arched roof, has been deleted from the final rule.

One commenter suggested that a provision be added to the final rule which would require roof control plans to show faults and other disturbances that are indicated by a satellite strata survey. MSHA's Technical Support Group has conducted numerous satellite surveys in the last ten years. These surveys have provided useful information for some mines but have shown no benefit at others. While satellite surveys have potential merit, the collection and distribution of this type of satellite data is not, to MSHA's knowledge, sufficiently established to make its use a requirement under the final rule.

Section 75.222 Roof control plan-approval criteria.

The final rule is derived from existing criteria in §§ 75.200–6 through 75.200–9, 75.200–11 and 75.200–12, except paragraph (e) which is new. These provisions are criteria, as opposed to standards, that are to be considered by the operator in formulating roof control plans and by MSHA in evaluating plans and revisions submitted by operators for approval. The purpose of the criteria is to provide guidance for the development and approval of roof control plans, while retaining the flexibility needed to address the variations among mining conditions. For example, when roof bolts are used, a criterion provides that they should be installed on centers not exceeding 5 feet lengthwise and crosswise. While this spacing is commonly used, the conditions at some mines require that roof bolts be installed closer together, while under more stable conditions, they may be safely installed farther apart. The final rule also authorizes MSHA to require safety measures in addition to those described by the plan-approval criteria and standards in the final rule. Correspondingly, roof control plans not conforming to the criteria in this section may be approved, provided that the methods proposed by the operator will result in effective control of the mine roof, face and ribs.

Paragraph (a) specifies that the provisions in this section are criteria that are to be considered when formulating and approving roof control plans. In response to commenters recommending evaluation of the applicability of criteria at each mine, the final rule specifies that the criteria be "considered on a mine-by-mine basis." Consistent with this concern, these commenters also suggested that the proposed phrase "generally accepted criteria" be removed as this could be misconstrued to mean that the criteria provisions were applicable to all mines. To avoid confusion, the final rule does not retain this characterization of the criteria for roof control plans.

The provisions in this section are intended to provide the flexibility needed to address the variations among mining conditions at individual mines. The plan-approval criteria reflect MSHA experience and industry practices, and provide a reference point for evaluating roof control measures for effectiveness.

In addition to the flexibility provided for by the plan-approval criteria, the final rule retains two existing provisions that are intended to facilitate the development and approval of mine-specific roof control plans which are suitable to each mine's conditions and mining system. Under the final rule, District Managers are authorized to require, before approving a plan or revision, that safety measures be included which are in addition to those provided for by the plan-approval criteria or the final rule standards. Because the Agency's purpose was to write comprehensive new standards and criteria, this provision was not included in the proposed rule. On reconsideration, however, MSHA has concluded that current experience and practices are inadequate to predict and address unique hazards at individual mines which, if the mine roof control plans are to be adequate, will need to be addressed.

Consistent with the objective of maintaining the flexibility to develop suitable roof control plans, the final rule also authorizes District Managers to approve roof control plans which do not conform with plan-approval criteria that would normally apply. This provision, which was included in the proposal, recognizes that future development may offer effective roof, face, and rib control as applied at a particular mine, and

should be permitted to be implemented in accordance with the mine's roof control plan.

Paragraph (b) addresses roof bolting and provides criteria for the spacing and torquing of roof bolts. Proper spacing and torquing of roof bolts are directly related to support capacity.

Provisions addressing "combination roof support" which appeared separately in the proposal, have been combined with the roof bolting criteria provisons since all combination systems include some roof bolting.

Several commenters suggested that the proposed criterion for 5-foot spacing of roof bolts be changed to 4-foot spacing. They stated that 4-foot spacing of bolts is normally used throughout the industry. MSHA agrees that some mines are currently installing roof bolts on 4-foot spacings. However, due to the composition of the strata and roof conditions encountered at different mines, the spacing of roof bolts and other supports will vary from mine to mine and, in some situations, from section to section within the same mine. The existing criterion for spacing of roof bolts is 5 feet. This criterion has proven to be effective in providing guidance to operators and MSHA for determining the spacing of roof bolts as well as other supports. Supports on 4-foot spacing will continue to be required where needed for effective roof control.

For purposes of consistency with § 75.204(f)(3) of the final rule and in response to commenters, paragraph (b)(2) has been revised to include a reference to anchorage capacity of the strata. This change specifies that the torque or tension range of tension roof bolts be at least 50 percent of the anchorage capacity of the strata.

The existing criterion which specifies that openings supported only with roof bolts should not be more than 20 feet wide has been deleted. This provision is duplicative of paragraph (b)(3) of this section which specifies that openings more than 20 feet wide should be supported by a combination of roof bolts and conventional supports.

Paragraph (b) also contains provisions that address the use of roof support systems using a combination of bolts and conventional support materials. Paragraph (b)(3) provides that such system should be used where mine openings are to be more than 20 feet wide. These criteria provide that posts should be used to narrow the roadway to 16 feet wide where straight and 18 feet wide where curved; that a row of posts should be set for each 5 feet of space between the roadway post and the rib; and that mine openings should not exceed 30 feet.

The proposed criterion for width of openings where natural roof support is created by means of an arched roof has been deleted from the final rule because "arched roof" is no longer addressed in the final rule.

The criteria provisions which addressed the use of conventional supports as the sole means of roof support that were included in this section of the proposal have been included in § 75.206(a) of the final rule as mandatory standards.

Paragraph (c) addresses the installation of roof supports using mining machines with integral roof bolters. The provisions in this paragraph, which address the spacing of supports and width of roadways, are unchanged from the proposal.

Paragraph (d) addresses pillar recovery and sets forth the criteria for pillar size, mining of pillars, width of openings and roadways leading to pillars and the spacing of breaker and roadside-radius posts during pillar recovery. Consistent with the existing criteria, the final rule specifies that breaker posts and roadside-radius posts should be installed on 4-foot centers. One commenter suggested that this spacing be increased to 5-foot centers so that they would be consistent with the spacing of most other supports. MSHA recognizes that 5-foot spacing of breaker posts may be appropriate in some mines depending on a variety of factors; such as depth of the coalbed and the type of roof strata. However, experience obtained through the use of the existing criterion indicates that breaker posts should be installed on at least 4-foot centers at the majority of mines.

The final rule retains the existing criterion which states that, before full pillar recovery is started, posts should be installed to limit roadway widths to 16 feet in areas where roof bolts are used as the only means of roof supports. Commenters suggested that this provision be deleted, stating that these posts restrict the movement of mining equipment without providing a corresponding safety benefit. They further stated that the roof in these areas is adequately supported during development and, unless hazardous roof conditions are encountered, should be adequate for retreat mining. MSHA recognizes that because of the various geological conditions encountered at underground coal mines, this criterion may not be appropriate for all mines. However, at some mines, it is necessary to reduce the roadway width before pillar recovery is started to assure safe removal of the coal pillars. Inclusion of this provision as a criterion, as opposed to a mandatory standard, will provide the flexibility to address the need for reducing roadway width on a mine-by-mine basis.

A provision which appeared in this section of the proposal addressing the use of temporary supports in conjunction with ATRS systems has been moved to § 75.209(b) of the final rule.

Paragraph (e) addresses the support of openings that create an intersection. It states that such openings should be permanently supported or that at least one row of temporary supports be installed on 5-foot centers prior to any other work or travel in the intersection. This provision appeared as a standard in the proposed rule. However, commenters suggested that the proposed provision was too restrictive and not appropriate for all mines. MSHA agrees that greater flexibility should be afforded with regard to supports installed in openings to intersections. Roof conditions vary from mine to mine and influence the spacing and number of posts, number of rows of posts or the use of roof bolts. Therefore, this provision has been incorporated into the criteria section of the final rule.

Section 75.223 Evaluation and revision of roof control plans.

Section 75.223 requires that revisions to roof control plans be proposed by operators when conditions indicate that the plan is not suitable for controlling the roof, face or ribs, or coal or rock bursts. Under this standard, any condition which indicates the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts requires that the plan be revised. The phrase "coal or rock bursts" has been added to this standard to clarify that it is also necessary to revise a plan that is not suitable for controlling coal or rock bursts. This addition is consistent with § 75.202 and clarifies that the control of coal or rock bursts is included within the scope of control of roof, face and ribs.

This standard also requires the plan to be revised when accidents and injuries at the mine indicate the plan is inadequate. The accident and injury experience is required to be reviewed at least every 6 months. This six-month review of accident and injury experience was contained in the preproposal draft but not included in the proposal. Upon reconsideration, MSHA believes that a regular review of the accident and injury experience at the mine will supply important data with which to evaluate the adequacy of roof control plans.

The proposal that unplanned roof or rib falls in active workings be plotted on a mine map and that the map be made available to MSHA and miners' representatives has been retained in the final rule. Plotting unplanned falls on a mine map will assist in evaluating the effectiveness of the roof control system and identification of hazardous trends.

In the preproposal draft and the proposal the Agency asked for comments with respect to the deletion of the requirement for 6-month review of roof control plans by MSHA. Several commenters suggested that this requirement should remain in effect, indicating that plans must be periodically evaluated by MSHA to assure that they are revised as conditions warrant.

Agency personnel currently review the adequacy of roof control plans during regular inspections which are conducted at least quarterly in underground coal mines. In addition, MSHA reviews the adequacy of the roof support system during investigations of unplanned roof falls. These current practices have been successful in assuring that roof control plans are reviewed at least every 6 months. To clarify that these current practices will continue, the final rule retains the existing standard requiring that roof control plans be reviewed by MSHA at least every 6 months.

Petitions for Modification

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of this final rule. If there are sections of this rule which are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with modifications granted for standards that have been revised will need to comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted in accordance with 30 CFR Part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

Derivation Table

The following derivation table lists the number of each standard in the final rule (New No.), and the number of the existing standard (Old No.) from which the new standard is derived. An asterisk (*) indicates existing criteria in Subpart C.

New No.	Old No.
75.200	New
75.201(a)	New
75.201(b)	75.200-11
75.202	75.200 and 75.200-14(g)*
75.203(a)	75.201, 75.201-1 and 75.201-2
75.203 (b) and (d)	New
75.203(c)	75.200-7(c)(2)*
75.203(e)	75.201-1(b)
75.204(a)	75.200-7(a)(1)*
75.204(b)	75.200-12(c)*
75.204(c)	75.200-7(a) (4) and (5)*
75.204(d)	75.200-7(a)(6)*
75.204(e)	75.200-7(b)(1)*
75.204(f)(1)	75.200-7(a) (2) and (3)*
75.204(f)(2)	New
75.204(f)(3)	75.200-7(b)(2)*
75.204(f)(4)	75.200-7(b)(3)(ii)* and 75.203
75.204(f) (5) and (6)	75.200-7(b)(3)(iii)*
75.204(f)(7)	New
75.204(f)(8)	75.200-7(b)(4)*
75.204(g)	New
75.205(a) (b), and (c)	75.200-12(b)(1)*
75.206(a)(1)	75.200-8(d)*
75.206(a)(2)	75.200-8(c)(1)*
75.206(a)(3)	75.200-8(c)(3)*
75.206(a) (4) and (5)	75.200-8(c)(2)*
75.206(a)(5)	75.200-8(c)(4)*
75.206(b)(1)	75.200-8(a)(2)*
75.206(b)(2) (i)	75.200-8(a)(3)*
75.206(b)(2) (e) and (iii)	75.200-8(a)(4)*
75.206(b)(3)	75.200-8(a)(5)*
75.206(c) and (d)	New
75.206(e)	75.200-8(b)(3)*
75.206(f)	75.200-8(b)(2)*
75.206(g)	75.200-8(b)(4)*
75.206(h)	75.200-8(b)(5)*
75.207(a)	75.201-2 (d) and (e)
75.207(b)(1)	75.200-11(d)*
75.207(b)(2)	75.200-11(e)*
75.207(c)	75.200-11(f)*
75.207(d)	75.200-11(h)(1)*
75.208	New
75.209	New
75.210(a)	75.200, 75.200-13(a)(1)* and (2)*
75.210(b)	75.200-13(a)(3)*
75.210(c)	75.200-13(b)(1)*
75.210(d)	75.200-13(a)(3)*
75.211 (a) and (b)	75.205
75.211(c)	75.202 and 75.205
75.211(d)	75.200-13(b)(2)*
75.212 (a) and (b)	New
75.212(c)	75.200-13(b)(3)*
75.213(a)(1)	75.200-14(a)* and 75.204
75.213(a)(2)	75.200-14(b)* and 75.204
75.213(b)	75.200-14 (c)*
75.213(c)	75.200-14 (e)* and (f)*
75.213(d)(1)	75.200-14 (e)* and (f)*
75.213(d)(2)	75.200-14(d)(2)* and 75.204
75.213(e)	75.200-14(h)* and 75.204
75.213(f)	75.200-14(d) (1)*, (3)* and 75.204
75.213(g)	New
75.214	75.202-1
75.215	New
75.220(a)(1)	75.200, 75.200-2 and 75.200-3
75.220(a)(2)	75.200 and 75.200-4
75.220(b)	75.200-4
75.220(c)	New
75.220(d)	75.200-1
75.220(e)	75.200
75.220(f)	New
75.221(a)(1)	75.200-5(a)*
75.221(a)(2)	75.200-5(b)*
75.221(a)(3)	75.200-5(c)*
75.221(a)(4)	75.200-5(e)*
75.221(a)(5)	75.200-5(f)*
75.221(a) (6) and (7)	New
75.221(a)(8)	75.201-1 and 75.201-2 (a) and (f)
75.221(a)(9)	75.200-5(f)(2)* and 75.200-7(b)(2)*
75.221(a) (10) and (11)	New
75.221 (b) and (c)	75.200-5(f)(1)*
75.222(a)	75.200-6*
75.222(b)(1)	75.200-7(c)(1)*
75.222(b)(2)	75.200-7(b)(2)*
75.222(b)(3)	75.200-9(a)*
75.222(b)(4)(i)	75.200-9(b)*
75.222(b)(4)(ii)	75.200-9(c)*
75.222(b)(5)	75.200-9(d)*
75.222(c)(1)	75.200-12(b)(2)*
75.222(c)(2)	75.200-12(b)(3)*
75.222(d)(1)	75.200-11(b)*
75.222(d)(2)	75.200-11(c)*
75.222(d)(3)	75.200-11(d)*
75.222(d)(4)	75.200-11(e)*
75.222(d)(5)	75.200-11(g)*
75.222 (e), (f), and (g)	New
75.223(a)	75.200, 75.200-1 and 75.200-2
75.223(b)	75.200-1
75.223(c)	New
75.223(d)	75.200

Redesignation Table

The following redesignation table cross-references the old standard numbers with the standard numbers used in the final rule. An asterisk (*) indicates existing criteria in Subpart C.

Old No.	New No.
75.200	75.202, 75.210(a), 75.220(a) (1) and (2), 75.220(d) and 75.223
75.200-1	75.220(c), 75.223 (a) and (b)
75.200-2	75.220(a)(1) and 75.223(a)
75.200-3	75.220(a)(1)
75.200-4	75.220 (a)(2) and (b)
75.200-5(a)	75.221(a)(1)
75.200-5(b)	75.221(a)(2)
75.200-5(c)	75.221(a)(3)
75.200-5(d)	Removed
75.200-5(e)	75.221(a)(4)
75.200-5(f)	75.221(a)(5)
75.200-5(f)(1)	75.221(b)
75.200-5(f)(2)	75.221(a)(9)
75.200-6	75.222(a)
75.200-7(a)(1)*	75.204(a)
75.200-7(a) (2)* and (3)*	75.204(f)(1)
75.200-7(a) (4)* and (5)*	75.204(c)
75.200-7(a)(6)*	75.204(d)
75.200-7(b)(1)*	75.204(e)
75.200-7(b)(2)*	75.204(f)(3), 75.221(a)(9), and 75.222(b)(2)
75.200-7(b)(3)(i)*	Removed
75.200-7(b)(3)(ii)*	75.204(f)(4)
75.200-7(b)(3)(iii)*	75.204(f) (5) and (6)
75.200-7(b)(4)*	75.204(f)(8)
75.200-7(c)(1)*	75.222(b)(1)
75.200-7(c)(2)*	75.203(c)
75.200-7(c)(3)*	Removed
75.200-7(d)*	75.222(b)(3)
75.200-8(a)(1)*	Removed
75.200-8(a)(2)*	75.206(b)(1)
75.200-8(a)(3)*	75.206(b)(2)(i)

Old No.	New No.
75.200-8(a)(4)*	75.206(b)(2) (ii) and (iii)
75.200-8(a)(5)*	75.206(b)(3)
75.200-8(b)(1)*	Removed
75.200-8(b)(2)*	75.206(f)
75.200-8(b)(3)*	75.206(e)
75.200-8(b)(4)*	75.206(g)
75.200-8(b)(5)*	75.206(h)
75.200-8(c)(1)*	75.206(a)(2)
75.200-8(c)(2)*	75.206(a) (4) and (5)
75.200-8(c)(3)*	75.206(a)(3)
75.200-8(c)(4)*	75.206(a)(6)
75.200-8(d)*	75.206(a)(1)
75.200-9(a)*	75.222(b)(3)
75.200-9(b)*	75.222(b)(4)(i)
75.200-9(c)*	75.222(b)(4)(a)
75.200-9(d)*	75.222(b)(5)
75.200-10*	Removed
75.200-11*	75.201(b)
75.200-11(a)*	Removed
75.200-11(b)*	75.222(d)(1)
75.200-11(c)*	75.222(d)(2)
75.200-11(d)*	75.207(b)(1) and 75.222(d)(3)
75.200-11(e)*	75.207(b)(2) and 75.222(d)(4)
75.200-11(f)*	75.207(c)
75.200-11(g)*	75.222(d)(5)
75.200-11(h)(1)*	75.207(d)
75.200-11(h)(2)*	Removed
75.200-12(a) (1)*, (2)*, (3)*, and (4)*	Removed
75.200-12(b)(1)*	75.205 (a), (b), and (c)
75.200-12(b)(2)*	75.222(c)(1)
75.200-12(b)(3)*	75.222(c)(2)
75.200-12(b)(4)*	Removed
75.200-12(c)*	75.204(b)
75.200-13(a) (1)* and (2)*	75.210(a)
75.200-13(a)(3)*	75.210 (b) and (d)
75.200-13(b)(1)*	75.210(c)
75.200-13(b)(2)*	75.211(d)
75.200-13(b)(3)*	75.212(c)
75.200-14*	Removed
75.200-14(a)*	75.213(a)(1)
75.200-14(b)*	75.213(a)(2)
75.200-14(c)*	75.213(b)
75.200-14(d)(1)*	75.213(f)
75.200-14(d)(2)*	75.213(d)(2)
75.200-14(d)(3)*	75.213(f)
75.200-14(e)*	75.213 (c) and (d)(1)
75.200-14(f)*	75.213 (c)(2) and (d)(1)
75.200-14(g)*	75.202(b)
75.200-14(h)*	75.213(e)
75.201	75.203(a)
75.201-1(a)	75.221(a)(8) and 75.203(a)
75.201-1(b)	75.203(e)
75.201-2	75.203(a)
75.201-2(a)	75.203(a) and 75.221(a)(8)
75.201-2 (b) and (c)	Removed
75.201-2 (d) and (e)	75.207(a)
75.201-2(f)	75.203(a) and 75.221(a)(8)
75.201-2 (g) and (h)	Removed
75.201-3	Removed
75.202	75.211(c)
75.202-1	75.214
75.203	75.204(f)(4)
75.203-1	Removed
75.204	75.213 (a), (d)(2), (e), and (f)
75.204-1	Removed
75.205	75.211 (a), (b), and (c)

III. Drafting Information

The principal persons responsible for preparing this final rule are: Cloyd Blankenship, Charles S. Battistoni, and Fred H. Ryan, Coal Mine Safety and Health, MSHA; M. Terry Hoch, Technical Support, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and M. Peter Garcia, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a final analysis to identify potential costs and benefits associated with the final changes to its roof, face and rib control standards for underground coal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that new or revised provisions in the final rule will not result in major cost increases nor have an effect of $100 million or more on the economy. The rule is not within the criteria for a major rule and, therefore, a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing standards. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees. This final rule introduces alternative compliance methods to the existing regulations, several of which will directly benefit small mining operations. In the final rule, MSHA has reorganized, updated, and clarified existing provisions. The Agency has also deleted existing duplicative provisions and replaced one recordkeeping requirement with a certification provision. In addition, the rule adopts performance-oriented standards when possible.

The primary benefit of the final rule is the protection that the standards will provide to miners who would be endangered by hazards related to falls of roof, face, and ribs in underground coal mines.

In the following summary of the Final Regulatory Flexibility Analysis, MSHA has compared the costs associated with the final requirements with the costs of the existing requirements. A copy of the full analysis is available upon request.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: Labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the final rule, the Agency projected initial compliance costs and annual recurring costs.

MSHA estimates that the initial cost for compliance with the existing requirements amounts to approximately $189.45 million. Estimated initial costs for the final rule will amount to about $187.15 million. MSHA estimates that annual recurring costs for compliance with the existing requirements amount to approximately $189.08 million. Estimated recurring costs for the final requirements will be about $188.78 million. The final rule represents a cost decrease of about $2.3 million when compared to the existing rule.

The final regulations will affect approximately 1970 underground mining operations. MSHA estimates that about 1088 of these mines are small businesses. Small mines represent 55% of the underground mines and 35% of the underground sections. Small mines incur about 22% of the compliance cost of the final rule compared to 21% under the existing rule. The final rule represents a 3.3% ($1.3 million) increase in compliance costs for small mines when compared to the existing rule.

Although the new provision for use of ATRS systems has initial and annually recurring compliance costs of $1.6 million associated with it, the compliance cost of this provision is offset by a $11.4 million reduction in costs related to the manual installation of temporary supports. MSHA believes that the requirement for ATRS systems will result in greater safety for miners during roof bolting activities and, in many instances, will contribute to increased productivity as a result of the mining process moving faster.

Under the final rule, alternative compliance methods and a more performance-oriented approach will reduce compliance costs without diminishing the safety of miners. For example, under the final rule, the amount and location of roof support materials supplied to face areas is left to the mine operator's discretion.

V. Paperwork Reduction Act

The recordkeeping provision concerning testing of roof bolts in existing § 75.200-7(b)(3)(iii) is replaced in the final rule with a requirement that the operator certify by signature and date that testing was conducted.

The existing rule contains extensive criteria for evaluating and approving roof control plans. As a result, comprehensive and often complex roof control plans are required for each mine. The final rule retains the requirement that each mine have an approved roof control plan. However, it reduces the requirements to be specified in a plan by making many of the existing criteria, which are applicable to all mines, mandatory standards. Therefore, roof control plans will be less complex, addressing only the particular roof control measures appropriate to the conditions at the mine which are not addressed by the safety standards.

The final rule requires that roof control plans be revised to meet the requirements of Subpart C within six months from the effective date of the final rule. This provision will only affect roof control plans which contain provisions inconsistent or in conflict with the final rule. As previously discussed, many of the provisions that are currently addressed in roof control plans have been included in the final rule as mandatory standards or have been deleted which, in either case, may no longer need to be addressed in the plan. For example, many existing roof control plans require that a torque wrench be kept on roof bolting machines and that such wrench be used to measure torque on roof bolts. Instead of specifying a tool for evaluating the torque on roof bolts, the final rule requires torque or tension to be measured, permitting the mine operator to determine the method, type of equipment to be used, and the location where this equipment is kept. Revising conflicting provisions in plans will assure that miners are aware of the requirements in effect and will eliminate any ambiguities that may arise.

In response to concerns raised by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1980, the proposed requirement that all roof control plans be revised to meet the requirements of Subpart C within six months after the effective date of the rule has been revised in the final rule. Under the final rule, only plans which contain provisions that are in conflict with Subpart C are required to be revised.

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35), the collection of information requirements contained in the final rule have been approved by OMB under control number 1219-0004. Comments regarding collection of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Mine Safety and Health Administration.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Roof, face and rib support.

Date: January 21, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Subpart C of Part 75 is revised to read as follows:

* * * * *

Subpart C—Roof Support

Sec.

75.200 Scope.
75.201 Definitions.
75.202 Protection from falls of roof, face and ribs.
75.203 Mining methods.
75.204 Roof bolting.
75.205 Installation of roof support using mining machines with integral roof bolters.
75.206 Conventional roof support.
75.207 Pillar recovery.
75.208 Warning devices.
75.209 Automated Temporary Roof Support (ATRS) systems.
75.210 Manual installation of temporary support.
75.211 Roof testing and scaling.
75.212 Rehabilitation of areas with unsupported roof.
75.213 Roof support removal.
75.214 Supplemental support materials, equipment and tools.
75.215 Longwall mining systems.
75.220 Roof control plan.
75.221 Roof control plan information.
75.222 Roof control plan—approval criteria.
75.223 Evaluation and revision of roof control plan.

* * * * *

Subpart C—Roof Support

§ 75.200 Scope.

This Subpart C sets forth requirements for controlling roof, face and ribs, including coal or rock bursts, in underground coal mines. Roof control systems installed prior to the effective date of this subpart are not affected so long as the support system continues to effectively control the roof, face and ribs.

§ 75.201 Definitions.

Automated temporary roof support (ATRS) system. A device to provide temporary roof support from a location where the equipment operator is protected from roof falls.

Pillar recovery. Any reduction in pillar size during retreat mining.

§ 75.202 Protection from falls of roof, face and ribs.

(a) The roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts.

(b) No person shall work or travel under unsupported roof unless in accordance with this subpart.

§ 75.203 Mining methods.

(a) The method of mining shall not expose any person to hazards caused by excessive widths of rooms, crosscuts and entries, or faulty pillar recovery methods. Pillar dimensions shall be compatible with effective control of the roof, face and ribs and coal or rock bursts.

(b) A sightline or other method of directional control shall be used to maintain the projected direction of mining in entries, rooms, crosscuts and pillar splits.

(c) A sidecut shall be started only from an area that is supported in accordance with the roof control plan.

(d) A working face shall not be mined through into an unsupported area of active workings, except when the unsupported area is inaccessible.

(e) Additional roof support shall be installed where—

(1) The width of the opening specified in the roof control plan is exceeded by more than 12 inches; and

(2) The distance over which the excessive width exists is more than 5 feet.

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432-83, "Standard Specification for Roof and Rock Bolts and Accessories", the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432-83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Roof bolts and accessories not addressed in ASTM F432-83 may be used provided they—

(1) Have been successful in supporting the roof in an area of a coal mine with similar strata, opening dimensions and roof stresses; or

(2) Have been tested and shown to be effective for supporting the roof in an

area of the affected mine which has similar strata, opening dimensions and roof stresses as the area where the roof bolts are to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c)(1) A bearing plate shall be firmly installed with each roof bolt.

(2) Bearing plates used directly against the mine roof shall be at least 6 inches square or the equivalent, except that where the mine roof is firm and not susceptible to sloughing, bearing plates 5 inches square or the equivalent may be used.

(3) Bearing plates used with wood or metal materials shall be at least 4 inches square or the equivalent.

(4) Wooden materials that are used between a bearing plate and the mine roof in areas which will exist for three years or more shall be treated to minimize deterioration.

(d) When washers are used with roof bolts, the washers shall conform to the shape of the roof bolt head and bearing plate.

(e)(1) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used.

(2) When separate finishing bits are used, they shall be distinguishable from other bits.

(f) *Tensioned roof bolts.* (1) Roof bolts that provide support by creating a beam of laminated strata shall be at least 30 inches long. Roof bolts that provide support by suspending the roof from overlying stronger strata shall be long enough to anchor at least 12 inches into the stronger strata.

(2) Test holes, spaced at intervals specified in the roof control plan, shall be drilled to a depth of at least 12 inches above the anchorage horizon of mechanically anchored tensioned bolts being used. When a test hole indicates that bolts would not anchor in competent strata, corrective action shall be taken.

(3) The installed torque or tension ranges for roof bolts as specified in the roof control plan shall maintain the integrity of the support system and shall not exceed the yield point of the roof bolt nor anchorage capacity of the strata.

(4) In each roof bolting cycle, the actual torque or tension of the first tensioned roof bolt installed with each drill head shall be measured immediately after it is installed. Thereafter, for each drill head used, at least one roof bolt out of every four installed shall be measured for actual torque or tension. If the torque or tension of any of the roof bolts measured is not within the range specified in the roof control plan, corrective action shall be taken.

(5) In working places from which coal is produced during any portion of a 24-hour period, the actual torque or tension on at least one out of every ten previously installed mechanically anchored tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured—

(i) Do not maintain at least 70 percent of the minimum torque or tension specified in the roof control plan, 50 percent if the roof bolt plates bear against wood; or

(ii) Have exceeded the maximum specified torque or tension by 50 percent.

(6) The mine operator or a person designated by the operator shall certify by signature and date that measurements required by paragraph (f)(5) of this section have been made. This certification shall be maintained for at least one year and shall be made available to an authorized representative of the Secretary and representatives of the miners.

(7) Tensioned roof bolts installed in the roof support pattern shall not be used to anchor trailing cables or used for any other purpose that could affect the tension of the bolt. Hanging trailing cables, line brattice, telephone lines, or other similar devices which do not place sudden loads on the bolts are permitted.

(8) Angle compensating devices shall be used to compensate for the angle when tensioned roof bolts are installed at angles greater than 5 degrees from the perpendicular to the bearing plate.

(g) *Non-tensioned grouted roof bolts.* The first non-tensioned grouted roof bolt installed during each roof bolting cycle shall be tested during or immediately after the first row of bolts has been installed. If the bolt tested does not withstand at least 150 foot-pounds of torque without rotating in the hole, corrective action shall be taken.

(c) Roof bolts to be installed more than 8 feet but less than 9 feet apart shall be installed with a wooden plank at least 2 inches thick and 8 inches wide, or material which provides equivalent support.

§ 75.206 Conventional roof support.

(a) When conventional roof support materials are used as the only means of support—

(1) The width of any opening shall not exceed 20 feet;

(2) The spacing of roadway roof support shall not exceed 5 feet;

(3)(i) Supports shall be installed to within 5 feet of the uncut face;

(ii) When supports nearest the face must be removed to facilitate the operation of face equipment, equivalent temporary support shall be installed prior to removing the supports;

(4) Straight roadways shall not exceed 16 feet wide where full overhead support is used and 14 feet wide where only posts are used;

(5) Curved roadways shall not exceed 16 feet wide; and

(6) The roof at the entrance of all openings along travelways which are no longer needed for storing supplies or for travel of equipment shall be supported by extending the line of support across the opening.

(b) Conventional roof support materials shall meet the following specifications:

(1) The minimum diameter of cross-sectional area of wooden posts shall be as follows:

Post length (in inches)	Diameter of round posts (in inches)	Cross-sectional area of split posts (in square inches)
60 or less	4	13
Over 60 to 84	5	20
Over 84 to 108	6	28
Over 108 to 132	7	39
Over 132 to 156	8	50
Over 156 to 180	9	64
Over 180 to 204	10	79
Over 204 to 228	11	95
Over 228	12	113

(2) Wooden materials used for support shall have the following dimensions:

(i) Cap blocks and footings shall have flat sides and be at least 2 inches thick, 4 inches wide and 12 inches long.

(ii) Crossbars shall have a minimum cross-sectional area of 24 square inches and be at least 3 inches thick.

(iii) Planks shall be at least 6 inches wide and 1 inch thick.

(3) Cribbing materials shall have at least two parallel flat sides.

(c) A cluster of two or more posts that provide equivalent strength may be used to meet the requirements of paragraph (b)(1) of this section, except that no post shall have a diameter less than 4 inches or have a cross-sectional area less than 13 square inches.

(d) Materials other than wood used for support shall have support strength at least equivalent to wooden material meeting the applicable provisions of this section.

(e) Posts and jacks shall be tightly installed on solid footing.

(f) When posts are installed under roof susceptible to sloughing a cap block, plank, crossbar or materials that are equally effective shall be placed between the post and the roof.

(g) Blocks used for lagging between the roof and crossbars shall be spaced to distribute the load.

(h) Jacks used for roof support shall be used with at least 36 square inches of roof bearing surface.

§ 75.207 Pillar recovery.

Pillar recovery shall be conducted in the following manner, unless otherwise specified in the roof control plan:

(a) Full and partial pillar recovery shall not be conducted on the same pillar line, except where physical conditions such as unstable floor or roof, falls of roof, oil and gas well barriers or surface subsidence require that pillars be left in place.

(b) Before mining is started in a pillar split or lift—

(1) At least two rows of breaker posts or equivalent support shall be installed—

(i) As close to the initial intended breakline as practicable; and

(ii) Across each opening leading into an area where full or partial pillar extraction has been completed.

(2) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.

(c) Before mining is started on a final stump—

(1) At least 2 rows of posts or equivalent support shall be installed on not more than 4-foot centers on each side of the roadway; and

(2) Only one open roadway, which shall not exceed 16 feet wide, shall lead from solid pillars to the final stump of a pillar. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed 14 feet.

(d) During open-end pillar extraction, at least 2 rows of breaker posts or equivalent support shall be installed on not more than 4-foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted. These supports shall be maintained to within 7 feet of the face and the width of the roadway shall not exceed 16 feet. Where posts are used as the sole means of roof support, the width of the roadway shall not exceed 14 feet.

§ 75.208 Warning devices.

Except during the installation of roof supports, the end of permanent roof support shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel beyond permanent support.

§ 75.209 Automated Temporary Roof Support (ATRS) systems.

(a) Except in anthracite mines and as specified in paragraphs (b) and (c) of this section, an ATRS system shall be used with roof bolting machines and continuous-mining machines with integral roof bolters operated in a working section. The requirements of this paragraph shall be met according to the following schedule:

(1) All new machines ordered after March 28, 1988.

(2) All existing machines operated in mining heights of 36 inches or more after March 28, 1989; and

(3) All existing machines operated in mining heights of 30 inches or more but less than 36 inches after March 28, 1990.

(b) After March 28, 1990 the use of ATRS systems with existing roof bolting machines and continuous-mining machines with integral roof bolters operated in a working section where the mining height is less than 30 inches shall be addressed in the roof control plan.

(c) Alternative means of temporary support shall be used, as specified in the roof control plan, when—

(1) Mining conditions or circumstances prevent the use of an ATRS system; or

(2) Temporary supports are installed in conjunction with an ATRS system.

(d) Persons shall work or travel between the support device of the ATRS system and another support, and the distance between the support device of the ATRS system and support to the left, right or beyond the ATRS system, shall not exceed 5 feet.

(e) Each ATRS system shall meet each of the following:

(1) The ATRS system shall elastically support a deadweight load measured in pounds of at least 450 times each square foot of roof intended to be supported, but in no case less than 11,250 pounds.

(2) The controls that position and set the ATRS system shall be—

(i) Operable from under permanently supported roof; or

(ii) Located in a compartment, which includes a deck, that provides the equipment operator with overhead and lateral protection, and has the structural capacity to elastically support a deadweight load of at least 18,000 pounds.

(3) All jacks affecting the capacity of the ATRS system and compartment shall have check valves or equivalent devices that will prevent rapid collapse in the event of a system failure.

(4) Except for the main tram controls, tram controls for positioning the equipment to set the ATRS system shall limit the speed of the equipment to a maximum of 80 feet-per-minute.

(f) The support capacity of each ATRS system and the structural capacity of each compartment shall be certified by a registered engineer as meeting the applicable requirements of paragraphs (e)(1) and (e)(2) of this section. The certifications shall be made available to an authorized representative of the Secretary and representative of the miners.

§ 75.210 Manual installation of temporary support.

(a) When manually installing temporary support, only persons engaged in installing the support shall proceed beyond permanent support.

(b) When manually installing temporary supports, the first temporary support shall be set no more than 5 feet from a permanent roof support and the rib. All temporary supports shall be set so that the person installing the supports remains between the temporary support being set and two other supports which shall be no more than 5 feet from the support being installed. Each temporary support shall be completely installed prior to installing the next temporary support.

(c) All temporary supports shall be placed on no more than 5-foot centers.

(d) Once temporary supports have been installed, work or travel beyond permanent roof support shall be done between temporary supports and the nearest permanent support or between other temporary supports.

§ 75.211 Roof testing and scaling.

(a) A visual examination of the roof, face and ribs shall be made immediately before any work is started in an area and thereafter as conditions warrant.

(b) Where the mining height permits and the visual examination does not disclose a hazardous condition, sound and vibration roof tests, or other equivalent tests, shall be made where supports are to be installed. When sound and vibration tests are made, they shall be conducted—

(1) After the ATRS system is set against the roof and before other support is installed; or

(2) Prior to manually installing a roof support. This test shall begin under supported roof and progress no further than the location where the next support is to be installed.

(c) When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel into the area.

(d) A bar for taking down loose material shall be available in the working place or on all face equipment except haulage equipment. Bars provided for taking down loose material shall be of a length and design that will allow the removal of loose material from a position that will not expose the person performing this work to injury from falling material.

§ 75.212 Rehabilitation of areas with unsupported roof.

(a) Before rehabilitating each area where a roof fall has occurred or the roof has been removed by mining machines or by blasting—

(1) The mine operator shall establish the clean up and support procedures that will be followed;

(2) All persons assigned to perform rehabilitation work shall be instructed in the clean-up and support procedures; and

(3) Ineffective, damaged or missing roof support at the edge of the area to be rehabilitated shall be replaced or other equivalent support installed.

(b) All persons who perform rehabilitation work shall be experienced in this work or they shall be supervised by a person experienced in rehabilitation work who is designated by the mine operator.

(c) Where work is not being performed to rehabilitate an area in active workings where a roof fall has occurred or the roof has been removed by mining machines or by blasting, each entrance to the area shall be supported by at least one row of posts on not more than 5-foot centers, or equally effective support.

§ 75.213 Roof support removal.

(a)(1) All persons who perform the work of removing permanent roof supports shall be experienced in this work, or they shall be supervised by a person experienced in removing roof supports who is designated by the mine operator.

(2) Only persons with at least one year of underground mining experience shall perform permanent roof support removal work.

(b) a person designated by the mine operator shall, prior to the removal of permanent roof supports, examine the roof conditions in the area where the supports are to be removed.

(c) Prior to the removal of crossbars, beams, or other similar supports, a row of temporary supports on not more than 5-foot centers or equivalent support shall be installed across the opening within 4 feet of the supports being removed. Additional supports shall be installed where necessary to assure safe removal.

(d)(1) Prior to the removal of roof bolts, temporary support shall be installed as close as practicable to each bolt being removed. After the removal of roof bolts, persons removing the temporary supports shall perform this work from a location under permanent supports which have not been disturbed.

(2) Roof bolts shall not be removed where full pillar extraction is conducted.

(e) Each entrance to an area where supports have been removed shall be posted with a readily visible warning or a physical barrier shall be installed to impede travel into the area.

(f) Except when supports are removed by persons who are in a remote location under supported roof, no permanent support shall be removed where—

(1) Roof bolt torque or tension measurements or the condition of conventional support indicate excessive loading;

(2) Roof fractures are present; or

(3) There is any other indication that the roof is structurally weak.

(g) Except for paragraph (b) of this section, the provisions of this section do not apply to removal of conventional supports for starting crosscuts and pillar splits or lifts.

§ 75.214 Supplemental support materials, equipment and tools.

(a) A supply of supplementary roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four crosscuts of each working section.

(b) The quantity of support materials and tools and equipment maintained available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of an accident involving a fall.

§ 75.215 Longwall mining systems.

For each longwall mining section, the roof control plan shall specify—

(a) The methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall; and

(b) The procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

§ 75.220 Roof control plan.

(a)(1) Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.

(2) The proposed roof control plan and any revisions to the plan shall be submitted, in writing, to the District Manager. When revisions to a roof control plan are proposed, only the revised pages need to be submitted unless otherwise specified by the District Manager.

(b)(i) The mine operator will be notified in writing of the approval or denial of approval of a proposed roof control plan or proposed revision.

(2) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes will be specified and the mine operator will be afforded an opportunity to discuss the deficiencies and changes with the District Manager.

(3) Before new support materials, devices or systems other than roof bolts and accessories, are used as the only means of roof support, the District Manager may require that their effectiveness be demonstrated by experimental installations.

(c) No proposed roof control plan or revision to a roof control plan shall be implemented before it is approved.

(d) Before implementing an approved revision to a roof control plan, all persons who are affected by the revision shall be instructed in its provisions.

(e) The approved roof control plan and any revisions shall be available to the miners and representative of miners at the mine.

(f) Existing roof control plans that conflict with this Subpart C shall be revised to meet the requirements of this Subpart C by September 28, 1988. This paragraph (f) shall expire March 28, 1989.

(Approved by the Office of Management and Budget under control number 1219–0004)

§ 75.221 Roof control plan information.

(a) The following information shall be included in each roof control plan:

(1) The name and address of the company.

(2) The name, address, mine identification number and location of the mine.

(3) The name and title of the company official responsible for the plan.

(4) A typical columnar section of the mine strata which shall—

(i) Show the name and the thickness of the coalbed to be mined and any persistent partings;

(ii) Identify the type and show the thickness of each stratum up to and including the main roof above the coalbed and for distance of at least 10 feet below the coalbed; and

(iii) Indicate the maximum cover over the area to be mined.

(5) A description and drawings of the sequence of installation and spacing of supports for each method of mining used.

(6) When an ATRS system is used, the maximum distance that an ATRS system is to be set beyond the last row of permanent support.

(7) When tunnel liners or arches are to be used for roof support, specifications and installation procedures for the liners or arches.

(8) Drawings indicating the planned width of openings, size of pillars, method or pillar recovery, and the sequence of mining pillars.

(9) A list of all support materials required to be used in the roof, face and rib control system, including, if roof bolts are to be installed—

(i) The length, diameter, grade and type of anchorage unit to be used;

(ii) The drill hole size to be used; and

(iii) The installed torque or tension range for tensioned roof bolts.

(10) When mechanically anchored tensioned roof bolts are used, the intervals at which test holes will be drilled.

(11) A description of the method of protecting persons—

(i) From falling material at drift openings; and

(ii) When mining approaches within 150 feet of an outcrop.

(b) Each drawing submitted with a roof control plan shall contain a legend explaining all symbols used and shall specify the scale of the drawing which shall not be less than 5 feet to the inch or more than 20 feet to the inch.

(c) All roof control plan information, including drawings, shall be submitted on 8½ by 11 inch paper, or paper folded to this size.

(Approved by the Office of Management and Budget under control number 1219–0004)

§ 75.222 Roof control plan-approval criteria.

(a) This section sets forth the criteria that shall be considered on a mine-by-mine basis in the formulation and approval of roof control plans and revisions. Additional measures may be required in plans by the District Manager. Roof control plans that do not conform to the applicable criteria in this section may be approved by the District Manager, provided that effective control of the roof, face and ribs can be maintained.

(b) *Roof Bolting.* (1) Roof bolts should be installed on centers not exceeding 5 feet lengthwise and crosswise, except as specified in § 75.205.

(2) When tensioned roof bolts are used as a means of roof support, the torque or tension range should be capable of supporting roof bolt loads of at least 50 percent of either the yield point of the bolt or anchorage capacity of the strata, whichever is less.

(3) Any opening that is more than 20 feet wide should be supported by a combination of roof bolts and conventional supports.

(4) In any opening more than 20 feet wide—

(i) Posts should be installed to limit each roadway to 16 feet wide where straight and 18 feet wide where curved; and

(ii) A row of posts should be set for each 5 feet of space between the roadway posts and the ribs.

(5) Openings should not be more than 30 feet wide.

(c) *Installation of roof support using mining machines with integral roof bolters.* (1) Before an intersection or pillar split is started, roof bolts should be installed on at least 5-foot centers where the work is performed.

(2) Where the roof is supported by only two roof bolts crosswise, openings should not be more than 16 feet wide.

(d) *Pillar recovery.* (1) During development, any dimension of a pillar should be at least 20 feet.

(2) Pillar splits and lifts should not be more than 20 feet wide.

(3) Breaker posts should be installed on not more than 4-foot centers.

(4) Roadside-radius (turn) posts, or equivalent support, should be installed on not more than 4-foot centers leading into each pillar split or lift.

(5) Before full pillar recovery is started in areas where roof bolts are used as the only means of roof support and openings are more than 16 feet wide, at least one row of posts should be installed to limit the roadway width to 18 feet. These posts should be—

(i) Extended from the entrance to the split through the intersection outby the pillar in which the split or lift is being made; and

(ii) Spaced on not more than 5-foot centers.

(e) *Unsupported openings at intersections.* Openings that create an intersection should be permanently supported or at least one row of temporary supports should be installed on not more than 5-foot centers across the opening before any other work or travel in the intersection.

(f) *ATRS systems in working sections where the mining height is below 30 inches.* In working sections where the mining height is below 30 inches, an ATRS system should be used to the extent practicable during the installation of roof bolts with roof bolting machines and continuous-mining machines with integral roof bolters.

(g) *Longwall mining systems.* (1) Systematic supplemental support should be installed throughout—

(i) The tailgate entry of the first longwall panel prior to any mining; and

(ii) In the proposed tailgate entry of each subsequent panel in advance of the frontal abutment stresses of the panel being mined.

(2) When a ground failure prevents travel out of the section through the tailgate side of the longwall section, the roof control plan should address—

(i) Notification of miners that the travelway is blocked;

(ii) Re-instruction of miners regarding escapeways and escape procedures in the event of an emergency;

(iii) Re-instruction of miners on the availability and use of self-contained self-rescue devices;

(iv) Monitoring and evaluation of the air entering the longwall section;

(v) Location and effectiveness of the two-way communication systems; and

(vi) A means of transportation from the section to the main line.

(3) The plan provisions addressed by paragraph (g)(2) of this section should remain in effect until a travelway is reestablished on the tailgate side of a longwall section.

§ 75.223 Evaluation and revision of roof control plan.

(a) Revisions of the roof control plan shall be proposed by the operator—

(1) When conditions indicate that the plan is not suitable for controlling the roof, face, ribs, or coal or rock bursts; or

(2) When accident and injury experience at the mine indicates the plan is inadequate. The accident and injury experience at each mine shall be reviewed at least every six months.

(b) Each unplanned roof fall and rib fall and coal or rock burst that occurs in

the active workings shall be plotted on a mine map if it—

(1) Is above the anchorage zone where roof bolts are used;

(2) Impairs ventilation;

(3) Impedes passage of persons;

(4) Causes miners to be withdrawn from the area affected; or

(5) Disrupts regular mining activities for more than one hour.

(c) The mine map of which roof falls are plotted shall be available at the mine site for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

(d) The roof control plan for each mine shall be reviewed every six months by an authorized representative of the Secretary. This review shall take into consideration any falls of the roof, face and ribs and the adequacy of the support systems used at the time.

(Approved by the Office of Management and Budget under control number 1219-0004)

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Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mine Ventilation; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's existing safety standards for ventilation of underground coal mines, for underground coal mine escapeways and for drilling of boreholes in advance of coal extraction underground. The proposed revisions would upgrade existing provisions consistent with advances in technology, eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevant standards, simplify and consolidate existing standards, address known hazards not now covered by standards, and clarify and reorganize standards, where necessary.

DATES: Written comments must be submitted on or before March 28, 1988.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration is proposing a revision of its existing safety standards for ventilation of underground coal mines, escapeways, and boreholes in advance of mining. These revisions are proposed pursuant to section 101 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811.

On November 19, 1985, MSHA published a notice in the **Federal Register** that announced the availability of a preproposal draft of the Agency's underground coal mine ventilation standards in 30 CFR Part 75. In response, MSHA has received written comments from all segments of the coal mining community. The Agency reviewed the comments and developed this proposed rule. The Agency's proposal addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Discussion of Proposed Rule

A. General Discussion

Underground coal mine ventilation affects various aspects of the safety and health of miners. Proper underground coal mine ventilation is necessary to protect against mine fires and explosions due, in part, to the presence of explosive gases in underground coal mines; oxygen-deficient atmospheres; accumulations of other harmful gases; and dust that could fuel a mine fire or propagate an explosion. Ventilation is also a primary method of controlling miners' exposure to respirable dust and preventing them from developing pneumoconiosis.

The proposed rule would clarify, reorganize, and update the existing ventilation standards that were promulgated more than 15 years ago. Miner safety and health would be improved by providing standards for and encouraging the use of advances in ventilation technology and by upgrading the quality of examinations for hazardous conditions that are conducted in all mines. In addition, irrelevant standards would be eliminated, and where appropriate, paperwork requirements and reporting burdens on the mine operator would be reduced.

The proposed rule would establish revised standards for ventilation that would be applicable to all underground coal mines, while retaining requirements for a ventilation plan for each mine. The ventilation plan would specify precautions and practices applicable to the particular conditions at the mine. The revisions proposed would convert some of the existing criteria used for the approval of ventilation plans into mandatory standards. As a result, ventilation plans would be simpler and only contain ventilation control measures needed to address unique conditions at a mine.

The proposal would retain the approach in existing standards and specify requirements for minimum air quantities in face areas, principally to control and dilute methane and respirable dust resulting from the mining process. Like the existing rules, the proposal would also include maximum permissible levels of methane that when reached would require action by the operator to eliminate the risk of explosion, and would be in addition to applicable respirable dust standards in existing 30 CFR Part 70. MSHA recognizes that this approach is somewhat redundant, in that it sets requirements for maximum levels of methane and dust, and for the amount of air used to control these hazards. However, MSHA believes that this redundancy will ensure that face areas are adequately ventilated and that miners will work in safe and healthy environments. MSHA solicits comments on this approach and whether other more performance-oriented approaches, such as regulating only air quality, would also protect miners from ventilation hazards in face areas.

The proposal includes a new standard that would allow mine operators to use air coursed through a belt conveyor haulageway to ventilate a working place in the mine provided that specified safety precautions are followed. Presently, this practice is not permitted except through the petition for modification process. The Agency has reviewed these petitions and the proposal includes the safety precautions that, in MSHA's experience, are necessary to protect miners when belt air is used to ventilate a working place. This aspect of the proposal would also reduce paperwork burdens associated with the petition for modification procedure.

The proposed rule would clarify the scope of examinations for hazardous conditions, particularly the preshift examination that is conducted before the start of each shift. The proposal specifies that all areas of the mine where miners are scheduled to travel or work during the shift would need to be examined.

Another new provision would establish requirements for the use of atmospheric monitoring systems when they are used to monitor the mine atmosphere at specified locations for concentrations of methane and carbon monoxide, and for air velocity. Under the preproposal draft, an Atmospheric Monitoring System (AMS) would have been required in all mines having a certain threshold concentration of methane gas. Upon review of the comments, the Agency now believes that a particular threshold methane concentration may not be an appropriate basis for requiring atmospheric monitoring systems. This proposal generally provides for the voluntary use of such systems. However, to encourage the use of this emerging technology, the proposal would permit an AMS to be used as an alternative to certain evaluations required to be made by persons.

The proposal incorporates recommendations contained in the Agency's June 12, 1985 report, "Two-Entry Longwall Mining—A Technical Evaluation." This report was the result of work completed by an MSHA task force, established on January 28, 1985, to study commonly employed practices and equipment used in longwall mining, and any effects of these practices and equipment on miner safety in a two-entry longwall system. The task force report contained 35 recommendations directed at safe operation of two-entry systems. Following release of the report, on July 18, 1985, the Mine Safety and Health Administration (MSHA) held a meeting in Denver, Colorado, to brief the public on the task force report. At that meeting and in subsequent response to the report, members of the mining community suggested that MSHA include the recommendations in the appropriate coal mine safety standards under review to afford the opportunity for comment through the rulemaking process. Consistent with these suggestions, the proposal includes task force recommendations related to ventilation that the Agency considers to be applicable to all mines. These include requirements for the construction and use of stoppings and other ventilation controls in all mines, and requirements for a passageway to be maintained through the tailgate entries of all longwall panels. Also related to longwall mining, the proposal would for the first time, specify a minimum air quantity reaching each working face.

The proposal would revise requirements for escapeways for underground coal mines in existing Subpart R and transfer these requirements to Subpart D. New provisions would generally require mines to have two escapeways ventilated with intake air to each working section, and would require at least one of the escapeways to be "smoke-free." A "smoke-free" intake escapeway would be one in which no permanent electrical equipment is present. This type of equipment can be a source of fire that could contaminate an escapeway, thus hindering escape.

The proposal would also revise requirements for drilling of boreholes in advance of mining, and establish procedures for mining into areas that have been penetrated by a borehole. Accidental mining into an abandoned or inaccessible area can cause disruption of ventilation and expose miners to hazards such as methane accumulations and oxygen deficient atmospheres.

B. Section-by-Section Discussion

Section 75.2 Definitions.

The proposal includes a new definition for "worked-out area" that would replace the current definition of abandoned areas. A worked-out area would be an area where mining has been completed, whether pillared or nonpillared, and would exclude developing entries, return air courses, and intake air courses. This definition would include all areas within the existing definition of abandoned areas.

The proposal also contains a new definition for "permanent electrical equipment." All electrical equipment would be included within the definition, with specific exceptions. The exceptions would be for communication and monitoring systems, self-propelled electrical equipment, and electrical equipment that is only energized and operated while attended. The types of equipment that would be within the definition of permanent electrical equipment would include transformers, rectifiers, high-voltage switchgear, battery chargers, rotary converters, motor-generator sets, belt drives, compressors, and pumps. Under the proposal, ventilation standards addressing permanent electrical equipment are in § 75.340 (Underground electrical installations) and § 75.380 (Escapeways).

Other new definitions in the proposal are for "air course," "intake air," and "return air." An "air course" would be defined as a set of entries separated from other entries by ventilation control devices, such as stoppings, so that the mixture of air currents between each entry or set of entries is limited to the minimal leakage that naturally occurs through the ventilation controls. Two adjacent entries or adjacent sets of entries with an open crosscut or crosscuts between them would be considered separate air courses, for purposes of proposed § 75.364 (Weekly examination), if the distance between open crosscuts is greater than 300 feet in seam heights below 48 inches, and 800 feet in seam heights 48 inches or above.

The definitions of "intake air" and "return air" would recognize longstanding industry interpretations characterizing the nature of the air current by whether the air has ventilated a working place or mined-out area. Thus, intake air would be air coursed through a mine that has not yet ventilated the last working place on any split of any working section, or any worked-out area, whether pillared or non-pillared. Conversely, if the air has ventilated these areas, it would be considered return air. The definition of return air would also clarify that when intake air mixes in a return air course with air that has ventilated working places or worked-out areas, it would be considered return air.

Section 75.300 Mine ventilation.

The proposal would revise and clarify existing § 75.300. It would require all mines to be ventilated with one or more main mine fans. The existing standard requires mines to be ventilated with mechanical ventilation equipment, which, in all cases, are main mine fans.

The proposal would not permit the use of underground booster fans. This is consistent with MSHA's application of existing fan installation criteria, and recognizes longstanding industry practice. When underground booster fans are used, the ability of a mine to control recirculation of air after an explosion or similar emergency is substantially reduced. Also, under such circumstances it may not be possible to go underground to control the booster fan.

The proposal would also eliminate the requirement that mechanical ventilation equipment be installed and operated in a manner approved by the District Manager. Instead, those criteria in the existing standards for installation and operations of main mine fans which, in MSHA's experience, are applicable to all fans, would be converted to standards and are included in proposed §§ 75.310 and 75.311.

Commenters were concerned that certain existing fan installations would not comply with some of the requirements in proposed §§ 75.310 and 75.311. To address this concern alternative means of installation and operation are specified by the proposed rule. These provisions are discussed more fully in the explanations of §§ 75.310 and 75.311. Also, MSHA solicits additional comments on whether other equally safe alternative methods of installing fans not included in the proposal should be addressed in the final rule. Commenters should describe these methods for possible inclusion in the final rule. Comments are also requested on whether the final rule should permit equally effective methods of fan installation to be approved by the District Manager in the ventilation plan, rather than describing these methods in the final rule.

Section 75.310 Installation of main mine fans.

Main mine fans provide the means by which mechanically produced pressure is supplied to the mine ventilating current. This proposal for installation of main mine fans is derived primarily from the existing criteria in § 75.300-2 for the approval of main fan installation. Generally, the measures this proposal would require are aimed at protection of

main fans from fires and damage in the event of an underground explosion so that necessary ventilation can be maintained.

Paragraph (a) of the proposal sets out the basic requirements derived from the criteria in existing § 75.300 that MSHA considers to be applicable to the safe installation of all main mine fans. Since this proposal would convert these criteria to standards, the proposed requirements would not need to be specified in the ventilation plan for the mine, with the exception that operators permitted to shut down main mine fans in accordance with § 75.371(i) could propose the use of pressure measuring devices other than pressure recorders or main fan monitoring systems. To be approved as part of the mine's ventilation plan, an alternative pressure measuring device would have to be equally as effective at measuring fan pressure as a pressure recording device or fan monitor. As explained more fully in the discussion of § 75.371(i), this provision would provide a compliance alternative for small mines, many of which operate only one shift daily.

Under the proposal, each main mine fan would be required to be installed on the surface in a fireproof housing, be connected to the mine opening with a fireproof air duct, and be equipped with a device that gives a signal to a surface location when the fan slows or stops. To ensure that fans are not damaged or destroyed by the forces of an explosion underground, paragraph (a) would also require fans to be protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, and be offset so that the fan and its components are not in direct line with possible explosive forces. Also, this section would require monitoring and recording of mine ventilating pressure by the use of pressure recording devices, or by a main fan monitoring system. Only the use of pressure recording gages are addressed by existing criteria for ventilation plan approval. This proposal would reflect and encourage the use of improved technology for monitoring fan pressure.

The proposal retains, as mandatory standards, the existing ventilation plan approval criteria for fans driven by electric motors, and by internal combustion engines. The proposal would require that electric motors operate from a power circuit independent of all other mine power circuits. This enables main fans to continue operating and maintaining ventilation should underground electric power be interrupted. If the electric motor powering the fan is not permissible, the motor would be required to be out of the air current exhausting from the mine. This would prevent the possibility of a potentially explosive mixture of methane in air from passing over a nonpermissible motor.

For fans driven by internal combustion engines, the proposal would require that the engine's fuel supply be protected against fires and explosions, that the engine be installed in a fireproof housing, and that the engine and engine exhaust system be located out of direct line of the air current exhausting from the mine. The engine exhaust would also be required to be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure. These provisions are retained from the existing approval criteria and are designed to minimize the potential for fires.

A proposed new requirement applicable to fans driven by internal combustion engines is that the engines be equipped with remote shut-down switches. Unlike an electric motor, which can be stopped by cutting electric power, an internal combustion engine will continue driving a fan as long as the fuel supply to the engine lasts. Thus, if the engine is inaccessible and cannot be remotely shut down in the event of a mine fire or similar emergency, the fan will continue to supply air to the fire.

The proposal specifies requirements for weak walls and explosion doors that would be required under paragraph (a) of this section for the protection of main mine fans from explosive forces originating from underground areas. Weak walls and explosion doors would be required to have a cross-sectional area at least equal to that of the entry through which the pressure from an explosion underground would be relieved. This would prevent explosive forces from being routed to and possibly damaging main fans. This proposal would permit the use of combinations of explosion doors and weak walls to protect main mine fans providing compliance flexibility and encouraging the use of the safest and most efficient methods of main fan protection at each mine.

Paragraphs (e) and (f) of the proposal establish requirements derived from existing ventilation plan approval criteria for specific main fan installation situations. Paragraph (e) addresses fans installed in line with a mine entry, a slope or a shaft, and provides that the cross-sectional area of the pressure relief entry shall be at least equal to that of the fan entry, and that the fan entry shall be developed out of line with possible explosive forces. At least 2,500 square feet of coal or other solid material would be required to be between the pressure relief entry and the fan entry. Together, these precautions would protect fans from the forces of an explosion underground and would maximize the effectiveness of systems aimed at diverting explosive forces away from main mine fans.

Paragraph (f) would apply to mines ventilated by multiple main mine fans. It provides that fireproof doors shall be installed on the fans so that if any main fan stops and air reversal through the fan is possible, the doors on the affected fan will automatically close and prevent air reversal through the fan. This provision recognizes that pressure differentials are created when a main fan stops, particularly when others keep running, and that this can cause air to be diverted away from working areas in the mine. However, it also recognizes that in mines ventilated by blowing fans, and in some mines ventilated with combination exhaust and blowing fan systems, air reversals may not be possible. In such circumstances, automatic closing doors may not be needed or desired.

Commenters suggested that to avoid confusion reference in the preproposal to main mine fans as "surface mine fans" be eliminated. This proposal reflects those comments and retains the terminology of the existing ventilation plan approval criteria.

The proposal also clarifies that only one device for monitoring mine ventilating pressure is required and that a main fan monitoring system may be used to monitor fan pressure in lieu of the other devices. If a monitoring system is used, paragraph (c) of the proposal provides that the monitoring system must be capable of performing certain functions. These functions include recording mine ventilating pressure and giving a signal to a surface location at the mine when either a deficiency exists in the monitoring system or when there is a sudden increase or loss of mine ventilating pressure. Also, in order to provide an effective alternative to main mine fan examinations, which would be required daily under § 75.312 of the proposal, monitoring systems would be required to be capable of monitoring main mine fans and their associated components for proper operation. MSHA anticipates that this function would include monitoring bearing temperature, revolutions-per-minute, vibration, and perhaps voltage and current. The Agency solicits comments on the scope of the monitoring system function and whether the final rule should more specifically set out the requirements for monitoring the fan and its associated components for proper operation.

In response to other comments, paragraph (a) of the proposal clarifies that all main mine fans must be equipped with an automatic device that signals a surface location when the main fan stops.

Commenters also recommended revision of the preproposal draft requirement that all main mine fans be offset so that the fan and its associated components are at least 15 feet from mine openings, or be protected by a slope, shaft, or diversion entry. A primary concern of the commenters was that fans installed and approved by MSHA as safe under existing criteria may, in some cases, not be offset by 15 feet due to the mountainside location of the mine opening, or other reasons. These commenters recommended that the installation requirement apply only to fans installed after the effective date of the final rule. After consideration of these comments, the proposal specifies that fan installations be offset so that the fan and its components are not in direct line with possible explosive forces. This approach provides a performance requirement for addressing the hazard of main mine fan damage or destruction due to an explosion in the mine, in light of the variety of mining conditions.

Section 75.311 Main mine fan operation.

This proposal is derived from existing ventilation plan approval criteria in §§ 75.300–2 and 75.300–3 and would establish requirements for main mine fan operation. It would require that fans be continuously operated to provide constant ventilation to underground areas, and specifies precautions for planned fan stoppages. The proposal also addresses the repair of main mine fans, monitoring of fan signal devices on the surface, and protection against fires around fan intake air openings.

The proposal would permit main mine fans to be stopped as specified in the ventilation plan for the mine, or when intentionally stopped for maintenance or adjustment of the fan. To minimize hazards to miners during these fan stoppages, the proposal specifies that if required ventilation is not maintained, only persons designated by the operator and authorized representatives of the Secretary may be permitted in the mine. Persons designated by the operator to be in the mine during a fan stoppage would be limited to those necessary to evaluate the effect of the fan stoppage or restart. The proposal also specifies that if the stoppage lasts for more than 30 minutes, electric power circuits entering underground areas must be deenergized and other mechanized equipment must be shut off. This provision revises the draft requirement, which would have required electric power circuits to be deenergized immediately when the fan is stopped. The proposal to permit power circuits to be energized for up to 30 minutes after there is a planned stoppage provides flexibility during shorter stoppages.

Commenters suggested that atmospheric monitoring systems should be permitted to remain energized during planned fan stoppages so that the systems could continue to monitor the mine atmosphere. MSHA recognizes that monitoring during fan stoppages would provide safety benefits, but monitoring systems would have to be intrinsically safe to protect against an explosion should methane accumulate during the fan stoppage. Although this alternative has not been included in the proposal, the Agency solicits further comments on options related to intrinsically safe monitoring systems.

Paragraph (c) of the proposal would require prompt repair of any electrical or mechanical deficiency detected in a main mine fan. A deficiency in a main mine fan can result in inadequate ventilation of underground areas, thereby creating a hazard to miners.

Paragraph (d) would require that while any person is underground, a person designated by the operator be at a surface location where mine fan signal devices can be seen or heard. This would allow immediate warning to be provided to miners in the event of a fan malfunction or other hazard that may require miners to be withdrawn to the surface or other precautions to be taken. Signal devices would be those specified in § 75.310 (Installation of main mine fans) of this proposal.

Paragraph (e) of this proposal provides that there should be no accumulation of combustible and flammable material in the area surrounding each main mine fan and intake air opening. Liquid fuels and other flammable substances stored on the surface, as well as debris that may burn in the area of mine fans, present the hazard of a mine ventilation system becoming contaminated by smoke from a fire on the surface. Therefore, the proposal retains the draft requirement that this standard apply to the area within 100 feet of all surface fans and mine openings. The proposal adds a provision, however, that alternative protective measures may be described in the mine's ventilation plan. This change provides compliance flexibility and recognizes that other effective precautions may be taken to provide protection from fire and products of combustion where a clear area of 100 feet is not available.

Section 75.312 Main mine fan examinations and records.

This proposal is derived from the existing § 75.300–4, which requires that main fans be inspected daily. Proper operation of main mine fans is critical to mine ventilation. Therefore, the proposal requires that surface mine fans and associated components, such as devices to monitor and record pressure, be examined at least once each day during which the fan operates. This daily examination would not be required if a main fan monitoring system is used. Instead, the proposal would require that the fan be examined and the monitoring system be tested at least every 7 days. If the monitoring system malfunctions, the mine fan and its associated components would then be required under the proposal to be examined at least once each day during which the fan operated until the problem is corrected.

The proposed interval between fan examinations if a main fan monitoring system is used is shorter than the 30-day examination period specified in the preproposal, reflecting comments that monthly examination would not provide sufficient verification that the fan is operating properly. The 7-day interval specified in the proposal is founded in the concept of a weekly examination of mine ventilation addressed in proposed § 73.364. MSHA requests comment on whether a weekly fan examination if a main fan monitoring system is used is an appropriate interval for verifying fan performance in this context, whether a longer interval would also ensure safe fan performance, or whether a requirement in the final rule that fans be maintained in proper operating condition would achieve the same purpose.

The proposal would require that circular recording charts for mine fan pressure recording devices be changed before completing one revolution. Commenters objected to this draft requirement, indicating that some charts may record fan pressure for up to a week before it is necessary that they be replaced. The commenters apparently believed one revolution to equal a day. MSHA agrees that charts designed to last more than a day should not be required to be changed daily, and the proposal should not necessarily require daily replacement of recording charts. If, for example, one revolution of a fan recording chart takes a week; the chart would only be required to be changed weekly. At this stage in rulemaking,

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MSHA believes that it is necessary for charts to be changed in this manner in order for them to be readable and thereby provide useful information. When charts are use to provide a record of main fan operation, this proposal would require that they be maintained for at least one year at a surface location of the mine.

Paragraph (c) of the proposal is new and would require that at least every 30 days, each main fan be tested to determine that the automatic fan signal device is operating properly. The preproposal draft specified that each main fan be slowed and stopped during such testing. Several commenters, however, indicated that this would cause undue stress on main fans. Therefore, this proposal permits fans to remain in operation during signal testing. However, an option requiring fan stoppage during signal testing is still being considered since the Agency believes that the best test for a signal device may be to stop the fan, provided it does not excessively stress the fan. MSHA solicits further comment on this issue.

Paragraph (d) would require that at least every 30 days, automatic closing doors in multiple main mine fan systems be tested for proper operation. These doors must automatically close in the event of fan failure or stoppage in order to prevent an air reversal through the fan. Such a reversal could cause air to flow away from working areas.

The proposal would retain the existing requirement that a record of fan examinations be made. However, unlike the existing standard, which requires a record of the results of every inspection, the proposal would require a record of defects found during the examination that may affect the operation of the fan and which have not been corrected by the end of the shift on which the fan examination is made. All defects affecting safe fan operation would be required to be corrected.

A commenter stated that a requirement for recording of uncorrected fan defects implies that defects may exist in a fan as long as they are recorded. Proposed § 75.311, paragraph (c) would require that repairs be made promptly to correct a mechanical or electrical deficiency in a fan, whenever such a deficiency exists.

The proposal would also require the person performing the examination to certify by initials and date that an examination was made and note the main mine fan examined. The preproposal draft requirement that the time of the examination be recorded has not been retained since the purpose of the certification is to indicate only that the fan has been examined during the shift.

The proposal provides that the certifications and records required by this section, including mine fan pressure recording charts, would be required to be retained for at least one year and to be made available to authorized representatives of the Secretary and representatives of miners.

One commenter recommended that the required certifications and records be required to be completed at the end of the examination, suggesting that this approach would give the oncoming shift access to the results of the examination prior to entering the mine. The examinations required by the proposal are intended to provide warning of and protection against main mine fan failures. At this stage in the rulemaking process, MSHA believes that completion of the certification and recordkeeping requirements at the end of the shift on which an examination is made is sufficient to verify proper fan operation. Therefore, the proposal does not specify that the results of fan examinations must be recorded at the end of the examination. The preshift examination required by § 75.360 (Preshift examination) of this proposal gives miners on the oncoming shift notice of hazards on working sections which could not be corrected and verification that proper ventilation is being maintained.

Section 75.313 Main mine fan stoppage with persons underground.

This proposal is derived from existing § 75.321 and sets forth safety precautions in the event of a main mine fan stoppage that interrupts ventilation while persons are underground. Unlike the existing standard, which requires mine operators to develop a plan for withdrawal of persons and deenergization of equipment, the proposal would establish standard procedures to be followed during a main fan stoppage. It would also require certain precautions when stoppages last longer than 15 minutes.

Paragraph (a) provides that if a main fan stops and required ventilation is not maintained, all electrically powered equipment in each working section must be deenergized. Deenergization of electrical equipment on working sections minimizes the possibility of an ignition source for accumulations of methane that can develop quickly when ventilation is interrupted. All other mechanized equipment not necessary for withdrawal of persons would be required to be shut off. This would include diesel and battery-operated equipment. This precaution would also eliminate a potential ignition source, and would avoid the accumulation of diesel exhaust contaminants while mine air-flow is interrupted.

Paragraph (a) also would require that all persons be withdrawn from working places when ventilation is interrupted by a main mine fan stoppage. Working places where coal is being extracted are typically the areas of an underground mine where methane accumulation, oxygen deficiency, and other hazards to health or safety can develop quickly when ventilation is interrupted. To avoid exposure of miners to these hazards, timely withdrawal of persons is an important safety practice.

Paragraph (b) of this proposal provides that when required ventilation is restored within 15 minutes, work may resume, provided that certified persons first examine for the presence of methane in all working places and in areas where methane will accumulate. A thorough examination is necessary so that methane ignitions do not occur when mining activity resumes. Diesel and electrically-powered equipment could be used in such areas only after certified persons have made examinations for methane in those areas.

When normal mine ventilation is not restored within 15 minutes after a main mine fan stops, paragraph (c) of the proposal, also derived from the existing § 75.321, would require that miners be withdrawn from the mine and that all electric power circuits be deenergized, except those necessary to withdraw persons from the mine which are located in areas where air reversals are not likely to occur. Air reversals can pull methane and other gases from worked-out areas, increasing the risk of ignition or explosion where electric power circuits are energized. Circuits permitted to remain energized for withdrawal of persons would be required to be deenergized in an orderly fashion as persons are withdrawn. This proposal would eliminate the existing requirement that deenergization of power circuits as persons withdraw be performed as specified in the mine's approved ventilation plan. The proposal would also require that mechanized equipment not on the working section be shut off. However, like electric circuits, mechanized equipment necessary to withdraw persons may remain in operation, if the equipment is located where air reversals are not likely to occur.

When ventilation is restored, and before electric power circuits are energized in any area, the proposal would require certified persons to examine for methane. This examination would address the hazard of power being restored when methane is present, which could result in an ignition. The proposal would also require that a certified person examine underground areas and determine them to be safe before miners and permitted to return. This examination would include tests for methane and oxygen deficiency, and verification that ventilation has been restored to required levels, protecting miners from hazards that can develop in working places while ventilation is interrupted.

If ventilation is restored to the mine while miners are being withdrawn, but before they reach the surface, the proposal provides that the miners may return to underground areas that have been evacuated after an examination by a certified person is made. This proposal provides protection to the miners from underground hazards resulting from sudden fan stoppage and recognizes that in some cases travel to the surface can last for up to an hour, perhaps longer. If ventilation is restored to the mine during this period no additional safety benefit is derived from having all miners go to the surface before they can return to working places, as long as their working places are examined and determined to be safe before they return.

Section 75.320 Air quality detectors and air measurement devices.

This proposal would revise and consolidate existing standards in §§ 75.303, 75.305–2, 75.307–1, 75.308–2, 75.309–1, 7.310–2, 74.311–1, 75.312–2, 75.314–1, 75.315–1, and 75.317. It would establish requirements for devices used to make tests or measurements required to be made under this proposed rule, including tests for methane, oxygen deficiency, and air velocity.

Electric components of methane detectors and other devices can be an ignition source for methane and other explosive gases. Therefore, the proposal retains the existing requirement that methane detectors be approved by MSHA and maintained in permissible and proper operating condition. MSHA believes that maintaining these devices in permissible and proper operating condition requires routine calibration with known methane-air mixtures. Under the preproposal, calibration at 30 day intervals was specified. The proposal does not retain this approach because the interval necessary to ensure that detectors are properly calibrated may vary between instruments. Instead, operators would be required to calibrate their instruments with sufficient frequency to maintain them in a properly calibrated condition at all times that they are available for use underground. MSHA solicits comments on the proposed approach, and whether the proposal or a specific interval for calibration in the final rule would more adequately ensure that detectors are maintained in permissible and proper operating condition. Interested commenters should also address the need for a specific calibration interval to the proposed rules for methane monitors (§ 75.342) and for fire detection and monitoring systems (§ 75.350 and § 75.351). As with methane monitors, the preproposal specified 30-day calibration intervals for each of these devices, while the proposal adopts the approach that these devices be maintained in permissible and proper operating condition.

The proposal would require that tests for oxygen deficiency be made with MSHA-approved oxygen detectors and that such devices be maintained in permissible and proper operating condition. The proposal would also require that devices that contain electrical components and that are used to measure air velocity be approved by MSHA and be maintained in permissible and proper operating condition.

Paragraph (d) of the proposal is new and would apply to devices that contain electrical components such as those used to measure carbon monoxide, oxides of nitrogen, and other harmful gases. Like methane detectors and other electrically operated devices, this equipment must be approved, maintained in permissible and proper operating condition. Also, like methane detectors, MSHA believes that maintaining these detectors in permissible and proper operating condition includes routine calibration with known concentrations of the applicable gas, and solicits comments on whether a calibration interval should be included in the final rule.

This proposal retains the word "permissible" to describe devices such as methane detectors that are safe to use in a potentially explosive atmosphere. At this stage in rulemaking, however, MSHA is considering a nomenclature change that would substitute the word "approved" in all sections of this proposal where the word "permissible" appears. This would be consistent with the requirement that devices with electrical components be approved as permissible under Part 18 of this chapter.

Paragraph (e) of the proposal is new and would prohibit the use of flame safety lamps. Under existing standards, these devices are used to detect oxygen-deficient atmospheres, and as a supplementary device for detecting methane. MSHA experience has been that oxygen and methane cannot be accurately measured with flame safety lamps, particularly at levels of 19.5 percent for oxygen and 1.0 percent for methane. Also, improper assembly of flame safety lamps can create ignition and explosion hazards in mines.

Section 75.321 Air quality.

This proposal is derived from existing §§ 75.301 and 75.301–5, and would delete existing §§ 75.301–6, 75.301–7 and 75.301–8. It would establish a basic air quality requirement that all areas where persons work or travel in an underground mine be ventilated by air that contains at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide. In most workplaces, air normally contains about 20.9 percent oxygen and .03 percent carbon dioxide. Levels below 19.5 percent oxygen and above 0.5 percent carbon dioxide indicate that an air quality problem exists that warrants attention. The proposed levels reflect this consideration and are generally recognized as appropriate for underground coal mines.

Paragraph (b) of the proposal, which is derived from existing § 75.301–5, would establish levels for explosive gases, other than methane. Gases which can present explosive hazards in mines include hydrogen, hydrogen sulfide, and ethane. Like existing § 75.301–5, the concentrations specified for these gases are based upon the lower explosive limit of the listed gases. This limit is the point at which the gas will propagate and maintain an explosion. Similar to the 1.0 percent action level for methane used in § 75.323 (Actions for excessive methane) of this proposed rule, the maximum concentrations this proposal would establish are 20% of the lower explosive limit of the indicated gases. Accordingly, the proposal retains the maximum allowable concentrations for hydrogen (.80 percent) and hydrogen sulfide (.80 percent).

Unlike the existing standard, this proposal would not specify maximum concentrations for propane, acetylene, or methyl acetylene-propylene-propodiene (MAPP). MSHA's experience has been that these gases are found very rarely in natural deposits in underground coal mines. However, these gases are found in compressed gas cylinders used underground. The transportation, handling, and storage of the gases in this form is generally governed by other MSHA and federal safety standards.

The proposal would also delete the existing maximum concentration for carbon monoxide. Under the proposal, carbon monoxide concentrations would be monitored for early warning of fire in such places as belt conveyor entries. Also, the proposal would not affect the existing health exposure standard for carbon monoxide, which is considerably lower than a maximum concentration based on the explosive range of the gas.

The proposal would add a maximum permissible concentration for ethane. This gas is found in underground coal mines, particularly near oil and gas wells, and is produced by mine fires. Like the other gases listed in paragraph (b) of the proposal, the maximum concentration (.60 percent) for ethane is also 20% of the lower explosive limit for the gas. MSHA also specifically requests comment on whether other explosive gases should be addressed in the standard.

Existing §§ 75.301–6, 75.307–7, which would be deleted by this proposal, generally specify actions to be taken by MSHA regarding sampling for explosive gases, other than methane, and the enforcement and abatement procedures to be applied in the event gas accumulations exceed the standards. As indicated in the preproposal draft, MSHA considers these existing standards to be unnecessary. The enforcement and abatement procedures for violations of standards are delineated in the Mine Act. Standards specifying MSHA-conducted sampling programs unnecessarily inhibit refinement and improvement in the administration of the Agency's responsibility.

Existing section 75.301–8 would also be deleted by this proposal. The current requirements specify measures an operator must take to control concentrations of explosive gases known by the operator to exist in the mine. This proposal, however, would establish limits for explosive gases and allow operators to develop the method of maintaining compliance with these limits.

The proposed rule would not affect the existing standard for harmful quantities of noxious gases in § 75.301–2. The existing rule, like the preproposal draft, includes an incorporation by reference of the threshold limit values (TLV's) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) for harmful, noxious and poisonous gases. On reconsideration of the preproposal, however, MSHA believes that standards for exposure to harmful, noxious or poisonous gases would be more appropriately addressed in the Agency's health standards. Accordingly, MSHA will undertake a separate rulemaking that would revise 30 CFR Part 70 to address this issue. Appropriate TLV's will be included in that proposal to address hazards at underground coal mines. In the interim, existing § 75.301–2 would be retained. MSHA solicits comments on whether the requirements in this proposal for oxygen and carbon dioxide would also be more appropriate for inclusion in Part 70, or should be retained in the ventilation standards.

Section 75.323 Actions for excessive methane.

This proposal revises and consolidates existing §§ 75.307, 75.308, 75.309, 75.310, and parts of §§ 75.316 and 75.326. It would establish action levels for methane concentrations detected in certain areas of the mine, when tests for methane are made at least 12 inches away from the roof, face, ribs, and floor. The lowest methane action levels are for those areas where methane accumulations are most likely to immediately endanger miners. This proposal also retains the requirement of progressive precautions based on the methane accumulations encountered.

When 1.0 percent of methane is present in a working place, paragraph (b) of the proposal would require that all electrically-powered equipment in the affected working place be deenergized. Removing power to electrical equipment in these areas prevents the equipment from providing ignition sources, such as sparks caused by contact of moving parts with mine surfaces. Other mechanized equipment, including diesel and battery-powered equipment, is also a potential source of ignitions, and therefore, this proposal would also require that this equipment be shut off when 1.0 percent methane is present. Before any equipment may be put back into operation, this proposal would require changes or adjustments to be made in ventilation or in the section mining cycle to reduce the methane concentration in air to within safe levels.

For the first time, the proposal would specify that actions be taken to protect miners when 1.0 percent methane is present in an intake air course. These actions would be the same as those described under paragraph (b). Under the preproposal, changes or adjustments in ventilation would have been required when 0.25 percent of methane was present in a designated escapeway ventilated with intake air, a track haulageway, or in an intake air course. Comments were received from many segments of the mining industry objecting to this provision. Some commenters indicated that 0.25 percent of methane is not a significant concentration in a coal mine. One commenter stated that in some cases this concentration could be found where coal is being transported on a belt conveyor. Commenters generally indicated that it would be difficult or even impossible for most mines to comply with this draft requirement, and recommended that this action level be deleted in favor of the existing action level of 1.0 percent for working places and belt haulageways. These commenters suggested that the existing level requires operators to institute effective and practical methane controls in intake air courses on a mine-by-mine basis, as appropriate.

After consideration of these comments, MSHA agrees with the commenters that 0.25 percent is not an indication of hazardous concentrations of methane in intake air. However, MSHA does not believe that the 1.0 percent methane limit for working places and belt haulageways will always serve to maintain low levels of methane in intake air in all mines. Nonpermissible equipment, which can be operated away from face areas, could cause an explosion should methane concentrations reach explosive levels in intake entries. To avoid this hazard and to help ensure that low levels of methane are maintained in face areas, the proposal would require that methane concentrations not exceed 1.0 percent in intake air courses. MSHA does not believe that this new requirement would increase costs for operators, but requests comments on whether, in fact, operating costs would be increased by this provision.

Under the proposal, intake air courses would include air courses in which belt conveyors are located. As discussed more fully regarding proposed § 75.352 (Return air courses), air that has ventilated a working face generally may not be coursed through belt entries. Therefore, intake air would generally be used in belt entries, regardless of whether the intake air will also be used to ventilate working places in accordance with proposed § 75.351 (Belt conveyor entries). As with all intake air courses the same precautions regarding methane concentrations would thus be required by paragraph (b) when 1.0 percent methane is present in an air course in which a belt conveyor is located. Derived from existing § 75.326, this provision is aimed at protecting miners from methane ignitions caused by sparks or other ignition sources created by belt conveyors and electrical equipment in belt entries. This provision would also minimize the risk of float coal dust explosions in belt entries, which can occur in atmospheres containing lower levels of methane.

Should 1.5 percent methane be present in a working place or an intake air course, including an air course in which a belt conveyor is located, paragraph (c) additionally would require persons to be withdrawn from the affected area. This requirement is retained from the existing standards. Only persons designated by the operator to take corrective action and authorized representatives of the Secretary would be permitted to remain in the area. Paragraph (c) would also require that all electric power to equipment in affected areas be disconnected at the power source. This prevents accidental reenergization of equipment, and removes power from cables and circuits which may also be ignition sources. Before work can be resumed, changes or adjustments in ventilation would be required to reduce the concentration of methane in air to less than 1.0 percent.

The preproposal draft used the phrase "including where longwall or shortwall mining is used" to indicate that working places would include areas where these mining techniques are used. After reconsideration, however, the proposal does not include this phrase since the term "working place" includes shortwall and longwall mining sections.

Paragraph (d) of this proposal would require the same precautions as in paragraph (b), specifying that mining equipment be shut off or deenergized, and changes or adjustments be made in ventilation when 1.5 percent of methane is present in a return split of air between the last working place on a working section and where that split of air meets another split of air. These measures would also be required when a split of air returning from a working section is used to ventilate seals or worked-out areas. When 2.0 percent of methane is present at these locations, paragraph (e), like paragraph (c), would require miners to be withdrawn, disconnection of electric equipment at the power source, and changes or adjustment in ventilation to reduce the concentration of methane in return air to less than 1.5 percent.

If 2.0 percent of methane is present in a bleeder split of air just before the air in that split enters another split of air, or if 2.0 percent of methane is present in a return air course other than a return air course described in paragraph (c), changes or adjustments in ventilation would be required to reduce the concentration of methane to less than 2.0 percent at these locations. Generally, a return air course other than as described in paragraph (c) would be in a main return.

Commenters objected to the draft requirement proposing the 1.5 percent methane action level for splits of air returning from working sections. The commenters indicated that the requirements of existing § 75.309 should be retained. This standard specifies that when 1.0 percent methane is encountered in a return air split, changes or adjustment in ventilation must be made to reduce the methane concentration to below 1.0 percent. Also, equipment must be deenergized and people must be withdrawn from the area when the level reached 1.5 percent.

The proposal, like the existing standard, would also require electric equipment to be deenergized when 1.5 percent methane is found in a return air split, and all other mechanized equipment would be required to be shut off. Also, under the proposal, changes or adjustments in ventilation would be required at the 1.5 percent level, and miners would be withdrawn at 2.0 percent. At this stage in rulemaking, MSHA feels that retaining the existing requirements for deenergizing equipment will remove the potential for a methane ignition when 1.5 percent methane is reached, and that allowing changes or adjustments to begin at 1.5 percent and miners to be withdrawn at 2.0 percent will not present a greater risk to miners when methane from the face is liberated into a return, where methane levels are ordinarily higher than in face areas. Also, the Agency feels that the new requirement that methane be maintained below 1.0 percent in intake air courses will contribute significantly to the protection of miners from methane hazards in all areas of a mine.

The commenter's objection to the draft requirement also appeared related to existing § 75.310, which requires precautions to be taken to maintain methane levels in return air to below 2.0 percent when mining is conducted in new or virgin territories of a mine. However, the proposal does not distinguish between virgin and non-virgin territories. Therefore, methane levels for return air in all areas of a mine would be required to be maintained at less than 1.5 percent.

Section 75.324 Intentional changes in the ventilation system.

This proposal would revise existing § 75.322. Under the proposal certain precautions would be required when a change is made increasing or decreasing ventilation on a working section by at least 9,000 cubic-feet-per-minute, or when a ventilation change materially affects the main air current of the mine or any split thereof. Under these circumstances, the ventilation change must be supervised by a person designated by the operator and made only after electric power has been removed from areas that may be affected by the change, and mechanized equipment in those areas is shut off. Only persons making the ventilation change would be permitted in the mine while the change is being made. Afterwards, certified persons would be required to examine the areas affected by the change to determine its effect on the mine ventilation system and whether any hazardous conditions are present. Specifically, tests for methane accumulation and for oxygen deficiency would be required. Electric power would not be permitted to be restored to affected areas, and mechanized equipment would not be permitted to be restarted until these tests are made and the areas are determined to be safe.

The application of the proposed standard to increases or decreases in section ventilation of 9,000 cubic-feet-per-minute (cfm) or more is responsive to comments. Some commenters expressed concern that the preproposal draft, which described only ventilation changes "that may affect the safety or health of persons," was vague. Many requested further clarification, and more than one commenter suggested that the current ventilation plan approval guideline of 9,000 cfm (§ 75.322) be incorporated into the proposal. In light of these comments and based on MSHA's belief that a ventilation change of 9,000 cfm is significant for any working section, the proposal sets a threshold of 9,000 cfm for ventilation changes on working sections requiring deenergization, withdrawal of persons from the affected areas, and subsequent examination for hazards.

The proposal also recognizes that in some large mines a ventilation change of 9,000 cfm in the main air current of the mine would not necessarily be significant. Alternatively, in other mines, changes of 9,000 cfm or less in the main air current could substantially affect mine ventilation. Accordingly, the proposal would not apply this guideline to main air currents, or to splits of main air currents. Instead, the proposal specifies that the prescribed precautions be taken when the ventilation change is one "that materially affects the main air current or any split thereof." This phrase is derived from the existing standard, which states that "[c] hanges in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons

in the coal mine shall be made only when the mine is idle."

Section 75.325 Air quantity.

This proposal is derived from existing §§75.301, 75.301–1, and 75.301–3. The proposal would establish minimum air quantity requirements for all coal mines.

Quantity of air, measured in cubic-feet-per-minute (cfm), is an important measure of underground coal mine ventilation. The quantity, or amount of air delivered to each working face is relied upon to dilute, render harmless, and carry away flammable and harmful dusts and gases produced during mining. An insufficient quantity of air at a working face could permit methane to accumulate and lead to the development of other hazards.

The proposal retains the existing requirement that a minimum air quantity of at least 3,000 cfm reach each working face in bituminous and lignite mines where coal is being cut, mined, drilled for blasting, or loaded. Maintaining this minimum quantity of air at the face is an accepted industry practice and is considered to be the minimum amount necessary for all mines so that effective, reliable face ventilation can be provided. Lesser quantities of air at the face have been shown to be inadequate to sweep face areas, thereby allowing methane to accumulate to dangerous levels. Therefore, since methane can be liberated at any time, even in a mine with little prior experience with methane liberation, the 3,000 cfm standard is retained in the proposal as a minimum air quantity.

Where mining conditions dictate that a greater quantity of air is necessary at the face, the proposal specifies that a greater quantity of air would be required in the ventilation plan. MSHA and Bureau of Mines studies of face ventilation systems demonstrate that the effectiveness of the face ventilation system is dependent on factors which include the volume of methane released and the volume of air delivered to the face by the ventilation system. See, e.g., "Face Ventilation in Underground Bituminous Coal Mines: Airflow and Methane Distribution Patterns in Immediate Face Area-Line Brattice" (James V. Luxner; 1969) and "Evaluation of Face Ventilation Systems in Underground Coal Mines" (Haney, Banfield, and Gigliotti; 1984). Thus, in mines where methane liberation is high, a quantity of air greater than 3,000 cfm may be necessary to reduce the potential for methane ignition at the face.

To determine that the required air quantity is reaching the working face, the proposal retains the existing requirement that the air quantity reaching the face be measured at the face end of the line curtain or ventilation tubing. The proposal also recognizes, however, the danger to miners of measuring the quantity beyond the last row of permanent supports. Therefore, the proposal would require that when the curtain or tubing extends beyond the last permanent support, the quantity of air reaching the working face is to be measured behind the line curtain or in the ventilation tubing at the last row of permanent supports.

After reviewing comments on the preproposal, MSHA believes that in bituminous and lignite mines the existing minimum air quantity requirements of 9,000 cubic-feet-per-minute reaching the last open crosscut in any pair or set of developing entries or rooms and reaching the intake end of a pillar line may not be sufficiently reflective of the variation among coal mines. At this stage in rulemaking, MSHA believes that a more appropriate measure of ventilation for these areas may be specific air volume and velocity requirements in the mine's ventilation plan, in accordance with § 75.371 (Mine ventilation plan) of this proposed rule. This approach, which is discussed in the explanation of proposed § 75.371, would allow the volume of air necessary to deliver specific quantities to the working face to vary according to mining conditions and the type of face ventilation system.

A proposed new requirement that would apply to longwall mining systems is that the quantity of air be at least 20,000 cubic-feet-per-minute reaching each working longwall face. A survey of MSHA Districts indicated that nearly all existing longwall sections are required, through ventilation plans, to have 20,000 cfm or more of air at the intake side of the face. At least this amount of air is therefore considered necessary in all mines in order to achieve adequate ventilation across the entire longwall face. When conditions warrant, the proposal indicates that a greater quantity would be required to be specified in the ventilation plan. To determine that the required air quantity is reaching the working face, the proposal would require that the quantity be measured in the intake entry or entries at the intake end of the longwall face immediately outby the face. The Agency solicits comments on the proposed minimum air quantity for longwalls and whether another minimum quantity would better achieve proper longwall ventilation.

The proposal separtely addresses anthracite mines and would require the minimum quantity of air to be 1,500 cubic-feet-per-minute reaching each working face where anthracite coal is being mined. The existing standard requires 3,000 cubic-feet-per-minute of air in these areas. The proposal would also reduce from 9,000 to 5,000 cubic-feet-per-minute the air quantity required to pass through the last open crosscut in each set of entries or rooms and the air quantity required at the intake end of any pillar line. These changes reflect Agency experience with respect to petitions for modification. The proposal retains the existing requirement that in robbing areas where air measurements cannot be obtained, the air must have perceptible movement.

Paragraph (a) of this proposal is new and is based on preproposal draft § 75.331 (Machine mounted dust collector fans). The section was added to this proposal since it is actually an air quantity requirement. The term "rated capacity" in this paragraph was changed to "operating volume" in response to comments that indicated that the "rated capacity" of a dust collector may not be the best measure of performance in actual mining situations. Additionally, the term "machine-mounted dust collector fans" was changed to "machine-mounted dust collectors" since not all such units are fans. The provision would also address diffuser fans, and would permit quantities other than the operating volume of dust collectors and diffusers to be specified in the ventilation plan.

Section 75.326 Mean entry air velocity.

The proposal is derived from the existing § 75.301–4 and retains the requirement that a minimum mean entry air velocity of 60-feet-per-minute be maintained in all working places utilizing exhausting face ventilation systems. MSHA's experience is that although dust compliance may be possible with a lesser velocity, a minimum mean entry velocity of 60 fpm will maintain the average concentration of respirable dust in face areas to within 2.0 mg/m³ of air, assuming 1.0 mg/m³ of respirable dust in intake air, as required by existing § 75.100(b), and the use of face ventilation controls to within 10 feet of the face. To provide compliance flexibility, the proposal would permit lower mean entry air velocities to be specified in the ventilation plan as long as the lower velocities will maintain concentrations of respirable dust to within the applicable dust standard of 2.0 mg/m³. The proposal would not retain the instructions in existing § 75.301–4 for calculating the mean entry air velocity. By eliminating this provision, the proposal permits the direct measurement of the mean entry air velocity, whenever such measurement is possible.

Section 75.327 Trolley haulageways used as intake air courses.

This proposal would revise existing §§ 75.327 and 75.327–1. It would apply to intake air courses where trolley wires or trolley feeder wires are installed, and specifies an air velocity in these entries of at least 50 feet per minute (fpm).

The proposed minimum air velocity requirement would provide a sufficient amount of air to dilute methane and to provide an adequate supply of oxygen. Unlike the existing standard, however, this proposal does not specify a maximum velocity of air for trolley haulage entries. The current standard, which applies to trolley haulageways in mines and working sections developed after March 30, 1970, requires that the air current not exceed 250 feet-per-minute, unless a greater velocity is approved by the District Manager. This standard was designed to minimize hazards associated with fires and dust explosions in the haulageways. The reason for the standard's "grandfather" provision for mines operated before March 30, 1970, is that in these mines the main intake for a working section often serves as a trolley haulageway. March 30, 1970 is the effective date of the existing standard.

MSHA's experience under the existing standard has been that a greater velocity of air in trolley haulage entries can provide safety benefits to miners in these entries and in face areas by reducing methane content and increasing oxygen supplies. Commenters on the preproposal, which specified a 300 fpm air velocity in trolley haulageways, indicated that limiting air velocity in trolley haulage entries can restrict the capability of a mine's ventilation system to dilute and carry away explosive mixtures of methane and harmful concentrations of contaminants from working places and other areas.

After consideration of these comments, MSHA agrees that limiting air velocities in trolley haulage entries unnecessarily restricts the ability of a mine's ventilation system to perform its functions. The Agency believes that restricting air velocities in these entries leads in some cases to pressure imbalances between entries, methane layering, and other ventilation problems. Therefore, at this stage in rulemaking, the 300 fpm air velocity limitation in the preproposal draft is not included in the proposal. Under the proposal, operators would be permitted to use velocities greater than 50 feet per minute that are necessary to deliver adequate ventilation to face areas.

Section 75.300 Face ventilation control devices.

This proposal would consolidate and modify existing §§ 75.302 through 75.302–3. It would require that brattice cloth, ventilation tubing, and other face ventilation control devices be made of flame-resistant material approved by the Secretary, and that such face ventilation control devices be used from the last open crosscut to each working face from which coal is being cut, mined or loaded. Also, to provide ventilation to working places as necessary where other activities such as roof bolting are being conducted, the proposal would require ventilation control devices to be used at other locations specified in the ventilation plan.

Paragraph (b) is derived from existing § 75.302–1, which requires the installation of line brattice to within 10 feet of the area of deepest penetration at the face, unless an alternative distance is approved by the District Manager. MSHA's experience under this provision has been that ventilation controls used more than 10 feet back from the face are often adequate to control methane and dust. This practice also helps to avoid damage to or displacement of controls during the mining process and eliminates the potential exposure of miners to unsupported roof. In line with these considerations, the proposal would delete the 10-foot requirement and instead would require ventilation control devices to be used at a distance from the fact that is specified in the ventilation plan. The distance specified would be required to be that which will maintain concentrations of respirable dust, methane, and other harmful gases below the applicable standards. This approach would permit flexibility in determining how far to extend line brattice and ventilation tubing based on the conditions at each mine.

Under the proposed approach, distances greater than 10 feet could be specified in the mine's ventilation plan if they are adequate to provide ventilation to the working face. Alternatively, if a distance less than 10 feet is required based on mining conditions, this distance would also be included in the plan.

One commenter indicated that without the "10-foot requirement," respirable dust concentrations and methane accumulations in face areas would increase dangerously. This commenter recommended that extensible line curtain and other devices be required for advancing ventilation controls to within 10 feet of the face to avoid exposure of miners to roof fall hazards. MSHA agrees that extensible ventilation controls can be effective for advancing line curtain and other controls. However, for the reasons discussed above, the Agency believes at this point in the rulemaking that the distance from the face at which controls are set should be based on the conditions at the mine, but requests further comments on the ten-foot requirement, and specifically whether distances should be addressed on a mine-by-mine basis in the ventilation plan.

Section 75.331 Auxillary fans and tubing.

This proposal is derived from and clarifies existing § 75.302–4. The proposal retains the requirement of the existing standard that auxiliary fans be permissible, and would require that fans be maintained in proper operating condition. The existing provision which requires fans to be inspected frequently by a certified person when in use would not be retained. MSHA believes that regular fan inspection by the operator is an element of maintaining fans in proper operating condition, and that the frequency of the inspection is dependent on mine-specific conditions. Under the proposal, operators would be expected to inspect auxiliary fans at whatever intervals are necessary to ensure their proper operating condition at all times. MSHA solicits comments on whether fan inspections should be required in the final rule at specific intervals and, if so, what interval would be necessary for all mines to maintain fans in safe condition.

The proposal would require that auxilary fans be deenergized when no person is present on the working section. This would prevent fans from developing malfunctions or creating ignition or explosion hazards that might not be detected until persons return to the section. The proposal would also require that auxiliary fans be located and operated to avoid recirculation of air.

Paragraph (b) specifies precautions to be taken when the air passing through an auxiliary fan or fan tubing contains 1.0 percent or more of methane. These precautions include deenergizing the fan and electrical equipment in the working place, and switching off other mechanized equipment, until the methane concentration is reduced to less than 1.0 percent. A new provision would also require that if a deficiency exists in an auxiliary fan, the deficiency shall be corrected or the fan shall be deenergized immediately.

With an auxiliary fan is stopped, the proposal would require that face ventilation control devices be used to provide ventilation to the face. This precaution will prevent the creation of "dead-air" spaces and is particularly important for removal of methane when an auxiliary fan is deenergized in accordance with paragraph (b) of this proposal.

The draft requirement that auxiliary fans be deenergized when a main mine fan stops and that they not be started until after ventilation has been restored and methane has been removed has not been retained. MSHA believes that it is unnecessary in this proposal to specify separate precautions for auxiliary fans when main mine fan stoppage occurs. MSHA believes that the precautions for planned stoppages in § 75.311 (Main mine fan operation) and for unplanned stoppages in § 75.313 (Main mine fan stoppage with persons underground) are sufficient to protect miners from the hazards that could be created by auxiliary fans when main fan stoppage situations occur.

Section 75.332 Working sections and working places.

Paragraphs (a) and (c) of this proposal are derived from existing §§ 75.319 and 75.319–1, while paragraph (b) would revise existing § 75.312. The proposal would establish the requirement, derived from existing § 75.319, that each working section be ventilated with a separate split of intake air. This will provide miners on each section with at least one fresh-air intake air current that is not contaminated with gases or dust from another set of mining equipment. The proposal would allow more than one set of mining equipment be used on a split, however, with the condition that only one set at a time may be used for the production of material. Thus, this would permit a second set to be repositioned or maintenanced while the other set is mining. A set of mining equipment would be defined to include a single loading machine, a single continuous mining machine, or a single longwall or shortwall machine. When two or more sets of mining equipment are simultaneously engaged in the production of material within the same working section, each set of mining equipment would be required to be on a separate split of intake air. Paragraph (a) would apply to longwall or shortwall sections where more than one longwall or shortwall mining machine is used.

The term "abandoned area" in existing § 75.312 would not be retained under this proposal. Instead, the proposal specifies that working places may not be ventilated by air that has passed through any worked-out area. The proposal includes a definition of "worked-out area." One commenter suggested that the term "abandoned area" be put back into the draft. This is unnecessary, however, as the definition of "worked-out" area encompasses all areas where mining has been completed, including abandoned areas.

The proposal does not retain the draft requirement, derived from existing § 75.312 and applying to pillar recovery, that would have allowed intake air ventilating a line of pillars being mined to ventilate advancing working places immediately adjacent to the line of retreat, provided that the air entering the advancing section contains less than .25 percent of methane. This provision was aimed at permitting an orderly sequence of pillar recovery while recognizing that the hazard of methane ignition would be minimal if methane liberation from the retreat section is less than .25 percent. The proposal adopts the approach, explained more fully regarding § 75.323 (Actions for excessive methane), of establishing a maximum allowable methane concentration of 1.0 percent for all intakes. At this stage in rulemaking, the Agency believes that this approach will help provide protection of all working places from methane hazards.

Section 75.333 Ventilation controls.

This proposal is derived from existing §§ 75.328 and 75.1707 and from criteria in § 75.316–2 used for the approval of mine ventilation plans. This section would apply to all workings, including extensions of existing air courses, haulageways, designated escapeways, and areas where trolley wires or trolley feeder wires are located. The proposal would not apply to rooms that are 600 feet or less in depth, measured from the centerline of the entry from which the room was developed. This exception is derived from the generally accepted mining practice which recognizes the impracticality of establishing permanent ventilation controls in rooms driven less than 600 feet.

The proposal consolidates into one standard the locations where permanent stoppings would be required to be constructed. Permanent stoppings maintain the integrity of intake and return air courses. Therefore, permanent stoppings would be required between intake and return air courses beginning at the fourth connecting crosscut outby each working face. This provision would delete the existing criteria for permanent stoppings between intake and return air courses from the third connecting crosscut outby the working face. This would allow brattice "curtains" to be arranged in a manner that reduces the necessity of driving equipment through the curtains.

This proposal would also require that: (1) Belt conveyor haulageways be separated from return air courses by permanent stoppings to and including the fourth connecting crosscut outby each working face; and (2) that stoppings be used to separate escapeways from belt and track haulageways, and from areas where trolley wires or trolley feeder wires are located as required by proposed § 75.380(c)(3).

In addition to the construction requirements for ventilation controls specified in the proposal, paragraph (b) includes a new requirement that doors be installed in permanent stoppings separating air courses and haulageways at 300 foot intervals in coal heights below 48 inches and at 600 foot intervals in coal heights 48 inches or above. In a mine emergency, the ability to travel between such entries can be life-saving. Without doors, miners can be required to travel for hundreds or even thousands of feet in entries filled with smoke or other hazards before a means of reaching a safe entry can be found. The specified distance between doors reflects a number of comments on the preproposal draft provision, which required that doors be installed in at least every fifth permanent stopping. Many commenters objected to this preproposal, indicating that this distance can very greatly from mine to mine. The proposal reflects these comments and takes into account that miners are unable to travel as quickly in lower coal seams. Also, the location of doors in all escapeways would be required to be clearly marked so that persons can easily identifying the doors when travelling in the escapeway or in the entries on either side of the doors.

The proposal would permit the installation of airlock doors in permanent stoppings where necessary for machinery to travel and require that their locations be specified in the mine's ventilation plan. So that the integrity of intake and return air courses is maintained when airlock doors are used, the proposal would require that at least one door in each set of doors remain closed when the doors are in use. When the doors are not being used both doors would be required to be closed.

Paragraph (d) would require that all overcasts, undercasts, regulators, shaft partitions, and permanent stoppings be made of durable and noncombustible material, such as concrete, concrete block, brick, cinder block, or tile. Ventilation controls constructed of such

materials provide protection against fires starting at these locations, and prevent the spread of fire. When fire burns through a stopping or other ventilation control, the harmful products of combustion contaminate a greater area, increasing the danger to miners' lives. Thus, the proposal would not permit the use of materials that can fail quickly during fires, such as aluminum.

During an underground coal mine fire, temperatures can reach 1500 to 2000 °F. At this stage in rulemaking, MSHA believes that aluminum is not an appropriate construction material for ventilation controls because most aluminum alloys are known to fail at temperatures below 1500 °F. In fact, most alloys melt at a temperature of approximately 1100–1200 °F, and show a reduction of strength at temperatures well below this. For these reasons, the Agency does not believe that aluminum can be considered a "noncombustible" material, a concept discussed more fully below.

The Agency, however, also recognizes that coatings may be available which, when applied to aluminum, could provide protection against fire for extended periods of time. Consistent with this, the Agency has permitted appropriately coated aluminum ventilation controls to be used in some mines. Thus, the proposal would not require these aluminum ventilation controls already in use in underground mines to be removed. Under the proposed approach, however, no new aluminum controls would be permitted to be installed after the effective date of the final rule.

Another alternative would be to permit the use of appropriately coated aluminum ventilation controls without restriction. Under this alternative, however, the Agency anticipates that inspection of the ventilation controls for cracks, delamination, spalling, and other damage, would be required to be conducted as part of the weekly examination. MSHA solicits comments on both approaches.

Paragraph (d) of this proposal would also require ventilation controls to be maintained so that the controls serve the purpose for which they are intended. Controls of insufficient strength can fail in the event of movement or pressures generated by the mine roof, floor, or ribs.

For purposes of this section of the proposal, paragraph (d) would define "durable" and "noncombustible." Durable material would be material that is structurally equivalent to an 8-inch hollow-core concrete block stopping with mortared joints, as tested in accordance with section 12 the American Society for Testing and Materials (ASTM), Standard Method of Test E–72 (Conducting Strength Tests of Panels for Building Construction). Noncombustible material would be defined as material that will continue to serve its purpose as a ventilation control when subjected to ASTM E–119 (Fire Tests of Building Constructions and Materials) for one hour.

The definitions of durable and noncombustible are derived from recommendation number seven of the Agency's Task Force Report, "Two-entry Longwall Mining System—A Technical Evaluation." As the report of that Task Force indicates, 8-inch hollow-core concrete block is typical of construction material used for ventilation controls in underground coal mines. Therefore, to establish minimum fire-resistance and structural requirements for ventilation controls, the 8-inch block with mortared joints is used.

The amount of static pressure a material will withstand is demonstrated by test E–72. Structurally sound material will withstand the same or greater static pressure as concrete block, which is approximately 39 pounds per square foot, when this pressure is applied according to ASTM E–72. The noncombustibility of a material, as used in the proposal, is the amount of time the material can be expected to withstand a fire without failure to such a degree as to make it nonfunctional as a ventilation control. During test ASTM E–119, material is subjected to a constant heat source. In order to be considered "noncombustible" a material would have to avoid ruptures or other failures while being subjected to test E–119 for one hour. A rating of one hour is considered to be a reasonable time for miners to exit a mine during an emergency.

At this stage in rulemaking, MSHA feels that Two-entry Task Force recommendation number 7, which bases characteristics of ventilation controls on results of standard tests ASTM E–72, section 12, and E–119, should be applicable to all mines. MSHA solicits comments on this issue.

The proposal would add the requirement that doors and frames in stoppings, ventilation doors, and regulators, be noncombustible or be treated or coated with fire-resistant material on all accessible surfaces. Timbers would be permitted to be placed across an opening to create a stopping in heaving or caving areas, as long as they are coated on accessible surfaces with a fire-resistant material having a flame-spread index of not more 25, when tested in accordance with ASTM E–162 (Surface Flammability of Material Using a Radiant Heat Energy Source). Similarly, a new requirement would be that when sealants are applied to any ventilation controls, the sealant must have a flame-spread index of not more than 25, as per ASTM E–162. Based on Two-entry Task Force recommendation number nineteen, MSHA believes that this requirement should be applicable to all mines and is necessary because flame resistant ventilation controls are less susceptible to failing quickly in the event of a mine fire, and therefore contributing to the fire's intensity. Certain ventilation controls may require application of a sealant to prevent or reduce air leakage. Under these circumstances, it is important that whenever sealants are applied to ventilation controls, the sealants themselves do not contribute to the propagation of a flame, or flame penetration.

Derived from existing criteria, paragraph (f) would require a crosscut to be made before mining is discontinued in an entry or room that is advanced in access of 30 feet. Alternatively, the proposal would permit line brattice to be installed to maintain adequate ventilation. Either of these alternatives would prevent the creation of "dead-air" spaces where methane could accumulate and thereby create an ignition or explosion hazard.

Section 75.334 Worked-out areas and areas where pillars are being recovered.

This proposal is derived from existing § 75.329 and criteria in existing § 75.316–2 used for the approval of mine ventilation plans. These provisions specify that bleeder entries, bleeder systems or equivalent means should be used in pillared areas to control the methane accumulation in these areas. During and after pillar recovery, methane gas is generated from cutting and loading operations, and from the strata. When this occurs, bleeder systems route gases away from worked-out areas and areas where pillars are being mined. This proposal would revise the requirements for bleeder systems and establish ventilation standards for control of methane and other harmful gases, dusts and fumes in worked-out areas and for areas where pillars are being mined. A definition of "worked-out area" is included in the proposal. The proposal would require that gases, dusts and fumes from throughout such areas either be routed into return air courses or directly to the surface of the mine, or that such areas be sealed.

Recognizing that there are mines which experienced little methane liberation, the preproposal draft

specified that bleeder systems be established where pillars are being fully or partially recovered in mines in which more than .25 percent of methane in air had been found or in which there had been a methane ignition. Commenters questioned the need for bleeder systems in all mines where the methane threshold was exceeded or where a methane ignition had occurred, indicating that such a requirement would not identify the mines were bleeder systems should be used to control the accumulation of gas.

Rather than requiring the use of bleeders under specified circumstances, the proposal requires ventilation of worked-out areas where no pillars have been recovered to be accomplished by routing gases into a return air course, or directly from the worked-out area to the surface of the mine. Alternatively, the proposal specifies that these areas be sealed. Where pillars are being fully or partially recovered, the proposal would require a bleeder system to be used to control the air passing through the area being pillar-mined to continuously dilute and move gases from all portions of the area into a return air course or directly to the surface of the mine. When pillar extraction is completed in an area, the proposal would require ventilation of the area to be maintained by a bleeder system so that gases are continuously moved into a return air course or to the surface, or the area would be required to be sealed.

The proposal would eliminate the term "bleeder entries" used in the existing rules. Instead, the proposal would define the term bleeder system to include four types of systems. Under the proposal, a bleeder system would include any one or combination of these systems.

One bleeder system would be special air courses designed, developed, and maintained to continuously move air-methane mixtures to a return air course or to the surface. Such systems are generally used in large mines with multiple sections, long-term operations, and mines which do or have the potential to liberate large amounts of methane. Connectors between special air courses and between caved areas would also constitute a bleeder system.

A bleeder system would also include a methane drainage system provided through boreholes. Such a system could be established by drilling or developing the borehole from the surface and into the worked-out area. Other surface openings would also constitute a bleeder system, including those developed from worked-out areas to the surface. In a blowing ventilation system, these openings and methane drainage systems would permit evaluation of the system to be conducted at a surface location.

This approach to the ignition and explosion hazard of methane accumulation in worked-out areas permits safe, workable ventilation methods to be developed by the operator based on the mining conditions, including methane liberation. Recognizing that small "hill-top" mines which have minimum overburden, short projected operation, and minimum methane liberation may not require the same type of bleeder system as other mines, the proposal would require the type of bleeder system used to be specified in the ventilation plan.

Evaluation of worked-out areas where no pillars have been recovered, and of bleeder systems, would be required during the weekly examination of the mine, as specified by § 75.364 of the proposal. For worked-out areas where no pillars have been recovered, that section would generally require weekly travel to the area of deepest penetration, and measurements and tests at locations where the effectiveness of the ventilation system can be determined. Similar examination requirements would be specified for bleeder systems. In lieu of weekly examination by a person, the use of an AMS would be permitted as an alternative.

Accumulation of methane and oxygen deficient atmospheres continues to present serious hazards in worked-out area. The potential for ignition and explosion is always present unless steps are taken to prevent these conditions. By requiring adequate ventilation of worked-out areas and proper examination, either in the form of weekly travel or evaluation by an AMS, MSHA believes that the potential for serious accidents is substantially reduced.

In accordance with paragraph (e), if measurements and tests indicate that the bleeder system for a worked-out area is not performing properly, or if the system cannot be properly evaluated, the worked-out area would be required to be sealed. Paragraph (f) of the proposal would retain the requirement from existing § 75.330 that each mining system be designed so that worked-out areas can be sealed. The location of proposed seals for worked-out areas would be required to be included on the ventilation map for the mine.

Comments on the preproposal draft indicated some confusion over whether operators would be permitted or required to seal areas of a mine. This proposal would permit sealing in lieu of ventilating worked-out areas. It would also require sealing if results of air measurements indicate that the ventilation system is not effectively moving gases out of a worked-out area. For clarification, the option to seal worked-out areas where no pillars have been recovered is specified in paragraph (a) of this proposal.

Section 75.335 Construction of seals.

This proposal is derived in part from existing § 75.329–2 and would establish construction requirements for seals. The purpose of seals includes preventing methane or other harmful gases in worked-out areas from escaping, and preventing air from being diverted into the worked-out area. The proposal requires that seals be constructed of noncombustible material with mortar or equivalent fire-resistant material between all joints. Seals would also be required to be constructed in solid floor, roof, and ribs, and hitched at least one foot into the ribs. To prevent damage to seals in the event of a mine fire or other emergency, seals would be required to be coated on all accessible surfaces with fire-resistant material that will also minimize leakage.

Under the proposal, a sampling pipe or pipes would be required to be installed in seals so that the atmosphere in sealed areas can be sampled. Excessive levels of methane or other gases or substances behind seals could indicate that measures need to be taken to protect miners. The proposal would therefore require that sampling pipes be installed in each set of seals for a worked-out area. To prevent leakage of methane or other gases through sampling pipes, each pipe would be required to be equipped with a cap or shut-off valve.

Commenters objected to the draft requirement that sampling pipes extend into sealed areas for a distance of 40 feet.

These commenters indicated that 40 feet is excessive and that representative samples can be obtained with much shorter pipes. Some commenters suggested lengths that they considered to be appropriate.

After consideration of these comments, MSHA agrees that pipes 40 feet long may not be necessary to obtaining accurate sampling of sealed areas in all cases. Accordingly, the proposal requires sampling pipes to extend into sealed areas for a sufficient distance to obtain a representative sample of the sealed area, but in no case could sampling pipes extend less than 15 feet into the sealed area. This proposal is based upon samping procedures recommended in the 1979 MSHA study, "Interpreting the State of a Mine Fire." The study indicates that in sampling situations involving fires behind sealed areas, samping pipes should extent not less than 15 feet toward the fire. MSHA feels that this minimum distance is also applicable to non-fire situations.

Another draft requirement that commenters objected to was that sampling pipes be installed 12 inches from the mine roof. This provision was included in the preproposal since methane is lighter than air and a representative sample would therefore have to be obtained close to the mine roof. One commenter, however, indicated that this provision would create a hazard in high seam mines where it would be necessary to have a ladder in order to reach the pipe. Responding to this comment, the proposal was modified to require only that the sampling end of the pipe be within 12 inches of the mine roof, thus allowing the other end of the pipe to be more accessible.

Water accumulations behind seals is another hazard in sealed areas that could present hazards to miners. Roof falls or mining-through into sealed areas where this condition is present can result in inundations of working areas. Therefore, the proposal would require that a corrosion-resistant water pipe or pipes be installed in seals at the low points of the area being sealed and at all other locations necessary to drain water from sealed areas. To provide additional protection against inundation hazards, the proposal would require water traps to be installed on the outby side of the lowest point of each set of seals.

Paragraph (d) would require that seals be at least 16 inches thick. This requirement is aimed at preventing geologic pressures from damaging seals. To provide additional strength to seals that are more than 16 feet wide, the proposal would require that a pilaster be interlocked near the center of the seal. However, if the seal is greater than 24 inches thick, a pilaster would not be required.

Paragraph (e) of the proposal would permit timbers to be used to create seals in heaving or caving areas, but would modify the draft requirement that timbers used to create seals be treated or coated with fire resistant material. This proposal reflects a comment that it is only necessary to coat the accessible surface of timbers. The accessible surface of timbers or other compressible materials is the area most likely to be exposed to possible sources of ignition. The proposal would also require that the material used to coat seals have a flame-spread index of not more than 25, as tested in accordance with ASTM E–162.

If specified in the ventilation plan for the mine, this proposal would permit mine operators to construct seals using methods or materials other than those identified in the standard, as long as equivalent protection is provided. This provision recognizes that other methods or materials may be available that can be used to effectively seal worked-out areas, and it would also allow the use of improved methods or technology. The existing requirement for a plan to seal areas has been incorporated into proposed § 75.371 (Mine ventilation plan).

Section 75.340 Underground electrical installations.

This proposal would revise the requirements of existing § 75.1105 and transfer that standard to this Subpart D. The proposal would require that certain underground electrical installations be in fireproof structures or areas and be ventilated by intake air that is coursed directly into a return air course and away from working places. These installations would be those fitting the definition of permanent electrical equipment, which is included in this proposal. Permanent electrical equipment may present fire hazards, depending on the type of installation and the manner that it is used.

Compliance with existing § 75.1105 generally requires regulating the intake air ventilating the electrical equipment into a return air course by way of an opening in a stopping or other ventilation control device after it has passed over the equipment. While this method would continue to constitute compliance with the proposal, a new provision would permit the permanent electrical equipment to be located in a crosscut between an intake regulator and a return entry, subject to certain specified precautions. The proposal would require that when this method is used, the quantity of intake air passing over the equipment be at least 5,000 cubic feet per minute. Also, the air must pass directly into the return, and no part of the equipment would be permitted to extend into the return air course. Additionally, for battery charging stations, the proposal specifies that no part of the station or the equipment being charged would be permitted to extend into the return. Although charging stations are used for charging permissible battery equipment, the equipment, because of the connectors used, is not permissible while it is being charged. For this reason, it cannot extend into the return air course.

MSHA believes that the proposed approach will minimize the fire hazards associated with permanent electrical installations in a number of ways. By coursing the intake air over the equipment and directly into a return, gases and smoke produced by a fire would be prevented from reaching areas where miners are working. Heat from a fire would be prevented from entering the intake escapeway by the cooling effect of the velocity of the air current passing through the intake regulator, thus containing the fire within the crosscut until it can be extinguished. Additionally, a fire would not be likely to cause a reversal of air, and would be contained by the intake regulator, normally a stopping required to be constructed of noncombustible material.

The proposal would also specify exceptions from the general ventilation requirements in paragraph (a) for certain types of electrical equipment. Rectifiers or power centers that move as the working section advances or retreats are one type of equipment that, under the proposal, could be ventilated by intake air not coursed directly into a return. These power sources, which are generally used to deliver electricity to face equipment, are routinely moved as mining advances and retreats. Therefore, should a fire occur involving this type of equipment, the fire is not likely to go undetected. Even if detected by miners, however, the fire could rapidly become serious. Therefore, so that the potential for fires originating from this equipment is minimized, the proposed exception only applies to rectifiers and power centers that are dry-type or that contain nonflammable liquid.

Certain electrical installations necessary for the operation of belt conveyors would also not be required to be located in intake air coursed directly into a return. This proposed exception would apply to installations that are located in an air course equipped with an early-warning fire detection system. This system would be required to be installed as specified in proposed § 75.350 (belt conveyor entries) and would provide early warning of the products of combustion.

Rectifiers for trolley haulage systems, underground substations, power centers, permanent pumping stations would also be permitted to be located in intake air not coursed directly into a return provided that they are housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system. The enclosure for this equipment would also be required to have automatic safety features that

would be triggered if the temperature in the fireproof structure reaches 165 degrees Fahrenheit or a rise in carbon monoxide concentration of 15 parts-per-million (ppm) above the established ambient level is detected. In the event of either of these conditions fireproof doors must close, power to the structure must be deenergized, and a warning signal must be activated at a surface location that can be seen or heard at all times while any person is underground. The surface location would be required to have access to two-way communication with affected working sections. These measures are necessary since a rise in temperature could provide a source for methane ignitions, or could indicate that a fire has occurred inside the structure since the specified temperature is higher than the safe operating temperature of the electrical equipment. A rise in carbon monoxide concentration of 15 part-per-million (ppm) above the ambient for the area could also indicate the incipient stage of a fire. As discussed more fully with respect to § 75.350 (Belt Conveyor Entries), after the 15 ppm level of CO is reached in a fire situation, a hazardous condition can develop rapidly.

Paragraph (c) of the proposal would apply to permissible pumps, and would permit them to be operated in return air courses. In many instances, the ventilation system can be severely restricted or blocked entirely by water accumulations in returns. For this reason, pumps frequently must be used in these air courses. Since the pumps would be required to be permissible, and be installed in air that is flowing away from working areas, the explosion hazard and the potential for contamination of working areas by the products of combustion are minimized.

Consistent with the definition of permanent electrical equipment, the proposal would apply to compressor stations. MSHA recognizes, however, that certain large compressors can be moved from place to place in a mine. These portable types of compressors can, under certain circumstances, present fire hazards, but a rule that would require all such equipment to be enclosed in fireproof structures and ventilated into a return may be impractical and significantly impair the utility of the equipment. The Agency intends to address this issue in the final rule and solicits comments on the appropriate way to address portable compressors in this rulemaking. Alternatives may include specific ventilation requirements based on the nature of the installation and the use of fire resistant lubricants, or additional examination requirements which might be included in the proposed preshift or onshift examinations. Also related to this issue, MSHA has examined its existing electrical and fire protection standards, which generally specify protective actions for electric equipment, including precautions based on whether the equipment is attended or unattended, or uses flammable hydraulic fluid. Similar requirements for compressors may be appropriate.

Section 75.341 Direct-fired intake air heaters.

This proposal is new and would establish requirements for the use of direct-fired intake air heaters. The provisions of this proposed standard would provide safeguards against fire hazards, adverse effects on mine ventilation, and persons coming into contact with intake air heaters.

Intake air heaters are becoming increasingly common in the mining industry. Often they are used to heat intake air in colder climates so that surfaces in shafts, slopes, and other mine entries do not become frozen. The use of these device, however, can increase the level of carbon monoxide introduced into the mine, and improperly installed and maintained heaters can be a fire hazard. Also, fuel supplies for heaters can increase the risk of explosion near mine openings, and overheating of intake air can cause air reversals to occur in mine intake shafts.

Under this proposal, heaters would be required to be located or guarded to prevent contact by persons. If any component of a heater system malfunctions, the proposal would require the affected heaters to switch off automatically. Thermal overload devices would be required to protect the blower motor from overheating, and if a flame-out occurs, the fuel supply to the heater must turn off automatically. These safeguards would protect against fires occurring in heaters and heater systems, which can result in the products of combustion being delivered by the main mine fans into the main ventilating current of the mine. Also, so that liquid fuel will not leak into the mine, the proposal would require fuel storage tanks to be located or protected to avoid this occurrence.

Paragraph (d) of this proposal would require a pressure switch or other device to switch off the heaters when the volume of air entering the shaft, slope, or drift where air is being heated is reduced by 10 percent or more when persons are underground. This change from the preproposal draft responds to comments that the language of the draft provision was too subjective. The preproposal provided that heaters must switch off when the volume of air being heated is reduced and mine ventilation is adversely affected.

Paragraph (d) would not require steam exchange heaters to switch off automatically when the volume of air being heated is reduced, but would instead allow such heaters to be shut down on a delayed basis. This provision recognizes that these heaters need to cool down to prevent steam from building to potentially dangerous pressures.

Section 75.342 Methane monitors.

The proposal retains the requirement in existing § 75.313 that methane monitors be installed on all face cutting machines, continuous miners, shortwall and longwall face equipment, and loading machines. The proposal would include all electric, diesel, or battery-powered cutting or loading machines.

Constant monitoring of methane during mining activities is an important safeguard against methane ignitions and explosions that could endanger the lives and safety of miners. Therefore, in addition to specifying installation and maintenance requirements for methane monitors, this proposal would require that a warning signal be given when the methane concentration in air at any monitor reaches 1.0 percent. The monitor would also be required to deenergize the cutting or loading mechanism of the equipment on which it is mounted when the methane concentration in air at the monitor reaches 2.0 percent.

Commenters indicated that additional hazards can be presented to miners when equipment is suddenly deenergized by a methane monitor. They suggested that the tramming controls of diesel, battery and electric machines on which methane monitors are installed should be allowed to remain in operation when 2.0 percent methane is encountered. This would permit the equipment to be withdrawn to a safe location, if necessary, before it is completely shut off. After consideration of these comments, this suggestion was not included in the proposal. Under no circumstances is a person permitted under unsupported roof. Therefore, if equipment is deenergized by a methane monitor, it is unlikely that the miner would be exposed to a hazard requiring that the tramming controls be operative, particularly since the tramming of equipment alone could be sufficient to create an ignition source of methane.

The proposal retains the existing requirement that monitors be maintained in permissible and proper operating condition. This prevents a monitor from becoming an ignition source, and would ensure that monitors provide accurate monitoring of methane. The proposal would also require sensing devices of monitors to be installed as close to the working face as practicable.

As noted in the discussion of methane detectors in § 75.320 of the proposal, MSHA believes that maintaining methane monitors in proper operating condition requires that the devices be frequently calibrated. While the proposal does not include a requirement for calibration at specific intervals, MSHA solicits comments on whether the frequency of calibration should be addressed in the final rule.

Section 75.343 Underground Shops and Stationary Diesel Equipment.

This proposal would retain that part of existing § 75.1105 pertaining to underground shops and transfer it to this Subpart D. Additionally, the proposal would address stationary diesel equipment, such as diesel-powered compressors and generators.

Underground shops and stationary diesel equipment would be required to be equipped with automatic fire suppression systems, or enclosed in fireproof structures or areas, and be ventilated with intake air that is coursed directly into a return air course. For shops, these precautions are necessary due in part to the nature of the activities which take place in these areas, such as cutting and welding, and to the materials which are used in shops, such as solvents, oils, and greases. In the event of a fire, the products of combustion need to be moved away from areas where persons are working, and the fire must be controlled. Also, during normal operations in shops, vapors, mists, and fumes are produced which must be vented directly into a return air course so that they are kept out of the air used to ventilate areas where persons will be required to work.

In the case of stationary diesel-powered equipment, the same precautions are necessary to protect against fires and the products of combustion since this equipment is often quite large and frequently operates while unattended.

Section 75.350 Belt conveyor entries.

The proposal revises existing § 75.326, which requires entries used as intake and return air courses to be separated from belt haulage entries and prohibits air that has been coursed through belt entries from ventilating working places. The proposal would allow belt haulage entries to be used as intake air courses in conventional, continuous, and longwall mining sections, provided that specified safety precautions are used.

The precautions specified in the proposal would not be required for belt conveyors less than 600 feet long that are used on a working section to transport coal from the face, or for cross belt conveyors that are 600 feet long or less and are located on a working section. These exceptions are consistent with the proposed exception for ventilation controls in rooms that are 600 feet long or less specified in proposed § 75.333 (Ventilation controls). Like that exception, this proposal would recognize a generally accepted mining practice.

MSHA's experience regarding petitions for modification of the current standard has been that ventilation benefits are achieved by allowing intake air coursed through a belt conveyor haulageway to ventilate working places. Over 30 petitions for modification have been granted to permit "belt air" to ventilate face areas. This method increases the quantity of air that can be supplied to face areas, and thereby provides increased protection to miners against hazards created by accumulation of methane and other harmful gases, as well as respirable dust. Also, by using the belt entry as an intake, the velocity of air in the belt entry can be increased. This provides more positive ventilation and reduces the possibility of methane accumulation in the belt entry. Additionally, it increases the effectiveness of early-warning fire detection systems, which would be required to be installed in such entries by this proposal. The experience at mines that have used "belt air" is that, properly monitored, it is a safe method of ventilating working places.

In order to use intake air coursed through a belt conveyor haulageway to ventilate a working place, this proposal would require a minimum air velocity of 50 feet-per-minute (fpm). This minimum velocity is necessary to prevent methane from accumulating along or under a belt conveyor. Unlike the preproposal, however, the proposal would not require that the velocity of air coursed through the haulageway be limited to 300 fpm.

The draft's 300 fpm maximum air velocity for belt conveyor entries was derived from MSHA's requirement for fire-resistant belts. Belts are tested for fire resistance in air traveling at 300 fpm, and fires on belts must extinguish at that velocity to gain approval. Comments on the draft proposal, however, objected to the proposed 300 fpm maximum, indicating that this would be unduly restrictive if belt air is to be used to ventilate a working place.

Since these comments were received, the Department of the Interior, Bureau of Mines, has completed preliminary tests to determine the effect of ventilation rate on the fire hazards of rubber conveyor belting. These tests were made at 300 and 800 feet-per-minute airflows on two types of rubber conveyor belts used in the industry. The preliminary results indicated that (1) the fire hazards in terms of flame propagation and fire intensity are no greater at 800 fpm than at 300 fpm for the two belts tested, and (2) downstream combustion products concentrations are reduced and air reversal is negligible at the higher airflow. In light of these results, the proposal does not specify a maximum air velocity when intake belt air is used to ventilate a working place. This would permit the velocity of air in the belt entry to vary based on the ventilation needs to each mine, and would thus maximize the ventilation benefits derived from the use of belt air at the working face.

Also, if intake belt air is to be used to ventilate a working place, the proposal would require the installation of an early-warning fire detection system in the belt entry. Consisting of carbon monoxide sensors that can detect the products of combustion even before a flame is visible, the system would provide an early fire alert and time to react to a fire. The proposal would also require that permanent stoppings be installed to separate the belt entry from escapeways ventilated by intake air and from return air courses. Permanent stoppings, which would be installed in accordance with proposed § 75.333 (Ventilation controls) would provide substantial protection against having fires or the products of combustion spread from one side of a stopping to the other.

Similar protections would be required by the proposal if intake air is used in a belt conveyor entry, but that air is not used to ventilate a working place. The haulageway would be required to be separated by permanent stoppings from return air courses, and the velocity of air in the belt entry would be required to be no less than 50 fpm. Additionally, the proposal would require that air from the haulageway be coursed directly into a return. Since air from the entry would not be routed to working places, the proposal does not require that an early-warning fire detection system be installed. This measure would be unnecessary since the products of combustion from a belt fire would not present an immediate danger to miners.

The early-warning fire detection systems that would be required to be

installed by this proposal are integral parts of atmospheric monitoring systems, which are addressed by § 75.351 (Atmospheric monitoring system) of this proposal. In accordance with that proposed section, sensors for detecting carbon monoxide would be required to be installed not more than 50 feet inby each belt-drive and each belt take-up, or not more than 50 feet inby each belt-drive and take-up combination where the take-up is within 300 feet of the belt drive. Sensors would also be required not more than 50 feet inby each section belt tailpiece. Monitoring at these locations allows detection of possible fires at each end of a belt conveyor. To provide protection along the belt, sensors would be required to be installed at least every 2,000 feet along each belt conveyor haulageway.

Some commenters indicated that continuous monitoring of belt conveyors as proposed by this section would be unnecessary. They suggested that monitoring only while the belt conveyor is operating would be sufficient. However, belt fires can and do occur when belt conveyors are stopped. A drive roller that becomes hot while a belt is operating will concentrate its heat on a fixed point when the belt is stopped and can cause a belt fire to develop. Therefore, continuous monitoring of belt conveyors, even when stopped, is retained in this proposal.

To ensure reliability, the early-warning fire detection system would be required to monitor circuit continuity and sensor operation, and give signals to a designated surface location when a malfunction exists in the system. Signals would also be required to be given when carbon monoxide in air at any sensor reaches 10 parts-per-million of CO above the established ambient level for the area. This proposal would also require persons in working places to be withdrawn. If necessary, corrections would be made. The established ambient level of CO and the method for establishing the ambient would be specified in the mine's ventilation plan.

If a carbon monoxide concentration in air of 15 parts per million or more above the ambient is reached, the early-warning fire detection systems would activate a fire alarm and the mine evacuation plan would be required to be implemented. Several commenters suggested that these carbon monoxide action levels would be too restrictive where diesel powered equipment is used because of the carbon monoxide normally contained in the exhaust of this equipment. The commenters were concerned that an inordinate number of false alarms would result. At this stage in the rulemaking process, MSHA believes that the proposed action levels are appropriate in order to provide the maximum protection available from the use of early-warning fire detection systems.

In the early stages of a fire, a smouldering fire source will release carbon monoxide before a flame is visible. Visible flame is normally observed when between 10 ppm and 15 ppm of CO is being released into the mine atmosphere. After 15 ppm, fire grows rapidly and the amount of CO released can quickly reach levels that present health risks to miners. See "Equivalency Tests of Fire Detection Systems for Underground Coal Mines Using Low Level Carbon Monoxide Monitors" (Miller, Turcic, and Banfield). For this reason, granted petitions for modification which rely upon early warning fire detection systems have specified alert levels of 10 ppm of CO above ambient, and alarm levels at 15 ppm above ambient, and these levels are retained in the proposal.

This proposal would require that while persons are underground, a person designated by the operator be present at the surface of the mine to see or hear the signals of the carbon monoxide detection systems. This person would be required to have access to two-way communication with persons on working sections and with other persons having identifiable duty stations, and a map showing underground monitoring system components and their locations would be required to be posted at the surface location so that information can be relayed quickly to and from working places in the event of an emergency. Commenters suggested that the persons monitoring the signals and alarms should be stationed underground so that they could perform other duties. After consideration of these comments, MSHA believes, at this stage in the rulemaking process, that the person responsible for responding to signals and alarms should be on the surface. This will ensure that in the event of a fire or other emergency in the mine, the signal location is not endangered by conditions underground. Further, the impact of the proposed requirement could be minimized by having the person on the surface be available for other duties, as long as he or she is continuously able to see or hear signals and alarms from the fire warning system.

Under paragraph (h) of the proposal, if any portion of the early-warning fire detection system malfunctions or is deenergized, the affected belt conveyor may be operated only if a qualified person patrols the affected area and monitors for carbon monoxide with a hand-held carbon monoxide detection device with a level of detection comparable to the monitoring sensors. The qualified person would be required to have communication with a designated surface location. More than one qualified person would be required to patrol for carbon monoxide if two or more adjacent sensors become inoperative, or if the complete system becomes inoperative. In the latter case, a sufficient number of qualified persons would be required so that the affected belt entry is travelled in its entirety in an hour, or it would be necessary for qualified persons to continuously monitor at the end of each belt flight. If the system remains inoperative after the completion of the shift of which the malfunction occurred, the proposal would require qualified persons to continue to patrol the belt once each hour in its entirety, or qualified persons with hand-held monitors would be required to be stationed at each sensor location. These precautions would ensure that during brief periods when the detection system is inoperative, equivalent means of fire detection will serve to protect miners on working sections from potential belt fires.

The proposal would require that at least once each coal producing shift, carbon monoxide sensors be visually examined. Also, carbon monoxide sensors would be required to be capable of detecting carbon monoxide at a level of ±1 ppm throughout the operating range. While the proposal does not include a specific interval for calibration of monitoring sensors, MSHA believes that routine calibration will be necessary to maintain sensing accuracy and solicits comments on whether a required calibration interval should be included in the final rule.

Some commenters stated that examination of sensors during each production shift would be burdensome. However, the proposal retains this requirement since the examination is simply a visual one, and the operation of each sensor is important to the overall function of the monitoring system. Also, it would be possible to make this visual examination during the preshift or onshift examination that would be required by this proposed rule.

To verify the performance of the detection system, and provide data regarding trends in the mine, the proposal would require that a record be made when a signal device or alarm of an early-warning fire detection system is activated. This record would include the date, time, and carbon monoxide

concentration at the sensor producing the signal and the reason for its activation. Records would be required to be retained for one year.

One commenter suggested that records made pursuant to this proposal be required to be "available" at the mine for one year. This recommendation, the commenter stated, would allow the use of centrally-stored computerized records. The proposed requirement that records be retained for at least one year does not prohibit centrally-stored computerized records.

MSHA solicits comments on the availability of product-of-combustion sensors that are equally as effective as sensors that detect low-level rises in carbon monoxide. At present, MSHA is unaware of any types of commercially available sensors that provide early-warning capability equivalent to CO sensors. The Agency will determine whether to address alternative types of product-of-combustion sensors in the final rule based on the comments received. Commenters should address the types of sensors the final rule should include, the alert and alarm levels necessary to give early warning of fire, and the appropriate sensor spacing and location.

Section 75.351 Atmospheric monitoring system.

This proposal is new and would establish performance requirements for atmospheric monitoring systems (AMS) used in mines. Under the proposal, an AMS would utilize sensors to monitor the mine atmosphere for products of combustion and other ventilation problems. Like the early-warning fire detection systems used in accordance with proposed § 75.350 (Belt conveyor entries), but depending on the purpose for which AMS are used, monitoring systems would consist of carbon monoxide sensors, as well as sensors for monitoring methane and oxygen. As with proposed § 75.350, MSHA solicits comments on whether the final rule for AMS should consider other types of sensors, and, if so, commenters should address the appropriate alert and alarm levels for these sensors, as well as sensor spacings and locations.

The proposal takes a different approach than the preproposal, which would have required that an AMS be installed in every mine in which a methane concentration of 1.0 percent or more had been detected in a main or submain return air course. Commenters indicated that this draft approach would be prohibitively expensive to a significant number of mine operators. Also, some commenters questioned the methodology used for determining that 1.0 percent methane has been present in main or submain return. After consideration of these comments, MSHA agrees that the 1.0 percent methane trigger for atmospheric monitoring systems as specified in the preproposal may not be the most appropriate way to address this emerging new technology.

On the other hand, MSHA believes that the use of atmospheric monitoring systems should be encouraged. The proposal therefore generally permits the voluntary use of such systems and provides incentives for their use. Operators who install such systems could use them under this proposal to measure methane and carbon monoxide concentrations as specified in proposed sections 75.362 (On-shift examination), to evaluate bleeder systems, including weekly examination of worked-out areas where no pillars have been recovered, as required by proposed § 75.364 (Weekly examination), and to evaluate certain return air courses under proposed § 75.365 (Examination of return air courses developed before March 30, 1970). One commenter recommended that monitoring systems should be permitted to be used in order to satisfy all of the examination and testing requirements of the proposed rule. Although MSHA believes that substantial safety benefits can be achieved by atmospheric monitoring, the Agency does not believe, at this stage in the rulemaking process, that reliance on monitoring systems would provide an adequate substitute for all physical examinations, particularly the preshift and on-shift examinations.

The proposal would also require the use of atmospheric monitoring systems in mining systems where both escapeways required by MSHA standards are ventilated by the same continuous split of air. Derived from MSHA Two-entry Task Force recommendation number four, MSHA believes that this requirement would result in a substantial safety benefit in all mining systems where both escapeways are on the same continuous split of air. Under § 75.380 of the proposal, the ventilation plan would be required to specify new development areas of older mines where two intake escapeways on separate splits cannot be provided. Thus, for some older mines MSHA anticipates that certain new development sections may of necessity ventilate both escapeways on the same continuous split of air. In this situation, an AMS would be required to be installed and operated in the intake escapeway so that the entire escapeway is monitored. The specified locations for AMS sensors would be adjacent to the section loading point, and at 2000 foot intervals for a distance of at least 6000 feet outby the section. The proposal would require AMS sensors to monitor the mine atmosphere for parts-per-million of carbon monoxide. Early warning of fire in the intake escapeway, for example, would allow miners to escape through the other escapeway before it becomes contaminated by smoke or other harmful products of combustion.

Under the proposal, an AMS would consist of sensing devices to monitor the mine atmosphere and instruments at a surface location designated to receive information from the monitoring sensors. As under paragraph (b), the specific type of sensors and monitoring locations required would be dependent on specific mining situations. Under paragraph (c), an AMS used to monitor belt conveyor haulageways as part of the on-shift examination would consist of sensors to monitor for carbon monoxide and methane at specified locations so that the haulageway can be effectively monitored. Where used to monitor return air splits in accordance with proposed § 75.362 (On-shift examinations), sensors would be required to monitor for methane and carbon monoxide at a location between the last working place ventilated by that air split and the junction where the split meets another split, a seal, or a worked-out area. Monitoring at this location would also be permitted in place of physical measurements in splits of air returning from longwall or shortwall faces.

If in accordance with § 75.384 (Weekly examination) of this part an AMS is to be used to evaluate special air courses used as bleeder systems, sensors would also be required to monitor for methane and carbon monoxide. In addition, the percentage of oxygen in the atmosphere would be required to be monitored so that oxygen deficient atmospheres in the bleeder system do not present a hazard to persons. The locations for these sensors would be where air from a worked-out area enters a return split of air, and at other locations, if the locations are specified in the ventilation plan. This proposal would also allow mine operators to elect to use continuous monitoring by an AMS to substitute for the weekly examination of worked-out areas where no pillars have been recovered. MSHA believes that the use of AMS sensors to monitor methane, oxygen and carbon monoxide where air from the area enters a return split and at other locations specified in the ventilation plan will allow an accurate

assessment of the ventilation system comparable to a physical examination.

The proposal would also establish requirements for monitoring system performance, setting alert and alarm levels, sensor calibration requirements, and requirements for recordkeeping. Like the locations and types of sensors specified in paragraphs (b) through (e), these requirements would apply only when AMS are used in accordance with the proposal. In other words, AMS would have to meet these provisions when installed in intake escapeways as required by paragraph (b), or when used to monitor bleeder systems and worked-out areas, return air splits, or belt conveyor haulageways.

Accordingly, under paragraph (f), a system used in accordance with the proposal would be required to give a signal when an electrical or mechanical deficiency occurs in the system, and depending on the type of monitors used, to give a signal when a sensing device detects a carbon monoxide concentration in air at 10 parts-per-million (ppm) above the established ambient level for that area, when a device detects a methane concentration exceeding an allowable concentration under proposed § 75.323 or the ventilation plan, or when the oxygen concentration at any sensor falls below 19.5 percent. The proposal would further require that when the carbon monoxide level at any carbon monoxide monitoring station reaches 15 ppm above the established ambient level for that area, fire alarms be activated and the mine evacuation plan be implemented.

So that sensing devices are able to detect gases at the specified levels, paragraph (i) of the proposal would require each carbon monoxide sensor to be capable of detecting carbon monoxide in air at a level of ±1 ppm throughout the operating range. Methane sensors and oxygen sensors would be required to be capable of detecting one percent methane or 19.5 percent oxygen, respectively, with an accuracy of ±0.2 percent. While the proposal does not include a specific interval for calibration of monitoring sensors, MSHA believes that routine calibration will be necessary to maintain sensing accuracy and solicits comments on whether a required calibration interval should be included in the final rule.

A person designated by the operator would be required to be located at the surface of the mine to see and hear alarms and signals while persons are underground, and to have access to two-way communication with persons on working sections. When a signal or alarm is activated, the proposal would require the monitor producing the signal to be identified, an immediate examination to be made to determine the cause of the signal's activation, and appropriate action to be taken.

The proposal also would require that a record be made if a signal device is activated. The date, time, methane, oxygen or carbon monoxide concentration at the sensing device producing the signal, and the reason for its activation would be required to be recorded and maintained for at least one year.

Section 75.352 Return air courses.

This section is derived from existing § 75.328. It would prohibit, except in areas of mines opened before March 30, 1970, return air courses from being used as belt haulage entries. The exception for areas of mines opened before March 30, 1970, is derived from the existing standard. It recognizes that in older coal mines developed before the existing standard the belt entry was frequently used as the main intake or return air course for working sections.

Preproposal draft § 75.350 would have permitted the use of belt entries as return air courses, provided that early warning fire detection systems and methane detection systems were installed, and other precautions were taken. Some commenters objected to this draft provision, however, indicating that since air returning from the working section contains methane and coal dust produced during coal extraction, the potential for methane and dust explosion may be increased when this air is coursed over the conveyor belt structure. This hazard, the commenters concluded, would not be adequately addressed by the routine use of continuous monitoring devices.

After consideration of these comments, the proposal retains the existing requirement for separation of belt entries and return air courses. Under the proposal, mine operators wishing to use the belt entry as a return air course would continue to be required to petition the Agency for modification of the standard. Through the petition for modification process, a mine-by-mine assessment is made of the safety and health impact of locating the belt in the return. Under the existing standard the Agency has granted petitions specifying continuous methane and carbon monoxide monitoring and other precautions to protect against the risk of ignition or explosion caused by conveyor belts operated in return air courses.

An alternative to the proposal still being considered by MSHA is to permit conveyor belts in return air courses, provided that certain precautions are implemented, including continuous monitoring. If adopted, these precautions would be set forth in the final rule. MSHA is particularly interested in additional comment regarding: (1) Specific safety hazards and/or benefits of the proposal to retain the requirement of separation of the belt from the return air course; (2) specific safety hazards and/or benefits of the alternative that would permit belt entries to be used as return air courses; and (3) any additional safety precautions that may be necessary if the alternative is adopted.

Section 75.360 Preshift examination.

This proposal is derived from existing §§ 75.301–3, 75.303 and 75.303–1, and would require that before any shift begins, a preshift examination be conducted by a certified person. Like the existing standard, the preshift examination required by the proposed rule would include examination of underground areas for hazardous conditions and for methane accumulation and oxygen deficiency. Also like the existing standard, this proposal requires that during the preshift examination air volume and velocity measurements be made to verify that the mine is being ventilated properly.

The preshift examination is a primary means of determining the effectiveness of the mine's ventilation system and detecting developing hazards, such as methane accumulations. Identification of these hazards before a shift begins is a traditional safety practice in the industry that can save miners' lives or prevent injuries during the shift. Consistent with this purpose, the proposal retains the requirement from the existing standard that the preshift examination be conducted within three hours before the shift begins.

The proposal clarifies the areas where examinations and tests during the preshift examination would be required to be made. Examinations for hazardous conditions and tests for methane and oxygen deficiency would be required for roadways and track haulageways where persons are scheduled to work or travel on the oncoming shift, for belt conveyors on which persons will ride and for the belt conveyor entries, for working sections, working places, ventilation controls, for seals along intake air courses, and for entries or rooms driven off an intake air course where intake air passes through or along these entries or rooms on its way to a working section. An examination of these areas before a shift begins would alert miners on the oncoming shift if hazards exist and would allow corrective action to be taken. Also detected during preshift examinations are hazards such as loose roof or ribs, water accumulation, electrical hazards from trolley wires that could cause injury or ignitions, and fire hazards from damaged or improperly operating belt conveyors.

A new requirement would be that the preshift examination include underground areas where unattended diesel equipment will be used during a shift, or where an electrical installation will be energized. These types of equipment can be ignition sources, thereby creating fire and other hazards for miners on the working sections. Examination of these areas before unattended diesel equipment is used or electrical installations are energized can protect against these hazards, and is particularly important before the first shift of the week, when an ignition hazard can be presented by methane accumulating when the mine is idle.

The preshift examination would also include measurements of air volume and velocity at certain locations where determinations can be made that air is reaching working places at the required levels. Measurements would be required to be made of the volume and velocity of air in the last open crosscut of each set of entries or rooms in each working section in the line of pillars containing the permanent stoppings that separate the intake air course and the return air course. Where pillars are being extracted, the location for the measurements would depend on whether a single split of air is used to ventilate the pillar line, or a split system is used. Where a single split of air is used, the measurements would be required in the intake entry immediately outby the first open crosscut outby the line of pillars being mined. In sections where a split system is used, the measurements would be taken in the intake entries immediately outby the split point.

On a longwall or shortwall section, the volume and velocity of air would be required to be measured in the intake entry or entries, at the intake end of the face immediately outby the face. In order to determine that a sufficient velocity of air is moving across the entire face, measurements would also be required to be made at locations at least 50 feet from each end of the face. Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, the air volume and velocity measurements would be required to be made in the last open crosscut in the line of pillars containing the temporary ventilation controls that separate the intake air courses from the return air courses.

The proposal would reduce and simplify existing recordkeeping requirements for preshift examinations. For each preshift examination, the examiner would be required to certify by initials and date, for each area examined, that the proper preshift examination was made. The time of the examination would be required to be noted. Also under the proposal, a record would be required to be made of uncorrected hazardous conditions and their locations, when these conditions cannot be corrected during the preshift examination. For example, if air measurements at a specified location disclose that the volume and velocity of air at that location is not as required in the ventilation plan, a record of that condition would be required to be made if the condition is not corrected during the preshift examination. The record would be required to be retained at a surface location at the mine for at least one year. If the condition is corrected, or if no hazardous conditions are detected during the examination, the proposal would not require that a record be made.

The proposal would allow records to be made by persons other than the person performing the preshift examination to permit certified persons conducting the examinations to remain underground to perform other tasks. However, the record would still be required to be made before any person, other than certified persons conducting required examinations, enters any underground area of the mine. Also, the certified person who conducted the examination would be required to verify the results of the examination by initials and date upon returning to the surface of the mine.

The proposal would delete the requirement in existing § 75.323 that mine foremen countersign reports of examinations. At this stage in rulemaking, MSHA believes that this requirement is unnecessary since the mine foreman would continue to be responsible for correcting hazardous conditions in the area under his or her supervision. Similarly, the requirement in existing § 75.324 that mine foremen complete a daily report of the condition of the mine under his or her supervision would also be deleted. MSHA believes that this report is duplicative of other recordkeeping requirements specified under this proposal and would result in no additional safety benefits.

Several commenters recommended that certified persons be permitted to preshift-examine their own work areas. The proposal, consistent with the existing standard, would permit this practice. One commenter also suggested that certified persons conducting preshift examinations should be permitted to be accompanied by another person in case the examiner is injured during the examination. If an operator so chooses, the proposal would permit more than one person to conduct this examination.

Several commenters raised questions about the areas of the mine where a preshift examination would be required. One commenter suggested that all areas of the mine, regardless of whether miners will work or travel there, should be preshift-examined, while other commenters indicated that a preshift examination would be unnecessary in all of the areas specified in the preproposal draft.

After consideration of these comments, MSHA believes that the areas specified in the proposal should be examined in order to protect miners from hazards that may develop. The Agency believes that it is unnecessary to require a preshift examination of all areas of the mine if no persons are expected to work or travel in all areas during the shift. This proposal is intended to provide protection to miners in working sections from hazards which they might encounter during their shift. Other sections of the proposal, particularly the supplemental examination that would be required by § 75.361 (Supplemental examination) of this proposal, would provide additional protections to miners from hazards developing in areas of the mine that have not received a preshift examination.

Paragraph (d) of this proposal incorporates a comment suggesting that preshift examiners should "danger off" areas of the mine that are hazardous for work or travel. Responding to this comment, the proposal provides that a warning sign be posted conspicuously where a hazard exists so that persons entering that area would see it. No person would be permitted to enter the area while the sign is posted unless he or she is designated by the operator to correct the hazardous condition. Unlike existing § 75.303, this proposal would not specify danger signs where violations of mandatory standards exist. This recognizes that the preshift examination is not intended as a complete mine inspection, but assumes that where such violations do constitute hazards, danger signs would be posted.

Section 75.361 Supplemental examination.

This proposal would modify existing § 75.314, and would require that an examination for hazardous conditions be made by a certified person before any person enters an area of the mine that has not been preshift-examined. An examination by a certified person would not be required before certified persons conducting preshift or other examinations that would be required by this proposal enter such areas, nor would the supplemental examination be required for persons, who, because of the nature of their work, travel throughout the mine. As under the existing rule, the proposal would permit these persons to make their own examinations for hazards, provided that they are trained and qualified in the use of air quality detectors and air measurement devices. The required supplemental examination would include tests for methane and oxygen deficiency, and a determination that the air is traveling in its proper course and at its normal volume and velocity. The proposed certification provision is like that prescribed in proposed § 75.360 (Preshift examination).

The preproposal draft provided that persons, such as pumpmen, who enter areas that have not been preshift-examined may make the supplemental examination for themselves under certain conditions. Several commenters indicated that this exception for pumpmen should be expanded to allow other persons, such as belt mechanics, to conduct the examination. This proposal reflects those comments and, like the existing standard, recognizes that certain occupations require miners to travel and work in remote areas of the mine. References to pumpmen and belt mechanics are used in the proposal only as examples.

One commenter suggested that only a certified preshift examiner should be permitted to conduct the supplemental examination and that qualified persons not be permitted to conduct supplemental examinations for themselves. This suggestion was not incorporated into the proposal, since at this stage in the rulemaking process, MSHA does not believe that modification of the existing requirements would serve the practical purpose to which this aspect of the proposal is directed, nor would it result in a significant increase in safety benefits.

Section 75.362 On-shift examination

This proposal is derived from existing §§ 75.301–3, 75.303–1, 75.304, 75.307, 75.307–1, 75.309 and 75.309–2 and would establish requirements for on-shift examinations. Like the preshift examination, the on-shift examination would include examination for hazardous conditions, tests for methane and oxygen deficiency, and measurement of air volume and velocity at specified locations. However, unlike preshift examinations, this section would require on-shift examinations only on shifts on which coal is produced. This approach is retained from the existing standard and recognizes that there is a greater potential for hazards to develop on coal-producing shifts than on non-coal producing shifts.

A certified person would be required by this proposal to examine each working section on which coal is produced during the shift. Since the mining environment changes constantly during coal production, this examination would verify that hazards have not developed on the section since the area was preshift-examined, and would include tests for methane and oxygen deficiency.

A proposed new provision would require on-shift examination of belt conveyor haulageways in which belts are operated. With the potential for heat or sparks to be produced by belts moving over stuck or improperly operating belt rollers, belt conveyors can be a major source of ignition in underground coal mines. Examination of belt conveyors is thus aimed at reducing the potential for the development of hazards associated with operating belts. The proposal would require the entire belt conveyor to be examined during production shifts. If a certified person conducts the examination, the proposal would allow the on-shift examination to satisfy the requirements for preshift examination of the belt conveyor and haulageway, provided that the examination is made within three hours preceding the oncoming shift. Allowing these examinations to be conducted at the same time eliminates a potentially duplicative examination requirement while maintaining the safety protection afforded by belt examinations.

The proposal would require certified persons conducting on-shift examinations to repeat the air volume and velocity measurements at the locations where measurements would be taken during the preshift examination. This provides an additional check of the mine's ventilation system and verifies that ventilation changes in the mine during the production process have not occurred. Reduced volume or velocity of air during the shift can contribute to increased levels of respirable dust and the occurrence of methane accumulations or oxygen-deficient atmospheres.

Immediately before equipment is operated or energized in working places, paragraph (d) would require a qualified personto test for methane. These tests would be required at the last permanent roof supports or, when longwall or shortwall mining is used, at the headgate and tailgate. Methane tests would verify that equipment can be safely energized in the working place and miners would thereby be protected from methane ignition or explosions. Additional tests may also be required at intervals during the operation of equipment if specified in the ventilation plan for the mine. This provision would replace the requirement that qualified persons test for methane at intervals of not more than 20 minutes where electrically operated equipment is energized. Some mines experience little methane liberation. Therefore, the frequency of methane tests would be determined on a mine-by-mine basis. In developing the ventilation plan, consideration would be given to the quantity of methane liberation or other gas-related problems. MSHA solicits comments on whether the proposal should specify a time period for additional methane checks to be included in the ventilation plan.

To detect methane accumulations under or around operating belt conveyors, paragraph (e) of the proposal would require that a qualified person test for methane along each belt conveyor haulageway in which a belt is operated during the shift. These tests would be required during the shift at intervals not to exceed 4 hours, and thus would be in addition to the on-shift examination of belt conveyors that would be required by paragraph (b) of this proposal. These checks would detect accumulations of methane liberated from the coal being transported, which can be ignited by heat or friction generated by the operating belt. As a compliance alternative, the proposal would allow methane tests along belt haulageways to be made by an atmospheric monitoring system (AMS).

A test for methane would also be required every four hours in each return air split on each working section. This test would determine whether methane levels in air returning from the face are within safe levels. The tests would be made by a certified person between the last working place, or longwall or shortwall face, ventilated by that air split, and where the split meets another air split, or a seal or worked-out area. Like the methane test specified for the belt conveyors and haulageways, monitoring by an AMS could be substituted for testing by a certified person.

Commenters objected that the 4-hour interval for methane tests in belt entries and return air splits would be excessive. At this stage in rulemaking, however, MSHA believes that due to the nature of the hazard presented by methane accumulations, a 4-hour check of methane will ensure that necessary attention is paid to methane accumulations in the areas specified in order to provide adequate safeguards against the risk of ignition and/or explosion.

The proposal would reduce and simplify existing recordkeeping requirements. Certified persons making on-shift examinations would be required to certify by initials and date that the examinations were conducted, and note the time of the examination at each working place examined. Also, a record of uncorrected hazardous conditions and their locations would be required to be made. These records would be required to be retained at a surface location at the mine for at least one year and made available to authorized representatives of the Secretary and representatives of the miners.

Section 75.364 Weekly examinations.

This proposal is derived from existing §§ 75.305 and 75.306 and would require that a weekly examination be conducted in all mines. The weekly examination would be required for worked-out areas and for locations where hazardous conditions could inhibit the mine's ventilation system or otherwise endanger miners.

A weekly examination would be required for all unsealed worked-out areas where no pillars have been recovered. This examination would include travel by a certified person to the point of deepest penetration in the worked-out area, as well as measurements of methane and oxygen concentration, and tests to determine if the air is moving in its designated direction, at locations where the effectiveness of the ventilation of the worked-out area can be determined. Equally effective alternatives to weekly travel may be specified in the ventilation plan. This would allow worked-out areas to be evaluated without subjecting the examiner to travel in areas where travel is difficult, or where bad roof or other unsafe conditions in worked-out areas exist. In lieu of any weekly examination by a certified person, the proposal would permit the alternative of continuous monitoring by an AMS. If this alternative is chosen, installation and operation of the system would be as specified in proposed § 75.351(e).

The proposal would similarly require weekly examination of bleeder systems used to ventilate areas where pillars have been fully or partially extracted. Measurements of methane and oxygen concentration, and tests to determine if air is moving in its designated direction, would be required at locations where air enters the worked-out area and where it enters a return split of air. Also, unlike existing criteria which provide for weekly travel and examination of bleeder entries, the proposal would require weekly travel of special air courses used as part of bleeder systems to locations specified in the ventilation plan where measurements can be made to determine the effectiveness of the bleeder system. Measuring methane and oxygen concentrations, and determining the direction of air flow at these locations will allow the performance of the ventilation system in worked-out areas to be assessed while minimizing the exposure of persons to hazards while traveling bleeders. The proposal would also permit the alternative of continuous monitoring of special air courses by an AMS.

The weekly examination would also include an examination of intake and return air courses to determine whether there is proper ventilation in the entire air course. An examination would also be required of each seal along return air courses, each designated escapeway so that the escapeway is travelled in its entirety, and at regulators. The examination would include an evaluation of hazardous conditions present, tests for methane, and air velocity measurements. To provide compliance flexibility, the proposal would allow any portion of the weekly examination to be conducted by a certified person during the preshift or on-shift examinations.

A new provision would require weekly examination and travel of at least one air course, in its entirety, on the tailgate side of each longwall mining section. Derived from MSHA Two-entry Task Force recommendation number one, this requirement would enable the weekly examiner to verify that no conditions on the tailgate side of the longwall exist that will impede ventilation or egress by persons. Ground failures or any other blockages in tailgate entries could require additional ventilating pressures in order to overcome the increased resistance caused by the obstruction and thereby restore longwall ventilation to within specified levels. As the Two-entry Task Force report indicates, any restriction in tailgate entries severe enough to prohibit a travelable route may present a serious impairment to proper longwall ventilation.

The proposal would retain, with clarifying changes, the existing provision that the weekly examination is not required when no persons are in the mine over a period of seven or more consecutive days. The proposal would also retain the existing prohibition against persons other than certified persons from entering any underground area of the mine if, within the previous 7-day period, a weekly examination has not been made.

The proposal would revise existing recordkeeping requirements for weekly examinations. Persons making the examinations would be required to certify that they have examined an area by placing their initials, the date, and noting the time at a sufficient number of locations to indicate that the area has been examined. A record of uncorrected hazardous conditions and their locations would be required to be made and retained at a surface location.

One commenter suggested retention of the current standard, objecting to provisions that would allow atmospheric monitoring systems to perform all or parts of weekly examinations. The commenter stated that regular physical examination is the only way to ensure that airways are being ventilated and maintained. MSHA agrees that physical examinations are a necessary element in the detection of certain hazards. Therefore, this proposal modifies the draft provision that would have allowed all of the weekly examination to be conducted by an AMS, and retains requirements for physical examination during the weekly examination.

Section 75.365 Evaluation of return air courses developed before March 30, 1970.

This section is new and would provide an alternate procedure to the weekly examination of certain return air courses. Mine operators would be permitted to evaluate any return air course developed before March 30, 1970, provided that the air course is unsafe for travel. Such air courses would have to be specified in the ventilation plan for the mine.

Remote evaluation of return air courses would minimize exposure of persons to adverse conditions that may be present in older returns. These conditions may include bad roof, bumps

and bounces from ribs, and other hazardous conditions. Therefore, instead of physical examinations, this proposal would permit air measurement stations to be established at locations where the air quality and quantity for the return air courses can be determined. Approaches to such stations would be required to be maintained in safe condition. At least once each day that coal is produced on any shift, an evaluation would be required to be made by certified persons at the air measurement stations. The evaluation would include measurement of air velocity, carbon monoxide, and methane, as well as a determination that the air is traveling in its proper direction. Under the proposal, an atmospheric monitoring system (AMS) may be used in lieu of the evaluation being made by certified persons.

One commenter stated that the measurements and tests required at air measurement stations should be made weekly rather than daily. However, changes in ventilation can occur in a return air course at any time. Therefore, MSHA believes that the air quality and quantity conditions in these air courses should be evaluated daily for early identification of adverse trends.

An immediate investigation of affected areas would be required to be made when a measurement taken at an air measurement station shows that (1) the methane concentration in air increases by more than 0.5 percent from the average methane concentration at that station during the previous seven days, (2) the air velocity measurement varies by more than 10 percent from the average air velocity at that station during the previous seven days, or (3) any change in the direction of the air current has occurred.

The proposal would require that persons making the evaluations certify by initials, date, and time, that the evaluations and tests were performed at each air measurement station. The proposal would also require the certified persons to make a record of uncorrected hazardous conditions and their locations. This record, in addition to printouts generated by atmospheric monitoring systems, would be required to be retained for one year at a surface location and made available to authorized representatives of the Secretary and representative of miners.

Several commenters indicated that this provision should apply to all air courses that are unsafe for travel, and not just to those developed before March 30, 1970. The proposal does not include this suggestion since, at this stage in the rulemaking process, MSHA believes that physical examination of returns is the better method of evaluating air courses developed after March 30, 1970. A provision permitting remote evaluation of older returns is appropriate since prior to 1970, returns were not required to be maintained so that they could be travelled weekly. Since 1970, however travellable returns have been required. Affirmative measures to keep returns developed since 1970 in safe condition are therefore necessary, and the Agency believes that this emphasis should be maintained. Requests to allow evaluation of "post-1970" returns that are unsafe for travel would continue to be considered on a mine-by-mine basis through the petition for modification procedure.

Section 75.370 Mine ventilation plan submission and approval.

This proposal would revise and consolidate existing §§ 75.316 through 75.316–2. The proposal retains the existing requirement 75.316–2. The proposal retains the existing requirement that each mine be ventilated in accordance with a ventilation plan developed by the mine operator and approved by the District Manager. The ventilation plan concept, which has been used effectively throughout the coal mining industry, grew out of a need for flexibility to address the unique conditions of each mine. Under the plan approach, mining conditions and experience with such conditions in the mine are addressed on a mine-by-mine basis.

A commenter suggested that miners, through their representatives, have the right to participate in the review of ventilation plans for approval. MSHA recognizes that miners play an important role in safety and health activities and therefore has structured the proposal to include a role for miners' representatives in the plan approval process. MSHA anticipates that after the proposal becomes final, the Agency would propose, through separate rulemaking, to conform MSHA's roof control plan approval provisions to the final form of the rule outlining the miners' role in the ventilation plan approval process.

The proposal would retain the requirement that the ventilation plan proposed by the operator be submitted to the District Manager for approval in writing. However, when revisions are proposed, the operator would need to submit only the revised pages, maps or sketches of the plan. Therefore, the entire plan would need not be submitted when, for example, the operator proposes a small addition or the replacement of a few pages. However, the District Manager would have the discretion to require that the entire plan be resubmitted when the submission of revised pages would prevent effective evaluation of the plan. A copy of the proposed ventilation plan and any revisions to the plan would have to be provided to the representatives of miners.

Paragraph (a)(3) would allow the operator and the representative of miners to submit additional written information to the District Manager concerning the plan. It would also afford both the operator and the representative of miners the opportunity to meet with the District Manager to discuss the plan. Any party submitting additional information would be required to provide a copy of it to the other party.

Paragraph (b) sets out the procedure for notification of approval or denial of approval of ventilation plans, retaining the existing practice that the operator be given written notice of approval actions. Under the proposal, the operator and the miners' representative would be advised of the deficiencies of the proposed plan or revision for which approval is denied, together with changes recommended for approval. The operator and miners' representative would then be given an opportunity to discuss with the District Manager the problems identified and potential solutions.

The Agency believes that all segments of the mining community recognize the importance of mine plans as an essential component to an effective safety and health program. Therefore, the proposal seeks to involve both the mine operator and the representative of miners in developing a meaningful and effective plan. This aspect of the proposal would not, however, change the responsibility of the mine operator to develop and submit a suitable ventilation plan, and MSHA would continue to independently evaluate such plans for approval. Based on its experience with the current plan approval process, MSHA anticipates that the procedures contemplated by this proposal would resolve most issues without difficulty.

Paragraph (c), however, would allow the operator to appeal plan approval decisions by District Managers to the Administrator for Coal Mine Safety and Health. To use this procedure, which is new, the operator would have to appeal the District Manager's decision within 30 days of receiving notification of a plan approval denial. The operator's appeal would be required to notify the Administrator in writing of the reasons for disagreeing with the District Manager, and the operator would have to provide a copy of the appeal to the representative of miners. Under the proposal, the representative of miners would be afforded the opportunity to submit additional information to the Administrator. After reviewing the appeal, the Administrator would issue a final decision on the disputed plan provisions. As noted above, however, MSHA anticipates that most plan approval issues would be resolved at the District Manager level.

Consistent with existing practices, the proposal would clarify that ventilation plans or revisions not be implemented until approved. Also, paragraph (d) would require that before implementing a revision to an approved ventilation plan, all persons who are affected by the revision must be instructed in its provisions. Complete understanding of the requirements of the approved plan is essential to its effective implementation. Paragraph (g) of the proposal would require that approved plans and revisions be available at the mine for inspection by an authorized representative of the Secretary and representatives of the miners.

In the preproposal, the Agency asked for comments regarding the deletion of the existing provision requiring ventilation plans to be reviewed every 6-months by MSHA and the operator. In lieu of this, MSHA personnel would review the adequacy of ventilation plan provisions during regular inspections, which are conducted at least once each quarter in underground mines.

A commenter objected to the deletion of the 6-month review, stating that plans must be reviewed periodically so that they can be properly revised as mining conditions warrant. The draft proposal deleting the 6-month review, however, was an approach that based evaluation of ventilation plans on the conditions at each mine rather than on routine review of the plan's provisions. The Agency did not intend to eliminate periodic review of ventilation plans. To clarify this approach, the proposal specifies that ventilation plans be reviewed by MSHA at least every six months. The proposal would also retain the obligation on mine operators that ventilation plans be suitable to the conditions and the mining system to be used at each mine, therefore requiring continuous attention to the content of plans.

Paragraph (h) would require that ventilation plans be revised to meet the requirements of the new Subpart D within 6 months from the effective date of the final rule. This provision would only affect ventilation plans which contain provisions in conflict with the final rule. As previously discussed, many of the provisions that are currently addressed in ventilation plans have been included in the proposal as mandatory standards or have been deleted. In either case, such provisions may no longer need to be addressed in the plan. Revising inconsistent or conflicting provisions in plans will ensure that miners are aware of the approved plan's requirements, and will eliminate any ambiguities that may arise.

Section 75.371 Mine ventilation plan; contents.

This proposal is derived from existing § 75.316–1, and lists the measures that would have to be addressed in each mine ventilation plan. While the plan would still address ventilation and methane control practices, the scope would be narrowed so that ventilation plans would be more relevant and less burdensome. Where the existing criteria are applicable to all mines they are included in the proposed rule as mandatory standards and would not be required to be included in ventilation plans. The plan for each mine would thus contain only the particular ventilation and methane control measures necessary to address the unique conditions of the mine. As a result, mine ventilation plans would be less complex, and more relevant, practical and useful.

In addition to the flexibility provided for by the plan approval process, the proposed rule retains the existing provision which authorizes the District Manager to require that additional measures be included in a mine ventilation plan. This aspect of the proposal recognizes that, despite comprehensive revisions and improvements in the proposed standards, current experience and practices are inadequate to predict and address unique hazards at individual mines which, if the mine ventilation plans are to be adequate, will need to be addressed.

Each ventilation plan would be required to specify the mine name, the name of the company owning or controlling the mine, and a phone number for the mine. The proposal would also require the operator to include the mine identification number in the plan submission to the Agency. This requirement will enable MSHA to develop a complete information base so that any decision can be made on the basis of all relevant facts including a profile of the mine's previous enforcement history.

Inclusion of the identification number for each mechanized mining unit (MMU) in the ventilation plan would provide information regarding the location of active working sections. An MMU is a set of mining equipment which generally includes face cutting machines, loading machines, roof bolting machines, and other equipment. This information assists the Agency in evaluation of the face ventilation systems and of drawings illustrating how such systems are used on working sections, which also would be required to be provided under this proposal.

Since control of methane accumulation is a primary purpose of a mine's ventilation system, each plan would be required to include information regarding means to be used to minimize this hazard. This proposal would require that methane control systems at underground coal dumps, crushers and transfer points be specified. These locations are where freshly mined coal can liberate significant quantities of methane. The proposal would require that where methane drainage systems are used to control methane, a description of each system and a pertinent sketch be included in the plan. The type, model, and manufacturer of methane monitoring sensors used would also be required.

Proper ventilation underground also serves to protect miners from excessive levels of respirable dust. Therefore, the proposal retains the existing requirement that respirable dust control information be provided in the plan. This information would include a description of the dust suppression system on each piece of equipment on each working section, and the dust control systems at underground dumps, crushers, and transfer points. Also, in conjunction with existing § 70.208 (Bi-monthly sampling; designated areas), the locations where the operator is required to collect designated area samples must be included in the plan, and the plan must include the respirable dust control systems used at the dust generating sources for these locations.

Proposed § 75.311 (Main mine fan operation) would require that combustible and flammable material not be allowed to accumulate in the area surrounding main mine fans for at least 100 feet. However, the proposal would permit other safe methods of protecting main mine fans from combustible and flammable material to be specified in the ventilation plan if a clear area of 100 feet cannot be provided. This approach would allow compliance flexibility and recognize other safe methods.

Proposed § 75.311 also generally would require that main mine fans be continuously operated, except when stopped for scheduled maintenance or adjustment. Fan stoppages for other

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than these reasons would also be permitted if specified in the plan, together with the procedures to be followed during such stoppages. This proposal recognizes that some mines do not operate fans during periods when the mine is shut down. Also, since generally these are smaller mines which often operate for only one shift per day, the proposal would permit, in accordance with § 75.310, devices to be used to monitor main mine fan pressure at these mines that are other than pressure recording devices and main fan monitoring systems. The alternative device would be required to be specified in the ventilation plan.

The proposal would require that the volume and velocity of air ventilating each working place be established in the ventilation plan for the mine. Derived from existing § 75.301–4, this approach is designed to allow volume and velocity to vary depending on particular conditions at the mine. It would require that each mine operator submit in the mine's ventilation plan the minimum volume and velocity of air necessary to provide adequate ventilation and protect against methane accumulation, dust, and other hazards.

This proposal recognizes that air volume and velocity are dependent on factors such as coal seam height and width of entries and is responsive to comments on the air velocity provisions in the preproposal draft. Many of these comments indicated that it is unnecessary for MSHA's standards to specify minimum requirements for both velocity and quantity of air. Also, these comments indicated that the minimum velocities specified in the preproposal of 60 feet-per-minute (fpm) in working places and 100 fpm in other areas may have been too much for some mines and not enough for others. After consideration of these comments, the proposal would allow variations in volume and velocity according to coal seam height, width of entries, as well as methane liberation, and the amount of dust produced during mining. Each operator would be required to submit in the ventilation plan the volume and velocity of air at the locations specified in §§ 75.360 and 75.362 where air velocity measurements will be required to be made during the preshift and onshift examinations.

The proposal would also require the ventilation plan to address air quantities under certain circumstances. For example, proposed § 75.325 requires the quantity of air reaching the working face to be greater than the operating volume of machine-mounted dust collectors and diffuser fans. However, if the operating volume cannot be determined, or if a different quantity is necessary, the quantity would be required to be included in the ventilation plan.

Where air quantities in bituminous and lignite mines, or in longwall mining systems in such mines, need to be greater than the minimum quantities that would be required by proposed § 75.325 (Air quantity), this proposal would require these quantities to be specified in the ventilation plan. This approach recognizes that particular mining conditions may require greater quantities than the minimum quantities set forth in proposed § 75.325. The quantity of air where diesel equipment is used would also be required to be included in the plan.

Proposed § 75.326 would require that in exhausting face ventilation systems, the mean entry air velocity be at least 60 feet per minute. This is based on MSHA's experience that in exhausting systems compliance with respirable dust standards can be maintained in all mines given this velocity and assuming 1.0 mg/m³ of respirable dust in intake air and face ventilation controls used to within 10 feet of the face. An alternative mean entry air velocity may be specified in the ventilation plan, if, for example, less than 1.0 mg/m³ of dust is maintained on intake air and a lower velocity will maintain compliance with respirable dust standards.

Distances to which ventilation controls are used from each working face would also be specified in the ventilation plan. Under proposed § 75.330, ventilation controls must be installed at a distance that will maintain compliance with standards for respirable dust and methane concentrations. Additionally, the plan would specify working places other than those where coal is being cut, mined, or loaded where face ventilation controls would be required to be used.

In accordance with proposed § 75.334 (Worked-out areas), the ventilation plan would include the type of bleeder system to be used in worked-out areas where pillars have been fully or partially recovered. Also, the locations for evaluation of special air courses used as bleeder systems would be specified in the ventilation plan. This location would be where measurements and tests of the ventilation of the area will be conducted. If an AMS is used to evaluate a bleeder system, the ventilation plan would include locations for monitoring sensors necessary for effective evaluation of the bleeder system.

If airlock doors are installed in permanent stoppings as specified in § 75.333 (Ventilation controls), the location of these doors would be required by this proposal to be identified in the ventilation plan. The plan would also have to include a description of the materials and the construction methods to be used to seal work-out areas if those methods or materials will be different than the methods required by proposed § 75.335 (Construction of seals).

Monitoring for carbon monoxide levels or methane concentrations is specified in several sections of this proposed rule. Where monitoring systems are used, this proposal would require that the ambient level in parts-per-million of carbon monoxide in those areas be set forth in the ventilation plan as well as the method used to determine the ambient. The ventilation plan would also be required to include the type, model, and manufacturer of monitoring sensors. This information would allow thorough evaluation of the effectiveness of monitoring systems.

The proposed on-shift examination provisions specify that a methane test must be made by a qualified person at intervals during the operation of equipment, where experience with methane liberation indicates that this is necessary. Consistent with this provision, the proposal provides that the locations and intervals for methane checks be specified in the ventilation plan.

The proposed weekly examination provisions would require weekly travel to the area of deepest penetration of worked-out areas where no pillars have been recovered. However, the proposal recognizes that in some mines weekly travel of these areas may be difficult or even unsafe for the examiner. The proposal would thus permit methods of evaluation equally as effective as weekly travel to be specified in the ventilation plan. Also, as when an AMS is used to evaluate bleeder systems under proposed § 75.364, the proposal specifies that when an AMS is used in lieu of a weekly examination of areas where no pillars have been recovered, locations for monitoring sensors necessary for effective evaluation of ventilation in the area would be required in the plan.

Return air courses that would be evaluated in accordance with § 75.365 (Evaluation of return air courses developed before March 30, 1970) would also be required to be identified in the mine's ventilation plan. Under the proposal, air courses that would be evaluated are those that are unsafe for travel and cannot be evaluated in accordance with the proposed weekly examination.

Proposed § 75.380 would generally require each working section to be provided with two escapeways ventilated with intake air. However, the proposal would recognize that some new development areas of older mines may not be capable of providing two separate and distinct intake escapeways to the surface or surface escape facilities. Therefore, the proposal would require that such areas be specified in the ventilation plan.

Prior to planned mining into an abandoned area, the procedures for mining through would be required to be specified in the ventilation plan. In accordance with proposed § 75.1702, the ventilation plan would include the method of ventilation, the ventilation controls to be used, the air quantities and velocities to maintain, and other procedures and precautions that will be used during the mining-through operations. Specifying this information in the ventilation plan will enable precautions to be implemented that will adequately protect miners from methane accumulations or other hazards in the abandoned area, as well as from interruption or changes in ventilation when mining-through occurs.

§ 75.372 Mine ventilation map.

This proposal is derived in part from existing §§ 75.316–1, 75.1200 and 75.1200–1, and would require that the operator submit an accurate up-to-date mine ventilation map to the District Manager at least once every 12 months. Under paragraph (c) of the proposal, the mine map that would be required by existing § 75.1200 (Mine map) could be submitted as the ventilation map, as long as all of the information that would be required by the proposal is included on the map.

The ventilation map would provide basic information for evaluation of the mine's ventilation plan. So that a sufficient number of maps are available to effectively evaluate plans, the proposal would require three copies of the map to be submitted.

The proposal retains the provision that maps be scaled to not more than 500 feet to the inch, and adds a provision that the scale be not less than 100 feet to the inch. The proposal also requires that a responsible company official certify that the map is accurate.

Ventilation maps would be required to show the mine name, company name, and the mine identification number. Also, this proposal would require that all maps have a legend identifying the scale of the map and the symbols used.

Like the current requirements for maps in § 75.316–1, this proposal would require ventilation maps to provide information regarding adjacent mine workings. All known workings on mine property that are located in the same coalbed, and all other known mine workings that are located in the same coalbed that are within 200 feet of existing or projected workings would be required to be on the map. Mining-through unintentionally into an adjacent working could disrupt mine ventilation and expose miners to hazards from water accumulations, oxygen deficiency, or accumulation of methane or other gases. The proposal would permit a scale not exceeding 2,000 feet to the inch so that adjacent workings can be more easily shown on the map.

The proposal retains the existing requirement that all known mine workings that are above or below the mine property be shown on the map. The distance between mine workings would also be required by this proposal. A hazard that can be presented by overlying workings is that water can accumulate in such areas and inundate underlying active workings if a roof fall or similar event occurs.

Accidental mining into an oil or gas well underground can result in an ignition, fire or explosion. Accordingly, this proposal would require that the locations of all known oil and gas wells be shown on the map, as well as the location of all known oil or gas drill holes that penetrate the coalbed being mined.

Other information that would be required on the map would include the location and specifications of each main mine fan and any stand-by fans. To provide information regarding air entering and leaving the mine, each map would show mine openings, the direction and quantity of air measured at each opening, and, where air is leaving the mine, the methane concentration that is normally in the air. The elevation at the top and bottom of each shaft and slope and its dimensions would also be required to be on the map.

Also required would be information regarding the flow of air underground. The ventilation of all underground areas would appear on the map, as well as the location of all ventilation controls, excluding temporary ventilation controls used on working sections. To provide a visual lay-out of the ventilation system of the mine, the direction and quantity of air in each working section would be required to be shown so that the air is depicted entering and leaving each split, passing through the last open crosscut of each set of entries or rooms, and at the intake end of each pillar line. Also specified in the proposal is information regarding locations where sampling devices will be placed to collect designated area respirable dust samples in accordance with existing § 70.208 (Bimonthly sampling; designated areas). New information that would be required by this proposal would include the locations of all carbon monoxide and methane sensors. This information would verify that sensors will be located in areas where adequate monitoring can be maintained.

The location of proposed seals for worked-out areas would be included on the map so that a determination can be made that an area of a mine can be sealed in the event of a mine fire or other emergency. Under proposed § 75.334, each mining system would be required to be designed so that each worked-out area can be sealed.

Commenters objected to the draft requirement that projections for at least 18 months of anticipated mine development be included on the mine map. They indicated that mining conditions and mining projections can change frequently, and accurate mine development for a period of 18 months would be difficult to anticipate on a mine map. Upon reconsideration, the current 12-month requirement has been retained in the proposal. The draft provision that would have required the proposed location of methane drainage systems and air measurement and evaulation points to be projected for at least 18 months on the map was also changed to 12 months.

One commenter suggested that numerous other items be included on the mine ventilation map in addition to the information specified. Some of the commenter's suggestions, like mines above or below, had already been included in the preproposal. Others, like the property lines of the mine, are unrelated to mine ventilation and were not included. The proposal is intended to require only that information which is necessary to reflect mine ventilation conditions and conditions that may affect mine ventilation or present hazards to miners. Related to this purpose, the commenter did suggest, however, that including contour lines or elevations sufficient to accurately indicate the dips and raises of the coalbed being mined would be valuable information on a mine ventilation map. Therefore, the proposal adds this requirement.

Section 75.380 Escapeways

The proposal is derived from existing §§ 75.1704, 75.1704–1, 75.1704–2, and 75.1707 and would transfer those standards to this Subpart D. The

proposal would establish requirements for escapeways for all mines.

Escapeways are the primary means of egress during a mine fire or similar life-threatening situation. Accordingly, the proposal would retain the existing requirement that at least two travelable passageways in each mine be designated as escapeways and be provided from each working section continuous to the surface or to escape shaft or slope facilities to the surface. To minimize the potential that one escapeway would become contaminated with smoke during a fire or otherwise become untravelable if the other escapeway loses its effectiveness as an escape route, the proposal would require escapeways to be separate and distinct passageways.

Under the proposal escapeways would be required to be maintained in safe condition to ensure passage at all times by any person, including disabled persons. The route of travel to the surface would be required to be clearly marked, and to facilitate travel, escapeways would be required to be maintained to at least a height of 5 feet from the mine floor to the mine roof, including the thickness of any roof support. In order to minimize the impact of this requirement in lower coal seams, escapeways would be required to be maintained to the height of the seam where the seam height is less than 5 feet.

The proposal would require that escapeways be maintained at least 4 feet wide. This requirement would modify the existing criteria in § 75.1704–1 that escapeways be maintained at a width of at least six feet. This criteria is based on an assumption that a width of at least six feet is necessary so that a person on a stretcher could be easily carried out of a mine. At this stage in rulemaking, the Agency believes that a width of 4 feet is sufficient to allow passage of a stretcher in all mines, and that a more significant requirement facilitating emergency egress is that escapeways be maintained to a height of at least 5 feet.

Escapeways would be required to follow the most safe and direct practical route to the surface. Impractical routes would therefore not be required to be designated, even though they may be the shortest routes of travel. Where escapeways cross over obstructions, such as overcasts or belts, they would be required to be provided with ladders, stairways, ramps or similar facilities that would allow miners to cross and transport disabled persons. Also, the proposal would permit multiple compartment shafts or slopes to be designated as separate and distinct passageways, as long as the compartments are separated from each other by walls constructed of noncombustible material.

A new requirement would be that designated escapeways be ventilated with separate splits of intake air. The Agency believes that this would provide a substantial safety benefit to miners in that if one split of intake air becomes contaminated, another escapeway on fresh intake air will be available for emergency egress. Under existing § 75.1707, only one escapeway is required to be ventilated with intake air.

MSHA recognizes that in some mines two escapeways on intake air may not be possible without changes in the mining system, or possibly the mine design. Therefore, to allow time for these mines to adjust to this requirement, the proposal would apply to mines opened after the effective date of the proposal, and to areas of mines developed after this date. A new development area would not include working panels where mining is being completed, such as retreating longwalls. Additionally, in the case of new development areas, the ventilation plan may specify areas where a second intake escapeway cannot be provided. However, in no case would any new development be permitted under the proposal to have less than one escapeway ventilated with intake air. For areas developed prior to the effective date, the proposal would retain the existing requirement of one intake escapeway.

The proposal to establish an exception from the two intake air escapeway requirement for new development areas would not allow approval, through the ventilation plan, of longwall mining systems using two entries for development. Rather, the proposal is designed to lessen the impact on older miners unable to provide two intake escapeways based on conditions existing prior to the new standards. Under these circumstances, the rule would permit the operator to specify, for approval in the ventilation plan, new development areas where only one separate intake escapeway can be provided. Where this results in the escapeways being on the same continuous split of air, an AMS would be required to be installed in accordance with proposed § 75.351.

The proposal also specifies requirements aimed at minimizing potential fire or explosion sources in the escapeways themselves. For example, the proposal would require that at least one designated intake escapeway be separated from belt and trolley haulage entries for the entire length of these entries, to and including the fourth connecting crosscut outby each working face. This distance from the face would conform to the proposed requirement in § 75.333 (Ventilation controls) that permanent stoppings be installed to and including this crosscut. The proposal would, however, require separation in older mining systems only where it exists prior to the effective date of the proposal. Therefore, separation would not be required for areas where separation is not required under the existing rule. Existing § 75.1707 does not require separation in working sections of mines opened prior to March 30, 1970, and for distances in entries that are approved by the District Manager.

Also aimed at keeping ignition sources out of intake escapeways, the proposal would not permit permanent electrical equipment or diesel equipment outby working panels in at least one intake escapeway from each working section. A definition of permanent electrical equipment is included in this proposal. The proposal would not require permanently installed equipment to be removed from areas of mines developed prior to its effective date, and would allow certain types of equipment in new developments. These types would include equipment necessary to maintain the escapeway in safe, travelable condition, and haulage equipment necessary for the transportation of persons and materials. Consistent with paragraph (c)(3) of the proposal, haulage equipment permitted in the escapeway would not include belts or trolley haulage. Additionally, and consistent with § 75.340 of the proposal, underground substations, power centers, and permanent pumping stations would be permitted in the escapeway provided that this equipment is housed in fireproof structures that are equipped with fireproof doors and an automatic fire suppression system.

The proposal would address shafts and slopes in designated escapeways and require that mechanical escape facilities be provided and maintained under specified circumstances. These would be when shafts are greater than 50 feet in depth and when slopes are either inclined 9 degrees or more from the horizontal, or 500 feet or longer. Specific technical and performance requirements for mechanical escape facilities are included in § 75.381 of the proposal. Also, paragraph (e) would require mechanical escape facilities to be operational at the bottom of each shaft and slope that is part of an escapeway within 30 minutes of notification of surface mine personnel under paragraph (f) that an emergency requiring evacuation has occurred. Paragraph (f) would require a means of signalling a surface location at the bottom of each escape slope or shaft. This surface location would be where a person is always on duty when persons are underground.

Stairways or mechanical escape facilities would be required in escape shafts that are 50 feet or less in depth. If stairways are used, they would be required to be made of concrete or metal, set at an angle not exceeding 45 degrees from the horizontal, and equipped on the open side with handrails. To facilitate escape, particularly when disabled persons are being transported out of the mine, the proposal would require that platforms be installed at intervals of 10 vertical feet in stairways. The dimensions of platforms would be required to be 2 feet by 4 feet, and they would be required to have handrails on open sides.

Where shafts in designated escapeways are 5 feet or less in depth, the proposal would permit a ladder to be used in lieu of stairways or mechanical facilities, as long as the ladders are made of metal, anchored securely, and set at an angle of 60 degrees or less. In slope or drift openings that are part of escapeways, the proposal would require travelways to be designed to prevent slippage during escape. These travelways would be required to be included less than 9 degrees, and be less than 500 feet long. Travelways would not be required where mechanical escape facilities are used.

Section 75.381 Mechanical escape facilities.

The proposal is new and would establish requirements for mechanical escape facilities installed in designated escapeways in accordance with proposed § 75.380. Normally, such facilities would be used as a means of escape in shafts deeper than 50 feet, and in other situations where travel is difficult.

Mechanical escape facilities would be required to be provided with overspeed, overwind, and automatic stop controls. These safety features are aimed at minimizing the risk of hoisting accidents during escape that are caused by mechanical malfunctions. So that facilities can be stopped if necessary in an escape situation, facilities handling platforms, cages, or other devices in which persons are carried would be required to be equipped with brakes capable of stopping the personnel carrier when fully loaded.

Additional safety requirements would include a provision that escape facilities have rated capacities consistent with the loads handled. This would prevent accidents from occurring due to failure of an overloaded escape facility. Another safety requirement would be that facilities have indicators that reliably and accurately indicate the position of the facility. This would enable the surface operator of the facility to be aware of its location at all times while persons are being transported.

Paragraph (c) of the proposal would require that mechanical escape facilities be examined weekly. This weekly examination would include examination of automatic elevators used for emergency escape purposes, and would be permitted to be conducted at the same time as a daily examination of hoisting equipment required by existing § 75.1400–2. The examination would include an examination of headgear, connections, links and chains. Also, at least once each week, the proposal would require hoists to be run by a qualified hoisting engineer through one complete cycle of operation to verify that the facility will be operational in the event of an emergency requiring escape.

Paragraph (d) would require a qualified hoisting engineer to be on duty while any person is underground, unless facilities are operated automatically. This is necessary since an emergency requiring operation of the facility could occur at any time.

Section 75.382 Escapeway maps and drills.

The proposal is derived from existing § 75.1704–2 and would specify requirements for escapeway maps and drills. These requirements are intended to ensure that miners are familiar with mine escape routes so that if escape is necessary miners will be capable of reaching the surface as quickly as possible.

The proposal would require operators to maintain two types of escapeway maps. One map would be required to be posted in each working section to show the designated escapeways from the working section to a location where the section escapeways intersect main escapeways. A second map would be required showing the main escapeways. This map would be required to be posted at a surface location of the mine where miners congregate. These locations would include near the mine bulletin board, bathhouse, or waiting room. Posting maps at one of these locations will give miners the opportunity to become familiar with their escape routes.

The proposal would require all maps to be kept up-to-date. Therefore, any changes in the route of travel, locations of doors, or airflow direction must be shown on the map by the end of the shift on which the changes are made so that during a mine emergency miners do not react based on inaccurate information. Similarly, when affected miners enter the mine after changes are made, the proposal would require that they be informed of the changes.

Paragraph (b) of the proposal would retain the existing requirement that each miner participate in a practice escapeway drill, including travel of each escapeway from the working section to the main escapeway. Recognizing that some miners have working stations located between working sections and main escapeways and that for these miners travel from the section may not effectively familiarize them with their escape routes, the proposal would also require miners not working on sections to be drilled on escapeways from their work stations to main escapeways.

A more frequent escapeway drill, in addition to the 90-day drill for all miners, would be required for at least two miners on each coal producing working section. These miners would be required to travel escapeways from the section to the surface accompanied by the section supervisor. This drill, also retained from the existing provision, is necessary so that if the supervisor is absent from work or is performing duties at a location not on the section, there is a greater likelihood that other miners on the working section will be available who are familiar with the escape route to the surface. Consistent with this purpose, the proposal would require this drill to be conducted for each shift.

The proposal would require that before or during escapeway drills, miners be informed of the locations of fire doors, check curtains, smoke retarding doors, and of changes in routes of travel, as well as plans for diverting smoke from escapeways. During mine emergencies, especially mine-fire situations, it may be necessary to utilize such devices to change ventilation to divert air from a fire or smoke from escapeways.

Paragraph (c) of the proposal would allow the escapeway drills to satisfy the fire drill and evacuation requirements of existing § 75.1101–23. This proposal is retained from the existing standard since the escape routes travelled during the proposed escapeway drills will be those used for all mine emergencies requiring evacuation, including mine fires.

Section 75.383 Shortwall and longwall travelways.

The proposal is new and would require that a travelway be provided as a means of egress from shortwall or longwall panels when both escapeways that would be required by proposed § 75.380 are on one side of the block of coal being mined. This travelway would be required on the side of the block of coal opposite the esapeways, and would be required to follow the most direct and safe practical route to an escapeway.

In shortwall and longwall mining systems, escapeways are normally located on the headgate side of the panel. Therefore, MSHA anticipates that most travelways provided in accordance with the proposal will be located on the tailgate side of longwalls and shortwalls. As MSHA's Task Force on Two-entry Longwall Mining indicated, safe travel across a longwall face to headgate entries may not be possible if an emergency occurs in the headgate area. In this type of situation, an unobstructed travelway through tailgate entries is necessary to prevent miners from being trapped in face areas without a viable means of egress.

The proposal recognizes that ground failures can occur in tailgate entries and therefore would not require the travelway to be located in the tailgate entry immediately adjacent to the panel. This would permit a route avoiding obstructions through other tailgate entries to be established, as long as this route is the most direct and safe practical route to an escapeway. If the route of travel is established by crossing into or using more than one entry, the route would be required to be clearly marked.

The proposal does not require the MSHA be notified if a roof fall occurs that blocks passage through the travelway provided under § 75.383. Existing reporting requirements in 30 CFR Part 50, however, require such notification for all unplanned roof falls at or above the anchorage zone of roof bolts, and for unplanned roof or rib falls that impair ventilation or impede passage.

Section 75.384 Opening new mines.

This proposal retains the requirements in existing § 75.1705 that when new mines are opened, not more than 20 miners shall be allowed in the mine until a connection is made between mine openings. This provision is necessary to minimize the exposure of persons to hazards in the initial stages of mine development when two escapeways continuous to the surface cannot be provided. The proposal would require that connections be made between mine openings to provide two escapeways as soon as possible.

Section 75.385 Final mining of pillars.

The proposal would retain requirements in existing § 75.1706 and address final mining of pillars. Similar to proposed § 75.384, this provision would apply to a mining situation in which two escapeways to the surface cannot be provided. Final mining of pillars is conducted during the close-out period of a mine. The proposal would permit no more than 20 miners in the mine during this period, and require that the distance between the mine opening and the working face be no longer than 500 feet.

Section 75.1701 Boreholes in advance of mining.

The proposal would revise and clarify existing § 75.1701 and retains requirements that boreholes be drilled: (1) When an advancing working place approaches within 50 feet of any accessible area which is in the same coalbed and has been surveyed; (2) within 200 feet of inaccessible areas in the same coalbed which have not been surveyed; and (3) within 200 feet of any mine located in the same coalbed which has not been examined during the previous 7 days.

Abandoned or other inaccessible areas of a mine can present several hazards to active workings when these areas are inadvertently or improperly mined into. These areas may contain potentially dangerous accumulations of gases or water, which could result in explosions or inundations. To increase the likelihood of detecting potential hazards when boreholes are drilled, the proposal also includes requirements for the pattern of drilling and the length of the holes. Boreholes would be required to be drilled into the working face, parallel to the rib and within three feet of each rib. Additional holes would be required to be drilled at 8 foot intervals across the face. To maximize the effectiveness of drilling, the boreholes would be required to be at least 20 feet in depth, drilled in advance of the face before mining begins, and maintained at all times to a distance of 10 feet in advance of the face as mining continues.

Paragraph (c) would specify requirements for drilling into at least one rib of advancing working places in order to detect potential hazards in inaccessible areas not directly ahead of the direction of advance. These boreholes would be required to be drilled at angles of 45 degrees to the direction of advance, at least 20 feet deep, and at intervals not exceeding 8 feet.

If a borehole penetrates an abandoned or inaccessible area, the proposal would require that tests be made to determine the direction of airflow in the borehole, the pressure differential between the active workings and the penetrated area, the concentration of methane, oxygen, carbon monoxide and carbon dioxide, and whether water is impounded within the penetrated area. Additionally, the proposal specifies the circumstances under which the borehole would be required to be plugged. Wooden plugs or similar devices would be required unless action is taken to dewater or ventilate penetrated areas, and one of three conditions is present. One condition would be when tests conducted at boreholes indicate that the atmosphere in the penetrated area contains hazardous concentration of gas, such as methane and carbon monoxide, or is deficient in oxygen. Another condition would be when tests for methane, oxygen, carbon monoxide and carbon dioxide concentrations cannot be made because air from active workings is flowing into the penetrated area through the borehole. Finally, the third condition that would require plugs to be inserted into boreholes would be when water is discharging from the penetrated area and into mine workings through boreholes.

Section 75.1702 Mining into inaccessible areas.

The proposal is new and would establish procedures for mining into inaccessible areas. It would require that when an area is penetrated by a borehole under proposed § 75.1701, mining would cease and not be permitted to resume until conditions in the penetrated area can be determined and procedures to be followed for mining into or through the area are specified. The proposal would also require that a copy of the procedures for mining into the penetrated area be posted near the site of the mine-through, and that miners involved in the operation have these procedures explained to them.

To address hazards that can be expected to be encountered in the penetrated area, the proposal specifies the minimum requirements for mining-through procedures, and would require that these procedures be specified in the ventilation plan. Under the proposal, the method of ventilation would be established, as well as the ventilation controls to be used, the necessary air quantities and velocities, and dewatering procedures to be used if the penetrated area contains water accumulations. Additional procedures necessary to protect those involved in the mine-through operation would also be included in the plan.

Paragraph (c) would require that prior to and during mining-through operations, air quality tests by certified persons be conducted at intervals and locations necessary to protect miners. Also, only those involved in the mining-through operation would be permitted in the mine, and an examination by a certified person after the operation is completed would be required before persons re-enter the mine.

Other Issues

Methane tests before planned roof fall. Appearing as § 75.323 in the preproposal, the draft standard was derived from existing § 75.315, which specifies that a qualified person test for methane "immediately before a planned roof fall begins." the preproposal also provided that the area affected by the roof fall contain less than 1.0 percent methane before the fall begins, or that changes or adjustments be made to reduce the methane concentration to less than 1.0 percent. Several commenters requested clarification and questioned the need for the draft proposal.

The draft standard was intended to address pillar recovery. It specified that a methane test be made before a fall occurred and created an ignition source. Commenters, however, indicated that since a fall could occur without warning at any time during pillar recovery, there would be no way to know when to make the required examination. They also stressed that once conditions for a roof fall are created, there would be little or no time to make changes or adjustments in ventilation, regardless of whether 1.0 percent of methane was present.

After review of these comments, the draft standard was not retained in the proposal. However, proposed § 75.362 (On-shift examination) would require a qualified person to test for methane before mining equipment is energized during pillar recovery, and the proposal retains continuous monitoring for methane under § 75.342 (Methane monitors).

Other Existing Sections Affected

The proposal would delete existing §§ 75.320 since the hazards addressed by this standard are addressed by the Agency's explosives and blasting proposal (51 FR 17284). Section 75.320 generally requires that before blasting may be conducted in any underground area an examination must be made and the air must contain less than 1.0 percent methane.

The Agency also proposes to delete existing § 75.325, which requires that before a coal mine is reopened after having been abandoned or declared inactive by the operator, MSHA must be notified and an inspection must be made. This provision is duplicative of the notice requirements of the existing MSHA standard for opening or reopening coal mines in 30 CFR § 75.1721. That standard also specifies that operators submit a plan to open a new mine or reopen an abandoned or deactivated one, and sets out information required to be in the plan.

Derivation Table

The following derivation table lists the number of each proposed standard and the number of the existing standard from which it is derived.

New section	Old section
75.300	75.300
75.301-2	No change.
75.310(a)	75.300-2 (a) and (b) and 75.300(b)(2).
75.310(b),310(b)(1) and 75.310(b) 310(b)(2)	75.300-2(c).
75.310(c)	New.
75.310(d)	75.300-2(b)(2).
75.310(e)	75.300-2(d)(2).
75.310(f)	75.300-3 (a)(e).
75.311(a)	75.300-3 (a)(1) and (a)(3).
75.311(b)	75.321
75.311(c)	75.300-3(b).
75.311(d)	75.300-2(a)(3).
75.311(e)	75.300-2(f).
75.312(a)	75.300 and 75.300-4 (a) and (b)
75.312(b)	New
75.312(c)	75.300—(new).
75.312(d)	75.300-4(c).
75.312(e)	75.300-4(b)
75.312(f)	New
75.312(g)	75.300 and 75.300-4(e).
75.312(h)	75.300-4(e).
75.313(a)	75.321
75.313	New—75.321-1
75.313(c)	New
75.320(a)	Part new—75.304-3, 75.305-2, 75.307-1, 75.308-2, 75.309-1, 75.310-2, 75.311-1, 75.312-2, 75.314-1, 75.315-1, and 75.317
75.320(b)	75.304—New.
75.320(c)	New.
75.320(d)	New.
75.320(e)	New.
75.321(a)	75.301
75.321(b)	75.301-8.
75.323(a)	Part new—75.308.
75.323(b)	New—75.308 and 75.308-1.
75.323(c)	75.308.
75.323(d)	75.309(b).
75.323(e)	Part new—75.310, and 75.316-2 (h) and (i).
75.323(f)	75.316-2(f).
75.324	Part new—75.322.
75.324(a)	75.322.
75.324(b)	75.322.
75.324(c)	New—75.322.
75.324(d)	75.322.
75.325(a)	New
75.325(b)	75.301-1.
75.325(c)	
75.325(d)	
75.326	75.301—Part new
75.327	75.301-4(a).
	Part new—75.327 and 75.327-1
75.330(a)	75.302(a) and 75.302-3
75.330(b)	75.302-1(a).

New section	Old section
75.331(a)	Part new—75.302-4(a).
75.331(b)	75.302-4(b)(e)
75.331(c)	Part new—75.302-4(b)(c)
75.331(d)	New
75.332(a)	75.319.
75.332(b)	75.311 and 75.312.
75.332(c)	75.312 and 75.312-2
75.333(a)	Part new—75.302-3, 75.316-2(b), 75.325, and 75.1704.
75.333(b)	New.
75.333(c)	New
75.333(d)	75.316-2(b)
75.333(e)	New
75.333(f)	75.316(c)
75.334(a)	Part new—75.329
75.334(b)	Part new—75.316-2(a), and 75.329
75.334(c)	New.
75.334(d)	New
75.334(e)	75.316-2(f)
75.334(f)	75.329—Part new.
75.334(g)	New.
75.335(a)	Part new—75.329-2
75.335(b)	New.
75.335(c)	New
75.335(d)	New
75.335(e)	New.
75.335(f)	New
75.340(a)	Part new—75.1105.
75.340(b)	Part new—75.1105.
75.340(c)	New
75.341	New
75.342(a)	75.313.
75.342(b)	75.313.
75.342(c)	75.313.
75.342(d)	75.313-1
75.342(e)	75.313-1
75.342(f)	Part new—75.313-1
75.343	Part new—75.1105.
75.350(a)	New
75.350(b)	Part new—75.326
75.350(c)	Part new—75.326.
75.350(d)	New
75.350(e)	New.
75.350(f)	New.
75.350(g)	New.
75.350(h)	New.
75.350(i)	New.
75.350(j)	New.
75.350(k)	New.
75.350(l)	New.
75.351	New.
75.352	Part new—75.326
75.360(a)	75.303(a).
75.360(b)	75.303(a).
75.360(c)	Part new—75.303.
75.360(d)	75.303(a)
75.360(e)	75.303
75.360(f)	75.303
75.360(g)	75.303.
75.361	Part new—75.314
75.362	75.301-3 and 75.303-1. Part new—75.304, 75.307, 75.307-1, 75.309, and 75.309-2.
75.364	Part new—75.305.
75.365	New.
75.370	Part new—75.316 and 75.316-2.
75.371	Part new—75.316-1(b).
75.372	Part new—75.316-1(a).
75.380(a)	75.1704, 75.1704-1, and 75.1704-2(b).
75.380(b)	New.
75.380(c)	New—75.350.
75.380(d)	New.
75.380(e)	New.
75.380(f)	New
75.380(g)	Part new—75.1704-1(c)
75.380(h)	New
75.381(a)	New—75.1400(a)
75.381(b)	New—75.1400(b).
75.381(c)	New
75.381(d)	New—75.1400(e).
75.381(e)	New.
75.381(f)	New.
75.381(g)	New.
75.382(a)	New—75.1704-2(d)
75.382(b)	75.1754-2(e)
75.382(c)	New—75.1754-2(f)
75.383	New
75.384	75.1705.
75.385	75.1706.
75.386	New

Redesignation Table

The following redesignation table lists the section number of the existing standard and the section numbers of proposed standards which contain revised provisions derived from the correspondsing existing section.

Old section	New section
75.300	75.300, 75.312(a), and 75.312(g)
75.300-1	Remove
75.300-2(a)(1)	75.310(a)(1)
75.300-2(a)(2)	75.310(a)(1)
75.300-2(a)(3)	75.310 (a)(3) and (a)(4), and 75.311(d)
75.300-2(b)(1)	75.310 (a)(5) and (a)(6), 75.310(d)(1), 75.310(a), and 75.310(d)
75.300-2(b)(2)	75.310 (a)(5), (a)(6), (d)(1), (e)(1) and (e)(3)
75.300-2(c)(1)	75.310(b)(1)
75.300-2(c)(2)	75.310(b)(2)
75.300-2(d)	75.310(f)
75.300-2(e)	75.310(e)
75.300-2(f)	75.311(e)
75.300-3(a)(1)	75.311(a).
75.300-3(a)(2)	75.311
75.300-3(a)(3)	75.311(b)
75.300-3(b)	75.311(c)
75.300-3(c)	Remove
75.300-4(a)	75.312(e)
75.300-4(b)	75.321 (a) and (c)
75.300-4(c)	75.312(d)
75.300-4(d)	75.312(f)(g).
75.300-4(e)	75.312(g)
75.300-4(f)	Remove
75.301	75.321 (a) and (b) and 75.325(d)
75.301-1	75.325(b)
75.301-3 (a) and (b)	75.360(c)
75.301-3(c)	75.325(c) and 75.362(c)(3)
75.301-3(d)	75.325(b)(2)
75.301-4(a)	75.325
75.301-4(b)(1)	75.326
75.301-4(b)(2)	Remove
75.301-4(c)	Remove
75.301-5	75.321(b)
75.301-6	Remove
75.301-7	Remove
75.301-8	Remove
75.302-(a)	75.330(b)(2)
75.302(b)	Remove
75.302(c)	75.333(a)
75.302-1	75.330(b)(2)
75.302-2	Remove
75.302-3	75.333(3)
75.302-4(a)	75.331(a)
75.302-4(a)(1)	Remove
75.302-4(a)(2)	Remove
75.302-4(b)	75.331(b)
75.302-4(c)	75.331(c)
75.302-4(d)	75.331(c)
75.302-4(e)	75.331(b)
75.302-4(f)	75.331(c).
75.302-4(g)	Remove
75.303(a)	75.360
75.303(b)	Remove
75.303-1	75.360 and 75.362
75.303-2(a)	75.320(c)
75.303-2(b)	75.320(a)
75.303-2(c)	Remove
75.304	75.362
75.304-1	Remove.
75.304-2	Remove
75.304-3	75.320
75.305	75.364
75.305-1	75.364
75.305-2	75.320
75.306	75.364
75.306-1	Remove
75.306-2	75.364
75.307	75.320 and 75.362
75.308	75.323 (a), (b) and (c)
75.308-1	75.323 (b) and (c).
75.308-2	75.320
75.309-(a)	75.362(g)
75.309(b)	75.323(d).
75.309-1	75.320
75.309-2	75.323 (a) and (b)(2)(c)(2), and 75.362(g)
75.309-3	75.323(2)(c)(2).
75.309-4	Remove.
75.310	75.323(e).
75.310-1	Remove
75.310-2	75.320
75.310-3	Remove.
75.311	75.332.
75.311-1	75.320
75.312	75.332 (b) and (c).
75.312-1	Remove
75.312-2	75.320(a) and 75.332(c)(2)
75.313	75.342
75.313-1	75.342
75.314	75.361 (a) and (b).
75.314-1	75.320
75.315	Remove.
75.315-1	Remove
75.316	75.370
75.316-1(a)	75.372
75.316-1(b)	75.371
75.316-2(a)	Remove
75.316-2(b)	75.333 (a), (b) and (c)
75.316-2(c)	75.333(f)
75.316-2(d)	75.323(e)
75.316-2(e)	75.334(b)
75.316-2(f)	75.334(e), 75.364 (a), (e), (f), and (g)
75.316-2(g)	Remove
75.316-2(h)	75.323(e)
75.316-2(i)	75.323(e)
75.317	75.320
75.318	Remove
75.319	75.332(a)
75.319-1	75.332
75.320	Remove
75.321	75.311 (b) and (c), and 75.313
75.321-1	75.313(b).
75.322	75.324
75.323	Remove
75.324	Remove
75.325	Remove
75.326	75.350(b) and 75.352
75.327	75.327
75.327-1	75.327
75.328	75.334
75.329	75.334
75.329-1	75.334
75.329-2	75.335 (a) and (h).
75.330	75.371(g)
75.330-1	75.371(g)
75.1704	75.380(a)
75.1704-1	75.380(a).
75.1704-1(a)	Remove.
75.1704-1(b)	Remove.
75.1704-1(c)	75.380(g)
75.1704-2(a)	Remove.
75.1704-2(b)	75.380(a)(6)
75.1704-2(c)	75.364(b)(5)
75.1704-2(d)	75.382
75.1704-2(e)	75.382(b).
75.1704-2(f)	75.382
75.1707-	75.350
75.1701-1	75.350

III. Drafting Information

The principal persons responsible for preparing this proposed rule are: Tony Turyn, Office of Standards, Regulations, and Variances, MSHA; James V. Bowman, Mark O. Eslinger, and John J. Somers, Coal Mine Safety and Health, MSHA; Edward J. Miller, Office of Technical Support, MSHA; and David M. McConnell, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA, has prepared an initial analysis to identify potential costs and benefits associated with the proposed changes to its ventilation standards for underground coal mines. The Agency has incorporated this analysis into the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This proposed rule would include alternative compliance methods, several of which would directly benefit small mining operations. In addition, the proposal would clarify compliance responsibilities and adopt performance-oriented standards when possible.

In the following summary of the Initial Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the proposed requirements with the costs and benefits of the existing requirements. A copy of the full analysis is available upon request.

MSHA estimates that the cost of compliance with the proposed rules would be less than the estimated cost of compliance with the existing requirements. The annual recurring costs of the existing rules are estimated to be $212,275,000, while total recurring compliance cost with the proposed requirements are $204,940,000. The estimated annual savings to the coal mining industry is thus $7,335,000 per year.

The proposed regulations would affect approximately 2,000 underground mining operations. MSHA estimates that 1,150 of these mines are small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mines with fewer than 20 employees.

Annual recurring costs of the existing rules for small mines are estimated to be $44,240,000. Recurring costs of the proposed regulations for small mines are estimated to be $42,865,000, a yearly projected savings of $1,375,000. Recurring costs of the current regulations for large mines are estimated to be $168,035,000, while recurring costs of the proposed requirements for large mines are estimated to be $162,075,000, a projected savings of $5,960,000 per year.

In developing cost estimates, MSHA has taken into consideration industry-wide safety practices. Current compliance costs are related to the following requirements: labor, equipment purchase and maintenance, and recordkeeping. In calculating the costs of the proposed rule, the Agency projected initial compliance costs and annual recurring costs.

In the proposed rule, MSHA has reorganized, updated, and clarified existing provisions. The Agency has also proposed deleting existing duplicative provisions and replacing recordkeeping requirements with certification provisions and requirements for certifications and records of uncorrected hazardous conditions.

The primary benefit of the proposed rule is the protection that the standards would provide to miners who would be endangered by hazards related to methane accumulations and fires in underground coal mines.

Under the proposal, alternative compliance methods and a more performance-oriented approach would reduce compliance costs without diminishing the safety of persons who work at the Nation's mines.

The Agency specifically solicits comments and data on how the proposed regulations would impact the mining industry.

V. Paperwork Reduction Act

The proposal would reduce and simplify existing recordkeeping requirements for preshift and other examinations. Unlike the existing rule, which requires a record of the results of the examinations, the proposal would require a certification that the examination was made and a record which specifies uncorrected hazardous conditions and their locations. If a hazardous condition is corrected, or if no hazardous conditions are observed, no record of the condition would be required.

The proposal would eliminate the existing requirement that the mine foreman review and countersign records of examinations. It would continue to be the responsibility of the mine foreman to have known hazards corrected.

The existing rule contains extensive criteria for evaluating and approving ventilation plans. As a result, comprehensive and often complex ventilation plans are required for each mine. The proposal would retain the requirement that each mine have an approved ventilation plan that addresses ventilation practices at the mine and is suitable to mining conditions. However, it would reduce the scope of the plan by making mandatory existing criteria that in the Agency's experience are applicable to all mines. Additionally, only revisions to ventilation plans would be required to be submitted once a ventilation plan is approved.

The proposed collection of information requirements contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35). Comments regarding collecting of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Mine Safety and Health Administration.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Ventilation, Escapeways, Boreholes in advance of mining, Mining into inaccessible areas.

January 21, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

It is proposed to amend Subparts A, D and R, Part 75, Subchapter I of Title 30 of the Code of Federal Regulations as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961

2. In § 75.2, paragraph (h) is revised to read as follows:

Subpart A—General

§ 75.2 Definitions.

* * * * *

(h) "Worked-out area" means an area where mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.

* * * * *

3. In § 75.2, paragraphs (o), (p), (q) and (r) are added to read as follows:

§ 75.2 Definitions.

* * * * *

(o) "Permanent electrical equipment" means all electrical equipment, except communication and monitoring systems, self-propelled electrical equipment, and electrical equipment that is only energized and operated while attended.

(p) "Air course" means an entry or a set of entries separated from other entries by stoppings, overcasts, other ventilation control devices, or solid blocks of coal or rock so that mixture of air currents between each is limited to leakage. For purposes of the examination required by § 75.364 of Subpart D, two adjacent entries or sets of entries with an open crosscut or crosscuts between them shall be considered separate air courses if the distance between open crosscuts is greater than 300 feet in seam heights below 48 inches and 600 feet in seam heights of 48 inches or above.

(q) "Intake air" means air which has not yet ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared.

(r) "Return air," means air which has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared. When air mixes in a return air course with air which has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared, it is return air.

4. Subpart D, except for § 75.301-a2 which remains unchanged, is revised to read as follows:

Subpart D—Ventilation

Sec.

75.300 Mine ventilation.
* * * * *
75.310 Installation of main mine fans.
75.311 Main mine fan operation.
75.312 Main mine fan examinations and records.
75.313 Main mine fan stoppage with persons underground.
75.320 Air quality detectors and air measurement devices.
75.321 Air quality.
75.323 Actions for excessive methane.
75.324 Intentional changes in the ventilation system.
75.325 Air quantity.
75.326 Mean entry air velocity.
75.327 Trolley haulageways used as intake air courses.
75.330 Face ventilation control devices.
75.331 Auxiliary fans and tubing.
75.332 Working sections and working places.
75.333 Ventilation controls.
75.334 Worked-out areas and areas where pillars are being recovered.
75.335 Construction of seals.
75.340 Underground electrical installations.
75.341 Direct-fired intake air heaters.
75.342 Methane monitors.
75.343 Underground shops and stationary diesel equipment.
75.350 Belt conveyor entries.
75.351 Atmospheric monitoring system.
75.352 Return air courses.
75.360 Preshift examination.
75.361 Supplemental examination.
75.362 On-shift examination.
75.364 Weekly examination.

Sec.
75.365 Evaluation of return air courses developed before March 30, 1970.
75.370 Mine ventilation plan submission and approval.
75.371 Mine ventilation plan; contents.
75.372 Mine ventilation map.

Subpart D—Ventilation

§ 75.300 Mine ventilation.

Each underground coal mine shall be ventilated by one or more main mine fans. Booster fans shall not be installed in the mine ventilation system to assist main mine fans.

* * * * *

§ 75.310 Installation of main mine fans.

(a) Each main mine fan shall be—

(1) Installed on the surface in a fireproof housing;

(2) Connected to the mine opening with fireproof air ducts;

(3) Equipped with an automatic device that gives a signal which can be seen or heard when the fan slows or stops;

(4) Equipped with a pressure recording device or a main fan monitoring system, except that for mines permitted to shut down main mine fans in accordance with § 75.371(i) of this part, an equally effective device for monitoring main mine fan pressure may be used;

(5) Protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, located in direct line with possible explosive forces; and

(6) Offset so that the fan and its associated components are not in direct line with possible explosive forces.

(b)(1) When an electric motor is used to drive a main mine fan, the motor shall operate from a power circuit independent of all other mine power circuits. If the electric motor is not permissible, it shall not be located in the air current exhausting from the mine.

(2) When an internal combustion engine is used to drive a main mine fan—

(i) The fuel supply shall be protected against fires and explosions;

(ii) The engine shall be installed in a fireproof housing and be equipped with a remote shut-down switch;

(iii) The engine and the engine exhaust system shall be located out of direct line of the air current exhausting from the mine; and

(iv) The engine exhaust shall be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure.

(c) If a main fan monitoring system is used, the system shall be capable of monitoring main mine fans and their associated components for proper operation and of recording mine ventilating pressure. The system shall also be equipped with an automatic device that gives a signal to a surface location when—

(1) An electrical or mechanical deficiency exists in the monitoring system; or

(2) A sudden increase or loss of mine ventilating pressure occurs.

(d) Weak walls and explosion doors shall have cross-sectional areas at least equal to that of the entry through which the pressure from an explosion underground would be relieved.

(e) If a mine fan is installed in line with an entry, a slope, or a shaft—

(1) The cross-sectional area of the pressure relief entry shall be at least equal to that of the fan entry;

(2) The fan entry shall be developed out of direct line with possible explosive forces; and

(3) The coal or other solid material between the pressure relief entry and the fan entry shall be at least 2,500 square feet.

(f) In mines ventilated by multiple main mine fans, fireproof doors shall be installed on the fans so that if any main mine fan stops and air reversal through the fan is possible, the doors on the affected fan will automatically close.

§ 75.311 Main mine fan operation.

(a) Main mine fans shall be continuously operated, except as specified in the ventilation plan, or when intentionally stopped for maintenance or adjustment.

(b) When a main mine fan is intentionally stopped for maintenance or adjustment and the required ventilation is not maintained—

(1) Only persons authorized by the operator who are necessary to evaluate the effect of the fan stoppage or restart, and authorized representatives of the Secretary, shall be permitted in the mine;

(2) Mechanized equipment in the mine shall be shut off prior to stopping the fan; and

(3) Electric power circuits entering underground areas of the mine shall be deenergized, if the fan is stopped for more than 30 minutes.

(c) Electrical or mechanical deficiencies in a main mine fan shall be repaired promptly.

(d) While persons are underground, a person designated by the operator shall be at a surface location at all times where each main fan signal device can be seen or heard.

(e) The area within 100 feet of main mine fans and intake air openings shall not contain accumulations of combustible or flammable material, or other precautions necessary to provide protection from fire or other products of combustion shall be specified in the ventilation plan.

§ 75.312 Main mine fan examinations and records.

(a) Each main mine fan and its associated components shall be examined for proper operation by a person designated by the operator at least once each day during which the fan operates, unless a main fan monitoring system is used.

(b)(1) When a main fan monitoring system is used, a person designated by the operator shall, at least every 7 days—

(i) Test the monitoring system for proper operation; and

(ii) Examine each main mine fan and its associated components.

(2) If the monitoring system malfunctions, the malfunction shall be corrected, or a person designated by the operator shall examine each main mine fan and its associated components for proper operation at least once each day during which the fan operates.

(c) At least every 30 days, the automatic fan signal device for each main mine fan shall be tested to determine whether it is working properly.

(d) At least every 30 days, automatic closing doors in multiple main mine fan systems shall be tested for proper operation.

(e) Circular mine fan pressure recording charts shall be changed before the beginning of a second revolution.

(f) *Certification.* Persons performing main mine fan examinations shall certify by initials and date that the examinations were made. Each certification shall identify the main fan examined.

(g) *Recordkeeping.* Persons performing main mine fan examinations shall record uncorrected defects that may affect the operation of the fan which are not corrected by the end of the shift on which the examination is made.

(h) *Retention period.* Certifications and records, including records of mine fan pressure, shall be retained for at least one year at a surface location and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.313 Main mine fan stoppage with persons underground.

(a) When a main mine fan stops while any person is underground and the required ventilation is not maintained—

(1) Electrically powered equipment in each working section shall be deenergized;

(2) Other mechanized equipment in each working section shall be shut off; and

(3) Persons shall be withdrawn from working places.

(b) If ventilation is restored within 15 minutes after the main fan stops, certified persons shall examine for methane in the working places and in other areas where methane will accumulate before work is resumed and before equipment is energized in such areas.

(c) If ventilation is not restored within 15 minutes after the main fan stops—

(1) Persons shall be withdrawn from the mine;

(2) Underground electric power circuits shall be deenergized, except those circuits located in areas where air reversals are not likely to occur and that are necessary to withdraw persons from the mine, which shall be deenergized as persons are withdrawn;

(3) Mechanized equipment not located on working sections shall be shut off unless the equipment is located in areas where air reversals are not likely to occur, and the equipment is necessary to withdraw persons from the mine;

(4) Certified persons shall complete an examination for methane before underground power circuits are energized in an area; and

(5)(i) No person shall enter any underground area of the mine until an examination of the area is completed by a certified person and the area is determined to be safe.

(ii) If ventilation is restored to the mine before miners reach the surface, the miners may return to underground areas only after an examination of the areas is made by a certified person and the area is determined to be safe.

§ 75.320 Air quality detectors and air measurement devices.

(a) Tests for methane shall be made with approved detectors that are maintained in permissible and proper operating condition.

(b) Tests for oxygen deficiency shall be made with approved oxygen detectors that are maintained in permissible and proper operating condition.

(c) Devices that contain electrical components and that measure air velocity shall be used only if they are approved and maintained in permissible and proper operating condition.

(d) Devices that contain electrical components and that are used for measuring carbon monoxide, oxides of nitrogen and other harmful gases shall be approved, and maintained in permissible and proper operating condition.

(e) Flame safety lamps shall not be taken into or used underground.

§ 75.321 Air quality.

(a) Areas where persons work or travel shall be ventilated by air containing at least 19.5 percent of oxygen and not more than 0.5 percent of carbon dioxide.

(b) Concentrations of explosive gases in air shall not exceed the following:

(1) Hydrogen (H_2)—.6 percent;

(2) Hydrogen sulfide (H_2S)—.8 percent;

(3) Ethane (C_2H_6)—.6 percent.

§ 75.323 Actions for excessive methane.

(a) These provisions shall apply when methane concentrations described in this section are detected at any location at least 12 inches from the roof, face, ribs and floor.

(b) When 1.0 percent of methane is present in a working place or an intake aircourse, including an aircourse in which a belt conveyor is located—

(1) Electrically powered equipment in the aircourse or in the affected working places shall be deenergized, and other mechanized equipment shall be shut off; and

(2) Changes or adjustments in ventilation or in the section mining cycle shall be made to reduce the concentration of methane to less than 1.0 percent.

(c) When 1.5 percent of methane is present in a working place or an intake aircourse, including an aircourse in which a belt conveyor is located—

(1) All persons shall be withdrawn from the affected area, except for those persons designated by the operator to take corrective action, and authorized representatives of the Secretary;

(2) Electric power to equipment in affected areas shall be disconnected at the power source; and

(3) Changes or adjustments in ventilation shall be made to reduce the concentration of methane to less than 1.0 percent.

(d) When 1.5 percent of methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location at which such split is used to ventilate seals or worked-out areas—

(1) Electrically-powered equipment in the affected split shall be deenergized and other mechanized equipment shall be shut off; and

(2) Changes or adjustments in ventilation shall be made to reduce the concentration of methane in the return air to less than 1.5 percent.

(e) When 2.0 percent of methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, seal, or worked-out area—

(1) All persons shall be withdrawn from the affected air split, except persons authorized by the operator to take corrective action, and authorized representatives of the Secretary;

(2) All electric power to equipment in the affected air split shall be disconnected at the power source; and

(3) Changes or adjustments in ventilation shall be made to reduce the concentration of methane in the return air to less than 1.5 percent.

(f) When 2.0 percent methane is present in a bleeder split of air just before the air in that split enters another split of air, or in a return air course other than as described in paragraphs (d) and (e) of this section, changes or adjustments in ventilation shall be made to reduce the concentration of methane to less than 2.0 percent.

§ 75.324 Intentional changes in the ventilation system.

Any intentional change in ventilation which materially affects the main air current or any split thereof, or which affects section ventilation by at least 9,000 cubic-feet-per-minute of air, shall be supervised by a person designated by the operator and shall be made only as follows:

(a) Electric power shall be removed from areas affected by the ventilation change, and mechanized equipment in those areas shall be shut off, before persons start to make the change.

(b) Only persons making the change in ventilation shall be permitted in the mine.

(c) Electric power shall not be restored to the areas affected by the ventilation change and mechanized equipment shall not be re-started until a certified person has examined such areas for methane and for oxygen deficiency and has determined that such areas are safe.

§ 75.325 Air quantity

(a) The quantity of air reaching the working face shall be greater than the operating volume of machine-mounted dust collectors and diffuser fans, unless otherwise specified in the ventilation plan.

(b)(1) In bituminous and lignite mines, the quantity of air shall be at least 3,000 cubic-feet-per-minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded,

unless a greater quantity is required in the ventilation plan.

(2) The quantity of air reaching the working face shall be measured at the face end of the line curtain or ventilation tubing. If the curtain or tubing extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be measured behind the line curtain or in the ventilation tubing at the last row of permanent supports.

(c) In longwall mining systems, the quantity of air shall be at least 20,000 cubic-feet-per-minute reaching each working face, when measured in the intake entry or entries at the intake end of the longwall face immediately outby the face, unless a greater quantity is required in the ventilation plan.

(d) In anthracite mines, the quantity of air shall be as follows:

(1) At least 1,500 cubic-feet-per-minute reaching each working face where coal is being mined.

(2) At least 5,000 cubic-feet-per-minute passing through the last open crosscut in each set of entries or rooms and at the intake end of any pillar line.

(3) In robbing areas where air currents cannot be controlled and air measurements cannot be obtained, the air shall have perceptible movement.

§ 75.326 Mean entry air velocity.

In exhausting face ventilation systems, the minimum mean entry air velocity shall be at least 60 feet-per-minute, unless a lower velocity is specified in the ventilation plan that will maintain respirable dust concentrations below the applicable standard.

§ 75.327 Trolley haulageways used as intake air courses.

In intake air courses where trolley wires or trolley feeder wires are installed, the velocity of air shall be at least 50 feet-per-minute.

§ 75.330 Face ventilation control devices.

(a) Brattice cloth, ventilation tubing and other face ventilation control devices shall be made of flame-resistant material approved by the Secretary.

(b)(1) Ventilation control devices shall be used to provide ventilation to each working face from which coal is being cut, mined or loaded, and to other working places as specified in the ventilation plan.

(2) Such devices shall be installed at a distance specified in the ventilation plan that will maintain concentrations of respirable dust, methane, and other harmful gases below the applicable standards.

§ 75.331 Auxiliary fans and tubing.

(a) When auxiliary fans and tubing are used for face ventilation, each auxiliary fan shall be—

(1) Permissible;

(2) Maintained in proper operating condition;

(3) Deenergized when no person is present on the working section; and

(4) Located and operated to avoid recirculation of air.

(b) When a deficiency exists in any auxiliary fan system, or when the air passing through any auxiliary fan or tubing contains 1.0 percent of methane—

(1) The deficiency shall be corrected or the auxiliary fan shall be deenergized immediately; and

(2) Power to electrical equipment in the working place and to the auxiliary fan shall be deenergized, and other mechanized equipment shall be switched off, until the methane concentration is reduced to less than 1.0 percent.

(c) When an auxiliary fan is stopped, line brattice or other face ventilation control devices shall be used to maintain ventilation to the face.

§ 75.332 Working sections and working places.

(a)(1) Each working section shall be ventilated by a separate split of intake air.

(2) When two or more sets of mining equipment are simultaneously engaged in the production of material within the same working section, each set of mining equipment shall be on a separate split of intake air.

(b) Air that has passed through any worked-out area shall not be used to ventilate any working place.

(c) For purposes of this section, a set of mining equipment includes a single loading machine, a single continuous mining machine, or a single longwall or shortwall mining machine.

§ 75.333 Ventilation controls.

(a) Except in rooms that are 600 feet or less in depth from the canterline of the entry from which the room was developed, permanent stoppings shall be erected and maintained—

(1) Between intake air courses and return air courses to and including the fourth connecting crosscut outby each working face;

(2) To separate belt conveyor haulageways from return air courses to and including the fourth connecting crosscut outby each working face, except for areas of mines developed before March 30, 1970, where belt entries are used as return air courses; and

(3) To separate escapeways from belt, trolley haulage, and trolley feeder entries, as required by § 75.380(c)(3).

(b) Doors that provide access between all intake air courses, return air courses, and haulageways shall be installed as follows in permanent stoppings that separate air courses and haulageways that are constructed after (insert 30 days after the final rule becomes effective):

(1) The distance between doors shall be no more than 300 feet in seam heights below 48 inches and 600 feet in seam heights 48 inches or above.

(2) The location of doors in all escapeways shall be clearly marked so that the doors may be easily identified by persons traveling in the escapeway or in entries on either side of the doors.

(c)(1) Where airlock doors are installed so that machinery can travel from one aircourse to another, their locations shall be specified in the ventilation plan.

(2) When airlock doors are used, one door in each set of doors shall remain closed. When not in use, both doors shall be closed.

(d)(1) All overcasts, undercasts, shaft partitions, and permanent stoppings shall be constructed of durable and noncombustible material, such as concrete, concrete block, brick, cinder block, or tile. No ventilation controls installed after [insert 30 days after final rule becomes effective] shall be constructed of aluminum. Controls shall be maintained so that they serve the purpose for which they were built.

(2) When timbers are used to create stoppings in heaving or caving areas, they shall be coated on all accessible surfaces with fire resistent material having a flame spread index of not more than 25, as tested in accordance with ASTM E–162.

(3) Doors and door frames in stoppings, ventilation doors, and regulators shall be made of noncombustible material, or treated or coated with fire-resistant material on all accessible surfaces.

(4) For purposes of this section, "durable material" is material that is structurally equivalent to an 8-inch hollowcore concrete block stopping with mortared joints in accordance with ASTM E–72 Section 12—Traverse Load-Section Vertical. "Noncombustible material" is material that will continue to serve its purpose as a ventilation control when subjected to ASTM E–119 for one hour.

(e) When sealants are applied to ventilation controls, the sealant shall have a flame-spread index of not more than 25, as tested in accordance with ASTM E–162.

(f) Before mining is discontinued in an entry or room that is advanced in excess of 30 feet, a crosscut shall be made or line brattice shall be installed and maintained to provide adequate ventilation.

§ 75.334 Worked-out areas and areas where pillars are being recovered.

(a) Worked-out areas where no pillars have been recovered shall be ventilated so that gases from throughout the workedout areas are routed into a return air course or to the surface of the mine, or they shall be sealed.

(b) During pillar recovery, a bleeder system shall be used to control the air passing through the area and to continuously dilute and move gases, dusts and fumes from all portions of the worked-out area, into a return air course or to the surface of the mine. After completion of pillar recovery, a bleeder system shall be maintained or the area shall be sealed.

(c) Bleeder systems shall include any one or combination of the following:

(1) Special aircourses designed, developed and maintained to continuously move air-methane mixtures from the workedout areas into a return air course or to the surface of the mine.

(2) Methane drainage systems.

(3) Surface openings.

(4) Connectors between caved areas and special aircourses described in (c)(1).

(d) The bleeder system to be used shall be specified in the ventilation plan.

(e) If the bleeder system used does not continuously move gases, dusts, and fumes away from worked-out areas into a return air course or to the surface of the mine, or if the effectiveness of the bleeder system cannot be determined in accordance with § 75.364 of this part, the worked-out area shall be sealed.

(f) Each mining system shall be designed so that each worked-out area can be sealed.

§ 75.335 Construction of seals.

(a) Except as specified in paragraph (f) of this section, each seal shall be—

(1) Constructed of noncombustible material with mortar or equivalent fire-resistant material between all joints;

(2) Constructed in solid floor, roof, and ribs, and hitched at least one foot into the ribs; and

(3) Coated on all accessible surfaces with fire-resistant material that will minimize leakage.

(b) A sampling pipe or pipes shall be installed in each set of seals for a worked-out area. Each pipe shall—

(1) Extend into the sealed area for a sufficient distance to obtain a representative sample from behind the seal, but in no case shall pipes extend less than 15 feet into the sealed area;

(2) Be equipped with a cap or shut-off valve; and

(3) Be installed with the sampling end of the pipe approximately 12 inches from the roof.

(c)(1) A corrosion-resistant water pipe or pipes shall be installed in seals at the low points of the area being sealed and at all other locations necessary to drain water from sealed areas; and

(2) Water traps shall be installed on the outby side of the lowest point of each set of seals.

(d) Seals shall be at least 16 inches thick. When the thickness of the seal is less than 24 inches and the width is greater than 16 feet, a pilaster shall be interlocked near the center of the seal.

(e) When timbers are used to create a seal in heaving or caving areas, they shall be coated on all accessible surfaces with fire resistant material having a flame-spread index of not more than 25, as tested in accordance with ASTM E–162.

(f) Alternate construction methods or materials may be used if they provide at least equivalent protection and are specified in the ventilation plan.

§ 75.340 Underground electrical installations.

(a)(1) Except as provided in paragraph (b) of this section, permanent electrical equipment shall be in fireproof structures or areas and shall be ventilated by intake air that is coursed directly into a return air course.

(2) Permanent electrical equipment may be located in a crosscut between an intake regulator and a return entry, provided that the quantity of intake air passing over the equipment is at least 5,000 cubic-feet-per-minute, the air passes directly into a return, and no part of the permanent electrical equipment extends into the return air course. Where battery charging stations used for charging permissible equipment are ventilated in accordance with this section, including stations located on or advanced with working sections, no part of the station or the equipment being charged shall extend into the return air course.

(b) The intake air ventilating the following electrical equipment is not required to be coursed directly into a return air course:

(1) Rectifiers or power centers with transformers that are either dry-type or contain nonflammable liquid, provided that such rectifiers or power centers are moved as the working section advances or retreats.

(2) Power centers and dry-type transformers that are necessary for the operation of a belt conveyor and are located in an air course equipped with an early-warning fire detection system that meets the requirements of § 75.350 of this part.

(3) Rectifiers for trolley haulage systems, underground substations, power centers, permanent pumping stations provided that—

(i) They are housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system; and

(ii) When either the temperature in the fireproof structure reaches 165 degrees Fahrenheit, or when the carbon monoxide concentration reaches 15 ppm above the established ambient level for that area, the fireproof doors close, incoming power to the structure is deenergized, and a signal is activated at a surface location that can be seen or heard at all times while any person is underground. This surface location shall have access to two-way communication with affected working sections.

(c) Permissible pumps may be used in return aircourses.

§ 75.341 Direct-fired intake air heaters.

(a) If any component in systems used to heat intake air malfunctions, the heaters affected shall switch off automatically.

(b) Thermal overload devices shall protect the blower motor against overheating.

(c) The fuel supply shall turn off automatically if a flame-out occurs.

(d) A pressure switch or other device shall switch off the heaters when the volume of air entering the shaft, slope, or drift opening is reduced by 10 percent or more when persons are underground, except that steam exchange units may be shut down on a delayed basis.

(e) Each heater shall be located or guarded to prevent contact by persons.

(f) If intake air heaters use liquefied fuel systems:

(1) Hydrostatic relief valves installed on vaporizers and on storage tanks shall be vented;

(2) Fuel storage tanks shall be located or protected to prevent fuel from leaking into the mine.

§ 75.342 Methane monitors.

(a)(1) Methane monitors approved by the Secretary shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other equipment used to extract or load coal from the face.

(2) Methane monitors shall be maintained in permissible and proper operating condition.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(b) When the methane concentration at any methane monitor reaches 1.0 percent, the monitor shall give a warning signal.

(c) The methane monitor shall automatically deenergize the machine on which it is mounted when the methane concentration at the monitor reaches 2.0 percent.

§ 75.343 Underground shops and stationary diesel equipment.

Underground shops and stationary diesel equipment shall be equipped with an automatic fire suppression system or be enclosed in a fireproof structure or area, and shall be ventilated with intake air that is coursed directly into a return air course.

§ 75.350 Belt conveyor entries.

(a) The provisions of this section apply where conventional, continuous, or longwall mining methods are used, except when—

(1) Belt conveyors that are no longer than 600 feet are used on a working section to transport coal from the face in lieu of shuttle cars or other such haulage equipment; or

(2) Cross belt conveyors that are no longer than 600 feet are located on a working section.

(b) *Intake belt air used at a working place.* When intake air is coursed through a belt conveyor entry to ventilate a working place, the belt conveyor entry shall be—

(1) Equipped with an early-warning fire detection system consisting of carbon monoxide sensors installed and operated as specified in paragraphs (c)(1), (c)(2), and (c)(3) of § 75.351, and paragraphs (d) through (j) of this section;

(2) Separated by permanent stoppings from escapeways, as required by § 75.380(c)(3), and from return air courses; and

(3) Ventilated by an air current with a velocity of at least 50 feet-per-minute.

(c) *Intake belt air not used at a working place.* When intake air coursed through a belt conveyor entry is not used to ventilate a working place, the entry shall be separated by permanent stoppings from escapeways as required by § 75.380(c)(3), and from return air courses, and the intake air shall—

(1) Have a velocity of at least 50 feet-per-minute; and

(2) Be coursed directly into a return air course.

(d) *Fire-detection systems.* Early-warning fire detection systems shall—

(1) Monitor for circuit continuity and sensor function;

(2) Give a signal to a designated surface location at the mine when any deficiency exists in the system;

(3) Give a signal to affected working sections and to the designated surface location when the carbon monoxide concentration at any sensor reaches 10 parts-per-million (ppm) above the established ambient level for that area;

(4) Activate alarms at a designated surface location when the carbon monoxide concentration at any sensor reaches 15 ppm above the established ambient level for that area; and

(5) Identify at the designated surface location any activated or malfunctioning sensor.

(e) When the carbon monoxide concentration at any sensor reaches 10 ppm above the established ambient level for that area, all persons shall be withdrawn from the affected area.

(f) When the carbon monoxide concentration at any sensor reaches 15 ppm above the established ambient level for that area, the mine evacuation plan shall be implemented for all persons, except those persons required to determine the cause of the activation and to take corrective action.

(g) A person designated by the operator shall be at a surface location where the signals and alarms for the early-warning fire detection system can be seen or heard at all times while any person is underground. This person shall have access to two-way communication with persons on working sections and with other persons having identifiable duty stations. A mine map showing underground monitoring system components and their locations shall be posted at the surface location.

(h) If any portion of the early-warning fire detection system required by this section malfunctions or is deenergized, the affected belt conveyor shall be operated only when a qualified person having communication with a designated surface location patrols the affected area and monitors for carbon monoxide with a hand-held carbon monoxide detection device with a level of detection comparable to monitoring sensors, in the following manner:

(1) If one sensor becomes inoperative, a qualified person shall monitor at that location;

(2) If two or more adjacent sensors become inoperative, a qualified person shall patrol and monitor the area affected; and

(3) If the complete system becomes inoperative, a sufficient number of qualified persons shall patrol and monitor so that the affected belt entry or entries are travelled each hour in their entirety, or qualified persons shall continuously monitor for carbon monoxide at the end of each belt conveyor flight. After the completion of the shift during which the system becomes inoperative, qualified persons shall continue to patrol the belt once each hour in its entirety, or qualified persons with hand-held monitors shall be stationed at each sensor.

(i)(1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ± 1 ppm throughout the operating range.

(2) At least once during each coal-producing shift, each carbon monoxide sensor shall be visually examined.

(j) *Recordkeeping.* When a signal device or alarm is activated, a record shall be made of the date, time, and carbon monoxide concentration at the sensor producing the signal and the reason for its activation.

(k) *Retention Period.* Records shall be retained for at least one year at a surface location at the mine and made availble to authorized representatives of the Secretary and representatives of miners.

§ 75.351 Atmospheric monitoring system.

(a) An atmospheric monitoring system (AMS) shall consist or sensors to monitor the mine atmosphere and instruments at a surface location designated by the operator to receive information from the monitoring sensors.

(b) In mining systems where both escapeways are ventilated by the same continuous split of air as specified in the ventilation plan in accordance with § 75.380(c)(2), AMS sensors shall monitor the mine atmosphere for parts-per-million of carbon monoxide in the intake escapeway required to be ventilated by intake air, at a location adjacent to the section loading point, and at 2000 foot intervals for a distance of at least 6000 feet outby the section.

(c) Where used to monitor belt conveyor haulageways in accordance with § 75.362 of this part, AMS sensors shall monitor the mine atmosphere for percentage of methane and parts-per-million (ppm) of carbon monoxide at the following locations:

(1) Not more than 50 feet inby or outby—

(i) Each belt drive and each belt take-up; or

(ii) Each belt drive and take-up combination where the take-up is within 300 feet of the belt drive.

(2) Not more than 50 feet inby or outby the section belt tail-piece.

(3) At least every 2,000 feet along the belt conveyor haulageway.

(4) At the inby end of each track where a belt and track are isolated in the same aircourse.

(d) Where used to monitor return air splits, in accordance with § 75.362, AMS sensors shall monitor the mine atmosphere for percentage of methane and parts-per-million of carbon monoxide between the last working place, or longwall or shortwall face, ventilated by the air split and the function with another air split, seal, or worked-out area.

(e) Where used in accordance with § 75.364 as a method of evaluating bleeder systems, and where AMS will be used in accordance with § 75.364 to monitor worked-out areas where no pillars have been recovered, AMS sensors shall be installed to monitor the mine atmosphere for percentage of methane and oxygen, and parts-per-million (ppm) of carbon monoxide where air from a worked-out area enters a return split of air and at other locations specified in the ventilation plan.

(f) When an AMS is used in accordance with this section, it shall monitor circuit continuity and sensor function, and shall give a signal to the designated surface location when—

(i)(1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ± 1 ppm throughout the operating range;

(2) Each methane sensor shall be capable of detecting one percent of methane in air with an accuracy of ± 0.2 percent of methane.

(3) Each oxygen sensor shall be capable of detecting 19.5 percent of oxygen in air with an accuracy of ± 0.2 percent of oxygen.

(j) *Recordkeeping.* When a signal device or alarm is activated, a record shall be made of the date, time, methane, oxygen, or carbon monoxide concentration at the sensor producing the signal and the reason for its activation.

(k) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.352 Return air courses.

Except for areas of a mine developed before March 30, 1970, the entries used as return air courses shall be separated from belt haulage entries.

§ 75.360 Preshift examination.

(a) Within 3 hours preceding the beginning of any shift and before any person on the oncoming shift, other than certified persons conducting examinations required by Subpart D, enters any underground area of the mine, a certified person designated by the operator shall make a preshift examination.

(b) The person conducting the preshift examination shall examine for hazardous conditions and test for methane and oxygen deficiency at the following locations:

(1) Roadways and track haulageways where persons are scheduled to work or travel during the oncoming shift.

(2) Belt conveyors which will be used to transport persons during the oncoming shift, and the entries in which the belt conveyors are located.

(3) Working sections, working places, and ventilation controls on working sections.

(4) Approaches to worked-out areas in active workings;

(5) Seals along intake air courses.

(6) Entries or rooms driven off an intake air course, where intake air passes through or along these entries or rooms to a working section.

(7) Where unattended diesel equipment or an electrical installation, except electrical cables, will be energized during the shift.

(c) The person conducting the preshift examination shall measure the volume and velocity of air at the following locations:

(1) Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, in the last open crosscut in the line of pillars containing the temporary controls that separate the intake air courses and the return air courses.

(2) In the last open crosscut of each set of entries or rooms on each working section in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(3) On a longwall or shortwall, in the intake entry or entries at the intake end of the shortwall or longwall face immediately outby the face and at locations along the face at least 50 feet from each end of the face.

(4) At the intake end of any pillar line—

(i) Where a single split of air is used, in the intake entry immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used, in the intake entries immediately outby the split point.

(d) Hazardous conditions in any area of the mine where persons will be required to work or travel shall be posted within a conspicuous warning sign where persons entering such area will be required to pass. Only persons designated by the operator to correct the condition may enter a posted area.

(e) *Certification.* Persons performing a preshift examination shall certify by initials and date at each working place examined that the examination was made and note the time of the examination. In areas required to be examined outby a working section, the certified person shall certify by initials and date and note the time of examination at a sufficient number of locations to indicate that the entire area has been examined.

(f) *Recordkeeping.* A record of uncorrected hazardous conditions and their locations for each examination shall be made on the surface before any person, other than certified persons conducting examinations required by Subpart D, enters any underground area of the mine. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(g) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.361 Supplemental examination.

(a) Before any person enters an area in which a preshift examination has not been made, a certified person shall examine the area for hazardous conditions, determine whether the air is traveling in its proper course and at its normal volume and velocity, and test for methane and oxygen deficienty. This provision does not apply to—

(1) Certified persons conducting examinations required by Subpart D; and

(2) Persons, such as pumpmen and belt mechanics, who may make such examinations for themselves, if they are trained and qualified in the use of air quality detectors and air measurement devices.

(b) *Certification.* Certified persons performing supplemental examinations shall certify by initials and date at each working place examined that the examination was made and note the time of the examination. In areas required to be examined outby a working section, the certified person shall certify by initials and date and note the time of the examination at a sufficient number of locations to indicate that the entire area had been examined.

§ 75.362 On-shift examination.

(a) During each shift that coal is produced, a certified person designated by the operator shall examine each working section for hazardous conditions and test for methane and oxygen deficiency.

(b) During each shift that coal is produced, a qualified person shall examine for hazardous conditions along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, provided that the examination is conducted by a certified person within three hours before the concoming shift.

(c) Persons conducting the on-shift examination shall measure the volume and velocity of air at the following locations:

(1) Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, in the last open crosscut in the line of pillars containing the temporary controls that separate the intake air courses and the return air courses.

(2) In the last open crosscut of each set of entries or rooms on each working section in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(3) On a longwall or shortwall, in the intake entry or entries at the intake end of the shortwall or longwall face immediately outby the face and at locations along the face at least 50 feet from each end of the face.

(4) At the intake end of any pillar line—

(i) Where a single split of air is used, in the intake entry immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used, in the intake entries immediately outby the split point.

(d) A qualified person shall make tests for methane in working places at the last permanent roof supports or, when shortwall or longwall mining systems are used, at the headgate and tailgate—

(1) Immediately before equipment is operated or energized in these areas; and

(2) At additional intervals during the operation of this equipment, if specified in the ventilation plan for the mine.

(e) During each shift that coal is produced and at intervals not exceeding 4 hours, tests for methane shall be made—

(1) By a qualified person or by an AMS along each belt conveyor haulageway in which a belt conveyor is operating; and

(2) By a certified person or by an AMS in each return split of air on each working section between the last working place, shortwall or longwall face, ventilated by that air split and the junction with another air split, seal, or worked-out area.

(f) *Certification.* Persons performing on-shift examinations shall certify by initials and date at each working place examined that the examination was made and note the time of the examination.

(g) *Recordkeeping.* At or by the completion of each coal-producing shift, a record of uncorrected hazardous conditions and their locations shall be made for the on-shift examination. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(h) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.364 Weekly examination.

(a) *Worked-out areas.* At least every seven days, a certified person shall examine unsealed worked-out areas where no pillars have been recovered as follows:

(1) The worked-out area shall be traveled to the area of deepest penetration, unless an alternative method of effectively evaluating the ventilation of the area is specified in the ventilation plan.

(2) Measurements of methane and oxygen concentration, and tests to determine if the air is moving in its designated direction, shall be made at locations where the effectiveness of the ventilation system of the area can be determined.

(3) In lieu of weekly examination by a certified person, an AMS may be used.

(b) At least every seven days, a certified person shall evaluate the effectiveness of bleeder systems used in accordance with § 75.334 (b) and (c), in the following manner:

(1) Measurements of methane and oxygen concentration, and a test to determine if the air is moving in its designated direction, shall be made where air enters the worked-out area.

(2) Measurements of methane and oxygen concentration, and a test to determie if the air is moving in its designated direction, shall be made where air enters a return split of air.

(3)(i) Special air courses described in § 75.334(c)(1), if used, shall be traveled at least once each week to locations specified in the ventilation plan where measurement of methane and oxygen concentration, and a test to determine if the air is moving in its designated direction, can be made; or

(ii) Such special aircourses may be evaluated by an atmospheric monitoring system (AMS).

(c) *Hazardous conditions.* At least every seven days, an examination for hazardous conditions, including air velocity measurements and tests for methane, shall be made by a certified person designated by the operator at the following locations:

(1) In each intake air course to determine if there is proper ventilation in the entire air course;

(2) In each return air course to determine if there is proper ventilation in the entire air course, except for return air courses evaluated in accordance with § 75.365 of this part.

(3) In at least one air course in its entirety on the tailgate side of each longwall mining section, so that the entire air course is traveled.

(4) At each seal along return air courses.

(5) In each escapeway so that the entire escapeway is traveled.

(6) At regulators.

(d) The weekly examination may be conducted at the same time as the preshift and on-shift examinations.

(e)(1) The weekly examination is not required during any seven consecutive day period in which no person enters any underground area of the mine.

(2) Except for certified persons to make examinations, no person shall enter any underground area of the mine if a weekly examination has not been completed within the previous 7 days.

(f) *Certification.* Persons performing the weekly examinations shall certify by initials and date that the examination was made and note the time of the examination. Certifications and times shall appear at a sufficient number of locations to indicate that the entire area has been examined.

(g) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is made, a record of corrected hazardous conditions and their locations shall be made. The record shall be made by the person performing the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date.

(h) *Retention period.* Records shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.365 Evaluation of return air courses developed before March 30, 1970.

(a) Return air courses may be evaluated in accordance with this section when such air courses—

(1) Were developed before March 30, 1970;

(2) Are unsafe for travel and cannot be examined as required by § 75.364 of this part; and

(3) Are identified in the ventilation plan for the mine.

(b) Air measurement stations for each return air course shall be established at locations where the quanity and quality of air entering, flowing through, and returning from each affected return air course can be determined.

(c) Air measurement stations and approaches to such stations shall be maintained in safe condition.

(d) At least once each day that coal is produced, the following measurements and tests shall be made at each air measurement station by certified persons designated by the operator or by an AMS:

(1) Measurements for the quality and velocity of air, including tests for methane and carbon monoxide.

(2) Tests to determine whether the air is traveling in the proper direction.

(e) An immediate investigation of affected areas shall be made when a measurement taken at an air measurement station shows—

(1) An increase in the methane concentration greater than 0.5 percent from the average methane concentration at that station during the previous seven days;

(2) A variation in air velocity greater than 10 percent from the average air velocity at that station during the previous seven days; or

(3) A change in the normal direction of any air current.

(f) *Certification.* Persons performing the evaluations shall certify by initials and date that the evaluation was made, and note the time of the evaluation at each air measurement station.

(g) *Recordkeeping.* A record of any uncorrected hazardous conditions and their locations shall be made by the person performing the evaluation.

(h) *Retention Period.* Records, including printouts from atmosphere monitoring systems, shall be retained for at least one year at a surface location at the mine and made available to authorized representatives of the Secretary and representatives of miners.

§ 75.370 Mine ventilation plan submission and approval.

(a)(1) Each mine operator shall develop and follow a ventilation plan, approved by the District Manager, that is suitable to the conditions and the mining system to be used at the mine.

(2) The proposed ventilation plan and any revision to the plan shall be submitted in writing to the District Manager. When revisions to a ventilation plan are proposed, only the revised pages, maps, or sketches of the plan need to be submitted, unless otherwise specified by the District Manager. A copy of the proposed ventilation plan and any revision to the plan shall be provided to the representative of miners.

(3) The mine operator and the representative of miners may submit additional information in writing to the District Manager, and upon request, shall be provided an opportunity to meet with the District Manager to discuss the plan. The operator or representative of miners submitting additional information shall provide a copy of such information to the other party.

(b)(1) The District Manager will notify the mine operator and miners' representative in writing of the approval or denial of approval of a proposed ventilation plan or proposed revision.

(2) When approval of a proposed plan or revision is denied, the deficiencies of the plan or revision and recommended changes will be specified and the mine operator and representative of miners will be provided an opportunity to discuss the deficiencies and changes with the District Manager.

(c)(1) The operator shall have an opportunity to appeal the District Manager's decision on the disputed plan provisions to the Administrator for Coal Mine Safety and Health within 30 days of receipt of the District Manager's notification of denial of approval. The operator shall notify the Administrator in writing of the reasons for disagreeing with the District Manager. A copy of the appeal shall be provided by the operator to the representative of miners.

(2) Within 30 days of receipt of a copy of the operator's appeal, the representative of miners may submit additional information in writing to the Administrator. The representative of miners shall provide a copy of any such written information to the operator.

(3) After reviewing the appeal, including information submitted by all parties, the Administrator will issue a decision on the disputed plan provisions. The Administrator's decision shall be final.

(d) No proposed ventilation plan or revision to a ventilation plan shall be implemented before it is approved.

(e) Before implementing an approved revision to a ventilation plan, all persons who are affected by the revision shall be instructed in its provisions.

(f) The approved ventilation plan and any revisions shall be available to the miners and represenatives of miners.

(g) The ventilation plan for each mine shall be reviewed every six months by an authorized representative of the Secretary.

(h) Existing ventilation plans that conflict with this Subpart D shall be revised to meet the requirements of this Subpart D by (insert date 6 months after the effective date of this rule). This paragraph (h) shall expire (insert date one year after effective date of this rule.)

§ 75.371 Mine ventilation plan; contents.

The mine ventilation plan shall include the information described below and any additional measures required by the District Manager.

(a) The mine name, company name, mine identification number, and phone number at the mine.

(b) The four-digit MSHA identification number for each mechanized mining unit (MMU).

(c) Face ventilation systems used and drawings illustrating how such systems are used on the working section, and a description of the dust suppression system used on each piece of equipment on the working section.

(d) The methane control systems and respirable dust control systems at underground dumps, crushers, and transfer points.

(e) Where methane drainage systems are used, a sketch of each system.

(f) The type, model, and manufacturer of monitoring systems used.

(g) The locations where designated area samples will be collected, and the respirable dust control systems used at the dust generating sources for these locations.

(h) Methods of protecting main mine fans, if combustible or flammable material is to be within 100 feet of the area surrounding the fan.

(i) Planned main mine fan stoppages other than those scheduled for maintenance and adjustment, procedures to be followed during the stoppages, and, in accordance with § 75.310 of this part, the type of device to be used for monitoring main mine fan pressure, if other than a pressure recording device or a main fan monitoring system.

(j) The volume and velocity of air at the locations for air volume and velocity

measurements specified in § 75.360 and § 75.362 of this part.

(k) The minimum quantity of air reaching each working face, if the quantity will not be greater than the operating volume of machine mounted dust collectors and diffuser fans.

(l) Locations where the air quantities will be required to be greater than those specified in § 75.325 of this part, and the quantities at those locations.

(m) The minimum quantity of air in each working section where diesel powered equipment is used.

(n) The minimum mean entry air velocity in exhausting face ventilation systems, if the velocity will be less than 60 feet-per-minute.

(o) The distance from each working face at which face ventilation control devices will be maintained.

(p) The method to be used to ventilate worked-out areas during and after pillar recovery.

(q) The locations where measurements of oxygen, methane and direction of airflow will be made to evaluate special air courses used as bleeder systems.

(r) A description of the construction methods to be used to seal worked-out areas if those methods will be different than those specified by § 75.335 of this part.

(s) The location of airlock doors.

(t) The ambient level in parts-per-million (ppm) of carbon monoxide, and the method for determining the ambient level, in all areas where early-warning fire detection systems are used, and where AMS are used.

(u) The location of AMS sensors installed to monitor worked-out areas for methane, oxygen, and carbon monoxide.

(v) Locations where on-shift tests for methane will be made in addition to those required by § 75.362(d) of this part, and the intervals between tests.

(w) The method of evaluation of worked-out areas where no pillars have been recovered, in lieu of weekly travel to the area of deepest penetration.

(x) Return air courses developed before March 30, 1970, that will be evaluated in accordance with § 75.364 of this part.

(y) Areas of mines developed after (insert 30 days after final rule becomes effective) where designated escapeways will not be ventilated with separate splits of intake air.

(z) Procedures to be used for planned mining into abandoned areas, in accordance with § 75.1702 of this part.

§ 75.372 Mine ventilation map.

(a) At least once every 12 months, the operator shall submit to the District Manager 3 copies of an up-to-date map of the mine drawn to a scale of not less than 100 nor more than 500 feet to the inch. A responsible company official shall certify that the information on the map is accurate.

(b) The map shall show the following information:

(1) The mine name, company name, mine identification number, and legend identifying the scale of the map and symbols used.

(2) All known mine workings on mine property that are located in the same coalbed, and all other known mine workings in the same coalbed that are within 200 feet of existing or projected workings. These workings may be shown on a mine map with a scale other than that required by paragraph (a) of this section, provided that the scale does not exceed 2,000 feet to the inch.

(3) The locations of all known mine workings underlying and overlying the mine property and the distance between the mine workings.

(4) The locations of all known oil and gas wells and all known drill holes that penetrate the coalbed being mined.

(5) The locations of all main mine fans, stand-by fans and motors, and each fan's specifications, including size, type, model number, manufacturer, operating pressure, motor horsepower and revolutions per minute.

(6) The locations of all surface mine openings, the direction and quantity of air measured at each opening, and the methane concentration in air at all openings where air is leaving the mine.

(7) The elevation at the top and bottom of each shaft and slope, and shaft and slope dimensions, including depth and length.

(8) The direction of airflow in all underground areas of the mine.

(9) The locations of all ventilation controls, including permanent stoppings, overcasts, undercasts, regulators, seals, airlock doors, haulageway doors and other doors, except for temporary ventilation controls on working sections.

(10) The direction and quantity of air in each active working section—

(i) Entering and leaving each split;

(ii) In the last open crosscut of each set of entries and rooms; and

(iii) At the intake end of each pillar line, including any shortwall and longwall.

(11) Projections for at least 12 months of anticipated mine development, proposed ventilation controls, and proposed methane drainage systems.

(12) The locations of existing methane drainage systems.

(13) The locations of existing air measurement stations and evaluation points.

(14) The locations of all carbon monoxide and methane sensors.

(15) The locations where sampling devices will be placed to collect designated area samples.

(16) Contour lines or elevations sufficient to accurately indicate the dips and rises of the coalbed being mined.

(17) The location of proposed seals for each worked-out area.

(c) The mine map required by § 75.1200 of this part may be used to satisfy the requirements for the ventilation map, provided that all the information required by this section is contained on the map.

5. In Subpart R §§ 75.1704 through 75.1707 are redesignated as §§ 75.380 through 75.385 in Subpart D and revised to read as set forth below:

§ 75.380 Escapeways.

(a) Except in situations addressed by §§ 75.384 and 75.385, at least two separate and distinct travelable passageways shall be designated as escapeways and shall be:

(1) Provided from each working section continuous to the surface or to escape shaft or slope facilities to the surface;

(2) Maintained in a safe condition to ensure passage at all times of any person, including disabled persons;

(3) Clearly marked to indicate the route of travel to the surface;

(4) Maintained to at least a height of 5 feet from the mine floor to the mine roof, including the thickness of any roof support, except that the escapeways shall be maintained to at least the height of the coalbed where the coalbed is less than 5 feet;

(5) Maintained at least 4 feet wide;

(6) Located to follow the most direct and safe practical route to the surface; and

(7) Provided with ladders, stairways, ramps or similar facilities where the escapeways cross over obstructions.

(b) Multiple compartment shafts or slopes separated by walls constructed of noncombustible material may be used as separate and distinct passageways.

(c)(1) Designated escapeways shall be ventilated with separate splits of intake air—

(i) In mines opened after (insert 30 days after final rule becomes effective); and

(ii) In areas of mines developed after (insert 30 days after final rule becomes effective), except as specified in the ventilation plan for areas where separate splits of intake air cannot be provided. In no case shall such areas have less than one escapeway ventilated with intake air.

(2) At least one designated escapeway shall be ventilated with intake air in areas of mines developed prior to (insert 30 days after the final rule becomes effective).

(3) Except where separation of belt and trolley haulage entries from designated intake escapeways did not exist prior to (insert 30 days after the final rule becomes effective), one designated intake escapeway shall be separated from belt and trolley haulage entries for the entire length of such entries to and including the fourth connecting crosscut outby each working face.

(4) In areas of mines developed after (insert 30 days after the final rule becomes effective), at least one designated escapeway from each working section, ventilated with intake air, shall contain no permanent electrical equipment or diesel equipment outby working panels except—

(i) Equipment necessary to maintain the escapeway in safe, travelable condition;

(ii) Haulage equipment, other than belts and trolley haulage, necessary for the transportation of persons and materials; and

(iii) Underground substations, power centers, and permanent pumping stations that are housed in fireproof structures equipped with fireproof doors and an automatic fire suppression system.

(d) Mechanical escape facilities shall be:

(1) Provided and maintained for each shaft that is part of a designated escapeway and is greater than 50 feet in depth; and

(2) Provided and maintained for each slope that is part of a designated escapeway, and is either inclined 9 degrees or more from the horizontal, or is 500 feet or more in length.

(e) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities shall be operational at the bottom of each shaft and slope opening that is part of a designated escapeway.

(f) The bottom of each shaft or slope opening that is part of a designated escapeway shall be equipped with a means of signalling a surface location where a person is always on duty when persons are underground. When the signal is activated or the evacuation of personnel is necessary, such person shall take appropriate action to ensure that mechanical escape facilities are operational as required by paragraph (e) of this section.

(g)(1) Stairways or mechanical escape facilities shall be installed in shafts that are part of the designated escapeways and that are 50 feet or less in depth, except ladders may be used in shafts that are part of the designated escapeways and that are 5 feet or less in depth;

(2) Stairways shall be constructed of concrete or metal, set on an angle not to exceed 45 degrees from the horizontal, and equipped on the open side with handrails. In addition, landing platforms that are at least 2 feet by 4 feet shall be installed at intervals not to exceed 10 vertical feet on such stairways and equipped on the open side with handrails.

(3) Ladders shall be constructed of metal, anchored securely, and set on an angle not to exceed 60 degrees from the horizontal.

(h) A travelway designed to prevent slippage shall be provided in slope and drift openings that are part of designated escapeways, and shall be inclined less than 9 degrees from the horizontal, and less than 500 feet in length, unless mechanical escape facilities are installed.

§ 75.381 Mechanical escape facilities.

(a) Mechanical escape facilities shall be provided with overspeed, overwind, and automatic stop controls.

(b) Every mechanical escape facility handling a platform, cage, or other device shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device.

(c) Mechanical escape facilities, including automatic elevators, shall be examined weekly. The weekly examination of such equipment may be conducted at the same time as a daily examination required by § 75.1400–3 of this part.

(1) The weekly examination shall include an examination of the headgear, connections, links and chains, and other facilities.

(2) At least once each week, the hoist shall be run by a qualified hoisting engineer through one complete cycle of operation.

(d) A qualified hoisting engineer shall be on duty while any person is underground. No such engineer, however, shall be required for automatically operated cages, platforms, or elevators.

(e) Mechanical escape facilities shall have rated capacities consistent with the loads handled.

(f) Mechanical escape facilities shall be equipped with indicators that accurately and reliably indicate the position of the facility.

§ 75.382 Escapeway maps and drills.

(a) A map shall be posted in each working section and shall show the designated escapeways from the working section to the location where such section escapeways intersect the main escapeways. A map showing the main escapeways shall be posted at a surface location of the mine where miners congregate, such as the mine bulletin board, bathhouse or waiting room. All maps shall be kept up-to-date, and any changes in route of travel, locations of any doors, or directions of airflow shall be shown on the maps by the end of the shift on which such changes are made and affected miners shall be informed of such changes before entering the underground areas of the mine.

(b)(1) At least once every 90 days, each miner, including miners with working stations located between working sections and main escapeways, shall participate in a practice escapeway drill and shall travel each escapeway from his or her working section or station to the main escapeways.

(2) At least once every six weeks and for each shift, at least two miners on each coal producing working section, accompanied by the section supervisor, shall participate in a practice escapeway drill and travel the designated escapeways from the section escapeways to the surface.

(3) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, smoke-retarding doors, changes in the routes of travel, and of plans of diverting smoke from escapeways.

(c) The practice escapeway drills may be utilized to satisfy the evacuation specifications of the fire drills required by § 75.1101–23.

§ 75.383 Shortwall and longwall travelways.

When shortwall or longwall systems of mining are used, and the two designated escapeways required by § 75.380 are located on one side of the block of coal being mined, a travelway shall be provided on the other side of that block of coal. The travelway shall be located to follow the most direct and safe practical route to a designated escapeway, and the route of travel shall be clearly marked if more than one entry is used to provide the travelway.

§ 75.384 Opening new mines.

When new coal mines are opened, not more than 20 miners shall be allowed at any one time in any mine until a

connection has been made between the mine openings, and such connections shall be made as soon as possible.

§ 75.385 Final mining of pillars.

When only one mine opening is available due to final mining of pillars, not more than 20 miners shall be allowed in the mine at any one time, and the distance between the mine opening and working face shall not exceed 500 feet.

6. In Subpart R, § 75.1701 is revised and § 75.1701–1 is added to read as follows:

§ 75.1701 Boreholes in advance of mining.

(a) Boreholes shall be drilled in each advancing working place when such place approaches—

(1) To within fifty feet of any inaccessible area located in the same coalbed in the mine, that has been surveyed and certified by an engineer or surveyor who is registered in the State in which the mine is located;

(2) To within 200 feet of any inaccessible area located in the same coalbed in the mine, that has not been surveyed and certified by an engineer or surveyor who is registered in the State in which the mine is located; and

(3) To within 200 feet of any mine workings of an adjacent mine located in the same coalbed, which have not been examined during the previous 7 days.

(b) Boreholes shall be drilled as follows:

(1) Into the working face, parallel to the rib and within 3 feet of each rib.

(2) Into the working face, parallel to the rib and at intervals across the face not to exceed 8 feet.

(3) At least 20 feet in depth in advance of the working face before mining begins, and maintained at all times to a distance of 10 feet in advance of the working face.

(c) Boreholes shall be drilled in at least one rib of advancing working places described in paragraph (a) of this section. These boreholes shall be drilled—

(1) At an angle of 45 degrees to the direction of advance;

(2) At least 20 feet in depth; and

(3) At intervals not to exceed 8 feet.

(d) When a borehole penetrates an area that cannot be examined, and before mining continues, a certified person shall, if possible, determine—

(1) The direction of airflow in the borehole;

(2) The pressure differential between the penetrated area and the mine workings;

(3) The concentrations of methane, oxygen, carbon monoxide, and carbon dioxide; and

(4) Whether water is impounded within the penetrated area.

(e) Unless action is taken to dewater or to ventilate penetrated areas, boreholes shall be plugged with wooden plugs or similar devices when—

(1) Tests conducted at the boreholes indicate that the atmosphere in the penetrated area contains more than 1.0 volume percent of methane, less than 19.5 percent of oxygen, or contains harmful concentrations of carbon monoxide, carbon dioxide or other explosive, harmful or noxious gases;

(2) Tests for methane, oxygen, carbon monoxide, and carbon monoxide cannot be made because air from mine workings is flowing into the penetrated area; or

(3) Water is discharging through the boreholes from the penetrated area into the mine workings.

§ 75.1701–1 Mining into inaccessible areas.

(a)(1) Mining shall not resume into any area penetrated by boreholes until conditions in the penetrated area can be determined in accordance with § 75.1701 of this part, and procedures for mining-through into the area have been specified in the ventilation plan.

(2) A copy of the procedures to be followed shall be posted near the site of the mining-through operations and the operator shall explain these procedures to all miners involved in such operations.

(b) The procedures specified in the plan shall include:

(1) The method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place;

(2) Dewatering procedures to be used if a penetrated area contains a water accumulation; and

(3) The procedures and safety precautions to be followed during mining-through operations.

(c)(1) Prior to and during mining-through operations, a certified person shall perform air quality tests at intervals and at locations necessary to protect the safety of the miners;

(2) During mining-through operations, only persons involved in these operations shall be permitted in the mine; and

(3) After mining through, a certified person shall determine that the affected areas are safe before any persons enter the underground area of the mine.

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Wednesday
January 27, 1988

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 1, etc.

Marriage Fraud Amendment Regulations; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 1, 204, 205, 211, 212, 214, 216, 223, 223a, 235, 242, and 245

Marriage Fraud Amendment Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration Marriage Fraud Amendments of 1986 (Pub. L. 99–639) became effective on November 10, 1986. Pub. L. 99–639 provides for conditional permanent resident status for certain alien spouses, sons and daughters of United States citizens and lawful permanent residents. It also provides for the removal of the conditional basis of such residence upon the filing of a joint petition by the conditional resident and the petitioning spouse. Additionally, the law provides for the termination of an alien's lawful permanent residence for failure to file the necessary petition or for other reasons. This rulemaking proposes regulations necessary for the implementation of the law.

DATES: Written comments must be submitted on or before February 26, 1988.

ADDRESS: Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION:

Historically, United States immigration policy has recognized the importance of protecting nuclear families from separation by permitting immediate family members of United States citizens to immigrate to the United States without numerical limitation. Similarly, the law has long set aside a significant number of immigrant visas for immediate relatives of permanent resident aliens. Because of the special status accorded such alien relatives, some aliens who cannot otherwise qualify for immigration to the United States have found it expedient to engage in fraudulent marriages in order to gain an immigration benefit.

Studies conducted by the Immigration and Naturalization Service have revealed that an estimated 30% of all spousal petitions for immigration involve suspect martial relationships. Although participating in a fraudulent marriage makes an individual subject to both criminal and administrative sanctions, in the past it has been difficult to detect such fraud, to prosecute individuals engaged in such fraud and to deport the alien beneficiaries of such fraud. Recognizing both the extent of the fraud and the difficulties which exist in combatting such fraud, Congress enacted the Marriage Fraud Amendments Act of 1986 (Pub. L. 99–639), which addresses these problems in a number of ways.

First, section 2(a) of Pub. L. 99–639 creates a conditional basis of lawful permanent residence for aliens obtaining permanent residence within two years of marriage to a United States citizen or lawful permanent resident. It provides that the conditional basis shall be placed on the alien's permanent residence for a period of two years, and establishes a procedure by which the alien may seek removal of the conditions at the end of the two-year period. It further permits the revocation of an alien's permanent resident status under any of three conditions:

(1) If it is determined within the two-year period that the marriage was entered into for the purpose of obtaining an immigration benefit or has been judicially annulled or terminated, or that a fee or other consideration was given for the filing of a petition for an immigration benefit;

(2) If the alien and his/her spouse fail to file a joint petition for removal of the conditional status within the 90 days immediately preceding the second anniversary of the alien's having obtained conditional permanent residence, although such failure may be excused; or

(3) If the petition to remove the conditional basis of the alien's resident status is denied.

Second, section 2(b) of Pub. L. 99–639 provides for the deportation of an alien whose permanent resident status is revoked.

Third, section 4(a) of Pub. L. 99–639 precludes the approval of a petition filed on behalf of an alien who has conspired to engage in a fraudulent marriage or who has attempted to obtain an immigration benefit on the basis of such marriage.

Fourth, section 5 of Pub. L. 99–639 prevents an alien against whom an administrative or judicial proceeding is pending concerning his or her right to enter or remain in the United States from obtaining an immigrant benefit on the basis of a marriage occurring during such proceedings.

Fifth, section 2(c) of Pub. L. 99–639 precludes the approval of a spousal immigrant visa petition filed by an alien who obtained permanent residence through marriage unless:

(1) The alien petitioner has been a permanent resident for at least five years; or,

(2) The alien establishes by clear and convincing evidence that the prior marriage was not entered into for the purpose of evading immigration laws; or,

(3) The alien's prior marriage was terminated through the death of his/her spouse.

Sixth, section 2(d) of Pub. L. 99–639 provides for criminal penalties for individuals who are convicted of having engaged in a fraudulent marriage.

Seventh, section 3(a) of Pub. L. 99–639 requires that the petitioner and beneficiary of a Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa (Form I–129F) have met within the two-year period immediately preceding the filing of the petition, unless such requirement is waived.

Eighth, section 3(c) of Pub. L. 99–639 requires that an alien fiance or fiancee of a United States citizen must apply for permanent residence through the normal adjustment procedures contained in section 245 of the Immigration and Nationality Act, as amended (the Act), instead of the automatic procedures formerly contained in section 214(d) of the Act.

Ninth, sections 2(e) and 3(b) of Pub. L. 99–639 create a new subsection, 245(d), which precludes an alien who obtained conditional permanent residence as the spouse of a citizen or lawful permanent resident from adjusting status on any other basis. It also precludes an alien who entered the United States as a nonimmigrant under section 101(a)(15)(K) of the Act and failed to marry the citizen petitioner from obtaining permanent residence on any other basis.

In addition to creating new regulations, this rulemaking revises existing regulations, including those sections relating to:

(1) Revocation of visa petitions to allow for revocation of petitions approved contrary to the provisions of Pub. L. 99–639,

(2) Documentary requirements for immigrants to permit the readmission of an otherwise eligible conditional resident,

(3) Reentry permits and refugee travel documents to allow issuance of such documentation to conditional residents,

(4) Admission of aliens to provide procedures for the admission or readmission of conditional residents, and

(5) Deportation proceedings to provide for cancellation of an Order to Show Cause under certain circumstances and to specify the conditions under which an immigration judge shall grant conditional residence in a deportation hearing.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements under the Paperwork Reduction Act which have been or will be submitted to the Office of Management and Budget.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure, Immigration.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Title I of Chapter 8 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1—DEFINITIONS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, new paragraph (o) is added to read as follows:

§ 1.1 Definitions.

* * * * *

(o) The term "director" means either district director or regional service center director, unless otherwise specified.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

3. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255.

4. In § 204.1 existing paragraphs (a)(2) through (a)(4) are redesignated (a)(3) through (a)(5), respectively, and a new paragraph (a)(2) is added to read as follows:

§ 204.1 Petition.

(a) * * *

(2) *Ineligible alien petitioners and beneficiaries.*—(i) The Service may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless:

(A) A period of five years has elapsed after the date the alien acquired permanent resident status; or

(B) The alien establishes by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained lawful permanent resident status) was not entered into for the purpose of evading the immigration laws; or

(C) The marriage through which the petitioner obtained permanent residence was terminated through the death of the petitioner's spouse.

(ii) In determining whether the petitioner has met the burden of establishing that the marriage through which he or she obtained permanent residence was not entered into for the purpose of evading immigration laws, the director shall take into account such factors as the length of time the petitioner and the prior spouse resided together, the existence of children born of the marriage, joint ownership of assets and assumption of liabilities, the grounds for which the marriage was terminated and other factors which the director may deem relevant. Because section 204(a)(2)(A)(ii) of the Act places the burden on the petitioner to establish "by clear and convincing evidence" that the prior marriage was not entered into for the purpose of evading the immigration laws, any reasonable doubts in the matter must be resolved by the petitioner. Failure to resolve such doubts may result in the denial of the petition; however, such a denial will be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings against the petitioner based upon information gained through the adjudication of the petition, but failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not for the purpose of evading immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition filed within the prohibited period.

(iii) The Service may not approve a visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse, which is based upon a marriage occurring after November 10, 1986 and while the alien is in either exclusion, deportation or rescission proceedings or judicial proceedings relating thereto, until the alien has resided outside the United States for a two-year period after the date of the marriage. The period during which the alien is in such proceedings commences with the issuance of the Order to Show Cause (Form I–221) or Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer (Form I–122), or Notice of Intent to Rescind, as appropriate, and terminates when the alien departs from

the United States or is found not to be excludable or deportable from the United States, or if the order to show cause or Form I–122 is cancelled by the district director or terminated by the immigration judge. Any petition filed during this period shall be denied without prejudice to the filing of a new petition once the beneficiary has resided outside the United States for the required period of two years following the marriage. Furthermore, any such denial shall be without prejudice to the reopening of petition proceedings should the beneficiary be found not deportable or excludable from the United States, or if the order to show cause or notice of hearing is cancelled by the district director or immigration judge. The beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal petition filed within the prohibited period.

(iv) Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

* * * * *

5. § 204.1, existing paragraphs (d)(2)–(d)(4) are redesignated as (d)(3) through (d)(5), respectively, and a new paragraph (d)(2) is added to read as follows:

§ 204.1 Petition.

* * * * *

(d) * * *

(2) *Ineligible beneficiaries.* Section 204(c) of the Act prohibits the approval of an immigrant visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

* * * * *

PART 205—REVOCATION OF APPROVAL OF PETITIONS

6. The authority citation for Part 205 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 180, 182, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a.

7. In § 205.1, a new paragraph (a)(10) is added to read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(10) Upon a determination by the Service that it has approved a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under exclusion, deportation or rescission proceedings and prior to the beneficiary's having resided outside the United States for at least two years in accordance with section 204(h) of the Act.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

8. The authority citation for Part 211 is revised to read as follows:

Authority: 66 Stat. 166, 173, 181, 182, 194, 198, 218, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

9. In § 211.1, paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I–151 or I–1551).* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, and:

(i) Is returning after a temporary absence abroad not exceeding one year;

(ii) Is an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman;

(iii) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(iv) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for Part 212 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 189, 198, 200, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1225, 1226, 1228, 1252, 1182b, 1182c.

11. In § 212.7, paragraph (a) is revised to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) *Section 212(h) or (i).*—(1) *Filing procedure.* (i) *Immigrant visa or fiance(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I–601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I–601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I–607 for inclusion in the alien's file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with Part 103 of this chapter.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in a deportation proceeding based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

* * * * *

PART 214—NONIMMIGRANT CLASSES

12. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

13. In § 214.2, paragraph (k) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(k) *Fiancees and fiances of United States citizens.*—(1) *Petition and supporting documents.* To be classified as a fiance or fiancee as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved visa petition filed on Form I–129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. The director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from nonimmigrant to immigrant.*—(i) *Nonimmigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner within 90 days of his or her admission to the United States pursuant to a valid K–1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (For IS–485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

* * * * *

14. A new Part 216 is added to read as follows:

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

Sec.

216.1 Definition of conditional permanent resident.
216.2 Notification requirements.
216.3 Termination of conditional resident status.
216.4 Petition to remove conditional basis of lawful permanent resident status.
216.5 Waiver of requirement to file petition to remove conditions.

Authority: 66 Stat. 166, 173, 179, 184, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

§ 216.1 Definition of conditional permanent resident.

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence within the meaning of subsection 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 of the Act and Part 216 of this chapter. Unless otherwise specified.

the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified.

§ 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the petitioning spouse must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section above does not relieve the alien and the petitioning spouse of the requirement to file a joint petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) of the Act are true. If the determination is based upon information which the alien cannot reasonably be expected to have, then the director must provide the alien with notice of the Service's intent to terminate the alien's lawful permanent residence and give the alien an opportunity to present evidence in opposition to the intended termination in accorance with § 103.2(b)(2) of this chapter. The termination of status, and of all rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the district director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the district director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with Part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the district director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) of the Act are true.

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the district director determines that the alien obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 241 of the Act.

§ 216.4 Petition to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition*—(1) *General procedures.* Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancee petition through which the alien obtained permanent residence must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I–751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien and the alien's spouse.

(2) *Dependent children.* Dependent children of a conditional permanent resident who acquired conditional permanent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752).

(3) *Jurisdiction.* Form I–751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing.* An alien must be physically present in the United States at the time of filing the joint petition. An alien who is unable to remain in the United States after filing form I–751 until a decision is reached on the petition, may request that the district director consider the petition expeditiously. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation.* Form I–751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include:

(i) Documentation showing joint ownership of property;

(ii) Lease showing joint tenancy of a common residence;

(iii) Documentation showing commingling of financial resources;

(iv) Birth certificates of children born to the marriage;

(v) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or

(vi) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the joint petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) *Interview*—(1) *Authority to waive interview.* The director of the regional service center shall review the Form I–751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* An interview on the Form I–751 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office, files control office or suboffice having jurisdiction over the residence of the joint petitioners.

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirement. If prior to the interview date the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* The director shall adjudicate the petition within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section. In adjudicating the petition the director shall determine whether—

(1) The qualifying marriage was entered into in accordance with the laws of the place where the marriage took place;

(2) The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;

(3) The qualifying marriage was entered into for the purpose of procuring permanent residence status for the alien; or

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence.

If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence and issue an order to show cause to initiate deportation proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If the director approves the joint petition he or she shall provide written notice of the decision to the alien on Form I–753 and shall require the alien to report to the appropriate office of the Service for processing for a new Alien Registration Receipt Card (if necessary), at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in deportation proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true and that the petition was properly denied.

§ 216.5 Waiver of requirement to file petition to remove conditions.

(a) *General.* A conditional resident alien who is ineligible for removal of the conditional basis of his or her permanent residence status may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752), if the alien was not at fault in failing to meet the filing requirement and the conditional resident alien is able to establish that:

(1) Deportation from the United States would result in extreme hardship, or

(2) The marriage upon which his or her status was based was entered into in good faith on the conditional resident alien's part, but was terminated by the conditional resident for good cause.

(b) *Fee.* Form I–752 shall be accompanied by the appropriate fee required under § 107.3(b) of this chapter.

(c) *Jurisdiction.* Form I–752 shall be filed with the regional service center director having jurisdiction over the alien's place of residence.

(d) *Interview.* The regional service center director may refer the application to the appropriate district, files control office or suboffice and require that the alien appear for an interview in

connection with the application for a waiver. The director shall deny the application and intitiate deportation proceedings if the alien fails to appear for the interview as required.

(e) *Adjudication of waiver application*—(1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's deportation from the United States, the director shall take into account only those factors which arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any deportation from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was entered into in good faith.* In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) The length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) The grounds for which the marriage was terminated, except that a finding by the court that the petitioning spouse was at fault shall not be deemed to be conclusive evidence that the alien spouse terminated the marriage for good cause, nor shall a divorce obtained in an area which does not require the determination of fault be deemed to be evidence that the alien spouse terminated the marriage for good cause; or

(iv) Other evidence deemed pertinent by the director.

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefore, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue an order to show cause placing the alien under deportation proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in deportation proceedings.

PART 223—REENTRY PERMITS

15. The authority citation for Part 223 is revised to read as follows:

Authority: 66 Stat. 173, 194, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1203.

16. Section 223.2 is revised to read as follows:

§ 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act is not valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained conditional permanent residence) unless and until the conditions have been removed. The period of validity commences on the date of issuance and not on the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

PART 223a—REFUGEE TRAVEL DOCUMENT

17. The authority citation for Part 223a is revised to read as follows:

Authority: 66 Stat. 173, 181, 182, 200, 201, 100 Stat. 3537; 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

18. Section 223a.4 and paragraph (a) of § 223a.5 are revised to read as follows:

§ 223a.4 Application.

An application for a refugee travel document shall be submitted on Form I–570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by Form I-94 or Form I–151 or Form I–551. The applicant shall be notified of the decision on the application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his or her return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee" shall be specified. If the applicant is in the United States as a conditional entrant, that status shall be specified. If the applicant is a lawful permanent resident, that status shall be specified. If the applicant is a lawful permanent resident subject to the conditions of section 216 of the Act, that status and the conditional basis of that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

§ 223a.5 Validity of refugee travel document.

(a) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act may not be valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained permanent residence) unless and until the conditions have been removed. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

19. The authority citation for Part 235 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 188, 191, 198, 200, 201, 202, 206, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1183, 1186a, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

20. Section 235.11 is added to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and the petitioning spouse must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Joint Petition to remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained, and whose conditional basis of such residence has not been removed pursuant to section 216(c) of the Act, shall be placed under exclusion proceedings. However, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition is filed jointly by the alien and petitioning spouse and approved by the Service, or if an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) is filed by the alien and approved by the Service.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

21. The authority citation for Part 242 is revised to read as follows:

Authority: 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1252, 1254, 1362.

22. In § 242.7, paragraph (a) is revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her tardiness was excused in accordance with section 216(d)(2)(B) of the Act; or

(6) The Order to Show Cause was improvidently issued.

* * * * *

23. In § 242.17, paragraph (a) is revised to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, section 1 of the Act of November 2, 1966, or section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of Parts 244, 245 and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 of the Act. However, the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status required by section 216(c) of the Act shall be made to the director in accordance with Part 216 of this chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes he or she can do so consistently with safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

24. The authority citations following the sections in Part 245 are removed and the authority citation for Part 245 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218, 100 Stat. 3359; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

25. In § 245.1 paragraphs (b)(12), (b)(13), (b)(14) and (h) are added to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(12) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible.

(13) Any alien admitted to the United States as a nonimmigrant fiance as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of

the alien pursuant to § 214.2(k) of this chapter.

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986 and after the issuance of an Order to Show Cause (Form I–221) issued pursuant to Part 242 of this chapter, or after the issuance of a Notice to Alien Detained for Hearing by an Immigration Judge (Form I–222) issued pursuant to Part 235 of this chapter. However, this restriction shall no longer apply if the alien is found not to be deportable in deportation proceedings, if the alien is found to be admissible in exclusion proceedings, or if the Order to Show Cause is cancelled pursuant to § 242.7 of this chapter.

* * * * *

(h) *Conditional basis of status.* Whenever an alien spouse (as defined in section 216(g)(1) of the Act) or an alien son or daughter (as defined in section 216(g)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to section 216 of the Act.

28. Section 245.8 is revised to read as follows:

§ 245.8 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act and who was medically examined when processed for parole by a Service officer in the United States or abroad, unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a nonimmigrant fiance or fiancee of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; *Provided That* the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under 8 CFR Part 299, § 299.5.

Dated: January 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–1550 Filed 1–26–88; 8:45 am]

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January 27, 1988

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 356, and 369

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 356, and 369

[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products (products for use in the mouth and throat) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products and the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, public comments to the advance notices of proposed rulemaking on OTC oral health care drug products and OTC oral mucosal injury drug products that were based on the respective Panels' recommendations, and public comments on the agency's proposed regulation on OTC oral mucosal injury drug product, which was issued in the form of a tentative final monograph. This proposal incorporates part of the tentative final monograph on OTC oral mucosal injury drug products that was published in the **Federal Register** of July 26, 1983 (48 FR 33984) into the rulemaking for OTC oral health care drug products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by May 26, 1988. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by January 27, 1989. Comments on the new data by March 27, 1989. Written comments on the agency's economic impact determination by May 26, 1988.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1982 (47 FR 22760), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC oral health care drug products, together with the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products (Oral Cavity Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by August 23, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by September 22, 1982. In a notice published in the **Federal Register** of July 30, 1982 (47 FR 32953), FDA extended the periods for comments and reply comments to allow more time for interested persons to adequately address several important issues raised by the Panel. The notice extended the comment period to November 22, 1982 and the reply comment period to December 22, 1982. In a notice published in the **Federal Register** of December 28, 1982 (47 FR 57739), FDA extended the reply comment period to January 21, 1983 to allow time for interested persons to adequately address several important issues raised during the comment period.

In response to the advance notice of proposed rulemaking, fifteen drug manufacturers, three professional organizations, four health professionals, and two individual consumers submitted comments.

Because there is considerable overlap between the rulemaking on OTC oral mucosal injury drug products and the rulemaking on OTC oral health care drug products, the agency is incorporating that part of the oral mucosal injury rulemaking that covers oral wound cleansers into this tentative final monograph. The intent of both rulemakings is to identify those ingredients that are generally recognized as safe and effective in temporarily relieving the symptoms of minor oral wounds or other irritations of the mouth or gums. Carbamide peroxide, hydrogen peroxide, and sodium perborate monohydrate, the three ingredients included in the tentative final monograph for OTC oral mucosal injury drug products as oral wound cleansers, were also included in the rulemaking for OTC oral health care drug products as debriding agents. A number of the comments submitted to the advance notice of proposed rulemaking for OTC oral health care drug products pointed out the similarities between oral wound cleansers and debriding agents and requested that the labeling for these ingredients be consistent between the two rulemakings. In order to achieve this consistency, the agency has decided to combine debriding agents and oral wound cleansers into one therapeutic class and to include it in this tentative final monograph. Oral wound healing agents, also addressed in the tentative final monograph for OTC oral mucosal injury drug products, were addressed in a final rule published in the **Federal Register** of July 18, 1986 (51 FR 26112).

The agency's proposed regulation, in the form of a tentative final monograph, for OTC oral mucosal injury drug products was published in the **Federal Register** of July 26, 1983 (48 FR 33984). Interested persons were invited to file by September 26, 1983, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by November 23, 1983. New data could have been submitted until July 26, 1984.

The agency received no written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs in response to the tentative final monograph on OTC oral mucosal injury drug products.

In accordance with § 330.10(a)(10), the data and information considered by the Panels and the agency are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above). Copies of the comments received are also on public display in the Dockets Management Branch.

FDA is issuing the tentative final monograph for OTC oral health care drug products in several segments. This document is the first segment to be published, and it contains the agency's responses to general comments on OTC oral health care drug products and to comments on OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products. A subsequent segment of the tentative final monograph on OTC oral health care drug products will be published in a future issue of the **Federal Register** and will contain the agency's responses to comments regarding oral health care antimicrobial drug products, and comments on the drug or cosmetic status of certain oral health care ingredients and claims.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 356 (21 CFR Part 356), FDA states for the first time its position on the establishment of a monograph for OTC oral health care (anesthetic/analgesic, a stringent, debriding agent/oral wound cleanser, and demulcent) drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph for these drug products.

This proposal constitutes FDA's tentative adoption of the Oral Cavity Panel's conclusions and recommendations on these drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report, and the agency's reevaluation of the previously published proposed rule on OTC oral mucosal injury drug products. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC oral health care drug products (published in the **Federal Register** of May 25, 1982 (47 FR 22760)), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition, from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of July 20, 1973 (38 FR 19444) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments on Oral Health Care Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696-98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

2. Noting its continued opposition to the exclusivity policy, one comment stated that FDA should not prohibit the use of alternative OTC labeling

terminology to describe indications, if that terminology is truthful, not misleading, and intelligible to the consumer. The comment's views on this subject were presented in oral and written testimony submitted to FDA in connection with the September 29, 1982 FDA hearing on the exclusivity policy.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g).

In this tentative final monograph, supplemental language relating to indications has been proposed and captioned as *Other Allowable Statements*. Under FDA's revised labeling policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling. In accordance with the revised labeling policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms have been reviewed by FDA, they should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under the monograph.

3. One comment suggested that the phrase "Try to avoid swallowing this product" be deleted as a warning for oral health care gargles, mouthwashes, and rinses because the "Warnings" section on the label should be reserved for instances that pose a serious threat to the well-being of the consumer. The comment contended that the Panel's recommended warning is unduly alarming to consumers who may conclude that swallowing even a minute quantity of the product will result in substantial harm. The comment suggested that reference to the fact that the product is not intended to be swallowed be included in the "Directions" section of the label rather than in the "Warnings" section. The comment then claimed that the phrase "Expel remainder" more clearly signifies the proper and intended use of these products without unnecessarily alarming consumers. The comment gave the following example: "Rinse thoroughly and expel remainder."

The agency agrees with the comment that information regarding swallowing or not swallowing an oral health care liquid dosage form is more appropriately included in the directions section than in the warnings section of the label. Including this information in the directions section is consistent with the style and format of other recently published OTC tentative final monographs.

The agency is not including the Panel's recommended warning in §§ 356.50(c)(3), 356.52(c)(2), 356.54(c)(2), and 356.56(c)(2), "Try to avoid swallowing this product," in this tentative final monograph. Instead, along with other modifications (see comments 10, 11, 27, and the Summary of the Agency's Changes, Nos. 18 and 19, below), the agency is proposing the phrase "and then spit out" as part of the directions in this tentative final monograph (e.g., "Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute, and then spit out"). Including the phrase "and then spit out" points out that such products are not intended to be swallowed and is consistent with the working for directions already proposed by the agency for liquid dosage forms in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33993). The agency did not receive any comments opposed to this proposal. The agency believes that the phrase "spit out" is better understood by the consumer and is preferable to the comment's suggested phrase "expel remainder."

B. General Comments on Anesthetic/Analgesic Drug Products

4. One comment stated that topical anesthetic/analgesic drug products are often promoted to the public with claims or implications that they prevent or treat diseases of the mouth or upper respiratory tract. Objecting to the OTC use of these drug products for the relief of pain or other symptoms of oral disease, the comment stated that the need to use topical anesthetic/analgesic drug products should be ascertained by a dentist or a physician. In addition, the comment said that OTC use of these drug products "may delay patients seeking professional care for the underlying disease."

A reply comment disagreed with the comment's position, stating that it "is a denial of the public's right to self-medicate for conditions that can be safely and effectively managed utilizing over-the-counter drugs appropriately labeled."

The agency agrees that these products should not be labeled to prevent or treat diseases, but disagrees with the comment that a health professional should first be consulted. The agency agrees with the reply comment regarding OTC use of topical anesthetic/analgesic drug products for oral health care. The Panel recommended labeling indications that clearly state that these products are to be used for the temporary relief of occasional minor irritation, pain, sore mouth, and sore throat. The Panel also provided warnings to discontinue use and to consult a physician if irritation persists or increases or if a rash appears on the skin and to consult a physician promptly for symptoms such as a severe or persistent sore throat or a sore throat accompanied by high fever, headache, nausea, and vomiting, which may indicate a serious condition. There are also warnings not to use a product indicated for sore throat for more than 2 days and not to use a product indicated for sore mouth for more than 7 days unless directed by a doctor.

The agency believes that the indications and warnings proposed in this tentative final monograph provide adequate labeling for the safe and effective OTC use of these products. Therefore, topical anesthetic/analgesic ingredients are included in this tentative final monograph.

5. One comment noted that the Panel's recommended monograph did not provide for professional labeling for anesthetic/analgesic agents. The comment stated that the agency has long recognized the need for labeling OTC drugs directed exclusively to health care professionals because physicians frequently prescribe nonprescription products for the treatment of various conditions. The comment added that under Category II labeling for anesthetics/analgesics (47 FR 22826), the Panel included a list of phrases as indications for use in conditions that properly require diagnosis by a physician. These indications include relief of pain associated with such conditions as tonsilitis, pharyngitis, and throat infections and such terms as "stomatitis" and "aphthous ulcers."

The comment agreed with the Panel that these conditions require professional diagnosis, but pointed out that Category I anesthetic/analgesic products are safe and effective for use in such instances. Therefore, the comment requested that the above indications for OTC oral health care products containing anesthetic/analgesic ingredients be included under § 356.85 *professional labeling*, for dissemination to health care professionals (but not to the general public).

The Panel placed OTC label claims that referred to pharyngitis, tonsilitis, and aphthous ulcers in Category II to guard against self-diagnosis and self-treatment of conditions that are not amenable to OTC treatment (47 FR 22785). The agency agrees with the Panel that such claims are not appropriate for OTC labeling. However, the agency believes that Category I OTC anesthetic/analgesic ingredients are as effective in relieving the pain associated with conditions that must be diagnosed by a physician as they are in relieving the occasional minor irritation, pain, sore throat, and sore mouth that can be self-diagnosed. Moreover, in its discussion on sore mouth, the Panel stated that anesthetic/analgesic ingredients can be used as adjuncts to therapeutic regimens outlined by physicians in conditions where professional care is necessary (47 FR 22776). At the present time, there are some OTC anesthetic/analgesic drug products on the market that are also promoted to health care professionals for some of the indications that were placed in Category II by the Panel (Refs. 1 and 2). The agency has determined that OTC anesthetic/analgesic drug products can be used for the relief of pain associated with tonsilitis, pharyngitis, and throat infections which must first be diagnosed by a physician. Therefore, professional labeling is being included in the tentative final monograph to alert health care professionals to the additional indications. In a new section, § 356.80, the agency is proposing that the professional labeling of products containing anesthetic/analgesic ingredients, identified in § 356.10, may contain the following indication: "For the temporary relief of pain associated with" (select one or more of the following conditions: "tonsilitis," "pharyngitis," "throat infections," or "stomatitis") However, these same indications remain in Category II for use on the labeling of these OTC drug products marketed directly to consumers because consumers cannot self-diagnose and self-treat these conditions.

Regarding the condition of "aphthous ulcers" (canker sores) mentioned by the comment, the agency has determined that this condition is self-diagnosable and self-treatable. Accordingly, as explained in comment 6 below, the agency is including in § 356.55 for anesthetic/analgesic ingredients the OTC indication "For temporary relief of pain associated with canker sores."

References

(1) "Physician's Desk Reference For Nonprescription Drugs," 7th Edition, Medical Economics Company, Oradell, NJ, p. 650, 1986.

(2) OTC Volume 130038.

6. One comment objected to the Panel's Category II classification of the indication "For temporary relief of pain associated with canker sores." The comment stated that canker sores are oral mucosal lesions that are commonly and accurately diagnosed by the consumer. The comment added that canker sores are usually self-limiting and seldom lead to complications, and that it is not in the best interest of the consumer to require that professional advice be sought prior to treatment with local anesthetics that have been proven safe and effective. The comment requested that the agency modify § 356.50(b) to include the indication "For temporary relief of pain associated with canker sores."

The agency agrees with the comment and believes that canker sores can be recognized by the consumer and that the pain associated with canker sores is amenable to treatment with OTC anesthetic/analgesic active ingredients. The agency notes that the Advisory Review Panel on OTC Miscellaneous Internal Drug Products concluded that canker sores are self-limiting, tend to reoccur in the same individual, are self-diagnosable, but are not amenable to self-treatment because of their diverse and usually unknown etiology (47 FR 504 to 505). However, in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33984), the agency stated that oral wound cleansing agents may be labeled for temporary use in cleansing canker sores because those agents could provide a useful function by removing debris from the ulcerated tissue. The agency believes that OTC anesthetic/analgesic active ingredients may provide an additional useful function by alleviating the pain commonly associated with canker sores. Therefore, in this tentative final monograph, the agency is proposing to modify § 356.55(b) to include the following indication for oral health care anesthetic/analgesic active ingredients: "For temporary relief of pain associated with canker sores."

7. One comment pointed out that statements referring to the time of onset of action of local anesthetics applied to the mucous membranes, in terms other than in definite units of time, were placed in Category II by the Panel (47 FR 22828). The comment stated that for all local anesthetics/analgesics included in the Panel's recommended monograph, the onset of activity is virtually instantaneous, occurring within seconds. The comment also stated that this rapid onset of action is the basis for the rational use of anesthetics in local pain relief and that the inclusion of such terms as "fast" or "quick" in reference to onset of action for these agents is truthful and not misleading. The comment contended that such terms are properly considered as product attributes and that the agency should not prohibit communication of these qualities to the consumer.

Claims concerning characteristics of product performance or attributes will be dealt with in OTC drug monographs only when they imply the existence of a characteristic that would be therapeutically significant for the drug in question. For example, "rapid onset" is a property that is not necessarily significant for most OTC drugs, including topical oral anesthetic/analgesic agents, but is important to the effective use of a bronchodilator in counteracting an asthma attack. Because the claims "fast" or "quick" are not directly related to the safe and effective use of topically applied oral anesthetic/analgesic agents, the agency considers these claims to be outside the scope of the monograph. The agency will continue to evaluate these claims, on a product-by-product basis, under the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 352) relating to labeling that is false and misleading. Any term that is outside the scope of the monograph, even though it is truthful and not misleading, may not appear on any portion of the labeling that is required by the monograph and may not detract from the required information. However, such terms may be included on the labeling provided that they are not intermixed with labeling established by

the monograph, and the statement is not false or misleading.

8. One comment disagreed with the Panel's recommended dosage of benzocaine as an anesthetic/analgesic for use in a throat lozenge. The Panel recommended a dosage of 2 to 15 milligrams (mg) benzocaine in the form of a lozenge every 2 hours, if necessary. The comment proposed that the upper limit of benzocaine for adult use be increased to a maximum of 40 mg every half hour, as necessary, with a maximum adult dosage of 1.3 grams (g) of benzocaine per day.

The comment based its recommendation on marketing experience, feedback from customers, and taste tests. The comment stated that taste tests, conducted on company personnel, showed that a dose of 20 mg benzocaine is necessary to produce an effective level of anesthesia in the throat when sugar-based lozenges are used and that in sugar-free products, the anesthetic effect appears to be inhibited and a larger dose of benzocaine (up to 40 mg) is needed. The comment added that at these doses, the duration of anesthesia in the throat is approximately 30 minutes. The comment also stated that its stability studies show that in a warm, moist environment, similar to that encountered in the throat, benzocaine is rapidly degraded; thus, a dosage interval of every 30 minutes rather than every 2 hours is more appropriate. Citing the "United States Dispensatory" and the Panel's discussion of toxicity data on benzocaine (47 FR 22808 to 22809), the comment emphasized that its recommended dosage does not produce harmful or toxic effects from benzocaine or its degradation products (i.e., ethanol and *p*-aminobenzoic acid).

Because the comment did not submit any clinical data to support an increase in the maximum dosage of benzocaine in a lozenge formulation, the undocumented statements made by the comment cannot be considered adequate proof of the safety and effectiveness of a 20-mg or 40-mg dose of benzocaine as a lozenge to be used every 30 minutes. Therefore, the agency cannot accept the higher dosage recommended by the comment for this ingredient without additional data being provided to support such a change.

9. One comment requested that the agency consider phenol and phenolate sodium, at a total concentration of 0.5 to 1.5 percent expressed as phenol, as a single active ingredient rather than as a combination in drug products. The comment pointed out that the Dental Panel, in its report on OTC drug products for the relief of oral discomfort, considered phenol and phenolate sodium to be a single active ingredient (47 FR 22712). The comment also noted that the Advisory Review Panel on Antimicrobial (II) Drug Products (Antimicrobial II Panel), in its report on OTC topical antifungal drug products, stated that it considered phenol and phenolate sodium to be a single active ingredient when both are contained in a product formulation and that the total level of phenol and phenolate sodium is expressed as percent phenol. (See the **Federal Register** of March 23, 1982; 47 FR 12480.)

According to the comment, in many rulemaking proceedings the agency "has considered salts of active ingredients synonymous with the free acid or base when such salts do not significantly change the safety or efficacy of that free acid or base." The comment further objected to these products being subject to the combination sections of the monograph and pointed out that phenolate sodium invariably arises from phenol-containing formulations when pH adjustments are required to make such products pharmaceutically acceptable, and not for the purpose of combining two distinct active ingredients.

The agency has reviewed the Dental Panel's report on OTC drug products for the relief of oral discomfort and finds that the Panel evaluated several drug products containing phenol and phenolate sodium (47 FR 22739). However, the Panel did not distinguish between phenolate sodium and phenol as separate single ingredients or classify such drug products as combinations. It considered such drug products as single active ingredient products containing phenol as the active ingredient.

The agency has also reviewed the Antimicrobial II Panel's report on topical antifungal drug products and notes that the Panel discussed phenol and phenolate sodium in a single writeup and discussed safety and effectiveness based on the concentration of phenol (47 FR 12517).

The Oral Cavity Panel recognized that the active moiety in phenolate sodium is phenol, and recommended for a liquid dosage form a concentration of 0.5 to 1.5 percent for phenol as a single ingredient and a concentration equivalent to 0.5 to 1.5 percent phenol for phenolate sodium as a single ingredient. For a solid dosage form, the Panel recommended 10 to 50 mg of phenol as a single ingredient and a concentration equivalent to 10 to 50 mg phenol for phenolate sodium as a single ingredient (47 FR 22814 to 22816).

The agency concludes that, because safety and effectiveness as an anesthetic/analgesic is based on the concentration of phenol, products containing both phenolate sodium and phenol are not considered as drug products containing two separate single active ingredients and are not combination drug products subject to the combination requirements in § 356.20 of the monograph. Accordingly, phenol identified in § 356.10(g) and phenolate sodium identified in § 356.10(h) of the Panel's recommended monograph are replaced in proposed § 356.10 of this tentative final monograph with the following: "(f) Phenol preparations (phenol and/or phenolate sodium)."

10. One comment stated that the Oral Cavity Panel had unnecessarily restricted the dosing frequency for phenol and phenolate sodium liquid formulations (mouthwashes, gargles, liquids, and sprays) in § 356.50(d) (7) and (8) of its recommended monograph. The comment stated that a number of studies submitted to the agency indicate that 2 hours is the maximum duration of effective anesthesia/analgesia typically induced by these ingredients. Thus, the Panel's recommended maximum frequency of "three to four times daily" is too restrictive. In addition, the comment contended that this dosing frequency is inconsistent with the dosing frequency for lozenges, which is every 2 hours. The comment requested that the dosing frequency for phenol and phenolate sodium liquid preparations be revised to every 2 hours.

The agency agrees with the comment that the data support a dosing frequency of every 2 hours for phenol-containing liquid formulations rather than three to four times daily as recommended by the Panel. Several of the studies submitted to the agency indicate that the duration of relief afforded by aqueous solutions of 1.5 percent phenol ranges from 30 minutes or less to approximately 2 hours (Refs. 1 through 4). Only one study (Ref. 3) mentioned a number of subjects (17 out of 44) who experienced relief defined as lasting longer than 2 hours. In that study, 27 subjects reported relief lasting 1 hour or less. Although these studies were submitted to the Panel, they were not discussed in the Panel's evaluation of this ingredient.

The agency believes that the use of 0.5 to 1.5 percent phenol-containing liquid formulations at a dosage frequency of every 2 hours is safe. In its report on OTC drug products for the relief of oral discomfort (47 FR 22712), the Dental Panel recommended that the daily dosage of phenol not exceed 600 mg daily for adults and 300 mg daily for children 6 to 12 years of age (47 FR 22759). When an aqueous solution of phenol is used according to label directions as a mouthwash or gargle, the amount of phenol absorbed or ingested is small and well below the maximum daily dosage recommended by the Dental Panel. One study (Ref. 5) demonstrates that when 1 fluid ounce of a 1.4-percent phenol solution (411 mg phenol) is used as a gargle or mouthwash with a rinse time of 2 minutes before spitting out, approximately 50 mg phenol (12 percent) is retained or absorbed in the oral cavity. The recommended rinse time for phenol-containing mouthwashes or gargles is 15 seconds (Refs. 1 and 6) indicating that under conditions of normal use, less than 12 percent of the phenol in the dose is retained or absorbed in the oral cavity after a single application of the drug product. Even if an adult applied 25 milliliters (mL) of a drug product containing 1.5 percent phenol every 2 hours with a rinse time of 2 minutes before spitting out, less than 550 mg of phenol would be absorbed or retained in the oral cavity over a 24-hour period, and the recommended maximum daily adult dosage of 600 mg phenol would not be exceeded.

Because there is an adequate margin of safety when label directions are followed and because the duration of anesthesia induced by phenol-containing drug products is less than 2 hours, the agency concludes that the maximum dosing frequency of phenol-containing liquid dosage forms should be every 2 hours, the same as the dosing frequency of phenol-containing lozenges (solid dosage forms). Therefore, in § 356.55(d)(6) of this tentative final monograph, the agency is proposing revised directions for products containing phenol preparations (phenol and/or phenolate sodium) that reflect a dosing frequency of every 2 hours.

References

(1) Bronsky, D.A., "to Evaluate the Efficacy of Both Chloraseptic Solution and Chloraseptic Lozenges When Used to Relieve the Gingival and Buccal Mucosal Discomfort Associated with Orthodontic Braces," draft of unpublished study, C00014, Docket No. 80N–0033, Dockets Management Branch.

(2) Blum, B., "Clinical Evaluation of an Anesthetic Mouthwash," *The New York State Dental Journal*, 26:419–421, 1960.

(3) Young, J.R., "Use of Phenol Anesthetic Spray for Pain Relief," *E.E.N.T. Digest*, 30:51–60, 1966.

(4) Braunlin, E.A., "Evaluation of an Antiseptic, Anesthetic Solution," *Journal of the National Medical Association*, 56:151–152, 1964.

(5) OTC Volume 130065

(6) OTC Volume 13ATFM.

11. One comment noted that although the Panel's recommended monograph provides for a gel form of benzocaine as an anesthetic/analgesic, a gel formulation for phenol was apparently inadvertently omitted. The comment requested that phenol as a 0.5- to 1.5-percent gel (i.e., the Category I concentration of phenol as an anesthetic/analgesic ingredient in a gel formulation) be included in the tentative final monograph.

The agency agrees that an aqueous gel formulation is an acceptable dosage form of phenol for use as an anesthetic/analgesic. Moreover, any Category I oral health care active ingredient may be formulated in any rational dosage form that is consistent with the directions for use of the product, provided that the ingredient is present at the specified dosage and the product is manufactured according to the regulations for the Current Good Manufacturing Practice for Finished Pharmaceuticals (21 CFR Part 211). Therefore, the agency finds it unnecessary to list specific dosage forms for oral health care drug products unless the dosage form is specifically relevant to the use, safety, or effectiveness of the ingredient.

Accordingly, to allow for the different solid dosage forms (e.g., lozenges, compressed tablets) and nonsolid dosage forms (e.g., mouthwashes, gels) that may be used when formulating oral health care drug products, the agency is using the terms "solid dosage forms" and "dosage forms other than solid" in this tentative final monograph and is not adopting words such as "rinse," "mouthwash," "lozenge," "gel," etc., that appeared in the advance notice of proposed rulemaking, except where the specific dosage form is relevant to the use, safety, or effectiveness of the ingredient. The directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of this tentative final monograph, where appropriate, use the terms "solid dosage forms" and "dosage forms other than solid."

12. Although agreeing with the Panel's recommended concentration of 0.04 to 2 percent menthol as an anesthetic/analgesic in liquid oral health care products (47 FR 22928), one comment contended that the recommended dosage for menthol per lozenge (2 to 20 mg) does not include the lowest dosage level that was submitted to the Panel. The comment claimed that a submission to the Panel contained a study showing that 1 mg menthol per 2-g lozenge exerted a statistically significant pharmacologic effect in the oral cavity (Ref. 1). The comment contended that as a result of reviewing the study in the submission to the Panel (Ref. 1) and subsequent literature provided on the method used in the study (Ref. 2), the Panel accepted the citric acid aerosol test for the assessment of drug activity. The comment recommended revision of the minimum effective dose for menthol in lozenges to include doses down to and including 1 mg per lozenge.

The agency reviewed the submission referred to by the comment (Ref. 1), but did not find a study using a concentration of 1 mg menthol per 2-g lozenge. The only study in the submission that specified the concentration of menthol was one in which menthol was used in combination at a concentration of 9 mg per 3-g lozenges (Ref. 3). The agency concludes that the data in this study cannot be used to support the effectiveness of menthol as an oral health care anesthetic/analgesic ingredient at doses down to and including 1 mg per lozenge, as recommended by the comment, because the study investigated a higher dose of menthol in a combination product. Therefore, any pharmacologic effect observed in the oral cavity can neither be attributed to menthol alone nor to menthol at the lower dosage level, as the comment claims.

Regarding the comment's statement that the Panel accepted the citric acid aerosol test for the assessment of drug activity, the agency's position, as stated in the **Federal Register** of October 19, 1983 (48 FR 48582), is that induced-cough studies are supportive, but are not a substitute for adequate and well-controlled studies in the target population. Additionally, cough reduction alone is not sufficient proof of the effectiveness of an ingredient labeled as an anesthetic/analgesic for oral health care use. Studies conducted on drugs for these uses must demonstrate a decrease in sore mouth or sore throat pain.

Therefore, the agency is proposing a Category III classification for less than 2 mg menthol as an anesthetic/analgesic active ingredient for use in a solid dosage form.

References

(1) OTC Volume 130095.

(2) Packman, E.W., and S.J. London, "The Utility of Artificially Induced Cough as a Clinical Model for Evaluating Antitussive Drug Combinations. Part I: Liquid and Solid Formulations of Systemic Drug," *Current Therapeutic Research*, 21:855–866, 1977.

(3) Packman, E.W., "Victors" (Study CRD No. 71–7), draft of unpublished study, OTC Volume 130095.

13. One comment noted that the Panel recommended a 0.05 to 5 percent concentration of benzyl alcohol as an anesthetic/analgesic ingredient as a liquid and a minimum of 100 mg as a lozenge. The comment stated that for a

usual 2-g lozenge, 100 mg corresponds to 5 percent, the maximum concentration allowed for liquids. However, because a lozenge is in contact with the oral cavity for a much longer period of time than a mouthwash or a spray, the benzyl alcohol has a much greater opportunity to exert the desired effect. Noting that as little as a 1-percent concentration is used for parenteral injection to produce an anesthetic effect, the comment recommended that the minimum content of benzyl alcohol for use in a lozenge be reduced to 5 mg (equivalent to 0.05 percent in 10 mL of a solution).

The Panel recommended a maximum concentration of 10 percent benzyl alcohol when formulated as a liquid, not 5 percent as stated by the comment (47 FR 22928). Thus, the amount of benzyl alcohol in the 2-g lozenge containing 100 mg of benzyl alcohol mentioned by the comment would not correspond to the maximum concentration recommended for a liquid.

The Panel acknowledged that the effect of benzyl alcohol when incorporated in a lozenge is sustained as long as the mucous membranes are bathed in a sufficient concentration of drug, but that the duration of action when benzyl alcohol is incorporated in rinses is brief, seldom more than 5 to 10 minutes (47 FR 22810). It would be expected that lower concentrations, such as 1 percent benzyl alcohol, when injected parenterally or when used as a rinse would produce an anesthetic effect because all of the drug is immediately available. In lozenge form, however, the amount of drug available is dependent upon other factors, such as the dissolution rate of the lozenge and the total concentration of drug in the lozenge. Thus, the anesthetic effect of the two formulations (lozenge and liquid) containing the same concentration of benzyl alcohol may not be the same because the amount of benzyl alcohol available at any one time in a lozenge would be less than that available in a liquid.

The Panel believed that a minimum dose of 100 mg in a lozenge is appropriate in order to produce an anesthetic effect. No data were submitted by the comment to support the effectiveness of a dose lower than 100 mg per lozenge for benzyl alcohol as a topical anesthetic/analgesic active ingredient. Therefore, the agency has no basis for proposing that 5 mg be the minimum allowable content for a lozenge. The agency invites the submission of data in support of the effectiveness of the comment's suggested lower minimum dose for benzyl alcohol in lozenge form.

14. Urging approval of internal analgesics for relief of minor sore throat pain, two comments stated that internal analgesics have been properly used for many years to treat this minor condition. The comments provided several references to support this claim. The comments pointed out, however, that the Advisory Review Panel on Over-the-Counter (OTC) Internal Analgesic and Antirheumatic Products (Internal Analgesic Panel) placed such claims for internal analgesics in Category II. The comments disagreed with the recommendation, noting that the review of drugs for relief of minor sore throat pain was assigned to the Oral Cavity Panel. Therefore, the comments considered it appropriate to include internal analgesics for this indication in the monograph for OTC oral health care drug products.

The agency notes that the Oral Cavity Panel was charged with evaluating ingredients and labeling used in OTC anesthetic/analgesic preparations intended strictly for local, topical application to the mucous membranes of the oral cavity (mouth) and pharynx (throat). The Oral Cavity Panel either classified ingredients and labeling for anesthetic/analgesic preparations that act systemically as Category II (47 FR 22765), or it deferred those ingredients known or presumed to be absorbed and to act systemically to other panels for evaluation.

The agency agrees with the Oral Cavity Panel's recommendation that systemic relief of minor sore throat pain should be addressed in the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and has transferred all comments and associated submissions regarding internal analgesics for the relief of minor sore throat pain to that rulemaking (Docket No. 77N–0094) (Ref. 1). The agency's findings on this subject will be addressed within the context of the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products in a future issue of the **Federal Register**. The agency discusses the use of topically applied aspirin for the relief of minor sore throat pain in this tentative final monograph. (See comment 15 below.)

Reference

(1) Memo No. 00006, Docket No. 77N–0094, Dockets Management Branch.

15. Two comments agreed with the Panel's majority report on the safety and effectiveness of aspirin that "aspirin is safe and effective as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat * * *." (47 FR 22796). One comment concurred with the majority of the Panel that the speed of the response excluded a systemic analgesic effect resulting from the absorption of aspirin. Both comments stated that these conclusions were based on a careful review of the published literature, the submissions to the Panel, and the original, independent work of one of the Panel members.

One comment maintained that several of the safety issues raised in the Panel's minority report on aspirin as a topical analgesic were not unique to aspirin in chewing gum form and were not supported by the quoted references. The comment then listed the following examples:

(1) The effect of a conventional aspirin tablet applied directly to the mucous membranes of the mouth (47 FR 22799) has little relevance to the evaluation of the safety of aspirin in chewing gum form.

(2) One of the reports of mouth ulcers associated with aspirin in chewing gum form cited in the minority report (47 FR 22799) involved an obvious abuse situation in which the consumer had chewed 8 to 10 gum tablets a day for 6 to 10 weeks.

(3) Two references to several cases of massive hemorrhage from the tonsillar bed following topical application of a "gargle of aspirin-containing chewing gum" (47 FR 22800) have been incorrectly quoted. The comment stated that neither reference involves the topical application of a "gargle of aspirin containing chewing gum." It asserted that one of these references presented the results of laboratory experiments in dogs treated with a variety of substances, including aspirin, placed in the gastrointestinal tract. The other reference discusses the effect of an aspirin suspension intended for systemic absorption.

(4) The comment quoted the following statements from the Panel's minority report (47 FR 22800): "Hemorrhage was observed in 8 percent of 100 posttonsillectomy patients medicated with aspirin * * *. No bleeding occurred in 100 patients medicated with acetaminophen." The comment stated that this report involved an aspirin suspension and therefore was not applicable to aspirin in chewing gum form.

(5) A study cited in the Panel's minority report (47 FR 22800) described a high incidence of post-tonsillectomy bleeding in children treated with an aspirin-containing chewing gum. The comment stated that this study involved a select subgroup of the population, and that it would be more sensible to restrict the use of aspirin-containing gum by this small subgroup than to deny the rest of the population the benefit of such a product. The comment maintained that the warnings included in § 356.50(c)(2)(iv) of the Panel's recommended monograph prohibit the use of chewable aspirin-containing drug products immediately following oral surgery.

The comment maintained that the safety concerns voiced by the minority of the Panel were not adequately documented and that some concerns would be more properly handled by labeling than by removal of the product. The comment requested that aspirin in a chewing gum dosage form remain in Category I for safety as a topical analgesic consistent with the conclusion of the majority of the Panel.

The majority of the Panel concluded that aspirin incorporated in a chewing gum base is safe and effective as an OTC anesthetic/analgesic ingredient for topical use on the mucous membranes of the mouth and throat. However, the minority of the Panel members concluded that there were insufficient data available to permit final classification of the safety and effectiveness of aspirin as an OTC anesthetic/analgesic active ingredient for topical use on the mucous membranes of the mouth and throat. The minority of the Panel members had serious reservations about the safety of topically applied aspirin used in the oral cavity and believed that aspirin has no known topical anesthetic or analgesic activity. They felt that any analgesic effect from aspirin applied topically in the oral cavity is ultimately due to systemic absorption and not to topical application.

In the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, to be published in a future issue of the **Federal Register**, the agency will discuss the systemic effectiveness of aspirin in chewing gum form for the relief of many kinds of pain including sore throat pain. However, with regard to the effectiveness of aspirin as a topical analgesic active ingredient for use on the mucous membranes of the mouth and throat, the agency disagrees with the comments and agrees with the minority of the Oral Cavity Panel members that there are insufficient data available to permit final classification.

The conclusion of the majority of the Panel members that aspirin is an effective topical analgesic ingredient was based upon a Panel member's oral presentation to the Panel describing his independent research, which was later published in the literature (Ref. 1), and upon a study by Scott (Ref. 2) indicating that aspirin applied topically to dentin in artificial cavities in a cat's incisor inhibits steady state discharge and response to a brief heat stimulus. However, the agency believes that aspirin's mode (or modes) of action have not been well elucidated and another recent publication by Adriani, Minokadeh, and Naraghi (Ref. 3), which was not available to the Panel, contradicts the results of the Panel member's research mentioned above (Ref. 1). This more recent study used an established method of algesimetry in which an electric current is applied to the tip of the tongue as a painful stimulus and found that a saturated solution of aspirin has no more analgesic effect on the tip of the tongue than the placebo (saline).

In the advance notice of proposed rulemaking for OTC external analgesic drug products (published in the **Federal Register** of December 4, 1979; 44 FR 69846 to 69847), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) stated that aspirin possesses no topical anesthetic activity and does not block the neuronal membranes as do topical anesthetics such as benzocaine. That Panel concluded that although percutaneous absorption of salicylate occurs, any subsequent analgesic effect is systemic and not local. In the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (published in the **Federal Register** of July 8, 1977; 42 FR 35378 to 35377), the Internal Analgesic Panel determined that although aspirin has historically been used as a gargle for the treatment of minor sore throat pain, aspirin or any analgesic in a gum base has not been adequately tested for effectiveness in the treatment of sore throat pain. That Panel deferred aspirin in a chewing gum base and the use of aspirin as a gargle for a local topical effect to the Oral Cavity Panel for evaluation (42 FR 35376 and 47 FR 22801). Although the topical use of aspirin in chewing gum dosage form for the relief of minor sore throat pain is discussed in this notice, the agency has determined that the role of internal analgesic drug products, including the systemic effects of aspirin in a chewing gum form, and their labeling for the relief of minor sore throat pain will be addressed within the context of the rulemaking for OTC internal analgesic drug products in a future issue of the **Federal Register**. (See comment 14 above.)

The agency believes that because there was a divided recommendation by the Oral Cavity Panel, because two other Panels concluded that aspirin has no known local analgesic effect, and because the referenced publications (Refs. 1 and 3) present conflicting data, a reasonable question exists regarding the ability of aspirin to exert a topical analgesic effect on the oral mucosa. Furthermore, it should be noted that the agency is not aware of any OTC aspirin products in tablet or lozenge dosage form that are marketed specifically for topical use. The OTC aspirin product in a chewing gum dosage form that was submitted to the Internal Analgesic Panel as an internal analgesic and subsequently was submitted to the Oral Cavity Panel is not specifically labeled for topical oral use. The product's current indications include temporary relief of minor sore throat pain, headache, aches and pains of colds, and muscular aches and pains (Ref. 4). Therefore, the agency is classifying aspirin when labeled for topical use in Category III for effectiveness as an analgesic for use in the oral cavity for the relief of pain associated with minor sore throat. The agency recommends that testing using protocols similar to those employed in the study by Adriani, Minokaden, and Naraghi (Ref. 3) are necessary to demonstrate that aspirin produces a statistically and clinically significant topical analgesic effect in the oral cavity. Manufacturers may want to discuss their proposed protocol(s) with the agency prior to performing studies. The agency invites further comments and data on this use of aspirin.

With regard to the safety of aspirin for topical use in the oral cavity, the agency accepts the conclusion of the majority of the Panel and agrees with the comments that aspirin in a chewing gum base is safe for topical use on the mucous membranes of the mouth and throat when labeled with adequate warnings against misuse. The agency also agrees with the one comment that two references (Refs. 5 and 6) cited in the Panel's minority report (47 FR 22800) are misquoted. However, both articles do point out that aspirin is irritating to mucous membranes and emphasize the need for proper labeling.

Also, contrary to the comment's contention, two publications (Refs. 7 and 8) cited in the minority report (47 FR 22799) did involve aspirin in a chewing gum base. In one case report, aspirin in a chewing gum and aspirin tablets were both applied to the roof of the mouth and resulted in local ulceration within a week. Upon removal of both forms of medication, the ulceration healed (Ref.

7). In this report, the lesions could have been caused by either form of aspirin or the unusual combination of both. In the other case report, a consumer chewed 8 to 10 gum tablets a day for 6 to 10 weeks (Ref. 8). Although prolonging treatment with aspirin-containing chewing gum for 6 to 10 weeks is an abusive situation, the ulcers were reported to have been present for 6 to 10 weeks also. This indicates that the ulcers could have been caused by or aggravated by misuse of the aspirin-containing chewing gum. The ulcers healed promptly when the gum was discontinued. These two reports, as well as another mentioned by the comment (Ref. 9), indicate the topical irritant action of salicylates on the mucous membranes of the mouth and point out the necessity for adequate warnings against misuse.

The agency acknowledges that aspirin increases bleeding time and inhibits platelet aggregation (42 FR 35384 and 47 FR 22797). In addition, aspirin-related hemorrhage after oral surgery is a well-documented occurrence (Refs. 10, 11, and 12). The agency agrees with both the Panel and the one comment that aspirin in any form should not be used after oral surgery or tonsillectomy (47 FR 22798 and 22801). In addition, the agency agrees with the Panel that aspirin should not be used either systemically or topically when mucous membranes are highly inflamed or abraded, when there are eroded, bleeding lesions, or when the consumer is on anticoagulant medication (47 FR 22798). In order to address the above-mentioned safety concerns, the majority of the Panel suggested the following warnings for aspirin-containing oral health care drug products in its recommended monograph:

Section 356.60(c)(2)(ii) "Do not use if you have a bleeding problem or if you are taking an anticoagulant drug."

Section 356.60(c)(2)(iii) "Do not use without a physician's or dentist's advice if your mouth is highly irritated or ulcerated."

Section 356.60(c)(2)(iv) "Do not use after surgery in the mouth or throat."

The agency believes that these warnings, with some minor modifications, are sufficient to protect the consumer against any adverse effects resulting from the use of aspirin in a chewing gum base in the oral cavity. The Internal Analgesic Panel, in its report, recommended that all aspirin products formulated to be chewed before swallowing (chewable tablets or gums) should contain the following warning: "Do not take this product for at least 7 days after tonsillectomy or oral surgery except under the advice and supervision of a physician" (47 FR 35385). The agency believes that prohibiting the use of aspirin for 7 days after oral surgery is reasonable and is recommending this as a required warning.

The agency also believes that the recommended warnings can be shortened by combining them into a single statement and that the phrase "except under the advice and supervision of a dentist or doctor" should be added to the combined warning. In addition, the agency believes that consumers may not understand the meaning of the word "anticoagulant." In the tentative final monograph for OTC internal analgesic drug products, to be published in a future issue of the **Federal Register**, the agency plans to explain the word "anticoagulation" by placing the words "thinning the blood" in parentheses after it. The same approach is being recommended in this tentative final monograph also.

The agency is recommending that the following warning be included in the final monograph for OTC oral health care drug products if aspirin in a chewing gum base becomes a Category I ingredient in this rulemaking:

> Do not use if you have a bleeding problem, if you are taking a prescription drug for anticoagulation (thinning the blood), if your mouth is highly irritated or ulcerated, or for at least 7 days after surgery in the mouth or throat except under the advice and supervision of a dentist or doctor.

In conclusion, in this tentative final monograph, the agency is classifying aspirin in a chewing gum base in Category III for effectiveness and in Category I for safety as a topical anesthetic/analgesic active ingredient for use in the oral cavity. If this ingredient is included in the final monograph for OTC oral health care drug products, the agency will consider the need for any additional warnings that are required for aspirin in the final monograph for OTC internal analgesic drug products.

References

(1) Loch, W.E.E., et al., "Local Aspirin Analgesia in the Oral Cavity," *Clinical Pharmacology and Therapeutics*, 33:642–648, 1983.

(2) Scott, D., Jr., "Aspirin: Action on Receptor in the Tooth," *Science*, 161:180–181, 1968.

(3) Adriani, J., S. Minokadeh, and M. Naraghi, "Effectiveness on Mucous Membranes of Topically Applied Antipyretic Analgesics," *Regional Anesthesia*, 6:47–50, 1981.

(4) OTC Volume 13ATFM.

(5) Davenport, H.W., "Gastric Mucosal Injury by Fatty and Acetylsalicylic Acids," *Gastroenterology*, 46:245–253, 1964.

(6) Reuter, S.H., and W.W. Montgomery, "Aspirin vs. Acetaminophen after Tonsillectomy: A Comparative Double-Blind Study," *Archives of Otolaryngology*, 80:214–217, 1964.

(7) Kawashima, Z., R.H. Flagg, and D.E. Cox, "Aspirin-Induced Oral Lesion: Report of Case," *Journal of the American Dental Association*, 91:130–131, 1975.

(8) Claman, H.N., "Mouth Ulcers Associated with Prolonged Chewing of Gum Containing Aspirin," *Journal of the American Medical Association*, 202:651–652, 1967.

(9) Roth, J.L.A., et al., "Topical Action of Salicylates in Gastrointestinal Erosion and Hemorrhage," *Gastroenterology*, 44:146–158, 1963.

(10) Singer, R., "Acetylsalicylic Acid, A Probable Cause for Secondary Post-Tonsillectomy Hemorrhage," *Archives of Otolaryngology*, 42:19–20, 1945.

(11) Hersh, R. A., "A Clinical Study Comparing the Incidence of Postoperative Bleeding in Patients Using Salicylate-containing Analgesics versus Acetaminophen Analgesics," *Bulletin of the Bergen County Dental Society*, 40:6–8 and 16, 1974.

(12) Fox, S. L., and G. B. West, "Vitamin K and Late Tonsillar Hemorrhage," *Laryngoscope*, 51:564–574, 1947.

16. One comment requested that the agency revise the Category I dosage schedule for topical aspirin as follows:

Adults—325–500 mg every 4 hours as needed not to exceed 3,900 mg in 24 hours.

Children 9 to 11—200–500 mg every 4 hours as needed, not to exceed 2,030 mg in 24 hours.

Children 6 to 8—130–325 mg every 4 hours as needed, not to exceed 1,625 mg in 24 hours.

The comment maintained that most of the efficacy and safety data and experience submitted to the Panel for evaluation was based upon a formulation containing 227 mg aspirin per gum tablet and that this concentration is not included in the Panel's recommended dosage schedule. The comment stated that the proposed revision takes into account the actual Category I dosage range (130 to 500 mg) officially approved by the Panel at its December 14, 1979 meeting, provides an age-dependent dosage as proposed in the Panel's majority report on aspirin, and provides a Category I dosage range that includes the currently available products.

The agency believes that a specific dosage schedule for topically applied aspirin in a chewing gum base cannot be proposed at this time because of the absence of actual study data to support such a dosage schedule. Although the comment proposes doses as low as 130 mg aspirin, no data were submitted to the Panel or the agency that would support the topical analgesic effectiveness of such a low dose of aspirin. As the comment stated, most of the information submitted to the Panel for evaluation (Ref. 1) was derived from a product containing 227 mg aspirin per tablet in a chewing gum base. Other data submitted to the agency regarding the topical analgesic effectiveness of aspirin (Ref. 2) were based on a dose of 210 mg of aspirin, but that amount was in an aqueous solution, not a chewing gum base. Neither dose was shown to be effective.

Therefore, the agency disagrees with the Panel's Category I classification of aspirin in a chewing gum base as an oral health care topical analgesic/anesthetic drug product and is proposing a Category III classification for this ingredient. (See comment 15 above.) Consequently, the agency is not proposing a dosage schedule for this ingredient as an oral health care drug product. In the event that aspirin in a chewing gum base reaches monograph status (Category I), the agency will establish an appropriate dosage at that time, based on the supporting data.

References

(1) OTC Volume 130104.

(2) Loch, W. E. E. et al., "Local Aspirin Analgesia in the Oral Cavity," *Clinical Pharmacology and Therapeutics*, 33:642–648, 1983.

17. One comment maintained that because aspirin in a chewing gum base can be labeled for use as an internal analgesic and/or a topical analgesic, provisions should be made to allow the warnings to be consolidated. It stated that the 2-day administration restriction should be identified as applicable only when treating sore throat, and that the 5-day to 10-day restriction would be applicable to internal analgesic use.

In this document, aspirin is classified in Category III for effectiveness as a topical anesthetic/analgesic ingredient. (See comment 15 above.) However, if aspirin is included in the final monograph for OTC oral health care drug products as well as in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, a product could display labeling from both monographs. For example, manufacturers may indicate on the label that the 2-day usage limitation is applicable only when treating sore throat, and that the 5-day to 10-day restriction on use applies when aspirin is used as an internal analgesic for the temporary relief of minor aches and pains such as headaches. Manufacturers may combine warnings, indications, and directions, respectively, to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

18. One comment maintained that the Panel's recommended warning in § 356.50(c)(2)(v), "Provide good fluid intake when aspirin or aspirin-containing preparations are used" is unnecessary for products containing aspirin in a chewing gum form because the process of chewing generates sufficient saliva to prevent pharyngeal or esophageal irritation. The comment added that the topical effect of aspirin could be diminished by the administration of liquids immediately after chewing the gum tablets. Therefore, the comment requested that the agency delete this warning for these drug products.

In this document, aspirin is classified as Category III for effectiveness as a topical anesthetic/analgesic ingredient. (See comment 15 above.) However, the agency agrees with the comment that if aspirin in a chewing gum base is shown to have a topical analgesic effect in the oral cavity, that effect could be negated or diminished by drinking water after chewing the tablets. In addition, the agency believes that the process of chewing the aspirin-containing gum produces enough saliva to prevent any irritation the aspirin might cause in the oral cavity. Therefore, if aspirin in a chewing gum base is included as a topical anesthetic/analgesic ingredient in the final monograph for OTC oral health care drug products, the agency proposes that the warning recommended by the Panel in § 356.50(c)(2)(v) should not be required.

C. General Comments on Debriding Agent/Oral Wound Cleanser Drug Products

19. Noting that the Dental Panel and the Oral Cavity Panel reviewed some of the same ingredients (i.e., carbamide peroxide and hydrogen peroxide) used at similar concentrations at the same or adjacent sites in the oral cavity, one comment pointed out similarities between the Oral Cavity Panel's definition of a debriding agent (47 FR 22927) and the Dental Panel's definition of an oral wound cleanser (44 FR 63289). The comment stated that the removal of foreign material by debriding agents and by oral wound cleansers is accomplished by utilizing oxygen-releasing moieties whose foaming action mechanically and chemically removes devitalized tissue, mucus, phlegm, etc. The comment claimed that it is confusing and misleading to consumers when the same ingredients, used for the same therapeutic purpose at the same or adjacent sites, have different labeling. The comment requested that the definitions, warnings, and indications be consistent between the two monographs.

The agency has reviewed the definitions, warnings, and indications for debriding agents in the Oral Cavity Panel's report (47 FR 22927 to 22929) and for oral wound cleansers in the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33992 to 33993). The agency agrees with the comment that there are many similarities between debriding agents and oral wound cleansers. The Dental Panel defined an oral wound cleanser as "a nonirritating preparation that assists (physically or chemically) in the removal of foreign material from minor oral wounds and does not delay wound healing" (44 FR 63289). The Oral Cavity Panel defined a debriding agent as "an agent which causes removal of foreign material or devitalized or contaminated tissue from or adjacent to a traumatic or infected lesion to expose surrounding healthy tissue" (47 FR 22927).

Debriding agents remove debris by either a mechanical, chemical, biochemical, or physicochemical mechanism of action, such as the release of oxygen, the lowering of pH, and by osmosis (47 FR 22905). Oral wound cleansers, generally, achieve the physical removal of debris by releasing oxygen, which results in a foaming action (44 FR 63280). The agency believes that the therapeutic effect of debriding agents and oral wound cleansers is the same, i.e., removal of foreign or devitalized materials from minor wounds or inflammations in the oral cavity.

Because of the overlap and similarities in the definitions, therapeutic effect, mechanisms of action, and site of action of oral wound cleansers and debriding agents, the agency has decided to incorporate part of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph for oral health care drug products. The tentative final monograph for OTC oral mucosal injury drug products was published in the **Federal Register** of July 26, 1983 (48 FR 33984) and proposed conditions under which OTC oral wound cleansers and oral wound healing agents would be generally recognized as safe and effective. Only oral wound cleansing ingredients and labeling are included in this segment of the oral health care tentative final monograph. The combination of an oral wound cleanser and an oral antiseptic proposed in § 353.20(b) of the tentative final monograph for OTC oral mucosal injury drug products will be addressed in the

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second segment (i.e., oral health care antimicrobial drug products) of this rulemaking. Oral wound healing agents were addressed in a final rule published in the **Federal Register** of July 18, 1986 (51 FR 26112). Definitions relevant to oral wound cleansers are being proposed in § 356.3 of this tentative final monograph. Indications, warnings, and directions relevant to oral wound cleansers are incorporated into § 356.70 of this tentative final monograph, which pertains to debriding agents. The resultant class of ingredients will hereafter be identified as oral health care debriding agent/oral wound cleansers.

20. One comment stated that although it does not recognize a therapeutic benefit from the use of cleansing and debriding agents, it is generally accepted that several agents are effective at cleansing and debriding the oral mucosa. The comment agreed with the Panel's recommendations that the following agents are safe and effective for those indications: hydrogen peroxide, sodium bicarbonate, and carbamide peroxide in anhydrous glycerin.

One reply comment noted that the comment partially agreed with the Panel's findings on cleansing and debriding agents, but that the comment did not recognize the therapeutic benefit of debriding agents, as did the Panel, and that both the Oral Cavity Panel and the Dental Panel placed debriding agents in Category I. The reply comment urged the agency to maintain the Category I indications for debriding agents.

The agency agrees with the Panel's conclusion that debriding agents are drugs that provide a therapeutic benefit to the target population because they aid in the symptomatic relief of sore mouth and sore throat by removing thick, tenacious mucus, purulent secretions, and debris that may stimulate pain receptors in ulcerated or inflamed areas of the mouth and throat (47 FR 22905). Therefore, the agency is proposing Category I indications for oral health care debriding agents in this tentative final mongraph.

21. One comment agreed that the Panel's recommended drug claims are appropriate for debriding agents, but argued that these ingredients are also useful as mechanical cleansers that perform an important cosmetic function. The comment requested that debriding agents be available for use in oral hygiene products intended solely for cleansing the mouth for cosmetic purposes.

Products marketed only as cosmetics are not subject to this rulemaking. Because the final mongraph will cover only the drug use of the active ingredients listed therein, the concentration range, limitations, statements of identity, indications, warnings, and directions established for these ingredients in the monograph will not apply to the use of the same ingredients in products intended solely as cosmetics. However, if a product is intended for both drug and cosmetic use, it must conform to the requirements of the final monograph. In addition to the indications allowed for OTC oral health care drug products, such products may also bear appropriate labeling for cosmetic uses, in conformity with section 602 of the Act (21 U.S.C. 362) and the provisions of 21 CFR Parts 701 and 740.

In accordance with the final rule on the agency's "exclusivity policy" (51 FR 16258), it is the agency's view that cosmetic claims may not appear within the boxed area designated "APPROVED USES." As discussed at 51 FR 16264 (paragraph 14), cosmetic claims may appear elsewhere in the labeling but not in the box should manufacturers choose the labeling alternative provided in § 330.1(c)(2) (i) or (iii) for labeling cosmetic/drug products.

22. Two comments disagreed with the Panel's Category II classification of sodium perborate monohydrate as an oral health care debriding agent (47 FR 22908). One comment stated that the Panel did not thoroughly evaluate the available data. The other comment stated that a review of the information in the Panel's report did not justify a Category II classification for sodium perborate monohydrate from the standpoint of safety.

In the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33984), the agency concluded that sodium perborate monohydrate is safe for use in the oral cavity as an oral wound cleanser if the ingredient is limited to dosage units of not more than 1.2 g (to be dissolved in 30 mL of water) and if its use in children under 6 years of age is prohibited. The agency also concluded that 1.2 g sodium perborate monohydrate releases 1.3 to 1.4 percent hydrogen peroxide (a Category I oral wound cleanser) and therefore may be considered an effective oral wound cleanser because the activity of hydrogen peroxide-containing compounds is a physical phenomenon based on the foaming action caused by the release of molecular oxygen when the compound comes into contact with tissue or saliva (48 FR 33988). The foaming action loosens and lifts out debris, thus cleansing the wound.

As stated in comment 19 above, the agency is incorporating part of the rulemaking on OTC oral mucosal injury drug products into the sections of this tentative final monograph pertaining to debriding agents. Therefore, the agency is proposing a Category I classification for sodium perborate monohydrate as a debriding agent/oral wound cleanser. The agency also concludes that the directions proposed for sodium perborate monohydrate as an oral wound cleanser are appropriate for sodium perborate monohydrate as a debriding agent/oral wound cleanser. (See § 353.50(d)(3) at 48 FR 33993.) Therefore, with minor format modifications, those directions are being proposed in this tentative final monograph.

23. One comment referred to the Oral Cavity Panel's statement that long-term, daily use of peroxides can cause gingival inflammation, tooth decalcification, and black hairy tongue (47 FR 22875). The comment maintained that the statement lacked the scientific clarification found in the report on OTC oral mucosal injury drug products (44 FR 63281), i.e., that only high concentrations (6 to 30 percent) of hydrogen peroxide may cause these adverse reactions. The comment stated that these adverse reactions are not associated with currently marketed products containing 3 percent hydrogen peroxide and 10 to 15 percent carbamide peroxide. The comment concluded that long-term safety is not at issue because debriding agents and oral wound cleansers are generally used intermittently for a week or less, and that the literature does not support a lack of safety in humans during either long-term or short-term use.

The agency notes that the Oral Cavity Panel provided a more detailed explanation of the possible adverse effects from the use of high concentrations of peroxide (6 to 30 percent) (47 FR 22875 to 22877) than the Dental Panel (44 FR 63281 to 63282). The Oral Cavity Panel discussed more studies showing adverse changes in the gingival tissue and the tongue as a result of the frequent use of hydrogen peroxide at high concentrations. The Dental Panel mentioned only a few of the studies showing adverse effects. Therefore, the agency rejects the comment's contention that the report on OTC oral mucosal injury drug products contains a clearer scientific explanation of the adverse effects of high concentration of hydrogen peroxide than the report on OTC oral health care drug products.

The Oral Cavity Panel was concerned about the chronic use of hydrogen peroxide in such products as antimicrobial-containing mouthwashes as well as the short-term use in debriding agents. The Dental Panel was only concerned about the short-term use of hydrogen peroxide in oral wound cleansers. One reference cited by the Oral Cavity Panel stated that hydrogen peroxide should not be used as a mouthwash for long periods of time because of its acidity and because hydrogen peroxide at low concentrations can decalcify teeth (Ref. 1).

Because both Panels concluded that concentrations of hydrogen peroxide up to 3 percent are safe for short-term use only, adverse reactions resulting from the use of higher concentrations are not relevant to this segment of the oral health care rulemaking. However, possible adverse reactions resulting from the chronic use of hydrogen peroxide at low concentrations are relevant to the antimicrobial segment of the rulemaking for OTC oral health care drug products because antimicrobial-containing mouthwashes may be used for extended periods of time. Possible adverse reactions resulting from the chronic use of hydrogen peroxide as a mouthwash will be discussed in the antimicrobial segment of this rulemaking. Therefore, the agency disagrees with the comment that long-term safety is not an issue.

Reference

(1) Dobbs, E.C., "Pharmacology and Oral Therapeutics," 12th Ed., C.V. Mosby Co., St. Louis, p. 427, 1961.

24. One comment requested that the "description" of carbamide peroxide in § 356.14(a) be revised to indicate that the active ingredient is carbamide peroxide in anhydrous glycerin and that § 356.54(d)(1) be revised to agree with the Panel's description of carbamide peroxide in its discussion at 47 FR 22905. The comment explained that it is incorrect to describe carbamide peroxide as a solution in water, as in the directions in § 356.54(d)(1), because the ingredient is not available as an aqueous solution inasmuch as it degrades to urea and hydrogen peroxide when contacting water. Referring to § 356.14(a), the comment explained that carbamide peroxide alone is also incorrect because degradation occurs if carbamide peroxide is present as a single unstabilized ingredient.

The agency concludes that §§ 356.14(a) and 356.54(d)(1) of the advance notice of proposed rulemaking should be revised as requested by the comment. Because carbamide peroxide is an unstable compound that breaks down if exposed to air or water, it is stabilized by formulation in anhydrous glycerin (47 FR 22883). (Anhydrous glycerin may be prepared by heating glycerin USP at 150 °C for 2 hours to drive off the moisture content.) Therefore, in this tentative final monograph, the agency is proposing that § 356.16(a) read as follows: "Carbamide peroxide in anhydrous glycerin." In addition, because carbamide peroxide is unstable in water (44 FR 63281), and it is neither formulated in water nor used in aqueous solution, the agency is not including any reference to a solution containing carbamide peroxide in water in the directions proposed in § 356.70(d)(1) of this tentative final monograph. (See comment 27 below.)

25. One comment noted that, although the definition of a debriding agent refers to its action on unhealthy tissues (47 FR 22927), the indication for a debriding agent recommended by the Panel in § 356.54(d) (47 FR 22929) limits use only to "Aids in the removal of phlegm, mucus, or other secretions in the temporary relief of discomfort due to occasional sore throat and sore mouth." The comment suggested that the indication be expanded to include the activity noted in the definition section regarding removal of oral secretions, foreign material, and devitalized or contaminated tissue from or adjacent to a lesion or irritated tissue which can occur in sore mouth, sore throat, and sore gums.

The comment suggested that § 356.54(b) be revised by adding the following:

(1) "For temporary use in cleansing of wounds caused by minor oral irritation or injury such as following minor dental procedures or from dentures or orthodontic appliances."

(2) "For temporary use in the cleansing of gum irritation due to erupting teeth (teething)."

The first indication suggested by the comment is similar in content to the indication proposed by the agency in § 353.50(b)(1)(i) of the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33993). The second indication proposed by the comment is identical to the professional labeling proposed in § 353.80 of that tentative final monograph. The agency is incorporating the proposed indications and professional labeling for oral wound cleansers into §§ 356.70 and 356.80 of this tentative final monograph. (See comment 19 above.) The comment's concern has been addressed by this action.

26. One comment stated that the Oral Cavity Panel recommended that debriding agents be used no longer than 2 days without professional supervision, whereas the Dental Panel proposed that the same active ingredients, when used as oral wound cleansers, should not be used longer than 7 days without professional supervision (44 FR 63282). Adding that the 7-day use limit provided for oral wound cleansers better approximates the healing time needed to effectively repair mucous membrane irritation and lesion, the comment cited the American Dental Association's notation that mild and asymptomatic oral lesions generally require 5 to 10 days for healing (Ref. 1). The comment recommended that the 2-day limit proposed for debriding agents be revised to the 7-day limit recommended for oral wound cleansers.

The comment also noted that the Oral Cavity Panel recommended that children can use debriding agents at age 3 (47 FR 22906), whereas the Dental Panel stated that children can use oral wound cleansers at age 2 (44 FR 63281). The comment recommended the use of debriding agents by children 2 years of age and older because limited toxicity is associated with the Category I ingredients and because teething in children may necessitate the use of a "debriding agent/oral wound cleanser." The comment further stated that it is unnecessarily alarming to include the age limitations in the warnings section and recommended that reference to age be deleted from the warnings section of the labeling of debriding agents because the age limit is included in the directions.

In addition, the comment requested that the reference in § 356.54(c)(1)(ii) to a rash appearing on the skin after use of a debriding agent be deleted because the appearance of a rash is neither noted in, nor supported by, the safety reviews of any of the debriding agents.

Accordingly, the comment suggested the following warning for OTC oral health care debriding agents:

(i) If improvement is not seen after 7 days of use, discontinue use and see a physician. Severe or persistent sore throat, or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly.

The agency has decided to incorporate portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph and to consider debriding agents and oral wound cleansers as one therapeutic class called debriding agent/oral wound cleansers. (See comment 19 above.) In addition, because this therapeutic class of ingredients (i.e., debriding agent/oral wound cleansers) has not historically been used for the relief of sore throat symptoms and

because the therapeutic benefits of using these ingredients for sore throat symptoms are not apparent, the agency is proposing that debriding agent/oral wound cleansers be limited to use only in relieving symptoms associated with a sore mouth.

The Oral Cavity Panel recommended that all OTC oral health care drug products be used for sore throat in addition to sore mouth. Therefore, the Panel recommended the 2-day use limit for all of these products because of the risk of serious illness if appropriate treatment of a sore throat is delayed. However, in its discussion of sore mouth, the Panel stated that although sore mouth may denote the presence of a condition that requires diagnosis and treatment by a physician, in most cases it is caused by minor ulcerations and other benign conditions that are self-limited and generally heal spontaneously in 7 to 10 days (47 FR 22774 to 22776).

In the tentative final monograph for OTC oral mucosal injury drug products, the agency agreed with the Dental Panel that even though the presence of an oral lesion or inflammation can be a symptom of a serious disease, oral wound cleansers may be used for up to 7 days without consulting a physician or dentist (48 FR 33993). Because debriding agent/oral wound cleansers in this tentative final monograph are indicated only for use to relieve the symptoms associated with sore mouth, and sore mouth is unlikely to be indicative of a serious health threat, the agency is proposing that debriding agent/oral wound cleansers can be safely used to relieve the symptoms associated with sore mouth for up to 7 days before seeking professional guidance.

The agency agrees with the comment that the lowest age for use of debriding agents by children should be 2 years. These active ingredients are applied topically and are only inadvertently ingested. In general, they exhibit low toxicity (47 FR 22905). Therefore, the agency is proposing that the lower age limit for use of OTC oral health care debriding agent/oral wound cleansers except sodium perborate monohydrate (see comment 22 above) should be 2 years. In addition, the agency agrees with the comment that because the age limitations are in the directions, they are not necessary in the warning statements.

The agency believes that the comment has misinterpreted the warning statement concerning the appearance of a rash. The Oral Cavity Panel's warning statement is not meant to imply that the appearance of a rash is an adverse reaction caused by the use of a debriding agent/oral wound cleanser. Rather, the appearance of a rash may be a symptom of serious diseases, such as scarlet fever, measles, or chicken pox, which can appear after initial sore mouth symptoms and which require professional advice and supervision (47 FR 22776). Thus, reference to a rash is an appropriate part of the warning statements for debriding agent/oral wound cleansers.

The agency believes that, with minor modification, the warning proposed in § 353.50(c) of the tentative final monograph for OTC oral mucosal injury drug products is appropriate for the oral health care debriding agent/oral wound cleansers included in this tentative final monograph and that this warning can be combined with the Oral Cavity Panel's recommended warning in § 356.54(c)(1)(ii). Therefore, the agency is proposing to replace the warnings recommended by the Oral Cavity Panel in § 356.54(c)(1) with the following warning: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash, or fever develops, see your dentist or doctor promptly." This warning is proposed in § 356.70(c)(1) of this tentative final monograph.

Reference

(1) "Accepted Dental Therapeutics," 38th ed., Council on Dental Therapeutics of the American Dental Association, Chicago, p. 292, 1979.

27. One comment stated that the directions recommended by the Oral Cavity Panel for carbamide peroxide do not reflect the labeling and use of the products submitted to the agency for review. The comment suggested that the directions for carbamide peroxide as an oral wound cleanser in § 353.50(d)(1) of the Dental Panel's recommended monograph for OTC oral mucosal injury drug products would, if modified to include use as a rinse in addition to use by direct application, be appropriate for carbamide peroxide as a debriding agent. The comment requested that the agency revise the directions for carbamide peroxide as a debriding agent and make the directions for debriding agents in this tentative final monograph consistent with the directions for oral wound cleansers in the recommended monograph for OTC oral mucosal injury drug products.

As discussed in comment 19 above, the agency is incorporating portions of the tentative final monograph for OTC oral mucosal injury drug products into this mongraph. The agency believes that, with minor format changes, the directions it proposed for carbamide peroxide and hydrogen peroxide as oral wound cleansers (48 FR 33993) are also appropriate for those ingredients when used as debriding agent/oral wound cleansers. The agency also believes that these directions reflect the labeling and use of products submitted to the agency for review. Therefore, with minor format changes, the directions proposed in § 353.50(d)(1) and (2) of the tentative final monograph for OTC oral mucosal injury drug products are being proposed in this tentative final monograph.

D. General Comments on Decongestant and Expectorant Drug Products

28. One comment maintained that the Oral Cavity Panel misconstrued the application of decongestants and of expectorants in the products that it reviewed. The comment stated that decongestant ingredients have their activity in relieving nasal congestion via absorption and systemic distribution, and expectorant drugs have their activity in relieving bronchial secretion problems via reflex action stimulated in the stomach or via action in the pulmonary tree by absorption and systemic distribution. The effectiveness of these ingredients should not be part of the oral health care monograph, the comment concluded, but should be referred to the monograph for OTC cough-cold drug products.

The Oral Cavity Panel deferred most of the decongestant active ingredients to the Cough-Cold Panel because most of these ingredients are administered orally or topically (47 FR 22909). However, the Oral Cavity Panel found that some decongestant ingredients were combined with oral health care ingredients in the form of lozenges and felt that these decongestant ingredients could have topical activity on the mucous membranes of the mouth and throat. The Oral Cavity Panel did review two submissions on products containing phenylephrine hydrochloride and phenylpropanolamine hydrochloride as decongestants in lozenge form (Ref. 1). However, the two ingredients were present in lozenges that were labeled for the relief of nasal congestion, not congestion of the mouth or throat. Therefore, the agency agrees with the comment that the Oral Cavity Panel misconstrued the application of decongestant ingredients in these oral health care drug products and the data on decongestants should be referred to the nasal decongestant segment of the rulemaking for OTC cough-cold drug products. These decongestant ingredients will be discussed within the context of the rulemaking for OTC nasal decongestant drug products in a future issue of the Federal Register.

Both the Cough-Cold Panel and the Oral Cavity Panel reviewed data on the safety and effectiveness of ingredients used as expectorants in OTC drug products. The Cough-Cold Panel reviewed 20 expectorants, classifying 6 in Category II and 14 in Category III. The Oral Cavity Panel reviewed only four expectorants, classifying one in Category II and three in Category III. The Cough-Cold Panel reviewed three of the four ingredients that were reviewed later by the Oral Cavity Panel. Both panels classified these three ingredients in the same categories. Because most of the expectorants had been reviewed earlier and more extensively by the Cough-Cold Panel, the agency agrees with the comment that the data on the effectiveness of expectorant active ingredients should be incorporated into the expectorant segment of the rulemaking for OTC cough-cold drug products. These ingredients will be discussed in the final monograph for OTC expectorant drug products, to be published in a future issue of the Federal Register.

Therefore, for the above reasons, and because no data were submitted in support of the effectiveness of any decongestant or expectorant ingredient for oral health care use, the agency is not including decongestants and expectorants in this tentative final monograph.

Reference

(1) OTC Volumes 130032 and 130038.

E. General Comments on Demulcent Drug Products

29. Citing the Panel's discussion of demulcents (47 FR 22915) as "* * * mucilaginous substances composed of gums, mucilages, starches, high molecular weight polymers of polyhydric alcohols, polysaccharides, certain saccharides * * *," one comment stated that sugars and sorbitol were overlooked by the Panel. The comment stated that two specific submissions to the Panel presented human clinical evidence supporting the demulcent action of sugar (Ref. 1) and sorbitol (Ref. 2), but that the Panel did not act on or respond to either of these submissions. The comment also referred to a study in which patients suffering with sore throat obtained pain relief with a plain, unflavored hard candy lozenge, a flavored hard candy lozenge, and a 2.4-mg hexylresorcinol lozenge (Ref. 3). The comment stated that in this study the demulcent effect of a sugar base lozenge was apparent both immediately after the dissolution of the lozenge and 5 minutes later.

The comment urged FDA to include sugars (such as sucrose, glucose, fructose, and dextrins) and sorbitol as approved demulcents in the oral health care rulemaking. In addition, the comment requested that, because sugars and sorbitol are usually the major components by weight in oral health care lozenges and syrups and because they are produced for and recognized as food substances, they should be allowed to be controlled for quality in accordance with the Current Good Manufacturing Practice (CGMP) regulations for foods, rather than for drugs. The comment also suggested an alternative approach that would allow demulcent claims for sugars and sorbitol when these ingredients form the major solid content of an oral health care drug product, but would not require their listing as active ingredients.

The agency has reviewed the studies (Refs. 1, 2, and 3) cited by the comment in support of its recommendation to include sugars and sorbitol as Category I demulcents in this rulemaking. The agency concludes that these studies provide insufficient data to support the effectiveness of sugars or sorbitol as Category I demulcents in lozenges or syrups when used in OTC oral health care drug products.

In the studies claimed by the comment to contain clinical evidence supporting the demulcent activity of sugars and sorbitol, the antitussive effectiveness of sugars and sorbitol was tested by the citric acid aerosol challenge-cough induction technique (Refs. 1 and 2). The agency concludes that these induction studies do not clearly demonstrate the demulcent effectiveness of sugars or sorbitol because the subjects studied did not have a sore mouth and sore throat. The Panel recommended the following indication for oral health care demulcents: "Aids in the temporary relief of minor discomfort and protects irritated areas in sore mouth and sore throat." Therefore, studies conducted to demonstrate the demulcent effect of ingredients must be conducted in the correct target population, i.e., subjects with a sore mouth or sore throat. The reduction of citric acid aerosol induced-cough does not demonstrate that an ingredient relieves sore mouth and sore throat symptoms by a demulcent action.

The multiclinic study mentioned by the comment, involving 225 volunteers in 3 separate medication groups, was designed to evaluate the safety and effectiveness of hexylresorcinol in the treatment of pain due to simple sore throat (Ref. 3). This double-blind, placebo-controlled study compared the effectiveness of a candy-based, 2.4-mg hexylresorcinol lozenge with two candy-based placebo lozenges, one flavored and one unflavored. The degree of relief from sore throat pain was subjectively evaluated immediately and 5 minutes after dissolution of each test lozenge. The agency's review of the results showed that there was some immediate subjective relief of sore throat pain in all groups tested and that the degree of relief was virtually the same in all three groups. At 5 minutes, the relief of sore throat pain provided by the hexylresorcinol lozenge was significantly better than the relief provided by the candy-based control lozenges ($p<0.05$); nevertheless, the control lozenges provided some sore throat relief. This study does not demonstrate the effectiveness of sugar as a demulcent in lozenges because the ingredients used to formulate the candy-based lozenges are not identified or quantitated and because both unmedicated lozenges were candy-based. Therefore, the study was not adequately designed or controlled and does not demonstrate the effectiveness of sugar in the form of a lozenge as a demulcent (Ref. 3).

In its report, the Panel included dextrose, sugar, and sorbitol as inactive ingredients or pharmaceutical necessities (47 FR 22764). The agency notes that sugars and sorbitol are usually considered pharmaceutical necessities in the manufacture and formulation of oral health care drug products. Although the data reviewed by the agency are inadequate to demonstrate the effectiveness of sugars or sorbitol as oral health care demulcents, the agency agrees with the comment that sugars and sorbitol may have demulcent activity when used in lozenge or syrup form. Therefore, the agency is proposing in this tentative final monograph to classify sugars and sorbitol as Category III demulcents when present as the major component of oral health care formulations such as a syrup or lozenge.

With regard to the comment's suggestion that sugars and sorbitol in OTC oral health care drug products should be controlled for quality in accordance with the CGMP regulations for foods (21 CFR Part 110), the agency notes that when sugars and sorbitol are included in products intended for use as food, they are required to meet the requirements of the CGMP regulations for foods. However, when sugars and sorbitol are used in the formulation of drug products, they are "components" (21 CFR 210.3(b)(3)) of the finished drug

products and, as such, they must meet all appropriate CGMP requirements applicable to drug components (21 CFR Parts 210 and 217).

Therefore, the agency recognizes that sugars and sorbitol can be included as inactive pharmaceutical ingredients in oral health care drug products. However, as stated above, the agency is also proposing to classify sugars and sorbitol in Category III as demulcents if demulcent claims are attributed to their presence in oral health care formulations such as syrups and lozenges.

The agency notes, however, that terms such as "soothing" may be used to describe the action of a sugar-based syrup or lozenge. This term is not a demulcent claim but describes certain physical and chemical attributes of a drug product and is distinctly separate from labeling indications. Terms describing product characteristics (e.g., color, odor, flavor, and feel) appear in the labeling for the consumers' information. Because such claims are not directly related to the safe and effective use of OTC oral health care drug products, the agency considers these claims to be outside the scope of the monograph. Any term that is outside the scope of the monograph may appear in any portion of the labeling not required by the monograph, but such labeling may not detract from the required information. Therefore, an OTC oral health care drug product could be described in the following manner in that portion of the labeling not required by the monograph: "A * * * drug product formulated in a soothing sugar (or sorbitol) base."

References

(1) OTC Volume 130095.
(2) OTC Volume 130146.
(3) Sabesin, S. M., and T. H. Weaber, Jr., "Multi-clinic SUCRETS Sore Throat Lozenge Study," draft of unpublished study, OTC Volume 130030.

F. General Comments on Combination Drug Products

30. Several comments objected to the Panel's recommendation in § 356.20(a), which allows an active ingredient identified in §§ 356.10 through 356.17 to be combined with one or more active ingredients from the same section in full or subtherapeutic doses only when "there is a clear demonstration that there is an improvement of safety or enhanced effectiveness or both." The comments contended that limited combinations to those that show enhanced safety or effectiveness conflicts with FDA's OTC drug review regulations in 21 CFR 330.10(a)(4)(iv) and with FDA's guidelines for OTC combination drug products (Ref. 1), which require only that each ingredient contributes to the claimed effect of the combination product.

Two comments noted that the Topical Analgesic Panel classified the combination of benzocaine and phenol in Category I. (See the **Federal Register** of December 4, 1979; 44 FR 69865.) The comments maintained that this combination should be allowed for oral health care use because phenol has a slower onset of action than benzocaine, but a longer duration of action; and benzocaine has a rapid onset, but a shorter duration of action. The comments acknowledged that proof of effectiveness is necessary if one or both ingredients are present at subtherapeutic levels. However, further testing is unwarranted if both ingredients are present at therapeutic levels because the ingredients supplement each other and thus have a broader activity.

One comment added that useful and acceptable combinations, such as benzocaine and menthol for sore throat (both anesthetic/analgesic active ingredients, but with different mechanisms of action), would be jeopardized by the Panel's recommended restriction. The comment also stated that there should not be a restriction against combining menthol with phenol, benzyl alcohol, or salicyl alcohol because menthol contributes cooling and palatability to a formulation, thus increasing patient acceptance. According to the comment, separating the contributions of the two drugs in terms of hard proof of enhanced safety would be extremely difficult and is unnecessary for compliance with the FDA guidelines. The comment stated that it interprets the guidelines to include patient acceptance, flavor, and other product improvements as some of the advantages allowed for combination drugs by the FDA guidelines. The comments recommended that the agency not adopt the Panel's recommendation regarding enhanced safety or effectiveness (§ 356.20(a)), but instead follow § 330.10(a)(4)(iv) and FDA's combination guidelines (Ref. 1).

Unlike the agency's combination guidelines, the Panel's recommendations in § 356.20(a) for combinations of ingredients from the same therapeutic category do not differentiate between a combination of ingredients from the same therapeutic category with the same mechanism of action and a combination of ingredients from the same therapeutic category with different mechanisms of action. The combination policy in § 330.10(a)(4)(iv), supplemented by the guidelines for OTC drug combination products (Ref. 1), will be used by the agency as the criterion for evaluating an OTC combination drug products.

The agency's guidelines do not require that combinations of ingredients from the same therapeutic category with different mechanisms of action demonstrate improved safety and/or enhanced effectiveness. Paragraph 2 of the guidelines provides that Category I active ingredients from the same therapeutic category that have different mechanisms of action may be combined to treat the same symptoms or condition if the combination meets the OTC combination policy in all respects and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Such combinations may utilize each active ingredient in full therapeutic or subtherapeutic dosage, as appropriate.

For combinations of ingredients from the same therapeutic category with the same mechanism of action, paragraph 3 of the guidelines states that such combinations should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. They may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC combination policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose.

For the above reasons, and based upon the requirements in § 330.10 and in the combination guidelines (Ref. 1), the agency is not proposing the Panel's Category I recommendation for the combinations in § 356.20(a). Instead, the agency is classifying all combinations containing two or more ingredients from the following pharmacologic groups in Category III except for specific combinations where data have shown a Category I classification is appropriate: anesthetic/analgesics identified in § 356.10, astringents identified in § 356.12, debriding agent/oral wound cleansers identified in § 356.14 (see comment 33 below), and demulcents identified in § 356.18. Decongestants identified in recommended § 356.15 and expectorants identified in recommended § 356.17 are not being included in this tentative final monograph but are being transferred to the rulemaking for OTC cough-cold drug products. (See comment 28 above.)

The agency agrees with the comments that benzocaine and phenol, and benzocaine and menthol are allowable combinations of oral health care anesthetic/analgesic ingredients that conform to the requirements in § 330.10 and to the agency's combination guidelines (Ref. 1). Benzocaine and phenol or menthol are ingredients from the same therapeutic category but with different mechanisms of action. In its report, the Topical Analgesic Panel stated that "caine"-type drugs (e.g., benzocaine) and alcohol-type topical anesthetics (e.g., phenol and menthol) act at different receptor sites and that a combination of two may result in an effect that is greater than that produced if each ingredient were used alone (44 FR 69786). The Panel concluded that in combinations such as benzocaine and phenol or benzocaine and menthol, a contribution is made by each ingredient and that the attributes added to the combinations by the ingredients enhance the product's effectiveness and convey a noticeable benefit to the consumer (44 FR 69786). Despite a minority Panel report that disputed this reasoning (44 FR 69787 to 69790), the agency accepted the conclusions of the Panel majority and in the tentative final monograph for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5852), classified the combination of benzocaine with phenol or menthol in Category I. Because topical anesthetics behave similarly at different sites of the body (44 FR 69788), the agency believes that the combination of benzocaine with phenol or menthol should likewise enhance an oral cavity drug product's effectiveness, and that such combinations are at least as effective as each of the active ingredients used alone at its therapeutic dose.

The agency is aware that the mucous membranes are more permeable than the skin, and drugs are therefore more rapidly absorbed. Blood levels after application of local anesthetics to the mucous membranes simulate levels that would result from intravenous injection (Refs. 2, 3, and 4). Thus, the possibility of systemic effects occurring is greater from drugs used topically in the oral cavity than from those used on the intact skin. However, the agency believes that data submitted to the Oral Cavity Panel (Refs. 5 and 5) support the safety of the combination of benzocaine with phenol or menthol for use in the oral cavity. A combination drug product containing 6.67 percent benzocaine and 0.45 percent phenol was found to be non-toxic and non-irritating (Ref. 5). Rats and mice tolerated large doses given orally and repeated applications on rabbit gingiva caused no gross or microscopic changes on the gingival surface or beneath it. Another combination drug product containing 6.25 mg benzocaine and 2.5 mg menthol per lozenge was demonstrated to be non-toxic to dogs after intragastric administration (Ref. 6). In human safety studies, the combination drug product produced no significant adverse effects in a total of 742 subjects (Ref. 6). Therefore, the agency believes that the combination of benzocaine with phenol or menthol meets the OTC drug combination policy in all respects and is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone.

Because menthol, phenol, benzyl alcohol, and salicyl alcohol are ingredients from the same therapeutic category with the same mechanism of action, these ingredients should not normally be combined unless there is some advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. The agency believes that because of its cooling effect, the use of menthol in combination with phenol, benzyl alcohol, or salicyl alcohol may enhance the consumer's acceptance of a drug product, but no data were submitted to the Panel or the agency demonstrating any advantage over the single ingredients for the combination of menthol with phenol, benzyl alcohol, or salicyl alcohol. The agency is, therefore, proposing a Category III classification for such combinations in this tentative final monograph. However, menthol, when used as an inactive ingredient, is generally recognized as safe as a flavorant in foods. (See 21 CFR 172.515 and 182.20.) Section 172.515 specifies that such flavoring substances be "used in the minimum quantity required to produce their intended effect and otherwise in accordance with all the principles of good manufacturing practice." These regulations do not specify an upper concentration for menthol used as a flavoring agent, and the agency is not proposing such a limit for OTC drug products at this time. However, the agency invites information and comments on (1) the minimum concentration of menthol needed to achieve a flavoring effect and (2) the minimum concentration needed to achieve a therapeutic effect. The agency will consider such information in determining how to distinguish between menthol as an active ingredient and whether to establish minimum levels. In any case, if menthol is present at a therapeutic level in a product, the agency would consider it to be an active ingredient in that product.

In summary, the agency is proposing the following Category III combinations in this tentative final monograph: menthol and phenol, benzyl alcohol, or salicyl alcohol. The following Category I combinations are being proposed in § 356.20:

(d) Benzocaine identified in § 356.10(b) may be combined with menthol identified in § 356.10(e).

(e) Benzocaine identified in § 356.10(b) may be combined with phenol identified in § 356.10(f).

References

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D–0322, Dockets Management Branch.

(2) Adriani, J., and H. Dalili, "Penetration of Local Anesthetics Through Epithelial Barriers," *Anesthesia and Analgesia*, 50:834–840, 1971.

(3) Adriani, J., "Some Aspects of Pharmacology of Local Anesthetics of Clinical Importance," *Marquette Medical Review*, 30:46–52, 1964.

(4) Adriani, J., and D. Campbell, "Fatalities Following Topical Application of Local Anesthetics to Mucous Membranes," *Journal of the American Medical Association*, 162:1527–1530, 1956.

(5) OTC Volume 130082.

(6) OTC Volume 130020.

31. One comment agreed with the Panel's recommendations in § 356.20 (d), (g), and (j) that combinations of nasal decongestants with anesthetics/analgesics and with antimicrobials are rational. It did not agree with the Panel's Category II classification of the combination of expectorants with anesthetics/analgesics and furthermore believed that the following combinations which were not reviewed by the Panel should be Category I:

(1) Decongestants with demulcents;

(2) Expectorants with demulcents;

(3) Antihistamines with each of the pharmacological groups reviewed by the Panel; and

(4) Antitussives with each of the pharmacological groups reviewed by the Panel.

The Oral Cavity Panel considered only those combination drug products for which data were submitted pursuant to the notice published in the **Federal Register** on July 20, 1973 (39 FR 19444). The Panel recognized that other combination drug products may exist in the marketplace, but it lacked sufficient data concerning them to make a reasonable judgment of their safety and

effectiveness (47 FR 22791). Thus the Panel did not specifically address combination drug products containing a decongestant and a demulcent, an expectorant and a demulcent, or an antihistamine or an antitussive and any of the pharmacological groups reviewed by the Panel.

The agency recognizes that cold symptoms (e.g., nasal congestion, cough, and runny nose) and sore throat frequently occur concurrently and, for that reason, combinations of cough/cold active ingredients with oral health care active ingredients such as anesthetics/analgesics, antimicrobials, and demulcents may be rational. However, because such combination drug products are primarily cough-cold products, they are not being addressed in this document but will be discussed further in the tentative monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. The agency believes that labeling specific to cough-cold/oral health care combination drug products need only appear in one monograph, which should be the one most pertinent to the intended target population of the combination product. Therefore, the agency has determined that the labeling for cough-cold/oral health care combination products should be included in the combinations segment of the cough-cold tentative final monograph. Accordingly, the Panel's specific recommendations in § 356.20 (d), (g), and (j) of its monograph are not being addressed in this tentative final monograph. Further, the agency has stated in § 356.78(b)(1) that for oral health care/cough-cold combinations, the indications stated in the cough-cold monograph should be used.

32. Two comments requested that the Panel's recommended combinations of active ingredients identified in § 356.20 be expanded to include the following combinations in appropriate dosage forms: (1) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any internal analgesic active ingredient identified in § 343.10 and (2) any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any demulcent active ingredient identified in § 356.16 and with any internal analgesic active ingredient identified in § 343.10.

The comments stated that these are rational combinations because there are several different mechanisms of action that provide relief of sore throat pain. The comments explained that topical anesthetic/analgesic ingredients and demulcent ingredients would provide prompt pain relief, and internal analgesic ingredients would prolong the relief of pain for several hours.

The agency believes that the combinations listed above may be rational. However, the agency is not aware of any currently marketed OTC drug product that contain these combinations, and the comments provided no data to demonstrate the safety and effectiveness of any such combination. In this tentative final monograph, the agency is therefore proposing to classify the following combinations in Category III: (1) any anesthetic/analgesic combined with any internal analgesic and (2) any anesthetic/analgesic combined with any demulcent and any internal analgesic. The agency invites public comment on these combinations.

33. One comment noted that under § 356.20(a) of the Oral Cavity Panel's recommended monograph two debriding agents could be considered a Category I combination. The comment further noted, however, that the combination of two oral wound cleansers (which are the same ingredients and are used for the same purposes as debriding agents) is a Category II combination in the advance notice of proposed rulemaking for OTC oral mucosal injury drug products (44 FR 63276).

The comment supported a Category I classification for the combination of two active ingredients from the same therapeutic drug category when each active ingredient makes a contribution to the claimed effect, the safety or effectiveness of any active ingredient is not decreased, and the combination has some advantage over the single active ingredient. The comment requested that the monograph for oral mucosal injury drug products be corrected to allow the combination of two oral wound cleansers.

The agency is not proposing all of the Panel's recommended combinations in § 356.20(a) as Category I combinations. (See comment 30 above.) Rather, based upon the agency's general guidelines for OTC drug combination products (Ref. 1) and as stated in § 330.10, the agency is proposing Category III classification for combinations containing two or more ingredients from the same pharmacotherapeutic group with the same mechanism of action unless data show that the combination offers some advantage over the active ingredients used alone, and that the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose. Also, as noted in comment 19 above, the agency is combining that part of the rulemaking for OTC oral mucosal injury drug products that includes oral wound cleansers with the rulemaking for OTC oral health care drug products and is creating a new class of drugs called debriding agent/oral wound cleanser drug products. The agency concludes that there is no basis for classifying the combination of two or more debriding agent/oral wound cleanser ingredients in Category I and is proposing to classify that combination in Category III in this tentative final monograph to allow for further comments and the submission of data to support such a combination.

Therefore, if the data are submitted that justify the combination of two or more debriding agent/oral wound cleansers, that combination will be reclassified from Category III to Category I in the final monograph.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.

34. One comment recommended that FDA reinstate the acceptability of a combination of debriding agents and demulcent agents, which was recognized in the Panel's drafts on combinations. As an example, the comment noted that in one product submitted to the Panel a demulcent recognized by the Panel (glycerin) is also the vehicle providing a stable dosage form of a debriding agent (carbamide peroxide).

The Panel's published report, rather than its working drafts, represents its final conclusions and recommendations to FDA. The combination of a debriding agent with a demulcent was not specifically discussed in the Panel's report, nor did the Panel classify as Category I any combination containing a debriding agent. In fact, the Panel classified several combinations containing debriding agents in Category II. It concluded that a debriding agent, because of its mechanical cleansing action, would wash away or dilute the other active ingredients in the combination and thus prevent them from acting as intended or from exerting their therapeutic effects (47 FR 22792.) The agency agrees with the Panel.

Regarding the comment's specific example, carbamide peroxide in anhydrous glycerin, the agency concludes that anhydrous glycerin is a pharmaceutical necessity used for the sole purpose of stabilizing the carbamide peroxide and as such is not considered to be an active ingredient in this product. Such products would contain only one active ingredient (carbamide peroxide) and would not be considered a combination of a debriding agent and a demulcent.

For the reasons above, the agency is proposing that combinations of debriding agent/oral wound cleansers and demulcents be classified Category II.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Oral Cavity Panel and oral wound cleanser ingredients submitted to the Dental Panel as well as other data and information available at this time, and has made the following changes in the categorization of oral health care (anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, decongestant, demulcent, and expectorant) active ingredients recommended by the Panels. The agency is combining debriding agents reviewed by the Oral Cavity Panel and oral wound cleansers reviewed by the Dental Panel into one therapeutic group, debriding agent/oral wound cleansers. The agency is proposing to reclassify sodium perborate monohydrate, 1.2 g, used as a debriding agent/oral wound cleanser, from Category II to Category I. The agency is proposing to reclassify aspirin in a chewing gum base, used as a topical anesthetic/analgesic, from Category I to Category III for effectiveness. Aspirin in a chewing gum base remains in Category I for safety when used as a topical anesthetic/analgesic. In addition, the agency is not including decongestant or expectorant ingredients in this rulemaking but is transfering them to the rulemaking for OTC cough-cold drug products. As a convenience to the reader, the following list is included as a summary of the categorization of oral health care (anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, decongestant, demulcent, and expectorant) active ingredients proposed by the Panel and the agency.

Oral health care active ingredients	Panel	FDA
Oral health care anesthetic/analgesics:		
Antipyrine	II	II
Aspirin	I	III
Benzocaine	I	I
Benzyl alcohol	I	I
Camphor	II	II
Cresol	II	II
Dibucaine	II	II
Dibucaine hydrochloride.	II	II
Dyclonine hydrochloride.	I	I
Eucalyptol (eucalyptus oil).	III	III
Hexylresorcinol	I	I
Lidocaine	II	II
Lidocaine hydrochloride	II	II
Menthol	I	I
Methyl salicylate	III	III
Phenol preparations (phenol and/or phenolate sodium).	I	I
Pyrilamine maleate	II	II
Salicyl alcohol	I	I
Tetracaine	II	II
Tetracaine hydrochloride.	II	II
Thymol	III	III
Oral health care astringents:		
Alum	I	I
Myrrh Tincture	II	II
Zinc chloride	I	I
Oral health care debriding agent/oral wound cleanser:		
Carbamide peroxide in anhydrous glycerin.	I	I
Hydrogen peroxide	I	I
Sodium bicarbonate	I	I
Sodium perborate monohydrate.	II	I
Oral health care decongestants:		
Phenylephrine hydrochloride.	III	R[1]
Phenylpropanolamine hydrochloride.	III	R[1]
Oral health care demulcents:		
Elm bark	I	I
Gelatin	I	I
Glycerin	I	I
Pectin	I	I
Sugars (sucrose, dextrose, fructose, and dextrins).	([2])	III
Sorbitol	([2])	III
Oral health care expectorants:		
Ammonium chloride	III	R[1]
Horehound	III	R[1]
Potassium iodide	II	R[1]
Tolu balsam	III	R[1]

[1] R—Referred to the rulemaking for OTC cough-cold drug products.
[2] Not reviewed.

2. *Testing of Category II and Category III conditions.* The Oral Cavity Panel recommended testing guidelines for OTC oral health care drug products (47 FR 22781 to 22784) and testing guidelines for OTC oral health care anesthetic/analgesic drug products (47 FR 22830 to 22831). The Dental Panel recommended testing guidelines for OTC oral mucosal injury drug products (44 FR 63287 to 63289). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submissions of data and information to demonstrate the safety or effectiveness of any OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, or demulcent active ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740). This policy statement includes procedures for the submissions and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Because of the overlap and similarities in the definitions, therapeutic use, mechanisms of action, and site of action of oral wound cleansers and debriding agents, the agency has decided to incorporate portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph for OTC oral health care drug products. The agency is combining the definition of oral wound cleansers proposed in § 353.3 of the tentative final monograph for OTC oral mucosal injury drug products and the definition of a debriding agent recommended by the Oral Cavity Panel in § 356.3(e) and is proposing the combined definition for debriding agent/oral wound cleansers in § 356.3 of this tentative final monograph. The agency is also reproposing, with minor modification, the indications, warnings, and directions from § 353.50 and the professional labeling from § 353.80 of the tentative final monograph for OTC oral mucosal injury drug products in § 356.70 and § 356.80 respectively of this tentative final monograph. (See comments 19 and 25 above.)

The agency is deferring consideration of recommended § 353.20(b), regarding the combination of an oral wound cleanser and an antiseptic, to the

antimicrobial segment of the rulemaking for OTC oral health care drug products.

The agency addressed oral wound healing agents in a final rule published in the **Federal Register** of July 18, 1986 (51 FR 26112). (See comment 19 above.)

2. The agency is transferring decongestant and expectorant ingredients to the rulemaking for OTC cough-cold drug products. Therefore, the agency is not including §§ 356.3(f) and (h), 356.15, 356.17, 356.20(d), (g), and (j), 356.55, and 356.57 of the advance notice of proposed rulemaking in this tentative final monograph. The agency will discuss decongestants within the context of the rulemaking for OTC nasal decongestant drug products that will be published in a future issue of the **Federal Register**. The agency will discuss expectorants in the final monograph for OTC expectorant drug products that will be published in a future issue of the **Federal Register**. (See comments 28 and 31 above.)

3. In this tentative final monograph, the agency is deleting the words "health care" from the statements of identity in §§ 356.55(a), 356.65(a), 356.70(a), and 356.75(a). The agency believes that the word "oral" is the key word in the statements of identity for oral health care drug products and that the words "health care" are excessive and unnecessary.

4. The agency is classifying aspirin (in a chewing gum base) in Category III for effectiveness and in Category I for safety. Therefore, the agency is not including the Panel's recommended §§ 356.10(a) and 356.50(a)(1), (c)(2), and (d)(1) in this tentative final monograph. (See comment 15 above.)

5. The agency agrees with the Oral Cavity Panel's recommendation that systemic relief of minor sore throat pain should be addressed in the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products and is transferring all comments and associated submissions regarding internal analgesic ingredients for the relief of minor sore throat pain to that rulemaking (Docket No. 77N–0094) for further evaluation. (See comment 14 above.)

6. The agency is revising the descriptions of carbamide peroxide in the Panel's recommended §§ 356.14(a) and 356.54(d)(1) and is proposing, in this tentative final monograph, that § 356.16(a) read as follows, "Carbamide peroxide in anhydrous glycerin." Reference to a solution of carbamide peroxide in water is not being included in the directions proposed in § 356.70(d)(1). (See comment 24 above.)

7. Phenol identified in recommended § 356.10(g) and phenolate sodium identified in recommended § 356.10(h) are being replaced by "Phenol preparations (phenol and/or phenolate)" in proposed § 356.10(f) of this tentative final monograph. (See comment 9 above.)

8. The agency is reclassifying sodium perborate monohydrate from Category II to Category I based upon the agency's evaluation of sodium perborate monohydrate as an oral wound cleanser and is including sodium perborate monohydrate, 1.2 g to be dissolved in 30 mL water in § 356.16(d) as a debriding agent/oral wound cleanser. The agency is including directions for use of sodium perborate monohydrate as a debriding agent/oral wound cleanser in § 356.70(d)(4) of this tentative final monograph. (See comment 22 above.)

9. The agency is classifying concentrations of less than 2 mg menthol in a solid dosage form for use as an anesthetic/analgesic active ingredient in Category III. (See comment 12 above.)

10. The agency is classifying sugars and sorbital in solid and nonsolid dosage forms for use as a demulcent in Category III. (See comment 29 above.)

11. The agency is inviting the submission of data in support of a minimum dosage of 5 mg benzyl alcohol per solid dosage form. (See comment 13 above.)

12. The agency is not accepting the Panel's Category I recommendation for the combinations it included in § 356.20(a) and is instead proposing a Category III classification for those combinations that contain two or more ingredients from the same pharmacological group except in specific cases where data have shown a Category I classification is appropriate. As a result, the agency is classifying combinations containing two or more ingredients from the following pharmacological groups in Category III: anesthetic/analgesics in § 356.10, astringents in § 356.14, debriding agent/oral wound cleansers in § 356.16, and demulcents in § 356.18. (See comments 30 and 33 above.)

13. The agency is proposing to classify the following combinations in Category I: benzocaine and phenol or menthol. (See comment 30 above.)

14. In this tentative final monograph, the agency is classifying the following combinations in Category III: menthol and benzyl alcohol, phenol, or salicyl alcohol; an anesthetic/analgesic and an internal analgesic; and an anesthetic/analgesic, an internal analgesic, and a demulcent. (See comments 30 and 32 above.)

15. The agency is proposing a Category II classification for the combination of a debriding agent/oral wound cleanser and demulcent. (See comment 34 above.)

16. Because combinations of cough-cold active ingredients with oral health care active ingredients are primarily cough-cold products, they are not being discussed in this document but will be addressed in the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to be published in a future issue of the **Federal Register**. Therefore, § 356.20 (d), (g), and (j) of the Panel's recommended monograph are not being proposed in this tentative final monograph. The agency is instead proposing § 356.20(g) which refers to § 341.40 for oral health care and cough-cold combinations and to § 356.78(b)(1) which states that for oral health care/cough-cold combinations, the indications stated in the cough-cold monograph should be used. (See comment 31 above.)

17. To encompass the variety of different solid dosage forms (lozenges, compressed tablets) and nonsolid dosage forms (mouthwashes, gels) that may be used as OTC oral health care drug products, the agency is using the terms "solid dosage forms" and "dosage forms other than solid," and is not using specific dosage form terms such as rinse, mouthwash, lozenge, etc., in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of the tentative final monograph except where the identification of a specific dosage form is relevant to the use, safety, or effectiveness of the ingredient. (See comment 11 above.)

18. The warning recommended by the Panel in §§ 356.50(c)(3), 356.52(c)(2), 356.54(c)(2), and 356.56(c)(2) is not being included in this tentative final monograph. Instead, the agency is proposing the phrase "and then spit out" in appropriate places in the directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d) of this tentative final monograph. (See comment 3 above.)

19. The agency is proposing that the lower age limit for use of all OTC oral health care drug products included in this tentative final monograph by 2 years, except for sodium perborate monohydrate and except for phenol preparations that are intended for ingestion or that could be inadvertently ingested. (See comment 22 above and Change No. 22 below.) In addition, in order to be consistent with labeling proposed for debriding agent/oral wound cleansers, the agency is deleting any reference to age limits from the warnings proposed for the OTC oral health care products included in this tentative final monograph and is, instead, including age requirements in the directions for use in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d). (See comment 26 above.)

20. The agency believes that children under 12 years of age should be supervised in the use of OTC oral health care nonsolid dosage forms. This restriction was recommended by the Dental Panel in the advance notice of proposed rulemaking for OTC oral mucosal injury drug products (44 FR 63278), and the agency agrees with that Panel. Therefore, in this tentative final monograph for oral health care drug products, the agency is proposing the phrase "Children under 12 years of age should be supervised in the use of the product" in all directions for use of dosage forms other than solid.

21. The agency believes the oral health care drug products in a dosage form other than solid should be gargled, swished around the mouth (affected area), or allowed to stay in place for at least 1 minute in order to exert their effect in the oral cavity, except for phenol which has been shown to exert its effect or the oral cavity in 15 seconds. (See Change No. 22 below.) Therefore, the agency is proposing such wording in the directions in §§ 356.55(d), 356.65(d), 356.70(d), and 356.75(d). The word "gargle" is not included in § 356.70(d) because debriding agent/oral wound cleansers are not indicated for the relief or sore throat symptoms. (See comment 26 above.)

22. The warnings recommended by the Panel in §§ 56.50(c)(1) (i) and (ii), 356.52(c)(1) (i) and (ii), and 356.56(c)(1) (i) and (ii) are not being included in this tentative final monograph. In order to limit the number of warnings and in simplify labeling so that only essential information is required, the agency is proposing to combine those warnings. Additionally, because OTC oral health care drug products other than debriding agent/oral wound cleansers may be used to relieve conditions associated with either sore throat or sore mouth, the agency believes that, in addition to the 2-day warning statement associated with sore throat symptoms, another statement would be useful to reflect the less serious nature of sore mouth symptoms. (For discussion of sore mouth symptoms, see comment 26 above.) Therefore, the agency is proposing the following revised warning in §§ 356.55(c)(1), 356.65(c), and 356.75(c) of this tentative final monograph: "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly." The agency is proposing in § 356.55(c)(2) a slightly different warning for anesthetic/analgesic drug products labeled only "for temporary relief of pain associated with canker sores." [The section numbers recommended by the Panel have been redesignated in this tentative final monograph.)

23. In this tentative final monograph the agency is including the following indication for OTC oral anesthetic/analgesic active ingredients in § 356.50(b): "For temporary relief of pain associated with canker sores." (See comment 6 above.)

24. Instead of the Panel's recommended directions for use of phenol and phenolate sodium in § 356.50(d) (7) and (8), the agency is revising those directions and including them in proposed § 356.55(d)(6) of this tentative final monograph. The agency believes that although phenol-containing oral health care drug products for local application (such as a spray or locally applied gel) may be used in children 2 years of age and older, phenol-containing oral health care products that are intended for ingestion (solid dosage forms) or that could be inadvertently ingested (mouthwashes) should not be used in children under 6 years of age except under the supervision of a dentist or doctor.

Although the amount of drug products used for local application in the oral cavity is small (usually less than 1 mL), the amount of product used as a mouthwash or oral rinse may be 10 to 25 mL. Children have been reported to be more sensitive to phenol toxicity than adults (Ref. 1), and children are more likely to swallow a liquid drug product (44 FR 63278). The Dental Panel stated that, for children under 6 years of age, there was no recommended dosage for phenol for use as a dental rinse except under the supervision of a dentist or doctor (47 FR 22759). In addition, the labeling of currently marketed OTC oral health care drug products containing phenol restricts use of the product to adults and children over 6 years of age (Ref. 2).

Therefore, the agency is proposing to restrict the use of phenol-containing lozenges (solid dosage form) and the use of nonsolid dosage forms (such as oral rinses or mouthwashes) to children 6 years of age and older. However, phenol-containing nonsolid dosage forms intended for local application (such as sprays or locally applied gels) may be used by children 2 years of age and older. Moreover, the agency is proposing to restrict the amount of phenol-containing oral rinse or mouthwash that children 6 to 12 years of age may use to 10 mL per application so that the maximum pediatric dosage of 300 mg per day is not exceeded. The agency does not believe that it is necessary to restrict the amount of liquid dosage form used by adults. (See comment 10 above.)

Furthermore, the agency believes that the anesthetic effectiveness of phenol depends not only upon the dosing frequency but also upon the contact time per dose. Therefore, the agency is proposing at least a 15-second contact time for each application of a phenol-containing dosage form other than solid (Refs. 2 and 3). (For additional discussion of rinse times, see comment 10 above.) The agency is proposing the following directions for OTC oral health care anesthetic/analgesic drug products containing phenol and/or phenolate sodium in § 356.55(d)(6) of this tentative final monograph:

(i) *For dosage forms other than solid, the product is an aqueous solution or suspension containing phenol or phenolate sodium equivalent to 0.5- to 1.5-percent phenol—(a) For direct application.* Adults and children 2 years of age and older: Apply to the affected area, allow to remain in place for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(*b*) *For use as a mouthwash (oral rinse).* Adults and children 12 years of age and older: Gargle or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Apply 10 milliliters to the affected area, gargle or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product (lozenge or tablet) contains phenol or phenolate sodium equivalent to 10 to 50 milligrams phenol.* Adults and children 12 years of age and older: Allow the product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Allow product lozenge or tablet to dissolve slowly in the mouth. May be repeated every 2 hours, not to exceed 300 milligrams phenol in 24 hours, or as directed by a dentist or doctor. Children under 6 years of age: Consult a dentist or doctor.

References

(1) Solis-Cohen, S., and T. S. Githens, "Pharmacotherapeutics," in "Materia Medica and Drug Action," D. Appleton and Co New York, p. 750, 1928.

(2) OTC Volume 13 ATFM.

(3) Bronsky, D. A., "To Evaluate the Efficacy of Both Chloraseptic Solution and Chloraseptic Lozenges When Used to Relieve the Gingival and Buccal Mucosal Discomfort Associated with Orthodontic Braces," draft of unpublished study, C00014, Docket No. 80N-0033, Dockets Management Branch.

25. Because debriding agent/oral wound cleansers have not historically been indicated for use in the relief of sore throat symptoms, and because the therapeutic benefits of using these ingredients for sore throat symptoms are not apparent, the agency is proposing that debriding agent/oral wound cleansers be limited to use only in relieving symptoms associated with sore mouth. (See comment 26 above.) The agency is proposing the following indications for debriding agent/oral would cleansers in § 356.70(b) of this tentative final monograph:

(1) "Aids in the removal of phlegm, mucus, or other secretions associated with occasional sore mouth."

(2) "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums."

(3) "For temporary use to cleanse canker sores."

26. The agency is proposing that debriding agent/oral wound cleansers can be safely used for up to 7 days before seeking professional guidance because debriding agent/oral wound cleansers are indicated only for removal of foreign material associated with sore mouth, and sore mouth symptoms are unlikely to be indicative of serious health threats. In addition, the agency is proposing that the lower age limit for use of debriding agent/oral wound cleansers, except sodium perborate monohydrate (see comment 22 above), be 2 years of age, and that because the age limitations are included in the directions, they need not be included in a warning statement.

Because debriding agent/oral wound cleansers are not indicated for sore throat symptoms, the agency is not including in this tentative final monograph the warning statement recommended by the Panel in § 356.54(c)(1)(i). Instead, the agency is combining the warning recommended in § 353.50(c) of the tentative final monograph for OTC oral mucosal injury drug products with the Panel's recommended warning in § 356.54(c)(1)(ii), to read as follows: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsen; or if swelling, rash, or fever develops, see your dentist or doctor promptly" and is including this warning in § 356.70(c) of this tentative final monograph. (See comment 26 above.)

27. The agency is not accepting the directions for use for carbamide peroxide and hydrogen peroxide recommended by the Panel in § 356.54(d)(1) and (2). Instead, the directions recommended by the agency for carbamide peroxide and hydrogen peroxide as oral wound cleansers in § 353.50(d) (1) and (2) of the tentative final monograph for OTC oral mucosal injury drug products, with minor modifications, are being proposed in § 356.70(d) (1) and (2) of this tentative final monograph. (See comment 27 above.)

28. The agency is proposing the following additional indications for anesthetic/analgesic ingredients identified in § 356.10 in § 356.80 *Professional labeling* in this tentative final monograph: "For the temporary relief of pain associated with any one or more of the following conditions: tonsilitis, pharyngitis, throat infections, and stomatitis." (See comment 5 above.)

29. As a result of incorporating portions of the rulemaking for OTC oral mucosal injury drug products into this tentative final monograph, the agency is adding a section, § 356.70(b)(4), to the debriding agent/oral wound cleanser section of this tentative final monograph entitled "Other allowable statements" to include the following statements that were proposed in the tentative final monograph for OTC oral mucosal injury drug products: "Assists in the removal of foreign material from minor oral wounds" and "Physically removes debris from minor oral wounds."

30. Combining the oral health care rulemaking (proposed Part 356) and the oral mucosal injury rulemaking (proposed Part 353) into the present tentative final monograph under proposed 21 CFR Part 356 (entitled "Oral Health Care Drug Products for OTC Human Use") and deferring decongestant and expectorant active ingredients and cough-cold/oral health care combination drug products to other rulemakings has resulted in the redesignation of many section and paragraph numbers. The agency is also designating proposed Subpart D of the monograph as Subpart C and is placing the labeling sections under Subpart C.

31. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency is proposing to remove the existing warning and caution statements required by § 369.20 for "sodium perborate (sodium perborate monohydrate) mouthwash and gargle and toothpaste" and for "throat preparations for temporary relief of minor sore throat: lozenges, troches, washes, gargles, etc." and the suggested warning for over-the-counter drugs for minor sore throats in § 201.315 because the conditions in those sections will be superseded by the requirements of the final monographs on OTC oral health care drug products (Part 356, Subpart C) and OTC relief of oral discomfort drug products (Part 354, Subpart C).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC oral health care anesthetic/analgesic, astringent, debriding agent/oral wound cleanser, and demulcent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC oral health care anesthetic/analgesic astringent, debriding agent/oral wound cleanser, and demulcent drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC oral health care anesthetic/analgesic, astringent, debriding agent, and demulcent drug products. It also invited public comment in the tentative final monograph for OTC oral mucosal injury drug products regarding any impact that this rulemaking would have on OTC oral mucosal injury drug products. No comments on economic impacts were received in response to either request. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by May 26, 1988. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Interested persons may, on or before May 26, 1988, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before May 26, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before January 27, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before March 27, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on March 27, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 356

Labeling, Over-the-counter drugs, Oral health care drug products.

21 CFR Part 369

OTC drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 201.315 [Removed]

2. Subpart G is amended by removing § 201.315 *Over-the-counter drugs for minor sore throats; suggested warning.*

3. By adding new Part 356, to read as follows:

PART 356—ORAL HEALTH CARE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
356.1 Scope.
356.3 Definitions.

Subpart B—Active Ingredients

356.10 Anesthetic/analgesics.
356.14 Astringents.
356.16 Debriding agent/oral wound cleansers.
356.18 Demulcents.
356.20 Permitted combinations of active ingredients.

Subpart C—Labeling

356.50 Labeling of oral health care drug products.
356.55 Labeling of anesthetic/analgesic drug products.
356.65 Labeling of astringent drug products.
356.70 Labeling of debriding agent/oral wound cleanser drug products.
356.75 Labeling of demulcent drug products.
356.78 Labeling of combination drug products.
356.80 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 356.1 Scope.

(a) An over-the-counter oral health care drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 356.3 Definitions.

As used in this part:

(a) *Oral health care drug.* A drug product applied topically for the proper care of the oral cavity, including the temporary relief of symptoms of the mouth and throat, for example, occasional minor sore throat or mouth soreness.

(b) *Anesthetic/analgesic.* A substance applied topically to an epithelial surface (e.g., skin or mucous membrane) that relieves pain without necessarily

abolishing other sensations (analgesic) or a substance applied topically that completely blocks pain receptors resulting in a sensation of numbness and abolition of response to painful stimuli (anesthetic).

(c) *Anhydrous glycerin.* An ingredient that may be prepared by heating glycerin U.S.P. at 150 °C for 2 hours to drive off the moisture content.

(d) *Astringent.* An agent that causes contraction of the tissues or arrest of secretions by coagulation of proteins on a cell surface.

(e) *Debriding agent/oral wound cleanser.* A nonirritating agent which causes or assists in the removal (physically or chemically) of foreign material or devitalized or contaminated tissue from or adjacent to a minor oral wound or a traumatic or infected lesion to expose surrounding healthy tissue and does not delay wound healing.

(f) *Demulcent.* A bland, inert agent that soothes and relieves irritation of inflamed or abraded surfaces such as mucous membranes.

(g) *Mouthwash (oral rinse).* A solution used for rinsing the mouth, not necessarily for medicinal purposes.

(h) *Oral cavity (mouth).* The cavity of the mouth and associated structures, including the cheeks, palate, oral mucosa, glands where ducts open into it, the teeth, and the tongue.

Subpart B—Active Ingredients

§ 356.10 Anesthetic/analgesics.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.55(d).

(a) Benzocaine.
(b) Benzyl alcohol.
(c) Dyclonine hydrochloride.
(d) Hexylresorcinol.
(e) Menthol.
(f) Phenol preparations (phenol and/or phenolate sodium).
(g) Salicyl alcohol.

§ 356.14 Astringents.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.65(d).

(a) Alum.
(b) Zinc chloride.

§ 356.16 Debriding agent/oral wound cleansers.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.70(d).

(a) Carbamide peroxide in anhydrous glycerin.
(b) Hydrogen peroxide.
(c) Sodium bicarbonate.
(d) Sodium perborate monohydrate.

§ 356.18 Demulcents.

The active ingredient of the product consists of any of the following when used within the dosage limits and in the dosage form established for each ingredient in § 356.75(d):

(a) Elm bark.
(b) Gelatin.
(c) Glycerin.
(d) Pectin.

§ 356.20 Permitted combinations of active ingredients.

(a) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any astringent active ingredient identified in § 356.14.

(b) Any anesthetic/analgesic active ingredient identified in § 356.10 may be combined with any demulcent active ingredient identified in § 356.18.

(c) Benzocaine identified in § 356.10(a) may be combined with menthol identified in § 356.10(e).

(d) Benzocaine identified in § 356.10(a) may be combined with phenol preparations identified in § 356.10(f).

(e) Oral health care and cough-cold combinations. See § 341.40.

Subpart C—Labeling

§ 356.50 Labeling of oral health care drug products.

(a) The word physician may be substituted for the word doctor in any of the labeling statements in this part.

(b) Where applicable, indications in this part applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this part, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) Warnings and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

§ 356.55 Labeling of anesthetic/analgesic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral anesthetic," an "oral anesthetic/analgesic," or an "oral pain reliever."

(b) *Indications.* The labeling of the product states, under the heading "Indications," either or both of the following:

(1) "For temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(2) "For temporary relief of pain associated with canker sores."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.10.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(2) *For all products containing any ingredient identified in § 356.10 labeled with only the indication in § 356.55(b)(2).* "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash or fever develops, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing benzocaine identified in § 356.10(a)*—(i) *For dosage forms other than solid, the product is a 5- to 20-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 2 to 15 milligrams benzocaine.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing benzyl alcohol identified in § 356.10(b)*—(i) *For dosage forms other than solid, the product is a 0.05- to 10-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 100 to 500 milligrams benzyl alcohol.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(3) *For products containing dyclonine hydrochloride identified in § 356.10(c)*—(i) *For dosage forms other than solid, the product is a 0.05- to 0.10-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 1 to 3 milligrams dyclonine hydrochloride.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(4) *For products containing hexylresorcinol identified in § 356.10(d)*—(i) *For dosage forms other than solid, the product is a 0.05- to 0.1-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 2 to 4 milligrams hexylresorcinol.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(5) *For products containing menthol identified in § 356.10(e)*—(i) *For dosage forms other than solid, the product is a 0.04- to 2-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 2 to 20 milligrams menthol.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(6) *For products containing phenol preparations identified in § 356.10(f)*—(i) *For dosage forms other than solid, the product is an aqueous solution or suspension containing phenol or phenolate sodium equivalent to 0.5- to 1.5-percent phenol*—(A) *For direct application.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(B) *For use as a mouthwash (oral rinse).* Adults and children 12 years of age and older: Apply to the affected area. Gargle, swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Apply 10 milliliters to the affected area, gargle, or swish around the mouth for at least 15 seconds and then spit out. Use every 2 hours or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product (lozenge or tablet) contains phenol or phenolate sodium equivalent to 10 to 50 milligrams phenol.* Adults and children 12 years of age and older: Allow the product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours or as directed by a dentist or doctor. Children 6 to under 12 years of age: Allow product (lozenge or tablet) to dissolve slowly in the mouth. May be repeated every 2 hours, not to exceed 300 milligrams phenol in 24 hours, or as directed by a dentist or doctor. Children under 6 years of age: Consult a dentist or doctor.

(7) *For products containing salicyl alcohol identified in § 356.10(g)*—(i) *For dosage forms other than solid, the product is a 1- to 6-percent solution or suspension.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains 50 to 100 milligrams salicyl alcohol.* Adults and children 2 years of age or older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

§ 356.65 Labeling of astringent drug products.

(a) *Statement of identify.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral astringent."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For temporary relief of occasional minor irritation, pain, sore mouth, and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.14.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing alum identified in § 356.14(a), the product is a 0.2- to 0.5-percent aqueous solution.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing zinc chloride identified in § 356.14(b), the product is a 0.1- to 0.25-percent aqueous*

solution. Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around, or allow to remain in place at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

§ 356.70 Labeling of debriding agent/oral wound cleanser drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral debriding agent" or an "oral debriding agent/oral wound cleanser."

(b) *Indications.* The labeling of the product states, under the heading "Indications," either or all of the following:

(1) "Aids in the removal of phlegm, mucus, or other secretions associated with occasional sore mouth."

(2) "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums."

(3) "For temporary use to cleanse canker sores."

(4) *Other allowable statements.* In addition to the required information specified in paragraphs (a), (b), (c), and (d) of this section, the labeling of the product may contain any of the following statements, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(i) "Assists in the removal of foreign material from minor oral wounds."

(ii) "Physically removes debris from minor oral wounds."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.16.* "Do not use this product for more than 7 days unless directed by a dentist or doctor. If sore mouth symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling, rash, or fever develops, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the products contains the following information under the heading "Directions":

(1) *For products containing carbamide peroxide identified in § 356.16(a), the product is a 10- to 15-percent solution in anhydrous glycerin—(i) For direct application.* Adults and children 2 years of age and older: Apply several drops directly to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For use as a mouthwash (oral rinse).* Adults and children 2 years of age and older: Place 10 to 20 drops onto tongue. Mix with saliva. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing hydrogen peroxide identified in § 356.16(b), the product is a 3-percent aqueous solution—(i) For direct application.* Adults and children 2 years of age and older: Apply several drops to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For use as an oral rinse.* Adults and children 2 years of age and older: Mix with an equal amount of warm water. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(3) *For products containing sodium bicarbonate identified in § 356.16(c).* Adults and children 2 years of age and older: Prepare a solution by mixing ½ to 1 teaspoon in ½ glass (4 ounces) of water. Swish around in mouth over affected area for at least 1 minute and then spit out. Use up to 4 times daily or as directed by a dentist or doctor. Children under 12 should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(4) *For products containing sodium perborate monohydrate identified in § 356.16(d).* Adults and children 6 years of age and older: Dissolve 1.2 grams of sodium perborate monohydrate in 1 ounce (30 milliliters) of warm water. Use immediately. Swish solution around in the mouth over the affected area or gargle for at least 1 minute and then spit it out. Do not swallow. Use up to 4 times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Consult a dentist or doctor for use in children under 6 years of age.

§ 356.75 Labeling of demulcent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "oral demulcent."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For temporary relief of minor discomfort and protection of irritated areas in sore mouth and sore throat."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For all products containing any ingredient identified in § 356.18.* "If sore throat is severe, persists for more than 2 days, is accompanied or followed by fever, headache, rash, nausea, or vomiting, consult a doctor promptly. If sore mouth symptoms do not improve in 7 days, see your dentist or doctor promptly."

(2) *For products containing glycerin identified in § 356.18(c).* "Do not use full strength. Dilute with two or three volumes of water."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing elm bark identified in § 356.18(a), the product is 10- to 15-percent elm bark in a solid dosage form.* Adult and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated every 2 hours as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a dentist or doctor.

(2) *For products containing gelatin identified in § 356.18(b)—(i) For dosage forms other than solid, the product is a 5- to 10-percent solution or suspension containing a sufficient quantity of gelatin to form a semi-solid state.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains a sufficient quantity of gelatin to form a solid state.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a doctor.

(3) *For products containing glycerin identified in § 356.18(c).* Adults and children 2 years of age and older: Apply a solution containing glycerin diluted with 2 or 3 parts of water to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(4) *For products containing pectin identified in § 356.18(d)—(i) For dosage forms other than solid, the product is a solution or a gel containing a sufficient quantity of pectin to form a semi-solid state.* Adults and children 2 years of age and older: Apply to the affected area. Gargle, swish around in the mouth, or allow to remain in place for at least 1 minute and then spit out. Use as needed or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For solid dosage forms, the product contains a sufficient quantity of pectin to form a solid state.* Adults and children 2 years of age and older: Allow product to dissolve slowly in the mouth. May be repeated as needed or as directed by a dentist or doctor. Children under 2 years of age: Consult a doctor.

§ 356.78 Labeling of combination drug products.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each active ingredient in the combination drug product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs, unless otherwise stated below.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated below. Other truthful and nonmisleading statements, describing only the indications for use that have been established in the applicable OTC drug monographs or listed below may also be used as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act. In addition to the required information identified above in this section, the labeling of the combination drug product may contain any of the "other allowable statements" (if any) that are identified in the applicable monographs, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(1) *For permitted combinations identified in § 356.20(e).* The indications in § 341.85 should be used. (To be published in a future issue of the **Federal Register**.)

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of the applicable OTC drug monographs, unless otherwise stated below.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated below. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

§ 356.80 Professional labeling.

(a) The labeling of products containing oral anesthetic/analgesic active ingredients identified in § 356.10 provided to health professionals (but not to the general public) may contain the following indication: "For the temporary relief of pain associated with" (select one or more of the following conditions: "tonsilitis," "pharyngitis," "throat infections," or "stomatitis.")

(b) The labeling of products containing oral debriding agent/oral wound cleanser active ingredients identified in § 356.16 provided to health professionals (but not to the general public) may contain the following indication: "For temporary use in the cleansing of gum irritation due to erupting teeth (teething)."

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

4. The authority citation for 21 CFR Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 55 Stat. 851, 59 Stat. 463 as amended, 52 Stat. 1055–1056 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

5. In subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entries for "SODIUM PERBORATE MOUTHWASH AND GARGLE AND TOOTHPASTE" and "THROAT PREPARATIONS FOR TEMPORARY RELIEF OF MINOR SORE THROAT: LOZENGES, TROCHES, WASHES, GARGLES, ETC."

Dated: October 5, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–1455 Filed 1–26–88; 8:45 am]

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Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 28, 37 and 52
Federal Acquisition Regulation (FAR); Nonpersonal Services Contracts for Health Care; Proposed Rule

federal register

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 37, and 52

Federal Acquisition Regulation (FAR); Nonpersonal Services Contracts for Health Care

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the FAR to prescribe uniform procedures regarding nonpersonal services contracts for health care services. Among other things, the proposed revisions prescribe a contract clause requiring that health care providers (i.e., physicians, dentists, and other medical practitioners) maintain medical liability insurance as a contract requirement and indemnify the Government against liability producing acts or omissions by the contractor, its agents, and employees occurring during contract performance. Additionally, the clause clarifies the relationship of the parties, by providing that professional services rendered by the contractor are rendered in its capacity as an independent contractor.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 28, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–51 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Background

In order to augment internal health care resources, the military departments and civilian agencies frequently enter into nonpersonal services contracts for the provision of medical services by physicians, dentists, and other practitioners. The majority of these contracts are awarded within DoD, for the purpose of providing medical care to military personnel and their dependents.

Under a nonpersonal services contract, the health care provider is an independent contractor and is legally responsible for liability producing acts or omissions by the contractor, its agents and employees which arise during contract performance. In recognition of this relationship, departments and agencies have generally required proof of liability insurance, in order to ensure that a remedy is available to injured health care beneficiaries, together with appropriate indemnification provisions within the contract instrument. As these provisions have varied, the proposed rule would benefit both the public and contracting personnel by adopting a uniform procedure and contract clause for use Governmentwide, thereby simplifying contracting procedures.

The contract clause proposed in this rule has been adopted from one currently used by the U.S. Army Health Services Command, with minor revisions to reflect FAR conventions and terminology. Comments are especially invited from the medical liability insurance industry with respect to the technical terms and procedures contained within the clause.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.* The majority of nonpersonal services contracts currently awarded by the military departments and civilian agencies contain provisions requiring health care providers to maintain liability insurance and indemnify the Government for liability producing acts by the contractor arising during contract performance. In addition, most states have adopted statutory provisions with respect to liability insurance coverage by practitioners within their jurisdictions. The proposed rule is not expected to affect insurance rates which are based upon the medical specialty involved and locale of practice, as opposed to the class of beneficiary affected. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small entities and other interested parties.

Comments are also invited from small entities, under section 610 of the Act, with respect to existing FAR coverage within FAR Part 37. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements nor impose recordkeeping burdens within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 48 CFR Parts 28, 37, and 52

Government procurement.

Dated: January 14, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 28, 37, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.301 is amended by adding paragraph (c) to read as follows:

§ 28.301 Policy.

* * * * *

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

PART 37—SERVICE CONTRACTING

3. New Subpart 37.4, consisting of sections 37.400 through 37.403, is added to read as follows:

Subpart 37.4—Nonpersonal Health Care Services

Sec.

37.400 Scope of subpart.
37.401 Policy.
37.402 Contracting officer responsibilities.
37.403 Contract clause.

Subpart 37.4—Nonpersonal Health Care Services

§ 37.400 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists, and other health care providers by nonpersonal services contracts, as defined in 37.101.

§ 37.401 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists, and other health care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall—

(a) State that the contract is a nonpersonal, health care services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g. professional judgments, diagnosis, or specific medical treatment);

(c) Require that the contractor idemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provision of health care services, contain the requirements of the clause at 52.237–7, Indemnification and Medical Liability Insurance, including the maintenance of medical liability insurance.

§ 37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain a certificate of insurance evidencing the required coverage prior to commencement of performance.

§ 37.403 Contract clause.

The contracting officer shall insert the clause at 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services, other than those conducted using small purchase procedures of Part 13.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.237–7 is added to read as follows:

§52.237–7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

Indemnification and Medical Liability Insurance (January 1988)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employee or agents. The Contractor shall maintain liability insurance in the amount of not less than [*] per incident during the term of this contract.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claim-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interests shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy of a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

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Part VII

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans; Interim Rule With Requests for Comments

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim rule with requests for comments.

SUMMARY: The Rural Electrification Administration (REA) is amending 7 CFR Chapter XVII by revising Part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The revised Part establishes policies and procedures to implement the provisions of section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) ("OBRA") relating to section 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the "RE Act"). Section 306(A) of the RE Act deals with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA.

These revised regulations will implement section 1401 of OBRA and establish conditions under which REA guaranteed FFB loans may be prepaid by borrowers pursuant to subsections (a) and (b) of section 306(A) of the RE Act, only during FY 1988, notwithstanding the provisions of subsections (c), (d), and (e) of section 306(A).

The regulations also set forth procedures to prioritize prepayment applications. Priority will be given first to: (a) Those 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A); then to (b) other borrowers of loans made by the FFB and guaranteed by REA, on a first come-first served basis in the order in which borrowers are prepared to disburse funds to the FFB.

DATE: Interim Rule is effective January 27, 1988; written comments must be received by REA no later than (February 26, 1988.

ADDRESS: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 4048, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, telephone number (202) 382–9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act REA hereby amends 7 CFR Chapter XVII by revising Part 1786, "Prepayment of REA Guaranteed Federal Financing Bank Loans.

This regulation is issued in conformity with Executive Order 12291, Federal Regulations. It will not: (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this amended rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Interim Rule With Request for Public Comment

Pub. L. 100-203, The Omnibus Budget Reconciliation Act of 1987 requires that implementing regulations be issued within 30 days after the date of enactment, which was December 22, 1987. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an opportunity to comment on the regulations, REA is issuing an interim rule with request for public comment. Since OBRA requires these regulations to be issued within 30 days from December 22, 1987, and since the prepayment program under OBRA expires on September 30, 1988, REA finds that good cause exists to make the interim rule effective upon publication, thereby enabling those borrowers having priority under OBRA to proceed with a prepayment application during the 30 day public comment period.

Background

On January 14, 1987, REA published a Final Rule to add a new Part 1786 to 7 CFR Chapter XVII. This rule set forth the REA policy and procedures implementing section 306(A) of the RE Act which permits an REA-financed electric or telephone system to prepay an FFB loan (or any loan advance there under) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

Pursuant to subsection (c) of section 306(A) and the determination of the Secretary of the Treasury, that par prepayments of FFB loans have an adverse effect on the operation of the FFB; the existing regulations limited prepayments during FY 1987 to no more than $2.0175 billion.

Furthermore, pursuant to subsection (d) of section 306(A), the existing regulations established eligibility criteria to ensure that the authorized prepayments during FY 1987 were directed to the cooperative-type borrowers in the greatest need of the benefits associated with prepayment.

The enactment of section 1401 of OBRA on December 22, 1987, permits a borrower to prepay FFB pursuant to subsections (a) and (b) of section 306(A), only during FY 1988, notwithstanding the provisions of subsections (c), (d), and (e) of said section 306(A).

However section 1401(a) of OBRA provides that prepayments in excess of $2,000,000,000 during FY 1988 shall be subject solely to the approval of the Secretary of the Treasury. The Secretary of the Treasury has determined that par prepayments in excess of $2,000,000,000 during FY 1988 will not be approved. Par prepayment causes a measurable dollar loss to the Treasury and thus to the U.S. taxpayer.

Section 1401(a) also allows rural electric and telephone borrowers to refinance their Federal Financing Bank loans in the private credit markets using full government guarantees. Refinancing in this manner: (1) Is contrary to the ongoing role and effectiveness of the FFB, an entity established to provide an efficient, least cost mechanism for financing a broad range of government programs; (2) interferes with the administration of Federal credit policy; (3) competes with the Treasury financing of the national debt; and (4) provides a further subsidy to borrowers. This subsidy would be provided to borrowers that have already received the lowest available rate at the time that they originally borrowed funds, and this subsidy would be provided outside of the normal budget/appropriations process, without the determination of the need of the borrower for the subsidy.

Thus this determination by the Secretary prevents the U.S. taxpayer from suffering measurable dollar losses above and beyond those that will result from the $2,000,000,000 of par prepayments mandated by the Congress during FY 1988, as well as protecting the taxpayer from the unquantifiable costs that result from the use of full government guarantees in the private credit markets.

Therefore, the revised regulations do not address payments in excess of $2.0 billion in FY 1988.

Section 1401 of OBRA also sets forth requirements for prioritizing prepayment applications. Priority will be given first to: (a) Those 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A); then to (b) other borrowers of loans made by the FFB and guaranteed by REA, on a first come—first served basis in the order in which borrowers are prepared to disburse funds to the FFB.

In order to both implement the provisions of section 1401 of OBRA and to modify and clarify certain aspects of the existing regulations, 7 CFR Part 1786 is being revised. The major revisions to the regulations summarized as follows:

The eligibility criteria previously set forth in § 1786.5 have been deleted. Procedures to prioritize prepayment applications and, if necessary, pro-rate applications have been established in a new § 1786.5. The Application Procedure, contained in § 1786.6, has been revised and a new subsection dealing with the submisson of applications has been added.

As a result of the experience REA gained from previous prepayment transactions, the qualifications provisions relating to the Private Loan have been modified to permit more flexibility in developing a loan structure, provided that the term, conditions and structure of the Private Loan does not result in an Increase in Loan Guarantee Risk as determined by REA. Additionally, the regulations have been revised to permit the prepayment of FFB advances that bear interest at rates below 10.0 percent.

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephony.

In view of the above, REA amends 7 CFR Ch. XVII by revising Part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.

1786.1 Purpose.
1786.2 Policy.
1786.3 Definitions and rules of construction.
1786.4 Qualifications.
1786.5 Priority of prepayment applications.
1786.6 Application procedure.
1786.7 Settlement procedure.
1786.8 Forms.
1786.9 Access to records of lenders, servicers, and trustees.
1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.
1786.11 Other prepayments.
1786.12 Application of regulation to previous prepayments.
1786.13 Judicial review.

Authority: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; Title I, Subtitle D, Pub. L. 100–203; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1786.1 Purpose.

This part contains the general regulations of the Rural Electrification Administration (REA) for implementing the provisions of section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act), and section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (OBRA) which permit, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA electric and telephone borrowers by paying the outstanding principal balance due on the FFB Loan, using private capital with the existing REA guarantees.

§ 1786.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with the provisions of section 306(A) of the RE Act and section 1401 of OBRA. Furthermore, consistent with the RE Act and OBRA it is the policy of REA to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on REA.

§ 1786.3 Definitions and rules of construction.

(a) *Definitions.* For the purposes of this part, the following terms shall have the following meanings:

"Administrator" means the Administrator of REA.

"Business day" means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. 6103 for the purposes of statutes relating to pay and leave of employees or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

"Date received" means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of REA, as the date the application was received.

"Documentation" means all or part of the agreements relating to a prepayment under this part, irrespective of whether REA is a party to each agreement, including all exhibits to such agreements.

"Existing loan guarantee" means a guarantee of payment issued by A to FFB pursuant to the RE Act for an FFB Loan made on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the Private Loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

"Financially viable lender" means a lender: (1) Which has a capital and surplus of at least $50 million; (2) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of $50 million; (3) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of $50 million from a lending institution with a capital and surplus of at least $50 million or (4) has other credit support, in form and substance satisfactory to the Administrator, in the amount of $50 million.

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB loan" means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and

guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the original endorsement, in the form specified by REA which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

"Increase in loan guarantee risk" means the change in any of the components of loan guarantee risk associated with the private loan which in the judgment of REA increases the magnitude or duration of the loan guarantee risk currently assumed by REA in connection with the existing loan guarantee.

"Lender" means the organization making and servicing the private loan which is to be guaranteed under the provisions of this part and used to prepay the FFB Loan. The term "lender" does not include the FFB, or any other Government agency.

"Loan guarantee agreement" means the written contract by and among the Lender, the borrower, the Administrator, and such other parties that REA may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this part.

"Loan guarantee risk" means the risk as determined by REA associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

(1) The outstanding principal balance of a loan;

(2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;

(3) The final maturity date of a loan;

(4) The annual principal amortization of the loan; and

(5) Any other factor that as determined by REA increases the magnitude or duration of the guarantee.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"Notice of Intent to Prepay the Federal Financing Bank" means the notice in the form specified in § 1786.8 hereof.

"OBRA" means section 1401 of The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203).

"Other applications" shall have the meaning specified in § 1786.5(a).

"Priority applications" shall have the meaning specified in § 1786.5(a).

"Priority borrower" means one or more of the following 8 borrowers that were determined by the Administrator of REA, prior to December 22, 1987, to be eligible to prepay, or prepaid an FFB loan pursuant to section 306(A):

(1) Arizona Electric Power Cooperative, Inc., Benson, Arizona;

(2) Big Rivers Electric Corporation, Henderson, Kentucky;

(3) Cajun Electric Power Cooperative, Inc., Baton Rouge, Louisiana;

(4) Deseret Generation and Transmission Co-operative, Sandy, Utah;

(5) Kansas Electric Power Cooperative, Topeka, Kansas;

(6) Soyland Power Cooperative, Inc., Decatur, Illinois;

(7) Tex-La Electric Cooperative of Texas, Inc., Nacogdoches, Texas; and

(8) Western Illinois Power Cooperative, Inc., Jacksonville, Illinois.

"Private loan" means a loan or loans to be guaranteed under the provisions of this part and used to prepay an FFB loan.

"Pro-rated applications" shall have the meaning specified in § 1786.5(c).

"Pro-rated borrowers" shall have the meaning specified in § 1786.5(c).

"Pro-rated percentage" shall have the meaning specified in § 1786.5(c).

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901–950b), as amended.

"Remaining prepayment amount" shall have the meaning specified in § 1786.5(c).

"Service" or "servicing" means the following activities:

(1) The billing and collecting of the private loan payments from the borrower;

(2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and

(4) Such other activities as may be specified in the loan guarantee agreement.

"Settlement date" means the date specified on the Notice of Intent to Prepay the Federal Financing Bank as the settlement date. Such date shall be the date the borrower is prepared to disburse funds to the FFB in order to complete a prepayment pursuant to this part, and shall be a business day.

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.3(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this part as a whole.

§ 1786.4 Qualifications.

(a) *Borrowers*—(1) *All borrowers.* To qualify to prepay an FFB loan pursuant to this part, the borrower must:

(i) Demonstrate that the FFB loan was outstanding on July 2, 1986;

(ii) Prepay the FFB loan using private capital with the existing loan guarantee;

(iii) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

(2) *Priority borrowers.* In order to qualify for priority in making a prepayment pursuant to this part, a priority borrower, in addition to qualifying under § 1786.4(a)(1), must comply with the following:

(i) The Notice of Intent to Prepay the Federal Financing Bank of the priority borrower must be received by REA on or before February 26, 1988, or the next preceding business day if February 26, 1988 is not a Business Day; and

(ii) The priority borrower must disburse funds to the FFB on or before May 26, 1988, or the next preceding business day if May 26, 1988 is not a business day, in order to complete the prepayment contemplated by its Notice of Intent to Prepay the Federal Financing Bank.

Nothing contained herein prohibits a priority borrower from applying to make a prepayment pursuant to this part without complying with § 1786.4(a)(2). Such an application must comply with all other provisions of this part and shall be processed without priority.

(b) *Lenders.* To participate in a borrower's prepayment of an FFB loan pursuant to this part, the lender must:

(1) be a private legally organized lender;

(2)(i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the loan is located;

(ii) Be a financially viable lender; or

(iii) Be a trust administered by an entity meeting the requirements of (b)(2)(i) of (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan.

A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator. Generally, the lender may utilize any financing structure it desires in obtaining funds to make the private loan, providing the private loan meets the requirements of § 1786.4(c).

(c) *Private loans.* Private loans, the proceeds of which are used exclusively to prepay FFB Loans, shall be eligible for a guarantee under this part. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. Consistent with the statutory requirement that a qualifying borrower may make a par prepayment of a FFB loan pursuant to section 306(A) of the RE Act, if:

* * * private capital, with the existing loan guarantee, is used to replace the loan * * *;

the private loan shall be structured in a manner which in the judgment of REA shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^{n} (C_o - A_i)T_i}{(J - n)}$$

Where,

C_r = The revised interest rate cap;

C_o = The original interest rate cap at the time of prepayment;

A_i = The average interest rate actually charged in the ith period;

T_i = Length of the ith period expressed in years;

n = The number of years that have elapsed since the initial prepayment;

J = The initial term of the Private Loan, at the time of prepayment;

Subject to the constraint that A_i, one must be less or equal to C_o].

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this part was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially similar to the private loan, on such dates as the lender, the borrower and REA may agree, provided however, that such a refunding loan shall comply with the provisions of § 1786.4(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except—

(i) With the written approval of the Administrator;

(ii) In the event that the guaranteed note evidencing the private loan is held by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to § 1786.4(c)(3); or

(iii) As an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide REA with the right to accelerate the private loan upon the occurrence of an event of default, as that term is defined in the mortgage, on the earlier of—

(i) Any date the interest rate on the private loan is reset, without premium or penalty;

(ii) Any date the borrower may prepay in accordance with the terms of the private loan, or

(iii) The tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in § 1786.4(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this part are advances with long-term maturity dates.

§ 1786.5 Priority of prepayment applications.

(a) *Primary order of priority.* Applications from borrowers to prepay pursuant to this part will be separated into the following two categories and processed by REA in the following primary order of priority:

(1) *Priority applications:* Priority applications are applications to make a prepayment pursuant to this part from priority borrowers that qualify in accordance with § 1786.4(a)(2) hereof;

(2) *Other applications.* Other applications are applications to make a prepayment pursuant to this part from all borrowers that qualify in accordance with § 1786.4(a)(1) hereof.

(b) *Manner of processing.* As stated above, priority applications will be processed by REA before other applications. Within each category, applications will be processed by REA in the following manner:

(1) *Priority applications:* Priority applications will be processed by REA in accordance with the settlement date specified by the priority borrower in its Notice of Intent to Prepay the Federal Financing Bank. The priority application with the earliest settlement date will be processed first, the priority application with the next earliest settlement date will be processed second, and so on, until all priority applications have been processed.

(i) If more than one priority borrower specifies the same settlement date, their priority applications will be processed in accordance with the date received. The priority application with the earliest date received will be processed first, the priority application with the next earliest date received will be processed second, and so on, until all priority applications with the same settlement date have been processed.

(ii) In the event that the priority borrower is unable to complete the prepayment by the settlement date specified in the Notice of Intent to

Prepay the Federal Financing Bank, REA may require the priority borrower to submit a new Notice of Intent to Prepay the Federal Financing Bank specifying a revised settlement date, and then its application will be reprocessed in accordance with the revised settlement date and the revised date received.

(iii) In order to retain its status as a priority application, the revised settlement date specified on the new Notice of Intent to Prepay the Federal Financing Bank must be on or before May 26, 1988, or the next preceding business day if May 26, 1988 is not a business day. In the event that the new settlement date specified on the new Notice of Intent to Prepay the Federal Financing Bank is after May 26, 1988, the application will be processed in the manner specified in § 1786.5(b)(2).

(2) *Other applications.* Other applications will be processed by REA in accordance with the settlement date specified by the borrower in the Notice of Intent to Prepay the Federal Financing Bank. The other application with the earliest settlement date will be processed first, the other application with the next earliest settlement date will be processed second, and so on, until all other applications have been processed.

(i) If more than one borrower specifies the same settlement date, their applications will be processed in accordance with the date received. The application with the earliest date received will be processed first, the application with the next earliest date received will be processed second, and so on, until all applications have been processed.

(ii) Should a borrower be unable to complete the prepayment by the settlement date specified in the Notice of Intent to Prepay the Federal Financing Bank, REA may require the borrower to submit a new Notice of Intent to Prepay the Federal Financing Bank specifying a revised settlement date, and then its application will be reprocessed in accordance with the revised settlement date and the revised date received.

(c) *Pro-rated applications.* Borrowers' applications will be prorated to permit partial prepayments in the event that: more than one prepayment application specifies the same settlement date; more than one prepayment application bears the same date received; and the combined amount of the proposed prepayments under these applications would cause the total amount of prepayments made during FY 1988 pursuant to this part to exceed $2.0 billion. Such applications are hereinafter called pro-rated applications and such borrowers are hereinafter called pro-rated borrowers. In such circumstances, the amount of each pro-rated borrower's permitted prepayment shall be determined as follows:

(1) The amount of FFB advances under each individual pro-rated application, which, if prepaid pursuant to this part, would result in an economic savings to the borrower, shall be divided by the aggregate amount of FFB advances, under all of the pro-rated applications, which, if prepaid pursuant to this part, would result in economic savings to the borrowers, in order to determine a percentage (hereinafter called a pro-rated percentage) for each pro-rated borrower;

(2) The aggregate amount prepayments to be allocated among pro-rated borrowers shall be determined by subtracting from $2.0 billion the sum of (i) the total amount of prepayments previously completed during FY 1988 and (ii) the amount of prepayments expected to be completed prior to the settlement date specified in the pro-rated applications (such remainder is hereinafter called the remaining prepayment amount);

(3) Each pro-rated borrower's share of the remaining prepayment amount shall be equal to the product of (i) the remaining prepayment amount times (ii) the respective pro-rated percentage; and

(4) If any expected prepayment fails to be completed prior to settlement date specified in the pro-rated applications, the remaining prepayment amount may in the discretion of REA be recalculated and reallocated.

§ 1786.6 Application procedure.

(a) Each application to make a prepayment pursuant to this part shall be submitted to REA on such forms as REA may prescribe. No application from a borrower other than an application from a priority borrower will be accepted by REA until after February 26, 1988. An application shall not be deemed submitted to REA until it is received by REA, and the "date received" has been inscribed on the Notice of Intent to Prepay the Federal Financing Bank by an authorized official of REA. Each application to make a prepayment pursuant to this part must be received by REA not less than 15 Business Days prior to the settlement date specified in the Notice of Intent to Prepay the Federal Financing Bank. Incomplete applications may be returned to the borrower at the discretion of REA and thereafter must be resubmitted in order to be processed. To be considered complete, the application should include the following:

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in § 1786.8 hereof;

(2) A listing of each FFB Loan advance to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance;

(3) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations;

(4) A certification of the chief executive officer of the borrower stating that, "Any savings from the prepayment of Federal Financing Bank Loans pursuant to section 306(A) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 936(A)) will be passed on to the customers of (insert the corporate name of the borrower) or used to improve the financial strength of (insert the corporate name of the borrower) in cases of financial hardship."

(5) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment;

(6) A proposal for the private loan from a lender selected by the borrower. The proposal shall contain the following material:

(i) Documentation for the private loan;

(ii) Evidence that the lender meets the qualification provisions of § 1786.4(b);

(iii) Evidence that the private loan meets the qualification provisions of § 1786.4(c); and

(iv) Proposed amortization schedule for the private loan;

(7) Estimate of fees, and expenses, including any taxes;

(8) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or state law, loan agreements, security agreements, existing financing arragements, or any other agreement to which the borrower is a party and the approvals that have not been obtained are not unobtainable; and

(9) In the case of priority borrowers evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates acknowledges its awareness of this requirement.

(b) *Loan commitment.* In order to maintain its place in the prepayment queue, the borrower must submit, no later than 5 business days prior to the settlement date specified in its Notice of Intent to Prepay the Federal Financing Bank:

(1) All final documentation;

(2) Evidence, in form and substance satisfactory to REA, that the borrower has obtained all the approvals set forth in § 1786.6(a)(8) that had not been obtained at the time of application and which REA determines to be necessary for settlement; and

(3) Evidence, in form and substance satisfactory to REA, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate that meets the requirements of § 1786.4(c)(1).

In the event that borrower is unable to deliver final documentation or the evidence specified above, the borrower's prepayment application may be removed by REA from the prepayment queue and in such event the borrower shall submit a revised Notice of Intent to Prepay the Federal Financing Bank in order to have its application reconsidered.

(c) *Procedure for submission of prepayment applications.* An original and three copies of each prepayment application must be submitted, between the hours of 8:15 a.m. to 4:45 p.m. Washington, DC time, to: Mr. Walter Twiggs, Chief, Communications and Records Management Branch, Administrative Service Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 0175 South Agriculture Building, Washington, DC 20250. The outside front of the package containing the prepayment application must be clearly marked, "FFB PREPAYMENT APPLICATION." An original and four copies of the Notice of Intent to Prepay the Federal Financing Bank must be the first document in the application package. Upon receipt the prepayment application will be opened, logged in and, the Notice of Intent to Prepay the Federal Financing Bank will be inscribed with the date received by an authorized official of REA. A copy of the Notice of Intent to Prepay the Federal Financing Bank will then be returned to the borrower. Should an application be submitted other than in accordance with the provisions of § 1786.6, the date received shall be a date determined by REA in its sole discretion.

§ 1786.7 Settlement procedure.

(a) *General.* Private loan settlements in connection with prepaying FFB Loans pursuant to this part shall be conducted in accordance with the provisions of this section.

(b) *Settlement date.* The private loan will be settled and the guarantee delivered on the settlement date.

(c) *Place of settlement.* All private loan settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is scheduled for the same settlement date, REA reserves the right to coordinate the locations of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to REA in another manner acceptable to REA, in an amount sufficient to pay the outstanding principal of the FFB loan plus accrued interest from last payment date to and including the settlement date.

(e) *Substitute note.* In the event that a borrower does not prepay all FFB loans evidenced by the same promissory note, REA may require the borrower to execute and deliver a substitute note to evidence its obligation to pay in accordance with its terms the remaining FFB loans.

(f) *Documentation.* The following executed documents, opinions and material shall be delivered at the settlement:

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse REA for any amounts that REA may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (f)(6) of this section, remains undisturbed. In the event that REA requires the borrower to deliver a substitute note pursuant to paragraph (e) of this section, then a similar conclusion concerning such substitute note shall be contained in the opinion required under this paragraph.

(8) An approving opinion of the lender's legal counsel to the effect that the loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by REA to ensure that the obligations of the borrower to reimburse REA for any amounts that REA pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

§ 1786.8 Forms.

Guarantees and loan guarantee agreements executed by REA pursuant to this part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on servicing, procedures for notifying REA of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by REA. REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.6(a)(4) of this part.

§ 1786.9 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of REA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and REA find convenient.

§ 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Deputy Administrator Program Operations is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of

the party who seeks the replacement documents and will submit the required documents to REA for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the guarantee, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the guarantee.

(vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.11 Other prepayments.

Nothing contained in this part shall prohibit a borrower from making prepayments of FFB Loans in accordance with the terms thereof.

§ 1786.12 Application of regulation to previous prepayments.

Nothing contained in this part shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to December 22, 1987, may, in their discretion request REA approval of any amendments necessary to make the terms and conditions of such loans consistent with loans guaranteed under these regulations.

§ 1786.13 Judicial review.

This part is intended to set forth REA policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act and section 1401 of OBRA, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

Dated: January 22, 1988.

Harold V. Hunter,

Administrator.

Editorial Note: The following form of Notice of Intent to Prepay the Federal Financing Bank (which will not be published in the Code of Federal Regulations) may be used in connection with a prepayment application.

BILLING CODE 3410-15-M

Exhibit A

45

USDA-REA

BORROWER DESIGNATION

[redacted]

NOTICE OF INTENT TO PREPAY THE FEDERAL FINANCING BANK

INSTRUCTIONS — Submit an original and four copies to: Walter Twigg, Chief, Communications and Records Management Branch, Administrative Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 0175 South Agriculture Building, Washington, DC 20250 (See 7 CFR 1786.6, "Application Procedure").

NOTIFICATION

_____ *hereby notifies the Administrator*
(Borrower Name)

of the Rural Electrification Administration (REA) of its intent to prepay the Federal Financing Bank under the provisions of 7 CFR 1786, "Prepayment of REA Guaranteed Federal Financing Bank Loans", (the "Regulations") and pursuant to §306(A) of the Rural Electrification Act of 1936, as amended. The following information is provided to REA in connection with its application to prepay:

1. Borrower Name and Address:	
2. Proposed Prepayment Amount:	$
3. Dollar weighted average FFB interest rate on the proposed prepayment amount:	

4. Name and Address of Proposed Lender; Servicer; and Trustee:

LENDER	SERVICER	TRUSTEE

5. Settlement Date *(the date the borrower is prepared to disburse funds to FFB):*	, 19

ACKNOWLEDGMENT

_____ *acknowledges that the*
(Borrower Name)

Settlement Date and the Date Received (as those terms are defined in the Regulations) inscribed hereon may be used by REA to establish processing priority.

BY: _____
(Authorized Official of Borrower)

TITLE: _____

DATE: _____

REA Form 606 *(1-88)*

[FR Doc. 88-1663 Filed 1-26-88; 8:45 am]

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VOL
53
ISS
17
JA
27
988
UMI

Reader Aids

Federal Register
Vol. 53, No. 17
Wednesday, January 27, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106.....4
107-230.....5
231-398.....6
399-486.....7
487-608.....8
609-732.....11
733-772.....12
773-854.....13
855-998.....14
999-1330.....15
1331-1466.....19
1467-1600.....20
1601-1738.....21
1739-1908.....22
1909-1996.....25
1997-2212.....26
2213-2476.....27

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
5760.....855
5761.....1464
5762.....1980
Executive Orders:
12537 (Amended by EO 12624).....489
12578 (Superseded by EO 12622).....222
12622.....222
12623.....487
12624.....489
Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987.....399
No. 88-4 of Dec. 17, 1987.....773
No. 88-6 of Jan. 19, 1988.....1601
Presidential Findings:
Jan. 12, 1988.....999
5 CFR
297.....1997
353.....857
551.....1331, 1739
890.....1, 860
Proposed Rules:
213.....1789
330.....408
338.....1789
351.....408
890.....898
7 CFR
1.....1001
7.....1441
27.....2213
28.....2213
61.....2213
246.....2213
272.....1603
275.....1603
301.....733
353.....1332
354.....1740
400.....2
401.....1001
405.....1467
614.....1605
704.....733
724.....1605
905.....401, 860
907.....6, 491, 1333, 1741
910.....7, 492, 1333, 1742
911.....402, 1742
915.....1742
928.....862
959.....401
971.....401
987.....401
1230.....1909
1430.....107
1610.....1743
1786.....2468
1902.....231
1924.....2150
1930.....2150
1933.....2150
1943.....2147
1944.....2150
1951.....2150
1965.....2150
Proposed Rules:
68.....411
301.....140
401.....505, 507
451.....1640
905.....898
907.....412
908.....412
910.....255
979.....413
981.....414
982.....900
1006.....1035
1012.....1035
1013.....1035
1033.....902
1046.....902
1068.....1360
1097.....1369
1106.....1370, 1790
1126.....256
1136.....686
1260.....509
1421.....2037
1701.....140
8 CFR
Proposed Rules:
1.....2426
204.....2426
205.....2426
211.....2426
212.....2426
214.....2426
216.....2426
223.....2426
223a.....2426
232.....1791
233.....1791
235.....1791, 2426
237.....1791
238.....1791
239.....1791
242.....2426
245.....2426
280.....1791
299.....1791

9 CFR
77 ... 1002
78 ... 2221

10 CFR
1 ... 1744
73 ... 403
Proposed Rules:
2 ... 415
62 ... 1926
430 ... 30
730 ... 1594

11 CFR
Proposed Rules:
109 ... 416
114 ... 416

12 CFR
206 ... 492
208 ... 492
226 ... 467
337 ... 597, 2223
501 ... 1003
525 ... 312
561 ... 324, 338
563 ... 324, 338, 354, 363, 372, 385, 1004
563c ... 324
571 ... 338, 372, 385
583 ... 312, 1003
584 ... 312
614 ... 775
795 ... 1005
Proposed Rules:
226 ... 467

13 CFR
108 ... 1468
140 ... 1606

14 CFR
21 ... 1745, 1748
23 ... 1745, 1746
39 ... 8–14, 232, 493–495, 1334, 1468, 1608–1613, 2005
47 ... 1911
49 ... 1911
71 ... 496, 497, 619, 1335, 1336, 1614, 2006–2013
75 ... 497, 1336–1339, 2014–2017
91 ... 233
95 ... 1005
97 ... 499
108 ... 2223
129 ... 2223
Proposed Rules:
Ch. I ... 1038
21 ... 2037, 2039
23 ... 2037, 2039
39 ... 258, 514, 515, 1371–1374, 2227, 2228
71 ... 516, 517, 666, 670, 674, 907–910, 1375
73 ... 517, 991

15 CFR
372 ... 1614
374 ... 1614
399 ... 108, 1616
806 ... 1015
Proposed Rules:
379 ... 418

16 CFR
13 ... 609, 2223, 2224
Proposed Rules:
13 ... 141, 1039, 2230

17 CFR
1 ... 609, 615
211 ... 109, 865, 1341
Proposed Rules:
300 ... 1793

18 CFR
3 ... 1469
154 ... 867, 1748
270 ... 867
271 ... 15
273 ... 867
375 ... 867, 1469, 1748
381 ... 867, 1469
382 ... 1748
388 ... 1469
389 ... 1750, 2224
410 ... 1751
1301 ... 405

19 CFR
4 ... 1103
24 ... 615
Proposed Rules:
132 ... 1376
141 ... 30
142 ... 1376
178 ... 30

20 CFR
Proposed Rules:
361 ... 143
901 ... 147

21 CFR
5 ... 2225
81 ... 19
176 ... 97
193 ... 20, 233, 1916
312 ... 1917
436 ... 1918
452 ... 1918
540 ... 234
546 ... 235
558 ... 235, 236, 1017
561 ... 20, 233, 1916
606 ... 111
610 ... 111
640 ... 111
884 ... 1554
892 ... 1554
1308 ... 500, 2225
Proposed Rules:
102 ... 1795
193 ... 259
201 ... 1796, 2436
356 ... 2436
358 ... 2198
369 ... 2436
561 ... 259
864 ... 1574
866 ... 1574
868 ... 1574
870 ... 1574
876 ... 1574
880 ... 1574
882 ... 1574
884 ... 1574
890 ... 1574
892 ... 1574
1308 ... 743

23 CFR
635 ... 1920, 1922
655 ... 236
Proposed Rules:
625 ... 2041
626 ... 2041
655 ... 2233

24 CFR
200 ... 842
203 ... 868
215 ... 842, 1122
221 ... 615
235 ... 842
236 ... 615, 842
247 ... 842
812 ... 842
880 ... 842, 1122
881 ... 842, 1122
882 ... 842, 1122
883 ... 842, 1122
884 ... 842, 1122
886 ... 842, 1122
904 ... 1122
905 ... 1122
912 ... 842
960 ... 1122
Proposed Rules:
115 ... 260

25 CFR
Proposed Rules:
151 ... 1797

26 CFR
1 ... 117, 238, 1103, 1441
Proposed Rules:
1 ... 153, 261

27 CFR
Proposed Rules:
9 ... 1492

28 CFR
55 ... 735
541 ... 196

29 CFR
2610 ... 1904
2616 ... 1904
2617 ... 1904
2618 ... 1904
2676 ... 1018
2702 ... 737
Proposed Rules:
1910 ... 1724, 2047
1926 ... 2049
2550 ... 1798

30 CFR
75 ... 2354
202 ... 1184, 1230
203 ... 1184
206 ... 1184, 1230
207 ... 1184
210 ... 1184
241 ... 1184
800 ... 994
Proposed Rules:
75 ... 2382
210 ... 1039
216 ... 1039

31 CFR
103 ... 776

32 CFR
45 ... 1341
104 ... 1343
199 ... 2018
374 ... 1345
552 ... 1752
887 ... 876
Proposed Rules:
199 ... 1378, 1926

33 CFR
110 ... 878
117 ... 119, 406, 2034
165 ... 616, 878
166 ... 1347
Proposed Rules:
140 ... 2236
143 ... 2236
146 ... 2236

34 CFR
Proposed Rules:
303 ... 1461

36 CFR
5 ... 739
404 ... 120
1254 ... 1348
Proposed Rules:
223 ... 519

37 CFR
201 ... 122, 123
Proposed Rules:
203 ... 153

38 CFR
4 ... 21, 1441
17 ... 1755
21 ... 616, 879, 1756, 1779
36 ... 1349
Proposed Rules:
21 ... 620, 1040
36 ... 1378

39 CFR
111 ... 124, 125
232 ... 126
233 ... 1780
Proposed Rules:
946 ... 2236

40 CFR
2 ... 214
51 ... 392, 480
52 ... 392, 501, 1019, 1020, 1354, 1780
61 ... 777
86 ... 470
180 ... 241, 243, 657, 1923
271 ... 126–128, 244, 1358
421 ... 1704
763 ... 1021
Proposed Rules:
52 ... 261, 779, 1043
86 ... 1716
145 ... 2238
156 ... 1494
170 ... 1494
180 ... 262, 263, 1495, 2147, 2238
192 ... 1641

261 ... 519
373 ... 850
795 ... 911
796 ... 911
799 ... 911, 913

41 CFR
101–20 ... 129
105–60 ... 1478
114–51 ... 741
Proposed Rules:
Ch. 201 ... 620
51–7 ... 1379
141 ... 31
142 ... 31
201–11 ... 1805
201–30 ... 1805
201–31 ... 1805
201–32 ... 1805
261 ... 31

42 CFR
405 ... 1617
412 ... 1621
413 ... 1621
418 ... 1621
431 ... 657
435 ... 657
440 ... 657
441 ... 657
442 ... 1984
Proposed Rules:
410 ... 1383
434 ... 744
435 ... 744

43 CFR
2 ... 24
3100 ... 1184
3160 ... 1184
Public Land Orders:
6661 ... 1359
6662 ... 1359
Proposed Rules:
3160 ... 1039
3590 ... 2055

44 CFR
64 ... 14855
Proposed Rules:
7 ... 922
67 ... 419
62 ... 419
80 ... 621
82 ... 621
83 ... 621

45 CFR
95 ... 26
233 ... 467
Proposed Rules:
1215 ... 1496
1336 ... 1806

46 CFR
Proposed Rules:
588 ... 624

47 CFR
Ch. I ... 502
0 ... 1022
15 ... 1781
64 ... 27
65 ... 1027
68 ... 1103
73 ... 28, 29, 504, 1030, 1629, 1630, 1782
90 ... 1022
Proposed Rules:
1 ... 625
63 ... 625
73 ... 426, 1386–1388, 1807, 1808, 2061–2064
74 ... 529
76 ... 625
78 ... 529
95 ... 779

48 CFR
7 ... 660
8 ... 660
13 ... 660
14 ... 660
19 ... 660
22 ... 660
25 ... 660
26 ... 660
28 ... 660
29 ... 660
33 ... 660
42 ... 660
45 ... 660
52 ... 660
208 ... 1924
501 ... 130, 132, 1441, 1540
513 ... 132, 1441
525 ... 1925
836 ... 1630
852 ... 1630
Proposed Rules:
28 ... 2464
37 ... 2464
52 ... 2464
215 ... 625
225 ... 626
232 ... 931
252 ... 626, 931
404 ... 749
407 ... 749
409 ... 749
410 ... 749
412 ... 749
414 ... 749
415 ... 749
416 ... 749
417 ... 749
419 ... 749
422 ... 749
424 ... 749
425 ... 749
428 ... 749
432 ... 749
436 ... 749
437 ... 749
439 ... 749
442 ... 749
445 ... 749
446 ... 749
447 ... 749
452 ... 749

49 CFR
24 ... 467
31 ... 880
190 ... 1633
192 ... 1633
301 ... 2035
386 ... 2035
389 ... 2035
541 ... 133
544 ... 1641
565 ... 1032
571 ... 1783
661 ... 617
Proposed Rules:
3 ... 100
7 ... 100
10 ... 100
192 ... 1043, 1045
383 ... 265
391 ... 42
544 ... 1635
571 ... 426, 780, 934, 936, 1643, 2239
572 ... 2254
1041 ... 155
1048 ... 155
1049 ... 155

50 CFR
33 ... 1487
216 ... 1638
611 ... 134, 741, 890, 894, 2147
653 ... 244
663 ... 246, 248
672 ... 890, 991
675 ... 894, 991, 2147
Proposed Rules:
17 ... 1929
20 ... 42, 1645
226 ... 530
301 ... 156
652 ... 265
658 ... 266
672 ... 627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



Just Released

Code of Federal Regulations

Revised as of October 1, 1987

Quantity	Volume	Price	Amount
	Title 48—Federal Acquisition Regulations System		
_____	Ch. 1 (Parts 1-51) (Stock No. 869-001-00169-1)	$26.00	$_____
_____	Ch. 1 (Parts 52-99) (Stock No. 869-001-00170-4)	16.00	_____
_____	Ch. 2 (Parts 201-251) (Stock No. 869-001-00171-2)	17.00	_____
	Title 49—Transportation		
_____	(Parts 1000-1199) (Stock No. 869-001-00181-0)	17.00	_____
_____	(Parts 1200-End) (Stock No. 869-001-00182-8)	18.00	_____

Total Order $_____

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JA
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Contents

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

Agricultural Stabilization and Conservation Service
RULES
Warehouse regulations:
Federally licensed warehouses; transfer of regulations from Agricultural Marketing Service; correction, 2477

Agriculture Department
See also Agricultural Stabilization and Conservation Service; Forest Service; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 2517
Meetings:
Dairy Policy National Commission, 2517
Privacy Act; systems of records, 2517

Arms Control and Disarmament Agency
NOTICES
Meetings:
General Advisory Committee, 2519

Army Department
See also Engineers Corps
NOTICES
Meetings:
Science Board, 2528, 2529
(3 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arkansas, 2519
Indiana, 2519

Coast Guard
NOTICES
Meetings:
Towing assistance policy, 2559

Commerce Department
See also Export Administration; International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 2519

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 2523
Uruguay, 2524

Commodity Futures Trading Commission
PROPOSED RULES
Hybrid and related instruments, 2510
NOTICES
Contract market proposals:
Amex Commodities Corp.—
Gold bullion warrants, 2525

Copyright Office, Library of Congress
RULES
Cable systems:
Compulsory license—
Gross receipts reporting, 2493

Defense Department
See also Army Department; Engineers Corps
PROPOSED RULES
Acquisition regulations:
Acquisition streamlining, 2514
Federal Acquisition Regulation (FAR):
Contract debts; demands for payment, 2577
NOTICES
Agency information collection activities under OMB review, 2528
Meetings:
Strategic Defense Initiative Advisory Committee, 2528

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Standard Gas Marketing Co., 2532

Education Department
NOTICES
Grants; availability, etc.:
Educational research grant program
Funding priorities, 2530
Jacob K. Javits fellows program, 2532
National diffusion network program—
Developer demonstrator awards, 2531
Dissemination process awards, 2532
Postsecondary education:
Federal Student Assistance Report, development, 2573

Employment and Training Administration
NOTICES
Adjustment assistance:
Apache Corp. et al., 2546
Flying J., Inc., 2547
National Aluminum Corp. et al., 2547

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Committees; establishment, renewal, termination, etc.:
National Petroleum Council, 2532

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Elk Creek Lake project, OR, 2529
Sacramento-San Joaquin Delta, CA; multiple reverse siphon system, 2529

Environmental Protection Agency
NOTICES
Agency information collection activities under OMB review, 2534
Meetings:
Science Advisory Board, 2535

Pesticide programs:
Pesticide assessment guidelines—
Data reporting addenda, 2535

Executive Office of the President
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Export Administration
See also International Trade Administration
NOTICES
Export privileges, actions affecting:
Ensch S.A.R.L., 2520

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace, 2478
VOR Federal airways, 2479–2482
(3 documents)
PROPOSED RULES
Airworthiness directives:
Aerospatiale, 2500
Boeing, 2502
Control zones, 2504
Transition areas, 2503
NOTICES
Meetings:
National Airspace Review Enhancement Program Advisory Committee, 2561

Federal Communications Commission
RULES
Radio and television broadcasting:
Oversight; clarification and editorial corrections, etc., 2497
Radio stations; table of assignments:
Arkansas, 2496
California, 2496
Colorado, 2496
North Carolina, 2497
PROPOSED RULES
Radio stations; table of assignments:
Georgia, 2510
Idaho, 2511
Illinois, 2511, 2513
(2 documents)
Indiana, 2513
New Mexico, 2512
Television stations; table of assignments:
California, 2513
Mississippi, 2512
NOTICES
Meetings:
ITU World Administrative Radio Conference, 2537
Rulemaking proceedings; petitions filed, granted, denied, etc., 2537
Applications, hearings, determinations, etc.:
Community Broadcasting Co., Inc., et al., 2536
Owens, Dale A., 2536

Federal Election Commission
PROPOSED RULES
Rulemaking petitions:
Ted Haley Congressional Committee, 2500
NOTICES
Meetings; Sunshine Act, 2565

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
West Virginia Energy Department, 2533

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
Recently converted insured institutions; stock repurchase restrictions, 2477

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2538
Shipping Act of 1984; section 16 exemption; applications, etc.:
Crowley Maritime Corp., 2537

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 2565
Applications, hearings, determinations, etc.:
Barnett Banks, Inc., 2538
First Wyoming Bancorporation, 2539
Firstier Financial, Inc., 2538
Landmark/Community Bancorp, Inc., et al., 2539

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Medical Staff of Doctors' Hospital of Prince George's County, 2506
Medical Staff of Memorial Medical Center, 2508

Forest Service
RULES
Administration:
Appeal of decisions—
National Forest System, 2490

General Services Administration
PROPOSED RULES
Acquisition regulations:
Additional awards to offeror under single solicitation (SF-30), 2515
Federal Acquisition Regulation (FAR):
Contract debts; demands for payment, 2577

Health and Human Services Department
NOTICES
Federal claims collection; interest rates on overdue debts, 2540

Housing and Urban Development Department
NOTICES
Grants; availability, etc.:
Fair housing assistance program, 2540

Human Immunodeficiency Virus Epidemic Presidential Commission
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Interior Department
See Land Management Bureau; Minerals Management Service

International Trade Administration
See also Export Administration
PROPOSED RULES
Export licensing:
Technical data controls; policy forum, 2505
NOTICES
Countervailing duties:
Granite products from—
Spain and Italy, 2521
Stainless steel products from Brazil, 2521
Tool steel products from Brazil, 2522
Meetings:
Automated Manufacturing Equipment Technical Advisory Committee, 2522
Electronic Instrumentation Technical Advisory Committee, 2523
Semiconductor Technical Advisory Committee, 2523

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Indiana Harbor Belt Railroad Co., 2546

Justice Department
See Juvenile Justice and Delinquency Prevention Office

Juvenile Justice and Delinquency Prevention Office
PROPOSED RULES
Juveniles in adult jails and lockups, nonsecure custody; policy guidance, 2568

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Eugene District Advisory Council, 2542
Roseburg District Advisory Council, 2542
Realty actions; sales, leases, etc.:
New Mexico, 2542
Oregon, 2543
Survey plat filings:
Illinois, 2544
Withdrawal and reservation of lands:
California, 2544

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Administration
NOTICES
Meetings:
Diesel-Powered Equipment in Underground Coal Mines Standards and Regulations Advisory Committee, 2550
Safety standard petitions:
Beckley Coal Mining Co., 2548
BethEnergy Mines, Inc., 2548
Four G. Coal Co., Inc., 2549
Lakeshore Equipment Co., Inc., 2549
Three Power Coal, Inc., 2550

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Amoco Production Co., 2544
Century Offshore Management Corp., 2545
Hall-Houston Oil Co., 2545

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contract debts; demands for payment, 2577
NOTICES
Meetings:
Aeronautics Advisory Committee, 2550

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Literature Advisory Panel, 2551
Music Advisory Panel, 2551

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Frontal interior impact; evaluation report, 2516

National Oceanic and Atmospheric Administration
NOTICES
Fishery management councils; hearings:
Gulf of Mexico—
Shrimp and red drum, 2523

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 2551
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 2552, 2553
(2 documents)
Pennsylvania Power & Light Co. et al., 2554

Postal Service
RULES
Organization and administration:
Miscellaneous organizational changes
Correction, 2495

Presidential Commission on the Human Immunodeficiency Virus Epidemic
NOTICES
Meetings, 2555

Railroad Retirement Board
RULES
Railroad Unemployment Insurance Act:
Unemployment benefits claims processing, adverse decisions appeals, and erroneous payment recovery waiver; initial determinations, 2485

Securities and Exchange Commission
RULES
Securities:
Government Securities Act; implementation—
Form BD revision, etc., 2484
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 2555
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 2557
Philadelphia Stock Exchange, Inc., 2557

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Calvary Run, OH, 2518

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 2558
Shipping Coordinating Committee, 2558, 2559
(4 documents)

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration

Treasury Department
NOTICES
Notes, Treasury:
W-1990 series, 2561
Tax treaties, income; various countries:
Spain, 2563

United States Information Agency
NOTICES
Meetings:
English Teaching Advisory Panel, 2563

Veterans Administration
NOTICES
Meetings:
Women Veterans Advisory Committee, 2564

Separate Parts In This Issue

Part II
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2568

Part III
Department of Education, 2573

Part IV
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 2577

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
736 2477

11 CFR
Proposed Rules:
110 2500

12 CFR
563b 2477

14 CFR
39 2478
71 (3 documents) 2479–2482
Proposed Rules:
39 (2 documents) 2500, 2502
71 (2 documents) 2503, 2504

15 CFR
Proposed Rules:
379 2505

16 CFR
Proposed Rules:
13 (2 documents) 2506, 2508

17 CFR
249 2484
Proposed Rules:
34 2510

20 CFR
320 2485
340 2485

28 CFR
Proposed Rules:
31 2568

36 CFR
211 2490

37 CFR
201 2493

39 CFR
228 2495

47 CFR
73 (5 documents) 2496, 2497
74 2497
76 2497
Proposed Rules:
73 (8 documents) 2510–2513

48 CFR
Proposed Rules:
32 2577
33 2577
207 2514
210 2514
215 2514
252 2514
514 2515
515 2515

49 CFR
Proposed Rules:
571 2516

VOL
53
ISS
18
JA
28
988
UMI

Rules and Regulations

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 736

Federal Licensed Warehouses; Transfer of Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This action makes technical amendments to Part 736 which corrects typographical errors to a Final Rule document published Monday, January 14, 1985, at 49 FR 1813 (FR document 85-1020). The regulations affecting warehouses under provisions of the United States Warehouse Act were transferred from 7 CFR Chapter I to 7 CFR Chapter VII and renumbered the regulations accordingly.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: R. Ford Lanterman, Warehouse Division, ASCS, U.S. Department of Agriculture, Washington, DC 20013, (202) 475-4032.

SUPPLEMENTARY INFORMATION: Regulations in their entirety were not published at that time. Only references and renumbering of regulations took place in this final rule. The following sections should be corrected as shown below:

PART 736—GRAIN WAREHOUSES

1. The authority citation for 7 CFR Part 736 continues to read as follows:

Authority: Section 23, 39 stat. 490 (7 U.S.C. 268).

2. In paragraph (g) the word "has" appearing in the second line should be corrected to "his". The revised paragraph (g) should read as follows:

§ 736.9 Warehouse license; suspension; revocation.

* * * * *

(g) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of grain which is not covered by a license or an exemption as provided in § 736.3e; or

* * * * *

§ 736.103 Futures contract market defined.

3. In § 736.103 the reference "§§ 736.737 through 736.111" appearing in the first line of the text should be amended to read "§§ 736.103 through 736.111".

§ 736.111 Terminal markets.

4. In § 736.111 references to sections 736.737 through 736.111" are to be amended to read "§§ 736.103 through 736.111". The reference "§§ 736.737 through 736.107" should be amended to read "§§ 736.103 through 736.107".

Signed at Washington, DC, on January 19, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-1485 Filed 1-27-88; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 88-31]

Restrictions on Repurchase of Stock of Recently Converted Insured Institutions

Date: January 20, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the processing of requests for waiver of the regulatory restriction on repurchases of the capital stock of recently converted institutions whose accounts are insured by the FSLIC ("insured institutions"). The Board is amending its regulations to preapprove certain requests for repurchases of any of the capital stock of a recently converted insured institution pursuant § 563b.3(g)(1) of the Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations").

EFFECTIVE DATE: January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377-7506; J. Larry Fleck, Deputy Director (202) 377-6413; V. Gerard Comizio, Director (202) 377-6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure (202) 377-6459; Office of General Counsel, Federal Home Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 563b.3(g)(1) of the Insurance Regulations (the "Rule") provides that:

(1) No converted insured institution shall for a period of three years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either, (i) a repurchase, on a pro rata basis pursuant to an offer approved by the Corporation and made to all shareholders of such institution, (ii) the repurchase of qualifying shares of a director, or (iii) a purchase in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

This provision, like several other provisions of the Board's Insurance Regulations, is intended to facilitate the deployment of the conversion stock sale proceeds and protect the integrity of the conversion process. In particular, the Rule prevents the use of a repurchase program to benefit insiders through selective repurchases of their stock at inflated prices or by shifting control of an institution to themselves through a program where the institution's assets are used to repurchase the stock of others.

Recently, the Board has received several requests for waiver or relaxation of the restrictions on stock repurchases

imposed by § 563b.3(g)(1). These requests have been made both by recently converted insured institutions and holding companies of recently converted institutions that have been made subject to the restrictions of § 563b.3(g)(1) through imposition of comparable conditions to approval of their respective holding company applications. Generally, the requests have been premised on the belief that the contemplated repurchases represent attractive investment alternatives and are in the best interests of the public entity and its shareholders.

The Board believes that stock repurchases programs can, if properly structured and limited, be implemented without (i) adversely affecting the financial condition of the insured institution or (ii) impinging on legal concerns arising in the conversion process. The Board further believes it would be appropriate, depending upon the facts and circumstances pertaining to each request, to approve requests to undertake open market stock repurchase programs. Accordingly, the Board has determined that it is appropriate and desirable to preapprove certain requests for repurchases under the Rule.

To implement the preapproval of requests for approval of repurchases, the Board is revising § 563b.3(g) to add new paragraph (g)(4). New paragraph (g)(4) preapproves open market repurchase programs provided that the following conditions are met: (i) No more than 5% of the insured institution's or holding company's outstanding capital stock is to be repurchased during any six month period, (ii) the insured institution's ratio of regulatory capital (as defined in 12 CFR 561.13) to total liabilities would not be reduced below 6%, and (iii) the repurchases would not adversely affect the financial condition of the insured institution.

This new provision provides that the insured institution or holding company shall provide to the Principal Supervisory Agent ("PSA") and the Corporate and Securities Division of the Office of General Counsel of the Board, no later than 10 days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken. Within such 10 day period, the PSA may object to the repurchase program. If no objection is made during that timeframe, the institution (or holding company) may proceed with its repurchase program.

The Board has determined that the amendment will enhance the processing efficiency of requests for approval under the Rule and will not impose any new or additional compliance obligations on recently converted institutions or their holding companies. The Board therefore finds that observance of the public notice and comment period, pursuant to 5 U.S.C. 552(b) and 12 CFR 508.11, is unnecessary, as is the 30 day delay of the effective date pursuant to 12 CFR 508.14.

List of Subjects in 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Subpart A—Standard Conversions

1. The authority citation for Part 563b continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a) sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, l–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563b.3 by adding new paragraph (g)(4) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) *Restrictions on repurchase of stock and payment of dividends*—(1) * * *

(4) *Preapproval of certain repurchases of stock.* A converted insured institution subject to paragraph (g)(1) of this section may repurchase its capital stock provided:

(i) The repurchases are part of an open-market stock repurchase program that does not involve greater than 5% of the institution's outstanding capital stock during a six month period;

(ii) The repurchases do not reduce the institution's ratio of regulatory capital (as defined in 12 CFR 561.13) to total liabilities below 6%;

(iii) The institution provides to the Principal Supervisory Agent and to the Corporate and Securities Division of the Office of General Counsel, no later than 10 days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken and the effect of such repurchases on its regulatory capital position, and the Principal Supervisory Agent does not disapprove the repurchase program based upon a determination that: (A) The repurchase program would adversely affect the financial condition of the insured institution; or (B) the information submitted by the insured institution is insufficient upon which to base a conclusion as to whether the institution's financial condition would be adversely affected.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–1787 Filed 1–27–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–123–AD; Amdt. 39–5835]

Airworthiness Directives; British Aerospace Aircraft Group Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (BAe) Model H.S. 748 series airplanes, which requires inspection and modification of the lower wing skins in the area of the inboard engine rib, on airplanes which were modified in accordance with BAe Service Bulletins 57/31, 57/32, or 57/33. This amendment is prompted by reports of cracks in the skin at the forward attachment bolt hole for the cam plate support bracket on airplanes previously repaired. It is now necessary to remove the existing repair, further inspect the existing cracks, inspect for possible new cracks, and to incorporate a new repair. This condition, if not corrected, could lead to reduced structural capability of the wing.

EFFECTIVE DATE: March 1, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation regulations to include an airworthiness directive, which requires inspection and modification of the lower wing skins in the area of the inboard engine rib on certain British Aerospace (BAe) Model H.S. 748 series airplanes, was published in the **Federal Register** on November 18, 1987 (52 FR 44132).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 300 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $5,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $85,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect, positive or negative, on a substantial number of small entities, because few, if any, BAe Model H.S. 748 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 series airplanes, which have been modified in accordance with British Aerospace (BAe) Service Bulletins 57/31, 57/32, or 57/33, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent further cracking which could lead to reduced structural capability of the wing, accomplish the following:

A. On airplanes previously modified in accordance with BAe Service Bulletin 57/31 or 57/33, inspect and modify the lower wing skins in accordance with BAe Service Bulletin 57/81, Revision 1, dated October 1985, prior to 7,500 hours time in service since modification in accordance with BAe Service Bulletins 57/31 or 57/33, or within the next 750 hours time in service after the effective date of this AD, whichever occurs later.

B. On airplanes previously modified in accordance with BAe Service Bulletin 57/32, inspect and modify the lower wing skins in accordance with BAe Service Bulletin 57/82, Revision 1, dated November 1985, prior to 10,000 hours time in service since modification in accordance with BAe Service Bulletin 57/32, or within the next 750 hours time in service after the effective date of this AD, whichever occurs later.

C. Any cracks found during the inspections required by paragraphs A. or B., above, must be repaired, prior to further flight, in accordance with BAe Service Bulletin 57/81, Revision 1, dated October 1985, or BAe Service Bulletin 57/82, Revision 1, dated November 1985, as applicable.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 1, 1988.

Issued in Seattle, Washington, on January 13, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–1683 Filed 1–27–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–17]

Alteration of VOR Federal Airways, Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas,

saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26488). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of these studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since the action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requrested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-292 and V-308 and revokes V-373 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-292 [Revised]

From Hancock, NY; INT Hancock 091° and Barnes, MA, 265° radials; Barnes; to Boston, MA.

V-308 [Revised]

From Nottingham, MD; Waterloo, DE; Sea Isle; NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Groton, CT; to Norwich, CT. The airspace below 2,000 feet MSL that lies outside the United States and the airspace below 3,000 feet MSL between Kennedy, NY, 087° and 141° radials is excluded. The airspace within R-5202 is excluded during times of use.

V-373 [Removed]

Issued in Washington, DC, on January 14, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-1679 Filed 1-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-15]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP, portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26493). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required.

Department of Transportation Regulatory Policies and Procedures (44 FR 11031) requires an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–213, V–222, V–223, and V–229 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–213 [Amended]

By removing the words "Woodstown, NJ; Robbinsville, NJ;" and substituting the words "INT Kenton 035° and Robbinsville, NJ, 228° radials; Robbinsville;"

V–222 [Amended]

By removing the words "Lynchburg, VA; INT Lynchburg 058° and Broke, VA, 230° radials; Brooke; to INT Brooke 045° and Richmond, VA, 009° radials;" and substituting the words "to Lynchburg, VA."

V–223 [Revised]

From Flat Rock, VA; INT Flat Rock 355° and Gordonsville, VA, 034° radials; to INT Gordonsville 034° and Brooke, VA, 300° radials.

V–229 [Revised]

From Patuxent, MD; INT Patuxent 036° and Atlantic City, NJ, 236° radials; Atlantic City; INT Atlantic City 055° and Colts Neck, NJ, 181° radials; INT Colts Neck 181° and Kennedy, NY, 209° radials; Kennedy; INT Kennedy 053° and Bridgeport, CT, 200° radials; Bridgeport; Hartford, CT; INT Hartford 055° and Gardner, MA, 195° radials; Gardner; Keene, NH; INT Keene 336° and Burlington, VT, 160° radials; to Burlington. The airspace within R–5002A, R–5002B and R–5002E is excluded during times of use. The airspace within Federal Airways V–139 and V–308 and the airspace below 2,000 feet MSL outside the United States is excluded.

Issued in Washington, DC, on January 14, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–1680 Filed 1–27–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–16]

Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26494). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings where involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–249, V–268 and V–270 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is

not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-249 [Amended]

By removing the words "INT Sparta 023° and Delancey, NY, 131° radials;" and substituting the words "INT Sparta 018° and Delancey, NY, 119° radials;"

V-288 [Amended]

By removing the words "Kenton 088° and Sea Isle, NJ, 050° radials." and substituting the words "INT Kenton 086° and Sea Isle, NJ, 050° radials; INT Sea Isle 050° and Hampton, NY, 235° radials; Hampton; Sandy Point, RI; to INT Sandy Point 031° and Providence, RI, 057° radials."

V-270 [Amended]

By removing the words "Chester, MA." and substituting the words "Chester, MA; INT Chester 091° and Boston, MA, 282° radials; to Boston."

Issued in Washington, DC, on January 14, 1988.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-1681 Filed 1-27-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-25285, File No. S7-15-87]

Revision of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form revision.

SUMMARY: The Commission is adopting a previously proposed revision of Form BD, the form which is filed by an applicant to become registered as a broker-dealer. The purpose of the revision is to provide, on Form BD, that the applicant consents that service of process for actions or proceedings brought by the Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities may be given to the applicant's contact employee at the address listed on Form BD.

EFFECTIVE DATE: April 27, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Flowers, Esq. at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 1987, the Commission proposed for comment a revision to Form BD,[1] the uniform registration application form for broker-dealers under the Securities Exchange Act of 1934 (the "Act"). The revision adds an additional paragraph on the execution page of Form BD providing for consent to service of process on behalf of the Commission and self-regulatory organizations ("SROs").

Before September 1985, the Commission's Special Instructions to Form BD included a provision explicitly providing for consent to service of process by registering broker-dealers that was required to be submitted to the Commission as part of their application. In September 1985, the Commission and the North American Securities Administrators Association, Inc. ("NASAA") adopted major revisions to Form BD.[2] However, the provision providing for consent to service of process was deleted from the Commission's Special Instructions at that time, in an effort to abbreviate these instructions. The instructions on Form BD continued to require that the contact employee on the form must be authorized to receive "all compliance information, communications, and mailings" at the address designated on the form.

It is the Commission's view that a broker-dealer submits to the Commission's jurisdiction when it registers with the Commission. A registered broker-dealer has a continuing obligation to keep its Form BD application, including its mailing address, current;[3] therefore, the broker-dealer is responsible if service of process at the specified address is not received by the firm. Notwithstanding the significance of this obligation, the Commission believes the Form BD should include a consent provision explicitly recognizing that service or notice of process provided to the contact employee is adequate for notice and jurisdictional purposes.

II. Revision to Form BD

The Commission's revision to Form BD provides that the applicant consents that service of any civil action brought by or notice of any proceeding before the Commission or any SRO in connection with the applicant's broker-dealer activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different.[4] The revision also includes

[1] Securities Exchange Act Release No. 24402 (May 7, 1987), 52 FR 17301.

[2] Securities Exchange Act Release No. 22966 (September 26, 1985), 50 FR 41867.

[3] Rule 15b3-1 of the Act.

[4] Rule 15b1-6 currently requires non-resident broker-dealers to furnish the Commission with consent to service of process designating the Commission as an agent for service of process, pleadings, or other papers in any civil action in connection with the non-resident's U.S. broker-dealer activities. The revision to Form BD has also been applied to non-resident broker-dealers, because excluding these non-resident broker-dealers would complicate the new consent language and crowd the Form BD execution page. Consequently, non-resident broker-dealers will provide the Commission with two consents, differing in that the Form BD consent, unlike the Rule 15b1-6 consent, provides that process may be served on the broker-dealer's contact employee rather than the Commission itself and does not extend to private litigants. The addition of the Form BD consent is not intended to change the Commission's jurisdiction over non-resident broker-dealers.

minor changes to the state consent to service of process language.

The Commission received one comment letter on the revision.[5] The commentator, the Securities Investor Protection Corporation ("SIPC"), requested that Form BD include language explicitly providing that the applicant broker-dealer consents that service or notice of any application for a protective decree ("application") filed by SIPC may be given in the same manner as provided in the proposed consent provision. After careful review of this comment, the Commission is adopting the previously proposed revision, and is proposing for comment inclusion of this provision in Form BD in a companion release.[6]

The Commission has determined to adopt the revision as proposed, effective ninety-days after publication. The membership of NASAA approved inclusion of this provision on the form at NASAA's Annual Fall Meeting in September. New broker-dealers will execute this consent provision when completing the Form BD initially; existing broker-dealers will be required to execute this consent provision only when they amend Form BD for some other reason.

III. Competition Findings

Section 23(a)(2) of the Act [7] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the revision in light of the standard cited in section 23(a)(2) and believes that adoption of this change will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

IV. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), Chairman Shad certified when the revision to Form BD was proposed that this revision, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received on the certification.

[5] Letter from Theodore H. Focht, President & General Counsel, SIPC, to Jonathan G. Katz, Secretary, SEC (June 5, 1987).

[6] Securities Exchange Act Release No. 25286 (January 22, 1988).

[7] 15 U.S.C. 78w(a)(2).

V. Statutory Authority

The Securities and Exchange Commission hereby adopts the revisions to Form BD referenced in § 249.501a of the CFR pursuant to its authority under the Act and particularly sections 15(b), 17(a), and 23(a) of the Act thereof (15 U.S.C. 78*o*(b), g(a) and w(a)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Form BD prescribed by § 249.501 is amended by revising the Execution paragraph as follows:

* * * * *

Uniform Application for Broker-Dealer Registration

* * * * *

Execution: For the purpose of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and applicant hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the applicant in said State(s) upon whom may be served any notice, process, or pleading in any action or proceeding against the applicant arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the applicant hereby consents that any such action or proceeding against the applicant may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if applicant were a resident in said State(s) and had lawfully been served with process in said State(s).

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Item 1G.

* * * * *

By the Commission.

Dated: January 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1760 Filed 1-27-88; 8:45 am]

BILLING CODE 8010-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 320 and 340

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals From Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Parts 320 and 340 of its regulations to clarify the handling of claims and reviews and appeals from denials of such claims under the Railroad Unemployment Insurance Act and to provide certain procedures to be followed by the agency in handling erroneous payment decisions under that Act. In addition, the amendment to Part 340 explains when and under what circumstances waiver of recovery of erroneous payments may occur.

EFFECTIVE DATE: These amendments shall be effective March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 386-4935).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Unemployment Insurance Act (Act) the Board pays unemployment and sickness benefits to railroad employees who are out of work due to unemployment or sickness. The processing of initial claims for unempoyment benefits under the Act is decentralized and the amendments clarify the authority of the different offices of the Board to render decisions. The amendments also clarify the procedures to be followed by claimants in contesting adverse decisions. Finally, the regulations provide for certain procedures to be followed by the Board in handling erroneous payment decisions where waiver of recovery might be appropriate under section 2(d) of the Act.

The Board published the amendments to Parts 320 and 340 as a proposed rule on August 14, 1987 (52 FR 30383), and

allowed 60 days for public comment. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 320 and 340

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, 20 CFR Chapter II, is amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for Part 320 continues to read as follows:

Authority: Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, unless otherwise noted.

2. Section 320.5 is revised to read as follows:

§ 320.5 Initial determinations.

An initial determination shall be made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office is provided by § 320.6 of this part. The adjudicating office shall make its determination on the basis of the claimant's application and claim and any other relevant information or evidence. A determination allowing payment of an initial claim shall not establish a presumption that benefits for subsequent claims in the same period of unemployment or sickness are also payable. The Director of Unemployment and Sickness Insurance shall issue instructions with respect to the adjudication of claims and initial determinations on such claims. It is found that only part of the benefits claimed may initially be paid, a partial payment shall be made prior to a final decision on the whole claim.

3. A new § 320.6 is added to read as follows:

§ 320.6 Adjudicating office.

(a) The term "adjudicating office" means any subordinate office of the Board which is authorized to make initial determinations and reconsideration decisions with respect to claims for benefits. The following paragraphs state which offices of the Board are adjudicating offices and define their authority to make determinations or decisions.

(b) *District offices.* Board district offices are authorized to make initial determinations on the following issues of eligibility for unemployment benefits:

(1) Availability for work;

(2) Voluntary leaving of work, with or without good cause;

(3) Failure to accept work or apply for work or failure to report to an employment office;

(4) Timely registration for benefits;

(5) Receipt of remuneration for claimed days of unemployment;

(6) Mileage or work restrictions and stand-by or lay-over rules;

(7) Whether the claimant's unemployment is due to a strike.

(c) *Regional offices.* Board regional offices are authorized to make determinations on any of the issues listed in paragraph (b) of this section. In addition, regional offices are authorized to make initial determinations on the following issues:

(1) Erroneous payment of benefits, including fraud;

(2) Applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a non-railroad employer by which he is employed;

(3) Determination of the amount of the Board's claim for reimbursement from pay for time lost payments under section 2(f) of the Railroad Unemployment Insurance Act or damages for personal injury under section 12(o) of the Railroad Unemployment Insurance Act.

(d) *Division of Program Operations.* The Division of Program Operations, Bureau of Unemployment and Sickness Insurance, is authorized to make initial determinations on all issues of eligibility for unemployment and sickness benefits, and recovery of benefits, as set forth above, not reserved to the Director by paragraph (e) of this section.

(e) *Bureau of Unemployment and Sickness Insurance.* The Director of Unemployment and Sickness Insurance, or his designee, shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment;

(2) Applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he is employed; and

(3) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act. The decision to waive recovery or to accept a compromise shall be made only by the Director. The Director shall also decide whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment, sickness or maternity insurance, within the meaning of section 1(j) of the Railroad Unemployment Insurance Act.

4. Section 320.8 is revised to read as follows:

§ 320.8 Notice of initial determination.

(a) *Benefits payable.* If benefits are payable for a claim, no special notice of the award will be issued. The amount of benefits due will be certified to the United States Treasury Department for payment.

(b) *Benefits not payable.* If an initial determination results in denial of a claim, either in whole or in part, the adjudicating office shall issue a notice of the denial within 15 days of the date that it makes its determination. The notice shall explain the basis for the denial of benefits and shall set forth what steps the claimant can take to contest the denial.

(c) *Communication of notice of denial.* When the adjudicating office mails the denial notice to the claimant's address of record, it shall be considered that notice of the denial has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the denial notice shall be sent to the attorney or such other representative.

5. A new § 320.9 is added to read as follows:

§ 320.9 Notice of erroneous benefit payment.

(a) *Content of notice.* When an adjudicating office determines that benefits were paid erroneously, that office shall issue to the claimant a notice of the amount of the erroneous payment and the basis for the determination. The notice shall include a statement telling the claimant of his or her right to request

reconsideration of the determination, of the provisions for waiver and of his or her right to request waiver.

(b) *Communication of notice of erroneous payment.* When the adjudicating office mails the erroneous payment notice to the claimant's address of record, it shall be considered that notice of the erroneous payment has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the erroneous payment notice shall be sent to the attorney or such other representative.

6. Section 320.10 is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

(a) *Request.* A claimant shall have the right to request reconsideration of an initial determination under § 320.5 which denies in whole or in part his or her claim for benefits. Such request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

(b) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the initial determination.

(c) *Notice of decision.* The adjudicating office shall, as soon as possible, render a decision on the request for reconsideration. If a decision rendered by a district office, as the adjudicating office, sustains the initial determination, either in whole or in part, the decision shall be referred to the appropriate regional office for review prior to issuance. The claimant shall be notified, in writing, of the decision on reconsideration no later than 15 days from the date of the decision or where the regional office has conducted a review of the decision, within 7 days following the completion of the review. If the decision sustains the initial determination, either in whole or in part, the claimant shall be notified of his or her right to appeal as provided in §§ 320.12 and 320.15.

(d) *Right to further review of initial determination.* The right to further review of a determination made under § 320.5 or § 320.6 shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(e) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the adjudicating office shall consider the circumstances which kept the claimant from filing the request on time and whether any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner.

7. A new § 320.11 is added to read as follows:

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* If a claimant requests waiver of recovery of an erroneous payment, he or she shall be given an opportunity for a hearing on his or her request. The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver and if he or she so desires, a request for a hearing. Such requests shall be made in writing and be filed by mail or in person at any Board office. If the claimant does not elect to have an oral hearing with respect to his or her request for waiver of recovery he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(b) *Recovery action.* Where a claimant has made a timely request for waiver of recovery, no action will be taken to recover the erroneous payment by setoff against current benefits prior to a decision on such request; *provided however,* that the Board may, prior to a decision, withhold the amount of the erroneous payment from benefit payments under any of the following circumstances:

(1) The amount of the erroneous payment does not exceed ten times the current maximum daily benefit rate;

(2) The claimant admits he or she was at fault in causing the overpayment;

(3) The claimant is found to have committed fraud;

(4) The claimant authorizes recovery by setoff or agrees to repayment; or

(5) The claimant requests that a scheduled hearing be rescheduled to a date more than five business days after the original hearing date.

(c) *Appointment of hearing officer.* If the claimant makes a timely request for waiver and for a hearing, the Director of Unemployment and Sickness Insurance shall promptly arrange for the selection of a board employee to schedule and conduct the hearing. The Board employee so selected shall not have participated in making the erroneous payment determination and shall conduct the hearing in a fair and impartial manner.

(d) *Scheduling the hearing.* The Board employee selected to conduct the hearing shall schedule such hearing at the earliest practicable time at a Board office or base point. The Board employee may reschedule the hearing upon his or her own motion or upon the request of the claimant, but if the hearing is rescheduled at the request of the claimant to a date more than five business days after the original hearing date the Board may, prior to the hearing, withhold the amount of the erroneous payment from benefit payments.

(e) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the erroneous payment determination.

(f) *Oral hearing.* The claimant shall also be afforded these rights:

(1) To present his or her case orally and to submit evidence, either through witnesses or documents;

(2) To cross-examine any adverse witnesses who testify;

(3) To be represented by counsel or other person.

(g) *Action after hearing.* When the hearing is completed, the Board employee who conducted it shall prepare a recommended decision and shall submit it, along with any evidence or documents produced as a result of the

hearing, to the Director of Unemployment and Sickness Insurance.

(h) *Decision.* The Director of Unemployment and Sickness Insurance shall make a decision on the claimant's request for waiver of recovery and shall notify the claimant accordingly. If the Director decides that waiver of recovery is not appropriate, the adjudicating office shall wait 15 days from the date of the notification of the waiver decision before taking any action to recover the erroneous payment. If the Director decides that recovery should be waived, any amount of the erroneous payment so waived but previously recovered by setoff shall be refunded to the claimant.

(i) *Appeal.* If the Director of Unemployment and Sickness Insurance decides that waiver of recovery is not appropriate, the claimant shall have the right to appeal such decision as provided under § 320.12.

(j) *Requests made after 30 days.* Nothing is this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 30 days. But action to recover the erroneous payment will not be deferred if such a request is not timely filed, and no prerecoupment hearing shall be granted. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of the erroneous payment or by selecting a particular method for repaying the debt. However, no waiver consideration will be given to any debt which is settled by compromise.

(k) *Sunset provision.* Those portions of this section which provide opportunity for a hearing on a claimant's request for waiver of recovery shall cease to be effective as of the close of business [insert date 2 years from publication date], except that this section will continue in full effect through the final administrative adjudication of any case involving such hearing requested prior to that date.

8. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

A claimant whose claim has been denied in whole or in part upon reconsideration under § 320.10 or a claimant whose request for waiver of recovery under § 320.11 has been denied in whole or in part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to the claimant. If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office § 320.10 or 320.11 shall be considered final and no further review of such decision shall be available unless the referee finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this chapter.

§ 320.15 [Removed]

9. Section 320.15 is removed.

10. Section 320.18 is amended by revising the last sentence thereof to read as follows:

§ 320.18 [Amended]

* * * In all other cases, the referee shall consider and decide the appeal; in each such case where the referee determines that an issue of fact exists, the claimant shall have the right to a hearing.

11. Section 320.22 is revised to read as follows:

§ 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the referee shall schedule a time and place for the conduct of the hearing. The referee shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The referee shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the referee. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The referee shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The referee may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The referee also may limit or expand the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the referee a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the referee a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the referee finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the referee shall reschedule the hearing. If the referee finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

12. Section 320.25 is amended by adding a new paragraph (c) to read as follows:

§ 320.25 [Amended]

* * * * *

(c) *Where no oral hearing required.* Where the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

§ 320.50 [Removed]

13. Section 320.50 is removed.

PART 340—RECOVERY OF BENEFITS

14. The authority citation for Part 340 continues to read as follows:

Authority: 45 U.S.C. 362.1.

15. Section 340.6 is revised to read as follows:

§ 340.6 Recovery by setoff.

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Retirement Act, or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, such recovery shall be made from his estate or heirs.

16. Section 340.10 is revised to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

(a) *When waiver of recovery may be applied.* Section 2(d) of the Act provides that there shall be no recovery in any case where more than the correct amount of benefits has been paid to an individual or where payment has been made to an individual not entitled to benefits if, in the judgment of the Board:

(1) The individual is without fault; and

(2) Recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(b) *Fault.* (1) Fault means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply wih the entitlement provisions of the Act. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(2) Whether an individual is at fault in causing erroneous payments generally depends on all circumstances surrounding the erroneous payments. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Act or to realize that he or she is being overpaid (*e.g.*, age, comprehension, memory, physical and mental condition); the particular cause of benefit non-entitlement; and the number of claims on which the individual made erroneous statements.

(3) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish information which the individual knew or should have known was material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts);

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(c) *When recovery defeats the purpose of the Railroad Unemployment Insurance Act.* (1) The purpose of the Railroad Unemployment Insurance Act is to furnish some replacement for an individual's railroad earnings lost because of days of sickness or unemployment. The purpose of the Act is defeated when an erroneous payment is recovered from income and resources which the individual requires to meet ordinary and necessary living expenses. If either income on resources are sufficient to meet expenses, the purpose of the Act is not defeated by recovery of an erroneous payment.

(2) For purposes of this section, income includes any funds which may reasonably be considered available for the individual's use, regardless of source. Income to the individual's spouse or dependents is available if the spouse or dependent lived with the individual at the time waiver is considered. Types of income include, but are not limited to:

(i) Government benefits such as Black Lung, Social Security, Workers' Compensation, and Unemployment Compensation benefits;

(ii) Wages and self-employment income;

(iii) Regular payments such as rent or pensions; and

(iv) Investment income.

(3) For purposes of this section, resources include, but are not limited to, liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds and the like. The Board may also consider certain non-liquid assets as resources.

(4) Whether an individual has sufficient income and resources to meet ordinary and necessary living expenses depends not only on the amount of his or her income and resources, but also on whether the expenses are "ordinary and necessary." While the level of expenses which is "ordinary and necessary" may vary between individuals, it must be held at a level reasonable for an individual who is temporarily unemployed or incapacitated due to sickness. The Board will consider the discretionary nature of an expense in determining whether it is reasonable. Ordinary and necessary living expenses include:

(i) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (*e.g.*, life, accident, and health insurance), taxes, installment payments, etc.;

(ii) Medical hospitalization, and other similar expenses;

(iii) Expenses for the support of others for whom the individual is legally responsible; and

(iv) Miscellaneous expenses (*e.g.*, newspapers, haircuts).

(5) Where recovery of the full amount of an erroneous payment would be made from income and resources required to meet ordinary and necessary living expenses, but recovery of a lesser amount would leave income or resources sufficient to meet expenses, recovery of the lesser amount does not defeat the purpose of the Act.

(d) *When recovery is against equity and good conscience.* Recovery is considered to be against equity and good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) *Recoveries not subject to waiver.* Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

Dated: January 21, 1988.

By Authority of the Board.

BEST COPY AVAILABLE

For the Board
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 88-1703 Filed 1-27-88; 8:45 am]
BILLING CODE 7905-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides procedures by which individuals or groups may appeal Forest Service officials decisions to reoffer returned or defaulted timber sales on Natural Forests. The rule results from a recent 9th Circuit Court of Appeals decision. In order to respond quickly to that Court ruling and preserve the opportunity for a meaningful appeal for potential appellants, it is necessary to make this rule effective upon publication. However, the Agency invites public comment on the interim rule, which it will consider in promulgating a final rule.

DATE: This rule is effective January 28, 1988.

Comments must be received in writing by March 28, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (1570), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed rule in the Office of the Staff Assistant for Operations, National Forest System, Room 4211, South Building, 12th and Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, (202) 382-9348, or Dave Spores, Assistant Director, Timber Management Staff, (202) 447-4051.

SUPPLEMENTARY INFORMATION:

Legislative and Administrative Background

In response to unusually high prices bid on National Forest timber sales during the late 1970s and early 1980s, the Congress enacted the Federal Timber Contract Payment Modification Act of 1984 (FTCPMA) (16 U.S.C. 618; Pub. L. 98-478). The Act allowed purchasers of timber sale contracts on National Forests the opportunity to buy out of a certain volume of timber under qualifying timber sale contracts. The Act also directed that timber from returned or defaulted timber sales be given preference for resale in the Forest Service timber sale program.

Following passage of the FTCPMA, the Forest Service took the position that a decision to reoffer timber from returned or defaulted timber sales was a reaffirmation of the original decision to offer the timber for sale, and, therefore, the review and subsequent reoffering would not constitute an appealable decision under the Agency's administrative appeal regulations at 36 CFR 211.18.

These rules provide a process by which anyone who objects to a decision of a Forest officer may appeal that decision and have it reviewed by an officer at the next higher administrative level. Under current procedures, two levels of appeal are available with many procedural requirements. If an appellant utilizes both levels of appeal, and if the maximum time allowed at each step is utilized, the time to resolve an appeal is about 305 days.

In October 1986, in response to questions about the extent of administrative appeal that Congress had intended on the reoffered sales, Congress provided specific direction in section 320 of the Appropriations Act for the Department of the Interior and Related Agencies for Fiscal Year 1987 (Pub. L. 99-591). That section provided that the reoffered sales would be subject to only one level of administrative appeal and that any such appeal must be resolved within 90 days of receipt.

Judicial Review

In 1980, the Forest Service completed an Environmental Assessment for the North Roaring Devil timber sale on the Willamette National Forest in Oregon, made a Finding of No Significant Impact, and issued a Decision Notice. The sale was subsequently sold, but later returned by the buyer in accordance with the FTCPMA. The Forest Service reviewed its earlier decision to offer the North Roaring Devil sale and reoffered it on December 5, 1985. That decision was appealed, pursuant to 36 CFR 211.18, by the Oregon Natural Resources Council and the Breitenbush Community.

The Forest Service dismissed the appeal as untimely on the basis that it was not filed within 45 days of the original decision to sell the North Roaring Devil sale (1980). The Agency concluded that the decision to reoffer the sale was merely a reaffirmation of that orignial decision, which had already been subject to appeal. Following that dismissal, the appellants filed suit in the U.S. District Court for the District of Oregon alleging that the dismissal of the appeal was improper and subsequently appealed the lower court's decision to the Ninth Circuit Court of Appeals. On December 21, 1987, the Ninth Circuit ruled that a reoffer by the Forest Service is a decision within the meaning of the Agency's administrative appeal regulations at 36 CFR 211.18, and that section 320 of the Fiscal Year 1987 Appropriations Act (Pub. L. 99-591) could not apply retroactively to appeals of sales reoffered prior to the passage of the appropriations language.

Interim Rule

The Department of Agriculture is promulgating a new rule at 36 CFR 211.17 that meets both the objectives of section 320 and the ruling of the 9th Circuit Court of Appeals concerning appeals of decisions to reoffer returned or defaulted sales. Decisions to reoffer returned or defaulted timber sales made prior to October 30, 1986, will be entitled to a 2-level appeal process, and decisions to reoffer returned or defaulted timber sales made after October 30, 1986, will be entitled to a 1-level appeal process, to be completed within 90 days. This interim rule provides persons or organizations who previously submitted a timely Notice of Appeal, pursuant to 36 CFR 211.18, on a decision to reoffer a sale of returned or defaulted timber and whose appeal was subsequently dismissed as untimely because the Forest Service did not consider reoffer of the sale an appealable decision, an opportunity to resubmit their appeal. These parties will have 30 days from publication of this rule to submit their notice of appeal. If the decision to reoffer was made prior to October 30, 1986, the appellant(s) will be entitled to a 2-level process. However, because the reoffered sales that can be reappealed under this interim rule have already been advertised and awarded, and because we need to provide equitable treatment for both purchasers of reoffered timber sales and appellants, the time for processing these appeals at the first level will be limited to 90 days after the appeal is filed; the time for processing appeals at the second level will be limited to 45 days after the appeal.

Consistent with section 320 of the Fiscal Year 1987 Interior and Related Agencies Appropriations Act, only one level of administrative appeal will be available for decisions to reoffer timber sales made after October 30, 1986, and review of those appeals will be completed in 90 days.

In promulgating this rule, the Department has considered as an alternative, issuing a new rule to give a one level, 90-day review for decisions to reoffer sales made after October 30, 1986, and applying existing appeal procedures at 36 CFR 211.18 for decisions made prior to this date. While this alternative is also consistent with the statutes and the ruling of the court in dealing with appeals of reoffered timber sales after October 30, 1986, it subjects similar decisions to two different processes under two different rules thus making for unnecessary administrative complexity. Moreover, the timeframes and complex procedures provided in the current appeal rules would create undue delays and might result in inequitable treatment of appellants and timber sale purchasers. In order to meet the shorter deadlines for processing appeals of decisions to reoffer timber sales returned or defaulted, it is necessary to streamline the appeal procedures. Accordingly, intervention is not allowed nor are procedural appeals, such as appealing decisions to deny a stay. Moreover, a responsive statement from the initial Forest Officer who made the decision to reoffer the sale is optional and there will be no extensions of time under the interim rule for appellants or the Forest Service.

In addition, paragraph (b) *Matters excluded from appeal under this section* of § 211.18 is being amended to exclude appeals of decisions to reoffer timber from review under those rules. This is a corollary technical amendment necessary to avoid conflict and inconsistency between this interim rule and the existing administrative appeal process.

Public Comment

In response to the Court's clarification of the Agency's appeal responsibilities, the Forest Service must act quickly and in a positive manner to preserve for potential appellants the maximum opportunity for a meaningful appeal on reoffered sales. This rule establishes agency policy and procedures on appeal of decisions to resell returned or defaulted federal timber sale contracts. Good cause exists for issuance of this policy and procedures effective upon publication. Notice and public comment prior to implementation would be impracticable and contrary to the public interest. Because many of the reoffered sales that are now subject to appeal under the Court's ruling have been awarded and operations have begun, the time available for meaningful appeal is limited. Accordingly, the Department of Agriculture is making the interim rule effective upon publication. However, public comment received on this rule will be analyzed and considered in the promulgation of a final rule.

Regulatory Impact

This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule itself will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

Because of the need to implement these procedures immediately to facilitate the orderly review and offering of reoffered sales and lessen the impact on the Agency's timber sale program, time has not permitted advance review by the Office of Management and Budget. However, as required by E.O. 12291, notice of this rule is being given to the Director of the Office of Management and Budget upon publication in the Federal Register.

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

Environmental Impact

Based on both experience and environmental analysis, this interim rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), National forest.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 211 of chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—[Amended]

2. Add a new § 211.17 to read as follows:

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions to reoffer sales of timber that were returned to the Government under the provisions of the Federal Timber Contract Modification Payment Act of 1984 or that were defaulted by the purchaser.

(b) *Matters subject to appeal.* The procedures established in this section apply only to decisions to reoffer timber sales resulting from returned or defaulted timber sale contracts. Notice of decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation. Subsequent actions to advertise and/or award a reoffered sale are not appealable under this section or 36 CFR 211.18. Except as provided for in paragraph (c)(1) of this section, a decision to reoffer a timber sale that was made prior to the effective date of

these rules and that was not timely appealed under § 211.18 of this subpart is not appealable under this section.

(c) *Who may appeal.* The process set forth in this section is available only to:

(1) Any individual or organization who previously submitted a timely Notice of Appeal, pursuant to 36 CFR 211.18, on a decision to reoffer a sale of returned or defaulted timber and whose appeal was subsequently dismissed as being untimely because the Forest Service did not consider reoffer of the sale an appealable decision. These parties may resubmit their appeals.

(2) Except as provided in paragraph (d) of this section, any individual or organization may appeal a decision made after January 28, 1988 to reoffer timber resulting from returned or defaulted timber sales.

(d) *Who may not appeal.* The process set forth in this section is not available to:

(1) Any individual or organization who did not, pursuant to 36 CFR 211.18, previously submit a timely Notice of Appeal on a decision to reoffer a sale of returned or defaulted timber.

(2) The defaulting purchaser of a reoffered timber sale.

(e) *Levels of appeal.* For decisions to reoffer timber sales made after October 30, 1986, one level of administrative appeal is available. For decisions to reoffer timber sales made prior to October 30, 1986, two levels of administrative appeal are available; the second level being to the next higher administrative level.

(1) Appeals of decisions to reoffer timber sales made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions to reoffer timber sales made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (h) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision to reoffer.

(1) For appeals filed pursuant to paragraph (c)(1) of this section, the notice of appeal must be submitted by February 29, 1988.

(2) All notices of appeal pursuant to paragraph (c)(2) must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision to reoffer a sale must include the following information in the written notice of appeal:

(1) The timber sale being appealed;

(2) Either the decision date or the date notice of the decision was published;

(3) The Forest Officer whom made the decision;

(4) How the appellant is affected by the decision;

(5) The relief desired; and

(6) A description of environmentally significant modifications which are alleged to have occurred after the initial timber sale was offered and the decision made to sell the timber, or changed circumstances.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision to reoffer the timber sale in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area effected by the reoffered timber sale; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the decision shall be sent to the appellant and the Forest Officer who made the initial decision to reoffer.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision to reoffer shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision to reoffer, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is open to public inspection.

(k) *Requests for additional information.* If the appeal record is considered inadequate to affirm or reverse a decision, the Reviewing Officer may request additional information.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation, except for appeals to the second level filed pursuant to paragraph (e) of this section.

(m) *Second level appeals.* For appeals to the second level filed pursuant to paragraph (e) of this section, a notice of appeal must be filed with the next higher administrative level within 15 days from the date of the first level Reviewing Officer's appeal decision. If the first level Reviewing Officer is the Forest Supervisor, the appeal is to the Regional Forester. If the first level Reviewing Officer is the Regional Forester, the appeal is to the Chief. The notice need only include the documents submitted at the previous level, the first level decision letter, and a statement addressing why the appellant believes the Reviewing Officer's decision is erroneous. A copy of that statement must be provided to the first level Reviewing Officer also. The first level Reviewing Officer may provide a response to the notice to appeal to the second level Reviewing Officer; and must send a copy to the appellant. The review will be based on the existing record from the first level appeal, the second level notice of appeal, and any response by the first Reviewing Officer. A decision shall be issued within 45 days after receiving the notice of appeal.

(n) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision to reoffer a sale withdraws that decision.

(2) If an appellant challenges an Environmental Assessment without referring to environmentally significant modifications which are alleged to have occurred after the initial timber sale was offered and the decision made to sell the timber, or without referring to changed circumstances, the appeal or that portion of the appeal may be dismissed.

(3) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(4) A Reviewing Officer will give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

3. Amend § 211.18 by adding new paragraphs (b) (13) and (14) to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(b) *Matters excluded from appeal under this section.*

* * * * *

(13) Decisions to reoffer timber from returned or defaulted timber sales appealable under § 211.17.

(14) Subsequent actions to advertise and/or award a reoffered sale.

* * * * *

Dated: January 22, 1988.

George M. Leonard,

Associate Chief.

[FR Doc. 88-1750 Filed 1-27-88; 8:45 am]

BILLING CODE 3410-11-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 88-1]

37 CFR Part 201

Compulsory License for Cable Systems; Reporting of Gross Receipts

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of policy decision.

SUMMARY: The Copyright Office of the Library of Congress issues this notice to inform the public regarding implementation of the decision of the United States Court of Appeals for the District of Columbia in *Cablevision Systems Development Company* v. *Motion Picture Association of America, Inc.*, No. 88-5552 (D.C. Cir. Jan. 5, 1988), as that decision affects the Copyright Office's administration of the cable compulsory licensing scheme established at section 111 of the Copyright Act of 1976. The notice advises cable systems to report their "gross receipts" for accounting period 1987-2 in accordance with 37 CFR 201.17(b)(1), and informs them that the Copyright Office will require corrected filings, as appropriate, for accountings period prior to 1987-2. The Office also clarifies its interpretation of the "gross receipts" regulation as it applies to "discounts" and "tie-in" arrangements.

EFFECTIVE DATE: January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems comply with provisions regarding the filing of Statements of Account and the deposit of statutory royalty fees pursuant to section 111(d) of the Act.

On April 2, 1984, the Copyright Office issued final regulations (49 FR 13029) that included a clarifying amendment to the Copyright Office definition of "gross receipts for the 'basic service of providing secondary transmissions of primary broadcast transmitters.'" (37 CFR 201.17(b)(1)). In issuing this amendment, the Copyright Office confirmed its 1978 interpretation that the Copyright Act does not allow cable systems to allocate gross receipts or the distant signal equivalent (DSE) value where any secondary transmission service is combined with nonbroadcast service and is offered to cable subscribers for a single fee. Cablevision Company and the National Cable Television Association ("NCTA") challenged that interpretation before the U.S. District Court for the District of Columbia.

On July 31, 1986, the district court held the Copyright Office's regulation defining "gross receipts" invalid, yet did not specify an alternative method for calculating royalties under section 111(d). *Cablevision Company* v. *Motion Picture Association of America, Inc.*, 641 F.Supp. 1154 (D.D.C. 1986). On August 25, 1986, the Office issued an interim regulation (51 FR 30214) establishing

new reporting and recordkeeping requirements for cable systems pending the appeal to the Court of Appeals for the District of Columbia Circuit, and any necessary rulemaking. The Copyright Office considered the views of the public concerning the interim regulation and, making two minor changes to the regulation, issued it in final form on December 17, 1986 (51 FR 45110).

On January 5, 1988, the Court of Appeals for the District of Columbia Circuit reversed the district court's holding with respect to the validity of the Copyright Office's April 2, 1984 "gross receipts" regulation. The Court held that "the Copyright Office has the authority to issue regulations interpreting the statutory language at issue and . . . its interpretation was a reasonable one." Based on these holdings, the Court determined that "the district court erred in declining to defer to the Copyright Office's regulation as to what revenues make up 'gross receipts.'" *Cablevision Systems Development Company* v. *Motion Picture Association of America, Inc.*, No. 86–5552, slip. op. at 4 (D.C. Cir. Jan. 5, 1988).

The Copyright Office is publishing this policy decision to notify the public as to how the Office intends to implement the D.C. Circuit's decision. The Office provides guidance to cable systems and the public in three areas: (1) Cable systems' calculation of "gross receipts" for accounting period 1987–2 (regarding secondary transmissions made during the period from July 1, 1987 through December 31, 1987); (2) certain cable systems' recalculation of "gross receipts" and payment to the Copyright Office of any amounts underpaid for accounting periods prior to 1987–2; and (3) clarification of the Copyright Office's interpretation of the gross receipts regulation as it applies to "discounts" and "tie-in" arrangements.

2. Calculation of Royalties for 1987–2

The D.C. Circuit reversed the district court's holding in the *Cablevision* litigation and affirmed the validity of the Copyright Office definition of "gross receipts" at 37 CFR 201.17(b)(1) as a reasonable interpretation of the Copyright Act of 1976. The Office therefore considers that regulation to be effective as a binding interpretation of the Act for cable systems calculating gross receipts for accounting period 1987–2 (and for prior accounting periods, as discussed below). The Office did not revoke the gross receipts regulation pending the appeal and informed cable systems that the Office believes the regulation represented the correct interpretation of the Act. Accordingly, cable systems should calculate gross receipts pursuant to the regulation and the directions on the Statement of Account forms issued by the Copyright Office. *Cable Systems should disregard Space P (Declaration of Gross Receipts) on Statement of Account Forms SA1–2 and SA3* already mailed to them.

The office considers 37 CFR 201.17(k), the transitional regulation issued on December 17, 1986 in light of the district court's decision, to be inapplicable to section 111 filings made after the issuance of the D.C. Circuit's reversal decision. The regulation was issued to ensure that cable systems that refused to follow the Office's gross receipts regulation because of the district court's decision in *Cablevision* would keep adequate accounting records so that, at the conclusion of the appellate process and any necessary rulemaking, those cable systems would have the tools to recalculate royalties owed for the affected accounting periods (beginning with the 1986–1 period) pursuant to a valid regulation. The D.C. Circuit affirmed that the April 2, 1984, regulation is valid, so the need for the declaration and recordkeeping requirements no longer exists for systems filing for accounting period 1987–2 and thereafter. Henceforth, cable systems will not be in compliance with the requirements of the cable compulsory license if they calculate royalties based upon their own definition of "gross receipts" and fail to comply with 37 CFR 201.17(b)(1). The Office is not revoking 37 CFR 201.17(k) at this time, however, and those cable systems that allocated gross receipts should retain the records of their methods and calculations for the five years set forth in the transitional regulation, unless the Office later issues a notice that the records are no longer needed.

3. Recalculation of Royalties for 1987–1, 1986–2, 1986–1, or Previous Accounting Periods

The D.C. Circuit's decision has eliminated the confusion created by the district court's invalidation of the Copyright Office's definition of "gross receipts" and the subsequent absence of any approved system for the calculation of gross receipts. The Office, therefore, intends to begin the administrative steps leading to collection of any underpayments of royalties caused by a cable system's calculation of gross receipts by an unapproved method.

The Copyright Office is in the process of preparing a brief form to be used by cable systems for amending statements filed in accounting periods 1986–1, 1986–2, and 1987–1. The Office will attempt to mail these forms to every cable system that indicated on a declaration of gross receipts statement filed pursuant to 37 CFR 201.17(k) that the system did not calculate gross receipts pursuant to the Copyright Office's definition at 37 CFR 201.17(b)(1) for a particular accounting period. The Office will provide filing instructions and deadlines for the filing of this form at a later date.

The Copyright Office is aware that some cable systems chose to disregard the Copyright Office regulation and to calculate gross receipts based upon their own theories of allocation, even before the district court issued its *Cablevision* decision. Any cable system that underpaid cable compulsory license royalties for any accounting period due to its application of an interpretation of "gross receipts" that differs from the Copyright Office definition should now file an amended statement of account for every relevant accounting period and submit the amount of royalties underpaid to the Copyright Office.

4. Clarification of the "Gross Receipts" Regulation as It Applies to "Tie-in" Arrangements and "Discounts"

The D.C. Circuit concluded that the Copyright Office's "gross receipts" regulation is reasonable "as applied to calculations involving any tier viewed in isolation." Slip. op. at 30. The Court, however, found unripe for judicial review an ancilliary dispute presented through hypotheticals in the case. That dispute concerned letter responses made by the General Counsel of the Copyright Office to hypothetical questions posed by NCTA regarding the Office's interpretation of the "gross receipts" regulation as it applies to marketing practices styled "discounts" and "tie-ins." Id. With the exception of discounts associated with premium pay cable services, the Office believes the hypotheticals are abstract in nature and do not reflect actual marketing practices of cable systems. Nevertheless, at this time the Copyright Office clarifies its interpretation of the regulation in these instances to give guidance to any cable systems that may decide to offer service packages like those described in the hypotheticals.

The "discount" hypotheticals set forth by NCTA in the *Cablevision* litigation involve a package of tiers sold by a cable system to subscribers for a discounted price—that is, the total price for a package of tiers of cable service is a lesser amount than the sum of the prices of each individual tier. For example, if a cable system offers to subscribers a package of three tiers of cable service for $20, while each tier is individually priced at $8, there is a $4 discount for the package.

The gross receipts problem arises because not all the tiers in a particular package of service may contain broadcast signals. For example, a system may offer tier A, consisting of all broadcast signals, for $10, tier B, consisting of both broadcast and nonbroadcast signals, for $4, and tier C, consisting of all nonbroadcast signals, for $9, and also offer a discount package of all three tiers for $22. The DC Circuit suggests in dicta that in these circumstances, the cable system should report $14 of the $22 received from a subscriber to the discounted package as gross receipts because "it would be possible to buy all the broadcast signals, A and B, alone for $14." The Copyright Office agrees that, so long as all of the broadcast signals offered in a discounted package of tiers of cable service are included on one or more of the individual tiers of service comprising the discounted package, and subscribers may actually elect to purchase those individual tiers separate from the tier or tiers in the package containing only nonbroadcast service, then "gross receipts" from subscribers to the discounted package shall be the lesser amount of (1) the sum of the amounts individually charged for every tier in the package that contains one or more broadcast signals, or (2) the price of the discounted package.

The "tie-in" hypotheticals set forth by NCTA in the *Cablevision* litigation involve marketing arrangements whereby a subscriber can purchase one tier only after another has first been purchased. For purposes of the calculation of gross receipts, "tie-in" arrangements necessarily call into question whether origination services are offered "in combination with secondary transmission service for a single fee" so as to require all amounts for the services "tied in" to be included in gross receipts under 37 CFR 201.17(b)(1).

Two kinds of "tie-in" arrangements are relevant for a clarification of the "gross receipts" regulation. Under one kind of "tie-in" (Situation A), a subscriber must purchase a tier of service containing broadcast signals in order to purchase a tier of nonbroadcast service. Under the other (Situation B), a subscriber must purchase a tier of nonbroadcast service in order to purchase a tier containing broadcast signals. In applying the Copyright Office definition of "gross receipts" to Situation A, it is clear that a subscriber may purchase the tier of service containing broadcast signals for a separate fee, and the optional purchase of nonbroadcast service does not interfere with the market valuation of the tier including broadcast signals. The Copyright Office does not suggest, and has never suggested that fees for separately-priced pay cable service should be included in gross receipts just because pay cable can be purchased only by those who subscribe to a tier of service that contains broadcast signals.

However, the Copyright Office is concerned about Situation B, and the regulations require reporting of the gross receipts from both tiers in the reverse kind of "tie-in" arrangement where subscriber receipt of a tier containing broadcast signals is tied to a required purchase of a tier containing only nonbroadcast signals. In this case it is clear that the tier with broadcast signals is not separately priced in the marketplace because consumers do not have a choice of buying the tier with broadcast signals alone for a single fee. By using a Situation B "tie-in" arrangement rather than offering broadcast and nonbroadcast signals on a single tier for one price, or offering each on separate tiers totally independently, a cable system could easily manipulate downward its "gross receipts," if the regulation did not require the total receipts from both tiers to be reported as gross receipts. For example, the system could offer subscribers tier X, consisting of broadcast signals WTBS, WGN and WOR for $1 so long as they purchase tier Z, consisting of nonbroadcast signals (e.g. ESPN and CNN) for $10. For each subscriber to the tied $11 service, the system would assert the right to report $1 gross receipts rather than the $11 that would be reported if the broadcast and nonbroadcast signals were offered together on a single tier, or the amount somewhere in between $1 and $11 that would reflect the market price for a totally independent tier of broadcast signals.

The DC Circuit in dicta noted that, generally, "if a subscriber can buy a given tier without purchasing any others, its nominal price will be at least as great as its value; if the subscriber must purchase another tier to receive the one in question, the latter's price may be understated." Slip. op. at 32. Based upon this observation, the Court suggested that in Situation B type "tie-in" arrangements, where subscriber receipt of a tier including broadcast signals is contingent upon purchase of a tier of nonbroadcast signals, subscriber revenues from both tiers of service should be reported as gross receipts for purposes of calculating cable copyright royalties. Id. That is the position on "tie-in" arrangements taken by the Copyright Office as early as July of 1985 in a letter ruling to an attorney representing a cable operator, and the Office confirms that position at this time.

Ralph Oman,
Register of Copyrights.

Approved by:
William Welsh,
Acting Librarian of Congress.

[FR Doc. 88–1765 Filed 1–27–88; 8:45 am]
BILLING CODE 1410–08–M

POSTAL SERVICE

39 CFR Part 228

Miscellaneous Organizational Changes; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct an error in the revised functional statement of the Transportation Management Service Centers (TMSCs) of the Mail Processing Department in the field, which, along with a number of other functional statements, was published in the

Federal Register on December 11, 1987 [52 FR 46998].

EFFECTIVE DATE: December 11, 1987.

FOR FURTHER INFORMATION CONTACT: Richard W. Peterson, (202) 268–4183.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–28514, in the issue of Friday, December 11, 1987, the Postal Service published a final rule revising the functional statements of the various Headquarters and field groups, divisions and offices to reflect a general reorganization and realignment of functions. The document says in new § 228.3(a) that TMSC managers report to the General Manager, "Transportation Administration and Procurement Division," at Headquarters. The name of the Division is incorrect; it should have read "TMSC Administration and Special Project Division."

For the above reason, the Postal Service hereby corrects FR Doc. 87–28514, beginning on page 46998 in the issue of Friday December 11, 1987, as follows:

PART 228—[AMENDED]

On page 47001, right hand column, in paragraph (a) of § 228.3, strike out the words "Transportation Administration and Procurement Division" and insert "TMSC Administration and Special Projects Division" in lieu thereof is.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–1772 Filed 1–27–88; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–17; RM–5561]

Radio Broadcasting Services; Searcy, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by KWCK, Inc., this document substitutes Channel 260C2 for Channel 257A at Searcy, Arkansas, and modifies the Class A license of Station KSER(FM) accordingly, thereby providing the community with its first wide coverage area FM service. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–17, adopted December 24, 1987, and released January 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, by substituting Channel 260C2 for Channel 257A at Searcy.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1754 Filed 1–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–391; RM–5797]

Radio Broadcasting Services; Fowler, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Bilmar Communications, Inc., this document substitutes Channel 244B1 for Channel 244A at Fowler, California, and modifies the Class A license of Station KEZL–FM , thereby providing that community with its first wide coverage area FM service. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–391, adopted December 24, 1987, and released January 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The compete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, by substituting Channel 244B1 for Channel 244A at Fowler.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1756 Filed 1–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–180; RM–5723]

Radio Broadcasting Services; Loveland, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C2 for Channel 272A at Loveland, CO, and modifies the Class A license of Station KLOV–FM to specify operation on the higher powered channel, in response to a petition filed by Aspen Leaf Broadcasting Corp., d/b/a/ KLOV MA & FM. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–180, adopted December 22, 1987, and released January 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado, by revising the entry for Loveland, from Channel 272A to 273C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1755 Filed 1–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–256; RM–5783]

Radio Broadcasting Services; Kill Devil Hills, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Joseph A. Booth, allocates Channel 281C1 to Kill Devil Hills, North Carolina, as the community's first local FM service. Channel 281C1 can be allocated to Kill Devil Hills in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective March 7, 1988. The window period for filing applications will open on March 8, 1988, and close on April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–256, adopted December 21, 1987, and released January 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by adding the following entry, Kill Devil Hills, Channel 281C1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–1753 Filed 1–27–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73, 74 and 76

Oversight of the Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR, Parts 73, 74 and 76. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for clarity and ease of understanding.

EFFECTIVE DATE: February 25, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order modifications are made to update, delete, clarify or correct regulations in Title 47, Code of Federal Regulations. Adopted December 9, 1987; released January 20, 1988.

Oversight of the Radio and TV Broadcast Rules; Order

Adopted: December 9, 1987
Released: January 20, 1988.

By the Chief, Mass Media Bureau.

1. In this *Order*, The Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In its ongoing effort to relax or remove unneeded, restrictive regulations, the Commission, in MM Docket 84–751, adopted changes in § 73.58(b). *Report and Order* Mass Media Docket 84–751, 49 FR 49848, December 24, 1984. The modification was designed to remove greatly detailed information concerning types of equipment, installation and the care and handling of meters required to measure radio frequency current at the base of each antenna element. In addition to removing this "how to" text, the rule amendment excised the requirement that the ammeter should "be permanently installed in the antenna circuit * * *".

The simplified text of the revised rule has led some licensees to presume that the amendment removed the option of using "a suitable jack and plug arrangement * * * to permit the removal of the meter from the antenna circuit so as to protect it from damage by lightning". While the extant, revised rule is silent on "jack and plug" use, it was not meant to preclude such use.

In order to fully clarify paragraph (b), additional text is added (much as it read before) to clearly approve of such "jack and plug" procedures. (See appendix rule item 2).

(b) Parts 73 and 74 of the FCC Rules set forth regulations in other Parts of 47 CFR which apply to broadcast, experimental, auxiliary, special broadcast and other program distribution services. In Part 73, this listing of applicable regulations is found in § 73.1010, Cross reference to rules in other parts. In Part 74, it is given in § 74.5, bearing the same section title. In

the past few years, rulemaking proceedings have wrought many amendments to 47 CFR which removed text referring to many section numbers and titles and the use of designations such as Volumes I, II and III of the rules. These two §§ 73.1010 and 74.5 are revised herein to delete or correct, as appropriate, these errors. (See appendix rule items 3 and 8).

(c) Any applicant for renewal of license who has had a petition to deny approval of the application filed against it may file an opposition to that petition within 30 days after the petition is filed. (*See* § 73.3584(b)). The petitioner may, in turn, file a reply to the opposition within 20 days after the opposition is due or within 20 days after the opposition is filed, whichever is longer.

A portion of § 73.3584(b) was amended in 1983 (*Report and Order*, General Docket 81–768, 48 FR 27182, June 13, 1983). In the revision, the alternative proviso to file the reply "within 20 days after the opposition is due" was inadvertently dropped, leaving the proviso standing nonsensically alone stating only "within 20 days after opposition is filed, whichever is longer." The dropped alternative proviso is returned to the rule herein. (See rule appendix item 4).

(d) When our rules were conformed with the public law which extended renewal periods to 5 and 7 years, respectively, for TV and radio stations (Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 357), one reference to the old triennial renewal period went unchanged. It is found in § 73.3615, Ownership reports, in paragraph (d). The rule directs "Licensees owning more than one non-commercial educational * * * station to file only one Ownership Report at *3 year intervals*" (Emphasis added). This aberration is corrected herein by correctly requiring such reporting at 5 or 7 year intervals. (See appendix rule item 5).

(e) Commission policy pertaining to certification of financial qualifications by new station applicants was released via Public Notice on May 7, 1987. (52 FR 17333, May 7, 1987). This new policy is herein listed in 47 CFR Part 73 as § 73.4099, Financial qualifications, Certification of. Concurrently, the title is added to the alphabetical index of Part 73. (See appendix rule items 6 and 7).

(f) Section 76.611 sets forth the basic signal leakage performance criteria for Cable TV systems. Several formulas, along with descriptive text are set forth in paragraph (a)(1) of this rule. In two of the formulas, the Greek letter phi (0) is used as an equation symbol, but in the descriptive text accompanying the formulas, the symbol theta (0) is shown. This corrected to read 0 (phi) herein. (See appendix rule item 9).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective 30 days after the date of the publication in the Federal Register.

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

Attachment: Appendix.

Appendix

List of Subjects in 47 CFR Parts 73, 74 and 76

Radio broadcasting.

Rules Changes

47 CFR is amended to read as follows:

PARTS 73, 74 AND 76—[AMENDED]

1. The authority citation for Parts 73, 74 and 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.58 is amended by revising paragraph (b) to read as follows:

§ 73.58 Indicating instruments.

* * * * *

(b) A thermocouple type ammeter or other device capable of providing an indication of radio frequency current, meeting the requirements of § 73.1215, shall be installed at the base of each antenna element. A suitable jack and plug arrangement may be used to permit removal of the meter from the antenna circuit thereby protecting it from damage by lighting.

* * * * *

3. Section 73.1010 is revised to read as follows:

§ 73.1010 Cross reference to rules in other parts.

Certain rules applicable to broadcast services, some of which are also applicable to other services, are set forth in the following Parts of the FCC Rules and Regulations.

(a) Part 1, "Practice and Procedure."

(1) Subpart A, "General Rules of Practice and Procedure". (§§ 1.1 to 1.120).

(2) Subpart B, "Hearing Proceedings". (§§ 1.201 to 1.364)

(3) Subpart C, "Rulemaking Proceedings". (§§ 1.399 to 1.430).

(4) Subpart G, "Schedule of Statutory Charges and Procedures for Payment". (§§ 1.1101 to 1.1116).

(5) Subpart H, "Ex Parte Communications". (§§1.1200 to 1.1216).

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969". (§§ 1.1301 to 1.1319).

(b) Part 2, "Frequency Allocations and Radio Treaty Matters, General Rules and Regulations", including Subparts A, "Terminology"; B, "Allocation, Assignments and Use of Radio Frequencies"; C, "Emissions"; D, "Call Signs and Other Forms of Identifying Radio Transmissions"; and J, "Equipment Authorization Procedures".

(c) Part 13, "Commercial Radio Operators".

(d) Part 17, "Construction, Marking and Lighting of Antenna Structures".

(e) Part 74, "Experimental, Auxiliary and Special Broadcast and Other Program Distributional Services" including:

(1) Subpart A, "Experimental Broadcast Stations";

(2) Subpart D, "Remote Pickup Broadcast Stations";

(3) Subpart E, "Aural Broadcast Auxiliary Stations";

(4) Subpart F, "Television Broadcast Auxiliary Stations";

(5) Subpart G, "Low Power TV, TV Translator and TV Booster Stations";

(6) Subpart H, "Low Power Auxiliary Stations";

(7) Subpart I, "Instructional TV Fixed Service"; and

(8) Subpart L, "FM Broadcast Translator Stations and FM Broadcast Booster Stations".

4. Section 73.3584 is amended by revising paragraph (b) to read as follows:

§ 73.3584 Petitions to deny.

* * * * *

(b) Except in the case of applications for new low power TV or TV translator stations, or for major changes in the existing facilities of such stations, the applicant may file an opposition to any Petition to Deny, and the Petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after opposition is due or within 20 days after the opposition is filed, whichever is longer. The failure to file an opposition or a reply will not necessarily be construed as an admission of fact or argument contained in a pleading.

* * * * *

5. Section 73.3615 is amended by revising paragraph (d) to read as follows:

§ 73.3615 Ownership reports

* * * * *

(d) Each licensee of a noncommercial educational AM, FM or TV broadcast station shall file an Ownership Report or FCC Form 323–E at the time the application for renewal of station license is required to be filed. Licensees owning more than one noncommercial educational AM, FM or TV broadcast station need file only one Ownership Report at 5 year intervals for TV stations and 7 year intervals for AM and FM stations. Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

* * * * *

6. New § 73.4099 is added to 47 CFR Part 73 to read as follows: § 73.4099 Financial qualifications, certification of.

See Public Notice, FCC 87–97, adopted March 19, 1987. 52 FR 17333, May 7, 1987.

INDEX, PART 73—[AMENDED]

7. The alphabetical index of 47 CFR Part 73 is amended by *adding* the following index entries:

(Following "Carrier Frequency measurements"..... 73.1540)
Certification of financial qualifications.....73.4099(*).
(Following "Financial qualifications"
AM and FM.....73.4100(*)
TV.....73.4100(*))
Financial qualifications, Certification of.....73.4099(*)

8. Section 74.5 is revised to read as follows:

§ 74.5 Cross reference to rules in other parts.

Certain rules applicable to Experimental, Auxiliary, Special Broadcast and other Program Distribution services, some of which are also applicable to other services, are set forth in the following Parts of the FCC Rules and Regulations:

(a) Part 1, "Practice and procedure".

(1) Subpart A, "General Rules of Practice and Procedure". (§§ 1.1 to 1.120).

(2) Subpart B, "Hearing Proceedings". (§§ 1.120 to 1.364).

(3) Subpart C, "Rulemaking Proceedings". (§§ 1.399 to 1.430).

(4) Subpart G, "Schedule of Statutory Charges and Procedures for Payment". (§§ 1.1101 to 1.1120).

(5) Subpart H, "Ex Parte Presentations". (§§ 1.1200 to 1.1216).

(6) Subpart I, "Procedures Implementing the National Environmental Policy Act of 1969". (§§ 1.1301 to 1.1319).

(b) Part 2, "Frequency Allocations and Radio Treaty Matters, General Rules and Regulations", including Subparts A, "Terminology"; B, "Allocation, Assignments and Use of Radio Frequencies"; C, "Emissions"; D, "Call Signs and Other Forms of Identifying Radio Transmissions"; and J, "Equipment Authorization Proceedings".

(c) Part 13, "Commercial Radio Operators".

(d) Part 17, "Construction, Marking and Lighting of Antenna Structures".

(e) Part 73, "Radio Broadcast Services".

9. Section 76.611 is amended by revising the second paragraph of the descriptive text following the formulas in paragraph (a)(1) to read as follows:

§ 76.611 Cable television basic signal leakage performance criteria.

(a) * * *

(1) * * *

Formulas * * *

η * * *

0 is the fraction of the system cable length actually examined for leakage sources and is equal to the strand miles of plant tested divided by the total strand miles in the plant;

* * * * *

[FR Doc. 88–1718 Filed 1–27–88; 8:45 am]
BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1988-3]

Rulemaking Petition; Ted Haley Congressional Committee

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition; notice of availability.

SUMMARY: On November 30, 1987, the Commission received a Petition for Rulemaking from the Ted Haley Congressional Committee. The petition suggests the addition of a new § 110.1(g)(3) to establish a rebuttable presumption that post-election contributions are "for the purpose of influencing" a federal election. The Commission's current regulations, and long-standing policy, treat all such donations as contributions that are covered by the Act's prohibitions and limitations.

DATE: Comments must be received on or before February 29, 1988.

ADDRESS: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

Rulemaking Petition: Notice of Availability

The petitioner is urging the Commission to add a new subsection to its regulations at 11 CFR 110.1. Section 110.1 implements the Federal Election Campaign Act's limitations on contributions by persons to Federal candidates and political committees. See 2 U.S.C. 441a(a). The petition suggests the addition of a new § 110.1(g)(3) to establish a rebuttable presumption that post-election. See 2 U.S.C. 431(8). It should be noted that the proposed designation for this new subsection is based upon the 1977 version of section 110.1. That section was substantially revised in 1987. See 52 F.R. 11187 (April 8, 1987); 52 F.R. 760 (Jan. 9, 1987).

Under the language proposed by the petition, a contributor could demonstrate that his or her post-election contribution to a candidate was not for the purpose of influencing that candidate's election and, thus, should not be subject to limit. The Commission's current regulations, and long-standing policy, treat all such donations as contributions that are covered by the Act's prohibitions and limitations. See 11 CFR 110.1.

As a basis for its petition, the Committee cites to the United States District Court's opinion in *Federal Election Commission* v. *Ted Haley Congressional Committee*, 654 F. Supp. 1120 (W.D. Wa. 1987). This decision is currently on appeal to the Ninth Circuit Court of Appeals. *FEC* v. *Ted Haley Congressional Committee*, No. 87-3867 (filed April 24, 1987).

Copies of the Petition for Rulemaking are available for public inspection and copying at the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, between the hours of 9:00 am and 5:00 pm. Statements in support of or in opposition to the petition must be filed with the Commission by February 29, 1988.

Thomas J. Josefiak,
Chairman, Federal Election Commission.

Dated: January 22, 1988.

[FR Doc. 88-1653 Filed 1-27-88; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-166-AD]

Airworthiness Directives: Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, that would require inspections for cracks of each main landing gear (MLG) wheel, and replacement, if necessary. This proposal is prompted by reports of cracks on inboard wheel halves. This condition, if not corrected, could lead to complete failure of the wheel.

DATES: Comments must be received no later than March 14, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-166-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-166-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist or develop on Aerospatiale Model ATR-42 series airplanes. Fatigue cracks have been identified in the inboard wheel halves of the MLG. This condition, if not corrected, could lead to complete failure of the wheel.

Aerospatiale has issued Service Bulletin ATR42-32-0006, Revision 2, dated August 14 1987, which describes inspections for cracks in the inboard wheel halves of the MLG, and replacement, if necessary. The DGAC issued Consigne de Navigabilité 87-091-006(B) on July 15, 1987, to require inspection and replacement in accordance with the service bulletin. The ATR-42 service bulletin references instructions in Loral Service Bulletin No. ATR42-32-40-1, Revision 2. The FAA has reviewed the Loral Systems Group Service Bulletin ATR42-32-40-1, Revision 2, dated June 23, 1987, and considers the inspections described to be adequate; however, the FAA has determined that, after a cracked spoke is detected, only one additional landing may be made with one cracked spoke on one wheel half before replacement is required.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require visual and non-destructive inspections of inboard wheel assembly, and replacement, if necessary, in accordance with the previously mentioned service bulletins.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,040.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($280). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category. Compliance required within 7 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the wheel, due to cracked spokes, accomplish the following:

A. With the airplane jacked, perform a visual inspection of the inboard wheel halves for cracks, in accordance with Loral Systems Group Service Bulletin ATR42-32-40-1, Revision 2, dated June 23, 1987. Repeat the inspection at intervals not to exceed 7 days. If a crack is detected, only one additional landing may be made after the detection of a crack before the cracked inboard wheel half must be replaced.

B. At each tire change, perform an eddy current inspection or other nondestructive test of the inboard wheel halves, in accordance with Loral Systems Group Service Bulletin ATR42-32-40-1, Revision 2, dated June 23, 1987. Replace any cracked inboard wheel half before further flight.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 12, 1988.

Wayne J. Barlow,
Director, Northwest Mountain Region.

[FR Doc. 88-1682 Filed 1-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-148-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which would require certain manual and/or electrical tests; inspections and repair, if necessary; interim manual operating procedures; and modifications to the lower lobe forward and aft cargo doors. This proposal is prompted by a lower lobe forward cargo door, with damaged lock sectors, that partially opened in flight. This condition, if not corrected, could lead to the opening of a lower lobe cargo door in flight, which could result in rapid depressurization of the airplane.

DATE: Comments must be received no later than March 14, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-148-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-148-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

An operator of a Boeing Model 747 airplane reported that the airplane would not pressurize correctly at 20,000 feet with both outflow valves closed. Inspection, after landing, revealed that the lower edge of the lower lobe forward cargo door was open 1.0 to 1.5 inches. The master latch lock handle was stowed in the locked position and the pressure relief doors were closed. There were no related door warning signals observed in the cockpit during the flight. The door had been closed manually prior to departure. Further investigation revealed some damage to all eight lock sectors with one lock sector broken.

Presently, there are three possible lock sector arrangements for the lower lobe cargo doors: The original lock sector configuration; lock sector elements which may have been modified by adding aluminum lock sector plates in accordance with Boeing Service Bulletin 747-52-2105 or in production, line numbers 286 through 326; or the present arrangement in which the original lock sector elements are relocated, without aluminum lock sector plates, to provide increased lock/latch engagement.

Testing by the manufacturer and several operators revealed that, in some instances, it is possible to electrically or manually open the latches with the lock sectors in the locked position. Cargo doors that couldl be inadvertently unlatched could subsequently open in flight.

The FAA has reviewed and approved Boeing Alert Service Bulletins 747-52A2206, Revision 3, and 747-52A2209, both dated August 27, 1987, which describe procedures for testing, interim door operation procedures, and modifiction of the lower lobe forward and aft cargo doors to prevent cargo doors from opening in flight.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require manual and/or electrical door operating tests, interim door operating procedures for those doors with the original locking system configuration, and modifications to the door locking mechanism, in accordance with the two service bulletins previously mentioned.

It is estimated that 156 airplanes of U.S. registry would be affected by this AD, that it would take approximately 52 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $324,480.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletins 747-52A2206, Revision 3, and 747-52A2209, both dated August 27, 1987, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure that inadvertent opening of the lower lobe cargo doors will not occur in flight, accomplish the following:

A. For those airplanes, specified in Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987:

1. Within 30 days after the effective date of this AD for those airplanes without aluminum lock sector plates installed, and within 90 days after the effective date of this AD for those airplanes with aluminum lock sector plates installed, perform as applicable, the mechanical and electrical latch lock system tests on the lower lobe forward and aft cargo doors in accordance with paragraphs III.A. and III.B. of the service bulletin, or later FAA-approved revisions. Airplanes with doors that do not pass either test must be repaired prior to further flight, in accordance with FAA-approved procedures. The electrical test in accordance with paragraph III.B. of the service bulletin must be repeated at intervals not to exceed one year until terminating action in accordance with paragraph A.3., below, is accomplished.

2. Within 30 days after the effective date of this AD, for those lower lobe cargo doors without aluminum lock sector plates installed:

a. Visually inspect for broken, bent or otherwise damaged lock sectors which could affect the integrity of the door locking mechanism and repair, if necessary, prior to further flight, in accordance with FAA-approved procedures.

b. Change the FAA-approved maintenance program to provide special procedures for manual door operation. Those procedures must include the following requirements:

(1) The procedures must be accomplished or witnessed by qualified personnel in accordance with the operator's FAA-approved maintenance program.

(2) Just prior to pulling the cargo loading ramp away from the door, the master latch lock handle must be recyled; the lock handle and pressure relief doors must open fully when the lock handle release trigger is pressed; and the pressure relief doors must close fully when the lock handle is fully stowed.

(3) Compliance with these procedures must be documented in accordance with the operator's FAA-approved maintenance program.

c. The special procedures specified in paragraph A.2.b., above, for manual door operation, must be continued and performed prior to each flight until electrical restoration and operation are resumed and reinspection of the lock sectors has been accomplished in accordance with paragraph A.2.a., above.

3. Within 18 months after the effective date of this AD, for those airplanes without aluminum lock sector plates installed, and within 24 months for those airplanes with aluminum lock sector plates installed on the forward and/or aft lower lobe cargo door locking mechanism, modify the doors in accordance with paragraphs III.H. through III.O. of Boeing Alert Service Bulletin 747-52A2206, Revision 3, dated August 27, 1987, or later FAA-approved revisions. Completion of this modification constitutes terminating action for this AD and the special door operating procedures required by paragraph A.2.b., above, may be deleted from operator's maintenance program.

B. For those airplanes, specified in Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987:

1. Within 90 days after the effective date of this AD, perform the electrical latch lock system test on the lower lobe forward and aft cargo doors in accordance with paragraph III.A. of Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987, or later FAA-approved revisions. Airplanes with doors that do not pass the above test must be repaired, prior to further flight, in accordance with FAA-approved procedures. The above test must be repeated at intervals not to exceed one year, until terminating action in accordance with paragraph B.2., below, is accomplished.

2. Within 24 months after the effective date of this AD, modify the lower lobe forward and aft cargo doors in accordance with paragraphs III.E. through III.L. of Boeing Alert Service Bulletin 747-52A2209, dated August 27, 1987, or later FAA-approved revisions. Completion of this modification constitutes terminating action for this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 12, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1684, Filed 1-27-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASO-21]

Proposed Designation of Transition Area, Nashville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Nashville, Georgia, transition area to accommodate instrument flight rule (IFR) operations at the Berrien County Airport. This action will lower the base of controlled airspace from 1200' to 700' above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations.

DATES: Comments must be received on or before: February 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-21, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASO–21 to designate the Nashville, Georgia, transition area." This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Berrien County Airport. If a proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) Nashville, Georgia (New). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Nashville, Georgia (New)

That airspace extending upward from 700' above the surface within a 6-mile radius of the Berrien County Airport (Lat. 31°12'45" N, Long. 83°13'40" W.).

Issued in East Point, Georgia, on January 6, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88–1677 Filed 1–27–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–23]

Proposed Amendment to Control Zone, Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hayden, Colorado, control zone. The action is necessary to provide controlled airspace to encompass a new instrument approach procedure. This would ensure segregation of aircraft operating in instrument flight rules conditions and other aircraft operating in visual flight rules conditions.

DATES: Comments must be received on or before March 25, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System, Management Branch, ANM–530, Federal Aviation Administration, Docket No. 87–ANM–23, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 87–ANM–23, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone (206) 431–2536.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ANM–23". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after closing data for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to contain a new approach procedure at Hayden, Colorado.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§71.171 [Amended]

2. Section 71.171 is amended as follows:

Hayden, Colorado, [Amended]

Change the period to a semicolon at the end of the first sentence and add, "* * * and within 3.5 miles each side of the Hayden VOR 118° radial extending from the 5 mile radius zone to 18.5 miles southeast of the VOR.

Issued in Seattle, Washington, on January 15, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–1678 Filed 1–27–88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 71283–7283]

Export Control Policy Forum on Technical Data Export Controls; Change in Time and Location

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Correction.

SUMMARY: On January 7, 1988, the Bureau of Export Administration published a Notice of a Forum on Technical Data Controls (53 FR 418) to solicit industry comment and involve industry in the implementation of export control programs. Due to the unexpected number of responses to that notice, the time and location have been changed.

DATE: February 11, 1988, from 8:30 a.m. to 4:00 p.m. (with a break for lunch). As previously announced, registration for the Forum will start at 8:00 a.m.

ADDRESS: The Forum will be held in Washington, DC at the Commerce Department's Herbert C. Hoover Building, 14th Street and Pennsylvania Avenue, NW., Main Auditorium. Attendees should enter the Hoover Building at the entrance on 14th Street, between Pennsylvania Avenue and Constitution Avenue.

FOR FURTHER INFORMATION CONTACT: Kenneth Cutshaw, Office of the Deputy Assistant Secretary for Export Administration, Room 3888, U.S. Department of Commerce, P.O. Box 273, Washington, DC (Telephone: (202) 377–5711).

SUPPLEMENTARY INFORMATION: Other information on the Forum, including the technical data issues to be discussed, is contained in the Supplementary Information section of the January 7 notice.

Dated: January 25, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–1786 Filed 1–27–88; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 861-0143]

Medical Staff of Doctors' Hospital of Prince George's County; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the medical staff of a hospital in Prince George's County, Maryland from engaging in concerted, coercive conduct that would prevent a health maintenance organization or others from offering health care services.

DATE: Comments must be received on or before March 28, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-3115, M. Elizabeth Gee, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Doctors, Medical staffs, Medical facilities, Trade practices.

Agreement Containing Consent Order to Cease and Desist

In the matter of Medical Staff of Doctors' Hospital of Prince George's County, an unincorporated association.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Medical Staff of Doctors' Hospital of Prince George's County, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated.

It is hereby agreed by and between proposed respondent and its duly authorized attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent, Medical Staff of Doctors' Hospital of Prince George's County ("Medical Staff"), an unincorporated association organized and existing under the laws of the State of Maryland, has its principal place of business at Doctors' Hospital of Prince George's County, 8118 Goodluck Road, Lanham, Maryland 20706.

2. Proposed respondent admits all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent, except to the extent described in Paragraph Two, that the facts as alleged in the draft complaint are true or that the law has been violated as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "Medical Staff" means the respondent Medical Staff of Doctors' Hospital of Prince George's County, its officers, agents, representatives, employees, committees, task forces, and its successors or assigns.

B. "Corrective action" means action taken pursuant to and in conformance with the Medical Staff's by-laws against any person with clinical privileges at Doctors' Hospital of Prince George's County who fails to provide evidence of malpractice insurance coverage or whose professional conduct or activities are detrimental to patient safety or to the delivery of quality patient care or are unreasonably disruptive to the operation of Doctors' Hospital of Prince George's County.

C. "Integrated joint venture" means a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

II

It is ordered, that the Medical Staff, directly, indirectly or through any device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from organizing, facilitating, or acting in furtherance of any agreement or combination, either express or implied, among any physicians, to refuse, or threaten to refuse, to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by any health maintenance organization, hospital or other health care facility.

III

A. It is provided, that this order shall not be construed to prohibit the Medical Staff or its members from engaging, pursuant to the Medical Staff's by-laws, in credentialling, corrective action, utilization review, quality assurance, peer review, or hospital policy-making at Doctors' Hospital of Prince George's County, where such conduct by the Medical Staff neither constitutes nor is of any agreement, combination, or conspiracy the purpose, effect or likely effect or which is to impede unreasonably the development or operation of any health maintenance organization, hospital or other health care facility.

B. It is further provided, that this order shall not be construed to prohibit the Medical Staff from facilitating the formation of an integrated joint venture that may refuse to deal with any person or entity as long as the physicians participating in the joint venture remain free to deal with any third-party payer other than through the joint venture.

IV

A. It is further ordered that within thirty (30) days after service of this order, the Medical Staff shall mail a copy of this order and the accompanying complaint to the Executive Director of Doctors' Hospital of Prince George's County, to the President of the George Washington University Health Plan, and to each of the Medical staff's members.

B. It is further ordered that the Medical Staff shall, within sixty (60) days after service of this order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the Medical Staff has complied and is complying with this order.

C. It is further ordered that the Medical Staff shall promptly notify the Commission of any change in the Medical Staff's business address or of any proposed change in its organization that may affect compliance obligations arising out of this order.

Medical Staff of Doctors' Hospital of Prince George's County Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Medical Staff of Doctors' Hospital of Prince George's County ("Medical Staff" or "proposed respondent") located in Lanham, Maryland. The agreement with the Medical Staff would settle charges by the Federal Trade Commission that the Medical Staff injured consumers and competition by conspiring to impede the entry of the George Washington University Health Plan ("Health Plan") into Prince George's County, Maryland in order to protect its members from competition, in violation of Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that the Medical Staff and its members engaged in a conspiracy to prevent, impede or limit the operations of the Health Plan for the purpose of protecting the Medical Staff's members from competition with the Health Plan.

The complaint alleges that in furtherance of this combination or conspiracy, representatives of the Medical Staff coerced and pressured American Medical International ("AMI"), the owner of both the Health Plan and Doctor's Hospital of Prince George's County ("Hospital"), not to open its planned Health Plan facility in Prince George's County. In particular, the complaint alleges that the Medical Staff threatened, first, that it would act collectively to prevent the opening of the facility and, second, if AMI nevertheless opened the facility, the Medical Staff then would act collectively to force the Hospital to close.

The Complaint alleges that the effects of the conspiracy have been to restrain trade unreasonably in Prince George's County and to deprive consumers of the benefits of competition in the following ways, among others: (1) Competition was restrained between physicians and the Health Plan, and between the Health Plan and other prepaid health plans in Prince George's County; (2) the Health plan's patients and other consumers were deprived of the benefits of competition, including certian benefits offered by the planned Health Plan facility; and (3) the Health Plan was restricted in is ability to serve consumers and compete in the provision of health care services.

The Proposed Consent Order

Paragraph I of the proposed order defines certain terms used in the order. Paragraph II, the central provision of the order, prohibits proposed respondent from engaging in concerted, coercive conduct that has the purpose or effect of preventing or restricting any HMO or

other health care facility from offering health care services.

Paragraph III contains two provisos which permit conduct that the order otherwise prohibits. The first allows the Medical Staff or its members to engage in customary medical staff activities, such as credentialling and peer review, as long as such conduct is not part of an agreement that has the purpose or effect of unreasonably impeding the operation of a health care facility.

The second proviso allows the Medical Staff to facilitate the formation of an "integrated joint venture" that refuses to deal with any person or entity, as long as the physicians participating in the joint venture remain free to deal with any third-party payer other than through the joint venture. The term "integrated joint venture" is defined by the order to mean a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

Part IV requires proposed respondent to (1) mail a copy of the order to the Executive Director of Doctors' Hospital, to the President of the Health Plan, and to each of the Medical Staff's members; (2) file an initial compliance report, and additional reports thereafter at the written request of the Commission; and (3) notify the Commission of any proposed change in its organization that may affect its compliance obligations under the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

Emily H. Rock,

Secretary.

[FR Doc. 88-1734 Filed 1-27-88; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 851-0002]

Medical Staff of Memorial Medical Center; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the medical staff of a Savannah, Ga. medical center from denying or restricting or recommending denial or restriction of hospital privileges for any nurse-midwife, unless the staff has a reasonable basis for believing that such restriction would serve the interest of the hospital in providing health care services. Respondent would also be prohibited from refusing to deal with or coercing the hospital or any person, organization or institution if the purpose or effect is to restrict the practice of nurse-midwifery generally or of any nurse-midwife.

DATE: Comments must be received on or before March 28, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Davis or Harold Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, Ga. 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Medical staff, Nurse-midwife, Trade practices.

Agreement Containing Consent Order to Cease and Desist

In the matter of Medical Staff of Memorial Medical Center, an unincorporated association.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Medical Staff of Memorial Medical Center, and it now appearing that the Medical Staff of Memorial Medical Center, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between the Medical Staff of Memorial Medical Center, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized and exists under and by virtue of the laws of the State of Georgia, with its mailing address at 4700 Waters Avenue, Savannah, Georgia 31404. The corporate bylaws of Memorial Medical Center provide that the Medical Staff shall operate as an integral part of the hospital.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for purposes of this Order, the following definitions shall apply:

A. "The hospital" means Memorial Medical Center, Inc., its trustees, officers, representatives, agents, employees, successors and assigns.

B. "Respondent" means the respondent Medical Staff of Memorial Medical Center, its officers, committees, representatives, agents, employees, successors and assigns.

C. A "nurse-midwife" means a registered nurse who is authorized under Georgia state law to practice nurse-midwifery.

II

It is further ordered that respondent, directly or indirectly or through any device, in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Deciding or recommending to deny, limit or otherwise restrict hospital privileges for any nurse-midwife, without a reasonable basis for believing that the denial, limitation or restriction serves the interest of the hospital in providing for the efficient and competent delivery of health care services.

B. Refusing or threatening to refuse to deal with, or otherwise coercing or attempting to coerce, the hospital or any other person or entity for the purpose or with the effect or likely effect of restricting the practice of nurse-midwifery or of any nurse-midwife.

III

It is further ordered that, for a period of five years from the date of service of this Order, whenever a nurse-midwife applies for privileges at the hospital, within thirty (30) days after respondent takes any action with respect to such application, respondent shall provide the hospital's governing body with a written statement of respondent's action and its reasons therefor.

IV

It is further ordered that respondent shall act upon any reapplication for privileges within four months after receiving a complete application from any nurse-midwife who, since January 1, 1982, has formally or informally sought privileges at the hospital.

V

It is further ordered that:

A. Within thirty (30) days after the date of service of this Order, respondent shall provide a copy of this Order and of the Complaint in this proceeding to each officer of respondent and to each member of respondent who was an officer or a member on the date of service of this Order and, for a period of five (5) years after that date, provide a copy of such Order and Complaint to each person who applies or requests an application to become a member of respondent, at the time that each such person applies or requests an application;

B. Within ninety (90) days after the date of service of this Order, respondent shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order; and

C. In addition to the report required by section V(B), respondent shall file, one (1) year after the date of service of this Order and at such other times as the Commission may by written notice require, a written report setting forth in detail the manner and form in which respondent has complied and is complying with this Order.

VI

It is further ordered that respondent shall notify the Commission of any proposed change in its organization that may affect compliance obligations arising out of this Order at least thirty (30) days prior to the effective date of any such proposed change.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Medical Staff of Memorial Medical Center in Savannah, Georgia.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the

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agreement or make final the agreement's proposed order.

The complaint in this matter alleges that the Medical Staff unreasonably restrained trade in the provision of health care services. The Medical Staff, acting through its Credentials Committee, acted as a combination of the physician members or in conspiracy with some of those members when it denied to a certified nurse-midwife the hospital privilege to "perform spontaneous vaginal deliveries with a physician in attendance." There was no reasonable justification for the actions of the Credentials Committee in denying that privilege to the nurse-midwife. The results of the denial were the following, among others: (1) Consumers have been limited in their ability to choose among alternative types of health care providers competing on the basis of price and service; (2) physicians have been restricted from offering the services of nurse-midwives to their patients; and (3) nurse-midwives have been restrained from offering their services to patients and may be deterred from entering into practice in the Savannah, Georgia, area.

The order prohibits the Medical Staff from denying or restricting or from recommending to deny or restrict hospital privileges for any nurse-midwife, unless the Staff has a reasonable basis for believing that the denial or restriction serves the interest of the hospital in providing efficient and competent delivery of health care services. The order also prohibits the Medical Staff from refusing to deal with or coercing, or threatening or attempting to refuse to deal with or coerce, the hospital or any other person, organization, or institution where the purpose or effect is the restriction of the practice of nurse-midwifery generally or of any one nurse-midwife.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-1735 Filed 1-27-88; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid and Related Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On December 11, 1987, the Commodity Futures Trading Commission ("Commission" or "CFTC") published in the **Federal Register** an advance notice of proposed rulemaking concerning the regulation of hybrid and related instruments. 52 FR 47022 (December 11, 1987). The advance notice seeks comment concerning a proposed regulatory framework that would clarify the status of such instruments and permit, by exemption and subject to certain conditions, specified hybrid option instruments to be traded other than on a designated contract market. The advance notice also seeks comment concerning a proposed no-action position with respect to certain commercial commodity contracts. The advance notice provided a 60-day period for public comment, which will end February 9, 1988.

The Commission has been requested by the Board of Trade of the City of Chicago ("CBT"), the Chicago Mercantile Exchange, the Committee on Futures Regulation of the Association of the Bar of the City of New York, the Futures Industry Association ("FIA") (on behalf of the FIA and is members individually), and members of the private bar to extend the comment period on the Commission's advance notice of proposed rulemaking by sixty days. Such additional time has been requested in order to allow the above entities and practitioners to receive and analyze the comments of their memberships or to obtain the views of their clients on the issues raised by the Commission's advance notice. In this regard, the CBT noted that in light of the substantial time and resources that the industry has devoted to addressing issues arising out of the October stock market decline, an additional period of time for analysis and comment is warranted. The Commission agrees that a sixty-day extension of the public comment period is appropriate to enhance the opportunity for interested parties to comment on the issues raised in the advance notice.

DATE: All comments on the Commission's advance notice of proposed rulemaking concerning the regulation of hybrid and related instruments (52 FR 47022 (December 11, 1987)) must be received by April 11, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Esq., Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-8955 or David R. Merrill, Esq., Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-8955.

Issued in Washington, DC on January 22, 1988.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-1731 Filed 1-27-88; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-607, RM-6040]

Radio Broadcasting Services; Jesup and Swainsboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Bohanan Associated Broadcasters, Inc., licensee of Station WZKS(FM), Jesup, Georgia, which seeks to substitute Channel 252C1 for Channel 252A at Jesup, and to modify its Class A license accordingly. To provide for Channel 252C1 at Jesup, petitioner has also requested that Channel 251A be substituted for Channel 252A at Swainsboro, Georgia, and the license for Station WGKS(FM) modified to specify the new Class A channel.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Beraff, Koener, Olender, & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-607, adopted December 22, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1689 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-606, RM-6023]

Radio Broadcasting Services; Rexburg, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Tri County Radio Corporation, licensee of Station KKQT(FM), Rexburg, Idaho, which seeks to substitute Channel 251C2 for Channel 252A at Rexburg, and to modify its Class A license accordingly.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: George M. Frese, P.E., 1011 Dennis Court, East Wenatchee, Washington 98801, (Consulting Engineer).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-606, adopted December 14, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1687 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-608, RM-6071]

Radio Broadcasting Services; Carlinsville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Jerrell A. Shepherd, proposing to allot Channel 240A to Carlinsville, Illinois, a first FM service.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrell A. Shepherd, P.O. Box 430, 300 West Reed, Moberly, Missouri 65270, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-608, adopted December 21, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1693 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-600, RM-6117]

Radio Broadcasting Services; White Rock, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Torjaq Radio, Inc. proposing the substitution of Channel 266C2 for Channel 266A at White Rock, New Mexico, and the modification of its construction permit for a new station there to specify the higher powered channel. Channel 266C2 can be allocated to White Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northeast to avoid a short-spacing to the pending applications for Channel 267A at Albuquerque, New Mexico. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 266C2 at White Rock.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, Esq., Arent Fox Kintner Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-600, adopted December 21, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1692 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-609, RM-6028]

Television Broadcasting Services; Grenada, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to allocate UHF Television 22+ to Grenada, Mississippi, in response to a petition filed by J. Boyd Ingram. The allotment could provide a first commercial television service to Grenada. There is a site restriction 20 kilometers (12.5 miles) northeast of the community. Although there is currently a freeze on the filing of petitions for TV channels within the top 30 markets, Grenada is not affected by the freeze.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:
J. Boyd Ingram, P.O. Box 73, Batesville, Mississippi 3806.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-609, adopted December 21, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1688 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-599, RM-6036]

Radio Broadcasting Services; Anna, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to substitute Channel 243C2 for Channel 224A at Anna, Illinois, and to modify the Class A license for Station WRA](FM), accordingly, in response to a petition filed by the licensee, Union Broadcasting, Inc.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Joseph McVeigh, Fisher, Wayland, Cooper and Leader, 1255—23rd Street NW., Suite 800, Washington, DC 20037, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-599, adopted December 14, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1690 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-597, RM-5875]

Radio Broadcasting Services; Haysville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Martin L. Hensley, proposing the allotment of FM Channel 277A to Haysville, Indiana, as that community's first FM broadcast service.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Martin L. Hensley, 1655 Oliver Street, Evansville, Indiana (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-597, adopted December 14, 1987, and released January 20, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1691 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-610, RM-5898]

Television Broadcasting Services; Bakersfield, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Gene Denari requesting the allotment of UHF television Channel 65 to Bakersfield, CA, as that community's fifth commercial television service.

As a result of a recent freeze the Commission has imposed on TV allotments, or applications therefor in specified metropolitican areas, such as Bakersfield, if Channel 65 is ultimately allotted to that community, as requested, the application process will be delayed until its availability is announced by the Commission.

DATES: Comments must be filed on or before March 14, 1988, and reply comments on or before March 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-610, adopted December 21, 1987 and released January 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1757 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 207, 210, 215 and 252

Department of Defense Federal Acquisition Regulation Supplement; Acquisition Streamlining

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to DFARS Parts 207, 210, 215 and 252 to implement proposed FAR coverage regarding acquisition streamlining which appeared in the Federal Register on Monday, January 4, 1988 (53 FR 161).

DATES: Comments on the proposed revisions to the DFARS should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below on or before March 4, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88-132D in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD (P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed amendments to DFARS 207.105, 210.001, 210.002(c), 210.004(a), 210.011, 215.608 and the provisions/clauses in Part 252 are added to implement the FAR and DoDD 5000.43, Acquisition Streamlining. Acquisition Streamlining is any effort related to ensuring that only necessary and cost-effective requirements are included in solicitations and contracts. It applies not only to the design, development, and production of new systems, but also to modifications of existing systems that involve the redesign of systems or subsystems.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the program primarily involves the engineering and design of systems and equipment which, ordinarily, is not accomplished by small businesses. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88-610D.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose any additional recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 207, 210, 215 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 207, 210, 215 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 207, 210, 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 207—ACQUISITION PLANNING

2. Section 207.105 is amended by adding paragraph (a)(8) to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(a) *Acquisition background and objectives.*

* * * * *

(8) *Acquisition streamlining.* Policy direction on acquisition streamlining is contained in DoDD 5000.43 and Part 210 of this regulation. See MIL-HDBK 248 for guidance on streamlining performance requirements, the technical package, and the contract strategy.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

3. Section 210.001 is amended by adding the following definitions:

210.001 Definitions.

* * * * *

"Systems," as used in this part, means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

"System acquisition," as used in this part, means the design, development and production of new systems or the modification to existing systems that involve redesign of the system or subsystems.

4. Section 210.002 is amended by adding paragraph (c) to read as follows:

210.002 Policy.

(c) All systems acquisition programs in the DoD are subject to acquisition streamlining policies and procedures as specified in DoD Directive 5000.43 and MIL-HDBK 248.

(1) Requirements that are not mandated by law or established DoD policy and that do not contribute to the operational effectiveness and suitability of the system, or effective management of its acquisition, operation, or support, shall be excluded.

(2) At the outset of development, system-level requirements shall be specified in terms of mission-performance, operational effectiveness, and operational suitability.

(3) During all acquisition phases, solicitations and contracts shall state management requirements in terms of results needed rather than "how-to-manage" procedures for achieving those results.

(4) The Government program manager shall have the authority and be held accountable for determining what requirements should be incorporated in the contract, subject to appropriate review by the established DoD and cognizant DoD component review procedures.

* * * * *

5. Section 210.004 is amended by adding paragraph (a)(3) to read as follows:

210.004 Selecting specifications or descriptions for use.

(a)(3) Statements of work subject to acquisition streamlining shall state whether individual specifications, standards, and related documents are provided for guidance only or as firm requirements. Where contract documents are specified for guidance only, the contractor shall be required to evaluate the documents in relation to the performance requirements and to recommend a tailored application of the documents for any subsequent phase of the system acquisition program. While there may be some mandatory design or performance requirements applied to a single phase or through the acquisition cycle, the citation of specifications, standards, and related documents shall:

(i) Specify results desired, rather than "how-to-design" or "how-to-manage."

(ii) Be tailored to the unique circumstances of individual acquisition programs.

(iii) Be for guidance only, except as provided in paragraph (a)(3)(v) of this section, if included for acquisition programs prior to entering the full-scale development phase of their life cycle.

(iv) Be for mandatory compliance only for directly cited and first tier referenced documents, except as provided in paragraph (a)(3)(v) of this section, for acquisition programs in the full-scale development phase of their life cycle. All other reference documents second tier and below shall be for guidance only.

(v) Be for mandatory compliance including all levels of referenced documents, if they (A) define the product baseline for acquisition programs in the production phase; (B) call for nondevelopmental items, such as standard parts or off-the-shelf items; or (C) cover design constraints which have been directed and have been tailored to the maximum extent practicable.

(4) If the contractor is to evaluate and recommend tailored application for a subsequent phase, the contract statement of work must delineate the effort required.

* * * * *

6. Section 210.011 is amended by adding paragraph (S-73) to read as follows:

210.011 Solicitation provisions and contract clauses.

* * * * *

(S-73) The contracting officer shall insert the clause, at 252.210-7005, Acquisition Streamlining, in solicitations and contracts for system acquisition programs (see 210.002).

PART 215—CONTRACTING BY NEGOTIATION

7. Section 215.608 is amended by adding paragraph (S-70) to read as follows:

215.608 Proposal evaluation.

* * * * *

(S-70) When a procurement is subject to acquisition streamlining, the contracting officer may want to include in the solicitation evaluation criteria on cost-performance trade-offs, application/tailoring recommendations, and cost-effectiveness of the proposed technical approach.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.210-7005 is added to read as follows:

252.210-7005 Acquisition streamlining.

As prescribed in 210.011 (S-73), insert the following clause:

Acquisition Streamlining (Jan 1988)

(a) It is the objective of the Government to acquire systems that meet stated performance requirements. The Government also desires to avoid over-specification and to ensure that cost-effective requirements are included in future acquisitions. The Contractor shall prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract. These recommendations shall be formatted and submitted as identified in the contract data requirements list (CDRL). However, recommendations may be accepted, modified or rejected by the Government.

(b) The Contractor shall insert this clause, including this paragraph (b), in all subcontracts in excess of one million dollars ($1 million).

(End of clause)

[FR Doc. 88-1730 Filed 1-27-88; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 514 and 515

[GSAR Notice No. 5-180]

Acquisition Regulation; Use of SF-30 for Additional Awards to an Offeror Under a Single Solicitation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which would add §§ 514.407-1 and 515.414 to prescribe the Standard Form 30, Amendment of Solicitation/Modification of Contract, for use in making additional awards to an offeror under a single solicitation and to provide the regulatory citation for such awards. The intended effect is to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before February 29, 1988.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4024, Washington, DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, 18th

VOL 53 ISS 18 JA 28 1988 UMI

and F Streets NW., Room 4026, Washington, DC 20405, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that the document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply clarifies a procedural matter relating to the form used when making additional contract awards to an offeror under one solicitation. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 514 and 515

Government procurement.

Dated: January 15, 1988.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 88–1715 Filed 1–27–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–14; Notice 1]

Evaluation Report on Occupant Protection in Frontal Interior Impact; Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 201, *Occupant Protection in Interior Impact.* This staff report evaluates safety effectiveness and benefits of improvements to instrument panel padding and structures in passenger cars and light trucks. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than April 27, 1988.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. [Docket hours, 8:00 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street SW., Washington, DC 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: Standard No. 201, *Occupant Protection in Interior Impact,* (49 CFR 571.201) regulates the performance of certain vehicle interior surfaces in a crash, specifying impact tests or requiring padding for instrument panels, seat backs, sun visors, armrests and glove compartment doors. Standard No. 201 took effect for passenger cars on January 1, 1968 and was extended to light trucks, vans and multipurpose passenger vehicles on September 1, 1981. During the 1960's and early 1970's, the manufacturers modified instrument panels of cars and light trucks: for example, they installed padding, reduced the rigidity of panel structures and extended the panel downward and toward the passenger.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of the effect of instrument panel design on the casualty risk of unrestrained right front passengers in frontal impacts. The objectives were to determine the effectiveness of technology selected by automobile manufacturers in preventing fatalities and injuries and to determine the benefits of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation is an analysis of the effectiveness and benefits of instrument panel improvements in passenger cars and light trucks.

The evaluation is based on statistical analyses of Fatal Accident Reporting System, National Crash Severity Study and National Accident Sampling System data and computer simulations of occupants impacting the instrument panel in frontal crashes.

The principal findings and conclusions of this study are the following:

- The instrument panel improvements of the 1965–75 era reduced fatality risk and serious injury risk by about 25 percent for unrestrained right front passengers of cars in frontal crashes. Little change occurred after the mid 1970's.
- The 1965–75 instrument panel improvements in passenger cars may be saving 400–700 lives per year in frontal crashes.
- A preliminary analysis of fatal accident data on light trucks indicates close to 25 percent reduction of fatality risk between model years 1968 and 1976, for unrestrained right front passengers in frontal crashes. Little change occurred after 1977. Many of the instrument panel improvements in light trucks were implemented in the 1968–76 period. The accident data on nonfatal injuries, however, do not show a similar reduction in those model years.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on January 25, 1988.

Adele Derby Spielberger,

Associate Administrator for Plans and Policy.

[FR Doc. 88–1726 Filed 1–27–88; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

NAME: National Commission on Dairy Policy.

TIME AND PLACE: 8:00 a.m. at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia.

STATUS: Open.

MATTERS TO BE CONSIDERED: On February 1, 2, and 3 the Commission will continue the process of drafting recommendations.

Written Statements May be Filed Before or After the Meeting With: Contact person named below.

CONTACT PERSON FOR MORE INFORMATION: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW, Suite 1100, Washington, D.C. 20005, (202) 638–6222.

Signed at Washington, D.C., this 26th day of January 1988.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 88–1696 Filed 1–27–88; 8:45 am]

BILLING CODE 3410–65–M

Forms Under Review by Office of Management and Budget

January 22, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Stabilization and Conservation Service
  Application for ASCS County Employment
  ASCS–675
  On occasion
  Individuals or households; 14,000 responses; 14,000 hours; not applicable under 3504(h)
  Donald Samuels (202) 447–7517

Revision

- Food and Nutrition Service
  Negative Quality Control Review Schedule, Statistical Summary of Sample Distribution, Status of Sample Selection and Completion
  FNS–245; –247 and –248
  Recordkeeping; On occasion; Monthly; Annually
  Individuals or households; State or local governments; 31,774 responses; 94,378 hours; not applicable under 3504(h)
  Nancy Theodore (703) 756–3468

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–1751 Filed 1–27–88; 8:45am]

BILLING CODE 3410–01–M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: An important provision of the Debt Collection Act of 1982 (Pub. L. No. 97–365) authorizes a Federal employee's salary to be offset to satisfy debts owed the Government. To implement a salary offset program which allows the Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) to offset salaries to collect delinquent debts owed to Agricultural Stabilization and Conservation Service/Commodity Credit Corporation (ASCS/CCC) by Federal employees, ASCS, USDA must participate in a computer match of its claims data base system of records against Federal agency payroll files. This match, which will be conducted in accordance with OMB's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982), will identify delinquent debtors who are current or former Federal employees and who are indebted to (ASCS/CCC). The match will be performed by the Defense Manpower Data Center (DMDC), Department of Defense (DOD) and during the matching process certain information concerning ASCS/CCC delinquent debtors will be disclosed to DMDC, DOD. Therefore, USDA hereby provides notice of intent to disclose to the Defense Manpower Data Center, Department of Defense, certain information on delinquent debts in the

USDA/ASCS–28 Privacy Act system of records, entitled "Claims Data Base (Automated) USDA/ASCS".

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on February 29, 1988, unless modified by a subsequent notice to incorporate comments received from the public. Any interested party may submit written comments about the revision to the system of records to the contact person listed below on or before February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Donaldson, Department of Agriculture, Agricultural Stabilization and Conservation Service (ASCS), Fiscal Division, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4048.

SUPPLEMENTARY INFORMATION: The ASCS, USDA, in coordination with other Federal agencies, plans to participate in a computer matching program of its claims data base system of records against Federal agency payroll files to identify delinquent debtors who are current or former Federal employees. This matching program is a procedure involving the use of a computer to compare a substantial number of records in a Federal system of records with records in one or more other systems of records.

The claims data base system contains data on delinquent debts of agricultural producers. The purpose of this system is to provide ASCS Fiscal Division with the necessary information to ensure collection of the overdue debts of agricultural producers. Maintenance and use of this system is intended to increase the efficiency of the Fiscal Division in collecting these overdue debts.

By enacting the Debt Collection Act, Congress acted to "increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts." An important provision of that Act authorizes a Federal employee's salary to be offset to satisfy debts owed the Government.

Since the ASCS claims data base system of records presently does not contain a routine use statement that meets OMB guidelines for computer match operations, a new routine use statement must be added in order to disclose information for the matches and to use information generated by the matches.

A "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record was collected. The purpose of this proposed routine use is to permit the release of limited information about delinquent debtors, such as name, social security number, delinquent amount, and claim number, for use in the proposed computer matching program. The ASCS, USDA will be the source agency and the Defense Manpower Center, Department of Defense, will be the matching agency under this computer matching program.

In accordance with requirements of the Debt Collection Act and USDA implementing regulations, the creditor agency, ASCS, USDA, will notify the debtor of his/her due process rights with respect to the debt and give the individual the opportunity to resolve the claim through repayment of the debt on an installment basis before salary offset is initiated.

The computer matches will be conducted in accordance with OMB's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982). The USDA has signed an agreement with the matching agency requiring that the information disclosed by USDA under this computer matching program be used only for making computer matches and compiling statistical data about the results of any match. The parties have also agreed to safeguard the information provided from unauthorized disclosure.

This proposed routine use is compatible with the USDA purpose of providing the ASCS Fiscal Division with information necessary to ensure efficient collection of overdue debts of agricultural producers. It also is compatible with the authority provided at section 5 of the Debt Collection Act.

The following routine use is being added to the system of records, USDA/ASCS–28 entitled "Claims Data Base (Automated) USDA/ASCS" last published at 51 FR 46897, December 24, 1986.

USDA/ASCS–28

System Name:

Claims Data Base (Automated), USDA/ASCS.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(8) Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by ASCS/CCC in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. No. 97–365) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

* * * * *

Signed at Washington, DC on January 22, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–1749 Filed 1–27–88; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

Calvary Run (CAT) RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Calvary Run CAT RC&D Measure, Mahoning County, Ohio.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, Acting State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Roger A. Hansen, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along approximately 675 feet of severely eroding creek bank on Calvary Run. Planned works of improvement include the installation of gabions along the streambank and the seeding of eroding areas to suitable grasses.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roger A. Hansen.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

Acting State Conservationist.

January 21, 1988.

[FR Doc. 88–1717 Filed 1–27–88; 8:45 am]

BILLING CODE 3410–16–M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament
Date: February 16–17, 1988
Time: 9:00 a.m.
Place: State Department Building, Washington, DC
Type of Meeting: Closed
Contact: Colonel William C. Golbitz, General Advisory Committee on Arms Control and Disarmament, Room 5927, Washington, DC 20451 (202) 647–5178

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time advise the President and Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review the status of START, strategic defenses, verification issues, conventional force reductions and stability, and non-nuclear force modernization, and, will hold executive sessions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88–1740 Filed 1–27–88; 8:45 am]

BILLING CODE 6820–32–M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m., on February 9, 1988, at the Camelot Hotel, Markham and Broadway, Little Rock, Arkansas. The purpose of the meeting is to conduct orientation for a newly rechartered Advisory Committee and conduct program planning for the balance of FY 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Alan Patteson, Jr., or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 21, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–1708 Filed 1–27–88; 8:45 am]

BILLING CODE 6335–01–M

Indiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m., on February 4, 1988, at the Hyatt Regency, 1 South Capitol, Indianapolis, Indiana. The purpose of the meeting is to conduct orientation for a newly rechartered Advisory Committee and conduct program planning for the balance of FY 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Professor William P. Harvey, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 21, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–1707 Filed 1–27–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1988 National Census Test
Form Number: Agency—S–575 thru S–580; OMB—NA
Type of Request: New collection

Burden: 16,200 respondents; 12,150 reporting hours
Needs and Uses: This survey is a component of the Questionnaire Design Project, and will be used to refine the question wording, layout, and instructions for census questionnaires which will be administered to the entire population.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: January 22, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–1785 Filed 1–27–88; 8:45 am]

BILLING CODE 3510–07–M

Export Administration

Export Privilege; Ensch S.A.R.L.

In the matter of: Ensch S.A.R.L., 12–14 d'Avranches Boulevard, L–1160 Luxembourg, G.D. Luxembourg, Respondent.

Order

The Office of Export Enforcement, United States Export Administration,[1] United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Ensch S.A.R.L. (Ensch), pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (1982 and Supp. III 1985)) and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368 through 399 (1987)) (the Regulations), based on allegations that Ensch violated §§ 387.3, 387.4 and 387.6 of the Regulations in that, between December 1983 and January 1986, Ensch reexported 10 shipments, and attempted reexport one shipment, of U.S.-origin computers and related peripheral equipment from Luxembourg to Bulgaria or Poland, knowing that the required reexport authorization had not been obtained;

The Department and Ensch having entered into a Consent Agreement whereby the parties have agreed that this matter will be settled: (1) By Ensch's paying to the Department a civil penalty in the amount of $80,000; and (2) by a denial to Ensch of all privileges of participating, directly or indirectly, in any transaction which requires a validated license or reexport authorization, for a period of two years following the date of entry of this order, and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered, first, Ensch shall pay to the Department a civil penalty in the amount of $80,000. Payment of $20,000 is suspended pursuant to § 388.16(c) of the Regulations for two years from the date of this order, provided Ensch has committed no violation of the Act, the Regulations, or this order. Payment of $60,000 of the civil penalty will be made to the Department, as follows: (1) Payment of $2,500 shall be made within 20 days of service of this Order; (2) payment of the balance, $57,500, shall be made in 23 equal installments of $2,500 each, due on or before the first of each month, beginning March 1, 1988 and continuing until January 1, 1990. Each payment shall be made in the manner specified in the attached instructions.

Second, Ensch is denied export privileges as follows:

A. For a period of two years following the date of entry of this Order, Ensch is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction which requires a validated export license or reexport authorization from the Department, except as provided in subparagraph C. herein.

B. Without limiting the generality of the foregoing paragraph, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated export license; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities to technical data, in whole or in part, exported or to be exported from the United States, and subject to the Regulations, and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations and which require a validated export license.

C. The last 18 months of the two-year denial period set forth in subparagraph A. above will be suspended pursuant to § 388.16(c) of the Regulations, six months after the date of entry of this order. The suspended portion of the denial period will be waived at the end of the two-year period, provided that Ensch has committed no further violation of the Act, the Regulations or this order.

D. Such denial of export privileges shall extend solely to Ensch, its licensees, assignees and successors.

Third, that the proposed Charging Letter, the Consent Agreement and this order shall be made available for public inspection.

This order is effective immediately.

Entered this 11th day of January, 1988.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 88–1701 Filed 1–27–88; 8:45 am]

BILLING CODE 3510–25–M

[1] On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended and a Departmental directive from Bruce Smart, Acting Secretary of Commerce, implementing those provisions, the Office of Export Enforcement was moved within the Department from the International Trade Administration of the United States Department of Commerce to the United States Export Administration of the United States Department of Commerce.

International Trade Administration

[C–469–702 and C–475–702]

Extension of the Deadline Dates for the Final Countervailing Duty, Determinations and Postponement of the Public Hearings; Certain, Granite Products from Spain and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are extending the deadline date for the final determinations to correspond to the date of the final determinations in the antidumping duty investigations of the same products pursuant to section 705(a)(1) of the Tariff Act of 1930 (the Act), as amended [19 USC 1671d(a)(1)]. These final determinations are now due not later than May 9, 1988. Pursuant to U.S. obligations under the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (the Subsidies Code), the Department will terminate the suspension of liquidation in the Spanish investigation 120 days after the date of publication of the preliminary countervailing duty determination. This action does not apply to the Italian investigation since the preliminary determination was negative and no provisional measures were imposed. In addition, we are postponing the hearing date originally scheduled for both investigations.

EFFECTIVE DATE: January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen (Spain), Mark Linscott (Italy) or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administratrion, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377–0167 (Nguyen), 377–8330 (Linscott) or 377–2438 (Tillman).

SUPPLEMENTARY INFORMATION: On December 18, 1987, we issued a preliminary affirmative countervailing duty determination in the Spanish investigation (52 FR 48737, December 24, 1987). On the same date, we issued a preliminary negative countervailing duty determination in the Italian investigation (52 FR 48732, December 24, 1987). On December 30, 1987, in accordance with section 705(a)(1) of the Act, as amended, we received a request from the petitioner, the Ad Hoc Granite Trade Group, to extend the deadline date for the final countervailing duty determinations to correspond to the date of the final determinations in the antidumping duty investigations of the same products from Spain and Italy. Accordingly, we are granting an extension of the deadline date for the final determinations in these investigations from March 2, 1988, to no later than May 9, 1988.

To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the Spanish investigation on April 22, 1988, which is 120 days from the date of publication of the preliminary determination. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters on or after April 22, 1988. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended from December 24, 1987, through April 21, 1988, until the conclusion of this investigation. This paragraph does not apply to the Italian investigation since the preliminary determination was negative and no provisional measures were imposed.

In addition, due to the extension of the final determinations in these investigations, we have postponed the date of the public hearings originally scheduled for February 2, 1988. They will be rescheduled if a request for a public hearing for each is received by the Department no later than February 5, 1988. Individuals who wish to participate in the hearings must submit a request to the Assistant Secretary for Import Administration, Room B–099, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the business proprietary version and five copies of the public version of the pre-hearing briefs must be submitted to the Assistant Secretary seven days prior to the hearing date. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determinations or, if hearings are held, within 10 days after the hearing transcripts are available.

This notice is published pursuant to section 705(a)(1) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

January 22, 1988.

[FR Doc. 88–1791 Filed 1–27–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–004]

Certain Stainless Steel Products From Brazil; Final Results of Changed Circumstances; Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review and termination of suspended countervailing duty investigation.

SUMMARY: On October 27, 1987, the Department of Commerce published the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on certain stainless steel products from Brazil and announced its tentative determination to terminate the suspended investigation. We determine that the domestic interested parties are no longer interested in maintaining the suspended investigation, and we are terminating the investigation. The review covers the period from January 1, 1987.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 41314) the preliminary results of its changed circumstances administrative review and its tentative determination to terminate the suspended

countervailing duty investigation on certain stainless steel products from Brazil (48 FR 4703, February 2, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian certain stainless steel products, limited to hot-rolled stainless steel bars, cold-formed stainless steel bars and stainless steel wire rod. Such merchandise is currently classifiable under items 606.9005, 606.9010, 607.2600, (if tempered, treated or partly manufactured, 607.4300) of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1987.

Final Results of Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in maintaining the suspension agreement on certain stainless steel products from Brazil and that the suspended investigation should be terminated on this basis effective January 1, 1987.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.41, 355.42.

Date: January 22, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-1792 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-806]

Certain Tool Steel Products From Brazil; Final Results of Changed Circumstances; Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On October 27, 1987, the Department of Commerce published the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on certain tool steel products from Brazil and announced its tentative determination to terminate the suspended investigation. We determine that the domestic interested parties are no longer interested in maintaining the suspended investigation, and we are terminating the investigation. The review covers the period from January 1, 1987.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 41315) the preliminary results of its changed circumstances administrative review and its tentative determination to terminate the suspended countervailing duty investigation on certain tool steel products from Brazil (48 FR 11731, March 212, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian certain tool steel products, limited to hot-finished tool steel, cold-finished tool steel, high speed tool steel, chipper knife tool steel and band saw steel bars and rods. Such merchandise is currently classifiable under items 606.9300, 606.9400, 606.9505, 606.9510, 606.9520, 606.9525, 606.9535, 606.9540, 607.2800, 607.3405, 607.3420, 607.4600, 607.5404, and 607.5420 of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1987.

Final Results of Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in maintaining the suspension agreement on certain tool steel products from Brazil and that the suspended investigation should be terminated on this basis effective January 1, 1987.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.41 and 355.42.

Dated: January 22, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-1793 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-DS-M

Automated Manufacturing Equipment Technical Advisory Committee; Open Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held February 10, 1988, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of TAC Committee Communications.
6. Discussion of CAD/CAM Software.
7. Discussion of Shop Floor Computers/Controllers.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. It is critical that this Committee meet on short notice to solicit comments from the public of the effect on U.S. industry of proposed changes to the Commodity Control involving the level of control of numerical control units. It is also important that the Committee discuss wide usage of personal computers and low level communications systems in the shops.

For further information or copies of the minutes, call Betty Ferrell at 202/377-4959.

Dated: January 22, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-1722 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-DT-M

Laser and Opto-Electronic Subcommittee, Electronic Instrumentation Technical Advisory Committee; Open Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held February 17 and 18, 1988, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC. The February 17 meeting will convene in Room B-841 at 9:30. The February 18 meeting will continue to its conclusion in Room B-841 of the Herbert C. Hoover Building.

The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of control applicable to lasers and related equipment and technology.

Agenda

1. Opening Remarks by the Chairman.
2. Public discussion on any matters related to activities of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

The subcommittee is also interested in proposals for revision of The People's Republic of China guidelines and G-COM regulations relating to CCL numbers 1522A lasers; 1556A optical devices; and 1548A photo devices.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee.

Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th Street and Constitution Avenue NW., Washington, DC 20230.

For further information or copies of the minutes contact Betty A. Ferrell, 202/377-2583.

Dated: January 22, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-1723 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Open Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held February 17, 1988, at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Computer Aided Design (CAD).
5. Discussion of Semiconductor/Electronic Instrumentation Proposal.
6. Discussion of Plan for Commodity Control List Review.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: January 22, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-1724 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a public hearing on the potential impact on penaeid shrimp and red drum resources and fisheries of the U.S. Army Corps of Engineers' proposal to widen and deepen the Houston and Galveston ship channels. The proposal is contained in the Corps' "Final Feasibility Report and Environmental Impact Statement" for the Galveston Bay Area navigation Study (GBANS).

DATES: The hearing will be held on February 24, 1988, from 7:00 p.m. to 11:00 p.m.

ADDRESSES: The hearing will be held at the University of Houston Clear Lake Auditorium, 2700 Bay Area Boulevard, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa FL 36609, (813) 228-2815.

Dated: January 25, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-1766 Filed 1-27-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

January 25, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 29, 1988. For further information contact Anne Novak, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established import restraint limits for Categories 341, 342/642, 347/348 and 638/639, produced or manufactured in Bangladesh. Any levels which are filled or have been filled as a result of missing charges will re-open February 1, 1988.

Background

CITA directives dated January 28, 1987 (52 FR 3327) and April 16, 1987 (52 FR 13114) established import restraint limits for certain cotton and man-made fiber textile products, including Categories 336, 341, 347/348 and 641, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

A subsequent CITA directive dated October 26, 1987 (52 FR 41751) established limits for cotton and man-made fiber textile products in Categories 338/339, 342/642 and 638/639, produced or manufactured in Bangladesh and exported during the periods which began, in the case of Categories 338/339, on June 1, 1987; in the case of Categories 342/642, on July 1, 1987; and, in the case of Categories 638/639, on September 1, 1987; and extend through January 31, 1988.

Under the terms of the Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, and at the request of the Government of the People's Republic of Bangladesh, the limits for Categories 342/642 and 347/348 are being increased by application of swing. The limits for Categories 336 and 641 are being reduced, respectively, to account for swing applied to Categories 342/642 and 347/348, and the limit for Category 641 is being further reduced to account for swing into Category 341. In addition, the limit for Categories 638/639 is being increased for swing and special shift from Categories 336/339.

Missing charges in the amounts of 26,935 dozen (Category 336), 14,790 dozen (Category 339), 28,262 dozen (Category 342), 44,352 dozen (Category 638), 80,724 dozen (Category 639) and 6,324 dozen (Category 642) are being charged to the current restraint limits for Categories 338/339, 342/642 and 638/639 for imports exported during the designated restraint periods.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Proposed Tariff Schedule of the United States Annotated (see **Federal Register** notice dated December 11, 1987 (52 FR 47745)).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

January 25, 1988

Committee For The Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of January 28, 1987 and April 16, 1987, concerning imports into the United States of cotton and man-made fiber textile products in Categories 336, 341, 347/348 and 641, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

This directive also amends, but does not cancel, the directive of October 26, 1987 concerning imports of cotton and man-made fiber textile products in Categories 338/339, 342/642 and 638/639, produced or manufactured in Bangladesh and exported during the periods which began, in the case of Categories 338/339, on June 1, 1987; in the case of Categories 342/642, on July 1, 1987; and, in the case of Categories 638/639, on September 1, 1987; and extend through January 31, 1988.

Effective on January 29, 1988, the directives of January 28, 1987, April 16, 1987 and October 26, 1987 are amended to adjust the previously established restraint limits for the following categories, under the terms of the bilateral agreement of February 19 and 24, 1986 [1]:

Category	Adjusted limits [1]
336	57,277 dozen.
338/339	260,084 dozen.
341	1,235,960 dozen.
342/642	122,430 dozen.
347/348	1,112,364 dozen.
638/639	376,620 dozen.
641	352,746 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1987 for Categories 336, 341, 347/348 and 641; May 31, 1987 for Categories 338/339; June 30, 1987 for Categories 342/642; and August 31, 1987 for Categories 638/639.

Also effective on January 29, 1988 you are directed to charge the following amounts to the current restraint limits established for Categories 338/339, 342/642 and 638/639. These charges are for goods imported during the period September 1, 1987 through November 1, 1987.

Category	Amount to be charged
336	26,935 dozen.
339	14,790 dozen.
342	28,262 dozen.
638	44,352 dozen.
639	80,724 dozen.
642	6,324 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1783 Filed 1–27–88; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Uruguay Effective on February 1, 1988

January 25, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

[1] The agreement provides, in part, that (1) specific limits may be adjusted during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption of wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which begins on February 1, 1988 and extends through January 31, 1989, in excess of the designated restraint limit.

Background

The Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay, and as translated to the new category system, establishes a specific limit for wool fabrics in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period beginning on February 1, 1988 and extending through January 31, 1989.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Proposed Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745 dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

January 25, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which begins on February 1, 1988 and extends through January 31, 1989, in excess of 2,142,210 square yards.

To the extent that trade which now falls in the foregoing category is within a category limit for the period February 1, 1987 through January 31, 1988, such trade, to the extent of any unfilled balances, shall be charged against the level of restraint established for such goods during that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, which provide, in part, that: (1) the specific limits may be adjusted for carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1784 Filed 1–27–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Amex Commodities Corporation Proposed Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed option contract.

SUMMARY: The Amex Commodities Corporation has applied for designation as a contract market in gold bullion warrants. The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be submitted by March 28, 1988.

ADDRESS: Written comments must be submitted to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 [Attention: Jean A. Webb, Secretary]. Telephone: [202] 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Amex Commodities Corporation in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letters dated October 21 and 22, 1987, the Amex Commodities Corporation ("ACC" or "Exchange") applied for designation as a contract market in gold bullion warrants ("gold warrants") pursuant to section 4c of the Commodity Exchange Act ("Act") and Commission Regulation 33.5, and for approval of Exchange Rules 1101 through 1111 and Rules 1113 through 1118 pursuant to section 5a(12) of the Act.[1]

[1] The Division of Trading and Markets ("Division") believes the ACC's proposed gold warrant contract is an option instrument fully subject to regulation under the Act as discussed in Part 4 of the Commission's Federal Register release concerning the regulation of hybrid and related instruments. 52 FR 47022, 47028 (December 11, 1987).

The proposed gold warrant contracts would be call options providing a holder with a choice of either purchasing a specified amount of physical gold at a fixed exercise price or receiving in cash the difference between a fixed exercise price and the value of gold at the time of exercise. Gold warrants which provide only for cash settlement upon exercise also may be issued for trading. Gold warrants would be issued by companies engaged in the production, fabrication or distribution of gold.

The unit of trading for gold warrants would be one troy ounce of gold, while the minimum delivery unit for warrants exercised for physical delivery would be 100 troy ounces, with further amounts to be delivered in multiples thereof. Any gold warrants exercised by a holder in excess of a multiple of 100 would be settled in cash. A gold warrant's cash settlement amount would be the difference between the warrant's exercise price and the value of gold at the time of exercise based on the afternoon gold fixing price of the London gold market (*i.e.*, the London p.m. gold fix price.)

A gold warrant's life would range in length from two to seven years. Under ACC's proposal any particular class of gold warrants [3] would not be exercisable for a minimum period of one year following the date of its issue, but must be exercisable during at least the last year prior to expiration. The Exchange has represented that in general a class of gold warrants must have a minimum of 250,000 troy ounces of gold in order to be approved for trading, unless ACC determines, subject to Commission approval, that a smaller-sized class is adequate for a liquid market to develop.

A company issuing gold warrants to be traded on the Exchange would do so, at least initially, in conjunction with a public debt offering as a means of raising capital or reducing borrowing costs in connection with the debt offering. Gold warrants may also be issued by a company as an independent transaction. To the extent required by applicable securities law the offering would be registered with the Securities and Exchange Commission.

[3] For the purposes of this notice of a class of gold warrants is defined as all such warrants issued by the same issuer and having the identical number of underlying troy ounces of gold bullion, exercise price, expiration date and all other terms.

Before a company could issue gold warrants for trading on ACC, it would have to meet certain requirements of the Exchange intended to provide assurances that the company is able to perform all the obligations of its gold warrants. First, in order for an issuer of gold warrants to be eligible to issue warrants for trading on the Exchange it must be a company which is in the business of mining, refining or trading gold or producing products of which gold is a significant component. Second, gold warrant issuers would be required to have their common stock listed, or be eligible for listing, on the American Stock Exchange or New York Stock Exchange, and be a reporting company under either Section 12(b) or 12(g) of the Securities Exchange Act of 1934. Additionally, gold warrant issuers would have to have either a shareholders' equity or a market capitalization of at least $100 million. Finally, if the issuer were a mining company it would be required to maintain and have certified periodically unencumbered proven gold reserves equal to at least 150% of the issuer's gold warrant commitments. If the issuer were not a mining company, it would be required either to maintain ownership of gold bullion equal to the issuer's warrant commitments, or provide a letter of credit in favor of its warrant agent equal to the greater of either (a) 120% of the excess of the London p.m. gold fix price over the exercise price of the issuer's applicable class of gold warrants multiplied by the class size or (b) 120% of the gold warrants' market value. These criteria must be satisfied, as judged by ACC, at the time a class of warrants is issued and maintained throughout the warrants' term.

ACC proposes to use a warrant agent in connection with each class of gold warrants, and to vest it with significant powers and responsibilities. The warrant agent generally would be a bank or trust company selected by an issuer and found acceptable by the Exchange. The warrant agent would act as an agent for an issuer's particular class of gold warrants pursuant to a warrant agency agreement entered into by the issuer and the warrant agent in compliance with the terms of the rules of ACC and the Intercommodity Clearing Corporation ("ICC"), ACC's clearing corporation. The warrant agent would keep the register of the relevant gold warrants in book entry form and record ownership, transfers, exercises and retirements of such gold warrants; it would receive reports from issuers regarding compliance with the requirements of the rules of the Exchange respecting eligibility of issuers of gold warrants; and, pursuant to the provisions of the warrant agency agreement, the warrant agent would be responsible in appropriate circumstances for pursuing legal remedies against issuers on behalf of holders of gold warrants.

II. Request for Comments

1. The clearing procedures proposed to be used by ACC for gold warrants are similar to the procedures used for clearing standard commodity option contracts; however, the ICC, the Exchange's clearing house, would not guarantee performance of the terms of each gold warrant. ACC proposes to require issuers of gold warrants to meet certain requirements intended to insure that issuers can perform their gold warrant obligations. As discussed above these would include a certain minimum level of capitalization, as well as a gold reserve or letter of credit requirement.

Are the requirements proposed by ACC sufficient to insure that issuers carry out their gold warrant obligations? Are there any additional safeguards which should be implemented to assure performance of warrants? Does the proposed role of the issuer present any particular problem for either the Commission or the Exchange in the enforcement of its respective rules and regulations?

2. The proposal would vest significant powers and responsibilities in the warrant agent in connection with each class of gold warrants traded on the ACC. The Exchange states that while a warrant agent is commonly appointed in connection with securities warrants offered by corporate issuers, there is to date to the Exchange's knowledge no party with a similar function in standard commodity options.

Are additional regulatory safeguards necessary to ensure that the warrant agent properly fulfills its responsibilities? Does the proposed role of the warrant agent present any particular problem for either the Commission or the Exchange in the enforcement of its respective rules and regulations?

3. ACC has represented that gold warrants may be issued by companies either in conjunction with public debt offerings or as independent transactions. Does either of these alternatives raise unique regulatory issues?

4. ACC proposes to require that all members and member organizations opening a commodity option account for a customer for the trading of gold warrants comply with the disclosure requirements established by Commission Regulation 33.7. Do the disclosure requirements of Regulation 33.7 adequately inform customers of the nature and risks of gold warrant trading? Should the absence of a clearing guarantee and any specific consequences thereof be disclosed to the customer?

5. Commission Regulation 1.17 establishes minimum financial requirements for futures commission merchants. The Commission anticipates that the proposed gold warrants would be treated like existing commodity options in computing net capital under Regulation 1.17. Please identify those instances, if any, in which different treatment might be appropriate.

6. Commission Regulations 1.20, 1.21, 1.22, and 1.24 set forth requirements for the segregation of customer funds. The Commission anticipates that the proposed gold warrants would be treated like existing commodity options for the purposes of the Commission's segregation requirements. Please identify those instances, if any, in which different treatment might be appropriate.

7. Part 190 of the Commission's regulations sets forth provisions governing the bankruptcy of commodity brokers. The Commission anticipates that the proposed gold warrants would be treated like existing commodity options under Part 190. Please identify those instances, if any, in which different treatment might be appropriate.

8. ACC has proposed position limits which restrict the position a person may hold or control in any class of gold warrants to the lesser of 100,000 troy ounces or one-third of the outstanding warrants in that class. The proposal also provides that the maximum amount which any person may hold or control in all classes combined shall not exceed 200,000 troy ounces. These limits would not apply to issuers or underwriters during the initial issuing or underwriting process. Additionally, if a person's ownership or control of a particular class of warrants exceeded one-third of that class because exercises lowered the number of total warrants outstanding, that person would not be required to reduce his level of warrant ownership. The Commission requests comment on this aspect of the rules.

9. Unlike typical commodity options and futures contracts where the potential open interest is unlimited, there would be a specific number of warrants in each class. Could this feature create any problems under the Act or the Commission's regulations? If so, please describe the problems, identify the relevant provisions of the Act or the Commission's regulations, and, to the extent possible, suggest possible solutions.

10. Under ACC's proposal, short sales of gold warrants could be made by borrowing and delivering warrants in satisfaction of a sale on the Exchange. The short seller would be required to maintain in his account a minimum margin as prescribed by ACC. The minimum margin level is intended to insure that short sellers will have the means to deliver the gold warrants to their lenders upon demand. Additionally, there could be no short sales of a particular class of gold warrants during the last seven days prior to its expiration. The Exchange has represented that it believes that short sales would encourage liquidity in the gold warrants market. Do the short sale provisions proposed by ACC raise any particular regulatory issues? Would a minimum margin level insure that sellers will be able to meet obligations to their lenders? In the event of a default what responsibilities should the ACC have with respect to performance by short sellers?

11. ACC contemplates that it may allow gold warrant issuers to participate to some degree in the trading of classes of their own gold warrants. The Exchange has stated that, if it decides to do so, it may propose several of the following provisions regarding such participation for Commission approval:

(a) Allowing gold warrant issuers to trade their own warrants for market making purposes, subject to a position limit of no more than 10% of the outstanding gold warrants in each class. By comparison, proposed ACC rules would establish a position limit for other persons of no more than 33⅓% of the outstanding gold warrants in any individual class;

(b) Allowing gold warrant issuers to include a redemption feature in their warrants so that issuers could buy a certain percentage of their own gold warrants on the Exchange and have them permanently removed from trading;

(c) Setting a limit on the number of shares which could be redeemed under (b) above. If so, the Exchange anticipates that it would allow further gold warrant redemptions by issuers over and above the limit only if they were part of a tender offer extended to all remaining gold warrant holders of the particular class of warrants involved. For example, ACC may propose that an issuer who wants to redeem more than 50% of a class of its gold warrants must make an offer to buy back the warrants at a set price from all of the class' remaining warrant holders; or

(d) Requiring that if a certain redemption level is reached under the tender offer procedure the Exchange would be allowed to delist the particular class of gold warrants. For example, if an issuer's tender offer was met with a redemption of two-thirds of the number of warrants issued in a particular class the Exchange could delist the warrant class and any remaining holders of those gold warrants would not be able to trade such warrants at ACC or elsewhere. Holders would continue, of course, to have the choice of either exercising the option or holding it until expiration.

Do any of these proposed features create particular regulatory problems under the Act or the Commission regulations? If so, detail such problems, identify the provisions of the Act or the Commission regulations implicated, and, to the extent possible, suggest possible solutions. In particular, identify what specific disclosures would be necessary regarding such provisions.

12. Some classes of gold warrants would be issued by companies in conjunction with public debt offerings. In order to establish a price basis for such instruments, ACC proposes to allow such classes of gold warrant issues to be traded on the Exchange prior to their actual issuance date, on a "when issued" basis. ACC anticipates

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the duration of such "when issued" trading would be no more than a few days. Are there any particular regulatory issues which arise in designating a contract which could trade in a "when issued" manner?

13. In designating ACC as a contract market in gold warrants, should the Commission assign any specific duties to the Exchange to monitor issuers' compliance with the gold warrant listing criteria?

14. Are there any specific trading rules that should apply to gold warrants as the result of their being issued by a single issuer?

The foregoing list of questions is not intended to be exclusive and commentors are encouraged to address such other matters as they deem appropriate. The Commission asks, however, that persons responding to any of the questions set forth above identify by number the particular matters upon which they are providing comments.

Any person interested in submitting written data or views on the application and the terms and conditions of the proposed contract, or with respect to other materials submitted by the ACC in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC on January 22, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-1732 Filed 1-27-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Advisory Committee Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in Washington, DC, on February 18–19, 1988.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on February 18–19, 1988 the subcommittee will discuss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1988.

[FR Doc. 88-1805 Filed 1-27-88; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under the Office of Management and Budget Review

Reason For This Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: Uniform Tender of Rates and/or Charges for Transportation Services; MT–HQ Form 43; 0702–0018.

Type of Request: Revision.

Annual Burden Hours: 3,800.

Annual Responses: 6,400.

Needs and Uses: The Military Traffic Management Command evaluates bids for transportation service and determines which carriers to utilize so that the Government pays the lowest rate for moving personal property.

Affected Public: Businesses or other for-profit, and small businesses or organizations.

Frequency: Semi-annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1988.

[FR Doc. 88-1806 Filed 1-27-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 18 and 19 February 1988

Time of Meetings: 0900–1630 hours daily

Place: The Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Subgroup for Focal Plane Array (FPA) will meet for briefings on service requirements that were not presented at the first meeting, analyses performed by the Institute for Defense Analysis (IDA) on Focal Plane Array producibility, and the statement of work for the Infa Red Focal Plane Array Initiative Request for Proposals (RFP) and contractor comments concerning it. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-1741 Filed 1-27-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Date of Meeting: 18–19 February 1988

Time of Meeting: 0800–1600 hours

Place: Pentagon, Washington, DC

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. The objective of this meeting will be to make a final review of the written and oral reports. This will include reviewing the complete document, organizing it in final format for printing, and making any necessary changes before going to a final product. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-1736 Filed 1-27-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS)

Dates of Meeting: 18–19 February 1988

Time: 0800–1700 hours each day

Place: Pentagon, Washington, DC

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet in the Pentagon for the purpose of gathering facts for the first phase of the study. The opening session will be devoted to the organization of the study team and the panel's succeeding fact-gathering and report-writing efforts. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-1738 Filed 1-27-87; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement Supplement (DEISS) for the Elk Creek Lake Project, Rogue River Basin, OR

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement Supplement (DEISS).

SUMMARY: Portland District, U.S. Army Corps of Engineers, is beginning preparation of Supplement No. 2 to the Environmental Impact Statement for Elk Creek Lake, Rogue River Basin, Oregon. The purpose of this action is to address and correct the deficiencies in the EIS and EIS Supplement No. 1 for Elk Creek Lake specified by the United States Court of Appeals for the Ninth Circuit in the decision in the case of Oregon Natural Resources Council V. Marsh.

Elk Creek Lake is a $119 million flood control project located on Elk Creek, a tributary of the Rogue River, approximately 30 miles northeast of Medford, Oregon. The project includes construction of a concrete dam across Elk Creek and relocation of roads and utilities. Real estate for the project was purchased in the 1970's and the relocation of roads and utilities has been accomplished. Construction of the dam began in February 1986, and a substantial portion of the dam structure has been completed. Elk Creek flows have been diverted through the dam.

Under the terms of an injunction order issued by the U.S. District Court in September 1987, construction of the dam has been halted at a height of 83 feet, a third of the planned height of 249 feet. Until the injunction is rescinded, the dam will remain at its existing height, and Elk Creek flows will pass unregulated through the outlet works. A spillway notch has been built into the dam to allow flood flows to pass safely over the structure.

The alternatives to be considered in this EISS are: (1) Completion of construction of the dam and operation of the project as planned; (2) removal of the existing structure; or (3) no action. The "no action" alternative assuems that the dam would not be completed as planned but that certain measures may need to be taken to stabilize and protect the existing structure in the interest of public safety.

The scoping process will formally commence in February 1988 with the issuance of a scoping letter. Federal, State and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternatives. The DEISS is scheduled for agency and public review in July 1989. The Final EISS is scheduled for publication in early 1990.

ADDRESS: Questions about the proposed action and DEISS can be answered by: David Kurkoski, telephone (503) 221–6094, U.S. Army Corps of Engineers, Portland District, Regulatory and Resources Branch, P.O. Box 2946, Portland, Oregon 97208–2946.

Dated: January 20, 1988.

Gary R. Lord,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87-1746 Filed 1-27-87; 8:45 am]

BILLING CODE 3710-AR-M

Multiple Reverse Siphons System, San Joaquin Delta, CA; Permit Application Number 9804

The Corps of Engineers, Sacramento District, will prepare an EIS/EIR for a regulatory permit to construct multiple reverse siphons in navigable waters of the U.S. The EIR portion of the document will be prepared by the State of California Water Resources Control Board, Division of Water Rights, as required by the California Environmental Quality Act. The project will involve flooding four large islands. The islands are located in the Sacramento-San Joaquin Delta, about 100 miles east of San Francisco.

AGENCY: Sacramento District, U.S. Army, Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to prepare EIS/EIR.

SUMMARY: Applicant for the Department of the Army permit intends to construct a siphon system in navigable waters of the U.S. The siphons will be used to flood four large islands in the Sacramento-San Joaquin Delta to create storage reservoirs. The islands to be flooded are below sea level, protected by levees, and are used to grow farm crops. Multiple siphons will be constructed to draw water from the delta and will flood the islands. The

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water will be returned to the delta by reversing flow in siphons during the summer months when river flows are low. The total storage capacity is about 380,000 a.f. and will have a surface area of about 19,500 acres.

The slope on the inside of the existing levee will be reshaped to 1:10 slope to create shallow areas for marsh and riparian growth. Club houses will be constructed on the levees and docks will be built on both sides of the levees. Duck hunting shelters and blinds will be constructed on various sites around the islands.

Alternatives: The following alternatives are being considered:

1. No project.

2. Reduced scope of project.

Other alternatives identified during the scoping process will be considered. The following significant issues will be discussed in the EIS/EIR:

1. Ecological resources.

2. Water quality.

3. Change in hydraulic characteristics of the Delta river and system.

4. Social and economic impacts, including loss of prime agricultural farm land.

5. Impacts on wildlife habitat and endangered species located in the area.

6. Impacts to existing and proposed state and Federal water projects.

7. Impacts on Flood control.

Other issues identified during the scoping will be discussed in the EIS/EIR. A public notice describing the project will be sent to all known interested parties requesting comments on the project and on the scope of the EIS/EIR. Scoping Process: A scoping meeting is scheduled to be held February 11, 1988, 9:30 a.m., at the Main Auditorium, State Resources Building, 9th and P Streets, Sacramento, California.

We estimate the draft EIS/EIR will be published by July 1988. Questions concerning the proposed actions and EIS/EIR should be directed to Tom Coe, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 551–2270, FTS 460–2270. Questions concerning the EIR should be directed to Jim Canaday, California Resources Control Board, Water Rights Division, 901 P Street, Sacramento, California 95814; telephone (916) 324–5648.

Wayne J. Scholl,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–1737 Filed 1–27–88; 8:45 am]

BILLING CODE 3710-EH-M

DEPARTMENT OF EDUCATION

Education Research Grant Program; Final Finding; Fiscal Years 1988 and 1989

AGENCY: Department of Education.

ACTION: Notice of final funding priority for fiscal years 1988 and 1989.

SUMMARY: The Secretary of Education (the Secretary) announces a final funding priority by reserving a portion of the total funds available for the Educational Research Grant Program (ERGP), for fiscal years 1988 and 1989, to support research projects led by teachers in public and private elementary and secondary schools.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this Final Funding priority call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: L. Ann Benjamin, U.S. Department of Education, Research Applications Division, Office of Educational Research and Improvement, 555 New Jersey Avenue NW. (Room 506–B—M/S 1508), Washington, DC 20208. Telephone: (202) 357–6187.

SUPPLEMENTARY INFORMATION: The purpose of the Educational Research Grant Program (ERGP) is to support scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

On October 2, 1987, the Secretary published a notice of proposed funding priority for fiscal years 1988 and 1989 in the **Federal Register** (52 FR 37078). Except for editorial changes, there are no differences between the notice of proposed funding priority and this final funding priority.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, three parties submitted comments on the proposed priority. An analysis of the comments follows.

Definition of Teacher-Led Research Project

Comments: One commenter suggested that the Secretary expand the definition of "teacher-led research project" to include projects led by teachers at postsecondary institutions. Another commenter recommended that the definition of "teacher-led research project" be modified to include projects conducted by regional teachers resource centers and other organizations in which teachers actively participate. A third commenters suggested that the definition include projects conducted by nonprofit agencies that provide teacher training and services to elementary and secondary school students.

Discussion: The purpose of this priority is to support research, conducted by classroom teachers, that will directly assist local school improvement efforts. The Secretary believes that the leader of a project under this prioity must be an elementary or secondary school classroom teacher in order to maximize the possibility of changes in educational practice as a result of the research.

However, this priority does not preclude collaboration between classroom teachers, postsecondary educators and other personnel or organizations in the educational system.

Changes: None.

Research Topics

Comments: A commenter suggested that the Secretary modify the list of research topics in the priority to include special education of the severely handicapped and the learning disabled.

Discussion: Special education is not specifically listed as a research topic, but it is also not precluded. For example, an applicant could research special education issues under the topics "teachers' roles and teaching functions" or "specific instructional processes and materials."

Changes: None.

Final Absolute Priority

Under this final priority, the Secretary supports only those applications which are for teacher-led research projects. Teacher-led research projects are those in which one or more classroom teachers serve as principal investigators for the project, although involvement of other personnel such as school administrators, supervisors of teachers, curriculum specialists, and staff developers may also be appropriate.

Under this absolute priority, each application must also be endorsed by appropriate education officials. An application for a teacher-led research project at a public school must include an endorsement from appropriate officials of the local educational agency (LEA). An application for a teacher-led research project at a private school must include an endorsement from the leadership of that school if the school is not a part of a larger local organization of private schools. If the application is for a teacher-led research project in a private school that is a member of a larger local organization of private schools, the endorsement must come from appropriate officials of the larger local organizations of schools. To satisfy the requirement for an endorsement, an application must contain assurances from the entity providing the endorsement that the proposed project addresses issues important to local educational improvement, that the appropriate education officials will provide the project participants with adequate time, facilities and support to conduct the project, and that the appropriate education officials will give the results of the project the fullest possible consideration in addressing related improvements.

Each grantee, in carrying out its teacher-led project, must address one or more of the following topics. Following each topic are examples, illustrative only, of specific study emphases that might be included under that topic.

1. Teachers' roles and teaching functions (e.g., instructional roles, roles as a professional educator, parent-teacher interactions in teaching).

2. Specific instructional processes and materials (e.g., effective teaching techniques, classroom management strategies, organizing learning groups).

3. Effective teaching of subject matter content (e.g., subject-specific approaches, interdisciplinary strategies, examining appropriateness of content).

4. Approaches to professional development of educational personnel (e.g., inservice education, induction of beginning teachers, school-based preservice initiatives).

5. Alternative patterns of school management and organization (e.g., administrator-teacher shared decisionmaking, differentiated staffing, career ladder programs).

6. Ways for schools to find, understand, and use research and practice-based knowledge more effectively in local improvement initiatives (e.g., development of local problem-solving capacity, diagnosing readiness for change, implementing and assessing research-based improvements).

7. More effective strategies to assess student, teacher or school indicators of excellence (e.g., student testing strategies, measurement of achievement of school-wide objectives, teacher performance assessment).

Applicable Regulations

(a) The Educational Research Grant Program Regulations, in 34 CFR Part 700, and (b) the Education Department General Administrative Regulations, in 34 CFR Parts 74, 75, 77 and 78.

(20 U.S.C. 1221e)

(Catalog of Federal Domestic Assistance Number 84.117K Educational Research Grant Program)

Dated: January 6, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88–1770 Filed 1–27–88; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.073A]

Applications for New Developer Demonstrator Awards Under the National Diffusion Network Program for Fiscal Year 1988

Purpose: Provides grants for the dissemination of exemplary education programs nationwide.

Deadline For Transmittal of Applications: April 1, 1988.

Deadline For Intergovernmental Review Comments: June 1, 1988.

Applications Available: February 16, 1988.

Available Funds: $1,619,000.

Estimated Range of Awards: $40,000 to $75,000.

Estimated Number of Awards: 29.

Project Period: Up to 48 months.

Applicable Regulations: (a) The final regulations for the National Diffusion Network, 34 CFR Parts 785 and 786, published in the **Federal Register** on August 14, 1987 (52 FR 30612), and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Absolute Priorities: Taking into account unmet national needs, the Secretary has selected absolute priorities for this competition from the list of priorities in § 786.3. Only applications for projects in these priority areas will be considered. The Secretary seeks applications for projects in the following priority areas:

1. English, including literature.
2. Science.
3. History, geography and civics.
4. Mathematics.
5. Reading; and adult literacy programs.
6. Written communications.
7. Health, including drug abuse prevention programs.
8. The humanities.
9. Programs that assist in improving school discipline and that foster an atmosphere conducive to learning.
10. Foreign languages.
11. Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.
12. Programs that improve teaching and the quality of instruction.
13. Educational leadership.
14. School-wide and district-wide improvement efforts.
15. Drop-out prevention programs and programs for at-risk youth.
16. Programs that foster parental involvement in schools.
17. Early childhood.
18. Gifted and talented students.

However, this listing of priorities does not bind the Department of Education to a specific number of projects in each priority, or to selecting projects for funding in each priority.

Competitive Preference: In accordance with § 786.3(e) and 34 CFR 75.105(c)(2)(ii), applications for projects that have had fewer than six years total funding under the National Diffusion Network will receive a competitive preference. The Secretary may select an application for a project that has had fewer than six years of funding under the National Diffusion Network over an application of comparable merit for a project that has received six or more years of funding under the National Diffusion Network.

For Applications or Information Contact: Mrs. Anne Barnes, U.S. Department of Education, 555 New Jersey Avenue NW., Room 508,

Washington, DC 20208. Telephone: (202) 357–6157.

Program Authority: 20 U.S.C. 3851.

Dated: January 20, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88–1767 Filed 1–27–88; 8:45am]

BILLING CODE 4000–01–M

[CFDA No. 84.073E]

Applications for New Dissemination Process Awards Under the National Diffusion Network Program for Fiscal Year 1988

Purpose: Provides grants for the dissemination of exemplary education programs nationwide.

Deadline for Transmittal of Applications: April 1, 1988.

Deadline for Intergovernmental Review Comments: June 1, 1988.

Applications Available: February 16, 1988.

Available Funds: $200,000.

Estimated Range of Awards: $50,000 to $100,000.

Estimated Number of Awards: Two.

Project Period: The Secretary expects to make these awards for a project period of up to 48 months.

Applicable Regulations: (a) The final regulations for the National Diffusion Network, 34 CFR Parts 785, 786.3 and 787, published in the **Federal Register** on August 14, 1987 (52 FR 30812), and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Absolute Priorities: Taking into account unmet national needs, the Secretary has selected absolute priorities for this competition from the list of priorities in § 786.3. Only applications for projects in these priority areas will be considered. The Secretary seeks applications for projects in the following priority areas:

1. Science.
2. History, geography and civics.
3. Mathematics.
4. Health, including drug abuse prevention programs.
5. The humanities.
6. Programs that assist in improving school discipline and foster an atmosphere conducive to learning.
7. Programs that improve teaching and the quality of instruction.
8. Drop-out prevention programs and programs for at-risk youth.

However, this listing of priorities does not bind the Department of Education to a specific number of projects in each priority, or to selecting Projects for funding in each priority.

For Applications or Information Contact: Mrs. Linda Jones, U.S. Department of Education, 555 New Jersey Avenue NW., Room 510, Washington, DC 20208. Telephone: (202) 357–6153.

Program Authority: 20 U.S.C. 3851.

Dated: January 20, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88–1766 Filed 1–27–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.170]

Applications for New Awards Under the Jacob K. Javits Fellows Program for Fiscal Year 1988

Purpose: Provide grants to eligible postsecondary students for graduate fellowships in the arts, humanities, and social sciences.

Deadline for Transmittal of Applications: March 7, 1988.

Applications Available: February 3, 1988.

Available Funds: Approximately $2,000,000 may be available for new fellowships in FY 1988 after funds for continuing fellowships have been allocated.

Estimated Range of Awards: Stipends are determined by the fellow financial need and can range from zero to $10,000 per academic year. Additionally, the institution attended by a fellow will receive a $6,000 cost of instruction payment, in lieu of tuition and fees.

Estimated Average Size of Awards: $15,000, including the cost of instruction payment.

Estimated Number of Awards: 135.

Project Period: 1 academic year (with possibility of continuation for a total of 48 months of support).

Priorities: The Fellowship Board has determined that eligible applicants for this competition will be limited to individuals with 20 or fewer graduate credit hours. Individuals completing their undergraduate degrees *are* eligible to apply.

Applicable Regulations: Regulations governing the Jacob K. Javits Fellows Program in 34 CFR Part 650. Amendments to these regulations were published in the **Federal Register** on August 6, 1987 (52 FR 29356).

For Applications or Information Contact: Dr. Allen P. Cissell, Director, U.S. Department of Education, 400 Maryland Avenue SW., ROB–3, Mail Stop 3327, Washington, DC 20202. Telephone: (202) 732–4415.

Program Authority: 20 U.S.C. 1134b–k.

Dated: January 20, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–1768 Filed 1–27–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and 41 CFR Part 101–6, Final Rule on Federal Advisory Committee Management, and following consultation with the Director, Committee Management Secretariat General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a 2-year period ending December 31, 1989.

The renewal of the National Petroleum Council has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Department of Energy Organization Act (Pub. L. 95–91), and the final rule.

Further information regarding this advisory committee may be obtained from Gloria Decker (202) 586–8990.

Issued in Washington, DC on January 22, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88–1726 Filed 1–27–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–51–NG]

Standard Gas Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Standard Gas Marketing Company (Standard) blanket authorization to import natural gas. The order issued in ERA Docket No. 87–51–NG authorizes Standard to import up to 50 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–76, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 22, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1727 Filed 1–27–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM79–44–001]

West Virginia Department of Energy; Order Granting Waiver

Issued: January 22, 1988.

On September 25, 1987, the West Virginia Department of Energy (West Virginia) petitioned for reconsideration of an order issued June 20, 1980,[1] in the above-captioned docket. That order denied an application by Consolidated Gas Supply Corporation, filed May 22, 1980, for rehearing of Order No. 78, issued April 22, 1980, Docket No. RM79–44.[2] West Virginia objects, as Consolidated did, to the definition of "natural gas produced from Devonian shale" in § 272.103(e) of the Commission's regulations,[3] promulgated in such order. Both object to the requirement that for gas to qualify as production from Devonian shale, the entire Devonian age stratigraphic interval encountered by the well bore must meet the standard prescribed by the provision. West Virginia states that this excludes certain production from Devonian shale which should qualify.

Preliminary Matters

Shale is a fine-grained rock with relatively low porosity which commonly contains natural gas. Great quantities of shale exist in only a few areas in the United States, and because of such quantities, shale potentially constitutes large sources of gas supply in those areas. However, shale produces gas very slowly because of low permeability, and because of this production from it is more costly than most other gas production. This is the basis of special provisions applicable to shale-produced gas in the Natural Gas Policy Act of 1978 (NGPA) and subsequent tax legislation. Shale production is usually accomplished by means of open hole completions, i.e., well bores with no casings in the shale intervals. This means that ordinarily the production interval is the entire Devonian interval penetrated by the well bore.

NGPA price ceilings for production of gas from Devonian shale qualifying under NGPA section 107(c)(4) were eliminated by NGPA section 121(b) on November 1, 1979.[4] However, there is a tax credit provided by section 231 of the Crude Oil Windfall Profit Tax Act of 1980,[5] as amended by section 611 of the Economic Recovery Tax Act of 1981.[6] The tax credit is applicable to production of fuel from nonconventional sources which includes, among other types of fuel, gas determined under NGPA section 503 to be produced from Devonian shale. The amount of the credit applicable to Devonian shale is $3.00 per barrel of oil equivalent (5.8 million Btu's) adjusted annually for inflation.

Although Devonian shale gas must qualify under NGPA section 107(c)(4) to be eligible for the credit, there is no credit available if section 107 is utilized for pricing purposes. In any year, therefore, a producer may elect either: (1) A deregulated price under section 107 without the tax credit, or (2) a price obtainable without reference to section 107 of the tax credit. Most Devonian shale gas wells also qualify under NGPA section 103, so that a producer, in most cases, can elect to price such production under section 103 and claim the tax credit.[7]

The credit is phased out as domestic oil prices increase above certain reference prices;[8] however, at current price levels, the full amount of the credit is available for shale production.

The actual value of the credits for 1987 and each subsequent year cannot be calculated until the Internal Revenue Service publishes the reference price and inflation adjustment factor in March following the year. However, it has been estimated by the Commission staff that the credit for qualified Devonian shale production in 1988 will be approximately $0.80 per MMBtu.

West Virginia's Arguments

West Virginia states that the geological conditions in West Virginia are broadly representative of conditions throughout the three state area of West Virginia, Kentucky, and Ohio where most of the nation's potential Devonian shale production is concentrated. It describes the Devonian interval generally as consisting of three layers, summarized as follows:

1. A top layer of rock consisting predominantly of coarse grained sands with relatively little interbedded shale. Standing alone, this layer could not approach qualifying as shale under the provision of the § 272.103(e) definition, which requires that at least 95 percent of

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[1] 11 FERC ¶ 61,296.

[2] 45 FR 28082 (Apr. 28, 1980); Stats & Regs. [Regulations Preambles 1977–1982] ¶ 30,147 (1980).

[3] 18 CFR 272.103(e) (1987). This provision reads as follows:

"Natural gas produced from Devonian shale" means natural gas produced from the fractures, micropores and bedding planes of shales deposited during the Paleozoic Devonian Period. "Shales deposited during the Paleozoic Devonian Period" means the gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater. The gamma ray index at any point is to be calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

[4] Specifically, section 121(b) eliminated price controls for such gas on the effective date of the incremental pricing rule required under section 201 of the NGPA. This rule was effective November 1, 1979.

[5] 94 Stat. 229 at 268–272 (April 2, 1980).

[6] 95 Stat. 172 at 339 (Aug. 13, 1981). Subsequent tax legislation has preserved the tax credit for the production of fuel from nonconventional sources. Section 231 of the Crude Oil Windfall Profit Tax Act of 1980, as amended, is codified at 26 U.S.C. 29 (1985).

[7] Most section 103 gas has been deregulated by NGPA section 121.

[8] The phase-out is now dependent on the price for domestic unregulated crude oil. For 1980, 1981, and 1982, however, the credit phase-out for Devonian shale production was based on the average wellhead price of high cost gas under section 107(c)(2), (c)(3), and (c)(4).

a well bore in the interval have a gamma ray index of 0.7 or greater.[9]

2. A middle layer of relatively pure shale with just a little sand or sandstone scattered through it in the form of stringers. Standing alone, this layer ordinarily would qualify as shale under the 95 percent—0.7 gamma ray provision of § 272.103(e).

3. A bottom layer of sandstone and other rock which is not shale.

West Virginia objects to the selection of the entire Devonian interval in the § 272.103(e) definition because it makes the eligibility of gas from a well depend on how much non-shale Devonian rock lies over the Devonian shale, i.e., if the thickness of the overlying rock is greater than 5 percent of the thickness of "the gross Devonian age stratigraphic interval encountered by . . . [the] well bore," then production from the well could not possibly qualify under the definition.[10]

Discussion

We agree with West Virginia that Devonian shale production should not be disqualified under NGPA section 107(c)(4) because of thickness of non-shale Devonian formations above or below the shale formations. Later developments since Order No. 78, as alluded to by West Virginia, have shown that a significant amount of Devonian gas production is excluded from the Commission's current definition. The Commission will therefore grant West Virginia a waiver from the Commission's regulations because Congress intended that the Commission establish a workable definition for Devonian shale production which would, as far as is practicable, assure that gas produced from Devonian shale would qualify under NGPA section 107(c)(4).

However, rather than modify § 272.103(e) and the other sections as requested by West Virginia, we have determined to waive the provisions of § 272.103(e) insofar as is necessary to allow applicants for section 107(c)(4) well determinations who so desire to select one continuous interval from the Devonian interval described in § 272.103(e) for qualification as gas produced from Devonian shale. The only condition to this waiver is that if the interval selected is more than 200 feet thick, then the bottom and top 100 foot portions must each meet the 95 percent 0.7 gamma ray requirement independently, in addition to the entire selected interval meeting the requirement. The Commission believes this is necessary to forestall possible use of this waiver to qualify disproportionately large quantities of production from adjacent non-shale stratigraphic layers.[11] We believe this waiver will satisfy the concerns raised by West Virginia.

The Commission Orders

Upon request, the Commission is waiving the requirements of § 272.103(e) of the Commission's regulations in accordance with the terms of the preceding paragraph of this order. No separate filing to request such waiver is required in any proceeding before, or to come before, the Commission.

By the Commission. Commissioner Stalon dissented with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Stalon, Commissioner, dissenting:

In this case, the Commission waives its regulations in order to redefine the definition of "natural gas produced from Devonian shale" in § 272.103(e) of the regulations. I do not object necessarily to redefining the regulations, but I do object to the Commission redefining its regulations outside the context of a rulemaking, where all affected parties have the ability to comment.

I would have preferred, therefore, to address this matter in a notice of proposed rulemaking, and for this reason I dissent from the order.

Charles G. Stalon,

Commissioner.

[FR Doc. 88-1752 Filed 1-27-88; 8:45 am]

BILLING CODE 6717-01-M

[9] Shale characteristically emits a higher level of natural gamma radiation than the coarser materials in sand stringers, sandstone, siltstone, and other rock in the Devonian stratigraphic interval. Therefore, the amount of shale or non-shale rock in a well bore can be measured by the intensity of its gamma radiation.

[10] The maximum thickness of the overlying rock would actually be 5 percent of the interval in the well bore, less any other footage therein with a gamma ray index of less than 0.7. We note that the effect described here could also happen with regard to non-shale Devonian rock under the shale, but this has been avoidable by producers either by not drilling into the underlying rock or by inserting a bridge plug at the top of such rock.

[11] Of course, in cases where a well also produces from places in the well bore other than the interval found to qualify under section 107(c)(4), and the qualifying production is not separately produced and metered, a reasonable allocation must be made to determine the amount of qualifying production from the well.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3320-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review, and is available to the public for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden; where appropriate, it includes the actual data collection instruments.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs): Manufacturing, Processing and Distribution in Commerce Exemptions. (EPA ICR No. 0857).

Abstract: The Toxic Substances Control Act prohibits the manufacture, processing and distribution in commerce of PCBs. However, the statute sets out conditions under which EPA may grant exemptions to this prohibition. EPA uses the information gathered from this collection to determine whether petitioners have met the exemption requirements prescribed by TSCA.

Respondents: Manufacturers, processors, and distributors of Polychlorinated Byphenyls (PCBs).

Estimated Burden: 49 hours.

Frequency of Collection: Annually.

Comments on the ICR should be sent to: Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St. SW., Washington, DC 20460 and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503 (Telephone No. (202) 395-3085).

Dated: January 20, 1988.

Daniel Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 88-1774 Filed 1-27-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3321-3]

Science Advisory Board; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a one-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on February 15, 1988. The meeting will begin at 9:00 a.m. and will be held in the Administrator's Conference Room, Room 1101 at the Environmental Protection Agency, Waterside Mall, West Tower, 401 M Street SW., Washington, DC. The meeting will adjourn no later than 5:00 p.m..

Several objectives will be accomplished at this meeting. First, the Environmental Effects, Transport and Fate Committee (EET&FC) will be brought up to date on the activities of the various Subcommittees it oversees, including the Municipal Waste Combustion Subcommittee, the Water Quality Advisories Subcommittee, and the Sediment Criteria Subcommittee. The Committee will also be informed of activities ongoing under the Research Strategies Committee, especially regarding ecological effects, and the Long-Range Ecological Research Needs Subcommittee, since these activities are related to the mission of the EET&FC.

Next, three briefings will be provided from Agency program staff. First, the Office of Research and Development (ORD), Office of Environmental Processes and Effects Research will discuss new objectives and directions to be followed by the Office, and will introduce the topic of environmental monitoring as an issue for Committee consideration. Second, Tudor Davies, Director of the Office of Marine and Estuarine Protection (OMEP), and Darrell Brown, also of OMEP, will update the Committee on the Agency's activities with respect to incinceration at sea. In April of 1985, the SAB issued a report on the incineration of hazardous waste, and made recommendations concerning the burning of such wastes at sea. OMEP staff will inform the Committee of the activities that have been undertaken since SAB issued advice, and will describe their plans for future progress. Third, the Committee will discuss issues related to developing criteria for wildlife protection.

The final objective for the meeting is to continue with planning for a Committee workshop designed to examine and clarify an environmental issue for the benefit of both EPA and the scientific community. Several suggestions have been made by Committee members, and a subgroup will be assigned to evaluate and further develop these ideas.

The meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC, telephone (202)382-2552 or FTS-8-382-2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than February 10, 1988, to be assured of space on the agenda.

Dated: January 14, 1988.

Dr. Terry F. Yosie,

Director, Science Advisory Boord.

(FR Doc. 88-1775 Filed 1-27-88; 8:45 am)

BILLING CODE 6560-50-M

[OPP-36150; FRL-3321-2]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines for certain studies have been finalized and are now available to the public from the National Technical Information Service (NTIS). The studies involved are: Wild Mammal Toxicity, Honey Bee Acute Contact LD_{50}, Honey Bee—Toxicity of Residues on Foliage, Field Testing for Pollinators, Magnitude of the Residue: Processed Food/Feed, and Speciality Applications. The addenda supersede paragraphs in the Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are strongly encouraged to follow the format so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

ADDRESS: Guidelines can be ordered from: National Technical Information Service, Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

FOR FURTHER INFORMATION CONTACT: Elizabeth M.K. Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2162).

SUPPLEMENTARY INFORMATION: The specific addenda, with NTIS order number and price, currently available from NTIS are as follows.

Document title	NTIS accession No.	EPA document No.	Price
Pesticide Assessment Guidelines Subdivision E, Hazard Evaluation: Wildlife and Aquatic Organisms, Series 71-3, Wild Mammal Toxicity Test, Addendum 3 on Data Reporting	PB88-117288	540/09-88-006	$9.95
Pesticide Assessment Guidelines Subdivision L, Hazard Evaluation: Non-target Insects, Series 141-1, 141-2, and 141-5, Honey Bee Studies	PB88-117296	540/09-88-005	$9.95
Pesticide Assessment Guidelines Subdivision O, Hazard Evaluation: Residue Chemistry, Series 171-4, Magnitude of the Residue: Processed Food/Feed, Addendum 4 on Data Reporting	PB88-117270	540/09-88-004	$9.95

Document title	NTIS accession No.	EPA document No.	Price
Pesticide Assessment Guidelines Subdivision O, Hazard Evaluation: Residue Chemistry, Series 171-4, Specialty Applications, (i) Classification of Seed Treatment and Treatment of Crops Grown for Seed Use Only as Non-Food or Food Uses, (ii) Magnitude of the Residue Post harvest Fumigation of Crops and Processed Foods and Feeds, (iii) Magnitude of the Residue: Post-harvest Treatment (Except Fumigation) of Crops and Processed Foods and Feeds, Addendum 5 on Data Reporting.	PB88-124003	540/09-88-008	$12.95

This is the third set of Data Reporting Guidelines published by the Agency. Publication of the previous sets were announced in the **Federal Register** of November 28, 1986 (51 FR 42931), and of September 23, 1987 (52 FR 35766). These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They underwent public comment announced in the **Federal Register** of October 15, 1986 (51 FR 36753). The documents were revised to reflect consideration of these comments and the public comments are addressed in the documents.

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $8.95 for the microfiche. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express; or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

Dated: December 4, 1987.

Anne Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88-1776 Filed 1-27-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Application for Consolidated Hearing; Community Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Community Broadcasting Co., Inc.	Wiggins, MS	BPH-860916MD	87-580
B. John F. White	Wiggins, MS	BPH-860916OB	
C. Colon Johnston	Wiggins, MS	BPH-860916MO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Air Hazard	B
2. Comparative	All.
3. Ultimate	All.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1694 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

Application Designated for Hearing; Dale A. Owens

1. The Commission has before it the following application for a new AM station:

Applicant	City/State	File No.	MM Docket No.
A. Dale A. Owens	Tigard, Oregon	BP-830623AE	87-583

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

Issue Heading

1. Site Availability
2. Environmental Impact
3. Financial Qualifications
4. Ultimate

3. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-1695 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee For The ITU World Administrative Radio Conference on The Use of The Geostationary Satellite Orbit and The Planning of The Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

January 20, 1988.

The Space WARC Advisory Committee will convene its next meeting on February 12, 1988. The Committee will be reviewing the work of the working groups and will be adopting recommendations and advice to the Commission for its Final Report concerning U.S. Proposals and positions for the second session in 1988. Details regarding the date, place and agenda of the meeting are provided below:

Chairman: Ronald F. Stowe (202) 383-6433
Vice Chairman: Stephen E. Doyle (916) 355-6941
Date: Friday, February 12, 1988
Time: 9:30 a.m.—1:00 p.m.
Location: Federal Communications Commission, 1919 M Street NW., Room 856, Washington, DC 20554.
Designated Federal Employee: Thomas S. Tycz (202) 634-1660
Agenda:
(1) Adoption of Agenda
(2) Approval of Minutes
(3) Status of ITU Preparatory Activities
(4) Working Group Reports
(5) Adoption of Recommendations for Final Report
(6) Future Work of Committee
(7) Date of Next Meeting
(8) Other Business
(9) Adjournment

For additional information, please contact Thomas B. Tycz, (202) 634-1660.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1758 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1706]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 21, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed February 16, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico. (CC Docket No. 86-309).

Number of petitions received: 1.

Note.—The above filing is being treated as a petition for reconsideration, although it is not captioned as such. Other petitions for reconsideration in this proceeding were listed in Public Notice, Report No. 1704, released January 7, 1988. In a separate order, the Common Carrier Bureau is modifying the pleading cycle established for those filings to conform to the schedule established for this petition.

Subject: Amendment of § 73.606(b), Table of Allotments, TV Broadcast Stations. (Kenansville, Florida) (MM Docket No. 86-388, RM-5385).

Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Lafayette, Louisiana) (MM Docket No. 87-196, RM-5492).

Number of petitions received: 2.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-1759 Filed 1-27-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Crowley Maritime Corp.; Application for Section 16 Exemption; Enlargement of Scope

The Commission, by notice published December 28, 1987 (52 FR 48879), announced that Crowley Maritime Corporation ("Crowley") has applied for an exemption pursuant to section 16, Shipping Act of 1984, 46 U.S.C. app. 1715, and the Commission's implementing regulations, 46 CFR 572.301.

Specifically, Crowley, on its own behalf and on behalf of its present and future wholly-owned subsidiaries, seeks an exemption from the filing requirements of section 5 of the Act, 46 U.S.C. app. 1704; from the prohibitions of section 10(a) (2) and (3) of the Act, 46 U.S.C. app. 1709(a) (2) and (3), to the extent applicable to agreements between or among Crowley or its subsidiaries; and from the prohibitions of section 10(c) of the Act, 46 U.S.C. app. 1709(c), insofar as such prohibitions would apply to activity by, between, or among Crowley or its subsidiaries, and insofar as joint action by common carriers is an essential element of the prohibited activity.

As grounds for the requested exemption, Crowley argues that "no regulatory interest is furthered by subjecting Crowley and its wholly-owned subsidiaries to statutory requirements intended to impose regulatory oversight on concerted activities engaged in by separate, competing entities, or intended to prevent separate entities from unfairly using their aggregate economic power." While acknowledging that in most aspects of their operations the various Crowley subsidiaries act through separate entities, it is also argued that they are all parts of a single, common business enterprise acting for the ultimate commercial benefit of Crowley. It is contended that the subsidiaries are not natural competitors, are in fact managed to avoid competition, and are legally incapable of combining or conspiring together in restraint of trade or commerce within the meaning of the antitrust laws.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons were requested to submit views or arguments

on the application no later than February 12, 1988.

The Commission now has determined to seek comments from interested persons on whether the exemption requested by Crowley should apply on an industry-wide basis to all other ocean common carriers and marine terminal operators under the same terms and conditions as those proposed by Crowley. In view of this enlargement of scope, the time for interested persons to submit views and arguments is extended to February 29, 1988. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 in an original and 15 copies. Responses shall also be served on counsel for Crowley: William H. Fort, Esq., Kominers, Fort & Schlefer, 1401 New York Avenue NW., Suite 1200, Washington, DC 20005.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–1686 Filed 1–27–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–200085.

Title: Port of Portland Terminal Agreement.

Parties:

The Port of Portland.

Pacific Commerce Line.

Synopsis: The proposed agreement provides for the preferential use of Berths 414 and 415 at Terminal 4 and approximately 10 acres of backup area. Pacific Commerce Line agrees to use the Port for a minimum of 9 sailings and loading a minimum of 40 million board feet of lumber in consideration for reduced truck unloading, wharfage and service and facility charges.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 25, 1988.

[FR Doc. 88–1794 Filed 1–27–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of of Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decrease or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Verifications, Inc., Jacksonville, Florida, in check guaranty services pursuant to § 225.25(b)(22); operating a collection agency pursuant to § 225.25(b)(23); and operating a credit bureau pursuant to § 225.25(b)(24) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1697 Filed 1–27–88; 8:45 am]

BILLING CODE 6210–01–M

Firstier Financial, Inc.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and (12 CFR 225.21(a)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirsTier Financial, Inc.*, Lincoln, Nebraska; to acquire 70.1 percent of the voting shares of Circle Management Company, Kerney, Nebraska, and thereby indirectly acquire Platte Valley State Bank and Trust Co., Kearney, Nebraska.

In connection with this application, Applicant also proposes to acquire Guaranty Trust Company, Kearney, Nebraska, and thereby engage in providing trust company services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Sioux National Company*, Lincoln, Nebraska; to acquire 100 percent of the voting shares of Dean Holbein & Associates, Inc., Lincoln, Nebraska, and thereby indirectly acquire The Security State Bank, Holbrook, Nebraska.

In connection with this application, Applicant also proposes to acquire a general insurance agency operation that will conduct business within a 10 mile radius of Holbrook, Nebraska; pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1698 Filed 1–27–88; 8:45 am]

BILLING CODE 6210–01–M

First Wyoming Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Wyoming Bancorporation*, Cheyenne, Wyoming; to acquire Item Processing Center, Inc., Cheyenne, Wyoming, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. This activity will be conducted in the states of Colorado, New Mexico, Utah, Nebraska, Wyoming, and Kansas.

Board of Governors of the Federal Reserve System, January 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–1699 Filed 1–27–88; 8:45 am]

BILLING CODE 6210–01–M

Landmark/Community Bancorp, Inc., et al.; Formations of; Acquisition by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 18, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Landmark/Community Bancorp, Inc.*, Hartford, Connecticut; to acquire

100 percent of the voting shares of Landmark Financial Corporation, Hartford, Connecticut, and thereby indirectly acquire The Landmark Bank, Hartford, Connecticut; Community Bancorp, Inc., Glastonbury, Connecticut, and thereby indirectly acquire Community National Bank, Glastonbury, Connecticut; and SBT Corp., Old Saybrook, Connecticut, and thereby indirectly acquire Saybrook Bank and Trust Company, Old Saybrook, Connecticut.

2. *USA Bancorp, Inc.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Olympic International Bank & Trust Company, Boston, Massachusetts.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Quebec, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Norris Bancorp, Inc., Saint Charles, Illinois, and thereby indirectly acquire The First National Bank of Batavia, Batavia, Illinois, and State Bank of Saint Charles, Saint Charles, Illinois.

2. *CNB Bancorp, Inc.*, Chicago, Illinois; to acquire 80.21 percent of the voting shares of Rankin State Bank, Rankin, Illinois.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fort Worth State Bancshares, Inc.*, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Worth State Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, January 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1700 Filed 1-27-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14.625% for the quarter ended December 31, 1987. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 22, 1988.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 88-1733 Filed 1-27-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-88-1780; FR-2428]

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for Type I Non-Competitive Funding under the Fair Housing Assistance Program. Agencies must meet the specific eligibility criteria set out in this announcement as well as the criteria in 24 CFR Part 111 in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State and Local Programs Division, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5214, 451 Seventh Street SW., Washington, DC 20410-2000. Telephone: (202) 755-0455 (V and TDD). (This is not a toll-free number.) Application kits are available to eligible State and local fair housing agencies upon written or telephone request. Telephone requests are encouraged to ensure that eligible agencies receive their application kits at the earliest possible date.

DATE: Applications for Type I funding may be submitted between February 3, 1988 and March 4, 1988. No application received after the closing date will be considered unless it is received before awards are made and qualifies for a late application exception as specified in the Application Kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for noncompetitive funding under the Fair Housing Assistance Program (FHAP) is issued pursuant to 24 CFR Part 111. Section 111.104 permits participation in Type I funding by agencies that have entered into agreements providing for interim referrals of complaints or for other utilization of such agencies' services. See 24 CFR 115.11, authorizing interim referrals.

Interested agencies are urged to review 24 CFR Parts 111 and 115 and the information in this announcement to determine eligibility for application.

The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes support for capacity building, training, complaint monitoring and reporting systems, and contributions for complaint processing. Type II-Competitive Funding includes support for specialized project proposals developed by State and local agencies to enhance their fair housing programs. Under this announcement, eligible agencies can apply for Type I funding only.

Background

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) of that title provides that, wherever a State or local fair housing law has been recognized as providing rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary of HUD is required to notify the appropriate State or local agency of any complaint filed with HUD that appears

to constitute a violation of the State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

Other Matters

This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Collection of information contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The OMB Control Number is 2529-0005.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the FHAP, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically, an agency must be certified as a substantially equivalent agency under the standards set forth at 24 CFR Part 115, and must have executed a written Memorandum of Understanding; or an agency must have entered into a written agreement for interim referral or other utilization of services, as set forth at 24 CFR 115.11. The Memorandum of Understanding/written agreement must describe the working relationship to be in effect between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity.

However, if an agency has applied to the Department for recognition as a substantially equivalent agency, and has been found by the Department to have statutory authority substantially equivalent to the Federal Fair Housing Law but has not been granted final or interim recognition, it will be eligible to apply for Type I funds if either of two conditions are met:

1. The agency was proposed for recognition as a substantially equivalent agency by the Secretary under 24 CFR Part 115, as in effect prior to October 8, 1984, or

2. The Department has published a notice advising the public that the law which the agency administers is, on its face, substantially equivalent to the Federal Fair Housing Law and seeking public comments on the current practices and past performance of the agency, in accordance with 24 CFR 115.6.

Such an agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity to develop a Memorandum of Understanding meeting the criteria set forth in 24 CFR 115.6(c), and may at the same time submit funding proposals. No funds will be obligated to such an agency until it has received final recognition as equivalent, or has entered into an Interim Agreement in accordance with 24 CFR 115.11.

All Type I proposals for funding must pertain to housing discrimination based on race, color, religion, sex or national origin.

II. Methods of Distribution

A. Scope: Applications are solicited for non-competitive funding as described at 24 CFR Section 111.102. A total of approximately $3.3 million is available under this Announcement.

B. Categories of Funding:

1. Capacity Building: Under 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second years of their participation in the FHAP with a level of funding based upon HUD records showing the number of complaints of housing discrimination received by HUD from that agency's jurisdiction during the period of October 1, 1986-September 30, 1987. The maximum payments will be determined by HUD in accordance with the following schedule:

Number of complaints	Maximum payment
25 or less	$25,000
26-50	45,000
51-75	60,000
76-100	75,000
For each additional complaint over 100	750

Under 24 CFR 111.105(b), all agencies seeking capacity building support must submit a written narrative justification documenting that within their jurisdiction there is a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

2. Training: Agencies receiving Type I funds will be required to participate in HUD-sponsored training. (24 CFR 111.105(a)(4)). Funds to support participation in this training are available to the agency at 15% of its capacity building or contributions allocation, but funds for training participation shall not exceed $8,000, nor be less than $4,000. Any agency which is otherwise eligible to receive funding for capacity building or contributions, but elects not to apply for it, may apply for training support funds up to the level which the agency would have been entitled to receive had it applied for capacity building or contributions funding.

These funds are intended to support attendance at HUD-sponsored training at national and regional training sites. These monies may also be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend national or regional training, subject to the approval of the HUD Government Technical Representative.

3. Complaint Monitoring and Reporting Systems: Any agency applying for capacity building funds will be entitled to receive funds for the creation, modification or improvement of the agency's complaint information and monitoring capability, to result in a system compatible with HUD's, provided that the agency has not previously been funded for that purpose. (Complaint monitoring and reporting systems funds are available on a one-time only basis.) Agencies can receive Complaint Monitoring and Reporting Systems support to a maximum of $5,000. Agencies seeking such support must submit a narrative justification documenting the need for the requested level of funding under this component.

4. Contributions: Agencies eligible for their third-or-later year of non-competitive support will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency during the annual period beginning October 1,

1988 and ending September 30, 1987. (See 24 CFR 111.102(b)) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $750 per complaint.

C. Applications: To receive first or second year funding, applicants must submit all information required in the Type I-Non-competitive Application Kit. Applicants eligible for third-or-later year funding will be sent a Cooperative Agreement based solely on the number of dual-filed housing discrimination complaints actually processed by the agency in the twelve month period from October 1, 1986 through September 30, 1987. HUD will incorporate the training allotment into that Agreement. (This collection of information requirement has been assigned OMB control number 2529–0005.)

D. Award Procedures: Applications for Type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also, paragraph III. below).

III. Application Notification and Award Procedures

A. Notification: All Applicants will be notified of the action on their Type I applications as soon as the evaluation of applications is completed.

B. Negotiations: After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations. Awards for Type I applications are expected to be made within four weeks after negotiations are successfully completed.

C. Type of Funding Instrument: Applicants most likely will be funded under fixed-price Cooperative Agreements. However, HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–19); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 30, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 87–1686 Filed 1–27–88; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–84–6310–02; GP8–046]

Roseburg District; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Roseburg District Advisory Council will meet to review district programs and to introduce and orient new council members.

DATE: February 12, 1988 at 9:00 a.m.

ADDRESS: Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Gordon Cheniae, BLM Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470. (Telephone (503) 672–4491, Ext. 230.)

SUPPLEMENTARY INFORMATION: Time will be provided about 11 a.m. during the Council meeting for interested persons to make oral statements or to file written statements for the Councils consideration.

Summary minutes of the meeting will be maintained at the District Office and will be available for public inspection and reproduction within 30 days following meeting.

Dated: January 14, 1988.

M.D. Berg,

District Manager.

[FR Doc. 88–1739 Filed 1–27–88; 8:45 am]

BILLING CODE 4310-33-M

[OR–090–08–6310–10 GP–8–065]

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Thursday, February 18, 1988, in Room 221 of the Federal Building, 211 E. 7th, Eugene, Oregon.

The agenda of the meeting will include: (1) Proposed land exchanges between BLM and private landowners; and (2) review of issues associated with the planning process for western Oregon.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401 by February 17, 1988. A time limit may be established by the District Manager, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: January 20, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–1789 Filed 1–27–88; 8:45 am]

BILLING CODE 4310-33-M

[NM–060–4220–90; NM 69431]

Realty Action; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management proposes to dispose of the following tract of land by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 U.S.C. 1713) and the procedures in 43 CFR 2709, at no less than the appraised fair market value of $6,900. The lands will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 29 E., NMPM
Sec. 28, Lot 11, aggregating 4.35 acres, more or less

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The tract will be offered for competitive sale beginning at 11 a.m., MST, April 4, 1988, at the Bureau of Land Management, Carlsbad Resource Area Office, 101 East Mermod Street, Carlsbad, New Mexico.

Sealed bids will be accepted. Sealed bids must be received by the BLM's Carlsbad Resource Area Office, P.O. Box 1778, Carlsbad, New Mexico 88220, no later than 4:30 p.m., MST, April 3, 1988. Sealed bid envelopes must be marked on the front lower left corner with the words, SEALED BID, April 4, 1988. Bids must not be for less than the appraised value of $6,900. Each sealed bid shall be accompanied by a certified check, postal money order, or cashier's check made payable to: USDI, Bureau of Land Management, for not less than 20 percent of the amount bid. All sealed bids will be publicly opened on the sale date. Following the opening of the sealed bids, oral bids will be accepted.

Oral bidding will start at a price of $50.00 over the highest sealed bid and will continue in $50.00 increments. After oral bids, if any, are received, the highest qualifying bid designated by type, shall be declared by the authorized officer. If applicable, the person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, certified check, cashier's check, or money order for not less than 20 percent of the amount bid immediately following close of the sale. If the highest declared bid is an oral bid, and if that person also submitted a sealed bid, that person must submit sufficient additional funds over that submitted with the sealed bid, to bring the total deposit to not less than 20 percent of the bid. This will be accomplished immediately following close of sale.

The successful purchaser shall submit the balance of the purchase price within 180 days from the date of the sale.

Reservations and Conditions

The terms and conditions applicable to the sale are:

1. All minerals are reserved to the United States, together with the right to prospect for, mine, and remove under applicable laws, and such regulations as the Secretary of Interior may prescribe. (43 U.S.C. 1719).

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. The sale of the tract will be subject to all valid existing rights.

In the event that the tract is not sold on the initial sale date, the tract will be offered competitively, by sealed bid only, on a continuing basis until June 1, 1988, at the Carlsbad Resource Area Office, Carlsbad, New Mexico. Sealed bids will be opened on the first business day of each month at 10 a.m. All bids must be received at the Carlsbad Resource Area Office no later than 4:30 p.m. on the day before the sale and must be marked in the lower left corner of the envelope with the words "Sealed Bid", and the sale date.

SUPPLEMENTARY INFORMATION: Public documents concerning land use plans, environmental documentation, land report analyses, appraisal, and record of public comments are available for inspection at the Carlsbad Resource Area Office, Carlsbad, New Mexico. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at P.O. Box 1397, Roswell, New Mexico, 88201.

In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 88–1716 Filed 1–27–88; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action—Exchange; Oregon

[OR–090–06–4212–13; GP8–052; OR 42315]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in lane and Linn Counties, Oregon.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 24 S., R. 1 E.
Sec. 29: E½SE¼
T. 16 S., R. 2 E.
Sec. 20: NE¼SW¼
T. 17 S., R. 1 W.
Sec. 25: Lots 3, 4
T. 17 S., R. 1 E.
Sec. 9: NW¼NE¼
Sec. 13: NE¼
T. 17 S., R. 2 E.
Sec. 10: S½SW¼
Sec. 20: E½NE¼, NE¼SE¼
T. 17 S., R. 3 E.
Sec. 18: Lot 3
T. 18 S., R. 1 W.
Sec. 3: Lots 12–14
Sec. 19: Lot 3
Sec. 20: Lot 4

Containing 80.00 acres in Linn County and 725.36 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from the Weyerhaeuser Company:

Willamette Meridian, Oregon

T. 17 S., R. 2 E.
Sec. 12: E½
T. 17 S., R. 3 E.
Sec. 6: Lots 1–6, SW¼NE¼, SE¼NW¼
Sec. 10: N½SE¼ North of 8100 Road
Sec. 11: NW¼SW¼ North of 8100 Road
Sec. 18: E½SE¼ East of Marten Creek Fork

Containing 746.29 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of the Weyerhaeuser Company. The public lands to be exchanged are relatively isolated parcels, noncontiguous to other BLM lands and in some cases lacking legal access. The private lands being offered have important timber, visual and wildlife habitat values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage or timber reservations will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights will be transferred with the surface.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation to the United States of all timber on a portion of Lots 3 and 4, Section 25, T. 17 S., R. 1 W., W.M. and on all of Lots 12–14, Section 3, T. 18 S., R. 1 W., W.M., until such time as the timber has been sold by the United States and the Bureau of Land Management contracts for the sale of

the timber have been completed and terminated.

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATE: For a period of up to and including March 14, 1988, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange, including the environmental assessment, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683–6403.

Dated: January 20, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88–1744 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–33–M

[ES–940–08–4520–13; ES–037835, Group 20]

Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of Rend Lake Acquisition Boundary; Stayed; Illinois

January 21, 1988.

On Monday, December 14, 1987, there was published in the **Federal Register**, Volume 52, Number 239, on page 47459 a notice entitled "Illinois: Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of the Rend Lake Acquisition Boundary". In said notice was a plat, in seven sheets, depicting the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 6, 7, 8, 9, 17, 31, 32, 33 and 34, and the Rend Lake acquisition boundary, Township 4 South, Range 3 East, Third Principal Meridian, Illinois, accepted on November 24, 1987.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–1714 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–GJ–M

[CA–940–08–4220–10; CA 3653]

Termination of Proposed Withdrawal and Reservation of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the U.S. Department of Agriculture, Forest Service, application CA 3653, for the withdrawal and reservation of National Forest System lands from appropriation under the United States mining laws (30 U.S.C. Ch. 2) for use as a natural area—the Shasta Mudflow Research Natural Area—located within the Shasta-Trinity National Forests, was published at 41 FR 21655 on May 27, 1976, and republished at 77 FR 17651 on June 20, 1977. The U.S. Department of Agriculture has cancelled the application in its entirety:

Mount Diablo Meridian

T. 40 N., R. 2 W.,
Sec. 8, W½W½NE¼, W½, and W½SE¼;
Sec. 16, SW¼NW¼, W½SW¼, SE¼SW¼, and S½SW¼SE¼;
Sec. 17, E½SE¼;
Sec. 20, E½E½;
Sec. 21, NW¼NE¼NE¼, S½↑NE¼NE¼, W½E½, W½, and SE¼SE¼;
Sec. 22, SW¼NW¼, SW¼SE¼NW¼, SW¼, S½SW¼SE¼, NW¼SW¼SE¼, and SW¼NW¼SE¼;
Sec. 27, W½NE¼NE¼, NW¼↑NE¼, SW¼NE¼, NW¼SE¼NE¼, NW¼, NE¼SW¼, NW¼SW¼, N½SW¼ SW¼, SW¼SW¼SW¼, and NW¼NW¼SE¼;
Sec. 28, All;
Sec. 29, E½;
Sec. 32, NE¼;
Sec. 33, N½;
Sec. 34, W½W½NW¼.

The area described contains 3,530 acres in Shasta County.

DATE: At 10 a.m. on March 1, 1988, the lands will be relieved of their segregative effect in accordance with the regulations in 43 CFR 2310.2–1(c).

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4815.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–1743 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5456, Block 38, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 22, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local government, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 22, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–1745 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Century Offshore Management Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Century Offshore Management Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5315, Block 368, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 19, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 20, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–1705 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2410, Block A–313, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on January 20, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 20, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–1706 Filed 1–27–88; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31148]

Indiana Harbor Belt Railroad Co.; Acquisition of Line of Chicago and Western Indiana Railroad Co.; Exemption From 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval: (1) Under 49 U.S.C. 11343 *et seq.* the purchase of approximately 5.0 miles of Chicago & Western Indiana Railroad Company's line between 109th Street and 144th Street, Chicago, IL by the Indiana Harbor Belt Railroad Company; and (2) under 49 U.S.C. 10903, *et seq.* Any discontinuance of operations arising from the cancellation of certain related operating agreements. The exemptions are subject to standard labor protection conditions.

DATES: These exemptions are effective on February 27, 1988. Petitions for stay must be filed by February 8, 1988, and petitions for reconsideration must be filed by February 17, 1988.

ADDRESSES: Send pleadings referring to Docket No. 31148 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners representatives:

John H. Park, Chicago & Western Indiana Railroad Co., 428 West 47th Street, Chicago, IL 60609

Anna M. Kelly, Indiana Harbor Belt Railroad Co., 175 W. Jackson Blvd., Suite 1460, Chicago, IL 60604

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289–4357 (D.C. metropolitan area), (assistance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: January 20, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1658 Filed 1–27–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Apache Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 19th day of January 1988.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner	Location	Date received	Date of petition	Petition No.	Articles Produced
Apache Corporation (Workers)	Denver, CO	1/19/88	12/28/88	20,386	Oil & Gas.
Bethlehem Steel Corp. (USWA)	Sparrows Point, MD	1/19/88	1/5/88	20,387	Steel
Brentwood Furniture, Inc (Company)	Haverhill, MA	1/19/88	12/23/87	20,388	Furniture.
CIBA-GEIGY Corp. (Workers)	Glens Falls, NY	1/19/88	1/8/88	20,389	Paint Pigments
Courtauld C P D Inc. (ACTWU)	Newark, NJ	1/19/88	1/5/88	20,390	Acetate Film.
Fletcher Paper, Co. (Workers)	Alpena, MI	1/19/88	1/7/88	20,391	Paper
General Motors Corp. Fisher Guide Div. (UAW)	Trenton, NJ	1/19/88	1/10/88	20,392	Hardware.
Husamann/Bastian-Blessing (AIW)	Grand Haven, MI	1/19/88	1/7/88	20,393	Food Equipment.
Jade Sportswear (Workers)	New York, NY	1/19/88	1/6/88	20,394	Sweaters.
Okonite Co (Workers)	Phillipsdale, RI	1/19/88	1/4/88	20,395	Telephone Cable
Oneonta Corporation (Workers)	Oneonta, NY	1/19/88	1/11/88	20,396	Dresses & Suits.
Radon Eyelet Specialty Co., Inc. (USAW)	Wallingford, CT	1/19/88	1/6/88	20,397	Cosmetic Cases.
Sealed Power Corp. (UAW)	Muskegon, MI	1/19/88	1/4/88	20,398	Piston Rings.

FR Doc. 88–1800 Filed 1–27–88; 8:454 am]

BILLING CODE 4510–30–M

[TA–W–20,180]

Flying J., Inc., Cut Bank Gas Plant, Cut Bank, MT; Negative Determination Regarding Application for Reconsideration

By an application dated December 22, 1987, the Oil, Chemical & Atomic Workers (OCAW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Flying J., Incorporated, Cut Bank Gas Plant, Cut Bank, Montana. The denial notice was signed on November 30, 1987 and published in the Federal Register on December 15, 1987 (52 FR 47845).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that worker separations at the Cut Bank Gas plant were the result of imports of propane from Canada. The union submitted a U.S. Customs invoice showing that Flying J. did, in fact, import propane.

Investigation findings show that Flying J received its wet natural gas via a pipeline from the oil and gas fields owned by the Montana Power Company. The wet gas was processed into a useable form for the Montana Power Company to deliver to its customers. During processing and refining certain by-products were produced, chief of which was propane. A certain percentage of propane was allowed to be sold in a separate market by Flying J by means of a contract with the Montana Power Company as compensation for refining.

On review, the findings show that the dominant cause for worker separations at Flying J was the loss of the wet gas processing contract with the Montana Power Company. Investigation findings show that Flying J was only a producer of propane as a result of its refining of wet natural gas. The Montana Power Company brought on line its own modern processing and refining plant in October, 1987 thus eliminating the need for Flying J to process and refine Montana's wet gas. Accordingly, the loss of the wet natural gas processing contract was the cause of the lost propane, not propane imports.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of January 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–1801 Filed 1–27–88; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; National Aluminum Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 4, 1988—January 8, 1988 and January 11, 1988—January 15, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20, 213; National Aluminum Corp., Murrysville, PA

TA–W–20, 230, A.C. Lawrence Leather Co., Winchester, NH

TA–W–20, 308; Wilson Welding Co., Inc., Huntington, WV

TA–W–20, 234; Elizabeth Fashions, Hoboken, NJ

TA–W–20, 269; Maxwell House Coffee, Hoboken, NJ

TA–W–20, 236; Griffin Wheel Co., Kansas City, KS

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20, 317; Potter & Brumfield, Inc., Princeton, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20, 347; Greenwich Collieries, Barnesboro, PA

U.S. imports of steam coal are negligible.

TA–W–20, 232; Cordis Corp., Miami, FL

U.S. imports of pacemakers decreased both absolutely and relative to domestic production in 1986 compared with 1985.

TA–W–20, 248; Internor Trade, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–20, 330; Format Printing Co., Totowa, NJ

U.S. imports of manifold business forms are negligible in 1985, 1986 and were decreasing and negligible in the January through June 1987 period compared to the same period in 1986.

TA–W–20, 315; POK Manufacturers, Inc., Pharoah, OK

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–20, 233; Excello Shirt, Seymour, IN

A certification was issued covering all workers of the firm separated on or after October 27, 1986 and before January 1, 1988.

TA-W-20, 240; The Stock Shop, Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after October 23, 1986.

TA-W-20, Malouf of Dallas, Healdton, OK

A certification was issued covering all workers of the firm separated on or after November 6, 1986.

TA-W-20, 256; Anchor Metals, Inc.; Fort Madison, IA

A certification was issued covering all workers of the firm separated on or after January 1, 1987.

TA-W-20, 251; Maxi-Switch Co., Minneapolis, MN

A certification was issued covering all workers of the firm separated on or after October 5, 1986

TA-W-20, 255; Amfesco Durmamil Div., Inc., Nedley, FL

A certification was issued covering all workers of the firm separated on or after November 5, 1986.

TA-W-20, 368; Gates Energy Products, Inc., Paris, MO

A certification was issued covering all workers engaged in the production of rechargeable sealed lead-acid batteries separated on or after December 22, 1986.

TA-W-20, 244; American Trim Products, Inc., McKenney, VA

A certification was issued covering all workers of the firm separated on or after November 2, 1986 and before January 31, 1988.

TA-W-20, 252; Prestolite Electric, Inc., Bay City, MI

A certification was issued covering all workers engaged in the production related to alternator components separated on or after November 6, 1986.

TA-W-20, 267; ITT Telecom Products Corp., Milan, TN

A certification was issued covering all workers of the firm separated on or after November 18, 1987.

TA-W-20, 250; Lorraine Handbags, Inc., East Boston, MA

A certification was issued covering all workers of the firm separated on or after November 11, 1986 and before May 23, 1987.

I hereby certify that the aforementioned determinations were issued during the period January 4, 1988—January 8, 1988 and January 11, 1988—January 15, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

Dated: January 19, 1988.

[FR Doc. 88-1802 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-274-C]

Beckley Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Beckley Coal Mining Company, P.O. Box 145, Glen Daniel, West Virginia 25844 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Beckely Mine (I.D. No. 46-03092) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to roof falls, adverse roof conditions, and water accumulations certain areas of the mine cannot be traveled.

3. As an alternate method, petitioner proposes to establish checkpoints where the air flow can be evaluated. These areas will be examined on a weekly basis by certified persons and recorded in a prescribed book.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regualtions and Variances, Mine Safety and Health Administration, Room 627 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 22, 1988.

[FR Doc. 88-1795 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-282-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., 7012 MacCorkle Avenue SE., Charleston, West Virginia 25304 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Livingston Portal Eighty-Four (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner intends to increase the length of its longwall face to 700 feet on the next panel. This increase will require the installation of two 400 horsepower motors. In order to supply such power to a longwall system from a power system limited to 1000 volts, the following problems arise:

(a) The ampacity requirements at 1000 volts are such that very heavy cables are required. These large, heavy cables can cause congested work space, and handling problems which may present a hazard;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor; and

(c) At 1000 volts, the interrupting limits of the available circuit breakers is approached, resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to use high-voltage (4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: January 22, 1988.

[FR Doc. 88-1796 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-266-C]

Four G. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Four G. Coal Company, Inc., Route 1, Box 211, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-15699) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 22, 1988.

[FR Doc. 88-1797 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-283-C]

Lakeshore Equipment Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lakeshore Equipment Company, Inc., 416 Lakeshore Drive, Lexington, Kentucky 40502 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Poplar Creek No. 1 Mine (I.D. No. 15-13769) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling

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tractors will be equipped with a continuous monitor.

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 22, 1988.

[FR Doc. 88-1798 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-273-C]

Three Power Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Three Power Coal, Inc., P.O. Box 484, Shinnston, West Virginia 26431 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 46-07337) located in Harrison County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 29, 1988. Copies of the petition are available for inspection at that address.

Date: January 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-1799 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

Advisory Committee Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: This notice provides the date, time, place, and agenda summary for the second meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act), a public meeting of the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 8:30 a.m. and 5:00 p.m. on February 16 and 17, 1988 at 1000 N. Glebe Road, Arlington, Virginia.

This nine member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

The agenda for the second meeting will include a review of draft equipment specification standards developed by the Mine Safety and Health Administration. The committee will also begin to discuss safety aspects surrounding the use of diesel-powered equipment in underground coal mines.

Official records of the meeting will be available for public inspection at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Signed at Arlington, Virginia this 25 day of January, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-1790 Filed 1-27-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-06]

NASA Advisory Council (NAC), Aeronautical Advisory Committee (AAC), Meeting

AGENCY: National Aeronautics and Space Administration.

Federal Register Citation of Previous Announcement: 53FR968, Notice Number 88-01, January 14, 1988.

Previously Announced Times and Dates of Meeting: January 28, 1988, 8:30 a.m. to 5 p.m.

Changes in the Meeting: Date changed to February 11, 1988, 8:30 a.m. to 5 p.m.

Contact Person for More Information: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

January 25, 1988.

[FR Doc. 88-1702 Filed 1-27-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 18-19, 1988 from 9:00 a.m. to 5:30 p.m. and on February 20, 1988 from 10:00 a.m. to 12:00 noon in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 20, 1988 from 10:00 a.m.-12:00 noon. The topics for discussion will include guidelines and policy issues.

The remaining sessions on February 18-19, 1988 from 9:00 a.m.-5:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

January 22, 1988.

[FR Doc. 88-1747 Filed 1-27-88; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers/Services Section) to the National Council on the Arts will be held on February 17, 1988 from 9:00 a.m. to 5:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 17, 1988 from 2:00 p.m.-3:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions on February 17, 1988 from 9:00 a.m.-2:00 p.m. and 3:00 p.m.-5:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at lease seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-1748 Filed 1-27-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-324]

Carolina Power and Light Co., Brunswick Steam Electric Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.62(c)(4) to Carolina Power & Light Company (the licensee), for Unit 2 of the Brunswick Steam Electric Plant located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 50.62(c)(4) to allow the Brunswick plant to use an injection rate of 66 gallons per minute of 13 weight percent sodium pentaborate solution in the standby liquid control system (SLCS).

The licensee's exemption request and the bases therefor are contained in a letter dated August 17, 1987.

The Need for the Proposed Action

The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements, as a result of the Brunswick Steam Electric Plant having a reactor vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation. The Brunswick Plant uses an injection rate of 66 gallons per minute of 13 weight percent sodium pentaborate solution because its vessel diameter is 218 inches, as opposed to 251 inches which is the basis for the 86 gallons per minute requirement.

Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985 states, in part:

The "equivalent in control capacity" wording was chosen to allow flexibility in implementation of the requirement.

The 86 gallons per minute and 13 weight percent sodium pentaborate concentration were values used in NEDE-24222, "Assessment of BWR Mitigation of ATWS, Volumes I and II," December 1979 for BWR/4, BWR/5, and BWR/6 plants with 251-inch diameter vessels. NEDE-24222 recognized that different values would provide equivalent control capacity for smaller plants, and cited 66 gallons per minute in a 218-inch diameter vessel plant as equivalent to 86 gallons per minute in a 251-inch inside diameter vessel plant.

Environmental Impacts of the Proposed Action

The exemption provides a degree for protection of the Brunswick reactor equivalent to that required by the regulation for reactors with larger reactor vessels for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an Anticipated Transient Without Scram (ATWS). This exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise effect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Brunswick Steam Electric Plant, Unit 2, operations and would not enhance the protection of the environment.

Alternative Use of Resources

This does not involve the use of resources not previously considered in connection with the Final Environmental Statement for Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of human environment.

For further information with respect to this action, see the application for exemption dated August 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Bethesda, Maryland, this 22nd day of January 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II.

[FR Doc. 87-1777 Filed 1-27-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 103 to Facility Operating License No. DPR-29 issued to Commonwealth Edison Company, (the licensee), for operation of Quad Cities, Unit 1, located in Rock Island County, Illinois.

In general, the license amendment deletes certain license conditions and revises Technical Specifications (TS) to incorporate new Cycle 10 reload fuel operating limits, expands operating domains (including operation with equipment out of service), and changes jet pump surveillance core flow evaluation methodology. More specifically, TS for the following are revised for Cycle 10 to reflect new reload fuel operating limits and analyses: (a) Linear Heat Generation Rate (LHGR), (b) Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limit curves, (c) Rod Block Monitor (RBM) setpoint, and (d) Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time value. Other TS and license conditions changs in this amendment that resulted from analyses performed by General Electric for the licensee to expand the unit operating region and allow for operation with certain equipment out-of-service include the following: (e) requirements for Single Loop Operation (SLO) deleted from existing License Condition and incorporated into TS, (f) expanded operating region analyzed for increased core flow (ICF) and feedwater temperature reduction (FTR), (g) revised Automatic Pressure Relief Subsystem TS to require action only when two or more relief valves are inoperable, and (h) deleted license condition operating restrictions for coastdown.

Concurrent with the aforementioned TS changes, several administrative and editorial revisions are made for continuity. Furthermore, applicable TS bases and references are updated to reflect new information, fuel type, analyses, computer models, operating domains, and Limiting Conditions of Operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on November 5, 1987 (52 FR 42485). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated September 1972.

For further details with respect to the action see (1) the application for amendment dated September 18, 1987, as supplemented October 13, 1987 and subsequently clarified November 25, 1987, (2) Amendment No. 103 to License No. 29, (3) the Commission's related Safety Evaluation dated December 15, 1987, and (4) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW.; and at the Dixon Public Library, 221 Hennepin Ave., Dixon, Illinois 61021. A copy of items (2) thru (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Bethesda, Maryland this 22nd day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-1778 Filed 1-27-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-11 issued to Commonwealth Edison Company (the licensee), for operation of LaSalle County Station, Unit 1 located in LaSalle County, Illinois.

The amendment would revise the Technical Specifications in support of the second reload for LaSalle Unit 1. Startup for Cycle 3 is currently scheduled for June 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a part to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative of the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Office of the General Counsel—White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Joseph Gallo, Esquire, Isham, Lincoln, and Beale, 1150 Connecticut Ave. NW., Suite 1100, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 19, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Public Library of Illinois

Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Bethesda, Maryland this 21st day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–1779 Filed 1–27–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22, issued to Pennsylvania Power & Light Company (the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2 located in Luzerne County, Pennsylvania.

The amendment would revise the provisions in the Technical Specifications relating to the required tolerance for the diesel generator loading timers associated with the Residual Heat Removal (RHR) pumps, in accordance with the licensee's application for amendment dated October 15, 1987, as revised October 30, 1987.

Specifically, the licensee proposes to revise the Technical Specification 4.8.1.1.2d.12 to permit each diesel generator loading sequencer timer setpoint range to be changed from ±10% to +20% and −10%.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, attorney for the licensee, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 15, 1987, as revised October 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland this 20th day of January, 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–1780 Filed 1–27–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Thursday, Friday, and Saturday, February 18, 19, and 20 in Memorial Hall at the Metropolitan Life Building, 11 Madison Avenue (entrance between 24th and 25th Streets), New York, New York 10010 from 9:00 a.m. to 5:30 p.m. each day.

The three day meeting will consist of individual and panel presentations of basic research, vaccine and drug development related to the HIV epidemic. People with AIDS, as well as research experts from the private sector, Federal Government, and medical institutions, will participate. Agenda items subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655 15th Street NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director, Presidential Commission on the HIV Epidemic.

[FR Doc. 88–1773 Filed 1–27–88; 8:45 am]

BILLING CODE 4160–18–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–25287; File No. SR–Amex–87–33]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Rules 220–222 (Floor Wires)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items, in most part, have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its rules to allow members to establish direct telephone communications between the Floor and non-members located off the Floor, and to more fully reflect existing telephone policy.[1]

The text of the proposed rule change is set forth below.

Brackets [ ] indicate words to be deleted; *italic* indicates words to be added.

Rule 220. Communication to Floor

[Communication between the office of a Regular member and his booth on the Floor of the Exchange shall be made only by such method or methods as shall have been approved by the Exchange.]

No member shall establish or maintain any telelphonic or electronic communication between the Floor and any other location without the prior written approval of the Exchange.

Commentary

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-member located off the Floor to communicate with such member or member organization on the Floor.

.02 With the approval of the Exchange, a specialist unit may maintain a telephone line at its trading post location to the off-floor offices of the specialist unit; the unit's clearing firm; the floor of another securities commodities or option exchange; or the upstairs offices of a member organization. Such a telephone connection shall not be used for the purpose of transmitting to the floor orders for the purchase or sale of securities, but may be used by the specialist to enter orders in options, futures, or underlying securities for execution in such other markets, or with a member firm's off-floor offices, or to obtain market information.

.03 A member or member organization which has been granted approval of any means of communication under this rule shall be responsible for assuring compliance with all Exchange rules and requirements in connection with any business conducted by means of such electronic or telephonic communication.

Rule 221. [Wires to Member Not Represented on Floor

(a) In addition to a wire connecting the office of a Regular member and a booth of such Regular member on the Floor of the Exchange, Regular members may have installed additional wires as follows:

(1) A wire, from the booth to which such Regular member's office wire is connected, to the office of another member not represented personally or through an authorized salaried market employee on the Floor of the Exchange; and

(2) Such other wires from additional booths rented by such member connecting such booths with offices of other members not represented personally or through an authorized salaried market employee on the Floor of the Exchange, provided, that no such additional booth shall have more than one wire to the office of another member installed therein.

(b) The provisions of this rule shall be deemed to permit] Two or more [Regular] members having separate offices and engaging in business on the Floor of the Exchange [to] *may* occupy a single booth on the Floor of the Exchange with only one [Regular] member paying the full booth rental fee as prescribed by the Exchange and the other occupant(s) paying the Order Pad Privilege Fee as prescribed by the Exchange. Members not occupying the booth, but having line connections therein, must pay the Floor Wire Privilege Fee as prescribed by the Exchange.

Rule 222. Revocation of Floor Wire Privilege

[The privilege of a wire connection between a telephone booth of a Regular member on the Floor of the Exchange and such member's office or the office of another member shall not be enjoyed as a right of the member but shall rest in

[1] The Commission previously published notice of a similar proposed rule change from the New York Stock Exchange, Inc. ("NYSE") (SR–NYSE–87–18). See Securities Exchange Act Release No. 24828, June 22, 1987, 52 FR 24578.

the discretion of the Exchange. The Exchange may disconnect or cause to be disconnected any apparatus or means for such communication or may deprive any member of the privilege of using any means of communication installed in the Exchange for the use of members, if such connection or means of communication has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, the Exchange Constitution or its Rules, or just and equitable principles of trade. Every decision of the Exchange whereby a member is deprived of any such privilege shall be immediately posted on the bulletin board in the Exchange and every member shall be deemed to have notice thereof. No member shall, after such notice shall have been posted, directly or indirectly furnish to the member named therein any facilities for communication between the office of the member so named and the Floor.) *The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke approval of any telephonic or electronic communication between the Floor and any other location whenever it determines, in accordance with the procedures set forth in Rule 40, that such communication is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such communication has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, or the Exchange Constitution or rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to codify all current Exchange policies relating to communications to and from the Trading Floor of the Exchange. These policies have developed in keeping with the general premise that since transacting business on the floor of an exchange is an essential privilege of exchange membership, communications to and from the Floor should be restricted.

Exchange Rule 3(b) provides that members may not effect transactions directly with non-members on the premises of the Exchange. Furthermore, the Exchange Constitution vests in the Board of Governors the authority to approve or disapprove any means of communication with the Floor. Exchange Rules 220 through 222 set forth basic terms under which telephone access is granted. The application of these rules has been modified by the Board from time to time to allow Floor brokers to have certain types of telephone connections in or adjacent to their booths for purposes other than accepting orders for execution, and to allow specialists to have direct telephone communications with other locations to obtain market information, place orders in securities underlying special options, and transmit orders in any dually-traded option directly to the other exchange involved. The proposed rule change would reflect the permissibility of these types of telephonic communications.

The proposed rule change would also reflect a recent modification to Exchange policy which allows members to establish direct telephone communications between the Floor and non-members located off the Floor. This policy modification was prompted by a SEC Opinion (Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432), in an appeal by a member of the New York Stock Exchange from the NYSE's denial of such telephone access, that the NYSE had no rule or policy which constituted an enforceable prohibition on such communication. Following the issuance of the Opinion, the NYSE revised its policies to allow members to communicate from the Floor with non-members located off the Floor. The Exchange's proposed rule change would permit a member, with the approval of the Exchange, to establish telephone communications to non-members located off the Floor.[3]

The proposed rule change sets forth the basic prohibitions on unauthorized communications, as well as specific authorization for non-member telephone access to the Floor. The amendments would also reflect the specialist and broker connections which are permissible under current policy, as well as the fact that back office rules regarding the conduct of a customer business would be applied to members conducting such business directly from the Floor. The general restriction against members effecting transactions directly with non-members on Exchange premises would in no way be negated, and specialists would continue to be prohibited from directly accepting orders for execution via any telephone line maintained at their trading post locations.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and respectively furthers the objectives of sections 6(b)(5) and 6(b)(8) in particular in that it serves to remove impediments to and perfect the mechanism of a free and open market, and helps to ensure that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] As noted, above, the NYSE also recently filed a proposal that set forth a new policy concerning telephone communications between members and non-members from the floor. Unlike the Amex proposal which does not specifically address portable telephones, the NYSE proposal specifically prohibits member communications with non-members from portable telephones when on the trading floor.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File Number SR–Amex–87–33 and should be submitted by February 18, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1761 Filed 1–27–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

BRT Realty Trust
Shares of Beneficial Interest, $3.00 Par Value (File No. 7–2018)

Enviropact, Inc.
Common Stock, $.01 Par Value (File No. 7–2019)

Graham Corp.
Common Stock, $.10 Par Value (File No. 7–2020)

Johnstown Consolidated Realty Trust
Shares of Beneficial Interest, No Par Value (File No. 7–2021)

Lawson Mardon Group
Common Stock, No Par Value (File No. 7–2022)

Wickes Companies
Warrants expiring January 28, 1992 (File No. 7–2023)

Western Union Corporation
$15.00 Class A Increasing Rate Cumulative Senior Preferred Shares (File No. 7–2024)

Western Union Corporation
$3.00 Class B Cumulative Convertible Preferred Shares (File No. 7–2025)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–1762 Filed 1–27–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Bowne & Company
Common Stock, $1.00 Par Value (File No. 7–2026)

First Capital Holdings Corp.
Common Stock, $0.01 Par Value (File No. 7–2027)

Norsky Hydro A.S.
Common Stock, NOK 25 Par (File No. 7–2028)

Tucson Electric Power Company
Common Stock, $2.50 Par Value (File No. 7–2029)

Standard Pacific Corp., L.P.
Partnership Units (File No. 7–2030)

Witco Corporation
Common Stock, $5.00 Par Value (File No. 7–2031)

Gull, Inc.
Common Stock, $0.10 Par Value (File No. 7–2032)

Motts Super Markets, Inc.
Common Stock, $1.00 Par Value (File No. 7–2033)

Sun Distributors L.P.
Limited Partnership Interest (File No. 7–2034)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1763 Filed 1-27-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8 1157]

Study Group A, U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telphone Consultative Committee (CCITT) will meet on March 1, 1988 at 9:30 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to review results of the Study Group VIII meeting held in February in Geneva, to prepare and approve U.S. Contributions and consider nomination of delegates to upcoming meetings of Study Group I and Study Group III scheduled to begin on May 10, 1988, and May 30, 1988, respectively, and to consider any other issues related to Study Group A interests.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Dated: January 25, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U. S. CCITT National Committee.

[FR Doc. 88-1709 Filed 1-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1161]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: February 16, 1988; March 17, 1988, and May 19, 1988. All meetings will be held in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950-0001.

The March 17 meeting will be held only if such a meeting is determined to be necessary. Persons interested in attending this meeting may call the contact listed below to obtain further information.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and new developments resulting from the 34th Session of the International Maritime Organization Subcommittee on Radiocommunications.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTS-3), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1710 Filed 1-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1160]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea (SOLAS); Meeting

The SOLAS Subcommittee of the Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on March 31, 1988, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 55th Session of the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) which is scheduled for 11-22 April in London. In particular, the SOLAS Subcommittee will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Authorization of surveys to classification societies.
—Investigations into serious casualities.
—Reports of the various Subcommittees.
—Preparation for 1988 Conference to modify the SOLAS and Load Line Conventions.

Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washington, DC 20593, or by calling: 202-267-2280.

Dated: January 15, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1711 Filed 1-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1159]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee is holding a series of meetings to consider U.S. policy with respect to an upcoming review and possible revision of international law concerning liability and compensation for damage caused by the maritime carriage of Hazardous and Noxious Substances (HNS). This subject will be considered by the Legal Committee of the International Maritime Organization (IMO) at its 59th Session in April 1988. The second Shipping Coordinating Committee meeting in preparation for the 59th Session will be held at 1230 on Wednesday 17 February 1988, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC and continuing at 0900 on Thursday, 18 February 1988 in room 6332 of the Department of Transportation Building, 400 Seventh Street SW. Washington, DC.

The first Shipping Coordinating Committee meeting was held on 12 January 1988 at which the following preliminary questions were discussed:

1. Assuming that an international HNS regime for liability/compensation is developed, what general scheme would best serve U.S. interests (e.g., shipowner-only, shared shipowner-cargo, or other)?

2. How should liability/compensation be structured?

3. Should packaged HNS be covered?

4. What principles should guide the formulation of the list of covered HNS, and how should this list be developed?

5. What types of HNS incidents/hazards (e.g., fire and explosion, toxicity, pollution, and unladen tankers), and what types of potential HNS damage should be covered (e.g., personal injury, property damage, economic losses, environmental cleanup costs, etc.)?

6. Approximately what specific monetary limits of liability/compensation should be considered?

7. What are the insurance implications of the development of an HNS liability/compensation scheme?

8. In view of the benefits which may be obtained for U.S. interests from an international HNS regime, on what basis may agreement be reached among U.S. public and private sector interests on the subject of federal and state remedy preemption, a foreseeable element of such a regime?

9. What U.S. interests here and abroad will be impacted by the implementation of an HNS liability/compensation scheme?

10. What information is available concerning the number and severity (actual or potential) of marine or other HNS mishaps or near mishaps over the past several decades?

As a result of the meeting it was agreed that further detailed discussion of these questions should continue. In particular issues associated with questions 1, 5, and 8 are areas requiring more special attention. Additional meetings are contemplated. Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the special HNS meeting, or the issues to be discussed at the 16 and 17 February public meeting, please contact Captain Frederick P. Burgess, Jr., or Lieutenant Commander Frederick M. Rosa, Jr., Maritime and International Law Division, U.S. Coast Guard (G-LMI), Washington DC, 20593, telephone (202) 267-1527.

Dated: January 15, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1712 Filed 1-27-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1158]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting on February 11, 1988, at 1:30 PM in Room 6103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting will be to prepare for the International Conference on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation to be held March 1-10, 1988, in Rome, Italy. The Conference culminates preparatory work under the auspices of the International Maritime Organization (IMO). The Conference will consider adoption of a draft Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and a draft Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. These instruments primarily concern creation of criminal offenses, establishment of jurisdiction, and imposition of the obligation of a Party to extradite or prosecute the alleged offender. The following will be discussed at the meeting:

1. Background regarding the draft Convention and Protocol.

2. The major provisions of the draft Convention and Protocol.

3. Proposed positions for the International Conference.

Members of the public may attend the meeting up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Horowitz, U.S. Coast Guard Headquarters (G-LMI), 2100 Second Street SW., Washington, DC 20593-0001. Telephone: (202) 267-1527.

Dated: January 14, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-1713 Filed 1-27-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-063]

Towing Assistance Policy

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for public comment, and notice of public meetings.

SUMMARY: This Notice requests comments and advises of public meetings to be held concerning the Coast Guard's policy regarding towing of vessels in need of assistance but not in immediate danger or distress. The Coast Guard is currently studying the effectiveness of this policy and the long-term effect it may have on the safety of the boating public.

DATES: Written comments should be submitted on or before March 31, 1988. Public meetings will be held in various locales:

First Coast Guard District: Western end Long Island, New York, March 12, 1988; Providence, Rhode Island, March 13, 1988; Boston, Massachusetts, March 14, 1988; Northern Jersey Shore, March 15, 1988. For specific time and place, contact the First District Public Affairs Oficer at (617) 223-8515, or check the Local Notice to Mariners.

Fifth Coast Guard District: Philadelphia, Pennsylvania, February 23, 1988; Norfolk, Virginia, March 8, 1988; and Annapolis, Maryland, March 10, 1988. For specific time and place, contact the Fifth Coast Guard District Public Affairs Officer at (804) 398-6275, or check the Local Notice to Mariners.

Seventh Coast Guard District: Miami/Ft. Lauderdale, Florida, February 25, 1988; and St. Petersburg, Florida, February 26, 1988. For specific time and place, contact the Seventh District Public Affairs Officer at (305) 536-5641, or check the Local Notice to Mariners.

Ninth Coast Guard District: Detroit, Michigan, March 3, 1988. For specific time and place, contact the Ninth District Public Affairs Officer at (216) 522-3951, or check the Local Notice to Mariners.

Eleventh Coast Guard District: Long Beach, California, February 16, 1988; and San Diego, California, February 17, 1988; San Francisco, California, February 18, 1988. For specific time and place, contact the Eleventh District Public Affairs Officer at (213) 499-5230, or check the Local Notice to Mariners.

Thirteenth Coast Guard District: Greater Seattle Metropolitan Area, March 1, 1988. For specific time and place, contact the Thirteenth District Public Affairs Officer at (206) 442-5806, or check the Local Notice to Mariners.

Groups interested in hosting additional public meetings should request one by contacting the individual names in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice and give a proposed location, date, and anticipated number of attendees.

ADDRESSES: Written comments should be mailed to the Marine Safety Council (G–CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001. Comments should identify this notice (CGD 87–083) and the sector of the maritime community that the person making the comments represents (see "Comments and Views Desired"). Between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays, written comments may be hand-delivered to, and are available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Captain K. C. Hollemon, Assistant Chief, Search and Rescue Division, Office of Operations (tel: 202–267–1948). Normal work hours are between 8:00 a.m. and 5:00 p.m. EST Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

a. The Current Coast Guard Policy

The Coast Guard's policy regarding towing of vessels in need of assistance, but not in immediate danger or distress, is to avoid inappropriate competition between the Coast Guard and private towing and salvage concerns. Under that policy, the Coast Guard now refers calls for assistance in non-emergency situations to qualified commercial towing operators whenever such operators are ready and willing to respond. The policy essentially precludes not only the Regular Coast Guard and Coast Guard Reserve units, but also Coast Guard Auxiliary volunteers when they are operating under official Coast Guard orders, from responding to non-emergency assistance cases when a qualified commercial towing operator is available. The Coast Guard is reviewing the effectiveness of this policy and the effect it may have on the boating public and on boating safety.

b. The Coast Guard

One of the primary missions of the United States Coast Guard is search and rescue. This mission is explained in 14 U.S.C. 88, which states, in part, "In order to render aid to distressed persons, vessels, and aircraft . . . the Coast Guard may: (1) perform any and all acts necessary to rescue and aid persons and protect and save property . . . ." Search and rescue is a fundamental responsibility of the Coast Guard and, in emergency situations, the Coast Guard takes action to search for and rescue individuals who are in distress or in immediate danger of being in distress on the high seas or navigable waters of the United States at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized. However, in non-emergency situations the Coast Guard most often refers the case to either private interests or, under certain conditions, to the Coast Guard Auxiliary.

c. The Coast Guard Auxiliary

The Coast Guard Auxiliary was created as a volunteer, non-military organization under the direction and administration of the Coast Guard. The functions of the Coast Guard Auxiliary are set out in 14 U.S.C. 821–832. Among them are, "Promoting safety and effecting rescues on and over the high seas and U.S. navigable waters." Auxiliarists undergo training and qualification to prepare them to perform these rescues. They perform under the authority of official Coast Guard orders. When under orders, Auxiliarists may be reimbursed for certain limited out-of-pocket expenses, primarily for fuel, and are provided limited liability, and damage and disability and indemnity coverage. The Commandant has broad authority to administer Coast Guard Auxiliary. Although Auxiliary volunteers are not government employees, the Commandant has established by policy that Auxiliarists under orders are governed by the same conditions on towing assistance observed by the Coast Guard.

d. The Towing Industry

The Coast Guard does not have complete information concerning commercial entrepreneurs who have offered their services to the recreational boating public. Some are firms which have licensed equipment and personnel qualified to provide commercial salvage and towing to larger vessels and which have extended this service to smaller recreational boats. New firms have also come into existence at various places around the seaboard specifically to provide this service to the recreational boater. The Coast Guard's experience to date is that these firms, when available, generally provide competent service, but industry standards of performance do not exist presently.

e. Public Concerns Already Expressed

Responses to a recent request for comments issued by the Coast Guard in the **Federal Register** of May 7, 1987 (CGD 87–029), suggested that excluding the Auxiliary from assisting boaters whenever there is the potential for referring the case to a commerical provider has been demoralizing to this volunteer organization and, as a result, could impact its capability to perform its safety patrol, public education, and courtesy marine examination activities. The concerns which were raised are generally as follows:

1. Some boaters felt that the present policy does not adequately respond to the concerns for safety in the minds of the boating public. Although the Coast Guard evaluates each situation to ascertain whether an emergency exists, the response may not alleviate the concerns in the mind of the boater for the safety of the boat and persons on board.

2. Some of those commenting felt that the present towing policy is too restrictive of the activities of the Auxiliary. Despite the fact that they may be reimbursed to a limited extent for their fuel expenses, the Auxiliary is an organization of volunteers who offer their services in the public interest. Members of both the boating public and the Auxiliary were concerned that the capability of the Auxiliary to respond to boating emergencies may be eroded by the current Coast Guard towing policy. Members of the Auxiliary were concerned that they may be unable to attract and retain Auxiliary members because the opportunity to help other boaters is a strong incentive.

3. Opinions were expressed that requiring the boater to submit to the services of commercial providers is unfair in view of the fact that the boaters pay a special motorboat fuel tax. In additon, the fact that the Coast Guard has given commercial towing concerns preference in responding to assist cases deprives the boater of the possibility of being assisted by a trained volunteer who does not charge for services. Some felt that the fees charged by commercial towers were unreasonably high because of the lack of competition in the market place.

4. Concern was expressed that proposed regulations to require Assistance Towing Licenses (CGD 87–017) were not adequate to ensure that the crew and/or vessels of the commercial providers are capable of rendering effective and efficient service. The comment period in (CGD 87–017) closed on October 19, 1987, and the comments are currently being reviewed.

5. Some felt that using the Coast Guard communications systems to provide business to commercial towing concerns was improper.

6. Commercial providers have stated that the fact that they charge a fee is a deterrent to the careless or reckless boaters who will take greater care in preparing for their boating trip in the face of the prospect of having to pay for assistance if they break down, run aground, or run out of gas.

Comments and Views Desired

The Coast Guard encourages interested parties from all sectors of the maritime community, including the commercial towers, the Auxiliary, and the general boating public, to respond to this request for comments. In particular, the Coast Guard is interested in:

1. Determining what effect this policy is having on boating safety in general.

2. Deciding, when the Coast Guard determines that it can not or should not respond with a Coast Guard unit to a boater who requests assistance but who is not in distress, should preference be given to either the Auxiliary or to a commercial towing provider, or should some method be devised to allocate the opportunity to assist between them.

3. Determining what factors are impacting on the Auxiliary's capability to perform its activities, such as emergency search and rescue, boat safety examinations, and public education.

4. Determining what quality of service, in terms of responsiveness and competence, is being provided to the boating public by the Auxiliary and the commercial provider.

5. Quantifying to the extent possible what consequences, economic or otherwise, a change in the towing policy could have on commercial towers and the boating public.

All comments should be sent to the address listed in the "ADDRESSES" section of this notice. Comments received on or before the close of the comment period will be fully considered in making any policy determination.

Dated: January 22, 1988.

C.E. Robbins,
Rear Admiral, U.S. Coast Guard, Chief, Office of Operations.

[FR Doc. 88–1804 Filed 1–27–88; 8:45 am]
BILLING CODE 4910-14-M

Federal Aviation Administration

National Airspace Review Enhancement Program, Executive Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Executive Committee of the National Airspace Review Enhancement Advisory Committee. The agenda of this meeting is as follows:

Opening remarks
Expansion of Executive Committee
Creation of New Subcommittees
Status Report from Existing Subcommittees
Future Plans
Summary

DATE: February 11, 1988, to convene at 2 p.m. and adjourn at 5 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Room 1010, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Room 1020, Washington, DC 20591, (202) 267–3277. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to Mrs. Wanda Munoz at the above address by February 1, 1988. Time permitting and subject to the approval of the Chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on January 19, 1988.

Michael P. Goldfarb,
Chief of Staff.

[FR Doc. 88–1685 Filed 1–27–88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 1–88]

Treasury Notes of January 31, 1990, Series W–1990

Washington, January 21, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated Treasury Notes of January 31, 1990, Series W–1990 (CUSIP No. 912827 VU 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 1, 1988, and will accrue interest from that date, payable on a semiannual basis on July 31, 1988, and each subsequent 6 months on January 31 and July 31 through the date that the principal becomes payable. They will mature January 31, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter

imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 16220, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 27, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 26, 1988, and received no later than Monday, February 1, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, February 1, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, January 28, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, February 1, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Deputy Fiscal Assistant Secretary.

[FR Doc. 88-1807 Filed 1-26-88; 9:48 am]

BILLING CODE 4810-40-M

Treasury Department Announces U.S. and Spain To Negotiate an Income Tax Treaty

The Treasury Department today announced that negotiations of a proposed income tax treaty between the United States and Spain are scheduled to take place in Madrid during the week of February 29–March 4, 1988.

There is not now an income tax treaty in effect between the United States and Spain. The negotiations will be based on the model draft texts published by the United States and the Organization for Economic Cooperation and Development. They will also take into account the U.S. Tax Reform Act of 1986 and recent treaties concluded by each country. The issues to be discussed include the taxation of income from business, investment, and employment derived in one country by residents of the other, provisions to ensure nondiscrimination and the avoidance of double taxation, and provisions for administrative cooperation between the tax authorities of the two countries.

Interested persons are invited to send written comments concerning the forthcoming negotiations to Leonard Terr, International Tax Counsel, U.S. Treasury, Room 3064, Washington, DC 20220.

O. Donaldson Chapoton,

Assistant Secretary (Tax Policy).

[FR Doc. 88-1721 Filed 1-27-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

English Teaching Advisory Panel; Meeting

The English Teaching Advisory Panel will conduct a meeting on February 4 and 5, 1988 in Room 840, 301 4th Street, SW. Washington, DC. Below is the intended Agenda.

Thursday, February 4, 1988: Open to the Public

9:00 Welcome by Dr. Mark Blitz, Associate Director, Bureau of Educational and Cultural Affairs
9:10 Introduction of Panel Members and USIA officers—Dr. Harold B. Allen, Chairman, English Teaching Advisory Panel
9:30 Remarks by Mr. Robert R. Gosende, Deputy Director, Bureau of Educational and Cultural Affairs.
10:00 Remarks by Dr. Guy Story Brown, Director, Office of Cultural Centers and Resources
10:15 Remarks by Mr. Sidney L. Hamolsky, Chief, English Language Programs Division
10:30 Coffee Break
10:45 Discussions chaired by Dr. Harold B. Allen
- A. 1987 Advisory Panel Report: Action taken
- B. Personnel, overseas and Washington
  - 1. R/ETO's
    - a. Criteria for selection
    - b. In-service training
    - c. Availability
    - d. Training Required
    - e. "State of the art" papers from EFL professionals: for enhancement purposes
  - 2. Support staff in Washington
    - c. E/CE Budget: '87; '88
    - d. Recycling

12:00 Lunch
1:30 Discussion—ELTB—Macmillan representatives
2:30 USIA Materials (Print, Audio, Audiovisual)
- A. Current and projected production
- B. Involvement of the private sector
- C. Use/demand at posts
- D. Worldnet/Electronic Dialogue

3:00 Coffee break
3:15 *English Teaching Forum*
- A. Content
- B. Proposed solicitation of freature articles
- C. Distribution: Free/subscription

3:45
1. Use of libraries: Relationship to EFL activity
2. USIA/AID/Peace Corps: Relationships/problems
3. Other needs and projects

4:45 Panel members: An informal update on relevant EFL developments in theory and practice.

Friday, February 5, 1988

9:00 General discussion: Report to the Agency
12:00 Meeting with Director Charles Z. Wick
12:30 Lunch
1:30 General discussion and adjournment

Members of the public interested in attending the February 4–5 meeting should contact Sidney Hamolsky (202)

485–2869 to make prior arrangements, as access to the building is controlled.

Dated: January 21, 1988.

Mark Blitz,

Associate Director.

[FR Doc. 88–1676 Filed 1–27–88; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Advisory Committee on Women Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Women Veterans will be held in Washington, DC, March 23 through March 25, 1988, in the Administrator's Conference Room, Room 1010, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Administrator regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Veterans Administration; and the activities of the Veterans Administration designed to meet such needs. The Committee will make recommendations to the Administrator regarding such activities.

The session will convene on March 23, 1988, at 8:30 a.m. and adjourn at 5 p.m. The sessions on March 24 and 25 will begin at 8:30 a.m. and adjourn at 4:30 p.m. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Program Assistant, AIDS Working Group, Veterans Administration Central Office (phone 202/233–2621) prior to March 16, 1988.

Dated: January 20, 1988.

By direction of the Administrator:

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–1786 Filed 1–27–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"Federal Register" No.: 88–1289.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 28, 1988, 10:00 a.m.

THE FOLLOWING ITEMS HAVE BEEN ADDED TO THE AGENDA:

Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3–110.6).

Application of 26 U.S.C. 9033(c) and 11 CFR 9033.5(b) and 9033.8(b) in the 1988 Presidential Nominating Process.

DATE AND TIME: Tuesday, February 2, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 4, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.

Correction and Approval of Minutes.

Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–1817 Filed 1–26–88; 10:31 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 3, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

Dated: January 26, 1988.

[FR Doc. 88–1886 Filed 1–26–88; 3:35 pm]

BILLING CODE 6210–01–M

VOL
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federal register

Thursday
January 28, 1988

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Proposed OJJDP Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Request for Public Comment; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Proposed OJJDP Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Request for Comments

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Request for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 262(d) (42 U.S.C. 5672(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, *et. seq.* (JJDP Act), proposes to issue a policy to provide guidance to states participating in the JJDP Act Formula Grants Programs for determining when a juvenile held in nonsecure custody within a building that houses an adult jail or lockup facility is considered to be "detained or confined in any jail or lockup for adults" for purposes of state monitoring for compliance with section 223(a)(14) (42 U.S.C 5633(a)(14)) of the JJDP Act.

DATE: Interested persons are invited to submit written comments on or before March 1, 1988.

ADDRESS: Address all comments to Mr. Verne L. Speirs, Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue NW., Room 1142, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Acting Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue NW., Room 768, Washington, DC 20531; telephone (202) 724–5921.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In an effort to comply with the provisions of the JJDP Act, particularly the jail removal mandate, section 223(a)(14), staff of state administering agencies and facility administrators are often called upon to identify alternatives to holding juveniles in jail cells or lockups while law enforcement officers carry out their responsibilities of identification, investigation, processing, release to parent(s) or guardian, hold for transfer to an appropriate juvenile detention or shelter facility, or transfer to court. OJJDP recognizes that during this interim period, a balance must be struck between the statutory objective of not holding juveniles in jail cells or lockups beyond the six hour temporary holding period permitted for accused criminal-type offenders (limited to circumstances where they will not be in sight or sound contact with adult prisoners), and not allowing juveniles in temporary law enforcement custody to disrupt police operations or to leave a police, sheriff or municipal facility without authorization.

Section 31.304(m) of the OJJDP Formula Grant Regulation published in the June 20, 1985, **Federal Register** on pages 25550–25561 (28 CFR Part 31), defines an *adult jail* as:

> A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trail. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

Section 31.304(n) of the Formula Grant Regulation defines an *adult lockup* as:

> Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

While these definitions provide general parameters, the efforts of state agency staff to monitor compliance with the JJDP Act jail removal requirement and to identify alternatives, indicate a need for specific guidelines to identify when a juvenile is being improperly detained or confined in an adult jail or lockup as opposed to being in nonsecure custody in a building that houses an adult jail or lockup facility, but not being detained or confined within a room or set of rooms that constitute a jail cell or lockup facility.

In making this determination, it is critical to first distinguish between nonsecure custody and secure detention. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status.

II. Secure Detention

A secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being locked in a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

III. Nonsecure Custody

When a juvenile is being held in a custody status in a building housing an adult jail or lockup, it is necessary to determine whether the area of the building where the juvenile is being held constitutes an adult jail or lockup. The criteria that follow are offered to assist state agency staff and facility administrators in identifying alternatives to the use of adult jails and lockups to detain or confine juveniles who are in temporary law enforcement custody.

The following criteria assume that immediate transfer of a juvenile to a juvenile detention center or appropriate nonsecure facility is not possible, and that no area is available within the building or on the grounds that qualifies as a separate juvenile detention facility under the requirements set forth in the Formula Grant Regulation at 28 CFR 31.303(e)(3)(i). The criteria are designed to provide guidance in identifying practices that do not constitute violations of the statutory jail removal requirement. They are not offered as standards for practice, nor do they supersede any state laws, policies, or guidelines.

IV. Criteria—Law Enforcement Facilities

The following criteria, if satisfied, would constitute nonsecure custody of a juvenile in a building that houses an adult jail or lockup facility:

(a) The area where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room which is not designed, set aside or used as a secure detention area or is not a part of such an area (for example, a contiguous or secure booking area or sallyport); (b) the juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the area; (c) the use of the area is limited to providing nonsecure custody only long enough and for the purpose of identification, investigation, release to parents, or arranging transfer to an appropriate juvenile facility or to court; (d) in no event can the area be designed or intended to be used for

residential purposes, and (e) the juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

V. Criteria—Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after a detention, preliminary bail hearing, or another court proceeding. Court holding facilities, where they do not detain individuals overnight and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups for purposes of section 223(a)(14) of the JJDP Act. However, such facilities remain subject to the section 223(a)(13) (42 U.S.C. 5633(a)(13)) separation requirement of the Act.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this guideline (See the Paperwork Reduction Act 44 U.S.C. 3504(h)).

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–1654 Filed 1–27–88; 8:45 am]

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VOL
53

ISS
18

JA
28

988

MI

federal register

Thursday
January 28, 1988

Part III

Department of Education

Federal Student Assistance Report; Solicitation of Comments; Notice

DEPARTMENT OF EDUCATION

Solicitation of Comments on Development of Federal Student Assistance Report

AGENCY: Education.

ACTION: Notice of solicitation of comments on Development of Federal Student Assistance Report.

SUMMARY: The Secretary provides notice that the Department of Education is soliciting comments concerning the implementation of section 483(f) of the Higher Education Act of 1965, as amended (HEA). Section 483(f) provides that the Secretary will develop a United States Department of Education Federal Student Assistance Report on which institutions would provide to a student at a minimum on an annual basis, a record of financial assistance received by the student under the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

DATE: Comments must be received on or before March 28, 1988.

ADDRESS: All comments concerning this notice should be addressed to Mr. Fred Sellers, Chief, Policy Section, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Sibyl Bowie, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202. Telephone (202) 732–4888.

SUPPLEMENTARY INFORMATION: Section 483(f) of the HEA, 20 U.S.C. 1090(f), requires the Secretary to develop a "United States Department of Education Federal Student Assistance Report." The law requires that a single form be developed on which can be recorded the amount of assistance received by a student under the Title IV, HEA Programs. These programs include the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, Byrd Scholarship, Guaranteed Student Loan, PLUS, Supplemental Loans for Students, Consolidation Loan, College Work-Study, Income Contingent Loan, and Perkins Loan programs. The Great Seal of the United States is to be prominently displayed on the form. The form is to be the same color as or a color similar to that of checks issued by the Treasury Department and is to be provided free to institutions in sufficient quantity and in a timely manner. The law further requires that at least once each year each institution shall provide each student a completed copy for each receipt of assistance at the time awards are made.

The Secretary is requesting public comment concerning the implementation of the United States Department of Education Federal Student Assistance Report. The Secretary is especially interested in comments concerning the following:

1. The design of the form and the paper on which it is printed.

2. The methods by which the form can best be used in conjunction with automated data processing equipment, as well as with manual operations for completing and using the form.

3. The burden hour impact of this form on institutions and methods of keeping these burden hours to a minimum.

The Secretary recognizes that the use of the United States Department of Education Federal Student Assistance Report will result in an additional administrative burden on financial aid administrators. He is interested in comments on the following:

1. The estimated number of burden hours that would be required at an institution to complete the form for each student.

2. The estimated number of burden hours that would be required at an institution to modify existing computer software.

3. The use of the form as it relates to current institutional practice, e.g., whether the form would (a) replace the institution's current award letter or (b) be an additional document the institution would provide the student, and how frequently the institution would have to complete the forms each year.

4. The estimated number of burden hours required to document the fact that all Federal aid recipients at the institution have been sent the United States Department of Education Federal Student Assistance Report.

5. The estimated cost of providing the United States Department of Education Federal Student Assistance Report to the student (e.g., the cost of staff time required to complete the letter with specific information about an individual student's aid award, the cost of software modifications mentioned in item 2 of this listing, equipment costs, and the costs of envelopes, postage, and other materials).

6. An implementation schedule for the use of the form which considers institutional calendars, award cycles, etc.

The Secretary realizes that institutions prepare financial aid informational materials for students well in advance of the award year the materials are intended to cover. Thus, the Secretary is soliciting comment on the timing of the implementation of the United States Department of Education Federal Student Assistance Report, specifically concerning its use beginning with awards for the 1988–89 award year.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the United States Department of Education Federal Student Assistance Report.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4318, ROB–3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program)

Dated: January 25, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–1771 Filed 1–27–88; 8:45 am]

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VOL
53

ISS
18

JA
28

988

MI

federal register

Thursday
January 28, 1988

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 32 and 33

Federal Acquisition Regulation (FAR); Demands for Payment; Proposed Rule

VOL
53
ISS
18
JA
28
988
UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 33

Federal Acquisition Regulation (FAR); Demands for Payment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) §§ 32.608, 32.610, and 33.211 to clarify the policy of the Government concerning demands for payment of contract debts owed the Government.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 28, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 87–54 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Generally, interest does not begin to accrue on a debt resulting from a final decision until a demand for payment is made. Currently there is no explicit requirement that a demand for payment be made concurrently with issuance of the final decision. This change is intended to clarify the policy of the Government concerning demands for payment so that interest will be charged on contractual debts due to the Government at the earliest practicable time.

B. Regulatory Flexibility Act

The proposed changes to the FAR are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because they merely clarify existing policy dealing with the timing of demands for payment of debts which are owed to the Government.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 32 and 33

Government procurement.

Dated: January 21, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 32 and 33 be amended as set forth below:

1. The authority citation for Parts 32 and 33 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.608 is amended by revising paragraph (c) to read as follows:

32.608 Negotiation of contract debts.

* * * * *

(c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the clause at 52.233–1, Disputes. Such decision shall include a demand for payment (see 33.211(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

32.610 [Amended]

3. Section 32.610 is amended by removing the first sentence in paragraph (c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

4. Section 33.211 is amended by removing in paragraph (a)(4)(iv) the word "and" at the end of the sentence; by removing in paragraph (a)(4)(v) the period at the end of the sentence and inserting in its place a semicolon and the word "and"; and by adding paragraph (a)(4)(vi) to read as follows:

33.211 Contracting officer's decision.

(a) * * *

(4) * * *

(vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

* * * * *

[FR Doc. 88–1719 Filed 1–27–88; 8:45 am]
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Reader Aids

Federal Register
Vol. 53, No. 18
Thursday, January 28, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-106	4
107-230	5
231-398	6
399-486	7
487-608	8
609-732	11
733-772	12
773-854	13
855-998	14
999-1330	15
1331-1466	19
1467-1600	20
1601-1738	21
1739-1908	22
1909-1996	25
1997-2212	26
2213-2476	27
2477-2578	28

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5760 ... 855
5761 ... 1464
5762 ... 1980

Executive Orders:
12537 (Amended by EO 12624) ... 489
12578 (Superseded by EO 12622) ... 222
12622 ... 222
12623 ... 487
12624 ... 489

Administrative Orders:
Presidential Determinations:
No. 88-2 of Oct. 30, 1987 ... 399
No. 88-4 of Dec. 17, 1987 ... 773
No. 88-6 of Jan. 19, 1988 ... 1601
Presidential Findings:
Jan. 12, 1988 ... 999

5 CFR

297 ... 1997
353 ... 857
551 ... 1331, 1739
890 ... 1, 860

Proposed Rules:
213 ... 1789
330 ... 408
338 ... 1789
351 ... 408
890 ... 898

7 CFR

1 ... 1001
7 ... 1441
27 ... 2213
28 ... 2213
61 ... 2213
246 ... 2213
272 ... 1603
275 ... 1603
301 ... 733
353 ... 1332
354 ... 1740
400 ... 2
401 ... 1001
405 ... 1467
514 ... 1605
704 ... 733
724 ... 1605
736 ... 2477
905 ... 401, 860
907 ... 6, 491, 1333, 1741
910 ... 7, 492, 1333, 1742
911 ... 402, 1742
915 ... 1742
928 ... 862
959 ... 401
971 ... 401
987 ... 401
1230 ... 1909
1430 ... 107
1610 ... 1743
1788 ... 2468
1902 ... 231
1924 ... 2150
1930 ... 2150
1933 ... 2150
1943 ... 2147
1944 ... 2150
1951 ... 2150
1965 ... 2150

Proposed Rules:
68 ... 411
301 ... 140
401 ... 505, 507
451 ... 1640
905 ... 898
907 ... 412
908 ... 412
910 ... 255
979 ... 413
981 ... 414
982 ... 900
1006 ... 1035
1012 ... 1035
1013 ... 1035
1033 ... 902
1046 ... 902
1068 ... 1360
1097 ... 1369
1106 ... 1370, 1790
1126 ... 256
1136 ... 686
1260 ... 509
1421 ... 2037
1701 ... 140

8 CFR

Proposed Rules:
1 ... 2426
204 ... 2426
205 ... 2426
211 ... 2426
212 ... 2426
214 ... 2426
216 ... 2426
223 ... 2426
223a ... 2426
232 ... 1791
233 ... 1791
235 ... 1791, 2426
237 ... 1791
238 ... 1791
239 ... 1791
242 ... 2426
245 ... 2426
280 ... 1791

299 1791

9 CFR

77 1002
78 2221

10 CFR

1 1744
73 403
Proposed Rules:
2 415
62 1926
430 30
730 1594

11 CFR

Proposed Rules:
109 416
110 2500
114 416

12 CFR

206 492
208 492
226 467
337 ..... 597, 2223
501 1003
525 312
561 ..... 324, 338
563 ..... 324, 338, 354, 363, 372, 385, 1004
563b 2477
563c 324
571 ..... 338, 372, 385
583 ..... 312, 1003
584 312
614 775
795 1005
Proposed Rules:
226 467

13 CFR

108 1468
140 1606

14 CFR

21 ..... 1745, 1746
23 ..... 1745, 1746
39 ..... 8–14, 232, 493–495, 1334, 1468, 1608–1613, 2005, 2478
47 1911
49 1911
71 ..... 496, 497, 619, 1335, 1336, 1614, 2006–2013, 2479–2482
75 ..... 497, 1336–1339, 2014–2017
91 233
95 1005
97 499
108 2223
129 2223
Proposed Rules:
Ch. I 1038
21 ..... 2037, 2039
23 ..... 2037, 2039
39 ..... 258, 514, 515, 1371–1374, 2227, 2228, 2500, 2502
71 ..... 516, 517, 666, 670, 674, 907–910, 1375, 2503, 2504
73 ..... 517, 991

15 CFR

372 1614
374 1614
399 ..... 108, 1516
806 1015
Proposed Rules:
379 ..... 418, 2505

16 CFR

13 ..... 609, 2223, 2224
Proposed Rules:
13 ..... 141, 1039, 2230, 2506, 2508

17 CFR

1 ..... 609, 615
211 ..... 109, 865, 1341
249 2484
Proposed Rules:
34 2510
300 1793

18 CFR

3 1469
154 ..... 867, 1748
270 867
271 15
273 867
375 ..... 867, 1469, 1748
381 ..... 867, 1469
382 1748
388 1469
389 ..... 1750, 2224
410 1751
1301 405

19 CFR

4 1103
24 615
Proposed Rules:
132 1376
141 30
142 1376
178 30

20 CFR

320 2485
340 2485
Proposed Rules:
361 143
901 147

21 CFR

5 2225
81 19
176 97
193 ..... 20, 233, 1916
312 1917
436 1918
452 1918
540 234
546 235
558 ..... 235, 236, 1017
561 ..... 20, 233, 1916
606 111
610 111
640 111
884 1554
892 1554
1308 ..... 500, 2225
Proposed Rules:
102 1795
193 259
201 ..... 1796, 2436
356 2436
358 2198
369 2436
561 259
864 1574
866 1574
868 1574
870 1574
876 1574
880 1574
882 1574
884 1574
890 1574
892 1574
1308 743

23 CFR

635 ..... 1920, 1922
656 236
Proposed Rules:
625 2041
626 2041
655 2233

24 CFR

200 842
203 868
215 ..... 842, 1122
221 615
235 842
236 ..... 615, 842
247 842
812 842
880 ..... 842, 1122
881 ..... 842, 1122
882 ..... 842, 1122
883 ..... 842, 1122
884 ..... 842, 1122
886 ..... 842, 1122
904 1122
905 1122
912 842
960 1122
Proposed Rules:
115 260

25 CFR

Proposed Rules:
151 1797

26 CFR

1 ..... 117, 238, 1103, 1441
Proposed Rules:
1 ..... 153, 261

27 CFR

Proposed Rules:
9 1492

28 CFR

55 735
541 196
Proposed Rules:
31 2568

29 CFR

2610 1904
2616 1904
2617 1904
2618 1904
2676 1018
2702 737
Proposed Rules:
1910 ..... 1724, 2047
1926 2049
2550 1798

30 CFR

75 2354
202 ..... 1164, 1230
203 1184
206 ..... 1184, 1230
207 1184
210 1184
241 1184
800 994
Proposed Rules:
75 2382
210 1039
216 1039

31 CFR

103 776

32 CFR

45 1341
104 1343
199 2018
374 1345
552 1752
887 876
Proposed Rules:
199 ..... 1378, 1926

33 CFR

110 878
117 ..... 119, 406, 2034
165 ..... 616, 878
166 1347
Proposed Rules:
140 2236
143 2236
146 2236

34 CFR

Proposed Rules:
303 1461

36 CFR

5 739
211 2490
404 120
1254 1348
Proposed Rules:
223 519

37 CFR

201 ..... 122, 123, 2493
Proposed Rules:
203 153

38 CFR

4 ..... 21, 1441
17 1755
21 ..... 616, 879, 1756, 1779
36 1349
Proposed Rules:
21 ..... 620, 1040
36 1378

39 CFR

111 ..... 124, 125
228 2495
232 126
233 1780
Proposed Rules:
946 2236

40 CFR

2 214
51 ..... 392, 480
52 ..... 392, 501, 1019, 1020, 1354, 1780
61 777

86 470
180 ..... 241, 243, 657, 1923
271 ..... 126–128, 244, 1358
421 1704
763 1021
Proposed Rules:
52 ..... 261, 779, 1043
86 1716
145 2238
156 1494
170 1494
180 ..... 262, 263, 1495, 2147, 2238
192 1641
261 519
373 850
795 911
796 911
799 ..... 911, 913

41 CFR

101–20 129
105–60 1478
114–51 741
Proposed Rules:
Ch. 201 620
51–7 1379
141 31
142 31
201–11 1805
201–30 1805
201–31 1805
201–32 1805
261 31

42 CFR

405 1617
412 1621
413 1621
418 1621
431 657
435 657
440 657
441 657
442 1984
Proposed Rules:
410 1383
434 744
435 744

43 CFR

2 24
3100 1184
3160 1184
Public Land Orders:
6661 1359
6662 1359
Proposed Rules:
3160 1039
3590 2055

44 CFR

64 14855
Proposed Rules:
7 922
61 419
62 419
80 621
82 621
83 621

45 CFR

95 26
233 467
Proposed Rules:
1215 1496
1336 1806

46 CFR

Proposed Rules:
588 624

47 CFR

Ch. I 502
0 1022
15 1781
64 27
65 1027
68 1103
73 ..... 28, 29, 504, 1030, 1629, 1630, 1782, 2496, 2497
74 2497
76 2497
90 1022
Proposed Rules:
1 625
63 625
73 ..... 426, 1386–1388, 1807, 1808, 2061–2064, 2510–2513
74 529
76 625
78 529
95 779

48 CFR

7 660
8 660
13 660
14 660
19 660
22 660
25 660
26 660
28 660
29 660
33 660
42 660
45 660
52 660
208 1924
501 ..... 130, 132, 1441, 1540
513 ..... 132, 1441
525 1925
836 1630
852 1630
Proposed Rules:
28 2464
32 2577
33 2577
37 2464
52 2464
207 2514
210 2514
215 ..... 625, 2514
225 626
232 931
252 ..... 626, 931, 2514
404 749
407 749
409 749
410 749
412 749
414 749
415 749
416 749
417 749
419 749
422 749
424 749
425 749
428 749
432 749
436 749
437 749
439 749
442 749
445 749
446 749
447 749
452 749
514 2515
515 2515

49 CFR

24 467
31 880
190 1633
192 1633
301 2035
386 2035
389 2035
541 133
544 1641
565 1032
571 1783
661 617
Proposed Rules:
3 100
7 100
10 100
192 ..... 1043, 1045
383 265
391 42
544 1635
571 ..... 426, 780, 934, 936, 1643, 2239, 2516
572 2254
1041 155
1048 155
1049 155

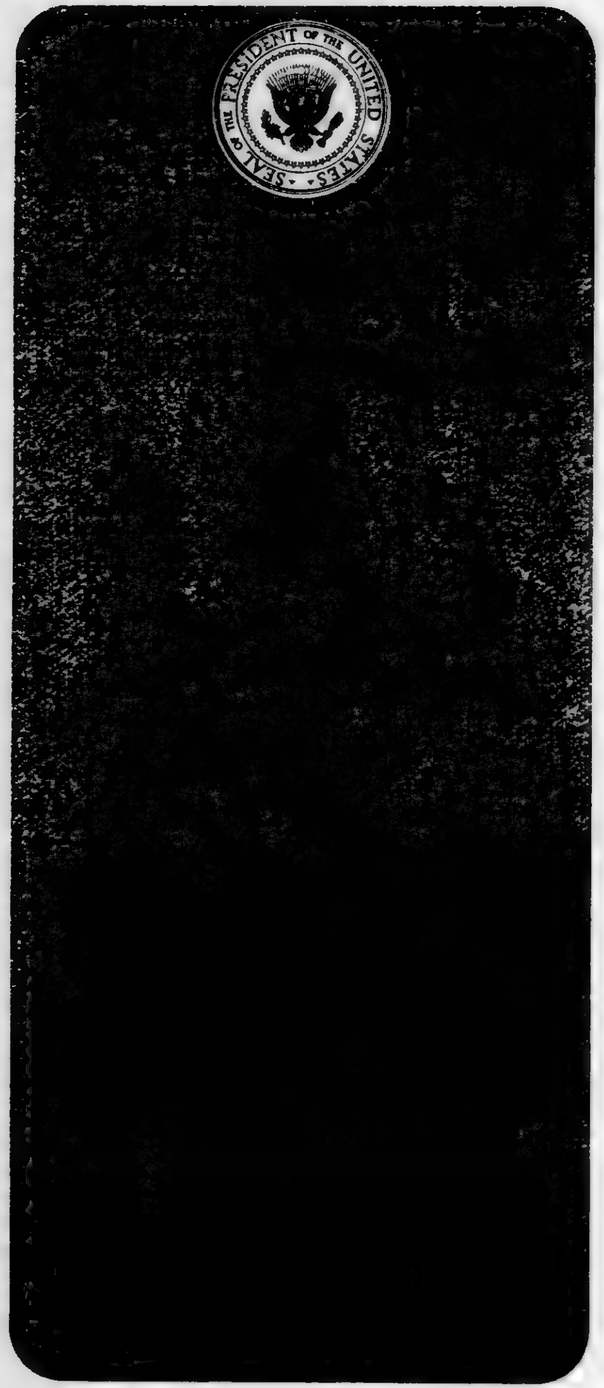
50 CFR

33 1487
216 1638
611 ..... 134, 741, 890, 894, 2147
653 244
663 ..... 246, 248
672 ..... 890, 991
675 ..... 894, 991, 2147
Proposed Rules:
17 1929
20 ..... 42, 1645
226 530
301 156
652 265
658 266
672 627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 14, 1988



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(Book II) $22.00

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1979
(Book II) $24.00
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(Book I) $21.00
1980–81
(Book II) $22.00
1980–81
(Book III) $24.00

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(Book II) $25.00
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(Book I) $31.00
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(Book I) $36.00

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VOL
53

ISS
18

JA
28

988

UMI

VOL
53

ISS
19

JA
29

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UMI

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VOL
53

ISS
19

JA
29

988

UMI

1-29-88
Vol. 53 No. 19
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federal register

Friday
January 29, 1988

Briefing on How To Use the Federal Register—
For information on briefings in Seattle, WA, San Francisco, CA, and Washington, DC, see announcement on the inside cover of this issue.

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Contents

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

Administrative Conference of the United States
NOTICES
Meetings:
Financial Services Special Committee, 2610

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 2580
Lemons grown in California and Arizona; correction, 2669
Oranges (navel) grown in Arizona and California, 2579

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Scrapie-exposed animals, 2580
NOTICES
Environmental statements; availability, etc.:
Genetically engineered herbicide tolerant tomato plants, 2610, 2611
(2 documents)

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Commerce Department
See International Trade Administration; Minority Business Development Agency; Patent and Trademark Office

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 2622
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 2619
India; correction, 2620
Export visa requiremetns; certification, waivers, etc.:
Costa Rica, 2620

Defense Department
NOTICES
Agency information collection activities under OMB review, 2622
Meetings:
Electron Devices Advisory Group, 2623
(2 documents)

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
ANR Pipeline Co., 2624

Education Department
PROPOSED RULES
Special education and rehabilitation services:
Older blind individuals; independent living services, 2702
NOTICES
Grants; availability, etc.:
Bilingual education—
Educational personnel training program, 2623
Family English literacy program, 2624
Special alternative instructional programs, 2624
National Insititute of Disability and Rehabilitation Research—
Funding priorities, 2690

Employment and Training Administration
NOTICES
Adjustment assistance:
Phoenix Steel Corp., 2656
Terry Corp., 2656

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 2656

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Industrial surface coating, plastic parts for business machines; VOC emissions, 2672
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 2639
Weekly receipts, 2639
Massachusetts Bay; ocean dredged material disposal site, 2640
Pensacola, FL; ocean dredged material disposal site, 2640
Pesticides; experimental use permits, etc.:
Crop Genetics International, 2641
Toxic and hazardous substances control:
Premanufacture exemption approvals, 2642
Water pollution; discharge of pollutants (NPDES):
Alaska OCS operations, 2631

Export Administration
See International Trade Administration

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 2667

Federal Communications Commission
RULES
Radio stations; table of assignments:
Virginia and North Carolina, 2800

PROPOSED RULES
Radio stations; table of assignments:
Arkansas, 2607
Kentucky, 2608
(3 documents)
NOTICES
Applications, hearings, determinations, etc.:
Bandy, Marshall M., et al., 2643
Fairmont Community Broadcasters et al., 2643
Hi-Band Broadcasting Co. et al., 2643

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 2667
(3 documents)

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Micronesia, 2644

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Reactor plant equipment; property list for use in accounting for addition and retirement—
Reporting and recordkeeping requirements, 2593
NOTICES
Electric rate and corporate regulation filings:
Commonwealth Edison Co. et al., 2625
Meetings; Sunshine Act, 2667
Preliminary permits surrender:
JDJ Energy Co., 2628
Applications, hearings, determinations, etc.:
ANR Production Co., 2626
Coastal Oil & Gas Corp., 2626
Distrigas of Massachusetts Corp., 2627, 2628
(2 documents)
El Paso Electric Co., 2628
Kentucky West Virginia Gas Co., 2628
Paiute Pipeline Co. et al., 2629
R & D Power Co., 2629
Tennessee Gas Pipeline Co., 2629
Texas Eastern Transmission Corp., 2629, 2630
(2 documents)
TXG Gas Marketing Co., 2631

Federal Highway Administration
RULES
Engineering and traffic operations:
Truck size and weight—
Automobile transporters, 2593
Grandfathered semitrailer lengths, 2597
PROPOSED RULES
Engineering and traffic operations:
Truck size and weight—
Boat transporters, 2602
Truck-tractor semitrailer-semitrailer combination with B-train assembly, 2603

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 2668

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Monaghan, Barry Eugene, et al., 2644

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Regency Insurance Co., 2666

Food and Drug Administration
PROPOSED RULES
Human drugs:
Antiflatulent drug products (OTC); tentative final monograph, 2716
Digestive aid drug products (OTC); tentative final monograph, 2706
NOTICES
Human drugs:
Orphan drug products—
Designations; cumulative listing, 2680

Health and Human Services Department
See also Food and Drug Administration; Human Development Services Office; Public Health Service
NOTICES
Agency information collection activities under OMB review, 2644

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Regional Administrators et al.; fair housing assistance and community housing resource board programs cooperative agreements and grants, 2647

Human Development Services Office
NOTICES
Meetings:
Federal Council on Aging, 2645

Interior Department
See also Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Garrison Diversion Unit Federal Advisory Council, 2647

Internal Revenue Service
RULES
Procedure and administration:
Bankruptcy; qualification of trustee or like fiduciary, 2599
PROPOSED RULES
Income taxes:
Federally-assisted buildings; low income housing credit, 2605

International Trade Administration
RULES
Export licensing:
Commodity Control List—
Electronic computers; COCOM review, 2582
NOTICES
Antidumping:
Steel wire nails from Korea, 2612
Countervailing duties:
Sodium gluconate from European Communities, 2613

Meetings:
Importers and Retailers' Textile Advisory Committee, 2613
Management-Labor Textile Advisory Committee, 2614
Short supply determinations:
Cold-rolled sheet, 2614

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 2650
Compensated intercorporate hauling operations, 2650

Justice Department
PROPOSED RULES
Privacy Act; implementation, 2606
NOTICES
Privacy Act; systems of records, 2650, 2651, 2653, 2654
(4 documents)

Labor Department
See Employment and Training Administration; Employment Standards Administration

Land Management Bureau
NOTICES
Conservation and recreation areas:
California Desert Conservation Area Plan, 2648
Environmental statements; availability, etc.:
Adobe Town and Ferris Mountains wilderness study areas, WY, 2648
Central California section 202; wilderness study area, 2648
Realty actions; sales, leases, etc.:
Nevada, 2649

Minority Business Development Agency
NOTICES
Business development center program applications:
Alaska, 2615
California, 2615, 2616
(4 documents)
Colorado, 2614
Nevada, 2618
Oregon, 2618

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 2657

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Plant Science Centers Advisory Panel, 2658
Meetings:
Cell Biology Advisory Panel, 2658
Developmental Biology Advisory Panel, 2658

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Georgia Power Co. et al., 2659
Meetings:
Reactor Safeguards Advisory Committee, 2659
Organization, functions, and authority delegations:
Nuclear Reactor Regulation Office; relocation, 2660
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 2661
Dairyland Power Cooperative, 2662
Georgia Institute of Technology, 2663
Public Service Co. of New Hampshire et al., 2664

Patent and Trademark Office
NOTICES
Meetings:
Patents and Trademarks Advisory Committee, 2619

Postal Service
NOTICES
Meetings: Sunshine Act, 2668

Public Health Service
See also Food and Drug Administration
NOTICES
Medical technology scientific evaluations:
Continuous cardiac output monitoring by electrical bioimpedance, 2645
Intensive electroencephalographic (EEG) video monitoring for seizure disorders, 2646
Meetings; advisory committees:
February, 2646

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Drexel Series Trust, 2664

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Highway Administration

Treasury Department
See also Fiscal Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 2665

Veterans Administration
RULES
Acquisition regulations:
Construction contracting procedures
Correction, 2669

Separate Parts in This Issue

Part II
Environmental Protection Agency, 2672

Part III
Department of Health and Human Services, Food and Drug Administration, 2680

Part IV
Department of Education, 2690

Part V
Department of Education, 2702

Part VI
Department of Health and Human Services, Food and Drug Administration, 2706

Part VII
Department of Health and Human Services, Food and Drug Administration, 2716

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
907.....2579
910 (2 documents).....2580, 2669

9 CFR
54.....2580

15 CFR
376.....2582
399.....2582

16 CFR
389.....2593

21 CFR
Proposed Rules:
332.....2716
357.....2708

23 CFR
658 (2 documents).....2593, 2597

Proposed Rules:
658 (2 documents).....2602, 2603

26 CFR
301.....2599

Proposed Rules:
1.....2605
602.....2605

28 CFR
Proposed Rules:
16.....2606

34 CFR
Proposed Rules:
367.....2702

40 CFR
60.....2672

47 CFR
73.....2600

Proposed Rules:
73 (4 documents).....2607, 2608

48 CFR
852.....2669

Rules and Regulations

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 670]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 670 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 29 through February 4, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 670 (§ 907.970) is effective for the period January 29 through February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987–88 adopted by the navel Orange Administrative Committee (Committee). The Committee met publicly on January 26, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 6 to 4 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is unstable.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.970 is added to read as follows: (This section will not appear in the Code of Federal Regulations.)

§ 907.970 Navel Orange Regulation 670.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 29, 1988, through February 4, 1988, are established as follows:

(a) District 1: 1,134,000 cartons;
(b) District 2: 216,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: January 27, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–1989 Filed 1–28–88; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 598]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 598 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 240,000 cartons during the period January 31 through February 6, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 598 (§ 910.898) is effective for the period January 31 through February 6, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on January 26, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10-1-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is weak.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.898 is added to read as follows: (This section will not appear in the Code of Federal Regulations.)

§ 910.898 Lemon Regulation 598.

The quantity of lemons grown in California and Arizona which may be handled during the period January 31, 1988, through February 6, 1988, is established at 240,000 cartons.

Dated: January 27, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-1990 Filed 1-28-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 87-087]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the scrapie regulations to provide for the payment of Federal indemnities for the destruction of scrapie-exposed sheep and goats when destruction of exposed animals is more cost effective than maintaining the flock under surveillance. This action should both reduce disease spread and control expenditures.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6321.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 54 (referred to below as the regulations), authorize the payment of federal indemnities for sheep and goats destroyed because of scrapie.

On April 15, 1987, we published in the **Federal Register** (52 FR 12189-12192, Docket 86-057), a document proposing to authorize payment of federal indemnities for the destruction of scrapie-exposed sheep and goats when:

1. Destroying the entire flock is more cost effective than the combination of destroying affected and bloodline animals and maintaining scrapie-exposed animals under surveillance; and

2. Sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.

Our proposal invited the submission of written comments by the close of the comment period on June 15, 1987. We received three comments. Two of the comments were in complete support of the proposal. The third, from a state agriculture agency, supported the proposal if scrapie-exposed animals "may be depopulated under the conditions described in the proposed rule, but do not have to be."

Under the proposed rule, depopulation is not predetermined or mandatory. The decision to destroy scrapie-exposed animals would be made after the requisite cost-benefit analysis is conducted and the Administrator has determined that depopulation is more cost effective than surveillance. The cost-benefit analysis that forms the basis for the depopulation/surveillance determination includes study and consideration of the applicable laws and regulations of the affected state, and evaluation of the impact of depopulation (versus surveillance) on state funding and manpower schedules. Animal owner recordkeeping and recording expenditures are also analyzed. We believe that these conditions assure adequate involvement by affected states and owners, and consideration of their interests and concerns.

Based on comments received, and on the rationale set forth in the proposal and this document, we are adopting this proposed rule as a final rule.

Miscellaneous

We have replaced the terms "Deputy Administrator" and "Deputy Administrator, Veterinary Services", wherever they appear in the regulations, with the term "Administrator" to reflect internal agency policy and have made minor editorial changes for clarity.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Over the past 5 years, scrapie indemnities totaled slightly over $2.4 million for an average annual expenditure of $482,528. Payment of indemnities in the new, limited instance authorized in this document should only slightly increase this figure. Moreover, this increase in indemnity costs should be accompanied by a greater reduction in the cost of maintaining affected flocks under surveillance. The primary effect of this final rulemaking should be to further decrease the risk of spreading scrapie and to reduce excessive flock surveillance costs.

This rule should not affect a substantial number of sheep and goat producers. The current program is controlling the disease, with the United States experiencing no more than 27 scrapie-affected flocks in any one of the past 5 years. This statistic should not be adversely affected since this rule should eliminate the current primary threat of disease spread (i.e., scrapie-exposed animals with undeterminable bloodlines).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

PART 54—ANIMALS DESTROYED BECAUSE OF SCRAPIE

Accordingly, 9 CFR Part 54 is amended to read as follows:

1. The authority citation for Part 54 is revised to read as follows and the authority citations following the sections in Part 54 are removed:

Authority: 21 U.S.C. 111, 114, 114a, 134a-134h; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 54.1 through 54.9 [Amended]

2. Sections 54.1 through 54.9 would be amended by removing the terms "Deputy Administrator" and "Deputy Administrator, Veterinary Services", and inserting "Administrator".

§ 54.1 [Amended]

3. Section 54.1 is amended by removing the definition of "Deputy Administrator" and by adding, in alphabetical order, the following:

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any employee of the United States Department of Agriculture to whom the Administrator has delegated authority to act in his or her stead.

* * * * *

Flock. (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm or ranch); or (b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

* * * * *

Scrapie-exposed animals. Animals, other than affected or bloodline animals, in a flock in which an affected animal has been diagnosed by a Veterinary Services representative or state representative. Animals in the flock are no longer considered exposed after they are destroyed or upon the flock's release from surveillance by state animal health authorities.

* * * * *

§ 54.3 [Amended]

4. Paragraph (a) of § 54.3 is amended by changing "affected animals and bloodline animals for which indemnity is to be paid under this part" to read "animals for which indemnity is to be paid under § 54.8 (a) and (b)".

§ 54.7 [Amended]

5. Paragraph (a) of § 54.7 is amended by changing "affected animals and bloodline animals destroyed under" to read "animals pursuant to § 54.8 (a) and (b) of".

6. Paragraph (b) of § 54.7 is amended by changing "affected animals and bloodline animals" to read "animals for which indemnity is sought pursuant to § 54.8 (a) and (b) of this part".

7. In § 54.8, paragraphs (b) and (c) are redesignated (d) and (e), respectively.

8. In § 54.8, paragraph (a) is redesignated (c) and is amended by changing "affected animals and bloodline animals" to read "affected animals, bloodline animals, and scrapie-exposed animals for which the Administrator authorizes payment of indemnity pursuant to § 54.8(b) of this part".

9. In § 54.8, new paragraphs (a) and (b) are added to read as follows:

§ 54.8 Payment to owners for animals destroyed.

(a) The Administrator shall authorize the payment of a federal indemnity to owners of affected animals and bloodline animals.

(b) The Administrator shall authorize the payment of a federal indemnity to

any owner of scrapie-exposed animals when a cost-benefit analysis establishes that it is more cost effective to destroy the flock than to maintain it under surveillance: Provided, That sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year.[1] This cost-benefit analysis shall be based on:

(1) The applicable laws and regulations of the state in which the flock would be maintained; and

(2) The total cost of federal and state indemnities to be paid if an entire scrapie-exposed flock were to be destroyed versus projected costs for indemnities if only affected and bloodline animals are destroyed; travel and per diem for the conducting of periodic flock inspections by federal and state inspectors; resulting disruptions of federal and state manpower schedules; and administrative and paperwork costs, including projected owner recordkeeping and reporting expenditures.

* * * * *

Done at Washington, DC, this 26th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-1908 Filed 1-28-88; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 399

[Docket No. 71268-7268]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises Export Control Commodity Number (ECCN) 1565A, which controls electronic computers and related equipment.

These revisions have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

The Office of Foreign Availability completed an assessment of selected categories of 16-bit microcomputer systems that were controlled by 1565A. The results of a positive finding in that assessment made a very significant contribution to the decontrol of the 16-bit computers that are described herein.

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

For questions of a technical nature regarding equipment controlled for export under ECCN 1565A, call Joseph Westlake, Computer Systems Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Decontrol of Selected Categories of 16-Bit Microcomputer Systems

Pursuant to the finding of foreign availability, Export Administration had begun the process of removing the controls on certain 16-bit computers to destinations other than the controlled countries. Before that process was completed, COCOM member nations agreed to decontrol digital computers with a "total processing data rate" not exceeding 6.5 million bits per second and "total internal storage capacity" not exceeding 8.2 million bits.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0038.

List of Subjects in 15 CFR Parts 376 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 376 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 376—[AMENDED]

§ 376.10 [Amended]

3. In § 376.10(a)(3)(iii)(B), the reference to "paragraph (h)(2)(v)" in Note 1 is revised to read "paragraph (h)(2)(iv)".

PART 399—[AMENDED]

§ 399.1 Supplement No. 1 [Amended]

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), in ECCN 1565A, the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" is revised to read as follows:

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers; and specially designed components and accessories therefor.

* * * * *

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A

(a) "Analog computers" and "related equipment" therefor, designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below 228 K (−45 °C) to above 328 K (+55 °C);

(b) Equipment or systems containing "analog computers" controlled by paragraph (a);

(c) "Analog computers" and "related equipment" therefor, other than those controlled by paragraph (a), *except* those that neither:

(1) Are capable of containing more than 20 summers, integrators, multipliers or function generators; *nor*

(2) Have facilities for readily varying the interconnections of such components;

(d) "Hybrid computers" and "related equipment" therefor, with all the following characteristics:

(1) The analog section is controlled by paragraph (c);

(2) The digital section has an internal fixed or alterable storage of more than 2,048 bits; *and*

(3) Facilities are included for processing numerical data from the analog section in the digital section or vice versa;

(e) "Digital computers" or controlled "analog computers" containing equipment for interconnecting "analog computers" with "digital computers";

(f) "Digital computers" and "related equipment" therefor, with any of the following characteristics:

(1) Designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below 228 K (−45 °C) to above 328 K (+55 °C);

(2) Designed or modified to limit electromagnetic radiation to levels much less than those required by government civil interference specifications;

(3) Designed as ruggedized or radiation hardened equipment and capable of meeting military specifications for ruggedized or radiation hardened equipment; *or*

(4) Modified for military use;

(5) Designed or modified for certifiable multi-level security or certifiable user isolation applicable to government classified material or to applications requiring an equivalent level of security;

(g) Equipment or systems containing "digital computers" controlled by paragraph (f);

(h) "Digital computers" and "related equipment" therefor, other than those controlled by paragraph (e) or (f), even when "embedded" in, "incorporated" in, or "associated" with equipment or systems:

Note.—The control status of these "digital computers" and "related equipment" therefor is governed by the appropriate ECCN, provided that:

(a) They are "embedded" in other equipment or systems;

(b) The other equipment or systems are described in other ECCNs on the Commodity Control List identified by the code letter "A"; *and*

(c) The export of technical data for these "digital computers" and "related equipment" is subject to control under Part 379.

(1) Including "digital computers" and "related equipment," as follows:

(i) Designed or modified for:

Note.—"Digital computers" and "related equipment" containing equipment, devices or logic control for the following functions are also included.

(A) "Signal processing";

(B) "Image enhancement";

(C) "Local area networks";

Note.—For the purpose of this paragraph, data communication systems when located within a single piece of equipment (e.g., television set, car) are not considered to be designed or modified for "local area networks."

(D) "Multi-data-stream processing";

Note.—For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "multi-data-stream processing," if they:

(a) Utilize staged (pipelined) instruction interpretation for conventional single instruction-single data sequence processing; *or*

(b) Have an arithmetic unit implemented with bit-slice microprocessor microcircuits.

(E) Combined recognition, understanding and interpretation of image, continuous (connected) speech or connected word text other than "signal processing" or "image enhancement" described in paragraph (h)(1)(i) (A) or (B);

(F) "Real time processing" of sensor data:

(*1*) Concerning events occurring outside the "computer using facility"; *and*

(*2*) Provided by equipment controlled by ECCN 1501, 1502, 1510 or 1518;

Note.—This does not include digital radar signal processing by equipment that is:

(a) Controlled by ECCN 1501(c)(2)(vi) only, for which the conditions of ECCN 1501 apply; *or*

(b) Freed from control by the two-year limit of ECCN 1501(c)(2)(vii).

(G) Microprocessor or microcomputer development systems;

Note.—For microprocessor or microcomputer development systems, see ECCN 1529(b)(6)(ii).

(H) "Fault tolerance";

Note.—For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "fault tolerance," if they utilize:

(a) Error detection or correction algorithms in "main storage";

(b) The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

(c) The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; *or*

(d) The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

(I) Reserved;

(J) "User-accessible microprogrammability";

Note.—For the purpose of this paragraph, "digital computers" and "related equipment" are not considered to be designed or modified for "user-accessible microprogrammability," if this facility is limited to:

(a) Loading, reloading or inserting of "microprograms" provided by the supplier; *or*

(b) Simple loading of "microprograms", which may or may not be provided by the supplier, but that are neither designed to be accessible to the user nor accompanied by training or "software" for user accessibility.

(K) "Data (message) switching";

(L) "Stored program controlled circuit switching"; *or*

(M) "Wide area networks";

(ii) Having the following characteristics:

(A) Size, weight, power consumption and reliability or other characteristics (e.g. bubble memory), that allow easy

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[1] Should funding not be sufficient to pay indemnities to all eligible owners seeking payment for scrapie-exposed animals, then the funds that are available shall be paid first in those instance where the following indicates the greatest need for flock destruction:

1. Whether any of the affected flocks contain animals for which bloodlines cannot be determined and the number of such animals in each flock.

2. The estimated extent of infection in each affected flock as measured by the number of affected and bloodline animals found and destroyed—and the number of remaining scrapie-exposed animals displaying symptoms indicative of scrapie—versus the number total number of animals in each affected flock.

3. Any previous history of scrapie in an affected flock.

application in mobile tactical military systems; *and*

(B) Ruggedized above the level required for a normal commercial/office environment, but not necessarily up to levels specified in paragraph (f);

(2) *Except:*

(i) "Digital computers" or "related equipment" therefor, provided that:

(A) They are "embedded" in other equipment or systems;

Note.—This does not preclude input/output control unit disk drive combinations having all the following characteristics:

(a) A "total transfer rate" not exceeding 5.5 million bits per second;

(b) Total connected "net capacity" not exceeding 200 million bits;

(c) No more than one independent drive; *and*

(d) A "total access rate" not exceeding 40 accesses per second;

(B) They are not the "principal element" of the other equipment or systems in which they are "embedded";

(C) The other equipment or systems are not described by other ECCNs of the Commodity Control List identified by the code letter "A," nor covered by the International Traffic in Arms Regulations, or by 10 CFR 110, or by 10 CFR 810;

(D) They have been designed and used for non-strategic applications;

(E) They are, by nature of design or performance, restricted to the particular application for which they have been designed;

(F) The "total processing data rate" of any one "embedded" "digital computer" does not exceed 43 million bits per second;

(G) The sum of the "total processing data rate" of each "embedded" "digital computer" does not exceed 100 million bits per second; and

(H) The "embedded" "digital computers" or "related equipment" therefor do not include equipment or systems controlled by ECCN 1519(c) or by ECCN 1567;

(I) Reserved;

(J) They do not include equipment described in paragraph (h)(1)(i) (A) to (M), other than for:

(*1*) "Signal processing" or "image enhancement" when lacking "user-accessible programmability" and when "embedded" in medical imaging equipment; *or*

(*2*) "Local area networks" implemented by using integral interfaces designed to meet ANSI/IEEE Std 488–1978 or IEC Publication 625–1;

Note.—Equipment or systems are released from control under paragraph (i) only if the "digital computer" portion of the equipment or system meets the following requirements:

(a) The circuit board(s) that contain the "digital computer" are company specific products whose design intermixes on the same board the digital computer with other circuit components that are essential to the operation of the equipment or system;

(b) The circuit board(s) that contain the "digital computer" are not available as independent, general purpose, OEM products except as service spare parts; and

(c) The "digital computer" is not the principal component of the equipment.

(ii) "Digital computers" or "related equipment" therefor, provided that:

(A) They are "incorporated" in other equipment or systems;

(B) They are not the "principal element" of the other equipment or systems in which they are "incorporated";

(C) The other equipment or systems are not controlled by other ECCNs on the Commodity Control List identified by the code letter "A," nor covered by the International Traffic in Arms Regulations, or by 10 CFR Part 110, or by 10 CFR Part 810;

(D) The "total processing data rate" of any one "incorporated" "digital computer" does not exceed 15 million bits per second;

(E) The "total internal storage available to the user" does not exceed 9.8 million bits; *and*

(F) They do not include controlled "related equipment" other than input/output control unit—disk drive combinations having all of the following characteristics:

(*1*) A "total transfer rate" not exceeding 5.5 million bits per second;

(*2*) A total connected "net capacity" not exceeding 200 million bits;

(*3*) No more than one independent drive; *and*

(*4*) A "total access rate" not exceeding 40 accesses per second;

(G) They do not include equipment or systems controlled by ECCN 1519(c) or by ECCN 1567;

(H) They do not include equipment described in paragraph (h)(1)(ii);

(I) Reserved;

(J) They do not include equipment described in paragraph (h)(1)(i) (A) to (M), other than for:

(*1*) "Signal processing" or "image enhancement" when lacking "user-accessible programmability" and when "embedded" in medical imaging equipment; *or*

(*2*) "Local area networks" implemented by using integral interfaces designed to meet ANSI/IEEE Std 488–1978 or IEC Publication 625–1;

Note.—"Digital computers" or "related equipment" "incorporated" in equipment exportable under the provisions of ECCNs 1501, 1502, 1510 or 1518, that are for internal functions that incidentally might be considered to be described by paragraph (h)(1)(i)(F) are exportable as part of that equipment. "Digital computers" or "related equipment" for the "real-time processing" of the outputs of the equipment controlled by ECCNs 1501, 1502, 1510 or 1518 and for Air Traffic Control systems are covered by this ECCN 1565.

(iii) "Digital computers" other than those described in paragraph (h)(1), and "related equipment", having all the following characteristics:

(A) Shipped as complete systems;

(B) Designed and announced by the manufacturer for identifiable civil use;

(C) Not specially designed for any equipment controlled by any other ECCN on the Commodity Control List identified by the code letter "A," by the International Traffic in Arms Regulations, or by 10 CFR Part 110, or by 10 CFR Part 810;

(D) "Total processing data rate" not exceeding 6.5 million bits per second;

(E) "Total internal storage available to the user" not exceeding 6.2 million bits; and

(F) They do not include a central processing unit implemented with more than two microprocessor or microcomputer microcircuits;

Note.—This limit does not include any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.

(G) They do not include a microprocessor or microcomputer microcircuit with more than 16-bit word length or a bus architecture with more than 16 bit;

(H) They do not include analog-to-digital or digital-to-analog converter microcircuits:

(*1*) Exceeding the limits of ECCN 1568(k); *and*

(*2*) Not for direct driven video monitors for normal commercial television;

(I) Reserved;

(J) They do not include controlled "related equipment" other than input/output control unit—disk drive combinations having all of the following characteristics:

(*1*) A "total transfer rate" not exceeding 5.5 million bits per second;

(*2*) A total connected "net capacity" not exceeding 200 million bits;

(*3*) No more than one independent drive; and

(*4*) A "total access rate" not exceeding 40 accesses per second;

(K) They do not include equipment controlled by ECCN 1519(c) or by ECCN 1567;

(iv) Peripheral equipment, as follows, provided it lacks "user-accessible programmability":

(A) Card punches and readers;

(B) Paper tape punches and readers;

(C) Manually-operated keyboards and teletype devices;

(D) Manually-operated graphic tablets not having more than 1024 resolvable points along any axis;

(E) Impact printers;

(F) Non-impact printers, not controlled by ECCN 1572 (b) or (c), that do not exceed:

(*1*) 2,000 lines (30 pages) per minute; *or*

(*2*) 600 characters per second;

(G) Plotting equipment, not controlled by ECCN 1572 (b) or (c), producing a physical record by ink, photographic, thermal, or electrostatic techniques, that has:

(*1*) A linear accuracy worse than or equal to + or − 0.004%; *and*

(*2*) An active plotting area less than or equal to 1,700 mm (66.9 inches) by 1,300 mm (51.2 inches);

(H) Digitizing equipment, generating rectilinear coordinate data by manual or semi-automatic tracing of physical records, that has:

(*1*) A linear accuracy worse than or equal to + or − 0.004%; and

(*2*) An active digitizing area less than or equal to 1,700 mm (66.9 inches) by 1,300 mm (51.2 inches);

(I) Reserved;

(J) Optical mark recognition (OMR) equipment;

(K) Optical character recognition (OCR) equipment that:

(*1*) Does not contain "signal processing" or "image enhancement" equipment; *and*

(*2*) Is only for:

(*i*) Stylized OCR characters;

(*ii*) Other internationally standardized stylized character fonts; *or*

(iii) Other characters limited to non-stylized or hand printed numerics and up to 10 hand printed alphabetic or other characters;

(L) Cathode-ray tube displays for which circuitry and character-generation devices, external to the tube, limit the capabilities to:

(*1*) Alpha-numeric characters in fixed formats;

(*2*) Graphs composed only of the same basic elements as used for alpha-numeric character composition; *or*

(*3*) Graphic displays for which the sequence of symbols and basic elements of symbols are fixed;

(M) Cathode-ray tube graphic displays, not containing cathode-ray tubes controlled by ECCN 1541, that are limited as follows:

(*1*) The "maximum bit transfer rate" from the electronic computer to the display does not exceed 9,600 bits per second;

Note.—Direct driven vide monitors are excluded from this limitation.

(*2*) Not more than 1,024 resolvable elements along any axis; *and*

(*3*) Not more than 16 shades of gray or color;

(N) Cathode-ray tube graphic displays, not containing cathode-ray tubes controlled by ECCN 1541, provided that they are:

(*1*) Part of industrial or medical equipment; and

(*2*) Not specially designed for use with electronic computers;

(O) Graphic displays specially designed for signature or security checking having an active display area not exceeding 150 cm ^{2} (23.25 inches ^{2});

(P) Other displays, provided that:

(*1*) Circuitry and character-generation devices, external to the display device (e.g., panel, tube) and the construction of the display device limit the capabilities to:

(*i*) Alpha-numeric characters in fixed formats;

(*ii*) Graphs composed only of the same basic elements as used for alpha-numeric character composition; *or*

(*iii*) Graphic displays for which the sequence of symbols and basic elements of symbols are fixed; *and*

(*2*) They are limited to:

(*i*) A capability for displaying no more than 3 levels (off, intermediate, and full on); *and*

(*ii*) A minimum character height of not less than:

(*a*) 5.5 mm (0.22 inches) if the area is 1,200 cm ^{2} (186 inches ^{2}) or less; *or*

(*b*) 20 mm (0.79 inches) if the area is more than 1,200 cm ^{2} (186 inches ^{2}); *and*

(*3*) They do not have as an integral part of the display device:

(*i*) Circuitry; *or*

(*ii*) Non-mechanical character-generation devices;

(Q) Light gun devices or other manual graphic input devices that are:

(*1*) Part of uncontrolled displays; *and*

(*2*) Limited to 1,024 resolvable elements along any axis;

(R) Disk drives for non-rigid magnetic media (floppy disks) not exceeding:

(*1*) A "gross capacity" of 17 million bits;

(*2*) A "maximum bit transfer rate" of 0.52 million bits per second; *or*

(*3*) An "access rate" of 12 accesses per second;

(S) Cassette/cartridge tape drives or magnetic tape drives not exceeding:

(*1*) A "maximum bit packing density" of 131 bits per mm (3,300 bits per inch) per track; *or*

(*2*) A "maximum bit transfer rate" of 2.66 million bits per second;

(v) Input/output interface or control units, as follows, provided they lack "user-accessible programmability":

(A) Designed for use with peripheral equipment free from control under paragraph (h)(2)(iv) above; *or*

(B) Designed for use with digital recording or reproducing equipment specially designed to use magnetic card, tag, label or bank check recording media, free from control according to ECCN 1572(a)(ii);

(i) Reserved.

ADVISORY NOTE 1.—Reserved.

ADVISORY NOTE 2.—Reserved.

ADVISORY NOTE 3.—Licenses are likely to be approved for export to satisfactory end-users in Country Group QWY and the People's Republic of China of "analog computers" and "related equipment" therefor controlled by paragraph (c), provided that:

(a) The equipment is primarily used in non-strategic applications;

(b) The equipment will be used primarily for the specific non-strategic application for which the export would be approved; and:

(1) The number, type, and characteristics of such equipment are reasonable for this application; *and*

(2) The equipment will not be used for the design, development or production of equipment controlled by other ECCNs identified by the code letter "A," by the International Traffic in Arms Regulations, or by 10 CFR Part 110, or by 10 CFR Part 810, especially for microelectronics production;

(c) The "analog computers" use neither:

(1) Optical computation devices; *nor*

(2) Acoustic wave devices controlled by ECCN 1586, other than those exportable under the Advisory Note to ECCN 1586;

(d) The "analog computers" are limited as follows:

(1) The rated errors for summers, inverters and integrators are not less than:

(i) Static: 0.01%

(ii) Total at 1 kHz: 0.15%

(2) The rated errors for multipliers are not less than:

(i) Static: 0.025%

(ii) Total at 1 kHz: 0.25%

(3) The rated error for fixed function generators (log x and sine/cosine) is not less than:

Static: 0.1%

(4) No more than 350 operational amplifiers; *and*

(5) No more than four integrator time scales switchable during one program.

TECHNICAL NOTES TO ADVISORY NOTE 3:

1. The percentage for Advisory Note 3 (d)(1)(i) applies to the actual output voltage; all the other percentages apply to full scale, that is, from maximum negative to maximum positive reference voltages.

2. Total errors at 1 kHz for Advisory Note 3 (d)(1)(ii) and (d)(2)(ii) are to be measured with those resistors incorporated in the inverter, summer or integrator that provide the least error.

3. Total error measurements include all errors of the unit resulting from, for example,

tolerances of resistors and capacitors, tolerances of input and output impedances of amplifiers, the effect of loading, the effects of phase shift, and the generating of functions.

ADVISORY NOTE 4:—Reserved.

ADVISORY NOTE 5:—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" and "related equipment" therefor, controlled by paragraph (b), provided that:

(a) The "digital computers" or the "related equipment":

(1) Have been designed or announced by a manufacturer for identifiable and dedicated medical applications;

(2) Are substantially restricted to the area of medical applications by nature of design and performance;

(3) Are the equipment necessary for the medical application;

(4) Are exported as complete systems;

(5) Will be located within one "computer using facility"; and

(6) Do not include communication control unit—"communication channel" combinations;

(b) Equipment for "signal processing", "image enhancement", or "multi-data-stream processing":

(1) Is "embedded";

(2) Is designed or modified specially for the identifiable and dedicated medical applications;

(3) Does not have "user-accessible microprogrammability"; *and*

(4) Does not have "user-accessible programmability" other than allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

(c) The "total processing data rate" of any one "incorporated" "digital computer" does not exceed 43 million bits per second;

(d) The "digital computers" or "related equipment" therefor do not include:

(1) Equipment controlled by ECCN 1519(c) or ECCN 1567; *or*

(2) Equipment described in paragraph (h)(1)(i)(C) to (h)(1)(i) (E) and (M); *and*

ADVISORY NOTE 6: Reserved.

ADVISORY NOTE 7: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China of spare parts for exported electronic computers or "related equipment", provided that:

(a) The parts are:

(1) "Related equipment" or specially designed components controlled by ECCN 1565; *or*

(2) Equipment or components controlled by other ECCNs on the Commodity Control List;

(b) The parts:

(1) Are destined for controlled equipment authorized for export under an Advisory Note or for uncontrolled equipment;

(2) Are shipped in the minimum quantities necessary for the types and quantities of exported equipment being serviced; *and*

(3) Do not upgrade the performance of the exported equipment beyond the level:

(i) Specified in the relevant Advisory Note; *or*

(ii) Specified as uncontrolled;

(c) If the parts are "advanced technology parts" and not eligible for export under an Advisory Note of another ECCN, the Western supplier's service organization must:

(1) Replace the parts on a one-for-one exchange basis;

(2) Take measures to obtain custody of the defective parts; *and*

(3) If custody is not obtained, destroy the defective parts;

TECHNICAL NOTE TO ADVISORY NOTE 7: For the purpose of this paragraph, "advanced technology parts" are either:

(a) Parts controlled by paragraph (c)(2) of ECCN 1564;

(b) Microprocessor, microcomputer, memory, programmed logic array or arithmetic logic unit microcircuits controlled by paragraph (d) of ECCN 1564;

(c) Magnetic tape heads, magnetic disk heads, magnetic drum heads, or non-exchangeable magnetic disk or drum recording media controlled by ECCN 1572; *or*

(d) Acoustic wave devices controlled by ECCN 1586, other than those exportable under the Advisory Note to ECCN 1586.

ADVISORY NOTE 8: Reserved.

ADVISORY NOTE 9: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (b), provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraphs (h)(1)(i) (D) to (M);

(2) Are not used with "digital computers" produced in controlled areas;

Note: This does not prohibit the exchange of data media.

(3) Are exported as:

(i) Complete systems; *or*

(ii) Enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Advisory Note;

(4) Have not been designed for any equipment:

(i) Controlled by any other ECCN on the Commodity Control List identified by the code letter "A"; *and*

(ii) Are not eligible for export under an applicable Advisory Note to such other ECCN;

(5) Have been primarily designed and used for non-strategic applications; *and*

(6) Do not have any of the following characteristics:

(i) They fall within the scope of both paragraphs (h)(1)(ii) (A) and (B); *or*

(ii) They fall within the scope of paragraph (h)(1)(ii)(A) and are microprocessor-based systems having a word length of more than 8 bits; *or*

(iii) They are ruggedized above the level required for a normal commercial/civil environment, but not necessarily up to the levels specified in paragraph (f) and are microprocessor-based systems having a word length of more than 8 bits;

Note.—8-bit word length systems with 16-bit architecture are regarded as 8-bit systems for the purpose of this paragraph.

(7) The number, type and characteristics of the equipment are reasonable for the application;

(8) The equipment is not destined for military end-use;

(9) The equipment will not be used for the design, development, or production of controlled items, especially not in microelectronics; and

(10) The equipment will be used primarily for the specific non-strategic application for which the export would be approved.

(b) The "digital computers" and "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—28 million bits per second;

(ii) "Total connected capacity" of "main storage"—9.8 million bits;

(iii) "Non-volatile storage" with "user-accessible programmability," including bubble memory—none;

Note.—Magnetic core "main storage" is not considered "non-volatile storage" for purposes of this paragraph.

(iv) Number of microprocessor microcircuits implementing the central processing unit—three;

Note.—This limit does not include any dedicated microprocessor or microcomputer microcircuit used solely for display, keyboard or input/output control, or any bit-slice microprocessor microcircuit.

(2) Input/output control unit—drum, disk or cartridge type streamer tape drive combinations:

(i) "Total transfer rate"—11 million bits per second;

(ii) "Total access rate"—160 accesses per second;

(iii) Total connected "net capacity"—2,800 million bits;

(iv) "Maximum bit transfer rate" of any drum or disk drive—10.3 million bits per second;

(v) Number of cartridge-type streamer tape drives—one, having a "maximum bit transfer rate" of 5.5 million bits per second;

(vi) Number of independent drum or disk drives including the streamer tape drive—four;

(vii) Exchangeable disk packs containing magnetic heads:

(A) "Access rate of an independent seek mechanism"—20 accesses per second;

(B) "Net capacity"—240 million bits;

(3) Input/output control unit—bubble memory combinations:

(i) For point of sale devices used by cashiers, total connected "net capacity"—5.3 million bits;

(ii) For "digital computers" and "related equipment" other than those in (i) above, total connected "net capacity"—2.1 million bits;

(4) Input/output control unit—magnetic tape drive combinations:

(i) "Maximum bit packing density"—246 bits per mm (6,250 bpi);

(ii) Maximum read/write speed—508 cm (200 ips);

(iii) Number exceeding 131 bits per mm (3,300 bpi)—four;

(iv) "Maximum bit transfer rate" of any magnetic tape drive—10 million bits per second;

(5) Communication control unit—"communication channel" combinations:

(i) "Total data signalling rate" of all "communication channels" terminating remote from the "computer using facility"—9,600 bits per second;

(ii) Maximum "data signalling rate" of any "communication channel"—4,800 bits per second;

(iii) Number of "communication channels" not dedicated full time to the given application—two, provided that they:

(A) Have telex interfaces for services conforming to CCITT recommendations F60 to 79;

(B) Are connected to the public switched network; *and*

(C) Have a "data signalling rate" not exceeding 300 bits per second at the interface between the "digital computer" and the telex communication control unit;

(iv) "Communication channels" terminating within the "computer using facility" that utilize or are connected to a common carrier communication facility or to an internal private automatic branch exchange (PABX) other than that identified in paragraph (b)(4)(iii) of this Advisory Note 9—none;

(6) Input/output or communication control unit—directly connected data channel combinations:

(i) "Total transfer rate"—1.6 million bits per second;

(ii) "Transfer rate of any data channel"—1.6 million bits per second;

(iii) Terminations of such combinations or any extensions thereto outside the "computer using facility"—none;

(7) Communication control unit—"local area network" combinations:

(i) "Total data signalling rate" on the common transmission medium—10 million bits per second;

(ii) Maximum "data signalling rate" of any "communication channel"—1.6 million bits per second;

(iii) Packet switching protocol levels—those limits specified in:

(A) ISO/DIS7498, Data Processing—Open System Interconnection, Basic Reference Model, February 4, 1982, Layer 2;

(B) CCITT X.25, Volume VIII—Fascicle VIII.2, VIIth Plenary Assembly, 10–21 November 1980, Level 2, (pages 104 to 120); *or*

(C) Draft IEEE 802.2, Logical Link Control, Draft D, November 1982;

(iv) Inter-network gateways—none;

(v) Maximum number of "data devices"—24;

(vi) Terminations of such combinations or any extensions thereto outside the "computer using facility"—none;

(vii) All "digital computers" connected to a "local area network" will be considered to be a single system sharing "main storage" (for purposes of computing the Advisory Note 9 parameters).

Note: If the "total data signalling rate" on the common transmission medium does not exceed 1.6 million bits per second, this paragraph will not apply.

(8) "Other peripheral devices":

(i) Maximum bit transfer rate of any "terminal device" located remote from the "computer using facility"—9,600 bits per second;

(ii) Displays or graphic input devices:

Resolvable elements along any axis—1024, and shades of gray or color—32;

(9) Other limits on equipment:

(i) "Equivalent multiply rate" for "signal processing" or "image enhancement" equipment—100,000 operations per second;

(ii) Analog-to-digital or digital-to-analog converter microcircuits exceeding the limits of ECCN 1568(k) (not including those converter microcircuits that are "embedded" in equipment otherwise exportable, are for the internal functions of such equipment, and are exported as part of that equipment)—none;

(iii) Equipment described in Advisory Note 9 (b) (1) to (5) above (including interface equipment and terminating modems of all "communication channels") located outside the "computer operating area"—none;

(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 9 shall be subject to the following restrictions:

(1) Reserved.

(2) Reserved.

(3) When the parameters of the equipment do not exceed:

(i) "Total processing data rate"—15 million bits per second;

(ii) Number of independent drum or disk drives including the cartridge-type streamer tape drive—four, of which not more than two drum or disk drives have a "maximum bit transfer rate" exceeding 5.5 million bits per second:

Then there are no quantity limitations on the export of equipment per transaction.

(4) When the parameters of any equipment involved in one transaction exceeds:

(i) "Total processing data rate"—15 million bits per second;

Then the "cumulative total processing data rate" must not exceed 100 million bits per second;

ADVISORY NOTE 10: Reserved.

ADVISORY NOTE 11: Reserved.

ADVISORY NOTE 12: (Not eligible for General License G-COM) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (b), provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraphs (h)(1)(i) (D) to (M);

(2) Are not used with "digital computers" produced in controlled areas;

Note: This does not preclude the exchange of data media.

(3) Are exported as:

(i) Complete systems; *or*

(ii) Enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Advisory Note;

(4) Have not been designed for any equipment:

(i) Controlled by another ECCN on the Commodity Control List identified by the code letter "A"; and

(ii) Are not eligible for export under an applicable Advisory Note to such other ECCN;

(5) Have been primarily designed and used for non-strategic applications; *and*

(6) Do not have any of the following characteristics:

(i) They fall within the scope of both paragraphs (h)(1)(ii) (A) and (B); *or*

(ii) They fall within the scope of paragraph (h)(1)(ii)(A) and are microprocessor-based systems having a word length of more than 16 bits; *or*

(iii) They are ruggedized above the level required for a normal commercial/civil environment, but not necessarily up to the levels specified in paragraph (f) and are microprocessor-based systems having a word length of more than 16 bits;

Note.—16-bit word length systems with a 32-bit architecture are regarded as 16-bit systems for the purpose of this paragraph.

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—45 million bits per second;

(ii) "Total connected capacity" of "main storage"—25.2 million bits;

(iii) "Non-volatile storage" with "user accessible programmability," including bubble memory—none.

Note.—Magnetic core "main storage" is not considered "non-volatile storage" for purposes of this paragraph.

(iv) "Virtual storage" capability—512 M Byte.

Note.—Supermini "digital computers" with a "virtual storage" capability exceeding the level in this paragraph will not be eligible for consideration under this Note. It is recognized, however, that other "digital computers" (e.g., mainframes) may have a "virtual storage" capability exceeding this limit and in such cases they may be considered under this Note.

(2) Input/output control unit—drum, disk or cartridge-type streamer tape drive combinations:

(i) "Total transfer rate"—15 million bits per second;

(ii) "Total access rate"—320 accesses per second;

(iii) Total connected "net capacity"—7,000 million bits;

(iv) "Maximum bit transfer rate" of any drum or disk drive—10.3 million bits per second;

(v) Number of cartridge-type streamer tape drives—one, having a "maximum bit transfer rate" of 7.5 million bits per second;

(vi) Number of drum or disk drives exceeding a "maximum bit transfer rate" of 7.5 million bits per second—four;

(vii) Exchangeable disk packs containing magnetic heads:

(A) "Access rate" of an independent seek mechanism—29 accesses per second;

(B) "Net capacity"—440 million bits;

(3) Input/output control unit—bubble memory combinations:

(i) Total connected "net capacity" for point of sale devices used by cashiers—5.3 million bits;

(ii) Total connected "net capacity" for "digital computers" and "related equipment" other than those in paragraph (b)(3)(i) above—2.1 million bits;

(4) Input/output control unit—magnetic tape drive combinations:

(i) "Maximum bit packing density"—246 bits per mm (6,250 bits per inch);
(ii) Maximum read/write speed—508 cm (200 ips);
(iii) Number exceeding 131 bits per mm (3,300 bpi)—four;
(iv) "Maximum bit transfer rate" of any magnetic tape drive—10 million bits per second;
(5) Communication control unit—"communication channel" combinations:
(i) "Total data signalling rate" of all "communication channels" terminating remote from the "computer using facility"—19,200 bits per second;
(ii) Maximum "data signalling rate" of any "communication channel"—9,600 bits per second;
(iii) Number of "communication channels" not dedicated full time to the given application—four, provided that they:
(A) Have telex interfaces for services conforming to CCITT Recommendations F60 to 79;
(B) Are connected to the public switched network; *and*
(C) Have a "data signalling rate" not exceeding 300 bits per second at the interface between the "digital computer" and the telex communication control unit;
(iv) "Communication channels" terminating within the "computer using facility," that utilize or are connected to a common carrier communication facility or to an internal PABX other than that identified in paragraph (b)(5)(iii) above—none;
(6) Input/output or communication control unit—directly connected data channel combinations:
(i) "Total transfer rate"—3.6 million bits per second;
(ii) "Transfer rate of any data channel"—1.6 million bits per second;
(iii) Terminations of such combinations or of any extensions thereto outside the "computer using facility"—none;
(7) Communication control unit—"local area network" combinations:
(i) "Total data signalling rate" on the common transmission medium—10 million bits per second;
(ii) Maximum "data signalling rate" of any "communication channel"—1.6 million bits per second;
(iii) Packet switching protocol levels—those limits specified in:
(A) ISO/DIS7498, Data Processing—Open System Interconnection, Basic Reference Model, February 4, 1982, Layer 2;
(B) CCITT X.25, Volume VIII—Fascicle VIII.2, VIIth Plenary Assembly, 10–21 November 1980, Level 2, (pages 104 to120); *or*
(C) Draft IEEE 802.2, Logical Link Control, Draft D, November 1982;
(iv) Inter-network gateways—none;
(v) Maximum number of "data devices"—48;
(vi) Terminations of such combinations or any extensions thereto outside the "computer using facility"—none;
(vii) All "digital computers" connected to a "local area network" will be considered to be a single system sharing "main storage" (for purposes of computing the Advisory Note 12 parameters)

Note.—If the "total data signalling rate" on the common transmission medium does not exceed 1.6 million bits per second, this paragraph will not apply.

(8) "Other peripheral devices":
(i) Maximum bit transfer rate of any "terminal device" located remote from the "computer using facility"—9,600 bits per second;
(ii) Displays or graphic input devices:
(A) Resolvable elements along any axis—512, and shades of gray or color—256; *or*
(B) Resolvable elements along any axis—900, and shades of gray or color—64; *or*
(C) Resolvable elements along any axis—1,024, and shades of gray or color—32;
(9) Other limits on equipment:
(i) "Signal processing" or "image enhancement" equipment:
(A) "Equivalent multiply rate"—800,000 operations per second;
(B) Output—8 million image elements per second;
(ii) Equipment described in Advisory Note 12(b) (1) to (5) (including interface equipment and terminating modems of all "communication channels") located outside the "computer operating area"—none;
(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 12 shall be subject to the following restrictions:
(1) In all cases:
(i) A responsible representative of the end-user(s) or the importing agency must submit a signed statement describing the end-use and certifying that:
(A) The "digital computers" or "related equipment" will:
(*1*) Be used only for civil applications; *and*
(*2*) Not be reexported or otherwise disposed of without permission from the government of the exporting country;
(B) Responsible Western representatives of the supplier will:
(*1*) Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*
(*2*) Be furnished information demonstrating continued authorized application of the equipment; *and*
(C) These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;
(ii) A full description must be provided of:
(A) The equipment; *and*
(B) Its intended application and workload; *and*
(iii) A complete identification of all end-users and their activities must be provided;
(2) Reserved.
(3) There is no visitation requirement when the parameters of the equipment do not exceed:
(i) "Total proceeding data rate"—28 million bits per second; *and*
(ii) "Total connected capacity" of "main storage"—9.8 million bits;
(4) When the parameters of the equipment exceed either limit of paragraph (c)(3) above, but the following parameters are not exceeded:
(i) "Total processing data rate"—40 million bits per second; *and*
(ii) "Total connected capacity" of "main storage"—19.6 million bits;

Then the supplier will:
(iii) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment, wherever located, at least quarterly for three years; *and*
(iv) Report periodically to the Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location; *and*
(5) When the parameters of the equipment exceed either limit of paragraph (c)(4) above, then the supplier will:
(i) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment, wherever located, at least monthly for two years and thereafter quarterly for four years; *and*
(ii) Report periodically to Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location.

Note.—The visitation requirements of paragraphs (c)(4) and (c)(5) above will be waived for remote "terminal devices" if they consist only of peripheral equipment freed from control by paragraph (h)(2)(iv) above.

ADVISORY NOTE 13: Reserved.

ADVISORY NOTE 14: Reserved.

ADVISORY NOTE 15: Reserved.

ADVISORY NOTE 16: The following are definitions of terms used in ECCN 1565A:

"access rate"—

(a) Of an input/output control unit—drum or disk drive combination (R_{cu})—

Either the "access rate" of an input/output control unit (R_{cu})or the sum of the individual "access rates" of all independent seek mechanisms (R_{sm}), whichever is smaller.

Thus: $R_{cu} = \min (R_{cu}; \text{SUM } R_{sm})$

(b) Of an input/output control unit (R_{cu})—

(1) With rotational position sensing (rps), the sum of the individual "access rate" of all independent seek mechanisms (R_{sm}) connected to the control unit.

Thus: $R_{cu} = \text{SUM } R_{sm}$ (with rps); *or*

(2) Without rotational position sensing (rps), the number (C) of independent read/write channels connected to the control unit divided by the least 'latency time' (t_{min}) of any connected independent seek mechanism.

$$\text{Thus: } R_{cu} = \frac{C}{t_{min}} \quad \text{(without rps)}$$

(c) Of a seek mechanism (R_{sm})—

The reciprocal of the average access time (t_{sm}) of the seek mechanism.

$$\text{Thus: } R_{sm} = \frac{1}{t_{sm}}$$

'average access time' of a seek mechanism (t_{sm})—The sum of the 'average seek time' (t_{ssm}) and the 'latency time' (t_l).

Thus: $t_{sm} = t_{ssm} + t_l$

'average seek time' (t_{ssm})—

The sum of the 'maximum seek time' (t_{max}) and twice the 'minimum seek time' (t_{min}), divided by three.

$$\text{Thus: } T_{ssm} = \frac{t_{max} + 2t_{min}}{3}$$

'maximum seek time' (t_{max})—

(1) For fixed head devices, it is zero; *or*
(2) For moving head or moving media devices, the rated time to move between the two most widely separated tracks.

'minimum seek time' (t_{min})—

(1) For fixed head devices, it is zero; *or*
(2) For moving head or moving media devices, the rated time to move from one track to an adjacent track.

'latency time' (t_l)—

The rotational period divided by twice the number of independent read/write heads per track.

"analog computer"—

Equipment that can, in the form of one or more continuous variables:
(a) Accept data;
(b) Process data; *and*
(c) Provide output of data.

"associated" with equipment or systems—

(a) Can feasibly be either:
(1) Removed from such equipment or systems; *or*
(2) Used for other purposes; *and*
(b) Is not essential to the operation of such equipment or systems.

"communication channel"—

The transmission path or circuit including the terminating transmission and receiving equipment (modems) for transferring digital information between distant locations.

"computer operating area"—

The immediate contiguous and accessible area around the electronic computer, where the normal operating, support and service functions take place.

"computer using facility"—

The end-user's contiguous and accessible facilities:
(a) Housing the "computer operating area" and those end-user functions that are being supported by the stated application of the electronic computer and its "related equipment"; *and*
(b) Not extending beyond 1,500 meters in any direction from the center of the "computer operating area".

"cumulative total processing data rate"—

The sum of all "total processing data rates" in a given transaction.

"data device"—

Equipment capable of transmitting or receiving sequences of digital information.

"data (message) switching"—

The technique, including but not limited to store-and-forwardor packet switching, for:
(a) Accepting data groups (including message, packets, or other digital or telegraphic information groups that are transmitted as a composite whole);
(b) Storing (buffering) data groups as necessary;
(c) Processing part or all of the data groups, as necessary, for the purpose of:
(1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling);
(2) Transmission; *or*
(3) Multiplexing; *and*
(d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

"data signalling rate"—

The rate as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, baud and bit per second are not equal. Binary digits for coding, checking, and synchronization function are included.

Note.—It is the maximum one-way rate, i.e., the maximum rate in either transmission or reception.

"digital computer"—

Equipment that can, in the form of one or more discrete variables:
(a) Accept data;
(b) Store data or instructions in fixed or alterable (writable) storage devices;
(c) Process data by means of a stored sequence of instructions that is modifiable; *and*
(d) Provide output of data.

Note.—Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"embedded" in equipment or systems—

Can feasibly be neither:
(a) Removed from such equipment or systems; *nor*
(b) Used for other purposes.

"equivalent multiply rate"—

The maximally achievable number of multiplication operations that can be performed per second considering that, in the case of simultaneous multiplication operations, all multiplication rates have to be summed in order to arrive at the "equivalent multiply rate":
(a) Assuming
(1) Optimal operand locations in the "most immediate storage"; *and*
(2) Operand lengths at least 16 bit, or more if this allows for faster operation; *and*
(b) Neglecting
(1) Set-up operations;
(2) Pipeline filling operations;
(3) Initialization;
(4) Interrupts; *and*
(5) Data reordering times.

Note.—Simultaneous multiplication operations can occur because of:
(a) Multiple arithmetic units for operations such as complex multiplication, convolution or recursive filtering;
(b) Parallel pipelining;
(c) More than one arithmetic unit in one data processing unit; *or*
(d) More than one data processing unit in one system.

"fault tolerance"—

The capability to perform correctly without human intervention after failure of any 'assembly', so that there is no single point in the system the failure of which could cause catastrophic failure of the system's functioning.

'assembly'—

A number of components (i.e., circuit elements, discrete components, microcircuits) connected together to perform a specific function or functions, replaceable as an entity (and normally capable of being disassembled).

"firmware"—

See "microprogram".

"gross capacity"—

The product of:
(a) The maximum number of binary digit (bit) positions per unformatted track; *and*
(b) The total number of tracks including spare tracks and tracks not accessible to the user.

"hybrid computer"—

Equipment that can:
(a) Accept data;
(b) Process data, in both analog and digital representations; *and*
(c) Provide output of data.

"image digitizer"—

A device for directly converting an analog representation of an image into a digital representation.

"image enhancement"—

The processing of externally derived information-bearing images by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g., Fast Fourier Transform or Walsh Transform). This does not include algorithms using only linear or rotational transformation of a single image, such as translation, feature extraction, registration or false coloration.

"incorporated" in equipment or systems—

(a) Can feasibly be either:
(1) Removed from such equipment or systems; *or*
(2) Used for other purposes; *and*
(b) Is essential to the operation of such equipment or systems.

"local area network"—

A data communication system that:
(a) Allows an arbitrary number of independent "data devices" to communicate directly with each other; *and*
(b) Is confined to a geographical area of moderate size (e.g., office building, plant, campus, warehouse).

"main storage"—

The primary storage for data or instructions for rapid access by a central processing unit. It consists of the internal storage of a "digital computer" and any hierarchical extension thereto, such as cache storage or non-sequentially accessed extended storage.

"maximum bit packing density"—

The density of recording specified in accordance with the appropriate ANSI or ISO Standard (e.g., ANSI X3.14–1979, ISO 1862–1975; ANSI X3.22–1973, ISO 1873–1975; ANSI X3.39–1973, ISO 3788–1976; ANSI X3.48–1977, ISO 3407–1975; ANSI X3.56–1977, ISO 4057–1979; ANSI X3.54–1976).

"maximum bit transfer rate"—

(a) Of a drum or disk drive (R_{tdmax}) is the product of:

(1) The maximum number of binary digit (bit) positions per unformatted track; *and*

(2) The number of tracks that simultaneously can be read or written, divided by the rotational period;

(b) Of a magnetic tape drive (R_{tmax}), is the product of:

(1) The "maximum bit packing density";

(2) The number of data bits per character (ANSI) or per row (ISO); *and*

(3) The maximum tape read/write speed.

"microprogram"—

A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"most immediate storage"—

The portion of the "main storage" most directly accessible by the central processing unit:

(a) For single level "main storage," this is the internal storage; *or*

(b) For hierarchical "main storage", this is:

(1) The cache storage;

(2) The instruction stack; *or*

(3) The data stack.

"multi-data-stream processing"—

The "microprogram" or equipment architecture technique that permits processing two or more data sequences under the control of one or more instruction sequences by means such as:

(a) Parallel processing; *or*

(b) Structured arrays of processing elements.

"net capacity"—

Of a drum, disk or cartridge type streamer tape drive, or a bubble memory:

The total capacity designed to be accessible to the "digital computer" excluding error control bits.

"non-volatile storage"—

A storage device the contents of which are not lost when power is removed.

"other peripheral device"—

A "data device" that is:

(a) Peripheral to a central processing unit—"main storage" combination; *and*

(b) Not an input/output control unit—drum, disk or magnetic tape drive or bubble memory combination.

"principal element"—

A "digital computer" or "related equipment" that is:

(a) Either "embedded" or "incorporated" in another equipment or system; *and*

(b) In replacement value more than 35% of the replacement value of the total equipment or system, i.e., including the "digital computer" or "related equipment".

"program"—

A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"real time processing"—

Processing of data by an electronic computer in response to an external event according to time requirements imposed by the external event.

"related equipment"—

Equipment "embedded" in, "incorporated" in, or "associated" with electronic computers, as follows:

(a) Equipment for interconnecting "analog computers" with "digital computers";

(b) Equipment for interconnecting "digital computers";

(c) Equipment for interfacing electronic computers to "local area networks" or to "wide area networks";

(d) Communication control units;

(e) Other input/output (I–O) control units;

(f) Recording or reproducing equipment referred to ECCN 1565 by ECCN 1572;

(g) Displays; *or*

(h) Other peripheral equipment.

Note.—"Related equipment" that contains an "embedded" or "incorporated" electronic computer, but lacks "user-accessible programmability", does not thereby fall within the definition of an electronic computer.

"signal processing"—

The processing of externally derived information-bearing signals by algorithms such as time compression, filtering, extraction, selection, correlation, convolution or transformations between domains (e.g. Fast Fourier Transform or Walsh Transform).

"software"—

A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"stored program controlled circuit switching"—

The technique for establishing, on demand and until released, a direct (space division switching) or logical (time division switching) connection between circuits based on switching control information derived from any source or circuit and processed according to the stored program by one or more electronic computers.

"terminal device"—

A "data device" that:

(a) Does not include process control sensing and actuating devices; *and*

(b) Is capable of:

(1) Accepting or producing a physical record;

(2) Accepting a manual input; *or*

(3) Producing a visual output.

Note: Normal groupings of such equipment (e.g., a combination of paper tape punch/reader and printer), connected to a single data channel or "communication channel", shall be considered as a single "terminal device".

"total access rate" (R_{atot})—The sum of the individual "access rates" of all input/output control unit—drum or disk drive combinations (R_{ad}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this "total access rate".

Thus: $R_{atot} = \text{SUM } R_{ad}$

"total connected capacity"—

The storage capacity excluding error control bits, word marker bits, and flag bits.

Note: The following are illustrative examples of how to calculate various parameters:

Part A. Conversion of Byte to bit in computing storage limits:

(a) 1 M Byte = $(1,024)^2$ Byte = 1,048,576 Byte

(b) 1 K Byte = 1,024 Byte

(c) 1 Byte = 8 bit or 9 bit

Part B. Limits on "total connected capacity" of "mainstorage":

The limits in the various Notes to ECCN 1565A assume a 9-bit Byte and an appropriate amount of cache storage (16, 32, 48 or 64KByte), as follows (although other combinations within these limits would be permissible):

Internal storage (MByte)	Cache storage (KByte)	"Total connected capacity" (million bit)
0.25	16	2.5
0.5	16	4.9
0.75	32	7.4
1.0	32	9.8
1.5	48	14.6
2.0	48	19.4
2.5	64	24.2

"total data signalling rate"—

The sum of the individual "data signalling rates" of all "communication channels" that:

(a) Have been provided with the system; *and*

(b) Can be sustained simultaneously assuming the configuration of the equipment that would maximize this sum of rates.

"total internal storage available to the user"—

The sum of the individual capacities of all internal user-alterable or user-replaceable storage devices that may be:

(a) Included in the equipment at the same time; *and*

(b) Used to store "software" instructions or data.

"total processing data rate"—

(a) Of a single central processing unit, is its "processing data rate";

(b) Of multiple central processing units that do not share direct access to a common "main storage," is:

The individual "processing data rate" of each central processing unit, i.e., each unit is separately treated as a single central processing unit as in paragraph (a) above; *or*

(c) Of multiple central processing units that partially or fully share direct access to a common "main storage" at any level is thesum of:

(1) The highest of the individual 'processing data rates' of all central processing units; *and*

(2) 0.75 times the 'processing data rate' of each remaining central processing unit, sharing the same "main storage"; assuming the configuration of equipment that would maximize this sum of rates.

"processing data rate"—

The maximum of either:

(a) The 'floating point processing data rate' (R_f);

or

(b) The 'fixed point processing data rate' (R_x).

Note.—The 'processing data rate' of a central processing unit implemented with two or more microprocessor microcircuits, not including any dedicated microprocessor microcircuit used solely for display, keyboard or input/output control, is the sum of the individual 'processing data rates' of all these microprocessor microcircuits.

"floating point processing data rate" (R_f)—

The sum of:

(1) 0.85 times the 'number of bits in a fixed point instruction' (n_{ix}) or 0.85 times the "number of bits in a floating point instruction' (n_{if}), if no fixed point instructions are implemented;

(2) 0.15 times the 'number of bits' in a floating point instruction' (n_{if});

(3) 0.40 times the 'number of bits in a fixed point operand'(n_{ox}) or 0.40 times the 'number of bits in a floating point operand' (n_{of}), if no fixed point instructions are implemented; *and*

(4) 0.15 times the 'number of bits in a floating point operand' (n_{of});

divided by the sum of:

(1) 0.85 times the 'execution time' for a fixed point addition (t_{ax}) or for a floating point addition (t_{af}), if no fixed point instructions are implemented;

(2) 0.09 times the 'execution time' for a floating point addition (t_{af}); *and*

(3) 0.06 times the 'execution time' for a floating point multiplication (t_{mf}) or for the fastest available subroutine (t_{emsub}) to simulate a floating point multiplication instruction, if no floating point multiplication instructions are implemented.

Thus:

$$Rf = \frac{(0.85)n_{ix} + (0.15)n_{if} + (0.40)n_{ox} + (0.15)n_{of}}{(0.85)t_{ax} + (0.09)t_{af} + (0.06)t_{emsub}};$$

or

If no fixed point instructions are implemented then:

$$Rf = \frac{(1.00)n_{if} + (0.55)n_{of}}{(0.94)t_{af} + (0.06)t_{emf}}; \text{ or}$$

If no floating point multiplication instructions are implemented ($t_{mf} = t_{emsub}$) then:

$$R_f = \frac{(0.85)n_{ix} + (0.15)n_{imx} + (0.40)n_{ox} + (0.15)n_{of}}{(0.85)t_{ax} + (0.09)t_{af} + (0.06)t_{emsub}}$$

Note.—If a "digital computer" has neither floating point addition nor floating point multiplication instructions, then its 'floating point processing data rate' is equal to zero.

"fixed point processing data rate" (R_x)—

The sum of:

(1) 0.85 times the number of bits in a fixed point addition instruction (n_{ax});

(2) 0.15 times the 'number of bits in a fixed point multiplication instruction' (n_{imx}); *and*

(3) 0.55 times the 'number of bits in a fixed point operand' (n_{ox});

divided by the sum of:

(1) 0.85 times the 'execution time' for a fixed point addition (t_{ax}); *and*

(2) 0.15 times the 'execution time' for a fixed point multiplication (t_{mx}) or for the fastest available subroutine (t_{emsub}) to simulate a fixed point multiplication instruction if no fixed point multiplication instructions are implemented.

Thus:

$$R_x = \frac{(0.85)n_{ax} + (0.15)n_{imx} + (0.55)n_{ox}}{(0.85)t_{ax} + (0.15)t_{emx}}$$

or

if no fixed point multiplication instruction are implemented ($t_{mx} = t_{emsub}$), then:

$$R_x = \frac{(0.85)n_{ax} + (0.15)n_{imx} + (0.55)n_{ox}}{(0.85)t_{ax} + (0.15)t_{emsub}}$$

Note.—If a "digital computer" has neither fixed point addition nor fixed point multiplication instructions, then its 'fixed point processing data rate' is equal to zero.

'number of bits in a:

Fixed point addition instruction' (n_{ax})—

Fixed point multiplication instruction' (n_{imx})—

Floating point addition instruction' (n_{af})—

Floating point multiplication instruction' (n_{imf})—

The appropriate shortest single fixed or floating point instruction length that permits full direct addressing of the "main storage".

Notes.—1. When multiple instructions are required to simulate an appropriate single instruction, the number of bits in the above instructions is defined as 16 bits plus the number of bits (b_{ax}, b_{imx}, b_{af}, b_{imf}) that permits full direct addressing of the "main storage".

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Thus:

$n_{ian} = 16 + b_{ian}$
$n_{iam} = 16 + b_{iam}$
$n_{isf} = 16 + b_{isf}$
$n_{ism} = 16 + b_{ism}$

2. If the addressing capability of an instruction is expanded by using a base register, then the 'number of bits in an instruction, fixed or floating point, addition or multiplication' is the number of bits in the instruction with the standard address length including the number of bits necessary to use the base register.

"number of bits in fixed point operand" (n_{ian})—

(a) The shortest fixed point operand length; *or*

(b) 16 bits;

whichever is greater.

"number of bits in a floating point operand" (n_{isf})—

(a) The shortest floating point operand length; or

(b) 30 bits;

whichever is greater.

"execution time"

(a) The time certified or openly published by the manufacturer for the execution of the fastest appropriate instruction, under the following conditions:

(1) No indexing or indirect operations are included;

(2) The instruction is in the "most immediate storage";

(3) One operand is in the accumulator or in a location of the "most immediate storage" that is acting as the accumulator;

(4) The second operand is in the "most immediate storage"; *and*

(5) The result is left in the accumulator or the same location in the "most immediate storage" that is acting as the accumulator;

(b) If only the maximum and minimum execution times of the instructions are published, the sum of:

(1) The maximum execution time of an instruction (t_{max}); *and*

(2) Twice the minimum execution time of this instruction (t_{min});

divided by three.

Thus:

$$t = \frac{t_{max} + 2t_{min}}{3}$$

(t stands for any of the values t_{an}, t_{as}, t_{am} or t_{sm})

(c) For central processing units that simultaneously fetch more than one instruction from one storage location: The average of the "execution times" when executing instructions fetched from all possible locations within the stored word.

(d) If the longest fixed point operand length is smaller than 16 bits, then use the time required for the fastest available subroutine to simulate a 16 bit fixed point operation.

Notes: 1. If the addressing capability of an instruction is expanded by using a base register, then the "execution time" shall include the time for adding the content of the base register to the address part of the instruction.

2. When calculating "processing data rate" for computers with cache sizes smaller than 64 K Bytes, the "execution time" of the appropriate instructions will be calculated as follows:

(cache hit rate) x ("execution time" when both instruction and operand are in cache storage) + (1 − cache hit rate) x ("execution time" when neither instruction nor operand are in cache storage), the cache hit rate being:

1.00 for cache size of 64 KByte
0.95 for cache size of 32 KByte
0.90 for cache size of 16 KByte
0.85 for cache size of 8 KByte
0.75 for cache size of 4 KByte

"total transfer rate"—

(a) Of the input/output control unit—drum, disk or cartridge-type streamer tape drive combinations (R_{total}):

The sum of the individual "transfer rates" of all input/output control unit—drum, disk or cartridge-type streamer tape drive combinations (R_{va}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

Thus: $R_{total} = SUM\ R_{va}$

"transfer rate"—

(1) Of an input/output control unit—drum or disk drive combination (R_{va}), the smaller of either:

Note: For the "transfer rate" of an input/output control unit—cartridge-type streamer tape drive combination, see paragraph (b) below.

(i) The input/output control unit "transfer rate" (R_{cu}); *or*

(ii) The sum of the individual "transfer rates" of all independent seek mechanisms (R_{sa}).

Thus: $R_{va} = min\ (R_{cu}; SUM\ R_{sa})$

(2) Of an input/output control unit (R_{cu}):

(i) With rotational *position* sensing (rps), is the product of:

(A) The number of independent read/write channels (C); *and*

(B) The greatest "maximum bit transfer rate" ($R_{maximum}$) of all independent seek mechanisms; *or*

(ii) Without rotational position sensing (rps), is two-thirds of this product.

Thus: $R_{cu} = C \times R_{maximum}$ (with rps); *or*

$$R_{cu} = \frac{2C}{3} \times R_{maximum} \text{ (without rps)}$$

(3) Of an independent seek mechanism (R_{sa}):

The product of:

(i) The "maximum bit transfer rate" ($R_{maximum}$); *and*

(ii) The rotational period (t_r); divided by the sum of:

(i) The rotational period (t_r);

(ii) The "minimum seek time" (t_{min}); and

(iii) The "latency time" (t_l).

Thus:

$$R_{sa} = \frac{R_{maximum} \times t_r}{t_r + t_{min} + t_l}$$

"minimum seek time" (t_{min})—

(1) For fixed head devices, it is zero; or

(2) For moving head or moving media devices, the rated time to move from one track to an adjacent track.

"latency time" (t_l)—

The rotational period divided by twice the number of independent read/write heads per track.

(b) Of the input/output control unit—magnetic tape drive combinations (R_{mta}):

The sum of the individual 'transfer rates' of all input/output control unit—magnetic tape drive combinations (R_{va}) provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

Thus: $R_{mtas} = SUM\ R_{va}$

"transfer rate"—

Of an input/output control unit—cartridge-type streamer or magnetic tape drive combination (R_{va}):

The product of:

(1) The number of independent read/write channels (C); *and*

(2) The greatest "maximum bit transfer rate" ($R_{maximum}$) of all tape drives.

Thus: $R_{va} = C \times R_{maximum}$

(c) Of the input/output or communication control unit—directly connected data channel combinations: The sum of the individual "transfer rates of all data channels" provided with the system that can be sustained simultaneously assuming the configuration of equipment that would maximize this sum of rates.

"transfer rate of any data channel"—

The sum of the individual bit transfer rates of all the "other peripheral devices", excluding "terminal devices", that can be sustained simultaneously on the data channel.

"user accessible microprogrammability"—

The facility allowing a user to insert, modify or replace "microprograms".

"user-accessible programmability"—

The facility allowing a user to insert, modify or replace "programs" by means other than:

(a) A physical change in wiring or interconnections; *or*

(b) The setting of function controls including entry of parameters.

"virtual storage"—

The storage space that may be regarded as addressable "main storage" by the user of a computer system in which virtual addresses are mapped into real addresses.

Note.—The size of "virtual storage" is limited by the addressing scheme of the computer system and not by the actual number of "main storage" locations.

"wide area network"—

A data communication system that:

(a) Allows an arbitrary number of independent "data devices" to communicate with each other;

(b) May include "local area networks", *and*

(c) Is designed to interconnect geographically dispersed facilities.

ADVISORY NOTE 17 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor controlled for export by paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Will be operated by civil end-users for civil applications;

(2) Are exported as complete systems or enhancements to previously exported systems up to the limits of paragraph (b) of this Advisory Note;

(3) Have been primarily designed and used for non-strategic applications; *and*

(4) Do not fall within the scope of both paragraphs (h)(1)(ii) (A) and (B);

(b) The "digital computers" or "related equipment" therefor do not exceed *any* of the following limits:

(1) Central processing unit—"main storage" combinations, with a "total processing data rate" of 285 million bits per second and a "total connected capacity" of "main storage" of 135 million bits;

(2) Input/output control unit—drum or disk drive combinations:

(i) "Total bit transfer rate"—101 million bits per second;

(ii) "Maximum bit transfer rate" of any drum or disk drive—34 million bits per second;

(iii) Total connected "net capacity"—74,000 million bits;

(3) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier Transform of 1,024 complex points—40 ms;

(iii) Word length—36 bits;

(c) The "digital computers" or "related equipment" therefor do not have the following characteristics:

(1) Those identified in paragraphs (h)(1)(i) (D) to (H) and (M);

(2) Those identified in paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

Note.—Reserved.

ADVISORY NOTE 18 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor in accordance with Advisory Note 5 not exceeding 70 million bits per second under Advisory Note 5(c).

ADVISORY NOTE 19 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of peripheral equipment as follows:

(a) Cathode ray tube graphic displays that do not exceed any of the following parameters:

(i) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis;

(ii) 11.8 million bits of refresh storage; *or*

(iii) 256 shades of gray or color (8 bits per pixel);

(b) Plotting equipment and digitizing equipment that has an accuracy of 0.002% or worse and an active area of 254 cm × 254 cm or smaller;

(c) Disk drives that do not exceed:

(i) "Maximum bit transfer rate"—7.5 million bits per second; *or*

(ii) "Net capacity"—350 million bits;

ADVISORY NOTE 20 (for the People's Republic of China): Licenses are likely to be approved for bulk shipments to satisfactory end-users in the People's Republic of China of personal computers and small business computer systems controlled by paragraph (h) of this ECCN 1565A that do not exceed any of the following parameters:

(a) "Total processing data rate"—15 million bits per second;

(b) "Virtual storage" capability—512 million Bytes (4,096 million bits); or

(c) The other technical parameters of the system—the limits contained in Advisory Note 9(b) without taking into account Advisory Note 9(b)(2)(v).

ADVISORY NOTE 21 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of spare parts in accordance with Advisory Note 7 (a) and (b) to this ECCN 1565A.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 6565G is amended by revising the reference in the heading to "paragraph (h)(2)(iv)" to read "paragraph (h)(2)(iii)".

Dated: January 22, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-1646 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 369

[Docket No. RM83-39-000; Order No. 484]

Fees for Hydroelectric Project Applications To Reimburse Fish and Wildlife Agencies

Issued: January 25, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB control number.

SUMMARY: The Federal Energy Regulatory Commission (Commission), on November 18, 1987, issued a final rule (Order No. 484) in Docket No. RM83-39-000, 52 FR 45167 (Nov. 25, 1987). The rule established a list for utilities to use in classifying certain property at nuclear power plants as "retirement units" for accounting purposes. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 484.

EFFECTIVE DATE: January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On January 12, 1988, OMB approved the information collection requirements of 18 CFR Part 116 as amended by this rule under Control Number 1902-0021. Therefore, the final rule in Docket No. RM83-39-000 will become effective January 27, 1988. No amendment to the Table of OMB Control Numbers in 18 CFR 389.101(b) is necessary since control number 1902-0021 is already assigned to Part 116 in the table.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1840 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 84-18, Notice No. 3]

Truck Size and Weight; Automobile Transporters

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising certain provisions established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. This rule establishes:

(1) Definitions of automobile transporter equipment, (2) length requirements for stinger-steered

automobile transporters and other tractor-semitrailer automobile transporter combinations, including low boys, (3) length requirements for triple saddlemount combinations, and (4) cargo carrying capability for truck tractors used as automobile transporters. This rule also affirms previous rulemaking in regard to: (1) Minimum allowable overhang for automobile transporters, (2) the exclusion of overhang from the overall vehicle length measurement, (3) grandfather rights of all longer dimensions legally operating on December 1, 1982, and (4) overall minimum length limitations for saddlemount and fullmount vehicle transporter combinations. The revisions clarify and further define certain issues contained in the June 5, 1984, final rule.

EFFECTIVE DATE: This final rule is effective February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Philip W. Blow, Office of Motor Carrier Transportation (202) 366–4036 or Mr. David C. Oliver, Office of the Chief Counsel (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097, was published in the **Federal Register** on June 5, 1984 (49 FR 23302). This document represented the culmination of major efforts by the FHWA to implement the truck size and weight provisions of the STAA. The June 5, 1984, rule addresses, among many issues, automobile transporters pursuant to section 411(d) of the STAA by determining that automobile transporters constitute specialized equipment and are not subject to the provisions of 23 CFR 658.13 (a) through (c). Section 658.13(d) provides requirements relative to overall length and allowable overhang for automobile transporters.

The June 5, 1984, final rule also noted FHWA's intent to initiate further rulemaking on automobile transporters. This was initiated through an Advance Notice of Proposed Rulemaking (ANPRM), Docket 84–18, issued on October 2, 1984, at 49 FR 38956. This notice requested comments on the off-tracking characteristics of automobile transporters and certain alternatives to the provisions in the June 5 final rule.

In consideration of the 42 responses to the October 2, 1984, ANPRM, Docket 84–18, a Notice of Proposed Rulemaking (NPRM), Docket 84–18, Notice No. 2, was published in the **Federal Register** on November 25, 1985 (50 FR 48431). In that NPRM and based upon considerations of vehicle safety and operating characteristics, productivity, economic factors, and unique needs of the industry; FHWA proposed the following: (1) For clarity, add two new definitions of automobile transporters, (2) eliminate the overall length limit for traditional tractor-semitrailer automobile transporters when the semitrailer is not longer than 48 feet and implement the same minimum 48-foot semitrailer limit as for other tractor-semitrailer combinations, (3) continue recognition that longer automobile transporter combinations that were lawfully operating on or prior to December 1, 1982, are grandfathered, (4) reiterate that automobile transporters may carry cargo on the power unit (truck tractor) including an over-cab rack, (5) establish the same length requirements for "low boys" (built or modified especially to transport automobiles) as for traditional tractor-semitrailer automobile transporters, (6) establish a 75-foot overall length limit, exclusive of overhang, for the stinger-steered automobile transporter combination, (7) make no change to the overhang provisions established in the June 5, 1984, final rule, (8) allow triple saddlemount with fullmount vehicle transporter combinations within a 65-foot overall length, and (9) allow the same access for all the above automobile transporters as allowed 48-foot semitrailers.

Forty responses were received in reply to the NPRM (Docket 84–18, Notice No. 2) issued on November 25, 1985. Respondents are generally categorized as follows: State agencies and the District of Columbia (DOT)—15, trucking companies—13, manufacturers—5, trucking associations—3, turnpike authority—1, bus company—1, union—1, and research organization—1.

Definitions

In response to the proposal to define automobile transporters, 24 respondents submitted comments. Two State DOT's voiced objections; the District of Columbia DOT gave no specific reason for its objection and the Wisconsin DOT objected because, as proposed, the definition of automobile transporter would include a single vehicle (straight truck) in addition to a vehicle combination. The Wisconsin DOT recommends modifying the definition to remove the word "or" so the definition would read, "Any vehicle combination designed * * *." The FHWA concurs with the suggested modification and has modified the definition accordingly in the final rule.

In response to the proposed definition for stinger-steered tractor-semitrailer automobile transporter combinations, 23 respondents agree that the definition should remain as proposed, i.e., the fifth wheel is located on a drop frame behind and below the rear axle(s) of the power unit, and the power unit is capable of carrying several vehicles over and behind it. Thus, this definition remains unchanged in the final rule.

Traditional Tractor-Semitrailer Automobile Transporter Overall Length

In reviewing the NPRM comments and the June 5, 1984, final rule, it was determined that although there were few objections to a minimum 65-foot overall length limit (exclusive of overhang), this length was shorter than that of STAA allowed tractor-semitrailer combinations, i.e., 22- to 24-foot tractor with a 48-foot semitrailer yielding overall lengths between 67 and 68 feet. In the November 25, 1985, NPRM, FHWA proposed to alleviate this situation by eliminating the overall length requirement for the traditional tractor-semitrailer automobile transporters (fifth wheel located on tractor frame over rear axle(s)) and using the same minimum 48-foot semitrailer requirement as with other tractor-semitrailer combinations.

There were 28 responses to that part of the proposal to eliminate the overall length requirement. Of these, the Teamsters Union and the Massachusetts and New York DOT's agree with the proposal to remove the overall length limit. The States request that the overall limit be removed and replaced with the establishment of a semitrailer length not to exceed 48 feet. The Teamsters Union asserts that the establishment of a semitrailer length limit is consistent with the intent of the STAA of 1982. All of the industry commenters on this issue oppose the elimination of the 65-foot overall length limit for traditional tractor-semitrailer automobile transporters. Industry commenters cite the sizeable investment in longer semitrailers since adoption of the 65-foot overall length limit in the June 5, 1984, final rule and the opportunity for flexibility in design.

There were 27 responses to that part of the proposal to establish a 48-foot minimum semitrailer length limit. Six responses favor the proposal and 21 oppose it. Massachusetts and New York State Dot's approve of providing a semitrailer length limit if not longer than 48 feet. The Oregon DOT states that no distinction should be made between traditional tractor-semitrailer automobile transporter combinations and other tractor-semitrailer combinations currently allowed by STAA. The Virginia and Idaho DOT's support the 48-foot minimum length limit, but do not explain the basis for their position. The Teamsters Union approves the length limit because the proposal is consistant with the intent of the STAA of 1982. Most of the industry commenters oppose the 48-foot minimum semitrailer length limit and recommend that if a 48-foot length limit is adopted that it apply to only tractor-semitrailer combinations in excess of 65 feet.

Based on an assessment of the comments submitted to Docket 84–18, Notice No. 2, the existing law was considered to provide a safe and equitable operation. The 65-foot overall length limit (exclusive of overhang) with no semitrailer length limit for traditional tractor-semitrailer automobile transporters, will remain as promulgated in the June 5, 1984, final rule.

Grandfathered Automobile Transporter Semitrailer Lengths

Eighteen commenters addressed an issue not raised specifically by FHWA concerning the appropriate date for grandfathering automobile transporters. These 18 commenters stated that the grandfather date should be the date the final rule was published (Truck Size and Weight; Final Rule, June 5, 1984). However, no change is being made in the grandfather date due to specific language in the STAA of 1982. In accordance with the June 5, 1984, rule, all automobile transporters semitrailers dimensions longer than 48 feet legally operating in a given State on December 1, 1982, are grandfathered and continued operation in such States must be allowed. The purpose of the grandfather "semitrailer lengths" provision was to prevent States from reducing their length limits existing on December 1, 1982, that were greater than the limits established in the STAA.

Cargo On Power Unit

Only two responses refer directly to the issue of carrying cargo on an over-cab rack. The Teamsters Union approves, yet also states that the rule should explicitly limit the truck tractor to carry only one vehicle on the over-cab rack on traditional tractor-semitrailer combinations. The District of Columbia DOT proposes that a vertical dimension limitation be included in the rulemaking to prevent heights in excess of 13 feet 6 inches. The June 5, 1984, final rule allows for cargo to be carried on the power unit and with the overhang limits should satisfy the Teamsters' concerns. FHWA continues this position.

The law is silent with respect to vertical dimension limitations. As a result of the variance in the height of overhead obstructions, FHWA is allowing this to continue to be subject to State regulation.

Low Boys

The vehicle traditionally refered to as a "low boy" as discused by several commenters in response to Docket 84–18 (49 FR 38956, October 2, 1984) is a special type of automobile transporter. The FHWA studied the issue, and in a NPRM, Docket 84–18, Notice No. 2 (50 FR 48431, November 25, 1985) stated its position that if a low boy had been built or modified especially to transport vehicles, then it should qualify as a automobile transporter. In addition, FHWA concluded that the length requirements applicable to these vehicles should be the same as for the traditional tractor-semitrailer automobile transporter.

There were five direct responses to the low boy issue as published in the NPRM. Two commenters object. The Georgia DOT states that low boy semitrailers can be used as "part-time" automobile transporters and the enforcement of dimension laws could be confusing. The Georgia DOT also indicates that haulers with other types of loads will ultimately expect the same exemptions from the law. The District of Columbia DOT states opposition to all amendments proposed in the November 25, 1985, NPRM. The Georgia DOT's concerns are satisfied by the definition of automobile transporter. Accordingly, if an operator uses a low boy to transport any cargo other than "assembled * * * highway vehicles," the low boy semitrailer will be subject to the same length requirements under the STAA as all other semitrailers designed to haul general cargo. In regard to enforcing the dimensions of empty low boys, such factors as obvious modification, trucking company business, and content of the previous load would determine the appropriate enforcement practice.

The FHWA continues its position regarding configurations that offer safety and productivity advantages which includes the use of low boy semitrailers in tractor-semitrailer combinations when used specifically for the transport of assembled highway vehicles. The term low-boy is included in § 658.13(d) for clarity.

Stinger-Steered Tractor-Semitrailer Automobile Transporters Overall Length

There were 34 responses relating to the proposed minimum seventy-five foot overall length (exclusive of overhang) requirement for stinger-steered automobile transporters. Nineteen commenters support 75 feet overall length and twelve commenters object. Missouri, Illinois, Georgia, Iowa, New Jersey, New Jersey Turnpike Authority, and New York object to any minimum length limit in excess of 65 feet.

Several issues were included in the comments objecting to the 75-foot length proposed. The Iowa DOT objects to the establishment of a minimum 75-foot stinger-steered overall length limit, because this limit conflicts with efforts to limit off-tracking through application of a 40-foot kingpin to rear axle restriction. The New Jersey and New York DOT's prefer the present 65-foot overall length limit plus a 5-foot overhang allowance. The District of Columbia DOT stated that although the Interstate and primay routes within the District will generally accommodate the proposed longer lengths, the local street system may not, except under special conditions. The Illinois DOT states that 82 feet (including front and rear overhang) is to long for two-lane roads. The Oregon, Washington State, and Idaho DOT's state that tractors with stinger-steered semitrailers should be allowed to operate with 75-foot lengths but include overhang. Oregon and Washington State further state that the commodity being carried should not be a determining factor in vehicle size limitations. The California DOT states that stinger-steered equipment has long been allowed in that State, and there is no inherent difference in safety between comparable semis and stinger-steered equipment. Additionally, the Alaska DOT, Western Highway Institution, and the National Automobile Transporters Association, do not object to the 75-foot minimum requirement.

Most of the objections dealt with safety concerns. A previous docket addressed off-tracking studies that have shown that a 75-foot stinger-steered combination tracked better than a 48-foot semi-trailer combination and was essentially equal to that of a 45-foot semi-trailer combination.

The NPRM noted that studies were to be made concerning the jackknifing tendencies of the stinger-steered automobile transporters. This research, conducted by the University of Michigan Transportation Research Institute (UMTRI), showed that the longer tractor wheelbase on stinger-steered vehicles

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reduces the jackknifing potential of these vehicles relative to traditional fifth wheel-type vehicles. The 75-foot stinger-steered automobile transporters that the UMTRI used in its research have less of a jackknifing tendency than the 65-foot automobile transporters that are currently allowed. Stinger-steered automobile transporters are also superior to many typical tractor semitrailers when operated in the empty condition because of their longer tractor wheelbases.

As a result of this research the FHWA has chosen the 75-foot overall length limit for stinger-steered automobile transporters.

Overhang and Length and Width Exclusions

Seven commenters responded to the overhang and length and width exclusions provisions issue as published in Docket 84–18, Notice No. 2. The Teamsters Union, Ryder System, Inc., and the Wisconsin DOT support the proposed overhang provision. The Wisconsin DOT also supports the proposed overhang provision but argues that FHWA allow an aggregate total of seven feet of overhang without other limits on the front and rear overhangs. Three State DOT's, Oregon, Idaho, Washington, as well as the District of Columbia DOT, object to the overhang provisions. The State of Oregon and Washington assert that overhang should be included in the 75-foot overall length for stinger-steered automobile transporters, while the State of Idaho indicates that overhang should be limited to a total of seven feet with no more than four feet to either the front or the rear. The District of Columbia DOT is opposed to all the proposed changes to the regulation which include overhang. Essentially, all of the objections to the overhang provisions were addressed in the context of overall length objections, there were no visibility or safety concerns raised as to the existing overhang provisions. Therefore, the June 5, 1984, Rule overhang provision that "no State may require less than three feet in the front and four feet in the rear" is being retained.

Saddlemount (Drive-Away) With Fullmount

In response to the proposal to allow triple saddlemount with fullmount vehicle transporter combinations within a 65-foot overall length, 26 responses were submitted. Twenty-two respondents favor this allowance, five from State DOT's and 17 from industry sources. Many of the industry commenters, such as the National Automobile Transporters Association, American Trucking Association, Ryder Systems, Inc., and the Western Highway Institute, urge support of a 75-foot minimum overall length limit for these types of vehicle combinations. The Oregon DOT favors the proposal, which was limited to vehicles of 65-foot overall length, but notes that triple saddlemounts with an overall length of up to 75 feet are allowed to operate in Oregon. The New York DOT supports triple saddlemounts with a 65-foot minimum. The Massachusetts and Idaho DOT's concur with the proposal, yet state no reason. The District of Columbia, New Jersey, and Wisconsin DOT's and the New Jersey Turnpike authority object to the proposal. Wisconsin DOT states concerns over the safety of the vehicle train because a triple saddlemount combination has three points of articulation and could jackknife while stopping. The State of New Jersey DOT has a law limiting vehicle combinations to two trailing units, therefore, New Jersey DOT states there is no compelling reason to change the law. The New Jersey Turnpike Authority enforces a regulation prohibiting double saddlemounts from traveling on the New Jersey Turnpike, and states that this proposal could have an impact on accidents in the heavily traveled traffic, as well as result in the deterioration of safety and service provided to motorists. The District of Columbia DOT opposes the proposal because of the problem larger vehicles have negotiating city streets. Its regulation only allows the operation of double saddlemounts within a 55-foot overall length.

The NPRM discussed several issues relative to the saddlemount combinations, i.e., the number of articulation points, the additional braking requirements of 49 CFR 393.71, and the low accident rate of the drive-away automobile transporter fleet.

After considering the comments as well as the above, FHWA believes that the provision for triple saddlemount with a 65-foot minimum overall length is a safe and equitable balance. This provision therefore remains unchanged.

Reasonable Access

In response to the proposal that automobile transporters be allowed access equivalent to that allowed the 48-foot semitrailers, 19 respondents made comments. Eighteen industry respondents object to the access requirement as each commenter requested additional access to terminals, dealers and secondary manufacturers via the safest and most practical routes. The ATA, NATA, and others stated that the access policy is discriminatory not only to carriers, but also to shippers. The Virginia DOT, the only respondent favoring the proposal, continues to support regulations allowing the States to determine safe access provisions with FHWA oversight. FHWA agrees with the Virginia DOT and is requiring that automobile transporters be afforded the same access allowed 48-foot semitrailers. This position is in line with the existing regulations which allows the States to determine access provisions with FHWA oversight.

Summary of Actions

Therefore, based upon full consideration of public comments received and on a further review by FHWA, Sections 658.5 and 658.13 are amended as described herein. Two paragraphs are being added to Section 658.5 to define automobile transporters and stinger-steered automobile transporters. An automobile transporter is being defined (paragraph (m)) as any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. A stinger-steered automobile transporter is being defined (paragraph (n)) as a truck-tractor semitrailer combination wherein the fifth wheel is located behind and below the rear axle of the power unit.

Paragraph 658.13(d) is being revised to incorporate the results of FHWA's consideration of the comments on: (1) Carrying cargo on the power unit, (2) the 75-foot overall length limitation for stinger-steered automobile transporters, and (3) grandfathered semitrailer length for automobile transporters.

Paragraph 658.13(d) is also being revised to establish that saddlemount with fullmount vehicle transporter combinations are considered specialized equipment and to establish the minimum overall length limit of these combinations at 65 feet.

Interpretations pertaining to length and width exclusive devices, including tie-downs, will be addressed under a separate action. Therefore the proposed revision to paragraph 658.13(e) is being withdrawn.

Based on its consideration of the docket comments, the FHWA has determined to adopt the regulation as proposed in the November 25, 1985, NPRM with regard to the following issues: (1) The minimum 65-foot overall vehicle length limitation (exclusive of overhang), (2) the carrying of vehicles on the power unit, (3) the use of low boy semitrailers for carrying highway vehicles, (4) the minimum front and rear overhang limitations, (5) minimum 65-foot overall length limitation for saddlemount with fullmount vehicle transporter combinations, and (6) reasonable access for automobile transporters.

Regulatory Impact

The FHWA has considered the impacts of this notice and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5 final rule, clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. Automobile transporters make up a small segment of the total medium to heavy truck population (approximately 13,000 vehicles out of a total medium to heavy truck population of over 2 million). The stinger-steered units constitute an even smaller percentage. Productivity gains, although insignificant in the total picture, could be considerable for this minor constituency, but cannot be quantified on the basis of available data. Safety considerations have been addressed earlier in this preamble. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the Headquarters Office of FHWA, 400 Seventh Street SW., Washington, DC.

Under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Lists of Subjects in 23 CFR Part 658

Grants programs-transportation, Highways and roads, Motor carrier-size and weight.

Issued on: January 25, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATION—LENGTH, WIDTH AND WEIGHT LIMITATIONS

In consideration of the foregoing, the FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, Part 658 as set forth below.

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313; 49 App. U.S.C. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraphs (m) and (n) as follows:

§ 658.5 Definitions.

* * * * *

(m) *Automobile Transporters*—Any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles.

(n) *Stinger-Steered Automobile Transporter*—An automobile transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

3. Section 58.13 is amended by revising paragraph (d) to read as follows:

§ 658.13 Length.

* * * * *

(d) *Specialized Equipment*—(1) *Automobile Transporters.* (i) Automobile transporters are considered to be specialized equipment. As provided in 658.5(k), automobile transporters may carry vehicles on the power unit behind the cab and on an over-cab rack. No State shall impose an overall length limitation of less than 65 feet on traditional automobile transporters (5th wheel located on tractor frame over rear axle(s)), including "low boys," or less than 75 feet on stinger-steered automobile transporters. Paragraph (c) requires the States to allow operation of vehicles with the dimensions that were legal in the State on December 1, 1982.

(ii) All length provisions regarding automobile transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhand limitation of less than four (4) feet.

(iii) Drive-away saddlemount with fullmount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less than 65 feet on saddlemount with fullmount combinations. (Triple saddlemount combinations shall be allowed when conforming to the 65-foot length limit and the applicable safety regulations at 49 CFR 393.71.)

(2) [Reserved]

* * * * *

[FR Doc. 88–1901 Filed 1–28–88; 8:45 am]

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23 CFR Part 658

[FHWA Docket Nos. 83–14 and 85–16]

Truck Size and Weight; Grandfathered Semitrailer Lengths

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This notice sets forth the grandfathered semitrailer lengths for fifty States, the District of Columbia, and Puerto Rico in accordance with the grandfather right established in section 411(b) of the Surface Transportation Assistance Act of 1982 (STAA). The grandfathered length for each State was determined by existing State law, practices, or agreement between the individual States and the trucking industry as to the length of semitrailers lawfully in use in each State, without need of special permit, on or prior to December 1, 1982.

EFFECTIVE DATE: This final rule is effective January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. C.J. MacGowan, Office of Motor Carrier Information Management and Analysis (202) 366–4032 or Mr. David C. Oliver, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2097 (STAA), was published at 49 FR 23302 on June 5, 1984 (FHWA Docket No. 83–14). The provisions established in that final rule are contained in 23 CFR Part 658.

One issue not completely resolved by the June 5 rulemaking involves the determination of the maximum length of semitrailers and trailers which could

legally operate, without special permit, in each State on December 1, 1982. Identification of these lengths is important because section 411(b) of the STAA provides for the continued legality of semitrailers and trailers of such dimensions as those in actual and legal use in the State on that date. The applicable sentence reads:

> No State shall establish, maintain, or enforce any regulation of commerce which has the effect of prohibiting the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State as of December 1, 1982.

This grandfather right applies only to those units operating on the National Network and under the reasonable access provision of the STAA. The States can regulate the overall length of vehicle combinations on other highways. This position has recently been affirmed by the Federal courts.

A segment of the June 5 rule established the grandfathered semitrailer lengths for 23 States, the District of Columbia, and Puerto Rico. The rule also committed the FHWA to initiate separate rulemaking for establishment of grandfathered semitrailer lengths for the remaining 27 States.

On March 1, 1985, a notice of proposed rulemaking (NPRM) 50 FR 8342 (FHWA Docket No. 85–16) published a proposed list of grandfathered semitrailer lengths for the remaining 27 States. The proposed grandfathered length for each State was based on criteria developed by the FHWA and published in the same NPRM. The FHWA received 50 comments to the NPRM, 30 from political persons or entities and 20 from corporations or trade associations (hereafter referred to as "industry"). In total, the comments represented 23 States.

The published lengths for the States of Colorado, Illinois, Massachusetts, Nebraska, North Dakota, and Tennessee generated no comment from any source. Therefore, this final rule adopts the lengths as published.

Comments were received asserting that the lengths in four States should be as follows: Florida, 57 feet 6 inches; Minnesota, 53 feet; Washington, 57 feet 4 inches; and Wisconsin, 53 feet. However, no conclusive justification for these lengths was provided, as semitrailers longer than 48 feet operated in these States only under special permit. Accordingly, FHWA is establishing 48 feet as the maximum semitrailer length in these States, modified only in Wisconsin, which has a kingpin-to-rear axle restriction.

The proposed grandfathered lengths for six other States are being revised due to subsequent agreements between each individual State and industry, a court decision, or kingpin-to-rear axle restrictions. Those States are: California, 48 feet unrestricted, 53 feet with a kingpin-to-rear axle restriction; Delaware, 53 feet; Indiana, 48 feet 6 inches unrestricted, 53 feet with a kingpin-to-rear axle restriction; Mississippi, 53 feet; and Oklahoma, 59 feet 6 inches. This final rule adopts these proposed grandfathered lengths.

In addition, a recent circuit court ruling in the case of *National Freight v. Larson*, 760 F.2d 499 (3d Cir. 1985), *cert. denied*, ___ U.S. ___, 106 S.Ct. 228 (1985), held that Pennsylvania must allow 53-foot semitrailers with no overall length limit to operate on the National Network, with reasonable access provided by the STAA. However, that decision also indicated that the State can regulate the overall length of vehicle combinations on other highways. As a result of this decision, the FHWA is also revising the proposed regulatory language in the March 1, 1985, NPRM, 23 CFR 658.13(c)(1) to delete the second sentence.

In Texas, although the State has submitted a limit of 57 feet, semitrailers up to 59 feet long are allowed under an equipment grandfather claim, i.e., the 57 to 59 foot semitrailer was legal if the year model indicated a date prior to December 1, 1982. As the STAA provides for the continued operation of semitrailers with specific dimensions, the states cannot limit continued operation to specific equipment. Therefore, this rule is establishing the Texas limit at 59 feet.

By memorandum dated November 2, 1983, from the Office of the Attorney General to the Director of the Utah Department of Transportation, the legal length limit of semitrailers in the State was established at 45 feet. The motor carrier industry has provided an argument with some support indicating that longer semitrailers did in fact operate in the state prior to the passage of the STAA of 1982. The State has responded to a request for clarification of this matter by letter of April 29, 1987, which assumes for the purpose of argument the operation of such longer semitrailers *de facto*. Notwithstanding this assumption it is the state's position that state law on the applicable date legalized only the operations of 45-foot long semitrailers and that therefore the *de facto* operation is without effect for our purposes here. The FHWA administers a federally-aided state program. It is our stated intent to rely on state interpretations of state law insofar as they have not been preempted. Accordingly, we are establishing the grandfathered semitrailer length for Utah at 48 feet, in reliance upon the state determination of state law on December 1, 1982.

The State of Arizona has submitted information confirming that some industries were using semitrailers up to 57 feet 6 inches long, and staying within the State's overall length limitation of 65 feet, prior to December 1, 1982. Therefore, the grandfathered semitrailer length for Arizona is being established at 57 feet 6 inches.

In the States of Alabama, Arkansas, and Iowa industry contends that the proposed semitrailer lengths do not reflect the actual length of semitrailers that lawfully operated in those States prior to December 1, 1982. Industry contends that the appropriate grandfathered length for each of those States should be: Alabama, 53 feet 6 inches; Arkansas, 53 feet 6 inches; and Iowa, 53 feet. Some support for the operation of semitrailers of these lengths is present in the Docket. Following the rationale of the National Freight decision, the FHWA is establishing the grandfathered semitrailer length for these States as follows: Alabama, 53 feet 6 inches; Arkansas, 53 feet 6 inches; and Iowa, 53 feet.

In another four States, industry has requested lengths be established as follows: Idaho, 57 feet 4 inches; Montana, 57 feet 4 inches; Nevada, 55 feet; and New Mexico, 59 feet. However, no substantive evidence has been provided. On the other hand, each of these States has provided a plausible rationale for establishing the following lengths, which have been adopted in this final rule: Idaho, 48 feet; Montana, 53 feet; Nevada, 53 feet; and New Mexico, 57 feet 6 inches.

Three States objected to the proposed grandfather semitrailer lengths listed in the June 5, 1984, rule. These States and the proposed lengths are: Oregon, 53 feet; Rhode Island, 48 feet; and Wyoming, 57 feet 4 inches.

The State of Oregon claims that State law specified only a 60-foot overall maximum combination length. However, industry presented documentation for trips by 53-foot long semitrailers, but within the 60-foot overall combination length. Therefore, the grandfathered semitrailer length for Oregon is established at 53 feet.

The State of Rhode Island presented evidence of State law indicating a semitrailer length of 48 feet 6 inches. Therefore, the grandfathered semitrailer length for Rhode Island is established at 48 feet 6 inches.

The State of Wyoming contended that State statutes provided for overall combination vehicle length with no specific semitrailer length restriction. However, industry did not provide evidence supporting actual and lawful use of semitrailers in excess of 57 feet 4 inches. Therefore, the grandfathered semitrailer length for Wyoming is established at 57 feet 4 inches.

The States cannot restrict, by law or regulation, operations of semitrailers of grandfathered lengths or shorter on the National Network, established by 23 CFR Part 658. In addition, it should be noted that the right to continued operation applies to all semitrailers with these lengths and not just to specific equipment that was in existence and in operation on December 1, 1982.

Regulatory Impact

The FHWA has considered the impacts of this rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. However, pursuant to E.O. 12498, this rulemaking action has been included in the Regulatory Program for significant rulemaking actions. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule, finalizing certain issues left unresolved at that time. While the particular grandfathered lengths proposed for some States are new, the impacts of these changes have already been considered by the previous documentation. A Regulatory Impact Analysis was prepared for the June 5, 1984, rulemaking and is available for inspection in the Headquarters' office of FHWA, 400 Seventh Street, SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA hereby amends Chapter 1 of Title 23, Code of Federal Regulations, by revising Part 658 as set forth below.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program.)

Issued on: January 20, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

658—TRUCK SIZE AND WEIGHT ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313, and App. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13 is amended by revising paragraph (c)(1), removing paragraph (c)(2), and redesignating and revising paragraph (c)(3) as paragraph (c)(2) to read as follows:

658.13 Length.

* * * * *

(c) * * *

(1) No State shall prohibit the use of trailers or semitrailers of such dimensions as those that were in actual and lawful use in such State on December 1, 1982, as set out in Appendix B of this part.

(2) If on December 1, 1982, State length limitations on a semitrailer were described in terms of the distance from the kingpin to rearmost axle, or end of semitrailer, the operation of any semitrailer that complies with that limitation must be allowed.

* * * * *

3. Part 658 is amended by adding Appendix B to read as follows:

APPENDIX B—GRANDFATHERED SEMITRAILER LENGTHS

State	Feet and inches
Alabama	53–6
Alaska	48–0
Arizona	57–6
Arkansas	53–6
California	[1] 48–0
Colorado	57–4
Connecticut	48–0
Delaware	53–0
District of Columbia	48–0
Florida	48–0
Georgia	48–0
Hawaii	48–0
Idaho	48–0
Illinois	53–0
Indiana	[2] 48–6
Iowa	53–0
Kansas	57–6
Kentucky	53–0
Louisiana	59–6
Maine	48–0
Maryland	48–0
Massachusetts	48–0
Michigan	48–0
Minnesota	48–0
Mississippi	53–0
Missouri	53–0
Montana	53–0
Nebraska	53–0
Nevada	53–0
New Hampshire	48–0
New Jersey	48–0
New Mexico	57–6
New York	48–0
North Carolina	48–0
North Dakota	53–0
Ohio	53–0
Oklahoma	59–6
Oregon	53–0
Pennsylvania	53–0
Puerto Rico	48–0
Rhode Island	48–6
South Carolina	48–0
South Dakota	53–0
Tennessee	50–0
Texas	59–0
Utah	48–0
Vermont	48–0
Virginia	48–0
Washington	48–0
West Virginia	48–0
Wisconsin	[3] 48–0
Wyoming	57–4

[1] Semitrailers up to 53 feet may also operate without a permit by conforming to a kingpin-to-rearmost axle distance of 38 feet.

[2] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rearmost axle distance of 40 feet 6 inches.

[3] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rear axle distance of 41 feet, measured to the center of the rear tandem assembly.

[FR Doc. 88–1905 Filed 1–28–88; 8:45 am]
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8172]

Procedure and Administration; Qualification of Trustee or Like Fiduciary in Bankruptcy

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations eliminating a requirement

that a bankruptcy trustee, debtor in possession or like fiduciary in a bankruptcy proceeding give notice of appointment or authority to act. This rule change eliminates an unnecessary requirement.

DATES: These regulations are effective as of January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T) (202–566–3458; not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains an amendment to the procedure and Administration Regulations (26 CFR Part 301) under section 6036 of the Code. This amendment is issued under the authority contained in sections 6036 and 7805 of the Code (68A Stat. 744; 26 U.S.C. 6036; 68A Stat. 917; 26 U.S.C. 7805).

Explanation of Provision

Section 6036 provides that every receiver, bankruptcy trustee, or like fiduciary or executor shall give notice of his qualifications to the Secretary of the Treasury as provided by regulations. The Secretary may provide exemptions from this notice requirement as he deems proper.

Section 301.6036–1(a)(1), before amendment by this document, required receivers, bankruptcy trustees, debtors in possession and other like fiduciaries in a bankruptcy proceeding to provide the appropriate district director with notice of appointment within 10 days of the date thereof. Notice was not required, however, if it had been given to the Secretary or other Treasury official under any provision of title 11 of the United States Code.

The amendment adopted by this document eliminates the notice requirement under section 6036 for bankruptcy trustees, debtors in possession and other like fiduciaries in a bankruptcy proceeding. This is because the Internal Revenue Service has determined that the notice requirements contained in the Bankruptcy Rules are sufficient for its purposes.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for final regulations subject to 5 U.S.C. 553(b)(B). Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of this Treasury decision is Bennett C. Steinhauer of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in drafting this Treasury decision, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise Taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority citation for 26 CFR Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 301.6036–1 also issued under 26 U.S.C. 6036.

Par. 2. Section 301.6036–1 is amended by revising paragraph (a)(1), the heading and introductory text of paragraph (a)(4)(i), and paragraph (e) as follows:

§ 301.6036–1 Notice required of executor or of receiver or other like fiduciary.

(a) *Receivers and other like fiduciaries.* (1) *Exemption for bankruptcy proceedings.* (i) A bankruptcy trustee, debtor in possession or other like fiduciary in a bankruptcy proceeding is not required by this section to give notice of appointment, qualification or authorization to act to the Secretary or his delegate. (However, see the notice requirements under the Bankruptcy Rules.)

(ii) Paragraph (a)(1)(i) of this section is effective for appointments, qualifications and authorizations to act made on or after January 29, 1988. For appointments, qualifications and authorizations to act made before the foregoing date, 26 CFR 301.6036–1 (a)(1) and (4)(i) (revised as of April 1, 1986) apply.

* * * * *

(4) *Contents of Notice*—(i) *Proceedings other than bankruptcy.* The written notice required under paragraph (a)(2) of this section shall contain—

* * * * *

(e) *Applicability.* Except as provided in paragraph (a)(1)(ii) of this section, the provisions of this section shall apply to those persons referred to in this section whose appointments, authorizations, or assignments occur on or after the date of publication of these regulations in the Federal Register as a Treasury decision.

* * * * *

This Treasury decision merely eliminates a requirement that a bankruptcy trustee, debtor in possession, or like fiduciary in a bankruptcy proceeding give notice of appointment or authority to act. For this reason, it is found unnecessary to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 14, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–1809 Filed 1–28–88; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–207; RM–5709, RM–5964, RM–6065]

Radio Broadcasting Services; Accomac and Deltaville, VA and Moyock, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257B1 to Accomac, Virginia and Channel 222A to Deltaville, Virginia at the request of C & R Communications, Golden Rule Organization Workshop, Inc., respectively. It also substitutes Channel 221B1 for Channel 221A at Moyock, North Carolina and modifies the license of Station WOFM(FM) at the request of the licensee, Southland Communications, Inc. Channel 222A at Deltaville requires a site restriction of 6.7 kilometers (4.2 miles) northeast of the city. Channel 221B1 at Moyock requires a site restriction of 20.1 kilometers (12.5 miles) north of the

community. With this action, this proceeding is terminated.

DATES: *Effective* March 10, 1988. The window period for filing applications for Channel 222A at Deltaville, Virginia and Channel 257B1 at Accomac, Virginia will open on March 11, 1988, and close on April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–207, adopted December 24, 1987, and released January 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virginia by adding Channel 257B1 at Accomac and Channel 222A at Deltaville; and by deleting Channel 221A and adding Channel 221B1 at Moyock, North Carolina.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88–1827 Filed 1–28–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 86-8, Notice 2]

Truck Size and Weight; Specialized Equipment—Boat Transporters

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Public comment is requested by the Federal Highway Administration on a request to designate boat transporters as specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA). This notice proposes: (1) A definition of boat transporters, (2) to afford the boat transporters the same lengths and overhang as that provided the automobile transporters, and (3) to provide a definition and a minimum length limit of 65 feet for a truck-trailer boat transporter.

DATE: Comments on this docket must be received on or before April 28, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 86-8, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A rule implementing the truck size and weight provisions of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097, was published in the **Federal Register** on June 5, 1984 (49 FR 23302). This document represented the culmination of major efforts by the FHWA to implement the truck size and weight provisions of the STAA. The rule addresses, among many issues, automobile transporters pursuant to section 411(d) of the STAA in part by determining that auto transporters constituted specialized equipment and were not subject to the provisions of 23 CFR 658.13 (a) through (c). Section 658.13(d) provided final requirements for automobile transporters relative to overall lenghth and allowable overhang. That rule also noted our intent to institute more definitive rulemaking on this subject as soon as possible.

The National Marine Manufacturers Association and Celebrity Boats, Inc., of Benton, Illinois, have petitioned that FHWA classify "boat haulers" as "specialized equipment" within the meaning of section 411(d) of the STAA, 49 U.S.C. 2311(d), and that, similar to the rules pertaining to automobile trnasporters, they be subject ot federally established limits on the National Network for commercial vehicles (see 23 CFR Part 658). The petitioners indicate that the needs of the boat transporter industry are analogous to the needs of the automobile transporter industry which was afforded "specialized equipment" status as part of the 1982 STAA.

The petitioners also claim that vehicles used to transport boats operate in a manner similar to the operation of vehicles used for automobile transport. The granting of "specialized equipment" designation for boat transporters and treatment analogous to the afforded to automobile transporters would entail the establishment of Federal minimum length specifications that would preclude States from imposing length maximums that are less than the Federal limit on the National Network established by 23 CFR 658.9; grant boat transporters the ability to carry cargo on the power unit of a truck combination; and grant front and rear allowances for overhang. The advantages of "specialized equipment" designation include greater cargo-carrying capacity and more economical use of boat transporters equipment.

The FHWA issued an advance notice of proposed rulemaking (ANPRM) at 51 FR 10234 on March 25, 1986, seeking public comments on this request. Comments and information were solicited on the following issues relating to boat transporters: maneuvering characteristics, safety, control, off-tracking, crosswind effects, and the need for overall length limits on boat transporters, information on similarities and dissimilarities between boat transporters and auto transporters and information on the consistency of truck configurations used for hauling boats.

In addition, proposals were requested regarding an actual definition and description of "boat transporters" as well as comments on the need to preempt current State regulation of these vehicles.

Fifty-four responses were received in reply to the March 25 ANPRM (Docket 86-8). The respondents are generally categorized as State agencies and the District of Columbia—13; trucking companies—7; trucking associations—1; and boat manufacturers—33. Most of the manufacturers also operate equipment for transporting their products.

The industry (both trucking and manufacturing companies) comments were unanimous in their comments that boat transporters' operation and equipment were very similar to those of the automobile transporters and that the same dimensions and configurations should be allowed the boat transporters. Five States agreed as to the similarity between the equipment and operations of the auto and boat transporters and to the appropriateness of extending the same allowances to the boat transporters.

Seven States objected to any rulemaking concerning boat transporters and questioned the need to preempt State laws for specialized equipment. They further questioned the appropriateness of defining boat transporters as specialized equipment and asked for a definition of specialized equipment. Several States suggested dimensions should be set based on equipment type and not equipment use.

Five of the States commented that the lengths noted in the ANPRM (63 to 68 feet) would cause problems with off-tracking and maneuvering off the National Network. They also questioned the handling and safety of all longer vehicles. Most of the industry commenters noted that their equipment and loadings had not caused any unusual handling or control problem. Several noted that the shape of the boat hulls minimizes any crosswind effect. Eight of the industry commenters made reference to their safety records noting such achievements as "1.6 million miles in '85 without a chargeable accident and won a safety award," "No accidents in 15 years," and "only one accident (during a blizzard) in 10 years."

In reviewing the comments to the docket, the FHWA found that a number of boat transporters were using a vehicle combination not covered by the June 5, 1984, rule. This combination is a truck-trailer wherein a straight truck pulls a trailer using a ball and socket connection rather than a "fifth wheel" as used by the traditional semi-trailer and the stinger steered semi-trailer. While most of the load on this type of trailer is carried by the trailer axle(s), some of the load is carried by the towing unit through the connection. Neither the American Association of State Highway and Transportation Officials (AASHTO) definitions nor the Federal Motor Carrier Safety Regulations specifically define this type of trailer. Additional information is being sought as to the handling and off-tracking of this "truck-trailer" combination. It appears that the off-tracking would be similar to that of the stinger steered configuration since the connection is well behind the rear axle of the towing vehicle. However, due to the usually longer wheelbase of the towing vehicle, the off-tracking may be different.

Section 133(a)(7) of the Federal-aid Highway Act of 1987 (Pub. L. 100-17, 101 Stat. 132) enacted on April 2, 1987, amends section 411(d) of the STAA of 1982 wherein "boat transporters" is added as an example of specialized equipment. This clearly shows the congressional intent in authorizing the Secretary of Transportation "to make such determinations as were necessary to accommodate specialized equipment." In addition to the comments received to the ANPRM, this recent action by Congress reinforces the basis for continuing with this rulemaking.

Those desiring to comment on this notice of proposed rulemaking are asked to submit their views in writing. Comments will be available for public inspection both before and after the closing date at the above address. All comments received to this notice will be considered before further rulemaking action is taken.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. However, pursuant to E.O 12498, this rulemaking action has been included in the Regulatory Program for significant rulemaking actions. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the June 5, 1984, final rule by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this proposed rulemaking have already been considered by the impact documentation prepared for the June 5 final rule. Any changes to the June 5 final rule resulting from this NPRM would not appreciably affect the impact documentation initially prepared. The Regulatory Impact Analysis prepared for the June 5 rulemaking (FHWA Docket 83-14) is available for inspection in the headquarters office of FHWA, 400 Seventh Street SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this section will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grant programs-Transportation, Highways and roads, Motor carrier-size and weight.

Issued on: January 13, 1988.

R.D. Morgan,

Executive Director, Federal Highway Administration.

The FHWA proposes to amend 23 CFR Part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for Part 658 is revised to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 App. U.S.C. 2311, 2312, 2313, and 2316), as amended by Pub. L. 98-17, 97 Stat. 59, Pub. L. 98-554, 98 Stat. 2829, and Sec. 133(a)(7) of Pub. L. 100-17, 101 Stat. 132; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraphs (p) and (q) as follows:

§ 658.5 *Definitions.*

* * * * *

(p) *Boat transporters.* Any vehicle combination designed and used specifically to transport assembled boats and boat hulls. Boats may be partially disassembled to facilitate transporting.

(q) *Truck-trailer boat transporter.* A boat transporter combination consisting of a straight truck towing a trailer using a ball and socket connection. The trailer axle(s) is located substantially at the trailer center of gravity (rather than the rear of the trailer) but so as to maintain a downward force on the trailer tongue.

3. Section 658.13 is amended by adding paragraph (d)(2) to read as follows:

§ 658.13 Length.

* * * * *

(d) * * *

(2) *Boat transporters.* (i) Boat transporters are considered to be specialized equipment. As provided for automobile transporters in § 658.5(k), boat transporters may carry boats on the power unit so long as the length and width restrictions of the vehicles and load are not exceeded. No State shall impose an overall length limitation of less than 65 feet on traditional boat transporters (fifth wheel located on tractor frame over rear axle(s)), including "low boys," or less than 75 feet on stinger-steered boat transporters. In addition, a truck-trailer boat transporter combination not less than 65 feet in length (exclusive of overhang) shall be allowed. Paragraph (c) of this section requires the States to allow operation of vehicles with the dimensions that were legal in the State on December 1, 1982.

(ii) All length provisions regarding boat transporters are exclusive of front and rear overhang. Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhang limitation of less than four (4) feet.

* * * * *

FR Doc. 88-1904 Filed 1-28-88; 8:45 am]
BILLING CODE 4910-22-M

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23 CFR Part 658

[FHWA Docket No. 85-16, Notice No. 2]

Truck-Tractor Semitrailer-Semitrailer; B-Trains

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Public comment is requested by the FHWA in regard to a proposal to designate a truck-tractor semitrailer-semitrailer combination vehicle (with a B-train assembly connecting the two trailing units) as specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097.

The FHWA has tentatively concluded that the "B-train" assembly can be operated safely on the National Network and is setting forth the basis for its tentative conclusions for further public comment.

DATE: Comments on this docket must be received on or before March 14, 1988.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-16, Notice No. 2, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4032 or Mr. David C. Oliver, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) titled "Truck Size and Weight: Revisions" (50 FR 8342, March 1, 1985) the FHWA proposed to interpret 23 CFR 658.13 in such a manner that a combination of vehicles described as a truck-tractor semitrailer-semitrailer be considered as a truck-tractor semitrailer-trailer for purposes of 23 CFR Part 658.

However, one respondent to Docket 85-16 pointed out that the proposed method of recognizing the truck-tractor semitrailer-semitrailer combination by adding the words "truck-tractor semitrailer-semitrailer" after the words "truck-tractor semitrailer-trailer" each time they appeared in § 658.13 was not literally consistent with the statute. The FHWA agrees with this comment and is proposing to recognize the truck-tractor semitrailer-semitrailer combination as specialized equipment under the provisions of section 411(d) of the STAA.

In addition, other matters were raised in response to the March 1, 1985, NPRM that also merit a supplemental NPRM. In particular, a number of commenters questioned the safety aspects of the "B-train" assembly. The FHWA has tentatively concluded that the "B-train" assembly can be operated safely on the National Network and is setting forth the basis for its tentative conclusions for further public comment. Commenters need not repeat comments previously submitted. However, any information addressing the issues raised in this supplemental NPRM will be considered before the FHWA issues a final rule.

Summary of Comments

Farmers and Feeders, Inc., of West Fargo, North Dakota, requested that the FHWA recognize a combination of vehicles consisting of a truck-tractor semitrailer-semitrailer for unrestricted use on the Interstate System and designated Federal-aid primary highways (National Network). It further requested that the rearward extension of the first semitrailer designed to accommodate a fifth wheel be adjudged a length exclusive device. This connection mechanism commonly referred to as a "B-train" has one less articulation point than the conventionally connected semitrailer-trailer combination and thus appears to increase stability and reduce off-tracking. This conclusion is drawn from research conducted at the University of Michigan Transportation Research Institute and the National Research Council of Canada.

Notwithstanding the fact that a portion of the second semitrailer is resting on a fifth wheel attached to the first semitrailer by an extension of the frame, the FHWA proposed that the fifth wheel assembly at the rear of the first semitrailer in a B-train semitrailer-semitrailer configuration be considered a length exclusive device because of its beneficial effect upon stability and off-tracking. However, when there is not a semitrailer mounted to the B-train assembly, it would be included in the length measurement of the semitrailer.

There were twelve responses to the March 1, 1985, NPRM regarding § 658.5(e)(2) which designated the fifth wheel connection point connected to the frame of the lead semitrailer in a semitrailer-semitrailer combination a length exclusive device. Four States and three trucking organizations were in favor, and five States were opposed.

The State of Montana's objection was based on its contention that the amendment exceeds the scope of the STAA. The State of Florida contended that it was necessary to first evaluate such a combination of vehicles. The State of Minnesota asserted that an overall length should be established for such a length exclusive device. Minnesota also indicated that if the fifth wheel connection on the rear frame of the lead semitrailer were determined to be a length exclusive device, it would be a hazard when the second semitrailer was not attached. The FHWA invites further comment on these issues.

The State of South Dakota allows longer semitrailers in combinations and does include the "B-train" assembly in the overall length of the lead semitrailer, but imposes offtracking requirements on semitrailer-semitrailer combinations. It appears that the State reads the proposed rule as adversely impacting those States with length laws more permissive than the national minimum standards. It is not the intent of the proposal to preempt State length laws which are more permissive than STAA minimum length limit requirements for vehicle combinations or to affect State laws which establish offtracking requirements for those vehicle combinations. As an example, since South Dakota law restricts off-tracking to a maximum of 17 feet, this requirement will still apply for truck-tractor semitrailer-semitrailer combinations except in cases where it would have the effect of prohibiting the second semitrailer from being at least 28 feet (or 28½ feet if grandfathered) as statutorily required.

The State of Washington contended that determination of such a length exclusive device would create an advantage for operators who design a fifth wheel connection in such a way that the freight-carrying part of the second semitrailer can significantly overlap the fifth wheel connection point, and will not be measured as part of the freight-carrying length of the two units. The State indicated that if this overlap occurred, it would not conform to the present method of measuring overall lengths of combinations of vehicles.

Many State laws require specific methods of measuring vehicle lengths. For example, some length measurement requirements include the rear frame fifth wheel assembly (the B-train) in the cargo-carrying length determination. One objective of the proposal to designate the fifth wheel connection point at the rear of a lead semitrailer as a length exclusive device is to ensure that the cargo box of a lead semitrailer be not less than 28 feet long (or 28½ feet if grandfathered).

There were thirteen responses to the March 1, 1985, NPRM proposal to add to § 658.5(1) the definition of truck-tractor semitrailer-semitrailer. Eight State entities and three trucking organizations were in favor and two States were opposed. The State of Florida objected to truck-tractor semitrailer-semitrailer combinations because it felt it was necessary to first evaluate the maneuvering characteristics, sway, effects on load distribution, and lighting requirements of such a combination of vehicles. Further comments on this issue are requested. The State of Montana objected to the inclusion of the truck-tractor semitrailer-semitrailer combination because it felt that the inclusion exceeded the scope of the STAA. The FHWA agrees with this comment and is proposing to recognize the truck-tractor semitrailer-semitrailer combination as specialized equipment under the provisions of section 411(d) of the STAA.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. Pursuant to E.O. 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking proposes to technically amend the final rule on truck size and weight (June 5, 1984; 49 FR 23302), by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this proposed rulemaking have already been fully considered by the impact documentation prepared for the June 5 final rule. Any changes to the June 5 final rule resulting from this NPRM would not appreciably affect the impact documentation initially prepared. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the headquarters office of FHWA, 400 Seventh Street SW., Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA proposes that the Secretary of Transportation designate the truck-tractor semitrailer-semitrailer combination as described in this NPRM as specialized equipment.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 1, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter 1 of Title 23, Code of Federal Regulations, by amending Part 658 as set forth below.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Sec. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.SS.C. 2311, 2312, 2313 and App. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraph (o) as follows:

§ 658.5 Definitions.

* * * * *

(o) *Truck-tractor Semitrailer-Semitrailer.* In a truck-tractor semitrailer-semitrailer combination vehicle, the two trailing units are connected with a "B-train" assembly. The B-train assembly is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth wheel connection point for the second semitrailer. This combination has one less articulation point than the conventional "A dolly" connected truck tractor semitrailer-trailer combination.

3. Section 658.13 is amended by adding paragraph (d)(3) to read as follows:

§ 658.13 Length.

* * * * *

(d) *Specialized Equipment.*

* * * * *

(3) Truck-tractor semitrailer-semitrailer. (i) Truck-tractor semitrailer-semitrailer combination vehicles are considered specialized equipment. No State shall impose a length limitation of less than 28 feet on any semitrailer operating in a truck-tractor semitrailer-semitrailer combination. No State shall impose an overall length limitation on a truck-tractor semitrailer-semitrailer combination when each semitrailer length is 28 feet. All longer-length truck-tractor semitrailer-semitrailer vehicle combinations legally operating on December 1, 1982, are grandfathered and continued operation must be allowed.

(ii) The B-train assembly is excluded from the measurement of trailer length when used between the first and second trailer of a truck-tractor semitrailer-semitrailer combination vehicle. However, when there is no semitrailer mounted to the B-train assembly, it will be included in the length measurement of the semitrailer.

[FR Doc. 88-1902 Filed 1-28-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-62-87]

Low-Income Housing Credit for Federally-Assisted Buildings; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code.

DATES: The public hearing will be held on Thursday, March 17, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, March 3, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-62-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marcia Evans of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations and the amendments thereto under section 42(d) (6) of the Internal Revenue Code of 1986 which provides

rules for the low-income housing credit allowable for certain Federally-assisted buildings acquired during the 10-year period described in section 42(d)(2)(B)(ii). The proposed regulations appeared in the **Federal Register** for Tuesday, November 3, 1987 (52 FR 42116).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than March 3, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Donald E. Ostsen,

Director, Legislation and Regulations Division.

[FR Doc. 88-1810 Filed 1-28-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 8-88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Civil Division, proposes to amend 28 CFR Part 16 to exempt four systems of records from certain provisions of the Privacy Act, 5 U.S.C. 552a. Specifically, the Division proposes to exempt the Civil Division Case File System/JUSTICE/CIV-001, and the Freedom of Information/Privacy Acts File System, JUSTICE/CIV-005, from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) and (H), (e)(5), (e)(8), and (g). These exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information. In addition, the Division proposes to exempt the Consumer Inquiry/Investigatory System, JUSTICE/CIV-006, from subsections (c)(3) and (4), (d), (e)(1) and (e)(5), and the Congressional and Citizen Correspondence File, JUSTICE/CIV-007, from subsection (d). These exemptions are needed to protect the integrity of civil investigatory and criminal law enforcement materials.

DATE: All comments must be received by March 29, 1988.

ADDRESS: Address all comments to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Room 6402, U.S. Department of Justice, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, 202-272-6474.

SUPPLEMENTARY INFORMATION: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy and Sunshine Acts.

These systems have been published in the Notice section of today's **Federal Register.**

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552 and delegated to me by Attorney General Order 793-78, it is proposed to amend 28 CFR Part 16 by adding § 16.89 as set forth below.

Dated: January 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows.

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483 unless otherwise noted.

2. It is proposed to amend 28 CFR by adding § 16.89 to read as follows:

§ 16.89 Exemption of Civil Division Systems—Limited Access.

(a) The following systems of records are exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3) (d), (e)(1), (e)(4) (G) and (H):

(1) Civil Division Case File System, JUSTICE/CIV-001.

(2) Freedom of Information/Privacy Acts File System, JUSTICE/CIV-005.

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Only that information which relates to the investigation, prosecution, or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4), (e)(4) (G) and (H), and (g).* These provisions are inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d).* To the extent that information contained in these systems has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; hamper sensitive civil or criminal investigations; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2).* To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others to whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3).* To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with the requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8).* To serve notice would give persons sufficient warning to evade law enforcement efforts.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1) and (e)(5); in addition, this system is also exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1).

Consumer Inquiry/Investigatory System, JUSTICE/CIV-006.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Only that information compiled for criminal or civil law enforcement purposes is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* This system occasionally contains investigatory material based on complaints of actual or alleged criminal or civil violations. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him/her would inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d).* Disclosure of information relating to the investigation of complaints of alleged violation of criminal or civil law could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(e) The following system of records is exempt pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) from subsection (d):

Congressional and Citizen Correspondence File, JUSTICE/CIV-007.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(f) Only that portion of the Congressional and Citizen Correspondence File maintained by the Communications Office which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsection:

(1) *Subsection (d).* Disclosure of investigatory information would jeopardize the integrity of the investigative process, disclose the identity of individuals who furnished information to the government under an express or implied promise that their identities would be held in confidence, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

[FR Doc. 88-1815 Filed 1-28-88; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-612, RM-5673]

Radio Broadcasting Services; North Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Earl N. Hodges, d/b/a Mid-South Frequency Monitoring Service, seeking the allotment of Channel 266A to North Little Rock, Arkansas, as that community's first local FM service.

DATES: Comments must be filed on or before March 17, 1988, and reply comments on or before April 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Earl N. Hodges, Mid-South Frequency Monitoring Service, 4004 Clay Drive, Jonesboro, AR 72401.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 87-612, adopted December 22, 1987, and released January 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-1823 Filed 1-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-613, RM-6055]

Radio Broadcasting Services; Jenkins, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Kincraft Industries, Inc., licensee of Station WIFX-FM, Channel 232A, Jenkins, Kentucky, proposing to modify its license from Class A facilities to Class C2 facilities operations on the same Channel 232.

DATES: Comments must be filed on or before March 17, 1988, and reply comments on or before April 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-613, adopted December 22, 1987, and released January 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1824 Filed 1-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-614, RM-6006]

Radio Broadcasting Services; Valley Station, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Mid-America Communications, Inc., proposing the allotment of FM Channel 290A to Valley Station, Kentucky as that community's first FM service.

DATES: Comments must be filed on or before March 17, 1988, and reply comments on or before April 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gene A. Bechtel, Esq., Bechtel & Cole, Chartered, 2101 L Street NW., Suite 502, Washington, DC 20037 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-614, adopted December 22, 1987, and released January 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do ot apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1825 Filed 1-28-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-615, RM-5877]

Radio Broadcasting Services; Virgie, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Shelby Valley Broadcasting, Inc., proposing the allotment of FM Channel 298A to Virgie, Kentucky as that community's first FM channel. Comments are requested on the issue of community status for Virgie.

DATES: Comments must be filed on or before March 17, 1988, and reply comments on or before April 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esq., 10 East Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-615, adopted December 22, 1987, and released January 25, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 88-1826 Filed 1-28-88; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services; Public Meeting

ACTION: Special Committee on Financial Services: Meeting Time.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee on Financial Services of the Administrative Conference of the United States. The committee has scheduled this meeting to develop proposed recommendations dealing with Implementation of the Bank Holding Company Act: The Adjudicatory Procedures of the Federal Reserve Board, based upon a study by Professor Alfred C. Aman. Copies of the Committee's report may be obtained from the contact person named at this notice.

DATE: Friday, February 5, 1988 at 2:00 pm.

Location: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone : (202) 254–7020.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 88–1808 Filed 1–28–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87–178]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing of genetically engineered tomato plants, designed to be tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not cause any significant impact to the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7908.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to the herbicide bromoxynil. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Calgene application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not cause any significant impact on the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a chromosome of these tomato plants. In nature, genetic material contained on the chromosomes of tomato plants can only be transferred to other compatible plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination for the following reasons: (1) The field test plot is located a sufficient distance from any compatible plants with which the genetically engineered tomato plants might cross-pollinate; (2) no pollen will be produced since the tops of the plants will be removed upon flower initiation; and (3) the field test will be conducted at a time of year when tomatoes are rarely grown.

2. Neither the herbicide tolerance gene itself, nor its gene product, confer on the tomato plant any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single herbicide tolerance gene.

3. The bacterium from which the herbicide tolerance gene was isolated is not a plant pest and is widely distributed in the soil.

4. The herbicide tolerance gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant pathogencity have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the plant cell, has been shown to have been eliminated and no longer associated with the transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome where it is inserted into the plant chromosomal DNA, and the remaining vector material degrades. The vector does not survive in the plant. No mechanism exists in nature to move the inserted gene from the plant to other organisms.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the pest plot is very small (129 feet wide by 750 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land.

10. The plot has good physical security. Physical isolation will be ensured and incursion by large animals and humans will be prevented by a chain-linked fence surrounding the plot. The occupants of a nearby farm house will provide additional security.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 25th day of January 1988.

James W. Glosser,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–1906 Filed 1–28–88; 8:45 am]
BILLING CODE 3410–34–M

[Docket No. 87–177]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing of genetically engineered tomato plants, designed to be tolerant to the herbicide bromoxynil. The assessment provides a basis for the conclusion that the field testing of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not cause any significant impact to the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7908.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for

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release into the environment of genetically engineered tomato plants that are designed to be tolerant to the herbicide bromoxynil. In the course of reviewing the application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Calgene application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not cause any significant impact on the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a chromosome of these tomato plants. In nature, genetic material contained on the chromosomes of tomato plants can only be transferred to other compatible plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination for the following reasons: (1) The field test pilot is located a sufficient distance from any compatible plants with which the genetically engineered tomato plants might cross-pollinate; (2) no pollen will be produced since the tops of the plants will be removed upon flower initiation; and (3) the field test will be conducted at a time of year when tomatoes are rarely grown.

2. Neither the herbicide tolerance gene itself, nor its gene product confers on the tomato plant any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single herbicide tolerance gene.

3. The bacterium from which the herbicide gene was isolated is not a plant pest and is widely distributed in the soil.

4. The herbicide tolerance gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant pathogenicity have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the plant cell, has been shown to have been eliminated and no longer associated with the transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome where it is inserted into the plant chromosomal DNA, and the remaining vector material degrades. The vector does not survive in the plant. No mechanism exists in nature to move the inserted gene from the plant to other organisms.

8. Bromoxynil is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the test plot is very small (96 feet wide by 750 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land.

10. The plot has good physical security. Physical isolation will be ensured and incursion by large animals and humans will be prevented by a chain-linked fence surrounding the plot. The occupants of a nearby farm house will provide additional security.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 25th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-1907 Filed 1-28-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-001]

Certain Steel Wire Nails From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 3, 1987, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order that was in effect prior to October 1, 1984 on certain steel wire nails from Korea. The review covers three manufacturers/exporters of this merchandise and the consecutive periods from February 3, 1982 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1985, the Department of Commerce ("the Department") revoked the antidumping duty order on certain steel wire nails from Korea effective October 1, 1984 (50 FR 40045). On December 3, 1987, the Department published in the **Federal Register** (52 FR 45984) the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain steel wire nails, currently classifiable under items 646.2500 and 646.2600 of the TSUSA. These products are currently classifiable under HS item numbers 7317.00.55.10 and 7317.00.55.20.

The review covers three manufacturers/exporters of Korean nails, Kabul/Dong-A Nails Mfg. Co., Ltd. and Kuk Dong Metal Ind. Co., Ltd., and the consecutive periods from February 3, 1982 through September 30, 1984.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of review are unchanged from those we presented in the preliminary results. We determine that the following margins exist for the consecutive periods from February 3, 1982 through September 30, 1984:

Manufacturer/Exporter	Margin (percent)
Kabul/Dong-A Nails Mfg. Co., Ltd.	0.09
Kuk Dong Metal Ind. Co., Ltd.	5.40

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

This administrative review, covering the consecutive periods from February 3, 1982 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: January 25, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-1895 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-408-006]

Sodium Gluconate From the European Communities; Final Results of Changed Circumstances Administrative Review and Termination of Suspended Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and termination of suspended investigation.

SUMMARY: On August 21, 1987, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on sodium gluconate from the European Communities and announced its tentative determination to terminate the suspended investigation. The review covers the period from January 1, 1986.

We gave interested parties an opportunity to comment. We received no comments from interested parties. We determine that the petitioner's withdrawal of its petition indicates no further interest in continuation of the investigation, and we are terminating the investigation. The termination is effective as of January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1986, the petitioner, Pfizer Inc., informed the Department of Commerce ("the Department") that it was withdrawing its petition in the suspended countervailing duty investigation on sodium gluconate ("SG") from the European Communities ("the EC") (46 FR 58132, November 30, 1981) and requested that the Department terminate the investigation. On December 4, 1986, the Belzak Corporation, a domestic manufacturer of sodium glucoheptonate ("SGH"), requested instead that the Department terminate the suspension agreement and resume the investigation.

On August 21, 1987, the Department published in the **Federal Register** (52 FR 31653) the preliminary results of its changed circumstances administrative review of the suspended investigation. The Department preliminarily determined that since SG and SGH are not like products, the Belzak Corporation is not an "interested party" to this proceeding and that, therefore, it is unnecessary to consider its request. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classifiable under item 437.5250 of the Tariff Schedules of the United States Annotated. This product is currently classifiable under Harmonized System item number 2918.16.50. The review covers the period from January 1, 1986.

Final Results of Review and Termination

We invited interested parties to comment on the preliminary results and tentative determination to terminate the suspended investigation. We received no comments from interested parties.

On September 21, 1987, we received a request from the Belzak Corporation to make a final determination as to whether it is an interested party to this proceeding. Based on our analysis in the preliminary results of review, we determine that the Belzak Corporation is not an interested party to this proceeding.

After reviewing the changed circumstances of this case, we determine that domestic interested parties are no longer interested in the continuation of the suspended investigation on sodium gluconate from the EC and that this investigation should be terminated. Therefore, we are terminating the suspended investigation on sodium gluconate from the EC effective January 1, 1986.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and 19 CFR 355.41 and 355.42.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: January 25, 1988.

[FR Doc. 88-1899 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Friday, February 19, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:00 a.m. Review of import trends, international activities,

report on conditions in the market, and other business.

Executive Session: 10:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 337–3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377–5761.

Dated: January 22, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1869 Filed 1–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Friday, February 19, 1988, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 2:00 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton (202) 377–5761.

Dated: January 22, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–1870 Filed 1–28–88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Cold-Rolled Sheet; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under paragraph 8 of the U.S.–Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain aluminum-killed cold-rolled steel sheet.

DATE: Comments must be submitted on or before February 8, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.–Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for certain aluminum-killed cold-rolled sheet, in coils, conforming to AISI standard C 1001, to be used in the manufacture of aperture masks for television screens. The steel is 381–762 mm in width, 0.0762–0.3048 mm in thickness, and in coils weighing from 1,500 to 3,000 kgs.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 8, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

January 25, 1988.

[FR Doc. 88–1897 Filed 1–28–88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Transmittal No. DRO–88–9998; Project I.D. No. DRO–88–9998]

Denver Minority Business Development Center (MBDC); Program Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $227,647 for the project's performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Denver, Colorado Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Denver SMSA	$193,500	[1] $34,147	$227,647

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for receipt of applications is March 4, 1988.

ADDRESS: MDBA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of applications kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on February 12, 1988 at 1:00 PM. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B.—Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Denver MBDC (Geographic Area or SMSA)
Project Identification Number: DRO–88–9998
Project Start and End Dates: 07/01/88 to 06/30/89
Project Duration: 12 months

highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

MBDA's Minimum Level of Effort

Financial packages: $3,226,000
Billable M&TA: $99,000
Number of Professional Staff: 4
Procurements: $6,452,000
M&TA Hours: 1,980
Number of Clients: 89
Total *Federal Funding* (85%): $193,500
Minimum *Non-Federal Share* (15%): $34,147
Total Project Cost (100%): $227,647

Closing Date for Submission of this Application: March 4, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Denver, Colorado.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

[FR Doc. 88–1891 Filed 1–28–88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Alaska Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 10–10–88012–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 25, 1988.

[FR Doc. 88-1832 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; Fresno, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Agency (MBDA) announces that it is soliciting applications under the Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $227,647 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Fresno Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $193,500 in Federal funds and a minimum of $34,147 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88013-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coodinate and broker public and private sector resources on behalf on minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 am.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 25, 1988.

[FR Doc. 88-1833 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; Oxnard, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Oxnard Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minuimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88015-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 a.m.

Proposals Are To Be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 88-1835 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; Riverside, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under the Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $282,824 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Riverside Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $240,400 in Federal funds and a minimum of $42,424 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88010-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 a.m.

Proposals are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 25, 1988.

[FR Doc. 88-1837 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program, Salinas, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Salinas Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for the project will be 09-10-88017-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and

technical assistance; the firms's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, the Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 25, 1988.

[FR Doc. 88-1838 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program, Las Vegas, NV

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Las Vegas Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for the project will be 09-10-88014-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designated to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, the Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

January 25, 1988.

[FR Doc. 88-1838 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; Portland, OR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Portland Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,119 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 10-10-88016-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.

March 1, 1988 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

January 25, 1988.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 88-1836 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-21-M

Office of Patent and Trademark

Advisory Committee for Patents and Trademarks; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

SUMMARY: The Committee was established on December 17, 1986, to advise the Patent and Trademark Office on domestic and foreign patent issues, international trademark matters, the Administration of the Office, and its office-wide automation program.

Time and Place: March 1, 1988, from 9:00 a.m. to 4:30 p.m. The Committee will meet in the Commissioner's Conference Room at the Patent and Trademark Office, Crystal Park 2, Room 912, in Crystal City, Arlington, VA.

Agenda:

(1) Orientation
(2) Automation Activities
(3) Quality Products
(4) Innovation Promotion

Note: Because snow precluded a number of committee members from attending the January 8, 1988 meeting, the basic agenda will be carried over for the March 1 meeting.

Public Observation: The meeting will be open to public observation; approximately 12 seats will be available for the public on a first-come, first-served basis. If time permits, oral comments by the public of no more than three minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: Donald G. Kelly, Executive Assistant to the Assistant Secretary, Crystal Park 2, Suite 906, Patent and Trademark Office, Washington, DC 20231. Telephone: 703/557-3071.

Date: January 22, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-1882 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit and Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

January 26, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 11, 1987), has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish an import restraint limit and guaranteed access level for cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic and exported during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

Background

A notice published in the **Federal Register** on July 23, 1987 (52 FR 27700) announced that the United States Government had requested the Government of the Dominican Republic to enter into consultations concerning exports of cotton textile products in Categories 347/348. Under the terms of the Bilateral Textile Agreement of December 18, 1986, as amended, between the two governments, agreement was reached to amend further their bilateral agreement to establish a specific limit for Categories 347/348 for the five-month period

beginning on January 1, 1988 and extending through May 31, 1988.

A specific limit for Categories 347/348 of 800,000 dozen for the period August 1, 1987 through December 31, 1987 was also established. Any overshipments of this level will be charged to the level set forth in this directive.

A further notice published in the **Federal Register** on November 17, 1987 (52 FR 43930) announced that the Governments of the United States and the Dominican Republic, under the terms of the Bilateral Textile Agreement of December 18, 1986, as amended, and the Special Access Program, had reached agreement to establish a guaranteed access level for properly certified cotton textile products in Categories 347/348 which are assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the five-month period beginning on January 1, 1988 and extending through May 31, 1988. Notes were exchanged on December 17, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Appeal Categories with Proposed Tariff Schedule of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of their provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

January 26, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of December 18, 1986, as amended, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in the Dominican Republic and exported during the five-month period beginning on January 1, 1988 and extending through May 31, 1988, in excess of 250,000 dozen.[1]

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limit set forth above is subject to adjustment pursuant to the provisions of the bilateral agreement of December 18, 1986, as amended, between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits also may be increased for carryover and carryforward. Any appropriate future adjustments under the foregoing provisions of the bilateralk agreement will be made to you by letter.

Additionally, pursuant to the bilateral agreement of December 18, 1986, as amended, and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 10, 1986) and 52 FR 26057 (July 11, 1987), effective on February 1, 1988, a guaranteed access level of 1,000,000 dozen has been established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in Categories 347/348 which are exported from the Dominican Republic during the five-month period which began on January 1, 1988 and extends through May 31, 1988.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-1909, Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textiles; and Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in India; Correction

January 28, 1988.

In the **Federal Register** notice and in the table of the letter to the Commissioner of Customs published in the **Federal Register** on January 4, 1988 (53 FR 58), delete Categories 800 and 810 from Group II.

The title of this document should be corrected to include silk blend and other vegetable fibers.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-1867 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Establishment of New Visa and Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products From Costa Rica

January 28, 1988.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1988. For further information, contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish visa and certification requirements for apparel products in Categories 340/640 manufactured or assembled in Costa Rica and exported to the United States.

Background

A CITA directive dated December 31, 1987 (53 FR 161) announced, among other things, the establishment of a guaranteed access level for cotton and man-made fiber textile products in Categories 340/640 for the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Under the terms of the Bilateral Textile Agreement, effected by exchange of notes dated November 25 and December 19, 1987, between the Governments of the United States and Costa Rica and the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 10, 1987), the two governments have established a new visa and certification system, as an administrative arrangement under the terms of the bilateral agreement. The visa and certification requirements apply to apparel products in Categories 340/640 exported on or after February 1, 1988. Apparel products in Categories 340/640 that have been exported from Costa Rica prior to February 1, 1988 shall not be denied entry for lack of a visa or a certification. To be entered under the Special Access Program and subject to the GAL on Categories 340/640, shipments must be accompanied by a certification issued by the appropriate Costa Rican authorities and a complete CBI Export Declaration (Department of Commerce Form ITA-370P, stock number 003-009-00505-1, available from the Government Printing Office, Washington, D.C. 20402 (202/783-3238)). Each shipment of apparel products in Categories 340/640 from Costa Rica not accompanied by a properly issued certification and a CBI Export Declaration must be accompanied by a properly issued visa.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the provisions as outlined below shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared as qualifying for the Special Access Program but found not to qualify shall be denied entry into the United States.

In the event of denial of entry for a minor error on Form ITA-370P, a request for a certification waiver may be made by the importer to the Office of Textiles and Apparel, Rm. 3110, U.S. Department of Commerce—Attn: Trade Data Division.

Facsimiles of the visa and certification stamp can be obtained from the Office of Textiles and Apparel, U.S. Department of Commerce, Room H3100, Washington, DC 20230.

Interested persons are advised to take all necessary steps to ensure that apparel products in Categories 340/640, produced or manufactured in Costa Rica, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported on or after February 1, 1988 will meet the stated certification and visa requirements.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

January 28, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of November 25 and December 19, 1987 between the Governments of the United States and Costa Rica; and in accordance with the provisions of the Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program, as set forth in 51 FR 21206 (June 11, 1986), you are directed, effective on February 1, 1988, and until further notice, to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber apparel products in Categories 340/640, produced or manufactured in Costa Rica and exported on or after February 1, 1988 which are not visaed or certified in accordance with the procedures outlined below. Apparel products in Categories 340/640, exported from Costa Rica prior to February 1, 1988 shall not be denied entry for lack of visa or certification.

To be entered under the Special Access Program (TSUSA number 807.0010) and subject to the GAL, shipments of Categories 340/640 must be accompanied by a certification issued by the appropriate Costa Rican authorities and a completed CBI Export Declaration. Each shipment of textile products in Categories 340/640 of Costa Rica not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The original visa or certification shall not be stamped on duplicate copies of the invoice. The original of the invoice with an original visa or certification stamp shall be required to enter the shipment into the United States. Duplicates of the invoice may not be used for this purpose.

The visa or certification stamp will include the following information:

1. The visa or certification number and date. The visa or certification number shall be nine digits and letters. It shall begin with one digit for the last digit of the year of export followed by the two-character country code for Costa Rica is "CR." On the visa stamp, these first two codes shall be followed by the number "1" and a five-digit serial number identifying the shipment (e.g., 7CR12345). On the certification stamp, these first two codes shall be followed by the number "2" and a five-digit serial number identifying the shipment (e.g., 7CR12345).

2. The signature of the issuing official.

3. The correct category and quantity in the shipment in the units of quantity provided for in Annex of the Agreement.

Entry of textile products subject to the certification system into the Customs territory of the United States will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of Costa Rica.

2. A completed copy of the CBI Export Declaration (U.S. Department of Commerce Form ITA-370P) with a proper declaration by the Costa Rica assembler that the articles were subject to assembly in Costa Rica from parts described on that CBI Export Declaration; and

3. A proper importer's declaration.

U.S. Customs shall not accept a visa or certification and entry will not be permitted if the visa or certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa or certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa or certification is more than that of the shipment, entry shall be permitted.

If the visa or certification is not acceptable to U.S. Customs, then a new visa or certification must be obtained from the Government of Costa Rica or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of Costa Rica and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

Any shipment which is declared for the Special Access Program (TSUSA number 807.0010) but found not to qualify, may be permanently denied entry into the United States.

In the event of denial of entry for a minor error on form ITA-370P, a request for a certification waiver may be made by the importer to the Office of Textiles and Apparel, Rm. 3110, U.S. Department of Commerce, Attn: Trade Data Division.

If the visaed or certified invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from Costa Rica has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

Visaed merchandise and products eligible for the Caribbean Basin Textile Special

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

Access Program may not appear on the same invoice.

Merchandise for the personal use of the importer and not for resale and properly marked or mutilated commercial samples valued at $250 or less do not require a visa or certification for entry into the United States and shall not be charged to agreement levels.

Facsimiles of the visa and certification stamps are enclosed with this letter.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of apparel products in Categories 340/640, produced or manufactured in Costa Rica and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

The actions taken with respect to the Government of Costa Rica and with respect to imports of textiles and textile products from Costa Rica have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-1868 Filed 1-28-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additional to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 29, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 23, 1987, November 6, and November 30, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 39678, 42704, 45479) of addition to Procurement List 1988, December 10, 1987 (52 FR 49626).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and services listed.

c. The action will result in authorizing small entities to provide the commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1988.

Commodity

Fixture, Lighting, Industrial
6210-00-688-4929

Services

Commissary Shelf Stocking and Custodial Service
Kirtland Air Force Base, New Mexico
Commissary Warehouse Service
Maxwell Air Force Base, Alabama
Commissary Warehouse Service
Minot Air Force Base, North Dakota
Commissary Warehouse Service
Francis E. Warren Air Force Base, Wyoming
Janitorial/Custodial
Newark Air Force Base, Ohio
Janitorial/Custodial
Fort Belvoir Billeting Building #505
Fort Belvoir, Virginia

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-1863 Filed 1-28-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: February 29, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Bookcase
7110-01-148-2414
Credenza
7110-01-148-2419
7110-01-148-2420
Cabinet, Telephone
7110-01-148-2421
Table
7110-01-226-1706
7110-01-226-1707
7110-01-226-9888
Mirror, Glass
7105-00-133-4846
7105-00-496-9866

Services

Janitorial Service
Prince Georges County Memorial USAR Center
6600 Baltimore Avenue
Riverdale, Maryland
Southern Maryland Memorial USAR Center
Dower House Road
Washington, DC

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-1864 Filed 1-28-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Submitted to OMB

Reason for this Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Many Forms; 0740-0188

Type of Request: Revision

Annual Burden Hours: 158,627,700.

Annual Responses: 1,442,070.

Needs and Uses: The AMSDL is a listing of data acquisition documents (information collection requests) utilized in DoD contracts. Information collection requests contained in these contracts number 1,890. These information collection requests from the public (contractors) are necessary for the Government to support the design, test, manufacture, training, operation, maintenance, and logistical support of items of defense material being acquired under the provisions of the Armed Services Procurement Act Title 10, U.S.C.

Affected Public: Business or other for profit; nonprofit institution and small businesses/organizations.

Frequency: On occasion, weekly, monthly, quarterly, semi-annual, annual, and biennially.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone 202/746-0933.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1988.

[FR Doc. 88-1856 Filed 1-28-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 25 February 1988.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1988.

[FR Doc. 88-1856 Filed 1-28-88; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Working Group C; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 23 February and 0900, Wednesday, 24 February 1988.

ADDRESS: The meeting will be held at the Air Force Weapons Laboratory, in Room 266, Building 413, Kirtland Air Force Base, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 25, 1988.

[FR Doc. 88-1857 Filed 1-28-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards Under the Bilingual Education: Education Personnel Training Program for Fiscal Year 1988 (CFDA No.: 84.003R)

Purpose: Provides grants to institutions of higher education to meet the needs for additional or better trained educational personnel for programs for limited English proficient persons.

Deadline for Transmittal of Applications: March 18, 1988.

Deadline for Intergovernmental Review Comments: May 17, 1988.

Applications Available: February 12, 1988.

Available Funds: $4,000,000.

Estimated Range of Awards: $40,000—$220,000.

Estimated Average Size of Awards: $121,000.

Estimated Number of Awards: 33.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education: Educational Personnel Training Program Regulations (34 CFR Part 561), and (b) the Education Department General Administrative Regulations, (34 CFR Parts 74, 75, 77, 78, and 79).

Additional Factors: In accordance with 34 CFR 561.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 10 points among the factors listed in § 561.32(a) as follows: (1) Job placement and development (4 points);

(2) Evidence of prior participant's success in serving LEP children in projects previously funded (2 points); (3) Evidence of demonstrated capacity and cost-effectiveness (4 points).

For Applications or Information Contact: James F. Rogers, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 447–8228.

Program Authority: 20 U.S.C. 3251(a)(1).

Dated: January 25, 1988.

Alicia Coro,

Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–1875 Filed 1–28–88; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Application for New Awards Under the Bilingual Education: Family English Literacy Program for Fiscal Year 1988 (CFDA No.: 84.003J)

Purpose: Provides grants to local educational agencies, institutions of higher education, including junior or community colleges, and private nonprofit organizations. Eligible applicants may apply separately or jointly.

The purpose of the awards is to establish, operate, and improve family English literacy programs.

Deadline for Transmittal of Applications: March 18, 1988.

Deadline for Intergovernmental Review Comments: May 17, 1988.

Applications Available: February 12, 1988.

Available Funds: $800,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $133,000.

Estimated Number of Awards: 6.

Project Period: 36 months.

Applicable Regulations: (a) The Bilingual Education: Family English Literacy Program Regulations, (34 CFR Part 525), and (b) the Education Department General Administrative Regulations, (34 CFR Parts 74, 75, 77, 78, and 79).

Additional Factors: In accordance with 34 CFR § 525.32(b) the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32(a) as follows: (1) Historically underserved (4 points); (2) Georgraphic distribution (4 points); (3) Financial need (4 points); (4) Relative number and proportion of children from low-income families (3 points).

For Applications or Information Contact: Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

Program Authority: 20 U.S.C. 3231(a)(5).

Dated: January 25, 1988.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–1874 Filed 1–28–88; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards Under the Special Alternative Instructional Programs for Fiscal Year 1988 (CFDA No: 84.003E)

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve Special Alternative Instructional Programs.

Deadline for Transmittal of Applications: March 18, 1988.

Deadline for Intergovernmental Review Comments: May 17, 1988.

Applications Available: February 12, 1988.

Available Funds: $1,000,000.

Estimated Range of Award: $60,000 – $90,000.

Estimated Average Size of Awards: $83,000.

Estimate Number of Awards: 12.

Project Period: 36 months.

Applicable Regulations: (a) The Special Alternative Instructional Programs Regulations, 34, CFR Parts 500–501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: Historically underserved (4 points); Relative need (4 points); Geographic distribution (3 points); Relative number and proportion of children from low-income families (4 points). In addition, in accordance with 34 CFR § 501.33(b) the Secretary will award 5 points on the factors listed in § 501.33 (a) as follows: Administrative impracticability of establishing a bilingual education program (3 points); Unavailability of qualified personnel (1 point); Applicant's current or past efforts to establish a bilingual education program (1) point).

For Applications or Information Contact: Robert Trifiletti, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue S.W. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

Program Authority: 20 U.S.C. 3231.

Dated: January 25, 1988.

Alicia Coro,

Director, Office of Bilingal Education and Minority Languages Affairs.

[FR Doc. 88–1873 Filed 1–28–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86–83–NG]

ANR Pipeline Co.; Order Amending and Extending Authorization To Import Natural Gas From Canada and Authorizing Spot Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting amendment and extension of authorization to import natural gas from Canada, and providing for spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending the authorization originally granted by DOE/ERA Opinion and Order No. 32 of ANR Pipeline Company (ANR) to import up to 75,000 Mcf of natural gas per day from Canada from October 31, 1987, through October 31, 1994. The amendment is based on a new gas sales contract between ANR and its Canadian supplier, ProGas Limited (ProGas), which supersedes all prior sales agreements and a new ANR/ProGas special marketing agreement.

Within the limits of the import authorization granted of up to 75,000 Mcf per day, the order also authorizes ANR to import natural gas which, if not needed to meet system supply contract demand, may be released to third parties in the spot market pursuant to the ANR/ProGas special marketing agreement. The duration of ANR's authority for spot market sales has been restricted to two years from the date of first delivery to conform with the ERA's policy on blanket authorizations.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence

Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 22, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–1855 Filed 1–28–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–200–000 et al.]

Commonwealth Edison Co. et al.; Electric Rate and Corporate Regulation Filings

January 25, 1988.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER88–200–000]

Take notice that on January 15, 1988, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated September 8, 1987 between Edison and Iowa Electric Light and Power Company (Iowa). The Letter Agreement provides for Edison and Iowa to make Short Term Power and General Purpose Energy available to each other.

Edison requests expedited consideration of the filing and an effective date coincident with the Commission's order accepting the rate for filing. Accordingly, Edison requests waiver of the Commission's notice requirements, to the extent necessary.

Copies of this filing were served upon the Illinois Commerce Commission, the Iowa State Commerce Commission and Iowa Electric Light and Power Company.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Yankee Atomic Power Company

[Docket No. ER88–202–000]

Take notice that on January 15, 1988, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing proposed changes to two supplements to its Electric Rate Schedule FPC No. 1 (the Power Contract). These two proposed changes, together with other changes addressed in its filing, increase revenues from jurisdictional sales and services by $9,739,021, based upon Period I data for the 12-month period ending December 31, 1986. Maine Yankee proposes to make the changes effective March 15, 1988.

Maine Yankee requests Commission approval of a decrease in the level of return on common equity that the Company can collect from the level of 13.6%, which was made effective June 1, 1987, to 13.5%. Maine Yankee is also proposing to modify the period over which it would collect decommissioning costs to 10 years, and to increase the amount collected from its customers based on a new cost estimate. The result would be to increase collections from the current level effective June 1, 1987 of $4,796,000 per annum to $14,466,467 per annum.

In addition, Maine Yankee is providing its customers notice that it is instituting certain other changes to the manner in which it calculates its billing to be effective March 15, 1988. Specifically, the Company proposes a modification to the methodology used to determine depreciation expense based on a recognition of shorter useful lives for certain classes of assets than had previously been assumed for depreciation purposes. Billing will also be adjusted to reflect the amortization of materials and supplies and the last core fuel that would otherwise remain unrecovered at the end of Maine Yankee's useful life. Maine Yankee will calculate its cash working capital pursuant to the guidelines set forth by the Commission in FERC Opinion No. 19–A. Maine Yankee notes that these three latter changes are subject to implementation under Maine Yankee's cost of service formula tariff without prior FERC approval. Finally, Maine Yankee also describes in its filing the billing effects resulting from implementation, which began on January 1, 1988, of the reduced federal income tax rates under the Tax Reform Act of 1986.

Copies of the filing were served upon Maine Yankee's jurisdictional customers and secondary purchasers of its power, as well as the utility regulatory authorities in each state having jurisdiction over such customers.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. ER88–196–000]

Take notice that on January 14, 1988, Nevada Power Company (NPC) tendered for filing a Notice of Cancellation of the Mohave Project Layoff Agreement between Southern California Edison Company (SCE) and NPC, Rate Schedule F.P.C. No. 8.

NPC requests to cancel said Agreement effective June 31, 1973.

Copies of this filing have been served upon SCE, Public Service Commission of Nevada, and the California Public Utilities Commisison, and the Office of Consumer Advocate.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Nevada Power Company

[Docket No. ER88–197–000]

Take notice that on January 14, 1988, Nevada Power Company (NPC) tendered for filing a Notice of Cancellation of the Wheeling Services Agreement between Tucson Gas and Electric Company (Tucson) and NPC, Rate Schedule F.P.C. No. 27.

NPC requests to cancel said Agreement effective May 30, 1977.

Copies of this filing have been served upon Tucson, the Arizona Corporation Commission, and the Public Service Commission of Nevada, and the Nevada Office of Consumer Advocate.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Company

[Docket No. ER88–198–000]

Take notice that on January 14, 1988, Nevada Power Company (NPC) tendered for filing a Notice of Cancellation of the Agreement be Nevada Power Company to provide transmission service to Arizona Power Pooling Association, Inc. (APPA), Rate Schedule FERC No. 28.

NPC requests to cancel said Agreement effective May 31, 1987.

Copies of this filing have been served upon APPA, the Arizona Corporation Commission, and the Public Service Commission of Nevada, and the Office of Consumer Advocate.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER88–199–000]

Take notice that on January 14, 1988, Nevada Power Company (NPC) tendered for filing a Notice of Cancellation of the Power Company Sale Agreement among Southern California Edison Company (SCE), Arizona Public Service Company (APS), Tucson Gas and Electric Company, NPC and Arizona Power Pooling Association, Inc. (APPA), Rate Schedule FERC No. 29.

NPC requests to cancel said Agreement effective May 31, 1987.

Copies of this filing have been served upon SCE, Tucson Electric Power Company (formerly Tuscon Gas and Electric Company), APPA, APS, the Arizona Corporation Commission, the Public Service Commission of Nevada, and the California Public Utilities Commission, and the Office of Consumer Advocate.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Oklahoma

[Docket No. ER88-204-000]

Take notice that on January 15, 1988, Public Service Company of Oklahoma (PSO) tendered for filing an Agreement between PSO and seven of its wholesale customers, the Cities of Cordell, Kaw, Manitou and South Coffeyville, Oklahoma, the Southwestern Power Administration, Western Farmers Electric Cooperative and KAMO Electric Cooperative, Inc. (the Customers). The Agreement is filed as a supplement to PSO's filed rate schedules providing for requirements service to the Customers. Under the Agreement, PSO and the Customers have agreed not to seek to make a change in PSO's rates for service to the Customers effective earlier than January 1, 1989. The Agreement reflects the mutual conclusion of PSO and the Customers that even in the light of the recent decrease in the federal corporate income tax rate from 46% to 34%, PSO's presently effective rates (which are based upon a 1982 test year) continue to be just and reasonable. PSO requests that the Agreement be accepted for filing and made effective as a supplement to PSO's existing applicable rate schedules as of January 15, 1988.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Southern Company Services, Inc.

[Docket No. ER88-201-000]

Take notice that on January 15, 1988, Southern Company Services, Inc. acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, (Southern Companies), tendered for filing an agreement extending the term of Service Schedule EP (Economic Energy Participation Schedule) to an Interchange Contract between Southern Companies and Florida Power & Light Company (FPL).

The filing extends the term of Schedule EP to April 30, 1988 and provides that the parties may further extend the term of the service schedule by mutual agreement.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER88-203-000]

Take notice that on January 15, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a Letter Agreement dated Novembr 17, 1987, between SWEPCO and City Utilities of Springfield, Missouri (CU). The Letter Agreement provides for purchases and sales of replacement energy between SWEPCO and CU pursuant to the terms and conditions of Service Schedule RE, Supplement No. 1 to SWEPCO's FERC Rate Schedule 93.

SWEPCO requests an effective date of November 24, 1987, in accordance with the terms of the Letter Agreement, and therefore requests waiver of the Commission's notice requirements. Copies of the filing were served upon CU and the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Public Utility Commission of Texas.

Comment date: February 8, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois. D. Cashell,

Acting Secretary.

[FR Doc. 88-1900 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9023-002]

JDJ Energy Co.; Surrender of Preliminary Permit

January 27, 1988.

Take notice that JDJ Energy Company, permittee for the Shepherd of the Hills State Trout Hatchery Conduit Project No. 9023 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9023 was issued on September 20, 1985, and would have expired on August 31, 1988. The project would have been located on Table Rock Lake, in Taney County, Missouri.

The permittee filed the request on July 20, 1987, and the preliminary permit for Project No. 9023 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1852 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-361-001]

ANR Production Co.; Application for Extension

January 25, 1988.

Take notice that on January 11, 1988, ANR Production Company (ANR), of Coastal Tower, Nine Greenway Plaza, Houston, TX 77046, filed an Application pursuant to section 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting that the Commission extend the authorizations issued in Docket No. CI87-361-000 for a three-year term. In Docket No. CI87-361-000 the Commission granted ANR the following authorizations: (1) Limited-term blanket abandonment of sales by ANR (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate with pregranted abandonment of sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations were without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection. ANR's prior authorizations included a waiver of §§ 154.94(h) and 154.94(k) and Part 271 of the Regulations. ANR's prior authorizations in Docket No. CI87-361-000 are due to expire March 31, 1988.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 4, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1841 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-360-001]

Coastal Oil & Gas Corp.; Application for Extension

January 25, 1988.

Take notice that on January 11, 1988, Coastal Oil & Gas Corporation (Coastal), of Coastal Tower, Nine Greenway Plaza, Houston, TX 77046, filed an Application pursuant to section 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting that the Commission extend the authorizations issued in Docket No. CI87-360-000 for a three-year term. In Docket No. CI87-360-000 the Commission granted Coastal the following authorizations: (1) Limited-term blanket abandonment of sales by Coastal (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate with pregranted abandonment of sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations were without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection. Coastal's prior authorizations included a waiver of §§ 154.94(h) and 154.94(k) and Part 271 of the Regulations. Coastal's authorizations in Docket No. CI87-360-000 are due to expire March 31, 1988.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 4, 1988, file with the Federal Energy Regulatory Commission, Washington DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1842 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-161-000]

Distrigas of Massachusetts Corp.; Application

January 20, 1988.

Take notice that on January 11, 1988, Distrigas of Massachusetts Corporation ("Applicant"), Two Oliver Street, Boston, Massachusetts 02019, filed an application pursuant to section 7 of the Natural Gas Act for Temporary and Permanent Certificates of Public Convenience and Necessity authorizing Applicant to make interruptible sales of natural gas for resale (IRS).

Applicant states that it is a natural gas company and is seeking to obtain temporary and permanent certificates under section 7 of the Natural Gas Act authorizing the operation of existing facilities for the transportation and sale of natural gas for resale in interstate commerce. Applicant requests authority no later than January 25, 1988 to meet needs of customers caused by extremely cold weather. Applicant also seeks authorization for any company that might transport the gas to the resale customers from the point of sale at Applicant's terminal in Everett, Massachusetts.

Applicant states that as a result of reduction in purchases of volumes of LNG by its existing customers it will have a supply of LNG in its terminal pursuant to the long term supply contract between Distrigas Corporation and Sonatrach, the Algerian national oil company, which probably will be in excess of customer purchase under Applicant's existing GS Rate Schedule that will be available for delivery to others. To meet customers needs for LNG and to alleviate any excess supply to make room for future cargoes, Applicant proposes to undertake interruptible sales for resale at negotiated market prices. LNG will be available for sale under the requested authorization to the extent volumes and service have been declined by existing customers under Applicant's GS and TS Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 3, 1988 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not service to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application of no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1843 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-160-000]

Distrigas of Massachusetts Corp.; Application

January 20, 1988.

Take notice that on January 11, 1988, Distrigas of Massachusetts Corporation ("Applicant"), Two Oliver Street, Boston, Massachusetts 02019, filed an application pursuant to section 7 of the Natural Gas Act for Temporary and Permanent Certificates of Public Convenience and Necessity authorizing Applicant to provide interruptible terminalling service (ITS) from its LNG terminal at Everett, Massachusetts, for the purpose of making interruptible direct sales to end users.

Applicant states that it is a natural gas company and is seeking to obtain temporary and permanent certificates under section 7 of the Natural Gas Act authorizing the operation of existing facilities for the interruptible transportation (terminalling) of natural gas for direct interruptible sales in interstate commerce. Applicant requests authority no later than January 25, 1988 to meet needs of customers created by extremely cold weather. Applicant also seeks authorization for any company that might transport the gas to end users from the point of sale at Applicant's terminal.

Applicants states that as a result of reduction in purchases of volumes of LNG by its existing customers it will have a supply contract between Distrigas Corporation and Sonatrach, the Algerian national oil company, which probably will be in excess of customer purchases under Applicant's existing GS Rate Schedule and that will be available for delivery to others. To alleviate this excess supply, Applicant proposes to make interruptible direct sales at negotiated market prices. LNG will be available under the requested authorization to the extent volumes and service have been declined by existing customers under Applicant's GS and TS Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 3, 1988 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not service to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application of no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1844 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES88-26-000]

El Paso Electric Co.; Notice of Application

January 26, 1988

Take notice that on January 19, 1987, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to section 204 of the Federal Power Act to issue up to 1,000,000 shares of Common Stock, no par value, pursuant to the El Paso Electric Company Employee Stock Option Plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1846 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-8-000]

Kentucky West Virginia Gas Co.; Filing of Curtailment Plan

January 25, 1988.

Take notice that on January 12, 1988, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105, filed in Docket No. TC88-8-000 the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 54
Original Sheet No. 54A
Original Sheet No. 54B
Original Sheet No. 54C
Original Sheet No. 54D
Original Sheet No. 54E
Original Sheet No. 54F
Original Sheet No. 54G
Original Sheet No. 54H

Kentucky West states that the foregoing tariff sheets set forth a gas curtailment plan on its pipeline system in conformity with Subpart B of Part 281 of the Commission's Regulations. Kentucky West requests that the subject tariff sheets become effective February 12, 1988.

Kentucky West states that copies of this filing were served upon the company's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person not previously granted intervention in this proceeding and wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1845 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-309-000]

Paiute Pipeline Co. and Southwest Gas Corp.; Informal Technical Conference

January 25, 1988.

Take notice that on February 3, 1988, at 10:00 a.m., the Commission staff will convene an informal technical conference in the above-captioned proceedings to discuss the outstanding issues regarding the proposal by Paiute Pipeline Company (Paiute), and Southwest Gas Corporation (Southwest) to transfer all of the FERC jurisdictional natural gas facilities and properties now owned, leased, and operated by Southwest to Paiute, and (2) Paiute's request for a blanket certificate to transport natural gas pursuant to Commission Order No. 436.

The conference will be held at the Commission's offices at 825 North Capital Street NE., Washington, DC 20426.

All interested parties are invited to attend. Attendance at the conference will not confer party status.

For further information contact Thomas Anderson, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, Room 7017, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8976.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1854 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8122-002]

R&D Power Co.; Surrender of Exemption

January 25, 1988.

Take notice that R&D Power Company, exemptee for the proposed Placerville Power Project No. 8122, has requested that its exemption be terminated. The exemption was issued September 24, 1985. The project would have been located on Iowa Canyon Creek, near Placerville, in El Dorado County, California, on lands of El Dorado National Forest. The project would have consisted of an intake structure, a headrace, a surge tank, a penstock, a powerhouse with a total rated capacity of 450 kW, a tailrace, and a transmission line. Construction of the project has not commenced.

The exemptee filed the request on December 28, 1987, and the exemption for Project No. 8122 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary

[FR Doc. 88-1853 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-9-001]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

January 25, 1988.

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1988:

Second Revised Volume No. 1

Substitute Sixth Revised Sheet No. 5
Substitute Fifth Revised Sheet No. 6
Substitute Fifth Revised Sheet No. 20
Substitute Second Revised Sheet No. 20A
Substitute Fifth Revised Sheet No. 21
Substitute Fourth Revised Sheet No. 22
Substitute Original Sheet No. 22A
Substitute Fourth Revised Sheet No. 23
Substitute Fourth Revised Sheet No. 24

Tennessee states that its filing is made in compliance with the Commission's order issued December 31, 1987, and reflects a decrease in its Demand rates of 37 cents and an increase in its Gas Rates of 4 cents from the rates stated in its prior filing. In addition, the Quantity Charge in various transportation rate schedules listed on Sheet new Current Average Cost of Purchased Gas reflected in Tennessee's rates is 189.03 cents per dth.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1851 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-177-048]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 25, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 15, 1988, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing in compliance with the Commission's November 13 and December 31, 1987 Orders in Docket No. RP85-177, *et al.*

Texas Eastern states that in its January 11, 1988 letter filed with the Commission in Docket No. RP85-177, *et al.*, Texas Eastern gave notice of its acceptance in accordance with the Commission's November 13 and December 31, 1987 Orders based upon its understanding of the effect of the December 31, 1987 Order. As a result, Texas Eastern states that the effectiveness of the tariff sheets listed on Appendix A, as well as the remaining tariff sheets filed on November 16, 1987, are subject to the receipt from the Commission of an affirmation that Texas Eastern's interpretation of the December 31 Order is correct.

Further, Texas Eastern states that Ordering paragraph (C) of the December 31, 1987 Order states that the Commission is not accepting for filing Texas Eastern's proposed tariff sheets relating to the Gas Supply Inventory Reservation Charge (GSIRC). It states that, because the GSIRC is an integral part of the new services proposed by Texas Eastern under proposed Rate Schedules CD-1, CD-2, FT-1 and IT-1, Texas Eastern indicated in the January 11, 1988 letter that it interprets Ordering paragraph (C) as providing that Rate Schedules CD-1, CD-2, FT-1 and IT-1 will not be implemented at this time but will be held pending the resolution of Docket No. CP88-136-000 and will be considered in that docket. Thus, according to Texas Eastern, the tariff sheets listed on Appendix A reflect the deletion of Rate Schedules CD-1, CD-2, FT-1 and IT-1 and related forms of service agreements. All references to the aforementioned Rate Schedules and the

GSIRC throughout Fifth Revised Volume No. 1 have also been deleted.

Texas Eastern requests, subject to confirmation by the Commission that Texas Eastern's interpretation of the December 31 Order is correct, that the Commission waive all necessary rules and regulations to permit the tariff sheets proposed for filing as well as remaining tariff sheets filed on November 16, 1987, to become effective as set forth in the January 11, 1988 letter.

Appendix A

Fifth Revised Volume No. 1

Substitute Original Sheet No. 1
Substitute Original Sheet No. 11
Second Substitute Original Sheet No. 50
Substitute Original Sheet No. 50A
Substitute Original Sheet No. 50B
Substitute Original Sheet No. 50C
Substitute Original Sheet No. 50D
Substitute Original Sheet No. 102
Substitute Original Sheet Nos. 107–114
Substitute Original Sheet No. 116
Substitute Original Sheet Nos. 121–127
Substitute Original Sheet No. 141
Substitute Original Sheet No. 202
Substitute Original Sheet No. 205
Substitute Original Sheet No. 208
Substitute Original Sheet No. 213
Substitute Original Sheet No. 216
Substitute Original Sheet Nos. 300–316
Substitute Original Sheet Nos. 326–337
Substitute Original Sheet Nos. 400–406
Substitute Original Sheet No. 415
Substitute Original Sheet No. 417
Substitute Original Sheet No. 421
Substitute Original Sheet No. 423
Substitute Original Sheet No. 424
Substitute Original Sheet Nos. 426–428
Substitute Original Sheet No. 432
Substitute Original Sheet Nos. 437–440
Substitute Original Sheet Nos. 442–444
Substitute Original Sheet No. 447
Substitute Original Sheet Nos. 451–452
Substitute Original Sheet No. 455
Substitute Original Sheet Nos. 461–464
Substitute Original Sheet Nos. 467–481
Substitute Original Sheet No. 600
Substitute Original Sheet Nos. 607–633
Substitute Original Sheet Nos. 676–681
Substitute Original Sheet Nos. 735–740

Texas Eastern states that since its acceptance of a blanket certificate to perform transportation under § 284.221 of the Commission's rules is pending the resolution of Docket No. CP88–136–000, it is also filing corrected tariff sheets to reflect the continuing effectiveness of Rate Schedule X–133. It states that this Rate Schedule represents an agreement that provides for the interruptible transportation of up to 9,500 dekatherms of gas per day by Texas Eastern on behalf of the Brooklyn Union Gas Company for a term limited to August 3, 1988 or the date Texas Eastern accepts a blanket certificate under Order No. 436. It further states that this agreement was approved by the Commission in Docket Nos. CP86–225–000, CP86–247–001, and CP86–247–002 on August 3, 1987. The following Original Volume No. 2 tariff sheets set forth in this agreement are proposed to be effective January 1, 1988:

Substitute First Revised Sheet Nos. 1267–1283

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 1, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1849, Filed 1–28–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI88–200–000]

Texas Eastern Transmission Corp.; Application

January 25, 1988.

Take notice that on January 4, 1988, Texas Eastern Transmission Corporation, (Applicant), P.O. Box 251, Houston, Texas 77252, filed an application for a certificate of public convenience and necessity for authorization to abandon the purchase obligation for certain certificated producer sales to Texas Eastern of natural gas related to West Cameron Block 522, offshore Louisiana.

Applicant states that it entered into separate gas purchase agreements with the Amerada Hess Corporation, Cabot Petroleum Corporation, Case-Pomeroy Oil Corporation, Felmont Oil Corporation, Kerr-McGee Corporation, Louisiana Land and Exploration Company, Marathon Oil Company and Phillips Petroleum Company (hereinafter referred to as "producer-suppliers") during the period of 1975 through 1977 to purchase natural gas from reserves located within the southern boundary of West Cameron Block 522.

Applicant states that it entered into three separate transportation agreements to transport the natural gas to Applicant's onshore facilities. Pursuant to a transportation agreement with Natural Gas Pipeline Company of America (Natural) dated January 28, 1976, the gas purchased from the producer-suppliers was transported by Natural from the purchase point at the platform in West Cameron Block 543 through Natural's 16" line to an interconnection with Stingray Pipeline Company (Stingray) located in West Cameron Block 565. This Natural transport was permanently authorized by Commission order dated June 28, 1980 in Docket No. CP76–278–000 (11 FERC ¶ 61,327).

Applicant states that in order to provide transportation beyond West Cameron Block 565, Applicant entered into two transportation agreements with Trunkline Gas Company (Trunkline), both dated March 22, 1976. The first agreement provided for the transportation of natural gas by Trunkline through its capacity entitlement in the Stringray system. This gas was transported to a Stingray/Natural onshore Louisiana interconnection. Natural provides a transportation service for Trunkline and delivers the natural gas to a Trunkline/Natural interconnection in Cameron Parish, Louisiana. The second Trunkline agreement provided for the transportation through Trunkline's wholly-owned facilities to an interconnection with Applicant in Allen Parish, Louisiana. A certificate authorizing the Trunkline transports was granted by Commission order dated March 22, 1976, in Docket No. CP76–310–000 (56 FPC 399). Under Trunkline's rate schedules T–7 and T–8, Applicant pays a combined monthly demand charge of $59,070 per month.

Since December, 1985, Applicant has not received any gas deliveries under the producer-supplier gas purchase agreements. On April 17, 1986, the producers-suppliers, with the exception of Amerada Hess Corporation, were notified that Applicant was terminating the gas purchase agreements because of insufficient delivery capacity by providing sellers with the required one hundred and fifty (150) days written notice stipulated in the purchase agreements. The agreements were therefore terminated September 14, 1987. Applicant alleges that due to administrative oversight, Amerada Hess was not notified until October 29, 1987, of Applicant's decision to terminate. Applicant has submitted a letter agreement to Amerada Hess verifying the termination of the gas purchase agreement and expects the execution of such in the near future.

Applicant and Trunkline executed a letter agreement dated February 25, 1986, which provided for the termination of the two transportation agreements effective July 1, 1987. Trunkline filed an application on July 31, 1987 in Docket No. CP87–475–000, to abandon the transportation service for Applicant. That application is presently pending before the Commission.

Applicant seeks authorization herein to abandon the purchase of natural gas from West Cameron Block 522 dedicated under the sales certificates listed below:

Producer-suppliers	Docket No.	Purchase contract term date
Amerada Hess Corporation.	CI77–384	
Cabot Petroleum Corporation [1].	CI76–260	Sept. 14, 1987.
Case-Pomeroy Oil Corporation.	CI76–266	Sept. 14, 1987.
Felmont Oil Corporation.	CI76–265	Sept. 14, 1987.
Kerr-McGee Corporation [2].	CI76–238	Sept. 14, 1987.
Louisiana Land & Exploration Co..	CI77–540	Sept. 14, 1987.
Marathon Oil Company.	CI77–363	Sept. 14, 1987.
Phillips Petroleum Company.	CI77–655	Sept. 14, 1987.

[1] Cabot Petroleum Corporation filed an application for abandonment of gas sales on November 23, 1987.

[2] Kerr-McGee Corporation, the designated operator for the producer-suppliers, has submitted an application, dated December 21, 1987, for abandonment of gas sales.

Applicant submits that the grant of this application is in the public interest and required by the public convenience and necessity. Following formal termination of the contracts on September 14, 1987, Texas Eastern requested the producer-suppliers to expedite the submittal of their abandonment filings; however, since Applicant has no control over the timeliness of producer abandonment filings, it applies herein for authorization to abandon this purchase and believes that it is in the public interest for the Commission to expeditiously authorize abandonment of both Texas Eastern's purchase obligations. Applicant's customers will benefit by the elimination of a monthly demand charge of $59,070 payable to Trunkline for an unneeded transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 5, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1848 Filed 1–28–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–476–001]

TXG Gas Marketing Co.; Application for Extension

January 25, 1988.

Take notice that on January 12, 1988, TXG Gas Marketing Company (TXG), 313 Frederica Building, Suite 200, P.O. Box 568, 313 Frederica Street, Owensboro, Kentucky 42302–0568, filed an application pursuant to sections 7 (b) and (c) of the Natural Gas Act (NGA), Part 157 of the Regulations under the NGA, and § 2.77 of the Regulations of the Federal Energy Regulatory Commission (Commission), for an amendment of its blanket sales certificate with pregranted abandonment to extend such authorization for a term through March 31, 1989, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 4, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–1850 Filed 1–28–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3320–6]

Draft NPDES General Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) of Alaska; Chukchi Sea General Permit

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft NPDES general permit.

SUMMARY: The Regional Administrator, Region 10, is proposing to issue a draft National Pollutant Discharge Elimination System (NPDES) general permit for oil and gas stratigraphic test and exploration wells on the Alaskan Outer Continental Shelf.

The proposed Chukchi Sea general permit will authorize discharges from oil and gas stratigraphic test and exploration wells only (not production wells) in the federal waters of the Chukchi Sea. The permit will authorize discharges from operations in all areas offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) during Federal Lease Sale 109.

When issued, the proposed permit will establish effluent limitations, standards, prohibitions, and other conditions on discharges from facilities in the general permit area. These conditions are based on the administrative record. EPA regulations and the permit contain a procedure which allows the owner or operator of a point source discharge to apply for an individual permit instead of coverage under the general permit.

A brief description of the basis for the conditions and requirements of the proposed permit is given in the fact sheet published below.

DATES: Persons interested in submitting comments on the draft general permit or requesting a public hearing may do so in writing to EPA, Region 10, at the address below. Comments and hearing requests

BEST COPY AVAILABLE

must be received by the regional office by February 29, 1988. All comments should include the name, address, and telephone number of the commenter and the relevant facts upon which it is based. All written comments and requests should be submitted to EPA at the address below to the attention of the Director, Water Division.

ADDRESS: Public comments, requests for a public hearing, and requests for coverage should be sent to: Environmental Protection Agency, Region 10, Attn: Ocean Programs Section WD–137, 1200 Sixth Avenue, Seattle, Washington 98101. The administrative record for the draft permit is available for public review at EPA, Region 10, 13th Floor, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Anne Dailey, Region 10, at the address listed above or by telephone at (206) 442–2110. Copies of the draft general permit and today's publication may be obtained by writing to the above address or by calling Kris Flint at (206) 442–8155.

SUPPLEMENTARY INFORMATION:

Request for Coverage

Written request for authorization to discharge under the general permit shall be provided, as described in Part I.A. of the draft permit, to EPA, Region 10, at least 60 days prior to initiation of discharges. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to operations at the discharge site. The permit also requires permittees to notify EPA no more than seven (7) days prior to the initiation of discharges at the site, and prior to the initiation of discharges from each new well at a given site.

FACT SHEET

I. General Permits and Requests for Individual NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with the terms of an NPDES permit. Under EPA's regulations (40 CFR 122.28(a)(2)), EPA may issue a single general permit to a category of point sources located within the same geographic area if the regulated point sources:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require similar monitoring requirements; and
- In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

In addition, under EPA regulations (40 CFR 122.28(c)(1)), the Regional Administrator is required to issue general permits covering discharges from offshore oil and gas facilities within the Region's jurisdiction. Where the offshore area includes areas for which separate permit conditions are required, such as areas of environmental concern, a separate individual or general permit may be required by the Regional Administrator.

The Regional Administrator has determined that exploratory oil and gas facilities operating in the area described in this general NPDES permit are more appropriately controlled by a general permit than by individual permits. The decision of the Regional Administrator is based on an evaluation of the section 403(c) Ocean Discharge Criteria (40 CFR Part 125, Subpart M) for discharges from exploratory operations into the waters of Lease Sale 109, the Agency's recent permit decisions in other Alaskan OCS areas, and the Draft Environmental Impact Statement (Draft EIS) for OCS Lease Sale 109.

Any owner and/or operator authorized to discharge under a general permit may request to be excluded from coverage under the general permit by applying for an individual permit as provided by 40 CFR 122.28(b). The operator shall submit an application together with the reasons supporting the request to the Director, Water Division, EPA, Region 10 ("Director"). A source located within a general permit area, excluded from coverage under the general permit solely because it already has an individual permit (i.e., a permit that has not been continued under the Administrative Procedure Act), may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply. Procedures for modification, revocation, termination, and processing of NPDES permits are provided by 40 CFR 122.62–122.64. As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act that is enforceable under section 309 of the Act.

II. Covered Facilities and Nature of Discharges

The general permit proposed today authorizes the discharge of drilling muds, drill cuttings, and associated operational wastewaters from exploratory operations in federal waters. Exploratory operations are defined as those operations involving the drilling of wells to determine the nature of potential hydrocarbon reserves. Under the permit, the number of wells from which discharges may occur is generally limited to a maximum of five at a single site. Exploration facilities covered by this general permit are included in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435).

This general permit authorizes the following discharges: Drilling mud; drill cuttings and washwater; deck drainage; sanitary wastes; domestic wastes; desalination unit wastes; blowout preventer fluid; boiler blowdown; fire control system test water; non-contact cooling water; uncontaminated ballast water; noncontaminated bilge water; excess cement slurry; mud, cuttings, and cement at the seafloor; and test fluids. Descriptions of discharges are given in Part II.A of the draft permit.

Drilling muds and cuttings are the major pollutants sources discharged from exploratory drilling operations.

III. Statutory Basis for Permit Conditions

Sections 301(b), 304, 306, 401, 402, and 403 of the Act provide the basis for the permit conditions contained in the permit. The general requirements of these sections fall into three categories, which are described below. A discussion of the basis for specific permit conditions follows in Part IV of this fact sheet.

A. Technology-Based Effluent Limitations

1. *BPT Effluent Limitations:* The Act requires particular classes of industrial dischargers to meet effluent limitations established by EPA. EPA promulgated effluent limitations guidelines requiring Best Practicable Control Technology Currently Available (BPT) for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subparts A and D) on April 13, 1979 (44 FR 22069).

BPT effluent limitations guidelines required "no discharge of free oil" for discharges of deck drainage, drilling muds, drill cuttings, and well treatment fluids. This limitation required that a discharge shall not cause a film or sheen upon or discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 435.11(d). The BPT effluent limitations guideline for sanitary waste required that the concentration of chlorine be maintained as close to 1 mg/l as possible in discharges from facilities housing ten or more persons. For facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons, the BPT effluent limitations guideline for sanitary waste required no discharge of floating solids. A "no floating solids" guideline is also applied to domestic waste. BPT limitations on oil and grease in produced water allowed a daily maximum of 72 mg/1 and a monthly average of 48 mg/1.

2. *BAT and BCT Effluent Limitations:* As soon as practicable but in no case later than March 31, 1989, all permits are required by section 301(b)(2) of the Act to contain effluent limitations for all categories and classes of point sources which: (1) Control toxic pollutants (40 CFR 401.15) and nonconventional pollutants through the use of Best Available Technology Economically Achievable (BAT), and (2) represents Best Conventional Pollutant Control Technology (BCT). BCT effluent limitations apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). In no case may BCT or BAT be less stringent than BPT.

BAT and BCT effluent limitations guidelines and New Source Performance Standards (NSPS) were proposed on August 26, 1985 (50 FR 34592). Promulgation of the final guidelines and standards for muds and cuttings is expected to occur in mid-1988. In the absence of effluent limitations guidelines for the Offshore Subcategory, permit conditions must be established using Best Professional Judgment (BPJ) procedures (40 CFR 122.43, 122.44, and 125.3). This permit incorporates BAT and BCT effluent limitations based on the Agency's Best Professional Judgment. Previous BPJ determinations for offshore oil and gas exploratory operations were incorporated into the general permits for the Bering and Beaufort Seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1985, and Cook Inlet (51 FR 35460, October 3, 1986.

As required by section 304(b)(2)(B) of the Act, in developing the BPJ/BAT permit conditions, the Agency considered the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of acheving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Director deemed appropriate.

The types of equipment and processes employed in exploratory drilling operations are well known to the Agency. Region 10 has issued numerous general and individual permits for such operations. The records for this permit and those earlier permits thoroughly discuss the types of equipment, facilities and processes employed in exploratory drilling operations. With regard to the engineering aspects of the application of various types of control techniques, there are no BAT permit limitations based on installation of control equipment. All proposed BAT permit limitations can be achieved through product substitution, the technology basis for the limitations in this permit. Any costs of achieving the effluent limitations and any non-water quality environmental impacts were also evaluated. A discussion of such evaluations is presented below with respect to any limitation where applicable.

As required by section 304(b)(4)(B) of the Act, Region 10 considered the same factors in determining BPJ/BCT permit conditions, but with one exception. Rather than considering "the cost of achieving such effluent reduction," any BCT determination includes "consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent benefits derived, and the comparison of the cost and level of reduction of such pollutants from publicy owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources." BCT effluent limitations cannot be less stringent than BPT; therefore, if the candidate industrial technology fails the BCT "cost test", BCT effluent limitations are set equal to BPT.

Region 10's evaluation of the BAT factors, as discussed above, is also applicable to BCT, as well as to the Region's best professional judgment determinations of BPT in instances where there is no BPT effluent limitation guideline for a particular wastestream. Unlike the BAT permit limitations, there is one BCT limitation based on installation of control equipment. There is a 10 percent limitation on the oil content of cuttings, based on the efficiency of conventional cuttings washers. With respect to the BCT "cost test," all BCT limitations are equal to the BPT effluent limitations guidelines or to the Region's best professional judgment determinations of BPT. Therefore, no incremental costs will be incurred.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. These guidelines, referred to as the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), and section 403 are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

If EPA determines that the discharge will cause unreasonable degradation, an NPDES permit will not be issued. If a determination of unreasonable degradation cannot be made because of a lack of sufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternatives to on-site disposal. To assess the probablility of irreparable harm, EPA is required to make a determination that the discharger, operating under appropriate permit conditions, will not cause permanent and significant harm to the environment during a monitoring period in which additional information is gathered. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

The Director has concluded that there is sufficient information to determine that exploratory oil and gas facilities operating under the effluent limitations and conditions in this general permit will not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. Conditions imposed under section 403(c) of the Act are discussed below in Part IV.D., Requirements Based on the Ocean Discharge Criteria Evaluation.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has included several monitoring requirements in this permit, as listed in the table below.

IV. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for each discharge was accomplished through:

(1) Consideration of technology-based effluent limitations to control conventional pollutants under BCT;

(2) Consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under BAT; and

(3) Evaluation of the Ocean Discharge Criteria for discharges in the Chukchi Sea lease sale area, assuming conditions in (1) and (2), above, were in place.

Discussions of the specific effluent limitations and monitoring requirements derived from (1) through (3) appear below in Part IV.B. through D., respectively. For convenience, these conditions and the regulatory basis for each are cross-referenced by discharge in the following table:

Discharge and permit condition	Statutory basis
Drilling muds and cuttings:	
Authorized muds and additives only	BAT.
No oil-based muds	BCT.
No diesel	BAT
10% max. oil content of cuttings	BCT.
No free oil	BCT.
3 mg/kg cadmium and 1 mg/kg mercury in barite.	BAT.
Monitoring of metals, oil content and toxicity	Section 308.
Monitor volume discharged	Section 308.
Chemical inventory	Section 308.
Depth and area related discharge rate limits	Section 403(c).
Deck drainage:	
No free oil	BCT.
Monitor discharge rate	Section 308.
Sanitary wastes:	
No floating solids	BCT.
Chlorine 1.0 mg/l (facilities with more than 10 people)	BCT.
Monitor discharge rate	Section 308.
Domestic wastes:	
No floating solids	BCT
Monitor discharge rate	Section 308.
Miscellaneous discharges (Discharges 006 to 014 in the permit):	
No free oil	BCT
Monitor discharge rate	Section 308.
Inventory of added substances	Section 308.
Test fluids.	
pH 6.5–8.5	BCT & Marine Water Quality Criteria.
No free oil	BCT.
Oil & grease limits. 48 mg/l monthly avg., 72 mg/l daily max.	BCT.
Monitor frequency and volumes of discharge.	Section 308.
All discharges:	
No halogenated phenol compounds, diesel oil, sodium chromate sodium dichromate, or trisodium nitrilotriacetic acid	BAT.
No floating solids	BCT.

B. BCT Requirements

1. *Oil and grease in test fluids:* Limited volumes of formation waters which are encountered during testing of the well are authorized for discharge as test fluids. Under BPT oil and grease in discharges of produced water were limited to a 48 mg/l monthly average and a 72 mg/l daily maximum based oil/water separation technologies. Since formation waters may be present in test fluids, these limits are applied to the discharge of test fluids under BCT. This limitation is equal to BPT because Region 10 does not have technology performance data available at this time on which to base a more stringent limitation. As this limitation is equal to the BPT level of control, there is no incremental cost involved.

2. *Free oil and oil-based muds:* No discharge of free oil is permitted from discharges authorized by this permit. Region 10 has determined that the BPT effluent limitations guideline of no discharge of free oil from the discharge of deck drainage, drilling muds, drill cuttings, and well treatment fluids should apply to other discharges, including uncontaminated bilge water, uncontaminated ballast water, test fluids, desalination unit wastes, boiler blowdown, non-contact cooling water, excess cement slurry, blowout preventer fluid, fire control system test water, mud, cuttings and cement at the seafloor. Thus, the no free oil limitation is Region 10's best professional judgment determination of BPT controls for these discharges. They have been subject to a no free oil limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation.

Under the draft permit, the discharge of oil-based drilling muds (with oil as the continuous phase and water as the dispersed phase) is prohibited since oil-based muds would violate the BCT effluent limitation of no discharge of free oil.

No technology performance data available to Region 10 indicate that more stringent standards are appropriate at this time. Region 10 has, therefore, set BCT effluent limitations equal to the BPT level of control. As such, these limitations impose no incremental costs.

Compliance with free oil limitation for deck drainage and miscellaneous discharges will be by visual observation for a sheen on the receiving water, except for deck drainage and bilge water under the conditions described below. This requirement is similar to that in the Region's BPT permits and will not result in any additional costs to the industry. The requirement was also a condition of Region 10's BAT/BCT permits for the Bering and Beaufort Seas (49 FR 23734, June 7, 1984), Norton Sound (50 FR 23578, June 4, 1985), and Cook Inlet (51 FR 35460, October 3, 1986).

Compliance with the free oil limitation for muds and cuttings will be monitored by year-round use of the Static Sheen Test. The Static Sheen Test will also be required for the monitoring of deck drainage and bilge water during unstable or broken ice and stable ice conditions. This requirement for muds and cuttings was a condition of the Region's BPT permits and thus imposes no additional costs to industry. These requirements and those on deck drainage and bilge water were also conditions of the Region's BAT/BCT permits. Use of the Static Sheen Test will prevent a violation of the free oil limitation due to those discharges most likely to be contaminated with oil. This would not be possible with an after-the-fact visual observation of a sheen on the receiving water.

3. *Oil content of cuttings:* The draft general permit restricts the discharge of oil-contaminated cuttings by prohibiting the discharge of free oil (see paragraph 2. above) and by limiting the maximum mineral oil content of cuttings. The limitation of 10 percent by weight on oil content is based on the efficiency of conventional cuttings washers in removing oil from drill cuttings. Region 10 expects that if mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives are used, drill cuttings would, at a minimum, have to be washed by cuttings washers to meet the free oil limitation. The limitation on the maximum oil content of drill cuttings has been imposed as an additional means of effectively controlling the discharge of oil from cuttings associated with muds.

Region 10 expects that cuttings washers will routinely be required only for drilling operations which use mineral oil-based drilling muds or water-based muds with high concentrations of mineral oil additives, and not for all drilling operations. Due to the rare usage of muds by exploratory drilling operations, very few, if any, Alaskan exploratory facilities will require the installation of cuttings washers. Any facility requiring a cuttings washer to meet the 10 percent oil limitation is expected to already require a cuttings washer to meet the BPT effluent limitation of no free oil. Therefore, there is no incremental cost involved beyond the cost of monitoring compliance, and the limitation passes the BCT costs test.

Region 10 has taken an approach to controlling the oil content of cuttings which differs from that taken by Regions 4 and 6 in their Gulf of Mexico permit (51 FR 284897, July 9, 1986). Regions 4 and 6 have imposed a visible sheen test to determine compliance of cuttings with the no free oil limit, in combination with a prohibition on the discharge of cuttings from oil-based mud systems. The prohibition on the discharge of cuttings from oil-based systems is necessary since some of these cuttings

are expected to have free oil and the visible sheen test results would not be evident until after a discharge to the receiving water had occurred. Region 10 has chosen to require the Static Sheen Test rather than the visible sheen test. An advantage of the Static Sheen Test is that it is done prior to discharge and cuttings which do not pass the test cannot be discharged. This test is also appropriate for the harsh weather and extended periods of darkness common in Alaska. Although the 10 percent oil limitation in Region 10 is less stringent than the prohibition by Regions 4 and 6 on discharges of cuttings from oil-based mud systems, any cuttings which pass the 10 percent limitation must also pass the Static Sheen Test prior to discharge.

EPA is presently studying a newly developed technology for removing oil and grease from drill cuttings from oil-based and invert emulsion drilling muds discharged into the Gulf of Mexico (52 FR 20282, March 31, 1987). This new technology, if successful, may be able to achieve a limit lower than 10 percent oil and grease and not result in the discharge of free oil. Should this new information become available during the public notice period, Region 10 will consider it in developing the final permit.

The permit requires an analysis of drill cuttings for oil content daily when oil-based drilling fluids or oil additives are used. Analysis is also required daily when drilling fluids could be contaminated with hydrocarbons from the formation. In addition, analysis is required immediately on any sample that has failed the daily Static Sheen Test if a discharge has occurred. Two alternative analytical methods for determining the oil content of drill cuttings are specified in the permit: (1) The soxhlet extraction procedure for oil and grease (as specified in 40 CFR Part 136), and (2) the American Petroleum Institute retort distillation procedure for oil (Recommended Practice 13B, 1980). The Region invites comments on the appropriateness of either or both of these methods for determining compliance.

4. *pH:* The pH of discharged test fluids (which may have a substantially different pH from that of the ambient receiving water) has been limited to a range of 6.5–8.5 at the point of discharge. In Region 10's best professional judgment, this limitation appropriately equals a BPT level of control. No more stringent standard has been identified by the Region at this time. Therefore, Region 10 is setting a BCT effluent limitation for the pH of test fluids equal to that of BPT. This limitation will ensure that pH changes greater than 0.2 pH unit will not occur beyond the edge of the 100-meter mixing zone (40 CFR 125.121(c)). This requirement has been and is routinely complied with by operations under previous BPT permits and thus, reflects no cost incremental to BPT.

5. *Floating solids:* The BCT prohibition on floating solids is equal to the BPT level of control for sanitary wastes. As with the free oil limitations for other waste streams, Region 10 has determined that the BPT effluent limitations guideline of no discharge of floating solids from the discharge of sanitary wastes should apply to all other discharges as well. Thus, the no floating solids limitation is Region 10's best professional judgment determination of BPT limitations for these discharges. They have been subject to this limitation in previous permits issued by Region 10, and past practices have not resulted in violations of this limitation. No technology performance data available to Region 10 indicate that a more stringent standard is appropriate at this time. Therefore, Region 10 has determined that the BCT effluent limitation on floating solids from these discharges is equal to the BPT level of control. As such, the extension of this limitation to all discharges will involve no incremental cost.

6. *Chlorine:* The requirement of maintaining residual chlorine levels as close as possible to, but no less than 1 mg/1 in sanitary waste discharges for facilities manned by ten (10) or more people is a BCT determination equal to BPT. There is therefore no incremental cost to the industry.

C. BAT Requirements

1. *Diesel oil:* The discharge of drilling muds and associated cuttings which have been contaminated by diesel oil is prohibited. Diesel, which is sometimes added to water-based mud system, is a complex mixture of petroleum hydrocarbons, known to be highly toxic to marine organisms and to contain numerous toxic and nonconventional pollutants. While this limitation thereby controls the toxic as well as nonconventional pollutants present in diesel, Region 10's primary concern is to control the toxic pollutants. The pollutant "diesel oil" is being used as an "indicator" of the listed toxic pollutants present in diesel oil which are controlled through compliance with the effluent limitation (i.e., no discharge). The technology basis for this limitation is product substitution of less toxic mineral oil for diesel oil.

Regarding the technology of product substitution, mineral oil-based fluids have a demonstrated product development and performance as acceptable substitutes for diesel oil-based fluids. This determination is based on the following: (1) The availability and successful formulation and use of chemical additives that are compatible with mineral oils (see 51 FR 29604–06, August 19, 1986), (2) the commercial availability of mineral oil spotting fluids (ibid.), and (3) the demonstrated performance of mineral oil spotting fluids as documented by published case histories (ibid.), and (4) a consideration of the performance statistics from the 1983–1984 American petroleum Association (API) surveys, the 1983–1986 Offshore Operators Committee (OOC) survey, and the Diesel Pill Monitoring Program (52 FR 36463–36464, September 29, 1987).

In previous notices and associated administrative records (Draft and Final Modification to the Bering and Beaufort Seas, Cook Inlet Final, and Norton Sound Final) Region 10 has throughly discussed the basis for the limitation of diesel oil, as well as determinations regarding cost and environmental considerations. This information is therefore not being repeated in detail here; it is instead being incorporated by reference.

One suggested alternative to the diesel oil prohibition would be to allow the discharge of drilling muds in which a diesel pill had been used, provided that the pill is removed and the residual drilling mud meets specified limitations on oil content. Such as approach depends on accomplishing effective pill removal such that the drilling mud can meet all other effluent limitations. The oil content limitation would be set at a level which not only reflects BAT control of toxic pollutants in diesel oil but also provides adequate safeguards for the marine environment. The Diesel Pill Monitoring Program (DPMP) was conducted to address the effectiveness of pill recovery in removing diesel oil from drilling muds. Region 10 has concluded from results available to date that the recovery techniques implemented in the DPMP were not successful in recovering the diesel pill and reducing mud toxicity to acceptable levels (52 FR 36465–36466, September 29, 1987). Available DPMP results indicate that the toxicity of drilling muds increases with their diesel oil content, and that pill recovery techniques currently in use are incapable of removing up to 30 percent of the diesel oil added as a pill. Hence, Region 10 has determined that the prohibition on the discharge of drilling fluids and cuttings contaminated with diesel oil is

appropriate for the BAT level of control

additional data are collected

Authorized additives which may be

These additives were originally

appropriate for the BAT level of control. Should new information from the study result in conclusions contrary to those drawn from the preliminary results, the Region will consider such new information in future permit determinations.

Region 10 has considered using "free oil," "oil-based drilling fluids," and "oil content of cuttings" as indicators of toxic pollutants. While the Region has determined that such effluent limitations will control the discharge of toxic pollutants in diesel oils, it is unnecessary to designate these pollutants as indicators since the same levels of control have been established under BCT, which are equal to levels of control required by the BPT affluent limitations guidelines. Therefore, redundant limitations under BAT are not proposed for these pollutant parameters.

In conclusion, Region 10 has evaluated alternative control technologies and alternative control parameters to reduce the toxic pollutants in discharged drilling muds. Based upon this evaluation, the Region has determined that the prohibition on the discharge of diesel contaminated drilling mud is reasonable and appropriate since complete diesel pill recovery is unproven and substitution of a mineral oil pill for a diesel pill is technologically feasible and economically achievable.

2. *Mercury and cadmium in barite:* The permit contains limitations of 1 mg/kg mercury and 3 mg/kg cadmium in barite, a major constituent of drilling muds. These restrictions are designed to limit the discharge of mercury, cadmium, and other potentially toxic metals which can occur as contaminants in some sources of barite. An identical limitation is included in the general permits for the Bering and Beaufort Seas, Norton Sound, and Cook Inlet.

As discussed in the fact sheets for the above permits, the justification for the limitation under BAT is product substitution; i.e., Alaskan operators can substitute "clean" barite, which meets the above limitations, for contaminated barite which does not. Numerous offshore exploratory wells have been drilled in Alaska over the past years, and chemical analyses have shown that the barite used has not exceeded the limitations. Given that "clean" barite is available and that operators in the above referenced general permit areas have been complying with an identical limitation, Region 10 believes that this limitation is both technologically feasible and economically achievable.

Region 10 has determined that it is impractical at this time to place the limitations on drilling mud until additional data are collected. Furthermore, if the limitation were placed on the drilling mud rather than on the barite, it would not be feasible for an operator to determine in advance if the discharge complied with the permit requirements since metals analyses must be conducted at commercial laboratories onshore. Such a requirement may impose costly and unreasonable delays while the analyses were being conducted.

Region 10 does recognize the possibility of changes in the available supply of "clean" barite. The draft permit contains a provision (Part II.B.1.g.) which would allow the Director the discretion to grant a waiver from the limitations on a case-by-case basis if the permittee (1) satisfactorily demonstrates that barite which meets the limitation is not available, and (2) provides results of analyses of the substitute barite. In determining the availability of "clean" barite under this provision, Region 10 will reasonably consider all relevant factors, including the cost of obtaining barite which meets the limitations.

3. *Generic muds and authorized additives:* The draft permit limits the discharge of toxic substances in drilling fluids by allowing only the discharge of generic drilling muds (listed in Table 1 of the draft permit) and additives for which acceptable bioassay or chemical data are available. Permittees are required to certify in advance of discharge that only generic drilling muds and authorized additives will be discharged.

The generic muds listed on Table 1 of the draft permit are the same generic muds listed on Table 1 of the Cook Inlet NPDES general permit (51 FR 35460, October 3, 1986). The six listed generic muds are the result of several changes to the original eight generic muds (listed on previous tables in permits for Norton Sound, Bering Sea, and Beaufort Sea). Three lignosulfonate muds (previously 2, 7, and 8) have been combined into a single mud, Generic Mud No. 2. The Region will use the toxicity of the most toxic of the three muds (old Generic Mud No. 8) in performing additive toxicity calculations. If a permittee requests authorization to discharge an additive in Generic Mud No. 2 as listed in Table 2 of this draft permit and can demonstrate that generic mud components will not exceed the concentrations of old Generic Mud Nos. 2 or 7, Region 10 will use the toxicity values for those muds instead. Reference to "generic muds" throughout this fact sheet means the six muds currently listed on Table 1 of the draft permit.

Authorized additives which may be discharged in combination with Generic Muds Nos. 2 through 6 are listed in Table 2 of the draft permit. The Region has determined that the toxicity limitations (i.e., generic muds and authorized additives) constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well. The technology basis for this permit condition is product substitution: That is, mud additives and components which would cause the toxicity of a mud system to exceed that of Generic Mud No. 1 can be replaced by less toxic mud additives and components. This principle has been successfully applied in Region 10 with the development of several "non-generic" muds. These "non-generic muds" are functionally similar to Generic Mud No. 1 but they are less toxic and may be used with specialty drilling fluid additives (e.g., polymers) without exceeding the toxicity of Generic Mud No. 1 (30,000 ppm spp using *M. Bahia*).

Permittees may discharge additives listed in Table 2 of the draft permit up to the specified concentrations in Generic Muds Nos. 2 through 6 without prior authorization. This table is an updated version of Table 2 in the Cook Inlet general permit (51 FR 35460, October 3, 1986). Tables 1 and 2 of this permit may be updated during the effective period of the permit. Updated versions will be mailed to permittees when they become effective, and will supersede all earlier versions. Any additive or mud receiving authorization in the future by update will be evaluated according to the regional criteria used for this permit before the tables are amended.

Most additives listed in Table 2 of the permit may not be discharged in Generic Mud No. 1 without prior authorization because Region 10 has determined that the addition of additives would cause the toxicity of the discharged mud to be more toxic than Generic Mud No. 1 alone. The only additives listed on Table 2 which may be routinely added to Generic Mud No. 1 are: aluminum stearate; calcium carbide; cellophane flakes; flakes of silicate mineral mica; inert spheres (glass or plastic); basic zinc carbonate (Mil-Gard); crushed granular nut hulls; sodium polyphosphate; vegetable plus polymer fibers, flakes, and granules; zinc carbonate and lime; and zinc oxide (Sulf-X ES). (Mention of any trade names or commercial products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency.)

These additives were originally authorized in Table 2 of the Bering Sea (AKG283000) and Beaufort Sea (AKG284000) general permits. They are not expected to appreciably affect the toxicity of Generic Mud No. 1. Although the most recent versions of Table 2 (Norton Sound [AKG287000] and Cook Inlet [AKG285000]) did not clearly exclude other additives from discharge in Generic Mud No. 1, the Region's authorizations in fact have not authorized other additives. Thus, this condition is not expected to have any effect on industry.

Any discharge of a generic mud which has been modified by addition of an additive not listed in Table 2 requires prior authorization by Region 10. Permittees may request authorization to discharge additives (including mineral oils) not listed in Table 2 by submitting appropriate information and bioassay data in advance of discharge. Region 10 will determine whether the use of requested additives is likely to cause the mud system to be more toxic than Generic Mud No. 1, which is the base formulation the Agency uses to determine acceptable toxicity levels for discharge of fluids. Other criteria (e.g., persistence and degradation) are also considered in the evaluation process, as appropriate. For the evaluation of mineral oil additives the draft permit contains a provision (Part II.B.1.f.) which allows an exception for the discharge of muds which exceed the toxicity of Generic Mud No. 1 if the least toxic available alternative is discharged.

In some cases, interim authorizations for the discharge of muds and additives may be granted if preliminary bioassay data are submitted and appear acceptable but the Region determines that additional bioassay testing or other analyses are required. For example, such testing may be required to examine possible cumulative or synergistic effects if the additive is to be used in combination with a number of other additives or if a "non-generic mud" (described above) is to be used, with or without additives. Because the additional testing may take a considerable amount of time to conduct, interim authorization to discharge may be granted, if a reasonable amount of data are available, so that operations are not impaired for an unreasonable amount of time. The information obtained under the requirements of an interim authorization will be used in further evaluations of the subject additives or muds. Thus, interim authorizations do not set a precedent for future full authorization of the subject additives or muds. Interim authorizations may require testing a used drilling mud from a rig.

This approach to limiting toxicity is expected to control the discharge of listed toxic as well as nonconventional pollutants in drilling muds. For example, the toxicity of muds containing lubricants, including mineral oil products, may vary widely, and such additives may greatly increase the toxicity of the mud. Studies on diesel-contaminated drilling muds have shown toxicity to be strongly correlated with the content of aromatic hydrocarbons, which include listed toxic pollutants. Some mineral oils also contain aromatic hydrocarbons which are listed toxics, such as fluorene, naphthalene, and phenanthrene. The toxicity of muds containing these oils is assumed to be caused, in part, by the listed toxic pollutants as well as by the nonconventional pollutants. Region 10 has determined that it is technically and economically infeasible to directly limit the toxic pollutants in drilling muds, as discussed above in Part IV.C.1. Therefore, the Region has determined that the toxicity limitations constitute a reasonable approach which is expected to control not only listed toxic pollutants, but other toxic substances (i.e., toxic nonconventional pollutants) as well.

Under section 308 of the Act, compliance with this permit condition will be monitored in two ways. First, by requiring that permittees certify that only generic muds and authorized additives will be discharged; and second, by requiring that permittees submit an end-of-well inventory listing all chemicals and the amounts of each added to each mud system. In addition, permittees must analyze at least one mud sample for metals content and toxicity. The draft permit requires that any discharged mud system which has a mineral oil lubricity or spotting agent must be sampled and analyzed when the mineral oil content is highest. In the event that no mineral oil lubricity or spotting agents are used, analyses are required on a sample of discharged mud use at the greatest well depth, typically referred to as an "end-of-well" sample. The metals data will be used to verify that mercury and cadmium limits on barite are adequately controlling metal concentrations in used muds. The Drilling Fluids Toxicity Test will provide a comparison between the toxicity of used muds containing mixtures of additives and the bioassay data submitted on individual additives prior to discharge.

4. *Other toxic and nonconventional compounds:* Under the permit discharges of the following pollutants are prohibited: Halogenated phenol compounds, trisodium nitrilotriacetic acid, sodium chromate, and sodium dichromate. The class of halogenated phenol compounds includes toxic pollutants, and sodium chromate and sodium dichromate contain chromium, also a toxic pollutant. Trisodium nitrilotriacetic acid is a nonconventional pollutant. The discharge of these compounds was previously prohibited in the BPT general permits for the Beaufort Sea and Norton Sound (48 FR 54881, December 7, 1983) as well as in the BAT/BCT general permits for the Bering and Beaufort Seas, Norton Sound, and Cook Inlet. These compounds are therefore subject to BAT limitation. Because operators complied with this provision in the BPT permit, there is no additional cost to the industry.

The draft permit contains a provision that the discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Health and Safety Administration and the Minerals Management Service. These products contain primarily nonconventional pollutants. This provision previously appeared in the BPT permits for the Beaufort Sea and Norton Sound, as well as in the Region's other BAT/BCT permits. Because operators complied with the provision in the BPT permits, there is no additional cost to the industry.

D. Requirements Based on the Ocean Discharge Criteria Evaluation

1. *Drilling muds, cuttings, and washwater:* Additional restrictions on these discharges are necessary to ensure no unreasonable degradation of the environment. Lease Sale 109 includes water depths that range from 8 to 80 meters. Discharge rate limitations on total muds and cuttings have been established in the Ocean Discharge Criteria Evaluation process in order to allow adequate dispersion of the discharges. These maximum rates are:

- 1,000 bbl/hr for discharges into waters greater than 40 m in depth;
- 750 bbl/hr for discharges into waters greater than 20 m but not more than 40 m in depth; and
- 500 bbl/hr for discharges into waters from 8 m to not more than 20 m in depth.

These limits are necessary because for any given discharge rate, the dilution of drilling muds and cuttings is not as great in shallow waters as in deeper waters. However, at any particular water depth, greater dilution close to the

discharge point will be achieved with a lower discharge rate. These maximum rates will ensure that acceptable toxicity limits will not be exceeded at the edge of the 100 meter mixing zone (Bigham el al. 1984, p. 62).

Additionally, two areas included in the draft permit are of particular concern to Region 10. They involve discharges of drilling muds and cuttings (a) below-ice to water depths shallower than 20 meters (excluding ice thickness) and (b) within 1,000 meters of an area of biological concern (e.g., the gray whale feeding area between Pt. Franklin and Wainwright).

For (a) above, the Director has determined that below-ice discharges to areas shallower than 20 meters will not cause unreasonable degradation of the marine environment provided that they are subject to the limitations and conditions of the draft permit. Monitoring is also required to verify that the discharge of effluents to these areas will not produce conditions in the future that would lead to unreasonable degradation. This monitoring requirement is the same as that required by the draft Beaufort Sea II general permit (52 FR 36617, September 30, 1987). Region 10 believes that the OOC (Offshore Operators Committee) model can successfully be used to predict the fate of under-ice discharges into waters greater than 20 meters deep (excluding ice thickness).

Concerning (b) above, the Director has determined that discharges within 1,000 meters of an area of biological concern will not cause unreasonable degradation of the marine environment provided that they are subject to the limitations and conditions of the draft permit. The worst-case exploratory drilling scenario has the potential for adversely impacting the abundance and composition of immobile or sessile benthic invertebrates that provide food for marine mammals. The worst-case scenario was up to five wells drilled with all mud systems discharged at the same location. If the discharges from more than one well were placed at one location and were dispersed only by low current velocities, the depth and rate of drilling mud sedimentation may be great enough to affect the integrity of the benthic habitat, particularly for larval stages of invertebrates. Although the area of benthic habitat affected could be very small relative to foraging areas of endangered whales and marine mammals like walrus, the possibility of effects to marine mammals and special nursery areas of marine birds cannot be ruled out, given the limited information available. Consequently, a conditional monitoring program is proposed, depending on the results of additional data gathered when the specific number and location of exploratory oil drilling sites are identified (e.g., through exploration plans, biological surveys, and environmental reports required by the Minerals Management Service).

Monitoring of benthic invertebrate populations is needed to determine whether the benthic community is affected adversely by thin layers of drilling muds and cuttings as suggested by the data presented in the ODCE for this lease sale. The requirement is conditional, dependent on a determination of whether significant numbers of marine mammals are expected to be foraging in the area of the proposed exploratory drilling. If so, then a monitoring program and toxicity tests on the discharge must be conducted.

The need for monitoring of additional exploratory drilling operations will have to be decided on a case-by-case basis, dependent on the results of the initial monitoring program. The need for a benthic invertebrate monitoring program is based on at least two independent studies which have demonstrated that as little as 0.1 cm (0.04 in) of drilling mud can adversely affect the benthos (Turk and Risk 1981 and Atema et al. 1982). Atema et al. (1982) found that 1 mm of drilling mud covering a natural substrate caused severe delays in shelter construction by post-larval Atlantic lobsters. Further, Turk and Risk (1981) found that a sedimentation rate of 19 mm/month caused a ten-fold decline in the density of a tube-building amphipod.

The specifics of each monitoring program will be determined by the Director in consultation with the Regional Environmental Supervisor of the Alaska Department of Environmental Conservation and the permittee.

2. *Other discharges (003–015).* These discharges are adequately controlled by the technology-based limitations in Part II.C. through E. of the draft permit to ensure no unreasonable degradation of the marine environment due to those discharges.

V. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permit are excluded from the provisions of section 311. However, this permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Endangered Species Act

Based on information in the Draft Ocean Discharge Criteria Evaluation and in the Draft Environmental Impact Statement prepared for Federal Lease Sale 109, EPA has concluded that the discharges authorized by this general permit are not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. EPA is requeting written concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on this determination. Region 10 will consult with the services as appropriate, depending upon the outcome of the request for concurrence, and otherwise will comply with the requirements of section 7 of the Endangered Species Act before issuing the final permit.

C. Coastal Zone Management Act

EPA has determined that the activities authorized by this general permit are consistent with local and state Coastal Management Plans. The proposed permit and consistency determination will be submitted to the State of Alaska for state interagency review at the time of public notice. The requirements for State Coastal Zone Management Review and approval must be satisfied before the general permit may be issued.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

No state waters are included in this permit.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Most of the information collection requirements have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the environmental monitoring requirements pursuant to section 403(c) of the Clean Water Act in Part II.B.4 of this permit are similar to the monitoring requirements that were approved by OMB for the previously issued Beaufort Sea general permit (June 7, 1984; 49 FR 23734) and the Norton Sound general permit (50 FR 23578, June 4, 1985).

The final general permit will explain how the information collection requirements respond to any OMB or public comments.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: January 22, 1988.

Robie G. Russell,

Regional Administrator, Region 10.

VI. References

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[ER–FRL–3321–8]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 11, 1988 through January 15, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned in draft environmental impact statements (EISs) was published in **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–E61065–00, Rating LO, Nolichucky Gore Segment, Wild and Scenic River Study, Eligibility and Suitability, National Wild and Scenic Rivers System, Nondesignation or Designation, Nolichucky River, Pisgah National Forest, Mitchell and Yancey Counties, NC and Cherokee National Forest, Unicoi County, TN. **SUMMARY:** EPA expressed no objections to the proposed designation since it provides a important focus for protecting this valuable resource. Management practices should emphasize phasing-out and/or prohibiting incompatible activities within the Gorge.

ERP No. D–BLM–L70010–OR, Rating EC2, Brothers/LaPine Planning Area, Resource Management Plan, Implementation, Prineville District, Crook, Deschutes, Harney, Klamath and Lake Counties, OR. **SUMMARY:** EPA has environmental concerns based on insufficient information on the project specific evaluation process, degredation of water quality, and cumulative effects.

ERP No. D–COE–J36041–ND, Rating EO2, Souris Basin Flood Control Project, Storage of Floodwater in Saskatchewan and Construction of Compatible Lake Darling Project Features, Implementation, Renville, Ward, McHenry, and Bottineau Counties, ND. **SUMMARY:** EPA raised concerns that the baseline conditions against which project impacts (especially water quality impacts) were projected are not realistic. EPA understands the COE, in conjunction with all interested parties, is developing better methods to project water quality impacts. EPA also requested the analysis in the final EIS of a multi-level release as a project design feature.

ERP No. D–FAA–K51032–CA, Rating EC2, Burbank-Glendale-Pasadena Airport, Replacement Passenger Terminal Construction, Approval, Los Angeles County, CA. **SUMMARY:** EPA expressed environmental concerns since the project could aggravate serious air quality problems in the Los Angeles Basin (LAB). EPA asked for more discussion in the final EIS on LAB air quality problems, air quality impacts, and emissions analyses; and for a discussion of commitments to mitigate adverse air quality and noise impacts.

ERP No. D–GSA–K81018–CA, Rating LO, Oakland Federal Building Construction, Approval, Alameda County, CA. **SUMMARY:** EPA expressed a lack of objections with this project.

ERP No. DS–UMI–K54104–CA, Rating LO, Los Angeles Metro Rail Rapid Transit Project, Construction, Funding, Los Angeles County, CA. **SUMMARY:** EPA expressed a lack of objections with this project.

Final EISs

ERP No. F–BLM–K61074–NV, Winnemucca District Wilderness Study Areas, Wilderness Recommendations, Designation, Humboldt, Washoe, Lander, Pershing, and Churchill Counties, NV. **SUMMARY:** EPA concurred with BLM's proposed recommendation of partial wilderness status for seven of 18 wilderness study areas, and noted that air and water quality are best protected under wilderness designation.

Dated: January 26, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–1916 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3321–7]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed January 18, 1988 Through January 22, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880016, Final, FHW, KY, Georgetown Bypass Construction, US 460 West/Frankfort Road to US 460/62 East/Paris-Cynthiana Roads Intersection, Funding and 404 Permit, Scott County, KY, Due: March 4, 1988,

Contact: Robert E. Johnson (502) 564–7250.

EIS No. 880017, Draft, BLM, ID, Idaho Statewide Small Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Box Creek, Lower Salmon Falls Creek, Henry's Lake, Worm Creek, Goldbury, Borah Peak, Boulder Creek, LittleButte WSAs', Valley, Twin Falls, Fremont, Bear Lake, Custer, Blaine and Lincoln Counties, ID; Due: April 28, 1988; Contact: Gary Wyke (208) 334–1952.

EIS No. 880018, Draft, SFW, AK, Arctic National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Implementation, AK, Due: April 25, 1988, Contact: William Knauer (907) 786–3399.

EIS No. 880019, Final, BLM, WY, Adobe Town and Ferris Mountain Wilderness Study Areas, Wilderness Recommendations, Designation or Nondesignation, Rawlins District, Carbon and Sweetwater Counties, WY, Due: February 29, 1988, Contact: Richard Colvin (307) 324–7171.

EIS No. 880020, Final, BLM, CA, Central California Section 202 Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Sheep Ridge, Milk Ranch/Case Mountain and Ventana Continguous WSAs, Tulare and Monterey Counties, Due: February 29, 1988, Contact: Bob Rheiner (805) 861–4406.

EIS No. 880021, Draft, BLM, CO, Northwest Colorado Coal Preference Right Lease Applications, Chapman-Riebold (C–0125366) and Jensen-Miller (C–4275), Leasing, Rio Blanco County, CO, Due: April 29, 1988, Contact: Roger Wickstrom (303) 878–3601.

EIS No. 880022, Draft, FHW, MD, MD–100 Extension, US 29 to I–95, Funding and 404 Permit, Howard County, MD, Due: March 14, 1988, Contact: Edward Terry (301) 962–4010.

EIS No. 880023, Final, AFS, ID, Salmon National Forest, Land and Resource Management Plan, Implementation, Idaho, Lemhi, and Valley Counties, ID, Due: February 29, 1988, Contact: Richard T. Heuff (028) 756–2215.

EIS No. 880024, Draft, BLM, AZ, Phoenix Resource Area Management Plan, Implementation, Apache, Navajo, Gila, Maricopa, Pima, Pinal, Santa Cruz and Yavapai Counties, AZ, Due: March 14, 1988, Contact: Tim Sanders (602) 863–4464.

EIS No. 880025, Final, FHW, MD, Warren Road Extension, MD–45/York Road to I–83/Harrisburg Expressway, Funding and 404 Permit, Baltimore County, MD, Due: February 29, 1988, Contact: Edward Terry (301) 962–4010.

EIS No. 880026, Final, EPA, LEG, Montreal Protocal on Substances that Delete the Ozone Layer, Stratospheric Protection Program, Implementation, Due: March 14, 1988, Contact: Stephen Seidel (202) 382–2787. The Environmental Protection Agency and the Department of Joint Lead Agencies for this project.

Amended Notices

EIS No. 870360, Draft, AFS, Pacific Northwest Region, National Forest System Lands, Competing and Unwanted Vegetation Management Plan, Implementation, Oregon, Idaho, Washington, and California, Due: February 15, 1988, Contact: Gary Larsen (503) 221–2727. Published FR 10–23–87—Review period extended.

EIS No. 880013, FSuppl, COE, Lake Wichita-Holliday Creek Flood Control Project, McGrath Creek Flood Control Plan, Implementation, Wichita County, TX, Due: February 22, 1988, Contact: Buell Atkins (918) 581–7857. Published FR 1–22–88—Incorrect Status and Change in close of comment period.

Dated: January 26, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–1915 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3322–1]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) in Massachusetts Bay; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region I.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the foul area dredged material disposal site in Massachusetts Bay.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), and with a voluntary policy to prepare EISs for all ocean disposal site designations, EPA issues this Notice of Intent pursuant to 40 CFR 1501.7.

For Further Information and To Be Placed on the Project Mailing List Contact: Kymberlee Keckler, Chemical Engineer, U.S. EPA Region I, JFK Federal Building, WQE–1900, Boston, MA 02203 Telephone: (Commercial) (617) 565–4432 or (FTS) 835–4432.

SUMMARY: Since 1977, the existing site known as the Foul Area Disposal Site, has been operating under an interim designation status for dredged material disposal. EPA has identified a continuing need for use of the present interim site, and is therefore proposing to grant final designation to the site. Designation in itself does not result in disposal; it only serves to make an ocean disposal site option available for consideration in the alternatives analysis for each dredging project in the area.

Need for Action: On May 7, 1974, the EPA published a Statement of Policy on Environmental Impact Statements (EISs). Section (1)(d)(2) of that policy specifies that EISs must be prepared in connection with ocean disposal site designations under section 102(d) of the Marine Protection, Research, and Sanctuaries Act. Final site designation will serve to clarify the site's status for the long term, including its availability as an ocean disposal alternative for consideration during the case-by-case permit reviews for future dredging projects in the region.

Alternatives: The EIS will consider various alternatives including alternative disposal methods, alternative ocean disposal sites, environmental evaluation of the existing interim site to determine if its use should be continued, and the no-action alternative.

Scoping: The Environmental Protection Agency (EPA), Region I, will hold a public scoping meeting on Wednesday, February 24, 1988 from 6:00 to 8:00 P.M. in the auditorium of the Department of Transportation, 55 Broadway, Kendall Square, Cambridge, MA. Details of the history of the project and the alternatives to be considered will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

Estimated Date of Draft EIS Release: September 30, 1988.

Responsible Official: Michael R. Deland, Regional Administrator for Region I.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–1917 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3321–9]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) Off Pensacola, FL; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region IV.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the final designation of an ODMDS off Pensacola, Florida. This EIS will consider a site substantially further offshore Pensacola than that Pensacola site described in the proposed designation rule noticed on August 10, 1987, in Volume 52, **Federal Register**, page 29550. Final Agency action on that proposed rule remains pending.

Purpose: The U.S. EPA, Region IV, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) and in cooperation with the U.S. Navy will prepare a Draft EIS on the designation of an ODMDS off Pensacola, Florida. An EIS is needed to provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and to be Placed on the ODMDS Project Mailing List Contact: Reginald Rogers, U.S. EPA, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–2126, FTS 257–2126; or Laurens Pitts; Naval Facilities; Engineering Command, P.O. Box 10068, Charleston, South Carolina 29411–0068, (803) 743–0797.

SUMMARY: EPA proposes to designate an ODMDS offshore Pensacola, Florida, for the disposal of dredged material that meets the criteria for ocean dumping, contained in 40 CFR Part 227. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred ODMDS.

Need for Action: EPA's proposal is made at this time because EPA is aware that application is likely to be made for future ocean dumping in this area. The U.S. Navy is proposing to establish a new homeport for the *USS Kitty Hawk* at Naval Air Station (NAS), Pensacola, Florida. The *USS Lexington*, currently based at Pensacola, will be moved to Corpus Christi, Texas, as part of the overall Gulf Homeport action. The proposed project will require deepening the existing channel to NAS, Pensacola. Approximately 3.9 million cubic yards of new-work dredged material is initially proposed for disposal. The Navy's EIS on that homeporting project indicates that ocean dumping is its preferred alternative for certain dredged materials from the project. However, the ODMDS would not be limited to the potential dumping of suitable dredged material from the proposed Navy project.

Alternatives: 1. No action. The no action alternative is defined as not designating an ocean disposal site.

2. Alternative offshore disposal sites (Site A and Site B).

Scoping: A scoping meeting will not be held. However, EPA encourages Federal, State and local agencies as well as interested parties to identify significant issues to be addressed in the EIS at this time. Comments and concerns should be sent to Reginald Rogers at the above address.

Estimated Date of Release: The Draft EIS will be made available in January 1988.

Responsible Official: Lee A. DeHihns, III; Acting Regional Administrator, EPA, Region IV.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88–1916 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50675; FRL–3321–6]

Receipt of Application for an Experimental Use Permit Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application form Crop Genetics International (CGI) for an EPA experimental use permit (EUP) for a genetically engineered microbial pesticide. This is one of the first genetically engineered microbial pesticides to be proposed for an EUP under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136(c). This microbial pesticide is unique in that it actually lives within the treated crop plants. The Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATE: Written comments must be received on or before February 29, 1988.

ADDRESS: Comments in triplicate, should bear the docket control number OPP–50675 and be submitted to:

Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2690).

SUPPLEMENTARY INFORMATION: An application for an EUP has been received from Crop Genetics International of 7170 Standard Drive, Hanover, Maryland 21076. This application was assigned EPA File Symbol 58788–EUP–R. The proposed experiment involves the endophytic bacterium *Clavibacter xyli* subspecies *cynodontis* that has been genetically engineered to contain a delta-endotoxin gene obtained from *Bacillus thuringiensis* subspecies *kurstaki*. After inoculation, the endophytic bacterium grows within the corn plants and produces the pesticidal agent which is active against the larval stages of the European Corn Borer.

The purpose of the EUP is to assess the efficacy of the product in control of the European Corn Borer on corn plants, study the charateristics of the recombinant organism in the environment, and evaluate the effect of the organism on crop yield. CGI proposes to initiate the field tests in the spring of 1988. The proposed field test sites are in Ingleside and Beltsville, Maryland. The sites are each approximately 2 acres in size, isolated and secured. Each site will consist of: (1) A central corn plant population arranged in distinct blocks; (2) a plant-free barren zone surrounding the test plants; (3) a zone surrounding the barren zone containing plants to be monitored to detect dissemination of the test agent; (4) a security fence; and (5) a fallow zone surrounding the security fence.

Studies to be performed at both sites will: (1) Determine *Clavibacter xyli* subsp. *cynodontis/Bacillus Thuringiensis* subsp. *kurstaki* recombinant levels in inoculated plants; (2) monitor mechanical and natural

spread of the recombinant organism to corn and other plant species; (3) monitor the recombinant organism in plant residues; (4) monitor the presence of the recombinant organism in runoff water and soil; and (5) compare yields of colonized and control corn plants. European Corn Borer control will be studied at the Ingleside site. At Beltsville, ARS–USDA cooperating scientists will examine the effects of recombinant colonization on: (1) Crop residue decomposition; (2) vesicular-arbuscular mycorrhizae associations; and (3) gram negative phylloplane bacterial populations.

According to the applicant, test sites will be monitored until the recombinant organism can no longer be detected in plant materials or soil. In the event that there is movement of the recombinant organism beyond the contained area, biocides will be employed to the extent necessary for control. At the completion of the test, all plant debris will be decontaminated.

The labeling proposed by CGI that would govern the conduct of the experiment, states:

Applicators should wear protective clothing including goggles, dust mask, and gloves. Surfaces of planting equipment should be treated with 10% household bleach and wiped with paper towels after use. Dispose of unused material, paper towels and rinse water by autoclaving or place in vessels containing 10% household bleach for disinfection prior to disposal. For use only in accordance with the terms and conditions of the Experimental Use Permit.

Following the review of the CGI application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP and, if issued, under what conditions the experiment is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Dated: January 25, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–1883 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59252; FRL–3321–4]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–88–2. The test marketing conditions are described below:

EFFECTIVE DATE: January 22, 1988. Written comments will be received until February 18, 1988.

ADDRESS: Written comments, identified by the document control number "[OPTS–59252]" and the specific TME number "[TME–88–2]" should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St. SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Roy Seidenstein, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–613, 401 M St., SW., Washington, DC 20460, (202–382–3395).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–88–2. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME–88–2. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–88–2

Date of Receipt: December 9, 1987.

Close of Review Period: January 22, 1988. The extended comment period will close February 16, 1988.

Applicant: PCR, Inc.

Chemical: 2-chloro-1,1,1,2-tetrafluoroethane.

Use: (G) A thermal density modification medium.

Production Volume: 1,200 kg/month.

Number of Customers: 8 domestic (2 foreign).

Worker Exposure: During manufacture, approximately 4 workers may be exposed to low levels by inhalation. During processing, approximately 200 workers may be exposed to 130 mg/day. For activities involving significant exposure, the protective equipment specified in the Material Safety Data Sheet (respirators, gloves, goggles) is mandatory.

Test Marketing Period: Three years.

Commencing on: Date of the first manufacture.

Risk assessment: EPA identified no significant environmental concerns. EPA identified potential health concerns for carcinogenicity, mutagenicity and developmental toxicity, based on test data submitted under section 4(e) of TSCA for compounds with chemical structure similar to the test market substance. However, EPA believes that any potential health hazards will be mitigated by the protective equipment specified in the Material Safety Data Sheet. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the rights to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: January 22, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–1885 Filed 1–28–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[M M Docket No. 87–581]

Applications for Consolidated Hearing; Marshall M. Bandy, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Marshall M. Bandy; Ringgold, GA.	BPH–870105ME	87–581
B. Werner Wortsman; Ringgold, GA.	BPH–870106MC	
C. Lionel F. Pye, Jr.; Ringgold, GA.	BPH–870106ME	
D. Paul Croft and Danny Jack White d/b/a Ringgold Broadcasting, Ltd.; Ringgold, GA.	BPH–870107ME	
E. Ringgold Associates; Ringgold, GA.	BPH–870107MM	
F. Valeria W. Watts; Ringgold, GA.	BPH–870107MN	
G. Ringgold FM Partnership Communications; Ringgold, Ga.	BPH–870107MG (Dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A, B, C, D, E, F
2. Ultimate, A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–182–8 Filed 1–28–88; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–584]

Applications For Consolidated Hearing; Fairmont Community Broadcasters, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Fairmont Community Broadcasters, Fairmont, WV.	BPH–870309MA	87–584
B. Fairmont Broadcasting Company, Fairmont, WV.	BPH–870309MC	
C. Joseph Capobianchi d/b/a J.C. Broadcasting, Fairmont, WV.	BPH–870310MC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A–C
3. Ultimate, A–C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–1829 Filed 1–28–88; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 87–421; File No. 8169–CM–P–86 and File No. 10861–CM–P–86]

Hi-Band Broadcasting Co. and Microband Corporation of America; For Construction Permits; Multipoint Distribution Service For a New Station on Channel 1 at Thibodaux/Houma, La:

Memorandum Opinion and Order

Adopted: December 17, 1987.

Released: January 22, 1988.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Thibodaux-Houma, Louisiana. The applicatons are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the capitioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis,

which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is Further Ordered, That Hi/Band Broadcasting Company, Microband Corporation of America and the Chief of the Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 88-1822 Filed 1-28-88; 8:45]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federated States of Micronesia; Amendment To Notice of a Major Disaster Declaration

[FEMA-803-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia (FEMA-803-DR), dated November 25, 1987, and related determinations.

DATED: January 26, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alfred A. Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David P. Grier, IV as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-1821 Filed 1-28-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 12, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Barry Eugene Monaghan*, Guthrie Center, Iowa; to acquire 10.9 percent of the voting shares of Guthrie County Bancshares, Inc., Guthrie Center, Iowa, and thereby indirectly acquire Guthrie County State Bank, Guthrie Center, Iowa.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Richard M. and Rebecca I. Adler Trust*, Los Angeles, California; to acquire 56 percent of the voting shares of APSB Bancorp, North Hollywood, California, and thereby indirectly acquire American Pacific State Bank, North Hollywood, California.

2. *Richard J. Meyer*, Fullerton, California; to acquire 2.78 percent of the voting shares of Pacific Inland Bancorp, Anaheim, California, and thereby indirectly acquire Pacific Inland Bank, Anaheim, California.

Board of Governors of the Federal Reserve System, January 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1816 Filed 1-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 8, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Certificate of Election of Reduced Spouse's Benefits—0960-0398—This form is used by the Social Security Administration to entitle spouses to reduced benefits for months in which they do not have an entitled child in care.

Respondents: Individuals or households.

Number of Respondents: 30,000;

Frequency of Response: Occasionally;

Estimated Annual Burden: 1,000 hours.

OMB Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Medical Records Review Under Prospective Payment System (PPS)—0938-0359—Professional Review Organizations are authorized to conduct medical review efforts under the PPS. In order to conduct medical review activities, we request hospitals to make available specific records.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Number of Respondents: 6,000;

Frequency of Response: Occasionally;

Estimated Annual Burden: 115,353 hours.

OMB Desk Officer: Allison Herron

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. NCHS Laboratory-Based Questionnaire Research—0937-0169—Questionnaires for two NCHS surveys (National Health Interview Survey and National Health and Nutrition Examination Survey) will be devleoped using laboratory methods which combine the techniques of cognitive research and survey research to reduce measurement errors.

Respondents: Individuals or households.

Number of Respondents: 660;

Freqency of Response: Occasionally;

Estimated Annual Burden: 650 hours.

Office of the Assistant Secretary for Health

1. Application for Appointment as a Commissioned Officer in the U.S. Public Health Service—0937-0025—The forms will be used by individuals to apply for appointment in the Commissioned Corps of the Public Health Service and to obtain references as part of that application process. Information supplied on the forms will be used by appropriate PHS officials to evaluate candidates for appointment.

Respondents: Individuals or households. Occasionally;

Estimated Annual Burden: 3,600 hours.

National Institutes of Health

1. Research and Research Training Grant Application and Related Forms—0925-0001—This clearance request is to revise the approval under OMB 0925-0001 to include: applications for the "Award for Leadership and Excellence in Alzheimer's Disease" information collections associated with proposed rules for the National Library of Medicine Financial Support of Biomedical Scientific Publications and the National Institute of Environmental Health Sciences Hazardous Waste Worker Training; special information collections for expeditied review of AIDS grant solicitations; and the Final Invention Statement and Certification (Currently 0925-0150).

Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Number of Respondents: 75,061;

Frequency of Response: Single-time;

Estimated Annual Burden: 700,924 hours.

Alcohol, Drug Abuse, and Mental Health Administration

1. Targeted Outreach Demonstration Project—AIDS Initial Assessment—0930-0124—The Targeted Outreach Demonstration Project data instrument is designed to obtain information on intravenous drug use, and sexual behaviors of populations at high risk of AIDS and to test the effectiveness of community-based outreach and intervention strategies in reducing the spread of AIDS among IV users, their sexual partners, and prostitutes. The revision will assist in locating individuals for follow-up purposes and makes minor improvements to the questionnaire.

Respondents: Individuals or households.

Number of Respondents: 12,000;

Frequency of Response: Occasionally;

Estimated Annual Burden: 12,000 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
SSA: 301-965-4149

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Date: January 25, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-1820 Filed 1-28-88; 8:45 am]

BILLING CODE 4160-04-M

Office of Human Development Services

Federal Council on The Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:30 a.m. and ends at 5:00 p.m. on Wednesday, February 17, 1988 and begins at 9:30 a.m. and ends at 3:00 p.m. on Thursday, February 18, 1988.

Place: On Wednesday, February 17 and Thursday, February 18, at the VISTA International Hotel, 1400 M. Street, NW., Washington, DC 20005 from 0930-1700 on Wednesday the 17th and from 0830-1500 on Thursday the 18th.

Status: Meeting is open to the public.

Contact Persons: Pete Conroy, Room 4545, Wilbur Cohen Federal Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub.L. 93-029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub.L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a 1988 quarterly meeting on February 17 and 18 from 9:30 a.m.-5:00 p.m. and from 9:30 a.m.-3:00 p.m. respectively, in the Board Meeting Room of the VISTA International Hotel, 1400 M. Street NW., Washington, DC 20005.

The 2-day meeting will consist of executive sessions that will include discussion of Current Projects, Committee Reports, Agenda Projects and Budget for 1988-89, the 1987 Annual Report to the President and Recommendations included therein—location of 1988 meetings. In addition, a briefing on the activities of the Administration on Aging by the Commissioner on aging.

Dated: January 25, 1988.

Ingrid Asvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 88-1871 Filed 1-28-88; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Continuous Cardiac Output Monitoring by Electrical Bioimpedance

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is seeking information in coordinating an assessment on the safety, clinical effectiveness, and indications for continuous cardiac output monitoring by electrical bioimpedance. Specifically, we are seeking information on the following questions: (1) Is the use of this

[1] Consideraton of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

technology safe and effective in monitoring cardiac output? (2) Is it sufficiently accurate and precise to serve as a reliable technique for monitoring cardiac output? (3) Is its use appropriate for all patients, or only certain categories of patients, e.g., the critically ill? (4) Is its use appropriate in both the inpatient and outpatient setting? (5) Has the technique gained acceptance by specialists in the field of cardiology? (6) What is known about the predictive value of the technique? (7) Is it intended for use primarily as a screening technique or as a diagnostic test?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than March 15, 1988 or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from this technology. Proprietary or confidential information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, (301) 443-4990.

Date: January 20, 1988.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research, and Health Care Technology Assessment.

[FR Doc. 88-1888 Filed 1-28-88; 8:45 am]

BILLING CODE 4160-17-M

Medical Technology Intensive EEG/Video Monitoring

The Public Health Service (PHS) through the Office of Health Technology Assessment (OHTA), announces that it is performing an assessment of what is known of the safety, clinical effectiveness, and use (indications) of electroencephalographic (EEG) video monitoring for seizure disorders. Intensive EEG video monitoring usually entails the simultaneous and prolonged recording of patients who are subject to clinical seizures with videotape and telemetered EEG, along with the frequent monitoring of plasma antiepileptic drug levels. With this type of monitoring, the telemetered EEG is displayed on the video screen simultaneously with face and whole-body views of the patient, so that the electrical and clinical manifestations during an attack can be correlated. The monitoring area usually simulates a home environment. Camera and microphone arrangements allow nearly continuous observation of the patient who engages in activities such as conversation, television viewing, games, sleeping, and eating.

This assessment seeks to answer the following questions: (1) Is intensive video monitoring widely accepted as a safe and clinically effective method for evaluating seizure disorders? (2) What are the specific clinical indications for which intensive EEG video monitoring is deemed appropriate? (3) Can specific subgroups of patients with seizure disorders and other syndromes characterized by episodic behavioral disturbances be identified in whom intensive EEG/video monitoring is required to establish an accurate diagnosis be identified? (4) Can guidelines be developed to specify which types of patients with which condition and at what point in their clinical evaluation and or management would benefit from this type of evaluation? If so what would such guidelines consist of? (5) What are the optimal uses and ultimate benefits of this technology? (6) Can intensive EEG/video monitoring be accomplished in the outpatient setting? (7) What length of time (hospital stay) is required to accomplish intensive EEG video monitoring? (8) What would be the cost associated with such monitoring? (9) Are there any disadvantages or limitations associated with the use of intensive EEG video monitoring?

The PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in establishing coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trails and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use are also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than April 29, 1988 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Mr. Martin Erlichman, Health Science Analyst, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, (301) 443-4990.

Date: January 20, 1988.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research, and Health Care Technology Assessment.

[FR Doc. 88-1889 Filed 1-28-88; 8:45 am]

BILLING CODE 4160-17-M

Advisory Committee; Meeting

In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1988:

Name: Health Care Technology Study Section.

Date and Time: February 16, 1988, 8:30 am.

Place: Holiday Inn—Georgetown, Dumbarton Room, 2101 Wisconsin Avenue, Northwest, Washington, DC.

Closed for entirety of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: This is a special meeting of the Study Section to review a single grant application submitted in response to a special solicitation for continued support of the legislatively-mandated

establishment and operation of the National Advisory Council on Health Care Technology Assessment. In Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that the entire meeting shall be closed because the discussions are likely to reveal personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Date: January 22, 1988.

J. Michael Fitzmaurice,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 88-1887 Filed 1-28-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-88-672; FR-2430]

Redelegation of Authority to Award and Administer Discretionary Assistance Awards Under the Fair Housing Assistance Program and the Community Housing Resource Board Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity, as the administrator of the Fair Housing Assistance Program and the Community Housing Resource Board Program, is delegating to the Regional Administrators-Regional Housing Commissioners, and the Regional Directors of Fair Housing and Equal Opportunity the authority to award and administer cooperative agreements and grants under the Fair Housing Assistance Program for Type I—noncompetitive funding and the Community Housing Resource Board Program.

EFFECTIVE DATE: January 21, 1988.

FOR FURTHER INFORMATION CONTACT: William O. Anderson, Director, Office of Management and Field Coordination, Office of Fair Housing and Equal Opportunity, Room 5124, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-8340. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development has delegated the authority to administer the Fair Housing Assistance Program Type I—noncompetitive funding and the Community Housing Resource Board Program to the Assistant Secretary for Fair Housing and Equal Opportunity. See 24 CFR Part 111 (§ 111.108) and 24 CFR Part 120 (§ 120.15).

This delegation of authority authorizes HUD Regional Administrators-Regional Housing Commissioners and HUD Regional Directors of Fair Housing and Equal Opportunity to award and administer cooperative agreements and grants, and make related determinations under the Fair Housing Assistance Program for Type I—noncompetitive funding and the Community Housing Resource Board Program.

Redelegation of Authority

The Assistant Secretary for Fair Housing and Equal Opportunity hereby redelegates that authority to award and administer cooperative agreements and grants under the Fair Housing Assistance Program for Type I—noncompetitive funding (24 CFR 111) and the Community Housing Resources Board Program (24 CFR Part 120) to the HUD Regional Administrators-Regional Housing Commissioners and to the Regional Directors of Fair Housing and Equal Opportunity.

Dated: January 21, 1988.

William E. Wynn,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-1903 Filed 1-28-88; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Establishment of the Garrison Diversion Unit Federal Advisory Council

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of advisory committee establishment.

SUMMARY: This notice announces the establishment of the Garrison Diversion Unit Federal Advisory Council. The Council will ensure that the Unit's mitigation, enhancement, and other fish and wildlife programs proceed with broad oversight and coordination. The Council will be charged with the responsibility of reviewing implementation plans, budgetary requirements, and program results, and making annual recommendations for any needed revisions to the wildlife resource management programs for consideration by the Secretary of the Interior, the Governor of North Dakota, and the managing agencies.

FOR FURTHER INFORMATION CONTACT: James E. Pinkerton, Committee Management Officer, 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240; (202) 653-7500.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provision of 5 U.S.C. 552(a)(1), and section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1). Notice is hereby given that the Secretary of the Interior is establishing the Garrison Diversion Unit Federal Advisory Council. The establishment of the Council is based on the Garrison Diversion Unit Commission's 1984 Report and Pub. L. 99-294. The Council will, on a case-by-case basis, make recommendations to the Secretary of the Interior regarding land acquisition for wildlife programs.

Both the 1984 report and Pub. L. 99-294 contain provisions concerning the mitigation program. With Council oversight, the agencies implementing the mitigation program will arrive at a specific mitigation strategy. The certification of establishment is published below.

Certification

I hereby certify that the Garrison Diversion Unit Federal Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Date: January 4, 1988.

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 88-1830 Filed 1-28-88; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA-060-08-5101-09-FB15]

Intent for 1988 Amendment Review of the California Desert Plan in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management is initiating the 1988 Review of the California Desert Conservation Area Plan in accordance with the amendment procedures outlined in Chapter 7 of the Plan. The purpose of this review is to consider the need for possible amendments to the Plan based on requests from individuals, public and private organizations, and the Bureau's own observations.

DATE: Proposed amendments are being accepted from the public until March 18, 1988.

ADDRESS: For further information contact: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507.

SUPPLEMENTARY INFORMATION: Requests for amendments or changes in the California Desert Plan are now being accepted from public agencies, interested individuals, and organizations. Supporting rationale should be provided for each proposed change. Requests will be considered in light of the following criteria:

(1) Is the proposed amendment based on new data not considered when the Plan was developed?

(2) Does the information represent a change in legal or regulatory mandate?

(3) Is the supporting detail sufficient and the problem clearly stated so that the request can be considered?

(4) Does the information represent a formal change in State or local government or agency plan?

The California Desert District Advisory Council will review the suggested amendments at its public meeting on or about April 7–9, 1988 in El Centro, CA. This meeting will serve as a scoping meeting for the environmental document to be prepared on the amendments.

Please send you comments and proposals to the following address: 1988 Plan Amendments, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507 (714) 351–6428.

H.W. Riecken,

Acting District Manager.

Date: January 22, 1988.

[FR Doc. 88–1892 Filed 1–28–88; 8:45 am]

BILLING CODE 4310-40-M

[WY-030-08-4332-09; FES 88-2]

Availability of Final Environmental Impact Statement; Rawlins District, WY

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Adobe Town and Ferris Mountains Wilderness Study Areas (WSAs), Rawlins District, Wyoming.

SUMMARY: This EIS assesses the environmental consequences of managing this Adobe Town Wilderness Study Area (WSA) and the Ferris Mountains WSA as wilderness or nonwilderness. The alternatives assessed in this EIS for the Adobe Town WSA include: (1) A "no wilderness" alternative; (2) an "all wilderness" alternative; and (3) two "partial wilderness" alternatives. For the Ferris Mountains WSA, the alternatives assessed include: (1) A "no wilderness" alternative; (2) an "all wilderness" alternative; and (3) an "enhanced wilderness" alternative.

The total acreage and the proposed action for each of the WSAs analyzed in the EIS are as follows:

WSA	Acres suitable	Acres non-suitable
Adobe Town WSA	10,920	74,790
Ferris Mountains WSA	22,245	0
Total	33,165	74,790

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulation, 40 CFR 1508.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, BLM Great Divide Resource Area, P.O. Box 670, Rawlins, Wyoming 82301, or call (307) 324–4841. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets NW., Washington, DC 20240;

Bureau of Land Management, Wyoming State Office, 2525 Warren Ave., Cheyenne, Wyoming 82001;

Bureau of Land Management, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Rick Colvin, EIS Team Leader, at BLM Rawlins District, P.O. Box 670, Rawlins, WY 82301, (307) 324–7171.

Dated: January 21, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88–1591 Filed 1–28–88; 8:45 am]

BILLING CODE 4310-23-M

[CA-930-08-4332-13]

Availability of Final Environmental Impact Statement; Central California Section 202 Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact (EIS) on the Wilderness Recommendations for the Central California Section 202 Wilderness Study Area (WSA).

SUMMARY: This EIS assesses the environmental consequences of managing three Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative for each WSA and (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for one of the WSAs.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Sheep Ridge—4,905 acres; 0 acres suitable, 4,905 acres nonsuitable.

Milk Ranch/Case Mountain—5,742 acres; 0 acres suitable, 5,742 acres nonsuitable.

Ventana Contiguous—702 acres; 0 acres suitable, 702 acres nonsuitable.

For Section 202 WSAs that he does not recommend for wilderness designation (all three WSAs in this final EIS), the State Director has the authority to release those public lands from wilderness study and return them to multiple-use management in accordance with existing land use plans. A Record of Decision will be prepared for these WSAs for State Director's approval. Multiple-use management may begin 30 days after the State Director files the final EIS with the Environmental Protection Agency or approximately 30 days from the filing of this notice.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305, and Hollister Resource Area, PO Box 365, Hollister, CA 95024. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240
or
Bureau of Land Management, California State Office, 2800 Cottage Way, Room E–2841, Sacramento, CA 95825
or
Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Bob Rheiner, District Manager, Bakersfield District Office, Federal Bldg., Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4406.

Ed Hastey,

State Director.

Date: January 26, 1988.

[FR Doc. 88–1972 Filed 1–28–88; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-08-4212-13; N-35298]

Realty Action, Exchange of Public Lands, Elko County, NV

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 32, N., R. 55 E.,
Sec. 28, All;
Sec. 32, All;
Sec. 34, N½, N½S½;
Sec. 36, W½W½.
Comprising 1,920 acres.

In exchange for these lands, the United States will acquire the following described private lands from Mr. Ray Corta:

Mount Diablo Meridian, Nevada

T. 32 N., R. 54 E.,
Sec. 13, All.
T. 31 N., R. 55 E.,
Sec. 9, All;
Sec. 15, All.
Comprising 1,920 acres.

The purpose of this exchange is to acquire non-Federal lands which have high public values for recreation, fuelwood harvest, deer winter range and fisheries. The exchange will also improve the Bureau of Land Management's ability to manage the Dixie Creek Watershed. The exchange is consistent with the Bureau's Elko Resource Management Plan and the public interest will be well served by completing the exchange. The exchange would not be consummated any sooner than 60 days after the date this notice is published in the Federal Register.

All surface and subsurface mineral rights, excluding oil and gas, would be exchanged. Other leasable minerals such as potash, coal and phosphate would be exchanged.

An appraisal to determine the value of the lands to be exchanged was completed August 28, 1987. The selected and offered lands were found to be of equal value.

The lands to be disposed of are within the Dixie Flats grazing allotment with grazing privileges held by Mr. Ed Tomera. The selected lands provide a total of 97 AUMs. Mr. Tomera was sent a Two-Year Notice/Waiver of Grazing Privileges on June 7, 1985, for a portion (1,280 acres) of the land to be disposed of. A second notice covering the remaining lands (640 acres) was sent to Mr. Tomera on July 22, 1987.

Land transferred from the United States will contain the following reservations in the patent:

1. A right-of-way for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 954).

2. Those rights for roadway purposes granted to the United States of America (Bureau of Land Management) and assigns by right-of-way N–47151 pursuant to the Act of October 21, 1976 (90 Stat. 278; 43 U.S.C. 1767).

3. All the oil and gas mineral deposits in the lands so patented, and to the United States, or persons authorized by it, the right to prospect for and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

A more detailed reservation will be contained in the patent and may be obtained from the office listed below.

The patent would be issued subject to:

1. The terms and conditions of oil and gas leases N–43461 issued to Exxon Corporation and N–15280 issued to Hunt Oil Company.

2. Continuation of grazing by Mr. Ed Tomera on section 32, T. 32 N., R. 55 E., MDM, until July 22, 1989. Mr. Tomera will be required to pay grazing fees to the exchange proponent for any grazing use that is made, equivalent to those fees imposed by the BLM.

Title to the offered lands when conveyed to the United States will contain a reservation for all the oil and gas mineral deposits in the lands so patented to Southern Pacific Company, their heirs or assigns, the right to prospect for and remove such deposits from the same.

Completion of this exchange will be conditioned upon:

1. The exchange proponent granting an 80-foot wide Exclusive Road Easement to the United States of America, its licensees and permitees, including the right of access for the people of the United States of America, encompassing the existing road across section 3 T. 31 N., R. 55 E., MDM:

2. The exchange proponent granting a General Easement to the United States for the following range improvements located in section 32, T. 32 N., R. 55 E., MDM:

BLM Project No. 1080, Scott Flat Seeding Fence

BLM Project No. 1022, White Flat Fence

Publication of this notice in the Federal Register will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a Termination of Segregation.

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of publication in the Federal Register interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, NV 89801. All objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior

Rodney Harris,

District Manager.

[FR Doc. 88–1893 Filed 1–28–88; 8:45 am]

BILLING CODE 4310-HC-M

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: January 26, 1988.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

(1) Norpac Services, Inc.
(2) 4350 S.W. Galewood St., Lake Oswego, OR 97035–0657
(3) 18053 SW Lower Boones Ferry Rd., Durham, OR 97062
(4) Mel Priday, P.O. Box 2249, Lake Oswego, OR 97035–0657

Noreta R. McGee,
Secretary.

[FR Doc. 88–1885 Filed 1–28–88; 8:45 am]
BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440.

2. Wholly-owned subsidiaries which will participate in the operations and addresses of their respective principal offices and place of incorporation:

(i) ACCO Feeds, Inc., P.O. Box 521, Abilene, Texas 79604—Delaware

(ii) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware

(iii) Cargill Marine and Terminal, Inc., P.O. Box 9300, Minneapolis, Minnesota 55440—Delaware

(iv) Cargill Transportation Services, Inc., P.O. Box 5621, Minneapolis, Minnesota 55440—Delaware

(v) Excel Corporation, Inc., P.O. Box 2519, Wichita, Kansas 67201—Delaware

Subsidiary of Excel Corporation:

(a) Excel Transportation, Inc., P.O. Box 2519, Wichita, Kansas 67201—Kansas.

(vi) Hohenberg Bros. Company, 266 South Front Street, Memphis, Tennessee 38101—Tennessee

Subsidiary of Hohenberg Bros. Company:

(a) R.T. Hoover & Co., 900 Hawkins, El Paso, Texas 79915—Texas.

(vii) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware

(viii) North Star Steel Company, 15407 McGinty Road West, Minnetonka, Minnesota 55343—Minnesota

Subsidiary of North Star Steel Company:

(a) Magnimet Corporation, P.O. Box 868, Monroe, Michigan 48161—Michigan.

(ix) North Star Steel Texas, Inc., Old Highway 90, Beaumont, Texas 77662—Delaware

(x) Young's Inc., Rural Route 1, Roaring Spring, Pennsylvania 16673—Pennsylvania.

(xi) Sunny Fresh Foods, Inc., P.O. Box 5613, Minneapolis, Minnesota 55440—Delaware

B. 1. Parent corporation and address of principal office: M.A. Hanna Company, 100 Erieview Plaza, Cleveland, Ohio 44114.

2. Wholly-owned subsidiaries which may participate in the operations, and their respective States of incorporation:

(i) Allied Color Industries, Inc., Ohio;

(ii) Avecor, Inc., California;

(iii) Burton Rubber Processing, Inc., Ohio;

(iv) Colonial Rubber Works, Inc., Tennessee;

(v) Day International Corporation, Michigan;

(vi) Faulkner Plastics, Inc., Florida;

(vii) PMS Consolidated, Inc., Delaware.

Noreta R. McGee,
Secretary.

[FR Doc. 88–1886 Filed 1–28–88; 8:45 am]
BILLING CODE 7035–10–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 4–88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Division, Department of Justice, proposes to modify a system of records last published in the **Federal Register** on December 9, 1981 (46 FR 60292), and entitled "Civil Division Case File System (JUSTICE/CIV–001)."

Specifically, the Division will modify the system notice by making minor changes, both factual and editorial; by revising the routine use language in several instances to provide clarity and to include additional specificity; by deleting routine uses; by adding routine uses for disclosure of certain records pursuant to Freedom of Information Act (FOIA) requests and to other agencies in connection with the processing of FOIA and Privacy Act (PA) requests; by revising the categories of records to show that the system contains national security, civil investigatory and criminal law enforcement information; and by indicating that a rule has been promulgated to exempt the system from certain PA provisions. All changes have been italicized for public convenience in the system notice reprinted below. The exemption of this system is more fully described in the Proposed Rules Section of today's **Federal Register**.

Title 5 of the U.S. Code, sections 552a (e) (4) and (11), require that the public be given 30 days in which to comment on new routine uses of information in the system. However, the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 60 days in which to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by March 29, 1988 to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

Dated: January 6, 1988.

Harry H. Flickinger,
Assistant Attorney General for Administration.

JUSTICE/CIV–001

SYSTEM NAME:

Civil Division Case File System.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 521 12th Street NW., Washington, DC 20530; Record Management Unit, 5320 Marinelli Road, Rockville, MD 20852; and Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals referenced in potential or actual cases and matters under the jurisdiction of the Civil Division; and attorneys, paralegals, and other employees of the Civil Division directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records in this system pertain to a broad variety of litigation under the jurisdiction of the Civil Division relating to torts, civil fraud and other commercial matters, federal programs and national security, immigration, and consumer issues. The case files contain court records, inter-agency and intra-agency correspondence, and legal research. These records may include civil investigatory and/or criminal law enforcement information and information classified pursuant to Executive Order to protect national security interests. (2) Summary information (i.e., names of principal parties or subjects, case file numbers, assignments, status, and classification) of these cases or matters is maintained prior to FY 78 on index cards and from FY 78 in an automated case tracking system. (3) A timekeeping function for attorneys, paralegals, and other employees of the Civil Division directly involved in litigation supplements the automated case tracking system from May of 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101. The particular system was established in accordance with 28 CFR 0.77(f) and 28 U.S.C. 552 and was delegated to the Civil Division pursuant to the memorandum from the Deputy Attorney General, dated July 17, 1974.

PURPOSE OF THE SYSTEM:

Case records are maintained for the purpose of litigating or resolving any case or matter under consideration by the Civil Division. The automated case tracking and timekeeping system exists for the purpose of managing and evaluating the Division's litigative activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information *or is responsible for acquiring information* relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the agency or officials thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter (4) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement (5) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (6) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest;

(7) a record, or any facts derived therefrom, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Civil Division is authorized to appear when the United States, or any agency or subdivision thereof, is a party to litigation and such records are determined by the Civil Division to be arguably relevant to the litigation;
(8) to facilitate processing Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records;
(9) information may be disseminated pursuant to a request under 5 U.S.C. 552, provided that the release does not violate personal privacy interests;
(10) information may be released to the news media and the public in accordance with 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy;
(11) a record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in file cabinets and on index cards. Automated records are stored on magnetic disks. Classified information is stored in locked safes.

RETRIEVABILITY:

Manual records are retrieved by file number. This number can be obtained from index cards arranged alphabetically by subject name for records received prior to FY 78 and from logical queries to the computer-based data for FY 78 and subsequent years.

SAFEGUARDS:

Classified information is maintained in locked safes. Access to all information is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with

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Department rules and procedures governing the handling of computerized information.

RETENTION AND DISPOSAL:

When a case file is closed by the responsible attorney, it is sent to the Federal Records Center for retention in accordance with the authorized Record Disposal Schedule for the classification of the case. Such scheduels are approved by the National Archives.

After the designated period has passed, the file is destroyed. However, the index and docket cards are not purged. Automated records constitute a cumulative resource file for which there are no plans to delete records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue NW., Washington DC 20530.

RECORD ACCESS PROCEDURES:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). Submit in writing all requests for access to those portions not so exempted to the system manager identified above. Clearly mark the envelope and letter "POI/PA Request" and provide a return address. The subject of the record should also provide his/her full name and notarized signature, date and place of birth, case caption, or other information which may assist in locating the records sought.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Assistant Attorney General, Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530. The request should clearly state what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information may be obtained from all individuals referred to in all cases or matters under consideration of the Civil Division. Timekeeping information is obtained from all Civil Division attorneys, paralegals, and other employees directly involved in such litigation or matters.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). That is, these exemptions apply only to the extent that the file contains information which has been properly classified pursuant to an Executive Order, or to the extent that it contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 88-1811 Filed 1-28-88; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 5-88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Division, Department of Justice, proposes to modify an existing system of records entitled "Freedom of Information/Privacy Acts File (JUSTICE/CIV-005)." Notice of the system was last published in the **Federal Register** on December 6, 1983 (48 FR 54728).

Specifically, the Division will modify the system notice by making minor changes, both factual and editorial; by revising the routine use language in several instances to provide clarity and to include specificity; by deleting two routine uses; by adding a routine use for disclosure of certain records pursuant to a Freedom of Information Act request; by revising the categories of records to show that the system contains national security, civil investigatory and criminal law enforcement information; and by indicating that a rule has been promulgated to exempt the system from certain Privacy Act provisions. All changes have been italicized for public convenience in the system notice reprinted below. The exemption of this system is more fully described in the Proposed Rules Section of today's **Federal Register**.

Title 5 of the U.S. Code, Sections 552a(e) (4) and (11), require that the public be given 30 days in which to comment on new routine uses of information in the system. However, the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 60 days in which to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by March 29, 1988, to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

Dated: January 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/CIV-005

SYSTEM NAME:

Freedom of Information/Privacy Acts File.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 550 11th Street, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of Civil Division records pursuant to the Freedom of Information Act (FOIA); persons who request access to or correction of records pertaining to themselves contained in Civil Division systems of records pursuant to the Privacy Act (PA); persons whose FOIA or PA requests for records have been referred to the Civil Division by another component of Department of Justice or another agency, *and*, where applicable, persons about whom records have been requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The manual records consist of FOIA and PA requests for Civil Division records; related correspondence and memoranda; and copies of records from other PA systems of records responsive to the requests, which may include information concerning national security, civil investigations, and criminal law enforcement matters. (2) An automated record of selected data which has been extracted from each case file is maintained on magnetic diskettes as an index to the files, to follow the progress of the requests, and to obtain statistical data for monthly and annual reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of processing administrative requests and appeals under the Freedom of Information and Privacy Acts and complying with reporting requirements of the Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records.

(2) A record may be disclosed to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

(3) Information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

(4) Information may be released pursuant to a request under 5 U.S.C. 552, provided that release does not violate personal privacy interests.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE

The request records (manual) are stored in cabinets. Classified information is stored in a locked file cabinet. Automated records are maintained on magnetic diskettes.

RETRIEVABILITY:

Files are retrievable by the requester's name or if filed chronologically by the requester's name and the date of final response.

SAFEGUARDS:

Classified information is maintained in locked safes. Access to all information is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. All records are stored in offices which are occupied during the day and locked at night.

RETENTION AND DISPOSAL:

The file is destroyed after the designated period has passed in accordance with the General Records Schedule 14, items 16, et seq. and 25, et seq.

SYSTEM MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above, c/o FOI/PA Office. The envelope and letter should be clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "FREEDOM OF INFORMATION /PRIVACY ACTS REQUEST." The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the system manager listed above, c/o the FOI/PA Office.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct a request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked "FREEDOM OF INFORMATION/PRIVACY ACTS REQUESTS."

RECORD SOURCES CATEGORIES:

The source of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Civil Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4), (G) and (H), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). That is, these exemptions apply only to the extent that the file contains information which has been properly classified pursuant to an Executive Order or to the extent that it contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 88-1812 Filed 1-28-88; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 6-88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Division, Department of Justice, proposes to modify an existing system of records entitled "Consumer Inquiry/Investigatory System (JUSTICE/CIV-006)." Notice of the system, formerly described as the "Consumer Mail File System," was last published in the **Federal Register** on December 20, 1983 (48 FR 56283).

Specifically, the Division will modify the system notice by making minor changes, both factual and editorial; by revising the routine use language in several instances to provide clarity and to include additional specificity; by deleting a routine use; by adding routine uses for disclosure of records pursuant to a Freedom of Information Act (FOIA) request and to other agencies in connection with the processing of FOIA and Privacy Act (PA) requests; by revising the categories of records to show that the system contains civil investigatory and criminal law enforcement information; and by indicating that a rule has been promulgated to exempt the system from certain PA provisions. All changes have been italicized for public convenience in the system notice reprinted below. The exemption of this system is more fully described in the Proposed Rules Section of today's **Federal Register**.

Title 5 of the U.S. Code, sections 552a(e) (4) and (11), require that the public be given 30 days in which to comment on new routine uses of information in the system. However, the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 60 days in which to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by March 29, 1988 to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530. If no comments are received, the proposal

will be implemented without further notice in the **Federal Register**.

Dated: January 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/CIV-006

SYSTEM NAME:

Consumer Inquiry/Investigatory System.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 666 11th Street NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with complaints or inquiries on consumer matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of complaints and inquiries from private individuals, any replies thereto and other correspondence and internal memoranda related to the investigation of such inquiries for violations of criminal or civil Federal law.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

U.S.C. 3101; 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of responding to consumer complaints or inquiries and to further or initiate investigations for law enforcement purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A complaint/inquiry, or any information developed in response thereto may be disclosed to other Federal, State or local agencies for law enforcement purposes, to ensure complete action on the matter, or to better assess consumer-related problems and programs.

(2) A complaint/inquiry or any information derived therefrom may be disclosed to a private firm that is the subject of a complaint/inquiry to resolve the issues raised in the complaint/inquiry or to fulfill the Department's law enforcement responsibilities.

(3) To facilitate processing Freedom of Information and Privacy Act requests for these records, a record may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records.

(4) Information may be released pursuant to a request under 5 U.S.C. 552, provided that the release does not violate personal privacy interests.

(5) A record or information derived therefrom may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

(6) A record may be disclosed to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets.

RETRIEVABILITY:

Information is retrieved by name subject matter and date.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Civil Division personnel in the area where the system is maintained. The area is locked during non-duty hours.

RETENTION AND DISPOSAL:

In accordance with the General Record Schedule 14, item 6, records are retained for one year after close of the file or completion of the project, after which the files are destroyed.

SYSTEMS MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Civil Division, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be written and clearly identified as a "Privacy Access Request." The request should include the name of the party making the inquiry and the date of the inquiry. The requester should indicate a return address. *The request should be directed to the system manager listed above.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the *information sought. The request should be directed to the system manager listed above.*

RECORD SOURCE CATEGORIES:

Sources of records maintained in the system are the public inquiries, and information provided by private firms regarding the subject matter of such inquiries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e) (1) and (e) (5) of the Privacy Act pursuant to 5 U.S.C. 552a(j) (2) and (k) (2). That is, these exemptions apply only to the extent that the file contains records combined for civil or criminal law enforcement purposes. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 88-1813 Filed 1-28-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 7-88]

Privacy Act of 1974; Modified System of Records

Under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Division, Department of Justice, proposes to modify an existing system of records entitled "Congressional and Citizen Correspondence File (JUSTICE/CIV-007)." Notice of the system was last published in the **Federal Register** on December 6, 1983 (48 FR 54727).

Specifically, the Division will modify the system notice by making minor changes, both factual and editorial; by deleting a routine use; by revising some of the routine use language to provide clarity and to include additional specificity; by adding a routine use for disclosure of information pursuant to a Freedom of Information Act (FOIA) request and to other agencies in connection with the processing of FOIA and Privacy Act (PA) requests; by revising the categories of records to show that the system contains civil investigatory and criminal law enforcement information; and by indicating that a rule has been promulgated to exempt the system from certain PA provisions. All changes have been italicized for public convenience in the system notice reprinted below. The exemption of this system is more fully described in the Proposed Rules Section of today's **Federal Register**.

Title 5 of the U.S. Code, sections 552a(e) (4) and (11), require that the public be given 30 days in which to comment on new routine uses of information in the system. However, the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 60 days in which to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by March 29, 1987 to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530. If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

Dated: January 6, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Justice/CTV-007

SYSTEM NAME:

Congressional and Citizen Correspondence File.

SYSTEM LOCATIONS:

Civil Division, U.S. Department of Justice, 550 11th Street NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and past members of Congress who correspond with the Department on civil and other related matters; and (2) Private individuals who correspond with the Department of civil and other related matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The records consist of written inquiries from private individuals (or Members of Congress) on various matters, including requests for action on Private Relief Bills, and copies of responses thereto. Included also may be internal memoranda and other materials compiled in connection with the underlying criminal or civil investigation of such matters. (2) An automated record of selected data which has been extracted from each request file is maintained on magnetic diskettes as an index to the files, to follow the progress of the correspondence, and to obtain statistical data for monthly and fiscal reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of permitting Civil Division and other Department of Justice personnel to respond to congressional and public inquiries, requests, or complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record, or any facts derived therefrom, may be referred or conveyed to other Federal, State, or local agencies for consultation or for direct response by that agency to the inquiry.

(2) To facilitate processing of Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records.

(3) A record may be released to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

(4) Information may be released pursuant to a request under 5 U.S.C. 552, provided that disclosure does not violate personal privacy interests.

(5) Information *may* be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

STORAGE:

Inquiry records (manual) are stored in file folders in cabinets. Automated records are maintained on magnetic diskettes.

RETRIEVABILITY:

The files are retrievable by date of final response, name of correspondent, or by subject matter.

SAFEGUARDS:

Access to records is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Information contained in the system is unclassified. The files are maintained in a room that is occupied by office personnel during the day and locked at night.

RETENTION AND DISPOSAL:

In accordance with the useful life of these records, the files are retained for two years after final response after which the files are destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above, c/o FOI/PA Office. The envelope and letter should be clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and letter clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST." The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the system manager listed above, c/o the FOI/PA Office.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct a request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD SOURCE CATEGORIES:

Sources of information maintained in the system are congressional and citizen correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). That is, this

exemption applies only to the extent that the file contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 88-1814 Filed 1-28-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,215]

Negative Determination Regarding Application for Reconsideration; Phoenix Steel Corp., Phoenixville, PA

After being granted a filing extension, counsel for the United Steel Workers (USW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Phoenix Steel Corporation, Phoenixville, Pennsylvania. The denial notice was signed on November 30, 1987 and published in the **Federal Register** on December 15, 1987 (52 FR 47846).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel claims that the Department should have considered the cumulative effect of imports prior to 1985 on the Phoenix Steel Corporation. The Department's narrow focus on imports for the years 1985, 1986 and the first quarter of 1987 is not in keeping with the remedial character of the Trade Act.

The Phoenixville plant produced carbon steel seamless tubing. All production operations ceased in March 1987.

Investigation findings show that the worker petition did not meet the increased import criterion of the Group Eligibility Requirements of the Trade Act of 1974. U.S. imports of seamless carbon steel pipe and tubing decreased absolutely and relative to domestic shipments in 1986 compared to 1985 and in the first quarter of 1987 compared to the same quarter in 1986. Imports of seamless carbon steel pipe and tube over 4.5 inches and less than 16 inches in outside diameter, the size produced by Phoenix Steel, declined absolutely in 1986 compared to 1985 and in the first quarter of 1987 compared to the same quarter in 1986.

With respect to imports prior to 1985, Departmental files show that workers at Phoenixville were certified for adjustment assistance under petition TA-W-13,790 from April 1, 1982 until June 7, 1985. To certify workers again with pre-1985 imports several years later under a different petition is to run contrary to the intent of the law. Section 223(b)(1) of the Trade Act states that worker separations prior to one year of the date of a petition cannot be covered under a certification. The date of the current petition is October 13, 1987.

Finally, the Group Eligibility Requirements state that there must be increased imports of the product produced by the workers' firm which contributed importantly to the worker separations and this did not occur. Investigation findings show that most of the workers were laid off in the first quarter of 1987.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of January 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88-1910 Filed 1-28-88; 8:45 am]

BILLING CODE 4510-30-M

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Terry Corp.

In the matter of TA-W-19,451 Windsor, Connecticut and TA-W-19,451A Cranford, New Jersey.

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1987 applicable to all workers of Terry Corporation, Windsor, Connecticut. The Certification was published in the **Federal Register** on June 16, 1987 (52 FR 22862).

Based on new information furnished to the Department by the company, the certification is amended to include the Cranford, New Jersey Sales Office which also was closed.

The intent of the Certification is to cover all workers at the Terry Corporation who were affected by the closing of the plant. The notice, therefore is amended by providing the new location of Cranford, New Jersey.

The amended notice applicable to TA-W-19,451 is hereby issued as follows:

"All workers of Terry Corporation, Windsor, Connecticut and Cranford, New Jersey who became totally or partially separated from employment on or after March 23, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC., this 22nd day of January 1988.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 88-1911 Filed 1-28-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Alabama:
- AL88-4 (Jan. 8, 1988) ..... p. 8.
- AL88-18 (Jan. 8, 1988) ..... p. 35.
- AL88-21 (Jan. 8, 1988) ..... p. 41.

Connecticut:
- CT88-1 (Jan. 8, 1988) ..... pp. 62-66, pp. 70-71.

Georgia:
- GA88-3 (Jan. 8, 1988) ..... pp. 218-219.

Massachusetts:
- MA88-1 (Jan. 8, 1988) ..... p. 377.

Volume II

Kansas:
- KS88-9 (Jan. 8, 1988) ..... p. 362.

Michigan:
- MI88-2 (Jan. 8, 1988) ..... pp. 425-439.
- MI88-3 (Jan. 8, 1988) ..... pp. 441-452.
- MI88-4 (Jan. 8, 1988) ..... pp. 454, 457-459.
- MI88-5 (Jan. 8, 1988) ..... pp. 462-474
- MI88-7 (Jan. 8, 1988) ..... pp. 478-480, 483, pp. 489-498.

Missouri:
- MO88-2 (Jan. 8, 1988) ..... p. 804.

Ohio:
- OH88-1 (Jan. 8, 1988) ..... pp.724-727.
- OH88-3 (Jan. 8, 1988) ..... p. 759.
- OH88-28 (Jan. 8, 1988) ..... p. 815.
- OH88-29 (Jan. 8, 1988) ..... pp. 820-856b.

Texas:
- TX88-9 (Jan. 8, 1988) ..... p. 958.

Listing by location (index) ..... pp. xxxiii-xxxiv.

Volume III

Arizona:
- AZ88-1 (Jan. 8, 1988) ..... pp. 10-11, 14.
- AZ88-2 (Jan. 8, 1988) ..... p. 19.
- AZ88-4 (Jan. 8, 1988) ..... p. 32.

California:
- CA88-2 (Jan. 8, 1988) ..... pp. 44-47, 49, 53, pp. 56, 58, 61.
- CA88-4 (Jan. 8, 1988) ..... pp. 77, 83-86, pp. 92, 94.

Nevada:
- NV88-1 (Jan. 8, 1988) ..... pp. 242-258b.
- NV88-3 (Jan. 8, 1988) ..... pp. 266-270b.
- NV88-5 (Jan. 8, 1988) ..... pp. 291-293, 295.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-1666 Filed 1-28-88; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 14, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National

Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–338–87–11). Facilitative records of Army terminals (records documenting overall policies and procedures are permanent).

2. Department of Commerce, Bureau of Economic Analysis (NC1–375–81–1). Comprehensive schedule covering the records of the entire Bureau.

3. Department of Commerce, International Trade Administration (N1–151–87–9). Subject files of industrial advisory committees.

4. Department of Energy, Western Area Power Administration (N1–201–88–1). Records relating to energy management and marketing functions.

5. Federal Communications Commission, News Media Division (N1–173–88–1). Informational releases.

6. Department of the Interior, National Park Service (N1–79–88–1). Comprehensive schedule for headquarters and regional office records.

7. Department of Justice, Criminal Division (N1–60–88–2). Nonlitigative correspondence received by the division and requiring a response.

8. Department of Justice, Federal Bureau of Investigation (N1–65–88–4). Pornographic Materials Reference File.

9. National Archives and Records Administration, Office of the National Archives, Field Archives Division (N2–21–88–1). U.S. District Court bankruptcy case files designated as disposable under the current schedule, and other selected case papers.

10. Department of Transportation, Maritime Administration (N1–357–88–2). Asbestos liability releases form.

11. Department of the Treasury, Financial Management Service, Chief Counsel's Office (N1–425–88–1). Closed litigation case files.

Dated: January 25, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–1894 Filed 1–28–88; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Cell Biology Advisory Panel; Meeting

Name: Advisory Panel for Cell Biology.

Date and Time: Wednesday, Thursday, and Friday, February 17, 18, and 19, 1988, from 9:00 AM to 5:00 PM.

Place: Room 1242, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. M.V. Parthasarathy, Program Director, Cell Biology Program, Room 321. Telephone: 202–357–7474.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

January 25, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88–1912 Filed 1–28–88; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Establishment

The Assistant Director for Biological, Behavorial, and Social Sciences has determined that the establishment of the Advisory Panel for the Plant Science Centers is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel for the Plant Science Centers.

Purpose: Primarily to advise on the merit of proposals for research and training centers in plant science submitted to NSF for financial support. Additionally, the Panel provides oversight, general advice and policy guidance to the Plant Science Centers Program.

M. Rebecca Winkler,

Committee Management Officer.

January 26, 1988.

[FR Doc. 88–1914 Filed 1–28–88; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Biology; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and Time: February 17, 18, 19, 1988, starting at 9:00 A.M. to 5:00 P.M.

Place: National Science Foundation 1800 G Street, NW., Conference Room, 1243.

Type of Meeting: Closed.

Contact Person: Dr. Ralph Hecht, Program Director or Dr. Judith Plesset, Assistant Program Director for Developmental Biology, Room 321, Telephone number: 202/357–7989.

Purpose of Advisory Panel: To provide advice and recommendations concerning support of research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and the personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

January 25, 1988.

[FR Doc. 88–1913 Filed 1–28–88; 8:45 am]

BILLING CODE 7555–01–M

[Docket No. 50–366]

Edwin I. Hatch Nuclear Plant, Unit 2; Georgia Power Co. et al.; Environmental Assessment and Finding of No Significant Impact

In the matter of Georgia Power Co. and Oglethorpe Power Corp.; Municipal Electric Authority of Georgia; City of Dalton, GA.

The U.S. Nuclear Regulatory Commission (the Commission) is issuing an exemption from the requirements of 10 CFR 50.62(c)(4) to Georgia Power Company (the licensee) for the Edwin I. Hatch Nuclear Plant, Unit 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The exemption allows the use of a minimum flow rate of 41.2 GPM and an available sodium pentaborate concentration ranging from 6.2 weight percent (w/o) to 13 w/o depending on the volume of the sodium pentaborate solution existing in the standby liquid control system (SLCS) storage tank. The flow rate and concentration of sodium pentaborate are different from the requirements of 10 CFR 50.62(c)(4) which specify a flow rate of 86 GPM and a concentration of 13 w/o of sodium pentaborate.

The exemption responds to the licensee's application for exemption dated January 6, 1988.

The Need for the Proposed Action

The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements in view of Hatch, Unit 2, having a reactor vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation. The flow and concentration requirements in 10 CFR 50.62 were based upon achieving a desired negative reactivity insertion rate into a 251-inch reactor vessel. However, the regulation does not explicitly refer to the vessel size.

The reactor vessel for Hatch, Unit 2 is 218 inches in diameter. Accordingly, the licensee has proposed to meet the requirements of 10 CFR 50.62(c)(4) by using sodium pentaborate enriched to 60 atomic percent in the Boron-10 isotope, in solution with a concentration ranging from 6.2 w/o to 13 w/o depending upon the solution volume, and with a minimum injection flow rate of 41.2 GPM. For the Hatch, Unit 2 reactor vessel size, this injection flow rate and solution concentration, using a minimum of 60 atomic percent Boron-10 in the sodium pentaborate, results in a negative reactivity insertion rate equivalent to that specified in 10 CFR 50.62(c)(4) for a 251-inch reactor vessel.

Environmental Impacts of the Proposed Action

The exemption provides a degree of protection for the Hatch Unit 2 reactor equivalent to that required by the regulation for reactors with larger reactor vessels for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an ATWS. Consequently, the probability of accidents has not been increased by the exemption and the post-accident radiological releases would not be greater than previously determined. The exemption does not otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this exemption.

The exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributable to this facility and would result in a larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Hatch, Unit 2 Plant, dated March 1978.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the exemption.

For further details with respect to this action, see the application for the exemption dated January 6, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Stret NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Bethesda, Maryland, this 25th day of January 1988.

For the Nuclear Regulation Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–1880 Filed 1–28–88; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 11–13, 1988, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the Federal Register on January 20, 1988.

Thursday, February 11, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:00 a.m.: Nuclear Power Plant Maintenance (Open)—Review and comment regarding proposed NRC Interim Policy Statement on Maintenance of Nuclear Power Plants (SECY–87–314 dated December 30, 1987).

10:15 a.m.–12:15 p.m.: Advanced Light Water Reactor Requirements (Open)—Briefing regarding proposed EPRI requirements for advanced light water reactors with more passive safety features.

1:15 p.m.–4:30 p.m.: Advanced MHTGR and MLMCR Nuclear Power Plants (Open)—Briefing and discussion regarding proposed design features of DOE advanced MHTGR and MLMCR (PRISM and SAFR) nuclear power plants.

4:30 p.m.–6:30 p.m.: Advanced (Non-Water) Nuclear Power Plants (Open)—Review and comment regarding proposed NRC requirements for key safety features of advanced MHTGR and MLMCR designs.

Friday, February 12, 1988

8:30 a.m.–10:30 a.m.: TVA Nuclear Management and Plant Operations (Open)—Review and comment regarding proposed changes in TVA nuclear management organization and proposed restart of TVA nuclear plants.

10:45 a.m.–12:45 p.m.: NRC Quantitative Safety Goals (Open)—Briefing and discussion regarding status of proposed NRC plan for implementation of the NRC Quantitative Safety Goals.

1:45 p.m.–2:30 p.m.: Systematic Assessment of Operating Experience (Open/Closed)—Briefing regarding analysis and evaluation of valve and valve operator performance in nuclear power plant feedwater systems and experience with use of radioisotopes.

Portions of this session will be closed as required to discuss Proprietary Information related to the matters being considered.

2:30 p.m.–3:00 p.m.: Nuclear Waste Management (Open)—Report and discussion of Congressional changes in the NWPA and its impact on NRC programs/activities as well as the status of other miscellaneous matters related to high-level and low-level nuclear radwaste.

3:15 p.m.–3:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

3:45 p.m.–4:45 p.m.: Resolution of Generic Issues (Open)—Discuss procedures being used by the NRC Staff to define and/or modify the scope of generic issues and unresolved safety issues as well as the effectiveness of staff activities that deal with generic issues and USIs.

4:45 p.m.–6:00 p.m.: ACRS Subcommittee Activities (Open)—Reports and discussion of ACRS subcommittee activities in designated areas including thermal-hydraulic phenomena, decay heat removal, and nuclear safety research prioritization methodology.

Saturday, February 13, 1988

8:30 a.m.–10:00 a.m.: ACRS Reports (Open)—Discuss proposed ACRS reports regarding items considered during this meeting, proposed NRC resolution of USI A–47, Safety Implications of Control Systems in Nuclear Power Plants, and the ACRS annual report to the U.S. Congress on the NRC safety research program.

10:15 a.m.–10:45 a.m.: New ACRS Members (Closed)—Discuss qualifications of candidates proposed for appointment to the ACRS and internal allocation of resources to support advisory functions related to nuclear reactor and nuclear radwaste regulation.

This session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personnel privacy and information that involves the internal personal rules and practices of the agency.

10:45 a.m.–11:00 a.m.: ACRS Practices and Procedures (Open)—Discuss proposed change in ACRS Bylaws regarding activities of ACRS members.

11:00 a.m.–12:00 Noon and 1:00 p.m.–2:00 p.m.: Important Safety-Related Issues (Open)—Discuss proposed hierarchical structure for important safety-related matters identified by ACRS members.

2:00 p.m.–3:30 p.m.: Miscellaneous (Open)—Complete discussion of issues considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent a clearly unwarranted invasion of personal pricacy (5 U.S.C. 552b(c)(6)), and Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: January 22, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–1859 Filed 1–28–88; 8:45 am]

BILLING CODE 7590–01–M

Relocation of Office of Nuclear Reactor Regulation

Effective February 1, 1988, the NRC's Office of Nuclear Reactor Regulation (NRR) has been relocated at the agency's new office building located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The agency's mailing address remains unchanged—U.S. Nuclear Regulatory Commission, Washington, DC 20555. Specific telephone numbers for the relocated NRR personnel may be obtained from the NRC Operator on 301–492–7000. A new NRC telephone directory (NUREG/BR–0046) is expected to be issued in late February or early March 1988.

Dated at Bethesda, Maryland, this 26th day of January 1988.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88–1879 Filed 1–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Unit No. 1); Exemption

I

The Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) are the holders of Facility Operating License No. NPF–58 which authorizes operation of Perry Nuclear Power Plant, Unit No. 1 (the facility) at steady-state reactor power levels not in excess of 3579 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nucelar Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensees' site in Lake County, Ohio.

II

10 CFR Part 50, Appendix J, Section III.D.3, states:

Type C tests. Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

These tests would become due at the Perry Nuclear Power Plant, Unit No. 1, for certain containment isolation valves which are the subject of this Exemption, between February 18, 1988, and June 15, 1988. The tests necessary to meet this section of Appendix J to 10 CFR Part 50 are required by Technical Specification 4.6.1.2 of the Perry Nuclear Power Plant, Unit No. 1, Technical Specifications.

III

On September 11, 1987, the licensees submitted a request for exemption from Section III.D.3 of Appendix J to 10 CFR Part 50 for the Perry Nuclear Power Plant, Unit No. 1, for 14 containment isolation valves. The licensees proposed to perform Type C local leak rate tests (LLRTs) of these valves prior to startup from the first refueling outage for Unit No. 1 (currently scheduled for January 1989) in lieu of the 2-year interval required by Section III.D.3. The licensees also submitted by separate correspondence dated September 11, 1987, as amended September 18, 1987, a related Technical Specification change request to the Perry Unit No. 1 license which would revise Technical Specification 4.6.1.2 to be consistent with the requested exemption. The licensees also responded to the Commission's staff requests for additional information related to the exemption and amendment request by letter dated January 8, 1988.

The Commission's staff has determined that the licensees' request for extension of the requested containment isolation valve Type C LLRTs until the first refueling outage will not present a significant safety concern and is therefore acceptable based on the following considerations:

1. The integrated temperature/pressure profiles experienced by the valves considered in this one-time exemption request will not be significantly greater than expected for subsequent refueling cycle test intervals.

2. The favorable results of previous leakage tests performed at the Perry Nuclear Power Plant, Unit 1, on these valves, coupled with their small contribution to allowable leakage, confirmatory industry experience and expected gradual deterioration of valves of these types provide reasonable assurance and confidence that granting the requested schedular exemption will not result in a significant decrease in the integrity of the containment boundary.

3. The 2-year interval testing requirement for Type B and C penetrations is intended to be often enough to prevent significant deterioration from occuring and long enough to permit LLRTs to be performed during plant outages. Leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some penetrations, because of their intended functions, cannot be tested during power operations. For penetrations that cannot be tested during power operations or those that, if tested during power operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity follwoing a successful test is not significant enough to justify a plant shutdown specifically to perform the LLRTs within the 2-year period, as long as the penetrations are in compliance with items 1 and 2 above.

For details with respect to the staff's evaluation see the Safety Evaluation Supporting Amendment to Facility Operating License No. NPF–58 dated January 19, 1988.

In support of the requirement of 10 CFR 50.12 for demonstration that special circumstances exist with respect to the requested exemption, the licensees have stated that pursuant to 10 CFR 50.12(a)(2), (iii) and (v), the following special circumstances exist:

50.12(a)(2)(iii)—A requirement for shutdown to comply with the two year testing requirement in Appendix J would impose a hardship and costs not contemplated by the rule when written since Appendix J clearly indicates an intent that required testing be performed during normal refueling outages except in unusual situations when the two year limit would apply. To require a plant shutdown to comply with the two year limit for testing even though the plant has not accumulated two full years of power operation would result in an unnecessary loss of power to the grid at a time when the distribution system's need for power is high as well as the extra costs attendant to having two successive outages.

50.12(a)(2)(v)—The requested exemption is temporary and became necessary as a result of the delays in attaining full power operation common to initial startup activities. If an outage of sufficient duration is encountered prior to the first refueling outage at Perry, CEI agrees to peform the testing which is the subject of this exemption request with the exception of valves 1E12–F023, 1E51–F013, 1E51–F066 which require removal of the drywell head for testing. Testing of these valves can only be performed during a refueling outage.

The Commission's staff has reviewed the licensees' description of the special circumstances relative to this exception request and has determined that special circumstances as required by 10 CFR 50.12 do exist.

The Commission's regulations in 10 CFR 50.12(a)(2)(v) state that special circumstances exist when the exemption would provide only temporary relief from the applicable regulation and that the applicant or licensee has made good faith efforts to comply with the regulation. The requested exemption is a one-time schedular exemption to delay LLRTs for 14 containment isolation valves until the first refueling outage. The licensees have completed satisfactorily LLRTs of all other containment isolation valves involving several hundred valves. However, due to plant constraints it was not possible to complete testing on these remaining 14 valves during previously scheduled maintenance outages without significantly extending these outages for the sole purpose of conducting these LLRTs. The staff has determined that the licensees have demonstrated a good faith effort to comply with the Appendix J requirement to conduct LLRTs on containment isolation valves.

IV.

Accordingly, the Commission has detemined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special

circumstances are present in that the requested exemption is temporary in nature and the licensees have made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the following Exemption from the requirements of Section III.D.3 of Appendix J to 10 CFR Part 50:

The 2-year limit on the Type C testing interval for the 14 valves identified in the licensees' September 11, 1987, request for exemption is extended on a one-time basis until prior to startup from the first refueling outage for Perry Nuclear Power Plant, Unit No. 1, provided the licensees conduct LLRTs of the 11 valves not requiring drywell head removal should an outage of sufficient duration occur before the first refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 1871).

A copy of the Commission's Safety Evaluation referred to in this Exemption is available for public inspection at the Commission's Puiblic Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland this 22nd day of January, 1988.

[FR Doc. 88-1878 Filed 1-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; Notice of Consideration of Issuance of Amendment To Facility License and Opportunity For Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility License No. DPR-45 issued to Dairyland Power Cooperative (the licensee). License No. DPR-45 authorizes the possession but not the operation of the LaCrosse Boiling Water Reactor (LACBWR), located in Vernon County, Wisconsin.

The proposed amendment would revise the provisions in the LACBWR Technical Sepcifications (TS) to reduce the required shift crew size since the reactor is permanently shutdown and the fuel has been moved to the Fuel Element Storage Well. The proposed amendment will continue to require a shift supervisor with a Senior Reactor Operator License and will require one operator who is a qualified Control Room Watchstander. Shift crew size requirements for reactor startup, power operations, hot shutdown and refueling would be deleted as these modes of operation are no longer permitted by the present license. The requirement for an Auxiliary Operator on each shift would also be deleted. The proposed amendment is in response to the licensees application dated November 12, 1987.

Prior to issuance of the propsed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 29, 1988, the licensee may file a request for a hearing with respect to issuance of an amendment to the subject facility operating license and any person whose interets may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding at to which petitioner wishes to intervene. Any persons who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases of each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Kevin P. Gallen Esq., Newman and Holtzinger, P.C. 1615 L Street, NW. Washington, DC. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714 (d).

For further details with respect to this action, see the application for amendment dated November 12, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, 20555, and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Dated at Bethesda, Maryland this 25th day of January 1988.

For The Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-1877 Filed 1-28-88; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-160, License No. R-97, EA 88-32]

Georgia Institute of Technology; Order Modifying License, Effective Immediately

I

The Georgia Institute of Technology (Georgia Tech) 900 Atlantic Drive, NW., Atlanta, GA 30332, is the holder of Operating License No. R-97 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 29, 1964, and subsequently amended. The license, as amended, authorizes Georgia Tech to operate its modified research reactor located on its campus in Atlanta, Georgia, at power levels up to 5 megawatts (thermal) for research and development activities in accordance with the conditions specified therein.

II

The Georgia Tech Research Reactor (GTRR) is utilized to conduct irradiation experiments including the irradiation of topaz and other gem-quality minerals. During the week of August 17, 1987, the improper opening of an irradiated topaz container resulted in contamination of the reactor building. An inspection of the licensee's operational and health physics activities, including actions pertaining to this contamination event, was conducted on December 16, 1987, and January 4-5, 1988 during which it was learned of the August contamination event. The inspection revealed that the experiment conditions and manipulation of the experiment materials resulted in unexpected elevated radiation levels from the experiment container and also the unmonitored release of Cadmium-115 (Cd-115) in the reactor building. The exposure dose rate at one foot from the experiment material was approximately 3 rem per hour (R/hr) on August 18, 1987 and qualitative measurements of radioactive contamination indicated level on masolin wipes of approximately 20 mR/hr on August 19, 1987. The NRC staff also determined during the inspection that the licensee had not provided adequate exposure assessments for personnel involved in the August 1987 incident, nor had the licensee conducted adequate verification surveys to demonstrate that the contamination had not been spread by personnel to areas outside of the reactor building. Inspection findings indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation has not been issed at this time; additional inspection activities are being conducted. Nonetheless, the following safety concerns, which could result in unnecessary personnel radiation exposures and the potential spread of contamination away from the reactor building as a result of experiment manipulations, have already been identified:

A. On May 4, 1987, an enforcement conference was held with the licensee in which the licensee outlined steps to be implemented to improve the management controls over operations and health physics at the GTRR to assure safe operation. These actions included steps to assure appropriate interaction between health physics and operations components of the organization. A recent inspection has shown these actions have not been fully successful and indicate that management control problems continue.

B. The licensee's health physics and operating procedures were inadequate in that they failed to address the precautions and equipment to prevent unnecessary exposure and contamination during handling and manipulation of materials irradiated during experiments at the GTRR.

C. The licensee failed to follow operating procedures as required by Technical Specifications as follows:

1. The August 1987 experiment involved irradiation of topaz gemstones for a total of 41.8 megawatt hours compared to 30 megawatt-hours authorized on the Request for Minor Experiment Approval regarding topaz irradiations dated April 3, 1987.

2. Procedure 3102, Quality Assurance for Experiments, October 28, 1982, requires that the approval form for Category 4 experiments, such as the topaz irradiation, address quantitative controls of reactivity, activation, shielding, cooling and materials. Request for Minor Experiment Approval, dated April 3, 1987, regarding the topaz irradiation lists the estimated isotopic activities to be "nil." However, following an initial irradiation in April 1987, activation of the experiment materials, including the container, resulted in radiation levels of approximately 3 R/hr at a distance of one foot from the container. These elevated exposure levels were not evaluated or included in experiment plans for the August 1987 topaz irradiation.

D. Assessments of internal and external personnel exposures for personnel involved in the August 1987 incident and decontamination event were not adequate in that they did not determine and document intakes of radioactive material, extremity dose or skin dose.

E. Surveys conducted were inadequate as follows:

1. Continuous air samples collected from within the reactor building during the August 1987 incident were not adequate to determine intakes in that they were not representative of concentrations of radioactive material in the work area.

2. Subsequent to the August 1987 incident, surveys were inadequate to define the extent and amount of radioactive contamination in the reactor building, on personnel, and in personal property offsite which could have been potentially contaminated.

F. At the time of the inspection the licensee had failed to complete a thorough review of the August 1987 contamination event regarding its cause or causes, nor had any corrective measures been implemented as of January 5, 1988 to prevent recurrence during future experiments.

G. Licensee management has indicated that there are other events similar to the August 1987 event that also have not yet been fully evaluated by the licensee. These safety concerns were the subject of discussions between Region II and the licensee on January 7, 1988. Upon the conclusion of these

discussions, Region II verbally requested, and the licensee agreed that irradiation experiments would be suspended until further notice.

III

After consideration of the apparent violations and safety hazards posed by the licensee's conduct of experiment activities, as exhibited during the August 1987 event, and the subsequent lack of aggressive review and corrective actions by the licensee, I have determined that certain actions by the licensee are required, and an Order modifying the Georgia Institute of Technology license is necessary, to protect the health and safety of the public and licensee's employees. Therefore, pursuant to 10 CFR 2.204, I find that the public health, safety, and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to sections 104, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, and 10 CFR 2.204, it is hereby ordered, effective immediately, that:

A. The licensee shall cease utilization of the reactor facility for irradiation experiments until the following conditions are met and the NRC approves, in writing, the resumption of irradiation experiments.

1. Management controls over facility operation, including irradiation experiments, are assessed to identify weaknesses.

2. A formal review is conducted, including record reviews and in-depth personnel interviews, to determine (a) if other occurrences similar to the August 1987 incident have occurred, and (b) the principal root causes of the August 1987 incident and any other similar incidents.

3. An assessment of internal exposure, external whole body, extremity, and skin doses to personnel involved in the August 1987 incident (any other identified incidents) and/or decontamination activities is conducted.

4. The GTRR health physics and operating procedures are reviewed to identify inadequacies which contributed to the August 1987 contamination event (and any other identified events).

5. Corrective actions are identified and a schedule established for implementing the corrective actions, including necessary changes in management controls, operations, and procedures.

6. A training program addressing all changes to management controls, operations, and procedures is developed and implemented.

7. The licensee's reviews and assessments of the above matters are documented and a summary of these reviews and assessments, including corrective actions and appropriate schedules, are submitted in writing to the NRC for review and approval.

B. Results of the licensee's survey of the house of the individual involved in the August 1987 contamination event shall be provided in writing to the NRC within 10 days of the issuance of this order.

The Regional Administrator, Region II, may in writing relax or rescind any of the above conditions upon written request and demonstration of good cause by the licensee.

V

The licensee or any person other than the licensee adversely affected by this Order may request a hearing on this Order within twenty days of its issuance. Any request for hearing shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and the Regional Administrator, NRC Region II, 101 Marietta Street NW., Suite 2900, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioners' interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this Order.

If a hearing is requested by the licensee or any person who has an interest adversely affected by the Order, the Commission will issue an Order designating the time and place of any such hearing. If the Licensee fails to request a hearing within 20 days of the date of this Order, the provisions of this Order shall be final without further proceedings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland this 20th day of January 1988.

[FR Doc. 88-1881 Filed 1-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL and 50-444-OL (ASLBP No. 82-471-03-OL) (Offsite Emergency Planning)]

Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2; Hearing

January 22, 1988.

Atomic Safety and Licensing Board, Before Administrative Judges: Ivan W. Smith, Chairman, Gustave A. Linenberger, Jr., Dr. Jerry Harbour.

The evidentiary hearing in this proceeding will resume at 1:00 p.m. on February 8, 1988 at Courtroom No. 2, Bankruptcy Court, 11th Floor, Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts 02222, and continue throughout the week. Rebuttal testimony will be received at the same place beginning February 22, 1988 at 1:00 p.m.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

Bethesda, Maryland, January 22, 1988.

[FR Doc. 88-1880 Filed 1-28-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16238; 812-6936]

Drexel Series Trust; Application

January 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Drexel Series Trust ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rules 22c-1 and 22d-1 thereunder.

SUMMARY OF APPLICATION: The Applicant seeks an order amending its prior order (Investment Company Act Release No. 15368, October 20, 1986) ("Prior Order") permitting a contingent deferred sales load ("CDSL") so as to permit an additional waiver of the CDSL.

FILING DATE: The application was filed on December 1, 1987, and amended on January 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 16, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847, or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a diversified, open-end management investment company registered under the 1940 Act which currently offers nine series of shares without an initial sales charge. Its principal distributor is Drexel Burnham Lambert Incorporated ("DBL") and its investment adviser is Drexel Management Corporation ("DMC").

2. The Prior Order amended an original order (Investment Company Act Release No. 14343, January 30, 1985) and permits the Applicant to assess and waive a CDSL on certain redemptions of its shares, to impose a service charge on exchanges among series of the Applicant and to provide a pro rata credit for any CDSL paid in connection with redemptions of shares of any series of the Applicant followed by a reinvestment effected within thirty days of such redemption. Pursuant to the Prior Order, the rate of the CDSL, when imposed, declines from 5% to 0% depending on the number of years since the investor made the purchase payment from which an amount is being redeemed. For purposes of determining the applicable CDSL, it is assumed that a redemption is made of shares not subject to the CDSL first and then of shares subject to the lowest CDSL.

3. The Prior Order also permits the Applicant to waive the CDSL on the following redemptions: (i) Redemptions following the death or disability of a shareholder, providing redemption is requested within one year of such event; (ii) any partial or complete redemption in connection with certain distributions from IRAs or other qualified retirement plans, (iii) involuntary redemptions pursuant to the Applicant's right to liquidate shareholder accounts, (iv) redemptions by employee benefit plans for the benefit of employees of DBL and its affiliates; and (v) redemptions of shares of the Goernment Securities Series purchased by the automatic investment of monthly distributions from shares of Drexel Burnham Lambert Unit Trusts High Income Trust Securities, a unit investment trust.

4. The Applicant now seeks an amendment to the Prior Order to permit the Applicant to further waive the CDSL on any redemption of shares of the Applicant purchased by or on behalf of any officer, director, trustee, account executive or full-time employee (or a spouse or child of any such person) of the Applicant, DBL, DMC or any company affiliated with DBL or DMC, provided that such redemption occurs at least 90 days after the purchase of the shares (or of shares of another series of the Applicant which were exchanged for the shares) being redeemed. The Applicant further requests that the proposed amended order extend to any additional series or classes of shares of the Applicant that may be offered in the future on substantially the same basis.

Applicant's Legal Analysis

1. The proposed additional waiver of the CDSL is fair and equitable and in the interest of the Applicant's shareholders and the public. An intended effect of the proposed waiver is to encourage the individuals who may be involved in the management, administration or marketing of the shares of the Applicant to acquire and maintain an equity position in the Applicant. To further promote this objective, and because short-term trading in shares of the Applicant would defeat the stated purpose of the proposed waiver, such waiver will not be available on redemptions of shares of the Applicant occurring within less than 90 days of purchase.

2. The Applicant will not be charged with any revenue lost as a result of the proposed waiver. Applicant's Board of Directors will also consider receipts from the CDSL obtained by DBL in connection with its annual review of its plan of distribution adopted pursuant to Rule 12b-1 under the 1940 Act. The proposed waiver is consistent with the scope of reduced or waived sales charges permitted under Rule 22d-1 under the 1940 Act inasmuch as the expense of marketing and selling shares of the Applicant to the individuals specified in the waiver is minimal, thereby resulting in economies of the sort contemplated by Rule 22d-1. Further, since many mutual funds waive all initial sales charges on sales of shares to employees of affiliated persons and affiliated persons of affiliated persons of such funds under Rule 22d-1, the proposed waiver of the CDSL by the Applicant in similar circumstances is consistent with the 1940 Act and the protection of investors, without being discriminatory.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicant will comply with the provisions of Rule 12b-1 (or a successor rule) under the 1940 Act, as such rule may be amended from time to time.

3. Applicant will comply with the provisions of Rule 11a-3 (or any similar rule) under the 1940 Act when and if such rule is adopted by the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-1882 Filed 1-28-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 22, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB: 1515-0032

Form Number: 5125

Type of Review: Reinstatement

Title: Application for Withdrawal of Bonded Stores for Fishing Vessel and Certification of Use
Description: The document is used by the master of fishing vessels for the conditionally free withdrawal of supplies to be used during the voyage from bonded warehouses. It allows for consecutive arrivals in the U.S. It is also used to certify the proper disposition of those supplies.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 42 hours
OMB Number: 1515–0142
Form Number: None
Type of Review: Reinstatement
Title: Transfer of Cargo to a Container Station
Description: The container station operator may file an application for transfer of a container intact to a container station which is moved from the place of unlading or from a bonded carrier after transportation in-bond before filing of the entry for the purposes of breaking bulk and redelivery.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1,560 hours

Clearance Officer: B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88–1819 Filed 1–28–88; 8:45 am]

BILLING CODE 4810–35–M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; Regency Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24623 to reflect this addition:

Regency Insurance Company.
Business Address: 217 East Hallandale Beach Blvd., P.O. Box 190, Hallandale, Florida 33009–0190. *Underwriting Limitation:*[3] *$784,000. Surety License:*[4] FL. *Incorporated in:* Florida. Federal Process Agents.[4]

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287–3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: January 25, 1988.

[FR Doc. 88–1881 Filed 1–28–88; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for February 2, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 2, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. FCA Mission Statement;
2. Proposed Final Rule Amending 12 CFR Part 620, on Shareholder Disclosure and 12 CFR Part 621, on Accounting and Reporting Requirements;
3. Proposed Interim Rule with Request for Comment, Amending 12 CFR Part 620 on Shareholder Disclosure;
4. Contribution of 1987 Undistributed Earnings to a Contingency Reserve Fund by the Federal Intermediate Credit Bank of Spokane;

*** Closed Session**

5. Examination and Enforcement Matters; and
6. Implementation of Agricultural Credit Act of 1987.

Dated: January 27, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–1993 Filed 1–27–88; 3:39 pm]

BILLING CODE 6705–01–M

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* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, February 2, 1988, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Proposed amendments to Part 308 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedures."

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: January 27, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88–2013 Filed 1–27–88; 3:59 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:15 a.m. on Tuesday, January 26, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible failure of certain insured banks; (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) a recommendation regarding an administrative enforcement proceeding against an insured bank.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 27, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88–2014 Filed 1–27–88; 3:59 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Matter To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, February 2, 1988, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC:

Staff status report on bank examination frequency.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: January 27, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88–2015 Filed 1–27–88; 3:59 pm]

BILLING CODE 6714–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 26, 1988, 53 FR 21439.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 27, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added:

Item No., Docket No., and Company

CAG–1

Docket No. CP88-203-000, El Paso Natural Gas Company

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1899 Filed 1-28-88; 4:06 pm]

BILLING CODE 6717-62-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 3, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Inquiry Into Laws, Regulations and Policies of the Republic of Korea Affecting Shipping in the United States/Korea Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88-1995 Filed 1-27-88; 3:39 pm]

BILLING CODE 6730-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 2145, January 26, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: February 2, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Officer Compensation"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 88-1922 Filed 1-27-88; 8:45 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 53, No. 19
Friday, January 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 593]

Lemons Grown in California and Arizona; Limitation of Handling

Correction

In rule document 87-29765 appearing on page 48794 in the issue of Monday, December 28, 1987, make the following correction:

In the second column, in the first line, remove "not".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

48 CFR Part 852

Acquisition Regulations; Construction Contracting Procedures

Correction

In rule document 88-1080 beginning on page 1630 in the issue of Thursday, January 21, 1988, make the following corrections:

852.236-72 [Corrected]

1. On page 1631, in the third column, in the 22nd line, the section number should read "852.236-72".

852.236-75 [Corrected]

2. On the same page, in the same column, in the 16th line from the bottom, the section number should read "852.236-75".

BILLING CODE 1505-01-D

VOL
53

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19

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federal register

Friday
January 29, 1988

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Industrial Surface Coating; Plastic Parts for Business Machines; Final Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3163-4]

Standards of Performance for New Stationary Sources; Industrial Surface Coating; Plastic Parts for Business Machines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for new, modified, or reconstructed facilities that surface coat plastic parts for business machines were proposed in the **Federal Register** on January 8, 1986 (51 FR 854). This action promulgates the standards of performance for affected facilities that surface coat plastic parts for business machines. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from facilities that surface coat plastic business machine parts cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed facilities that surface coat plastic parts for business machines to control emissions of volatile organic compounds (VOC) to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: January 29, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Surface Coating of Plastic Parts for Business Machines—Background Information for Promulgated Standards" (EPA–450/3–85–019b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments; (2) a summary of the changes made to the standards since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A–83–50, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For policy questions—Mr. Doug Bell or Ms. Laura Butler, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578; for technical questions—Mr. James C. Berry, Chemicals and Petroleum Branch, Emission Standards and Engineering Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5605.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, or reconstructed spray booths that perform surface coating of plastic parts for business machines. The standards require that these affected facilities limit VOC emissions to no more than 1.5 kilograms of VOC per liter (kg VOC/l) of coating solids applied (i.e., deposited on the surface) for prime and color coats and to no more than 2.3 kg VOC/l of coating solids applied for texture and touch-up coats.

The BDT for these standards is a combination of coating formulations and application technologies. The BDT for prime and color coating is based on the use of organic-solvent-based coatings containing approximately 60 percent, by volume, solids as applied and sprayed at a transfer efficiency (TE) of 40 percent. The BDT for fog coating, a special type of color coating, is the application of waterborne coatings at a TE of 25 percent. The BDT for texture and touch-up coating is the application of organic-solvent-based coatings containing approximately 60 percent solids at a TE of 25 percent. The standards for prime, color, texture, and touch-up coating can also be met by using waterborne coatings applied at a TE of 25 percent. As noted in Table 1 of the regulation, a TE of 25 percent may be assumed for air atomized spray equipment for prime, color, texture, touch-up, and fog coats; and a TE of 40 percent may be assumed for either air-assisted airless or electrostatic air spray equipment for prime and color coats.

Compliance is determined by using data on the VOC content of the coatings applied and of the solvents used for diluting the coatings, records of monthly coating consumption, and a TE value obtained from Table 1 of the regulation to calculate the VOC emissions from each type of coating used at each affected facility during each nominal 1-month period. Data on the VOC content of the coatings applied and of the solvents used for diluting the coating must be determined by the use of EPA Reference Method 24. Coaters have the option of using Table 1 or demonstrating to the Administrator on a case-by-case basis that they achieve TE's higher than the assigned values for the spray equipment. Reports of noncompliance will be submitted on a quarterly basis; statements of compliance will be submitted on a semiannual basis.

It is important to note that the standards for surface coating of plastic parts under section 111 of the CAA are technology-based and are intended to reflect best demonstrated technology. As described elsewhere in this preamble, higher-efficiency application equipment has been identified as part of BDT and the numerical level of the standards reflects the use of this equipment. The TE table values are based on typical or average performance of this and other equipment. They are consistent with the data upon which the standards are based. They are provided to assist facilities in demonstrating compliance with the NSPS when these technologies are used. The TE values are not necessarily appropriate for any purposes other than determining compliance with the NSPS. Such other purposes include SIP requirements, emission trading baselines, and emission reduction credit calculations.

II. Environmental Impacts

There has been no change in the environmental impacts since proposal. The promulgated standards will reduce the national VOC emissions in 1990 from new, modified, and reconstructed facilities that perform exterior coating of plastic parts for business machines by about 2,200 megagrams (Mg) (2,430 tons), or 51 percent of the total emissions from affected facilities. In a typical plant, the promulgated standards will reduce annual overall VOC emissions by 51 percent below baseline.

Water pollution from waterwash spray booths will be reduced under this new source performance standard (NSPS) because of improved TE for prime and color coating.

Solid waste generated by a typical plant will be reduced approximately 25 percent below baseline discharge levels because improving TE for prime and color coating from 25 percent to 40 percent will reduce solid waste that results from overspray.

There are no noise or radiation impacts associated with these standards.

III. Energy Impacts

There has been no change in energy impacts since proposal. The coatings outlined in the control technologies that are the basis for the regulatory alternatives can all be cured at low temperatures and, therefore, have a negligible effect on the energy requirements for facilities that surface coat plastic parts for business machines. Therefore, the energy impact attributed to the standards is considered negligible.

IV. Cost Impacts

There has been no change in cost impacts since proposal. The initial capital cost for a typical medium-size plant controlled to the level of the standards is $545,000, and the annualized cost is approximately $752,000 below the regulatory baseline. The nationwide cumulative 5-year capital costs for plants covered by the standards are $23 million compared with $20 million at the regulatory baseline. The nationwide annualized costs in the fifth year of applicability of the standards at plants covered by the standards are estimated to be $120 million compared with the annualized costs of $150 million at new plants with emissions at the regulatory baseline. The total nationwide cost to comply with the standards in the fifth year of applicability is projected to be a net credit of $30 million.

V. Economic Impact

As discussed, the standards result in a net annualized credit in the fifth year. Also, in the fifth year of implementation, the standards will result in reductions of 24 percent and 13 percent in the overall price for the surface coating of plastic parts for business machines for small plants and large plants, respectively. In addition, the availability of the lower cost technologies on which the standards are based could increase the amount of plastic parts coated for business machines to 24.6 million square meters (m^2) in 1990 compared to 23.6 million m^2 without the standards.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the proposed standards ("Surface Coating of Plastic Parts for Business Machines—Background Information for Proposed Standards" [EPA–450/3–85–019a]).

In addition to the economic impact analysis, an analysis also was made of the cost effectiveness of alternative standards to determine the alternative that achieves the greatest emission reduction for a reasonable cost and to ensure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards will reduce the operating costs of the affected spray booths and result in a net annualized credit of $30 million in the fifth year compared to the baseline. Additional details on costs can be found in the proposal BID.

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (50 FR 12889) (April 1, 1985) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal for the surface coating of plastic parts for business machines. This meeting was held on May 2, 1985. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on January 8, 1986. The preamble to the proposed standards discussed the availability of the BID ("Surface Coating of Plastic Parts for Business Machines—Background Information for Proposed Standards" [EPA–450/3–85–019a]), which describes in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were distributed to interested parties.

The opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests to hold such a hearing, and, therefore, no hearing was held.

The public comment period was from January 8, 1986, to March 18, 1986. Five comment letters were received during the comment period concerning issues relative to the proposed standards of performance for affected spray booths. The comments have been carefully considered, and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, one State air pollution control agency, and one trade association. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of reevaluation by EPA, several changes have been made to the standards since proposal. Section 60.721 has been amended by the addition of a definition for "coating operation." This definition clarifies the compliance provisions of the regulation for situations where two or more types of coatings are applied at different times at a single affected spray booth.

Also, the meaning of the symbol "T" used in the equations to determine compliance was revised to be the transfer efficiency for a coating operation. A symbol "T_{avg}" was added to represent the volume-weighted average transfer efficiency for a coating operation to ensure that the distinction is clear between transfer efficiency and average transfer efficiency in equations presented later in the regulation.

Section 60.722 has been clarified to state specifically that all VOC emissions that are caused by coatings applied in each affected facility, regardless of the actual point of discharge of those emissions into the atmosphere, are covered by the standards and must be included when compliance with the numerical emission limits is determined.

Table 1 in § 60.723 has been revised to clarify the applicability of the TE values for specific coating types (i.e., prime, color, texture, touch-up, and fog). Approval of alternate TE's on a case-by-case basis will be granted by the Administrator if the owner or operator can demonstrate to the satisfaction of the Administrator that TE's other than those presented in Table 1 are appropriate.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Standards and Affected Facility, Achievability of the Standards, Recordkeeping and Reporting Requirements, Emission Control Technology, Economic Impact, and Electromagnetic Interference/Radio Frequency Interference (EMI/RFI) shielding.

Standards and Affected Facility

One commenter stated that because the affected facility is the spray booth, the standards for VOC emissions set forth in § 60.722 could be interpreted as applying only to those VOC's emitted from the spray booth. The effect of this interpretation would be to exclude VOC's that are emitted from outside the spray booth (i.e., flash-off area and oven) from being covered by the standards. To rectify this problem, the commenter suggested that VOC emission limits be established for the entire line (i.e., spray booth, flash-off area, and oven) but that the reconstruction provisions still apply only to the spray booth.

The EPA believes that the wording of the proposed standards precludes the interpretation suggested by the commenter and, therefore, that it is unnecessary to implement the commenter's solution. Section 60.722 of the regulation uses the language "no affected facility *shall cause* the discharge into the atmosphere" (emphasis added). The coatings application that takes place in the spray booth is clearly the cause of VOC emissions from the flash-off area and oven. Therefore, VOC emissions from these areas are covered by the standards.

The language of § 60.723 of the regulation also precludes the commenter's interpretation. The calculations by which performance is determined include all VOC's resulting from coatings applied in the spray booth and do not allow for the exclusion of VOC's that may be emitted from the flash-off area and oven.

However, to protect against possible misinterpretation, EPA has revised the regulation to specify that all VOC emissions caused by coatings applied in each affected facility, regardless of the actual point of discharge of emissions into the atmosphere, shall be included in determining compliance with the emission limits. It also should be noted that because the affected facility remains unchanged, the reconstruction provisions still apply only to the spray booth.

Achievability of the Standards

One commenter stated that coatings that comply with the standards cannot achieve performance levels for abrasion, adhesion, and chemical resistance. Another commenter stated that these coatings could not meet chemical and stain resistance specifications for certain business machine uses. This commenter suggested that the regulation allow variances on a case-by-case basis if the coater can demonstrate to the satisfaction of the Administrator that no coating exists that meets both the emission limits and necessary performance specifications.

The EPA has determined that high-solids solvent-based and waterborne coatings that comply with the emission limits when used with appropriate coating application technologies are being used for prime, color, texture, and touch-up coats by coaters in at least two States. These coatings have been approved by some original equipment manufacturers (OEM's) for performance specifications including abrasion, adhesion, and chemical and physical stain resistance. The EPA expects coaters to use high-solids solvent-based coatings to achieve compliance and has determined that these coatings are available for use. Waterborne coatings also can be used to meet the standards and are available for use. For these reasons, EPA has determined that the standards are achievable and has not revised the standards.

One commenter stated that none of the waterborne primers available will achieve the standards.

The EPA has determined that waterborne primers that will achieve the standards are available for use with waterborne coatings and are being used in production. These waterborne coatings can be applied as a prime/barrier coat for certain types of plastic that are sensitive to direct application of solvent-based coatings. In many cases, waterborne coatings are not used as primers, but are applied as a color coat to the part(s) without the use of a primer coating.

Recordkeeping and Reporting Requirements

One commenter stated that recordkeeping requirements to determine compliance are excessive, particularly for large surface coating operations that coat both plastic and metal parts with a variety of coatings. The commenter also stated that the cost of analyzing coatings using EPA Reference Method 24 could be unreasonable. He requested that the language of the standards be changed to allow alternate methods of compliance on a case-by-case basis for facilities that use a large number of paint formulations. One such method suggested by the commenter would allow small-volume coatings to be grouped with a large-volume coating (i.e., 90 percent of the total coating volume) having similar formulation and application characteristics. The costs of monthly compliance testing would be reduced because it would be necessary only to test the large volume coating formulation and to measure the total coatings volume.

The time and costs associated with the recordkeeping necessary to determine compliance with the standards have previously been evaluated by EPA and were determined to be reasonable. Most coaters maintain operation or inventory logs that contain at least some of the information that is required by these standards, and some coaters are already maintaining the information needed to perform the calculations to determine compliance with the standards. In addition, the recordkeeping requirements, as written, are the only feasible way for a coater to demonstrate continuous monthly compliance with the standards. Also, in most cases, coating composition data determined by EPA Reference Method 24 can be obtained from the coating manufacturer. In rare cases such as when coaters manufacture coatings in-house or modify (e.g., add solvent to) the formulation of a purchased coating, a coater may have to perform an EPA Reference Method 24 test in-house when such data are not available from an outside coating manufacturer. The cost to the coater to perform EPA Reference Method 24 is estimated to be $200 per coating. The EPA considers this cost to be reasonable.

Because the time and costs necessary to perform the compliance calculations were determined to be reasonable and because EPA Reference Method 24 coating composition data can, in most cases, be obtained from the coating manufacturer, EPA has determined that the recordkeeping and reporting requirements of the standards are not excessive. Therefore, the standards have not been revised.

One commenter stated that the 1-liter sample size requested for the determination of VOC content of each coating using EPA Reference Method 24 is unreasonable, especially in the case of specialty coatings. The commenter said that 1 liter may be equivalent to the total volume of coating manufactured or supplied for a specialty coating, whereas EPA Reference Method 24 requires only a 10-gram sample size. The commenter noted that the cost of manufacturing or purchasing additional paint for sample analysis alone would be unreasonable. The commenter recommended that the standards be rewritten to specify a sample size of 10 grams.

The sample size was set at 1 liter for several reasons: (1) Losses of the sample could occur during transfer of the sample between pieces of equipment or sample container and equipment, (2) losses of the sample could occur during equipment setup, and (3) additional runs of the EPA Reference Method 24 tests could require additional sample in the event of problems with the initial runs. Therefore, to account for any sample losses and for the need for additional test runs, the sample size remains at 1 liter.

Additionally, the low-volume usage of specialty coatings is expected to be a rare occurrence. It should be noted that coaters who perform the EPA Reference Method 24 test are free to use as small a volume as necessary to conduct the test. The 1-liter sample size requirement applies when a coating sample is requested for analysis by EPA.

Economic Impact

One commenter said that because compliance coatings that will meet all performance specifications are not available, the proposed standards would force OEM's either to change to solid wall plastics with molded-in color, which would eliminate structural foam and all coatings and severely impact both industries, or to move tooling, molding, and finishing operations offshore, which would result in additional loss of jobs in the already depressed business machine cabinetry market as well as loss of local, State, and Federal tax revenues.

The EPA has determined that both waterborne and high-solids solvent-based coatings that meet the standards are available and are being used by industry. In addition, EPA has performed an economic market analysis, presented in Chapter 9 of the Volume I BID for this industry, that indicates that the use of the combination of the BDT coatings and coating application equipment will result in a net credit to industry of $30 million/yr. Therefore, because BDT coatings are available and are being used and because there is a net credit from the use of BDT coatings and application techniques, no adverse economic impacts are expected.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)].

The effective date of this regulation is January 29, 1988. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after January 8, 1980, the date of proposal.

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination that facilities that surface coat plastic parts for business machines contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart TTT) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060-0162.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The regulation results in a net annual credit to the industry, and no price increases are expected. The Agency has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Surface coating of plastic parts for business machines.

Date: January 13, 1988.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

1. The authority citation for Part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. 40 CFR Part 60 is amended by adding a new Subpart TTT to read as follows:

Subpart TTT—Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines

Sec.

60.720 Applicability and designation of affected facility.
60.721 Definitions.
60.722 Standards for volatile organic compounds.
60.723 Performance test and compliance provisions.
60.724 Reporting and recordkeeping requirements.
60.725 Test methods and procedures.
60.726 Delegation of authority.

Subpart TTT—Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines

§ 60.720 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats.

(b) This subpart applies to any affected facility for which construction, modification, or reconstruction begins after January 8, 1986.

§ 60.721 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of this part.

"Business machine" means a device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission, such as:

(1) Products classified as typewriters under SIC Code 3572;

(2) Products classified as electronic computing devices under SIC Code 3573;

(3) Products classified as calculating and accounting machines under SIC Code 3574;

(4) Products classified as telephone and telegraph equipment under SIC Code 3661;

(5) Products classified as office machines, not elsewhere classified, under SIC Code 3579; and

(6) Photocopy machines, a subcategory of products classified as photographic equipment under SIC code 3861.

"Coating operation" means the use of a spray booth for the application of a single type of coating (e.g., prime coat); the use of the same spray booth for the application of another type of coating (e.g., texture coat) constitutes a separate coating operation for which compliance determinations are performed separately.

"Coating solids applied" means the coating solids that adhere to the surface of the plastic business machine part being coated.

"Color coat" means the coat applied to a part that affects the color and gloss of the part, not including the prime coat or texture coat. This definition includes fog coating.

"Conductive sensitizer" means a coating applied to a plastic substrate to render it conductive for purposes of electrostatic application of subsequent prime, color, texture, or touch-up coats.

"Fog coating" (also known as mist coating and uniforming) means a thin coating applied to plastic parts that have molded-in color or texture or both to improve color uniformity.

"Nominal 1-month period" means either a calendar month, 30-day month, accounting month, or similar monthly time period that is established prior to the performance test (i.e., in a statement submitted with notification of anticipated actual startup pursuant to 40 CFR 60.7(2)).

"Plastic parts" means panels, housings, bases, covers, and other business machine components formed of synthetic polymers.

"Prime coat" means the initial coat applied to a part when more than one coating is applied, not including conductive sensitizers or electromagnetic interference/radio frequency interference shielding coatings.

"Spray booth" means the structure housing automatic or manual spray application equipment where a coating is applied to plastic parts for business machines.

"Texture coat" means the rough coat that is characterized by discrete, raised spots on the exterior surface of the part.

"Touch-up coat" means the coat applied to correct any imperfections in the finish after color or texture coats have been applied.

"Transfer efficiency" means the ratio of the amount of coating solids deposited onto the surface of a plastic business machine part to the total amount of coating solids used.

"VOC emissions" means the mass of VOC's emitted from the surface coating of plastic parts for business machines expressed as kilograms of VOC's per liter of coating solids applied (i.e., deposited on the surface).

(b) All symbols used in this subpart not defined below are given meaning in the Act or Subpart A of this part.

D_c = density of each coating as received (kilograms per liter)

D_d = density of each diluent VOC (kilograms per liter)

L_c = the volume of each coating consumed, as received (liters)

L_d = the volume of each diluent VOC added to coatings (liters)

L_s = the volume of coating solids consumed (liters)

M_d = the mass of diluent VOC's consumed (kilograms)

M_o = the mass of VOC's in coatings consumed, as received (kilograms)

N = the volume-weighted average mass of VOC emissions to the atmosphere per unit volume of coating solids applied (kilograms per liter)

T = the transfer efficiency for each type of application equipment used at a coating operation (fraction)

T_{avg} = the volume-weighted average transfer efficiency for a coating operation (fraction)

V_s = the proportion of solids in each coating, as received (fraction by volume)

W_o = the proportion of VOC's in each costing, as received (fraction by weight)

§ 60.722 Standards for volatile organic compounds.

(a) Each owner or operator of any affected facility which is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by §§ 60.8 and 60.723 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first. No affected facility shall cause the discharge into the atmosphere in excess of:

(1) 1.5 kilograms of VOC's per liter of coating solids applied from prime coating of plastic parts for business machines.

(2) 1.5 kilograms of VOC's per liter of coating solids applied from color coating of plastic parts for business machines.

(3) 2.3 kilograms of VOC's per liter of coating solids applied from texture coating of plastic parts for business machines.

(4) 2.3 kilograms of VOC's per liter of coatings solids applied from touch-up coating of plastic parts for business machines.

(b) All VOC emissions that are caused by coatings applied in each affected facility, regardless of the actual point of discharge of emissions into the atmosphere, shall be included in determining compliance with the emission limits in paragraph (a) of this section.

§ 60.723 Performance tests and compliance provisions.

(a) Section 60.8 (d) and (f) do not apply to the performance test procedures required by this section.

(b) The owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8(a) and thereafter a performance test each nominal 1-month period for each affected facility according to the procedures in this section.

(1) The owner or operator shall determine the composition of coatings by analysis of each coating, as received, using Reference Method 24, from data that have been determined by the coating manufacturer using Reference Method 24, or by other methods approved by the Administrator.

(2) The owner or operator shall determine the volume of coating and the mass of VOC used for dilution of coatings from company records during each nominal 1-month period. If a common coating distribution system serves more than one affected facility or serves both affected and nonaffected spray booths, the owner or operator shall estimate the volume of coatings used at each facility by using procedures approved by the Administrator.

(i) The owner or operator shall calculate the volume-weighted average mass of VOC's in coatings emitted per unit volume of coating solids applied (N) at each coating operation [i.e., for each type of coating (prime, color, texture, and touch-up) used] during each nominal 1-month period for each affected facility. Each 1-month calculation is considered a performance test. Except as provided in paragraph (b)(2)(iii) of this section, N will be determined by the following procedures:

(A) Calculate the mass of VOC's used ($M_o + M_d$) for each coating operation during each nominal 1-month period for each affected facility by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

where n is the number of coatings of each type used during each nominal 1-month period and m is the number of different diluent VOC's used during each nominal 1-month period. ($\Sigma L_{dj} D_{dj}$ will be 0 if no VOC's are added to the coatings, as received.)

(B) Calculate the total volume of coating solids consumed (L_s) in each nominal 1-month period for each coating operation for each affected facility by the following equation:

$$L_s = \sum_{i=1}^{n} L_{ci} V_{si}$$

where n is the number of coatings of each type used during each nominal 1-month period.

(C) Select the appropriate transfer efficiency (T) from Table 1 for each type of coating applications equipment used at each coating operation. If the owner or operator can demonstrate to the satisfaction of the Administrator that transfer efficiencies other than those shown are appropriate, the Administrator will approve their use on a case-by-case basis. Transfer efficiency values for application methods not listed below shall be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient data for the Administrator to judge the validity of the transfer efficiency claims.

(D) Where more than one application method is used within a single coating operation, the owner or operator shall determine the volume of each coating applied by each method through a means acceptable to the Administrator and compute the volume-weighted average transfer efficiency by the following equation:

$$T_{avg} = \frac{\sum_{i=1}^{n} \sum_{k=1}^{p} L_{cik} V_{sik} T_k}{L_s}$$

TABLE 1.—TRANSFER EFFICIENCIES

Application methods	Transfer efficiency	Type of coating
Air atomized spray	0.25	Prime, color, texture, touch-up, and fog coats.
Air-assisted airless spray	.40	Prime and color coats.
Electrostatic air spray	.40	Do

where n is the number of coatings of each type used and p is the number of application methods used.

(E) Calculate the volume-weighted average mass of VOC's emitted per unit volume of coating solids applied (N) during each nominal 1-month period for each coating operation for each affected facility by the folowing equation:

$$N = \frac{M_o + M_d}{L_s T_{avg}}$$

(T_{avg} = T when only one type of coating operation occurs).

(ii) Where the volume-weighted average mass of VOC's emitted to the atmosphere per unit volume of coating solids applied (N) is less than or equal to 1.5 kilograms per liter for prime coats, is less than or equal to 1.5 kilograms per liter for color coats, is less than or equal to 2.3 kilograms per liter for texture coats, and is less than or equal to 2.3 kilograms per liter for touch-up coats, the affected facility is in compliance.

(iii) If each individual coating used by an affected facility has a VOC content (kg VOC/l of solids), as received, which when divided by the lowest transfer efficiency at which the coating is applied for each coating operation results in a value equal to or less than 1.5 kilograms per liter for prime and color coats and equal to or less than 2.3 kilograms per liter for texture and touch-up coats, the affected facility is in compliance provided that no VOC's are added to the coatings during distribution or application.

(iv) If an affected facility uses add-on controls to control VOC emissions and if the owner or operator can demonstrate to the Administrator that the volume-weighted average mass of VOC's emitted to the atmosphere during each nominal 1-month period per unit volume of coating solids applied (N) is within each of the applicable limits expressed in paragraph (b)(2)(ii) of this section because of this equipment, the affected facility is in compliance. In such cases, compliance will be determined by the Administrator or a case-by-case basis.

§60.724 Reporting and recordkeeping requirements.

(a) The reporting requirements of § 60.8(a) apply only to the initial performance test. Each owner or operator subject to the provisions of this subpart shall include the following data in the report of the initial performance test required under § 60.8(a):

(1) Except as provided for in paragraph (a)(2) of this section, the volume-weighted average mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) for the initial nominal 1-month period for each coating operation from each affected facility.

(2) For each affected facility where compliance is determined under the provisions of § 60.723(b)(2)(iii), a list of the coatings used during the initial nominal 1-month period, the VOC content of each coating calculated from data determined using Reference Method 24, and the lowest transfer efficiency at which each coating is applied during the initial nominal 1-month period.

(b) Following the initial report, each owner or operator shall:

(1) Report the volume-weighted average mass of VOC's per unit volume of coating solids applied for each coating operation for each affected facility during each nominal 1-month period in which the facility is not in compliance with the applicable emission limits specified in § 60.722. Reports of noncompliance shall be submitted on a quarterly basis, occurring every 3 months following the initial report; and

(2) Submit statements that each affected facility has been in compliance with the applicable emission limits specified in § 60.722 during each nominal 1-month period. Statements of compliance shall be submitted on a semiannual basis.

(c) These reports shall be postmarked not later than 10 days after the end of the periods specified in § 60.724(b)(1) and § 60.724(b)(2).

(d) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine monthly VOC emissions from each coating operation for each affected facility as specified in 40 CFR 60.7(d).

(e) Reporting and recordkeeping requirements for facilities using add-on controls will be determined by the Administrator on a case-by-case basis.

(Approved by the Office of Management and Budget under Control No. 2060–0162)

§60.725 Test methods and procedures.

(a) The reference methods in Appendix A to this part except as provided under § 60.8(b) shall be used to determine compliance with § 60.722 as follows:

(1) Method 24 for determination of VOC content of each coating as received.

(2) For Method 24, the sample must be at least a 1-liter sample in a 1-liter container.

(b) Other methods may be used to determine the VOC content of each coating if approved by the Administrator before testing.

§60.726 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States:

Section 60.723(b)(1)
Section 60.723(b)(2)
Section 60.723(b)(2)(i)(C)
Section 60.723(b)(2)(i)(D)
Section 60.723(b)(2)(iv)
Section 60.724(a)(2)
Section 60.724(e)
Section 60.725(b)

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federal register

Friday
January 29, 1988

Part III

Department of Health and Human Services

Food and Drug Administration

Cumulative List of Orphan Drug and Biological Designations; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list, which is brought up to date quarterly, identifying the drugs and biologicals granted orphan drug designation pursuant to section 526 of the Federal Food, and Drug, and Cosmetic Act. (See the **Federal Register** of April 13, 1984 (49 FR 14808).) By this notice, FDA is announcing the availability of a cumulative list of designated orphan drugs and biologicals as of December 31, 1987.

ADDRESS: Copies of the list of current orphan drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATIN: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan drug designation under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a quarterly basis and is available on request from FDA's Dockets Management Branch (address above). Those requesting a copy should specify Docket No. 84N-0102, which is the docket number for this notice. At the end of each calendar year, the agency intends to publish in the **Federal Register** an up-to-date cumulative list of designated orphan drugs and biologicals including the names of designated compounds, the specific disease/condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan drug designation through 1986 was published in the **Federal Register** of February 5, 1987 (52 FR 3778).

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1987, and therefore, brings the February 5, 1987, publication up to date.

The orphan drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan drug designation in order to obtain exclusive marketing rights. Copies of the interim guidelines for use in preparing an application for orphan drug designation may be obtained from the Office of Orphan Products Development (HF-35) (address above).

The names used in this notice for the drug and biological products that have not been approved/licensed for marketing may not be the established/proper names approved by FDA for these products if they are eventually approved/licensed for marketing. Since these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established/proper name.

Dated: January 21, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

Orphan Designations Pursuant to Section 526 of the Federal Food, Drug, and Cosmetic Act as Amended by the Orphan Drug Act (Pub. L. 97-414) Through 1987

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988

[Approved for Marketing*]

[Exclusive Approval**]

Biological Designations		
Name of biological	Designated use	Sponsor's name and address
Generic-alpha-1-anti-trypsin (recombinant DNA origin). *Trade*—Not established.	Supplementation therapy for alpha-1 antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, Inc., 3145 Porter Drive, Palo Alto, CA 94304.
Generic-alpha-1-proteinase inhibitor (Alpha-1 PI). *Trade*—Prolastin */**.	Replacement therapy in the Alpha 1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic-anti-J5mAb. *Trade*—Not established.	Treatment of patients with gram-negative bacteremia which has progressed to endotoxin shock.	Centocor, Inc., 244 Great Valley Parkway, Malvern, PA 19355.
Generic-antimelanoma antibody XMMME-001-RTA. *Trade*—Same as generic.	Treatment of Stage III melanoma not amenable to surgical resection.	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94116.
Generic-Anti-TAP-72 immunotoxin. *Trade*—XOMAZYME-791.	Treatment of metastatic colorectal cancer adenocarcinoma.	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94701.
Generic-antithrombin III (AT-III). *Trade*—Not established.	For use as replacement therapy in congenital deficiency of AT-III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic-antithrombin III concentrate I.V. *Trade*—Kybernin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoechst-Roussel, Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic-antithrombin III (human). *Trade*—Antithrombin.	Hereditary AT-III deficiency	Kabi Vitrum Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic-antithrombin III (human). *Trade*—Antithrombin III (Human).	For use in preventing or arresting episodes of thrombosis in patients with congenital antithrombin III deficiency and/or to prevent the occurrence of thrombosis in patients with antithrombin III deficiency who have undergone trauma or who are about to undergo surgery or parturition.	The American National Red Cross, National Headquarters, 17th and E Street, NW., Washington, DC 20006.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Biological Designations		
Name of biological	Designated use	Sponsor's name and address
Generic-benzylpenicillin, benzylpenicilloic acid, and benzylpenilloic acid. *Trade*—Pre-Pen/MDM.	For use in assessing the risk of administrating penicillin when it is the preferred drug of choice in adult patients who have previously received penicillin and have a history of clinical hypersensitivity.	Kremers-Urban Co., P.O. Box 2038, Milwaukee, WI 53201.
Generic-botulinum A toxin. *Trade*—Oculinum.	Treatment of strabismus and blepharospasm	Alan B Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic-botulinum toxin. *Trade*—Orthoinum.	For use in the treatment of spasmodic torticollis	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic-CD5-T Lymphocyte Immunotoxin. *Trade*—XOMAZYME-H65.	For ex vivo treatment to eliminate mature T cells from potential bone marrow grafts and for in-vivo treatment of bone marrow recipients to prevent graft rejection and graft vs host disease (GVHD).	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
	For treatment of graft versus host disease (GVHD) and/or rejection in patients who have received bone marrow transplants.	
Generic-Cytomegalovirus Immune Globulin (Human). *Trade*—Not established.	For use in the prevention or attenuation of primary cytomegalovirus disease in immunosuppressed recipients of organ transplants.	Massachusetts Public health Biologic Laboratories, 305 South Street, Jamaica Plain, MA 02130.
Generic-digoxin Immune Fab (Ovine). *Trade*—Digidote.	Life-threatening acute cardiac glycoside intoxication manifested by conduction disorders, ectopic ventricular activity and (in some cases) hyperkalemia.	Boehringer Mannheim, Corporation, 1301 Piccard Drive, Rockville, MD 20850.
Generic-digoxin Immune Fab (Ovine). *Trade*—Digibind*/**.	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-erwinia 1-asperaginase. *Trade*—Not established.	Treatment of acute lymphocytic leukemia	Porton Products Ltd., 5445 Balboa Boulevard, Suite 115, Encino, CA 91316.
Generic-erwinia 1-asparaginase. *Trade*—Not established.	Acute lymphoblastic leukemia	Lypho Med, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic-erythropoietin (recombinant-human). *Trade*—Not established).	Treatment of anemia associated with end stage renal disease (ESRD).	Amgen, 1900 Oak Terrace Lane, Thousand Oaks, CA 91320.
Generic-erythropoietin (recombinant-human). *Trade*—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166.
Generic-erythropoietin (recombinant-human). *Trade*—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	Ortho Pharmaceutical Corporation, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
Generic-erythropoietin (recombinant-human). *Trade*—EPOCH.	Treatment of anemia associated with end stage renal disease (ESRD).	Chugai Pharmaceutical Co., Ltd., 1-9, Kyobashi 2-Chome, Chuo-Ku, Tokyo 104, Japan.
Generic-erythropoietin (recombinant-human). *Trade*—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	Organon Teknika Corporation, 800 Capitola Drive, Durham, NC 27713.
Generic-factor XIII. *Trade*—Fibrogammin	Congenital Factor XIII deficiency	Hoechst-Roussel, Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic-hemin. *Trade*—Panhematin*/**	Amelioration of recurrent attacks of acute intermittent porphyria temporally related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic-Indium In 111 antimelanoma antibody XMMME-0001-DTPA. *Trade*—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastasis.	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94116.
Generic-interferon alfa-n1. *Trade*—Wellferon.	Treatment of AIDS -related Kaposi's Sarcoma	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
	For use in the treatment of Human Papillomavirus (HPV) in patients with severe resistant/recurrent respiratory (laryngeal) papillomatosis.	
Generic-interferon alfa-2a (recombinant). *Trade*—Roferon-A.	Treatment of AIDS-related Kaposi's Sarcoma	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
Generic-interferon alfa-2b (recombinant). *Trade*—Intron A.	Treatment of chronic myelogenous leukemia (CML)	Schering Corporation, 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
	Treatment of metastatic renal cell carcinoma	
	Treatment of AIDS-related Kaposi's Sarcoma	
	Treatment of ovarian carcinoma	
Generic-Iodine I 131 Lym-1 monoclonal antibody. *Trade*—Not established.	For use in the treatment of B-cell lymphoma	Lederle Laboratories, Division Cyanamid Co., Pearl River, NY 10965.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Biological Designations

Name of biological	Designated use	Sponsor's name and address
Generic-monoclonal antibodies (murine or human) recognizing B-cell lymphoma idiotypes. *Trade*—Not established.	For the treatment of B-cell lymphoma	IDEC, Inc., 291 North Bernardo Avenue, Mountain View, CA 94043.
Generic-monoclonal antiendotoxin antibody XMMEN-OE5. *Trade*—Same as generic.	Treatment of patients with gram-negative sepsis which has progressed to shock.	Pfizer Inc., 235 East 42nd Street, New York, NY 10017.
Generic-pentastarch. *Trade*—Pentaspan*/**.	For use as an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	DuPont Critical Care, 1600 Waukegan Road, McGaw Park, IL 60085.
Generic-ST1-RTA Immunotoxin (SR 44163). *Trade*—Not established.	For use in the prevention of acute Graft versus Host Disease (GVHD) in allogenic bone marrow transplantation and for the treatment of patients with B-chronic lymphocytic leukemia (CLL).	Sanofi, Inc., 101 Park Avenue, New York, NY 10178.
Generic-Technetium Tc 99m Anti-melanoma Murine Monoclonal Antibody Kit. *Trade*—Not established.	For use in detecting, by imaging, metastases of malignant melanoma.	NeoRx Corporation, 410 West Harrison, Seattle, WA 98119.
Generic-trisaccharides A and B. *Trade*—Not established.	Treatment of moderate to severe clinical forms of hemolytic disease of the newborn arising from placental transfer of antibodies against blood group substances A and B. For use in ABO-incompatible solid organ transplantation, including kidney, heart, liver, and pancreas. Treatment of moderate to very severe clinical forms of transfusion reactions arising from ABO incompatible transfusion of blood, blood products and blood derivatives.	CHEMBIOMED Ltd., 16th Floor Campus Towers, 11145–87th Avenue, Edmonton, Alberta, Canada T6G OY1.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-acetylcysteine. *Trade*—Mucomyst/Mucomyst 10 IV.	For use in the intravenous treatment of patients presenting moderate to severe acetaminophen overdose.	Bristol-Myers, U.S. Pharmaceutical Group, 2404 Pennsylvania Street, Evansville, IN 47721–0001.
Generic-allopurinol. *Trade*—Zyloprim	For use in the ex-vivo preservation of cadaveric kidneys for transplantation.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-allopurinol riboside. *Trade*—Not established.	Treatment of cutaneous and visceral leishmaniasis and Chagas' disease.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-amsacrine. *Trade*—Amsidyl	Treatment of patients with acute adult leukemia	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic-anagrelide. *Trade*—not established.	Treatment of polycythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221–4755.
Generic-anagrelide. *Trade*—Not established.	Treatment of thrombocytosis in chronic myelogenous leukemia.	Bristol-Myers, Co., Pharmaceutical Research and Development Division, 5 Research Parkway, P.O. Box 5100, Wallingford, CT 06492.
Generic-antipyrine. *Trade*—not established.	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, Inc., 14905 23rd Avenue North, Minneapolis, MN 55441.
Generic-AS-101. *Trade*—Not established	For use in the treatment of acquired immune deficiency Syndrome (AIDS).	Scientific Testing, Inc., 783 Jersey Avenue, New Brunswick, NJ 08901.
Generic-bacitracin, U.S.P. *Trade*—Altracin	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A and B elaborated by Clostridium difficile.	A.L. Laboratories, Inc., 452 Hudson Terrace, P.O. Box 1621, Englewood Cliffs, NJ 07632.
Generic-baclofen (intrathecial). *Trade*—Liorasal.	For use in the treatment of intractable spasticity caused by spinal cord injury or multiple sclerosis.	Medtronic, Inc., 7000 Central Ave. N.E., Minneapolis, MN 55432.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-benzoate/phenylacetate. *Trade*—Ucephan */**.	For adjunctive therapy in the prevention and treatment of hyperammonemia in patients with urea cycle enzymopathy (UCE) due to carbamylphosphate synthetase, ornithine, transcarbmylase, or arginosuccinate sythetase deficiency.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799–5080.
Generic-BW B759U. *Trade*—not established.	Treatment of severe human cytomegalovirus infections (HCMV) in specific immunosuppressed patient populations (e.g., bone marrow transplant recipients and AIDS).	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-BW 12C. *Trade*—Not established	For use in the treatment of sickle cell disease crisis	Burroughs, Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-calcitonin-Human. *Trade*—Cibacalcin */**.	Treatment of symptomatic Paget's disease of bone (osteitis deformans).	Pharmaceuticals Division, Ciba/Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.
Generic-chenodiol. *Trade*—Chenix*/**	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Reid-Rowell, Inc., 210 Main Street West, Baudette, MN 56623–0370.
Generic-chlorhexidine gluconate mouthrinse. *Trade*—Peridex.	For use in the amelioration of oral mucositis associated with cytoreductive therapy used in conditioning patients for bone marrow transplantation therapy.	The Procter and Gamble Co., Sharon Woods Technical Ctr., HB Building, 1511 Reed Hartman Highway, Cincinnati, OH 45241.
Generic-clofazimine. *Trade*—Lamprene*/**.	Treatment of lepromatous leprosy, including dapsone-resistant lepromatous leprosy and lepromatous leprosy complicated by erythema nodosum leprosum.	Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.
Generic-colchicine. *Trade*—Not established.	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis.	Pharmacontrol Corporation, P.O. Box 931, 661 Palisade Avenue, Englewood Cliffs, NJ 07632.
Generic-copiymer 1 (COP 1). *Trade*—Not established.	For use in the treatment of multiple sclerosis (MS)	TAG Pharmaceuticals, C/O Lemmon Company, Sellersville, PA 18960.
Generic-cromolyn sodium. *Trade*—Cromoral.	Mastocytosis	Fisons Corporation 2 Preston Court Bedford, MA 01730.
Generic-cromolyn Sodium, 4% ophthalmic solution. *Trade*—Opticrom 4% Ophthalmic Solution*/**.	Treatment of vernal keratoconjunctivitis (VKC)	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic-cyproterone acetate. *Trade*—Cyproteron/Androcur.	Treatment of severe hirsutism	Berlex Laboratories, Inc., 110 East Hanover Avenue, Cedar Knolls, NJ 07927.
Generic-cysteamine (2-aminoethanethiol). *Trade*—Not established.	Treatment of naphrophatic cystinosis	Jess G. Thoene, M.D., Section of Biochemical Genetics and Metabolism, Department of Pediatrics, University of Michigan School of Medicine, Ann Arbor, MI 48109.
Generic-dantrolene sodium. *Trade*—Dantrium.	Treatment of the neuroleptic malignant syndrome	Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
Generic-defibrotide. *Trade*—not established.	Treatment of thrombotic thrombocytopenic purpura	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic-dextran sulfate sodium (UA001). *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS).	Ueno Fine Chemicals Industry, Ltd., 2–31 Koraibashi, Higashi-Ku, Osaka 541, Japan.
Generic-diaziquone. *Trade*—not established.	Treatment of primary brain malignancies (Grade III–IV astrocytomas).	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic-diethyldithiocarbamate. *Trade*—Imuthiol.	Treatment of acquired immunodeficiency syndrome (AIDS).	Merieux Institute, Inc., 7855 N.W. 12th Street, Suite 114, Miami, Florida 33126.
Generic-dimethyl sulfoxide (DMSO). *Trade*—Sclerosol.	Treatment of cutaneous manifestations of scleroderma	Research Medical, Inc., A Subsidiary of Research Industries Corporation, 1847 West 2300 South, Salt Lake City, UT 84119.
Generic-disodium silibinin dihemisuccinate. *Trade*—Legalon.	Treatment of hepatic intoxication by Amanita phalloides (mushroom poisoning).	Pharmaquest Corporation, 201 Tamal Vista Blvd., Corte Madera, CA 94925 and Dr. Madaus GmbH and Co., Ostmerheimer Str. 198, 5000 Koln 91, Federal Republic of Germany.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-eflornithine HC1 (DFMO). *Trade*—Ornidyl.	Trypanosoma brucei gambiense sleeping sickness Treatment of Pneumocystis carinii pneumonia in AIDS patients.	Merrell Dow Research, P.O. Box 6300, 2110 East Galbraith Road, Cincinnati, OH 45215–6300.
Generic-epidermal growth factor (human). *Trade*—not established.	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery. For use in the acceleration of corneal epithelial regeneration and the healing of stromal tissue in the condition of non-healing corneal defects.	Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608.
Generic-epidermal growth factor (human). *Trade*—not established.	Promotion of cutaneous wound healing in extreme burn treatment protocols.	Ethicon, Inc. Somerville, NJ 08876–0151.
Generic-epoprostenol prostacyclin, PGI_2, PGX. *Trade*—Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs Wellcome Co. 3030 Cornwallis Road Research Triangle Park, NC 27709.
Generic-epoprostenol. *Trade*—Cyclo-Prostin.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta Street, Kalamazoo, MI 49001.
Generic-epoprostenol, prostacyclin, PGI_2, PG_{12}, *Trade*—Flolan.	For use in the treatment of primary pulmonary hypertension (PPH).	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic-etidronate disodium. *Trade*—Didronel */**.	Treatment of hypercalcemia of a malignancy inadequately managed by dietary modification and/or oral hydration.	Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
Generic-ethanolamine oleate. *Trade*—Not established.	Bleeding esophageal varices	Glaxo, Inc., P.O. Box 13960, Five Moore Drive, Research Triangle Park, NC 27709.
Generic-flumecinol. *Trade*—Zixoryn	Hyberbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586, Westport, CT 06881.
Generic-flunarizine. *Trade*—Sibelium	Treatment of alternating hemiplegia	Janssen Pharmaceutica, 40 Kingsbridge Road, Piscataway, NJ 08854.
Generic-ganciclovir (DHPG). *Trade*—Not established.	Treatment of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immunocompromised patients.	Syntex (USA), Inc., 3401 Hillview Avenue, Palo Alto, CA 94304.
Generic-glucocerebrosidase/beta-glucosidase (placenta-derived). *Trade*—Not established.	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corporation, 75 Kneeland Street, Boston, MA 02111.
Generic-guanethidine monosulfate. *Trade*—Ismelin I.V..	Treatment of moderate to severe reflex sympathetic dystrophy and causalgia.	Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.
Generic-HPA–23. *Trade*—Not established	Treatment of acquired immunodeficiency syndrome (AIDS).	Rhone-Poulenc Pharmaceuticals, Division of Rhone Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
Generic-hexamethylmelamine. *Trade*—Hexastat.	Treatment of advanced adenocarcinoma of the ovary	Ives Laboratories, 685 Third Avenue, New York, NY 10017.
Generic-hydroxycobalamin/sodium thiosulfate. *Trade*—Not established.	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.
Generic-Iodine I 131 meta-iodobenzylguanidine. *Trade*—Not established.	Diagnostic adjunct in patients with pheochromocytoma	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109.
Generic-Iodine I 131 6B-iodomethyl-19-norcholesterol. *Trade*—Not established.	Adrenal cortical imaging	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan, Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109.
Generic-Ifosfamide. *Trade*—Not established.	Treatment of soft tissue and bone sarcomas	Bristol-Myers Company, P.O. Box 4755, Syracuse, NY 13221–4755.
	Treatment of testicular cancer	Bristol-Myers company, Pharmaceutical Research and Development Division, Wallingford, CT 06492.
Generic-1-alpha-acetyl-methadol (LAAM). *Trade*—not established.	Treatment of herion addicts suitable for maintenance on opiate agonists.	Dixon and Williams, Pharmaceutical Co, Inc., 43 Old Wood Road, Bernardville, NJ 07924
Generic-1-carnitine. *Trade*—Vita Carn*	Genetic carnitine deficiency	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799–5080.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-1-carnitine. *Trade*—Vita Carn	Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799–5080.
Generic-1-carnitine. *Trade*—Carnitor*/**	Primary and secondary carnitine deficiency of genetic origin.	Sigma Tau, Inc., 723 North Beers Street Holmdel, NJ 07733.
Generic-leucovorin. *Trade*—Leucovorin Calcium.	For use in combination with 5-fluorouracil for the therapy of metastabc adenocarcinoma of the colon and rectum.	Lederle Laboratories Div., American Cyanamid Company, Pearl River, NY 10965.
Generic-LHRH [(DES-GLY ^{10})-D-Trp^6-Pro^9-N-Ethylamide)]. *Trade*—Not established.	For use in the treatment of central precocious puberty	Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, NJ 07724.
Generic-1-5 hydroxytryp-tophan (L-5HTP). *Trade*—Not established.	Treatment of postanoxic intention myoclonus	Bolar Pharmaceutical Co, Inc., 130 Lincoln Street, Copiague, NY 11726.
Generic-luteinizing hormone releasing hormone (GnRH). *Trade*—Not established.	For use in the induction of ovulation in women with hypothalamic amenorrhea due to a deficiency or absence in the quantity or pulse pattern of endogenous GnRH secretion.	Ortho Pharmaceutical, Route 202 P.O. Box 300, Raritan, NJ 08869–0602.
Generic-mazindol. *Trade*—Sanorex	Treatment of Ducnenne muscular dystrophy (DMD)	Platon J. Collipp, M.D., 176 Memorial Drive, Jesup, GA 31545.
Generic-mefloquine HC1. *Trade*—Mephaquin.	Treatment and prevention of chloroquine-resistant falciparum malaria.	Mephra AG, 4143 Dornach, Aesch Basel, Switzerland.
Generic-mesna. *Trade*—Uromitexan	For use in inhibiting the urotoxic effects induced by Ifosfamide.	Degussa Corporation, P.O. Box 2004, Route 46 at Hollister Road, Teterboro, NJ 07608.
Generic-mesna. *Trade*—Not established	For the inhibition of the urotoxic effects induced by oxazaphosphorine compounds such as cyclophosphamide.	Adria Laboratories, Division of Erbamont, Inc., P.O. Box 16529, Columbus, OH 43216–6529.
Generic-methotrexate sodium. *Trade*—Methotrexate.	Treatment of osteogenic sarcoma	Leder Laboratories, Pearle River, NY 10965.
Generic-metronidazole (topical). *Trade*—MetroGel.	For use in the treatment of acne rosacea	Curatek Pharmaceuticals, Inc., 1965 Pratt Blvd., Elk Grove Village, IL 60007.
Generic-metronidazole (topical). *Trade*—Flagyl.	For use as a topical treatment of Grade III and IV, anaerobically infected, decubitus ulcers.	G.D. Searle and Co., Box 5110, Chicago, IL 60680.
Generic-midodrine HC1. *Trade*—Midamine	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, Inc., 230 Half Mile Road, Red Bank, NJ 07701.
Generic-mitoxantrone HC1. *Trade*—Novantrone*/**.	Treatment of acute myelogenous leukemia (AML), also referred to as acute nonlymphocytic leukemia (ANLL).	Lederle Laboratories Division, American Cyanamid Company, Pearl River, NY 10965.
Generic-monooctanoin. *Trade*—Moctanin*/**.	Dissolution of cholesterol gallstones retained in the common bile duct.	Ethitek Pharmaceuticals Co., 8100 North Lawndale Avenue, Skokie, IL 60076.
Generic-morphine sulfate concentrate (preservative free). *Trade*—Duramorph.	For administration via microinfusion devices in repeated doses or constant infusion, for *epidural* use in the treatment of severe chronic pain which responds inadequately to systemic analgesic therapy or when epidural administration is considered preferable to systemic administration and for *intrathecal* use in patients with refractory pain due to malignancy.	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003–4099.
Generic-naltrexone HC1. *Trade*—Trexan*/**.	Blockade of the pharmacological effects of exogenously administered opiods as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I du Pont de Nemours Inc., dba Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, NY 11530.
Generic-oxymorphone HC1. *Trade*—Numorphan H.P.	Relief of severe intractable pain in narcotic-tolerant patients.	Du Pont Pharmaceuticals, Inc., P.O. Box 12, Manati, Puerto Rico 00701.
Generic-PEG-adenosine deaminase (PEG-ADA). *Trade*—Imudon.	For use as enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
Generic-pentamidine isethionate. *Trade*—Pentam 300*/**.	For the treatment of Pneumocystis carinii pneumonia	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic-pentamindine isethionate. *Trade*—not established.	For the treatment of Pneumocystis carinii pneumonia	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic-pentamidine isethionate (inhalation). *Trade*—Aeropent.	For use in the prevention of Pneumocystis carinii pneumonia in patients at high risk of developing this disease.	Fisons Corporation, 2 Preston Cort, Bedford, MA 01730.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-pentostatin. *Trade*—Not established.	For use in the treatment of Hairy Cell Leukemia	Warner-Lambert Co., 2800 Plymouth Road, P.O. Box 1047, Ann Arbor, MI 48106.
Generic-physostigmine salicylate. *Trade*—Antilirium.	Friedreich's and other inherited ataxias	Forrest Pharmaceuticals, Inc., 2510 Metro Boulevard, Maryland Heights, MO 64043-9979.
Generic-piracetam. *Trade*—Nootropil	For use in the treatment of myoclonus	U.S.B, Secteur Pharmaceutique, 326 Ave. Louise, 1050 Brussels, Belgium.
Generic-potassium citrate. *Trade*—Urocit-K */**.	Prevention of calcium renal stones in patients with hypocitraturia and for the avoidance of the complication of calcium stone formation in patents with uric lithiasis.	Charles Y.C. Pak, M.D., The Univ. of Texas Health, Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
	Prevention of uric acid nephrolithiasis	
Generic-potassium citrate and citric acid. *Trade*—Polycitra-K.	For use in the dissolution and control of uric acid and cystine calculi in the urinary tract.	Willen Drug Company, 18 North High Street, Baltimore, MD 21202.
Generic-prednimustine. *Trade*—Sterecyt	Treatment of malignant non-Hodgkin's lymphomas	Pharmacia, Inc., 800 Centennial Ave., Piscataway, NJ 08855.
Generic-protirelin (TRH). *Trade*—Thymone	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064.
Generic-quinacrine HC1. *Trade*—Not established.	For use in the prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patents with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic-rifampin. *Trade*—Rifadin I.V	For use as antituberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Pharmaceuticals, 2110 E. Galbraith Rd., Cincinnati, OH 45215.
Generic-rifampin, isoniazid, pyrazinamide. *Trade*—Rifater V.	Short course treatment of tuberculosis	Merrell Dow Research Inst., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
Generic-selegiline HCl. *Trade*—Deprenyl	Adjuvant to levodopa or levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism.	Somerset Pharmaceuticals. One Olde Town Court, Bernardsville, NJ 07924.
Generic-sodium monomercap-toundecahydro-*closo*-dodeca-borate. *Trade*—Borolite.	Treatment of gliobastoma multiforme as an alternative to conventional photon therapy.	Theragenics Corporation, 900 Atlantic Drive, NW., Atlanta, GA 30318.
Generic-sodium oxybate (sodium gamma hydroxybutyrate). *Trade*—Not established.	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Sigma F and D, Division, Ltd., Sigma Chemical Co., 3050 Spruce Street, St. Louis, MO 63103.
Generic-sodium oxybate (sodium gamma hydroxybutyrate). *Trade*—Not established.	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407.
Generic-sodium pentosan polysulphate. *Trade*—Elmiron.	Treatment of interstitial cystitis	Medical Market Specialties, Inc., P.O. Box 150, Boonton, NJ 07005.
Generic-sodium tetradecyl sulfate. *Trade*—Sotradecol.	Treatment of bleeding esophageal varices	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003-4099.
Generic-somatrem. *Trade*—Protropin*/**	For long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic-somatrem. *Trade*—Protropin	Short stature associated with Turner's syndrome	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic-somatropin. *Trade*—Humatrope*/**	For long-term treatment of children who have growth failure due to inadequate section of normal endogenous growth hormone.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
Generic-somatropin. *Trade*—saizen	Treatment of idiopathic or organic growth hormone deficiency in children with growth failure.	Serono Laboratories, Inc., 260 Pond Street, Randolph, MA 02368.
Generic-somatropin. *Trade*—Protropin II	For use in the long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-somatropin. *Trade*—Norditropin	Treatment of growth failure in children due to inadequate growth hormone secretion.	Nordisk-USA, 3202 Monroe Street, Suite 100, Rockville, MD 20852.
	For adjunctive use in the induction of ovulation in women with infertility due to (1) hypogonadotropic hypogonadism, and (2) bilateral tubal occlusion or unexplained infertility, who are undergoing in vivo fertilization procedures or in vitro fertilization with embryo transfer procedures, respectively, and who fail to ovulate in response to gonadotropin therapy alone.	
	For use in the treatment of short stature associated with Turner's Syndrome.	
Generic-spiramycin. *Trade*—Rovamycine	For use in the symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic-superoxide dismutase (human). *Trade*—Not established.	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Pharmacia-Chiron Partnership, 4560 Horton Street, Emeryville, CA 94608.
Generic-surface active extract of saline lavage of bovine lungs. *Trade*—Infasurf.	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	ONY Inc., TDC Incubation Center, 2211 Main Street, Buffalo, NY 14214.
Generic-surfactant (human) (amniotic fluid derived). *Trade*—Human Surf.	For use in the prevention and treatment of neonatal respiratory distress syndrome (RDS).	T. Allen Merritt, University of California, San Diego Medical Center, 225 W. Dickinson Street, H-814-J, San Diego, CA 92103.
Generic-surfactant TA (modified bovine lung surfactant extract). *Trade*—Survanta.	For the prevention and treatment of neonatal respiratory distress syndrome (RDS).	Ross Laboratories, Division of Abbott Laboratories, 625 Cleveland Avenue, Columbus, OH 43216.
Generic-teniposide (VM-26). *Trade*—Not established.	Treatment of refractory childhood acute lymphocytic leukemia (ALL).	Bristol-Myers Co., Pharmaceutical Research & Development Division, P.O. Box 4755, Syracuse, NY 13221-4755.
Generic-teriparatide. *Trade*—Parathar*/**	For use as a diagnostic agent to assist in establishing the diagnosis in patients presenting with clinical and laboratory evidence of hypocalcemia due to either hypoparathyroidism or pseudohypoparathyroidism.	Rorer Pharmaceutical Corp., Fort Washington, PA 19034.
Generic-terlipressin. *Trade*—Glypressin	For the treatment of bleeding esophageal varices	Ferring AB, Soldattorspvagen 5, Box 30651, 200 62 Malmo, Sweden.
Generic-thymoxamine HC1. *Trade*—Not established.	For use in the reversal of phenylephrine-induced mydriasis in patients who have narrow anterior angles and are at risk of developing an acute attack of angle-closure glaucoma following mydriasis.	Iolab Pharmaceuticals, 500 Iolab Drive, Claremont, CA 91711.
Generic-tiopronin. *Trade*—Thiola	For use in the prevention of cystine nephrolithiasis in patients with homozygous cystinuria.	Charles Y.C. Pak, M.D., The Univ. of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic-tranexamic acid. *Trade*—Cyklokapron.	Treatment of hereditary angioneurotic edema	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
	Treatment of patients undergoing prostatectomy where there is hemorrhage or risk of hemorrhage as a result of increased fibrinolysis or fibrinogenolysis.	
Generic-tranexamic acid. *Trade*—Cyklokapron*/**.	Treatment of patients with cogenital coagulopahties who are undergoing surgical procedures e.g. dental extractions.	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic-tretinoin. *Trade*—Not established	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctiva and/or cornea) with mucous deficiency and keratinization.	Spectra Pharmaceutical Services, Inc., Hanover Business Park, 155 Webster Street, Hanover, MA 02339.
Generic-trientine HC1. *Trade*—Cuprid*/**	Treatment of patients with Wilson's disease who are intolerant, or inadequately responsive to penicillamine.	Merck Sharp and Dohme, Research Laboratories, Division of Merck, and Co., Inc., West Point, PA 19486.
Generic-trimetrexate glucuonate. *Trade*—Not established.	Treatment of metastatic colorectal adenocarcinoma, metastatic carcinoma of the head and neck (i.e., buccal cavity, pharynx and larynx), and pancreatic adenocarcinoma.	Warner-Lambert Company, 2800 Plymouth Road, P.O. Box 1047, Ann Arbor, MI 48106.
	Treatment of Pneumocystis carinii pneumonia (PCP) in AIDS patients.	

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1987—Continued

[Approved for Marketing*]

[Exclusive Approval**]

Drug Designations

Name of drug	Designated use	Sponsor's name and address
Generic-urofollitropin. *Trade*—Metrodin */ **.	For use in the induction of ovulation in patients with polycystic ovarian disease who have an elevated LH/FSH ratio and who have failed to respond to adequate clomiphene citrate therapy.	Serono Laboratories, Inc., 260 Pond Street, Randolph, MA 02368.
Generic-viloxazine hydrochloride. *Trade*—Vivalan.	Treatment of narcolepsy and cataplexy	Stuart Pharmaceuticals, Division of ICI Americas Inc., Wilmington, DE 19897.
Generic-zidovudine (AZT). *Trade*—Retrovir*/**.	Treatment of acquired immunodeficiency syndrome (AIDS) and AIDS related complex (ARC) in certain patients.	Burroughs Wellcome Co., 3030 Corwallis Road, Research Triangle Park, NC 27709.
Generic-zinc acetate. *Trade*—Not established.	For use in the treatment of Wilson's disease	Lemmon Company, 650 Cathill Road, Sellersville, PA 18960.
Generic-4-aminopyridine (4-AP). *Trade*—Not established.	For the relief of symptoms of multiple sclerosis	Rush-Presbyterian-St. Luke's Medical Center, 1753 West Congress Parkway Chicago, IL 60612.
Generic-5-AZA-2'-deoxycy-tidine (DAC). *Trade*—Not established.	For use in the treatment of acute leukemia	Pharmachemie B.V., Nijverheidsweg 48-50, Post Office Box 552, 2003 RN Haarlem, Holland.
Generic-2'-3'-dideoxy-adenosine. *Trade*—Not established.	Treatment of acquired immune deficiency syndrome (AIDS).	Division of Cancer Treatment, National Cancer Institute, Bldg 31, Room 3A49, National Institutes of Health, Bethesda, MD 20892.
Generic-2'-3'-dideoxycytidine. *Trade*—Not established.	Treatment of acquired immune deficiency syndrome (AIDS).	The Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A49, National Institutes of Health, Bethesda, MD 20892.
Generic-2,3-dimercaptosuccinic Acid (DMSA). *Trade*—Not established.	Treatment of lead poisoning in children	Johnson and Johnson, Baby Products Co., Grandview Road, Skillman, NJ 08858.
Generic-24,25 dihydroxy-cholecalciferol. *Trade*—Not established.	Treatment of uremic osteodystrophy	Lemmon Company/TAG Pharmaceuticals, Inc., P.O. Box 630, Sellersville, PA 18960.

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Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Year 1988

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1988.

SUMMARY: The Secretary of Education announces final funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, the National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1141). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the RRTC program of NIDRR, formerly NIHR, is contained in section 204 of the Rehabilitation Act of 1973. Under this program, awards are made to institutions of higher education, public and private agencies and organizations—including Indian tribes—and tribal organizations, in affiliation with universities. NIDRR can make awards for up to sixty months.

On October 7, 1987 NIDRR published in the **Federal Register** (52 FR 37574) for public comment twelve proposed priorities for RRTCs in fiscal year 1988. That notice included proposed priorities in areas of psychosocial and vocational rehabilitation research, such as employability development, supported work, rehabilitation, community integration for individuals with developmental disabilities, rehabilitation of special populations and elderly disabled persons, research on families with disabled members, and research to make housing more accessible, that NIDRR intends to approach through RRTCs in fiscal year 1988. The notice requesting transmittal of the applications for these priority Centers was published with the Notice of Proposed Priorities, and the closing date for receipt of applications was December 15, 1987. This notice does not solicit additional applications, nor will NIDRR accept applications transmitted after December 15, 1987.

Analysis of Comments and Changes

NIDRR received 34 letters of comment from the public. A discussion of the requests for substantive changes and clarifications follows, with general comments first, and then comments on each individual priority.

Study Institute's and State-of-the-Art Studies

Comment: Several commenters questioned the purpose or meaning of "state-of-the-art" study. One other commenter suggested that each Center should conduct an annual institute on rehabilitation issues, leading to a publication, as is required in some of the vocational priorities.

Discussion: NIDRR intends this to mean that the RRTC should conduct a review of the state-of-the-art, either by a conference, an expert review, or some other means proposed by the applicant. NIDRR is not requiring that every Center conduct an ambitious study institute each year because of the fact that work in some of the priority areas will be quite new and the constituencies for the institutes not yet well-defined. This is not true in the vocational area where there is a tradition and an expectation that such institutes will occur. However, the Secretary notes that the conduct of study institutes is one means by which a Center can conduct some of its dissemination activities.

Changes: The phrase, "Conduct • • • a state-of-the-art study" has been modified to read, "a study of the state-of-the-art" to reflect more clearly NIDRR's intent.

Inclusion of Long-Term Mentally Ill Individuals

Comment: One commenter remarked that there should be priorities for research on persons disabled by chronic mental illness, and suggested that priorities of supported employment, facilities improvement, rehabilitation information systems management, and community integration of elderly persons with mental retardation should include focus on persons with mental illness.

Discussion: NIDRR currently supports four RRTCs dealing specifically with issues of mental illness. In addition, NIDRR recently funded a priority project to evaluate models of supported employment for this population. The Secretary will not require these currently announced Centers to focus on problems of persons with mental illness. However, the supported employment and the facilities improvement Centers are encouraged to assess extending these programs to new populations, including those with mental illness. NIDRR intends to continue research related to this important target population outside these priorities.

Changes: None.

Rehabilitation Information Management

Comments: Several commenters suggested that NIDRR establish a priority for improving management generally in the state rehabilitation agency system. These commenters suggested that issues such as "organizational culture", staff training, planning and evaluation, and other traditional management issues should not be neglected.

Discussion: The Secretary agrees that the general management issues are important ones, and also that there are interesting theoretical models for increasing productivity in public agencies that could be worthwhile subjects of further exploration. However, the Secretary wants to avoid the dilution of effort and instead to focus on the solution to discrete but important problems in management. Therefore, the decision was made to focus this RRTC for this time period on improving the manangement of information in rehabilitation agencies. Certain issues of planning and evaluation, staff development, and organizational cultures may be touched upon in the context of improving information management, thereby developing models that might be adapted to a broader range of issues. NIDRR also urges applicants to approach these issues in investigator-initiated competitions in the Field-Initiated Research and Innovation Grant programs.

Changes: None.

Enhancing Employability

Comments: One commenter suggested that this priority contains two very different issues in the employability development process. One issue focuses on the disabled person and his or her abilities, limitations, needs, and aspirations. The other issue focuses on the needs of the rehabilitation professional, the employer, and others for training, support, and program models. The commenter suggested that these two separate aspects of the problem should be isolated and two separate priorities announced.

Discussion: The Secretary agrees that these are different issues and that they traditionally have been approached by different groups of researchers, usually in isolation. For this reason, this Center

priority was designed to include comprehensive, multifaceted, interdisciplinary, and synergistic research and training in this area.

Changes: None.

Rehabilitation of Native Americans

Comments: NIDRR received a number of comments concerning the priority for a Center in rehabilitation of American Indians with disabilities. The first of these was that the Center's scope should be expanded by changing the target population to Native Americans.

Some commenters objected to the priority's requirement that there be a focus on developing models to improve employment of Native Americans with disabilities on and adjacent to reservations, on the grounds that the economies in these areas are too limited to afford employment opportunities to Indians with disabilities. Others urged that the priority should focus on culturally sensitive, comprehensive approaches to rehabilitation, including issues of substance abuse and self-esteem. Some commenters stated that the priority ignored the needs of specific subpopulations, including youthful and elderly population groups and urban Indians.

A number of commenters urged that NIDRR require the RRTC to work on issues of prevention and restoration. Finally, some commenters stated that the recent Congressionally-mandated study, entitled "A Study of the Special Problems and Needs of American Indians with Handicaps Both On and Off the Reservation", prepared by the two existing RRTCs on Native Americans obviates the need for further studies of the specific rehabilitation problems of Native Americans with disabilities.

Discussion: NIDRR chose to use the term "American Indians" because that was the focus of the Congressional mandate for a study. However, the Secretary agrees to the use of a more inclusive designation for the Center.

The Secretary recognizes that the economies on and adjacent to many Indian reservations are depressed, and that employment opportunities are scarce. This is the very reason that an RRTC must analyze the precise nature of those labor markets *in order to develop models for increasing employment.* The Secretary and NIDRR believe that employment is a critical component of independent living and are committed to developing employment options for all persons with disabilities who want to work. The Center is supposed to develop and test culturally sensitive models to enhance employment within the context of the area economies. This may be a difficult task, but it is one that is crucial to the independence and dignity of many individuals with disabilities. The Center is not precluded from developing employability enhancement models for urban Indians, but it is not required to do so, nor is it required to conduct analyses of urban labor markets. In fact, the study referenced above included a number of "Recommendations for Improving the Status of American Indians with Disabilities". Among those related to employment (see page 16 of the Executive Summary) was to "• • • facilitate the development of jobs for American Indian people with disabilities within the existing job market, particularly on and adjacent to reservations".

NIDRR provides support to studies of rehabilitation for all age groups. Each applicant for the Center grant may select any age group or groups as the focus of this research, and may include special research or dissemination projects that serve either very young or elderly Native Americans.

NIDRR realizes that the problems of Native Americans with disabilities are extremely complex, and are compounded by factors in the external community, including economic limitations and service delivery problems, as well as by attitudinal and cultural issues, language and geographic barriers, substance abuse, learned dependency, and other factors. The RRTC will approach and develop potential solutions to only a fraction of those issued during this five-year period. However, the priority as announced both implies and explicitly states that the RRTC is expected to develop culturally relevant models for employability development, for general service delivery, for training, and for information dissemination. The priority has been amended slightly to emphasize this fact.

Although NIDRR recognizes the importance of both primary and secondary prevention of disability, it does not require that this be a focus of this RRTC. The Public Health Service is generally charged with the responsibility for prevention. NIDRR does not believe its resources for this RRTC should be widely diverted from the needs of Native Americans who do have disabilities, and therefore has not made this a focus of this Center.

Finally, the Secretary does not believe that the recent above-referenced study meets all the needs for additional information on the incidence, prevalence, etiology, distribution, and impact of disability on Native Americans, or of the need for information on service use and availability. The study used only secondary data, which are not ideal for providing the level of detail and specificity needed for this purpose. The priority envisioned that there will be primary data collection and analysis relating to subsamples of the population. Indeed the study itself, in its recommendation to "Improve the Data Available on American Indians Who Are Disabled" (see page 19 of the Executive Summary), indicated eleven areas in need of future research. Many of these were relevant to this priority, including further analysis of mental retardation as a disabling condition among American Indians, an assessment of the needs of reservation Indians within the context of local communities, and an investigation of the status of disabled urban Indians to assess their integration into the community, access to services, employment, and other issues.

Changes: The name of the Center has been changed to include Native Americans rather than only American Indians. The specific requirements for employment studies and service delivery studies have been altered slightly to make explicit the emphasis on developing culturally relevant service models for Native Americans.

Access to Community Living Environments

Comments: One commenter suggested that NIDRR specify the National Advisory Committee for this Center must include a representative of a State Vocational Rehabilitation agency. A second commenter suggested that the third paragraph be amended to include reference to accessible adaptable environments. Several commenters suggested that the priority should include research on supportive services for independent living, since service issues are often a major barrier to access to community living.

Discussion: NIDRR agrees that the National Advisory Committee for the Center should include a representative of a State rehabilitation agency and has so specified in the final priority. The word "adaptable" may help to clarify the intent of the Center, and thus the statement has been amended to refer to environments that are adaptable as well as accessible. However, the Secretary does not agree that research into the issues of community support services should be a specific requirement for this Center. The Secretary does not want to dilute the focus of the Center, in light of the fact that NIDRR supports other research on community support systems.

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For that reason, the priority states that the Center must coordinate with other Centers and projects in relevant areas.

Changes: The priority has been changed to require that a representative of a State rehabilitation agency be included on the National Advisory Committee. The word "adaptable" has been inserted in the third paragraph of the priority.

Rehabilitation of Elderly Persons With Disabilities

Comments: Two commenters suggested that as the population of persons who become disabled after they are older greatly exceeds that with pregeriatric onset of disability, the Center should focus on the former population.

Discussion: The Secretary realizes the increasing incidence of disability as the population ages. However, the elderly population with mild to moderate impairments and disabling conditions is also served by a number of generic service agencies and other agencies that focus specifically on problems of aging persons. The population of those with pergeriatric onset of disability, especially those living outside of institutions, is increasing at a faster rate than the general aging population. This population includes many who have had long-term rehabilitation needs and services, and often their needs are not addressed by service systems not related to rehabilitation and disability. It is important to begin analyzing the needs of this population and planning to meet those needs in order to avoid unnecessary institutionalization.

Changes: None.

New Directions for Rehabilitation Facilities

Comment: One commenter requested that NIDRR clarify that the RRTC on new directions for rehabilitation facilities would assist those facilities to serve individuals with profound mental retardation as one of the new population groups.

Discussion: It is NIDRR's intention that this group be taken into consideration as a target population. Thus the priority has been changed to indicate that persons with profound mental retardation comprise one of the emerging population groups that should be served by facilities in community settings, with the expectation that the RRTC in this area will incorporate this group into its scope of work.

NIDRR supports a program of Rehabilitation Research and Training Centers to conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. The following final funding priorities represent priorities for research in a variety of rehabilitation areas that the Secretary intends to support through the RRTC program in the coming year.

These final priorities were established on the basis of NIDRR initial planning and public comments received during the comment period. The publication of these final priorities does not bind the Federal Government to fund projects in any of these areas. Funding of particular projects depends on the availability of funds and on the quality of the applications that are received.

The priorities represent areas in which NIDRR intends to support research and related activities through grants or cooperative agreements for one or more Rehabilitation Research and Training Centers. Rehabilitation Research and Training Centers have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings as well as for related findings of other studies. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be appropriately accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC will conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers will also conduct studies of the state-of-the-art in relevant aspects of their priority areas. Each RRTC will also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not laer than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center, to include review by peers. Continued funding depends at all times on satisfactory performance and accomplishment. (See 34 CFR 75.253). Each Center will be expected to provide appropriate attendees for a general grants management meeting in Washington, D.C., to be arranged by NIDRR shortly after the Center grant has been awarded.

Final Priorities (12)

New Directions for Rehabilitation Facilities

There are approximately 5,500 rehabilitation facilities in the United States. Facilities have traditionally served as settings for vocational training and evaluation, medical rehabilitation, and long-term employment for individuals with disabilities. State vocational rehabilitation agencies often use contracts and service agreements with facilities for the purchase of vocational rehabilitation services. The Federal Government has provided fiscal incentives for facility expansion and guidelines for the purchase of facility-based services by agencies using Federal grant monies. Rehabilitation services are rapidly shifting from providing evaluation and training in facilities toward providing these services in regular integrated job sites. State rehabilitation agencies may use vendor payments or grant arrangements to obtain transitional employment services that provide training and follow-along services in competitive job sites. Rehabilitation facilities are the most frequent suppliers of these transitional services. At the same time, facilities are also establishing programs for public schools, for post-employment and job retention services, and to train nondisabled persons.

However, many facilities face significant challenges in expanding their expertise and redirecting their services. They are particularly likely to have difficulties organizing programs and services for "new" groups such as persons with traumatic brain injuries, severe learning disabilities, profound mental retardation, and chronic mental illness in community-based settings.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria.

An absolute priority is announced for an RRTC to:

- Develop and evaluate model transitional employment programs, or program components, that assist vocationally limited disabled individuals to acquire and maintain competitive employment;
- Identify, assess, and disseminate new models of enclave and subcontract arrangements that can provide employment for small groups of disabled persons in integrated work settings;
- Develop, based on studies of the direct placement of disabled individuals in competitive jobs, improved techniques and related services to assist disabled individuals to obtain and maintain employment;
- Develop and disseminate new models that facilities can use to provide supportive networks for disabled persons in competitive employment;
- Develop research-based training programs to train staff of rehabilitation facilities to provide services in regular employment settings;
- Develop procedures to assess the needs of disabled youth exiting public schools, to enable communities to develop responsive employment programs;
- Assist facilities that have limited data gathering and research capacities to develop appropriate data and information systems and to participate in research efforts to improve their community-based employment programs;
- Identify and evaluate new technologies such as laser discs, computers, and robotics and provide guidelines and training for the use of such innovations by community employment programs to increase their effectiveness and efficiency in assisting disabled individuals to gain and maintain employment;
- Assess the employment-related needs of special populations of disabled individuals and identify methods by which such groups may be served more effectively by community-based employment services programs;
- Organize and direct an annual study institute on a rehabilitation topic, publish the results in a resource manual, and distribute the manual to State vocational rehabilitation programs; and professionals.

Enhancing Employability of Individuals With Handicaps

Approximately thirteen million people between sixteen and sixty-four years of age are work-disabled. Of the disabled population not employed, (9.5 million) an estimated 8.7 million are not seeking employment. Disabled persons, particularly persons with severe disabilities, are far more likely than nondisabled persons to be out of work. Persons with disabilities who are employed tend to work fewer hours, fewer weeks in the year, and earn less than nondisabled persons. A research and training effort is needed to develop capabilities at the national, state, and local levels to enhance employment potentials for all persons with disabilities.

Research at this Center will be concerned with both the enhancement of individual employability and the enhancement of job opportunities. Services to individuals typically include skills training, employment readiness training, and job placement. Services to employers may include increasing awareness of disability, job development, technical assistance on job modifications, and other disability services. The Center will address employability problems of disabled individuals in preparing for, obtaining, maintaining, and advancing in employment. This area of research will focus on career preparation, career initiation, and career enhancement for disabled individuals. The objective of this research will be the development of techniques whereby disabled individuals can improve their work-related skills and general employability.

A second emphasis of the research and training activities will be the development of more and better employment opportunities, primarily through enhancing employer knowledge of disability, and assisting employers to locate and hire qualified disabled workers. The Center will conduct research which will improve work settings and employer practices for workers who experience the onset of disabilities while employed. The RRTC will assist rehabilitation service delivery systems to adapt to the changing employability needs of persons with disabilities, whether by restructuring services programs, retraining staff, or adopting new service techniques.

NIDRR intends to establish one or more Centers that will be national resources for research and training to assist rehabilitation facilities to establish exemplary community-based employment programs. A critical element of any Center to be supported in response to this priority will be the involvement of individuals with disabilities in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for one or more RRTCs to:

- Develop research and training models to enhance the capabilities of disabled individuals to develop rehabilitation plans, select career goals, and match personal abilities and expectations to available vocational opportunities;
- Conduct research and training to improve the use of vocational evaluations and assessments, and develop reliable and valid assessment measures that will optimize personal choice and the range of employment opportunities for disabled individuals;
- Develop strategies and techniques that will enable special and vocational education and vocational rehabilitation agencies to work together to assist both employers and disabled youth in the transition from school to work;
- Develop technical assistance and training to enable rehabilitation agencies, business and labor associations, and consumer groups to assist employers to hire, retain, or return to work persons with disabilities;
- Investigate the efficacy of a system to facilitate contacts between disabled people seeking jobs and disabled persons who are employed in order to increase the likelihood that the former will obtain and maintain employment;
- Develop and test new approaches for consumer organizations and independent living programs to enhance employment of persons with disabilities;
- Implement and expand computer-assisted vocational rehabilitation techniques to improve the access of rehabilitation counselors to current job data and expedite employment;
- Organize and direct an annual study institute on a rehabilitation topic, publish the results, and distribute the manual to state vocational rehabilitation agencies; and
- Conduct at least one study of the state-of-the-art to identify current knowledge and recommend future research, and organize research and training conferences and short-term institutes to disseminate the results of Center projects to rehabilitation consumers and professionals.

Improving Supported Employment Outcomes for Developmentally and Other Severely Disabled Individuals

During the past several years, Federal legislation and various employment programs for developmentally and other severely disabled individuals have incorporated the concept of supported employment (Developmental Disabilities Act of 1984, Pub. L. 98-527, the Education of the Handicapped Act

Amendments of 1986, Pub. L. 99-457, and the Rehabilitation Act Amendments of 1986, Pub. L. 99-506). Supported employment is defined as, "competitive work in integrated work settings for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicaps, need ongoing support services to perform such work." There is now substantial agreement on many of the issues involved in the administration of supported employment programs, including training needs for direct service and leadership personnel, standards for performance, and measures for the evaluation of outcomes. Preliminary indications from studies of exemplary programs illustrate that these programs can provide significant benefits for program participants at reasonable costs. Other studies have evaluated the role of specific components of supported work, such as paid work in jobs with nondisabled coworkers, behavioral techniques to teach job duties, and the involvement of parents and advocates. The rapid growth in the number and size of supported employment programs has exceeded the capacity of the resource base of trained personnel and established program operating procedures to meet the needs of those persons with more severe disabilities who require ongoing support to maintain regular employment.

Recent research efforts have examined strategies for interagency coordination to promote long-term support for persons with severe disabilities who are employed. Current activities focus on technical assistance, development of information systems, and networks to share information among supported employment programs.

The success of supported employment with developmentally and severely disabled persons has led to replications and expansions to other disability groups. Consequently, NIDRR anticipates there will be a variety of supported employment research and service activities taking place during the period of performance of this RRTC. Although the RRTC to be established under this priority will focus primarily on developmentally disabled persons, the Center will be encouraged to identify methods, techniques and models of value for other efforts in supported employment.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting work sites and consumer-oriented performance criteria. The Center will be an essential component of a national information system on supported employment. It will be expected to share reports, research findings, and program models with other programs on supported employment indentified by NIDRR.

An absolute priority is announced for an RRTC to:

- Analyze vocational assessment techniques, training methods, placement strategies, integration with nondisabled persons, followup and employer assistance, and techniques of imparting job-related social skills, in order to improve supported employment for persons with developmental and other severe disabilities;
- Identify costs and benefits of alternative supported employment models, including time-limited and long-term support programs, for various populations of disabled persons, in order to provide better estimates for planning supported employment opportunities;
- Develop new, and validate existing, approaches to enhancing productivity, wages and benefits, job security, job advancement, and career transitions to increase employment satisfaction for employees and employers in supported work settings;
- Develop and provide training to severely disabled persons, family members, counselors, and peers, to increased their awareness of supported work and to integrate supported employment with other major components of independent living, including transportation, recreation, and residing in the community;
- Analyze and organize training on regulations, employer incentives, standards, contracts, job agreements, economic development factors, and related issues to increase organizational capacities;
- Identify best practices and most effective methods including staffing requirements for large organizations to set up small supported employment units in dispersed locations;
- Conduct research on transition from school to supported employment to improve linkages among programs and to identify issues, methods, and models for both school and adult programs;
- Develop technical assistance and training to ensure that developmentally and other severely disabled youth exiting public school programs will have well-defined pathways for entry into supported employment;
- Analyze long-term funding options for supported employment for individuals who have exhausted the time-limited services provided by the vocational rehabilitation system;
- Analyze the relationship of supported employment to eligibility for income and health insurance benefits in order to inform prospective employers and disabled individuals on financial consequences of supported work;
- Conduct at least one comprehensive study of the state-of-the-art in an important area of supported employment, and serve as a national resource to disseminate information on supported employment programs;
- Provide opportunities for professional development through the temporary exchange of staff with other RRTCs, Federal, State, or local agencies, private industry, or other relevant organizations;
- Identify and assess methods to use technology to improve supported employment; and
- Develop, evaluate, and disseminate materials to provide information, technical assistance, and motivation for supported employment programs, using various media and assuring that all materials are accessible to various persons with disabilities, and are distributed to businesses that may be interested in supported employment programs.

Improving the Management of Rehabilitation Information Systems

Access to specialized information is an essential element of all rehabilitation activities. Major strides in research and training on such severe, but low-incidence, disabilities as spina bifida, spinal cord injury, and deaf-blindness have come through the establishment of specialized information systems and data linkages among programs. Independent living and vocational and other rehabilitation programs generate and use large amounts of information. Eligibility determinations, case management requirements, organizational structures, decisions of rehabilitation professionals and clients, and client or program evaluations all require complex information systems.

In addition, broad and rapid dissemination of new knowledge requires central data depositories with access through on-line data retrieval at the point of use. The implementation and improvement of rehabilitation information systems have substantial program implications; these systems generate needs for staff competent in the use of computers, for interagency and intra-agency coordinating agreements, and for continuous review and revision of the system. Rehabilitation agencies are increasingly using information technology and various databases in all aspects of their rehabilitation programs. As a result of past research and development efforts in this area, several significant rehabilitation information bases and automated information systems are in place or under development, including Spinal Cord Injury Data Systems, Traumatic Brain Injury Systems, Independent Living Systems, the State-Federal Vocational Rehabilitation System, and the databases on the demographics of disability.

At this time, it is important to assure that current and future databases are properly integrated, maintained, and used to enhance rehabilitation practices and results. A Center working in this area must identify model linkages and other arrangements through which the operators of these information systems can cooperate on mutual program goals; develop and test methods to use specific information system components in planning, delivering, and evaluating rehabilitation services; and provide training and information exchange to improve the managment of rehabilitation information systems.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of increasing consumer access to information on rehabilitation program processes and outcomes.

An absolute priority is announced for an RRTC to:

- Develop specific procedures and methods to enhance access to, and effective use of, disability-related information systems by rehabilitation agencies, consumers, and related organizations;
- Identify program needs, including staffing, system design, and organizational development components, and develop training programs to promote improved rehabilitation information management;
- Evaluate existing computer programs, and develop new programs where needed, to improve rehabilitation use of information systems in such areas as functional assessment, development of service plans, case management, and evaluation of rehabilitation processes and outcomes;
- Provide technical assistance to professional and consumer groups on issues related to rehabilitation information systems, with particular attention to availability of resources, avoidance of duplication of data components, methods of data analysis, and cooperation among information sources;
- Facilitate communication between research and model demonstration systems and rehabilitation service delivery agencies on issues in the management of service programs;
- Conduct conferences, presentations, short-term institutes, and other training activities to facilitate linkages among rehabilitation information systems, particularly those organized as a result of research support from NIDRR; and
- Organize at least two national conferences on the state-of-the-art in information management for rehabilitation research and service delivery during the period of the project.

Improving Community Integration for Persons with Mental Retardation

A basic tenet of the concept of community integration of people with mental retardation is that they live and work in non-restrictive community environments. The expressed preferences of disabled individuals and their families favor maximum community integration, living in typical residences, working in regular jobs, and using community facilities for daily living activities and recreation. Most States have closed institutions, or parts of institutions, where people with mental retardation had resided in the past. These institutions now have discharged their clients into a variety of community settings. One of the major challenges to successful deinstitutionalization is that of developing local community capacity to provide appropriate options in residences, work, education, and recreation for individuals with mental retardation. It is important to support rather than supplant families so that citizens with disabilities are not forced into institutions or other out-of-home settings. Results of previous research indicate that small-scale, normalized living arrangements are most effective in promoting successful integration into the community for most disabled populations.

Social relationships and support systems are an integral part of successful integration into community living. People with disabilities need opportunities and social skills to interact with a range of nondisabled persons in the community, including family members, neighbors, merchants and providers of community services, and other participants in job, school, or recreational settings. The involvement of parents and consumers in all aspects of the design, operation, and monitoring of community services to persons with mental retardation has increased the sensitivity of service providers.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches that improve the social and community living skills of persons with mental retardation; enhance the available residential options; and increase the capacities of consumers, parents, and professionals to operate a program of community integration that is guided by the needs and preferences of individuals with mental retardation and their families. A critical element of any Center to be supported in response to this priority will be the involvement of disabled persons and their families in the design, implementation, and evaluation of Center activities.

A Center in this area must serve as a national resource for information on the community integration of persons with mental retardation and maintain a database on the results of research in this area. The Center must also make a particular effort to establish linkages with other RRTCs on community integration, mental retardation, and independent living; national disability organizations; parent training projects; University Affiliated Facilities; and Developmental Disability Councils.

An absolute priority is announced for an RRTC to:

- Identify existing housing options and document best practices to enable persons with mental retardation to reside with their families, in foster-care homes, or in other small-scale residences, and develop guidelines for effectively matching the living arrangements to the needs of the individual;
- Identify options for long-term financing of housing accommodations, recreational opportunities, health services, respite care, and other support needed by mentally retarded persons and their families, and develop and disseminate information on these options;
- Develop and evaluate new options for living arrangements, recreational activities, health services, and other community programs and services that will improve the integration of persons with mental retardation into their communities;
- Develop and evaluate strategies that will train families and service providers to help persons with mental retardation establish and maintain

supportive social relationships in the community;

• Develop and evaluate strategies to train persons with mental retardation to determine their own vocational, recreational, housing, and independent living choices, and to train service providers to respond in positive ways to the choices made by persons with mental retardation; and

• Conduct at least one conference on the state-of-the-art in improving the community integration of persons with mental retardation in order to disseminate the research findings and to provide guidance for future research.

Access to Community Living Environments

Providing appropriate housing for severely disabled people is a major undertaking involving a complex array of individuals with various types and degrees of disability and housing needs on the one hand, and a variety of housing types and options, design challenges, financial issues, technology requirements, and statutory and administrative authorities on the other.

It is an area in which millions of dollars are spent annually, research is minimal, and useful information is difficult to find. These problems extend beyond housing alone to encompass recreational, educational, vocational, commercial, and transportation barriers that are encountered in the course of daily living.

An immediate objective is to make better use of the information that is available, including research data, models of accessible housing, and standards and guidelines that have been developed for housing construction. Over the longer term, it is important to develop better housing designs, based on field and laboratory research, and tested by disabled persons in regular use. One prerequisite to improving housing design in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, and finance housing more aware of the potential for creating more accessible adaptable environments.

A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing, recreational facilities, and other environments in which disabled persons can live independently. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities to benefit all citizens. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

A Center to be funded in response to this priority must maintain liaison with the Accessibility Subcommittee of the Interagency Committee on Handicapped Research and the Architectural and Transportation Barriers Compliance Board, as well as with NIDRR-supported research projects and Centers in such areas as housing, independent living, and community integration. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center must form a National Advisory Committee composed of individuals with disabilities and representatives of disability-focused organizations, state rehabilitation agencies, architects, designers, engineers, planners, builders, manufacturers, and housing providers to provide input on needs and to facilitate the evaluation and dissemination of Center products.

An absolute priority is announced for an RRTC to:

• Analyze legal, regulatory, commercial, and financial disincentives to the development of suitable living environments of severely disabled persons and develop strategies to address those problems;

• Develop recommendations for housing adaptations appropriate for persons with hearing and vision impairments;

• Develop models of accessible environments and provide for their evaluation by disabled individuals;

• Develop, acquire, and maintain both graphic and text databases and serve as a national resource for information on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, providing information and referral;

• Conduct training programs to increase awareness of the concepts of accessibility and availability of adaptive environmental design for the full range of audiences concerned with accessible housing;

• Promote the concepts of accessible housing and universal adaptable design, including ideas from abroad, among schools of architecture and urban planning; and

• Conduct at least one state-of-the-art study on a significant aspect of accessibility.

Improving the Community Integration of Elderly Persons With Mental Retardation and Other Developmental Disabilities

Demographers and gerontologists estimate that the population of persons over sixty-five years of age in the United States will grow from 27 million in 1983 to 67 million in 2040. In addition, they estimate that by the year 2040, twelve percent of the population will be over seventy-five years of age. The population of elderly persons with mental retardation and other developmental disabilities is of particular concern to NIDRR. There may be more than 150,000 persons over sixty years of age who have mental retardation and other developmental disabilities, and predictions are that this number will approach 600,000 within forty years.

A review of the relevant current literature reveals that services to this specific aging population, and consequently the research and training to support such services, are very sparse. One reason for this is that neither the public nor private sectors has addressed adequately the needs of the elderly population in general or the problems of this subpopulation in particular. Although some programs have been adopted in an effort to assist elderly citizens to improve their lives, it is difficult for individuals with mental retardation and other developmental disabilities to use the generic service systems.

Only in the last twenty years has living outside of institutions, in normal community settings, been a viable option for older persons with mental retardation. Thus, any existing data about the effects of aging with mental retardation and other developmental disabilities are based on individuals residing in institutions. These data are inadequate to assess the needs of this aging subpopulation living in regular community settings. A third reason for the dearth of programs is that funds for services and research in the area of mental retardation and other developmental disabilities have been directed toward children and young people. Recent legislation pertaining to persons with these disabilities did not anticipate that improved health care, the growth of early intervention programs, improved living arrangements, and improved community-based resources would result in significantly extended lifespans for this population. There has been no organized planning to meet the current and future needs of this aging population.

Older people with and without developmental disabilities share many needs that are not now being met in their communities, and which frequently lead unnecessarily to institutionalization. Both groups require improved home care and supportive living arrangements, and often need mental health services, nutritional guidance, recreational and transportation services, legal assistance, and opportunities to socialize, as well.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches to maintaining physical, psychological, family, and vocational functioning for aging persons who have mental retardation and other developmental disabilities. A critical element of any Center to be funded under this priority will be the involvement of individuals with developmental disabilities and their families in the planning, conduct, and review of the research and related activities.

A Center in this area must serve as a national resource for information on aging persons who have mental retardation and other developmental disabilities, and maintain information on the results of research in this area. The Center also must make particular effort to establish linkages with other Research and Training Centers focusing on community integration, mental retardation, and independent living; Centers on Aging and University Affiliated Facilities; and organizations representing disabled individuals and their families. This Center must also disseminate its research findings to a broad target audience of service providers, including health care professionals, social workers and gerontologists, attorneys and insurance carriers, rehabilitation professionals, and others.

An absolute priority is announced for an RRTC to:

• Analyze existing services for noninstitutionalized mentally retarded and other developmentally disabled aging persons, identify those generic services that may be appropriate for this population and barriers to the use of those services, and develop strategies for more effective collaboration between Developmental Disabilities service agencies and those responsible for services to elderly persons;

• Develop and evaluate programs that will enable families and other caregivers to detect declines in behavioral and functional levels of aging persons with mental retardation and other developmental disabilities, with particular attention to persons with Down Syndrome, and to intercede to maintain maximum functional ability;

• Investigate the reactions of this population to transitional periods, such as deaths of family and friends, retirement, change in residence, and changes in physical and mental functioning, and develop effective counseling techniques matched to individual needs;

• Develop and evaluate innovative models using long-term funding streams for small-scale community living arrangements that will allow older people with mental retardation and other developmental disabilities to remain in nonrestrictive settings after their families and other primary caregivers may be unable to care for them;

• Develop and evaluate innovative strategies to provide families and other full-time caregivers with needed respite and support, in order to prevent institutionalization;

• Develop and evaluate materials to increase the awareness of individuals providing services to the general aging population about the needs of individuals with developmental disabilities;

• Conduct at least one study of the state-of-the-art in improving the functioning of aging persons who have developmental disabilities, to focus attention on the research findings and to provide guidance for future research.

Improving the Functioning of Families Whose Members Have Disabilities

Many of the recently acquired characteristics of American families—single parents, two working parents, geographic mobility, separation from the extended family, economic pressures, lack of leisure time, and increased stress—have particularly severe consequences for families with disabled members. Families with disabled members have the additional pressures of identifying, accessing, arranging, managing, and financing a wide range of medical, educational, rehabilitative, employment, recreation, transportation, and housing services. Families with disabled children, parents, or grandparents must also attend to the social and emotional needs of all members of the family.

Despite the magnitude of these challenges, there are many special needs families who have learned to master these complex tasks and at the same time to assist other disabled persons, raise other children, and engage in a variety of community and leisure time activities. There remain many other special needs families who have not been successful in attaining their goals of creating a balanced and rewarding family life.

The current literature, including a report from an NIDRR-sponsored conference on special needs families, indicates that one cause of inadequate family coping may be that family members, and the professionals on whom they rely, expect disability to have a negative impact on family functioning. This expectation may become a self-fulfilling prophecy which diminishes the self-esteem of the disabled person and adds unnecessary stress to the family unit. Professionals working with special needs families often approach them from a perspective of pathology, which again may undermine the ability of these families to cope constructively. The end product may be a family with low expectations, lacking a support system, unable to cope, and regarding institutionalization of the disabled member as the only viable option.

The attitudes of society in general also affect the functioning of a family unit and the member who is disabled. Too often, society in general tends to have negative conceptions and low expectations concerning persons with disabilities. People often regard disabled persons as incapable of making decisions or as not sharing wishes, values, and goals typical of the broader society. They are often unaware of the positive contributions that disabled individuals make to their families and to society as a whole. These negative biases make it very difficult for families to find integrated schools, housing, worksites, and recreation programs, or to assist all members of the family to achieve maximum levels of functioning.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation strategies and information to assist families with disabled members to improve their coping skills, attitudes, and general knowledge about services. The Center must include research and training to address the needs of families whose disabled members are of various ages and have various family roles, including children disabled at birth or who incur disability later, and parents who incur disability as well as disabled persons who become parents. A critical element of any Center funded under this priority will be the involvement of individuals with disabilities and their close relatives in the planning, conduct, and review of the Center's program. These programs must be open to the involvement of diverse groups, such as single parents, members of ethnic and racial minorities, and traditionally

underserved families such as those whose members have mental health impairments or are dependent on respirators.

A Center in this area must serve as a national resource for information on families whose members have disabilities and maintain a database on the results of research in this area. The Center must also make particular effort to establish linkages with other NIDRR-supported RRTCs, organizations representing disabled members and their families, independent living centers, and other agencies serving disabled people. The Center must conduct training and other activities to disseminate the results of its research to a wide range of target audiences, including disabled individuals and their families, health care professionals, educators, rehabilitation service providers, communications media, and those who provide social and community services to the general population.

An absolute priority is announced for an RRTC to:

- Study successful family coping and develop and evaluate individualized interventions that could assist families to improve their functioning;
- Conduct research and training to enable families and their disabled members to become involved in the development, provision, and evaluation of integrated, age-appropriate, community-based services;
- Assess the impact of the attitudes of disabled individuals, the members of their families, and the general public on the functioning of the family unit;
- Evaluate the impact of the availability/unavailability of support services on family functioning, and the disincentives to raising children and maintaining adults at home;
- Develop and disseminate criteria to match disabled individuals and foster-care families, in order to promote maintenance in lease restrictive environments; and
- Conduct at least two studies of the state-of-the-art in improving functioning in special needs families in order to focus attention on the Center's findings and to provide guidance for future research.

Rehabilitation of Economically Disadvantaged Individuals with Disabilities

While the demographic data are inadequate to make precise comparisons of the amount of disability in economically disadvantaged populations, including minorities, one general finding is that the incidence and prevalence of disability is greater in those populations. Furthermore, there is evidence that economically disadvantaged individuals are less likely than other disabled individuals to use vocational rehabilitation services. Indications are that the distribution of rehabilitation facilities and trained personnel does not meet the needs of economically disadvantaged individuals with disabilities, and there are few models of effective rehabilitation service delivery for these special populations.

Different cultures have different attitudes toward disability and different expectations for rehabilitation of persons with disabilities. There are differences in the structure and functioning of disadvantaged Asian, Black, Hispanic, and white families. Support systems that often assist middle-class disabled individuals during rehabilitation may be quite different in disadvantaged communities. The willingness of the poor disabled individual to seek and accept rehabilitation differs as a function of the mores of his/her culture. Despite some efforts, the rehabilitation community has conducted insufficient research to illuminate and address effectively the rehabilitation needs of disabled economically disadvantaged individuals. There are many psychological, social, and financial barriers to the optimal rehabilitation of disadvantaged individuals. There are insufficient trained personnel working with these populations; and there is a lack of research on effective rehabilitation techniques and technology applicable to the special problems of disadvantaged disabled individuals.

NIDRR intends to initiate a program of coordinated, interdisciplinary research and training to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing functional capacity of disadvantaged individuals with disabilities. This Center will serve as a national information resource on issues relating to rehabilitation of economically disadvantaged and create an accessible data base for clinicians, researchers and disabled individuals. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR-sponsored consensus conference.

A critical element of any Center to be funded under this priority will be the involvement of economically disadvantaged individuals, with disabilities and their families in the planning, conduct, and review of the research and related activities.

Universities and affiliated organizations with particular familiarity with problems of disabled disadvantaged and minority individuals, including Historically Black Colleges and Universities, are encouraged to submit applications under this priority.

An absolute priority is announced for an RRTC to:

- Conduct research on the incidence and prevalence of disabilities among economically disadvantaged populations, including minorities, to provide an information base for developing services for those populations;
- Identify the factors contributing to unemployment among disabled economically disadvantaged individuals and develop model programs to increase the rate of employment;
- Assess the availability of various technological aids and devices currently commercially available for the purpose of improving the access of economically disadvantaged to appropriate technology;
- Conduct research on attitudinal barriers to the rehabilitation of disadvantaged individuals in order to improve rehabilitation services available for these populations;
- Identify and develop formal and informal support systems that assist economically disadvantaged disabled individuals to obtain rehabilitation services and disseminate information on ways to develop optimal systems; and
- Conduct a conference on the state-of-the-art in rehabilitation techniques that are effective in addressing the special problems of economically disadvantaged individuals with disabilities.

Rehabilitation of Older Persons With Disabilities

Older persons who experienced onset of disability early in life, as well as persons who incurred their disability after they became elderly, have very specific rehabilitation problems that need to be addressed through research. At least eighty percent of individuals over sixty-five years of age have one or more identifiable chronic diseases. The most common of these include arthritis, reported in more than forty percent of older people; impaired vision or hearing (twenty to thirty percent); diabetes (ten to fifteen percent); chronic heart conditions (fifteen to twenty percent); or a diminution of mental function (five percent or more). These conditions often lead to functional losses that interfere with the ordinary activities of daily living. About one-fifth of persons over seventy years of age report that they need the help of another person for at least some part of every day; this figure rises to forty percent for persons over the age of eighty. The number of older Americans with pre-geriatric onset of disability is increasing, and their number is likely to continue to increase as the life expectancies of disabled persons rise.

There are many psychological, social and financial barriers to the optimal rehabilitation of older disabled individuals. The wide range of individual differences within categories of disabling conditions makes the development of individualized treatment a difficult challenge for professionals, disabled individuals, and society. Presently, financial assistance programs facilitate institutionalization of elderly persons with disabilities, there is a lack of well-trained personnel to work in the rehabilitation of older disabled persons, and there is a paucity of research on effective rehabilitation techniques and technology applicable to elderly disabled individuals. Older disabled individuals and their families, as well as those who provide services to them, are expressing a growing preference for the development of options for older disabled persons to participate in the full range of community activities as an alternative to segregated services or institutions. At present, there are insufficient models for rehabilitation services to promote maximum independence and community-based services for older persons with disabilities.

A special emphasis of this project will be the physical and psychosocial functioning of persons with pre-geriatric onset of physical disability, such as persons with spinal cord injury, post-polio syndrome, and cerebral palsy. It is of critical importance to determine their unique rehabilitation needs in order to formulate optimum strategies for supporting individuals with these disabilities in the community. A comparative analysis should be performed on support systems needed by aging persons with both pre- and post-geriatric onset of disability.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate behavioral, medical, and technological rehabilitation approaches to maximizing the functional capacity of elderly individuals with disabilities. The Center must have a national scope, and must involve all investigators in the development of training programs that will be provided at various sites throughout the country. A critical element of any Center to be funded under this priority will be the involvement of older individuals with disabilities and their families in the planning, conduct, and review of the research and related activities. The Center will provide, prior to the end of its period of performance, documentation of one or more rehabilitation techniques suitable for consideration for an NIDRR sponsored consensus conference.

An absolute priority is announced for an RRTC to:

- Investigate alternative methods of financing home support and community services for disabled elderly individuals in rehabilitation programs to prevent premature placement of those individuals in domiciliary care;
- Assess the effectiveness of existing rehabilitation techniques and technology in reducing such secondary complications as pressure ulcers, incontinence, depression, and memory loss among older persons;
- Conduct research comparing older disabled individuals with a pre-geriatric onset of disability and individuals who become disabled late in life in order to develop effective rehabilitation programs for both groups;
- Identify, develop, and test models that integrate long-term care facilities for older disabled individuals into community environments to improve existing facilities and develop options for new, integrated community care facilities;
- Assess the availability and effectiveness of various commercially available technological aids and devices in improving the rehabilitation of older disabled individuals;
- Study the special rehabilitation and socio-economic problems of individuals with early onset of physical disabilities, such as spinal cord injury, post-polio syndrome and cerebral palsy;
- Determine the impact, if any, of Independent Living services in providing older severely disabled individuals with the least restrictive environment and the maximum level of independence within their community;
- Develop public education materials outlining strategies for reducing secondary complications of disability;
- Conduct research on attitudinal barriers to the rehabilitation of older disabled individuals and disseminate information to reduce those barriers;
- Identify and develop formal and informal support systems to assist older disabled individuals to obtain and use rehabilitation services and disseminate information to develop effective models; and
- Conduct one study of the state-of-the-art in rehabilitation and community integration techniques that are effective for older individuals who were disabled early in life and one such study on techniques appropriate to the needs of older persons who become disabled.

Improving Rehabilitation of Native Americans

Native Americans are often isolated from rehabilitation services by linguistic, attitudinal, cultural, and geographic barriers which may not be evident either to the person who is disabled or to the service provider. The Native American population with disabilities may require specialized rehabilitation services and a unique service delivery system to meet certain needs that often differ from those of other populations.

Information presently available on the incidence and prevalence of disability among Native Americans is based upon secondary analysis of data on the general population. The representation of Native Americans in any general sample is inadequate to reflect accurately the presence and distribution of specific types of disabling conditions among that subgroup. There is not sufficient data on the employment histories or patterns of service use in this population to plan appropriate rehabilitation services for Native Americans. However, it is known that there is a high rate of disabling conditions among American Indians and that the distribution is different from that in the general population, and that disabled Native Americans are less likely than other disabled people to receive effective rehabilitation services.

A Center to address these problems must involve Native Americans with disabilities in various capacities in all facets of the development and operation of the Center, and applicants must include evidence of involvement of disabled Native Americans in policymaking and administration of the RRTC. The Center also must form linkages with the various service delivery systems serving Native Americans, both on and off reservations. These systems should include Federal, State, regional, tribal, local, and private agencies in order to demonstrate methods for disseminating findings and for utilizing existing resources to improve service delivery.

Such a Center must provide training to rehabilitation service providers, researchers, and managers to increase their awareness of the unique rehabilitation needs of Native Americans and of innovative

approaches to meet these needs. This training should involve collaborative sponsorship with other Rehabilitation Research and Training Centers, as well as with public, private, and tribal rehabilitation, health, and human services agencies.

An absolute priority is announced for an RRTC to:

- Survey Native American populations to determine the incidence, prevalence, and demographic distribution of disability among American Indians and/or Native Americans, estimate levels of employment and unemployment for Indians with disabilities, and identify patterns of service use;
- Analyze labor market conditions on and around Indian reservations and develop culturally sensitive model employability development programs that take into account these labor market conditions;
- Develop and evaluate culturally sensitive methods for assessing rehabilitation needs of Native Americans, and develop and test appropriate models to meet some of those needs;
- Develop methods to evaluate attitudinal barriers to service delivery as a basis for designating improved models of rehabilitation service delivery;
- Identify the rehabilitation training needs and provide training to rehabilitation service providers, researchers, managers, policymakers, and Native Americans with disabilities;
- Design appropriate models for career development, job enhancement, and job retention in order to improve employment opportunities and rehabilitation outcomes;
- Develop and dissiminate culturally relevant informational materials to increase use of rehabilitation services by Native Americans;
- Develop strategies to ensure optimal use of available rehabilitative technology by Native Americans; and
- Conduct at least one study of the state-of-the-art in some significant aspect for improving rehabilitation services to Native Americans with disabilities.

Mental Health Rehabilitation of Individuals With Deafness

An estimated fourteen million Americans, or 66 in every 1000, have signficant hearing impairment. At least two million—9 in 1000—are profoundly deaf. About half a million persons became deaf before they reached age nineteen, that is, before they had established vocations. About 200,000 persons, one of every thousand Americans, became deaf before the age of three, that is, before they developed effective language. This last group, the prelingually deaf, though a small minority, requires separate attention from those deafened after the acquisition of language. This segment of the population presents a major challenge to public and private mental health rehabilitation efforts. Few skilled professionals and service programs are available to provide timely, expert mental health rehabilitation interventions. For many, satisfactory adjustment is further complicated by the presence of additional disabilities, lower levels of educational attainment, underemployment, and reduced earnings.

Research in this area is needed to identify the characteristics of effective counseling strategies and interventions matched to the characteristics of deaf individuals; to refine the quantative and qualitative methods for assessing psychological, social, and emotional adjustment and performance; and to develop models for effective delivery of coordinated programs of mental health rehabilitation services.

A critical element of any Center to be supported under this priority will be the involvement of individuals who are deaf in the planning, conduct, and review of all Center activities. All assessment instruments, training materials and courses, databases, and technical assistance developed by the Center must be provided in formats that are fully accessible to individuals with various types of hearing impairments. This Center will develop a national data base in this field of activity and serve as a central repository of information on mental health illness of individuals with deafness.

An absolute priority is announced for an RRTC to:

- Investigate the causes of abnormal social, emotional, linguistic, and cognitive development of people with deafness or severe hearing impairment;
- Develop assessment techniques, rehabilitation interventions, and training approaches, including interpreter training, to benefit this population;
- Develop models for clinical interventions and service delivery to improve the availability and effectiveness of mental health rehabilitation services for individuals with deafness;
- Develop and evaluate models of technical assistance to state rehabilitation agencies to improve the development and implementation of mental health rehabilitation services for deaf individuals;
- Provide advanced training in research for professional practitioners in mental health rehabilitation of persons who are deaf and hearing impaired, with an emphasis on recruiting individuals with deafness for that training;
- Explore and develop suitable visual media, appropriately captioned, to enhance the dissemination of new knowledge in this area to appropriate audiences;
- Serve as a resource for information on mental health and deafness and maintain a database on the results of research in this area; and
- Conduct at least one study of the state-of-the art in a significant aspect of mental health rehabilitation of individuals with deafness.

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

Program Authority: 29 U.S.C. 762.

Dated: January 19, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-1876 Filed 1-28-88; 8:45 am]

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Friday
January 29, 1988

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to add a new part to implement Title VII, Part C of the Rehabilitation Act of 1973, as amended. This program authorizes grants to designated State units for projects that provide independent living services for older blind individuals.

These proposed regulations include information about the kinds of project activities supported under this program, the application requirements, and the selection criteria for evaluating applications.

DATES: Comments must be received on or before March 29, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Judith Miller Tynes, Rehabilitation Services Administration, U.S. Department of Education, Mary E. Switzer Building, Room 3328, (M/S 2312) 330 C Street SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Judith Miller Tynes (202) 732–1346.

SUPPLEMENTARY INFORMATION: The proposed regulations also contain post-award requirements that relate to permissible methods of providing project services and mandatory confidentiality of client information.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 367.20 and 367.21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3326, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 367

Education, Independent living services, Older blind individuals, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.177, Independent Living services for Older Blind Individuals Program)

Dated: January 12, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 367 to read as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

Subpart A—General

Sec.

367.1 What is Independent Living Services for Older Blind Individuals?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

367.10 What assurances must a designated State unit submit to receive a grant?

Subpart C—How Does the Secretary Make an Award?

367.20 How does the Secretary evaluate an application?
367.21 What selection criteria does the Secretary use?
367.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met after an Award?

367.30 How are services to be administered under this program?
367.31 What are the requirements pertaining to the protection, use and release of personal information?

Authority: 29 U.S.C. 796f, unless otherwise noted.

Subpart A—General

§ 367.1 What is Independent Living Services for Older Blind Individuals?

This program support projects that provide independent living services to older blind individuals.

(Authority: 29 U.S.C. 796f)

§ 367.2 Who is eligible for an award?

Any designated State unit is eligible for an award under this program.

(Authority: 29 U.S.C. 796f)

§ 367.3 What activities may the Secretary fund?

Authorized activities under this program include—

(a) Services to help correct blindness or visual impairment such as—

(1) Outreach services;

(2) Visual screening;

(3) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions;

(4) Ocular prostheses; and

(5) Hospitalization related to these services;

(b) The provision of eyeglassers and other visual aids;

(c) The provision of services and equipment to assist an older blind individual to become more mobile and more self-sufficient;

(d) Mobility training, braille instruction, and other services and equipment to help an older blind individual adjust to blindness;

(e) Guide services, reader services, and transportation;

(f) Any other appropriate services designed to assist a blind person in coping with daily living acitvities, including supportive services or rehabilitation teaching services; and

(g) Activities that will improve or expand services for older blind individuals and help improve public understanding of the problems of those individuals.

(Authority: 29 U.S.C. 796f)

§ 367.4 What regulations apply?

The following regulations apply to Independent Living Services for Older Blind Individuals:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 367.

(c) The regulations in 34 CFR 365.13.

(Authority: 29 U.S.C. 796f)

§ 367.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definition.* The following definitions also apply to this part:

"Designated State unit" means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

"Independent living services for older blind individuals" means any services enumerated in § 367.3 that will assist an older blind individual to correct blindness or visual impairment or to adjust to blindness by becoming more able to care for individual needs.

"Older blind individual" means an individual aged fifty-five or older whose severe visual impairment makes gainful employment extremely difficult to obtain but for whom independent living goals are feasible.

(Authority: 29 U.S.C. 796f)

Subpart B—How Does One Apply For an Award?

§ 367.10 What assurances must a designated State unit submit to receive a grant?

Each designated State unit shall submit to the Secretary assurances that any new methods and approaches relating to the services described in § 367.3 for older blind individuals that are developed by projects under this program will be incorporated into its State plan for independent living services authorized by section 705 of the Act.

(Authority: 29 U.S.C. 796f)

Subpart C—How Does the Secretary Make an Award?

§ 367.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the criteria in § 367.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 796f)

§ 367.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine the extent that the need for independent living services for older blind individuals is justified in terms of complementing or expanding existing independent living programs and facilities and the potential of the project to support the overall mission of the State-Federal independent living program as stated in Title VII, section 701 of the Act.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(6) The extent to which the plan of operation and management includes involvement by blind individuals in planning for and conducting of program activities.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older blind individuals.

(e) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment and supplies.

(g) *Service comprehensiveness.* (20 points)

(1) The Secretary reviews each application to determine the extent to which effective outreach services for independent living will be provided within the project to enable older blind individuals to live more independently in the home and community.

(2) The Secretary reviews each application to determine the extent to which the availability of the following core services that will meet the independent living needs of older blind individuals with varying degrees of visual impairment are included:

(i) Orientation and mobility skills training that will enable older blind individuals to travel independently, safely and confidently in familiar and unfamiliar environments.

(ii) Skills training in braille, handwriting and typewriting or other means of communication.

(iii) Communication aids such as large print, cassette tape recorders and readers.

(iv) Training to perform daily living activities such as meal preparation, identifying coins and currency, selection of clothing, telling time and maintaining a household.

(v) Provision of low-vision services and aids such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling services to assist the older blind individual adjust emotionally to the loss of vision as well as to assist in the individual's integration into the community and its resources.

(vii) Any other needed services such as transportation or guide services provided to individuals with severe handicaps under the State-Federal independent living program authorized by 34 CFR Part 365.

(h) *Likelihood of sustaining program.* (15 points) The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal measures; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits under other programs for which project clients might be eligible.

(Authority: 29 U.S.C. 796f)

§ 367.22 What additional factors does the Secretary consider?

In addition to the criteria in § 367.21, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796f)

Subpart D—What Conditions Must Be Met After an Award?

§ 367.30 How are services to be administered under this program?

Each designated State unit may either directly provide independent living services under this program or it may make subgrants to other public agencies or private nonprofit organizations to provide these services.

(Authority: 29 U.S.C. 796f)

§ 367.31 What are the requirements pertaining to the protection, use and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information (including records) concerning individuals must be limited to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or the individuals' representative, has been obtained in writing. However, the Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or the individual's representative.

(Authority: 29 U.S.C. 711(c))

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January 29, 1988

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Digestive Aid Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0106]

Digestive Aid Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) digestive aid drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by March 29, 1988. New data by January 30, 1989.

Comments on the new data by March 29, 1989. Written comments on the agency's economic impact determination by May 31, 1988.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 454), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC digestive aid drug products, together with the recommendations of the Advisory Review panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel) which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In a notice published in the **Federal Register** of March 30, 1982 (47 FR 13365), the agency advised that it had extended the comment period until June 4, 1982, and the reply comment period to July 5, 1982, on the advance notice of proposed rulemaking for OTC digestive aid drug products to allow for consideration of additional data and information.

In accordance with § 330.10(a)(1), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, one physician, seven drug manufacturers, one research firm, and one trade association submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart D of Part 357 (21 CFR Part 357, Subpart D), FDA states for the first time its position on the establishment of a monograph for OTC digestive aid drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC digestive aid drug products.

This proposal constitutes FDA's tentative conclusions on OTC digestive aid drug products based on the agency's independent evaluation of the Panel's report and the comments received. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

In reviewing the Panel's recommendations on OTC digestive aid drug products, the agency recognizes that there is significant overlap between the rulemaking on OTC digestive aid drug products and other rulemakings in the OTC drug review. A number of ingredients reviewed as digestive aids were also reviewed for similar claims in other rulemakings. For example, glutamic acid hydrochloride was reviewed in the rulemaking for OTC stomach acidifier drug products and the pancreatic enzymes, pancreatin and pancrelipase, were reviewed in the rulemaking for OTC exocrine pancreatic insufficiency drug products. (See the **Federal Register** of October 19, 1979 (44 FR 60316); December 21, 1979 (44 FR 75668); January 15, 1985 (50 FR 2184); and November 8, 1985 (50 FR 46594), respectively.) Simethicone was evaluated for use in relieving the symptoms of gas in the rulemaking for OTC antiflatulent drug products. (See 21 CFR Part 332.) A number of the ingredients reviewed as digestive aids are antacid ingredients that are included in the rulemaking for OTC antacid drug products as well as the rulemaking for OTC drug products for relief of symptoms associated with overindulgence in alcohol and food. (See 21 CFR Part 331 and the **Federal Register** of October 1, 1982 (47 FR 43540), respectively.) In addition, the claims for many of these ingredients in the other rulemakings are very similar to those in the digestive aid rulemaking, i.e., to relieve symptoms of gastrointestinal distress (e.g., heartburn, sour stomach, acid indigestion, gas, upset stomach, etc.).

Therefore, in proceeding with the development of this tentative final monograph on OTC digestive aid drug products, the agency has decided to limit the digestive aid rulemaking to those ingredients and labeling claims that have not been adequately covered by other rulemakings on OTC drug products. For further discussion, see comment 4 below.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document

retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC digestive aid drug products (published in the **Federal Register** of January 5, 1982 (47 FR 454)), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

In the event that no new data are submitted to the agency during the allotted 12-month new data period or if submitted data are not sufficient to establish "monograph conditions" for OTC digestive aid drug products, the final rule will declare there products to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (p)), for which applications approved under section 505 of the act (21 U.S.C. 355) and 21 CFR 314 are required for marketing. Such rule will also declare that in the absence of an approval application, these products would be misbranded under section 502 of the act (21 U.S.C. 352). The rule will then be incorporated into 21 CFR Part 310, Subpart E—Requirements for Specific New Drugs or Devices, instead of into an OTC drug monograph in Part 357.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31698) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

General Comments

1. One comment contented that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696-98 (2d Cir. 1975) and *National Association of Pharmaceutical Manfacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd* 637 F.2d 887 (2d Cir. 1981).

2. One comment contended that FDA lacks the statutory authority to prescribe exclusive lists of terms from which indications for OTC drug use must be drawn, thus prohibiting alternative OTC labeling terminology that is truthful, accurate, not misleading, and intelligible to the consumer. The comment stated that existing statutory provisions (15 U.S.C. 1453(a)), and sections 508 and 502(e) of the fact (21 U.S.C. 358 and 352(e)) do not grant FDA the authority to legislate the exact wording of OTC drug claims to the exclusion of other equally accurate and truthful claims. The comment further contended that section 502(c) of the act (21 U.S.C. 352(c)) may in fact be violated by manufacturers if some of the terms being prescribed by OTC review panels are adopted because the act requires that label information be in such terms as to render it likely to be read and understood by consumers under ordinary conditions of purchase and use.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indicating for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a

boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the final rule revising the labeling policy.

3. One comment disagreed with the Panel's recommendation that inactive ingredients be listed on the label. The comment argued that a list of inactive ingredients would be meaningless to all but a few consumers and that such a list might overemphasize the importance of the inactive ingredients, obscure more meaningful information such as warnings or directions for use, and be more confusing than helpful. The comment also stated that if the quantity of the inactive ingredients had to be listed there would be an additional problem of changing the labels whenever the quantity of an inactive ingredient is changed.

The act specifies the requirements for ingredient labeling of OTC drug products. Section 502(e) of the act (21 U.S.C. 352(e)) requires that all active ingredients and certain other ingredients, whether included as active or inactive, be disclosed on the label. The act also limits the requirement for stating quantity of ingredients in OTC drug products to those specifically mentioned in section 502(e). Although the act does not require the disclosure of all inactive ingredients in the labeling of OTC drug products, the agency agrees with the Panel that listing of inactive ingredients in OTC drug product labeling would be useful information for some consumers. Consumers with known allergies or intolerance to certain ingredients would then be able to identify substances that they may wish to avoid.

The Proprietary Association, the trade association that represents approximately 85 OTC drug manufacturers who reportedly market between 90 and 95 percent of the volume of all OTC drug products sold in the United States, has announced that its member companies would voluntarily begin to list inactive ingredients in the labeling of OTC drug products under guidelines established by the association (Ref. 1). Under another voluntary program begun in 1974, the member companies of The Proprietary Association have been including the quantities of active ingredients on OTC drug labels. The agency is not at this time proposing to require the listing of inactive ingredients in OTC drug product labeling. However, the agency commends these voluntary efforts and urges all other OTC drug manufacturers to similarly label their products.

Reference

(1) "Proprietary Association Adopts Disclosure of Inactive Ingredients," News Release, The Proprietary Association, Washington, DC, May 14, 1984, copy included in OTC Volume 17GTFM.

4. Several comments disagreed with the Panel's recommendations to divide digestive aid drug products into two categories, that is, (1) products for immediate postprandial upper abdominal distress (IPPUAD) and (2) products for intestinal distress—with the distinguishing feature between the two categories being the time to onset of symptoms. The comments pointed out that the symptoms of bloating, distention, fullness, and pressure are the same for both categories. The comments stated that patients do not differentiate symptoms on the basis of time relationships and, therefore, establishing a time-based differentiation of symptoms has no logical basis. One comment argued that adopting the Panel's recommendations would create a "phantom" category of products that the consuming public could not understand. Most comments recommended that the concept of IPPUAD be abolished, and several suggested that the digestive aid monograph be expanded to encompass all abdominal and intestinal distress claims, whether due to food-related or other causes, e.g., stress, travel, or changes in the environment.

The Panel reviewed digestive aid drug products as those products which were claimed to alleviate symptoms in the stomach as well as the intestines following the ingestion of food. In reviewing these products, the Panel decided to classify them into the following two groups: (1) Those that treat symptoms that occur within 30 minutes after ingestion of food (immediate postprandial upper abdominal distress drug products) and (2) those that treat symptoms that occur from 30 minutes to several hours after ingestion of food (intestinal distress drug products). As one comment pointed out, the symptom complex of bloating, distention, fullness, and pressure was common to both classifications.

After reviewing the available data and information, the agency agrees with the comments that the distinction between IPPUAD and intestinal distress, with the distinguishing feature being the time to onset of symptoms, is one that will have little meaning to consumers. In addition, historically, this distinction has not been made in the labeling of digestive aid drug products. Further, the agency notes that the Miscellaneous Internal Panel also reviewed drug products for relieving symptoms of overindulgence in food and drink and did not make such a time distinction in that rulemaking. Therefore, the agency is not adopting the two classifications of IPPUAD and intestinal distress and is defining a digestive aid drug product as "a drug product intended to relieve the symptoms of gastrointestinal distress (including fullness, pressure, bloating, and stuffed feeling (commonly referred to as gas), and minor pain and cramping) following the ingestion of food."

The agency does not believe it is appropriate to expand the scope of this rulemaking to include gastrointestinal distress other than that related to food. As discussed in the preamble above, there is significant overlap with respect to ingredients and claims within the digestive aid rulemaking and other OTC drug rulemakings, i.e., antacid, antiflatulent, exocrine pancreatic insufficiency, overindulgence in food and drink, and stomach acidifier. For example, the final monograph for OTC antacid drug products includes the indication for the relief of heartburn, sour stomach, acid indigestion, and upset stomach associated with these symptoms. The labeling does not specify the etiology of the symptoms and, therefore, would not preclude the use of antacids for relieving upset stomach associated with heartburn, sour stomach, or acid indigestion that may occur following the ingestion of food or from other causes, e.g., stress, etc. Further, the term "acid indigestion" suggests a food-related cause.

In order to avoid duplication, the agency is limiting the digestive aid rulemaking to include only those ingredients that have not been adequately covered by other OTC drug rulemakings that address similar claims related to relief of symptoms of gastrointestinal distress. As discussed above, antacid ingredients and simethicone have been adequately considered for gastrointestinal distress claims in the rulemakings for OTC antacid drug products and OTC antiflatulent drug products, respectively. In addition, as discussed in comments 8 and 10 below, pancreatic enzyme ingredients and stomach acidifier ingredients have been reviewed for use in aiding digestion in the rulemakings for OTC exocrine pancreatic insufficiency drug products and OTC stomach acidifier drug products, respectively. After reviewing the ingredients evaluated by the Panel, the agency has determined that the following ingredients are appropriate for consideration in the digestive aid rulemaking: Bismuth sodium tartrate, cellulase, charcoal, dehydrocholic acid, duodenal substance, garlic, hemicellulase, homatropine methylbromide, ox bile extract, papain, peppermint oil, pepsin, and sorbitol. Because no new data for any of these ingredients were submitted following publication of the Panel's recommendations, the agency is concurring with the Panel's categorization of these ingredients as follows:

Ingredient	Categorization
Bismuth sodium tartrate	II
Cellulase	III
Charcoal, activated and Charcoal, wood	III
Dehydrocholic acid	I
Duodenal substance	II
Garlic, dehydrated	II
Hemicellulase	III
Homatropine methylbromide	III
Ox bile extract	III
Papain	II
Peppermint oil	III
Pepsin	II
Sorbitol	II

In addition, the agency is aware of another enzyme (lactase) that is contained in a number of marketed products and is promoted for use as a digestive aid for persons who are intolerant to lactose-containing foods. Lactase deficiency is extremely prevalent, estimated to occur in about 75 percent of adults (Ref. 1). Although the condition can be controlled by ingesting a lactose-free diet, the agency believes that lactase enzyme products could be potentially useful for those persons who do not wish to avoid lactose in their diets. However, no submissions were made to the agency regarding these products, nor is the agency aware of any specific data that would establish general recognition of safety and effectiveness. Therefore, the agency invites specific data and information regarding the use of lactase enzyme products. After review and evaluation of the data submitted, the agency will consider lactase for inclusion in the final monograph for OTC digestive aid drug products.

Based on the above discussion, the agency is proposing the following indication for OTC digestive aid drug products: "For relief of symptoms of gastrointestinal distress such as" (select one or more of the following: "fullness," "pressure," "bloating," or "stuffed feeling") (optional: "(commonly referred to as gas),") (optional: "pain," and/or "cramping") "which occur(s) after eating." Although the Panel included the word "distention" in its indication statements for IPPUAD and intestinal distress drug products, the agency is not proposing this word in the indication statement in this tentative final monograph. Based on the discussion in comment 7 below, the agency has determined that "distention" is not a word that is used by consumers in describing symptoms of gastrointestinal distress.

Reference

(1) "The Merck Manual of Diagnosis and Therapy," 14th Edition, edited by R. Berkow, Merck and Co., Inc., Rahway, NJ, p. 779, 1982.

5. Several comments objected to the Panel's review of simethicone as a digestive aid ingredient and requested that the final monograph for OTC antiflatulent drug products be neither revoked nor modified based on the Panel's conclusions that there is no conclusive evidence that excess gas is the causative agent in producing undesirable gastrointestinal symptoms such as bloating, pressure, or fullness. The comments added that there is no new and significant data that question the safety or effectiveness of simethicone, which was included in the final monograph for OTC antiflatulent drug products (21 CFR Part 332). Several comments stated that the Panel misinterpreted its charge from the agency which was to review the safety and effectiveness data submitted on antiflatulent ingredients other than simethicone in order to determine whether such ingredients should be added to the antiflatulent monograph. Referring to the call-for-data notice published in the Federal Register of August 27, 1975 (40 FR 38183), the comments stated that a re-review of simethicone for use in relieving the symptoms of gas is contrary to established OTC drug review procedures and to the specific charge to the Panel that it should not review ingredients for conditions that had been previously reviewed by other panels. The comments argued that there is no legal basis to restrict labeling to claims or situations where definitive proof of causation has been established and that OTC drug products are used to provide relief of the symptoms, not the cause. The comments stated that it is irrelevant whether excess gas actually causes the symptoms described by consumers as "gas," provided an ingredient can be shown to be safe and effective in relieving those symptoms.

The agency agrees with the comments that the final monograph for OTC antiflatulent drug products should not be revoked or modified based on the Panel's recommendations. Although the agency agrees with the Panel that data are insufficient to demonstrate that excess gas actually causes the symptoms of bloating, pressure, and fullness, data are available to demonstrate that "gas" is a word used by consumers to describe these symptoms. In developing the antiflatulent final monograph, the agency relied on the results of two double-blind studies (Refs. 1 and 2) which demonstrated the effectiveness of simethicone in relieving symptoms of upper gastrointestinal distress. (See 38 FR 31268.) In both studies, the symptoms described as bloating, fullness, pressure, and stuffed feeling were among those evaluated. Although the studies did not demonstrate that the symptoms were actually caused by excess gas, simethicone was demonstrated to be effective in relieving the symptoms. In addition, the results of a consumer survey indicate that the terms "bloating," "pressure," "stuffed feeling," and "fullness" are very meaningful to and used by consumers in describing what is commonly, if not accurately, referred to as "gas." (See comment 7 below.) Therefore, the agency agrees with the comments that evidence need not be available demonstrating the cause of a symptom as long as there is sufficient evidence to show that an ingredient provides relief from the symptom.

However, as discussed in the preamble above, the agency is limiting the digestive aid rulemaking to those ingredients and labeling claims which have not been adequately covered by other rulemakings on OTC drug products. Therefore, simethicone is no longer being considered in this digestive aid rulemaking. (See also comment 7 below.)

References

(1) Kazich, A., "A Summary of a Double-Blind Study Comparing the Effectiveness of Simethicone and Placebo in the Relief of Symptoms of Functional Disease of the Upper Gastrointestinal Tract," copy of unpublished study included in OTC Volume 17GTFM.

(2) "A Summary of the Double-Blind Study of the Effectiveness of Simethicone in Relieving the Symptoms of Acute Upper Gastrointestinal Distress," copy of unpublished study included in OTC Volume 17GTFM.

6. Referring to the Panel's recommended indication in § 357.350(b)(1) which states, " 'For relief of upper abdominal' (one or more of the following symptoms: 'distress,' 'bloating,' 'distention,' 'fullness,' and 'pressure') 'which occurs soon after eating,' (optional, 'and which may be described as 'gas.')", one comment suggested that the words "and which may be described as" be deleted as unnecessary and that the word "gas" be placed among the other allowable words such as "bloating, distress, distention, fullness, and pressure."

The agency agrees with the Panel that data are insufficient to demonstrate that excess gas actually causes the symptoms of gastrointestinal distress that may occur after eating. However, data are available demonstrating that "gas" is a word that is commonly, although not accurately, used by consumers to describe those symptoms. (See comment 7 below.) Because the word "gas" is used by consumers to describe those symptoms, the agency has no objection to its use in the labeling of OTC digestive aid drug products provided there is no implication that the presence of gas, in the literal sense of excess gas bubbles in the gastrointestinal tract, is the cause of the symptoms. Likewise, there should be no implication that "gas" is a symptom distinct or different from the terms used by consumers to describe the symptoms of what they perceive as "gas," i.e., "bloating," "pressure," "fullness," "stuffed feeling." Therefore, the agency does not agree that "gas" should be placed among the other allowable words because it would imply a symptom different from the others when, in fact, it is a term used to collectively describe those symptoms.

As discussed in comment 4 above, the agency is proposing the following indication for OTC digestive aid drug products: "For relief of symptoms of gastrointestinal distress such as" (select one or more of the following: "fullness," "pressure," "bloating," or "stuffed feeling") (optional: "(commonly referred to as gas)") (optional: "pain," and/or "cramping") "which occur(s) after eating."

7. Referring to a previously submitted petition (Ref. 1), one comment requested the agency to expand the labeling indications of antiflatulent drug products to include the terms "bloating," "gas pressure," "stuffed feeling," and "fullness," as descriptive words for the symptoms of gas. Noting the results of a consumer survey (Ref. 1), the comment contended that these terms are used by consumers to describe the symptoms of gas and there is no basis to preclude the use of these terms in the labeling of OTC antiflatulent drug products. The comment also requested that the term "antigas" be included in the monograph because it is more meaningful to consumers than the term "antiflatulent."

The agency has reviewed and evaluated the available data and determined that the terms requested by the comment are appropriate for inclusion in the monograph for OTC antiflatulent drug products. In developing the antiflatulent monograph, the agency relied on the results of two double-blind studies (Refs. 2 and 3) which demonstrated the effectiveness of simethicone in relieving symptoms of upper gastrointestinal distress. (See 38 FR 31266.) In both studies the symptoms described as "bloating," "fullness," "pressure," and "stuffed feeling" were among those evaluated. In both studies, simethicone was demonstrated to be effective for relieving these symptoms.

In addition, the results of the consumer survey (Ref. 1) indicate that the terms "bloating," "pressure," "stuffed feeling," and "fullness," are very meaningful to and used by consumers in describing what is commonly, if not accurately, referred to as "gas." Based on these data, the agency is proposing elsewhere in this issue of the **Federal Register** to amend the antiflatulent monograph to include the following indication: (Select one of the following: "Alleviates" or "Relieves") (select one or more of the following: "bloating," "pressure," "fullness," or "stuffed feeling") "commonly referred to as gas." The agency is also proposing to amend that monograph to include a "statement of identity" section to conform with the format of other final OTC drug monographs. The agency agrees that the term "antigas" is an appropriate statement of identity as an alternative or in addition to the term "antiflatulent" provided there are not statements elsewhere in the labeling implying that the symptoms are caused by the presence of excess gas. For example, phrases such as "antigas formulation relieves gas trapped in the intestine" or "for gas pain" would be considered inappropriate.

Reference

(1) Petition from Plough, Inc., dated May 18, 1976, on file under Docket No. 76P-0218, Dockets Management Branch.

(2) Kasich, A., "A Summary of a Double-Blind Study Comparing the Effectiveness of Simethicone and Placebo in the Relief of Symptoms of Functional Disease of Upper Gastrointestinal Tract," copy of unpublished study included in OTC Volume 17GTFM.

(3) "A Summary of the Double-Blind Study of the Effectiveness of Simethicone in Relieving the Symptoms of Acute Upper Gastrointestinal Distress," copy of unpublished study included in OTC Volume 17GTFM.

8. One comment believed that there were inconsistencies in the Panel's conclusions regarding the classification of pancreatin and pancrelipase and their components. The comment questioned why pancreatin and pancrelipase were classified by the Panel as Category III for the symptoms of intestinal distress when their major constituents, amylase, lipase, and protease, were classifed as single ingredients in Category II. Furthermore, the comment contended that the Panel's Category III classification for the combination of lipase, amylase, protease, and hemicellulase contradicts its own statement (47 FR 462) that any combination of ingredients containing one or more Category II ingredients is Category II.

The agency acknowledges that it seems the Panel was inconsistent with its own combination policy in classifying pancreatin and pancrelipase as Category III when the major components of these substances, as single ingredients, are classified Category II. However, pancreatin and pancrelipase are extracts of natural origin that contain amylase, lipase, and protease, and, as such, are considered by "The United States Pharmacopeia/ The National Formulary" as single substances when these components are combined as specified in the compendia (Ref. 1). Therefore, the Panel considered pancreatin and pancrelipase as single ingredients.

The agency concurs with the Panel's conclusion that there are no data to support the use of amylase, lipase, or protease other than as the combination of the three principal components. Therefore, amylase, lipase, and protease as single ingredients are Category II. The ingredients pancreatin and pancrelipase were considered by the agency in the tentative final monograph for OTC exocrine pancreatic insufficiency drug products, published in the **Federal Register** of November 8, 1985 (50 FR 46594). In that document, the agency concurred with the Panel's recommendation that pancreatin and pancrelipase are beneficial only in cases of pancreatic enzyme insufficiency. The agency is not aware of any well-controlled studies demonstrating the effectiveness of these ingredients in aiding or facilitating the digestive process, except in cases of diagnosed pancreatic enzyme insufficiency. Therefore, those ingredients are not being reconsidered in this rulemaking.

Hemicellulase will remain in Category III as a digestive aid single ingredient.

Reference

(1) "The United States Pharmacopeia XXI–National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp 777 and 779, 1985.

9. Several comments opposed the testing guidelines recommended by the Panel for Category III OTC digestive aid drug products. Three comments objected to the Panel's recommendation that the test population consist only of individuals who have consulted a gastroenterologist for treatment of their symptoms because these individuals are not representative of the general population who experience the symptoms of IPPUAD or intestinal distress. One comment suggested that a more representative test population would be composed of individuals who, following food consumption, successfully self-medicate with OTC drug products to relieve the occasional symptoms of gas, fullness, bloating, distention, and/or pressure. Two comments emphasized that the Panel's requirement that complete relief be demonstrated within 30 minutes of administration of medication is overburdensome with regard to establishing efficacy. The comment stressed that significant relief of symptoms within an appropriate amount of time, even if relief is only partial, is an important criterion. Two comments criticized the Panel's criteria for admission into the study. These comments contended that the requirements for comprehensive medical histories with expensive diagnostic testing are unrealistic and unnecessary.

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part II, paragraph A.2. below—*Testing of Category II and Category III conditions.*)

10. One comment noted that although the Panel's report on OTC digestive aids does not deal directly with its product (which is labeled for use as a stomach acidifier), the report does review the active ingredient (glutamic acid hydrochloride) contained in its product for general use in the treatment of IPPUAD and intestinal distress. The comment requested that submissions made to the rulemaking for OTC stomach acidifier drug products (Refs. 1, 2, and 3) be incorporated by reference in this rulemaking because the symptoms that characterize IPPUAD and intestinal distress are among the recognized symptoms of gastric acid deficiency. The comment contended that when the symptoms of IPPUAD and intestinal distress are due to deficiencies of hydrochloric acid its product has been shown to provide effective therapy. The comment recommends that the agency classify glutamic acid hydrochloride as a Category I digestive aid. Furthermore, the comment contended that this product is exempt from review under the "grandfather" provisions of the 1938 act and the 1962 amendments to the act.

As discussed in comment 4 above, the agency is limiting the digestive aid rulemaking to include only those ingredients that have not been adequately covered by other OTC drug rulemakings for similar claims. Glutamic acid hydrochloride was reviewed in the rulemaking for OTC stomach acidifier drug products (Docket No. 79N–0176). The use evaluated was as an aid to digestion by increasing the amount of hydrochloric acid in the stomach in cases of achlorhydria or hypochlorhydria. In the tentative final monograph for OTC stomach acidifier drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2184), the agency classified stomach acidifier active ingredients, including glutamic acid hydrochloride, in Category II because the conditions of hypochlorhydria and achlorhydria are not established medical conditions causing any specific symptoms that require treatment. Further, the Panel stated that it knows of no proven relationship between hypoacidity or anacidity of the stomach and the symptoms of IPPUAD (47 FR 465) and the symptoms of intestinal distress (47 FR 497). The Panel also stated that it was not aware of any adequate and well-controlled clinical studies demonstrating the effectiveness of glutamic acid hydrochloride in treating the symptoms of IPPUAD (47 FR 465) or intestinal distress (47 FR 479). The Panel concluded that glutamic acid hydrochloride is not generally recognized as an effective treatment for these conditions. Based on the Panel's findings and the conclusions presented in the tentative final monograph for OTC stomach acidifier drug products, the agency does not believe it would be appropriate to further consider glutamic acid hydrochloride in this digestive aid rulemaking.

The agency also addressed the "grandfather" status of the glutamic acid hydrochloride product in the tentative final monograph for OTC stomach acidifier drug products (50 FR 2186). Based on that discussion, the agency reaffirms that the glutamic acid hydrochloride product is subject to the OTC drug review.

The discussion in this tentative final monograph is the agency's final consideration of glutamic acid hydrochloride in the rulemaking for OTC digestive aid drug products. The agency's final conclusions with respect to the indications for glutamic acid hydrochloride referred to in the comment will appear in the final rule for OTC stomach acidifier drug products. The final regulations for OTC stomach acidifier drug products, not the final regulations for OTC digestive aid drug products, will be those applicable to this glutamic acid hydrochloride product.

References

(1) OTC Volume 170103.
(2) OTC Volume 170104.
(3) OTC Volume 170124.

11. One comment recommended that the agency not adopt the Panel's recommended warning for aluminum-containing antacid products, which reads, "If you have kidney disease, do not take this product except under the supervision of a physician." (See 47 FR 468.) The comment argued that a fair balance of the literature indicates that the association of ingested aluminum-containing drug products in patients with impaired kidney function and encephalopathy has not been demonstrated; therefore, the recommended warning should not be adopted.

The agency reviewed all available data concerning aluminum toxicity and published its conclusions on these data in the notice of proposed rulemaking for OTC hypophosphatemia and hyperphosphatemia drug products in the **Federal Register** of January 15, 1985 (50 FR 2160). The agency concluded that the largest body of evidence of toxicity associated with aluminum is stongest for encephalopathy that occurs in renal failure patients undergoing dialysis. (See 50 FR 2162.) Although aluminum has not been proven to be a causative factor there is considerable indirect evidence that it has a role in development of this syndrome. Because of this potential role, the agency believes it is appropriate to

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provide warning labeling to this effect. However, the agency believes that the persons at highest risk to aluminum toxicity are those with severe renal failure who are generally under the care of a physician. The agency thus concluded that it would be more prudent to inform health professionals of the potential risks involved rather than to require the kidney-disease warning recommended by the Panel. The agency reaffirms its previous conclusion (50 FR 2162) that additional information be provided in the professional labeling section of the antacid monograph (21 CFR 331.31) for aluminum-containing antacids.

II. The Agency's Tentative Conclusions on the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made some changes in the categorization of digestive aid active ingredients recommended by the Panel. In addition, as discussed in the comments above, the agency is limiting the digestive aid rulemaking to include only those ingredients that have not been adequately covered by other OTC drug rulemakings for similar claims related to relief of symptoms of gastrointestinal distress. As a convenience to the reader, the following list is included as a summary of the categorization of digestive aid active ingredients recommended by the Panel and the proposed categorization by the agency. Where the ingredient has been classified in another rulemaking, that rulemaking and the classification therein is stated.

CATEGORIZATION OF INGREDIENTS

Degestive aid active ingredients	Panel		Agency
	(IP-PUAD [1])	(ID [2])	
Almadrate sulfate.	III		Antacid (I)
Aluminum hydroxide.	III		Antacid (I)
Bismuth sodium tartrate.		II	II
Calcium carbonate.	III		Antacid (I)
Cellulase	II	III	III
Charcoal, activated and Charcoal, wood.		III	III
Dehydrocholic acid.	II	II	II
Dihydroxyaluminum sodium carbonate.	III		Antacid (I)
Duodenal substance.		II	II
Garlic, dehydrated.	II	II	II
Glutamic acid hydrochloride.	II	II	Stomach Acidifier (II)
Hemicellulase.		III	III
Homatropine methylbromide.	II	III	III
Lactase			([3])
Magnesium hydroxide.	III	III	Antacid (I)
Magnesium trisilicate.	III		Antacid (I)
Ox bile extract.	II	II	II
Pancreatin and pancrelipase.	II	III	Exocrine Pancreatic Insufficiency (I)
Papain		II	II
Peppermint oil.	III		III
Pepsin	II	II	II
Simethicone.	III	IR	Antiflatulent (I)
Sodium bicarbonate.	III	III	Antacid (I)
Sodium citrate.	III	III	Antacid (I)
Sorbitol	II	II	II

CATEGORIZATION OF INGREDIENTS—Continued

Degestive aid active ingredients	Panel		Agency
	(IP-PUAD [1])	(ID [2])	
Charcoal, activated and Charcoal, wood.		III	III
Dehydrocholic acid.	II	II	II
Dihydroxyaluminum sodium carbonate.	III		Antacid (I)
Duodenal substance.		II	II
Garlic, dehydrated.	II	II	II
Glutamic acid hydrochloride.	II	II	Stomach Acidifier (II)
Hemicellulase.		III	III
Homatropine methylbromide.	II	III	III
Lactase			([3])
Magnesium hydroxide.	III	III	Antacid (I)
Magnesium trisilicate.	III		Antacid (I)
Ox bile extract.	II	II	II
Pancreatin and pancrelipase.	II	III	Exocrine Pancreatic Insufficiency (I)
Papain		II	II
Peppermint oil.	III		III
Pepsin	II	II	II
Simethicone.	III	IR	Antiflatulent (I)
Sodium bicarbonate.	III	III	Antacid (I)
Sodium citrate.	III	III	Antacid (I)
Sorbitol	II	II	II

[1] Immediate postprandial upper abdominal distress.
[2] Intestinal distress.
[3] Not categorized at this time. See discussion in comment 4 above.

2. *Testing of Category II and Category III conditions.* Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any digestive aid ingredient or condition included in this rulemaking by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows:

1. The agency is not adopting the two classifications (IPPUAD and intestinal distress) for digestive aid drug products recommended by the Panel and is proposing a new definition for OTC digestive aid drug products. (See comment 4 above.) Based on this change, the definitions section of the tentative final monograph has been modified accordingly.

2. The agency is limiting the digestive aid rulemaking to include only those ingredients that have not been adequately covered by other OTC drug rulemakings that address similar claims related to relief of symptoms of gastrointestinal distress. (See comment 4 above and Part II. paragraph A.1. above—Summary of ingredient categories.)

3. The agency is proposing a new indication statement for OTC digestive aid drug products. (See comments 4 and 6 above.)

4. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basic that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the

Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC digestive aid drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC digestive aid drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC digestive aid drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by May 31, 1988. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before March 29, 1988, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before May 31, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before January 30, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before March 29, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on March 29, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

Labeling, Over-the-counter drugs, Digestive aid drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 by adding new Subpart D, consisting of §§ 357.301–357.350, to read as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart D—Digestive Aid Drug Products

Sec
357.301 Scope.
357.303 Definition.
357.310 Digestive aid active ingredients. [Reserved]
357.350 Labeling of digestive aid drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart D—Digestive Aid Drug Products

§ 357.301 Scope.

(a) An over-the-counter digestive aid drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.303 Definition.

As used in this subpart:

Digestive aid drug product. A drug product intended to relieve the symptoms of gastrointestinal distress (including fullness, pressure, bloating, and stuffed feeling (commonly referred to as gas), and minor pain and cramping) following the ingestion of food.

§ 357.310 Digestive aid active ingredients. [Reserved]

§ 357.350 Labeling of digestive aid drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "digestive aid."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "For relief of symptoms of gastrointestinal distress such as" (select one or more of the following: "fullness," "pressure," "bloating," or "stuffed feeling") (optional: "(commonly referred to as gas),") (optional: "pain," and/or "cramping") "which occur(s) after eating." Other truthful and nonmisleading statements, describing only the indications for use that have

been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "If symptoms of distress persist, stop this medication and consult your doctor."

(2) "Do not use this product in children under 12 years of age except under the supervision of a doctor."

(d) *Directions.* [Reserved]

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: October 30, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-1782 Filed 1-28-88; 8:45 am]

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Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 332

Antiflatulent Drug Products for Over-the-Counter Human Use; Proposed Amendment of Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 332

[Docket No. 87N-0053]

Antiflatulent Drug Products for Over-the-Counter Human Use; Proposed Amendment of Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the monograph for over-the-counter (OTC) antiflatulent drug products by adding a statement of identity section to conform to the format of other OTC drug final monographs and by revising the indications for use to include additional descriptive terms. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on the advance notice of proposed rulemaking for OTC digestive aid drug products that was based on those recommendations. The agency's proposed concerning OTC digestive aid drug products is being published elsewhere in this issue of the **Federal Register**. These proposals are part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by March 29, 1988.

ADDRESS: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antiflatulent drug products (21 CFR Part 332).

In the **Federal Register** of January 5, 1982 (47 FR 454), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)) an advance notice of proposed rulemaking to establish a monograph for OTC digestive aid drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel) which was the advisory review panel responsible for evaluating data on this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In a notice published in the **Federal Register** of March 30, 1982 (47 FR 13385), the agency advised that it had extended the comment period until June 4, 1982, and the reply comment period to July 5, 1982, on the advance notice of proposed rulemaking for OTC digestive aid drug products to allow for consideration of additional data and information.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In the tentative final monograph (proposed rule) to establish Subpart D of Part 357 (21 CFR Part 357, Subpart D), published elsewhere in this issue of the **Federal Register**, FDA states for the first time its position on the establishment of a monograph for OTC digestive aid drug products. In reviewing the Panel's recommendations on OTC digestive aid drug products together with the data and comments submitted in response to the advance of proposed rulemaking on OTC digestive aid drug products, the agency recognized that there is significant overlap between the rulemaking on OTC digestive aid drug products and other rulemakings in the OTC drug review. As discussed in comment seven of the tentative final monograph for OTC digestive aid drug products, the agency has reviewed and evaluated the available data and information and has determined that the terms "bloating," "pressure," "fullness," and "stuffed feeling" are appropriate for inclusion in the antiflatulent monograph to describe the symptoms of gas.

In developing the antiflatulent monograph, the agency relied on the results of two double-blind studies (Refs. 1 and 2) which demonstrated the effectiveness of simethicone in relieving symptoms of upper gastrointestinal distress. (See 38 FR 31266.) In both studies the symptoms described as "bloating," "fullness," "pressure," and "stuffed feeling" were among those evaluated. In both studies, simethicone was demonstrated to be effective for relieving these symptoms.

In addition, the results of a consumer survey (Ref. 3) indicate that the terms "bloating," "pressure," "stuffed feeling" and "fullness" are very meaningful to and used by consumers in describing what is commonly, if not accurately, referred to as "gas." Based on these data, the agency is therefore proposing to amend the antiflatulent monograph by adding an additional indications statement to read as follows: (Select one of the following: "Alleviates" or "Relieves") (select one or more of the following: "bloating," "pressure," "fullness," or "stuffed feeling") "commonly referred to as gas."

Additionally, the agency is proposing to amend the antiflatulent monograph to include a "statement of identity" section to conform with the format of other final OTC drug monographs. The agency believes that the term "antigas" is an appropriate alternative statement of identity to the term "antiflatulent" provided there are no statements elsewhere in the labeling implying that the symptoms are caused by the presence of excess gas. For example, phrases such as "antigas formulation relieves gas trapped in the intestine" or "for gas pain" would be considered inappropriate. The agency has also slightly modified the existing indication to conform with the newly proposed indication.

References

(1) Kasich, A., "A Summary of a Double-Blind Study Comparing the Effectiveness of Simethicone and Placebo in the Relief of Symptoms of Functional Disease of the Upper Gastrointestinal Tract," copy of unpublished study included in OTC Volume 17GTFM.

(2) "A Summary of the Double-Blind Study of the Effectiveness of Simethicone in Relieving the Symptoms of Acute Upper Gastrointestinal Distress," copy of unpublished study included in OTC Volume 17GTFM.

(3) Petition from Plough, Inc., dated May 18, 1976, on file under Docket No. 76P–0218, Dockets Management Branch.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antiflatulent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antiflatulent drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before March 29, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments or objections on the proposed regulation. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on March 29, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 332

Labeling, Over-the-counter drugs, Antiflatulent drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 332 as follows:

PART 332—ANTIFLATULENT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 332 is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart C—[Removed]

2. In Part 332, "Subpart C—[Reserved]" is removed.

3. In Part 332, "Subpart D—Labeling" (consisting of §§ 332.30–332.31) is redesignated as "Subpart C—Labeling" and § 332.30 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), by adding new paragraph (a), and by revising new paragraph (b) to read as follows:

Subpart C—Labeling

§ 332.30 Labeling of antiflatulent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antiflatulent," "antigas," or "antiflatulent (antigas)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the Act relating to misbranding and the prohibition in section 301(d) of the Act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the Act.

(1) (Select one of the following: "Alleviates" or "Relieves") "the symptoms referred to as gas."

(2) (Select one of the following: "Alleviates" or "Relieves") (select one or more of the the following: "bloating," "pressure," "fullness," or "stuffed feeling") "commonly referred to as gas."

* * * * *

Dated: October 30, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–1781 Filed 1–28–88; 8:45 am]

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VOL
53
ISS
19
JA
29
988
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Reader Aids

Federal Register

Vol. 53, No. 19

Friday, January 29, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–106	4
107–230	5
231–398	6
399–486	7
487–608	8
609–732	11
733–772	12
773–854	13
855–998	14
999–1330	15
1331–1466	19
1467–1600	20
1601–1738	21
1739–1908	22
1909–1996	25
1997–2212	26
2213–2476	27
2477–2578	28
2579–2718	29

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5760	855
5761	1464
5762	1980

Executive Orders:

12537 (Amended by EO 12624)	489
12578 (Superseded by EO 12622)	222
12622	222
12623	487
12624	489

Administrative Orders:

Presidential Determinations:

No. 88–2 of Oct. 30, 1987	399
No. 88–4 of Dec. 17, 1987	773
No. 88–6 of Jan. 19, 1988	1601

Presidential Findings:

Jan. 12, 1988	999

5 CFR

297	1997
353	857
551	1331, 1739
890	1, 860

Proposed Rules:

213	1789
330	408
338	1789
351	408
890	898

7 CFR

1	1001
7	1441
27	2213
28	2213
61	2213
246	2213
272	1603
275	1603
301	733
353	1332
354	1740
400	2
401	1001
405	1467
614	1605
704	733
724	1605
736	2477
905	401, 860
907	6, 491, 1333, 1741, 2579
910	7, 492, 1333, 1742, 2580, 2669
911	402, 1742
915	1742
928	862
959	401
971	401
987	401
1230	1909
1430	107
1610	1743
1786	2468
1902	231
1924	2150
1930	2150
1933	2150
1943	2147
1944	2150
1951	2150
1965	2150

Proposed Rules:

68	411
301	140
401	505, 507
451	1640
905	898
907	412
908	412
910	255
979	413
981	414
982	900
1006	1035
1012	1035
1013	1035
1033	902
1046	902
1068	1360
1097	1369
1106	1370, 1790
1126	256
1136	686
1260	509
1421	2037
1701	140

8 CFR

Proposed Rules:

1	2426
204	2426
205	2426
211	2426
212	2426
214	2426
216	2426
223	2426
223a	2426
232	1791
233	1791
235	1791, 2426
237	1791
238	1791
239	1791
242	2426

245.....2426
280.....1791
299.....1791

9 CFR

54.....2580
77.....1002
78.....2221

10 CFR

1.....1744
73.....403

Proposed Rules:

2.....415
62.....1926
430.....30
730.....1594

11 CFR

Proposed Rules:

109.....416
110.....2500
114.....416

12 CFR

206.....492
208.....492
226.....467
337.....597, 2223
501.....1003
525.....312
561.....324, 338
563.....324, 338, 354, 383, 372, 385, 1004
563b.....2477
563c.....324
571.....338, 372, 385
583.....312, 1003
584.....312
614.....775
795.....1005

Proposed Rules:

226.....467

13 CFR

108.....1468
140.....1606

14 CFR

21.....1745, 1746
23.....1745, 1746
39.....6–14, 232, 493–495, 1334, 1468, 1608–1613, 2005, 2478
47.....1911
49.....1911
71.....496, 497, 619, 1335, 1338, 1614, 2006–2013, 2479–2482
75.....497, 1336–1339, 2014–2017
91.....233
95.....1005
97.....498
108.....2223
129.....2223

Proposed Rules:

Ch. I.....1038
21.....2037, 2039
23.....2037, 2039
39.....258, 514, 515, 1371–1374, 2227, 2228, 2500, 2502
71.....516, 517, 666, 670, 674, 907–910, 1375, 2503, 2504
73.....517, 991

15 CFR

372.....1614
374.....1614
376.....2582
399.....108, 1616, 2582
806.....1015

Proposed Rules:

379.....418, 2505

16 CFR

13.....609, 2223, 2224

Proposed Rules:

13.....141, 1039, 2230, 2506, 2508

17 CFR

1.....609, 615
211.....109, 865, 1341
249.....2484

Proposed Rules:

34.....2510
300.....1793

18 CFR

3.....1469
154.....867, 1748
270.....867
271.....15
273.....867
375.....867, 1468, 1748
381.....867, 1469
382.....1748
388.....1469
389.....1750, 2224, 2593
410.....1751
1301.....405

19 CFR

4.....1103
24.....615

Proposed Rules:

132.....1376
141.....30
142.....1376
178.....30

20 CFR

320.....2485
340.....2485

Proposed Rules:

361.....143
901.....147

21 CFR

5.....2225
81.....19
176.....97
193.....20, 233, 1916
312.....1917
436.....1918
452.....1918
540.....234
546.....235
558.....235, 236, 1017
561.....20, 233, 1916
606.....111
610.....111
640.....111
884.....1554
892.....1554
1308.....500, 2225

Proposed Rules:

102.....1795
193.....259
201.....1796, 2436
332.....2716
356.....2436
357.....2706
358.....2198
369.....2436
561.....259
864.....1574
866.....1574
868.....1574
870.....1574
876.....1574
880.....1574
882.....1574
884.....1574
890.....1574
892.....1574
1308.....743

23 CFR

635.....1920, 1922
655.....236
658.....2593, 2597

Proposed Rules:

625.....2041
626.....2041
655.....2233
658.....2602, 2603

24 CFR

200.....842
203.....868
215.....842, 1122
221.....615
235.....842
236.....615, 842
247.....842
812.....842
880.....842, 1122
881.....842, 1122
882.....842, 1122
883.....842, 1122
884.....842, 1122
886.....842, 1122
904.....1122
905.....1122
912.....842
960.....1122

Proposed Rules:

115.....260

25 CFR

Proposed Rules:

151.....1797

26 CFR

1.....117, 238, 1103, 1441
301.....2599

Proposed Rules:

1.....153, 261, 2605
602.....2605

27 CFR

Proposed Rules:

9.....1492

28 CFR

55.....735
541.....196

Proposed Rules:

16.....2606
31.....2568

29 CFR

2610.....1904
2616.....1904
2617.....1904
2618.....1904
2676.....1018
2702.....737

Proposed Rules:

1910.....1724, 2047
1926.....2049
2550.....1798

30 CFR

75.....2354
202.....1184, 1230
203.....1184
206.....1184, 1230
207.....1184
210.....1184
241.....1184
800.....994

Proposed Rules:

75.....2382
210.....1039
216.....1039

31 CFR

103.....776

32 CFR

45.....1341
104.....1343
199.....2018
374.....1345
552.....1752
887.....876

Proposed Rules:

199.....1378, 1926

33 CFR

110.....878
117.....119, 406, 2034
165.....616, 678
166.....1347

Proposed Rules:

140.....2236
143.....2236
146.....2236

34 CFR

Proposed Rules:

303.....1461
367.....2702

36 CFR

5.....739
211.....2490
404.....120
1254.....1348

Proposed Rules:

223.....519

37 CFR

201.....122, 123, 2493

Proposed Rules:

203.....153

38 CFR

4.....21, 1441
17.....1755
21.....616, 879, 1756, 1779
36.....1349

Proposed Rules:

21.....620, 1040
36.....1378

39 CFR

111.....124, 125

228.....2495
232.....126
233.....1780

Proposed Rules:

946.....2236

40 CFR

2.....214
51.....392, 480
52.....392, 501, 1019, 1020, 1354, 1780
60.....2672
61.....777
86.....470
180.....241, 243, 657, 1923
271.....126–128, 244, 1358
421.....1704
763.....1021

Proposed Rules:

52.....261, 779, 1043
86.....1716
145.....2238
156.....1494
170.....1494
180.....262, 263, 1495, 2147, 2238
192.....1641
261.....519
373.....850
795.....911
796.....911
799.....911, 913

41 CFR

101–20.....129
105–60.....1478
114–51.....741

Proposed Rules:

Ch. 201.....620
51–7.....1379
141.....31
142.....31
201–11.....1805
201–30.....1805
201–31.....1805
201–32.....1805
261.....31

42 CFR

405.....1617
412.....1621
413.....1621
418.....1621
431.....657
435.....657
440.....657
441.....657
442.....1984

Proposed Rules:

410.....1383
434.....744
435.....744

43 CFR

2.....24
3100.....1184
3160.....1184

Public Land Orders:

6661.....1359
6662.....1359

Proposed Rules:

3160.....1039
3590.....2055

44 CFR

64.....14855

Proposed Rules:

7.....922
61.....419
62.....419
80.....621
82.....621
83.....621

45 CFR

95.....26
233.....467

Proposed Rules:

1215.....1496
1336.....1806

46 CFR

Proposed Rules:

588.....624

47 CFR

Ch. I.....502
0.....1022
15.....1781
64.....27
65.....1027
68.....1103
73.....28, 29, 504, 1030, 1629, 1630, 1782, 2496, 2497, 2600
74.....2497
76.....2497
90.....1022

Proposed Rules:

1.....625
63.....625
73.....426, 1386–1388, 1807, 1808, 2061–2064, 2510–2513, 2607, 2608
74.....529
76.....625
78.....529
95.....779

48 CFR

7.....660
8.....660
13.....660
14.....660
19.....660
22.....660
25.....660
26.....660
28.....660
29.....660
33.....660
42.....660
45.....660
52.....660
208.....1924
501.....130, 132, 1441, 1540
513.....132, 1441
525.....1925
836.....1630
852.....1630, 2669

Proposed Rules:

28.....2464
32.....2577
33.....2577
37.....2464
52.....2464
207.....2514
210.....2514
215.....625, 2514
225.....626
232.....931
252.....626, 931, 2514
404.....749
407.....749
409.....749
410.....749
412.....749
414.....749
415.....749
416.....749
417.....749
419.....749
422.....749
424.....749
425.....749
428.....749
432.....749
436.....749
437.....749
439.....749
442.....749
445.....749
446.....749
447.....749
452.....749
514.....2515
515.....2515

49 CFR

24.....467
31.....880
190.....1633
192.....1633
301.....2035
386.....2035
389.....2035
541.....133
544.....1641
565.....1032
571.....1783
661.....617

Proposed Rules:

3.....100
7.....100
10.....100
192.....1043, 1045
383.....265
391.....42
544.....1635
571.....426, 780, 934, 936, 1643, 2239, 2516
572.....2254
1041.....155
1048.....155
1049.....155

50 CFR

33.....1487
216.....1638
611.....134, 741, 890, 894, 2147
653.....244
663.....246, 248
672.....890, 991
675.....894, 991, 2147

Proposed Rules:

17.....1929
20.....42, 1645
226.....530
301.....156
652.....265
658.....266
672.....627

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Last List January 14, 1988

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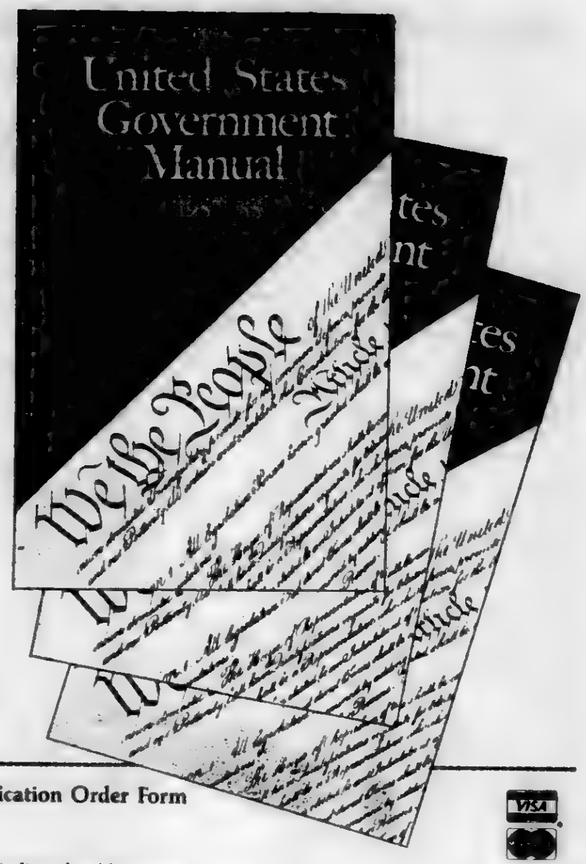
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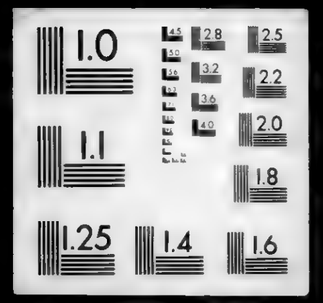
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Monday
February 1, 1988

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Vol. 53 No. 20
Pages 2719-2816

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Monday
February 1, 1988

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Contents

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

Agriculture Department
See Animal and Plant Health Inspection Service; Commodity Credit Corporation

Air Force Department
NOTICES
Active military service and discharge determinations:
American Merchant Marine in oceangoing service during World War II, 2775

Animal and Plant Health Inspection Service
PROPOSED RULES
Livestock and poultry disease control:
Brucellosis reactor cattle and bison; Federal indemnity, 2759

Army Department
NOTICES
Meetings:
Military personal property claims symposium, 2775

Coast Guard
PROPOSED RULES
Drawbridge operations:
New York, 2769

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica; correction, 2775

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Grain, etc.; warehouse approval standards, 2759

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 2809
(8 documents)

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 2809, 2810
(3 documents)

Customs Service
PROPOSED RULES
Organization and functions; field organization, ports of entry, etc.:
Chicago, IL, et al.; correction, 2767

Defense Department
See Air Force Department; Army Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Rotermund, Kurt H., D.O., 2795

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Salmon Resources Ltd., 2775
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
Ft. Pierce Utility Authority, 2776

Energy Department
See Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 2777

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 2735
McDonnell Douglas, 2736, 2737
(2 documents)
Airworthiness standards, etc.:
Special conditions—
Petersen Aviation, Inc. (modified Cessna), 2721–2730
(7 documents)
Petersen Aviation, Inc. (modified Gulfstream), 2733
PROPOSED RULES
Airworthiness directives:
Cessna, 2763
McDonnell Douglas, 2765
Airworthiness standards, etc.:
Special conditions—
Dornier 228-200, 2761
NOTICES
Airport noise compatibility program:
Cleveland-Hopkins International Airport, OH, 2799
Port Columbus International Airport, OH, 2800
Exemption petitions:
British Aerospace Public Limited Co.; correction, 2801
Fairchild Aircraft Corp.; correction, 2804

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 2810

Federal Emergency Management Agency
RULES
Flood elevation determinations:
California et al., 2743
Flood insurance; communities eligible for sale:
Pennsylvania et al., 2741
Freedom of Information Act; implementation:
Confidential commercial information; predisclosure notification procedures, 2739

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 2777
ANR Pipeline Co., 2777
Arkla Energy Resources, 2778
Granite State Gas Transmission, Inc., 2778
South Georgia Natural Gas Co., 2778
Southern Natural Gas Co., 2779
Transcontinental Gas Pipeline Corp., 2779
United Gas Pipe Line Co., 2780
Western Transmission Corp., 2780
Williams Natural Gas Co., 2780

Federal Home Loan Bank Board
NOTICES
Applications, hearings, determinations, etc.:
Home Federal Savings & Loan Association of Salisbury, 2781

Federal Labor Relations Authority
NOTICES
Senior Executive Service:
Performance Review Board; membership, 2781

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 2781
Applications, hearings, determinations, etc.:
First Bank System, Inc., 2782
First Financial Services of Moose Lake, Inc., 2783
Merrimack Bancorp, Inc., et al., 2783

Federal Trade Commission
PROPOSED RULES
Funeral industry practices, 2767
NOTICES
Franchising and business opportunity ventures; disclosure requirements and prohibitions:
Automobile companies; exemption petitions, etc.; franchise rule requirement exemption, 2784
Premerger notification waiting periods; early terminations, 2784

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 2794

Food and Drug Administration
PROPOSED RULES
Formal evidentiary public hearing; exceptions filing time periods, 2767

General Accounting Office
NOTICES
Competitive Equality Banking Act; implementation:
High yield bonds market; hearing, 2785

General Services Administration
RULES
Federal property management:
Publications distribution procedures, etc., 2738
NOTICES
Agency information collection activities under OMB review, 2789

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service

Health Resources and Services Administration
See also Public Health Service
NOTICES
Meetings; advisory committees:
February, 2789

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service
NOTICES
Environmental statements; availability, etc.:
Coastal barrier resources system, 2792

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Japan, 2771
Antidumping and countervailing duties:
Administrative review requests, 2771
Meetings:
Telecommunications Equipment Technical Advisory Committee, 2773, 2774
(3 documents)

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Kentucky, 2792
Meetings:
Prineville District Advisory Council, 2793
Opening of public lands:
Wyoming, 2793
Realty actions; sales, leases, etc.:
New Mexico, 2793
Survey plat filings:
New Mexico, 2794

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 2795

National Aeronautics and Space Administration
RULES
Freedom of Information Act; implementation:
Uniform fee schedules and administrative guidelines Correction, 2738

National Institutes of Health
NOTICES
Meetings:
Health of Biomedical Research Institutions; regional briefing meetings, 2790
National Institute of Allergy and Infectious Diseases, 2790, 2791
(3 documents)

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
National Fish and Seafood Promotional Council, 2774
New England Fishery Management Council, 2774

National Park Service
NOTICES
Meetings:
San Antonio Missions Advisory Commission, 2795

Presidential Documents
PROCLAMATIONS
Special observances:
American Red Cross Month (Proc. 5764), 2814
Challenger Center Day, National (Proc. 5763), 2719
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
President's Council on Integrity and Efficiency (EO 12625), 2812
ADMINISTRATIVE ORDERS:
H.J. Res. 395 and H.R. 3545; certification of printed enrollments (Memorandum of Jan. 28, 1988), 2816

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Meetings:
National Toxicology Program; concept review, 2791

Research and Special Programs Administration
NOTICES
Meetings:
Aviation, Marine and Land Radionavigation Users Conference, 2805

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 2810

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Texas, 2796
Applications, hearings, determinations, etc.:
EAB Venture Corp., 2796
San Joaquin Business Services Group, Inc., 2797

State Department
NOTICES
Privacy Act; systems of records, 2798

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 2798
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 2799

Treasury Department
See also Customs Service
NOTICES
Agency information collection activities under OMB review, 2805–2807
(5 documents)
Committees; establishment, renewal, termination, etc.:
Art Advisory Panel (IRS), 2807

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Soviet Union exhibit, 2807

Veterans Administration
NOTICES
Advisory committees; annual reports; availability, 2808

Separate Parts In This Issue

Part II
The President, 2812

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5763 2719
5764 2814
Executive Orders:
12301 (Revoked by 12625) 2812
12625 2812
Administrative Orders:
Memorandums:
January 28, 1988 2816
7 CFR
Proposed Rules:
1421 2759
9 CFR
Proposed Rules:
51 2759
14 CFR
21 (8 documents) 2721–2733
23 (8 documents) 2721–2733
39 (3 documents) 2735–2737
1206 2738
Proposed Rules:
21 2761
23 2761
39 (2 documents) 2763, 2765
16 CFR
Proposed Rules:
453 2767
19 CFR
Proposed Rules:
101 2767
21 CFR
Proposed Rules:
12 2767
33 CFR
Proposed Rules:
117 2769
41 CFR
101–1 2738
44 CFR
5 2739
64 2741
67 2743

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

Presidential Documents

Title 3—

The President

Proclamation 5763 of January 28, 1988

National Challenger Center Day, 1988

By the President of the United States of America

A Proclamation

Two years ago, on January 28, 1986, America lost the seven-member crew of the Challenger. Now as then, we join the families of those gallant Space Shuttle explorers in mourning them and in saluting their courage, vision, and determination.

The families of Challenger's crew members, sharing the bold spirit of the loved and lost, resolved to join in the task of preparing America's coming generations of astronauts and scientists—of inspiring young people and of giving them the opportunity to develop all of the knowledge and capabilities they would need in space and science research.

To that end, the families established a living memorial, the Challenger Center for Space Science Education. The Center will be a tribute to the Challenger crew and to their achievements, their bravery, and their dedication to America's leadership in space. The Center will stimulate and enhance students' search for knowledge and involvement in science, especially the space sciences. The Center, which will rely on private donations, has already established headquarters in our Nation's Capital and is planning regional sites.

The goals of the Center are those of all Americans, as National Challenger Center Day reminds us so well. Let our Nation's continued mission in the exploration of space pay tribute to the Center and to the families, and let it forever salute Challenger's crew and its quest.

To commemorate the members of the Challenger crew, the Congress, by Senate Joint Resolution 201, has designated January 28, 1988, as "National Challenger Center Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 28, 1988, as National Challenger Center Day, and I call on the people of the United States to observe this day by remembering the Challenger astronauts who died while serving their country and by reflecting upon the important role of the Center in honoring them and in furthering their goal of strengthening space and science education.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2ud3
Filed 1-28-88; 3:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 029CE, Special Conditions No. 23-ACE-20]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 185 Series Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Aircraft Company Model 185 Series Airplanes to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 185 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid systems to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC 3A24) for the Cessna Aircraft Company Model 185 Series Airplane is Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by 3-1 through 3-5 (normal category); effective S/N 18502300, 18503684 and on, § 23.1559, effective March 1, 1978, Part 36, dated December 1, 1969, plus Amendments 36-1 through 36-6 for S/N 18502300, 18503459 and on; and § 21.25 of the Federal Aviation Regulations dated February 1, 1965 (restricted category). In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23-ACE-20, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23-ACE-18, and stated that the "comments are applicable to all such special conditions concerning ADI system installations." The FAA addressed these comments in the adoption of the final special conditions, Petersen Aviation, Inc., for modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11627).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline." While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude non-flammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water

According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75°F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a supplemental notice for public comment in the **Federal Register** (52 FR 32805) on August 31, 1987. The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 185 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the models and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Cessna Model 185 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954, § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967 (a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975(a) (1), (2), (3), (5), (6), and (7); § 23.977 (a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1337 (a), (b)(1), (2), (3), and (4), and (c) of Part 23 of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems as follows:

(a) In § 23.955(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown. * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(a)".

(e) In § 23.991, replace current paragraph (a) with '(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(f) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word 'emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph for ADI systems to read as follows: "(e) Be located with respect to any pressure or flow sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a) paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph(e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with the following: "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may by used. In addition * * *."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on January 11, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88–1956 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 23

[Docket No. 917CE, Special Conditions No. 23–ACE–16A]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 188 Series Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; amendment to special conditions No. 23–ACE–16.

SUMMARY: This special condition amendment is issued to become part of the type certification basis for Cessna Model 188 Series Airplanes that are modified to incorporate Anti-Detonation Injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. Special conditions were published in the **Federal Register** on August 25, 1986 (51 FR 30207), to provide the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 188 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification.

The Administrator made a finding that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the proposed system.

Special conditions for the certification of this ADI system were proposed in Notice No. 23–ACE–16 which was published in the **Federal Register** on June 13, 1986. The closing date for comments was July 14, 1986. One comment was received. The special conditions were adopted as proposed on August 8, 1986, and published in the **Federal Register** on August 25, 1986 (51 FR 30207) to be effective September 24, 1986.

Subsequent certification activity revealed that one special condition paragraph, previously coordinated between the FAA and the applicant, had inadvertently been omitted from the special conditions package. The purpose of this adoption is to correct that omission.

Type Certification Basis

The certification basis (TC A9CE) for the Cessna Aircraft Company Model 188 Series Airplanes is, for Restricted Category, Part 21 of the Federal Aviation Regulations, dated February 1, 1965; for Normal Category, Part 23 of the Federal Aviation Regulations, dated February 1, 1965; and, in addition, for S/N 18803297 and on, in Normal Category, § 23.1559, effective March 1, 1978.

For the Model T188C only, the certification basis is Part 21 of the Federal Aviation Regulations dated February 1, 1965, Part 23 of the Federal Aviation Regulations dated February 1, 1965, with exception to § 23.221, per § 21.25(a)(1), and, in addition, § 23.1559, effective March 1, 1978.

Equivalent Safety Findings were made on S/N 676T, 18802349 and on, S/N T18803307T, T18803306T, T18803325T and on, relative to Airspeed Indicator § 23.1545 (see Note 7 on TCDS on use of IAS), and Airspeed Limitations § 23.1583(a)(1).

Special Conditions No. 23–ACE–18 and the special conditions amendment adopted by this rulemaking action are applicable to all Cessna Model 188 Series Airplanes modified to incorporate the Petersen Aviation, Inc., ADI System.

Discussion of Comments

The FAA received no comments in response to Notice No. 23–ACE–16A, published in the **Federal Register** on August 31, 1987. The closing date for comments was September 30, 1987.

Conclusion

This action affects only the Cessna Model 188 Series Airplanes incorporating ADI systems. It is not a rule of general applicability and applies only to the series and model of airplane identified in these amended final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions amendment is issued as a part of the type certification basis for the Cessna Model 188 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

A new paragraph (k) is added to Special Condition 2 to read as follows:

(k) In § 23.1337(b), for ADI systems, replace the lead-in paragraph with "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds, and clearly marked to indicate which scale is being used, may be used. In addition * * *."

Issued in Kansas City, Missouri, on January 5, 1988.

Paul K. Boie,

Director, Central Region.

[FR Doc. 88–1955 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 23

[Docket No. 921CE, Special Conditions No. 23–ACE–21]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 206 Series Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Aircraft Company Model 206 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 206 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an

associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplane was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropiate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC A4CE) for the Cessna Aircraft Company Model 206 Series Airplane is Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by 3–1 through 3–8; effective S/Nos. U20602589 and U20604650 and up, § 23.1559, effective March 1, 1978; dual wheel amphibious float criteria special conditions dated January 14, 1969; Amendment No. 1 dated February 20, 1969; Part 36, Amendments 1 through 6, S/N U20604075 and up.

Equivalent Safety Items S/N U20602589 and U20603021 and up

Airspeed Indicator—CAR 3.757

Operating Limitations—CAR 3.778(a)

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–21, published in the **Federal Register** on August 28, 1986. The closing date for comments was September 29, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23–ACE–16, and stated that the "* * * comments are applicable to all such special conditions concerning ADI system installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11627).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75° F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a Supplemental Notice for public comment in the **Federal Register** on August 31, 1987 (52 FR 32807). The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 206 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Cessna Model 206 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954; § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967(a)(1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973(a), (b), and (c); § 23.975(a)(1), (2), (3), (5), (6), and (7); § 23.977(a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph as follows: "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detected by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI fluid tank filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank, in either pounds, or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on January 7, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–1959 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 022CE, Special Conditions 23–ACE–22]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 207 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Aircraft Company Model 207 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 207 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC A16CE) for the Cessna Aircraft Company Model 207 Series Airplane is Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–

1 through 23–6; S/N 20700463 and up, § 23.1559 as amended by Amendment 23–21 effective March 1, 1978; Part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–6 for S/N 20700363 and up; S/N 20700315 and up, equivalent safety findings for airspeed indicator, § 23.1545; and operating limitations, § 23.1583(a)(1).

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–22, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23–ACE–18, and stated that the "* * * comments are applicable to all such special conditions concerning ADI system installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11627).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published for public comment in the **Federal Register** (52 FR 32808) on August 31, 1987. The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 207 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Cessna Model 207 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954, § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967 (a)(1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975(a)(1), (2), (3), (5), (6), and (7); § 23.977 (a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1237 (a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1985, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude." Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph as follows: "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *".

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank, in either pounds, or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri on January 11, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88–1958 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 023CE, Special Conditions No. 23–ACE–23]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 210 Series Airplanes To Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Aircraft Company Model 210 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 210 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engine in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b) effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC 3A21) for the Cessna Aircraft Company Model 210 Series Airplane is as follows:

Models 210/210A: Part 3 of the Civil Air Regulations effective May 15, 1956, with no amendments.

Models 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, T210N, 210–5(205), 210–5A(205A): Part 3 of the Civil Air Regulations effective May 15, 1956, and Paragraph 3.112, as amended October 1, 1959; Part 36 dated December 1, 1969, plus Amendments 36–1 through 36–9 for the T210N; in addition, § 23.1559, effective March 1, 1978, for the Models 210N/T210N.

Model P210N: Part 3 of the Civil Air Regulations dated May 15, 1956, Paragraph 3.112, as amended October 1, 1959, and §§ 23.365, 23.571, 23.775, 23.841, 23.843, 23.901, 23.909, 23.1041, 23.1043, 23.1143, 23.1305, 23.1325, 23.1441, and 23.1527 of Part 23 effective February 1, 1965, as amended to February 14, 1975. Part 36 dated December 1, 1969, plus Amendments 36–1 through 36–6. Also, § 23.1559, effective March 1, 1978, for P21000151 and up.

Equivalent Safety Items (S/N U21061040 and up, and S/N P2100001 and up): Airspeed Indicator, CAR 3.757; Operating Limitations, CAR 3.778(a) (210N, S/N 21062955 and up); Airspeed Indicating System, CAR 3.663.

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–23 published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23–ACE–18, and stated that the "* * * comments are applicable to all such special conditions concerning ADI system installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11627).

Another commenter representing an aviation foundation, "* * * takes issue

with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, parts 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75°F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice.

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a Supplemental Notice for public comment in the **Federal Register** on July 20, 1987 (52 FR 27223). The comment period closed on August 19, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 210 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Cessna Model 210 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951(a) and (b); § 23.953; § 23.954, § 23.955(a) and (c)(1); § 23.959; § 23.961; § 23.963(a), (d), and (e); § 23.965(a)(1); § 23.967(a)(1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973(a), (b), and (c); § 23.975(a)(1), (2), (3), (5), (6), and (7); § 23.977(a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143(a), (e), and (f); § 23.1189(a) and (c); § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a) General, in the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *"

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude." Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pumps which supplies ADI fluids to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that estblished for proper operation of the ADI system", and add a new paragraph as follows: "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detectable by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI fluid tank filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specifications"; and (b) the capacity of the tank, in either pounds or gallons, consistent with other ADI system markings.

Issued in Kansas City, Missouri on January 8, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–1953 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 019CE, Special Conditions No. 23–ACE–19]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 310 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Aircraft Company Model 310 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 310 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc. has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis for the Cessna Aircraft Company Model 310 Series (TC 3A10) is as follows: Model 310 through 310F, CAR 3 dated November 1, 1949, as amended by 3–1 through 3–10; Models 310G through T310P, same as earlier models plus §§ 3.109, 3.111, 3.112, 3.115, 3.118 and 3.120 of CAR 3, dated May 15, 1956, as amended by 3–2 and 3–5; Models 310Q and T310Q, same as earlier models plus § 3.688 of CAR 3 dated May 15, 1956, as amended by 3–2, 3–5, and 3–8; Models 310R and T310R, same as earlier models plus §§ 23.161 and 23.171 through 23.181 of Part 23 dated February 1, 1965, as amended by 23–1 through 23–7, and 23.1327, as amended through 23–23, in addition, for S/N 310R0801 and up, compliance with ice protection has been demonstrated in accordance with § 23.1419 of Amendment 23–14, effective December 20, 1973, when ice protection equipment is installed in accordance with the Pilot's Operating Handbook and Factory Kit No. 194; S/N 310Q0901 and on, markings, placards, and manuals are primarily in knots instead of m.p.h., as required by CAR 3, but permitted by Part 23, Amendment 23–7; S/N 310R0501 and up, findings of equivalent level of safety were made for CAR 3.757 and 3.778(a); Model 310R/T310R, S/N 310R1801 and up, compliance with noise certification requirements has been demonstrated in accordance with Part 36, dated December 1, 1969, as amended through 36–10.

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–19, published in the **Federal Register** on August 28, 1986. The closing date for comments was September 29, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23–ACE–18, and stated that the "* * * comments are applicable to all such special conditions concerning ADI systems installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes, published in the **Federal Register** on April 10, 1987 (52 FR 11627).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid might be a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water.

According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a Supplemental Notice of public comment in the **Federal Register** on August 31, 1987 (52 FR 32808). The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 310 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as part of the type certification basis for Cessna Model 310 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954; § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967(a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975(a) (1), (2), (3), (5), (6), and (7); § 23.977(a) (1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e) and (f); § 23.1189 (a) and (c); and § 23.1337 (a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate.

In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude." Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph as follows: "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detected by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI systems, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI fluid tank filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank, in either pounds or gallons, consistent with other ADI system markings.

Issued in Kansas City, Missouri, on January 7, 1988.

Paul K. Bolar,

Director, Central Region.

[FR Doc. 88–1952 Filed 1–29–88; 8:45 am]

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14 CFR Parts 21 and 23

[Docket No. 024CE, Special Conditions No. 23–ACE–24]

Special Conditions; Petersen Aviation, Inc., Modified Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Cessna Model 320 Series Airplanes. This installation incorporates ADI tanks, pumps, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for these ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid used in this system (a mixture of 60 percent methanol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC A25CE) for the Cessna Aircraft Company Model 320 Series, Model 340 Series, and Model 335 Series Airplanes is as follows:

For the Model 320 Series: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3–1 through 3–5.

For the Model 340 Series: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by 3–1 through 3–5 and 3–8, except Subpart B; Part 23, Subpart B, and §§ 23.959, 23.1041 and 23.1305(p) of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23–1 through 23–7 and exemption No. 1435.

For the Models 340A and 335: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3–1 through 3–5 and 3–8, except Subpart B and §§ 3.437(a), (b), (c), (d), (f), 3.581, and 3.668; Part 23, Subpart B and §§ 23.959, 23.1041 and 23.1305(p), effective February 1, 1965, as amended by Amendments 23–1 through 23–7; § 23.1387(e), as amended by Amendment 23–12, § 23.1327 as amended by Amendment 23–23; and FAR 36, dated December 1, 1969, as amended by Amendments 36–1 through 36–4 (36–10, Model 335); findings of equivalent level of safety for CAR sections 3.757 and 3.778(a).

For Model 340, S/N 340–0301 and up, Models 340A and 335, markings, placards and manuals are primarily in knots instead of m.p.h., as required by CAR 3, but permitted by Part 23, Amendment 23–7.

For Model 340A, S/N 340A0201 and up, and Model 335, in addition to the above certification basis, compliance with ice protection has been demonstrated in accordance with § 23.1419 as amended by Amendment 23–14, effective December 20, 1973, when ice protection equipment is installed in accordance with the Pilot's Operating Handbook and Factory Kit (FK) No. 194.

For Model 335, S/N 335–0001 and up; in addition to the above certification basis, oxygen systems must comply with § 23.1441 as amended by Amendment 23–9, effective June 17, 1970, to make the airplane eligible for operation at altitudes where supplemental oxygen is mandatory.

For all models, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–24 published in the **Federal Register** on September 17, 1986. The closing date for comments was October 13, 1986.

One commenter representing a general aviation manufacturer, stated that "Airplanes covered by TC A25CE and also A10CE were included in Airworthiness Directive Amendment 39–793 relating to the flow of fuel from tip tanks. FAA will recall that the capability to keep engines running with the corrections required by that AD depended, in part, on the particular characteristics of the engine, as originally type certificated, to tolerate and recover from fuel flow that may be encountered during prolonged steep descents. We believe that the proposed modification should be examined to assure that the modified engines have acceptable tolerance and recovery characteristics to preclude the situation corrected in that AD."

The FAA has concluded that the ADI installation will not affect the condition described by the commenter. In deep descents, the engines would be expected to be producing less than 75 percent power; the ADI system would not be operating at less than 75 percent power.

The commenter continues: "FAA will also recall that for T.C. A25CE, in Airworthiness Directive Amendment 39–407B, FAA established that a peculiar relationship existed between the characteristics of installed engines and the dynamic response characteristics of the empennage. Cessna's airframe investigations were limited to the characteristics of engines as type certificated. We believe that additional investigations should be accomplished to assure airworthiness of the present airframe in combination with the proposed modified engines."

The FAA has concluded that there should be no change in the relationship between the engines and the dynamics of the empennage caused by the installation and use of an ADI system. The rotational speed of the engines is unchanged; any detonation resulting from the use of autogas will be suppressed by the ADI system.

The commenter pointed out that "* * * for both Amendments, 39–793 and 39–407B, it was necessary to examine characteristics not provided for in the certification bases. In both of these cases, FAA held that a potential existed for catastrophic failure. It is

recommended that the Special Conditions proposed in this case be expanded to require compliance with the same criteria as in the ADs and that FAA examine the applicant's compliance evidence with the same depth as they did in the referenced AD programs."

As indicated above, the FAA has determined that expanding the special conditions, as recommended by the commenter, is not necessary. The use of autogas and ADI should not adversely affect the characteristics that are of concern to the commenter.

The same commenter had sent comments on these special conditions to a representative of the General Aviation Manufacturers Association (GAMA) for compilation with other comments and submittal to a docket. The commenter also submitted a duplicate set of GAMA-addressed comments to this docket. The FAA has reviewed those comments and finds that they are among the comments, except for one instance, submitted to Docket No. 018CE (Notice No. 23–ACE–18). These comments were analyzed and disposed of in the final special conditions for Petersen Aviation, Inc. modified Beech Model 33 Series Airplanes published in the **Federal Register** (52 FR 11627), April 10, 1987, and will not be further addressed here. The exception is as follows: "It is understood that an effect of some ADI systems is to increase the temperature of gases in the exhaust stream. Yet the draft special conditions are silent with respect to accounting for any increased temperature and its effect on the integrity of exhaust system components or their limitations."

The FAA is not familiar with ADI systems that increase the temperature of gases in the exhaust stream. In all cases that the FAA is familiar with, addition of ADI systems reduces the occurrences of detonation thereby reducing the peak temperature in the combustion chamber which results in an overall lower exhaust gas temperature than would occur without the ADI system.

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc. ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. This paragraph was published in the **Federal Register** (52 FR 32809) for public comment on August 31, 1987. The comment period closed on September 30, 1987. No comments were received. The requirements has been incorporated into these final special condition as paragraph 2(l).

Conclusion

This action affects only the Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the models and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Cessna Model 320 Series, Model 340 Series, and Model 335 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953, § 23.954, § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965 (a)(1); § 23.967 (a)(1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975 (a)(1) (2), (3), (5), (6), and (7); § 23.977 (a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1337(a), (b) (1), (2), (3), and (4), and (c) of Part 23 of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriated. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems as follows:

(a) In § 23.955(a), General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.995, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "* * * of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph for ADI systems to read as follows: "(e) Be located with respect to any pressure or flow sensing devices such that the blockage of the filter will be detected by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine engine powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), for ADI systems, replace the current lead-in paragraph with the following paragraph: "There must be a means to indicate the quantity of ADI fluid in each tank. A dipstick, sight guage, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *"

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on January 13, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88–1954 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 23

[Docket No. 026CE, Special Conditions No. 23–ACE–26]

Special Conditions; Petersen Aviation, Inc., Modified Gulfstream Aerospace Model 500 Series Airplanes to Incorporate Anti-Detonation Injection (ADI) System Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Gulfstream Aerospace Corporation Model 500 Series Airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Gulfstream Aerospace Model 500 Series Airplanes. This installation incorporates ADI tanks, pumps, lines, and an associated control system to supply ADI fluid to the engines in measured quantities to allow the engines to be operated on automobile gasoline (autogas). The engines will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the certification basis for the subject airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 4, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent alcohol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid system to meet essentially the same standards as the airplane fuel system.

Type Certification Basis

The certification basis (TC 6A1) for the Gulfstream Aerospace Corporation Model 500 Series Airplane is as follows:

Model 500: CAR 3 effective November 1, 1949, through Amendment 3–12 dated May 18, 1954, and CAR 3.431, as amended May 15, 1956.

Model 500–A, CAR 3 effective May 15, 1956, including Amendments 3–3 and 3–4 effective October 6, 1958.

In addition, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

The FAA received two comments in response to Notice No. 23–ACE–26, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, submitted several comments to Docket No. 018CE, Notice No. 23–ACE–18, and stated that the "* * * comments are applicable to all such special conditions concerning ADI systems installations." The FAA addressed these comments in the adoption of the final special conditions, for Petersen Aviation, Inc., modified Beech Model 33 Series, Model 35 Series, and Model 36 Series

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Airplanes, published in the Federal Register on April 10, 1987 (52 FR 11627).

Another commenter, representing an aviation foundation, "* * * takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc., ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

"Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's Chemical Engineer's Handbook, Sixth Edition, McGraw-Hill, 1984, pages 12–43, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen Aviation, Inc., adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Supplemental Notice

During the type certification program of an ADI system on another airplane, it was discovered that a necessary paragraph addressing the ADI fluid quantity measuring device was inadvertently omitted from the Notice of Proposed Special Conditions. The paragraph was published as a Supplemental Notice for public comment in the **Federal Register** on August 31, 1987 (52 FR 32810). The comment period closed on September 30, 1987. No comments were received. The requirement has been incorporated into these final special conditions as paragraph 2(l).

Conclusion

This action affects only Gulfstream Aerospace Model 500 Series Airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the model and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires. The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Gulfstream Aerospace Model 500 Series Airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951 (a) and (b); § 23.953; § 23.954, § 23.955 (a) and (c)(1); § 23.959; § 23.961; § 23.963 (a), (d), and (e); § 23.965(a)(1); § 23.967 (a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.973 (a), (b), and (c); § 23.975 (a)(1), (2), (3), (5), (6), and (7); § 23.977 (a)(1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141; § 23.1143 (a), (e), and (f); § 23.1189 (a) and (c); and § 23.1337 (a), (b)(1), (2), (3), and (4), and (c) of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in Special Condition 1, as appropriate. In addition, certain Part 23 requirements listed in Special Condition 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a) General. In the first sentence, replace the words "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown * * *" with the words "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown * * *."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when the pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the words "of a single-engine airplane" are not applicable to ADI systems.

(d) In § 23.971, replace the current paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace current paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)".

(e) In § 23.991, replace current paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace current paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine." In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace current paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph as follows: "(e) Be located with respect to any pressure or flow-sensing devices such that the blockage of the filter will be detected by this device".

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777, which are incorporated by reference, are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555, which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the words "for turbine-engine-powered airplanes" are not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add the following sentence: "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

(l) In § 23.1337(b), replace the current lead-in paragraph with the following paragraph: "There must be means to indicate the quantity of ADI fluid in each tank. A dipstick, sight gauge, or an indicator, calibrated in either gallons or pounds and clearly marked to indicate which scale is being used, may be used. In addition * * *."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI fluid tank filler openings must be conspicuously marked at or near the filler cover with: (a) the words "ADI fluid meeting the Petersen Aviation, Inc. specification"; and (b) the capacity of the tank, in either pounds or gallons, consistent with other ADI system markings.

Issued in Kansas City, Missouri on January 7, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–1957 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–20–AD; Amendment 39–5837]

Airworthiness Directives; Beech Model F33A, V35B, A36, A36TC, B36TC, E55, 95B55, 58, 58A, 58P, 58PA, 58TC, and 58TCA Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87–18–06, Amendment 39–5721, applicable to certain Beech Models F33A, V35B, A36, A36TC, B36TC, E55, 95B55, 58, 58A, 58P, 58PA, 58TC, and 58TCA airplanes, which requires the replacement of the seat recline actuator handle assembly with a redesigned one to prevent the inadvertent reclining of the co-pilot's and/or third and fourth passenger seats. This AD, issued to all registered affected owners/operators with an effective date of October 9, 1987, was inadvertently not published in the **Federal Register**. This revision corrects that oversight, establishes a new effective date for the AD, and allows for previous compliance with the unpublished version of the AD.

DATES: *Effective Date:* February 5, 1988. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin Number 2175, revision dated June 1987, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Federal Aviation Administration, Wichita Aircraft Certification Office, ACE–120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: AD 87–18–06, Amendment 39–5721, requiring the replacement of the seat recline actuator handle assembly with a redesigned one to prevent the inadvertent reclining of the co-pilot's and/or third and fourth passenger seats on certain Beech Model F33A, V35B, A36, A36TC, B36TC, E55, 95B55, 58, 58A, 58P, 58PA, 58TC, and 58TCA airplanes was issued to all registered affected owners/operators with an effective date of October 9, 1987. The AD resulted from free play designed into the armrest that allows the optional seat recline adjuster handle to be inadvertently actuated if force is applied downward in the forward end of the armrest. The AD requires the replacement of the existing seat recline actuator handle on the co-pilot's and the third and fourth seats with a new handle assembly.

Interested persons were afforded an opportunity to comment on the AD prior to its adoption. No comments or objections were received on the proposal or the FAA determination of the related cost to the public.

Subsequently, the FAA determined that although the AD was issued to all registered owners/operators, the AD was never published in the **Federal Register**. Therefore, the FAA is revising this AD with a new effective date as a means of total public notification as required by the Administrative Procedure Act (5 U.S.C. 553), and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation as originally issued, only involved 2200 airplanes at an approximate one-time cost of $40 for each airplane with a total cost estimated to be $88,000 to the public sector. The cost of this revision to the AD will have no additional economic impact on the private sector.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By revising and reissuing AD 87–18–06, Amendment 39–5721, as follows:

Beech: Applies to model and serial numbered airplanes listed below equipped with the optional hydrolock seat recline actuators on co-pilot and third and fourth seats, certificated in any category:

Model	Serial Numbers
F33A	CE–919, CE–923, CE–925, CE–927, CE–929, thru CE–1083.
V35B	D–10348, D–10353 thru D–10403.
A36	E–1422, E–1551, E–1569, E–1581, E–1594 thru E–2327.
A36TC and B36TC	EA–21, EA–26, EA–33 thru EA–454.
95–B55	TC–2340, TC–2355 thru TC–2456.
E55	TE–1152, TE–1181 thru TE–1201.
58 and 58A	TH–1027, TH–1062, TH–1067, TH–1080 thru TH–1507.
58P and 58PA	TJ–210, TJ–235 thru TJ–497.
58TC and 58TCA	TK–107, TK–108, TK–110 thru TK–151.

Compliance: Required within the next 100 hours time-in-service or the next scheduled inspection, whichever occurs first after the effective date of this revised AD, unless already accomplished per the original issuance of this AD.

To prevent the co-pilot and/or passenger chair armrest from coming in contact with the seat recline actuator handle and inadvertently releasing the locking feature on the seatback, accomplish the following:

(a) Replace the seat recline actuator handle on the co-pilot's and the third and fourth passenger seats that are equipped with reclining backs, with a new P/N 102–530111–5 handle assembly in accordance with the Instructions in Beech Service Bulletin No. 2175, revision dated June 1987.

Note.—The third and fourth passenger seats are the seats immediately behind the pilot's and co-pilot's seats.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Dept. 52, P.O. Box 85, Wichita, Kansas 67201–0085, or may examine these documents at the FAA, Office of the Regional Counsel, 601 East 12th Street, Room 1558, Kansas City, Missouri 64106.

This amendement revises AD 87-18-08, Amendment 39-5721, effective October 9, 1987.

This amendment becomes effective on February 5, 1988.

Issued in Kansas City, Missouri, on January 21, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-1960 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-78-AD; Amdt. 39-5839]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 Series Airplanes Equipped With Honeywell, Inc., P/N HG280D80 Digital Air Data Computers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, which requires inspection and modification, if necessary, of certain Honeywell Digital Air Data Computers (DADC). This amendment is prompted by reports of erroneous information being transmitted to the Digital Flight Guidance Computer (DFGC) from the DADC. This condition, if not corrected, could lead to an aircraft stall close to the ground during an automatic pilot or flight director go-around maneuver.

EFFECTIVE DATE: March 11, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60); or Honeywell, Incorporated, Commercial Aviation Division Technical Services, Mail Station MN23-6345, P.O. Box 889, Minneapolis, Minnesota 55440. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires inspection and modification, if necessary, of certain Honeywell DADC on McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, was published in the **Federal Register** on August 7, 1987 (52 FR 29390).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the Air Transport Association (ATA) of America, indicated that its affected operators intend to accomplish the proposed modification within the proposed compliance period.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 366 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4.2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,488.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($166). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, as listed in McDonnell Douglas Service Bulletin 34-177, dated April 28, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent erroneous information from being transmitted to the Digital Flight Guidance Computer (DFGC) from the Digital Air Data Computer (DADC) in the event of an electrical transient, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), inspect Honeywell P/N HG280D80 DADC in affected airplanes to determine if Modification 8 has been installed, in accordance with Part 2 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin 34-177, dated April 28, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If Modification 8 has been installed and identified, no further action is necessary.

2. If Modification 8 has been installed but not identified, identify the DADC in accordance with the service bulletin.

3. If Modification 8 has not been installed, modify and identify the DADC in accordance with the service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60); or Honeywell, Incorporated, Commercial Aviation Division Technical Services, Mail Station MN23-6345, P.O. Box 889, Minneapolis, Minnesota 55440. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective March 11, 1988.

Issued in Seattle, Washington, on January 21, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1961 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-161-AD; Amdt. 39-5838]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10, -10F, -15, -30, 30F, -40, and KC-10A (Military) series airplanes, which requires inspections and repair, as necessary, of the horizontal stabilizer constant and outer section integrally-machined skin panels, as well as inspections and replacement of H-11 material bolts used for attachment of the horizontal stabilizer constant section to the spar caps. This amendment is prompted by reports of cracks in the horizontal stabilizer skin panel and a failed bolt. This condition, if not corrected, could result in structural failure of the horizontal stabilizer.

EFFECTIVE DATE: March 11, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires inspections and repair, as necessary, of the horizontal stabilizer constant and outer section integrally machined skin panels, plus inspections and replacement of H-11 material bolts used for attachment of the horizontal stabilizer constant section to the spar caps, on McDonnell Douglas Model DC-10 series airplanes, was published in the **Federal Register** on September 9, 1987 (52 FR 33950). The comment period for the proposal closed on October 12, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments received from the manufacturer and an operator suggested that the description of the horizontal stabilizer skin panel read, "constant and outer section upper and lower skin panels." The FAA agrees that the suggested language is clearer and has revised the wording of paragraph A. accordingly.

The manufacturer suggested that the final rule be changed to give credit for inspection previously accomplished since May 8, 1987 (the date of the service bulletins), rather than 18 months as proposed in paragraph A. and 6 months as proposed in paragraph B. The FAA agrees that the reference to 18 months prior to the effective date (as indicated in proposed paragraph A.) is anomolous in that, prior to May 8, 1987, which is the issuance date of the service bulletin, it was not possible to perform an inspection in accordance with that service bulletin. Accordingly, the FAA has revised paragraphs A. and B. of the final rule to reflect the language "* * * unless already accomplished since May 8, 1987."

One operator stated that proposed paragraphs D.2.b. and D.2.c. would require inspection of a greater area than that described in the service bulletin. The FAA agrees that only the cracked skin panel(s) and the adjacent panels need to be inspected along with the bolts on the spar cap nearest to the cracked panel(s). The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 198 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,880.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model DC-10 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delgated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of a horizontal stabilizer skin panel or a spar cap bolt due to stress corrosion, accomplish the following:

A. Within the next 6 months after the effective date of this AD, unless already accomplished since May 8, 1987, and thereafter at intervals not to exceed 2 years, inspect the horizontal stabilizer constant and outer section upper and lower skin panels and apply LPS-3 (or equivalent) corrosion-inhibiting compound in accordance with McDonnell Douglas Alert Service Bulletin A55-16, dated May 8, 1987, or later FAA-approved revison.

B. Within the next 6 months after the effective date of this AD, unless already accomplished since May 8, 1987, and thereafter at intervals not to exceed one year, inspect the horizontal stabilizer spar cap bolts made from H-11 material in accordance with McDonnell Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

C. If a broken bolt is found, prior to further flight, replace the broken bolt with a new bolt in accordance with McDonnel Douglas Alert Service Bulletin A55-17, dated May 8, 1987, or later FAA-approved revision.

D. If a crack is found in a skin panel:

1. Prior to further flight, repair or replace in accordance with McDonnell Douglas Alert

Service Bulletin A55–16, dated May 8, 1987, or later FAA-approved revision; or

2. If the crack is within limits defined in McDonnell Douglas Alert Service Bulletin A55–16, dated May 8, 1987, or later FAA-approved revision, accomplish the following:

a. Prior to further flight, apply LPS–3 (or equivalent) corrosion inhibiting compound in accordance with McDonnell Douglas Alert Service Bulletin A55–16, dated May 8, 1987, or later FAA-approved revision; and

b. Prior to further flight, inspect the horizontal stabilizer spar cap bolts nearest to the cracked panel(s) and, if necessary, replace broken attachment bolts in accordance with McDonnell Douglas Alert Service Bulletin A55–17, dated May 8, 1987, or later FAA-approved revision; and

c. At intervals not to exceed 3 months from the last inspection, reinspect the cracked skin panel(s) and the adjacent panels (forward and aft and inboard or outboard) and horizontal stabilizer spar cap bolts nearest to the cracked panel(s) in accordance with paragraphs A. and B., above.

E. If, at any inspection, a crack is found in the skin panel which is outside acceptable limits defined in paragraph D.2., above, prior to further flight, repair or replace in accordance with McDonnell Douglas Alert Service Bulletin A55–16, dated may 8, 1987, or later FAA-approved revision.

F. Installation of a new inconel or multiphase bolt, as applicable, to replace an H–11 material bolt constitutes terminating action for the repetitive inspections required by this AD for that bolt.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakwood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective March 11, 1988.

Issued in Seattle, Washington, on January 21, 1988.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 88–1962 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

Availability of Agency Records to Members of the Public; Correction

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: NASA is correcting errors found in this regulation published in the **Federal Register** on October 28, 1987 (52 FR 41406). This action corrects the NASA official identified in §1206.500 and § 1206.503(a)(4) from the Associate Deputy Administrator (Policy) to the Associate Deputy Administrator (Institution). This also necessitates correction to the table of contents for Subpart 5, § 1206.500.

This action also corrects the names and addresses of several NASA information centers listed in § 1206.401. The name of the Dryden Flight Research Center has been changed to the Dryden Flight Research Facility. The name of the Wallops Flight Center has been changed to the Wallops Flight Facility, The ZIP code at the Langley Research Center has been changed to 23665. The ZIP code at the NASA Resident Procurement Office (JPL) has been changed to 91109. The address of the National Space Technology Laboratories has been changed from Bay St. Louis to NSTL, MS 39529.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Siegel, 202 453–2465.

PART 1206—[CORRECTED]

1. Table of contents for Subpart 5 is corrected to read as follows:

Subpart 5—Responsibilities

1206.500 Associate Deputy Administrator (Institution).

* * * * *

2. Section 1206.401 (c), (f), (j), (k), and (l) are corrected to read as follows:

§ 1206.401 Location of NASA information centers.

* * * * *

(c) NASA Information Center, Hugh L. Dryden Flight Research Facility, Post Office Box 273, Edwards, CA 93523.

* * * * *

(f) NASA Information Center, Langley Research Center, Langley Station, Hampton, VA 23665.

* * * * *

(j) NASA Information Center, National Space Technology Laboratories, NSTL, MS 39529.

(k) NASA Information Center, NASA Resident Procurement Office (JPL), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island, VA 23337.

3. The introductory text of § 1206.500 is corrected to read as follows:

§ 1206.500 Associate Deputy Administrator (Institution).

Except as otherwise provided in § 1206.504, the Associate Deputy Administrator (Institution) or designee is reponsible for the following:

* * * * *

4. Section 1206.503(a)(4) is corrected to read as follows:

§ 1206.503 NASA Headquarters.

(a) * * *

(4) In coordination with the Associate Deputy Administrator (Institution), ensuring that requests for agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

* * * * *

James C. Fletcher,

Administrator.

January 25, 1988.

[FR Doc. 88–1973 Filed 1–29–88; 8:45 am]

BILLING CODE 7510–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–1

[FPMR Amdt. A–41]

Revision of Procedures for Distributing the FPMR and for Obtaining GSA Forms

AGENCY: Office of Administration, GSA.

ACTION: Final rule.

SUMMARY: These changes to FPMR Subchapter A reflect changes in GSA organization and policy and clarify procedures for distributing FPMR and other publications and for obtaining GSA forms.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dynnelle Kozlowski, Directives and Correspondence Branch (202–535–7942).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits, and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–1

Government property management.

PART 101–1—INTRODUCTION

1. The authority citation for Part 101–1 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–1.1—Regulation System

2. Section 101–1.104–2(a) is revised to read as follows:

§ 101–1.104–2 Distribution.

(a) Each agency shall designate an official to serve as liaison with GSA on matters pertaining to the distribution of FPMR and other publications in the FPMR series. Agencies shall report all changes in designation of agency liaison officers to the General Services Administration (CAR), Washington, DC 20405.

* * * * *

Subpart 101–1.48—Illustration of Forms

3. Section 101–1.4902 is amended to revise paragraph (b) to read as follows:

§ 101–1.4902 GSA forms.

* * * * *

(b) GSA forms illustrated in § 101–1.4902 may be obtained by addressing requests to the General Services Administration, National Forms and Publications Center–7 CAR–W, Warehouse 4, Dock No. 1, 501 West Felix Street, Forth Worth, TX 76115.

Dated: January 19, 1988.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–1966 Filed 1–29–88; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Implementation of Executive Order 12600 of June 23, 1987, Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending its Freedom of Information Act (FOIA) regulations to add a new section regarding predisclosure notification procedures for confidential commercial information as required by Executive Order (E.O.) 12600 of June 23, 1987.

EFFECTIVE DATE: March 2, 1988.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646–3840.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to issue final implementing regulations in conformance with the requirements of E.O. 12600 which was published in the **Federal Register** on June 25, 1987, 52 FR 23781. Section 7 of E.O. 12600 of June 23, 1987, requires that the designation and notification procedures required by this Executive Order shall be established by regulation, after notice and public comment. On September 9, 1987, FEMA published a notice of proposed rulemaking to issue proposed implementing regulations as required by E.O. 12600. FEMA received one comment pursuant to that notice from a public interest group.

Section-By-Section Analysis

Section 5.57(d) Opportunity to object to disclosure.

The commenter objects to FEMA's proposal to give 7 working days to submitters to object to disclosure and urges FEMA to reduce the response time for submitters, implement notification procedures by telephone rather than letter, or take any other steps to make clear that the notification procedures do not obviate the Agency's obligation to respond to a FOIA request within 10 working days.

FEMA believes that the notification procedures as required by E.O. 12600 constitute unusual circumstances which permit an extension of 10 working days beyond the normal time limits, thereby providing for a due date for response to the FOIA requester within 20 working days rather than the normal 10 working days. Although E.O. 12600 requires agencies to provide notice to submitters within "a reasonable number of days" to submit objections to disclosure or prior to the specified disclosure date by the Agency, FEMA believes that "a reasonable number of days" should be clearly defined to avoid inconsistent interpretation by the various FOIA case processors of what it constitutes. FEMA is cognizant that the FOIA time limits are not always realistic. However, it believes that the Agency has carefully considered the interests of both the submitters and the public and determined that 7 working days is the fewest number of days that FEMA can reasonably expect to receive submitters' comments and still be responsive to the needs of the FOIA requesters. While FEMA will expedite the consultation process as much as possible in notifying submitters, it will continue to do so through written procedures due to the potential of litigation, wherein the propriety of FEMA's determination to release any of the submitter's information over their objections would be decided on the administrative written record. Also, verbal notices have a much greater probability of being misconstrued or misunderstood than do written notices. Because the majority of FEMA's records which require notification to submitters involve procurement activities and the contract area has a high turnover of personnel, it would be difficult for FEMA to verify proper notification to a submitter absent a written record. Accordingly, FEMA has not made any changes to this section.

Section 5.57(d)(2) Opportunity to object to disclosure.

The commenter also challenges FEMA's "invitation" that the requester not consider the time delay as a denial but voluntarily agree to an extension of time. The commenter argues that the proposed rule makes no provision for following the time limit should the requester decline the invitation, and suggests that FEMA simply intends to ignore the law while it considers business information submitters' comments. The commenter suggests that it is simply inappropriate for FEMA to request through regulation that FOIA requester ignore the time provisions made for their benefit in the FOIA.

In its experience, FEMA has found informal negotiations with some requesters for voluntary extension of the time limits to be quite effective in avoiding unnecessary FOIA litigation. The inclusion of these informal negotiation procedures in FEMA's

proposed rule was not in any way meant to restrict the legal rights of a requester to submit an administrative appeal or seek judicial review which is provided by the FOIA. Based upon the comment, however, FEMA has revised this section as it agrees that negotiation procedures continue to be best handled informally.

FEMA has determined that this document is not a major rule under E.O. 12291 since it will not have a significant economic effect on a substantial number of small entities. The basis for this determination is that any economic impact on small entities resulting from this proposed rule would be attributable to E.O. 12600, not to these regulations.

This final rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Part 5

Freedom of Information Act, Production or disclosure of information.

Accordingly, for reasons set out in the preamble, 44 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12600.

§ 5.52 [Amended]

2. Section 5.52 is amended by removing paragraph (c).

§§ 5.57, 5.58, 5.59 and 5.60 [Redesignated as § 5.58, 5.59, 5.60 and 5.61]

3. Sections 5.57, 5.58, 5.59, and 5.60 are redesignated as §§ 5.58, 5.59, 5.60, and 5.61 respectively.

4. A new § 5.57 is added to read as follows:

§ 5.57 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Business information provided to FEMA by a business submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to business submitters.* FEMA shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter; or

(iii) The information is subject to prior express commitment of confidentiality given by FEMA to the submitter.

(2) For confidential commercial information submitted to FEMA on or after January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, FEMA shall afford a submitter 7 working days within which to provide FEMA with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemptions of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request, i.e., 10 working days after receipt of the request by FEMA or 20 working days after receipt of the request by FEMA if the time limits are extended under unusual circumstances permitted by the FOIA, may be considered a denial of access to records and the requester may proceed with an adminstrative appeal or seek judicial review, if appropriate.

(e) *Notice of intent to disclose.* FEMA shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever FEMA decides to disclose business information over the objection of a submitter, FEMA shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is 7 working days after the notice of the final decision to release the requested information has been mailed to the submitter. FEMA shall inform the submitter that disclosure will be made by the specified disclosure date, unless the submitter seeks a court injunction to prevent its release by the date. When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) FEMA determines that the information shall not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was required in the course of a lawful investigation of a possible violation of criminal law.

§ 5.60 [Amended]

5. Newly redesignated § 5.60 is amended by changing "§ 5.58" to read "§ 5.59".

§ 5.61 [Amended]

6. Newly redesignated § 5.61 is amended by changing "§ 5.59" to read "§ 5.60".

Date: January 26, 1988.

Julius W. Becton, Jr.,

Director.

[FR Doc. 88-1923 Filed 1-29-88; 8:45 am]

BILLING CODE 6718-31-M

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44 CFR Part 64

[Docket No. FEMA 6773]

Suspension of Community Eligibility; Pennsylvania et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and indentified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64.

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Dated [1]
Region III—Regular Conversions				
Pennsylvania:				
Hamilton, Township of, Monroe County	421888	Mar. 31, 1978, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	Feb. 4, 1988	Feb. 4, 1988.
Hatfield, Township of, Montgomery County	420699	Apr. 21, 1972, Emerg.; Nov. 15, 1979, Reg.; Feb. 4, 1988, Susp.	do	Do.
Washington, Township of, Armstrong County.	421317	Feb. 17, 1977, Emerg., Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region IV				
Georgia: Jesup, City of, Wayne County	130188	June 4, 1975, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region V				
Ohio:				
Belmont County, Unincorporated Areas	390762	June 3, 1976, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Brookside, Village of, Belton County	390027	Mar. 20, 1975, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region VI				
Louisiana: Iowa, Town of, Calcasieu Parish	220039	Nov. 2, 1974, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.		
Texas: Arlington, City of, Tarrant County	485454	July 31, 1970, Emerg.; Dec. 31, 1970, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region VII				
Kansas: Geary County, Unincorporated Areas	200579	Jan. 8, 1979, Emerg.; Feb. 4, 1988, Reg., Feb. 4, 1988, Susp.	do	Do.
Nebraska: Saline County, Unincorporated Areas	310472	Feb. 3, 1981, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region VIII				
Utah: Duchesne, City of, Duchesne County	490055	Nov. 25, 1974, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region IX				
California:				
Stockton, City of, San Joaquin County	060302	Apr. 19, 1973, Emerg.; Jan. 3, 1979, Reg.; Feb. 4, 1988, Susp.	do	Do.
Sacramento, City of, Sacramento County	060266	Mar. 17, 1972, Emerg.; Sept. 15, 1978, Reg.; Feb. 4, 1988, Susp.	do	Do.
Minimal Conversions				
Utah: Myton, City of, Duchesne County	490056	July 29, 1981, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.	do	Do.
Region I—Regular Conversions				
Maine:				
Fairfield, Town of, Somerset County	230125	Aug. 11, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Waterville, City of, Kennebec County	230070	Nov. 25, 1974, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Massachusetts: Marion, Town of, Plymouth County.	255213	Oct. 8, 1971, Emerg.; Apr. 6, 1973, Reg.; Feb. 17, 1988, Susp.	do	Do.
Region III				
Pennsylvania:				
Bath, Borough of, Northampton County	420717	Aug. 8, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Chestnuthill, Township of, Monroe County	421885	Dec. 23, 1977, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Eldred, Township of, Monroe County	421867	July 20, 1977, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Ross, Township of, Monroe County	421895	June 1, 1976, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Starrucca, Borough of, Wayne County	420867	Nov. 26, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Region IV				
South Carolina: Clemson, City of, Anderson County.	450238	Sept. 22, 1980, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Tennessee:				
Fayetteville, City of, Lincoln County	470105	Aug. 30, 1974, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Lewisburg, City of, Marshall County	470121	Jan. 12, 1982, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Marshall County, Unincorporated Areas	470119	June 11, 1981, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Mount Pleasant, City of, Maury County	470125	Oct. 5, 1973, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Dated [1]
Region V				
Michigan: Blissfield, Village of, Lenawee County	260339	Dec. 10, 1976, Emerg., July 19, 1982, Reg.; Feb. 17, 1988, Susp.	do	Do.
Region IX				
Nevada: Lincoln County, Unincorporated Areas	320014	Dec. 12, 1983, Emerg.; Mar. 1, 1984, Reg.; Feb. 17, 1988, Susp.	do	Do.
Oregon:				
Enterprise, City of, Wallowa County	410225	May 6, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Joseph, City of, Wallowa County	410226	April 30, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Wallowa, City of, Wallowa County	410228	Mar. 12, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Wallowa County, Unincorporated Areas	410224	Mar. 3, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Jefferson County, Unincorporated Areas	160214	July 6, 1978, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.
Region IX—Minimal Conversion				
Oregon: Lostine, City of, Wallowa County	410227	Mar. 3, 1975, Emerg.; Feb. 17, 1988, Reg.; Feb. 17, 1988, Susp.	do	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued January 25, 1988.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 88-1924 Filed 1-29-88; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
CALIFORNIA	
Sutter County (unincorporated areas) (FEMA Docket No. 6909)	
Auburn Ravine:	
100 feet downstream from the center of Pleasant Grove Road	*46
At a point 150 feet north of the stream and 150 feet west of the Union Pacific Railroad	#1
Curry Creek:	
At Center of Keys Road, 450 feet east of its eastern intersection with Pleasant Grove Road	*41
Curry Creek Bypass:	
250 feet downstream from the center of Pleasant Grove Road	*39
East Side Canal	
350 feet downstream from the center of Pacific Avenue	*38
Howsley Creek:	
250 feet upstream from the center of Pleasant Grove Road	*43
King Slough:	
275 feet upstream from the center of Pleasant Grove Road	*45
North King Slough:	
At center of Catlett Road, 300 feet east of the Union Pacific Railroad	*39

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Pleasant Grove Creek:	
At center of Ehield Road, 450 feet west of its intersection with Pleasant Grove Road	*43
Pleasant Grove Creek Bypass:	
150 feet upstream from the center of Pleasant Grove Road	*44
Pleasant Grove Creek Canal:	
At the intersection of Pacific Avenue and Hawsley Road	*37
Maps are available for review at the Planning Department, County Administration Building, 463 Second Street, Yuba City, California 95991	
VERMONT	
Lyndon (town), Caledonia County (FEMA Docket No. 6909)	
Passumpsic River:	
Upstream side of Lyndonville Electric Company Dam	*677
Approximately 150 feet downstream of confluence of Hawkins Brook	*681
Approximately 75 feet upstream of U.S. Route 5 (Chapel Street)	*702
Approximately 670 feet upstream of State Route 122 (Central Street)	*704
Approximately 40 feet downstream of Canadian Pacific Railroad (first upstream crossing)	*711
At confluence of West Branch Passumpsic River	*713
East Branch Passumpsic River:	
At State Route 114	*713
Approximately 1,200 feet upstream of confluence of Mountain Brook	*773
West Branch Passumpsic River: At confluence with Passumpsic River	*713
Calendar Brook:	
At confluence with West Branch Passumpsic River	*725
Approximately 0.5 mile upstream of U.S. Route 5	*735
Hawkins Brook:	
At confluence with Passumpsic River	*681
At Town Highway 8 (Severence Hill Road)	*706
Millers Run:	
At confluence with Passumpsic River	*705
Approximately 100 feet upstream of Interstate Route 91	*711
Approximately 50 feet upstream of Town Highway 31	*713
At Town Highway 26	*720
Wheelock Branch Brook:	
At confluence with Passumpsic River	*703
At Mill Street	*723
Maps available for inspection at the Town Clerk's Office, Lyndon, Vermont.	
WASHINGTON	
Spokane County (unincorporated areas) (FEMA Docket No. 6645)	
Chester Creek:	
Intersection of Chester Creek and center of Bowdish Road	*2,005
Country Homes Drainage:	
Intersection of Whitehouse and Barnes Street	*1,941
Hangman Creek:	
260 feet upstream from center of Hatch Road	*1,844
Little Spokane River:	
Intersection of Little Spokane River and center of Colbert Road	*1,636
Newman Lake:	
Along entire lake shoreline	*2,127
Saltese Creek:	
30 feet upstream of center of Barker Road	*2,036
Saltese Flats:	
South of dike	*2,045
Maps are available for inspection at the Public Works Department, Public Safety Building, West 1100 Mallon Avenue, Spokane, Washington.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Cottonwood (town), Houston County (FEMA Docket No. 6914)	
Boggy Creek:	
Just upstream of State Highway 53	*141
Just downstream of Ashford Road	*167
Boggy Creek Tributary:	
At confluence with Boggy Creek	*148
Just downstream of Pine Tree Street	*157
Buck Creek:	
About 2,000 feet downstream of confluence of Buck Creek Tributary	*133
About 3,050 feet upstream of State Line Road	*155
Buck Creek Tributary:	
At confluence with Buck Creek	*138
Just downstream of Metcalf Road	*162
Maps available for inspection at the City Hall, Cottonwood, Alabama.	
ARIZONA	
Avondale (city), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
2,500 feet downstream of Broadway Road	*927
At downstream edge of Indian School Road	*1,012
Maps are available for review at the Public Works Department, 525 North Central Avenue, Avondale, Arizona.	
Carefree (town), Maricopa County (FEMA Docket No. 6903)	
Andora Hills Wash:	
Approximately 1,250 feet downstream from center of Piedra Grande Drive	*2,248
At the most upstream crossing of Burro Road	*2,296
Galloway Wash:	
Approximately 120 feet downstream of Scops Trail	*2,310
Approximately 820 feet upstream of Tranquil Trail	*2,362
Maps are available for review at the Town Engineer's Office, P.O. Box 740, Carefree, Arizona.	
El Mirage (city), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
2,650 feet upstream of Olive Avenue	*1,087
3,120 feet downstream of Bell Road	*1,149
Maps are available for review at the City Manager's Office, 14405 Palm Street, El Mirage, Arizona.	
Gila Bend (town), Maricopa County (FEMA Docket No. 6903)	
Gila Bend Canal:	
Approximately 1,000 feet west of center of intersection of Euclid Avenue and Locke Street	*745
Maps are available for review at the Town Hall, 644 West Pima Street, Gila Bend, Arizona.	
Glendale (city), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
5,350 feet downstream of Glendale Avenue	*1,040
3,200 feet downstream of Glendale Avenue	*1,045
New River:	
4,750 feet upstream of confluence with Agua Fria River	*1,041
At downstream edge of Pinnacle Peak Road	*1,308
Skunk Creek:	
100 feet downstream of corporate limits north of Paradise Lane	*1,213
At upstream edge of 51st Avenue	*1,296

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Community Development Department, 5850 West Glendale Avenue, Glendale, Arizona.	
Goodyear (city), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
4,200 feet upstream of confluence with Gila River	*924
950 feet downstream of Broadway Road	*933
Gila River:	
560 feet upstream of Reems Road	*911
1,280 feet downstream of Dysart Road	*927
Maps are available for review at the City Hall, 119 North Litchfield Road, Goodyear, Arizona.	
Maricopa County (unincorporated areas) (FEMA Docket No. 6903)	
Agua Fria River:	
4,020 feet west of intersection of Southern Avenue and Dysart Road	*924
1,710 feet upstream from the southern boundary of Township 5 North	*1,271
Gila River:	
560 feet upstream of Reems Road	*911
At downstream edge of 115th Avenue	*944
New River:	
At confluence with Agua Fria River	*1,030
1,500 feet downstream of New River Dam	*1,381
Salt River:	
At upstream edge of 115th Avenue	*944
1,460 feet east along Salt River Indian Reservation Boundary from North Alma School Road	*1,207
Skunk Creek:	
At upstream edge of Pinnacle Peak Road	*1,392
4,280 feet upstream of Unnamed Road	*2,255
Scatter Wash:	
At upstream edge of Pinnacle Peak Road, 200 feet west of 7th Avenue	*1,455
At intersection of Pinnacle Peak Road and 7th Avenue	*1,471
Agua Fria Channels:	
At confluence with Grass Wash	*2,148
Approximately 1,300 feet north of intersection of 5th Street and State Highway 60/70	*2,178
Andora Hills Wash:	
At confluence with Cave Creek	*2,007
Approximately 1,350 feet downstream of Piedra Grande Drive	*2,246
Apache Creek (Apache Junction Alluvial Fan):	
At intersection of Crimson Road and Apache Trail	*1
Cave Creek (Above Cave Creek Dam):	
Approximately 3,850 feet downstream of Carefree Highway	*1,833
Approximately 750 feet upstream of Morning Star Road	*2,149
East Fork Cave Creek (Above Cave Creek Road):	
50 feet upstream of Cave Creek Road	*1,453
At Beardsley Road	*1,497
Galloway Wash:	
Confluence with Cave Creek	*2,030
Approximately 170 feet downstream of Scops Trail	*2,310
Grapevine Wash:	
Confluence with Galloway Wash	*2,180
Approximately 3,100 feet upstream of Unnamed Road	*2,297
Grass Wash:	
Approximately 1,250 feet downstream of confluence with Agua Fria Channel	*2,147
At 4th Street extended	*2,173
Little San Domingo Wash:	
Approximately 90 feet upstream of U.S. Highway 60/70/89 and State Highway 93	*1,963
Approximately 550 feet downstream of Morristown-New River Highway	*2,001
Marinez Wash:	
Approximately 275 feet upstream of Rincon Road	*2,103
At Maricopa-Yavapai County Limits	*2,128
Mootangard Wash:	
At U.S. Highway 60/70/89 and State Highway 93	*1,966
Approximately 440 feet upstream of most upstream Unnamed Road	*2,071

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Ocotillo Wash:	
Confluence with Cave Creek	*2,039
Approximately 900 feet upstream of Lone Mountain Road	*2,244
Powder House Wash:	
At Constellation Road	*2,100
Approximately 1,800 feet upstream of Jeep Trail extended	*2,178
Rowe Wash:	
Confluence with Galloway Wash	*2,111
Approximately 1,850 feet upstream of Echo Canyon Road	*2,315
Willow Springs Wash:	
Confluence with Cave Creek	*2,057
Approximately 2,900 feet upstream of Spur Cross Road	*2,186
Williams Drainage:	
At Atchison, Topeka and Santa Fe Railway	*1,879
Approximately 1,100 feet upstream of Center Street	*1,702
Gila Bend Canal:	
At Southern Pacific Railroad Bridge, 1 mile east of Thebe	#2
Maps are available for review at the Maricopa County Flood Control District Office, 3325 West Durango, Phoenix, Arizona.	
Mesa (city), Maricopa County (FEMA Docket No. 6903)	
Salt River:	
770 feet upstream from a point at the intersection of a line drawn due north from the intersection of Price Road and 1st Street and the Salt River Indian Reservation Boundary	*1,183
1,550 feet east of intersection of East Lehi Road and North Center Street	*1,227
Maps are available for review at the Building Permit Department, 55 North Center, Mesa, Arizona.	
Peoria (city), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
400 feet upstream of Northern Avenue	*1,085
4,000 feet upstream of Northern Avenue	*1,076
New River:	
200 feet downstream of Northern Avenue, west of 99th Avenue	*1,089
240 feet downstream of Pinnacle Peak Road	*1,307
Skunk Creek:	
300 feet upstream of confluence with Arizona Canal	*1,196
100 feet downstream of corporate limits, north of Paradise Lane	*1,213
Maps are available for review at the Engineering Department, 8320 West Madison, Peoria, Arizona.	
Phoenix (city), Maricopa County (FEMA Docket No. 6903)	
New River:	
900 feet upstream of confluence with Agua Fria River	*1,932
At Bethany Home Road, 1,400 feet east of 107th Avenue	*1,044
Salt River:	
240 feet upstream of corporate limit due south of intersection of Southern Avenue and 99th Avenue	*959
At corporate limit due north of intersection of 99th Street and 1st Street	*1,146
Skunk Creek:	
At upstream edge of 91st Avenue	*1,295
400 feet downstream of edge of Happy Valley Road	*1,430
Scatter Wash:	
At confluence with Skunk Creek	*1,307
At intersection of 7th Avenue and Pinnacle Peak Road	*1,471
Scatter Wash, North Branch:	
At confluence with Scatter Wash South Branch	*1,380
350 feet upstream of Skunk Creek Drive	*1,403
Scatter Wash, South Branch:	
At confluence with Scatter Wash North Branch	*1,380
80 feet upstream of Williams Drive	*1415

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Floodplain Management Office, 125 East Washington, Phoenix, Arizona.	
Prescott (city), Yavapai County (FEMA Docket No. 6908)	
Willow Creek Reservoir Tributary:	
Willow Creek Road	None
1.0 miles above Willow Creek Road	None
1.6 miles above Willow Creek Road	None
2.2 miles above Willow Creek Road	None
2.7 miles above Willow Creek Road	None
Willow Creek Tributary:	
At confluence with Willow Creek	None
0.3 mile above confluence with Willow Creek	None
0.41 mile above confluence with Willow Creek	None
Upstream side of Pleasant Valley Road Bridge	None
0.07 mile above Horizon Hills Road	None
Willow Creek (with levee):	
Downstream of corporate limits	None
0.18 mile above Willow Creek Road Bridge	None
Lorraine Drive	None
Willow Creek (without levee):	
Downstream corporate limits	*5,167
0.18 mile above Willow Creek Road Bridge	*5,174
0.55 mile above Willow Creek Road Bridge	*5,186
1.55 miles above Willow Creek Road Bridge	*5,228
Upstream corporate limits	*5,243
Maps are available for inspection at the City Engineer's Office, 221 South Cortez Street, Prescott, Arizona.	
Surprise (town), Maricopa County (FEMA Docket No. 6903)	
Agua Fria River:	
3,120 feet downstream of Bell Road	*1,149
4,900 feet east of El Mirage Road at upstream edge of Beardsley Road	*1,184
Maps are available for review at the Maricopa County Flood Control District Office, 3325 West Durango, Phoenix, Arizona.	
Tempe (city), Maricopa County (FEMA Docket No. 6903)	
Salt River:	
8,070 feet downstream of Southern Pacific Railroad Bridge	*1,146
4,850 feet upstream of Hayden Road centerline	*1,182
Maps are available for review at the Pacific Works Department-Engineering Division, 31 East 5th Street, Tempe, Arizona.	
Wickenburg (town), Maricopa County (FEMA Docket No. 6903)	
Powder House Wash:	
Approximately 200 feet north of intersection of Constellation and Burden Roads	*2,089
Approximately 180 feet upstream of centerline of Constellation Road, approximately 1,400 feet north of intersection of Constellation Road and El Recreo Drive	*2,102
Maps are available for review at the Building Inspector's Office, 120 East Apache, Wickenburg, Arizona.	
ARKANSAS	
Cherry Valley (city), Cross County (FEMA Docket No. 6914)	
Cooper Creek:	
At downstream corporate limits	*278
Upstream side of Missouri Pacific Railroad	*278
Approximately 1,200 feet upstream of confluence of Hait Creek	*286
Hait Creek:	
At confluence with Cooper Creek	*283
Approximately 1,100 feet upstream of State Route 42	*286
Maps available for inspection at the City Hall, Cherry Valley, Arkansas.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Lemon Grove (city), San Diego County (FEMA Docket No. 6912)	
Spring Valley Creek:	
Approximately 50 feet upstream of Blossom Lane	*300
At Ildica Street	*308
400 feet upstream of Ildica Street	*308
Maps are available for inspection at City Hall, 3232 Main Street, Lemon Grove, California. Send comments to Mayor James Dorman, City Hall, 3232 Main Street, Lemon Grove, California 92045.	
Napa (city), Napa County (FEMA Docket No. 6908)	
Napa River:	
Downstream corporate limits, 1.8 miles downstream of State Highway	*7
Just downstream of Imola Avenue	*12
Just upstream of Third Street	*19
Approximately 200 feet upstream of Lincoln Avenue	*26
Approximately 1,000 feet downstream of the confluence with Milliken Creek:	
East of levee	*27
West of levee	*26
Just downstream of Transcee Road (the location was formerly outside of the corporate limits):	
East of levee	*30
West of levee	*29
Maps are available for inspection at the City of Napa Public Works Department, Napa, California 94558.	
Solano County (unincorporated areas) (FEMA Docket No. 6914)	
Sacramento River:	
At Toland Landing	*7
At the upstream corporate limits of the City of Rio Vista	*9
Sacramento River Via Sutter Slough and Miner Slough:	
At Elevator Road extended on Prospect Island (RD 1667)	*15
Steamboat Slough:	
At the southern tip of Ryer Island	*9
Approximately one half mile upstream of State Highway 220 Extended	*13
Sutter Slough:	
At the confluence with Steamboat Slough	*13
At the border with Yolo County	*16
Miner Slough:	
At the southern tip of Prospect Island	*13
At the divergence from Sutter Slough	*15
Yolo Bypass:	
At the confluence with Steamboat Slough	*9
Approximately 1,500 feet south of Liberty Ferry	*13
At the border with Yolo County	*17
Along Liberty Island Road just south of Lindsey Slough on Egbert Tract (RD 536)	*14
At the intersection of Swan Road and Liberty Island Road on Cache Haas Area (RD 2098)	*15
Elk Slough:	
At the intersection of Oxford Road and Jefferson Boulevard on Netherlands Island (RD 999)	*10
Cache Slough:	
At the southern tip of Ryer Island	*9
At the confluence of Sacramento River Deep Water Ship Channel	*13
At the confluence of Haas Slough	*15
Suisun Bay:	
At the eastern limits of the City of Benicia	*5
At the meeting of Grizzly Island Slough Road and Montezuma Slough	*7
At a footbridge south of the Vermont Club on Grizzley Island	*9
Entire Chipps Island	*9
Maps are available for review at the Solano County Department of Public Works, 589 Union Street, Fairfield, California.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Yolo County (unincorporated areas), (FEMA Docket No. 6012)	
Sacramento River:	
At the divergence of Sutter Slough	*17
At County Road 141 extended to river	*21
At Davis Road extended to river	*28
At Pioneer Memorial Bridge	*30
At "I" Street Bridge	*31
Sutter Slough:	
At the confluence of Elk Slough	*17
Yolo Bypass:	
At southwestern corner of Yolo County	*17
At the intersection of Western Pacific Railroad and County Road 108	*22
At Yolo Causeway (Interstate Highway 80 and U.S. Highway 40)	*25
Area located within County Road 104, south of County Road 38 A (Hackman Road), and Western Pacific Railroad	#2
Elk Slough:	
At the intersection of Clarksburg Road and Western Pacific Railroad, in Reclamation District (RD) 999	*10
At County Road 142, in Merritt Island (RD 150)	*17
Sacramento River Deep Water Ship Channel:	
On the entire reach located within Yolo County	*18
Maps are available for inspection at the Yolo County Department of Planning, 292 West Beamer Street, Woodland, California.	
DELAWARE	
Newark (city), New Castle County (FEMA Docket No. 6012)	
Christina River:	
At most downstream corporate limits	*62
Approximately 300 feet upstream of confluence of West Branch Christina River	*87
Downstream side of Barksdale Road	*111
Approximately 450 feet upstream of Nottingham Road	*134
White Clay Creek:	
At downstream corporate limits	*53
Approximately 1,050 feet upstream of the upstream corporate limits	*79
Maps available for inspection at the Planning Department, Municipal Building, 320 Elkton Road, Newark, Delaware.	
FLORIDA	
Bowling Green (city), Hardee County (FEMA Docket No. 6014)	
Little Payne Creek:	
Approximately 1,600 feet upstream of confluence with Payne Creek	*73
Approximately 2,080 feet upstream of confluence with Payne Creek	*73
Maps available for inspection at the City Hall, 107 West Main Street, Bowling Green, Florida.	
Hardee County (unincorporated areas) (FEMA Docket No. 6014)	
Peace River:	
Approximately 45 mile downstream of downstream County boundary	*36
Approximately 400 feet downstream of State Route 64	*51
Approximately .23 mile upstream of State Route 652	*60
At upstream County boundary	*72
Troublesome Creek:	
At confluence with Peace River	*44
At Vandolah Road	*91
Thompson Branch:	
At confluence with Peace River	*57
Approximately 50 feet upstream of State Route 358	*123
Hog Branch:	
At confluence with Peace River	*67
Approximately .82 mile upstream of Altman Road	*118
Payne Creek:	
At confluence with Peace River	*70
Approximately .35 mile upstream of confluence of Hickey Branch	*91
Little Payne Creek:	
At confluence with Payne Creek	*72
Approximately 425 feet upstream of County boundary	*86
Maps available for inspection at the Courthouse Annex, Wauchula, Florida.	
Lake Wales (city), Polk County (FEMA Docket No. 6014)	
Lake Wales: Along shoreline	*116
Lake Weeder: Along shoreline	*120
North Lake Wales: Along shoreline	*120
Lake Altamaha: Along shoreline	*121
Crystal Lake: Along shoreline	*121
Lake Cooper: Along shoreline	*124
Twin Lakes: Along shoreline	*126
Grassy Lake: Along shoreline	*129
Maps available for inspection at the City Hall, 152 East Central Avenue, Lake Wales, Florida.	
Mt. Dora (city), Lake County (FEMA Docket No. 6013)	
Lake Dora: At shoreline	*66
Lake Gertrude: At shoreline	*73
Lake John: At shoreline	*82
Lake Tem: At shoreline	*82
Lake Nettie: At shoreline	*87
Lake Franklin: At shoreline	*105
Maps available for inspection at the City Hall, Mt. Dora, Florida.	
Taveres (city), Lake County (FEMA Docket No. 6013)	
Lake Dora: Along shoreline	*66
Lake Eustis: Along shoreline	*66
Lake Juneita: Along shoreline	*69
Lake Frances: Along shoreline	*69
Lake Taveres: Along shoreline	*72
Maps available for inspection at the City Hall, 201 East Main Street, Taveres, Florida.	
Wauchula (city), Hardee County (FEMA Docket No. 6014)	
Thompson Branch:	
Approximately 1,420 feet upstream of Stanstrom Road	*80
Approximately 1,850 feet upstream of Stanstrom Road	*82
Maps available for inspection at the City Hall, 225 East Main Street, Wauchula, Florida.	
Zolfo Springs (town), Hardee County (FEMA Docket No. 6014)	
Peace River:	
Approximately .52 mile downstream of State Route 64	*50
Approximately 1,560 feet downstream of State Route 64	*51
Approximately 650 feet upstream of State Route 64	*52
Approximately 800 feet upstream of CSX Transport (Seaboard Coast Line Railroad)	*56
Maps available for inspection at the Town Hall, Highway 17, Zolfo Springs, Florida.	
GEORGIA	
Aragon (city), Polk County (FEMA Docket No. 6014)	
Euharlee Creek:	
About 2,300 feet downstream of confluence of Mill Creek	*720
About 3,000 feet upstream of Haville Road	*730
Mill Creek:	
At mouth	*722
Just upstream of State Route 101	*728
Maps available for inspection at the City Clerk's Office, City Hall, Aragon, Georgia.	
Rockmart (city), Polk County (FEMA Docket No. 6012)	
Euharlee Creek:	
About 0.8 mile downstream of Nathan Dean Bypass	*733
About 1.4 miles upstream of Beauregard Street	*761
Thompson Creek: Within community	*752
Elm Street Slough:	
At mouth	*748
About 500 feet upstream of Piedmont Avenue	*765
Tributary A:	
Just downstream of Brock Road	*748
Just upstream of State Route 113	*779
White River Cave Creek:	
Just downstream of Brock Road	*748
About 600 feet upstream of Brock Road	*751
Maps available for inspection at the Building Inspector's Office, City Hall, Rockmart, Georgia.	
Young Harris (city), Towns County (FEMA Docket No. 6014)	
Corn Creek:	
About 2,550 feet downstream of Sunset Drive	*1,834
Just downstream of Cupid Falls Dam	*1,883
Just upstream of Cupid Falls Dam	*1,905
About 1,400 feet upstream of Bryson Road	*1,918
Brasstown Creek Tributary:	
About 3,300 feet downstream of Reed Street	*1,824
Just upstream of Reed Street	*1,873
Maps available for inspection at the City Hall, Young Harris, Georgia.	
IDAHO	
Boise County (unincorporated areas) (FEMA Docket No. 6012)	
Payette River:	
Approximately 3,450 feet downstream of Boise Street	*2,589
Just upstream of Main Street near the City of Horseshoe Bend	*2,598
Approximately 200 feet upstream of State Route 55	*2,634
Approximately 370 feet upstream of the confluence with Porter Creek	*2,645
Approximately 1,300 feet upstream of the confluence with Brownlee Creek	*2,668
Shafer Creek:	
Approximately 490 feet upstream of the confluence with Payette River	*2,600
Approximately 1,200 feet upstream of Old Emmett Highway	*2,611
South Fork Payette River:	
Approximately 285 feet upstream of the confluence with Middle Fork Payette River	*3,012
Approximately 1.1 miles upstream of Alder Creek Road	*3,052
Approximately 570 feet upstream of Alder Creek Road	*3,073
Approximately 3,450 feet downstream of State Highway 21	*3,762
Just downstream of State Highway 21	*3,779
Approximately 2,600 feet upstream of State Highway 21	*3,793
Elk Creek:	
Approximately 280 feet upstream of Mores Creek	*3,820
At the confluence with Charcoal Gulch	*3,866
Just upstream of Wall Street	*3,904
Approximately 180 feet downstream of the confluence with Spanish Fork Creek	*3,959
Maps are available for inspection at the Boise County Courthouse, 340 Main Street, Idaho City, Idaho.	
Crouch (city), Boise County (FEMA Docket No. 6012)	
Middle Fork Payette River:	
Approximately 3,260 feet upstream of the confluence with the South Fork Payette River	*3,013
Approximately 1,280 feet downstream of State Highway 17	*3,014
Approximately 2,950 feet upstream of the confluence with Anderson Creek	*3,020

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at City Hall, Crouch, Idaho.	
Custer County (FEMA Docket No. 6012)	
Salmon River:	
Due east of the Challis Creek Bridge on U.S. Highway 93	*4,837
Due east of the intersection of Jobe Lane and U.S. Highway 93	*4,854
Due east of the intersection of U.S. Highway 93 and Sportsman's Access Road	*4,880
At confluence with Hannah Slough	*4,892
At confluence with Warm Spring Creek	*4,940
Approximately 2,100 feet upstream of U.S. Highway 93	*5,000
Herman Slough:	
At confluence with Salmon River	*4,892
Approximately 400 feet downstream of confluence with Garden Creek	*4,922
Maps are available for inspection at the Custer County Courthouse, Main Street, Challis, Idaho.	
Idaho City (city), Boise County (FEMA Docket No. 6012)	
Elk Creek:	
Just upstream of Wall Street	*3,904
Approximately 750 feet upstream of the confluence with Slaughterhouse Gulch	*3,921
Elk Creek Split Fiber:	
Approximately 750 feet downstream of Wallula Street	*3,885
Approximately 100 feet upstream of Wall Street	*3,896
Just downstream of Placer Street	*3,916
Maps are available for inspection at City Hall, 511 Main Street, Idaho City, Idaho.	
Nezperce (city), Lewis County (FEMA Docket No. 6014)	
Long Hollow Creek:	
At downstream corporate limits	*3,199
740 feet from downstream corporate limits along Third Avenue	*3,201
At Fifth Avenue	*3,203
At upstream of Eighth Avenue	*3,206
At upstream corporate limits	*3,208
Maps are available for review at City Hall, 502 Fifth Street, Nezperce, Idaho.	
Sittes (city), Idaho County (FEMA Docket No. 6014)	
South Fork Clearwater River:	
At northern corporate limits	*1,308
At upstream side of Bridge Street	*1,316
100 feet downstream of southern corporate limits	*1,320
Maps are available for review at City Hall, 113 Main Street, Sites, Idaho.	
ILLINOIS	
Amboy (city), Lee County (FEMA Docket No. 6014)	
Green River:	
About 0.85 mile downstream of South Washington Street	*731
Just upstream of U.S. Route 52	*738
West Tributary:	
At mouth	*739
About 400 feet upstream of Sterling Road	*748
Maps available for inspection at the Zoning Office, City Hall, 227 East Main Street, Amboy, Illinois.	
Dixon (city), Lee County (FEMA Docket No. 6014)	
Rock River:	
About 2,850 feet downstream of confluence of Plum Creek	*849
About 1.2 miles downstream of confluence of Savannate Branch	*858
Plum Creek:	
At mouth	*850
Just upstream of Palmyra Avenue	*853
Fargo Creek:	
At mouth	*650
About 340 feet upstream of Eastern Avenue	*715
West Branch Fargo Creek:	
At mouth	*659
Just downstream of Madison Avenue	*666
Just upstream of Monroe Avenue	*675
About 1,300 feet upstream of Monroe Avenue	*690
Maps available for inspection at the Building and Zoning Department, City Hall, 121 West 2nd Street, Dixon, Illinois.	
Evansville (village), Randolph County (FEMA Docket No. 6014)	
Mississippi River: Within community	*395
Maps available for inspection at the Village Hall, Evansville, Illinois.	
Lee County (unincorporated areas) (FEMA Docket No. 6014)	
Rock River:	
At western county boundary	*641
At northern county boundary	*664
Green River:	
About 3,700 feet downstream of Rockyford Road	*721
About 1,500 feet upstream of Burlington Northern railroad	*743
Steward Creek:	
Just downstream of Perry Bridge	*799
About 3,800 feet upstream of Steward Bridge	*820
Maps available for inspection at the Lee County Zoning Office, County Courthouse, Dixon, Illinois.	
Nelson (village), Lee County (FEMA Docket No. 6014)	
Nelson Creek:	
About 1,500 feet downstream of Chicago and North Western railroad	*644
Just downstream of Chicago and North Western railroad	*647
Just upstream of Chicago, and North Western railroad	*652
About 1,500 feet upstream of Nelson Road	*652
Maps available for inspection at the Village Hall, Nelson, Illinois.	
Ogle County (unincorporated areas) (FEMA Docket No. 6014)	
Rock River:	
About 1.8 miles downstream of confluence of Pine Creek	*659
At eastern county boundary	*662
Kyte River:	
Just upstream of Flagg Road	*764
At City of Rochelle corporate limits (north of Flagg Road)	*782
Stillman Creek:	
At mouth	*686
Just downstream of County Route 4	*696
Kyte River Tributary: Within community	*772
Mill Creek:	
At mouth	*684
About 700 feet upstream of Mill Road	*691
Ryley Ditch: Within community	*789
Maps available for inspection at the office of the Zoning Administrator, County Courthouse Annex, 106 South 5th Street, Oregon, Illinois.	
South Wilmington (village), Grundy County (FEMA Docket No. 6012)	
East Fork Mazon River:	
About 300 feet downstream of Rice Road	*581
About 900 feet upstream of Rice Road	*583
Maps available for inspection at the Village Hall, Lake Street, South Wilmington, Illinois.	
Sugar Grove (village), Kane County (FEMA Docket No. 6012)	
Welch Creek:	
About 900 feet downstream of Fay's Lane	*680
Just downstream of Burlington Northern railroad	*683
Just upstream of Burlington Northern railroad	*692
Just upstream of Granart Road	*693
Tributary No. 1	
Just upstream of north-south airport runway	*693
About 3,500 feet upstream of north-south airport runway	*697
Blackberry Creek:	
About 650 feet downstream of Bliss Road	*684
About 750 feet upstream of Bliss Road	*687
Maps available for inspection at the Village Hall, 85 Main Street, Sugar Grove, Illinois.	
Warnac (city), Clinton, Marion, and Washington Counties (FEMA Docket No. 6012)	
Fulton Branch:	
Just upstream of Irvington Road	*476
Just downstream of Illinois Central Gulf Railroad	*484
Just upstream of Illinois Central Gulf Railroad	*486
About 650 feet upstream of Burlington Northern Railroad	*493
Fulton Branch Tributary:	
At confluence with Fulton Branch	*477
Just upstream of Jefferson Avenue	*478
About 650 feet upstream of Jefferson Avenue	*496
Just downstream of Wabash Street	*499
Webster Creek:	
Just upstream of Irvington Road	*476
Just upstream of east bridge of Illinois Central Gulf Railroad	*482
Maps available for inspection at the City Hall, 361 East 17th, Warnac, Illinois.	
INDIANA	
Converse (town), Miami and Grant Counties (FEMA Docket No.6013)	
Dolin Young Ditch:	
Just upstream of Chessie System Railroad bridge	*812
About 1,000 feet upstream of State Route 18	*817
Maps available for inspection at the Clerk Treasurer's Office, Town Hall, Converse, Indiana.	
KANSAS	
Carbondale (city), Osage County (FEMA Docket No. 6012)	
Burys Creek:	
About 2,850 feet downstream of Main Street	*1,065
Just downstream of U.S. Highway 75	*1,097
Maps available for inspection at the City Hall, Carbondale, Kansas.	
KENTUCKY	
Johnson County (FEMA Docket No. 6014)	
Levisa Fork:	
At downstream County boundary	*598
At downstream City of Paintsville corporate limits	*613
At upstream City of Paintsville corporate limits	*614
At upstream County boundary	*624
Miller Creek:	
At confluence with Levisa Fork	*618
At upstream side of Miller Creek Road	*636
Approximately 513 feet upstream of Butcher Hollow Road	*715
Paint Creek:	
Approximately 300 feet downstream of Second Street	*614
At upstream side of U.S. Highway 460	*614
At downstream side of Subdivision Road	*615
Approximately 1,100 feet upstream of State Highway 40	*620
Mudlick Creek:	
At confluence with Paint Creek	*617
Approximately 200 feet downstream of Rocky Knob Branch Road	*628

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At downstream side of Sturgeon Branch Road	*887
Approximately 1.04 miles upstream of State Highway 689	*758
Little Mudlick Creek:	
At confluence with Mudlick Creek	*620
Approximately 1.24 miles upstream of confluence with Mudlick Creek	*747
Jones Creek:	
At confluence with Mudlick Creek	*724
Approximately .9 mile upstream of confluence with Mudlick Creek	*774
Jennys Creek:	
At confluence with Pent Creek	*614
At Hilton Hollow Road	*633
Upstream side of Swamp Branch Road	*669
At Narrows Fork Road	*705
Lick Fork:	
At confluence with Jennys Creek	*621
Approximately 1,320 feet upstream of Middle Fork Road	*626
Approximately 1.3 miles upstream of Middle Fork Road	*639
Maps available for inspection at the Johnson County Courthouse, Paintsville, Kentucky	

LOUISIANA

Abita Springs (Town), St. Tammany Parish (FEMA Docket No. 6817)

Abita River:	
At downstream corporate limits	*23
Upstream side of State Route 36	*29
At upstream corporate limits	*33
Long Branch:	
At confluence of Abita River	*29
At upstream corporate limits	*30
Long Branch Tributary:	
At confluence with Long Branch	*30
At upstream side of Allen Road	*36
Approximately 0.1 mile upstream of Allen Road	*37
LA 36 South Tributary:	
At confluence with Abita River	*24
At upstream side of Illinois Central Gulf Railroad	*28
Approximately 0.2 mile upstream of Herbert Road	*32
LA 36 North Tributary:	
At confluence with LA 36 South Tributary	*24
At upstream side of Laurel Street	*25
Approximately 0.6 mile upstream of Gum Street	*30
Southwind Branch	
Approximately 0.4 mile upstream from confluence with Abita River	*21
Approximately 0.6 mile upstream from confluence with Abita River	*22
Upstream side of State Route 59	*27
Upstream side of Illinois Central Gulf Railroad	*30
Maps available for inspection at the Town Hall, Level Street, Abita Springs, Louisiana.	

Bogalusa (city), Washington Parish (FEMA Docket No. 6814)

Coburn Creek:	
At downstream corporate limits	*78
At upstream side of State Route 21	*83
At upstream side of Jefferson Street	*95
At upstream side of Van Buren Street	*97
At upstream corporate limits	*102
Bogue Lusa Creek:	
At downstream corporate limits	*78
At upstream side of State Route 21	*82
At upstream side of Illinois Central Gulf Railroad	*88
At downstream side of Varnet Avenue	*94
At upstream corporate limits	*102
Yellow Branch:	
At downstream side of Illinois Central Gulf Railroad	*95
Approximately 100 feet downstream of Avenue I	*102
Coburn Creek Tributary:	
At confluence of Coburn Creek	*98
Approximately 100 feet upstream of Hudson Street	*101
Approximately .7 mile upstream of Hudson Street	*117

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Ice Water Branch: Approximately 200 feet downstream of Rio Grande Street	*93
Maps available for inspection at the City Hall, Arkansas Avenue, Bogalusa, Louisiana.	

Breaux Bridge (town), St. Martin Parish (FEMA Docket No. 6812)

Bayou Teche:	
Downstream side of Southern Pacific Railroad	*21
Upstream corporate limits	*21
Downstream side of Interstate 10	*21
Maps available for inspection at the City Hall, 101 Bernard Street, Breaux Bridge, Louisiana.	

Broussard (town), Lafayette Parish (FEMA Docket No. 6814)

Grenoviliares Swamp	*31
Maps available for inspection at 418 East Main, Broussard, Louisiana.	

Calahoula Parish (unincorporated areas) (FEMA Docket No. 6814)

Ouachita River:	
At confluence with Tensas River	*63
Streambank at State Route 559 (extended)	*66
Tensas River:	
At confluence with Black River	*63
Streambank at State Route 921 (extended)	*64
Black River:	
At confluence with the Red River	*60
At confluence of Ouachita River and Tensas River	*63
Red River: At confluence of Black River	*60
Boeuf River:	
At confluence with Ouachita River	*65
At upstream corporate limits	*66
Little River:	
Approximately 3.4 miles upstream of U.S. Route 84	*62
At confluence with Black River	*63
Maps available for inspection at the Courthouse, Scilla Street, Harrisonburg, Louisiana.	

Harrisonburg (village), Catahoula Parish (FEMA Docket No. 6814)

Ouachita River: Entire shoreline (for length) affecting community	*64
Maps available for inspection at the Town Hall, Harrisonburg, Louisiana.	

Madison Parish (unincorporated areas) (FEMA Docket No. 6812)

Brushy Bayou:	
At confluence with Lower Roundaway Bayou	*76
At Illinois Central Gulf Railroad	*81
Approximately 0.58 mile upstream of confluence of Grassy Lake Canal	*83
Cypress Bayou:	
Approximately 2.11 miles downstream of Interstate Route 20 westbound	*80
At Illinois Central Gulf Railroad	*83
At downstream side of downstream crossing of Parish Route B4	*85
Approximately 0.41 mile upstream of upstream Parish Route B4	*87
Ditch L-7CC1:	
At confluence with Lower Roundaway Bayou	*76
Approximately 185 feet upstream of Cleveland Street	*82
Grassy Lake Canal:	
At confluence with Brushy Bayou	*82
At Illinois Central Gulf Railroad	*83
Lower Roundaway Bayou:	
At confluence with Panola Bayou	*75
Upstream of U.S. Route 65	*76
Mississippi River:	
At downstream parish boundary	*96
At upstream parish boundary	*111
Mohigbim Bayou:	
At Chicago Mill Road	*75
At Illinois Central Gulf Railroad	*76
Panola Bayou:	
At confluence with Mohigbim Bayou	*75

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At U.S. Route 80	*77
At Bailey Street	*81
Approximately 0.21 mile upstream of State Route 3030	*85
Southeast Tributary to Talla Bena Bayou:	
At confluence with Talla Bena Bayou	*85
Approximately 1.90 miles upstream of confluence with Talla Bena Bayou	*86
Talla Bena Bayou:	
At confluence with Willow Bayou	*80
Approximately 1.33 miles upstream of Port Road	*87
Western Branch of Talla Bena Bayou:	
At confluence with Willow Bayou	*80
Approximately 0.62 mile upstream of confluence with Willow Bayou	*81
Maps available for inspection at the Courthouse, Chestnut Street, Tallulah, Louisiana.	

Pearl River (town), St. Tammany Parish (FEMA Docket No. 6814)

West Pearl River:	
At downstream corporate limits	*18
At confluence with Pump Slough	*19
At confluence with Brockham Bayou	*19
At confluence with Old Channel	*21
Old Channel:	
At upstream side of U.S. Route 11 and Interstate Route 59	*21
At Shingle Mill Road (extended)	*23
Gum Creek:	
At Shingle Mill Road (extended)	*23
Approximately 0.38 mile downstream of State Route 41	*25
At State Route 41	*27
Little Gum Creek:	
At confluence with Gum Creek	*24
At State Route 41	*28
South Tributary of Little Gum Creek:	
At confluence with Little Gum Creek	*24
Upstream side of Oak Street (extended)	*28
At State Route 41	*32
Maps available for inspection at the Town Hall, Willis Lane, Pearl River, Louisiana.	

Washington Parish (unincorporated areas) (FEMA Docket No. 6814)

Bogue Chitto River:	
Downstream side of Isabel Highway	*96
Downstream side of State Route 437	*109
Approximately 7 miles upstream of State Route 437	*128
Upstream side of State Routes 10, 16 and 25	*147
Pushepatapa Creek:	
Downstream side of Mt. Olive Cemetery Road	*105
Upstream side of Illinois Central Gulf Railroad	*120
Downstream side of Seal Cemetery Road	*135
Approximately 2 miles upstream of Seal Cemetery Road	*144
Upstream side of Muddie Creek Church Road	*168
Approximately 300 feet upstream of State Route 438	*195
Mile Branch:	
Downstream side of State Route 25	*149
Downstream side of State Route 430	*159
Downstream side of Sixteenth Avenue	*168
Approximately .8 mile upstream of Seventeenth Avenue	*188
Maps available for inspection at the Courthouse, Washington Street, Franklinton, Louisiana.	

MAINE

Benton (town), Kennebec County (FEMA Docket No. 6812)

Kennebec River:	
Approximately 1.1 miles downstream of State Routes 11, 100, 139 Bridge	*82
Upstream side of Maine Central Railroad	*97
Upstream side of Interstate Route 95	*102
Downstream side of Shawmut Dam	*108
Upstream side of Shawmut Dam	*120
Sebasticook River:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1.3 miles downstream of State Route 139 Bridge	*59
Downstream side of State Route 139 Bridge	*78
Approximately 0.44 mile upstream of State Route 139 Bridge	*84
At confluence of Fowler Brook	*97
Approximately 1.8 miles upstream of confluence of Fowler Brook	*109
Maps available for inspection at the Town Clerk's Sale, Benton, Maine.	

Camden (town), Knox County (FEMA Docket No. 6803)

Megunticook River:	
Approximately 300 feet downstream of Main Street Bridge	*10
Upstream side of Washington Street Bridge	*36
Upstream side of Knowlton Street Bridge	*59
Downstream side of Rawson Avenue Bridge	*77
Upstream side of Mount Battie Street Bridge	*109
Upstream side of Molyneaux Mill Road Bridge	*129
Megunticook Lake: Entire shoreline within community	*145
Atlantic Ocean (affecting Penobscot Bay):	
Approximately 300 feet downstream of Main Street Bridge	*10
Ogier Point	*32
Sea Street (extended southeast)	*25
Harbor Road (extended)	*23
Beacon Street (extended)	*18
At confluence of Spring Brook	*19
Maps available for inspection at the Planning Board, Camden, Maine.	

Cherryfield (town), Washington County (FEMA Docket No. 6812)

Narraguagus River:	
Approximately 450 feet upstream of downstream corporate limits	*11
State Route 186	*31
Maine Central Railroad	*55
Approximately 1.1 miles upstream of Maine Central Railroad	*67
Maps available for inspection at the Town Clerk's Vault, Cherryfield, Maine	

Durham (town), Androscoggin County (FEMA Docket No. 6809)

Androscoggin River:	
200 feet upstream of downstream corporate limits	*81
100 feet upstream of Worumbo Mill Dam	*106
250 feet downstream of confluence of Dyer Brook	*122
500 feet downstream of upstream corporate limits	*127
Maps available for inspection at the New Town Offices, Durham, Maine.	

Georgetown (town), Sagadahoc County (FEMA Docket No. 6814)

Atlantic Ocean:	
At Ocean Avenue (extended)	*10
At Indian Point	*14
At Todds Point	*15
At southern tip of Long Island	*18
At Kennebec Point	*19
At Outer Head	*29
At Bay Point	*29
Kennebec River:	
Approximately 1,800 feet west of intersection of Bay Point Road and Sagahadoc Bay Road	*10
At West Georgetown Hill	*10
Sasanoa River:	
At Soldier Point	*10
At northern tip of Bareneck Island	*11
Sheepscot River:	
At Gotts Cove	*10
Approximately 0.50 mile south of Northeast Point	*14
At southern tip of Mink Island	*18
Sheet Flow (caused by Atlantic Ocean):	
Approximately 900 feet north of Indian Point	#1

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.40 mile northeast of lower parking lot for Reid State Park	#1
Approximately 1,100 feet south of intersection of Indian Point Road and Loop Road	#1
Maps available for inspection at the Georgetown Office, Bay Point Road, Georgetown, Maine.	

Masardis (town), Aroostook County (FEMA Docket No. 6814)

Aroostook River:	
At downstream corporate limits	*546
At Garfield Road bridge	*548
Approximately 0.7 mile upstream of confluence of St. Croix Stream	*553
St. Croix Stream:	
At confluence of Aroostook River	*552
Approximately 1.5 miles upstream of confluence of Aroostook River	*557
Maps available for inspection at the Town Clerk's Office, Masardis, Maine.	

Mattawamkeag (town), Penobscot County (FEMA Docket No. 6809)

Penobscot River:	
At downstream corporate limits	*191
At confluence of Mattawamkeag River	*202
At upstream corporate limits	*240
Mattawamkeag River:	
At confluence with Penobscot River	*202
Approximately 1.7 miles upstream of Maine Central Railroad Bridge	*212
Maps available for inspection at the Town Vault, Mattawamkeag, Maine.	

Passadumkeag (town), Penobscot County (FEMA Docket No. 6803)

Penobscot River:	
At downstream corporate limits	*134
At confluence of Passadumkeag River	*142
At upstream corporate limits	*147
Passadumkeag River:	
At confluence with Penobscot River	*142
Approximately 50 feet upstream of Gould Ridge Road	*142
Maps available for inspection at the Planning Board, Passadumkeag, Maine.	

Rome (town), Kennebec County (FEMA Docket No. 6803)

Long Pond: Entire shoreline within community	*242
Great Pond: Entire shoreline within community	*249
Maps available for inspection at the Town Hall, Rome Corners, Maine.	

Southport (town), Lincoln County (FEMA Docket No. 6814)

Atlantic Ocean:	
At State Route 27 crossing of Townsend Gut	*10
At Cape Newagen	*15
Approximately 800 feet north of Cape Newagen	*23
Approximately 1.9 miles north of Cape Newagen	*26
Shallow Flood (caused by Atlantic Ocean): Approximately 600 feet northeast of intersection of State Routes 27 and 238	#1
Sheepscot Bay:	
At Dry Ledge	*10
On west side of Pratts Island	*20
At Mollys Head	*21
Shallow Flooding (Sheepscot Bay): At eastern side of Cedarbush Island	#1
Maps available for inspection at the Town Clerk's Office, West Southport, Maine.	

MICHIGAN

Castleton (township), Barry County (FEMA Docket No. 6817)

Thornapple River:	
About 3,800 feet downstream of confluence of High Bank Creek	*803
About 1.83 miles upstream of Greggs Crossing Road	*813
Maps available for inspection at the Township Supervisor's Home, 512 North Main, Nashville, Michigan.	

Cheboygan (city), Cheboygan County (FEMA Docket No. 6814)

Cheboygan River:	
At mouth	*583
Just downstream of Cheboygan Dam	*583
Just upstream of Cheboygan Dam	*594
About 0.7 miles upstream of Lincoln Avenue	*594
Lake Huron: Along shoreline	*583
Maps available for inspection at the City Hall, 202 Backus Street, Cheboygan, Michigan.	

Memphis (city), St. Clair & Macomb Counties (FEMA Docket No. 6814)

Belle River:	
About 1,950 feet downstream of Bordman Road	*696
About 2,200 feet upstream of the Memphis Ridge Road	*723
Sage Creek:	
At mouth	*717
About 2,200 feet upstream of the Belle River Road	*722
Maps available for inspection at the City Hall, 35095 Potter Street, Memphis, Michigan.	

Sault Ste. Marie (city), Chippewa County (FEMA Docket No. 6814)

Mission Creek:	
At mouth	*584
Just upstream of Tenth Avenue	*596
Mission Creek Tributary:	
At mouth	*591
About 500 feet upstream of Shunk Road	*599
Ashmun Creek:	
At mouth	*605
About 0.6 mile upstream of Easterday Avenue	*637
Edison Sault Power Canal: Within community	*605
St. Mary's River:	
About 3.8 miles downstream of Interstate 75	*584
Just downstream of Soo Locks Tailgate	*585
Just upstream Soo Locks Tailgate	*605
About 5.8 miles upstream of Interstate 75	*605
Maps available for inspection at the City Hall, 325 Court Street, Sault Ste. Marie, Michigan	

Vernon (village), Shiawassee County (FEMA Docket No. 6814)

Shiawassee River:	
Just downstream of State Highway 71	*761
Just upstream of confluence of Holly Drain	*763
Holly Drain:	
At mouth	*762
About 500 feet upstream of Leaver Street	*765
Maps available for inspection at the Village Hall, 120 East Main Street, Vernon, Michigan.	

MINNESOTA

Renville County (unincorporated areas) (FEMA Docket No. 6813)

Minnesota River:	
About 4.6 miles downstream of confluence of Three Mile Creek	*818
About 5.2 miles upstream of confluence of Hawk Creek	*861
Maps available for inspection at the County Auditor's Office, County Building, 500 East DePue, Olive, Minnesota.	

MISSISSIPPI

Aberdeen (city), Monroe County (FEMA Docket No. 6814)

City Ditch:	
About 2,400 feet downstream of Illinois Central Gulf Railroad	*194
Just upstream of Long Street	*215

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Old Tombigbee River:	
At mouth at Tombigbee River	*194
At confluence of Mattuby Creek	*194
Mattuby Creek:	
At confluence with Old Tombigbee River	*194
About 3.5 miles upstream of Meridian Street	*202

Maps available for inspection at the City Hall, Aberdeen, Mississippi.

Amory (city), Monroe County (FEMA Docket No. 6914)

Roundhouse Branch: About 1,500 feet downstream of 109th Street	*222
Burketts Creek:	
About 800 feet downstream of State Highway 25	*219
Just upstream of Boulevard Drive	*238
Burketts Creek Tributary No. 1:	
At confluence with Burketts Creek	*238
Just upstream of Tschudi Street	*255
Burketts Creek Diversion Channel:	
Just upstream of drop structure	*239
About 0.56 mile upstream of State Highway 25	*242
Upper Burketts Creek:	
About 1,800 feet downstream of Philips School Road	*242
About 1,350 feet upstream of Mississippian Railway	*246

Maps available for inspection at the City Hall, Amory, Mississippi.

Long Beach (city), Harrison County (FEMA Docket No. 6914)

Canal No. 1:	
About 800 feet downstream of Beatline Road	*19
About 0.7 mile upstream of Commission Road	*22
Canal No. 3:	
Just downstream of Espy Avenue	*15
Just downstream of 28th Street	*22

Maps available for inspection at the City Hall, Long Beach, Mississippi.

Monroe County (unincorporated areas) (FEMA Docket No. 6914)

Tombigbee River:	
At county boundary	*186
About 3.7 miles upstream of confluence of Boguegaba Creek	*241
Tennessee-Tombigbee Canal:	
At confluence with Tombigbee River	*208
Just downstream of Lock A	*209
Just upstream of Lock A	*222
Just downstream of Lock B	*223
Just upstream of Lock B	*248
At county boundary	*249
Old Tombigbee River: Within community	*194
Mattuby Creek:	
At confluence with Old Tombigbee River	*194
About 3.5 miles upstream of Meridian Street	*202
Weaver Creek:	
At mouth	*207
Just downstream of County Highway 617	*272
James Creek Tributary No. 1:	
Just upstream Thayer Road	*210
Just downstream of State Highway 25	*211
Just upstream of State Highway 25	*217
Just upstream of Central Drive	*234
James Creek Tributary No. 2:	
Just upstream of Illinois Central Gulf Railroad	*200
About 850 feet upstream of Hamilton Street	*217
Roundhouse Branch:	
About 1,500 feet downstream of 109th Street	*222
At divergence from Burketts Creek Tributary No. 1	*246
Town Creek:	
At mouth	*213
About 1.0 mile upstream of U.S. Highway 45	*236
Burketts Creek:	
About 800 feet downstream of State Highway 25	*219
Just upstream of Boulevard Drive	*238
Burketts Creek Tributary No. 1:	
At confluence with Burketts Creek	*238
Just upstream of Tschudi Street	*254
Burketts Creek Diversion Channel:	
Just upstream of drop structure	*239
About 0.57 mile upstream of State Highway 25	*242
Upper Burketts Creek:	
About 1,800 feet downstream of Philips School Road	*242
Just upstream of Mississippian Railway	*245
City Ditch:	
At mouth	*193
About .75 miles downstream of Illinois Central Gulf Railroad	*193

Maps available for inspection at County Courthouse, Aberdeen, Mississippi.

Smithville (town), Monroe County (FEMA Docket No. 6914)

Tennessee-Tombigbee Canal: Within community	*249

Maps available for inspection at the City Hall, Smithville, Mississippi.

MISSOURI

Cape Girardeau County (FEMA Docket No. 6906)

Mississippi River:	
Downstream County boundary	*351
Upstream side of State Route 146	*356
Upstream County boundary	*370
Apple Creek:	
Approximately 2.7 miles downstream of U.S. Route 61	*388
Downstream corporate limits of Town of Appleton	*399
Upstream corporate limits of Town of Appleton	*403
Approximately 1.7 miles upstream of U.S. Route 61	*410
Byrd Creek:	
Approximately 1.5 miles downstream of State Route 72	*389
Approximately 100 feet upstream of State Route 72	*407
Approximately 1,000 feet upstream of County Route 468	*418
Cape La Croix Creek:	
Approximately 0.5 mile downstream of State Route W	*391
Most upstream corporate limits of City of Cape Girardeau	*417
Approximately 0.4 mile upstream of most upstream corporate limits of City of Cape Girardeau	*426
Hubble Creek:	
Approximately 0.2 mile upstream of State Route Z	*379
Upstream side of County Route 324	*395
Confluence of Goose Creek	*401
Upstream side of Missouri Pacific Railroad bridge	*404
Approximately 0.4 mile upstream of confluence of Rocky Branch	*411
Goose Creek:	
Confluence with Hubble Creek	*401
Approximately 1.0 mile upstream of confluence with Hubble Creek	*418
Rocky Branch:	
Confluence with Hubble Creek	*405
Upstream side of State Route PP	*410
Downstream corporate limits of City of Jackson	*412
Williams Creek:	
Approximately 600 feet downstream of State Route K	*383
Upstream side of County Route 316	*398
Approximately 300 feet upstream of U.S. Route 61	*422
Approximately 300 feet upstream of Interstate Route 55	*443
Approximately 200 feet upstream of County Route 616	*490

Maps available for inspection at the County Planning and Zoning Office, Cape Girardeau County Courthouse, Jackson, Missouri.

Scott City (city), Scott County (FEMA Docket No. 6914)

Ramsey Creek Diversion Channel: Within community	*353
Ramsey Creek:	
About 1,300 feet downstream of Old Highway 61	*353
At confluence of Illmo Branch	*355
Illmo Branch:	
At confluence with Ramsey Creek	*355
Just downstream of East First Street	*371
Illmo Tributary:	
At mouth	*361
Just downstream of State Street	*372

Maps available for inspection at the City Hall, 712 Main Street, Scott City, Missouri.

MONTANA

Wibaux (town), Wibaux County (FEMA Docket No. 6912)

Beaver Creek:	
Approximately 1,500 feet downstream of Interstate Highway 94	*2,640
Approximately 200 feet downstream of Interstate Highway 94	*2,644
Approximately 200 feet upstream of Interstate Highway 94	*2,650
Approximately 1,500 feet downstream of State Highway 7	*2,652
Approximately 4,600 feet upstream of State Highway 7 (approximately 100 feet downstream of southernmost corporate limits)	*2,657

Maps are available for inspection at the Town Clerk's Office, 112 S. Wibaux Street, Wibaux, Montana.

Wibaux County (FEMA Docket No. 6912)

Beaver Creek:	
Approximately 2.4 miles downstream of Interstate Highway 94	*2,603
Approximately 200 feet downstream of Interstate Highway 94	*2,644
Approximately 200 feet upstream of Interstate Highway 94	*2,650
Approximately 4,600 feet upstream of State Highway 7 (approximately 100 feet downstream of southernmost corporate limits of the Town of Wibaux)	*2,657
Approximately 400 feet downstream of State Highway 7 (approximately 4,000 feet from southernmost corporate limits of the Town of Wibaux along State Highway 7)	*2,669

Maps are available for inspection at the Office of the County Clerk and Recorder, Wibaux County Courthouse, 200 S. Wibaux Street, Wibaux, Montana.

NEW HAMPSHIRE

Alton (town), Belknap County (FEMA Docket No. 6903)

Lake Winnipesaukee: Entire shoreline within community	*506

Maps available for inspection at the Office of the Planning Board, Alton, New Hampshire.

Canaan (town), Grafton County (FEMA Docket No. 6906)

Mascoma River:	
At downstream corporate limits	*806
Intersection of South Road and U.S. Route 4	*810
Downstream side of Boston and Maine Railroad (2nd upstream crossing)	*811
At Boston and Maine Railroad (3rd upstream crossing)	*828
At Boston and Maine Railroad (4th upstream crossing)	*841
At U.S. Route 4 (3rd upstream crossing)	*871
Approximately 0.8 mile upstream from U.S. Route 4 (3rd upstream crossing)	*873
Appletobaom Road extended to river bank	*875
Approximately 0.5 mile south on Switch Road from intersection of Switch Road and Canaan Center Hill Road	*881
Downstream side of Grafton Turnpike Road	*923
Downstream side of River Road	*951
Approximately 0.4 mile upstream of Lasiva Road	*977

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Indian River:	
At confluence with Mascoma River	*870
Upstream side of Grasshill Hill Road	*935
Upstream side of U.S. Route 4 (3rd upstream crossing)	*947
Upstream side of Orange Road	*954
Approximately 1 mile upstream of Orange Road	*958
At upstream side of Lary Road	*984
Approximately 1,450 feet downstream of State Route 118 (3rd upstream crossing)	*1,090
Upstream side of State Route 118 (3rd upstream crossing)	*1,110
At upstream corporate limits	*1,124
Goose Pond Brook:	
At confluence with Mascoma River	*808
Approximately 170 feet upstream of 3rd upstream crossing of Goose Pond Road	*811
Orange Brook:	
At confluence with Indian River	*948
Approximately 0.8 mile upstream of confluence with Indian River	*980

Maps available for inspection at the Selectmen's Office, Canaan, New Hampshire.

Enfield (town), Grafton County (FEMA Docket No. 6903)

Mascoma River:	
At confluence with Mascoma Lake	*754
Upstream side of Boston and Maine Railroad	*803
At upstream corporate limits	*806
Lovejoy Brook:	
Confluence with Mascoma River	*804
At Lovejoy Brook Road	*806
At upstream corporate limits	*806
Rhoe River:	
Confluence with Mascoma Lake	*754
Upstream side of State Route 4A	*844
Approximately 0.5 mile upstream of State Route 4A	*863

Maps available for inspection at the Town Clerk's Office, Town Hall, Enfield, New Hampshire.

Farmington (town), Strafford County (FEMA Docket No. 6906)

Cocheco River:	
At downstream corporate limits	*236
At Watson's Cross Road	*258
Approximately 0.6 mile upstream of confluence of Ela River	*314
Ela River:	
Confluence with Cocheco River	*276
At State Route 11	*319
Approximately 0.4 mile upstream of State Route 11	*360
Approximately 0.3 mile downstream of New River Road	*395
At downstream side of New River Road	*435
Approximately 0.4 mile upstream of New River Road	*483
Approximately 0.7 mile upstream of New River Road	*515
Upstream side of Hamilltown Road	*573
Ella River:	
At approximately 0.7 mile upstream of the confluence with Cocheco River	*349
Approximately 0.5 mile downstream of Spring Street	*356
At upstream side of Spring Street	*395
At upstream corporate limits	*364
Dames Brook:	
At confluence with Cocheco River	*281
Approximately 170 feet upstream of Elm Street	*286
Kicking Horse Brook:	
At confluence with Dames Brook	*388
At downstream side of Wintor Street	*377
Approximately 40 feet upstream of Glen Street	*325
Approximately 98 feet upstream of Charles Street	*360

Maps available for inspection at c/o Planning Board, Town Hall, Farmington, New Hampshire.

Hopkinton (town), Merrimack County (FEMA Docket No. 6903)

Contoocook River:	
At downstream corporate limits	*359
At upstream side of Penacook Road	*361
At confluence of Warner River	*362
At upstream side of Hydroelectric Dam	*364
At confluence of Crossey Brook	*366
Approximately 240 feet downstream of Rowell Covered Bridge	*368
Upstream side of Hoague Sprague Dam	*383
Warner River:	
At confluence with Contoocook River	*362
At upstream corporate limits	*383
Blackwater River:	
At confluence with Contoocook River	*360
At upstream corporate limits	*360

Maps available for inspection at the Selectman's Office, Town Hall, Hopkinton, New Hampshire.

NEW MEXICO

Silver City (town), Grant County (FEMA Docket No. 6917)

San Vicente Arroyo:	
Approximately 0.5 mile upstream of confluence of Maude's Creek	*5,620
Approximately 100 feet upstream of Broken Arrow Drive	*5,664
Approximately 0.5 mile downstream of downstream corporate limits	*5,736
At downstream corporate limits	*5,759
At State Route 90	*5,833
At confluence of Silva Creek & Pinos Altos Creek	*5,894
Pinos Altos Creek:	
At confluence with San Vicente Arroyo	*5,894
At Pine Street	*5,899
Approximately 1,300 feet upstream of 32nd Street	*6,048
Tributary 7 to Pinos Altos Creek:	
At confluence with Pinos Altos Creek	*5,952
Downstream side of Kimberly Road	*5,986
Silva Creek:	
At confluence with San Vicente Arroyo	*5,894
At upstream corporate limits	*5,940
Approximately 0.9 mile upstream of upstream corporate limits	*5,999
Maude's Creek:	
Approximately 1.8 miles upstream of confluence with San Vicente Arroyo	*5,695
Approximately 2.9 miles upstream of confluence with San Vicente Arroyo	*5,770
At confluence of Tributary 1 to Maude's Creek	*5,855
Approximately 0.7 mile downstream of corporate limits	*5,927
At corporate limits	*5,998
Approximately 795 feet upstream of U.S. Route 180	*6,018
Tributary 1 to Maude's Creek:	
At confluence with Maude's Creek	*5,855
Downstream side of Pinon Lane	*5,910
At downstream corporate limits	*6,007
Approximately 980 feet upstream of corporate limits	*6,044
Tributary 2 to Maude's Creek:	
Approximately 4.5 miles upstream of confluence with Maude's Creek	*5,958
At most downstream corporate limit	*5,981
Approximately 600 feet upstream of U.S. Route 180	*6,044

Maps available for inspection at the City Hall, 101 West Broadway, Silver City, New Mexico.

Socorro (City), Socorro County (FEMA Docket No. 6914)

Rio Grande River:	
At downstream corporate limits (extended)	*4,585
Approximately 1,380 feet upstream at most upstream corporate limits	*4,598

Maps available for inspection at the City Hall, 200 Church Street, Socorro, New Mexico.

NEW YORK

Annsville (town), Oneida County (FEMA Docket No. 6914)

East Branch Fish Creek:	
At confluence with Fish Creek	*406
Approximately 0.5 mile upstream of Palmer Road	*628
Furnace Creek:	
At confluence with East Branch Fish Creek	*504
Approximately 0.5 mile upstream crossing of Glenmore Road	*607
Fish Creek:	
At downstream corporate limits	*402
At confluence with West Branch Fish Creek	*406
West Branch Fish Creek:	
Approximately 550 feet downstream of confluence with Fish Creek	*406
Approximately 1.4 miles upstream of McConnellsville Road	*483

Maps available for inspection at the Town Vault, Maine Street, Tabeg, New York.

Kingston (town), Ulster County (FEMA Docket No. 6914)

Saw Kill:	
At downstream corporate limits	*162
Approximately 140 feet downstream of County Highway 30	*179
Approximately 1,780 feet upstream of County Highway 30	*191
Approximately 1,600 feet downstream of Powder Mill Road	*218
Approximately 350 feet upstream of Powder Mill Road	*237
Approximately 1,660 feet downstream of corporate limits	*247
At upstream corporate limits	*262

Maps available for inspection at the Town Hall, Sawkill Road, R.D. # 2, Kingston, New York.

Owasco (town), Cayuga County (FEMA Docket No. 6914)

Sucker Brook:	
Confluence with Owasco Lake	*716
Approximately 660 feet upstream of State Route 38 A	*718
Approximately 1,200 feet upstream of State Route 38 A	*725
Approximately 0.5 mile upstream of State Route 38 A	*739
Ballch Hollow Brook:	
At confluence with Owasco Lake	*716
Downstream side of State Route 38 A	*724
Approximately 0.4 mile upstream of State Route 38 A	*744
Owasco Outlet:	
At downstream corporate limits	*695
Upstream side of State dam	*716
At confluence with Owasco Lake	*716
Owasco Lake: Entire shoreline within corporate limits	716

Maps available for inspection at the Owasco Town Hall, Two Bostad Avenue, Auburn, New York.

Ticonderoga (town), Essex County (FEMA Docket No. 6917)

Lake Champlain: Entire shoreline within community	*102

Maps available for inspection at the Ticonderoga Town Office, Town Clerk's Office, Ticonderoga, New York.

Vernon (village), Oneida County (FEMA Docket No. 6914)

Sconondoa Creek:	
Downstream corporate limits	*391
Upstream corporate limits	*846

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the Village Hall, Vernon, New York.	
NORTH CAROLINA	
Louisburg (town), Franklin County (FEMA Docket No. 6812)	
Tar River:	
About 900 feet downstream of confluence of Sycamore Creek	^196
About 1.2 miles upstream of North Main Street	^207
Maps available for inspection at the Town Hall, 110 West Nash Street, Lousburg, North Carolina.	
Southern Pines (town), Moore County (FEMA Docket No. 6812)	
McDeeds Creek:	
About 1,845 feet downstream of Old Connecticut Avenue	^369
About 625 feet upstream of Old Connecticut Avenue	^393
Maps available for inspection at the Town Hall, Southern Pines, North Carolina.	
NORTH DAKOTA	
Tioga (city), Williams County (FEMA Docket No. 6812)	
Main Tributary:	
Approximately 475 feet upstream of the Burlington Northern Railroad	^2,197
Approximately 1,400 feet downstream of North Dakota State Highway 40	^2,226
Just downstream of Main Street	^2,242
Just upstream of County Road at western corporate limits	^2,257
Approximately 300 feet downstream of Tioga Dam	^2,272
South Main Tributary:	
Approximately 370 feet upstream of confluence with Main Tributary	^2,230
Just downstream of Main Street	^2,240
Approximately 1,860 feet upstream of the county road paralleling the western corporate limits	^2,268
North Burlington Northern Railroad Ditch:	
At convergence with Main Tributary	^2,263
Approximately 170 feet downstream of divergence with Main Tributary	^2,270
North Tributary:	
At confluence with Main Tributary	^2,236
Just upstream of 3rd Street	^2,237
Just upstream of Signal Street	^2,248
North Channel:	
At confluence with Main Tributary	^2,236
Just upstream of 4th Street	^2,237
Just downstream of Signal Street	^2,241
Maps are available for inspection at the City Auditor's Office, City Hall, 12 N.E. First Street, Tioga, North Dakota.	
OHIO	
Crooksville (village), Perry County (FEMA Docket No. 6812)	
Moxahala Creek:	
About 1.0 mile downstream of Main Street	^748
About 0.9 mile upstream of Industrial Drive	^755
Moxahala Creek Overflow Basains:	
About 1,020 feet downstream of China Street	^749
Just downstream of Main Street	^752
Maps available for inspection at the Municipal Building, 22 China Street, Crooksville, Ohio.	
OKLAHOMA	
Fairview (city), Major County (FEMA Docket No. 6812)	
Lost Creek:	
At downstream corporate limits	^1,258
Upstream side of U.S. Route 60, State Route 8	^1,278
At most upstream corporate limits	^1,306
Lost Creek Tributary:	
At confluence with Lost Creek	^1,266
Approximately 300 feet upstream of 8th Street	^1,276
Upstream side of Beck Street	^1,289
Approximately 300 feet upstream of North First Avenue	^1,299
Gypsum Creek:	
At downstream corporate limits	^1,274
At upstream corporate limits	^1,289
Sand Creek School Tributary:	
Approximately 2,300 feet upstream of downstream corporate limits	^1,253
Approximately 250 feet upstream of State Routes 8 and 58	^1,272
Approximately 1,500 feet upstream of State Routes 8 and 58	^1,275
Sand Creek:	
At most downstream corporate limits	^1,264
Approximately 200 feet upstream of U.S. Route 60	^1,277
At most upstream corporate limits	^1,302
Sand Creek Park Tributary:	
At downstream corporate limits	^1,264
Upstream side of Twelfth Avenue	^1,276
Approximately 75 feet upstream of U.S. Route 60	^1,298
Approximately 100 feet upstream of Atchison Topeka and Santa Fe Railway	^1,302
At most upstream corporate limits	^1,332
Maps available for inspection at the City Hall, 206 East Broadway, Fairview, Oklahoma.	
OREGON	
Dallas (city), Polk County (FEMA Docket No. 6814)	
Rickreall Creek:	
Approximately 1,100 feet downstream of Fir Villa Road	^258
200 feet downstream of Levens Street	^312
Approximately 7,800 feet downstream of Ellendale Road	^349
North Fork Ash Creek:	
Approximately 1,800 feet downstream of Godsey Road	^273
20 feet upstream of Holman Street	^300
Approximately 2,100 feet upstream of Main Street	^321
North Fork Tributary:	
Approximately 1,050 feet downstream of Godsey Road	^279
400 feet upstream of Monmouth Cutoff Highway	^297
Maps are available for review at City Hall, Main Street, Dallas, Oregon.	
Independence (city), Polk County (FEMA Docket No. 6814)	
Willamette River:	
Approximately 3,400 feet downstream of the confluence of Ash Creek	^157
200 feet downstream of South River Road	^159
Ash Creek:	
100 feet upstream of Main Street (State Highway 51)	^159
Approximately 2,400 feet upstream of Gun Club Road	^168
South Fork Ash Creek:	
At confluence with Ash Creek	^160
20 feet upstream of F Street	^166
Maps are available for review at City Hall, Independence, Oregon.	
Monmouth (city), Polk County (FEMA Docket No. 6814)	
Ash Creek:	
850 feet downstream of Sewage Lagoon Road	^170
At confluence of North Fork Ash Creek and Middle Fork Ash Creek	^174
North Fork Ash Creek: At confluence with Ash Creek and Middle Fork Ash Creek	^174
Middle Fork Ash Creek:	
At confluence with Ash Creek and North Fork Ash Creek	^174
Approximately 2,000 feet upstream of U.S. Highway 99 West (Pacific Highway)	^183
Middle Fork Tributary:	
At confluence with Middle Fork Ash Creek	^177
100 feet upstream of U.S. Highway 99 West (Pacific Highway)	^181
Maps are available for review at City Hall, 151 West Main Street, Monmouth, Oregon.	
Polk County (unincorporated areas) (FEMA Docket No. 6814)	
Willamette River:	
Approximately 13,900 feet downstream of the confluence of Glenn Creek	^123
Approximately 6,800 feet upstream of the Southern Pacific Railroad Bridge	^144
Approximately 4,000 feet upstream of the confluence of Rickreall Creek	^148
Approximately 3,400 feet downstream of the confluence of Ash Creek	^157
Approximately 3,330 feet upstream of South River Road	^160
At confluence of Santiam River	^183
Approximately 13,700 feet of Santiam River	^189
South Yamhill River:	
Approximately 2.3 miles downstream of Bellevue Ballston Road Bridge	^155
Approximately 1.26 miles upstream of Bellevue Ballston Road Bridge	^168
Approximately 0.58 mile downstream of the condemned steel bridge	^224
Approximately 0.22 mile downstream of State Highway 2 (Wallace Bridge)	^239
100 feet upstream of Gold Creek Road	^269
Approximately 0.29 mile upstream of the confluence of Agency Creek	^341
Rickreall Creek:	
700 feet downstream of the crossing of the Southern Pacific Railroad	^148
100 feet upstream of Bowersville Road	^235
300 feet upstream of Fir Villa Road	^263
50 feet downstream of Ellendale Road	^393
At U.S. Geological Survey Gage No. 14-1907 00 (Approximately 1.8 miles upstream of Ellendale Road)	^463
Ash Creek:	
Approximately 2,000 feet downstream of Gun Club Road	^162
At confluence of North Fork Ash Creek and Middle Fork Ash Creek	^174
South Fork Ash Creek:	
Just upstream of Hemrick Road	^191
400 feet upstream of Monmouth Highway (State Highway 51)	^198
North Fork Ash Creek (at Monmouth):	
At confluence with Ash Creek and Middle Fork Ash Creek	^174
10 feet downstream of Holfman Road	^178
North Fork Ash Creek (at Dallas):	
Approximately 1,800 feet downstream of Godsey Road	^273
10 feet upstream of Kings Valley Highway	^338
Middle Fork Ash Creek:	
At confluence with Ash Creek and North Fork Ash Creek	^174
Approximately 1,950 feet upstream of Riddell Road	^190
North Fork Tributary:	
Approximately 1,000 feet upstream of confluence with North Fork Ash Creek	^274
900 feet downstream of Godsey Road	^282
Maps are available for review at the Polk County Courthouse, 850 Main Street, Dallas, Oregon.	
PENNSYLVANIA	
Bushkill (township), Northampton County (FEMA Docket No. 6812)	
Bushkill Creek:	
At downstream corporate limits	^366
Approximately 250 feet upstream of Legislative Route 48040 (Henry Road)	^420
Approximately 3,100 feet downstream of Township Road 597 (Akita Mill Road)	^486
Approximately 460 feet downstream of Horn Road	^560
At upstream corporate limits	^620
Maps available for inspection at 1114 Bushkill Center Road, Nazareth, Pennsylvania.	

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Center (township), Snyder County (FEMA Docket No. 6812)	
Penns Creek:	
Approximately 1.8 miles downstream of State Route 104	^509
At confluence of Dry Run	^519
Approximately 100 feet downstream of State Route 104	^521
Approximately 0.4 mile upstream of State Route 104	^525
Maps available for inspection at the Township Secretary's residence, R.D. 1, Box 129, Middleburg, Pennsylvania.	
Conewago (township), Adams County (FEMA Docket No. 6812)	
South Branch Conewago Creek:	
At downstream corporate limits	^509
Approximately 40 feet downstream of L.R. 01005	^517
Approximately 90 feet downstream of State Route 116	^524
Plum Creek:	
Approximately 0.81 mile downstream of State Route 116	^520
Approximately 0.26 mile downstream of State Route 116	^526
Approximately 1,000 feet upstream of State Route 116	^539
Maps available for inspection at the Township Building, 350 Third Street, Hanover, Pennsylvania.	
Cranberry (township), Venango County (FEMA Docket No. 6814)	
Sage Run:	
At downstream corporate limits	^1,020
Downstream side of U.S. Route 62 second upstream crossing	^1,070
Upstream side of U.S. Route 62 fifth upstream crossing	^1,150
Upstream side of U.S. Route 62 seventh upstream crossing	^1,237
Upstream side of U.S. Route 62 ninth upstream crossing	^1,261
Allegheny River:	
At downstream corporate limits	^961
Upstream side of U.S. Route 322 Bridge	^976
Upstream side of CONRAIL bridge	^997
Approximately 4.3 miles upstream of CONRAIL bridge	^1,006
Lower Twomile Run:	
At confluence with Allegheny River	^971
Approximately 75 feet upstream of Deep Hollow Road second crossing	^1,041
Maps available for inspection at the Township Building, Route 257, Seneca, Pennsylvania.	
Dawson (borough), Fayette County (FEMA Docket No. 6812)	
Youghiogheny River:	
Approximately 0.36 mile downstream of State Route 819 bridge	^851
Approximately 0.7 mile upstream of State Route 819 bridge	^854
Maps available for inspection at the Borough Building, Dawson, Pennsylvania.	
Dreher (township), Wayne County (FEMA Docket No. 6812)	
Wallenpaupack Creek:	
Approximately 1.9 miles downstream of State Route 507	^1,278
Downstream side of Mountain View Road	^1,339
Approximately .8 mile downstream of Pine Grove Road	^1,410
Downstream side of Pine Grove Road	^1,467
Approximately 1.7 miles upstream of Pine Grove Road	^1,596
Maps available for inspection at the Township Building Newfoundland, Pennsylvania.	
East Franklin (township), Armstrong County (FEMA Docket No. 6814)	
Allegheny River:	
Approximately 0.5 mile downstream of U.S. Route 422 and State Route 28 Bridge	^793
Downstream side of Lock and Dam No. 7	^795
Upstream of Lock and Dam No. 7	^798
At confluence of Limestone Run	^802
At CSX Transport	^804
Approximately 1.7 miles upstream of CSX Transport	^806
Maps available for inspection at the Municipal Building, R.D. #3, Kittanning, Pennsylvania.	
Freedom (township), Adams County (FEMA Docket No. 6814)	
Middle Creek:	
At downstream corporate limits	^430
Upstream side of U.S. Route 15	^460
Approximately 1,000 feet upstream of L.R. 01052	^488
Marsh Creek:	
Approximately 0.65 mile upstream of U.S. Route 15	^433
Approximately 40 feet upstream of U.S. Business Route 15	^446
Approximately 0.4 mile upstream of T-327	^460
At upstream corporate limits	^476
Maps available for inspection with the Township Engineer, Gettysburg Engineer Company, 40 East High Street, Gettysburg, Pennsylvania 17325.	
Gilpin (township), Armstrong County (FEMA Docket No. 6814)	
Allegheny River:	
At confluence of Kiskiminetas River	^772
Upstream side of Lock and Dam No. 5	^776
At Danley Island	^778
Approximately 5.3 miles upstream of Lock and Dam No. 5	^780
Kiskiminetas River:	
At confluence with Allegheny River	^772
Approximately 1.3 miles upstream of confluence of Elder Run	^775
At confluence with Guffy Run	^781
Maps available for inspection at the Township Building, Leechburg, Pennsylvania.	
Hartley (township), Union County (FEMA Docket No. 6812)	
Penns Creek:	
At downstream corporate limits	^571
Approximately 1 mile upstream of downstream corporate limits	^585
Downstream side of Ranch Road	^594
Downstream side of State Route 235	^604
Downstream side of Thomas Road Dam	^660
Upstream side of Weikert Lane	^731
Approximately .9 mile upstream of Weikert Lane	^751
Approximately .2 miles upstream of Weikert Lane	^788
Approximately 3.2 miles upstream of Weikert Lane	^812
Approximately .8 mile downstream of upstream corporate limits	^835
At upstream corporate limits	^854
Approximately 400 feet upstream of upstream corporate limits	^857
Laurel Run:	
Confluence with Penns Creek	^587
Upstream side of T-307	^833
Upstream side of LR 58003	^899
Downstream side of State Route 235	^720
Approximately .4 mile upstream of State Route 235	^753
Maps available for inspection at the Hartley Community Center, Laurelton, Pennsylvania.	
Kiskiminetas (township), Armstrong County (FEMA Docket No. 6814)	
Kiskiminetas River:	
Most downstream corporate limits	^792
Confluence with Roaring Run	^811
Confluence with Long Run	^826
Approximately 0.9 mile upstream of State Road 56	^832
Maps available for inspection at the Township Building, Apollo, Pennsylvania.	
Lamar (township), Clinton County (FEMA Docket No. 6812)	
Fishing Creek:	
At downstream corporate limits	^595
Upstream side of 2nd upstream crossing of U.S. Route 220	^607
Upstream side of first upstream crossing of LR 18007	^615
Upstream side of second upstream crossing of LR 18007	^624
Approximately 0.6 mile upstream of second upstream crossing of LR 18007	^633
Approximately 0.5 mile downstream of third upstream crossing of LR 18007	^642
Upstream side of third upstream crossing of LR 18007	^652
Upstream side of LR 18030 (Main Street)	^670
Downstream side of Hog Valley Road	^678
At upstream corporate limits	^692
Long Run:	
At confluence with Fishing Creek	^603
Downstream side of first upstream crossing of State Route 477 (Ridge Road)	^608
Approximately 100 feet downstream of second upstream crossing of State Route 477 (Ridge Road)	^618
Downstream side of T-362 (Wetzel Road)	^644
Approximately 0.8 mile upstream of T-362 (Wetzel Road)	^670
Maps available for inspection at the Township Building, Rote, Pennsylvania.	
Lehigh (township), Wayne County (FEMA Docket No. 6812)	
Gouldsboro Lake Tributary:	
At confluence with Lehigh River	^1,885
Approximately 5 mile upstream of Main Street (State Route 507)	^1,890
At CONRAIL bridge	^1,894
Lehigh River:	
Philips Road	^1,814
Approximately 2,000 feet upstream of Philips Road	^1,829
Approximately .7 mile upstream of Philips Road	^1,843
Downstream side of downstream dam	^1,873
Upstream side of Fourth Street (T-303)	^1,880
At confluence of Gouldsboro Lake Tributary	^1,885
Maps available for inspection at the Lehigh Municipal Building, Gouldsboro, Pennsylvania.	
Limestone (township), Union County (FEMA Docket No. 6812)	
Penns Creek:	
Approximately 400' downstream of downstream corporate limits	^489
At downstream corporate limits	^491
Approximately 200' upstream of State Route 204	^495
At confluence of Swetzers Run	^504
Approximately 1.1 miles downstream of State Route 104	^515
Approximately .4 mile upstream of State Route 104	^525
Approximately 0.9 mile upstream of State Route 104	^530
At upstream corporate limits	^543
Maps available for inspection at the Township Meeting Hall, R.D. 3, Mifflinburg, Pennsylvania.	

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Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Londonderry (township), Chester County (FEMA Docket No. 6914)	
Doe Run:	
Approximately 150 feet of downstream corporate limits	*338
Upstream side of dam	*373
Approximately 0.27 mile upstream of Creek Road	*413
Maps available for inspection at the Londonderry Township Building, Dalesville Road, Londonderry, Pennsylvania.	
Lower Frankford (township), Cumberland County (FEMA Docket No. 6912)	
Conodoguinet Creek:	
At downstream corporate limits	*438
At upstream corporate limits	*458
Maps available for inspection at the Township Building, R.D. 9, Carlisle, Pennsylvania.	
Lower Nazareth (township), Northampton County (FEMA Docket No. 6914)	
Monocacy Creek:	
At downstream corporate limits	*321
Downstream side of Hanoverville Road	*332
Confluence of East Branch Monocacy Creek	*339
Upstream corporate limits	*351
East Branch Monocacy Creek:	
Confluence with Monocacy Creek	*339
Upstream side of Steuben Road	*343
Confluence of Unnamed Tributary to East Branch Monocacy Creek	*359
At upstream corporate limits	*374
Unnamed Tributary to East Branch Monocacy Creek:	
Confluence with East Branch Monocacy Creek	*359
Upstream side of Newburg Road	*372
At upstream corporate limits	*376
Shoeneck Creek:	
At downstream corporate limits	*345
Approximately 200 feet upstream of the Sewage Treatment Plant Road	*348
Maps available for inspection at the Township Office, 306 Buttztown Road, Bethlehem, Pennsylvania.	
Lower Tyrone (township), Fayette County (FEMA Docket No. 6912)	
Youghiogheny River:	
At downstream corporate limits	*811
Approximately 4.25 miles downstream of confluence of Laurel Run	*815
Approximately 2.95 miles downstream of confluence of Laurel Run	*829
At confluence of Laurel Run	*844
Approximately 0.1 mile downstream of State Route 819 bridge	*852
At upstream corporate limits	*859
Maps available for inspection at the Township Building, Dawson, Pennsylvania.	
McSherrystown (borough), Adams County (FEMA Docket No. 6912)	
Plum Creek:	
At upstream corporate limits	*533
At downstream corporate limits	*527
Maps available for inspection at the Borough Hall, 338 Main Street, McSherrystown, Pennsylvania.	
Mifflinburg (borough), Union County (FEMA Docket No. 6912)	
Buffalo Creek:	
At downstream corporate limits	*540
Approximately 200' downstream of Fourth Street	*545
At upstream corporate limits	*549
Maps available for inspection at the Mifflinburg Borough Building, 33 Chestnut Street, Mifflinburg Pennsylvania.	
New Britain (township), Bucks County (FEMA Docket No. 6912)	
West Branch Neshaminy Creek:	
At downstream corporate limits	*250
Downstream side of CONRAIL	*263
Downstream side of County line road at the upstream corporate limits	*268
Railroad Creek:	
Confluence with West Branch Neshaminy Creek	*251
Approximately 1,170 feet upstream of Sunset Road at the upstream limit of detailed study	*257
Maps available for inspection at the Township Building, 207 Park Avenue, Chalfont, Pennsylvania.	
Parks (township), Armstrong County (FEMA Docket No. 6914)	
Kiskiminetas River:	
At downstream corporate limits	*781
Confluence of Carnahen Run	*785
At State Route 66 Alternate	*790
At upstream corporate limits	*792
Maps available for inspection at the Township Building, Vandergrift, Pennsylvania.	
Perry (township), Armstrong County (FEMA Docket No. 6914)	
Allegheny River:	
Approximately .5 mile downstream of confluence of Armstrong Run	*850
Confluence of Birch Run	*856
Approximately 2.3 mile upstream of confluence of Birch Run	*860
At confluence of Bear Creek	*866
Maps available for inspection at the Township Building, Kame City, Pennsylvania.	
Perry (township), Snyder County (FEMA Docket No. 6912)	
West Branch Mahantango Creek:	
Approximately 0.4 mile downstream of T-301	*483
Upstream side of T-301	*489
Upstream side of T-315	*485
Downstream side of LR 54004	*493
Approximately 1.2 miles upstream of LR 54004	*540
At upstream corporate limits	*556
North Branch Mahantango Creek:	
Confluence with Mahantango Creek	*428
Approximately 0.8 miles upstream of confluence with Mahantango Creek	*434
Approximately 0.6 mile downstream of T-344	*441
Downstream side of T-344	*449
Upstream side of T-333	*485
Downstream side of LR 54002	*471
Approximately 0.7 mile upstream of LR 54002	*483
Downstream side of LR 54003	*502
Approximately 0.5 mile upstream of LR 54003	*515
Downstream side of T-351	*529
Upstream side of Township Route 356	*543
Approximately 450 feet upstream of State Route 35	*562
Maps available for inspection at the Township Building, R.D. 2, Mt. Pleasant Mills, Pennsylvania.	
Saville (township), Perry County (FEMA Docket No. 6912)	
Buffalo Creek:	
Approximately 450 feet downstream of Spangle Hollow Road	*577
Approximately .6 mile upstream of confluence of Panther Creek	*585
Approximately 1.3 miles upstream of confluence of Panther Creek	*593
Approximately 1.8 miles upstream of confluence of Panther Creek	*598
Unnamed Tributary to Buffalo Creek:	
Confluence with Buffalo Creek	*598
Approximately .9 mile upstream of confluence with Buffalo Creek	*815
Approximately 1.8 miles upstream of confluence with Buffalo Creek	*840
Approximately 1,600 feet downstream of Peach Ridge Road	*657
Approximately 100 feet upstream of Peach Ridge Road	*675
Maps available for inspection at the Township Building, R.D. #1, Elliottsburg, Pennsylvania.	
Smithfield (township), Monroe County (FEMA Docket No. 6912)	
Delaware River:	
At downstream corporate limits	*315
At confluence of Shawnee Creek	*325
Approximately 3.0 miles upstream of confluence of Shawnee Creek	*330
Brodhead Creek:	
At confluence with Delaware River	*322
At confluence of Marshalls Creek	*322
Approximately 1,000 feet upstream of confluence of Marshalls Creek	*322
Marshalls Creek:	
At confluence with Brodhead Creek	*322
Upstream side of Old Mill Road	*338
Upstream side of U.S. Route 209	*403
Upstream side of Twin Falls Road	*442
Upstream side of Marshalls Road	*471
At upstream corporate limits	*520
Cherry Creek:	
At downstream corporate limits	*322
Upstream side of Cherry Valley Road	*338
At upstream corporate limits	*348
Approximately 100 feet above corporate limits	*350
Shawnee Creek:	
At confluence with Delaware River	*324
Upstream side of River Road	*325
Approximately 3,000 feet upstream of River Road	*382
Approximately 100 feet downstream of Shawnee Lake Dam #1	*422
Downstream side of Shawnee Lake Dam #2	*441
Downstream side of Hollow Road	*454
Approximately 1,800 feet upstream of Hollow Road	*467
Little Sambo Creek:	
At downstream corporate limits	*454
Upstream side of Valhalla Drive	*472
Upstream side of Delaware Avenue	*485
Little Sambo Creek Tributary:	
At confluence with Little Sambo Creek	*478
Approximately 650 feet upstream of confluence with Little Sambo Creek	*496
Maps available for inspection at the Township Building, East Stroudsburg, Pennsylvania.	
Spring (township), Snyder County (FEMA Docket No. 6912)	
Middle Creek:	
At downstream corporate limits	*569
At downstream side of Legislative Route 54048	*594
At upstream side of Township Route 570	*611
Beaver Creek:	
At confluence with Middle Creek	*571
At confluence of Mitchell Run	*601
Approximately 200 feet upstream of confluence of Mitchell Run	*602
Mitchell Run:	
At confluence with Beaver Creek	*601
Approximately 0.3 mile upstream of confluence with Beaver Creek	*627
Maps available for inspection at the Township Building, Railroad Avenue, Beaver Springs, Pennsylvania.	
Upper Frankford (township), Cumberland County (FEMA Docket No. 6912)	
Conodoguinet Creek:	
At downstream corporate limits	*458
Downstream side of Blosserville Road	*466
Approximately 280 feet upstream of upstream corporate limits	*481
Maps available for inspection at the Township Building, Mohawk Road, R.D 3, Newville, Pennsylvania.	

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Tyrone (township), Perry County (FEMA Docket No. 6912)	
Laurel Run:	
Approximately 1,800 feet downstream of L.R. 50010	*533
Upstream side of L.R. 50010	*541
Approximately 1,700 feet upstream of L.R. 50010	*549
Muddy Run:	
Approximately 1,155 feet downstream of State Routes 274 and 850	*571
Upstream side of State Routes 274 and 850	*578
Downstream side of L.R. 50010	*579
Maps available for inspection at the Township Municipal Building, Route 274, Landisburg, Pennsylvania.	
West Pennsboro (township), Cumberland County (FEMA Docket No. 6912)	
Conodoguinet Creek:	
At downstream corporate limits	*438
Approximately 500 feet downstream of McCallister Road	*446
Upstream side of Interstate Route 76	*470
Approximately 1,400 feet upstream of upstream corporate limits	*482
Maps available for inspection at the Township Building, 2130 Newville Road, Carlisle, Pennsylvania.	
SOUTH CAROLINA	
Hampton (town), Hampton County (FEMA Docket No. 6914)	
Coosawhatchie River Tributary:	
At downstream corporate limits	*86
Approximately 150 feet downstream of State Route 363	*93
Just downstream of State Route 316	*99
At upstream corporate limits	*101
Sanders Branch:	
At downstream corporate limits	*82
Approximately 2,000 feet upstream of downstream corporate limits	*83
Maps available for inspection at the Town Hall, 808 First Street, Hampton, South Carolina.	
TENNESSEE	
Brownsville (city), Haywood County (FEMA Docket No. 6912)	
Sugar Creek:	
About 0.86 mile downstream of Sugar Creek Road	*296
About 1,000 feet upstream of State Route 76 Bypass	*360
Sugar Creek Lateral:	
At mouth	*335
Just downstream of County Road	*369
Buck's Creek:	
At mouth	*320
Just downstream of Key Corner Road	*340
Buck's Creek Lateral:	
At mouth	*326
Just downstream of Key Corner Road	*346
Little Nixon Creek:	
Just upstream of Allen King Road	*318
Just downstream of Louisville and Nashville Railroad	*368
Little Nixon Creek Lateral:	
At mouth	*340
Just downstream of Louisville and Nashville Railroad	*371
Maps available for inspection at the City Hall, Brownsville, Tennessee.	
Claiborne County (unincorporated areas) (FEMA Docket No. 6914)	
Clear Fork:	
At western county boundary	*1,086
At northern state boundary	*1,262
Straight Creek:	
At mouth	*1,108
Just downstream of Straight Creek Road	*1,119
Valley Creek:	
At mouth	*1,185
About 0.53 mile upstream of Norfolk Southern Railway	*1,229
Davis Creek:	
At western county boundary	*1,040
About 0.55 mile upstream of State Route 63	*1,263
Gawood Branch:	
At mouth	*1,095
About 0.7 mile upstream of Dunn Lane	*1,170
Maps available for inspection at the County Executive's Office, County Courthouse, Tazewell, Tennessee.	
Clifton (city), Wayne County (FEMA Docket No. 6912)	
Tennessee River:	
About 157.1 miles upstream of mouth	*390
About 159.2 miles upstream of mouth	*391
Maps available for inspection at the City Hall, Clifton, Tennessee.	
Dunlap (city), Sequatchie County (FEMA Docket No. 6913)	
Sequatchie River:	
Just upstream of Rankin Avenue	*690
At confluence of Big Brush Creek	*702
Big Brush Creek:	
At mouth	*702
Just downstream of Elliott Road	*784
Little Brush Creek:	
At mouth	*728
About 550 feet upstream of Old State Route 8	*824
Coops Creek:	
At mouth	*698
About 650 feet upstream of Mountain View Road	*837
Cordell Lane Branch:	
At mouth	*711
About 1,200 feet upstream of Jones Drive	*748
Maps available for inspection at the City Hall, Dunlap, Tennessee.	
Henning (town), Lauderdale County (FEMA Docket No. 6912)	
Henning Creek:	
About 3,200 feet downstream of McFarlin Avenue	*284
About 860 feet upstream of Henning Bethlehem Road	*295
Maps available for inspection at the City Hall, Henning, Tennessee.	
Manchester (city), Coffee County (FEMA Docket No. 6912)	
Duck River:	
About 0.1 mile downstream of U.S. Route 41	*998
Just downstream of Morton Dam	*1,001
Just upstream of Morton Dam	*1,010
About 400 feet upstream of Interstate 24	*1,013
Little Duck River:	
About 0.75 mile downstream of U.S. Route 41	*975
At confluence of Hunt Creek	*1,048
Grindstone Hollow Creek:	
About 420 feet upstream of mouth	*976
Just downstream of Louisville and Nashville railroad	*1,029
Just upstream of Louisville and Nashville railroad	*1,039
Just downstream of Louisville and Nashville railroad	*1,056
Hickory Flat Creek:	
At mouth	*1,042
About 400 feet upstream of Expressway Drive	*1,056
Hunt Creek:	
At confluence with Little Duck River	*1,048
About 0.6 mile upstream of Skinner Flat Road	*1,056
Wolf Creek:	
At confluence with Little Duck River	*1,011
About 1.2 miles upstream of Brushy Branch Road	*1,043
Maps available for inspection at the City Hall, 200 West Fort Street, Manchester, Tennessee.	
McMinnville (city), Warren County (FEMA Docket No. 6912)	
Barren Fork:	
About 1.8 miles downstream of Beersheba Street	*887
About 1,800 feet downstream of the confluence of Hickory Creek	*914
Pepper Creek:	
At mouth	*899
Just downstream of South Chancery Street	*899
Just upstream of South Chancery Street	*910
About 0.4 mile upstream of South Chancery Street	*911
Maps available for inspection at the Blue Municipal Building, West Colville Street, McMinnville, Tennessee.	
Pikeville (city), Bledsoe County (FEMA Docket No. 6917)	
Sequatchie River:	
About 3,800 feet downstream of State Route 30	*819
About 3,600 feet upstream of State Route 30	*825
Tributary No. 1:	
Just upstream of William Howard Taft Highway	*810
Just downstream of Alvin York Highway	*813
Tributary No. 2:	
About 850 feet downstream of William Howard Taft Highway	*829
About 1,925 feet upstream of Rockford Road	*868
Tributary No. 3:	
About 800 feet downstream of William Howard Taft Highway	*829
About 700 feet upstream of Little's Circle	*851
Maps available for inspection at the City Hall, Pikeville, Tennessee.	
Red Boiling Springs (city), Macon County (FEMA Docket No. 6914)	
Salt Lick Creek:	
About 1,900 feet downstream of North Main Street	*762
About 1,700 feet upstream of Market Street	*778
Salt Lick Creek Tributary:	
At mouth	*774
About 550 feet upstream of Market Street	*795
McClure Hollow:	
Just downstream of Market Street	*772
About 1,000 feet upstream of Sunset Drive	*791
Maps available for inspection at the City Hall, Red Boiling Springs, Tennessee.	
Viola (town), Warren County (FEMA Docket No. 6912)	
Hickory Creek:	
About 0.4 mile downstream of Mount Zion Road	*993
About 0.3 mile upstream of Mount Zion Road	*998
Maps available for inspection at the City Hall, Viola, Tennessee.	
Warren County (unincorporated areas) (FEMA Docket No. 6912)	
Barren Fork:	
At mouth	*875
About 2,400 feet upstream of confluence of Caney Branch	*957
Pepper Creek:	
At mouth	*899
Just downstream of South Chancery Street	*899
Just upstream of South Chancery Street	*910
About 0.4 mile upstream of South Chancery Street	*911
Hickory Creek:	
At mouth	*914
About 0.9 mile upstream of confluence of Little Hickory Creek	*1,006
Hills Creek:	
At mouth	*893
At the confluence of Dry Creek	*914
Charles Creek:	
At mouth	*860
Just downstream of State Route 56	*894
Collins River:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 1,200 feet downstream of confluence of Charles Creek	*862
Just downstream of North Shelisford Road	*885
Dry Creek:	
At mouth	*914
Just downstream of Hills Creek Road	*1,009
Maps available for inspection at the County Courthouse, McMinnville, Tennessee.	
VERMONT	
Barnet (town), Caledonia County (FEMA Docket No. 6909)	
Connecticut River:	
Approximately 2,400 feet downstream of McIndoes Dam	*433
Upstream side of McIndoes Dam	*468
At confluence of Passumpsic River	*470
Approximately 240 feet downstream of Commerford Dam	*484
Approximately 1.1 miles upstream of Commerford Dam	*659
Passumpsic River:	
At confluence with Connecticut River	*470
Upstream side of East Barnet Dam	*497
Approximately 300 feet downstream of Passumpsic Dam	*513
Approximately 325 feet upstream of Passumpsic Dam	*534
Stevens River:	
At confluence with Connecticut River	*468
Approximately 100 feet upstream of State Route 8	*557
Approximately 450 feet upstream of Town Highway 56	*648
Approximately 70 feet upstream of Mill Dam	*745
Approximately 150 feet upstream of State Route 1	*768
Upstream side of Harvey Lake Dam	*895
Maps available for inspection at the Town Clerk's Office, Town Office, Barnet, Vermont 05821.	
Jamaica (town), Windham County (FEMA Docket No. 6906)	
West River:	
At downstream corporate limits	*536
At the confluence of Turkey Mountain Brook	*580
Approximately 60 feet upstream of French Bridge	*589
Approximately 1.14 miles upstream of French Bridge	*830
Approximately 275 feet upstream of the confluence of Ball Mountain Brook	*859
West River Auxiliary Channel:	
At the confluence with West River	*598
At the divergence from West River	*864
Winhall River:	
At the most downstream corporate limits	*1,051
At the confluence of Mill Brook	*1,116
Approximately 100 feet upstream of the downstream crossing of Vermont Route 30	*1,174
At the most upstream corporate limits	*1,250
Wardsboro Brook:	
At the confluence with West River	*547
Approximately 0.6 mile upstream of the confluence with West River	*607
Upstream side of the downstream crossing of Vermont Route 100	*861
Approximately 0.66 mile downstream of the upstream crossing of Vermont Route 100	*917
At the upstream corporate limits	*923
Ball Mountain Brook:	
At the confluence with West River	*656
Approximately 120 feet upstream of the crossing of Vermont Routes 30 and 100	*731
At the upstream side of the most downstream crossing of State Aid Highway 1 (Pikes Falls Road)	*835
At the upstream side of the most upstream crossing of State Aid Highway 1 (Pikes Falls Road)	*1,014
Approximately 0.93 mile upstream of most upstream crossing of State Aid Highway 1 (Pikes Falls Road)	*1,131
Approximately 0.51 mile downstream of Sage Hill Road	*1,210
Approximately 0.77 mile upstream of Sage Hill Road	*1,361
Upstream side of the most downstream crossing of Town Highway 30	*1,502
Approximately 520 feet upstream of the most upstream crossing of Town Highway 30	*1,548
Maps available for inspection at the Town Clerk's Office, Town Office, Jamaica, Vermont.	
VIRGINIA	
Abingdon (town), Washington County (FEMA Docket No. 6912)	
Wolf Creek:	
Downstream corporate limits	*2,000
Approximately 300 feet downstream of Colonial Road	*2,002
Upstream corporate limits	*2,008
Town Creek:	
Downstream corporate limits	*1,996
Approximately 250 feet downstream of East Main Street	*2,042
Upstream corporate limits	*2,061
Maps available for inspection at the Municipal Building, Abingdon, Virginia.	
Damascus (town), Washington County (FEMA Docket No. 6912)	
Beaver Dam Creek:	
Upstream corporate limits	*1,986
Upstream side of Water Street	*1,940
At confluence with Laurel Creek	*1,917
Laurel Creek:	
At upstream corporate limits	*1,960
Upstream side of Old Mill Dam	*1,924
Downstream corporate limits	*1,878
Maps available for inspection at the Municipal Building, Damascus, Virginia.	
Glade Spring (town), Washington County (FEMA Docket No. 6912)	
Tributary to Hutton Creek:	
At downstream corporate limits	*2,061
Approximately 100 feet upstream of Norfolk and Western Railway	*2,100
At Norfolk and Western Railway	*2,108
Maps available for inspection at the Town Hall, 213 East Main Street, Glade Spring, Virginia.	
Honaker (town), Russell County (FEMA Docket No. 6914)	
Lewis Creek:	
At downstream corporate limits	*1,615
At upstream corporate limits	*1,623
Maps available for inspection at the Municipal Building, Honaker, Virginia.	
Lancaster County (FEMA Docket No. 6912)	
Chesapeake Bay:	
Shoreline at State Route 646 (extended)	*10
Intersection of State Route 643 and State Route 703	*7
State Route 895 at Windmill Point Creek (Bridge)	*8
Rappahannock River:	
Shoreline at State Route 3 bridge (Norris Bridge)	*10
Shoreline at West Point	*7
Approximately 200 feet south of intersection of State Route 626 and State Route 627	*7
Shoreline at Curletts Point	*7
Maps available for inspection at the Zoning Office, County Courthouse, Lancaster, Virginia.	
Russell County (unincorporated areas) (FEMA Docket No. 6912)	
Indian Creek:	
Approximately 0.14 mile downstream of first downstream crossing of U.S. Route 19	*2,131
Upstream side of second downstream crossing of county road	*2,142
At confluence of Hogwallow Branch	*2,162
Upstream side of third downstream crossing of U.S. Route 19	*2,184
Approximately 0.24 mile upstream of most upstream crossing of U.S. Route 19	*2,256
Lick Creek:	
At confluence with Clinch River	*1,471
Upstream side of second upstream crossing of Clinchfield Railroad	*1,496
Approximately 0.08 mile upstream of State Route 63	*1,640
Big Cedar Creek:	
Approximately 0.48 mile downstream of U.S. Route 19	*1,884
Approximately 0.85 mile upstream of footbridge	*1,955
Clinch River:	
Approximately 0.14 mile downstream of downstream St. Paul corporate limits	*1,463
At upstream St. Paul corporate limits	*1,469
Approximately 0.41 mile upstream of confluence with Lick Creek	*1,473
Lewis Creek:	
Approximately 0.09 mile downstream of State Route 653	*1,794
At upstream Honaker corporate limits	*1,823
At State Route 624	*1,844
Swords Creek:	
At most downstream crossing of Norfolk and Western Railway	*1,861
Upstream side of State Route 622	*1,929
Approximately 140 feet downstream of Robinson Run	*2,059
Maps available for inspection at the County Courthouse, Lebanon, Virginia.	
St. Paul (town), Wise and Russell Counties (FEMA Docket No. 6914)	
Lick Creek:	
At confluence with Clinch River	*1,471
Approximately 265 feet upstream of upstream corporate limits	*1,481
Clinch River:	
Approximately 1,900 feet upstream of downstream corporate limits along cut-off portion of channel	*1,464
Approximately 3,000 feet upstream of Clinchfield Railway along cut-off portion of channel	*1,464
Maps available for inspection at the Municipal Building, Russell Street, St. Paul, Virginia.	
Washington County (unincorporated areas) (FEMA Docket No. 6914)	
Wolf Creek:	
Approximately 0.4 mile downstream of confluence of Town Creek	*1,900
Upstream side of the most upstream portion of State Highway 794	*1,992
Upstream side of State Highway 682	*2,018
Approximately 1,270 feet upstream of U.S. Highway 19	*2,052
Town Creek:	
Confluence with Wolf Creek	*1,936
Upstream side of second upstream crossing of State Highway 670	*1,988
Downstream side of State Highway 699	*2,063
Laurel Creek:	
Approximately 211 feet upstream of confluence with South Fork Holston River	*1,825
Downstream side of the most upstream State Highway 91	*2,001
Greenway Creek:	
Approximately 400 feet downstream of State Highway 706	*1,882
Downstream side of U.S. Highway 11	*2,018
Tributary to Hutton Creek:	
Upstream side of Norfolk and Western Railway	*2,037
Approximately 1 mile upstream of the Norfolk and Western Railway	*2,081
Beaverdam Creek:	
Approximately 0.84 mile downstream of the confluence with Belvins Branch	*1,950
Approximately 1,200 feet downstream of the confluence with Belvins Branch	*1,986

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Planning and Zoning Office, 205 Academy Drive, Abingdon, Virginia.	
WASHINGTON	
Columbia County (unincorporated areas) (FEMA Docket No. 6914)	
Tucannon River:	
360 feet downstream from the Powers Road Bridge	*572
Approximately 7870 feet upstream from the Powers Road Bridge	*615
At downstream corporate limits of the City of Starbuck	*635
510 feet upstream from the Tucannon Street Bridge	*646
At upstream corporate limits of the City of Starbuck	*654
Touchet River:	
970 feet downstream from County Road 2427	*1,509
Approximately 2,975 feet upstream from County Road 2427	*1,532
Approximately 270 feet upstream of the corporate limits of the City of Dayton	*1,580
70 feet upstream from the corporate limits of Dayton	*1,650
At the confluence of North and South Forks Touchet River	*1,672
North Fork Touchet River:	
At the confluence of North and South Forks Touchet River	*1,672
70 feet upstream from South Touchet Road Bridge	*1,703
120 feet upstream from County Road Bridge	*1,739
At a point approximately 200 feet downstream from the Junction of Crail Hollow Road and North Fork Touchet River Road	*1,761
South Fork Touchet River:	
At the confluence of North and South Forks Touchet River	*1,672
2,400 feet above confluence of North and South Forks of Touchet River	*1,699
6,200 feet above confluence of North and South Forks of Touchet River	*1,739
50 feet upstream from County Road Bridge	*1,768
Johnson Hollow:	
200 feet upstream from Dayton Avenue and 80 feet upstream from corporate limits of Dayton	*1,635
50 feet upstream from a private bridge located 2,350 feet above confluence with Patit Creek	*1,662
Approximately 170 feet upstream from double culverts at a private bridge located approximately 5,285 feet above confluence with Patit Creek	*1,706
Approximately 90 feet downstream from Edgar Road Bridge	*1,725
Maps are available for review at the Columbia County Planning Department, 341 East Main Street, Dayton, Washington.	
Dayton (city), Columbia County (FEMA Docket No. 6914)	
Patit Creek:	
Confluence with Touchet River	*1,591
100 feet downstream from Patit Street Bridge	*1,600
20 feet upstream from First Street Bridge	*1,604
100 feet upstream from Sixth Street Bridge	*1,628
140 feet upstream from U.S. Highway 12 Bridge	*1,633
Patit Creek Left Overbank:	
Confluence with Patit Creek	*1,594
50 feet downstream from First Street	*1,600
75 feet upstream from Second Street	*1,605
80 feet downstream from Fourth Street	*1,613
Touchet River:	
At southwest corner of the corporate limits surrounding waste water treatment plant	*1,560
Approximately 110 feet east of western corporate limits of the City of Dayton	*1,579
Confluence with Patit Creek	*1,591
Confluence with Mustard Hollow	*1,618
Upstream corporate limits of City of Dayton	*1,649
Johnson Hollow:	
Confluence with Patit Creek	*1,628
20 feet upstream from Dayton Avenue Bridge	*1,633
City of Dayton corporate limits	*1,634
Maps are available for review at City Hall, Planning Department, 111 South First, Dayton, Washington.	
Mason County (unincorporated areas) (FEMA Docket No. 6914)	
Hood Canal:	
At confluence with Jorstad Creek	*10
At northern County Boundary	*10
Union River:	
At State Route 300 (North Shore Road)	*13
At Old Belfair Highway	*54
Approximately 3,000 feet upstream of confluence with Bear Creek (at County Boundary)	*129
Tahuya River:	
At State Route 300 (North Shore Road)	*9
Approximately 400 feet downstream of confluence with Howell Lake Tributary	*90
Approximately 400 feet upstream of Haven Way	*177
Skokomish River:	
At State Route 106	*16
Approximately 400 feet upstream of U.S. Route 101	*28
Approximately 500 feet downstream of confluence with North Fork Skokomish River	*57
Goldsborough Creek:	
Approximately 1,800 feet downstream of confluence with Cortes Creek	*33
Approximately 900 feet upstream of U.S. Highway 101	*86
Cortes Creek:	
At confluence with Goldsborough Creek	*45
Approximately 1,700 feet upstream of West Oregon Road	*80
Maps are available for review at the Mason County Courthouse, General Services Department, Annex I, Fourth and Alder, Shelton, Washington.	
Starbuck (city), Columbia County (FEMA Docket No. 6914)	
Tucannon River:	
450 feet downstream of the southwest corporate limits of Starbuck	*832
550 feet downstream from the Tucannon Street Bridge	*840
100 feet downstream from the Tucannon Street Bridge	*845
800 feet upstream of the Tucannon Street Bridge	*848
200 feet upstream of the southeast corporate limits of Starbuck	*856
Maps are available for review at City Hall, Main Street, Starbuck, Washington.	
WEST VIRGINIA	
Barrackville (town), Marion County (FEMA Docket No. 6914)	
Buffalo Creek:	
Downstream corporate limits	*891
Upstream corporate limits	*909
Maps available for inspection at the City Hall, Barrackville, West Virginia.	
Bridgeport (city), Harrison County (FEMA Docket No. 6912)	
Simpson Creek:	
Downstream side of Summit Park abandoned covered bridge	*956
Upstream side of Interstate Route 79	*963
At confluence of Ann Run	*975
At upstream corporate limits	*979
Ann Run:	
Confluence with Simpson Creek	*975
Downstream side of Willis Avenue	*984
At upstream corporate limits	*1,000
Maps available for inspection at the City Hall, 131 W. Main Street, Bridgeport, West Virginia.	
Fairview (town), Marion County (FEMA Docket No. 6914)	
Paw Paw Creek:	
At downstream corporate limits	*982
Approximately 132 feet upstream of Madison Street	*996
Upstream corporate limits	*1,006
Maps available for inspection at the City Hall, Fairview, West Virginia.	
Farmington (town), Marion County (FEMA Docket No. 6914)	
Buffalo Creek:	
Approximately 100 feet downstream of the downstream corporate limits	*937
Downstream side of State Route 15	*939
Approximately 425 feet upstream of the upstream corporate limits	*940
Maps available for inspection at the City Hall, Farmington, West Virginia.	
Fayette County (unincorporated areas) (FEMA Docket No. 6912)	
White Oak Creek:	
Confluence of Dunloup Creek	*1,606
Downstream side of County Route 20/8 bridge	*1,893
Approximately 0.7 mile upstream of upstream crossing of County Route 21-20 bridge	*1,724
Piney Creek:	
At confluence with Town Creek	*1,606
Approximately 210 feet upstream of County Route 23-4 bridge	*1,631
Dunloup Creek:	
Approximately 3.8 miles downstream of first downstream crossing of County Route 25	*1,536
Upstream side of County Route 25-5 bridge	*1,804
At confluence with White Oak Creek	*1,806
Gauley River:	
At downstream County boundary	*668
Approximately 200 feet downstream of confluence of Big Creek	*674
New River:	
At confluence with Kanawha River	*665
Approximately 130 feet upstream of Chesapeake System bridge	*663
Kanawha River:	
At downstream County boundary	*625
At downstream side of County Highway 13 bridge	*645
At confluence with New River	*665
Maps available for inspection at the Fayette County Zoning Office, County Memorial Building, Fayetteville, West Virginia.	
Grant Town (town), Marion County (FEMA Docket No. 6912)	
Paw Paw Creek:	
At downstream corporate limits	*933
At upstream corporate limits	*945
Maps available for inspection at the City Hall, Grant Town, West Virginia.	
Lost Creek (town), Harrison County (FEMA Docket No. 6912)	
Lost Creek:	
Downstream corporate limits	*1,012
At confluence of Bonds Run	*1,013
Upstream side of Virginia Avenue	*1,022
Upstream corporate limits	*1,028
Gee Lick:	
At confluence with Lost Creek	*1,013
Upstream corporate limits	*1,052
Maps available for inspection at the City Hall, Lost Creek, West Virginia.	
Lumberport (town), Harrison County (FEMA Docket No. 6912)	
West Fork River:	
Upstream side of State Route 20	*919
Entire Length of Tennille Creek within the community	*920
Confluence of Tennille Creek	*920
Maps available for inspection at the City Hall, Lumberport, West Virginia.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Monongah (town), Marion County (FEMA Docket No. 6012)	
West Fork River:	
Downstream corporate limits	*885
Upstream corporate limits	*886
Maps available for inspection at the Town Hall, Monongah, West Virginia.	
Pax (town), Fayette County (FEMA Docket No. 6014)	
Paint Creek:	
At downstream corporate limits	*1,626
At upstream corporate limits	*1,631
Maps available for inspection at the City Hall, Pax, West Virginia.	
Rivesville (town), Marion County (FEMA Docket No. 6014)	
Monongahela River:	
Downstream corporate limits	*867
Upstream corporate limits	*868
Entire shoreline of Paw Paw Creek within community	*868
Maps available for inspection at the Town Hall, Rivesville, West Virginia.	
Shinnston (city), Harrison County (FEMA Docket No. 6014)	
West Fork River:	
Downstream corporate limits	*906
Upstream corporate limits	*912
Shins Run: Entire length of Shins Run within the community	*911
Maps available for inspection at the City Hall, 43 Bridge Street, Shinnston, West Virginia.	
Worthington (town), Marion County (FEMA Docket No. 6012)	
West Fork River:	
At downstream corporate limits	*897
At upstream corporate limits	*898
Maps available for inspection at the City Hall, 274 Main Street, Worthington, West Virginia.	
WISCONSIN	
Manawa (city), Waupaca County (FEMA Docket No. 6014)	
Little Wolf River:	
About 1.2 miles downstream of Bridge Street	*808
Just downstream of Manawa Dam	*809
Just upstream of Manawa Dam	*815
About 0.5 mile upstream of Manawa Dam	*815
Maps available for inspection at the City Hall, 590 Clark Street, Manawa, Wisconsin.	
Marion (city), Waupaca County (FEMA Docket No. 6014)	
North Branch Pigeon River:	
About 1.0 mile downstream of Parkview Avenue	*832
Just downstream of Main Street	*841
Marion Pond: Along shoreline	*854
Maps available for inspection at the City Hall, 402 North Main Street, Marion, Wisconsin.	
WYOMING	
Converse County (unincorporated areas) (FEMA Docket No. 6014)	
North Platte River (near Orin):	
Approximately 600 feet downstream of State Highway 319	*4,668
Approximately 1,500 feet downstream of Interstate Highway 25	*4,676
North Platte River (near Glenrock):	
Approximately 1.2 miles downstream of State Highway 95	*4,967
Approximately 100 feet downstream of State Highway 95	*4,973
Maps are available for review at the Converse County Planning Office, County Courthouse, 107 North Fifth, Douglas, Wyoming.	
Ranchester (town), Sheridan County (FEMA Docket No. 6014)	
Tongue River:	
Approximately 1.2 miles downstream of Wolf Creek County Road	*3,742
Approximately 900 feet downstream of Wolf Creek County Road	*3,750
Approximately 1,800 feet upstream of the confluence with Five Mile Creek	*3,786
Maps are available for review at the Town Clerk's Office, 145 Colleen Street, Ranchester, Wyoming.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 25, 1988.

[FR Doc. 88-1820 Filed 1-29-88; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed; Reopening of Comment Period

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of reopening comment period.

SUMMARY: On October 8, 1987, the Commodity Credit Corporation ("CCC") published in the **Federal Register** a proposed rule with respect to warehouse bonding requirements. The proposed rule provided for a comment period ending January 8, 1988 (52 FR 37619). In response to requests received, CCC determined that the comment period should be reopened for an extended period.

DATE: The comment period for the proposed rule which was published on October 8, 1987 at FR 37619 is reopened to February 12, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

Signed at Washington, DC, on January 27, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-2018 Filed 1-29-88; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 87-100]

Federal Indemnity Payments for Brucellosis Reactor Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to phase out federal indemnity payments for reactor cattle and bison destroyed because of brucellosis. This would involve reducing indemnity amounts in Fiscal Year 1988 and again in Fiscal Year 1989; we would pay no federal indemnity for brucellosis reactor cattle and bison after Fiscal Year 1989. Rates of destruction of reactor animals in recent years have been the same in states offering and not offering federal indemnity. Once an incentive for owners to slaughter reactor animals, this federal indemnity is no longer a decisive factor in brucellosis eradication. We therefore propose to cease federal indemnity payments for brucellosis reactor cattle and bison, so that we may allocate these federal funds for more effective use within the brucellosis eradication program.

DATE: Consideration will be given only to comments postmarked or received on or before April 1, 1988.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-100. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. H.E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animals destroyed because of brucellosis in 9 CFR Part 51 (referred to below as the regulations) authorize payment of federal indemnity to certain owners of brucellosis reactor and brucellosis exposed cattle and bison. The payment of this federal indemnity originated as an incentive to encourage participation in brucellosis eradication efforts.

With brucellosis reactors having only slaughter value in today's market, compensating reactors' owners is no longer necessary. Unlike the owners of brucellosis exposed animals, the owners of confirmed reactors have few options other than to dispose of them. For us to continue offering them an incentive to take action they are likely to take without this federal indemnity would reduce the amount available for allocations to brucellosis eradication program areas more directly dependent on our funding for their success—such as the program for depopulating herds of brucellosis exposed cattle or bison.

We are therefore proposing to phase out federal indemnity payments for brucellosis reactor cattle and bison. Our proposal, which would authorize no more of these payments after Fiscal Year 1989, has the support of the United States Animal Health Association (USAHA). Industry representatives and state and federal animal health officials constitute the membership of USAHA; in their annual report for 1983, they recommended phasing out federal indemnity payments at a rate of 20 percent each year, with all payments ending by the end of the decade. Recent statistics support this proposed action: The number of animals infected with brucellosis, destroyed because they are reactors, has been dropping at a rate fluctuating between 11 and 20 percent each year since 1981. This has been the case in all states, including those that have discontinued Federal indemnity payments, giving us reason to believe that the success of the national brucellosis eradication program does not depend on compensating owners who destroy brucellosis reactor cattle or bison.

We propose to reduce federal indemnity payments for reactors during fiscal years 1988 and 1989, at a rate of 20 percent of the current indemnity each year before payments cease in Fiscal Year 1990. We prefer this phasing down of federal indemnity payments to a more abrupt cessation, to enable states interested in continuing to compensate owners of reactors to make appropriate allocations in their annual budgets.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The economic effect of the proposed change would be minimal. Since Fiscal Year 1975, when Texas discontinued paying federal indemnity, owners of brucellosis reactor cattle and bison have been destroying those animals at approximately the same rate, whether or not federal indemnity has been available. In Fiscal Year 1987, the number of brucellosis reactors continued to drop in the high incidence states of Arkansas, Texas, and Louisiana as it did in other states, although the three named states offer no federal indemnity. Accordingly, there is no evidence that continuing payment of federal indemnity has any effect on the sale of brucellosis reactors for slaughter or the elimination of reactor herds. Owners of brucellosis reactors have little to gain by keeping those animals, which have slaughter value only. Begun as an incentive for owners to participate in the brucellosis eradication program, the federal indemnity for reactor cattle and bison destroyed because of brucellosis no longer serves that purpose. Recent statistics indicate that the owners of brucellosis reactors do not decide to participate in the brucellosis eradication program on the basis of our offer of federal indemnity.

The ratio of herd owners to herds in the United States is approximately one-to-one. The total number of herds, in Fiscal Year 1987, was 1,479,849. Of that number, 4,752 were found to contain brucellosis reactors. Almost half of those—2,024 reactor herds—were found in Arkansas, Texas, and Louisiana, the three states offering no federal indemnity to owners. If every eligible owner of a brucellosis reactor decided to claim the federal indemnity, fewer than 2,728 owners, would have been affected. With the brucellosis eradication program reducing the number of brucellosis reactors each year, we expect the number of owners of reactors to be similarly reduced; the availability of federal indemnity affects fewer herd owners each year. This means that, at most, less than .002 percent, or 2,728 of the 1,479,849 herd owners in the United States, might be affected by our proposed discontinuation of federal indemnity payments if it were effective immediately. Considering the two-year phase-out proposed, and the continuing success of the brucellosis eradication program, we expect the actual number of herd owners affected by our proposal to be under 2,728. Furthermore, a herd containing even one brucellosis reactor is considered a reactor herd; the average percentage of reactor animals within a reactor herd is less than six percent.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. [See 7 CFR Part 3015, Subpart V.]

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

Accordingly, we propose to amend 9 CFR Part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 51.3, paragraph (a)(1) would be revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) * * *

(1) *Brucellosis reactor cattle and bison.* The Administrator may, through Fiscal Year 1989, continue to authorize [3] payment of federal indemnity to owners of cattle or bison destroyed as brucellosis reactors. The maximum federal indemnity paid in Fiscal Year 1988 will not exceed $200 for registered cattle nor $40 for nonregistered cattle or bison, with the following exceptions: This figure for nonregistered dairy cattle will not exceed $200; and, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, the maximum indemnity paid for nonregistered cattle or bison will not exceed $120. The maximum federal indemnity paid in Fiscal Year 1989 will not exceed $150 for registered cattle nor $30 for nonregistered cattle or bison, with the following exceptions: This figure for nonregistered dairy cattle will not exceed $150; and, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, the maximum indemnity paid for nonregistered cattle or bison will not exceed $90. Payment of all federal indemnity for reactor cattle or bison will cease in Fiscal Year 1990. The owner of brucellosis reactor cattle or bison must provide the Veterinarian in Charge with proof of destruction [4] to receive an indemnity payment.

* * * * *

Done in Washington, DC, this 28th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–1971 Filed 1–29–88; 8:45 am]

BILLING CODE 3410-34-M

[3] The Administrator will authorize payment of federal indemnity by the United States Department of Agriculture at the maximum per head rates in § 51.3: (a) So long as sufficient funds appropriated by Congress for that fiscal year appear to be available for brucellosis exposed cattle and bison; (b) In states or areas not under federal quarantine; (c) In states requesting payment of federal indemnity; and (d) In states not requesting a lower rate.

[4] The Veterinarian in Charge will accept any of the following documents as proof of destruction: (a) A postmortem report; (b) A written statement by a state representative, veterinary services representative, or accredited veterinarian attesting to the destruction of the animal; (d) The owner or caretaker's written, sworn statement attesting to the animal's destruction; (e) A permit (VS Form 1–27) consigning the animal from a farm or market directly to a recognized slaughtering establishment; or (f) In unique situations where no document listed above is available, a comparable proof of destruction.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 048CE, Notice No. 23–ACE–39]

Special Conditions; Dornier 228–200 Airplanes With Electronic Flight Instrument Systems (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for incorporation of an electronic flight instrument system (EFIS) in the Dornier 228–200 Airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the use of a cathode-ray tube electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATE: Comments must be received on or before March 2, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 048CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 048CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 048CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Dornier 228–200 Airplanes is as follows: Special Federal Aviation Regulation (SFAR) 41C, effective September 13, 1982; Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965, as amended by Amendments 23–2 through 23–23; SFAR 27 effective February 1, 1974, as amended by Amendments 27–1 through 27–4; and Part 36, effective December 1, 1969, as amended by Amendments 36–1 through 36–12.

Background

On September 14, 1987, AAR Oklahoma, Inc., Oklahoma City, Oklahoma submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a Collins 85B Electronic Flight Instrument System (EFIS) on the Dornier 228–200 Airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Collins 85B EFIS installation in the Dornier 228–200 Airplane contains a number of novel and unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Collins 85B EFIS installation in the Dornier 228–200 Airplane.

Special conditions resulting from this notice will also be applicable to all Dornier 228–200 series airplanes for installation of similar EFIS (not limited to the same manufacturer) without further amendment of the special conditions.

AAR Oklahoma, Inc. has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an electronic horizontal situation indicator (EHSI) in the left and right instrument panels and a multifunction display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. A back-up conventional attitude instrument will be near the center of the panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is

minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Back-up instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be safely flown following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments and has not required, as a basic IFR rating requirement, that all IFR rated airmen must demonstrate abilities using other back-up instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The proposed special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the proposed special condition includes requirements needed for their certification.

The proposed special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The present § 23.1309 has been used as a means of evaluating systems since being incorporated into 14 CFR Part 23 by Amendment 23–14, dated December 20, 1973. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed for the Collins 85B EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems does not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently acceptable substantiation of compliance with the various required levels of system reliability rather than a numerical analysis alone.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of system(s) failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree as to lead to potentially catastrophic results.

The proposed special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation.

The FAA has considered the features proposed by AAR Oklahoma, Inc. for the EFIS installation in the Dornier 228–200 Airplane and has concluded that, notwithstanding the existing small airplane requirements which did not envision the use of such complex or critical systems, special conditions can be promulgated for the affected systems, in lieu of applicable requirements, that will provide the intended level of safety. Accordingly, the special conditions are proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these proposed special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Dornier 228–200 Airplanes:

1. In addition to Appendix A of Part 135 and in lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could effect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crew member for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri on January 11, 1988.

Donald J. Schneider,

Acting Director, Central Region.

[FR Doc. 88–1949 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84–CE–03–AD]

Airworthiness Directives; Cessna 180, A182, 182, F182, FR182, R182, 185, 188, T188, 190, 195, 205, 206, P206, U206, TP206, TU206, 207, T207, 210 and T210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to revise and reissue Airworthiness Directive (AD) 84–10–01, Amendment 39–4863 (49 FR 21507, May 22, 1984), applicable to certain Cessna single engine airplanes, to allow for an equivalent means of compliance for those airplanes presently required to be equipped with a fuel system preflight placard. The equivalent means of compliance is the installation of raised filler neck fuel caps. Incidents of engine power loss and accidents due to water contamination of the fuel system have occurred on some models of the above airplanes. The prescribed action will identify airplanes having bladder fuel cells which tend to retain water contamination, provide fuel tank drainage provisions and reduce the possibility that water may enter and be retained in the fuel tanks.

DATE: Comments must be received on or before March 8, 1988.

ADDRESSES: Cessna Service Information Letters SE79–45 dated September 10, 1979, SE82–34 dated July 23, 1982, SE84–8 dated March 16, 1984, SE–84–9 dated March 23, 1984, and Cessna Single Engine Service Kit SK182–85 dated September 10, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, P.O. Box 1521, Wichita, Kansas 67201.

Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, ACE–140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316–946–4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 84–10–01, Amendment 39–4863 (49 FR 21507, May 22, 1984), which was effective May 22, 1984, applicable to certain Cessna single engine airplanes required (among other things) that airplanes containing wrinkles in the fuel bladder tanks (other than fluid trapping diagonal corner wrinkles which were required to be removed or the bladder replaced) that trapped more than three fluid ounces to be placarded for specific fuel system preflight procedures. Accident reports reviewed since AD 84–10–01 became effective indicate that pilot negligence of the fuel system preflight procedures still exist. Also, some owner pilots may consider the fuel system preflight procedures cumbersome but they are not willing to have the fuel bladders replaced to

eliminate the fluid trapping wrinkles. This proposal would allow fuel bladders containing wrinkles that trap more than three fluid ounces (other than fluid trapping diagonal corner wrinkles) to remain in service and delete the requirement to install the fuel system preflight placard if those airplanes are equipped with Cessna Service Kit SK182–85, which is for installation of reduced diameter fuel filler caps on all fuel filler openings. The reduced diameter filler caps installed by SK182–85 are the raised filler neck type which have proven to be able to prevent precipitation from entering the fuel tanks even when the caps receive minimum maintenance and inspection. If the airplane owner elects to install the raised filler neck fuel caps, the projected cost for parts and labor is $200 per airplane. The cost of compliance with the proposed revised AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

This proposal also corrects the serial numbers on the 180, 182, and 210 series airplanes by deleting the series prefix which are not part of the serial numbers on early production airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), and 1421 and 1423; 49 U.S.C. 106(g) (Revied, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By revising and reissuing AD 84–10–01, Amendment 39–4863 (49 FR 21507, May 22, 1984), as follows:

§ 39.13 [Amended]

Cessna: Applies to the following series and serial numbered airplanes certificated in any category:

Series	Serial Numbers
180	30000 thru 50911; 18050912 thru 18053000 (1953 thru 1978)
	18053001 thru 18053203 (1979 thru 1981) (optional tanks only)
182	33000 thru 53007; 18253008 thru 18266590 (1956 thru 1978)
R182	R18200001 thru R18200583 (1978)
185	185–0001 thru 18503683 (1961 thru 1978)
	18503684 thru 18504414 (1979 thru 1983) (optional tanks only)
188	188–0448 thru 18803856 (1972 thru 1981) (wing tanks only)
	18800967T thru 188039867 (1972 thru 1983)
T188	T18803307T thru T18803986T (1979 thru 1983)
190/195	thru 18183
210–5 (205)	205–0001 thru 205–0577 (1963 and 1964)
206, U206, TU206	206–0001 thru U20604849 (1964 thru 1978)
P206, TP206	P206–0001 thru P20800847 (1965 thru 1970)
207, T207	20700001 thru 20700771 (1969 thru 1984)
210	57001 thru 57575; 21057576 thru 21058616 (1960 thru 1986)
T210	T210–0001 thru T210–0197 (1966)
A182	A182–0001 thru A182–0146 (1966 thru 1974)
F182	F18200001 thru F18200094 (1976 thru 1978)
FR182	FR18200001 thru FR18200020 (1978)

Compliance: Required as indicated, unless already accomplished.

To prevent power loss or engine stoppage due to water contamination of the fuel system, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, on all applicable airplanes, install quick drains in the fuel tank sumps and fuel tank reservoirs where applicable, in accordance with the kits specified by Cessna Service Letters SE79–45 and SE84–8, or using equivalent aircraft standard hardware.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the fuel tank filler area for proper sealing in accordance with the following:

(1) On all applicable airplanes:

(i) Visually inspect the wing aft of the fuel filler for indications of inflight fuel leakage.

(ii) Visually inspect the fuel cap locking mechanism and seals for cracking, distortion and any condition which might prevent sealing.

(iii) Remove the fuel filler caps and inspect the adapter sealing face for distortion, scratches, corrosion or any condition which may prevent the cap from sealing.

(2) In addition, on all applicable airplanes except models 190 and 195 airplanes:

(i) Visually check the sealing and security of the attachment of the adapter flange to the adapter plate paying particular attention to the adhesive (if present) between the parts.

(ii) Check the fuel cap seal by actuating the locking tab and noting that force is maintained between the cap, seal, and adapter when the tab is in the overcenter locked position or conduct a fuel cap seal test in accordance with Cessna Single Engine Service Information Letter SE82–34.

(3) Correct any deficiencies disclosed by the above inspections by parts replacement or adjustment, as required, before returning the airplane to service.

(c) Within the next 50 hours time-in-service after the effective date of this AD, on all applicable airplanes, except models 190 and 195, conduct an inspection for fuel tank wrinkles in accordance with the following:

(1) Drain the wing fuel tanks.

(2) Note any wrinkles which retain fluid after draining. Remove diagonal wrinkles across the inboard rear corner in the vicinity of the fuel tank drain by installation of Cessna drain kit described in Service Letter SE84–6, or by replacement of the fuel bladder. Verify that no wrinkles exist in the tank sump drain area before returning the airplane to service.

Note: The manufacturer has identified some new bladder cells which may require installation with a special adapter to prevent the formation of the above described wrinkles and has included this part with these bladder cells. Use of this part, or the drain kit, may be necessary to eliminate these wrinkles.

(3) If wrinkles are found in the tank bottom at a location other than diagonally across the inboard rear corner, determine the amount of fluid which is trapped by these wrinkles in accordance with the following:

(i) Place the airplane in the normal ground (water) attitude.

(ii) Service tank(s) with enough fuel to completely cover bottom of tank surface. Drain tank and note any wrinkles which retain fuel.

(iii) Direct all trapped fluid to the tank drain area, using a non-absorbent squeegee or other tool compatible with the fuel bladder, and drain and measure the fluid retained in both tanks.

(iv) If this total does not exceed three ounces, no further action is required.

(v) If the total quantity drained exceeds three ounces, check the snaps and fasteners for security. If necessary, blend and smooth the tank bottom to remove wrinkles. Blending may include replacement of the protective tape on the corners or edges to maintain a tank surface which will not trap excess fluid. Caution: Excessive blending or smoothing may cause leaks to develop in the tank.

(vi) If the tanks trap fluid in excess of three ounces after compliance with paragraph (v) above accomplish either paragraph (A) or paragraph (B) as follows:

(A) Fabricate using letters at least .10 inches in height, and install a placard in full view of the pilot which states as follows:

"Prior to flight following exposure to rain, sleet, snow, or after fueling from an unfiltered fuel source:

1. Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tank sumps and check for water contamination.

2. Place the airplane on a level surface and lower the tail to within 5 inches of the ground (on nose gear airplanes).

3. Rock the wings 10 inches up and 10 inches down at least 12 times.

4. Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tanks sumps and check for water contamination.

5. If water is found in step 4. above, repeat steps 3. and 4. until no additional water is detected, or drain the entire airplane fuel system."

(B) Install reduced diameter (raised filler neck) fuel caps on all fuel filler openings in accordance with Cessna Service Kit SK182–85. If SK182–85 is accomplished, paragraph (d) below no longer applies.

(d) Within 12 months after initial compliance with the AD, and each 12 months thereafter, reinspect the fuel filler installation of airplanes that require the placard per paragraph (c)(3)(vi) in accordance with paragraph (b) of this AD.

(e) The placard required by paragraph (c)(3)(vi) may be fabricated and installed by the airplane owner, or operator, providing that this person possesses at least a private pilot license.

(f) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished if it is determined that no water is present in the tank from which fuel will be used.

(g) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. Fuel cells and quick drain valves that are approved for the applicable airplanes are approved as an equivalent means of compliance in replacement of corresponding parts required to be installed by this AD.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment revises AD 84–10–01, Amendment 39–4863 (49 FR 21507, May 22, 1984), effective May 22, 1984.

Issued in Kansas City, Missouri on January 19, 1988.

Paul K. Bolr,

Director, Central Region.

[FR Doc. 88–1950 Filed 1–29–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–134–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Through –80, and C–9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1309

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10 through –50, and C–9 (Military) series airplanes, which currently requires visual/borescope inspections, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap. This proposal would provide for optional eddy current inspections of the fuselage aft pressure bulkhead tee cap from the forward side of the bulkhead and increase the current repetitive inspection intervals. This action would also expand the applicability to include certain Model DC–9–80 series airplanes. This proposal is prompted by reports of cracks in the aft pressure bulkhead tee cap. If this condition is not corrected, bulkhead tee cap cracks may develop, which could result in rapid depressurization and cause severe structural damage to the airplane.

DATES: Comments must be received no later than March 28, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–134–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–134–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On April 25, 1985, FAA issued Airworthiness Directive (AD) 85–16–03, Amendment 39–5109 (50 FR 30804; July 30, 1985), which requires inspection for cracks, and repair or replacement, as necessary, of the aft pressure bulkhead tee cap on McDonnell Douglas DC–9 series airplanes with 35,000 or more landings. The AD was prompted by reports of cracks, which could lead to rapid depressurization and result in severe structural damage to the airplane.

Since the issuance of that AD, McDonnell Douglas has developed an eddy current procedure for inspection for cracks in the aft pressure bulkhead tee cap from the forward side of the aft pressure bulkhead. This nondestructive inspection (NDI) procedure will increase the probability of detecting cracks in the tee caps.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin (ASB) 53–191, Revision 1, dated July 20, 1987, which describes procedures for optional eddy current inspection and includes certain DC–9–80 series airplanes in its effectivity.

Since this condition is likely to exist or develop on other airplanes of this

same type design, an AD is proposed which would supersede AD 85-16-03 to include optional inspection using eddy current procedures from the forward side of the bulkhead, in accordance with the service bulletin previously mentioned; increase the repetitive inspection intervals from 3,500 to 15,000 landings when using the eddy current procedures; and expand the applicability to include certain Model DC-9-80 series airplanes.

It is estimated that 740 airplanes of U.S. registry would be affected by this AD. It would take approximately 12 manhours per airplane to accomplish an optically-aided visual inspection, and 148 manhours per airplane to accomplish high and low frequency eddy current inspections from the forward side of the bulkhead. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $355,200 and $4,380,000, respectively.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 85-16-03, Amendment 39-5109 (50 FR 30804; July 30, 1985), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-10 through -80 and C-9 (Military) series airplanes, Fuselage Number 1 through 1308, certificated in any category. Compliance required as indicated, unless previously accomplished within the last 3,500 landings.

To detect cracks which could result in structural failure of the aft pressure bulkhead, accomplish the following:

A. Prior to the accumulation of the number of landings indicated in the table below, inspect the aft pressure bulkhead attach cap section around the entire periphery of the fuselage in accordance with the following procedures outlined in either paragraph B. or C., below.

TABLE

Accumulated landings as of Sept. 6, 1985	Initial inspection prior to accumulation of the following landings after effective date
35,000 to 49,999	1,500 landings.
50,000 to 59,999	1,000 landings.
60,000 or more	300 landings.

For airplanes with less than 35,000 landings as of September 6, 1985, conduct the initial inspection before the accumulation of 36,500 landings.

Note: The specific areas of concern include the forward and/or aft face of the upstanding leg of the tee, starting at the outboard edge of the bulkhead web. The area extends outboard to approximately the inboard point of tangency for the .188-inch tee filet radius on the upstanding leg.

B. Using an optically aided visual inspection technique, inspect from the aft side of the bulkhead in accordance with Option I of McDonnell Douglas Alert Service Bulletin A53-191, Revision 1, dated July 20, 1987 (hereinafter referred to as ASB 53-191).

1. If no tee cracks are found, repeat the optically aided visual inspections at intervals not to exceed 3,500 landings.

2. If tee cracks are found, perform a high frequency eddy current inspection of the tee side of the bulkhead to determine length of cracks.

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, perform weekly repetitive high frequency eddy current inspections from aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progressed more than 0.5 inches from the original crack tip, or within 18 months after initial detection of crack, whichever occurs first, accomplish the requirements of paragraph B.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, prior to further flight:

(1) Repair by replacing cracked tee cap with a new part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC-J060305), dated February 15, 1985, or later FAA approved revisions. Upon accumulation of 36,500 landings after the repair, conduct repetitive inspections in accordance with paragraph B. or C. of this AD; or

(2) Repair by splicing in a section of tee cap, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985, or later FAA-approved revision. After repair, resume repetitive inspections in accordance with paragraph B. or C. of this AD.

C. Using a high and low frequency eddy current inspection technique, inspect from the forward side of the bulkhead in accordance with Option II of ASB 53-191.

1. If no cracks are found, repeat high and low frequency eddy current inspection from the forward side of the bulkhead at intervals not to exceed 15,000 landings.

2. If cracks are found, accomplish the following:

a. If cracks are within the limits outlined in paragraph 1.D. of the Compliance section of ASB 53-191, perform weekly repetitive high frequency eddy current inspections from the aft side of the bulkhead.

(1) If weekly repetitive high frequency eddy current inspections reveal that a previously identified crack has progressed more than 0.5 inches from the original crack tip, or within 18 months after initial detection of the crack, whichever occurs first, accomplish the requirements of paragraph C.2.b., below.

b. If cracks have exceeded the limits outlined in paragraph 1.D. of the Compliance section ASB 53-191, prior to further flight:

(1) Replace cracked tee cap with new part, in accordance with McDonnell Douglas Service Rework Drawing SR09530001 (originally identified as MDC-J060305), dated February 15, 1985, or later FAA approved revisions. Upon accumulation of 36,500 landings after the repair, conduct repetitive inspections in accordance with paragraph B. or C. of this AD; or

(2) Repair by splicing in a section of tee cap, in accordance with McDonnell Douglas Service Rework Drawing SR09530001, dated February 15, 1985, or later FAA approved revision. After repair, resume repetitive inspections in accordance with paragraph B. or C. of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on January 21, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-1951 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Extension of period for public comment on the advance notice of proposed rulemaking for the mandatory review of the trade regulation rule concerning funeral industry practices.

SUMMARY: The Federal Trade Commission published an Advance Notice of Proposed Rulemaking on December 9, 1987, inviting public comment on how the trade regulation rule concerning funeral industry practices ("Funeral Rule") has affected consumers, funeral providers and others, and what changes, if any, should be made to the Rule. The comment period was scheduled to end on January 25, 1988. To facilitate thorough public consideration and comment, the Commission has extended the comment period until February 5, 1988.

DATES: Written comments will be accepted until February 5, 1988.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580. All comments should be captioned: "Comment on Advance Notice of Proposed Rulemaking—Funeral Rule, FTC File No. 215-66."

FOR FURTHER INFORMATION CONTACT: Ra'ouf M. Abdullah, Attorney, (202) 326-3024, Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580. Copies of the **Federal Register** notices are available through the FTC Public Reference Room, Room 130, 6th and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326-2222.

SUPPLEMENTAL INFORMATION: On December 9, 1987, the Commission published an advance notice of proposed rulemaking in the **Federal Register** to inform the general public about and seek public comment on the impending mandatory Funeral Rule review. 52 FR 46706 (Dec. 9, 1987). Section 453.10 of the Funeral Rule requires that the Commission initiate a rulemaking amendment proceeding four years after the effective date of the rule, which was April 30, 1984. The notice provided for a 45-day comment period, which was originally scheduled to end on January 25, 1988.

In response to a request for additional time to comment by an interested party and to facilitate thorough public consideration of and comment on the Advance Notice of Proposed Rulemaking, the Commission announces that it has extended the time for public comment until February 5, 1988.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1929 Filed 1-29-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Amendment Relating to the Customs Field Organizations—Chicago, IL; Cleveland, OH; Fort Wayne, IN; Correction

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule; correction.

SUMMARY: In **Federal Register** Document 87-28981, published on December 17, 1987 (52 FR 47948), it was proposed to amend the Customs Regulations by changing the boundaries of the Chicago and Cleveland Districts, and by designating the newly approved Customs facility at Fort Wayne, IN, as a Customs station. Written comments were invited concerning the proposal.

It has come to our attention that the description of the proposed Cleveland, Ohio District in the North Central Region was not worded correctly in the portion of the document describing the proposed amendments to § 101.3(b), Customs Regulations (19 CFR 101.3(b)). The corrected description of the proposed boundaries of the Cleveland, Ohio District is as follows:

The States of Ohio, Kentucky; that part of the State of Indiana lying south of latitude 41° N.; that part of the state of Indiana lying east of longitude 86° W.; and the county of Erie in the State of Pennsylvania.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2324, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman or John Lenihan, Office of Workforce Effectiveness and Development (202-566-9425).

Dated: January 26, 1988.

Edward T. Rosse,

Acting Director, Regulatory Procedures and Penalties Division.

[FR Doc. 87-1968 Filed 1-29-88; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 12

[Docket No. 87N-0364]

Formal Evidentiary Public Hearing; Time Periods for Filing Exceptions to Initial Decisions and Replies to Exceptions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing formal evidentiary public hearings to provide for a period of 60 days in which a party may file exceptions to an initial decision of the administrative law judge and to provide for a period of 60 days for filing replies to exceptions. FDA also proposes to revise these regulations to provide that the Commissioner of Food and Drugs would grant extensions of these 60-day periods only in extraordinary circumstances.

DATES: Written comments by April 1, 1988. FDA intends that any final rule based on this proposal would become effective 30 days after date of publication of a final rule.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tenny P. Neprud, Jr., Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: Part 12 of FDA's regulations (21 CFR Part 12) governs formal evidentiary public hearings. These hearings are held before an administrative law judge who, following the hearing and the parties' briefs, issues an initial decision which may be appealed to the Commissioner. The Commissioner then issues a final decision. A party appeals the initial decision by filing and serving exceptions to the initial decision; the opposing party or parties then have an opportunity to file and serve replies to the exceptions (21 CFR 12.125).

At present, the regulations specify that the period for filing and serving exceptions is the period specified in the initial decision; this period may not exceed 30 days, unless extended by the Commissioner for good cause shown (21 CFR 12.125 (a) and (d)). The regulations also state that the period for filing replies to exceptions is the period specified in the initial decision; this period may not exceed 30 days after the deadline (including any extension) for filing exceptions, unless extended by the Commissioner for good cause shown (21 CFR 12.125 (c) and (d)).

Based upon several years of experience, FDA believes that § 12.125 should be revised to provide a period of 60 days in which parties may file exceptions to an initial decision and a period of 60 days in which parties may file replies to exceptions. FDA is also proposing to provide that the Commissioner would grant extensions for filing exceptions or replies to exceptions only in extraordinary circumstances.

FDA acknowledges that, frequently, 30 days is not sufficient time to prepare exceptions to an initial decision. In general, several months pass between the filing of post-hearing briefs and the administrative law judge's issuance of an initial decision. Parties cannot predict when an initial decision will be issued. When the decision is issued, the parties' counsel invariably are in the midst of another hearing, court litigation, or other legal work with deadlines. Strict adherence to a period of 30 days to file exceptions to an initial decision could cause hardship to parties because of the difficulty, on such short notice, of rearranging other assignments or arranging for substitute counsel for the formal evidentiary public hearing.

Because of the difficulties parties have had in filing exceptions to initial decisions within 30 days, it has become common for parties who wish to file exceptions to the initial decision to request an extension of time for filing exceptions. Generally, the Commissioner has granted 30-day extensions, thus providing the excepting party or parties a total of 60 days in which to file exceptions. Requests by the opposing side for an extension of time to file a reply to exceptions have been less frequent, but have generally been granted upon request.

The current regulations do not specify a procedure for parties to file requests for extensions for filing either exceptions or replies to exceptions. The preferred approach has been for the party's counsel to file the request with the Commissioner's Executive Secretariat and to serve copies of the request on the Chief Counsel (in the Chief Counsel's capacity as advisor to the Commissioner) and on all parties. However, sometimes counsel have filed the request with the Commissioner's personal secretary or with the Dockets Management Branch, resulting in confusion and delays.

In view of the fact that parties to formal evidentiary hearings routinely request extensions of time in which to file exceptions and replies thereto and that the Commissioner routinely grants such extension requests, FDA believes that it would be more reasonable and would comport more closely with current practice to revise Part 12 to provide 60 days for filing exceptions to an initial decision and 60 days to file replies to exceptions. In most circumstances, 60 days should be ample time for counsel to the party or parties planning to file exceptions to complete other ongoing work, to arrange reassignments of that work, or to arrange for substitute counsel to prepare the exceptions or the reply to the exceptions.

The Commissioner is also proposing to revise that portion of the regulations that provides for granting extensions of time to file exceptions or replies (21 CFR 12.125(d)) to limit such extensions to extraordinary circumstances. Extraordinary circumstances that would justify an extension would include, e.g., death or hospitalization of counsel or extended unavailability of a party's scientific advisors. The Commissioner believes that limiting extensions to extraordinary circumstances is appropriate because, generally, 60 days should be ample time to prepare exceptions or replies to exceptions or to arrange for substitute counsel.

Finally, the Commissioner is proposing to revise 21 CFR 12.125(d) to specify that any request for extension shall be made in writing and shall be filed with the Commissioner's Executive Secretariat, with copies of the request to be served on the Dockets Management Branch, the Chief Counsel, and all hearing participants. This revision and additional specificity should eliminate the confusion and accompanying delay that has occurred in the past as a result of the various approaches used by hearing participants when requesting extensions.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has analyzed the economic impact of this proposal in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency has determined that the final rule, if promulgated, will not be a major rule as defined in Executive Order 12291 and certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Interested persons may, on or before April 1, 1988, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 12

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 12 be amended as follows:

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

1. The authority citation for 21 CFR Part 12 continues to read as follows:

Authority: Sec. 301 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 88–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

2. Section 12.125 is amended by revising paragraphs (a), (c), and (d), to read as follows:

§ 12.125 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the Dockets Management Branch, and serving them on the other participants, within 60 days of the date of the initial decision, unless extended by the Commissioner under paragraph (d) of this section.

* * * * *

(c) Any reply to the exceptions is to be filed and served within 60 days of the end of the period (including any extensions) for filing exceptions, unless extended by the Commissioner under paragraph (d) of this section.

(d) The Commissioner may extend the time for filing exceptions or replies to exceptions only in extraordinary circumstances. Such an extension shall be requested by filing a written request with the Commissioner's Executive Secretariat (HF–40) and serving copies of the request on the Dockets Management Branch (HFA–305), the Chief Counsel (GCF–1), and all hearing participants.

* * * * *

Dated: January 7, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–1940 Filed 1–29–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 88–001]

Temporary Drawbridge Operation Regulations; Reynolds Channel, NY

AGENCY: Coast Guard, DOT.

ACTION: Proposed temporary rule.

SUMMARY: At the request of Long Island Rail Road, the Coast Guard is considering temporary regulations permitting the Wreck Lead railroad drawbridge over the Reynolds Channel, at mile 4.4, between Island Park and Long Beach, New York, to remain closed for 31 days from 23 March through 22 April 1988. This temporary regulation is needed to facilitate the construction of a new bascule bridge adjacent to the existing swing bridge which will be removed. This action should relieve the bridge owner of the burden to open the draw during part of the construction of the new bridge and would only permit marine traffic which can pass under the fixed span.

DATE: Comments must be received on or before February 28, 1988.

ADDRESS: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5098. The comments and other material referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 9 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District (212) 668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this temporary rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Good cause exists for limiting the comment period to less than 30 days after publication in the **Federal Register**, because of the need to have the work commence as soon as possible to minimize the impact on marine interests.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed temporary regulations may be changed in light of comments received.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR R. B. Ellard, project attorney.

Discussion of Temporary Regulations

Current regulations provide that the draw of the bridge shall open on signal at all times. The temporary regulations would allow the bridge to remain in the closed position from 9 a.m. on 23 March through 5 p.m. on 22 April 1988, inclusive. on 24 March 1987, the Coast Guard approved a bridge permit, P(5–87–3), for the replacement and relocation of the draw of the Long Island Rail Road's Wreck Lead drawbridge across the Reynolds Channel. The existing movable bridge (built in 1927) is a cable-stayed steel bobtail swing bridge and is scheduled for removal. To minimize the closure time of the draw during construction, the existing 40 foot horizontal clearance of of the navigable channel has been reduced to 34 feet. There is only 3 foot vertical clearance at Mean High Water (MHW) when the bridge is in its closed position. A couple extra feet will be available under the fixed spans during construction. The proposed replacement project will provide for a new bridge and trestle located 400 to 500 feet south of the existing draw, with the channel width in the draw being increased to 60 feet. The new movable bridge will be a rolling lift bascule and will increase the existing vertical clearance to 10 feet when the bridge is in its closed position. Public Notice 3–848, dated 5 February 1987, which proposed replacement and relocation of the draw also indicated that a 60 day closure between December and March was anticipated to facilitate construction. Replacement of the bridge was previously determined by the Long Island Rail Road to be the most cost effective and prudent course of action to minimize future disruption of both railroad and channel boat traffic. In order to minimize disruption to marine traffic, the contractor will be required by Long Island Rail Road to work overtime on all critical path work to assure the shortest possible closure period. This action along with redesign of part of the approach trestle in the vicinity of the existing draw have allowed the Long Island Rail Road to decrease the planned closure time frame from the original 60 days to 31 days. However, due to some construction delays the closure period is delayed until late March. During the 31 day closure period, the contractor is required to work around the clock to install pier supports, turnouts, preassembled girder-slab sections, and make the line fully operational. As soon as the line is operational the trestle in the vicinity of the new draw will be removed and the waterway swept for debris.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is

unnecessary. This determination is based on the fact that work will be done outside prime boating season; that the bridge is in need of major repairs and both commercial fishing and recreational boaters have frequently been delayed or unable to transit the existing swing bridge due to unscheduled bridge malfunctions; and that the railroad has taken all reasonable and prudent measures to minimize the impact and the temporary hardships imposed by the proposed temporary regulations. Additionally, local marine oriented law enforcement agencies intended to relocate or share facilities to provide coverage on either side of the bridge. Anticipated impact will be to a couple of larger clam boats who will not be able to pass under the bridge. However, marine traffic does have alternate water routes through Jones and East Rockway Inlets. As a result of the imposition of the temporary regulations, the new relocated channel will improve visibility by eliminating the bend in the navigational channel. The bridge would also be widened and made higher to improve visibility and reduce delays and congestion.The relocated channel avoids encroachment on the nearby marina and lines up with the draw of the adjacent bridge.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.799(j) is added to read as follows:

§ 117.799 Long Island, New York inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(j) The draw of the existing and proposed LIRR (Wreck Lead) bridges, mile 4.4, at Island Park, New York need not be opened for the passage of vessels from 9 a.m., March 23, 1988 through 5 p.m., April 22, 1988 inclusive, to effect replacement of the new and removal of the old bridge.

Dated: January 22, 1988.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard. Commander, First Coast Guard District.

[FR Doc. 88–2006 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than February 29, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

Antidumping Duty Proceeding	Period
Birch 3-Ply Doorskins from Japan	02/01/87–01/31/88
Certain Carbon Steel Butt-Weld Pipe Fittings from Japan	06/11/86–01/31/88
Melamine from Japan	02/01/87–01/31/88
Natural-Bristle Paint Brushes and Brush Heads from the People's Republic of China	02/01/87–01/31/88
Racing Plates from Canada	02/01/87–01/31/88
Railway Track Maintenance Equipment from Austria	02/01/87–01/31/88

Countervailing Duty Proceeding	Period
Carbon Steel Wire Rods from Saudi Arabia	01/01/87–12/31/87
Cotton Sheeting and Sateen from Peru	01/01/87–12/31/87
Cotton Yarn from Peru	01/01/87–12/31/87

Suspended Investigation	Period
Unprocessed Float Glass from Mexico	01/01/87–12/31/87
Yarns of Polypropylene Fibers from Mexico	01/01/87–12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by February 29, 1988.

If the Department does not receive by February 29, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: January 25, 1988.

[FR Doc. 88–2002 Filed 1–29–88; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–704]

Preliminary Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 11, 1988.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Ready or Paul H. Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2613 or 377–4136.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of initiation (52 FR 30412), the following events have occurred: On September 3, 1987, the ITC determined that there is a reasonable indication that a U.S. industry is materially injured by reason of imports or brass sheet and strip from Japan (52 FR 3424).

On September 11, 1987, we presented antidumping duty questionnaires to Nippon Mining Co., Ltd. (NMC), Sambo

Copper Alloy Co., Ltd. (Sambo), Mitsubishi Shindoh Co., Ltd., (Mitsubishi), and Kobe Steel, Ltd, (Kobe), which accounted for approximately 90 percent of the exports of brass sheet and strip from Japan to the United States during the period of investigation.

We received responses to there questionnaires from NMC and Sambo. After reviewing the responses, we sent our deficiency questionnaires and received supplemental responses from NMC and Sambo. Additional deficiency letters were sent to those respondents during November and December. These responses were received by the Department prior to this determination.

On December 1, 1987, petitioners requested a postponement of the preliminary determination. On December 4, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until January 26, 1988 (52 FR 46805, December 10, 1987).

On December 24, 1987, petitioners alleged that NMC's home market sales of brass sheet and strip were being made at prices that were below their costs of production. Given the timing of this allegation, we were unable to consider if for the preliminary determination. We will address this allegation in our final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the United States annotated (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the (*TSUSA*) item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass and strip, currently provided for under the *TSUSA* item numbers 612.3960, 612.3982, and 612.3988, and currently classifiable under HS item numbers 7409.21.0050, 7409.21.0075, 7409.29.0050, and 7409.29.0075.

The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Period of Investigation

Following a request by Sambo and analysis of sales and shipment data by the respondents, we noted that the bulk of Sambo's sales are made pursuant to long-term blanket contracts, most of which would not be captured by our February 1, 1987–July 31, 1987 period of investigation. Consequently, we extended the period of investigation for Sambo to October 1, 1986–July 31, 1987, as permitted by 19 CFR 353.38(a). No such extension was warranted for the other respondents, so their period of investigation remains from February 1, 1987 to July 31, 1987.

Such or Similar Comparisons

We have determined that all of the brass sheet and strip under investigation constitutes the same class or kind of merchandise and differences between types of brass are not significant enough to warrant separate "such or similar" comparisons. Therefore, the brass sheet and strip was considered one "such or similar" category.

In order to select the most similar products, we made comparisons of merchandise based on grade (chemical composition), gauge, width, coating (tinned or nontinned), temper and packed form (coil, cut-to-length or traverse-wound).

For merchandise where there were no identical products with which to compare a product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. Where adjustments were not provided by the respondents, we used the best information otherwise available in making the product comparisons.

Fair Value Comparisons

To determine whether sales of brass sheet and strip from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Where a company has failed to respond to our questionnaire, in accordance with section 776(b) of the Act, we have determined that it is appropriate for this preliminary determination to assign that company the higher of either (1) the rate calculated from information supplied in the petition, or (2) the rate for the respondent with the highest margin of all respondents that supplied adequate responses. For Mitsubishi and Kobe, the margin was based on information from the petition as best information available.

United States Price

Since all sales were made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

We calculated purchase price based on the packed c & f or c.i.f. duty unpaid prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, export brokerage, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act. We made an addition to purchase price for duty drawback (i.e., import duties which were not collected by reason of the exportation of the merchandise to the United States) pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on packed delivered prices to unrelated customers in the home market. We made deductions from the home market price, where appropriate, for inland freight and rebates. In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs.

We made adjustments to the home market price, where appropriate, for differences in credit expenses and warranties, pursuant to 19 CFR 353.15. Where information was provided, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Where no such information was provided by respondents for certain product characteristics, the Department used the best information otherwise available and selected most similar merchandise on the basis of cost. As an example, with all product characteristics matched except for gauge, U.S. merchandise was compared to the next thinnest (more costly) home market merchandise.

The credit expense formulas used by Sambo and NMC were inconsistent with Departmental practice. We recalculated credit expenses for these respondents based on the actual number of days from shipment date to payment date.

We disallowed technical service expenses claimed by NMC in the home market because NMC did not sufficiently demonstrate that these expenses were directly related to the sales in question. We will seek further information at verification.

Sambo claimed a quantity surcharge adjustment for certain home market sales. We are disallowing this claim because it has not been sufficiently quantified. We will seek further information at verification and consider it for purposes of our final determination.

Sambo has also made claims for indirect selling expenses and inventory carrying costs in the home market. We denied these adjustments because no claim was made for commissions in the U.S. market in accordance with 19 CFR 353.15(c).

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1). All currency conversions were made at the rates certified by the Federal Reserve Bank of New York.

Verification

We will verify the information used in making our final determination in accordance with section 776(a) of the Act.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of brass sheet and strip from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/ Exporter	Weighted-average margin percentage (percent)
Nippon Mining Co., Ltd.	24.89
Sambo Copper Alloy Co., Ltd.	14.36
Mitsubishi Shindoh Co., Ltd.	33.25
Kobe Steel, Ltd.	33.25
All Others	24.98

This suspension of liquidation covers imports of brass sheet and strip meeting the definition outlined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Acting Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this determination or 45 days after the final determination, if affirmative.

Public Comment

In accordance with 19 CFR 353.47, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 15, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, prehearing brief in at least ten copies must be submitted to the Acting Assistant Secretary by March 8, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, at the above address, in at least ten copies, not less than 30 days before the date of the final determination, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

January 26, 1988.

[FR Doc. 88-2003 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-DS-M

Fiber Optics Subcommittee, Telecommunications Equipment, Technical Advisory Committee; Open Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held February 23, 1988, 2:30 p.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Fiber Optics Subcommittee was formed to study fiber optic communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, please call Betty Ferrell at (202) 377-4959.

BEST COPY AVAILABLE

Date: January 25, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-1925 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-07-M

Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Open Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held February 24, 1988, 9:30 a.m. Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.

Date: January 25, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-1927 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-07-M

Telecommunications Equipment Technical Advisory Committee; Open Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held February 23, 1988, 9:30 a.m. Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of Chairman.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.

Date: January 25, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88-1928 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

National Fish and Seafood Promotional Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

Time and Date: The meeting will convene at 8:15 a.m., February 15, 1988, and adjourn at approximately 12:30 p.m. February 16, 1988.

Place: Westgate Hotel, 1055 2nd Avenue, San Diego, California 92101.

Status: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual plan to the Secretary of Commerce for his approval that describes the marketing activities it intends to carry out. Funding for NFSPC activities are provided for through Congressional appropriations and private donations.

Matters To Be Considered

Portion Opened to the Public: February 15, 1988, 8:45 a.m.-12:15 p.m.—1988 Marketing Plan Options, Market Research Needs and Methodologies.

February 16, 1988, 9:15 a.m.-1:00 p.m., Budget, Administrative and Legal Issues, Export Promotion Activities, Model Seafood Surveillance Program, Summary Discussion on Council Staffing Requirements and 1988 Marketing Plan.

Portion Closed to the Public: February 15, 1988, 8:15 a.m.-8:45 a.m.—Internal NFSPC Policy issues; 12:15 p.m.-5:00 p.m.—Working Lunch, Concurrent Meetings of the Marketing Plan, Market Research, Policy, Fund Raising, and Operations Committees.

February 16, 1988, 8:30 a.m.-9:15 a.m.—Fisheries Trade Issues.

FOR FURTHER INFORMATION CONTACT: Bruce C. Morehead, Interim Executive Director, National Fish and Seafood Promotional Council, Office of Trade and Industry Services, NMFS, Washington, DC 20235, Telephone: (202) 673-5280.

Dated: January 25, 1988.

Carmen J. Blondin,

Director, Office of Trade and Industry Services.

[FR Doc. 88-1981 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Sheraton Islander Inn, Goat Island, Newport, RI, to discuss reports of the groundfish, scallop, large pelagics, and coastal anadromous committees; an ad hoc committee report on saltwater licenses and user fees, and updates on other fishery management matters. The public meeting will convene February 11, 1988, at 1:30 p.m., and will adjourn in the afternoon of February 12 after agenda items have been completed.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: January 27, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-1982 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit and Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica; Correction

January 27, 1988.

In the letter to the Commissioner of Customs published in the **Federal Register** on December 16, 1987 (52 FR 47744) the new twelve-month restraint period for Categories 340/640 should be corrected to read May 3, 1987 through May 2, 1988.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-2001 Filed 1-29-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

Under the provisions of section 401, Pub. L. 95-202 and DOD Directive 1000.20, "Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel," the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on January 19, 1988, that the service of the "American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945," shall be considered "active duty" for the purposes of all laws administered by the Veterans Administration. Although technically not part of the United States Merchant Marine, Civil Service crewmembers aboard U.S. Army Transport Service and Naval Transportation Service vessels in oceangoing service or foreign waters are also included as parts of this approved group.

To be eligible for Veterans Administration benefits, each member of the group must meet the following eligibility criteria:

1. Was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the U.S. Coast Guard or Department of Commerce (Merchant Mariner's Document/Certificate of Service), or as a civil servant employed by the U.S. Army Transport Service (later redesignated U.S. Army Transportation Corps, Water Division) or the Naval Transportation Service; and

2. Served satisfactorily as a crew member during the period of armed conflict, December 7, 1941, to August 15, 1945, aboard

(a) Merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service (46 USCA 10301 and 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or

(b) Public vessels in oceangoing service or foreign waters.

Before an individual can receive any Veterans Administration benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to one of the following offices:

Merchant Marine: Commandant (GMVP-1/12), United States Coast Guard, Washington, DC 20593-0001.

Army Transport Service: Commander, U.S. Army Reserve Components, Personnel & Administrative Center (PAS-EENC), 9700 Page Boulevard, St. Louis, MO 63132-5200.

Naval Transportation Svc: Naval Military Personnel Command (NMPC-3), Navy Department, Washington, DC 20370-5300.

Forms are available from Veterans Administration Offices, Merchant Marine veterans organizations, and from the offices listed above.

For further information contact Lt. Col. Michael Dandar or Lt. Col. James Pauls at the Secretary of the Air Force Personnel Council (SAF/MRC), Washington, DC 20330-1000, telephone (202) 692-4744.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-1987 Filed 1-29-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command, Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 18 February 1988 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 8 February 1988.

Dated: January 21, 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-1933 Filed 1-29-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-50-NG]

Salmon Resources Ltd.; Order Extending Blanket Authorization To Import Natural Gas From Canada and Granting Interventions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Salmon Resources Ltd.'s (Salmon) existing blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-50-NG authorizes Salmon to import up to 100 Bcf over an additional two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-1997 Filed 1-29-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-88-3; OFP Case No. 51025-9393-20-22]

Acceptance of Petition for Exemption and Availability of Certification by Ft. Pierce Utility Authority, Ft. Pierce, FL

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On January 6, 1988, Ft. Pierce Utilities Authority (Ft. Pierce or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for a proposed 34.5 megawatt combined cycle cogeneration unit to be located at their H. D. King Generating Station in Ft. Pierce, Florida, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedure for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials of this proceeding is available upon request though DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 17, 1988. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-C&E-88-3 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs; Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

SUPPLEMENTARY INFORMATION: This project is an addition to the Ft. Pierce Utility Authority's H. D. King Generating Station. When completed this unit will be designated Unit No. 9. The proposed facility will consist of a combustion turbine generator with a heat recovery boiler and a steam turbine generator. The combined cycle facility will have a total generating capacity of 34.5 megawatts, all of which will be used to supply baseload power to Ft. Pierce customers. The facility will use natural gas as its primary fuel will a No. 2 fuel oil backup.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council of Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 26, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-1998 Filed 1-29-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before March 2, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For Further Information and Copies of Relevant Materials Contact: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that your will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-580.
3. 1902-0137.
4. Fuel Purchase Practices.
5. Revision.
6. Biennially.
7. Mandatory.
8. Businesses or other for profit.
9. 67 respondents.
10. 67 responses.
11. 6,030 hours.
12. The information requested is needed to comply with the requirements of section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two year" of "practices * * * to ensure efficient use of resources."

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, January 28, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-1999 Filed 1-29-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA88-3-20-000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 21, 1988, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Seventeenth Revised Sheet No. 204
Seventeenth Revised Sheet No. 205
Seventh Revised Sheet No. 214

Algonquin states that such tariff sheets are being filed pursuant to section 7 of its Rate Schedule F-3 and F-4 and section 9 of Rate Schedule SS-III to reflect changes in the underlying rates by its suppliers, National Fuel Gas Supply Corporation in Rate Schedule F-3 and Texas Eastern Transmission Corporation in Rate Schedules F-4 and SS-III. The proposed effective date of the above-mentioned tariff sheets is February 1, 1988.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-1974 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-34-001]

ANR Pipeline Co.; Proposed Changes in Gas Tariff

January 26, 1988

Take notice that on January 15, 1988, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission ("Commission") Substitute Fourth Revised Sheet No. 570 under Rate Schedule X-64 of Original Revised Volume No. 2 of its F.E.R.C. Gas Tariff, to become effective January 1, 1988

ANR states that this filing has been made to: (a) Reflect the elimination of the 5% inflation adjustment to operating expenses; (b) tie the rate of retrun to the outcome of ANR Docket No. RP86-169 and the depreciation rate to the outcome of HIOS Docket No. RP87-22; and (c) submit ANR's plan for refund resulting from any overaccumulated deferred income taxes, in compliance with Ordering Paragraphs (1), (2) and (3), respectively, of the Commission's December 31, 1987 acceptance in the subject docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the

Commission in determining the

[Granite State) tendered for filing the

Rate Schedule GSS.[1] Granite State

Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1975 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-001]

Arkla Energy Resources; Filing

January 26, 1988.

Take notice that on January 15, 1988, Arkla Energy Resources (AER) tendered for filing First Substitute Third Revised Sheet No. 7 to its FERC Gas Tariff, Original Revised Volume No. 1-A, to be effective February 1, 1988.

AER requested that this tariff sheet be substituted for Third Revised Sheet No. 7 submitted with AER's December 31, 1987 filing. AER states that the substitute tariff sheet does not reflect, as the sheet initially filed erroneously did, a reservation charge for AER's proposed service under Rate Schedule LT.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests or motions should be filed on or before February 2, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1976 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-87-002 and RP87-116-002]

Granite State Gas Transmission, Inc.; Tariff Filing

January 26, 1988.

Take notice that on January 19, 1988, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the following sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2:

To be effective October 1, 1987

First Revised Volume No. 1

Thirteenth Revised Sheet No. 8
Substitute First Revised Sheet No. 83

Original Volume No. 2

Third Substitute Seventh Revised Sheet No. 27

To be effective November 27, 1987

Original Volume No. 2

Second Substitute Eighth Revised Sheet No. 27

To be effective January 1, 1988

First Revised Volume No. 1

Fourteenth Revised Sheet No. 8
First Revised Sheet No. 32
Original Sheet No. 33
Original Sheet No. 34

Granite State states that the revised states and tariff provisions are applicable to storage services under its Rate Schedules GSS and S-1 rendered to its two affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities), and to a transportation service provided Northern Utilities under its Rate Schedule T-3.

Granite State further states that it submitted revised tariff sheets on November 4, 1987 which, *inter alia*, established an annual charges adjustment (ACA) applicable to its jurisdiction sales to Bay State and Northern Utilities, effective October 1, 1987, in compliance with Order No. 472, *et seq*. These tariff sheets were accepted by letter order dated December 17, 1987, subject to the condition that an ACA charge be included in Rate Schedule T-3 for the transporation service rendered Northern Utilities. Granite State also states that the revised tariff sheets that it submitted on November 27, 1987, in Docket No. RP87-87-000, which changed the rate for service under Rate Schedule T-3, did not include an ACA charge. Accordingly, Granite State has included an ACA charge in Rate Schedule T-3 and has added an ACA charge to the change in Rate Schedule T-3 that was filed in Docket No. RP87-87-000.

According to Granite State, it provides storage service for Bay State under Rate Schedule GSS in a storage facility operated by Consolidated Gas Transmission Company (Consolidated). Granite State is authorized to track Consolidated's rate changes in its own Rate Schedule GSS.[1] Granite State states that Consolidated filed an ACA charge applicable to the withdrawal charge under its Rate Schedule GSS in Docket No. RP87-111-000, and Granite State has tracked this charge in this filing.

Granite State also states that it provides storage services for Bay State and Northern Utilities under Rate Schedule S-1 in a facility owned by Penn-York Energy Corporation (Penn-York). Granite State is authorized to track Penn-York's rate changes in its own Rate Schedule S-1.[2] Granite State states that Penn-York has filed revised rates and other provisions applicable to its Rate Schedule S-1 service in Docket No. RP87-78-000, and Granite State has tracked these changes in this filing.

A copy of the filing has been served upon Granite State's jurisdictional customers, Bay State and Northern Utilities, on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire, and on each of the intervenors in Docket No. RP87-87-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1977 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-25-003]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 26, 1988.

Take notice that on January 15, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1987:

First Revised Sheet Nos. 16B-16D
First Revised Sheet Nos. 16G-16O
First Revised Sheet Nos. 16R-16T
First Revised Sheet Nos. 16W-16Z
First Revised Sheet Nos. 16AA-16EE
First Revised Sheet No. 34I
First Revised Sheet Nos. 34L-34O
First Revised Sheet Nos. 34S-34W
First Revised Sheet No. 34Y
First Revised Sheet Nos. 42B-42C
First Revised Sheet Nos. 42E-42F
First Revised Sheet No. 42K
First Revised Sheet Nos. 42N-42O
First Revised Sheet Nos. 42Q-42R
First Revised Sheet Nos. 42W

South Georgia states that on November 16, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. On December 16, 1987, the Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Granting Waiver of Notice Requirement and Convening Technical Conference (Order). Ordering Paragraph (A) required South Georgia to file within 30 days of the date of the issuance of the Order to make revisions prescribed by the Order. Accordingly, South Georgia has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

South Georgia states that copies of the filing were mailed to all of South Georgia's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1978 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-003]

Southern Natural Gas Co.; Compliance Filing

January 26, 1988.

Take notice that on January 6, 1988, Southern Natural Gas Company (Southern) tendered for filing First Revised Sheet No. 30N to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987.

Southern states that First Revised Sheet No. 30N was inadvertently omitted from its filing of December 14, 1987.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such protests or motions should be filed on or before February 3, 1988. Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1979 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-5-004 and RP88-37-001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 26, 1988.

Take Notice that on January 22, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Second Revised Sheet No. 196
Substitute First Revised Sheet No. 196-A
Substitute Original Sheet Nos. 199-L, 199-O, and 199-P
Substitute First Revised Sheet Nos. 219-A and 259
Substitute Original Sheet Nos. 260 through 262
Original Sheet Nos. 263 and 264
Substitute Second Revised Sheet No. 373
Substitute Original Sheet No. 381

Transco states that on November 30, 1987, it filed with the Commission in Docket No. RP88-5-002, original and revised tariff sheets in compliance with the Commission's order issued October 29, 1987 in Docket No. RP88-5-000, which required Transco to make certain revisions to its Rate Schedule FT and to file terms and conditions governing interruptible transportation of gas pursuant to Part 284 of the Commission's regulations. Transco states that the tendered tariff sheets setting forth Rate Schedule IT included, *inter alia*, provisions requiring the buyer to provide Transco with certain information to implement the take-or-pay crediting mechanisms of Order No. 500, *et seq*. On December 2, 1987, Transco filed with the Commission in Docket No. RP88-37-000, revised tariff sheets to Rate Schedule FT which included provisions requiring the buyer to provide the same Order No. 500 information as that which had been set forth in Rate Schedule IT.

On December 31, 1987, the Commission issued an order accepting Transco's November 30 and December 2 tariff filings, subject to refund and conditions. Transco states that the instant filing is made in compliance with ordering paragraph (C) of that order.

Transco also states that since August 13, 1987, it has been providing interruptible transportation service pursuant to operating procedures similar to those proposed by Transco in its November 30, 1987 filing in Docket No. RP88-5-002. Specifically, Transco states that it has offered to provide and has provided, interruptible transportation under terms whereby capacity is allocated to shippers monthly, with capacity allocated among shippers within the same priority class on a ratable basis. Transco states that under the circumstances, it would be unfair to shippers who have requested capacity on Transco's system based on their belief that capacity would be allocated in such manner to allocate capacity to these shippers on a first come, first served basis ties to a historical period which has already occurred under different assumptions and actual operations. Therefore, to provide all potential shippers with fair notice and opportunity to nominate capacity; Transco proposes a forward-looking "window" period, whereby all shippers requesting interruptible service within 21 days of the date of a Commission

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[1] Tennessee Gas Pipeline Co., *et al*., 18 FERC ¶ 61,013 (1982).

[2] Granite State Gas Transmission, Inc., 21 FERC ¶ 61,199 (1982).

order accepting the IT rate schedule tariff sheets included in the instant filing would be treated equally with all shippers who have requested such service since August 13, 1987. If and when capacity allocation is necessary, Transco states that all shippers who have requested service within the window period would be ratably served. Transco further states that shippers requesting interruptible service after the window period would be offered priority rights on a first come, first served basis.

A copy of the filing has been served upon each of Transco's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1880 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-308-001]

United Gas Pipe Line Co.; Petition To Amend

January 27, 1988.

Take notice that on January 13, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-308-001, a petition pursuant to sections 7(b) and 7(c) of the Natural gas Act to amend its certificate of public convenience and necessity issued in Docket No. CP87-308-000 on September 28, 1987, so as to authorize the construction and operation of facilities and for the issuance of an order permitting and approving abandonment of other, older facilities, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

United states that in a filing made on February 19, 1987 in Docket No. CP87-214-000, authorization is sought to construct and operate 58.16 miles of new 24-inch pipeline and to abandon by removal 53.9 miles of old 18-inch pipeline and 18.6 miles of other, smaller diameter old pipeline.

United is seeking Commission approval to alter the construction timetable set out in the Docket No. CP87-214-000 filing, so as to promptly perform a needed 1.52 mile pipeline replacement to its existing 18-inch Baton Rouge—New Orleans Main Line located in St. Charles Parish, Louisiana, to begin at the east levee of the Bonnet Carre Spillway and to extend in a generally south easterly direction, to pass predominantly through residential and commercial locations, including the yard of Shell's Norco Refinery for which authority has already been obtained in Docket No. CP87-308-000, and to end at a point near the Good Hope Road location.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 17, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1961 Filed 1-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-2-57-006, -091, -000]

Western Transmission Corp.; Notice of Filing

January 28, 1988.

Take notice that Western Transmission Corporation (Western) on January 14, 1988, tendered for filing Second Subsitute Thirtieth Revised Sheet No. 3-A to its FERC Gas Tariff, Original Volume No. 1, to be effective February 1, 1988.

Western states that this Second Substitute Thirtieth Revised Sheet No. 3-A has been filed to correct the current adjustment column in its Statement of Rates to be 4.69 cents. The current adjustment was incorrectly stated on Thirtieth Revised Sheet No. 3-A and Substitute Thirtieth Revision Sheet No. 3-A, respectively, as previously filed on January 4, 1988 and January 12, 1988, respectively.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 2, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1962 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-165-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

January 25, 1988.

Take notice that on January 14, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-165-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities and to construct and operate certain other facilities, all located in Ottawa County, Oklahoma, under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams proposes to abandon by reclaim measuring, regulating and appurtenant facilities for two town border setting in Miami and North Miami, Oklahoma. Williams proposes to abandon by sale to KPL Gas Service (KPL) a 2.6 mile segment of 8-inch lateral line. Williams proposes to construct and operate replacement measuring, regulating and appurtenant facilities at the site of the Miami town border. It is stated that the proposed abandonments and construction would enable Williams to consolidate two town border settings into one and to sell to KPL the lateral line which Williams states is more appropriately a part of KPL's distribution system.

It is stated that the estimated cost of reclaiming the abandoned facilities is $6,210. It is further stated that the estimated salvage value of facilities which cannot be reclaimed is $5,850 and that the sale price of the lateral line is $1,758. It is stated that the estimated construction cost of the replacement facilities is $53,530.

It is asserted that there would be no disruption of service resulting from the proposed changes. It is explained that two of the customers served from the lateral line are already customers of KPL and that the third customer served from the line has agreed to receive service from KPL. Williams states that the proposed changes would not result in increased deliveries to KPL and would not cause the deliveries to exceed KPL's authorized entitlement from Williams.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-1963 Filed 1-29-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

January 28, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Comments which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once

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FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Monica L. Kelly, Director of Personnel, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424, (202-382-0751).

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Jacqueline Bradley, FLRA
Edith Baum, Office of General Counsel, FLRA
Johnny Butler, Equal Employment Opportunity Commission
Paul Mahoney, Merit Systems Protection Board
Peter Basso, National Endowment for the Arts

Dated: January 26, 1988.

Monica L. Kelly,

Director of Personnel.

[FR Doc. 88-1932 Filed 1-29-88; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-699; FHLBB No. 3148]

Home Federal Savings and Loan Association of Salisbury, Salisbury, NC; Final Action; Approval of Conversion Application

Date: January 27, 1988.

Notice is hereby given that on January 25, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Salisbury, Salisbury, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-2016 Filed 1-29-88; 8:45 am]

BILLING CODE 6720-01-M

approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extension With Minor Revision of the Following Report

1. *Report Title:* Report of Changes in Foreign Investments.
Agency Form Number: FR 2064.
OMB Docket Number: 7100-0109.
Frequency: On occasion.
Reporters: Member banks, bank holding companies and Edge and Agreement corporations making or changing a foreign investment.
Annual Reporting Hours: 180 Small businesses are not affected.
General Description of Report: This report is required by law (12 U.S.C. 602 and 1844). Certain portions are given confidential treatment (5 U.S.C. 552(b)(4)).

This report provides information needed to enable the Federal Reserve to monitor foreign investments by U.S. banking organizations. The report is used to notify the Federal Reserve of foreign investment changes as required under Regulation K, and to provide a basis for updating the System's information on foreign investments.

Board of Governors of the Federal Reserve System, January 28, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-1941 Filed 1-29-88; 8:45 am]
BILLING CODE 6210-01-M

First Bank System, Inc.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent and To Broker Certain Options

First Bank System, Inc., Minneapolis, Minnesota ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, FBS Brokerage Services, Inc., Minneapolis, Minnesota ("Company"), in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to broker options on securities issued or guaranteed by the United States and its agencies, money market instruments and foreign currency on exchanges regulated by the Securities and Exchange Commission in accordance with the terms and conditions previously approved by the Board in *Security Pacific Corporation*, 70 Federal Reserve Bulletin 238 (1984). In addition, Applicant has applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)).

Applicant has applied to underwrite and deal in ineligible securities in accordance with virtually all of the limitations set forth in the Board's Order approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) (*"Citicorp/Morgan/Bankers Trust"*); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing in consumer-receivable-related securities). In its *Citicorp/Morgan/Bankers Trust* Order, the Board determined that a member bank affiliate would not be engaged principally in the above ineligible securities underwriting activity if its gross revenue from that activity does not exceed a range of between 5 and 10 percent of its total gross revenues. The Board also determined that a similar range should apply to the market share test adopted by the Board, but that the lower end of the range—5 percent—was the appropriate level to be applied at that time with regard to both revenue and market share.

Applicant proposes to engage in ineligible securities underwriting and dealing up to 10 percent of Company's gross revenue and 5 percent of the market. Applicant states that, unlike the bank holding companies involved in the *Citicorp/Morgan/Bankers Trust* Order, Applicant is not, and does not intend to become a primary dealer in U.S. government securities. Moreover, Applicant notes that the eligible mortgage-related securities and municipal securities activities that Applicant proposes to transfer to Company are several times smaller than those involved in the *Citicorp/Morgan/Bankers Trust* Order. Thus, Applicant concludes, the overall level of Company's projection eligible securities underwriting activities and the level of ineligible securities underwriting activities that such activities will support is many times smaller than those previously considered by the Board. Applicant further argues that a 5 percent gross revenue test is unfair to institutions with relatively small eligible securities underwriting operations and would guarantee a few large institutions a virtual monopoly on bank affiliate participation in the ineligible securities underwriting market. In addition, Applicant argues that if the Board were to impose a 5 percent gross revenue limitation on Applicant, Applicant doubts that Company could achieve a level of activity necessary to justify the capital and the expenditures required to enable it to conduct profitable ineligible securities underwriting operations.

Applicant also proposes to engage in certain incidental activities including the private placement of ineligible securities as both principal and as agent. Under the terms of the proposal, Company's placement activities as principal, but not as agent, would be included in the above quantitative limitations.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as First National Bank of Minneapolis with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary and relative to the total market in such activity.

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 22, 1988.

Board of Governors of the Federal Reserve System, January 26, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-1944 Filed 1-29-88; 8:45 am]
BILLING CODE 6210-01-M

First Financial Services of Moose Lake, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Financial Services of Moose Lake, Inc.*, Moose Lake, Minnesota; to become a bank holding company by acquiring 53.1 percent of the voting shares of First National Bank of Moose Lake, Moose Lake, Minnesota.

In connection with this application, Applicant also proposes to acquire First National Agency of Moose Lake, Inc., Moose Lake, Minnesota, and thereby engage in general insurance sales in a community that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Moose Lake, Minnesota, and the six surrounding townships.

Board of Governors of the Federal Reserve System, January 28, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-1942 Filed 1-29-88; 8:45 am]
BILLING CODE 6210-01-M

Merrimack Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 19, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Merrimack Bancorp, Inc.*, Lowell, Massachusetts, and Merrimack Bancorp of New Hampshire, Inc., Milford, New Hampshire; to acquire 100 percent of the voting shares of Hillsborough Bank & Trust Company, Milford, New Hampshire.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.* Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of PNC National Bank of New Jersey, Cherry Hill, New Jersey, a *de novo* bank.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Florida Banks, Inc.*, Tampa, Florida, and 7L Corporation, Tampa, Florida; to acquire 100 percent of the voting shares of First Florida Bank of Orange County, N.A., Orlando, Florida, a *de novo* bank.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Bank of Shelbyville, Shelbyville, Kentucky.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sterling National Bank Employee Stock Ownership Plan*, Sugar Creek, Missouri; to become a bank holding company by acquiring 38.8 percent of the voting shares of Sterling Bancorporation, Sugar Creek, Missouri, and thereby indirectly acquire Sterling National Bank, Sugar Creek, Missouri.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Summit Banking Corp.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Alta Mesa National Bank, Fort Worth, Texas, and thereby indirectly acquire Camp Bowie National Bank, Fort Worth, Texas, and Summit National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, January 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-1943 Filed 1-29-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested exemption from trade regulation rule.

SUMMARY: The Commission is requesting public comment with respect to a request from the Saturn Corporation for an exemption from the requirements of the Franchise Rule. The Commission has stayed the Franchise Rule (16 CFR Part 436), insofar as it applies to the petitioner, pending a final decision by the Commission on the exemption request.

DATE: Written comments will be accepted until April 1, 1988. The stay is effective as of January 15, 1988.

ADDRESS: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326-2222.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Attorney, PC-H-238, Federal Trade Commission, Washington, DC 20580, (202) 326-2970.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (16 CFR Part 436). In general, the Rule provides for Pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, Room 130, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule.

The Saturn Corporation, a wholly-owned subsidiary of General Motors Corporation, filed a petition for exemption pursuant to section 18(g) on June 5, 1987. Briefly stated, Petitioner alleges that an exemption should be granted to the Saturn Corporation because: (1) Saturn dealers will be extremely sophisticated businesspersons; (2) prospective dealers and their advisors will have more than adequate time to review the dealer agreement and other information; (3) given their experience and sophistication, prospective dealers will be well-acquainted with the automobile industry and all relevant facts about the dealership; (4) the public comments in prior exemption proceedings for automobile dealerships have not opposed the exemptions granted; and (5) failure to grant the petition would place the Saturn Corporation at a competitive disadvantage in view of the other exemptions the Commission has granted.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which can be obtained from the FTC Public Reference Branch, Room 130, upon request.

In assessing the present exemption request, the Commission would like comments on all relevant issues germane to the proceeding, including the following: (1) Is there any evidence to indicate that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of motor vehicle franchises? If not, is it in the public interest to exempt it from coverage under the Franchise Rule? (2) If an exemption is appropriate, should it be: (a) Limited to Petitioner; (b) expanded and made applicable to all motor vehicle manufacturers; or (c) expanded only to a particular class, and if so, what is the proper definition of the class sharing the characteristics that make aplicability of the Franchise Rule unnecessary?

The Commission is also interested in receiving comments on whether provisions of the Automobile Dealer Franchise Act or the Automobile Dealers Day in Court Act constitute industry-specific federal substantive law sufficient to remedy the same potential abuses that the Rule's information disclosures seek to remedy.

The Commission has analyzed the arguments made by Petitioner and concluded that further inquiry is warranted before a determination regarding the petition can be made. The Commission, therefore, seeks comment regarding the exemption requested by Petitioner. In addition, after weighing the potential harm to Petitioner, and the public interest, the Commission has determined that a stay of the Franchise Rule insofar as it applies to the Saturn Corporation, pending a final Commission decision on the exemption request, is appropriate and shall become effective this date.

All interested parties are hereby notified that they may submit written data, views or arguments on any issues of fact, law or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Auto Industry Franchise Rule Exemption Comment," and two copies should be submitted, if possible.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1931 Filed 1-29-88; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 01/14/88 AND 01/25/88

Name of acquiring persons, name of acquired persons, name of acquired entity	PMN No.	Date terminated
(1) Mannesmann A.G., L'Her, Inc., L'Her, Inc.	88-0615	01/14/88
(2) Cineplex Odeon Corporation, James Pedas, movie theaters 2-TJP Holding Co., Inc.	88-0632	01/14/88
(3) Cineplex Odeon Corporation, Theodore Pedas, movie theaters 2-TJP Holding Co., Inc.	88-0634	01/14/88
(4) Enterra Corporation, CRC-Evans Pipeline International, Inc., CRC-Evans Pipeline International, Inc.	88-0665	01/14/88
(5)Excel Industries, Inc., Nyloncraft, Inc., Nyloncraft, Inc.	88-0679	01/14/88
(6) Paine Webber Group Inc., Manufacturers Hanover Corporation, Manufacturers Hanover Investment Corporation	88-0731	01/14/88
(7) Sandoz Ltd., Reed Plastics Corporation, Reed Plastics Corporation	88-0602	01/15/88
(8) The Clorox Company, Mr. H. Wayne Huizenga, Waco Services, Inc.	88-0743	01/15/88
(9) Stephen Adams, Lewis Manderson, Jr., Turner Outdoor Advertising, Ltd.	88-0600	01/16/88
(10) Campbell Soup Company, Reckitt & Colman plc, Compania Envasadora de Loreto SA/Durkee Famous Foods	88-0609	01/19/88
(11) Glenn R. Jones, Geoffrey R. Buford, Broward Cable TV, Inc., and subsidiaries	88-0644	01/19/88
(12) Glenn R. Jones, Cable TV Fund IX-C, Ltd., Cable Fund IX-C	88-0648	01/19/88
(13) Glenn R. Jones, Cable TV Fund 10-A, Ltd., Fund 10-A, Ltd	88-0651	01/19/88
(14) Glenn R. Jones, Cable TV Fund 10-B, Ltd., Fund 10-B, Ltd	88-0652	01/19/88
(15) Bass plc, Holiday Corporation, Holiday Inns, Incorporated (subsidiaries thereof)	88-0669	01/19/88
(16) Bass plc, Holiday Corporation, Holiday Inns, Incorporated	88-0686	01/19/88
(17) Charles E. Hurwitz, Maxcam Group Inc., Maxcam Group Inc	88-0706	01/19/88
(18) Okamoto Industries, Inc., J.N. Ceazan Company, J.N. Ceazan Company	88-0617	01/20/88
(19) Cass Foods, Inc., Troyer's Poultry, Inc., and Ardmore Poultry, Inc., Troyer's Poultry, Inc. and Ardmore Poultry, Inc	88-0714	01/20/88
(20) S. & W. Berisford PLC, High Voltage Engineering Corporation, High Voltage Engineering Corporation	88-0718	01/20/88
(21) Kenneth W. Ford, James M. Goldsmith, DIA Holdings International, BV and DIA Holdings	88-0605	01/22/88
(22) Borden, Inc., Robert M. Harris and Cecily W. Harris, Nutrition Industries Corporation	88-0638	01/22/88
(23) Vodavi Technology Corporation, Contel Corporation, Contel Business Systems, Inc	88-0660	01/22/88
(24) Cyprus Minerals Company, Newmont Mining Corporation, Foote Mineral Company	88-0680	01/22/88
(25) Ibeotec Communications, Inc., Contel Corporation, Contel Business Systems, Inc	88-0684	01/22/88
(26) Exxon Corporation, Leede Exploration, Leede Exploration	88-0690	01/22/88
(27) Hanson Trust plc, Marriott Corporation, Saga Restaurants, Inc	88-0717	01/22/88
(28) Georgia Gulf Corporation, H.H Robertson Company, Freeman Chemical Corporation	88-0722	01/22/88
(29) Martin E. Zimmerman., Scientific Leasing Inc., Scientific Leasing Inc	88-0727	01/22/88
(30) American Express Company, The Philp Co. Trust, Chief Auto Parts Division of Southland Corporation	88-0733	01/22/88
(31) Daniel J. Sullivan, Compact Video, Inc., Image Transform, Inc	88-0735	01/22/88
(32) Lear Holdings Incorporation, Morgan Stanley Group Inc., Burlington Industries, Inc	88-0748	01/22/88
(33) Merrill Lynch & Co., Inc., Mark IV Industries, Inc., Code-A-Phone Corporation	88-0752	01/22/88
(34) Commonwealth Savings Association, Pacific First Financial Corporation, Pacific First Federal Savings Bank	88-0760	01/22/88
(35) Martin E. Zimmerman, Scientific Leasing Inc., Scientific Leasing Inc	88-0766	01/22/88
(36) CoreStates Financial Corp., BankAmerica Corporation, BancAmerica Commercial Corporation	88-0768	01/22/88
(37) Peter W. May, CJI Industries, Inc., CJI Industries, Inc	88-0653	01/23/88
(38) Lutheran General Health Care System, Quad Cities Health Care Resources, Inc., Quad Cities Health Care Resources, Inc	88-0666	01/25/88
(39) Minorco, Engelhard Corporation, Engelhard Corporation	88-0672	01/25/88
(40) Minorco, Adobe Resources Corporation, Adobe Resources Corporation	88-0673	01/25/88
(41) Minorco, Inspiration Resources Corporation, Inspiration Resources Corporation	88-0674	01/25/88
(42) Minorco, Danville Resources, Inc., Danville Resources, Inc	88-0675	01/25/88
(43) Kenneth R. Thomson, Capital Cities/ABC, Inc., Securities Data Company, Inc	88-0702	01/25/88
(44) Rini Holding Corporation, Rini Holding Corporation, Rini Holding Corporation	88-0738	01/25/88
(45) Fisher Foods, Inc., Fisher Foods, Inc., Fisher Foods, Inc	88-0739	01/25/88
(46) American Seaway Foods, Inc., American Seaway Foods, Inc., American Seaway Foods, Inc	88-0740	01/25/88
(47) Rego Supermarket Group, Rego Supermarket Group, Rego Supermarket Group	88-0741	01/25/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 88-1930 Filed 1-29-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Public Hearing and Request for Comments on the Nature of the Market for High Yield Bonds

AGENCY: General Accounting Office (GAO).

ACTION: Notice of public hearing and request for comments.

SUMMARY: The General Accounting Office (GAO) is seeking comments on the nature of the market for high yield bonds. This request is part of a GAO study, mandated by the Competitive Equality Banking Act of 1987 (Pub. L. 100-86). This Act requires GAO to identify, for a five year period preceding its date of enactment (August 10, 1987), the issuers and purchasers of high yield bonds, the purposes for which such bonds are issued, and how investments in these bonds by federally insured institutions compare to other investments these institutions have made. GAO is also required to provide Congress a summary and analysis of

current laws regulating investment in high yield bonds and a review of the impact of these bonds on corporate debt as it relates to monetary policy.

As provided by the Act, the study is being conducted in coordination and consultation with the Securities and Exchange Commission, the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, the Secretary of the Treasury and the Secretary of Labor. Comments received in writing will be shared with these agencies.

Also as provided by the Act, GAO and these agencies will conduct a joint public hearing. Those interested in the high yield bond market will have an opportunity to discuss their views on the topics included in the supplementary information section of this release. The results of the hearing will be merged with the individual responses to this request for comment to form a body of evidence for consideration in a final GAO report on high yield bonds which is expected to be issued in June 1988.

DATES: Comments must be received by February 19, 1988. The public hearing will be held on March 1, 1988 at 10:00 (e.s.t.) at the Public Meeting Room (Room 1C-30) of the Securities and Exchange Commission in Washington, DC, 450 5th Street NW. Individuals or organizations wishing to present their views at the public hearing should contact the GAO officials listed below by February 12, 1988.

ADDRESS: Please file five copies of your comments with Craig A. Simmons, Senior Associate Director, General Government Division, U.S. General Accounting Office, Room 3858A, 441 G Street NW., Washington, DC 20548. Refer to File No. 233203.

All comments will be available for review Monday-Friday, 8:00 a.m. to 4:45 p.m. (e.s.t.) in Washington, DC at GAO's Law Library, Room 7056; in New York, at GAO's Regional Office, Room 4112, 26 Federal Plaza; and in Los Angeles, at GAO's Regional Office, 350 S. Figueroa St., Suite 1010.

For Hearing Participation and Farther Information Contact: Michael A. Burnett or Frank Philippi, (202) 272-3003, General Government Division, U.S. General Accounting Office, Room 3858A, 441 G St. NW., Washington, DC 20548.

SUPPLEMENTARY INFORMATION: This supplementary information section explains the objectives, scope, and methodology for the GAO study and discusses the topics and questions respondents should address. The discussion assumes a basic familiarity with the high yield bond market. Additional information about the high yield bond market can be found in the references shown in Appendix I.

Until 1977 the high yield bond market consisted primarily of "fallen angels"—bonds of large companies, primarily conglomerates, railroads, and utility companies—whose credit had been downgraded for various reasons. However, beginning around 1977 the high yield bond market changed significantly. Companies with below investment grade ratings, which traditionally obtained their long term capital from private sources, commercial banks, or equity markets, began issuing below investment grade, high interest rate bonds, commonly referred to as "junk bonds", to raise capital.

After growing from about $8.5 billion in 1977 to $29.2 billion [1] in 1983, the high yield bond market evolved further in 1984 as financiers and companies began to use funds raised from issuing high yield bonds to launch both friendly and hostile corporate takeover bids either through tender offers or through leveraged buyouts. Another phase of the market that has developed is the use of high yield bonds to finance either corporate reorganizations or to resist takeover attempts. As a result, many corporations have issued increasing amounts of debt. As of June 1987, total high yield bond issues outstanding were estimated at about $150 billion. This is about 20% of the total corporate straight (non-convertible) debt market, up from 3.5% in 1977.

As high yield bonds became a source of financing for corporate takeovers, especially hostile takeovers, the Congress became concerned about the implications for American business. Since 1985, the Congress has held numerous hearings on the subject of hostile takeovers and the use of high yield bonds as a mechanism to finance them. A number of issues were discussed in these hearings including

1. Concerns about the risks to the Federal Savings and Loan Insurance Corporation (FSLIC) represented by those federally insured savings institutions which invest extensively in high yield bonds;

2. Whether investing in takeover related high yield bonds is an appropriate role for a federally insured home mortgage lending institution;

3. Whether tax policy should be changed to restrict the use of high yield bonds as a tool to finance corporate takeovers; and

4. The effect of increased debt, either as a result of a takeover situation or from using bonds rather than equity as a source of corporate financing, on the long term financial stability and growth prospects of American business.

Several legislative proposals have been introduced in Congress to limit the use of high yield bonds to finance takeovers by imposing a moratorium, using tax code provisions to disallow interest deductions to the issuers, applying credit margin requirements to investors, or prohibiting outright the holding of high yield bonds by federally insured institutions. This legislative focus has been twofold, involving concern over the relationship of high yield bonds to takeover activity as well as concern over the inherent "riskiness" of these bonds as investment vehicles for federally insured institutions. None of these proposals have been enacted.

Objectives, Scope and Methodology of GAO Study

Section 1201 of the Competitive Equality Banking Act specifically requires GAO to include in its study:

—The identity and rating (as determined by Moody's, Standard and Poor's or other nationally recognized bond rating house) of the issuers of these bonds;

—The identity of the major purchasers of these bonds, including but not limited to federally insured depository institutions;

—The percentage of the total amount of high yield, non-investment grade bonds that are issued as a method of financing corporate takeovers;

—The identity of the purchasers, including but not limited to federally insured depository institutions, that invest in high yield, non-investment grade bonds that are issued as a method of financing corporate takeovers;

—The purposes for which high yield, non-investment grade bonds are issued other than for financing corporate takeovers;

—A summary and analysis of the adequacy of current state and federal laws that regulate investment in high yield, non-investment grade bonds by investors, including but not limited to federally insured depository institutions and pension funds; and

—A review of the impact of the issuance of and investment in high yield, non-investment grade bonds upon corporate debt as it relates to federal monetary policy.

[1] Average total outstanding low rated straight (non-convertible) public corporate debt.

The Act further requires that GAO examine all other types of direct investments made by federally insured institutions and the effect these investments have had on federal deposit insurance funds.

The principal tasks of GAO's study are to provide the Congress with accurate data and information on the nature of the high yield, non-investment grade bond market and to assess public policy considerations relating to the market. In addressing these topics, the study will be concerned with the use of these bonds in corporate takeovers, especially hostile takeovers, and with the possible risks to the safety and soundness of federally insured institutions which invest in the bonds.

Topics on Which GAO Is Seeking Comment

GAO is soliciting information which would clarify the Congress' understanding of the high yield bond market and identify current problems, if any, in the high yield bond market. We are interested in receiving any suggested federal regulatory or legislative changes. To guide comments, the questions below are organized around the topics the Act has directed GAO to include in its study. Those commenting are urged to be specific, citing wherever possible quantitative information in support of their positions. Respondents are also encouraged to bring to GAO's attention any matter pertinent to the inquiry that is not specifically addressed in the following sections.

Issuers of High Yield Bonds

GAO has found that much information is available on publicly traded high yield bonds, but little information is available on the role and significance of privately placed high yield bonds.

Questions

1. How large, in terms of dollar volume and number of issues, is the private placement high yield bond market?

2. To what extent in the past five years has the private placement market been affected by the growth of the publicly traded high yield bond market? Is the growth of publicly traded low grade bond offerings mostly a rechanneling of corporate borrowing away from individually negotiated loans toward public securities, as some commentators suggest?

3. To what extent are privately placed bonds used to finance corporate takeovers?

Investors In High Yield Bonds

According to investment bankers, the major investors in high yield bonds are mutual funds, insurance companies, pension funds, and federally insured thrift institutions. Other categories of investors include individuals, foreign investors and corporations. Commercial banks do not invest in high yield bonds because of Federal Deposit Insurance Corporation, Comptroller of Currency and Federal Reserve Board restrictions.

Federally insured and federally chartered thrifts may invest up to 11 percent of their assets in these bonds. Federally insured, state chartered thrifts may invest more than 11 percent of their assets in high yield bonds, depending on individual state laws and regulations. Data maintained by the Bank Board shows that 80% of the $10 billion in high yield bonds held by all thrifts are owned by only 10 institutions. Some of these institutions hold more than 11 percent of their assets in high yield bonds.

At congressional hearings Federal Home Loan Bank Board witnesses have testified as to their concerns about federally insured thrift institution investments in high yield bonds. The Board's concerns fall into two areas: (1) The issue of risk to the FSLIC presented by extensive involvement of thrifts in the junk bond markets, and (2) whether federally insured lenders who are subsidized to provide a commitment to housing finance should be investing in high yield bonds which have been issued to finance corporate takeovers.

Questions

1. How does the riskiness of high yield bonds compare to other investments and activities, such as commercial loans, that thrift institutions may enter into? In evaluating risk, what factors should be considered and are there ways to quantify these risk factors?

2. Two studies indicate that compared to Treasury bonds and investment grade corporate bonds, historically the return of high yield bonds has more than compensated high yield bond holders for additional risks of default (See Appendix I: Studies). What are the analytical strengths and weaknesses of these studies? Given the growth and change in the composition of the high yield bond market in the past several years, are historical risk and return factors necessarily a guide to the future?

3. How adequate are state laws and regulations governing investments by federally insured institutions in high yield bonds? Should state chartered institutions be subject to the same limitation of assets (11 percent) as federally chartered institutions?

4. What is the best way to protect FSLIC from unreasonable risk as a result of thrift investments in high yield bonds? Some suggestions that have been made include restrictions or prohibitions on bond purchases, increased capital requirements, risk-based insurance premiums, additional regulation to require an appropriate credit analysis before purchase, and diversification of bond holdings.

5. From a public policy viewpoint, should federally insured institutions be restricted from purchasing high yield bonds which were issued in connection with the financing of a hostile takeover or a leveraged buyout?

6. Many bonds that are issued to finance takeovers and leveraged buyouts are likely to be repaid in whole or in part from the sale of assets rather than from future earnings. As an investment, are asset backed bonds riskier than bonds whose repayment is based on expected earnings? To what extent, if any, has the stock market turmoil of October 1987 increased the riskiness of bonds issued in connection with takeovers and leveraged buyouts?

7. Some investors actively trade high yield bonds in the secondary market. How large is the secondary market for these bonds? Can this market be maintained in the event of an economic downturn? To what extent was trading (price and volume) in the secondary market affected by the October 1987 stock market decline?

8. Private pension plans, the benefits of which are federally insured, are permitted to invest in high yield bonds. However, there are no requirements that such investments be especially reported to the Department of Labor. Should there be any special reporting requirement for high yield bonds? Is there any indication that pension funds may be investing too heavily in high yield bonds either directly or indirectly through insurance company annuities or mutual funds?

Role of High Yield Bonds in Increased Corporate Leverage

In the past several years significant concern has been expressed in Congressional hearings and elsewhere that the level of debt being assumed by some non-financial corporations is excessive. Citing Federal Reserve Board statistics, some of which indicate that debt to equity ratios have reached historically high levels, some observers warn that in the event of a business downturn or a substantial rise in interest rates, corporations with high debt burdens may not be able to meet their debt obligations and a high level of

defaults may occur. This could pose significant risks for the financial system and the economy as a whole.

The extent to which high yield bonds have contributed to the growth of debt and an increased leveraging of corporations is unclear. Some observers believe that the growth of the high yield bond market, particularly the use of high yield bonds to finance corporate takeovers, corporate financial restructuring and leveraged buyouts, together with associated retirements of equity, has been a significant factor leading to increased leveraging and risk to the economy. Others have discounted the significance of the high yield bond market, pointing out that although this segment of the bond market has grown significantly, it still represents less than 25 percent of total new bond issues. Also, proponents of the high yield bond market question whether there is a leveraging problem at all. They argue that even though the amount of new debt assumed has been large in absolute terms, at market value the ratio of debt to equity has actually declined since the mid-1970's because of the rising equity value of domestic corporations.

Questions

1. The Federal Reserve Board reports the relationship of total debt to total equity of nonfinancial corporations in two ways, as shown by the following table:

DEBT-TO-EQUITY RATIOS FOR NONFINANCIAL CORPORATIONS

End of period	Debt (par) [1]	Debt (market) [2]
	Equity (current) (percent)	Equity (market) (percent)
1962	38.2	42.4
1964	40.4	37.7
1966	42.8	43.4
1968	45.4	35.6
1970	46.4	48.0
1971	45.5	46.7
1972	45.4	45.4
1973	45.1	61.9
1974	40.8	91.1
1975	37.8	72.0
1976	37.0	72.9
1977	37.6	84.0
1978	36.9	87.5
1979	36.7	79.0
1980	35.1	60.4
1981	35.3	70.3
1982	36.6	71.5
1983	37.1	63.6
1984	42.4	75.4
1985	47.3	70.3
1986	53.0	69.4
1987 (2nd quarter, estimated)	55.4	57.1

[1] Debt is valued at par, and equity is balance sheet net worth with tangible assets valued at replacement cost.

[2] The market value of debt is a staff estimate based on par value and rabos of market to par values of NYSE bonds; equity is market value of outstanding shares.

Which of these ratios most appropriately measures the significance of corporate debt? Is there another measure that is more meaningful such as earnings or cash flow coverage of debt services?

2. The publicly traded high yield bond market has grown from less than $3 billion in new issues in 1982 to about $34 billion in 1986. One reason for this growth appears to be a shift in corporate financing from additional stock, private placement bonds or bank loans to publicly traded bonds. What implications, if any, does this change in the source of corporate capital have on monetary policy?

3. It has been alleged that much of the increased corporate leverage is the result of using high yield bonds to finance takeovers, takeover defenses and leveraged buyouts. The outcome is often highly leveraged corporations which must sell assets and restrict spending to meet debt obligations. Should regulatory and tax policy be changed to make the use of high yield bonds in takeovers and leveraged buyouts less attractive?

4. Others allege that the preference for debt over equity financing arises from the double taxation of dividends and the deductibility of interest for tax purposes. What effect will the lower tax rate have on financing decisions? What would be the merits of eliminating double taxation of dividends?

5. How can it be determined if corporate debt to equity ratios are too high or too low? If they are believed to be too high or low, what, if anything, should the Government do about it?

Appendix I

References

Hearings

U.S. Congress, House Committee on Banking, Finance and Urban Affairs, Subcommittee on General Oversight and Investigations. Issues Relating to High-Yield Securities (Junk Bonds), Hearing, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1986 (Serial No. 99–47).

U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance. Debt, Financial Stability, and Economic Growth, Hearing, 99th Congress, 2nd session. Washington, DC, U.S. Government Printing Office, 1986 (Serial No. 99–89).

U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance. Corporate Takeovers (Parts 1 and 2). Hearing, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1986 (Serial Nos. 99–99 and 99–100).

U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs. Hostile Takeovers, Hearing, 100th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1987 (Senate Hearing 100–50).

U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs. Regulating Hostile Takeovers, Hearing, 100th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1987 (Senate Hearing 100–183).

Reports

U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance. The Role of High Yield Bonds (Junk Bonds) in Capital Markets and Corporate Takeovers: Public Policy Implications. A report prepared by the Congressional Research Service, 99th Congress, 1st session. Washington, DC, U.S. Government Printing Office, 1985 (Committee Print 99–W).

U.S. Congress, House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance. Corporate Mergers and High Yield (Junk) Bonds: Recent Market Trends and Regulatory Developments. A report prepared by the Congressional Research Service, 99th Congress, 2nd session. Washington, DC, U.S. Government Printing Office, 1986 (Committee Print 99–00).

Studies

Altman, Edward I. and Scott A. Nammacher. "Investing in Junk Bonds: Inside the High Yield Debt Market." New York: Wiley & Sons, 1986.

Blume, Marshall E. and Donald B. Keim. "Lower-Grade Bonds: Their Risks and Returns." Financial Analysts Journal, July-August 1987, pp. 26–33.

Richard L. Fogel,

Assistant Comptroller General, General Government Programs.

[FR Doc. 88–1928 Filed 1–29–88; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Administration, GSA.

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget to renew expiring report 3090–0071: Certification of Payment to Subcontractors and Suppliers.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ronald Shansby, 202–566–1578.

Annual Reporting Burden: Firms 1,500; responses, 18,000; average time per response, .05 hours; burden hours, 900.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3014, GS Bldg. Washington, DC 20405, or by telephoning 202–535–7974.

Dated: January 25, 1988.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 88–1934 Filed 1–29–88; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1988:

Name: Subcommittee on Graduate Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time:

February 16, 1988, 7:00 p.m.–9:00 p.m.
February 17, 1988, 8:00 a.m.–5:00 p.m.

Place: Hyatt Regency, 2799 Jefferson Davis Highway, Crystal City, Virginia 22202.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply and distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; Federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy and accrediting bodies with respect to medical education programs.

Agenda: Agenda items include: Discussions of issues and recommendations to be included in the Council's first report to the Secretary of DHHS and the Congress, including (1) items for inclusion in GME payments, (2) appropriate sources for financing GME, and (3) financing GME in ambulatory settings.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6328.

* * * * *

Name: Subcommittee on Physician Manpower of The Council on Graduate Medical Education.

Time: February 17, 1988 8:30 a.m.—5:00 p.m.

Place: Hyatt Regency, 5600 Fishers Lane, Crystal City, Virginia 22282.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the outlook for supply, appropriate federal policies and suggestions for voluntary action by hospitals, medical and osteopathic schools and accrediting bodies regarding physician supply, and shortages and excesses.

Agenda: Agenda items include: Discussion of the issues, conclusions, and recommendations to be included in the Council's first report to the Secretary of DHHS and the Congress, including (1) the adequacy of the expected physician supply in the aggregate, (2) the adequacy of the primary care physician supply; (3) issues about the geographic supply of physicians; (4) issues about under represented groups, and (5) recommendations to deal with problems identified in the examination of the above issues.

Anyone requiring information regarding the subject Subcommittee should contact Jerald Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6364.

Name: Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education.

Time: February 17, 1988, 9:00 a.m.–5:00 p.m.

Place: Hyatt Regency, 2799 Jefferson Davis Highway, Crystal City, Virginia 22282.

Open for entire meeting.

Purpose: The Subcommittee reviews and analyzes existing data and information on alien and U.S. foreign medical graduates in training and in practice regarding adequacy of existing data bases, effect of existing policies and procedures regarding distribution, service delivery and international relations.

The Subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy, licensing, certifying, and accrediting bodies with respect to issues relating to foreign medical graduates.

Agenda: Agenda items include: (1) The impact of removal of foreign medical graduates (FMGs) from Hospital-based training; (2) GME for international exchange visitors; (3) evaluation of various mechanisms for FMGs entry into GME; and (4) need for formal recognition of foreign medical schools. Presentations will be made on the availability of alternative sources of care to medically indigent populations

and the examinations taken by medical students prior to entry into GME.

Anyone requiring information regarding the subject Subcommittee should contact Magdalena Mirana, M.S.W., Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–3626.

Name: Council on Graduate Medical Education.

Time: February 18–19, 1988 8:30 a.m.—4:30 p.m.

Place: Hyatt Regency, 2799 Jefferson Davis Highway, Crystal City, Virginia 22262.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: Agenda items include: (1) A review, discussion and tentative assessment regarding all of the conclusions and recommendations (for the Council's first report) developed to date by the Physician Manpower, Foreign Medical School Graduates, and the Graduate Medical Education Programs and Financing Subcommittees; (2) discussion and agreement of the dates through May 1991 for future COGME meetings.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–5796.

Agenda Items are subject to change as priorities dictate.

Date: January 27, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–1939 Filed 1–29–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Health of Biomedical Research Institutions; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hodl the seventh meeting of a series of regional public briefing meetings to be conducted under the auspices of the Advisory Committee to the Director, NIH, on "The Health of Biomedical Research Institutions." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing the broad political context in which the NIH operates, discussing the Federal budget process as it affects the formulation of the NIH budget, demonstrating recent trends in the funding of NIH programs, discussing the broad strategies adopted by NIH to meet emerging needs, and describing new NIH policies and programs designed to achieve program objectives; and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties concerning the impact of the Federal system of sponsored research on the health of biomedical research institutions.

The meeting will be held on Thursday, March 24, 1988, from 9:00 a.m. to 4:00 p.m. at Northwestern University (Chicago Campus), Chicago, Illinois.

Following presentations by the Director, NIH, and his senior staff, a panel comprised of members of the Advisory Committee to the Director, NIH; representatives of NIH national advisory councils; and senior NIH staff will spend the remainder of the day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, Jay Moskowitz, Ph.D., Executive Secretary, Advisory Committee to the Director, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Moskowitz by February 26, 1988; a copy of the full text of these remarks should be submitted for the record at the time of the meeting. Additional information may be obtained by calling Mr. Edward Lynch, Division of Program Analysis, Office of Program Planning and Evaluation, National Institutes of Health, at (301) 496–4418.

Date: January 25, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–1946 Filed 1–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases, Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on February 23, 24 and 25, 1988, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:55 a.m. on February 23, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:55 a.m. on February 23 until adjournment on February 25. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 20, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1945 Filed 1–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases, Microbiology and Infectious Diseases Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 25 and 26, 1988, in Building 31C, Conference Room 7, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 11:30 a.m. on February 25, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 11:30 a.m. on February 25 until adjournment on February 26. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institute of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7465), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infections Diseases Research, National Institutes of Health)

Dated: January 20, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1947 Filed 1–29–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases, Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 2–3, 1988, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 12 noon to 3 p.m. on March 2, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 8:30 a.m. until 12 noon on March 2, and from 3 p.m. on March 2 until adjournment on March 3. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Trasplanatation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 20, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–1948 Filed 1–29–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Concept Review Meeting

Background: The National Toxicology Program (NTP) was established as a DHHS cooperative effort to coordinate and manage the Department's program to develop the scientific information necessary to protect the health of the American public from exposure to hazardous chemicals. The NTP is composed of components of the National Institute for Occupational Safety and Health (NIOSH), the National Center for Toxicological Research (NCTR), and the National Institute of Environmental Health Sciences (NIEHS). The NTP conducts short-term and long-term studies in rodents to determine which chemicals may be potentially hazardous to man. In order to assure the quality of the pathology data, both the technical and diagnostic aspects of the pathology data are reviewed from studies conducted under contract to NTP or studies conducted in-house. On Wednesday, February 10, 1988, the NTP plans a concept review of a project to provide support for pathology quality assurance. The meeting to review the concept will be open to the public so long as discussions are limited to review of the general project purposes, scopes, goals and various optional approaches to obtain the kinds of results that we seek.

Title of Project to be Concept Reviewed: Pathology Support for quality Assurance for the National Toxicology Program.

Period of Award: Five Years.
Funding Mechanism: Contract.

The concept review is to be held on Wednesday, February 10, 1988, at the National Institute of Environmental Health Sciences, South Campus, Building 101, Room B204, Alexander Drive, Research Triangle Park, North Carolina 27709. The meeting will begin at 10:00 a.m. If you have specific questions about the review, please call Dr. Gary A. Boorman (919) 541-3780, Project Officer for the current contract, or write to Dr. Boorman at the above address. For more general information contact Dr. Larry G. Hart, (919) 541-3971.

Dated: January 27, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88-1988 Filed 1-29-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DES 88-6]

Compliance With the National Environmental Policy Act; Notice Of Availability of Draft Supplemental Legislative Environmental Impact Statement on Proposed Changes to the Coastal Barrier Resources System

AGENCY: Department of the Interior.

ACTION: Notice of availability of a draft supplemental legislative environmental impact statement on proposed changes to the Coastal Barrier Resources System.

DATE: Comments will be accepted until March 17, 1988.

ADDRESS: Comments should be sent to: Coastal Barriers Study Group, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Ms. Audrey Dixon, Coastal Barriers Study Group, National Park Service (473), P.O. Box 37127, Washington, DC 20023-7127.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10 of the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3509), the Secretary of the Interior is required to provide recommendations to the Congress for conservation of the fish, wildlife, and other natural resources of the Coastal Barrier Resources System (CBRS). He is also required to provide recommendations to the Congress for additions to or deletions from the CBRS, and for modifications to the boundaries of CBRS.

The Secretary of the Interior established a Coastal Barrier Resources Study Group in 1983 and instructed it to develop an inventory of undeveloped coastal barriers on all coastlines of the United States and to develop management alternatives that foster the conservation of the CBRS' natural resources. The maps of the inventory were made available on Monday, March 4, 1985 (**Federal Register** Vol. 50, No. 42, Part II, pp. 8689-8702), and the draft conservation alternatives on Wednesday, May 1, 1985 (**Federal Register** Vol. 50, No. 84, p. 18576). The public comment period closed on September 30, 1985. A Draft Report and Proposed Recommendations on the Coastal Barrier Resources System was made available for public comment on March 25, 1985 **Federal Register** Vol. 52, No. 57, p. 9618), the comment period closed on June 23, 1987.

This Draft Supplemental Legislative Environmental Impact Statement (LEIS) is prepared as a supplement to the Final Environmental Statement (FES) on Undeveloped Coastal Barriers published by the Department of the Interior in 1983 to satisfy the requirements of the National Environmental Policy Act. It assesses the environmental implications of the Draft Report and Proposed Recommendations to Congress on the Coastal Barrier Resources System (CBRS). This document is intended to assist the Secretary of the Interior in making final recommendations to Congress pursuant to section 10 of the Coastal Barrier Resources Act of 1982.

Because copies of the 1983 FERS are in limited supply, you may be referred to a U.S. Fish and Wildlife Service regional office or other public repository in order to review it. Copies of the Executive Summary of the Draft Report and Proposed Recommendations as well as State atlases of the proposed changes to the CBRS can also be obtained from the office listed above.

Your views opinions on this document are solicited to assist the Secretary of the Interior in making his final decisions. Comments on either the LEIS or the Draft Report and Proposed Recommendations should be addressed to the office listed above. The Secretary will make final recommendations after reviewing the administrative record, but no changes will occur in the Coastal Barrier Resources System unless Congress takes further action.

Those individuals who commented on the Coastal Barrier Resources System Draft Report to Congress during the March 25-June 23, 1987, comment period need *not* resubmit their comments.

Dated: December 3, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 88-1984 Filed 1-29-88; 8:45 am]

BILLING CODE 4310-75-M

Bureau of Land Management

[ES-970-08-4121-14-2410; ES 36585]

Competitive Coal Lease Offering by Sealed Bid, Clay County, KY

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that certain coal resources in the Chap Branch Tract, Clay County, Kentucky, are being offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*) and the Mineral Leasing Act for Acquired Lands of 1947. The Chap Branch Tract is being offered for lease as the result of an application filed by Leeco, Inc. for an emergency coal lease application ES 36585. The applicant has satisfactorily demonstrated under the emergency coal leasing regulation 43 CFR 3425.1-4, that if these coal deposits are not leased, they will be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years.

DATE: The lease sale will be held at 10:00 a.m. Tuesday, March 8, 1988. Sealed bids must be submitted on or before 4:00 p.m., Monday, March 7, 1988.

ADDRESS: The lease sale will be held in the Public Room of the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Sealed bids should be sent by certified mail-return receipt or hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Javes, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274-0158.

SUPPLEMENTARY INFORMATION: The Chap Branch Tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid to be considered for this tract is $100 per acre, or fraction thereof. Any bid less than $100 per acre, or fraction thereof, will not be considered and shall be returned. The minimum bid is not intended to represent fair market value. The fair market value of this tract will be determined by the authorized officer.

The lands included in Emergency Coal Lease Application ES 36585 are described as follows:

Chap Branch Tract

Clay County, Kentucky
Part of Tracts R-625 and R-744 (Metes and Bounds)
Containing approximately 230.94 acres

The Chap Branch Tract represents the continuation of an existing underground mining operation. The primary group and bed of interest is the Manchester (Lily). This tract is to be mined from the existing underground mine.

The proximate analysis of the Chap Branch Tract is:

1. Moisture (percent)	2.91
2. Ash (percent)	5.67
3. Sulfur (percent)	1.29
4. BTU/lb (million tons)	13,939
5. Approx. recoverable coal reserves (million tons)	1.54
6. High-volatile A bituminous in rank	

Rental and Royalty—A lease issued as the result of this offering will provide for of an annual rental payment of $3.00 per acre or fraction thereof and a royalty payable to the United States at a rate of 8.0 percent of the value of the coal produced by underground mining methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 88-2030 Filed 1-29-88; 8:45 am]

BILLING CODE 4310-GJ-M

[OR-050-4410-10;GP8-054]

Oregon; Prineville District Advisory Council Meeting

January 22, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on April 7, 1988. The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) Discussion of public comments on the Draft Brothers/LaPine Resource Management Plan and resulting plan modifications; (2) implementation of the BLM Organization Plan; (3) progress on the Prineville District land exchange program; (4) progress on the development of the John Day and Deschutes River Management Plans; (5) upcoming resource management plan amendment for the BLM managed lands in Grant County.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the District Manager at the above address prior to April 1, 1988.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

James L. Hancock,

District Manager, Prineville District office.

[FR Doc. 88-2029 Filed 1-29-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-08-4220-10; W-96702]

Termination of Proposed Withdrawal and Opening of Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 350 acres of land requested by the Department of Energy. This action will open 350 acres of land to surface entry and mining location. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: March 2, 1988.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, (307) 772-2072.

SUPPLEMENTARY INFORMATION: On September 4, 1985, a notice of proposed withdrawal and reservation of land for the Department of Energy was published in the **Federal Register** in Vol. 50, No. 171, Page No. 35876, FR Doc. 85-21007. The purpose of the application was for a disposal site for radioactive wastes. The land is no longer required for this purpose.

1. The segregative effect is hereby terminated as to the following described land:

Sixth Principal Meridian

T. 35 N., R. 94 W.,
Sec. 31, S½N½, S½N½NE¼, E½SE¼ NW¼, SE¼NE¼NW¼, E½E½SW¼, SE¼.

2. At 10 a.m. on March 2, 1988, the land described in paragraph 1, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on March 2, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on March 2, 1988, the land described in paragraph 1, will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this notice under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

John A. Naylor,

Chief, Branch of Land Resources.

January 14, 1988.

[FR Doc. 88-2027 Filed 1-29-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-010-4212-20-RGRP]

Realty Action; Disposal of Public Lands in the Valencia II and III Disposal Blocks; New Mexico

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action—Valencia II and III Disposal Blocks.

SUMMARY: The following public lands have been examined and found suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53 U.S.C. 178), the Recreation and Public Purposes Act (45 U.S.C. 869 et. seq.), and under sales authority contained in section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976). The lands will not be offered for sale until 60 days after the date of this notice.

New Mexico Principal Meridian

T. 7N., R. 2E., NMPM.
Sec. 26 (portions thereof)
Sec. 35 (portions thereof)
Sec. 34 (portions thereof)
Comprising approximately 200 acres.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in decending order of priority.

BEST COPY AVAILABLE

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualifies under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who have occupied the parcels before June 11, 1979 (the date land use plans were approved for the area) but who do not qualify under one of the Color-of-Title Acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the Recreation and Public Purposes Act.

4. *Competitive Sale.* All remaining tracts will be sold competitively if they are not needed for public purposes and if they were not occupied as of June 11, 1979 (the date land use plans were approved for the area).

A location map and information pertaining to this disposal block are available for review at the Rio Puerco Resource Area Office, 435 Montano Rd, NE, Albuquerque, New Mexico 87107, or telephone 505–761–4504. For a period of 45 days from the date of this Notice, interested parties may submit written comments to the Rio Puerco Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

For further information contact Rick Hanks, Area Manager at (505) 761–4504 or FTS 474–4504.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 88–1936 Filed 1–29–88; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–084520–1]

Filing of Plat of Survey; New Mexico

January 22, 1988.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

A survey representing the survey of lots in sections 30 and 31, Township 2 South, Range 1 East, New Mexico Principal Meridian, New Mexico, executed under Group 768, New Mexico, filed January 22, 1988.

A survey representing the dependent resurvey of portions of the north boundary of the Bosque del Apache Grant, the north boundary, the subdivisional lines, certain small holding claim boundaries, and the adjusted record meanders of portions of the Rio Grande, the subdivision of sections 3, 6, 10, and 15, and the survey of the new meanders and accreted lands in sections 4, 5, 9, and 16, Township 5 South, Range 1 East, New Mexico Principal Meridian, New Mexico, executed under Group 768, New Mexico, filed January 22, 1988.

These surveys were requested by the Area Manager, Socorro, New Mexico.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88–1935 Filed 1–29–88; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–724530

Applicant: Murphy, John, Weston, MA.

The applicant requests a permit to purchase in interstate commerce one pair on nene geese (*Branta sandvicensis*) from Mr. Dillon S. Ripley for the purpose of enhancement of the propagation of the species.

PRT–724508

Applicant: Los Angeles Zoo, Los Angeles, CA.

The applicant requests a permit to purchase in interstate commerce 50% ownership of a pair (male and female) of pudu (*Pudu pudu*) from International Animal Exchange, Ferndale, MI, for the purpose of enhancement of the propagation of the species.

PRT–724506

Applicant: Doug Larson, Chisholm, MN.

The applicant requests a permit to purchase in interstate commerce either a male and female, or twelve eggs, of masked bobwhite quail (*Colinus virginianus ridgwayi*) from the 7 Oaks Game Farm, Wilmington, NC, for the purpose of enhancement of the propagation of the species.

PRT–724390

Applicant: Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to export one male ocelot (*Felis pardalis*), to the Japan Feline Research Institute, for the purpose of enhancement of propagation and for exhibition.

PRT–719320

Applicant: Delta Primate Research Center, Covington, LA.

The applicant requests a permit to collect (take) blood, serum and skin samples from 45 white-collared mangabeys (*Cercocebus torquatus*) for leprosy research. Presently, 32 of these animals are inoculated with leprosy (*Mycobacterium leprae*). The applicant would like to inoculate the remaining 13 animals with leprosy.

PRT–724306

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant request a permit to import one male and two female captive born Cuvier's gazelles (*Gazolla cuvieri*) from Munchener Tierpark Hellabrun, Munich, Federal Republic of Germany for the purpose of increasing the reproductive potential of their breeding group.

PRT–724304

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and one female captive born silvery gibbon (Hylobates moloch) for the purpose of establishing an additional breeding pair for the North American captive population.

PRT–679956

Applicant: William and Barbara Woodcock, Ruskin, FL.

The applicant requests a permit to re-export and re-import one male and one female Asian elephant (*Elephas maximus*) for the purpose of educating the public about the conservation needs of the species and for exhibition.

PRT–724540

Applicant: Archie Carr Center for Sea Turtle Research, Gainesville, FL.

The applicant requests a permit to import tissue samples of the following sea turtle species for studies on nutrition, demography, and growth rates: green sea turtle (*Chelonia mydas*), Pacific green sea turtle (*C.m. agassiszi*), loggerhead sea turtle (*Caretta caretta*), hawksbill (=*carey*) sea turtle (*Eretmochelys imbricata*), Olive (*Pacific*) Ridley sea turtle (*Lepidochelys olivacea*), Kemp's (*Atlantic*) Ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). Samples will be collected throughout the turtles' ranges and the live turtles will be released at the site of capture. No animals will be held in captivity.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: January 22, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–1984 Filed 1–29–88; 8:45 am]

BILLING CODE 4310–AM–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340; with coies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Outer Continental Shelf Minerals, General (30 CFR Part 256).

Abstract: Respondents submit information necessary for the Minerals Management Service to determine which tracts will be leased, to identify areas for environmental study and further consideration for leasing, and to determine if the applicant or bidder for an Outer Continental Shelf (OCS) lease is qualified to hold such a lease.

Bureau Form Numbers: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees, potential bidders, and the public.

Annual Responses: 2,693.

Annual Burden Hours: 12,819.

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6213.

Date: December 31, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–1938 Filed 1–29–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Tuesday, February 23, 1988, at the park headquarters, located at 2202 Roosevelt, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95–629, Title II, November 10, 1978. The purpose of the Commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed include:

Mission Concepcion development design (parking lot and contact station)
Recognition of reappointments to the Commission
Park boundary adjustment
Engineering design of Phase II of Mission Road
Operations Update
County Report
Los Compadres Report
Archdiocese Report
Open Discussion

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 2202 Roosevelt Avenue, San Antonio, Texas 78210 (512) 229–5701.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Date: January 22, 1988.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 88–2000 Filed 1–29–88; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87–39]

Kurt H. Rotersmund, D.O.; Revocation of Registration

On April 3, 1987, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Kurt H. Rotersmund, D.O., Southwest Medical Clinic, 4123 Montgomery Blvd. NE., Albuquerque, New Mexico 87109 (Respondent) The Order to Show Cause sought to revoke Respondent's DEA Certificate of Registration AR9266556, and to deny any pending applications for renewal of that registration. The grounds for the issuance of the Order to Show Cause and Immediate Suspension are that Respondent's continued registration is inconsistent with the public interest, and would constitute an imminent danger to the public health and safety during the pendency of administrative proceedings. The Administrator made three preliminary findings supporting the immediate suspension of Respondent's registration. They were that: (1) Respondent sold prescriptions for Dilaudid and Preludin, Schedule II controlled substances, to individuals for no legitimate medical purpose and outside the course of professional practice; (2) Respondent was arrested by officers of the New Mexico State Police on February 17, 1987, and charged with trafficking in Dilaudid and Preludin, and continued to write prescriptions for Dilaudid and Preludin to the same individuals in March 1987; and (3) Respondent wrote in excess of 1,000 prescriptions for Schedule II controlled substances, primarily

Dilaudid and Preludin, from August 1986 through March 1987.

Respondent, through counsel, requested a hearing in a letter dated April 22, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in Albuquerque, New Mexico on June 2, 1987. Judge Young issued his opinion and recommended decision on November 6, 1987.

The Administrative Law Judge found that a review of selected pharmacies in the Albuquerque, New Mexico area for the period August 1986 through April 1987, disclosed 1266 prescriptions written by Respondent. All these prescriptions were for controlled substances. Of these prescriptions, 841 were for Preludin 75 mg., totalling 48,585 dosage units; and 425 were for Dilaudid 4mg. tablets, totalling 24,869 dosage units. During this time, DEA Investigators received information from a confidential informant that indicated that he/she had obtained prescriptions for Dilaudid and Preludin from Respondent, and had paid $300 for the Dilaudid prescription, and $75 for the Preludin prescription.

On January 23, 1987, an Agent from the New Mexico State Police, using the undercover name of Annie Williams, visited Respondent's office. The Agent told Respondent she needed some "D's." Respondent gave her a prescription for Dilaudid after asking what name she wanted on the prescription. Respondent also provided the undercover Agent with a form to give the pharmacist indicating she was being treated for pain. The Agent then requested a prescription for "Lu's." Respondent prescribed Preludin for the Agent. He told the Agent to tell the pharmacist she had narcolepsy since she did not have a weight problem. The Respondent did not examine the Agent, ask the Agent any medical questions, or keep any medical record. He charged the Agent $60 for the Preludin prescription and $300 for the Dilaudid prescription.

On February 17, 1987, Respondent was arrested at his office by the New Mexico State Police. At the time of his arrest, Respondent's black bag contained a Colt 45 automatic, full ammunition clips, a stethoscope, a glove and two nonsurgical knives. Respondent indicated that the gun was to protect himself from people who could not get their prescriptions filled. Following Respondent's arrest, the New Mexico State police received information that Respondent continued to write illegal prescriptions for Dilaudid and Preludin. On March 12, 1987, a confidential informant, monitored by the New Mexico State Police, went to Respondent's office and requested a prescription for a fictitious brother-in-law, Fred Hill. The informant left with a prescription for Dilaudid in the name of Fred Hill for which he paid $300. Dilaudid and Preludin are Schedule II controlled substances which are available on the street in Albuquerque, New Mexico for $40 to $50 a tablet for Dilaudid and $5 to $10 a tablet for Preludin.

Respondent was present at the hearing, but did not testify. He presented no evidence and no witnesses. There is no evidence in the record to contradict the evidence presented by the Government.

The Administrative Law Judge concluded that the preponderance of the evidence estabished that Respondent was not in compliance with applicable State and Federal laws relating to controlled substances, and that continued registration of Respondent was inconsistent with the public interest. The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the revocation of Respondent's DEA Certificate of Registration, and that such registration is inconsistent with the public interest. Respondent's activity was not the practice of medicine, but merely the trafficking of significantly abused controlled substances for profit.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AR9286556, previously issued to Kurt H. Rotermund, D.O., be, and it hereby is, revoked. Any pending applications for registration submitted by Respondent are hereby denied. This order is effective March 2, 1988.

Dated: January 25, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-1937 Filed 1-29-88; 8:45 am]

BILLING CODE 4410-09-M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Public Meeting; Texas

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting at 1:30 p.m. Wednesday, February 10, 1988, in the conference room of the SBA Houston District Office, located at 2525 Murworth, Suite 112, Houston, Texas 77054, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660-4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 25, 1988.

[FR Doc. 88-2025 Filed 1-29-88; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0403]

Filing of an Application for Transfer of Ownership and Control; EAB Venture Corp.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601) for the transfer of ownership and control of EAB Venture Corp. (the Licensee), 10 Hanover Square, New York, New York 10015, a Federal Licensee under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. 661 et seq.) The proposed transfer of control of EAB Venture Corp., which was licensed August 18, 1980, is subject to the prior written approval of SBA.

At the present time the Licensee has 3,000 shares of voting common stock issued and outstanding. It is proposed that European American Bank will exchange its 3,000 shares of the voting common stock for certain shares in one class of non-voting preferred stock of the Licensee. In addition, the Licensee intends to issue shares of non-voting Junior Preferred Stock and voting Common Stock to persons other than European American Bank.

The proposed officers, directors and shareholders owning 10 or more percent of the voting securities of the Licensee will be as follows:

Name	Title or relationship	Percentage of shares owned
Mark R. Littell, 65 Norwood Avenue, Upper Montclair, NJ 07043.	President, Director.	37.84
Francis J. McBrien, 175 Old Farm Road, Levittown, NY 11756.	Director	
Robert E. LaBlanc, 323 Highland Avenue, Ridgewood, NJ 07450.	Director	5.92
Dr. Alfred Saffer, 160 East 65th Street, #26C, New York, NY 10021.	Director	2.96
Hazel Matthews-Forte, 92-31 57th Avenue, s1N, Elmhurst, NY 11373.	Controller, Secretary.	
Sunwestern Holding Company, 3 Forrest Plaza, Suite 1300, 12221 Merit Drive, Dallas, Texas 75251.	Shareholder	29.6

It is proposed that upon the change of control the name of the Licensee will be changed to Norwood Venture Corp.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the New York, New York area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 26, 1988.

[FR Doc. 88-2024 Filed 1-29-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5378]

San Joaquin Business Services Group, Inc.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended 15 U.S.C. 661 *et seq.*), has been filed by San Joaquin Business Services Group, Inc. (San Joaquin), with the Small Business Administration, (SBA), pursuant to 13 CFR 107.102 (1987).

The officers, directors, and stockholders of San Joaquin are as follows:

Name and address	Title	Percentage ownership of corporation
William F. Stewart, Ph.D, 1011 E. Ashlan, No. 106, Fresno, California 93704.	Chairman and Director	
Joe Williams, 8683 North Colfax, Fresno, California 93710.	President and Director	
Harold F. Brown, 237 Fairgrounds Dr., Sacramento, California 95817.	Investment Advisor/ Manager and Director	
Richard L. Giddens, 1233 East Alhambra, Fresno, California 93726.	Treasurer	
Robert M. Perkins, 4869 East Clinton, Fresno, California 93703.	Secretary and Director	
Michael A. Carpenter, 7229 North Dewey, Fresno, California 93711.	Director	
Gail G. Griego, 2920 East Huntington Blvd, Fresno, California 93721.	....do	
Gene M. Geish, 2170 Santa Ana Clovis, California 93621.	....do	
Thomas L. Hunt, 5139 Horseshore Bend, Clovis, California 93612.	....do	
Roger Palomino, 205 East Clinton, Fresno, California 93703.	....do	
C. Peter Wilson, 4885 N. Becker Ave., No. 107, Fresno, California 93726.	....do	
Fresno County Economic Opportunities Commission, 2100 East Tulare Street, Fresno, California 93721.	Shareholder	100

San Joaquin, a California corporation, with its principal place of business located at 2310 Tulare Street, Suite 140, Fresno, California 93721, will begin operations with $1,000,000 of private capital derived from the sale of common stock, to Fresno County Economic Opportunities Commission (FCEOC). Funds from FCEOC were derived from its home energy program under contract with Pacific Gas and Electric Company.

San Joaquin will conduct its activities principally in the State of California.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under this management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A Copy of this notice shall be published in a newspaper of general circulation in Fresno, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 26, 1988.

[FR Doc. 88-2026 Filed 1-29-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1047]

Privacy Act of 1974; New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, the "Communications Training Records, STATE–57," pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(o)) and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on January 5, 1988.

The proposed system will facilitate the functions of the Office of Communications Training Division by providing a data base storage for quick access to biographic training information such as an individual's formal education, technical training, previous assignments, and related information which is requisite in making a valid training decision.

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520.

The new system, the "Communications Training Records, STATE–57," will read as set forth below.

For the Secretary of State.

Dated: January 5, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

STATE–57

SYSTEM NAME:

Communications Personnel Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Communications, Resource Management Training Division, 2201 C Street NW., Washington, DC 20520; and Warrenton Training Center, Bear Wallow Road, Warrenton, Virginia 22186.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Foreign Service professional communications personnel, Foreign Service officer and secretary back-up communications personnel, and Civil Service communications personnel employed by the Department of State.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security account number, grade, date and place of birth, current and previous assignments, Continuing Education Units (CEU'S) awarded, previous experience and educational backgrounds, and technical training provided by the Office of Communications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Service Act of 1980, as amended, (22 U.S.C. 3901), and the Civil Service Reform Act of 1978 (5 U.S.C. 1101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office of Communications will use this record system in determining current and future training requirements of those individuals who are professional communications personnel and who have been tasked to perform additional back-up communications duties at Foreign Service posts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, computer media.

RETRIEVABILITY:

By individual name, social security account number, assignment/posts and types of training.

SAFEGUARDS:

All employees of the Department of State have undergone a background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

Biographic training data may be maintained in the system for as long as the individual is employed by the Department of State. More specific information regarding retention and disposal may be obtained by writing to the Director, Foreign Affairs Information Management Center, Room 1239, Department of State, 22201 C Street NW., Washington, DC 20520.

SYSTEM MANAGER AND ADDRESS:

Chief of Training Division, Warrenton Training Center, Box 3050, B–47, Warrenton, Virginia 22186.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Communications Personnel Training Records might contain records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520. The individual must specify that he/she wishes the records of the Communications Personnel Training Records to be checked. At a minimum, the individual must include: Date and place of birth; current mailing address and zip code; signature.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

The individual employee and the Department's central personnel database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88–1985 Filed 1–29–88; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending January 22, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45401

Parties: Members of International Air Transport Association

Date Filed: January 20, 1988

Subject: TC 2–3 Passenger Fares

Proposed Effective Date: April 1, 1988

Docket No. 45402

Parties: Members of International Air Transport Association

Date Filed: January 20, 1988

Subject: Santiago-Taheti Fares

Proposed Effective Date: April 1, 1988.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–1985 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 22, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45397

Date Filed: January 19, 1988

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 16, 1988

Description: Application of Wings West Airlines, Inc., d/b/a American Eagle, pursuant to section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity for Scheduled and Charter Interstate and Overseas air transportation of persons, property and mail.

Docket No. 45404

Date Filed: January 22, 1988

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 19, 1988

Description: Application of Aerovias, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in foreign air transportation of property and mail as follows: Between Guatemala City, on the one hand and Miami, Florida, on the one hand, via an intermediate point or points.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88–1986 Filed 1–29–88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program; Cleveland-Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Cleveland, Department of Port Control under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 3, 1984, the FAA determined that the noise exposure maps submitted by the City of Cleveland, Department of Port Control, under Part 150 were in compliance with applicable requirements. On August 18, 1987, the Administrator approved the Cleveland Hopkins International Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Cleveland-Hopkins International Airport noise compatibility program is August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Cleveland-Hopkins International Airport, effective August 18, 1987.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the ACT") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the

program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The City of Cleveland, Department of Port Control submitted to the FAA on November 17 and 30, 1983, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September, 1981, through June 1985. The Cleveland-Hopkins International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on July 3, 1984. Notice of this determination was published in the **Federal Register** on September 19, 1984.

The Cleveland-Hopkins International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 20, 1987 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained seven (7) proposed actions for noise mitigation, on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 18, 1987.

Outright approval was granted for all of the specific program elements. Operational measures approved include equitable fan-out procedure, 095 degree departure corridor and noise abatement departures. Approved land use measures include land acquisition, soundproofing/easement program, airport zoning overlay district, and complete installation of noise monitoring system.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 18, 1987.

The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Cleveland, Department of Port Control.

Issued in Des Plaines, Illinois, on December 23, 1987.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 87-1963 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Columbus, Department of Public Utilities and Aviation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report Number 96-52 (1980). On July 28, 1987, the FAA determined that the noise exposure maps submitted by the City of Columbus, Department of Public Utilities and Aviation under Part 150 were in compliance with applicable requirements. On September 25, 1987, the Administrator approved the Port Columbus International Airport noise compatibility program. All of the recommendations of the program were approved except one measure, A.3., which relates to specific flight procedures requiring additional information and analysis.

EFFECTIVE DATE: The effective date of the FAA's approval of the Port Columbus International Airport noise compatibility program is September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Port Columbus International Airport, effective September 25, 1987.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the ACT") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The City of Columbus, Public Utilities and Aviation Department submitted to the FAA on March 26, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 3, 1985 through March 26, 1987. The Port Columbus International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on July 28, 1987. Notice of this determination was published in the **Federal Register** on August 10, 1987.

The Port Columbus International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 26, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained nineteen (19) proposed actions for noise mitigation, on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 25, 1987.

Outright approval was granted for eighteen (18) of nineteen (19) specific program elements submitted. One measure, A.3, was not approved at this time, because it relates to specific flight procedures which require additional information and analysis. Program elements approved consist of operational controls, such as establishment of departure tracks to the west, use of standard noise abatement departure profile, restrictions on maintenance run ups and other noise relief procedures. Also, included are land use strategies such as land acquisition, easements, soundproofing, zoning restrictions, and building code requirements. Finally, program management elements are included such as establishing and staffing a noise abatement office to monitor airport noise, document noise complaints, educate the public on airport noise, and update the noise compatibility program.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 25, 1987.

The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Columbus, Department of Public Utilities and Aviation.

Issued in Des Plaines, Illinois, on December 29, 1987.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 88-1964 Filed 1-29-87; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 048CE; Petition Notice PE-88-1]

Petition of the British Aerospace Public Limited Co. for Exemption From Certain Ground Load and Landing Gear Requirements; Correction

SUMMARY: On January 21, 1988, on page 1699, the above named petition for exemption was inadvertently omitted from the document published in **Federal Register**; therefore it is being published below.

Debbie Swank,

Acting Manager, Program Management Staff.

The Administrator,
Federal Aviation Administration
Rules Docket (AGC-204),
800 Independence Avenue,
Washington, DC. 20591

24th November 1987.

Dear Sir: British Aerospace Jetstream Series 3200, *petition for exemption from certain ground load and landing gear requirements of FAR 23.*

In accordance with the requirements of FAR Part 11, Section 11.25(b)(2)(iv), British Aerospace plc, Civil Aircraft Division, Prestwick hereby submit in duplicate a Petition for an exemption from certain ground load and landing gear requirements of Federal Aviation Regulations Part 23.

The Petition respectfully requests that:

(a) the FAA grant an exemption to permit certification of the Jetstream Model 3201 in the Commuter Category of FAR Part 23 with the landing gear and associated structure complying with the design standards of FAR Part 25,

(b) the publication and comment procedures normally applicable to petitions for exemption be found unnecessary in this case,

(c) the 120-day advance filing requirement of Section 11.25(b)(1) of the FARs be waived.

(d) this Petition be granted expeditiously.

Yours faithfully for and on behalf of British Aerospace Public Limited Company, Civil Aircraft Division.

B.J.G. Asbeek Brusse,

Chief Airworthiness Engineer.

cc. Mr. Craig Beard, AWS-1 Washington DC
Mr. John Varoli, AEU-100 FAA Brussels
Mr. Richard F. Yotter, ACT-109 FAA Kansas City
Mr. M. Murden, CAA Redhill
Mr. P. Meiklem, British Embassy Washington DC

British Aerospace Public Limited Company Civil Aircraft Division, Prestwick, Scotland

British Aerospace Jetstream Model 3201; Petition for Exemption From Certain Ground Loads and Landing Gear Requirements of FAR Part 23

Communications with respect to this document should be sent to: British Aerospace Public Limited Company, Civil Aircraft Division, Prestwick Airport, Ayrshire, Scotland KA9 2RW.

For the attention of: B J G Asbeek Brusse, Chief Airworthiness Engineer.

In pursuance of Type Certification of Jetstream Model 3201, for which an application was made on 1st June 1987, British Aerospace, Civil Aircraft Division, Prestwick, hereby petition the Adminstrator of the Federal Aviation Administration for an exemption from certain Ground Loads and Landing Gear requirements of FAR part 23 of Commuter Category Airplanes.

1. Summary of Petition for Exemption

1.1 *Citation.* FAR Part 23, as amended up to and including amendments 23-24, paragraphs 23.471 thru 23.511 and 23.721 thru 23.737.

1.2. *Description.* British Aerospace requests that an exemption be ranged to the Jetstream Model 3201 from the above cited requirements. The exemption is requested on the basis of equivalent safety provided by meeting the Ground Loads & Landing Gear requirements of FAR Part 25 in lieu of FAR Part 23 requirements. The proposed basis has previously been accepted by the Administrator for certification of the Jetstream Model 3101 and is compatible

with the Country of Origins National Code.

2. Rules From Which Relief is Sought

Relief is sought from the following FAR Part 23 rules as effective on 1st June 1987:

Ground Loads

FAR 23.471—General
FAR 23.473—Ground Load Conditions and Assumptions
FAR 23.477—Landing Gear Arrangement
FAR 23.479—Level Landing Conditions;—except subpara. (d)
FAR 23.481—Tail Down Landing Conditions
FAR 23.483—One Wheel Landing Conditions
FAR 23.485—Side Load Conditions
FAR 23.493—Braked Roll Conditions
FAR 23.497—Supplementary Conditions for Tail Wheels
FAR 23.499—Supplementary Conditions for Nose Wheels
FAR 23.505—Supplementary Conditions for Skiplanes
FAR 23.509—Towing Loads
FAR 23.511—Ground Load; Unsymmetrical Loads on Multiple Wheel Units

Landing Gear

FAR 23.721—General
FAR 23.723—Shock Absorption Tests
FAR 23.725—Limit Drop Tests
FAR 23.726—Ground Load Dynamic Tests
FAR 23.727—Reserve Energy Absorption Drop Tests
FAR 23.729—Landing Gear Extension and Retraction System
FAR 23.731—Wheels
FAR 23.733—Tires
FAR 23.735—Brakes
FAR 23.737—Skis

3. Text of Petition

3.1 British Aerospace, Civil Aircraft Division, Prestwick, petition for exemption from certain Ground Loads and Landing Gear requirements of FAR Part 23 for Commuter Category Airplanes to be granted to Jetstream Model 3201.

3.2 In lieu of the FAR Part 3 paragraphs listed in paragraph 2 of this petition, British Aerospace, Civil Aircraft Division, Prestwick, request certification of the airplane meeting:

(1) The Ground Loads and Landing Gear requirements of FAR Part 25 in effect on 1st June 1987, as follows:

Ground Loads

25.471—General
25.473—Ground Load Conditions and Assumptions
25.477—Landing Gear Arrangement
25.481—Tail-down Landing Conditions;—except subpara (b)
25.483—One-wheel Landing Conditions
25.485—Side Load Conditions
25.487—Rebound Landing Conditions
25.489—Ground Handling Conditions
25.491—Takeoff Run
25.493—Braked Roll Conditions;—except subpara (a)
25.495—Turning
25.499—Nose-wheel Yaw
25.503—Pivoting
25.507—Reversed Braking;—except subpara (c)
25.509—Towing Loads
25.511—Ground Loads; Unsymmetrical Loads on Multiple-wheel Units

Land Gear

25.721—General
25.723—Shock Absorption Tests
25.725—Limit Drop Tests
25.727—Reserve Energy Absorption Drop Tests
25.729—Retracting Mechanism
25.731—Wheels
25.733—Tires
25.735—Brakes;—except subparas (f) & (g).

FAR Part 25 paragraphs incorporated by reference and not appearing in the preceding list are replaced by the equivalent FAR Part 23 paragraphs

(2) The following requirements of FAR Part 23 as amended through amendments 23–24 for which no equivalent FAR Part 25 paragraphs exist: FAR 23.479 (d), FAR 23.507—Jacking Loads.

3.3 The requirements relating to Tail Wheels and Skis have been omitted from the proposed certification requirements because they are not applicable to Jetstream Model 3201.

3.4 British Aerospace, Civil Aircraft Division, Prestwick, request this exemption on the basis of equivalent safety to the requirements for Ground Loads and Landing Gear of FAR Part 23 Amendments 23–34.

4. Interest of the Petitioner

4.1 British Aerospace have suffered significant delays and additional costs in their plans for further weight and power growth of the successful Jetstream commuter airliner, resulting from the long delay of the publication of the FAR Part 23 Commuter Category rules, following expiration of the SFAR 41 rules for new certifications. In some instances, orders have been lost.

4.2 British Aerospace are now committed to certification and customer delivery of the Jetstream Model 3201 by mid 1988 and have initiated large scale manufacture. Program costs and delivery schedules can be maintained only if the established philosophy of appropriate FAR Part 25 substitutions for similar FAR Part 23 requirements is extended to Jetstream Model 3201.

4.3 British Aerospace are therefore concerned that further delays, costs and loss of revenue may be incurred as a result of the need to resubmit and reinvestigate all Exemptions and findings of equivalent safety granted in earlier certification, as first mentioned in discussions with the FAA at Kansas City in late April 1987 and more recently at a Type Familiarisation Meeting at Prestwick in June 1987. These discussions were arranged as a result of the British Aerospace application for an Amended Type Certificate submitted in February 1987, later amended by application for a new Type Certificate submitted on 1st June 1987.

4.4 British Aerospace would incur additional costs and significant delays in revalidating the landing gears, the inner wing structure and centre fuselage structure in order to comply with the relevant requirements of FAR Part 23 as amended through Amendment 23–34.

This situation appears to be considerably at variance with the statements on Economic Impact contained in the Supplementary Information of Final Rules published in **Federal Register** Vol 52, No. 10, Thursday January 15, 1987 which is quoted below.

"This final rule provides for the certification of a new category airplane, the commuter category. To accomplish this end, there are approximately 82 specific changes to the FAR. With four exceptions, all changes are similar to requirements previously applied to propeller-driven airplane of a size approximately that of the commuter category. There are no additional costs associated with these amendments, since they do not amend the requirements applicable to any existing airplane category, but rather, provide an option for manufacturers to certificate propeller-driven airplanes of the size to requirements other than those applicable to transport category airplanes".

British Aerospace view that this statement should apply equally to alternative rules which have previously been accepted as providing equivalent safety.

5. Background

5.1 Jetstream Model 3201 is a derivative of Model 3101 which is itself a derivative of earlier Jetstream variants. Models 3101, Series 200 and HP 137 Mk.1 are type certificated (ref TC A21EU), certification being granted in accordance with US/UK bilateral agreements. The FAA type certifications rely on various appropriate FAA equivalent safety findings between BCAR Section D, FAR Part 23 and certain ground load and landing gear requirements of FAR Part 25.

5.2 Models HP 137 Jetstream Mk.1 and Series 200:

5.2.1 In the context of the type certification of the Model HP 137 Jetstream Mk.1 airplane, the UK Air Registration Board (now Civil Aviation Authority) in their letter dated 18th May, 1966 to the Chief, Aircraft Certification Staff, FAA—Brussels, pointed out that, although the subject airplane was intended intitially to be certificated at 12,000 lbs all-up-weight, a planned weight growth was envisaged which would take the airplane well beyond the 12,500 lbs limit of FAR Part 23. The designer was obliged therefore to pay regard to the requirements of FAR Part 25 as well as FAR Part 23 at the outset.

5.2.2 Consequently, the ARB asked if the Chief, Aircraft Certification Staff, could confirm acceptance of British Civil Airworthiness Requirements Section D plus the Special Conditions of Validation Arrangement VA Note 1 as providing eqivalent levels of safety for the subject airplane in relation to the relevant requirements of FAR Part 23 dealing with Ground Loads and Landing Gear requirements.

Validation Arrangement VA Note 1, being a "Note on the Special Conditions Applicable to Complete United Kingdom airplanes for United States Type Certification as Transport Aeroplanes", lists the Special Conditions necessary in addition to complying with BCAR Section D, to establish compliance with FAR Part 25.

5.2.3 In his reply, ref M/6/1 of June 1, 1966 the Chief, airplanes Certification Staff, FAA—Brussels, writes:

"We concur that the BCAR ground load cases plus the Special Conditions of VA Note 1 can be used for the subject airplane on the basis of equivalent safety to Federal Aviation Regulations 23, Ground Loads".

5.3 *Jetstream Model 3101:*

5.3.1 The principle that FAR Part 25 provides equivalent safety to FAR Part 23 is clearly evidenced by Type Certificate Data Sheet A21EU wherein it is recorded that, in lieu of FAR Part 23 Ground Loads and Landing Gear requirements, compliance was demonstrated with the following FAR Part 25 paragraphs.

FAR Sections (in effect on 8 May, 1970) 25.471, 25.473, 25.477, 25.479, 25.481, 25.483, 25.485, 25.487, 25.489, 25.491, 25.493, 25.495, 25.499, 25.503, 25.507, 25.509, 25.511, 25.573, 25.723, 25.725, 25.727, 25.729 (in effect on 7 May, 1970), 25.731, 25.733 and 25.735.

5.4 *Service Experience:*

Jetstream Model 3101 has been operating for four years in intensive commuter operations amounting to over half a million flying hours. This experience constitutes the significant majority of the total worldwide experience accumulated for all Jetstream Models. The structural reliability of the landing gear, inner wing and centre fuselage demonstrated during these four years vindicate the suitability of FAR Part 25 in lieu of FAR Part 23.

5.5 *Jetstream Model 3201:*

5.5.1 British Aerospace propose that the certification basis for Jetstream Model 3201 include the Ground Loads and Landing Gear requirements of FAR Part 25 in effect on June 1st, 1987 in lieu of the FAR Part 23 Ground Loads and Landing Gear requirements at Amendment 23–34, with the exception of FAR 23.479(d) and FAR 23.507 which should remain effective.

5.5.2 This proposal is entirely consistent with previous findings made by the FAA in relation to all earlier models of Jetstream type certificated in the United States, i.e.

(i) The acceptance by the FAA that the U.K. National Code, BCAR Section D plus VA Note 1, provided equivalent safety.

(ii) The previous acceptance of certain FAR Part 25 requirements in lieu of FAR Part 23 Ground Loads and Landing Gear requirements for Model 3101.

6. Supporting Statement

6.1 The requirements from which British Aerospace, Civil Aircraft Division, Prestwick are petitioning for exemption are listed at paragraph 1.1 and 2 and concern the Ground Loads and Landing Gear requirements of FAR Part 23 at Amendment 23–34.

6.2 It is submitted that the Ground Loads and Landing Gear requirements of FAR Part 23 are primarily aimed at providing a high degree of ruggedness in small airplanes that are subjected to the often simultaneous rigours of ab initio flight training and operation from unprepared surfaces. Professionally piloted twin engine commuter airliners such as Jetstream are exposed to neither of these conditions.

6.3 Pilot proficiency has a profound influence on the reliability of the landing gear. This was recognized in 1956 when the FAA significantly relaxed the design requirements for large airplanes landing gear contained in CAR 4b, later recodified as FAR Part 25, Amendment 4b–3 (21 FR 989) effective 13 March 1956 introduced full wing lift accountability, rather than the previous 2/3 wing lift, in the design loading conditions for the landing impact. This relaxation permitted considerable weight savings for landing gears whilst retaining adequate structural integrity. Full wing lift accountability remains a feature of FAR Part 25 and its adequacy has been justified by over 30 years satisfactory experience.

6.4 All Jetstream airplanes currently operating in the U.S.A. are flown by professional flight crews from municipal airports with hard prepared surfaces. It is anticipated that Jetstream Model 3201 will be operated in the same manner and consequently the FAR Part 25 Ground Loads and Landing Gear requirements are entirely appropriate.

6.5 The suitability of FAR Part 25 Ground Loads to Jetstream airplane operations has been borne out by operating experience. Jetstream airplanes have been in service, both in the U.S.A. and Europe, for nearly 20 years without any structural defects which can be attributed to a short fall in the Ground Loads requirements to which the airplane is designed. This experience confirms the previous FAA agreements of 1966 and 1982 as to the acceptability of BCAR Section D plus VA Note 1 or FAR Part 25 as providing a level of safety equivalent to that of FAR Part 23.

6.6 It is further submitted that the Ground Loads requirements of FAR Part 25 are a more comprehensive and rational set of rules with greater applicability to the operation of commuter airplanes such as Jetstream than are those of FAR Part 23.

The Ground Loads and Landing Gear requirements of FAR Part 23 and FAR Part 25 are compared in Exhibit A. It will be seen by comparison that FAR Part 25 has a greater scope as one would expect for Transport Category, covering a greater variety of ground maneuvering and landing requirements than FAR Part 23. It is therefore considered that in meeting the requirements of FAR Part 25 as listed in paragraph 3.2, together with FAR 23.479(d) and FAR 23.507 (for which there are no equivalents in the Ground Loads section of FAR Part 25), a level of safety is achieved which is satisfactory and was previously acceptable to the FAA.

7. Public Interest

If strict compliance with the requirements of the Commuter Category of FAR Part 23 was to be imposed on Jetstream Model 3201, certain rational design cases which are invoked by FAR Part 25 would be omitted. This would result in an inferior level of safety

contrary to the interest of the travelling public.

Furthermore, technically unjustifiable and substantial addtional costs and delays in the certification and entry to service of Jetstream Model 3201 would be incurred which are not in the interest of the travelling public.

8. Publication and Comment

8.1 British Aerospace's planned certification and delivery schedule anticipates type certification by mid June 1988, with customer deliveries commencing shortly thereafter. Unnecessary procedural delays to the disposition of this petition will have a serious effect on this timescale and consequently British Aerospace are anxious that this petition be settled at the earliest opportunity.

8.2 As provided in FAR 11.27(j), British Aerospace submit that the publication and comment procedures of FAR 11.27(c) are unnecessary because this petition does not set a precedent, similar FAR Part 25 substitutions having already been accepted by the Administrator.

8.3 British Aerospace request a waiver to the requirement of FAR 11.25(b)(1) that petitions for exemption be submitted at least 120 days before the effective date of the exemption. Denial of this petition would involve considerable structural changes to the airplane which would not be possible in the time interval remaining between the expiry of the 120 day period and the scheduled dates for certification and delivery to customers.

This request for a waiver takes account of the time already elapsed since first application for an Amended Type Certificate for Jetstream Series 3200 in February 1987 and the discussions which have already taken place with FAA at Kansas City in May and at Prestwick in June 1987.

Respectfully submitted, British Aerospace, Civil Aircraft Division, Prestwick.

B J G Asbeek Brusse,

Chief Airworthiness Engineer

24th November 1987.

[FR Doc. 88-1970 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 045CE; Petition Notice PE-88-2]

Petition of the Fairchild Aircraft Corp.; Exemption; Correction

SUMMARY: On January 22, 1988, on page 1880, the above named petition for exemption was inadvertently omitted from the document published in **Federal Register**, therefore it is being published below.

Debbie Swank,

Acting Manager Program Management Staff.

FAIRCHILD AIRCRAFT CORP.,
San Antonio, TX, 78279-0490, December 4, 1987.

Director, Central Region, I,
Federal Aviation Administration, Small Airplane Certification Directorate.

Attn: Regional Counsel, ACE-110, 601 East 12th Street, Kansas City, MO 64106

SUBJECT: PETITION FOR EXEMPTION, SA227-CC

Gentlemen: In accordance with the provision of FAR 11.25, Fairchild Aircraft Corporation seeks an exemption from the provisions of FAR 23.53(c)(6), 23.53(c)(7), and 23.67(e)(1)(i) of amendment 23-34. The exemption would apply to the SA227-CC METRO IIIC airplane, and would recognize the validity of the prior FAA approval per the ICAO Annex 8 provisions of SFAR 41.

Regulations Affected

Relief is sought from the following three paragraphs of FAR 23, amendment 23-34:

- 23.53(c)(6)—This paragraph requires demonstration that a rotation speed five knots less than the scheduled VR will not cause an increase in the single-engine takeoff distance.
- 23.53(c)(7)—Out-of-trim situations and over-rotation on takeoff must not result in a marked increase in the scheduled takeoff distance.
- 23.67(e)(1)(i)—This rule defines the performance requirement for the takeoff, gear extended climb configuration. It requires out-of-ground-effect determination of the minimum gradient of climb between lift-off speed and the speed at which the landing gear is retracted.

Relief Sought

This exemption is needed to rectify a few inconsistencies introduced when SFAR 41 was incorporated by amendment 23-34. There are three items: a fourth item, FAR 23.933(c), applies a jet engine thrust reverser rule to turbopropeller airplanes. Its impact will be somewhere between minor and catastrophic; the matter is being studied and, if necessary, will be the subject of a separate petition. A fifth item, FAR 23.1587(d)(6), is being resolved by equivalent safety proceedings and, therefore, is not included in this petition.

The SA227-CC airplane. The SA227-CC METRO IIIC is a SA227-AC airplane incorporating the changes necessary to comply with amendment 23-7 through 23-33. The SA227-AC METRO III is certified to FAR 23 through amendment 8, special conditions, SFAR 23, SFAR 41, and ICAO Annex 8, as explained by Type Certificate Data Sheet A8SW. Because amendment 23-34 was intended to incorporate the provisions of SFAR 41 and ICAO Annex 8, as defined by SFAR 41, the SA227-AC may logically be considered to be in compliance with amendment 23-34, by definition. The few physical changes necessary to convert a SA227-AC to a SA227-CC are relatively minor and, in no case influence the performance or flying qualities of the airplane. Instead, they involve design details affected by amendments 23-7 through 23-33.

Reasons for exemption. Industry perceived amendment 23-34 as incorporation of SFAR 41, including the referenced portions of Appendix A of FAR 135, and the provisions for compliance with ICAO Annex 8 standards. This understanding was based on the fact that industry had been urging FAA to incorporate SFAR 41, and on FAA's published description of the effort. Consider, for example, the following excerpts from the "Federal Register".

- 15 November 1983, page 52011:

The scope of this NPRM is limited to the proposals which are considered appropriate as airworthiness and noise standards and operating rules for commuter category, propeller-driven, multiengine airplanes. Existing airworthiness standards of Part 23, SFAR No. 41, as supplemented by those airworthiness standards necessary to comply with the requirements developed by the International Civil Aviation Organization (ICAO), and appropriate sections of Appendix A of Part 135, are the foundation for the proposals. The FAA proposes to integrate into Part 23 of the FAR those additional airworthiness standards of SFAR No. 41 and the appropriate sections of Appendix A of Part 135 not previously adopted in Part 23 of the FAR. It is not intended to propose substantive changes to the existing Part 23 airworthiness standards or to the airworthiness standards being integrated into Part 23 . . .

- 15 January 1987, page 1824:

This final rule provides for the certification and operation of a new category airplane, the commuter category. To accomplish this end, there are approximately 82 specific changes to the FAR. With four exceptions, all changes are similar in substance to requirements previously applied to propeller-driven airplanes of a size approximating that of the commuter category. The four exceptions require (1) Compliance with ICAO Annex 8, Part III, (2) consideration of obstacle clearance for takeoffs in Part 135 operations, (3) commuter category airplanes with more than 9 passenger seats to be operated in Part 91 operations with a second pilot, and (4) commuter category airplanes to be defined as large and small for Part 135 operations.

Based on this understanding, it is reasonable to expect the airplane performance of an airplane, certified to ICAO Annex 8 standards in accordance with SFAR 41, to be directly transferable to an equivalent commuter category model. Except for the few rules cited in this petition, that is the case. Therefore, Fairchild seeks an exemption to permit the use of the FAA-approved SA227-AC ICAO Annex 8 performance data for the SA227-CC, without change or additional performance work.

It is our intention to offer the SA227-CC as a low-cost, highly reliable, proven-design commuter category airplane. The design is being completely updated to bring it into full compliance with all of the changes introduced by amendments 23-7 through 23-33. We contend that FAA previously established, in SFAR 41, the rules that were required to provide an appropriate level of safety for this class of airplane, and believe that the public should not be burdened with the additional costs of showing compliance with a few additional rules included in amendment 23-34 in an effort to improve upon FAA's previous good work.

Because the rules in question would not materially enhance safety, the exemption will benefit the public by eliminating the unnecessary cost of additional testing, flight manual development work, and possible physical changes to the airplane. This will enable Fairchild to minimize its product cost so as to better serve the public and be able to compete with government-subsidized foreign manufacturers.

Extent of the Relief Sought. The exact relief desired for each regulatory item is as follows:

1. FAR 23.53(c)(6). Fairchild asks that compliance with this requirement be waved on the basis that an appropriate level of safety has been demonstrated. This has been accomplished by extensive FAA flight test programs, and by millions of hours of safe operation. FAR 23.53(c)(6) was taken from 25.107(e)(3) and introduced in an effort to clarify the definition of V_R; no equivalent rule existed in the regulations being incorporated. Historically, this concept was first introduced as 4T.114(e)(3) in SR-422B, in July in July 1959. It was based on experience gained in the certification of early, large, jet transport airplanes. No such rule was necessary for the earlier propeller-driven airplanes approved per CAR 4b, which were more akin to the commuter category than any jet-propelled airplane. Therefore, FAR 23.53(c)(6) is not necessary to assure safety in propeller-driven, commuter category airplanes such as the SA227-CC.

2. FAR 23.53(c)(7). Fairchild asks that further compliance with this rule be waved on the basis that an appropriate level of safety has been demonstrated. Out-of-trim takeoff has been demonstrated to show compliance with FAR 23.143. General takeoff safety has been demonstrated by extensive flight testing and a long history of safe operation.

3. FAR 23.67(e)(1)(i). An exemption from compliance with this rule is requested on the basis of prior demonstration of compliance with FAR 135 Appendix A paragraph 6(b)(1), which FAA previously established as provided the appropriate level of safety for ICAO Annex 8 compliance. Fairchild considers imposition of this rule particularly vexing and unfair, for several reasons:

a. FAA's 15 November 1983 proposal for SFAR 41/ICAO Annex 8 incorporation contained no discrete gear-down, takeoff climb requirement and, therefore, represented a lower level of safety than that of the rules being incorporated. Industry, including Fairchild, called this to FAA's attention, and FAA responded by incorporating a portion of FAR 25 instead of the applicable FAR 135 Appendix A rule. Thus, industry was rewarded for a conscientious effort to help with a more burdensome and possibly costly rule that may still result in a lower level of safety than would otherwise obtain.

b. If FAR 23.67(e)(1)(i) is interpreted like the parent FAR 25.121(a), we would be required to determine the subject climb gradient with landing gear doors blocked open. Thus, the performance benefits of closing gear doors would be lost. Lacking any practical benefit, this safety feature would be deleted from commuter category designs, which is not in the best interest of the public.

c. The previously accepted Appendix A rule allowed demonstration of compliance at a well-defined airspeed. The incorporated rule, on the other hand, requires investigation of a range of speeds and is, therefore, more burdensome to administer.

d. SA227-CC compliance with FAR 23.67(e)(1)(i) will probably result in a change to the takeoff weight limit, which will necessitate an expensive change to the airplane flight manual performance and degrade the usefulness of the airplane, without any cost-efficient benefit.

Federal Register Summary.

Petitioner: Fairchild Aircraft Corporation.

Regulations affected: 14 CFR 23.53(c)(6), 23.53(c)(7), and 23.67(e)(1)(i).

Description of relief sought.

To allow FAA approval of airplane performance based on standards previously determined to provide the required level of safety.

Yours truly,

W.J. Dwyer,

Director, Airworthiness.

[FR Doc. 88-1969 Filed 1-29-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Aviation, Marine and Land Radionavigation Users Conference

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of conference.

SUMMARY: An Aviation, Marine and Land Radionavigation Users Conference will be conducted in Washington, DC on March 18, 1988. The purpose of the conference is to present to the users and suppliers of navigation equipment the opportunity to comment on current plans and policy for federally provided systems which satisfy marine, inland waterway and land radionavigation requirements.

DATE, TIME AND PLACE: March 18, 1988 beginning 9:00 am at the FAA auditorium located in the FAA headquarters building, 800 Independence Ave SW., Washington, DC. Other meetings may be scheduled later as warranted.

FOR FURTHER INFORMATION CONTACT: David C. Scull, Office of Budget and Programs, Research and Special Programs Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-4355.

SUPPLEMENTARY INFORMATION: The meeting will open with an overview of the Federal radionavigation planning process, the Federal Radionavigation Plan, and current plans and policy for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations and/or individuals representing the users of radionavigation systems to participate in the meeting and make their comments to representatives of the FAA, Coast Guard, RSPA, Maritime Administration and other government agencies participating in the conference.

Issued in Washington, DC, on January 25, 1988.

M. Cynthia Douglas,

Administrator, RSPA.

[FR Doc. 88-1987, Filed 1-29-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OM Number: 1512-0038
Form Number: ATF F 5030.6
Type of Review: Extension
Title: Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978)
Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution

Respondents: Businesses or other for-profit, Small Businesses or organizations
Estimated Burden: 500 hours
OMB Number: 1512-0460
Form Number: ATF REC 5110/12
Type of Review: Extension
Title: Equipment and Structures
Description: Marks, signs and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1 hour
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2008 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 26, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0130
Form Number: ATF F 4473, Part II (ATF F 5300.9)
Type of Review: Extension
Title: Firearms Transaction Record, Part II—Contiguous State Non-Over-The-Counter
Description: This form is used to establish the eligibility of the buyer and to detemine the legality of the sale. It is sent to the Chief Law Enforcement Officer in the Buyers' local to insure there is no barrier to the sale. It becomes part of the Dealers' records and is used by law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons who have violated the Gun Control Act
Respondents: Individuals or households, Businesses or other for-profit, Small Businesses or organizations
Estimated Burden: 11,843 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2009 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8697
Type of Review: Resubmission
Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts
Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code section 460(b)(3). IRS uses Form 8697 to determine if the interest has been figured correctly
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6,466 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2010 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0202
Form Number: 5310 and 6088
Type of Review: Extension
Title:
1. Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate—Form 5310
2. Distributable Benefits From Employee Benefit Plans—Form 6088

Description: Employees who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. They are required to notify IRS of any plan mergers, consolidations or transfer of plan assets or liabilities to another plan. Form 5310 is used to make the required notifications and the request for a determination letter. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 108,788 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2011 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0202
Form Number: 5310 and 6088
Type of Review: Extension
Title:
1. Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate—Form 5310
2. Distributable Benefits From Employee Benefit Plans—Form 6088

Description: Employees who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. They are required to notify IRS of any plan mergers, consolidations or transfer of plan assets or liabilities to another plan. Form 5310 is used to make the required notifications and the request for a determination letter. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 108,788 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2012 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

Rechartering of the Art Advisory Panel of the Commissioner of Internal Revenue

Pursuant to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, as amended, and with the approval of the Secretary of the Treasury, announces the rechartering of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by the taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

Providing this assistance requires Panel records and discussions to include tax return information. Therefore, the panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b (3), (4), (6), and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved continuation of the Art Advisory Panel. The membership is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

For further information contact: Karen Carolan, CC:AP:V, 1111 Constitution Avenue NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259, (not a toll free number).

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Department of the Treasury has rechartered the Art Advisory Panel of the Commissioner of Internal Revenue for a two-year period beginning January 26, 1988.

Jill E. Kent,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 88-2007 Filed 1-29-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Soviet Union Exhibit

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit from the Soviet Union, (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the Brandywine River Museum in Chadds Ford, Pennsylvania, beginning on or about February 21, 1988, to on or about April 17, 1988; at the Corcoran Gallery of Art in Washington, DC beginning on or about May 2, 1988, to on or about June 5, 1988 is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

Date: January 26, 1988.

[FR Doc. 88-2017 Filed 1-29-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Voluntary Service National Advisory Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 94-463 (Federal Advisory Committee Act) notice is hereby given that the Annual

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Report of the VAVS National Advisory Committee for 1986 has been issued.

The Report summarizes activities of the Annual Meeting which was held in Washington, DC, November 20–23, 1986. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Veterans Administration, Voluntary Service (135) Program Review Division (151D), Room 601, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: January 25, 1988.

By direction of the Administrator.

Rose Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–2004 Filed 1–29–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 5, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Meeting

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2042 Filed 1–28–88; 11:22am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, February 5, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2043 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 12, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Meeting

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2044 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., February 12, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2045 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 19, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2046 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., February 19, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2047 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 26, 1988.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Meeting

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2048; Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., February 26, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–2049 Filed 1–28–88; 11:22 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 53, No. 14, P. 1888.

PREVIOUSLY ANNOUNCED TIME AND PLACE OF MEETING: Tuesday, January 26, 1988.

CHANGES: Item 1 (Compliance Status Report) was dropped from Agenda.

LISTED BELOW IS THE REVISED AGENDA:

Commission Meeting, Tuesday, January 26, 1988, 10:00 a.m., Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Closed to the Public

Enforcement Matter OS# 3222

The staff will brief the Commission on Enforcement Matter OS# 3222.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800

Sheldon D. Butts,

Deputy Secretary.

January 27, 1988.

[FR Doc. 88–2057 Filed 1–28–88; 11:43 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 2, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 3993

The Commission will discuss issues relating to Enforcement Matter OS§ 3993.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301–492–6800.

January 27, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88–2023 Filed 1–27–88; 4:34 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 3, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Small Parts Petition, HP 87–2

The Commission will consider Small Parts Petition, HP 87–2, from the Consumer Federation of America and the New York State Attorney General's Office, which requests amendment of the small parts regulation.

Closed to the Public

2. Enforcement Matter OS# 5527

The staff will brief the Commission on Enforcement Matter OS# 5527.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207. 301–492–6800.

January 27, 1988.

Sheldon D. Butts,

Deputy Secretary.

FR Doc. 88–2022 Filed 1–27–88; 4:34 p.m.

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:05 p.m. on Wednesday, January 27, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 28, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88–2070 Filed 1–28–88; 1:47 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 1, 1988:

A closed meeting will be held on February 2, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 2, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Formal order of investigation.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272–3085.

Jonathan G. Katz,

Secretary.

January 25, 1988.

[FR Doc. 88–2063 Filed 1–28–88; 12:24 pm]

BILLING CODE 8010–01–M

federal register

Monday,
February 1, 1988

Part II

The President

Executive Order 12625—Integrity and Efficiency in Federal Programs
Proclamation 5764—American Red Cross Month, 1988
Memorandum of January 28, 1988

Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

Presidential Documents

Title 3—

The President

Executive Order 12625 of January 27, 1988

Integrity and Efficiency in Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to coordinate and enhance governmental efforts to promote integrity and efficiency and to detect and prevent fraud and abuse in Federal programs, it is hereby ordered as follows:

Section 1. *Establishment of the President's Council on Integrity and Efficiency.* (a) There is established as an interagency committee the President's Council on Integrity and Efficiency.

(b) The Council shall be composed of the following members:

(1) The Deputy Director of the Office of Management and Budget, who shall be Chairperson of the Council;

(2) The Associate Attorney General;

(3) The Deputy Director of the Office of Personnel Management;

(4) The Executive Assistant Director-Investigations of the Federal Bureau of Investigation;

(5) The Director of the Office of Government Ethics;

(6) The Special Counsel of the Merit Systems Protection Board;

(7) A designee of the Secretary of the Treasury; and

(8) All civilian Inspectors General, now or hereafter created by statute.

(c) The Chairperson may, from time to time, invite other officials to participate in meetings of the Council.

Sec. 2. *Functions of the Council.* (a) The Council shall continually identify, review, and discuss areas of government-wide weakness and vulnerability to fraud, waste, and abuse and develop plans for coordinated government-wide activities that attack fraud and waste and promote economy and efficiency in government programs and operations. These will include interagency audit and investigation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency. The Council will recognize the preeminent role of the Department of Justice in matters involving law enforcement and litigation.

(b) The Council shall develop policies that will aid in establishment of a corps of well-trained and highly skilled Office of Inspector General staff members.

(c) The Council members should, to the extent of their ability and authority, pay careful attention to professional standards developed by the Council and participate in Council plans, programs, and projects.

(d) The creation and operation of the Council shall neither interfere with existing authority and responsibilities in the departments and agencies, nor augment or diminish the statutory authority or responsibilities of its members.

Sec. 3. *Responsibilities of the Chairperson.* (a) The Chairperson may appoint a Vice Chairperson from the Council members to assist in carrying out the functions of the Council.

(b) The Chairperson shall, in consultation with the members of the Council, establish the agenda for Council activities.

(c) The Chairperson shall, on behalf of the Council, report to the President on the activities of the Council. The Chairperson shall advise the Council with respect to the reaction of the President on the Council's activities.

(d) The Chairperson shall provide agency heads with summary reports of the activities of the Council.

(e) The Chairperson shall establish, in consultation with members of the Council, such committees of the Council as deemed necessary or appropriate for the efficient conduct of Council functions. Committees of the Council may act for the Council in their areas of designated responsibility.

(f) The Chairperson shall be supported by the Associate Director for Management and Chief Financial Officer of the Office of Management and Budget who shall advise and assist the Chairperson in the execution of the entire range of responsibilities set forth above.

Sec. 4. *Coordinating Conference.* (a) There is established as an interagency committee the Coordinating Conference of the President's Council on Integrity and Efficiency.

(b) The Conference shall be composed of the Chairperson of the Council and one representative of each Executive agency, not represented on the Council, determined by the Office of Management and Budget to possess audit and investigative resources. The head of each such agency shall designate as the agency's representative the official who is responsible for coordinating the agency's efforts to eliminate fraud and waste in the agency's programs and operations.

(c) The Chairperson shall convene meetings of the Conference at least quarterly. The Chairperson shall provide for the dissemination to the Conference of appropriate information on the activities of the Council, in order to enable the Conference members, to the extent of their own ability and authority to do so, to implement the coordinated plans, standards, policies, programs, and projects developed by the Council.

Sec. 5. *Administrative Provisions.* (a) The Director of the Office of Management and Budget shall provide the Council and the Conference with such administrative support as may be necessary for the performance of the functions of the Council and the Conference.

(b) The head of each agency represented on the Council or the Conference shall provide its representative with such administrative support as may be necessary, in accordance with law, to enable the agency representative to carry out his responsibilities.

Sec. 6. *Revocation.* Executive Order 12301 of March 26, 1981, entitled "Integrity and Efficiency in Federal Programs," is revoked.

Ronald Reagan

THE WHITE HOUSE,
January 27, 1988.

[FR Doc. 88-2139
Filed 1-29-88; 10:44 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5764 of January 28, 1988

American Red Cross Month, 1988

By the President of the United States of America

A Proclamation

The remarkable story of the International Red Cross began at Solferino, in northern Italy, exactly 125 years ago, when battling Austrian and French soldiers brought death and destruction to the countryside—and when Swiss traveler Henri Dunant realized that wounded soldiers should receive assistance no matter what their allegiance.

From that compassion at Solferino grew a great tradition and a humanitarian organization that relieves the sufferings of all those wounded not only by war but also by poor health, old age, personal adversity, natural calamity, and so on.

As Americans join people around the globe in observing this anniversary, we reflect that the story could have turned out much differently if Henri Dunant—one man, after all—had ignored Solferino and its victims. Clara Barton, for instance, might never have founded the American Red Cross, and her counterparts in other countries might never have founded sister societies. Life would truly have been different in our land for people who needed blood, or evacuees left homeless by floods, or accident victims, or countless others.

A century and a quarter after Solferino, we have real reason to celebrate the victory for humanity and for international cooperation that sprang from that battlefield. Today, 145 national societies of the International Red Cross offer help without regard to race, creed, cause, or nationality. Like many of these societies, the American Red Cross provides assistance on several fronts, including health and safety, disaster relief, blood, and social services.

Every day, the American Red Cross battles the devastation left by natural disasters. Last year, the Red Cross clothed, fed, or sheltered 450,000 disaster victims, and through the generosity of the American people it provided individuals with $122 million in disaster relief.

The Red Cross also assists military personnel, last year alone helping members of the Armed Forces and their families 2.5 million times. Daily it relays 4,000 messages of birth, death, and illness to military posts worldwide.

The American Red Cross battles potential threats to the blood supply by collecting, and testing for disease, more than half of our Nation's blood supply. Last year, four million volunteers donated blood to the Red Cross, restoring life and health to millions of blood recipients.

The Red Cross also fights hazards to health and safety by training in cardiopulmonary resuscitation, first aid, swimming, water and boating safety, and preparation for parenthood and babysitting. Last year, seven million Americans successfully completed Red Cross courses. Last year, Red Cross chapters also distributed 67 million AIDS brochures and urged the public "to get the facts."

The Red Cross also combats social and economic problems; it helps young mothers, assists the aged, the homeless, and the destitute, and helps immigrants learn English.

These are some of the reasons we all rejoice in the vision and the mission of the American Red Cross, especially in this 125th anniversary year of the International Red Cross.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America and Honorary Chairman of the American National Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1988 as American Red Cross Month. I urge all Americans to continue their generous support and ready assistance to the work of the American Red Cross and its more than 2,600 chapters, 1.4 million adult members, and three million youth volunteers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2160
Filed 1-29-88; 10:45 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of January 28, 1988

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollments of H.J. Res. 395, Joint Resolution making further continuing appropriations for the fiscal year 1988 (Public Law 100–202), and H.R. 3545, the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), are correct printings of the hand enrollments, which were approved on December 22, 1987, and if so to make on my behalf the certifications required by Section 101(n)(4) of H.J. Res. 395 and Section 8004(c) of H.R. 3545.

Attached are the printed enrollments of H.J. Res. 395 and H.R. 3545, which were received at the White House on January 27, 1988.

This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 28, 1988.

[FR Doc. 88–2169
Filed 1–29–88; 11:39 am]
Billing code 3195–01–M

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Federal Register
Vol. 53, No. 20
Monday, February 1, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719–2816 1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$9.00	Jan. 1, 1987
3 (1986 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1987
4	14.00	Jan. 1, 1987
5 Parts:		
1–1199	25.00	Jan. 1, 1987
1200–End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0–45	25.00	Jan. 1, 1987
46–51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53–209	18.00	Jan. 1, 1987
210–299	22.00	Jan. 1, 1987
300–399	10.00	Jan. 1, 1987
400–699	15.00	Jan. 1, 1987
700–899	22.00	Jan. 1, 1987
900–999	26.00	Jan. 1, 1987
1000–1059	15.00	Jan. 1, 1987
1060–1119	13.00	Jan. 1, 1987
1120–1199	11.00	Jan. 1, 1987
1200–1499	18.00	Jan. 1, 1987
1500–1899	9.50	Jan. 1, 1987
1900–1944	25.00	Jan. 1, 1987
1945–End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1–199	18.00	Jan. 1, 1987
200–End	16.00	Jan. 1, 1987
10 Parts:		
0–199	29.00	Jan. 1, 1987
200–399	13.00	Jan. 1, 1987
400–499	14.00	Jan. 1, 1987
500–End	24.00	Jan. 1, 1987
11	11.00	July 1, 1987
12 Parts:		
1–199	11.00	Jan. 1, 1987
200–299	27.00	Jan. 1, 1987
300–499	13.00	Jan. 1, 1987
500–End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1–59	21.00	Jan. 1, 1987
60–139	19.00	Jan. 1, 1987
140–199	9.50	Jan. 1, 1987
200–1199	19.00	Jan. 1, 1987
1200–End	11.00	Jan. 1, 1987
15 Parts:		
0–299	10.00	Jan. 1, 1987
300–399	20.00	Jan. 1, 1987
400–End	14.00	Jan. 1, 1987
16 Parts:		
0–149	12.00	Jan. 1, 1987
150–999	13.00	Jan. 1, 1987
1000–End	19.00	Jan. 1, 1987
17 Parts:		
1–199	14.00	Apr. 1, 1987
200–239	14.00	Apr. 1, 1987
240–End	19.00	Apr. 1, 1987
18 Parts:		
1–149	15.00	Apr. 1, 1987
150–279	14.00	Apr. 1, 1987
280–399	13.00	Apr. 1, 1987
400–End	8.50	Apr. 1, 1987
19 Parts:		
1–199	27.00	Apr. 1, 1987
200–End	5.50	Apr. 1, 1987
20 Parts:		
1–399	12.00	Apr. 1, 1987
400–499	23.00	Apr. 1, 1987
500–End	24.00	Apr. 1, 1987
21 Parts:		
1–99	12.00	Apr. 1, 1987
100–169	14.00	Apr. 1, 1987
170–199	16.00	Apr. 1, 1987
200–299	5.50	Apr. 1, 1987
300–499	26.00	Apr. 1, 1987
500–599	21.00	Apr. 1, 1987
600–799	7.00	Apr. 1, 1987
800–1299	13.00	Apr. 1, 1987
1300–End	6.00	Apr. 1, 1987
22 Parts:		
1–299	19.00	Apr. 1, 1987
300–End	13.00	Apr. 1, 1987
23	16.00	Apr. 1, 1987
24 Parts:		
0–199	14.00	Apr. 1, 1987
200–499	26.00	Apr. 1, 1987
500–699	9.00	Apr. 1, 1987
700–1699	18.00	Apr. 1, 1987
1700–End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1987
26 Parts:		
§§ 1.0–1.60	12.00	Apr. 1, 1987
§§ 1.61–1.169	22.00	Apr. 1, 1987
§§ 1.170–1.300	17.00	Apr. 1, 1987
§§ 1.301–1.400	14.00	Apr. 1, 1987
§§ 1.401–1.500	21.00	Apr. 1, 1987
§§ 1.501–1.640	15.00	Apr. 1, 1987
§§ 1.641–1.850	17.00	Apr. 1, 1987
§§ 1.851–1.1000	27.00	Apr. 1, 1987
§§ 1.1001–1.1400	16.00	Apr. 1, 1987
§§ 1.1401–End	20.00	Apr. 1, 1987
2–29	20.00	Apr. 1, 1987
30–39	13.00	Apr. 1, 1987
40–49	12.00	Apr. 1, 1987
50–299	14.00	Apr. 1, 1987
300–499	15.00	Apr. 1, 1987
500–599	8.00	[3] Apr. 1, 1980
600–End	6.00	Apr. 1, 1987
27 Parts:		
1–199	21.00	Apr. 1, 1987
200–End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987
29 Parts:		
0–99	16.00	July 1, 1987
100–499	7.00	July 1, 1987
500–899	24.00	July 1, 1987
900–1899	10.00	July 1, 1987
1900–1910	28.00	July 1, 1987
1911–1925	6.50	July 1, 1987

Title	Price	Revision Date
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1987
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[2] July 1, 1984
1–39, Vol. II	19.00	[2] July 1, 1984
1–39, Vol. III	18.00	[2] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[4] July 1, 1986
700–799	15.00	July 1, 1987
800–End	16.00	July 1, 1987
33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1987
200–End	19.00	July 1, 1987
37	13.00	July 1, 1987
38 Parts:		
0–17	21.00	July 1, 1987
18–End	16.00	July 1, 1987
39	13.00	July 1, 1987
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1987
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
10–17	9.50	[5] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[5] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[5] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[5] July 1, 1984
19–100	13.00	[5] July 1, 1984
1–100	10.00	July 1, 1987
101	23.00	July 1, 1987
102–200	11.00	July 1, 1987
201–End	8.50	July 1, 1987
42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	5.50	Oct. 1, 1987
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	15.00	Oct. 1, 1987
*1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1986
44	17.00	Oct. 1, 1986
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1987
41–69	13.00	Oct. 1, 1987
70–89	7.00	Oct. 1, 1987
90–139	12.00	Oct. 1, 1987
140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
200–499	19.00	Oct. 1, 1986
500–End	10.00	Oct. 1, 1987
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	10.00	Oct. 1, 1987
70–79	17.00	Oct. 1, 1986
80–End	20.00	Oct. 1, 1986
48 Chapters:		
*1 (Parts 1–51)	26.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
2	27.00	Dec. 31, 1986
3–6	17.00	Oct. 1, 1987
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1987
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178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1987
400–999	22.00	Oct. 1, 1987
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1–199	15.00	Oct. 1, 1986
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

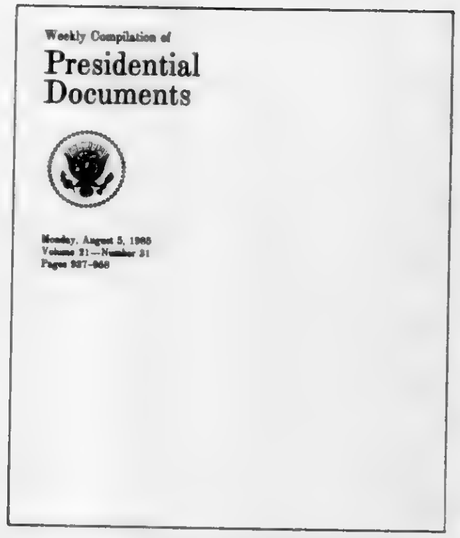
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DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 1	February 16	March 2	March 17	April 1	May 2
February 2	February 17	March 3	March 18	April 4	May 2
February 3	February 18	March 4	March 21	April 4	May 3
February 4	February 19	March 7	March 21	April 4	May 4
February 5	February 22	March 7	March 21	April 5	May 5
February 8	February 23	March 9	March 24	April 8	May 9
February 9	February 24	March 10	March 25	April 11	May 9
February 10	February 25	March 11	March 28	April 11	May 10
February 11	February 26	March 14	March 28	April 11	May 11
February 12	February 29	March 14	March 28	April 12	May 12
February 16	March 2	March 17	April 1	April 18	May 16
February 17	March 3	March 18	April 4	April 18	May 17
February 18	March 4	March 21	April 4	April 18	May 18
February 19	March 7	March 21	April 4	April 19	May 19
February 22	March 8	March 23	April 7	April 22	May 23
February 23	March 9	March 24	April 8	April 25	May 23
February 24	March 10	March 25	April 11	April 25	May 24
February 25	March 11	March 28	April 11	April 25	May 25
February 26	March 14	March 28	April 11	April 26	May 26
February 29	March 15	March 30	April 14	April 29	May 31

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Contents

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development Board, 2892
Mediterranean fruitfly eradication program in Guatemala, 2892

Agricultural Marketing Service
RULES
Olives grown in California, 2823
PROPOSED RULES
Grapes grown in California, 2851
Oranges (navel and Valencia) grown in Arizona and California, 2849
Pears, plums, and peaches grown in California, 2851

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Drug Abuse AIDS Research Review Committee, 2834

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
Middle Rio Grande Valley, NM, 2889

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Animals and birds; quarantine space reservation, 2824

Army Department
See also Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Kwajalein Atoll, Marshall Islands, 2865
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 2865

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Commerce Department
See also Minority Business Development Agency; National Bureau of Standards; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 2862

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Jamaica, 2864

Customs Service
NOTICES
Automated manifest system; new information dissemination product, proposed; republication, 2911

Defense Department
See Army Department; Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Johnson Matthey, Inc., 2893

Education Department
PROPOSED RULES
Postsecondary education:
Language resource centers program, 2918
NOTICES
Meetings:
Educational Research and Improvement National Advisory Council, 2866

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
International energy program; emergency international oil sharing; second plan of action implementation, 2866
Meetings:
Innovative Control Technology Advisory Panel, 2885

Engineers Corps
RULES
Natural disaster procedures; Army and other resources emergency employment, 2841
NOTICES
Meetings:
Inland Waterways Users Board, 2866

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Total reduced sulfur emissions determination; alternative recovery gas certification procedure (Methods 16A and 16B)
Correction, 2914
Toxic substances:
Significant new uses—
1-Chloro-2-bromoethane, 2842
Technical amendments, 2845
PROPOSED RULES
Toxic substances:
Significant new uses—
Diphenyl-2,4,6-trimethylbenzoyl phosphine oxide, 2857
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Model 8830 CO Analyzer, 2887
Grants, State and local assistance:
Capitalization awards under Clean Water Act; State water pollution control revolving fund, initial guidance, 2887

Meetings:
Science Advisory Board, 2887
Toxic and hazardous substances control:
Premanufacture notices review period extensions, 2888

Farm Credit Administration
RULES
Farm credit system:
Borrower rights, 2825

Farmers Home Administration
PROPOSED RULES
Loan and grant programs:
Audits; OMB Circular A-73 implementation, 2852

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 2888

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Guam, 2888
Northern Mariana Islands, 2889

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act), etc.:
Purchased gas adjustment regulations, 2826
Natural Gas Policy Act:
Ceiling prices—
Compression allowances and protest procedures, 2826
NOTICES
Applications, hearings, determinations, etc.:
East Tennessee Natural Gas Co., 2886
Shell Oil Co. et al., 2886

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Alabama, 2861
Alaska, Arkansas, and Tennessee, 2861
North Dakota, 2862

Federal Highway Administration
RULES
Engineering and traffic operations:
Utilities accomodation; freeway (interstate) right-of-way; longitudinal utility use, 2829
NOTICES
Environmental statements; notice of intent:
Richmond, VA, 2901

Federal Maritime Commission
NOTICES
Agreements filed, etc., 2889

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 2910

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 2910

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Yukon Delta National Wildlife Refuge, AK, 2891

Food and Drug Administration
RULES
Code of Federal Regulations; authority citations, 2827

Food and Nutrition Service
RULES
Food stamp program:
Income and eligibility verification, 2817
PROPOSED RULES
Food distribution program:
Food donations processing provisions; State processing and National commodity processing program, 2846

Forest Service
RULES
Range management:
National Forests in 16 Western States; grazing fees, 2978

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Public Health Service

Health Resources and Services Administration
See Public Health Service

Immigration and Naturalization Service
RULES
Immigration:
Beneficiary; automatic conversion of classification Correction, 2824
NOTICES
Aliens:
Asylum adjudications procedure change, 2893

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Commission
NOTICES
Meetings; Sunshine Act, 2910

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Chicago, Missouri, & Western Railway Co., 2893

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service

Land Management Bureau
RULES
Grazing administration:
Livestock grazing on public lands, 2984
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 2891

Withdrawal and reservation of lands:
Colorado, 2890

Maritime Administration
NOTICES
War risk insurance; ship value determinations, 2901

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Lease sale, 2891
Pacific OCS—
Lease sale, 2892

Minority Business Development Agency
NOTICES
Business development center program applications:
Arkansas, 2863
Oklahoma, 2863

National Bureau of Standards
NOTICES
Information processing standards, Federal:
Data encryption standard; correction, 2911

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 2894

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 2864

National Science Foundation
NOTICES
Meetings; Sunshine Act, 2910

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 2910

Nuclear Regulatory Commission
PROPOSED RULES
Byproduct material; medical use:
GENE-TRAK Systems salmonella and listeria pathogen testing in food products; phosphorus-32 (100 microcuries) exemption, 2853
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 2894
(2 documents)
Applications, hearings, determinations, etc.:
Connecticut Yankee Atomic Power Co., 2895
Duquesne Light Co. et al., 2896
Finlay Testing Laboratories, Inc., 2895

Public Health Service
See also Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration
RULES
Grants:
Family planning services; abortion, prohibition on use of appropriated funds, 2922
NOTICES
Organization, functions, and authority delegations:
Food and Drug Administration, 2889

Securities and Exchange Commission
PROPOSED RULES
Securities:
Government Securities Act; implementation—
Form BD revision, etc., 2854
NOTICES
Self-regulatory organizations; proposed rule changes:
Midwest Stock Exchange, 2897
Applications, hearings, determinations, etc.:
Drexel Burnham Fund et al., 2897

Small Business Administration
NOTICES
Disaster loan areas:
Guam, 2898
Northern Mariana Islands, 2899

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission:
North Dakota, 2837

Tennessee Valley Authority
RULES
Archaeological resources protection; uniform regulations, 2826

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Federal Highway Administration; Maritime Administration; Urban Mass Transportation Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Galaxy Airlines, Inc., 2899
Privacy Act; systems of records, 2899

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Customs Service

Urban Mass Transportation Administration
NOTICES
Grants; UMTA sections 3 and 9 obligations:
Formula grant apportionments; 1988 FY, 2948

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
Employment services for eligible veterans, 2855

Separate Parts In This Issue

Part II
Environmental Protection Agency, 2914

Part III
Department of Education, 2918

Part IV
Department of Health and Human Services, Public Health Service, 2922

Part V
Department of Transportation, Urban Mass Transportation Administration, 2948

Part VI
Department of Agriculture, Forest Service, 2978

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
272.....2817
932.....2823
Proposed Rules:
250.....2846
907.....2849
908.....2849
917.....2851
925.....2851
1823.....2852
1930.....2852
1933.....2852
1942.....2852
1944.....2852
1948.....2852
1980.....2852

8 CFR
204.....2824

9 CFR
92.....2853

10 CFR
Proposed Rules:
31.....2853

12 CFR
614.....2825

17 CFR
Proposed Rules:
249.....2854

18 CFR
154.....2826
270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826

21 CFR
1.....2827

23 CFR
645.....2829

27 CFR
9.....2834

30 CFR
934.....2837

33 CFR
203.....2841

34 CFR
Proposed Rules:
669.....2918

36 CFR
222.....2978

38 CFR
Proposed Rules:
21.....2855

40 CFR
60.....2914
721 (2 documents).....2842, 2845
Proposed Rules:
721.....2857

42 CFR
59.....2922

43 CFR
4100.....2984

Rules and Regulations

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[Amdt. No. 361]

Food Stamp Program; Targeting for Income and Eligibility Verification Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: Section 9101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amends section 1137(a)(4)(c) of the Social Security Act. The amendment prohibits State agencies from being required to use information obtained through their income and eligibility verification systems (IEVS) to determine the eligibility of all recipients. This rule implements section 9101 by allowing State agencies to identify (target) which information items obtained through IEVS they will use to determine if actions adverse to household eligibility are warranted. The rule also specifies the elements which State agencies must include in their Plans of Operation concerning targeting action on IEVS information. It sets timeliness standards for such action, and specifies an annual reporting requirement.

DATES: Effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the Federal Register of the approval of the information collection requirements by the Office of Management and Budget (OMB), as discussed further in the paragraph concerning the Paperwork Reduction Act in this preamble. Comments on this rule must be received by April 4, 1988, to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas J. O'Connor, Chief, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 716, Alexandria, Virginia 22302. All written comments will be open to public inspection at this same address during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. O'Connor at the above address, telephone (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

Anna Kondratas, Administrator of the Food and Nutrition Service (FNS) has determined pursuant to 5 U.S.C. 533, that for the reasons discussed below prior public comment on this rulemaking is unnecessary and contrary to the public interest.

This rule primarily affects State agencies. In general correspondence, in conferences, and in justifications for waiver requests, State agencies have indicated a desire to be allowed to target information items for follow up and to be given more than 30 days to complete follow-up action. In particular, State agencies have expressed concern that the requirement that they act on all information items causes them to devote staff and other resources to activities which frequently do not help determine the correctness of eligibility and benefits. Consequently, prompt implementation of this rule will enhance the efficiency of program administration by eliminating the requirement that all information items be followed up on. Also, according to State agencies, following up on all information items within 30 days adversely affects the quality and timeliness of application processing and ongoing case action. Consequently, prompt implementation of this rule will also enhance the effectiveness of the program with respect to the delivery of benefits. Since both program efficiency and effectiveness are important to the public interest in the Food Stamp Program (FSP), delay of this rule for prior public comment is contrary to that public interest.

As discussed in section C of this preamble, State agencies have broad discretion in the design of targeting methods and will be required to review and modify those methods periodically as their experience and capability develop. State agencies are required to provide FNS certain information about targeting methods so that FNS can determine if State agencies are conforming to the legislative requirement that IEVS information be used to the extent useful in determining eligibility and benefits. State agencies should have most of this information available or should be able to develop it within the 90-day timeframe provided for implementation. Consequently, given the flexibility that State agencies have in the design of actual procedures and the minimum requirements for information, delay in the implementation of this rule for prior public comment is unnecessary.

Notwithstanding these factors, public comment may enable the Department to improve the rule after it is published and implemented on an interim basis. Therefore, we are soliciting comments for 60 days. We will analyze the comments we timely receive, make any appropriate change in this rule and publish a final rule.

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the Food Stamp Program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3507) requires that OMB approve information collection requirements before they become effective. Paragraphs 272.8(i) (3) and (4) and 272.8(j) of this rule contain those requirements. The information collection burden associated with the current IEVS rule has been approved under OMB No. 0584–0350. Comments on the new provisions should be sent to Mr. O'Connor at the above address and to Ms. Pamela Barr, Office of Management and Budget, Room 3228, NEOB, 726 Jackson Place NW., Washington, DC 20503. The Department plans to publish a final rule in the **Federal Register** when OMB approves the information collection burden.

Background—Discussion of Regulatory Provisions

A. Current IEVS Legislation and Regulation

Section 2651 of the Deficit Reduction Act (DEFRA) of 1984 (Pub. L. 98–369) established requirements for the income and eligibility verification system (IEVS) by adding section 1137 to the Social Security Act (42 U.S.C. 1320 b–7). The legislation affected several Federal public assistance programs, all of which simultaneously published in the **Federal Register** proposed rules on March 14, 1985 (50 FR 10450) and final rules on February 28, 1986 (51 FR 7178). With certain exceptions, the final rules required State agency implementation by May 29, 1986. A thorough review of those regulations is essential to a complete understanding of the action taken in this rulemaking. Accordingly, the reader is refered to 51 FR 7178.

B. Language of the Amending Statute

1. Data Sources Involved

Section 1137(a)(2) of the Social Security Act requires matching between public assistance programs and such data sources as the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Section 1137(a)(4), among other things, discusses the exchange of information among the public assistance programs and between them and the unemployment compensation (UC) program. The amending language of section 9101 of Pub. L. 99–509 is inserted into the latter provision only. Nonetheless, since the October 21, 1986 amendment does not prohibit a general application of the targeting allowance and because a general application would significantly benefit State agencies, this rule allows State agencies to target follow-up action on results from all data sources.

2. Recipients/Applicants

Current rules treat follow-up action on applicants and recipients differently. At 7 CFR 272.8(e)(1), current rules provide that IEVS-obtained information regarding applicants received within the 30-day application period shall be used to determine household eligibility and benefits if the information is received timely enough for these determinations. At 7 CFR 272.8(g) the rules discuss the several components of follow-up action on recipients and the timeframe for those actions. The October 21, 1986 amendment applies its limitation to recipients, and this rule applies targeting to recipient households only. Targeting is not usefully applied to applicants for several reasons. First, in cases where IEVS information is received timely enough to be used for eligibility determinations, State agencies should be able to resolve any discrepancies as part of those determinations and the cost of the action should therefore be extremely small. Secondly, current rules provide that information requested on applicants and received after such households are recipients will be used according to the guidelines for recipients. The targeting provisions of this rule apply to such information.

C. Targeting and Timeframes

1. General

Current IEVS rules at 7 CFR 272.8(g)(1) specify three actions which State agencies must take on all information items received by means of IEVS. The three actions are: (1) Review of the information and comparison of it with the case record; (2) contact with the household and/or collateral contacts to resolve discrepancies with new or previously unverified information; and (3) issuance of adverse action when warranted. The rule requires that these actions be initiated and pursued so that the actions will be completed within 30 days of receipt of the information items. Action on a maximum of 20 percent of the information items may be completed after the 30-day period if two conditions are present. One condition is that action could not be completed only because requested verification from a collateral contact was not received. The second condition is that action is completed according to established timeliness standards for State agency action on reported changes or with the next case action, whichever is earlier.

Except for a technical revision, this rule makes no change in the follow-up actions which State agencies must take on information items. The second sentence of 7 CFR 272.8(g)(1)(iii) serves to remind State agencies that the treatment of adverse actions for periodic reporting households and for households under retrospective budgeting differs. This reminder is unnecessary, and so the sentence is deleted. The rule changes the timeframe for completing follow-up actions from 30 to 45 days and adds a requirement that for particular data sources State agencies develop methods for targeting, depending on State agency cost-benefit analyses. State agencies are required to describe these targeting methods in attachments to Plans of Operations.

2. Targeting In General

A mentioned at the beginning of this preamble, the amending legislation prohibits State agencies from being required to use information obtained through IEVS to determine the eligibility of all recipients. As also mentioned there, this rule implements that legislation by allowing State agencies to target the information items which they follow up on. Targeting is used to implement the legislation because, while the legislation sets no minimum level for follow-up action, the Department believes that State agencies should follow up on as many information items as possible. As discussed in the following parts of this preamble, targeting in the seletion of as many information items for follow up as a State agency's cost-benefit analysis indicates should be followed up on.

a. Targeting by data source. This rule requires at 7 CFR 272.8(i)(3) that in their attachments to their Plans of Operation, State agencies separately describe for each data source the targeting methods which they will use for follow-up action. This is required so that FNS can review and approve the methods and ensure that IEVS information is used to the maximum extent useful in verifying recipient eligibility and benefits.

This rule requires that State agencies develop targeting methods separately for each data base because the differences in the data warrant such consideration in planning overall follow-up strategy. For example, data from the annual IRS match covers a calendar year and is available approximately nine to twelve months after that year; verification of the data is always required with the household and/or a financial institution before any decision about an adverse action is made; and there are a relatively large number of matches to process. Consequently, State agencies may want to target only the relatively larger dollar value matches. In some situations, a different approach may be desirable. For example, State agencies may want to target all Unemployment Insurance Benefit (UIB) matches for follow up. UIB data is relatively current when received, it covers discrete and limited time periods (weeks), and it has such a high degree of reliability that under IEVS rules it is considered verified upon receipt.

b. Recipients participating in other IEVS programs. Current rules at 7 CFR 272.8(f) require that State agencies request information on all members of recipient households. At 7 CFR 272.8(g)(1) the rules require that State agencies initiate and pursue action on information about recipient households which is received from IEVS sources. If four conditions are met, this rule allows State agencies either to exclude from their matching requests members of households who are participating in one of the other IEVS programs, or to exclude from follow-up action information items about such household members. These other IEVS programs are listed at 7 CFR 272.8(a)(2). For the most part, food stamp recipients would be excluded from matching or follow-up action because of participation in the Aid to Families with Dependent Children (AFDC) program. As explained just below in the discussion of the conditions for these exclusions, appropriate action would be taken on the excluded information items by the AFDC program and appropriate information communicated to the FSP-State agency. Consequently, this charge will avoid duplicate efforts and the related waste of administrative resources. The Department is providing State agencies the option of either excluding household members from matching or excluding information items in order to accommodate different administrative structures and data processing situations. The four conditions are the same for either option.

The first condition is that the agency administering the other program must be requesting and acting on information on food stamp recipients who are participating in that program as required by IEVS and any other pertinent rules for that program, including any provisons for selecting (targeting) information items for follow-up action. This will assure that information about food stamp household members participating in the other program is being appropriately requested and acted on. The second condition requires that the agency administering the other program agree to inform the FSP-State agency of the information obtained from its follow-up action on information items when that action discovers a discrepancy between actual circumstances of food stamp recipients and circumstances known by the other program agency. This communication is necessary so that the FSP-State agency can take action with respect to food stamp eligibility and benefits. The requirement should impose no burden on the State agencies since current rules at 7 CFR 273.12 provide that the results of AFDC-State agency follow up, insofar as it affects food stamp housholds, must be communicated to the FSP-State agency. The third condition is that the other program agency agrees to make available, upon the request of the FSP-State agency, any information items on food stamp recipients which the other program agency did not follow up on. This will enable the FSP-State agency to provide such information items to its QC reviewers. For further discussion of this matter, see section D of this preamble. The fourth condition is that the State agency must assure itself and FNS that the action taken by the other program agency is at least as beneficial as similar action by the ESP-State agency. This matter is discussed in detail in section 5 of this preamble.

This rule also makes an editorial revision to the name of paragraph 272.8(f). The reference to using information is deleted since using information is the subject of paragraph 272.8(g).

3. Targeting Methods

This rule at 7 CFR 272.8(i)(3)(i) requires that State agencies describe the targeting method which will be used for each data source, including such details as: what selective criteria (thresholds) are used, including (when feasible) assurances that the most cost-beneficial data are targeted in instances of redundancy across data sources; what program standards and information about households are used, if any; whether the criteria are applied on the basis of individual information items, or groups of information items about either individual household members or households; and whether the criteria are applied before any follow-up action is initiated or are applied as part of the comparison of match results to casefile information. The Department needs this kind of detailed description so it can understand what the targeting criteria are and how they are used.

One example of a selective criterion or threshold is, for quarterly wage data, to follow up on information items of $750 or more. The State agency would need to state whether the criterion would be applied to individual or to groups of information items and for individual household members or for entire households. As stated here, the criterion would be applied before any follow-up action. In this example, all this information would constitute the description of the targeting method. Another example of a targeting method would be comparing wage reports to income standards for particular households and acting on wage reports at or above the income standards. This method would use program standards, which would be the income levels for various sizes of households. It would also use information about particular households, that is, the number of household members. Finally, because the method would use information about particular households, it would involve some comparison of match results to casefile information.

Another targeting method would incorporate patterns of problems with respect to household reporting of the type of information obtained from the data source. For example, larger households with several wage earners might warrant closer attention with respect to quarterly wage data than a flat dollar discrepancy might indicate is appropriate. Finally, State agencies might flag particular households with a history of reporting problems or claims in order to give them special attention.

In developing targeting methods, State agencies are encouraged to be imaginative in their use of computer technology and other resources. For example, a computer system could identify wage data obtained from SSA which is already know from SWICA matching. State agencies could then follow up on such SSA information as wages from out-of-state employers and pensions. If a State agency uses such a procedure, this rule requires that a description of it be included as part of the description of the pertinent targeting method.

With respect to such procedures, however, the Department would reiterate and expand a point made in the preamble to the final IEVS rule (51 FR 7182, February 28, 1986). Current rules at

7 CFR 273.18(a) require State agencies to establish claims against households which receive overissuances. This rule does not modify that requirement. State agencies are required to pursue claims and related actions such as administrative disqualification hearings which IEVS-obtained information may indicate is appropriate with respect to overissuances to both participating and nonparticipating households.

4. Number of Matches Targeted for Follow Up

The Department is providing State agencies the maximum amount of flexibility in developing targeting methods so that they can make use of present capabilities and follow up on as many match results as possible. As discussed in the next section of this preamble, the sole requirement that targeting methods must meet is to be cost beneficial. This rule does require, at 7 CFR 272.8(i)(3)(ii), that State agencies estimate for each data source the number of information items which will be followed up on after targeting and to estimate the percentage that that number is of the number of information items received. These numbers should be produced as part of the development of targeting methods and of cost/benefit analyses.

5. Cost-Benefit Justification

The rule requires that State agencies include in their attachments to their Plans of Operation separate cost-benefit analyses to justify the targeting methods for each data source. Separate justifications are required because benefits and perhaps some cost elements will vary by data source as will targeting methods. With respect to the justifications in general, the rule requires that the analyses be sufficiently comprehensive and detailed to justify the targeting methods. While the Department does not want to restrict State agencies to any particular method of cost-benefit analysis, it does want analyses to be well developed and well presented so that the reasons for targeting methods can be understood and evaluated.

There are two general provisions related to cost-benefit justifications. First, if all information items received from matches from a particular data source will be followed up on, the State agency must certify that it has performed an analysis which showed that this 100 percent targeting is cost-beneficial. Second, if the targeting method will select matches for follow up, the cost-benefit justification must show that follow-up action on more matches than the targeting method selects would not be cost beneficial. Such statements are required because, as already mentioned, the Department wants State agencies to follow up on as many match results as possible considering the cost and the benefit of doing so. For targeting methods which select less than 100 percent of information items, the Department recognizes that State agencies would have difficulty in identifying a precise break point in the spectrum of information items at which following up on one more item would make the overall activity more costly than the expected benefits. The Department expects that State agencies will be able to determine when adding another group of items would have that result. For example, a State agency might show that following up on a quarterly wage data of $750 or more is cost-beneficial and that adding follow up on the $700–$749 group makes follow up no longer cost-beneficial for that data source. The Department encourages State agencies to define this group as narrowly as possible.

While State agencies have wide flexibility in developing cost-benefit justifications, the rule requires that the justifications demonstrate that the targeting method is cost-beneficial overall. To this end the rule does specifies certain factors which the justifications must and must not include. With respect to costs, the rule requires that the total costs include the total of State and Federal administrative costs. The total of Federal and of State costs must be included to reflect the actual total costs involved. The rule limits the elements of costs to the costs of targeting and follow-up. The rule sets these limits because the legislation requires that matches be used to the extent useful for eligibility determinations. So, for example, cost considerations of accessing data sources are not a factor. The rule also requires that the justification include the State agency's estimated cost per follow-up action for each particular data source. The Department believes that this figure will be a factor in any cost-benefit calculation. Providing the figure should impose no workload on the State agency, and the figure will be useful in updating to Congress and for other purposes discussed in section E of this preamble.

The rule specifies two types of costs which cannot be included in cost-benefit justifications. The first such type is developmental, start-up and other one-time costs. These cannot be included since they would be one-time costs and not factors in the day-to-day expenses. The second type is indirect costs. Cost factors of targeting and follow up cannot include elements attributed to them because of indirect costs because such elements tend to be difficult to document and in this situation should be marginal and insignificant.

With respect to the benefit part of the cost-benefit justification, the rule requires that total benefits include certain factors. One factor which must be included is the amount of claims established because of IEVS-obtained information. Two other factors are: Overissuances avoided and the total of Federal and State administrative costs avoided because of terminated cases. State agencies may include other factors if they can be quantified. In calculating overissuances and administrative costs avoided, State agencies should use the benefit levels and the number of months remaining in the certification periods of actual households whenever possible. Some components of the benefit part of the justification, for example a monthly administrative cost per case, may already be known to State agencies. The Department certainly encourages the use of such already established measures of benefits. However, such measures should not be used without adjustment when there is some likelihood that they would be misleading. For example, an established average claim collection figure might misstate claims in cases of data from IRS since that data source is relatively new.

As discussed in section 2(b) above, this rule allows the exclusion of household members from matching or the exclusion of information items about them from follow-up action if the household members or information items are dealt with by other agencies. Three of the four conditions which must be met for such exclusions to be allowed are discussed in section 2(b). The fourth condition is that such exclusions must result in follow-up action which is at least as beneficial as action the State agency would conduct. Section 2(b) explains that the general purpose for allowing State agencies to exclude household members and information items about them is to avoid duplicate effort and waste of resources. The fourth condition is to assure the overall effectiveness of matching and follow-up action with respect to food stamp household members. The condition has several parts which require that State agencies review certain materials and provide certain information to FNS. The actual work required is minimal relative to the relief that the exclusions provide State agencies.

First, the rule requires that if the State agency wants to exclude household members or information items about them it must identify in its cost-benefit justification the other program which is matching and following up on information items and otherwise meeting the first three conditions. This information is required so that it is understood what program is being discussed and so that FNS is assured that the first three conditions are met.

The second part of the condition requires that the State agency summarize the methods for targeting, or for otherwise selecting information items for follow-up action, used by the other program agency. In that summary the State agency must explain why those methods are at least as beneficial as the action which the State agency would take. That explanation is required so that the Department will be sure that IEVS-obtained information is being used effectively for food stamp households.

The Department expects that such explanation will be relatively simple. For example, the AFDC program generally provides greater benefits than does the FSP. Assuming equal costs for each program, it would be cost-beneficial for the AFDC program to follow up on more discrepant information items relating to food stamp recipients receiving AFDC than the FSP State agency. An explanation covering these points would generally be a sufficient demonstration that this part of the fourth condition is being met. The condition is stated in terms of benefits without reference to costs because it is assumed that it would cost the FSP State agency the same to follow up on a food stamp only recipient as one also receiving benefits from the other program. So, if the gross benefits by themselves are at least what they would be if the FSP State agency itself conducted the follow up, subtracting out an equal amount for costs from both gross benefit figures would not change their relative values. Consequently, costs do not have to be considered.

The rule further specifies that the summary and explanation must be based on the State agency's review of the description of the targeting or other selection methods as provided by the other program agency. A review of such materials is sufficient for the purposes of this rule since the other program agency would have attested that it is complying with its pertinent program rules. This approach also avoids involving the FSP State agency in inappropriate and costly operational reviews of the other program.

Finally with respect to the attachment to the Plan of Operation, the rule requires that State agency submit revisions to their attachments as warranted by information in their annual reports. This is being required so that the attachments accurately reflect State agency operations.

6. Timeframe for Action on Match Results

Current rules provide for a 30-day follow-up period on match results. This rule specifies a 45 day follow-up period. As already discussed, Congress supports this timeframe as more reasonable than 30 days, and the Department agrees. This is a maximum time period and does not preclude a State agency from setting shorter timeframes for action on match results from a particular data base or for prioritizing action on match results. For example, matches showing unreported UIB may warrant a relatively high priority. The 20 percent allowance for action on match results when third party information is late remains. This rule makes an editorial change to clarify that both of the two conditions related to the 20 percent allowance must be met when follow-up action is taken after the 45-day timeframe. (See 7 CFR 272.8(g)(3).)

D. Quality Control

Current rules state at 7 CFR 272.8(h) that the IEVS requirements do not relieve State agencies of the responsibility of determining erroneous payments or of the responsibility for any liability for such payments as determined by QC reviews. IEVS information which caseworkers have not resolved can be used by QC reviewers as leads to information about cases. The IEVS rule published February 28, 1986, added a sentence to 7 CFR 275.15(c) to specify that full field investigations of active cases must include a review of any information pertinent to a particular case which is available through IEVS. This rule allows State agencies to target IEVS-obtained information for follow-up action and so screen out some information items from any further action. In addition, other program agencies which are following up on information items about food stamp household members under the conditions of this rule may screen out information items. The Department believes that all such screened-out information items should be available for QC reviewers as leads to information about cases. Consequently, this rule revises 7 CFR 272.8(h) by adding a sentence which requires that State agencies make available to QC reviewers information items not selected for follow-up action because of the use of targeting methods, including any such methods used by another program agency under an attachment to the State agency's Plan of Operation for IEVS.

E. Reporting

Current IEVS rules at 7 CFR 272.8(j) require that State agencies report as the Secretary prescribes for determining compliance with the IEVS rules and evaluating the effectiveness of the IEVS. The preamble to the final IEVS rules (51 FR 7197, February 28, 1986) stated the intention of the Federal programs to limit reporting to (a) the number of agency records submitted to each IEVS source agency and (b) the number of positive match results received from each source agency. This rule requires that State agencies report annually on targeting-related aspects of IEVS. The reports must cover particular Federal Fiscal Years (October 1 through September 30). This reporting requirement supercedes the reporting requirement in the current rules. It is being established now because the anticipated variety of targeting methods will not allow the Department to estimate matching activity based on general information such as State participation levels and information from data sources such as the IRS and SSA. The Department believes that annual reporting is the longest cycle compatible with the need to monitor IEVS policy and operations, and to report about those matters to Congress. The three months from the end of the Fiscal Year to December 31 should give State agencies adequate time to prepare and submit reports.

In the reports State agencies must assess their targeting activities separately for each data source. For this purpose, the reports must include the actual number of information items acted on and the percentage that that number is of the number of items received. The Department needs this information to report on the level of matching activities, and the State agencies need it for other aspects of the reporting requirement. The information should be readily available to State agencies. The rule also requires that the reports include a summary of any significant operational events and patterns in targeting, and any consequent changes made or planned in such areas as automated data processing and targeting methods. This is being required because the Department expects that State agency experience, new computer technology and other developments will warrant changes in State agency IEVS operations. A third requirement is that the report include any changes to the

cost-benefit justification. This information is required because changes in operations will probably result in changes to the cost-benefit figures.

F. Implementation

Paragraph 272.1(g)(96) states that this rule is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the **Federal Register** of the approval of the information collection burden by OMB. As mentioned in the paragraph in this preamble concerning the Paperwork Reduction Act, after that approval the Department plans to publish a final rule. In that rule it intends to require the submission of the attachments to State Plans of Operations 90 days after publication of that final rule. The first reports required by that rule would be due December 31, 1988.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

Therefore, 7 CFR Part 272 is amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority for Part 272 continues to read as follows:

Authority: (7 U.S.C. 2011–2099).

2. In § 272.1, paragraph (g)(96) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(96) Amendment 301. This rule pertains to the Income and Eligibility Verification System (IEVS). It is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the **Federal Register** of the approval of the information collection burden by the Office of Management and Budget (OMB).

3. In § 272.8, the name of paragraph (f) and the introductory clause of paragraph (f) are revised, and a new paragraph (f)(7) is added; paragraph (g) is revised; a new sentence is added to the end of paragraph (h); and paragraphs (i) and (j)(1) are revised. The revisions and the new sentence read as follows:

§ 272.8 State income and eligibility verification system.

* * * * *

(f) *Requesting information about recipients.* Except as provided in paragraph (f)(7) of this section, with respect to all members of recipient households State agencies shall:

* * * * *

(7) Under certain conditions State agencies may exclude from the requests for information specified in this paragraph those members of recipient households who are participating in one of the other programs listed in paragraph (a)(2) of this section. The conditions for such exclusion are that:

(i) The agency responsible for administering such other program is requesting and acting on information on food stamp recipients who are participating in that program as required by the pertinent regulations for that program, including any concerning selective criteria for information items for follow-up action;

(ii) The other program agency agrees to inform the State agency of the information obtained from its follow-up action when that action discovers discrepancies between actual circumstances of food stamp recipients and circumstances known by the other program agency;

(iii) The other program agency agrees to make available, upon the request of the State agency, information items about food stamp recipients which it did not follow up on; and

(iv) The follow-up action taken by the other program agency is at least as beneficial as such action by the State agency.

(g) *Actions on recipient households.* With respect to information items received as a result of requests made according to paragraph (f) of this section, State agencies shall initiate and pursue action according to the attachment to the Plan of Operation specified in paragraph (i) of this section.

(1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2(f)(9)(iii) and (iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies shall initiate and pursue the actions specified in paragraph (g)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information items on no more than 20 percent of the information items if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (g)(1) of this section substantiate an overissuance, State agencies shall establish and take actions on claims as specified in § 273.18.

(4) State agencies shall use appropriate procedures to monitor the timeliness requirements in paragraph (g)(2) of this section.

(5) Except for the claims actions specified in paragraph (g)(3) of this section, under the conditions of paragraph (f)(7) of this section, State agencies may exclude from the actions required in paragraph (g) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(h) *IEVS information and quality control.* * * * State agencies shall make available to quality control reviewers information items which are not selected for follow-up action because of the use of targeting methods specified in paragraph (i)(3) of this section including any information items not selected by other program agencies as provided in paragraph (i)(3)(iii)(C).

(i) *Plan of Operations.* The requirements for the IEVS specified in this section shall be included in an attachment to the State agency's Plan of Operations as required in § 272.2(d). This document shall include:

(1) A description of procedures used, and agreements with the other agencies and programs specified in paragraph (a) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households and third parties as specified in § 272.1;

(2) Any of the material concerning alternate data sources as specified in paragraph (c) of this section;

(3) For each of the data sources specified in paragraphs (c) and (f) of this section, a separate description of how the State agency will select (target) information items for the actions specified in paragraph (g)(1) of this section. The description shall:

(i) Describe the targeting method which will be used including such details as: What selective criteria (thresholds) are used, including (when feasible) assurances that the most cost-beneficial data are targeted in instances of redundancy across data sources; what program standards and/or information about households are used, if any; whether the criteria are applied on the basis of individual or groups of information items, and about individual household members or households; and whether the criteria are applied before any follow-up action specified in paragraph (g) of this section are initiated or are applied as part of the comparison of match results to casefile information;

(ii) State the approximate number of information items which will be acted on and the approximate percentage that that number is of the number of information items received;

(iii) Include a sufficiently comprehensive and detailed cost-benefit analysis to justify the targeting method. If the State agency will follow-up on all information items received, it shall certify in its Plan of Operation that it performed an analysis which showed that 100 percent follow up is cost beneficial. If the targeting method will select certain information items for follow up, the justification shall show that following up on more information items than selected would not be cost-beneficial.

(A) Total costs shall include both the Federal and State share of administrative costs. The elements of the total costs shall be limited to the costs of targeting and follow-up action. The justification shall include an estimate of the cost per follow-up action. No costs for any developmental, start-up and other one-time costs or indirect ongoing costs shall be included.

(B) Total benefits shall include such quantifiable factors as the amounts of collections on claims established because of IEVS-obtained information, and the amounts of overissuances and the total of Federal and State administrative costs avoided due to terminating participation and reducing benefits.

(C) As provided in paragraphs (f)(7) and (g)(5) of this section, the State agency may exclude household members from match requests or exclude information items about them from follow up. If the State agency wants to make either of such exclusions, in its cost-benefit justification it shall provide certain information. First, the State agency shall identify the program involved and state that the agency responsible for administering the program meets the conditions of paragraphs (f)(7)(i), (ii) and (iii) of this section. Second, the State agency shall summarize the methods for targeting, or for otherwise selecting information items for follow-up action, used by the other program agency as required in paragraph (f)(7)(i) of this section. In that summary, the State agency shall explain why those actions are at least as beneficial as the action which the State agency would take to comply with paragraph (g) of this section. The summary shall be based on the State agency's review of the description of the targeting or other selection methods as provided by the other program agency; and

(4) The State agency shall submit revisions to the attachment as warranted by information in the annual report required in paragraph (j)(1) of this section.

(j) *Reports and documentation.* (1) The State agency shall annually assess the targeting aspects of its IEVS specified in paragraph (i)(3) of this section and shall report that assessment to FNS. Such reports shall cover a Federal Fiscal Year (October 1 through September 30) and are due to the appropriate FNS Regional Office by December 31 following the particular Fiscal Year. In the reports the State agency shall provide the following information about its targeting activities separately for each data source:

(i) The actual number of information items acted on and the percentage that that number is of the number of items received;

(ii) A summary of any significant operational events and patterns in targeting, and any consequent changes made or planned in such areas as automated data processing and targeting methods; and

(iii) Any change to the cost-benefit justification which is required by paragraph (i)(3) of this section.

* * * * *

Date: January 28, 1988.

Thomas W. Mitchell,

Acting Administrator.

[FR Doc. 88–2079 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 932

Expenses and Assessment Rate for Marketing Order Covering California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1988 fiscal year established for that order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1988, through December 31, 1988 (§ 932.222).

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was issued on December 24, 1987, and published in the **Federal Register** (52 FR 49417, December 31, 1987). That document contained a proposal to add § 932.222 to authorize expenses and establish an assessment rate for the California Olive Committee for the 1988 fiscal year, and provided that interested persons could file comments through January 11, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

Approval of this budget and assessment rate should be expedited

because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, § 932.222 is added as follows [This section wil not appear in the Code of Federal Regulations]:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 932.222 is added to read as follows:

§ 932.222 Expenses and assessment rate.

Expenses of $1,620,350 by the California Olive Committee are authorized, and an assessment rate of $23.92 per ton of assessable olives is established, for the fiscal year ending December 31, 1988. Unexpended funds from the 1987 fiscal year may be carried over as a reserve.

Dated: January 22, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2064 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1010–88]

Automatic Conversion of Classification of Beneficiary

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction in rule document No. INS 1010–87 beginning on page 33797 in the issue of Tuesday, September 8, 1987.

SUMMARY: This corrects a typographical error in the final rule published on September 8, 1987, 52 FR 33797.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Yolanda Sanchez-K, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC. Telephone: (202) 633–5014.

PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

§ 204.5 [Corrected]

In § 204.5(c), the phrase "12 years of age" should read "21 years of age", where it appears after the phrase "unmarried children under * * *".

Date: December 8, 1987.

James A. Puleo,

Assistant Commissioner, Adjudications.

[FR Doc. 88–2098 Filed 2–1–88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87–148]

Reservation of Space for Quarantine of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on reserving space in quarantine facilities maintained by Veterinary Services (VS) by requiring advance payment for all estimated quarantine related costs for birds and poultry. When, in the past, bird and poultry importers defaulted on payments owed to VS for quarantine costs, the federal government absorbed those costs. To prevent further losses, we are requiring that the reservation fees for birds and poultry amount to payment in full for the 30-day quarantine period.

We are also revising the definition section of the animal and poultry regulations. As now defined, pigeons are considered poultry.

EFFECTIVE DATE: March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) prescribe conditions under which animals and poultry may enter the United States. Section 92.4 provides for reservation fees for animals and poultry being imported through quarantine facilities maintained by Veterinary Services (VS).

In a document published in the **Federal Register** on August 14, 1987 (52 FR 30372–30373, Docket Number 86–088), we proposed to amend § 92.4 of the regulations by requiring advance payment for all estimated costs of quarantining birds and poultry, defined to include pigeons, in the VS facilities. Our proposal invited the submission of written comments which we would consider if postmarked or received on or before October 13, 1987. We received 20 comments. With the exception of one from a State agency, all came from private industry. Two commenters supported the proposed rule; the others objected to it. A discussion of their objections follows.

Seventeen commenters maintained that advance payment of 25 percent of estimated quarantine costs should not be increased. All of these commenters objected to the increased rate, disputing our assertion that the government incurs significant losses when importers default on paying quarantine costs. One commenter suggested that we increase the reservation fee to 50 percent, rather than 100 percent, of estimated costs. He did not explain how he arrived at this compromise figure, nor the rationale behind it. Sixteen commenters stated that we should absorb our losses as a routine cost of doing business. They stated that "for the USDA to lose only twelve thousand dollars ($12,000.00) of all funds * * * collected from the avian imports is not a substantital amount * * *." These commenters erroneously compared the $12,000 lost in fiscal year 1986 with total funds collected from avian imports; in fact, the $12,000 lost represents a percentage of total funds collected in bird quarantine facilities maintained by Veterinary Services. Regulations on VS-maintained bird quarantine facilities concern fewer than one percent of all birds imported into the United States. Of the total number of birds imported into the United States each year—700,000—the number quarantined in VS maintained facilities each year fluctuates between 5,000 and 6,000. The majority of "avian imports" are quarantined in privately operated facilities.

One commenter objecting to the proposal stated that "costs of the care of the birds in many cases are the major factor of the *per diem*, and if there is no bird there, those costs are not incurred."

In recognition of that fact, the current regulations prescribe procedures for canceling reservations. We do not penalize importers who cancel reservations in accordance with the regulations; after subtracting our standard handling fee, we refund the amount of the reservation deposit. The change we proposed will not change the refunding procedures established in the regulations.

Two commenters, including one in favor of our proposal, worried about the administrative burdens we might encounter in processing refunds for unused fees. We expect the bookkeeping complications to be minimal, and the administrative advantage of our new system to outweigh any slight increase in refund-processing activities and costs that might occur.

Finally, one commenter objected to losing interest by depositing money with us. We concede his point, but note that the interest amounts involved are small. The commenter estimated that he would lose between $50 and $150 for a $7,000 quarantine. While we regret the necessity of requiring advance payment, slightly increasing the business expenses of bird importers using VS-maintained quarantine facilities, we are taking this action to prevent past abuses of our reservation fee policy from recurring.

Based on the rationale set forth in this document and in the proposal, we are amending the regulations as proposed.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability or United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This billing procedure requires that bird and poultry importers using VS-maintained quarantine facilities prepay the estimated quarantine costs. Total bird quarantine charges will not increase; only the time of payment will change.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 is amended to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of the word "birds" is revised to read: *Birds.* All members of the class aves (including eggs for hatching), other than poultry.

3. In § 92.1, the definition of the word "pigeons" is removed.

4. In § 92.1, the definition of the word "poultry" is revised to read: *Poultry.* Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching).

5. Section 92.2(b) is revised to read:

§ 92.2 General prohibitions; exceptions.

* * * * * *

(b) Birds from Canada may be imported in accordance with this section or in accordance with the provisions applicable to importation of poultry from Canada as specified in §§ 92.5(b), 92.19, and 92.26 of this part.

* * * * * *

§ 92.2 [Amended]

6. Section 92.2(e) is removed and reserved.

7. Section 92.4 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 92.4 [Amended]

(a) * * *

(4)(i) The importer or importer's agent shall pay or ensure payment of a reservation fee for each lot of animals or birds to be quarantined in a facility maintained by Veterinary Services. For animals other than poultry, the reservation fee shall be 25 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. This advance payment shall be at least $130 for each horse and $240 for each lot of any other kind of animal except poultry, but shall not exceed $2,500. For birds and poultry, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

* * * * * *

Done in Washington, DC this 28th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–2065 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Borrower Rights; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 614 on November 25, 1987 (52 FR 45161). These regulations were amended to make Federal land banks and Federal intermediate credit banks subject to the credit review committee requirements and provide that the duties of the board member on such committees may be performed by an alternate, who is also required to be a board member. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the

effective date of the regulations is February 2, 1988.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Joanne P. Ongman, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(Secs. 5.17(9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

Dated: January 27, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–2051 Filed 2–1–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 270, 273, 375, and 381

[Docket No. RM86–14–000; Order No. 483]

Revisions to the Purchased Gas Adjustment Regulations

Issued January 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) on November 10, 1987, amended its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers. (52 FR 43854 (Nov. 17, 1987)).

In order to afford the natural gas pipeline industry the opportunity to discuss the technical aspects of implementing the revised Purchased Gas Adjustment (PGA) regulations, the Commission is holding a technical question and answer conference.

DATE: This conference is to be held on Tuesday, March 15, 1988, at 9:30 a.m. in a room to be designated in the offices of the Commission. Any revisions required to the time and place of the conference will be announced by, and the new time and place of the conference will be available from, the Commission's Office of Pipeline and Producer Regulation, Cost Analysis and Field Review Branch, (202) 357–9138.

ADDRESS: The address of the Commission offices where the conference is to be held is: Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426.

The room number will be posted on the day of the conference at the guard's desk on the second floor.

FOR FURTHER INFORMATION CONTACT: Robert W. Fulton, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 357–9138.

In order to afford the natural gas pipeline industry the opportunity to discuss the technical aspects of implementing the revised Purchased Gas Adjustment (PGA) regulations, the Commission's staff will hold a technical conference on Tuesday, March 15, 1988, at 9:30 a.m. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Both rate and computer technical staff will be present at this conference to answer questions from the conference attendees. Any attendees may submit questions in writing in advance of the conference to Mr. Robert Fulton, 825 N. Capitol St. NE., Room 5410H, Washington, DC 20426.

All interested persons and Staff are invited to attend.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2092 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket Nos. RM86–7–001 et al.]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued January 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing; Correction.

SUMMARY: On December 29, 1987, the Commission issued Order No. 473–A, granting rehearing of Order No. 473 to provide protest procedures for all first sellers to obtain compression allowances and to provide several clarifications of the final rule, (53 FR 15 (Jan. 4, 1988)). This notice corrects the date shown in the preamble text by which persons using the protest procedures to obtain compression allowances must make their filings under the expanded protest procedures. The corrected language now reflects the date provided in the regulations.

EFFECTIVE DATE: This change is effective March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Commission issued Order No. 473–A, granting rehearing of Order No. 473 to provide protest procedures for all first sellers to obtain compression allowances and to provide several clarifications of the final rule, (53 FR 15 (Jan. 4, 1988)). This notice corrects the date shown in the preamble text by which persons using the protest procedures to obtain compression allowances must make their filings under the expanded protest procedures. On page 16, second column of 53 **Federal Register** (page 6 of the Commission's order), the second sentence of the first full paragraph is revised to read: "Interested persons will have until May 3, 1988 to make their filing."

The corrected language now reflects the date provided in the regulations included in Order No. 473–A and will become effective March 4, 1988, the date the order on rehearing becomes effective. (*See* 18 CFR 271.1104(h)(4)(ii)).

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2093 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1310

Administrative Cost Recovery

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule amends existing TVA administrative cost recovery regulations by providing for the collection of a $2 fee to accompany applications for quota turkey hunt permits at TVA's Land Between The Lakes (LBL) in western Kentucky and Tennessee. The regulation is promulgated under authority of the Tennessee Valley Authority Act of 1933, as amended, and Title V of the Independent Offices Appropriations Act of 1952 which authorizes TVA to prescribe for certain services or things of value provided by TVA such fee, charge, or price as it determines to be fair and equitable.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth E. Thack, Director of Land Between the Lakes, Golden Pond, Kentucky 42231, (502) 924–5602.

SUPPLEMENTARY INFORMATION: TVA published the proposed rulemaking in the **Federal Register** on December 16, 1987 (52 FR 47728–29), and invited comments for 30 days ending January 15, 1988. TVA received one comment in general opposition to the quota turkey hunt and the application fee. The commenter did not challenge the basis for instituting the quota hunt or for charging the fee. The quota hunt is being implemented to enable TVA to more effectively manage the turkey population and help reduce the risk of injuries to hunters due to overcrowding. Accordingly, TVA has decided to institute the quota turkey hunt on peak days. TVA already charges a $2 application fee for its quota deer hunts. Not charging for quota turkey hunt applications would be inconsistent, and TVA has decided to charge for quota turkey hunt application processing. Accordingly, TVA is promulgating this final rule as proposed.

Hunters at LBL must hold a State hunting license for the State in which they are hunting (Kentucky or Tennessee) and a hunter use permit from TVA for which TVA charges a fee. Due to the quality of the hunting experience offered, LBL is a very popular turkey hunting site. Because of the large number of people desiring to hunt turkey at LBL, TVA has decided to limit participation in the turkey hunts during peak use days of the hunting season by random selection of applicants for special quota turkey hunt permits as part of an intensively managed hunting program. The special quota turkey hunts will be implemented beginning in April 1988 for the first five days of the season. Limiting hunter density on these days should help reduce the risk of accidental injury and enhance the hunting experience. Actual quota hunt days will be publicized well in advance of each season. In order to participate in quota turkey hunts, hunters will be required to complete an application form which must be received by established deadlines. A drawing will be conducted by computer and a quota hunt permit or rejection notice mailed to the applicant.

The $2 application fee for LBL quota turkey hunt permits will recover administrative costs associated with processing the forms, conducting the drawing, and notifying applicants of rejection or selection. TVA already charges the $2 application fee for LBL quota deer hunts. Application forms must be made available no later than February 1988 in order to process the applications for the 1988 quota turkey hunt. In order to treat all quota hunt applicants equally and in light of the foregoing, TVA has determined that good cause exists to make these regulations effective immediately and that it is impracticable and unnecessary to delay the effective date of this rulemaking beyond the publication date hereof.

TVA has determined that this proposed rule will not be a "major" rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act.

TVA has determined in accordance with section 5.2.9 of TVA's procedures implementing the National Environmental Policy Act (48 FR 19264) that the proposed rule is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 18 CFR Part 1310

Government property, Hunting, Land, Land sales.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

1. The authority citation for 18 CFR Part 1310 continues to read as follows:

Authority: 16 U.S.C. 831–831dd; 31 U.S.C. 9701.

§ 1310.2 [Amended]

2. Section 1310.2 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (c) in the heading and text.

§ 1310.3 [Amended]

3. Section 1310.3 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (d) in the heading and text.

W. F. Willis,

General Manager.

January 26, 1988.

[FR Doc. 88–2059 Filed 2–1–88; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 87N–0358]

Code of Federal Regulations; Authority Citations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing new procedures to ensure that the authority citations for the agency's regulations in Title 21 of the Code of Federal Regulations (CFR) conform to the requirements established by the Administrative Committee of the Federal Register (ACFR). This action does not represent a change in policy and does not increase the burdens on the public.

DATES: Effective February 2, 1988; comments by March 3, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Office of Regulatory Affairs (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 1985 (50 FR 12462), the ACFR amended its regulations (Title 1, Code of Federal Regulations (CFR)) to clarify, among other things, the form and placement of citations of authority in the CFR (1 CFR 21.40).

Under the new regulations issued on March 28, 1985 (see 1 CFR 21.43), authority citations are to be centralized and provided for each part or subpart. ACFR made this change because it considers authority citations for each section to be needlessly repetitious and confusing to the public. ACFR is confident that its new rules will eliminate repetition, result in fewer pages in the CFR, save agency printing costs, and provide easy reference for the reader. If an agency wishes to specify the authority for a particular CFR section, it can do so within the centralized authority citation (see 50 FR 12464).

ACFR also noted that many CFR authority citations are redundant because agencies have not consolidated the Public Law, Statutes at Large, and

United States Code (U.S.C.) citations. Therefore, ACFR amended its regulations (see 1 CFR 21.52) to require only reference to the U.S.C. in authority citations. Use of Public Law and U.S. Statutes at Large citations is now optional.

ACFR noted that its action did not represent a change in policy or an increase in the burdens on agencies or the public. As it stated in the **Federal Register** of March 28, 1985 (see 50 FR 12462):

> The ACFR will not require agencies to reach back and rewrite authority citations for regulations already in the CFR. This centralization of authority citations will take place as agencies amend their regulations. It will be most cost effective for agencies when amending their regulations to remove the authority citations at the section level and centralize the citations at the part or subpart level. This can be done with amendatory language such as:
>
> The authority citation for Part X is revised to read as set forth below and the authority citations following all the sections in Part X are removed.

FDA recognizes that each of its documents classified as a rule or proposed rule in the **Federal Register** must contain a citation of the legal authority under which the agency issues the document (see 1 CFR 21.40). Over the years, FDA has followed the practice of including the authority citations both at the part or subpart level and at the section level. After a preliminary review of FDA's regulations in 21 CFR Parts 1 through 1299, the agency has determined that, although the authority citations are accurate, there are some redundancies and inconsistencies. Therefore, the agency has undertaken a project to review and to revise all of the authority citations in 21 CFR Parts 1 through 1299, to comply with ACFR's authority citation requirements. The agency intends to remove the authority citations that are listed for particular sections and to include all these citations in the authority citation for the part or subpart. The agency recognizes that, as a result, some authority citations included for a part or subpart will not be applicable to all of the regulations included in that part or subpart. Interested persons should be aware of this fact.

The agency also intends to eliminate all references to Public Laws and to the U.S. Statutes at Large when it can cite the U.S.C. However, the agency will cite both the Federal Food, Drug, and Cosmetic Act (Public Health Service Act or other applicable statute) and the U.S.C. in the authority citation.

For example: **Authority:** Secs. 402, 403, 409, 701, 702, 703, 704 (21 U.S.C. 342, 343, 348, 371, 372, 373, 374).

In this final rule, FDA is revising the authority citations in 21 CFR Part 1. The agency anticipates that in the next year, it will review and revise Subchapter A—General Parts 2 to 99 (21 CFR Parts 2 to 99) and Subchapter B—Food For Human Consumption Parts 100 to 169 and Parts 170 to 199 (21 CFR Parts 100 to 169 and Parts 170 to 199) to comply with 1 CFR 21.43. The agency expects to complete its revision of its regulations in 1989. If, however, the agency finds that it is amending a part or subpart, or significant numbers of sections in a part or subpart, as part of a substantive rulemaking activity, it may revise the citations in that part or subpart to comply with the ACFR requirements as part of the rulemaking. Any new parts or subparts that FDA adds will be drafted to conform to 1 CFR 21.43.

The agency believes that it should codify its practices for including authority citations. Therefore, the agency is issuing new § 1.4 *Authority citations.* New § 1.4(a) makes clear that FDA's policy is to review and to revise its regulations as necessary to comply with ACFR's requirements. Where there is no applicable U.S.C. authority for a regulation, the agency, in accordance with new § 1.4(c), will include a citation to the Statutes at Large. If necessary, the agency, in accordance with new § 1.4(d), will include a citation to executive delegations (e.g., Executive Orders), if any, to link the statutory authority to the agency.

New § 1.4(b) provides that, in reading the agency's regulations in 21 CFR Parts 1 through 1299, interested persons should be aware that the agency may rely on one or more of the statutory provisions listed for a part or subpart to implement or to enforce any section in that part or subpart.

FDA has determined that this final rule does not change the statutory authority under which any section of any part or subpart was issued. Accordingly, because the changes that the agency is making are not substantive, the Commissioner of Food and Drugs finds that there is good cause not to engage in notice and public procedures or to delay the effective date of these amendments. FDA is merely conforming the form and placement of authority citations to ACFR's requirements in 1 CFR 21.40, et al. (5 U.S.C. 553).

In accordance with 21 CFR 10.40(e)(1), the agency is providing until March 3, 1988 for interested persons to submit written comments on the changes to the Dockets Management Branch (address above) to permit the agency to determine whether the amendments should subsequently be modified or revoked. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule and has determined that the rule is not a major rule as defined by the Order. Because the amendments are not substantive, there is no economic impact from them.

The agency has determined under 21 CFR 25.24(a) (8) and (9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 1

Food, Human drugs and biologics, Animal drugs and feeds, Cosmetics, Medical devices, Radiological health products, Administrative practices and procedures, Authority citations.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 1 is amended as follows:

PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for 21 CFR Part 1 is revised to read as follows and the authority citations following all of the sections in Part 1 are removed:

Authority: Secs. 4, 5, 6 (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371).

2. In Subpart A by adding new § 1.4 to read as follows:

§ 1.4 Authority citations.

(a) For each part or each subpart of its regulations, the Food and Drug Administration includes a centralized citation of all of the statutory provisions that provide authority for any regulation that is included in that part or subpart.

(b) The agency may rely on any one or more of the authorities that are listed for a particular part or subpart in implementing or enforcing any section in that part or subpart.

(c) All citations of authority in this chapter will list the applicable sections in the organic statute (e.g., the Federal Food, Drug, and Cosmetic Act), as well as the corresponding United States Code (U.S.C.) sections, if they exist. Where there is no corresponding U.S.C. provision, the agency will include a citation to the U.S. Statutes at Large. Citations to the U.S. Statutes at Large will refer to section, page, and volume.

(d) The authority citations will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

Dated: January 7, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-2038 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 86-15]

Accommodation of Utilities; Longitudinal Utility Use of Freeway Right-of-Way

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects to clarify requirements regarding utility use of Federal-aid highway right-of-way and modify the conditions under which certain types of utilities such as fiber optics may be located longitudinally on Federal-aid freeways.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering and Program Development, (202) 366-4652; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The final rule sets forth the FHWA's Accommodation of Utilities; Longitudinal Use of Freeway Right-of-Way policy and it explains what States must address in amending their current accommodation plans to obtain FHWA approval for utilities to use the longitudinal right-of-way, including provisions for the direct access from the roadway to install, service and maintain the utility. Once a State decides to provide for longitudinal use in its accommodation plan and establishes procedures which meet the criteria described in the rule, the State, rather than FHWA, will determine whether a particular request to use the longitudinal right-of-way, including direct access, is appropriate. For administrative convenience, States may set up procedures for individual and/or class approvals of such requests. A State also can decide not to permit longitudinal use, but this must be expressed in its accommodation plan.

This process, therefore, leaves to the States the decision as to whether particular applications should be approved so long as they comply with the regulatory criteria and thus is consistent with E.O. 12612 on "Federalism."

The rule includes three criteria that State plans must meet: Assure that longitudinal installations do not adversely affect highway safety; evaluate the effects that denial of a particular application would have on the productivity of agricultural land; and consider any impairment or interference with the use of the highway.

Background

Under the existing FHWA regulations, the need for allowing utility installations to cross over or under Federal-aid highway right-of-way is recognized, provided certain conditions are satisfied. The policy is designed so that the Federal-aid highway systems do not act as barriers to necessary and orderly land use and development. The existing policy, although strongly discouraging the longitudinal use of the freeway right-of-way within the access control limits, does not prohibit such use, provided certain conditions are met.

On December 19, 1986, the FHWA issues a notice of proposed rulemaking (NPRM) (51 FR 45479, FHWA Docket No. 86-15). On February 11, 1987, the comment period was extended to March 17, 1987 (52 FR 4349). The NPRM solicited comments on proposed revisions to regulations on the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. The proposed revisions sought to clarify requirements regarding utility use of Federal-aid highway right-of-way and to modify the conditions under which certain types of utilities such as fiber optics may be located longitudinally on Federal-aid freeways.

A total of 89 commenters responded to the NPRM. This included 40 State highway agencies (SHA's), 15 utility companies, four governors, four contractors, six national organizations, seven private citizens and 13 others including other State agencies, local agencies and universities.

There were 76 general comments on the NPRM. Thirty-two commenters expressed support for loosening of the longitudinal occupancy policy. Forty-two commenters expressed unfavorable responses to the use of controlled access right-of-way for longitudinal utility installations. The others offered technical comments or did not indicate any preference. Of the responses from SHA's, 24 were unfavorable and 10 were favorable. Comments from State governors, private citizens, universities, and consultants provided 12 unfavorable responses and 15 favorable responses. Eight utility companies supported the rulemaking, and six did not. One offered technical suggestions only.

Further analysis of the general comments showed that 31 of the 42 unfavorable comments expressed opposition to any change from the existing policy. Several expressed strong opposition to any change and cited potential safety problems and fears of proliferation as reasons. Several expressed concern for the availability of information needed to justify use of freeway right-of-way under the NPRM. The favorable comments most often expressed support or non-opposition with the condition that safety should not be compromised.

The specific comments on the NPRM mirror in many respects the general comments. Of the 40 comments on specific provisions, 18 were favorable, 21 may be characterized as unfavorable, and one was technical. The 18 comments in favor of the specific requirements supported the opportunity for use of controlled access right-of-way. Many of the comments which expressed opposition indicated an anticipated difficulty with the justification that would be necessary to support use of the freeway right-of-way.

The following discussion addresses the substantive issues most frequently mentioned by the commenters:

1. Safety and Operations

Under the NPRM, access from the main lanes or ramps would be permitted under very strictly controlled conditions. Nine commenters, mostly utilities, responded that access should be allowed from the main lanes and ramps under various forms of permits or specifications that would require demonstration of the utility's abilities to

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comply with traffic control measures. Nine SHA's opposed this position.

Most of the commenters recognized that after a fiber optic cable system is installed, need for access for maintenance or service is minimal. Several noted that the actual maintenance experience with a system in a freeway environment is uncertain because none have been in service long enough. However, judging from other cable installations, very little line maintenance is necessary except at repeater stations or when an accident occurs. Some commenters reported problems with splices and recommended that they be located at non-strategic locations, such as in interchange areas where access would be easy. Others recommended that repeater stations be located at or outside of the right-of-way line so that more frequent maintenance would not be disruptive to highway traffic.

The final rule provides criteria under which States may permit direct access, after FHWA approves the plans, from the main lanes or ramps. Those States that oppose this form of access are not required to allow such access and their accommodation plans can reflect this fact. Prior to granting direct access, States must address the conditions under which it will permit such access in their accommodation plans and the accommodation plans must be approved by FHWA.

The NPRM also raised a question regarding the need for specific standards in the rule. Seven commenters believed that some standards were necessary. However, there was no agreement on what type of standards would be appropriate nor whether the standards should be part of the rule. Three of the commenters recommended that standards be devised but not included in the rule.

FHWA is not adopting detailed programmatic standards for States to adopt uniformly for permits for direct access. States may grant such permits consistent with the generic criteria established by FHWA.

There were 18 comments on a question regarding nature, type and extent of controls on operations and safety if access were to be permitted from the main lanes of a freeway. Nine of the responses were from SHA's whose primary concerns were for proper signing and control of the utility contractor. A frequent SHA statement was that they do not have enough personnel to police the proposed policy under a permit process. Several SHA's and some utilities recommended strict permit procedures or demonstration of ability to perform under freeway conditions. The utilities responding to this question suggested that the installations be at the right-of-way edge to minimize traffic conflicts.

Direct access requirements are included in the final rule and must be addressed by the States in their accommodation plan to ensure that highway safety is not adversely affected. Those States that have concerns can prohibit direct access or address them through their longitudinal use plan, without unnecessary Federal oversight.

2. Class Approval Process

The NPRM also proposed that States could establish, with FHWA prior approval, class approval procedures. Once a plan containing class approval was approved by FHWA, individual longitudinal use requests within the class could be expedited. The class approval process was established for the administrative convenience of the States and it was anticipated that it would assist in expediting approvals where warranted. FHWA solicited comments on the types, terms and conditions that should be imposed on various utilities under a class approval process. Twelve of the 26 comments on this question were from SHA's and directed at the class of utility or type of installation. The comments were in general agreement that there could be a general class of utilities which by type of installation (buried at various depths) and by low frequency of maintenance and low incidence of danger which could be accommodated at or near the right-of-way line. Other commenters, mainly utility companies, thought standards or criteria of installation should include location, depth, access provisions and marking as factors for determining class approval.

There were 14 comments on a question as to what type of utility could warrant approval under the class approval process. The general consensus was that class approval could be given for a utility that (1) could be buried easily, (2) would present very low hazard, (3) would require very little maintenance and (4) would be similar to fiber optics, and (5) could be identified as a class of utilities. Several responses indicated that transmission facilities would meet the class approval criteria, but distribution would not. Some commented that overhead facilities would not be warranted because of visual intrusion and potential for damage. Others expressed views that underground facilities, such as water, gas, oil and sewer lines, would not be warranted because of potential danger or the need for frequent service.

The final rule enables States to establish class approval procedures, but does not distinguish between types of utilities for which class approval will be granted.

3. Limiting Increased Use to Certain Types of Utilities

The NPRM solicited comments on whether only certain types of utilities should be permitted increased use of the right-of-way. Twenty-three SHA's, eight utilities and two private citizens responded to this issue. Seventeen SHA's thought that allowing access for certain utilities while excluding others would be discriminatory, difficult to justify or might raise charges of restraint of trade. Other States thought there would be no problems or that any conflicts could be worked out with proper procedures. Seven of the eight utilities indicated access could be provided fairly if certain controls were adhered to. The two private citizens thought it would not be legally or politically possible to allow only certain types of utilities.

As noted above, the final rule does not distinguish between types of potential users. As long as the regulatory criteria are met, the States will have the option of determining which types of utilities should be permitted along the right-of-way within their jurisdiction. The NPRM, however, did note that underground utility facilities which require little maintenance or servicing obviously would have less impact than above ground utility installations which are more subject to environmental deterioration and may create a safety hazard as a roadside obstacle. States are free to make such a distinction among classes in their accommodation plans, and if consistent with criteria established by this rule, would be approved. Thus, as part of the accommodation plan, States can distinguish between type, nature or function of utility and potential impact of freeway use in setting up a class approval process.

4. Impact on Future Highway Construction and Maintenance

There were four comments on this specific question, three from SHA's and one from a utility. The SHA's expressed concern for the proliferation of use by fiber optics lines and other types of utilities. Their comments indicated that more problems could be anticipated with placement of signing, illumination and guard rails away from the roadway. There was also concern expressed about the presence of utilities limiting further ability to add to or reconstruct the highway. There were no specific comments which addressed the economic impact on future highway construction and maintenance.

The final rule includes a provision which requires States to consider the interference or impairment of the use of the highway in reviewing applications for longitudinal use of the right-of-way. This provision is consistent with 23 U.S.C. 109(l)(1).

5. Governmental Usage/Defense Enhancements of Telecommunications Facilities

Seven SHA's and two utilities responded to the question of whether a portion of the fiber optic cables should be specifically dedicated for a given use as a condition to approving such installations. Five States thought dedicated use should be required. Two States and the two utilities said it should not be required. Two States also thought specific defense enhancements should be required. The two responding utilities said such enhancements should not be required. One State and one private citizen thought a defense communication system would be vulnerable to attack if placed on the Interstate System.

The final rule does not include any requirements on this issue. If States decide that dedicated use is necessary or specific enhancements should be required, these may be included in their accommodation plans. FHWA, however, will not consider the presence or absence of such restrictions in reviewing and approving accommodation plans.

6. Fees for Use of Right-of-Way

There were 34 responses to the general question of whether and how a fee system could be implemented for use of the right-of-way. The general consensus was that some type of fee should be charged. Four utilities and one utility organization thought the charge should be limited to administrative costs. Six utilities thought there should be no fee. The reasons for no fee ranged from "a fair fee system would be difficult to implement" to "utilities pay for highways through taxes." One State thought there should be no fee if the utility agrees to an indemnification condition. In three States the laws would have to be changed to allow collection of fees. In one State the laws prohibit fees being greater than administrative costs. Others favored charging fees and suggested various methods for setting them.

There was a consensus among respondents that right-of-way should be leased rather than purchased, that States should collect and retain fees collected, and that the revenues should be earmarked for highway purposes.

The final rule contains no provision requiring the SHA's to charge for utility use of Federal-aid highway right-of-way. Rather, the amount, if any, and disposition of fees collected is left to State discretion. FHWA intends to continue to review this issue. Section 126 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (23 U.S.C. 156) requires that States charge fair market value for the sale, use, or lease of right-of-way airspace. However, utility use and occupancy was specifically exempted from this requirement. FHWA intends to leave this issue to State discretion pending further review.

7. Benefits To Be Expected From Increased Use of Right-of-Way

The NPRM asked for comments on the benefits that could be gained by allowing an increased use of the right-of-way. There were nine comments addressing this issue. Those from SHA's (four) were clouded by the question of whether fees would be charged and how the amount of the fee would be determined. Two of the SHA's reported that there should be an economic benefit to the utility because the utility would not have to purchase private right-of-way. One SHA indicated there would be little difference in cost of highway right-of-way versus private right-of-way. The general conclusion was that there would be some benefit to the utility. The utilities commented that there would be considerable benefit to the utility due to reduced construction costs, greater protection offered by freeway right-of-way, and ease in dealing with one agency. All these benefits would be passed on to the utility user. Any fee involved would be of economic benefit to the highway agency.

The final rule does not require that States consider governmental benefits in submitting a plan for FHWA approval or in reviewing individual longitudinal use applications. States are free to evaluate governmental benefits and the absence or presence of such a requirement in their accommodation plans will not be considered by FHWA.

Final Rule

In light of these comments the FHWA is revising its regulation to incorporate the policy as outlined in the NPRM with some modifications and clarification. Under the final rule, as part of the utility accommodation plan, States must indicate whether or not longitudinal installations of utilities will be permitted and submit procedures for the processing of individual requests and, if desired, for class approvals. Once FHWA has approved the plan, it will no longer review installations requests. This does not mean that States must adopt installation approval procedures. However, if States choose not to permit installations, they must indicate clearly their intent to prohibit installation in their accommodation plan. This regulation requires that revisions be made to existing State plans and that, as indicated in the existing regulation (23 CFR 645.215), such revisions must be submitted to FHWA within 1 year of the effective date of this rule.

There are two principal statutory provisions (23 U.S.C. 109 and 111) the States must be cognizant of in developing utility accommodation plans and which FHWA will ensure are complied with before approving such plans. Under 23 U.S.C. 109 (l)(1), in determining whether any right-of-way on any Federal-aid system should be used for accommodating any utility facility, the Secretary "shall":

—Ascertain the effect such use will have on the highway and safety;
—Evaluate the direct and indirect impact on agricultural lands if a freeway right-of-way request is denied; and,
—Consider any interference with or impairment of the highway if a request is granted.

Under 23 U.S.C. 111, States are required to obtain the prior approval of the Secretary before adding any point of access to, or exit from, an existing approved Interstate System project.

The approval required under section 111 and Federal determinations required under 109(l) will be deemed obtained by each State once it has submitted an accommodation plan that meets the requirements of this regulation and the plan is subsequently approved by FHWA. The approval will be conditioned upon complete compliance with the procedures established in the State plan. Although the final rule requires that all States address longitudinal installations in their accommodation plans, States can decide the extent of longitudinal installations that may be permitted or determine that no installations be permitted. All plans that contemplate longitudinal installations must demonstrate compliance with the criteria set out in the rule to obtain FHWA approval. For example, States may wish to permit and promote certain installations. On the other hand, States may choose to submit plans that maintain the current restrictive standards with regard to

longitudinal installations or to prohibit longitudinal installations. As long as States make a showing in their plans that the criteria of this regulation will be met prior to allowing such installations, States will be able to permit them under the approved plan.

Specific Provisions

1. Joint Use Policy Statement: Section 645.205

Paragraph (b) of § 645.205 adds a policy statement which encourages joint highway and utility planning in the design of new highways and the accommodation of utilities in existing highway corridors. This policy statement responds to the comments which pointed out the tradition of accommodating utility service and highway service in the same right-of-way.

2. Utility Definitions: Section 645.207

Section 645.207 clarifies the definitions of utility and utility facilities to include such things as communication lines owned by or dedicated to a governmental agency for its own use. This brings such facilities under the same comprehensive accommodation policy as public utilities. The definitions are also expanded to include hardware and facilities which are part of the utility's physical plant and necessary facilities for the utility's operations.

3. Criteria for Approval: Section 645.209

Section 645.209(c) provides that to obtain FHWA approval, the State plan must demonstrate that it will meet the requirements of 23 U.S.C. 109(l)(1). Each State accommodation plan that contemplates longitudinal installations must adequately demonstrate that such criteria are met prior to installation of any utility.

The criteria are:

—The State must ascertain the effects utility installations will have on highway and traffic safety, since in no case shall any use be permitted which would adversely affect safety.

—The State must evaluate the effects the denial of a particular application would have on the productivity of agricultural land.

—The State must consider any impairment or interference with the use of the highway.

These provisions are based on section 109(l)(1) and section 111. The NPRM had proposed to adopt the American Association of State Highway and Transportation Officials (AASHTO) Policy on the Accommodation of Utilities Within Freeway Right-of-Way standards as part of the criteria for approval of an accommodation plan. The final rule does not do so.

While the criteria must be met by the States to obtain FHWA approval of the accommodation plan, they are intended as minimum requirements and States are free to adopt additional criteria, including those used by AASHTO.

The NPRM proposed additional specific elements, such as the costs and difficulties of using alternative locations, as criteria for FHWA approval. These elements have not been included as regulatory conditions that States must meet to obtain FHWA approval of their accommodation plan because FHWA believes that, once plans are approved, States will be able to make the necessary determinations in implementing their accommodation policies consistent with the statutory and regulatory criteria.

Utility Standards/Strips

FHWA is including § 645.209(c)(2)(v) as a technical clarification. This provision essentially reflects the existing regulation with respect to utility strips and was inadvertently omitted from the NPRM's proposed regulatory language. It was not FHWA's intent to delete this requirement and, therefore, the rule contains provisions for establishment of a utility strip or corridor in which a longitudinal utility could be placed. The utility strip would be formed along the outer right-of-way limit by establishing a utility access control line between the proposed utility installation and the through roadways. The means of enforcing the utility access control line would have to be addressed in the State's utility accommodation policy. No service connections would be allowed from within the utility corridor. Under this concept the original control of access line and right-of-way fence would not have to be moved to establish a utility strip.

FHWA is not adding a specific provision, as requested in several comments received from both highway and utility industry authorities, which recommended establishment of construction standards, location standards, or special marking techniques. These matters are already governed by Part 645, and no additional changes are needed at this time.

4. State Accommodation Policies: Section 645.211

Under § 645.211(a) the State should limit the number or type of utilities that could qualify for longitudinal occupancy if excessive utility installations are likely which could result in conditions detrimental to the highway and its use. The State must have uniform procedures for establishing reasonable limitations in its utility accommodation policy to preserve the integrity of the freeway and preclude proliferation of utility occupancy. The procedures should provide a means of limiting utility use in a fair and equitable manner.

Class Approval Procedures

Section 645.211(e) requires the State to set forth in its accommodation policy detailed procedures, criteria and standards it will use to evaluate and approve proposed utility installations on freeways. To facilitate installations, a class approval process is established. Under this process the State could distinguish by type, nature or function of utility and potential impact on freeway use those utilities which would be considered for approval under the provisions of § 645.209(c). This procedure recognizes that not all utilities impact the highway or its use in the same way and may be treated differently. These procedures would be added to the State's accommodations policy and if approved by the FHWA, used to evaluate utility proposals. The State highway agency would be responsible in each individual case to ensure that the proposed utility installation meets the criteria of the approved accommodation policy.

5. Submission of Utility Application of FHWA: Section 645.215

Section 645.215(d) has been modified regarding when individual utility applications are to be submitted to FHWA. Under the revised procedures the State must address longitudinal installation in its utility accommodation policy. The State's accommodation policy must address the criteria for utility use of highways in a manner sufficient to permit FHWA approval. FHWA will no longer review individual longitudinal use requests.

Regulatory Impact

The FHWA has determined that this document is not a major rule under Executive Order 12291. However, it is considered a significant regulation under the Department of Transportation's regulatory policies and procedures and has been included in DOT's Regulatory Program for significant rulemakings. The final rule modifies and clarifies existing FHWA policy and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. Specifically, policy and procedural clarifications are set forth concerning applications of the regulation to placement of new utility facilities on highway right-of-way, particularly longitudinal use of freeway right-of-way.

The revisions will not impose any significant or substantial additional reporting or recordkeeping requirments on the States. Additional justification for longitudinal occupancy would have to be supplied by the utility to the States. Only the conditions under which certain types of utilities may be located longitudinally on Federal-aid freeways will be modified. The modified conditions will merely be incorporated in the States' existing utility accommodation policies if a State so chooses.

The regulatory impacts are addressed in more detail in a Regulatory Evaluation/Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For the above reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation are being submitted for approval to the OMB.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

In developing this final rule, FHWA has considered fully the affect this rule will have on the States, as required by E.O. 12612 on "Federalism", and the final rule is consistent with those principals.

In consideration of the foregoing, the FHWA hereby amends Part 645, Subpart B to Chapter I of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and Roads, Incorporation by reference, Reporting and recordkeeping requirements, Utilities.

Issued on January 27, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

The FHWA is amending 23 CFR Part 645, Subpart B as follows:

PART 645—UTILITIES

Subpart B—Accommodation of Utilities

1. The authority citation for Part 645 is revised to read as follows:

Authority: 23 U.S.C. 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and Executive Order 11990, 42 FR 26961 (May 24, 1977).

2. Section 645.205 is amended by redesignating paragraphs (b) and (c) to read as (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 645.205 Policy.

* * * * *

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

* * * * *

3. Section 645.207 is amended by revising paragraph (m) to read as follows:

§ 645.207 Definitions.

* * * * *

(m) *Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

4. Section 645.209 is amended by revising paragraph (c) to read as follows:

§ 645.209 General requirements.

* * * * *

(c) *Installations within freeways.*

(1) Each State highway agency shall submit an accommodation plan in accordance with §§ 645.211 and 645.215 which addresses how the State highway agency will consider applications for longitudinal utility installations within the access control lines of a freeway. This includes utility installations within interchange areas which must be constructed or serviced by direct access from the main lanes or ramps. If a State highway agency elects to permit such use, the plan must address how the State highway agency will oversee such use consistent with this subpart, Title 23 U.S.C., and the safe and efficient use of the highways.

(2) Any accommodation plan shall assure that installations satisfy the following criteria:

(i) The effects utility installations will have on highway and traffic safety will be ascertained, since in no case shall any use be permitted which would adversely affect safety.

(ii) The direct and indirect environmental and economic effects of any loss of productive agricultural land or any productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for accommodation of such utility facility will be evaluated.

(iii) These environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility will be considered.

(iv) [Reserved]

(v) A utility strip will be established along the outer edge of the right-of-way by locating a utility access control line between the proposed utility installation and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. The State or political subdivision is to retain control of the utility strip right-of-way including its use by utility facilities. Service connections

to adjacent properties shall not be permitted from within the utility strip.

(3) Nothing in this part shall be construed as prohibiting a highway agency from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or for servicing such installations.

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5. Section 645.211 is amended by revising paragraph (a) and adding paragraphs (e) and (f) as follows:

§ 645.211 State highway agency accommodation policies.

• • • • •

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety. Uniform procedures controlling the manner, nature and extent of such utility use shall be established.

• • • • •

(e) The State highway agency shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of § 645.209(c) of this part. The State highway agency also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State highway agency plan.

6. Section 645.215 is amended by removing paragraph (d)(2), by redesignating paragraph (d)(3) to read as paragraph (d)(2), and by revising paragraph (b) as follows:

§ 645.215 Approvals.

(b) Upon determination by the FHWA that a State highway agency's policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State

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[FR Doc. 88-2104 Filed 1-29-88; 9:39 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-266; Re: Notice No. 631]

Middle Rio Grande Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Middle Rio Grande Valley, in Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The viticultural area is located in central New Mexico (near Albuquerque) along the Rio Grande River. This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on May 28, 1987, at 52 FR 19535, Notice No. 631. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: March 3, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF received a petition for a viticultural area encompassing a narrow valley (no wider than 20 miles) along the Rio Grande River from just north of Albuquerque, New Mexico southward for approximately 106 miles to San Antonio, New Mexico. The viticultural area is known as Middle Rio Grande Valley. The petition was submitted by the Middle Rio Grande Chapter of the New Mexico Vine & Wine Society located in Albuquerque. The viticultural area consists of an irrigated valley of approximately 435 square miles. In response to the petition, ATF published a notice of proposed rulemaking in the **Federal Register.**

Local Viticultural History

Winemaking began in the Middle Rio Grande Valley with the establishment of Franciscan missions in the Seventeenth Century. Winemaking continued in the Middle Rio Grande Valley until Prohibition in 1920 when most vineyards were replaced by other crops. After repeal of Prohibition in 1933, viticulture was revived on a smaller scale. Today there are 6 bonded wineries in the viticultural area with others planned for the near future. There are twenty growers with more than one acre of wine grapes in the viticultural area with a total acreage of approximately 458 acres.

Evidence of Name

The name Middle Rio Grande Valley has been in use for many years to identify this area of New Mexico. In a report of Chief Engineer on the Chronological Development of the Rio Grande Basin, the name Middle Valley and Middle Rio Grande Valley were used to describe the settlement and agricultural attributes of the area. The report stated that the Middle Rio Grande Valley is probably one of the oldest irrigated areas in the United States. According to this report, the name Middle Rio Grande Valley applied to the area from Santa Fe, New Mexico southward to Socorro, New Mexico. Attached to the above described report was a map titled Rio Grande Valley which specifically identified an area of land between Albuquerque and Socorro as the Middle Rio Grande Conservancy District.

Boundary

The boundary of the Middle Rio Grande Valley viticultural area is adopted as proposed.

Geographical Evidence

(a) Climate

The climate in the Middle Rio Grande Valley is classified as arid continental type and it is characterized by low rainfall, warm summers, and mild winters. Most precipitation occurs during summer months as brief thunder showers. Snow occurs occasionally in the winter but accumulations are small. Winds are light to moderate and usually stronger during Spring months. The average number of days without killing frost ranges between 180 to 200 days in this belt. Minimum and maximum daily temperatures fluctuate 30 to 35 degrees. Two tables were published in the notice of proposed rulemaking showing the climate comparisons between the Middle Rio Grande Valley and the surrounding areas.

(b) Soils

The Middle Rio Grande Valley viticultural area is located in a Basin province of the Warm Desert Region of New Mexico. The Rio Grande River is the principal drainage for the Middle Rio Grande Valley. Soils within the viticultural area are on the nearly level floodplain adjacent to the river and are deep, highly stratified and typically non-gravelly. The Typic Torrifluvent association is developed in alluvium of mixed origin. Most of the soil within this association is medium, moderately fine or fine textured, and a high percentage of it is well suited to irrigation for a wide variety of crops. Subsurface layers are similar but may range in texture from sand to clay. Representative soil series of the Middle Rio Grande Valley are of Gila, Glendale or Vinton series. By contrast, soils adjacent to the viticultural area that occur on the strongly sloping uplands north of the Rio Grande plain have soils of the Typic Torriorthents which have gravelly, sandy surface layers and coarse textured subsurface layers. Soil series in this area are Bluepoint and Caliza. Higher soils are rough broken lands of Nickel and Canutio series and include a layer of gravel with subsurface caliche and clay layers. Steep side slopes cut with streambeds often show exposed areas of bedrock in the eroded hilly areas.

(c) Distinct Valley Area

The viticultural area follows the Rio Grande River and surrounding irrigated land for the length of 106 miles. Elevations within the area range from approximately 4,800 feet to 5,200 feet above sea level. The surrounding mountain areas located to the north, east, west and southwest have much higher elevations. There soils, water availability and climates differ from the Middle Rio Grande Valley area. Based on the evidence provided in the notice of proposed rulemaking, ATF finds that the Middle Rio Grande Valley viticultural area defines a region with unique climate and growing conditions and distinct valley features different from the surrounding areas.

Notice of Proposed Rulemaking

On May 28, 1987, Notice No. 631 was published in the **Federal Register** with a 45-day comment period. In that Notice, ATF invited comments from all interested parties regarding the proposal to establish "Middle Rio Grande Valley" as an American viticultural area. No comments were received from the public during the comment period.

Miscellaneous

ATF does not wish to give the impression by approving "Middle Rio Grande Valley" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Middle Rio Grande Valley."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural areas is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.119 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

. . . . .

9.119 Middle Rio Grande Valley.

Par. 3. Subpart C is amended by adding § 9.119 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.119 Middle Rio Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is "Middle Rio Grande Valley."

(b) *Approved maps.* The approved maps for determining the boundaries of the "Middle Rio Grande Valley" viticultural area are 24 U.S.G.S. Quadrangle (7.5 Minute Series) maps and 1 (15 Minute Series) U.S.G.S. map. They are titled:

(1) Abeytas, N. Mex. (1952), revised 1979.
(2) Alameda, N. Mex. (1960), revised 1967 and 1972.
(3) Alburquerque East, N. Mex. (1960), revised 1967 and 1972.
(4) Albuquerque West, N. Mex. (1960), revised 1967 and 1972.
(5) Belen, N. Mex. (1952), revised 1971.
(6) Bernalillo, N. Mex. (1954), revised 1972.
(7) Dalies, N. Mex. (1952), revised 1971.
(8) Isleta, N. Mex. (1952), revised 1967 and 1974.
(9) La Joya, N. Mex. (1952), revised 1971.
(10) Lemitar, N. Mex. (1952), revised 1971.
(11) Loma De Las Canas, N. Mex. (1959), revised 1979.
(12) Loma Machete, N. Mex. (1954), revised 1972.
(13) Los Griegos, N. Mex. (1960), revised 1967 and 1972.
(14) Los Lunas, N. Mex. (1952), revised 1971 and 1974.
(15) Mesa Del Yeso, N. Mex. (1959).
(16) Placitas, N. Mex. (1954).
(17) San Acacia, N. Mex. (1952), revised 1971.
(18) San Antonio, N. Mex. (1948)—15 minute series.
(19) San Felipe Pueblo, N. Mex. (1954), revised 1978.
(20) Santa Ana Pueblo, N. Mex. (1954), revised 1978.
(21) Socorro, N. Mex. (1959), revised 1971.
(22) Tome, N. Mex. (1952), revised 1979.
(23) Turn, N. Mex. (1952), revised 1979.
(24) Veguita, N. Mex. (1952), revised 1979.
(25) Wind Mesa, N. Mex. (1952), revised 1967.

(c) *Boundary description.* The boundary of the proposed Middle Rio Grande Valley viticultural area is as follows:

(1) The beginning point is at the transmission line tower in the middle of Section 34, T14N, R4E of the Santa Ana Pueblo, N. Mex. U.S.G.S. map;

(2) The boundary follows the power transmission line east for 2.5 miles until it converges with New Mexico State Route 25/Interstate 85 (now known as Interstate 25) at Sec. 1, T13N, R4E on the San Felipe Pueblo, M. Mex. U.S.G.S. map;

(3) It follows I–25 southwest for 1.2 miles until it arrives at an unimproved dirt road approx. .2 mile east of Algodones Cemetery, at Sec. 11, T13N, R4E on the Placitas, N. Mex. U.S.G.S. map;

(4) The boundary follows the unimproved dirt road southeast for 5.5 miles until it meets another unimproved dirt road at Tecolote, NM, south of Sec. 27 and 28, T13N, R5E;

(5) It travels southwest on the unimproved dirt road .7 mile until it meets NM–44 approx. 100 feet northwest of BM 6,075 in Placitas, NM, at T13N, R5E;

(6) It then goes southeast on NM–44 for approx. 250 feet until it intersects the 6,100 foot elevation contour line approx. 250 feet southeast of BM 6,075, at T13N, R5E;

(7) It then travels west for 3.5 miles on the 6,100 feet elevation contour line until it reaches a light-duty road on the Huertas Grant/Cibola National Forest Boundary at Sec. 6, T12N, R5E;

(8) The boundary runs north to northwest on the light-duty road for approx. .9 mile until it meets NM–44 next to BM 5,875 in Sec. 31, T13N, R5E;

(9) It travels west 5.2 miles on NM–44 until it arrives at I–25 (southbound interchange) near the Bernalillo Cemetery at T13N, R4E on the Bernalillo, N. Mex. U.S.G.S. map;

(10) It proceeds south on I–25 for approx. 8.6 miles until it intersects with NM–556 at the east bound interchange at Sec. 1, T11N, R3E on the Alameda, N. Mex. U.S.G.S. map;

(11) The boundary goes east approx. 5 miles on NM–556 until it intersects the 106°30' longitude meridian, T11N, R4E;

(12) Then it goes south on the 160°30' longitude meridian for approx. 4.5 miles until it arrives at Montgomery Blvd. at Sec. 34, T10/11N, R4E;

(13) The boundary travels west on Montgomery Blvd. for approx. 6.1 miles until it meets the south exit ramp of I–25 in Sec. 34, T11N, R3E;

(14) Then it travels south on I–25 for approx. 13.3 miles (through Albuquerque, N.M), until it intersects with NM–47 at Sec. 6, T8N, R3E on the Isleta, N. Mex. U.S.G.S. map;

(15) It heads south on NM–47 for approx. 3.2 miles until it converges with the 4,900 foot elevation contour line at Isleta Pueblo, NM, in Sec. 24, T8N, R2E;

(16) The boundary follows the 4,900 foot elevation contour line south for approx. 25 miles until it arrives at a point north on Madron, NM, at the Atchison, Topeka and Santa Fe Railroad (AT&SF RR) tracks, approx. 250 feet east of elevation mark 4,889 feet on the Turn, N. Mex. U.S.G.S. map;

(17) It then travels north on the AT&SF RR tracks for approx. 350 feet until it intersects NM–47 approx. 350 feet north of elevation mark 4,889 feet;

(18) The boundary goes southwest on NM–47 (through Turn, N.M.) for approx. 2.4 miles until it reaches the 106°45' longitude meridian between the Turn, N. Mex. & Vequita, N. Mex. U.S.G.S. maps;

(19) Then it travels south on the 106°45' longitude meridian for approx. 4.7 miles until it meets the 34°30' latitude parallel on the Veguita, N. Mex. U.S.G.S. map;

(20) It then proceeds west on the 34°30' latitude parallel for approx. 1 mile until it arrives at NM-47 approx. .75 mile south of San Juan Church;

(21) Then it moves south on NM-47 for approx. 13.2 miles until it reaches an improved light-duty road at La Joya, NM, approx. 500 feet west of La Joya Cemetery on the La Joya, N. Mex. U.S.G.S. map;

(22) It then travels south on the improved light-duty road for approx. 450 feet until it intersects another improved light-duty road;

(23) Then it goes 500 feet west on the improved light-duty road until it reaches a north-south unimproved road at a point approx. .9 mile east of the AT&SF RR tracks;

(24) The boundary heads south on the unimproved road for approx. 7.9 miles until it reaches the 34°15' latitude parallel on the La Joya, N. Mex. U.S.G.S. map;

(25) It travels west on the 34°15' latitude parallel for approx. .9 mile until it intersects the 106°52'30" longitude meridian on the Mesa Del Yeso, N. Mex. U.S.G.S. map;

(26) It then goes south on the 106°52'30" longitude meridian for approx. 3.3 miles until it intersects the south section line of Sec. 19, T1S, R1E;

(27) It then runs east for approx. 1.25 miles until it reaches the east section line (marked altitude 5,058 feet) of Sec. 20, T1S, R1E;

(28) It travels south on the section line for approx. 7.1 miles, until it meets the Grant Boundary at altitude mark 4,734 feet at Sec. 32/33, T2S, R1E on the Loma De Las Canas, N. Mex. U.S.G.S. map;

(29) It proceeds east on the Grant Boundary for .25 mile until it arrives at the section line (Grant Boundary at Sec. 32/33, T2S, R1E;

(30) The boundary moves south on the Grant Boundary for approx. 5.2 miles until it meets the (Grant Boundary) section line near altitude spot 4,702 feet at Sec. 28/29, T3S, R1E;

(31) The boundary goes west on the section line (Grant Boundary) for approx. .25 mile until it arrives at the section line at Sec. 28/29, T3S, R1E;

(32) Then it moves south on the section line for approx. 5.7 miles until it meets an unimproved dirt road at Bosquecito, N.M. on the west section line of Sec. 9, T4S, R1E on the San Antonio, N. Mex. (15 minute series) U.S.G.S. map;

(33) It heads south on the unimproved dirt road for approx. 2 miles until it changes to a light-duty road at Padilla Ranch in Sec. 21, T4S, R1E;

(34) It follows the light-duty road for 2.25 miles until it intersects US-380/85, in Sec. 33, T4S, R1E;

(35) Then it follows US-380/85, first west then it loops north for approx. 8 miles until it meets the 34° 00' latitude parallel;

(36) The boundary moves west on the 34° 00' latitude parallel of the Socorro, N. Mex. U.S.G.S. map for approx. .75 mile until it meets the 4,800 foot elevation contour line in Sec. 35;

(37) It meanders north on the 4,800 foot elevation contour line for approx. 9 miles until it meets the 34° 07' 30" latitude parallel;

(38) It travels east for approx. .2 mile on the 34°07'30" latitude parallel until it meets I-25 (US-60/85);

(39) It goes north on I-25 (US-60/85) for approx 27.8 miles until it meets the Belen Highline Canal levee approx. 1.6 mile south of San Antonio Church on the Veguita, N. Mex. U.S.G.S. map;

(40) Then the boundary follows the Belen Highline Canal north for approx. 9.4 miles until it intersects I-25, approx. .5 mile west of Bacaville, NM, on the Belen, N. Mex. U.S.G.S. map;

(41) Then it travels north on I-25 for approx. 16 miles until it meets the 34°52'30" latitude parallel on the Isleta, N. Mex. U.S.G.S. map;

(42) The boundary goes west on the 34°52 30" latitude parallel for approx. 1 mile until it arrives at the 106° 45' longitude meridian;

(43) Then it moves north on the 106° 45' longitude meridian for approx. 16.5 miles until it reaches the 35°07'30" longitude meridian on the Albuquerque West, N. Mex. U.S.G.S. map;

(44) At this point it heads east for approx. 1.2 miles along the 35° 07' 30" latitude parallel until it reaches the power transmission line towers at Sec. 3/4, T10N, R2E of the Los Griegos, N. Mex. U.S.G.S. map; and finally

(45) From there it follows the power transmission line towers (and for 1 mile along a connecting unimproved road) north and northeast for a total of approx. 24.4 miles to the point of beginning at Sec. 34, T14N, R4E, of the Santa Ana Pueblo, N. Mex. U.S.G.S. map.

Signed. January 11, 1988.

Stephen E. Higgins,

Director.

Approved.

January 19, 1988.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 88–2050 Filed 2–1–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Approval in Part and Disapproval in Part of Amendments to the North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of a proposed amendment submitted by the State of North Dakota as a modification to its permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises State regulations on performance bonds, postmining land use and signs and markers for surface coal mining operations.

EFFECTIVE DATE: February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background

Information pertinent to the general background on the State program approval process, the North Dakota program submission, and the Secretary's findings, disposition of comments, and conditional approval of the program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning the approval of program amendments are identified at 30 CFR 934.15.

II. Submission of Amendment

On February 10, 1987, North Dakota submitted a proposed amendment addressing performance bonds, postmining land use and signs and markers for surface mining operations.

The April 14, 1987 **Federal Register** (52 FR 12002) announced receipt of the proposed amendment and invited public comment on its adequacy.

Since no one requested a public hearing, none was held. The public comment period closed on May 14, 1987, but was reopened as noted below.

On July 27, 1987, OSMRE notified the State of deficiencies found in the amendment and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions or other evidence to show that the State's proposed modifications were consistent with the Federal requirements. At the State's request, the contents of this letter were further discussed with OSMRE at a meeting on August 7, 1987. By letter dated August 18, 1987, North Dakota submitted additional proposed rule changes addressing the identified deficiencies. On September 23, 1987, OSMRE announced receipt of the materials submitted on August 18, 1987, and reopened the public comment period until October 8, 1987 (52 FR 35735). On December 10, 1987, OSMRE sent North Dakota a second issue letter requesting further revisions and information to which North Dakota responded on December 14, 1987. OSMRE again reopened the public comment period until January 13, 1988, to allow for public review and comment on this new material (52 FR 49031, December 29, 1987).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the North Dakota Administrative Code (NDAC) submitted by North Dakota on February 10, 1987, and revised August 18, 1987, and December 14, 1987. Only those provisions of particular interest

are discussed below. Any provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules. Revisions which are not discussed contain language similar to the corresponding Federal rules or concern nonsubstantive wording changes which do not adversely affect other aspects of the program.

1. Chapter 69–05.2–12 Performance Bonds

(a) *General.* North Dakota has revised the wording of its bonding regulations at NDAC 69–05.2–12–01, 69–05.2–12–02, 69–05.2–12–03, 69–05.2–12–04, 69–05.2–12–06, 69–05.2–12–07, 69–05.2–12–08, 69–05.2–12–09, 69–05.2–12–10 (deleted in full), 69–05.2–12–11, 69–05.2–12–12, 69–05.2–12–13, 69–05.2–12–14, 69–05.2–12–15, 69–05.2–12–16 and 69–05.2–12–18 to clarify and simplify the language without changing the intent or meaning (except as discussed below) and to delete provisions no longer required by the corresponding Federal regulations at 30 CFR Part 800 as revised on July 19, 1983 (48 FR 32932).

Significant changes include: (1) Addition of NDAC 69–05.2–12–01.6 which, like 30 CFR 800.4(g), requires maintenance of adequate bond coverage at all times and specifies that failure to do so is a violation of the permit.

(2) Addition of NDAC 69–05.2–12–04.4 which, like 30 CFR 800.21(f), requires that persons with an interest in collateral posted as bond who desire notice of actions relating to the bond shall be afforded the opportunity to request such notice in writing at the time the collateral is offered.

(3) Addition of a self-bond to the list of acceptable forms of performance bonds at NDAC 69–05.2–12–02.3, as allowed by 30 CFR 800.12(c).

(4) Addition of NDAC 69–05.2–12–08.3 and 69–05.2–12–12.10 and deletion of NDAC 69–05.2–12–10 to clarify that operator-requested bond reductions and adjustments need not be processed as bond releases when the request is not based on reclamation work performed, as allowed by 30 CFR 800.15(c).

(5) Revision of NDAC 69–05.2–12–14.1 to provide the Commission with the authority to arrange access to the permit area for any person with an interest in a proposed bond release, as authorized by 30 CFR 800.40(b)(1).

Since, except as discussed in Findings 1(b) through 1(d), the State's revisions are either editorial in nature or similar to the corresponding Federal regulations, the Director finds these revisions to be no less effective than the Federal regulations, with the exceptions noted below and in Findings 1(b) and 1(d)(1).

In accordance with the Federal rules in effect at the time of approval of the North Dakota program, subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01 contain provisions that allow for incremental bonding. On October 1, 1984, the Federal rule providing for incremental bonding (30 CFR 800.11(b)) was remanded by the U.S. District Court of the District of Columbia as being inconsistent with section 509 of SMCRA (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144). On February 21, 1985 (50 FR 7278), OSMRE suspended 30 CFR 800.11(b) insofar as it allows bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term. The Director, by letter dated February 3, 1986, notified North Dakota that it would need to amend its program to be consistent with the District Court's decision and requested that the State, in accordance with 30 CFR 732.17(f)(1), submit a timetable for doing so. On April 1, 1986, North Dakota responded that the elimination of incremental bonding would require a statutory amendment, not just regulatory revisions. Accordingly, while this amendment revises the bonding requirements of NDAC 69–05.2–12 to address all other concerns of the Director as stated in the February 3, 1986 letter, it fails to remove the provisions authorizing incremental bonding. Therefore, to avoid the appearance of condoning an incremental bonding system in conflict with the court decision, the Director is not approving the proposed editorial revisions to subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01.

(b) *Surety bond replacement.* At NDAC 69–05.2–12–03.3, North Dakota proposes to require a permittee with a surety bond to obtain replacement bond within 30 days after receiving notice from the North Dakota Public Service Commission of the incapacity of the surety company. The Federal rule at 30 CFR 800.16(e)(2) requires that, upon incapacity of a bank or surety company, if adequate bond is not posted by the end of the period allowed, the operator cease coal extraction and begin reclamation in accordance with the approved reclamation plan and 30 CFR 816.132 or 817.132. The proposed North Dakota rule does not contain fully comparable provisions specifying when extraction is to cease and reclamation is to begin.

Therefore, the Director finds the North Dakota rule at NDAC 69–05.2–12–03.3 to be less effective than the Federal rule at 30 CFR 800.16(e)(2) with respect to surety bonds. However, since the North Dakota program, unlike the Federal rules, does not permit the posting of irrevocable letters of credit as a form of performance bond, and since all cash accounts and certificates of deposit are fully insured or guaranteed, the Director finds that the State's failure to address insolvent banks, as does the Federal rule, does not render the North Dakota rule less effective than 30 CFR 800.16(e)(2) with respect to collateral bonds. The Director is requiring that North Dakota further amend its program to require that, if adequate bond coverage is not posted within the specified time period following notification of the incapacity of a surety, the operator cease coal extraction and begin permanent reclamation.

(c) *Certificates of deposit.* At NDAC 69–05.2–12–04.1(d), the State proposes to allow acceptance of certificates of deposit backed by the Bank of North Dakota without placing a dollar limit on these certificates. The Federal rules at 30 CFR 800.21(d) (1) and (3) provide for the posting of cash accounts or certificates of deposit which are Federally insured or equivalently protected. However, 30 CFR 800.21(d)(4) does not allow the regulatory authority to accept an individual cash account or certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

The Bank of North Dakota is a State-owned bank, created by Chapter 6–09 of the North Dakota Century Code (NDCC) in 1919. NDCC 6–09–10 states that all deposits in the Bank of North Dakota are guaranteed by the State. North Dakota has assured OSMRE that no cash limits are placed on this guarantee. The State rule limits the maximum amount of cash accounts or certificates backed by all other financial institutions in the same manner as the Federal rule. Therefore, the Director finds the North Dakota rule at NDAC 69–05.2–12–04 to be no less effective than the Federal regulations which limit cash deposits to the maximum amount which is Federally insured or equivalently protected.

(d) *Self-bonding.* As it existed prior to this amendment, the North Dakota program did not allow self-bonding. North Dakota has now proposed to add self-bonding provisions at NDAC 69–05.2–12–01.9, 69–05.2–12–01.10 and 69–05.2–12–05 to correspond to the Federal self-bonding requirements at 30 CFR 800.5(c) and 800.23. The North Dakota rules include no counterpart to that portion of 30 CFR 800.23(e)(4) which requires that, if permitted under State law, the indemnity agreement, when under forfeiture, operate as a judgement against those parties liable under the agreement. However, by letter of December 14, 1987, North Dakota explained that State law does not allow this procedure, and that the provision is therefore inapplicable.

The Director finds that the proposed North Dakota self-bonding provisions are substantively equivalent to and, except as discussed in Finding 1(d)(1) below, no less effective than the Federal rules.

(1) *Rural electric cooperatives.* At NDAC 69–05.2–12–05.1(c)(4), North Dakota proposes to establish separate criteria for self-bonding by a rural electric cooperative (REC). North Dakota's proposed language is similar to 30 CFR 800.23(b)(3), which establishes the minimum financial criteria to be met before a self-bond may be accepted by the regulatory authority. However, in order for an REC to self-bond, North Dakota proposes to substitute Rural Electrification Administration (REA) loan qualification criteria for the total liabilities to net worth ratio of 2.5 or less required by 30 CFR 800.23(b)(3) (ii) and (iii). North Dakota asserts that State law (NDCC Chapter 10–13) prevents RECs, as nonprofit corporations, from accumulating the equity necessary to achieve a total liability to net worth ratio of 2.5 or less.

The total liabilities to net worth ratio required by the Federal rules assures that the entity is not over-extended, that is, that the debts of the entity are not disproportionate to the entity's assets. The financial showings of 30 CFR 800.23(b)(3) are designed to ensure that only well-established, financially sound companies with a minimal risk of failure will qualify to self bond. Companies which cannot attain the financial status necessary to qualify for self-bonding must post either a collateral or a surety bond.

The Director finds that North Dakota has not shown that the REA loan criteria would provide the same degree of risk protection as the financial criteria of the Federal regulations. Although the State has submitted sample REA mortgage covenants, North Dakota has not explained how the REA loan criteria or mortgage covenants would be used to evaluate self-bond applications or how they would provide the same degree of risk protection as the financial showings required by the Federal rules at 30 CFR 800.23(b)(3). Therefore, the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have established separate financial criteria for self-bonding by rural electric cooperatives.

North Dakota also proposes to revise NDAC 69–05.2–12–01.9(a) to clarify that an REC qualifying to self-bond or guarantee an applicant's self-bond must meet all indemnity agreement requirements as if it were a corporation. The Federal rules do not address self-bonding by cooperatives. However, since cooperatives are structured in a manner similar to corporations, the Director finds that requiring them to meet all requirements as if they were corporations will ensure that any cooperative self-bond is no less effective than a corporate self-bond. Therefore, the Director finds this North Dakota provision to be no less effective than the Federal self-bonding rules at 30 CFR 800.5(c) and 800.23.

(2) *Third party guarantees.* Proposed NDAC 69–05.2–12–05.2, as originally submitted, would have allowed a third party to guarantee the applicant's self-bond, provided the third party met all self-bonding criteria as if it were the applicant. As promulgated on August 10, 1983, the Federal rules at 30 CFR 800.23(c) provided for third party guarantees only by the applicant's parent corporation. However, on December 3, 1987, the Assistant Secretary of the Interior for Land and Minerals Management, acting for the Secretary, approved revisions to 30 CFR 800.23 which would allow third party guarantees by non-parent corporations, provided both the applicant and the third party guarantor meet certain criteria and execute an indemnity agreement containing provisions designed to ensure its validity and enforceability. These revisions were published as a final rule in the January 14, 1988 **Federal Register** (53 FR 994–997).

On December 14, 1987, North Dakota submitted a revised version of the amendment; the revised rule includes provisions which are substantively identical to the December 3, 1987 changes in the Federal rules. Therefore, the Director finds the provisions of proposed NDAC 69–05.2–12–05 pertaining to third party guarantees to be no less effective than the revised Federal rules at 30 CFR 800.23 (c), (d), (e), (f) and (g).

2. Chapter 69–05.2–13–04 Performance Standards

(a) *Signs and markers.* North Dakota has revised the wording of NDAC 69–05.2–13–04 concerning signs and markers, primarily to clarify and simplify the language without changing the meaning or intent. However, the State has made one substantive change, inserting a sentence stating that the permittee shall, at a minimum, sign and mark those areas of the permit for which a performance bond has been posted. In general, the corresponding Federal regulations at 30 CFR 816.11 apply to the entire permit area. However, the preamble to these Federal regulations explains that "proper markings of perimeters and working areas will be particularly valuable in preventing equipment operators from inadvertently entering areas not authorized for disturbance, and should help eliminate arguments over location of perimeters" (44 FR 15137, March 13, 1979). The preamble also cites reduction of hazards to the general public and mine personnel and prevention of adverse environmental effects as purposes of the signs and markers regulation.

Since NDAC 69–05.2–12–01.7 prohibits the permittee from disturbing any areas until the bond covering the area to be affected is approved, requiring posting of signs and markers on only the bonded area rather than the entire permit area would not adversely affect any of the stated purposes of the Federal rule. Instead, requiring posting and marking of only the area authorized for disturbance would better achieve these purposes in that permitted but as yet unbonded areas would be less likely to be inadvertently disturbed. Therefore, the Director finds that the revised State rule is no less effective than the corresponding Federal rule at 30 CFR 816.11.

(b) *Land use.* North Dakota has revised NDAC 69–05.2–23–01 and 69–05.2–23–03, which concern premining and alternative postmining land uses, to more closely resemble the corresponding Federal regulations at 30 CFR 816.133 (b) and (c). Specifically, NDAC 69–05.2–23–01, like 30 CFR 816.133(b), now requires that the postmining land use be compared to those premining uses which the land previously supported under proper management. NDAC 69–05.2–23–03 has been revised to replace the rigid criteria for the approval of alternative postmining land uses previously required with the more flexible criteria permitted under 30 CFR 816.133(c), as revised on September 1, 1983 (48 FR 39892). Therefore, the Director finds the proposed revisions to be no less effective than the corresponding Federal rules.

North Dakota has also revised the wording of NDAC 69–05.2–23–02 concerning land use categories to clarify and simplify the language without changing the intent or meaning. The Director finds these revisions to be

nonsubstantive and, therefore, no less effective than the corresponding Federal rule concerning land use categories at 30 CFR 701.5.

IV. Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment."

One comment was received from—the North Dakota Resource Council. The commenter was concerned that North Dakota's proposal to allow RECs to self-bond under separate financial criteria set a bad precedent and did not provide adequate risk protection. As discussed in Finding 1(d)(1), the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have established separate criteria for self-bonding by RECs.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. No substantive comments were received.

V. Director's Decision

The Director, based on the above findings, is approving the proposed amendment as submitted by North Dakota on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations. For the reasons discussed in Finding 1(d)(1), the Director is disapproving NDAC 69–05.2–12–05.1(c)(4), which would have allowed special consideration for rural electric cooperatives in meeting the financial criteria necessary for self-bonding. Also, as indicated in Finding 1(b), he is requiring that North Dakota further amend its program concerning the replacement of surety bonds. The Director has notified North Dakota, pursuant to 30 CFR 732.17, that a required program amendment will be necessary. In addition, as discussed in Finding 1(a), he is deferring action on the proposed revisions to subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01, which concern incremental bonding.

The Federal rules at 30 CFR Part 934 are being amended to implement this decision. This final rule is being made effective immediately to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the proposed program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the North Dakota program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by North Dakota of only such provisions.

VI. Procedural Requirements

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: January 28, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.12 is amended by revising the section heading to read as follows:

§ 934.12 North Dakota program provisions affirmatively disapproved in accordance with court order.

* * * * *

3. Section 934.14 is added to read as follows:

§ 934.14 State program amendments disapproved.

The following provision of an amendment to the North Dakota permanent regulatory program, as submitted to OSMRE on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, is hereby disapproved: Paragraph (c)(4) of the North Dakota Administrative Code, Article 69–05.2–12–05.1, which would have established separate financial criteria for self-bonding by rural electric cooperatives.

4. Section 934.15 is amended by revising the section heading and adding a new paragraph (j) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment to the North Dakota permanent regulatory program, as submitted to OSMRE on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, is approved effective February 2, 1988, with the exceptions identified herein or in section 934.14: Modifications to North Dakota Administrative Code (NDAC) Article 69–05.2–12, addressing performance bonds, with the exception of modifications to the incremental bonding provisions of subsections 4, 5, 6 and 7 of NDAC 69–05.2–12–01, on which action is deferred; NDAC 69–05.2–13–04, addressing signs and markers; and NDAC 69–05.2–23, addressing postmining land use.

5. Section 934.16 is added to read as follows:

§ 934.16 Required program amendments.

By May 1, 1988, North Dakota shall submit a revised version of NDAC 69–05.2–12–03.3 or otherwise propose to amend its program to require that, if adequate replacement bond coverage is not posted within the specified time period following notification of the

incapacity of a surety, any operator bonded by that surety must cease coal extraction, begin reclamation and follow the requirements for permanent cessation.

[FR Doc. 88–2039 Filed 2–1–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

Emergency Employment of Army and Other Resources, Natural Disaster Procedures (ER 500–1–1)

AGENCY: Army Corps of Engineers, DOD.

ACTION: Interim final rule with request for comments.

SUMMARY: These changes amend the regulation dated December 21, 1983, and provide revised procedures for the Corps of Engineers in conducting certain emergency activities pursuant to Public Law (Pub. L.) 84–99.

This action provides minor modifications to clarify previous rules on Corps of Engineers emergency operations activities in support of state and local flood fight efforts. The amended rules implement procedures for assistance under the expanded authority provided by section 917, Pub. L. 99–662, amendment to Pub. L. 84–99. These changes are being implemented as an interim final rule because timely implementation of these procedures would be impeded by the notice and public comment requirements of section 553 of the Administrative Procedure Act. Given the inherent unpredictability of natural disasters and the potential threat to the safety of disaster victims, these changes are being implemented without delay.

EFFECTIVE DATE: February 2, 1988. Written comments should be provided on or before March 3, 1988.

ADDRESS: Comments should be addressed to: HQUSACE (CECW–OE–O), Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Buettner, (202) 272–0251.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has authority under Pub. L. 84–99 to supplement state and local flood fight activities. However, prior to November 17, 1986, there was no authority to continue supplemental assistance in response to life and improved property threatening situations after flood waters had receded. Section 917, Pub. L. 99–662 expanded the authority to include activities that are necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The amendment established the basis for requesting assistance, time limitation on providing assistance, and types of potential assistance.

Note.—The U.S. Army Corps of Engineers has determined that this regulation is not a major rule under Executive Order 12291. I certify that under the criteria of the Regulatory Flexibility Act that this interim final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood assistance, Drought assistance.

For the reasons set forth in the preamble, 33 CFR Part 203 is amended as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

1. The authority citation for 33 CFR Part 203 continues to read as follows:

Authority: Pub. L. 84–99, 69 Stat. 186; 33 U.S.C. 701n.

* * * * *

2. Section 203.12 is revised to read as follows:

§ 203.12 Authority.

Flood and Coastal Storm Emergencies (33 U. S. C. 701n (69 Stat. 186) (Pub. L. 84–99). An emergency fund is authorized to be expended at the discretion of the Chief of Engineers for: Flood emergency preparation; flood fighting and rescue operations; repair or restoration of flood control works threatened; damaged, or destroyed by flood; emergency protection of federally authorized hurricane or shore protection projects being threatened; and, the repair and restoration of any federally authorized hurricane or shore protective structures damaged or destroyed by wind, wave, or water of other than an ordinary nature. The law, as amended, includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. The law, as amended, authorizes the Secretary of the Army to construct wells and to transport water within areas he determines to be drought-distressed.

3. Section 203.13(b) is revised to read as follows:

§ 203.13 Non-federal interests responsibilities.

* * * * *

(b) *Emergency operations.* During emergency operations, including flood response (flood fight and rescue operations) and post flood response, non-Federal interests must commit available resources to include; manpower, supplies, equipment, and funds. Requests for Corps assistance will be in writing from the Governor or his/her authorized representative. Non-Federal interests must furnish formal written assurances of local cooperation which are detailed in Subpart G of this regulation. Following a flood response, it is a non-Federal responsibility to remove expedient flood control structures installed by the Corps under Pub. L. 84–99.

* * * * *

4. Subpart C, consisting of §§ 203.31 and 203.32, is revised to read as follows:

Subpart C—Emergency Operations

Sec.
203.31 Authorities.
203.32 Policy.

Subpart C—Emergency Operations

§ 203.31 Authorities.

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting, rescue operations, and protection of Corps constructed hurricane and shore protection projects. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance is supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) *Flood response.* Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) *Post flood response.* Corps divisions/districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by

debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

§ 203.32 Policy.

During or immediately following a flood or coastal storm, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emergency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pub. L. 84–99 and will not prevent state or local governments from receiving other Federal assistance.

(a) *Flood response.* Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the State. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the flood waters recede below bankfull. Removal of ice jams is a local responsibility; however, Corps technical advice and assistance, as well as assistance with flood fight operations can be provided to supplement state and local efforts. The Corps will normally not perform ice jam blasting operations.

(b) *Post flood response.* A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood or coastal storm disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. Corps assistance is limited to 10 days following receipt of the Governor's written request or on assumption of activities by state and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period. The Corps will deny a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* Issuance of Government owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the division or district commander. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Dated: December 4, 1987.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–1704 Filed 2–1–88; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS–50562A; FRL–3322–8]

1–Chloro–2–Bromoethane; Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 1–chloro–2–bromoethane (CBE) (CAS No. 107–04–0). The Agency believes that this substance may be hazardous to human health and/or the environment and that any use of CBE may result in significant human or environmental exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for any and all uses are required to notify EPA at least 90 days before commencing that activity. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 pm, eastern time on February 16, 1988. This rule becomes effective on March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554–1404.

SUPPLEMENTARY INFORMATION: The SNUR for 1–chloro–2–bromoethane requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of CBE for any use. This rule was proposed in the **Federal Register** of September 4, 1987 (52 FR 33606). No public comments were received in response to the proposal.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** notice, and interested persons should refer to that document for further information. On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions some of which would apply to this SNUR.

III. Summary of This Rule

The chemical substance which is the subject to this SNUR is 1-chloro-2-bromoethane (CAS No. 107–04–0). EPA is designating any use of CBE as a significant new use of the substance. This rule requires persons who intend to manufacture, import, or process CBE for any use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Background

A. Production and Use Data

EPA reviewed both the TSCA Chemical Substances Inventory data base and other information sources to identify current manufacturers, importers, and processors of CBE.

Apparently, CBE is no longer produced in the United States and currently there are no commercial uses, though small amounts are imported and used for research and development. Because of health concerns about the chemical substances, substitutes have been found for commercial applications. CBE is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.) for use as an active pesticide ingredient and has been used in the United States as a fumigant for fruits and vegetables. However, there is no evidence that CBE is currently used as a pesticide in the United States. It has potential use in plant growth and fruit maturity enhancement agents, as well as in agents to regulate plant metabolism. Such uses also would be regulated under FIFRA. CBE could be used as a solvent for cellulose esters and ethers and as an intermediate in chemical synthesis, especially of compounds containing haloalkylamino groups. It is conceivable that CBE could also be used as a substitute for ethylene dibromide (EDB) and ethylene dichloride (EDC) as a lead scavenger in gasoline, and as an intermediate in the production of numerous pharmaceutical agents, such as analgesics, antihistamines, and tranquilizers.

B. Health Effects

CBE has demonstrated mutagenic activity in the Ames *Salmonella* assay and the Chinese hamster ovary cell HGPRT assay. It also showed activity in a deoxyribonucleic acid (DNA) repair assay with *E. coli* and caused *in vivo* DNA damage in mice comparable in degree to that caused by EDB.

No studies examining the relationship between human exposure to CBE and the incidence of human cancer were found in the literature. No animal carcinogenicity studies on CBE were reported in the literature. However, based on its mutagenic activity and structural similarity to EDB and EDC, CBE is a suspected carcinogen as well as a potential mammalian mutagen. For these reasons, EPA has concluded that exposure to CBE may present a risk of injury to human health.

C. Exposure

Although present exposure to CBE is thought to be minimal, because of the high probability of carcinogenic activity implied by the *in vitro* results and CBE's close structural analogy to the known carcinogens EDB and EDC, there is concern for exposures from any future use of CBE.

V. Determination of Significant New Uses

To determine what would constitute a significant new use of CBE, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA expects to achieve the following objectives with regard to the significant new use that is designated in this rule:

1. The Agency wants to ensure that it will receive notice of any company's intent to manufacture, import, or process CBE for any use before that activity begins. Potential uses of CBE as a solvent, as a chemical intermediate, or as a substitute for EDB and EDC could also result in significant human exposure. Risk from these releases cannot be assessed without detailed data on worker exposure, potential releases to the environment, and the chemical fate of CBE in these uses.

2. The Agency wants to ensure that it will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing CBE for any use.

3. The Agency wants to ensure that it will be able to regulate prospective manufacturers, importers, or processors of CBE before any use of this substance begins, provided that the degree of potential health and environmental risk if sufficient to warrant such regulation.

CBE has demonstrated mutagenic activity and is a close structural analogue to the known carcinogens EDB and EDC. There is concern that CBE may find new markets and that increased usage could occur without notification of appropriate regulatory authorities. CBE is not subject to any federal regulation that would notify the government of activities that might result in adverse exposures to CBE or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use and the associated manufacture, import, or processing of CBE have a high potential to increase the magnitude and duration of exposure to this substance. Also, given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to CBE at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of CBE as a significant new use of this chemical substance.

VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for CBE including the promulgation of a TSCA section 8(a) reporting rule or a section 6 regulation. No comments were received that addressed the regulatory approach chosen and for the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for this substance.

VII. Applicability of Rule to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating the proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who began commercial manufacture, importation, or processing of CBE for the significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5(a)(2), persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possessions or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential risks that may be posed by a significant new use of CBE, EPA encourages SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by this substance when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure and environmental release that may result from the significant new use of CBE. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements of potential manufacturers, importers, and processors of CBE. The Agency's complete economic analysis is available in the rulemaking record for the rule (OPTS–50562A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50562A). The record includes basic information considered by the Agency in developing this rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The proposed rule.
2. The economic analysis of this rule.
3. A summary of data on CBE prepared by Tracor Jitco/Technical Resources, Inc.
4. This final rule.

A public version of this record containing sanitized copies from which confidential business information has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M St. SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikly to discourage an innovation that has a high potential value.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2070–0038 to this rule.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 8, 1988.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.648 to read as follows:

§ 721.648 1-Chloro-2-bromoethane.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance 1-chloro-2-bromoethane (CAS No. 107–04–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section execpt for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 88–2073 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPTS–50565; FRL–3322–2]

Significant New Use Rule; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document redesignates and renumbers 40 CFR Part 721, Subpart B to Subpart E. There are no substantive or language changes. This redesignation has been made for a more orderly and symmetrical development of regulations under 40 CFR Part 721. The new designation will allow space for future growth as Significant New Use Rules are published. Because these are non-substantive changes, notice and public comment are not required.

DATES: This document is effective February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street SW., Washington, DC 20460. Telephone: (202–554–1404).

SUPPLEMENTARY INFORMATION: For the convenience of the user, the following redesignation table has been included.

Old section	New section
721.109	721.350
721.120	721.400
721.180	721.520
721.195	721.550
721.205	721.575
721.230	721.600
721.290	721.800
721.320	721.950
721.324	721.975
721.342	721.1150
721.347	721.1175
721.350	721.1200
721.370	721.1250
721.385	721.1300
721.497	721.1475
721.575	721.1750
721.615	721.1875
721.975	721.2100
721.1021	721.2200
721.1125	721.2550

Lists of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 19, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

Subpart B—[Redesignated as Subpart E]

2. Subpart B is redesignated as Subpart E and §§ 721.109, 721.120, 721.180, 721.195, 721.205, 721.230, 721.290, 721.320, 721.324, 721.342, 721.347, 721.350, 721.370, 721.385, 721.497, 721.575, 721.615, 721.975, 721.1021, and 721.1125 are redesignated as §§ 721.350, 721.400, 721.520, 721.550, 721.575, 721.600, 721.800, 721.950, 721.975, 721.1150, 721.1175, 721.1200, 721.1250, 721.1300, 721.1475, 721.1750, 721.1875, 721.2100, 721.2200, and 721.2550 respectively.

[FR Doc. 88–2074 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Food Distribution Program Regulations to strengthen provisions concerning the processing of donated foods and to increase uniformity between provisions governing State processing activities and those governing the National Commodity Processing (NCP) Program (Part 252).

DATE: To be assured of consideration comments must be received or postmarked on or before March 18, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22303.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch at (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule related notice published June 24, 1983 (48 FR 29112).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.15 of this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under control number 0584–0007.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts for processing of donated foods.

Discussion of Proposed Rule

In an effort to enhance processing activities and provide for consistency between State processing and the NCP Program, the Department is proposing modifications to provisions contained in the current Food Distribution Program Regulations (7 CFR Part 250) concerning: substitution, sales verification, value-pass-through systems, duration of contracts, termination of contracts, and listing of ingredients.

Definition of Refund Payments

A definition of "Refund" is being incorporated in Section 250.3 under this proposed rule. "Refund" is defined as a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold under a refund system as defined in § 250.3.

By defining "Refund" in this manner, processors will be permitted to credit a distributor's account rather than issue individual checks for all refund applications submitted by a distributor. As under the current regulations, processors will be required to provide refund payments by check to recipient agencies. The Department believes that permitting processors to credit the account of a recipient agency for the value of the donated food is not in the best interest of the recipient agency. The recipient agency may no longer choose to use a particular processor or distributor which could result in a loss of the credit given for the value of the donated foods.

Sales Verification

Section 250.15(b)(2)(ii) of the current regulations requires that distributing agencies design and implement a system to verify on a quarterly basis a statistically valid sample of all sales which have been made through a distributor at a discount to the recipient agency. Distributing agencies may delegate this responsibility to processors. If the responsibility is delegated, § 250.15(m)(1)(ix) requires processors to report the results of sales verification efforts quarterly.

This proposed rule amends § 250.15 (b)(2)(ii) and (m)(1)(ix) to require that distributing agencies or processors conduct a statistically valid sample of such sales twice a year rather than quarterly. The verification of sales and submission of the data twice a year will reduce the distributing agencies' and processors' work load while providing sufficient data to accomplish the monitoring goals.

Section 250.15(b)(2) has also been revised to require that the sample size ensure a 95 percent confidence level. This change will further ensure the statistical validity of the sample selected. This is also consistent with NCP Regulations.

In addition, § 250.15(b)(2) has been revised to require adjustment of

performance reports and processing inventory reports to reflect invalid sales which were identified as a result of the sales verification effort and the development and submission of a corrective action plan by the processor designed to correct deficiencies. This change will ensure that recipient agencies are receiving the benefit of the donated foods and that the value pass through system being used is accountable.

Section 250.15(b)(2) also requires distributing agencies to review the processor's sales verification system and findings in instances in which the responsibility for sales verification has been delegated to the processor.

As part of the distributing agency's review of the processor's sales verification system, § 250.15(b)(2) of this proposed rule has been revised to require distributing agencies to select a sub-sample of at least 10 percent of all sales verified by the processor. Each sale selected as part of the sub-sample must be reverified by the distributing agency by contacting the recipient agency either by telephone or through written correspondence. The reverification of these sales will assist the distributing agency in determining the efficacy of the processor's sales verification system.

In instances in which poor processor performance is revealed, the distributing agency must require the processor to discontinue the abused value pass through system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract. While the Department has always considered such action to be warranted in instances in which poor processor performance occurs, under this proposed rule such action is required to further ensure accountability for the donated foods.

Contract Duration

Section 250.15(c) of the current regulations requires the termination of processing contracts no later than one year after they have been initiated. Under this proposed rule, processing contracts will terminate as of June 30 of each year. The reason for this change is twofold. First, establishing a fixed expiration date will help regularize those activities associated with audits and management evaluation reviews especially among multi-State processors. Second, this provision is consistent with NCP Regulations.

End Product Data

Section 250.15(c)(4)(ii) of the current regulations requires that each processing contract include the quantity of each donated food and any other ingredient needed to yield a specific number of units of each product except for flavorings and seasonings.

This proposed rule eliminates the requirement that processors list the quantity of non-donated foods. However, processors will continue to be required to identify these ingredients. The listing of ingredients will provide contracting agencies with information for which they have expressed a need while ensuring that information which is considered to be "trade secrets" by some processors is not disclosed. This change is also consistent with NCP Regulations.

Value-Pass-Through (VPT) Systems

Paragraphs (d) and (e) of § 250.15 of the current regulations permit the sale of processed end products to recipient agencies through four specific VPT systems.

This proposed rule amends paragraphs (d) and (e) to allow the use of other VPT systems which have been approved for use by FNS at the request of an individual distributing agency. This change will encourage processors and other interested parties to submit for approval innovative VPT systems that are accountable and appealing to recipient agencies. The Department and its authorized representatives retain the authority to inspect and review all pertinent records regarding the sale of processed end products under all systems including the application of a statistically valid verification method.

Paragraph (e) has been revised to require that distributors maintain invoices issued to recipient agencies when end products are sold through a discount system. The invoices must be provided to the processor upon request. This will significantly reduce the flow of paper between processors and distributors while ensuring accountability. This change is also consistent with NCP Regulations.

In an effort to ensure that recipient agencies are receiving the benefit of the donated foods contained in the end products, paragraphs (d) and (e) are also being revised to require that processors ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund payment due is for the value of the donated food regardless of the VPT system used. This change is also consistent with NCP Regulations.

Contract Termination

Section 250.15(j) of the current regulations requires that payment for commodities remaining in a processor's inventory be based on the Department's replacement costs or the contract value as stated in the processor's contract.

Under this proposed rule, the option of requiring payment for commodities remaining in a processor's inventory based on the CCC unrestricted sales price has been added. This provision is consistent with NCP Regulations.

Refunds

Paragraph (k) of § 250.15 of the current regulations requires that recipient agencies submit refund applications to processors within 60 days of the date of purchase of end products in order to receive benefits. In instances in which refunds are to be provided to distributors, refund applications must be submitted by the distributor within 60 days of the date of sale to the recipient agency in order to receive benefits. The processor is required to make payment within 10 days after the receipt of any refund application.

Under this proposed rule, paragraph (k) is being revised to require the submission of refund applications by recipient agencies and distributors within 30 days of receipt of the processed end product by the recipient agency. Processors will be required to make payment within 30 days after receipt of any refund application. However, at the end of the contract period, processors must make refunds as soon as possible, but no later than 60 days after the close of the contract period. This allows a 60-day period to close-out any remaining refunds due after the end of the contract period. This change is consistent with NCP regulations. However, the Department is specifically soliciting comments as to whether the time period associated with the submission of refund applications should be tied to the date the end product was purchased, date the end product was received, or some other time period.

Performance Reports

Section 250.15(m) of the current regulations requires processors to report the number of pounds of each donated food represented in sales to distributors.

This requirement is being deleted under this proposed rule. However, processors will continue to be required to maintain this information as part of the inventory control system to ensure an acceptable audit trail.

Annual Reconciliation

Section 250.15(n)(3) of the current regulations requires that as part of the

annual reconciliation, processors must pay distributing agencies for the contract value of any donated foods for which a timely refund application has not been submitted and for excess inventories.

The Department has received several requests for clarification concerning these provisions. Thus, the intent of these provisions is being clarified under this proposed rule by rewording this section to state that processors must pay distributing agencies for all donated food inventory remaining at contract termination.

Audits

Section 250.15(t) of the current regulations requires that multi-State processors obtain an independent CPA audit. The frequency of the audit cycle is based on the value of the donated foods received by the processor during the year.

In order to clarify the Department's intent, this section is being revised to state that the audit frequency is determined by adding the value of donated foods received by the processor under State and National Commodity Processing contracts.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch program, Surplus agricultural commodities.

Accordingly, Part 250 is amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 86–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 288 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).

2. In § 250.3, the definition of "Refund" is added to read as follows:

§ 250.3 Definitions.

* * * * *

"Refund" means (1) a credit or check issued to a distributor in an amount equal to the contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price and (2) a check issued to a recipient agency in an amount equal to the contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

§ 250.15 [Amended]

3. In § 250.15, paragraph (b)(2)(ii)(A) and paragraph (b)(2)(ii)(C) are revised and paragraphs (b)(2)(ii)(D) through (b)(2)(ii)(F) are added to read as follows:

(b) * * *

(2) * * *

(ii) * * *

(A) Provide for a semi-annual review of a statistically valid sample of sales for the previous six-month period of all processors which contract with the distributing agency or contracting agencies under the authority of the distributing agency, including multi-State processors. The sample size must ensure a 95 percent confidence level;

* * * * *

(C) Provide for the assessment of claims against the processor in accordance with FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program, in instances when deficiencies have been identified.

(D) Provide for the adjustment of performance reports and processing inventory reports to reflect any invalid sales;

(E) Provide for the development and submission by processors to the distributing agency of a corrective action plan designed to correct problems identified during the sales verification; and

(F) In instances in which the distributing agency has delegated the responsibility of sales verification to processors, the distributing agency must:

(*1*) Establish guidelines which ensure that the criteria contained in paragraphs (b)(2)(ii) (A) through (E) are met;

(*2*) Ensure that processors report their findings to the distributing agency on a semi-annual basis in accordance with § 250.15(m);

(*3*) Review the processor's findings and select a random sub-sample of at least 10 percent of all sales verified by the processor and reverify the sale by contacting the recipient agency by telephone or through written correspondence; and

(*4*) Submit a copy of the processor's review report and findings and the results of the reverification efforts to the appropriate FNSRO.

In instances of poor processor performance, the distributing agency shall require the processor to discontinue the abused value pass through system, initiate an audit or review to determine the extent to which sales are to be disallowed, establish a claim, and/or terminate the contract.

* * * * *

4. In § 250.15, the first two sentences of paragraph (c)(1) are revised to read as follows:

(c) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form and be reviewed by the appropriate FNSRO. Processing contracts shall terminate on June 30 of each year. * * *

* * * * *

5. In § 250.15, paragraphs (c)(4)(ii) and (c)(4)(viii)(I) are revised to read as follows:

(c) * * *

(4) * * *

(ii) A description of each end product, the quantity of each donated food and the identification of any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), the processor's free on board (FOB) plant price schedule for quantity purchases of processed products, and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product to be distributed to eligible recipient agencies. For substitutable donated foods, at least 100 percent of the donated food provided to the processor must be physically contained in the end products with no allowable tolerance;

* * * * *

(viii) * * * (I) Submit annual reconciliation reports and make payments to distributing agencies for any inventory remaining at the termination of the contract in accordance with paragraph (n)(3) of this section.

* * * * *

6. In § 250.15, paragraphs (d) and (e) are revised to read as follows:

(d) *End products sold by processors.* (1) When recipient agencies pay the processor for end products, the processing contract shall include

(i) The processor's established wholesale price schedule for quantity purchases of specified units of end products, and

(ii) An assurance that

(A) The price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or

(B) A refund equal to the value of the donated foods contained therein shall be made upon presentation of proof of purchase by an eligible recipient agency in accordance with paragraph (k) of this section or

(C) The value of donated food contained therein shall be passed to the recipient agency through a system which has been approved by FNS at the request of the distributing agency.

(2) Any value pass through system approved under this part must comply with the sales verification requirements specified in § 250.15(b), or an alternative verification system approved by FNS. The Department retains the authority to inspect and review all pertinent records under all value pass through systems, including records pertaining to the verification of a statistically valid sample of sales.

(3) Processors shall ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund due is for the value of the donated food regardless of the value pass through system used.

(4) Processors shall retain invoices from recipient agencies when end products are sold through a discount system.

(e) *End products sold by distributors.* (1) When a processor transfers end products to a distributor for sale and delivery to recipient agencies, such sales shall be under either a refund system as defined in Section 250.3 or a system which provides refunds to distributors and discounts to recipient agencies unless another value pass through system has been approved in accordance with paragraph (d)(2) of this section. The processor shall make refund payments to distributors or recipient agencies in accordance with paragraph (k) of this section.

(2) Processors shall ensure that invoices clearly indicate the discount included or refund due on the end product and that the invoice clearly identifies that the discount included or refund due is for the value of the donated food regardless of the value pass through system used.

(3) Processors shall ensure that distributors maintain invoices from recipient agencies when end products are sold through a discount system and that such invoices shall be provided to the processor upon request.

* * * * *

7. In § 250.15, new paragraphs (j)(1)(i)(D) and (j)(1)(ii)(F) are added to read as follows:

(j) *Termination of processing contracts.* (1) * * *

(i) * * *

(D) Pay the contracting agency the CCC unrestricted sales price;

(ii) * * *

(F) Pay the contracting agency the CCC unrestricted sales price.

* * * * *

8. In § 250.15, paragraph (k) is amended by changing the words "60 days" wherever they appear to "30 days" and by changing "10 days" to "30 days".

9. In § 250.15, a new paragraph (k)(4) is added to read as follows:

(k) * * *

(4) At the close of the contract period, processors shall pay refunds as soon as possible, but not later than 60 days from the end of the contract period.

* * * * *

10. In § 250.15, paragraph (m)(1)(vii) is removed, and paragraphs (m)(1)(viii) through (m)(1)(x) are redesignated (m)(1)(vii) through (m)(1)(ix) and newly redesignated paragraph (m)(1)(viii) is revised to read as follows:

(m) *Performance reports.* (1) * * *

(viii) In instances in which sales verification has been delegated to the processor pursuant to § 250.15(b)(2), sales verification findings shall be reported as an attachment to the December and June performance reports in whatever format the distributing agency deems necessary.

* * * * *

11. In § 250.15, paragraph (n)(3) is revised to read as follows:

(n) * * *

(3) Processors shall complete and submit annual reconciliation reports to distributing agencies within 90 days following the end of the contract period. As a part of the annual reconciliation, processors shall pay distributing agencies for the contract value of any donated food inventory remaining at the termination of the contract except in those instances in which the processor has entered into a contract with the contracting agency for the next year. In such instances the processor shall pay the distributing agency for any donated food inventory in excess of the inventory level which has been approved by the distributing agency.

* * * * *

12. In § 250.15, paragraph (t)(1) is amended by inserting a sentence between the third and fourth sentences to read as follows:

(t) *CPA Audits.* (1) * * * The total value of donated food received shall be computed by adding the value of food received under State and National Commodity Processing contracts. * * *

* * * * *

Dated: January 28, 1988.

Sonia Crow,

Acting Administrator.

[FR Doc. 88–2032 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Parts 907 and 908

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1987–88 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark Niederkofler, Volume Control Programs, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), regulating the handling of California-Arizona navel and Valencia oranges. Both orders are effective under

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the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administration of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange growers and handlers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Navel Orange Administrative Committee (NOAC) met on December 1, 1987, and recommended, by an 8 to 3 vote, 1987–88 fiscal year expenditures of $1,160,020 and an assessment rate of $0.026 per carton of navel oranges. In comparison, 1986–87 fiscal year budgeted expenditures were $1,039,000 and the assessment rate was $0.022 per carton. Expenditure categories in the 1987–88 budget are $297,695 for program administration, $133,205 for compliance activities, $558,520 for the field department, $187,300 for direct expenses, and $3,300 for a salary reserve. Assessment income for 1987–88 is expected to total $1,092,000, based on shipments of 42 million cartons of oranges. Interest and incidental income is estimated at $54,960. The NOAC may expend operational reserve funds of $13,060 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

The Valencia Orange Administrative Committee (VOAC) met on December 15, 1987, and unanimously recommended 1987–88 fiscal year expenditures of $669,030 and an assessment rate of $0.029 per carton of Valencia oranges. In comparison, 1986–87 fiscal year budgeted expenditures were $626,200 and the assessment rate was $0.027 per carton. Excess income for 1986–87 of $58,280 was distributed to handlers as assessment refunds. Expenditure categories in the 1987–88 budget are $152,405 for program administration, $68,195 for compliance activities, $285,930 for the field department, $160,800 for direct expenses, and $1,700 for a salary reserve. Assessment income for 1987–88 is expected to total $623,500, based on shipments of 21.5 million cartons of oranges. Interest and miscellaneous income is estimated at $29,070. The VOAC may expend operational reserve funds of $16,460 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for both programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges, Navel, Valencia.

For the reasons set forth in the preamble, it is proposed that new §§ 907.225 and 908.227 be added as follows:

1. The authority citation for both 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 907.225 and 908.227 are added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.225 Expenses and assessment rate.

Expenses of $1,160,020 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.026 per carton of navel oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.227 Expenses and assessment rate.

Expenses of $669,030 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.029 per carton of Valencia oranges is established for the fiscal year ending October 31, 1988. Unexpended funds from the 1987–88 fiscal year may be carried over as a reserve.

Dated: January 27, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2131 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 917

Pears, Plums, and Peaches Grown in California; Proposed Increase in Expenses for 1987–88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the Plum and Peach Commodity Committees established under Marketing Order 917 for the 1987–88 fiscal year. For plums, the expenses would be increased from $3,036,485 to $3,125,626. For peaches, the expenses would be increased from $2,401,435 to $2,409,160. The increases reflect higher than estimated costs for market development and promotion activities undertaken by the plum and peach committees in marketing the 1987 crops of these fruits.

DATES: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act".

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 649 handlers of California plums, peaches, and nectarines under these marketing orders, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $3,036,485 for the Plum Commodity Committee and $2,401,435 for the Peach Commodity Committee for the fiscal period ending February 29, 1988, was published in the **Federal Register** on August 20, 1987 (52 FR 31375). That action also fixed assessment rates to be levied on peach and plum handlers during the 1987–88 fiscal period. At a meeting held on December 9, 1987, the Plum Commodity Committee voted unanimously to increase its budget of expenses from $3,036,485 to $3,125,626. On December 8, 1987, the Peach Commodity Committee also voted unanimously to increase its budget of expenses from $2,401,435 to $2,409,160.

Both committees incurred higher than expected market development and promotion costs because the 1987 plum and peach crops were larger than anticipated. The proposed increases are needed to cover these expenses.

No change in assessment rates were recommended by the committees. Adequate funds are available to cover any proposed increase in expenses for the Plum and Peach Commodity Committees that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval for both committees needs to be expedited. The committees need to have authority to pay their expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, it is proposed that §§ 917.247 and 917.248 be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Sections 917.247 and 917.248 are amended as follows:

§ 917.247 [Amended]

Section 917.247 is amended by changing "$3,036,485" to $3,125,626".

§ 917.248 [Amended]

Section 917.248 is amended by changing "$2,401,435" to $2,409,160".

Dated: January 27, 1988.

Robert C. Keeney,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2067 Filed 2–1–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 925

Expenses and Assessment Rate for Marketing Order No. 925

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 925 for the 1988 fiscal period. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by February 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and

will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 925 (7 CFR Part 925) regulating the handling of grapes grown in a designated area of southeastern California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of California desert grapes under this marketing order, and approximately 87 desert grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable grapes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The California Desert Grape Administrative Committee met on January 14, 1988, and unanimously recommended a 1988 budget of $45,000. The proposed budget is $1,700 more than last year's due to added expenditures for the committee manager's automobile expenses and salary increases for the committee manager and the Los Angeles market monitor. Other increases include payroll taxes, postage, telephone, utilities, rent, office equipment, and insurance. No funds have been allocated for research, or the Mexican border monitor's salary and automobile expenses, and funds have been reduced for employee travel. The committee also recommended an assessment rate of $0.004 per lug. This rate, when applied to anticipated shipments of 8,000,000 lugs would yield $32,000 in assessment revenue which, when added to $13,000 from interest income and reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, grapes (California).

For the reasons set forth in the preamble, it is proposed that § 925.207 be added (the following section prescribes annual expenses and assessment rate and will not be published in the Code of Federal Regulations):

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 925.207 is added to read as follows:

§ 925.207 Expenses and assessment rate.

Expenses of $45,000 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.004 per 22-pound container of grapes is established for the fiscal period ending December 31, 1988. Unexpended funds may be carried over as a reserve.

Dated January 27, 1988.

Robert C. Keeney,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2128 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-22-M

Farmers Home Administration

7 CFR Parts 1823, 1930, 1933, 1942, 1944, 1948, and 1980

Audit Reports

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) will, as soon as regulations and guidelines can be finalized, implement OMB Circular A–73. The circular requires audits of borrowers and grantees to comply with the requirements as set forth by the Comptroller General of the United States.

DATE: This advance notice of proposed rulemaking is subject to a comment period ending April 4, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Booker Reaves, Senior Loan Officer, Multiple Housing Processing Division, FmHA, Room 5337, Washington, DC 20250, telephone (202) 382–1624.

SUPPLEMENTARY INFORMATION: This is to announce that FmHA will adopt and implement the requirement of OMB Circular A–73 that audits submitted in accordance with program requirements must be prepared on the basis of the audit standards issued by the Comptroller General of the United States. These standards are published in "Standards for Audit of Governmental Organizations, Programs, Activities, and Function." It is important to note that the standards include the requirement that the generally accepted government auditing standards (GAGAS) be used instead of the generally accepted auditing standards (GAAS).

Audits must be submitted by certain participants in certain FmHA programs, including the Housing Programs, Community and Business Programs and Farmer Programs.

Proposed changes in these programs will be published later in the **Federal Register** for comment by interested parties. Any comments received in response to that publication will be considered by FmHA in the formulation of the final, applicable changes in the programs.

Written proposals and/or comments may also be submitted at this time for a period of 60 days from the date of this publication.

The other affected programs are listed in the Catalog of Federal Domestic Assistance: 10.405, Farm Labor Housing Loans and Grants; 10.415 Rural Rental Housing Loans; 10.433 Rural Housing Preservation Grants; 10.420, Rural Self-Help Housing Technical Assistance; 10.411, Rural Housing Site Loans; 10.422, Business and Industry Loans; 10.418, for Water and Waste Disposal Systems for Rural Communities; 10.423, for Community Facilities Loans; 10.419, Watershed Protection and Flood Prevention Loans; 10.414, Resource Conservation and Development Loans; 10.430, Energy Impacted Area Development Assistance Program; 10.434, Nonprofit National Corporations Loan and Grant Program; and 10.421, Indian Tribes and Tribal Corporation Loans. The Energy Impacted Area Development Assistance Grant, Industrial Development Grant Programs, Association Loans for Irrigation and Drainage and other Soil and Water Conservation Measures, and Association Loans for Shift-in-Land-Use projects, are not listed in the Catalog. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Dated: January 26, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–2127 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[Docket No. PRM–31–4]

GENE-TRAK Systems; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from GENE-TRAK Systems.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated November 18, 1987, which was filed with the Commission by GENE-TRAK Systems. The petition has been assigned Docket No. PRM–31–4. The petition requests that the Commission establish that 100 microcuries of phosphorus-32 used in GENE-TRAK Salmonella and Listeria assays by a food laboratory is an exempt quantity under a general license according to § 31.11.

DATE: Submit comments by April 4, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The food industry and its regulators are continuously concerned with the transmission of disease producing organisms, or pathogens, through processed food products. Food laboratories throughout the country routinely test food products for the presence of pathogens such as Salmonella and Listeria.

Salmonella, an important cause of food transmitted illness, is widely distributed in nature. There are approximately 2,000 different Salmonella organisms all potentially harmful to humans. Because of the widespread nature of Salmonella in the environment, there is the possibility that food products may be contaminated after processing. Therefore, many food manufacturers routinely test finished products for the presence of Salmonella.

Listeria is an emerging pathogen of special significance. In contrast to common food poisoning agents which generally cause gastrointestinal disease, Listeria infection can produce severe disorders such as meningitis, septicemia, and abortion.

Listeria, which is ubiquitous in nature and is able to survive and multiply at refrigeration temperature, is a contaminant most likely to be found in foods of animal origin. The presence of species of Listeria may be significant indicators of food plant sanitation conditions.

The Petitioner

GENE-TRAK Systems is a joint venture formed between Integrated

Genetics, Inc., Framingham, Massachusetts and AMOCO Corporation of Chicago, Illinois. The company currently markets and sells in-vitro diagnostic tests for food bacteria such as Salmonella and Listeria in food products. GENE-TRAK Systems has applied new technology to improve on conventional microbiological methods of identifying these pathogens.

The Process

Because of new advances in molecular biology, it is now possible to isolate DNA from the bacteria to be tested for, label it with phosphorus-32, a radioactive isotope, and use it in a test system to identify the bacteria if it is present in food samples. The petitioner has developed test procedures using DNA probes for both Salmonella and Listeria. The petitioner asserts that these tests are more accurate because the DNA probes are highly specific. In addition, the tests are speedier, requiring only two days for completion rather than the seven days needed for conventional methods.

The Problem

Because of the presence of byproduct material in the form of phosphorus-32 in amounts exceeding currently exempt quantities, those desiring to use the DNA probe assays must apply for and obtain a specific license from the NRC that authorizes the use. The amount of phosphorus-32 used per test is 0.5 microcurie and the amount shipped in a single vial is 75 microcuries. The assays are in-vitro diagnostic tests conducted in food laboratories.

The Solution

The petitioner requests that NRC amend § 31.11(a) to include food laboratories and to include up to 100 microcuries of phosphorus-32 as an exempt quantity.

The petitioner asserts that authorizing the use of these products under a general license would assist food manufacturers and food laboratories by eliminating the licensing procedure. In addition, the paperwork burden on both the NRC and the industry would be reduced.

Dated at Washington, DC this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-2123 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-25286, File No. S7-1-88]

Request for Comments on a Proposed Revision of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Form Revisions.

SUMMARY: The Commission is publishing for comment a proposed revision of Form BD, the uniform registration form that is filed by an applicant to become registered as a broker-dealer. The revision would add to the form an explicit consent to service of process for any application for protective decree brought by the Securities Investor Protection Corporation.

DATE: Comments should be submitted by March 3, 1988.

ADDRESS: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should refer to File No. S7-1-88. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Henry E. Flowers, Esq., at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 1987, the Commission proposed for comment a revision to Form BD,[1] the uniform registration form that is filed by an applicant to become registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Act"). The revision provided that the applicant consents that service of any civil actions brought by or notice of any proceeding before the Commission or any self-regulatory organization ("SRO") in connection with the applicant's broker-dealer activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different.

The Commission received one comment letter on the proposed revision.[2] The commentator, the Securities Investor Protection Corporation ("SIPC"), requested that the proposed Form BD consent provision be expanded to include language explicitly providing that the applicant broker-dealer consents that service or notice of any application for a protective decree ("application") filed by SIPC may be given in the same manner as provided in the proposed consent, that is, by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address identified on Form BD, or mailing address if different. The Commission is proposing for comment inclusion of this provision in Form BD, and at the same time has adopted the proposed revision in a separate release.[3]

II. Discussion

SIPC's request arises from the difficulty it has experienced in a number of instances in obtaining adequate service of process in applications for protective decrees for broker-dealers that failed financially. These difficulties have resulted in delays in filing applications or in some cases refusals to entertain such applications by the courts. SIPC, a non-profit membership corporation,[4] created by the Securities Investor Protection Act of 1970 ("SIPA"), files applications for protective decrees in its essential role of providing protection to customers of member broker-dealer that fail financially. If SIPC concludes that a member broker-dealer has failed or is in danger of failing to meet its obligations to customers, and finds conditions suggestive of financial irresponsibility, SIPC, upon notice to the member broker-dealer, files an application for a protective decree in a United States Federal District Court. If the court agrees with SIPC's determination, it will appoint a trustee to oversee the liquidation of the member broker-dealer. SIPC is required to advance the trustee sufficient funds to ensure that customers of the broker-dealer receive return of their funds and securities left with the broker-dealer up to certain limits. SIPC funds are available to satisfy the claims of each customer up to a maximum of $500,000 including up to $100,000 on cash claims (as distinct from claims for securities). Thus, SIPC's ability to obtain

[1] Securities Exchange Act Release No. 24402 (May 7, 1987), 52 FR 17301.

[2] Letter from Theodore H. Focht, President & General Counsel, SIPC, to Jonathan G. Katz, Secretary, SEC (June 5, 1987).

[3] Securities Exchange Act Release No. 25285 (January 22, 1988).

[4] SIPC membership is composed of all broker-dealers registered under section 15(b) of the Act, with some minor exceptions.

timely service of its applications for protective decrees is important for the protection of customers of broker-dealers that fail financially.

SIPC's functions are subject to broad Commission supervision. SIPC must file with the Commission proposed rule changes for approval and proposed by law changes which become effective thirty days after filing unless disapproved by the Commission. The Commission can require SIPC to adopt, amend, or repeal any bylaws or rules. The Commission may examine SIPC's operations and require SIPC to furnish it with such reports as it considers to be in the public interest. In addition, should SIPC fail to file an application for a protective decree in what the Commission determines to be an appropriate case, the Commission may apply to a United States Federal District Court for an order compelling SIPC to file an application for a protective decree.

SIPC has no simple way of obtaining consent to service of process on its own behalf. The Commission and SROs provide SIPC's only official channel of information regarding the financial health of its members. It does not receive regular filings and the SROs serve as collection agents for SIPC-imposed assessments. Consequently, the Commission preliminary believes the Form BD should include a provision obtaining consent that service or notice of process provided to the Form BD contact employee for any application for a protective decree by SIPC is adequate for notice and jurisdictional purposes. The Commission requests comment on this provision.

III. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a substantial number of small entities." [5]

[5] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity", the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982). A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d). *See* Rule 0-10(c).

The Chairman of the Commission has certified that the proposed revision to Form BD, is adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments would not provide any additional cost on broker-dealers.

It is highly unlikely that the proposed amendment to Form BD would have a significant impact on a substantial number of small entities. New broker-dealers would consent to service of process only when completing the Form BD. In addition, existing broker-dealers will execute this consent to service of process only when they amend Form BD for some other reason.

IV. Statutory Authority

The proposed change to Form BD would be adopted pursuant to sections 15(b), 17(a) and 23(a) of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Form BD prescribed by § 249.501 is amended by revising the Execution paragraph to read as follows:

§ 249.501 [Amended]

Uniform Application for Broker-Dealer Registration

* * * * *

Execution

* * * * *

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Item 1G.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: January 22, 1988.

Regulatory Flexibility Act Certification

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Form BD set forth in Securities Exchange Act Release No. 25286, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendment, if adopted, would result in no additional costs on broker-dealers.

David S. Ruder,

Chairman.

Dated: January 28, 1988.

[FR Doc. 88-2119 Filed 2-1-88; 8:45 am]

BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Employment Services for Certain Eligible Veterans

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: It is proposed to amend existing rules governing the provision of employment services under chapter 31 to make clear that the Veterans Administration (VA) is empowered to furnish such assistance to help a veteran already qualified for suitable employment obtain or maintain suitable employment if he or she is otherwise eligible for assistance under this program. Existing rules have been misinterpreted to limit the provision of employment assistance only to veterans who first have received vocational training assistance in a vocational rehabilitation program under chapter 31, or in a vocational rehabilitation program authorized under the Rehabilitation Act of 1973, as amended.

DATES: Comments must be received on or before March 3, 1988. Comments will be available for public inspection until March 17, 1988. It is proposed to make these changes effective the date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 17, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2885.

SUPPLEMENTARY INFORMATION: These proposed amendments are intended to clarify the authority of the VA to assist those service-disabled veterans otherwise eligible for vocational rehabilitation services under chapter 31, who have problems in obtaining or maintaining suitable employment, but who do not require training assistance to achieve such employment. Such veterans are entitled to employment assistance even if they have not participated in a vocational rehabilitation program. The proposed amendments make clear that employment services may be provided to any veteran found to have an employment handicap under 38 CFR 21.51 or a serious employment handicap as determined under 38 CFR 21.51 and 21.52. In effect, provisions of such services becomes that veteran's program of vocational rehabilitation to be provided under chapter 31.

These proposed regulatory amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments concern the rights and responsibilities of individual VA beneficiaries under chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 30, 1986.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. Section 21.47 is revised to read as follows:

§ 21.47 Eligibility for employment assistance

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31.* Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 1502)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran has a service-connected disability which:

(i) Was incurred on or after September 16, 1940; and

(ii) Is compensable, but for payment or retired pay; and

(4) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. Ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of postsecondary education or vocational training.

(Authority: 38 U.S.C. 1517)

(c) *Veteran never received vocational rehabilitation services from the Veterans' Administration or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31.

(Authority: 38 U.S.C. 1517)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§ 21.41 through 21.45 of this title, but entitlement to such assistance is, as provided in § 21.73, limited to 18 total months of assistance.

(Authority: 38 U.S.C. 1505)

2. In § 21.51, paragraphs (f)(1)(i) and (iii) and (f)(2)(i) and (iii) are revised to read as follows:

§ 21.51 Employment handicap.

* * * * *

(f) *Determinations of employment handicap.*

(1) * * *

(i) The veteran has an impairment of employability; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons not within their control;

* * * * *

(iii) The veteran has not overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests.

(2) * * *

(i) The veteran's employability is not impaired; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons within their control;

* * * * *

(iii) The veteran has overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests, and is successfully maintaining such employment.

(Authority: 38 U.S.C. 1502)

3. In § 21.73, paragrpah (a) is revised to read as follows:

§ 21.73 Duration of employment assistance programs.

(a) *Duration.* Employment assistance may be provided to the veterans for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of § 21.47.

(Authority: 38 U.S.C. 1505(b))

* * * * *

4. In § 21.250, paragraph (b)(3) is added and paragraphs (c) (1) and (2) are revised to read as follows:

§ 21.250 Overview of employment services.

* * * * *

(b) * * *

(3) The term "employable" means the veteran is able to secure and maintain employment in the competitive labor market or in a sheltered workshop or other special situation at the minimum wage.

(Authority: 38 U.S.C. 1501, 1508, 1516, 1517)

(c) *Determining eligibility for, and the extent of, employment services.*

(1) A veteran's eligibility for employment services shall be determined under the provisions of § 21.47;

(2) The duration of the period of employment services is determined under provisions of § 21.73;

* * * * *

[FR Doc. 88-2100 Filed 2-1-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50563; FRL-3322-7]

Diphenyl-2,4,6-Trimethylbenzoyl Phosphine Oxide; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance diphenyl-2,4,6-trimethylbenzoyl phosphine oxide [CASRN: 75980-60-8], which was the subject of premanufacture notice (PMN) P-87-586. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use would be required to notify EPA at least 90 days before commencing that activity. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it occurs.

DATE: Written comments should be submitted by April 4, 1988.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St. SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50563. Nonconfidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE-G004 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460. Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: This notice announces a proposed significant new use rule for the chemical substance which was the subject of PMN P-87-586. The Agency believes that this substance may be hazardous to human health and that the uses described in this proposed rule may result in significant human exposure.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed there in detail and persons should refer to that document for further information. EPA is proposing that these general provisions apply to this SNUR. On April 22, 1986, EPA proposed revisions to the general provisions (51 FR 15104), some of which would apply to this proposed SNUR.

III. Summary of this Proposed Rule

The chemical substance which is the subject of this proposed rule is identified as diphenyl-2,4,6-trimethylkbenzoyl phosphine oxide [CASRN: 75980-60-8]. It was the subject of PMN P-87-586. EPA is proposing to designate the

following as significant new uses of the substance: (1) Any manner or method of manufacture associated with any use within the United States, (2) any manner or method of import in dust or powder form associated with any use within the United States, or (3) use other than in solution with styrene.

IV. Background

On February 10, 1987, EPA received a PMN which the Agency designated as P-87-586. EPA announced receipt of the PMN in the **Federal Register** of February 20, 1987 (52 FR 5333). The notice submitter intends to manufacture the substance for use as a photoinitiator for (1) light-cured unsaturated polyester resins, (2) manufacture of small plastic parts using fiberglass, and (3) coating of small thin shell molds.

The notice submitter claimed the following as confidential business information (CBI): The compnay's identity, production volume, process information, use formulation concentrations, percent production devoted to each use, and exposure and release estimates. Under section 14(a)(4) of TSCA, the Agency may disclose CBI when relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its specific chemical name and PMN number.

The Agency is concerned that P-87-586 may present risks to human health. The Agency is specifically concerned that exposure to P-87-586 might induce neurotoxic effects in workers exposed to the substance. These conclusions are based primarily on the structural analogy of the PMN substance with triphenyl phosphine oxide.

Although the Agency identified potential adverse effects of P-87-586, no action was taken during the PMN review period. This was because the Agency does not expect exposures to workers under the conditions of use described by the notice submitter in the PMN to pose a significant health risk. That is, in light of the fact that P-87-586 will be imported in styrene solution, the Agency believes that the workplace controls for styrene presently required by the Occupational Safety and Health Administration will adequately reduce the risk of neurotoxic effects for workers exposed to P-87-586. However, during other potential activities, such as the manufacture of P-87-586 in the United States (where exposure to the substance in dust or powder form could occur), import in dust or powder form, or use other than in solution with styrene, the Agency believes that significant exposures might occur.

When the notice submitter commences commercial import of the substance and submits a Notice of Commencement of Import to EPA, the Agency will add the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without restrictions. Therefore, EPA is proposing to designate the uses set forth in proposed § 721.855(a)(2) as significant new uses so the Agency can review those uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P-87-586 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to designate the significant new uses of P-87-586 as set forth in proposed § 721.855(a)(2).

VI. Exemptions To Reporting Requirements

EPA has codified, in § 721.19, general exemption provisions covering SNUR reporting. On a case-by-case basis, the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

On April 22, 1986, EPA issued amendments to 40 CFR Part 720, the premanufacture notification rule (51 FR 15096), including revisions of §§ 720.36 and 720.78(b) which contain detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. Because §§ 720.36 and 720.78(b) were not in effect when EPA codified § 721.19, the Agency has relied on the definition of small quantities solely for research and development in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities by manufacturers, importers, and processors of substances identified in SNURs qualify under this exemption. On April 22, 1986, EPA proposed amendments to 40 CFR Part 721 (51 FR 15104) to redesignate § 721.19 as § 721.18 and to establish a new § 721.19 with detailed rules for the section 5(h)(3) exemption for SNURs which would ultimately apply to this SNUR. The proposed new § 721.19 is similar to revised §§ 720.36 and 720.78(b). Until the SNUR amendments are promulgated, manufacturers, importers, and processors of chemical substances identified in SNURs may look to §§ 720.36 and 720.78(b) and the proposed new § 721.19 for guidance in complying with the section 5(h)(3) exemption.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance solely for export, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting.

The term "manufacture solely for export" is defined in § 720.3(s) of the PMN rule; and amendment clarifying this definition was issued on April 22, 1986 (51 FR 15096). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S. except in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer or processor; and (3) distribution in commerce is limtied to purposes of export or processing solely for export. If a person manufactured or processed the substance both for export and for use in the U.S., the manufacturing or processing would be for use in the U.S. regardless of whether any quantity of the substance were exported at the same time or at a later date.

VII. Applicability of Proposed Rule To Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter begins import of the substance, the submitter will send EPA a Notice of Commencement of Import and the substance will be added to the Inventory. The notice submitter indicated that it did not intend to undertake the activities designated in this proposal as significant new uses, and EPA has no indication that the submitter will do so contrary to its original intent. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of promulgation of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, any person could defeat the SNUR by initiating a proposed significant new use before the rule became final. This would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of P-87-586 for a significant new use between proposal and promulgation of this SNUR would have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expired.

EPA recognizes that this interpretation of TSCA may disrupt the commercial activities of persons who begin to manufacture, import, or process the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who manufacture, import, or process for a proposed significant new use prior to promulgation of a final SNUR, has proposed a new § 721.18(h) in Subpart A of 40 CFR Part 721 (51 FR 15104) to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation).

VIII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the potential risks posed by this substance when utilized for an intended use. The Agency believes that the results of a 90-day oral toxicity study with a functional observational battery and neuropathology examination would adequately characterize possible neurotoxic effects of the substance. This study may not be the only means of addressing the potential risks. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, or processors of this chemical substance. The Agency's complete economic analysis is available in the public record for this rule (OPTS-50563). This economic analysis is summarized below.

The only direct costs that will definitely occur as a result of the promulgation of this SNUR will be EPA's cost of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing a SNUR are from $10,504 to $20,488. While enforcement costs may also be incurred, the Agency cannot quantify them at this time.

Subsequent to promulgating the SNUR, the Agency believes that there would be three possible outcomes associated with this SNUR, a company could: (1) Manufacture, import, process, distribute in commerce, or use the substance within the limits of this SNUR; (2) manufacture, import, process, distribute in commerce, or use the substance under circumstances requiring the submission of a SNUR notice; or, (3) not manufacture, import, process, distribute in commerce, or use the substance.

If a company intends to produce the substance not under the terms of the SNUR, it will incur the cost of filing a SNUR notice (from $1,400 to $8,000). The company may also incur up to a 3.2 percent reduction in profits due to delays in manufacture or processing, and the cost of regulatory follow-up, if any.

EPA recognizes that persons are not required to develop any particular test data before submitting a SNUR notice; however, the Agency believes that the results of a 90-day subchronic oral toxicity study with a functional observation battery and neuropathological examination ($103,000) would adequately characterize possible neurotoxic effects of the substance.

If a company chooses to perform this test, it would incur the cost of testing ($103,000), the cost of filing the SNUR notice, the delay costs, if any, and the cost of regulatory follow-up, if any.

Some companies could find the cost of controlling manufacture, import, or processing of the substance, associated with certain uses too expensive to justify. Under this outcome a company would not incur any direct costs as a result of the SNUR. The company and society, however, could lose any potential benefits that would have been derived from those uses of the substance.

The Agency has not qualified the benefits of the proposed SNUR. In general, benefits will accrue if the

proposed action leads to the identification and control of unreasonable risks before significant health effects occur. The proposal and promulgation of the SNUR provide benefits to society by minimizing or eliminating potential health effects for the substance.

X. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50563). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. This proposed rule.
4. The economic analysis of the proposed rule.
5. The toxicology support document.
6. The engineering support document.

The Agency will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M St. SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA believes that the cost would be low. EPA believes that, because of the nature of the proposed rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage innovation that has high potential value.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not, if promulgated, have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, the Agency believes that the number of small businesses affected by this proposed rule would not be substantial even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.*, and has assigned OMB control number 2070–0012 to this proposed rule. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 15, 1988.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

Part 721—[Amended]

1. The authority citation for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.855 to read as follows:

§ 721.855 Diphenyl-2,4,6-trimethylbenzoyl phosphine oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its chemical name and CAS number is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: Dipheny-2,4,6–trimethylbenzoyl phosphine oxide [CASRN: 73980–60–8].

(2) The significant new uses are:

(i) Any manner or method of manufacture associated with any use within the United States.

(ii) Any manner or method of import in dust or powder form associated with any use within the United States, or

(iii) Use other than in solution with styrene.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 88–2075 Filed 2–1–88; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the State of Alabama (AL)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Alabama Department of Agriculture and Industries (Alabama), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Alabama's designation terminates on February 29, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the September 1, 1987, **Federal Register** (52 FR 32947). Applications were to be postmarked by October 1, 1987. Alabama was the only applicant for designation in its geographic area and it applied for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant name in the November 2, 1987, **Federal Register** (52 FR 42024) and requested comments on the designation renewal of Alabama. Comments were to be postmarked by December 17, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Alabama is able to provide official services in the geographic area for which the Service is renewing its designation. Effective March 1, 1988, and terminating February 28, 1991, Alabama will provide official inspection and Class X or Class Y weighing services in its entire specified geographic area, previously described in the September 1 **Federal Register**.

Interested persons may obtain official services by contacting the agency at the following address: Alabama Department of Agriculture and Industries, 1445 Federal Drive, Montgomery, AL 36193.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–2019 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the State of Alaska (AK), and Little Rock (AR) and Memphis (TN) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the Alaska Department of Natural Resources, Division of Agriculture (Alaska), Little Rock Grain Exchange Trust (Little Rock), and Memphis Grain and Hay Association (Memphis).

DATE: Comments to be postmarked on or before March 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454. *Telemail* users may respond to [IRSTAFF/FGIS/USDA] telemail. *Telex* users may respond as follows: To: Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 7, 1987, **Federal Register** (52 FR 46384). Applications were to be postmarked by January 4, 1988. Alaska, Little Rock, and Memphis were the only applicants for designation in their geographic area and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: January 27, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–2020 Filed 2–1–88; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Jamestown (ND) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Grain Inspection, Inc. (Jamestown).

DATE: Applications to be postmarked on or before March 3, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Jamestown, located at 217 4th Avenue, Jamestown, ND 58401, was designated under the Act as an official agency to provide inspection functions on August 1, 1985.

The official agency's designation terminates on July 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed acccording to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Jamestown, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S. Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County; the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route 45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan County line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State Route 49; State Route 49 north to State Route 21; State Route 21 west to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 west-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop Elevator, Fessenden, Farmers Union Elevator, and Manfred Grain, both in Manfred, all in Wells County (located inside Grand Forks Grain Inspection Department's area); and Norway Spur, and Oakes Grain, both in Oakes, Dickey County (located inside North Dakota Grain Inspection Service, Inc.'s area).

Exeptions to Jamestown's assigned geographic area are the following locations inside Jamestown's area which have been and will continue to be serviced by the following official agencies:

1. Aberdeen Grain Inspection, Inc.: Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; Regent Grain Company, and Regent Equity, both in Regent, Hettinger County; and

2. Minot Grain Inspection, Inc.: Farmers Elevator & Mercantile Co., and Coast Trading Company, both in Underwood; and Merle A. Larson Elevator, Inc., Washburn all in McLean County.

Interested parties, including Jamestown, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period begining August 1, 1988, and ending July 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official sevices in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: January 27, 1988.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 88-2021 Filed 2-1-88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Export Administration.

Title: Request for and Notice of Amendment Action.

Form Number: Agency—ITA-685P; OMB—0625-0003.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8,620 respondents; 2,298 reporting/recordkeeping hours.

Needs and Uses: The information provided by export license holders is used by Export Administration as a basis for granting approval of amendment requests to revise outstanding export licenses.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion/recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-2053 Filed 2-1-88; 8:45am]

BILLING CODE 3510-CW-M

Minority Business Development Agency

[Transmittal No. 06-10-88009-01, Project I.D. No. 06-10-88009-01]

Little Rock, AR Minority Business Development Center (MBDC); Program Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of June 1, 1988 to May 30, 1989. The MBDC will operate in the Little Rock, Arkansas Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBCD will consist of:

Name	Federal	Non-federal	Total
Little Rock SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBCD will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for receipt of application is February 29, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and application regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on February 12, 1988 at 1:00 pm. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Little Rock MBDC (Geographic Area or SMSA)
Project Identification Number: 06-10-88009-01
Project Start and End Dates: 06/01/88 to 05/30/89
Project Duration: 12 months
Total *Federal Funding* (85%): $165,000
Minimum *Non-Federal Share* (15%): $29,118
Total Project Cost (100%): $194,118

Closing Date for Submission of this Application: February 29, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Little Rock, Arkansas.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:
Financial packages $2,747,000
Billable M&TA $84,000
Number of Professional Staff 3
Procurements $5,493,000
M&TA Hours 1,680
Number of Clients 76

[FR Doc. 88-2135 Filed 2-1-88; 8:45 am]

BILLING CODE 3510-21-M

[Transmittal No. DRO-88-9999, Project I.D. No. DRO-88-9999]

Tulsa, OK Minority Business Development Center (MBDC); Program Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its

Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of June 1, 1988 to May 30, 1989. The MBDC will operate in the Tulsa, Oklahoma Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-federal	Total
Tulsa SMSA	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fees for service.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer then a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: The closing date for receipt of application is March 4, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Deselene Crenshaw, Acting Business Development CLerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and application regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on February 12, 1988 at 1:00 pm. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specification

Program Number and Title: 11.800 Minority Business Development
Project Name: Tulsa MBDC (Geographic Area or SMSA)
Project Identification Number: DRO–88–9999
Project Start and End Dates: 07/01/88 to 06/30/89
Project Duration: 12 months
Total *Federal Funding* (85%): $165,000
Minimum *Non-Federal Share* (15%): $29,118
Total Project Cost (100%): $194,118

Closing Date for Submission of this Application: March 4, 1988.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Tulsa, Oklahoma.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:
Financial packages $2,747,000
Billable M&TA $84,000
Number of Professional Staff 3
Procurements $5,493,000
M&TA Hours 1,680
Number of Clients 76

[FR Doc. 88–2137 Filed 2–1–88; 8:45 am]
BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene separate public meetings of its advisory bodies as follows:

Special Red Drum and Standing Scientific and Statistical Committee—will convene February 17, 1988, from 8:30 a.m. to 3:30 p.m., to review new stock assessment information on red drum and the draft amendment which would close Federal waters to the harvest of red drum. The public meeting will be held at the Days Inn Rocky Point Island, 7627 Courtney Campbell Causeway, Tampa, FL.

Red Drum Advisory Panel—will convene February 26, 1988, from 10 a.m. to 4 p.m., to discuss the same agenda items as stated above for the Special Red Drum and Standing Scientific and Statistical Committee. The public meeting will be held at the Sheraton Hotel, 2150 Veterans Boulevard, Kenner, LA.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: January 27, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2094 Filed 2–1–88; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcements of Import Restraint Levels and Guaranteed Access Levels for Certain Cotton, Man-Made Fiber and Other Vegetable Fiber Textile Products From Jamaica, Effective on January 1, 1988; Correction

January 28, 1988.

In the second column on page 49186, the letter to the Commissioner of Customs, published in the **Federal Register** on December 30, 1987, should be corrected to refer to trade in Categories 445/446 during the period which began on January 1, 1987 and extends through December 31, 1987, instead of the period June 1, 1987 through December 31, 1987.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2136 Filed 2–1–88; 8:45 am]
BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Operation of U.S. Army Kwajalein Atoll (USAKA), Republic of the Marshall Islands

AGENCY: U.S. Army Strategic Defense Command, Army Department, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The U.S. Army Kwajalein Atoll ((USAKA) formerly the Kwajalein Missile Range) is a subordinate command under the U.S. Army Strategic Defense Command and is one of two National Test Range facilities authorized to conduct anti-ballistic missile (ABM) tests under the 1972 ABM treaty between the United States and the U.S.S.R. USAKA is located at Kwajalein Atoll, Republic of the Marshall Islands (RMI), about 2,100 nautical miles southwest of Honolulu, Hawaii. USAKA is subject to the provisions of the National Environmental Policy Act (NEPA) and the substantive provisions of some other Federal environmental statutes pursuant to the Compact of Free Association between the U.S. Government and the RMI Government (48 U.S.C. 1681).

2. Currently, USAKA provides research and support facilities for about 2,800 personnel. The proposed DEIS will assess the effects of construction and operations relating to ongoing personnel and facilities support activities, and Strategic Defense Initiative (SDI) research and testing activities. As previously announced (52 FR 28859, August 4, 1987), the DOD Strategic Defense Initiative Organization concluded that SDI Demonstration and Validation test activities would require an Environmental Impact Statement for the entire range of operations at USAKA.

3. Alternatives to be considered include:

a. No action.

b. Reduced activities at USAKA (including relocating some or all of USAKA or the SDI activities elsewhere).

c. Differences in the duration of operations at USAKA.

4. Potentially significant environmental concerns include the effects of a population increase (principally on Kwajalein Island); the redistribution of the population; the past, present and future economic impact of USAKA operations on the RMI economy; indirect socioeconomic impacts to nearby Micronesian residents outside the boundary of the range; the potential destruction of historic and prehistoric cultural materials, even in disturbed environments; the potential destruction of rare native forests; the disturbance to marine environments previously unaffected by or recovering from past construction and operations; disturbance to nesting seabirds and threatened and endangered sea turtles; reduced access to fishery grounds of subsistence value to the Marshallese residents; possible radio-frequency and radar hazards to civilian personnel, schools, and family housing areas; adequacy of explosives safety quantity distance (ESQD) buffers; air, noise and water quality; and management and disposal of liquid and solid waste. Various measures to avoid, reduce or mitigate for possible adverse environmental impacts will also be considered.

5. The DEIS will be based upon input from field studies, including the description and evaluation of past, present and future effects on the marine environment, the terrestrial environment, the socioeconomic setting, and archaeological and historic sites, augmented by interviews and field investigations by Army Corps of Engineers personnel, and a public involvement program. Public involvement and scoping will include three public workshops on Kwajalein, and Ebeye Island and at Majuro, the capitol of RMI. Notice of these meetings will be placed in local newspaper. The research will also include inteviewing selected Marshallese and USAKA residents, and local/RMI governmental and USAKA officials. All interested organizations and individuals are strongly encouraged to provide written comments including input to the process of identifying and evaluating issues and concerns, and of formulating alternative measures to avoid, reduce, or mitigate potential adverse impacts.

6. In conducting this DEIS, contact is planned with various U.S. Army commands, Army contractors preparing master plans for USAKA, various USAKA community organizations, the Marshallese land owners of USAKA-controlled properties (i.e. Kwajalein Landowners Association), adjoining landowners, the Kwajalein Atoll Development Authority, RMI Government agencies, the RMI Nitijela (Parliament), and Federal agencies having authority with reference to US activities at USAKA. In addition, the Army will solicit the advice of other Federal agencies with environmental expertise such as the US Fish and Wildlife Service, the US Environmental Protection Agency, the National Marine Fisheries Service, the National Park Service and the Advisory Council on Historic Preservation.

7. The DEIS is scheduled to be available for public review in October 1988. Questions and written comments about the proposed action and DEIS can be addressed to: Mr. Bennie D. Wall, U.S. Army Strategic Defense Command, ATTN: CSSD–H–TF, PO Box 1500, Huntsville, Alabama 35807–3801. Telephone: (205) 895–4823

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 88–2068 Filed 2–1–88; 8:45 am]
BILLING CODE 3710–08–M

Intent To Grant a Limited Exclusive Patent License to Roberts Pharmaceutical Corp.

The Department of the Army announces its intention to grant Roberts Pharmaceutical Corporation, a corporation of the State of New Jersey, a limited exclusive license under U.S. Patent No. 4,657,903, issued April 14, 1987, entitled "Transition Metal Complexes of the Selenium Analogs of 2-Acetyl- and 2-Propionylpyridine Thiosemicarbazones Useful for Treating Malarial Infections and Leukemia" by John P. Scovill, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Patent Counsel, Walter Reed Army Institute of Research, Washington, DC 20307–5100.

For further information concerning this notice, contact: Lieutenant Colonel Francis A.Cooch, Patent Counsel,

Building T–20, Room 206E, Walter Reed Army Institute of Research, Washington, DC 20307–5100, Telephone No. (Area Code 202) 576–4369/4370.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–2037 Filed 2–1–88; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Meeting

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: March 2, 1988.

Place: Quality Inn—Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Time: 9 a.m. to 5 p.m.

Proposed Agenda

A.M. Session

09:00 Call to Order and Disposition of Prior Meeting Minutes.

9:15 Review, Explanation, and Evaluation of Information Provided to Board by Support Staff.

11:00 Review and Update of 1987 Board Recommendations for Inland Waterways Development Priorities.

P.M. Session

1:30 Discussion of Testimony before Congressional Committees on Fiscal Year 1989 Budget Priorities.

3:30 Other Business.

4:00 Public Comment Period.

4:30 Identification of Information to be Provided to the Board by Support Staff.

5:00 Meeting Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314–1000 at (202) 272–0146.

H.J. Hatch,

Major General, USA, Executive Director to the Inland Waterways Users Board.

[FR Doc. 88–2036 Filed 2–1–88; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Educational Research and Improvement National Advisory Council; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 2, 3, and 4, 1988.

ADDRESS: The Council will meet on March 2 in the Nicholas de Basily Room, Hoover Tower, Stanford University, Stanford, California, from 4:30 p.m. to 5:45 p.m.; on March 3 in the Stauffer Auditorium, Hoover Institution, from 9 a.m. to 5 p.m.; on March 4, in Room 130 (or as posted) in the Hoover Memorial Building, from 9 a.m. to 12 noon, and from 1 to 5 p.m. in the School of Education (room to be announced), Stanford University.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4064, Washington, DC 20202, (202) 732–4504.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Amendments, Pub. L. 92–318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498, 20 U.S.C. 1221e). The Council is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; (20 U.S.C. 1233 *et seq.*)), and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2). The Council advises the President, the Secretary and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). Meetings of the Council are open to the public. The agenda for March 2 includes a briefing by Mr. Charles Palm, director of Hoover Archives. On March 3 the Council will sponsor a conference on Soviet education. Hoover scholars and other eminent Sovietologists will speak. On March 3 the Council will conduct a business meeting from 9 a.m. to 12 noon and will conduct a site visit at the Stanford School of Education from 1 to 5. Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4064, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: January 28, 1988.

Mary Grace Lucier,

Executive Director.

[FR Doc. 88–2102 Filed 2–1–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the General Counsel

Second Plan of Action To Implement the International Energy Program

AGENCY: Department of Energy.

ACTION: Notice of Approval of "Second Plan of Action to Implement the International Energy Program."

SUMMARY: The Department of Energy (DOE) gives notice that the Secretary of Energy and the Attorney General have approved the "Second Plan of Action to Implement the International Energy Program." That document describes the types of substantive actions which the seventeen U.S. oil companies participating in the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," which was adopted in 1976, may take during implementation of emergency international oil sharing as provided in the Agreement on an International Energy Program (IEP). The IEP emergency oil sharing system, operated by the International Energy Agency (IEA), can be activated only when the IEA group of countries as a whole or an individual IEA country experiences an oil supply emergency involving at least a seven percent supply shortfall.

Section 252 of the Energy Policy and Conservation Act makes available a limited antitrust defense with respect to actions taken by U.S. oil companies to implement the information and allocation provisions of the IEP, provided that such actions are described in a voluntary agreement or plan of action. A plan of action is required to be as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

The approved "Second Plan of Action to Implement the International Energy Program," which appears as an appendix to this notice, is the product of extensive interchanges over a period of years involving representatives of U.S. oil companies participating in the Voluntary Agreement, the IEA's Secretariat, and staffs of DOE, the Department of Justice, the Department of State and the Federal Trade Commission. U.S. oil companies participating in the Voluntary Agreement considered the Second Plan of Action at a meeting of the IEA's Group of Reporting Companies held at the Department of State on July 29, 1987. At the conclusion of that meeting, the IEA Secretariat advised the U.S. Government that the Group of Reporting Companies favored proceeding with adoption of this Plan of Action. Public comments then were solicited on the Plan of Action, and a public hearing was held with respect to it on September 22, 1987.

On December 18, 1987, after consulting with the Federal Trade Commission, the Assistant Attorney General (Antitrust) advised the Secretary of Energy of his approval, on behalf of the Attorney General, of the Second Plan of Action. On January 28, 1988, the Secretary of Energy thereupon gave his approval to the Second Plan of Action, which would go into effect only if the President finds that an "international energy supply emergency" exists.

DOE also gives notice that the Department of Justice intends to amend the existing Voluntary Agreement, effective 20 days after the publication of this Notice, to incorporate the approved Plan of Action into, and make conforming technical changes to, the Voluntary Agreement.

FOR FURTHER INFORMATION CONTACT:

Craig S. Bamberger, Assistant General Counsel for International Affairs, Department of Energy, Forrestal Building, Room 6A–167, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–2900

James R. Weiss, Chief, Transportation, Energy & Agricultural Section, Antitrust Division, Department of Justice, Judiciary Center, 555 4th Street NW., Room 9824, Washington, DC 20044, Telephone: (202) 724–6528

Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 601 Pennsylvania Avenue NW., Room 3303, Washington, DC 20580, Telephone: (202) 326–2622

David H. Small, Assistant Legal Adviser for Economic, Business and Communications Affairs, Office of the Legal Advisor, Department of State, 2201 C Street NW., Room 6420, Washington, DC 20520, Telephone: (202) 647–5242.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Plan of Action
1. Coverage of the Plan of Action
2. Exclusions from the Plan of Action
3. Recordkeeping, Reporting and Monitoring
III. Public Comments on the Plan of Action
IV. U.S. Government Approval of the Plan of Action
Appendices
Appendix 1: Second Plan of Action to Implement the International Energy Program
Appendix 2: Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program
Appendix 3: Correspondence Concerning Approval of the Second Plan of Action

I. Background

Following the oil embargo of 1973, the United States and certain other members of the Organization for Economic Cooperation and Development (OECD) entered into the Agreement on an International Energy Program (IEP), TIAS 8278, which provided for creation of the International Energy Agency (IEA), headquartered in Paris, France, as an autonomous agency of the OECD. The IEP's main purposes include reducing the Free World oil consuming nations' vulnerability to supply disruptions by encouraging self-sufficiency in oil supplies; avoiding competition for short supplies of available oil during a disruption through an Emergency Sharing System for equitably allocating those supplies among the signatory countries; establishing a comprehensive international information system; and creating a forum for cooperation with governments and consultation with oil companies. There are now 21 IEA member countries, consisting of all OECD members except France, Finland and Iceland. The IEP provides that the IEA's Emergency Sharing System (ESS) may be activated only when the IEA group of twenty-one member countries as a whole or an individual IEA country experiences a seven percent or greater shortfall of available petroleum supplies, measured against a specified base period.

The oil companies of the U.S. and the other IEA countries would play a vital role in the implementation of the Emergency Sharing System, providing essential information, advising the IEA on supply and logistical matters, and actually effecting international oil allocation. It has been recognized from the outset that the performance of these functions at the behest of governments could expose companies to antitrust and breach of contract risks under U.S. law. To facilitate U.S. company participation in the IEA, the Congress in 1975 enacted section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272, which authorizes the development of voluntary agreements and plans of action to implement the allocation and information provisions of the IEP, and makes available a limited antitrust defense and a breach of contract defense with respect to actions taken to develop or carry out voluntary agreements and plans of action.

A "Voluntary Agreement and Plan of Action to Implement the International Energy Program" (Voluntary Agreement) was agreed to in 1976 by a number of U.S. oil companies. *See* 41 FR 13998 (April 1, 1976) and 2 CCH Federal Energy Guidelines, para. 15,845. At the present time the following seventeen companies, which have agreed to be IEA Reporting Companies, are participants in the Voluntary Agreement:

Amerada Hess Corporation
Amoco Corporation
ARCO
Ashland Oil, Inc.
Caltex Petroleum Corporation
Chevron Corporation
CONOCO, Inc.
Exxon Corporation
Mobil Oil Corporation
Occidental Petroleum Corporation
Phillips Petroleum Company
Shell Oil Company
The Standard Oil Company
Sun Company, Inc.
Texaco Inc.
Union Pacific Resources Company
Unocal Corporation

Section 6(c)(1) of the Voluntary Agreement provides for the development of plans of action elaborating and applying IEA allocation principles and measures, and describing the types of substantive actions which may be taken under the plan, in the event that the Emergency Sharing System is triggered by an oil supply emergency.

Section 252 of the EPCA, and the existing Voluntary Agreement, contemplate that the oil companies which participate in the Voluntary Agreement will play a role in developing plans of action. Before a plan of action can be made effective, it must be approved by the U.S. Government:

EPCA section 252(d) requires approval by the Attorney General, after he has consulted with the Federal Trade Commission, and the Voluntary Agreement itself calls for approval of plans of action by the Secretary of Energy. The existing Voluntary Agreement contains a plan of action describing company actions which may be taken when IEP oil sharing has been triggered. However, the provisions of that plan of action understandably are very broad and general, since it was adopted in 1976 while the IEP Emergency Sharing System was in an early stage of development, whereas EPCA section 252(d)(3) requires that a plan of action describe the "types of substantive actions" which may be taken under the plan, and calls for a plan of action "as specific in its description of proposed substantive actions as is reasonable in light of known circumstances." For that reason, efforts have been under way for a period of years to prepare a new draft plan of action setting out in much more precise detail those activities in which industry would engage while implementing IEP emergency oil sharing, and to which the limited antitrust and breach of contract defenses would apply.

The oil company participants in the Voluntary Agreement several years ago indicated their desire that the Executive Branch take the lead in drafting a new plan of action. Accordingly, staff of DOE, in cooperation with staff of the Departments of Justice and State and the Federal Trade Commission, initially performed this function, preparing draft texts for consideration by the participating companies; the first two such drafts were published in the **Federal Register** on May 8, 1981 (46 FR 26026), and October 28, 1983 (48 FR 49906), respectively, to solicit public comments. subsequently, the companies elected to play a greater role in drafting the proposed plan of action, and the Plan of Action which has been adopted is the product of an extensive interchange at meetings of Subcommittee C of the IEA's Industry Advisory Board (IAB) involving representatives of U.S. Reporting Companies, the IEA's Secretariat, and staffs of the concerned U.S. Government agencies.

The Plan of Action was essentially finalized at a meeting of Subcommittee C held in White Plains, New York, on April 2, 1987, and a subsequent meeting of the IAB in Paris on June 9, 1987. The final draft of the Plan of Action was considered by U.S. Voluntary Agreement participants at a meeting of the IEA Group of Reporting Companies at the Department of State on July 29, 1987. At that meeting some concerns were voiced that the Plan of Action was less flexible than might be desired in order to facilitate oil company implementation; in particular, the recordmaking and recordkeeping provisions were perceived as burdensome, and questions were raised as to the operational effects of omitting Plan of Action coverage for so-called "Type 1 activities" (discussed below). Nonetheless, at the conclusion of the meeting the IEA Secretariat advised the Department of Energy that, on balance, the Group of Reporting Companies favored proceeding with adoption of this Plan of Action.

Following the meeting, DOE published a copy of the draft Second Plan of Action in the **Federal Register** along with a solicitation of public comments and an announcement of a public hearing (*see* 52 FR Part II, August 21, 1987). The public hearing was held at DOE on September 22, 1987. The public comments submitted in writing or made at the hearing are discussed below.

II. Discussion of the Plan of Action

Section 6(a) of the existing Voluntary Agreement authorizes the participating oil companies, during an "international energy supply emergency," to "take such actions as may be necessary or appropriate to implement emergency allocation programs of the IEA," including certain specified actions. The new Plan of Action, which appears below at Appendix 1, replaces paragraph (B) of section 6(a), which specifies as one type of action the participating companies are authorized to engage in, "Arrangements among the participants for the purchase, loan, sale, or exchange of petroleum by and among themselves, or with other persons or entities."

Because of the length and complexity of the Plan of Action, it is being placed in an appendix (Appendix B) to the Voluntary Agreement, and incorporated by reference into the Voluntary Agreement. All of the remaining provisions of the Voluntary Agreement will apply to the Plan of Action as though its full text physically were within the Voluntary Agreement, including the Voluntary Agreement's Section 6 provisions for carrying out the Plan of Action only following a Presidential determination that there exists an "international energy supply emergency."

The Plan of Action consists of ten sections and two annexes; in addition to the Plan of Action *per se*, there are several implementing amendments to the Voluntary Agreement. Much of the Plan of Action is devoted to describing the IEA Emergency Sharing System which the participating oil companies would help carry out, in the event that the Sharing System were activated during an emergency; certain other provisions deal with administrative arrangements.

There are three key sections of the Plan of Action. In terms of conveying legal protection to the companies for their participation in the IEA Emergency Sharing System, the most significant provisions are in section 5, "Specification of Substantive Actions," and section 6, "Confidential or Proprietary Information Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees," each as limited by a provision in section 2.2 which excludes from the Plan of Action all so-called "Type 1 activities" (explained below). The third key section is section 8, "Requirements for Recordkeeping, Reporting and Monitoring."

1. Coverage of the Plan of Action

Section 252(f) of the EPCA makes available a limited defense to a legal action brought under the antitrust laws, in respect to actions taken to carry out a properly approved plan of action, unless such actions to carry out the plan of action were taken "for the purpose of injuring competition." [1] However, this defense is available "only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action." And as noted above, section 252(d)(3) conditions the Government's approval of any plan of action on its describing with specificity the substantive actions which may be taken under it. The function of section 5, therefore, is to specify the substantive actions which may be taken under the Plan of Action by participating U.S. Reporting Companies and those of their affiliates which participate in the Voluntary Agreement, inclusive of activities undertaken through the IAB or in the Industry Supply Advisory Group (ISAG), which is comprised of industry technical experts who would advise the IEA Secretariat in Paris on oil allocation during an emergency.

The function of section 6 is to specify what types of confidential or proprietary information or data may be communicated, either in writing or orally, when the Voluntary Agreement participants take substantive actions that are covered by the Plan of Action. This section is based on similar provisions that have been used in U.S. Government approval letters for IEA Allocation Systems Tests. *See, e.g.*, 50 FR 41383 (October 10, 1985).

[1] The contract breach defense under section 252(i) applies where the breach was caused "predominantly by action * * * to carry out" a plan of action.

2. Exclusions From the Plan of Action

The coverage provided by sections 5 and 6 is, however, subject to certain express exclusions. A question which has received considerable attention in the development of the new Plan of Action is whether there should be antitrust protection for the communication by participating U.S. oil companies to the IEA's Emergency Management Organization (EMO), consisting of the ISAG and the Secretariat, of transactional oil price information. Section 5.5 specifically excludes such oil price communications from the Plan of Action, with certain very narrow exceptions for special functions of the IEA Secretariat. In addition, section 6.15 excludes from Plan of Action coverage, the communication of confidential or proprietary information or data concerning company oil costs, market shares, or long-term programs for investment, divestment, refining, operating, transportation or marketing.

Another important exclusion from the Plan of Action, alluded to above, is contained in section 2.2: "Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action are all Type 1 activities." Simply stated, "Type 1 activities" are those oil supply transactions and related activities which oil companies would undertake voluntarily and independently of the EMO and of the IEP Emergency Sharing System procedures for EMO approval of proposed oil transactions ("voluntary offers"). "Type 2 activities," in contrast, involve the submission of proposed "voluntary offers" to the EMO for review by the ISAG and IEA Secretariat, and Type 2 supply transactions are not to be implemented unless and until they have been approved by the EMO.[2] And until the recent adoption of the IEA Governing Board of a proposal described below, the Emergency Sharing System was structured so that the "voluntary offers" could not be submitted to the EMO by participating oil companies until roughly mid-way through each monthly allocation cycle, when each IEA member country's exact oil allocation right or allocation obligation under the Sharing System formula would be known.

The question of antitrust and breach of contract protection for Type 1 activities has been the most controversial issue raised during preparation of the Plan of Action. The issue gained prominence during and after the IEA's Second Allocation Systems Test (AST–2) in 1978, as the participating U.S. oil companies observed in IEA test activities an increasing EMO emphasis on the use of Type 1 transactions within the IEP Emergency Sharing System, and in that connection on the role of the IEA secretariat and the ISAG in exhorting Reporting Companies to redirect oil to countries thought likely to have rights to receive it under the IEP Sharing System's formula. Over time, the U.S. Reporting Companies became more worried that efforts of the Secretariat or the ISAG to influence their Type 1 transactions could expose the companies to antritrust risks like those arising from their Type 2 transactions, which it is generally recognized need antitrust protection. Because the IEP Emergency Sharing System depends upon the voluntary participation of oil companies, which was being thrown into doubt by Type 1 legal risks, in 1984 the Department of Energy, with the concurrence of the Department of Justice, began to explore with the IEA Secretariat and the U.S. Reporting Companies whether it was possible to develop some selective form of Type 1 coverage; that is, whether a narrowly constructed, carefully monitored Type 1 coverage could be developed in the Plan of Action which would allay the concerns of the companies and facilitate the operation of the Sharing System, without overextending antitrust and breach of contract protections to normal commercial transactions that might have occurred without regard to IEA oil allocation.

In 1985, however, while these efforts were under way, apprehension developed on the part of the General Accounting Office and in the Congress that overly broad Type 1 Plan of Action coverage might ultimately be allowed. As a result, in the course of enacting legislation to extend the EPCA, the Congress added a new subsection (m) to section 252. Under this provision, any Plan of Action which made the section 252 defenses available to Type 1 activities would have to be submitted to Congress under a prescribed Congressional review procedure, in order for the Type 1 coverage to be valid. Public Law No. 99–58, Section 105 (July 2, 1985).

Although consideration of proposals for Type 1 coverage in the Plan of Action subsequently resumed, what now has made possible the completion of a Plan of Action which excludes Type 1 coverage, is a significant innovation in the IEP Emergency Sharing System with respect to *Type 2* activities. On November 6, 1986, the IEA Governing Board adopted a proposal of the IEA Secretariat which was designed to enhance the operational effectiviness of the IEP Emergency Sharing System, and which had corollary benefits for the potential development of a Plan of Action satisfactory to the U.S. Government, The IEA Secretariat, and the U.S. oil companies participating in the Voluntary Agreement.

The operational problem with which the proposal was meant to deal, was that the current oil allocation system as well as the Voluntary offer procedure were established more than ten years previous, at a time when a relatively small number of large, integrated oil companies accounted for a greater share of the world oil market than today and when long-haul crude oils traded via long-term contracts were still the main element in the markets. At that time, it was believed that decisions to eliminate or reduce supply imbalances among IEA member countries through redirection of floating crude oil cargoes could be made without undue haste in view of the long travelling times and the small number of main players. But the increased importance since then of short-haul oil cargoes and of spot crude oil and refined product transactions has changed this situation, and now necessitates a faster responding decision process. Furthermore, technical improvements (*e.g.*, current computing capabilities) permit a more flexible EMO operating approach than was considered possible then years before.

The Secretariat's proposal, known as the "Wider Window" concept, dealt exclusively with the so-called "closed-loop" form of Type 2 voluntary offers—*i.e.*, with proposed international supply transactions that already have been worked out with a prospective trading partner, either within the same international oil company or with an independent company. This is in contradistinction to an "open-loop" type of voluntary offer, which is a firm's proposal to either supply oil to or receive oil from a company in another country, without predesignation of a trading partner, so that its offer may be matched up with a proposed trading partner by the EMO. Under the "Wider

[2] There also is a category of "Type 3 activities," involving government-mandated supply actions, as a last resort if the voluntary system fails.

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Window" proposal, as adopted by the Governing Board, "closed-loop voluntary offers" could be submitted to the ISAG or the IEA Secretariat at any time during an allocation cycle, not just at specified times, as in the case of "open-loop" voluntary offers. Moreover, the Secretariat and the ISAG, on an expedited basis (within a period of no more than 48 hours after receipt of the "closed-loop" voluntary offer), are to process each proposed Type 2 transaction and notify the proposing company or companies of the EMO's approval, disapproval, or determination that there is insufficient information to act upon a voluntary offer.

In adopting the IEA Secretariat's proposal, the IEA Governing Board requested the Secretariat to prepare draft implementing amendment to the IEA Emergency Management Manual (EMM), an IEA-classified document which condifies Governing Board decisions on the operation of the IEP Emergency Sharing System. In the interim, the Governing Board agreed to apply these Emergency Sharing System modifications on a provisional basis, in order to enable the U.S. Government to proceed with a Plan of Action which takes them into account.

The approved Second Plan of Action which appears below reflects the IEA's adoption of the "Wider Window" concept. By allowing Type 2 activities to occur at any time during a monthly allocation cycle, it gives the participating companies a means to avoid the antitrust risks previously associated with Type 1 activities.

3. Recordkeeping, Reporting and Monitoring

In order to enjoy the benefits of the legal defenses contained in section 252, a participating oil company must comply with the conditions of this Plan of Action applicable to it. Section 8 of the Plan of Action, "Requirements for Recordkeeping, Reporting and Monitoring," imposes such conditions. It is basically through this section that there is to be established and maintained the "full and complete record of any meeting held," and of "any communication (other than in a meeting) made, between or among participants or potential participants," which is required by EPCA section 252(c)(3), and by regulations of the Departments of Energy and Justice at 10 CFR Part 209 and 28 CFR Part 50, respectively.

Provisions for recordkeeping, reporting and monitoring have been included in the U.S. Government's approval letters for each of the IEA's five Allocation Systems Tests (ASTs). *See e.g.*, 50 FR 41383 (October 10, 1985). These AST approval letters, which gradually have been improved and clarified over the years, were used as a starting point in the preparation of Section 8. As Section 8 was developed, all parties concerned were conscious of the desirability of simplifying and clarifying its provisions, and of removing burdens on industry to the maximum extent possible consistent with the Government's antitrust responsibilties. Extensive drafting efforts repeatedly have been made toward that end.

Nonetheless, it is recognized that the recordkeeping provisions of the Plan of Action are complex. While most of the issues raised by these requirements already have been the subject of substantial discussion, the Government will remain receptive to any suggestions for lightening or simplifying them in a manner consistent with the Government's responsibilities under the EPCA and the antitrust laws. It should be noted that the provisions at Annex I to the Second Plan of Action, for the disposition and retention of "computer documents", are of more recent origin and are considered to be tentative in nature. As the Annex explains, it is intended that these provisions be tested in the IEA's next simulated exercise of the IEA's Emergency Sharing System, AST–6, presently scheduled for late 1988, in order to evaluate whether companies are capable of complying with these requirements without undue burden.

III. Public Comments of the Plan of Action

In response to the August 21, 1987, **Federal Register** notice, written comments were submitted by Sun Company, Inc., the Petrochemical Energy Group and the Petroleum Marketers Association of America. The Petrochemical Energy Group also presented its comments in an oral statement at the public hearing on the Second Plan of Action on September 2, 1987. The following is a discussion of these comments.

Sun Company, Inc., the only IEA Reporting Company and U.S. Voluntary Agreement participant which submitted comments, criticized the Plan of Action's recordkeeping and reporting requirements as excessive, and contended that the burdensomeness of these requirements could make the Plan unworkable in an emergency.

As noted above, when the recordkeeping provisions were developed, intensive efforts were made to simplify and clarify them, and to remove burdens on industry to the maximum extent possible consistent with the Government's antitrust responsibilities under section 252 of the EPCA. Admittedly, there were limits beyond which these efforts could not be carried without sacrificing requirements imposed by law or which the antitrust authorities considered important to the fulfillment of their mission.

It is regrettable but perhaps inevitable that the Government's statutory and programmatic antitrust responsibilities result in Plan of Action reporting and recordkeeping responsibilities more extensive than industry considers necessary. However, some of the complexities of Article 8 of the Plan of Action stem directly from initiatives of oil industry counsel to address special problems, such as those of foreign affiliates of Reporting Companies which are covered under the Voluntary Agreement and Plan of Action. In any event, all of the particulars of Article 8 have been subject to lengthy and exhaustive discussion between the Government and industry, and notwithstanding the Government's disposition of the various issues presented, the IEA's Group of Reporting Companies has indicated that it favors proceeding with the adoption of this Plan of Action.

The Petroleum Energy Group (PEG), consisting of seven independent petrochemical companies,[a] criticized the Plan of Action for its failure to provide any participatory or advisory role for the independent petrochemical industry, and recommended that the Second Plan of Action be modified to provide for the participation of petrochemical companies in the IEA's Industry Advisory Board (IAB) and Industry Supply Advisory Group (ISAG) which, PEG stated, were "established" by the Plan of Action. According to PEG, its members have substantial interest in decisions made to allocate world oil supplies because of their dependence upon domestic and imported petroleum both as a feedstock and as a source of fuel for manufacturing; in addition, a number of the U.S. oil companies participating in the IEA are competitors as well as supplies of PEG members. Consequently, PEG contented that its members should be eligible to participate in the IAB and ISAG, along with the U.S. and foreign oil companies, in advising the U.S. Government and the IEA on IEA oil allocation.

PEG was incorrect in stating that the IAB and the ISAG were established by the Plan of Action and that they serve as advisory bodies to the U.S. Government. Both groups were established by the IEA Governing Board as industry advisory bodies to the IEA. Both are comprised of representatives of U.S. and foreign oil companies operating in IEA member countries which have consented to be designated by the IEA as IEA "Reporting Companies."

It is possible, however, that some of PEG's members are in fact eligible to become Reporting Companies, and then to apply for participation in the U.S. Voluntary Agreement and Plan of Action. To become a participant in either the IAB or the ISAG, a PEG member first would have to request that the IEA designate it as a Reporting Company. Under the IEP, Reporting Company status is accorded only to "oil companies" which "play a significant role in the international oil industry," but "oil companies" is defined sufficiently broadly that some petrochemical firms may fit the definition. In deciding whether to designate a firm as a Reporting Company, the IEA considers what contribution that firm could make to the operation of the IEP Emergency Sharing System. If so designated, a PEG member then could request membership in the IAB and/or the ISAG. Once designated an IEA Reporting Company, a PEG member could participate in the Voluntary Agreement and in the Plan of Action, if its participation were recommended by the Secretary of Energy and approved by the Attorney General. The Department of Energy has encouraged PEG to pursue among its members who may qualify, the question of their becoming IEA Reporting Companies and U.S. Voluntary Agreement participants.

Admittedly, not all U.S. petrochemical firms will qualify as Reporting Companies. It is the responsibility of the DOE, as the U.S. "National Emergency Sharing Organization," to see to it that Non-Reporting Companies are kept apprised of and involved in IEA activities during an emergency.

The comments of the Petroleum Marketers Association of America (PMAA), a federation of 41 state and regional associations representing approximately 11,000 independent petroleum marketers across the United States, expressed general approval of the Second Plan of Action. In particular, PMAA supported the exclusion, from the Plan of Action's antitrust portection, of the communication by U.S. oil companies of transactional oil price information to the IEA, because of the possibility of misuse of such data. PMAA also agreed with the Plan of Action's recordkeeping requirements, commenting that comprehensive recordkeeping requirements are an essential condition of the antitrust protection available under the Plan of Action. Finally, PMAA supported the decision to exclude Type 1 activities from the Plan of Action's coverage.

However, PMAA expressed concern that "closed-loop" Type 2 transactions submitted under the recently adopted "Wider Window" modification to the IEA's Emergency Sharing System (which PMAA's comments inaccurately characterize as "Type 1" activity) might not receive the same degree of antitrust scrutiny from the U.S. Government antitrust monitors as "open-loop" Type 2 transactions, in light of the fact that the IEA is not involved in the matching up of supplying and receiving companies in closed-loop transactions, and because of the fast-track IEA review that will be accorded such transactions. PMAA is even more concerned that the contract breach defense which is provided by EPCA section 252(j) to actions taken under the Plan of Action, might enable suppliers of refined products to renege on their supply commitments, in order to obtain a higher price.

The U.S. Government agencies charged with antitrust monitoring of U.S. company participation in the IEA's Emergency Sharing System are responsible for subjecting both "open-loop" and "closed-loop" Type 2 transactions to scrutiny. In addition, the IEA's review procedures for "closed-loop" transactions under the "Wider Window" modification to the Emergency Sharing System include a special category, in which the Secretariat may decline either to approve or to disapprove a proposed transaction if there is insufficient informaton available about the effects of the transaction; in that event, no legal protection would attach to the transaction under U.S. law.

The question of potential misuse of the contract breach defense was addressed exhaustively in an August 1, 1985, DOE staff response to a General Accounting Office (GAO) report. The Department's response was especially concerned with utilization of the contract breach defense in *Type 1* transactions, since that was the subject discussed in the GAO's report. However, the analysis contained at pages 14–26 of the Department's response is equally applicable to contract breach defenses against lawsuits based on *Type 2* IEA transactions.

With respect to supplies of refined petroleum products (the chief concern of PMAA), the Department's August 1, 1985, paper pointed out several reasons why the Plan of Action's coverage for IEA transactions should not meaningfully increase the contract breach risks of PMAA's members during an oil supply emergency. Where term supply contracts for product remain in use today, they generally stipulate that prices will fluctuate with the market, thereby reducing the supplier's incentive to renege on commitments in order to obtain a higher price. These supply contracts typically include various kinds of *force majeure* clauses to excuse the supplier from his commitments in specified circumstances such as those associated with emergencies. But under U.S. law there are significant legal constraints on a supplier's freedom of action: even where a valid excuse for contractual nonperformance is recognized in U.S. courts, the seller has a legal duty to deal fairly and act in good faith to meet his contractual obligations to the extent practicable, and absent an express contractual provision to the contrary, this may be held to entail an obligation to allocate his supplies equitably. The applicability of the EPCA section 252(j) breach of contract defense to certain transactions covered by the Second Plan of Action should not eliminate these legal constraints. Moreover, under section 252(j) this defense is available only if the supplier can prove that a contract breach was caused "predominantly" by his efforts to carry out the Plan of Action, which even further limits any potential for misuse of this defense.

Copies of the August 1, 1985, legal analysis will be made available by DOE upon request.

IV. U.S. Government Approval of the Plan of Action

Section 6(c)(1) of the existing Voluntary Agreement requires that the Secretary of Energy approve a plan of action, before it may be carried out. In adddition, section 252(d) of the EPCA provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commisison, which is required to publish in the **Federal Register** its views as to whether the plan of action should be approved.

In accordance with these procedures, on October 14, 1987, the Secretary of Energy submitted the proposed Second Plan of Action to the Attorney General for his approval, and to the Federal Trade Commission and the Secretary of

[a] Borg-Warner Chemicals, Inc., Dow Chemical U.S.A., The Goodyear Tire & Rubber Co., Hercules Incorporated, Rohm and Haas Company, Texas Eastman Company, and Union Carbide Corporation.

State for their comments. By letter dated November 13, 1987, the Secretary of State recommended that the Attorney General and the Secretary of Energy approved the Second Plan of Action. On December 18, 1987, after consulting with the Federal Trade Commission, the Assistant Attorney General (Antitrust) advised the Secretary of Energy of his approval, on behalf of the Attorney General, of the Second Plan of Action. The Secretary of Energy thereupon, on January 28, 1988, gave his approval to the Second Plan of Action. The correspondence among DOE, the Departments of Justice and State and the Federal Trade Commission concerning the approval of the Second Plan of Action appears below at Appendix 3. The Federal Trade Commission published the text of its letter to the Department of Justice in the **Federal Register** on December 17, 1987 (52 FR 47974).

The Department of Energy also has received from the Department of Justice, notice of the latter's approval, pursuant to its authority under section 252(d)(1) of the EPCA and section 11(b) of the existing Voluntary Agreement, of necessary implementing amendments to the Voluntary Agreement. The text of these amendments is set forth below in Appendix 2. The first amendment would revise section 6(a)(1)(B) of the Voluntary Agreement to incorporate the Second Plan of Action as Appendix B to the Voluntary Agreement. The second modification would revise section (6)(e)(1) to clarify that when the Second Plan of Action is in effect, following a Presidential finding of an international energy supply interruption, the Plan of Action's provisions for oil company recordkeeping and reporting to the U.S. Government would apply in lieu of the reporting requirement in section 6(e)(1). The final amendment would modify section 9(b)(3) to permit a Voluntary Agreement signatory to designate for Voluntary Agreement coverage, in addition to any subsidiary which is more than fifty percent owned by the signatory, any company which owns fifty percent of the signatory (that is, its parent company), and any company which is more than fifty percent owned by the same parent company (that is, a sister company).

As indicated by the correspondence in Appendix 3, prior consultation with the Federal Trade Commission and the Department of State concerning these amendments has taken place, as required by section 252(d)(1) of the EPCA. The Department of Justice's December 18, 1987, letter authorizes DOE, on behalf of the Justice Department, to give notice to the Voluntary Agreement participants, as required by section 11(b) of the Voluntary Agreement, that the Department of Justice intends to adopt the implementing amendments to the Voluntary Agreement effective twenty days after the date of this **Federal Register** notice. Therefore, this **Federal Register** notice constitutes the notice to Voluntary Agreement participants which the Department of Justice is required to provide pursuant to section 11(b) of the Voluntary Agreement.

As indicated above, section 252(m)(1) of the EPCA, added in 1985, provides with respect to a new plan of action that only after the Congressional review prescribed in that subsection shall the section 252 antitrust and breach of contract defenses be applicable to Type 1 activities. Even though the approved Second Plan of Action which we publish today at Appendix 1 to this notice does not provide for the so-called "Type 1" coverage which as a legal matter would necessitate submission to Congress, under prescribed procedures for Congressional review, DOE nonetheless intends to transmit a copy of the Plan of Action to Congress.

The "Second Plan of Action to Implement the International Energy Program" would go into effect only if the President finds that an "international energy supply emergency" exists. EPCA section 252(k)(1) defines this term as meaning a period when the President determines that oil allocation to IEA countries is required by the IEP.

Issued in Washington, DC, January 28, 1988.

Eric J. Fygi,

Acting General Counsel.

Appendix 1—Second Plan of Action To Implement the International Energy Program

1.0 *Definitions.*

For purposes of this Plan of Action:

"Allocation site" means that space in IEA headquarters or elsewhere designated by the Allocation Coordinator as the area in which the Emergency Management Organization shall conduct its operations.

"Communication" means any written or unwritten disclosure, provision or exchange of information or data relating to the carrying out of this Plan of Action.

"Confidential or proprietary information or data" means information or data relating to an oil company or group of oil companies that (A) may tend to cause harm to competition or to the competitive position of that company or group if disclosed and (B) customarily (i) is not disclosed by that company or group to other persons or (ii) is disclosed to other persons pursuant to a restriction on further disclosure of such information or data.

"Document" means any material substance containing information or data relating to the carrying out of this Plan of Action, including "computer documents" (as defined in Annex I hereto) but excluding voice recordings.

"Emergency Management Organization" means any or all of the functional offices or groups at the allocation site which will supervise IEA oil allocation, and includes the Standing Group on Emergency Questions, the Standing Group on Emergency Questions Emergency Group, the Allocation Coordinator and his team, various task forces of the IEA Secretariat, the Industry Advisory Board, including its subcommittees, and the Industry Supply Advisory Group.

"EMM" means the Emergency Management Manual approved by the IEA Governing Board and issued by the IEA, as in effect during an international energy supply emergency.

"Employee" means any employee or director of a Voluntary Agreement participant. A person serving on the Industry Supply Advisory Group who is an employee or director of an affiliate of a Voluntary Agreement participant shall be deemed an employee of such participant without regard to whether such affiliate is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

"IEA oil allocation" means international allocation of petroleum activated and taking place in accordance with Chapters III, IV and the Special Section of Chapter V of the IEP, as in effect during an international energy supply emergency.

"ISOM" means the Industry Supply Advisory Group/IEA Secretariat Operations Manual describing activities of the Industry Supply Advisory Group and the IEA Secretariat during a period when the IEA Secretariat and the Industry Supply Advisory Group are assisting the Allocation Coordinator in IEA oil allocation.

"Questionnaire A" means the monthly data submission by a Reporting Company to the IEA Secretariat, which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories to, from or in the IEA countries as prescribed in the EMM and denominated therein as "Questionnaire A".

"Questionnaire B" means the monthly data submission by the National Emergency Sharing Organization ("NESO") or other governmental agency of an IEA country to the IEA Secretariat which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories for all oil companies engaged in such activities in the country concerned, as prescribed in the EMM and denominated therein as "Questionnaire B".

"Type 1 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 1" activities in the EMM. They include activities of such companies to rearrange their supply systems in response to the emergency situation, including sale or exchange transactions with or by affiliated or non-affiliated companies, undertaken voluntarily and independently of the Emergency Management Organization and of the voluntary offer procedures set forth in the EMM. In undertaking these activities, such companies may take into account information on IEA countries' allocation rights and allocation obligations.

"Type 2 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 2" activities in the EMM. They also include submission of data to NESOs or other governmental agencies of IEA countries and to the IEA Secretariat; communication with NESOs, the Emergency Management Organization, or other Reporting or Non-Reporting Companies in connection with the making of voluntary offers to reallocate or redirect oil supplies in accordance with the procedures set forth in the EMM; and implementation of voluntary offers which have been approved by the Allocation Coordinator ("Type 2 transactions"). Type 2 activities do not include the implementation of oil supply arrangements other than those for which voluntary offers have been approved by the Allocation Coordinator.

"Type 3 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 3" activities in the EMM. Generally, these will include all actions to implement IEA oil allocation mandated by governments of IEA countries ("Type 3 transactions").

"Voluntary Agreement" means the "Voluntary Agreement and Plan of Action to Implement the International Energy Program" as amended or modified (to which this Plan of Action is Appendix B).

"Voluntary Agreement participant" means an oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof, and also any affiliate of that oil company covered, pursuant to section 9(b)(3) of the Voluntary Agreement, through the approval of that oil company.

See Section 3 of the Voluntary Agreement for additional definitions.

2.0 *Scope of This Plan of Action.*

2.1 This Plan of Action describes and specifies substantive actions of Voluntary Agreement participants and their employees in advising and assisting the IEA in implementing oil allocation during an international energy supply emergency. Actions taken to carry out this plan of Action are entitled to the antitrust defense accorded under section 252(f) of EPCA provided that the person taking them has complied with the applicable requirements of section 252 of EPCA, the regulations implementing section 252 of EPCA, the Voluntary Agreement, and the conditions of this Plan of Action applicable to such person.

2.2 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this plan of Action are all Type 1 activities.

3.0 *Description of Entities Involved.*

This section describes the entities presently expected to participate in IEA oil allocation during an international energy supply emergency.

3.1 The Standing Group on Emergency Questions ("SEQ"), composed of representatives of IEA countries, carries out functions assigned to it in the IEP, and any other function delegated to it by the IEA Governing Board. The SEQ Emergency Group ("SEQ–EG") is an IEA body reporting to the IEA Governing Board, composed of representatives from each IEA country, which is convened during the period of IEA oil allocation. The SEQ–EG is responsible for ensuring intergovernmental agreement or consensus as regards decisions taken in implementation of the IEP during an emergency; it also is responsible for maintaining communications between the IEA and IEA countries on matters of emergency policy or problems.

3.2 The Allocation Coordinator is the Executive Director of the IEA. The Allocation Coordinator is assisted by a small team and may designate one or more members of this team to act on his behalf on particular matters. The Allocation Coordinator and his team wil be responsible to the SEQ–EG for the supervision and direction of IEA oil allocation. This responsibility will include reviewing and approving proposed allocation actions, coordinating with the SEQ–EG on policy guidance and on problems, and ensuring that the implementation of allocation is consistent with the principles and objectives of the IEP and the EMM. The Allocation Coordinator is responsible for approving for implementation those voluntary offers he deems most suitable in the circumstances.

3.3 The IEA Secretariat, consisting of the Executive Director and the staff, will be organized as appropriate to deal with various aspects of IEA oil allocation.

3.4 NESOs are governmental organizations in each IEA country which will be responsible for national oil reallocation, other national energy emergency measures, and liaison with the IEA on matters of international oil allocation in an emergency. They may at times include oil company personnel.

3.5 The Industry Supply Advisory Group ("ISAG") is an *ad hoc* group of the Industry Advisory Board made up of employees of Reporting Companies or their affiliates (including Voluntary Agreement participants), which is responsible to the IEA. The ISAG will serve as an advisory group to the Allocation Coordinator during IEA oil allocation. It is composed of oil company supply, logistics, maritime and other experts and includes an ISAG Manager, a Deputy Manager and the heads and members of the following subgroups:

(A) The Supply Coordination Group, each of whose members is assigned to communicate with and process the material received from a specified number of Reporting Companies. A Supply Coordination Group member will not serve as liaison with his own Voluntary Agreement participant employer unless the Allocation Coordinator determines otherwise for reasons of efficiency.

(B) The Country Supply Group, each of whose members is assigned, together with a member of one of the Secretariat's task forces, to communicate with and process the material received from a specified number of IEA country NESOs.

(C) The Supply Analysis Group, which assists the analytical efforts of the

Supply Coordination Group and the Country Supply Group as assigned, and is responsible for all other ISAG analytical work on supply reallocation problems or potential problems identified in the course of supply emergency.

3.6 The Reporting Companies are a group of oil companies which have consented to be so designated by the IEA, including all oil companies whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof (but excluding their affiliates). During each monthly cycle the Reporting Companies are responsible for the submission of appropriate Questionnaires A to the IEA Secretariat, and they carry out Type 1, Type 2 and Type 3 activities.

3.7 The Non-Reporting Companies are firms which are not Voluntary Agreement participants or other Reporting Companies, or affiliates thereof, which may submit data comparable to that reported on Questionnaire A, and may make voluntary offers to redirect petroleum supplies. These submissions and offers are made to NESOs but not to the IEA Secretariat directly.

3.8 The Industry Advisory Board together with its subcommittees ("IAB"), whose members are drawn from the group of Reporting Companies, has been established by the IEA to provide advice and consultation on emergency oil sharing and related questions. When IEA oil allocation is activated the IAB may be consulted on specific oil sharing and related questions by the Allocation Coordinator and his team and by the ISAG, as described in section 4.9. It also may be consulted from time to time by the ISAG Manager on ISAG organizational, administrative and personnel matters.

4.0 *Description of IEA Oil Allocation.*

IEA oil allocation generally is governed by a cycle of scheduled activities set by the Allocation Coordinator, based principally upon the calculation of IEA countries' allocation rights and allocation obligations monthly or at changed intervals as necessary. While normal commercial activities of the Reporting Companies and Non-Reporting Companies, both within countries and in international trading, will go forward and change throughout the allocation cycle in response to changing circumstances, the actions of Reporting Companies and of the ISAG which are described in this Plan of Action are guided by this cycle as to both timing and type of activity undertaken. Unless circumstances require modification by the Allocation Coordinator, the timetable governing operations typically would be in accordance with sections 4.1 through 4.10. However, in the case of IEA oil allocation carried out pursuant to Article 17 of the IEP (a "selective trigger"), the SEQ-EG would be convened to discuss with the Allocation Coordinator, in consultation with the IAB, the most suitable means to fulfill IEA countries' allocation rights and allocation obligations and in this context whether a partial or full application of the general procedures for allocation implementation is required; thus some modifications in the activities described in this Plan of Action may be necessary in connection with a selective trigger.

4.1 As soon as a trigger finding to activate IEA oil allocation has been made, the IEA Secretariat or the ISAG or both will notify Reporting Companies of the finding and of the need to consider rearranging supply programs. The IEA Secretariat or the ISAG also may provide preliminary calculations of IEA countries' supply rights and advice as to the general direction of reallocation likely to be required. Based on this information, the Reporting Companies, their affiliates, and Non-Reporting Companies will ascertain whether their supplies can be reallocated in order to assist in the reallocation process, through "closed-loop" voluntary offers (*i.e.*, proposed transactions with affiliates or with other oil companies or NESOs) to divert quantities of oil from a specified country to another specified country. Commencing with the finding, and possibly prior to the submission and processing of Questionnaires A and B described in section 4.2 and 4.3, and continuing throughout each allocation cycle, Reporting Companies and Non-Reporting Companies, on their own initiative or upon the request of the Emergency Management Organization, may submit to the IEA Secretariat or to the ISAG "closed-loop" voluntary offers. The IEA Secretariat or the ISAG, on an expedited basis (within a period of no more than forty-eight hours after receipt of the offer), will process "closed-loop" voluntary offers as described in Sections 4.6 and 4.7, and the IEA Secretariat or the ISAG will notify the appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval or disapproval, or determination of insufficient information to act upon, such voluntary offers.

4.2 Reporting Companies will submit Questionnaires A to the IEA Secretariat after the beginning of each allocation cycle; Questionnaire A submissions may be made before the trigger finding upon the request of the Executive Director of the IEA and, in the case of a Voluntary Agreement participant, pursuant to approval under section 5 of the Voluntary Agreement. At the same time, they or their affiliates in IEA countries will submit to their NESOs or other government agencies similar information or data on operations in those countries. These data will be incorporated, along with aggregate information with respect to domestic Non-Reporting Companies, in Questionnaires B which will be submitted to the IEA Secretariat by IEA countries.

4.3 The ISAG, but mainly the Supply Coordination Group, with its counterparts from the IEA Secretariat, will analyze Questionnaires A for errors, and ISAG, but mainly the Country Supply Group, with its counterparts from the IEA Secretariat, will do the same with Questionnaires B. Possible errors in the questionnaires, as well as discrepancies between Questionnaires A and B, then will be discussed with the appropriate Reporting Companies and NESOs.

4.4 The questionnaire data will be processed by the IEA Secretariat to obtain the supply right, and the allocation right or allocation obligation, of each IEA country for the allocation cycle, taking into account adjustments provided for in the EMM. The resulting allocation rights and allocation obligations together with the total supplies of crude oils and crude oil equivalents, by country of origin, for each IEA country are available to the Allocation Coordinator, the IEA Secretariat, the SEQ–EG and the ISAG, and are transmitted to NESOs and Reporting Companies and through NESOs to Non-Reporting Companies. The ISAG or the IEA Secretariat or both also may provide to Reporting Companies and NESOs, preliminary indications of the effect of the supply disruption on individual IEA countries, and other general comments and calculations as to the general type and direction of voluntary offers needed to balance allocation rights and allocation obligations.

4.5 Based on the information or data received from the ISAG or the IEA Secretariat as described in sections 4.1 and 4.4, each Reporting Company, each of its affiliates, and each Non-Reporting Company may ascertain whether its supplies can be reallocated or further reallocated in order to assist in balancing allocation rights and allocation obligations. Each of them may further explore with non-affiliated companies whether this result can be accomplished through sale or exchange with those companies. A Reporting Company may notify the ISAG of its potential voluntarily to meet IEA countries' allocation rights or allocation obligations, and may submit to the ISAG a number of voluntary offers to reallocate supplies. These may be "open-loop" voluntary offers ("open-supply" voluntary offers to supply a quantity of petroleum to any destination recommended by ISAG or chosen by the Allocation Coordinator or "open-receive" voluntary offers to receive oil from any available source). They also may be additional "closed-loop" voluntary offers, as described in section 4.1. ISAG may solicit such "open-loop" voluntary offers and additional "closed-loop" voluntary offers, and NESOs will seek to develop such voluntary offers from Non-Reporting Companies in their jurisdiction and submit them to the ISAG.

4.6 The ISAG, but mainly the Supply Coordination Group, or the IEA Secretariat, or both, will analyze all of the voluntary offers received from Reporting Companies, and may contact the Reporting Companies for clarification of details, to suggest possible modifications, or to explore the possibility of additional voluntary offers. The ISAG and its Country Supply Group and its IEA Secretariat counterparts will do the same for voluntary offers to be submitted by NESOs.

4.7 In accordance with criteria set forth in sections 5.3(I) and 5.3(J), ISAG and IEA Secretariat personnel will undertake a balancing of allocation rights and allocation obligations, including a matching of "open-supply" and "open-receive" voluntary offers and a examination of "closed-loop" voluntary offers for suitability, for the periods covered under the current allocation cycle, for future allocation cycles where applicable, and to fulfill unsatisfied allocation rights or allocation obligations from prior allocation cycles.

4.8 In addition to notifying the appropriate Reporting Companies and NESOs of the Allocation Coordinator's action with respect to "closed-loop" voluntary offers, as decribed in Section 4.1, ISAG and the IEA Secretariat also will notify the appropriate Reporting Companies and NESOs of all "open-loop" voluntary offers matched or approved by the Allocation Coordinator. The notified entities will advise whether they are implementing approved "open-loop" and "closed-loop" Type 2 transactions. If appropriate, the Reporting Companies and NESOs also will confirm whether they have been able to develop any additional voluntary offers previously suggested to them by ISAG or the IEA Secretariat. All these results are to be reported by ISAG to the Allocation Coordinator, who in turn may report the information to the SEQ–EG.

4.9 If substantial unfulfilled allocation rights and allocation obligations remain among IEA countries, the SEQ–EG may request the ISAG and Allocation Coordinator to consult with the IAB, and with others, on ways to elicit further voluntary offers to balance these allocation rights and allocation obligations. If the imbalances remain after subsequent efforts by ISAG to implement the advice agreed on by the Allocation Coordinator and the IAB, and cannnot be resolved on a voluntary basis, the Allocation Coordinator will not inform the SEQ–EG.

4.10 The SEQ–EG then will undertake intergovernmental consultation and, after contacts by the Allocation Coordinator or his team with the Reporting Companies concerned, will determine whether corrective measures should be taken under the IEP by IEA country governments. As a last resort IEA countries having jurisdiction over the Reporting Companies and Non-Reporting Companies may order them to carry out Type 3 activities.

5.0 Specification of Substantive Actions.

5.1 *Voluntary Agreement Participants.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant and its employees are specified in this Plan of Action.

(A) Preliminary communications with the Emergency Management Organization to ensure that communication channels are working and to discuss schedules for submission of Questionnaires A and of other information required for IEA oil allocation.

(B) Preparation and submission to the IEA Secretariat of Questionnaires A, and subsequent discussion with ISAG or the IEA Secretariat of these and of other relevant information reasonably required to confirm Questionnaire A data, including provison of amplifying or collateral information.

(C) The receipt of preliminary calculations of IEA countries' supply rights and allocation rights and allocation obligations, of final supply rights and allocation rights and allocation obligations, of comments originated by the ISAG or the IEA Secretariat on the general type and direction of voluntary offers needed to balance preliminary or final allocation rights and allocation obligations, and of other information, data or suggestions regarding the development or modification of voluntary offers as described in section 4.1, 4.4, 4.5, 4.6 and 4.8; communications and other actions to develop voluntary offers to supply or received petroleum; and the submission, to the ISAG or the IEA Secretariat, at any time during an allocation cycle, of "closed-loop" voluntary offers and, at specified times, of "open-loop" voluntary offers. The voluntary offers may consist of sales or exchanges with other companies as well as intracompany and interaffiliate movements.

(D) Communications with other Reporting Companies or their affiliates or with Non-Reporting Companies, or with the ISAG, the IEA Secretariat, or NESOs, following receipt of preliminary or final allocation rights and allocation obligations or of other information or data as described in sections 4.1 and 4.4, and other actions to develop or modify voluntary offers for the current allocation cycle, or for a future cycle where applicable, even if a voluntary offer cannot be agreed on by the parties or subsequently is not approved by the Allocation Coordinator.

(E) Discussion with ISAG or the IEA Secretariat to clarify aspects of a voluntary offer submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) The receipt of notification by ISAG or the IEA Secretariat regarding the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, "closed-loop" voluntary offers, and matching or approval of certain "open-loop" voluntary offers, and any communications and other actions to implement any Type 2 transaction.

(G) Communications with ISAG or the IEA Secretariat to report that Type 2 transactions are or are not being implemented and to confirm whether it has been possible to develop any additional voluntary offer previously suggested by ISAG or the IEA Secretariat.

(H) Any other communications or other actions taken to develop or implement Type 2 activities.

(I) Consultations with the SEQ–EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and

communications and other actions regarding the development or implementation of Type 3 activities.

(J) Communications with ISAG or the IEA Secretariat dealing with study or appraisal of the allocation cycle.

(K) Communcations with the Allocation Coordinator in connection with his giving advice in a price dispute arising out of a Type 2 or Type 3 transaction specified in this section 5.1.

(L) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in Section 4, elsewhere in this section 5.1, and sections 5.2 and 5.3.

(M) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission.

5.2 *IAD Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant member of the IAB and its employees are specified in this Plan of Action:

(A) Participation in meetings of the IAB or in communications with the SEQ-EG or other bodies of the IEA, the Allocation Coordinator, ISAG representatives or the IEA Secretariat, to develop and transmit advice on the substantive issues set forth in section 4.9 or on other issues on which the IAB may be consulted pursuant to Article 19.7 of the IEP.

(B) Participation in communications with the ISAG concerning ISAG organizational, administrative or personnel matters.

(C) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission

It is understood that during the course of an international energy supply emergency, other meetings of the IAB, or of other industry bodies created by the IEA, may be scheduled, possibly to advise on matters unrelated to, or only marginally related to, the emergency. Such meetings are not specified in this Plan of Action. The provisions of Section 5 of the Voluntary Agreement continue to apply to them as if no emergency had occurred.

5.3 *ISAG Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant's employees serving on the ISAG, and of a Voluntary Agreement participant, to the extent carried out through such employees, are specified in this Plan of Action:

(A) Communications with other offices or groups of the Emergency Management Organization, Reporting Companies and NESOs, to ensure that communication channels are working and to discuss schedules for submission of Questionnaries A or B and of other information required for IEA oil allocation, and with NESOs with respect to domestic policies, practices or issues which may affect IEA oil allocation.

(B) Receipt and analysis of Reporting Company Questionnaries A to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with Reporting Companies and with NESOs to resolve them.

(C) Receipt and analysis of NESO Questionnaries B to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with NESOs and Reporting Companies to resolve them.

(D) Receipt of preliminary and final allocation rights and allocation obligations and other allocation right/allocation obligation information from the IEA Secretariat, the transmission to Reporting Companies of preliminary and final allocation rights and allocation obligations and preliminary assessments of the impact of the crisis in terms of available supplies and supply rights and other information as described in section 4.1 and 4.4; and analytical discussions within ISAG and with Reporting Companies or NESOs, as well as study of ISAG work formats as required, in order to identify the types of actions which may be needed to correct the imbalances in available supplies among IEA countries.

(E) Communications with Reporting Companies or NESOs and with the IEA Secretariat on formulations of voluntary offers; the receipt and analysis of voluntary offers, and discussion of them within ISAG; and follow-up communications with Reporting Companies or NESOs to clarify aspects of voluntary offers submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) Analytical work to develop a country supply/demand profile for any IEA country and to study general product imbalance problems within any IEA country in order to advise the IEA Secretariat or a NESO on possible resolution of these problems. To assist this study of product imbalance problems within a country, Voluntary Agreement participant employees serving on the ISAG may receive from the government of that IEA country, or from the IEA Secretariat, data on historical supply patterns for that country, including indigenous production, imports of crude and products by country or origin, exports of crude and products to country of destination, stocks at sea and crude and product inventory profiles. Data or information with respect to regions of a country may be provided as required.

(G) Other analytical work on country or company supply plans as requested by the Allocation Coordinator, including with respect to such plans, following, analyzing and forecasting shipping tonnage availability and requirements, during the course of an emergency, in addition to communications within ISAG or with outside persons in order to develop necessary information for such shipping analyses.

(H) Coordination, under the guidance of the Allocation Coordinator, of the voluntary offers of Reporting and Non-Reporting Companies, including independent efforts to encourage the development of voluntary offers in order better to direct supplies to meet IEA calculated supply rights. Participation in the ISAG/IEA Secretariat process of balancing allocation rights and allocation obligations of IEA countries for the periods covered in an allocation cycle, or for a future cycle where applicable, including matching available "open-supply" and "open-receive" voluntary offers and examining "closed-loop" voluntary offers for suitability.

(I) The ISAG in consultation with the IEA Secretariat will evaluate the voluntary offers by Reporting Companies and by NESOs for Non-Reporting Companies. In making its evaluation and recommendations to the Allocation Coordinator, it may be guided by technical factors including the following, in addition to specific guidance from the Allocation Coordinator:

(i) The volumes of petroleum required to balance the allocation rights and allocation obligations of individual IEA countries;

(ii) The petroleum logistics system of each country, including port facilities, storage capacity, and barge/pipeline facilities;

(iii) The specifications of the crude oil being delivered in relation to the refining capability within the country to process that oil;

(iv) Product imbalance problems in IEA countries as compared with the supply mix scheduled for these countries;

(v) Insofar as possible and consistent with section 5.3(J), maintenance of normal supply patterns for various IEA countries and normal supply proportions between crude oil and products and among different categories of crude oil and products;

(vi) Minimization of transportation costs, for example, by avoidance to the greatest possible extent of logistical disadvantages arising from unduly long voyages; and by utilization of backhaul voyages for vessels; and

(vii) The need for priorities in considering offers, as among such voluntary offers.

If, after such an evaluation process, there remain alternative allocation possibilities for an IEA country or too many voluntary offers so that a selection must be made, such alternatives may be discussed with the relevant NESO and Reporting Companies as well as with the IEA Secretariat for the purpose of exchanging views on the choices to be made.

(J) In evaluating potential alternative actions to balance allocation rights and allocation obligations, ISAG is not to take into account the economic benefit or penalty to any Reporting Company or IEA country (but see section 5.3(I)(vi)), or the market share of any Reporting or Non-Reporting Company in any county. National oil reallocation of available supply is solely a matter for decision by each IEA country.

(K) Notification of appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, specified voluntary offers, and communications with regard to the implementation of Type 2 transactions and, if appropriate, with regard to any additional voluntary offers previously suggested to them by the ISAG or the IEA Secretariat.

(L) Participation in consultations and meetings with the IAB on specific oil sharing and related questions, as described in section 4.9, and on ISAG organizational, administrative and personnel matters.

(M) Consultations with the SEQ-EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and communications and other actions regarding the development or implementation of Type 3 activities.

(N) Participation in development of an ISAG appraisal of the allocation cycle.

(O) Participation in meetings of ISAG, of the ISAG Manager and Deputy Manager with subgroup heads, and of ISAG subgroups, as well as joint work sessions.

(P) Communications and other actions as contemplated in the ISOM.

(Q) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in sections 4, 5.1, 5.2 and elsewhere in this section 5.3.

(R) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to representatives of the Department of Justice and the Federal Trade Commission at the allocation site, and such information or data shall be considered to be confidential or proprietary information or data for purposes of section 7.1.

5.4 *Other Actions.* Such additional communications or other actions as may be needed to meet specific problems as they arise in implementing IEA oil allocation, provided that such actions are approved by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to section 10.

5.5 *Exclusion.* Except as otherwise provided in sections 5.1 (K) and (M), 5.2(C), and 5.3(R), specifically excluded from this Plan of Action are the communication by any Voluntary Agreement participant or its employees to ISAG or the IEA Secretariat, and the communication by any Voluntary Agreement participant employee serving on ISAG to any person, of prices, credit terms, or other information effectively disclosing prices or credit terms, relating to any proposed or actual transaction.

6.0 *Confidential or Proprietary Information or Data Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees.*

The following types of information or data which may be or may reveal confidential or proprietary information or data may be communicated by or to Voluntary Agreement participants or their employees in carrying out the substantive actions specified in this Plan of Action:

6.1 Disaggregated Questionnaire A or B data submitted by Reporting Companies or NESOs, *i.e.*, data as required by the Questionnaire A and B reporting instructions specified in the EMM, and ISAG work formats derived from such data, including:

(A) Indigenous production of crude oil, natural gas liquids (NGLs) and feedstock;

(B) Imports and exports of crude oil, NGLs and feedstock;

(C) Petroleum product imports and exports (in crude oil equivalents);

(D) International marine bunkers;

(E) Inventory levels and changes; and

(F) Stocks at sea.

6.2 Capability of a refinery to process crude oil or specific crude oils, and the capability of a pipeline, dock or terminal or other storage or transit facility to receive, store, or throughput crude oil or specific crude oils or petroleum products or specific petroleum products.

6.3 Capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

6.4 The availability of tankers and barges, including their location, routing, size, specifications and operating characteristics.

6.5 Main characteristics of crude grades and product specifications.

6.6 Actual and estimated historical production data on crude oils and NGLs for individual countries.

6.7 Historical country supply patterns for crude oil, NGLs and petroleum products, *e.g.*, imports by country of origin, exports to country of destination, and inventory profiles.

6.8 Specific refinery considerations that prevent acceptance or release of certain crudes, *e.g.*, the inability of a refinery to process specific types of crude oil or to make certain specialty products for which the crude oil is particularly suited; the inability of a type of crude oil to meet certain product specifications; hazards to refinery operations which processing of a particular type of crude oil might cause; or the need for a refinery to operate at a minimum throughput level.

6.9 Identification of supply logistics problems relating to certain countries or regions of countries.

6.10 Identification, without disclosure of specific costs, prices or financial information, or other underlying facts, of the existence of certain individual company considerations which would preclude or make impracticable a proposed movement of oil, involving:

(A) Commercial policy;

(B) Supply or transportation factors;

(C) Affiliate, third-party, concessional or other contractual arrangements; or

(D) Constraints relating to actions or policies of governments.

6.11 Identification of differences between the crude oil and petroleum product supply mix and demand for products in certain countries or regions of countries.

6.12 Information or data, including (as limited by section 5.5) petroleum prices and other commercial terms, concerning: voluntary offers made by Reporting Companies or Non-Reporting Companies; or the implementation of Type 2 or Type 3 transactions.

6.13 Clarification, amplification, correction, explanation or supplementation of the types of information or data specified in sections 6.1–6.12, provided that this section 6.13 does not supersede any specific exclusion contained in this Plan of Action.

6.14 Such additional types of confidential or proprietary information or data as may be needed in implementing IEA oil allocation as guided by the EMM and the ISOM, (i) if a communication of such types of information or data is approved in advance by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission or (ii) if communication of such types of information or data is needed on a timely basis and receipt of such advance approval is not practicable, provided, in the latter case, that prompt written notice of such communication together with a description of the circumstances necessitating such communication without such advance approval must be given to representatives of the Departments of Energy and Justice and the Federal Trade Commission. Approval for the continued communication of such types of information or data can be terminated prospectively by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission.

6.15 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action is the communication (but see sections 5.1(M), 5.2(C) and 5.3(R) concerning unsolicited receipt of information or data) of the following types of information or data to the extent that they are or reveal confidential or proprietary information or data:

(A) Company costs or market shares of crude oil or petroleum products (other than those which can be derived from Questionnaire A or B data); or

(B) Individual company information or data regarding overall long-term programs for investment, divestment, refining, operating, transportation or marketing.

7.0 *Disposition of and Access to Confidential or Proprietary Information or Data.*

7.1 In no case shall an employee of a Voluntary Agreement participant provide to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG, except such information or data as is necessary to be supplied in the course of carrying out IEA oil allocation. No Voluntary Agreement participant employee serving on the ISAG may remove any documents from the IEA premises, except (when otherwise permitted by the IEA Secretariat) as authorized by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to section 10.

7.2 Each Voluntary Agreement participant shall provide to the U.S. Government one copy of its Questionnaire A submitted to the IEA Secretariat in Questionnaire A format, as distinguished from telex format, in accordance with section 8.8(A), or in such other manner as may be provided pursuant to section 10.

8.0 *Requirements for Recordkeeping, Reporting and Monitoring.*

8.1 *Introduction.* Section 252 of EPCA provides that a U.S. Government representative shall be present at all meetings to carry out a plan of action and that a full and complete record (where practicable, a verbatim transcript) of such meetings shall be made. For purposes of this Plan of Action, meetings of the IAB herein specified and allocation meetings will be subject to the foregoing requirement. Section 252 also requires that a full and complete record be made of communications, including face-to-face communications other than in the context of a meeting. The following sections implement the existing U.S. recordkeeping, reporting and monitoring requirements in Section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 50, and apply such requirements to meetings, communications and other actions to carry out this Plan of Action. In addition, Annex I hereto contains special rules governing disposition and retention of computer documents which apply in lieu of certain specified provisions of this section 8, as indicated at the appropriate places herein. These requirements apply, *inter alia*, to Voluntary Agreement participants and to their employees serving on the ISAG who will be participating in the allocation activities at the allocation site. These requirements apply to actions of Covered Foreign Affiliates to the extent provided in sections 8.6, 8.7 and 8.8, except under the circumstances described in Annex II hereto, which concern the prevention of compliance by a foreign law prohibition, in which event the alternative requirements specified in Annex II will apply. Questions concerning the removal of records from the allocation site are outside of the scope of the following sections. If experience indicates the need, the U.S. Government observers at the allocation site will have discretion to allow alternative operating procedures and recordkeeping requirements consistent with section 252 of EPCA and existing regulations thereunder.

8.2 *Definitions.* For purposes of these requirements the following additional definitions apply:

(A) "Communication" and "document" exclude:

(i) The communication or documentation of administrative, procedural, or ministerial information or data such as scheduling of meetings, personnel assignments, arranging for support services, testing of communications links, and merely routine implementation of previously-agreed petroleum sale or exchange transactions (*e.g.*, supply and vessel slating, cargo inspection and oil loss reports, insurance, third-party financing, and the like) (but see section 8.8(C) (1) and (2));

(ii) Communications or documents which are subject to the attorney-client or attorney work product privileges (but see section 8.8(C)(3)); and

(iii) Communications with or the documentation of communications with U.S. Government observers at the allocation site.

(B) "Allocation site communication" means any unwritten face-to-face communication occurring on, or telephonic communication received at or sent from, the allocation site, other than in an allocation meeting.

(C) "Off-site communication" means any unwritten face-to-face communication which does not occur on, or any telephonic communication which is neither received at nor sent from, the allocation site.

(D) "Allocation meeting" means the following group meetings held at the allocation site (with or without IEA Secretariat participation):

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG's Country Supply, Supply Coordination or Supply Analysis subgroups; and

(iii) Meetings of the ISAG Manager or Deputy Manager and ISAG subgroup heads.

(E) "U.S. Voluntary Agreement participant" means any oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) of the Voluntary Agreement, and also any affiliate (other than a Covered Foreign Affiliate) of that oil company that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

(F) "Covered Foreign Affiliate" means any affiliate of a U.S. Voluntary Agreement participant that has its principal place of business outside the United States, that conducts the substantial majority of its activities outside the United States, and that is covered pursuant to section 9(b)(3) of the Voluntary Agreement. A Covered Foreign Affiliate's "parent company" means the oil company approved as a Voluntary Agreement participant under section 9(b)(1) thereof, which has designated the Covered Foreign Affiliate for coverage under section 9(b)(1) thereof.

(G) "Affiliate" means: (i) Any other company that receives Voluntary Agreement coverage through the approval of the participation of the same oil company pursuant to section 9(b)(1) of the Voluntary Agreement; and (ii) except as otherwise provided below in this paragraph, any other company that is eligible to be designated for coverage by the approved oil company pursuant to section 9(b)(3). Excluded from (ii) above is any company that is eligible to be designated for coverage pursuant to section 9(b)(3)(ii), and any company (other than a company described in section 9(b)(3)(i)) that is eligible to be designated for coverage pursuant to section 9(b)(3)(iii), which, independently of the said Voluntary Agreement participant, is an oil company as defined in section 3(a) of the Voluntary Agreement; provided, however, that this exclusion shall not apply if such oil company has its principal place of business within the United States and there is 100% ownership under section 9(b)(3)(ii). Upon the request of a Voluntary Agreement participant, the Department of Energy, with the approval of the Department of Justice, for purposes of section 8, at any time may stipulate that a company is or is not an oil company for purposes of the above exclusion, or may designate any company as an affiliate.

8.3 *U.S. Government Monitoring and Recordkeeping at the Allocation Site.*

(A) To the extent practicable, allocation activities of ISAG members shall be conducted at the allocation site, while a U.S. Government observer is in attendance at the allocation site. A U.S. Government observer must be present throughout all allocation meetings in which a Voluntary Agreement participant employee serving on the ISAG participates, and may elect to be present during any other allocation activities in which a Voluntary Agreement participant employee serving on the ISAG participates, including communications (except communications between an individual Voluntary Agreement participant employee and his legal counsel). It is intended that U.S. Government observers will be in attendance continuously at the allocation site to monitor allocation meetings and communications by Voluntary Agreement participant employees serving on the ISAG during such regular hours as ISAG adopts, and at any extraordinary hours if given reasonable notice. Voluntary Agreement participant employees serving on the ISAG shall provide advance notice whenever they anticipate that allocation meetings or allocation site communications will occur during extraordinary hours, or that communications (other than telephonic communications during extraordinary hours) will occur outside of the allocation site.

(B) A U.S. Government observer shall be responsible for keeping a written record of each allocation meeting, and of each communication held in the presence of such observer, in which a Voluntary Agreement participant employee serving on the ISAG participates, or for ensuring that a verbatim transcript of such meeting or communication is made. Failure of the U.S. Government to maintain a full and complete written record shall not vitiate the antitrust defense accorded by section 252 of EPCA for a Voluntary Agreement participant or it employees unless such failure is due to the willful act of the Voluntary Agreement participant employee serving on the ISAG or of the Voluntary Agreement participant.

(C) Unwritten communications of Voluntary Agreement participant employees serving on the ISAG which relate to allocation activities may occur outside of the allocation site only when circumstances make an off-site communication necessary, *i.e.*, when a need for an immediate communication arises unexpectedly or after normal working hours or otherwise makes a return to the allocation site impracticable or unreasonable, or when time zone differences involved in necessary communications otherwise would require early morning arrival or late night stay at the allocation site.

8.4 *Unwritten Communications, Outside of Allocation Meetings, Involving Voluntary Agreement Participant Employees Serving on the ISAG.*

(A) These recordkeeping requirements for unwritten communications apply to allocation site communications and off-site communications by or to Voluntary Agreement participant employees serving on the ISAG, including communications with the IAB, but excluding communications with members of the SEQ–EG, official observers from the European Communities, IEA Participating Country representatives authorized by the IEA to be at the allocation site, or the U.S. and other NESOs. They apply to such communications with the IEA Secretariat only when those communications relate to activities specified in section 5.1(K).

(B) Except when a U.S. Government observer is present, a Voluntary Agreement participant employee serving on the ISAG shall make a full and complete record of any allocation site communication or off-site communication, by means of: (1) Entering in a standardized log, the date, approximate time, identity of the parties (by name and organization) and a description of the communication in sufficient detail to convey adequately its substance, or (2) reporting at a subsequent meeting held no later than the next working day at which a verbatim transcript is kept, information sufficient to identify the parties and a description of the communication in sufficient detail to convey adequately its substance. The log entry also shall state the special circumstances which necessitated an off-site communication, or an allocation site communication despite the absence of a U.S. Government observer from the allocation site, if such absence was

known to such employee at the time of such communication.

(C) When more than one Voluntary Agreement participant employee serving on the ISAG is involved in a communication, the employees may designate who shall make and supply the record. Non-Voluntary Agreement participant employees serving on the ISAG may furnish the required records of communications with Voluntary Agreement participants and with Voluntary Agreement participant employees serving on the ISAG.

8.5 *Disposition of Records by Voluntary Agreement Participant Employees Serving on the ISAG.*

(A) Each Voluntary Agreement participant employee serving on the ISAG shall provide to the U.S. Government observers at the allocation site, within three working days of the first day it covers, a copy of any log kept pursuant to section 8.4(B), and within one working day of the occurrence, a copy of any other written communication which such employee prepares or receives that relates to allocation activities, except that any written communication which is prepared or received by such employee and which is expected to undergo one or more revisions (including incorporation in any other written communication), and each revision of any such communication, may be provided to the U.S. observers within one day of the close of the allocation cycle in which such communication is prepared or received by such employee. (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in this section 8.5(A).)

(B) The requirement imposed by paragraph (A) of this Section may be waived by the U.S. Government observers at the allocation site, to the extent that the IEA Secretariat will provide copies of such communications to the U.S. Government observers.

8.6 *U.S. Government Monitoring at Voluntary Agreement Participant Offices.*

(A)(1) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all U.S. Voluntary Agreement participant employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of, and upon reasonable advance notice to, the U.S. Voluntary Agreement participant involved. Any interviewed employee may have counsel present.

(2) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all Covered Foreign Affiliate employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of the parent company U.S. Voluntary Agreement participant of such Covered Foreign Affiliate, or at the election of such Covered Foreign Affiliate and such parent company, at the offices of such Covered Foreign Affiliate, upon reasonable advance notice to such parent company and to such Covered Foreign Affiliate. Any interviewed employee may have counsel present.

(B) U.S. Government observers shall be permitted to examine and copy, at U.S. Voluntary Agreement participant headquarters during normal business hours and upon reasonable notice to the U.S. Voluntary Agreement participant involved, any document or other information source which relates to carrying out this Plan of Action which is not subject to the attorney-client or attorney work product privileges, and which is in the possession or custody of such U.S. Voluntary Agreement participant, including any Covered Foreign Affiliate records forwarded to such U.S. Voluntary Agreement participant pursuant to section 8.8(C)(2).

8.7 *Recordkeeping Requirements for Voluntary Agreement Participants Other Than Employees Serving on the ISAG.*

(A)(1) Except as provided in section 8.7(B), each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate promptly shall make a full and complete record of all of the following unwritten communications:

(i) Communications with individuals serving on the ISAG (including any of its own employees serving on the ISAG);

(ii) Communications with another company (not including any of its affiliates); and

(iii) Communications with the IEA Allocation Coordinator or IEA Secretariat which relate to activities specified by section 5.1(K).

(2) Records of such unwritten communications of a U.S. Voluntary Agreement participant should be made by the U.S. Voluntary Agreement participant by means of entering in a standardized log, the date, the approximate time, identity of the parties (by name and organization), and a description of the communication in sufficient detail to convey adequately its substance.

(3) Records of such unwritten communications of a Covered Foreign Affiliate may be made in the manner described in section 8.7(A)(2) or, at the election of the Covered Foreign Affiliate, may consist of a bi-weekly summary:

(i) Identifying (a) each individual serving on the ISAG with whom the Covered Foreign Affiliate has had an unwritten communication, (b) each nonaffiliated company with which the Covered Foreign Affiliate has had an unwritten communication, (c) each Secretariat official with whom the covered Foreign Affiliate has had an unwritten communication that is required to be recorded pursuant to section 8.7(a)(1)(iii), and (d) each affiliate with which the covered Foreign Affiliate has had an unwritten communication;

(ii) Describing with particularity each agreement entered into with any nonaffiliated company, and each agreement or other arrangement entered into with an affiliate, and each transaction performed, to carry out this Plan of Action, setting forth all significant terms, including volume, crude or product type, origin, destination, time of delivery and price; and

(iii) Describing in summary terms, for each category of unwritten communications listed in subparagraph (i) of this subsection, the substance thereof, to the extent not already disclosed pursuant to subparagraph (ii) of this subsection.

A bi-weekly summary may be made by the Covered Foreign Affiliate or, at the election of the Covered Foreign Affiliate and its parent company, by such parent company on behalf of the Covered Foreign Affiliate.

(B)(1) A Voluntary Agreement participant need not make a record pursuant to this section 8.7 of any communication with any individual serving on the ISAG, when such Voluntary Agreement participant has agreed with such individual that the record of the communication will be made by and provided to the U.S. Government by such individual in accordance with section 8.5(A), or provided by the IEA Secretariat in accordance with section 8.5(B).

(2) A Voluntary Agreement participant need not make a record pursuant to section 8.7 of a communication with any other Voluntary Agreement participant if the latter makes a record of the communication and provides it to the U.S. Government in accordance with section 8.8(B).

(C) To the extent that any information required to be set forth pursuant to section 8.7(A) can be derived readily from a document deposited pursuant to section 8.8, a specific cross-reference to such document shall suffice.

8.8 *Disposition of Records by Voluntary Agreement Participants.*

(A)(1) Each U.S. Voluntary Agreement participant shall deposit with the U.S. Government, in accordance with this Section and with any further instructions that may be provided pursuant to section 10, a copy of each record required to be made by it under section 8.7(A)(1),and of:

(i) Each written communication with the ISAG (including any employee of the U.S. Voluntary Agreement participant serving on the ISAG);

(ii) Each written communication with another company (not including any of the U.S. Voluntary Agreement participant's affiliates), and each document setting forth any agreement between the U.S. Voluntary Agreement participant and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the vuluntary offer shown on the first page thereof) or Type 3 transaction; and

(iii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relates to activities specified in section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(2) Each covered Foreign Affiliate (or, at the election of the Covered Foreign Affiliate and of its parent company, such parent company) shall deposit with the U.S. Government, in accordance with this section and with any further instructions that may be provided pursuant to section 10, a copy of each record required to be made by the Covered Foreign Affiliate under Section 8.7(A)(1), and of:

(i) Each written communication with another company (not including any of the Covered Foreign Affiliate's affiliates), and each document setting forth any agreement between the Covered Foreign Affiliate and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the voluntary offer shown on the first page thereof) or Type 3 transaction; and

(ii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relate to activities specified in section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(B) Records of unwritten communications, and copies of written communications or documents, of U.S. Voluntary Agreement participants shall be deposited with the U.S. Government within seven days after the close of the week (ending Saturday) in which they occur. In the case of communications or documents of Covered Foreign Affiliates, this period shall be extended to fourteen days. Computer documents shall be deposited in hard copy (paper) form. If possible, copies of written communications of a U.S. Voluntary Agreement participant shall be sent to the U.S. Government by the U.S. Voluntary Agreement participant simultaneously with and by the same means of transmission used to send the original.

(C)(1) Each U.S. Voluntary Agreement participant shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to section 8.8(A)(1) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observers in connection with an examination pursuant to section 8.6(B), such U.S. Voluntary Agreement participant, within two weeks of such request, shall forward a copy of each requested document to an appropriate office at company headquarters, where the documents shall be maintained separately from other company records until completion of such examination; notwithstanding section 8.2(A)(i), the U.S. Voluntary Agreement participant shall include among the documents forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the U.S. Voluntary Agreement participant at the time of a U.S. Government examination request.

(2) Each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to section 8.8(A)(2) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observes in connection with an examination pursuant to section 8.6(B), such Covered Foreign Affiliate, within four weeks of such request, shall forward a copy of each requested document to an appropriate office at the headquarters of such Covered Foreign Affiliate's parent company, where the documents shall be maintained until completion of such examination; notwithstanding section 8.2(A)(i), the Covered Foreign Affiliate shall include among the document forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the Covered Foreign Affiliate at the time of a U.S. Government examination request.

(3) Notwithstanding section 8.2(A)(ii), copies of all Voluntary Agreement participant documents which are subject to the attorney-client or attorney work product privileges shall be included among the documents forwarded to the appropriate company office pursuant to section 8.8(C)(1) and (2). Upon request, the Voluntary Agreement participant shall submit to the U.S. Government a list of the documents which the Voluntary Agreement participant claims are subject to the attorney-client or attorney work product privileges. The list shall specify for each document, the applicable privilege and all facts relied on in support thereof, the type of document (letter, telex, etc.), its date, author, addressee, title (unless the title vitiates the applicable privilege), a statement of the subject matter (but not including information that would vitiate the applicable privilege), and all recipients of the original and of any copies. Those documents which are not subject to the attorney-client or attorney work product privileges will be subject to U.S. Government examination during and after the allocation process, if so requested by U.S. Government observers, as provided elsewhere in this section 8.

9.0 *Meeting—Notice Requirements.*

9.1 Pursuant to the notice requirements of Section 5 of the Voluntary Agreement, the ISAG emergency activities at the allocation site will be conducted as a single ISAG meeting. Because it will be impracticable to notice all allocation meetings, or meetings of the IAB pursuant to section 5.2(A), during the course of a supply emergency, there may be only one **Federal Register** notice at the beginning of an international energy supply emergency.

9.2 U.S. Government observers shall be notified in advance of the time and place of each allocation meeting, or meeting of the IAB pursuant to section 5.2(A). If all or a portion of the allocation site is to be placed other than IEA headquarters, the Allocation

Coordinator and/or the ISAG Manager shall so notify the U.S. Government observers assigned to monitor activities of Voluntary Agreement participant employees serving on the ISAG during the allocation period, as much in advance as possible.

10.0 *U.S. Government Monitoring.* This Plan of Action shall be governed by monitoring guidelines that may be issued by the Secretary of Energy pursuant to the provisions of section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56. Such monitoring guidelines may establish procedures for the approvals described in sections 5.4, and 6.14 or 7.1, for notice to or from U.S. Government observers, or for other matters pertaining to implementation of this Plan of Action, and also may modify the requirements contained in Annex I hereto applicable to computer documents. Subject to further guidance from the Secretary of Energy, where in this Plan of Action a record or a copy of a record or document is required to be deposited with the U.S. Government, such copy shall be sent to the following address: The General Counsel, U.S. Department of Energy, Forrestal Building, 1000 Independance Avenue SW., Washington, DC 20585.

Annex I to Second Plan of Action To Implement the International Energy Program: Requirements for the Disposition and Retention of Computer Documents

Requirements for the disposition and retention of computer documents are set out in this Annex in order to facilitate any modifications therein which may be indicated by experience with computer capabilities or changes in computer technology. The Departments of Energy, State and Justice and the Federal Trade Commission intend, in the context of the next IEA allocation systems test, to evaluate whether companies are capable of complying with these requirements without undue burden. Based on experience in the test, the Government will consider whether these requirements, including the provisions of paragraphs 3 and 4 of this Annex, should be modified.

1. "Computer document" means information or data relating to the carrying out of this Plan of Action in non-transitory storage on magnetic, optical, or other media or devices used by computers, including but not limited to computer diskettes, disks, and tapes, but excluding voice recordings and information or data on hard copy (paper) form. A communication by means of a computer document is considered to be a written communication. The exclusions in section 8.2(A)(i)–(iii) applicable to "communication" and "documents" are applicable to computer documents.

2. Subject to section 8.5(B), the following requirements apply to the disposition of computer documents by Voluntary Agreement participant employees serving on the ISAG, in lieu of the requirements contained in Section 8.5(A):

Each Voluntary Agreement participant employee serving on the ISAG shall (subject to the cooperation of the IEA Secretariat) provide to the U.S. Government observers at the allocation site, within one working day of its preparation, in hard copy (paper) form, of any computer document requested specifically or by category by the observers.

3. Subject to paragraph 4 of this Annex, the following requirements apply to the retention of computer documents by Voluntary Agreement participants, in lieu of the requirements contained in the first sentences of section 8.8(C) (1) and (2):

a. Each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each of the following computer documents:

i. in the case of a computer database or other ongoing computer document that is expected to be revised periodically in the ordinary course of business to update its contents, (A) the portions thereof relating to the carrying out of this Plan of Action that reflect the situation (1) at a time as close as practicable to the onset of the international energy supply emergency, and (2) at the end of each allocation cycle, and (B) the last verison of such portions of the document;

ii. in the case of a computer document that is sent to or received by a person other than its listed author(s) (other than a computer document maintained pursuant to (i)), each version that is sent to or received by a person other than the listed author(s); and

iii. in the case of a computer document other than those described in (i) or (ii), the last version of the document.

b. The obligation to maintain a computer document may be satisfied by maintaining it in any retrievable form, including hard copy (paper) form.

4. In the event that, following the onset of an international energy supply emergency, a Voluntary Agreement participant ascertains that compliance with the requirements of paragraph 3 of this Annex by it or by any of its covered affiliates would be unreasonably burdensome, the Voluntary Agreement participant, promptly after ascertaining that such burden would affect the ability of the Voluntary Agreement participant or (as applicable) the covered affiliate thereof to comply with said requirements, shall so notify the Department of Justice and the Federal Trade Commission in writing. The notification shall specify the requirements in question, the extent and nature of the burden, and the types of computer documents that it would be unreasonably burdensome to retain, and shall propose alternative requirements that will achieve to the maximum extent practicable the purposes of the recordkeeping requirements contained in paragraph 3 of this Annex. If such notification is promptly made, and if the Voluntary Agreement participant or (as applicable) the covered affiliate thereof, for the period prior to the notification and for the ten-day period thereafter, either (1) complies with the proposed alternative requirements or (2) complies with the requirements of paragraph 3 of this Annex to the maximum extent practicable, the availability to them of the defenses accorded under section 252 of EPCA shall be unaffected by the lack of full compliance with the requirements of paragraph 3 of this Annex, for the period preceding the notification and for the ten-day period thereafter. To the extent that, after the ten-day period from such notification, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof does not comply with the requirements of paragraph 3 of this Annex, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof will not be entitled to the defenses accorded under section 252 of EPCA for actions taken thereafter to carry out the Plan of Action, and may elect not to take such actions, unless the Voluntary Agreement participant has received and accepted, and there remains in effect, approval from the Department of Justice for compliance with alternative requirements.

Annex II to Second Plan of Action To Implement the International Energy Program: Suspension of Coverage Under Section 252 in the Event of Foreign Law Prohibition

In the event that a Covered Foreign Affiliate is prevented, as a result of a foreign law prohibition, from complying with any of the requirements of section 8, the following alternative requirements will apply for so long as such foreign law prohibition remains in effect:

1. The Covered Foreign Affiliate will not be entitled to the defenses accorded under section 252 of EPCA for any actions taken by it after first learning of the foreign law prohibition that prevents compliance with the provisions of section 8 relating to such actions.

2. The Covered Foreign Affiliate will be entitled to the defenses accorded under section 252 for actions taken by it before first learning of the foreign law prohibition, provided that the following alternative requirements are met:

a. The Covered Foreign Affiliate will comply in timely fashion with all Section 8 requirements not affected by the foreign law prohibition. Promptly upon termination of the foreign law prohibition, the Covered Foreign Affiliate must comply with all other requirements of section 8 relating to the period prior to suspension of section 252 coverage pursuant to paragraph 1 of this Annex, to the extent not previously met, and with any supplemental U.S. Government request for production of documents (including intracorporate documents) relating to such period.

b. The Covered Foreign Affiliate or its parent company will inform the Department of Justice and the Federal Trade Commission of the existence of the foreign law prohibition as soon as possible or, in any event, on or before the due date for the first submission, following suspension of coverage pursuant to paragraph 1 of this Annex, that otherwise would have been required to be made to the U.S. Government by or on behalf of the Covered Foreign Affiliate pursuant to section 8.7.

c. No later than twenty-one days following suspension of coverage pursuant to paragraph 1 of this Annex, the parent company will submit to the Department of Justice and the Federal Trade Commission:

i. A report of the nature of the foreign law prohibition, giving full particulars, including a description of the efforts being made to obtain a waiver from the competent foreign authorities, a statement that the Covered Foreign Affiliate made no attempt to have the foreign law prohibition invoked, and, to the extent permissible under applicable law, a detailed account of all oral communications with any foreign government authority concerning the requirements of the foreign law prohibition and compliance or noncompliance with them (including a copy of each document consisting of or relating to such communications);

ii. A report setting forth all of the information listed in section 8.7(A)(3), to the extent known to such parent company, and describing in detail the efforts made by it to obtain any such information not set forth in such report;

iii. A report of all transactions to carry out the Plan of Action entered into by the Covered Foreign Affiliate during the period beginning as of the end of the period covered by the last report filed by or on behalf of the Covered Foreign Affiliate pursuant to section 8.7 and ending as of the date of suspension of coverage pursuant to paragraph 1 of this Annex (the "covered period");

iv. A report describing such parent company's unwritten communications with the Covered Foreign Affiliate during such covered period; and

v. A copy of each written communication between such parent company and the Covered Foreign Affiliate during such covered period.

d. Within fourteen days following receipt of a request from the Department of Justice or the Federal Trade Commission, the parent company shall forward to the Department of Justice and the Federal Trade Commission copies of any documents requested by them (other than documents subject to the attorney-client or attorney work product privilege, but including intracorporate documents) in the possession of the parent company relating to the period prior to suspension of coverage pursuant to paragraph 1 of this Annex.

e. The Covered Foreign Affiliate and its parent company shall make good faith efforts to obtain the information necessary for the preparation of the reports pursuant to subparagraph 2.c.

f. The Covered Foreign Affiliate shall, until termination of the foreign law prohibition, continue to make good faith efforts to obtain a waiver of such prohibition and the parent company shall keep the Department of Justice and the Federal Trade Commission informed in a timely fashion of such efforts.

3. The provisions of paragraph 2 will not apply in the event that the Department of Justice, bearing the burden of proof, shows that the Covered Foreign Affiliate knowingly encouraged or faciliated the creation of the foreign law prohibition or that the reports submitted by the parent company pursuant to subparagraphs 2.c or 2.f of this Annex were materally incomplete in light of the information that was available to, or could lawfully be obtained by, such parent company at the time of their submission.

4. The provisions of paragraph 2 will not apply unless, at least thirty days prior to suspension of coverage pursuant to paragraph 1 of this Annex (or contemporaneously with the onset of the international energy supply emergency, whichever is later), the Covered Foreign Affiliate shall have been instructed by its parent company:

a. to forward to such parent company a copy of all written communications, and of all written reports of oral communications, with other oil companies (not including any of the Covered Foreign Affiliate's affiliates);

b. to keep such parent company continuously infomed, at least in general terms, of its unwritten communications with other oil companies (not including the Covered Foreign Affiliate's affiliates); and

c. to forward to such parent company, at intervals of no more than three months, copies of the Covered Foreign Affiliate's other documents.

5. For purposes of this Annex, a "foreign law prohibition" shall be deemed to exist whenever compliance with any provision of section 8 would, to the extent such provision would otherwise be applicable to the Covered Foreign Affiliate, contravene (or, in the opinion of the competent foreign government authority, would contravene) the laws of the foreign country or political subdivision thereof having jurisdiction over such Covered Foreign Affiliate.

Appendix 2—Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program

Section 6(a)(1)(B) is amended to read: "The carrying out of the Second Plan of Action to Implement the International Energy Program, which is set out in Appendix B."

The second sentence of section 6(e)(1) is amended to read: "Except where an approved plan of action contains other provisions for recordkeeping and reporting to the U.S. Government with respect to actions taken to carry out the plan of action, each participant taking any joint or agreed action or agreeing to take any action pursuant to this subsection shall notify the Administrator and the Attorney General within 72 hours, or longer period as may be determined by the Administrator, after the end of the week in which such action is taken or agreed upon."

Section 9(b)(3) is amended to read: "Approval of any oil company's participation in this Agreement shall extend to actions of other companies which (i) are more than 50% owned, directly or indirectly, by the company to which approval is granted, (ii) own, directly or indirectly, more than 50% of the company to which approval is granted, or (iii) are more than 50% owned, directly or indirectly, by a person described in (ii), provided that the company to which approval is granted notifies the Administrator and

the Attorney General of each affiliate to be covered by this subsection, including the reasons for its inclusions and the nature of the company's ownership; and provided that neither the Administrator nor the Attorney General notifies the participant that he disapproves the coverage of such affiliate by this subsection."

Appendix 3—Correspondence Concerning Approval of the Second Plan of Action

(1) Letter of the Secretary of Energy to the Attorney General, dated October 14, 1987.

In accordance with section 252(d) of the Energy Policy and Conservation Act (EPCA) and sections 6(c)(1) and 9(a) of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," I herewith submit for your approval the "Second Plan of Action to Implement the International Energy Program," along with related implementing amendments to the Voluntary Agreement.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating U.S. oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Upon your approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. We also will provide notice to the Voluntary Agreement participants of an intention to adopt the implementing amendments to the Voluntary Agreement, as required by section 11(b) of the Voluntary Agreement. We request that you adopt these amendments, pursuant to your authority under section 252(d)(1) of the EPCA, twenty days after our provision of such notice to the participating companies.

cc: Honorable George P. Shultz, Secretary of State
Honorable Daniel Oliver, Chairman, Federal Trade Commission
Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(2) Letter of the Secretary of Energy to the Secretary of State, dated October 14, 1987.

I am writing to request your comments on the enclosed "Second Plan of Action to Implement the International Energy Program" and related implementing amendments to the "Voluntary Agreement and Plan of Action to Implement the International Energy Program." Simultaneously, I am forwarding these documents to the Attorney General for his approval; a copy of my letter to the Attorney General also is enclosed.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating U.S. oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Subject to the Attorney General's approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. Thereafter, in accordance with section 252(d) of the Energy Policy and Conservation Act and section 11(b) of the Voluntary Agreement, the Voluntary Agreement would be formally amended to incorporate the Second Plan of Action.

It would be appreciated if you would address any comments which you may wish to make with respect to the Second Plan of Action or the implementing amendments to the Voluntary Agreement, both to the Attorney General and to me.

cc: Honorable Daniel Oliver, Chairman, Federal Trade Commission
Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(3) Letter of the Secretary of Energy to the Chairman of the Federal Trade Commission, dated October 14, 1987.

In accordance with section 252(d) of the Energy Policy and Conservation Act (EPCA) and sections 6(c) (1) and (9) of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program," I herewith submit for your comments the "Second Plan of Action to Implement the International Energy Program" along with related implementing amendments to the Voluntary Agreement. Simultaneously, I am forwarding these documents to the Attorney General for his approval; a copy of my letter to the Attorney General is enclosed.

The Second Plan of Action and the implementing amendments were developed through consultations over a period of years among staffs of the Department of Energy, the Department of Justice, the Department of State, and the Federal Trade Commission, and representatives of the Secretariat of the International Energy Agency (IEA) and of U.S. oil companies participating in the Voluntary Agreement. The final drafts of these documents were considered by participating oil companies at a meeting of the IEA's Group of Reporting Companies in Washington, DC, on July 29, 1987. Upon the conclusion of that meeting the IEA Secretariat advised the Department of Energy that the U.S. companies favored proceeding with adoption of the Second Plan of Action. The Plan of Action was published in the **Federal Register** for public comment (52 FR 31704, August 21, 1987), and on September 22, 1987, we conducted a public hearing on the Plan.

Subject to the Attorney Generals' approval, I intend to approve the Second Plan of Action in accordance with section 6(c)(1) of the Voluntary Agreement, and to have notice of my approval published in the **Federal Register**. Thereafter, in accordance with section 252(d) of the EPCA and section 11(b) of the Voluntary Agreement, the Voluntary Agreement would be formally amended to incorporate the Second Plan of Action.

It would be appreciated if you would address any comments which you may wish to make with respect to the Second Plan of Action or the implementing amendments to the Voluntary Agreement, both to the Attorney General and to me.

cc: Mr. Charles F. Rule, Assistant Attorney General, Antitrust Division

(4) Letter of the Secretary of State to the Secretary of Energy, dated November 13, 1987.

I am responding to your October 14 letter inviting comments on the "Second Plan of Action to Implement the International Energy Program". The Second Plan of Action, which represents the culmination of eight years of work by federal agencies, the IEA Secretariat, and representatives of the U.S. reporting companies, will update the original Voluntary Agreement and Plan of Action adopted in 1976. The Second Plan will establish a more secure and sound basis for implementing emergency international oil sharing as provided in the agreement on an International Energy Program.

Oil company participation in the IEA Sharing System would be essential for the effective and efficient operation of the system in the event of a major oil supply crisis. The Second Plan of Action represents a reasonable balance between the public interest in assuring competition and contract sanctity in the oil industry, and the public interest in safeguarding our economic, foreign policy, and national security objectives in the event of a major oil supply disruption. I therefore recommend its approval by you and the Attorney General as soon as possible. I am also sending a copy of this letter to Ed Meese.

(5) Letter of the Assistant Attorney General (Antitrust) to the Chairman of the Federal Trade Commission, dated November 9, 1987.

Secretary John S. Herrington of the Department of Energy sent a letter to the Attorney General on October 14 requesting his approval of the "Second Plan of Action to Implement the International Energy Program" and for related implementing amendments to the existing "'Voluntary Agreement and Plan of Action to Implement the International Energy Program." The request was submitted pursuant to section 252(d) of the Energy Policy and Conservation Act, which provides that before a plan of action can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commission. This letter constitutes a formal request for your agency's advice on this matter.

(6) Letter of the Assistant Attorney General (Antitrust) to the Secretary of Energy, dated December 18, 1987.

This letter is in response to your letter of October 14 by which you seek approval from the Department of Justice ("Department") of the "Voluntary Agreement and Plan of Action to Implement the International Energy Program" ("Second Plan of Action" or "Plan") and related implementing amendments. Section 252(d) of the Energy Policy and Conservation Act and sections 6(c)(1) and 9(a) of the Second Plan of Action require such approval before the Second Plan of Action can be put into effect. Those sections also preclude the Department from approving the Plan or any amendments to it until it seeks the advice of the Federal Trade Commission. The Department did seek such advice and, on December 7, 1987, the Federal Trade Commission advised the Department of its approval of the Second Plan of Action and the implementing amendments.

As you note in your letter, the Department participated in the development of the Second Plan of Action. Our role has been to insure that the emergency allocation system implemented under the Plan cannot be used by participating oil companies to collude on prices. The Second Plan of Action, which is the product of extensive, multi-year negotiations among U.S. oil companies, the Secretariat of the International Energy Agency, and four government agencies, provides the necessary assurances. The Plan minimizes the risks to competition by restricting the types of data that can be exchanged by participating oil companies and by mandating extensive recordkeeping of communications between them. Accordingly, the Plan contains within it sufficient safeguards, and the Department hereby approves it.

For the same reasons, the Department approves the implementing amendments to the Voluntary Agreement. We will not adopt the amendments, however, until twenty days after you publish a notice of our intention to adopt them. This procedure is in accordance with section 11(b) of the Voluntary Agreement.

(7) Letter of the Secretary, Federal Trade Commission, to the Assistant Attorney General (Antitrust), dated October 7, 1987.

We have received your letter requesting the Commission's advice on the adoption of the proposed Second Plan of Action and implementing amendments to the Voluntary Agreement. Section 252(d) of the Energy Policy and Conservation Act provides that plans of action may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission.

As required by section 252(d), the Commission, through its staff, has participated from the beginning in the preparation of the proposed Second Plan of Action. The plan, in final form, resulted from continuing consultations between the Department of Energy, the Department of Justice, the Department of State, and the Commission, at the staff level. It was, moreover, subject to comments from interested parties who cared to comment, and was the subject of a hearing open to the public, following publication in the **Federal Register** on August 21, 1987.

The Commission hereby advises that it has no objection to your approving the Second Plan of Action and implementing Voluntary Agreement amendments referred to in your letter of November 9, 1987. By registering no objection to the Plan, including Annex II, the Commission does not mean to suggest that it regards representations made by foreign governmental authorities as entitled to similar deference or legal treatment outside the Plan in the context of a foreign blocking statute, a foreign sovereign compulsion defense, or other circumstances.

In accordance with section 252(d), a copy of this letter will be published in the **Federal Register**.

By direction of the Commission,

(8) Letter of the Secretary, Federal Trade Commission, to the Secretary of Energy, dated December 7, 1987.

We have received your letter submitting the proposed Second Plan of Action to implement the International Energy Program and the implementing amendments to the Voluntary Agreement. Section 252(d) of the Energy Policy and Conservation Act provides that plans of action may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commisison.

As required by section 252(d), the Commission, through its staff, has participated from the beginning in the preparation of the proposed Second Plan of Action. The plan, in final form, resulted from continuing consultations between the Department of Energy, the Department of Justice, the Department of State, and the Commission, at the staff level. It was, moreover, subject to comments from interested parties who cared to comment, and was the subject of a hearing open to the public, following publication in the **Federal Register** on August 21, 1987.

The Commission has advised Assistant Attorney General Charles F. Rule that it has no objection to his approving the Second Plan of Action and implementing Voluntary Agreement amendments. In its letter to Mr. Rule, the Commission noted, however, that by registering no objection to approval or implementation of the Plan, including Annex II, the Commission does not necessarily mean to suggest that it believes representations made by foreign governmental authorities should be entitled to similar deference or legal treatment outside the Plan in the context of a foreign blocking statute, a foreign sovereign compulsion defense, or any other circumstances. A copy of the Commission's letter to Mr. Rule is enclosed.

By direction of the Commission.

[FR Doc. 88-2143 Filed 2-1-88; 8:45 am]

BILLING CODE 6450-01-M

Innovative Control Technology Advisory Panel; Public Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Innovative Control Technology Advisory Panel.

Date and Time: February 25, 1988—9:00 a.m.–5:00 p.m.

Place: Loews' L'Enfant Plaza Hotel, 408 L'Enfant Plaza SW., Washington, DC 20024.

Contact: Sandy Guill, Department of Energy, Environment, Safety and Health (EH–22), 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586–4628.

Purpose of the Panel: To advise the Secretary of Energy on how to best achieve DOE's expanded innovative clean coal technologies program's objectives of reducing costs and improving efficiency by expanding emissions control options beyond those now available.

Tentative Agenda: Briefings and discussions of:

- Panel report on Factors to be Considered in the First Innovative Clean Coal Technology Program (ICCTP) Solicitation
- Congressional Appropriation for First Innovative Clean Coal Technology Program (ICCTP) Solicitation
- Draft Program Opportunity Notice for the First ICCTP Solicitation
- Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sandy Guill at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 27, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–2041 Filed 2–1–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA88–1–2–002]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

January 27, 1988.

Take notice that on January 22, 1988, East Tennessee Natural Gas Company (East Tennessee) filed Thirty-Fourth Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1988.

East Tennessee states that the purpose of these revisions is to track changes in the rates of Tennessee Gas Pipeline Company pursuant to the Commission's Order of December 31, 1987, accepting East Tennessee's previous Purchased Gas Adjustment (PGA) filing in this docket. East Tennessee states that the effect of these changes is to reduce its Demand Rates by 32 cents per dekatherm and increase its Gas Rates by 3.28 cents per dekatherm. East Tennessee further states that it has recomputed and restated its Unrecovered Gas Cost account as of September 30, 1987, by modifying its income tax adjustments to the carrying charges. East Tennessee further states that this recomputation has no effect on its rates.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 3, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2090 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CI88–73–000 and CI88–91–000]

Shell Oil Co. and Shell Offshore Inc.; Applications for Permanent Abandonment and Permanent Blanket Certificate of Public Convenience and Necessity With Pregranted Abandonment

January 27, 1988.

Take notice that on October 29, 1987, as supplemented on December 7, 1987, Shell Oil Company (Shell) and Shell Offshore Inc. (SOI) (Applicants), P.O. Box 2463, Houston, Texas 77001, filed applications pursuant to section 7 of the Natural Gas Act and § 2.77[1] of the Commission's rules for permanent abandonment in Docket No. CI88–91–000 of nine sales of gas to Southern Natural Gas Company (Sonat), as shown on the appendix attached hereto, and requesting a permanent blanket certificate with pregranted abandonment in Docket No. CI88–73–000 authorizing the sale for resale in interstate commerce of the released gas together with waiver of Part 154 of the Commission's Regulations requiring the establishment of rate schedules.

Applicants state in support of their applications that on October 1, 1987, agreement was reached with Sonat with respect to both past and future take-or-pay obligations of Sonat. Applicants assert that the agreement provided for a payment by Sonat and for amending contracts, as contemplated in 18 CFR 2.76. Applicants state that there are matters covered by the settlement which are confidential. The request for abandonment is conditioned upon the Commission granting an application by Sonat pending in Docket No. CP88–54–000 for authority to transport gas for Applicants and others. Applicants request that the commission authorize abandonment of gas-well gas effective upon the date of issuance of the order and abandonment of oil-well gas effective on April 1, 1988. Applicants state that they are requesting separate effective dates because Article 7 of their April 1, 1987, release agreement with Sonat requires Sonat to purchase all oil-well gas during the period from November 1, 1987, through March 31, 1988. Inasmuch as the release agreement permits its cancellation if the requested authorizations have not been issued by March 1, 1988, Applicants request expeditious issuance not later than February 29, 1988. Applicants state that deliverability is approximately 91.9 MMcf/da of NGPA section 104 flowing gas (8%), recompletion or replacement contract gas (.2%), 1973–1974 biennium gas (26.1%), post-1974 gas (17.3%), 102(d) gas (34%) and 109 gas (14.4%).

Since Applicants have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Comission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand (40 FERC ¶ 61,172 (1987)). These interim regulations became effective on September 15, 1987.

APPENDIX

Shell Oil FERC gas rate schedule No.	Certificate docket No.	Field	County	State
352	CI68–531	Tallahalla Creek	Smith	Mississippi

Shell Offshore Inc. FERC gas rate schedule No.	Certificate docket No.	Offshore Louisiana block
10	CI67–808	West Delta 105, *et al.*
15	CI69–242	Main Pass 152, *et al.*
32	CI76–3	Grand Isle 76.
41	CI78–389	Grand Isle 75.
49	CI78–1167	South Marsh Island 149.
52	CI79–546	Mississippi Canyon 194, *et al.*
53	CI79–114	Mississippi Canyon 311.
75	CI85–165–000	Main Pass 304.

[FR Doc. 88–2091 Filed 2–1–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3322–5]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method; Determination

Notice is hereby given that on December 17, 1987, the Environmental Protection Agency received an application from Monitor Labs, Incorporated, 10180 Scripps Ranch Boulevard, San Diego, California 92131, to determine if its Model 8830 CO Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 52 FR 24727). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88–2076 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3322–6]

Initial Guidance; State Water Pollution Control Revolving Fund; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the "Initial Guidance—State Water Pollution Control Revolving Fund." The purpose of the document is to provide States with the information necessary to apply for and receive capitalization grant awards as authorized by Title VI of the Clean Water Act.

ADDRESSES: Copies of the guidance can be obtained by contacting Richard Kuhlman, U.S. Environmental Protection Agency, Office of Municipal Pollution Control, Planning and Analysis Division (WH–546), 401 M Street, SW., Washington, DC 20460; (202) 382–7256.

FOR FURTHER INFORMATION CONTACT: H. William Kramer, Chief, Policy and Analysis Branch (202) 382–7256 or Alan Hais, Acting Director, Planning and Analysis Division (202) 382–5856.

SUPPLEMENTARY INFORMATION: The guidance represents the Environmental Protection Agency's approach to implementation of Title VI of the Clean Water Act, until interim final regulations on selected provisions in the guidance are issued later this year. The guidance will assist EPA Regions in their review of proposed State Water Pollution Control Revolving Fund programs and provide States with initial guidance on applying for Capitalization Grants.

Upon receipt of a copy of the guidance, State representatives should direct their questions to the Regional contacts identified in Appendix B of the guidance.

Dated: January 27, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 88–2084 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board, Research Strategies Subcommittee Sources, Transport and Fate Work Group; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Sources, Transport and Fate Group of the Science Advisory Board's Research Strategies Subcommittee will meet from 9:00 a.m. to 5:00 p.m. on February 19–20, at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC in Room 1103 West Tower. The purpose of the Research Strategies Subcommittee is to advise the Administrator of the Environmental Protecton Agency on the development of research strategies needed to enhance the Agency's ability to acquire scientific and technical information to support regulatory decisionmaking, and to identify emerging environmental issues. The Sources, Transport and Fate Work Group will evaluate environmental contaminants from both a media-specific and a multi-media basis. The purpose of this specific meeting is to enable the Work Group to revise draft working papers and conduct additional planning to develop a final report.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202–382–4126 of Joanna Foellmer by February 12, 1988.

Dated: January 26, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 88–2077 Filed 2–1–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-51700A; FRL-3322-3]

Certain Chemical; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review periods for an additional 90-days for premanufacture notices (PMNs) P-88-134 and 138, under the authority of section 5 (c) of the Toxic Substances Control Act (TSCA). The review periods will now expire on April 19, 1988.

FOR FURTHER INFORMATION CONTACT: James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: On October 23, 1987, EPA received PMNs 88-134 and 88-138 for substances, generically identified as an acrylate polymer and a methacrylate polymer respectively. The submitter claimed the submitter identity, specific chemical identity, production volume, use information, process information, and other information to be confidential business information. Notice of receipt was published in the **Federal Register** of November 6, 1987 (52 FR 42721 and 42722). The 90-day review periods are scheduled to expire on January 20, 1988.

Based on its analysis, EPA finds that there is a possibility that the substances submitted for review in these PMNs may be regulated under TSCA. The Agency requires an extension of the review periods, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review periods for an additional 90 days, to April 19, 1988.

PMNs are available for public inspection in Rm. NE-G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: January 20, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-2078 Filed 2-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

January 22, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0041.

Title: Application for Authority to Operate a Broadcast Station by Remote Control or Make Changes in a Remote Control Authorization.

Form No.: FCC 301-A.

The approval on form FCC 301-A has been extended through 12/31/90. The July 1985 edition with a previous expiration date of 12/31/87 will remain in use until updated forms are available.

OMB No.: 3060-0048.

Title: Application for Consent to Transfer of Control of Corporation Holding Common Carrier or Non-Common Carrier Radio Station Construction Permit or License.

Form No.: FCC 704.

The approval on form FCC 704 has been extended through 11/30/90. The September 1985 edition with a previous expiration date of 11/30/87 will remain in use until updated forms are available.

OMB No.: 3060-0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Form No.: FCC 740.

A revised form FCC 740 has been approved for use through 10/31/90. The October 1984 edition with a previous expiration date of 10/31/87 will remain in use until revised forms are available.

OMB No.: 3060-0093.

Title: Application for Renewal of Radio Station License in Specified Services (FCC Rule Parts 5, 21, 22, 23, and 25).

Form No.: FCC 405.

The approval on form FCC 405 has been extended through 11/30/90. The November 1984 edition with a previous expiration date of 11/30/87 will remain in use until updated forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-2040 Filed 2-1-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-810-DR]

Territory of Guam; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA-810-DR), dated January 20, 1988, and related determinations.

DATED: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated January 20, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Territory of Guam caused by Typhoon Roy on January 11-12, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in Guam.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be cost shared. The final terms of this cost-sharing arrangement can include per capita cost-sharing.

You are authorized to provide Individual Assistance. Pursuant to section 408(b) of PL 93-288, you are authorized to advance to the Territory of Guam its share of the Individual and Family Grant program. This advance would have to be repaid to the United States by the Territory of Guam only to the extent the Governor's request for a waiver is denied.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of Guam to have been affected adversely by this declared major disaster:

The Territory of Guam for Individual Assistance and Public assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-2054 Filed 2-1-88; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-811-DR]

Commonwealth of the Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA-811-DR), dated January 20, 1988, and related determinations.

DATED: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated January 20, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands caused by Typhoon Roy on January 11-12, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be cost shared. The final terms of this cost sharing arrangement can include per capita cost sharing.

You are authorized to provide Individual Assistance. Pursuant to section 408(b) of PL 93-288, you are authorized to advance to the Commonwealth of the Northern Mariana Islands its share of the Individual and Family Grant program. This advance would have to be repaid to the United States by the Commonwealth of the Northern Mariana Islands only to the extent a waiver is not appropriate.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster:

The Island of Rota for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-2055 Filed 2-1-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011186

Title: Australia New Zealand Direct Line/Hoegh Line (U.S.A.) Inc. Reciprocal Space Charter Agreement

Parties: Australia New Zealand Direct Line/Hoegh Line (U.S.A.) Inc.

Synopsis: The proposed agreement would permit the parties to charter space aboard one another's vessels in the trade between ports on the Pacific Coast of North America and ports in Australia. It would also permit the interchange of containers and related equipment for use in the trade.

By Order of the Federal Maritime Commission.

Dated: January 27, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-2062 Filed 2-1-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Establishment of Drug Abuse AIDS Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, on January 25, 1988, of the following committee:

Drug Abuse AIDS Research Review Committee

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: January 26, 1988.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-2082 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-20-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug and Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 36678, September 9, 1985) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA is retitling the Office of the Executive Assistant (OEA) as the Office

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of Executive Operations (OEO). This new title will more accurately reflect the functions and activities of the office. OEO will remain in the Immediate Office of the Commissioner.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (a-1), Office of Executive Operations (HFA-D).

2. Insert new subparagraph (a-1), Office of Executive Operations (HFA-D).

(a-1) *Office of Executive Operations (HFA-D).* Coordinates identification of and expedites development and implementation of the agency's highest program priorities for the Commissioner.

Coordinates and facilities, for the Commissioner, program initiatives and resolution for program issues involving more than one component of the agency.

Advises the Commissioner, Deputy Commissioner, other Policy Board members and key agency officials on all activities that affect agencywide programs, projects and initiatives.

Performs special agencywide assignments involving complex problems and issues related to agency programs, strategies and activities.

Assures that materials in support of recommendations presented for the Commissioner's consideration are comprehensive, accurate, fully discussed and encompass the issues involved.

Reviews, analyzes and evaluates pertinent aspects of the agency's ongoing programs and consults with appropriate Policy Board members to insure a comprehensive approach toward identifying and resolving problems.

Provides direct support to the Commissioner and Deputy Commissioner, including briefing material, background information for meetings, and responses to outside inquiries.

Provides correspondence control for the Commissioner and controls and processes all agency public correspondence directed to the Commissioner. Develops and operates tracking systems designed to identify and resolve early warning and bottleneck problems with executive correspondence.

Tracks Federal Register documents and responses to executive communication memoranda directed, to, of interest to, the Commissioner and Deputy Commissioner.

Informs appropriate agency staff of the decisions and assignments made by the Commissioner and Deputy Commissioner, reviews and coordinates all of the Commissioner's agency communications and concurrences, and secures background data and revisions from appropriate agency components.

Coordinates the agency's communications with PHS and HHS, including correspondence for the Assistant Secretary for Health and Secretarial signatures.

Reviews Commissioner's correspondence for program issues, and monitors testimony with program implications.

Prepares speeches for the Commissioner and Deputy Commissioner, including drafting of texts and obtaining appropriate agency clearances.

Date: January 25, 1988.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 88-2132 Filed 2-1-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-08-4220-11; C-28251]

Proposed Continuation of Withdrawals; Colorado

January 25, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that the orders which withdrew lands for an indefinite period of time for the Dolores Project, McPhee Dam and Reservoir, be modified and the withdrawals be continued for 100 years insofar as they affect 1,053.81 acres of public land 3,839.02 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 2, 1988.

ADDRESS: Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Bureau of Reclamation proposes that the existing withdrawals made by two Secretarial Orders dated December 30, 1942, one Secretarial Order dated January 4, 1943, as amended, Public Land Order No. 2800, and Public Land Order No. 3608, for an indefinite period of time, be modified to expire in 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following described public and National Forest System lands:

New Mexico Principal Meridian

T. 37 N., R. 15 W.,
Sec. 7, a parcel of public land in E½NW¼ SE¼.
T. 38 N., R. 16 W.,
Sec. 1, lots 1, 2, 3, 4, S½N½ and N½SE¼;
Sec. 2, S½NE¼, SE¼NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 11, N½N½;
Sec. 12, N½N½ and SE¼NE¼.

The areas described aggregate 1,053.81 acres of public land in Montezuma County.

New Mexico Principal Meridian

San Juan National Forest

T. 38 N., R. 15 W.,
Sec. 2, lots 3 and 4, and NW¼SW¼NW¼;
Sec. 3, lots 1, 3, and 4, S½N½, SW¼, NW¼NE¼SE¼, and NW¼SE¼;
Sec. 4, S½SW¼ and SE¼;
Sec. 5, S½S½;
Sec. 6, lots 1 thru 6, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 3 and 4, N½NE¼, NE¼NW¼, and W½SE¼;
Sec. 8, N½N½;
Sec. 9, N½N½;
Sec. 10, N½NW¼;
Sec. 17, NW¼SW¼;
Sec. 18, lot 1, E½NE¼, SE¼NW¼, and W½SE¼;
Sec. 19, W½NE¼, N½SE¼, and SE¼SE¼;
Sec. 20, W½E½W½ and SE¼SE¼;
Sec. 21, E½SW¼, SW¼SW¼, and NW¼SE¼;
Sec. 28, W½NW¼;
Sec. 29, NE¼, E½W½, and N½SE¼.
T. 39 N., R. 15 W.,
Sec. 34, NE¼NW¼, S½NW¼, and SW¼;
Sec. 35, S½SW¼ and W½SW¼SE¼.

The areas described aggregate 3,839.02 acres of National Forest System land in Montezuma County.

The purpose of these withdrawals is for the administration and protection of the Dolores Project, McPhee Dam and Reservoir. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and

continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-2061 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-020-08-4212-13;A-23176]

Realty Action; Exchange of Public Lands, Maricopa, Pinal & Mohave Counties, AZ

All or part of the following described sections containing federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 7 W.,
Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 30, 31 and 32.
T. 3 N., R. 7 W.,
Sec. 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35 and 36.
T. 2 N., 8 W.,
Sec. 1, 2, 4, 9, 10, 11, 12, 13, 14, 15, ,17, 18, 23, 24, 25 ad 34.
T. 3 N., R. 8 W.,
Sec. 36.
T. 5 N., R. 5 W.,
Sec. 6, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.
T. 10 S., R. 11 E.,
Sec. 9.
T. 7 S., R. 12 E.,
Sec. 21, 22, 23, 25, 26, 27, 28, 29, 31, 33, 34 and 35.
T. 8 S., R. 12 E.,
Sec. 6, 18, 19, 28, 32 and 33.
T. 8 S., R. 13 E.,
Sec. 25.
T. 7 S., R. 13 E.,
Sec. 3, 4, 5, 8, 17, 22, 27 and 34.
T. 8 S., R. 14 E.,
Sec. 9 and 15.
T. 16 N., R. 19 W.,
Sec. 18.
T. 16 N., R., 20 W.,
Sec. 6, 15, 17 and 18.
T. 16 N., R. 20½ W.,
Sec. 1, 3, 10, 11, 12, 13, 14 and 15.
T. 16½ N., R. 20 W.,
Sec. 30 and 32.
T. 16½ N., R. 20½ W.,
Sec. 22, 23, 25, 26, 27, 34 and 35.

Comprising 52,958 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

Date: January 25, 1988.

[FR Doc. 88-2134 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

[FES 88-3]

Availability of Final Environmental Impact Statement; Yukon Delta National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan, Wilderness Review, and Wild River Plan for Yukon Delta National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes five alternatives for managing the refuge as well as the environmental consequences of implementing each alternative. In the document the suitability of all federal lands in the refuge is reviewed for possible wilderness designation and inclusion in the National Wilderness Preservation System.

DATES: A Record of Decision will be issued no sooner than March 18, 1988.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to all those who responded to the draft and to all federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete Plan are available at the office of the Regional Director, at the above address; at the Yukon Delta National Wildlife Refuge, 807 State Highway, Bethel, Alaska 99559; and for review, at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE. Multnomah Street, Suite 1692, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303;

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

Dated: January 21, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-2033 Filed 2-1-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Alaska Outer Continental Shelf; Availability of the Environmental Assessment for Oil and Gas Lease Sale 97, Beaufort Sea

The regulations, 40 CFR 1502.9(c)(1), for implementing the National Environmental Policy Act, as amended, require that a Federal Agency "shall

prepare supplements to either the draft or final Environmental Impact Statement (EIS) if: (i) The Agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The final EIS for oil and gas lease Sale 97, Beaufort Sea, provided an analysis based on original mean conditional resource estimates. As a result of new data and new analysis that have become available, revised mean conditional resource estimates are now available. Also, there has been a change in the method used to analyze deferral alternatives. An Environmental Assessment (EA) has been prepared which analyzes these two factors.

The Minerals Management Service has reviewed the information in the EA and the information in the final EIS for this proposed sale and has determined that the given changes will not significantly affect (40 CFR 1508.27) the quality of the human environment and that a supplemental EIS is not required. Copies of the EA may be obtained by contacting the Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, telephone (907) 261–4080 or by telephone request to Richard H. Miller, Minerals Management Service, Washington, DC, (202) 343–6264.

Date: January 27, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 88–2031 Filed 2–1–88; 8:45 am]

BILLING CODE 4310-MR-M

Pacific Outer Continental Shelf Region; Extension of the Public Comment Period for the Draft Environmental Impact Statement for Proposed Lease Sale 91 in the Northern California Planning Area

On December 11, 1987, the Minerals Management Service made available to the public a draft Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf Oil and Gas Lease Sale 91 in the Northern California Planning Area (DES 87–37). A Notice of Availability of this draft EIS was published in the **Federal Register** on December 16, 1987 (52 FR 47764).

In response to a request from the Governor of California, the Department of the Interior decided that the public comment period on the draft EIS should be extended by 30 days. This notice extends the closing of the public comment period for the draft EIS on proposed lease Sale 91 from February 12, 1988, to March 14, 1988. Comments on the draft EIS should be addressed to: Regional Director, Minerals Management Service, Sale 91 Comments, 1340 West Sixth Street, Los Angeles, California 90017.

John B. Rigg,

Associate Director for Offshore Minerals Management.

January 28, 1988.

[FR Doc. 88–2095 Filed 2–1–88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Mediterranean Fruitfly Eradication Program in Guatemala; Public Meeting

The U.S. Agency for International Development (A.I.D.) has been requested to approve the use of Pub. L. 480 Title I generated local currency to support a Mediterranean Fruitfly eradication program in Guatemala, Central America. This program would include aerial spraying with baited malathion, sterile fly release, methyl bromide fumigation commodity treatment and spraying of vehicles passing through quarantine lines with d-phenothrin.

Prior to approving the use of local currency funds for this program, A.I.D. has determined that it will undertake a detailed environmental impact assessment. This six-month study began January 5, 1988 and will be completed by July 5, 1988. While not a legal requirement, in order to respond to public interest and explain the environmental impact assessment process to the public, and to permit written comment, A.I.D., in conjunction with the Guatemalan Presidential Commission on Environment (CONAMA) announce a public meeting to be held in Guatemala City, Guatemala on February 18, 1988. Total participation in the meeting will be limited to 100 people and it will be in the format of a three hour briefing with no question and answer session. Written comments from either those attending or those unable to attend are invited and will be reviewed by the environmental impact assessment contractor (The Consortium for International Crop Protection), A.I.D. and the government of Guatemala. Comment format should include the commentor's name, organization, address, a brief statement of why the commentor is interested in the environmental assessment and/or the eradication program, and then any constructive information or comments which may be of use in the environmental impact assessment process. Those interested in attending should write by February 26, 1988 to James Hester, Chief Environmental Officer, Bureau for Latin America and the Caribbean, Room 2239–NS, U.S. Agency for International Development, Washington, DC 20523. Those interested in commenting should submit their written comments no later than February 29, 1988.

Dated: January 29, 1988.

James S. Hester,

Chief Environmental Officer, Bureau for Latin America and the Caribbean, U.S. Agency for International Development.

[FR Doc. 88–2164 Filed 2–1–88; 8:45 am]

BILLING CODE 8116-01-M

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Sixth Meeting of the Board for International Food and Agricultural Development (BIFAD) on February 10, 1988.

The purpose of the Meeting is to hear the presentation of a report from the BIFAD Environment and Natural Resources Task Force. The presentation will include an overview of development problems, a discussion of concepts and definitions, possible strategies for achieving sustainability, and conclusions and recommendations.

The February 10, 1988 Meeting will be held in the Pan American Health Organization building, 525 Twenty-Third Street, NW. Washington, DC 20037. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, Washington, DC 20523, or telephone him on (703) 235–8929.

This notice has been several days delayed in reaching the Office of the Federal Register because for the majority of the past two weeks the Senior BIFAD Staff has been out of town attending the BIFAD Title XII Seminars.

Date: January 29, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88–2163 File 2–1–88; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31215]

Railroad Operation; Chicago, Missouri & Western Railway Co.; Trackage Rights; Chicago South Shore and South Bend Railroad Co.; Exemption

Chicago South Shore and South Bend Railroad (South Shore) has agreed to grant trackage rights to Chicago, Missouri & Western Railway Company (CM&W), between milepost 69.5 at the Illinois/Indiana State line at Burnham Yard and milepost 75.5 at Kensington Station in Chicago, IL, a total distance of approximately 6 miles for the purpose of interchanging traffic at Burnham Yard with carriers other than South Shore. The trackage rights became effective on January 20, 1988. CM&W already had trackage rights over the involved line for the sole purpose of interchanging traffic with South Shore.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Tracking Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–1920 Filed 2–1–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Johnson Matthey, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 4, 1988, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 3, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 26, 1988.

[FR Doc. 88–2101 Filed 2–1–88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1059–88]

Asylum Adjudications Procedure Change

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Change in procedure in Asylum adjudications.

SUMMARY: Beginning November 2, 1987, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) in the Department of State will no longer issue an advisory opinion for each request submitted by the Immigration and Naturalization Service. They will, however, respond to each case notifying the Immigration Service of their disposition. For each request for an advisory opinion, Service officers will receive one of the following three responses: (1) BHRHA will not be able to provide information which would supplement that found in the "Country Conditions" Reports published by the Department of State; (2) a general opinion concerning the nationality or group in question which will supplement information found in the "Country Conditions"; or, (3) an actual individual advisory opinion as was previously issued on each case. This procedure modifies Operating Instruction 208.8(e) and District Directors of the Immigration Service have been instructed to proceed to a final determination on an asylum request when BHRHA has indicated that no opinion will be provided. Asylum adjudicators have been instructed that in cases where they are unable to make a final decision without input from the Department of State, they are to pose specific questions which will be addressed by BHRHA.

FOR FURTHER INFORMATION CONTACT: Ralph Thomas, Deputy Assistant Commissioner, Refugee, Asylum and Parole, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone (202) 633–5463.

SUPPLEMENTARY INFORMATION: By letter dated October 21, 1987, Mr. Edward Wilkinson, Director, Office of Asylum Affairs, Bureau of Human Rights and Humanitarian Affairs, advised that, due to budgetary constraints, BHRHA would no longer be able to provide an advisory opinion for each and every application for political asylum referred to that office. He further stated that, given these circumstances, it would be their goal to address only those cases where input from BHRHA would provide information not routinely available to the District Director. Therefore, the decision was made to screen incoming cases into three categories: (1) Cases where the "Country Conditions" Reports would provide adequate information; (2) cases where "Country Conditions" should be supplemented by a generic response, not specifically tailored to an individual application but which would be useful in understanding the human rights situation in the applicant's country of nationality; and (3) cases where an individually prepared advisory opinion would be essential. Mr. Wilkinson stated that the failure to respond individually to each case as they have done in the past, should not be taken to mean that BHRHA thought the case to be without merit. He stated that "(i)t would simply mean that we believe the current State Department *Country Conditions Reports on Human Rights Practices* to contain sufficient information to make an informed judgment on the matter.".

Upon receipt of the foregoing information, Ms. Delia B. Combs, Assistant Commissioner, Refugee,

Asylum and Parole in the Immigration Service, notified field offices of the new procedures. This was done by cable on October 30, 1987, as Mr. Wilkinson had advised that the new system of responding would begin November 2, 1987. This new procedure modifies Operating Instruction 208.8(e).

Dated: December 9, 1987.

Ronald A. Brooks,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-2099 Filed 2-1-88; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Dance/Film/Video Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on February 17 and 18, 1988, from 9:00 a.m.-7:00 p.m.; and on February 19, 1988, from 9:00 a.m.-5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC. 20506.

If time permits, a portion of this meeting will be open to the public on February 19, 1988, from 3:00 p.m.-5:30 p.m. for a policy discussion.

The remaining sessions of this meeting on February 17 and 18, from 9:00 a.m.-7:00 p.m. and on February 19, 1988, from 9:00 a.m.-3:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-2028 Filed 2-1-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on February 18, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, February 18, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will review Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Material," and other matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-2125 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Subcommittees on Scram Systems Reliability and Core Performance; Meeting

The ACRS Subcommittees on Scram Systems Reliability and Core Performance will hold a joint meeting on February 19, 1988, Room 1046, 1717 H Street, NW. Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, February 19, 1988—8:30 a.m. until the conclusion of business

The Subcommittees will review the current status of LWR plant operations (core reload designs, etc.) as they impact on core reactivity control operational limits (e.g., moderator temperature coefficients) in general, and ATWS analyses in particular.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Paul Boehnert or Mr. Dean Houston (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated 28, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-2126 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-13435, ASLBP No. 88-559-01-SC]

Finlay Testing Laboratories, Inc.; Hearing

January 27, 1988.

Before Administrative Judges: Robert M. Lazo, Chairman; Glenn O. Bright, Richard F. Cole.

On September 21, 1987, the Deputy executive Director for Regional Operations issued against Finlay Testing Laboratories, Inc. ("Licensee") an Order Suspending Licensing (Effective Immediately) (published at 52 FR 36479, September 29, 1987). The order recited that on August 31, 1987, the NRC Staff commenced an investigation into the Licensee's activities based upon allegations received by the Staff. Relying upon the results of an initial investigation by the NRC's Office of Investigations ("OI"), the Staff determined that on the two occasions that were the subject of the allegations the Licensee had transported licensed material in violation of U.S. Department of Transportation ("DOT") and NRC regulations. The regulations in question (49 CFR 173.448(f) and 10 CFR § 71.5) prohibit the transportation of radioactive material, with execptions not relevant here, aboard passenger-carrying aircraft. The order also noted the failure on both of these occasions to use required shipping papers and labels. *See* 10 CFR § 71.5. While noting that the OI investigation was continuing, the Staff concluded on the basis of information from the initial investigation that the violations appeared to be deliberate, raising significant doubts as whether the Licensee is able or willing to comply with the Commission's requirements to protect the public health and safety. Therefore, the Deputy Executive Director for Regional Operations, pursuant to 10 CFR § 2.201(c) and 2.202(f), suspended on an immediately effective basis all activities authorized under the license.

The order further noted that, pursuant to 10 CFR 2.202(b), the Licensee might file an answer showing cause why license should not have been suspended and might also request a hearing on the order. If a hearing were requested by the Licensee (or any other person adversely affected[1]), the Commission would issue an order designating the time and place for any hearing. The issue to be considered at any such hearing would be whether the suspension order should be sustained.[2]

On October 5, 1987, the Licensee filed an "Answer; Request for Rescission or Relaxation of Order; Request for Hearing." Therein, the Licensee admitted that the improper shipments to and from the island of Hawaii in February 1987 occurred, as recited in the order. The Licensee also admitted that the DOT's labeling requirements were not met with respect to the August 18, 1987, shipment to Johnston Island, as recited in order, but denied that it violated DOT regulations by shipping the radiographic device on a military flight that also carried passengers. The Licensee denied that Gordon Finlay, President and owner of the Licensee, had any knowledge of: (1) The repackaging of the radiographic device involved in the Johnston Island shipment and the failure to have properly labelled the resulting package and (2) the improper shipment of a radiographic device to the island of Hawaii.

Wherefore, it is ordered in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, and please take notice that an evidentiary hearing in this proceeding shall convene at 10:00 a.m., local time, Wednesday, March 9, 1988, at: Room 3322, U.S. Coast Guard Legal Office, PJKK Federal Building, 300 Ala Moana Boulevard, Honolulu, HI 96850.

The hearing shall be conducted continuously day to day until all evidence on matters outstanding has been received or until continued by further order of the Board.

Members of the public are invited to attend the hearing.

Dated at Bethesda, Maryland, this 27th day of January, 1988.

[1] No other person requested a hearing on the order.

[2] The order further stated that an answer or request for hearing would not stay the immediate effectiveness of the order. Order at 5.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge

[FR Doc. 88-2124 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company, for operation of the Haddam Neck Plant located in Haddam Connecticut.

The amendment would revise the provisions in the Technical Specifications relating to the degraded grid voltage protection system to be consistent with their degraded grid voltage procedures.

In addition, operability requirements on off-site and on-site power sources have been added.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 15th day of January 1988.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-2096 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co. and Pennsylvania Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66, issued to Duquesne Light Company, et al (the licensees), for operation of the Beaver Valley Power Station Unit 1 located in Shippingport, Beaver County, Pennsylvania.

The proposed amendment would revise the provisions in the Technical Specifications Section 4.2.1.4, relating to surveillance requirement of the target flux difference by interpolating to the design end-of-life value.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., J. E. Silberg, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 22nd day of January 1988.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-2097 Filed 2-1-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25256; File No. SR-MSE-87-12]

Self-Regulatory Organizations; Order Approving Midwest Stock Exchange Proposed Rule Change Amending Its Auto Quote Parameters

On September 11, 1987, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission a proposed rule change (File No. SR-MSE-87-12) pursuant to section 19(b) and Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"). The proposal amends Article XX, Rule 8 of the MSE's Rules to establish a pilot program testing new quotation parameters for specialists using the MSE's Auto Quote facility.[1] The Commission published notice of the proposed rule change on October 13, 1987,[2] and received no comments.

The proposed rule change amends Rule 8 for the duration of the pilot program by adding a new Interpretation and Policy ("I&P") .03. For issues that have 50,000,000 or more shares outstanding and for which the price per share is less than $100.00, the proposal requires specialists who use Auto Quote to display a bid that is ⅝ point less than the primary market bid and an offer that is ⅝ point greater than the primary market offer. The MSE stated in its filing that this amendment to Rule 8 will encourage specialists to manually update quotes and to use the Auto Quote feature only when necessary. Thus, specialists who in the past may have relied on Auto Quote to track the market for a security now will find it more advantageous to actively participate in that market.

The proposal also amends I&P .02 by requiring specialists' Auto Quote bids and offers in all other Dual Trading System issues to be no more than ⅛ point away from the primary market quote, instead of the best ITS quote, as is now the requirement. The MSE stated that this proposal simply conforms the rule to the exchange's current practice. Very frequently the primary market quote is also the best ITS quote.

The rule change will be implemented on a trial basis during a three-month pilot program. The proposal also reserves to the MSE Committee on Floor Procedure the authority to terminate the pilot program earlier, if necessary.

The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act. Because the proposal will encourage market makers to actively participate in the market for a security, it facilitates transactions in securities and thus removes impediments to and perfects the mechanism of a free and open market and a national market system.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that File No. SR-MSE-87-12 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2058 Filed 2-1-88; 8:45 am]

BILLING CODE 8010-01-M

[1] The MSE's Auto Quote facility is a feature of the exchange's trading support system that automatically updates specialists' quotes in response to a change in the best ITS quote.

[2] Securities Exchange Act Release No. 25039 (October 13, 1987), 52 FR 39579.

[Rel. No. IC-16201; 812-6887]

The Drexel Burnham Fund and DBL Tax-Free Fund, Inc.; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Drexel Burnham Fund ("TDBF") and DBL Tax-Free Fund, Inc. ("Tax-Free").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35) and 22(c) of the 1940 Act and Rule 22c-1 thereunder.

Summary of Application: The Applicants seek an order to permit them to assess a contingent deferred sales load ("CDSL") on certain redemptions of their current and future portfolios of shares.

Filing Date: The application was filed on October 6, 1987, and amended on November 27, 1987. Another amendment will be filed during the notice period, the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 23, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 60 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Applicants are diversified, open-end management investment companies registered under the 1940 Act. TDBF primarily seeks long-term capital appreciation. Tax-Free, which presently consists of three portfolios (Money Market, Limited Term and Long Term), seeks a high level of income exempt from federal income taxes. Applicants' underwriter is Drexel Burnham Lambert ("DBL"). The investment adviser for TDBF is Drexel Burnham Lambert Management; the investment adviser for Tax-Free is Drexel Management Corporation.

2. TDBF and the Limited Term and Long Term Portfolios of Tax-Free (hereinafter referred to as the "Funds") impose traditional front-end sales loads on purchases of shares of the Funds, but waive such loads for purchases of Fund shares by or on behalf of any officer, director, account executive or full time employee (or a spouse or child of any such person) of the Fund, the Fund's investment adviser, DBL or any company affiliated with DBL (the "Waiver"). Shares of each Fund are offered at net asset value plus a sales load that declines, depending upon the amount invested, from 1.50% of the offering price to 0% in the case of the Limited Term Portfolio, from 4.25% to 0% in the case of the Long Term Portfolio and from 3.50% to 1.00% in the case of TDBF. No sales load is imposed upon purchases of Fund shares through reinvestment of dividends. The proceeds of the foregoing sales loads are paid to DBL, as distributor of the Funds.

3. The Funds propose to impose the CDSL on all redemptions of Fund shares purchased pursuant to the Waiver and held for less than 90 days. The shares of the Money Market Portfolio of Tax-Free are offered at net asset value, and no sales load, front-end or deferred, is contemplated with respect to such shares. The CDSL, which would be paid to DBL, would be the front-end sale load that would originally have been applicable to the purchase of such shares had the Waiver not been in effect. The proposed CDSL would be imposed upon any redemption causing the value of an investor's account to fall to an amount which is below the total dollar amount of purchase payments made pursuant to the Waiver during a period of 90 days prior to the redemption, but would not be imposed upon redemptions of amounts derived from: (1) Increases in the value of the account above the total dollar amount of purchase payments made subject to the Waiver during the prior 90 days (either through growth in net asset value per share or through reinvestment of dividends or capital gains distributions), (2) purchase payments made more than 90 days prior to the redemption or (3) purchase payments from which the Fund's sale load was deducted at the time of purchase. It would be assumed that shares on which a sales load was paid at the time of purchase are the first to be redeemed, followed by shares held the longest. In determining the rate of any applicable CDSL, it will be assumed that a redemption is made of shares not subject to the CDSL first. In instituting and applying the proposed CDSL, the Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

4. Shares of the Long-Term Portfolio of Tax-Free are sold under a plan of distribution adopted pursuant to Rule 12b–1 under the 1940 Act (the "Plan"). The Plan provides that DBL receives a distribution fee equal to .25% per annum of that portfolio's average daily net assets. Tax-Free's Board of Directors will consider receipts from the CDSL obtained by DBL in connection with its annual review of the Plan.

Applicants' Legal Anaysis

1. The requested exemptions and approval of the proposed CDSL described above are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. An intended effect of the Waiver is to encourage those individuals who may be involved in the management, administration or marketing of the Funds to acquire and maintain an equity position in one or more of the Funds. To further promote this objective, and because short-term trading in Fund shares would defeat the foregoing purpose of the Waiver, Applicants have proposed the imposition of the CDSL. The effect of the CDSL would merely be to impose a condition on the availability of the Waiver, namely, that shares purchased subject to the Waiver be held for 90 days.

2. The proposed CDSL would in no way restrict a shareholder from receiving his or her proportionate share of the current net assets of a Fund, but would merely defer the deduction of a sales charge and make it contingent upon an event which may never occur.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–2120 Filed 2–1–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2308]

Territory of Guam; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 20, 1988, I find that the Territory of Guam constitutes a disaster loan area because of damages caused by Typhoon Roy occurring on January 11–12, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 21, 1988 and for economic injury until the close of business on October 20, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230806 for physical damage and for economic injury the number is 650900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: January 26, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–2121 Filed 2–1–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2309]

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 20, 1988, I find that the Island of Rota in the Commonwealth of the Northern Mariana Islands constitutes a disaster loan area because of damages caused by Typhoon Roy occurring on January 11–12, 1988. Eligible persons, firms, and organizations may file applications for physical damage under the close of business on March 21, 1988 and for economic injury until the close of business on October 20, 1988 at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, CA 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000

The number assigned to this disaster is 230906 for physical damage and for economic injury the number is 660000.

(Catalog of Federal Domestic Assistance Programs Nos 59002 and 59008).

Dated: January 28, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88–2122 Filed 2–1–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 88–1–56]

Continuing Fitness Investigation of Galaxy Airlines, Inc., Order to Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposal to revoke air carrier certificate.

SUMMARY: The Department of Transportation is proposing to find Galaxy Airlines, Inc. has failed to meet the Department's continuing fitness requirements and that its certificate should be revoked under section 401(r) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative revocation determination should file their responses with the Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street SW., Washington, DC 20590, in Docket 45023 and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Bernard F. Diederich, Office of the General Counsel, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–9154.

Dated: January 27, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–2034 Filed 2–1–88; 8:45 am]

BILLING CODE 4910–62–M

Privacy Act of 1974; Alterations to Notices of Systems of Records

The Department of Transportation (DOT) herewith publishes proposed alterations to the following four systems of records: Claimants under Federal Tort Claims Act, DOT/SLS 151, Data Automation Program Records, DOT/SLS 152, Employees' Compensation Records, DOT/SLS 153, and Emergency Operating Records (Vital Records), DOT/SLS 155.

Any person or agency may submit written comments on the proposed alterations to the Privacy Act Officer (M–34), Room 7109, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Comments must be received within 30 days to be considered.

If no comments are received, the proposed alterations will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the alterations.

Issued in Washington, DC on January 28, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation Office of the Secretary To Alter Systems of Records

The Department of Transportation proposes to alter the four Saint Lawrence Seaway Development Corporation systems of records:

DOT/SLS 151	Claimants under Federal Tort Claims Act
DOT/SLS 152	Data Automation Program Records
DOT/SLS 153	Employees' Compensation Records
DOT/SLS 155	Emergency Operating Records (Vital Records)

The purpose of the altered systems of records is to: (1) Change the system location, (2) change the system manager and his/her address, (3) change General Counsel to Chief Counsel wherever referenced, (4) change the address for the record access procedure, and (5) change the address to the contesting record procedure. The system and the authorities under which it is maintained are described under the appropriate headings in the attached copy of the system notice prepared for publication in the Federal Register.

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 *et. seq.*, 21 U.S.C. 1101 *et. seq.*, and 42 CFR Part 2) and participation in the programs is limited. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate

heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular A–130, Appendix I, 50 FR 52730 (1985).

DOT/SLS 151

SYSTEM NAME:

Claimants under Federal Tort Claims Act, DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who make claims against the Corporation.

CATEGORIES OF RECORD IN THE SYSTEM:

Claims forms on which are recorded name, address, age and marital status of claimants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Chief Counsel to determine allowability of claims.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by subject and name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and his secretary.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the above System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the: Department of Transportation, Director, Finance and Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration, as under Record Access Procedure.

RECORD SOURCE CATEGORIES:

Claimants.

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records, DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, travel vouchers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Payroll and voucher disbursement: GAO audits.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, punch cards, micro-film cassettes and supporting documents.

RETRIEVABILITY:

Indexed by social security number and name.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to appropriate supervisor, his immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with GAO and GSA schedules:

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by writen request to: Department of Transportation, Saint Lawrence Seaway Development Corporation, Director Finance and Administration, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration, at the address given in Record Access Procedure.

DOT/SLS 153

SYSTEM NAME:

Employees' Compensation Records DOT/SLS.

SYSTEM LOCATION:

Department of Transportation (DOT), Saint Lawrence Seaway Development Corporation (SLSDC), 180 Andrews Street, Massena, NY 13662–1763.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim forms on which are recorded employee' personal statistics, medical record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For determining allowability of claims.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and micro-film casette.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible to cognizant Personnel Officers.

RETENTION AND DISPOSAL:

Retained indefinitely for possible future use.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

NOTIFICATION PROCEDURE:

The individual may inquire, in writing, to the above System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to: Director, Finance and Administration, Department of Transportation, Saint Lawrence Seaway, Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the System Manager.

RECORD SOURCE CATEGORIES:

Injured employee, witnesses, supervisors, hospitals, physicians.

DOT/SLS 155

SYSTEM NAME:

Emergency Operations Records (Vital Records) DOT/SLS.

SYSTEM LOCATION:

Department of Transportation, Saint Lawrence Seaway, Development Corporation (SLSDC), Eisenhower Lock (Emergency Relocation Site), Massena, NY 13662.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retirement records, payroll distribution records, leave records, employee roster and next of kin records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To insure continuity of operations during and after a national defense emergency.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U.S. Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(1)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by name and social security number.

SAFEGUARDS:

Locked metal file container.

RETENTION AND DISPOSAL:

Retained until updated annually; then old records destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance and Administration (Emergency Coordinator), Department of Transportation, Saint Lawrence Seaway, Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

NOTIFICATION PROCEDURE:

Individuals may inquire in writing to the System Manager whether this system of records applies to him/her.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to the: Department of Transportation, Saint Lawrence Seaway, Development Corporation, Director, Finance and Administration, 180 Andrews Street, Massena, NY 13662–1763.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the Director, Finance and Administration.

RECORD SOURCE CATEGORIES:

Personnel records, time cards, and related supporting documents.

[FR Doc. 88–2103 Filed 2–1–88; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; City of Richmond, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on December 24, 1986, to prepare an environmental impact statement for a proposed highway project on Warwick Road in the City of Richmond between Route 60 (Midlothian Turnpike) and Bells Road.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2682.

SUPPLEMENTARY INFORMATION: When the Notice of Intent was published, Federal-aid funds were going to be used to build the proposed project; however, due to a lack of available funds, the Virginia Department of Transportation will now build the project solely with State funds.

Issued on: January 25, 1988.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 88–2060 Filed 2–1–88; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Values for War Risk Insurance

AGENCY: Maritime Administration, DOT.

ACTION: Determination of ship values for War Risk Insurance, effective July 1, 1987.

SUMMARY: Pursuant to the procedure stated at 46 CFR 309.1, the required biannual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA–184, prescribed by 46 CFR Part 308. In accordance with Pub. L. 99–59, authority to issue such war risk insurance will expire on June 30, 1990.

The interim binders listed below shall be deemed to have been amended as of July 1, 1987, by inserting in the space provided therefore, or in substitution for

any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period January 1, 1987 to December 31, 1987 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the right, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator.

Dated: January 27, 1988.

Joel C. Richard,

Assistant Secretary.

Federal Register List of Ship Valuations

Official	Binder	Ship type	Vessel name	Valuation
680897	3721	CDS	1st Lt. Alex Bonnyman	$26,850,000
668348	3686	CDS	Adabelle Lykes	5,000,000
533270	3344	TKR	Admiralty Bay	8,540,000
513704	3537	SML	Alson C.	1,200,000
523846	2764	TKR	America Sun	8,540,000
529004	2812	CDS	American Apollo	4,285,000
530999	2869	CDS	American Aquarius	4,285,000
520694	2583	CDS	American Astronaut	4,285,000
577343	3360	TKR	American Heritage	3,750,000
514261	2446	CDS	American Lancer	4,000,000
518444	2550	CDS	American Lark	4,000,000
516464	2485	CDS	American Liberty	4,000,000
517450	2518	CDS	American Lynx	4,000,000
544303	3644	CDS	American Marketer	5,000,000
547288	3645	CDS	American Merchant	5,000,000
519937	3641	CDS	American Monarch	735,000
612715	3648	CDS	American Resolute	8,800,000
518434	3639	CDS	American Spitfire	735,000
515976	3640	CDS	American Titan	735,000
517617	3642	CDS	American Trojan	1,250,000
530142	3647	CDS	American Veteran	4,900,000
648470	3654	SML	Amoco Columbia	5,000,000
640014	3609	SML	Amoco Florida	10,000,000
643069	3610	SML	Amoco Georgia	8,610,000
644241	3607	SML	Amoco Richmond	5,000,000
3459	3509	TKR	Amoco Savannah	4,100,000
645759	3611	SML	Amoco South Carolina	9,800,000
3233	3505	TKR	Amoco Yorktown	4,100,000
614544	3495	TKR	Arco Alaska	30,000,000
548424	3048	TKR	Arco Anchorage	17,500,000
623291	3518	TKR	Arco California	30,000,000
559400	3194	TKR	Arco Fairbanks	17,500,000
586633	3604	TKR	Arco Independence	43,000,000
556666	3142	TKR	Arco Juneau	17,500,000
536496	2900	TKR	Arco Prudhoe Bay	8,350,000
539313	2948	TKR	Arco Sag River	8,350,000
601377	3469	CDS	Argonaut	8,800,000
292191	1716	CDS	Ashley Lykes	1,540,000
535357	3345	TKR	Aspen	8,540,000
586128	3385	TKR	Atigun Pass	26,000,000
646348	3608	SML	Atlanta Bay	5,000,000
530141	3337	CDS	Austral Rainbow	4,900,000
3234	3510	TKR	Baltimore Sea	4,100,000
600128	3464	TKR	Bay Ridge	35,400,000
572359	3357	TKR	Beaver State	3,750,000
582451	3315	SML	Biehl Trader	3,250,000
584627	3316	SML	Biehl Traveler	3,250,000
633428	3628	TKR	Blue Ridge	33,000,000
511485	3270	SPC	Boston	900,000
3046	3511	TKR	Brisbane Sea	3,600,000
586130	3408	TKR	Brooks Range	26,000,000
543461	3623	SML	CG-461	15,000
543481	3624	SML	CG-481	15,000
248095	3350	SPC	Charleston	900,000
668349	3685	CDS	Charlotte Lykes	5,000,000
562416	3215	TKR	Chelsea	3,250,000
557503	3144	TKR	Cherry Valley	3,250,000
689194	3724	CDS	Chesapeake Bay	30,000,000
577738	3286	TKR	Chestnut Hill	3,750,000

Federal Register List of Ship Valuations—Continued

Official	Binder	Ship type	Vessel name	Valuation
588320	3394	TKR	Chevron Arizona	9,800,000
541563	2985	TKR	Chevron California	8,500,000
577358	3308	TKR	Chevron Colorado	9,800,000
584696	3372	TKR	Chevron Louisiana	9,800,000
542850	2992	TKR	Chevron Mississippi	8,500,000
566080	3309	TKR	Chevron Oregon	9,800,000
570709	3310	TKR	Chevron Washington	9,800,000
638709	3626	TKR	Coast Range	33,000,000
590414	3528	TKR	Cornucopia	25,000,000
553623	3104	TKR	Coronado	3,250,000
279938	3704	TKR	Cove Leader	2,900,000
644295	3702	TKR	Cove Liberty	2,900,000
279438	370	TKR	Cove Trader	1,780,000
671969	3722	CDS	Cpl Louis J. Hauge	26,850,000
689193	3725	CDS	Delaware Bay	30,000,000
528567	2806	TKR	Edgar M. Queeny	4,000,000
500702	2086	CDS	Elizabeth Lykes	1,000,000
657540	3658	SPC	Energy Independence	51,750,000
541414	2980	CDS	Export Freedom	4,000,000
548442	3065	CDS	Export Patriot	4,000,000
282272	2593	TKR	Exxon Baltimore	1,620,000
524619	3056	TKR	Exxon Baton Rouge	7,800,000
658495	3683	TKR	Exxon Baytown	82,360,000
600478	3465	TKR	Exxon Benicia	26,000,000
283784	2595	TKR	Exxon Boston	1,700,000
658493	3668	TKR	Exxon Charleston	72,000,000
588443	3412	TKR	Exxon Galveston	3,000,000
297151	2601	TKR	Exxon Houston	3,180,000
275519	2603	TKR	Exxon Jamestown	2,000,000
276270	2610	TKR	Exxon Lexington	2,000,000
692967	3723	TKR	Exxon Long Beach	110,000,000
298216	2606	TKR	Exxon New Orleans	3,180,000
600477	3460	TKR	Exxon North Slope	26,000,000
526792	3057	TKR	Exxon Philadelphia	7,800,000
647470	3717	TKR	Exxon Princeton	39,000,000
523626	3058	TKR	Exxon San Francisco	7,800,000
692966	3716	TKR	Exxon Valdez	110,000,000
273896	2609	TKR	Exxon Washington	2,000,000
658494	3673	TKR	Exxon Wilmington	72,735,000
656742	3718	TKR	Exxon Yorktown	39,000,000
663105	3708	TKR	Falcon Champion	25,000,000
536850	3709	TKR	Falcon Countess	5,500,000
533611	3710	TKR	Falcon Duchess	5,500,000
658555	3712	TKR	Falcon Leader	25,000,000
538811	3713	TKR	Falcon Princess	5,500,000
514966	3540	SML	Freeport I	5,200,000
516720	3541	SML	Freeport II	5,200,000
292748	3538	SML	Gale B	1,070,000
248242	2556	SPC	Galveston	900,000
513140	2421	CDS	Genevieve Lykes	1,000,000
526588	3346	TKR	Glacier Bay	8,855,000
561433	3729	TKR	Golden Endeavor	3,750,000
526972	2791	TKR	Golden Gate	7,150,000
566090	3512	TKR	Golden Monarch	3,750,000
650771	3739	SML	Great Lakes	7,800,000
684689	3745	TKR	Gus W. Darnell	40,000,000
531048	2861	TKR	IOS 3301 Martha R. Ingram	2,800,000
538231	2935	TKR	IOS 3302 Carol G. Ingram	2,800,000
292810	2108	SML	Islander	600,000
280564	387	CDS	James Lykes	1,500,000
287103	1304	CDS	Jean Lykes	1,500,000
500799	3366	SML	Joe Sever	350,000
282772	389	CDS	John Lykes	1,500,000
281326	390	CDS	Joseph Lykes	1,500,000
621042	3491	SPC	Kauai	45,000,000
586127	3458	TKR	Kenai	20,350,000
586129	3398	TKR	Keystone Canyon	26,000,000
266730	598	TKR	Keystoner	835,000
579572	3287	TKR	Kittanning	3,750,000
684692	3748	TKR	Lawrence H. Gianella	40,000,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
550598	3622	SML	LB-726	15,000
550599	3623	SML	LB-727	15,000
287416	1352	CDS	Leslie Lykes	1,500,000
512187	2403	CDS	Letitia Lykes	1,000,000
248240	3256	SPC	Long Beach	1,440,000
299938	2062	CDS	Louise Lykes	1,000,000
2774	3730	TKR	M.P. Grace	1,400,000
655330	3701	CDS	Maj Stephen W. Pless	40,000,000
524219	2763	SPC	Manukai	14,600,000
528400	2803	SPC	Manulani	14,600,000
618705	3492	SML	Maoi	700,000
668347	3687	CDS	Margaret Lykes	5,000,000
529399	2814	TKR	Marine Chemist	4,400,000
245851	2777	TKR	Marine Duval	1,500,000
246836	2133	TKR	Marine Floridian	1,500,000
247563	1812	TKR	Marine Texan	1,230,000
289873	1513	CDS	Marjone Lykes	1,540,000
299786	3539	SML	Martha II	2,650,000
246343	2109	SPC	Maunalei	1,440,000
650770	3740	SML	Michigan	4,450,000
542026	3152	TKR	Mobil Arctic	17,500,000
286479	2442	TKR	Mobile Meridian	1,900,000
578288	3301	TKR	Mormacsky	3,410,000
569257	3302	TKR	Mormacstar	3,410,000
573770	3303	TKR	Mormacsun	3,410,000
284178	2799	TKR	Mount Vernon Victory	1,760,000
286650	1243	CDS	Nancy Lykes	1,500,000
569583	3348	TKA	New York	8,795,000
628783	3656	TKR	New York Sun	24,845,000
248076	3259	SPC	Oakland	1,440,000
5886	3508	TKR	Ocean Voyager	4,100,000
642151	3577	TKR	Ogden Hudson	40,300,000
547919	3515	TKR	Ogden Yukon	9,085,000
523341	2745	TKR	OMI Champion	4,000,000
522864	3470	TKR	OMI Charger	4,000,000
638899	3576	TKR	OMI Dynachem	40,300,000
520839	3471	TKR	OMI Leader	4,000,000
520728	2614	TKR	OMI Wabash	4,000,000
518738	2591	TKR	OMI Willamette	4,000,000
529795	2827	TKR	Overseas Alaska	7,210,000
514928	3672	TKR	Overseas Alice	3,240,000
530877	2862	TKR	Overseas Arctic	7,210,000
630050	3535	TK2	Overseas Boston	17,500,000
583412	3378	TKR	Overseas Chicago	15,000,000
590624	3409	SPC	Overseas Harriette	4,600,000
553137	3533	TKR	Overseas Juneau	17,500,000
590623	3406	SPC	Overseas Marilyn	4,600,000
287156	3377	TKR	Overseas Natalie	3,000,000
588001	3386	TKR	Overseas New York	15,000,000
586647	3383	TKR	Overseas Ohio	15,000,000
517186	3671	TKR	Overseas Valdez	3,240,000
518125	3480	TKR	Overseas Vivian	3,240,000
588955	3399	TKR	Overseas Washington	15,000,000
248241	3260	SPC	Panma	1,440,000
684688	3742	TKR	Paul Buck	40,000,000
291990	3472	TKR	Petersburg	1,785,000
641084	3700	CDS	PFC Eugene A. Obregon	40,000,000
679513	3719	CDS	PFC James Anderson, Jr	26,850,000
674269	3741	CDS	PFC William B. Baugh	26,850,000
516541	2560	SPC	Philadelphia	900,000
638073	3655	TKR	Philadelphia Sun	27,800,000
247275	2844	SPC	Pittsburgh	1,100,000
517120	2501	CDS	President Adams	3,000,000
521866	2740	CDS	President Cleveland	3,000,000
673003	3690	CDS	President Eisenhower	25,000,000
674310	3689	CDS	President F.D. Roosevelt	25,000,000
513860	2447	CDS	President Fillmore	3,400,000
530138	3483	CDS	President Grant	10,000,000
530139	3726	CDS	President Harrison	10,000,000
530137	3485	CDS	President Hoover	10,000,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
544900	3030	CDS	President Jefferson	6,370,000
552109	3121	CDS	President Johnson	6,370,000
296778	1947	CDS	President Kennedy	3,190,000
651627	3677	CDS	President Lincoln	29,500,000
546725	3041	CDS	President Madison	6,370,000
512593	2416	CDS	President McKinley	3,400,000
655397	3678	CDS	President Monroe	29,500,000
552108	3120	CDS	President Pierce	6,370,000
511653	2398	CDS	President Taft	3,400,000
518517	2565	CDS	President Taylor	3,000,000
530140	3484	CDS	President Tyler	10,800,000
509581	2359	CDS	President Van Buren	3,400,000
653424	3679	CDS	President Washington	29,500,000
520392	2622	CDS	President Wilson	3,000,000
570108	3396	TKR	Prince William Sound	17,915,000
684591	3720	CDS	PVT Harry Fisher	26,850,000
684691	3743	TKR	Richard G. Matthiesen	40,000,000
557038	3147	CDS	Robert E. Lee	7,500,000
502928	2162	CDS	Ruth Lykes	1,000,000
684690	3744	TKR	Samuel L. Cobb	40,000,000
248238	2846	SPC	San Pedro	1,180,000
535020	2918	TKR	Sansinena II	8,255,000
504815	3423	CSD	Santa Adela	1,000,000
502726	2752	CDS	Santa Juana	1,000,000
1876	3791	TKR	Sasstown	1,350,000
594073	3453	SPC	Sea-Land Adventure	9,750,000
552818	3100	CDS	Sea-Land Consumer	7,350,000
604246	3496	SPC	Sea-Land Defender	24,500,000
604247	3513	SPC	Sea-Land Developer	24,500,000
532410	2868	SPC	Sea-Land Economy	6,000,000
606062	3534	SPC	Sea-Land Endurance	24,500,000
604248	3489	SPC	Sea-Land Explorer	24,500,000
604249	3514	SPC	Sea-Land Express	24,500,000
606065	3527	SPC	Sea-Land Freedom	24,500,000
606061	3516	SPC	Sea-Land Independence	24,500,000
606064	3529	SPC	Sea-Land Innovator	24,500,000
594374	3451	SPC	Sea-Land Leader	9,750,000
604245	3487	SPC	Sea-Land Liberator	24,500,000
606068	3526	SPC	Sea-Land Mariner	24,500,000
593980	3450	SPC	Sea-Land Pacer	9,750,000
604244	3486	SPC	Sea-Land Patriot	24,500,000
594375	3452	SPC	Sea-Land Pioneer	9,750,000
552819	3131	CDS	Sea-Land Producer	7,350,000
531478	3867	SPC	Sea-Land Venture	6,000,000
606063	3517	SPC	Sea-Land Voyager	24,500,000
641083	3699	CDS	Sgt. Matej Kocak	40,000,000
668350	3688	CDS	Sheldon Lykes	5,000,000
641804	3627	TKR	Sierra Madre	33,000,000
653210	3707	CDS	Spirit of Texas	8,000,000
591709	3415	SPC	SS Maui	36,565,000
515620	2795	SPC	St. Louis	1,100,000
642934	3706	CDS	Star of Texas	8,000,000
557034	3148	CDS	Stonewall Jackson	7,500,000
584459	3413	TKR	Stuyvesant	35,400,000
277623	233	TKR	Syosset	1,400,000
640635	3606	SML	Tallahassee Bay	5,000,000
3460	3507	TKR	Texas City Sea	4,100,000
283897	2927	TKR	Texas Sun	1,780,000
516156	3536	SML	Theresa F.	1,200,000
283413	405	CDS	Thompson Lykes	1,500,000
586131	3431	TKR	Thompson Pass	26,000,000
1778	3732	TKR	Timbo	1,350,000
585629	3391	TKR	Tonsina	20,700,000
275583	3657	TKR	Tropic Sun	1,740,000
550200	3727	TKR	Ultramar	5,000,000
555146	3728	TKR	Ultrasea	5,000,000
505786	2270	TKR	Valley Forge	3,100,000
642492	3652	SML	Virginia Bay	10,000,000
551001	3361	SML	Wa-1-0001	15,000
567451	3362	SML	Wa-2-0451	20,000

FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

Official	Binder	Ship type	Vessel name	Valuation
608713	3621	SML	Wa-3-0576	25,000
608714	3622	SML	Wa-3-0577	25,000
268798	2928	TKR	Western Sun	1,400,000
282126	411	CDS	Zoella Lykes	1,500,000

[FR Doc 88-2133 Filed 2-1-88; 8:45 am]
BILLING CODE 4810-61-M

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A-130; Customs Automated Commercial System; Republication

[Editorial Note: The following document was originally published at page 1097 in the issue of Friday, January 15, 1988. In that publication, a large portion of the document was omitted. The corrected document is reprinted below in its entirety.]

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), has been developing a module called the Automated Manifest System (AMS). Through the AMS, carriers, port authorities (PAs) and service centers electronically transmit data from inward vessel manifests to Customs. Customs uses this information concerning the nature and origin of the cargo to make decisions with respect to inspection and examination. Customs thereafter electronically informs the senders, their agents and others of this information. An underlying purpose for this exchange is to expedite the release of cargo from Customs custody.

In June, 1988, Customs intends to make available for sale to the public a *magnetic tape* which will contain data from all the manifests being transmitted electronically to Customs. At that time, Customs intends to provide to eligible PAs *on line access* to this manifest data, and to other data concerning the status of cargo moving within their port limits. This information will enable the PAs to more efficiently monitor the movement of cargo through their facilities, as well as perform their cargo release responsibilities.

Information from inward manifests is presently available to the public in hard copy, pursuant to section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431). The statute also requires that Customs safeguard the confidentiality of the names and addresses of importers, consignees and their shippers upon request. Accordingly, the names and addresses of those who have requested confidentiality will be deleted from the manifest data to be provided.

While not all of the manifests filed with Customs are filed in an automated fashion via AMS, it is envisioned that AMS will eventually contain all vessel manifest data and replace the paper manifest. Because of the amount of data involved, the increased access that the automated format provides, and the anticipated growth of automated systems in all phases of the processing of Customs commercial transactions, Customs believes it appropriate to give notice and an opportunity to comment to those who may be interested in obtaining the information as well as those importers and consignees who may wish to request confidentiality, or are otherwise affected by release to the PAs of data pertaining to all importations arriving at their ports.

DATES: Comments must be received on or before March 15, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202) 566-8237.

FOR FURTHER INFORMATION CONTACT:
Legal Aspects: B. James Fritz, Chief, Regulations Control and Disclosure Law Branch, (202) 566-8681.
Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations (202) 566-6012.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A-130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of significant new proposed information dissemination products. Such notice is intended to allow agencies to gauge the impact of such products upon affected segments of the public. Two such products are proposed. The first is automated vessel manifest and cargo release data to PAs via on line access. The second is automated vessel manifest data to the public via magnetic tape.

For more than three years, Customs has been developing the Automated Commercial System. The ultimate goal of the ACS is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has developed an Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data and inspection guidelines, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

Automated manifest data may be transmitted to Customs by one of two methods. Carriers may transmit data directly to the AMS with their own compatible automated system. Alternatively, carriers may use the computer facilities of PAs or service centers which have established interface capability with Customs. After receiving and analyzing the data, Customs makes its decision with respect to inspection and release of the merchandise.

Once the merchandise is authorized for release, the carrier, service center or PA which transmitted the data receives a message from the system informing it of that fact. Thus each user will be able to track the status of cargo for which it transmitted data. A more detailed explanation of the data provided is set forth below.

Section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, certain information with respect to the nature of the merchandise on board the vessel. Subsection (c)(1) of section 431 provides that the following information when contained on the manifest shall be made available for public disclosure:

1. The general character of the cargo,
2. The number of packages and gross weight,
3. The name of the vessel or carrier,
4. The port of loading,
5. The port of discharge,
6. The country or origin of the shipment
7. The name and address of each importer or consignee and the name and address of the shipper unless the importer or consignee has requested confidential treatment of such information.

Section 103.14(d), Customs Regulations, [19 CFR 103.14(d)] sets forth the procedures pursuant to which an importer or consignee may request confidential treatment of its name and address and that of its shippers. To date, Customs Headquarters has on file approximately 1,100 requests for confidential treatment.

Section 103.14(c), Customs Regulations, provides that accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and to copy therefrom manifest information made public by statute. Members of the general public are not given direct access to the documents but may obtain information from manifests upon request. Importers or agents are permitted to examine manifests in which they have an interest as principal or agent.

At present, Customs compiles a list of those importers and consignees who have requested confidentiality. The list is updated on a weekly basis, and is provided to all Customs offices nationwide. The list is also provided to certain commercial trade publications such as King Publishing Co., the Journal of Commerce and others. These trade publications publish the manifest data, taking steps to make certain that the names and addresses of those who have requested confidentiality are deleted.

Dissemination of Manifest Data to Port Authorities

Background

When ACS was in the planning stages, Customs encouraged various sectors of the international trade community to participate in its development in order to share in the benefits that could accrue through the more efficient processing of commercial transactions. Among those who expressed a significant interest in ACS (particularly in AMS) were PAs. PAs viewed AMS as a means of streamlining their involvement in the processing of cargo as well as attracting new business to their ports.

Customs viewed PAs as a potential conduit for the transmission of AMS data for non-automated carriers who were interested but otherwise lacked the capability to electronically transmit their manifest data. PAs were informed that if they were willing to assume this role they would be eligible to receive all *automated manifest data* for those manifests which Customs receives for vessels calling in their ports regardless of whether the carrier used the PA to transmit its data. The data elements that comprise the manifest file are set forth in Appendix 1 to this document.

In addition to receiving manifest data, eligible PAs would be entitled to receive release data which conveys the status of the cargo which is being processed through their ports. Release data would be provided from the manifest where an automated manifest is filed at the port. In addition, where no automated manifest is filed, PAs would receive release data obtained from entry documents for all formal entries made in the port provided that the entry filer has given his written consent. The data elements pertaining to this release data are set forth in Appendix 2.

Finally, eligible PAs would receive manifest data which is transmitted through AMS with respect to all cargo which moves master in bond to their ports. For example, when a carrier files an automated manifest for cargo from a vessel which calls at Seattle but will move via master in bond procedures to Boston, the Massachusetts Port Authority will receive an extract of the manifest filed at Seattle. This will enable Massport to have a more accurate account of cargo in transit to it.

It is emphasized that the above data to be provided to PAs is to be provided via on-line access. Customs recognizes that the value of the data to the PAs as a basis for cargo release services is tied to its being provided in an expeditious manner. Accordingly, Customs intends to provide this data directly to the PA's automated system as soon as is operationally feasible.

Eligibility Criteria

In order to be eligible to receive automated manifest data, release data, and the master in bond data, a PA must develop the *full technical capacity* to transmit as well as receive AMS data. This means that the PA must demonstrate to Customs satisfaction that it possesses all the necessary facilities to be capable of immediately providing full AMS services for any interested carrier.

Customs recognizes that the development of this capacity does not guarantee that carriers will choose to avail themselves of the PAs services. One difficulty has been the fact that many carriers do not use a unique bill of lading number in their business operations. Such a unique identifier is necessary in order for AMS to operate. It is hoped, however, that a proposed amendment to the Customs Regulations mandating the use of a unique bill of lading identifier will eliminate this obstacle to participation in AMS by carriers. See 52 FR at 48602, dated December 9, 1987.

Customs has not established a minimum number of manifests to be transmitted in order for a PA to be eligible to receive this data. Customs will, however, condition continued access to the information on efforts by the PAs to acquire customers for this service. Should Customs learn that a PA has declined to provide AMS services when requested by a carrier, or has not made efforts to obtain participation by carriers, Customs will reevaluate its decision to provide access.

Providing Automated Manifest Data to the Public

Separate and apart from its decision to provide manifest data to PAs as described above, Customs intends to make available to the public, in the form of a magnetic tape, certain data with respect to all the manifests captured by AMS nationwide. This tape would be available at a price which would reflect the cost of producing it, and would contain the same data elements that are in the manifest file to be provided to the PAs. See Appendix 1 for the precise data elements involved. It is contemplated that the tape will be available on a weekly basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566-5492.

Confidentiality of Manifest Data

As noted above, the manifest data to be provided to the PAs and to the public will be sanitized by removing the names and addresses of those importers/consignees and that of their shippers when confidentiality has been requested. Customs has developed a computer program which will automatically delete the name and address of these requesters when manifests containing their name are transmitted through AMS. In determining the precise automated system to be employed, Customs was faced with a choice between using an "alpha" system or a "soundex" system. Each system has certain limitations. The

alpha system will only delete the name of the importer/consignee when there is an exact match as to spelling and formulation between the way the name has been transmitted by the carrier or service center and the name that the importer has provided to Customs. Thus where abbreviations and incorrect spellings of names are transmitted, the data would not be deleted from the system.

The soundex approach would eliminate from the system not only the exact formulation of the name in question, but also a variety of sound alike names. This approach would be overinclusive, resulting in the deletion of many names and addresses where no request for confidentiality had been made.

In addition, the soundex approach requires a significantly more complex programming effort.

Customs intends to use the alpha approach. In order to safeguard the names and addresses of companies which have requested confidentiality, however, Customs advised each of the requesters of the limitations of the system and invited them to enumerate variations of their name which they believe may be transmitted into AMS. Many importers have responded with these variations and Customs has added them to its database so that confidentiality will be protected whenever a match is made between any of the versions of the name submitted and the version transmitted by the carrier. A copy of the letter to the requesters is provided as Appendix 3 to this document. Customs remains willing to program these additional variations as they are received, as well as new requests for confidentiality. Such requests should be directed to the Regulations Control and Disclosure Law Branch, Customs Headquarters: Attention: Mr. Crowley.

Dissemination of the Entry Number

Among the data elements which will be provided to the port authorities as part of the bill of lading status report is the entry number assigned to the goods once entry has been filed. See Appendix 2 to this document. Providing this entry number is an essential link between the data in the manifest file and entry process.

Customs has identified two potential issues with respect to providing the entry number to the PAs. Each of these issues relates to Customs obligation to protect the identity of the importer or consignee of the merchandise when confidentiality has been requested.

The Bulletin Notice of Liquidation, Customs Form 4333, lists the entry number together with the name of the entry filer. By matching this data with the manifest data being provided, one may determine the identity of the entry filer and the nature of the goods being imported despite the importer's request for confidentiality. In order to resolve this issue, Customs has decided to amend the Bulletin Notice of Liquidation so as to remove any reference to the name of the entry filer. Importers and brokers will be able to identify their entires through the entry number.

The second issue that is presented with dissemination of the entry number arises because the first three digits of the entry number (the National Filer Code) identify the broker or importer filing the entry. Knowing an importer's filer code together with the manifest data would clearly enable a person to link the importer to the particular goods being imported. Even where the filer code pertains to a broker, in some instances, knowledge of the broker and the port involved is tantamount to knowledge of the identity of the importer. In each case, confidentiality would be breached. In order to protect against this unintended effect, Customs has decided to offer any importer or broker who has a presently assigned filer code an opportunity to apply for a new filer code. This code will not be revealed by Customs to any third party without the authorization of the entry filer so that the filer code will not be a means by which the filer's identity may be ascertained. Persons interested in obtaining a new filer code should write to the Office of Automated Commercial Systems, Customs Headquarters, Attention: Dick Bonner.

Comments

Customs invites comments on any aspect of this proposed information dissemination product. Commenters might particularly address the impact, if any, of Customs proposed actions on their conduct of Customs business.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4 Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control and Disclosure Law Branch, Room 2324, U.S. Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Dated: January 12, 1988.

E.H. Mach,

Assistant Commissioner, Office of Commercial Operations.

Appendix 1—Data Elements From the Manifest to be Provided to Eligible Port Authorities Via On-Line Access and to the Public Via Magnetic Tape

1. Carrier code.
2. Vessel country code.
3. Vessel Name.
4. Voyage Number.
5. District/Port of Unlading.
6. Estimated Arrival Date.
7. Bill of Lading Number.
8. Foreign Port of Lading.
9. Manifest Quantity.
10. Manifest Units.
11. Weight.
12. Weight Unit.
13. Shipper Name.[1]
14. Shipper Address.[1]
15. Consignee Name.[1]
16. Consignee Address.[1]
17. Piece Count.
18. Description of Goods.
19. Container Number.
20. Seal number.

Appendix 2—Cargo Release Data Elements Derived From the Manifest or from Entry Documents[2] To Be Provided to Eligible Port Authorities Via On Line Access.

1. Carrier code.
2. District/port of unlading
3. Vessel Name.[3]
4. Voyage Number.[3]
5. Bill of Lading Number.
6. Disposition code.
7. Quantity.
8. Entry Type.
9. Entry Number.
10. Action date and time.

Appendix 3—Department of the Treasury

U.S. Customs Service, Washington, DC

October 19, 1987.

[DIS-3:CO:R:R:D: 575849 MBH]

Dear Sir or Madame:

This is in reference to previous correspondence from your company to the Customs Service in which you requested confidentiality for your name and address and that of your shippers on inward vessel cargo manifests.

The Customs Service wishes to inform you that it is in the process of changing

[1] Data element will be deleted where confidentiality has been requested.

[2] Where the source is entry documents, data relating to formal entries will be furnished, provided that the written consent of the entry filer is obtained.

[3] This element will only be provided where an automated manifest or an ABI entry has been filed.

the method by which it collects and disseminates inward cargo manifest data. Customs is developing an Automated Manifest System which will process vessel manifest data transmitted electronically by carriers, port authorities and others. In return, Customs will provide certain manifest data and information concerning the release of the goods electronically to these parties. The system is designed to improve efficiency in the inspection and cargo release process.

As you know, Customs is required by law to make certain manifest information available to the public except for the names and addresses of importers/consignees and that of their shippers when confidentiality is requested. In the near future, this manifest data will be available to any requester in the form of a magnetic computer tape. Requests for confidentiality will continue to be honored. The limitations of the automated system are such, however, that it will only safeguard the precise spelling of the company's name that is provided to it. *Therefore, in order to safeguard your data, it is essential that you provide within 10 working days of your receipt of this letter all spellings or formulations* (such as abbreviations) of the name of your company that appear or could appear on the manifest or related shipping documents. These spellings or formulations will be entered into the computer data base so as to protect any transactions on which the formulation appears.

A more detailed explanation of the Automated Manifest System and the release of vessel manifest information will appear in the **Federal Register** shortly. Your comments on that notice would be appreciated. If you have any questions concerning this matter, you may contact Gerald Crowley at (202) 566-8681.

Sincerely,

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 88-781 Filed 2-1-88; 8:45 am]

BILLING CODE 1501-01-D

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, February 8, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2212 Filed 1-29-88; 2:43 pm]

BILLING CODE 6210-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 27, 1988.

TIME AND DATE: 10:00 a.m., February 4, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Danny Johnson* v. *Lamar Mining Company* et al., Docket No. KENT 87-68-D (Issues include Danny Johnson's motion to reopen.)
2. *Secretary of Labor on behalf of Joseph Gabossi* v. *Western Fuels-Utah, Inc.*, Docket No. WEST 86-24-D (Issues include consideration of the Secretary of Labor's motion for oral argument.)
3. Consideration of possible revisions to Commission procedural Rules 50-55. 29 CFR 2700.50 through 2700.55.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow, Acting Agenda Clerk, (202) 653-5629/(202) 566-2673 for TDD Relay.

Sandra G. Farrow,

Acting Agenda Clerk.

[FR Doc. 88-2232 Filed 1-29-88; 4:00 pm]

BILLING CODE 6735-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, February 2, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Recombinant Erythropoietin (Docket Number 1429).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth Mason,

Secretary.

January 27, 1988.

[FR Doc. 88-2223 Filed 1-29-88; 3:37 pm]

BILLING CODE 7020-02-M

NATIONAL SCIENCE BOARD

DATE AND TIME: February 12, 1988.
8:30 a.m.—Closed Session
8:55 a.m.—Open Session

PLACE: National Science Foundation Washington, DC.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED FEBRUARY 12:

Closed Sesson (8:30 a.m. to 8:55 a.m.)

1. Minutes—October 1987 Meeting
2. NSB and NSF Staff Nominees
3. Vannevar Bush Award
4. Grants, Contracts, and Programs

Open Session (8:55 a.m.—11:00 a.m.)

5. Grants, Contracts, and Programs
6. Chairman's Report
7. Minutes—October 1987 Meeting
8. Director's Report
9. Report on Funding Trends and Balance of Activities
10. Draft Report of the Committee on Centers and Individual Investigator Awards
11. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 88-2066 Filed 1-28-88; 4:01 pm]

BILLING CODE 7555-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Board Meeting

TIME AND DATE: 4:30 P.M.—Tuesday, February 2, 1988.

PLACE: Federal Deposit Insurance Corporation, 550 17th Street, NW., Sixth Floor Conference Room, Washington, DC 20429.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Nance Frazier, Director of Communications 376-2623.

AGENDA:

I. Call to Order and Remarks of Chairman
II. Housing Policy Proposals

Carol J. McCabe,

Secretary.

[FR Doc. 88-2158 Filed 1-29-88; 10:46 am]

BILLING CODE 7570-01-M

Corrections

Federal Register
Vol. 53, No. 21
Tuesday, February 2, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 70109-7242]

Reaffirmation of Federal Information Processing Standard 46, Data Encryption Standard

Correction

In notice document 88-1201 appearing on page 1813 in the issue of Friday, January 22, 1988, make the following correction:

In the second column, in the third complete paragraph, in the sixth line, after "devices", insert "certified".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3251-2]

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions

Correction

Editorial note: For a correction to FR Doc. 87-22291 published Tuesday, September 29, 1987, See Part II of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A-130; Customs Automated Commercial System

Correction

FR Doc. 88-781 which was originally published in the issue of Friday, January 15, 1988, at page 1097, is being republished in its entirety in the Notices section of today's issue because of omissions.

BILLING CODE 1505-01-D

VOL
53

SS
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federal register

Tuesday
February 2, 1988

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions; Correction

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3251-2]

Standards of Performance for New Stationary Sources; Reference Method 16A Revisions; Addition of Method 16B for the Determination of Total Reduced Sulfur Emissions

Correction

In rule document 87-22291 beginning on page 36408 in the issue of Tuesday, September 29, 1987, make the following corrections:

1. On page 36409, in the first column, in the sixth line from the bottom, remove the parenthesis before the word "have".

Appendix A, Method 16A—[Corrected]

2. On page 36413, in the first column, section 7.1.4.6, in the third paragraph, in the 10th line, "know" should have read "known".

3. In the same column, in section 7.1.5, in the fifth line, "HCL" should read "HCl".

4. On the same page, in the third column, in section 7.1.9.1, in the third line, "H_2S" should be a subscript to C.

5. In the same section, on page 36414, in the first column, in all the entries of nomenclature for Q_{std}, the words "average", "before", and "after" should be subscripts.

6. On the same page, in section 7.1.9.4, in Eq. 16A-7, there should be a bar above the "Q".

Appendix A, Method 16B—[Corrected]

7. On page 36415, in the second column, in section 1.3, in the first line, "*Range Sensitivity*" should read "*Range and Sensitivity.*"

8. In the same paragraph, in the third line, "FRD" should read "FPD".

9. On page 36417, in the first column, in section 8, in the first line of nomenclature, "SO^{2*}" should read "SO_2".

Appendix A, Method 16A—[Corrected]

10. Because of confusing page layout, the text of page 36414 (incorporating the corrections above) is republished as follows:

$$= \frac{17.03\ g}{8\text{-eq}} \frac{24.05\ \text{liters}\ H_2S}{\text{mole}\ H_2S} \frac{1\ \text{mole}\ H_2S}{34.08\ g\ H_2S} \frac{10^3\ ml}{\text{liter}}$$

M_a = Molecular weight of ambient air saturated at impinger temperature, g/g-mole.
M_s = Molecular weight of sample gas (nitrogen) saturated at impinger temperature, g/g-mole. (For tests carried out in a laboratory where the impinger temperature is 25 °C, M_s = 28.5 g/g-mole and M_a = 27.7 g/g-mole.)
N_I = Normality of standard iodine solution (0.01 N), g-eq/liter.
N_T = Normality of standard $Na_2S_2O_3$ solution (0.01 N), g-eq/liter.
P_{bar} = Barometric pressure, mm Hg.
P_{std} = Standard absolute pressure, 760 mm Hg.
Q_{std} = Volumetric flow rate through critical orifice, liters/min.

Date _____
Critical orifice ID _____
Soap bubble meter volume, V_{sb} _____ liters
Time, Θ_{sb}
Run no. 1 _____ min _____ sec
Run no. 2 _____ min _____ sec
Run no. 3 _____ min _____ sec
Average _____ min _____ sec
Convert the seconds to fraction of minute:
Time
= _____ min + _____ Sec/60
= _____ min
Barometric pressure, P_{bar} = _____ mm Hg
Ambient temperature, t_{amb} = 273 + _____ °C
= _____ °K
Pump vacuum, = _____ mm Hg. (This should be approximately 0.4 times barometric pressure.)

$$V_{sb(std)} = \frac{(V_{sb})(T_{std})(P_{bar})(10^{-3})}{(T_{amb})(P_{std})}$$

= _____ liters

$$Q_{std} = \frac{V_{sb(std)}}{\Theta_{sb}}$$

= _____ liters/min

Table 1. Critical orifice calibration data.

$Q_{std,\ average}$ = Average standard flow rate through critical orifice, liters/min.
$Q_{std,\ before}$ = Average standard flow rate through critical orifice determined before H_2S sampling (Section 7.1.4.6), liters/min.
$Q_{std,\ after}$ = Average standard flow rate through critical orifice determined after H_2S sampling (Section 7.1.7), liters/min.
T_{amb} = Absolute ambient temperature, °K.
T_{std} = Standard absolute temperature, 293 °K.
Θ_s = Sampling time, min.
Θ_{sb} = Time for soap bubble meter flow rate measurement, min.
$V_{m(std)}$ = Sample gas volume measured by the critical orifice, corrected to standard conditions, liters.
V_{sb} = Volume of gas as measured by the soap bubble meter, ml.
$V_{sb(std)}$ = Volume of gas as measured by the soap bubble meter, corrected to standard conditions, liters.
V_I = Volume of standard iodine solution (0.01 N) used, ml.
V_T = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used, ml.
V_{TB} = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used for the blank, ml.

7.1.9.2 Normality of Standard $Na_2S_2O_3$ Solution (0.1. N).

$$N_T = \frac{1}{\text{ml}\ Na_2S_2O_3\ \text{Consumed}}$$

Eq. 16A-5

7.1.9.3 Normality of Standard Iodine Solution (0.01 N).

$$N_I = \frac{N_T V_T}{V_I}$$

Eq. 16A-6

7.1.9.4 Sample Gas Volume.

$$V_{m(std)} = (\bar{Q}_{std})(\Theta_s)(1-B_{ws})\frac{M_s}{M_b}$$

Eq. 16A-7

7.1.9.5 Concentration of H_2S in the Gas Cylinder.

$$C_{H_2S} = \frac{K N_T (V_{TB} - V_T)}{V_{m(std)}}$$

Eq. 16A-8

8. Bibliography

1. American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Standard Methods for the Examination of Water and

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VOL
53
ISS
21
FE
2
988
MI

federal register

Tuesday
February 2, 1988

Part III

Department of Education

34 CFR Part 669

Language Resource Center Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 669

Language Resource Center Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to govern the Language Resource Center Program which is authorized by section 603 of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498. The Language Resource Center Program is intended to provide assistance to centers which serve as resources for improving the nations' capacity for teaching and learning foreign languages.

DATES: Comments must be received on or before March 18, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Joseph F. Belmonte, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3054, ROB–3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Joseph F. Belmonte; Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION: The Language Resource Center Program was added to the foreign language and international studies programs authorized under Title VI of the HEA by the Higher Education Amendments of 1986. The goal of this program is to improve the effectiveness of language teaching and learning, through research, training, and outreach activities. The Secretary is authorized to award grants to institutions of higher education for the specific activities set forth in § 669.3.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Most institutions that would be interested in this program are expected to be major higher education institutions with enrollments of well over 500. They are not defined as small entities.

Paperwork Reduction Act of 1980

Section 669.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3054, Regional Office Building No. 3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 669

Colleges and universities, Education, Foreign languages, Reporting and recordkeeping requirements, Research, Teacher training.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: December 14, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 669 to read as follows:

PART 669—LANGUAGE RESOURCE CENTER PROGRAM

Subpart A—General

Sec.

669.1 What is the Language Resource Center Program?
669.2 Who is eligible to receive assistance under this program?
669.3 What activities may the Secretary fund?
669.4 What regulations apply?
669.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

669.20 How does the Secretary evaluate an application?
669.21 What selection criteria does the Secretary use?
669.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

669.30 What are allowable equipment costs?

Authority: 20 U.S.C. 1123, unless otherwise noted.

Subpart A—General

§ 669.1 What is the Language Resource Center Program?

The Language Resource Center Program makes awards, through grants or contracts, for establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

(Authority: 20 U.S.C. 1123)

§ 669.2 Who is eligible to receive assistance under this program?

An institution of higher education or a combination of institutions of higher education is eligible to receive an award under this part.

(Authority: 20 U.S.C. 1123)

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities may include—

(a) The conduct of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development of new materials for teaching foreign languages to reflect the results of research on effective teaching strategies;

(c) The development and application of proficiency testing that is appropriate for use in an educational setting to be used as a standard measurement of skill levels in all foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language proficiency tests, the use of effective teaching strategies and the use of new technologies;

(e) The publication of instructional materials in the less commonly taught foreign languages; and

(f) The widespread dissemination of research results, teaching materials, and improved pedagogical strategies to the postsecondary education community.

(Authority: 20 U.S.C. 1123)

§ 669.4 What regulations apply?

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 669.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that Apply to Department Regulations) and 34 CFR Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1123)

§ 669.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Language Resource Center" means a coordinated concentration of educational research and training resources for improving the nation's capacity to teach and learn foreign languages.

(Authority: 20 U.S.C. 1123)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 669.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for an award on the basis of the criteria contained in § 669.21.

(b) The Secretary awards up to 100 possible points for these criteria. However, if the Secretary establishes one or more priorities under § 669.22, the Secretary awards up to 120 possible points.

(c) The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1123)

§ 669.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating applications under this part:

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (20) (See 34 CFR 655.31(b))

(c) *Budget and cost-effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(f) *Need and potential impact.* (30) The Secretary reviews each application to determine—

(1) The extent to which the proposed materials or activities are needed in the foreign languages on which the project focuses;

(2) The extent to which the proposed materials may be used throughout the United States; and

(3) The extent to which the proposed work or activity may contribute significantly to strengthening, expanding, or improving programs of foreign language study in the United States.

(g) *Likelihood of achieving results.* (10) The Secretary reviews each application to determine—

(1) The quality of the outlined methods and procedures for preparing the materials; and

(2) The extent to which plans for carrying out activities are practicable and can be expected to produce the anticipated results.

(h) *Description of final form of results.* (5) The Secretary reviews each application to determine the degree of specificity and the appropriateness of the description of the expected results from the project.

(i) *Priorities.* (20) If, under the provisions of § 669.22, the application notice specifies priorities for this program, the Secretary determines the degree to which the priorities are served.

(Authority: 20 U.S.C. 1123)

§ 669.22 What priorities may the Secretary establish?

(a) The Secretary may each year select funding priorities from among the following:

(1) Categories of allowable activities described in § 669.3.

(2) Specific foreign languages for study or materials development.

(3) Levels of education, for example, elementary, secondary, postsecondary, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1123)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 669.30 What are allowable equipment costs?

Equipment costs may not exceed fifteen percent of the grant amount.

(Authority: 20 U.S.C. 1123)

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VOL
53

SS
21

FE
2

988

MI

register

Tuesday
February 2, 1988

Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects; Final Rule

federal

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects

AGENCY: Public Health Service, HHS.

ACTION: Final rules.

SUMMARY: The Public Health Service (PHS) amends the regulations governing the use of funds for family planning services under Title X of the Public Health Service Act in order to set specific standards for compliance with the statutory requirement that none of the funds appropriated under Title X may be used in programs where abortion is a method of family planning. It is expected that the amendments will improve compliance by grantees with the statute and facilitate monitoring of compliance by PHS.

DATE: The rules are effective March 3, 1988, except for 42 CFR 59.9, which will be effective April 4, 1988.

ADDRESS: Nabers Cabaniss, Deputy Assistant Secretary for Population Affairs, Room 736E, 200 Independence Ave. SW., Washington, DC 20201

FOR FURTHER INFORMATION CONTACT: Nabers Cabaniss at 202-245-0152.

SUPPLEMENTARY INFORMATION: On July 30, 1987, President Reagan announced that the Department of Health and Human Services would, within 30 days, publish proposed regulations applicable to grants under Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, to give effect to the statutory prohibition on the use of Title X appropriated funds in programs include abortion as a method of family planning. On September 1, 1987, a Notice of Proposed Rulemaking was accordingly published in the **Federal Register**, 52 FR 33210. The September 1 notice proposed rules which would prohibit Title X projects from counseling or referring project clients for abortion as a method of family planning. The proposed rules also required grantees to separate their Title X project—physically and financially—from any abortion activities. Finally, the rules proposed compliance standards for family planning projects funded under Title X to specifically prohibit certain actions that promote or encourage abortion as a method of family planning, such as the use of project funds for lobbying for abortion, developing and disseminating materials advocating abortion, or taking legal action to make abortion available as a method of family planning. Proposed 42 CFR 59.8–59.10.

The Department requested public comment on the proposed provisions. Approximately 75,000 comments were received during the 60-day comment period. Of these comments, a majority favored the proposed policies. The Department has carefully considered the issues raised by the public. A description and dicussion of these issues precedes the final rules set out below.

Background

Few issues facing our society today are more divisive than that of abortion. Those who oppose abortion do so on the ground that it is nothing less than the killing of an innocent human life and, as such, is not only the unconscionable destruction of an individual life but also sets the stage for the devaluation of life on a much broader scale. Those who favor the choice of abortion view it as an immediate and positive option for pregnant women in crisis and consider any governmental regulation of abortion to be a wrongful intrusion by the State into a very personal decision.

Indeed, the volume and highly charged nature of the public comments received on this regulatory proposal emphasize the polar divisions of national opinion on this issue. Because the rules below address such a controversial issue, it is imperative that these final rules be precisely understood. The extended discussion of the legal framework circumscribing the Department's regulatory authority and the detailed explanation of the Department's actions below are provided for this reason.

Title X of the Public Health Service Act was enacted in 1970 by Pub. L. 91–572. It authorizes the Secretary of Health and Human Services to, among other things, make grants to public and private nonprofit entities to establish and operate family planning projects. Section 1001(a) of the Public Health Service Act, 42 U.S.C. 300(a). Section 1008 of Title X, 42 U.S.C. 300a–6, contains the following prohibition, which has not been altered since enacted in 1970:

> None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

This language clearly creates a wall of separation between Title X programs and abortion as a method of family planning. It embodies a view that abortion is inappropriate as a method of family planning. Indeed as the Supreme Court has recognized abortion is "inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris* v. *McRae*, 448 U.S.297, 325 (1980). In *McRae*, the Supreme Court stated that because there is a "legitimate congressional interest in protecting potential life," Congress may decline to subsidize abortions, even though it may not erect legal obstacles to the exercise of that choice. *Id.* Section 1008 and the rule below express just such a decision and thus fall squarely within the range of choices that the Supreme Court has recognized that the government may legitimately make.

It is important to recognize that section 1008 extends to all activities conducted by the federally funded project, not just the use of federal funds for abortions within the project. When a statute focuses only on the acutal use of federal funds, mere allocation of costs through appropriate bookkeeping entries may be appropriate. In section 1008, however, Congress crafted a broader prohibition, and that prohibition should be given effect.

Moreover, it is clear that Congress designed the Title X program to provided preventive family planning and infertility services, not to provide all possible medical services, including services for the care of pregnant women. (Compare section 1001 of the Act, 42 U.S.C. 300 and section 330 of the Act, 42 U.S.C. 254c.) This design is consistent with the statutory prohibition of section 1008.

The legislative history of Title X bears out this interpretation. The most significant expression of congressional intent in this connection is contained in the Conference Report accompanying S. 2108, which contains the following statement:

> It is, and has been, the intent of both Houses that the funds authorized under this legislation be used only to support *preventive* family planning services, population research, infertility services,[1] and other related medical, information and education activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion in order to make clear this intent.[2]

In addition, Congressman John D. Dingell, the principal sponsor of section 1008, made the following statement on the floor of the House:

[1] The statutory requirements for infertility services was not added until the 1978 amendments.

[2] Conf. Rep. No. 91–1667, 97th Cong., 2nd Sess. 8–9 (1970).

> Mr. Speaker, I support the legislation before this body. I set forth in my extended remarks the reasons why I offered to the amendment which prohibited abortion as a method of family planning * * *. With the "prohibition of abortion" the committee members clearly intended that *abortion is not to be encouraged or promoted in any way* through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this Act.[3]

Thus, as clearly contemplated by Title X and its legislative history, "family planning" as circumscribed by section 1008, permits only activities related to facilitating or preventing pregnancy, not for terminating it.

Initial Implementation Through Advisory Opinions

Critical to an understanding of the rules below is an understanding of the past history of the Title X program. The Department has, since 1972, interpreted section 1008 not only as prohibiting the provision of abortion but also as prohibiting Title X projects from in any way promoting or encouraging abortion as a method of family planning. Further, based on the legislative history, the Department has also, since 1972, interpreted section 1008 as requiring that the Title X program be "separate and distinct" from any abortion activities of a grantee.

Initially, the Department's interpretation of the language of section 1008 was limited to opinions of its Office of General Counsel (OGC). After quoting the passage from the Conference Report and the statement of Congressman Dingell, cited above, the first such OGC opinion concluded that "it is apparent that the Congressional intent was to prohibit a broader scope of activity than a literal reading of section 1008 would require."[4] In these opinions, however, the Department generally took the view that activity which did not have the immediate effect of promoting abortion or which did not have the principal purpose or effect of promoting abortion was permitted.

The 1981 Guidelines

In 1981, the Department issued revised Title X program guidelines, "Program Guidelines for Project Grants for Family Planning Services." As with previous editions of the guidelines, they did not incorporate prior OGC opinions providing guidance on abortion counseling, referral and program separation. However, while the pre-1981 OGC opinions had been directed to provision of guidance on which abortion related activities were *permissible* within the section 1008 prohibition, the guidelines went a step further and *required* Title X projects to engage in abortion-related activities under certain circumstances. These guidelines for the first time required nondirective "options counseling" on pregnancy termination (abortion), prenatal care, and adoption and foster care when a woman with an unintended pregnancy requests information on her options, followed by referral for these services if she so requests. These guidelines were premised on a view that "non-directive" counseling and referral for abortion were not inconsistent with the statute and were justified as a matter of policy in that such activities did not have the effect of promoting or encouraging abortion. It should be noted that although OGC opinions continued to interpret section 1008 as prohibiting any abortion referrals beyond "mere referral," that is, providing a list of names and addresses without in any further way assisting the woman in obtaining an abortion (such as by providing transportation or arranging appointments), this policy was not reflected in the 1981 program guidelines, thereby creating an appearance of treating each option identically.

Upon review of the guidelines, however, the Department for serveral reasons no longer believes that these approaches were correct. First, with regard to the consistency of the guidelines with the statute, counseling and referral for abortion are prohibited by section 1008. The Department does not believe that the current guidelines can be viewed as consistent with section 1008 on the ground that they only involve counseling and referral, not the actual performance of abortions. Counseling and other informational services are some of the principal family planning services provided by Title X programs, and section 1008 is applicable to all aspects of the program. Because counseling and referral activities are integral parts of the provision of any method of family planning, to interpret section 1008 as applicable only to the performance of abortion would be inconsistent with the broad prohibition against use of abortion as a method of family planning. As discussed above, "family planning," as clearly contemplated by Title X and its legislative history, refers to activities relating to facilitating or preventing pregnancy, not to terminating it. The current guidelines, however, require grantees to involve themselves in activities specifically related to the termination of pregnancies. This creates a conflict between the guidelines and the statutory prohibition on Title X programs using abortion as a method of family planning.

In addition, the Department does not believe that the requirement that the counseling must be "nondirective" is sufficient to render the guidelines consistent with the statute. Counseling in a Title X program, whether directive or nondirective, which results in abortion as a method of family planning simply cannot be squared with the language of section 1008, regardless of whether the actual abortion occurs in another program operated by the grantee or in an unrelated program.

Finally, the 1981 guidelines are highly questionable simply as a matter of statutory policy. The policy that section 1008 reflects is that abortion is not to be encouraged or promoted in any way; nowhere in the statute is any countervailing policy reflected. Nonetheless, the current guidelines require Title X programs to counsel and refer regarding abortion. Whether or not such a requirement is consistent with the express prohibition is section 1008, it is less sound as a matter of policy than the rules being promulgated today. In sum, upon reexamination of the issue, the Department is unable to conclude that the current guidelines are consistent with the statute. Thus, one basis for the regulations being promulgated today is to bring program practices into conformity with the language of the statute.

Rational Basis for the New Regulation

Even if the abortion counseling and referral provided for by the current guidelines were not prohibited by the express language of section 1008, the Department has concluded, as a matter of its experience with Title X, its responsibility to administer the program as provided by Congress, and its general administrative discretion, that the provisions of the current guidelines do not faithfully and effectively maintain the prohibition contained in section 1008. In the first place, the language of the guidelines pertaining to section 1008 is so brief and so broadly worded that it fails to offer "clear and operational guidance" to grantees about how to preserve the distinction between Title X programs and abortion as a method of family planning. Second, in 1982, both the Department's Office of the Inspector General (OIG) and the General Accounting Office (GAO) urged the Department to give more specific, formalized direction to programs about

[3] 116 Cong. Rec. 37535 (1970).

[4] "Abortions as a Method of Family Planning—Section 1008 of the Public Health Services Act" (April 20, 1971).

the extent of prohibition on abortion as a method of family planning.

The OIG, after auditing thirty-two Title X clinics, found that the Department's failure to provide specific program guidance regarding the scope of section 1008 had created confusion about precisely which activities were proscribed by the section, and had resulted in variations in practice by grantees. In particular, the GAO, in a report based on an audit of fourteen Title X clinics, found that the clinics were relying on the Department's policy of permitting both Title X family planning services and separately funded, abortion-related activities to be provided at a single site.[6] In the report, GAO found that some of these providers had engaged in a number of practices that were questionable in light of section 1008. These included clinic counseling practices which did not present alternatives to abortion,[7] clinic referral practices which went beyond HHS referral policy,[8] and clinic literature promoting abortion as a back-up method of family planning.[9] Further, the GAO found "questionable" lobbying expenses, including some instances where clinics had used Title X funds to pay dues to organizations that lobbied and two instances where small amounts of programs funds has been used directly for lobbying. GAO observed that the specifics of the Department's abortion policy were contained only in legal opinions issued by its Office of General Counsel:

> In effect, HHS' regulations that spell out overall policy and implement provisions of the law and corresponding program guidelines that elaborate on the law and regulations in operational terms do not contain the specific policy guidance concerning section 1008 needed by title X recipients.[9]

Accordingly, GAO stated that,

> We recommend that the Secretary establish clear operational guidance by incorporating into the title X program regulations and guidelines HHS' position on the scope of the restriction in section 1008.[10]

Public comments received by the Department on the proposed regulations further demonstrate the problems inherent in "nondirective counseling" and lend weight to concerns raised by the OIG audit and GAO report. Many comments argued that the practice or nondirective counseling has been the subject of widespread abuse, with many providers foregoing any balanced discussion of options in favor of pressuring women, particularly teenagers, into obtaining abortions. Numerous comments were received from women who said that they were never presented with any favorable or neutral information on any other option. Many of these commenters specifically mentioned experiences with particular Title X grantees or projects. A typical complaint was that the counseling that they had received was one-sided, with the fetus dehumanized as a "lump of tissue," "fetal tissue," or "uterine contents," and with no information presented as to gestational characteristics and stage of development, so that they were not given adequate information on which to make an informed choice regarding abortion. These commenters typically stated that they had experienced severe and long-lasting regret over the decision to abort, and also stated that they were given no counseling at the time they made their decision to abort as to the remorse and guilt they might later feel:

> I have experienced the one-sidedness of * * *'s "counseling" and have seen the consciences of friend's (sic) shattered by what they now know was the wrong choice. Too many people are literally encouraged to use abortion as a birth control device because of its availability. * * * has never discussed the alternative side with anyone I know. I don't feel guilty or presumptive calling their efforts exploitive.
>
> These clinics do not provide adequate information to pregnant women. There is no "choice" involved in regard to abortion. It is the *only* solution offered. I know this from experience and have spoken to many women who have shared that experience.
>
> Please indulge me a little longer to say this, *they lied to me.* My third abortion required hospitalization and this was not done for the others. So I pointedly asked *why?* Her response, "No—well, yes—it's the same." Now I have learned I submitted to a *dilitation* (sic) and *evacuation—second trimester abortion.* I never knew this until three years ago. *But I asked and she lied to me.* * * * The family planners holler about—(and I quote from their Action Alert here in * * * N.Y.) "Medical professionals have an *obligation* to give patients information and referrals on *all* options, and patients have a right to make an informed decision. (fully informed)" *Where was mine?*
>
> Since Planned Parenthood is the foremost abortion provider in the U.S., they have a responsibility to tell women the truth about fetal development and subsequent risks involved in pursuing abortion as an option. I know for a fact that they do not. The baby is dehumanized as much as possible by being termed a "blob," "products of conception," or "uterine contents." Not even the term fetus is used by the counselors. The very risky surgery is then passed over as safe [and] harmless [and] there is no mention of emotional or physical after effects. The counselors are told that any information on fetal development is distasteful [and] should not be used to avoid making the woman feel guilty. * * * Since my abortion, I have had 2 miscarriages.
>
> If I had been given proper information as to the development of my 12 week old child and if I had been presented with options to abortion rather than just abortion (given by the *F.P. clinic*) I would have had my baby.
>
> I had an abortion at the age of 16 years with the full encouragement of * * * in * * *, CA. They even called and made my first appt. to see the Dr. who would perform my abortion. There was no encouragement to consider adoption or to keep my baby. They helped me to get rid of my baby as quickly as possible.
>
> I was not given a complete picture of my situation. Therefore the decision I made for abortion was no decision at all. It was a coercion. Sixteen year old girls do not have the where-with-all to make such a life threatening, life changing decision *especially* when the choices given are so deceitfully incomplete. If I had known the reality of what I chose I would not have chosen an abortion. I killed my baby! How would *you* feel/react if someday several years after abortion you saw pictures of a 12 week old fetus and learned this was the picture of a perfectly formed human being. Hmmm—* * * [they] told me it was a "blob!" I was devastated beyond all description.
>
> I was a seventeen year old who had just found out I was pregnant. * * * I couldn't get out of school to visit * * *, so they sent a nurse to see me. She blew my spirit down so much. * * * I expected her to help me and she wanted to destroy a little, innocent baby for convenience. She said, "There's no way you can bring a child into this world and take care of it on your own. It isn't fair to the baby. People will speak badly of you. How can you let a baby be born with no father and no name? What about school? You can't finish 12th grade walking around pregnant. What kind of life would that be? * * *" Then she suggested an abortion. I started crying. All I could feel was why would anyone want to kill * * * her own flesh and blood * * * and why was she urging me to do this?

The Department, accordingly, concludes that there is an adequate basis for this rule since it is reasonable in light of all the circumstances. See *Chevron, U.S.A., Inc.*, v. *Natural Resources Defense Council, Inc.*, 476 U.S. 837 (1984).

The New Regulation

The rules below, which are issued pursuant to the Secretary's rulemaking authority at 42 U.S.C. 300a–4(a), establish far more specific and clearer standards for compliance with section 1008. They focus the emphasis of the Title X program on its traditional mission: The provision of preventive family planning services specifically designed to enable individuals to determine the number and spacing of their children, while clarifying that pregnant women must be referred to appropriate prenatal care services. H. Rep. No. 91–1472, 91st Cong., 2nd Sess. (1970), reprinted at 3 U.S. Code Cong. & Adm. News 5071 (1970). In addition, they require that grantees maintain program integrity and separation. The regulations, however, do not restrict the use of funds outside the Title X program or impose restrictions on funds provided under other federal programs. Nor do they prevent a woman from seeking and obtaining an abortion outside the Title X program. They thus make no attempt to establish abortion restrictions beyond the parameters of a Title X project.

Although the rules below thus adhere to the broad policies laid out in the proposed rules, a number of changes in particular provisions have been made in response to concerns raised by the public comments. A summary of these comments, an explanation of the changes to the final rules, and the Department's responses to the remainder of the comments are set out below.

Discussion

I. Definitions

The proposed rules set out a series of definitions to be added to the regulatory definitions at 42 CFR 59.2. The additional definitions proposed were of the terms "family planning", "grantee", "organization", "program" and "project", and "Title X". While the suggested definitions of the terms "grantee," "organization," and "Title X" elicited very little comment, the remaining definitions were the subject of extensive debate. In addition, a few comments suggested that other terms be defined to clarify the proposed rules.

A. Comments.

1. *"Family planning"*: As proposed, this term was defined as—

> the process of establishing objectives for the number and spacing of a family's children, and selecting the means (including natural family planning methods, adoption, infertility services and general reproductive health care, abstinence and contraception) by which those objectives may be achieved. As such, family planning does not include medical services or counseling after pregnancy is diagnosed (including prenatal or postpartum care or counseling), or abortion-related services. As it relates to the statutory prohibition on the inclusion of abortion as a method of family planning, proper family planning should reduce the incidence of abortion.

Numerous providers and provider organizations objected to this definition. A large number of comments took issue with the first sentence of the definition. First, some commenters pointed out that by limiting the definition of "family planning" to services provided to "families," the Department would be excluding from coverage single individuals, whom Congress intended to be served. Other comments objected to the items included in the parenthetical expression in the first sentence of the definition. Many providers argued that listing "contraception" at the end of the list of family planning methods de-emphasizes its importance in Title X, and converts Title X into a program that is principally designed to encourage abstinence and promote adoption, contrary to Congress's intent. The inclusion of "adoption" as a method of family planning elicited a mix of comments. Some providers thought its inclusion inappropriate and inconsistent with the overall mission of Title X, while others favored its inclusion. A few comments pointed out that adoption and infertility services do not fit in conceptually with preventive methods of family planning. A few commenters were concerned that the reference to infertility services in the parenthetical expression not be construed as connoting approval of *in vitro* fertilization, surrogate motherhood, and the like. Finally, concern was expressed that the definition in general and the first sentence in particular would preclude Title X projects from continuing to provide the range of health services— such as physical examinations, gynecological services, screening and treatment for sexually transmitted diseases, screening for breast cancer— that they have traditionally provided.

A common objection was to the exclusion of prenatal care from the range of services offered by Title X clinics. Citing the 1970 Senate committee report, they argued that Title X projects were intended to be providers of comprehensive family planning services and that family planning involves more than birth control. Many providers argued that the time at which pregnancy is diagnosed is the optimal time to educate pregnant clients as to proper nutrition and the importance of avoiding high-risk behavior—such as smoking, consumption of alcohol, drug abuse, and management of weight gain—as early pregnancy is when organogenesis is proceeding most rapidly. These comments asserted that terminating the Title X project's involvement with the client at this point would have significant adverse public health consequences (such as an increase in low birth weight, maternal and infant health complications, and infant mortality), as the disadvantaged status (*i.e.*, youth, poverty, low education) of most of the program's clientele makes it unlikely that they will obtain adequate prenatal care from other sources in a timely fashion. A number of providers argued that for many Title X clients, the Title X project constitutes their only source of health care due to factors such as geographic isolation, unwillingness of other providers to accept non-paying clients, or the inability of the clients to arrange for care themselves. It was argued that the effect of the definition will be to create a dual system of health care in which the poor served by Title X clinics are relegated to inferior health care, while the population that can afford to pay for care will continue to obtain prenatal care.

Similar concerns were noted with respect to the exclusion of postpartum care from the definition of family planning. In addition, some commenters contended that the exclusion of postpartum care is inconsistent with the statute. First, many health professionals and providers argued that proper medical practice dictates that family planning counseling and selection of a family planning method be done postpartum, as that is when it is most likely to be effective; exclusion of services at that point, they argued, would be thus inconsistent with the statutory emphasis on the provision of "comprehensive * * * and effective family planning services * * *". Second, several comments argued that the legislative history itself indicates

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[6] Comp. Gen. Rep. No. GAO/HRD–82–108, "Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification," p. 22 (1982) (hereafter referred to as "the GAO Report".)

[7] At one clinic discussed in the report, women were required to complete paperwork before their pregnancy tests and preselect how they intended to deal with their pregnancy. If they chose to continue the pregnancy, they were counseled on that option. If they checked abortion, they were counseled only on that choice. Six other clinics, which did not require prepregnancy test decisions, did not routinely counsel women on other alternatives if they had decided on abortion.

[8] Four clinics provided clients with brochures prepared by abortion clinics. At two clinics, clients seeking abortions were allowed to use the telephone to make appointments for abortions. At one clinic, appointments for abortion were made for clients who did not speak English. At one clinic, the Title X recipients provided women loans for abortions for nonprogram funds; however, administrative costs associated with the referral and loans were charged to Title X program costs. The GAO Report also noted OIG's discovery that several Title X clinics in Indiana had provided and witnessed the signing of consent forms required by an abortion clinic.

[9] One Texas clinic showed all clients a film about birth control methods and sterilization that included a section that presented abortion as a legal alternative in the event of an unwanted pregnancy. Four clinics provided or made available to all clients entering the family planning program handout material that discussed abortion. Typically this material listed various birth control methods with the barrier method and early abortion in the event of a failure as an alternative method.

[9] The GAO Report, p. 14–15.

[10] The GAO Report, p. 22.

that projects are supposed to provide family planning services to women "shortly after childbirth," quoting the 1970 House and Conference Reports.

Numerous comments objected to the use of the phrase "abortion-related services" in the exclusionary portion of the definition of "family planning" on the ground that the former term was vague and overbroad. In addition, it was argued that the exclusion of "abortion-related services" makes the definition inconsistent in that abortion is excluded as a method of family planning, while there are repeated references in the remainder of the regulation to "abortion as a method of family planning."

Supporters of the regulations generally favored adoption of the definition as proposed. However, a few reservations were expressed concerning its coverage. It was suggested that the limitation on the provision of abortion-related services and prenatal and adoption services for pregnant women be explained to clarify that although prenatal and adoption services are not preventive family planning services, they are not subject to the same stigma as abortion services, which are specifically prohibited by the statute. It was therefore suggested that the regulations should permit and support efficient and formalized referral processes to assure access to prenatal and adoption services. It was also suggested that the proposed definition was still inadequate, in that it would not permit crisis pregnancy centers to be funded as Title X grantees, since abortion counseling which discourages abortion is not within the definition.

2. *"Program" and "project":* This proposed definition elicited a number of comments, primarily from supporters of the proposed rules. In general, these comments objected to equating the terms program and project, contending that the definition of "program" as applied to receipt of Title X funds was not consistent with the ordinary usage and meaning of the term and allowed grantees artificially to manipulate compliance. The commenters argued that the Department's longstanding interpretation of the terms as being interchangeable for the purposes of administration of section 1008 is wrong and permits projects funded under Title X to evade the restrictions of section 1008 by simple bookkeeping maneuvers. Proponents wanted to strengthen the regulation to prevent grantees from simply omitting certain items from their grant proposal while in fact including prohibited activities within the program.

3. *Other definitions:* In addition, a few comments suggested that other terms used in the proposed regulations should be defined in order to clarify the scope of the regulatory policies. Among the terms that were suggested for definition were "abortion," "abortion-related services," "prenatal services," "low-income family," and "medically indicated." With respect to the term "abortion," questions were raised about its meaning, and it was suggested that procedures such as "menstrual regulation," "menstrual extraction," and "endometrial aspiration" be included in any definition of abortion since these are euphemisms for proecedures which are actually abortions. The term "abortion-related services" was widely criticized as vague; comments asserted that it could include services such as housekeeping or laundry if shared by the abortion component of a medical facility. With respect to the term "prenatal services," it was suggested that the term be defined to include services to protect both maternal and fetal health and that referrals not be allowed where the provider is primarily a provider of abortion services. It was suggested that the current regulatory definition of "low-income family" be changed to delete the provision which requires that unemancipated minors who wish to receive services on a confidential basis be considered on the basis of their own resources. It was suggested that the term "medically indicated" be clearly defined to prohibit referral for abortion or abortion-related services except where the life of the mother is in imminent danger as in the case of an ectopic pregnancy, or defined to prohibit any referral for abortion. With respect to the term "organization," proponents of the regulation argued that it was unclear and appeared to treat as separate organizations an organization's activities in several States, creating a cumbersome situation for the grantee. They suggested that the definition be clarified to cover a legal entity chartered in one State and authorized to do business in several States.

B. Response

1. *"Family planning":* The Department acknowledges that the definition has caused misunderstanding in several respects and has revised the proposed definition of this term accordingly. First, it was never the Department's intention to suggest that contraception is to be deemphasized in the Title X program; to make that perfectly clear, it has placed the term "contraception" at the beginning of the list of services to be provided in the second sentence of the definition. In addition, it agrees that exclusion of postpartum services was inappropriate to the extent that it appeared to exclude provision of preventive methods of family planning in the postpartum period, and has accordingly eliminated the exclusion from the definition. With respect to the comments criticizing the use of the word "families," the definition has been conformed more closely to the language of Title X, clarifying that the eligibility of individuals will not be affected by the regulation. Finally, with respect to the argument that the definition of family planning was logically inconsistent with the rest of the regulation because of the exclusion of "abortion-related services," it has modified the definition of the term to make clear that while abortion may, in a statutory sense, constitute "a method of family planning," it is an impermissible method in programs supported by funds appropriated under the title.

Although the Department has not accepted the suggestions that it delete the references to "adoption" and "infertility services" in their entirety from the definition of "family planning," it has modified the definition in response to the concerns raised. Both approaches constitute legitimate means of determining family size and spacing, but adoption is simply one means of addressing the broader problem of infertility. Thus, the term "infertility services" in the definition has been changed to make this relationship clear. With respect to the criticism that the definition should be limited to preventive methods of family planning only, it is clear that Congress intended the term "family planning" to be broader in scope than simply contraception, as infertility services are included as one of the mandatory services listed in section 1001(a) of the Act. With respect to the comments suggesting that inclusion of infertility services should not permit funding of in vitro fertilization, surrogate motherhood and similar methods of providing children to childless couples, the Department continues to construe the term, as it has in the past, as requiring only the provision by the Title X project of what are known as "Level I" services (*i.e.*, initial infertility interview, education, examination, appropriate laboratory testing, counseling and appropriate referral).

The Department notes that a number of the objections to the proposed definition were premised on a misinterpretation of its scope. The Department agrees that family planning is broader than just the provision of contraceptive services, but it disagrees that either the proposed definition or the definition below so restrict the term; see, in particular, the inclusion of "general reproductive health care" and "infertility services" in the definition. Moreover, it is not correct that the proposed definition would exclude physical examinations, screening for breast cancer or treatment of gynecological problems. All of these services continue to be authorized under the definition, either concomitant to providing contraceptive services or as "general reproductive health care." In addition, services not related to pregnancy which are necessary to general reproductive health care, such as treatment for sexually transmitted diseases, continue to be authorized under the definition.

While the Department concurs in comments regarding the importance of early access to high quality prenatal care, it does not believe that Title X was intended to provide prenatal care, and therefore does not accept the suggestion that the exclusion of prenatal care from the definition of "family planning" be dropped. It disagrees with the argument that the exclusion is inconsistent with the statute. The 1970 Conference Report to Pub. L. 91-572 makes it abundantly clear that while medical services are clearly permitted under Title X, they are authorized only when related to population research, infertility services of preventive family planning services. The exclusion of prenatal care is consistent with this concept.

In addition, provision of prenatal services, like the requirement for pregnancy options counseling, was not included in program guidelines prior to 1981. Moreover, under the 1981 program guidelines, prenatal services (other than initial diagnosis and counseling) may only be provided by Title X projects in very specific and limited circumstances and with prior approval from the relevant regional office of the Department. Since 1981, very few Title X projects have requested or received this authority. At the present time, for instance, we are aware of only two grantees in one region that have received approval to provide extended prenatal services as part of their Title X projects. Thus, it is not correct, as contended by some commenters, that prenatal services have traditionally been a major component of the Title X program. Nor does the Department agree with the commenters that the exclusion represents unsound public health policy, so long as it is clear that the Title X project must facilitate obtaining the prenatal care necessary for a healthy pregnancy. Because Title X has never funded substantial amounts of prenatal care and thus availability of prenatal services would be unaffected by these provisions, the Department does not agree that low income clients will receive inferior care to what they are now receiving. Indeed, the provisions emphasize the importance of helping clients to receive appropriate prenatal care through referral.

The Department concurs in comments that the regulations should clarify that, although beyond the scope of Title X, prenatal services and adoption services for pregnant clients do not fall under the same statutory prohibition that abortion services do. The regulation thus clarifies that, while Title X does not fund prenatal care, Title X projects are required to facilitate access to prenatal care and social services, including adoption services, that might be needed by the pregnant client to promote her well-being and that of her child, while making it abundantly clear that the project is not permitted to promote abortion by facilitating access to abortion through the referral process. See the definition of "prenatal care" at §§ 59.2 and 59.8 below.

Finally, the Department rejects the argument that these regulations are objectionable because they create a "two-tier" system of health care, *i.e.*, clients of Title X programs, many of whom are low-income, are prohibited from receiving abortion counseling and referral, while wealthy women can obtain these services from their own physicians. In section 1008 Congress chose to prohibit the provision of abortion services by Title X programs. This choice—like any choice to impose restrictions on the use of federal funds—necessarily creates a "two-tier" system to the extent that any legally obtainable service is available in the marketplace and unavailable in the federal program where such services are prohibited by law. Commenters may believe that this is unsound as a matter of social policy because they believe the federal government should fund all medical care. If so, however, their remedy lies with Congress, not with the Department which manifestly lacks the legal authority to implement such a social policy.

2. *"Program" or "project":* The Department believes that it is not supportable, in light of the legislative history in the 1970 Conference Report, to read the term "program" in section 1008 as relating to the funded organization as a whole, as urged by some comments. The Department agrees that a Title X project must be separate and distinct from abortion activity and that "simply omitting offending items from their grant proposals" does not constitute sufficient compliance with this precept. Indeed, this is the rationale for promulgation of § 59.9 below.

However, in response to the confusion expressed by many commenters on this issue, the Department has changed the rules below to provide a separate definition of the term "program" and "project" that recognizes the generic meaning of those terms as use in the statute and their commonly understood usage in the grantee community. Two new terms, "Title X program" and "Title X project," have been added corresponding to the original definition of program and project in the proposed rules. These latter terms, as defined below, carry substantially the same meaning as originally proposed and clarify the scope of the regulatory requirements. However, to clarify a point that apparently confused many commenters, a sentence has been added in the latter definition relating to what constitutes Title X project funds. The Department's concern is that all funds allocated to the Title X program or project—whether they are direct Title X grant funds, program or grant-related income, or matching fund—be spent in compliance with section 1008 and that the program be separate and distinct from prohibited abortion activities. The definition in the final regulation accomplishes this statutory mandate.

The above definitional changes necessitated minor conforming changes to the existing regulations. These changes are set out at items 4 and 6 in the rules below.

3. *Other definitions:* The Department has defined the term "prenatal care" in response to the public comments on this issue. It has not included any other definitions as it does not agree that they are needed or appropriate here. It has deleted the definition of the term "organization" because it believes the definition is self-evident and unnecessary. The Department has not defined the term "medically indicated" because, as used in § 59.5(b)(1), it refers to an infinite variety of physical conditions aside from pregnancy, making further definition infeasible. As the proposed rules did not address the issue of defining the term "low income family," the definition remains unchanged. The term "abortion-related services" has not been defined because it is no longer employed in the text of the rules below. The Department has not defined the term "abortion" because it believes the meaning is clear.

II. Standards of Compliance

The proposed rules provided that a project may not receive funds unless it provides assurances satisfactory to the

Secretary that it does not include abortion as a method of family planning. Such assurances must include representations (supported by documentary evidence where the Secretary requests) as to compliance with each of the requirements of the proposed regulations.

A. Comments

Some commenters suggested that provisions be added which would prohibit the funding of a program where there are special risks that Title X funds will be used for abortion-related activities due to abortion advocacy activities of the organization. They maintained that recognition of organizations having special risks, and denial of funding where such risks exist, will facilitate the implementation of the Title X program as Congress originally intended. Commenters then went on to list serveral examples of special risks associated with grants to advocacy organizations, including situations which would place an abortion advocacy organization in a government-sponsored position of great influence with persons of special vulnerability, facilitate abortion in conflict with the purpose of the Title X program, or make personnel choices for reasons foreign to the purpose of the grant.

B. *Response*

The Department notes that the suggested provisions relating to advocacy organizations were derived from the Public Health Service's (PHS) Grants Administration Manual policy relating to "Exceptional Organizations," a policy which has recently been revised by the Department. While the Department agrees with the concept behind the proposed provision, it believes that it is more appropriate to deal with the issue on a broader PHS-wide level. Furthermore, the Department believes that the risks associated with funding advocacy organizations will be substantially mitigated through implementation of the requirement of separation between Title X programs and activities prohibited under section 1008 and the rules pursuant thereto.

III. Counseling

Section 59.8 of the proposed rules provided, among other things, that a project which

provides counseling * * * for abortion services as a method of family planning is not eligible to receive funds under this subpart. In addition, because Title X funds are intended only for family planning, services related to pregnancy care after pregnancy is diagnosed may not be provided with Title X funds.

Proposed § 59.8(a). In addition, proposed § 59.8(b) set out three examples interpreting the regulatory language relating to counseling: proposed § 59.8(b)(1) related to the provision of prenatal services by the Title X project, which was termed impermissible; proposed § 59.8(b)(3) related to counseling for infertility and adoption for an infertile couple, which was termed permissible; and proposed § 59.8(b)(4) related to the provision by the project of a brochure and a film that include sections on abortion, which was deemed to render the project ineligible for Title X funds.

A. *Comments*

These provisions elicited the most extensive comments of any provisions of the proposed rules. Thousands of comments were received in opposition to the proposed provisions, while thousands likewise were received supporting the proposed policies. The main issues addressed by opponents and proponents are summarized below.

Opponents of the counseling provisions advanced the following objections: (1) They would require providers to engage in unethical and unprofessional conduct; (2) they would require providers to treat Title X patients, both for contraceptive services and at the point of pregnancy diagnosis, without informed consent; (3) because of the two preceding factors, Title X projects would be exposed to increased risk of tort liability, an increase in insurance costs or inability to obtain insurance, and a decreased ability to hire or retain competent family planning professionals; (4) these factors would in turn mean that, as a practical matter, present Title X projects would be forced to relinquish their title X funds, resulting in a net loss of services to the Title X client population; (5) there is no evidence to show that the proposed provisions are needed; (6) the proposed provisions are inconsistent with Title X; (7) the proposed provisions violate the First Amendment rights of providers and health professionals in that they constitute viewpoint discrimination and restriction of free speech; and (8) the proposed provisions impermissibly burden women's exercise of their right to an abortion and violate the due process rights of physicians and other health professionals to practice their profession.

Proponents of the regulations, on the other hand, argued that the proposed provisions are needed to strengthen the implementation of section 1008. They contended that Title X is in effect promoting abortion through current guidelines and practice, and the provisions would substantially correct this. They also contended that the counseling requirements in current guidelines wrongfully require organizations to engage in abortion-related activities in order to become a Title X grantee. Further, they maintained that such guideline requirements have been abused by Title X providers, who have in fact pressured pregnant women, particularly teenagers, to choose abortion. They maintained that the consequent loss of life involved, together with the emotional and physical effects on the women who aborted, are unacceptable in a program which was intended to have no connection with abortion at all, much less with the promotion or facilitation of abortion.

1. *Medical ethics:* Numerous providers, provider organizations, and health professionals argued that the proposed restriction of abortion counseling is countrary to sound medical practice and the canons of medical ethics. Basically, they contended that medical ethics require that a physician provide his patient with a full discussion of his view of her medical circumstances in order to enable her to make an informed choice as to treatment; nurses and social workers stated similar concerns. In this regard, a number of comments quoted the following statement from the 1982 Report of the President's Commission for the Study of Ethical Problems in Medicine and in Biomedical and Behavioral Research:

a physician is obligated to mention all alternative treatments, including those he or she does not provide or favor, so long as they are supported by respectable medical opinion.

Also cited were the American Medical Association's (AMA) principles of medical ethics, which state that patients "are entitled to accept or reject a health care intervention on the basis of their own personal values," and the *Standards for Obstetric-Gynecologic Service*, Sixth Edition, (*Standards*) of the American College of Obstetricians and Gynecologists, which state:

It is the physician's responsibility to inform the patient of the surgical or medical procedure being recommended. In most cases, the explanation should include the necessity of the treatment, the management alternatives, the reasonably foreseeable risks and hazards involved, the chances of recovery and the likelihood of desired outcome. Adequate opportunity should be provided to encourage and answer questions.

It was asserted that the proposed provisions would require providers to violate the canons of ethics governing their professions and thereby expose them to liability for malpractice. In this regard, opponents of the provisions stated that the provisions would require them to treat women differently depending on their medical circumstances. For example, the provision was commonly interpreted as meaning that a nonpregnant woman who has a severe diabetic or hypertensive condition could, under the provision, be counseled with respect to management of the condition, while a pregnant woman could not be.

It was also argued that the provision would require physicians to remain silent when confronted with a pregnant patient with medical conditions which may be exacerbated by pregnancy, such as diabetes, multiple sclerosis, lupus, or AIDS. These commenters apparently interpreted the provision as precluding any further discussion of medical symptoms or any other matter once pregnancy is diagnosed. Other commenters maintained that since the risks associated with both pregnancy and abortion increase substantially once the eighth week of pregnancy has passed, it is unethical to withhold information about both at the time pregnancy is diagnosed.

Proponents of the provisions, however, disputed that prohibiting discussion of abortion is unethical and instead contended that the requirements for "options counseling" in current guidelines are the ethical problem. It was noted, for example, that the House of Delegates of the AMA has consistently confirmed the right of practitioners to abstain from involvement in abortions. In this regard, it was argued that the ethical standard inherent in the AMA standards and elsewhere is not that a physician must counsel or refer, but rather that the physician *need not* counsel or refer for abortion. It was noted that laws in approximately 40 states protect the right of medical personnel not to participate in medical procedures such as abortion on the basis of conscience. Some maintained that as providers in a preventive family planning program, Title X providers are not qualified to provide services after pregnancy is confirmed.

Numerous commenters argued that the policy of requiring Title X providers to perform nondirective counseling that has been applicable in the past violates medical ethics by excluding from the program organizations which, for moral or religious reasons, refuse to counsel or refer women for abortions. In addition, many comments argued that the practice of nondirective counseling has been subject to widespread abuse, with many providers foregoing any balanced discussion of options in favor of pressuring women, particularly teenagers, to obtain abortions.

Other comments argued that by requiring "options counseling," the Title X guidelines promote a moral relativism which holds that all options are equally valid morally, without providing for the expression of moral arguments opposed to abortion or discussion of potential psychological consequences of abortion. This, it is argued, results in abortion being presented as the easiest, quickest, and least harmful solution when in fact it may not be, and when it should in any event not be so presented in a program that has a statutory bias against abortion as a method of family planning.

2. *Informed consent:* Opponents of the proposed provisions expressed similar concerns relating to the issue of obtaining informed consent so as to minimize the likelihood of malpractice claims. While most of the comments relating to the issue of informed consent raised the liability concerns discussed in the preceding section, a number of additional concerns were also raised. A number of grantees and provider organizations argued that prohibiting provision of information relating to abortion precludes obtaining an informed consent from the patient, either with respect to continuation of pregnancy or with respect to selection of a method of birth control. This, it was argued, would place grantees in the position of violating laws relating to informed consent of over 40 states; specifically mentioned were California, Maryland, Michigan, Massachusetts, New York, and Wisconsin.

Proponents of the regulations, on the other hand, argued that the requirement of informed consent, in jurisdictions where it applies, applies only to medical treatment, not to counseling which leads to referral. Since the proposed rules provided that pregnant women would not receive treatment for pregnancy in the Title X project, the requirement to obtain informed consent for services relating to pregnancy does not arise. They also argued that the informed consent laws of various states would not present a problem for Title X providers, as they would be superseded, pursuant to the Supremacy Clause of the Constitution, to the extent they imposed requirements inconsistent with Federal regulation. Those who stated that they had an abortion and had not been counseled about its effects argued that they could not have informed consent because they had not been given complete information.

3. *Liability and licensure risks:* Because of the foregoing factors, many providers and provider organizations argued that the proposed provisions present unacceptable risks for providers. Specifically, they argued that failure to disclose relevant risks and considerations to individuals, either in the process of counseling regarding the selection of a method of birth control or concerning pregnancy once pregnancy is diagnosed, would subject them to liability for malpractice on several possible tort grounds: defective consent, abandonment, negligent failure to disclose, "wrongful birth"/"wrongful life". Cases such as *Canterbury* v. *Spence*, 464 F. 2d 772 (D.C. Cir., 1972), *Scott* v. *Bradford*, 606 P. 2d 554 (Okla., 1979), *Betesh* v. *U.S.*, 400 F. Supp. 238 (D.D.C., 1974) were cited as examples of the types of tort liability to which the proposed provisions would expose providers.

Accordingly, some commenters asserted that they would probably face suit if they complied with the proposed provisions, and, moreover, might find that they were uninsurable. It was also argued that compliance with the proposed provisions would place health professionals (particularly physicians) in many jurisdictions at risk of losing their licenses. For example, the Attorney General for the State of Massachusetts stated that physicians could lose their licenses in Massachusetts if they complied with the regulations. It was argued that health professionals would find these risks unacceptable. Thus, it was claimed that the regulations would mean that Title X providers would be unable to attract or retain competent professional staff.

Proponents of the regulations, on the other hand, argued that the same Supremacy Clause considerations described in the preceding section would protect providers from successful suit. They accordingly argued that the proposed regulations should not increase providers' liability and licensure risks.

4. *Impact on Title X client population:* Opponents of the proposed provisions thus argued, based on the above reasons, that the net effect of the proposed provisions relating to counseling would be to force current Title X providers to reject Title X funds entirely. A number of comments argued that the proposed provisions are inconsistent with requirements applicable under other State and federal programs (such as the programs of grants to migrant and community health centers under sections 329 and 330 of the Public Health Service Act and block

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grants to States for maternal and child health programs under Title V of the Social Security Act). Commenters making this point contended that they would have to elect between sources of funding; they typically stated that they would reject Title X funds. Thus, it was argued, a net loss of services to the population currently served by Title X would result. Planned Parenthood of Pierce County, Washington, for instance, said that if it rejected Title X funds, approximately 5,000 low income women in that county would be placed at risk of unwanted pregnancies; Planned Parenthood of Chicago said that if it rejected Title X funds, "tens of thousands" of teenage and low income women would be placed at risk. Proponents, however, asserted that the regulations would have a positive impact on Title X clients and their babies by helping protect pregnant clients, particularly adolescents, from receiving incomplete counseling that in effect promoted abortion and facilitated obtaining an abortion, to the client's (and, obviously, the unborn child's) long-term emotional and physical detriment. Some commenters noted that privacy and confidentiality requirements surrounding counseling make it difficult, if not impossible, to reflect the substance of counseling in auditable records in order to discern whether or not in fact clients, especially highly vulnerable and impressionable teens, are being coerced into abortion decisions. Other proponents argued that the regulations would protect women from pregnancy counseling by unqualified personnel since most Title X programs do not have the time to provide the intense support required during the early stages of a problem pregnancy. Proponents noted that decisions about families involve more than just medical counseling and that given the potentially serious consequences of abortion, women are best served by providers outside the Title X program who may counsel in greater depth about pregnancy.

5. *Rational basis for regulations:* Related to the above concerns was the criticism articulated in many comments that the proposed provisions are irrational or are simply not needed. Some comments contended that the theory advanced to justify the proposed prohibition of counseling—that counseling and referral "encourage or promote" abortion—is incorrect. In particular, many of these comments took issue with the statement that the provision of information on abortion is pointless absent the expectation that some of those informed will act upon the information and that the purpose of counseling programs is to provide information upon which a course of action will be based on the ground that it equated the provision of information on mutually exclusive choices with promotion of a particular choice. It was argued that, under the theory advanced in the proposed rules, counseling teenagers about contraceptive methods or suicide would never be appropriate. Furthermore, with respect to the issue of evidence, numerous grantees stated that they have always been and are presently in compliance with the requirement to separate their Title X projects from their abortion-related projects. A number of these comments challenged the evidentiary basis for the Department's action, arguing that the 1982 GAO and Inspector General reports cited in support of the proposed rules in fact established that the audited grantees had not spent Title X funds in contravention of section 1008.

Proponents of the proposed rules, on the other hand, overwhelmingly thought that the proposed restrictions were needed. As noted in the Rational Basis Section and in section IIIA1 above, many individuals wrote in relating personal experience of abuse of the counseling process. Numerous other individuals and groups argued that nondirective counseling is inappropriate in a program in which abortion is a prohibited method of family planning and in which it is clearly viewed as an undesirable alternative to childbirth. Others argued that these counseling practices promote the use of abortion as a method of family planning by helping a pregnant woman obtain an abortion. They expressed the opinion that safeguards were needed to ensure that pregnant women are not pressured into having abortions by Title X-funded projects. Others argued that Title X projects should actively discourage women from obtaining abortions by providing full information describing the abortion procedure and its potential physical, emotional and psychological effects, as well as providing full information on fetal development.

6. *Statutory authority:* Hundreds of comments questioned the statutory authority for the proposed prohibition of abortion counseling. Numerous comments suggested that the provisions would prevent informed consent and are, therefore, inconsistent with the requirement of sections 1001 and 1007 of the Act that services be "voluntary." It was also argued that section 1008 itself defines abortion as a method of family planning (albeit one for which funds under the title are not available) and that therefore the statement in the legislative history of the 1970 act that "information would be provided on the full range of family planning methods," means that abortion counseling must be provided notwithstanding the prohibition. Representative Dingell criticized the use of his 1970 floor statements as support for the proposed restrictions on counseling and referral. His comments focused in particular on what he saw as the failure of the Department to take account of the evolution of the law, that is, the Supreme Court's decision in *Row* v. *Wade*, 410 U.S. 113 (1973), and its progeny. It was also argued that the proposed provision is inconsistent with the Department's own regulations in the food and drug area, which the comments contend require manufacturers of oral contraceptives and intrauterine devices to provide patient package inserts explaining the risks of the respective contraceptive methods, including some information on abortion. Numerous providers contended that, under the regulations, they would be prohibited from prescribing or dispensing contraceptives containing such inserts which would, as a practical matter, have the effect of restricting the methods available under Title X to barrier methods, foams, and natural family planning. Therefore, it was argued, such a restriction is contrary to the mandate of Title X that projects offer a "broad range" of family planning methods. Finally, it was argued that there is no legal authority for changing the current Title X guidelines, which require that counseling on abortion, prenatal care, adoption and foster care be provided to pregnant women.

These comments maintained that the guidelines are clearly known by Congress, which has implicitly approved of them in successive reauthorizations of the program and explicitly approved them in language in the Conference Report on Departmental appropriation for FY 1987, Pub. L. 99-1005.

Proponents, on the other hand, generally argued that the policies embodied in the present Title X guidelines contravene section 1008, and that the proposed restrictions on counseling are statutorily required or at a minimum would better effectuate the section 1008 prohibition. As noted above, they expressed the view that abortion or options counseling results in the promotion of abortion, and is therefore inappropriate in a preventive family planning program which its authors clearly intended to have no connection with abortion other than to reduce the incidence thereof. The guidelines, it was argued, had converted Title X from a program in which abortion was supposed to be prohibited into a program which in fact promotes abortion as a method of family planning. It was also noted that, during the 1978 reauthorization of the program, an amendment to prohibit abortion counseling and referral was rejected as unnecessary given the prohibition of section 1008. Further, the primary purpose of Title X as being a preventive family planning program was reiterated.

7. *First Amendment:* A common argument against the proposed provisions were that they constitute unconstitutional viewpoint-based discrimination. According to the comments, under cases such as *F.C.C.* v. *League of Women Voters*, 468 U.S. 364 (1984), *Perry* v. *Sindermann*, 408 U.S. 593 (1972), and *Speiser* v. *Randall*, 357 U.S. 513, 518 (1958), the government may not interfere with the exercise of the right of free speech. The comments argued that this principle applies not only to direct interference, but also to indirect interference, such as attaching unconstitutional conditions to a governmental benefit, penalizing advocacy of a certain viewpoint, or selectively granting benefits only to those advocating particular viewpoints. The comments contended that the proposed provisions contravene this principle by prohibiting Title X funds from going to organizations that seek to provide all viewpoints about potential options, including the abortion option, while permitting funding under Title X of organizations that have or express solely the viewpoint that abortion is not an option in the management of pregnancy.

A related argument was that the proposed provisions violate the First Amendment rights of Title X health care professionals to express their views and the rights of their clients to obtain information from their doctors. *Perry* v. *Sindermann, supra; Lamont* v. *Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring). Citing *Board of Education (Island Trees)* v. *Pico*, 457 U.S. 853 (1982) and *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), some comments took the position that the proposed provisions represent an impermissible attempt by the government to "restrict the spectrum of available knowledge" about family planning and abortion.

Proponents of the proposed restrictions generally argued that they were fully constitutional and in no way violated the First Amendment as interpreted by the Supreme Court's decision in *Regan* v. *Taxation Without Representation*, 461 U.S. 540 (1983). In *Regan* the Court upheld as constitutional an internal revenue statute granting tax exemption for certain nonprofit organizations that do not engage in substantial lobbying activities. It was argued that the *Regan* decision establishes the principle that a governmental decision not to subsidize the exercise of a fundamental right does not infringe upon the right and that the government may adopt classifications with respect to subsidizing the exercise of First Amendment rights, so long as the classifications bear a rational relationship to a legitimate governmental purpose. Since the decision in *Harris* v. *McRae, supra*, establishes that the government may choose to promote childbirth, the proposed policies are constitutional.

8. *Unconstitutional interference with right to abortion, right to practice medicine:* A number of comments argued that the proposed provisions prohibiting counseling regarding abortion are unconstitutional in that they impermissibly burden a woman's right to obtain abortion and interfere with the doctor-patient relationship safeguarded by *Roe* v. *Wade, supra*. It was argued that the proposed provisions are invalid on the same basis as the Akron, Ohio ordinance struck down in *City of Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983), in that both limit the presentation of information to pregnant women relative to the abortion decision so as to discourage them from choosing abortion. Thus, under the rationale of *City of Akron*, it was claimed that the proposed provisions both impermissibly interfere with the woman's right to make an informed choice and impermissibly intrude upon her physician's right to provide medical advice and treatment. It was asserted, in connection with this line of reasoning, that the Supreme Court's decision in *Harris* v. *McRae* does not insulate counseling restrictions from constitutional attack, as that decision only relates to a governmental decision to subsidize the operation itself; restrictions on counseling, by contrast, were said to directly interfere with the freedom of choice protected under *Roe* v. *Wade*. The decision in *Planned Parenthood Ass'n.) Chicago Area* v. *Kempiners*, 531 F. Supp. 320, 326 (N.D. Ill. 1981), vacated and remanded on other grounds, 700 F.2d 115 (7 Cir. 1983), *aff'd on rehearing*, 568 F. Supp. 1490 (N.D. Ill. 1983) was cited in support of this proposition. Many comments noted, in this regard, the recent decision in *Reproductive Health Services* v. *Webster*, 662 F. Supp. 407 (W.D. Mo., March 17, 1987), in which a Federal district court concluded that restrictions on a state-supported clinic counseling and referring for abortion were unconstitutional insofar as they applied to women who paid the full cost of their treatment:

> Patients who fully pay for their services would be denied access to medical information which may affect their decision whether to continue the pregnancy, perhaps enduring health risks. Here the State is not asked to subsidize abortions or the exercise of First Amendment rights. 662 F. Supp. at 427.

These comments contended that this reasoning applies to Title X clinics, as a significant percentage of the clients served by Title X projects are full-pay.

Proponents of the regulations took the position that the proposed provisions on counseling are constitutional. According to the proponents, the Supreme Court ruled in *Harris* v. *McRae, supra*, that the government may constitutionally decide to subsidize childbirth over abortion, and the mere denial of government subsidy for abortion does not constitute a constitutionally impermissible obstacle to the exercise of the right to abortion. Thus, they argued, this necessarily means that the government may likewise subsidize speech and actions designed to further childbirth and decline to subsidize speech and actions that facilitate abortion. Such remedies are necessary to end the confusion which exists where clients, especially adolescents, may see the interaction between federally funded projects and abortion services. Proponents wanted to sever the "symbolic union" between the federal program and private programs which promote or provide abortions.

B. Response

The Department recognizes the problems created by the proposed provision with respect to patient package inserts for contraceptives and otherwise limiting the provision of information which is medically necessary to understanding the relative risks of different methods of contraception in the course of selecting a method of family planning; it has therefore modified the requirements and examples accordingly. See 42 CFR 59.8(a)(4) and 59.8(b)(6) below. However, it disagrees with the remaining comments opposing the proposed restrictions on counseling and therefore the provisions otherwise remain substantially as proposed. The Department notes that many of the objections stated appear to be based on a misinterpretation of the scope and

application of the counseling restriction. It has accordingly clarified the provisions. The explanation below likewise attempts to clarify the provisions, and also sets out the Department's reasons for rejecting the remaining comments opposing the provisions.

1. *Medical ethics:* The Department believes that much of the opposition to the proposed restriction on counseling proceeds from a misunderstanding as to what is prohibited by the provision and what is not. It was not the intent of the provision to restrict the ability of health professionals to communicate to a patient any information they discover in the course of physical examination or otherwise about her medical condition. Contrary to the assumption of most commenters, doctors would not be precluded by the provision from informing a woman, pregnant or nonpregnant, that she has a tumor, AIDS, a diabetic or hypertensive condition, lupus, and so on. The provision thus does not preclude a health professional from disclosing to the woman any physical findings he or she has made regarding her condition and communicating his or her assessment of the urgency of the need for treatment, consistent with the exercise of his or her professional judgment. By the same token, however, there would appear to be no ethical imperative for a health professional at a Title X clinic which will, by definition, not be providing treatment services to counsel a woman who displays a medical condition unrelated to family planning as to the medical management of that condition. Nor, it should be noted, is Title X money available for the treatment of medical conditions unrelated to family planning. The same considerations apply where pregnancy is diagnosed. See §§ 59.8(a)(2) and 59.8(a)(3) below. Rather, as has traditionally been the case in the Title X program and as is required by 42 CFR 59.5(b)(1) and 59.8(a)(2) below, the medically responsible course is to ensure that the woman is referred to the appropriate specialist for treatment of the condition, with adequate followup provided.

In the Department's view, the foregoing considerations address the ethical objections to the proposed provisions. The Department notes that if any requirement is established with regard to abortion counseling, it will conflict with someone's ethical beliefs. The approach of the proposed regulations, however, is more consistent with section 1008. Moreover, it is apparent that there is no absolute ethical imperative upon physicians to counsel or refer for abortion, as evidenced by the "conscience" exceptions cited by proponents of the provision. Opponents contend that the proposed rules are contrary to the findings of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. However, the Commission also found that:

> Patients are not entitled to insist that health care practitioners furnish them services when to do so would breach the bounds of acceptable practice or violate a professional's own deeply held moral beliefs or would draw on a limited resource to which the patient has no binding claim. (*Making Health Care Decisions*, Vol. 1, p. 3.)

Although abortion may be considered to be within the bounds of acceptable medical practice, it may potentially conflict with the professional's deeply held moral beliefs. Moreover, since Title X resources are clearly limited, the patient has no claim to the services relating to the provisions of abortion. The Commission went on the say that:

> Similarly, a professional who has been flexible about possible avenues of treatment as his/her standards allow is not generally obligated to accede to the patient in a way that violates the bounds of acceptable medical practice or the provider's own deeply held moral beliefs. *id.* (Vol. 1, p. 38.)

Similarly, the American College of Obstetricians and Gynecologists support the physician is right "[t]o refuse to render treatment which is inconsistent with the Fellow's own moral code." (*Standards*, p. 99.)

2. *Informed consent:* The Department disagrees with the numerous comments objecting to the proposed restriction on counseling for abortion as restricting a pregnant woman's ability to give informed consent. As a general matter, a requirement for informed consent only arises where a course of treatment is proposed. See, *Canterbury* v. *Spence*, *supra*. Section 59.8(a) below makes clear that where a woman is diagnosed as pregnant, the only appropriate action is a referral for appropriate treatment (which, as noted above, would include treatment for other conditions unrelated to pregnancy). Since the Title X project is not providing treatment related to pregnancy (or, indeed, for other conditions unrelated to family planning), it has no need to obtain consent to such treatment. Rather, it becomes the responsibility of the provider to whom the woman is referred to obtain appropriate consent to services: as the *Standards* of the American College of Obstetricians and Gynecologists state, "[i]t is the physician's responsibility to inform the patient of the nature of the surgical or medical procedure being recommended. In most cases, the explanation should include the *necessity* of the *treatment* * * *" (emphasis added) (*Standards*, p. 84). This situation is in essence no different than the situation that currently exists in the Title X program with respect to services that are not offered by the project. In the Department's view, this issue is thus not a problem, and the concerns expressed by providers regarding violating State laws requiring informed consent with respect to their treatment of pregnant women are therefore misplaced.

A conceptually different issue is presented with respect to the issue of informed consent to family planning services, since in the context the Title X project is the provider of treatment services. However, as noted above, the Department has modified the rule to make it clear that projects are not prohibited from providing the factual information necessary to assess the risks and benefits of various methods of family planning which is provided by means of the patient package inserts accompanying various forms of contraception. Thus, the projects remain in substantially the same posture they have always been in with respect to the provision of information at this stage: they may provide the factual information necessary to assess risks of a particular contraceptive method as set out in the patient package inserts, but may not promote or encourage abortion as a method of family planning. Indeed, the Department notes and concurs in Congressman Dingell's floor statement of November 16, 1970, in which he stated, "the prevalence of abortion as a substitute or backup method of family planning can reduce the effectiveness of family planning programs." Cong. Rec., daily ed., p 37375 (Nov. 16, 1970). This clarification thus responds to the concerns raised regarding provision of complete information on the risks of various forms of contraception. At the same time, it ensures that the project in no way promotes abortion and that, at the point at which abortion becomes more than a hypothetical issue (pregnancy), the project refers the woman for prenatal pregnancy care rather than providing "options counseling," which could violate section 1008 by influencing her choice toward abortion.

3. *Liability and licensure risks:* For the reasons stated in the preceding sections, the Department is of the view that the "parade of horribles" depicted in many of the comments with respect to the risk of tort liability and loss of licensure is invalid. In fact, physicians are excepted from disclosing common, known or usual information or risks to treatment. See, *Bly* v. *Rhoads*, 222 S.E. 2d 783 (Va. 1976). Abortion is clearly a common and known procedure, and Title X is not the sole source of information about it. Indeed, since Title X projects are already prohibited under the present regulations and guidelines from taking any affirmative action to facilitate abortion, many of the "risks" attributed to the asserted failure of the provisions to make abortion available have already been assumed. Moreover, the *Canterbury* case cited by many of the opponents does not presuade the Department that the rules below significantly increase the risk of liability: the court in *Canterbury* held that liability will not lie unless a plaintiff can establish that a reasonable person would have taken a different course of action had full disclosure been made, an extremely difficult burden under the rules below, given the referral requirements. In addition, to the extent these regulations are inconsistent with the provisions of State law regarding counseling and informed consent, they may, in some circumstances, supersede State law under the Supremacy Clause of the Constitution. See, for example, *Leslie Miller, Inc.* v. *State of Arkansas*, 352 U.S. 187 (1956); *Planned Parenthood of Billings, Inc.* v. *The State of Montana*, 648 F. Supp. 47 (D. Mont. 1986). Thus, provider preceptions notwithstanding, the Department does not anticipate that the regulations below will place Title X providers at risk.

4. *Impact on Title X client population:* The Department recognizes that the regulations below may result in some realignment of Title X providers, as providers who disagree with the regulations drop out of the program and other providers enter it. However, it notes that most of the comments taking this position appeared to be concerned principally with what was perceived to be a prohibition on providing patient package inserts for oral contraceptives and IUDs, a policy which, as explained both above and below, is not contained in the rules below. The Department is thus unpersuaded that such a realignment will occur, or if any realignment in fact occurs, that it will have a significant negative impact on the Title X client population. Indeed, the Department intends that the rules have a positive impact on the Title X population by helping to assure that scarce resources are allocated to preventive family planning and infertility services, not to assisting pregnant clients to obtain an abortion.

5. *Rational basis for regulations:* With respect to the comments criticizing the theoretical basis for the restriction on counseling, the Department thinks they are misplaced. Indeed, the comments concerning contraceptive counseling support the Department's point, as both the purpose of and the demonstrated effect of contraceptive counseling is to promote the use of contraception. Some commenters attempted to apply the Department's analysis on counseling to a hypothetical example of preventing teen suicides. The hypothetical example in fact reveals the flaw in the critics' arguments. Given the state's interest in protecting life, Congress might well establish programs to provide teenagers or others with "directive" counseling on suicide—that is, counseling that encourages teenagers not to commit suicide. However, if Congress enacted a statutory grant program to provide mental health services to reduce the incidence of mental illness, including suicide, and included a provision that "none of the funds appropriated under this title shall be used in programs where suicide is a method of alleviating mental illness," the Department assumes that no one would argue that such a statute permitted—much less required—that the provision of "nondirective" counseling to the depressed adolescent would include suicide as one of the options followed by "mere referral" to organizations such as the Hemlock Society for those who indicated that they wanted to choose the suicide option. If the Department is correct as to the interpretation that would be given such a hypothetical statutory prohibition on suicide, it cannot see why the same statutory language acquires a different meaning when "abortion" is substituted for "suicide."

It may well be that, based on differing assessments of the relative morality of abortion and suicide, some might find nondirective options counseling concerning abortion morally acceptable while they would find nondirective options counseling concerning suicide unacceptable. Such a distinction, however, would reflect their moral choice, not their interpretation of statutory language—it certainly would not be based on any belief that nondirective options counseling would be any less likely to promote or encourage abortion that it would be to promote or encourage suicide.

The Department's responsibility, however, is not to make moral choices of this sort—it is to implement the choice that Congress made in enacting section 1008. As indicated earlier, upon reexamination of the statutory language, the Department is simply unable to conclude that the type of counseling and referral that has been required by the program guidelines has not had the effect of promoting or encouraging abortion in violation of the statutory prohibition in section 1008.

In addition, the Department disagrees with the contention that the 1982 GAO Report does not substantiate the need for the provisions below. As noted above, GAO found that grantees were engaging in questionable activities relating to counseling and referral and ascribed this in major part to the lack of concrete guidance from the Department. The comments from women who have received abortions quoted above embody the concern articulated by GAO and indicate that the policy of the present guidelines requiring Title X grantees to provide nondirective counseling on all options on request may have been violated. Moreover, given that the Title X projects do not provide pregnancy services, it is unnecessary for them to provide counseling with respect to such services. In light of these concerns, the Department has concluded that the best way to safeguard Title X funds from being used to promote or facilitate abortion as a method of family planning is to prohibit counseling regarding abortion and ensure that pregnant clients are referred for prenatal services for the care of the pregnancy.

6. *Statutory authority:* After considering the comments relating to the provision of factual information relative to the choice of a birth control method, the Department has modified the regulation. See § 59.8(a) (4), below. As noted in the discussion at IB1 above, it was never the Department's intention to restrict the range of contraceptives available from Title X projects, and the modification of § 59.8(a) makes clear this intent. Nor are the criticisms on informed consent grounds pertinent, particularly in light of the changes discussed above. As noted in the discussion at IIIB2 above, the issue of informed consent as it relates to pregnant women is beside the point, because Title X does not provide treatment for pregnancy. With respect to the provision of services to nonpregnant women, the policy remains unchanged from that which has previously applied. These changes eliminate any concern that regulations might be inconsistent with the statutory requirements relating to the provision of services on a voluntary basis.

The Department dissagrees with the contention that the provisions constitute

an additional and unlawful condition on eligibility for grants. Since, in the Department's view, section 1008 authorizes the provisions, they by definition do not impose conditions that are inconsistent with the statute.

The Department also disagrees with the comments criticizing the restrictions on counseling (as well as referral) as not supported by the legislative history of the 1970 Act. With respect to the reference to "information * * * activities" in the Conference Report, cited by many opponents of the provisions, it notes that the precise reference is to information activities that are "related" to, among other things, "preventive family planning services." Conf. Rep. No. 91–1667, 91st Cong., 2nd Sess. 8–9 (1970). Counseling concerning abortion is manifestly not related to preventive family planning services. Furthermore, regarding Representative Dingell's challenge to the Department's interpretation of his floor statements as made in 1970, that challenge appears to be based principally on the asserted failure of the proposed regulations to take account subsequent developments in the medico-legal environment. While the Department recognizes that there have been developments in both the medical and legal communities regarding abortion that could lead legislators to change their minds as to what restrictions are appropriate on federally funded programs, it disagrees with Representative Dingell as to what legal conclusions flow from those developments. Section 1008 remains in force precisely as enacted in 1970. If Congress believed that subsequent developments have rendered its restrictions obsolete, it could have amended it; it has not done so.

Moreover, the Department does not agree that congressional actions subsequent to 1970 constitute a form of legislative ratification of its policy of requiring abortion counseling and referral by Title X grantees such that it is now required by law to maintain that policy in force. Although Congress has enacted several unrelated amendments to the family planning provisions of Title X and has authorized funding six times, the relevant provisions of Title X have remained unchanged since 1970. Thus, the commenters' arguments that the Department is now required as a matter of law to maintain its policy of requiring abortion counseling and referral appears to rest largely on inferences drawn from Congress' failure to enact a statutory amendment affirmatively rejecting that policy.

Aside from the factual errors of this argument, discussed below, this argument rests on the mistaken legal premise that Congress' failure to enact a statutory amendment affirmatively rejecting this policy constitutes a ratification of the policy. In general, the courts have been reluctant to permit such an inference to be drawn from the legislature's failure to act. See, *e.g., Motor Vehicle Manufacturers Ass'n* v. *State Farm Automobile Insurance Co.*, 463 U.S. 29 (1983). Indeed, even where Congress has acted affirmatively to the extent of publishing a committee report to subsequent legislation which interprets prior law, the Court has been unwilling to accord it great weight. As the Supreme Court observed in *Consumer Product Safety Comm'n.* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 118, n. 13 (1980), "even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment."

Moreover, the factual premise of this argument—that Congress has adopted the policy requiring abortion counseling and referral—is wrong. Many commenters described the history of Title X as reflecting seventeen years of consistent administrative policy which was well known and accepted by Congress. The facts, however, are quite different. Initially, it should be noted that the Department's policy on abortion counseling and referral developed in an evolutionary manner during the 1970s. Only in 1981 was that policy incorporated and indeed expanded in guidelines. The available evidence regarding Congress' knowledge and reaction to those policies does not reflect full knowledge and acceptance of them. Rather, in the Department's view, the available evidence indicates—in the earlier years—considerable congressional confusion as to what the Department's administrative policies were, and, thereafter, as those policies became more well known, considerable political controversy as to their correctness both as a matter of law and as a matter of social policy.

The Department does not believe it is appropriate to provide a comprehensive analysis of the legislative history of Title X subsequent to 1970 in this preamble. However, by way of illustration, the Department does think it would be useful to focus on one event that was probably given the most emphasis by the commenters who argued that the subsequent legislative events preclude the promulgation of these regulations—the 1978 defeat, by a 232–137 vote in the House of Representatives of an amendment to Title X proposed by Representative Dornan. 124 Cong. Rec. 37048 (1978).

The defeated amendment provided that: "No grant or contract authorized by this Title may be made or entered into with *an entity* which directly or indirectly provides abortion, abortion counseling, or abortion referral services." *Id.* (emphasis added). As the underscored language indicates, Rep. Dornan's amendment would have done much more than reverse HHS' then current policy of permitting abortion counseling and referral by Title X grantees in the Title X program; in addition to that, it would have banned entities that provided abortion counseling and referral with non-Federal funds in separate programs from participating in Title X. Indeed, in initially introducing this amendment, Rep. Dornan stressed the fact that it provided a ban on participation of entities—such as Planned Parenthood—which provided the described abortion-related services. See Cong. Rec. 31241–2 (1989).

Subsequently, however, when Rep. Dornan again offered his amendment, he did raise the issue of HHS' abortion counseling and referral policy, stating "it has come to my attention there are at least 117 hospitals and clinics receiving Title X family planning money where abortion is a method of family planning * * *". *Id.* at 37046. A colloquy then ensued in which Rep. Rogers—who was the sponsor of the reauthorization of Title X—vehemently rejected the statement that Title X clinics were providing abortion counseling and referral.

> Abortion is not a method of family planning. Abortion comes after pregnancy—after pregnancy. And the gentleman misses the point of what we are doing in Title X. It is before—before. It is to let people know how to avoid pregnancy. We cannot use any funds for abortion. The amendment is not needed. I urge its defeat. *Id.*

When Rep. Dornan again referred to the 117 Title X clinics that he was informed were providing abortion counseling and referral, Rep. Rogers again denied the truth of this statement, suggesting, among other things, that "you may have a hospital that may be running a family planning section in one wing and maybe they do an abortion in that hospital to save the life of the mother." *Id.*

Thus, what occurred in 1978 was: (1) The House defeated an amendment that would have done something far different and far more sweeping than the prohibition on abortion counseling and referral contained in the regulations being promulgated today, and (2) did so after having been emphatically misinformed by the sponsor of the reauthorization legislation that the amendment was unnecessary.[6] The Department does not believe that this episode can be construed as evidence of an adoption by the House of Representatives (much less Congress as a whole) of the Department's policy at that time. Indeed, what it appears to reflect is congressional confusion as to what was occurring in the Title X program. At the very least, it simply provides support for the view that an administrative agency or a court should look to legislation enacted by Congress to determine what Congress' intent is, and not try to draw inferences about that intent from other sources.

Congress, of course, recently did enact in the Continuing Resolution for fiscal year 1987 legislation arguably bearing on the Title X guidelines. Specifically, a Conference Report to an unenacted HHS appropriations bill was incorporated by reference into the continuing resolution for fiscal year 1987 (Pub. L. No. 99–464, section 101(b)(4)(e), 100 Stat. 1187 (1986)). Some commenters asserted that the "incorporated" Conference Report contains a restriction on administrative change in the Title X guidelines during fiscal year 1987. The Department disagrees with that interpretation of the Conference Report.

Even assuming, however, that the Continuing Resolution, in effect, "codified" the current Title X guidelines for fiscal year 1987 by forbidding the Department from changing them during that period (*i.e.*, until October 1, 1987), the Department does not believe that that fact would lead to the conclusion advanced by several commenters opposed to the proposal—that the legislation represents a definite manifestation of congressional intent to permanently adopt HHS' current Title X abortion counseling and referral guidelines. Indeed, it seems to the Department that such an interpretation would contravene the asserted meaning of the legislation by converting what was purportedly intended as temporary, one-year delay in amendment of the guidelines into a permanent incorporation of them into the statute. In this connection, the Department notes that language analogous to the language of the 1987 Continuing Resoluation was dropped in the 1988 Continuing Resolution.

[6] That Rep. Rogers was so mistaken as to the Department's interpretation of section 1008 strongly suggests that this interpretation was not widely known in Congress—at least in 1978—as some commenters have claimed.

There is no question, of course, that Congress has now become acutely aware of Title X. The treatment of abortion in connection with Title X has become a matter of sharp political controversy in recent years. Some members of Congress believe that the policies set out in the current guidelines are correct as a matter of statutory interpretation and administrative policy; other members of Congress believe that the current Department guidelines are incorrect as a matter of law and policy. Unless and until Congress enacts new legislation, however, Title X remains in effect as law, and the Department's obligation is to interpret existing law and—based on its experience in administering the program—to exercise its delegated administrative authority by adopting the policies that best effectuate the statute.

7. *First Amendment:* The Department disagrees with the comments challenging the proposed limitations on counseling on First Amendment grounds. To begin with, it should be noted that Congress has broad authority to determine the purpose, terms, and conditions under which grants are made. *Buckley* v. *Valeo*, 424 U.S. 1, 90–91 (1976). In particular, Congress, under the *McRae* case, *supra*, and under *Maher* v. *Roe*, 432 U.S. 464 (1977), may make a choice favoring childbirth over abortion and may implement that choice through the allocation of public funds. The fact that speech in the form of counseling is involved in a program such as Title X does not disable Congress from making that choice. Thus, no issue of viewpoint discrimination is posed here such as might be presented were the government to fund a widespread public relations campaign taking one view.

The *League of Women Voters* case, which was frequently cited by critics of the proposed rules, does not change this analysis. In *League of Women Voters*, the Supreme Court found unconstitutional a statute that prohibited editorializing by any broadcast station that received Federal funds. The Court expressed concern that all editorializing was prohibited, even that financed by private funds; it stated, however, that if a statute allowed a station to establish an affiliate which could editorialize with nonfederal funds, it would satisfy constitutional scrutiny. 468 U.S. at 400, n. 27. The result reached by the Court in the *Regan* case, cited by many supporters of the proposed rules, confirms this position. In *Regan*, the court upheld the constitutionality of a section of the tax code prohibiting taxpayers from deducting as charitable contributions gifts to nonprofit organizations that engage in lobbying. The Court upheld the tax statute because nonprofit organizations had available an alternative avenue for conducting lobbying activities through formation of affiliate organizations under a separate section of the code. The rules below clearly meet the tests of these cases. Indeed, as discussed both above and in the following sections, the rules below do not go as far as the statutes at issue in those cases, as they do not require the formation of a separate organization to conduct various abortion activities; they merely restrict what an organization may do, with Title X project funds, within the confines of its Title X project activities.

With respect to the claim of many comments that the counseling restrictions of the proposed rules would violate the First Amendment rights of health care professionals and their patients, the Department disagrees that the cases cited in support of this claim bear on the case at hand. The proposed rules, and the final rules below, do not establish universally applicable penal provisions which interfere with an individual's right to free speech, as was the case in *Griswold*, *supra*. They place no restrictions on the dissemination of information by health professionals about abortion, except in the context of the federally funded project. This distinguishes the instant rules from the Illinois law declared unconstitutional in *Kempiners*, *supra*, which created a total ban on funding to organizations that did abortion counseling or referral. Nor is this a case like those involved in *Sherbert* v. *Verner*, 374 U.S. 398 (1963) and *Speiser* v. *Randall*, *supra*, in which a governmental benefit that is available to all other similarly situated persons is denied solely because of the exercise of their First Amendment rights. Title X confers no entitlement to benefits upon individual organizations; it is a discretionary grant program. Moreover, the fact that an organization's grant application does not include abortion activities will not automatically entitle it to receipt of grant funds. In any event, as noted by Judge Cudahy in his concurring opinion in the remand by the Court of Appeals for the Seventh Circuit in *Kempiners*, the Constitution does not require "equal time" on the payment of public funds to subsidize a point of view. 700 F. 2d 1115, at 1128.

8. *Unconstitutional interference with right to abortion, right to practice medicine:* The Department disagrees with the contention of numerous critics of the proposed rules that the proposed restrictions on counseling (as well as the other restrictions of proposed § 59.8 and

§ 59.10) impermissibly burden a woman's right to obtain an abortion, as well as a physician's right to practice. It notes, as an initial matter, that there is no significant difference in constitutional principle between a physician's right to practice and a patient's right to his services. See, *Harris* v. *McRae*, 448 U.S. at 316, n. 21; *Whalen* v. *Roe*, 429 U.S. 589, 605, n. 33 (1977). The regulations below are not like the statutes struck down in *Colautti* v. *Franklin*, 439 U.S. 379 (1979), *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976), and *City of Akron*, *supra*. In each of these cases, the law at issue imposed mandatory disclosure and informational requirements upon physicians counseling in the abortion context, requirements that were enforced through criminal and administrative sanctions. Even the Illinois statute at issue in *Kempiners*, *supra*, was considered by Judge Cudahy not to impermissibly burden a woman's right to an abortion, as she remained free, under that statute, to seek the services of organizations not funded by government funds or to seek counseling from friends, family, and so on. *Kempiners*, 700 F.2d at 1127. Similarly, the statutes that were struck down in *Reproductive Health Services* v. *Webster*, *supra*, prohibited not only the use of *any* public funds for abortions and abortion counseling but also the performance of such activities by *any* public employees or in *any* public facilities. 662 F. Supp. at 424. The rules below are far less broad. The rules below, in fact, do not prevent a health professional or a provider organization from discussing, promoting, or otherwise encouraging a woman to have an abortion as a general matter; they simply do not permit them to do so within a Title X project. As such, they do not suffer from the constitutional infirmities of the laws at issue in the cases relied upon by the opponents of the proposed rules.

IV. Referral

Section 59.8(a) of the proposed rules provided, among other things, that a project which—

> provides * * * referral for abortion services as a method of family planning is not eligible to receive funds under this subpart * * *. Where appropriate, medical or social service referrals for non-Title X supported services shall be made by providing a full list of available health care providers of appropriate prenatal medical care and delivery services from which a family planning client may select. Such referrals may not, however, be used as an indirect means to encourage or promote abortion in violation of section 1008, such as consciously weighting the list of referrals in favor of health care providers and/or facilities which provide abortions.

The example provided in proposed § 59.8(b)(2) to illustrate this requirement concerned the case of a pregnant woman whom the project diagnoses as having an ectopic pregnancy; it was stated that she should be immediately provided with a list of appropriate hospitals and physicians, and that such a referral would be permissible under the statute.

A. Comments

As with the provisions on counseling, the proposed provisions relating to referral were the subject of numerous comments. Opponents criticized the provisions on the ground that a prohibition on referral for abortion would prevent projects from insuring that women confronted with life-threatening conditions received proper emergency treatment, that it violated medical ethics, that it would slow access to abortions and to prenatal care, that it was vague and unclear, and that it was illegal. Proponents, on the other hand, argued that the provisions would correct the ethical problems presented by the 1981 guidelines and bring them into conformity with section 1008.

1. *Emergency referrals:* Opponents of the proposed provisions uniformly objected to these proposed policies. A major objection, based in large part on the ectopic pregnancy example, was that the provision was far too broad. Numerous providers contended that, as drafted, the provision would place them in the untenable position of not being able to provide appropriate treatment or referrals for life-threatening conditions. It was repeatedly stated that the medically appropriate response, where an ectopic pregnancy or other life-threatening condition is diagnosed, is to make immediate arrangements for appropriate emergency treatment. These comments stated that simply providing a list of referrals would be improper, as well as subject the provider to various tort actions.

2. *Referrals for prenatal care:* A related and very common criticism of the proposed provision was that it would subject pregnant women to a standard of care inferior to that available to nonpregnant women. The example typically cited was of the woman who is diagnosed as having a breast lump: it was asserted that if she is not pregnant, she can be referred to an oncologist for examination and treatment if it proves to be malignant; on the other hand, it was asserted that if she is pregnant, under the proposed provision she could only be referred for prenatal care, thereby building in a possibly critical delay in the treatment of a cancerous condition. The same argument was made by various commenters with respect to a range of other conditions, such as cervical cancer, breast cancer, AIDS, minor gynecological problems, and so on. According to the providers, such a disparity in the standard of care is medically indefensible and would create major liability risks for them. In addition, several comments argued that such a policy is inconsistent with the legislative history of the 1970 act, which indicates that Title X projects were intended to be providers of comprehensive health care and not simply dispensers of contraceptives.

The proposed change in policy regarding referral for abortion itself was also attacked as constituting unsound public health policy. It was argued that the requirement that women desiring abortions be given a list of providers of prenatal care and delivery services would build in a delay in obtaining services. It was asserted that this would result in an increase in later, riskier abortions, an increase in prenatal complications and infant mortality due to the delay in prenatal care, and an increase in women (particularly teenagers) being effectively deprived of the choice to elect abortions because of the time limits on availability and their own comparative inability to negotiate the health care system. A few providers suggested that the provision would have the counterproductive result of wasting valuable time for those few Title X clients who need genetic counseling and for whom *in utero* treatment of the fetus is a possibility.

Proponents of the proposed provisions, on the other hand, thought they were needed. They stated that under the 1981 guidelines, a Title X grantee must make abortion referrals, which they contended fosters a policy of encouraging abortion since, under the guidelines, projects must identify providers of acceptable quality, ensure that the services are obtained by the client and in some instances, aid the client in identifying potential resources for reimbursement. Such activities, it was argued, entangle the program with abortion and therefore require projects to indirectly support what the Federal government cannot directly support. Some maintained that the requirement to refer for abortion has resulted in the implementation of a pro-abortion program, because groups which refuse to refer for abortion are excluded, thereby causing an overall bias toward abortion.

Proponents also argued that the proposed provisions do not threaten the ethical responsibilities of family planning providers to render high quality care to their clients. They maintained that claims that health care providers have an ethical obligation to counsel clients on abortion and to arrange abortions is a novel interpretation of the canons of medical ethics, as evidenced by the fact that the House of Delegates of the AMA has consistently affirmed the right of physicians to abstain from any involvement in abortion. In support of the argument that there is no legal or ethical requirement to refer for abortion, proponents pointed to various "conscience clauses" established by various state and Federal statutes, which generally provide that physicians and other medical personnel may not be required to provide, counsel or refer for abortion if contrary to the individual's moral beliefs. It was pointed out that if there were an absolute ethical duty to refer for abortions, thousands of physicians would be unable to practice ethically, as they refuse to refer for abortion; the fact that such physicians can practice was cited as evidencing the lack of an ethical imperative to refer for abortion.

3. *"Conscious weighting":* Numerous comments also questioned the scope and advisability of the provision prohibiting "conscious weighting" of the referral list. Both proponents and opponents of the proposed rules questioned whether they would permit or require a facility to provide a referral list that entirely omitted any abortion providers. In this regard, a number of providers, particularly from rural areas, asked whether the provision would preclude inclusion on the list of facilities such as hospitals which perform abortions; it was pointed out that in many areas of the country (Michigan and Tennessee were cited as examples), hospitals are often the main or only source of prenatal care for indigent women, so that if the provision requires excluding them, such women would be left without a source of prenatal care. Questions were also raised as to whether the list could be specifically tailored to indicates providers' specialties (such as genetic screening and counseling, experience in handling certain types of high-risk pregnancies) or their willingness to accept low-income clients and clients on welfare, so as to reduce the delay in obtaining services. With respect to indigent women, a number of providers argued that the only medically responsible course is to provide preliminary prenatal care until the woman has lined up another provider who will accept her for prenatal care; to fail to do so would constitute the tort of "abandonment."

4. *Legal authority:* The proposed provisions relating to referral were also opposed as illegal. Opponents of the provision suggested that it is inconsistent with the decision of the U.S. Court of Appeals for the Eighth Circuit in *Valley Family Planning* v. *State of North Dakota*, 661 F. 2d 99 (8 Cir. 1981), asserting that that decision relied on and upheld an earlier Departmental opinion construing 42 CFR 59.5(b)(1) as requiring, and section 1008 of the statute as not precluding, referral for abortion where "medically indicated." Opponents also argued that the proposed provisions are unconstitutional, both as a restriction on the free speech of providers and as placing another obstacle in the path of a woman's exercise of her right to abortion.

Proponents of the proposed provisions, on the other hand, argued that they are legal. It was argued that the restrictions regarding referral are essential to ensure that the statutory purpose that abortion not be promoted with Title X funds be met, and the GAO findings were cited as evidence of abuse of the referral process. In this regard, several took the position that *Valley Family Planning* would be irrelevant under the proposed regulatory scheme, since that decision simply relied on an opinion construing the prior requirements. They also maintained that the arguments supporting the constitutionality of the counseling provisions likewise support the constitutionality of the referral provisions.

B. Response

The Department agrees with and has accepted several of the points raised by the comments on this issue, as reflected in the revised provisions appearing at § 59.8 (a)(2) and (3) and § 59.8(b)(2) below.

1. *Emergency referrals:* The ectopic pregnancy example has been amended to provide for immediate provision of appropriate referral for emergency treatment, to make clear that Title X providers are in fact obligated to provide referrals for immediate and appropriate medical care when confronted with a life-threatening medical condition. See § 59.8(b)(2) below. In any cases in which emergency referrals are needed, the Title X project must expedite the referral and take whatever steps are necessary and appropriate to insure that the client receives the services needed quickly. See § 59.8 (a)(2) below.

2. *Referral for prenatal care:* In addition, the provisions below have been modified to make clear a point that was apparently misunderstood by many commenters, *i.e.*, that Title X providers are not precluded from making—and indeed are obligated to make—appropriate referrals with respect to treatment of conditions that are diagnosed in the course of examining pregnant Title X clients. Thus, in general, clients with medical conditions requiring treatment—whether pregnant or not—must be referred under the rules below to an appropriate provider of the needed medical care. If the condition is one that is related to pregnancy, the requirements of § 59.8(a) apply; if the condition is one that is not related to pregnancy, § 59.5(b)(1) continues to apply. See, in this regard, the discussion at sections IB1 and IIIB1 above.

These changes and clarifications of the proposed policies thus respond to most of the comments on the referral issue. As for the comments arguing that the policy builds an unacceptable delay into the process of obtaining both prenatal care and abortion, where chosen, the Department does not agree that substantial delays will result under the rules below. It has addressed the issue of delay in prenatal care by requiring that projects provide information designed to protect maternal and fetal health until a provider of prenatal care is secured for the client. This will permit information regarding good health practices during pregnancy (*e.g.*, warning the pregnant woman about the risks of substance abuse, counseling regarding proper nutrition, rest, and so on) to be provided by the project.

However, the Department rejects the contention of many comments that the policies below will expose poor and young women to substantially greater risk or delay in obtaining services related to pregnancy outcome. This contention is based on the assumption of delay or client loss in the referral process. However, such a risk has always existed in the Title X program, as it has never provided *any* pregnancy outcome services, whether abortion services or delivery services. All that the referral requirements below do is move what has always been, where pregnancy is diagnosed, an inevitable referral slightly ahead in time. Moreover, there is no *a priori* reason why a properly operating referral process cannot operate just as efficiently if it refers at the time pregnancy is diagnosed as it can if it

first provides options counseling and then refers.

Because Title X projects do not offer the complete continuum of care from pregnancy diagnosis to childbirth, there may have been and may continue to be some unavoidable delays in individual cases. The only certain way to eliminate any gap in time would be to award Title X funds only to organizations which provide the entire spectrum of obstetric and gynecological services including delivery services.

With respect to an abortion, moreover, these comments evidence a substantial misunderstanding of (and to the extent they come from Title X providers, probable noncompliance with) the Title X requirements. Contrary to the claims of many providers, Title X has never permitted more than "mere referral," that is, the provision of the name and telephone number of a provider for abortion; the extensive facilitation of abortion (such as setting up appointments, making transportation arrangements, making arrangements for payment of the abortion) that so many of these comments assume to be common practice have never been permissible in the Title X program. While the rules below no longer permit "mere" referral for abortion, this is consistent with the statute which clearly intended that abortion not be facilitated through the Title X program. Those who seek abortions must do so outside of the program. The Title X program has never been involved in ensuring rapid and easy access to abortion services so that a later term abortion could be avoided. Some delay in an individual decision choosing abortion is not unusual in medical practice, nor is it in all cases inadvisable. ACOG, for example, recommends that a woman "should be allowed sufficient time for reflection prior to making an informed decision." (*Standards*, p. 63.)

For the reasons above, the Department does not believe that access to abortions will be affected as a result of the change in policy. Nevertheless, it should be clear that given the prohibition of section 1008, the Department cannot now nor ever has been able to facilitate the selection or obtaining of abortion as a method of family planning. Therefore, to the extent abortions are not selected as a consequence of this policy, it believes such a result is consonant with the congressional purpose underlying section 1008, which clearly disfavors the choice of abortion as a method of family planning.

3. *"Conscious weighting"*: With respect to the comments questioning the meaning of the prohibition on "conscious weighting" of the referral lists, the Department thinks that most of the provider concerns are misplaced. As proposed, the prohibition was very narrow: It precluded only conscious weighting of the list in favor of abortion providers. As such, it was silent with respect to other characteristics of the list such as breakdown by area of specialty, acceptance of Medicaid and other relevant variables and such breakdowns were therefore not precluded. Indeed, section 59.8(a)(2) requires referral to "available" providers of prenatal care, including providers appropriate to the Title X clientele, who are primarily low income. Nor does the Department view the "conscious weighting" provision as prohibiting the inclusion of facilities, such as hospitals, in which abortions are performed if they are also major providers of prenatal care and other services and the referral is specifically made to the providers of prenatal care services. Rather, what is prohibited is inclusion on the list of providers that, as their main function, provide abortions and the deliberate exclusion in the composition of the list of providers that do not provide abortions or referrals for abortion. However, to make clear that the requirement relates solely to the actual composition of the list and does not relate to the project's intent, it has deleted the word "conscious" from § 59.8(a) below. In addition, the Department has added language to make clear that the project may not direct clients to prenatal providers on the referral list who also perform abortions.

4. *Legal authority*: The Department also rejects the contention that the referral requirements are illegal. As regards the *Valley Family Planning* decision, it notes that the Court of Appeals for the Eighth Circuit did not purport to limit the Secretary's authority to prescribe standards implementing section 1008; rather, pursuant to the Supremacy Clause of the Constitution, it simply applied the regulatory standards then in effect to supersede contrary State law. Moreover, the basic premise of that regulatory standard—that referrals where a life-threatening condition is diagnosed are not prohibited by section 1008 and are regulatorily required whether or not the treatment ultimately is abortion—is unaffected by the rules below, as the discussion at the first paragraph of this section makes clear. The Department interpretation upon which *Valley Family Planning* was partially based did not state that referral is required on demand, neither did it find that referral is always required; rather, it held only that it was required under the regulations when medically necessary, such as when the life of the mother is endangered.

Nor does the Department agree that the referral provisions of the rules below are constitutionally infirm. With regard to the First Amendment problems which many comments asserted exist, there is analytically no difference in First Amendment terms between the restrictions on counseling and the restrictions on referral. Thus, the points made at IIIB7 above apply to these claims as well. As to the claim that prohibiting projects from making referrals for abortion constitutes an unconstitutional interference with the woman's right to obtain and the doctor's right to refer for abortion, the points made at IIIB8 apply to this claim also.

V. Program Integrity

Section 59.9(a) of the proposed rules provided that a Title X project must—

> be kept entirely separate and distinct, financially and physically, from any abortion-related activities. This requirement includes maintaining separate financial, accounting personnel and medical record systems and separately maintaining other project functions and physical facilities (including office space, equipment, stationary and the like) in such a manner as to clearly separate Title X-funded activities from abortion-related activities. This requirement prohibits, by way of example, common waiting, consultation, examination and treatment areas; shared telephone numbers and receptionists, common names for eligible and ineligible programs; and common office entrances and exists. Although common street or mailing addresses will presumptively constitute a failure to separate adequately Title X-funded programs from other programs which include abortion as a method of family planning, grant applicants may seek to establish the reasonableness of such arrangemnts in exceptional cases where, as in the example of a large metropolitan hospital with abortion and family planning services located in different wings, the fact of physical separation is otherwise established and no use of appropriated funds in an ineligible program is likely.

Proposed § 59.9(b) set out four examples of fact patterns which failed to comply with the proposed requirements and one example of a fact pattern that complied.

A. Comments

1. *Cost:* The most common objection to the proposed co-siting restrictions was cost. Many comments, particularly those from State and local governmental organizations, argued that the proposed restrictions would require a substantial investment in duplicate facilities, personnel and so on, which would render Title X funds uneconomic to accept. The particular concern in this regard was typically stated to be the phrase "abortion-related services." The comments typically criticized this phrase as extremely vague, but assumed that the phrase covered any services in which abortion is mentioned, such as genetic screening and counseling or the provision of handouts mentioning abortion, and not just the actual performance of abortions. One State health department questioned whether the term "abortion-related services" covered such services as laundry, housekeeping, security, and data processing services that are shared by the abortion component of, for example, a large metropolitan hospital.

A number of public organizations stated that the practical effect of the requirements would be to bar them from participating in the Title X program. They contended that they do not have the financial ability to establish duplicate clinical facilities, provide separate parking lots (as appeared to be required in the example at proposed § 59.9(b)(1)), or even establish separate entrances and exits. Moreover, many stated that they are required by law to provide services through existing public hospitals and clinics, in which they also conduct a variety of activities in which abortion is mentioned, abortion counseling is done, or abortions are provided, frequently because of court orders mandating such activity. Several public organizations argued that the only organizations that would be able to remain in the program under the proposed requirements are the single or dual-purpose private organizations, such as Planned Parenthood affiliates, which would have the financial capability and legal flexibility to establish separate facilities. The requirements were seen as impacting particularly severely on rural areas, where existing resources are scarce and where distance is a major barrier to service. Because of such considerations, it was argued, the emphasis has been on establishing multi-purpose sites of rural health care, with which the requirements would be at odds.

Private providers likewise criticized the proposed provisions as too costly. A number argued that the net effect of separating their Title X operations from any abortion-related activities they conduct would be an increase in cost for *both* operations. These comments took the position that a cross-subsidy existed, with Title X benefitting from economies of scale due to bulk purchasing of supplies, sharing or overhead costs, and so on. A few providers and provider organizations submitted estimates of the cost of complying with this provision, which ranged up to $150 million for the program as a whole. Based on such cost estimates, a number of comments argued that the Department did not comply with Executive Order 12291 in that it did not conduct a regulatory impact analysis of the proposed requirements, and maintained that the proposed requirements exceeded the impact threshold of the Executive Order. It was argued, moreover, that it is inappropriate as a matter of public policy to require Title X funds to be spent on such items as paving parking lots, which some assumed the proposed provisions to require, and constructing new doorways and lobbies rather than on the provision of direct health care services.

2. *Continuity of care:* The co-siting requirements were also criticized on public health grounds, principally on the basis that they would impact negatively on continuity of care between family planning and abortion. Numerous comments, particularly from public providers, argued that the trend in public health has been to locate related services together, to facilitate full utilization by clients of needed services. For this reason, it was stated, even in "large, metropolitan hospitals," abortion counseling services are frequently located in the same corridor or wing as family planning services. Such arrangements also decrease the rate of repeat abortions, it was argued, by making contraceptive counseling and services readily available to women who have had or are about to have abortions. As a practical matter, therefore, it was asserted that it will often not be possible to relocate Title X services and, in any event, doing so would not be consistent with contemporary public health thinking. It was also argued that the proposed requirements, if complied with, would have at least a short-term impact on continuity of care, occasioned by the change attendant on moving to new facilities, hiring new personnel, and so on. A public agency in New York for instance, indicated that family planning providers in that state would have to seek approval under New York's certificate of need law to establish duplicative services, which could temporarily impair the ability of the Title X projects to provide services or close them down permanently, if the certificate of need were not obtained. Several commenters expressed concern that the requirement of proposed § 59.9 would interfere with the activities of other federally funded programs in which abortion information may be provided.

3. *Separation of medical, personnel and financial systems*: A related criticism was frequently expressed with regard to the proposed requirement to establish separate "medical records systems." Many providers and provider organizations argued that the requirement would be impractical for multifunction health care facilities, such as hospitals or county health departments, which maintain centralized medical records systems. They also maintained that such a requirement would interfere with continuity of care by fragmenting a patient's medical records. They stated that this could lead to poor medical management of the patient's care by the project or elsewhere in the organization if complete records are not obtained. The proposed requirement was thus generally criticized as inconsistent with proper medical procedure.

The requirement for separate personnel systems was attacked on similar grounds. Public organizations generally argued that they could not comply with the proposed requirement, given the legal structure of most governmental personnel systems in which employees of many governmental agencies are employed under the same personnel system. Other provisions, criticizing the example at proposed § 59.9(b)(2), argued that it was improper to regulate what a physician or other health professional, who may be employed by the project on a part-time basis, does with the rest of his time.

The proposed requirement for separate accounting systems elicited similar criticisms. A number of comments recognized that it is reasonable, and consistent with customary and longstanding Department practice, to require Title X grantees to maintain separate accounting records. However, it was repeatedly stated that requiring separate accounting systems is infeasible for most large organizations, particularly governmental ones. For example, the state health department of New Jersey endorsed the reasonableness of requiring physical and financial separation of abortion and family planning services in a hospital, but argued that the common practice of having distinct "cost centers" in hospitals should be sufficient to meet the requirement for financial separation. These comments thus urged that both the policy and the example at proposed § 59.9(b)(4) be changed.

4. *Treatment of large, metropolitan hospitals:* The proposed provision which

used the example of "a large, metropolitan hospital" was critized on several grounds. A number of comments argued that it was vague. Other comments argued that it was arbitrary, in that there is no reason to except metropolitan hospitals from the requirement that does not also apply to rural hospitals, which may be the only provider of services in an area, or to hospitals which are constructed without wings but have some other type of physical separation. As noted above, a number of comments also stated that metropolitan hospitals typically locate abortion-related services in the same area of the facility as family planning services and not in separate wings. It was also argued that the proposal, together with the requirement for separate entrances and exits, does not take into account the concerns of inner city hospitals, which frequently restrict the number of entrances and exits for security reasons. For these reasons, many public providers expressed the view that the waiver for large metropolitan hospitals would be of very little help and that the co-siting requirements would force them to forego Title X funds.

5. *Legal authority:* The proposed physical separation requirements were attacked as illegal on several grounds. Numerous comments argued that there is no evidence that they are needed, asserting that the Inspector General and GAO audits failed to show that Title X grantees had intermingled project and abortion-related activities in any way. In this regard, it was argued that there is no evidence supporting the presumption of illegality with respect to common street or mailing addresses. It was also argued that the requirements greatly exceed what is needed to assure that Title X funds are not used for abortion-related purposes, and thus are invalid. The decisions in the litigation involving the State of Arizona and Planned Parenthood of Central and Northern Arizona (see, *e.g., Planned Parenthood of Central and Northern Arizona* v. *The State of Arizona*, 789 F. 2d. 1348 (9 Cir. 1986), aff'd U.S. ——, 107 S. Ct. 391 (1986)) and *Planned Parenthood of Billings, Inc.* v. *The State of Montana, supra*, were cited in support of this argument. Finally, some comments also contended that the proposed requirements violate the First Amendment, based on the decision in *League of Women Voters, supra*. In that decision, it was argued, the Supreme Court established the principle that the government may not require the recipient of a Federal benefit (in that case, a broadcast license) to establish an "entirely separate facility" to exercise its First Amendment rights, even though it could decline to subsidize the exercise of those rights with Federal funds. The proposed co-siting requirements, it was argued, constitute a requirement to establish an "entirely separate facility" analogous to that considered and rejected by the Supreme Court and is thus invalid.

Proponents of the regulations uniformly supported the proposed physical separation requirements. Many argued that physical intermingling of Title X projects with abortion facilities necessarily has the effect of subsidizing the latter, contrary to Congressional intent. Others contended that lack of physical separation necessarily leads to the public perception that the government is supporting abortion as a method of family planning, which is contrary to the intent of section 1008 that Title X funds not be used to promote abortion as a method of family planning. Because Title X clients do not see the accounting and other "paper" indices of separation, it was argued, physical separation is the only reasonable means to clarify that Title X projects may not include abortion and that the federal government insists on a clear adherence to its policy against spending federal money to facilitate abortions. In this regard, it was evident from the comments of hundreds of individuals that they confused the Title X projects with abortion providers or assumed that Title X projects were generally abortion providers.

B. Response

The Department has carefully considered the comments received concerning the proposed separation requirements and has made a number of changes to the requirements in light of the comments received. In essence, the new rules adopt an approach that will enable the Department to make case-by-case determinations as to whether a given Title X project is physically and financially separate from prohibited activities. As stated in the proposed rules, meeting the requirement of section 1008 mandates that Title X programs be organized so that they are physically and financially separate from other activities which are prohibited from inclusion in a Title X program. Having a program that is separate from such activities is a necessary predicate to any determination that abortion is not being included as a method of family planning in the Title X program. Under the rules below, the separation must be objective; that is, if the Title X program cannot be distinguished from prohibited activities conducted by the grantee or others, the statutory mandate has not been met. Thus, the rule below provides that, while accounting separation is necessary, it is not sufficient. There must also be a visible separation between the Title X program and other activities which are prohibited from inclusion in the Title X program. To determine whether sufficient separation exists in a particular case, the Department will weigh the relevant factors. The regulation identifies four non-exclusion factors relevant to such a determination. See § 59.9 below. However, because the rule below adopts a "facts and circumstances approach," it is felt that providing examples would be misleading, in that examples are unlikely to replicate the complex circumstances and conditions that the Department will be considering when making the individual determinations called for by the rule. Accordingly, unlike proposed § 59.9, § 59.9 below contains no examples.

In light of these changes to the proposed rule, the Department makes the following responses to the public comments.

1. *Cost.* Because of the adoption of a case-by-case determination approach in the rules below, it is not possible to determine with any precision the costs that grantees will face in accommodating to the rules. However, the Department would note that most of the actual or apparent requirements of proposed § 59.9 that caused the most concern regarding costs, such as the stated requirement for separate entrances and exits and the apparent (although unintended) requirement to repave parking lots, no longer constitute *per se* tests under rules below. Certainly, the Department at this point does not have complete data about each of the 4,000 clinics presently in the program so that it could determine how much, if any, expense each would incur to maintain program integrity. Indeed, the Department has in part chosen a case-by-case approach so as to be able to implement this policy with a greater understanding and sensitivity to the costs imposed. In any event, because the rules no longer contain the rigid physical separation requirements of the proposed rules, it does not agree that the "worst case" estimates submitted of approximately $50,000 per clinic are likely to be realized for many clinics. Accordingly, the Department is not persuaded that the rules below will substantially impact upon rural health care providers.

The Department also is unpersuaded by the provider arguments that Title X benefits from lack of separation from abortion facilities due to the economies of scale that are realized. Indeed, such comments only underscore the problem of commingling the Title X services with abortion services, both in the difficulty of ensuring that no subsidy in the other direction occurs, but also in creating the appearance, if not the reality, of federal support of abortion. Further, current program policy allows grant funds to be used for the one-time costs associated with relocating a Title X clinic for the express purpose of complying with the rules below.

2. *Continuity of care:* The above changes also respond to several of the provider concerns with continuity of care, as do the related changed discussed in the following section. The example typically cited—the Title X clinic that is located at the same site as a project funded under another program that provides genetic screening and counseling—may not be affected by the requirements revised, if the project can show that the later project's activities meet the separation indicia of § 59.9 below. To the extent the rules below minimize continuity between family planning and abortion, this is a result which the Department views as consistent with section 1008.

3. *Separation of medical records, personnel, and financial and accounting systems:* The requirements relating to separate financial and accounting, personnel, and medical records systems have been eliminated in response to the concerns raised in the public comments. See § 59.9 below. However, in order to ensure financial separation of abortion from Title X and consistent with past practice as well as in recognition of the customary financial management practices of health care providers, § 59.9 below provides that one of the indicia of separation to be considered is the existence of separate accounting *records* that are separate from those of any abortion activity it conducts. This, it should be emphasized, represents no change from longstanding program practice. With respect to the issue of shared personnel, § 59.9 below establishes the existence of separate personnel as one of the regulatory indicia of separation. However, as noted above with respect to this section, the existence of this factor—like the existence of any of the factors set out in § 59.9—in a particular case is not a *per se* disqualification, but rather must be considered in light of the facts and circumstances of the project as a whole. Where sharing of personnel exists, but the project can demonstrate on an overall basis that it is objectively separated from prohibited activities, the Department will determine that the project is in compliance with § 59.9. Accordingly, the Department does not believe that the concerns raised with respect to the ability of medical personnel to act outside their employment by the project are valid. These changes thus address and should allay many of the cost concerns expressed by the public comments.

4. *Treatment of large, metropolitan hospitals:* The Department has deleted the language relating to large hospitals. It agrees that this language was unclear and suggested criteria that were never intended to apply. Moreover, the approach adopted below makes such a provision no longer necessary.

5. *Legal authority:* The legal authority for these regulations is discussed extensively elsewhere in this preamble and does not need to be repeated here. In brief, section 1008 prohibits the use of title X funds in programs that include abortion as a method of family planning. Thus, section 1008 is broader than a mere restriction on the use of federal funds, and clearly authorizes the Department to set out rules to implement its mandate that Title X programs not include prohibited activities. Based on the need to implement the mandate of the statute and the Departments experience in administering the program, the Department has concluded that greater guidance and specificity is needed with regard to program separateness. Section 59.9's case-by-case approach will allow the Department to implement the statutory mandate of program separateness with sensitivity to the circumstances of each program. Thus, adopting the case-by-case approach reflects the Department's efforts to reconcile the commands of the statute with the concerns expressed by commenters. As such, it reflects a rasonable exercise of the Department's authority to promulgate rules for the administration of the Title X program. With repsect to the constitutional claims raised by some commenters, the Department disagrees that the cases cited, particularly *League of Women Voters, supra*, preclude the policies below, for the reasons more fully discussed previously and below.

VI. Advocacy of Abortion

Proposed § 59.10 set out a number of restrictions designed to ensure that Title X grantees do not promote or encourage abortion as a method of family planning with Title X funds. Under proposed § 59.10(a), a Title X project could—

take no action which encourages, promotes, or advocates abortion as a method of family planning, or which assists a woman in obtaining an abortion as a method of family planning. Actions are considered to encourage, promote, or advocate abortion as a method of family planning if they in any way have the effect of facilitating obtaining abortion as a method of family planning.

The proposed rule prohibited certain specific actions: lobbying, providing speakers promoting abortion and paying dues to abortion advocacy organizations (proposed § 59.9(a)(1)); using legal action to make abortion available as a method of family planning (proposed § 59.9(a)(2)); and developing or disseminating materials advocating abortion as a method of family planning (proposed § 59.9(a)(3)). Five examples were provided. The following four were termed impermissible under the statute: providing a brochure advertising an abortion clinic, paying dues to an organization which devotes a substantial part of its activities to lobbying Congress for liberalized abortion laws, displaying posters encouraging clients to write legislators to vote in favor of abortion, and assisting clients in making appointments at abortion clinics; the fifth example, concerning the activities of the Title X project's personnel outside of the project in writing legislators in support of pro-choice legislation, was termed permissible. See proposed § 59.10(b).

A. Comments

1. *Provision of abortion materials:* The majority of comments opposing proposed § 59.10 criticized the prohibition of proposed § 59.10(a) relating to assisting a woman to obtain a family planning abortion and actions that "in any way have the effect of facilitating obtaining abortion," together with proposed § 59.10(a)(3) relating to the development and dissemination of materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning. The usual criticism was that these provisions are overbroad, in that they fail to distinguish between the provision of factual information and advocacy of abortion. It was argued that the provisions would prohibit Title X grantees from disseminating such things as patient package inserts included in oral contraceptive packages and the patient information required by the Food and Drug Administration regarding the IUD, or even keeping copies of the telephone yellow pages which contain advertisements by abortion clinics. A national medical organization suggested that the "assisting" and "facilitating" language of proposed § 59.10(a) would preclude Title X projects from providing

copies of a patient's medical records on request, if the request came from an abortion facility, which conflicts with the principle that patients have a right to their medical records.

A series of related legal objections were also raised. The same criticisms relating to informed consent and voluntary acceptance of services that were articulated with respect to the proposed counseling provisions were likewise stated with respect to proposed § 59.10. In addition, many opponents argued that these provisions are unconstitutionally vague in failing to make clear exactly what the limits on expression are, so that a provider could never be certain whether it had violated them or not. It was also argued by a number of organizations that the provisions violate the First Amendment in constituting viewpoint-based discrimination (by forbidding pro-abortion but not anti-abortion speech) and by requiring grantees to relinquish their right to speech that is protected under *Griswold* v. *Connecticut, supra.* It was further argued that these restrictions on speech are not permissible on the theory that a benefit, rather than a right, is denied, as the government may not condition receipt of a benefit upon the relinquishment of First Amendment rights, as such a condition would have a chilling effect on the exercise of those rights. *Perry* v. *Sindermann, supra, Planned Parenthood of Central and Northern Arizona* v. *The State of Arizona, supra,* and *Alan Guttmacher Institute* v. *McPherson,* 616 F. Supp. 195, 202 (S.D.N.Y. 1985) were cited in support of this argument.

Supporters of the proposed provisions, on the other hand, generally expressed the view that they were appropriate and needed. They contended that advocacy of abortion is not a proper governmental function and is certainly not a "family planning" service which should be subsidized with federal funds. With regard to constitutional concerns, it was argued that the provisions are constitutional because the constitutional guarantees under the First Amendment do not apply to the government; those acting as agents of the government have no greater rights than the government itself, and accordingly the government may lawfully restrict what they say on its behalf. Also cited in support of the constitutionality of these provisions was *Regan* v. *Taxation Without Representation, supra.*

2. *Dues payment, lobbying and litigation:* The remaining provisions of proposed § 59.10 attracted somewhat less comment. A general criticism of these provisions was that they would prevent Title X grantees who are pro-abortion from exercising their First Amendment rights. In this regard, the provisions were criticized as politically motivated and not politically neutral; it was argued that they permit Title X funds to be used to support pro-life political, legal and lobbying activities, but prohibit such use of funds for the contrary point of view. In addition, a number of specific criticisms of the provisions were expressed. The restriction on payment of dues to organizations that advocate abortion was objected to as depriving grantees of access to needed professional information and services, as well as being an unconstitutional restriction of their right to free association under the First Amendment. The restrictions on lobbying were generally criticized as unnecessary: several comments argued that IRS requirements and OMB Circular No. A-122 already limit lobbying by grantees, and stated that there is no evidence that grantees are not complying with these requirements. It was also asserted that the lobbying restrictions violated the First Amendment. Similar arguments were made with respect to the restriction on litigation which, in addition, was criticized as vague. Questions were raised as to whether a grantee, which in its non-project activities provides abortions, could defend itself under this provision in any malpractice actions arising out of such abortions.

Proponents of the proposed provisions generally took the position that, if anything, they did not go far enough. In this regard, it was argued that it is inconsistent to restrict a grantee from advocating abortion if the parent organization is permitted to do so on the ground that the federal funds "free up" funds of the parent organization for such advocacy activity. In addition, one comment took the position that the example at proposed § 59.10(b)(2) was inconsistent with the logic of the regulation as a whole: If the point of the provisions is to separate Title X funds from abortion advocacy, then payment of dues to an organization that devotes *any* part of its activities to lobbying for abortion should be prohibited. The proponents of the provisions also took the position that, since the restrictions only apply to the Title X project itself, they are constitutional. *Regan* v. *Taxation Without Representation, supra,* was cited in support of this argument, as, it was noted, that case specifically concerned the availability of a tax exemption with regard to lobbying activities; in that case, the organization's tax exemption was denied because a substantial part of its activities were devoted to lobbying.

B. Response

The Department has considered the comments received, but for the reasons stated below, has not accepted them. Accordingly, § 59.10 below remains substantially as proposed.

1. *Provision of abortion materials:* The Department notes that many of the comments criticizing these provisions proceed from a misunderstanding of the requirements or have been addressed in connection with revisions to the rest of the regulation. As noted in the discussion at sections IIIB1 and IIIB2 above, it is not the intent of these regulations to restrict the provision of information to Title X clients necessary to assess the risks and benefits of different methods of contraception. See § 59.8(a)(4) above. Similarly, keeping the yellow pages in the project office and provision of medical records to another medical provider would not be proscribed, as they are not actions that directly "assist" a woman to obtain an abortion.

With respect to the legal criticisms of these provisions, the Department does not believe that they have merit. It notes, as an initial matter, that with the exception of the provision relating to payment of dues, the policies at proposed § 59.10(a) represent the long-standing interpretation of section 1008 by this Department, of which the grantee community should be aware and is currently bound. What the final rules below do is reduce to readily accessible written, regulatory form compliance standards which were articulated in an OGC opinion written in 1978 and a matter of public record since 1980. It is difficult to understand how, with these policies reduced to written, regulatory form and with concrete applications of them provided as in the proposed rules and the final rules below, the regulatory framework can be challenged as "vague," when the *status quo*, which the opponents of the regulations uniformly seek to continue, is not. The criticisms made on informed consent and "voluntariness" grounds are, with respect to the provisions of § 59.10, irrelevant, as those provisions in general do not relate to treatment, *per se.* However, to the extent that the requirements of § 59.10 do impinge on treatment, these concerns are addressed at section IIIB2 above. With respect to the claims that § 59.10 is unconstitutional, the Department disagrees that these claims have merit. These provisions are constitutional under the standards set forth in *Regan* v. *Taxation Without Representation, supra,* and *League of Women Voters, supra,* because they do not prohibit organizations from establishing affiliates that provide abortion materials. They permit an organization to operate both a Title X project and a project that would educate women on abortion as long as they are separate and distinct.

2. *Dues payment, lobbying, and litigation:* The Department disagrees with the comments criticizing the proposed policies as not politically neutral. It is true that § 59.10, like the remainder of the rules below, does exhibit a bias in favor of childbirth and against abortion as a method of family planning. However, this bias is explicit in the statute itself, and is not a creation of this Department or this Administration. Moreover, as noted above, virtually all of the policies in § 59.10 represent program requirements that antedate the present Administration. Thus, it considers these criticisms to be unfounded.

With respect to the specific objections to the provisions relating to dues payment, lobbying and litigation, the Department disagrees that they have merit. It should be noted in this regard that the requirements apply only to the project. Thus, if a grantee organization believes that its interests are best served by belonging to an organization that advocates abortion, it is free to join; it simply may not use project funds for payment of dues. Similarly, if it wishes to lobby for the passage of pro-abortion legislation, it may, so long as project funds (including project personnel working on project time) are not used. The same principle applies with respect to the restriction on litigation, and thus the answer to the malpractice concern raised by some providers is that the organization may of course defend itself. See the examples at § 59.10(b) below.

The Department has thus not accepted the criticism expressed by some supporters of the rule, *i.e.*, that the restrictions of § 59.10 should apply to the organization in its entirely rather than just to the Title X-supported project. It does not agree that it has the statutory authority to impose such a policy, as section 1008 by its terms applies solely to programs supported with Title X funds; therefore, activities lying outside the project are not covered by the statutory prohibition. Moreover, such a policy would raise potential constitutional concerns. By the same token, since the restrictions at issue affect only the project, and not the organization as a whole, they come squarely within the *Regan* case, *supra,* and the claim that they violate the First Amendment is without merit.

VII. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule," as defined in the Executive Order. Although the rules below establish standards of performance for all Title X programs, only the requirements under § 59.9, *Maintenance of program integrity,* may have effects of the type and/or magnitude covered by Executive Order 12291. As discussed above, in reponse to comments about costs of complying with the rules, the Department has changed the rules to require appropriate and objective separation between the Title X program and activities prohibited under the subpart. The Department at this point does not have complete data about each of the 4,000 clinics presently in the program to determine how much, if any, expenses each will have to incur to maintain program integrity as mandated by Congress. However, since the rules no longer contain the rigid physical separation requirements of the proposed rules, the Department does not believe that the costs associated with implementation of the requirements contained in § 59.9 will even begin to approach the level of $100 million. The Secretary has determined, therefore, that this final rule is not a "major rule" as defined under E.O. 12291 because it will not have an annual effect on the economy of $100 million or more, or otherwise meet the criteria for which a regulatory impact analysis is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small entities. Although the rules below establish standards of performance for all Title X programs, only the requirements under § 59.9, *Maintenance of program integrity,* may have effects of the type covered by the Regulatory Flexibility Act. With one exception, the effect of the rules is to eliminate existing requirements or permissive provisions concerning the provision of abortion-related services, and as a result the rules should to this extent produce a reduction in costs for Title X programs. The exception is at § 59.9, relating to separation of services prohibited under this subpart from the Title X program. For the reasons discussed above, the Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these rules will not have a significant impact on a substantial number of small entities.

C. Executive Order 12612

Executive Order 12612 requires that a Federalism Assessment be prepared in any cases in which proposed policies have significant federalism implications as defined in the Executive Order. Among the types of actions which can have such implications are federal regulatory actions which preempt State law. As discussed above, the Department does not intend or interpret these rules as imposing additional costs or burdens on the States or preempting State laws and has argued that these rules will not have any of those effects, nor are they inconsistent with any of the principles, criteria or requirements established by this Executive Order. To the extent there are any additional costs for the operation of Title X programs resulting from these regulations, these costs are small, (see the discussion of Executive Order 12291, above) and are costs which will affect only the expenditure of Title X program funds. To the extend that these rules may have any effect, undetected by this analysis, which would create any federalism impact, the Department maintains that these regulations are necessary to ensure the integrity of the Title X program and appropriate enforcement of section 1008. Therefore, these rules comply with the letter and spirit of Executive Order 12612.

D. Paperwork Reduction Act

The final rules do not impose a burden of information collection under the Paperwork Reduction Act. Information collection requirements which were included in § 59.9 of the proposed rules have been deleted. The requirement established at § 59.7 will be administered in such a way that it will not create any paperwork burden. Applicants for grants will be asked merely to sign an assurance of compliance with the requirements in § 59.8 through § 59.10. Additional documentary evidence will be requested of an applicant or grantee only on a case-by-case basis in situations where such information is deemed necessary by the Secretary. The final rules do not contain any information collection requirements subject to OMB approval under the Paperwork Reduction Act.

E. Family Impact

The final rules have been reviewed in conformance with E.O. 12606. The effect of the final rules is to establish standards of compliance concerning the

separation of abortion services from the national family planning program.

The final rules were assessed under the seven criteria in section 1 of E.O. 12606. We conclude that the rules below will not have a significant potential negative impact on family well-being, based on the following determinations:

1. *Impact on stability of the family:* Although program services are provided without regard to, among other things, age, sex, number of pregnancies, or marital status, it is inherent in the character of the services provided under the program that other family members, such as a spouse, will be affected by the services. The limitations on project involvement with abortion in the rules below are intended to convey to the public the Department's concern for the well-being of both mothers and their unborn children.

2. *Impact on parental influence:* The rules below will lessen the influence of service providers and create an increased opportunity for parental influence on the education, nurture, and supervision of their children. Approximately 1,000,000 adolescents are served by Title X. Of those who become pregnant, Title X will no longer counsel or refer them for abortion. This increases the likelihood of adolescents seeking parental advice when faced with pregnancy and reinforces that the seeking of parental advice and involvement is preferable to government services.

3. *Governmental intrusion on family activities:* The rules below prohibit Title X projects from counseling once pregnancy is diagnosed and require referral for services. Insofar as this policy affects teenage clients of Title X projects, it thus diminishes the role of federally funded entities in influencing the childbearing decision and may serve to increase the parental role.

4. *Impact on family earnings:* The rules below will have no impact on family earnings, as they relate solely to receipt of health services under governmentally funded programs and not to income-producing activities of individuals. There should likewise be no impact on family budgets in the aggregate, as the decrease of services in some areas (*e.g.*, prenatal services) will be replaced by increased services in other areas (*e.g.*, preventive family planning services).

5. *Feasibility of less Federal government involvement:* The rules below principally involve establishing standards for compliance with a federal statute by recipients of federal grant funds. The monitoring activities called for could not be discharged by a non-federal entity.

6. *Message of the rules regarding the status of the family:* One message to the public is that family planning is separable from abortion and that the government supports, through its funding, programs that enable families to plan the number and spacing of their children, either through preventive methods of family planning or through management of infertility problems, but not through elimination of unborn children by abortion. In reviewing the public comments, the Department was impressed that both supporters and opponents of the proposed rules seemed to agree that Title X has in the past linked family planning and abortion; the rules below break this link and dispel any perception that Title X funds may be used to support abortion services and activities.

7. *Message of the rules to young people concerning their behavior and social norms:* The message to young people is that the federal government does not sanction abortion as a method of family planning and that it will not provide funding for actions that help young women with an unintended pregnancy to obtain an abortion.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities.

Dated: January 28, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: January 28, 1988.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, Subpart A of Part 59, 42 Code of Federal Regulations, is hereby amended as set forth below.

PART 59—[AMENDED]

1. The authority citation for Subpart A of 42 CFR Part 59 is revised to read as follows:

Authority: 42 U.S.C. 300a–4

2. In 42 CFR 59.2, the following definitions are added:

§ 59.2 [Amended]

* * * * *

"Family planning" means the process of establishing objectives for the number and spacing of one's children and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods (including natural family planning and abstinence) and the management of infertility (including adoption). Family planning services includes preconceptional counseling, education, and general reproductive health care (including diagnosis and treatment of infections which threaten reproductive capability). Family planning does not include pregnancy care (including obstetric or prenatal care). As required by section 1008 of the Act, abortion may not be included as a method of family planning in the Title X project. Family planning, as supported under this subpart, should reduce the incidence of abortion.

"Grantee" means the organization to which a grant is awarded under section 1001 of the Act.

* * * * *

"Prenatal care" means medical services provided to a pregnant woman to promote maternal and fetal health.

"Program" and "project" are used interchangeably and mean a coherent assembly of plans, activities and supporting resources contained within an administrative framework.

* * * * *

"Title X" means Title X of the Act, 42 U.S.C. 300, *et seq.*

"Title X program" and "Title X project" are used interchangeably and mean the identified program which is approved by the Secretary for support under section 1001 of the Act, as the context may require. Title X project funds include all funds allocated to the Title X program, including but not limited to grant funds, grant-related income or matching funds.

§ 59.5 [Amended]

3. In 42 CFR 59.5(a), paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(11) are redesignated as paragraphs (a)(5) through (a)(10) respectively.

4. 42 CFR 59.5(b)(3)(i) is revised to read as follows:

§ 59.5 [Amended]

* * * * *

(b) * * *

(3) * * *

(i) achieve community understanding of the objectives of the Title X program,

* * * * *

5. In 42 CFR Part 59, § 59.7 through § 59.13 are redesignated as § 59.11 through § 59.17 respectively, and new § 59.7 through § 59.10 are added to read as follows:

§ 59.7 Standards of compliance with prohibition on abortion.

A project may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that it does not include abortion as a method of family planning. Such assurance must include, as a minimum, representations

(supported by such documentation as the Secretary may request) as to compliance with each of the requirements in § 59.8 through § 59.10. A project must comply with such requirements at all times during the period for which support under Title X is provided.

§ 59.8 Prohibition on counseling and referral for abortion services; limitation of program services to family planning.

(a)(1) a Title X project may not provide counseling concerning the use of abortion as a method of family planning or provide referral for abortion as a method of family planning.

(2) Because Title X funds are intended only for family planning, once a client served by a Title X project is diagnosed as pregnant, she must be referred for appropriate prenatal and/or social services by furnishing a list of available providers that promote the welfare of mother and unborn child. She must also be provided with information necessary to protect the health of mother and unborn child until such time as the referral appointment is kept. In cases in which emergency care is required, however, the Title X project shall be required only to refer the client immediately to an appropriate provider of emergency medical services.

(3) A Title X project may not use prenatal, social service or emergency medical or other referrals as an indirect means of encouraging or promoting abortion as a method of family planning, such as by weighing the list of referrals in favor of health care providers which perform abortions, by including on the list of referral providers health care providers whose principal business is the provision of abortions, by excluding available providers who do not provide abortions, or by "steering" clients to providers who offer abortion as a method of family planning.

(4) Nothing in this subpart shall be construed as prohibiting the provision of information to a project client which is medically necessary to assess the risks and benefits of different methods of contraception in the course of selecting a method; *provided*, that the provision of this information does not include counseling with respect to or otherwise promote abortion as a method of family planning.

(b) *Examples.* (1) A pregnant client of a Title X project requests prenatal care services, which project personnel are qualified to provide. Because the provision of such services is outside the scope of family planning supported by Title X, the client must be referred to appropriate providers of prenatal care.

(2) A Title X project discovers an ectopic pregnancy in the course of conducting a physical examination of a client. Referral arrangements for emergency medical care are immediately provided. Such action is in compliance with the requirements of paragraph (a)(2) of this section.

(3) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The Title X project tells her that it does not refer for abortion but provides her a list which includes, among other health care providers, a local clinic which principally provides abortions. Inclusion of the clinic on the list is inconsistent with paragraph (a)(3) of this section.

(4) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The project tells her that it does not refer for abortion and provides her a list which consists of hospitals and clinics and other providers which provide prenatal care and also provide abortions. None of the entries on the list are providers that principally provide abortions. Although there are several appropriate providers of prenatal care in the area which do not provide or refer for abortions, none of these providers are included on the list. Provision of the list is inconsistent with paragraph (a)(3) of this section.

(5) A pregnant woman requests information on abortion and asks the Title X project to refer her to an abortion provider. The project counselor tells her that the project does not consider abortion an appropriate method of family planning and therefore does not counsel or refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion counseling or referral.

§ 59.9 Maintenance of program integrity.

A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and § 59.8 and § 59.10 of these regulations from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include (but are not limited to):

(a) The existence of separate accounting records;

(b) The degree of separation from facilities (*e.g.*, treatment, consultation, examination, and waiting rooms) in which prohibited activities occur and the extent of such prohibited activities;

(c) The existence of separate personnel;

(d) The extent to which signs and other forms of identification of the Title X project are present and signs and material promoting abortion are absent.

§ 59.10 Prohibition on activities that encourage, promote or advocate abortion.

(a) A Title X project may not encourage, promote or advocate abortion as a method of family planning. This requirement prohibits actions to assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of Title X project funds for the following:

(1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

(2) Providing speakers to promote the use of abortion as a method of family planning;

(3) Paying dues to any group that as a significant part of its activities advocates abortion as a method of family planning;

(4) Using legal action to make abortion available in any way as a method of family planning; and

(5) Developing or disseminating in any way materials (including printed matter and audiovisual materials) advocating abortion as a method of family planning.

(b) *Examples.* (1) Clients at a Title X project are given brochures advertising an abortion clinic. Provision of the brochure violates subparagraph (a) of this section.

(2) A Title X project makes an appointment for a pregnant client with

an abortion clinic. The Title X project has violated paragraph (a) of this section.

(3) A Title X project pays dues to a state association which, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association violates paragraph (a)(3) of this section.

(4) An organization conducts a number of activities, including operating a Title X project. The organization uses non-project funds to pay dues to an association which, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association by the organization does not violate paragraph (a)(3) of this section.

(5) An organization that operates a Title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a Title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, using no project funds to do so. The Title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a Title X project employee speaks before a legislative body in support of abortion as a method of family planning. The Title X project has not violated paragraph (a) of this section.

6. In addition to the amendments set forth above, in 42 CFR Part 59 remove the words "project" or "projects" or "project's" and add in their place, the words "Title X project" or "Title X projects" or "Title X project's," respectively, in the following places:

(a) Section 59.2 definition of "low income family";
(b) Section 59.5(a)(1);
(c) Section 59.5(b), introductory text;
(d) Section 59.5(b)(3)(iii);
(e) Section 59.5(b)(4);
(f) Section 59.5(b)(7);
(g) Section 59.5(b)(10);
(h) Section 59.6(a);
(i) Newly redesignated § 59.11(a);
(k) Newly redesignated § 59.11(a)(7);
(l) Newly redesignated § 59.11(b);
(m) Newly redesignated § 59.11(c);
(n) Newly redesignated § 59.12(a), the first time it appears;
(o) Newly redesignated § 59.15;
(p) Newly redesignated § 59.16(a).

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federal register

Tuesday
February 2, 1988

Part V

Department of Transportation

Urban Mass Transportation Administration

UMTA Fiscal Year 1988 Formula Grant Apportionments; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1988 Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act signed into law by President Reagan on December 22, 1987, provides, among other things, Fiscal Year 1988 appropriations for the formula grant program under Sections 9 and 18 and for the section 16(b)(2) elderly and handicapped program of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This notice includes the distribution of these funds. The law also provides limitations on the use of operating assistance, also included in this Notice.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202)366–2053.

SUPPLEMENTARY INFORMATION: Federal assistance to urban mass transportation systems is authorized under the UMT Act, as amended. Funds for Fiscal Year 1988 were appropriated by the DOT and Related Agencies Appropriations Act, 1988, Pub. L. 100–202.

Formula Program Appropriations

This Notice provides the Fiscal Year 1988 apportionments of Sections 9 and 18 funds for urbanized and nonurbanized areas, based on the most recent U.S. Census data. Section 9 apportionments for urbanized areas over 200,000 in population are also based on operating and financial data submitted for the 1986 Section 15 Annual Report.

A total of $1,731,703,000 has been appropriated for Fiscal Year 1988 for the Sections 9 and 18 programs. In addition, $4,750,000 is available for the Rural Transportation Assistance Program (RTAP). The Appropriations Act directs that, before apportionment of the Sections 9 and 18 funds, $12,350,000 shall be made available to the Section 18 program. Of the remaining amount, 97.07 percent is being made available to the Section 9 program and 2.93 percent is being made available to the Section 18 program.

Construction Management Oversight Set Aside

The UMT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1988 under Sections 3, 9, 9B, 18, the National Capital Transportation Act of 1969 ("Stark-Harris"), and Section 103(e)(4) of Title 23, United States Code, to contract with any person to oversee the construction of any major project under such programs. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1988 under the Section 9 (including Section 9B) and 18 programs, or $8,984,765, has been reserved for this purpose ($8,661,571 under Section 9 and $323,194 under Section 18). The remaining amount of Fiscal Year 1988 funds is apportioned in this Notice.

Section 9 Additional Funding

This apportionment also includes Fiscal Year 1984 Section 9 funds ($4,053,809) that were never obligated and thus have become available for reapportionment. In addition, it includes Fiscal Year 1975 to Fiscal Year 1983 Section 5 funds ($11,103,856) that were deobligated in Fiscal Year 1987 and thus also have become available for reapportionment. These Sections 9 and 5 funds, totaling $15,157,665, are being apportioned under and become part of the Fiscal Year 1988 Section 9 program as provided for in the Surface Transportation Assistance Act of 1982. Also, $431,227 of reserved construction management oversight Fiscal Year 1987 funds that were not required for this function in Fiscal Year 1987 are being reapportioned. In addition, this apportionment includes Fiscal Year 1986 construction management oversight funds ($538,526) that were deobligated in Fiscal Year 1987 and have become available for reapportionment. Thus, the total additional funding amount being apportioned under Section 9 is $16,127,418.

Section 9B Formula Program—Distribution of Mass Transit Account (Trust Fund)

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURA Act) made a number of changes to the programs of the Urban Mass Transportation Administration and established a new Section 9B Program. The Act states that beginning in Fiscal Year 1988, in any year in which an obligation limitation in the Discretionary Grants Program exceeds $1 billion, the funds in excess of that amount are to be allocated half on a discretionary basis and half under a new Section 9B formula program—essentially a capital-only Section 9 program. The obligation limitation for Fiscal Year 1988 is $1,130,500,000. Thus, $65,250,000 have been allocated for Section 9B. These Section 9B funds cannot be used for operating assistance but are otherwise treated as Section 9 funds. In grant applications, amounts applied for under each Section should be clearly shown.

Total Section 9 Fiscal Year 1988 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the Section 9 program (General Fund) and the Section 9B program (Trust Fund). The amounts apportioned under Section 9 ($1,667,064,132) and Section 9B ($65,250,000) have been added together. Adjustments have been made previously to Section 9 for construction management oversight and reapportioned funds. The total amount being apportioned for Section 9 (including Section 9B) is $1,739,779,979.

Section 9 Fiscal Year 1987 Data Corrections

Corrections have been made to the data from certain areas that were used to compute the Fiscal Year 1987 formula grant apportionments published in the **Federal Register** of December 10, 1986 (51 FR 44546). Differences between corrected apportionments and previously published apportionments have been resolved and necessary adjustments have been made by adding to or subtracting from, as appropriate, the apportionments for Fiscal Year 1988. The dollar amounts published in this Notice contain these corrections. The affected unbanized area have been advised of these corrections.

Section 9 Fiscal Year 1988 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with Section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population as needed. UMTA has administered the Section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the Section 5 program. For technical assistance purposes, and in compliance with the STURA Act, this Notice also contains the amount attributable to the most recent U.S. Census data for each urbanized area above 50,000 in population within the State.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1988 apportionments, included in this Notice is a listing of the Fiscal Year 1988 limitations on the amount of Section 9 funds that may be used for operating assistance.

The STURA Act revised certain of the Section 9 formula program operating assistance limitations. Operating assistance limitations for urbanized area under 200,000 in population increased by 32.2 percent on October 1, 1987, or increased to ⅗ of an area's apportionment during the first full year it received funds under Section 9 for urbanized areas that became urbanized under the 1980 Census or thereafter. Previously, the operating assistance limitation for urbanized areas under 200,000 in population was 95% of its Fiscal Year 1982 Section 5 Tiers I, II, and III apportionment or forty percent of its Section 9 apportionment in the case of a newly urbanized area. Under the UMT Act (as revised by the STURA Act) the revised operating assistance limitation for these areas as well as all other urbanized areas total $912,598,392. However, the Fiscal Year 1988 Appropriations Act reduces the nationwide availability for operating assistance to a maximum of $804,691,892 (for funds under the Fiscal Year 1988 Appropriations Act).

Accordingly, this notice provides operating assistance limitations which take into account both the UMT Act and the FY 1988 Appropriations Act. That is, the operating assistance limitation in the Fiscal Year 1988 Appropriations Act is being met by taking a pro rata reduction applicable to all areas and States subject to the $912,598,392 UMT Act total limitation to reach the limitation of $804,691,892 in the Appropriations Act.

For all urbanized areas under 200,000 in population within each State, one limitation for operating assistance is provided to the State Governor. However, for technical assistance purposes, and in conformance with the STURA Act, this Notice also contains the limitation attributable to the data for each urbanized area within the State.

The operating assistance limitations were adjusted in a few urbanized areas and States so as not to exceed the area's or State's General Fund apportionments. However, in those States where the operating assistance limitations shown for the individual urbanized areas under 200,000 in population exceeded the General Fund apportionment levels attributable to individual urbanized areas no such adjustments had to be made because the Governor's limitation is the controlling limitation.

Section 18 Program

In addition to the appropriated Fiscal Year 1988 formula funds, the Section 18 Fiscal Year 1988 apportionment also includes $401,143 in prior year funds which had lapsed to the States to which they were originally apportioned, and $375,024 in unused Fiscal Year 1987 funds which had been set aside for construction management oversight. Thus the total amount apportioned for Section 18 is $65,091,841.

The Fiscal Year 1988 Rural Transit Assistance Program (RTAP) allocations to the States are also included in this Notice. Of the RTAP program total of $4,750,000, $4,037,500 in RTAP funds is being allocated to the States. These RTAP funds are available to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas, in conjunction with the States' administration of the Section 18 formula assistance program. The remainder of the RTAP funds are made available by UMTA in direct contracts.

Section 16(b)(2) Elderly and Handicapped Program

A total of $35,180,378 is allocated to the States under the Section 16(b)(2) program. This capital assistance program provides funds to nonprofit organizations to provide transportation for elderly and handicapped persons. Of the total allocated, $35,000,000 is the Fiscal Year 1988 appropriation and $180,378 is prior year reapportioned funds.

Period of Availability of Funds

The funds apportioned to urbanized areas under Section 9 in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1988. Any of these apportioned funds unobligated at close of business on September 30, 1991, will be added to the amounts available for apportionment for the succeeding fiscal year under Section 9. Funds apportioned to nonurbanized areas under Section 18, including RTAP funds, will remain available for two (2) years following Fiscal Year 1988. Any such funds remaining unobligated at the close of business on September 30, 1990, will be reapportioned among the States in the succeeding Fiscal Year. Funds allocated to States under Section 16(b)(2) in this Notice must be obligated by September 30, 1988. Any such funds remaining unobligated as of this date will be added to the succeeding Fiscal Year allocation.

Approval of Grants

The Urban Mass Transportation Administration has established a quarterly and bimonthly cycle for processing formula grants. Section 9, Interstate Transfer and Federal-Aid Urban Systems grants are processed on a quarterly basis and Sections 8, 16(b)(2), and 18 grants will be processed on a bimonthly basis.

Applicants should submit completed applications to the appropriate UMTA regional offices by the first day of each review cycle. If the application is complete, UMTA will approve and release the grant by the end of the cycle. The only factor which would delay UMTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to grant approval.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a Transportation Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights and 504 program requirements, and submission of all requisite documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

The application submission and approval dates for the remainder of Fiscal Year 1988 for Section 9, Interstate and FAUS projects are for completed applications submitted to UMTA no later than January 4, April 1, or July 1. UMTA will award grants on March 31, June 30, or September 30. For Sections 8, 16(b)(2), and 18 projects, completed applications submitted to UMTA no later than January 4, March 1, May 2, or July 1; UMTA will award grants on February 29, April 29, June 30, or August 31.

Application Procedures

Applications for Section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1A, published September 18, 1987. Applications for Section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1A, published May 23, 1985. Applications for Section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with Circular 9070.1A, published May 14, 1985.

Issued on: January 22, 1988.

Alfred A. DelliBovi,

Administrator.

BEST COPY AVAILABLE

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, Georgia	$21,520,210	$834,840	$22,355,050
Baltimore, Maryland	19,198,167	745,222	19,943,389
Boston, Massachusetts	49,150,292	1,904,347	51,054,639
Buffalo, New York	8,506,396	330,861	8,837,257
Chicago, Illinois-Northwestern Indiana	133,490,604	5,173,031	138,663,635
Cincinnati, Ohio-Kentucky	8,575,255	333,532	8,908,787
Cleveland, Ohio	17,554,995	681,767	18,236,762
Dallas-Fort Worth, Texas	17,395,171	676,329	18,071,500
Denver, Colorado	13,486,141	524,576	14,010,717
Detroit, Michigan	21,912,106	1,023,965	22,936,071
Fort Lauderdale-Hollywood, Florida	7,044,243	274,074	7,318,317
Houston, Texas	20,181,592	784,899	20,966,491
Kansas City, Missouri-Kansas	6,068,996	236,297	6,305,293
Los Angeles-Long Beach, California	101,873,622	3,958,362	105,831,984
Miami, Florida	18,120,358	703,888	18,824,246
Milwaukee, Wisconsin	12,293,236	478,166	12,771,402
Minneapolis-St. Paul, Minnesota	14,550,748	565,679	15,116,427
New Orleans, Louisiana	11,578,197	449,052	12,027,249
New York, N.Y.-Northeastern New Jersey	419,582,606	16,311,569	435,894,175
Philadelphia, Pennsylvania-New Jersey	75,142,871	2,912,640	78,055,511
Phoenix, Arizona	7,282,962	283,503	7,566,465
Pittsburgh, Pennsylvania	22,653,699	879,786	23,533,485
Portland, Oregon-Washington	11,249,304	437,587	11,686,891
St. Louis, Missouri-Illinois	14,060,246	581,868	14,642,114
San Diego, California	18,194,538	706,483	18,901,021
San Francisco-Oakland, California	71,387,542	2,766,218	74,153,760
San Jose, California	14,875,500	577,963	15,453,463
San Juan, Puerto Rico	10,413,605	404,810	10,818,415
Seattle-Everett, Washington	25,218,609	977,945	26,196,554
Washington, D.C.-Maryland-Virginia	51,449,967	1,994,402	53,444,389
TOTAL	$1,244,011,798	$48,513,661	$1,292,525,459

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Akron, Ohio	$3,382,352	$131,720	$3,514,072
Albany-Schenectady-Troy, New York	4,641,968	180,588	4,822,556
Albuquerque, New Mexico	2,752,539	107,233	2,859,772
Allentown-Bethlehem-Easton, Pa.-N.J.	2,289,158	89,180	2,378,338
Ann Arbor, Michigan	2,032,164	79,139	2,111,303
Augusta, Georgia-South Carolina	1,093,923	42,616	1,136,539
Austin, Texas	4,022,823	156,720	4,179,543
Bakersfield, California	1,693,481	65,936	1,759,417
Baton Rouge, Louisiana	2,046,886	79,612	2,126,498
Birmingham, Alabama	3,342,777	130,120	3,472,897
Bridgeport, Connecticut	3,573,869	146,545	3,720,414
Canton, Ohio	1,334,957	52,007	1,386,964
Charleston, South Carolina	1,755,081	68,259	1,823,340
Charlotte, North Carolina	2,459,943	95,715	2,555,658
Chattanooga, Tennessee-Georgia	1,637,357	63,729	1,701,086
Colorado Springs, Colorado	883,444	34,417	917,861
Columbia, South Carolina	1,683,092	65,569	1,748,661
Columbus, Georgia-Alabama	1,192,804	46,469	1,239,273
Columbus, Ohio	7,765,359	301,968	8,067,327
Corpus Christi, Texas	1,393,557	54,279	1,447,836
Davenport-Rock Island-Moline, Iowa-Illinois	2,075,118	80,798	2,155,916
Dayton, Ohio	8,240,369	319,644	8,560,013
Des Moines, Iowa	1,839,453	71,588	1,911,041
El Paso, Texas	4,036,296	156,788	4,193,084
Fayetteville, North Carolina	848,988	33,075	882,063
Flint, Michigan	2,047,255	79,715	2,126,970
Fort Wayne, Indiana	1,485,751	57,876	1,543,627
Fresno, California	2,909,302	113,232	3,022,534
Grand Rapids, Michigan	2,455,894	95,613	2,551,507
Greenville, South Carolina	1,350,650	52,595	1,403,245
Harrisburg, Pennsylvania	1,740,609	67,708	1,808,317
Hartford, Connecticut	5,048,104	196,333	5,244,437
Honolulu, Hawaii	13,378,146	518,449	13,896,595
Indianapolis, Indiana	5,233,481	203,618	5,437,099
Jackson, Mississippi	1,303,257	50,750	1,354,007
Jacksonville, Florida	3,829,670	149,195	3,978,865
Knoxville, Tennessee	1,486,630	57,886	1,544,516
Lansing, Michigan	1,853,530	72,170	1,925,700
Las Vegas, Nevada	1,504,491	66,401	1,570,892
Lawrence-Haverhill, Mass.-New Hampshire	2,128,049	47,815	2,175,864
Little Rock-North Little Rock, Arkansas	1,748,658	68,051	1,816,709
Lorain-Elyria, Ohio	653,996	25,478	679,474
Louisville, Kentucky-Indiana	6,789,420	264,071	7,053,491
Madison, Wisconsin	2,953,027	114,830	3,067,857
Melbourne-Cocoa, Florida	1,061,533	41,334	1,102,867

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Memphis, Tennessee-Arkansas-Mississippi....	$6,005,135	$233,549	$6,238,684
Mobile, Alabama.....	1,475,160	57,468	1,532,628
Nashville-Davidson, Tennessee.....	3,224,984	125,448	3,350,432
New Haven, Connecticut.....	4,239,542	164,567	4,404,109
Newport News-Hampton, Virginia.....	1,952,379	75,946	2,028,325
Norfolk-Portsmouth, Virginia.....	5,753,868	224,069	5,977,937
Ogden, Utah.....	1,584,112	61,652	1,645,764
Oklahoma City, Oklahoma.....	2,987,519	116,356	3,103,875
Omaha, Nebraska-Iowa.....	4,054,040	157,808	4,211,848
Orlando, Florida.....	3,753,534	146,070	3,899,604
Oxnard-Ventura-Thousand Oaks, California...	1,874,389	73,020	1,947,409
Pensacola, Florida.....	1,075,393	41,874	1,117,267
Peoria, Illinois.....	1,553,486	60,514	1,614,000
Providence-Pawtucket-Warwick, R.I.-Mass....	10,589,116	410,878	10,999,994
Raleigh, North Carolina.....	1,283,176	49,990	1,333,166
Richmond, Virginia.....	4,273,454	166,161	4,439,615
Rochester, New York.....	5,138,054	199,988	5,338,042
Rockford, Illinois.....	844,921	32,891	877,812
Sacramento, California.....	6,429,368	250,072	6,679,440
St. Petersburg, Florida.....	5,722,014	222,674	5,944,688
Salt Lake City, Utah.....	6,161,303	239,785	6,401,088
San Antonio, Texas.....	10,376,404	403,730	10,780,134
San Bernardino-Riverside, California.....	4,747,571	184,927	4,932,498
Sarasota-Bradenton, Florida.....	1,641,898	63,949	1,705,847
Scranton-Wilkes-Barre, Pennsylvania.....	2,429,336	94,640	2,523,976
Shreveport, Louisiana.....	1,718,844	66,908	1,785,752
South Bend, Indiana-Michigan.....	1,708,300	66,518	1,774,818
Spokane, Washington.....	2,954,603	114,961	3,069,564
Springfield-Chicopee-Holyoke, Mass.-Conn...	3,641,006	141,698	3,782,704
Syracuse, New York.....	3,664,446	142,656	3,807,102
Tacoma, Washington.....	4,189,174	163,061	4,352,235
Tampa, Florida.....	4,633,999	180,215	4,814,214
Toledo, Ohio-Michigan.....	4,063,268	158,129	4,221,397
Trenton, New Jersey-Pennsylvania.....	2,648,924	102,966	2,751,890
Tucson, Arizona.....	4,770,765	185,701	4,956,466
Tulsa, Oklahoma.....	2,498,103	97,320	2,595,423
West Palm Beach, Florida.....	2,772,234	107,940	2,880,174
Wichita, Kansas.....	1,935,269	75,340	2,010,609
Wilmington, Delaware-New Jersey-Maryland...	2,554,658	99,445	2,654,103
Worcester, Massachusetts.....	1,977,972	77,021	2,054,993
Youngstown-Warren, Ohio.....	1,810,961	70,551	1,881,512
TOTAL	$275,691,893	$10,705,290	$286,397,183

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,059,737	$158,192	$4,217,929
Anniston.....	352,477	13,734	366,211
Auburn-Opelika.....	219,134	8,538	227,672
Decatur.....	256,696	10,003	266,699
Dothan.....	224,975	8,766	233,741
Florence.....	344,747	13,433	358,180
Gadsden.....	324,871	12,659	337,530
Huntsville.....	724,932	28,248	753,180
Montgomery.....	1,081,509	42,143	1,123,652
Tuscaloosa.....	530,396	20,668	551,064
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$823,198	$32,077	$855,275
Anchorage.....	823,198	32,077	855,275
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$354,537	$13,815	$368,352
Yuma, Ariz.-Calif.....	354,537	13,815	368,352
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,196,269	$46,614	$1,242,883
Fayetteville-Springdale.....	284,573	11,088	295,661
Fort Smith, Ark.-Okla.....	425,506	16,580	442,086
Pine Bluff.....	390,166	15,204	405,370
Texarkana, Tex.-Ark.....	96,024	3,742	99,766
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$12,524,232	$488,022	$13,012,254
Antioch-Pittsburg.....	681,819	26,568	708,387
Chico.....	315,754	12,304	328,058
Fairfield.....	429,953	16,754	446,707
Hemet.....	328,877	12,816	341,693
Lancaster.....	275,300	10,728	286,028

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA--Continued:			
Merced	$380,168	$14,813	$394,981
Modesto	1,291,744	50,334	1,342,078
Napa	450,078	17,538	467,616
Palm Springs	305,629	11,909	317,538
Redding	252,489	9,839	262,328
Salinas	835,193	32,544	867,737
Santa Barbara	1,187,426	46,270	1,233,696
Santa Cruz	675,966	26,340	702,306
Santa Maria	382,283	14,896	397,179
Santa Rosa	944,113	36,789	980,902
Seaside-Monterey	876,177	34,141	910,318
Simi Valley	588,304	22,923	611,227
Stockton	1,542,976	60,123	1,603,099
Visalia	382,585	14,908	397,493
Yuba City	395,829	15,424	411,253
Yuma, Ariz.-Calif	1,569	61	1,630
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,683,914	$104,582	$2,788,496
Boulder	665,304	25,924	691,228
Fort Collins	494,302	19,262	513,564
Grand Junction	321,099	12,512	333,611
Greeley	472,556	18,414	490,970
Pueblo	730,653	28,470	759,123
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,693,786	$453,725	$12,147,511
Bristol	467,923	18,233	486,156
* Danbury, Conn.-N.Y.	1,906,788	73,817	1,980,605
Meriden	380,992	14,846	395,838
New Britain	941,339	36,680	978,019
New London-Norwich	772,012	30,082	802,094
* Norwalk	2,125,344	82,332	2,207,676
* Stamford	2,629,857	101,991	2,731,848
* Waterbury	2,469,531	95,744	2,565,275

*An appropriate amount for commuter rail from UZA's above 200,000 has been included.

DELAWARE:

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,610,978	$218,639	$5,829,617
Daytona Beach	927,013	36,124	963,137
Fort Myers	736,287	28,690	764,977
Fort Pierce	347,280	13,532	360,812
Fort Walton Beach	435,151	16,956	452,107
Gainesville	618,972	24,119	643,091
Lakeland	597,519	23,283	620,802
Naples	248,497	9,683	258,180
Ocala	247,692	9,652	257,344
Panama City	397,891	15,504	413,395
Tallahassee	665,889	25,947	691,836
Winter Haven	388,787	15,149	403,936
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,125,137	$121,775	$3,246,912
Albany	450,812	17,566	468,378
Athens	333,089	12,979	346,068
Macon	802,436	31,268	833,704
Rome	253,951	9,896	263,847
Savannah	970,361	37,811	1,008,172
Warner Robins	314,488	12,255	326,743
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$800,965	$31,210	$832,175
Kailua-Kaneohe	800,965	31,210	832,175
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,162,338	$45,291	$1,207,629
Boise City	839,319	32,704	872,023
Pocatello	323,019	12,587	335,606

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,709,942	$300,428	$8,010,370
Alton	507,646	19,781	527,427
Aurora	1,018,550	39,689	1,058,239
Beloit, Wis.-Ill	36,364	1,416	37,780
Bloomington-Normal	662,974	25,833	688,807
Champaign-Urbana	953,644	37,159	990,803
Danville	332,434	12,954	345,388
Decatur	682,614	26,598	709,212
Dubuque, Iowa-Ill	13,870	541	14,411
Elgin	760,710	29,642	790,352
Joliet	1,095,270	42,682	1,137,952
Kankakee	449,319	17,508	466,827
Round Lake Beach	354,279	13,805	368,084
Springfield	842,268	32,820	875,088
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,749,013	$185,051	$4,934,064
Anderson	431,859	16,828	448,687
Bloomington	487,392	18,991	506,383
Elkhart-Goshen	489,762	19,084	508,846
Evansville, Ind.-Ky	1,100,183	42,870	1,143,053
Kokomo	446,683	17,406	464,089
Lafayette-West Lafayette	697,931	27,196	725,127
Muncie	627,543	24,453	651,996
Terre Haute	467,660	18,223	485,883
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,648,914	$103,218	$2,752,132
Cedar Rapids	828,319	32,275	860,594
Dubuque, Iowa-Ill	444,747	17,332	462,079
Iowa City	352,060	13,718	365,778
Sioux City, Iowa-Nebr.-S. Dak	440,231	17,154	457,385
Waterloo	583,557	22,739	606,296

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,138,683	$44,369	$1,183,052
Lawrence	374,895	14,607	389,502
St. Joseph, Mo.-Kans	6,203	242	6,445
Topeka	757,585	29,520	787,105
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,409,024	$93,869	$2,502,893
Clarksville, Tenn.-Ky	133,630	5,207	138,837
Evansville, Ind.-Ky	144,090	5,613	149,703
Huntington-Ashland, W.Va.-Ky.-Ohio	339,984	13,248	353,232
Lexington-Fayette	1,314,607	51,225	1,365,832
Owensboro	476,713	18,576	495,289
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,813,785	$109,643	$2,923,428
Alexandria	499,879	19,478	519,357
Houma	325,117	12,669	337,786
Lafayette	742,571	28,936	771,507
Lake Charles	641,926	25,013	666,939
Monroe	604,292	23,547	627,839
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,214,671	$47,330	$1,262,001
Bangor	257,894	10,049	267,943
Lewiston-Auburn	305,590	11,907	317,497
Portland	592,928	23,104	616,032
Portsmouth-Dover-Rochester,N.H.-Me.	58,259	2,270	60,529
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,066,295	$41,550	$1,107,845
Annapolis	386,104	15,045	401,149
Cumberland, Md.-W. Va	309,293	12,052	321,345
Hagerstown, Md.-Pa	370,898	14,453	385,351

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,314,175	$207,072	$5,521,247
Brockton	1,261,819	49,167	1,310,986
Fall River, Mass.-R.I.	1,003,826	39,115	1,042,941
Fitchburg-Leominster	370,747	14,447	385,194
Lowell, Mass.-N.H.	1,078,371	42,020	1,120,391
New Bedford	1,086,617	42,341	1,128,958
Pittsfield	283,542	11,049	294,591
Taunton	229,253	8,933	238,186
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,728,845	$184,266	$4,913,111
Battle Creek	425,591	16,584	442,175
Bay City	488,433	19,032	507,465
Benton Harbor	358,196	13,958	372,154
Jackson	507,501	19,775	527,276
Kalamazoo	922,488	35,946	958,434
Muskegon-Muskegon Heights	608,225	23,700	631,925
Port Huron	367,367	14,315	381,682
Saginaw	1,051,044	40,956	1,092,000
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,606,388	$62,595	$1,668,983
Duluth-Superior, Minn.-Wis.	479,172	18,671	497,843
Fargo-Moorhead, N. Dak.-Minn.	227,096	8,849	235,945
Grand Forks, N. Dak.-Minn.	53,881	2,100	55,981
La Crosse, Wis.-Minn.	23,036	897	23,933
Rochester	438,139	17,073	455,212
St. Cloud	385,064	15,005	400,069
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,523,612	$59,370	$1,582,982
Biloxi-Gulfport	923,478	35,985	959,463
Hattiesburg	281,505	10,969	292,474
Pascagoula-Moss Point	318,629	12,416	331,045

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,877,842	$73,174	$1,951,016
Columbia	341,699	13,315	355,014
Joplin	268,106	10,447	278,553
St. Joseph, Mo.-Kans.	440,743	17,175	457,918
Springfield	827,294	32,237	859,531
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,358,844	$52,950	$1,411,794
Billings	537,576	20,948	558,524
Great Falls	468,620	18,261	486,881
Missoula	352,648	13,741	366,389
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,278,928	$49,835	$1,328,763
Lincoln	1,215,180	47,351	1,262,531
Sioux City, Iowa-Nebr.-S. Dak.	63,748	2,484	66,232
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,028,666	$40,083	$1,068,749
Reno	1,028,666	40,083	1,068,749
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,537,980	$59,930	$1,597,910
Lowell, Mass.-N.H.	3,750	146	3,896
Manchester	680,933	26,535	707,468
Nashua	466,058	18,160	484,218
Portsmouth-Dover-Rochester, N.H.-Me.	387,239	15,089	402,328

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,205,780	$46,985	$1,252,765
Atlantic City	844,861	32,921	877,782
Vineland-Millville	360,919	14,064	374,983
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$583,100	$22,721	$605,821
Las Cruces	311,035	12,120	323,155
Santa Fe	272,065	10,601	282,666
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,844,342	$149,799	$3,994,141
Binghamton	1,075,759	41,918	1,117,677
Danbury, Conn.-N.Y.	12,293	479	12,772
Elmira	469,023	18,276	487,299
Glens Falls	277,469	10,812	288,281
Newburgh	344,094	13,408	357,502
Poughkeepsie	757,478	29,516	786,994
Utica-Rome	908,226	35,390	943,616
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,588,360	$256,723	$6,845,083
Asheville	497,806	19,398	517,204
Burlington	353,948	13,792	367,740
Concord	353,014	13,756	366,770
Durham	974,428	37,970	1,012,398
Gastonia	543,443	21,176	564,619
Goldsboro	275,595	10,739	286,334
Greensboro	1,092,555	42,571	1,135,126
Hickory	293,888	11,452	305,340
High Point	518,026	20,185	538,211
Jacksonville	346,223	13,491	359,714
Wilmington	421,098	16,409	437,507
Winston-Salem	918,336	35,784	954,120

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,155,111	$45,010	$1,200,121
Bismarck-Mandan	368,117	14,344	382,461
Fargo-Moorhead, N. Dak.-Minn	446,954	17,416	464,370
Grand Forks, N. Dak.-Minn	340,040	13,250	353,290
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,741,525	$145,793	$3,887,318
Hamilton	677,886	26,415	704,301
Huntington-Ashland, W.Va.-Ky.-Ohio	196,500	7,657	204,157
Lima	431,163	16,800	447,963
Mansfield	426,902	16,634	443,536
Middletown	481,804	18,774	500,578
Newark	289,999	11,300	301,299
Parkersburg, W.Va.-Ohio	47,891	1,866	49,757
Sharon, Pa.-Ohio	28,755	1,121	29,876
Springfield	670,297	26,119	696,416
Steubenville-Weirton, Ohio-W.Va.-Pa.	264,295	10,299	274,594
Wheeling, W. Va.-Ohio	226,033	8,808	234,841
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$814,794	$31,752	$846,546
Enid	261,527	10,191	271,718
Fort Smith, Ark.-Okla	9,905	386	10,291
Lawton	543,362	21,175	564,537
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,603,763	$101,459	$2,705,222
Eugene	1,338,865	52,171	1,391,036
Longview, Wash.-Oreg	6,855	267	7,122
Medford	327,413	12,758	340,171
Salem	930,630	36,263	966,893

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,455,645	$290,518	$7,746,163
Altoona	575,387	22,421	597,808
Erie	1,469,533	57,262	1,526,795
Hagerstown, Md.-Pa.	4,765	185	4,950
Johnstown	605,154	23,581	628,735
Lancaster	1,027,460	40,036	1,067,496
Monessen	355,878	13,867	369,745
Reading	1,371,228	53,431	1,424,659
Sharon, Pa.-Ohio	315,701	12,302	328,003
State College	429,909	16,752	446,661
Steubenville-Weirton, Ohio-W.Va.-Pa.	1,316	51	1,367
Williamsport	396,901	15,466	412,367
York	902,413	35,164	937,577
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,209,214	$202,982	$5,412,196
Aguadilla	416,786	16,241	433,027
Arecibo	477,373	18,601	495,974
Caguas	1,118,017	43,565	1,161,582
Mayaguez	782,940	30,508	813,448
Ponce	1,840,111	71,701	1,911,812
Vega Baja-Manati	573,987	22,366	596,353
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$414,499	$16,151	$430,650
Fall River, Mass.-R.I.	90,303	3,519	93,822
Newport	324,196	12,632	336,828
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,302,309	$50,747	$1,353,056
Anderson	267,651	10,429	278,080
Florence	281,957	10,987	292,944
Rock Hill	252,337	9,833	262,170
Spartanburg	500,364	19,498	519,862

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$827,252	$32,234	$859,486
Rapid City	300,634	11,715	312,349
Sioux City, Iowa-Nebr.-S.Dak.	8,655	337	8,992
Sioux Falls	517,963	20,182	538,145
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,417,160	$55,223	$1,472,383
Bristol, Tenn.-Bristol, Va.	137,457	5,356	142,813
Clarksville, Tenn.-Ky.	260,253	10,141	270,394
Jackson	251,346	9,794	261,140
Johnson City	387,397	15,097	402,494
Kingsport, Tenn.-Va.	380,707	14,835	395,542
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$13,035,421	$507,929	$13,543,350
Abilene	484,698	18,887	503,585
Amarillo	861,838	33,582	895,420
Beaumont	654,177	25,490	679,667
Brownsville	673,691	26,251	699,942
Bryan-College Station	463,318	18,053	481,371
Galveston	376,897	14,686	391,583
Harlingen-San Benito	362,228	14,115	376,343
Killeen	552,333	21,523	573,856
Laredo	885,501	34,504	920,005
Longview	347,400	13,537	360,937
Lubbock	1,013,940	39,509	1,053,449
McAllen-Pharr-Edinburg	1,053,691	41,048	1,094,739
Midland	426,401	16,615	443,016
Odessa	643,776	25,086	668,862
Port Arthur	581,012	22,640	603,652
San Angelo	436,120	16,994	453,114
Sherman-Denison	269,640	10,507	280,147
Temple	248,876	9,698	258,574
Texarkana, Tex.-Ark.	238,011	9,274	247,285
Texas City-La Marque	479,592	18,688	498,280
Tyler	438,175	17,074	455,249
Victoria	342,242	13,336	355,578

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS—Continued:			
Waco	$655,955	$25,560	$681,515
Wichita Falls	545,909	21,272	567,181
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,056,484	$41,168	$1,097,652
Provo-Oren	1,056,484	41,168	1,097,652
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$411,931	$16,052	$427,983
Burlington	411,931	16,052	427,983
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,952,600	$115,053	$3,067,653
Bristol, Tenn.-Bristol, Va	106,990	4,169	111,159
Charlottesville	438,356	17,081	455,437
Danville	308,869	12,035	320,904
Kingsport, Tenn.-Va	20,683	806	21,489
Lynchburg	432,239	16,842	449,081
Petersburg-Colonial Heights	592,999	23,107	616,106
Roanoke	1,052,464	41,013	1,093,477
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,488,367	$96,961	$2,585,328
Bellingham	301,923	11,765	313,688
Bremerton	370,748	14,447	385,195
Longview, Wash.-Oreg	295,588	11,518	307,106
Olympia	373,318	14,547	387,865
Richland-Kennewick	608,986	23,728	632,714
Yakima	537,804	20,956	558,760
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,719,020	$105,951	$2,824,971
Charleston	990,188	38,584	1,028,772

FISCAL YEAR 1988 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WEST VIRGINIA—Continued:			
Cumberland, Md.-W. Va	$14,712	$573	$15,285
Huntington-Ashland, W.Va.-Ky.-Ohio	640,955	24,976	665,931
Parkersburg, W. Va.-Ohio	421,672	16,431	438,103
Steubenville-Weirton, Ohio-W.Va.-Pa	167,211	6,516	173,727
Wheeling, W. Va.-Ohio	484,282	18,871	503,153
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,182,508	$240,910	$6,423,418
Appleton	1,034,237	40,302	1,074,539
Beloit, Wis.-Ill	269,583	10,505	280,088
Duluth-Superior, Minn.-Wis	121,212	4,723	125,935
Eau Claire	402,671	15,691	418,362
Green Bay	782,017	30,472	812,489
Janesville	326,671	12,729	339,400
Kenosha	747,505	29,127	776,632
La Crosse, Wis.-Minn	433,661	16,898	450,559
Oshkosh	388,447	15,136	403,583
Racine	951,693	37,084	988,777
Sheboygan	405,505	15,801	421,306
Wausau	319,306	12,442	331,748
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$776,405	$30,253	$806,658
Casper	413,663	16,119	429,782
Cheyenne	362,742	14,134	376,876
TOTAL	$154,826,288	$6,031,049	$160,857,337
OVER 1,000,000 IN POPULATION	$1,244,011,798	$48,513,661	$1,292,525,459
200,000-1,000,000 IN POPULATION	275,691,893	10,705,290	286,397,183
50,000-200,000 IN POPULATION	154,826,288	6,031,049	160,857,337
NATIONAL TOTALS	$1,674,529,979	$65,250,000	$1,739,779,979

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Atlanta, Georgia	$6,274,314
Baltimore, Maryland	10,042,549
Boston, Massachusetts	18,854,432
Buffalo, New York	6,188,866
Chicago, Illinois-Northwestern Indiana	52,219,763
Cincinnati, Ohio-Kentucky	5,439,789
Cleveland, Ohio	9,953,010
Dallas-Fort Worth, Texas	8,925,311
Denver, Colorado	6,093,242
Detroit, Michigan	22,096,273
Fort Lauderdale-Hollywood, Florida	3,913,740
Houston, Texas	9,378,625
Kansas City, Missouri-Kansas	4,609,253
Los Angeles-Long Beach, California	58,934,914
Miami, Florida	8,656,794
Milwaukee, Wisconsin	5,640,315
Minneapolis-St. Paul, Minnesota	7,520,507
New Orleans, Louisiana	6,822,181
New York, N.Y.-Northeastern New Jersey	136,489,138
Philadelphia, Pennsylvania-New Jersey	32,856,564
Phoenix, Arizona	4,859,118
Pittsburgh, Pennsylvania	9,807,640
Portland, Oregon-Washington	4,544,394
St. Louis, Missouri-Illinois	9,901,048
San Diego, California	7,541,905
San Francisco-Oakland, California	20,081,207
San Jose, California	6,822,662
San Juan, Puerto Rico	7,754,477
Seattle-Everett, Washington	6,372,267
Washington, D.C.-Maryland-Virginia	17,432,429
TOTAL	$516,027,127

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Akron, Ohio	$2,373,702
Albany-Schenectady-Troy, New York	2,302,231
Albuquerque, New Mexico	1,591,753
Allentown-Bethlehem-Easton, Pa.-N.J.	2,289,158
Ann Arbor, Michigan	1,009,290
Augusta, Georgia-South Carolina	804,005
Austin, Texas	1,514,084
Bakersfield, California	987,235
Baton Rouge, Louisiana	1,319,245
Birmingham, Alabama	2,423,356
Bridgeport, Connecticut	2,103,919
Canton, Ohio	1,162,425
Charleston, South Carolina	1,102,097
Charlotte, North Carolina	1,328,598
Chattanooga, Tennessee-Georgia	1,001,580
Colorado Springs, Colorado	863,444
Columbia, South Carolina	1,133,776
Columbus, Georgia-Alabama	843,019
Columbus, Ohio	4,479,086
Corpus Christi, Texas	884,703
Davenport-Rock Island-Moline, Iowa-Illinois	1,151,136
Dayton, Ohio	2,980,480
Des Moines, Iowa	1,121,143
El Paso, Texas	1,833,735
Fayetteville, North Carolina	758,231
Flint, Michigan	1,559,557
Fort Wayne, Indiana	1,112,045
Fresno, California	1,496,520
Grand Rapids, Michigan	1,581,761
Greenville, South Carolina	764,544
Harrisburg, Pennsylvania	1,154,660
Hartford, Connecticut	2,343,198
Honolulu, Hawaii	2,901,999
Indianapolis, Indiana	3,899,213

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Jackson, Mississippi	$921,764
Jacksonville, Florida	2,065,975
Knoxville, Tennessee	918,885
Lansing, Michigan	1,186,167
Las Vegas, Nevada	1,408,056
Lawrence-Haverhill, Mass.-New Hampshire	871,642
Little Rock-North Little Rock, Arkansas	1,057,272
Lorain-Elyria, Ohio	653,996
Louisville, Kentucky-Indiana	3,982,292
Madison, Wisconsin	1,017,265
Melbourne-Cocoa, Florida	718,540
Memphis, Tennessee-Arkansas-Mississippi	3,690,744
Mobile, Alabama	1,028,478
Nashville-Davidson, Tennessee	1,711,176
New Haven, Connecticut	1,898,175
Newport News-Hampton, Virginia	1,163,207
Norfolk-Portsmouth, Virginia	3,161,029
Ogden, Utah	714,555
Oklahoma City, Oklahoma	2,368,349
Omaha, Nebraska-Iowa	2,428,901
Orlando, Florida	1,787,239
Oxnard-Ventura-Thousand Oaks, California	1,386,073
Pensacola, Florida	774,604
Peoria, Illinois	1,079,262
Providence-Pawtucket-Warwick, R.I.-Mass.	4,851,771
Raleigh, North Carolina	746,409
Richmond, Virginia	$1,977,018
Rochester, New York	3,169,210
Rockford, Illinois	844,921
Sacramento, California	3,584,466
St. Petersburg, Florida	3,409,042
Salt Lake City, Utah	2,506,601
San Antonio, Texas	4,716,519
San Bernardino-Riverside, California	2,591,821
Sarasota-Bradenton, Florida	1,293,934
Scranton-Wilkes-Barre, Pennsylvania	1,778,208
Shreveport, Louisiana	1,077,687
South Bend, Indiana-Michigan	1,177,274
Spokane, Washington	1,142,378
Springfield-Chicopee-Holyoke, Mass.-Conn.	2,075,500
Syracuse, New York	1,945,802
Tacoma, Washington	1,590,485
Tampa, Florida	1,970,219
Toledo, Ohio-Michigan	2,297,887
Trenton, New Jersey-Pennsylvania	2,028,857
Tucson, Arizona	1,699,875
Tulsa, Oklahoma	1,609,468
West Palm Beach, Florida	1,693,967
Wichita, Kansas	1,392,379
Wilmington, Delaware-New Jersey-Maryland	2,059,317
Worcester, Massachusetts	1,188,681
Youngstown-Warren, Ohio	1,810,961
TOTAL	$152,419,251

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
ALABAMA:	
State limitation for areas 50,000 to 200,000 in population:	$3,772,171
Anniston	332,949
Auburn-Opelika	178,644
Decatur	210,068
Dothan	183,719
Florence	337,285
Gadsden	334,495
Huntsville	724,775
Montgomery	967,627
Tuscaloosa	502,609
ALASKA:	
State limitation for areas 50,000 to 200,000 in population:	$726,326
Anchorage	726,326
ARIZONA:	
State limitation for areas 50,000 to 200,000 in population:	$285,240
Yuma, Ariz.-Calif	285,240
ARKANSAS:	
State limitation for areas 50,000 to 200,000 in population:	$1,136,690
Fayetteville-Springdale	232,012
Fort Smith, Ark.-Okla	395,053
Pine Bluff	386,707
Texarkana, Tex.-Ark	122,918
CALIFORNIA:	
State limitation for areas 50,000 to 200,000 in population:	$9,620,454
Antioch-Pittsburg	496,074
Chico	255,103
Fairfield	352,366
Hemet	269,711
Lancaster	223,871
Merced	259,194
Modesto	935,920
Napa	367,604
Palm Springs	249,026
Redding	206,241
Salinas	607,384
Santa Barbara	1,004,849
Santa Cruz	540,667
Santa Maria	312,870
Santa Rosa	644,520
Seaside-Monterey	749,032
Simi Valley	439,800
Stockton	1,267,146
Visalia	310,842
Yuba City	326,078
Yuma, Ariz.-Calif	2,156
COLORADO:	
State limitation for areas 50,000 to 200,000 in population:	$2,350,692
Boulder	592,050
Fort Collins	406,002
Grand Junction	261,178
Greeley	390,899
Pueblo	700,563
CONNECTICUT:	
State limitation for areas 50,000 to 200,000 in population:	$6,951,833
Bristol	427,406
Danbury, Conn.-N.Y	706,574
Meriden	430,880
New Britain	898,622
New London-Norwich	766,331
Norwalk	970,891
Stamford	1,450,569
Waterbury	1,292,560
DELAWARE:	

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
FLORIDA:	
State limitation for areas 50,000 to 200,000 in population:	$4,528,917
Daytona Beach	739,110
Fort Myers	538,401
Fort Pierce	282,629
Fort Walton Beach	356,134
Gainesville	504,987
Lakeland	495,937
Naples	202,414
Ocala	202,740
Panama City	323,876
Tallahassee	565,286
Winter Haven	317,203
GEORGIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,958,801
Albany	453,724
Athens	272,131
Macon	779,049
Rome	206,281
Savannah	990,180
Warner Robins	257,436
HAWAII:	
State limitation for areas 50,000 to 200,000 in population:	$655,820
Kailua-Kaneohe	655,820
IDAHO:	
State limitation for areas 50,000 to 200,000 in population:	$940,311
Boise City	674,417
Pocatello	265,894
ILLINOIS:	
State limitation for areas 50,000 to 200,000 in population:	$7,709,942
Alton	535,038
Aurora	1,038,349
Beloit, Wis.-Ill	835,141
Bloomington-Normal	549,189
Champaign-Urbana	885,206
Danville	268,959
Decatur	641,241
Dubuque, Iowa-Ill	12,580
Elgin	913,953
Joliet	1,368,620
Kankakee	361,910
Round Lake Beach	288,973
Springfield	833,629
INDIANA:	
State limitation for areas 50,000 to 200,000 in population:	$4,349,214
Anderson	435,287
Bloomington	396,877
Elkhart-Goshen	397,617
Evansville, Ind.-Ky	1,022,160
Kokomo	365,349
Lafayette-West Lafayette	630,096
Muncie	625,176
Terre Haute	476,652
IOWA:	
State limitation for areas 50,000 to 200,000 in population:	$2,539,775
Cedar Rapids	778,731
Dubuque, Iowa-Ill	434,442
Iowa City	285,708
Sioux City, Iowa-Nebr.-S. Dak	447,205
Waterloo	593,689
KANSAS:	
State limitation for areas 50,000 to 200,000 in population:	$1,078,329
Lawrence	299,970
St. Joseph, Mo.-Kans	5,550
Topeka	772,809

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FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
KENTUCKY:	
State limitation for areas 50,000 to 200,000 in population:	$2,134,748
Clarksville, Tenn.-Ky.	104,851
Evansville, Ind.-Ky.	64,665
Huntington-Ashland, W.Va.-Ky.-Ohio	313,523
Lexington-Fayette	1,222,555
Owensboro	429,154
LOUISIANA:	
State limitation for areas 50,000 to 200,000 in population:	$2,507,788
Alexandria	468,091
Houma	264,936
Lafayette	615,704
Lake Charles	594,177
Monroe	564,880
MAINE:	
State limitation for areas 50,000 to 200,000 in population:	$1,149,896
Bangor	210,531
Lewiston-Auburn	309,486
Portland	587,947
Portsmouth-Dover-Rochester, N.H.-Me	41,932
MARYLAND:	
State limitation for areas 50,000 to 200,000 in population:	$865,542
Annapolis	315,105
Cumberland, Md.-W. Va.	248,500
Hagerstown, Md.-Pa.	301,937
MASSACHUSETTS:	
State limitation for areas 50,000 to 200,000 in population:	$5,314,175
Brockton	1,387,461
Fall River, Mass.-R.I.	902,729
Fitchburg-Leominster	381,174
Lowell, Mass.-N.H.	1,431,188
New Bedford	998,924
MASSACHUSETTS--Continued:	
Pittsfield	$304,254
Taunton	186,716
MICHIGAN:	
State limitation for areas 50,000 to 200,000 in population:	$4,492,195
Battle Creek	450,408
Bay City	493,576
Benton Harbor	291,109
Jackson	470,217
Kalamazoo	881,392
Muskegon-Muskegon Heights	595,193
Port Huron	300,802
Saginaw	1,009,498
MINNESOTA:	
State limitation for areas 50,000 to 200,000 in population:	$1,563,612
Duluth-Superior, Minn.-Wis.	514,448
Fargo-Moorhead, N. Dak.-Minn.	218,594
Grand Forks, N. Dak.-Minn.	51,728
La Crosse, Wis.-Minn.	17,876
Rochester	412,178
St. Cloud	348,788
MISSISSIPPI:	
State limitation for areas 50,000 to 200,000 in population:	$1,281,083
Biloxi-Gulfport	792,496
Hattiesburg	228,865
Pascagoula-Moss Point	259,722
MISSOURI:	
State limitation for areas 50,000 to 200,000 in population:	$1,720,766
Columbia	319,303
Joplin	218,592
St. Joseph, Mo.-Kans.	447,357
Springfield	735,514

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
MONTANA:	
State limitation for areas 50,000 to 200,000 in population:	$1,230,771
Billings	477,728
Great Falls	465,654
Missoula	287,389
NEBRASKA:	
State limitation for areas 50,000 to 200,000 in population:	$1,124,670
Lincoln	1,072,293
Sioux City, Iowa-Nebr.-S. Dak.	52,377
NEVADA:	
State limitation for areas 50,000 to 200,000 in population:	$795,605
Reno	795,605
NEW HAMPSHIRE:	
State limitation for areas 50,000 to 200,000 in population:	$1,322,736
Lowell, Mass.-N.H.	1,631
Manchester	610,739
Nashua	388,617
Portsmouth-Dover-Rochester, N.H.-Me	321,749
NEW JERSEY:	
State limitation for areas 50,000 to 200,000 in population:	$1,205,780
Atlantic City	1,273,191
Vineland-Millville	357,009
NEW MEXICO:	
State limitation for areas 50,000 to 200,000 in population:	$477,367
Las Cruces	255,075
Santa Fe	222,292
NEW YORK:	
State limitation for areas 50,000 to 200,000 in population:	$3,844,342
Binghamton	1,082,123
Danbury, Conn.-N.Y.	6,064
Elmira	471,441
Glens Falls	225,350
Newburgh	280,427
Poughkeepsie	905,065
Utica-Rome	991,743
NORTH CAROLINA:	
State limitation for areas 50,000 to 200,000 in population:	$5,844,389
Asheville	450,293
Burlington	342,396
Concord	285,794
Durham	761,819
Gastonia	521,040
Goldsboro	224,637
Greensboro	985,340
Hickory	239,396
High Point	512,780
Jacksonville	282,548
Wilmington	373,040
Winston-Salem	865,306
NORTH DAKOTA:	
State limitation for areas 50,000 to 200,000 in population:	$974,049
Bismarck-Mandan	299,487
Fargo-Moorhead, N. Dak.-Minn.	409,621
Grand Forks, N. Dak.-Minn.	264,941
OHIO:	
State limitation for areas 50,000 to 200,000 in population:	$3,496,143
Hamilton	593,948
Huntington-Ashland, W.Va.-Ky.-Ohio	176,874
Lima	425,923
Mansfield	426,418
Middletown	394,284

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
OHIO—Continued:	
Newark	$236,911
Parkersburg, W.Va.-Ohio	44,725
Sharon, Pa.-Ohio	28,936
Springfield	651,068
Steubenville-Weirton,Ohio-W.Va.-Pa	278,664
Wheeling, W. Va.-Ohio	238,392
OKLAHOMA:	
State limitation for areas 50,000 to 200,000 in population:	$769,050
Enid	214,448
Fort Smith, Ark.-Okla	9,550
Lawton	545,052
OREGON:	
State limitation for areas 50,000 to 200,000 in population:	$2,033,974
Eugene	1,041,479
Longview, Wash.-Oreg	7,400
Medford	268,138
Salem	716,957
PENNSYLVANIA:	
State limitation for areas 50,000 to 200,000 in population:	$7,156,036
Altoona	585,653
Erie	1,333,704
Hagerstown, Md.-Pa	5,819
Johnstown	627,499
Lancaster	872,167
Monessen	291,601
Reading	1,580,970
Sharon, Pa.-Ohio	254,051
State College	345,836
Steubenville-Weirton,Ohio-W.Va.-Pa	978
Williamsport	398,729
York	848,969

STATE/URBANIZED AREA	LIMITATION
PUERTO RICO:	
State limitation for areas 50,000 to 200,000 in population:	$4,252,677
Aguadilla	338,813
Arecibo	392,369
Caguas	883,774
Mayaguez	651,282
Ponce	1,515,822
Vega Baja-Manati	470,617
RHODE ISLAND:	
State limitation for areas 50,000 to 200,000 in population:	$342,525
Fall River, Mass.-R.I	77,761
Newport	264,764
SOUTH CAROLINA:	
State limitation for areas 50,000 to 200,000 in population:	$1,113,257
Anderson	218,852
Florence	229,504
Rock Hill	205,629
Spartanburg	459,272
SOUTH DAKOTA:	
State limitation for areas 50,000 to 200,000 in population:	$740,987
Rapid City	245,051
Sioux City, Iowa-Nebr.-S.Dak	6,056
Sioux Falls	489,880
TENNESSEE:	
State limitation for areas 50,000 to 200,000 in population:	$1,247,624
Bristol, Tenn.-Bristol, Va	124,369
Clarksville, Tenn.-Ky	240,065
Jackson	204,885
Johnson City	315,316
Kingsport, Tenn.-Va	362,989

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION
TEXAS:	
State limitation for areas 50,000 to 200,000 in population:	$11,406,701
Abilene	462,399
Amarillo	781,007
Beaumont	627,112
Brownsville	492,882
Bryan-College Station	357,100
Galveston	378,267
Harlingen-San Benito	306,770
Killeen	463,034
Laredo	631,621
Longview	283,758
Lubbock	911,014
McAllen-Pharr-Edinburg	781,423
Midland	371,087
Odessa	585,697
Port Arthur	600,250
San Angelo	386,362
Sherman-Denison	283,228
Temple	203,355
Texarkana, Tex.-Ark	205,037
Texas City-La Marque	443,236
Tyler	390,833
Victoria	278,892
Waco	626,058
Wichita Falls	556,279
UTAH:	
State limitation for areas 50,000 to 200,000 in population:	$769,091
Provo-Orem	769,091
VERMONT:	
State limitation for areas 50,000 to 200,000 in population:	$336,812
Burlington	336,812

STATE/URBANIZED AREA	LIMITATION
VIRGINIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,693,674
Bristol, Tenn.-Bristol, Va	75,246
Charlottesville	355,860
Danville	251,422
Kingsport, Tenn.-Va	22,403
Lynchburg	416,855
Petersburg-Colonial Heights	594,305
Roanoke	977,583
WASHINGTON:	
State limitation for areas 50,000 to 200,000 in population:	$2,024,431
Bellingham	245,378
Bremerton	301,655
Longview, Wash.-Oreg	238,254
Olympia	303,612
Richland-Kennewick	472,052
Yakima	463,480
WEST VIRGINIA:	
State limitation for areas 50,000 to 200,000 in population:	$2,595,709
Charleston	959,263
Cumberland, Md.-W. Va	14,448
Huntington-Ashland, W.Va.-Ky.-Ohio	624,282
Parkersburg, W. Va.-Ohio	395,192
Steubenville-Weirton,Ohio-W.Va.-Pa	184,381
Wheeling, W. Va.-Ohio	418,143
WISCONSIN:	
State limitation for areas 50,000 to 200,000 in population:	$5,589,814
Appleton	941,104
Beloit, Wis.-Ill	214,487

FISCAL YEAR 1988 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	LIMITATION	STATE/URBANIZED AREA	LIMITATION
WISCONSIN—Continued:		WYOMING:	
Oshkosh	$405,547	State limitation for areas 50,000 to 200,000 in population:	$635,625
Racine	892,530		
Sheboygan	329,076		
Wausau	258,711	Casper	340,966
		Cheyenne	294,659
TOTAL			$134,658,159

OVER 1,000,000 IN POPULATION	$516,027,127
200,000-1,000,000 IN POPULATION	152,419,251
50,000-200,000 IN POPULATION	134,858,159
NATIONAL TOTALS	$803,304,537

FISCAL YEAR 1988

UMTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	$1,555,611	$84,593	NEBRASKA	683,860	65,208
ALASKA	169,273	53,764	NEVADA	150,072	53,337
AMERICAN SAMOA	23,605	10,525	NEW HAMPSHIRE	458,654	60,199
ARIZONA	588,083	63,078	NEW JERSEY	784,390	67,443
ARKANSAS	1,259,359	78,005	NEW MEXICO	568,308	62,638
CALIFORNIA	2,815,749	112,616	NEW YORK	2,752,248	111,204
COLORADO	637,980	64,187	NORTH CAROLINA	2,835,600	113,058
CONNECTICUT	579,404	62,885	NORTH DAKOTA	347,803	57,734
DELAWARE	165,745	53,686	NORTHERN MARIANAS	12,264	10,273
FLORIDA	1,694,039	87,672	OHIO	3,113,100	119,229
GEORGIA	2,090,195	96,481	OKLAHOMA	1,285,190	78,580
GUAM	77,457	11,722	OREGON	997,554	72,183
HAWAII	202,098	54,494	PENNSYLVANIA	3,431,922	126,318
IDAHO	552,311	62,282	PUERTO RICO	1,079,509	74,006
ILLINOIS	2,289,564	100,915	RHODE ISLAND	114,268	52,541
INDIANA	2,111,539	96,956	SOUTH CAROLINA	1,412,154	81,403
IOWA	1,448,556	82,213	SOUTH DAKOTA	403,486	58,973
KANSAS	1,102,980	74,528	TENNESSEE	1,830,565	90,708
KENTUCKY	1,774,630	89,464	TEXAS	3,728,065	132,906
LOUISIANA	1,464,845	82,575	UTAH	300,676	56,686
MAINE	639,873	64,229	VERMONT	317,877	57,069
MARYLAND	786,131	67,482	VIRGIN ISLANDS	70,580	11,570
MASSACHUSETTS	944,539	71,004	VIRGINIA	1,682,727	87,420
MICHIGAN	2,543,673	106,566	WASHINGTON	1,104,128	74,553
MINNESOTA	1,477,849	82,864	WEST VIRGINIA	1,130,125	75,132
MISSISSIPPI	1,411,966	81,399	WISCONSIN	1,731,514	88,505
MISSOURI	1,678,500	87,326	WYOMING	257,151	55,718
MONTANA	422,497	59,395			
TOTAL				$65,091,841	$4,037,500

FISCAL YEAR 1988 UMTA SECTION 16(b)(2) ALLOCATIONS

AMOUNTS ALLOCATED TO STATES

STATE	ALLOCATION	STATE	ALLOCATION
ALABAMA	628,693	MONTANA	214,312
ALASKA	139,178	NEBRASKA	341,105
AMERICAN SAMOA	50,940	NEVADA	197,146
ARIZONA	462,276	NEW HAMPSHIRE	234,038
ARKANSAS	478,635	NEW JERSEY	1,067,238
CALIFORNIA	2,793,657	NEW MEXICO	254,059
COLORADO	394,046	NEW YORK	2,503,015
CONNECTICUT	513,880	NORTH CAROLINA	809,190
DELEWARE	189,854	NORTH DAKOTA	208,040
DISTRICT OF COLUMBIA	208,666	NORTHERN MARIANAS	50,492
FLORIDA	1,930,904	OHIO	1,413,651
GEORGIA	718,781	OKLAHOMA	534,984
GUAM	127,969	OREGON	447,482
HAWAII	208,745	PENNSYLVANIA	1,776,855
IDAHO	225,106	PUERTO RICO	432,550
ILLINOIS	1,508,754	RHODE ISLAND	263,131
INDIANA	752,384	SOUTH CAROLINA	455,329
IOWA	532,412	SOUTH DAKOTA	219,959
KANSAS	446,565	TENNESSEE	716,202
KENTUCKY	596,769	TEXAS	1,642,145
LOUISIANA	585,594	UTAH	242,615
MAINE	276,195	VERMONT	187,558
MARYLAND	567,318	VIRGIN ISLANDS	129,450
MASSACHUSETTS	915,515	VIRGINIA	683,314
MICHIGAN	1,141,220	WASHINGTON	588,925
MINNESOTA	629,179	WEST VIRGINIA	388,378
MISSISSIPPI	454,606	WISCONSIN	715,988
MISSOURI	821,409	WYOMING	163,977
TOTAL			$35,180,378

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federal register

Tuesday
February 2, 1988

Part VI

Department of Agriculture
Forest Service

Department of the Interior
Bureau of Land Management

36 CFR Part 222
43 CFR Part 4100
Grazing Fees; Final Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing Fees on National Forests in the 16 Western States

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby establishes regulations for annually determining fees for livestock grazing and use on National Forest and Land Utilization Project lands in the 16 Western States. The fee system is the formula prescribed in Executive Order 12548 of February 14, 1986, and, in most respects, is the same grazing fee formula as that enacted by Congress in 1978 under the Public Rangelands Improvement Act. Grazing fees will be based on a rate per head month.

EFFECTIVE DATE: This rule is effective March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, or Edward R. Frandsen, Range Economist, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Room 801 RP–E, Washington, DC 20090–6090, (703) 235–8139.

SUPPLEMENTARY INFORMATION:

Background

Except in limited circumstances, fees are charged for all livestock grazing use or occupancy of National Forest System lands, or other lands under the control of the Forest Service. In 1978, with enactment of the Public Rangelands Improvement Act (PRIA), 43 U.S.C. 1752–1753, 1901, 1908; 16 U.S.C. 1333(b), Congress created a new grazing fee formula to be used on a trial basis. The formula sought to base public land grazing fees on the cost of livestock production and the public land grazer's ability to pay. The objective was to prevent crippling economic impacts on the public land grazer and dependent rural communities in the Western States. The Act required the Secretaries of Agriculture and the Interior to present to Congress an evaluation of the trial formula as well as an analysis of alternative grazing fee systems.

Pursuant to the sunset provisions in the Act, the trial grazing fee formula expired on December 31, 1985. Shortly before expiration of the formula, Congressional delegations from many of the Western States appealed to the President to extend the PRIA fee formula. On February 14, 1986, in the absence of Congressional action to establish a grazing fee system for 1986 and subsequent grazing years, the President, through Executive Order 12548, indefinitely extended the PRIA fee formula subject to a few minor changes. The Executive Order also directed how the formula indexes would be calculated by specifying that: (1) The Forage Value Index shall be based on 11 Western States data, and use "the weighted average estimate of the annual rental charge per head per month," rather than "animal unit month;" (2) the "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States, and (3) the Prices Paid Index would reflect selected livestock production costs in the Western States. In addition, the Executive Order specified that the fee "shall not be less than $1.35 per Animal Unit Month." The Executive Order retained the PRIA formula provision that annual adjustments would not exceed plus or minus 25 percent of the previous year's grazing fee. Accordingly, the Secretaries of Agriculture and the Interior calculated the 1986 and 1987 grazing fee, using 11 Western States data, for application to the public lands in the 16 Western States using the formula prescribed in the Executive Order.

In 1986, in *Natural Resources Defense Council, et.al., v. Lyng, Hodel,* plaintiffs filed suit in the United States District Court for the Eastern District of California, Civil No. 86–0548, alleging that the Secretaries of Agriculture and the Interior lacked statutory and regulatory authority to implement the prescribed fee formula, and, further, they had failed to engage in the formal rulemaking requirements of the Administrative Procedures Act (APA) (5 U.S.C. 553) and, in the case of the Secretary of Agriculture, the public participation requirements of the National Forest Management Act (NFMA) (16 U.S.C. 1621(12–13)). On August 13, 1987, the Court issued a bench opinion followed by a Memorandum of Decision and Order filed October 13, 1987. The Court determined, first, that both Secretaries had discretion under their respective governing statutes to consider factors in addition to market value in determining a grazing fee, and second, that the affected Departments had not complied with the APA and the public participation requirements of NFMA and other applicable statutes in establishing the grazing fee formula. The Court ordered the agencies to follow formal APA rulemaking procedures to establish a fee formula with full opportunity for public participation.

In compliance with the District Court ruling, the Department of Agriculture proposed amending its rules governing grazing fees at 36 CFR 222.50 and 222.51 to establish the fee formula prescribed by Executive Order 12548. The proposed rule was published on October 7, 1987, at 52 FR 37483.

Under the rule, the fee for grazing livestock on National Forest and Land Utilization Project lands in the 16 Western States will be calculated annually for 1988 and subsequent grazing years. The formula would apply to designated lands in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. National Grasslands are excluded.

This action is consistent with previous Congressional policy for grazing fees on Federal rangelands established in the Public Rangelands Improvement Act. This policy was designed to prevent economic disruption and harm to the public lands sector of the western livestock industry. Congress deemed it in the public interest to charge a fee for livestock grazing on National Forest lands in the 16 Western States based on a formula reflecting annual changes in the costs of production and livestock prices.

The annual grazing fee generally represents the economic value of the use of the land to the user rather than market value or value in exchange. The annual calculated fee equals the $1.23 base value established by the 1966 Western Livestock Grazing Survey, multiplied by the result for the Forage Value Index (FVI), added to the Beef Cattle Price Index (BCPI), less the Prices Paid Index (PPI) or the cost of livestock production index, and divided by 100. The rule provides that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and that the fee shall not be less than $1.35 per Head Month.

In equation format the formula is:

$$\text{Economic value per head month} = \frac{\$1.23 \times FVI + BCPI - PPI}{100}$$

1988 Calculated Grazing fee per Head Month:

$$\text{Economic value fee per head month} = \frac{\$1.23 \times 234 + 272 - 381}{100} = \$1.54/\text{Head Month.}$$

The $1.23 in the formula is the base fair market value in 1986. This value is based on the principle that the value of public range forage used for grazing is equal to the rental value of private rangelands leased for grazing after adjusting for differences in the costs of services routinely provided on private lands that are not provided on public rangelands.

"Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangeland in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming) (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per Head Month and multiplied by 100;

"Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming) for November through October (computed by the Statistical Reporting Service (now National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100;

"Prices Paid Index" means the following selected components from the Statistical Reporting Service's (now National Agricultural Statistics Service) Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

As set forth at § 222.50, the Forest Service shall charge a monthly grazing fee for each head of livestock grazing use, or occupancy by one adult animal. The grazing fee, then, is equal to the use fee per Head Month multiplied by the number of months the grazing animal will be on National Forest or Land Utilization Project (LUP) ranges during the grazing fee year.

Analysis of Public Comments

A Content Summary Analysis (CSA) approach was used in the tabulation and analysis of the 4,314 public responses received on the proposed rulemaking. An additional 367 responses were postmarked after the close of the response period (November 23, 1987) and were not used in the analysis of comments. From the responses received and analyzed, 9,745 specific comments were identified, both for and against the proposed rule. Of the 4,314 responses, a total of 3,710 were from individuals, 435 businesses, 129 from associations, 26 from local or State governments, 9 from Western States Universities, and 5 from Congressmen. The majority of the individual responses were from the livestock industry. Association responses included national and regional conservation, wildlife and sportsmens groups as well as National and State Livestock Producer Associations. The 435 responses from businesses were located primarily in rural communities throughout the Western states.

Total comments and content of the comments are used in the CSA process. Principal focus of the process is to evaluate the substance of the comments in order to reveal the public's concerns, argumentation, rationale, and discourse. The CSA process is not a vote count.

Comments were categorized into subject matter areas as follows: Ecology-Conservation-Land Restoration; Subsidy-Operational Costs; Fair Market Value-Fair Profit-Subleasing; Adequacy of Grazing Fee System; Rural Economic Stability; Social Values; Livestock Grazing as a Tool; Multiple Use-Wilderness Grazing-Wildlife-Fish-Riparian Values-Recreation-Other Resource Values; Agency Staffing and Budget; Change in Grazing Permit System, Legal Basis and Analytical Logic for Fee System, and, Removal of Livestock.

There was a public concern evident throughout the more than 9,700 comments about the relationship of the grazing fee to the Federal Budget deficit. Nationally, the majority of the substantive comments stressed that public land grazing fees should be raised to fair market value or at least be cost effective and provide enough funds to pay for the costs of permit administration. On the other hand, the majority of the individual, state and local government, and rural business responses, which were primarily from the Western States, favored the continuation of the proposed grazing fee formula. Major comments and Forest Service responses are summarized below.

Comments on Ecology, Conservation, and Land Restoration: There were 351 comments received concerning ecology, conservation and restoration of National Forest lands. Typical comments were: Low grazing fees will perpetuate overgrazing and increase poor range condition; grazing fee revenues do not cover the costs of administering the program and rehabilitating overgrazed areas, and under the Government proposal, the taxpayer will continue to foot most of the bill for the grazing program, and critical areas damaged by overgrazing will not be restored.

Response: The level of the grazing fee and stocking rates or livestock carrying capacity are not related. Livestock grazing capacity on national forest lands is determined biologically rather than through economic principles of supply and demand. The conventional economic principle of an inverse relationship between quantity available and its price in a competitive market does not apply on National Forest lands. Therefore, the level of the grazing fee does not affect the amount of forage available for grazing.

The relationship between the current grazing fee and overgrazing remains speculative given that many other considerations besides the grazing fee govern ranchers' decisions to graze livestock on National Forest lands. The grazing fee bears neither any relationship to how many livestock graze nor the Forest Service's management of the activity. From 1980 to 1986, the grazing fee steadily decreased from $2.36 to $1.35. The amount of livestock grazing occurring on the National Forest lands in the 16 Western States during the same period fluctuated. The relationship between the fee and the level of grazing use was variable. For example, from 1982 to 1983, while the fee decreased by twenty-five

percent, livestock use did not increase at all. Also telling is that while the fee remained the same in 1985 and 1986, livestock use again decreased substantially. Moreover, if the years 1980 and 1986 are compared the fee decreased by forty-three percent, but the amount of livestock grazing essentially remained the same.

The assertion that the current fee causes overgrazing also must assume that ranchers will increase their livestock use on National Forest lands when the fee is low. The Forest Service has been unable to document this assertion. If a rancher chooses to forego full livestock use authorized under permit, Forest Service approval must first be obtained. Conversely, if the rancher decides to activate the approved non-use, approval must be obtained. The governing consideration is whether the requested increase in actual use will exceed the allotment's grazing capacity. Thus, the grazing fee in itself cannot lead to poor range conditions.

Concerning recovery of the cost of administering grazing permits, it is true that the cost of administering a Forest Service grazing permit, including allotment inventory and planning, grazing use supervision and management, range improvement, and program management, will not be entirely recovered by grazing fee levels under the planned fee formula.

The grazing fee, in itself, has no bearing on the ultimate amount of monies available for range improvement projects and programs. Instead the level of monies available will be determined annually by Congress through the appropriation process. Section 401 of the Federal Land Policy and Management Act states that receipts from grazing fees are simply "authorized to be appropriated" for range improvements (43 U.S.C. 1751(b)(1)). Unless Congress actually appropriates funds that have been previously authorized by statute for range improvements, the monies are not available. They must be annually appropriated by Congress, and are subject to the current circumstances of the given appropriation year.

For the years 1977–1987, the RBF appropriated by the Congress has been 50 percent of grazing fee receipts. However, any projections with regard to future appropriations would be purely speculative. Besides the RBF, the Forest Service uses other appropriated funds, in particular, appropriations under PRIA and Protection and Management, and grazing permittee contributions for range improvement. It also must be recognized that Congress does not always appropriate monies authorized by statute.

Comments on Subsidies and Operational Costs: Comments in this category were of two types. Six hundred and eleven comments stated that the public land grazing fee was a subsidy. Typical comments from this group of respondents were: Grazing fees are too low to provide adequate funds to administer the grazing program on Federal lands; below cost grazing fees are an unfair subsidy that benefits a small number of livestock producers, and it is very troubling that the American taxpayer is subsidizing grazing permit fees at a cost of $46 million, 70 percent of the total cost. One hundred and twenty-nine comments stated that costs of operating on public lands were significantly higher than leased private lands. These respondents stated that "when total non-fee costs associated with Federal grazing are considered, permittees are paying, in many instances, far above private land lease rates."

Response: Concerning operational costs or the nonfee costs of grazing public rangelands, prior to 1978, fair market value grazing fees were charged through a fee formula based on an economic model developed at Utah State University. This model defined fair market value as the price that a willing buyer will pay and a knowledgeable seller will accept. The principle used in the fee model was that the value of public land grazing is equal to the rental value of private pastures leased for grazing after adjusting for differences in the costs of services provided on the private lands but not on public rangelands. When the nonfee cost items for public land grazing are subtracted from the total cost to the rancher leasing comparable private grazing land, the difference measures the dollar value a rancher should be willing to pay in a competitive market for the use of the public rangeland. The 1986 base fair market value for public lands was $1.23 per Animal Unit Month. Fair market value grazing fees were to be reached in ten years. The $1.23 was the residual value after equalizing the costs of grazing public rangelands and comparable leased private lands.

With regard to the subsidy issue, the addition of the ability to pay and cost of production components in the public rangeland grazing fee formula, through the Public Rangeland Improvement Act of 1978, may be perceived as providing a level of benefit since costs of permit administration are not covered. Some double counting of ability to pay and cost of production occurs through the addition of these components. However, Congress added these components to the fee formula to help protect ranchers dependent on public lands from being forced out of busines as well as to help sustain dependent rural communities in the Western States.

In 1986, to recover the total cost of the livestock grazing progam on National Forest lands in the 16 Western states, it would have been necessary to collect $3.57 per Animal Unit Month. However, there are other multiple resource values resulting from the grazing program. These benefits are discussed under the response to comments concerning multiple use, wilderness grazing, wildlife, fish and riparian values, and other resource values.

Comments on Fair Market Value, Fair Profit, and Subleasing of Public Rangelands: Of the 9,725 comments analyzed, 811 were concerned about fair market value, receiving a fair profit, and the subleasing of public rangelands. Typical comments were: Public Rangeland Improvement Act (PRIA) grazing fees do not reflect fair market value, and are unfair to ranchers that do not have access to the public lands. Current permit fees are so far below market value that the program cannot support itself, and should be raised to the point where they pay for the costs of managing the range program. Permittees are subleasing their grazing permits at a profit while paying the Government below market fees. Grazing permittees stated that the proposed fee formula is fair and equitable.

Response: To prevent economic disruption and harm to the Western livestock industry, Congress through the PRIA, determined that it was in the public interest to charge a fee for livestock grazing permits and leases on the public lands based on a formula reflecting annual changes in the cost of livestock production. The fee formula represents the economic value of the land to the user rather than fair market value. It is an ability to pay fee system.

In enacting the Public Rangelands Improvement Act (PRIA), Congress rejected market value as a sole method for establishing a public land grazing fee, and instead opted for a value combining fair market value with cost of production. As reported in Senate Report 1237, 95th Congress, 2nd Sess., September 23, 1978, page 11, the formula would prevent ranchers who depend upon public lands for grazing livestock from being forced out of business by the combined pressures of high production costs and relatively low beef cattle prices. Congress, through the PRIA, rejected fair market value primarily because it failed to incorporate factors recognizing "the costs of production, beef prices, or the ranchers' ability to pay" (PRIA House Report, page 18). It believes these factors were important because the fee increases proposed in 1977 by the Secretaries of Agriculture and the Interior (Study of Fees For Grazing Livestock On Federal Lands, October 21, 1977) "when considered along with rapidly escalating costs for other aspects of livestock production, would place an increasing, and perhaps crippling, burden on the many livestock operations which are heavily dependent on the use of the public grazing lands" (PRIA House Report). This burden could contribute to what Congress saw as an "alarming rate" of farm and ranch foreclosures occurring nationwide. The legislative history of PRIA discloses that Congress was concerned that the Secretaries' proposed grazing fee increases would come at a time when the western livestock industry is just recovering from very depressed beef prices and severe drought conditions. By establishing the formula for a 7-year trial basis, Congress acknowledged that there were concerns related to the adoption of a fee formula based on changes in the costs of production.

In the lawsuit filed in 1986, (*Natural Resource Defense Council, et. al.*, v. *Lyng, Hodel*), the Court ruled that while fair market value of forage is one goal in establishing public land grazing fees, it is within the discretion of the Secretary of Agriculture and satisfies Congressional policy to consider other factors. Moreover, the statutory responsibilities of the Secretary of Agriculture permit, if not require him, to consider other factors in addition to economic ones in the setting of grazing fees. In setting grazing fees on National Forest lands in the 16 Western states, the Secretary of Agriculture has dual responsibility to assure that the ranching industry remains viable and to balance broader national interest against the need to charge reasonable fees.

The question of how to measure the fair market value of Federal forage has always been subject to dispute and there is no single accepted way to measure the value. On September 22, 1987, in testimony before the House Subcommittee on National Parks and Public Lands, the Department of Agriculture stated its position that "given the different views on what constitutes fair market value, we believe that additional time should be taken to focus specifically on the question. Views should be solicited from permittees, other users of public lands, the academic community, and others interested in public land issues to develop a consensus on principles for defining fair market value."

The issue of a fair profit (fair share, parity, or ability to pay) is an agricultural income or equity issue. The proposed fee formula will materially assist the public land grazing user, however, it will not solve the broader equity issue of agricultural income because the grazing fee is only available to those livestock producers who are also users of National Forest and BLM administered public rangelands.

With regard to subleasing, grazing users on National Forest System lands are required to own base property and permitted livestock. Grazing of livestock owned by someone else is a violation of their grazing permit. When violation of this nature is discovered actions are taken against the permit, including suspension or cancelling the permit in whole or in part.

Comments Concerning Adequacy of Grazing Fee System: Standard form letters or post cards amounting to 2,120 responses from individuals stated they "support the Forest Service's proposed rules * * * as embodied in Executive Order No. 12548." Other comments stated that:

(1) The intent of the Federal Land Policy Management Act of 1976 was to create a grazing fee system which provided a fair return to the Federal Government yet considers the economic circumstance of the livestock industry, and (2) the proposed fee formula adequately reflects changes in the livestock industry so that the fee increases when livestock prices are up and decreases when the industry is economically depressed.

Response: The proposed fee system responds to changes in prices received for the sale of beef cattle, and costs of livestock production. Therefore, it meets the criteria of reflecting changes in the livestock industry. For these reasons, the Administration as outlined in Executive Order 12548, February 14, 1986, determined that the fee formula is adequate.

Comments On Rural Economic Stability: Grazing permittees, local and State Governments, agricultural business organizations, and several western State universities addressed the issue of rural economic stability. Many comments came from local rural businesses that are dependent on the livestock industry sector for their own existence such as retail trade and service industries. Discussions centered around the economic conditions facing agriculture and farm and ranching communities, about long term ranchers knowing no other way of life and presented a strong feeling by the ranching community that they are providing a vital service to the Nation.

Opposing comments stated that the number of actual users of public rangelands are few and that the amount of red meat that is produced from these lands is insignificant and would have very little effect on the Nation's economy. Further, the ranching community has become so dependent on subsidies that grazing permittees need to make it on their own or get out of business.

Response: Certain Western states rural economies are heavily dependent on the public lands sector of the Western livestock industry. The level of the grazing fee primarily affects personal income. A significant increase in the grazing fee on National Forest land would have an immediate negative impact on both permittee income as well as personal income in dependent rural communities. Alternative fee level impacts on these sectors are influenced in large part by the changes in State and county personal incomes and community employment resulting from grazing fee changes, and the disbursement of fee receipts to the Western States.

Seventy-five percent of grazing fee receipts, through the Range Betterment Fund and payments to Roads and Counties, are returned to the states and counties in the Western states. Therefore, any change in the level of the grazing fee will have an impact on dependent rural communities, affected State and local governments, and others having an interest in the public rangelands. The Range Betterment Fund returns 50 percent of the fee collected to the place of origin for investment in range improvements. Investing range betterment funds and disbursement of the States and counties share of receipts affects those economic sectors furnishing supplies and materials for range improvement and fish and wildlife habitat improvement, and households through wage payments to construct or install these improvements. Monies returned for roads and schools (25 percent of receipts) have the greatest effect on the household sector through wages and salaries or reduced local taxes and through household consumption in other sectors of the economy. While personal income of permittees and dependent rural economies are affected by changes in the fee level, the fee level also affects the amount of receipts paid to States and local governments for support of public roads and schools. The proposed fee system has the least negative impact

on local and state personal income because of the low fee level, but has the greatest impact on the level of receipts to States for roads and schools.

Comments Concerning Social Values: One hundred and seventy-five comments addressed the continuation of livestock ranching as a lifestyle and the significance of family ties to the land. The majority of the respondents writing to this concern feel threatened with Federal policies on public lands and stated that higher grazing fees would put them out of business and end a way of life that is a part of the Western heritage.

Response: In 1978, the Congress in creating the Public Rangelands Improvement Act (PRIA) fee formula determined that it was of National interest to charge a grazing fee based on the public land grazers ability to pay. On February 14, 1986, the President through Executive Order No. 12548 continued the same policies established by Public Rangelands Improvement Act (PRIA). This action will help preserve social values attached to Western rural lifestyles.

Comments Concerning Livestock Grazing As A Tool: Thirty comments were received concerning the use of livestock as a management tool to maintain or improve the health and vigor of the plant community and other resource values.

Response: A principle of range management is the use of controlled livestock grazing to achieve a desired plant community, including protection of the soil. Livestock use can be prescribed that will minimize impacts on and maximize recovery from grazing desirable forage species. In addition grazing may be used to promote the tillering to reduce plant residues which inhibit productive growth when species which have these characteristics exist. Results will be increased plant vigor and higher density.

Comments Concerning Multiple Use, Wilderness Grazing, Wildlife, Fish and Riparian Values, Outdoor Recreation, and Other Resource Values: The proposed rule generated 396 comments concerning these issues and concerns. The majority of the comments were opposed to the proposed grazing fee formula. Commentors believe that low grazing fees would contribute to increased numbers of livestock and create severe competition with needs for wildlife, and further degrade the structure and composition of native plant communities. They also believe that rangelands, especially wilderness areas, should be cleared from grazing and set aside for wilderness and/or wilderness users. Grazing permittee comments asserted that Forest Service allotment management plans consider wildlife and fish needs, and that permittee's contribute to wildlife by investing in and maintaining range improvements which benefit and enhance wildlife.

Response: In response to environmental concerns, stocking rates for livestock grazing are biologically determined. Therefore, the fee level does not affect the number of livestock grazed on National Forest lands. The lands are managed under Forest land management plans which are multiple use in concept and scope. The National Forests are managed for the various values present, such as wildlife and fisheries, livestock grazing, timber, watershed, wilderness, and recreation.

While environmental concerns are important, grazing fees are charged for the use and occupancy of public rangelands, and essentially is an economic issue.

Comments Concerning Adequacy of Agency Staffing and Budget—Grazing Fees Inadequate: There were 136 comments concerning the adequacy of agency staffing and budget, and 550 respondents commented that grazing fees on National Forest lands were too low. The majority of the comments received in this category opposed keeping current grazing fees at below cost levels, and asserted that the grazing fee level affects the number of range management personnel available to administer range programs on National Forests and the amount of funds available for range improvement.

Response: Grazing fees are paid to the U.S. Treasury and are deposited to the General Fund. Range management program funds are annually appropriated by the Congress, including range management, range improvement, and allotment analysis and planning. No relationship exists between the fee level and the number of range management personnel in the Forest Service.

Comments on Changes in Grazing Permit System: Sixty individual responses commented on the subject of changing the grazing permit process. Recommendations were to use a 5-year term instead of the current 10-year term permit, eliminate the commensurate property requirements, and use a competitive bidding process to allow all livestock producers access to the public rangelands. Others asserted that the current fee system is unfair to livestock producers in the Western states who do not have access to public lands.

Response: Competitive bidding has been used by the Forest Service in certain situations for new or vacant grazing allotments. Where there have been long established grazing permittees competitive bidding has not been used. Changes in grazing permit requirements, including base property and livestock ownership are being reviewed. Any proposed changes will be addressed, with full public involvement, separate from this rulemaking effort.

The Federal Land Policy and Management Act of 1976 established that permits and leases for domestic livestock grazing on National Forests in the 16 Western States shall be for a term of 10 years subject to such terms and conditions that the Secretary of Agriculture deems appropriate and consistent with the governing law, including, but not limited to, the authority to cancel, suspend, or modify a grazing permit for any violation of a grazing resolution or of any term or condition of such grazing permit or lease. Permits or leases may be issued for a period shorter than 10 years where: (1) The land is pending disposal; (2) the land will be devoted to a public purpose prior to the end of ten years; or (3) it will be in the best interest of sound land management to specify a shorter term. The Act goes on to state that the holder of the expiring permit shall be given first priority for receipt of the new permit.

Comments on Legal Basis and Analytical Logic for Proposed Fee Formula: One hundred and eight comments stated that the Court for the Eastern District for California recognized that the Forest Service has legal authority for the proposed fee formula. These respondents also stated that the proposed formula, utilizing livestock industry conditions, is an equitable process for establishing public land grazing fees, and that the Environmental Analysis (EA) was sufficient. One comment suggested retention of Animal Unit Month (AUM) as the pricing unit as permittees were use to this terminology.

Conversely, 225 comments asserted that the Forest Service must comply with its statutory responsibilities prior to issuing final regulations, and has abandoned long standing policy of charging Fair Market Value. These comments also argue that impacts on the environment resulting from low grazing fees have not adequately been considered, and that the Forest Service must supply a convincing statement of reasons why they have failed to prepare an Environmental Impact Statement (EIS).

Response: The Federal District Court for the Eastern District of California has ruled that the Secretary of Agriculture has discretion under his governing authorities to consider other factors in addition to fair market value in determining National Forest grazing fees in the 16 Western States. Through the Public Rangelands Improvement Act (PRIA), Congress determined that public land grazing fees were to include, in addition to fair market value, the costs of livestock production and the producers ability to pay. Grazing fees under this approach help protect the interest of public land grazing permittees. The intent of the PRIA was continued through the Executive Order of the President on February 14, 1986. This action is viewed by the Administration as a postive step in helping to maintain the economic stability of public land grazers and dependent rural communities.

In response to the assertion to prepare an EIS, the Forest Service conducted an environmental analysis (EA) on the proposed grazing fee formula for calculating grazing fees for the National Forests and Land Utilization Projects in the 16 Western States. In the EA, the Secretary of Agriculture determined that establishing a grazing fee formula for National Forests in the 16 Western States is not a major Federal action that would significantly affect the quality of the human environment. Pursuant to the EA, a Finding of No Significant Impact (FONSI) was prepared which concluded that an EIS does not need to be prepared because the physical and biological impacts of establishing a grazing fee formula are minor, and that grazing fees are primarily an economic issue rather than an environmental issue. Further, the FONSI documented that: (1) The Forest Service establishes stocking rates for permitted livestock grazing through its range analysis and planning processes which encorporates analysis processes included in Forest land management plans and attendant EIS's; (2) grazing use is controlled through grazing permits; (3) actual grazing use is normally less than permitted use and is correlated with prevailing economic conditions rather than with grazing fee levels; (4) fee levels for grazing have no known, measurable, or predictable effect on the physical and biological environment, and (5) appropriation of funds for improving National Forest rangelands from the Range Betterment Fund are controlled by Congress rather than the grazing fee. It was acknowledged in the FONSI that social and economic effects would occur proportionate to grazing fee levels, but that economic or social effects by themselves are not intended to require preparation of an EIS, according to Council of Environmental Quality Regulations implementing the National Environmental Policy Act (40 CFR 1508.14).

Concerning the use of Head Month as the formula pricing unit, the Executive Order specifies that the Forage Value Index be calculated using the unit of dollar per head month. The majority of the private sector uses "rate per head" or "rate per head month." The Forest Service has used "Animal Month" (AM) as the formula pricing unit rather than the AUM. It is the intent of the Forest Service to utilize a pricing unit that is commonly used in the private sector. This terminology change will not affect the calculation of grazing bills, and will help to eliminate confusion which now exists between AUM and AM.

Comments on Removal of Livestock From National Forest Lands: Approximately 50 comments advocated the removal of livestock grazing from the National Forests and recommended they be replaced with an alternate use that would either increase dollars collected or at least equal that generated by grazing fees. The majority of these comments favored removal of livestock in favor of wildlife, and other resource uses.

Response: As previously stated, National Forest System lands are managed under Forest land management plans which are multiple use in scope and concept. These plans provide for the management of the various values present, such as wildlife, livestock grazing, timber, watershed, wilderness and recreation, so removing livestock to manage National Forest lands exclusively for wildlife would not meet the requirements of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 (note), and the National Forest Management Act of 1976.

Basis for Final Rulemaking

Continuing the PRIA grazing fee formula as prescribed in Executive Order No. 12548 is based on the judgment that it results in a reasonable charge. This formula has produced grazing fees that change annually according to the cost of producing livestock and the market prices received for the sale of beef cattle. And while the PRIA formula is subject to criticism, it has worked the way Congress intended—it produced fees corresponding to a rancher's ability to pay. As Congress explained in the PRIA, any benefit the fee may confer to the grazing permittee on National Forests in the 16 Western States is acceptable because of the need to protect them from economic disruption and the need to sustain dependent Western rural communities. The establishment of a minimum fee at an amount which, in lean years for the public land grazer, exceeds the formula's calculated fee, represents an effort to make the fee more responsive to the notion of cost recovery. The prescribed formula annually recovers about one-third of the cost of administering National Forest grazing permits in the 16 Western States.

None of the previous discussion or response to public comments is meant to suggest that the consideration of fair market value has been ignored. As acknowledged, too many uncertainties remain about it to justify any departure, at this time, from the President's direction that the fee formula prescribed in the EO (the PRIA fee formula with a floor level of $1.35 per Head Month) should continue to govern grazing fees on National Forest lands in the 16 Western States.

The final rulemaking serves the additional purpose of being consistent with legislative intent under the Federal Land Policy and Management Act of 1976 as well as the PRIA. By using the formula specified in the EO, which has worked as Congress intended, the policies underlying the PRIA fee system are promoted. The fee level is considered to be equitable to the public land grazing permittee and is reasonable to the Administration. Since the formula takes into account costs of production, market conditions and ability to pay the fee system promotes stability within the public lands sector of the Western livestock industry. Moreover, the Final Rulemaking preserves the status quo.

Regulatory Impact

Under USDA procedures and Executive Order 12291, this action has been determined not to be a major rule. While there will be a monetary difference between the market value of National Forest land grazing and the rate per head under the concept of the economic value in use or value to the user, the actual monetary difference will be available for direct expenditure by the grazing permittee in local, rural communities throughout the Western States. From a regional economic viewpoint, the Federal grazing permittees enjoy a slight competitive advantage in the short-term, but are disadvantaged in the long-term due to high capital replacement costs. Thus, little or no effect on the National economy will result from this regulation. The Department of Agriculture has further determined that this regulatory action will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The provisions of

this regulatory rulemaking are applicable to all persons or entities who possess a grazing permit on National Forest or Land Utilization Project lands in the 16 Western States, without regard to the size of the operation.

An environmental analysis has been conducted by the Forest Service on this action and is available for public review in the office of the Director, Range Management Staff, Washington, DC. The analysis addresses issues discussed in "The Grazing Fee Review and Evaluation: A Report From the Secretary of Agriculture and the Secretary of the Interior," February, 1986, Washington, DC, 99 pp., available from the Director, Range Management, USDA Forest Service, Room 601 RP-E, P.O. Box 96090, Washington, DC 20090-6090. It specifically addresses:

1. Questions concerning the formula's methodology;
2. Effects on government revenues for range improvements;
3. Cost of the grazing program;
4. Equitability between permittees and nonpermittees; and
5. Potential environmental effects.

Based on the environmental assessment, it has been determined that this regulatory action will not have a significant effect on the human environment.

Information Collection Requirements.

There are no additional informaion collection requirements because of the final rulemaking.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, Range management, Wildlife.

Therefore, for the reasons set forth above, Title 36 of the Code of Federal Regulations, Part 222, Subpart C—Grazing Fees, is amended as follows:

PART 222—[AMENDED]

1. The authority citation for Subpart C is revised to read as follows:

Authority: 16 U.S.C. 551; 31 U.S.C. 483A; 43 U.S.C. 1901; E.O. 12548, 51 FR 1986 Comp., p. 188.

2. Section 222.50 is amended by revising paragraph (c) to read as follows:

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

* * * * *

3. Section 222.51 is amended by revising paragraph (b) and removing paragraph (c), to read as follows:

§ 222.51 National Forests in 16 Western States.

* * * * *

(b) Notwithstanding the provisions of § 222.50, paragraph (b), the calculated grazing fee for 1988 and subsequent grazing fee years represents the economic value of the use of the land to the user and is the product of multiplying the base fair market value of $1.23 by the result of the annual Forage Value Index, added to the sum of the Beef Cattle Price Index minus the Prices Paid Index and divided by 100; provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and provided further, that the fee shall not be less than $1.35 per head per month. The indexes used in this formula are as follows:

(1) Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) from the June Enumerative Survey) divided by $3.65 per head month and multiplied by 100;

(2) Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming) (computed by the National Agricultural Statistics Service) for November through October (computed by the National Agricultural Statistics Service) divided by $22.04 per hundred weight and multiplied by 100; and

(3) Prices Paid Index means the following selected components from the National Agricultural Statistics Service "Annual National Index of Prices Paid by Farmers for Goods and Services" adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States:

1. Fuels and Energy (14.5);
2. Farm and Motor Supplies (12.0);
3. Autos and Trucks (4.5);
4. Tractors and Self-Propelled Machinery (4.5);
5. Other Machinery (12.0);
6. Building and Fencing Materials (14.5);
7. Interest (6.0);
8. Farm Wage Rates (14.0);
9. Farm Services (18.0).

Date: January 27, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-2085 Filed 2-1-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2602; AA-220-88-4322-02]

43 CFR Part 4100

Grazing Administration; Exclusive of Alaska; Grazing Fees for 1988

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking and notice of Grazing Fee for 1988.

SUMMARY: This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 concerning the determination of grazing fees for grazing domestic livestock on public land administered by the Bureau of Land Management (BLM). These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on October 7, 1987 (52 FR 37485) with a public comment period of 45 days.

Four thousand seven hundred and thirty-eight responses were received during the comment period and considered during the development of this final rulemaking. This final rulemaking amends the regulations in 43 CFR Part 4100 Subpart 4130.7 by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, hereafter only the fee, as established under the formula, will be published as a **Federal Register** notice.

EFFECTIVE DATE: February 2, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Assistant Director—Land & Renewable Resources (220), Bureau of Land Management, Room 5626, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton or Donald Waite, (202) 653-9193, or Mark E. Lawrence (202) 343-8735.

SUPPLEMENTARY INFORMATION: This final rulemaking amends Subpart 4130.7 of the existing regulations for the management of grazing on the public lands by providing that fees for grazing domestic livestock on public land administered by the Bureau of Land Management for 1988 and subsequent years will be determined by a formula that consists of a base value of grazing on public land adjusted by indexes reflecting current year land lease rates, cost of production, and beef cattle prices. Because the formula for establishing grazing fees is being incorporated into the regulations, only the fees as established under the formula for years *after 1988* will be published as a **Federal Register** notice. The grazing fee for the 1988 grazing season is established in accordance with this final rulemaking. Notice of the grazing fee for 1988 is contained in this preamble to the rulemaking.

Background

Under section three of the Taylor Grazing Act, enacted in 1934, "[t]he Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock * * * upon payment annually of reasonable fees in each case to be fixed or determined from time to time * * *.". The statute's preamble declared that its operative provisions were intended "to stabilize the livestock industry dependent upon the public range * * *".

The Federal Land Policy and Management Act of 1976 (FLPMA), did not alter this concept. The policy statement in that law that "the United States receive fair market value of the use of the public lands and their resources" was not reflected in the provisions relating to grazing fees. Rather, the statute simply directed the Secretary to study what was an "equitable" grazing fee, taking into account "the costs of production normally associated with domestic livestock grazing * * *, differences in forage values, and such other factors as may relate to the reasonableness of such fee." FLPMA left intact the notion that grazing fees were premised on reasonableness.

In 1978, however, with enactment of the Public Rangelands Improvement Act, (PRIA), the Secretary was provided with specific directions governing grazing fees. PRIA stated that "to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." The statute then established a policy "to charge for public grazing use which is equitable and reflects the concerns addressed * * * above." PRIA contained a grazing fee formula that takes into account the cost of livestock production and the public land permittee's ability to pay.

House Report 1122 (1978) of the 95th Congress stated that PRIA's policy direction and formula were in direct response to the Secretary's attempt at that time to set a grazing fee reflecting the fair market value of the public lands for that activity. Congress was extremely concerned that increasing grazing fees to fair market value would be injurious to the western livestock industry, especially since it was just recovering from a depressed agricultural economy. Moreover, as the House Committee on Interior and Insular Affairs reported, the formula produced a fee sensitive to the ranchers' costs of production and beef prices. This was viewed as a stabilizing influence on the western livestock industry. The Committee also pointed out that the fees generated by the formula, based upon ability to pay, would contribute to improving range conditions by encouraging private investment and discouraging trespass. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives in Senate Report 1237 (1978).

Congress, in considering the formula eventually codified in PRIA, acknowledged that many persons concerned with the public rangelands disagreed with pegging grazing fees to a ranchers' costs and ability to pay. Accordingly, PRIA made the grazing fee formula effective on a trial basis, from 1979 until the end of 1985. The law also called for a study to evaluate the performance of the formula and to explore alternative fee systems by the end of 1985. That study was produced too late for deliberation by the Congress in 1985. Therefore, to establish a fee for the 1986 grazing season and to give the Congress adequate time to consider the fee issue, the President of the United States, acting on advice from the affected Federal agencies and a number of Members of Congress, issued Executive Order 12548 on February 14, 1986.

Through Executive Order 12548, the President directed the Secretary of the Interior "to exercise [his] authority, to the extent permitted by law * * *, to establish fees for domestic livestock grazing on the public rangelands which annually equals [the fee under PRIA] * * * provided * * * that the fee shall not be less than $1.35 per animal unit month."

On March 12, 1986, the Secretary announced a decision to continue using the PRIA formula to set grazing fees, with the qualification that the fee would not be less than $1.35 per animal unit month of forage permitted or leased. The decision was based on the Secretary's Final Grazing Fee Review and Evaluation that was also issued on March 12, 1986. The fee for 1986 and 1987 was $1.35.

In the fall of 1987, the Secretary's decisions were judicially reviewed in *Natural Resources Defense Council* v. *Lyng, et al.*, Civil Action No. S-86-0548 EJG (E.D. Cal. 1987).

The Federal district court held that the grazing fee adopted, derived from the PRIA formula, was consistent with substantive statutory mandates and legislative policy. In particular, the opinion stressed that despite the fact that the trial period for the fee formula established by PRIA had expired, PRIA's underlying policies governing grazing fees remain in effect. The court also pointed out that the Secretary's decision was unaffected by FLPMA's policy favoring fair market value. That policy, while to be considered, was not required to be implemented in the case of grazing fees. FLPMA's specific direction was that the Secretary determine a grazing fee that is "equitable to the United States and to the holders of grazing permits and leases." The court also noted that the Secretary's adoption of the lapsed PRIA formula was consistent with the Taylor Grazing Act's purpose of stabilizing the western livestock industry.

However, the Secretary's procedure of adopting the grazing fee in a published notice alone was not upheld. The court ordered the Secretary to comply with the procedures for adopting rules specified in the Administrative Procedure Act.

Finally, the court remanded back to the Secretary the question of the formula's environmental consequence, and directed him to consider anew the formula's environmental impacts, if any, as specified by the National Environmental Policy Act.

Notice of Proposed Rulemaking and Environmental Assessment

In compliance with the district court's opinion, the Department of the Interior informed the public by publishing in the

Federal Register on October 7, 1987, a notice of proposed rulemaking relating to grazing fees, (52 FR 37485) with a 45 day comment period.

Under the proposed rule, the fees for grazing domestic livestock on public lands administered by the Bureau of Land Management for 1988 and subsequent years would be determined by using the lapsed PRIA formula, as specified in Executive Order 12548. It consists of a base value of grazing on public lands adjusted by indexes reflecting current year private land lease rates, cost of production and beef cattle prices. Because the formula for establishing grazing fees would be incorporated into the agency's rules and regulations, after 1988 the grazing fees would simply be published as a notice in the **Federal Register**.

The purposes of the proposed regulation were "to meet the policy objective set forth in the Taylor Grazing Act, the Federal Land Policy and Management Act, and the Public Rangelands Improvements Act, which remain vital", and achieve a "fee level that is reasonable and promotes stability in the western livestock industry." The proposed rulemaking stated that these objectives would be met, since "[t]he fee is intended to reflect annual changes in costs of production and to be equitable to both grazing permit holders and to the government." The proposed rulemaking also stated that "the formula is intended to have no negative environmental impacts."

The latter finding was based upon an environmental assessment. It considered the proposition that the amount of grazing fees influences the level of grazing, especially the premise that lower fees lead to overgrazing. The environmental assessment observed on the basis of historical data that the conventional economic principle of inverse relationship between quantity available and its price in a competitive market did not apply under the lapsed PRIA formula. It followed, then, that continuing to use that formula would not alter existing environmental conditions. The environmental assessment also pointed out that grazing on public lands is determined on the basis of multiple use and sustained yield principles, not on economic principles of supply and demand. It also followed, then, that even if the proposed fees might encourage someone to seek the agency's approval to increase grazing, in actuality increased grazing could only occur if the agency decided that was consistent with its management principles. The fee itself could not be the proximate cause of the increased grazing.

The public was invited to comment on the proposed rulemaking, the environmental assessment and the finding of no significant impact. The environmental assessment also was made available to the public.

Public Comment on the Notice of Proposed Rulemaking

During the comment period, the public submitted 4,738 responses commenting on the notice of proposed rulemaking. Of this number 4,131 were from individuals, 435 from businesses, 129 from associations, 14 from local governments, 12 from state governments, 9 from universities and 8 from Congressmen or from other federal agencies. An additional 409 responses were postmarked after November 23, 1987. They were not considered.

Most of the individuals and other respondents supported the proposal to use the lapsed PRIA grazing fee formula, as set out by the President in Executive Order 12548. They pointed out that the formula, by accounting for costs of production and ability to pay, produced a fee that avoids economic disruption to the western livestock industry that depends upon public lands. They considered this particularly important given the relatively ill health of the agricultural economy.

Conservation groups and a minority of individuals opposed the proposal. The usual criticism was that the formula produces a fee below the fair market rental value of the public rangelands, and, by doing so, denies the government funds needed to manage rangelands and promotes overgrazing. Some concern was voiced that the proposal would give an inequitable advantage to public land permittees over ranchers without federal grazing permits. To avoid these consequences, they urged the Secretary to adopt a formula that recovers the fair market value of federal grazing.

Statement of Basis and Purpose

The decision to continue using the PRIA formula contained in Executive Order 12548 in setting grazing fees is based on the judgment that it results in a fair, just and suitable charge.

The formula produces a grazing fee that is equitable to the person who must pay it. Under the PRIA formula grazing fees change annually according to the costs of producing livestock and the market for that commodity. As previously reported to Congress by the Secretary of Agriculture and the Secretary of the Interior in the 1986 Grazing Fee Review and Evaluation study, under the PRIA formula, when the costs of production increased as measured by the prices paid index, the grazing fee decreased. Also reported to Congress was that almost every year the market price for livestock, as measured by the beef cattle price index, decreased, so did the grazing fee. The PRIA formula has worked the way Congress intended—it produces grazing fees corresponding to a rancher's cost of production and ability to pay.

Any inequity that might arise to a rancher who pays a higher price to graze livestock on private property is beside the point. As Congress explained in enacting PRIA, any benefit the fee might confer to public lands ranchers is acceptable because of the need to protect them from economic dislocation and to sustain dependent rural communities.

The formula, by producing fees responsive to a public lands rancher's economic realities, also is particularly appropriate, where, as here, any substantial increase in fees is likely to cause hardship to many ranchers. The Secretary's report addresses this. "When the grazing fee was increased from $2.00 to $5.00 per AUM, net returns [for ranchers] above cash costs declined." This increase would be significant for those permittees that are highly dependent on public lands. This becomes particularly important when measured against the long-term costs persons must pay to stay in the livestock business. With an average debt to asset ratio of 20%, any increase in grazing fees would aggravate and make quite difficult many ranchers' ability to pay off their long-term debt. Also, the size of livestock businesses may be adversely affected by a significant increase in grazing fees. "An increase in the fee of $1.00 per AUM would increase total grazing fee costs to 26,700 FS and BLM permittees by about $17.6 million." Finally, "changes in the grazing fee affect the permittee's asset position as a result of the changes in the value of the permit and thus affect the ability to borrow money."

The foregoing is corroborated by the numerous letters from ranchers and others establishing that any substantial increase in grazing fees would hurt a substantial number of ranchers just as they are beginning to recover from the plight of the agricultural economy over the past decade. States and localities also echoed the concern in the Secretary's report to Congress that a jump in grazing fees could depress rural community economies.

The formula also is equitable to the United States. It recovers a reasonable portion of the costs the BLM incurs in rangeland management. As the Secretary's report to Congress stated, the PRIA fee could generate revenues covering fifty-four percent of those costs. Conversely, "[a]s grazing fees increase, the amount of permittee contribution to range improvements is expected to decline." Moreover, the establishment of a minimum fee at an amount which, in lean years for the western livestock industry, exceeds the formula's calculated fee, represents a direct effort to make the fee more responsive to the concept of cost recovery. While higher fees, assuming inelasticity of demand for federal forage, might provide for recovery of all the costs the BLM incurs in rangeland management, full recovery of the range program budget from ranchers is inappropriate because forty percent of the planning, inventory and management budget would be required to carry out basic range ecological tasks even in the absence of livestock grazing. Also funds spent on range improvements produce multiple use benefits and it would not be appropriate to charge all of these costs to the livestock industry.

The decision to continue using the PRIA formula, as stated in Executive Order 12548, to set grazing fees is also based on the finding that it poses no significant impact to the environment. By preserving the status quo, it should have no environmental consequence.

Despite the public comment that the PRIA fee is the cause of overgrazing, there is no evidence of any correlation between the fee and livestock use. From 1980 to 1986, the grazing fee steadily decreased from $2.36 to $1.35. However, the amount of livestock grazing occurring on the public lands during the same period fluctuated. Accordingly, if the PRIA fee dictated use, the expectation would be that every year the fee decreased, an increase in use would have occurred. This was not the case. For example, from 1982 to 1983, while the fee decreased by twenty-five percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985 and 1986, livestock use decreased by nearly seven percent.

Moreover, from the years 1980 to 1986 the fee decreased by forty-three percent while the amount of livestock use remained almost unaltered, increasing less than two percent. In short, the changes in the PRIA fee and livestock use are unrelated and it is unreasonable to assume any correlation.

Thus, the PRIA fee is highly unlikely to alter livestock use. By preserving the status quo, it is equally unlikely that there will be any changes in environmental conditions.

The absence of a correlation between the PRIA formula and livestock use is not reflected in other governmental documents. A document prepared by the Office of Management and Budget, entitled Grazing Fee Presentation (1985), which is referred to in a few public comments, had only two statements about grazing fees and overgrazing. One states that "[e]nvironmental groups support fee increases as [a] disincentive to overgraze." The other statement is found in a section named "objectives of grazing fee system," and states that a grazing fee should "discourage overgrazing." Neither are substantive statements. The Council on Environmental Quality's report, *Desertification of the United States* (1981), another often cited document, reaches a similar conclusion. While the report infers that "federal grazing fees that are well below the free market price encourage overgrazing of the commons," the statement represents theory rather than empirical evidence. No proof accompanies the statement. More important, the statement was made seven years ago. Since then the evidence shows that there is no discernable relationship between the PRIA fee and livestock use.

BLM's publication entitled *Program Direction—Oregon and Washington 1986* and the Economic Research Service report, *A Theoretical Evaluation of Fee Systems for Private Grazing on Federal Lands* have also been examined. While they also state a relationship between fees and livestock use, the statements are unpersuasive, theoretical and not supported by rigorous analysis of empirical data.

Other public comments state that the PRIA fee causes overgrazing because ranchers increase their use on the public lands because the price is artificially low. The statement, though, is only speculation. Ranchers may opt to, and in fact have, foregone increasing their livestock use despite the existence of the PRIA fee. While the fee may affect a rancher's decision about how many livestock to graze, it is only one consideration among many, and usually, is not the predominant factor. According to recognized experts in the field, and the livestock industry, costs of production, market conditions, and the quality of the public lands from one year to another, among other considerations have more bearing on the amount of grazing.

A corollary public comment draws a connection between how the BLM manages livestock grazing and the fee. These comments claim: (1) Ranchers are not grazing as many livestock as the agency permits; (2) ranchers' actual use, however, causes environmental degradation, and therefore, (3) if the fee induces the ranchers to make more use, up to permitted levels, then more environmental harm will occur.

These comments fail to recognize that even if the fee is an inducement, it has no bearing on how many livestock the rancher may graze. Agency approval is required before ranchers may increase their livestock use up to the maximum level and any increase in grazing use is the prerogative of the agency. That decision is not based on economics, but on the agency's judgment concerning whether the range can withstand additional grazing. In making that judgment the agency's responsibility is to prevent unnecessary and undue environmental degradation.

Even if the PRIA fee were to have the effect claimed by some public comments—that increased livestock use leads to overgrazing—the environmental impacts from any grazing are largely known on a site specific basis. One hundred thirty-seven impact statements have already been completed on grazing use covering 169,809,000 acres of public rangelands. By the end of 1988, five more site specific statements will be completed, involving another 4,042,000 acres. A review of the completed studies shows consideration of livestock grazing at actual use and permitted levels, as well as grazing beyond permitted levels. The documents also address ways to redress any overgrazing that is or may occur under differing levels of use. Repeating that effort by producing a programmatic impact statement that accounts for different levels of use, upon the assumption that fees are the cause, is to place form over substance. It also is a questionable use of resources given the fact that the current fee has little effect in altering the status quo.

The court and others commenting on the environmental assessment expressed concern that the description of the "affected environment" did not specifically relate to lands administered by BLM and there is no reference to the current range condition of any site specific areas or aggregated areas. Description of the "affected environment" comes directly from the programmatic EIS *Livestock Grazing Management on National Resource Land (1974)* and provides a broad overview of the general nature of the western environment of public lands. As stated previously BLM has completed site-specific environmental impact statements. In addition to describing the

"affected environment," the EIS's discuss range condition, and the effects of livestock grazing, provide site-specific analysis, allotment or area specific objectives, and site-specific grazing proposals, and address site-specific issues, resource problems, conflicts, and management actions on public rangelands. Also, the environmental impacts of range improvements are analyzed.

Even though the BLM has or will by the end of 1988 complete site specific EIS's on all public lands subject to livestock grazing and the grazing fee, this information is not necessary for analyzing the impact of the fee. As had been documented in the EA on this rulemaking, the grazing fee has no known, predictable, or measurable effect on the physical or biological environment.

None of this discussion is meant to suggest that the consideration of fair market value has been ignored in this rulemaking. Rather, the arguments for fair market value are unpersuasive.

First, raising grazing fees to "fair market value" will not necessarily reduce grazing. Regardless of the fee, ranchers must make substantial use of the privilege to graze livestock. The regulations prohibit a rancher from "failing to make substantial grazing use as authorized for two consecutive years." And while a higher fee may mean some ranchers cannot abide by this regulation, and thus lose their permit, fair market value implies that someone else will be willing to take over at the new price.

Second, no one knows with any confidence what will happen to the demand for federal forage if its price is increased to fair market value. It all rests on the hypothesis that the demand will remain inelastic. At this point, the relationship is conjectural.

Third, the perception that fair market value will reduce overgrazing rests on chance. If a rancher can afford the new fee in an area where overgrazing may be occurring, a reduction in grazing will not occur. Conversely, if a rancher cannot afford the fee in an area of that is being properly grazed, the higher fee causes economic dislocation with no corresponding environmental benefit.

Fourth, there are means available to deal with overgrazing other than the grazing fee. They range from the BLM ordering reduced livestock numbers, changes in seasons of use or kinds of use, to new grazing patterns, and to projects to rehabilitate the range, including seeding or water development. The traditional means make it unnecessary to use pricing which is indiscriminate as a means of solving overgrazing problems.

Fifth, it is somewhat uncertain that adopting a fair market value approach would generate more monies to fund the range improvements necessary to compensate for isolated cases of overgrazing. Beyond resting on the premise of inelastic demand, the proposition appears to assume Congress will appropriate sufficient funds for needed range improvements. Recent experience would bring into question that assumption. In making appropriations for fiscal year 1987, Congress did not choose to make up the difference between the grazing fee receipts collected by the BLM and the ten million dollar range improvement appropriation fund promised in FLPMA. Moreover, Congress has not funded any of the 360 million dollar authorization for range improvements made in 1978 under PRIA.

Finally, the final rulemaking serves the additional purpose of being consistent with legislative intent under PRIA, FLMPA and the Taylor Grazing Act. The formula specified in PRIA has worked as intended and meets the policies underlying that formula. It is equally equitable to the rancher who must pay the fee and to the United States. FLPMA, as a consequence, is served well by the rule. Finally, since the formula takes into account costs of production, market conditions and ability to pay, little doubt can exist that the fee promotes stability in the western livestock industry. Thus, the final rulemaking meets the intent of Taylor Grazing Act. All of this is confirmed by the decision in *Natural Resources Defense Council v. Lyng, et al.*, supra.

Response to Public Comment on Related Issues

Comments on the proposed fee formula centered on eight basic issues: (1) Fee Formula Structure and Alternatives, (2) Fair Market Value and Comparability, (3) Livestock Grazing Use and Environmental Effects, (4) Availability of Range Improvement Funds, (5) Subsidy and Stability of the Western Livestock Industry, (6) Equity to Other Public Land Users and Non-Permittees, (7) Cost Recovery, and (8) The Local Economy, Rural Social Values, and Importance of Public Forage. The following discussion supplements the presentation of these issues in the Statement of Basis and Purpose above.

(1) *Fee Formula Structure and Alternatives*—Several comments opposing the proposed grazing fee formula expressed concern that the PRIA fee formula takes costs of production into account three times—in establishing the $1.23 per AUM base value, in the "Forage Value Index" (FVI), and in the "Prices Paid Index" (PPI). Several other comments expressed the belief that the PRIA formula "double counts" Federal permittees' ability to pay and that the $1.23 per AUM base value is too low. These comments suggested the alternative of not including beef cattle prices and cost of production or other "ability to pay" indexes in the fee formula. Competitive bidding was suggested several times as an alternative approach to establishing grazing fees. Several comments expressed the belief that the Administration had abandoned its 1977 Grazing Fee Study position of supporting a formula that attained fair market value.

Most comments supporting the proposed fee formula either specifically mentioned or inferred support of all that is embodied in the PRIA formula. The comments viewed the proposed formula as a judicious reflection of private land lease rates, produciton costs of operators, and beef cattle prices. Many comments expressed the view that the PRIA formula, with a minimum of $1.35, is working well and as intended and there is no reason to change it.

In reviewing the comments regarding the number of times cost of production is counted in the proposed fee formula, is became evident that there is a lack of understanding concerning the difference in establishing the base value of $1.23 per AUM and the functions of the Forage Value Index and Prices Paid Index indexes. The $1.23 base was established as the fair market value of Federal forage through the 1966 Western Livestock Grazing Survey. Cost differences of using private leases as opposed to public leases were used to adjust the private land lease rate so that it reflected a comparable public land lease rate. This is not an adjustment to reflect change in "ability to pay." The PPI adjusts for year-to-year changes in the cost of production and does reflect "ability to pay." The FVI adjusts for year-to-year changes in the private land lease rate and, thus, keeps the base value current in reflecting fair market value. A level of ability to pay is probably reflected in the FVI but only to the extent it reflects the cost of private land leases. The extent to which the FVI and PPI are combined to reflect ability to pay is not apparent because the cost components that make up the PPI, which is a composite index, do not include the cost of private land leases. Even if the PPI did include the private land lease rate, an increase in the lease rate and thus the PPI would drive the fee down, whereas an increase in the private land lease rate and thus in the FVI would drive the fee up. These two indexes drive the fee in opposite directions.

The Administration's proposal to include consideration of beef cattle prices and cost of production in the fee forula and to reject all other alternative formulas that do not include these factors is in direct response to the expressed findings of Congress when it enacted the 1978 Public Rangeland Improvement Act. The underlying policy of PRIA, which is still in effect, states thta "* * * to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production." In response to the concern that the Administration has changed its position since its 1977 proposal *(Study of Fee for Grazing on Federal Lands, October 21, 1977)*, the action of Congress since that time should be noted.

In stating the policy that the grazing fee should include beef cattle prices and cost of production, Congress specifically rejected the fair market value policy expressed in the 1977 Fee Report. H.R. Rep. 1122, 95th Cong., 2d Sess., *Improving the Range Conditions of the Public Lands* (PRIA House Report) at pp. 16–20. As the House Committee reported, the formula would prevent ranchers who depend upon public lands for grazing livestock from being forced out of business by the combined pressures of high production costs and low beef prices. The Senate Committee on Energy and Natural Resources concurred in the findings made by the House of Representatives. S. Rep. 1237, 95th Cong., 2d Sess., at 11 (September 23, 1978).

To elaborate, the PRIA House report makes it clear that Congress rejected the Secretaries' formula primarily because it failed to incorporate factors recognizing "the costs of production, beef prices, or the ranchers' ability to pay." It believed these factors were important because the fee increases proposed by the Secretaries' formula, "when considered along with rapidly escalating costs for other aspects of livestock production, would place an increasing, and perhaps crippling, burden on the many livestock operations which are heavily dependent on the use of the public grazing lands." This burden could contribute to what Congress saw as an alarming rate of farm and ranch closures occurring nationwide. Congress was equally concerned that the Secretaries' proposed grazing fee increases would come "at a time when the Western Livestock industry is just recovering from, very depressed beef prices and severe drought conditions."

(2) *Fair Market Value and Comparability*—Many of the comments opposing the proposed fee formula expressed the view that the Government should charge fair market value for Federal forage. The 1983 *Mass Appraisal Report* prepared by the Bureau of Land Management and Forest Service (FS) was cited as the basis for the determination of fair market value. Also cited in support of the determination of fair market value was the report prepared by C. Kerry Gee and Albert G. Madsen, *The Cost of Subleasing Federal Grazing Privileges*. Comments related to this report suggested that subleasing is proof that lessees are willing to pay considerably more for public grazing than the Government charges. A few comments cited specific examples of private land leases where the leases were considered comparable to public land leases but the lease rate was significantly higher than the Federal grazing fee. Also, cited were situations where States and railroad companies charge higher grazing fees than the BLM and FS.

A number of comments that supported incorporating in the proposed rulemaking the formula in Executive Order 12548 expressed the belief that the public lands are not comparable to private lands, and therefore, private land lease rates do not reflect the value of public land grazing. Numerous examples of this situation were presented. Higher costs of using public lands are compared to private lands were cited most often as the major difference between private and public leases. Cost differences cited most often were higher fence and water facilities maintenance, trucking, herding, salt distribution, vandalism, capital investments, male breeding stock, and death losses. Also some comments expressed the belief that land administered by BLM, as compared to private lands, are of poorer grazing quality, have less water, produce lighter calves and lower calving percentages, and are subject to more restrictions and control. A few comments suggested that the high level of non-use of available AUM's on public land in some areas is proof that the current grazing fee exceeds the grazing benefits to the user. A number of comments expressed the view that the PRIA formula as presented in the proposed rulemaking represents the fair market value of a Federal grazing permit or lease.

The fair market value issue was addressed in the case of *Natural Resources Defense Council, Inc. v. Lyng, et al., supra*. The Court held that "although return of the fair market value of Federal forage is one goal in establishing the grazing fee, it is within the discretion of the Secretaries to consider other factors." This discretion is accorded to the Secretary of the Interior under PRIA, FLPMA and the Taylor Grazing Act.

Even though the Government is not required to charge fair market value for Federal grazing, that concept nevertheless is given consideration. Fair market value has been previously addressed in the statement of basis and purpose. In addition, what constitutes fair market value and how to measure it is disputed. As mentioned earlier, the base value of $1.23 per AUM used in the proposed fee formula was established as fair market value in the 1966 Western Livestock Grazing Survey (WLGS). To arrive at this value, the Survey used a scientifically and statistically sound process of explicitly accounting for the differences in the costs (e.g., fence maintenance) of using public lands as compared to private lands. Congress defined "fair market value" of Federal grazing as the fee that is generated by the Public Rangeland Improvement Act formula. The 1983 mass appraisal, conducted by the BLM and FS, used the private land lease rates with adjustments to reflect the market rental value for Federal forage. Values were estimated for each of six pricing areas. The value estimates do not represent the "site specific" fair market grazing rental value of any individual allotment. Rather, they are intended to represent a reasonable estimate of the mean average rental value of public grazing in each pricing area. It should be noted that using these average values to set fees would result in overpricing one-half of the forage in each pricing area and underpricing the other one-half. The 1983 mass appraisal has been heavily criticized principally for not being statistically valid and not making proper adjustments for comparability between private and public land leases.

In reviewing the comments concerning subleasing of BLM grazing privileges, it becomes clear that confusion exists on this issue. First, the so-called subleases discovered in the 1983 mass appraisal and analyzed in the Gee and Madsen Report do not fit BLM's legal definition of a sublease. If the BLM land was any part of a ranching operation under lease, the appraisal categorized this as a sublease even though the leasee of the ranching operation may have had a

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separate valid lease from the BLM. It is legal to gain access to BLM grazing privileges and thus lease BLM permits directly by leasing or otherwise controlling the private base property that is associated with the public lands. Most of the so-called subleases in the appraisal were not 100 percent BLM land but part of a larger operation which may have included private deeded land, railroad land, or other types of ownership. Second, as indicated in the Gee and Madsen report, the lease rates were higher where the percentage of BLM acreage was low and lower where BLM land made up a larger percentage of the lease. The Gee and Madsen Report also indicated that current Federal grazing fees do not reflect market value of the resource but that lease market rates are highly variable and individualized. Third, subleasing is illegal. The regulations makes this very clear. Whenever subleasing is discovered, actions are taken against both the permittee and the sublessee.

(3) *Livestock Use and Environmental Effects*—A substantial number of the comments opposing the proposed grazing fee formula expressed concern that the fee resulting from the formula would encourage overgrazing and have harmful environmental effects. The comments stated that a low fee would cause permittees to graze excessive livestock resulting in degradation of wildlife habitat, riparian areas, and other environmentally sensitive areas. A number of comments also suggested that if the Government is not going to charge fees above what they currently charge, all livestock should be removed from public lands. A few comments suggested that a higher fee would induce permittees to take better care of their Federal grazing privileges.

On the other hand, a large number of comments opposed the view that there is a connection between the level of fees, livestock use, and environmental effects. Some comments observed that the level of livestock grazing use is established by Government agencies through land use plans and other procedures and that these levels are regulated and enforced. Several other comments expressed the belief that permittees take as good of care of public lands as they do their own, that financially strong permittees are better able to maintain public land productivity and that much of the West never supported vegetation or wildlife much above current levels. A number of additional comments directly opposed the view that livestock should be removed from the public rangelands and suggested that livestock can be used as a tool to restore, protect, and enhance resource values. They stated that livestock grazing may be the least environmentally harmful of all public land uses. Finally, a couple of comments suggested that the BLM should continue a strong program of monitoring, enforcing, supervising, and implementing stocking rates and that the fee should not be tied directly to these objectives.

These comments were addressed in the Statement of Basis and Purpose. To supplement that discussion, land use plans (LUP) and environmental impact statements (EIS) set forth the overall management objectives for managing livestock grazing on public lands. The broad management objectives of the LUP determine the number of livestock and season of grazing, the types of grazing prescriptions that can be used, and the range improvements that may be installed. Livestock grazing management on public land is closely monitored to ensure that current management practices are meeting the management objectives of the LUP/EIS. If the objectives are not being met, adjustments in management are made to change the direction of management to reach the objectives. Livestock grazing management on public lands is to be consistent with the principles of multiple use and sustained yield.

By both statute and regulation, the level of livestock permitted to graze on public lands is based upon a determination of the carrying capacity of the land which in turn is based on monitoring range conditions and incorporates environmental considerations. The grazing fee plays no part in the determination of permitted grazing use. For various reasons, permittees may, with agency approval, elect not to graze up to the level of permitted use. The difference between actual use and full permitted use is referred to as "approved nonuse." If a permittee decides to activate the approved nonuse, agency approval must be obtained. The only possible bearing that fees could have on the level of grazing use is in the area of "approved nonuse" or of unauthorized use.

An analysis of the correlation between nonuse and grazing fees and active grazing use levels and grazing fees for the past 7 years indicates that these factors do not correlate in accordance with economic theory. There is no clear evidence that lower fees have led to increased utilization of BLM forage within the allowable limits or that higher grazing fees have led to decreased utilization.

Any assessment of the comments that lower fees would create an incentive to illegally exceed levels of permitted use would be a speculative exercise. Grazing use above permitted use is considered trespass and is handled accordingly.

Concerning the comments on removal of all livestock and the alternative of using livestock as a management tool, it is important to recognize certain principles of range management. Controlled livestock grazing can be used to selectively graze undesirable plant species. Controlled livestock grazing also can be used to graze desirable species during phenological periods of reduced susceptibility. In addition, grazing may be used to promote the tillering of desirable species and to reduce plant residues which inhibit productive growth. A further benefit of proper livestock grazing is the increased vigor and production of desirable plants. Furthermore, removal of all livestock from public lands would not be in accordance with the principles of multiple use required by FLPMA.

(4) *Availability of Range Improvement Funds*—A large number of the comments opposed to the proposed rulemaking expressed the view that higher fees would generate more funds for improving Federal rangeland. Some comments suggested specific projects identified in existing LUP/EIS's as areas that need funding.

A large number of comments in support of the proposed rulemaking suggested that the range improvement funds may not increase with increased fees because permittees might use less forage. Other comments stated that Congress might not appropriate the additional funds and permittees might invest less of their own funds in public lands. A few comments suggested that incentives and programs, such as Experimental Stewardship, be used to increase funds for improving public rangelands.

It would be entirely speculative to project whether an increase in fees would result in increased funds for on-the-ground range improvements. FLPMA provides that 50 percent of all grazing fees are authorized to be appropriated by Congress and that one-half of these receipts are available for use in the district or region from where they were derived and the remaining one-half as the Secretary concerned directs. All of these funds are to be used for on-the-ground range rehabilitation, protection, and improvements. Congress has not always appropriated the full amount of difference between the funds available from receipts and the $10 million

specified by FLPMA. Whether it will do so in the future is uncertain. Also, since Range Improvement (RI) funds cannot be used for range administration it is necessary for Congress to supplement the appropriation in order for RI funds to be expended in a planned manner. Additionally, the level of increased revenue will depend upon the amount of forage demanded at various fee levels. The elasticity of demand for Federal forage had not been empirically tested and demand studies of the private forage market is a free market and does not have many of the requirements placed on the public forage market (e.g., base property requirements). Also, an increase in fees is likely to reduce the level of permittee investments in public lands.

(5) *Subsidy and Stability of the Western Livestock Industry*—A large number of the comments that opposed the proposed rulemaking expressed the belief that the fee generated by the formula results in an unwarranted subsidy to a small segment of the western livestock industry. Many comments also expressed the belief that the fee largely subsidizes ranching operations owned by oil companies, out-of state investors, and large corporations. It was also suggested that since BLM and FS permittees represent only 7 percent of the livestock producers in the 16 Western States, it is not possible for the grazing fee to stabilize the industry. Finally, a few comments suggested that if the industry is to be subsidized, it should be subsidized directly and not through grazing fees.

Numerous comments supporting the proposed rulemaking described the financial difficulties of the livestock industry, the large number of bankruptices, and economic troubles of family ranch operations and suggested that a fee tied to economic conditions is justified. A few comments expressed the view that raising fees would only serve to negate the effect of other programs designed to assist agriculture.

In response to these comments and as expressed earlier, the Secretary of the Interior is statutorily mandated by the Taylor Grazing Act "to stabilize the livestock industry dependent upon the public range." The underlying policy of PRIA, which is still in effect, prescribes that the grazing fee formula reflect annual changes in the costs of production in order "to prevent economic disruption and harm to the western livestock industry."

According to the findings of a recent General Accounting Office investigation, the typical BLM permittee is an individual, operating a family business, who owns the ranch that serves as base property, and also resides on the base property or in a local community within 100 miles of the base property. Specifically, the report states that 84 percent are individuals or partnerships, 91 percent own the base property, and 95 percent reside within 100 miles of base property. Only 11 percent of BLM permittees were found to be corporations, and many of these are family corporations. Additionally, BLM's grazing records indicate that about 90 percent of it permittees are family size operations or smaller with less than 500 head of cattle. The level of dependency of permittee ranch operations on Federal forage varies considerably from State to State. In Arizona, permittees obtain an average of 60 percent of their annual feed supply from Federal rangelands. This is the highest average percentage of the 13 Western States. In Montana, the State with the lowest percentage, permittees depend on Federal forage for 11 percent of their supply. It should be noted that the percentage do not always reflect the extent of the dependency because use of public and private land is interdependent and Federal forage often provides feed during critical periods of the year. Regardless of what percent of the western livestock industry are permittees or the extent to which fees might held stabilize the industry or the percentage of forage that is provided to permittees by public lands, the Secretary of the Interior is still required to the exteni possible to consider and carry out the statutory obligation of stabilizing the dependent livestock industry.

(6) *Equity to Other Public Land Users and Non Permittees*—A large number of comments opposing the proposed rulemaking raised the point that the Federal grazing fee is not equitable because only a part of the livestock industry has federal grazing permits. The belief is that the fee structure gives permittees an unfair competitive advantage over non-permittees. A few of the comments also expressed the belief that large numbers of permittees exclude the public from Federal lands, and therefore, permittees should not be given credit for sharing public lands.

Numerous comments in support of the proposed rulemaking expressed the view that the proposed fee formula is equitable because Federal permittees provide feed and shelter on their private lands to wildlife that the public enjoys on public lands, and permittees invest in and maintain water facilities, roads, and other improvements on public lands that benefit wildlife, wild horses, riparian areas, and recreational users. Also mentioned in several comments was the belief that livestock grazing reduces fire hazards. Many other comments noted that a number of public land users such as hunters and general recreationists do not pay anything to use public lands. Finally a few comments raised the equity issue that in order to use federal grazing privileges, it is necessary to invest in base property and because of the intermingled land pattern, Government restrictions are placed on permittees' private lands.

Beyond the earlier consideration given this issue, the Economic Research Service, U.S. Department of Agriculture, compared the "receipts less cash costs" positions of public land permittees and all western livestock industry producers and found them not to be statistically different. One of the explanations is that any advantage that might result from the level of the PRIA fee is offset by the higher cost of using public lands or the lower return from less productive public lands. The proposed grazing fee formula provides no specific adjustment to compensate permittees for the benefit they might provide to, or the added costs they might incur from, other public land users. At the same time it should be noted that some recreationists pay to use BLM land for special recreational events and camping but most do not pay for general recreation uses.

(7) *Cost Recovery*—A large number of comments opposing the proposed rulemaking suggested that the grazing fee recover the costs of the grazing program. Most felt this was necessary in view of the large Federal deficit and the need to reduce taxes.

A large number of comments supporting the rulemaking expressed the opposite view and suggested that the fee should not recover all the costs. The belief was expressed that range program costs include non-range related items such as salaries for other resource specialists, some basic range program costs that would be incurred even in the absence of livestock grazing, and that the range program generates multiple-use benefits.

In response to the comments concerning cost recovery, and in addition to what has been said earlier, it is helpful to understand that the costs of the BLM range program include three broad categories: Allotment Planning and Inventory, Grazing Management, and Range Improvement. Congress appropriates the funds for the first two categories and in the past has appropriated all the funds that are available from return of 50 percent of the grazing receipts for range improvements. However, in recent years, Congress has not made up the

difference between 50 percent of the fee receipts and the $10 million for range improvements specified in the Federal Land Policy and Management Act. Range program funds do not provide salaries for the resource specialists or their programs. It is true that there would still be some basic range resource tasks and, thus, costs in the absence of livestock grazing. In a special budget analysis, the BLM determined that it would require about 40 percent of the current planning, inventory, and range management budget to carry out certain basic resource protection and rangeland ecology tasks even in the absence of livestock grazing. Comments concerning multiple use benefits are also valid. Range improvements are capital investments that improve wildlife habitat, watersheds, and riparian areas, as well as livestock forage. Water developments particularly benefit wildlife. In view of this, it is questionable whether the grazing fee should be required to recover annually all of capital investment RI costs that produce non-livestock benefits as well as livestock benefits.

(8) *The Local Economy, Rural Social Values and Importance of Public Forage*—A number of comments opposing the proposed rulemaking expressed the belief that since Federal land forage makes such an insignificant contribution to the nation's forage supply, it is not important enough to be given special pricing consideration. A few comments expressed the view that livestock forage production should not be supported because it leads to the production of red meat which is an unhealthy food. A few comments expressed opposition to the proposed fee formula because it is believed to support a rural western lifestyle and that support of this lifestyle is unnecessary. Some comments stated that Federal grazing represents a very small portion of the local economy.

A large number of comments in support of the proposed rulemaking expressed a different position on the socioeconomic aspect of grazing fees. Many stated that Federal grazing is very important to many local rural economies and that an increase in grazing fees could have a significant impact on rural western communities that are already economically depressed. Many comments stated that a healthy ranching community contributes to the diversity of the local economy, lifestyle, and social values and that this is a public benefit.

Additionally, a large number of comments countered the view that production of Federal forage is not significant and cited statistics on a number of Western States where a large percentage of the beef cattle graze at least part of the year on Federal rangeland. A few comments also expressed the opinion that the contribution of forage and livestock production from Federal lands is important to providing food for the Nation.

In response to the comments it should be recognized that State and community interests are affected in two basic ways by changes in the grazing fee. First, State and county governments are affected financially through the level of payments that are made from grazing fee receipts. Under the Taylor Grazing Act, BLM makes payments to the State and county governments of 12.5 percent and 50 percent of the fees collected from section 3 and section 15 lands, respectively. The 1986 Grazing Fee Report shows, for example, that payments to States in 1982, when fees were $1.86 per AUM, varied from a high of $946,800 to New Mexico to a low of $200 to Kansas. Second, the State and local economy is affected by the amount of fees that are paid out and the percentage of money that is returned to the area. Money is returned through direct payment as well as through range improvement expenditures that come from the return of 50 percent of the grazing receipts. Since the Federal Government retains a percentage of all fee receipts, any increase in grazing fees would have an adverse economic impact on the State and local areas. The significance of the impact varies depending upon how dependent the State or local economy is on Federal grazing.

Special studies prepared for the 1986 Grazing Fee Report also show that there is a wide range in economic dependency of rural western communities on Federal forage. Areas that show higher dependency, for example, include Catron County, New Mexico; Owyhee County, Idaho; Sublette County, Wyoming; and Harney County, Oregon. Raising the grazing fee from the current level of $1.35 to $4 per AUM would reduce personal income in these four areas by about 7.1 percent, 6.0 percent, 3.5 percent and 3.5 percent, respectively. A study of the economic impact on Western States of increasing fees from $1.35 to $3 shows that personal income would be reduced by about $50.5 million and employment by about 1,500 jobs.

The importance of Federal forage from the production standpoint depends upon the context in which it is being considered. Federal forage provides 10 percent of the Nation's total rangeland forage and 2 percent of the total feed consumed by cattle in the United States. In many Western States, Federal grazing is a highly significant portion of total grazing. For example, 88 percent of the cattle produced in Idaho, 84 percent in Wyoming, and 63 percent in Arizona graze at least part of the year on public rangelands. The Secretary of the Interior cannot eliminate consideration of community social or economic impacts or the importance of production of Federal forage in the decision on the grazing fee formula simply because a few western states do not have a significant level of dependency on Federal forage.

Conclusion

For the foregoing reasons, the final rulemaking adopts the provisions of the proposed rulemaking without change. Implementation of the fee formula set out by the President of the United States in Executive Order 12548 and reestablished in this rulemaking will result in a grazing fee that is reasonable and equitable to the United States, the holders of the grazing privileges, State and local interests, and other interested parties. Also, administration of this fee system will be efficient and cost effective.

The public is hereby notified that the grazing fee for 1988 is $1.54 per animal unit month (AUM). This was arrived at by using the fee formula contained in this rulemaking which becomes effective today.

$$\text{CF (Calculated Fee)} = \$1.23 \times \frac{234\ (\text{FVI}) + 272\ (\text{BCPI}) - 381\ (\text{PPI})}{100} = \$1.54 \text{ per AUM}$$

This fee meets the requirements of § 4130.7–1(a)(2) of the regulations that any annual increase be not more than 25 percent of the previous year's fee. The fee in 1987 was $1.35 per AUM.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Billy R. Templeton and Donald Waite, Division of Rangeland Resources, Bureau of Land Management, assisted by staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no signficant impact, it is hereby determined that the publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), and Executive Order 12548 of February 1986, it is proposed to amend § 4130.7, Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Livestock, Penalties, Range management.

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1988.

PART 4100—[AMENDED]

1. The authority citation for 43 CFR Part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1701 *et seq.*, 1181d, and 98 Stat. 1837.

2. Section 4130.7–1 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 4130.7–1 Payment of fees.

(a) * * *

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$\text{CF} = \$1.23 \times \frac{\text{FVI} + \text{BCPI} - \text{PPI}}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

$1.23 = The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI = "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by $3.85 and multiplied by 100;

BCPI = "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by $22.04 per hundred weight and multiplied by 100; and

PPI = "Prices Paid Index" means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (16.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

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Reader Aids

Federal Register

Vol. 53, No. 21

Tuesday, February 2, 1988

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data Base Services	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719-2816.....1
2817-2994.....2

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5763.....2719
5764.....2814
Executive Orders:
12301 (Revoked by 12625).....2812
12625.....2812
Administrative Orders:
Memorandums:
January 28, 1988.....2816

7 CFR

272.....2817
932.....2823
Proposed Rules:
250.....2846
907.....2849
908.....2849
917.....2851
925.....2851
1421.....2759
1823.....2852
1930.....2852
1933.....2852
1942.....2852
1944.....2852
1948.....2852
1980.....2852

8 CFR

204.....2824

9 CFR

92.....2853
Proposed Rules:
51.....2759

10 CFR

Proposed Rules:
31.....2853

12 CFR

614.....2825

14 CFR

21.....2721-2733
23.....2721-2733
39.....2735-2737
1206.....2738
Proposed Rules:
21.....2761
23.....2761
39.....2763-2765

16 CFR

Proposed Rules:
453.....2767

17 CFR

Proposed Rules:
249.....2854

19 CFR

154.....2826
270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826
Proposed Rules:
101.....2767

21 CFR

1.....2827
Proposed Rules:
12.....2767

23 CFR

645.....2829

27 CFR

9.....2834

30 CFR

934.....2837

33 CFR

203.....2841
Proposed Rules:
117.....2769

34 CFR

Proposed Rules:
669.....2918

36 CFR

222.....2978

38 CFR

Proposed Rules:
21.....2855

40 CFR

60.....2914
721.....2842, 2845
Proposed Rules:
721.....2857

41 CFR

101-1.....2738

42 CFR

59.....2922

43 CFR

4100.....2984

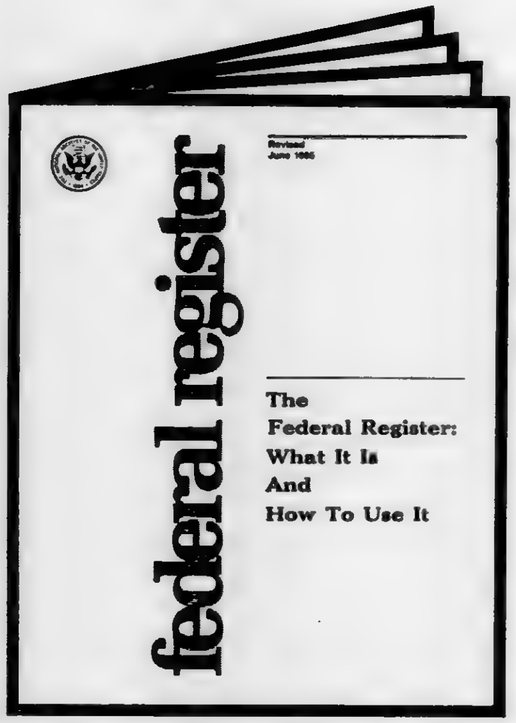
44 CFR

5.....2739
64.....2741
67.....2743

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988



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Vol. 53 No. 22
Pages 2995-3182

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Wednesday
February 3, 1988

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Contents

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

Agricultural Marketing Service
RULES
Potatoes grown in California and Oregon, 2995
PROPOSED RULES
Cranberries grown in Massachusetts et al., 3036
Livestock; grading, certification, and standards:
Slaughter cattle and carcass beef, 3025
Potatoes (Irish) grown in Colorado, 3037

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food Safety and Inspection Service
NOTICES
Agency information collection activities under OMB review, 3059

Animal and Plant Health Inspection Service
PROPOSED RULES
Hawaiian and territorial quarantine notices:
Conveyance, baggage, and cargo moving interstate from Hawaii, Puerto Rico, or the Virgin Islands; inspection, 3028
Interstate transportation of animals and animal products (quarantine):
Swine identification, 3146

Army Department
See also Engineers Corps
NOTICES
Patent licenses, exclusive:
Roberts Pharmaceutical Corp., 3067

Commerce Department
See also Export Administration; International Trade Administration
NOTICES
Meetings:
Private Sector Initiatives Presidential Board of Advisors, 3059

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Nikkei Stock Average, 3063
Kansas City Board of Trade—
Value Line Average and Mini Value Line Average Stock Index, 3064

Comptroller of the Currency
RULES
National banks:
Lending limits, 2997

Consumer Product Safety Commission
RULES
Hazardous substances:
Petroleum distillates; first aid direction; labeling requirements; revocation, 3014
NOTICES
Settlement agreements:
BernzOmatic, 3064

Copyright Office, Library of Congress
RULES
Cable systems:
Compulsory license—
Gross receipts reporting; correction, 3118

Defense Department
See also Army Department; Engineers Corps
NOTICES
Agency information collection activities under OMB review, 3066
Meetings:
Science Board task forces, 3067
(2 documents)

Economic Regulatory Administration
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
First Energy Associates et al., 3069

Education Department
See also National Council on the Handicapped
RULES
Educational research and improvement:
Library research and demonstration program, 3020
NOTICES
Grants; availability, etc.:
Leadership in educational administration development program, 3068
Strengthening institutions program, 3067
Meetings:
Bilingual Education National Advisory and Coordinating Council, 3068

Employment and Training Administration
NOTICES
Adjustment assistance:
Armco Inc. et al., 3088
Young Radiator Co. et al., 3087

Energy Department
See Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission

Energy Research Office
NOTICES
Meetings:
Energy Research Advisory Board, 3069, 3070
(2 documents)

Engineers Corps
RULES
National Environmental Policy Act; implementation, 3120

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, 3022
Iprodione, 3021

Peas, 3022
Pendamethalin, 3023
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado et al. (stack height), 3052
NOTICES
Meetings:
Science Advisory Board, 3071, 3072 (2 documents)
Pesticide, food, and feed additive petitions:
Rhone-Poulenc Ag. Co. et al., 3074
Pesticides; emergency exemption applications:
Dinoseb, 3072
Pesticides; experimental use permits, etc.:
Rohm Haas & Co., 3074
Toxic and hazardous substances control:
Confidential business information and data transfer to contractors, 3075

Export Administration
See also International Trade Administration
NOTICES
Export privileges; actions affecting:
Hakanson, Swen Olof, 3059

Farmers Home Administration
PROPOSED RULES
Employment:
County committee members; election, 3176

Federal Aviation Administration
RULES
Airport radar service areas, 3008 (2 documents)
Airworthiness directives:
Boeing, 3001
Pratt & Whitney, 3002
Prohibited areas, 3010
Restricted areas, 3010
Standard instrument approach procedures, 3011, 3012 (2 documents)
VOR Federal airways, 3005–3008 (3 documents)
PROPOSED RULES
Aircraft products and parts, certification:
Special conditions—
Boeing Model 767 series airplanes with PW4000 series engines, 3042
British Aerospace, 3040
Airworthiness directives:
Fokker, 3047
Mitsubishi, 3044
SAAB-Fairchild, 3048
Transition areas, 3049
NOTICES
Grants; availability, etc.:
Airport improvement programs, 3104

Federal Communications Commission
RULES
Radio stations; table of assignments:
Nevada, 3024
PROPOSED RULES
Common carrier services:
Domestic fixed-satellite service—
RCA American Communications, Inc.; modification of Space Station authorization, 3056
Radio services, special:
Maritime services—
Digital selective calling equipment; correction, 3058
Television broadcasting:
Television-to-land mobile interference elimination, 3057
NOTICES
Applications, hearings, determinations, etc.:
Family Stations, Inc., et al., 3076

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 3116 (2 documents)

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices—
Maximum lawful prices and inflation adjustment factors, 3019
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Public Service Co. et al., 3070

Federal Home Loan Bank Board
NOTICES
Receiver appointments:
Citizens Savings & Loan Association, 3076

Federal Procurement Policy Office
NOTICES
Value engineering policy guidance: (Circular A-131), 3130

Federal Reserve System
RULES
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 2998
NOTICES
Agency information collection activities under OMB review, 3076
Applications, hearings, determinations, etc.:
Century Financial Corp. et al., 3077
McNeal, Larry, et al., 3077
Omdahl, Richard A., 3077
State Bancshares, Inc., et al., 3078
Workingmens Corp. et al., 3078

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Swine identification, 3146

Health and Human Services Department
See Human Development Services Office; National Institutes of Health

Human Development Services Office
NOTICES
Grants; availability, etc.:
Social services block grant program; Federal allotments to States, 3079

Interior Department
See also Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office
NOTICES
School facilities; new construction applications, 3080

Internal Revenue Service
RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance
Correction, 3118
PROPOSED RULES
Income taxes:
Property and casualty insurance companies; paid and unpaid losses; treatment of salvage and reinsurance; cross reference—
Correction, 3118

International Trade Administration
See also Export Administration
RULES
Export licensing:
Foreign policy-based export controls, 3014
NOTICES
Antidumping:
Elemental sulphur from Canada, 3062
Applications, hearings, determinations, etc.:
Carnegie Mellon University et al., 3061
University of Colorado, 3062
University of Delaware et al., 3062

International Trade Commission
NOTICES
Import investigations:
Bimetallic cylinders from Japan, 3084
Ink jet printers employing solid ink, 3085
Recloseable plastic bags and tubing, 3086
Small aluminum flashlights and components, 3083
Welded carbon steel pipes and tubes from India, 3084

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
Commercial zones and terminal areas, 3058
NOTICES
Agency information collection activities under OMB review, 3086
Rail carriers:
Bangor & Aroostook Railroad Co. et al.; interchange agreements, 3086
Railroad services abandonment:
Southern Railway Co., 3086

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Minerals management:
Onshore oil and gas operations; Federal and Indian oil and gas leases, order no. 4, 3158
Onshore oil and gas operations; Federal and Indian oil and gas leases, order no. 5, 3168
NOTICES
Committees; establishment, renewal, termination, etc.:
National Public Lands Advisory Council, 3081
Environmental statements; availability, etc.:
Coal preference right lease applications—
Colorado, 3080
Realty actions; sales, leases, etc.:
North Dakota, 3080
Resource management plans, etc.:
Arizona, 3080

Library of Congress
See Copyright Office, Library of Congress

Management and Budget Office
See Federal Procurement Policy Office

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
BethEnergy Mines Inc., 3089
Jim Walter Resources, Inc., 3089

National Aeronautics and Space Administration
NOTICES
Meetings:
Aeronautics Advisory Committee, 3090
Space and Earth Science Advisory Committee 3090
Space Station Advisory Committee, 3090

National Council on the Handicapped
NOTICES
Meetings; Sunshine Act, 3116

National Credit Union Administration
RULES
Reporting and recordkeeping requirements, 3000

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 3079

National Park Service
NOTICES
Concession contract negotiations:
Adventure Bound, Inc., et al., 3083
National Register of Historic Places:
Pending nominations—
Kentucky et al., 3083

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 3116
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 3091
Illinois Power Co., 3092
Virginia Electric & Power Co., 3093

President's Commission on Privatization
NOTICES
Meetings, 3093

Privatization, President's Commission
See President's Commission on Privatization

Public Health Service
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
All-American Canal Project, CA, 3081, 3082 (2 documents)

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 3093, 3094 (2 documents)

Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 3101
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 3102
Applications, hearings, determinations, etc.:
CTC Mansfield Funding Corp., 3094
EBI Series Trust et al., 3097
Germany Fund, Inc., 3102
Public utility holding company filings, 3100
RCS Emerging Growth Fund, 3099

Small Business Administration
NOTICES
License surrenders:
DGC Capital Co., 3104
Applications, hearings, determinations, etc.:
Raffensperger Hughes Venture Corp., 3102

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Oklahoma, 3050

Transportation Department
See Federal Aviation Administration

Treasury Department
See also Comptroller of the Currency; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 3114, 3115
(2 documents)

Separate Parts in This Issue

Part II
Department of Defense, Department of the Army, Corps of Engineers, 3120

Part III
Office of Management and Budget, Federal Procurement Policy Office, 3130

Part IV
Department of Agriculture, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, 3146

Part V
Department of the Interior, Bureau of Land Management, 3158

Part VI
Department of the Interior, Bureau of Land Management, 3168

Part VII
Department of Agriculture, Farmers Home Administration, 3176

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
947 ... 2995
Proposed Rules:
53 ... 3025
54 ... 3025
318 ... 3028
929 ... 3036
948 ... 3037
2054 ... 3176

9 CFR
Proposed Rules:
71 ... 3146
78 ... 3146
85 ... 3146
309 ... 3146
310 ... 3146
320 ... 3146

12 CFR
32 ... 2997
207 ... 2998
220 ... 2998
221 ... 2998
224 ... 2998
795 ... 3000

14 CFR
39 (2 documents) ... 3001, 3002
71 (5 documents) ... 3005–3008
73 (2 documents) ... 3010
97 (2 documents) ... 3011, 3012
Proposed Rules:
21 (2 documents) ... 3040, 3042
25 (2 documents) ... 3040, 3042
39 (3 documents) ... 3044–3048
71 ... 3049

15 CFR
Ch. III ... 3014

16 CFR
1500 ... 3014

18 CFR
271 ... 3019

26 CFR
1 ... 3118
Proposed Rules:
1 ... 3118

30 CFR
Proposed Rules:
936 ... 3050

33 CFR
230 ... 3120
325 ... 3120

34 CFR
777 ... 3020

37 CFR
201 ... 3118

40 CFR
180 (4 documents) ... 3021–3023
Proposed Rules:
52 ... 3052

43 CFR
Proposed Rules:
3160 (2 documents) ... 3158, 3168

47 CFR
73 ... 3024
Proposed Rules:
25 ... 3056
69 ... 3057
80 ... 3058

49 CFR
Proposed Rules:
1041 ... 3058
1048 ... 3058
1049 ... 3058

Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp., 3101
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 3102
Applications, hearings, determinations, etc.:
CTC Mansfield Funding Corp., 3094
EBI Series Trust et al., 3097
Germany Fund, Inc., 3102
Public utility holding company filings, 3100
RCS Emerging Growth Fund, 3099

Small Business Administration
NOTICES
License surrenders:
DGC Capital Co., 3104
Applications, hearings, determinations, etc.:
Raffensperger Hughes Venture Corp., 3102

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Oklahoma, 3050

Transportation Department
See Federal Aviation Administration

Treasury Department
See also Comptroller of the Currency; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 3114, 3115
(2 documents)

Separate Parts In This Issue

Part II
Department of Defense, Department of the Army, Corps of Engineers, 3120

Part III
Office of Management and Budget, Federal Procurement Policy Office, 3130

Part IV
Department of Agriculture, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, 3146

Part V
Department of the Interior, Bureau of Land Management, 3158

Part VI
Department of the Interior, Bureau of Land Management, 3168

Part VII
Department of Agriculture, Farmers Home Administration, 3176

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
947 ... 2995
Proposed Rules:
53 ... 3025
54 ... 3025
318 ... 3028
929 ... 3036
948 ... 3037
2054 ... 3176

9 CFR
Proposed Rules:
71 ... 3146
78 ... 3146
85 ... 3146
309 ... 3146
310 ... 3146
320 ... 3146

12 CFR
32 ... 2997
207 ... 2998
220 ... 2998
221 ... 2998
224 ... 2998
795 ... 3000

14 CFR
39 (2 documents) ... 3001, 3002
71 (5 documents) ... 3005–3008
73 (2 documents) ... 3010
97 (2 documents) ... 3011, 3012
Proposed Rules:
21 (2 documents) ... 3040, 3042
25 (2 documents) ... 3040, 3042
39 (3 documents) ... 3044–3048
71 ... 3049

15 CFR
Ch. III ... 3014

16 CFR
1500 ... 3014

18 CFR
271 ... 3019

26 CFR
1 ... 3118
Proposed Rules:
1 ... 3118

30 CFR
Proposed Rules:
936 ... 3050

33 CFR
230 ... 3120
325 ... 3120

34 CFR
777 ... 3020

37 CFR
201 ... 3118

40 CFR
180 (4 documents) ... 3021–3023
Proposed Rules:
52 ... 3052

43 CFR
Proposed Rules:
3160 (2 documents) ... 3158, 3168

47 CFR
73 ... 3024
Proposed Rules:
25 ... 3056
69 ... 3057
80 ... 3058

49 CFR
Proposed Rules:
1041 ... 3058
1048 ... 3058
1049 ... 3058

Rules and Regulations

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

Potatoes Grown in Designated Areas in California and Oregon; Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will make permanent the relaxed minimum size requirements currently in effect for high quality potatoes shipped for market expansion purposes. The current requirements were made effective on a temporary basis until March 7, 1988. The relaxed requirements are designed to develop and expand the market for potatoes. This final rule also includes all of the other handling requirements established over the years and currently in effect under the marketing order. Their inclusion in this rulemaking document and their eventual publication in the Code of Federal Regulations will make them easier for interested persons to locate and use. The inclusion of these requirements does not result in a change in regulatory effect.

EFFECTIVE DATE: March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 947, as amended [7 CFR Part 947], regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507] and have been assigned OMB No. 0581–0112.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 42 handlers of Oregon-Northern California potatoes subject to regulation under the marketing order, and approximately 469 potato producers in Oregon and Northern California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual revenues are less than $3,500,000. The majority of handlers and producers of Oregon-Northern California potatoes may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in § 947.340 [46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987]. The most recent amendment relaxed the minimum size requirements for potatoes shipped under specific conditions for market expansion purposes for the period February 25, 1987, through March 7, 1988, and permanently exempted all non-white fleshed varieties of potatoes from handling regulations.

Notice of this change was published in the October 30, 1987, issue of the Federal Register [52 FR 41730] affording interested persons 30 days in which to submit written comments. None were received.

Potatoes that measure less than 1⅝ inches in diameter may be shipped under the temporarily relaxed minimum size requirements specified in the March 9, 1987, final rule provided that they grade at least U.S. No. 1, and are packed in quantities of 50 pounds or more per container. Red-skinned varieties of potatoes allowed to be shipped under the relaxed requirements must be at least "Size B." "Size B" potatoes have a minimum diameter of 1⅝ inches and a maximum diameter of 2¼ inches and no minimum or maximum weight requirement.

Prior to shipping any such potatoes under the relaxed size requirements, handlers must apply for and obtain from the committee each marketing season a special purpose certificate authorizing shipment of the potatoes. In addition, handlers who ship potatoes under the relaxed minimum size provisions are required to promptly report information requested by the committee relating to such shipments, including the grade and usage of the potatoes, once the shipments are concluded. The reporting requirements are designed to provide adequate safeguards to assure that the potatoes shipped under these provisions are shipped to the intended market for the stated purpose, and to provide the committee with information necessary to monitor and evaluate the effects of such shipments on the market.

This action making the current rule permanent is designed to further the development of new markets and further expand marketing opportunities for potato growers in Oregon and Northern California. This action was recommended by the Oregon-California Potato Committee.

The committee reports that about 600 pounds of potatoes have been test marketed as samples to prospective customers e.g., restaurants, under the relaxed minimum size requirements. These shipments have been well received, and shipments of potatoes under the relaxed requirements are expected to increase considerably. The committee is of the opinion that the

procedures set up on a temporary basis for keeping track of those shipments to make sure that the potatoes do not end up in the markets for larger-sized Oregon-California potatoes will work on a permanent basis. Further, the committee believes that such shipments will not adversely impact the market for larger-sized potatoes, and hence, these requirements should be established on a permanent basis. For potatoes shipped to markets desiring larger-sized potatoes, the minimum size requirements are 2 inches in diameter or 4 ounces in weight for potatoes shipped within the continental United States, and 1½ inches in diameter for potatoes shipped to export destinations, while the minimum grade requirement is U.S. No. 1 for potatoes packed in 50-pound cartons and U.S. No. 2 for potatoes packed in other size containers.

Exemptions to the handling requirements will continue to be available. For example, the minimum grade, size, cleanness, maturity, pack and inspection requirements do not apply to certified seed potatoes, or potatoes for canning, freezing, prepeeling, and "other processing". Exemptions are available for livestock feed and charity under certain conditions, and any person may handle up to 1,900 pounds of potatoes per day without regard to the inspection requirements.

Also, under this action, the entire handling regulation [§ 947.340] will be published in the **Federal Register**, not just paragraph (b) which is being amended. The purpose for taking this action is to consolidate the handling regulation, and the various amendments to it, into one document, and have the entire regulation published in the next issue of the Code of Federal Regulations. This will make the requirements easier to locate and use. This action will not result in any regulatory changes.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that permanently relaxing the minimum size requirements currently in effect for high quality potatoes shipped for market expansion purposes will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes, Oregon, California.

For reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 947.340 (46 FR 47757, September 30, 1981; 48 FR 38203, August 23, 1983; 52 FR 7120, March 9, 1987) the introductory text and paragraphs (a), (c), (d), (e), (f), (g), (h), (i), and (j) are republished and paragraph (b) is revised to read as follows in consequence, the entirety of § 947.340 is set out:

§ 947.340 Handling regulation.

No person shall handle any variety of potatoes grown in the production area, except for non-white fleshed varieties of potatoes, unless such potatoes meet the requirements specified in paragraphs (a) through (f) of this section, or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* Such potatoes grade at least U.S. No. 2.

(b) *Size requirements.* Such potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or weigh at least 4 ounces, and such potatoes shipped to export destinations shall be at least 1½ inches in diameter: *Provided,* That any person may handle all varieties of such potatoes, except red-skinned varieties of potatoes, that measure less than 1½ inches in diameter, and all red-skinned varieties of potatoes which are Size B, if such potatoes otherwise grade at least U.S. No. 1, and they are packed in quantities of 50 pounds or more per container: *Provided further,* That any person who desires to so handle potatoes shall each season prior to shipment apply for and obtain a special purpose certificate from the committee authorizing shipment of the potatoes for market expansion purposes: *Provided further,* That any person who so handles potatoes for market expansion purposes shall promptly report the shipment, grading, and usage of the potatoes to the committee.

(c) *Cleanness requirements.* All varieties and grades—As required in the United States Standards for Grades of Potatoes, except that U.S. Commercial may be no more than "slightly dirty."

(d) *Maturity (skinning) requirements.* (1) Round and White Rose varieties: not more than "moderately skinned."

(2) Other Long Varieties (including but not limited to Russet Burbank and Norgold): not more than "slightly skinned."

(3) Not to exceed a total of 100 hundredweight of potatoes may be handled during any seven day period without meeting these maturity requirements. Prior to shipment of potatoes exempt from the above maturity requirements, the handler shall obtain from the committee a Certificate of Privilege.

(e) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, as identified by USDA Color Photographs 121 and 123 [U.S. No. 1-Maximum Allowed], USDA Visual Aid POT–L–1, January 1981, or not more than 5 percent serious damage by internal defects.

(f) *Inspection.* (1) Except when relieved by paragraphs (g) and (h), or (i) of this section and paragraph (f)(2) of this section, no person shall handle potatoes without first obtaining inspection from an authorized representative of the Federal-State Inspection Service.

(2) Handlers making shipments from facilities located in an area where inspection costs would otherwise exceed one and one-half times the current per-hundredweight inspection fee, are exempt from on-site inspection provided such handler has made application to the committee for inspection exemption on forms supplied by the committee, and provided further that such handler signs an agreement with the committee to report each shipment on a daily basis and pay the committee a sum equal to the current inspection fee.

(3) For the purpose of operation under this part each required inspection certificate is hereby determined, pursuant to § 947.60(c) to be valid for a period of not to exceed 14 days following completion of inspection as shown on the certificate. The validity period of an inspection certificate covering inspected and certified potatoes that are stored in mechanically refrigerated storage within 14 days of the inspection shall be 14 days plus the number of days that the potatoes were held in refrigerated storage.

(4) Any lot of potatoes previously inspected pursuant to § 947.60 and certified as meeting the requirements of this part is not required to have additional inspection under § 947.60(b) after regrading, resorting, or repacking such potatoes, if the inspection certificate is valid at the time of regrading, resorting, or repacking of the potatoes.

(g) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, pack and inspection requirements set forth in paragraphs (a) through (f) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Certified seed, subject to applicable safeguard requirements of paragraph (h) of this section.

(2) Livestock feed: However, potatoes may not be handled for such purposes if destined to points outside of the production area, except that shipments to the counties of Benton, Franklin and Walla Walla in the State of Washington and to Malheur County, Oregon, may be made, subject to the safeguard provisions of paragraph (h) of this section.

(3) Planting in the district where grown: Further, potatoes for this purpose grown in District No. 2 or District No. 4 may be shipped between those two districts.

(4) Grading or storing under the following provisions:

(i) Between districts within the production area for grading or storing if such shipments meet the safeguard requirements of paragraph (h) of this section.

(ii) Potatoes grown in District No. 2 or District No. 4 may be shipped for grading or storing between those two districts without regard to the safeguard requirements of paragraph (h) of this section.

(iii) Potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

(5) Charity: Except that shipments for charity may not be resold if they do not meet the requirements of the marketing order, and that shipments in excess of 5 hundredweight per charitable organization shall be subject to the safeguard provisions of paragraph (h) of this section.

(6) Starch manufacture.

(7) Canning, freezing, prepeeling, and "other processing" (except starch manufacturing) as hereinafter defined (including storage for such purposes).

(h) *Safeguards.* (1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on forms provided by it.

(2) Each handler making shipments of potatoes pursuant to paragraphs (2), (4)(i), and (5) of paragraph (g) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to paragraph (7) of paragraph (g) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee, in accordance with its administrative rules.

(i) *Minimum quantity exemption.* Any person may handle not more than 19 hundredweight of potatoes on any day without regard to the inspection requirements of § 947.60 and to the assessment requirements of § 947.41 of this part except no potatoes may be handled pursuant to this exemption which do not meet the requirements of paragraphs (a), (b), (c), (d) and (e) of this section. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

(j) *Definitions.* (1) The terms "U.S. No. 1," "U.S. Commercial," "U.S. No. 2," "Size B," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566) including the tolerances set forth therein.

(2) The term "slightly dirty" means potatoes that are not damaged by dirt.

(3) The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422, United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433).

(4) The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, or starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing."

(5) The term "non-white fleshed potatoes" means all colored fleshed varieties of potatoes other than white-fleshed varieties of potatoes.

(6) Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114, as amended, and this part.

Dated: January 27, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2130 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 32

[Docket No. 88–2]

National Banks' Lending Limits; Banks With Agricultural or Oil and Gas Loans

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency is amending the portion of its regulation on national bank lending limits dealing with the substitute lending limit for banks with charged-off agricultural and oil and gas loans. The final rule extends the period for eligible "special category charge-offs" and, also, the period of the substitute lending limit so as to make those periods consistent with the recently amended policy on capital forbearance. This final rule is intended to provide further temporary relief from lending limit restrictions for national banks with charge-offs of agricultural and oil and gas loans.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division, (202) 447–1880; or Jon A. Nagy, National Bank Examiner, Commercial Activities Division, (202) 447–1164.

SUPPLEMENTARY INFORMATION: On October 30, 1986, the Office of the Comptroller of the Currency ("Office") adopted a final amendment to 12 CFR Part 32 creating a substitute lending limit for national banks with charged-off agricultural and oil and gas loans. (51 FR 39641). This final rule followed the Office's April 23, 1986, temporary rule with request for comment (51 FR 15303). The amendment was intended to provide temporary relief from lending limit restrictions to national banks which have suffered reductions in capital as a result of problems in the agricultural and oil and gas sectors of the economy. Further, the substitute limit was intended to complement the

Office's policy statement on capital forbearance, adopted on the same date (51 FR 15305).

Part 32 implements the lending limits in 12 U.S.C. 84. This final rule will allow, for two additional years, those national banks that have experienced capital declines due to charge-offs from agricultural or oil and gas loans to continue lending to their creditworthy customers under a higher substitute lending limit. As originally adopted, the relevant periods of the substitute limit matched those of the capital forbearance policy; both programs took into account charge-offs occurring on or before December 31, 1987, and both programs ended on January 1, 1993. However, in OCC Banking Circular 212 Supplement No. 2, dated July 7, 1987, and published in the **Federal Register** on September 14, 1987 (52 FR 34736), the effective periods of the capital forbearance policy were extended in light of the problems banks were continuing to experience due to a protracted recovery in some economic sectors. Specifically, the application deadline for capital forbearance was extended two years to December 31, 1989, and the period of supervisory forbearance was likewise extended two years to January 1, 1995.

As noted above, the substitute lending limit was intended to complement the capital forbearance policy. Further, the Office stated in BC–212 Supplement No. 2 that it anticipated the substitute lending limit would be extended. Accordingly, the Office is amending 12 CFR 32.8 to make that that limit co-extensive with the forbearance policy as amended. To that end, the Office is amending the definition of "Special category loan charge-offs" in 12 CFR 32.8(a)(3) to include loans charged-off through December 31, 1989, rather than December 31, 1987, as originally provided. Similarly, 12 CFR 32.8(b) is amended to provide that the substitute lending limit will remain in effect until January 1, 1995, rather than January 1, 1993, as originally provided.

Effective Date and Notice and Comment

This final rule is effective February 3, 1988. Adoption of this final rule February 3, 1988 is required to ensure that loans charged-off after December 31, 1987, are eligible for inclusion in calculating the substitute lending limit. Additionally, the amendment confers benefits on eligible banks. For these reasons, the Office finds that a delayed effective date due to application of the notice and comment procedure of 5 U.S.C. 553 to this final rule is unnecessary, would be contrary to the public interest and that good cause, described above, exists for making this action effective February 3, 1988.

Regulatory Impact Analysis

Pursuant to section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that this final rule does not constitute a "major rule" within the meaning of the executive order. Consequently, no regulatory impact analysis is necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act [Pub. L. 96–354, 5 U.S.C. 601 *et seq.*], it is certified that this final rule will not have significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 32

National banks, Banking, Loans, Lending Limits.

Authority and Issuance

For the reasons set out in the preamble, Part 32 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 12 U.S.C. 93a.

§ 32.8 [Amended]

2. In § 32.8, paragraph (a)(3), December 31, 1987, is revised to read December 31, 1989.

3. In § 32.8, paragraph (b), January 1, 1993, is revised to read January 1, 1995.

Date: December 22, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88–2208 Filed 2–2–88; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

Regulations G, T, U, and X; Securities Credit Transactions; List of Marginable OTC Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective November 10, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 8, 1988.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202) 425–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective November 10, 1987. (Additions and deletions for that List were published at 52 FR 41962, November 2, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U, and X (12 CFR Parts 207, 220, 221, and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would

be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed For Failing Continued Listing Requirements

ACA Joe, Inc.
$.01 par common
Alaska National Bank of The North
$2.00 par common
Amvestors Financial Corp.
Series A, $1.00 par convertible preferred
Bio-Response, Inc.
$.004 par common
Bruce, Robert Industries Inc.
Class A, $.01 par common
Calstar, Inc.
Warrants (expire 1998)
Cogenic Energy Systems, Inc.
$.01 par common
Cousins Home Furnishings, Inc.
$.01 par common
CR/PL, Inc.
$.01 par common
Cypress Savings Association (Flordia)
Warrants (expire 01–01–91)
Encor Energy Corporation
No par common
Energy Factors, Inc.
8¼% convertible subordinated debentures
Federated Group, Inc., The
$.10 par common
First of America Bank Corp.
Series G, 9% convertible preferred
Great American Parters
Limited Partnership Units
Guardian Packaging Corporation
$.34 par common
Hanover Companies, Incorporated
$.01 par common
Incomnet, Inc.
No par common
Jepson Corporation, The
$.01 par common
Lynden Incorporated
$1.00 par common
MBI Business Centers, Inc.
$.01 par common
Micron Technology, Inc.
14% convertible subordinated debentures
Page America Group, Inc.
$.01 par common
Pharmakinetic Laboratories, Inc.
Warrants (expire 10–28–87)
Quantech Electronics Corp.
$.01 par common
Rogers Cablesystems of America, Inc.
Class A, $1.00 par common
Royale Airlines, Inc.
No par common
Scherer Health care, Inc.
$.01 par common
Semicon, Inc.
$.25 par common
Sigma Research, Inc.
No par common
Sippican, Inc.
$1.00 par common
Specialty Retail Concepts, Inc.
$.02 par common
Tele-Communications, Inc.
Warrants (expire 01–01–88)
U.S. Capital Corporation
$.10 par common
Up-Right, Inc.
No par common
Webb, Del. E., Corporation
Warrants (expire 04–15–88)
Worlco Data Systems
$.10 par common

Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition

AIFS, Inc.
$.10 par common
Alaska Mutual Bancorporation
$5.00 par common
American Bank of Connecticut
$1.00 par common
American Exploration Company
$.05 par common
Anitec Image Technology Corp.
$.10 par common
Atlantic Research Corporation
$.10 par common
Baird Corporation
$1.00 par common
Bench Craft, Inc.
$1.00 par common
Burnham American Properties, Inc.
No par common
Cash American Investments, Inc.
$.10 par common
Cavalier Homes, Inc.
$.10 par common
Commerce Union Corporation
$6.66-⅔ par common
Commercial Security Bancorporation
No par common
Danners, Inc.
No par common
Data Card Corporation
$.10 par common
Detector Electronics Corporation
$.10 par common
Digital Communication Associates, Inc.
$.10 par common
Electro-Biology, Inc.
$1.00 par common
Endata, Inc.
$.10 par common
Enviropact, Inc.
$.01 par common
Equatorial Communications Company
No par common
First Mutual Savings Association of Florida
$1.00 par common
First National Corporation (California)
No par common
Funtime, Inc.
No par common
Gallagher, Arthur J., & Co., Inc.
$1.00 par common
Godfrey Company
$1.00 par common
Grantree Corporation
$.10 par common
Greater Washington Investors, Inc.
$.10 par common
Growth Fund of Florida, Inc., The
$.001 par common
Guarantee Financial Corporation of California
No par common
Harman International Industries, Inc.
$.01 par common

Illinois Reginal Bancorp, Inc.
$10.00 par common
Inertia Dynamics Corp.
$.01 par common
International Technology Corporation
Warrants (expire 12–14–87)
Ivaco Industries, Inc.
$.10 par common
Jackpot Enterprises, Inc.
$.01 par common
K.V. Pharmaceutical Co.
Class B, $.25 par common
Laidlaw Industries, Inc.
$.25 par common
Lands' End, Inc.
$.01 par common
Louis Vuitton S.A.
American Depository Receipts for ordinary shares
Millipore Corporation
$1.00 par common
Morlan International, Inc.
$.01 par common
New Bedford Institution For Savings (Massachusetts)
$.10 par common
Par Technology Corporation
$.02 par common
Peoples Ban Corporation (Washington)
$5.00 par common
PNC Financial Corp.
$5.0. par common
Series C, $1.60 par cumulative preferred
Series D, $1.80 par cumulative preferred
Present Company, Inc.
$.10 par common
Rusty Pelican Restaurants, Inc.
No par common
Saatchi & Saatchi Company PLC
American Depository Shares
Stater Bros. Inc.
$.01 par common
Super Sky International, Inc.
$.10 par common
Thermo Instrument Systems, Inc.
$.10 par common
Thunander Corporation
$.01 par common
Timberland Industries, Inc.
$.16 par common
Triton Group Ltd.
$.10 par common
U.S. Playing Corp.
$.10 par common
United Bancorporation Alaska Inc.
$.20 par common
United States Surgical Corporation
$.10 par common
VLI Corporation
$.01 par common
Wolverine Technologies, Inc.
$1.00 par common
Zehntel Inc.
$.01 par common

Additions To The List

Alliant Computer Systems Corporation
7¼% convertible subordinated debentures
Bank of Redlands (California)
$5.00 par common
Campeau Corporation
No par common
Carolin Mines, Ltd.
Class A, no par common
Central Bancorporation (Washington)
$1.67 par common
Clean Harbors, Inc.
$.01 par common
Cohasset Savings Bank (Massachusetts)
$.10 par common
Consumer Financial Corporation
$1.00 par convertible preferred
Diversified Foods, Inc.
$.001 par common
Emcon Associates
No par common
Federal Savings Bank, The (Connecticut)
$.01 par common
First State Financial Services, Inc.
$.01 par common
Fountain Powerboat Industries, Inc.
$.01 par common Warrants (expire 12–15–91)
Great Bay Bankshares, Inc.
$.10 par common
H.M.S.S., Inc.
$.01 par common
Health Insurance of Vermont, Inc.
$2.00 par common
Hemodynamics Incorporated
$.01 par common
Henley Manufacturing Corporation
$.01 par common
Highwood Resources Ltd.
No par common
Intellicall, Inc.
$.01 par common
Interim Systems Corporation
$.01 par common
Investors Savings Corporation
$.01 par common
Invitron Corporation
$.02 par common
Keptel, Inc.
No par common
Lund Enterprises, Inc.
$.10 par common Warrants (expire 04–30–91)
Mayflower Co-operative Bank (Massachusetts)
$1.00 par common
Mid-South Corporation
$.20 par common
National Insurance Group
No par common
National Loan Bank (Texas)
$.01 par common
National Mercantile Bancorp
No par common
Northland Cranberries, Inc.
$.01 par common
Nucorp Energy, Inc.
$.05 par common
Optek Technology, Inc.
$.01 par common
Orthomet, Inc.
$.10 par common
Otisville Biopharm, Inc.
$.01 par common
Plant Genetics, Inc.
$.01 par common
Poseidon Pools of America, Inc.
$.01 par common
Properties of America, Inc.
$.01 par common
Provena Foods, Inc.
No par common
Provident Bankshares Corporation
$1.00 par common
Silicon Valley Bancshares (California)
No par common
Southland Corporation, The
15% cumulative exchangeable preferred stock
Tempest Technologies, Inc.
$.01 par common
Teva Pharmaceuticals Industries Ltd.
American Depository Receipts
Thrifty Rent-a-Car System, Inc.
$.05 par common
Universal Medical Buildings, L.P.
Units of preferred limited partnership
Valley Federal Savings Bank (Indiana)
$.01 par common
Washington Trust Bancorp, Inc.
$.0625 par common
WCRS Group, PLC, The
American Depository Receipts
Wesbanco, Inc.
$4.166 par common
Wharf Resources, Ltd.
No par common
WPP Group, PLC
American Depository Receipts

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), January 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–2150 Filed 2–2–88; 8:45 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; OMB control numbers assigned to NCUA regulations pursuant to Paperwork Reduction Act.

SUMMARY: This part collects and displays the control numbers assigned to information collection requirements of the National Credit Union Administration by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The National Credit Union Administration intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement.

EFFECTIVE DATE: February 3, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, at the above address or telephone (202) 357–1030; Wilmer Theard, Director, Administrative Procedure, at the above address or telephone (202) 357–1055.

SUPPLEMENTARY INFORMATION: The purpose of this final rule, in accordance with the Paperwork Reduction Act, is to put the public on notice of the control numbers assigned by OMB to paperwork requirements in NCUA regulations. The part was first promulgated in 1984. "Expiration Dates" has been deleted from the title of the regulation since these dates are not shown in the display table. Section 795.1(a) of the final rule sets forth the purpose of the regulation and has not been amended. Section 795.1(b) provides notice of current control numbers assigned. This section has been amended to add all current control numbers and delete those that are no longer valid.

Regulatory Procedures

The NCUA Board has determined that because this action is non-substantive in nature, consideration of the Regulatory Flexibility Act is unnecessary.

List of Subjects in 12 CFR Part 795

Credit unions, Collection requirements.

By the National Credit Union Administration Board on January 28, 1988.

Becky Baker,

Secretary, National Credit Union Administration Board.

Accordingly, 12 CFR Part 795 is revised to read as follows:

PART 795—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

Authority: 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

§ 795.1 OMB control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the NCUA by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The NCUA intends to comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

2 CFR part or section where identified and described	Current OMB control No.
701.1	3133–0015
701.12	3133–0075
701.13	3133–0001
	3133–0016
	3133–0067
701.13(b)	3133–0053
701.21	3133–0092
	3133–0101
	3133–0110
701.24	3133–0057
701.31	3133–0068
701.36	3133–0040
702.2	3133–0072
705	3133–0109
708	3133–0024
708B	3133–0107
710	3133–0076
724.1	3133–0057
725	3133–0060
	3133–0061
	3133–0063
740.2	3133–0064
741	3133–0098
	3133–0007
	3133–0009
	3133–0011
741.10	3133–0004
741.7	3133–0099
	3133–0106
748	3133–0094
	3133–0108

[FR Doc. 88–2211 Filed 2–2–88; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–01–AD; Amdt. 39–5842]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, which requires repetitive functional testing of the wing and engine anti-ice control system. This amendment is prompted by reports of problems associated with the switches used in anti-ice control panels, and of the inadequacy of the anti-ice circuit logic that can result in the flight crew not being warned that the anti-ice system has not been activated. An undetected failure of the anti-ice system could result in an unacceptable ice build-up on the wings or the engine inlets.

EFFECTIVE DATE: March 4, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recent investigation and service experience has shown that the switches and logic used in the wing and engine anti-ice control system on the Boeing Model 767 airplanes has deficiencies which may result in failure of the anti-ice system to be activated and a false system annunication being provided to the flight crew. This condition could occur as a result of incomplete latching of the switch and/or switch contamination. Failure of an anti-ice system to activate when needed may result in unacceptable build up of ice on the wing and/or engine inlets.

There have been no reported failures of the switches used in the anti-ice system; however, these same switches used in other applications on the airplane have a history of failure.

Since this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that, to ensure proper operation of the system, repetitive functional tests of the wing and engine anti-ice control system must be conducted.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure wing and engine anti-ice system integrity, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service, perform the following functional test of the wing and engine anti-ice control system:

1. Apply electrical power in accordance with the Boeing Model 767 Maintenance Manual 24-22-00.

2. If the pneumatic system is depressurized, continue to step 3. If the pneumatic system is pressurized, depressurize the pneumatic system in accordance with 767 Maintenance Manual 36-00-00, then go to step 3.

3. Deactivate airplane systems which are adversely affected when air/ground relay system No. 2 is in flight mode by performing deactivation instructions as follows:

a. Open the following circuit breakers and attach DO-NOT-CLOSE identifiers:

Main Power Distribution Panel P6:
6J23, Probe Heat R TAT
6K20, Pitot Heat L AUX OC
6K21, Pitot Heat L AUX OB
6K22, Pitot Heat F/O OB
6K23, Pitot Heat F/O OA
6K24, Pitot Heat R AOA
6K24, Probe Heat R ENG
Overhead Circuit Breaker Panel P11
11T27 ENG Mach Probe HT R
Fwd Miscellaneous Electrical Equipment Panel P33
33A2 Drain Mast HTG FLT

b. Check that EQUIP COOLING mode selector on pilot's overhead panel P5 is in AUTO.

4. Open LDG GR POS AIR/GND SYST 2 circuit breaker (11U24) on P11 overhead circuit breaker panel.

5. On the wing and engine anti-ice module located on the P5 panel, depress and release the wing anti-ice switch.

6. Verify that the switch latches and indicates ON.

7. Verify that both wing anti-ice amber VALVE lights illuminate.

8. Depress and release the wing anti-ice switch.

9. Verify that the switch unlatches and *does not* indicate ON.

10. Verify that both wing anti-ice amber VALVE lights are extinguished.

11. On the wing and engine anti-ice module, depress and release both engine andi-ice switches.

12. Verify that both switches latch and indicate ON.

13. Verify that both engine anti-ice amber VALVE lights illuminate.

14. Depress and release both engine anti-ice switches.

15. Verify that both switches unlatch and *do not* indicate ON.

16. Verify that both engine anti-ice amber VALVE lights are extinguished.

17. Close LDG GR POS AIR/GND SYST 2 circuit breaker (11U24).

18. Remove DO-NOT-CLOSE identifiers and close the circuit breakers opened in Step 3.a. The test is complete. Remove electrical power.

B. Any switch or circuit malfunction, identified by a negative verification during the functional test required by paragraph A., above, must be corrected prior to further flight, in accordance with the Boeing Model 767 Maintenance Manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the tests required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 4, 1988.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,
Acting Director, Northwest Mountain Region.

[FR Doc. 88-2180 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-23; Amdt. 39-5817]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-209, -217, -217A, -217C, and -219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires initial and repetitive inspections of low pressure turbine (LPT) third stage vane anti-rotation pins and modification of the LPT case assembly on JT8D-200 series engines. The AD is needed to detect and remove from service turbine modules containing fractured anti-rotation pins which could result in turbine vane rotation and subsequent uncontained engine failures.

DATE: Effective March 4, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of March 4, 1988.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 87-ANE-23, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: James Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring initial and repetitive radiographic isotope inspections of LPT third stage vane anti-rotation pins and modification of the LPT case assembly on JT8D-209, -217, -217A, -217C, and -219 turbofan engines was published in the **Federal Register** on July 29, 1987 (52 FR 28278). The proposal was prompted when the FAA determined that fracture of all LPT third stage vane anti-rotation pins on JT8D-200 series engines can result in rotation of the vane clusters, severing of the rear turbine case, liberation of vane clusters and penetration of the engine cowl. Investigation and analysis have indicated that creep of the anti-rotation pin material combined with vane twist, due to thermal transients, can result in anti-rotation pin fracture. There have been four events where fracture of all of the LPT third stage vane anti-rotation pins caused engine failures. Three of the failures were uncontained, one of which caused engine cowl damage.

A new anti-rotation pin design with a higher strength material and a modification of the LPT case assembly have been developed by the manufacturer.

The compliance and reporting paragraphs of this AD have been reworded to reflect routine air carrier's recordkeeping practices regarding LPT modules. During module disassembly, the original LPT case may not remain with the same LPT module. The compliance and reporting paragraphs of the notice of proposed rulemaking (NPRM) referenced LPT modules and engines regarding cycle count calculation. Those paragraphs have been reworded to reflect LPT case cycle count calculation. The remaining provisions of this final rule are identical to those of the NPRM.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires initial and repetitive radiographic isotope inspections of LPT third stage vane anti-rotation pins, in accordance with PW Alert SB 5753, Revision 2, dated December 11, 1987. This AD also requires modification of the LPT case assembly at the next LPT module disassembly, in accordance with PW SB 5751, Revision 1, dated September 30, 1987.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

Discussion of Comments

Two commenters stated that routine carrier maintenance practice permits the interchange of LPT modules between engines and LPT cases between modules. The commenters requested that the proposed compliance time of engine cycles be clarified to account for this situation; one suggested module time (as referenced in PW Alert SB 5753, Revision 1, September 30, 1987) and the other case time. The FAA believes that LPT case time (cycles) is the most appropriate in light of routine maintenance practices and the proposal as adopted has been changed accordingly. PW Alert SB 5753 also has been clarified to refer to LPT case time (Revision 2, dated December 11, 1987) and this latest revision is referenced in the AD as adopted.

One commenter stated that if all third stage vane anti-rotation pins have been replaced at some prior refurbishment, the initial inspection interval should be calculated from that time of refurbishment. The commenter also stated that the inspection would not be required if PW SB 5711, Revision 3, dated April 1, 1987, was incorporated at that time.

The FAA agrees that the initial inspection interval will be calculated from the time the LPT case was refurbished with new tinidur material pins. As stated in the NPRM (paragraph (a) of the compliance paragraph), engines with new or refurbished LPT case assemblies that have incorporated PW SB 5711, Revision 3, dated April 1, 1987, and have been concurrently assembled with new anti-rotation pins, are not required to meet the inspection requirements of the AD.

One commenter stated that engines with LPT cases having 16 or more but less than 44 fractured, missing, or bent pins, should be allowed to operate for 25 cycles before removal. The NPRM proposed 10 cycles. The commenter further stated that the additional 15 cycles would permit operators significantly better flexibility in planning engine removals without sacrificing safety.

The FAA disagrees. The anti-rotation pin fracture progression study used in determining the risk analysis, was based on an inspection reliability assumption, a computer model simulation, and limited service data. The engineering study resulted in 25 cycles of dwell time from a 16 to 43 fractured pin event to an inflight shutdown. Recognizing the conservatism applied in the study, the FAA however, has determined that insufficient data exists to substantiate that an adequate margin of safety would exist if engines are allowed to remain in service for 25 cycles. This conclusion is based primarily on the lack of representative service history from the industry, as well as the limitations of the analysis conducted. The results of the inspection and shop findings will be monitored by the FAA under the reporting requirements of the AD to determine if relaxation of the 10 cycle removal threshold is warranted. The FAA conducted an industry survey to determine what impact a 10 cycle removal threshold would have on shop workload and maintenance costs. The results of that survey did not support a 25 cycle removal threshold based on a study of the relative impact upon the operators.

One commenter stated that the duplicate reporting requirements imposed by the NPRM and the PW SB are unduly burdensome to the airlines and unnecessary. The commenter preferred reporting to the engine manufacturer.

The FAA disagrees. The reporting requirement does not require any more information than an operator must already document in accordance with Federal Aviation Regulations (FAR) Part 43 to show compliance with the AD. Therefore, the reporting requirement will remain as proposed.

Conclusion

The FAA has determined that this regulation involves approximately 500 (domestic) PW JT8D-200 series engines at an approximate total cost of 1.5 million dollars for the first year. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which PW JT8D-200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follow:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39–13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –218C, and –219 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbin (LPT) case penetration as a result of anti-rotation pin failures, accomplish the following:

(a) Radiographic isotope inspect LPT cases installed in JT8D–200 series turbofan engines that incorporate Tinidur (AMS 5637) anti-rotation pins. Engines with new or refurbished (in accordance with the Accomplishment Instructions of paragraph 2.A.(2)(a) of PW service bulletin (SB) 5751, Revision 1, dated September 30, 1987) LPT case assemblies that have incorporated PW SB 5711, Revision 3, dated April 1, 1987, and have been concurrently assembled with new LPT third stage vane anti-rotation pins (Tinidur or Inco 901), are not required to meet the initial and repetitive inspection requirements of this paragraph. Engines requiring the inspection must be inspected in accordance with the Accomplishment Instructions contained in PW Alert SB 5753, Revision 2, dated December 11, 1987, in accordance with the following schedule:

(1) PW JT8D–209 engine LPT cases with 9,300 total cycles in service (CIS) or more on the effective date of this AD; inspect within 2,500 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(2) PW JT8D–209 engine LPT cases with less than 9,300 total CIS on the effective date of this AD; inspect before the accumulation of 9,300 total CIS, or within 2,500 CIS from the effective date of this Ad, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(3) PW JT8D–217 engine LPT cases with 7,300 total CIS or more on the effective date of this AD; inspect within 700 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(4) PW JT8D–217 engine LPT cases with less than 7,300 total CIS on the effective date of this AD; inspect before the accumulation of 7,300 total CIS, or within 700 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(5) PW JT8D–217A engine LPT cases with 3,300 total CIS or more on the effective date of this AD; inspect within 900 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(6) PW JT8D–217A engine LPT cases with less than 3,300 total CIS on the effective date of this AD; inspect before the accumulation of 3,300 total CIS, or within 900 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(7) PW JT8D–217C/–219 engine LPT cases with 4,200 total CIS or more on the efffective date of this AD; inspect within 1,000 cycles from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(8) PW JT8D–217C/–219 engine LPT cases with less than 4,200 total CIS on the effective date of this AD; inspect before the accumulation of 4,200 total CIS, or within 1,000 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

THIRD STAGE ANTI-ROTATION PIN REINSPECTION TABLE

Number of fractured, missing, or bent pins	Maximum CIS until reinspection	
	JT8D–209	JT8D–217/–217A/–217C/–219
0	7,000	1,700
1	6,640	1,610
2	6,280	1,525
3	5,920	1,440
4	5,560	1,350
5	5,200	1,265
6	4,840	1,180
7	4,480	1,090
8	4,120	1,005
9	3,760	920
10	3,400	830
11	3,040	745
12	2,680	660
13	2,320	570
14	1,960	485
15	1,600	400

(b) Remove from service prior to further flight, PW JT8D–209, –217, –217A, –217C, and –219 engines with 44 fractured, missing, or bent LPT third stage vane anti-rotation pins found during the accomplishment of the inspection requirements of paragraph (a) above.

(c) Remove from service within 10 CIS, PW JT8D–209, –217, –217A, –217C, and –219 engines with 16 or more, but less than 44 fractured, missing, or bent LPT third stage vane anti-rotation pins, found during the accomplishment of the inspection requirements of paragraph (a) above.

(d) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987, those engines removed from service in accordance with paragraphs (b) and (c) above.

(e) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987, PW JT8D–209, –217, –217A, –217C, and –219 engines inspected in accordance with paragraph (a) above, at an engine shop visit, and found with 15 or more fractured, missing, or bent LPT third stage vane anti-rotation pins.

(f) Modify PW JT8D–209, –217, –217A, –217C, and –219 engine LPT cases (including LPT cases from those engines referred to in paragraph (a) that were not required to meet the initial and repetitive inspection requirements) at the next LPT module disassembly after the effective date of this AD, in accordance with the Accomplishment Instructions of PW SB 5751, Revision 1, dated September 30, 1987.

(g) Report the following information in writing within 30 days from the date of the inspection to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Telex Number 949301 FAANE BURL:

(1) Inspection date

(2) Engine serial number (S/N)

(3) LPT case S/N

(4) Engine total time and cycles (if estimate, so note)

(5) LPT case time and cycles since last shop visit (if estimate, so note)

(6) Number of third stage vane anti-rotation pins:

(i) Fractured,

(ii) Missing,

(iii) Bent.

Notes.—(1) For the purpose of this AD, LPT module disassembly occurs when the LPT rotor is separated from the LPT case and vane assembly.

(2) Shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(b) Removal of a disk, hub, or spool.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PW Alert SB 5753, Revision 2, dated December 11, 1987, PW SB 5751, Revision 1, dated September 30, 1987, and PW SB 5711, Revision 3, dated April 1, 1987, identified and described in this document, are incorporated herein and made a part thereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Rules Docket Number 87–ANE–23, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on March 4, 1988.

Issued in Burlington, Massachusetts, on December 17, 1987.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88–2264 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–20]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the Expanded East Coast Plan (EECP); portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26497). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan.

Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71–123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–475, V–476, V–483 and V–487 and adds V–615 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–475 [Revised]

From LaGuardia, NY; Bridgeport, CT; Madison, CT; Norwich, CT; Providence, RI.

V–476 [Revised]

From Lynchburg, VA; to Gordonsville, VA.

V–483 [Amended]

By removing the words "DeLancey, NY;" and substituting the words "INT Carmel 344° and Kingston, NY, 129° radials; Kingston; INT Kingston 304° and DeLancey, NY, 119° radials; DeLancey;"

V–487 [Amended]

By removing the words "From INT LaGuardia, NY, 034° and Carmel, NY, 188° radials; Carmel; Pawling, NY; Cambridge, NY;" and substituting the words "From LaGuardia, NY; Bridgeport, CT; INT Bridgeport 343° and Cambridge, NY, 189° radials; Cambridge;"

V–615 [New]

From Raleigh-Durham, NC; INT Raleigh-Durham 059° and Hopewell, VA, 209° radials; to Hopewell.

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–2112 Filed 2–2–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AWA–19]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the Expanded East Coast Plan (EECP), portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26496). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings

were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–431, V–433, V–451 and V–457 and revokes V–467 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 42272) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–431 [Amended]

By removing the words "From Hyannis, MA, via INT Hyannis 343° and Boston, MA, 066° radials; Boston; INT Boston 015° and Gardner, MA, 097° radials; and substituting the words "From INT Boston, MA, 015° and Gardner, MA, 097° radials;"

V–433 [Revised]

From Nottingham, MD; INT Nottingham 042° and Dupont, DE, 223° radials; Dupont; Yardley, PA; INT Yardley 047° and Kennedy, NY, 253° radials; INT Kennedy 253° and LaGuardia, NY, 209° radials; LaGuardia; Bridgeport, CT; INT Bridgeport 324° and Pawling, NY, 160° radials; Pawling; INT Pawling 304° and Rockdale, NY, 116° radials; Rockdale; INT Rockdale 325° and Syracuse, NY, 100° radials; to Syracuse.

V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, RI, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton; INT Groton 064° and Sandy Point, RI, 031° radials; INT Sandy Point 031° and Kennebunk, ME, 180° radials; INT Kennebunk 180° and Brunswick, ME, 211° radials; to Brunswick.

V–457 [Amended]

By removing the words "Westminster

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MD:" and substituting the words "INT Lancaster 214° and Westminster, MD. 048° radials; Westminster."

V-467 [Removed]

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2109 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-1]

Alteration of Airport Radar Service Area; March AFB, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action postpones the effective date of the alteration of the March Air Force Base (AFB) Airport Radar Service Area (ARSA). The effective date is postponed from February 11, 1988, to March 10, 1988. This action is necessary because of the delayed sectional charting date for this area.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

A final rule Airspace Docket 87-AWA-1 published in the **Federal Register** on December 11, 1987 (52 FR 47304) with an effective date of February 11, 1988, implemented modifications to the March AFB, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988.

Issued in Washington, DC, on January 28, 1988.

EDITORIAL NOTE: This document was received by the Office of the Federal Register on January 28, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2105 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-21]

Alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to final rule; delay of effective date.

SUMMARY: This action postpones the effective date of the alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area (ARSA). The effective date is postponed from February 11, 1988, to March 10, 1988. This action is necessary because of the delayed sectional charting date for this area. This action also alters two altitudes which were inadvertently raised to 3,500 feet mean sea level (MSL) in the five- to ten-mile area instead of the correct 3,000 feet MSL.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

A final rule in Airspace Docket 87-AWA-21 was published in the **Federal Register** on December 11, 1987 (52 FR 47308) with an effective date of February 11, 1988. The rule implemented modifications to the Burbank-Glendale-Pasadena Airport, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988. This action also alters two altitudes which were inadvertently raised to 3,500 feet mean sea level (MSL) in the five- to ten-mile area instead of the correct 3,000 feet MSL. This action corrects the error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

PART 71—[AMENDED]

A final rule Airspace Docket 87-AWA-21 published in the **Federal Register** on December 11, 1987 (52 FR 47308) with an effective date of February 11, 1988, implemented modifications to the Burbank-Glendale-Pasadena Airport, CA, ARSA. However, due to a delay in charting, the effective date is being changed to March 10, 1988. Also, the description is corrected to read as follows:

Burbank-Glendale-Pasadena Airport, CA [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Burbank-Glendale-Pasadena Airport (lat. 34°12'02" N., long. 118°21'27" W.) excluding that airspace below 3,000 feet MSL within a 1.75-mile radius of the Whiteman Airport (lat. 34°15'35" N., long. 118°24'45" W.) and excluding that airspace below 3,500 feet MSL east of a direct line from a point 5 miles on the 004° bearing from the airport to a point 5 miles on the 090° bearing from the airport; and that airspace extending upward from 3,000 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the Burbank-Glendale-Pasadena Airport from the 104° bearing clockwise to the 004° bearing from the airport excluding that airspace south of the north boundary of the Los Angeles, CA, Terminal Control Area, and excluding that airspace beyond an 8-mile radius north and east of the 294° bearing, and excluding that airspace, beyond 5 miles north and east of a line from a point 8 miles on the 343° bearing from the airport to a point 5 miles on the 004° bearing from the airport.

Issued in Washington, DC, on January 26, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2106 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWA-16]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes, and the Southern Regions. This amendment is the final segment of Phase II of the EECP. portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of New York (52 FR 26495). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

The State of New Jersey Department of Environmental Protection comments were mostly directed at the jet route changes, but were additionally concerned with what impact these jet route changes would have on the flight paths in the lower altitudes. They state that "consideration of the direct and indirect aircraft noise impacts on residential communities should have been factored into the EECP planning process." People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities.

Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and for that reason, a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-374, V-405, V-408 and V-419 located in the vicinity of New York. These airways are part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is the final segment of Phase II of the EECP. Portions of Phase II were implemented on November 19, 1987, and January 14, 1988. Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 39822 and 42273) is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-374 [Revised]

From Martha's Vineyard, MA; Groton, CT; INT Groton 276° and Calverton, NY, 044° radials; INT Calverton 044° and Carmel, NY, 099° radials; Carmel; INT Carmel 254° and Deer Park, NY, 308° radials; INT Deer Park 308° and Binghamton, NY, 119° radials; to Binghamton.

V-465 [Revised]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 056° and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; INT Carmel 344°and Pawling, NY, 203° radials; Pawling; INT Pawling 060° and Bradley, CT, 286° radials; Bradley; Providence, RI; INT Providence 151° and Martha's Vineyard, MA, 287° radials; to Martha's Vineyard.

V-488 [Revised]

From INT Martinsburg, WV, 058° and Modena, PA, 258° radials; Modena; Pottstown, PA; East Texas, PA; Allentown, PA; Lake Henry, PA; to INT Lake Henry 056° and Barnes, MA, 285 radials.

V-489 [Revised]

From Boston, MA, INT Boston 252° and Bradley, CT, 072° radials; Bradley; Carmel, NY; INT Carmel 243° and Sparta, NJ, 082° radials; Sparta; Stillwater, NJ; INT Stillwater 194° and Solberg, NJ, 227° radials; Modena, PA; to Westminster, MD.

Issued in Washington, DC, on January 15, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2111 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 87-AWA-47]

Revocation of Prohibited Area P-77, Plains, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Prohibited Area P-77 Plains, GA. The United States Secret Service has determined that this is no longer required. This action restores previously prohibited airspace to public use.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations revokes Prohibited Area P-77 at Plains, GA. The Secret Service has notified the FAA that restrictions are no longer required at this location for national welfare or security purposes. Because this action restores previously prohibited airspace to public use, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.88 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Prohibited areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.88 [Amended]

2. Section 73.88 is amended as follows:

P-77 Plains, GA [Removed]

Issued in Washington, DC, on January 26, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2115 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 87-ANM-27]

Alteration of Restricted Areas R-6402A and B Dugway, UT

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R-6402A and B located near Dugway, UT. This action is necessary since the Commander, Dugway Proving Grounds has transferred its functions to the Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations is to designate the Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT, as the using agency for Restricted Areas R-6402A and B. The change in using agency does not alter the type activities conducted in the restricted areas. Since this amendment is procedural in nature and has no affect on airspace users, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.64 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.64 [Amended]

2. Section 73.64 is amended as follows:

R-6402A Dugway Proving Ground, Dugway, UT [Amended]

By removing the present using agency and substituting the following:

Using agency, U.S. Air Force, Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

R-6402B Dugway Proving Ground, Dugway, UT [Amended]

By removing the present using agency and substituting the following:

Using agency, U.S. Air Force, Commander, 6501st Range Squadron, Air Force Systems Command, Hill AFB, UT.

Issued in Washington, DC, on January 28, 1988.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-2113 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25515; Amdt. No. 1365]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of

immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 8, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective May 5, 1988

Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 18, Amdt. 10
Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 28, Amdt. 9
Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 36, Amdt. 6

Effective March 10, 1988

Windsor Locks, CT—Bradley Intl, NDB RWY 6, Amdt. 25
Windsor Locks, CT—Bradley Intl, ILS RWY 6, Amdt. 29
Windsor Locks, CT—Bradley Intl, ILS RWY 24, Amdt. 4
Cresco, IA—Ellen Church Field, NDB RWY 33, Amdt. 1
Kimball, NE—Kimball Muni, NDB RWY 28, Orig.
Kimball, NE—Kimball Muni, NDB RWY 29, Orig., CANCELLED
Columbia, MS—Columbia-Marion County, VOR/DME RWY 23, Amdt. 4
Mohall, ND—Mohall Muni, VOR/DME RWY 31, Amdt. 2
Mohall, ND—Mohall Muni, NDB RWY 31, Amdt. 1, CANCELLED

Effective February 11, 1988

Aguadilla, PR—Borinquen, NDB RWY 08, Orig.
Rockport, TX—Aransas Co, VOR/DME or TACAN-A, Admt. 6

[FR Doc. 88-2110 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25520; Amdt. No. 1386]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on January 22, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective May 5, 1988

Sebring, Fl—Sebring Airport & Indus. Park, NDB RWY 36, Amdt. 3
Gary, IN—R.G. Hatcher Gary Regional, VOR/DME RWY 2, Amdt. 4
Gary, IN—R.G. Hatcher Gary Regional, NDB RWY 30, Amdt. 5
Gary, IN—R.G. Hatcher Gary Regional, ILS RWY 30, Amdt. 2
Independence, IA—Independence Muni, NDB RWY 17, Admt. 2
Chanute, KS—Chanute Martin Johnson, RNAV RWY 36, Orig.
Black River Falls, WI—Black River Falls Area, NDB RWY 8, Amdt. 3
Cable, WI—Cable Union, VOR/DME-A, Amdt. 5
Cable, WI—Cable Union, NDB-B, Amdt. 9
Shell Lake, WI—Shell Lake Muni, NDB RWY 31, Amdt. 2

. . . Effective April 7, 1988

Goshen, IN—Goshen Muni, VOR RWY 9, Amdt. 11
Tell City, IN—Perry County Muni, VOR RWY 31, Amdt. 2
Escanaba, MI—Delta County, VOR RWY 9, Amdt. 12
Escanaba, MI—Delta County, VOR RWY 18, Amdt. 6
Escanaba, MI—Delta County, VOR RWY 27, Amdt. 10
Lansing, MI—Capital City, VOR RWY 6, Amdt. 22
Lansing, MI—Capital City, RADAR-1, Amdt. 12
Mora, MN—Mora Muni, NDB RWY 35, Amdt. 1
Bowman, ND—Bowman Muni, NDB RWY 29, Amdt. 1
Cincinnati, OH—Cincinnati-Blue Ash, VOR RWY 6, Amdt. 3

. . . Effective March 10, 1988

Walnut Ridge, AR—Walnut Ridge Regional, LOC RWY 17, Orig.
Walnut Ridge, AR—Walnut Ridge Regional, NDB RWY 17, Amdt. 1
Ukiah, CA—Ukiah Muni, VOR-A Amdt. 2
Ukiah, CA—Ukiah Muni, LOC/DME RWY 15 Amdt. 3
Ukiah, CA—Ukiah Muni, RNAV-B Amdt. 3
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 6, Amdt. 19
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR RWY 24, Amdt. 12
Danbury, CT—Danbury Muni, RNAV RWY 26, Amdt. 2
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 8L, Amdt. 1
Burley, ID—Burley Muni, RNAV RWY 20, Amdt. 2
Clarksdale, MS—Fletcher Field, NDB RWY 18, Amdt. 6
Clarksdale, MS—Fletcher Field, NDB RWY 36, Amdt. 6
Meridian, MS—Key Field, VOR-A, Amdt. 13
Meridian, MS—Key Field, NDB RWY 1, Amdt. 18
Meridian, MS—Key Field, RNAV RWY 19, Amdt. 3
Natchez, MS—Hardy-Anders Field Natchez-Adams County, VOR/DME RWY 13, Amdt. 1
Natchez, MS—Hardy-Anders Field Natchez-Adams County, VOR RWY 17, Amdt. 9
Natchez, MS—Hardy-Anders Field Natchez-Adams County, LOC RWY 17, Amdt. 3
Natchez, MS—Hardy-Anders Field Natchez-Adams County, NDB RWY 17, Amdt. 3
Chattanooga, TN—Lovell Field, VOR RWY 33, Amdt. 18
Chattanooga, TN—Lovell Field, NDB RWY 20, Amdt. 30
Chattanooga, TN—Lovell Field, ILS RWY 2, Amdt. 6
Chattanooga, TN—Lovell Field, ILS RWY 20, Amdt. 35
Chattanooga, TN—Lovell Field, RADAR-1, Amdt. 6
Gallatin, TN—Sumner County Regional, RADAR-1, Amdt. 1
Houston, TX—Houston Intercontinental, ILS RWY 8, Amdt. 15

. . . Effective January 19, 1988

Houston, TX—Houston Intercontinental, ILS RWY 26, Amdt. 12

... Effective January 14, 1988

Waycross, GA—Waycross-Ware County, RNAV RWY 18, Amdt. 4
Boston, MA—General Edward Lawrence Logan Intl. VOR/DME RWY 27, Amdt. 1
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 13, Amdt. 20
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 31, Amdt. 21

... Effective January 12, 1988

Traverse City, MI—Cherry Capital, VOR or TACAN-A, Amdt. 18
Traverse City, MI—Cherry Capital, NDB RWY 28, Amdt. 8
Traverse City, MI—Cherry Capital, ILS RWY 28, Amdt. 10.

[FR Doc. 88-2114 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Ch. III

[Docket No. 80107-8007]

Extension of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of extension of foreign policy controls.

SUMMARY: On January 20, 1988, the Department of Commerce, with the concurrence of the Secretary of State and in consultation with other Departments and Agencies, extended all existing foreign policy export controls. Commerce also submitted a report to the Congress as required by section 6(f) of the Export Administration Act of 1979, as amended (the Act). Under the Act, foreign policy controls expire annually unless extended. All foreign policy controls in effect as of January 20, 1988, were extended through January 20 1989.

On November 6, 1987, the Department of Commerce published in the **Federal Register** (52 FR 42663) a request for public comments on the effects of foreign policy-based export controls. The public record of these comments is maintained at the address listed below.

EFFECTIVE DATE: This extension is effective January 21, 1988.

ADDRESS: The public record of comments on the November 6, 1987, notice is maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Information about the inspection and copying of the public comments may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2953.

FOR FURTHER INFORMATION CONTACT: Glen Schroeder, Country Policy Branch, Bureau of Export Administration, Department of Commerce, Washington, DC (Telephone: (202) 377-3160). Copies of the report to Congress are available upon request.

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 240 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986), and E.O. 12543 of January 7, 1986, (51 FR 875, January 9, 1986).

Dated: January 27, 1988.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-2052 Filed 2-2-88; 8:45 am]
BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Petroleum Distillates; Revocation of Required First Aid Direction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation.

SUMMARY: The Commission revokes its regulations that required the specific label statement "If swallowed, do not induce vomiting" for hazardous substances containing 10 percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent, and related petroleum distillates. These requirements originally were intended to protect against the risk of chemical pneumonia that can be caused by aspiration of substances containing the ingredients listed above when vomiting is induced as a treatment to reduce potential toxic effects of ingestion of such hazardous substances. The Commission revoked the requirements because some of the substances containing the ingredients listed above may present even greater risks from the toxicity of other ingredients in the substances than are presented by the possibility of chemical pneumonia from aspiration of the listed substances while vomiting.

EFFECTIVE DATE: This revocation is effective March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

Section 2(p)(1) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(p)(1), provides that certain informative and precautionary labeling is required for hazardous substances that are intended, or packaged in a form suitable, for use in the household or by children. Among the labeling required for such hazardous substances is a statement of the principal hazard or hazards presented by the substance and an instruction, when necessary or appropriate, for first aid treatment.

Many substances intended for use in the household have significant percentages of petroleum distillates as ingredients. [14,15] [1] Where products containing petroleum distillates have a low viscosity, there is a risk that, if the product is accidentally ingested, some of the product could be aspirated into the lungs. [14] This could happen, for example, as the result of a gagging reflex during the ingestion. When petroleum distillates are aspirated, they may cause a condition known as chemical pneumonia, which can be serious, and even fatal. [14]

The presence of petroleum distillates in a product does not generally cause the product to have a high degree of systemic toxicity; however, such products may present a risk of poisoning from the systemic toxicity of other ingredients in the substance. [14] A traditional method of treatment for the ingestion of toxic substances is to induce vomiting to remove the substance from the stomach and thus reduce the risk of systemic poisoning. However, when a substance that is low in viscosity has been ingested, there is a risk that the substance could be aspirated during the act of vomiting. If the substance contains petroleum distillates, aspiration may cause the

[1] Bracketed numbers indicate the numbers of relevant documents in the record, as listed in the Appendix to this notice.

serious condition of chemical pneumonia. [14]

In order to protect against the risk of chemical pneumonia that could be caused by aspirating petroleum distillates during vomiting that is induced as a first aid treatment, the Food and Drug Administration, which administered the FHSA before the Commission was established, issued regulations that required products containing ten percent or more by weight of certain petroleum distillates to bear the following label statement: "If swallowed, do not induce vomiting." The regulations currently are codified at 16 CFR 1500.14(b)(3)(i)-(ii). The products subject to this regulation are those containing ten percent or more by weight of benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent, and related petroleum distillates. These substances are commonly found in products such as lighter fuels, torch and charcoal lighter fuels, paint solvents, and automobile-care products, including fuel additives. Certain viscous products containing these substances were exempted from these labeling requirements if the viscosity of the substance, or of any liquid that may separate or be present in the container, is not less than 100 Saybolt universal seconds (S.U.S.) at 100 °F. 16 CFR 1500.83(a)(13).

The labeling statement previously required by 16 CFR 1500.14(b)(3)(i)-(ii) remains appropriate for most of the substances to which it applies, for example, where the product consists only of a low-viscosity petroleum distillate. [14, 15] However, there has been a growing recognition in recent years that some products that fall with the scope of the Commission's regulation contain significant amounts of other substances, such as methanol, that are sufficiently toxic that failure to induce vomiting when medical treatment is not immediately available, thus leaving the substance in the stomach, presents a risk from toxicity that can exceed the risk of chemical pneumonia from aspiration that may occur while vomiting. [14] Examples of some products that fall within the scope of the Commission's regulation, but that may be sufficiently toxic that vomiting nevertheless should be induced, include certain paint solvents and certain automotive care products.

Because of these concerns, the Food and Drug Administration proposed to amend its regulation to require instead that for products containing acutely toxic substances other than the toluene, xylene, etc., in such concentrations that the greater likelihood of injury results from the presence of the substance in the digestive tract than from the risk of chemical pneumonia if vomited, the products' labeling shall recommend that vomiting shall be induced to reduce the hazard of an acute poisoning. 36 FR 11040; June 8, 1971. [1]

The responsibility for administering the FHSA was transferred to the Consumer Product Safety Commission on May 14, 1973, by section 34 of the Consumer Product Safety Act, 15 U.S.C. 2051n. The FDA proposal to amend the labeling rule for low-viscosity petroleum distillates was withdrawn by the Commission on September 25, 1979 [3], largely because of the period of time that had passed since the proposal and because the Commission had appointed a nine-member Toxicological Advisory Board ("TAB") to advise the Commission on appropriate hazard labeling under the FHSA and to consider the issue of appropriate first aid instructions for hazardous substances. The TAB's final report noted that the labeling statement required for substances containing ten percent or more of petroleum distillates was not appropriate in some cases. [4]

The TAB final report recommended that products having viscosities of 35 S.U.S. or less should have a statement to the effect that a severe aspiration hazard exists. The TAB recommended that this statement appear in a "Physician Alert" section of the labeling to allow a physician to determine if the aspiration hazard associated with the substance outweighted the systemic toxicity hazard from the other ingredients in the formulation. By a recommendation that was not unanimous, the TAB also recommended that the label could indicate if a moderate or slight aspiration hazard existed. (A moderate aspiration hazard would exist, according to the TAB recommendation, for products having viscosities between 35 and 100 S.U.S.)

The Commission agreed with the conclusion of the TAB that the current regulation does not adequately address the situation where products containing petroleum distillates have a high degree of systemic toxicity. However, the Commission concluded that "physician alert" type of information should not be required on the labels of most household products. General medical knowledge, and sources of information that are readily available to physicians, should enable physicians to determine an appropriate means of treatment for a particular ingestion. The labeling required by the FHSA is intended primarily for the user of the product. In the case of first aid instructions, the information is intended to be useful when medical treatment or advice is not immediately available. A requirement for additional labeling for the supposed benefit of physicians could make it more difficult for consumers reading the label to comprehend what actions should be taken, particularly under the stress of an accidential ingestion situation. Accordingly, the Commission decided not to propose the "physician alert" features of the plan recommended by the TAB for labeling according to the degree of aspiration hazard presented by the product.

On December 15, 1985, the Commission proposed to address the problem of whether the first aid instructions for a particular substance should deal primarily with the hazard of chemical pneumonia or primarily with the hazard of acute toxicity by deleting the requirement for a particular first aid instruction from 16 CFR 15.14(b)(3)(i)-(ii). 50 FR 50919. Of course, the adoption of this proposal does not relieve manufacturers of products subject to that section from the requirement of section 2(p)(1) of the FHSA, 15 U.S.C. 1261(p)(1), that the product be labeled with a first aid instruction when necessary or appropriate.

Comments on the Proposal

The Commission received seven comments on the proposal to revoke the requirement that low-viscosity petroleum distillate products be labeled with the statement "If swallowed, do not induce vomiting." These comments, and the Commission's views on the issues raised, are discussed below.

A. Comments Supporting the Proposed Revocation

The American Petroleum Institute supported the revocation as proposed, nothing that it is their policy to develop appropriate first aid information based upon an analysis of the toxicity of individual products. The New York State Consumer Protection Board also supported the revocation, noting that the statement "if swallowed, do not induce vomiting" is not completely accurate for all petroleum distillate products.

The Director of a major poison control center, and a former member of the Commission's Toxicological Advisory Board, supported the proposed revocation, provided that the requirement that the product be labeled with a first aid statement when necessary or appropriate is contained in section 2(p)(1) of the FHSA and is not

affected by the revocation of the specific labeling requirement.

B. Comments Supporting the Proposed Revocation, but Suggesting Alternative Requirements

1. Viscosity Labeling

The Director of a major poison control center, mentioned above, commented that a requirement that labels state the viscosity of the product would help the persons responsible for medical treatment to make better decisions.

While information on the viscosity and toxicity of products could aid medical personnel in certain circumstances, the Commission does not believe that such information should be required to be on labels. As explained earlier in this notice, labeling under the FHSA is intended primarily for the user of the product. A requirement for additional labeling for the benefit of physicians could make it more difficult for consumers reading the label to comprehend what actions should be taken, particularly under the stress of an accidental ingestion situation. Furthermore, general medical knowledge and sources of information that are readily available to physicians should enable them to determine the appropriate medical treatment for a particular situation.

2. Labeling With Information About Poison Control Centers

The poison control center Director, as well as an official of the Environmental Protection Agency, commented that it would be advantageous to change the statement required by 16 CFR 1500.14(b)(i) and (ii) from "Call physician immediately" to "Call physician or poison control center immediately", or the equivalent.

The Commission's regulations, at 16 CFR 1500.14(b)(3) (i) and (ii), require that certain products containing petroleum distillates bear the statements "Harmful or fatal if swallowed" and "Call physician immediately." Although not legally required, some product manufacturers also state that a poison control center could be called, as suggested by these commenters, and this is allowed by the regulation. The suggestion to supplement the "Call a physician immediately" statement with "or a poison control center" has merit and should be encouraged. However, the Commission does not believe a mandatory requirement is appropriate. Such a requirement could cause disruption to manufacturers who would have to relabel containers or alter other labels which are often produced and stockpiled in advance of use. The Commission believes that encouragement of industry to voluntarily adopt this additional language (where it is not already in use) could bring about the suggested change in labeling as manufacturers go through their normal cycles of reprinting product labels.

3. Retain a Requirement for First Aid Directions

The Environmental Protection Agency ("EPA"), Office of Pesticide Programs ("OPP"), offered several comments on the proposal. The main thrust of their comments was in opposition to the proposed revocation, and those comments are discussed below in Section C of this notice. However, OPP commented that, in the event the Commission permitted the "Do not induce vomiting" statement to be deleted, the Commission should require the manufacturer to replace it with an affirmative alternative first aid or practical treatment recommendation. OPP reserved that, if it was the Commission's intention that the label provide first aid recommendations to which the user should look, the regulation should require it.

This suggestion, that the Commission in withdrawing the current labeling requirement require manufacturers to replace it with an affirmative alternative first aid statement, appears to reflect a misunderstanding of the operation of the FHSA. As previously discussed, section 2(p)(1) of the FHSA requires manufacturers to include an instruction for first aid, where necessary or appropriate. As discussed in the proposal, the Commission believes that a specific requirement with respect to "do" or "do not" induce vomiting would serve to preclude the use of other appropriate statements such as: "Call a poison center, emergency department, or physician. Vomiting may need to be induced, but only on the advice of medical personnel."

4. Require a Specific Recommendation On Vomiting

The Mobil Oil Corporation supported the proposed revocation, but noted that the individual administering first aid needs to have immediately available information regarding initial care and is not in a position to evaluate viscosity information or other data before determining whether or not to induce vomiting. This commenter suggested that the appropriate toxicity information is best interpreted by the manufacturer prior to formulating an appropriate first aid statement. Mobil noted that poison control centers would not be any more qualified to interpret such information than is the manufacturer and suggested that these products be required to give a specific recommendation regarding the induction of vomiting and the basis for such recommendation.

The Commission agrees that individuals called upon to administer emergency first aid are not likely to be in a position to interpret viscosity and other technical information. For that reason, and others, the Commission decided not to adopt any labeling recommendations which would require labels to contain information intended specifically for physicians. The Commission also agrees that the manufacturer is generally the best qualified party to interpret toxicity information on a product and to design an appropriate first aid statement. Revocation of the presently required specific labeling statement allows manufacturers to do just this and to use their best judgments in determining how to comply with the requirements of the law. Thus, while the law requires an appropriate first aid statement, this revocation allows the manufacturer the flexibility of determining the particular first aid direction appropriate to the chemical composition of his product.

While a manufacturer is generally in the best position to deal with appropriate first aid recommendations, allowing manufacturers to adopt an additional statement to call a poison control center is not inappropriate. Very often, poison control centers have access to current information on product formulations and treatment regimens for accidental exposures. Because clinical considerations may determine which specific first aid treatment is the most desirable for a particular ingestion, the Commission does not believe that it is possible or appropriate always to state categorically on a label a specific recommendation regarding the induction of emesis.

C. Comments Opposing the Proposed Revocation

1. Handle Toxicity by Exemption

The Exxon Corporation opposed the revocation, noting that the data available on the petroleum products listed in the proposal (as examples of petroleum distillates containing systemically toxic ingredients) strongly suggest that the immediate risk from chemical pneumonia through induced vomiting is far greater than the toxic effects that might occur prior to undertaking recommended medical treatment such as gastric lavage. This commenter recommended that the Commission adopt the alternative discussed in the proposal which would retain the present labeling requirement for the product class but which would allow exemptions for those limited substances where the toxic hazard would be greater than the risk of chemical pneumonia.

The Commission notes that the petroleum products mentioned in the proposal are only examples of types of products where the systemic toxicity of a mixture was likely to outweigh the risk of aspiration and chemical pneumonia. Thousands of household products subject to this regulation have unique formulations known only to the manufacturer. The proposed revocation allows manufacturers to determine first aid instructions appropriate to the product.

The commenter's suggestion that toxic effects would be unlikely to occur before medical treatment could be undertaken is beside the point, since first aid labeling is designed to provide appropriate advice to be followed pending medical treatment or when expert medical treatment or advice is not available. The time between when the toxic substance is ingested and when medical treatment can begin may vary widely with the circumstances; therefore, appropriate first aid often is critical to complete recovery.

Under the FHSA, the responsibility for proper labeling of chemical household products generally lies with the manufacturer. Revocation of this labeling rule allows manufacturers the flexibility of labeling their product appropriately, after making a determination of the relative hazards presented by its components. While the Commission's staff is prepared to advise manufacturers on the appropriateness of their labels and to seek correction of inappropriate labels, an exemption process would severely tax the Commission's limited resources.

2. Justify Economic Burden

The Carroll Company, which manufactures and privately labels chemical specialty products, objected to the proposal, noting that they sell petroleum based furniture polish products to hundreds of different customers, using an individual label for each customer. The commenter noted that the company had recently remade hundreds of label plates to comply with regulations of other agencies, and any additional changes would be an economic burden to the company and others in the industry. The commenter suggested that definitive data showing that victims' lives are in greater danger because the petroleum substance remains in the stomach should be obtained prior to revoking the present labeling requirement.

As noted in the proposal, the Commission is aware of petroleum distillate products subject to its jurisdiction which contain toxic ingredients in sufficient amount to represent a risk from toxicity that can exceed the risk of chemical pneumonia from aspiration that may occur while vomiting. Examples given were methanol and certain paint solvents and automotive care products. The systemic toxicity of these substances is well documented in the scientific and medical literature. The Commission's Toxicological Advisory Board supported the revocation as being necessary to ensure appropriate labeling.

The proposal indicates that the currently-required statement will remain appropriate for the majority of petroleum distillate products where it is now used. Typical generic formulations for petroleum-based furniture polishes were reviewed by the staff. According to information available in Clinical Toxicology of Commercial Products (Gosselin, R.E. *et al.*, 5th Edition, Williams and Wilkins, Baltimore, 1984), these formulations typically contain either petroleum distillates or mineral spirits as the major toxic ingredient; these components generally do not present a high degree of systemic toxicity. Other ingredients used in these formulations (dyes, perfumes, waxes, *etc.*) are not systemically toxic in the amounts generally present. For these reasons, the staff believes that the statement "If swallowed, do not induce vomiting" will continue to be appropriate for petroleum-based furniture polishes. Thus, the proposed revocation should not require any changes in the labeling of furniture polishes manufactured by this company.

As noted in the proposal, the Commission does not believe the revocation will have a significant effect on manufacturers, distributors, or retailers of products subject to the rule since it does not prohibit use of the "do not induce vomiting" instruction on the majority of products where it is now used. Rather, the revocation permits changes in these instances where a direction that vomiting should not be induced is inappropriate.

In any event, the Commission does not consider it appropriate to continue in effect a requirement that could lead to inaccurate first aid directions on products.

3. Key a Product's Labeling To Specified Toxicity Levels

The Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP) offered several comments on the proposal. They recommended establishing toxicity levels (based upon LD_{50} values) which would define products of sufficient toxicity that the "Do not induce vomiting" statement would be inappropriate. Using this approach, they recommended that the labeling requirement be maintained and exemptions granted for products with significant systemic toxicity. OPP stated its belief that where clear-cut distinctions in practical treatment can be made based upon toxicity, it would be advantageous to specify the treatment on the label. These distinctions are, according to OPP, most easily made for products whose systemic toxicity is very high or very low. According to the scheme by which EPA evaluates pesticide labels, in those cases where it is not obvious which treatment recommendation is appropriate, the responsibility for selection should rest with the manufacturer.

OPP commented that without a clear statement not to induce vomiting, the user is apt to assume that vomiting is the appropriate course of action. OPP expressed concern that for products where the aspiration hazard is greater than the systemic hazard, the lack of a clear statement not to induce vomiting might increase the possibility of injury.

The Commission does not believe it is appropriate or practical to establish toxicity levels to decide the question of whether a label should state "Do" or "Do not" induce vomiting. Since LD_{50} values do not necessarily precisely reflect human toxicity, judgment would need to be exercised in applying such criteria to specific product formulations. As the OPP noted, this is especially true in dealing with products falling between the extremes of "highly toxic" and relatively low toxicity. Whereas EPA scientific staff are in a position to exercise such judgments during the preclearance process for pesticides, no such preclearance is required by the FHSA. Such judgment therefore initially becomes the responsibility of the manufacturer, although Commission staff will provide advice on request and review labels for adequacy. The purpose of the proposed revocation is to allow manufacturers to exercise sound scientific and medical judgment in developing first aid labeling recommendations rather than be bound by a rule which requires a specific label.

With respect to OPP's concern that withdrawal of this labeling requirement will lead the consumer to assume that vomiting is the appropriate course of

action for products in which the aspiration hazard is greater than the systemic hazard, it appears that OPP has not taken into consideration the legal requirements of the FHSA. The FHSA requires that, where necessary or appropriate, the label bear an appropriate first aid statement. For petroleum distillate products of low viscosity and low systemic toxicity, a statement cautioning against the induction of vomiting may be regarded as a necessary and appropriate statement of first aid. In this respect, a statement of what not to do is as appropriate to first aid as are statements advising positive action. Since the Commission's staff interprets the FHSA as requiring that a labeling statement such as "Do not induce vomiting" be present where appropriate, users would not be left to assume vomiting was the appropriate course of action in such cases. On the other hand, where the systemic toxicity of a product is high, the determination of whether to induce vomiting may depend on the amount of the product ingested. In such a case, the revocation of the previous rule allows the manufacturer to choose to stress the need for medical treatment rather than to recommend specifically whether vomiting should be induced.

Economic and Environmental Effects

The Commission believes that revocation of this regulation will have no significant effect on the manufacturers, distributors, or retailers of products subject to the rule. The revocation does not prohibit the use of the "do not induce vomiting" instruction on the majority of petroleum distillate products where it is now used; instead, it permits changes in those instances where a direction that vomiting should not be induced is inappropriate. [14,15] The Commission's staff is not aware of any product labeling that will have to be changed because of the revocation of this requirement.

If the Commission becomes aware of products whose labeling should be changed as a result of this revocation, in most cases the change could be made when the existing stock of labels is depleted and new labels would have to be printed in any event.

Accordingly, the Commission does not believe that a substantial number of manufacturers, distributors, or retailers will be affected by the amendment or that its economic impact on affected parties will be significant. Therefore, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that the revocation issued in this notice will not have a significant economic impact on a substantial number of small entities.

This action falls within the category of labeling rules that originally are expected to have little or no potential for affecting the human environment. See the Commission's regulations at 16 CFR 1021.5(c)(2). After considering this issue, the Commission concludes that the revocation will not have a significant effect on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects In 16 CFR Part 1500

Consumer protection, Hazardous materials, Imports, Infants and children, Labeling, Law enforcement, Toys.

Conclusion

For the reasons discussed above, and under the authority of sections 2 and 10 of the FHSA (15 U.S.C. 1261, 1269), the Commission amends Part 1500 of Subchapter A, Chapter II, of Title 16 of the Code of Federal Regulations as follows:

PART 1500—[AMENDED]

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Sections 1500.14(b)(3) (i) and (ii) are revised to read as follows:

§ 1500.14 [Amended]

* * * * *

(b) * * *

(3) *Benzene, toluene, xylene, petroleum distillates.*

(i) Because inhalation of the vapors of products containing 5 percent or more by weight of benzene may cause blood dyscrasias, such products shall be labeled with the signal word "danger," the statement of hazard "Vapor harmful," the word "poison," and the skull and crossbones symbol. If the product contains 10 percent or more by weight of benzene, it shall bear the additional statement of hazard "Harmful or fatal if swallowed" and the additional statement "Call physician immediately."

(ii) Because products containing 10 percent or more by weight of toluene, xylene, or any of the other substances listed in paragraph (a)(3) of this section may be aspirated into the lungs, with resulting chemical pneumonitis, pneumonia, and pulmonary edema, such products shall be labeled with the signal word "danger," the statement or hazard "Harmful or fatal if swallowed," and the statement "Call physician immediately."

Dated: January 27, 1988

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Editorial Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—List of Relevant Documents in the Record

1. **Federal Register** notice, 36 FR 11040, June 8, 1971.
2. Comments received in response to 36 FR 11040 (1971) (1).
3. **Federal Register** notice, 44 FR 55304, September 25, 1979.
4. Final Report of the Toxicological Advisory Board, September 13, 1982.
5. Memorandum from the Directorates for Health Sciences and Compliance and Administrative Litigation, "Staff Analysis of Toxicological Advisory Board Final Report," dated June 24, 1983.
6. **Federal Register** notice of availability of Toxicological Advisory Board Final Report, 48 FR 57585; December 30, 1983.
7. Public comments on the Toxicological Advisory Board Final Report:
   - CA6–84–1 Union Carbide Corporation
   - CA6–84–2 Chemical Specialties Manufacturers Association
   - CA6–84–3 U.S. Borax Research Corporation
   - CA6–84–4 Dale Miller, Consultant
   - CA6–84–5 National Paint and Coatings Association
8. Testimony of New York State Consumer Protection Board, July 10, 1984.
9. Memorandum from the Office of General Counsel, "Analysis of Comment on Toxicological Advisory Board Final Report," dated July 10, 1984.
10. Memorandum from the Directorates for Health Sciences and Compliance and Administrative Litigation, "Staff Analysis of Public Comments on Toxicological Advisory Board Final Report," dated October 25, 1984.
11. Briefing Package on Staff Analysis of Comments on the Final Report of the Toxicological Advisory Board, Directorate for Health Sciences, dated December 13, 1984.
12. Record of Commission action on ballot vote decision on staff recommendations concerning the final Report of the Toxicological Advisory Board, dated February 6, 1985.
13. Comments of Commissioner Saundra B. Armstrong concerning her vote on the staff recommendations on the TAB Final Report.
14. Memorandum from the Directorate for Health Sciences, "Petroleum Distillate Required Labeling," dated April 2, 1985.
15. Memorandum from the Directorate for Compliance and Administrative Litigation, "FHSA Labeling for Petroleum Distillates," dated _____, 1985.
16. Memorandum from the Directorate for Economic Analysis, "FHSA Labeling for Petroleum Distillates," dated July 9, 1985.
17. "Briefing Package on Draft Proposed Rule to Revise Special Labeling Rule for Products Containing Petroleum Distillates," August 1985.
18. "Briefing Package on Draft Final Rule to Revoke the First Aid Labeling Requirement for Petroleum Distillates," October 1987.

[FR Doc. 88–2242 Filed 2–2–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80–53]

Natural Gas Policy Act; Maximum Lawful Prices

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March, and April, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Policy Act of 1978; Order of the Director

Issued January 27, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March, and April, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February 1988 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR, Part 271

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for February, March, and April, 1988 in Tables I and II as follows:

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in— Feb. 1988	Mar. 1988	Apr. 1988
B	102	New natural gas, certain OCS gas [4]	$4.792	$4.819	$4.846
C	103(b)(1)	New onshore production wells [5]	3.260	3.268	3.276
E	105(b)(3)	Intrastate existing contracts	4.657	4.679	4.701
F	106(b)(1)(B)	Alternative maximum lawful price for certain intrastate rollover gas [1]	1.865	1.869	1.873
G	107(c)(5)	Gas produced from tight formations [3]	6.520	6.536	6.552
H	108	Stripper gas	5.131	5.160	5.189
I	109	Not otherwise covered	2.701	2.707	2.713

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative maximum lawful price specified in this table. This alternative maximum lawful price for each month appears in this row of Table I. Commencing Jan. 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

* * * * *

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing Jan. 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing Jan. 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in— Feb. 1988	Mar. 1988	Apr. 1988
Post-1974 gas: All producers	$2.701	$2.707	$2.713
1973-1974 biennium gas:			
Small producer	2.281	2.286	2.291
Large producer	1.745	1.749	1.753
Interstate rollover gas: All producers	1.002	1.004	1.006
Replacement contract gas or recompletion gas:			
Small producer	1.280	1.283	1.286
Large producer	.983	.985	.987
Flowing gas:			
Small producer	.649	.651	.653
Large producer	.548	.549	.550
Certain Permian Basin gas:			
Small producer	.762	.764	.766
Large producer	.675	.677	.679
Certain Rocky Mountain gas:			
Small producer	.762	.764	.766
Large producer	.649	.651	.653
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.617	.618	.619
Other contracts	.572	.573	.574
Minimum rate gas: [1] All producers	.338	.339	.340

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of February, March, and April, 1988.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery—1988	Factor by which price in preceding month is multiplied
February	1.00239
March	1.00239
April	1.00239

[FR Doc. 88-2087 Filed 2-2-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 777

Library Research and Demonstration Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Research and Demonstration Program. This action is taken to implement section 205 of the Higher Education Amendments of 1986. The amendments delete information technology as a specific focus of this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens or Louise Sutherland, Library Programs, Office of Educational Research and Improvement (OERI), U.S. Department of Education, Room 402M, 555 New Jersey Avenue NW., Washington, DC 20208-1430. Telephone (202) 357-6315.

SUPPLEMENTARY INFORMATION: The 1986 Amendments amended the existing Title II, creating a new College Library Technology and Cooperation Grants Program. This new program deals specifically with the improvement of library services through technology. Congress eliminated information technology as an allowable activity under the Research and Demonstration Program of Title II-B.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations incorporate a statutory change, public comment could have no effect on the content of these regulations. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 777

Education, Educational research, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.039, Library Research and Demonstration Program)

Dated: November 16, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 777 of Title 34 of the Code of Federal Regulations as follows:

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

1. The authority citation for Part 777 is revised to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

§ 777.1 [Amended]

2. In § 777.1, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

§ 777.10 [Amended]

3. In § 777.10, paragraph (a)(3) is removed, the word "and" is added following paragraph (a)(2), and paragraph (a)(4) is redesignated as paragraph (a)(3).

[FR Doc. 88-2220 Filed 2-2-88; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3481/R926; FRL-3322-6]

Pesticide Tolerance for Iprodione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide iprodione in or on leaf lettuce. This regulation to establish the maximum permissible level for residues of iprodione in or on this raw agricultural commodity was requested by Rhone-Poulenc, Inc.

EFFECTIVE DATE: Effective on February 3, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18020), which announced that Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, had submitted a pesticide petition (7F3481) to EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] expressed in or on leaf lettuce at 25 parts per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 mg/kg bwt/day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg bwt/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg bwt/day);

2. A rabbit teratology study in which the following doses were administered by gavage: 0, 20, 60, and 200 milligrams/kilogram body weight (mg/kg bwt), resulting in a teratogenic NOEL equal to or greater than 60 mg/kg bwt;

3. A rat teratology study in which the following doses were administered by gavage: 0, 40, 90, and 200 mg/kg bwt, resulting in a teratogenic NOEL equal to 90 mg/kg bwt (considered supplementary under current guidelines and may be upgraded to minimum with additional information);

4. A 24-month feeding/oncogenicity study in rats using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study;

5. An 18-month oncogenicity study in mice using dosage levels of 200, 500, and 1,250 ppm (28.6, 71.4, and 178.6 mg/kg bwt/day), which showed no oncogenic effects under the conditions of the study.

6. A 1-year dog feeding study using dosage levels of 168, 600, and 3,600 ppm (4.2, 15, and 90 mg/kg bwt/day) with a NOEL of 168 ppm (4.2 mg/kg bwt/day) and an LEL of 600 ppm (15 mg/kg bwt/day); and

7. A 90-day dog feeding study using dosage levels of 800, 2,400, and 7,200 ppm (20, 60, and 180 mg/kg bwt/day) with a NOEL of 2,400 ppm (60 mg/kg bwt/day) and an LEL of 7,200 ppm (180 mg/kg bwt/day).

Data currently lacking include an acute dermal study, a skin sensitization study, and an appropriate laboratory animal metabolism study. The registrant plans to submit these studies by January 1988.

The acceptable daily intake (ADI) based on the NOEL of 4.2 mg/kg bwt/day and using a hundredfold safety factor, is calculated to be 0.04 mg/kg bwt/day. The maximun permitted intake for a 60-kg human is calculated to be 2.4 mg/day. The theoretical maximum residue contribution from the proposed tolerance is 0.002464 mg/kg/day and utilizes 6.16 percent of the ADI. This tolerance and the previously established tolerances utilize a total of 91.68 percent of the ADI.

There are no regulatory actions pending against the registration of iprodione. The metabolism of iprodione in plants and animals is adequately understood for purposes of the tolerance. An analytical method, gas liquid chromatography using an electron capture detector, is available in Volume II of the Pesticide Analytical Manual for enforcement purposes.

Based on the information cited above, the Agency has determined that establishing the tolerance for residues of the pesticide in or on the listed commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1987 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 15, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399(a) table is amended by adding and alphabetically inserting a listing for the raw agricultural commodity lettuce, leaf, to read as follows:

§ 180.399 Iprodione; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Lettuce (leaf)	25.0
* * * * *	

[FR Doc. 88-2072 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3532/R932; FRL-3323-7]

Pesticide Tolerance for 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity pumpkins. This regulation was requested in a petition by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: February 3, 1988.

ADDRESSES: Written objections, identified by the document control number, [PP 7E3532/R931], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 16, 1987 (52 FR 47733), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3532 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Illinois and Oklahoma.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposed the establishment of a tolerance for the residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity pumpkins at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of the document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** on May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1988

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.425 is amended by adding and alphabetically inserting the listing for the raw agricultural commodity pumpkins, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodities	Parts per million
Pumpkins	0.1
* * * * *	

[FR Doc. 88-2182 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300173A; FRL-3323-6]

Peas; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.1(h) to include lentils in the commodity definition of peas. This regulation, which will expand and redefine the definition of peas, was submitted by the Interregional Research Product No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 3, 1988.

ADDRESSES: Written objections, identified by the document control number [OPP-300173A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Donald R. Stubbs, Emergency Response and Minor Use Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 716H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 25, 1987 (52 FR 45204), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NY 08903, had submitted this request to amend 40 CFR 180.1(h) on behalf of Dr. Robert H. Kupelian, National Director, and the IR-4 Technical Committee.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The Agency concurs with IR-4 on the revision of § 180.1(h) to expand the general category "peas" in column A to include lentils in the corresponding listing of specific raw agricultural commodities on column B. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "peas" to include the specific raw agricultural commodity lentils. Based on the information considered by the Agency, it is concluded that the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition of "peas," to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Peas	*Cajanus cajan* (includes pigeon peas); *Cicer spp.* (includes chick peas and garbanzo beans); *Lens culinaris* (lentils); *Pisum spp.* (includes dwarf peas, garden peas, green peas, English peas, field peas, and edible pod peas) [Note: A variety of pesticide tolerances have been previously established for peas and/or beans. Chick peas/garbanzo beans are now classified in both the bean and the pea categories. For garbanzo beans/chick peas ONLY, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity.]
* * * * *	

[FR Doc. 88-2183 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3537/R933; FRL-3323-4]

Pesticide Tolerance for Pendamethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide pendimethalin and its metabolite in or on the raw agricultural commodity garlic. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: February 3, 1988.

ADDRESSES: Written objections, identified by the document control number, [PP 7E3537/R932], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:
Hoyt jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 16, 1987 (52 FR 47734), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3537 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of California and Oregon.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide pendimethalin (N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine) and its metabolite 4-[1-ethylpropyl) amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodity garlic at 0.1 part per million (ppm). The petitioner proposed that this use of pendimethalin and its metabolite on garlic be limited to California, Nevada, and Oregon based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.361 is amended by adding new paragraph (c), to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

* * * * *

(c) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[1-ethylpropyl)aminol]-2-methyl-3,5-dinitrobenzyl alcohol in or on the following raw agricultural commodities as follows:

Commodities	Parts per million
Garlic	0.1

[FR Doc. 88–2184 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–257; RM–5853]

Radio Broadcasting Services; Wendover, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Rita Taylor, allocates Class C Channel 272 to Wendover, Nevada, as the community's first local FM service. Channel 272C can be allocated to Wendover in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective March 14, 1988. The window period for filing applications will open on March 15, 1988, and close on April 14, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–257, adopted December 24, 1987, and released January 26, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours of the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nevada is amended by adding Wendover, Channel 272C.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–2200 Filed 2–2–88; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Slaughter Cattle and Standards for Grades of Carcass Beef

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle. The proposed changes would provide for separate application of the quality grade and yield grade for steer, heifer, cow, and bullock carcasses and for slaughter cattle without changing either the quality grade or yield grade requirements. These changes would provide more flexibility in using the grading service by permitting the voluntary use of either the beef quality grades and/or the yield grades. Packers would be able to adopt certain avanced production and marketing procedures, and the industry as a whole would be able to choose the procedures which most efficiently meet consumer demands for trimmer beef. The separation of the quality and yield grades would allow the industry to trim carcasses before grading and maintain the option of quality grading. It would also allow the industry to pursue an alternative procurement system that could benefit producers of cattle with higher lean meat yields by discouraging overproduction of fat in order to maximize selling weights of both cattle and beef.

DATES: Comments must be received by April 4, 1988. See Supplementary Information for date of public hearing session.

ADDRESSES: Written comments to: Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2649 South Building, P.O. Box 96456, Washington, DC 20090–6456. See Supplementary Information for location of public hearing session.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, 202–447–4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The proposed revision of the beef carcass (7 CFR Part 54) and slaughter cattle (7 CFR Part 53) standards was reviewed under Department procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and is hereby classified as a non-major rule because (1) it would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA because the changes would not change the grade requirements for slaughter cattle or beef carcasses but would provide all users with greater flexibility in usng the grade standards to identify quality and/or yield characteristics. Users of the grades would be able to specify the combinations of quality and/or yield grades that best meet their needs. Further, the use of the beef grades is voluntary, and they are applied equally to all size entities covered by these regulations.

Comments and Hearing

In order that all those affected have ample opportunity to comment, oral as well as written views, data, or arguments will be received on the proposal. In this regard, a public hearing will be held on the proposed changes contained in this notice. The hearing session will be held at the location listed below on the date shown:

March 8, 1988, Kansas City, Missouri 64195, Hilton Airport Plaza Inn, I–29 and 112th Street, (816) 891–8900.

The public hearings session will commence at 9:30 a.m., local time. Persons who wish to be heard are requested to notify Dr. Michael L. May (see For Further Information Contact) on or before March 1, 1988, stating that they wish to present a statement and approximately how much time they will need to make their presentation. However, any person who wishes to make an oral presentation will be permitted to do so, whether or not that person has given advance notice. A written copy of the speaker's statement is requested and should be presented to the presiding official at the hearing.

In addition, all persons who desire to submit written data, views, or comments on this proposal are invited to submit such material, in duplicate, to the Standardization and Review Branch Livestock and Seed Division, AMS, U.S. Department of Agriculture, 2649 South Building, P.O. Box 96456, Washington, DC 20090–6456 on or before April 4, 1988. Comments must be signed and include the address of the sender and should bear a reference to the date and page number of this issue of the **Federal Register**. The comments should include information which explains and supports the sender's views. All written submissions and transcripts of the coments at the public hearing will be made available for public inspection at the office of the Standardization and Review Branch, Livestock and Seed Division, AMS, USDA, 2649 South Building, 14th and Independence Avenues SW., Washington, DC 20250, during regular office hours.

Background

Federal grading of beef is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of cattle and

beef. Beef grades are intended to segregate the beef supply into groups with similar attributes of palatability and yields of cuts. These criteria are generally of ultimate concern to consumers and the beef industry because they affect the acceptability, price, and consumption of beef. Grades provide a uniform basis for marketing cattle and beef and allow consumer desires to be communicated to the industry so that necessary changes in feeding and production may be made.

Beef grading is provided by the Department for a fee to users who request the service. Because beef grading is voluntary, not all marketed beef is graded. In 1986 approximately 56 percent of commercial beef production was graded. However, approximately two-thirds of the federally inspected steer and heifer slaughter was graded. The steer and heifer slaughter is the portion of the beef supply generally available to consumers as retail cuts.

The official beef grade currently consists of both a quality grade and a yield grade. The quality grades identify differences in the palatability of cooked beef principally through the characteristics of marbling and maturity. The yield grades identify differences in the percentage of product that may be obtained from a carcass through the characteristics of external fat cover; percent kidney, pelvic, and heart fat; hot carcass weight; and ribeye area. Yield grades are also useful as predictors of the yield of further subdivisions of carcasses, but their usefulness diminishes as the size of the cuts lessens, fat is trimmed, and bone is removed.

Yield grades are primarily used as wholesale marketing indicators and are seldom used at retail because of standardized retail fat trims. However, AMS believes that consumers are generally able to differentiate differences in the amount of lean meat and fat and to make value comparisons. Quality grades are also used in wholesale marketing, but unlike yield grades, are used at retail to identify quality differences which are difficult for consumers to differentiate.

The last major revision of the beef grade standards was issued in 1975. A portion of that revision "coupled" the beef quality grades and the beef yield grades; i.e., when officially graded, the grade of cattle or carcasses consists of both the quality grade and the yield grade. Before this change, the user of the grading service had the option of identifying beef for the quality grade, yield grade, or both. The 1975 change was made for the purpose of providing the most complete indication of the two major factors for determining the value of a carcass—quality and yield of cuts. By identifying both of these major determinants of carcass value, consumer preferences could be communicated to producers, and production could be adjusted to most efficiently meet consumer demand. Further, the combination of quality and yield grades was intended to encourage their use in wholesale marketing so that producers of cattle with a higher lean meat yield would be compensated accordingly. The Department believes that these objectives have generally been achieved.

Another related reason for the 1975 change was to provide a trimmer product to consumers by reducing the amount of waste fat produced. Although excess fat is still produced, producers have responded by changing production practices and doubling the production of the more desirable Yield Grade 1 and 2 carcasses and decreasing the production of Yield Grade 4 and 5 carcasses while maintaining approximately the same percentage production of Choice beef. The industry now recognizes the value of identifying differences in percentage yields of cuts by the yield grades. Premiums for Yield Grades 1 and 2 and discounts for Yield Grade 4 and 5 exist. However, they seldom reflect the value differences indicated by yield grades.

Changes in the marketing of beef have occurred since 1975. These changes have caused the industry to re-evaluate the need for coupled quality and yield grades. The first change is in the way that wholesale beef is marketed. In 1975, a large percentage of wholesale beef was marketed either as carcasses or as bone-in primals. However, it is estimated that in 1986 less than 5 percent of the retail receipts of beef were in carcass form and the percentage of boneless receipts had risen to over 60 percent of the total retail receipts of beef.

The second major change in the marketing of beef involves the trim levels of beef sold at retail. Until recently most beef sold at retail was trimmed to no more than one-half inch. However, in the past two or three years, most retailers, which includes 8 of the 10 largest supermarket companies, have changed to one-fourth-inch or closer trim programs. Retailers are also offering consumers a continually greater percentage of boneless cuts.

Although significant progress has been made in production of leaner cattle without sacrificing quality, excess fat and bone must still be removed in order to satisfy consumer demands. The industry recognizes the inefficiency of not trimming excess fat and removing bone at the packer level. Therefore, in order to provide retailers and consumers with the types of beef preferred and to increase efficiency, most packers have either initiated or intend to initiate programs to provide purchasers with more closely trimmed primal and subprimal cuts.

To most efficiently produce these most desirable types of cuts, packers have also examined alternative production and marketing procedures. One procedure is to remove external fat from carcasses at the time of slaughter, a process called hot-fat trimming. Although this procedure offers potential economic benefits, two provisions in the current standards prevent packers from using this technology if they desire to have beef officially graded. The first provision is the coupling of the quality and yield grades. The second is the standard that prevents the grading of carcasses that have had substantial amounts of external fat removed. This provision prevents the yield grading of carcasses that have been trimmed because accurate yield grade determinations cannot be made on trimmed carcasses. For these reasons, the American Meat Institute and the National Cattlement's Association petitioned the Department in June 1987 to amend the beef carcass grade standards to permit the voluntary use of either the beef quality grades and/or the beef yield grades.

The petitioners pointed out that under the current standards, plants wishing to produce closely trimmed primals and subprimals have essentially two options: (1) Add personnel and equipment to maintain present processing or production rates or (2) reduce processing rates to match existing personnel and facility restraints. Both options are considered costly and inefficient. The petitioners further stated that hot-fat trimming on the slaughter floor could more efficiently remove most of the excess fat before processing. The industry would benefit if packers were afforded the opportunity to implement cost-effective production systems in a constantly changing, competitive economic environment.

The petitioners also stated that market demands would dictate use of the grading service. If beef purchasers, whether large or small volume, accept hot-fat trimmed primals and subprimals, they would have no need for yield grade identification. If they do not accept hot-fat trimmed product, they could still choose to use the yield grading system on quality graded or non-quality graded product.

The Department believes that if the quality and yield grades are separated, retailers will continue to specify yield grading as a purchasing requirement unless the benefits of hot-fat trimmed product had been successfully demonstrated. Packers would still have to meet specified trim requirements on their products. This same condition is presently met by packers in order to satisfy the needs of their customers. However, if the efficiencies of hot-trimmed product dictate, closer trim specifications could be met more efficiently and economically than with normally trimmed product.

One of the primary functions of yield grades is to account for differences in external and seam (intermuscular) fat. The hot trimming of external fat could account for the largest portion of variability in yield of cuts between carcasses. However, hot-fat trimming does not affect the amount of seam fat in a carcass. For this reason, the variability in yield due to differences in fat between carcasses which have been hot-trimmed is largely the result of differences in the amount of seam fat. Carcasses which have had external fat removed may not be eligible for yield grading in some instances because accurate grade determinations cannot be made. Therefore, purchasers may not have yield grades available to determine the amount of seam fat in a carcass.

Two differences in the way beef is currently marketed make yield grades less significant for determining the amount of seam fat in a product. Unpublished data from research conducted by the Texas Agricultural Experiment Station has shown a 0.12 percentage difference in seam fat between each tenth of a yield grade on a 700 pound carcass. However, packers do not currently distinguish between boxed beef produced from Yield Grade 3 or better carcasses. Secondly, the industry is marketing a higher percentage of boneless subprimal cuts. During processing to boneless subprimal cuts, significant amounts of seam fat may be removed. A benefit of hot-fat trimming perceived by the petitioners is the opportunity it gives producers to be paid on lean meat yield. As the difference in amount of external fat on carcasses is narrowed, the differences in composition among carcasses of different yield grades narrows. Carcasses from cattle with less fat would have higher trimmed carcass weights. If producers are paid on a trimmed carcass weight basis, if two cattle weighed the same live, the trimmer animal would have the heavier pay weight. Such a system would encourage beef producers to adopt breeding and feeding technology directed toward the production of leaner cattle.

While there would be some shifting in the value per pound of live animals, carcasses, and more closely trimmed subprimal cuts, such shifts should only account for changes in value associated with removal of fat and/or bone, and no significant change in the cost of beef would be expected. In fact, if the efficiencies of hot-fat trimming are realized, these efficiencies should be reflected in the cost of product trimmed in this manner when compared to conventionally trimmed product.

Proposed Standards

Consideration of all the available data and information indicates that the revision of the beef carcass and slaughter cattle standards to allow either quality grading and/or yield grading would appear to offer potential for improving the effectiveness of the beef grades in meeting the needs of the marketplace. Considerable changes which have occurred in the marketing of beef have necessitated the need to remove excess fat and bone more efficiently. Although the industry retains its goal of eliminating excess waste through improved breeding and feeding technology, the current information suggests that the hot-fat trimming technology offers considerable promise to the industry as a potential method to more efficiently remove waste fat when it is produced. There are potential economic benefits that could benefit not only producers and packers, but also beef purchasers and consumers who desire the attributes of trimmer beef. The current provisions that require both a quality and yield grade are effectively preventing the possible adoption of such technologies. Therefore, it is proposed that the beef carcass standards be revised to allow the application of the quality grade only, the yield grade only, or the application of both the quality and yield grades. As a result of the uncoupling of these grades, carcasses that have had external fat removed for any non-fraudulent or non-deceptive cause may receive a yield grade if it is determined that an accurate grade evaluation can be made. No changes in the actual grade requirements for either quality or yield grades are proposed.

The standards for grades of slaughter cattle, which are based on the beef carcass grade standards, would be revised to reflect the changes proposed for the beef carcass grade standards. Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce.

For the reasons outlined, it is proposed that certain sections of the standards appearing at 7 CFR Part 53 as they relate to livestock and certain sections of the standards appearing at 7 CFR Part 54 as they relate to meats, prepared meats, and meat products be revised as set forth below.

List of Subjects

7 CFR Part 53

Livestock, Cattle, Grading and certification, Standards.

7 CFR Part 54

Beef carcasses, Meat and meat products, Grading and certification, Standards.

PARTS 53 and 54—[AMENDED]

1. The authority citation for Parts 53 and 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§ 53.203 [Amended]

2. In 7 CFR 53.203(a), the last sentence is revised to read as follows: "The grades of slaughter cattle may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade except that slaughter bulls are yield graded only."

3. In 7 CFR Part 54, § 54.104 paragraphs (a) and (g) are revised to read as follows:

§ 54.104 Application of standards for grades of carcass beef.

(a) The carcass beef grades identify two separate general considerations: The indicated yield of closely trimmed (½ inch fat or less), boneless retail cuts expected to be derived from the major wholesale cuts (round, sirloin, short loin, rib, and square-cut chuck) of a carcass, herein referred to as the "yield grade," and characteristics of the meat which predict the palatability of the lean, herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass may consist of the quality grade only, the yield grade only, or a combination of the quality grade and the yield grade. The grade of a bull carcass consists of the yield grade only.

* * * * *

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which may alter the characteristics of the ribeye or thickness of fat over the ribeye prevent an accurate grade determination. Therefore, carcasses subjected to such influences shall not be eligible for grade

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determinations, and the presentation of such carcasses for official grade determinations shall be considered a fraudulent or deceptive practice in connection with the services requested for such carcasses. Carcasses that have had external fat removed may be yield graded only if the official grader determines that an accurate yield grade determination can be made. Although entire carcasses with more than minor amounts of lean removed from the major wholesale cuts (round, sirloin, short loin, rib, or square-cut chuck) shall not be eligible for grade determinations, the remaining portions of these carcasses which are unaffected by the removal of lean shall remain eligible for grade determinations, provided that a cross section at the 12th-13th rib is available and accurate grade determinations may be made.

* * * * *

Done at Washington, DC, on: January 29, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-2177 Filed 2-2-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 84-356]

Inspection of Means of Conveyance, Baggage, and Cargo Moving Interstate From Hawaii, Puerto Rico, or the Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend two subparts in our Hawaiian and territorial quarantine notices with respect to inspection requirements and the location of inspection for ships, other surface craft, aircraft, and cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, or the Virgin Islands of the United States to other parts of the United States. These proposed amendments are intended to improve the efficiency of inspections, and to consolidate and clarify the Department's regulations and procedures with respect to these inspections. We are also proposing editorial changes to make the organization of the two subparts similar.

DATES: Comments must be postmarked or received on or before April 4, 1988.

ADDRESS: Send your written comments concerning this proposed rule to Mr. Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 84-356. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Havens, Port Operations Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

We are proposing to amend two subparts in the "Hawaiian and Territorial Quarantine Notices" (7 CFR Part 318). The "Hawaiian and Territorial Quarantine Notices," among other things, quarantine Hawaii, Puerto Rico, and the Virgin Islands of the United States (referred to below as the Virgin Islands) to prevent the spread of dangerous plant diseases and insect infestations that are new to or not widely prevalent or distributed within and throughout the United States. The two subparts we are proposing to amend are "Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*), and "Fruits and Vegetables From Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*). We refer to these regulations, respectively, as the Hawaii regulations and the Puerto Rico-Virgin Islands regulations. We are proposing to amend the requirements for inspection of ships, vessels, other surface craft, and aircraft, and inspection of certain cargo, baggage, and personal effects moving from Hawaii, Puerto Rico, and the Virgin Islands to other parts of the United States.

The Hawaii regulations govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam Puerto Rico, or the Virgin Islands. The Puerto Rico-Virgin Islands regulations govern the movement of raw and unprocessed fruits and vegetables from Puerto Rico and the Virgin Islands into or through Guam, Hawaii or the continental United States. The Puerto Rico-Virgin Islands regulations also govern movement of cactus plants and parts of cactus plants from the Virgin Islands into or through Guam, Puerto Rico, or the continental United States. Similar language appears in the two sets of regulations. (See 7 CFR 318.13-8, 318.13-10, 318.58-8, 318.58-10, 318.58-11).

APHIS's mandate is to protect United States agriculture from harmful plant pests and diseases. To do this, APHIS regulations are designed to prevent plant pests and diseases that are not present in the United States from entering the country, and to prevent plant pests and diseases that are already in the United States from spreading. To achieve this objective more effectively, we are proposing this rule to clarify the requirements for inspection of baggage from Hawaii, to clarify similar requirements for inspection of baggage from Puerto Rico and the Virgin Islands, and to clarify requirements for inspection of means of conveyance and cargo from Hawaii, Puerto Rico and the Virgin Islands.

We are proposing to rewrite and consolidate various requirements of the Hawaii and Puerto Rico-Virgin Islands regulations to improve organization and clarity and to aid enforcement. These proposed revisions result in four proposed new subsections, in both the Hawaii and the Puerto Rico-Virgin Islands regulations, entitled "Articles and persons subject to inspection," "Inspection of means of conveyance," "Inspection of baggage, other personal effects, and cargo," and "Disinfection of means of conveyance." We are also proposing to add a definition of "certificate" to the Puerto Rico-Virgin Islands regulations to conform with that definition in the Hawaii regulations. This rule proposes the substantive and organizational changes described below.

Articles and Persons Subject to Inspection

This proposed new subsection in both the Hawaii and the Puerto Rico-Virgin Islands regulations reiterates the statutory authority of inspectors to inspect persons, means of conveyance, and articles that are destined for movement, are moving, or have been moved, from Hawaii, Puerto Rico, or the Virgin Islands to other parts of the United States. While other portions of the proposed regulations require inspections at particular points during movement, this proposed subsection also allows additional inspections to be performed at the discretion of an inspector at the port of departure and the port of arrival.

Inspection of Aircraft and Aircraft Cargo

Currently, the Hawaii regulations provide that aircraft moving from Hawaii to the continental United States, Puerto Rico, the Virgin Islands, or Guam shall be subject to inspection upon arrival (except when an inspector exercises discretionary authority to order inspection prior to departure).

This rule proposes to change these regulations to provide that aircraft moving from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands must instead be offered for inspection prior to departure. Aircraft moving from Hawaii to Guam would have to be offered for inspection upon arrival in Guam, unless arrangements for a pre-departure inspection in Hawaii have been made between the operator of the aircraft, APHIS, and the government of Guam.

Currently, the Puerto Rico-Virgin Islands regulations provide that aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States shall be subject to inspection upon arrival (except when an inspector exercises discretionary authority to order inspection prior to departure).

This rule proposes to change these regulations to provide that aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory or District of the United States (except Guam) would instead be offered for inspection prior to departure. Aircraft moving from Puerto Rico or the Virgin Islands to Guam would be offered for inspection upon arrival in Guam, unless arrangements for a pre-departure inspection in Puerto Rico or the Virgin Islands were made between the operator of the aircraft, APHIS, and the government of Guam.

These proposed changes to the Hawaii and Puerto Rico-Virgin Islands regulations would allow the Department to use its inspectors in a more efficient manner and to reduce the number of sites at which these inspections must be conducted. The Department currently has sufficient staff in Hawaii, Puerto Rico, and the Virgin Islands to inspect departing flights subject to the regulations, but does not have sufficient staff to conduct these inspections at all arrival points in other parts of the United States. In addition, the Department believes it can more efficiently manage these inspections when they are limited to a small number of departure sites, rather than a large number of arrival sites.

Inspection of Baggage and Personal Effects of Aircraft Passengers and Crew

Currently, the Hawaii regulations provide that baggage and personal effects of passengers and crew of aircraft moving from Hawaii to the continental United States, Puerto Rico, the Virgin Islands, or Guam shall be subject to inspection, at the discretion of APHIS, either upon departure from Hawaii or upon arrival.

This rule proposes to change the Hawaii regulations to provide that persons destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands would have to offer their baggage and other personal effects to an inspector for inspection at designated inspection stations. Persons boarding aircraft destined for movement from Hawaii to Guam would not be subject to this restriction for reasons discussed below under "Guam".

Currently, the Puerto Rico-Virgin Islands regulations provide that baggage and personal effects of passengers and crew of aircraft moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States shall be subject to inspection, at the discretion of APHIS, either upon departure from Puerto rico or the Virgin Islands or upon arrival.

This rule proposes to change the Puerto Rico-Virgin Islands regulations to provide that persons destined for movement by aircraft from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States, except Guam, would have to offer their baggage and other personal effects to an inspector for inspection at designated inspection stations.

The baggage and personal effects inspections for aircraft flights is proposed to be performed prior to departure because we believe that this method minimizes the burden on travellers and carriers, while maximizing efficiency of the inspections. In addition, while we believe we have sufficient staff to perform the inspections at the relatively few points of departure, we do not have sufficient staff available to perform these inspections at the larger number of aircraft arrival sites.

Currently, the Hawaii and Puerto Rico-Virgin Islands regulations do not describe in detail what is involved in an inspection; instead they state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

This proposed rule would expand and clarify the description in both the Hawaii and the Puerto Rico-Virgin Islands regulations of what is involved in an inspection, in order to aid enforcement and reduce the number of attempts by passengers and crew to carry prohibited articles in their baggage. The present requirement that baggage "shall be subject to examination" is passive. The proposed language would require passengers and crew to present all their baggage and personal effects for inspection, to disclose any articles of the types th Inspector asks about, and to present identification where prohibited or regulated articles are discovered. This proposal would also allow the imposition of civil and criminal penalties on persons who fail to meet these requirements. We except that these proposed changes, by clearly stating the responsibilities of passengers and crew, would reduce the number of attempted violations of the quarantines and would also provide a clearer basis for imposing civil and criminal penalties on those who try to evade inspection or violate the quarantine.

Inspection of Ships and Ships' Cargo

Currently, the Hawaii regulations require that ships and other surface vessels and their cargo moving from Hawaii be inspected upon their arrival in the continental United States, Puerto Rico, the Virgin Islands, or Guam.

For ships, other surface vessels, and their cargo destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands, we propose to change the Hawaii regulations to require pre-departure inspection for cargo, and post-arrival inspection for the ships and vessels themselves. For ships, other surface vessels, and their cargo destined for movement from Hawaii to Guam, we would continue to require inspection upon arrival in Guam.

Currently, the Puerto Rico–Virgin Islands regulations require that ships and other surface vessels and their cargo moving from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States be inspected upon their arrival.

For ships, other surface vessels, and their cargo destined for movement from Puerto Rico or the Virgin Islands to any other State, Territory, or District of the United States, except Guam, we propose to change the Puerto Rico–Virgin Islands regulations to require pre-departure inspection for ships' cargo, and post-arrival inspection for the ships themselves. For ships and ships' cargo destined for movement from Puerto Rico or the Virgin Islands to Guam, we would continue to require inspection upon arrival in Guam.

The proposed change to pre-departure inspection of cargo in the Hawaii and Puerto Rico–Virgin Islands regulations would be made to allow the Department to use its inspectors in a more efficient manner and to reduce the number of

locations at which these inspections must be conducted. The Department currently has sufficient staff in Hawaii, Puerto Rico, and the Virgin Islands, to inspect the cargo of departing ships and other ocean-going vessels subject to the regulations, but does not have sufficient staff to readily conduct these inspections at all arrival points in other parts of the United States. In addition, the Department believes that it can more efficiently manage these inspections when they are limited to a small number of departure sites, rather than a large number of arrival sites. However, we propose that inspections in Guam would continue to be performed upon arrival, because Guam requires inspections upon arrival and the Department has sufficient staff in place on Guam to perform inspections.

Further, shippers and carriers appear to benefit by having cargo inspected prior to loading and departure. If cargo is found to be infested after it has been loaded onto a ship and after the ship has moved to its destination, all the cargo would have to be removed from the ship's hold and treated or disposed of, and the ship would have to be disinfected. If the cargo is inspected prior to loading, any infested cargo could be treated or disposed of without requiring the unloading of holds or the disinfection of the ship. Also, cargo that has been pre-inspected and passed may be shipped interstate to any destination in the United States. Cargo that is inspected upon arrival may be shipped only to ports where there are treatment and disinfection facilities.

Containerized Ship Cargo and Air Cargo

The Hawaii regulations require certain shipments of fruits or other regulated articles to be inspected and certified prior to movement from Hawaii, but allow them to be moved without being accompanied by copies of the inspection certificates under certain circumstances. Shipments may move without accompanying certificates if the articles are shipped as air cargo or as containerized cargo on ships; the articles have been inspected or treated and precleared in Hawaii; the carrier has on file evidence that a certificate or limited permit was issued for the articles' movement; and the existence of these documents is noted by the carrier on the waybill accompanying the articles.

This proposed rule adds to the Puerto Rico-Virgin Islands regulations a similar provision allowing movement of certain inspected, containerized shipments without accompanying certificates. The Department believes this practice is effective in meeting the goals of the quarantines while imposing the minimum burden on shippers and carriers.

Inspection of Baggage and Personal Effects of Ships' Passengers and Crew

Currently, the Hawaii regulations allow the baggage and personal effects of ships' passengers and crew to be inspected either upon departure from Hawaii, or upon arrival in the continental United States, Puerto Rico, the Virgin Islands, or Guam. The regulations leave the choice of the inspection site up to the discretion of the inspector. The regulations do not describe in detail what is involved in an inspection, but state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

We propose to change the Hawaii regulations to require that baggage and personal effects must be offered for inspection upon arrival of the ship in the continental United States, Puerto Rico, the Virgin Islands, or Guam. The description of what is involved in an inspection would also be changed to require that those persons arriving on ships with baggage required to be inspected shall not "remove or attempt to remove any baggage or other personal effects from a designated inspection area on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage or other personal effects" and shall "disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector."

Currently, the Puerto Rico-Virgin Islands regulations allow the baggage and pesonal effects of ships' passengers and crew to be inspected either upon departure from Puerto Rico or the Virgin Islands, or upon arrival in any other State, Territory or District of the United States. The regulations leave the choice of the inspection site up to the discretion of the inspector. The regulations do not describe in detail what is involved in an inspection, but state that baggage and personal effects "shall be subject to examination by an inspector to ascertain if they contain any of the articles or plant pests prohibited movement."

We propose to change the Puerto Rico-Virgin Islands regulations to require that baggage and personal effects be offered for inspection upon arrival of the ship in any other State, District, or Territory of the United States. The description of what is involved in an inspection would also be changed, to require that those persons with baggage required to be inspected shall not "remove or attempt to remove any baggage or other personal effects from a designated inspection area on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects" and shall "disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector."

This rule proposes that the baggage and personal effects inspections for ships' passengers and crew be performed upon arrival because the Department believes that this method minimizes the burden on travellers and carriers, while maximizing efficiency of the inspections. One reason for inspecting upon arrival, rather than upon departure, is that fruits, vegetables, flowers and other articles subject to the regulations may be consumed or disposed of during the ship's transit, obviating the need to inspect them. Another reason for inspection upon arrival is the small number of seaports and the relatively large number of inspectors available to them.

We propose that the description of what is involved in an inspection be expanded and made more specific in order to aid enforcement and reduce the number of attempts by passengers and crew to carry prohibited articles in their baggage. The present requirement that baggage "shall be subject to examination" is passive. The proposed language would require passengers and crew to present their baggage and other personal effects for inspection, to disclose any articles that the inspector requires to be disclosed, and allows the imposition of civil and criminal penalties on persons who fail to meet these requirements. We expect that these changes, by clearly stating the responsibilities of passengers and crew, would reduce the number of attempted violations of the quarantines and would also provide a clearer basis for imposing civil and criminal penalties on those who try to evade inspection or violate the quarantine.

Guam

As we have explained, we are proposing to amend both the Hawaii and Puerto Rico-Virgin Islands regulations to require that inspections of baggage and other personal effects moved by aircraft, and certain cargo moved by ship, vessel, other surface craft, and aircraft, be conducted prior to departure. However, the Territory of Guam requires all baggage, other personal effects, and cargo arriving in Guam from other areas in the United States to be inspected upon arrival.

Since Guam requires inspection upon arrival, and because APHIS sees no need to require inspections in Hawaii, Puerto Rico, or the Virgin Islands prior to departure, and then reinspection upon arrival in Guam, this proposed rule provides for APHIS to inspect upon arrival in Guam all baggage and other personal effects moving interstate by aircraft, and certain cargo moving by ship, vessel, and other surface craft.

Disinfection of Means of Conveyance

Both the Hawaii and Puerto Rico-Virgin Islands regulations currently require inspection of ships, vessels, other surface craft, and aircraft to ascertain whether these conveyances are infested with plant pests or contain any articles that are infested with plant pests. The regulations also require, under the direction of and in a manner prescribed by an inspector the disinfection of ships, vessels, other surface craft, or aircraft in which infestations or infections are found.

We are proposing to amend the Hawaii and Puerto Rico-Virgin Islands regulations by specifying that disinfection of ships, other ocean-going craft, and aircraft, and the cargo carried by them, may be ordered by an inspector at the site of inspection, and that the disinfection must be performed under the supervision of an inspector and in a manner prescribed by the inspector, in accordance with the Plant Protection and Quarantine Treatment Manual, prior to any movement of the ship, other ocean-going craft, aircraft, or cargo. We believe that requiring disinfection prior to movement would help prevent the spread of plant pests or diseases by infested or infected means of conveyance that are moved prior to disinfection.

Movement of Articles by the Department of Agriculture

Both the Hawaii regulations and the Puerto Rico-Virgin Islands regulations currently allow articles subject to the regulations to be moved by the Department of Agriculture for scientific or experimental purposes, under certain conditions, without being subject to the full requirements of the regulations. This proposed rule would clarify the conditions under which these articles may be moved, and would make the conditions consistent with similar regulations in other parts of this Chapter.

Specifically, this proposed rule would allow articles to move without further restriction under the regulations when they are moved by the Department for scientific or experimental purposes: (1) If the articles are moved under a Departmental permit specifying conditions of movement that will prevent plant pest or disease spread; and (2) if the articles bear a tag or label giving the Departmental permit number.

Miscellaneous

In addition to the foregoing amendments, we are proposing certain nonsubstantive, editorial changes to the Hawaii regulations and the Puerto Rico-Virgin Islands regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million dollars; would not cause a major increase in costs or prices for consumers, individual industries Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Most of the effects of this proposed rule would apply to airlines and ship lines that are not small entities. Any effects on small entities by the proposed rule's inspection and shipping requirements (e.g., small packers and shippers) should be minimal; the proposed rule does not prohibit the movement of any products formerly allowed movement, and would not increase shipping costs to small entities. Persons are not charged for the inspection of their baggage and other personal effects by an inspector, and there is no inspection cost to shippers and importers of cargo with the exception of reimbursements to the Department for overtime hours requested by shippers or importers.

Under these circumstances, and in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Hawaii, Puerto Rico, Transportation, Virgin Islands, Baggage, Cargo, Incorporation by reference.

Accordingly, we propose to amend "Subpart—Hawaiian Fruits and Vegetables" (7 CFR 318.13 *et seq.*) and "Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands" (7 CFR 318.58 *et seq.*) as follows:

PART 318—HAWAIIAN AND TERITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 would be revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, 371.2(c).

§ 318.13a [Amended]

2. Section 318.13a would be amended by removing paragraph (b).

3. Section 318.13–3 would be amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 318.13–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Hawaii in accordance with this subpart to any destination if

(1) The movement is authorized by a valid certificate issued in accordance with § 318.13–4(a) or

(b), and the movement complies with the conditions of any applicable compliance agreement made under § 318.13–4(d), or

(2) Movement is exempted from certificates or limited permit requirements by administrative instructions in this subpart.

(d) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and

containerized cargo on ships moved in accordance with § 318.13–10, each box, bale, crate, or other container of regulated articles moved under a certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided*, that if a certificate or limited permit is issued for a shipment of more than one container or for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

4. Section 318.13–6 would be revised to read as follows:

§ 318.13–6 Container marking and identity.

For shipments of regulated articles moved in accordance with this subpart, the following information shall be clearly marked on each container, or for shipments of multiple containers or bulk products, on the waybill, manifest, or bill or lading accompanying the articles: nature and quantity of contents; name and address of shipper, owner, or person shipping or forwarding the articles; name and address of consignee; shipper's identifying mark and number; and, the number of the certificate or limited permit authorizing movement, if one was issued.

§ 318.13–7 [Amended]

5. Section 318.13–7 would be amended as follows:

a. The heading would be changed to read "Products as ships' stores or in the possession of passengers or crew."

b. In paragraph (a) "ship, vessel, other surface craft, or aircraft" would be removed and "aircraft moving to Guam, ship, vessel, or other surface craft" would be inserted.

c. In paragraph (a) "Virgin Islands of the United States:" would be removed and "Virgin Islands of the United States," would be inserted, and the remainder of that sentence would be removed.

d. In paragraph (b) "a ship, vessel, or other surface craft, or aircraft in Hawaii" would be removed and "an aircraft moving from Hawaii to Guam, or a ship, vessel, or other surface craft in Hawaii" would be inserted.

e. In paragraph (b) "the ship, vessel, other surface craft, or aircraft before arrival" would be removed and "the aircraft moving from Hawaii to Guam, or the ship, vessel, or other surface craft before arrival" would be inserted.

6. Section 318.13–8 would be revised to read as follows:

§ 318.13–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles, that are destined for movement, are moving, or have been moved from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States are subject to agricultural inspection at the port of departure and or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin, or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

7. Section 318.13–9 would be revised to read as follows:

§ 318.13–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Hawaii to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Hawaii prior to departure in accordance with arrangements made between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Hawaii to the continental United States, Guam, Puerto Rico, or the Virgin Islands of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.1–10 and 318.13–11 [Removed]

8. Sections 318.13–10 and 318.13–11 would be removed.

§ 318.13–12 [Redesignated as § 318.13–10]

9. Section 318.13–12 would be redesignated as § 318.13–10, and would be revised to read as follows:

§ 318.13–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to such baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a passenger's baggage or personal effects discloses an article in violation of the regulations in this part, such passenger shall state his or her name and address, and provide corroborative identification to the inspector.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passsed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetable, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, such crew member shall state his or her name and address, and provide coroborative identification to the inspector.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Hawaii to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and has had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(d) *Baggage acceptance and loading on aircraft.* No person shall accept check-in aircraft baggage for movement, and no person shall load any check-in aircraft baggage destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been inspected and passed.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Hawaii to the continental United States, Puerto Rico, Guam, or the Virgin Islands of the United States, shall remove or attempt to remove any baggage or other personal effects from the designated inspection area as provided in § 318.13–10(h) on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and has had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2), no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulted under this subpart that are destined for movement from Hawaii to the continental United States, Puerto Rico, or the Virgin Islands of the United States, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.13–3(d).

(2) Cargo designated in paragraph (f)(1) may be loaded without a USDA stamp or USDA inspection sticker, and without an attached certificate or limited permit if the cargo is moved

(i) As containerized cargo on ships or other ocean-going craft or as air cargo; and

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill or lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.13–10(h), on or off the means of conveyance, any cargo moved from Hawaii to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are adequate, in the inspector's judgment, for the performance of inspection.

10. A new § 318.13–11 would be added to read as follows:

§ 318.13–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§§ 318.13–13 through 318.13–17 [Redesignated as 318.13–12 through 318.13–16]

11. Sections 318.13–13 through 318.13–17 would be redesignated as 318.13–12 through 318.13–16.

§ 318.13–12 [Amended]

12. Newly designated § 318.13–12 would be amended as follows:

a. In the first sentence of paragraph (a) "Before any ship, vessel, other surface craft, or aircraft from Hawaii" would be removed and "Before any aircraft moving to Guam from Hawaii, or any ship, vessel, or other surface craft from Hawaii" would be inserted.

b. In the second sentence of paragraph (a) the colon after "inspection area" would be replaced with a period, and the remainder of that sentence would be removed.

13. Newly designated § 318.13–13 would be revised to read as follows:

§ 318.13–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands

§ 318.58–1 [Amended]

14. Section 318.58–1 would be amended by adding a new paragraph (f) to read as follows:

* * * * *

(f) *Certificate.* A document signed by an inspector certifying that a particular ship, vessel, other surface craft, or aircraft, or any specified lot or shipment of fruits or vegetables or other plant

materials, via baggage, parcel post, express, freight or other mode of transportation, has been inspected and found apparently free from articles the movement of which is prohibited by the quarantine and regulations in this subpart, and from the plant pests referred to in said quarantine; or that the lot or shipment is of such a nature that no danger of infestation or infection is involved; or that it has been treated in a manner to eliminate infestation. A certificate covering treated products must state the treatment applied.

§ 318.58–2 [Removed]

15. Section 318.58–2 would be removed.

§ 318.53–3 [Redesignated as § 318.58–2 and amended]

16. Section 318.58–3 would be redesignated as § 318.58–2, the section heading would be revised, paragraphs (a), (b) and (c) would be redesignated as (b), (c) and (d), and a new paragraph (a), and new heading for paragraph (b) would be added to read as follows:

§ 318.58–2 Regulated articles.

(a) *Prohibited movement.* Fruits, vegetables, and other products specified in § 318.58 and not eligible for inspection and certification under § 318.58–4 or otherwise expressly authorized movement in the regulations in this subpart are prohibited movements.

(b) *Regulated movement.* Subject to

* * *

* * * * *

17. Section 318.58–3 would be revised to read as follows:

§ 318.58–3 Conditions of movement.

(a) *To any destination.* Any regulated articles may be moved interstate from Puerto Rico or the Virgin Islands of the United States in accordance with this subpart to any destination if

(1) The movement is authorized by a valid certificate issued in accordance with § 318.58–4, or

(2) Movement is exempted from certificate or limited permit requirements by administrative instructions in this subpart.

(b) *Segregation of certified articles.* Articles authorized movement by a certificate after treatment in accordance with § 318.58–4(b), taken aboard any ship, vessel, other surface craft, or aircraft in Puerto Rico or the Virgin Islands of the United States must be segregated and protected from infestation by any plant pest or disease under the supervision of an inspector.

(c) *Attachment of certificates and limited permits.* Except as otherwise provided for certain air cargo and containerized cargo on ships moved in accordance with § 318.58–10, each box, bale, crate, or other container of regulated articles moved under a certificate or limited permit shall have the certificate or limited permit attached to the outside of the container: *Provided*, that if a certificate or limited permit is issued for a shipment of more than one container or for bulk products, the certificate or limited permit shall be attached to or stamped on the accompanying waybill, manifest, or bill of lading.

§ 318.58–5 [Removed]

§ 318.58–4 [Redesignated as § 318.58–5]

18. Section 318.58–5 would be removed, and § 318.58–4 would be redesignated as § 318.58–5.

19. A new § 318.58–4 would be added to read as follows:

§ 318.58–4 Issuance of certificates.

An inspector may issue a certificate for the movement of regulated articles upon compliance with the regulations in this subpart and under either of the following conditions:

(a) *Certification on basis of inspection or nature of lot involved.* An inspector may issue a certificate for fruits and vegetables designated in § 318.58–2(b) after he has inspected them and found that they appear free from infestation and infection, or has determined without an inspection that the lot for shipment is of such a nature that there appears to be no danger of infestation or infection.

(b) *Certification on basis of treatment.* Fruits and vegetables designated in § 318.58–2(b) may be certified after undergoing an approved treatment contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and if the articles are handled after treatment in accordance with all conditions that the inspector requires. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "materials incorporated by reference." Treatments shall be applied at the expense of the shipper, owner, or person in charge of the articles. The Department of Agriculture or its inspector will not be responsible for loss or damage resulting from any treatment prescribed or supervised under this subpart.

§ 318.58–3c [Redesignated as § 318.58–4a]

20. Section 318.58–3c would be redesignated as § 318.58–4a.

§ 318.58–7 [Amended]

21. Section 318.58–7 would be amended as follows: (a) By removing "ships, vessels, or aircraft" and inserting "ships or other ocean-going craft"; (b) by adding the phrase", or aircraft moving from Puerto Rico or the Virgin Islands of the United States to Guam" after the words "United States" and before the words ": *Provided*, That"; and (c) by amending the reference to "318.58–11" to read "318.58–12" in the proviso.

22. Section 318.58–8 would be revised to read as follows:

§ 318.58–8 Articles and persons subject to inspection.

Persons, means of conveyance (including ships, other ocean-going craft, and aircraft), baggage, cargo, and any other articles that are destined for movement, are moving, or have been moved from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District of the United States are subject to agricultural inspection at the port of departure and/or the port of arrival. If an inspector finds any article prohibited movement by the quarantine and regulations of this subpart, he or she, taking the least drastic action, shall order the return of the article to the place of origin or the exportation of the article, under safeguards satisfactory to him or her, or otherwise dispose of it, in whole or part, to comply with the quarantine and regulations of this subpart.

23. Section 318.58–9 would be revised to read as follows:

§ 318.58–9 Inspection of means of conveyance.

(a) *Inspection of aircraft prior to departure.* No person shall move any aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States, except Guam, unless the person moving the aircraft has contacted an inspector and offered the inspector the opportunity to inspect the aircraft prior to departure and the inspector has informed the person proposing to move the aircraft that the aircraft may depart.

(b) *Inspection of aircraft moving to Guam.* Any person who has moved an aircraft from Puerto Rico or the Virgin Islands of the United States to Guam shall contact an inspector and offer the inspector the opportunity to inspect the aircraft upon the aircraft's arrival in Guam, unless the aircraft has been inspected and cleared in Puerto Rico or the Virgin Islands prior to departure in accordance with arrangements between the operator of the aircraft, the Animal and Plant Health Inspection Service, and the government of Guam.

(c) *Inspection of ships upon arrival.* Any person who has moved a ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, District, or Territory of the United States shall contact an inspector and offer the inspector the opportunity to inspect the ship or other ocean-going craft upon its arrival.

§§ 318.58–10 and 318.58–14 [Removed]

§ 318.58–11 [Redesignated as § 318.58–10]

24. Sections 318.58–10 and 318.58–14 would be removed, and § 318.58–11 would be redesignated as § 318.58–10 and revised to read as follows:

§ 318.58–10 Inspection of baggage, other personal effects, and cargo.

(a) *Offer for inspection by aircraft passengers.* Passengers destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, shall offer their carry-on baggage and other personal effects for inspection at the place marked for agricultural inspections, which will be located at the airport security checkpoint or the aircraft boarding gate, at the time they pass through the checkpoint or the gate. Passengers shall offer their check-in baggage for inspection at agricultural inspection stations prior to submitting their baggage to the check-in baggage facility. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that the baggage or personal effects have been inspected and passed as required. Passengers shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a passenger's baggage or other personal effects discloses an article in violation of the regulations in this part, such passenger shall state his or her name and address, and provide corroborative identification to the inspector.

(b) *Offer for inspection by aircraft crew.* Aircraft crew members destined for movement by aircraft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, shall offer their baggage and personal effects for inspection at the inspection station designated for the employing airline not less than 20 minutes prior to the scheduled departure time of the aircraft or the rescheduled departure time as posted in the public areas of the airport. When an inspector has inspected and passed such baggage or personal effects, he or she shall apply a USDA stamp, inspection sticker, or other identification to the baggage or personal effects to indicate that such baggage or personal effects have been inspected and passed as required. Aircraft crew members shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a crew member's baggage or personal effects discloses an article in violation of the regulations in this part, such crew member shall state his or her name and address, and provide corroborative identification to the inspector.

(c) *Baggage inspection for persons traveling to Guam on aircraft.* No person who has moved from Puerto Rico or the Virgin Islands of the United States to Guam on an aircraft shall remove or attempt to remove any baggage or other personal effects from the area secured for customs inspections before the person has offered to an inspector, and had passed by the inspector, his or her baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. When an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(d) *Baggage accepting and loading on aircraft.* No person shall accept check-in aircraft baggage for movement and no person shall load any check-in aircraft baggage destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, unless a certificate is attached to the baggage, or the baggage bears a USDA stamp, inspection sticker, or other indication applied by an inspector representing that the baggage has been offered for inspection and passed by an inspector.

(e) *Offer for inspection by persons moving by ship.* No person who has moved on any ship or other ocean-going craft from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District shall remove or attempt to remove any baggage or other personal effects from a designated inspection area as provided in § 318.58–10(h), on or off the ship or other ocean-going craft unless the person has offered to an inspector for inspection, and had passed by the inspector, the baggage and other personal effects. Persons shall disclose any fruits, vegetables, plants, plant products, or other articles that are requested to be disclosed by the inspector. Where an inspection of a person's baggage or personal effects discloses an article in violation of the regulations in this part, such person shall state his or her name and address, and provide corroborative identification to the inspector.

(f) *Loading of certain cargoes.* (1) Except as otherwise provided in paragraph (f)(2) of this section, no person shall present to any common carrier or contract carrier for movement, and no common carrier or contract carrier shall load, any cargo containing fruits, vegetables, or other articles regulated under this subpart that are destined for movement from Puerto Rico or the Virgin Islands of the United States to any other State, Territory, or District, except Guam, unless the cargo has been offered for inspection, passed by an inspector, and bears a USDA stamp or USDA inspection sticker, or unless a certificate or limited permit is attached to the cargo as specified in § 318.58–3(c).

(2) Cargo designated in paragraph (f)(1) of this section, may be loaded without a USDA stamp or USDA inspection sticker and without an attached certificate or limited permit if the cargo is moved

(i) As containerized cargo on ships or other ocean-going craft or as air cargo; and

(ii) The carrier has on file documentary evidence that a valid certificate or limited permit was issued for the movement; and

(iii) A notation of the existence of these documents is made by the carrier on the waybill, manifest, or bill of lading that accompanies the shipment.

(g) *Removal of certain cargoes in Guam.* No person shall remove or attempt to remove from a designated inspection area as provided in § 318.58–10(h), on or off the means of conveyance, any cargo moved from Puerto Rico or the Virgin Islands of the United States to Guam containing fruits, vegetables, or other articles regulated under this subpart, unless the cargo has been inspected and passed by an inspector in Guam.

(h) *Space and facilities for baggage inspection.* Baggage inspection will not be performed until the person in charge or possession of the ship, other ocean-going craft, or aircraft provides space and facilities on the means of conveyance, pier, or airport that are

adequate, in the inspector's judgment, for the performance of inspections.

25. A new § 318.58–11 would be added to read as follows:

§ 318.58–11 Disinfection of means of conveyance.

If an inspector, through an inspection pursuant to this subpart, finds that a means of conveyance is infested with or contains plant pests, and the inspector orders disinfection of the means of conveyance, then the person in charge or in possession of the means of conveyance shall disinfect the means of conveyance and its cargo, in accordance with an approved method contained in the Plant Protection and Quarantine Treatment Manual under the supervision of an inspector and in a manner prescribed by the inspector, prior to any movement of the means of conveyance or its cargo. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1, "Materials incorporated by reference."

§ 318.58–12 [Redesignated as § 318.58–14]

26. Section 318.58–12 would be redesignated as § 318.58–14.

27. A new § 318.58–12 would be added and reserved as follows:

§ 318.58–12 [Reserved]

28. Section 318.58–13 would be revised to read as follows:

§ 318.58–13 Movements by the Department of Agriculture.

Notwithstanding any other restrictions of this subpart, articles subject to the requirements of the regulations in this subpart may be moved if they are moved:

(a) By the United States Department of Agriculture for experimental or scientific purposes;

(b) Pursuant to a Departmental permit issued for the article and kept on file at the port of departure;

(c) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plant pests and diseases; and,

(d) With a Departmental tag or label bearing the number of the Departmental permit issued for the article securely attached to the outside of the container of the article or securely attached to the article itself if not in a container.

29. A new § 318.58–15 would be added to read as follows:

§ 318.58–15 Costs and charges.

Plant Protection and Quarantine shall furnish the services of the inspector during regularly assigned hours of duty at the usual places of duty without cost to the person requesting the services. Plant Protection and Quarantine will not assume responsibility for any costs or charges, other than those indicated in this paragraph, in connection with the inspection, treatment, conditioning, storage, forwarding, or any other operation incidental to the movement of regulated articles under this subpart.

30. A new § 318.58–16 would be added to read as follows:

§ 318.58–16 Cancellation of certificates.

Any certificate that has been issued or authorized under this subpart may be withdrawn by an inspector orally or in writing; if he or she determines that the holder of the certificate has not complied with all conditions under the regulations for the use of the document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

Done at Washington, DC, this 28th day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–2068 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, et al.; Amendments to the Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on several amendments to administrative rules and regulations of the cranberry marketing order. The proposals would: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; and (3) delete portions of applicable sections that currently contain the Cranberry Marketing Committee's (CMC) old office address.

DATE: Comments must be received by March 4, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Divison, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jacquelyne R. Schlatter, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 states. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 31 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This proposed rule invites comments on several amendments to administrative rules and regulations of the cranberry marketing order. The proposals would: (1) Require handlers to file inventory reports at earlier dates and add a fourth reporting date; (2) increase the total quantity of cranberries exempt from program assessments from 75 to not more than 300 barrels per year; (3) delete portions of applicable sections that currently contain the Cranberry Marketing Committee's (CMC) old office address.

The first proposal would require handlers to file handler inventory reports five days earlier than currently required, and would add a fourth reporting period with a September 5 deadline. Currently handlers are required to file such reports no later than the 10th day of February, May, and August of each fiscal period. The proposed changes would require handlers to file such reports no later than the 5th day of the above mentioned months and add a fourth reporting period with a September 5th deadline. The impact of this proposed regulation on handlers would not be significant. This proposal would simply require these reports to be filed earlier and at one additional date and any potential costs to handlers would appear to be significantly offset when compared to the potential benefits to the industry. These reports contain important information essential to the CMC in formulating marketing policies and recommendations on marketable quantity regulations and base allotment percentages. The CMC management staff needs more time to compile and analyze the information before distribution at CMC meetings, and this proposal would allow the CMC that additional time.

The second proposal would increase the minimum handling exemption from 75 to not more than 300 barrels per year. This proposal would relieve handlers of certain marketing order requirements by not requiring them to pay assessments if they handle not more than 300 barrels of cranberries per year. This proposal would also exempt handlers who handle not more than 300 barrels of cranberries per year from the set aside provisions of the order. These provisions have not been used since 1972. The CMC reports that it is costly and burdensome to collect assessments on such small shipments of cranberries. These handlers would still have to file receipt, inventory, and handling reports to the CMC, as required by the order. The impact of this proposal on affected handlers would be beneficial because the change would expand the minimum handling exemption.

The last proposal would delete the listing of the CMC's office address from applicable sections in the rules and regulations. The CMC office has relocated to Wareham, Massachusetts and its old address should not appear in the rules and regulations.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not be made effective until OMB approval has been obtained.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Subpart—Rules and Regulations

1. The authority citation for 7 CFR Part 929 continues to read as follows.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.101 is amended by revising the section to read as follows:

§ 929.101 Minimum exemption.

The requirements of § 929.41 *Assessments* § 929.54 *Withholding* shall not apply to any handler in a fiscal year during which the handler handles not more than a total of 300 barrels of cranberries.

3. Section 929.105 is revised to read as follows:

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to §§ 929.6 and 929.48 shall be mailed to the committee office or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) Certified reports shall be filed with the committee, on a form provided by the committee, by each handler not later than the 5th day of February, May, and August of each fiscal period and the 5th day of September of the succeeding fiscal period showing:

(1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the reporting period indicated through January 31, April 30, July 31, and August 31 respectively, and

(2) The respective quantities of cranberries and cranberry products held by the handler on February 1, May 1, August 1, and August 31 of each fiscal period.

4. Section 929.160 is amended by revising paragraph (c) to read as follows:

§ 929.160 [Amended]

* * * * *

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office.

* * * * *

Dated: January 27, 1988.

Robert C Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–2129 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

Irish Potatoes Grown in Colorado Area 2; Proposed Change in Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (except Russet Burbank) grading U.S. Grade No. 2 from 1⅞ inches to 2 inches minimum diameter or four ounces minimum weight. This action would also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. The size change would also apply to imported red skinned, round type potatoes. This action is intended to prevent potatoes of undesirable size and

quality from being distributed in fresh market channels.

DATES: Comments must be received by February 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 948 [7 CFR Part 948], as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 23 potato importers subject to the requirements of the potato import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The Colorado Agricultural Statistics Service estimated planted acreage for the 1987–88 crop in the San Luis Valley (Area 2) at 59,000 acres, an increase of 4,000 acres over the 55,000 acres harvested in 1986–87. Shipments during the 1986–87 season totaled 29,745 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,814,866 cwt., entered the fresh market, and the remaining three percent (462,103 cwt.) was shipped to processors. Culls approximated 1.4 million cwt, which were utilized for starch.

The breakdown of fresh shipments by variety was 70.4 percent Centennial Russets (9,725,665 cwt.), 23.5 percent Russet Burbanks (3,246,494 cwt.), 5.9 percent reds (815,077 cwt.), and 0.2 percent Other varieties (27,630 cwt.).

Two percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 60 percent U.S. No. 1, 22 percent U.S. Commercial, 17 percent U.S. No. 2, and one percent U.S. No. 1/ Size B.

While this regulation would increase the minimum diameter for round variety potatoes and all long varieties (except Russet Burbank) grading U.S. No. 2 and would also establish an earlier starting date for maturity requirements for the 1988–89 crop year, exemptions to the handling regulation would continue to be available. For example, each person may handle up to but not more than 1,000 pounds of potatoes without regard to the requirements of the handling regulation. This exception does not apply to any shipment which exceeds 1,000 pounds of potatoes. Furthermore, grade, size, maturity, and inspection requirements are not applicable to shipments of potatoes for seed, livestock feed, relief or charity, or canning, freezing, and "other processing."

The handling requirements for fresh Colorado Area No. 2 potatoes are specified in § 948.386 [46 FR 52324, October 27, 1981] and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must grade at least U.S. Commercial and be at least 2 inches in diameter or at least 4 ounces in weight, or grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All varieties of potatoes may be Size B if graded at U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2⅛ inches and no minimum or maximum weight requirement. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period September 1 through October 31, specify that all potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This proposed rule would increase the minimum diameter for round variety potatoes from 2 inches to 2⅛ inches and for long varieties (other than Russet Burbank) grading U.S. Grade No. 2, from 1⅞ inches to 2 inches or a 4 ounce minimum weight. This action would also change the starting date of maturity requirements from September 1 to August 25 beginning with the 1988–89 crop year. These changes were recommended by the Colorado Potato Administrative Committee Area 2.

The changes in the size requirements would eliminate the less desirable sizes of potatoes from the marketplace without shorting the market. Requiring handlers to ship larger sized potatoes, which are preferred in the marketplace, would be expected to foster increased consumption and have a positive impact on the industry.

The change in the starting date of the maturity requirements would recognize the industry's switch to earlier maturing varieties and the need to ensure the maturity of early season shipments in the interest of the Colorado potato industry and potato consumers. The maturity requirements are based on the degree of skinning on a shipment of potatoes, and are effective during the period September 1 through October 31 each season. Maturity requirements relate to the amount of skin on the potato, which is a factor in the storability of potatoes. All varieties of potatoes that grade U.S. No. 2 cannot be more than "moderately skinned" which means that not more than 10 percent of the potatoes in a lot more than one-half of the skin missing or "feathered" For all other grades, potatoes cannot be more than "slightly skinned" which means that not more than 10 percent of the potatoes in the lot have more than one-fourth of the skin missing or "feathered." These requirements prevent badly skinned potatoes from being distributed to fresh market outlets.

In recent years the producers in this area have switched to earlier maturing varieties, and season shipments now begin in late August rather than September. To reflect these changes in production and marketing practices, the starting date for maturity requirements would be changed to August 25 each season. The earlier starting date is proposed in the interest of producers, handlers, and consumers and would have no measurable effect on the quantity of potatoes shipped from Colorado Area No. 2. The earlier starting date would enable the Colorado Area No. 2 potato industry to better compete with other potato producing areas in the U.S. by ensuring the shipment of qualities acceptable to buyers early in its season. The shipment of unacceptable quality potatoes early in the season can have a negative impact on market demand and grower returns throughout the entire season.

Quality assurance is very important to the Colorado (Area 2) potato industry both within the outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action would increase the quality of potatoes in the marketplace, it would also be of benefit to both Colorado (Area 2) potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports, then must meet the quality standards set for the particular area.

In the case of potatoes, the current import regulation [§ 980.1, 34 FR 8043] specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (M.O. 945) during each month of the marketing year and that for round white types, they be based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31, and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year.

The quality standards imposed upon potatoes grown in Colorado Area 2 are applied only to imports of red-skinned, round type potatoes and only during the months of September through June. During July and August, the import requirements are based upon those in effect for potatoes grown in Washington.

While it is being proposed that the maturity requirements for Colorado Area 2 potatoes be made effective at an earlier date, it has been determined that shipments from this area in late August are minimal, and that those from Washington continue to dominate throughout the month. Imports of red skinned, round type potatoes during July and August are in most direct competition with the same type as produced in Washington State, the area covered by Order No. 946. Therefore, the import requirements for round red varieties would continue to be based upon those established for Colorado Area 2 only from September 1 through June 30. Accordingly, the language of the determinations made in § 980.1(a)(2) concerning direct competition does not have to be changed.

While no change would be made in the import requirement pertaining to maturity, imports of round red-skinned potatoes would have to meet the increased minimum size requirement (from 2 to 2-⅛ inches) being proposed herein during the September 1 to June 30 period. No change is required in the language of § 980.1 or § 948.386(h) *Applicability to imports.* However, a conforming change to § 948.386(h) would be made to revise obsolete language.

Based on the above, the Administrator of AMS had determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 15 days is deemed appropriate because the shipping season for potatoes has begun, and it is important that any change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of potatoes in the production area are already aware of the recommended changes.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

2. Section 948.386 (46 FR 52324, Oct. 27, 1981) is amended by revising paragraphs (a)(1), (a)(3), (b) introductory text, and (h) to read as follows:

§ 948.386 Handling regulations.

* * * * *

(a) *Minimum grade and size requirements.*—(1) Round varieties, U.S. No. 2, or better grade, 2–⅛ inches minimum diameter.

* * * * *

(3) *All other long varieties except Russet Burbank,* U.S. Commercial, or better grade, 2 inches minimum diameter or 4 ounces minimum weight, or U.S. No. 2 grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

(b) *Maturity (skinning) requirements.*—From August 25 through October 31 minimum maturity requirements shall be: * * *

* * * * *

(h) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 *Import regulations* [7 CFR 980.1], Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 1 through June 30 each year shall meet the minimum grade, size, and quality requirements prescribed in paragraph (a) of this section, and during the period September 1 through October 31 shall meet the maturity requirements as specified in paragraph (b) of this section.

Dated: January 27, 1988

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2178 Filed 2–2–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-27; Notice No. SC-88-1-NM]

Special Conditions; British Aerospace BAe ATP Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes a special condition for the British Aerospace BAe ATP Airplane with PW124 series engines. Control of these engines is provided electronically with mechanical backup. A special condition is proposed because airplanes with these series engines will have novel or unusual design features associated with the installation of the full authority electronic engine control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are protected.

DATE: Comments must be received on or before February 23, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-27, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-27. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-27." The postcard will be date/time stamped, and returned to the commenter.

Background

On March 28, 1982, British Aerospace made an application to the Federal Aviation Administration for an amended type certificate for the advanced turboprop (ATP) airplane. Subsequently, the manufacturer determined that a new U.S. type certificate was desirable and changed his application to reflect this.

BAe and ATP Design Features

General

The BAe ATP airplane is a stretched variant of the British Aerospace HS 748 (formerly Hawker Siddeley HS 748). It is 17.5 feet longer and carries 72 passengers. Other differences from the HS 748 include: type II overwing emergency exits, new doors, Pratt and Whitney (Canada) PW124A engines, six bladed propellers, swept fin, improved wing center section structure, new wing tips and main landing gear, modified nose gear, new electrical generating system and hydraulic pumps, introduction of a bleed air environmental control system (ECS), weight increase to 49,800 pounds, smaller windows, electronic flight instrument systems and electronic engine controls.

Because the regulations do not include adequate airworthiness standards for lightning protection for the PW124 series engines with full authority electronic controls, this special condition is proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The BAe ATP with PW124 engines is being designed with the propulsion systems using electrical interfaces for critical functions such as crew inputs to the engines. The system also provides mechanical manual reversion. The electrical part of these systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike causing electrical or magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion: The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in JAR AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stoke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D) A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is make up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$$i(t) = I_0[e^{-at} - e^{-bt}]$$

where:

t = time in seconds,

I = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (1/2 Component D)	Multiple burst (Component H)
I_0, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	2,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and					
$(di/dt)_{max}$ (amp/$_{sec}$)	=	1.4×10^{11} @t = 0 + $_{sec}$	1.4×10^{11} @t = 0 + $_{sec}$	0.7×10^{11} @t = 0 + $_{sec}$	2.0×10^{11} @t = 0 + $_{sec}$
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

Type Certification Basis

The United Kingdom (UK) type certification basis for this airplane will be Joint Airworthiness Requirements (JAR) 25. Based on the provisions of 14 CFR 21.17 and the Bilateral Airworthiness Agreement between the U.S. and the UK, BAe, through CAA-UK, will show compliance with Part 25 of the FAR, as amended by Amendments 25-1 through 25-54, and Amendment 25-62, including any exceptions and exemptions which are identified in the Type Certificate Data Sheet.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(a) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as described in §§ 11.28 and 11.29(b) and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Condition

Accordingly, the FAA proposes the following special condition as part of the type certification basis for the British Aerospace BAe ATP airplane with PW124 series engines.

1. The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Lightning Protection.* Each electronic propulsion control system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

Issued in Seattle, Washington, on January 15, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-2117 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-28; Notice No. SC-88-2-NM]

Special Conditions; Boeing Model 767 Series Airplanes With PW4000 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 767 series airplanes with PW4000 series engines. The airplanes with these series engines will have novel or unusual design features associated with the installation of the digital electronic propulsion control system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning, the susceptibility to external radio frequency (RF) energy sources, and the overall propulsion control system integrity. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical, are maintained.

DATE: Comments must be received on or before March 21, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-28, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-28. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-28." The postcard will be date/time stamped, and returned to the commenter.

Background

On September 26, 1986, the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, made an application to the Federal Aviation Administration for an amended type certificate for the Model 767 series airplanes.

Boeing 767 Design Features

General

The Boeing 767 series airplane is a 290 passenger (maximum), fuel efficient, low noise (Stage 3), twin-engine transport. The 200 series and 21 foot longer 300 series airplanes were previously approved with JT9D series and CF6 series engines, both of which have electronic engine controls with conventional (hydro-mechanical) backup. The twin-aisle transports are currently approved for a maximum takeoff weight of 351,000 pounds and have a maximum operating altitude of 43,100 feet.

The installation of the PW4000 series engines will incorporate a full authority digital electronic engine control system with no backup. The regulations incorporated by reference on the type certificate for the Boeing 767 series airplanes do not include adequate airworthiness standards for this installation and, as a result, these special conditions are proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.851). These standards do not, however, provide the level of safety for the electronic propulsion control system that is inherently provided by traditional designs which utilize mechanical means to connect the engines to the flight deck.

The 767 with PW4000 engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to the engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a Special Condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion: The following "threat definition" is proposed as a basis to use in determining compliance with the proposed lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Joint Airworthiness Requirements (JAR) AMC-S5 or Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and it systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control system may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and,

3. *Multiple Burst:* (Component H) In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental theat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$I(t) = I_0 (e^{-at} - e^{-bt})$

where:

t = time in seconds,

I = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
I_0, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following charactenstics:					
I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and					
$(di/dt)_{max}$ (amp/$_{sec}$)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t = .5 us	1.0×10^{11} @t = .25 us	0.5×10^{11} @t = .25 us	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

Protection From Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from gound-based transmitters. With the trent toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the airplane to RF energy must be established. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be cabable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when compliance with the proposed RF special condition is shown with paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 20 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Average (V/m)	Peak (V/m)
10KHz-2 MHz	100	100
2 MHz-30 MHz	1,000	1,000
30 MHz-100 MHz	100	100
100 MHz-200 MHz	200	3,000
200 MHz-1 GHz	2,000	6,000
1GHz-2 GHz	2,000	14,000
2 GHz-8GHz	600	14,000
8 GHz-10GHz	2,000	14,000
10 GHz-40 GHz	1,000	8,000

To establish the values in paragraph 2 above, an analysis was performed using a model of U.S. airspace and the Electromagnetic Compatibility Analysis Center (ECAC) data base, which contains the characteristics of all U.S. emitters. This analysis assumed a minimum separation distance between the airplane and emitters as follows: In the airport environment, 250 ft. for fixed emitters and 50 ft. for mobile emitters; for the air-to-air environment, 50 ft. from interceptor aircraft and 500 ft. from non-interceptor aircraft; for the ground-to-air environment, 500 ft.; and for the ship-to-air environment, 1,000 ft. The results of this analysis were then combined with the results of a study of emitters in European countries. The above values are therefore believed to represent the worst case external threat levels to which an airplane would be exposed in the operating environment.

Propulsion Control System

The Propulsion Control System for the Boeing 767 with PW4000 series engines is made up of: (1) A dual channel Full

Authority Digital Electronic Control (FADEC) mounted on each engine's fan case: (2) an array of interfacing aircraft computers which provided data necessary for thrust management, data validation, and reversion modes; (3) power levers in the aisle stand; (4) the hydromechanical interfaces on the engines; (5) the power supplies; and (6) the interconnecting wiring. The electronic components of this array that are directly associated with setting and controlling the thrust of each engine, while meeting the requirements of §§ 25.901 and 25.903, may not necessarily exhibit a level of system integrity that was envisioned under the original B767 certification basis. Although the software function contained in the engine's FADEC has been validated to a "critical" level during the engine certification program, Part 25 contains no specific requirements for evaluating the design integrity of the FADEC and the overall control system, as installed in the airplane. Unlike conventional hydromechanical controls, the electronic control does not exhibit a "wear out" characteristic, but rather exhibits an in-service failure rate which may be somewhat random with time. Therefore, endurance tests or other "mechanical" type evaluations and subsequent tear downs do not establish any significant degree of implied or inherent design integrity as has been the case with mechanical systems evaluated in accordance with Part 33 of the FAR.

The applicable airworthiness requirements for the engine installation do not contain adequate standards by which to determine an acceptable level of safety for a full authority digital electronic engine control system installed on a transport airplane. Therefore, a special condition is required to establish that the overall propulsion control system (including the full authority digital electronic control) exhibits an acceptable level of system integrity.

Type Certification Basis

The type certification basis for the Boeing Model 767 series airplanes is Part 25 of the FAR, as amended by Amendments 25–1 through 25–45, with certain exceptions and exemptions which are identified in the Model 767 series Airplane Type Certificate No. A1NM. These exceptions and exemptions and certain noise and environmental requirements and a Special Federal Aviation Regulation are not pertinent to the special conditions.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as described in §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Boeing Model 767 series airplane with PW4000 series engines.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* In addition to compliance with the requirements of §§ 25.581 and 25.954 of the FAR concerning lightning protection, each electronic propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

3. *Protection from Unwanted Effects of Radio Frequency (RF) Energy.* Each propulsion control system must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to externally radiated electromagnetic energy sources which may be reasonably anticipated in service.

4. *Propulsion Control System.* In addition to the requirements of §§ 25.901(c) and 25.903(b) of the FAR, the components of the propulsion control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

Issued in Seattle, Washington, on January 15, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

FR Doc. 88–2116 Filed 2–2–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88–CE–03–AD]

Airworthiness Directives; Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directives (AD), applicable to all Mitsubishi Models MU–2B, MU–2B–10, –15, –20, –25, –26, –26A, –30, –35, –36, –36A, –40, and –60 airplanes equipped with Bendix Model M–4C and M–4D autopilots and/or Bendix electric pitch trim systems. This proposed AD would require: (a) The standardization of the function, location and color of the autopilot/manual electric pitch trim system disconnect/interrupt push button; (b) verification that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) changing the LIMITATION section of the Airplane Flight Manual of certain models together with an associated placard on the main instrument panel. This proposal is the result of a request from the National Transportation Safety Board (NTSB), which while investigating a series of fatal MU–2B accidents, concluded that pilots were becoming confused in the operation of the interrupt/disconnect switches for the electric pitch trim and autopilot systems. Compliance with this proposed AD would preclude pilot confusion and possible loss of airplane.

DATES: Comments must be received on or before March 24, 1988.

ADDRESSES: Mitsubishi Service Bulletins (S/B) No. 206 dated October 13, 1987, and S/B 066/22–006 dated December 18, 1987, applicable to this AD may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 681–7279, or may

be examined in the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: For Mitsubishi Aircraft International, Inc. (MAI) Type Certificate (TC) A10SW series airplanes manufactured in the U.S.: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE–130W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4419. For Mitsubishi Heavy Industries, Inc. (MHI) TC A2PC Series airplanes manufactured in Japan: Herbert Peters, Aerospace Engineer, Western Aircraft Certification Office, ANM–173W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007; Telephone (213) 297–1367.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this Notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88–CE–03–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The National Transportation Safety Board (NTSB), after reviewing fatal accidents involving the apparent sudden loss of control of Mitsubishi MU–2B Series airplanes resulting in uncontrolled collisions with the ground/water, requested that the FAA conduct an investigation of the Bendix M–4 Series autopilot systems as installed on the MU–2B airplanes and take such appropriate action as deemed necessary to correct any deficiencies identified. The result of this investigation, with cooperation between MHI, MAI, Beech Aircraft Corporation (licensee for MHI), Bendix Corporation, and the FAA, revealed that there are at least seven different configurations of the disconnect/interrupt switches for the autopilot and electric pitch trim systems. This situation could lead to pilot confusion and an inability to safely operate the MU–2B Series airplanes. A pilot's familiarity with the autopilot disconnect procedures in one MU–2B model airplanes does not guarantee the same familiarity with another MU–2B model airplane even if owned by the same operator. This situation could lead to pilot confusion and affect his ability to safely operate an MU–2B Series airplane. This confusion was apparently a factor in an MU–2B airplane crash at Bartlett, Texas on June 2, 1986. MHI agreed and issued S/B No. 206 dated October 13, 1987, correcting this installation on those MU–2B–30 and –35 model airplanes manufactured in Japan in accordance with Type Certificate (TC) A2PC, equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M–4 autopilot installation.

Subsequently MHI and Beech issued S/B No. 066/22–006 dated December 18, 1987, which covers those MU–2B model airplanes equipped with an FAA approved installation of the Bendix M–4 autopilot by providing one manual electric pitch trim switch configuration or one combination autopilot/electric pitch trim disconnect/interrupt switch configuration. The disconnect/interrupt switch is a red bi-level momentary push-button device with a partial depression disconnecting the autopilot. Continued further depressing of the switch will disconnect/interrupt the lectric pitch trim system. This switch is located below and outboard of the electric pitch trim switch on the outboard horn of the control yoke. This proposed airworthiness action provides standardization of switch location, color and function in MU–2 Series airplanes equipped with a Bendix M–4 autopilot.

To reduce the possible misuse of the autopilot/manual electric pitch trim system the FAA prepared an "Accident Prevention Program" flyer which explains the operation of the autopilot/electric pitch trim systems and the reasons the pilot should not assist the autopilot system perform its intended function. This flyer was made available to all MU–2B owner/operators through Beech Aircraft Corporation.

During FAA review of the proposed associated AFM revisions, the FAA determined that there may be a large altitude loss in the coupled autopilot approach mode resulting from an autopilot/manual electric pitch trim (AP/MEPT) runaway malfunction on certain MU–2B–35 and –36 model airplanes incorporating the AP/MEPT system installed in accordance with Supplemental Type Certificate (STC) SA1693SW or on certain MU–2B–35, –36A and –60 model airplanes incorporating the AP/MEPT system installed in accordance with approved MAI data. This large altitude loss is an airplane operating limitation and must be incorporated in the LIMITATION section of the affected model Airplane Flight Manual and displayed to the pilot by the installation of a permanent red placard, using letters a minimum of 0.10 inches in height, which states: "COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

To verify that all MU–2B Model airplanes equipped with Bendix AP/MEPT systems are uniform in configuration and function, a "one time" visual check and functional ground test of the autopilot/manual electric pitch trim is also proposed. This visual check will verify that the disconnect/interrupt switch is red in color and that this switch is located on the outboard horn of the control yoke, and further verify that the autopilot circuit breaker is properly labeled. The proposed functional test is a ground test requiring manually overpowering the autopilot and verifying that the manual pitch trim wheel stops moving after each of the following actions: (1) The disconnect/interrupt switch is depressed; (2) the autopilot circuit breaker is pulled; and (3) the autopilot master switch or airplane master switch or radio master switch (as appropriate) is positioned to "OFF".

S/B No. 206 was approved and made mandatory in Japan by the issuance of JCAB AD No. TCD 2856–87 dated October 29, 1987. The JCAB which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan has classified this

S/B No. 206 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under JCAB registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of MU-2B S/B No. 206 and No. 066/22-006, and the mandatory classification of S/B No. 206 by the JCAB. Based on the foregoing, the FAA has determined that the condition addressed by these service bulletins is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Consequently an AD is proposed which would correct the undesired condition and is applicable to all Mitsubishi MU-2B model airplanes equipped with a Bendix M-4C or M-4D autopilot and/or a manual electric pitch trim system. The proposed AD would require the incorporation of S/B No. 206 and/or No. 066/22-008 as appropriate to: (a) Standardize the location, functions and color of the disconnect/interrupt switch; (b) verify that the system can be disconnected, interrupted or shut off by at least three independent methods; and (c) change the LIMITATION section of certain MU-2B model airplanes together with mounting an associated red placard on the main instrument panel prohibiting coupled autopilot approaches below 125 KCAS or 300 feet AGL.

The FAA has determined there are approximately 274 airplanes affected by the proposed AD. The cost of complying with this proposed AD is estimated to be $400 per airplane, with a total cost estimated to be $109,600 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

All transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi: Applies to Models MU-2B, MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all Serial Numbers, with or without the SA suffix) airplanes certificated in any category, equipped with Bendix M-4C or M-4D autopilots and/or Bendix electric pitch trim systems.

Note 1: The serial number of airplanes manufactured in the United States by Mitsubishi (MAI) under Type Certificate (TC) A10SW are suffixed by "SA." The serial numbers of airplanes manufactured in Japan by Mitsubishi Heavy Industries, Inc. (MHI) under TC A2PC have no suffix.

Compliance: Within the next 200 flight hours or five (5) calendar months, whichever occurs first.

To minimize the possibility of confusion in autopilot/manual electric pitch trim disconnect/interrupt switch location, accomplish the following:

(a) Modify the control yoke in the affected model and serial numbered airplane as follows:

(1) For MU-2B-30 and -35 model airplanes manufactured under TC A2PC equipped with a Japanese Civil Airworthiness Board (JCAB) approved Bendix M-4C autopilot, in accordance with MHI Service Bulletin (S/B) No. 206 dated October 13, 1987, or

(2) For all other MU-2B model airplanes equipped with an FAA approved installation of the Bendix M-4 autopilot, in accordance with MHI S/B No. 066/22-006, dated December 18, 1987.

(b) For MU-2B-35 and -36 model airplanes with Bendix autopilots installed in accordance with STC SA1693SW and MU-2B-35, -36A and -60 model airplanes with Bendix M-4D autopilots installed in accordance with approved MAI data, accomplish the following:

(1) Insert additional placard data in the LIMITATION Section of the Airplane Flight Manual (AFM) as follows:

"COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(2) Fabricate and install a permanent red colored placard in full view of the pilot using white colored letters of a minimum of 0.10 inches in height which states:

"COUPLED AUTOPILOT APPROACHES BELOW 125 KCAS OR 300 FEET AGL NOT PERMITTED."

(c) Insertion of a copy of this AD in the "LIMITATIONS" section of the AFM satisfies the requirements of paragraph (b)(1) of this AD.

(d) Prior to returning the aircraft to service, accomplish a visual configuration check and system functional ground test, and record successful completion in the appropriate airplane maintenance record as prescribed by FAR 91.173, as follows:

(1) Visually verify that:

(i) The disconnect/interrupt switch is red in color and located on the outboard horn of the control yoke; and,

(ii) The disconnect/interrupt switch is properly labeled as shown in Figure 7 of MHI S/B N. 206 for the A2PC airplanes or as shown in Figure 8 of Figure 9, (as appropriate for the control wheel configuration) of MHI S/B No. 066/22-008 for A10SW airplanes, as applicable; and,

(iii) The autopilot circuit breaker is properly labeled.

(2) If a manual electric pitch trim system only is installed, engage the system and press the trim button to cause the manual pitch trim wheel to rotate, then verify that after each of the following operations is performed the manual pitch trim wheel stops moving when:

(i) The disconnect/interrupt switch is depressed; or,

(ii) The Master Electric Power switch is positioned to "OFF"; or,

(iii) The Radio Master switch is positioned to "OFF" (if installed and so configured) or;

(iv) The electric trim circuit breaker is pulled.

Note 2: It is very important to verify that the manual pitch trim wheel stops moving after each of the above operations.

(3) If an autopilot system is installed, with or without a manual electric trim system, engage the system and then verify:

(i) That the autopilot system can be overpowered by pushing or pulling on the control yoke; and,

(ii) That, while overpowering the autopilot, the manual pitch trim wheel stops moving when each of the following operations is performed:

(A) The disconnect/interrupt switch is depressed; or,

(B) The autopilot master switch is positioned to "OFF" (On some MU-2B airplanes equipped with MHI installed manual electric trim system, the RADIO MASTER switch must be used to disconnect the system in lieu of the autopilot master switch); or

(C) The autopilot circuit breaker is pulled.

Note 3: It is very important that the manual pitch trim wheel stops moving after each of these opertions.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 900009-2003; and on the MAI airplanes, if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation (Licensee to Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or may examine the documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 22, 1988.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 88-2107 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-129-AD]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, that would require a modification of the emergency lighting system. This proposal is prompted by reports that certain elements of the emergency lighting system may not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

DATES: Comments must be received no later than March 18, 1988.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V. Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900, Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald E. Gonder, Technical and Administrative Support Staff, ANM-103, telephone (206) 431-1928; or Mr. Robert Huhn, Standardization Branch, ANM-113, telephone (206) 431-2339. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been reports that the emergency lighting system on Fokker Model F28 series airplanes may not come on automatically upon impact when both engines stop and the normal aircraft power is lost, if the battery remains attached to the power bus. In this situation, the voltage drop out relay would prevent the independent lighting system from operating. The voltage drop out relay remains energized until the DC bus voltage drops to 10 to 12 volts. Accordingly, during an impact, if the battery remains attached to the bus and is above 10 to 12 volts, the external emergency lighting system for illuminating the ground and the independent lighting system for illuminating the cabin are inhibited from operating. Additionally, adequate illumination levels may not be provided. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required during an emergency situation.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the emergency lighting system in a manner approved by the FAA.

Fokker has issued Service Bulletin F28/33-26, dated October 12, 1983, which lists affected airplanes' serial numbers and provides general instructions for modification of the emergency lighting system on affected airplanes. However, specific accomplishment instructions are not provided in the service bulletin because of the differences among each airplane's individual electronic configurations.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $122,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

BEST COPY AVAILABLE

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.132 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V. Applies to Model F28 series airplanes, as listed in Service Bulletin F28/33–26, dated October 12, 1983, certificated in any category. Compliance is required within the next 12 hours after the effective date of this AD, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Modify the emergency lighting system in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, to ensure that all elements of that system operate when normal airplane power is disconnected.

Note.—Information describing methods for accomplishing the modification is contained in Fokker Service Bulletin F28/33–28, dated October 12, 1983.

B. After installing the modification, perform a functional test of the modified emergency lighting system to verify proper operation. The functional test is considered to be successful if all elements of the emergency lighting system operate when normal airplane power is disconnected.

Note.—Normal airplane power is defined as excluding the airplane batteries.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker, B.V. Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2191 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–152–AD]

Airworthiness Directives; SAAB–Fairchild Model SF–340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain SAAB–Fairchild Model SF–340A series airplanes, which currently requires the installation of a positive stop to limit the maximum flap setting to 20° to prevent an uncommanded pitch excursion. This action provides for optional modifications which, if incorporated, allow removal of the limitations required by the AD.

DATES: Comments must be received no later than April 4, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention, Airworthiness Rules Docket No. 87–NM–152–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania, Product Suport, S–58188, Linkoping Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–152–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On March 7, 1986, the FAA issued AD 86–06–03, Amendment 39–5258 (51 FR 8791; March 14, 1986), to require certain operational limitations and the installation of a positive stop on the flap quadrant on SAAB–Fairchild Model SF–340A series airplanes to prevent flap settings in excess of 20°. This action was necessary to prevent uncommanded pitch excursions which had been reported to have occurred when the wing flaps were extended to 35° while the horizontal stabilizer had an accumulation of ice.

Subsequent investigation of one related incident revealed that a 5mm (0.2 inch) layer of clear ice with rough surface had formed over a large part of the boots on the tailplane. Coarse distribution roughness, such as that found on an airplane after flying in freezing rain, has been found to have more serious aderse effects on the Model SF–340A tail section than the typical horn ice shapes previously tested.

Since issuance of AD 86–06–03, SAAB has developed a cambered tail section, a row of vortex generators on the right-hand stabilizer, and an upspring on the elevator control system in order to reinstate the use of the 35° flap setting. This design was based on flight and wind tunnel tests, including ice simulation tests using horned shapes and sandpaper surfaces to simulate three icing conditions. Tests have shown that, with the new cambered stabilizer, there is no reversal of elevator stick force. This modification, No. 1462, is described in SAAB Service Bulletin SF 340–55–008, Revision 1, dated October 27, 1987.

Further, on one test airplane, it was found that a stall can occur before activation of the stick pusher if flaps are set at 35°, and if inflation of boots should occur in a slow speed turn. Therefore, it is considered necessary to change the schedule when the stick pusher is activated to a low angle of attack when the boot de-ice system is activated.

The de-icing boot inflation sequence includes a boot segment inflation pressure schedule of six seconds. During testing, it was noted that the boots did not completely inflate when operating them at the extreme low temperatures of the icing envelope. The low temperature inhibits the inflation and deflation rate which, in turn, affects the boot de-icing performance.

SAAB has issued Service Bulletin SF 340–27–049, Revision 1, dated July 21, 1987, which describes a modification, No. 1784, to increase the boot inflation pressure schedule time from six to twelve seconds in order to allow the boot segment to completely inflate at the coldest of the icing envelope temperatures.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the U.S., an AD is proposed which would provide an optional terminating action for the requirements of AD 86–06–03 by modifying the airplane in accordance with the two service bulletins previously mentioned. The installation of these modifications will provide optimum boot performance, provide stall warning when the boots are inflated, prevent an uncommanded pitch down, and ensure pitch control with flap configurations greater than 20°.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 94 manhours per airplane to accomplish the optional modification, and that the average labor cost would be $40 per manhour. Parts are estimated to be $83,709 per airplane. Based on these figures, the cost to U.S. operators to incorporate the optional modification is $87,469 per airplane.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model SF–340A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 86–06–03, Amendment 39–5258 (51 FR 8791; March 14, 1986), by adding a new paragraph 5. to read as follows:

Saab-Fairchild: Applies to Model SF–340A series airplanes, serial numbers 003 through 048, inclusive, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To prevent uncommanded pitch excursions, accomplish the following:

1. Within the next 7 days after the effective date of this AD, incorporate the following into the limitations section of the airplane flight manual: "More than 20° flap is NOT authorized at any time." This may be accomplished by including a copy of this AD in the airplane flight manual.

2. Within the next 21 days after the effective date of this AD, install a mechanical stop on the flap handle to limit the flap extension to a maximum setting of 20°, in accordance with SAAB-Fairchild Service Bulletin SF 340–27–036, dated February 13, 1986.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

4. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

5. Installation of Modification 1784 in accordance with SAAB Service Bulletin SF 340–27–049, Revision 1, dated July 21, 1987, and Modification 1462 in accordance with SAAB Service Bulletin SF 340–55–008, Revision 1, dated October 27, 1987, constitutes terminating action for the requirements of paragraph 1. and 2., above.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Product Support, S, 58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1988.

Temple H. Johnson, Jr.,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–2192 Filed 2–2–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ASW–52]

Proposed Amendment of Transition Area; Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Rockport, TX. The development of a new standard instrument approach procedure (SIAP) to the San Jose Island Airport, Rockport, TX, utilizing the Corpus Christi Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposed revision necessary. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP to the San Jose Island Airport. Coincident with this proposed revision would be the changing of the status of the San Jose Island Airport from visual flight rules (VFR) to instrument fight rules (IFR).

DATES: Comments must be received on or before March 10, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87–ASW–52, Department of

Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-52." The postcard will be data/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Rockport, TX. The development of a new SIAP to the San Jose Island Airport utilizing the Corpus Christi VORTAC, has necessitated the proposal of this revision. The intended effect of this proposed revision is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this proposed revision would be the changing of the status of the San Jose Island Airport from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Rockport, TX [Amended]

By adding to the end of the legal description: "and within a 7-mile radius of the San Jose Island Airport (latitude 27°56'36.6"N., longitude 96°59'04.6"W.)."

Issued in Fort Worth, TX on January 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-2108 Filed 2-2-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Reopening and Extension of Public Comment Period on Proposed Amendments to Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed Rule; reopening and extension of public comment period.

SUMMARY: Oklahoma submitted required revisions to previously submitted proposed amendments to the Oklahoma permanent regulatory program (hereinafter referred to as the Oklahoma program). As required under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), OSMRE is announcing receipt of these revisions and reopening the public comment period for 15 days.

The amendments consist of changes to several parts of the Oklahoma program that were identified as necessary to ensure that the State's regulations were no less effective than the Federal regulations, as revised since January 19, 1981, when the Oklahoma program was originally approved. This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

The proposed regulations concern the general section; permanent regulatory program; restriction on financial interests of state employees; exemption for coal extraction incident to government-financed highway or other construction; areas designated unsuitable for mining by the act; requirements for coal exploration; requirements for permit, permit processing, revisions, renewals, or sale of permit rights; administrative and judicial review; permit applications; small operator assistance; bond and insurance requirements; permanent program performance standards; and state inspections and enforcement.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on February 18, 1988 will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Copies of the Oklahoma program, the proposed modification to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and the Oklahoma Department of Mines (ODM) during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430;

Office of Surface Mining Reclamation and Enforcement, 100 L Street NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492;

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the Federal Register notices of January 19, 1981 (46 FR 4910), April 2, 1982 (47 FR 14152), May 4, 1983 (48 FR 20050), and August 28, 1984 (49 FR 34000).

Other actions taken with regard to the Oklahoma program, and program amendments can be found at 30 CFR 936.10, and 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) through (f), OSMRE notified Oklahoma by letter, (Administrative Record No. OK-661), of the changes necessary to ensure that the State's Act was no less stringent than SMCRA and that its regulations were no less effective than the Federal regulations, as revised since January 19, 1981, when the program was originally approved. To comply with this notification, Oklahoma completed a partial rewrite of its regulations. The rewrite was submitted to OSMRE for approval in three parts. These were submitted August 19, 1986:

(Administrative Record No. OK-747),

August 29, 1986

(Administrative Record No. OK-749),

and January 16, 1987

(Administrative Record No. OK-780).

The proposed regulations, consisting of Parts 700, General Definitions; 701, Permanent Regulatory Program; 705, Restriction on Financial Interests of State Employees; 707, Exemption for Coal Extraction Incident to Government-Financed Highway or other Construction; 761, Acres Designated Unsuitable for Mining by the Act; 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations; 764, Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; 772, Requirements for Coal Exploration; 773, Requirements for Permits and Permit Processing; 774, Revision; renewal; and Transfer, Assignment, or Sale of Permit Rights; 775, Administrative and Judicial Review; 777, General Content Requirements for Permit Applications; 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 779, Surface Mining Permit applications—Minimum Requirements for Information on Environmental Resources; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 783, Underground Mining Permit Applications—Minimum Requirements for information on Environmental Resources; 784, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 785, Requirements for Permits for Special Categories of Mining; 795, Small Operator Assistance; 800 Bond and Insurance Requirements for surface coal Mining and Reclamation Operations; 810, Permanent Program Performance Standards—General Provisions; 815, Permanent Performance Standards—Coal Exploration; 816, Permanent Program Performance Standards—Surface Mining; 817, Permanent Program Performance Standards—Underground Mining Activities; 819, Special Permanent Program Performance Standards—Auger Mining; 823, Special Permanent Program Performance Standards—Operations on Prime Farmland; 824, Special Permanent Program Performance Standards—Mountaintop Removal; 827, Special Permanent Program Performance Standards—Coal Preparation Plants not Located Within the Permit area of a Mine; 828, Special Permanent Program Performance Standards—In Situ Processing; 842, State Inspections; 843, State Enforcement; 845, Civil Penalties; and 850, Training, Examination, and Certification of Blasters; would replace those of the currently approved regulatory program.

Copies of the proposed changes were sent to various agencies for comment and notices were published in the Federal Register to allow the public to submit written comments or request a public hearing. Proposed Rule for the August 19, 1986 and August 29, 1986 submittals were published together on October 15, 1986 (51 FR 36405). The Proposed Rule for the January 16, 1987 submittal was published on February 25, 1987 (52 FR 5550).

OSMRE reviewed the proposed changes and sent two separate letters (Administrative Record No. OK-804) to Oklahoma identifying those proposed amendments that were not as effective as the Federal rules. Oklahoma revised parts of the amendment and resubmitted the entire package for review to OSMRE on September 18, 1987, (Administrative Record No. OK-824).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15. If approved by OSMRE and promulgated by Oklahoma, the proposed amendments will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Tulsa, Oklahoma, will not necessarily be considered in the final rulemaking or included in the Oklahoma Administrative Record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Dated: January 28, 1988.

[FR Doc. 88-2142 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3214-5]

Approval and Promulgation of State Implementation Plans, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Stack Height Analyses and Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve (1) the stack height regulations for Utah, Montana, Colorado and South Dakota, (2) the stack height demonstration analyses for Montana, North Dakota, South Dakota, and Wyoming, and (3) the stack height demonstration analyses for Utah with one exception as noted below. Each state was required to review its State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that these states have satisfied their obligations under section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations.

Today's action does not include the Kennecott stack height analyses which were submitted as part of the Utah SIP revision. EPA will address that part of the Utah Stack Height SIP, analyses of the Kennecott stack, in a separate rulemaking.

Today's action acknowledges the commitments from Wyoming and North Dakota to implement the Federal stack height regulations until the States adopt the required regulations and such regulations are approved by EPA.

EPA received the Colorado stack height demonstration analyses, but because of questions remaining with the submittal, EPA is addressing the Colorado demonstration analyses in a separate rulemaking.

DATES: Comments must be received on or before March 4, 1988.

ADDRESSES: Written comments should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the states' submittals are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1762.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), promulgated on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the basis for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all states were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

State Submissions

A. Demonstration Analyses

EPA has received stack height reviews for Montana, North Dakota, South Dakota, Utah and Wyoming. The Montana review was submitted on November 25, 1985, with subsequent submittals dated January 28, 1986, June 5, 1986, and September 2, 1986; the North Dakota review on April 18, 1986; the South Dakota review on August 20, 1986, and subsequent submittal on December 3, 1986; the Utah review on May 7, 1986; and the Wyoming review on August 8, 1986. Each State has found that no existing emissions limitations have been affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that the states' inventories above *de minimis* height and de minimis emission level are complete. EPA has carefully reviewed the states' findings that no emission limits have been affected by prohibited dispersion techniques. EPA concurs in those findings except with regard to the Kennecott stack in Utah. EPA has not completed its evaluation of the Kennecott stack's emission limit, which will thus be addressed in a separate action. Summaries of the states' findings are presented in the chart below. Detailed documentation of the states' findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

A summary of each State's findings is provided below.

WYOMING

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height	SO_2 [1] (t/yr)
Basin electric:					
(Laramie River)	Unit 1	182.9	H+1.5L	193.5	5000+
	Unit 2	182.9	H+1.5L	193.5	
	Unit 3	182.9	H+1.5L	193.5	
Pacific Power & Light:					
(Jim Bridger Power Plant)	Unit 1	152.7	H+1.5L	199.0	5000+
	Unit 2	152.7	H+1.5L	199.0	
	Unit 3	152.7	H+1.5L	199.0	
	Unit 4	152.7	H+1.5L	199.0	
(Dave Johnson Power Plt.)	Unit 1	151.1	H+1.5L	160.3	5000+
	Unit 2	151.1	H+1.5L	160.3	
	Unit 3	151.1	H+1.5L	160.3	
	Unit 4	76.3	H+1.5L	160.3	
(Wyodak Power Plant)	Unit 1	122.3	H+1.5L	143.7	5000+
Utah Power & Light:					
(Naughton)	Unit 2	68.21	Grandfathered [2] (1968).		5000+
	Unit 3	143.29	H+1.5L	144.8	
Black Hills P & L:					
(Neil Simpson)	Unit 5	76.2	H+1.5L	92.6	
FMC Wyoming:					
(Green River)	NS-1-A	91.4	H+1.5L	119.75	5000+
	NS-1-B	91.4	H+1.5L	119.75	
Wyoming Refinery	TCC Unit	69.2	H+1.5L	69.77	

[1] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

[2] Documentation provided. Grandfathered means stack in existence in given year.

NORTH DAKOTA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2 [4] (t/yr)
Amoco Oil Refinery		60.7	De minimis		5584
ANG Coal Gasification Co.		125.2	H+1.5L	127	8948
Basin Electric Power Corp:					
AVS	1	182.9	H+1.5L	189	5615
AVS	2	182.9	H+1.5L	189	
AVS	3	210.2	H+1.5L	189	
L. Olds	1	106.7	H+1.5L	191	8718
L. Olds	2	152.4	H+1.5L	191	18110
KOCH Hydrocarbon		65.5	[1]	65.5	1298
Minnkota Power Coop:					
M.R. Young	1	91	2.5[2]	199	12353
Square Butte Elec. Power Corp:					
M.R. Young	2	168	2.5[3]	199	13206
Montana Dakota Utilities:					
Coyote 1	1	151.8	2.5H[2]	221	15780
Heskett	1	91.5	H+1.5L	97.5	4635
	2	91.5	H+1.5L	94	4414
Nokota Company		152.4	H+1.5L	152.4	
United Power Association[5]	1 and 10	78	H+1.5L	11.3	11121
UPA/CPA:					
Coal Creek	1	201	2.5H[2]	222	20196
Coal Creek	2	201	2.5H[2]	222	21322

[1] A stack height of 65m is used in all dispersion modeling scenarios conducted by the company and the State.

[2] Documentation provided to show reliance.

[3] This is a merged stack. The merging did not result in any increase in the allowable emissions and was associated with the installation of a new boiler (Unit 10) meeting NSPS.

[4] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

UTAH

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2 [1] (t/yr)
Deseret	Unit 1	182.9	H+1.5L	177.9 [2]	
U.P. & L. Hunter	Unit 2 [3]	182.9	H+1.5L	177.9 [2]	
	Unit 1	183.08	H+1.5L	185.05	
	Unit 2	183.08	H+1.5L	185.05	
	Unit 3	183.1	H+1.5L	185.0	

UTAH—Continued

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[1] (t/yr)
U.P. & L. Huntington	Unit 1	182.93	H + 1.5L	[1]176.83	9448
	Unit 2	182.93	H + 1.5L	[1]176.83	
I.P.P.	Unit 1	216.46	H + 1.5L	230.2	17870
	Unit 2	216.46	H + 1.5L	230.2	-
U.S. Steel Blast Furnace	Unit 1	79.2	Grandfathered [2] (1946)		
	Unit 2	79.2	Grandfathered [2] (1946)		
	Unit 3	68.6	Grandfathered [2] (1946)		
U.S. Steel Coke Combustion	Unit 1	76.2	Grandfathered [2] (1946)		
	Unit 2	76.2	Grandfathered [2] (1946)		
	Unit 3	76.2	Grandfathered [2] (1946)		
	Unit 4	76.2	Grandfathered [2] (1946)		
Chevron USA	HCC Cracker	88.4	Grandfathered [2] (1946)		6085
Chevron Research	Cat. Dis. Air Heater	69.8	(4)	(4)	
Chevron Research	Retort	69.8	(4)	(4)	
AMAX	Melt Reactor	76.22	H + 1.5L	86.13	
	Electrolytics	76.22	H + 1.5L	86.13	
	Emergency Off Gas	76.22	H + 1.5L	86.15	
	Spray Dryer 1	76.22	H + 1.5L	86.1	
	Spray Dryer 2	76.22	H + 1.5L	86.13	
	Spray Dryer 3	76.22	H + 1.5L	86.13	
Phillips Petro	Thermal Cat. Cracking	80.8	Grandfathered [2] (1952)		5733
White River (Phase I)	3 Boilers	76.2	H + 1.5L	76.2	
White River (Phase II)	1 Boiler	76.2	H + 1.5L	76.2	
	2 Retort	76.2	H + 1.5L	111.28	
White River (Phase III)	2 Elutnators	76.2	H + 1.5L	92.98	
	2 Shale Lifts	76.2	H + 1.5L	92.98	
	1 Hydrogen Plant	76.2	H + 1.5L	76.2	
	3 Power Plants	76.2	H + 1.5L	76.2	
	2 Ball Heaters	76.2	H + 1.5L	92.98	
Tosco	Preheat [5]	(4)	H + 1.5L	(4)	
	Elutnator [5]	(4)	H + 1.5L	(4)	
	Proc. Shale Wetters [5]	(4)	H + 1.5L	(4)	
U.P. & L. Gadsby	Unit 1	76.2	Grandfathered [2] (1951)		
	Unit 2	76.2	Grandfathered [2] (1952)		
	Unit 3	76.2	Grandfathered [2] (1955)		

[1] Source modeled; no significant difference in emission limitations found.
[2] Documentation provided. Grandfathered means stack in existence in year given.
[3] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).
[4] Feasibility approval issued Dec. 28, 1983; construction still has not started; PSD permit has not been issued; EPA has advised the State that it is not approving a GEP height on these proposed stacks until a permit is issued and in compliance with the GEP regulation requirements. The State in a SIP revision, gives an actual and GEP height for these stacks. However, the State has committed to review plans for emission limitations based on PSD & stack height requirements.
[5] Proposed stacks.
[6] Permit expired; source shot down.

MONTANA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[5] (t/yr)
ASARCO (East Helena)	Sinter	128	Grandfathered [6] (1939)		5000 +
	Blast Furnace	130	Field Study [1]	114.3	
	Zinc Slag	107	Modeling [2]	65	
Conoco (Billings)	Boiler	82	H + 1.5L	[7]5.7	
Montana-Dakota (Sidney)	Coal Boiler	76	H + 1.5L	95.3	
Montana Power (Billings)	Coal Boiler	107	Grandfathered [6] (1968)		5000 +
Montana Power (Colstrip)	Coal Boiler I	152.4	H + 1.5L	164.6	
	Coal Boiler 2	152.4	H + 1.5L	164.6	
	Coal Boiler 3	211	H + 1.5L	212.6	
	Coal Boiler 4	211	H + 1.5L	212.6	
Exxon (Billings)					5000 +

MONTANA—Continued

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO_2[5] (t/yr)
Cenex (Laurel)					5000 +

[1] SIP was based upon demonstration height of 114 meters; emission limitation stated in Montana regulation 16.8.1414.
[2] Modeling done at 65m. No predicted violation of federal ambient standard at given emission rate.
[3] Modeling confirmed no violations of federal ambient SO_2 standards.
[4] Documentation provided. Grandfathered means stack in existence in given year.
[5] The emissions given below are total SO_2 emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).

SOUTH DAKOTA

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP heights (M)	SO_2[1] (t/yr)
Big Stone Power Plant		152	H + 1.5L	161.5	

[1] The state has determined that all the listed facilities below dod not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)–(iii) and prohibited by 40 CFR 50.118(a).

B. Stack Height Regulation

EPA has received stack height regulation revisions, from Utah, Montana, Colorado and South Dakota. Also, EPA received commitments to comply with the federal stack height regulations from North Dakota and Wyoming. The rules from Colorado, Utah, Montana and South Dakota and the commitments from Wyoming and North Dakota apply to all new sources and modifications as required in 40 CFR 51.164 (old citation § 51.18(1)), as well as existing sources as required in 40 CFR 51.118 (old citation § 51.12(j), (k), (1)). This means that these rules and commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA haws reviewed the revisions to these regulations and has determined that they are consistent with EPA's requirement for GEP stack height and disperson techniques as as revised on July 8, 1985. (Reference to the old citation is made because on November 7, 1986, 51 FR 40656, EPA restructured 40 CFR Part 51. The regulations themselves have not changed; the numbering sequence has changed.) Discussion on these States' submittals as well as the status of the North Dakota and Wyoming regulations are given below.

Colorado

In a letter dated May 13, 1986, Governor Richard Lamm submitted revisions to Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permission Fees) of the Colorado SIP modifying stack height evaluations. The changes consisted of (1) new definitions of dispersion techniques, good engineering practice, nearby and excessive concentrations (Section XII. D.) and (2) rules clarifying technical modelling and monitoring requirements (Section XII. C.). These revised rules bring the Colorado reglations into conformity with regulations promulgated by the EPA.

Montana

In a letter dated March 28, 1986, Governor Ted Schwendin, submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. The modification repeals Administrative Rules of Montana (ARM) 16.8. 1201, 16.8.1202 and 16.8 1203 in Sub-Chapter 12 and adds ARM 16.8. 1204 (Definition), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

Montana regulations do not specifically define "emission limitation and emission standards." However, the regulation, ARM 16.8.1205, subjects the source(s) to all emission limitation requirements in the Montana Clean Air Act. Montana regulations do not specifically define "stack in existence"; however, Montana implies its use in its definition of GEP and in its stack height requirements (ARM 16.8.1205) and exemptions (16.8.1206).

The Montana regulations are designed to limit the use of tall stacks. Further, the State underscores the change in its regulations as reflecting the policy of the State to achieve acceptable levels of ambient air quality through the use of continuous emission reduction and not through the use of dispersion techniques or tall stacks.

Utah

The Utah SIP revision to comply with the stack height requirement was submitted on May 2, 1986, by Governor Norman H. Bangerter. The submittal includes regulations to address (1) GEP stack height/dispersion techniques (2) a new section 17 of the SIP that lists all existing stacks in Utah greater than 65 meters and (3) a technical support document for Section 17 of the SIP.

New definitions are added to Part I of the Utah Air Conservation Regulations (UACR). They are UACR 1.1.128 (dispersion techniques), UACR 1.1.129 (excessive concentration), UACR 1.1.130 (good engineering practice), UACR 1.1.131 (nearby), UACR 1.1.132 (stack) and UACR 1.1.133 (a stack in existence). Part III of the UACR (UACR 3.8), which defines the stack height exemptions and requirement for source owners or operators, was also revised to be more consistent with federal regulations.

North Dakota and Wyoming

The States of North Dakota and Wyoming submitted letters of commitment to adopt, in future SIP revisions, stack height regulations similar to the new federal regulations. The North Dakota letter dated April 18, 1986, was submitted by Mr. Dana Mount, Division Director of Environmental Engineering, North Dakota Health Department. The Wyoming letter dated December 4, 1986, was submitted by Mr. Charles Collins, Administrator, Wyoming Air Quality Division. North Dakota has submitted proposed regulations to EPA and plans to finalize such regulations by mid 1987. Wyoming, however, has missed two State/EPA Agreements commitment dates to adopt the appropriate regulation. EPA is considering federal promulgation of stack height regulations for Wyoming. In the interim, EPA believes that the States' commitments to comply with the Federal regulations are acceptable.

South Dakota

On August 7, 1986, Governor William Janklow submitted revisions to the South Dakota SIP adopting federal stack height regulations. South Dakota has incorporated by reference EPA definitions for good engineering practices (40 CFR 51.1 (ii)) and dispersion techniques (40 CFR 51.1 (hh)), which were promulgated on July 8, 1985, into the South Dakota Air Quality Regulations (SDAQR) 74:26:01:12. This is to ensure that new sources comply with emission limitations and other requirements of the CAA. (Note.—As stated above, EPA restructured 40 CFR Part 51 on November 7, 1986 (51 FR 40656). The citation in SDAQR 74:26:01:12 referenced regulations 40 CFR 51.1(ii) and (hh) which are 40 CFR 51.100 (ii) and 51.100 (hh) in the new Federal citation. The South Dakota regulation and the Federal regulations are one and the same.)

In a letter dated January 30, 1987, Joel Smith, South Dakota Administrator for Air Quality and Solid Waste, committed to adopting the definitions "nearby" and "excessive concentration" (51.100(jj) and (kk), new citation) with the next regulatory update (mid 1987). In August 1987, EPA received draft regulations from South Dakota which incorporates by reference in SDAQR 74:26:01:12 all applicable stack height regulations (51.100(z), (ff), (gg), (hh), (ii), (jj), (kk) and (ll). South Dakota anticipates adoption of the regulations in late September 1987. EPA has determined that the draft regulation SDAQR 74:26:01:12 is consistent with the Federal stack height requirements and will approve in final action such regulation after adoption and submittal to EPA.

South Dakota did not have to meet public availability requirements for the one existing source that was evaluated. The source's stack height is documented by the State and is proposed for approval in this notice.

For new or modifying sources, the new source review and prevention of significant detrioration review lie with EPA (these programs have not been delegated to the State).

Thus, EPA believes that requirements for any source in 40 CFR 51.118 are satisfied.

EPA Action

EPA believes that the stack height regulations submitted by Utah, Montana, Colorado and South Dakota are consistent with the revised Federal regulations. EPA is, therefore, proposing to approve such regulations.

The commitments from North Dakota and Wyoming to comply with Federal regulations, until adequate state regulations are adopted, are acknowledged by EPA.

The stack height GEP analyses submitted by Utah, Montana, Wyoming, North Dakota and South Dakota have been determined to be acceptable. Therefore, EPA proposes to approve these stack height demonstrations. As noted earlier, the Kennecott stack height analyses submitted as part of the Utah SIP Revision will be addressed in a separate rulemaking.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Date: September 30, 1987.

James J. Scherer,

Regional Administrator.

[FR Doc. 88–404 Filed 2–2–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[FCC 88–1; File Nos. 1970–DSS–MP/ML–86; 1971–DSS–MP/ML–86; 1972–DSS–MP–86]

Modification of Space Station Authorizations of RCA American Communications, Inc., in the Domestic Fixed-Satellite Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Tentative decision.

SUMMARY: This action addresses a modification request made by RCA American Communications, Inc. (RCA) seeking authority to operate its 12/14 GHz K–3 satellite from 85° W.L. with transponders capable of operating either with 27 MHz or 54 MHz with 60 watt instead of 45 watt travelling wave tube amplifiers. The FCC proposes to accommodate high power density satellites such as K–3 by assigning these satellites to a discrete segment of orbital arc. If implemented, this discrete orbital arc segment will be used to separate high power density 12/14 GHz satellites from low power density 12/14 GHz satellites and thus greatly reduce the potential interference conflicts between satellites of differing power densities and transmission parameters.

DATES: Comments must be filed on or before March 7, 1988 and reply comments on or before March 28, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr. or Joseph Harcarufka at (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Tentative Decision* in the matter of the applications of RCA American Communications, Inc., File Nos. 1970–1971–DSS–MP/ML–86 and 1972–DSS–MP–86, adopted January 4, 1988 and released January 26, 1988.

The full text of this document is available for inspection and copying during normal business hours in the Domestic Facilities Division Public Reference Room (Room 6220), 2025 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Tentative Decision

1. In the *Tentative Decision*, we are considering the modification request of RCA American Communications, Inc. (RCA) to redesign and operate its K–3 satellite and redesign its K–4 ground spare satellite with 60 watt travelling wave tube amplifiers. RCA intends to use its K–3 satellite capacity exclusively for the distribution of video program services.

2. The Commission finds merit in the RCA request, but recognizes that in order to accommodate the K–3 satellite, it has to develop an alternative orbital assignment plan for the 12/14 GHz band. The Commission proposes using a discrete segment of the orbital arc to accommodate high power density satellites such as RCA's K–3 satellite. The Commission proposes using the orbital arc from 87 degrees to 93 degrees west longitude as the initial high power density segment and because of certain technical advantages, the Commission proposes spacing 12/14 GHz satellites within the discrete segment with 1.5 degree separations at 87.0, 88.5, 90.0, 91.5 and 93.0 degrees west longitude. Satellite operators authorized to build high-power satellites who cannot reach coordination agreements with adjacent satellite operators in the standard 12/14 GHz, 2 degree spaced, orbital arc or who prefer to operate in the high power density segment, may be assigned to a location within this special orbital arc segment.

3. Pursuant to the procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested parties may file comments on these proposals on or before March 7, 1988 and reply comments on or before March 28, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Final Decision* to follow.

4. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and ten copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to: Office of the Secretary, Federal Communications Commission, Wshington, DC 20554. All documents will be available for public inspection during regular business hours at the Domestic Facilities Division Public Reference Room, Room 6220, 2025 M Street NW., Washington, DC. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632–7000.

5. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a tentative decision until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* 47 CFR 1.1231.

Ordering Clause

6. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), 214(c) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 214(c), 303(r) and section 553 of the Administrative Procedures Act, 5 U.S.C. 553, we hereby give notice that the policies set forth in this document are adopted as a Tentative Decision.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–2202 Filed 2–2–88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[MM Docket No. 87–465]

Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-channel Land Mobile Operations

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for the Association of Maximum Service Telecasters (MST) to file comments and reply comments in response to the *Notice of Inquiry* in the MM Docket No. 87–465 (52 FR 47736; December 16, 1987). This *Notice* requested comments on proposals to amend Part 73 of the Commission's rules to address the problem of interference between television and land mobile stations.

DATES: Comments are due February 17, 1988, and reply comments are due March 2, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Whitsett, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Order Granting Request for Extension of Time To File Comments

In the matter of Resolution of Interference between UHF channels 14 and 69 and Adjacent-channel Land Mobile Operations.

Adopted: January 4, 1988.
Released: January 26, 1988.
By the Chief, Mass Media Bureau.

1. On November 30, 1987, the Commission released a *Notice of Proposed Rule Making/Notice of Inquiry* in MM Docket No. 87–465 *(Notice)*, FCC 87–336, to solicit comments on proposals to amend Part 73 of the Commission's rules to address the problem of interference between television stations operating on channels 14 or 69 and land mobile stations operating on frequencies adjacent to either channel.

2. On December 16, 1987, the Association of Maximum Service Telecasters (MST) requested an extension of time until February 17, 1988, for filing comments, and an extension until March 2, 1988, for filing reply comments. MST contends that it needs additional time because (1) it is filing reply comments in the advanced television systems proceeding; (2) the Commission's proposed amendments in this proceeding raise complex and difficult technical and policy issues; and (3) the extension will not cause administrative delay because the Commission cannot implement its proposed amendments before resolving issues in the advanced television systems proceeding. MST also stated that the Land Mobile Communications Council, an interested party, has no objection to the requested extension of time.

3. For all of the reasons cited by MST in its Motion for Extension of Time, we believe it would be beneficial to provide the additional time sought.

4. Accordingly, *in is ordered* that the date for filing comments in MM Docket No. 87–465 is extended until February 17, 1988, and the date for filing reply comments is extended until March 2, 1988. This action is taken pursuant to authority provide in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

5. For further information concerning this proceeding, contact Louis C. Whitsett, Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-2203 Filed 2-2-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 87-491]

Maritime Services; Use of Digital Selective Calling (DSC) Equipment; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the dates by which comments and reply comments are to be submitted to the Commission.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, (202) 632-7175.

SUPPLEMENTARY INFORMATION: December 1, 1987, the Commission published a Summary Notice of Proposed Rule Making in this proceeding at 52 FR 45685. The "DATES" paragraph in the item's Preamble contained the correct due dates for comments and reply comments while paragaraph 9 of the item contained incorrect dates. Accordingly, the first sentence of paragraph 9 is corrected to read, "Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments by the dates indicated in the Preamble to this document.".

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-2204 Filed 2-2-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC-37 (Sub-No. 40)]

Commercial Zones and Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule, extension of comment period.

SUMMARY: The comment period in this proceeding is being extended because interested parties have demonstrated a need for more time.

DATES: The due date for comments is extended to March 21, 1988.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-37 (Sub-No. 40) should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry, (202) 275-7540
or
Richard B. Felder, (202) 275-7691
[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: This proceeding was instituted by notice of proposed rulemaking (NPR) published January 5, 1988 (52 FR 155) to amend the commercial zone and terminal area regulations (49 CFR 1048 and 1049 and at 49 CFR 1041.21). The NPR fixed February 4, 1988 as the date for comments. By this notice, the due date for comments is extended to March 21, 1988.

Decided: January 27, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2315 Filed 2-2-88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 29, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

Farmers Home Administration
CFR Part 1901-K, Certificates of Beneficial Ownership and Insured Notes
FmHA 471-7
On occasion
Individuals or households; Businesses or other for-profit; 2,685 responses; 679 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Foreign Agricultural Service
Certificate of Quota Eligibility
On occasion
Businesses or other for-profit; 600 responses; 100 hours; not applicable under 3504(h)
John Nuttall (202) 447-2916

New

Farmers Home Administration
Application to Obtain Additional Funding
On occasion
State or local governments; Non-profit institutions; 130 responses; 520 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88-2241 Filed 2-2-88; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liasion.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting via conference call on February 5, 1988. The conference will be held in order to continue discussion and make a timely decision regarding the Communication sub-committee's recommendation for the President's Volunteer/Action Awards.

TIME AND PLACE: The conference call will take place on February 5, 1988. Discussion by a quorum of the board members will begin at 2:00 p.m. and a vote taken at 2:30 p.m. Board members will be allowed to call in their votes until 4:00 p.m. As one of the conference call sites, the National Association of Broadcasters located at 1771 N Street, NW., Washington, DC will be open to the public.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Date: February 1, 1988.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 88-2356 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-BP-M

Export Administration

[Docket Nos. 6678-01 and 6678-02]

Actions Affecting Export Privileges; Sven Olof Hakanson

Summary

In the matter of: Sven Olof Hakanson, individually and doing business as Sunitron A.B., Respondent.

Pursuant to the Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, Sven Olof Hakanson, individually and doing business as Sunitron A.B., with an address at Hagtornsvagen 4, S-183 62 Taby, Sweden, is denied all export privileges for a period of twenty (20) years from the date hereof.

Order

On December 29, 1987, the Administrative Law Judge entered his recommended Decision and Order in the above referenced matter. Pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420) (1982 and Supp. III 1985)), that Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: January 28, 1988.

Paul Freedenberg,

Acting Under Secretary for the Bureau of Export Administration.

Decision and Order

Appearance for Respondents: Mr. Sven Olof Hakanson, Hagtornsvagen 4, S–183 62 Taby, Sweden.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, Washington, DC 20230.

Preliminary Statement

On October 28, 1986, the Office of Export Enforcement (OEE), United States Department of Commerce (Agency), issued an amended charging letter to Respondent Sven Olof Hakanson, individually and doing business as Sunitron, A.B. (hereinafter collectively referred to as "Respondents") [1]. The amended charging letter alleges that Respondents violated §§ 387.4 and 387.6 of the Export Administration Regulations (15 CFR Parts 368–399), (the Regulations). The amended charging letter, dated October 28, 1986, was served on Respondents on April 2, 1987.

Respondents filed an answer to the initial charging letter on August 15, 1986. They have not filed a supplemental answer to the amended charging letter. Neither party has requested a hearing in this matter. Agency Counsel has moved for judgment on the record, pursuant to § 388.14 of the Regulations, which provides for adjudications on the record without a hearing. The present posture of the case is also consistent with a default, pursuant to § 388.8 of the Regulations, for failure to answer the outstanding amended charging letter. Since the procedure for both is the same, both sections are cited as the basis for this action.

Facts

In the amended charging letter of October 28, 1986, the Agency alleged that, between on or about January 11, 1980 and on or about November 1, 1982, Respondents, in two separate transactions, reexported a total of six U.S.-origin computers from the Federal Republic of Germany (F.R.G.) through Sweden to the United Soviet of Socialist Republics (U.S.S.R.).

Between January 11, 1980 and November 15, 1981, Respondents purchased two U.S.-origin computers from a supplier in the F.R.G. Respondents reexported these two U.S.-origin computers from the F.R.G. through Sweden to the U.S.S.R. In a second transaction occurring between April 15, 1981 and November 1, 1982, Respondents reexported four additional U.S.-origin computers from the F.R.G. through Sweden to the U.S.S.R.

The charging letter further states that between approximately January 1, 1983 and May 30, 1983, Respondents purchased three U.S.-origin computers from a Swedish company and reexported those computers from Sweden to Czechoslovakia without obtaining the reexport authorization from the Agency.

Each of the above-described transactions was undertaken by Respondents without the reexport authorization from the Agency which Respondents knew or had reason to know that such authorization, was required by § 374.1 of the Regulations. Accordingly, by engaging in the three transactions described above, Respondents violated §§ 387.4 and 387.6 of the Regulations, as alleged in the amended charging letter of October 28, 1986. Each of those violations involved U.S.-origin goods controlled under section 5 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985)) (the Act), for national security reasons.

In their answer, Respondents admit, the allegations of the amended charging letter, that they reexported, in two separate shipments, a total of six U.S.-origin computers which they had purchased from a supplier in the F.R.G., from the F.R.G. through Sweden to the U.S.S.R. They also admit that they reexported, from Sweden to Czechoslovakia, three U.S.-origin computers. Further, Respondents admit that they did not have authority from the Agency to reexport these computers to the ultimate end-user. Thus, in accordance with § 388.7 of the Regulations, Respondents' answer constitutes an admission that they committed three violations of § 387.6 of the Regulations (three transactions involving the reexport of U.S.-origin computers within the reexport authorization required by § 374.1 of the Regulations).

Discussion

While they admit to reexporting U.S.-orgin computers to the U.S.S.R. and Czechoslovakia without reexport authorization from the Agency, Respondents assert in their answer that they were unaware of any such reexport requirement. Thus, the only question in this proceeding is whether Respondents also violated § 387.4 of the Regulations in committing the above-described violations.

Respondents' defense to the Agency's allegation that they violated § 387.4 of the Regulations is that they "had no reason to believe, that such a permission was necessary * * *." Agency Counsel contends that statements made by Respondent Hakanson in connection with the Agency's investigation, as well as statements made by him in other contexts, show Respondents' "defense" to be a sham.

Agency Counsel particularly cites an interview with an OEE Special Agent on October 1, 1985, in which Respondent Hakanson expounded at length regarding both his knowledge of U.S. export control laws and his involvement in a series of transactions, including the transactions identified in the amended charging letter (Exh. 1). In that interview, Respondent Hakanson admitted to conspiring with two other individuals, in the 1979–1980 time frame, to violate U.S. export control laws. He further admitted that during that time period he and his co-conspirators specifically discussed U.S. export control laws and stated that they were all "fully aware that U.S. regulations were going to be violated" in connection with their contemplated activities.

While that statement alone is sufficient to support a finding that Respondents "knew or had reason to know" of the requirements of the Act and the Regulations, including the reexport requirements, the interview also establishes that Respondents were specifically aware in 1980 that U.S. export control laws prohibited the export or reexport of U.S.-origin computers to the U.S.S.R.[2] Hakanson also admitted to being aware of the restriction on the transfer of U.S.-origin computers to the U.S.S.R. during an investigation undertaken by a Swedish County Prosecutor. (Exh. 2) and in an interview submitted by the Respondents in a related administrative proceeding. (Exh. 3)

Agency Counsel argues, and I agree that Exh. 1–3 clearly establish that Hakanson knew or had reason to know of the reexport requirements of the Act and the Regulations. In fact, Hakanson acted in clear disregard of the Act and the Regulations in carrying out the transactions identified in the amended charging letter.

Based on the above findings of fact, I conclude that an Order denying Respondents' U.S. export privileges for a period of 20 years from the date a final order becomes effective by being entered in this proceeding.[3] The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondents.

Order

I. For a period of 20 years from the date of the final Agency action, Respondents Sven Olof Hakanson, individually and doing business as Sunitron A.B., Hagtornsvagen 2–4, 183–62 Taby, Sweden,

and all successors, or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges or participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(i) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)). That disposition will constitute the sole basis for any entry in the Table of Denial Orders, until modified. (15 CFR Part 388 (Supp. No. 1, 1987)).

Date: December 29, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88–2168 Filed 2–2–88; 8:45 am]

BILLING CODE 3510-DT-M

[1] An initial charging letter was issued by the Agency on July 21, 1986. Respondents filed an answer to that charging letter on August 16, 1986, admitting certain allegations and denying others. On September 19, 1986, Agency Counsel's petition to amend the charging letter was granted. The amended charging letter deletes allegations and names relating to a conspiracy but does not alter the basic charges.

[2] On January 11, 1980, the Agency issued a General Order suspending all outstanding validated export licenses or other authorizations for export to the U.S.S.R. would be issued, pending review and revision of U.S. policy in light of Soviet intervention in Afghanistan. (45 FR 3027, January 16, 1980) The General Order is the "U.S. embargo laws [*sic*]" referenced in the report of interview.

[3] I do not concur in Agency counsel's suggestion of an "indefinite" denial period. The practice, started over a decade ago, of fixing definite periods appears to be better from a denied party's viewpoint. The use of the term "indefinite" is also questioned. Formerly the word "permanent" was used in these sanctions. "Indefinite" was reserved for situations whereby answering interrogatories or some other such action on the part of the Respondent could effect the removal of the cause of the denial and lead to the restoration of export privileges.

International Trade Administration

Carnegie Mellon University et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–175R. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Interferometric Spectrometer, Model DA3.16 with Accessories. *Manufacturer:* Bomem, Canada. *Intended Use:* See notice at 52 FR 18263, May 14, 1987. *Reasons for This Decision:* The foreign article provides an unapodized resolution of 0.026cm^{-1}.

Docket Number: 88–025. *Applicant:* United States Department of Energy, Argonne National Laboratory, Argonne, IL 60439–4812. *Instrument:* Tunable Picosecond Dye Laser System. *Manufacturer:* Lambda Physik, GmbH, West Germany. *Intended Use:* See notice at 52 FR 46639, December 9, 1987. *Reasons for This Decision:* The foreign article provides a 50 ps pulse duration over a tuning range of 380 to 910 nanometers.

Docket Number: 88–033. *Applicant:* Brigham Young University, Provo, UT 84602. *Instrument:* Nitrogen Dioxide Analyzer, Model LMA–3. *Manufacturer:* Scintrex, Canada. *Intended Use:* See notice at 52 FR 46814, December 10, 1987. *Reasons for This Decision:* The foreign instrument provides direct continuous measurement of NO_2 with a detection limit of 5 parts per trillion.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent

to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2234 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Colorado; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-214. *Applicant:* University of Colorado, Boulder, Co 80309. Instrument. Rapid Kinetics Stopped Flow Instrument. *Manufacturer:* Hi Tech, United Kingdom. *Intended use:* See notice at 52 FR 30942, August 18, 1987. *Reasons for This Decision:* The foreign instrument provides an operating temperature range of −100°C to +100°C, is capable of measuring kinetics at pressures up to 3 bar and provides N_2 purging of the flow circuit and reservoir.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each in intended to be used, is being manufactured in the United States. This capability is pertinent to each applicant's intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2235 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Delaware et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 87-295. *Applicant:* University of Delaware, Newark, DE 19717-1303. *Instrument:* Pressure-Jump Spectrometer Consisting of Relaxation Digitizer, Model DIA-RP and DIA-RRD. *Manufacturer:* DiaLog, West Germany. *Intended Use:* See notice at 52 FR 42028, November 2, 1987. *Reasons for This Decision:* The foreign instrument measures the kinetics of cation and anion reactions on soils and soil constituents at micro- and millisecond time scales. *Advice Submitted by:* The Department of the Air Force, Air Force Weapons Laboratory, January 4, 1988.

Docket Number: 87-307. *Applicant:* University of Texas, Austin, TX 78713-7909. *Instrument:* Mass Spectrometer, Model 261V. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* See notice at 52 FR 43218, November 10, 1987. *Reasons for This Decision:* The foreign instrument provides fully automated, high precision, simultaneous multiple collection (7 collectors, 6 movable for Sr, Nd, Pb and U and 1 fixed for Ca) of very small samples. *Advice Submitted by:* The National Bureau of Standards, December 18, 1987.

Docket Number: 87-207. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Arc Furnace Melt Spinner Apparatus. *Manufacturer:* Edmund Buhler Co., West Germany. *Intended Use:* See notice at 52 FR 27039, July 17, 1987. *Reasons for This Decision:* The foreign article provides rapid quenching of molten alloys and a vacuum capability for rapid chamber evacuation to $<5\times10^{-7}$ torr. *Advice Submitted by:* The National Bureau of Standards, December 14, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The Department of the Air Force and National Bureau of Standards advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-2236 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 7 producers and/or exporters of this merchandise to the U.S. and generally the period December 1, 1985 through November 30, 1986. The review indicates the existence of dumping margins for certain firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 3, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION: On October 29, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 41601) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). Seven respondents requested in accordance with 19 CFR 353.53a(a) that we conduct an administrative review. We published a notice of initiation on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of elemental sulphur, currently classifiable under TSUSA item 415.4500 and HS item numbers 2503.10.00, 2503.90.00, and 2802.00.00.

The review covers 7 producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1985 through November 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the ex-factory or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the ex-factory, C & F, or delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight and volume rebates. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Producer/exporter	Period of review	Margin (percent)
B.P. Resources Canada	12/85-11/86	[1] 5.56
Cities Service Oil & Gas	12/85-11/86	[1] 0
Imperial Oil	12/85-11/86	0
InterRedec	12/84-11/86	0
Petrogas	12/85-11/86	[1] 0
Sulco Chemical	12/85-11/86	3.78
Texaco Canada, Inc	12/85-11/86	[1]

[1] No shipments during the period; margin from the last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For the remaining producers/exporters not covered by this review the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (50 FR 37889, September 18, 1985, 51 FR 43954, December 5, 1986, 51 FR 45153, December 17, 1986, and 52 FR 41601, October 29, 1987).

For any future entries of this merchandise from a new producer/exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm, a cash deposit of 3.78 percent shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: January 27, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-2233 Filed 2-2-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Nikkei Stock Average. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before March 4, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On May 29, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the Nikkei Stock Average futures contract (52 FR 20136). On September 16, 1987 and November 19, 1987, the Commission republished in the **Federal Register**, for 15-day and 30-day comment periods, respectively, notices of availability of the terms and conditions of this contract (52 FR 34978 and 52 FR 44460). In a January 20, 1988 letter to the Commission, the CME

requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on January 28, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–2157 Filed 2–2–88; 8:45 am]

BILLING CODE 6351–01–M

Kansas City Board of Trade; Proposed Amendments Relating to the Value Line Average and Mini Value Line Average Stock Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Kansas City Board of Trade ("KCBT" or "Exchange") has submitted for the Value Line Average (VLA) and Mini VLA futures contracts proposed changes in the method of computing the underlying cash index. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before March 4, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the KCBT VLA futures contracts.

FOR FURTHER INFORMATION: Contact Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to change the method of computation of the cash index underlying the VLA stock index futures contracts to an arithmetic average from a geometric average.

With regard to this proposal, the KCBT noted that, although the VLA index is computed using a geometric procedure, the value of a cash equity portfolio is determined arithmetically. The Exchange states that the VLA futures contracts, in comparison to other stock index futures contracts, are more difficult to use for hedging and arbitrage because a geometric average tends to underperform an arithmetic average. The Exchange believes that the proposed change in computation procedures "* * * will significantly improve the accuracy with which the index tracks an actual portfolio. The change will also cause the fair value of the futures to be at a premium to cash * * *, thus trading in what has become accepted as the proper relationship. We feel both of these will significantly enhance the utility of the product."

The KCBT proposes that the change in computation procedures will become effective with the commencement of trading in the first contract month with no outstanding open interest upon Commission approval. All existing open interest as of the date of the change would continue to be traded based on a geometric average.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC, on January 28, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–2158 Filed 2–2–88; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 87–C0003]

BernzOmatic; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with BernzOmatic, a Division of Newell Co., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 18, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION:

Dated: January 29, 1988

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between BernzOmatic a Division of Newell Co., a corporation (hereinafter, "BernzOmatic") and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. Since its acquisition in 1982, BernzOmatic has been a division of Newell Co., a corporation organized and exisitng under the laws of the State of Delaware with its principal corporate offices located at 29 E. Stephenson St., Freeport, Illinois.

3. Prior to its acquisition by Newell, BernzOmatic manufactured certain liquid propane (LP) fueled radiant camping heaters (hereinafter, "heaters"), identified and described in paragraphs 6–8 below, (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation, or otherwise, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation, or otherwise. These heaters are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. BernzOmatic manufactured, sold and distributed these heaters nationwide for resale in stores located throughout the United States. BernzOmatic, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSC, 15 U.S.C. 2052(a)(1), (4) and (11).

5. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

II. The Product

6. It is estimated that BernzOmatic manufactured 38,000–42,000 of Model TX–900 and TX–900A (and possibly other presently unknown model numbers) propane fueled, radiant camping heaters from 1962 through 1966.

7. As far as can be determined, the heater is a blue and green metal cabinet approximately 9 inches wide x 14 inches high x 7 inches deep. There is a panel/door in the rear of the heater which swings open so that 2 L.P. gas cylinders can be inserted to fuel the heater. The name "BernzOmatic" is imprinted on the front.

8. As far as can be determined, the operating instructions and warnings, which may be adhered to the inside of the rear panel/door, state, among other things, "CAUTION! For COMPLETELY SAFE OPERATION this heater SHOULD BE USED ONLY IN WELL VENTILATED AREAS, since all combustion heaters consume oxygen and exhaust fumes can be harmful. DO NOT USE WHEN SLEEPING!", or, in the althernative, it may contain the following language: "CAUTION! USE ONLY IN WELL VENTILATED AREAS." An undetermined number of the heaters contain no such warning whatsoever.

III. Staff Allegations Concerning Heaters and of Failure by BernzOmatic to Comply With the Reporting Requirements

9. Primarily through information obtained from BernzOmatic, the staff is aware of at least 32 fatalities, 1 case of permanent injury and 4 other injuries of an indeterminate nature allegedly associated with the use of these heaters. These incidents have occurred from 1965—1987. Additionally, the staff has information indicating at least 3–5 other fatalities allegedly associated with these heaters which have not been confirmed.

10. A substantial portion of those incidents which the staff has been able to investigate occurred after the users had retired for the night either in campers or in truck bed caps. Several investigations indicated that the windows of the campers or caps were ajar to some degree.

11. A test was performed by the staff on a heater which was found at the site of the latest fatality. The staff operated and observed the heater for 30 minutes and concuded that it functioned normally.

12. Testing performed by the State of Washington In January 1971 of the TX–900A, showed that it was, in the opinion of the Commission's staff, quite possible to operate this heater in such a way as to cause it to emit a lethal level of carbon monoxide in a relatively short period of time, when operated in a poorly ventilated camper.

13. The staff believes that the words of the lighting instructions and of the warning label may be inadequate (or in some cases may have been totally absent) to provide sufficient warning for users to be able to properly appreciate the dangers associated with the use of the heater.

14. A limited recall of the heaters was reportedly undertaken by BernzOmatic in 1966 and again in 1971.

15. The staff believes that BernzOmatic had received sufficient information to reasonably support the conclusion that the heaters described in paragraphs 6–8 above, contained a defect which could create a substantial product hazard, but failed to report such information to the Commission as required by section 15(b) of the CSPA, 15 U.S.C. 2064(b). Section 15(b) requires a manufacturer of consumer products who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to immediately inform the Commission of the defect.

IV. Response of BernzOmatic

16. BernzOmatic denies each and all of the staff allegations herein, except that BernzOmatic admits it performed voluntary recalls of the heaters in 1966 and again in 1971. BernzOmatic also is currently performing an additional voluntary recall.

17. BernzOmatic further and specifically denies that the subject heaters contain a defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and also specifically denies any obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to these radiant heaters. Further, section 15(b) requires the manufacturer to report "unless the manufacturer has actual knowledge that the Commission has been adequately informed."

18. BernzOmatic contends that the Commission has long been aware of

conerns associated with unvented, gas heaters in general and has obtained information in connection with a series of industry-wide rulemakings conducted by the Commission beginning in 1974 and continuing until 1981 concerning unvented, gas heaters. In 1980, the Commission estimated that approximately 70 deaths occur each in the U.S. associated with CO poisoning and unvented, gas heaters produced by many manufacturers. In 1980 the Commission issued a safety standard requiring an oxygen depletion safety shutoff system for unvented gas-fired heaters. The standard was revoked in 1984 in favor of a voluntary standard.

V. Response of Staff

19. Despite BernzOmatic's contention that "the Commission has long been aware of concerns associated with unvented, gas heaters in general" and its other contentions contained in paragraph 18 above, it is the Staff's view that any such general body of knowledge of which the Commission may have been aware does not relieve BernzOmatic of its obligation to report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), as stated in paragraph 15 above.

VI. Agreement of the Parties

20. BernzOmatic and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

21. BernzOmatic agrees to settle the Commission's claim for a civil penalty by payment in the amount of $350,000 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on BernzOmatic. This payment is made in settlement of allegations by the staff, disputed by BernzOmatic, that BernzOmatic failed to report to the Commission pursuant to the requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to certain heaters described in paragraphs 6–8 above. BernzOmatic makes no admission of any fault, liability or statutory violation and expressly denies any fault, liability or statutory violation. The Commission does not make any determination that such heaters contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has been issued.

23. Upon final acceptance of this Settlement Agreement by the Commission, BernzOmatic knowingly, voluntarily and completely waives any rights it may have: (1) To an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty. By making this waiver, BernzOmatic does not concede that the heaters identified and described in paragraphs 6, 7 and 8 above contain a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a).

24. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of $350,000 settlement amount by BernzOmatic, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

25. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

26. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject BernzOmatic to appropriate legal action.

27. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

28. Nothing in this Agreement should be construed as limiting BernzOmatic's obligation to report pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

BernzOmatic, a Division of Newell Co.

Dated: December 10, 1987.

Roger L. Maxon,

Director of Industrial Relations.

The Consumer Product Safety Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation

Dated: December 22, 1987.

Melvin I. Kramer,

Complaint Counsel.

ORDER

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered that BernzOmatic, a Division of Newell Co., shall pay within 30 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $350,000 to the Consumer Product Safety Commission.

Provisionally accepted on the 28th day of January, 1988.

By Order of the Commission.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88–2243 Filed 2–2–88; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Collection of Information Submitted to the Office of Management and Budget for Review

Reason for This Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Recruiting Incentives Survey; No Form; and No Previous OMB Control Number

Type of Request: New.

Annual Burden Hours: 7,500.

Annual Responses: 15,000.

Needs and Uses: The Recruiting Incentives Survey will measure the attitudes of high school students towards an array of actual or possible Army recruiting incentives and career opportunities using a methodology which can determine quantitatively the magnitude of the importance of the incentive.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2249 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting; Change in Date

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for February 23, March 1–2, and March 8–10 as published in the **Federal Register** (Vol. 53, No. 14, Page 1815, Friday, January 22, 1988, FR Doc. 88–1314) will be held on February 20–21, March 2–3, and March 18–19, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2250 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures will meet in closed session on March 30, 1988 at the Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review verification aspects with regard to US programs, facilities, technologies and defense contractors and determine which START verification approaches are most appropriate from the acquisition viewpoint.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1988.

[FR Doc. 88–2251 Filed 2–2–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Intent To Grant a Limited Exclusive Patent License to Roberts Pharmaceutical Corp.

The Department of the Army announces its intension to grant Roberts Pharmaceutical Corporation, a corporation of the State of New Jersey, a limited exclusive license under U.S. Patent No. 4,665,173, issued May 12, 1987, entitled "2-Acetyl- and 2-Propionylpyridine Selenosemicarbazones" by Daniel L. Klayman, et al.

The proposed limited exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR Part 404. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Patent Counsel, Walter Reed Army Institute of Research, Washington, DC 20307–5100.

For further information concerning this notice, contact: Lieutenant Colonel Francis A. Cooch, Patent Counsel, Building T–20, Room 2068, Walter Reed Army Institute of Research, Washington, DC 20307–5100. Telephone no. (Area Code 202) 576–4369/4370.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–2148 Filed 2–2–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

(CDFA No. 84.031A)

Invitation for Applications; New Awards Under the Strengthening Institutions Program for Fiscal Year 1988, Title III, Part A of the Higher Education Act, as Amended

Purpose: Provide grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

Deadline for Transmittal of Applications: April 11,1988.

Applications Available: Applications will be mailed by February 22, 1988, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: Public Law 100–202 provides $152,370,000 for Title III of the Higher Education Act (Pub. L. 89–329), as amended. Of this amount, $60,060,500 will be available under the Strengthening Institutions Program. It is estimated that of this amount, $13,000,000 will be available for new awards.

Estimated Range of Awards: $20,000 to $25,000 for 12-month planning grants; $125,000 to $200,000 for one- to three-year development grants; $350,000 to $500,000 for four- and five-year development grants.

Estimated Project Period and Average Size of Awards: $23,000 for 12-month planning grants; $185,000 for one- to three-year development grants; $450,000 for four- and five-year development grants.

Estimated Number of Awards: 10 planning grants and 48 development grants.

Special Funding Considerations: In tie-breaking situations described in the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under §§ 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market value, per FTE student, is less than the average, per FTE student, at similar type institutions; or which has library expenditures, per FTE student, which are less than the average, per FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment funds.

BEST COPY AVAILABLE

per FTE, or library expenditure, per FTE, is *less* than the following national averages for base year 1985–86.

	Average market value of endowment fund, per FTE	Average library expenditures, per FTE
Two-year public institutions	$28.00	$120.00
Two-year nonprofit, private institutions	321.00	105.00
Four-year public institutions	109.00	306.00
Four-year nonprofit, private institutions	955.00	380.00

Applicable Regulations: (a) The General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78, and (b) the Strengthening Institutions Program Regulations, 34 CFR Part 607.

For Information, Contact: Dr. Louis J. Venuto, Chief, Strenghtening Institutions Program Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB–3, Washington, DC 20202, Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057.

Dated: January 26, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–2222 File 2–2–88; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.178]

Amendment of Invitation; Applications for New Awards Under the Leadership in Educational Administration Development (LEAD) Program for Fiscal Year 1987

On September 18, 1986, the Secretary of Education published in the **Federal Register** at 51 FR 33218 a notice of proposed rulemaking for the LEAD Program. On March 24, 1987, the Secretary published in the **Federal Register** at 52 FR 9440 the final regulations for the LEAD Program. In addition, the Office of Educational Research and Improvement published an application notice on October 6, 1986, (51 FR 35550), inviting applications for grants to establish or operate a technical assistance center in each of the 50 States. The closing date for applications from the 50 States was December 5, 1986. Congress later enacted legislation permitting participation by the District of Columbia in the LEAD Program, and the Secretary then published an application notice on December 11, 1986, for a LEAD Center in the District of Columbia.

Since these documents were published, Congress enacted the Higher Education Technical Amendments Act of 1987, which authorized grant assistance for support of a technical assistance center in each of these additional entities: Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. The Secretary therefore advises eligible parties of the opportunity to apply for grant assistance for establishment or operation of a technical assistance center in Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. Grant assistance to the Trust Territory of the Pacific Islands is subject to the Compact of Free Association Act of 1985, Pub. L. 99–239. In particular, section 105(h)(2) of that Act provides that:

The laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in appropriation Acts or other Acts of Congress.

The deadline for submission of grant applications for centers in Guam, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands is April 22, 1988. Aside from this amended deadline and the obsolete schedule for an information conference, all other information provided in the application notice published on October 6, 1986, remains in effect.

FOR FURTHER INFORMATION CONTACT: Hunter Moorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502-C, Capitol Place, Washington, DC 20208, (202) 357–6116.

(20 U.S.C. 4206)

Dated: January 28, 1988.

Chester F. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–2221 Filed 2–2–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory and Coordinating Council on Bilingual Education; Meeting.

AGENCY: Department of Education.

ACTION: Notice of Meeting. The public is being given less than 15 days' notice of this meeting due to scheduling problems due to scheduling conflicts.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 11 and 12, 1988, 8:30 a.m. until 5:00 p.m. The meeting will be conducted at the Holiday Inn, 550 C Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC. 20202 (202) 732–5063.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the off limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

I. Roll Call
II. Approval of Minutes of Previous Meeting
III. Introduction of Visitors
IV. Presentation of Information by OBEMLA Director or Designee
V. Presentation of information by Members of General Public or Organizations on Agenda Items (Limited to 5 minutes per person from any one group)
VI. Committee Reports
VII. Old Business
VIII. New Business
IX. Meetings of Individual Committees
X. Reconvening of Council
XII. Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC. 20202, Monday through Friday from 9:00 a.m.–5:30 p.m.

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88–2322 Filed 2–2–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 88–05; Certification Notice—10]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to published in the **Federal Register** a notice reciting that the certification has been filed. Four owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
First Energy Associates, Needham, MA	1–12–88	Combined Cycle	65.4	Batavia, NY, New York.
Simpson Paper Co., Ripon, CA [1]	11–23–87	Simple Cycle	49.5	Ripon, CA.
ANR Venture Management Company, Detroit, MI	11–18–87	Combined Cycle	170	Westville, NJ.
Encogen One Partners Ltd., Houston, TX [2]	9–16–87	Combined Cycle	255	Sweetwater, TX.

[1] The Notice of this certification originally appeared in the FEDERAL REGISTER on December 24, 1987, (52 FR 48751) erroneously indicating that it was a combined cycle instead of a simple cycle (52 FR 48751)

[2] The Notice of this certification originally appeared in the FEDERAL REGISTER on October 8, 1987 (52 FR 37644) erroneously indicating that the name was Enserch Development Corp. instead of Encogen One Partners Ltd.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on January 26, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–2167 Filed 2–2–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board, New Production Reactor Technology Assessment Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: New Production Reactor Technology Assessment Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 12, 1988—8:30 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Ave. SW. Room 8E–089, Washington, DC 20585.

Contact: Philip M. Stone, Executive Assistant, Office of Energy Research, Department of Energy, Washington, DC 20585, (202) 586–5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The New Production Reactor Technology Assessment Panel is a subgroup of ERAB and reports to the parent Board. The Panel will review and assess four reactor types as candidate technologies for the New Production Reactor (NPR): the Low Temperature Heavy Water Reactor; the Light Water Reactor; the High Temperature Gas-Cooled Reactor; and the Liquid Metal Reactor. Specifically, the Panel will review and assess the Department's proposed evaluation criteria for the NPR; assess the adequacy of each of the four candidate reactor technologies to meet the criteria; and assess schedule and technical risks, benefits, and costs in implementing a NPR program with each technology.

Tentative Agenda:

8:30 am Organization of the Panel (charge, membership, schedules, subpanels)
9:00 am Discussion and Conclusions regarding the Department's Evaluation Criteria
11:00 am Overview of Four Technologies
1:45 pm Review of Previous Studies
4:30 pm Discussion of Interim Report
5:30 pm Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Philip Stone at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Less than 15 days notice is given because of an immediate need to prepare an interim report by March 1, 1988 as required by the Secretary.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 26, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88-2166 Filed 2-2-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board, Research and Technology Utilization Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Research and Technology Utilization Panel of the Energy Research Advisory Board (ERAB).

Date and Time: February 9, 1988—8:30 am–5:00 pm.

Place: Department of Energy, 1000 Independence Ave., SW., Room 1E-245, Washington, DC 20585.

Contact: Claire H. Sink, Executive Secretary, Research and Technology Utilization Panel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3560.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Research and Technology Utilization Panel is a subgroup of ERAB and reports to the parent Board. The Research and Technology Utilization Panel is reviewing the process and effectiveness of the movement of scientific research and technology from DOE and its contractors to industry, universities, and state and local governments; reviewing the technology transfer objectives and efforts of the major Departmental programs; evaluating the significance of past activities in this area; and is to make recommendations to improve the activities. The purpose of this Panel meeting is to discuss the information gathered at the three previous meetings of the Panel, and the report itself, in preparation for the Panel's progress report to the ERAB on February 10–11, 1988.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Claire Sink at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Less than 15 days notice is given because it was determined after the January 13, 1988 Panel meeting that the Panel needed more time to discuss the material gathered so that the Chairman of the Panel could make an appropriate presentation to the Board on February 10–11, 1988.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW, Washington, DC between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 25, 1988.

J. Ronald Young,

Director, Office of Management, Office of Energy Research.

[FR Doc. 88-2165 Filed 2-2-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-205-000 et al.]

Central Illinois Public Service Co. et al.; Electric Rate and Corporate Regulation Filings

January 28, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Public Service Company

[Docket No. ER88-205-000]

Take notice than on January 19, 1988, Central Illinois Public Service Company (CIPS) tendered for filing a rate schedule change with respect to the June 11, 1987 Power Supply Agreement between CIPS and the Illinois Municipal Electric Agency (IMEA). The rate schedule change, made pursuant to agreement between CIPS and IMEA, is a change in the rate of return on common equity used to determine the overall rate of return on net investment that should be used in the formula rate contained in the Power Supply Agreement. The change is based on the increase in the FERC benchmark rate of return on common equity, announced by the FERC in its October 19, 1987 Notice of Benchmark Rate of Return on Common Equity for Public Utilities in Docket No. RM88-12-000.

Copies of the filing were served upon IMEA and the Illinois Commerce Commission.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER88-213-000]

Take notice than on January 22, 1988, Duke Power Company tendered for filing pursuant to Section 2.C of the Settlement Agreement, a reduction in the Settlement Rates (Twenty-Third (Proposed) Revised Leaf No. 40) attributable to a reduced Corporate tax rate from 40% to 34% of federal taxes effective January 1, 1988.

Duke requests a waiver of all notice and filing requirements which would otherwise be applicable under the Commissions Rules and Regulations.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this document.

3. Empire District Electric Company

[Docket No. ER88-211-000]

Take notice than on January 21, 1988, Empire District Electric Company tendered for filing proposed changes in its Power Purchase Contract and Service Schedule with Associated Electric Cooperatives (Associated).

The proposed changes would extend the term of the contract and service schedule and allow them to remain in effect until January 1, 1991.

Copies of the filing were served upon the Missouri Public Service Commission, the Kansas State Corporation Commisison, the Oklahoma Corporation Commisison, the Arkansas Public Service Commission and Associated.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER88-155-000]

Take notice than on January 19, 1988, Iowa Public Service Company tendered for filing an amendment to its original filing in this docket providing additional supporting documentation. This filing involves a short-term sale of capacity and energy to Northern States Power Company.

Copies of the filing were served on Northern States Power Company and the Iowa Utilities Board.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Monongahela Power Company

[Docket No. ER88-206-000]

Take notice than on January 19, 1988, Monongahela Power Company tendered for filing an Notice of Cancellation and Certificate of Concurrence as a Supplement to its FERC Electric Tariff, Original Volume No. 1, which cancels an Electric Service Agreement with the Preston Electric Company. The proposed change will have no effect upon other purchasers under the same rate schedule.

The reason for the proposed change is to remove Preston Electric as a wholesale for resale customer of Monongahela Power Company and to revise and update the list of purchasers under the schedule.

A copy of the filing has been served upon Preston Electric Company and upon the West Virginia Public Service Commission by Monongahela Power Company.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

[Docket No. ER88-207-000]

Take notice that on January 19, 1988, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement dated November 24, 1987 and executed on December 8, 1987 for the sale of firm energy to the Sierra Pacific Power Company during the period from December 1, 1987 through March 31, 1988.

MPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER88-210-000]

Take notice that on January 20, 1988, Southern California Edison Company (Edison) tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's Regulations (18 CFR 35.15) under the Federal Power Act, a Notice of Cancellation of Rate Schedule FERC No. 171, Power Exchange Agreement Between Southern California Edison Company and Imperial Irrigation Distict (Agreement).

Pursuant to § 4.3 of the Agreement, service was to remain in force and effect until midnight on April 30, 1986.

Edison respectfully requests waiver or prior notice requirements and asks the Commission to assign an effective date of May 1, 1986, to the cancellation of Rate Schedule FERC No. 171.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Co.

[Docket No. ER88-212-000]

Take notice that on January 21, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a Letter Agreement between SWEPCO and Brazos Electric Power Cooperative, Inc. (Brazos), dated December 2, 1987, under which SWEPCO will furnish Interruptible As-Available Off-Peak Energy transmission service through its system for up to 8 MWH/hour of energy from the Southwestern Power Administration (SWPA) to SWEPCO's interconnection with Gulf States Utilities Company for the benefit of Brazos. The term of the agreement is from January 1, 1988 through December 31, 1988.

SWEPCO requests an effective date of February 1, 1988, to coincide with the initiation of service and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, Gulf States Utilities Company, the Southwestern Power Administration and Brazos.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this document.

9. Utah Power & Light Co.

[Docket No. ER88-119-000]

Take notice that on January 22, 1988, Utah Power & Light Company tendered for filing its compliance with the Deficiency Notice issued on December 22, 1987. The changes in the filing are reflected by the use of composite Federal and state income taxes allowable for component A of the formula.

Copies of the filing were served upon Utah's jurisdictional customers and the state regulatory commission of Arizona, California, Colorado, Idaho, Nevada and Utah.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. VEPCo-PJM Group Interconnection Agreement, Virginia Electric and Power Company (Referred to as VEPCo), Pennsylvania-New Jersey-Maryland Interconnection (Referred to as the PJM Group)

[Docket No. ER88-208-000]

Take notice that on January 20, 1988, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection tendered for filing on behalf of the above listed parties to the VEPCo-PJM Agreement, Schedule 9.04 superseding Schedule 9.03 currently in effect.

Proposed Schedule 9.04 modifies the rate charged by either party for Other Energy. Fixed adders are replaced by ceiling rates and provision is made for ceiling services charges. The parties have requested an effective date of February 1, 1988 for proposed Schedule 9.04.

Comment date: February 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

FR Doc. 88-2213 Filed 2-2-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3323-2]

Science Advisory Board Closed Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on February 11–12, 1988 to determine the recipients of the Agency's 1987 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer-reviewed journals.

Pursuant to the appropriate provision of the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. Appendix 1, and the appropriate provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), I have determined that this meeting may be closed to the public. In determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. In addition, the Board will advise on the amount of money to be allocated for each award. Discussions of such a personal nature,

where disclosure would constitute an unwarranted invasion of personal privacy, may be closed to the public under section 10(d) of 5 U.S.C. Appendix 1. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting and for providing an annual report setting forth a summary of the meeting consistent with the policy of 5 U.S.C. Appendix 1 section 10(d).

For further information contact: Terry Yosie at (202) 382–4126.

A. James Barnes,

Acting Administrator.

Date: January 28, 1988.

[FR Doc. 88–2165 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3323–1]

Science Advisory Board; Neurotoxicology Research Review Subcommittee; Open Meeting; February 29–March 1, 1988

Under Pub. L. 92–463, notice is hereby given that the Neurotoxicology Research Review Subcommittee of the Science Advisory Board will meet from 9:00 a.m. to 5:00 p.m. on February 29th and from 9:00 a.m. to approximately 3:00 p.m. on March 1st in Classroom #2, Environmental Research Center, U.S. Environmental Protection Agency, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to enable the Subcommittee to review the current activities and future needs of EPA's research program for neurotoxicology. To assist in the review, EPA staff have prepared a background document entitled, "Advances in Neurotoxicology Methods." To obtain a copy of this document after February 10, please write or call Ms. Judith Smith, Neurotoxicology Division, Health Effects Research Laboratory (MD–51) U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–2760.

The meeting is open to the public. Any member of the public wishing to attend should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202–382–4126 or Joanna Foellmer by February 22, 1988.

Terry F. Yosie,

Director, Science Advisory Board.

Dated: January 27, 1988.

[FR Doc. 88–2166 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180754; FRL–3323–5]

Receipt of Applications for Emergency Exemptions From Virginia and Delaware To Use Dinoseb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: EPA has received specific exemption requests from the Virginia Department of Agriculture and Consumer Services and the Delaware Department of Agriculture (hereafter referred to as "Virginia," "Delaware," or "Applicants") to use the pesticide dinoseb (CAS 88–85–7). Virginia proposes to use dinoseb on green peas, cucumbers, potatoes, snap beans, and lima beans to control broadleaf weeds. Delaware proposes to use dinoseb on green peas, snap beans, lima beans, blackeyed peas, and dry beans to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

DATE: Comments must be received on or before February 18, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180754," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state of Delaware, and the Department of Agriculture and Consumer Services for the state of Virginia, by letters received December 29, 1987, and January 11, 1988, respectively, have requested the Administrator to issue specific exemptions for the use of dinoseb on green peas, snap beans, lima beans, cucumbers, and potatoes in Virginia, and green peas, snap beans, lima beans, dry beans, and blackeyed peas in Delaware to control broadleaf weeds.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently, four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an immient hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicants' specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164. 130 to 164.133, in addition to the regulations at 40 CFR Parft 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for an

emergency exemption under section 18 for a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidences which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether, and under what terms and conditions, dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

The Applicants requested specific exemptions for the same uses of dinoseb in April of 1987. The requests for use of dinoseb on snap beans and lima beans were withdrawn in May of 1987, after the issuance of specific exemptions for the use of the pesticide Pursuit to control the broadleaf weeds in these two crops. The rest of the requests were administratively withdrawn by the Agency on September 30, 1987, on the basis that the use seasons were over and there had been insufficient time for EPA to evaluate available information concerning the proposed uses of dinoseb.

II. Emergency Condition

The Applicants state that there are a number of herbicides registered for use in green peas, snap beans, lima beans, potatoes, cucumbers, dry beans, and blackeyed peas. According to the Applicants, trifluralin (Treflan), pendimethalin (Prowl), and metolachlor (Dual) are mainly for control of annual grasses and provided only fair to good control of a few broadleaf weeds. According to the Applicants, chloramben (Amiben) has a high water solubility which results in rapid leaching in coarse-textured soils low in organic matter, common in Virginia and Delaware. Rapid leaching results in poor crop tolerance and short-term, erratic weed control. The Applicants state that bentazon (Basagran) controls only certain seedling broadleaf weeds and frequently causes crop injury which reduces yield and/or delays harvest. Harvest delays are not tolerable because planting is rigidly scheduled to stagger harvest.

According to the Applicants MCPB gives postemergence control of Canada thistle and controls or supresses lambsquarters, pigweed, smartweed, sowthistle, fanweed, annual morningglory, and nighshade. However, the Applicants point out that this compound is in the phenoxy family of herbicides, thus some temporary twisting of some pea varieties may occur. In addition, spray drift has to be avoided as it may injure other broadleaf crops and ornamentals. The Applcants point out that use of MCPB at temperatures above 80 °F can cause crop injury. They also state that MCPB works best early in the season when weeds are small; however, application use parameters as described limit MCPB's use in peas in Virginia and Delaware.

EPTC (Eptam), labeled for use in snap beans and potatoes, and DCPA (Dacthal) labeled for use in snap beans, cucumbers and potatoes, are primarily for control of annual grasses and control few broadleaf weeds, according to the Applicants.

According to Virginia, linuron (Lorox) and metribuzin (Lexone, Sencor) are registered on potatoes for broadleaf control. Linuron controls only a few broadleaf weeds and has little activity against mustard species and jimsonweed, according to Virginia. Metribuzin controls most problem weeds except wild radish, which Virginia claims is found in at least 33% of Virginia potato fields. In addition, Virginia points out that metribuzin cannot be used on several sensitive potato varieties; these varieties make up 80% of Virginia pototoes.

According to the Applicants mechanical cultivation controls only weeds between the rows; weeds in the row can significantly reduce yields and can result in fields that cannot be harvested. In addition, cultivation cannot be done late in the season after the crop reaches a certain height, further limiting its effectiveness. According to the Applicants mechanical cultivation cannot be used in peas because the rows are narrow.

Delaware states that, with the suspension of dinoseb, growers of green peas, dry beans, lima beans, snap beans, and blackeyed peas have no effective and/or economically viable alternative herbicides. Delaware goes on to state that, with the depressed economy of corn and soybean production, these crops represents the only other means for many Delaware farmers to make a profit in farming.

Virginia claims that without the use of dinoseb, pea, lima bean, snap bean, cucumbers, and potato growers can expect a $4.93 million dollar loss. Delaware claims that without the use of dinoseb, pea, lima bean, and snap bean growers can expect a 25% loss in yield valued at $1.1 million for peas, $800 thousand for lima beans, and $300 thousand for snap beans. Monetary losses were not presented for blackeyed peas or dry beans.

III. Proposed Use

Virginia requested emergency exemptions for use of dinoseb on green peas, lima beans, snap beans, potatoes, and cucumbers between March and August of 1988. Delaware requested emergency exemptions for use of dinoseb on green peas, lima beans, snap beans, dry beans, and blackeyed peas between February 1 and August 31, 1988. The Applicants' proposed specific exemption programs involve use of the following dinoseb products: Basanite, Caldon, Chemox General, Chemox PE, Chemsect DNBP, Dinitro, Dinitro-3, Dinitro General, Dynamyte, Elgetrol 318, Gebutox, Hel-Fire, Kiloseb, Nitropone C, Premerge 3, Sinox General, Subitex, Unicrop DNBP, Vertac Dinitro Weed Killer 5, Vertac General Weed Killer, and Vertac Selective Weed Killer.

Virginia proposes to use a total of 43,200 pounds active ingredient on 22,000 acres of crops. The proposed uses involve use of 1,125 pounds ingredient to treat 1,000 acres of green peas, 1,500 pounds active ingredient to treat 500 acres of lima beans, 18,000 pounds of active ingredient to treat 8,000 acres of snap beans, 9,375 pounds of active ingredient to treat 5,000 acres of potatoes, and 13,200 pounds of active ingredient to treat 7,500 acres of cucumbers.

Delaware proposes to use a total of 94,000 pounds active ingredient on 25,000 acres of crops in New Castle, Kent, and Sussex countries. By crop, the proposed uses involve: 36,000 pounds active ingredient to treat up to 10,000 acres of green peas; 40,000 pounds active ingredient to treat up to 11,000 acres of lima beans; 18,000 pounds of active ingredient to treat 4,000 acres of snap beans, blackeyed peas, and dry beans.

In Virginia, dinoseb would be applied at a rate of 0.75 to 1.88 pounds active ingredient per acre to green peas; 0.56 to 3.0 pounds active ingredient per acre to lima beans; 2.25 pounds of active ingredient to snap beans; 1.5 to 2.25 pounds active ingredient to potatoes; and 1 to 1.5 pounds active ingredient to cucumbers. A maximum of 2

applications would be made to lima beans, one preemergence and the other postemergence. A single preemergence application will be made to green peas, snap beans, potatoes, and cucumbers.

In Delaware, dinoseb would be applied at a rate of 0.75 to 3 pounds active ingredient per acre to green peas; 0.56 to 4.5 pounds active ingredient per acre to lima beans; 3 to 4.5 pounds of active ingredient to snap beans, dry beans, and blackeyed peas. A maximum of 2 applications would be made to peas and lima beans, one preemergence and the other postemergence. A single preemergence application will be made to snap beans, dry beans, and blackeyed peas.

Other restrictions to be imposed by the states of Virginia and Delaware include: (1) Application by ground row crop sprayer; (2) use by persons certified by the State in private or commercial categories; (3) no mixing/loading/application by females; (4) mixer/loader/applicator must wear Tyvek suit and chemical-resistant gloves; (5) do not mix with liquid fertilizers; (6) no aerial application; and (7) a 40-day pre-harvest interval would be observed.

IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Virginia and Delaware will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application that proposes any emergency use of a pesticide if such pesticide were the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: January 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-2188 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50674; FRL-3321-5]

Issuance of an Experimental Use Permit; Rohm

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to Rohm Haas and Company. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St SW., Washington, DC 20460.

Office location and telephone number:

Rm. 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit.

707-EUP-110. Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 750 pounds of the herbicide oxyfluorfen on alfalfa to evaluate the control of various weeds. A total of 1,500 acres are involved; the program is authorized only in the States of Arizona, California, Idaho, Oregon, and Washington. The experimental use permit is effective from November 1, 1987 to December 31, 1988. A temporary tolerance for residues of the active ingredient in or on alfalfa has been established.

Interested persons wishing to review the experimental use permit are referred to the designated product manager listed above. It is suggested that anyone interested in reviewing the permit notify the Agency in advance by calling 703-557-1830. The permit will be available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: January 20, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-1884 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[PF-491; FRL-3323-6]

Pesticide Tolerance Petitions; Rhone-Poulenc Ag Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Att'n.: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	Do.
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	Do.
William Miller (PM 16).	Rm. 211, CM #2, 703-557-2600.	Do.
Richard Mountfort (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3584.* Rhone-Poulenc Ag. Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes amending 40 CFR 180.169 by establishing a regulation to permit the residues of the insecticide carbaryl (1-naphthyl N-methylcarbamate) in or on barley grain at 20 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM 12).

2. *PP 8F3588.* Natural Ag., Division of Bentech Laboratories, Inc., 635 Water Ave., NW., Albany, OR 97321, proposes amending 40 CFR Part 180 by exempting from the requirement of a tolerance for residues of the biochemical plant growth regulator poly-D-glucosamine (chitosan) when applied to pea, barley, and oat seeds. (PM 23).

3. *PP 8F389.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide imazethapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid as its ammonium salt) in or on soybeans at 0.1 ppm. (PM 25).

4. *PP 8F3591.* PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272, proposes amending 40 CFR 180.432 by establishing a tolerance for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage expressed as lactofen, in or on peanuts and peanut hulls at 0.05 ppm. The proposed analytical method for determining residues is capillary column gas chromatography using an electron capture detector. (PM 23).

5. *PP 8F3592.* Merck, Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide abamectin and its delta 8,9-isomer in or on citrus whole fruit at 0.005 ppm, cattle meat and meat byproducts at 0.005 ppm, and milk at 0.001 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography. (PM 15).

6. *PP 8F3593.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 40 CFR 180.352 by establishing a regulation to permit the residues of the insecticide terbufos (S-[[(1,1-dimethylethyl)thio]methyl]o,o-diethyl phosphorodithioate) and its phosphorylated (cholinesterase-inhibiting) metabolites in or on cottonseed at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 18).

7. *PP 8F3594.* Farrson Chemicals, P.O. Box 7134, Kennewick, WA 99336, proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for the pesticide chemical chitosan (poly-D-glucosamine) when applied to grass seeds, vegetable seeds, oil-bearing seeds, rice seeds, and all other cereal seeds. (PM 23).

8. *PP 8F3595.* FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposes amending 40 CFR 180.378 by establishing a regulation to permit residues of the insecticide permethrin [(3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate)], and the sum of its metabolites, dichlorovinyl acid [3(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid] and m-phenoxybenzyl alcohol [(3-phenoxyphenyl methanol) acid] in or on asparagus at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15).

9. *FAP 8H5548.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 21 CFR Part 193 to exempt from the requirement of a tolerance the residues of the herbicide imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridine carboxylic acid in or on refined sugar. (PM 25).

10. *FAP 8H5549.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the insecticide-nematicide terbufos (S-[[(1,1-dimethylethyl)thio]methyl] o,o-diethyl phosphorodithioate) and its phosphorylated (cholinesterase-inhibiting) metabolites in or on peanut oil at 0.2 ppm. (PM 16).

11. *FAP 8H5550.* Merck Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the insecticide abamectin and its delta-8,9-isomer in or on dried citrus pulp at 0.03 ppm and citrus oil at 0.10 ppm. (PM 15).

Authority: 21 U.S.C. 346a.

Dated: January 27, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-2187 Filed 2-2-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140092; FRL-3323-3

Access to Confidential Business Information by Toxicology Education Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractor, Toxicology Education Associates (TEA) of Alexandria, VA, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or chemical mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, and 8 of TSCA.

Under contract number 68-02-4232, EPA's subcontractor TEA, 7732 Schelhorn Road, Alexandria, VA will assist the Office of Toxic Substances' Economics and Technology Division in assessing chemical data to prepare oral and written reports that characterize the potential toxicity of chemical compounds undergoing review.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–02–4232, subcontractor TEA will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified as a subcontractor under the MITRE Corporation (MITRE). Access to TSCA CBI by MITRE was previously announced in the **Federal Register** of September 20, 1985 (50 FR 38199).

Clearance for access by TEA to TSCA CBI under this subcontract is scheduled to expire on September 30, 1988.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide TEA access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this subcontract will take place at EPA Headquarters facilities.

TEA personnel will be required to sign non-disclosure agreements, will be briefed on appropriate security procedures, and must pass a test on those security procedures before they are permitted access to TSCA CBI.

Dated: January 25, 1988

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–2189 Filed 2–2–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87–585]

Applications for Consolidated Hearing; Family Stations, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Family Stations, Inc.; Bridgeport, TX B. Criswell Center For Biblical Studies; Wichita Falls, TX.	BPED–831115AK BPED–831208AF	87–585

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b)—Noncommercial Educational FM, A, B
2. Contingent Comparative—Noncommercial Educational FM, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washingotn, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–2205 Filed 2–2–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Citizens Savings and Loan Association, a Federal Savings and Loan Association, Salem, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Citizens Savings and Loan Association, a Federal Savings and Loan Association, Salem, Oregon on January 28, 1988.

Dated: January 28, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 88–2210 Filed 2–2–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 28, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegation authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

Date: Comments must be received within fifteen working days of the date of publication in the Federal Register.

Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as approved in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

For Further Information Contact: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension with revision of the following report:

1. *Report title:* Criminal Referral Form
Agency form number: FR 2230
OMB Docket number: 7100–0212
Frequency: On Occasion
Reporters: State member banks, bank holding companies, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks.
Annual reporting hours: 1955
Small businesses are affected.
General description of report: This information collective is voluntary [12 U.S.C. 248(a)(1), 625, and 1844(c)] and is given confidential treatment [5 U.S.C. 552(b)(7) and 552a(k) (2)].

This form has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and U.S. Department of Treasury. The purpose of the form is to detect and tract suspected criminal misconduct involving financial institutions and persons associated with them. The revision address issues raised by recently enacted legislation as well as suggestions made by representatives of supervisory agencies, the federal law enforcement community, and financial institutions in light of experience gained with use of the form since its inception in 1985.

Board of Governors of the Federal Reserve System, January 28, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–2149 Filed 2–2–88; 8:45 am]

BILLING CODE 6210–01–M

Century Financial Corp. et al.; formations of, Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 19, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Century Financial Corporation,* Rochester, Pennsylvaina; to become a bank holding companay by acquiring 100 percent of the voting shares of The Century National Bank and Trust Company, Rochester, Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Powell Valley Bankshares, Inc.,* Jonesville, Virginia; to become a bank holding company bu acquiring 100 percent of the voting shares of Powell Valley National Bank, Jonesville, Virginia. Comments on this application must be received by February 24, 1988.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–2151 Filed 2–2–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Larry McNeal,* Warner Robins, Georgia; to acquire an additional 26.31 percent of the voting shares of International City Bank, Warner Robins, Georgia.

B. **Federal Reserve Bank of St. Louis** (Randall C., Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Jack Chester Porter,* Mt. Washington, Kentucky, and Maria L. Bouvette Bryant, Mt. Washington, Kentucky; to acquire 100 percent of the voting shares of Central Bancshares, Inc., Pleasureville, Kentucky, and thereby indirectly acquire The Central Bank of North Pleasureville, Pleasureville, Kentucky.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter L. Ochs,* Wichita, Kansas, to acquire 27.4 percent; Wesley Rubenich, Wichita, Kansas, to acquire 27.4 percent; Clay Philips, Attica, Kansas, to acquire 2.8 percent; and Jim Fujiwara, Wichita, Kansas, to acquire 2.5 percent of the voting shares of Attica Financial Corporation, Wichita, Kansas, and thereby indirectly acquire First National Bank of Attica, Attica, Kansas.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–2152 Filed 2–2–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1988.

A. **Federal Reserve Bank of Chicago.** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Richard A. Omdahl*, Peshtigo, Wisconsin; Mary Omdahl, Peshtigo, Wisconsin, custodian for Sarah Omdahl; Daniel Miron & Rose Miron, Marinette, Wisconsin; Timothy Rennes, Peshtigo, Wisconsin; Shirley Rosera, Cateman, Wisconsin; Kopish, Miron, Boyle, Minerman & Topel, S.C. Profit Sharing Plan and Trust, Marinette, Wisconsin; to acquire 97.4 percent of the voting shares of Peshtigo National Bancorporation, Inc., Peshtigo, Wisconsin, and thereby indirectly acquire Peshtigo National Bank, Peshtigo, Wisconsin.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2153 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-01-M

State Bancshares, Inc., et al. Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Bancshares, Inc.*, Schaller, Iowa; to engage *de novo* in securities brokerage activities pursuant to section 225.25(b)(15) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locoust Street, St. Louis, Missouri 63166:

1. *Dixie Bancshares, Inc.*, Dukedom, Tennessee; to engage *de novo* in making and servicing loans pursuant to section § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the countries of Hamiliton, Weakely and Obion, all in the State of Tennessee; and Graves County, Kentucky. Comments on this application must be received by February 24, 1988.

2. *Gainesville Bancshares, Inc.*, Gainsville, Missouri; to engage *de novo* in selling ordinary life insurance/health insurance and related products in a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities are to be conducted from offices in Gainesville, Missouri, to serve the surrounding area.

Board of Governors of the Federal Reserve System, January 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2154 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-10-M

Workingmens Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 25, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Workingmens Corporation*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Workingmens Co-operative Bank, Boston, Massachusetts.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Rose Holding Co., Roseville, Minnesota, and thereby indirectly acquire The Roseville Bank, Roseville, Minnesota.

2. *1889 Bankcorp*, East Lansing, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank, North Branch, Michigan. Comments on this application must be received by February 19, 1988.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Firstar Corporation, Bloomington, Minnesota, and thereby indirectly acquire Marine Bank-Bloomington, Bloomington, Minnesota.

Board of Governors of the Federal Reserve System, January 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2155 Filed 2-2-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nationa Institutes of Health

National Cancer Institute: Meeting of President's Cancer Panel

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 1, 1988, at Columbia University Cancer Center, 701 West 168th Street, New York, NY, in the Julius and Armand Hammer Health Sciences Center Auditorium 401.

This meeting will be open to the public on March 1 from 9 a.m. to 1 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; and a number of New York area researchers dealing with Innovations in Cancer Treatment.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon a request.

Dated: January 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2194 Filed 2-2-88; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX, Social Services Block Grant Act; Revised Promulgation for Fiscal Year 1989

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Notification of revised allocations of Title XX—Social Services Block Grant Allotment for Fiscal Year 1989.

SUMMARY: This issuance sets forth the revised individual allotments to States for Fiscal Year 1989, pursuant to Title XX of the Social Security Act, as amend (Act). The revision was required by amendments to the Act by Pub. L. 100-203, enacted December 22, 1987, which added American Samoa to the list of eligible jurisdictions under Title XX. The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act as amended by Pub. L. 100-203 authorizes $2.7 billion for Fiscal Year 1989 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.7 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Nothern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.7 billion is allotted to each State in the same proportion as that State's population bears to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1989, allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P-26, No. 86-A issued August 1987 (and "Estimates of the Population of Puerto Rico and the Outlying Areas: 1980 to 1988" (Series P-25, No. 1009 issued July 1987), which was the most recent satisfactory data available from the Department of Commerce at the time of initial promulgation as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1989.

FISCAL YEAR 1989 FEDERAL ALLOTMENTS TO STATES SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY89 allotment	Revised FY89 allotment
Total	$2,700,000,000	$2,700,000,000
Alabama	45,147,848	45,144,884
Alaska	5,948,421	5,948,031
American Samoa	N/A	176,282
Arizona	36,537,118	36,534,720
Arkansas	26,422,575	26,420,840
California	300,551,217	300,531,480
Colorado	36,392,307	36,389,917
Connecticut	35,523,436	35,521,104
Delaware	7,051,218	7,050,755
Dist. of Col	6,973,243	6,972,785
Florida	130,052,090	130,043,552
Georgia	67,994,686	67,990,222
Guam	465,517	465,517
Hawaii	11,830,006	11,829,229
Idaho	11,172,783	11,172,050
Illinois	126,693,088	128,684,639
Indiana	61,299,928	61,295,903
Iowa	31,758,331	31,756,246
Kansas	27,413,978	27,412,178
Kentucky	41,527,554	41,524,826
Louisiana	50,138,283	50,134,992
Maine	13,077,615	13,076,756
Maryland	49,714,988	49,711,724
Massachusetts	64,964,779	64,960,514
Michigan	101,869,496	101,862,808
Minnesota	46,941,286	46,938,204
Mississippi	29,240,834	29,238,914
Missouri	56,432,025	56,428,320
Montana	9,123,140	9,122,541
Nebraska	17,800,706	17,799,537
Nevada	10,727,209	10,726,505
New Hampshire	11,440,128	11,439,377
New Jersey	84,881,964	84,876,391
New Mexico	16,475,121	16,474,040
New York	197,968,801	197,955,804
North Carolina	70,523,322	70,518,692
North Dakota	7,563,629	7,563,132
No Manana Island	93,103	93,103
Ohio	119,770,456	119,762,593
Oklahoma	36,815,602	36,813,185
Oregon	30,054,008	30,052,035
Pennsylvania	132,435,915	132,427,220
Puerto Rico	13,965,517	13,965,517
Rhode Island	10,860,881	10,860,168
South Carolina	37,606,497	37,604,026
South Dakota	7,886,671	7,886,153
Tennessee	53,502,372	53,498,859
Texas	185,826,893	185,814,693
Utah	18,547,043	18,545,826
Vermont	6,026,397	6,026,001
Virgin Islands	465,517	465,517
Virginia	64,483,507	64,459,275
Washington	49,714,988	49,711,724
West Virginia	21,376,442	21,375,039
Wisconsin	53,301,863	53,298,364
Wyoming	5,647,658	5,647,287

Date: January 22, 1988.

G. Barry Nielsen,

Director, Office of Policy, Planning, and Legislation.

Approved January 26, 1988.

Sydney Olson,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 88-2207 Filed 2-2-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

New Construction Applications; School Facilities

AGENCY: Office of Construction Management, Interior.

ACTION: Notice for new school construction procedures.

This notice is published to comply with the Conference Report on the Department of the Interior and Related Agencies Appropriations for FY 1988 which states: "The Bureau and the Office of Construction Management (OCM) are directed to notify all tribes that applications for new facilities may be submitted in accordance with the guidelines recently made available by OCM."

The guidelines titled, "Instructions and Application for New School Construction" and dated November 1987, are available upon request through the Office of Construction Management and from the Bureau of Indian Affairs (BIA) Area and Agency offices and the BIA Facility Management Construction Center, P.O. Box 1248, Albuquerque, NM 87103.

All applications will be reviewed and ranked in accordance with the criteria outlined in the guidelines. Top ranking projects will be considered for advance planning and design in accordance with the availability of funds.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets NW., Mail Stop 2415, Washington, DC 20240, (202) 343-3403.

Dated: January 25, 1988.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration

[FR Doc. 88-2146 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[MT-930-08-4212-13; M 74199]

Conveyance and Order Providing for Opening of Public Land in Bowman County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice and order will open certain lands that were reconveyed to the United States in an exchange completed pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.)* (FLPMA) to the operation of the public land laws. It will also inform the public and interested local governmental officials of the issuance of the patent.

EFFECTIVE DATE: 9 a.m. on March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM, Montana State Office, P.O. box 36800, Billings, Montana 59107, 406-657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was conveyed to Kelly Stearns and Susan Stearns.

Fifth Principal Meridian, North Dakota

T. 129 N., R108 W.,
Sec. 3, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 4, lots 5, 6, and 7;
Sec. 11, N½NE¼, SE¼NE¼;
Sec. 12, NW¼NW¼;
Sec. 15, lots 1, 2, NE¼NE¼, E½SE¼;
Sec. 22, E½NE¼;
Containing 651.58 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate:

Fifth Principal Meridian, ND

T. 129 N., R. 109 W.,
Sec. 20, NE¼, N½NW¼, S½;
Sec. 21, W½NW¼.
Containing 640 acres.

3. The values of the Federal public land and the nonfederal land in the exchange were appraised at $32,000 each.

Opening Date

At 9 a.m. on March 9, 1988, the lands described in paragraph 2 above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 9, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

January 22, 1988.

[FR Doc. 88-2147 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-DN-M

[CO-010-08-4121-12]

Draft Environmental Impact Statement for the Northwest Colorado Coal Preference Right Lease Applications; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of when written comments on the draft environmental impact statement (EIS) will be accpeted.

SUMMARY: This notice extends the time period in which written comments will be accepted as previously published in the Federal Register December 31, 1987 (52 FR 49523), for the Draft EIS for the Northwest Colorado Coal Preference Right Lease Applications. The written comment period is extended from April 8, 1988 to April 29, 1988.

Date: January 28, 1988.

Tom Welker,

Associate State Director, Colorado.

[FR Doc. 88-2144 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-JB-M

Resource Management Planning; Lower Gila North Planning Area et al.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to prepare a Category I Amendment to planning documents for the Lower Gila North, Black Canyon, Middle Gila and Silver Bell planning areas, Lower Gila and Phoenix Resource Areas, Phoenix District, Arizona.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c) and 1610.3-1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1507.7).

The proposed action is to amend the Lower Gila North Management Framework Plan (MFP) completed in December 1982, the Black Canyon MFP completed June 3, 1974, the Middle Gila MFP completed June 2, 1976, and the Silver Bell MFP completed June 4, 1976. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The MFP amendment and accompanying Environmental Assessment (EA) will provide the basis for modifying the Land Tenure Adjustment sections of the MFPs to make additional land in portions of Maricopa, Pima and Pinal counties available for exchange. Disciplines to be represented and used to prepare the amendment include realty, wildlife, botany, archaeology, geology, economics, range and wilderness.

Information concerning the plan amendment may be obtained from: William T. Childress and Arthur E. Tower, Area Managers, 2015 West Deer Valley Road, Phoenix, Arizona 58027, Phone: (602) 863-4464.

Interested parties may also submit written comments to the area managers for a period of thirty (30) days following this announcement.

Documents pertaining to the plan amendment are available for public review at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

Henri R. Bisson,

District Manager.

Date: January 27, 1988.

[FR Doc. 88-2175 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-32-M

[WO-150-08-4830-11]

Renewal of National Public Lands Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal of National Public Lands Advisory Council.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463). The Secretary of the Interior has determined, in consultation with the General Services Administration, that renewal of the National Public Lands Advisory Council is necessary and in the public interest. Accordingly, notice is hereby given of the Council's renewal.

The purpose of the National Public Lands Advisory Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on implementation of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), as well as on policies and programs of a national scope under the jurisdiction of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Bureau of Land Management (150), MS-5558, Department of the Interior, Washington, DC 20240. Telephone: (202) 343-5101.

January 28, 1988.

Robert F. Burford,

Director.

[FR Doc. 88-2219 Filed 2-2-88; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Intent To Prepare Draft Environmental Statement; All-American Canal Project, All-American Branch, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amendment to notice of intent to prepare a draft environmental statement.

SUMMARY: This Notice of Intent amends and updates that Notice of intent published for the All-American Canal Relocation Project of Monday, April 29, 1985 (50 FR 82, page 16755). The alternatives for the proposed project have changed, and its extent has been increased to include the Coachella Branch of the canal.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement (DES) on lining a 28 mile section of the All-American Branch of the proposed All-American Canal Project (formerly the All-American Canal Relocation Project), located in Imperial and Riverside Counties in southern California. A separate DES will be prepared to address water conservation on the remaining unlined portion of the Coachella Branch since many issues are unique to each branch of the All-American Canal.

The portion of the project dealing with the All-American Branch has been under study since about 1976, and a number of public involvement activities have been carried out with individuals and Federal, State, and local entities. A continuing public involvement program is being planned to obtain public input and to keep the public informed about study progress and decisions. Interested public entities and individuals may provide input to the DES to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the All-American Branch DES will be held in March 1988 in El Centro, California. The date, time, and location of the meeting will be announced in local new releases.

FOR FURTHER INFORMATION CONTACT: The contact person for the DES is Rob Leutheuser. For additional information, write the Bureau of Reclamation, Attention: Code LC-730A, P.O. Box 427, Boulder City, Nevada 89005; or telephone (702) 293-8524 or FTS 598-7524.

SUPPLEMENTARY INFORMATION: the purpose of lining the All-American Branch of the proposed project is to conserve about 62,000-78,000 acre-feet of water a year which currently is lost to seepage from the unlined All-American Canal between Pilot Knob and Drop No. 4. The water would be conserved for beneficial use.

The DES will examine the impacts of project alternatives along 28 miles of the unlined All-American Canal. The alternatives include: (1) In-place concrete lining a 28-mile reach of the existing canal; (2) in-place concrete lining selected portions of the 28 miles; (3) construct a new, concrete-lined canal adjacent to the existing canal; and (4) no Federal action. The DES is scheduled to be completed and available for review and comment by April 1990. (The related draft environmental statement on the Coachella Branch also is scheduled to be available by that date.)

Dated: January 27, 1988.

C. Dale Fuvall,

Commissioner.

Fact Sheet—Draft Environmental Statement To Be Prepared for All-American Branch, All-American Canal Project, California

The Department of the Interior will prepare a draft environmental statement (DES) for lining 28 miles of the All-American Branch of the All-American Canal Project in southern California, Edward M. Hallenbeck, Lower Colorado Regional Director for Interior's Bureau of Reclamation, announced today.

The goal of the proposed All-American Canal Project is to conserve water lost through seepage on unlined sections of the All-American and Coachella Branches of the All-American Canal. This study is an extension of previous investigations an All-American Canal relocation. Separate draft environmental statement will be prepared for the two branches of the canal.

Preliminary investigations on the All-American Branch indicate that about 62,000 to 78,000 acre-feet of water could be conserved in a 28-mile section of unlined All-American Canal between Pilot Knob and Drop No. 4. The proposed project would make this water available for beneficial use.

Alternatives being studied to conserve All-American Branch seepage include in-place concrete lining 28 miles of the existing canal, in-place lining selected portions of the 28 miles, constructing a new, concrete-lined canal adjacent to a portion of the existing canal, and no Federal action.

Hallenbeck said the DES would describe the environmental and social resources and potential impacts of the

proposed project located in Imperial County in southern California. Additional environmental and hydrologic studies are being conducted to update and supplement existing data. Areas being studied include terrestrial and aquatic habitats, sensitive species, archaeological resources, water quality, and potential socioeconomic impacts. The draft environmental statement is scheduled to be completed and available for review and comment in April 1990.

A public involvement program will be carried out to obtain public input, as well as to keep the interested public informed about study progress and decisions. Newsletters are planned for the study. Interested public entities and individuals may provide input to the draft environmental statement to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the draft environmental statement on the All-American Branch of the study will be conducted in El Centro, California, in March 1988. The date, time and location of the meeting will be announced later.

Additional information on the study can be obtained by writing the Regional Director, Bureau of Reclamation, Attention: LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or by telephoning (702) 293–8524.

[FR Doc. 88–2080 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–09–M

All-American Canal Project, Coachella Branch, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Statement.

SUMMARY: The scope of All-American Canal Project (formerly the All-American Canal Relocation Project), initiated in 1985, has been increased to include the Coachella Branch of the canal.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental statement (DES) for seepage conservation on the remaining unlined 38 miles of the Coachella Branch of the proposed All-American Canal Project, located in Imperial and Riverside Counties in southern California. A separate DES will be prepared to address lining a portion of the All-American Branch of the canal since many issues are unique to each branch of the All-American Canal.

A public involvement program is being planned to obtain public input on the Coachella Branch of the All-American Canal Project and to keep the public informed about study progress and decisions. Interested public entities and individuals may provide input to the DES to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the Coachella Branch DES will be held in March 1988 in Coachella, California. The date, time, and location of the meeting will be announced in local news releases.

FOR FURTHER INFORMATION CONTACT: The contact person for the draft environmental statement is Rob Leutheuser. For additional information, write the Bureau of Reclamation, Attention: Code LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or telephone (702) 293–8524 or FTS 598–7524.

SUPPLEMENTARY INFORMATION: The purpose of seepage conservation on the Coachella Branch of the proposed project is to preserve some of the 30,000–40,000 acre–feet of water a year which currently is lost to seepage from the remaining unlined section of the Coachella Canal between Siphon No. 7 and Siphon No. 32. The conserved water would be available for beneficial use.

The DES will examine the impacts of project alternatives along the remaining unlined 38 miles of the canal. The alternatives include: (1) In-place concrete lining the entire 38 miles; (2) in-place concrete lining selected reaches of the 38 miles; (3) modify canal operation and maintenance methods; and (4) no Federal action. The DES is scheduled to be completed and available for review and comment by April 1990. (The related daft environmental statement on the All-American Branch also is scheduled to be available by that date.)

Dated: January 27, 1988.

C. Dale Duvall,

Commissioner.

Fact Sheet—Draft Environmental Statement To Be Prepared for Coachella Branch, All-American Canal Project, California

The Department of the Interior will prepare a draft environmental statement (DES) for water conservation on 38 miles of the Coachella Branch of the All-American Canal Project in southern California, Edward M. Hallenbeck, Lower Colorado Regional Director for Interior's Bureau of Reclamation, announced today.

The goal of the proposed All-American Canal Project is to conserve water lost through seepage on unlined sections of the All-American and Coachella Branches of the All-American Canal. This study is an extension of previous investigations on All-American Canal relocation. Separate draft environmental statements will be prepared for each branch of the canal.

Preliminary investigations on the Coachella Branch indicate that about 30,000–40,000 acre-feet of water could be conserved in the remaining 38 unlined miles of the Coachella Canal between Siphon No. 7 and Siphon No. 32. The proposed project would make this water available for beneficial use.

Alternatives being considered to conserve Coachella Branch seepage include in-place concrete lining the remaining unlined section of the canal, in-place concrete lining selected sections of the remaining unlined canal, modifying canal operation and maintenance methods, and no Federal action.

Hallenbeck said the DES would describe the environmental and social resources and potential impacts of the proposed project located in Imperial and Riverside Counties in southern California. Additional environmental and hydrologic studies are being conducted to update and supplement existing data. Areas being studied include terrestrial and aquatic habitats, sensitive species, archaeological resources, water quality, and potential socioeconomic impacts. The DES on the Coachella Branch is scheduled to be completed and available for review and comment in April 1990.

A public involvement program will be carried out to obtain public input, as well as to keep the interested public informed about study progress and decisions. Newsletters are planned for the study. Interested public entities and individuals may provide input to the draft environmental statement to assure that the full range of pertinent issues is discussed.

A public environmental scoping meeting for the draft environmental statement on the Coachella Branch of the project will be conducted in Coachella, California, in March 1988. The date, time, and local of the meeting will be announced later.

Additional information on the study can be obtained by writing the Regional Director, Bureau of Reclamation, Attention: LC–730A, P.O. Box 427, Boulder City, Nevada 89005; or by telephone (702) 293–8524.

[FR Doc. 88–2081 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Intention to Negotiate Concession Contract With Adventure Bound, Inc. et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate concession permits with Adventure Bound, Inc.; American Wilderness Expeditions, Inc., DBA as Adrift Adventures of Canyonlands; Colorado Outward Bound School, Inc.; Colorado River and Trail Expeditions, Inc.; Descent River Expeditions, Inc.; Don Hatch River Expeditions, Inc.; Holiday River Expeditions, Inc.; Moki Mac River Expeditions, Inc.; Niskanen & Jones, Inc., DBA as San Juan Expeditions; Niskanen & Jones, Inc., DBA as Tag-a-Long Tours; Niskanen & Jones, Inc., DBA as Tag-a-Long Tours; North American River Expeditions, Inc.; Sheri Griffith River Expeditions; Tour West, Inc.; Western River Expeditions, Inc.; and World Wide River Expeditions, Inc. authorizing them to provide guided white water interpretive river trips for the public at Canyonlands National Park, Utah for a period of five (5) years from January 1, 1987, through December 31, 1991.

These permit renewals have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expired December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given perference in the renewal of the permits and in the negotiation of new permits as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed permits.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

Date: October 8, 1987.

[FR Doc. 88–2162 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations; Kentucky, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 23, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 18, 1988.

Carol D. Shull,

Chief of Registration, National Register.

Kentucky

Kenton County

Lakeside Park, *Dixie Highway Historic District*, 2696, 2698, 2700, 2708, 2712 Dixie Hwy.

MICHIGAN

Houghton County

Hancock, *Quincy Street Historic District*, 100, 200, and 300 blks of Quincy St. and 416 Tezcuco St.

Kent County

Rood Building

MISSOURI

Dent County

Salem vicinity, *Young, W. A., House*, CR 513

NEW YORK

Westchester County

Peekskill, *Villa Loretto*, Crompond Rd.

WISCONSIN

Ashland County

Morty Site
P-Flat Site No. 47AS47

[FR Doc. 88–2161 Filed 2–2–88; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–254]

Certain Small Aluminum Flashlights and Components Thereof; Decision To Terminate Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Determination of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation and termination of investigation.

SUMMARY: The Commission has determined that there is no violation of section 337 in the above-captioned investigation because the subject patent is unenforceable and the subject common-law trademark has not been established. The investigation is therefore terminated on those grounds.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1098. Hearing impaired individuals may contact the Commission's TDD terminal at 202–724–0002.

SUPPLEMENTARY INFORMATION: On August 11, 1987, the ALJ issued an initial determination (ID) in the above-captioned investigation finding no violation of section 337 on the grounds that the patent in controversy is invalid and unenforceable and that the asserted common-law trademark had not been established. On October 1, 1987, the Commission determined to review the issues of: (i) Patent validity, (ii) patent enforceability, (iii) patent infringement, (iv) trademark infringement, and (v) injury. Following review of the ID, including consideration of the submissions of the parties, the Commission has determined that there is no violation of section 337 and, therefore, has terminated the investigation as to all issues and all parties.

Copies of the Commission's determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: January 25, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-2227 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

Dismissal of Request for Institution of a Review Investigation; Certain Welded Carbon Steel Pipes and Tubes From India

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-271 (Final), Certain Welded Carbon Steel Pipes and Tubes from India.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-271 (Final), regarding certain welded carbon steel standard pipes and tubes from India.[1]

FOR FURTHER INFORMATION CONTACT: Jennifer Hinshaw (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1802.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-271 (Final), Certain Welded Carbon Steel Pipes and Tubes from India (51 FR 16908). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from India of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be sold at less than fair value. On May 12, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the **Federal Register** (51 FR 17384).

On October 5, 1987, the Commission received a request filed by the Engineering Export Promotion Council of India, the Tata Iron and Steel Co. (TISCO) Ltd., and Jindal Pipes, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-271 (Final). Under § 207.45 (a) of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determination was published in the **Federal Register** of May 7, 1986. The petitioners contend that the circumstances of this case constitute "good cause" for conducting an immediate review.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding certain welded carbon steel pipes and tubes from India. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Issued: January 28, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-2228 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-383 (Final)]

Certain Bimetallic Cylinders From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-383 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain bimetallic cylinders,[1] provided for in item 678.35 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before March 28, 1988, and the Commission will make its final injury determination by May 13, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain bimetallic cylinders from Japan are being sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on August 4, 1987, by Xaloy, Inc., Pulaski, VA, and Bimex Corp., Wales, WI. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 35770, September 23, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 22, 1988, pursuant to section 207.11 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 7, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 28, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 31, 1988, in room 101 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 1, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 84.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 14, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 14, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatemt must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 28, 1988.

[FR Doc. 88-2224 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Certain Ink Jet Printers Employing Solid Ink; Termination of Investigation of the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination granting a motion to terminate the investigation on the basis of a settlement agreement.

SUMMARY: On December 1, 1987, complainant Dataproducts Corporation and respondents Howtek, Inc. and Tokyo Juki Industrial Co., Ltd. filed a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement. On December 28, 1987, the presiding administrative law judge issued an initial determination (ID) granting the motion to terminate the investigation. The Commission determined not to review the ID. The Commission's decision terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-252-1104.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 25, 1988.

[FR Doc. 88-2225 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

[1] The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[1] Such items consist of an outer shell of steel and an inner lining of a corrosion- and abrasion-resistant alloy that are metallurgically bonded, and are, if imported, reported under items 678.3570, 678.3575, and 678.3580 of the Tariff Schedules of the United States Annotated.

[Investigation No. 337-TA-266]

Certain Recloseable Plastic Bags and tubing; Commission Determination Not To Review an Initial Determination Finding Respondent in Default

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination (ID) finding respondent in default.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondent Ideal Plastic Industrial Co., Ltd. (Ideal), in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On December 9, 1987, the ALJ ordered (Order No. 57) respondent Ideal to show cause why it should not be held in default. No adequate response was received. On December 24, 1987, the ALJ issued an ID (Order No. 59) finding respondent Ideal in default pursuant to Commission rule 210.25 (19 CFR 210.25). No petitions for review of the ID or Government agency comments were received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1802. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 25, 1988.

[FR Doc. 88-2226 Filed 2-2-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Application for authority under 49 USC to acquire control of a motor carrier or carriers thru ownership of stock or otherwise.
OMB Form No.: 3120-0100
Agency Form No.: OP-F-45
Frequency: Non-Recurring
Respondents: Motor Passenger Carrier & Non-Carriers
No. of Respondents: 11
Total Burden Hrs.: 1,320
Brief Description of the need & proposed use: This form is used by applicants seeking Commission's approval of finance transactions that would result in control of a motor passenger carrier by another carrier. The information is used to determine whether the proposal meets the proposal meets the criteria for approval.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2196 Filed 2-2-88; 8:45 am]

BILLING CODE 7035-01-M

[No. 35940]

Investigation Into the Lawfulness of Interchange Arrangements Between the Bangor and Aroostook Railroad and CP Rail at Brownville Junction, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision vacating cease and desist order.

SUMMARY: The Commission vacates a cease and desist order entered in *Interchange Arrangements Between BAR and CP*, 361 I.C.C. 615 (1979). It concludes that the order may inhibit contract ratemaking and desirable through route arrangements and that the order is no longer necessary to assure compliance with 49 U.S.C. 10701(c). Although the parties are no longer subject to the specific restrictions contained in the order, they remain subject to the prohibition in 49 U.S.C. 10701(c) against unreasonable discrimination among connecting carriers.

EFFECTIVE DATE: March 4, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Notice of the filing of a petition by Canadian Pacific Limited (CP) to lift the cease and desist order was published August 6, 1987 [52 FR 29318], and comments from interested parties were invited. Comments were filed jointly by the Maine Central Railroad and the Boston and Maine Corporation. Replies were filed by CP and by the Bangor and Aroostook Railroad.

Additional explanation of the Commission's reasons for vacating the cease and desist order is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (D.C. Metropolitan area). (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: January 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley, and Simmons. Commissioner Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2197 Filed 2-2-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 2X)]

Southern Railway Co.; Abandonment and Discontinuance of Operations Exemption; Between Ringgold and Keysville, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, et seq., the (1) abandonment by Southern Railway Company of 59.3 miles of line and 2.76 miles of side track; and (2)

discontinuance of operations over a 1.5-mile line and 1.52 miles of siding, all between Ringgold and Keysville, VA, subject to standard employee protective conditions and to the condition that applicant shall not dispose of the bridges until the provisions of section 106 of the National Historic Preservation Act have been met.[1]

DATES: The exemption will be effective on March 4, 1988. Petitions for stay of the exemption must be filed by February 18, 1988, and petitions for reconsideration must be filed by February 29, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Nancy S. Fleischman, One Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (DC Metropolitan area), assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: January 27, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2198 Filed 2-2-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Young Radiator Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 18, 1988 through January 22, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,274; Young Radiator Co., Racine, WI
TA-W-20,307; Standard T. Chemical Co., Linden, NJ
TA-W-20,270; Milwaukee Valve Co., Inc., Milwaukee, WI
TA-W-20,254; Alpha Cast, Inc., Whitewater, WI
TA-W-20,297; Indian Well Oil Co., Tulsa, OK

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,271; Seimens Transmission Systems, El Paso, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,301; Industrial Steel Products, Shreveport, LA

U.S. imports of fabricated structural steel decline in the Jan-Sept period of 1987 compared to the same period in 1986.

TA-W-20,296; Baker Huges, Inc., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,259, Cipher Data Products, Garden Grove, CA

A certification was issued covering all workers of the firm separated on or after October 17, 1986.

TA-W-20,257; Andy's Sportswear, Inc., Boston, MA

A certification was issued covering all workers of the firm separated on or after November 17, 1986.

TA-W-20,348; Maine Woods Div. of Bennett Industries, Livermore Falls, ME

A certification was issued covering all workers of the firm separated on or after December 9, 1986.

TA-W-20,306; Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, Midland, TX

A certification was used covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,306A; Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, Texas (State Wide)

A certification was issued covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,306B; Standard Oil Production Co., Midland Operations Sector of The Onshore Business Unit, New Mexico (State Wide)

A certification was issued covering all workers of the firm separated on or after November 9, 1986.

TA-W-20,329; Editorial America, S.A., Virginia Gardens, FL

A certification was issued covering all workers of the firm related to the production of Buenhogar, Hombre de Mundo and Geomundo magazine separated on or after October 26, 1986.

TA-W-20,313; M.G. Kinsler Co., Inc., Springfield MA

A certification was issued covering all workers of the firm separated on or after November 23, 1986 and before January 31, 1988.

TA-W-20,273; Umetco Minerals Corp., Blanding, UT

A certification was issued covering all workers of the firm separated on or after November 10, 1986.

TA-W-20,266; Elliott Co., Jeannette, PA

A certification was issued covering all workers of the firm separated on or after November 6, 1986.

TA-W-20,277; Zenith Electronics Corp., Melrose Park, IL

[1] In a matter related to the transaction, Southern granted its affiliate, Norfolk and Western Railway Company (N&W) trackage rights over the 3.02 miles for which Southern seeks the discontinuance of service in this proceeding. A notice of exemption pursuant to 49 CFR 1180.2(d)(7) was served and published in the **Federal Register** on October 14, 1987, in Finance Docket No. 31120.

BEST COPY AVAILABLE

A certification was issued covering all salaried workers of the firm separated on or after November 2, 1986.

TA-W-20,275; Zenith Electronics Corp., Glenview, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.,

TA-W-20,276; Zenith Electronics Corp., Springfield, MO (Springfield Div.)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,278; Zenith Electronics Corp., Elk Grove Village, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,279; Zenith Electronics Corp., Chicago, IL (Kostner Avenue)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,280; Zenith Electronics Corp., Franklin Park, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,281; Zenith Electronics Corp., Northlake, IL

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,282; Zenith Electronics Corp., Chicago, IL (Austin Avenue)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,283; Zenith Electronics Corp., McAllen, TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,284; Zenith Electronics Corp., El Paso TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,285; Zenith Electronics Corp., El Paso, TX

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,286; Zenith Electronics Corp., San Francisco, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,287; Zenith Electronics Corp., Sacramento, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,288; Zenith Electronics Corp., Santa Fe Springs, CA

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,289; Zenith Electronics Corp., Secaucus, NJ

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,290; Zenith Electronics Corp., Wallingford, CT

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,291; Zenith Electronics Corp., Lenexa, KS

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,292; Zenith Electronics Corp., Wichita, KS

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,293; Zenith Electronics Corp., Springfield MO (Distribution)

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,294; Zenith Electronics Corp., Denver, CO

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

TA-W-20,295; Zenith Electronics Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after November 2, 1986.

I hereby certify that the aforementioned determinations were issued during the period January 18, 1988–January 22, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

Dated January 26, 1988.

[FR Doc. 88-2138 Filed 2-2-88; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Armco Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1988.

The petitions filed in this case are available for inspection at the Office of the Director of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 25th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Armco Inc. (USWA)	Kansas City, MO	1/25/88	1/15/88	20,399	Steel
Atlas Wireline Serv. (Workers)	Prudhoe Bay, AK	1/25/88	1/11/88	20,400	Oilwells

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Chrysler Corp. (UAW)	East Syracuse, NY	1/25/88	1/13/88	20,401	Manual Transmissions.
Clarksburg Electro-Plating, Inc. (AFGWU of A)	Clarksburg, WV	1/25/88	1/14/88	20,402	Chrome Plating.
Computerized Machine Tools, Inc. (Workers)	Farmington Hills, MI	1/25/88	1/5/88	20,403	Machines.
Control Data Corp. (Company)	Roseville, MI	1/25/88	12/18/88	20,404	Computer Repairs.
Excel Handbags Co, Inc. (Workers)	Miami, FL	1/25/88	11/29/88	20,405	Handbags.
Filmation Studios (Workers)	Canoga Park, CA	1/25/88	1/11/88	20,406	Animated Cartoons.
Four Star Corp. (Workers)	Mesick, MI	1/25/88	1/14/88	20,407	Auto Parts.
General Motors, Corp. (Workers)	Livonia, MI	1/25/88	1/4/88	20,408	Seat Cushions.
Hareus Amersil Inc	Sayreville, NJ	1/25/88	1/7/88	20,409	Fused Quartz Silica.
Inmos Corporation (Company)	Colorado Springs, CO	1/25/88	1/14/88	20,410	Semiconductor Chips.
Lake Shore, Inc. (USA)	Kingsford, MI	1/25/88	1/5/88	20,411	Ship Cranes.
M. Smith Co., Inc. (ILGP&N)	Philadelphia, PA	1/25/88	1/11/88	20,412	Luggage.
Mitchell Corp. (Workers)	Ludington, MI	1/25/88	1/11/88	20,413	Bucket Seats.
Peabody Coal Co. (UMWA)	Charleton, WV	1/19/88	1/6/88	20,414	Coal.
Rhone-Poulenc, Inc. (Workers)	Mt. Pleasant, TN	1/25/88	1/11/88	20,415	Agro-Chemical.
SKS Industries (Workers)	Hornell, NY	1/25/88	1/15/88	20,416	Ball & Roller Bearings.
T.D. Engine & Jump Service, Inc. (Company)	Odessa, TX	1/25/88	1/12/88	20,417	Repairs Oilfield Equipment.
Volkswagen of America, Corporate Headquarters (Workers).	Troy, MI	1/25/88	1/11/88	20,418	Auto.
Volkswagen of America, Edward St. Bldg. (Workers).	Madison Hts, MI	1/25/88	1/11/88	20,419	Auto.
Volkswagen of America, Eleven Mile Complex (Workers).	Warren, MI	1/25/88	1/11/88	20,420	Auto.
Volkswagen of America, Hangar Pontiac (Workers)	Pontiac, MI	1/25/88	1/11/88	20,421	Auto.
Volkswagen of America, Howard St. (Workers)	Madison Hts, MI	1/25/88	1/11/88	20,422	Auto.
Volkswagen of America, Parkview Bldg. (Workers)	Warren, MI	1/25/88	1/11/88	20,423	Auto.
Volkswagen of America, Vorelco (Workers)	Warren, MI	1/25/88	1/11/88	20,424	Auto.
Volkswagen of America, VW Credit, Inc. (Workers)	Troy, MI	1/25/88	1/11/88	20,425	Auto.

[FR Doc. 88-2139 Filed 2-2-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-210-C]

BethEnergy Mines Inc.; Amendment To Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines Inc., 7012 MacCorkle Avenue SE., Charleston, West Virginia 25304 has filed an amendment to a petition for modification. On August 25, 1987, BethEnergy Mines Inc., submitted a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mine No. 131 (I.D. No. 46-01268) located in Boone County, West Virginia. On November 3, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 42158), allowing interested parties 30 days to submit comments. On December 10, 1987, petitioner submitted a request to amend the originally submitted petition for modification to include its Mine No. 132 (I.D. No. 46-04789), also located in Boone County, West Virginia. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 4, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 88-2140 Filed 2-2-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-300-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine, Longwall No. 2 (I.D. No. 01-01247) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use high-voltage (2300 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

3. In order to safely and efficiently mine the coal seam, a 500 horsepower shearing machine, an approximately 1,000 horsepower face conveyor and a stage loader with a crusher unit driven by 150 horsepower motor will be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before

March 4, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 88-2141 Filed 2-2-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-10]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: February 17, 1988, 8:30 a.m. to 4 p.m., and February 18, 1988, 8:30 a.m. to 4 p.m.

ADDRESS: National Air and Space Museum, Director's Conference Room, Third Floor, 7th and Independence Avenue SW., Washington, DC 20560.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

February 17, 1988

8:30 a.m.—Introduction of Members, Discussion of Charter and Objectives.

12:30 p.m.—Discussion of Assessment Plan of Attack and Resources Available.

4 p.m.—Adjourn.

February 18, 1988

8:30 a.m.—Continued Discussion of Assessment Plan.

12:30 p.m.—Summary by Chairman and Task Assignments.

4 p.m.—Adjourn.

January 27, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-2179 Filed 2-2-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-11]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: February 24, 1988, 9:30 a.m. to 5:30 p.m., February 25, 1988, 8:30 a.m. to 5:30 p.m., February 26, 1988, 8:30 a.m. to 1 p.m.

ADDRESS: As listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee consults with and advises NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Sciences programs. The Committee will meet to discuss the Office of Space Science and Applications (OSSA) FY 1988 and FY 1989 budgets, OSSA strategic planning, and future committee activities. The group is chaired by Dr. Louis Lanzerotti, and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the committee).

Type of Meeting: Open.

Agenda

February 24, 1988, National Council on the Aging, 600 Maryland Avenue, SW., Room 100, Washington, DC 20024.

9:30 a.m.—Remarks by the Committee Chairman.

OSSA Program Update

10 a.m.—Overview of FY 1988 and FY 1989 Budgets.

10:30 a.m.—OSSA Program Status.

11:30 a.m.—Advisory Committee Restructuring.

1:30 p.m.—OSSA Strategic Plan.

3:45 p.m.—SESAC Discussion.

5:30 p.m.—Adjourn.

February 25, 1988, National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 226A, Washington, DC 20546.

8:30 a.m.—OSSA Strategic Planning: Discipline Views.

10:45 a.m.—OSSA Strategic Planning: Transportation Issues.

1:30 p.m.—Science Update: New Findings.

2 p.m.—OSSA Strategic Planning: Discussion.

3:15 p.m.—OSSA Strategic Planning: Space Station Science.

5:30 p.m.—Adjourn.

February 26, 1988, same location as February 25, 1988.

8:30 a.m.—Science Update: Infrared Detection of High Red Shift Objects.

9 a.m.—OSSA Strategic Planning: Office of Exploration Plans.

9:30 a.m.—OSSA Strategic Planning: Discussion.

1 p.m.—Adjourn.

January 27, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-2180 Filed 2-2-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice 88-09]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATE AND TIME: February 12, 1988, 8:30 a.m. to 5 p.m.

ADDRESS: Capitol Holiday Inn, Room: Columbia South, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Dr. John L. McLucas and is composed of 20 members, including individuals who also serve on other committees.

This meeting will be open to the public up to the seating capacity of the room, which is approximately 50 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

February 12, 1988

8:30 a.m.—Introduction.
Administrative Items.
9:15 a.m.—Program Overivew.
Background History.
10:15 a.m.—Current Program Status.
Organization.
Major Contracts.
1:15 p.m.—Special Topics.
Transportation.
Operations.
Information Systems.
Evolution.
3:30 p.m.—Committee Identification of Issues.
Work Plan.
5 p.m.—Adjourn.

January 28, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-2181 Filed 2-2-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

[Docket Nos.: 50-454, STN 50-455, STN 50-456 and STN 50-457]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois and Facility Operating License Nos. NPF-72 and NPF-75, issued to the licensee, for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The amendments add two radiation monitors in the Technical Specifications and add a requirement that a composite sample of sump effluent be taken prior to discharge into the circulating water system. The licensee's application of February 18, 1987 proposed to add the two radiation monitors in the Technical Specification for Byron and was noticed in the **Federal Register** on March 25, 1987 (52 FR 9561). By application dated November 17, 1987, the licensee added the requirement for the composite sample of sump effluent and requested that the amendment also be applied to Braidwood.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Sidley and Austin, One

First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings for petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–2214 Filed 2–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–62 issued to Illinois Power Company (the licensee), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

These amendments include four proposed changes to Technical Specification sections 3/4.3.7.1, 3/4.3.7.11 and 3/4.3.7.12 concerning radiation monitoring instrumentation. The first proposed change consists of revisions which both account for and allow credit to be taken for redundancy of the common Central Control Terminals (CCTs) where process radiation monitor status and indications are provided. These revisions consist of: including the CCTs in the OPERABILITY requirements for certain radiation monitor channels required to be OPERABLE by the Technical Specifications; changing the ACTION statements, as applicable, to account for inoperability of the CCTs versus inoperability of the monitor itself that provides input to the CCTs; enhancing the CHANNEL CHECK for the applicable radiation monitors to ensure that channel communication is established to the Main Control Room—CCT or Radiation Protection—CCT; and changing the expanded CHANNEL FUNCTIONAL TEST requirements for the radiation monitors to make the wording of the requirement based on the Standard Technical Specifications more specific and applicable to the Clinton design without altering the intent of the requirement.

The second proposed change consists of revisions to the CHANNEL FUNCTIONAL TEST requirement for the Liquid Radwaste Discharge Monitor. The current requirement requires a demonstration of automatic isolation of the release pathway with the monitor controls not set in the OPERATE mode. The proposed change would delete this specific requirement since the monitor is not designed to effect an isolation for the specific condition.

The third proposed change consists of specific revisions to make the channel/instrument descriptions for the Standby Gas Treatment System (SGTS) Exhaust Process Radiation Monitor (PRM) agree with the HVAC Exhaust PRM descriptions since they are designed and operated in a similar manner. These revisions would not change the intent of the Specification or the manner in which the surveillances are conducted.

The fourth proposed change consists of several changes to ACTION 72 of Table 3.3.7.1–1 to make it consistent with other applicable Specifications. To support these changes, which are associated with the OPERABILITY of the Pre-treatment Off-Gas process radiation moniotor, changes are also proposed for related Secifications 4.11.2.7.1 and 4.22.2.7.2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Council—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zable, Esq., of Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factor specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Vespasion Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Bethesda, Maryland, this 27th day of January 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–2215 Filed 2–2–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–2 (50–280 and 50–281)]

Virginia Electric and Power Co.; Issuance of Amendment to Materials License SNM–2501

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Materials License No. SNM–2501 held by the Virginia Electric and Power Company for the receipt and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation, located on the Surry Power Station site, Surry County, Virginia. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to change the environmental reporting requirement to coincide and be consistent with existng requirements for the Surry Power Station. It also corrects a typographical error; an administrative inconsistency between the Commission's regulations and the Technical Specifications. The changes do not alter the intent of the Technical Specification nor any safety margins.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated November 16, 1987, and (2) Amendment No. 2 to Materials License No. SNM–2501, and (3) the Commission's letter to the licensee dated January 27, 1988. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia, 23185.

Dated at Rockville, Maryland, this 27th day of January 1988.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 88–2216 Filed 2–2–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Meetings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: February 5 and 6, 1988—Business Meeting—February 5 beginning at 10:00 a.m. and February 6 beginning at 9:30 a.m..

ADDRESS: Room B318 Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634–8501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in Postal Service and asset sales, including Naval Petroleum Reserves and AMTRAK, and Potal Service and other matters. The business meeting is open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 88–2321 Filed 2–2–88; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549

Revised File No. 270–19, Form BD

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.), the Securities and Exchange Commission has submitted for clearance the following proposed revision to Form BD under the Securities Exchange Act of 1934.

Form BD—Application for Registration as a Broker or Dealer, inclusion of additional language, in Form BD, providing that the applicant consents to service of process for any application for protective decree brought by the Securities Investor Protection Corporation. Two thousand six-hundred and sixteen respondents incur 4.2 burden hours to comply with this rule. However, this revision will not

affect the burden hours incurred by such respondents.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 22, 1988.

[FR Doc. 88–2171 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270–71, Form 12b–25

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance of Form 12b–25; which provides registrants with a vehicle to disclose that filings will be late. The Form effects 4227 filers at 2.5 hours per form for a total of 10,568 burden hours.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 29, 1988.

[FR Doc. 88–2237 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16240; 812–6904]

CTC Mansfield Funding Corp; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: CTC Mansfield Funding Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit it to assist The Toledo Edison Company ("Toledo") and The Cleveland Electric Illuminating Company ("Cleveland") in the financing and refinancing of property through leveraged lease financing transactions in which they will be co-lessees.

Filing date: The application was filed on October 16, 1987, and amended on January 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2190 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and the Applicant undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. Applicant also undertakes that there is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which Toledo, an Ohio corporation, and Cleveland, an Ohio corporation, are the co-lessees (in such capacities, collectively "Lessee"). Toledo and Cleveland will be jointly and severally obligated under the facility leases described below. Toledo and Cleveland are both wholly-owned subsidiaries of Centerior Energy Corporation ("Centerior"), an Ohio corporation that is an exempt public utility holding company under section 3(a)(1) of the Public Utility Holding Company Act of 1935. Centerior will make an initial determination as to whether or not the debt portion of such leveraged leased transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities ("Collateral Trust Notes").

2. Applicant's sole purpose is to assist Toledo and Cleveland in the financing and refinancing,[1] in whole or in part, of Toledo's and Cleveland's undivided ownership interest [2] in Bruce Mansfield Generating Station Units Nos. 1, 2 and 3 and certain common facilities relating thereto, a coal-fired generating station located on the Ohio River at Shippingport, Pennsylvania, (the interest of Toledo and Cleveland in Bruce Mansfield Generating Station Units 1, 2 and 3 and the facilities whose use is common to all three Units is collectively the entire property described and defined as a single Facility in the documents and subject, as a whole, to the lien of each of the Lease Indentures described below and is hereinafter referred to as the "Generating Station"). Pursuant to an Operating Agreement relating to the Generating Station, among other things, Pennsylvania Power Company is authorized to act as agent for the companies entitled to the capacity of and energy from the Generating Station, and has responsibility and control over construction, operation and maintenance of the Generating Station. Rights under such Operating Agreement relating to the undivided interests being financed and refinanced by Toledo and Cleveland will be assigned to the Lessors (referred to below) and reassigned for the benefit of the holders of Secured Notes (as hereinafter defined).[3]

[1] Applicant believes any refinancing will be undertaken infrequently and that every representation concerning the Collateral Trust Notes will apply to each and every series irrespective of whether such series of Collateral Trust Notes refunds a prior series.

[2] Specifically, Toledo owns a 17.30% and a 19.91% undivided interest in each of Units 2 and 3, respectively, and the respective common facilities relating thereto; and Cleveland owns a 6.50%, a 28.60% and a 24.47% undivided interest in each of Units 1, 2 and 3, respectively, and the respective common facilities relating thereto. The remaining percentages of ownership interests of the Units and the common facilities relating thereto are owned by certain other utilities, and the interests of these other utilities can have no effect on the Applicant or holders of Collateral Trust Notes.

[3] Applicant represents that Toledo and Cleveland have received all regulatory approvals necessary for the consummation of the Lease Transactions.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the facility leases forming a part thereof ("Facility Leases") which will be payable from rentals and other payments by the Lessee. Initially the Lessor under each Facility Lease will be a bank or trust company, incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000, acting as trustee for one or more beneficiaries pursuant to a trust agreement entered into exclusively for the purpose of the lease financing. Under such trust agreement, any successor trustee must be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. (See paragraph 15 below.) The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Secured Notes").

4. Prior to the issuance of the Collateral Trust Notes, it is possible that interim borrowings by the Lessor of the balance of the purchase price will be made directly from one or more banks. It is expected that such direct borrowings will be refunded in full by borrowings from the Applicant simultaneous with the issuance of the relevant Collateral Trust Notes. To the extent that market conditions do not permit a 100% refinancing of such bank debt, however, the banks will have *pari passu* rights in the collateral under the respective Lease Indentures with a Collateral Trust Noteholder. In all cases, the timely payment of the principal of, and premium, if any, and interest on, the Secured Notes pledged solely for the benefit of the Collateral Trust Noteholders will be sufficient to timely pay the debt service on such Collateral Trust Notes.

5. Under each Facility Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Secured Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Toledo and Cleveland pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Toledo and Cleveland from time to time, and Toledo and Cleveland have agreed to provide certain indemnifications to CTC and CT with respect to Applicant's participation.

6. The funds necessary for the purchase of the Secured Notes will be acquired through the issuance by Applicant of its Collateral Trust Notes, which will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the Secured Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Secured Notes held by Applicant will consist only of Secured Notes issued in connection with any Facility Leases to which Toledo and Cleveland are parties, as Lessee, relating to their ownership interest in the Generating Station.

7. All Collateral Trust Notes will be issued under a common indenture and a separate supplemental indenture for each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Collateral Trust Notes of that series. It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Centerior or its subsidiaries. At each lease closing involving the financing of the debt portion of the purchase price of the Leased Property through the issuance of Collateral Trust Notes, the Secured Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Secured Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("1933 Act").

8. The Lease Indentures will set forth the terms and conditions under which the Secured Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Facility Lease. The Lease Indenture Trustee or the Applicant may have a lien on, or security interest in, the Leased Property. The Lessor will covenant that, so long as any Secured Note is outstanding, it will not incur any other debt not constituting Secured Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien on or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Secured Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Collateral Trust Noteholders. Except for sinking fund provisions and the like which would be disclosed in a prospectus complying with the 1933 Act and the rules and regulations issued thereunder in respect of the Collateral Trust Notes in a public offering of Collateral Trust Notes, the Applicant will be precluded from purchasing any Secured Note. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Secured Notes issued thereunder, and (b) certain events of default under the related Facility Lease.

9. The various series of Collateral Trust Notes will have terms which may differ as to maturity dates, interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Collateral Trust Notes and other matters. The interest rates, maturities and principal amounts of each series of Collateral Trust Notes will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Secured Notes exceed the cash requirements of Applicant's obligations under the Collateral Trust Notes, the resulting funds will be invested by Applicant in certain permitted investments, in each case maturing at such time as necessary to pay Applicant's obligations under the Collateral Trust Notes. The Collateral Trust Notes, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the 1933 Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Collateral Trust Notes are offered and sold outside the United States and to non-U.S. persons without

registration under the 1933 Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Collateral Trust Notes both within and outside the United States will be made without registration of all such Collateral Trust Notes under the 1933 Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Collateral Trust Notes from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

10. The initial issuance of Collateral Trust Notes will be through an underwritten public offering of one or more series having a maximum aggregate principal amount of approximately $877 million (assuming a total sales price for Toledo's and Cleveland's interests in the Generating Station of $1.0236 billion). Although neither Toledo nor Cleveland will be the actual obligor of the Collateral Trust Notes, they will be considerd the "issuer" thereof for purposes of the 1933 Act and an "obligor" thereof for the purposes of the Trust Indenture Act of 1939. Any registration statement filed under the 1933 Act relating to the Collateral Trust Notes will name Toledo and Cleveland as the joint registrants and will be signed on behalf of Toledo and Cleveland as the joint registrants by such officers and directors of them as may be required under the 1933 Act and the rules, regulations and forms of the SEC thereunder.

Accordingly, the provisions of section 11 of the 1933 Act will apply to Toledo and Cleveland.

11. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of the premium, if any, and interest on all Collateral Trust Notes, the Secured Notes and other assets held by the Applicant. Each such Secured Note will in turn be secured by the assigned rentals and other assigned payments under such Facility Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Collateral Trust Noteholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Secured Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Collateral Trust Noteholders to direct, by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Secured Notes. As a result of this pass-through voting mechanism, the rights and remedies of Secured Noteholders will be exercisable directly by the Collateral Trust Noteholders through their fiduciary, the Trustee. The percentage of aggregate principal amount of Secured Notes directing any action or being voted for or against any proposal will be the percentage of aggregate principal amount of the Collateral Trust Noteholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Secured Notes as a prudent man would in the care of his own property.

12. In the event Toledo or Cleveland defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Secured Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the exercise by the Lessor under the applicable Facility Lease of any remedies available to it under such Facility Lease, all of the rights and remedies against Toledo and Cleveland provided in the related Lease Indenture. The exercise of such rights and remedies would be at the direction of the Collateral Trust Noteholders through the Trustee's instructions to the Lease Indenture Trustee or as pledgee of the Applicant's interests in such Lease Indenture.

13. Among the rights and remedies of a holder of Secured Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Toledo and Cleveland pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Secured Notes. Amounts payable by Toledo and Cleveland under the Facility Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Secured Notes, will be paid directly to the Trustee for distribution to the Collateral Trust Noteholders. Therefore the Collateral Trust Noteholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Toledo and Cleveland. Moreover, the Collateral Trust Noteholders will be entitled to realize on the security afforded by the security interest created by the Lease Indentures in an amount up to the aggregate unpaid amount of the relevant Secured Notes secured by such security interest. The combination of the Secured Notes and the obligation of Toledo and Cleveland under the Facility Leases, grant Collateral Trust Noteholders access to the general credit of Toledo and Cleveland and is thus the functional equivalent of a guaranty by them. The Secured Notes and the Lease Indentures will provide that, upon the occurrence of certain casualty events, termination events, special loss events or certain other events, Toledo and Cleveland shall, jointly and severally, assume the obligations represented by the Secured Notes, and the Lessors will grant a lien on and security interest in the Leased Property to secure the Secured Notes. The assumption described in the preceding sentence will be in partial satisfaction of Toledo's and Cleveland's obligation to make payments required of them upon early termination of the Facility Leases in consequence of any such event. The preservation of the right of Toledo and Cleveland to assume the Secured Notes in certain circumstances permits them to avoid an accelerated obligation to prepay the Secured Notes under provisions of the Facility Leases.

14. When funds are held on deposit for a specific purpose for example, under the Lease Indentures for release of the lien on the Trust Estate, United States Government securities sufficient to pay all amounts of principal, interest and premium, if any, without reinvestment may be deposited. In other cases, the Lease Indentures also provide for permitted investments by the Trustee which are at the direction, expense and risk of the beneficiary of the grantor trust in securities of a term of 90 days of less limited to (i) direct obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment; (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's or "A-1" or its equivalent by Standard & Poor's; (iii) certificates of deposit maturing within 90 days after such investment issued by commerical banks organized under the laws of the United States of America or of any political subdivision thereof having a combined captial and surplus in excess of $500,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed $2,000,000 and (b) in certificates of deposit issued by any one bank shall not exceed $10,000,000. The Collateral Trust Indenture will contain similar provisions.

15. Except to the extent payable from the proceeds of refunding the Collateral Trust Notes, or the proceeds of the initial issuance of the Collateral Trust Notes, when the relevant Lease Closing Date does not occur simultaneously, due to the non-recourse nature of Secured Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any and interest on the Collateral Trust Notes, will be made exclusively from amounts paid by the Lessee under the Facility Leases.

16. It is expected that the Lessors will be grantor trusts formed exclusively for the purpose of lease financing. The original beneficiary of such grantor trust will be a single sophisticated institutional investor. All such beneficial interests will be offered and sold in transactions not involving a public offering within the meaning of section 4(2) of the 1933 Act. Subsequent transfers of such beneficial interests will be made only to "sophisticated investors" including a transferee which is an affiliate of the original beneficiary, to a transferee which is a bank, insurance company or other financial institution or corporation with a net worth at the time of such transfer of not less than $50 million or a subsidiary of any such person, or to any other person with the consent of the parties to the Lease Transaction or without such consent if the original beneficiary is deemed to be, or becomes subject to regulation as, an electric utility, a public utility or a public utility holding company, but in no event shall such transfer violate the 1933 Act. Applicant believes that these restrictions, when considered in light of the nature of leveraged lease transactions, effectively preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interest, the legal and regulatory framework of the transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of beneficial interests in the Lessor. Moreover, Applicant represents that any sale and lease back transaction as described in the application consummated on or after October 1, 1987, (excluding therefore, the Lease Transactions already consummated as described in the application) will contain limitations designed to ensure that both the original beneficiary of each grantor trust acting as Lessor and each transferee thereof will be a sophisticated investor.

Applicant's Legal Conclusions

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Collateral Trust Notes would provide a convenient mechanism for Toledo and Cleveland to obtain access to segments of the debt capital market other than the institutional private placement market. The primary reason for making Toledo and Cleveland co-lessees under the Facility Leases is to provide purchasers of the Collateral Trust Notes (and the Lessors under the Facility Leases) with access to the credit of both utility companies and thus to enhance the investment characteristics of the Collateral Trust Notes. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the 1940 Act is inapplicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2173 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16239; (812-6908)]

EBI Series Trust, et al.; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The EBI Flex Fund and EBI International Fund of EBI Series Trust (the "Trust"), EBI Equity, Inc. ("EBI Equity"), EBI Income, Inc. ("EBI Income") and EBI Cash Management, Inc. ("EBI Cash") (collectively, "Applicants" or the "Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35, 22(c) and 22(d) and Rule 22c-1 thereunder; approval requested under section 11(a).

SUMMARY OF THE APPLICATION: Applicants seek an order amending a prior order (Investment Company Act Release No. 14916, January 27, 1988) ("Prior Order") permitting the assessment of a contingent deferred sales load ("CDSL") on certain redemptions and the waiver of the CDSL under certain circumstances. The amended order will extend the CDSL to all current and future series of Applicants, delete one waiver of the CDSL permitted in the prior order and approve certain exchange privileges as described below.

FILING DATES: The application was filed on October 21, 1987, and amended on December 7, 1987, December 16, 1987, and January 15, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Suite 500, 1315 Peachtree Street NE., Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-2847, or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. All of the Applicants are registered under the 1940 Act as open-end, diversified, management investment companies. INVESCO Services, Inc. ("Distributor") serves each of the Applicants pursuant to principal underwriting agreements with each of the Applicants. The Prior Order, which amended an original order (Investment Company Act Release No. 13789, February 24, 1984) was issued on behalf of EBI Equity, EBI Income and EBI Cash (collectively, "EBI Funds"). The Trust, a recently organized Massachusetts business trust, consists of two separate investment portfolios and the Trustees of the Trust may authorize additional series. The Trust was not included in the Prior Order. Applicants now request

that the Prior Order be amended to include the Trust and any additional series or classes of shares Applicants may offer in the future on substantially the same basis as Applicants (other than EBI Cash) offer their shares.

2. The Prior Order exempted the three EBI Funds from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder. Under the Prior Order, the EBI Funds are permitted to impose a CDSL on certain redemptions of shares and to waive such CDSL on redemptions as follows: (1) With respect to investors who are individuals, upon such individual's death, disability or retirement; (2) with respect to investors who are tax-exempt employee benefit plans (i) upon the death, disability or retirement of a plan participant which results in a distribution from the plan, which distribution cannot be funded from other sources (subject to the right to require a certificate from such plan's fiduciary confirming such fact), (ii) upon the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Fund would be improper (subject to the right to require an opinion of counsel to the effect that the continuation of such an investment would be improper), (iii) upon the determination by any applicable regulatory authority that continuation of the investment in the Fund is improper or (iv) upon a change in control of a plan sponsor or the appointment of a new plan fiduciary; and (3) with respect to banks, trust companies and other financial institutions with trust powers which use trust funds to purchase shares of the fund, no CDSL is imposed if such institution made the purchase pursuant to the exercise of discretionary investment authority, as trustee, and not at the direction of the grantor, the beneficiary of any trust or of any other third party (subject to the right to require a certificate from an officer of such financial institution stating that the investment in the Fund was not made at the direction of any third party).

3. Each of the series of the Trust propose to distribute their shares pursuant to separate plans of distribution adopted pursuant to Rule 12b–1 under the 1940 Act (collectively, the "Rule 12b–1 Plans") and to impose a CDSL with respect to redemptions of shares purchased pursuant to such Rule 12b–1 Plans. EBI Income and EBI Equity have previously adopted a Rule 12b–1 Plan, and pursuant to the terms of the Prior Order, have imposed a CDSL. EBI Cash does not presently intend to adopt a plan of distribution under Rule 12b–1 under the Act; however, if shares of EBI Cash are acquired as a result of an exchange of shares from the other EBI Funds or the Trust and the shares tendered are subject to CDSL such charge will carry over to the EBI Cash shares being acquired. In its periodic review of the Rule 12b–1 Plans for EBI Income, EBI Equity and the Trust, the Trustees and Boards of Directors of each such Fund, as the case may be, will consider, among other things, the effect of the CDSL and the waiver thereof. Any subsequently created series of the Trust, the shares of which are issued and sold with a CDSL on substantially the same basis as the shares of beneficial interest in the existing series, will utilize distribution plans under Rule 12b–1 comparable to the Rule 12b–1 Plans referred to above.

4. The Trust proposes to offer its shares without an intial sales charge to investors and proposes to impose a CDSL on the proceeds of certain redemptions of the Trust's shares, and may pay such amounts to the Distributor. The CDSL will be imposed, except as noted below, if an investor makes a partial or complete redemption shares purchased under the Rule 12b–1 Plans. The CDSL will decline from 5% to 0% depending on the length of time the investments have been held by the investors. In no event could the amount of the CDSL, in the aggregate, ever exceed 5% of the lesser of (1) the net asset value of the shared redeemed, or (2) the total cost of such shares. No CDSL will be imposed when the investor redeems (1) amounts derived from increases in the net asset value per share of the Trust series, (2) shares with respect to which the Trust did not pay a commission on issuance (including shares acquired through reinvestment of dividend income and capital gains distributors), or (3) shares which, together with exchanged shares, have been held continuously for 30 months. The amount of any CDSL is calculated by determining the month in which the purchase payment which was the source of the investment being redeemed was made, and applying the appropriate percentage to the amount of the redemption subject to the charge.

5. Applicants further request approval of certain exchange offers under section 11(a) of the 1940 Act. The Trust proposed that shares of any of its series may be exchanged for shares of any of its other series or subsequent series, or for shares of any of the EBI Funds, all exchanges being at the respective net asset value of the shares being exchanged. No CDSL will be imposed at the time of such exchange, but a CDSL will be payable when an investor ultimatley redeems shares of the series of the Trust or EBI Funds acquired as a result of the exchange. Applicants also state that where shares of one Applicant have been exchanged for shares of another Applicant, the dates of the purchase of the shares of the Applicant exchanged into, for purposes of any future CDSL, are assumed to be the dates on which the shares given up in exchange were initially subject ot the Rule 12b–1 Plan. For purposes of determining the length of time shares have been help by an investor, shares held in EBI Cash which are subject to a CDSL will not be credited with the time such shares are held therein. In determining whether a CDSL is payable and, if so, the percentage charge applicable, it is assumed that, a redemption is made of shares not subject to the CDSL first and then of shares subject to the lowest CDSL.

6. The series of the Trust and the EBI Funds proposes to eliminate the waiver of the CDSL permitted under the Prior Order and set forth at paragraph 2 under item (2)(iv) above. That waiver applies to redemptions upon a change in control of a plan sponsor or the appointment of a new plan fiduciary of tax-exempt employee benefit plans. Such waiver would not be applicable under the amended order, but Applicants will continue to apply the waiver at item (2)(iv) with respect to those investors acquiring shares in EBI Equity and EBI Income prior to the time that the terms of the waiver to be permitted by the amended order are set forth in the current prospectuses of EBI Equity and EBI Income and mailed to all then current shareholders of such Funds.

Applicants' Legal Analysis

1. Applicants assert that the imposition of the CDSL and the right to waive it under certain circumstances is fair and is in the best interests of their shareholders. Applicants submit that the proposed CDSL permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of shares in the Funds. Applicants also point out that the CDSL will not apply to redemptions of shares held continuously for 30 months after the date of purchase, or to increases in the investor's account through reinvestment of dividend income and capital gains distributions or increases in net asset value per share.

2. Applicants further assert that granting the amendment to the Prior Order would not result in the abuses addressed by section 22(d) of the 1940 Act and will not result in unjust discrimination among investors. Applicants assert that the waiver of the CDSL will apply only to highly limited categories of persons and would not create a widespread opportunity for investors to avoid the imposition of the CDSL to the detriment of the Funds. Applicants assert that it would be fair and equitable and in the public interest and in the interests of their shareholders for the CDSL to be waived on the redemptions described above since, in the waiver situations described, the redemption is normally unforeseen by the shareholder at the time of purchase.

Applicant's Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

3. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act to the extent applicable when, and if, such rule is adopted.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2174 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16241; 812–6920]

RCS Emerging Growth Fund; Application

January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: RCS Emerging Growth Fund ("Applicant").

Relevant 1940 Action Sections: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1 thereunder.

Summary of Application: Applicant seeks an order to permit it to assess a contingent deferred sales load ("CDSL") on certain redemptions of its current and future series of shares and to permit it to waive the CDSL under certain circumstances.

Filing Dates: The application was filed on November 18, 1987 and amended on December 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by ceretificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington DC 20549. Applicant, 30 Tower Lane, Avon Park South, Avon, Connecticut 06001.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst, (202) 272–2847 or Brion R. Thompson, Special Counsel, (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust which was organized on May 11, 1987, and registered as an open-end, diversified management investment company under the 1940 Act. Such registration became effective on November 30, 1987. Commencing in June 1987, Applicant offered shares in a private placement only to "accredited investors", as such term is defined in Regulation D under the Securities Act of 1933 ("1933 Act"). Applicant was organized and sponsored by Robertson, Colman & Stephens ("Distributor") which acts as its distributor and Applicant's investment adviser is Avon Capital Management Corporation, a wholly-owned subsidiary of the Distributor.

2. Applicant currently issues one series of shares, but other series or classes of shares may be offered and issued in the future. Applicant requests that the exemptive order extend to all series of its shares which may be issued from time to time and to any successor fund or funds organized as part of a series in the form of a single business trust or one or more individual corporations or trusts.

3. Applicant now intends to offer its shares to the public without any initial sales charge. Applicant further proposes that a CDSL will be deducted from the proceeds of certain redemptions of its shares purchased in such public offering, if the shareholder redeems the shares within three years of purchase. The amount of the CDSL will vary depending upon the length of time the redeemed shares have been held, but will never exceed three percent of the aggregate purchase payments made by the shareholder. The proceeds of the CDSL will be paid to the Distributor to help defray the costs of selling Applicant's shares.

4. In determining the applicability of a CDSL to each redemption, shares will be deemed in a manner designed to result in the lowest possible charge for the redeeming shareholder. Thus, in determining the rate of any applicable CDSL, it will be assumed that a redemption is made first of shares from categories on which no CDSL is imposed.

5. Thus, no CDSL would be imposed to the extent that the net asset value of the shares redeemed by a shareholder does not exceed (i) the current net asset value of shares purchased more than three years prior to the redemption ("Old Shares Value"), plus (ii) the current net asset value of shares purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Shares Value"), plus (iii) increases in the net asset value of the shares above purchased with payments made during the preceding three years ("Appreciaiton Value"). The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value and Old Shares Value would be subject to the CDSL. The amount of the CDSL would depend on the number of years that have elapsed since the shareholder made the purchase payment from which an amount is being redeemed. The CDSL would be 3% in the first year, 2% in the second year and 1% in the third year. The amount if the CDSL (if any) would be calculated by first determining the date on which the purchase payment that is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption subject to the CDSL. In determining whether a CDSL is payable and, if so, the percentage rate that is applicable, Applicant will assume that the purchase payment for shares from which a redemption is made is the earliest purchase payment from which a full redemption has not already been effected.

6. Under Applicant's proposal, the CDSL would be waived on the following redemptions: (i) Redemptions of shares in connection with certain post-retirement distributions and withdrawals from retirement plans (which are permitted to be made without penalty under the Internal Revenue Code of 1986) or following the death or disability of a shareholder, (ii) redemptions by employee benefit plans maintained for or by the employees of the Distributor, (iii) involuntary redemptions, and (iv) redemptions of any shares which were issued by the Applicant as part of the private placement of shares by the Applicant. Applicant intends, when providing for waivers from the CDSL, to meet all of the conditions set out in Rule 22d–1, of the 1940 Act.

7. Applicant currently finances, in part, its distribution expenses pursuant to a plan adopted in accordance with Rule 12b–1 under the 1940 Act (the "Plan"). Under the Plan, Applicant pays a fee at an annual rate of 1% to the Distributor, which may be used by the Distributor to cover expenses primarily intended to result in the sale of Applicant's shares. Amounts of shares redeemed, including amounts upon which the proposed CDSL is waived, will be removed from the base upon which the fee Applicant pays the Distributor under the Plan is calculated. In connection with its annual review of the Plan, Applicants' Board of Trustees will also consider the Distributor's receipts from the CDSL.

Applicant's Legal Analysis

1. Applicant submits that the imposition and waiver of the proposed CDSL is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The amount, computation and timing of the CDSL are designed to permit fair treatment of all shareholders, while permitting the Applicant to offer shareholders the advantage of having their purchase payments fully invested on their behalf immediately.

2. In each situation in which the Applicant proposes to waive the CDSL, the redeeming shareholder is either a member of a class of shareholders which is favored under the tax laws or securities laws or, in the case of involuntary redemptions and redemptions of shares which were part of the intitial private placement of shares issued by the Applicant, the amounts potentially involved will likley not be sufficiently large to impose any inequitable burden on the Applicant's other shareholders. The proposed waiver to all shares which were issued as part of Applicant's private placement is also justified on basic considerations of fairness. In order to encourage funding in its initial private placement under the 1933 Act, Applicant disclosed in the Private Placement Memorandum that it would waive the CDSL on redemptions of shares which were part of the first $6,00,000 of such shares issued by the Applicant. While authorized to accept up to $20,000,000 in private placement investments, Applicant anticipated receiving only a maximum of $8,000,000. The initial offering exceeded this amount and in order to be fair to all private placement investors, Applicant proposes to waive the CDSL on redemptions of all shares which were issued as part of the private placement.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Applicant will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicant will comply with the provisions of Rule 12b–1 (or any successor rule) under the 1940 Act, as such rules may be amended from time to time.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2172 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24567]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Western Massachusetts Electric Co. et al.

January 28, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 22, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Massachusetts Electric Company (70–7488)

The Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, an electric utility subsidiary of Northeast Utilities, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) promulgated thereunder.

WMECO proposes to issue and sell up to $75 million principal amount of its first mortgage bonds ("Bonds"), in one or more series, for time to time through December 31, 1989. Each series of Bonds will have a maturity of five to thirty years. The interest rate and the price of the Bonds will be determined by the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). In addition WMECO may amend its application to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Bonds through a negotiated public offering or private placement.

Middle South Utilities, Inc. (70–7489)

Middle South Utilities, Inc. ("Middle South"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

Middle South proposes to amend its Restated Articles of Incorporation ("Charter") to increase the authorized number of shares of Middle South's common stock ("Common Stock") from 250,000,000 shares to 500,000,000 shares, all of which will be Common Stock having a par value of $5 per share. Of the 250,000,000 shares of Common Stock which Middle South is presently authorized to issue, 204,581,092 shares are presently outstanding.

Middle South also seeks authority to amend its By-Laws to broaden the right to indemnification of Middle South's directors, officers, employees, agents and representatives, to the fullest extent from time to time permitted by Florida law. Middle South also proposes to adopt certain procedural amendments to its By-Laws. Such amendments would (1) permit the board of directors to fix a record date, at not in excess of 60 days (nor less than 10 days in the case of a meeting of stockholders) prior to the date of the particular action, for making a determination of Middle South's stockholders; and (2) establish advance notice procedures with respect to (i) the nomination of candidates for election as directors of Middle South by stockholders of record ("Nomination Amendment"), and (ii) certain business to be brought before an annual meeting of stockholders of Middle South by stockholders ("Business Amendment").

Middle South proposes to take appropriate steps to submit to the stockholders for approval, at the Annual Meeting of Stockholders to be held on May 20, 1988, the proposals to amend the Charter to increase authorized Common Stock and to amend the By-Laws to broaden rights to indemnification and to change the provisions regarding record dates. Middle South proposes to solicit proxies from its stockholders in connection with these amendments. The Nomination Amendment and the Business Amendment do not require stockholder approval and can be adopted by Middle South's Board of Directors, but will be included in the 1988 proxy solicitation materials for notification purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2170 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25290; File No. SR–NSCC–87–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change on a Temporary Basis

I. Summary

On October 15, 1987, the National Securities Clearing Corporation ("NSCC") filed with the Commission, under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), a proposed rule change concerning the Mutual Fund Settlement, Entry and Registration Verification ("Fund/SERV") service. The proposed rule change would establish a new membership category for broker-dealer that only use Fund/SERV and new Fund/SERV clearing fund contribution requirements. The Commission published notice of the proposed rule change in the **Federal Register** on December 14, 1987, to solicit public comment.[1] No comments were received. This order approves the proposed rule change on a temporary basis for three months, through April 30, 1988.

II. Description

The proposed rule change would revise NSCC's rules to authorize a new category of broker-dealer membership, whose activities would be restricted exclusively to use of the Fund/SERV Service. The proposal also would add a questionnaire for broker-dealer applicants seeking Fund/SERV membership.

The proposed rule change also would revise NSCC's rules concerning Fund/SERV clearing fund contributions and allocating losses to that fund in the event of systems losses or member defaults. Those changes would affect all members using Fund/SERV, not just broker-dealers qualifying for Fund/SERV only services.

Under the proposed rule change, each NSCC member using Fund/SERV would be obligated to contribute $5,000 or $10,000 to the Fund maintained for the Fund/SERV system, if the member has daily Fund/SERV settlement debits of no more than $100,000, or $500,000, respectively. If the member's daily Fund/SERV debit items exceed $500,000, the member would be obligated to contribute $20,000 to the Fund/SERV Fund.

If NSCC suffers a loss or liability resulting from a member's default on obligations arising from Fund/SERV activity, NSCC would reverse debits and credits to the defaulting member to reduce its settlement obligations. NSCC would recover any remaining loss from the defaulting member's Fund/SERV deposit.[2] If that were insufficient to cover the loss, NSCC would follow its current loss recovery rules and procedures, *i.e.*, first use NSCC's retained earnings, then aggregate Fund/SERV deposits and, finally, the remainder of the Clearing Fund deposits allocated to other systems (*e.g.*, the continuous net settlement system). In that event, Fund/SERV members that used only Fund/SERV facilities would be liable for assessment only to the extent of their clearing fund requirement.

III. NSCC's Rationale

NSCC believes that the proposed Fund/SERV clearing fund requirements and the separate limited-use Fund/SERV broker-dealer membership category are consistent with the Act and will enhance the Fund/SERV service and encourage greater participation in a centralized settlement system for mutual fund transactions. Accordingly, NSCC believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions and will not adversely affect NSCC's ability to safeguard securities and funds within its custody or control.

IV. Discussion

The Commission preliminarily believes that the proposed rule change is consistent with the Act and, accordingly, is approving the proposed rule change on a temporary basis, for a period of three months. During that time, it will be possible to measure the benefits accruing from lower Fund/SERV clearing fund contributions and limited member assessments.

NSCC does not guarantee member Fund/SERV activity. Thus, NSCC's proposal reflects its reliance on its ability to reverse debits and credits to a defaulting member's account to avoid potential losses.

NSCC's proposal would require Fund/SERV members to contribute $5,000–$20,000 to use this service. During the next three months, the Commission expects NSCC to monitor member Fund/SERV settlement activity, and report on the risk that Fund/SERV settlement debits and credits could not be reversed and fully-collected from other Fund/SERV system users.

V. Conclusion

On the basis of the foregoing, the Commission finds preliminarily that the proposed rule change is consistent with the Act and, in particular, with section 17A. The proposed rule changes would appear to increase the number of transactions that can be processed through central facilities in a safe and efficient manner.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–87–12) be, and hereby is, approved on a temporary basis through April 30, 1988.

[1] See Securities Exchange Act Rel. No. 25175 (Dec. 4, 1987), 52 FR 47471.

[2] For a member who utilizes services other than Fund/SERV, NSCC, pursuant to the provisions of NSCC Rule 4, would look to the remainder of the defaulting member's Clearing Fund deposit to cover the loss after it exhausts the Fund/SERV deposit and before it took any other action.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 26, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2238 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Brush Wellman, Inc.

Common Stock, $1.00 Par Value (File No. 7-2036)

Ultimate Corporation

Common Stock, No Par Value (File No. 7-2037)

British Airways PLC

Definitive American Depositary Receipts (File No. 7-2038)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 22, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2239 Filed 2-2-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16242; (812-6550)]

The Germany Fund, Inc., Application

Date: January 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Germany Fund, Inc.

Relevant 1940 Act Sections: Exemption requested pursuant to section 10(f) from the provisons of section 10(f).

Summary of Application: Applicant seeks an order to permit it to purchase securities in underwritten public offerings in the Federal Republic of Germany ("Germany") in which affiliates of its investment adviser and manager participate as principal underwriters.

Filing Date: The application was filed December 4, 1986, and amended on October 16, 1987, and January 6, 1988. A third amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC. 20549; The Germany Fund, Inc., c/o Stephen K. West, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033 or Brion Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is registered under the 1940 Act as a diversified, closed-end management investment company. Applicant is designed for United States and non-German foreign investors wishing to participate in the German economy by means of a professionally managed diversified portfolio seeking long-term capital appreciation. To this end, Applicant pursues investments in equity and equity-linked securities of German companies which are either listed or approved for listing on one or more German stock exchanges, or admitted or approved for admission to regulated unlisted trading on such exchanges. Under normal market conditions, at least 65 percent of its total assets will be invested in such securities. In addition, Applicant may invest in Deutsche mark ("DM") denominated bonds issued by the Federal Republic of Germany, the German Federal Railways and Post Office, as well as in DM-denominated debt instruments issued by private and public entities, including multinational lending institutions and supranational institutions. For temporary defensive purposes, Applicant may also invest in U.S. dollar and DM-denominated money market instruments.

2. Applicant's investment adviser is Capital Management International GmbH of Deutsche Bank ("CMI"), an entity organized under the laws of Germany, and its manager is Deutsche Bank Capital Corporation ("DBCC"), a corporation organized under the laws of the State of New York. Both CMI and DBCC are wholly-owned subsidiaries of Deutsche Bank AG ("Deutsche Bank"), an entity organized under Germany law.

3. Pursuant to an Investment Advisory Agreement, CMI, in accordance with Applicant's stated investment objective, policies and restrictions, makes recommendations to DBCC with respect to Applicant's investments, and, upon instructions given by DBCC as to suitable securities for investment by Applicant, transmits purchase and sale orders and selects brokers and dealers to execute portfolio transactions on behalf of Applicant. Under a Management Agreement, DBCC acts as the corporate manager and administrator for Applicant and, subject to the supervision of Applicant's Board of Directors and pursuant to recommendations made by CMI, determines suitable securities for investment by Applicant.

4. Deutsche Bank is a member of all eight German stock exchanges and frequently acts as lead manager or co-manager for underwritten public offerings of both debt and equity securities. Applicant has been advised that for the years 1984 through 1987, Deutsche Bank and its affiliates were lead manager or co-manager for 38 out of 77 initial public offerings of equity securities in Germany, representing approximately 71.6% of the approximately 10.13 billion DM raised in such offerings. Moreover, Deutsche Bank or its affiliates were members of virtually all underwriting syndicates for initial issues exceeding 3.5 million DM.

5. Regarding the disclosure available to prospective purchasers of German securities Applicant first notes that the German Commercial Code and Corporation Act require German corporations (whether or not listed on an exchange) to publish annual reports. The 1985 Law Regarding Financial Statements also calls for annual reports and, in the case of listed and certain other larger companies, interim earnings reports disclosing, among other things, all material facts and events occurring since the prior report. The disclosure contained in these reports for German companies approved for listing on an exchange or approved for regulated unlisted trading is similar to that provided by U.S. corporations in their filings under the Securities Exchange Act of 1934. Although public entities, such as the German Federal Government, Railways and Post Office, are not required to publish financial records under these laws, information of this type is available in the budgets and annual reports of such entities.

6. The German equity and equity-linked securities in which the Applicant's investment policy permits it to invest are listed or approved for listing on one or more of the eight German stock exchanges, or are admitted or approved for admission to regulated unlisted trading on such exchanges. In certain rare cases, Applicant may purchase securities which have been approved for listing or regulated unlisted trading but which have not been formally listed or admitted at the time of purchase. In such cases, the admissions committee of the relevant exchange will have approved the disclosure contained in the Listing Prospectus (or condensed memorandum, in the case of regulated unlisted trading) and such disclosure will have been completed and will be made available to investors. Generally, formal listing or admission will take place within two business days after purchase of the securities by Applicant.

7. The debt instruments in which Applicant may invest are listed on one or more of the German Stock Exchanges. For an official listing, the German Stock Exchange Law requires publication of a prospectus ("Listing Prospectus") which contains all information considered material to an evaluation of the securities to be listed. Those applying for listing on the German Stock Exchanges must provide latest annual financial statements with explanatory notes, including disclosure of any liabilities not shown therein and complete details of the issue to be listed.

8. Applications for admission of issues for regulated unlisted trading on German Stock Exchanges must contain essentially similar information as that required for official listing, but in a condensed form that may be submitted as a memorandum. Applications (to both listed and regulated unlisted trading) are reviewed by a committee of each stock exchange, which committee has the obligation under the German Stock Exchange Law to ensure that the public is provided with all information of a legal or factual nature which is legally required or otherwise considered necessary to make an informed judgment about the securities to be issued and not to admit the issue if the disclosure statement is incomplete.

9. If a Listing Prospectus pursuant to which securities have been admitted for official listing, or the memorandum pursuant to which securities are admitted for regulated unlisted trading on an exchange contains inaccurate statements which are material to the making of a judgment about the securities, the issuer and the exchange member sponsoring the issue (which, in the case of securities admitted for official listing, must be a bank) are jointly and severally liable to any buyer for damages resulting from the inclusion of such statements if such issuer or member knew or but for gross negligence should have known of the inaccuracy. The liability for damages cannot be avoided by stating that the information originated from third persons. Applicant represents that the degree of liability is the same for both listed and regulated unlisted securities in accordance with laws recently enacted in Germany.

Applicant's Legal Analysis

1. Because of the affiliations described above, CMI and DBCC are "affiliated persons" of Deutsche Bank within the meaning of section 2(a)(3) of the 1940 Act. Absent the requested exemption, section 10(f) of the 1940 Act prohibits Applicant from purchasing securities in primary offerings from any underwriting syndicate in which Deutsche Bank or its affiliates participate as principal underwriters because Deutsche Bank is an affiliated person of DMI and DBCC.

2. Applicant cannot satisfy one of the conditions of Rule 10f-3 under the 1940 Act, which would permit the purchase of securities in circumstances otherwise prohibited by Section 10(f) of the 1940 Act. Rule 10f-3(a)(1) provides that the securities to be purchased be part of an issue registered under the Securities Act of 1933 ("1933 Act"). The securities offerings in Germany in which Applicant will participate are not required to be and will not be registered under the 1933 Act.

According to the application, the price for German securities when initially offered through an underwriting syndicate is generally more favorable than that available if Applicant were to purchase such securities in the secondary market. Because Applicant is unable to satisfy all of the conditions of Rule 10f-3, unless the requested order is granted it will be precluded from purchasing German securities at the more favorable initial offering price in offerings where Deutsche Bank or its affiliates participate as principal underwriters.

3. In support of the requested relief, Applicant asserts that the disclosure required by the German Commercial Code, Corporation Act, Law Regarding Financial Statements and German Stock Exchange Law and regulations thereunder, although not as comprehensive in some respects as that required by U.S. laws, provide significant disclosure in connection with the issuance of securities, the level of such disclosure is the substantial equivalent to that required by the 1933 Act for the purpose of Rule 10f-3(a)(1). Applicant also asserts that the disclosure provided by German issuers is sufficient in order to provide CMI with the information necessary to make informed investment decisions, and that CMI is both familiar with and capable of evaluating this disclosure. Further, Applicant points out that its shareholders will be protected by the Underwriters' and issuers' liability prescribed by the German Stock Exchange Law for losses resulting from reliance on a misleading Listing Prospectus or memorandum in the case of regulated unlisted issues.

4. Applicant submits that, given the significant role of Deutsche Bank and its affiliates as principal underwriters of public offerings in Germany, Applicant's shareholders may be seriously prejudiced in the absence of the requested relief. In this regard it is submitted that Applicant might find it difficult to purchase the amount and

types of securities needed to achieve its investment objective of long-term capital appreciation unless it can purchase at the lower initial offering price. Accordingly, Applicant concludes that the granting of the requested exemptive order is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

Applicant expressly consents to the following conditions with respect to the requested order:

Applicant undertakes that it will purchase securities in underwritten public offerings in Germany in which Deutsche Bank or its affiliates participate as principal underwriters only if (i) the securities purchased are listed or approved for listing or, admitted or approved for admission to regulated unlisted trading on one or more of the German stock exchanges and (ii) with the exception of paragraph (a)(1) of Rule 10f–3, all other conditions of Rule 10f–3 are satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–2240 Filed 2–2–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0189]

DGC Capital Co.; Surrender of License

Notice is hereby given that DGC Capital Company (DGC), 525 Lake Avenue South, Duluth, Minnesota 55802, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). DGC was licensed by the Small Business Administration on October 29, 1964.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on January 25, 1988, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 28, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–2246 Filed 2–2–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 05/05–0209]

Raffensperger Hughes Venture Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, et seq.) has been filed by Raffensperger Hughes Venture Corp. (RHV), 20 North Meridian Street, Indianapolis, Indiana 46204 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
L. Gene Tanner, 6215 Old Orchard Road, Indianapolis, IN 46226	Chairman	
Russell Breeden III, 7878 Eagle Creek, Overlook Drive, Indianapolis, IN 46254	Director	
Robert H. Shortle, 11904 Eden Glen Drive, Carmel, IN 46032	Director, President	
Keith R. Faller, 530 East 58th Street, Indianapolis, IN 46220	Director	
Samuel B. Sulphin II, 422 North College Ave., Indianapolis, IN 46202	Director, Vice President	
Richard Maurer, 12575 Town Road, Carmel, IN 46032	Director, Vice President, Secretary, Treasurer	
Raffensperger, Hughes & Co., Inc., 20 North Meridian St., Indianapolis, IN 46204	Investment Advisor/ Manager	100
Associated Group, Inc. d/b/a Regional Marketing, Inc. ("RMI"), 120 West Market St., Indianapolis, IN 46204	Parent of Raffensperger	
Associated Insurance Companies, Inc. ("Associated"), 120 West Market St., Indianapolis, IN 46204	Parent of RMI	

The Applicant, RHV, and Indiana Corporation will begin operations with $1,000,000 paid in capital and paid in surplus. RHV will conduct its activities primarily in the State of Indiana but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416. A copy of this notice shall be published in a newspaper of general circulation in the Indianapolis, Indiana area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 28, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–2247 Filed 2–2–88; 8:45 am]

BILLING CODE 8025–01–M

Federal Aviation Administration

Grant Assurances and Agreement for Airport Improvement Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of grant assurances to be used in the Airport Improvement Program.

SUMMARY: This notice provides copies of the grant assurance and grant agreement which will be used in the Airport Improvement Program after December 30, 1987.

DATE: These grant assurances and agreement will be used on and after December 30, 1987.

Background: Under the provisions of *The Airport and Airway Improvement Act of 1982* as amended by *The Airport and Airway Safety and Capacity Expansion Act of 1987*, as a condition of approval of a grant application, the Secretary must receive certain assurances from the sponsor (applicant). These assurances are submitted as Part V of the application for Federal assistance. The FAA has reviewed the assurances currently being used and has revised them to reflect the requirements of the 1987 Act.

Two sets of assurances are included in this notice. The first set appearing in grants as FAA Form 5100–100 (1–88) contains assurances to be made by airport sponsors in their applications requesting funds for airport development, airports planning and noise program implementation and by planning agencies in their applications requesting funds for integrated airport system planning. The second set appearing in grants as FAA Form 5100–100.1 (1–88) contains assurances to be made by sponsors in their application requesting funds for noise program implementation when the sponsor does not own or operate the airport.

The assurances, submitted with the application for assistance under the Airport Improvement Program, are incorporated into the grant agreement by reference. For this reason, the grant agreement appearing as FAA Form 5100–37 (1–88) is also included as part of this notice. As need dictates, the assurances published herein may be amended to reflect new Federal requirements, or to resolve problems arising in the grant program. Notice of any such changes proposed will be published in the **Federal Register** and opportunity will be provided for comment by the public.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Benedict D. Castellano, APP–510, Office of Airport Planning and Programming (Room 618), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, Telephone (202) 267–8822.

Issued in Washington, DC on January 22, 1988.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Part V—Assurances—Airport and Planning Agency Sponsors

A. General

1. These assurances shall be complied with in the performance of the following grant agreements:

a. Airport development, airport planning, and noise program implementation grants to airport sponsors.

b. Integrated airport system planning grants to planning agencies.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or the Aviation Safety and Noise Abatement Act of 1979. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport, the term "private sponsor" means a private owner of a public-use airport and the term "sponsor" includes public agency sponsors and private sponsors.

3. These assurances also are required to be submitted as part of the project application by a sponsor which is both a public agency and a planning agency requesting funds for integrated airport system planning under the provisions of the Airport and Airway Improvement Act of 1982, as amended.

4. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability

1. *Airport Development or Noise Program Implementation Projects Undertaken by a Public Agency Sponsor.* The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise program implementation project, or throughout the useful life of the project items installed within a facility under a noise program implementation project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurance against exclusive rights or the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

2. *Airport Development or Noise Program Implementation Projects Undertaken by a Private Sponsor.* The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of facilities developed or equipment acquired under an airport development or noise program implementation project shall be no less than 10 years from the date of the acceptance of Federal aid for the project.

3. *Airport Planning Undertaken by a Sponsor.* Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. *Sponsor Certification.* The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*[1]

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Hatch Act—5 U.S.C. 1501, *et seq.*[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, *et seq.*[1] [2]

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).[1]

g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 through 469C.

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.[1]

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d–4.

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*[1]

n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.[1]

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*[1]

q. Copeland Antikickback Act—18 U.S.C. 874.[1]

r. National Environmental Policy Act of 1969—42 U.S.C. 4231, *et seq.*[1]

s. Endangered Species Act—16 U.S.C. 668(a), *et seq.*[1]

t. Single Audit Act of 1984—31 U.S.C. 7501, *et seq.*[2]

u. Merchant Marine Act, 1936—42 U.S.C. 1241(b).[1]

Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs.

[1] These laws do not apply to planning projects.

[2] These laws do not apply to private sponsors.

Executive Order 11246—Equal Employment Opportunity.

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Progams.

d. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

e. 49 CFR Part 29—Debarments, Suspensions, and Voluntary Exclusions.

f. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

g. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

h. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

i. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

j. 14 CFR Part 150—Airport Noise Compatibility Planning.

k. 46 CFR Part 381—Cargo Preference—U.S. Flag Vessels.

Office of Management and Budget Circulars

a. A–87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.*

b. A–102— Uniform Requirements for Assistance to State and local Governments.*

c. A–128—Audits of State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.*

a. *Public Agency Sponsor:* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. *Private Sponsor:* It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative, and shall in writing direct and authorize that person of file this application, including all understandings and assurances contained therein; to act in connection with the application; and to provide such additional information as may be required.

3. *Sponsor Fund Availablity.* It has sufficient funds available for the portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* It holds good title, satisfactory the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

For noise program implementation projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.*

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify and outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise program implementation project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor of an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with the Airport and Airway Improvement Act of 1982, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects, other than land acquisition, to be carried out on property not owned by the airport and over which property another public agency has land use control or authority, the sponsor shall obtain from each such agency a written declaration that such agency supports that project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Consultation with Users.* In making a decision to undertake any airport development project under the Airport and Airway Improvement Act of 1982, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. *Public Hearings.* In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community. It shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary.

10. *Air and Water Quality Standards.* In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. *Local Approval.* In projects involving the construction or extension of any runway at any general aviation airport located astride a line separating two counties within a single state, it has received approval for the project from the governing body of all villages incorporated under the laws of that state which are located entirely within five miles of the nearest boundary of the airport.

12. *Terminal Development Prerequisities.* For projects which include terminal development at a public airport, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 612 of the Federal Aviation Act of 1958 and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

13. *Accounting System, Audit, and Recordkeeping Requirements.*

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

14. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c)(1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

17. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. *Planning Projects.* In carrying out planning projects:

a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.

*OMB Circulars A–87 and A–102 contain requirements for state and local governments receiving Federal assistance. Any requirement levied upon state and local governments by those two circulars shall also be applicable to private sponsors receiving Federal Assistance under the Airport and Airway Improvement Act of 1982, as amended

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b. It will furnish the Secretary the with such periodic reports as required pertaining to the planning project and planning work activities.

c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. *Operation and Maintenance.*

a. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the Secretary. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenace and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.

In furtherance of this assurance, the sponsor will have in effect at all times arrangements for—

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitable operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

20. *Hazard Removal and Mitigation.* It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. *Economic Nondiscrimination.*

a. It will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses.

b. In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor—

(1) To furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classifications or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g. In the event the sponsor itself exercise any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaries of the sponsor under these provisions.

h. The sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. *Exclusive Rights.* It will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply: (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and (2) if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

24. *Fee and Rental Structure.* It will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

25. *Airport Revenue.* If the airport is under the control of a public agency, all revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982 by the owner or operator of the airport, or provisions enacted before September 3, 1982 in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

26. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. For airport development projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise program implementation projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

27. *Use of Government Aircraft.* It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary , or otherwise agreed by the sponsor and the using agency, substantial use of an airport by government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that—

a. Five (5) or more government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of government aircraft is 300 or more, or the gross accumulative weight of government aircraft using the airport (the total movements of government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. *Airport Layout Plan.*

a. It will keep up to data at all times an airport layout plan of the airport showing: (1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport

layout plan. The sponsor will not make or permit any changes or alterations in the airport or in any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

b. If a change or alteration in the airport or its facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested by the Secretary: (1) Eliminate such adverse effect in a manner approved by the Secretary, or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form or personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

31. *Disposal of Land.*

a. For land purchased under grant before, on, after December 30, 1987 for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. For land purchased for airport purposes (other than noise compatibility) under grant before, on or after December 30, 1987, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value. That portion of the proceeds of such disposition, which is proportionate to the United States share of the cost of acquisition of such land will be paid to the Secretary for deposit in the Trust Fund.

C. Disposition of such land under a. and b. above will be subject to the retention or reservation on any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport.

32. *Engineering and Design Services.* It will award each contract, or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. *Foreign Market Restrictions.* It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. *Policies, Standards, and Specifications.* It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed below, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

Number	Subject
70/7460-1G	Obstruction Marking and Lighting.
150/5100-14	Architectural, Engineering and Planning Consultant Services for Airport Grant Projects
150/5200-31	Airport Winter Safety and Operations.
150/5210-5B	Painting, Marking, and Lighting of Vehicles Used on an Airport.
150/5210-7B	Aircraft Fire and Rescue Communications.
150/5210-14	Airport Fire and Rescue Personnel Protective Clothing
150/5210-15	Airport Rescue and Firefighting Station Building Design.
150/5220-4A	Water Supply Systems for Aircraft Fire and Rescue Protection
150/5220-10	Guide Specification for Water/Foam Type Aircraft Fire and Rescue Trucks.
150/5220-11	Airport Snowblower Specification Guide.
150/5220-12	Airport Snowsweeper Specification Guide
150/5220-13A	Runway Surface Condition Sensor—Specification Guide.
150/5220-14A	Airport Fire and Rescue Vehicle Specification Guide.
150/5220-15	Buildings For Storage and Maintenance of Airport Snow Removal and Ice Control Equipment: A Guide.
150/5220-16	Automated Weather Observing Systems (AWOS) for Non-Federal Applications.
150/5300-4B	Utility Airports—Air Access to National Transportation.
150/5300-12	Airport Design Standards—Transport Airports.
150/5320-5B	Airport Drainage
150/5320-6C	Airport Pavement Design and Evaluation
150/5320-12A	Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-14	Airport Landscaping for Noise Control Purposes.
150/5325-4	Runway Length Requirements for Airport Design
150/5340-1E	Marking of Paved Areas on Airports
150/5340-4C	Installation Details for Runway Centerline Touchdown Zone Lighting Systems
150/5340-5B	Segmented Circle Airport Marker System
150/5340-14B	Economy Approach Lighting Aids
150/5340-17B	Standby Power for Non-FAA Airport Lighting Systems
150/5340-18B	Standards for Airport Sign Systems.
150/5340-19	Taxiway Centerline Lighting Systems.
150/5340-21	Airport Miscellaneous Lighting Visual Aids
150/5340-23A	Supplemental Wind Cones.
150/5340-24	Runway and Taxiway Edge Lighting System
150/5340-27A	Air-to-Ground Radio Control of Airport Lighting Systems.
150/5345-3D	Specification for L-821 Panels for Remote Control of Airport Lighting
150/5345-5A	Circuit Selector Switch
150/5345-7D	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
150/5345-10E	Specification for Constant Current Regulators and Regulator Monitors.
150/5345-12C	Specification for Airport and Heliport Beacon.

Number	Subject
150/5345-13A	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-26B	Specification for L-823 Plug and Receptacle, Cable Connectors.
150/5345-27C	Specification for Wind Cone Assemblies.
150/5345-28D	Precision Approach Path Indicator (PAPI) Systems.
150/5345-39B	FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers.
150/5345-42B	FAA Specification L-857, Airport Light Bases, Transformer Houses, and Junction Boxes.
150/5345-43C	Specification for Obstruction Lighting Equipment.
150/5345-44D	Specification for Taxiway and Runway Signs.
150/5345-45	Lightweight Approach Light Structure.
150/5345-46A	Specification for Runway and Taxiway Light Fixtures.
150/5345-47	Isolation Transformers for Airport Lighting Systems.
150/5345-49A	Specification L-854, Radio Control Equipment.
150/5345-50	Specification for Portable Runway Lights.
150/5345-51	Specification for Discharge-Type Flasher Equipment.
150/5370-6A	Construction Progress and Inspection Report—Federal-Aid Airport Program.
150/5370-10	Standards for Specifying Construction of Airports
150/5370-11	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
150/5370-12	Quality Control of Construction for Airport Grant Projects.
150/5390-1B	Heliport Design Guide.

Part V—Assurances—Noise Program Implementation Projects Undertaken by Non Airport Sponsors

A. *General*

1. These assurances shall be complied with in the performance of grant agreements for noise program implementation projects undertaken by sponsors that are not proprietors of the airport which is the subject of the noise compatibility program.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982 as amended and the Aviation Safety and Noise Abatement Act of 1979. Sponsors are units of local government in the areas around the airport which is the subject of the noise compatibility program.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. *Duration.* The terms, conditions, and assurances of the grant agreement shall remain in full force and effect throughout useful life of the facilities developed or equipment acquired or throughout the useful life of the items installed within a facility under this project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no time limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be as specified in the assurance.

C. *Sponsor Certification.* The sponsor hereby assures and certifies, with respect to this grant that:

1. *General Federal Requirements.* It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Federal Aviation Act of 1958—49 U.S.C. 1301, *et seq.*

b. Davis-Bacon Act—40 U.S.C. 276(a), *et seq.*

c. Federal Fair Labor Standards Act—29 U.S.C. 201, *et seq.*

d. Hatch Act—5 U.S.C. 1501, *et seq.*

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970—42 U.S.C. 4601, *et seq.*

f. National Historic Preservation Act of 1966—Section 106—16 U.S.C. 470(f).

g. Archeological and Historic Preservation Act of 1974—16 U.S.C. 469 thorugh 469C.

h. Flood Disaster Protection Act of 1973—Section 102(a)—42 U.S.C. 4012a.

i. Rehabilitation Act of 1973—29 U.S.C. 794.

j. Civil Rights Act of 1964—Title VI—42 U.S.C. 2000d through d-4.

k. Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. 2101, *et seq.*

l. Age Discrimination Act of 1975—42 U.S.C. 6101, *et seq.*

m. Architectural Barriers Act of 1968—42 U.S.C. 4151, *et seq.*

n. Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. 2201, *et seq.*

o. Powerplant and Industrial Fuel Use Act of 1978—Section 403—42 U.S.C. 8373.

p. Contract Work Hours and Safety Standards Act—40 U.S.C. 327, *et seq.*

q. Copeland Antikickback Act—18 U.S.C. 874.

r. National Environmental Policy Act of 1969—42 U.S.C. 4321, *et seq.*

s. Endangered Species Act of 1973—16 U.S.C. 668(a), *et seq.*

t. Single Audit Act of 1984—31 U.S.C. 7501, *et seq.*

u. Merchant Marine Act, 1936—42 U.S.C. 1241(b).

Executive Orders

Executive Order 12372—Intergovernmental Review of Federal Programs

Executive Order 11246—Equal Employment Opportunity

Federal Regulations

a. 49 CFR Part 21—Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 49 CFR Part 23—Participation by Minority Business Enterprise in Department of Transportation Programs.

c. 49 CFR Part 25—Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs.

d. 49 CFR Part 27—Non-Discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance.

e. 49 CFR Part 29—Debarments, Suspensions and Voluntary Exclusions.

f. 29 CFR Part 1—Procedures for Predetermination of Wage Rates.

g. 29 CFR Part 3—Contractors or Subcontractors on Public Buildings or Public Works Financed in Whole or Part by Loans or Grants from U.S.

h. 29 CFR Part 5—Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

i. 41 CFR Part 60—Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted Contracting Requirements).

j. 46 CFR Part 381—Cargo Preference—U.S. Flag Vessels.

k. 14 CFR Part 150—Airport Noise Compatibility Planning.

Office of Management and Budget Circulars

a. A-87—Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-102—Uniform Requirements for Assistance to State and Local Governments.

c. A-128—Audits of State and Local Governments.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars

are incorporated by reference in the grant agreement.

2. *Responsibility and Authority of the Sponsor.* It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

3. *Sponsor Fund Availability.*

a. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States.

b. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. *Good Title.* For projects to be carried out on the property of the sponsors, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. *Preserving Rights and Powers.*

a. It will not enter into any transaction, or change thereto, or take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under the Airport and Airway Improvement Act of 1982 to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions and assurances contained in this grant agreement.

c. For all noise program implementation projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise program implementation project. That agreement and changes thereto must be approved in advance by the Secretary.

d. For noise program implementation projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary.

6. *Consistency with Local Plans.* The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport. For noise program implementation projects to be carried out on property which is not owned by the sponsor and which is under the land use control or authority of a public agency other than the sponsor, the sponsor shall obtain from each agency a written declaration that such agency supports the project and the project is reasonably consistent with the agency's plans regarding the property.

7. *Consideration of Local Interest.* It has given fair consideration to the interest of communities in or near which the project may be located.

8. *Accounting System, Audit, and Recordkeeping Requirements.*

a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the U.S. General Accounting Office publication entitled *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.*

b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by the recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

9. *Minimum Wage Rates.* It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

10. *Veterans Preference.* It shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in section 515(c) (1) and (2) of the Airport and Airway Improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

11. *Conformity to Plans and Specifications.* It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Secretary, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules shall also be subject to approval by the Secretary and incorporation into the grant agreement.

12. *Construction Inspection and Approval.* It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms with the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

13. *Operation and Maintenance.* It will suitably operate and maintain noise program implementation items that it owns or controls upon which Federal funds have been expended.

14. *Hazard Prevention.* It will protect such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) by preventing the establishment or creation of future airport hazards on property owned or controlled by it or over which it has land use jurisdiction.

15. *Compatible Land Use.* It will take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction that will reduce the compatibility, with respect to the airport, of the noise program implementation measures upon which Federal funds have been expended.

16. *Reports and Inspections.* It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. It will also make records and documents relating to the project, and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

17. *Land for Federal Facilities.* It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land purchased under this grant agreement as the Secretary considers necessary or desirable for construction, operation and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

18. *Civil Rights.* It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

19. *Engineering and Design Services.* It will award each contract or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

20. *Foreign Market Restrictions.* It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

21. *Disposal of Land.*

a. For land purchased under grant before, on, after December 30, 1987 for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. Disposition of such land will be subject to the retention or reservation on any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with the operation of the airport.

Department of Transportation, Federal Aviation Administration—Grant Agreement

Part 1—Offer

Date of Offer

Airport/Planning Area

Project No.

Contract No.

To: (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

Whereas, the Sponsor has submitted to the FAA a Project Application dated ———, for a grant of Federal funds for a project at or associated with the Airport/Planning Area which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

Whereas, the FAA has approved a project for the Airport or Planning Area (herein called the "Project") consisting of the following:

all as more particularly described in the Project Application.

Now therefore, pursuant to and for the purpose of carrying out the provisions of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, herein called the "Act," and/or the Aviation Safety and Noise Abatement Act of 1979, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project.

The Offer is made on and subject to the following terms and conditions:

Conditions

1. The maximum obligation of the United States payable under this offer shall be $———. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 512(b) of the Act, the following amounts are being specified for this purpose:

$——— for planning
$——— for airport development or noise program implementation.

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.

3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. The sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.

5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.

6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before ———, or such subsequent date as may be prescribed in writing by the FAA.

7. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misued in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

(Name) ———
(Title) ———

Part II—Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this ——— day of ———, 19 .

———
(Name of Sponsor)

By ———
(SEAL) (Sponsor's Designated Official Representative)

Title ———
Attest: ———
Title: ———

CERTIFICATE OF SPONSOR'S ATTORNEY

I, ———, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of ———. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at ——— this ——— day of ———, 19 .

———
Signature of Sponsor's Attorney

[FR Doc. 88-2193 Filed 2-2-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau or Alcohol, Tobacco and Firearms

OMB Number: 1512-0131
Form Number: ATF F 5400.14/5400.15, Part III
Type of Review: Extension
Title: Renewal of Explosives License or Permit
Description: This form is used for the renewal of explosives licenses and permits. It requires the repsonse to ten questions which establish the eligibility of the applicant to receive an explosives license or permit.
Respondents: Business or other for-profit, Small Businesses or organizations
Estimated Burden: 825 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.

[FR Doc. 88-2229 Filed 2-2-88; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0224
Form Number: 6248
Type of Review: Extension
Title: Annual Information Return of Windfall Profit Tax
Description: Form 6248 is used by purchasers of domestic crude oil to inform the producers of crude oil the amount of windfall tax that was paid with respect to the producer's interest. The IRS uses Form 6248 to determine if the correct amount of windfall profit tax was paid with respect to the producer's interest.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1,337,950 hours

OMB Number: 1545-0387
Form Number: 4419
Type of Review: Revision
Title: Application to Report Information Returns on Magnetic Media
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Payers wishing to file these returns on magnetic media must complete Form 4419 to receive authorization to file.
Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 1,332 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.

[FR Doc. 88-2230 Filed 2-2-88; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:08 p.m. on Thursday, January 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible failure of an insured bank; and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 29, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-2245 Filed 1-29-88; 4:45 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Friday, January 29, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: January 29, 1988.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-2324 Filed 2-1-88; 3:45 pm]

BILLING CODE 6714-01-M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

Feb. 8, 1988, 9:00 a.m. to 5:00 p.m.
Feb. 9, 1988, 8:00 a.m. to 4:00 p.m.
Feb. 10, 1988, 9:00 a.m. to 12:00 noon

LOCATION: Sheraton Grand Hotel, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Reports from Chairperson and Executive Director
Report on the Council's Personal Assistance Policy
Working Conference on the Council's Equal Opportunity Initiative (Tuesday, February 9th 8:00 a.m.-4:00 p.m.)
Presentation of "On the Threshold of Independence"
Reports from the Research, Adult Services, Children Services, and Public Affairs Committees
Discussion of unfinished and new business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on January 27, 1988.

Lex Frieden,

Executive Director.

[FR Doc. 88-2283 Filed 2-1-88; 10:20 am]

BILLING CODE 6820-BS-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 1, 8, 15, and 22, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

Wednesday, February 3

2:00 p.m.
Briefing on Status of State, Local, and Indian Tribe Programs (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Friday, February 12

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Thursday, February 18

2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 22—Tentative

Monday, February 22

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)

Tuesday, February 23

9:00 a.m.
Discussion/Possible Vote on Rancho Seco Restart (Public Meeting)

Wednesday, February 24

9:30 a.m.
Briefing on Sequoyah Restart (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

January 28, 1988.

[FR Doc. 88-2244 Filed 1-29-88; 4:44 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 22
Wednesday, February 3, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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37 CFR Part 201

[Docket No. RM 88-1]

Compulsory License for Cable Systems; Reporting of Gross Receipts

Correction

In rule document 88-1765 beginning on page 2493 in the issue of Thursday, January 28, 1988, make the following correction:

On page 2494, in the third column, in the second complete paragraph, in the ninth line, after "period" insert "prior to 1986-1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8171]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

Correction

In rule document 87-30193 beginning on page 117 in the issue of Tuesday, January 5, 1988, make the following corrections:

1. On page 118, in the first column, in the first complete paragraph, in the last line "C1." should read "Cl.".

2. On the same page, in the second column, in the third complete paragraph, in the eighth line, "C1." should read "Cl."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-65-87]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

Correction

In proposed rule document 87-30194 appearing on page 153 in the issue of Tuesday, January 5, 1988, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read "(202) 566-3238".

BILLING CODE 1505-01-D

federal register

Wednesday
February 3, 1988

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 230 and 325

Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA); Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 230 and 325

Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This final rule replaces the regulation (ER 200-2-2) issued by the U.S. Army Corps of Engineers on August 25, 1980, as amended on March 2, 1981, which has served as the Corps implementing regulation for NEPA (42 U.S.C. 4321 et seq.). This action is taken to comply more fully with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508). Proposed revisions to the Corps regulation were published for public comment on January 11, 1984 (49 FR 1387–1399).

The purpose of this final rule is to clarify and streamline the Corps NEPA requirements on activities for Federal water resource development projects and related lands. In addition, the Corps NEPA regulation governing the Department of the Army's regulatory activities (33 CFR Part 325, Appendix B) has been modified to reflect judicial rulings subsequent to our previous regulation and to reduce unnecessary delays and paperwork consistent with the CEQ–NEPA regulations, recommendations of the Presidential Task Force on Regulatory Relief, and recommendations of CEQ.

EFFECTIVE DATE: March 4, 1988.

ADDRESS: Office of the Chief of Engineers, ATTN: CECW–RE, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Makinen, (202) 272–0166 for Part 230 and Ms. Janet O'Neill, (202) 272–0201 for Part 325, Appendix B.

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

The purpose and intended effect of this revision is to streamline the Corps NEPA procedures consistent with improved management techniques to reduce unnecessary delays and paperwork. This rule is also intended to make the regulation consistent with judicial rulings. No increased paperwork burden is imposed by the revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Analysis

Under E.O. 12291, the Department of the Army must determine if a regulation is "major" and, therefore, subject to a Regulatory Impact Analysis. Because the Department of the Army believes that this revision is not "major", it is not subject to such an analysis.

Background

On 11 January 1984, a notice of proposed rule 33 CFR Part 230, Environmental Quality, Procedures for Implementing the National Environmental Policy Act (NEPA), was published in the **Federal Register** (49 FR 1387–1399). A 60-day period for public review was provided. During this period, 44 letters of comment were received from a broad spectrum of interests including individuals, corporations, environmental groups, local and national associations, State, local and Federal agencies.

Overall response to the proposed rules varied widely with perceptions being divided clearly between natural resource conservation interests and the resource users and developers. Six commenters expressed unreserved approval of the regulation and twenty-three indicated strong support for streamlining NEPA procedures but recommended additional actions which would further streamline and simplify procedures. Nine respondents, while recognizing the stated purpose to streamline and reduce paperwork, questioned whether such streamlining and paperwork reduction would be achieved at the expense of other more important NEPA and CEQ mandates. Two such respondents stated that the proposal would undermine NEPA and another suggested that it would be counter productive with respect to delays, confusion and litigation.

It should be noted that many comments supported the proposed regulations. However, that support was not repeated on a paragraph-by-paragraph basis and is not repeated herein on that basis. The Army has considered and evaluated each of the comments received and has developed responses. Many comments resulted in corresponding changes to the rules. Conversely, some did not. Keeping in mind both points of view, the Corps has endeavored to further clarify and streamline the procedures where possible but also to reaffirm the environmental, action-forcing purposes of NEPA and the CEQ regulations. Additionally, the Environmental Protection Agency determined that the proposed regulation would have unsatisfactory impacts on the quality of the environment and referred the matter to CEQ on February 25, 1985. The major issues of the referral concerned the scope of the Corps NEPA review of regulatory actions, clarification of the purpose and need, elimination of the requirement to discuss alternatives for non-water dependent activities in an EA for a non-controversial regulatory action, and the proposed 50-page limit for the text of an EIS. CEQ published its findings and recommendations on the referral in the **Federal Register** on June 12, 1987 (52 FR 22517–22523). We have revised the final regulation to incorporate CEQ's recommendations and have adopted their suggested language on the scope of analysis issue that addresses the determination of the extent of cumulative Federal control and responsibility.

The following discusses the comments and Army's responses to the general and specific concerns expressed on the proposed rules. Copies of all written comments received have been provided to CEQ and are available for public inspection at the Office of the Chief of Engineers, Room 7119C, 20 Massachusetts Avenue, NW., Washington, DC. Copies of the final rule are also available upon request.

General Comments Main Text

One of the most frequent issues noted in the comments was that the regulation is difficult to use because excessive amounts of information have been deleted from the existing regulation and replaced with references to CEQ regulations and other Corps internal guidance. A review of the Corps existing regulations on NEPA procedures indicated that a complete revision was necessary because it contained too much material not directly pertinent to implementing NEPA requirements, was too long, redundant in some cases, paraphrased or duplicated CEQ regulations, and contained agency informational guidance which is contained elsewhere in internal directives. This final rule reflects Army's efforts to reduce the length of the regulation by the use of appropriate references to CEQ regulations for implementing procedures, and to eliminate needless repetition. By the use of references the guidance in the CEQ regulation stands, and this final rule is intended to be used in conjunction with the CEQ regulation as a supplement. It does not modify the intent of CEQ regulations. The Corps will continue to develop and implement environmental protection procedures consistent with applicable laws and statutes while maintaining the environmental review responsibilities under NEPA. 40 CFR 1507.3 specifically prohibits agency regulations from paraphrasing CEQ--NEPA regulations or restating environmental policy. They are required to be procedural in nature only.

In addition, we have moved those portions of the regulation pertaining to regulatory actions (i.e. "Appendix B") to the regulations governing that program. Appendix B is now published at 33 CFR Part 325, Appendix B. We have reserved Appendix B at Part 230.

A number of commenters felt that the regulation is overly broad and open to varied interpretations with wide discretion given to district commanders. Specific examples cited as potential problem areas include actions normally requiring an EIS, emergency actions, inappropriate categorical exclusions, and determination of procedural requirements. We believe that these issues are adequately discussed in the specific comments section of the preamble which follows. In general, we have revised the specificity of several sections of the final regulation to be as responsive as possible to the concerns expressed. In addition, a provision has been added to require a periodic review of the Corps experience in the use of categorical exclusions to determine if modification of these exclusions is needed. The regulation reflects Army's policy to allow the district commander as much discretion as possible in carrying out the Civil Works mission consistent with statutory responsibilities and other essential considerations of national policy.

General Comments (Appendix B)

The majority of comments received on Appendix B focused on categorical exclusions, scope of analysis for NEPA documents, and the discussion of alternatives. The addition of a categorical exclusion paragraph is based on a review of the Corps regulatory experience over the past four years which has shown that considerable time and resources have been expended on preparing environmental assessments for proposed permit actions which do not individually or cumulatively cause significant environmental effects. The proposed rule lists the actions which fit this category. In the final rule we have modified the language covering these exclusions in response to comments to achieve more compatibility between the categorical exclusions for permit applicants and those for Corps projects and activities. In addition, we have deleted the categorical exclusion covering concrete structures and headwalls for intake and outfall pipes because the environmental sensitivity and potential impacts related to these types of actions should be evaluated through the EA process. Also, the procedures which would allow district commanders to authorize additional categorical exclusions has been deleted and replaced by a procedure which calls for a headquarters approval of proposed modifications to the list of categorical exclusions to achieve Corps-wide consistency. We believe that the Corps public interest review, section 404(b)(1) guidelines, and the existing coordination and certification requirements with concerned Federal, State and local governmental agencies provide adequate environmental safeguards for these types of minor actions. A requirement to prepare and process an EA for these types of actions would not, in and of itself, increase the consideration and evaluation of the significance of environmental effects and would only increase cost and time without any commensurate benefit to the decisionmaking process.

Because the "scope of analysis" issue has generated considerable interest and some confusion, it might be helpful to review the concepts involved. The Corps of Engineers inquiry begins with a permit application which is evaluated, usually resulting in the issuance of a permit, often with special conditions that modify the project, or permit denial. The Corps evaluation of an eventual action on the permit application is, by definition, the "Federal action" for NEPA purposes (see 40 CFR 1508.18(b)(4)). The "scope of analysis" issue arises when the application for a Corps permit covers only a part of a larger project (e.g., the application for a Corps permit for a pier which is part of a larger, upland oil refinery project). In such a case, the Corps must determine the "scope of analysis" which will guide all of our inquiries under NEPA; that is, what portion of the total project will the Corps cover in its EA describing the work, the range of environmental effects of that work, alternatives to the proposed work, etc. Based on the scope of analysis adopted, the Corps determines whether the proposed work would constitute a "major Federal action significantly affecting the quality of the human environment", i.e. whether an EIS must be prepared. As explained in the regulation, the scope of analysis the Corps will use for permit cases normally will cover the regulated activity (e.g., the pier) plus whatever other portions of the project the Corps determines to be within Federal control and responsibility for the particular case in question.

It is our intention to follow the judicial rulings clarifying the limits of Federal action for NEPA purposes when Federal agencies issue permits for private actions. NEPA requires Federal agencies to consider the direct and indirect consequences of Federal actions, not State or private actions. When the Federal action is the issuance of a 404 permit, then the activity which would be authorized by the permit is the subject of the NEPA document.

The Corps authorizes the discharge of dredged or fill material in 404 permits. Therefore, the activity the Corps studies in its NEPA document is the discharge of dredged or fill material. Similarly, under its Rivers and Harbors Act Section 10 authority, the Corps regulates work and structures in navigable waters of the United States. Therefore, the activities evaluated in the NEPA document are those subject to section 10 of the Rivers and Harbors Act. The same principle applies to Corps authorities under section 103 of the Ocean Dumping Act.

Although it specifies a broad range of impacts which must be considered, NEPA does not expand the authority of the Corps to either approve or disapprove activities outside waters of the United States. In other words, construction of the upland facility may proceed without a Corps permit. The only activity legally dependent on Corps action is the permitted activity. The Corps NEPA document should address all aspects of the activity within its jurisdiction.

We recognize, however, that in appropriate circumstances, the scope of analysis should be expanded to include portions of the project outside Corps jurisdiction. The circumstances under which the scope should be expanded beyond the limits of jurisdiction involve those cases where the Corps has sufficient control and responsibility for

the activities undertaken by the non-Federal parties so that the environmental impacts are essentially a product of Federal action.

The phrase "control and responsibility" is taken from judicial language but has proven difficult to articulate in regulations. As we gain case-specific field experience with the interpretation of the phrase "control and responsibility", it is our intention to further develop factors to be used as guidance to field officials in specific cases. Four factors have been developed from existing case law and are included in the regulation as examples of what typical factors might be.

Generally, in order to prevent the unwarranted situation where "the Federal tail wags the non-Federal dog", the scope of analysis would be confined to the environmental effects of only the activity requiring a Corps permit. One specific application of the rule adopted at paragraph 7b(2) of Appendix B of this regulation on scope of analysis arises when a pipeline or electric utility line requires a Corps permit to cross a navigable water of the United States. In that situation, only the specific activity requiring a Corps permit (i.e., the crossing) including the structures in the immediate vicinity which affect the location and configuration of the crossing, would be analyzed to determine whether the crossing would result in a significant environmental impact. The entire length of the pipeline or utility line should not be analyzed unless, in the judgment of the district commander, there is sufficient control and responsibility of the Corps of Engineers over the entire project to warrant an expanded analysis.

This example is taken from the Eighth Circuit's *Winnebago Tribes of Nebraska v. Ray* 621 F. 2d 269 (8th Cir., 1980), cert. denied, 449 U.S. 836 (1980), decision which addressed a situation where a power transmission line crossed a waterway. It was ruled that the Corps did not have control over the entire route of the power line so it was reasonable to limit its environmental review to the immediate vicinity of the crossing. As another example, in the Fifth circuit decision, *Save the Bay v. Corps of Engineers* 610 F. 2d 322 (5th Cir., 1980), the Corps did not review the environmental effects of an entire chemical plant even though the outfall structure from the plant needed a Corps permit. This was because the Corps deemed the outfall to be a minor feature of the overall project and not sufficient to "Federalize" the project; the Fifth Circuit upheld this determination. Also, there were alternatives available to the chemical company that would not require a Corps permit.

Because of the wide variety of Corps regulatory situations, the degree of Federal responsibility or interest varies. We have not attempted to define at what point there is sufficient Federal control or responsibility over the entire project to "Federalize" it for NEPA purposes. We have entrusted this decision to the district commander to be based on a reasonable evaluation of the case-specific factual situation. In response to comments from the public and governmental agencies, we have reworded this provision to state more clearly our intentions, and to ensure flexibility and discretion for the district commander.

The language of this section reflects the reduction of paperwork and unnecessary regulations consistent with the policy goals of the Administration and decisions of the Federal courts. This language also reflects the judgment of Army regarding certain examples to be considered by Corps project managers in determining the scope of analysis for NEPA documents prepared in connection with the regulatory program. Whatever portion of the project we choose to cover in the scope of analysis, that analysis will include all direct, indirect, and cumulative impacts.

The final rule on the "scope of analysis" issue adds another important requirement: whatever scope of analysis the Corps adopts for NEPA purposes for evaluation of impacts and alternatives must also serve as the scope of analysis for purposes of analyzing the expected benefits of a proposal. This rule is derived from the decision in *Sierra Club v. Siegler* 695 F. 2d. 957 (5th Cir., 1983).

The alternatives paragraph also generated numerous comments. The central point at issue was that the language in the proposed rule was read by some as limiting the Corps review of alternatives to those favorable to the applicant rather than requiring a review of a broad range of alternatives from a public interest perspective. The Corps position in developing the language in this paragraph was to consider alternatives which are practicable and feasible in light of the underlying purpose and need for the proposal which, on occasion, is limited to the applicant's purpose and need. It is our clear intent to examine all reasonable alternatives, including all public alternatives, if appropriate, but at the same time to not require costly and time-consuming evaluation of conjectural alternatives, the implementation of which would be remote and speculative.

We believe that we have interpreted correctly NEPA and CEQ regulations consistent with recent decisions of the Federal courts, while maintaining environmental responsibilities mandated by Congress. Once again, in response to public and agency comments, we have reworded this provision to clarify its intent and to insure that only reasonable (and that all reasonable) alternatives may be considered by the district commander.

We also received one general comment expressing concern about integration of the NEPA review, other environmental reviews, and permit requirements. Our intent in this regulation and those governing the Corps regulatory program (33 CFR Parts 320 through 330) is to emphasize the need for timely action by doing all environmental reviews concurrently with the processing and evaluation of the permit application. Step by step procedures are not specified because of the variation in types of reviews and regulatory actions.

Comments on Specific Sections

Section 230.3 References.

Comment: The listing of Corps regulations should include a title, other identifying information and the means of accessing each of the references cited. The 18 references listed are of little assistance to persons unfamiliar with the content or availability of internal Corps regulations.

Response: We recognize that the extensive list, without identification, would not mean much to an outside reviewer and have limited the list to those cited and have identified the references by title. The list of references should only be considered as an informational guide to useful documents with which a user may wish to be familiar and is not intended to be all-inclusive or incorporated by reference as part of the regulation.

Section 230.5 Responsible officials.

Comment: Three commenters suggested that the section in the existing regulation dealing with policy should not be deleted. They felt that it should be reinstated in the final regulation to establish a policy and guidance framework needed to interpret specific implementation procedures such as those dealing with alternatives and wetlands.

Response: 40 CFR 1507.3 requires that implementing regulations be confined to the development of implementing procedures and may not paraphrase CEQ–NEPA regulations. The Corps regulation is so structured. The policies in NEPA and CEQ regulations continue to be this agency's policies. New § 230.5 notes the officials responsible for various environmental actions.

Section 230.6 Actions normally requiring an EIS.

Comment: Eight commenters noted that this section is confusing and may contradict the intent of NEPA. They noted that the degree of impact should determine whether an EIS is prepared, not some ill-defined geographic area, legislative status, judgmental standards or potential for litigation. In general, the terms used (major, significant) should be defined and specific criteria applicable to Corps projects and permit cases should be provided for district commander guidance.

Response: In drafting the January 1984, proposal, we attempted to classify typical Corps projects by degree of impact. However, we found that the impacts of specific types of projects vary so widely that such classifications would have too many exceptions to be meaningful. For example, a levee in a certain location or of a particular size may or may not have significant impacts depending upon many variables. The descriptions of such categorical exclusions would contain so many caveats as to be ineffective in providing useful guidance.

The most reasonable and concise manner in which to describe actions which normally do and do not require an EIS turned out to be general categories of legislative authority. These are broad categories which fit the generality and are intended to signal the public and the district commander what may be anticipated in normal circumstances.

Definitions of terms are those used in the CEQ–NEPA regulations. They are not further defined by this regulation in order to avoid unintended modifications to the CEQ–NEPA meanings.

Section 230.7 Actions normally requiring an EA but not necessarily an EIS.

Comment: Seven commenters provided similar or related comments on § 230.6.

Response: We believe that the response prepared for § 230.6 on actions normally requiring an EIS would apply generally to the comments raised concerning the use of EAs.

Section 230.8 Emergency actions.

Comment: The general concern expressed by four commenters was that the proposed regulation does not conform to the intent stated in the preamble to clarify that the district commanders are not excused from their environmental responsibilities in emergency situations.

Response: The final regulation has been revised to clarify the district commanders' requirements.

Section 230.9 Categorical Exclusions

Comment: The issue most frequently addressed in the comments was the addition of certain minor actions to be categorically excluded. There was concern for the need for a clearer restrictive definition of when a categorical exclusion would be used. Nearly every categorical exclusion was cited or questioned. Several commenters noted that certain categorically excluded actions could result in serious environmental effects. Also, several commenters suggested that the list of categorical exclusions be expanded. A common theme among the letters was that the categorical exclusions for the Corps projects and activities were more generous than for permit applicants, as reflected in 33 CFR Part 325, Appendix B.

Response: In developing the proposed regulation, Corps field offices furnished data based on four years of field experience showing minor actions that were addressed by EA/FONSI and never resulted in preparation of an EIS. We screened the incoming data and prepared the proposed list for Corps-wide consistency. Based on the comments received in response to the proposed rules and our continuing internal review, we have decided to delete or modify certain categorical exclusions.

We have revised the maintenance dredging exclusion to cover only minor actions using existing disposal sites. These recurring actions over the years have had an insignificant effect on the environment. Moreover, environmental safeguards are also provided by compliance requirements with the Clean Water Act, Coastal Zone Management, etc. The proposed exclusion covering the disposal of less than 50,000 cubic yards of uncontaminated dredged material at an upland site has been deleted because of objections to the difficulty in applying specific or limiting Corps-wide criteria for this type of placement. We agree that upland disposal site impacts may involve a broad spectrum of environmental or other factors which are not readily discernable and should not be approved without review.

We have deleted the exclusion for facilities at Corps projects such as hydropower facilities, which are subject to other Federal agency authority and are categorically excluded by that agency. Commentors point out that some of these actions could possibly have serious environmental and operational impacts which might be overlooked because review would be limited. We concur that a case by case environmental review of the proposed action would ensure that the integrity of the affected Corps project would not be compromised by the addition of these facilities.

We have consolidated the proposed lists of activities authorized by grants at Corps projects. Such activities, in order to be categorically excluded, must have been addressed in earlier Corps documentation.

Based on the comments we have also consolidated and modified the language concerning real estate grants for rights-of-way to categorically exclude only minor utility distribution and collection lines, including irrigation. Grants of leases or easements for other than minor electric transmission lines, oil and gas transmission lines, road and highway rights-of-way, lands fills, and sewage and water treatment facilities, have been added to the list of actions normally requiring an EA (§ 230.7(e) of the regulation). Grants for canals, ditches, dikes, retarding structures, etc. used in connection with fish and wildlife conservation and development programs have been deleted as a categorical exclusion.

We concur with comments that appropriate NEPA documentation should be accomplished for emergency projects constructed under section 14 and section 3 authority if time constraints render this practicable and have relocated these projects for procedural compliance under § 230.8 of the regulation. (Emergency Actions).

Some of the commenters suggested that many of the proposed categorical exclusions may have the potential to be environmentally damaging. We believe that the introductory paragraph to this section clearly puts the district commander on alert for circumstances which may dictate the need to prepare an EA or an EIS, and further, that categorical exclusion does not exempt an action from compliance with other Federal laws. While the possibility exists that under certain conditions an activity could cause a significant impact, we believe that such circumstances would be extremely rare, would be recognized and would be treated as exceptions to the categorical exclusion. Individual judgment on a case-by-case basis, as a result of the continuing environmental review process, is still necessary when deciding whether an individual activity in a categorical

exclusion grouping should have explicit environmental documentation. In addition, we have added a review requirement to assess the categorical exclusions and modify or delete them if future assessment indicates a need to do so.

Section 230.10 Environmental Assessment (EA)

Comment: One commenter noted that the statement of purpose of an EA is too narrowly defined, that part (b) requires corrective wording to better correspond to 40 CFR 1508.9, and that certain agency procedures have been deleted without explanation.

Response: Part (a) of this section has been revised to describe accurately the purpose of an EA. Also, part (b) has been modified to correspond to the wording in 40 CFR 1508.9.

We have deleted requirements beyond those in 40 CFR 1508.9. The EA will reflect the results of necessary environmental studies and analyses and required coordination or consultation activities in connection with a proposed action to provide the basis for determining whether to prepare an EIS or a finding of no significant impact (FONSI).

It is important that the reader understand that the term "environmental assessment" describes not only a document, but is also considered a process by which impacts or effects of a proposed action are identified and evaluated. This process is started at the outset of the consideration of a proposed action, continues with other technical studies (informal coordination, literature searches, site visits, etc.), and culminates in a determination whether an EIS or EA is required. Additional information on combining or integrating the EA into various Corps reports has been added.

Section 230.11 Finding of No Significant Impact (FONSI).

Comment: Several commenters noted inconsistencies between the preamble which states that the FONSI is the decision document of the responsible official and as such is not subject to review and comment through the coordination process, while the proposed rule calls for circulation and review of the EA and FONSI for certain Corps planning reports. Also, the Environmental Protection Agency (EPA) commented that the EA and FONSI for *all* Corps actions should be sent to EPA to allow that agency to carry out its authorities under sections 176(c) and 309 of the Clean Air Act, as amended.

Response: To eliminate the confusion over the circulation of the FONSI, we have modified the regulation by including certain specific procedural details covering various types of actions for which the 30-day review of the EA and draft FONSI applies, minor or routine actions which only require circulation of the notice of availability of the FONSI and operation and maintenance activities involving the discharge of dredged or fill material where the widely circulated public notice will note the FONSI determination.

Corps reports meeting the criteria set forth in 40 CFR 1501.4(e)(2) are always sent to EPA for a required 30-day review. We have deleted the requirement to provide EPA a 15-working day comment period for minor Corps actions falling below the criteria of 40 CFR 1501.4(e)(2) since the 15-day review is not required by regulations or statute and was merely the Corps own internal mechanism to double-check itself. Over the past four years, we have routinely provided these documents on minor actions to EPA for the 15-day review. Rarely, if ever, did EPA submit comments which would have altered the Corps final decision. Since EPA gets notice of availability of all these EA/FONSI documents and can request copies in appropriate instances, they will retain full review opportunity with significantly reduced paperwork flow. We recognize that EPA's review authority contained in section 309 of the Clean Air Act applies to those Federal agency actions specified in section 309 and we will comply with that statute.

Section 230.12 Notice of intent and scoping.

Sections 230.15 and 230.16 from the proposed regulation are combined in this paragraph for clarification and renumbered. Proposed § 230.12 is renumbered § 230.13.

Comment: Five commenters felt that the Corps should describe how it will implement the scoping requirements rather than referencing the CEQ regulations. They suggested that the language in the previous regulation be retained.

Response: A review of the language in the previous regulation indicated that much of the material duplicated existing guidance on integrating the EIS scoping process into the Corps public involvement program and, in some instances, paraphrased CEQ regulations. For this reason we believe that a reference to CEQ regulations which provides a complete discussion on agency scoping requirements should be sufficient. However, based on a review of the comments, we have expanded this paragraph to include additional guidance on how scoping will be implemented. CEQ's Information Memorandum of July 28, 1983, provides additional guidance and has been added as a reference. We have further modified this paragraph by incorporating the notice of intent requirements, as required by CEQ regulations (§ 1508.22), to consolidate Corps scoping guidance.

Comment: A few commenters questioned the use and availability of ER 200–2–1, an internal Corps regulation on preparing and processing notices of intent for publication in the **Federal Register**.

Response: We have rescinded ER 200–2–1 and incorporated it into this final rule as Appendix C for program continuity.

Section 230.13 Environmental Impact Statement (EIS).

This paragraph has been renumbered from § 230.12 in the proposal.

Comment: A number of commenters felt that restricting an EIS to 50 pages may be unrealistic and fail to comply with the requirements of NEPA, and that setting an arbitrary page limit could become an excuse for not providing adequate information needed for a meaningful review and adversely impact decisionmaking. Two commenters also noted that the requirement to circulate only summaries if the document exceeds 50 pages appears to conflict with the public disclosure intent of NEPA and the CEQ regulations. The commenters suggested adherence to the language contained in the CEQ regulations covering page limits and circulation of EIS summaries.

Response: The Corps does not intend to limit arbitrarily the amount of information available to the public or to circumvent the legal and technical requirements for an EIS. Rather, our intent is to provide the public with a clear and concise text of an EIS that does not contain unnecessarily lengthy or repetitive material, and that is therefore easily read and understood (the content of the "text" of an EIS is described at 40 CFR 1502.10 (d) through (g). In this light, the regulation has been rewritten to rely on the general page length recommendations provided by the CEQ regulations at 40 CFR 1502.07 with the provision that district commanders should strive for an EIS text that succinctly discusses the relevant NEPA issues in a legally and technically adequate manner. The new provision might, in some cases, result in NEPA documents that are substantially shorter than the CEQ's recommended lengths. The goal is to prepare NEPA documents which better inform the decisionmakers and the public.

The Corps believes that concise documents, when carefully written, will enhance rather than detract from the public's ability to participate in the NEPA process. Circulation of EIS summaries is included within the Availability § 230.18.

Section 230.14 Record of decision and implementation.

This paragraph has been revised to shorten and clarify it, renamed, and renumbered from § 230.13.

Comment: A number of commenters noted that the monitoring and mitigation section found in earlier versions has been deleted from the proposed rules with the statement in the preamble that those subjects are appropriately discussed in CEQ regulations at 40 CFR Part 1505. These commenters felt that the agency should include their specific procedures for monitoring and mitigation as a necessary supplement to the CEQ regulations and recommended that the previous paragraph be retained in its entirety.

Response: In concurring with the commenters, we have reinserted mitigation and monitoring procedures into the final regulation at § 230.15 to eliminate any misconceptions that the Corps is decreasing the importance of mitigation. This paragraph appropriately references the CEQ regulations at §§ 1505.2(c) and 1505.3 as applicable agency guidance and has been reworded to clarify the term monitoring as that action necessary to insure adopted mitigation measures are implemented. An evaluation of the effectiveness of mitigation measures may be authorized or established as a project feature or a permit condition. This definition is provided to prevent the interpretation that for *each* and *every* mitigation measure there must be follow-on studies or evaluation to assess the effectiveness of the mitigation. Mitigation is an integral part of the Corps planning and regulatory programs. It is included in a project or as a permit condition in accordance with existing laws, current Federal regulations, and internal guidance. Mitigation measures developed for viable project alternatives, including the recommended plan or in the case of a regulatory permit action the "applicant's preferred alternative," are discussed in the EIS and summarized as part of the record of decision as required by 40 CFR Part 1505. The revised paragraph *Record of Decision and Implementation* has been rewritten to eliminate the paraphrasing of the CEQ regulations on the content of a Record of Decision and appropriately references the CEQ regulation as agency guidance (40 CFR 1505.2). The repetitious instructions on which Corps official should sign the Record of Decision for the various types of Corps projects has also been eliminated since it is appropriately discussed in the processing instruction in Appendix A and 33 CFR Part 325, Appendix B. The example included in the new regulation is intended only to illustrate the record of decision for a typical Corps action.

Section 230.16 Lead and Cooperating Agencies

This paragraph has been renumbered from 230.14.

Section 230.17 Filing Requirements

Paragraph (b) has been rewritten for clarification.

Section 230.18 Availability

This paragraph has been revised to allow fees to be charged in unusual circumstances for reproduction of NEPA documents in accordance with CEQ–NEPA regulations 40 CFR 1506.6(f).

Comment: One Federal agency noted that the preamble stated that this section would be modified to require preparation and circulation of an EIS summary in certain cases whereas the discussion actually appeared in 33 CFR 230.12. One reviewer suggested that the discussion on the EIS summary should appear in this section rather than 33 CFR 230.12.

Response: The incorrect citation in the preamble was noted. Circulation of the EIS summary in accordance with 40 CFR 1502.19 is included within the Availability paragraph.

Section 230.19 Comments

Comment: Three commenters noted that the effects of allowing agency discretion to respond to comments on a final EIS may result in the loss of opportunity for comments and positions to be known about the preferred alternative when the preferred alternative was not identified in the draft EIS. Also, the section on public involvement was deleted without explanation.

Response: In concurring with the comments, we are requiring that responses be made to comments received on the final EIS when substantive issues are raised which have not been addressed in either the EIS or in response to comments on the draft EIS. We have also modified 33 CFR Part 325, Appendix B of the regulation to indicate that the "preferred alternative" means the "Applicant's preferred alternative", since the Corps is not a proponent or opponent of any proposed regulatory action. In the case of other than regulatory actions the Corps preferred or tentatively selected alternative is identified in the draft and final EIS. The separate public involvement section was deleted since it duplicates the information contained elsewhere in the text of the EIS or accompanying report and is not required by CEQ–NEPA regulations.

We have added those areas of special Corps expertise, also listed in § 230.15, upon which the Corps should provide comments when responding to other agency EISs.

Section 230.25 Environmental Review and Consultation Requirements

This paragraph was clarified to allow filing of an EIS where ongoing studies would not materially affect the decision.

Section 230.26 General Considerations in Preparing Corps EISs

This paragraph was modified slightly to allow more discretion in the use of footnotes and to clarify the interaction in contractual relationships.

Appendix A

No substantive comments were received on this Appendix. Minor editorial changes have been made to reflect current planning and engineering procedures. The procedure to be followed in a draft EIS after consultation with CEBRH has also been clarified.

Comments on Specific Sections of Appendix B, Regulatory Actions

B–2 General

Comment: One commenter expressed concern that this paragraph refers to the basic regulation (ER 200–2–2) or the CEQ regulations (40 CFR Parts 1500 through 1508) which in turn refer to the agencies' regulations for implementing procedures.

Response: We agree that the proposed language could be interpreted as leading the reader around a closed loop. The paragraph has been rewritten to state that these are implementation procedures. For additional information the reader should see 33 CFR Part 230 and, for policy see 40 CFR Parts 1500 through 1508.

B–3 Development of Information and Data

Comment: One commenter requested that the Corps ask for additional information from the applicant as early as possible and should discourage additional or repetitive requests.

Response: We concur with this comment. The intent of this regulation

and of the regulation governing the regulatory program (33 CFR Parts 320 through 330) is to encourage timely review of applications including obtaining the information needed as early as is practicable in the review process.

Comment: Another comment expressed concern that key concepts of the Corps procedures regarding information to fully describe reasonable alternatives were deleted.

Response: That is not the case. See the discussion on alternatives in paragraph 9.

B–6 Categorical Exclusions

Comment: Numerous comments were received on this paragraph. Some were general, such as: Strongly supporting the concept; the categorical exclusions should be drawn as narrowly as possible; actions listed for Corps activities should also apply to private applicants; and, activities considered are far too limited in scope to help spur economic development. Other comments were very narrowly focused, suggesting changes to the specific activities such as: changing fixed docks to open fixed pile; defining small or upland sites with important wildlife values; stating no fill in special aquatic sites; and, adding "except during construction" to indicate some temporary interference with navigation is acceptable. Several suggested regional and nationwide general permits should be added to the list. One commenter felt the extraordinary circumstances language was too vague and could lead to a broad range of interpretation and little accountability for district commanders' decisions on what qualified as a categorical exclusion. There was a request for a return to the 90-day comment period for public notices for activities proposed for categorical exclusion. Some commenters requested adding erosion control authorities to the list of categorical exclusions. There was also confusion regarding activities categorically excluded from NEPA documentation, the need for environmental assessments and the relationship between general and nationwide permits, letters of permissions, individual permits and other required State and local approvals. One State requested advance notification of activities categorically excluded. Finally a few comments opposed having district and division commanders develop "local" categorical exclusions as this could lead to a patchwork of different exclusions across the Nation and was counter to the CEQ regulations and supplemental guidance.

Response: We concur that, in general, the categorical exclusions for Corps activities and private permit applicants should be of the same general magnitude. Therefore, we have modified the language concerning maintenance dredging to limit disposal to existing sites and utility line crossings to minor distribution and collection lines. We believe that a fixed pier is generally understood to be either a concrete or wooden pier on piling. The language of categorical exclusion of 6a(1) and 6a(2) has been changed to delete redundant references to interference with navigation. Navigation is always considered during the evaluation process and permits are conditioned or denied as necessary to reflect this interest. The request for adding erosion control activities to the list of categorical exclusions was considered, but we believe that the nationwide permits found in 33 CFR 330.5 (a)(2) and (a)(13) would apply to most erosion control activities. Concrete structures and headwalls for intake and outfall pipes have been deleted from the list. We have also removed the narrowly restrictive qualifying language in 6a(5) concerning boat launching ramps.

The regional and nationwide general permits are permits for certain types of activities for which there has already been a NEPA review and NEPA documents have already been prepared on a generic basis. Therefore, it is not necessary to add them to the list of actions categorically excluded from NEPA documentation.

The actions listed as categorically excluded in paragraph 6 of Appendix B are not excluded from the requirement to obtain the proper Army permit and/or any other required State permits and certifications or local approvals. The listing simply means that the activities will usually not need a separate NEPA document. Therefore, activities listed as categorically excluded should not be interpreted as being authorized.

We have decided not to provide district commanders with more specific guidance on where and what types of categorically excluded activities might require additional NEPA review. We believe that the laws and regulations with which the Corps and other Federal agencies must comply (e.g., Endangered Species Act, Clean Water Act, National Historical Preservation Act) provide sufficient safeguards to ensure categorical exclusions will be properly applied. Subparagraph (a) has been expanded to include specific discussion of this point.

In addition, a provision has been added to require the district commander to review periodically the type and number of categorically excluded actions which, because of case-specific circumstances, require individual NEPA documentation. This review would determine if modification of the categorical exclusions is needed. This provision replaces the proposed procedures for the district commander to develop additional "local" categorical exclusions discussed in 6C. These new procedures require higher authority for approval of changes to the list of categorically excluded activities in order to achieve Corps-wide consistency on a national basis prior to undertaking rulemaking changes.

B–7 EA/FONSI Document

Comment: This paragraph generated the largest number of comments on Appendix B. Several commenters expressed concerns regarding the EA not having to address alternatives in those cases in which there were no unresolved conflicts as to resource use. These commenters also pointed out that 404(b)(1) guidelines require alternative analysis. Comments on the scope of analysis included: Commending the Corps; expressing concerns about expansion of the NEPA review based on the district commander's "sole discretionary authority"; to concerns for limiting the NEPA review to the specific activity requiring a Corps permit. Some thought the examples were good, others thought they were confusing or should be eliminated. Some thought the scope of the NEPA review should be based on the overall control and responsibility the Corps has over the entire project. There was confusion on just what triggers the decision to "federalize" the total project. One person commented on the need to consider cumulative impacts. Another suggested that the implied need to prepare an EA prior to preparing an EIS); where the activity proposed clearly required an EIS, was an unnecessary additional step. Finally, several commenters requested that the EA be provided during the public notice period for public and agency review.

Response: We concur that where it is obvious an EIS is required there is no need to prepare an EA. The regulation has been revised to reflect this.

The section concerning the alternatives to be considered reflects the language and intent of section 102(2)(E) of NEPA and is consistent with policies to reduce unnecessary paperwork and streamline NEPA requirements. We have revised paragraph 7a to state that, if the impacts of the applicant's proposal would not be significant (i.e. would require only an EA, not an EIS); and if there are no unresolved conflicts (i.e., no unresolved objections regarding alternative uses of available resources from Federal and State resource agencies and members of the public commenting on the public notice or none discerned by the district commander); and, if the activity is "water dependent" in the meaning of 40 CFR 230.10(a)(3) (for discharges requiring a section 404 permit) the EA need not include a discussion on alternatives. However, there is nothing in this regulation which would preclude the district commander from considering other alternatives in the public interest review for a permit application if it is appropriate to do so. This has been noted in the regulation.

The change in the scope of analysis is not an attempt to relieve the Corps of responsibilities. Rather, it is to use good judgment in the extent of analysis and to incorporate the holdings of certain Federal court decisions to better determine when the need to trigger an overall review or "Federalization" should occur. The overall review takes place when there is a significant Federal interest, not just because of the need for an Army permit for a minor part of the overall project. Therefore, the district commander must have the discretion to determine the significance of the Federal interest to justify the overall review. This section has been rewritten to clarify these concepts, and the term "sole discretionary authority" was deleted to avoid any misunderstanding that the district engineer must comply with appropriate NEPA requirements.

The EA is prepared after all comments are received on the public notice and the district commander has had an opportunity to evaluate those comments. Hence, it is not possible to provide the EA for review during the public notice period. Concerned Federal and State resource agencies and the public in response to the public notice provide the necessary input to the Corps staff in preparing the EA and form the basis for the district commander's findings on the case.

B–8 Environmental Impact Statement

Comment: A comment was received suggesting that the district commander account in writing for time delays in processing an EIS.

Response: District commanders presently are reporting on a quarterly basis on permits over 120 days old and providing an estimated date when final action will be taken. This report includes actions requiring an EIS.

Several word changes were made for clarification.

B–9 Organization and Content of Draft EIS

Comment: Numerous comments were received on this paragraph. The majority concentrated on the scope of review of alternatives required in an EIS for a Department of the Army permit. Many felt that the scope of review as written could require a review of alternatives beyond those the applicant could reasonably accomplish, while others believed the scope too narrow and inadequate. Several suggested that a preferred alternative be identified as the "applicant's preferred alternative". Comments on mitigation ranged from those who think it should be limited to those who believe it is being improperly de-emphasized. One commenter requested clarification of the type of mitigation and monitoring programs legally required.

Response: Our intent in this paragraph is to have reasonable alternatives considered in the EIS which could be implemented by the applicant. Where necessary for an informed decision on the public interest, alternatives beyond those that could be implemented by the applicant should also be considered. The district commander's final decision, whether to grant or not grant the authorization, or to grant it with modifications and conditions, which could require mitigation, is dependent on the result of the public interest review required by the Corps regulation at 33 CFR 320.4. That decision is documented in the record of decision. Since the Corps is neither a proponent nor an opponent of any proposal, the final EIS will recognize the applicants proposal as the "applicant's preferred alternative," and the regulation has been changed accordingly. In accordance with CEQ regulations (40 CFR 1505.2(b)), the environmentally preferred alternative will also be identified in the record of decision. Paragraph 9b(5)(e) has been rewritten to clarify the mitigation considerations.

List of Subjects

33 CFR Part 230

Administrative practice and procedure, Environmental impact statements, Environmental protection, Flood control, Flood plains, Navigation, Water resources, Water supply, Waterways, Wetlands.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

Dated: January 28, 1988.

Approved

John S. Doyle, Jr.,

Principal Deputy Assistant Secretary of the Army (Civil Works).

PART 230—[AMENDED]

1. The authority citation for Part 230 is revised to read as follows:

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 1514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

2. Part 230 is revised in its entirety to read as follows:

PART 230—PROCEDURES FOR IMPLEMENTING NEPA

Sec.

230.1 Purpose.
230.2 Applicability.
230.3 References.
230.4 Definitions.
230.5 Responsible officials.
230.6 Actions normally requiring an EIS.
230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.
230.8 Emergency actions.
230.9 Categorical exclusions.
230.10 Environmental assessments (EA).
230.11 Findings of No Significant Impact (FONSI).
230.12 Notice of intent and scoping.
230.13 Environmental Impact Statement (EIS).
230.14 Record of decision and implementation.
230.15 Mitigation and monitoring.
230.16 Lead and cooperating agencies.
230.17 Filing requirements.
230.18 Availability.
230.19 Comments.
230.20 Integration with State and local procedures.
230.21 Adoption.
230.22 Limitations on actions during the NEPA process.
230.23 Predecision referrals.
230.24 Agency decision points.
230.25 Environmental review and consultation requirements.
230.26 General considerations in preparing Corps EISs.

Appendix A—Processing Corps NEPA Documents

Appendix B—Reserved

Appendix C—Notice of Intent to Prepare a Draft EIS

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 1514 Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

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§ 230.1 Purpose.

This regulation provides guidance for implementation of the procedural provisions of the National Environmental Policy Act (NEPA) for the Civil Works Program of the U.S. Army Corps of Engineers. It supplements Council on Environmental Quality (CEQ) regulations 40 CFR Parts 1500 through 1508, November 29, 1978, in accordance with 40 CFR 1507.3, and is intended to be used only in conjunction with the CEQ regulations. Whenever the guidance in this regulation is unclear or not specific the reader is referred to the CEQ regulations. Appendix A provides guidance on processing NEPA documents except for those concerning regulatory actions. Appendix C (formally ER 200–2–1) has been added to provide guidance on preparing and processing a notice of intent to prepare an EIS for publication in the **Federal Register** for all types of Corps actions. 33 CFR Part 325, Appendix B provides procedural guidance for preparing and processing NEPA documents for regulatory actions.

§ 230.2 Applicability.

This regulation is applicable to all HQUSACE elements and all Field Operating Activities (FOAs) having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 12291, Federal Regulation, February 17, 1981 (46 FR 13193, February 19, 1981).

(b) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979 (44 FR 1957, January 9, 1979).

(c) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as section 404).

(d) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(e) Environmental Effects Abroad of Major Department of Defense Actions: Policies and Procedures 32 CFR Part 197 (44 FR 21786–92, April 12, 1979).

(f) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(g) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

(h) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(i) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969," (40 CFR Parts 1500 through 1508, November 29, 1978), Council on Environmental Quality.

(j) Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies (48 CFR Parts 10249 through 10258, March 10, 1983).

(k) Regulatory Programs of the Corps of Engineers 33 CFR Parts 320 through 330, and 334.

(l) CEQ Information Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations (46 FR 34263–68, July 28, 1983).

(m) ER 310–1–5. Federal Register Act Requisitioning.

(n) ER 1105–2–10 thru 60. Planning Regulations.

§ 230.4 Definitions.

Refer to 40 CFR Part 1508; other definitions may be found in the references given above.

§ 230.5 Responsible officials.

The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander also provides agency views on other agencies' environmental impact statements (EIS). The Office of Environmental Policy HQUSACE (CECW–RE) WASH DC 20314–1000 (phone number 202–272–0166) is the point of contact for information on Corps NEPA documents, NEPA oversight activities, review of other agencies' EISs and NEPA documents about legislation, regulations, national program proposals or other major policy issues. The Assistant Chief Counsel for Environmental Law and Regulatory Programs, HQUSACE (CECC–E) WASH DC 20314–1000, is the point of contact for legal questions involving environmental matters. Requests for information on regulatory permit actions should be directed to HQUSACE (CECW–OR) WASH DC 20314–1000.

§ 230.6 Actions normally requiring an EIS.

Actions normally requiring an EIS are:

(a) Feasibility reports for authorization and construction of major projects;

(b) Proposed changes in projects which increase size substantially or add additional purposes; and

(c) Proposed major changes in the operation and/or maintenance of completed projects.

District commanders may consider the use of an environmental assessment (EA) on these types of actions if early studies and coordination show that a particular action is not likely to have a significant impact on the quality of the human environment.

§ 230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.

Actions normally requiring an EA, but not an EIS, are listed below:

(a) *Regulatory Actions.* Most permits will normally require only an EA.

(b) *Authorized Projects and Projects Under Construction.* Changes which may be approved under the discretionary authority of the Secretary of the Army.

(c) *Continuing Authorities Program.* Projects recommended for approval of the Chief of Engineers under the following authorities:

(1) Section 205, Small Flood Control Authority;

(2) Section 208, Snagging and Clearing for Flood Control Authority;

(3) Section 107, Small Navigation Project Authority;

(4) Section 103, Small Beach Erosion Control Project Authority; and

(5) Section 111, Mitigation of Shore Damages Attributable to Navigation Projects.

(d) *Construction and Operations and Maintenance.* Changes in environmental impacts which were not considered in the project EIS or EA. Examples are changes in pool level operations, use of new disposal areas, location of bank protection works, etc.

(e) *Real Estate Management and Disposal Actions.* (1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

(2) Disposal of real property for public port and industrial purposes.

(3) Grants of leases or easements for other than minor oil and gas transmission lines, electric power transmission lines, road and highway rights-of-way, and sewage or water treatment facilities and land fills.

§ 230.8 Emergency Actions.

In responding to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses, district commanders may proceed without the specific documentation and procedural requirements of other sections of this regulation. District commanders shall consider the probable environmental consequences in determining appropriate emergency actions and when requesting approval to proceed on emergency actions, will describe proposed NEPA documentation or reasons for exclusion from documentation. NEPA documentation should be accomplished prior to initiation of emergency work if time constraints render this practicable. Such documentation may also be accomplished after the completion of emergency work, if appropriate. Emergency actions include Flood Control and Coastal Emergencies Activities pursuant to Pub. L. 84–99, as amended, and projects constructed under sections 3 of the River and Harbor Act of 1945 or 14 of the Flood Control Act of 1946 of the Continuing Authorities Program. When possible, emergency actions considered major in scope with potentially significant environmental impacts shall be referred through the division commanders to HQUSACE (CECW–RE) for consultation with CEQ about NEPA arrangements.

§ 230.9 Categorical exclusions.

Actions listed below when considered individually and cumulatively do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a "categorical exclusion", that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

(a) For a period of one year from the effective date of these regulations, district commanders should maintain an information list on the type and number of categorical exclusion actions which due to extraordinary circumstances triggered the need for an EA and finding of no significant impact (FONSI) or an EIS. If a district commander determines that a categorical exclusion should be modified, the information will be furnished to the division commander, who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW–RE) will review recommended changes for Corps-wide consistency and revise the list accordingly. See 33 CFR Part 325, Appendix B for categorical exclusions for regulatory actions.

(b) Activities at completed Corps projects which carry out the authorized project purposes. Examples include routine operation and maintenance actions, general administration, equipment purchases, custodial actions, erosion control, painting, repair, rehabilitation, replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities, and installation of new buildings utilities, or roadways in developed areas.

(c) Minor maintenance dredging using existing disposal sites.

(d) Planning and technical studies which do not contain recommendations for authorization or funding for construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

(e) All Operations and Maintenance grants, general plans, agreements, etc., necessary to carry out land use, development and other measures proposed in project authorization documents, project design memoranda, master plans, or reflected in the project NEPA documents.

(f) Real estate grants for use of excess or surplus real property.

(g) Real estate grants for Government-owned housing.

(h) Exchanges of excess real property and interests therein for property required for project purposes.

(i) Real estate grants for rights-of-way which involve only minor disturbances to earth, air, or water:

(1) Minor access roads, streets and boat ramps.

(2) Minor utility distribution and collection lines, including irrigation.

(3) Removal of sand, gravel, rock, and other material from existing borrow areas.

(4) Oil and gas seismic and gravity meter survey for exploration purposes.

(j) Real estate grants of consent to use Government-owned easement areas.

(k) Real estate grants for archeological and historical investigations compatible with the Corps Historic Preservation Act responsibilities.

(l) Renewal and minor amendments of existing real estate grants evidencing authority to use Government-owned real property.

(m) Reporting excess real property to the General Services Administration for disposal.

(n) Boundary line agreements and disposal of lands or release of deed restrictions to cure encroachments.

(o) Disposal of excess easement interest to the underlying fee owner.

(p) Disposal of existing buildings and improvements for off-site removal.

(q) Sale of existing cottage site areas.

(r) Return of public domain lands to the Department of the Interior.

(s) Transfer and grants of lands to other Federal agencies.

§ 230.10 Environmental Assessments (EA).

(a) *Purpose.* An EA is a brief document which provides sufficient information to the district commander on potential environmental effects of the proposed action and, if appropriate, its alternatives, for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). The district commander is responsible for making this determination and for keeping the public informed of the availability of the EA and FONSI.

(b) *Format.* While no special format is required, the EA should include a brief discussion of the need for the proposed action, or appropriate alternatives if there are unresolved conflicts concerning alternative uses of available resources, of the environmental impacts of the proposed action and alternatives and a list of the agencies, interested groups and the public consulted. The document is to be concise for meaningful review and decision.

(c) *Integration with Corps Reports.* In the case of planning and/or engineering reports not requiring an EIS, the EA may be combined with or integrated into the report. The same guidance on combining or integrating an EIS within the report shall apply equally to an EA. Where the EA is combined with a Corps report or prepared as a separate document in the case of construction, operating projects and real estate actions requiring an EA, the EA normally should not exceed 15 pages.

§ 230.11 Finding of No Significant Impact (FONSI).

A FONSI shall be prepared for a proposed action, not categorically excluded, for which an EIS will not be prepared. The FONSI will be a brief summary document as noted in 40 CFR 1508.13. In the case of feasibility, continuing authority, or special planning reports and certain planning/engineering reports, the draft FONSI and EA should be included within the draft report and circulated for a minimum 30-day review to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(2)). In the case of operation and maintenance activities involving the discharge of dredged or fill material requiring a public notice, the notice will indicate the availability of the EA/FONSI. For all other Corps project actions a notice of availability of the FONSI will be sent to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(1)).

§ 230.12 Notice of intent and scoping.

As soon as practicable after a decision is made to prepare an EIS or supplement, the scoping process for the draft EIS or supplement will be announced in a notice of intent. Guidance on preparing a notice of intent to prepare an EIS for publication in the Federal Register is discussed in Appendix C. Also, a public notice will be widely distributed inviting public participation in the scoping process. As described in 40 CFR 1501.7 and reference 3(m), this process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping.

§ 230.13 Environmental Impact Statement (EIS).

An EIS for feasibility or continuing authority reports and certain planning/engineering reports may be combined with or integrated into the report in accordance with 40 CFR 1500.4(o) and 1506.4. An EIS combined with the report shall follow the format in 40 CFR 1502.10, follow the main report, use colored paper and not be an attachment or appendix. An EIS integrated within the report may follow the instructions in the last paragraph of 40 CFR 1502.10. Additional guidance on combining and integrating EISs is located in ER 1105–2–60. Where the EIS is not combined with or integrated into the project document, the EIS shall be a separate document and follow the format in 40 CFR 1502.10. CEQ regulations suggest maximum lengths for the text of an EIS at 40 CFR 1502.07. An effort should be exerted to cover the substantive topics simply and concisely to the extent practicable, and consistent with producing a legally and technically adequate EIS. Normally, the CEQ page limits should be met.

(a) *Draft and Final EISs.* Guidance on EISs prepared for planning and certain planning/engineering studies is contained in ER 1105–2–10 thru 60. 33 CFR Part 325, Appendix B contains guidance for regulatory actions. For final EISs which are not combined with or integrated into the report, the final EIS may take the form of an "abbreviated" document described in 40 CFR 1503.4(c). An abbreviated final EIS should consist of a new title page, summary, errata or correction sheet(s) and comments and responses. In filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. District commanders shall be responsible for determining the type of final EIS to prepare.

(b) *Supplements.* A supplement to the draft or final EIS should be prepared whenever required as discussed in 40 CFR 1502.09(c). A supplement to a draft EIS should be prepared and filed in the same manner as a draft EIS and should be titled "Supplement I", "Supplement II", etc. The final EIS should address the changes noted in the supplement and substantive comments received as a result of circulation of the document. A supplement to a final EIS should be prepared and filed first as a *draft* supplement and then as a final supplement. Supplements will be filed and circulated in the same manner as a draft and final EIS (including the abbreviated procedure discussed in 13a. above). Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS. Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet should clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision may be made on the proposed action by the appropriate Corps official no sooner than 30 days after the final supplement has been on file. A record of decision will be signed when the decision is made.

(c) *Tiering.* Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs or EAs as appropriate.

(d) *Other Reports.* District commanders may also publish periodic fact sheets and/or other supplemental information documents on long-term or complex EISs to keep the public informed on the status of the proposed action. These documents will not be filed officially with EPA.

§ 230.14 Record of decision and implementation.

A record of decision shall be prepared by the district commander, in accordance with 40 CFR 1505.2, for the signature of the final decisionmaker as prescribed by applicable Corps regulations. Procedures implementing the decision are discussed in 40 CFR 1505.3. Incoming letters of comment on the final EIS will be furnished for review by the decisionmaker who signs the record of decision. For example, the record of decision for feasibility reports will be signed by the ASA(CW) at the time the report is transmitted to Congress for authorization.

§ 230.15 Mitigation and monitoring.

See 40 CFR 1505.2(c) and 1505.3. District commanders shall, upon request from interested agencies or the public, provide reports on the progress and status of required mitigation and other provisions of their decisions on Corps projects. The term monitoring will be interpreted as that oversight activity necessary to ensure that the decision, including required mitigation measures, is implemented.

§ 230.16 Lead and cooperating agencies.

Lead agency, joint lead agency, and cooperating agency designation and responsibilities are covered in 40 CFR 1501.5 and 1501.6. The district commander is authorized to enter into agreements with regional offices of other agencies as required by 40 CFR 1501.5(c). District or division commanders will consult with HQUSACE (CECW–RE), WASH DC 20314–1000 prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5 (e) and (f).

(a) *Lead Agency.* The Corps will normally be lead agency for Corps civil works projects and will normally avoid joint lead agency arrangements. Lead agency status for regulatory actions will be determined on the basis of 40 CFR 1501.5(c).

(b) *Corps as a Cooperating Agency.* For cooperating agency designation the Corps area of expertise or jurisdiction by law is generally flood control, navigation, hydropower and Corps regulatory responsibilities. See Appendix II of CEQ regulations [49 FR 49750, December 21, 1984].

§ 230.17 Filing requirements.

Five copies of draft, final and supplement EISs should be sent to: Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. District commanders should file draft EISs and draft supplements directly with EPA. Final EISs and final supplements should be filed by appropriate elements within HQUSACE for feasibility and reevaluation reports requiring Congressional authorization. Division commanders should file final EISs and final supplements for all other Corps actions except for final EISs or final supplements for permit actions which should be filed by the district commander after appropriate reviews by division and the incorporation of division's comments in the EIS. HQUSACE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will file the final document with EPA after notified that distribution of the document has been accomplished.

(a) *Timing Requirements.* Specific timing requirements regarding the filing of EISs with EPA are discussed in 40 CFR 1506.10. District commanders will forward any expedited filing requests with appropriate supporting information through channels to CECW–RE. Once a decision is reached to prepare an EIS or supplement, district commanders will establish a time schedule for each step of the process based upon considerations listed in 40 CFR 1501.8 and upon other management considerations. The time required from the decision to prepare an EIS to filing the final EIS normally should not exceed one year [46 FR 18037, March 23, 1981). For feasibility, continuing authority, or reevaluation studies, where the project's study time is expected to exceed 12 months, the timing of the EIS should be commensurate with the study time. In appropriate circumstances where the costs of completing studies or acquiring information for an EIS (i.e., cost in terms of money, time, or other resources) would be exorbitant, the district commander should consider using the mechanism described in 40 CFR 1502.22, as amended. In all cases, however, it is the district commander's responsibility to assure that the time-limit established for the preparation of an EIS or supplement is consistent with the purposes of NEPA.

(b) *Timing Requirements on Supplements.* Minimum review periods will be observed for draft and final supplements covering actions not having a bearing on the overall project for which a final EIS has been filed. Such supplements should not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA.

§ 230.18 Availability.

Draft and final EISs and supplements will be available to the public as provided in 40 CFR 1502.19 and 1506.6. A summary may be circulated in lieu of the EIS, as provided in 40 CFR 1502.19, if the statement is unusually long. These documents will normally be made available without charge except that, in unusual circumstances, reproduction costs may be recovered in accordance with 40 CFR 1506.6(f) from recipients other than those required by CEQ to receive the complete EIS.

§ 230.19 Comments.

District commanders shall request comments as set forth in 40 CFR 1503 and 1506.6. A lack of response may be presumed to indicate that the party has no comment to make.

(a) *Time Extensions.* District commanders will consider and act on requests for time extensions to review and comment on an EIS based on timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity.

(b) *Public Meetings and Hearings.* See 40 CFR 1506.6(c). Refer to paragraph 12, 33 CFR Part 325, Appendix B for regulatory actions.

(c) *Comments Received on the Draft EIS.* See 40 CFR 1503.4. District commanders will pay particular attention to the display in the final EIS of comments received on the draft EIS. In the case of abbreviated final EISs, follow 40 CFR 1503.4(c). For all other final EISs, comments and agency responses thereto will be placed in an appendix in a format most efficient for users of the final EIS to understand the nature of public input and the district commander's consideration thereof. District commanders will avoid lengthy or repetitive verbatim reporting of comments and will keep responses clear and concise.

(d) *Comments Received on the Final EIS.* Responses to comments received on the final EIS are required only when substantive issues are raised which have not been addressed in the EIS. In the case of feasibility reports where the final report and EIS, Board of Engineers for Rivers and Harbors (CEBRH) or Mississippi River Commission (CEMRC) report, and the proposed Chief's report are circulated for review, incoming comment letters will normally be answered, if appropriate, by CECW–P. After the review period is over, CECW–P will provide copies of all incoming comments received in HQUSACE to the district commander for use in preparing the draft record of decision. For all other Corps actions except regulatory actions (See 33 CFR Part 325, Appendix B), two copies of all incoming comment letters (even if the letters do not require an agency response) together with the district commander's responses (if appropriate) and the draft record of decision will be submitted through channels to the appropriate decision authority. In the case of a letter recommending a referral under 40 FR Part 1504, reporting officers will notify CECW–RE and request further guidance. The record of decision will not be signed nor any action taken on the proposal until the referral case is resolved.

(e) *Commenting on Other Agencies' EISs.* See 40 CFR 1503.2 and 1503.3. District commanders will provide comments directly to the requesting agency. CECW–RE will provide comments about legislation, national program proposals, regulations or other major policy issues to the requesting agency. See Appendix III of CEQ regulations. When the Corps is a cooperating agency, the Corps will provide comments on another Federal agency's draft EIS even if the response is no comment. Comments should be specific and restricted to areas of Corps jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and 1508.26, generally including flood control, navigation, hydropower, and regulatory responsibilities. See Appendix II of CEQ regulations.

§ 230.20 Integration with State and local procedures.

See 40 CFR 1506.2.

§ 230.21 Adoption.

See 40 CFR 1506.3. A district commander will normally adopt another Federal agency's EIS and consider it to be adequate unless the district commander finds substantial doubt as to technical or procedural adequacy or omission of factors important to the Corps decision. In such cases, the district commander will prepare a draft and final supplement noting in the draft supplement why the EIS was considered inadequate. In all cases, except where the document is not recirculated as provided in 40 CFR 1506.3 (b) or (c), the adopted EIS with the supplement, if any, will be processed in accordance with this regulation. A district commander may also adopt another agency's EA/FONSI.

§ 230.22 Limitations on actions during the NEPA process.

See 40 CFR 1506.1.

§ 230.23 Predecision referrals.

See 40 CFR Part 1504. If the district commander determines that a predecision referral is appropriate, the case will be sent through division to reach CECW–RE not later than 15 days after the final EIS was filed with EPA. Corps actions referred to CEQ by

another Federal agency shall be transmitted to CECW-RE for further guidance. See paragraph 19, 33 CFR Part 325, Appendix B, for guidance on predecision referrals affecting regulatory permit actions.

§ 230.24 Agency decision points.

The timing and processing of NEPA documents in relation to major decision points are addressed in paragraphs 11 and 14 and Appendix A for studies and projects and 33 CFR Part 320 through 330 for regulatory actions.

§ 230.25 Environmental review and consultation requirements.

See 40 CFR 1502.25.

(a) For Federal projects, NEPA documents shall be prepared concurrently with and utilize data from analyses required by other environmental laws and executive orders. A listing of environmental laws and orders is contained in table 3.4.3 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Reviews and consultation requirements, analyses, and status of coordination associated with applicable laws, executive orders and memoranda will be summarized in the draft document. The results of the coordination completed or underway pursuant to these authorities will be summarized in the final document. Where the results of the ongoing studies are not expected to materially affect the decision on the proposed action, the filing of the final EIS need not be delayed.

(b) *Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979.* For general policy guidance, see **Federal Register** of April 12, 1979, 32 CFR Part 197. Procedural requirements for Civil Works studies and projects are discussed below.

(1) The district commander through the division commander will notify CECW-PE, PN, PS or PW as appropriate, of an impending action which may impact on another country and for which environmental studies may be necessary to determine the extent and significance of the impact. The district commander will inform CECW-P whether entry into the country is necessary to study the base condition.

(2) CECW-P will notify the State Department, Office of Environment and Health (OES/ENH) of the district commander's concern, and whether a need exists at this point to notify officially the foreign nation of our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(3) As soon as it becomes evident that the impacts of the proposed actions are considered significant, CECW-P will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate, requesting formal discussions on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper course of action for formal consultations.

(4) Prior to public dissemination, press releases or reports dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy.

§ 230.26 General considerations in preparing corps EISs.

(a) *Interdisciplinary Preparation.* See (40 CFR 1502.6).

(b) *Incorporation by Reference.* To the maximum extent practicable, the EIS should incorporate material by reference in accordance with 40 CFR 1502.21. Footnotes should be used only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list should include the author's name, the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

Appendix A—Processing Corps NEPA Documents

NEPA documents for Civil Works activities other than permits will be processed in accordance with the instructions contained in this appendix and applicable paragraphs in the regulation.

Table of Contents

Title
1. Feasibility Studies
2. Continuing Authorities Program Studies
3. Projects in Preconstruction Engineering, and Design, Construction, and Completed Projects in an Operations and Maintenance Category
4. Other Corps Projects

1. Feasibility Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental evaluation should be continued in the feasibility phase, and if the need for an EIS develops the district commander will issue a notice of intent as early in the feasibility phase as possible. Following the guidance in ER 1105-2-10 through 60, the district commander will prepare a draft feasibility report combining or integrating the draft EIS or EA and draft FONSI (as appropriate), or a separate NEPA document and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. *Division Review.* After review, the division commander will issue a public notice of report issuance and transmit the report to the CEBRH. On Mississippi River and Tributaries projects, the district commander will issue a public notice and submit the report to the CEMRC. For the purpose of this regulation, only the acronym CEBRH will be used since the review functions of CEMRC and CEBRH are similar. The notice will provide a 30-day period for comments to be submitted to CEBRH on the report and EIS. Although the EIS in the report is identified as "final" at this stage of processing, it should be made clear to all those requesting a copy that it is an "Interim Document under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed after CEBRH review.

c. *CEBRH Review.* CEBRH will review the EIS at the same time it reviews the final feasibility report. The report and EIS should be compatible. If the CEBRH review requires minor revisions (with insignificant impacts) to the plan as recommended by the division and district commanders, these changes and impacts shall be noted in the CEBRH report. If the CEBRH action results in major revisions to the recommended plan and revisions are variants of the plan or are within the range of alternatives considered and discussed in the draft EIS, an addendum to the final EIS will be prepared by CEBRH (with assistance from the district commander, as required). This addendum "package" will be identified as an "Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name." The format shall include an abstract on the cover page; recommended changes to the division/district commander's proposed plan; rationale for the recommended changes; environmental consequences of the recommended changes; and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during CEBRH review which provide new pertinent information having a bearing on the modifications recommended by CEBRH will be attached to the addendum. If CEBRH proposes to recommend a major revision or a new alternative to the plan recommended by the division and district commanders with significant impacts which were not discussed in the draft EIS, a supplement to the draft EIS will be required. After consultation with CEBRH and the division commander, the district commander will prepare and circulate the supplement to the draft EIS in accordance with paragraph 13(b). The supplement together with incoming letters of comment and Corps responses to substantive issues shall be incorporated into the existing final report and EIS with a minimum of page changes or revisions to reflect the modified or new proposed plan. CEBRH will review its proposed action in light of the comments received prior to taking final action on the report and EIS.

d. *Departmental Review.* The report and final EIS, together with the proposed report of the Chief of Engineers and the CEBRH report, will be filed with EPA at about the same time as it is circulated for the 90-day departmental review by Federal agencies at the Washington level and the concerned state(s). District commanders will circulate the proposed Chief's report, CEBRH report, and the report and final EIS to parties on the project mailing list not contacted by HQUSACE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. HQUSACE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to HQUSACE (CECW-P). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with HQUSACE responses and the draft record of decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's report is transmitted to ASA(CW) for further review and processing.

e. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. In situations where Congress has acted to authorize construction of a project prior to receiving ASA(CW) recommendations, the Director of Civil Works is the designated official to sign the ROD. In this case the ROD should only address the project as authorized by the Congress and not attempt to provide any additional justification of the Congressional action.

2. Continuing Authorities Program Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the results of the reconnaissance phase warrant preparation of an EIS, the district commander will issue a notice of intent early in the ensuing feasibility study. Following the guidance in ER 1105-2-10 through 60 the district commander will prepare the draft DPR incorporating the EA and draft FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared, five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 for filing after distribution has been accomplished.

b. *Agency Review.* After receipt and evaluation of comments the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review, the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been accomplished.

c. *Final Review.* Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the record of decision will be submitted through division to the appropriate element within CECW-P. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the record of decision if an EIS was prepared for the DPR.

3. Projects in Preconstruction Engineering and Design, Construction, and Completed Projects in an Operations and Maintenance Category

a. *General.* District commanders will review the existing NEPA document(s) to determine if there are new circumstances or significant impacts which warrant the preparation of a draft and final supplement to the EIS. If the proposed changes and new impacts are not significant an EA and FONSI may be used.

b. *Preparation and Draft Review.* As soon as practicable after the district commander makes a determination to prepare an EIS or supplement for the proposed project, a notice of intent will be issued. The district commander will, in accordance with 40 CFR 1506.6, prepare and circulate the draft EIS or supplement for review and comment to agencies, groups and individuals known who may be interested or affected. Five (5) copies will be sent to Director, Office of Federal activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished.

c. *Agency Review.* The district commander will prepare the final EIS or supplement after receipt and evaluation of comments. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within HQUSACE. The division commander will file the final EIS when the district commander has made distribution.

d. *Final Review.* Letters of comment on the final EIS or supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or supplement and a draft of the record of decision will be submitted to the appropriate Corps official having approval authority. After review of the NEPA documents and letters, the appropriate approving official will sign the record of decision.

4. *Other Corps Projects.* Draft and final EISs for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in a manner similar to that discussed in paragraph 3 of this appendix except that CERE-MC will be the coordinating office within HQUSACE for real estate actions.

Appendix B—[Reserved]

Appendix C—Notice of Intent to Prepare a Draft EIS

1. *Purpose.* This appendix provides guidance on the preparation and processing of a notice of intent to prepare a draft EIS for publication in the **Federal Register**. A notice of intent to prepare a draft EIS or a draft supplement is discussed in 40 CFR 1508.22.

2. *Procedure.* District commanders shall publish a notice of intent in the **Federal Register** as soon as practicable after a decision is made to prepare a draft EIS or draft supplement. See 40 CFR 1507.3(e) for timing of notice of intent for Corps feasibility studies. Guidance on the format and content of the notice in the form of a sample notice of intent is contained in paragraph 4 of this appendix. District commanders shall also follow this guidance when publishing a notice of intent to withdraw a notice of intent when a decision has been made to terminate the EIS process.

3. *Publishing Documents in the Federal Register.* The following information is furnished for preparation and publication of notices of intent in the **Federal Register**:

a. A brief transmittal letter inclosing three (3) signed copies of the notice of intent should be processed through local Chief, Information Management channels to: HQDA, SFIS-APP, ATTN: Department of the Army Liaison

Officer with the Office of the Federal Register, Alexandria, VA 22331–0302. This office will review and correct (if needed) all documents prior to publication in the **Federal Register**.

b. The notice must be signed by the official issuing the document along with the signer's typed name, rank and position title for military officials or name and position title for civilian officials. A signer cannot sign "as acting" or "for" if another name is shown in the signature block. All three copies sent forward must be signed in ink. A xerox copy of the signature is not allowed.

c. A six-digit billing code number must be typed or handwritten in ink at the top of the first page on all three copies of a notice. This billing code number can be found on GPO bills. GPO Form 400, in the upper left corner opposite the address. The billing code number will be indicated as 3710–XX. FOAs must submit an open-end printing and binding requisition, Standard Form 1, each fiscal year to cover **Federal Register** printing costs (reference 3(n)). Completed requisitions (SF–1) must be forwarded to reach HQUSACE (CEIM–SP) WASH DC 20314–1000 by 1 June of each year. Consult the local chief, Information Management for Assistance.

4. *Sample Notice of Intent.* The following is a sample notice of intent to be used by district commanders:

Department of Defense
Corps of Engineer, Department of the Army, 3710–XX (Use Local Billing Code Number)
Intent To Prepare A Draft Environment Impact Statement (DEIS) For a Proposed (*Name and location of project, permit or activity*).
Agency: U.S. Army Corps of Engineers, DoD.
Action: Notice of Intent.
Summary: The summary should briefly state in simple language what action is being taken, why the action is necessary, and the intended effect of the action. Extensive discussion belongs under the Supplementary Information caption.
For Further Information Contact: Questions about the proposed action and DEIS can be answered by: (Provide name, telephone number, and address of the person in the district or division who can answer questions about the proposed action and the DEIS).
Supplementary Information: The Supplementary Information should contain the remainder of the necessary information of the document. It should contain any authority citation, **Federal Register** citation to a previously published document, or CFR citation when appropriate and include a discussion of the following topics:
1. Briefly describe the proposed action.
2. Briefly describe reasonable alternatives.
3. Briefly describe the Corps' scoping process which is reasonably foreseeable for the DEIS under consideration. The description:
a. Shall discuss the proposed public involvement program and invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.
b. Shall identify significant issues to be analyzed in depth in the DEIS.
c. May discuss possible assignments for input into the EIS under consideration among the lead and cooperating agencies.
d. Shall identify other environmental review and consultation requirements.
4. Indicate whether or not a scoping meeting will be held. Indicate time, date and location if a meeting is scheduled.
5. Provide an estimated date when the DEIS will be made available to the public.
(Provide date)

(Signature)

See par. 3.b. for instructions on signature

Note

- Text to be double-spaced. Use block format.
- Place local billing code number at the top of the first page on all three copies.
- Margins—one inch on top, bottom and right side; and one and one-half inches on the left side.
- Pages must be numbered consecutively.
- Text should be typed on one side only.
- Use 8½ by 11 inch bond paper or photocopy paper.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

3. The authority citation for Part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

4. Part 325, Appendix B is added to read as follows:

* * * * *

Appendix B—NEPA Implementation Procedures for the Regulatory Program

1. Introduction
2. General
3. Development of Information and Data
4. Elimination of Duplication with State and Local Procedures
5. Public Involvement
6. Categorical Exclusions
7. EA/FONSI Document
8. Environmental Impact Statement—General
9. Organization and Content of Draft EISs
10. Notice of Intent
11. Public Hearing
12. Organization and Content of Final EIS
13. Comments Received on the Final EIS
14. EIS Supplement
15. Filing Requirement
16. Timing
17. Expedited Filing
18. Record of Decision
19. Predecision Referrals by Other Agencies
20. Review of Other Agencies' EISs
21. Monitoring

1. *Introduction.* In keeping with Executive Order 12291 and 40 CFR 1500.2, where interpretive problems arise in implementing this regulation, and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used. Specific examples of ways to reduce paperwork in the NEPA process are found at 40 CFR 1500.4. Maximum advantage of these recommendations should be taken.

2. *General.* This Appendix sets forth implementing procedures for the Corps regulatory program. For additional guidance, see the Corps NEPA regulation 33 CFR Part 230 and for general policy guidance, see the CEQ regulations 40 CFR 1500–1508.

3. *Development of Information and Data.* See 40 CFR 1506.5. The district engineer may require the applicant to furnish appropriate information that the district engineer considers necessary for the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). See also 40 CFR 1502.22 regarding incomplete or unavailable information.

4. *Elimination of Duplication with State and Local Procedures.* See 40 CFR 1506.2.

5. *Public Involvement.* Several paragraphs of this appendix (paragraphs 7, 8, 11, 13, and 19) provide information on the requirements for district engineers to make available to the public certain environmental documents in accordance with 40 CFR 1506.6.

6. Categorical Exclusions—a. *General.* Even though an EA or EIS is not legally mandated for any Federal action falling within one of the "categorical exclusions," that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS. The following activities are not considered to be major Federal actions significantly affecting the quality of the human environment and are therefore categorically excluded from NEPA documentation:

(1) Fixed or floating small private piers, small docks, boat hoists and boathouses.

(2) Minor utility distribution and collection lines including irrigation;

(3) Minor maintenance dredging using existing disposal sites;

(4) Boat launching ramps;

(5) All applications which qualify as letters of permission (as described at 33 CFR 325.5(b)(2)).

b. *Extraordinary Circumstances.* District engineers should be alert for extraordinary circumstances where normally excluded actions could have substantial environmental effects and thus require an EA or EIS. For a period of one year from the effective date of these regulations, district engineers should maintain an information list on the type and number of categorical exclusion actions which, due to extraordinary circumstances, triggered the need for an EA/FONSI or EIS. If a district engineer determines that a categorical exclusion should be modified, the information will be furnished to the division engineer who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW–OR) will review recommended changes for Corps-wide consistency and revise the list accordingly.

7. *EA/FONSI Document.* (See 40 CFR 1508.9 and 1508.13 for definitions)—a. *Environmental Assessment (EA) and Findings of No Significant Impact (FONSI).* The EA should normally be combined with other required documents (FA/404(b)(1)/SOF/FONSI). "EA" as used throughout this Appendix normally refers to this combined document. The district engineer should complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and when the EA is a separate document it must be completed prior to completion of the statement of finding (SOF). When the EA confirms that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources * * *" (section 102(2)(E) of NEPA), and the proposed activity is a "water dependent" activity as defined in 40 CFR 230.10(a)(3), the EA need not include a discussion on alternatives. In all other cases where the district engineer determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the Corps, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or deny the permit. Modifications are limited to those project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the "no action" alternative (i.e. no activity requiring a Corps permit). The combined document normally should not exceed 15 pages and shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district engineer may delegate the signing of the NEPA document. Should the EA demonstrate that an EIS is necessary, the district engineer shall follow the procedures outlined in paragraph 8 of this Appendix. In those cases where it is obvious an EIS is required, an EA is not required. However, the district engineer should document his reasons for requiring an EIS.

b. *Scope of Analysis.* (1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.

(2) The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

Typical factors to be considered in determining whether sufficient "control and responsibility" exists include:

(i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.

(iii) The extent to which the entire project will be within Corps jurisdiction.

(iv) The extent of cumulative Federal control and responsibility.

A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).

B. In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action the district engineer should consider whether other Federal agencies are required to take Federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 601 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands, (42 U.S.C. 4321 91977), and other environmental review laws and executive orders.

C. The district engineer should also refer to paragraphs 8(b) and 8(c) of this appendix for guidance on determining whether it should be the lead or a cooperating agency in these situations.

These factors will be added to or modified through guidance as additional field experience develops.

(3) *Examples:* If a non-Federal oil refinery, electric generating plant, or industrial facility is proposed to be built on an upland site and the only DA permit requirement relates to a connecting pipeline, supply loading terminal or fill road, that pipeline, terminal or fill road permit, in and of itself, normally would not constitute sufficient overall Federal involvement with the project to justify expanding the scope of a Corps NEPA document to cover upland portions of the facility beyond the structures in the immediate vicinity of the regulated activity that would effect the location and configuration of the regulated activity.

Similarly, if an applicant seeks a DA permit to fill waters or wetlands on which other construction or work is proposed, the control and responsibility of the Corps, as well as its overall Federal involvement would extend to the portions of the project to be located on the permitted fill. However, the NEPA review would be extended to the entire project, including portions outside waters of the United States, only if sufficient Federal control and responsibility over the entire project is determined to exist; that is, if the regulated activities, and those activities involving regulation, funding, etc. by other Federal agencies, comprise a substantial portion of the overall project. In any case, once the scope of analysis has been defined, the NEPA analysis for that action should include direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute. The district engineer should, whenever practicable, incorporate by reference and rely upon the reviews of other Federal and State agencies.

For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the Federal action, i.e., the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps of Engineers (or other Federal agencies).

For example, a 50-mile electrical transmission cable crossing a 1 1/4 mile wide river that is a navigable water of the United States requires a DA permit. Neither the origin and destination of the cable nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Corps of Engineers. Those matters would not be included in the scope of analysis which, in this case, would address the impacts of the specific cable crossing.

Conversely, for those activities that require a DA permit for a major portion of a transportation or utility transmission project, so that the Corps permit bears upon the origin and destination as well as the route of the project outside the Corps regulatory boundaries, the scope of analysis should include those portions of the project outside the boundaries of the Corps section 10/404 regulatory jurisdiction. To use the same example, if 30 miles of the 50-mile transmission line crossed wetlands or other "waters of the United States," the scope of analysis should reflect impacts of the whole 50-mile transmission line.

For those activities that require a DA permit for a major portion of a shoreside facility, the scope of analysis should extend to upland portions of the facility. For example, a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.

In all cases, the scope of analysis used for analyzing both impacts and alternatives should be the same scope of analysis used for analyzing the benefits of a proposal.

8. *Environmental Impact Statement—General—a. Determination of Lead and Cooperating Agencies.* When the district engineer determines that an EIS is required, he will contact all appropriate Federal agencies to determine their respective role(s).

i.e., that of lead agency or cooperating agency.

b. *Corps as Lead Agency.* When the Corps is lead agency, it will be responsible for managing the EIS process, including those portions which come under the jurisdiction of other Federal agencies. The district engineer is authorized to require the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix. It is permissable for the Corps to reimburse, under agreement, staff support from other Federal agencies beyond the immediate jurisdiction of those agencies.

c. *Corps as Cooperating Agency.* If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1508.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its regulatory authority. As a cooperating agency the Corps will be responsible to the lead agency for providing environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS. This in no way shall be construed as lessening the district engineer's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the Corps is a cooperating agency because of a regulatory responsibility, the district engineer should, in accordance with 40 CFR 1501.6(b)(4), "make available staff support at the lead agency's request" to enhance the latter's interdisciplinary capability provided the request pertains to the Corps regulatory action covered by the EIS, to the extent this is practicable. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will normally be by written agreement with the lead agency providing for the Corps expenses on a cost reimbursable basis. If the district engineer believes a public hearing should be held and another agency is lead agency, the district engineer should request such a hearing and provide his reasoning for the request. The district engineer should suggest a joint hearing and offer to take an active part in the hearing and ensure coverage of the Corps concerns.

d. *Scope of Analysis.* See paragraph 7b.

e. *Scoping Process.* Refer to 40 CFR 1501.7 and 33 CFR 230.12.

f. *Contracting.* See 40 CFR 1506.5.

(1) The district engineer may prepare an EIS, or may obtain information needed to prepare an EIS, either with his own staff or by contract. In choosing a contractor who reports directly to the district engineer, the procedures of 40 CFR 1506.5(c) will be followed.

(2) Information required for an EIS also may be furnished by the applicant or a consultant employed by the applicant. Where this approach is followed, the district engineer will (i) advise the applicant and/or his consultant of the Corps information requirements, and (ii) meet with the applicant and/or his consultant from time to time and provide him with the district engineer's views regarding adequacy of the data that are being developed (including how the district engineer will view such data in light of any possible conflicts of interest).

The applicant and/or his consultant may accept or reject the district engineer's guidance. The district engineer, however, may after specifying the information in contention, require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. In all cases, the district engineer should document in the record the Corps independent evaluation of the information and its accuracy, as required by 40 CFR 1506.5(a).

g. *Change in EIS Determination.* If it is determined that an EIS is not required after a notice of intent has been published, the district engineer shall terminate the EIS preparation and withdraw the notice of intent. The district engineer shall notify in writing the appropriate division engineer; HQUSACE (CECW–OR); the appropriate EPA regional administrator, the Director, Office of Federal Activities (A–104), EPA, 401 M Street SW., Washington, DC 20460 and the public of the determination.

h. *Time Limits.* For regulatory actions, the district engineer will follow 33 CFR 230.17(a) unless unusual delays caused by applicant inaction or compliance with other statutes require longer time frames for EIS preparation. At the outset of the EIS effort, schedule milestones will be developed and made available to the applicant and the public. If the milestone dates are not met the district engineer will notify the applicant and explain the reason for delay.

9. *Organization and Content of Draft EISs—a. General.* This section gives detailed information for preparing draft EISs. When the Corps is the lead agency, this draft EIS format and these procedures will be followed. When the Corps is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed.

b. *Format—(1) Cover Sheet.* (a) Ref. 40 CFR 1502.11.

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c)) is the project manager handling that permit application.

(c) The cover sheet should identify the EIS as a Corps permit action and state the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary.* In addition to the requirements of 40 CFR 1502.12, this section should identify the proposed action as a Corps permit action stating the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction. It shall also summarize the purpose and need for the proposed action and shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents.*

(4) *Purpose and Need.* See 40 CFR 1502.13. If the scope of analysis for the NEPA document (see paragraph 7b) covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, "The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant.") If the scope of analysis covers a more extensive project, only part of which may require a DA permit, then the underlying purpose and need for the entire project should be stated. (For example, "The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.") Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, "to construct an electric generating plant"). However, whenever the NEPA document's scope of analysis renders it appropriate, the Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, "to meet the public's need for electric energy"). Also, while generally focusing on the applicant's statement, the Corps, will in all cases, exercise independent judgment in defining the purpose and need for the project from both the applicant's and the public's perspective.

(5) *Alternatives.* See 40 CFR 1502.14. The Corps is neither an opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the "applicant's preferred alternative" in the final EIS. Decision options available to the district engineer, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or conditions or deny the permit.

(a) Only reasonable alternatives need be considered in detail, as specified in 40 CFR 1502.14(a). Reasonable alternatives must be those that are feasible and such feasibility must focus on the accomplishment of the underlying purpose and need (of the applicant or the public) that would be satisfied by the proposed Federal action (permit issuance). The alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines (40 CFR Part 230) where applicable. Those alternatives that are unavailable to the applicant, whether or not they require Federal action (permits), should normally be included in the analysis of the no-Federal-action (denial) alternative. Such alternatives should be evaluated only to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application.

(b) The "no-action" alternative is one which results in no construction requiring a Corps permit. It may be brought by (1) the applicant electing to modify his proposal to eliminate work under the jurisdiction of the Corps or (2) by the denial of the permit. District engineers, when evaluating this alternative, should discuss, when appropriate, the consequences of other likely uses of a project site, should the permit be denied.

(c) The EIS should discuss geographic alternatives, e.g., changes in location and other site specific variables, and functional alternatives, e.g., project substitutes and design modifications.

(d) The Corps shall not prepare a cost-benefit analysis for projects requiring a Corps permit. 40 CFR 1502.23 states that the weighing of the various alternatives need not be displayed in a cost-benefit analysis and "* * * should not be when there are important qualitative considerations." The EIS should, however, indicate any cost considerations that are likely to be relevant to a decision.

(e) Mitigation is defined in 40 CFR 1508.20, and Federal action agencies are directed in 40 CFR 1502.14 to include appropriate mitigation measures. Guidance on the conditioning of permits to require mitigation is in 33 CFR 320.4(r) and 325.4. The nature and extent of mitigation conditions are dependent on the results of the public interest review in 33 CFR 320.4.

(6) *Affected Environment.* See Ref. 40 CFR 1502.15.

(7) *Environmental Consequences.* See Ref. 40 CFR 1502.16.

(8) *List of Preparers.* See Ref. 40 CFR 1502.17.

(9) *Public Involvement.* This section should list the dates and nature of all public notices, scoping meetings and public hearings and include a list of all parties notified.

(10) *Appendices.* See 40 CFR 1502.18. Appendices should be used to the maximum extent practicable to minimize the length of the main text of the EIS. Appendices normally should not be circulated with every copy of the EIS, but appropriate appendices should be provided routinely to parties with special interest and expertise in the particular subject.

(11) *Index.* The Index of an EIS, at the end of the document, should be designed to provide for easy reference to items discussed in the main text of the EIS.

10. *Notice of Intent.* The district engineer shall follow the guidance in 33 CFR Part 230, Appendix C in preparing a notice of intent to prepare a draft EIS for publication in the **Federal Register.**

11. *Public Hearing.* If a public hearing is to be held pursuant to 33 CFR Part 327 for a permit application requiring an EIS, the actions analyzed by the draft EIS should be considered at the public hearing. The district engineer should make the draft EIS available to the public at least 15 days in advance of the hearing. If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1500.6(c)(2), the district engineer should coordinate a joint hearing with that agency whenever appropriate.

12. *Organization and Content of Final EIS.* The organization and content of the final EIS including the abbreviated final EIS procedures shall follow the guidance in 33 CFR 230.14(a).

13. *Comments Received on the Final EIS.* For permit cases to be decided at the district level, the district engineer should consider all incoming comments and provide responses when substantive issues are raised which have not been addressed in the final EIS. For permit cases decided at higher authority, the district engineer shall forward the final EIS comment letters together with appropriate responses to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR Part 1504, the district engineer will follow the guidance in paragraph 19 of this appendix.

14. *EIS Supplement.* See 33 CFR 230.13(b).

15. *Filing Requirements.* See 40 CFR 1506.9. Five (5) copies of EISs shall be sent to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official review periods commence with EPA's publication of a notice of availability of the draft or final EISs in the **Federal Register.** Generally, this notice appears on Friday of each week. At the same time they are mailed to EPA for filing, one copy of each draft or final EIS, or EIS supplement should be mailed to HQUSACE (CECW–OR) WASH DC 20314–1000.

16. *Timing.* 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

17. *Expedited Filing.* 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. The district engineer will provide the necessary information and facts to HQUSACE (CECW–RE) WASH DC 20314–1000 (with copy to CECW–OR) for consultation with EPA for a reduction in the prescribed review periods.

18. *Record of Decision.* In those cases involving an EIS, the statement of findings will be called the record of decision and shall incorporate the requirements of 40 CFR 1505.2. The record of decision is not to be included when filing a final EIS and may not be signed until 30 days after the notice of availability of the final EIS is published in the **Federal Register.** To avoid duplication, the record of decision may reference the EIS.

19. *Predecision Referrals by Other Agencies.* See 40 CFR Part 1504. The decisionmaker should notify any potential referring Federal agency and CEQ of a final decision if it is contrary to the announced position of a potential referring agency. (This pertains to a NEPA referral, not a 404(q) referral under the Clean Water Act. The procedures for a 404(q) referral are outlined in the 404(q) Memoranda of Agreement. The potential referring agency will then have 25 calendar days to refer the case to CEQ under 40 CFR Part 1504. Referrals will be transmitted through division to CECW–RE for further guidance with an information copy to CECW–OR.

20. *Review of Other Agencies' EISs.* District engineers should provide comments directly to the requesting agency specifically related to the Corps jurisdiction by law or special expertise as defined in 40 CFR 1508.15 and 1508.26 and identified in Appendix II of CEQ regulations (49 FR 49750, December 21, 1984). If the district engineer determines that another agency's draft EIS which involves a Corps permit action is inadequate with respect to the Corps permit action, the district engineer should attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If the district engineer finds that the final EIS is inadequate with respect to the Corps permit action, the district engineer should incorporate the other agency's final EIS or a portion thereof and prepare an appropriate and adequate NEPA document to address the Corps involvement with the proposed action. See 33 CFR 230.21 for guidance. The agency which prepared the original EIS should be given the opportunity to provide additional information to that contained in the EIS in order for the Corps to have all relevant information available for a sound decision on the permit.

21. *Monitoring.* Monitoring compliance with permit requirements should be carried out in accordance with 33 CFR 230.15 and with 33 CFR Part 325.

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Part III

Office of Management and Budget

Office of Federal Procurement Policy

Final Issuance of OMB Circular A-131; Value Engineering; Notice

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Issuance of Circular A-131; Value Engineering

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Final issuance of OMB Circular No. A-131.

SUMMARY: This OMB Circular provides policy guidance to Federal agencies regarding the use of value engineering as a means of identifying and reducing nonessential program and procurement costs. The Circular requires agencies to establish value engineering programs.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC 20503, (202) 395-6803.

SUPPLEMENTARY INFORMATION: A draft of the Value Engineering Circular was published in the **Federal Register** for review and public comment on August 27, 1987 (52 FR 32520). Comments were received in response to the **Federal Register** notice from 14 agencies and 18 private organizations. All comments were reviewed and, where warranted, changes have been made in the final Circular. A summary of the main issues and concerns raised by the comments follows:

1. Organizational Placement of the Value Engineering Function

The Circular requires agency heads to assign officials within their agencies to manage and monitor value engineering programs. Several commentors suggested that the person heading the value engineering effort should report directly to the agency head. The Circular does not direct the organizational placement or reporting hierarchy for agency value engineering officials. The Circular, instead, requires that the person responsible for the value engineering function receive appropriate training and that the performance of the function be consistent with achieving full compliance with the Circular. Organizational placement remains within the discretion of individual agency managers.

2. Functions of Agency Value Engineering Organizations

Several suggestions were made that the Circular should specifically identify and prescribe the role, size, grade levels and functions of the respective agency value engineering officials and activities to be established or appointed to implement the Circular. Details regarding staffing and grade levels and specific functions are not prescribed in the Circular. The Circular directs agencies to institute a value engineering effort but leaves the details of how the effort will be performed up to the individual agencies. This permits agencies to tailor value engineering efforts to their specific programs.

3. OMB's Oversight Role

Several private organizations recommended that OMB maintain active oversight over agencies' value engineering programs by requiring agencies and departments to prepare and submit annual savings goals and plans to OMB for review and approval. They believed that the requirement for submitting annual goals and plans would encourage agencies to more aggressively implement value engineering programs. The requirement for submitting annual goals and plans was not included in the Circular. Instead, agencies and departments will be required to provide OMB with annual, summary information about their value engineering programs. The exact data elements to be reported to OMB will be developed after consultation with the agencies. Figure 1, Sample Format for Annual Value Engineering Report, illustrates the type of summary information being considered for collection.

Figure 1—Sample Format For Annual Value Engineering Report

(Name)

Agency/Department

A. Estimated total amount of funds invested in value engineering in FY 1988

$ _____

B. Total value engineering savings achieved in FY 1988

$ _____

a. Savings achieved by in-house staff

$ _____

b. Savings generated by contractors

$ _____

C. Total employees assigned to value engineering

_____

a. Number of full-time employees

_____

b. Number of FTE's

_____

D. Number of agency/department employees receiving 8 hours or more of value engineering training in FY 1988

_____

E. Number of value engineering proposals received in FY 1988

_____

F. Number of value engineering proposals approved in FY 1988

_____

4. Funding Concerns

Concern about sufficient funds to establish and maintain value engineering programs was expressed by both agencies and private industry. Agency officials noted that funds for staffing management improvement efforts are difficult to obtain. Private industry noted that agencies need to make certain that funds are available to pay for both collateral and future contract savings, as appropriate, on accepted value engineering proposals. Suggestions were made that agencies should be required to fund value engineering programs on a line item basis and that agency heads should be authorized to retain and reprogram all value engineering savings. Agency budgeting practices and reprogramming authorities are often dictated by specific authorization, appropriation, and other statutory and administrative controls. Such practices and policies, therefore, must be tailored to fit the statutory and regulatory requirements of individual agencies. Requiring or specifying Government-wide funding practices in the Circular was not considered to be appropriate or practical.

5. Performance Evaluations

A provision in the draft Circular stated that supervisors would consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the perfomance of program and project managers and contracting officers. Comments from value engineers supported this provision enthusiastically. Comments from the Federal agencies were, in contrast, almost unanimously opposed to the provision. The agencies noted that a scorekeeping approach to the evaluation and processing of value engineering proposals could be counterproductive. Value engineering change proposals differ in complexity and dollar effect. Furthermore, the quality of the proposals is more important than the quality received and the rapidity of processing. The agencies also stated that the processing of value engineering change proposals is often an interdependent effort among the engineering, program and contracting offices. It would be difficult, therefore, to establish and consistently apply meaningful performance evaluation standards for tasks having such divided responsibility. In view of these objections made by the agencies, the requirement was deleted to consider the receipt and processing of value engineering change proposals as a specific factor in performance evaluations. The Circular does, however, still require that contract files list all change proposals requiring more than 45 days to accept or reject and that the rationale for rejecting any change proposal also be reflected in the file.

6. Definition of Value Engineering

Several comments stated that the definition of value engineering provided in the draft Circular should be changed to comply with the definition used by the Department of Defense. These suggestions were not accepted. The definition in the Circular is considered more appropriate for Government-wide use than the DOD definition. The primary difference between the definition in the Circular and the DOD definition is not large. The DOD definition specifically references "maintainability" and "interchangeability". These characteristics are essentially part of a product's performance requirements and it was not considered necessary to specifically add them to the definition used in the Circular.

7. Definitions of Value Engineering Change Proposal and Value Engineering Proposal

Various suggestions were made to clarify the definition of Value Engineering Change Proposals and Value Engineering Proposals. The suggestions were widely disparate and could not be adopted, in whole. The definitions now in the Circular, however, comply to the extent warranted with the suggested changes.

8. Changes to the Federal Acquisition Regulation

Comments were received that the Circular should address several value engineering issues now being considered by the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council. These issues pertain, in part, to the allowability (as indirect costs) of expenses incurred by contractors in developing value engineering change proposals that are ultimately rejected by the Government. Other commentors requested that the value engineering clauses at FAR 52.248 (1), (2), and (3) be changed to specifically provide that collateral savings resulting from change proposals that decrease life cycle cost be shared even if immediate contract costs are increased. The respective FAR Councils have a deliberate, standard approach for considering FAR changes. The Circular was not intended to interfere with the Council's deliberations of these issues. Accordingly, suggestions to have the Circular specify these regulatory changes were not accepted. The Circular does require the amendment of the FAR to prohibit "agency heads from making one time agency-wide exemptions to using value engineering provisions in their contracts."

9. Applicability to Grants

Suggestions were made that the Circular should be expanded to require the use of value engineering in grant programs. These suggestions were not adopted. The Circular is limited to Government contracts. It neither prohibits nor requires the use of value engineering by grant receiving activities. However, the Government-wide common rule now being developed to replace OMB Circular A-102 (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments) is expected to encourage (but not require) Federal grantees to use value engineering on contracts where there is reasonable opportunity for cost reductions.

10. Value Analysis vs. Value Engineering

It was suggested that the term "value engineering" is misleading and that the terms "value management" or "value analysis" would be more appropriate and less offensive to "design professionals". The rationale for this suggestion was, in part, that the term "engineering" should be reserved for functions that require performance by registered professional engineers. Value engineering is often performed by both registered engineers and by unregistered "nonengineers". This suggestion was not adopted, as "value engineering" appears to have a wider acceptance than the proposed terms.

11. Certified Training

The Circular requires that value engineering training be provided to agency personnel responsible for performing value engineering functions. Suggestions were received that the Circular should specify the minimum training requirements and that the personnel responsible for value engineering be required to complete courses "certified" by value engineering organizations. These suggestions were not accepted. The level of training to be provided to value engineering personnel will be determined by agency management. While "certified courses" may be appropriate in some instances, there are a number of "non-certified" value engineering courses. Several are offered by the Department of Defense and may generally be attended by civilian agency personnel on a space available basis.

12. Timing

Many suggestions were made that the Circular should emphasize that the sooner value engineering is introduced into a project or program the greater the potential for savings. These recommendations were accepted and the Circular now specifies that the criteria and guidelines to be established by agencies for screening programs and projects should recognize that the potential savings are "generally greatest during the planning, design, and other early phases of project/program development."

13. Commercial Products and Services

Suggestions were made by several agencies and Departments that value engineering has very limited applicability or potential within their respective programs. Specifically, several procurement officials stated that the Circular could not be applied in their agency as their contracts were largely for commercial products and services. These suggestions were not adopted. The application and implementation of value engineering is not dependent on the procurement process. Value engineering can and should be applied to internal program delivery systems. Organizations and missions can also benefit, in some instances, by value engineering reviews. While contracts for commercial products frequently result in the delivery of standard off-the-shelf items, the requirements specified in the RFP's or IFB's for the items can be subjected to a value engineering review. These reviews, obviously, should be made before the issuance of the RFP or the IFB. The Circular is not intended to cause agencies to "value engineer" commercial products but to value engineer the Government's requirements and specifications for such products.

14. Research and Development Contracts

One agency suggested that value engineering provisions should not be required for research and development contracts. The same agency suggested that the use of various incentive fee type contracts negated the potential of value engineering. While there is merit to the agency's observations and suggestions, VE can be productively applied to some R&D contracts and to contracts using incentive fee provisions. VE can be used in helping to develop functional/performance specifications where these

types of specifications are used and it, in turn, can be used by the contractor to make suggested changes either to the specifications or work statement specified in a contract. There is always the potential for a better idea with regard to the tasks or functions to be performed within a particular contract. Incentive type contracts motivate contractors to perform better within specified parameters. Value engineering can remove the parameters and provide additional incentives for high performance. Accordingly, while value engineering may not be applicable to all R&D contracts, and to some contracts containing incentive fee arrangements, it is a tool that can provide benefits in certain instances. Therefore, the Circular does not exempt contracts for specific types of services such as R&D nor does it exempt specific types of contracts such as incentive fee contracts. Exemptions, where merited, may be granted by agency heads.

EFFECTIVE DATE: The Circular is effective February 3, 1988.

Circular No. A–131

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Value Engineering

1. *Purpose.* The purpose of this Circular is to require the use of value engineering, as appropriate, by Federal Departments and agencies to identify and reduce nonessential procurement and program costs. The Circular requires agency heads to establish and improve their use of value engineering programs.

2. *Background.* Value engineering in the Federal Government is a means for some Federal contractors and Government entities to change the plans, designs and specifications for Federal programs and projects. These changes are intended to lower the Government's costs for goods and services and maintain necessary quality levels.

a. *Prior Reports.* Over the last several years, reports issued by the General Accounting Office (GAO) and many Inspectors General (IGs) have consistently concluded that greater use of value engineering would result in substantial savings to the Government. While some Federal agencies have value engineering programs, other agencies have not utilized value engineering fully. Even for agencies with established programs, the GAO and IG reports conclude that much more can and should be done to realize the benefits of value engineering.

b. *Identified Impediments.* The impediments that are frequently noted in these reports and that have prevented a greater use of value engineering include:

(1) Failure of senior management to allocate the necessary resources, both in effort and in funds, to establish and run value engineering programs;

(2) Absence of good criteria for selecting projects and programs for value engineering studies;

(3) Failure to properly perform value engineering studies;

(4) Inadequate attention by agency management to reviewing and implementing the recommendations made in value engineering studies.

c. *Other Problems.* Many of the problems noted in the GAO and IG reports are attitudinal. A common observation in many of the reports is that there are few incentives to use value engineering or other cost cutting techniques to save money on fully funded Federal programs and projects. Obviously, programs should be developed, critically reviewed and administered in the most cost effective manner possible. Value engineering and other management techniques must ensure realistic project budgets and identify and remove nonessential capital and operating costs.

3. *Definitions.*

a. *Agency.* As used in this Circular, the term "agency" means any executive department, military department, government corporation, government controlled corporation or other establishment of the executive branch of the Federal government.

b. *Value Engineering.* An organized effort directed by a person trained in value engineering techniques to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality and safety.

c. *Value Engineering Change Proposal (VECP).* A change proposal that is submitted by a contractor under a value engineering incentive or program requirement clause included in a Federal contract.

d. *Value Engineering Proposal.* A change proposal developed by employees of the Federal Government or contractor value engineering personnel employed by the agency to provide value engineering services for the contract or program.

4. *Policy.* Agencies shall establish value engineering programs and use value engineering, where appropriate, to reduce nonessential costs and improve productivity. Value engineering programs of agencies shall, at a minimum, provide for the following management and procurement practices.

a. *Management Practices.* Value engineering programs must be tailored to the mission and organizational structure of each agency. For example, the cost and program/project size usually indicate the potential for value engineering. In most agencies, a relatively few programs or projects comprise the majority of costs and value engineering efforts should be concentrated on these programs and projects. Therefore, agencies shall:

(1) Emphasize, through training, evaluation and other programs, the potential of value engineering to reduce unnecessary costs.

(2) Establish a single entity within the agency to manage and monitor value engineering efforts, encourage the use of value engineering and maintain data on the program. This function shall achieve the purposes of this circular. Value engineering training shall be provided to the person responsible for the value engineering function and to other personnel responsible for developing, reviewing and analyzing value engineering actions.

(3) Report and update the name, address and telephone number of the person responsible for each agency's value engineering program to the Office of Federal Procurement Policy, Office of Management and Budget.

(4) Ensure that funds necessary for operating agency value engineering programs are included in annual budget requests, and provide annual summary value engineering program information to the Office of Management and Budget as requested.

(5) Establish criteria and guidelines to identify those programs and projects that are most appropriate for value engineering studies. The criteria and guidelines should recognize that the potential savings are generally greatest during the planning, design, and other early phases of project/program development.

(6) Require that files be documented to explain why value engineering studies were not performed or required for any programs/projects meeting the agency criteria.

(7) Establish guidelines to evaluate and process value engineering proposals.

b. *Procurement Practices.* Present procurement policies and practices for the use of value engineering are set forth in Parts 48 and 52 of the Federal Acquisition Regulation (FAR). Part 48 provides two basic incentive approaches for using value engineering. The first approach uses a Value Engineering Incentive (VEI) clause. In this approach the contractor's participation is voluntary and the contractor uses its resources to develop and submit VECPs. A contract clause provides that when a VECP is accepted any resulting savings are shared with the contractor or a preestablished—usually a percentage—basis set forth in the contract.

The second approach, uses a Value Engineering Program Requirement (VEPR) clause and requires the contractor to conduct a specific value engineering effort within the contract, i.e., an effort to identify and submit to the Government methods for performing more economically. In this second approach, the contractor also shares in any savings resulting from the VECP, but at a lower percentage rate than under the voluntary approach. This effort generally is directed at the major cost items of a system or project.

The FAR presently permits agency heads to exempt their agencies from using value engineering provisions in contracts. The authority to totally exempt agencies from using value engineering provisions will be rescinded and the FAR will be modified to require that contracting activities include value engineering provisions in contracts except where exemptions are granted on a case-by-case basis or for specific classes of contracts. One time agency-wide exemptions will no longer be permitted. In addition, agency contracting activities will:

(1) Actively elicit VECPs from contractors.

(2) Promote value engineering through contractor meetings and the dissemination of promotional and informational literature regarding the value engineering provisions of contracts.

(3) Establish guidelines for processing value engineering change proposals and require that contract files list all change proposals requiring more than 45 days to accept or reject.

(4) Document all contract files to explain the rationale for accepting or rejecting value engineering change proposals.

(5) Use the value engineering clauses provided in the FAR for appropriate supply, service, architect-engineer and construction contracts.

(6) Use the value engineering program requirement clause (FAR 52.248–1 alternatives I or II) in initial production contracts for major systems programs and for contracts for research and development except where the controlling program officer determines and documents the file to reflect that such use is not appropriate (see Section 4 of Public Law 93–400, as amended (41 U.S.C. 403) for definitions of major systems).

5. *Sunset Review.* The policies contained in this Circular will be reviewed by the Office of Management and Budget three years from the date of issuance.

6. *Inquiries.* Further information about this Circular may be obtained by contacting the Office of Federal Procurement Policy, 726 Jackson Place NW., Washington, DC 20503, Telephone (202) 395–6803.

James C. Miller III,

Director.

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service
Food Safety and Inspection Service

9 CFR Part 71 et al.
Swine Identification; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Food Safety and Inspection Service

9 CFR Parts 71, 78, 85, 309, 310, and 320

[Docket No. 87-103]

Swine Identification

AGENCY: Animal and Plant Health Inspection Service, USDA, and Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (the Department) is proposing to add to its existing identification and recordkeeping requirements for swine, to require that all swine in interstate commerce be identified and that records concerning the swine identification be maintained. Expanding existing requirements, so that all swine in interstate commerce are identified and records of their identification maintained, would allow the Animal and Plant Health Inspection Service (APHIS) of the Department to trace a swine disease to its source much more efficiently than is now possible. APHIS needs to be able to locate the source of infection in order to eradicate certain diseases and stop them from spreading. Expanding existing identification and recordkeeping requirements for swine in interstate commerce would also allow the Food Safety and Inspection Service (FSIS) of the Department to determine more easily the source of meat that is adulterated with drugs and other chemical residue at levels higher than the allowed tolerance. FSIS needs to be able to locate these sources of adulteration in order to better keep the United States meat supply free of meat that could harm the health of the American public.

DATE: Consideration will be given to all comments postmarked or received on or before April 4, 1988.

ADDRESS: Send an original and 2 copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket Number 87-103. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. W.E. Ketter, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5863; or Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, FSIS, USDA, Room 4444, P.O. Box 96464, Washington, DC 20090-6464, 202-447-3219.

SUPPLEMENTARY INFORMATION:

Background

This background material is presented in five sections: (1) History of Industry Action Concerning Swine Identification; (2) Packers and Stockyards Administration: Responsibilities and Current Regulations; (3) Animal and Plant Health Inspection Service (APHIS): Responsibilities and Current Regulations; (4) Food Safety and Inspection Service (FSIS): Responsibilities and Current Regulations; and (5) Proposed Regulations.

The first section is historical material concerning identification of swine and pork from the point of view of the various industries concerned with producing meat for the American public, including livestock producers (especially hog producers), feedlot owners, sale barn operators, and slaughtering plant operators. The second, third, and fourth sections summarize the current USDA regulations concerning swine identification and records required to be maintained on swine in interstate commerce. The fifth section details proposed regulations to expand requirements for swine identification and to require certain records of swine identification to be kept.

History of Industry Action Concerning Swine Identification

For many years, representatives of the swine industry have urged the United States Department of Agriculture (the Department) to promulgate regulations requiring the identification of swine in the United States. In 1970, the U.S. Animal Health Association (USAHA), a national organization of state and federal animal health officials and industry representatives, adopted a resolution demanding that all livestock and poultry containing biological residues or harboring zoonotic diseases injurious to human health be quarantined and disposed of in an appropriate manner. In 1982, the Livestock Conservation Institute (LCI), a nonprofit research and education organization of the livestock and meat industry and other professional groups, approved a resolution supporting mandatory identification of all swine to the farm of origin at all points of concentration and slaughter. Virtually all segments of the pork industry concurred in the resolution. In 1984, the National Pork Producer's Council (NPPC), which represents swine producers, appointed a task force to develop a national identification program for swine.

At their respective 1984 meetings, the identification committees of both the USAHA and the LCI reported that "there is general agreement on the need for identification." Both organizations resolved "to continue to pursue a national, uniform means to identify swine back to the farm or ranch." An NPPC identification task force has also recommended the development of a system "to allow for the potential for product improvement that will enhance the product image and increase consumer confidence in the product. To accomplish this, hogs must be identified for control of disease and residues as well as composition and quality."

Packers and processors, as represented by the American Meat Institute (AMI), advocate animal identification to help prevent and eliminate diseases and control residues. Many slaughtering establishments independently require identification for the animals they purchase.

On March 28, 1984, the AMI submitted a petition to USDA requesting adoption of regulations requiring identification of all swine moved or sold for the purpose of slaughter, so that they could be traced back through marketing channels to their respective sources. The purpose of the identification would have been "to facilitate the prevention, eradication, and elimination of swine diseases and for other public health-related reasons." FSIS denied this petition on August 22, 1984, stating that USDA does not have authority to require a mandatory swine identification program for all swine moved or sold for purposes of slaughter, as requested by the AMI.

On July 9, 1985, the AMI submitted a second petition, asking that regulations be adopted requiring, with certain exceptions, that swine moved or sold in interstate commerce for the purpose of slaughter be identified to their places of origin by a means approved by USDA. The petition referred to a "Notice of Intent to Institute Proposed Rulemaking," published by FSIS on May 20, 1985 (50 FR 20796). The notice stated that FSIS would consider evidence from producers that animals offered for ante-mortem inspection had been properly withdrawn from sulfonamide and other drugs. (If animals are not properly withdrawn from these drugs before slaughter, their meat will be adulterated by residues.) According to the AMI, adequate evidence cannot be provided, and therefore the sulfa residue problem can only be dealt with effectively with a swine identification system that allows swine to be traced back to their premises or herd of origin.

The AMI petition was supported by the LCI, the National Association of Meat Purveyors, an organization representing meat wholesalers, and the American Feed Industry Association, an organization representing manufacturers of livestock and poultry feed.

In addition, Dr. R.H. Wasserman of the New York State College of Veterinary Medicine, Cornell University, endorsed the AMI petition. Dr. Wasserman had chaired the National Academy of Sciences/National Research Council (NAS/NRC) Committee on the Scientific Basis of the Nation's Meat and Poultry Inspection Program. In July 1985, the Committee published a report, "Meat and Poultry Inspection: the Scientific Basis of the Nation's Program." In this report, the Committee recommended (pp. 77-78) that an animal identification system "be created to allow diseased or contaminated animals to be raced to their source, to increase the farmer's share of responsibility for contamination, and to facilitate epidemiological studies of specific disease outbreaks." The identification system would be used in conjunction with an integrated USDA animal health monitoring program using data from meat and poultry inspection to ensure the routine tracing of disease and contamination back to their respective sources (p. 78). In addition, as pointed out in the report, an identification and traceback system would also be useful in controlling use of contaminating chemicals at the farm (p. 60).

The FSIS responded to the NAS report in its "FSIS Future Agenda," issued June, 1986. In preparing the response, the FSIS established eight committees, including a committee on animal identification and traceback. That committee recommended establishing a mandatory, national system for tracing swine back to their points of origin (p. VI-5). USDA was urged to begin at once to develop a program requiring identification of swine and maintenance of identification records by slaughter plants (p. VI-6). The committee found the persistence of the residue problem in swine to be a compelling reason to initiate an identification and traceback program. "In the case of residue screening, product which has been sampled [in FSIS's monitoring program] and found by the laboratory to be positive for chemical contamination will have moved into commerce before the [laboratory] results are returned to the point of origin. However, these results can be used to develop trend data and to alert inspectors to potential problem producers, *provided the source of the contamination is known*" (p. VI-3). The committee assessed the option of requiring slaughter plants to maintain records on the ownership of all swine during the 30-day period immediately preceding slaughter. It found this option "* * * could be put into operation with little difficulty and may be generally acceptable to producers and slaughter plants. It would provide an excellent, low-cost, and highly effective start-up program for a nationwide system for tracing animal ownership."

The primary value of these regulations, in the view of the committee, would be in establishing the means for tracing animals with violative levels of residues to their previous owners (p. VI-5). But the committee also noted other possible benefits from the regulations. "Part of [FSIS's] future agenda," observed the committee, "* * * is to move into more productive forms of inspection. FSIS is planning to direct more intensive efforts to the control of microbiological and chemical contaminants in meat and poultry. These efforts would include the generation of epidemiological data that could be fed back into the animal production chain to improve the condition of animals presented for inspection. An animal identification and traceback system would be needed to carry out this kind of inspection activity * * *. Federal and state animal health authorities would be able to trace animals to their source when appropriate action is needed to be taken to prevent epizootic infections or chemical residues or other contaminations. Benefits would also accure to producers in the form of reduced herd morbidity and mortality and as a tool in the development of better animal husbandry. By monitoring the results of breeding improvements from the farm to the slaughterhouse, producers, consumers, and food companies could all be expected to benefit from the enhanced livestock quality that animal identification and traceback could bring. In addition, effective animal identification can deter theft and thereby reduce losses to producers and insurers." (p. VI-3.)

In its deliberations, the committee agreed that one aspect of animal disease control that deserves particular attention is that of exotic diseases. Contagions of foreign origin, such as African swine fever, could have devastating effects on domestic herds. Losses would be caused by disruption to the marketing system, and by morbidity and mortality among animals. A good identification and traceback system would enable the industry and animal health authorities to locate the sources of exotic infections quickly and efficiently.

On January 12, 1987, officials of the AMI, the Livestock Marketing Association, an organization representing operations of livestock markets, and the NPPC sent a letter to the Assistant Secretary of Agriculture for Marketing and Inspection Services. The letter outlined the basic features of a suggested swine identification system. Among other things, the letter stated that a workable swine identification system would "provide an effective, economical method of enhancing the Department's public health capabilities." The system outlined in the letter would require packers, marketing agents, and other buyers to maintain records regarding the sources of animals.

In addition to this industry support for a swine identification system, there has been much recent congressional interest in the subject. The Processed Products Inspection Improvement Act of 1986 (Title IV of the Futures Trading Act of 1986 (Pub. L. 99-641)) expresses the sense of Congress that the Secretary of Agriculture should evaluate the feasibility of, and develop, a program that would enable the Secretary to trace livestock subject to federal inspection in order to identify the producer (section 405(2)). The Secretary is to report to congressional committees on any action proposed or taken with respect to such a program by November 1987 (see 406(3)).

Packers and Stockyards Administration: Responsibilities and Current Regulations

The Packers and Stockyards Administration (PSA) of the Department, under the Packers and Stockyards Act, 1921 (7 U.S.C. 181, *et seq.*), regulates the packers and stockyards industry to assure fair trade practices. Most PSA regulations concern financial practices of the industry. However, as part of this regulation, PSA requires market agencies to maintain certain records concerning livestock. The regulations do not require that these records show the identification, if any, of the livestock. Records may include this information, but most swine are identified only by lot.

APHIS: Responsibilities and Current Regulations

APHIS is responsible, in part, for protecting the health of United States livestock and poultry. In order to fulfill this responsibility, APHIS has promulgated regulations requiring

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animals moving in interstate commerce to be tested for disease and inspected for pests, requiring certain animals moving in interstate commerce to be identified, and otherwise governing the interstate movement or commerce of livestock and poultry in the United States.

Millions of livestock are slaughtered every year in the United States. Many of these animals are moved interstate to get to slaughter. When these animals are slaughtered, blood and tissue samples are taken from some, and all the carcasses are inspected. If any of them are found to be infected with certain diseases, APHIS attempts to trace the route the animals took through marketing channels to arrive at slaughter. In that way, APHIS can find out where diseased animals were located, when they were there, and what other animals they came in contact with. Each animal that a diseased animal came in contact with is exposed and may itself become infected, and may in turn have the capability of infecting other animals. Therefore, if APHIS is to successfully control and eradicate certain livestock diseases in this country, it must be able to trace individual animals.

APHIS has some regulations requiring identification of swine moved in interstate commerce. However, not all swine are covered, and when identification is required, it is often optional whether it is applied before or after the swine move interstate. The regulations concerning swine identification are contained in Title 9, Code of Federal Regulations, Parts 78 and 85.

Part 78 contains APHIS's regulatory program to control and eradicate brucellosis. These regulations include requirements for movements in interstate commerce of: reactor swine, exposed swine, sows and boars moving for slaughter or for sale for slaughter, and sows and boars moving for breeding. Other swine are not covered by Part 78.

Part 78 does not regulate swine that are not brucellosis reactors or exposed to brucellosis, or that are not sows or boars moved or moving in interstate commerce for any purpose other than slaughter, sale for slaughter, or breeding. Most swine in this category would be moving or moved in interstate commerce for feeding.

Part 78 requires reactor swine moved in interstate commerce to be identified by a metal eartag (see § 78.31(b)). The regulations also require reactor swine to be accompanied by a permit (see § 78.31(c)). The permit must include certain information: owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, any reactor tag numbers, and one of the following: The official eartag number, individual animal registered breed association registration tattoo, registered breed association registration brand, United States Department of Agriculture backtag number, individual animal registered breed association registration number, or similar individual identification (see § 78.1, definition of "permit"). Part 78 also requires that records kept in connection with the interstate movement of reactor swine have the words "Brucellosis Reactor" on them (see § 78.31(d)).

Part 78 requires that exposed swine may only be moved in interstate commerce if accompanied by a permit (see § 78.32). The permit must include the same information listed above.

Part 78 provides that sows and boars that are not brucellosis reactor or exposed swine may only be moved in interstate commerce for slaughter or for sale for slaughter if individually identified: (1) By an official eartag or USDA backtag applied before movement in interstate commerce and before they are mixed with swine from any other source (see § 78.33(a)(1)); (2) by an official eartag or USDA backtag applied upon arrival after movement in interstate commerce and before they are mixed with swine from any other source, when moved directly from their herd of origin to a recognized slaughtering establishment or a stockyard, market agency, or dealer operating under the Packers and Stockyards Act, as amended (see § 78.33(a)(2)); or, (3) by a Veterinary Services-approved tattoo that has been authorized in writing by the Deputy Administrator, VS (see § 78.33(a)(3)). The regulations also state that serial numbers of official eartags, USDA backtags, and Veterinary Services approved tattoos will be assigned to persons who apply in the state where they maintain their place of business. "Persons assigned serial numbers must: (1) Identify the herd of origin of swine upon which the serial numbers were used and record this information on a document; (2) maintain these records at their place of business for 2 years; and (3) make these records available for inspection during ordinary business hours upon request by a Veterinary Services representative or a state representative" (see § 78.33(d)). The regulations also state that:

"[t]he operator of each place of business where sows and boars are identified on arrival in accordance with this section must enter the identification on the yarding receipt, sale ticket, invoice, or waybill relating to the sows and boars, and maintain the document at the place of business for 2 years. The operator must make the document available for inspection during ordinary business hours upon request by a Veterinary Services representative or state representative" (See § 78.33(e)).

Part 78 provides that sows and boars that are not brucellosis reactor or exposed swine may only be moved in interstate commerce for breeding if individually identified by an official eartag, or by ear notching or an ear tattoo that has been recorded in the book of record of a purebred registry association. According to the regulations, the identification must be done before the swine move in interstate commerce and before they are mixed with swine from any other source. (See § 78.33(b)).

Part 85 contains APHIS's regulatory program to control the spread of pseudorabies. The regulations include requirements for interstate movement of: infected swine, exposed swine, vaccinated swine that are not known to be either infected or exposed, and unvaccinated swine that are not known to be either infected or exposed.

Infected swine and exposed swine may be moved interstate under Part 85 to certain locations under certain conditions. One of the conditions is that they are accompanied by a permit or owner-shipper statement. All permits and owner-shipper statements must include certain information, including the number of swine being moved, the points of origin and destination, the consignor and consignee, and any other information required by the regulations. (See § 85.1, definitions of "Owner-shipper statement" and "Permit".) Section 85.5(a)(3) requires that the permit or owner-shipper statement accompanying infected swine and exposed swine interstate to slaughter must also list "the identification tag, tattoo earnotch recognized by a breed association, or similar identification of each swine being moved; *except* if the swine are moved interstate and the identity of the farm of origin of each swine is maintained, the permit or the owner-shipper statement need not list the individual identification required * * * if such swine are identified to the farm of origin at the recognized slaughtering establishment or the first slaughter market." Similarly, the permit accompanying exposed swine moving interstate to a quarantined herd or a quarantined feedlot must include "the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved." (See § 85.5(b)(5)).

Pseudorabies vaccinated swine that are not known to be either infected with the disease or exposed to it can be moved to slaughter if they are accompanied by a permit or owner-shipper statement (see § 85.6(a)(2)). These documents need only include the number of swine being moved, the "points of origin and destination," and "the consignor and the consignee." The documents do not need to include identification of the swine. However, pseudorabies vaccinated swine moving to a quarantined herd or quarantined feedlot must be accompanied by a permit that include "the individual identification tag, tattoo, earnotch recognized by a breed association or similar identification of each animal being moved." (see § 85.6(b)(2)).

Swine that have not been vaccinated for pseudorabies, and that are not known to be either infected with the disease or exposed to it, can be moved interstate to slaughter without being accompanied by any document and without being identified. These swine must be moved either directly to a recognized slaughtering establishment or "directly through one or more slaughter markets and then directly to a recognized slaughtering establishment." (See § 85.7(a)).

Swine that have not been vaccinated for pseudorabies and that are not known to be either infected with the disease or exposed to it, can be moved interstate to feedlots, quarantined feedlots, quarantined herds, and approved livestock markets under certain conditions. Only in certain circumstances must the swine be accompanied by documents or identified. If they are moved from a state "which requires the State animal health official * * * to be immediately notified of any suspected or confirmed case of pseudorabies in that State and which requires that exposed or infected livestock be quarantined" under certain conditions, then the swine must either: (a) Be accompanied by an owner-shipper statement, moved directly from a farm of origin to an approved livestock market, and identified at the approved livestock market to the farm of origin by an identification tag (see § 85.7(b)(3)(i)); or must, among other things, (b) be accompanied by a certificate which states "the identification of the farm of origin of each swine being moved by an earnotch recognized by a breed association, identification tag, tattoo, or similar identification * * * " (see § 85.7(b)(3)(ii)).

Swine that have not been vaccinated for pseudorabies and that are not known to be either infected with the disease or exposed to it, can be moved interstate for other purposes only if they are accompanied by a certificate that includes the number and description of the swine being moved, the points of origin and destination, the consignor and consignee, and "the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved." (See § 85.1, definition of "Certificate" and § 85.7(c)).

Finally, Part 85 requires consignors "of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies which are moved interstate directly to a feedlot, quarantined feedlot, quarantined herd, or to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot or quarantined herd" to maintain "records whereby individual swine can be traced to the farm of origin." (See § 85.11(a)). Part 85 also requires consignors to maintain these records for 2 years after the swine are moved interstate, and to make the records available on request (see § 85.11(b)).

The APHIS regulations in Parts 78 and 85 are designed to provide a way to locate swine infected with brucellosis or pseudorabies, trace them to their sources, and identify all animals they may have exposed to disease and that may in turn have become infected and able to spread the disease. For this reason, most swine are required to be individually identified, accompanied during movement in interstate commerce by some document showing their ownership, origin, and destination, or both identified and accompanied by certain documents. Only with this information can APHIS eradicate and control brucellosis and pseudorabies in swine.

However, these requirements do not effectively allow APHIS to trace all swine in interstate commerce. This is because some swine in interstate commerce are not covered under any of the identification and documentation requirements. The current regulations require identification and documentation of swine with respect to only two diseases: brucellosis and pseudorabies. If swine in interstate commerce are not required to be identified or accompanied by documents under either Part 78 or Part 85, then no identification or documentation requirements apply to them, and they cannot be traced back through marketing channels. Also, because the current regulations do not require maintenance of records showing the ownership of swine at all times while they are in interstate commerce, not all swine can be traced. A system requiring all swine in interstate commerce to be identified, and also requiring complete records of their ownership, would help APHIS trace diseased swine, control the spread of diseases, and eradicate sources of infection. This type of system would also help APHIS enforce its existing regulations concerning interstate movement of swine.

FSIS: Responsibilities and Current Regulations

FSIS, under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), has responsibility for ensuring that meat and meat food products intended for consumers in the United States are wholesome and not adulterated or misbranded. The FMIA, among other things, requires the Secretary of Agriculture, through appointed inspectors, to conduct ante-mortem and post-mortem examination and inspection of certain livestock, including swine, when these animals are slaughtered in an establishment that is subject to federal inspection (see 21 U.S.C. 603 and 604). The inspection is performed by veterinarians or by trained food inspectors working under veterinary supervision, and is administered by FSIS.

FSIS conducts visual and manual inspections of animals and carcasses. The agency also conducts the National Residue Program to help prevent products that are adulterated with residues of drugs and other chemicals, such as pesticides and industrial contaminants, from being distributed in commerce. In the monitoring phase of the program, tissue samples are collected by inspectors on a random basis. These samples are subjected to laboratory examination to determine, among other things, if levels of substances are higher than the established tolerances. Besides the monitoring samples, other samples may be taken from specific animals and carcasses that FSIS has reason to believe may be adulterated. For example, if the FSIS inspector finds injection lesions or other conditions that indicate possible adulteration, the animal or carcass and parts may be retained until the results of laboratory tests on tissue samples are known.

There are not enough FSIS personnel to test every animal or carcass for possible adulteration with chemical residues, and even if there were, it is not practical to retain every carcass until test results are known. This fact was important consideration in establishing

the National Residue Program. Also, the cost of testing all animals or carcasses and holding them for test results would be prohibitive. Therefore, a system whereby FSIS could predict which animals or carcasses were most likely to be adulterated would help the agency more accurately to choose animals and carcasses for blood and tissue sample testing, use its personnel more efficiently, more effectively enforce its regulations, and more effectively keep adulterated meat out of the nation's food supply.

To do this, FSIS needs a system in which all swine in interstate commerce arriving at slaughter are identified and in which a record of the previous ownership and location of each swine is provided. Then, when FSIS locates an adulterated carcass, the animal from which the carcass is derived can be traced through marketing channels. Tracing animals would allow officials to locate other animals that are likely to yield adulterated meat. These specific animals could then be tested at slaughter. For example, if a carcass were adulterated with antibiotics, the animal from which the carcass is derived could be traced to the location where the antibiotics were given. Other animals from that location, which would also be likely to yield adulterated meat, could then be traced. Also, steps could be taken to stop more animals from being improperly treated with antibiotics, and animals already treated could be held longer before slaughter, until the adulteration problem naturally corrected itself. For another example, if a carcass is adulterated with a pesticide, the animal from which the carcass is derived could be traced back to the farm or other premises where it came in contact with the pesticide. Again, other animals from the premises, which would also be likely to yield adulterated meat, could be traced. Steps could then be taken to stop or reduce exposure of animals at the premises to the pesticide.

However, the current identification requirements for swine do not provide a means for all swine in interstate commerce to be traced through marketing channels. The reasons for this are explained above in the discussion of current APHIS regulations.

Requirements that swine be identified while in interstate commerce, and requirements that records be maintained showing ownership of swine, would help FSIS meet its responsibilities under the FMIA, would help FSIS more efficiently locate a larger proportion of adulterated carcasses at slaughter, and would allow sources of adulteration to be located and eliminated. With this type of regulation in effect, FSIS would be better able to enforce its existing regulations and therefore better able to protect the wholesomeness of the United States meat supply.

Proposed Regulations

Under current law, there is only one feasible way to trace outbreaks of swine diseases to their source, eradicate infection, control spread of diseases, and locate swine that are likely to have residue problems before they enter the nation's food supply. That is to require all swine in interstate commerce to be identified, and to require records showing the identification of all swine moved in interstate commerce to be kept. If the swine in interstate commerce would be identified, and records would be kept showing that identification, the swine could be traced through marketing channels to their respective sources. Tracing would be accomplished by starting with the current owner and location of the swine, and working backwards through each previous owner and location of the swine, to the point when and where the individual swine entered interstate commerce. As explained below, under the proposed regulations, each person (individual, firm, corporation, or other legal entity) who owns or possesses or has owned or possessed a swine which was or is in interstate commerce, and each person who applies or has applied identification to swine which were or are in interstate commerce, would have to maintain a record of any identification the person applied to the swine, along with certain information about the person from whom he/she or it acquired the swine and any identification on the swine when he/she or it acquired the swine. To trace individual swine, USDA personnel would start by interviewing and inspecting the records of the person currently owning or possessing the swine or its carcass. From those records, they would learn the identity of the previous person which owned or possessed the swine, the previous location of the swine, and any identification on the swine when it was most recently acquired. If necessary, USDA personnel would then go to the next person which owned or possessed the swine, moving backwards in time, using the identification records to identify the specific swine being traced. This process would continue until the location where the swine were farrowed is reached. At each stop, USDA personnel would be able, by examining the records, to trace animals back another step in commerce. In this manner, individual swine can be traced back through marketing channels. This same method could be used to trace swine forward through marketing channels. This would be done when a source of disease is found and all swine exposed to it must be located. The same tracing method would be used.

Tracing is impossible without two things: (1) The swine must be identified with some marking or device; and (2) there must be a written record of who has owned or possessed the swine, where the swine have been located, and the identification applied to them. Both these requirements are included in the proposed regulations, which are explained below. The written record of ownership or possession and location alone, without the swine being identified, is not enough. For example, a slaughterhouse must keep written records of the persons from whom it has purchased swine. In turn, a person who sells the swine to the slaughterhouse must, if the swine are in interstate commerce, make a record of the source of the swine. But if the swine are not individually identified, and the person purchased swine from more than one source, then there may be no means of determining which swine came from which source. Therefore, individual swine could not be traced back through marketing channels in all instances without the swine being identified with some marking or device.

As explained above, various agencies within the Department do have some regulations requiring identification of swine and maintenance of various records. However, the APHIS identification and documentation requirements do not cover all swine in interstate commerce, and the PSA record-keeping requirements neither specifically require swine identification, nor authorize FSIS and APHIS personnel to have access to the records.

The Department therefore proposes various amendments to the regulations in Title 9, Code of Federal Regulations[1]. The Department proposes to require, with one exception, that no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified by means of identification devices approved by the Deputy Administrator (see proposed §§ 71.19 and 309.16(c)).

[1] The Food and Drug Administration of the Department of Health and Human Services (FDA), which is responsible, in part, for protecting the American public against adulterated and misbranded foods and drugs, has informed FSIS that a swine identification program would greatly improve the ability of FDA to take enforcement action in drug residue violation cases.

The exception would be for swine from farrow to finish operations that are taken directly to a slaughtering establishment from the premises where they were raised (see proposed § 71.19(c)).

Under the proposed regulations, only one identification marking or device would have to be applied to each swine. If persons applied additional markings or devices, that would not conflict with the regulations. However, under the proposed regulation, it would be illegal to remove or tamper with any identification while the swine is in interstate commerce (see proposed § 71.19(f)). In addition, the records required under the proposed regulations would have to list *all* identifications applied to each swine (see proposed §§ 71.19(d)(1)(iii) and (e), and 78.33(d)(1)(iii) and (e), which are explained more fully below.)

The required swine identification would have to be maintained through post-mortem inspection (see current § 310.2(a), which requires animal identification to be maintained until post-mortem examination is completed). This is to ensure that any test samples can be identified to the swine from which they came.

Means of identification would be approved by the Deputy Administrator, Veterinary Services, APHIS, if he or she determines they can be used successfully to trace a swine in interstate commerce. The proposed regulations list several approved means of identification, to be used in different circumstances, that APHIS has determined will provide the information necessary to trace the prior movements of the animal through marketing channels (see proposed § 71.19(b)). Most of the listed means of identification could be used on any swine. However, United States Department of Agriculture swine backtags and Veterinary Services-approved tattoos would be restricted to use on swine moving to slaughter, and even then Veterinary Services-approved tattoos could not be used on sows and boars without prior approval from the Deputy Administrator. Backtags could be used only on slaughter swine because they are not suitable for long-term identification. They are made of paper and glued to the animals back. They adhere to the animal and remain legible long enough for the animal to be moved to slaughter. However, they will not stay on the animal for longer periods of time. Veterinary Services-approved tattoos could only be used on slaughter swine because these tattoos are not legible unless the animal's hair is removed. This is done at slaughter, when most swine are scalded, scraped, and dehaired. However, Veterinary Services-approved tattoos are not allowed to be used on sows and boars without prior approval from the Deputy Administrator because sows and boars, when slaughtered, are generally not scalded, scraped, and dehaired, but instead are skinned. Unless the slaughtered swine are scalded, scraped, and dehaired, the tattoo is not legible and is useless as identification. Approval to use Veterinary Services-approved tattoos on slaughter sows and boars is only given when they are to be scalded, scraped, and dehaired.

Under the proposal, requests could be submitted to APHIS to have additional means of identification approved (see proposed § 71.19(g)). If the Deputy Administrator determines that the requested devices and markings will provide a means of tracing swine, a proposal will be published in the **Federal Register** to add the devices and markings to the list of approved means of swine identification.

The Department is also proposing to require that each person who sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, and each person who applies approved means of identification to swine in interstate commerce, make and maintain records of the identification of the swine (see proposed §§ 71.19(d) and (e), and 320.1(b)(1)(ix)). This record would not accompany the swine in interstate commerce, but would be maintained by the person required to make the record. If identification is or has been placed on the swine, such as eartags, backtags, tattoos, and ear notching, a record would have to be made of each identification. The person would be required to maintain the records for at least two years, and would be required to allow authorized USDA employees to inspect and copy them (see proposed §§ 71.19(d)(3) and (e), 309.16(e), 310.23(a) and (b), and 320.1(b)(1)(ix)). The records would have to include information on the identification of the swine, and on their origin and destination (see proposed §§ 71.19(d) and (e), 309.16(e), and 320.1(b)(1)(ix)). The Department is not proposing to require any particular form for these records; any documentation containing the required information would be acceptable under the proposed rules. These records are necessary to allow swine to be traced. The two-year retention requirement conforms with standard business practices in the industry, under which records of sale, delivery receipt, transfer of ownership, and other matters are commonly retained for at least two years.

A new § 310.23(b) would be added to the regulations specifically to provide that, if an establishment fails to provide required swine identification, the inspector shall order swine carcasses to be retained at an establishment pending completion of tests to confirm that the carcasses are not adulterated.

Miscellaneous

The Department is proposing to add definitions of the terms "Accredited veterinarian," "Area Veterinarian in Charge," "Deputy Administrator," "Interstate commerce," "Official eartag," "Premises of origin," "Purebred registry association," "State animal health official," "State representative," "United States Department of Agriculture swine backtag," and "Veterinary Services approved tattoo" to Part 71 (see proposed amendments to § 71.1).

These terms are all included in proposed § 71.19, and are new to Part 71. The proposed definition of "Interstate commerce" is intended to cover as many swine as possible under the animal quarantine laws and the Federal Meat Inspection Act, including those swine in foreign commerce that are imported into the United States. This appears to be necessary to make the proposed regulations as effective as possible. The definitions of "Official eartag," "United States Department of Agriculture swine backtag," and "Veterinary Services approved tattoo" all refer to alpha-numeric coding systems. These systems, designed by APHIS, use a combination of digits and letters to identify the state, either the dealer or market, and either the individual swine, lot of swine, or premises where the swine came from. Eartags have a nine character code: Two digits identifying the state; three letters used to increase the number of digit and letter combinations available, and therefore increase the number of unique tags available; and four digits identifying the individual swine. Backtags have an eight character code: Two letters identifying the state; two letters identifying the dealer or market; and four digits identifying the individual swine. Tattoos have a six character code: Three letters identifying the state and market, and three digits identifying the lot of swine or premises where the swine came from. The eartag coding system has been in use for at least 30 years, and the tattoo coding system since 1973. Backtags specifically for

swine have been in use only since 1986. However, prior to that time cattle backtags could be used on swine. Cattle backtags have been used since 1958. They utilize a similar coding system, except 2 digits are used to identify the state, 2 letters to identify the dealer or market, and 4 digits to identify the individual animal. When APHIS adopted backtags specifically for swine, it was decided to change the use of digits and letters to distinguish the two types of tags while conveying the same information. The only other differences between cattle and swine backtags is that cattle backtags are ovals made of plastic coated paper and swine backtags are round disks of vinyl.

The Department is also proposing to amend Part 71 to revise the current definition of "State." The current definition does not include United States possessions or the Commonwealth of the Northern Mariana Islands, which are covered by the regulations in Part 71, including proposed § 71.19.

Under the proposed swine identification requirements, individual swine may need to be identified even if they are not immediately being moved interstate. This is because the proposed regulations are based on the broadest possible definition of "interstate commerce" under the animal quarantine laws and the Federal Meat Inspection Act. Transactions and movements occurring prior to, during, and after an interstate transaction or movement would be included as long as the commerce in the swine continued. For example, if a swine is sold and the buyer and seller are in different states, that swine would be required under the proposed regulations to be identified, whether or not it moves interstate. That is because the transaction itself would be in "interstate commerce," as the Department proposes to define that term. Prior and subsequent movements and transactions would also be in interstate commerce, as long as the swine remain in commerce.

The Department is also proposing to amend the current regulations in Parts 78 and 85 to make them consistent with the requirements of proposed § 71.19.

The Department is proposing, in Part 78, to amended the current definition of "United States Department of Agriculture backtag" to refer to swine and to clarify that these backtags are intended for use on swine. The proposed definition would be identical to the proposed definition of "United States Department of Agriculture swine backtag in § 71.1.

The Department is proposing to revise current § 78.33(c) to refer to the identification requirements in proposed § 71.19. This reference is needed because if proposed § 71.19 is adopted, sows and boars moved in interstate commerce for purposes other than slaughter or breeding would be required to meet the identification requirements of § 71.19.

The Department is also proposing to revise current § 78.33(d). Proposed § 78.33(d) states that serial numbers of USDA backtags and VS-approved tattoos will be assigned to "each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his or her place of business." Proposed § 71.19(d) also states that "[s]erial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whichever is responsible for issuing official eartags." Current § 78.33(d) does not make these distinctions as to accredited veterinarians and state and federal representatives, and other applicants for swine identification, though this regulation, and earlier versions of it, have always been interpreted and applied to distinguish among them. Official eartags are permanent identification. They are used not only for tracing animals to their herds of origin, but also for identifying individual animals for disease control purposes. To ensure that official eartags are not removed and replaced to conceal the identity of an animal, APHIS must closely control their availability and application. APHIS does this by issuing them only to accredited veterinarians and state and federal representatives. Therefore, the Department is proposing to amend § 78.33(d) to make these distinctions clear.

In addition, proposed § 71.19(d) makes it clear that accredited veterinarians, state, and federal representatives are responsible for using official eartag identification numbers and for keeping records in the same manner as are persons assigned USDA backtags and VS-approved tattoos. This same requirement appears in § 78.33(d), though not in the same words. Therefore, the Department is proposing to amend the wording in § 78.33(d) to conform to the wording in proposed § 71.19(d).

The Department is also proposing to amend § 78.33(e). In part, this section requires certain records showing identification of sows and boars to be maintained. Proposed § 71.19(e) contains similar provisions concerning all swine, but clearly requires that the records must include the street address, including the city and state, or the township, county, and state, of the premises of origin of the swine, and must include the telephone number, if available, of a person who owned or possessed the swine at the premises of origin. Under this proposal, the wording of § 78.33(e) would be amended to conform to the wording in proposed § 71.19(e).

The Department is also proposing to amend §§ 85.5, 85.6, and 85.7. These sections currently state that required permits and certificates must list the "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each swine being moved." Under the proposed regulations, these sections would be amended to remove the list of identification methods, and would instead refer to proposed § 71.19 for means of approved identification.

Only two substantive changes would be made in the existing requirements for sows and boars by these proposed amendments. One would be to require that swine, to be identified using ear notches, would have to be registered with a purebred registry association. The current regulations require registration with a breed association. A "purebred registry association" is the same thing as a "breed association." However, these organizations refer to themselves as "purebred registry associations." Also, ear tattoos registered with a purebred registry association would be allowed as identification. They are not currently allowed under these regulations. Ear notches and ear tattoos are equally permanent and useful forms of swine identification. There appears to be no reason not to allow both types of identification to be used.

The Department is also proposing to remove current § 85.11. This section concerns records used to trace individual swine to their herds of origin. This material would be included in proposed § 71.19. Therefore, to avoid confusion and to consolidate as many of the swine identification and record-keeping requirements as possible in proposed § 71.19, the Department proposes to delete this section.

Executive Order 12291 and Regulatory Flexibility Act

The Department is proposing this rule in conformance with Executive Order 12291, and has determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than $100 million; and would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If this proposed rule were adopted, the Department anticipates that there would be no significant effect on the number of owners, producers, markets, feedlots, and other entities, both large and small, that would be required to apply identification to livestock or keep records concerning their identification. Most of the livestock in interstate commerce are cattle that are already subject to identification and documentation requirements similar to those proposed in this document for swine. Of those swine in interstate commerce, many are already subject to federal identification and documentation requirements for brucellosis and pseudorabies that are the same or substantially similar to those proposed in this document. In 1986, 1.84 million swine were identified in accordance with the APHIS regulations concerning brucellosis (see 9 CFR Part 78). This compares with 54.043 million swine in the United States in 1985. The APHIS regulations concerning pseudorabies (9 CFR Part 85) have much broader identification requirements, and a much larger proportion of the swine population must therefore be identified in accordance with these requirements. However, the Department does not have any statistics available showing the number of swine identified in accordance with Part 85. In addition to swine identified in accordance with federal requirements, many swine are subject to state-imposed identification requirements. Also, all packers, stockyards, and dealers under the jurisdiction of the Packers and Stockyards Administration are already required to maintain, for two years, records which may contain swine identification information.

Only incomplete statistics concerning swine identification and record keeping are available to the Department. However, based on the information that is available, the Department believes that adoption of these proposed amendments would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

These programs/activities under 9 CFR Parts 71, 78, and 85, are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et. seq.*) the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under OMB control number 0579–0047. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation.

9 CFR Part 85

Animal diseases, Livestock and livestock products, Quarantine, Transportation.

9 CFR Part 309

Ante-mortem inspection.

9 CFR Part 310

Post-mortem inspection.

9 CFR Part 320

Records, Registration, Reports.

Accordingly, it is proposed to amend parts 71, 78, 85, 309, 310, and 320 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for Part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 71.1 would be amended by adding the following definitions in alphabetical order:

§ 71.1 Definitions.

* * * * *

Accredited Veterinarian. A veterinarian who is approved by the Deputy Administrator, in accordance with Part 161 of this chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in Subchapters, A, B, C, and D of this chapter; and to perform work required by cooperative state-federal disease control and eradication programs.

Area Veterinarian in Charge. The veterinary official of Veterinary Services, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the state concerned.

* * * * *

Deputy Administrator. The Deputy Administrator, Veterinary Services, or any other person to whom the Deputy Administrator has delegated his or her authority.

* * * * *

Interstate commerce. Trade, traffic, transportation, or other commerce between a place in a state and any place outside of that state, or between points within a state but through any place outside of that state.

* * * * *

Official eartag. An identification eartag approved by Veterinary Services as being tamper-resistant and as conforming to the nine-character alpha-numeric National Uniform Eartagging System, which provides unique identification for each animal.

* * * * *

Premises of origin. The farm or other premises where the animals are farrowed and remain until moved in interstate commerce.

Purebred registry association. A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are seet forth in constitutions, by-laws, and other rules of the association.

* * * * *

State animal health official. The state official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a state or a political subdivision thereof and authorized by such state or political

subdivision to perform the function involved.

• • • • •

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

• • • • •

Veterinary Services approved tatto. A tattoo, conforming to the six character alpha-numeric National Tattoo System, which provides unique identification for each herd or lot of swine.

• • • • •

3. In § 71.1, the definition of "State" would be revised to read as follows:

• • • • •

State. Any of the fifty states, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

• • • • •

4. In Part 71, a new § 71.19 would be added to read as follows:

§ 71.19 Identification of swine in interstate commerce.

(a)(1) Except as provided in paragraph (c) of this section, no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified by means of identification approved by the Deputy Administrator and listed in paragraph (b) of this section. All swine shall remain so identified while they are in interstate commerce.

(2) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, is responsible for the identification of the swine as provided by this section.

(b) Means of swine identification approved by the Deputy Administrator are:

(1) Official eartags, when used on any swine;

(2) United States Department of Agriculture swine backtags, when used on swine moving to slaughter;

(3) Veterinary Services-approved tattoos, when used on swine moving to slaughter, except sows and boars as provided in § 78.33 of this title;

(4) Ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association; and

(5) Ear tattoos when used on any swine, if the ear tattoos have been recorded in the book of record of a purebred registry association.

(c) Swine that are kept as a group are not required to be individually identified when in interstate commerce if:

(1) They were born on the same premises;

(2) They were raised on the same premises where they were born;

(3) They are moved in a group directly to a slaughtering establishment from the place where they were raised;

(4) They are not mixed with swine from any other premises, between the time they are born and the time they arrive at the slaughtering establishment; and

(5) They are slaughtered one after another, as a group, and not mixed with other swine at slaughter.

(d) Serial numbers of United States Department of Agriculture swine backtags and Veterinary Services approved tattoos will be assigned to each person who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his/her or its place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) The street address, including the city and state, or the township, county, and state, of the premises where the approved means of identification were applied;

(ii) The telephone number, if available, of the person who owns or possesses the swine; and

(iii) Any other serial numbers or other approved means of identification appearing on the swine;

(2) Maintain these records at the person's place of business for two years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(e)(1) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce, must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills upon which is recorded:

(i) All serial numbers and other approved means of identification appearing on the swine; and

(ii) The street address, including city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain the records at his/her or its place of business for at least two years after the person has sold or otherwise disposed of the swine to another person, and for such further period as the Deputy Administrator may require by written notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

(f) No person may remove or tamper with any approved means of identification required to be on swine pursuant to this section while it is in interstate commerce, except at the time of slaughter as provided in 9 CFR 309.16(e).

(g) Written requests for approval of swine identification devices and markings not listed in paragraph (b) of this section should be sent to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782. If the Deputy Administrator determines that the devices and markings will provide a means of tracing swine in interstate commerce, a proposal will be published in the Federal Register to add the devices and markings to the list of approved means of swine identification.

PART 78—BRUCELLOSIS

5. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

6. In § 78.1, the definition of "United States Department of Agriculture backtag" would be revised to read as follows:

• • • • •

United States Department of Agriculture swine backtag. A backtag issued by Veterinary Services for use on swine, which conforms to the eight-character alpha-numeric National Backtagging System and uniquely identifies each individual swine.

• • • • •

7. In § 78.33, paragraphs (c), (d), and (e) would be revised to read as follows:

§ 78.33 Sows and boars.

• • • • •

(c) Sows and boars may be moved in interstate commerce for purposes other than slaughter or breeding without restriction under this subpart, if they are identified as required by § 71.19 of this chapter.

(d) Serial numbers of United States Department of Agriculture swine backtags and Veterinary Services approved tattoos will be assigned to each person, other than an accredited veterinarian, who applies to the state animal health official or the Area Veterinarian in Charge for the state in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or state or federal representative who requests official eartags from the state animal health official or the Area Veterinarian in Charge, whoever, is responsible for issuing official eartags in that state. Persons assigned serial numbers of United States Department of Agriculture swine backtags, Veterinary Services approved tattoos, and official eartags must:

(1) Record the following information on a document:

(i) The street address, including the city and state, or the township, county, and state, of the premises where the aproved means of identification were applied;

(ii) The telephone number, if available, of the person who owns or possesses the swine; and

(iii) Any other serial numbers or other approved means of identification appearing on the swine; and

(2) Maintain these records at the place of business for two years; and

(3) Make these records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) upon request by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials

(e)(1) Each person who buys or sells, for his own account or as the agent of the buyer or seller, transports, receives for transportation, offers for sale or transportation, or otherwise handles swine in interstate commerce must keep records relating to the transfer of ownership, shipment, or handling of the swine, such as yarding receipts, sale tickets, invoices, and waybills, upon which are recorded:

(i) All serial numbers and other approved means of identification appearing on the swine; and

(ii) The street address, including the city and state, or the township, county, and state, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained.

(2) Each person required to keep records under this paragraph must maintain these documents at his/her or its place of business for at least two years after the person has sold or otherwise disposed of the swine to another person and for such further period as the Deputy Administrator may require by written notice to the person, for purposes of any investigation or action involving the swine identified in the records. The person shall make the records available for inspection and copying during ordinary business hours (8 a.m. to 5:30 p.m., Monday through Friday) by any authorized employee of the United States Department of Agriculture, upon that employee's request and presentation of his or her official credentials.

PART 85—PSEUDORABIES

8. The authority citation for Part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.5 [Amended]

9. In § 85.5, paragraph (a)(3), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each swine being moved" would be revised to read "identification of the swine as required by § 71.19 of this chapter", and the phrase "individual identification required by this paragraph" would be revised to read "identification required by § 71.19 of this chapter".

10. In § 85.5, paragraph (b)(5), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved" would be revised to read "identification of the swine as required by § 71.19 of this chapter".

§ 85.6 [Amended]

11. In § 85.6, paragraph (b)(2), the phrase "identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved;" would be revised to read "identification of the swine required by § 71.19 of this chapter;".

12. In § 85.7, paragraph (b)(3)(i)(B) would be revised to read as follows:

§ 85.7 Interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies.

• • • • •

(b) • • •

(3) • • •

(i) • • •

(B) The swine are identified at the approved livestock market to the farm of orgin by the identification required by § 71.19 of this chapter.

• • • • •

13. In § 85.7, paragraph (b)(3)(ii), the phrase "an earnotch recognized by a breed associated [sic.], identification tag, tattoo, or similar identification," would be revised to read "a means of identification required by § 71.19 of this chapter,".

14. In § 85.7, paragraph (c)(2)(i), the phrase "identification tag, tattoo, ear notch recognized by a breed association, or similar identification of each animal being moved;" would be revised to read "identification required by § 71.19 of this chapter;".

§ 85.11 [Removed]

15. Section 85.11 would be removed.

PART 309—ANTE-MORTEM INSPECTION

16. The authority citation for Part 309 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

17. Section 309.16 would be amended by adding a new paragraph (e) to read as follows:

§ 309.16 Livestock suspected of having biological residues.

• • • • •

(e) The name of each and all person(s) who sold or consigned each swine to the establishment shall be made available by the establishment to any Program employee or other authorized employee of the United States Department of Agriculture upon that employee's request and presentation of his or her official credentials. Swine identification, by means approved by the Animal and Plant Health Inspection Service, USDA, under Part 71 of this title, must be maintained throughout post-mortem inspection, in accordance with § 310.23(a) of this subchapter.

PART 310—POST-MORTEM INSPECTION

18. The authority citation for Part 310 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended. 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

19. The Table of Contents would be amended to add, in numerical order, "310.23 Identification of carcasses and parts of swine."

20. A new § 310.23 would be added to read as follows:

§ 310.23 Identification of carcasses and parts of swine.

(a) The identification of the carcasses and parts of swine identified in accordance with Part 71 of this title shall be made available to the inspector upon the inspector's request throughout post-mortem inspection.

(b) If the establishment fails to provide required swine identification, the inspector shall order the retention of swine carcasses at the establishment until the completion of tests to confirm that the carcasses are not adulterated.

PART 320—RECORDS, REGISTRATION, AND REPORTS

21. The authority citation for part 320 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 9903, as amended. 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

22. Section 320.1(b)(1) would be amended by adding a new paragraph (ix) to read as follows:

§ 320.1 Records required to be kept.

(b) * * *

(1) * * *

(ix) In the case of a person belonging to the class specified in paragraph (a)(1), and engaged, for commerce, in the business of slaughtering any swine for use as human or animal food, the name and address (including the city and state, or the township, county, and state) of each person from whom the person belonging to the class so specified purchased or otherwise obtained each swine, and the telephone number, if available, of the person from whom the swine were purchased or otherwise obtained, and all serial numbers and other approved means of identification appearing on the swine.

Done at Washington, DC, this 25th day of January, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-1803 Filed 2-2-88; 8:45 am]

BILLING CODE 3410-34-M

federal register

Wednesday
February 3, 1988

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02]

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would issue Onshore Oil and Gas Order No. 4 under 43 CFR 3164.1. This Order would implement and supplement requirements found in 43 CFR Part 3160 relating to the measurement of oil produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as oil produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order would address oil measurement by tank gauging, by positive displacement metering systems, and by other methods acceptable to the authorized officer of the Bureau of Land Management. The Bureau of Land Management's existing internal guidelines on oil measurement were never published as a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

DATE: Comments should be submitted by April 4, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above adddress during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard T. Hunter (303) 236-1787

or

Sie Ling Chiang (202) 653-2127

or

Ted R. Hudson (202) 343-8735

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3190—Oil and Gas Operations—provide in § 3164.1 for the issuance of Oil and Gas Orders when necessary to implement and supplement the specific provisions of the regulations. All Orders are promulgated by rulemaking process and, when issued in final form, apply on a nationwide basis. A table is included in § 3164.1 that shows all existing or former Orders. This proposed rulemaking would result in another such Order. It is specifically intended to supplement the provisions of § 3162.7-2—*Measurement of oil*, and § 3162.7-1—*Disposition of production*.

Section 3162.7-2 requires that all production be measured by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. This Order would set out specific and detailed requirements and minimum standards for oil measurement by tank gauging or a positive displacement metering system, based on the standards, specifications, and recommended practices published by the American Petroleum Institute. Those items proposed to be included in this Order as requirements and minimum standards are necessary to ensure that oil production is measured accurately, so that the Federal Government, the general public, and State Governments which share in the proceeds, and Indian mineral owners will receive all royalties due under the terms of the various oil and gas leases. Specific comments are requested on whether the requirements of this Order should be phased in over a period of time for existing facilities and how long such a period of time should be.

The Order would establish no specific or detailed requirements or minimum standards for any other possible systems of oil measurement which may be acceptable to the authorized officer, but would require prior approval by the authorized officer before any such alternate oil measurement method may be employed. It would require an application for an alternate system to include evidence that the proposed system would measure oil with accuracy equivalent to tank gauging or measurement by a positive displacement metering system, or result in no loss of royalty to the Federal Government or Indian mineral owners.

The Order would also address those instances where oil cannot be measured due to spillage or leakage, in which case the volume would be determined in accordance with methods and procedures approved or prescribed by the authorized officer pursuant to 43 CFR § 3162.7-2. This would include so-called waste oil as required by § 3162.7-1(a), when it is not economically feasible to put such oil into marketable condition. When it is economically feasible to put "slop" oil into marketable condition, whether it is contained in a production vessel, an open sump, or a pit, the Order would reiterate the requirement of § 3162.7-1(b) that such oil, after any treatment necessary to put it into marketable condition, shall be accurately measured by an authorized measurement system.

The Order would set out a procedure whereby an operator may request approval for a variance from any of the required minimum standards. An application for variance would be required to propose an alternative means to satisfy the minimum standard.

The Order would also contain provisions for corrective actions and normal abatement periods. These would set out for each minimum standard the corrective action required when an incident of noncompliance with the standard is detected, and the time frame within which such corrective action shall be taken. Many of these abatement periods are shown as "Prior to sales or removal" in this proposal. Specific comments are requested on whether any or all of these provisions should also specify a firm deadline as an alternative. For example, "Prior to sales or removal, or 30 days, whichever occurs first."

The principal authors of this proposed rulemaking are Mr. Richard T. Hunter, Lakewood, Colorado; Mr. Joe Delozier, Bakersfield, California; Mr. Terry Messerli, Billings, Montana; Mr. Upendra Parikh, Jackson, Mississippi; and Mr. Joe Chesser, Washington, DC of the Bureau of Land Management Orders Committee responsible for the development and issuance of this order, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Mr. Raymond W. Vinyard, retired from the Bureau of Land Management. Mr. Ronald Heath, Minerals Management Service, was also a part of the Orders Committee and assisted on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The proposed Order will have no adverse economic effects, because its requirements reflect the operating practices currently followed by prudent operators when oil production is measured in accordance with the standards and practices recommended by the American Petroleum Institute.

The proposed Order may provide a beneficial economic effect. Industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of the requirements of the Bureau of Land Management which relate to the measurement of oil production. The State Governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate oil measurement. The minimum standards established by this Order essentially are those which have been required but not officially promulgated by this Department and would impose the same burden on all lessees and operators, regardless of the size of the entity, on lands where the measurement of oil production is under the jurisdiction of the Bureau of Land Management. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The proposed Order will not affect current information collection and record keeping requirements. All proposed and existing reporting requirements are included in the following Office of Management and Budget approvals: 1004-0134, 1004-0135, or 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 30, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 31, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457). See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No. and subject	Effective date	FR Reference	Supersedes
* * * * *			
4 Measurement of Oil			None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

November 10, 1987.

T. Steven Griles,

Assistant Secretary of the Interior.

Appendix—Text of Oil and Gas Order No. 4

Note: This appendix will not appear in the Code of Federal Regulations.

Contents

Onshore Oil and Gas Order No. 4

I. Introduction
A. Authority
B. Purpose
C. Scope
II. Definitions
III. Requirements
A. General.
B. Oil Measurement by Tank Gauging
C. Oil Measurement by Positive Displacement Metering System
D. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer
E. Determination of Oil Volumes by Methods Other than Measurement
IV. Variances from Minimum Standards
Attachment
I. Sections from 43 CFR Subparts 3163 and 3165.

ONSHORE OIL AND GAS ORDER NO. 4

Federal and Indian Oil and Gas Leases—Measurement of Oil

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operations regulations contained in Title 43 CFR Part 3160. Section 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations, and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at § 3162.7-1, *Disposition of Production;* § 3162.7-2, *Measurement of Oil;* and Subpart 3163, *Noncompliance and Assessment.*

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of oil by the methods authorized in 43 CFR 3162.7-2, i.e., measurement by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer. Proper oil measurement ensures that the Federal Government and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected, and to specify the assessments and penalties that will be imposed as a result of failure to correct the noncompliance within the specified abatement period. The regulations pertaining to the rights to administrative

review and hearing on the record, as well as the right to appeal and judicial review, will be attached to this Order when it becomes effective and is distributed as a circular.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to State or privately owned lands when Federal and/or Indian leases are entitled to share in the revenues generated by wells on such lands under the terms of an approved agreement.

II. Definitions

A. Authorized representative, means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, contract, or memorandum of understanding (see 43 CFR 3160.0–5).

B. Barrel (bbl) means 42 standard United States gallons of 231 cubic inches each.

C. By-pass means any piping arrangement connected upstream and downstream of a meter that allows oil to continue on the sales line without passing through the meter.

D. Cpl. means the correction factor for the effect of pressure on liquid.

E. Cps. means the correction factor for the effect of pressure on steel.

F. Ctl. means the correction factor for the effect of temperature on liquid.

G. Cts. The correction factor for the effect of temperature on steel.

H. INC means incident of noncompliance, which serves as a Notice of Violation under 43 CFR Subpart 3163.

I. Lessee means the party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference, the term lessee also refers to and includes the owners of approved operating rights and designated operators (see 43 CFR 3160.0–5).

J. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impact on public health and safety, the environment, production accountability, or royalty income 43 CFR 3160.0–5).

K. Minor violation means noncompliance which does not rise to the level of a "major violation" (43 CFR 3160.0–5).

L. Oil, for the purposes of this Order, shall mean all liquid hydrocarbons produced from or for the benefit of jurisdictional leases, including condensate and oil from tar sands that is measured as a liquid.

M. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

N. Bad oil means crude oil that is not marketable to normal purchasers but that can be treated economically by use of heat, chemicals, or other methods or combination of methods with existing or modified lease facilities or portable equipment.

O. Slop oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided at the existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

P. Waste oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value and for which royalty is not due.

III. Requirements

A. General (See 43 CFR 3162.7–2)

1. The regulations at 43 CFR 3162.7–2 authorize oil measurement methods for production from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1. The authorized oil measurement methods are tank gauging, positive displacement metering systems, and other methods acceptable to the authorized officer. The requirements and minimum standards for each of these methods are set forth below.

2. These requirements and minimum standards are based on the standards and practices recommended by the American Petroleum Institute (API). The API standards and recommended practices are considered by both the Department of the Interior and the oil and gas industry to be appropriate for proper oil measurement. The requirements and minimum standards set out herein are those necessary to promote conservation of natural resources and to ensure that oil production, except for waste oil, is properly measured for sales purposes, in order that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases. Any variances from these requirements and minimum standards shall be in accordance with section IV of this Order.

3. A violation of a minimum standard established by this Order shall be abated within the time period specified. If any such violation is not abated within the required period, action shall be initiated in accordance with 43 CFR Subpart 3163 (see Attachment I).

B. Oil Measurement by Tank Gauging

Oil measurement by tank gauging shall accurately compute the volume of oil withdrawn from a properly calibrated sales tank by measuring the height of the oil level in the tank before delivery (opening gauge) and then measuring the height of the oil level in the tank after delivery (closing gauge). The opening and closing gauges are then used with the tank calibration charts (tank tables) to compute accurately the volume of oil withdrawn. Gauging may be accomplished by measuring the height of the oil level from the tank bottom or a fixed datum plate upward to the surface of the oil in the tank (innage gauging) or by measuring from a fixed reference point at the top of the tank downward to the surface of the oil in the tank (outage gauging). Samples shall be taken from the oil before gauging to determine API oil gravity corrected to 60° F, oil temperature, and content of sediment and water. The measured oil volume shall then be corrected for sediment and water content, and to the standard sales temperature of 60° F.

The following requirements and minimum standards shall be accomplished in accordance with API Standard 2545 (ASTM D 1085) "Method of Gauging Petroleum and Petroleum Products," 1985, or the latest revised standard.

1. *Sales Tank Equipment.* Each oil storage tank to be used for oil sales by tank gauging shall be properly equipped for such gauging, using the "API Recommended Practice for Setting, Connecting, Maintenance, and Operation of Lease Tanks, API RP 12 R1," 1988, or latest revised standard. Tanks shall also be connected, maintained, and operated so as to comply with the Site Security Regulations, 43 CFR 3162.7–4, and Onshore Order No. 3, and sales tanks shall meet the following requirements:

a. Each sales tank shall be equipped with a pressure-vacuum thief hatch and/or vent-line valve.

Violation: Major.

Corrective Action: Install proper thief hatch and/or vent line, valve, or drain

tank and install proper equipment prior to reuse.

Abatement Period: 5 days.

b. Each sales tank shall be equipped with connections and sealable valves so the tank may be isolated from the remainder of the facility during the sales phase.

Violation: Major.

Corrective Action: Install proper connections and/or valves to allow isolation of tank during sales.

Abatement period: Prior to sales or removal.

c. Each sales tank shall be set and maintained level and free of distortion in accordance with the above-referenced API recommended practice.

Violation: Major.

Corrective Action: Level tank.

Abatement Period: Prior to sales.

d. Pursuant to API Standard 2545 (ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products," 1965, or latest revised standard, each sales tank shall:

(1) Be equipped with a gauging reference point.

Violation: Minor.

Corrective Action: Affix a gauging reference point in gauging hatch.

Abatement Period: 30 days.

(2) Have the height of this reference point stamped on fixed bench-mark plate or stenciled on the tank roof near the gauging hatch.

Violation: Minor.

Corrective Action: Stamp height on bench-mark plate or stencil it open tank roof near gauging hatch.

Abatement Period: 30 days.

2. *Sales Tank Calibrations.* Each oil storage tank to be used for oil sales by tank gauging shall be accurately calibrated for such gauging, using the API Standard 2550 (ASTM D 1220), "Method for Measurement and Calibration of Upright Cylindrical Tanks," 1965, or latest revised standard. The following minimum standards shall be satisfied:

a. Sales tank capacities shall be determined by actual tank measurements by the method known as "tank calibration," and in accordance with the above-referenced API Standard.

Violation: Major.

Corrective Action: Make capacity determination and develop appropriate capacity table.

Abatement Period: Prior to sales or removal.

b. A sales tank shall be recalibrated if it is removed or the capacity is changed through denting, damage, or installation or removal of interior components, or otherwise.

Violation: Major.

Corrective Action: Recalibrate tank and develop new (revised) capacity table.

Abatement Period: Prior to sales or removal.

c. Calibration charts (tank tables) for:

(1) All calibrations performed prior to the effective date of this Order shall be submitted to the authorized officer on request.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

(2) All calibrations performed subsequent to the effective date of this Order shall be submitted to the authorized officer on request and shall be applied to all sales.

Violation: Minor.

Corrective Action: Submit tables to authorized officer.

Abatement Period: 30 days.

3. *Oil Sampling.* Sampling of oil to be sold from sales tanks is required and shall be conducted in such fashion as to yield a representative sample of the oil for purposes of determining the physical properties of the oil, following the "API Manual of Petroleum Measurement Standards, Chapter 8, Section 1—Manual Sampling" (ASTM D–4057) October 1981, or latest revised standard, and shall meet the following minimum standards.

a. All samples shall be taken from the contents of the sales tank.

Violation: Major.

Corrective Action: Repeat sampling procedures from sales tank.

Abatement Period: Prior to sales or removal.

b. All samples from a sales tank shall be taken prior to gauging.

Violation: Major.

Corrective Action: Allow tank contents to settle for at least 30 minutes and repeat sampling procedure in proper sequence.

Abatement period: Prior to sales or removal.

c. Samples shall be taken in accordance with one of the sampling procedures specified in the above-referenced API Manual.

Violation: Major.

Corrective Action: Repeat sampling procedure.

Abatement Period: Prior to sales or removal.

4. *Sales Tank Gauging.* Gauging of oil sales tanks is required and shall be accomplished in such fashion as to measure the contents of the tank accurately, following API Standard 2545 (ASTM D 1085), "Method of Gauging Petroleum and Petroleum Products" 1965, or latest revised standard, and shall meet the following minimum standards.

a. Gauging shall be accomplished using gauging tapes:

(1) Made of steel, or corrosion resistance material if corrosive liquids are present.

Violation: Major.

Corrective Action: Replace tape with certified tape made of an appropriate material.

Abatement Period: Prior to sales or removal.

(2) With graduations clearly legible and not kinked or spliced.

Violation: Major.

Corrective Action: Replace tape with certified tape.

Abatement Period: Prior to sales or removal.

(3) Accuracy of all gauging tapes used for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace tape or obtain certification.

Abatement Period: Prior to sales or removal.

b. Acceptable gauging requires:

(1) At least 2 identical gauges to the nearest ¼ inch for tanks with a capacity of less than 1,000 bbls.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

(2) At least 2 identical gauges to the nearest ⅛ inch for tanks with a capacity of 1,000 bbls. or more.

Violation: Major.

Corrective Action: Repeat gauging until 2 identical readings are obtained.

Abatement Period: Prior to sales or removal.

(3) That the proper bob for innage gauging or outage gauging shall be used in accordance with the above-referenced API standard.

Violation: Major.

Corrective Action: Repeat gauging using proper bob.

Abatement period: Prior to sales or removal.

5. *Oil Gravity.* Tests for oil gravity are required, following the "API Manual of Petroleum Measurement Standards Chapter 9—Density Determination" (ASTM D 1298–80) 1981, or latest revised standard, and shall be performed on a representative sales tank oil sample obtained as specified in Part C, above, following "API Manual of Petroleum Measurement Standards Chapter 8—

Sampling." Gravity tests shall meet the following minimum standards.

a. All gravity determinations shall be completed before oil sales are made.

Violation: Major.

Corrective Action: Obtain sample from sales tank and determine oil gravity.

Abatement Period: Prior to sales or removal.

b. Accuracy of all instruments used to determine oil gravity for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace with certified instruments or obtain certification.

Abatement Period: Prior to sales or removal.

c. The instrument used to obtain the oil gravity shall be clean, with no loose shot weights or detached gravity scale.

Violation: Major.

Corrective Action: Clean and/or replace hydrometer.

Abatement Period: Prior to sales or removal.

d. The instrument used to obtain the oil gravity shall be calibrated for a gravity range that includes the gravity of the oil sample being tested.

Violation: Major.

Corrective Action: Repeat gravity tests using hydrometer with proper scale.

Abatement Period: Prior to sales or removal.

e. Temperatures shall be measured and recorded to the nearest 0.5° F for a separate thermometer or nearest whole degree when using a thermohydrometer.

Violation: Major.

Corrective Action: Repeat test, measuring and recording temperature to nearest 0.5° F or nearest whole degree as appropriate.

Abatement Period: Prior to sales or removal.

f. Liquid density (gravity) will be measured and recorded to the nearest 0.05° API gravity, making any necessary meniscus correction as described in the above-referenced API Manual on density determinations.

Violation: Major.

Corrective Action: Repeat test, measuring and recording gravity to nearest 0.05° API gravity after making necessary correction for fluid meniscus.

Abatement Period: Prior to sales or removal.

6. *Tank Temperature.* Determination of the temperature of oil contained in a sales tank is required following the "API Standard 2543 Method of Measuring the Temperature of Petroleum and Petroleum Products" (ASTM D 1086) 1965, or latest revised standard, and shall meet the following minimum standards:

a. Accuracy of all thermometers used for oil sales purposes shall be certified as accurate to the standards of the National Bureau of Standards by either the manufacturer or an independent testing facility.

Violation: Major.

Corrective Action: Replace with certified thermometer or obtain certification.

Abatement Period: Prior to sales or removal.

b. Thermometers shall be kept clean and free of mercury separation.

Violation: Major.

Corrective Action: Replace thermometer.

Abatement Period: Prior to sales or removal.

c. Temperature measurements shall be taken by immersing the thermometer at a point not less than 12 inches from the shell of the tank and to the approximate center of the fluid column during both the opening and closing gauges.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

d. For each measurement taken, the thermometer shall be left immersed at the required level for a minimum of 5 minutes. Temperatures shall be measured and recorded to the nearest 1.0° F.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

7. *Sediment and Water (S & W).* Determinations of the sediment and water content of oil contained in sales tanks is required following the "API Manual of Petroleum Measurement Standards Chapter 10—Sediment and Water Section 4—Standard Methods of Test for Water and Sediment in Crude Oils" (ASTM D 96–68) 1970, or latest revised standard, and shall meet the following minimum standards:

a. A thoroughly mixed oil sample-solvent combination, prepared in accordance with the procedure described in the above-referenced API Manual, shall:

(1) Be heated to at least 120° F for asphaltic based oil prior to centrifuging.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

(2) Be heated to at least 140° F for paraffin based oil prior to centrifuging.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

b. At the conclusion of centrifuging, the temperature shall not fall below 115 °F without water saturated diluent, and 125 °F with water saturated diluent.

Violation: Major.

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

c. The heated sample shall be whirled in the centrifuge for not less than 3 minutes.

Violation: Major.

Corrective Action: Repeat test as prescribed

Abatement Period: Prior to sales or removal.

d. The combined volume of water and sediment at the bottom of the 100 ml. centrifuge tube shall be read:

(1) To the nearest 0.05 ml. in the range from 0.1 to 1 ml.

(2) To the nearest 0.1 ml. if above the 1 ml. graduation.

(3) Estimated to the nearest 0.025 ml. if the volume is less than 0.1 ml.

Violation: Major (d.1., 2., or 3.).

Corrective Action: Repeat test as prescribed.

Abatement Period: Prior to sales or removal.

e. The water and sediment volume in the centrifuge tube thus determined shall be multiplied by the appropriate factor for the centrifuge tube size and oil sample-solvent ratio, as specified in the above-referenced API Manual, and the product recorded as the percentage of water and sediment.

Violation: Major.

Corrective Action: Repeat procedures using specified factors.

Abatement Period: Prior to sales or removal.

C. Oil Measurement by Positive Displacement Metering System

Acceptable oil measurement by a positive displacement metering system, for purposes of oil sales, shall be accomplished by a Lease Automatic Custody Transfer (LACT) unit designed to provide for the unattended transfer of liquid hydrocarbons from a production facility to the transporting carrier while providing proper and accurate means for the determination of net volume and quality, while also providing for fail-safe and tamper proof operations in accordance with the regulations at 43 CFR 3162.7–4 and Onshore Order No. 3.

A positive displacement meter is one which registers the volume passing through said meter by a system which constantly and mechanically isolates the flowing liquid into segments of known volume.

LACT unit design shall follow API Spec. 11N "API Specifications for Lease Automatic Custody Transfer (LACT) Equipment," 1979, or latest revised standard. LACT units shall be constructed and operated so as to satisfy the following requirements and minimum standards:

1. *LACT Unit Components and General Operating Requirements.*

a. Each LACT unit shall include all of the following listed components as a minimum:

(1) Charging pump and motor.

(2) Sampler, composite sample container and mixing system.

(3) Strainer.

(4) Positive displacement meter.

(5) Meter proving connections.

(6) Meter backpressure and check valve.

(7) Air eliminator.

(8) Diverter valve.

Violation: Major: a.1., 2., 4., 5., and 8.

Corrective Action: Shut in LACT and install component.

Abatement Period: Prior to sales or removal.

Violation: Minor: a.3., 7., and 8.

Corrective Action: Install component.

Abatement Period: 30 days.

b. There shall be no by-pass piping around the LACT unit or any connections that would permit liquids to be transferred without measurement.

Violation: Major.

Corrective Action: Remove by-pass or other connection.

Abatement Period: Immediate correction required.

c. All components of LACT unit shall be accessible for inspection by the authorized officer.

Violation: Minor.

Corrective Action: Provide authorized officer with means of access to LACT.

Abatement Period: 30 days.

d. The authorized officer shall be notified of any LACT unit failure, such as electrical, meter, or other failure that requires other methods of measurement prior to sales.

Violation: Major.

Corrective Action: Provide authorized officer sales documentation (run ticket, etc.) and tank calibration tables.

Abatement Period: By 5th working day following discovery.

e. Any and all tests conducted on oil samples extracted from LACT samplers for determination of oil gravity and S & W content shall meet the same requirements and minimum standards specified in this Order with respect to oil measurement by tank gauging for all measurements taken of temperature, gravity, and S & W content (section III A. 5, 6, and 7.)

Violation: Major.

Corrective Action: Report tests for gravity, temperature, and/or S & W content per section III A. 5, 6, and 7 minimum standards.

Abatement Period: Prior to sales or removal.

2. *Operating Requirements for LACT Unit Components.* All required LACT unit components shall be operated to satisfy the following minimum standards:

a. *Sampler.*

(1) The sampler probe shall extend into the center ⅓ of the flow piping in a vertical run, at least 3 pipe diameters downstream on any pipe fitting. The probe shall always be in a horizontal position.

Violation: Major.

Corrective Action: Shut in LACT, install component properly.

Abatement Period: Prior to sales or removal.

b. *Composite Sample Container.*

(1) The composite sample container shall be capable of holding sample under pressure and shall be equipped with a vapor proof top closure and operated to prevent the unnecessary escape of vapor.

Violation: Major.

Corrective Action: Shut in LACT, install component properly.

Abatement Period: Prior to sales or removal.

(2) The composite sample container shall be emptied after each sample withdrawal.

Violation: Major.

Corrective Action: Empty container prior to using sample for sales purpose and/or empty container upon completion of sample withdrawal.

Abatement Period: Prior to sales or removal.

c. *Mixing System.*

(1) The mixing system shall completely blend the sample into a homogeneous mixture before and during the withdrawal of a portion of the sample for testing.

Violation: Major.

Corrective Action: Repair mixing system.

Abatement Period: Prior to sales or removal.

d. *Strainer.*

(1) The strainer shall be constructed so that it may be depressurized, opened, and cleaned.

Violation: Minor.

Corrective Action: Replace with properly designed strainer.

Abatement Period: 30 days.

(2) The strainer shall be located upstream from the meter.

Violation: Minor.

Corrective Action: Install component properly.

Abatement Period: 30 days.

(3) The strainer basket shall be made of noncorrosive material of a mesh size no larger than ¼ inch.

Violation: Minor.

Corrective Action: Replace basket with basket made of noncorrosive material with a mesh size no larger than ¼ inch.

Abatement Period: 30 days.

e. *Positive Displacement Meter.*

(1) Must register volumes of oil passing through said meter determined by a system which constantly and mechanically isolates the flowing oil into segments of known volume.

Violation: Major.

Corrective Action: Replace or repair meter or totalizer.

Abatement Period: Prior to sales or removal.

(2) The meter shall be equipped with a non-resettable totalizer.

Violation: Major.

Corrective Action: Replace meter with meter having a non-resettable totalizer.

Abatement Period: Prior to sales or removal.

f. *Meter Proving Connections.*

(1) All meter proving connections shall be located downstream from the LACT meter.

Violation: Major.

Corrective Action: Relocate prover loops downstream from LACT meter.

Abatement Period: Prior to proving LACT.

(2) The line valve between the inlet and outlet of the prover loop shall have a double block and bleed design feature to provide for leak testing during proving operations.

Violation: Major.

Corrective Action: Install double block and bleed line valve on line between inlet and outlet prover connections.

Abatement Period: Prior to proving LACT.

g. *Back Pressure and Check Valves.*

(1) The back pressure valve and check valve shall be installed downstream from the LACT meter.

Violation: Major.

Corrective Action: Install back pressure and/or check valve downstream from LACT meter.

Abatement Period: Prior to sales or removal.

3. *Sales Meter Proving Requirements.* LACT positive deplacement meters shall be proved periodically. Meter provings

shall follow "API Manual of Petroleum Measurement Standards Chapter 4—Proving Systems," 1978, or latest revised standard, and shall meet the following minimum standards.

a. The types of meter provers to be used, and the calibration requirements are as follows:

(1) The acceptable types of meter provers are pipe provers, tank provers, master meters, or other API recognized meter provers.

Violation: Major

Corrective Action: Shut in LACT and prove again with acceptable meter prover.

Abatement Period: Prior to sales or removal.

(2) When a prover arrives onsite to prove a positive displacement meter measuring oil production from a lease that is under Bureau jurisdiction, communitized area, or unit participating area, the lessee/operator, or its agent, shall have available at the site for review by the authorized officer, evidence that the prover has been calibrated, with the certified calibration date identified by some unique number, i.e., serial number assigned to and inscribed on the prover. The calibration evidence for a pipe or tank prover shall show the certified volume as determined by the water draw method. If a master meter is used, the most recent calibration report for said master meter shall be available. Said calibration report shall show that the master meter has an operating factor within the range specified in section III. B. 4. a(2) herein (a range from 0.9900 to 1.0100), and the calibration report shall show that the calibration met all of the requirements of section III. B. 3. c. herein, except that the 5 consecutive runs in calibration of the master meter shall have matched within a tolerance of 0.0002.

Violation: Minor.

Corrective Action: Provide calibration certification.

Abatement Period: Prior to proving.

b. Minimum proving Frequency is:

(1) Upon initial installation or following repair.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving and prove meter.

Abatement Period: Prior to sales or removal.

(2) At least monthly thereafter for the first 3 months.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(3) Following the first 3 months, meters shall be proved at least quarterly.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(4) In the event that the total throughput exceeds 100,000 bbl per month, then proving shall be accomplished bi-weekly.

Violation: Minor.

Corrective Action: Shut in LACT, notify authorized officer of scheduled proving, and prove meter.

Abatement Period: Prior to sales or removal.

(c) In Establishing the Operating Meter Factor:

(1) At least 6 runs shall be made. Of these 6 runs, 5 consecutive runs shall match within a tolerance of 0.0005 between the highest and the lowest reading.

Violation: Major.

Corrective Action: Prove according to standard.

Abatement Period: Prior to sales or removal.

(2) The arithmetic average of these 5 consecutive runs shall be used for computation of the meter factor.

Violation: Minor.

Corrective Action: Prove according to standard.

Abatement Period: Prior to sales or removal.

(3) Meter factor computations shall also include the correction for the effect of pressure on steel (Cps); if appropriate, the correction for the effect of temperature on liquid (Ctl), and the correction for the effect of temperature on steel (Cts), and the correction for the effect of pressure on liquid (Cpl). The Cps and Cts correction factors shall be determined using the "API Manual of Petroleum Measurement Standards, Chapter 12, Section 2," 1981, or latest revised standard, and the Ctl correction factor shall be obtained from the "API Standard 2540, chapter 11.1, Volume I (ASTM D 1250–80), Table 6A," 1980, or latest revised standard, and the Cpl correction factor shall be obtained from the API Manual of Petroleum Measurement Standards, Chapter 11.2.1.

Violation: Minor.

Corrective Action: Include proper correction factors.

Abatement Period: Prior to sales or removal.

(4) The initial meter factor for a new or repaired meter shall be within the range from 0.9950 to 1.0050.

Violation: Major.

Corrective Action: Shut in LACT, replace/repair and re-prove.

Abatement Period: Prior to sales or removal.

4. *Excessive Meter Factor Deviation.* Excessive meter factor deviation may be evidence of meter malfunction, and corrective action shall be taken upon discovery of meter malfunction. However, if the operator determines that the meter did not, in fact, malfunction, the lessee/operator shall submit, for approval by the authorized officer, a report as to the findings and reasons for the excessive meter factor deviation and the determination of no meter malfunction.

The minimum standards for evidence of meter malfunction, and corrective action required, are as follows:

a. *Meter Factor Deviation.*

(1) Deviation in a meter factor shall not exceed ±0.0025 since the last proving of the meter unless explained by changing conditions, i.e., temperature or gravity or flow-rate.

Violation: Minor.

Corrective Action: Repair or replace meter, or submit report to authorized officer for approval of the findings and reasons for the determination that there is no meter malfunction.

Abatement Period: Prior to sales or removal.

(2) A meter factor shall not exceed 1 percent above or below unity, i.e. outside of the range from 0.9900 to 1.0100.

Violation: Major.

Corrective Action: Same as a.(1), above.

Abatement Period: Prior to sales or removal.

b. *Corrective Action Upon Determination of Meter Malfunction.*

(1) The meter shall be repaired or replaced. Proving is required. The proving report shall indicate any repairs to or replacement of the meter.

Violation: Minor.

Corrective Action: Shut in LACT, repair, adjust, and/or replace meter, re-prove meter, and submit proving report to authorized office complete with details of maintenance and/or repairs to meter.

Abatement Period: Prior to sales or removal.

5. *Meter Reporting Requirements.* All meter provings, meter failures, and volume adjustments following meter malfunction shall be reported to the authorized officer, as follows:

a. *Meter Proving Reports.*

(1) The meter proving report shall be filed on one of the forms set out in "API Manual of Petroleum Measurement Standards, Chapter 12—Calculation of Petroleum Quantities, Section 2—Calculation of Liquid Petroleum Quantities Measured by Turbine or Displacement Meters," 1981, or latest revised standard.

Violation: Minor.

Corrective Action: File report on proper form.

Abatement Period: File with authorized officer no later than the 10th working day.

(2) Each meter proving report shall be identified by lease number, communitization agreement number, or unit participating area name, and the location of the facility.

Violation: Minor.

Corrective Action: Resubmit report with appropriate identification.

Abatement Period: File with authorized officer no later than the 10th working day.

(3) Each meter proving report shall be filed with the authorized officer no later than 10 working days following the meter proving.

Violation: Minor.

Corrective Action: Submit proving report to authorized officer.

Abatement Period: File with authorized officer no later than the 10th working day.

b. All meter failures that require other methods of measurement shall be reported to the authorized officer prior to sales. The report shall include an explanation of the event, and a determination as to whether the meter failure also involved meter malfunction.

Violation: Minor.

Corrective Action: Submit proving report.

Abatement Period: File with authorized officer no later than the 10th working day.

D. Oil Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Any method of oil measurement other than tank gauging or positive displacement metering system, requires prior approval, based on applicable API standards, by the authorized officer. Other measurement methods include, but are not limited to: Turbine metering systems, Measurement by calibrated tank truck, Measurement by weight, Net oil computer.

The requirements and minimum standards for oil measurement on the lease, unit, or communitized area by an alternate method, or at a location off the lease, unit, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit, or Communitized Area.*

a. An application for approval of an alternate oil measurement method shall be submitted to the authorized officer and approval obtained before any such alternate oil measurement method is operated.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of desired method of oil measurement.

Abatement Period: Prior to sales or removal.

2. *Measurement at a Location Off the Lease, Unit, or Communitized Area.*

a. An application for off-lease measurement shall be submitted to the authorized officer and approval obtained before any such off-lease oil measurement facilities are installed or operated. The application for approval of off-lease measurement shall justify location of the measurement facilities at the off-lease location desired before approval will be granted, but no additional approval as to the oil measurement method is required, provided measurement is to be accomplished by tank gauging or positive displacement metering system, pursuant to the requirements and minimum standards of this Order.

Violation: Minor:

Corrective Action: Submit application for approval of off-lease measurement.

Abatement Period: 10 days.

b. If oil measurement is to be accomplished at a location off the lease, unit, or communitized area by any alternate measurement method (any method other than tank gauging or positive displacement metering system), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method, pursuant to section III C. 1.

Violation: Major.

Corrective Action: Shut in operations. Submit application for approval of off-lease measurement and approval of desired method of measurement.

Abatement Period: Prior to sales or removal.

E. Determination of Oil Volumes by Methods Other Than Measurement

Pursuant to 43 CFR 3162.7–2, when production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods approved or prescribed by the authorized officer. This category of production includes, but is not limited to, oil which is classified as slop oil or waste oil.

The minimum standards for determining the volume of oil that cannot be measured are as follows:

1. No oil located in an open pit or sump, in a stock tank, in a production vessel or elsewhere, may be classified as waste oil unless it can be shown, to the satisfaction of the authorized officer, that it is not economically feasible to put the oil into marketable condition.

Violation: Major.

Corrective Action: Put oil into marketable condition.

Abatement Period: 10 working days.

2. No slop oil may be sold or otherwise disposed of without prior approval from the authorized officer of the method for estimating the volume of the slop oil, and the terms and conditions of any sale to an oil reclaimer or any other party.

Violation: Major.

Corrective Action: Submit complete report of sale.

Abatement Period: 24 hours.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) on making a determination that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with **Federal Register** publication).

[FR Doc. 88–2218 Filed 2–2–88; 8:45 am]

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Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5; Measurement of Gas; Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-630-07-4111-02]

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases, Onshore Oil and Gas Order No. 5, Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking would issue Onshore Oil and Gas Order No. 5 under 43 CFR 3164.1. This Order would implement and supplement requirements found in 43 CFR Part 3160 relating to the measurement of gas produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as gas produced from State or privately owned when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement.

The Order would address gas measurement by orifice meter and gas measurement by other methods acceptable to the authorized officer of the Bureau of Land Management. Gas measurement by electronic flow computers, utilizing an orifice, which calculate volume using the equations specified by the American Gas Association (AGA) Committee Report No. 3, may be approved by the Bureau of Land Management (BLM) State Office having jurisdiction over the producing area. The Bureau of Land Management's existing internal guidelines on the subject of gas measurement were never formalized in a Notice to Lessees and Operators. Thus, this Order has no direct predecessor.

DATE: Comments should be submitted by April 4, 1988. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Richard T. Hunter, (303) 236-1787,
or
Sie Ling Chiang, (202) 653-2127,
or
Ted R. Hudson, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 3160—Oil and Gas Operations—provide in § 3164.1 for the issuance of Onshore Oil and Gas Orders when necessary to implement and supplement the specific provisions of the regulations. All Orders are to be promulgated through the rulemaking process and, and when issued in final form, apply on a nationwide basis. A table is included in § 3164.1 that shows all existing or formal Orders. This proposed rulemaking would result in another Order. It is intended specifically to supplement the provisions of § 3162.7-1—Disposition of production, and § 3162.7-3—Measurement of gas, and Subpart 3163.

Section 3162.7-3 requires that all production be measured by orifice meter or other methods acceptable to the authorized officer. This order would set out specific and detailed requirements that are minimum standards for gas measurement by orifice meter, based on the standards and specifications published by the American Gas Association (AGA) "Orifice Metering of Natural Gas" Committee Report No. 3, 2nd editions (August 1985) and the American Petroleum Institute (API) Standard 2530. This publication is referred to in the Order as AGA Committee Report No. 3. Those items selected for inclusion in this Order as requirements are those which are necessary to ensure that gas production is measured accurately, so that the Federal Government, the general public, and State governments, which share in the proceeds, and Indian mineral owners will receive all royalties due under the various oil and gas leases. Specific comments are requested on whether the requirements of this Order should be phased in over a period of time for existing facilities and how long such a period of time should be.

The Bureau is aware of the existence of old (10 to 15 years) purchase contracts whereby the lessee/operator is committed to sell the gas for a fixed price ranging from 4 to 50 cents per thousand cubic feet (MCF), and of the existence of wells producing at very low volumes (100 MCF per day or less). Compliance with the minimum standards requiring specific equipment for the measurement of the flowing gas temperature, adherence to proper Beta ratio, and the requirement for the secondary element to record the static and differential pressure in at least the middle one-third of the production chart could result in materials and labor costs out of proportion to any potential additional royalty income derived from the well. Such costs could prompt premature abandonment or shut-in, resulting in the lost of potential gas reserves and royalty payments. For example, the cost of compliance with the requirement that the flowing gas temperature be measured could be $1,000 per well. However, under a typical old contract with a price of 30 cents per MCF, and a royalty of 12.5 percent, production of 100 MCF per day would produce an annual royalty of $900. On the other hand, requiring compliance in the above situation with a temperature error 10 degrees would only increase royalties by 9 dollars per year. Even at current prices of $2.70 per MCF and a 1 percent volume error, the increase in royalty in this example would only be $81 per year. If such a well were abandoned because of the cost of compliance, these royalties and the reserves in the ground would be lost. Therefore, we believe that it would be in the public interest to exempt certain wells from some requirements of this Order. The public is specifically requested to comment on (a) the criteria for determining which wells or fields should be exempted from these standards and (b) the particular minimum standards that may be subject to exemption. It is expected that no well would be exempted from this Order as a whole, but that any exemption would apply only to specific appropriate minimum standards set forth in the Order.

With regard to other possible systems of gas measurement which may be acceptable to the authorized officer, the Order would set forth no specific or detailed requirements or minimum standards for any such method, but would clearly require, for any and all such methods, that prior approval by the authorized officer is necessary before any alternate gas measurement method may be employed. The application for approval to use any alternate system for gas measurement would be required to furnish convincing evidence that the proposed system will measure gas accurately and result in no loss of royalty to the Federal Government or Indian mineral owners.

The Order would set out a procedure whereby an operator may request approval for a variance from any of the required minimum standards. An application for variance would be required to propose an alternative means for satisfaction of the minimum standard.

The Order would also contain provisions for corrective actions and normal abatement periods. These would set out for each minimum standard, the corrective action necessary when an incident of noncompliance with the minimum standard is detected, and the time frame within which such corrective action shall be taken. Many of these abatement periods are shown as "Prior to sales or removal" in this proposal. Specific comments are requested on whether any or all of these provisions should also specify a firm deadline as an alternative. For example, "Prior to sales or removal, or 30 days, whichever occurs first."

The principal authors of this proposed rulemaking are Mr. Richard T. Hunter, Lakewood, Colorado, Mr. Terry Messerli, Billings, Montana, and Mr. Upendra Parikh, Jackson, Mississippi, assisted by the Orders Task Group, the staff of the Office of Legislation and Regulatory Management, all of the Bureau of Land Management, the Office of the Solicitor, Department of the Interior, and Mr. Jim Fisher, retired from the Bureau of Land Management. Mr. Scott Ellis, Minerals Management Service, was also part of the Orders Committee and provided input on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

The Proposed Order would have minimal adverse economic effects, since its requirements reflect the operating practices currently followed by prudent operators when gas production is measured in accordance with the standards and specifications published by the American Gas Association (AGA) and the American Petroleum Institute (API). The proposed Order may provide a beneficial economic effect, in that industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions, if it has a better understanding of this Bureau's requirements for the measurement of gas production. The State governments that share in the royalties collected and Indian mineral owners will also benefit from assurance of more accurate gas measurement. The minimum standards established by this Order essentially are those which have been required but not promulgated by this Department and would impose the same burden on all lessees and operators, regardless of size, on lands where the measurement of gas production is under the jurisdiction of this Bureau. Therefore, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

The information collection requirements contained in this proposed rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0134, 1004-0135, and 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—Mineral resources, Indian lands—Mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 31, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

2. Section 3164.1(b) is amended by adding the following entry to the table:

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No. and subject	Effective date	Federal Register reference	Supersedes
* * * * *			
5. Measurement of Gas.			None

J. Steven Griles,

Secretary of the Interior.

November 5, 1987.

Appendix—Text of Oil and Gas Order No. 5

Note—This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
II. Definitions.
III. Requirements.
A. Gas Measurement by Orifice Meter
B. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer.
IV. Variances from Minimum Standards.
Attachment.
1 Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: § 3162.7-1, *Disposition of production*; section 3162.7-3, *Measurement of gas*; and subpart 3163, Noncompliance and assessments.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the measurement of gas by the methods authorized in 43 CFR 3162.7–3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Proper gas measurement ensures that the Federal Government, the general public, State Governments which share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected, and to specify the assessments and penalties that will be imposed as a result of noncompliance and/or a failure to correct the noncompliance within the specified abatement period.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to State or privately owned lands when Federal and/or Indian leases are entitled to share in the revenues from non-jurisdictional wells under the terms of an approved agreement.

II. Definitions

A. Authorized representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, contract, or memorandum of understanding (43 CFR 3160.0–5).

B. Production unit means, for purposes of reporting production, a measurement unit of 1000 standard cubic feet (Mcf).

C. Standard cubic foot means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute (psia), at a base temperature of 60 °F or 520° Rankine (43 CFR 3162.7–3).

D. By-pass means any piping arrangement connected upstream and downstream of a meter that allows gas to continue on the sales line without passing through the meter. Equipment that permits the changing of the orifice plate without bleeding the pressure off the gas meter run shall not be considered a by-pass.

E. Incident of Noncompliance (INC) means a notice transmitted to a lessee or operator (Form 3160–9) that a violation of this Order has occurred, and serves as a notice of violation.

F. Lessee means the party authorized by or through a lease or an approved assignment to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference, the term "lessee" also refers to and includes the owners of approved operating rights and designated operators (see 43 CFR 3160.0–5).

G. Major violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

H. Minor violation means noncompliance which does not rise to the level of a major violation (see 43 CFR 3160.0–5).

I. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0–5(a)).

III. Requirements

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7–3, gas measurement authorized for gas produced from leases, units, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out in this Order.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA) Committee Report No. 3, and the American Petroleum Institute (API). The AGA and the API published standards and specifications and considered to be appropriate for proper gas measurement by both the Department of the Interior and the Oil and Gas Industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

A. Gas Measurement by Orifice Meter

The following are recognized as minimum standards for measurement of natural gas using orifice meters. Failure to comply with these minimum requirements shall be considered a violation resulting in the issuance of an INC, and appropriate enforcement action shall be taken for obtaining compliance with these minimum standards. All existing and future sales facilities shall meet the requirements of this Order.

1. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "flange taps," shall be between 0.15 and 0.70; however, the authorized officer may approve beta ratios between 0.10 and 0.75 on low volume wells when measurement cannot be obtained as per Section III, A, 4.

Violation: Major.

Correction Action: Shut in gas meter and install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales.

2. The orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67; however, the authorized officer may approve beta ratios lower than 0.20 and higher than 0.67 on low volume wells when measurement cannot be obtained as per Section III, A, 4.

Violation: Major.

Correction Action: Same as A.1. above.

Abatement Period: Prior to sales.

3. To obtain flow conditions as near normal as possible and minimize the effects of turbulence in gas flow, the minimum length of pipe preceding and following an orifice and the use of straightening vanes, shall conform to those specifications detailed in Figure 4 through 9 of AGA Committee Report No 3.

Violation: Major.

Corrective Action: Shut in gas meter and install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Committee Report 3 specifications.

Abatement Period: Prior to sales.

4. The orifice plate shall be sized to make the pen that records differential pressure operate in at least the middle one-third of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size orifice to meter tube so that differential pen will deflect and record in at least the middle one-third of the chart range and so that the measurement will be within the prescribed beta ratio range.

Abatement Period: 20 days.

5. The static element shall be sized to make the pen that records the static pressure operate in at least the middle one-third of the chart range for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in at least the middle one-third of the chart range.

Abatement Period: 20 days.

6. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3. Sample probes may be installed upstream of straightening vanes.

Violation: Major.

Corrective Action: Shut in gas meter and replace entire length of pipe ahead of orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

7. A temperature recorder that measures the average flowing gas temperature is required and the thermometer well shall be installed in accordance with AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Shut in gas meter, and install temperature recorder and/or install thermometer well in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales.

8. The internal diameters of the meter tube pipe and the orifice fittings shall be the same or within tolerance limits set by AGA.

Violation: Major.

Corrective Action: Shut in gas meter and install properly sized meter tube.

Abatement Period: Prior to sales.

9. Meter tubes using "pipe taps," shall have the center of the upstream tap hole placed a distance of two and one-half times the appropriate inside diameter from the upstream face of the orifice plate. The center of the downstream tap hole shall be placed at a distance of eight times the published inside diameter from the downstream face of the orifice plate.

Violation: Major.

Corrective Action: Shut in gas meter and install meter tube pipe having properly constructed meter pressure taps.

Abatement Period: Prior to sales.

10. Meter tubes using "flange taps" shall have the center of the upstream pressure tap hole placed 1 inch from the upstream face of the orifice plate. The center of the downstream pressure tap hole shall be 1 inch from the downstream face of the orifice plate.

Violation: Major.

Corrective Action: Shut-in gas meter and install orifice holder with properly constructed pressure taps.

Abatement Period: Prior to sales.

11. There shall be no by-pass piping around the gas meter or other upstream connections that would permit gas to be transferred without being measured.

Violation: Major.

Corrective Action: Shut in gas meter and remove by-pass. Remove the unauthorized connection(s) installed upstream of the meter.

Abatement Period: Prior to sales.

12. Orifice plates shall be removed from the flange or plate holder, and inspected for visual conformance with AGA standards and specifications during testing of the accuracy of measuring equipment.

Violation: Minor.

Corrective Action: Remove and inspect orifice plate for visual conformance with AGA standards and specifications.

Abatement Period: No later than the next meter calibration.

13. Any plate or orifice that is determined not in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.

Corrective Action: Shut in gas meter and replace orifice plate.

Abatement Period: Prior to sales.

14. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy, and at any other time leaks are detected, and all leaks shall be stopped.

Violation: Minor.

Corrective Action:

a. Stop meter calibration and conduct leak test. Stop leaks before further test for meter accuracy.

b. Repair secondary element where necessary to stop leak.

Abatement Period: Prior to completion of calibration.

15. The appropriate "zero" position of meter pens shall be checked during each test of meter accuracy, and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and check for appropriate "zero" position of meter pens and make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

16. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration and re-test meter accuracy. Check for proper differential pen arc and make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

17. Differential pen accuracy shall be tested throughout the entire range of the test chart.

Violation: Minor.

Corrective Action: Stop meter and re-test meter accuracy. Check for differential pen accuracy throughout the entire range of the appropriate test chart.

Abatement Period: Prior to completion of calibration.

18. During testing of the meter accuracy, the static pen time lag shall be adjusted for proper operation.

Violation: Minor.

Corrective Action: Check for proper time lag and make appropriate adjustments which will assure independent travel of the static pen in relation to differential pen.

Abatement Period: Prior to completion of calibration.

19. For all sales and allocation meters, the accuracy of the measuring equipment at the point of delivery or allocation shall be tested monthly following initial meter installation or following repair for the first three months and, if proven adequate, at least quarterly thereafter unless a longer period is approved by the authorized officer. All extensions of intervals between tests of meters shall be approved in writing by the authorized officer.

Violation: Minor.

Corrective Action: Test meter for accuracy following intial installation or repair, and/or quarterly thereafter.

Abatement Period: Prior to next sales.

20. At least a 24-hour notice shall be given to the authorized officer prior to conducting the tests and calibrations required by this order.

Violation: Minor.

Corrective Action: Notify authorized officer of scheduled meter tests and calibrations at least 24 hours prior to next tests and calibrations.

Abatement Period: Prior to completion of calibration.

21. If the inaccuracy in the measuring equipment results in a volume calculation more than 2 percent in error, the volume measured shall be corrected in addition to adjusting the meter to zero error. Also, the operator shall submit a corrected report adjusting the volumes of gas sold, and showing or discussing

all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of last calibration.

Violation: Minor.

Corrective Action: Calculate correct volumes to zero volume error and submit corrected volume on an amended report.

Abatement Period: Prior to completion of calibration.

22. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in this order of priority:

a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately; then,

b. Base corrections on the percentage error found during the instrument test. If that is not feasible; then,

c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Re-estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and submit an amended Monthly Report of Operations (Form 3160–6).

Abatement Period: 20 days.

23. Volumes of gas delivered shall be determined according to the flow equations specified in § 6.3 of the AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Recalulate all gas volumes not determined in accordance with flow equations specified in § 6.3 of the AGA Committee Report No. 3 and submit an amended Form 3160–6 report.

Abatement Period: 30 days.

24. Unless otherwise established, the point of sales delivery and appropriate measurement shall be on the leasehold (or within the boundaries of the communitized area (CA) or unit participating area). Sales measurement off the leasehold (or outside the CA or unit participating area) may be approved by the authorized officer.

Violation: Minor.

Corrective Action: Submit application to authorized officer for approval of off lease (CA or Unit participating area) measurement.

Abatement Period: 20 days.

25. The weighted average BTU content shall be determined at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The BTU content most recently determined and used for royalty purposes shall be reported monthly to the authorized officer on Form 3160–6.

Violation: Minor.

Corrective Action: Conduct test for weighted average BTU and submit on an amended Form 3160–6 the proper weighted average BTU.

Abatement Period: 20 days.

26. Operators shall submit a copy of the meter calibration report to the authorized officer within 30 working days.

Violation: Minor.

Corrective Action: Submit meter calibration report(s) to authorized officer.

Abatement Period: 10 days.

27. No special form is required, but all meter calibration report forms shall include the following information, if applicable:

a. Name of producer or seller.

b. Name of purchaser.

c. Federal or Indian lease number, communitization agreement number, or unit name or number, and participating area identification.

d. Station or meter number.

e. Meter data (make, differential and static range, recording period).

f. Type of connections (flange or pipe, upstream, or downstream static connections).

g. Orifice data (plate size and ID of meter tube).

h. Base of data used on each chart or record (temperature, specific gravity, atmospheric pressure, integration value, etc.).

i. Name of company performing the integration.

j. Time and date of test.

k. Instrument error(s) found and certification of corrections, and "found" and "left" data for all instruments.

l. Signature and affiliation of tester and witness.

m. Remarks.

Violation: Minor.

Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.

Abatement Period: 10 days.

28. For purposes of measurement and meter calibration, atmospheric pressure is that value defined in the buy/sell contract (normally assumed to be a constant value). In the absence of such a definition in the buy/sell contract, the atmospheric pressure shall be established as a constant value based on the elevation at the metering station.

Violation: Minor.

Corrective Action: Recalibrate gas meter and submit amended Form 3160–6 indicating correcting volumes due to adjusted "absolute zero" or incorrectly calculated pressure extensions.

Abatement Period: 20 days.

29. The method and frequency of determining specific gravity are normally defined in the buy/sell contract. Except when a continuous recording gravitometer is used, specific gravity may be determined at the time of an instrument check using a spot or cumulative gas sample, and is usually effective the first of the following month. The continuous recorder may be of a balance of kinematic type. Also, specific gravity may be determined from a laboratory analysis of a spot or cumulative gas sample.

Violation: Minor.

Corrective Action: Redetermine specific gravity of gas by approved method and submit an amended Form 3160–6 with corrected volume.

Abatement Period: 20 days.

30. The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, or if involved in an audit or investigation, the records shall be maintained until the record holder is released by the Secretary from the obligation to maintain them. The authorized officer and/or authorized representative may request these records any time within this period. Records submitted shall include all additional information used to compute volumes so that computations may be verified.

Violation: Major.

Corrective Action: Submit data as required.

Abatement Period: 20 days.

B. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, or communitized area, requires prior approval from the authorized officer pursuant to 43 CFR 3162.7–3. Other measurement methods include, but are not limited to:

Turbine metering systems

Pitot tube

Orifice well tester

Critical flow prover

Gas–oil ratio

The requirements and minimum standards for gas measurement on the lease, unit, or communitized area by an alternate method of measurement, or at a location off the lease, unit, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. *Measurement on the Lease, Unit or Communitized Area*

a. An application for approval of an alternate gas measurement method shall be submitted to the authorized officer and approval obtained before any such alternate gas measurement method is installed or operated. Any lessee/operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will perform with reliability and accuracy equal to or exceeding gas measurement by orifice meter.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

2. *Measurement at a Location Off the Lease, Unit, or Communitized Area*

a. An application for off-lease measurement shall be submitted to the authorized officer and approval obtained before any such off-lease gas measurement facilities are installed or operated. The application for approval of off-lease measurement shall justify location of the measurement facilities at the desired off-lease location before approval will be granted, but no additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application and obtain approval.

Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, or communitized area by any alternate measurement method (any method other than measurement by orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method pursuant to Sec. III B 1 of this Order.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Section III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

Attachment

I. Sections from 43 CFR Subparts 3163 and 3165 (not included with **Federal Register** publication).

[FR Doc. 88–2217 Filed 2–2–88; 8:45 am]

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Part VII

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend the Agency's regulations governing the election of county committee members. The proposed rule is necessary to comply with section 607 of the Agricultural Credit Act of 1987, Public Law (Pub. L.) 100–233. The intended effect of this action is to revise the criteria for voting and serving as elected county committee members to permit greater participation by the public in the process.

DATES: Comments must be received on or before March 4, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6440, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1061.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This action affects the following Catalog of Federal Domestic Assistance numbers and programs:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.421 Indian Tribes and Tribal Corporation Loans

For the reasons set forth in the final rule related Notice to 7 CFR 3015 Subpart V, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

County committee members assist local FmHA offices by determining the eligibility of applicants for Farmer Program (FP) loans. The 1985 Farm Security Act, Pub. L. 99–198, established county committee elections of two of the three members of the county committee by farmers deriving the principal part of their income from farming who reside within the county or area [illegible]. However, section 607 of the Agricultural Credit Act of 1987, Pub. L. 100–233, has amended this provision by deleting the requirement that eligible voters derive the principal part of their income from farming. Other changes made in the county committee election process by Pub. L. 100–233 include permitting FmHA borrowers and those eligible for loans made or insured by FmHA to serve on the county committee subject to section 336(c) of the Farm Security Act of 1985, as amended, making spouses of eligible farmers eligible to participate in the election process, increasing the period for receipt of nominations from 25 days to 45 days, and increasing the length of the notice period prior to elections from 10 days to 30 days. The changes in the proposed action are designed to comply with section 607 of the Agricultural Credit Act of 1987 (Pub. L. 100–233). In addition to changes made to the regulation as a result of Pub. L. 100–233, the Agency clarified language regarding voting to ensure that each individual voter only casts one ballot, whether that ballot is voted in person or mailed in. Another change was to clarify that functions performed by county or area committees must be conducted under appropriate Civil Rights regulations. Two corrections were made to the regulations. The first dealt with retention of disputed ballots. The time frame for retention of such ballots was increased from 30 to 60 days to conform with the requirement that all ballots be retained for 60 days. The second correction dealt with the processing of Federal appointments for committee members that related to the inclusion of Form I–9, "Verification of Employment Eligibility" in the appointment papers.

List of Subjects in CFR Part 2054

Agriculture, County Committee Members.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7 of the Code of Federal Regulations by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101–2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, and Functions of County and/or area Committees

Sec.

2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Functions of the county and/or area committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
2054.1106 Voting eligibility.
2054.1107–2054.1110 [Reserved]
2054.1111 Conducting elections.
2054.1112–2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121–2054.1122 [Reserved]
2054.1123 Notifying candidates of election results.
2054.1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130–2054.1149 [Reserved]
2054.1150 OMB control number.

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

§ 2054.1101 General.

This subpart provides instructions for selection of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, or handicap.

§ 2054.1102 Establishment and composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carried out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected by farmers. For this subpart, farmer is defined as any person who has an interest in a farm as owner, tenant, or sharecropper within the county or area. The term "farmer" shall include the spouse of an eligible farmer. One member, who shall reside within the county or area, shall be designated by the State Director. Designation may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the objectives of FmHA. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts to two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking step (2) (paragraph (c)(2) of this section), the County Supervisor should have the members draw lots for the positions.

(4) In combining two county committees to create an area committee, the State Director must ensure that no more than one member of the reconstituted committee is a farmer eligible for a loan made or insured by FmHA.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting.

When utilizing alternates, the County Supervisor should ensure that no more than one member of the committee is a farmer eligible for a loan made or insured by FmHA. Persons will be considered covered by this provision if they either currently have such a loan, or are qualified applicants for such a loan.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. This rule of succession is subject to the requirement that no more than one farmer eligible for a FmHA loan serve at the same time. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county and/or area committee.

(a) The functions which are subject to appropriate program regulations, Civil Rights Laws, and Subpart E of Part 1901 of this chapter to be performed by committees, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans.

irrigation and drainage loans and loans to grazing associations;

(2) Making recommendations on resolving problem cases;

(3) Conferring with the County Supervisor on the servicing of FmHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(4) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(5) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(6) Attending appeal hearing authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearing and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county of area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify county committee members of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and are farmers (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. Any farmer eligible for a loan made or insured by FmHA shall be eligible to serve as an elected or appointed county committee member. Not more than one farmer eligible for a loan made or insured by FmHA may serve on a county committee at the same time. Persons will be considered "eligible" for an FmHA loan if they either currently have such a loan, or are certified applicants for such a loan. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2046–CC (available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stabilization and Conservation Service (ASCS), Soil conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIC), or agents of these agencies.

(f) Not currently be an employee of a Federal Land Bank, Production Credit Association, or other Farm Credit System institutions, or serve on a committee which make recommendations for approval of loans by these organizations since FmHA may be involved in participation loans with such Farm Credit System loans.

(g) Not perform any of the following functions for an FmHA financed association or organization after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(h) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse of or a family member living in the same household with an individual serving on the board of such organizations in the county or area over which the county committee has jurisdiction, since FmHA may be involved in participation loans with such banks.

(i) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1126 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the areas, and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving these groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; i.e., persons who have an interest in a farm as owner, tenant, or sharecropper or spouses of such persons, or be duly authorized representatives of a legal entity which has an interest in a farm.

(b) Have their principal farming operation within the county or area for which the election is being held.

§ 2054.1107–§ 2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Election calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will be 45 days and end 20 days before the election date.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletter and through public service announcements on radio and television stations serving the area. In addition, notices shall be posted in all FmHA offices within the area. The Notice of Right to Nominate by Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office).

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating petition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 20 days before election date, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), or (h).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 20 days before the election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (available in any FmHA office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If a special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112–2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candidate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 30 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots should be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the producer list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote. Individuals voting in person may only cast their own vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope

with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 60 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff. Each ballot must be mailed in a separate envelope with the name and address of the voter clearly marked on the outside of the envelope. If more than one ballot is mailed in the same envelope, all ballots contained therein will be invalid, the votes will not be counted, and the ballots will be destroyed 60 days after the election.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted within 7 working days after the election.

(b) The counting process should be public. This can be done by counting in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses.

(c) Examine the ballots and determine whether each meets the election requirements.

(d) Separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(e) Call out the votes shown on the ballots.

(f) Review the final vote count and determine the candidate(s) elected.

(g) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

(h) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§ 2054.1121-2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify successful candidates of election results in writing See FmHA Guide Letter No. 2054-2, "Letter to Elected County Committee Members." (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to held office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.1125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, § 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF-52, "Request for Personnnel Action", and AD-350A, "Change Action Notice,") for members. One of the remark codes listed below must be entered in Blocks 37 and 56, respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of the Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.*

The State Director will make the necessary determinations in such cases in accordance with Federal Personnel Manual (FPM) chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form (sf) 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054-6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD-214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the SF 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review SF 171 for completeness and conformity with requirements and will process Form AD-350A. The State Director will send a copy of Forms AD-350A, AD-349, "Declaration Sheet," SF-61, "Appointment Affidavits," I-9, "Employment Eligibility Verification," Treasury Form W-4, "Employee's Withholding Exemption Certificate," and State Income Tax Withholding form, where applicable, to the County Supervisor. The copy of Form AD-350A will be retained in the County Office committee file. FmHA Instruction 2045-BB and Appendix 1, "Employee Responsibilities and Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing Forms AD-349, SF-61, I-9, Treasury Form W-4, and State Income Tax Withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD-321-3, "Time and Attendance Report," before Form AD-349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the committee member's pay. Form AD-349 must be executed in its entirety. The State Director will forward the "Employee Copy" of the SF 50B "Notification of Personnel Action" printout produced by NFC to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment. Terms of appointments are for three years except in cases where the appointee is completing the unexpired term of a former member.

(6) Elected county committee members will be issued a "Certificate of Election" by the County Supervisor. These certificates can be reordered only by the State Offices. When ordering from the warehouse, State Offices should ask for Item No. 410, "Certificate of Election."

(e) County committee members are covered by FmHA Instruction 2045-BB, including Exhibits A and B "Employee Responsibilities and Conduct."

§ 2054.1127 Compensation.

(a) *Commuting time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county committee members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126(c) (3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the County Office or other place where county committee meetings are normally held, as provided on the following chart:

1-way mileage from residence to meeting place	Salary	Allowance	Total
25 or less	$30	$6	$36
25-50	30	9	39
51 and over	30	12	42

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after the change in residence; or the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendance at training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054-6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by § 2054.1128 of this subpart are submitted.

(3) A revised certification on Form FmHA 2054-6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has been changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking speedometer readings. Otherwise, the certification will be based on actual speedometer readings.

(5) The speedometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the County Office.

§ 2054.1128 Certification of services.

The County Supervisor will certify biweekly on Form AD-321-3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars

through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD–350A. The Employee's copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be properly documented. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible, (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisor will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning the personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) No member of a county committee shall knowingly make or join in making any certification with respect to a loan to purchase any land in which he or any person related to him within the second degree of consanguinity or affinity has or may acquire any interest or with respect to any applicant related to him within the second degree of consanguinity or affinity. Should this provision be violated, those FmHA officials having information will take action in accordance with § 2054.1129(b)(4).

(6) Where termination is due to the expiration of appointment, a termination action is not necessary. NFC will automatically drop the country committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§2054.1130–2054.1149 [Reserved]

§2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and assigned an OMB control number 0575–0117.

Date: January 26, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–2275 Filed 2–2–88; 8:45 am]

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Reader Aids

Federal Register

Vol. 53, No. 22

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INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data Base Services	523–3408
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719–2816.....1
2817–2994.....2
2995–3182.....3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5763.....2719
5764.....2814
Executive Orders:
12301 (Revoked by EO 12625).....2812
12625.....2812
Administrative Orders:
Memorandums:
January 28, 1988.....2816

7 CFR

272.....2817
932.....2823
947.....2995
Proposed Rules:
53.....3025
54.....3025
250.....2846
318.....3028
907.....2849
908.....2849
917.....2851
925.....2851
929.....3036
948.....3037
1421.....2759
1823.....2852
1930.....2852
1933.....2852
1942.....2852
1944.....2852
1948.....2852
1980.....2852
2054.....3176

8 CFR

204.....2824

9 CFR

92.....2853
Proposed Rules:
51.....2759
71.....3146
78.....3146
85.....3146
309.....3146
310.....3146
320.....3146

10 CFR

Proposed Rules:
31.....2853

12 CFR

32.....2997
207.....2998
220.....2998
221.....2998
224.....2998
614.....2825
795.....3000

14 CFR

21.....2721–2733
23.....2721–2733
39.....2735–2737, 3001, 3002
71.....3005–3008
73.....3010
97.....3011, 3012
1206.....2738
Proposed Rules:
21.....2761, 3040, 3042
23.....2761
25.....3040, 3042
39.....2763–2765, 3044–3048
71.....3049

15 CFR

Ch. III.....3014

16 CFR

1500.....3014
Proposed Rules:
453.....2767

17 CFR

Proposed Rules:
249.....2854

18 CFR

271.....3019

19 CFR

154.....2826
270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826
Proposed Rules:
101.....2767

21 CFR

1.....2827
Proposed Rules:
12.....2767

23 CFR

645.....2829

26 CFR

1.....3118
Proposed Rules:
1.....3118

27 CFR

9.....2834

30 CFR

934.....2837

Proposed Rules:
936.....3050

33 CFR

203.....2841
230.....3120
325.....3120
Proposed Rules:
117.....2769

34 CFR

777.....3020
Proposed Rules:
669.....2918

36 CFR

222.....2978

37 CFR

201.....3118

38 CFR

Proposed Rules:
21.....2855

40 CFR

60.....2914
180.....3021-3023
721.....2842, 2845
Proposed Rules:
52.....3052
721.....2857

41 CFR

101-1.....2738

42 CFR

59.....2922

43 CFR

4100.....2984
Proposed Rules:
3160.....3158, 3168

44 CFR

5.....2739
64.....2741
67.....2743

47 CFR

73.....3024
Proposed Rules:
25.....3056
69.....3057
80.....3058

49 CFR

Proposed Rules:
1041.....3058
1048.....3058
1049.....3058

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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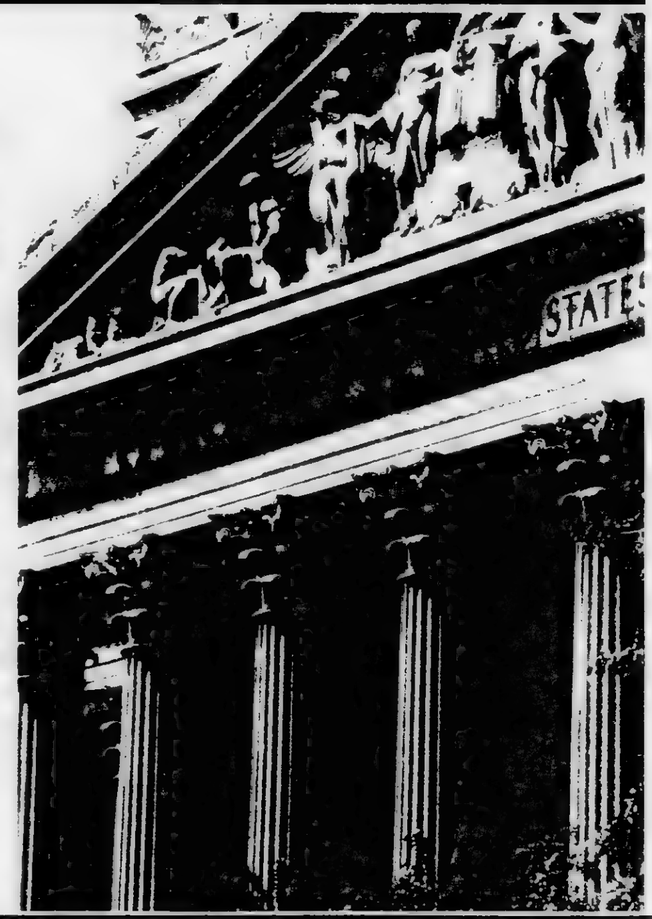
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Vol. 53 No. 23
Pages 3183-3324

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Thursday
February 4, 1988

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Contents

Federal Register
Vol. 53, No. 23
Thursday, February 4, 1988

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in Idaho and Oregon, 3187
Tomatoes grown in Florida, and imported, 3189

Agriculture Department
See also Agricultural Marketing Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Cotton Marketing National Advisory Committee, 3227

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Santa Clara Valley, CA, 3214

Army Department
NOTICES
Meetings:
Science Board, 3231
Military traffic management:
Domestic household goods program; eligibility for participation, 3232

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Christopher Columbus Quincentenary Jubilee Commission
RULES
Organization, recognition and support of quincentenary projects, and use of logo, 3320
Recognition of commercial sponsors, licenses, and use of logo, 3321

Coast Guard
RULES
Drawbridge operations:
Florida, 3206
PROPOSED RULES
Regattas and marine parades:
Permit application submission requirements; 90 day time limit, 3221

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 3227

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 3290
(3 documents)

Defense Department
See also Army Department; Navy Department
PROPOSED RULES
Contracting:
Commercial activities program (OMB A-76 implementation), 3218

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Exempt chemical preparations, 3292
Exempt prescription products table, 3314

Economic Regulatory Administration
NOTICES
Consent orders:
Salomon Inc., 3237
Natural gas exportation and importation:
Poco Petroleum, Inc., 3240
Unicorp Energy, Inc., 3240

Education Department
NOTICES
Meetings:
Indian Education National Advisory Council, 3236

Employment and Training Administration
NOTICES
Adjustment assistance:
Adirondack Steel Casting Co., Inc., et al., 3274

Employment Standards Administration
NOTICES
Meetings:
Special Minimum Wages Advisory Committee, 3274

Energy Department
See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
National Petroleum Council, 3236
(2 documents)

Energy Research Office
NOTICES
Meetings:
Health and Environmental Research Advisory Committee, 3248

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Export Administration
See International Trade Administration

Farm Credit Administration
RULES
Farm credit system:
Loan policies and operations; loss-sharing agreements, Correction, 3191

Federal Communications Commission
RULES
Common carrier services:
Public land mobile services—
Rural radio service; basic exchange telecommunications radio service, 3210
Television broadcasting:
Cable television systems—
Input selector switches, 3212

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 3290

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Alabama et al., 3208

Federal Energy Regulatory Commission
NOTICES
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 3241
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 3242
East Tennessee Natural Gas Co., 3243
East Tennessee Natural Gas Co. et al., 3243
Ecogen One Partners, Ltd., 3243
Helmerich & Payne, 3244
Lawrenceburg Gas Transmission Corp., 3244
Mercer County Improvement Authority, 3245
Midwestern Gas Transmission Co., 3245
(2 documents)
National Steel Corp., 3245
Natural Gas Pipeline Co. of America, 3246
Odeco Oil & Gas Co., 3246
Sun Exploration & Production Co., 3246
Texaco Gas Marketing, Inc., 3247
Texas Eastern Transmission Corp., 3247, 3248
(2 documents)

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Walker County, AL, 3285

Federal Home Loan Bank Board
NOTICES
Applications, hearings, determinations, etc.:
First Federal Savings & Loan Association of Livingston County et al., 3266

Federal Maritime Commission
NOTICES
Agreements filed, etc., 3266
(2 documents)

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Encyclopaedia Britannica, Inc., 3214

Food and Drug Administration
NOTICES
Human drugs:
Export applications—
'CONTAC' C Sustained Release Capsules, 3266

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Family Medicine—
Maternal and child health services, 3267

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Decisions and orders, 3248–3253
(3 documents)
Special refund procedures; implementation, 3254

Housing and Urban Development Department
RULES
National Housing Act; implementation:
Mutual insurance programs; direct endorsement processing, 3201

Interior Department
See Land Management Bureau; Minerals Management Service; Mines Bureau

International Trade Administration
NOTICES
Antidumping:
Stainless steel butt-weld pipe and tube fittings from Japan, 3227

Justice Department
See also Drug Enforcement Administration
RULES
Nondiscrimination on basis of handicap; uniform Federal accessibility standards, 3203
NOTICES
Pollution control; consent judgments:
LTV Steel Co., Inc., et al., 3273
Van Leer Containers, Inc., et al., 3273

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Closure of public lands:
California, 3268
Environmental statements; availability, etc.:
Guadalupe County landfill site, NM, 3270
Meetings:
Albuquerque District Advisory Council, 3269
Cedar City District Advisory Council, 3270
Mineral interest applications:
Arizona, 3269
Motor vehicles; off-road vehicle designations:
Oregon, 3269
Realty actions; sales, leases, etc.:
California, 3270

Wisconsin, 3271
Resource management plans, etc.:
Carlsbad Resource Area, NM, 3270
Withdrawal and reservation of lands:
New Mexico, 3271

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Great Western Coal (Kentucky) Inc., 3276
Jim Walter Resources, Inc., 3274–3276
(4 documents)
Mount Vernon Coal Co., 3276

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 3272
Outer Continental Shelf; development operations coordination:
Hall-Houston Oil Co., 3272

Mines Bureau
NOTICES
Agency information collection activities under OMB review, 3272

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 3277
Humanities Panel, 3277

National Highway Traffic Safety Administration
NOTICES
Meetings:
Motor Vehicle Safety Research Advisory Committee, 3285

National Oceanic and Atmospheric Administration
RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 3213
PROPOSED RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, etc., 3225
NOTICES
Meetings:
North Pacific Fishery Management Council, 3231
Pacific Fishery Management Council, 3231

Navy Department
PROPOSED RULES
Acquisition regulations, 3225
NOTICES
Environmental statements; availability, etc.:
Naval Undersea Warfare Engineering Station, Hadlock, WA, 3232
Inventions, Government-owned; availability for licensing, 3232

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 3278
Carolina Power & Light Co., 3280

Office of United States Trade Representative
See Trade Representative, Office of United States

Physician Payment Review Commission
NOTICES
Meetings, 3280

Presidential Documents
PROCLAMATIONS
Special observances:
Consumers Week, National (Proc. 5765), 3183
Small Business Week (Proc. 5766), 3185

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Railroad Retirement Board
RULES
Privacy Act; implementation, 3198
Railroad hiring requirements, etc., 3200
NOTICES
Agency information collection activities under OMB review, 3281
(2 documents)

Research and Special Programs Administration
NOTICES
Meetings:
International standards on transport of dangerous goods, 3286

Securities and Exchange Commission
RULES
Securities:
Mutual fund expenses; consolidated disclosure, 3192
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 3281
Options Clearing Corp., 3282
Applications, hearings, determinations, etc.:
Moto-Photo, Inc., 3282
Royal Bank of Scotland Group plc, 3282

Trade Representative, Office of United States
NOTICES
Government procurement agreement; amendments, effective date, 3285
Government procurement agreement; application determination:
Dollar equivalent of special drawing right units, 3284

Transportation Department
See also Coast Guard; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration; Urban Mass Transportation Administration
PROPOSED RULES
Acquisition regulations, 3222

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities under OMB review, 3288, 3289
(3 documents)
Notes, Treasury:
W–1990 series, 3289

Urban Mass Transportation Administration
NOTICES
Grants; UMTA sections 3 and 9 obligations:
Los Angeles County Transportation Commission, CA, et al., 3286

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
Miscellaneous amendments, 3206
Loan guaranty:
Interest rates, 3207
Vocational rehabilitation and education:
Veterans education—
All volunteer force educational assistance program; correction, 3207

Separate Parts In This Issue

Part II
Department of Justice, Drug Enforcement Administration, 3292

Part III
Christopher Columbus Quincentenary Jubilee Commission, 3320

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5765.....3183
5766.....3185

7 CFR
945.....3187
966.....3189

12 CFR
614.....3191

16 CFR
Proposed Rules:
13.....3214

17 CFR
239.....3192
274.....3192

20 CFR
200.....3198
346.....3200
355.....3200
359.....3200

21 CFR
Proposed Rules:
1308 (2 documents).....3292, 3314

24 CFR
200.....3201

27 CFR
Proposed Rules:
9.....3214

28 CFR
42.....3203

32 CFR
Proposed Rules:
169.....3218
171.....3218

33 CFR
117.....3206
Proposed Rules:
100.....3221

38 CFR
3.....3206
21.....3207
36.....3207

44 CFR
64.....3208

45 CFR
2201.....3320
2202.....3321

47 CFR
2.....3210
22.....3210
76.....3212
90.....3210

48 CFR
Proposed Rules:
1246.....3222
5215.....3225
5252.....3225

50 CFR
301.....3213
Proposed Rules:
661.....3225
663.....3225

Federal Register
Vol. 53, No. 23
Thursday, February 4, 1988

Presidential Documents

Title 3—

The President

Proclamation 5765 of February 2, 1988

National Consumers Week, 1988

By the President of the United States of America

A Proclamation

Across our Nation and around the world, consumers are sending business an important message: there is no substitute for good service, the kind on which companies make their reputations. Under free enterprise, we consumers express our views through our everyday marketplace decisions and require businesses to adapt to our changing consumer choices.

The flexibility of American economic freedom opens the door to many opportunities for consumers and businesses. Both profit from today's increased emphasis on service. Customer-oriented companies that listen to their customers and make the commitment to act on their customers' wishes outperform their self-centered competitors time and again in profitability and customer loyalty. As a result, consumers are finding increasing responsiveness in some corners of the marketplace and are creating a demand for service in others. Indeed, customer service is emerging as a key competitive advantage today, not only in the domestic marketplace, but also in the expanding international arena.

In many industries, service is the product. The service sector accounts for 60 percent of our gross national product and provides some 70 percent of American jobs. Communications, transportation, utilities, banking, accounting, health care, and home maintenance are but a few examples of service industries indispensable to our way of life. Whether the transaction involves goods, services, or both, quality of customer service is a crucial ingredient in the interaction between customer and business, before, during, and after the sale. Service quality is often the factor that distinguishes businesses from one another.

This is the 7th year I have proclaimed National Consumers Week. I initiated National Consumers Week in 1982 to acknowledge and emphasize the significant stake consumers have in our economy. Our economy has three bases, the triad of capital, labor, and consumers; without any one of them the whole economy would lose its balance. Over the past 7 years, I have watched National Consumers Week grow into an established, national event involving millions of Americans in all sectors of our economy. I am proud of the success National Consumers Week enjoys. In recognition of the importance of consumers to our economy, and of service to consumers and business, "Consumers Buy Service" is the theme I have selected for National Consumers Week, 1988.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning April 24, 1988, as National Consumers Week. I urge consumers, businesses, educators, community organizations, labor unions, the media, and government officials to identify, emphasize, and promote activities during National Consumers Week that draw attention to the importance of service in consumers' purchasing decisions.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2511
Filed 2-2-88; 4:50 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5766 of February 2, 1988

Small Business Week, 1988

By the President of the United States of America

A Proclamation

More than 17 million Americans own a small business; and the rest of us benefit from their ingenuity, enterprise, and hard work. These entrepreneurs employ half of all Americans in the work force. These achievements and the American heritage of economic liberty that helps make them possible are truly fitting reasons for each of us to join in observance of Small Business Week.

Today, small businesses provide well over two-thirds of all new American jobs, as well as 40 percent of our aggregate national output; the bulk of new American products and technologies; and more than two-thirds of all first jobs. The majority of jobs held by younger, older, minority, and female employees are in small business. In the next quarter-century, fully three-fourths of all new jobs created in America will have their genesis in small business.

The development of new enterprises depends on many factors, including the hopes, dreams, and hard work that have always characterized America's entrepreneurs. But it also depends on a climate hospitable to small business—a climate marked by a lack of government interference in the marketplace; low taxes; low interest rates; and the basic freedom to strive for and create progress, prosperity, and opportunity for ourselves and our fellow Americans. Government, the servant of the people, must make sure that it does not harm that climate, which is so necessary to our Nation's well-being and future.

The small business men and women of our land truly follow a great heritage and foster good for America.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 8 through May 14, 1988, as Small Business Week, and I urge all Americans to join with me in saluting our small business men and women by observing that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2512
Filed 2-2-88; 4:51 pm]
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Rules and Regulations

Federal Register
Vol. 53, No. 23
Thursday, February 4, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO-150-A5]

Idaho-Eastern Oregon Potato Marketing Order; Order Amending the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for potatoes grown in certain counties in Idaho and Malheur County, Oregon. The amendments change the term of office for committee members to two years, and limit committee member tenure to three consecutive terms. In addition, the amendments change procedures for nominating committee members to permit nominations by mail and allow selection of dates, other than those specified in the order, for performing the procedures in the nomination process. Changes also have been made that revise the written acceptance procedures required of persons appointed as committee members; remove the limit on compensation to committee members; and provide for a larger operating reserve for excess funds. Periodic continuance referenda also are required. All of these changes will improve the committee's operations and procedures.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior Documents in this proceeding—Notice of Hearing issued November 8, 1985, and published in the November 15, 1985, issue of the **Federal Register** (50 FR 47226). The Recommended Decision was issued March 27, 1987, and published in the **Federal Register** April 6, 1987 (52 FR 10893). The Secretary's Decision was issued June 29, 1987, and published in the **Federal Register** July 2, 1987 (52 FR 25016).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Pocatello, Idaho, on December 10, 1985, to consider the proposed amendment of the Marketing Agreement and Marketing Order No. 945, both as amended, regulating the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the Idaho-Eastern Oregon Potato Committee established under the order, hereinafter referred to as the "committee." The proposals pertained to adding a public advisor to the committee, limiting the tenure of committee members, changing the term of office, changing nomination procedures, making changes in fiscal operations, and requiring periodic continuance referenda. The Department of Agriculture proposed that it make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator, on March 27, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing notice of the opportunity to file written exceptions thereto by May 6, 1987. Three exceptions were filed, and were discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued June 29, 1987, directing that a referendum be conducted during the period July 10-24, 1987, among Irish potato producers in designated counties in Idaho and Malheur County, Oregon to determine whether they favored various amendment proposals to the order. In that referendum, producers voted in favor of six of the eight amendment proposals listed on the referendum ballot. The proposals that did not receive the requisite two-thirds vote would have added a public advisor to the committee and deleted the assessment limitation of $1 per carload or equivalent. Accordingly, those two proposed amendments are not included in this order amending the order.

The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendment proposals on small businesses for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 945 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

During the 1986-87 crop year, 106 handlers were regulated under M.O. 945 and handled potatoes for fresh market with an estimated crop value of $34.2 million. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of Idaho-Eastern Oregon potatoes would fall within that definition. In addition, there are about 3,648 producers of potatoes in the production area. Small agricultural producers have been

defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000. The majority of handlers and producers may be classified as small entities.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the Marketing Agreement and Marketing Order No. 945 (7 CFR Part 945) regulating the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon.

Upon the basis of the record, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Irish potatoes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Irish potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping potatoes covered by the said order, as hereby amended) who, during the period August 1, 1986, through June 30, 1987, handled not less than 50 percent of the volume of such potatoes covered by the said order as hereby amended; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved, by at least two-thirds of the producers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such producers during the period August 1, 1986, through June 30, 1987 (which has been deemed to be a representative period), having engaged within the production area in the production of Irish Potatoes for fresh market.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on March 27, 1987, and published in the **Federal Register** April 6, 1987 (52 FR 10293), and in the Secretary's Decision issued on June 29, 1987, and published in the **Federal Register** on July 2, 1987 (52 FR 25016) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 945.21 to read as follows:

§ 945.21 Term of office.

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be for two years beginning June 1 or such other date as recommended by the committee and approved by the Secretary. The term of office of members and alternates shall be so determined that approximately one-half of the total producer and handler committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified. Beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms: *Provided,* That an alternate member may serve up to three consecutive terms and then serve as a member for up to three consecutive terms without a break in service. Members serving three consecutive terms could again become eligible to serve on the committee by not serving for one full term as either member or alternate member: *Provided,* That in the event a position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve, the Secretary may authorize a member or alternate member to serve more than three full consecutive terms.

3. Amend § 945.25 as follows:

(1) Revise paragraphs (a) and (c).

(2) Redesignate paragraph (e) as paragraph (g) and revise it.

(3) Redesignate paragraph (f) as paragraph (e).

(4) Redesignate paragraph (g) as paragraph (f).

§ 945.25 Nominations.

* * * * *

(a) In order to provide nominations for producer and handler committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, or such other date as the Secretary may designate, one or more meetings of producers and of handlers in each district to nominate such members and alternates; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

* * * * *

(c) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

* * * * *

(g) Nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than May 1 of each year, or such other date as the Secretary may specify.

4. Revise § 945.27 as follows:

§ 945.27 Acceptance.

Any person nominated to serve on the committee as a member or as an alternate shall qualify by filing a statement of willingness to serve with the Secretary.

5. Revise § 945.31 to read as follows:

§ 945.31 Expenses.

Committee members and alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate determined by the committee, and approved by the Secretary, for each day or portion thereof, spent in conducting committee business.

6. In § 945.44 revise the heading; remove the introductory paragraph and revise paragraphs (a) and (b) to read as follows:

§ 945.44 Excess funds.

(a) The funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over, with the approval of the Secretary, into following periods as a reserve. Such reserve shall be established at an amount not to exceed approximately one fiscal period's budgeted expenses. Funds in such reserve shall be available for use by the committee for expenses authorized under § 945.40.

(b) Funds in excess of those placed in the operating reserve shall be credited proportionately against a handler's operations of the following fiscal period, except that if the handler demands payment, such proportionate refund shall be paid to such handler.

* * * * *

7. Section 945.83 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 945.83 Termination.

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by potato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Termination of the order shall be effective only if announced on or before July 1 of the then current fiscal period.

* * * * *

Signed at Washington, DC, on January 28, 1988 to become effective March 7, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 88–2176 Filed 2–3–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 966

Tomatoes Grown in Florida and Tomatoes Imported into the United States; Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule will extend the effective period of the handling regulation from June 15 to June 30, increase the minimum grade for fresh market shipments of 6×7 size (small) tomatoes outside the regulated area from U.S. No. 3 to U.S. No. 2, and establish a minimum grade requirement for 6×7 size tomatoes of U.S. No. 2 for shipments within the regulated area. The changes will apply to both domestic shipments of tomatoes under the marketing order and to imported tomatoes. This action is intended to prevent tomatoes of undesirable size and quality from being distributed in fresh market channels.

EFFECTIVE DATE: The changes in the requirements for tomatoes grown in Florida are effective from February 4, 1988, through June 30, 1988, for the 1987–88 season and from February 8, 1988, through June 30, 1988, for imported tomatoes. For each season thereafter, these regulations are effective October 10 through June 30.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 966 (7 CFR Part 966), as amended, regulating the handling of tomatoes grown in Florida. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 103 handlers of tomatoes subject to regulation under the Florida Tomato Marketing Order, and approximately 180 tomato producers in Florida.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

The 1986–87 annual report of the Florida Tomato Committee indicated that total shipments for the 1986–87 season were 56,366,486 25–lb. equivalents, compared to 52,421,792 for the 1985–86 season and 52,471,073 for 1984–85. The average yield was approximately 1,107 25–lb. equivalents per acre compared to 1,150 the previous season and 1,173 in 1984–85. The total acres harvested were 5,387 more than the 45,530 acres harvested last season, and shipments were up 3,944,694 packages. Available forecasts predict that adequate tomato supplies will be available in the fall, winter, and spring of the 1987–88 season. Tomato production in the Florida marketing

order area is expected to be at least equal to the 56.4 million 25–lb. equivalents shipped in 1986–87.

For mature green and vine ripe 6×7 size tomatoes grading U.S. No. 3 total shipments for 1986–87 were 1,787,153 million 25–lb. equivalents or approximately three percent of the total shipments of 52,366,486 25-lb. equivalents for all sizes and grades. Mature green and vine ripe 6×7 size tomatoes grading U.S. No. 3 were valued at $6,022,910.25 or 1.4 percent of the total sales dollars of $410,124,645 for all tomato grades and sizes shipped.

The final rule will change the handling regulation specified at 7 CFR in section 966.323 (49 FR 47189 December 3, 1984; 51 FR 41074 November 13, 1986; 52 FR 46345 December 7, 1987) to extend the handling regulation effective period, increase the minimum grade for fresh market shipments of 6×7 size tomatoes outside the regulated area, and establish a minimum grade for shipments of 6×7 size tomatoes within the regulated area.

Changes will be made in the introductory text and in § 966.324(a)(1) to help maintain the quality of Florida tomato shipments by extending the handling regulation effective period and increasing and extending the coverage of the minimum grade requirement. This final rule is being issued pursuant to § 966.52 of the order.

Notice of this change was published in the December 15, 1987, issue of the **Federal Register** (52 FR 47576) affording interested persons 20 days in which to submit written comments. One comment was received from the Florida Tomato Exchange which unanimously supported the committee's recommendation.

Growers are producing and harvesting tomatoes into late June. Currently, the handling regulations are in effect October 10–June 15. After June 15, handlers may ship tomatoes free of the grade, size, container, and inspection requirements under the marketing order. According to the committee, many tomatoes that would not meet the requirements of the marketing order were shipped after June 15 last season. Quality standards have been imposed on the Florida tomato industry to improve its image and give the consumer a better product. According to the committee, to stop regulations before all harvesting is complete and allow significant supplies of poor quality tomatoes to be shipped to fresh market channels at the end of a season defeats the purpose of the regulations. Members of the committee believe extending the effective period to June 30 is needed to maintain the quality of late season shipments of tomatoes by requiring the tomatoes to meet the applicable grade, size, and quality requirements established under the order.

Marketing Order No. 966 defines the "regulated area" as that portion of the State which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Tomatoes shipped to points outside the regulated area are currently required to be at least U.S. No. 3 grade and 2–8/32 inches in diameter, and be sized and packed in accordance with three classifications. The smallest of the three designated sizes is the 6×7, which includes tomatoes ranging form 2–8/32 to 2–18/32 inches in diameter. The committee has recommended that the minimum grade for the 6×7 size be increased to U.S. No. 2.

It also was recommended that this requirement be made applicable to fresh market shipments within the regulated area. Such shipments are now subject only to size and inspection requirements.

This revision in the grade requirements is expected to prevent small, low-quality tomatoes from reaching the marketplace. This action is intended to improve the overall quality of tomatoes in fresh marketing channels.

Tomatoes grading U.S. No. 3 must be well developed, may be misshapen, and cannot be seriously damaged by sunscald. Tomatoes grading U.S. No. 2 have to be well developed, reasonably well-formed, and free from sunscald. Sunscald is an injury which usually occurs on the sides or upper half of the tomato, but may occur wherever the rays of the sun strike most directly. The first symptom is a whitish, shiny, blistered area. The affected tissue gradually collapses, forming a slight sunken area that may become a pale yellow color and will often wrinkle or shrivel as the tomato ripens. This detracts from the overall appearance and quality of the tomato.

The difference between tomatoes grading U.S. No. 3 and U.S. No. 2 with regard to development, shape, and sunscald is especially noticeable in smaller sized tomatoes.

Preliminary findings of a research study being conducted by Dr. John VanSickle, Marketing Economist, Food & Resources Economics Department, College of Agriculture, University of Florida, indicate that 6x7 U.S. No. 3 grade tomatoes are generally of very poor quality and are not desired by the consumer. Moreover, the data shows that when tomatoes of this quality are offered for sale to consumers they have an adverse affect on the demand and sale of other Florida tomatoes.

While this regulation will extend the effective period of the handling regulations, and increase and extend the applicability of the minimum grade requirement, exemptions to the handling regulation will continue to be available. For example, several varieties or types of tomatoes are completely exempt and handlers may ship up to 60 pounds of tomatoes per day without regard to the requirements of the handling regulation. Shipments of tomatoes for canning, experimental purposes, relief, charity, or export are also exempt. Importers can also ship up to 60 pounds of tomatoes per day exempt from the import regulation.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Because this final rule will extend the effective period of the handling regulation, and establish a higher minimum grade requirement for domestic tomato shipments, this change will be applicable to imported tomatoes.

Florida tomatoes must be packed in accordance with three specified size designations, and tomatoes falling into different size classifications may not be commingled in a single container. These pack restrictions do not apply to imported tomatoes. Imported tomatoes are generally sized in accordance with the U.S. Standard for Grades of Tomatoes [§§ 51.1855 through 51.1877]. Under these standards, there are specific diameter ranges for different size classifications, e.g. medium size tomatoes are classified as tomatoes which range from 2 6/32 to 2 17/32 inches in diameter and large size tomatoes are classified as tomatoes which range from 2 17/32 to 3 2/32 (§ 51.1859 of the standards). In addition, different sizes of imported tomatoes (e.g. medium and large) may be commingled in the same container. In this instance, a lot of imported tomatoes may range from the smallest size of medium tomatoes to the largest size of large tomatoes, i.e. 2 6/32 to 3 5/32 inches in diameter. Under these circumstances, it would be impracticable to require imported tomatoes to meet the same quality requirements proposed for Florida 6x7 size tomatoes which range from 2 6/32 inches to 2 14/32 inches in diameter because of the variation in the way imported tomatoes are sized. Thus, a comparable quality requirement is being established for imported tomatoes. The upper range of a medium tomato in the U.S. Standards for tomatoes is 2 17/32 inches in diameter. Since most imported tomatoes are sized in accordance with such standards and medium tomatoes under the standards are comparable to Florida 6x7 tomatoes, imported tomatoes with a minimum diameter of 2 17/32 inches or larger will be required to grade at least U.S. No. 3. All other imported tomatoes (those ranging from 2 6/32 inches to 2 16/32 inches in diameter) will be required to be U.S. No. 2 or better. Moreover, the current undersize tolerance will remain in effect. That means any lot with more than 10 percent of its tomatoes less than 2 17/32 inches in diameter will have to grade at least U.S. No. 2.

While section 8e of the Act requires that imports meet quality standards the same or comparable to those imposed on domestic tomatoes, it also provides that any import regulation shall not become effective until reasonable notice is given, which notice shall not be less than three days. In accordance with the provisions of section 8e, it has been determined that the effective date for import requirements for the 1987–88 season beginning three days after the publication of this final rule in the **Federal Register** is reasonable notice. In future seasons, both the domestic and import requirements will be effective during the same time period, i.e. from October 10 through June 30 each season.

A conforming change of § 966.323(f) *Applicability to imports* will be made to reflect the change in the effective period of the import regulation and the increase in the minimum grade requirement. No change is needed in the import regulation for tomatoes which appears in Part 980 (7 CFR 980.212; 42 FR 55192, October 4, 1977).

Quality assurance is very important to the Florida tomato industry both within and outside of the State. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action increases the quality of tomatoes in the marketplace, it will also be of benefit to both Florida tomato growers and handlers.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that extending the effective period of the handling regulation from June 15 to June 30, increasing the minimum grade for fresh market shipments of 6x7 size (small) tomatoes outside the regulated area from U.S. No. 3 to U.S. No. 2, and establishing the minimum grade requirement of U.S. No. 2 for 6x7 size tomato shipments within the regulated area will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the harvesting and shipping season for Florida tomatoes has begun and to be of maximum benefit to producers and handlers this rule should become effective as soon as possible. In addition, pursuant to section 8e of the Act, it has been determined that the requirements for imported tomatoes should become effective three days after publication of this final rule.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

For the reasons set forth in the preamble, 7 CFR Part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966, Tomatoes Grown in Florida continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the introductory text, paragraph (f), and the first sentence of (a)(1) to read as follows:

§ 966.323 Handling regulation.

During February 4, 1988, through June 30, 1988, for the 1987–88 season and from October 10 through June 30 each season thereafter, except as provided in paragraphs (b) and (d) of this section, no person shall handle any lot of tomatoes for shipment outside the regulated area unless it meets the requirements of paragraph (a) of this section and no person shall handle any lot of tomatoes for shipment within the regulated area unless it meets the requirements of paragraphs (a)(1), (a)(2)(i), and (a)(4) of this section.

(a) *Grade, size, container, and inspection requirements.* (1) *Grade.* Tomatoes shipped outside the regulated area shall be graded and meet the requirements for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3 of the U.S. Standards for Grades of Fresh Tomatoes, except that all shipments of size 6x7 tomatoes must grade at least U.S. No. 2 or better." * *

* * * * *

(f) *Applicability to imports.* Under section 8e of the Act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the period February 8, 1988, through June 30, 1988, during the 1987–88 season and from October 10 through June 30 each season thereafter shall be at least 2 5/32 inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter. All lots with a minimum diameter of 2 17/32 inches and larger shall be at least U.S. No. 3 grade. All other tomatoes shall be at least U.S. No. 2 grade. Any lot with more than 10 percent of its tomatoes less than 2 17/32 inches in diameter shall grade at least U.S. No. 2.

Dated: February 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–2440 Filed 2–3–88, 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Loss-Sharing Agreements; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting a typographical error in the final rule which amended the regulation relating to the reversal of previously accrued financial assistance under Farm Credit System loss-sharing agreements. The final rule appeared in the **Federal Register** on January 13, 1988 (53 FR 775).

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In Typing the final rule for submission to the **Federal Register**, the word "Capital" was inadvertently omitted in the amended language of § 614.4341.

PART 614—LOAN POLICIES AND OPERATIONS

1. Section 614.4341, Subpart I, Loss-Sharing Agreements is corrected to read as follows:

Subpart I—Loss-Sharing Agreements

§ 614.4341 Financial assistance.

No institution shall reverse any financial assistance provided under the 37-Bank Capital Preservation Agreement or any other capital preservation/loss-

sharing program that was received or accrued prior to July 1, 1986.

Dated: February 1, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-2314 Filed 2-3-88; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33-6752; IC-16244; File No. S7-30-87]

Consolidated Disclosure of Mutual Fund Expenses

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments.

SUMMARY: The Commission is adopting revisions to the expense-related disclosure requirements of the registration form used by open-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933, and is publishing revisions to the staff guidelines accompanying the form. The amendments consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is adopting these amendments to improve the quality of expense disclosures in mutual fund prospectuses.

EFFECTIVE DATE: The amendments will become effective: (1) For investment companies whose registration statements become effective on or after May 1, 1988, and investment companies with fiscal years ending December 31, as to prospectuses used on or after May 1, 1988; and (2) for all other investment companies, upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1988.

FOR FURTHER INFORMATION CONTACT: John McGuire, Attorney, or Robert E. Plaze, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is amending Form N-1A (17 CFR 239.15A), the registration form under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "1940 Act") and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for open-end management investment companies ("funds"), and publishing revised guidelines to that form. These revisions, proposed on August 18, 1987 (Investment Company Act Rel. No. 15932) ("Release 15932" or "the Reproposal"),[1] require a tabular presentation of expenses ("fee table") to be included as part of the synopsis at the beginning of the prospectus. The fee table will reflect both the transactional expenses paid directly by the shareholder, such as sales loads, and the annual fund operating expenses, such as management fees, whether paid from fund assets or deducted from shareholder accounts. The fee table will also provide an example of the cumulative amount of these dissimilar fees over various investment periods. In addition, the Commission is publishing amendments to Form N-1A that improve the narrative prospectus disclosure of fees deducted under, and the nature of, Rule 12b-1 distribution plans ("Rule 12b-1 plans").[2]

Finally, the Commission is publishing revisions to Guide 29 and Guide 33 of the guidelines to Form N-1A. Guide 29 provides guidance as to the requirements for full disclosure of distribution expenses, and Guide 33 provides guidance in preparing the synopsis.

Discussion

The Commission received 621 comment letters in response to the Reproposal.[3] A majority of the commenters (578) were individual investors who supported the Commission's proposal.[4] The mutual fund industry commenters generally supported the Reproposal, but several suggested that the Commission modify and clarify some portions. The Commission has decided to adopt the proposed amendments to Form N-1A as modified to reflect many of the comments received.

A. Fee Table

All commenters supported adoption of the first two sections of the proposed fee table, which would list shareholder transaction expenses and annual fund operating expenses.[5] These two sections have been adopted with modifications, the most significant of which are discussed below.

1. Sales Loads on Reinvested Dividends

Twenty commenters recommended that the Commission require funds to list, as a shareholder transaction expense, any sales load imposed upon reinvested dividends. They argued that such a sales load is significant enough to justify inclusion in the fee table. One commenter, however, stated that these fees should not be listed in the fee table because they apply only to those investors who choose to have their dividends reinvested. This commenter essentially argued that sales loads deducted upon reinvestment be treated like Individual Retirement Account fees (which are not reflected in the fee table because they are not deducted from all shareholder accounts) rather than exchange fees (which are reflected in the table although only imposed on shareholders who make exchanges). The Commission has determined to include disclosure of sales loads imposed on reinvested dividends in the fee table because of their significance to the many investors who elect to have dividends reinvested,[6] and so that prospective investors in those relatively few funds that impose this charge will not be misled as to the existence of this load by its absence from the fee table.[7]

2. Schedule Variations of Sales Loads

The Reproposal would not have permitted scheduled variations of sales loads deducted from payments ("initial sales load") to be listed in the fee table, although specific comment was sought on this issue. Since these variations generally apply only to very large purchases of shares, inclusion of this information would unnecessarily complicate the table with information of limited value for most investors.[8]

[1] 52 FR 32018 (August 25, 1987). The Commission initially proposed similar revisions to Form N-1A in Investment Company Act Rel. No. 14230 (Nov. 9, 1984) (49 FR 45171 (Nov. 15, 1984)).

[2] A Rule 12b-1 plan is a plan adopted pursuant to Rule 12b-1 (17 CFR 270.12b-1) under the 1940 Act to provide for the use of fund assets to finance activities intended primarily to result in the sale and distribution of fund shares. *See* Release 15932 at note 2 for a more detailed description of Rule 12b-1 plans.

[3] The comment letters and a summary of comments prepared by the Commission staff are contained in File No. S7-30-87.

[4] In addition to the comment letters received, the staff received over 100 telephone calls from investors who supported the Reproposal.

[5] At the suggestion of a commenter, the title "Nonrecurring Shareholder Expenses" used in the Reproposal has been changed to "Shareholder Transaction Expenses," and the title "Recurring Fund Expenses During the Past Fiscal Year" has been changed to "Annual Fund Operating Expenses."

[6] Mutual fund shareholders reinvest 71.2% of dividends. *1987 Mutual Fund Factbook* at 29.

[7] Although this would require an additional line item in the fee table, only those funds that deduct sales load from reinvested dividends will be required to include this line item in the table. (*See* Instruction 2 of Item 2 (a)(i) of Form N-1A.) Less than five percent of funds charge a sales load on reinvested dividends.

[8] The Reproposal would (and the amendments adopted today do), however, *permit* variations over time of (contingent) deferred sales loads and

Continued

Five commenters urged that the Commission permit funds to include scheduled variations of the initial sales load in the fee table because they believe that these scheduled variations are significant, and valuable for an accurate comparison of initial sales loads. Three commenters, however, stated that the narrative disclosure currently in the prospectus was adequate for those relatively few and generally knowledgeable investors in a position to take advantage of scheduled variations. In an effort to keep the fee table simple and easy to understand, and in light of these comments, the Commission is limiting the fee table to only the maximum initial sales load. Funds may, of course, highlight the scheduled variations of sales load in the narrative portion of the prospectus synopsis or in the brief narrative following the table.

3. Restatement of Expenses

Funds occasionally increase or decrease expenses so that their annual operating expense information, which is based on the amount incurred during the past fiscal year, will be out-of-date. Therefore, the Commission proposed that funds restate the expense information is a second column using the current fees that would have been applicable had those fees been in effect during the previous fiscal year, but requested comment on whether a single column of restated expense information would be preferable. All of the commenters addressing the issue favored a single column of restated expense information which, they asserted, would be shorter, simpler, and more easily understood. The Commission therefore has modified the fee table to require, when fees change, a single restated column of expense information. The instructions clarify the types of expense changes that require restatement.[9]

4. New Funds

Annual fund operating expenses will be listed in the table as a percentage of average net assets during the fund's most recent fiscal year.[10] However, funds that have been in operation for only a short period ("new funds") could not provide this information. Thus, the Reproposal would have required new funds to describe in the table the basis on which payments for operating expenses would be made. One commenter stated that, for some operating expenses, funds would not have enough information to develop the basis on which payments will be made. The Commission has added an instruction to the fee table requiring new funds to estimate such operating expenses.[11]

5. Expense Reimbursements and Waivers

Commenters requested that the Commission clarify how the fee table should reflect expense reimbursement or fee waiver arrangements. In an expense reimbursement arrangement, the adviser reimburses the fund for any expenses that exceed a predetermined amount, while in a fee waiver arrangement the adviser agrees to waive a portion of its fee in order to limit total expenses to a predetermined amount. The Commission has added an instruction providing that the fee table should generally reflect only the actual expenses incurred by the fund during the most recent fiscal year, that is, expenses net of any reimbursement or waiver, and that the brief narrative following the table must disclose the amount of expenses that would have been incurred had there been no waiver or reimbursement.[12] However, in circumstances where the fee waiver or expense reimbursement arrangement will no longer be in effect,[13] the table must show this as a change in expenses and the information must be restated to reflect the change.[14] Similarly, new funds must state the estimated actual expenses for the current fiscal year and, in the brief narrative following the table, disclose what the estimate would be if there was no expense reimbursement or waiver.[15]

6. Extraordinary Expenses

One commenter asked whether extraordinary expenses were to be included among "Other Expenses," and pointed out that, if so, this might be inconsistent with the title "Recurring Fund Expenses."[16] Because the primary purpose of the fee table is not so much to provide precise historical information as to convey to the investor an understanding of the level of expenses that might be expected to be incurred in the future and because, by definition, extraordinary expenses will not likely be incurred in the future, the Commission has added an instruction to the table excluding extraordinary expenses from the "Other Expenses" required to be listed in the table.[17] The brief narrative following the table must disclose the amount "Other Expenses" would be had to extraordinary expenses been included.

7. Miscellaneous Matters Pertaining to Operation Expenses

The Reproposal would permit "Other Expenses" to be divided into as many as three subcategories of the fund's choosing. Commenters disagreed as to whether there should be no subcategories (to keep the table simple), more categories, or an unlimited

exchange fees to be listed in the fee table since all investors are likely to be affected by these variations. However, only the maximum amount of each is *required* to be listed. An instruction has been added to require use of only a cross-reference to the narrative portion of the prospectus discussing the exchange fee where the number of variations of the exchange fee are so numerous as to make the fee table unwieldy.

[9] Of course, as discussed *infra* in the next section of this release, new funds cannot base their operating expense information on expenses incurred in the previous fiscal year and thus the restatement requirement is not applicable to them.

[10] Fund operating expenses include all recurring expenses incurred by the fund or its shareholders, but does not include brokerage commissions or other capital items.

[11] See Instruction 11 to Item 2(a)(i) of Form N-1A. Funds currently make similar estimates for purposes of accrual of expenses in determining net asset value. If after the prospectus becomes effective a new fund adjusts its estimated expenses for the purpose of determining net asset value, it would not be required to amend the prospectus to reflect the adjustment unless the adjustment would materially affect information provided in the table. *See* Instruction 12 to Item 2(a)(i) of Form N-1A and Release 15932 at note 16. The Commission has added an instruction clarifying that for purpose of the fee table a "new fund" is a fund whose prospectus contains financial statements reporting operating results for a period of less than ten months. *See* Instruction 11(a) to Item 2(a)(i) of Form N-1A.

[12] *See* Instruction 13(a) to Item 2(a)(i) of Form N-1A. One commenter, raising similar issues, asked whether the table should reflect actual amounts paid out under a Rule 12b-1 plan or the maximum permitted under the plan. The table should reflect only actual expenses paid out during the previously completed fiscal year. Therefore, so-called "defensive" Rule 12b-1 plans under which no payments are actually made would not have to be disclosed in the fee table. *See* Instruction 9 to Item 2(a)(i) of Form N-1A.

[13] For example, if the adviser agrees to reimburse a portion of the management fees during a fund's first year in operation, and the fund is entering its second year, the reimbursement arrangement would no longer be in effect.

[14] An instruction has been added to the fee table explaining that a change in expense reimbursement or waiver arrangement does not include circumstances where the fund expenses have decreased in relation to the size of the fund so as to make any expense waiver or reimbursement arrangement inoperative. *See* Instruction 12 to Item 2(a)(i) of Form N-1A.

[15] *See* Instruction 13(b) to Item 2(a)(i) of Form N-1A.

[16] The Reproposal would have titled the second section of the fee table, which grouped together management fees, 12b-1 fees and all other expenses "Recurring Fund Expenses." As noted above, *supra* at note 5, this caption has been changed to "Annual Fund Operating Expenses."

[17] *See* Instruction 10(a) to Item 2(a)(i) of Form N-1A. For similar reasons, the Commission is requiring restated expense information when expenses have changed. *See supra* Section A.3. of this release.

number of categories (to give funds greater flexibility). The Commission has decided to retain the three subcategory limit, but has modified the table and Instruction 10(b) to the table to clarify that, as intended by the Reproposal, "Other Expenses" may consist of up to four line-items: a total of all "Other Expenses" and as many as three subcategories which equal that total.

The reproposing release requested comment on whether the "Annual Fund Operating Expenses" portion of the fee table should contain a subtotal of all non-Rule 12b–1 expenses. Most commenters responding did not believe a subtotal would be helpful, although some stated that it should be optional. The fee table as adopted does not require such a subtotal and, to preserve uniformity, simplicity, and comparability, does not permit such a subtotal.

8. Location

Form N–1A currently requires that the first three items of the form be set forth in the prospectus in the same order as in the form, and requires that Item 3 (Condensed Financial Information) be set forth within the first five pages.[18] The Reproposal would have required that the fee table, as part of Item 2, be set out within the first two pages of the prospectus. Three fund commenters stated that these requirements, taken together, would create difficulties for series funds using a single prospectus because of the amount of information required to be set forth in a few pages. Four fund commenters argued that placing the fee table in the front of each prospectus would overemphasize expenses. They suggested that funds be permitted to locate the fee table anywhere within the prospectus and be required to provide a reference to the location of the fee table at the front of the prospectus.[19] Many commenters, however, strongly supported locating the fee table at the front of the prospectus to "clearly alert investors" of the costs of an investment.

The significance of expense information warrants locating the fee table at the front of the prospectus. Because of the practical concerns raised about series funds, the Commission has modified the positioning requirements of Form N–1A so that the first three items need only be set forth in order in the prospectus.

[18] Form N–1A, General Instructions for Parts A and B.

[19] One commenter suggested that the hypothetical portion of the fee table be placed in an appendix to the prospectus.

9. Separate Accounts

One commenter urged the Commission to exempt underlying funds of variable annuity and variable life insurance separate accounts,[20] because the fee table of an underlying fund prospectus would not reflect expenses deducted from the separate account and could thereby mislead an investor into believing that it reflected all expenses. The commenter suggested that the Commission propose amendments to Forms N–3 and N–4 (17 CFR 274.11b, and 274.11c), the registration forms for these insurance products, that would provide for a fee table in separate account prospectuses.

The Commission has decided to exempt certain underlying fund prospectuses from the fee table requirements. Under the amendments to Form N–1A adopted today, funds that offer their shares exclusively to separate accounts issuing variable life insurance contracts need not include a fee table in their prospectuses.[21] As noted in the reproposing release, these prospectuses contain tables of hypothetical account values that serve much the same purpose as the fee table.[22] Funds that only offer shares to separate accounts issuing variable annuity contracts are not required to include a fee table if the variable annuity prospectus contains a fee table similar to that otherwise required to be included in a mutual fund prospectus.[23]

B. The Hypothetical Example

The third section of the proposed fee table would have illustrated the effect of expenses on the value of a hypothetical $1,000 investment at the end of one, three, five, and ten year periods, and was intended to provide a relatively simple means for investors to compare all of the disparate expenses of different funds.[24] The illustration would have shown the redemption value of a $1,000 investment at the end of each period assuming: (1) A zero percent rate of return; (2) a five percent rate of return; and (3) a five percent rate of return and no expenses. While most individual investors commenting on the Reproposal enthusiastically supported the hypothetical illustration, most fund commenters opposed it and/or offered substantially different alternative approaches.

One of the principal subjects of disagreement among the commenters was the assumed interest rate used to calculate the hypothetical account values. The first column of the proposed illustration assumed a zero percent rate of return; the second two columns assumed a five percent rate of return. The Commission requested comment whether the assumed rates of return were appropriate and on what basis any rate of return should be chosen. All ten of the commenters addressing the zero percent rate of return issue were of the view that it was either inappropriate because the account values it produced would always show an investment decreasing in value, or unnecessary because fund expenses can be compared at any uniform rate of return and a positive rate of return would demonstrate the effect of asset-based fees. Thirty commenters, however, supported adopting the proposed illustration using the five percent rate of return. Eight other commenters suggested using a higher rate of return. One recommended that the illustration use an eight percent rate of return because such a rate represents a compromise between the historical long-term return on stocks and the long-term return on bonds. Another commenter suggested that a ten percent rate of return would be easier to work with, and would better illustrate expense differences over time. A third commenter recommended that different rates be used for different types of funds. Finally, three commenters stated that it was impossible to choose any appropriate rate of return for an illustration showing the return on an investment because it would be viewed as promissory or predictive. Consequently, any rate of return would either overly-encourage or discourage investment in funds, which, they argued, should be avoided at all costs.

The three columns of the proposed illustration showed the value of an investment at the end of certain periods, assuming that fees and expenses had been deducted in the first two columns, but not in the third. The reproposing release explained that the first column, and the second and third columns when compared, were intended to demonstrate the cost of an investment and the amount of investment growth necessary to recoup expenses. The Commission requested comment as to whether the first column was necessary in light of the second and third columns. As stated above, commenters believed that the first column, which showed returns after deduction of expenses assuming a zero percent rate of return, was unnecessary. Other commenters asserted that the third column could create unrealistic investor expectations since no fund is without expenses.[25] Still other commenters thought that the quantity of numbers in this part of the table made it too complex for the average investor to understand.

While commenters raised significant issues regarding the proposed hypothetical illustration, the Commission nonetheless has decided to adopt a modified version of the proposed hypothetical illustration because it believes that such an illustration is vital to permit investors to comprehend and compare increasingly disparate and complex fund expense structures. The comments of an unusually large number of investors, many of whom complained about their inability to assess fund expenses, support this conclusion.[26] The modified illustration, which is restyled as an "Example" of the amount of expenses listed in the first two parts of the table that might be incurred over time, should be simpler to understand and alleviates many of the concerns raised by commenters.

Like the proposed illustration, the Example is based on a hypothetical $1,000 investment and assumes a five percent rate of return. However, instead of portraying the redeemable value of an investment, the Example will show the amount of expenses that would be incurred by an investor redeeming at the end of one, three, five, and ten years. Funds that charge a (contingent) deferred sales load upon redemption will provide an additional line in the table that will show expenses that would be incurred at the end of one, three, five, and ten years if the investor did not redeem his or her investment.

The Commission believes that the Example, an outgrowth of the proposed hypothetical illustration, will fulfill the objective of providing a relatively single means for investors to compare expense levels of funds with different fee structures over varying investment periods. In addition, it will demonstrate the cost of an investment and the amount of investment growth necessary to recoup those costs. In response to comments, the Commission has eliminated the column of information computed based upon a zero percent rate of return and has merged the two columns assuming a five percent rate into one line of expense information.[27] Because the Example will focus on fund expenses and not account values, the possibility that investors will be misled and believe that these figures represent projections is significantly diminished. Moreover, by focusing on fund expenses the Example substantially reduces the impact of and thus the significance of the selection of an assumed rate of growth. The second line of expense information, applicable only to funds charging a (contingent) deferred sales load or a redemption fee, will permit investors to compare the expenses of a continuing investment to those of a redemption.

1. Alternative Illustration

Some fund commenters proposed an alternative illustration that would present fund expenses (including sales load) as a percentage of a hypothetical investment over varying investment periods. Such a table, they argued, would be less complex, less likely to be viewed as a projection of results, and would not require an assumed rate of return.[28] The Commission has decided not to adopt such a method of illustrating expenses because it believes that the disclosure of fund expenses in dollar values would better convey to investors the impact of expenses on a fund investment. Moreover, the problems with the hypothetical illustration that led commenters to suggest the expense rate approach have largely been resolved by the Example being adopted today.

2. New Funds

Some commenters argued that new funds should not include the hypothetical illustration portion of the fee table in their prospectuses because their current expenses are much higher than their future expenses will be and because any estimate of future expenses would be of questionable validity. One fund commenter urged the Commission to require new funds to make estimates of their expenses. Because of the importance of the Example in enabling investors to compare expenses, the Commission has decided to require new funds to include the Example in their fee table. As explained above, fund operating expenses listed for new funds will be based on estimates of expenses expected to be incurred in the current fiscal year.[29] In computing the Example, established funds will extrapolate expenses incurred during the past fiscal year into the future.[30] However, in the case of new funds, the validity of the estimate may diminish in later years. Therefore, the Commission will only require new funds to calculate the Example for one and three year periods.

C. Narrative Distribution Expense Disclosures

Funds adopting Rule 12b–1 plans must disclose in the prospectus the existence of the plan and list the various activities for which payments are made under the plan. More detailed information must be provided in the Statement of Additional Information. In the Reproposal, the Commission proposed amendments to Form N–1A to clarify the minimum disclosure obligations of funds regarding Rule 12b–1 plans which have become increasingly diverse and complex. The Commission is adopting these amendments substantially as proposed.

[20] Underlying funds of variable annuity and variable life insurance separate accounts register their shares on Form N–1A but offer them only to separate accounts organized as unit investment trusts. Investors in those contracts receive two prospectuses, one relating to the interests in the unit investment trust and the other relating to shares of the underlying fund.

[21] *See* Item 2(a)(ii) to Form N–1A.

[22] Release 15832 at note 17.

[23] If a fund offers its shares to both variable life insurance and variable annuity separate accounts, the prospectuses of both separate accounts must meet the conditions of the exemption for the fund to omit the fee table. The Commission staff is currently preparing amendments to Forms N–3 and N–4 for proposal that would provide for a fee table in variable annuity prospectuses.

[24] The hypothetical example was first proposed in Release 15602.

[25] The Commission did not accept the recommendation of several commenters to modify the second and third columns to show the "profit" or "loss" an investor would receive instead of account values, given all the assumptions of the proposed illustration. Profit or loss could be shown by subtracting the initial $1,000 invested from the redeemable value of the investment. The Commission believes this approach would increase the likelihood that investors might misunderstand the illustration as a projection.

[26] The Commission received over 1,000 comment letters from individual investors on the original fee table proposal and approximately 600 on the Reproposal. The majority of the 600 commenters supported the entire Reproposal without specifically supporting any single portion; however, 116 commenters specifically endorsed some variation of a hypothetical illustration.

[27] This expense information is approximately the difference between the amounts that would have been required in column two and column three of the proposed hypothetical illustration, *i.e.*, the difference between an investment in the fund and an investment in a fund without any expenses, both of which earn a 5% gross return.

[28] Under this alternative, a fund charging a sales load deducted from payments would show a relatively high expense rate in the first year of a hypothetical investment, which would be reduced over time as the impact of the load is spread over time. A fund with all distribution expenses paid through a 12b-1 plan would, in contrast, have a consistent expense rate over time.

[29] *See* discussion *supra* Section A.4. of this release.

[30] The Commission has added an instruction to the fee table to clarify that to prepare the Example funds should assume that the fund operating expenses listed in the second parts of the fee table are those that will be incurred in each year of the one, three, five, and ten year periods. *See* Instruction 12(a) to Item 2(a)(i) of Form N–1A. Therefore, if a fee has been restated because of a change, the restated fee must be used to calculate the Example. In addition, if the advisory fee reflects an amount determined by the performance of the fund, that amount would be assumed to have been paid in each year of the one, three, five, and ten year periods.

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with the exception of one of the proposed requirements. [31]

One proposed amendment would have required funds to disclose if payments under a Rule 12b–1 plan, together with any sales loads charged, could exceed the amount that could be deducted under applicable National Association of Securities Dealers ("NASD") limitations. [32] Commenters opposed this proposed disclosure requirement. The Commission has decided not to adopt the proposed requirement.

D. Date of Effectiveness

As a compromise between the need to include this information in all fund prospectuses as soon as possible and the burdens that would be imposed on funds and the Commission staff if all funds were required to amend their prospectuses immediately, the Commission is staggering the date when these revisions will become effective. For funds whose registration statements become effective on or after May 1, 1988, the revisions become effective for prospectuses used on or after May 1, 1988. For funds with fiscal years ending on December 31, the revisions will become effective on May 1, 1988, as to any prospectuses used on or after that date, the date on which their post-effective amendments ordinarily must become effective. For all other funds today's revisions will become effective upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1988.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 15932. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting John McGuire, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 239 and 274

Investment Companies, Reporting and recordkeeping requirements, Securities.

Text of Form Changes

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

PART 239—[AMENDED]

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

PART 274—[AMENDED]

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

§ 239.15A [Amended]
§ 274.11A [Amended]

3. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a), of General Instruction G of Form N–1A, described in §§ 239.15A and 274.11A, to read as follows:

General Instructions for Parts A and B

1. The information contained in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant. The information need not be in any particular order, with the exception that Items 1, 2, and 3 must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Item 3.

* * * * *

4. By redesignating current paragraphs (a) and (b) of Item 2 as (b) and (c), adding a new paragraph (a) to Item 2, and revising redesignated paragraph (b) as follows:

Item 2. *Synopsis*

(a)(i) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

Shareholder Transaction Expenses

Maximum Sales Load Imposed on Purchases (as a percentage of offering price)	____%
Maximum Sales Load Imposed on Reinvested Dividends (as a percentage of offering price)	____%
Deferred Sales Load (as a percentage of original purchase price or redemption proceeds, as applicable)	____%
Redemption Fees (as a percentage of amount redeemed, if applicable)	____
Exchange Fee	____

Annual Fund Operating Expenses (as a percentage of average net assets)

Management Fees	____%
12b–1 Fees	____%
Other Expenses	____%
	____%
	____%
	____%
Total Fund Operating Expenses	____%

Example	1 year	3 years	5 years	10 years
You would pay the following expenses on a $1,000 investment, assuming (1) 5% annual return and (2) redemption at the end of each time period	$____	$____	$____	$____
You would pay the following expenses on the same investment, assuming no redemption	$____	$____	$____	$____

Instructions:

General Instructions

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

4. If the Registrant is a series company, list separately the data for each series.

Shareholder Transaction Expenses

5. "Deferred Sales Load" includes the maximum contingent deferred sales load.

[31] An amended staff guideline published in the reproposing release stated that funds should disclose the estimated amount of time it will take for the fund to pay all "carryover expenses." Commenters argued that it would be very difficult for funds to make this estimate and it would not be of much utility to investors. The staff has decided to withdraw this guideline. "Carryover expenses" are distribution expenses under a Rule 12b–1 plan incurred in one plan year to be paid in a later year. This practice is explained in detail in Release 15932.

[32] Proposed Item 7(f)(iv).

expressed as a percentage of the original purchase price or redemption proceeds, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

6. "Redemption fee" includes any fee charged for any redemption but does not include any sales load charged upon redemption.

7. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Registrant to another investment company or from one series of the Registrant to another. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

Annual Fund Operating Expenses

8. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

9. "Rule 12b–1 Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to Rule 12b–1 under the 1940 Act. Disclose the amount of any distribution or similar expenses deducted from assets other than pursuant to a Rule 12b–1 under an appropriate caption or under a subheading of the general caption "Other Expenses."

10. "Other Expenses" include all expenses (except nonrecurring account fees, brokerage commissions and other capital items, sales loads, management fees, or Rule 12b–1 fees) that are deducted from fund assets or charged to all shareholder accounts.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affect the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

(c) For any account fees that vary relative to the size of the account, assume an account size equal to Registrant's mean (or median) account size.

11. Except as provided in (a) or (b) below, the percentages expressing annual fund operating expenses shoud be based on amounts incurred during the most recent fiscal year.

(a) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction, and Instructions 13(b) and 14(e), is a Registrant (or series of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the intitial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual fund operating expenses.

12. If there have been any changes in the annual fund operating expenses that would materially affect the information disclosed in the table:

(a) restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) in the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual fund operating expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where fund expenses decrease in relation to the size of the fund so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a fund whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

13.(a) If there were expense reimbursement or fee waiver arrangements that reduced any fund operating expenses and will continue to reduced them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, *i.e.*, net of the amount reimbursed or waived; and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement of waiver arrangements that are expected to reduce any fund operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waiver); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

Example

14. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under Annual Fund Operating Expenses remain the same in each year of the one, three, five, and ten year periods;

(b) For the purpose of any breakpoint in any fee, assume that the amount of Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(c) Assume reinvestment of all dividends and distributions;

(d) Reflect recurring and nonrecurring fees charged to all investors and assume no exchanges (A Registrant that charges a sales load on the reinvestment of dividends should not reflect these fees in the Example, but should explain in the brief narrative following the table that the Example does not reflect these amounts and that the amounts would be increased if they were reflected.);

(e) A New Registrant should complete only the one and three year period portions of the Example;

(f) Reflect any contingent deferred sales load by assuming redemption on the last day of the year;

(g) Provide the information required in the second line of the Example only if a sales load or other fee is charged upon redemption, and

(h) Prominently disclose that the Example should not be considered a represenatation of past or future expenses and that actual expenses may be greater or lesser than those shown.

(ii) A Registrant that offers its shares exclusively to an insurance company separate account may omit the table if the separate account issues either: (A) Variable life insurance contracts; or (B) variable annuity contracts the prospectuses for which contain a table of expenses similar to the table required by this item.

(b) The Registrant should include a synopsis of the information, other than the required synopsis of expense information, contained in the prospectus where the length or complexity of the prospectus makes such a synopsis appropriate. (If the prospectus without a synopsis would be twelve pages or less when printed in the manner in which it is to be delivered to investors, a synopsis, with the exception of the table required in paragraph (a) above, should not normally be necessary.)

* * * * *

5. By amending paragraph (d) by removing the word "and" after the semicolon and revising paragraph (e) and adding new paragraph (f) to Item 7 as follows:

Item 7. *Purchase of Securities Being Offered*

* * * * *

(e) the amount or rate of any continuing fee paid out of fund assets to any dealer or any persons who may be advising shareholders regarding the purchase, sale, or retention of fund shares ("trail fee"); and

(f) if the Registrant directly or indirectly pays distribution or other expenses pursuant

to a plan adopted under Rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] (i) a brief description of the plan; (ii) a listing of the principal types of activities for which payments are or will be made; and (iii) a statement of the amount of any unreimbursed expenses incurred in a previous plan year and carried over to future plan years, in terms of dollars and as a percentage of net assets of the Fund on the last day of the previous plan year. If the Registrant participates in any joint distribution activities with another fund, or, if a series of the Registrant participates in joint distribution activities with other series, disclose, if applicable, that a 12b–1 fee paid by one series or fund may be used to finance distribution of the shares of another series or fund and the method (e.g., relative net asset size, number of shareholder accounts) by which distribution costs will be allocated.

* * * * *

6. By revising paragraphs (f) and (f)(i), redesignating current paragraph (f)(i)(F) as (f)(i)(G) of Item 16, and adding a new paragraph (f)(i)(F) as follows:

Item 16. *Investment Advisory and Other Services*

* * * * *

(f) Furnish a detailed description of the material aspects of any plan under which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The description should include, among other information, the following:

(i) The dollar amount and the manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) * * *

(F) interest, carrying, or other financing charges, and

* * * * *

7. By revising Guide 29 of the Guidelines as follows:

Guide 29. *Distribution Expenses*

Item 7 requires a registrant that bears distribution or other expenses in accordance with Rule 12b–1 to briefly describe the plan in the prospectus. To comply with this item, the brief description of the Rule 12b–1 plan should include: a discussion of the relationships between amounts paid to an underwriter and expenses actually incurred by the underwriter (e.g., whether the plan reimburses the distributor only for actual expenses incurred or whether the distributor's compensation is based on the fund's average daily net assets or some other factor, regardless of the amount of expenses incurred). If the funds is or can be charged for interest, carrrying, or any other financing charges on any unreimbursed distribution or other expense incurred in a prior plan year, or considers itself under a legal obligation to pay all or part of the amount carried over, the registrant should so disclose in the prospectus.

When special arrangements will be made to sell shares of the fund to customers of dispository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the fund, if these issues are resolved adversely, should also be discussed.

8. By amending the first two paragraphs of Guide 33 of the Guidelines as follows:

Guide 33. *The Synopsis*

If the registrant determines that inclusion of a synopsis is appropriate because of the length or complexity of the prospectus, that synopsis should be a clear and concise description of the key features of the offering and the registrant.** The information provided in the synopsis need not be set forth in the order or manner described in this Guide. Further, the information may be presented in a question-and-answer format.

A synopsis provided pursuant to Item 2 of Form N–1A should, in the staff's opinion, include: (i) a brief description of how the registrant proposes to achieve its investment objectives, including identification of the types of securities in which the registrant proposes to invest primarily and a statement as to whether the registrant proposes to operate as a diversified or non-diversified investment company; (ii) a summary of the principal speculative or risk factors associated with investment in the registrant, including factors peculiar to the registrant as well as those generally attendant to investment in an investment company with objectives and policies similar to registrants; and (iii) the nature of the securities being offered.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

February 1, 1988.

[FR Doc. 88–2345 Filed 2–3–88; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Exempt a System of Records Under the Privacy Act

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends § 200.5 of its regulations, which implement the Privacy Act, to exempt system of records, RRB–43, Investigation Files, from those requirements of the Privacy Act consistent with the general exemption provision of the act at 5 U.S.C. 552a(j)(2).

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4548 (FTS 386–4548).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board hereby exempts, under the general exemption provisions of 5 U.S.C. 552a(j)(2), RRB records system: RRB–43, Investigation Files (50 FR 10332–33 (March 14, 1985)). This system of records is presently exempted under the specific exemption provision of 5 U.S.C. 552a(k)(2). At the time this system was established, it was not maintained by a component of the Board "which performs as its principal function any activity pertaining to the enforcement of criminal laws," and hence could not qualify for general exemption. The system is now maintained by a newly established Office of Inspector General. A component of that Office, the Office of Investigations, performs as its principal function activities pertaining to the enforcement of criminal laws. The system thus now qualifies for exemption under 5 U.S.C. 552a(j)(2).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

The RRB published the proposed rule on November 13, 1987, at 52 FR 43620–22 for a 60 day comment period. No comments were received from the public. This final rule is identical to the proposed rule.

List of Subjects in 20 CFR Part 200

Railroad retirement, Railroad unemployment insurance, Privacy.

Title 20 CFR Part 200 is amended as follows:

PART 200—[AMENDED]

1. The authority citation for Part 200 continues to read as follows:

Authority: 45 U.S.C. 231f and 45 U.S.C. 362, unless otherwise noted.

Title 20 CFR, § 200.5 is amended as follows:

2. The authority citation for § 200.5 continues to read as follows:

Authority: 5 U.S.C. 552a.

3. Section 200.5(f) is revised to read as follows:

§ 200.5 [Amended]

* * * * *

(f) General exemptions—(1) Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(j)(2). RRB–43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) Scope of exemption. (i) The system of records identified in this paragraph is maintained by the Office of Investigations (OI) of the Office of Inspector General (OIG), a component of the Board which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's OI is the Inspector General Act of 1978, 5 U.S.C. app.

(ii) Applicable information in the system of records described in this paragraph is exempt from subsections (c)(3) and (4) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), (Agency Requirements), (f) (Agency Rules) and (g) (Civil Remedies) of 5 U.S.C. 552a.

(iii) To the extent that information in this system of records does not fall within the scope of this general exemption under 5 U.S.C. 552(j)(2) for any reason, the specific exemption under 5 U.S.C. 552(k)(2) is claimed for such information. (See paragraph (g) of this section.)

(3) Reasons for exemptions. The system of records described in this section is exempt for one or more of the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make available to the individual named in the records, at his or her request, an accounting of each disclosure of records. This accounting must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting of each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of an investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since the RRB is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that this system of records is exempted from subsection (d) of the Act.

(iii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of the investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(vi) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation.

(vii) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him or her, how he or she can gain access to such a record, and how he or she can contest its contents. Since the RRB is claiming that the system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although the RRB is claiming exemption from these requirements, RRB has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, RRB might decide it is appropriate for an individual to have access to all or a portion of his or her records in this system of records.

(viii) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish in the Federal Register notice concerning the categories of sources or records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although RRB is claiming exemption from this requirement, RRB has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(ix) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act

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** The table required by item 2(a) should, in all cases, be included in the prospectus.

defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impending effective law enforcement.

(x) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(xi) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since the RRB is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although RRB is claiming exemption from the requirements of subsection (f) of the Act, RRB has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this Part.

(xii) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since the RRB is claiming that this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that this system or records is exempted from those subsections of the Act.

* * * * *

By the authority of the Board.
Dated: January 28, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-2370 Filed 2-3-88; 8:45 am]
BILLING CODE 7905-01-M

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20 CFR Parts 346, 355, and 359

Railroad Hiring

AGENCY: Railroad Retirement Board.
ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby redesignates 20 CFR Part 359 as 20 CFR Part 346, and removes it from Subchapter E as published in the **Federal Register** on Thursday, May 21 1987 (52 FR 19133). A final rule published on December 16, 1987 (52 FR 47705), added a new Subchapter E, consisting of Part 355. This amendment will move the sole remaining section of Part 359 to a more appropriate position in the Board's regulations, and properly places Part 355 in new Subchapter E.

EFFECTIVE DATE: February 4, 1988.
ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.
FOR FURTHER INFORMATION CONTACT: Steven A. Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 386-4935).
SUPPLEMENTARY INFORMATION: Upon publication of 20 CFR Part 355 in the **Federal Register** on December 16, 1987 (52 FR 47705), it was determined that the designation of Subchapter E, Railroad Vacancy Reporting and Hiring Requirements, for Part 359, as published in the **Federal Register** on Thursday, May 21, 1987 (52 FR 19133), was in error, as only one section of Part 359, § 359.7, remains in effect, and would have appeared as a single section in its own Subchapter E, in the April 1, 1988 codification of the CFR; all other sections of Part 359 as published on May 31, 1987, ceased to be effective as of the close of business on August 12, 1987 in accordance with the sunset provision of § 359.8. Part 359 is therefore redesignated as Part 346, and § 359.7 is redesignated as § 346.1, in order to move the one remaining section into a more appropriate Subchapter C, Regulations Under the Railroad Unemployment Insurance Act.

Subchapter E, Administrative Remedies for Fraudulent Claims or Statements, and Part 355, Regulations Under the Program Fraud Civil Remedies Act of 1986, which were published as a final rule on December 16, 1987 (52 FR 47705), is therefore correctly positioned in the Board's regulations.

This document was not published as a proposed rule, and public comment was not invited, as the final rule does not affect applicable regulations in any way; it merely corrects the designation and placement of CFR parts within the Board's regulations.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required. In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed. (The information collection approved by the Office of Management and Budget for § 359.3, control number 3220-0122, is no longer applicable as that section ceased to be effective due to the sunset provision of § 359.8, as of the close of business on August 12, 1987.)

List of Subjects

20 CFR Part 346

Railroad employees, Railroad employment, Railroads, Railroad hiring.

20 CFR Part 355

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Government agencies), Penalties, Railroad Retirement Board.

20 CFR Part 359

Railroad employees, Railroad employment, Railroads, Railroads hiring.

For the reasons set out in the Preamble, Title 20, Chapter II, of the Code of Federal Regulations is amended as follows:

1. The Subchapter E heading, *Railroad Vacancy and Hiring Requirements*, as published in the **Federal Register** in May 21, 1987 (52 FR 19133), is removed.

PART 359—[REMOVED]

2. Part 359 is removed.

3. Part 346 is added to Subchapter C to read as follows:

PART 346—RAILROAD HIRING

Authority: 45 U.S.C. 362(l).

§ 346.1 Central register.

(a) The Board shall maintain a central register of railroad employees with at least one year of service who have declared their current availability for rail industry employment. The register shall indicate which of those employees claims a first right of hire.

(b) The central register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current employee availability.

(c) Upon request, listings of employees named in the central register and selected on the basis of job experience, location of residence, claimed hiring preference, last railroad employer or other available selection criteria will be furnished to railroads. Railroads may provide written notice of job vacancies to selected employees listed on the register. The railroad notice to the employees should contain job qualification requirements and application instructions. If the railroad requests, the Board shall notify the employees of the vacancy.

PART 355—REGULATIONS UNDER THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

4. Subchapter E, Administrative Remedies for Fraudulent Claims or Statements, and Part 355, Regulations Under the Program Fraud Civil Remedies Act of 1986, continue to read as published in the **Federal Register** on December 16, 1987 (52 FR 47705).

5. The authority citation for Part 355 continues to read as follows:

Authority: 31 U.S.C. 3809.

Dated: January 29, 1988.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-2266 Filed 2-3-88; 8:45 am]
BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-88-1323; FR-2241]

Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises HUD's Direct Endorsement Program to Establish a dual certification procedure. Under the new procedure the direct endorsement mortgagee's underwriter will certify as to the eligibility of the property and mortgagor while the Direct Endorsement Mortgagee (through its authorized representative) may then certify as to matters relating to the actual closing of the loan. The rule will accelerate mortgage processing and case submissions to HUD, and will also set forth more explicitly the responsibilities of mortgagees and their underwriters under the Direct Endorsement Program.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Office of Single Family Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1983, HUD published regulations at 48 FR 11928 for a new program involving direct underwriting in insured single family mortgage loans by approved mortgage lenders. (See 24 CFR 200.163-.164.) Under this program, the lender has the responsibility for underwriting and closing the mortgage loan and for submission of the loans to HUD for insurance endorsement, without need of any prior HUD commitment. This Direct Endorsement Program does not replace the existing mortgage insurance application procedure, but is available in addition to the existing procedure. The purpose of the new program is to simplify and expedite the process by which mortgagees can secure mortgage insurance endorsements from HUD.

Experience under the program indicated that most participating direct endorsement mortgagees consolidated their underwriting activities into central locations covering a number of branches, field offices, and in some cases, the mortgagee's nationwide lending activity. This usually meant that at each step in the processing, *i.e.*, appraisal review, credit review, submission for endorsement, documents were sent to the mortgagee's underwriter and upon approval, were returned to the originating office. Concern was expressed by participating mortgagees that, especially in the case of a resubmission of the closed mortgage package to the underwriter for review and certification, the existing procedure created unnecessary delays in submitting cases to HUD.

Under the regulation then in effect, underwriters were required to certify as to *all* phases of loan processing, for and on behalf of the mortgagee. This was required even though both the mortgagee and underwriter could be held accountable. In the event of improper processing, the mortgagee could be sanctioned under 24 CFR 200.163(h), and the underwriter under 24 CFR Part 24.

HUD's response to this problem was to publish, on April 10, 1987, a proposed rule (52 FR 11686) which proposed to effectively separate those functions relating to underwriting and mortgagor approval from those associated with closing and insuring. The latter functions could be carried out by the direct endorsement mortgagee or its representative.

Specifically, the rule would permit a representative of the mortgagee (who does not need to be the underwriter) to certify as to the following closing-

related items: (A) That the mortgage contains certain provisions required under specific sections in Part 203, 221 or 234, as applicable; (B) that the mortgage covers real estate held in fee or under a renewable 99-year leasehold; (C) that any GPM (graduated payment mortgage), modified GPM, GEM (growing equity mortgage) or ARM (adjustable rate mortgage) meets relevant regulatory requirements; (D) that the property meets applicable flood plain requirements; (E) that the stated mortgage amount meets applicable regulatory requirements; (F) that the mortgagor has made the required minimum investment; (G) that a mortgage involving refinancing does not exceed the specified maximum mortgage amounts for such mortgages; and (H) for a property in an outlying area, that the requirements of 24 CFR 203.18(d) are met.

Public Comments on Proposed Rule

Five public comments were received on the proposed rule. Two were from trade associations, two from mortgage banking companies and one from an individual attorney. All but the individual attorney were in favor of the proposal. The attorney, though in opposition, did not specifically address the rule but rather, criticized HUDs processing procedures generally.

One favorable commenter did express a specific concern with respect to the rule. The commenter believes that the division of the Underwriter's Certification will detract from the overall quality and control of the program in cases where an individual other than the underwriter is able to clear conditions previously set by the underwriter on either appraisal or credit approval. It is not the intent of the dual certification program that such actions be permitted. Clearly, conditions placed upon a commitment by an underwriter may only be cleared by that underwriter. The mortgagee certification would be subsequent to such action by the underwriter and would involve certification of closing items only. Further, both certifications may be made by the underwriter at the discretion of the mortgagee who is ultimately responsible for the quality of the submission to the Department.

Given a generally favorable public response, and upon futher review and consideration, the Department has determined to adopt the proposed rule as final without revision or amendments.

Findings and Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markers.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely provides for a more efficient loan processing procedure, which should prove beneficial to both small and large entities.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements have been approved and have been assigned OMB control number 2502–0274.

This rule was listed as item number H–29–88 (Sequence Number 910) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358); pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance numbers are 14.105 through 14.165.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Mortgage insurance, Homeownership.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.163 is amended by adding a new paragraph (b)(5)(xi), and by revising paragraphs (c) and (d)(6), to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(b) * * *

(5) * * *

(xi) A mortgagee closing certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgages (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement and certifying that the mortgage complies with the requirements of this paragraph (b). This mortgagee certification is in addition to any certifications required of the mortgagee or the mortgagor (or both) on HUD forms 92800 and 92900. The certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(A) That the mortgage satisfies the requirements (as appropriate) of 24 CFR 203.17, or the requirements of 24 CFR 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45 or 234.25;

(B) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or 203.37 as made applicable in § 221.1(a), or § 234.65;

(C) That any graduated payment mortgage meets the requirements established under 24 CFR 203.45 or 234.75; any growing equity mortgage meets the requirements established under 24 CFR 203.47 or 234.77; and any adjustable rate mortgage meets the requirements established under 24 CFP 203.49 or 234.79;

(D) That the property covered by the mortgage meets the flood plain requirements set forth in § 203.16a, or § 203.16a as made applicable in § 221.1(a), or § 234.17;

(E) That the stated mortgage amount (*1*) satisfies the requirements of 24 CFR 203.18, 203.18a, 203.18b, 203.29, or § 203.29 as made applicable in §§ 2221.1(a), 221.10, 221.11, 221.20, 221.50, 234.27, or 234.49; and (*2*) for a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (b)(5)(xi)(E)(i) of this section, and any further limitation prescribed by the Secretary;

(F) That the mortgagor has made the minimum investment required by 24 CFR 203.19, 221.50, or 234.28, and no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgator's minimum investment;

(G) That for a mortgage involving refinancing to be insured under 24 CFR 221.21, the mortgage, in addition to the limitations contained in §§ 221.10, 221.11 and 221.20, does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property;

(H) That for a property located in an outlaying area, the mortgage meets the requirements of 24 CFR 203.18(d); and

(I) That a mortgage to be insured under section 234(c) of the National Housing Act meets the requirements of 24 CFR 234.59.

(c) *Underwriter certification.* The underwriter shall personally review the appraisal report and credit application (including the analysis performed on the worksheets) and shall certify, for and on behalf of the mortgagee on a form prescribed by the Secretary, that the proposed mortgage complies with HUD underwriting requirements. For each mortgage reviewed, this Underwriter Certification shall include an identification of the mortgage by type, as identified under § 200.163(a)(3); a statement that the underwriter has personally reviewed the relevant documents; and a statement that the mortgage complies with the requirements of this paragraph (c). The Underwriter Certification is in addition to any certifications required of the mortgagee, the mortgagor, or both on HUD forms 92800 and 92900. The Underwriter Certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(1) That the mortgage property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40;

(2) That there is located on the mortgage property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, or by 203.38 as made applicable in § 221.1(a);

(3) That the mortgagor's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21 or § 203.21 as made applicable in 221.1(a), or as required under § 234.36;

(4) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33, or 203.33 as made applicable in § 221.1(a), or § 234.56;

(5) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as made applicable in § 221.1(a), or § 234.57;

(6) That the buildings on the property secured by the mortgage comply with the applicable property standards issued by HUD as required by 24 CFR Part 200, Subpart S, for proposed construction, and the standards set forth in HUD Handbooks 4905.1, for existing construction, and 4940.4, for rehabilitation construction;

(7) In cases where the mortgaged property is subject to—

(i) A secondary mortgage or loan made or insured, or other secondary lien held, by a Federal State or local government agency or instrumentality or

(ii) A second mortgage held by a mortgagee that is not a Federal, State or local governmental agency or instrumentality or

(iii) A junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured; that the applicable requirements of 24 CFR 203.32(b), (c) or (d), 203.32(b), (c) or (d) as made applicable in § 221.1(a), or § 234.55 are met;

(8) That the property designed for a two-, three- or four-family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12;

(9) For a condominium unit, that the mortgaged property is in a project that has been approved by HUD under 24 CFR 234.26;

(10) In the case of proposed or new construction to which 24 CFR 203.12 is applicable, that the property covered by the application for insurance meets the requirements of 24 CFR 203.12(c); and

(11) That the property covered by the mortgage is not located in an area that is precluded from receiving Federal financial assistance pursuant to the Coastal Barrier Resources Act (Pub. L. 97–349).

(d) * * *

(6) That all necessary certifications are made in accordance with paragraph (b) and (c) of this section.

* * * * * *

(Approved by the Office of Management and Budget under control number 2502–0274.)

Dated: January 27, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88–2253 Filed 2–3–88; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

28 CFR Part 42

[Atty. Gen. Order No. 1249–88]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Federally Assisted Programs or Activities

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This regulation amends the regulation issued by the Department of Justice for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

EFFECTIVE DATE: March 7, 1988.

ADDRESS: Comments received on the Notice of Proposed Rulemaking will be available for public inspection in Room 854 of the HOLC Building, 320 First Street NW., Washington DC, from 9:00 a.m. to 5:00 p.m., Monday through Friday

except legal holidays until April 4, 1988. Copies of this final rule are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Irene Bowen, Supervisory Attorney, Community Services Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724–2245 (voice or TDD); or Merrily F. Raffa, Attorney, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 724–2216 (voice) or 724–7878 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On March 27, 1987 (52 FR 9685), the Department of Justice published a Notice of Proposed Rulemaking (NPRM) that would amend the regulation issued by the Department for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. The Department received five comments in response to the NPRM. Three comments came from State organizations representing individuals with handicaps, and two came from other such organizations. Each comment was read and carefully considered in developing this final rule. The final rule is identical to the NPRM except for substitution of the term "persons with physical handicaps" for "physically handicapped persons" in § 42.522(b)(2). The revision was made to be consistent with section 103(d) of the Rehabilitation Act Amendments of 1986, which changed the statutory term "handicapped individual" to "individual with handicaps."

Background

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides that

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The existing Department of Justice section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1–1961 (R1971), meets the requirements of section 504. The revision set forth in this document will reference UFAS in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528) (see discussion *infra*). This Department, as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, *inter alia*, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.[1]

[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 330 C Street SW., Washington, DC 20201. The telephone number is (202) 472–2700 (voice/TDD). This is not a toll free number.

On August 7, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (see 41 CFR Subpart 101–19.6 (GSA) and 24 CFR Part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980, published by the American National Standards Institute (ANSI). (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1980, is ANSI A117.1–1980. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

This regulation amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from the Department of Justice to refer to UFAS.

This Department has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The amendment does not affect the current section 504 requirement that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps

and that alterations be accessible to the maximum extent feasible. It merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," it is anticipated that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient *bedrooms* be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all *beds* in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

For correctional facilities, including jails, prisons, reformatories, and other detention facilities, UFAS requires that five percent of all residential units, or at least one unit (whichever is greater), be accessible. However, all areas of common use or visitor use, and areas in which persons with physical handicaps may be employed, must be accessible (see UFAS section 4.1(9)(c)).

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alteration. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with the General Services Administration's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR Subpart 101–19.6.

The revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: alterations*. Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or residents or employees with handicaps.

The revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document is an adaptation of a prototype prepared by this Department under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298).

The Architectural and Transportation Barriers Compliance Board has been consulted in the development of this document in accordance with 28 CFR 41.7.

This regulation is not a major rule within the meaning of Executive Order 12291 46 FR 13193, 3 CFR, 1981 Comp., p. 127) because it imposes no new

requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 42

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons stated in the preamble, Part 42 of title 28 of the Code of Federal Regulations is amended as follows:

PART 42—NONDISCRIMINATION; POLICIES AND PROCEDURES

1. The authority citation for Subpart G of Part 42 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 29 U.S.C. 706, 794; E.O. 12250.

2. In § 42.522, paragraph (b) is revised to read as follows:

§ 42.522 New construction.

* * * * *

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of March 7, 1988, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Edwin Meese III,
Attorney General.
January 27, 1988.

[FR Doc. 88–2282 Filed 2–3–88; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–60]

Drawbridge Operation Regulations; Whitcomb Bayou, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Pinellas County, the Coast Guard is changing the regulations governing the Beckett Bridge at Whitcomb Bayou in Tarpon Springs, Pinellas County, Florida, by requiring that advance notice of opening be given seven days a week. This change is being made because of a very low volume of requests for opening the draw. This action will relieve the bridgeowner of the burden of having a person constantly available on weekends to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Zonia Reyes, at (305) 536–4103.

SUPPLEMENTARY INFORMATION: On November 25, 1987, the Coast Guard published proposed rule (52 FR 45202) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated December 4, 1987. In each notice, interested persons were given until January 11, 1988 to submit comments.

Drafting Information: The drafters of these regulations are Ms. Zonia Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments: No comments were received.

The final rule is unchanged from the proposed rule published on November 13, 1987.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because bridge openings are infrequent. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.341 is revised to read as follows:

§ 117.341 Whitcomb Bayou.

The draw of the Beckett Bridge, mile 0.5, at Tarpon Springs, Florida shall open on signal if at least two hours notice is given.

Dated: January 27, 1988.
H. B. Thorsen,
Rear Admiral, U.S. Coast Guard; Commander, Seventh Coast Guard District.

[FR Doc. 88–2320 Filed 2–3–88; 8:45 am]
BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Adjudication; Pensions, Compensation, Dependency, etc.; Miscellaneous Amendments

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: In the Federal Register of September 19, 1972, on page 19132 (37 FR 19132) there appeared a final rule containing miscellaneous amendments to Part 2 and Part 3 of Title 38, Code of Federal Regulations. Material which was to appear in both Part 2 and Part 3 did appear in Part 2 (§ 2.6(a)), but was inadvertently omitted from Part 3 (§ 3.100(c)). This notice corrects that error.

EFFECTIVE DATE: June 30, 1972.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 357–6503.

Dated: January 29, 1988.
Priscilla B. Carey,
Chief, Directives Management Division.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.100 is amended by revising paragraph (c) to read as follows:

§ 3.100 Delegations of authority.

* * * * *

(c) Authority is delegated to the Director, Compensation and Pension Service, and to personnel of that service designated by him to determine whether a claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture pursuant to the provisions of 38 U.S.C. 3503 or 3504. See § 3.905.

(Authority: 38 U.S.C. 212(a))

[FR Doc. 88–2289 Filed 2–3–88; 8:45 am]
BILLING CODE 8320–01–M

38 CFR Part 21

Veterans Education; All Volunteer Force Educational Assistance Program

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: In the Federal Register of January 22, 1988, on pages 1756 through 1779 (53 FR 1756–1779) the Veterans Administration (VA) published a final rule to implement those provisions of the Veterans' Educational Assistance Act of 1984 which established a new educational assistance program for veterans and servicemembers, and the provisions of the Department of Defense Authorization Act, 1986, which affect that program. In three places, a reference in the text was inadvertently in error. This notice corrects that previously published information.

EFFECTIVE DATE: October 19, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

Dated: January 29, 1988.
Priscilla B. Carey,
Chief, Directives Management Division.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

§ 21.7110 [Amended]

1. In § 21.7110, paragarph (b)(1), remove the words "§ 21.7020(b)(22)" where they appear and add, in their place, the words "§ 21.7020(b)(23)", and in paragraph (b)(2) remove the numbers "(21)" where they appear and add, in their place, the numbers "(22)".

§ 21.7120 [Amended]

2. In § 21.7120, remove the words "§ 21.7020(b)(22)" in the introductory text and add, in their place, the words "§ 21.7020(b)(23)".

[FR Doc. 88–2268 Filed 2–3–88; 8:45 am]
BILLING CODE 8320–01–M

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 Federal Register (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which

would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: January 29, 1988.

By direction of the Administrator.

James E. DeWire,

Chief of Staff.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1819(f))

(1) Effective February 1, 1988, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective February 1, 1988, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective February 1, 1988, 11½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9½ per centum per annum, effective February 1, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9¾ per centum per annum, effective February 1, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective February 1, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum.

(Authority: 38 U.S.C. 1811(d) (1) and (2)(A))

* * * * *

[FR Doc. 88-2287 Filed 2-3-88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6774]

Flood Insurance, Alabama et al.; Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Washington, DC, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting live and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community name	County	Effective date
Alabama	Alabaster, city of	Shelby	Feb. 4, 1988
Do	Athens, city of	Limestone	Do.
Do	Autaugaville, town of	Autauga	Do.
Do	Bessemer, city of	Jefferson	Do.
Do	Brighton, town of	Jefferson	Do.
Do	Carbon Hill, town of	Walker	Do.
Florida	Unincorporated areas	Alachua	Do.
Do	Altamonte Springs, city of	Seminole	Do.
Do	Apalachicola, city of	Franklin	Do.
Do	Atlantis, city of	Palm Beach	Do.
Do	Belle Glade, city of	Palm Beach	Do.
Do	Bellear Bluffs, city of	Pinellas	Do.
Do	Bellear Shore, city of	Pinellas	Do.
Do	Brooksville, city of	Hernando	Do.
Do	Callaway, city of	Bay	Do.
Do	Casselberry, city of	Seminole	Do.
Do	Cedar Grove, city of	Bay	Do.
Do	Cedar Key, city of	Levy	Do.
Do	Unincorporated areas	Charlotte	Do.
Do	Unincorporated areas	Clay	Do.
Do	Clewiston, city of	Hendry	Do.
Do	Coconut Creek, city of	Broward	Do.
Georgia	Berkeley Lake, city of	Gwinett	Do.
Do	Unincorporated areas	Bryan	Do.
Do	Cave Spring, city of	Floyd	Do.
Do	Columbus, city of	Muscogee	Do.
Do	Fort Oglethorpe, city of	Catoosa	Do.
Kentucky	Catlettsburg, city of	Boyd	Do.
Do	Georgetown, city of	Scott	Do.
Do	Grayson, city of	Carter	Do.
Do	Greenup, city of	Greenup	Do.
Do	Unincorporated areas	Greenup	Do.
Do	Hazard, city of	Perry	Do.
Do	Unincorporated areas	Jefferson	Do.
Do	Jeffersontown, city of	Jefferson	Do.
Do	St. Matthews, city of	Jefferson	Do.
Do	Unincorporated areas	Woodford	Do.
Mississippi	Bay St. Louis, city of	Hancock	Do.
Do	Crenshaw, city of	Panola	Do.
Do	Florence, town of	Rankin	Do.
Do	Grenada, city of	Grenada	Do.
Do	Unincorporated areas	Grenada	Do.
Do	Gulfport, city of	Harrison	Do.
Do	Inverness, town of	Sunflower	Do.
Do	Isola, town of	Humphreys	Do.
North Carolina	Unincorporated areas	Chowan	Do.
Do	Creswell, town of	Washington	Do.
Do	Edenton, town of	Chowan	Do.

State	Community name	County	Effective date
Do	Gatesville, town of	Gates	Do
Do	Hamilton, town of	Martin	Do
Do	Kitty Hawk, town of	Dare	Do
Do	Pantego, town of	Beaufort	Do
Do	Unincorporated areas	Perquimans	Do
Do	Southern Shores, town of	Dare	Do
Do	Stonewall, town of	Pamlico	Do
Do	Unincorporated areas	Washington	Do
Do	Washington Park, town of	Beaufort	Do
South Carolina	Bowman, town of	Orangeburg	Do
Do	Branchville, town of	Orangeburg	Do
Do	Unincorporated areas	Chester	Do
Do	Columbia, city of	Richland	Do
Do	Unincorporated areas	Dorchester	Do
Do	Holly Hill, town of	Orangeburg	Do
Do	Honea Path, town of	Anderson	Do
Tennessee	Alcoa, city of	Blount	Do
Do	Unincorporated areas	Anderson	Do
Do	Arlington, town of	Shelby	Do
Do	Bartlett, town of	Shelby	Do
Do	Bristol, city of	Sullivan	Do
Do	Charleston, city of	Bradley	Do
Do	Clarkesville, town of	Montgomery	Do
Do	Collierville, town of	Shelby	Do
Do	Cowan, city of	Franklin	Do
Do	Dechard, town of	Franklin	Do
Do	East Ridge, city of	Hamilton	Do
Do	Unincorporated areas	Wilson	Do

Issued: January 28, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-2288 Filed 2-3-88; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 90

[CC Docket No. 86-495; FCC 87-387]

Common Carrier Services; Amendments to Rural Radio Service and Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission establishes basic exchange telecommunications radio service within the purview of the existing Rural Radio Service. The Commission makes frequencies available for this service from the Public Land Mobile Service and from the Private Land Mobile Service.

EFFECTIVE DATE: February 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Mobile Services Division, Common Carrier Bureau, 202/632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket 86-495, adopted December 10, 1987, and released January 19, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

On January 16, 1987, the Commission issued a Notice of Proposed Rulemaking requesting comment on the establishment of a new radio service to be known as the Basic Exchange Telecommunications Radio Service (BETRS). The NPRM was issued in response to a Petition for Rulemaking filed by the Rural Electrification Administration, the National Rural Telecom Association, the National Telephone Cooperative Association, the Organization for the Protection and Advancement of Small Telephone Companies, and the United States Telephone Association (hereinafter "Petitioners").

In the NPRM, the Commission acknowledged the Petitioners' estimate that almost 900,000 households do not have standard telephone service because the cost bringing wire or cable to their remote locations is prohibitive. The Commission found that Rural Radio Service is not adequately fulfilling its purpose because, first, the Rural Radio Service has secondary access to frequencies allocated to the Public Land Mobile Service, and second, because removal of the separate frequency allocation for PLMS wireline and non-wireline licensees could result in telephone companies losing Rural Radio Service frequencies to a radio common carrier apply for PLMS use.

Accordingly, in the NPRM, the Commission proposed three alternatives for making more frequencies available for radio loop technology to remote subscriber locations. First, the Commission proposed that the Rural Radio Service be changed from secondary to co-primary status with PLMS licensees. Second, the Commission proposed that Rural Service Area cellular licensees be permitted to use the cellular frequencies in any manner they choose to provide basic exchange telephone service to subscribers within their Cellular Geographic Service Area. Third, the Commission proposed that fifty frequency pairs in the Private Radio Service in the 800 MHz frequency band be available on a co-primary basis for BETRS.

In the Report and Order, the Commission finds that demand for BETRS is subject to widely differing estimates and therefore a discrete frequency band would not, at this time, be allocated. The Commission finds that BETRS can be accommodated by sharing frequency bands with existing services whose frequency allocations are lightly used or vacant in the rural areas where BETRS would operate.

Accordingly, BETRS is placed within the Rural Radio Service of Part 22 of the Commission's Rules, and Rural Radio Service is given co-primary access to PLMS frequencies. In addition, fifty pairs of Private Radio Service frequencies in the 800 MHz band are also made available on a co-primary basis for BETRS. Regarding the proposed expansion of cellular frequency use for fixed service, the Commission has, on October 15, 1987, released a Notice of Proposed Rulemaking (General Docket 87-390) which proposed to allow more flexible use of the cellular allocations. The Commission therefore deferred the question of fixed cellular service for consideration in that docket.

Eligibility for BETRS is limited to entities which are either a certificated local exchange carrier, or which can demonstrate authority from the state to provide BETRS, or which can show that no such authority is required by the state.

Ordering Clauses

Wherefore, for the foregoing reasons, Parts 2, 22 and 90 of the Commission's Rules are hereby amended as discussed herein and as shown in this Order;

It is further ordered that all Rural Radio Service licensees whose licenses were granted on a secondary basis are hereby upgraded to co-primary status with Public Land Mobile Service stations;

It further ordered that the rule changes made herein will become effective February 29, 1988;

It is further ordered that this procceding is terminated.

List of Subjects in 47 CFR Parts 2, 22, and 90

Communications equipment, Radio.

Amendments to the Commission's Rules

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

1a. Section 2.106 is amended by adding a reference to note "NG31" to the table section stating "806-821—LAND MOBILE" in column 5 (non-government allocation in the United States).

2. Section 2.106 is amended by adding a reference to note "NG31" to the table section stating "851-866—LAND MOBILE" in column 5 (non-government allocation in the United States).

3. Section 2.106 is amended by adding note "NG31" to read as follows:

* * * * *

NG31 Stations in the Rural Radio Service licensed for Basic Exchange Telecommunications Radio Service may be authorized to use some frequencies in the bands 816-820 MHz (fixed subscriber) and 861-865 MHz (central office or base), on a co-primary basis with private land mobile radio licensees, pursuant to Part 22 Subpart H.

* * * * *

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.2 is amended by adding the definition "Basic Exchange Telecommunications Radio Service" and revising paragraph (1) of the "Rural Radio Service" definition as follows:

§ 22.2 Definitions.

* * * * *

Basic Exchange Telecommunications Radio Service. One of the public radio services available through the Rural Radio Service. This Service provides public message communication service between a central office and subscribers located in rural areas.

* * * * *

Rural Radio Service. * * * (1) Basic Exchange Telecommunications Radio Service, which is public message communication service between a central office and subscribers located in rural areas, * * *

* * * * *

3. Section 22.601(a) is revised to read as follows:

§ 22.601 Frequencies.

(a) Licensees authorized pursuant to this section may offer fixed service only. However, nothing in this part is intended to change the requirement of § 22.501(c) for entities licensed in the Public Land Mobile Service.

(1) The frequencies in paragraph (b) of this section are available to applicants in the Rural Radio Service, including Basic Exchange Telecommunications Radio Service, on a co-primary basis with stations in the Public Land Mobile Service;

(2) The frequencies in paragraph (c) of this section are available to applicants in the rural radio service, for the provision of Basic Exchange Telecommunications Radio Service, provided the following conditions are met:

(i) Rural radio service licensees may not use these frequencies within 100 miles of the border of the top 54 SMSAs as defined in the Domestic Cellular Radio Service;

(ii) The frequencies must be used as grouped and paired;

(iii) Rural radio licensees must protect licensed systems at the time of grant;

(iv) The same frequency group may not be reassigned to a base station within 70 miles of another base station on the same channels or channels offset by 12.5 kHz;

(v) Technical parameters for the use of these frequencies are contained in Subpart S and Subpart M of Part 90 of the Commission's Rules;

(vi) Applications for the use of these frequencies should be submitted by applicant to the Common Carrier Bureau for review, from where they will be forwarded to the Private Radio Bureau for coordination and frequency availability;

(3) For the Canadian Regions and within 68.4 miles of the Mexican border, the frequencies in paragraph (c) of this section are not available.

(4) All applicants in the Basic Exchange Telecommunications Radio Service must have first acquired whatever authorization is needed to provide this service from the state in which applicant proposes to offer BETRS. If no authorization is needed in the state in which applicant proposes to offer BETRS, applicant should so indicate in its application.

* * * * *

4. Existing §§ 22.601(c) through 22.601(f) are redesignated as §§ 22.601(d) through 22.601(g), and a new § 22.601(c) is added which will read as follows:

§ 22.601 Frequencies.

* * * * *

(c) The following frequencies are available on a co-primary basis for Basic Exchange Telecommunications Radio Service:

Subscriber location	Central office
816.2375	861.2375
817.2375	862.2375
818.2375	863.2375
819.2375	864.2375

Subscriber location	Central office
820 2375	865 2375
816 2125	861 2125
817 2125	862 2125
818 2125	863 2125
819 2125	864 2125
820 2125	865 2125
816 1875	861 1875
817 1875	862 1875
818 1875	863 1875
819 1875	864 1875
820 1875	865 1875
816 1625	861 1625
817 1625	862 1625
818 1625	863 1625
819 1625	864 1625
820 1625	865 1675
816 1375	861 1375
817 1375	862 1375
818 1375	863 1375
819 1375	864 1375
820 1375	865 1375
816 1125	861 1125
817 1125	862 1125
818 1125	863 1125
819 1125	864 1125
820 1125	865 1125
816 0875	861 0875
817 0875	862 0875
818 0875	863 0875
819 0875	864 0875
820 0875	865 0875
816 0625	861 0625
817 0625	862 0625
818 0625	863 0625
819 0625	864 0625
820 0625	865 0625
816 0375	861 0375
817 0375	862 0375
818 0375	863 0375
819 0375	864 0375
820 0375	865 0375
816 0125	861 0125
817 0125	862 0125
818 0125	863 0125
819 0125	864 0125
820 0125	865 0125

• • • • •

5. Section 22.609(d) introductory text and paragraph (d)(1) are revised to read as follows:

§ 22.609 Supplementary showing required with applications for rural radio service.

• • • • • •

(d) All applications for Central Office, Inter Office and Relay Stations shall provide the following information:

(1) A showing listing all co-channel facilities required by § 22.15(b) and interference studies, pursuant to § 22.15(b)(2), demonstrating that the proposed facility will not cause harmful electrical interference to those co-channel facilities identified in § 22.15(b);

• • • • • •

Part 90 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

1a. Section 90.362 is amended by adding new paragraph (f) to read as follows:

§ 90.362 Selection and assignment of frequencies.

• • • • • •

(f) Channel numbers 401–410, 441–450, 481–490, 521–530, and 561–570 are available on a co-primary basis to stations in the Basic Exchange Telecommunications Radio Service as described in Part 22 of the Commission's Rules.

2. Section 90.621 is amended by adding new paragraph (j) to read as follows:

§ 90.621 Selection and assignment of frequencies.

• • • • • •

(j) Channel numbers 401–410, 441–450, 481–490, 521–530, and 561–570 are available on co-primary basis to station in Basic Exchange Telecommunications Radio Service as described in Part 22 of the Commission's Rules.

Federal Communication Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–2199 Filed 2–3–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 85–349, GEN Docket No. 87–107; FCC 87–396]

Carriage of Television Broadcast Stations on Cable Television Systems and Technical Standards for Input Selector Switches

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Stay of Compliance Date.

SUMMARY: Action taken herein stays the date for compliance with the requirements of § 76.66 of the Commission's rules (input selector switch and consumer education) that was adopted in MM Docket 85–349 and GEN. Docket 87–107 until further notice.

EFFECTIVE DATE: December 23, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: 1. On December 11, 1987, the United States Court of Appeals for the District of Columbia Circuit invalidated the must carry rules adopted by the Commission in MM Docket 85–349 (52 FR 45961, December 3, 1987), as incompatible with the first amendment. *Century Communications Corp.* v. *FCC*, slip op. (D.C. Cir., December 11, 1987). The court held that the Commission had not demonstrated that the new must carry rules furthered any substantial government interest so as to justify the incidental burden on first amendment interests under the test set forth in *United States* v. *O'Brien*, 391 U.S. 367 (1968).

2. There is some uncertainty in the wake of this decision as to the scope of the court's ruling. In particular, it is unclear whether the court's ruling invalidates all aspects of the Commission's order in that proceeding, that is, whether the ruling extends beyond the interim mandatory carriage obligations set forth in § 76.5 through 76.65 to include, as well, the input selector switch and consumer education requirements imposed by 47 CFR 76.66. Therefore, the Commission has today filed a motion for clarification of the *Century* decision with the United States Court of Appeals in order to resolve this matter.

3. In view of this motion, we believe it is appropriate to suspend the effectiveness of § 76.66 of the Commission's rule until the uncertainties of this decision are resolved. Therefore, we hereby stay the compliance date of § 76.66 of the Commission's rules as adopted in MM Docket No. 85–349 and GEN. Docket 87–107, pending further court and Commission action.

4. Accordingly, *it is ordered* That the date for compliance with Section 76.66 of the Commission's rules, 47 CFR § 76.66, is stayed until further notice. Authority for this action is provided in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–2201 Filed 2–3–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 80113–8013]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Chief, Fisheries Management Division, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115, telephone 206–526–6140; or Donald A. McCaughran, Executive Director, International Pacific Halibut Commission, P.O. Box 95009, University Station, Seattle, WA 98145, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. These regulations are consistent with the catch-sharing plan adopted by the Pacific Fishery Management Council and approved by the Secretary of Commerce. These regulations have been approved by the Secretary of State of the United States and by the Government of Canada. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness and to inform persons subject to the regulations of their restrictions and requirements.

The current halibut regulations (52 FR 16268; May 4, 1987) are amended as follows. The sport fishing season in IPHC Regulation Area 2A originally scheduled to open February 1, 1988, will remain closed until further notice. For members of United States treaty Indian tribes, the subsistence and ceremonial fishing season in IPHC Regulatory Subarea 2A–1 originally scheduled to open April 1, 1988, will open February 1, 1988, with a special provision prohibiting the use of setline gear east of the Bonilla-Tatoosh Line from February 1 through March 31, 1988. Additional regulations to govern the 1988 halibut fisheries will be announced following the January 25–28, 1988, annual meeting of the IPHC in Sitka, Alaska.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations. These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: February 1, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

2. In § 301.18, paragraph (b) is revised to read as follows:

§ 301.18 Sport fishing for halibut.

• • • • • •

(b) Sport fishing for halibut in all waters off the coasts of California, Oregon, and Washington is prohibited until further notice.

• • • • • •

3. In § 301.20, paragraph (f)(2) is revised to read as follows:

§ 301.20 United States treaty Indian tribes.

• • • • • •

(f) • • •

(2) For members of the U.S. treaty Indian tribes, a subsistence and ceremonial fishing season in Subarea 2A–1 will commence on February 1, and terminate on December 31. From February 1 through February 28, 1988, and from November 1 through December 31, 1988, treaty Indians may take and retain, but not sell, up to two halibut per day caught on hook-and-line gear. From February 1 through March 31, 1988, the use of setline gear is prohibited east of the Bonilla-Tatoosh Line (defined as a line projected from the most westerly point on Cape Flattery to the Tatoosh Island light, then to Bonilla Point on Vancouver Island).

• • • • • •

[FR Doc. 88–2361 Filed 2–1–88; 4:52 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 23
Thursday, February 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket D-8908]

Prohibited Trade Practices; Encyclopaedia Britannica, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: Encyclopaedia Britannica, a corporate respondent in the order in Docket No. D-8908, is prohibited from making misrepresentations while recruiting sales representatives, promoting merchandise or services, or attempting to collect debts, and filed a petition on April 2, 1987 requesting that the Commission reopen the proceeding and either set aside the order, now or at a fixed future date, or modify the order. A supplemental request to reopen the proceeding was filed on September 22, 1987. A second supplemental request to reopen the proceeding has been filed on January 22, 1988. This document announces the public comment period on the supplemental petition.

DATE: The deadline for filing comments on this matter is February 28, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION: The order in Docket No. D-8908 was published at 41 FR 17884 on April 29, 1976. A correction to the order was published at 41 FR 19301 on May 12, 1976. The original request to reopen the proceeding was published at 52 FR 12430 on April 16, 1987. The petitioner, Encyclopaedia Britannica, sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitation. The order modification request is based on claimed changes of fact and law. A supplemental petition was placed on the public record on September 22, 1987. A second supplemental petition was placed on the public record on January 22, 1988.

List of Subjects in 16 CFR Part 13

Encyclopedia sales, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-2276 Filed 2-3-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 653]

Santa Clara Valley Viticultural Area; CA

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located in West Central California, immediately south of San Francisco Bay. The petition was submitted by two winery owners located within the boundary of the proposed viticultural area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by March 7, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044-0385 (Notice No. 653). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7627.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, AFT published Treasury Decision AFT-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, AFT published Treasury Decision AFT-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region which has been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area in Santa Clara, San Benito, San Mateo and Alameda Counties that extends from lower San Francisco Bay from the cities of San Jose, Santa Clara, Menlo Park, Mountain View and Fremont on the north to Gilroy and Morgan Hill on the southern end. Most of the proposed area is in Santa Clara County. The area is approximately 550 square miles or 352,000 acres.

There are 40 bonded wineries in the proposed viticultural area with approximately 1,500 acres of grapes. The proposed viticultural area is to be known as Santa Clara Valley. The petition was submitted by Mr. Eugene Guglielmo of Guglielmo Winery and Mr. Ernest Fortino of Fortino Winery. The Santa Clara Valley is in effect a southern extension of the depression partly filled by San Francisco Bay. It is protected from the Pacific Ocean by the Santa Cruz Mountains and separated from the San Joaquin Valley by the Diablo Range on the east.

Evidence of Name

In the 1770's, Spanish adventurers and ranchers impressed by the richness of the soil and mild climate, explored and settled in the area. In 1777, Franciscan friars chose the valley as the site of Mission Santa Clara and Mission San Jose and soon after their founding, planted grapes. The Cities of Santa Clara and San Jose were named after those early missions. In 1850 Santa Clara County became one of the twenty-seven original California counties. The name Santa Clara Valley became popularized during the early 1850's. The term "Santa Clara Valley" has been used in local books written from 1871 to present. The petitioner claims that the area has a proud and noble history as a grape-growing area. As stated by Mr. Leon Adams in his book, *The Wines of America*, "Santa Clara is the oldest of the northern California wine districts." The tourist pamphlet *San Jose—Santa Clara County, California (with full information on the Santa Clara Valley)* published by the San Jose Chamber of Commerce (circa 1905) described the Santa Clara Valley. It said that it is approximately 50 miles long (north to south) and approximately 25 miles wide (at the north end).

According to the petitioner the best evidence of the area's identification as the Santa Clara Valley is indicated on the U.S.G.S. maps that depict and name the entire valley area from a topographic viewpoint.

Historical or Current Evidence that the Boundaries of the Proposed Viticultural Area are Correct

The petitioner submitted 26 U.S.G.S. maps with the boundaries of the proposed viticultural area appropriately marked so that they include all vineyards and bonded wineries in the proposed area. A few small mountain vineyards exist north and west of San Jose, but the bulk of the valley's northernmost grape growing has faded under urban development and the adverse effects of smog.

Most of the remaining wineries (many operated by one or two persons) are found where the valley narrows south of San Jose in the Morgan Hill, Gilroy and Hecker Pass areas.

In 1982, the Santa Cruz Mountains viticultural area was approved by ATF (T.D. ATF-98, 46 FR 59240). This grape-growing area is located immediately to the west of the proposed Santa Clara Valley viticultural area. A portion of the western boundary of the proposed Santa Clara Valley viticultural area is shared with the eastern boundary of the Santa Cruz Mountains viticultural area.

Evidence Relating to the Geographic Features such as Climate, Soil, Elevation, Physical Features, etc. which set the proposed Santa Clara Valley Viticultural Area apart from the Surrounding Areas.

(a) Climate

All references to the Santa Clara Valley in early publications made mention of the rich fertile soil of the valley floor which was protected from the colder ocean conditions by the nearby Santa Cruz Mountains located to the west and from the much hotter interior temperatures of the San Joaquin Valley with the Diablo Range to the east.

According to the petitioner, the climate of the Santa Clara Valley is moderate, with warm, dry summers, mild wet winters, and prevailing northwest winds. Summer temperatures can rise above 100 degrees F. at times.

The annual average temperature is 58 to 60 degrees F. The growing season between killing frosts is fairly long, ranging from 250 to 300 days. The area falls into climate region II (cool) with a heat summation of 2,700 degree days. Heavy frosts do not occur in the proposed viticultural area, although temperatures often get below freezing in winter. Most of the days are sunny, although in summer a high fog often hangs over the valley in the morning hours.

The nearby Santa Cruz Mountains (to the west of the proposed viticultural area) fall into climate Region I (very cool), having 2,500 or fewer degree days. The Santa Cruz Mountains take in most of the western boundary of the proposed area.

The Santa Cruz Mountains are characterized by a climate which is greatly influenced in the western portion by the Pacific Ocean breezes and fog movements, and in the eastern portion by the moderating influences of the San Francisco Bay. The Santa Cruz Mountains are characterized by a growing season in excess of 300 days. This is apparently due to cool air coming down the mountains forcing warmer air upward, thereby lengthening the season in which the necessary conditions for grape-growing are present. Temperatures in the slopes of the hillsides where most of the vineyards are located appear to vary from that at the lower elevations of the vineyards in the Santa Clara Valley. This is caused by the marine influence coming off the Pacific Ocean which cools the Santa Cruz Mountains at night, much more so than the more inland Santa Clara Valley floor.

The rich San Jaoquin Valley located on the east side of the Diablo Range is in Region V (very warm climate). The Livermore Valley (an American viticultural area) located 15 miles northeast of the proposed area is mostly in Region III (moderately cool climate).

(b) Rainfall and Winds

The average rainfall is between 16 to 20 inches in the Santa Clara Valley. The rainy season, when 80% of the rain falls, extends from November through March. Annual precipitation to the west averages over 28 inches annually at coastal Santa Cruz and over 56 inches annually at Ben Lomond in the elevated areas of the Santa Cruz Mountains. In the Diablo Range, to the east, precipitation is as much as 30 inches annually. Rainfall in the mountainous portions increases rapidly with elevation, although much less so in the Diablo Range than in the Santa Cruz Mountains. There is a greater amount of rainfall in the Santa Cruz Mountains because they are located close to the Pacific Ocean. Rainfall in the Livermore Valley (to the northeast) averages only 14 inches annually.

During the summer, the cool temperature and the prevailing, moderate to strong, west and northwest offshore winds move into the San Francisco Bay area at low elevations, thus, the effect of the marine air is felt in

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the Santa Clara Valley mainly late in the afternoon and the evenings.

Precipitation distribution occurs during storms that bring in southwesterly winds. The winds come from that direction because of the close proximity to the Pacific Ocean and the Santa Cruz Mountains lie at right angles to the direction of the wind flow.

Surface winds enter the south part of the Santa Clara Valley via the Coyete Narrows and pass through Pajaro Gap. Prevailing wind direction is from the north over most of the south part of the valley, with winds blowing mostly from the south just below Gilroy, due to the Pajaro Gap. In the vicinity of Gilroy, however, winds are variable, because the currents from north and south meet there. Winter winds associated with the low pressure cyclonic storms which visit the region are more changeable in direction and velocity. Wind speeds are greatest during summer, when they average ten miles per hour.

(c) Soils

The soil associations present in the Santa Clara Valley are areas dominated by very deep, well drained to poorly drained soils on alluvial plains, fans, stream benches and terraces. The soils in the Santa Cruz Mountains are Franciscan shale which is unique to this particular area south of San Francisco. The soil of the Santa Cruz Mountains is basically residual material from the decomposition of bedrock and the soil types in the area differ depending on the type of underlying bedrock. Generally, these residual soils tend to be thin and stony, and somewhat excessively drained. They are also characterized as impoverished, making it extremely difficult to grow grapes. This contrasts with the soil of the Santa Clara Valley, which is primarily alluvium and is more fertile. The soils of the Livermore Valley also differ from those of Santa Clara Valley because they are very gravelly as opposed to the rich Santa Clara Valley soils.

(d) Physiography and Geology

The Santa Clara Valley ranges in elevation from 100 to 800 feet above sea level as compared with the Santa Cruz Mountains and Diablo Range which surround the valley on the west and east side, respectively. The Santa Cruz Mountains elevation is approximately, 1,000 feet above sea level to 3,500 feet above sea level. The Diablo Range elevation averages approximately 1,000 feet above sea level to 3,500 feet above sea level.

Just like the Santa Clara Valley, the Livermore Valley viticultural area is one of the coastal intermountain valleys that surround the San Francisco Bay depression. The Livermore Valley has three main streams which are formed by the watershed runoff from three surrounding ridges.

Drainage in the Livermore Valley flows west to Alameda Creek which empties into San Francisco Bay.

The Santa Cruz Mountains are geologically different than the Santa Clara Valley because this mountain area is composed of formations of grantee, marble, sandstone, lava, quartzite and schist.

The Santa Clara Valley floor consists chiefly of a number of confluent alluvial fans and flood plains formed by deposits from the numerous streams that enter the valley from both mountain systems. An inperceptible alluvial divide at Morgan Hill separates the drainage of the valley into a north-flowing system and a south-flowing system. The former drains into San Francisco Bay at the north end of Santa Clara County, and the latter leads to the Pajaro River south of Gilroy and eventually flows into Monterey Bay.

The oldest rocks found within eastern Santa Clara Valley are the Franciscan-Knoxville Group of Upper Jurassic age. These rocks form the largest single geologic unit in the area.

Along the margins of the Santa Clara Valley, Pliocene strata are exposed and the valley floor itself is composed of an accumulation of Quaternary clay, sand, and gravel. The structure of the area is complex. It is controlled by faulting. Faults are zones of weakness that are rapidly attacked by water and other agents of erosion. The famous San Andreas Fault, together with one of its prominent branches, the Sargent Fault, subparallels the western boundary of Santa Clara County and separates Miocene strata from Upper Jurassic rocks. San Francisco Bay and Santa Clara Valley outline a trough that is a downdropped fault block.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Santa Clara Valley" viticultural area. However, comments concerning other possible boundaries or names for this proposed vitcultural area will be given full consideration.

ATF is particularly interested in receiving comments on the northern boundary of the proposed viticultural area particularly in the Menlo Park/Redwood City/Woodside areas on the northwest and in the Fremont/Newark areas on the northeast. ATF would also like to receive comments on the southern boundary in the Hecker Pass/Pacheco Pass areas. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Paragraph 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.126 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * * *

9.126 Santa Clara Valley.

Paragraph 3. Subpart C is amended by adding § 9.126 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.126 Santa Clara Valley.

(a) *Name.* The name of the viticultural area described in this section is "Santa Clara Valley."

(b) *Aproved Maps.* The appropriate maps for determining the boundaries of the "Santa Clara Valley" viticultural area are 26 U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Calaveras Reservoir, Calif., 1961, (photorevised 1980);

(2) Castle Rock Ridge, Calif., 1955 (photorevised 1968), photoinspected 1973;

(3) Chittenden, Calif., 1955 (photorevised 1980);

(4) Cupertino, Calif., 1961 (photorevised 1980);

(5) Gilroy, Calif., 1955 (photorevised 1981);

(6) Gilroy Hot Springs, Calif., 1955 (photorevised 1971), photoinspected 1973;

(7) Lick Observatory, Calif., 1955 (photorevised 1968), photoinspected 1973;

(8) Loma Prieta, Calif., 1955 (photorevised 1968);

(9) Los Gatos, Calif., 1953 (photorevised 1980);

(10) Milpitas, Calif., 1961 (photorevised 1980);

(11) Mindego Hill, Calif., 1961 (photorevised 1980);

(12) Morgan Hill, Calif., 1955 (photorevised 1980);

(13) Mt. Madonna, Calif., 1955 (photorevised 1980);

(14) Mt. Sizer, Calif., 1955 (photorevised 1971), photoinspected 1978;

(15) Mountain View, Calif., 1961 (photorevised 1981);

(16) Newark, Calif., 1959 (photorevised 1980);

(17) Niles, Calif., 1961 (photorevised 1980);

(18) Pacheco Peak, Calif., 1955 (photorevised 1971);

(19) Palo Alto, Calif., 1961 (photorevised 1968 and 1973);

(20) San Felipe, Calif., 1955 (photorevised 1971);

(21) San Jose East, Calif., 1961 (photorevised 1980);

(22) San Jose West, Calif., 1961 (photorevised 1980);

(23) Santa Teresa Hills, Calif., 1953 (photorevised 1980);

(24) Three Sisters, Calif., 1954 (photorevised 1971), photoinspected 1978;

(25) Watsonville East, Calif., 1955 (photorevised 1980);

(26) Woodside, Calif., 1961 (photorevised 1968 and 1973).

(c) The boundaries of the proposed Santa Clara Valley viticultural area are as follows:

(1) The beginning point is at the junction of Elephant Head Creek and Pacheco Creek (approx. .75 mile southwest of the Pacheco Ranger Station) on the Pacheco Peak, Calif. U.S.G.S. map.

(2) From the beginning point the boundary moves in a northerly direction up Elephant Head Creek approx. 1.2 miles until it intersects the 600 foot contour line;

(3) Then it meanders in a northwesterly direction along the 600 foot contour line approx. 55 miles until it intersects Vargas Road in the northwest portion of Sec. 25, T4S/R1W on the Niles, Calif. U.S.G.S. map;

(4) Then it travels in a northwesterly direction approx. .6 mile to the intersection of Morrison Canyon Road in the eastern portion of Sec. 23, T4S/R1W;

(5) Then it follows Morrison Canyon Road west approx. 1.5 miles to Mission Boulevard (Highway 238) at Sec. 22, T4S/R1W;

(6) Then it moves northwest on Mission Boulevard (Highway 238) approx. .6 mile to the intersection of Mowry Avenue just past the Sanatorium at Sec. 22, T4S/R1W;

(7) It then goes in a southwesterly direction on Mowry Avenue approx. 3.6 miles to the intersection of Nimitz Freeway (Highway 880) (depicted on the map as Route 17) at Sec. 5, T5S/R1W, on the Newark, Calif. U.S.G.S. map;

(8) It then moves along the Nimitz Freeway (Highway 880) in a southeasterly direction for approx. 9 miles to the intersection of Calaveras Boulevard (Highway 237) at Milpitas on the Milpitas, Calif. U.S.G.S. map;

(9) Then it follows Highway 237 in a westerly direction approx. 7.2 miles to the intersection of Bay Shore Freeway (Highway 101) at Moffett Field on the Mt. View, Calif. U.S.G.S. map;

(10) Then in a northwest direction follow Bay Shore Freeway (Highway 101) for approx. 12 miles to the intersection of Woodside Road (Highway 84) at Redwood City on the Palo Alto, Calif. U.S.G.S. map;

(11) Then it heads southwest on Woodside Road (Highway 84) approx. 5 miles to the intersection of Mountain Home Road at Woodside on the Woodside, Calif. U.S.G.S. map;

(12) It travels along Mountain Home Road in a southerly direction approx. 2.2 miles to where it intersects Portola Road on the Palo Alto, Calif. U.S.G.S. map approx. .1 mile northwest of Searsville Historical Marker;

(13) It then moves along Portola Road in a west to north direction approx. .6 mile until it intersects La Honda Road (Highway 84) on the Woodside, Calif. U.S.G.S. map;

(14) It then goes south on La Honda Road (Highway 84) approx. .5 mile until it meets the 600 foot elevation contour line;

(15) It moves along the 600 foot elevation contour line in a southeasterly direction approx. 14 miles to Regnart Road at Regnart Creek on the Cupertino, Calif. U.S.G.S. map;

(16) It goes northeast along Regnart Road, approx. .7 mile to the 400 foot elevation contour line (.3 mile southwest of Regnart School);

(17) It travels along the 400 foot elevation contour line southeast approx. 1.4 miles to the north section line of Section 36, T7S/R2W at Blue Hills, CA;

(18) The boundary goes east on the section line approx. .4 mile to Saratoga Sunnyvale Road (Highway 85);

(19) It travels south on Saratoga Sunnyvale Road (Highway 85) approx. 1 mile to the south section line of Section 36, T7/8S R2W;

(20) Then it goes west on the section line approx. .75 mile to the first intersection of the 600 foot elevation contour line;

(21) It follows the 600 foot elevation contour line southeast approx. .75 mile to Pierce Road south of Calabazas Creek;

(22) It then travels south on Pierce Road approx. .4 mile to the first intersection of the 800 foot elevation contour line;

(23) Then it runs southeast approx. 28 miles on the 800 foot elevation contour line to the east section line of Sec. 25, T10S/R2E/R3E approx. .5 mile north of Little Arthur Creek on the Mt. Madonna, Calif. U.S.G.S. map;

(24) Then it goes south on the section line approx. .5 mile to the 800 foot elevation contour line approx. .2 mile south of Little Arthur Creek;

(25) Then it goes southeast along the 800 foot elevation contour line approx. 2.7 miles to Hecker Pass Road (Highway 152) approx. 1.25 miles east of Hecker Pass on the Watsonville East, Calif. U.S.G.S. map;

(26) The boundary goes northeast on Hecker Pass Road (Highway 152) approx. .75 mile to the intersection of the 600 foot elevation contour line just west of Bodfish Creek;

(27) It travels southeast along the 600 foot elevation contour line approx. 7.3 miles to the first intersection of the western section line of Sec. 30, T11S/R3E/R4E on the Chittenden, Calif. U.S.G.S. map;

(28) Then it follows south along the section line approx. 1.9 miles to the south township line at Sec. 31, T11S/T12S, R3E/R4E;

(29) It moves in an easterly direction along the township line approx. 12.4 miles to the intersection of T11S/T12S and R5E/R6E on the Three Sisters, Calif. U.S.G.S. map;

(30) Then it goes north along R5E/R6E range line approx. 5.3 miles to Pacheco Creek on the Pacheco Creek, Calif. U.S.G.S. map;

(31) Then it moves northeast along Pacheco Creek approx. .5 mile to Elephant Head Creek at the point of beginning.

Approved: January 27, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88-2287 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 169 and 171

[DoD Directive 4100.15]

Commercial Activities Program

AGENCY: Office of the Secretary, DoD.

ACTION: Supplemental notice of proposed rule.

SUMMARY: This rule proposes to reissue Part 169 to incorporate substantive changes required by Pub. L. 100-180, "National Defense Authorizaiton Act for Fiscal Years 1988 and 1989" December 4, 1987, section 111 and Executive Order 12615, "Performance of Commercial Activities," November 19, 1987. This part proposes to prescribe DoD policy for establishment and operation of DoD commercial activities. It also withdraws proposed Part 171.

DATE: Comments must be received on or before March 4, 1988.

ADDRESS: Office of the Assistant Secretary of Defense (Production & Logistics), Installation Services Directorate, The Pentagon, Room 3E787, Washington, DC. 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Hansen, Telephone 202-325-0537.

SUPPLEMENTARY INFORMATION: Part 169 was published in the **Federal Register** on March 18, 1980 (45 FR 17138) and reissued on September 16, 1985 (50 FR 37527) prescribing the policy for the establishment of DoD commercial activities. Comments will be available for public inspection by request. Because of the short time requirements placed on DoD to publish this part, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to the comments in the preamble of the final rule.

DoD has determined that the proposed rule (32 CFR Part 171) that was published in the **Federal Register** on December 3, 1986 (51 FR 43620) is withdrawn. Current Parts 169 and 169a remain in effect until revised.

List of Subjects in 32 CFR Part 169

Armed Forces, Government procurement.

It is proposed to revise Part 169 to read as follows:

PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec

169.1 Reissuance and purposes.
169.2 Applicability and scope.
169.3 Definitions.
169.4 Policy.
169.5 Responsibilities.

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

§ 169.1 Reissuance and purpose.

This part:

(a) Reissues 32 CFR Part 169.

(b) Updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by E.O. 12615 and OMB Circular A-76 (revised).

§ 169.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for CAs when they are staffed partially with civilian personnel paid by or reinbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities.

(d) Does not:

(1) Apply to governmental functions as defined in § 169.3

(2) Apply when contrary to law, executive orders, or any treaty or international agreement.

(3) Apply in times of a declared war or military mobilization.

(4) Provide authority to enter into contracts.

(5) Apply to the conduct of research and development, except for severable in-house CAs in support of research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33.[1]

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

Federal Acquisition Regulation (FAR) 37.104

§ 169.3 Definitions.

Commercial Activity Review. The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

Commercial Source. A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to Contract. The changeover of a CA from performance by DoD personnel to performance under contract by a commercial source.

Conversion to In-House. The changeover of a CA from performance under contract to performance by DoD personnel.

Core Logistics. The government facilities, equipment, and personnel involved directly in the management and performance of depot maintenance of mission-essential material at depot maintenance activities.

Cost Comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in DoD Instruction 4100.33 to the cost of performance by contract.

Direct Conversion. Conversion to contract performance of an in-house commercial activity based on a simplified cost comparison on the direct conversion of an in-house commercial activity performed exclusively by military personnel.

Directly Affected Parties. DoD employees and their exclusively recognized labor organizations and bidders or offerers on the solicitation.

Displaced DoD Employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, or grade reduction). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

DoD Commercial Activity (CA). An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA may be the mission of an organization or a function within the organization. It must be type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of DoD Instruction 4100.33. A DoD CA falls into one of two categories:

(a) *Contract CA.* A DoD CA managed by A DoD Component but operated with contractor personnel.

(b) *In-House CA.* A DoD CA operated by a DoD Component with DoD personnel.

DoD Employee. Civilian personnel of the Department of Defense.

DoD Governmental Function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgement in making the decision for the Department of Defense. Services or products in support of Governmental functions such as those listed in enclosure 3 of DoD Instruction 4100.33 are normally subject to this part and its implementing instructions. Governmental functions normally fall into two categories:

(a) *Act of Governing.* The discretionary exercise of Governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; management of natural resources on Federal Property; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) *Monetary Transactions and Entitlements.* Tax collection and revenue disbursements; control of the money supply treasury accounts; and the administration of public trusts.

DoD Personnel. Military and civilian personnel of the Department of Defense.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

Installation. An installation includes the land, buildings, structures, and utilities constructed or acquired for the operation and support of the mission of a post, camp, station, hospital, depot, base, arsenal, detachment, office, etc. Activities that are located within the confines of another installation and occupying portions of land, buildings, and structures of the main installation are considered to be tenants.

Installation Commander. The commanding officer or head of an installation or a tenant activity, who has budget and supervisory control over resources and personnel.

Military Installation. See installation.

Mission-Essential Materiel. All materiel which is authorized and available to Combat Support, Combat Service Support, and Combat readiness training forces to accomplish their assigned mission.

New Requirement. A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential Procurement Programs. Mandatory source programs such as Federal Prison Industries (FPI) and the Javits-Wagner-O'Day Act administered by the Committee for Purchase from the Blind and Other Severely Handicapped. Small, minority, and disadvantaged businesses; and labor surplus area set-asides and awards made under section 8(a) of the Small Business Act and Pub. L. 95-507 are included under preferential procurement programs.

§ 169.4 Policy.

It is DoD policy to:

(a) *Ensure DoD mission accomplishment.* DoD Components shall consider the overall mission of the Department of Defense and the defense objective of maintaining readiness and sustainability to ensure a capability to mobilize the defense and support structure when implementing this part.

(b) *Encourage competition.* Encourage competition with the objective of securing ever increasing quality products and services at an acceptable price. High quality products and services are a good investment because they engender pride in the people who use them thereby greatly enhancing their performance. Consider quality history in the source selection process and reward high quality performance.

(c) *Retain Governmental functions in-house.* Certain functions inherently are Governmental in nature, being so

intimately related to the public interest as to mandate performance only by DoD personnel. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(d) *Rely on the commercial sector.* DoD Components shall rely on commercially available sources to provide commercial products and services. Except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care, DoD Components will not start, expand, or carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(e) *Achieve economy and enhance productivity.* Whenever performance by a commercial source of a DoD in-house CA is permissible, in accordance with this part and its implementing instructions, a comparison of the cost of contracting and the cost of in-house performance normally shall be performed to determine who will do the work. The restriction of a solicitation to a preferential procurement program does not negate this requirement.

(f) *Delegate broad decision authority and responsibility.* DoD Components shall delegate broad decision authority and responsibility to lower organization levels giving more authority to the doers, linking responsibility with that authority. This will facilitate the work that Installation commanders must perform without limiting their freedom to do their jobs. Whenever possible, the Installation Commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of our support organizations in DoD Directive 4001.1 [2]

(g) *Share resources saved.* Where possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations and working and living conditions on the installation.

(h) *Provide placement assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169.5 Responsibilities.

(a) *The Assistant Secretary of Defense (Production and Logistics),* or his designee, shall:

(1) Formulate and develop policy consistent with this part for the DoD CA program.

(2) Issue instructions to implement the policies of this part.

(3) Maintain an inventory of in-house DoD CAs and the Commercial Activities Management Information System (CAMIS).

(4) Establish criteria for determining whether a CA is required to be retained in-house for reasons of National Defense.

(5) Approve or disapprove Core Logistics waiver requests in DoD Instruction 4100.33.

(b) *The Assistant Secretary of Defense (Comptroller)* shall provide inflation factors/price indices and policy guidance to the DoD Components on procedures and systems for obtaining cost data for use in preparing the in-house cost estimate.

(c) *The Heads of DoD Components* shall:

(1) Implement this Directive and DoD Instruction 4100.33.

(2) Designate an official at the Assistant Secretary or equivalent level to implement this part.

(3) Establish an office to serve as a central point of contact for implementing this part.

(4) Encourage and facilitate CA competitions.

(5) Delegate, as much as practicable, broad authority to installation commanders to decide how best to use the CA Program to accomplish the mission. At a minimum, as prescribed by Pub. L. 100-180, Section 1111, Installation Commanders shall have the authority and responsibility to carry out the following:

(i) Prepare an inventory each fiscal year of commercial activities carried out by government personnel on the military installation in accordance with DoDI 4100.33.

(ii) Decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A-76, and DoDI 4100.33. This authority shall not be applied retroactively. Cost comparisons and direct conversions already underway as of February 4, 1988, shall be continued.

(iii) Conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the circular A-76 process.

(iv) To the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

(6) Develop specific National Defense guidance consistent with the DoD Instruction 4100.33.

(7) Establish administrative appeal procedures consistent with the DoD Instruction 4100.33.

(8) Ensure that contracts resulting from cost comparisons conducted under this part are solicited and awarded in accordance with the Federal Acquisition Regulation (FAR) and DoD FAR (DFAR) Supplement.

(9) Ensure that all notification and reporting requirements established in DoD Instruction 4100.33 are satisfied.

(10) Ensure that the Office of Federal Procurement Policy (OFPP) Policy Letter No. 78-3 is considered in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.

(11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.

(12) Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include as appropriate:

(i) Providing priority placement assistance for other Federal jobs.

(ii) Training and relocation when these will contribute directly to placement.

(iii) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.

(13) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(14) Ensure that the Joint Committee on Printing (JCP) is notified at least 30 days before commencing a cost comparison of a field printing operation. These JCP notifications shall be coordinated with the appropriate legal counsel.

Dated: January 29, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-2248 Filed 2-3-88; 8:45 am]

BILLING CODE 3810-01-M

[2] See footnote 1 to § 169.2(d)(5)

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 87-087]

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend the regatta and marine parade regulations to increase, to 90 days, the lead time requirement for submitting regatta permit applications. The present 30 day minimum requirement for submitting applications is inadequate for the Coast Guard to verify information provided by the event sponsor, review potential impacts on navigation and on the environment, coordinate with affected interests and other agencies, and prepare and publish required notices and special local regulations concerning the event. This rulemaking will allow the Coast Guard adequate time to review regatta permit applications, conduct appropriate coordination and provide necessary notice relating to regattas and marine events.

DATES: Comments must be received on or before April 4, 1988.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), [CGD 87-087], U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for examination and copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, 202-267-0979.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data or arguments on these proposed rules. Persons submitting comments should include their names and addresses, identify this Notice (CGD 87-087) and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope. The proposal may be changed in light of comments received. All comments received by the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing has been scheduled, but one may be held at a time and place to be set in later notice in the **Federal Register**, if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

Drafting Information

The principal persons involved in drafting this proposed rule are Mr. Carlton Perry, Project Manager and Mrs. Christena Green, Project Attorney.

Discussion of the Proposed Amendment

Section 100.15 of Title 33 Code of Federal Regulations prescribes the requirements concerning regatta and marine parade applications, including a 30 day lead time for submitting the application (§ 100.15(c)). When deemed necessary, the Coast Guard issues special local regulations to insure safety of life on navigable waters before, during and after an approved marine event. Such regulations may include restricted or other controlled movement of navigation through the event area. Prior to issuing special local regulations, the Coast Guard must give the public full and adequate notice of the event dates and any needed regulations.

All Coast Guard actions on permit applications must comply with the procedures and intent of the National Environmental Policy Act of 1969. Regattas do not normally have a significant impact on the quality of the human environment and these permit actions are considered to be categorically excluded from further environmental documentation. However, further environmental documentation may be required when a normally categorically excluded action is likely to involve significant cumulative impacts on the environment, substantial controversy because of effect on the human environment, or impacts which are more than minimal on properties protected under section 4(f) of the Department of Transportation Act, etc.

The Coast Guard examines permit applications for potential impacts on navigation through the event area and for extraordinary circumstances which may require additional environmental review and preparation of an environmental assessment. The Coast Guard may need to contact Federal, State or local agency offices to determine if there are conflicting activities scheduled in the area, or if any threatened or endangered species exist in the event area.

Permit applications requiring additional navigational or environmental review and documentation require more time to process. Therefore, the Coast Guard is proposing to require that applications be submitted 90 days prior to the intended event.

The National Boating Safety Advisory Council (NBSAC) has been consulted and their opinions and advice have been considered in the formulation of this proposed rule. The transcripts of NBSAC meetings at which this proposed rule was discussed are available for examination in Room 4306, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

Regulatory Evaluation

This proposed rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This amendment is being proposed to make an adjustment to the time requirements for submitting applications and does not reflect interpretations of statutory language. The Coast Guard must consider the impact of these events on safety of navigation through the event area and on the environment under agency rulemaking and NEPA implementing procedures. The effect of the proposed amendment is to improve consideration of navigational and environmental impacts of these marine events by identifying early in the planning process whether any navigational conditions or environmental areas exist in the vicinity of the planned event which would be adversely affected by the event and increasing the time period available for verifying information, allowing adequate public notice and input, and minimizing the impacts. For these reasons, the economic impact of the proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of the proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations to read as follows:

PART 100–[AMENDED]

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.15 is amended by revising paragraph (c) to read as follows:

§ 100.15 Submission of application.

* * * * *

(c) The application shall be submitted no less than 90 days prior to the start of the proposed event.

* * * * *

Dated: January 29, 1988.

M. E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 88–2319 Filed 2–3–88; 8:45 am]

BILLING CODE 4910-14-M

Office of the Secretary

48 CFR Part 1246

[OST Docket No. 45415, Notice No. 88–1]

Use of Warranties in Major System Acquisitions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the Department of Transportation (DOT) Acquisition Regulation (TAR) to include Policy and Procedures for use of warranties in major system acquisitions of the United States Coast Guard (USCG) and to provide additional guidance for use of warranties in all other DOT contracts. The establishment of policy and procedures for use of warranties in major system acquisitions by the Coast Guard is required by the Department of Transportation Appropriation Act of 1988, (Pub. L. 99–190) (10 U.S.C. 2304 note), and would serve as additional guidance with respect to major system acquisitions, for all other DOT operating administrations.

DATES: Comments must be received on or before March 21, 1988.

ADDRESS: Interested persons are invited to submit comments to the Docket Clerk, OST Docket No. 45415, Office of General Counsel, C–55, Room 4107, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments are available for public examination at that address Monday through Friday, except legal holidays, from 9:00 am to 5:00 pm e.s.t. Persons wishing to have receipt of their comments acknowledged must send a stamped, self addressed post card with their comments.

FOR FURTHER INFORMATION CONTACT: Roger Martino, Chief, Procurement Management Division, (M–62), Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–4271. (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The Federal Acquisition Regulation (FAR) (48 CFR 46.705), as implemented by the Transportation Acquisition Regulation (TAR) (48 CFR Part 1246), permits the optional use of warranties when the initiator of a Procurement Request recommends inclusion of a warranty provision in a contract and the contracting officer makes a determination that inclusion is appropriate.

By the Department of Transportation Appropriation Act of 1988, (10 U.S.C. 2304 note), Congress directed the Secretary of Transportation to issue regulations requiring inclusion of written warranties in all contracts with prime contractors for major system acquisitions of the Coast Guard. The legislation requires that the Coast Guard obtain contractual rights to protect itself from defective or nonconforming major systems when the defect or nonconformance occurs or becomes apparent after acceptance of the system. The intent is to prevent excessive payments for replenishment (spare) parts under the major systems contract(s) follow-on contracts and to permit recovery of unjustified payments to contractors.

Prior to this legislation, the Coast Guard and other DOT operating administrations used warranties in major systems acquisitions on a case-by-case basis, as permitted by FAR Subpart 46.7. Congress determined that this requirement should apply to the Coast Guard to prevent the problem of excessive payments for spare parts for major systems which has recently been identified at the Department of Defense.

This notice proposes to amend the TAR Subpart 1246.7 to require the Coast Guard to ensure that each major system contract for production of a major system, as defined in DOT Order 4200.14B, Major Systems Acquisition Review and Approval, contains three specific warranties: one covering design and manufacturing requirements; one covering defects in materials and workmanship; and one covering essential performance requirements contained in the contract. These warranties also shall be included in follow-on contracts for replenishment parts for major systems.

The proposal also would provide procedures for tailoring the required warranties to the circumstances of a particular procurement, as well as a mechanism for obtaining waivers from the new requirements when properly justified, approved, and reported to Congress.

Adherence to the proposed policy and procedures for use of warranties in major system acquisitions would be mandatory for the U.S. Coast Guard and would serve as guidance in the acquisition of major systems for all other DOT operating administrations. The proposed procedures are similar to the requirements on use of warranties in major system acquisitions contained in the Department of Defense's FAR supplement, 48 CFR Subpart 1246.7. The proposed rule also would provide additional mandatory requirements that apply when a warranty is included in any DOT contract. These proposed requirements include warranty planning, treatment of warranty acquisition cost, contracting officer determinations for use, and warranty terms and conditions.

When warranties are used, each operating administration would have to ensure that all maintenance and support personnel who operate, repair, or control the inventory of major systems, are fully aware of the warranties; assure that warranty provisions of the contract are enforced; and determine responsibility for correcting defects on a case-by-case basis when warranted equipment is used jointly with unwarranted equipment. To enable the Department to ensure that these regulations are implemented and that compliance is consistent and cost effective, the proposal would require each operating administration within the Department to establish procedures for providing, collecting, and maintaining warranty data and to submit an annual report on warranty costs and enforcement during each fiscal year.

We anticipate that the regulation will benefit the Department by providing more protection from defects in commercially available items and from non-compliance with specific Government specifications, and that it will reduce the need for buying spare parts and reduce the cost of maintenance to replace or repair defective equipment. Although a net cost savings is anticipated, it would be offset to some degree by the costs of obtaining the warranties themselves. At this time we cannot quantify the expected savings or warranty costs but will consider information received in comments. Therefore, we have not prepared a separate regulatory evaluation.

Procedural Requirements

A. *National Environmental Policy Act.* DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

B. *Regulatory Flexibility Act.* Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed amendments do not significantly change the current procedures of 48 CFR Subpart 46.7, which already authorize contracting officers to require warranties in contracts. The few small entities that are affected would be reimbursed for providing warranties as part of the contract price or cost considerations.

C. *Paperwork Reduction Act.* There are no requirements for collection of information contained in this proposal.

D. *Administrative Procedure Act.* Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the FAR provides that views of agencies and non-government parties must be considered in formulating acquisition policies and procedures on proposed significant revisions (48 CFR Subpart 1.5). The Department has determined that the proposed rule would not represent a significant rule; however, it is providing a 45-day comment period, and will consider comments received in drafting the final rule.

List of Subjects in 48 CFR Part 46

Government contracts, Federal procurement regulations.

Accordingly, the Department amends 48 CFR Part 1246 as set forth below.

This proposed rule is issued under the delegation of authority in 49 CFR 1.59(q).

Issued in Washington, DC, on January 27, 1988.

Jon H. Seymour,

Assistant Secretary for Administration

Accordingly, 48 CFR Part 1246 is amended to read as follows:

PART 1246–[AMENDED]

1. The authority citation for Part 1246 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2304 note; 48 CFR 1.301; 49 CFR 1.59.

2. Subpart 1246.7, consisting of sections 1246.701 through 1246.772, is revised to read as follows:

Subpart 1246.7—Warranties

1246.701 Definitions.
1246.702 General.
1246.703 Criteria for use of warranties.
1246.704 Authority for use of warranties.
1246.705 Limitations.
1246.706 Warranty terms and conditions.
1246.770 Use of warranties in major system acquisitions by Coast Guard.
1246.770–1 Policy.
1246.770–2 Tailoring warranty terms and conditions.
1246.770–3 Warranties on government-furnished property.
1246.771 Cost benefit analysis.
1246.772 Waiver and notification procedures.

Subpart 1246.7—Warranties

1246.701 Definitions.

"At no additional cost to the United States," as used in this section, means at no increase in price for firm-fixed-price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see 48 CFR 46.707) or at no increase in estimated cost/or fee for cost-reimbursement contracts.

"Defect," as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

"Design and manufacturing requirements," as used in this subpart, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

"Major system," as used in this subpart, means a system or major subsystem used directly by the agency to carry out its mission(s), as defined by DOT Order 4200.14B, Major Systems Acquisition Review and Approval. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; unless an effective warranty for the system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described in FAR 15.804–3(c).

"Performance requirements," as used in this subpart, means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

"Prime contractor," as used in this subpart, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

1246.702 General.

In addition to the considerations outlined in FAR 46.702, the following areas should be addressed by all DOT operating administrations in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7 as implemented by DOT Order 4200.14B, Major Systems Acquisition Review and Approval.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each operating administration within DOT shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and accumulate data relative to warranty costs. Each operating administration shall make an annual report to the Director of Acquisition and Grant Management, on warranty related costs and enforcement experience no later than 60 days after the end of each fiscal year.

1246.703 Criteria for use of warranties.

(a) Acquisition of warranties in the procurement of supplies that do not meet the definition of a major system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.703 for all DOT operating administrations. Contracting officers should negotiate a warranty that meets or exceeds the requirements of section 1246.706 of this part where such warranty is advantageous and conforms to Departmental Policy.

(b) The use of warranties in the procurement of major systems by the United States Coast Guard is mandatory, unless a waiver is authorized. The use of warranties in major systems acquisitions by DOT

administrations other than the Coast Guard is voluntary.

(c) Warranties should be obtained only when they are cost beneficial. In order to determine whether use of a warranty would be cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs, and the contract file documented accordingly. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties for similar supplies or services.

1246.704 Authority for use of warranties.

(a) For any contract entered into by an operating administration, other than a contract entered into by the Coast Guard for major system acquisitions, the contracting officer shall determine if a warranty clause is appropriate in accordance with 1246.703(c), prior to solicitation of a requirement. If a warranty is determined to be appropriate, he/she shall document the reason for inclusion of a warranty and identify the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply, and shall address why the warranty is appropriate under the criteria set forth in 48 CFR 46.703. For DOT operating administrations, other than the Coast Guard, the policy and procedures set forth in section 1246.770 of this part for use of warranties in major system acquisitions may be used as a guideline.

(b) Authority for use of warranties in the procurement of major systems by the Coast Guard is stated in section 1246.703 of this part. The policy and procedures on warranties set forth in section 1246.770 of this part are mandatory for Coast Guard. The Coast Guard shall use the procedure set forth in paragraph (a) of this section for including a warranty in procurements other than major system acquisitions.

1246.705 Limitations.

In addition to limitations set forth in FAR 46.705, the following restrictions are applicable to all DOT contracts:

(a) The Coast Guard is the only DOT operating administration which is authorized to include warranties in cost-reimbursement contracts for the production of major systems as required by 48 CFR 1246.770.

(b) Any written warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in section 1246.770–4 of this part.

(c) Any written warranty obtained shall specifically exclude coverage of combat damage, where there is some likelihood that the warranted items may be subjected to such damage.

1246.706 Warranty terms and conditions.

(a) In addition to those items set forth in FAR 46.706, the contracting officer, in developing the warranty terms and conditions, shall consider the need for and where appropriate, in accordance with 1246.703(c) shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to (i) an identified revision of a top-level drawing, and/or (ii) an identified specification or revision thereof;

(3) Require that the system conforms with the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible.

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the end of the warranty period (i.e., passing a test or demonstration, or operation without failure for specified period of time);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition, any DOT contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor be paid at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

1246.770 Use of warranties in major system acquisitions by Coast Guard.

This section sets forth policy and procedures for the Coast Guard to use in obtaining warranties from prime contractors when contracting for the production of a major system. Other operating administrations may use these procedures as guidelines.

1246.770–1 Policy.

The Coast Guard shall include written warranties in all contracts with prime contractors for major system acquisitions. The warranties shall meet the following requirements (as well as those specified at 1246.771):

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained (see FAR 46.703(d)), and the contractor shall warrant that all systems or components delivered under the contract will be free from defects in material and workmanship at the time of acceptance or delivery as specified in the contract.

(b) For systems or components provided in accordance with either design or performance requirements as specified in the contract or any modification to that contract, a written warranty of compliance with the stated requirements shall be obtained. The warra: ty shall also provide that the system or component is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the United States, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract,

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(3) Equitably reduce the contract price.

(d) Any written warranty shall specifically exclude coverage of combat damages where there is some likelihood that the warranted items may be subjected to such damage.

1246.770–2 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among major system acquisition programs, contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see FAR 46.706). Contracting officers for major system acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system). It is the Department's policy not to include in warranty clauses any terms that require contractor liability for loss, damage or injury to third parties.

1246.770–3 Warranties on government-furnished property.

A prime contractor for a major system acquisition shall not be required to provide the warranties specified in section 1246.770–2 of this part on any property furnished to that contractor by the United States except for (a) defects in installation, and (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

1246.771 Cost benefit analysis.

It is the Department's policy to obtain warranties for a major system acquisition only when they are cost beneficial. If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated under section 1246.772 of this part. In order to determine whether use of a warranty would be cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs, and the contract file documented accordingly. The analysis should examine the major system's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties on similar systems.

1246.772 Waiver and notification procedures.

The Secretary of Transportation may waive the requirement for a written warranty for Coast Guard major acquisition systems when such waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. Waivers may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive the warranty requirement and the reasons supporting such a determination prior to granting the waiver. The written request for Secretarial waiver of the warranty requirement shall include, at a minimum:

(a) A brief description of the major system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(b) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(c) All documentation supporting the request for waiver, such as a cost-benefit analysis.

All waivers shall be forwarded via the Office of Acquisition and Grants Management for submission to the Secretary. The Coast Guard shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation, for use in answering inquiries.

[FR Doc. 88–2270 Filed 2–3–88; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5215 and 5252

Navy Acquisition Regulations Supplement; Policy for Use of Cost and Pricing Data and Cost Analysis Where Adequate Price Competition Exists; Extension of Comment Period

AGENCY: Department of the Navy.

ACTION: Proposed Rule comment period extended.

SUMMARY: The Department of the Navy published on December 23, 1987 (52 FR 48550) a Proposed Rule to parts 5215 and 5252 of the Navy Acquisition Regulations Supplement (NARSUP) to add clarifying language to Adequate Price Competition. The closing date for public comments was 22 January 1988. The public comment period is extended until 23 February 1988.

DATE: Public comments on the proposed rule should be received by February 23, 1988.

ADDRESS: Interested parties should submit written comments to: Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Contracts and Business Management, Washington, DC 20361, ATTN: Ms. Linda E. Greene or Mr. Dick Moye.

FOR FURTHER INFORMATION CONTACT: Ms. Linda E. Greene, 202–692–3324.

Dated: January 28, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–2272 Filed 2–3–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 661 and 663

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California and Pacific Coast Groundfish Fishery; Availability of Amendments to Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of amendments to fishery management plans and request for comments.

SUMMARY: NOAA issues this notice that the Pacific Fishery Management Council

has submitted amendments to the (1) Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (salmon FMP), and the (2) Pacific Coast Groundfish Fishery Management Plan (groundfish FMP) for review by the Secretary of Commerce (Secretary). Written comments are invited from the public. Copies of the amendments may be obtained from the addresses below.

DATE: Comments will be accepted until March 31, 1988.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731–7415. Copies of the amendments are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; E. Charles Fullerton, 213–514–6196; or the Pacific Fishery Management Council, 503–221–6352.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Act) requires that a regional fishery management council submit any amendment to an FMP it has prepared to the Secretary for review and approval or disapproval. The Act also requires that upon receipt of the amendment, the Secretary will publish immediately a notice stating that the amendment is available for public review and comment. Comments received from the public will be considered during the secretarial review.

The eighth amendment to the salmon FMP and the third amendment to the groundfish FMP were prepared under a 1986 amendment (Pub. L. 99–659) to the Act, which requires that any FMP amendment occurring after January 1, 1987—

(1) Include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery; and

(2) Consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels.

An environmental assessment and requirements of other applicable law are incorporated in each of the amendments.

No regulatory changes are being proposed as a result of these amendments.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 1, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–2366 Filed 2–3–88; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 53, No. 23

Thursday, February 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Establishment of National Advisory Committee on Cotton Marketing

AGENCY: Office of the Secretary, USDA.

ACTION: Proposal to establish a National Advisory Committee on Cotton Marketing.

SUMMARY: The U.S. Department of Agriculture is proposing to establish a national advisory committee to review the cotton marketing system and recommend ways of improving its efficiency.

DATE: Comments must be received by February 19, 1988.

ADDRESS: Send written comments to: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jesse F. Moore, (202) 447–3193.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Secretary of Agriculture intends to establish a National Advisory Committee on Cotton Marketing. The purpose of the committee is to review the cotton marketing system and to recommend ways of improving its efficiency. The review will include but not be limited to the cotton classification program, cotton standards, market quotations and the impact of High Volume Instrument (HVI) classing on the price support loan structure.

The Secretary has determined that the work of the committee is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means to obtain the technical and practical expertise needed from private industry.

Balanced committee membership would be attained through appointment by the Secretary of Agriculture of one grower from each of the four general areas of cotton production and two representatives each from the ginner, cooperative, merchant, manufacturers and academic/research areas. One alternate member for every two regular members would also be appointed. Federal policy with respect to equal opportunity would be followed in the appointment process.

Dated: January 29, 1988.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 88–2289 Filed 2–3–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: 1988 Dress Rehearsal Census—Block Splits

Form Number: Agency—DX–110A; OMB—NA

Type of Request: New collection

Burden: 2,160 respondents; 36 reporting hours

Needs and Uses: The results of this survey will be used to refine and finalize procedures for taking the 21st Decennial Census.

Affected Public: Individuals or households

Frequency: One time

Respondent's Obligation: Mandatory

OMB Desk Officer: Francine Picoult 385–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc 88–2351 Filed 2–3–88; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–588–702]

Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain stainless steel butt-weld pipe and tube fittings (SSPF) from Japan are being, or are likely to be, sold in the United State at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Judith L. Nehring, (202) 377–1769 or Michael J. Ready, (202) 377–2613, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Final Determination

We have determined that, with the exception of those sales of Fuji Acetylene Industries, Co., Ltd. (Fuji), SSPF from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, (the Act) as amended (19 U.S.C. 1673d(a)). The weighted-average margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On September 9, 1987, we made an affirmative preliminary determination (52 FR 34973, September 16, 1987). The

following events have occurred since the publication of that notice.

On September 17, 1987, Nippon Benkan Kogyo, K.K. (Benkan), a respondent who represents a significant proportion of exports of SSPF in this investigation, requested that the Department extend the period for the final determination until not later than 135 days after the date on which the Department published its preliminary determination. The Department granted this request and postponed its final determination until not later than January 29, 1988 (52 FR 37815, October 9, 1987).

On December 11, 1987, Department held a public hearing. Interested parties submitted comments for the record in their pre- and post-hearing briefs.

Scope of Investigation

The products covered by this investigation are SSPF, whether finished or unfinished, including as-formed tubular blanks (blanks), under 14 inches in inside diameter, as provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item number 610.8948. The corresponding Harmonized System (HS) number is 7307.23.00.

In this investigation, Gerlin, Inc. (Gerlin), a domestic manufacturer and converter of SSPF, and a party to the proceeding according to § 353.12(1)(4) of the Commerce Regulations (19 CFR 353.12(i)(4)), requested the Department to exclude blanks from the scope of investigation on the grounds that blanks constitute a separate product from finished fittings.

The Department has determined that blanks are appropriately included within the scope of this investigation. The petitioner explicitly included both unfinished and finished SSPF in its petition. Respondents and the Department have used the term "unfinished" SSPF as encompassing blanks throughout the duration of this investigation. Only Gerlin has attempted to distinguish blanks from unfinished SSPF and Gerlin has not provided the Department with a sufficient basis to support such a distinction. While the Department has the authority to modify the scope of a petition in conducting its investigation, Gerlin has not provided us with sufficient reason to do so. Therefore, the Department continues to include blanks within the scope of the investigation.

Fair Value Comparison Methodology

To determine whether sales of SSPF in the United States were made at less than fair value, we compared the United States price to the foreign market value of such or similar merchandise for the period November 1, 1986, through April 30, 1987.

Foreign Market Value

In accordance with section 773(a) of the Act, for Benkan and Fuji, we calculated foreign market value based on delivered, packed, home market prices to unrelated and related purchasers. We made deductions, where appropriate, for inland freight, brokerage and handling, rebates, and discounts. We subtracted home market packing and added U.S. packing to home market prices. Pursuant to § 353.15 of our regulations, we made circumstance of sale adjustments for differences in home market and U.S. credit expenses. We also allowed a circumstance of sale adjustment for advertising expenses incurred by Fuji. We denied a circumstance of sale adjustment for technical services claimed by both Benkan and Fuji. This claim was denied because the Department views the services that were provided as being of a general manufacturing nature rather than being directly related to sales.

In accordance with § 353.16 of the Commerce Department regulations, where there was no identical product in the home market with which to compare a product sold to the United States, we made adjustments to the price of similar merchandise. These adjustments were based on differences in the costs of material, direct labor, and directly related factory overhead.

United States Price

As provided in section 772(b) of the Act, we used the purchase price to represent the United States price for sales of SSPF directly to unrelated purchasers and for sales through a related sales agent in the United States. The Department determined that purchase price, and not exporter's sales price, was the most appropriate indicator of United States price for the sales through a related sales agent based on the following factors:

1. The merchandise was purchased or agreed to be purchased by the unrelated U.S. buyer prior to the date of importation from the manufacturer or producer of the merchandise for exportation to the United States.
2. The related selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.
3. Rather than entering into the inventory of the related selling agent, the merchandise in question was shipped directly from the manufacturer to the unrelated buyer. Thus, it did not give rise to storage and associated costs on the part of the selling agent or create added flexibility in marketing for the exporter.
4. Direct shipment from the manufacturer to the unrelated buyer was the customary commercial channel for sales of this merchandise between the parties involved.

Where all the above elements are met, as in this case, we regard the primary marketing functions and selling costs of the exporter as having occurred in the country of exportation prior to importation of the product into the United States. In such instances, we consider purchase price to be the appropriate basis for calculating United States price.

We calculated purchase price based on the packed, c.i.f. duty paid, c.i.f. duty unpaid, or f.o.b. prices to unrelated purchasers in the United States. We made deductions under § 353.10(d)(2)(i) of the Commerce Regulations, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, and U.S. inland freight.

Best Information Available

On July 21, 1987, we were notified by the American Embassy in Tokyo that Mie Horo would not be responding to the questionnaire. Therefore, as required by section 776(b) of the Act, in making our fair value comparisons we used the best information available in calculating both United States price and foreign market value for Mie Horo. We used information in the petition as the best information available.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations, at the rate of exchange certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and original source documents provided by the respondents.

Interested Party Comments

Comment 1: Petitioner argues that the dates of sale to the United States should be revised to reflect the dates of shipment for both Benkan and Fuji rather than the dates of the purchase orders because the dates of shipment reflect the dates when prices became final and determinable. Petitioner contends that many of the prices established on the purchase orders were adjusted upwards at the time of shipment. Finally, petitioner notes that Benkan enters its U.S. sales into its accounting records on the date of "shiploading" (shipment), and thus the sale is not recognized until it is invoiced and ready to ship.

Benkan contends that the purchase order date should be used for date of sale because the purchase order is a binding, irrevocable contract whereby prices on the purchase order date are final and determinable. Respondent contends that price increases at the time of invoicing were due to currency realignments between the dollar and the yen during the period January through March, 1987. Sales negotiations were undertaken in December, 1986, and the increase in prices were reflected in shipments as of April, 1987.

DOC Position: We agree with petitioner that the date of sale for Benkan's U.S. sales should be the date of shipment. At verification we found that Benkan's prices to its U.S. customers for a majority of the sales examined were indeed revised after the date of the purchase order. The Department will recognize a sale only when all key elements (i.e., binding commitment, irrevocable price, quantities to be purchased) are determinable. Since a majority of the purchase order prices were changed at the time of shipment, the Department has determined that the prices were determinable only at the date of shipment, therefore, we have used the reported dates of shipment as the dates of sale to the United States for Benkan.

Fuji only had two sales. We have decided, based on the verification, that a price revision occurred on one of those sales after the date of the purchase order. No other changes were noted on Fuji's U.S. data as reported. Since there were only two sales, we were unable to determine whether the prices are determinable at the date of shipment or the date of purchase order as a matter of course. Therefore, the Department is using the date of purchase order for one sale and the date of shipment for the other side.

Comment 2: Petitioner contends that the claimed home market technical service expense for Benkan should be disallowed because some of the same services provided to home market customers are also extended to U.S. customers and no adjustment has been claimed for these sales. The American Society for Testing and Materials (ASTM) standards require that some of the services provided to U.S. customers by Benkan must be performed according to industry standards. If a claim for technical services is made for some of the same expenses on sales in the Japanese home market as in the U.S. market, then a similar claim for technical services expenses must be claimed for those U.S. sales requiring such services. For these reasons, technical service expenses for home market sales should not be allowed as a direct selling expense.

Respondent claims that the technical services ("supplemental specifications") are directly related to the specific sales under investigation and as such are allowable as a direct selling expense. Further, respondent claims that it does not matter whether the costs of the technical services were passed on to the home market customers. The costs and services were identified at verification and would not have occurred but for the sale of the fittings.

DOC Position: The Department agrees with the petitioner that the technical service adjustment should not be allowed. The claimed expenses were incurred in order to ensure that the producers met certain industry-wide specifications. These expenses were incurred for inspecting, stress testing, color coding, etc. Thus, they were more in the nature of general manufacturing expenses as were those incurred in meeting ASTM standards for U.S. sales, rather than technical services directly related to specific sales.

Comment 3: Petitioner has asked the Department to file supplemental instructions to Customs to prevent possible circumvention of the order by other manufacturers and producers in Japan who might ship their products through Fuji in order to take advantage of Fuji's *de minimis* margin determination. As the purchase and resale of like products is a standard business practice in this industry in Japan, petitioner contends that it is necessary to issue instructions to Customs for some type of chain-of-title certification to ensure that Fuji exports only Fuji-manufactured products.

Respondent argues that there is simply no evidence to support the allegation made by petitioner. If the Department were to require certification, it would be tantamount to a "backdoor import restriction."

DOC Position: The Department recognizes that exclusion of firms from an antidumping duty finding can create the potential for circumvention of the order by other firms who would seek to export through the excluded firms. On the other hand, it is our understanding that it is a normal practice in the SSPF industry in Japan for a producer to purchase from other producers when it is unable to fill an order.

Having weighed the competing concerns of preventing circumvention and of not restricting legitimate trade, we have determined not to require a "chain-of-title certification." If this proceeding should result in an antidumping duty order, we will consider any information presented by petitioner that the order is being circumvented.

Comment 4: Respondent contends that the yen appreciated by eight percent from January through March, 1987, and to avoid the possible sale of products at less than fair value, Benkan negotiated price increases with its U.S. customers in December, 1986. Benkan maintains that, in accordance with 19 CFR 353.56(b), it acted within a reasonable period of time to respond to exchange rates fluctuations. Respondent thus feels that those sales which are shown to be at less than fair value as a result of exchange rate fluctuations should not be taken into account for purposes of the margin determination.

Petitioner argues that because the yen appreciation was steady and not fluctuating, 19 CFR 353.56(b) does not apply. Also, the fact that the dumping margins exceeded these price revisions, leads to the conclusion that the upward price revisions were not directly tied to the rising value of the yen.

DOC Position: The Department has determined that Benkan has failed to provide sufficient evidence to support the claim that the upward price revisions were made to compensate for currency realignments between the dollar and the yen. At the hearing, the Department requested that Benkan supply us with information on whether it had a history of price adjustments to reflect currency realignments prior to the January through March, 1987, period. Benkan did not respond to this request. The Department also found that the upward revisions of price were not applied to all U.S. customers. Rather, it appears as if Benkan was selective in its application of the price revision. Thus, the Department has made necessary currency conversions in accordance with the general rule of 19 CFR 353.56(a).

Comment 5: Gerlin, a domestic manufacturer and converter of SSPF and party to the proceeding, contends that the scope of investigation should not include as-formed tubular blanks (blanks). Gerlin feels that blanks are a separate product from finished fittings and should therefore be treated as a wholly different product. Gerlin relies on the finding of *Midwood Industries v. United States*, C.D. 4026, 64 Cust Ct. 499

(1970) and *Ferrostaal Metals Corp. v. United States* 13 CIT ——, Slip Op. 87–76 (June 26, 1987), in which the Court held that the goods under consideration in these investigations had undergone substantial transformations such that the producers' goods were substantially different than the consumers' goods. Gerlin further argues that the level of trade between finished fittings and blanks is very different in that blanks are traded only between manufacturers of fittings and not at the level of consumers.

Petitioner contends that on the issue of determining separate margins for finished fittings and blanks, the Department has no justification for segregating those products which are of the same class or kind of merchandise, and Department policy mandates that the scope of investigation include the same class or kind of merchandise under one cash deposit rate. (*See, Steel Jacks from Canada*, 50 FR 42577, Oct. 21, 1985); *Certain Carbon Steel Butt-Weld Pipe Fittings from Japan*, 51 FR 46893, Dec. 29, 1986).

DOC Position: The Department agrees with the petitioner that both blank and finished SSPF are within the scope of investigation. (See discussion *supra*, "Scope of Investigation.") The Department also agrees with the petitioner that both blank and finished SSPF are within the same class or kind of merchandise. The Department takes the position that SSPF which is in the blank form is the same "class or kind" of merchandise as finished fittings. This determination is based on a consideration of the following factors: (1) General physical characteristics, (2) the expectations of the ultimate purchasers, (3) the channels of trade in which the product is sold, (4) the manner in which the product is advertised and displayed, and (5) the ultimate use of the merchandise in question. The Court of International Trade has endorsed these criteria in determining whether a product is within the "class or kind" of merchandise described in a prior antidumping finding. (*See, Diversified Products Corp. v. United States*, 572 F. Supp. 883 (C.I.T., 1983), *Kyowa Gas Chemical Industry Co., Ltd. v. United States*, 582 F. Supp. 887 (C.I.T., 1984).

Blank SSPF is physically very similar to finished SSPF. All that remains to transform blank SSPF into finished SSPF is pickling, beveling and stress testing to industry standards, which do not change the physical nature of the fitting itself. Thus, the first criterion outlined above is satisfied.

As for the second and fifth criteria, both the ultimate use and the ultimate purchaser of the SSPF are the same as for the finished SSPF, because blanks are not used to make any product other than finished SSPF, and have no independent use.

In terms of the third criterion, blanks and finished fittings move in the same channel of trade in that although blanks must be further manufactured for use as finished SSPF, there is no other use for blanks in the SSPF industry. Many U.S. importers purchase both blanks and finished fittings for resale to the ultimate end-user. Finally, since there is no separate channel of trade for blanks, the only manner in which they are advertised and displayed is in the form of finished SSPF. Thus, the fourth criterion is also met.

Since both finished SSPF and blanks are the same class or kind of merchandise, they are subject to the same cash deposit rate (*See, Bicycle Speedometers from Japan*, 52 FR 11720, April 10, 1987); *Brass Sheet and Strip from France*, 52 FR 812, January 9, 1987.)

The cases cited by Gerlin relate to transformation of products under an entirely different statutory scheme than the antidumping law. The Department is not required to follow Custom's determinations in defining the scope of its investigation. (*See, Diversified Products Corp. v. United States*, 572 F. Supp. 883 (C.I.T., 1983)).

Comment 6: Petitioner argues that since the stocking distributor discount claimed by Fuji on its home market sales could not be tied directly to invoices, a circumstance of sale adjustment for this discount should be disallowed.

Fuji argues that this discount to cover distributor's stocking expense is a direct selling expense because the discount is a condition of sale to a specific home market customer, pursuant to a contract. If the Department does not find these discounts to be direct selling expenses, then they should be considered as warehousing expenses as the customer does hold title to the goods and there is a contract outlining the seller's obligation regarding the expense.

DOC Position: The Department considers the stocking distributor discount a discount tied to sales and has subtracted it from the sales on which it was paid.

Comment 7: Petitioner claims that the adjustment for trade discounts on Fuji's home market sales should be denied because the reason for the discounts is not adequately explained and the discounts were granted after the filing date of the petition on all but one sale.

Fuji argues that it paid its major customer trade discounts in order to facilitate inventory movements at times of changing market conditions. Furthermore, to counter petitioner's claim that these discounts were post-hoc discounts as a result of the filing of the petition, respondent points to the order which was discounted two months prior to the petition filing date.

DOC Position: The Department disagrees with the petitioner, and has determined that the trade discount is an allowable adjustment. Fuji reported five sales in the home market and of these five sales, four received trade discounts. One was granted prior to the filing date of the petition, three were granted after the filing date of the petition, and the last one, which was also invoiced after the filing date of the petition, had no trade discount attached to it. The Department finds that these trade discounts are bona fide because they had initially been granted prior to the filing date of the petition and the discounts were verified on the invoices. Therefore, we have allowed this adjustment.

Comment 8: Petitioner claims that the expenses used to the advertisement for SSPF in the local paper, the *Fuji News*, should be disallowed as it is targeted directly to Fuji's customers and not at the customer's customers. Also, the expense for the Fuji catalogue should be denied as this expense was invoiced three weeks after the last purchase order during the period of investigation. Petitioner further argues that the catalogue is not directly related to sales and is printed on an "as-needed" basis rather than on a recurring one, and is more in the category of a general expense than a direct selling expense.

Respondent argues that the advertisement in the *Fuji News* was directed to Fuji's customers' customers. The expenses for the Fuji catalogue should also be allowed because the cost of printing falls under the period of investigation and the catalogues were used by Fuji's customers to facilitate sales to end users.

DOC Position: We agree with the respondent that both the advertisement in the *Fuji News* and the Fuji catalogue are allowable as circumstance of sales adjustments. We allow a circumstance of sale adjustment for sellers' expenses directed at the customer's customer. We allow no adjustment when the target is the party purchasing from the manufacturer or exporter. (*See*, Department of Commerce Adjustment Study, p. 51, November, 1985) At verification, we examined the advertisement, the catalogue, associated expenses, and determined that these expenses were incurred on behalf of Fuji's customer's customer.

Critical Circumstances

Petitioner has withdrawn its allegation of critical circumstances. Therefore, the Department has made no final determination concerning this issue.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSPF, excluding those imports from Fuji for which we have found *de minimis* margins, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below.

The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/Producer/ Exporter	Weighted-average margin percentage
Nippon Benkan Kogyo, K.K.	37.24
Fuji Acetylene Industries Co., Ltd.	0.08 (*de minimis*)
Mie Horo	55.08
All others	49.31

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty order on SSPF from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

January 29, 1988.

[FR Doc. 88–2352 Filed 2–3–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene separate public meetings of its advisory bodies as follows:

Bycatch Committee—will convene February 9, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Building 4, Room 2079, to identify and prioritize the bycatch issues of primary concern to the Committee. These issues include Gulf of Alaska bycatch; the remaining and ongoing bycatch concerns in the Bering Sea, and issues originally proposed for plan amendment but deferred to the Committee by the Council at its January meeting. The public meeting will adjourn on February 10.

Future of Groundfish Fisheries Committee—will convene February 25, 1988, at 10:00 a.m., at the same location as stated above for the Bycatch Committee, to continue examining effort limitation alternatives which may be applicable to the North Pacific groundfish and crab fisheries. The Committee will continue to work toward developing a recommendation for long-term management of those fisheries for presentation to the North Pacific Council in June. The public meeting will adjourn on February 26.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: January 29, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2310 Filed 2–3–88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Pacific Fishery Management Council will convene separate public meetings of its advisory bodies as follows:

Salmon Plan Development Team (SPDT)—will convene February 17, 1988, at 9 a.m., at the Pacific Council's office (address below), to draft the 1988 stock status report for presentation to the Pacific Council in March. The public meeting will continue through February 19.

Salmon Advisory Subpanel (SAS) and members of the Council's Scientific and Statistical Committee—will convene jointly with the SPDT, February 23, 1988, at 10 a.m., at the Red Lion Inn-Portland Center, 310 SW. Lincoln Street, Portland, OR, for a preliminary review of the 1988 stock abundance projections. This preliminary review is provided to assist SAS members in developing salmon management proposals to submit to the Pacific Council for 1988. Written or oral statements pertaining to salmon abundance projections will be accepted at appropriate times during the public meetings.

For Further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: January 29, 1988.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2311 Filed 2–3–88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS).

Dates of Meeting: 23 and 24 February 1988.

Time: 0900–1700 hours each day.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board 1988 Summer Study on Technology Insertion in Army Systems will meet in the Pentagon for the purpose of gathering facts for the first phase of the study. The opening session will be devoted to the organizations of the study team and the panel's succeeding fact-gathering and report-writing efforts. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner,

may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–2254 Filed 2–3–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Directorate of Personal Property; Domestic Household Goods Program

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Eligibility for Participation in the Department of Defense Domestic Household Goods Program.

SUMMARY: Participation in the Department of Defense Domestic Household Goods Program will be limited to moving van companies (motor carriers) with Interstate Commerce Commission Certificates of Public Conveyance and Necessity (or appropriate state regulatory authority for intrastate operations). Freight forwarder participation will be phased out in two stages:

(a) On November 1, 1988, only one carrier under common financial and/or administrative control with others will be permitted to participate in the same traffic channel, in the same code of service. Origin agents will be restricted to representing only two forwarders.

(b) On November 1, 1989, participation in the domestic household goods program will be restricted to van lines (motor carriers) only.

FOR FURTHER INFORMATION CONTACT: LT Marcial B. Dumlao, SC, USN, HQ. Military Traffic Management Command, ATTN: MT–PPQ (Room 423), 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (703) 756–1784.

Joseph R. Marotta,

Colonel, General Staff, Director of Personal Property.

[FR Doc. 88–2255 Filed 2–3–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Proposed Physical Facilities Development Program, Naval Undersea Warfare Engineering Station, Indian Island Detachment, Hadlock, WA; Finding of No Significant Impact

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the Department of the Navy announces its decision not to prepare an environmental impact statement for the Proposed Physical Facilities Development Program at the Naval Undersea Warfare Engineering Station, Indian Island Detachment, Hadlock, Washington.

The proposed development program consists of eleven Military Construction Projects to support the Naval Undersea Warfare Engineering Station mission of ordnance storage and renovation in support of fleet ships. The projects include missile and high explosive magazines, covered operational storage, an explosive operations facility, a service craft pier replacement, a fire station, a public works maintenance shop, ammunition wharf improvements, road reconstruction, and a helicopter landing pad.

Alternatives to the proposed project were evaluated, including no action and various alternative siting alternatives. Because of stringent safety requirements at ordnance activities, however, land use patterns are driven primarily by consideration of Explosive Safety Quantity Distance (ESQD) arcs generated by ordnance storage and renovation activities. Additional facilities may only be sited in areas where newly-generated ESQD arcs will not affect existing facilities. Because support functions must be sited outside boundaries of explosive arcs produced by ordnance activities, available locations for new facilities are limited. Therefore, because of these siting requirements, planned ordnance functions must be sited as described in the preferred alternative. The service pier replacement and the ammunition wharf improvements involve existing facilities and provide no siting alternatives.

The Environmental Assessment provides an analysis of impacts from the no action alternative. Based on the absence of significant adverse environmental effects, in keeping with national security interests, and the increased safety provided by the proposed development program, the no action alternative was not considered feasible.

The proposed development program has been located in conformance with the Naval Undersea Warfare Engineering Station, Indian Island Detachment Master Plan, is compatible with existing land use, and will be implemented in a manner consistent to the maximum extent practicable with the Washington Coastal Zone Management Program and in accordance with applicable requirements of federal and state laws and permit requirements.

The proposed projects will continue to observe all existing restrictions within the bald eagle protection zones as described in the Indian Island Naval Installation Bald Eagle Management Plan prepared jointly by the Navy and the U.S. Fish and Wildlife Service. All proposed new structures are located outside the eagle protection zones. The U.S. Fish and Wildlife Service, Olympia Office, concurs that the proposed development program will have no impact on the eagle population at Indian Island.

The Environmental Assessment indicates that by employing alternative procedures and mitigation measures, no significant adverse impacts would occur as a result of construction and operation of the proposed facilities at Indian Island. The appropriate Federal and State of Washington resource agencies have been contacted and their concerns have been addressed. Construction and operation of the waterfront facilities will be in compliance with the U.S. Army regulatory program.

The Environmental Assessment prepared by the Department of the Navy addressing this action is on file and may be reviewed by interested parties at the point of origin: Director, Pacific Northwest Branch Office, Western Division Naval Facilities Engineering Command, 3505 NW. Anderson Hill Road, Silverdale, Washington 98383 (Attn: Mr. John Linquist, Code 202NW, telephone (206) 476–5773); or at the Environmental Protection, Safety, and Occupational Health Division (OP–45), Office of the Chief of Naval Operations, Crystal Plaza-5, 2211 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (202) 692–5577. Several copies of the Environmental Assessment will be placed with the Jefferson County Administration Office and a limited number of copies are available from the point of origin to fill single-copy requests.

Date: January 29, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88–2273 Filed 2–3–88 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC. 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent 4,492,014: Jet Engine Compressor Stage Puller; filed 8 April 1983; patented 8 January 1985.

Patent 4,492,121: Gauge for Measuring High Transient Pressures; filed 30 September 1982; patented 8 January 1985.

Patent 4,492,434: Multi-Color Tunable Semiconductor Device; filed 7 January 1982; patented 8 January 1985.

Patent 4,492,672: Enhanced Microstructural Stability of Nickel Alloys; filed 19 April 1982; patented 8 January 1985.

Patent 4,492,923: Apparatus for Measuring the Spatial Scalar Variation of a Magnetic Field With Vector Magnetic Sensors on a Moderately Stable Moving Platform; filed 21 June 1982; patented 8 January 1985.

Patent 4,493,260: Annular Shaped Charge for Breaching Masonary Walls; filed 8 November 1983; patented 15 January 1985.

Patent 4,493,262: Fuel Air Explosive Device; filed 3 November 1982; patented 15 January 1985.

Patent 4,494,115: Controller for a Locked Carrier Distributed Multiplexed Telemetry System; filed 15 July 1981; patented 15 January 1985.

Patent 4,493,373: Fail Safe Rocket Motor; filed 17 May 1980; patented 22 January 1985.

Patent 4,495,848: Pyro-Gun; filed 6 July 1981; patented 29 January 1985.

Patent 4,497,046: Long Line Hydrophone; filed 24 June 1981; patented 29 January 1985.

Patent 4,498,233: Retrieval Tool for Socket Contacts; filed 27 August 1982; patented 12 February 1985.

Patent 4,498,329: Apparatus for Measurement of Sliding Friction Using Gyroscopic Mass; filed 20 May 1983; patented 12 February 1985.

Patent 4,499,309: Derivatives of Energetic Orthoformates; filed 18 February 1983; patented 12 February 1985.

Patent 4,500,295: Personnel Alpha Contamination Simulator and Detector; filed 26 May 1983; patented 19 February 1985.

Patent 4,502,758: Absorption Path Controlled Filter; filed 24 June 1982; patented 5 March 1985.

Patent 4,503,229: 1,4,5,8-Tetranitor-1,4,5,8 Tetraazadifurazano-Declain; filed 24 June 1983; Patented 5 March 1985.

Patent 4,505,023: Method of Making a Planar INP Insulated Gate Field Transistor by a Virtual Self-Aligned Process; filed 29 September 1982; patented 19 March 1985.

Patent 4,506,324: Simulator Interface System; filed 8 March 1982; patented 19 March 1985.

Patent 4,512,745: Flight Simulator With Dual Probe Multi-Sensor Simulation; filed 16 May 1983; patented 23 April 1985.

Patent 4,513,148: Method for the Preparation of Methylnitramine; filed 1 July 1982; patented 23 April 1985.

Patent 4,514,479: Method of Making Near Infrared Polarizers; filed 1 July 1980; patented 30 April 1985.

Patent 4,516,111: Pulsewidth Modulated, Charge-Transfer, Digital to Analog Converter; filed 1 July 1982; patented 7 May 1985.

Patent 4,520,973: Stabilized Gimbal Platform; filed 11 April 1983; patented 4 June 1985.

Patent 4,523,842: Aspheric Surface Test Fixture; filed 18 March 1983; patented 18 June 1985.

Patent 4,524,190: Process for Preparation of Cross Linked Poly(Tri-N-Butyltin) Methacrylate With Simultaneous Particle Size Reduction; filed 14 May 1984; patented 18 June 1985.

Patent 4,524,279: Radiation Source Shield and Calibrator; filed 18 February 1983; patented 18 June 1985.

Patent 4,525,720: Integrated Spiral Antenna and Printed Circuit Balun; filed 15 October 1982; patented 25 June 1985.

Patent 4,526,545: Diurnal Effects Simulator; Filed 12 May 1983; patented 2 July 1985.

Patent 4,527,062: Portable Infrared Spectrophotometer; filed 5 July 1983; patented 2 July 1985.

Patent 4,527,459: Small Arms Ammunition Loading System; filed 17 August 1983; patented 9 July 1985.

Patent 4,529,601: Primary Explosive; filed 28 November 1983; patented 16 July 1985.

Patent 4,531,013: Preparation of Diaminotetranitronaphthalene; filed 3 August 1984; patented 23 July 1985.

Patent 4,531,299: Analog Inclination Data System; filed 21 March 1984; patented 30 July 1985.

Patent 4,532,801: Method and Apparatus for Determining Small Magnitude Fluid-Dynamic Drag Resistance Differentials Between Different Structural Configurations of a Model; filed 17 May 1984; patented 6 August 1985.

Patent 4,543,655: Free Electron Laser Device for Scanning a Spatial Field; filed 2 July 1984; patented 24 September 1985.

Patent 4,544,285: Fluid Equalized Tilting Pad Thrust Bearings; filed 18 April 1983; patented 1 October 1985.

Patent 4,546,317: Free Nuclear Procession Gradiometer System; filed 1 July 1983; patented 8 October 1985.

Patent 4,547,656: Portable Smoke Generator; filed 9 April 1984; patented 15 October 1985.

Patent 4,547,776: Loop Antenna With Improved Balanced Feed; filed 3 November 1983; patented 15 October 1985.

Patent 4,552,298: Apparatus for Attaching an Underwater Explosive Pad Eye; filed 29 April 1983; patented 12 November 1985.

Patent 4,554,554: Quadrifilar Helix Antenna Tuning Using Pin Diodes; filed 2 September 1983; patented 19 November 1985.

Patent 4,568,041: Fin Attachment; filed 19 March 1984; patented 4 February 1986.

Patent 4,568,159: CCD Head and Eye Position Indicator; filed 26 November 1982; patented 4 February 1986.

Patent 4,568,820: Smoke Generator; filed 16 May 1984; patented 4 February 1986.

Patent 4,569,886: Fabrication of Novel Whisker Reinforced Ceramics; filed 18 June 1984; patented 11 February 1986.

Patent 4,571,631: CIG Distortion Correction with Delay Lines; filed 2 April 1984; patented 18 February 1986.

Patent 4,574,096: Suspension Method of Impregnating Active Material Into Composite Nickel Plaque; filed 29 May 1985; patented 4 March 1986.

Patent 4,574,287: Fixed Aperture, Rotating Feed, Beam Scanning Antenna System; filed 4 March 1983; patented 4 March 1986.

Patent 4,575,811: Vector Summation Power Amplifier; filed 21 June 1982; patented 11 March 1986.

Patent 4,578,287: Process for Producing Graphite Fiber/Aluminum-Magnesium Matrix Composites; filed 9 October 1984; patented 25 March 1986.

Patent 4,581,527: Damage Assessment System for Composite Plastic Structures Using Fiber Optics; filed 29 July 1983; patented 8 April 1986.
Patent 4,576,882: Polyethylene Imine-Metal Salt Solid Electrolyte; filed 28 February 1985; patented 18 March 1986.
Patent 4,587,325: Processable and Stable Conducting Polymers From Diether-Linked Bisorthodinitrile Monomers; filed 9 January 1985; patented 6 May 1986.
Patent 4,587,881: Depression Gun Pod; filed 11 October 1984, patented 13 May 1986.
Patent 4,588,662: Method and Device for Filling the Cells of a Battery With Electrolyte; filed 29 July 1985; patented 13 May 1986.
Patent 4,589,137: Electronic Noise-Reducing System; filed 3 January 1985; patented 13 May 1986.
Patent 4,591,864: Frequency Independent Twisted Wave Front Constant Beamwidth Lens Antenna; filed 13 June 1983; patented 27 May 1986.
Patent 4,593,110: Preparation of 1,3-dioxa-5,5,6,6,7,7-hexafluorocyclooctane; filed 8 July 1985; patented 3 June 1986.
Patent 4,593,602: Rocket Weapon System and Method Therefor; filed 4 December 1984; patented 10 June 1986.
Patent 4,594,542: Solid State, High-Low Resistance Monitor; filed 21 February 1984; patented 10 June 1986.
Patent 4,595,463: Cobalt Treatment of Nickel Composite Electrode Surfaces; filed 29 May 1985; patented 17 June 1986.
Patent 4,595,792: Method for Detecting Faults in a Synthetic Electro-Mechanical Cable; filed 1 April 1983; patented 17 June 1986.
Patent 4,595,925: Altitude Determining Radar Using Multipath Discrimination; filed 28 March 1983; patented 17 June 1986.
Patent 4,600,455: Method for Bonding a Thin Sheet to a Rigid Body; filed 25 July 1984; patented 15 July 1986.
Patent 4,601,344: Pyrotechnic Fire Extinguishing Method; filed 29 September 1983; patented 22 July 1986.
Patent 4,601,961: Bilaminar Seawater Battery; filed 4 November 1985; patented 22 July 1986.
Patent 4,603,398: Matrix-Matrix Multiplication Using an Electrooptical Systolic/Engagement Array Processing Architecture; filed 17 February 1984; patented 29 July 1986.
Patent 4,603,422: Long-Lived Laser Dye; filed 26 September 1984; patented 29 July 1986.
Patent 4,603,823: Airspeed Sensing Pressure Valve System; filed 2 July 1984; patented 5 August 1986.
Patent 4,603,486: Automated Anthropometric Data Measurement System; filed 17 October 1985; patented 5 August 1986.
Patent 4,604,938: Arresting & Recovery System for Test Missiles; filed 2 August 1984; patented 12 August 1986.
Patent 4,605,932: Nested Microstrip Arrays; filed 6 June 1984; patented 12 August 1986.
Patent 4,606,049: Remote Transmitter Control System; filed 3 December 1984; patented 12 August 1986.
Patent 4,606,293: Explosively Actuated Mine Cable Marker Device; filed 13 September 1984; patented 19 August 1986.
Patent 4,607,912: In-Line Optical Fiber Polarizer; filed 7 December 1983; patented 26 August 1986.
Patent 4,609,215: Hydraulic Locking Boltwork System; filed 20 August 1984; patented 2 September 1986.
Patent 4,609,362: Non-Soniferous Power Drive for Underwater Vehicles; filed 5 July 1983; patented 2 September 1986.
Patent 4,609,871: Temperature Compensated Optical Fiber Interferometric Magnetometer; filed 2 July 1984; patented 2 September 1986.
Patent 4,611,245: Real-Time Ultra-High Resolution Image Projection Display Using Laser-Addressed Liquid Crystal Light Valve; filed 29 October 1984; patented 9 September 1986.
Patent 4,612,642: Operation of Transversely Excited N_2O Lasers; filed 17 September 1984; patented 16 September 1986.
Patent 4,612,660: Time Resolved Extended X-Ray Absorption Fine Structure Spectrometer; filed 17 May 1985; patented 16 September 1986.
Patent 4,613,755: Method of Mass Spectrometry; filed 20 June 1983; patented 23 September 1986.
Patent 4,613,810: High Output Programmable Signal Current Source for Low Output Impedance Applications; filed 10 May 1985; patented 23 September 1986.
Patent 4,614,672: Liquid Phase Epitaxy (LPE) of Silicon Carbide; filed 6 June 1985; patented 30 September 1986.
Patent 4,614,918: Frequency Generator With Digitally Controlled Phase Modulation; filed 27 October 1980; patented 30 September 1986.
Patent 4,615,903: Method for Melt-Coating a Surface; filed 1 July 1985; patented 7 October 1986.
Patent 4,617,493: Collective Interaction Kystron; filed 28 January 1985; patented 14 October 1986.
Patent 4,617,530: Pseudo-Random Noise Generator; filed 17 June 1985; patented 14 October 1986.
Patent 4,619,986: Epoxy Phthalonitrile Polymers; filed 28 June 1985; patented 28 October 1986.
Patent 4,619,845: Method for Generating Fine Sprays of Molten Metal for Spray Coating and Powder Making; filed 22 February 1985; patented 28 October 1986.
Patent 4,620,733: Shipboard Internal Locking System; filed 2 July 1985; patented 4 November 1986.
Patent 4,620,942: Electrically Conductive Ladder Polymers; filed 31 May 1983; patented 4 November 1986.
Patent 4,621,896: Optical Fibers With Reduced Pressure Sensitivity to High Frequency Acoustic Fields; filed 30 July 1984; patented 11 November 1986.
Patent 4,622,266: Moldable Electrically Conductive Polymer Compositions; filed 30 May 1985; patented 11 November 1986.
Patent 4,622,552: Factored Matched Filter/FET Radar Doppler; filed 31 January 1984; patented 11 November 1986.
Patent 4,623,106: Reentry Vehicle Having Active Control and Passive Design Modifications; filed 25 October 1984; patented 18 November 1986.
Patent 4,623,219: Real-Time High-Resolution 3-D Large-Screen Display Using Laser-Actived Liquid Crystal Light Valves; filed 15 April 1985; patented 18 November 1986.
Patent 4,626,369: Lead Zirconate Titanate Ceramics; filed 28 July 1985; patented 2 December 1986.
Patent 4,626,283: Chemiluminescent System Catalysts; filed 3 April 1985; patented 2 December 1986.
Patent 4,626,764: Photovoltaic Battery Charge Controller; filed 2 September 1983; patented 2 December 1986.
Patent 4,627,586: Thrust Vectoring Apparatus for Maneuvering Missile in Flight; filed 29 October 1984; patented 9 December 1986.
Patent 4,627,822: Low Temperature Inflator Apparatus; filed 20 May 1985; patented 9 December 1986.
Patent 4,628,006: Passivation of Hybrid Microelectronic Circuits; filed 20 January 1984; patented 9 December 1986.
Patent 4,628,010: Fuel Cell With Storable Gas Generator; filed 13 December 1985; patented 9 December 1986.
Patent 4,630,011: Microwave and Millimeter Wave Phase Shifter; filed 12 December 1985; patented 16 December 1986.
Patent 4,630,224: Automation Initialization of Reconfigurable On-Line Automatic Test System; filed 19 April 1984; patented 16 December 1986.
Patent 4,630,300: Front-End Processor for Narrowband Transmission; filed 5 October 1983; patented 16 December 1986.

Patent 4,630,883: Optical Waveguide Apparatus and Method for Manufacturing; filed 21 March 1983; patented 23 December 1986.
Patent 4,631,303: Underwater Formulation and Method for Cleaning and Waxing Simultaneously; filed 28 June 1985; patented 23 December 1986.
Patent 4,631,447: IREB Converter to AC Pulses; filed 17 October 1984; patented 23 December 1986.
Patent 4,631,586: Digital Raster Timing Encoder/Decoder; filed 6 July 1984; patented 23 December 1986.
Patent 4,631,709: Low Cost Sonobuoy; filed 13 July 1984; patented 23 December 1986.
Patent 4,631,956: Air Deployed Oceanographic Mooring; filed 27 August 1984; patented 30 December 1986.
Patent 4,632,010: AIRBOC Chaff Deployment System; filed 1 April 1985; patented 30 December 1986.
Patent 4,632,889: Lithium Composite Anode; filed 2 July 1985; patented 30 December 1986.
Patent 4,633,170: Bragg Cell Spectrum Analyzer; filed 5 June 1984; patented 30 December 1986.
Patent 4,634,201: Connector/Nitinol Contact Force Device; filed 7 May 1984; patented 6 January 1987.
Patent 4,634,230: Multi-Dimensional Instantaneous Optical Signal Processor; filed 3 February 1984; patented 6 January 1987.
Patent 4,636,358: Concretization of High Level Radioactive Source in Marine Sediment; filed 4 February 1985; patented 13 January 1987.
Patent 4,636,638: Remote Optical Crack Sensing System Including Fiberoptics; filed 12 October 1984; patented 13 January 1987.
Patent 4,636,767: Mixed Semiconductor Film Device for Monitoring Gases; filed 21 August 1985; patented 13 January 1987.
Patent 4,640,003: Method of Making Planar Geometry Schottky Diode Using Oblique Evaporation and Normal Incidence Proton Bombardment; filed 30 September 1985; patented 3 February 1987.
Patent 4,642,218: Hot Rolling of Ceramics by the Use of Self Propagating Synthesis; filed 19 October 1984; patented 10 February 1987.
Patent 4,642,271: BN Coating of Ceramic Fibers for Ceramic Fiber Composites; filed 11 February 1985; patented 10 February 1987.
Patent 4,644,399: Video/Digital Data Multiplexer; filed 2 May 1983; patented 17 February 1987.
Patent 4,644,556: Extended Laser Sensor; filed 25 January 1984; patented 17 February 1987.
Patent 4,648,083: All-Optical Towed and Conformal Arrays; filed 3 January 1985; patented 3 March 1987.
Patent 4,650,329: Optical 3-D Signature Device for Detecting Chemical Agents; filed 29 November 1984; patented 17 March 1987.
Patent 4,633,331: Test Apparatus for Uniform Tensioning of Long Lengths of Small Cables in Simulated Environments; filed 30 June 1986; patented 31 March 1987.
Patent 4,653,915: Technique for the Reduction of Fading in Interferometers; filed 12 April 1985; patented 31 March 1987.
Patent 4,653,917: Fiber Optic Gyroscope Operating With Unpolarized Light Source; filed 24 March 1983; patented 31 March 1987.
Patent 4,655,660: Low-Profile Fastener; filed 22 February 1985; patented 7 April 1987.
Patent 4,658,359: Method for Managing Redundant Resources in a Complex Avionics Communication System; filed 31 December 1984; patented 14 April 1987.
Patent 4,658,745: Collapsible Salvage Drum and Method; filed 22 June 1981; patented 21 April 1987.
Patent 4,658,928: Seal for Air Cushion Vehicle; filed 11 February 1985; patented 21 April 1987.
Patent 4,660,164: Multiplexed Digital Correlator; filed 5 December 1983; patented 21 April 1987.
Patent 4,660,182: Programmable Multichannel Sonobuoy Transmitter; filed 20 June 1984; patented 21 April 1987.
Patent Application 006,517: Gloss Measurement Device; filed 23 January 1987.
Patent Application 016,694: Active Filter Using Low Gain Amplification Stages; filed 19 February 1987.
Patent Application 017,967: Universal Footing With Jetting System; filed 24 February 1987.
Patent Application 025,742: Buried Metallic Layer Formed by Ion Implanatation; filed 13 March 1987.
Patent Application 027,473: Method for Forming Copious $(F_2^+)_A$ Centers in Certain Stable, Broadly-Tunable Laser-Active Materials; filed 18 March 1987.
Patent Application 027,921: Security Indicating Attachment for Safe-Type Apparatus; filed 17 March 1987.
Patent Application 029,514: Thermonic Cathode Coating by OMCVD (Organo-Metallic Chemical Vapor Deposition); filed 24 March 1987.
Patent Application 037,271: Fiber-Optic Accelerometer Having Cantilevered Acceleration Sensitive Mass; filed 10 April 1987.
Patent Application 038,381: Metal Hydrides Explosive System; filed 10 April 1987.
Patent Application 043,268: Energetic Polynitro Formal Plasticizers; filed 27 April 1987.
Patent Application 043,269: 4,4,10,10-tetranitro-6,8-dioxatridecane-1,13-diol Polyformal and Method of Preparation; filed 27 April 1987.
Patent Application 046,345: Bis(2-fluoro-2,2-dinitroe-thoxy) 2,2,3,3,4,4-heptafluorobutoxymethane and a Method of Preparation; filed 1 May 1987.
Patent Application 046,474: Bis(2,2,2-fluorodinitroe-thoxy)-(1,1,1-fluorodinitro-2-propoxy) Methane and Method of Preparation; filed 30 April 1987.
Patent Application 052,501: 2,4,4,5,5,6,6-Heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diol Polyformal and Method of Preparation; filed 5 May 1987.
Patent Application 052,503: Synthesis of Dihydroxy-Terminated Poly(2,2,3,3,4,4-hexafluoropentane-1,5-diol Formal); filed 5 May 1987.
Patent Application 054,976: FET Demodulator-Downconverter for Microwave-Modulated Optical Signals; filed 28 May 1977.
Patent Application 078,994: Opto-Optical Beam Deflector Modular, and Shaper; filed 4 June 1987.
Patent Application 068,395: Method of Fabricating a Metal/Ceramic Composite Structure; filed 1 July 1987.
Patent Application 070,758: Co-Nitration of 1,2,4-Butanetriol and Glycerin; filed 6 July 1987.
Patent Application 071,502: Mineral Spirits Purification Process; filed 9 July 1987.
Patent Application 736,614: Reactive Evaporation of Vanadium Dioxide Thin Films; filed 21 May 1985.
Patent Application 750,970: Five-Axis Optical Fiber Gradiometer; filed 2 July 1985.
Patent Application 761,983: Aircraft With Single Surface Membranous Airfoils; filed 2 August 1985.
Patent Application 764,687: Battery Tester; filed 12 August 1985.
Patent Application 818,512: Self-Aligned Notch INP Planar Transferred Electron Oscillator; filed 13 January 1986.
Patent Application 880,524: Stibine Filter for Antimonial Lead Acid Batteries; filed 3 June 1986.
Patent Application 880,866: Microwave Pulse Compression in Dispersive Plasmas; filed 3 July 1986.
Patent Application 881,756: Diazido Alkanes and Diazido Alkanols as

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Combustion Modifiers for Liquid Hydrocarbon Ramjet Fuels; filed 3 July 1986

Patent Application 901,710: Scaled-up Production of Liposome-Encapsulated Hemoglobin; filed 29 August 1986.

Patent Application 913,430: Optical Waveguide Device; filed 30 September 1986.

Patent Application 928,777: Stripping Agent for Chemically Resistance Coatings; filed 4 November 1986.

Patent Application 937,801: Microwave Circular Polarization Analyzer; filed 1 December 1986.

Patent Application 940,145: Axial Injection Orbitron; filed 10 December 1986.

Patent Application 940,121: Method for Manufacturing Integral Shadow Gridded Controlled Porosity Dispenser Cathodes; filed 10 December 1986.

Patent Application 942,670: Fluid Spray Cleaning Arrangement; filed 16 December 1986.

Patent Application 943,011: Multi-Gigawatt High-Efficiency RF Amplifier; filed 18 December 1986.

Date: January 29, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-2274 Filed 2-3-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

DATES: February 17, 1988, 9:00 a.m. until conclusion of business, approximately 5:00 p.m.

ADDRESS: National Advisory Council on Indian Education, 330 C Street, SW., Room 4072 (Conference Room), Switzer Building, Washington, DC 20202 (202/732-1353).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202 (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92-318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Discussion on Search for Executive Director.

(2) Election Dispute.

(3) Regular Council business.

The public is being given less than fifteen days notice of this meeting due to uncertainty of all Council Members being able to schedule their time to attend the meeting on February 17th to have a quorum.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202.

Date: February 2, 1988. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 88-2438 Filed 2-3-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Liquids Transportation Task Group Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, February 17, 1988, 1:00 p.m.

Place: National Petroleum Council, 1625 K Street, NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss the pipeline survey.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC., between the hours of 9:00 AM and 4:00 PM Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-2277 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

Natural Gas Transportation Task Group Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, February 17, 1988, 8:30 a.m.

Place: National Petroleum Council, 1625 K Street, NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss gas pipeline survey and review progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss the gas pipeline survey.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 88-2278 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Salomon Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Salomon Inc. (Salomon). This Consent Order would resolve Salomon's potential liability for DOE regulatory violations based on an audit which tentatively concluded that Salomon had overcharged in crude oil resale transactions during the period August 19, 1973 through December 31, 1977. Salomon has disputed ERA's audit findings and denies any overcharge liability. No formal allegations of violations have been issued against Salomon.

ERA proposes that Salomon's liability for potential overcharges and interest be settled by payment of $16.25 million within 30 days of the effective date of the Consent Order, if finalized. ERA will direct that these monies be deposited in a suitable account for appropriate distribution by DOE. This proposed settlement reflects negotiated compromises present in every settlement, including assessments of litigation risks in significant areas of dispute between ERA and Salomon.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice. Comments should be addressed to: Salomon Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585.

ERA will consider the comments received from the public in determining whether to make final the proposed settlement. This will result in one of the following courses of action: rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Laurence J. Hyman, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6727.

Salomon is a crude reseller subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order, Salomon engaged in, among other things, the resale of crude oil.

ERA conducted an audit of Salomon's crude oil transactions for the period August 19, 1973 through December 31, 1977 (the audit period). As a result of this audit, disputes arose between ERA and Salomon concerning Salomon's compliance with the federal petroleum price and allocation regulations which pertained to the resale of crude oil during this period.

During the audit period, Salomon engaged in a number of transactions involving crude oil physically located outside the United States, but as to which the ERA contends the provisions of the Mandatory Petroleum Price and Allocation Regulations applied. The ERA's audit indicated that Salomon had received $10.3 million in revenues in these transactions in excess of those permitted under the rules applicable during the audit period to crude oil resellers.

In its consideration of settlement, ERA reviewed the revenues Salomon had received in the subject transactions, and the costs it had incurred. The ERA also considered Salomon's contentions, primarily, that (1) its transactions involving crude oil located outside the United States were not subject to the price regulations; and that, (2) if its transactions were subject to the price regulations, Salomon had incurred substantial unrecovered product costs, or "banks," during the audit period which, under the interpretations of the regulations it advanced, would have served to reduce substantially its potential liability.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the audit findings in litigation, and considering the asserted facts and legal issues underlying the audit, and appropriate settlement compromises related to those issues.

In addition to the analysis of potential litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the legal and factual issues, and the time and expense required for the government to litigate fully every issue. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $16.25 million is an appropriate settlement. Given all these factors, ERA has made a preliminary determination that this settlement is in the public interest.

The settlement calls for Salomon to make a restitutionary payment of $16.25 million to discharge in full all of Salomon's obligations under the price and allocation regulations with regard to its crude oil transactions during the audit period. The restitutionary sum

would be paid to DOE for appropriate distribution within thirty (30) days of the effective date of the Consent Order.

Pursuant to the proposed Consent Order, Salomon and DOE mutually release each other from issues and claims regarding Salomon's compliance with the federal petroleum price and allocation regulations which pertain to Salomon's crude oil transactions during the audit period.

Submission of Written Comments

The Proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above. All comments received by the thirtieth day following publication of this Notice in the Federal Register will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the Federal Register.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 28, 1988.

Milton C. Lorens,

Chief Counsel, Office of Enforcement Litigation Economic Regulatory Administration.

I. Introduction

101. This Consent Order is entered into between Salomon Inc. ("Salomon") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Salomon, as hereinafter defined, relating to Salomon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, in its crude oil resale transactions during the period August 19, 1973, through December 31, 1977 (hereinafter "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA.

203. The following definitions apply for purposes of this Consent Order:

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, and 212, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, and forms relating to the pricing and allocation of crude oil, as well as Subpoena No. 1, issued to Salomon on December 29, 1986 and served on Salomon on January 5, 1987 ("Subpoena No. 1"). The provisions of 109 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, ERA, and all predecessor and successor agencies.

c. "Salomon" includes Salomon Inc. (formerly known as Engelhard Minerals & Chemicals Corporation, Phibro Corporation, and Phibro-Salomon Inc.), its successors, subsidiaries and affiliates (but only for such time as they were subsidiaries or affiliates of Salomon), and its officers, directors and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period 1973 through 1977, Salomon engaged in, among other things, the resale of "crude oil", as that term is defined in the federal petroleum price and allocation regulations, and as a United States corporation is subject to the audit jurisdiction of the DOE.

302. The DOE has conducted an audit to determine Salomon's compliance with the federal petroleum price and allocation regulations during the period August 19, 1973 through December 31, 1977. As part of its audit, the DOE examined Salomon's books and records relating to Salomon's compliance with the federal petroleum price and allocation regulations.

303. During the course of the DOE's audit, subpoena enforcement proceedings instituted by the DOE, and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to the application of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

304. With respect to the issues raised by DOE, each party believes that its respective position is meritorious. In particular, DOE and Salomon disagree as to whether the DOE's jurisdiction under the federal petroleum price and allocation regulations extended to Salomon's transactions. However, in order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions, Salomon has agreed to enter into this Consent Order. The DOE believes that this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might have been sought by the DOE against Salomon for such matters, under 10 CFR 205.199I or otherwise, Salomon shall pay a total of sixteen million two hundred and fifty thousand dollars ($16,250,000.00), inclusive of interest, to DOE within 30 days of the effective date of this Consent Order. Payment shall be wire transfer, pursuant to written directions provided to Salomon by DOE.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Salomon regarding Salomon's compliance with and obligations under the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, whether or not heretofore raised by an issue letter, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Salomon by this Consent Order. This Consent Order does not cover, and does not resolve, Salomon's compliance with, or obligations under, the federal petroleum price and allocation regulations (other than Salomon's compliance with Subpoena No. 1) after December 31, 1977.

502.(a) Except as otherwise provided herein, compliance by Salomon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Salomon, the DOE hereby releases Salomon completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Salomon before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Salomon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Salomon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Salomon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Salomon in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence currently in its possession with respect to the matters covered by this Consent Order, provided, however, that nothing in this Consent Order Precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence currently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party.

(c) Salomon releases the DOE completely and for all purposes from all administration and civil judicial claims, liabilities, or causes of action that Salomon has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Salomon from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Salomon also agrees that, upon the effective date of this Consent Order, it shall withdraw paragraphs 4 and 5 and subparagraph 7(iii) of Request No. 87063001R made under the Freedom of Information Act, 5 U.S.C. Section 552, *et seq.*, and not to initiate or prosecute any requests or claims under the Freedom of Information Act pertaining to paragraphs 4 and 5 and subparagraph 7(iii) or the matters which they address. Salomon will not initiate or prosecute any new requests under the Freedom of Information Act with respect to the matters covered by this Consent Order unless such requests also relate to issues affecting Salomon's compliance with or obligations under the federal petroleum price and allocation regulations after December 31, 1977.

503. Execution of this Consent Order constitutes neither an admission by Salomon nor a finding by the DOE of any violation by Salomon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Salomon pursuant to this Consent Order is to be considered for any purposes as a penalty, fine, or forfeiture or as settlement of any potential liability for penalties, fines or forfeitures.

504. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Salomon, but only if Salomon has concealed facts relating to such violations. The DOE and Salomon also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during thre course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Salomon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in distribution of the monies paid pursuant to paragraph 401, Salomon shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401. The DOE in this first instance will attempt to obtain this information from the documents already provided to the DOE by Salomon in the course of the DOE's audit and Salomon's subpoena production. Thereafter, if requested, Salomon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 401 of this Consent Order, Salomon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating solely to the matters settled by this Consent Order.

602. Except for final requests for information regarding other firms subject to the DOE's information gathering and reporting authority,

Salomon will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating solely to Salomon's compliance with the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

603. The DOE will treat the sensitive commerical and financial information provided by Salomon pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Salomon and related to matters covered by this Consent Order as confidential and proprietary and will not dislose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Salomon with ten (10) days' actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Salomon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a daily authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to vaive or prejudice any right Salomon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Salomon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Salomon (and its successors and assigns) and the DOE each reserves the right to institue a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Salomon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Salomon hereby waives its right to administrative or judicial review of this Order, but Salomon reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Salomon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Salomon, Salomon may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Salomon, hereby agree to and accept on behalf of Salomon the foregoing Consent Order.

Arnold S. Olshin,

Secretary, Salomon Inc.

Dated: January 21, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Robert G. Heiss,

Acting Deputy Chief Counsel for Enforcement Litigation, Economic Regulatory Administration, Department of Energy.

Dated: January 22, 1988.

[FR Doc. 88-2281 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-64-NG]

Poco Petroleum, Inc.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending Poco Petroleum, Inc.'s (Poco), existing blanket authorization to import natural gas. The order issued in ERA Docket No. 87-64-NG extends for two years Poco's authority to import up to 150 Bcf of natural gas.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC., 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 26, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-2280 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-56-NG]

Unicorp Energy, Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Unicorp Energy, Inc. (Unicorp), blanket authorization to import natural gas. The order issued in ERA Docket No. 87-56-NG authorizes Unicorp to import up to 290 Bcf of natural gas over two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 28, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-2279 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI88-186-000 et al.]

Mitchell Energy Corp., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

January 29, 1988.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI88-186-000 (CI85-146) (CI80-467) (CI83-412) (CI83-425) (CI84-436) (CI85-26) (CI85-148), B, Dec. 8, 1987 (1).	Mitchell Energy Corp, P.O. Box 4999, The Woodlands, TX 77387-4000	Natural Gas Pipeline Co. of America Wise County Area, Wise, Jack & Palo Pinto Counties, TX.	(2)	
CI82-944-003, D, Jan. 17, 1988	Conoco Inc., P.O. Box 2197, Houston, TX 77252	El Paso Natural Gas Co., Arrowhead E-M-E Field, Lea County, NM.	(3)	
CI82-946-000, D, Jan. 17, 1988	do	Jalmat-Langlie-Mattix Fields, Lee County, NM	(1)	
CI78-479-003, D, Jan. 11, 1988	Texaco Inc., P.O. Box 3109, Midland, TX 79702	S/2 and NE/4 Sec. 35, Block 42, T-1-S, Ector County, TX.	(3)	
CI88-235-000 (CI67-751), B, Jan 11, 1988	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Company, Division of Enron Corp.; Mocane-Laverne Field, Ellis County,OK.	(7)	
CI88-236-000 (CI84-251), B, Jan. 11, 1988.	do	Harper Ranch Field, Clark, County, KS	(8)	
CI88-237-000 (CI84-250)	do	do	(9)	
CI88-238-000 CI84-249), B, Jan. 11, 1988.	do	Harper Ranch and Snake Creek Fields, Clark County, KS.	(10)	
CI88-242-000 (CI65-545), B, Jan. 12, 1988	do	Mider Field, Ellis County, OK	(7)	
CI88-245-000 (CI79-373), B, Jan. 13, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Salon, S.E. Field, Ellis County, OK	(11)	
CI61-1819-001, D, Jan. 15, 1988	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX, 75221-2880	Panhandle Eastern Pipe Line Co., Mocane Field, Beaver County, OK	(12)	
G-5180-000, D, Jan. 15, 1988	do	ANR Pipeline Co., Flores Field, Beaver County, OK.	(13)	
G-18630-000, D, Jan. 15, 1988	do	Mocane-Laverne Field, Harper County, OK	(14)	
CI67-270-001, D, Jan. 11, 1988	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA, 94120-7309.	ANR Pipeline Co., Luther Field, Ellis County, OK	(15)	
G-16139-014, D, Jan. 11,	do	Transwestern Pipeline Co., Shapley Field, Hansford County, TX.	(16)	
CI85-34-003, D, Jan. 11, 1988	Sun Exploration and Production Co	Williams Natural Gas Co., Goldsby Plant, Grady County, OK.	(17)	
CI88-239-000, (C180-5), B, Jan. 11, 1988.	Chevron U.S.A., Inc.	Phillips 66 Natural Gas Co., Panhandle east Field, Gray County, TX.	(18)	
CI88-230-000, F, Jan. 11, 1988	Mobil Producing Texas & New Mexico, Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046	Natural Gas Pipeline Co. of America and Transcontinental Gas Pipe Line Corp., Clayton Field, Block, 85 and 75 Units, Live Oak County, TX and Ray-Wilcox Field Gas Unit, Bee County, TX.	(19)	
CI88-247-000, (G-7310), B, Jan. 14, 1988	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Mountain Fuel Resources, Inc., Ace Unit Area, Moffet County, CO.	(20)	
CI88-246-000, (CI77-780), B, Jan. 14, 1988.	do	Colorado Interstate Gas Co., Mocane Field Area, Beaver County, OK.	(21)	
CI88-241-000, B, Jan. 11, 1988	National Cooperative Refinery Association, 1775 Sherman Street—Suite 3000, Denver, CO,80203.	Panhandle Eastern Pipe Line Co., Carthage Field, Texas County, OK.	(22)	
CI88-240-000, B, Jan. 11, 1988	do	Elkart West Field, Morton County, KS	(22)	
CI88-243-000, B, Jan. 11, 1988	Walter E. Smith	Consolidated Gas Transmission Corp., Sherman District, Calhoun, County, WV.	(23)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI88-244-000 (CI77-363), B, Jan. 11, 1988	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	Texas Eastern Transmission Corp., West Cameron Block 522, Offshore, LA.	(24)	
CI88-234-000 (G-3079), B, Jan. 11, 1988	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Trunkline Gas Co., Sabine Tram Field, Newton County, TX.	(25)	
CI88-233-000, B Jan. 11, 1988	Pedestal Oil Company, Inc., P.O. Box 1522, Oklahoma City, OK 73101.	Sun Exploration and Production Co., Breshears Lease NW/4 Sec. 2-T10N-R5W, Candian County, OK.	(26)	
CI88-158-000, B, Nov. 30, 1987 [27]	Lone Wolf Producing Co.	ARCO Oil and Gas Co., Division of Atlantic Richfield, Co.; A.B. Thomerson, *et al.*, Survey, El Dorado Gas Plant, Schleicher, County, TX.	(28)	

[1] Additional information received January 14, 1988.

[2] Mitchell requests permanent abandonment of ten sales of gas to Natural. Certain interests were acquired from NICOR Exploration Company, which made sales pursuant to its certificate in Docket No. CS78-574. Other interests were acquired from Champlin Petroleum Company, which made sales pursuant to a certificate in Docket No. G-14830 and a December 27, 1977 contract on file as Champlin FERC Gas Rate Schedule No. 71.

In support of its application, Mitchell states that Natural is currently experiencing a gas supply/demand imbalance due to an excess of supply and expects this imbalance to increase. On September 21, 1987, by Termination Notice/ Agreement the parties agreed to terminate the contracts effective August 1, 1987, release Natural from obligations to receive and pay for gas and/or to pay for gas not taken. Mitchell waives all gathering allowance claims arising out of section 110. Mitchell states that currently the gas is being sold on a spot-market basis pursuant to Natural's limited-term abandonment authority issued in Docket No. CI86-637-000. Mitchell proposes to sell in intrastate commerce. Applicant states that the deliverability is approximately 17,331 MMBtu/month and the gas is NGPA section 104 flowing gas (7%) and 108 gas (93%).

[3] Conoco assigned certain acreage to Lewis B. Burleson, effective 12-1-87.

[4] Not used.

[5] Texaco assigned to Sun Exploration and Production Company its rights in and to the Sallie W. Ratliff Lease, located in the S/2 and NE/4 of section 35, Block 42, T-1-S, TAP RRCo. Survey, Ector County, Texas, effective 11-1-87.

[6] Not used.

[7] Tenneco assigned certain acreage to Bell & Kinley Company, effective 12-1-86.

[8] Tennaco assigned certain acreage to Beresco Properties, Inc., effective 8-1-86.

[9] Tenneco assigned certain acreage to Beresco Properties, Inc. and Karser-Francis Oil Company, effective 8-1-86.

[10] Not used.

[11] Multistate Oil assigned certain acreage to Bell & Kinley Company, effective 12-1-86.

[12] Effective 6-1-87, Sun assigned its interest in Property No. 814427, Wayne Buffalow, limited to the interval from the surface down to a depth of 6,480 feet, to Fond Petroleum.

[13] Effective 6-1-87, Sun assigned its interest in Property No. 823612, Minnie B. Dorman, from the surface to a depth of 7,100 feet, to Fond Petroleum

[14] Effective 11-1-87, Sun assigned its interest in Property No. 885410, M.A. Stinson Unit (B. P. 87667), to Oneok Exploration Company.

[15] Chevron assigned certain acreage to South Timbers Ltd. Partnership, effective 12-1-87.

[16] Chevron assigned certain acreage to C. M. Fleetwood, Inc., effective 10-1-86.

[17] Sun is requesting abandonment of a sale of gas from Sun's Goldsby Plant to Williams attributable to the Pedestal Oil properties. The Breshears lease has a split gas connection whereas one purchaser (Mobile) has offered to pucrhase this gas at enhanced prices. Sun's purchaser, Williams, does not recognize the 107(c)(5) enhancement price, and therefore will not pay the incentive price for work that was done on the Breshears lease. Sun can no longer afford to purchase gas from Pedestal.

[18] Chevron assigned certain acreage to Atlantic Energy (USA) Corporation, effective 7-1-87.

[19] Mobil Producing Texas & New Mexico Inc. (MPTM) requests authorization to continue the service previously authorized to ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), which has been authorized under certificates of public convenience and necessity issued in Docket Nos. G-3894, G-3219, G-4544 and G-4535. Effective 5-1-86, MPTM acquired these interests from ARCO.

[20] Permanent abandonment of a sale of gas to Mountain Fuel. By letter dated 6-22-87, Mountain Fuel notified ARCO that they wish to terminate the contract in accordance with Article III-5, Amendatory Gas Purchase Agreement dated 3-14-74.

[21] Permanent abandonment of a sale of gas to Colorado Interstate. By letter dated 9-17-87, ARCO notified Colorado Interstate that they wish to terminate the contract in accordance with Article VI 6.1 of Gas Purchase Agreement dated 4-8-57.

[22] Depletion of reserves.

[23] Low volume and low pressure. The well will not feed against purchaser's existing line pressure.

[24] Effective 8-31-87, Marathon sold its interest in properties covered by Rate Schedule No. 139 to Huffco Petroleum Corporation. By letter dated 4-8-86, Texas Eastern Transmission Corporation had terminated the related Gas Purchase Contract, effective 9-13-86.

[25] The primary term of the contract has expired, producing properties have been assigned to others, and deliveries of gas under the certificate and Exxon Corporation's FERC Rate Schedule No. 1 have ceased.

[26] Pedestal Oil Company, Inc., filed for and received approval under section 107(c)(5) of the NGPA for production enhancement. The Breshears lease has a split gas connection whereas one purchaser (Mobil), has offered to purchase this gas at enhanced prices, but the other purchaser (Sun), has declined to provide uplift. Therefore, this abandonment is requested, in the interest of all working interest and royalty owners involved, and for the purpose of maintaining parity between all parties.

[27] Additional information received December 14 and 22, 1987, and January 21, 1988.

[28] Applicant requests authorization to permanently abandon a sale of gas to ARCO's El Dorado Gas Plant from certain wells located on the A.B. Thomerson, *et al.* Survey, Schleicher County, Texas. Applicant states that the November 1, 1977, percentage-of-proceeds contract has expired under its own terms. ARCO sells this gas to Northern under its FERC Gas Rate Schedule No. 376. Applicant states that due to deteriorated market demand curtailment of production is threatened making the wells uneconomical for Applicant to continue service. In addition, Applicant states there is the possibility of premature abandonment of these wells and loss of remaining reserves. Deliverability is 90 Mcf/day of NGPA section 104 post 1974 gas (25%), large producer flowing gas (50%) and section 106(a) gas (25%). Applicant plans to sell the gas in the intrastate market.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-2327 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-052]

Columbia Gas Transmission Corp.; Request for Extension

January 29, 1988.

Take notice that on January 5, 1988, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed on behalf of itself and its producer-suppliers, a request to extend for a period of two years the authority granted by the Commission in Docket No. CP83-452-048, as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia requests the Commission to extend until March 31, 1990, the authority to (a) make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is equal to or higher than the NGPA section 104 price for 1973-74 biennium gas for large producers, and (b) abandon temporarily sales to Columbia for resale of NGA gas for which the maximum lawful price is equal to or higher than the NGPA section 104 price for 1973-74 biennium gas for large producers and which were previously certificated by the Commission, to the extent that such gas is released by Columbia.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2331 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-70-007]

East Tennessee Natural Gas Co.; Filing

January 28, 1988.

Take notice that on January 13, 1988 East Tennessee Natural Gas Company (East Tennessee) filed ten copies of the following:

(1) Workpapers demonstrating the derivation of the cumulative adjustment reflected on Thirty-First Revised Sheet No. 4 of its FERC Gas Tariff and demonstrating that the effect of CNG purchases has been removed from the SWS Summer Rate; and

(2) The following revised tariff sheets to its FERC Gas Tariff to be effective November 1, 1987:

Second Substitute First Revised Sheet No. 139
Second Substitute First Revised Sheet No. 140
Second Substitute First Revised Sheet No. 278

East Tennessee states that this filing is in response to letter order from the Director of the Office of Pipeline and Producer Regulation on December 29, 1987. East Tennessee further states that the revised tariff sheets are supported by a related compliance filing in Docket No. CP85-275.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2332 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-9-022 et al.]

East Tennessee Natural Gas Co. et al.; Filing of Pipeline Refund Reports

January 28, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before February 4, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
12/15/87	East Tennessee Natural Gas Company.	TA82-2-9-022
12/17/87	Inter-City Minnesota Pipelines.	RP85-152-004
12/21/87	Eastern Shore Natural Gas Company.	TA87-2-23-003
12/21/87	Panhandle Eastern Pipe Line Company.	RP85-96-007
12/21/87	Trunkline Gas Company.	RP85-77-008
12/23/87	ENRON (Northern Natural Gas Company).	RP85-206-033
12/28/87	Texas Eastern Transmission Corporation.	RP74-41-043
12/30/87	Natural Gas Pipeline Company of America.	RP80-11-022
1/4/88	Transcontinental Gas Pipe Line Corp.	TA85-1-29-016
1/5/88	Consolidated Gas Transmission Corp	RP85-169-030
1/5/88	East Tennessee Natural Gas Company.	RP71-15-025
1/15/88	Alabama-Tennessee Natural Gas Company.	RP84-76-008

[FR Doc. 88-2333 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-615-001]

Ecogen One Partners Ltd.; Application for Commission Recertification of Qualifying Status for a Cogeneration Facility

February 1, 1988.

On January 28, 1988, Ecogen One Partners Ltd. (Applicant), of 10375 Richmond Avenue, Houston, Texas 77042 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. The facility was previously certified by the Commission as a qualifying facility in Docket No. QF87-615-000 on October 29, 1987. Applicant's request for recertification is based solely on a change in ownership of the facility, through a partnership arrangement which includes an electric utility interest. No determination has been made by the Commission that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located near Sweetwater, Texas. The facility will consist of three combustion turbine generating units, three heat recovery steam generators and an extraction/condensing steam turbine generating unit. Heat recovered from the facility will be sold to the United States Gypsum Company for use in an industrial process for drying gypsum slurry in gypsum board drying kilns and for space heating. The net electric power production capacity of the facility will be 257 MW. The primary energy source will be natural gas.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 12, 1988. Protests will be considered by the Commission in

determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2328 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C188-172-000 et al.]

Helmerich & Payne, Inc.; Applications for Permanent Abandonment and Blanket Limited-term Certificate With Pregranted Abandonment

January 29, 1988.

Helmerich & Payne, Inc., (Applicant) has filed applications pursuant to section 7 of the Natural Gas Act for authorization in Docket Nos. CI88-172-000 through CI88-177-000 to permanently abandon service, to El Paso Natural Gas Company and requesting in Docket No. CI88-257-000 a blanket limited-term certificate with pregranted abandonment for a period of three years. Applicant requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1] The requests are more fully described in the tabulation hereto.

Since applicant has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and Date Filed	Applicant	Purchaser and Location	Description
CI88-172-000 (CI76-235), B, Dec. 7, 1987 [1]	Helmerich & Payne, Inc	El Paso Natural Gas Company, Wheeler-Pan Filed, Wheeler County, Texas.	(3)
CI88-173-000 (CI71-772), B, Dec. 7, 1987 [1]	do	El Paso Natural Gas Company, Toro Field, Reeves County, Texas.	(3)
CI88-174-000 (CI76-1085), B, Dec. 7, 1987 [1]	do	El Paso Natural Gas Company, Hamon Field, Reeves County, Texas.	(3)
CI88-175-000 (CI76-1084), B, Dec. 7, 1987 [1]	do	El Paso Natural Gas Company, Toro Field, Reeves County, Texas.	(3)
CI88-176-000 (CI62-1512), B, Dec. 7, 1987 [1]	do	El Paso Natural Gas Company, Yucca Butte Field, Terrell & Pecos Counties, Texas	(3)
CI88-177-000 (CI67-865), B, Dec. 7, 1987 [1]	do	El Paso Natural Gas Company, Toro Field, Reeves County, Texas.	(3)
CI88-257-000, A, Dec. 19, 1987 [2]	do	Various purchasers Wheeler-Pan Field, Wheeler County, Texas, Toro and Hamon Fields, Reeves County, Texas, and Yucca Butte Field, Terrell & Pecos Counties, Texas.	(4)

FOOTNOTES

[1] Application amended January 14, 1988.

[2] Applicant requests permanent abandonment of sales of gas to El Paso. In support of its applications Applicant states it has been and is subject to substantially reduced takes without receiving payments for its gas. Applicant anticipates that with approval of its applications more gas will become available for distribution in the open market. Deliverability is approximately 2,770 Mcf/d. The gas is NGPA section 104 large producer flowing gas (68.8%), minimum rate gas (21%), post 1974 gas (6%), 106(a) gas (3.7%) and 108 gas (0.5%).

[3] Application was received on January 14, 1988. The filing date is the date of receipt of the filing fee.

[4] Application requests a blanket limited-term certificate for a period of three years for the sale for resale in interstate commerce of the gas requested to be released in Docket Nos. CI88-172-000 through CI88-177-000. Applicant also requests limited-term pregranted abandonment for a period of three years.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-2334 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-14-003]

Lawrenceburg Gas Transmission Corp.; Filing Substitute Tariff Sheet

January 29, 1988.

Take notice that on January 11, 1988, Lawrenceburg Gas Transmission Corporation ("Lawrenceburg") tendered for filing one (1) substitute gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective August 1, 1987, and identified as follows:

Second Substitute Forty-Second Revised Sheet No. 4

Lawrenceburg states that the revised tariff sheet was filed to reflect rate revisions from Texas Gas Transmission Corporation, pursuant to Commission Order issued August 7, 1987 in Docket No. TA87-2-14-002.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76. On August 7, 1987, the Commission issued Order No. 500 which promulgated interim regulations in response to the court's remand [40 FERC ¶ 61,172 (1987)]. These interim regulations became effective on September 15, 1987.

Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2335 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-188-000]

Mercer County Improvement Authority; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 29, 1988.

On January 11, 1988, Mercer County Improvement Authority, (Applicant) of 1589 Lamberton Road, Trenton, New Jersey 08611-3517 filed submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on vacant land adjacent to the Delaware River in the Township of Hamilton, Mercer County, New Jersey. The facility will consist of three biomass-fired steam generators and two turbine generators. The net power production capacity of the facility will be 36.5 Megawatts. The primary energy source will be biomass in the form of commercial and municipal solid waste. Oil and natural gas will be used for purposes outlined in section 3(17)(B) of the FPA as amended by section 210 of PURPA. However, such fossil fuel uses will not exceed 25% of the total energy input to the facility during any calendar year period.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 209 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2336 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-5-001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

January 28, 1988.

Take notice that on January 22, 1988 Midwestern Gas Transmission Company (Midwestern) filed ten copies of Thirtieth Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1988.

Midwestern states that the purpose of the filing is to reflect an increase of 4.10 cents per dekatherm applicable to the Gas Rates and a decrease of 37 cents applicable to the Demand Rates, to track changes in the rates of Tennessee Gas Pipeline Company effective January 1, 1988. Midwestern states that the filing also reflects new base tariff rates from previous filings in Docket No. RP86-33.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2337 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-5-001]

Midwestern Gas Transmission Co.; Rate Filing

January 28, 1988.

Take notice that on January 22, 1988, Midwestern Gas Transmission Company (Midwestern) tendered for filing ten copies of Twenty-Eighth Revised Sheet No. 6 of its FERC Gas Tariff, to be effective January 1, 1988.

Midwestern states that this filing amends its previous out of cycle Current Purchased Gas Cost Adjustment (PGA) (filed on December 21, 1987) reflecting in the rates for Midwestern's Northern System Rate the newly negotiated gas supply rates from TransCanada Pipelines Ltd. (TransCanada), the sole supplier to gas to Midwestern's Northern System. Midwestern states that the purpose of this filing is to incorporate rate adjustments filed and accepted in Docket No. RP86-33 in its out-of-cycle PGA.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2337 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-195-000]

National Steel Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 29, 1988.

On January 13, 1988, National Steel Corporation, Granite City Steel Division (Applicant), of Twentieth and State Streets, Granite City, Illinois 62040, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to

§ 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located adjacent to Applicant's steel manufacturing facility in Granite City, Illinois. The facility will consist of three high pressure boilers, one natural gas fired combustion turbine generator, a heat recovery steam generator and one extraction/condensing steam turbine generator. The thermal output of the facility, in the form of steam, will be used for process requirements in Applicant's steel plant. The maximum net electric power production capacity of the facility will be 85.2 MW. The facility is expected to commence operation in early 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2330 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-26-000]

Natural Gas Pipeline Company of America; Changes in Rates

January 29, 1988.

Take notice that on January 21, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, (Tariff) the tariff sheets listed on attached Appendix A to be effective March 1, 1988.

Natural states the purpose of the instant filing is to implement its semi-annual PGA unit rate adjustment pursuant to section 18 of the General Terms and Conditions of its Tariff.

The overall effect of the revised adjustments when compared to Natural's last semi-annual rates effective September 1, 1987, is an increase in the DMQ-1 commodity rate of .3178¢ and decreases in the DMQ-1 demand and entitlement rates of $.08 and .31¢ respectively. The annual effect of these rate changes is a net increase of $58.3 million.

As more fully explained in the filing, Natural has requested waiver of its deferred purchased gas calculation to continue its current three year surcharge recovery rate of 14.82¢.

Natural also states that it has filed to amend the General Terms and Conditions of its Tariff to eliminate the incremental price provisions and to incorporate revisions to its PGA clause to set up separate deferred accounts and recovery rates for fixed and commodity cost changes and revised procedures to calculate commodity and fixed cost PGA recovery rates as more fully explained in the filing.

A copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before February 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

Seventieth Revised Sheet No. 5
Fifth Substitute Thirty-fourth Revised Sheet No. 5A
Sixteenth Revised Sheet No. 5C
Eighth Revised Sheet No. 116
Fifth Revised Sheet No. 117
Eighth Revised Sheet No. 118
Fourteenth Revised Sheet No. 119
Twelfth Revised Sheet No. 120
Twelfth Revised Sheet No. 120-A
Nineth Revised Sheet No. 121
Second Revised Sheet No. 121A
First Revised Sheet No. 121B
First Revised Sheet No. 121C
First Revised Sheet No. 121D
First Revised Sheet No. 152

[FR Doc. 88-2338 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-010]

Odeco Oil & Gas Co.; Application for Extension

January 29, 1988

Take notice that on January 20, 1988, Odeco Oil & Gas Company (Odeco), P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for amendment of its blanket limited-term abandonment and sales certificate with pregranted abandonment in Docket No. CI85-29, to extend such authorization for a term through March 31, 1990, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition, Odeco requests authorization to consolidate herein the authorization granted by the Commission in Docket No. CI87-776-000 to allow it to sell natural gas for resale in interstate commerce produced from reservoirs located in the Outer Continental Shelf which have not been previously committed.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2339 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-33-003]

Sun Exploration and Production Co.; Application for Extension

January 29, 1988.

Take notice that on January 15, 1988, Sun Exploration and Production Company (Sun), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to Section 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act requesting that the Commission modify its March 31, 1987, Order Approving, Amending and Extending Limited Term Abandonments and Blanket Sales Certificates with Pre-Granted Abandonment by extending the term from a one year term to a three year term expiring March 31, 1991. Sun also requests that the certificate continue to: (1) Authorize the sale of all vintages (102(d), 104, 106, 108 and 109) of natural gas by Sun and its working interest owners for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; and (3) confer pregranted abandonment authorization for sales of natural gas made pursuant to the requested certificate.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2340 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-231-000]

Texaco Gas Marketing Inc.; Application

January 29, 1988.

Take notice that on January 11, 1988, Texaco Gas Marketing Inc. (Applicant), P.O. Box 52332, Houston, Texas 77052, filed an application under Section 7 of the Natural Gas Act for a certificate of public convenience and necessity that would grant Applicant blanket authority to make sales of natural gas subject to the Commission's Natural Gas Act jurisdiction under contracts having a stated term of one year or longer.

Applicant requests that the certificate include authorization to abandon any such sale at the expiration or other termination of the contract. Applicant further requests that the certificate be granted for an unlimited term. Applicant also requests a waiver of rate filing requirements in connection with sales made under the certificate. In addition, Applicant requests that the Commission impose reporting requirements which are no more burdensome than those in 18 CFR 157.301(c).

Any person desiring to be heard or to make any protest with reference to said application should on or before February 16, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2341 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-110-007]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 28, 1988.

Take notice that on January 19, 1988, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing the following sheets to its FERC Gas Tariff, Fifth Revised Volume No. 1:

First Revised Sheet No. 1
First Revised Sheet Nos. 50-50D
First Revised Sheet No. 114
First Revised Sheet No. 202
First Revised Sheet No. 205
First Revised Sheet No. 208
First Revised Sheet No. 213
First Revised Sheet No. 216
First Revised Sheet No. 300
First Revised Sheet Nos. 301-316
First Revised Sheet Nos. 326-337
First Revised Sheet Nos. 401-405
First Revised Sheet No. 421
First Revised Sheet No. 439
First Revised Sheet Nos. 442-443
First Revised Sheet Nos. 461-464
First Revised Sheet No. 474
First Revised Sheet No. 600
First Revised Sheet No. 676-681
First Revised Sheet No. 735-740

Texas Eastern states that the tariff sheets set forth the rates, terms and conditions which it desires to have on file with the Commission, as required by section 284.7 of the Commission's regulations, to enable it, at its election, to render firm and interruptible self-implementing transportation pursuant to section 311 of the Natural Gas Policy Act (NGPA) on an open access basis as required by Order No. 500 *et seq.* Texas Eastern also states that the filing is predicated upon its understanding that it is permitted to commence and to cease transportation pursuant to section 311 of the NGPA without further Commission approval, and that conversion rights pursuant to § 284.10 of the Commission's regulations may be exercised during the period in which section 311 transportation is performed.

The tariff sheets include the addition of new Rate Schedules FT-1 and IT-1 and related Forms of Service Agreements under which section 311 transportation will be provided. Texas Eastern states that it proposes to provide self-implementing transportation on a firm basis under Rate Schedule FT-1 and self-implementing transportation on an interruptible basis under Rate Schedule IT-1. It states that the rates reflected in the tariff sheets for these services are based on the settlement cost of service, cost allocation, and rate design approved by the Commission in Docket Nos. RP85-177-000, *et al.*, by orders dated December 19, 1986 and October 15, 1987. Texas Eastern is also proposing revisions to its General Terms and Conditions which it states are necessary to perform transportation consistent with the requirements of Order No. 500. The General Terms and Conditions have been modified to reflect the existence of Rate Schedules FT-1 and IT-1.

A copy of the filing has been served upon each of Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2342 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 29, 1988.

Take notice that on January 25, 1988, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing the following sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1:

To Be Effective October 1, 1987
Substitute Revised Eighty-seventh Revised Sheet No. 14
To Be Effective January 1, 1988
Substitute Eighty-eighth Revised Sheet No. 14
To Be Effective February 1, 1988
Second Substitute Eighty-ninth Revised Sheet No. 14

Texas Eastern states that these tariff sheets are filed pursuant to section 4.F of its Rate Schedules SS-II and SS-III, which provide for an automatic rate adjustment to flow through any changes in Rate Schedule GSS of Consolidated Gas Transmission Corporation (Consolidated) which underlie Rate Schedules SS-II and SS-III. Texas Eastern notes that on December 15, 1987; the Commission approved Consolidated's compliance filing in Docket No. RP87-111-002 to collect the annual charge adjustment (ACA) charge of $.0020 per dekatherm of gas withdrawn from storage from all customers, as required in Order No. 472-B. Texas Eastern states that on September 1, 1987, when it filed in Docket No. RP87-128-000 to include in its tariff the procedures for collecting its assessed ACA, it did not include Consolidated's surcharges in its rates because it was unaware of the exact ACA surcharges Consolidated would impose. Consequently, Texas Eastern is refiling its rates solely to reflect Consolidated's revised GSS rates in Docket No. RP87-111-002.

On December 31, 1987, Texas Eastern filed tariff sheets in Docket No. TA88-2-17-000 reflecting its semiannual PGS filing proposed to be effective February 1, 1988. Texas Eastern states that if these tariff sheets are not approved or are altered in any way by the Commission's decision, it will refile such tariff sheets to reflect the Commission's decision.

Texas Eastern also states that on January 15, 1988, it filed revised tariff sheets based on its understanding of the effect of an order issued December 31, 1987 approving a compliance filing that it made on November 16, 1987 in Docket Nos. RP85-177-044, *et al.* Texas Eastern states that if its interpretation of the December 31, 1987 order is affirmed, it will file substitute tariff sheets reflecting the change in Consolidated's Rate Schedule GSS rates in light of the Commission's acceptance of the tariff sheets submitted by Texas Eastern on November 16, 1987 and January 15, 1988.

Texas Eastern states that a copy of the filing has been served upon each of Texas Eastern's jurisdictional customers and on interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2343 Filed 2-3-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time:
March 2, 1988—9:00 a.m.–5:00 p.m.
March 3, 1988—9:00 a.m.–12:00 noon

Place: Conference Room B-169, Building 202, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Illinois 60439

Contact: George D. Duda, Office of Health and Environmental Research (ER-72); Office of Energy Research, Department of Energy, Washington, DC 20545. Telephone: 301/353-3651

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

March 2, 1988

- Presentations by Staff of the Argonne National Laboratory
- Report from HERAC Subcommittee on Biotechnology
- Public comment (10 minute rule)

March 3, 1988

- Report from HERAC Subcommittee on Radiation Biology
- Report from HERAC Subcommittee on Nuclear Medicine
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact George D. Duda at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 1, 1988.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 88-2286 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 16 through November 20, 1987

During the week of November 16 through November 20, 1987, the Decisions and Orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Atlantic Richfield Company, 11/18/87, KFA-0137, KES-0009

The DOE denied an Application for Reconsideration and an Application for Stay filed by the Atlantic Richfield Company (ARCO) in connection with an October 2, 1987 Decision and Order concerning a Freedom of Information Act (FOIA) Appeal filed by USA Petroleum Corporation. *USA Petroleum Corp.*, 16 DOE ¶ 80,119 (1987) (*USA Petroleum*). ARCO's Application for Reconsideration was based on a court decision issued two days before *USA Petroleum* by the U.S. Court of Appeals for the District of Columbia Circuit, in which the scope of Exemption 4 of the FOIA was expanded. *Critical Mass Energy Project* v. *Morton*, No 86-5847 (D.C. Cir. Sept. 29, 1987), (*Critical Mass*). ARCO alleged that if the DOE had been aware of the decision, it might have materially altered its analysis in *USA Petroleum*. Upon review, the DOE found that while the *Critical Mass* Decision expanded the government's interest under Exemption 4 to include program efficiency and effectiveness, ARCO had not alleged that any of the information ordered to be released in *USA Petroleum* would harm any governmental interest. Accordingly, the reconsideration request was denied. Under the circumstances, Arco's Application for Stay was also denied.

Petitions for Special Redress

Rosebud Sioux Tribe, 11/20/87, KEG-0011

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the Rosebud Sioux Tribe. In its Petition, the Tribe contended that 1986 Bureau of Indian Affairs Labor Market data ("the BIA data") should be used as the basis for determining its equitable share of South Dakota's oil overcharge monies. The Tribe also requested that OHA review language governing the transfer of Exxon funds from the State of South Dakota to the Tribe to determine whether the language constituted a broad, general waiver of the Tribe's sovereign immunity. In its Decision, the OHA determined that 1980 Census data was more accurate than the BIA data and therefore should be used to calculate the Tribe's portion of OHA second-stage and Exxon monies. In addition, OHA found that the language of the waiver did not constitute a waiver of the Tribe's sovereign immunity but merely transferred accountability for expenditure of the Tribe's portion of Exxon funds to the Tribe. Accordingly, the Rosebud Sioux Tribe's Petition was dismissed and the Tribe and the State of South Dakota were requested to report to OHA by December 31, 1987, any agreements for the expenditure of Exxon monies.

Vermont, 11-19-87, KEG-0020

The DOE issued a Decision and Order concerning a Petition for Special Redress filed by the State of Vermont. The State sought approval to use Stripper Well funds for its Underground Storage and Assistance Program, a project found by the DOE's Assistant Secretary for Conservation and Renewable Energy to be inconsistent with the terms of the Stripper Well Settlement suggested. Upon review, the DOE disapproved Vermont's Petition because the Program would have helped service stations and municipalities replace leaking underground storage tanks, and thus focused on environmental concerns rather than on reducing energy use. Accordingly, Vermont's Peution for Special Redress was denied.

Sellers Oil Company, 11-16-87, KEB-0144

Sellers Oil Company (Sellers) filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In reviewing the request, the DOE found that Sellers would not experience an inordinate burden by fulfilling its reporting obligation. The DOE also considered the fact that Sellers is a company specifically designated by the EIA as vital to its survey because of the firm's impact on its market area. Accordingly, exception relief was denied.

Refund Applications

APCO Oil Corporation/K & S Oil Company, Inc., 11/20/87, RF83-57

The DOE issued a Decision and Order concerning an Application for Refund filed by K&S Oil Company, Inc. K&S', a motor gasoline reseller, sought a portion of the settlement fund obtained by the DOE through a Consent Order entered into with K&S supplier, Apco Oil Corp. Based on an evaluation of the firm's refund claim using the three-step competitive disadvantage methodology, the DOE found that K&S was injured by Apco's alleged overcharges in its sales of motor gasoline. The DOE granted K&S a refund of $13,772, representing $9,206 in principal plus $4,566 in interest.

Apex Towing Company, 11/18/87, RF270-20, RF271-237

The DOE issued a Decision and Order concerning a Motion for Reconsideration of a previous Surface Transporter refund denial and an Application for Rail & Water Transporter (RWT) Refund. The petitioner's reconsideration request was dismissed because the firm was a waterborne transporter instead of a surface transporter. The petitioner's late RWT refund application was approved, however, because the firm showed good cause for its delay in filing. The number of gallows approved as a basis for a refund in this Decision is 26,469,176.

Cranston Oil Service Company, Inc. Madaline Norton, et al., 11/20/87, RF276-8 et al.

The DOE issued a Decision granting 34 Applications for Refund from the Cranston Oil Service, Inc. Consent Order fund. The 34 refund applicants were end-users of Cranston No. 2 heating oil during the consent order period. Each applicant elected to apply for a refund based upon the presumptions set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The determination approved a refund of $3,584, representing $3,145 in principal and $439 in interest.

Getty Oil Company/Bethlehem Steel Corporation, 11/17/87, RF265-1899, RF265-1889

The DOE issued a Decision and Order concerning two Applications for Refund filed by Bethlehem Steel Corporation (Bethlehem), an end-user of products covered by a Consent Order that the DOE entered into with the Getty Oil Company. Bethlehem provided documentation of the volumes of propane and lubricants that it purchased from Getty during the consent order period. As an end-user, Bethlehem is entitled to receive the full volumetric refund. The total amount of the refunds approved in this Decision is $15,837, representing $7,872 in principal and $7,965 in accrued interest.

Getty Oil Company/Henry Oil Company, et al., 11/17/87, RF265-1012, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with the Getty Oil Company. Each applicant documented its volume of Getty purchases, and none of these claims exceeded the $5,000 small claims limitation. The refunds approved in this Decision totalled $26,840, representing $13,342 in principal and $13,498 in accrued interest.

Gulf Oil Corporation/H & J, Inc., 11/19/87, RR40-4

The DOE issued a Decision and Order approving a Motion for Reconsideration filed by a purchaser of gasoline products covered by a Consent Order that the agency entered into with Gulf Oil Corporation. In a prior determination, the DOE denied the applicant's refund request because the applicant did not meet the injury standards for Gulf consignees. *Gulf Oil Corp./Roberts Oil Co.*, 15 DOE § 85,095 (1986). The applicant argued in its Motion that it was a retailer, not a consignee, because the "Automotive Gasoline Agreement" under which it was supplied by Gulf provided that the applicant had total control over the prices at which it resold Gulf gasoline. The DOE agreed with this reasoning because the applicant was neither guaranteed nor limited to a fixed profit margin. After reviewing the applicant's claim and supporting documentation, the DOE decided to grant the applicant a refund of $11,459, representing $9,019 in principal and $2,440 in interest.

Marathon Petroleum Company/FKG Oil Company, 11/20/87, RF250–1032.

The DOE issued a Decision and Order concerning an Application for Refund filed by the FKG Oil Company, a retailer of motor gasoline, in the Marathon Petroleum Company special refund proceeding. FKG documented purchases of Marathon motor gasoline which, if accompanied by documentation of injury, would have lead to a refund in excess of the $5,000 small claims limitation without application of the 35% injury presumption established in Marathon for reseller/retailer claims between $5,000 and $50,000. In support of its claim, FKG contended that its profit margins had declined as a result of its purchases of motor gasoline from Marathon. The DOE concluded that FKG's profit margin claim was not supported by the record and calculated a refund based upon 35% of the firm's volumetric share. The refund granted totalled $8,213, representing $7,277 in principal and $936 in interest.

Marathon Petroleum Company/Orth Oil, Company, 11/19/87, RF250–2740

The Department of Energy issued a Supplemental Order to Orth Oil, Inc., correcting a determination which granted a second refund for the firm's purchases of Marathon Petroleum Company middle distillates. The Orth motor gasoline refund, which was limited to $5,000 under the small purchaser presumption, was reduced by $873 to reflect the amount of the distillate refund the firm had previously received. Accordingly, Orth was granted a refund of $4,327 in principal and $556 in interest for its Marathon gasoline purchases.

Oneok Inc./Home Petroleum Corp., 11/16/87, RF212–3

The DOE issued a Decision and Order granting a refund from the Oneok, Inc., escrow account filed by Home Petroleum Corp., a reseller/wholesaler of Oneok natural gas liquid products. The Applicant elected to apply for a refund based upon the presumptions of injury set forth in the Oneok decision. *Oneok, Inc.*, 13 DOE ¶ 85,144 (1985). The DOE granted a total refund of $6,090, representing $5,000 in principal and $1,090 in interest.

Remington Freight Lines, 11/20/87, RR270–17

The DOE issued a Decision and Order regarding a Motion for Modification filed by Remington Freight Lines in the Surface Transporters refund proceeding. The Motion related to a Surface Transporter refund claim that the DOE had denied on the basis that all of the gasoline specified in the claim had been purchased by Remington's owner-operators, not the firm itself. In its Motion, Remington asserted that although it had used owner-operators, a portion of the gasoline purchases in its claim had been purchased by the firm, and, as such, was eligible for a refund. The DOE agreed, and determined that Remington is eligible for a Surface Transporter refund based on that portion of its purchases of diesel fuel during the Settlement Period.

Standard Oil Company (Indiana)/New York; National Helium Corp./New York, 11/18/87, RM21–87, RM3–91, RQ3–391

The DOE issued a Decision and Order granting two Motions for Modification and a second-stage refund application submitted by the State of New York. New York will be permitted to modify its proposals outlined in *Standard Oil Co. (Indiana)/New York*, 12 DOE ¶ 85,090 (1984) and in *National Helium Corp./New York*, 14 DOE ¶ 85,254 (1986), and will be permitted to use an additional $64,502 from the National Helium Corp. escrow account. Programs to be funded include several energy audit programs for residential buildings and small businesses, an energy measurement equipment program, and a homeless housing rehabilitation program.

Taylor's Farm & Dairy, et al., 11/16/87, RF272–924, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 25 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the claimants used the products for various agricultural activities, and estimated its consumption based on the acres it farmed. Each was an end-user of the products it claimed, and was therefore presumed injured by the DOE. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available. The total amount of refunds granted is $868.

The True Companies/Alden Oil Company; Kerr-McGee Corporation, 11/20/87, RF195–04, RF195–12

The DOE issued a Decision approving two Applications for refund in the True Oil Company refund proceeding. The two claimants demonstrated that they were direct purchasers of True covered products during the Consent Order period. Each applicant elected to limit its claim to the figures contained in the *True* Appendices. Because each claim was less than the $5,000 small claims threshold, the claimants were not required to demonstrate injury. The total amount of refunds granted in this decision is $6,685, representing $4,929 in principal and $1,756 in interest.

Dismissals

The following submissions were dismissed:

Company name	Case No.
Gulf States Oil & Refining Company	RF277–75.
Jerry's Biltmore Gulf	RF300–412.
M. A. Malik	KFA–0138.
Mission Lumber Company	RF294–1.
Owen's Gulf	RF300–481.
Reco Petroleum, Inc.	KEE–0156.
Thermagas, Inc.	RF300–469.
Tri-County Gas Company	RF300–468.
10–10 Truck Stop	RF300–470.

Copies of the full text of these Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 26, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–2282 Filed 2–3–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of November 30 through December 4, 1987

During the week of November 30 through December 4, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Hanford Education Action League, 11/30/87, KFA–0138

The Hanford Education Action League (HEAL) filed an Appeal from a partial denial by the Assistant Manager for Administration of the Richland Operations Office (the Assistant Manager) of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that HEAL had been provided with all existing lists of accidents and other non-routine incidents that occurred at the DOE's Hanford nuclear facility. It found that the Assistant Manager was not required to create a complete list of accidents in response to HEAL's Freedom of Information Request. The DOE also found, however, that the Assistant Manager's search for all reports of accidents or incidents occurring at the Hanford facility was inadequate. Accordingly, the Appeal was granted in part and the matter was remanded for an additional search for responsive documents.

Petitions for Special Redress

Arizona, 12/1/87, KEG–0018, KEG–0021

The DOE issued a Decision and Order concerning two Petitions for Special Redress filed by the State of Arizona. The State sought approval to use Stripper Well funds for two projects which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal to use $433,000 to fund the Motor Fuel Quality Assurance Program on the basis of several procedents in the OHA Subpart V second-stage proceedings. However, the DOE did not approve the State's proposal to use $7,000,000 to fund an elderly low-income subsidy program because the State did not provide materials upon which DOE could conclude that the program would achieve restitution.

Maine, 12/2/87, KEG–0012

The Department of Energy (DOE) issued a Decision and Order concerning the Petition for Special Redress filed by the State of Maine. Maine sought approval to use Stripper Well funds for two Underground Petroleum Storage Tank Removal programs previously deemed inconsistent with the terms of the Stripper Well Settlement Agreement by the DOE's Assistant Secretary for Conservation and Renewable Energy. After considering Maine's Petition, the DOE disapproved the State's proposal to use $3.5 million for the storage tank projects. The DOE found that the programs address environmental goals rather than energy related ones and should therefore not be funded from oil overcharge monies intended for energy restitution. Accordingly, Maine's Petition for Special Redress was denied.

Remedial Order

William Valentine & Sons, Inc., et al., 12/2/87, KRO–0410

William Valentine & Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine and James L. Marchant (the respondents) objected to a Proposed Remedial Order (PRO) which the DOE's Economic Regulatory Administration (ERA) issued to them on October 27, 1986. In the PRO, the ERA alleged that during the period May 1979 through December 1980, Big Muddy Oil Processors, Inc. (Big Muddy), an entity related to the respondents, engaged in the reclamation of waste crude oil and in the course of its operations resold blend crude oil and other "blending agents" at prices in excess of those permitted under the crude oil reseller price rule, 10 CFR Part 212, Subpart L. The PRO finds that the respondents are jointly and severally liable for Big Muddy's pricing violations.

The DOE found no merit in respondent's argument that Big Muddy should not be treated as a reseller of crude oil for purposes of the regulations. The DOE held that Big Muddy was properly classified as a crude oil reseller because it purchased waste crude oil, blended it with other purchased products, and resold the resulting mixture as 100% crude oil. The DOE next rejected respondents' contention that the price relief granted to Big Muddy did not specifically exclude the volumes of blending agents sold by that firm. The DOE also denied respondents' assertion that the enforcement of the price regulations was inequitable with respect to Big Muddy. In this regard, the DOE found that respondents had not shown that the ultimate financial failure of Big Muddy's reclamation operations was in any way attributable to an inadequate permissible price markup for the resale of its blending agents. On the issue of individual liability, the DOE rejected respondents' objections. It found that Dale and Verna Valentine and James Marchant were personally liable for Big Muddy's violations because they were central figures in the firm's violations and had derived some benefit from them. It also found that William Valentine & Sons, Inc. and Valentine Construction, Inc. shared a unity of interest and ownership with Big Muddy that warranted holding those firms jointly liable for Big Muddy's price violations.

Accordingly, the PRO was issued as a final Remedial Order. The Remedial Order directs the respondents to refund $1,454,876.35, plus interest, for ultimate distribution under 10 CFR Part 205, Subpart V.

Refund Applications

Cranston Oil Service Company, Inc., Tillie Gertz, et al., 12/1/87, RF276–10 et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company Inc., and its successor-in-interest Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $2,443, representing $2,144 in principal and $299 in interest.

Ford Motor Company, 12/2/87, RF270–2497

The Office of Hearings and Appeals issued a Decision and Order granting an Application for Refund from the Surface Transporters Escrow filed by Ford. Ford's refund will be based on its purchases of 26,964,186 gallons of U.S. petroleum products.

Getty Oil Company/Stanley Morris Oil Company, et al., 12/3/87, RF265–65, et al.

The DOE issued a Decision and Order concerning 43 Applications for Refund filed by resellers and retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In all of these cases, the applicants elected to base their claims on a percentage presumption of injury methodology. They were therefore eligible to receive less than $50,000 each.

The sum of the refunds approved in this Decision is $494,752, representing $245,603 in principal and $249,149 in accrued interest.

Giant Industries, Inc., 12/2/87, RR270–24

The Department of Energy (DOE) issued a Decision and Order concerning a Motion for Reconsideration of a Decision which denied an application for refund from the Surface Transporters Escrow filed by Giant Industries, Inc. 16 DOE ¶ 85,472 (1987). In that Decision, the DOE determined that the firm was not eligible for a Surface Transporter refund because it had received a refund from the escrow account established for Refiners. Upon reconsideration, the DOE determined that Giant's receipt of a refund from the Refiners' escrow precluded it from receiving a Surface Transporter refund. The DOE further determined that the fact that Giant received its Refiners' refund prior to its signing the Surface Transporters Escrow Settlement Claim Form and Waiver did not alter the determination. Therefore, the DOE determined that the Motion for Reconsideration should be denied.

Gulf Oil Corporation/R.F. White Co., Inc., 12/2/87, RF40–3129

The DOE issued a Decision and Order granting an Application for Refund filed by R.F White Co., Inc. in connection with the Gulf Oil Corporation special refund proceeding. In accordance with the procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the applicant documented its purchases of Gulf product, and demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund amount claimed. The DOE determined that White should receive a total refund of $28,763, representing $22,639 in principal and $6,124 in interest.

Hilt Truck Line, 12/4/87, RR270–28

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by Hilt Truck Line (Hilt) in the Surface Transporters Refund Proceeding. Hilt's initial refund application was denied on the grounds that the firm's owner-operators were responsible for fuel costs and as such Hilt was not eligible for a refund. In its Motion for Reconsideration, Hilt produced a copy of a lease demonstrating that in fact the firm itself was contractually responsible for the fuel purchases of its owner-operators. Therefore, Hilt's Motion for Reconsideration was granted, and the DOE approved Hilt's initial claim of 39,712, 949 gallons of petroleum products purchased.

John Bembry, et al., 12/3/87, RF272–924, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the applicants used the products for various agricultural activities, and each determined its claim by consulting purchase records or by estimating its consumption based on the acres it farmed. Each was an end-user of the products it claimed, and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,240. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Kaibab Industries, 12/1/87, RR270–18

Kaibab Industries filed a Motion for Reconsideration of a Decision and Order that the OHA issued on August 27, 1987 in the Surface Transporter Refund proceeding. *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. In the August 27, 1987 Decision and Order, Kaibab was approved 6,911,464 refund gallons of motor vehicle fuel which the firm used in its truck operations. In its Motion for Reconsideration, Kaibab sought additional refunds based on 3,116,792 gallons of refined products that the firm used in its sawmill operations. In this Decision and Order, the OHA analyzed Kaibab's consumption of the 3,116,792 gallons of petroleum products in the firm's sawmill operations. The OHA approved 75 percent of that volume, which was used to haul logs, and denied the remaining 25 percent of the gallons, which were used to operate off-road equipment.

Marathon Petroleum Company/Ecol, Inc. 12/1/87, RF250–2069.

The DOE issued a Decision and Order concerning an Application for Refund from the Marathon refund proceeding filed on behalf of Ecol, Inc. by Emro Marketing Company. Emro, the current owner of Ecol, sought a refund based on Ecol's purchases of Marathon product. The DOE determined that Emro, as a wholly-owned subsidiary of Marathon, was ineligible to receive a portion of the consent order funds remitted by Marathon. Accordingly, the Application for Refund was denied.

Marlen L. Knutson Distributors, Inc./ Sno-King Red Barn Whitehorse Mercantile, 12/2/87, RF279–1, RF279–2

The DOE issued a Decision granting 2 Applications for refund from the Marlen L. Knutson Distributors, Inc. consent order fund. In the Decision, the DOE found that the two applicants had previously been identified as first purchasers of motor gasoline from Knutson. The DOE stated that applicants who certified that they had purchased motor gasoline from Knutson and that they were willing to rely on data in the DOE audit file would be eligible for a refund. The DOE concluded that the two applicants had satisfied these requirements, and that they would be granted refunds totalling $1,198, consisting of $701 in principal and $497 in interest.

School Forms, et al., 12/3/87, RF272–3434, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the applicants used the products for various agricultural activities, and each estimated its claim based on the acres it farmed. Each was an end-user of the products it claimed, and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $805. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Standard Oil Co. (Indiana)/Nebraska, 12/1/87, RM21–88

The DOE issued a Decision and Order approving the Motion for Modification filed by the State of Nebraska in the Standard Oil Co. (Indiana) (Amoco I) refund proceeding. Nebraska will use $55,000 of its unexpended Amoco I funds for an agricultural minimum tillage demonstration program involving sugar beet seedings. In evaluating Nebraska's plan, the DOE found that the proposed program would help farmers conserve energy by reducing the number of fuel-consuming steps required for soil preparation. The DOE concluded that the program would therefore provide restitutionary benefits to consumers who were injured by the oil overcharges during the period 1973–1981.

Tresler Oil Company/Swifty Oil Company, 12/4/87, RF295–1

The DOE issued a Decision granting a refund from the Tresler Oil Company escrow account filed by Swifty Oil Co., a retailer of Tresler motor gasoline. The Applicant elected to apply for a refund based upon the presumptions set forth in the *Tresler* decision. *Tresler Oil Company*, 15 DOE ¶ 85,522 (1987). The DOE granted a refund of $1,105 ($957 principal and $148 interest).

DISMISSALS

Name	Case No.
A.O. Thompson Lumber Co.	RF294–4.
Clark Oil Distributors, Inc.	RF272–3480.
Howe & Company	RF40–2168.
Hunsaker Truck Lease, Inc.	RR270–25.
Leon L. Sidell	RF225–342.
Milton Transportation	RR270–16.
Myer's Propane Gas Service	RF277–84.
Owens-Illinois	RF225–5020 RF225–5021.
Schlichers Store	RF225–8538.
Seattle Post-Intelligencer	KFA–0140
Tenneco Oil Company	RF40–2582.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 27, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88–2283 Filed 2–3–88; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; During the Week of December 28, 1987 Through January 1, 1988

During the week of December 28, 1987 through January 1, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Modification and/or Rescission

J.D. Streett & Company, Inc., 12/29/87, KRR–0038

The Department of Energy (DOE) denied a Motion for Reconsideration filed by J.D. Streett & Company, Inc. (Streett) in connection with an Interlocutory Order previously issued to the firm. *J.D. Streett & Co.*, 16 DOE ¶83,015 (1987). The Interlocutory Order resolved certain legal issues, as well as the audit methodology, underlying a Proposed Remedial Order (PRO) issued to Streett by the Economic Regulatory Administration (ERA) on May 21, 1982. Streett requested reconsideration of two determinations reached in the Interlocutory Order: (1) that Streett's increased product costs for leaded and unleaded gasoline must be determined on a separate product basis; and (2) that Streett's belated claim that the ERA conducted a double-audit must be rejected. The DOE found a lack of any significantly changed circumstances to justify reconsideration. Specifically, the DOE rejected Streett's assertion that an extension of time granted the ERA in which to revise the PRO justifies reopening the "double-audit" claim. That time extension was merely procedural in nature and did not permit the reopening of issues previously resolved in the Interlocutory Order. Finally, the DOE found that Streett advanced no arguments whatsoever to support reconsideration of the increased costs issue. Accordingly, reconsideration was denied.

Refund Applications

Beacon Oil Company/Ben W. Nachtigall Distributor, Inc., J.B. Dewar, Inc., L.A. Oil Company 12/28/87, RF238–13, RF238–33, RF238–56

The DOE issues a Decision and Order concerning three Applications for Refund filed by resellers and retailers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Co.*, 14 DOE ¶85,011 (1986), as modified by *Beacon Oil Co.*, 14 DOE 85,509 (1986), governing the disbursement of settlement funds received from beacon pursuant to a December 17, 1979 Consent Order. Since the applicants were resellers and retailers claiming refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $22,854, representing $11,076 in principal and $11,778 in accrued interest.

Conoco Inc./Bussanmus, Inc., 12/28/87, RF220–278

The DOE issued a Decision and Order granting an Application for Refund filed by Bussanmus, Inc. in the Conoco Inc. special refund proceeding. *Conoco Inc.*, 13 DOE ¶85,316 (1985). Bussanmus was a retailer of Conoco refined petroleum products claimning a refund of less than $5,000 and were therefore presumed to have been injured by Conoco's alleged overcharges. After examining the application and supporting documentation submitted by Bussanmus, the DOE concluded that it should receive a refund of $1,079, representing $754 in principal and $325 in accured interest.

Pyrofax Gas Corporation/Rural Gas Service of Warren, 12/28/87, RF277–71

The DOE issued a Decision and Order concerning an Application for Refund filed by Rural Gas Service of Warren, a purchaser of Pryrofax propane. The firm applied for a refund based on the procedures outlined in *Pyrofax Gas Corp.*, 15 DOE ¶85,494 (1987) (Pyrofax), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. The firm was a retailer of Pyrofax propane and filed for a small claims refund of less than $5,000, plus accured interest. The firm provided evidence of its purchases of Pyrofax propane during the consent order period. In *Pyrofax*, the DOE adopted the presumption that all retailers claiming $5,000 or less, excluding accrued interest, were injured. After examining the application and supporting documentaion submitted by the claimant, the DOE concluded that the firm should receive a refund of $5,209, representing $2,874 in principal and $2,335 in accrued interest.

Standard Oil Co. (Indiana)/Colorado, 12/30/87, RM251–74, RM251–86, RM251–417

The DOE issued a Decision and Order denying the Motions for Modification and the second-stage refund application filed by the State of Colorado in the Standard Oil Co. (Indiana) (Amoco II) refund proceeding. Colorado requested permission to use $20,000 for the 1987 Energy Forecast and $75,000 for several projects administered by the Denver Metropolitan Air Quality Council (MAQC). The DOE found that both programs failed to provide restitution to injured consumers of petroleum products. In past determinations, the DOE has stated that energy forecasts, such as the one proposed by Colorado, do not benefit injured consumers. The DOE has also previously denied programs, like the Denver MAQC, whose goal is to promote changes in state laws. Accordingly, Colorado's submissions were denied.

Dismissals

The following submissions were dismissed:

Name and Case No.

L.F. Archer Co. RF238–52
Mrs. Benjamin Pina: RF276–283
Multinational Legal Services, P.C.: KFA–0150
Textron Lycoming: RF272–7358

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 27, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88-2284 Filed 2-3-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) announces procedures for the disbursement of $68,035,515.62 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with the Atlantic Richfield Company (ARCO), a major integrated refiner marketing crude oil and refined petroleum products throughout the United States. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for Refund from the refined product portion of the ARCO consent order fund must be filed in duplicate and postmarked by August 31, 1988. All applications should refer to the ARCO Refund Proceeding, Case Number HEF-0591 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-3054.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, set forth at 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by the DOE and the Atlantic Richfield Company (ARCO) which settled a comprehensive list of issues pertaining to ARCO's compliance with the Federal petroleum price and allocation regulations during the period January 1, 1973, through January 27, 1981 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the ARCO consent order funds was issued on June 26, 1986. 51 FR 24206 (July 2, 1986).

The Decision sets forth procedures and standards which the DOE has formulated in order to distribute the contents of the escrow account funded by ARCO pursuant to the Consent Order. The escrow funds associated with ARCO's alleged refined product violations, $46,387,975.28, plus interest, will be used to provide restitution to individuals and firms that purchased refined covered products sold by ARCO during the period March 6, 1973, through January 27, 1981. The remainder of the escrow funds, $21,647,540.36, plus interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. *See* 51 FR 27899 (August 4, 1987), using the procedures described in *A. Tarricone, Inc., et al.*, 15 DOE ¶85,495 (1987).

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by purchasers of refined covered products sold by ARCO during the period March 6, 1973, through January 27, 1981. Applications will be accepted provided they are filed in duplicate and postmarked by August 31, 1988. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order—Implementation of Special Refund Procedures

January 28, 1988.

Name of Firm: Atlantic Richfield Company

Date of Filing: July 30, 1985

Case Number: HEF-0591

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On July 30, 1985, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a June 27, 1985 Consent Order between Atlantic Richfield Company (ARCO) and the DOE.

I. Background

During the period of federal petroleum price and allocation controls, ARCO was engaged in the production, importation, sale, and refining of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products; and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. After an extensive audit of ARCO's operations, ERA alleged that the firm had violated applicable DOE pricing and allocation regulations in its sales of covered products.

On January 23, 1985, ERA and ARCO signed a Proposed Consent Order settling a comprehensive list of issues pertaining to ARCO's compliance with the federal petroleum price and allocation regulations during the period, January 1, 1973, through January 27, 1981 (consent order period). 50 FR. 8368 (March 1, 1985). Under the terms of the Proposed Consent Order, ARCO agreed to remit a total of $85,700,000, plus interest, to the DOE [1] and ERA agreed not to pursue its allegations regarding ARCO's compliance with the DOE regulations, with the exception of certain issues enumerated in the Proposed Consent Order. *See* Proposed Consent Order, ¶ 501, 50 FR. 8732 (March 1, 1985). The Proposed Consent Order specifically stated that "[e]xecution of this Consent Order constitutes neither an admission by ARCO nor a finding by DOE of any violation by ARCO of any statute or regulation." Proposed Consent Order, ¶ 506, 50 FR. 8373 (March 1, 1985). On June 27, 1985, the DOE finalized the ARCO Consent Order, with only minor technical modifications.[2] 50 FR 26603 (June 27, 1885).

On June 26, 1986, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the ARCO consent order funds. 51 FR. 24206 (July 2, 1986). In this Decision and Order, we will address the comments which were submitted in response to the PD&O and will adopt final refund procedures. In addition, we will provide a suggested refund application format in order to assist individuals and firms in making claims.

II. Summary of Proposed Refund Procedures

As we indicated in the PD&O, the ARCO Consent Order resolved alleged regulatory violations involving the sale of both refined covered products [3] and crude oil. Therefore, we proposed to divide the escrow funds into two pools.[4] Because the record indicated that approximately 68.182 percent of the alleged overcharges resolved by the Consent Order occurred in ARCO's sales of refined products, we proposed that 68.182 percent of the consent order funds be made available for distribution to individuals and firms that were injured by their purchase of ARCO refined covered products during the period March 6, 1973, through January 27, 1981 (refund period).[5] We also proposed that the remaining 31.818 percent of the escrow fund be set aside as a pool of crude oil monies.[6]

In the PD&O, we outlined procedures under which purchasers of ARCO refined covered products could apply for refunds. The procedures involve: (1) Assigning applicants shares of the ARCO settlement, *i.e.*, potential refund amounts; and (2) determining the extent to which the claimants were injured by the alleged overcharges. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow us to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to both aspects of the refund procedures.

First, we presumed that the alleged product overcharges were spread evenly in all of ARCO's sales of refined covered products during the consent order period. We therefore proposed that an applicant's maximum potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of ARCO refined covered products that the claimant purchased during the refund period.[7] The resulting figure is referred to as the claimant's "full volumetric share" of the ARCO consent order funds. We further proposed, however, that an applicant could rebut the volumetric refund presumption by showing that it sustained a disproportionate share of the alleged overcharges.

Because demonstrating that one was forced to absorb ARCO's alleged overcharges is potentially difficult, time-consuming, and expensive, we proposed to adopt a number of presumptions concerning injury. For example, we proposed to presume that resellers and retailers claiming refunds of $5,000 or less, end users, agricultural cooperatives, and certain types of regulated firms were injured by ARCO's alleged overcharges. We also proposed to presume that resellers and retailers that made only spot purchasers from ARCO as well as consignee agents were not injured and are therefore ineligible for refunds. We stated that applicants not covered by one of these injury presumptions would be required to demonstrate that they were forced to absorb ARCO's alleged overcharges in order to receive their full volumetric shares of the ARCO consent order funds.[8] We further proposed, however, that with respect to their purchases of ARCO motor gasoline resellers and retailers should be allowed to receive 41 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury. This "mid-level" presumption that ARCO resellers and retailers absorbed 41 percent of the alleged overcharges associated with ARCO's sales of motor gasoline was based on national average profit margin data for resellers and retailers of motor gasoline.[9] Because suitable profit margin data for other products were unavailable, we proposed to restrict the use of the mid-level presumption to claimants' purchases of ARCO motor gasoline.

III. Comments on the Proposed Procedures

The PD&O was published in the **Federal Register** on July 2, 1986, and comments on the proposed refund procedures were requested by August 1, 1986. *See* 51 FR 24206. In addition, copies of the PD&O were mailed to a variety of organizations representing a broad spectrum of potential ARCO refund applicants. Ten parties filed comments on the proposed refund procedures. Those comments, which concern an array of issues, are discussed below.

A. Crude Oil Comments

In the PD&O, we proposed to distribute the crude oil portion of the ARCO consent order funds in accordance with the DOE's Statement of Restitutionary Policy in Crude Oil Cases (SRP). 50 FR 27400 (July 2, 1985). The Commonwealth of Pennsylvania, however, urged us not to follow this policy and, instead, to distribute the ARCO crude oil funds to state governments as a way of effecting indirect restitution. On July 28, 1986, after we had issued the ARCO PD&O and after the Commonwealth of Pennsylvania had filed its comments, the DOE amended the SRP. *See* 51 FR 27899 (August 4, 1987). Under the Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), up to 20 percent of crude oil overcharge funds

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[1] Upon signing the Proposed Consent Order, ARCO deposited $85,700,000 into an interest-bearing escrow account administered by the Bank of America, pending completion of the public comment period and finalization of the Consent Order.

[2] At the same time, ARCO transferred $68,035,515.62, including interest, to the DOE.

[3] For the purposes of this Decision, the term "refined covered products" includes all covered products other than crude oil.

[4] The PD&O explained that any crude oil overcharges would have been dispersed throughout the domestic refining industry through the operation of the DOE Entitlements Program, and that as a policy matter the DOE had decided that direct restitution for these alleged overcharges was impractical. We proposed to distribute the ARCO crude oil funds in accordance with the DOE's Statement of Restitutionary Policy in Crude Oil Cases (SRP), 50 Fed Reg. 27400 (July 2, 1985). Under the SRP, all funds received in crude oil cases were to be held in escrow pending Congressional action. However, if Congress did not act by the autumn of 1986, crude oil funds were to be paid into the U.S. Treasury.

[5] Except for the first ten days of 1973, no ARCO products were "covered" by mandatory controls until March 6, 1973. Because refunds in this type of case are only warranted for purchases of regulated products, the refund period begins on this date.

[6] In the PD&O, we applied the 31.818 percent figure to $85,700,000, the ARCO consent order amount, and produced a crude oil sum of $30,904,426. However, this calculation should have been based on $68,035,515.62, the total amount of money that ARCO eventually remitted to the DOE. Using this figure, the crude oil portion of the ARCO consent order funds is $21,647,540.36 [0.31818 x $68,035,515.62]. Similarly, the refined product portion of the ARCO monies is $46,387,975.28 [0.68182 x 68,035,515.62]. In addition to these sums, the pools will also include proportionate shares of the interest that has accrued on the escrow account.

[7] Based on the revised calculation of the product portion ($46,387,975.28) of the money that the DOE ultimately received from ARCO (*see supra* note 6), we are raising the per-gallon refund amount from $0.000710 to $0.000735 per gallon [$46,387,975.28/63,109,256,000 gallons of refined covered products estimated to have been sold by ARCO during the refund period].

[8] As stated in the PD&O, an applicant attempting to demonstrate injury must: (1) show that it maintained banks of unrecouped increased product costs of sufficient size to justify the amount of the refund claimed; and (2) demonstrate that market conditions forced it to absorb the alleged overcharges.

[9] We computed the 41-percent fraction from information concerning the percentage of months of our data set in which the profit margins of resellers and retailers declined.

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will be reserved for the payment of refunds to eligible applicants, and the balance will be divided between the states and the U.S. Treasury, as indirect restitution to unidentified injured parties. The Commonwealth of Pennsylvania has presented no convincing arguments why we should not follow standard departmental policy, and we will distribute the ARCO crude oil monies in accordance with the MRSP.

B. Refined Product Comments

Most of the comments which we received concern the proposed procedures for distributing the refined product portion of the ARCO consent order funds. One of the commenters, Mr. Richard Gindhart, was a small retailer of ARCO motor gasoline whose firm was located in Bellingham, Washington. Mr. Gindhart states that, in 1973, ARCO opened a large self-service station near him that charged prices equal to the prices charged to him by his ARCO distributor. Mr. Gindhart states that as a result of ARCO's "predatory pricing practices", he suffered a significant sales volume decline and eventually sold his business in January 1978 at a price that he states was substantially less than the firm's market value. He therefore contends that he should be able to apply for a refund based not only on his full volumetric share of the ARCO consent order funds but also on the "injury" associated with ARCO's alleged "predatory pricing practices."

Mr. Gindhart's claims, if true, could conceivably have formed the basis for a private action against ARCO. Claims in the ARCO refund proceeding, however, must be based on matters resolved in the Consent Order pertaining to ARCO's compliance with the Mandatory Petroleum Price and Allocation Regulations. The arguments raised by Mr. Gindhart, though compelling, are not covered by the Consent Order. Therefore, unless Mr. Gindhart, or any other applicant, demonstrates that he either suffered a disproportionate share of the alleged overcharges or lost profits because of an ARCO allocation violation, he may only apply for his volumetric share of the ARCO consent order funds.

Several parties filed comments regarding the proposed injury presumptions.[10] For example, the Controller of California (Controller) disagrees with the presumption that resellers and retailers claiming refunds of $5,000 or less were injured by the alleged overcharges. He suggests a hypothetical situation in which a wholesaler and its retailer customer, if they are small claimants, would both be presumed to have absorbed 100 percent of the alleged overcharges associated with a given volume of ARCO products. In the past, the Controller has objected to our use of any injury presumptions for resellers and retailers. In this case, he insists that if we adopt such measures we should apply an absorption fraction similar to the one envisioned for use with mid-level motor gasoline claims. In the Controller's opinion, all resellers and retailers that wish to receive full volumetric refunds should be required to submit detailed proof of injury.

We do not agree with the Controller's position. Because demonstrating injury can be an expensive, time-consuming undertaking, failure to allow simplified application procedures for small claimants could effectively preclude such applicants from seeking refunds.[11] As we have stated in many previous cases, the small claims presumption provides adequate incentive for firms to apply for relatively small refunds, minimizes data retrieval burdens for small firms, and promotes efficient consideration of these types of applications by OHA. *See, e.g., Texas Oil & Gas Corporation, et al.*, 12 DOE ¶ 85,069 at 88,210 (1984) (*Texas Oil & Gas*). However, when we grant a small claimant a full volumetric refund, we are not making a specific finding regarding the portion of the alleged overcharges that the applicant absorbed. *See Little America Refining Company/University Gas*, 14 DOE ¶ 85,216 at 88,401 (1986). Therefore, direct and indirect purchasers can both properly receive small claims refunds for a given volume of ARCO products.

Two commenters, the ARCO Distributors Group (Distributors) and the ARCO Jobbers Group (Jobbers), suggest that we increase the $5,000 small claims amount with respect to applications filed by ARCO resellers. The Distributors and Jobbers believe that for the sake of administrative efficiency and in light of the passage of time, an average-sized reseller[12] should be able to receive a full volumetric refund without making a detailed showing of injury. The Distributors and Jobbers state that applying the $5,000 small claims amount to both resellers and retailers unfairly discriminates against resellers since the full volumetric refund of an average-sized retailer[13] would fall within the $5,000 limit while that of the average-sized reseller would not.

Adopting the suggestion of the Distributors and Jobbers would require us to depart from the considerations that led to the small claims presumption. The focus of the presumption is the size of the refund to be granted and whether the benefits to be obtained by the increased accuracy that is possible through analyzing injury data outweigh the burdens of supplying and reviewing the data. The presumption was adopted to assist applicants seeking small refunds regardless of whether the applicants are "average-sized" resellers or retailers. Under the approach suggested by the Distributors and Jobbers, even if we used the PMAA survey's lower median volume figure to define "average-sized reseller", the small claims amount would be set at over $25,000 (4.4 million gal./yr. × 7.8 × $0.000735/gal. = $25,225.20). We believe that if a reseller requests a full volumetric refund of this magnitude, the additional effort necessary for a detailed injury analysis is warranted. *See Gulf Oil Corporation*, 16 DOE ¶ 85,381 at 88,738 (1987) (*Gulf II*); *Marathon Petroleum Company*, 14 DOE ¶ 85,269 at 88,510 (1986) (*Marathon*).

We also received comments on our proposal to allow resellers and retailers of ARCO motor gasoline to receive 41 percent of their volumetric shares up to $50,000, without making detailed showings of injury. The Controller of California (Controller) claims that "administrative convenience" does not justify adoption of the 41-percent absorption presumption. He also contends that the 41-percent figure was inappropriately derived and that, instead of using national average profit margin data for resellers and retailers of motor gasoline to compute this fraction, we should have relied on the information outlined in the *Report of the Office of Hearings and Appeals, In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), 6 Fed. Energy Guidelines ¶ 90,507 (1985) (Stripper Well Report).

The Stripper Well Report addressed the absorption by refiners of crude oil overcharges. It did not consider overcharges on refined products or the absorption of such overcharges. As a result, the Stripper Well Report has no bearing on the alleged refined product overcharges in this proceeding. *See Marathon*, at 88,510–11. Nor was the proposal to adopt the mid-level injury presumption made solely for "administrative convenience." The 41-percent presumption was based on the best data at hand, and it promotes efficient, effective and equitable distribution of refunds to injured parties. *See* 10 CFR 205.282(e). Consequently, we reject the Controller's comments.

Four commenters, the ARCO Distributors Group (Distributors), the ARCO Jobbers Group (Jobbers), the National Association of Truck Stop Operators (NATSO), and the class of wholesale purchaser-resellers in *Van Vranken, et al. v. Atlantic Richfield Company*, Civil No. C–79–0627–SW (N.D. Cal.) (*Van Vranken class*)[14] request that purchasers of ARCO middle distillates also be allowed to use the 41-percent mid-level injury presumption.[15] The *Van Vranken* class states that restricting the use of this presumption to purchases of ARCO motor gasoline discriminates against truck stop operators and certain jobbers for whom diesel fuel represents a significant portion of their purchases. The Jobbers and NATSO believe that the extension of the mid-level presumption to middle distillate purchases would: (1) Further OHA's restitutionary duty in Subpart V proceedings; (2) ease the administrative burden on OHA in conducting the ARCO refund proceeding; and (3) be consistent with procedures used in other large refund proceedings. *See Gulf II*, at 88,740; *Getty*, at 88,123; *Marathon*, at 88,515. Moreover, the Jobbers and NATSO state that extending the mid-level injury presumption to purchases of ARCO middle distillates would not be counter-intuitive.

We find considerable merit in these comments. Although we stated in the PD&O that the lack of adequate profit margin data for other products caused us to restrict the use of the mid-level presumption to purchases of ARCO motor gasoline, the additional experience that we have gained in conducting large refund proceedings since the issuance of the PD&O confirms that a broader use of this presumption is warranted. Accordingly, we will allow resellers and retailers of *all* ARCO refined covered products to use the mid-level injury presumption.[16]

The *Van Vranken* class also suggests that we combine the small claims presumption with the 41-percent mid-level presumption so that a reseller or retailer of ARCO products that chose not to demonstrate injury would be able to receive a full volumetric refund up to $5,000 and 41 percent of the volumetric amount for all purchases in excess of those necessary to reach the $5,000 small claims limitation. The *Van Vranken* class maintains that this approach would provide a more equitable distribution of refunds and points out that if we do not adopt its proposal, resellers and retailers that are potentially eligible for full volumetric refunds between $5,000 and $12,196 would have to demonstrate injury or elect to limit their claims to $5,000.

As we have stated, the small claims presumption was adopted in order to avoid a situation in which the cost of preparing a refund claim exceeds the value of the potential refund. We have previously concluded that these considerations apply to claims for $5,000 or less. Plainly, the fact that an applicant seeking a refund of more than $5,000 may have to demonstrate injury certainly does not alter our conclusion. Moreover, there is nothing in the *Van Vranken* class submission that would lead us to alter this conclusion. Consequently, we will not adopt the *Van Vranken* class proposal.

We also received comments concerning the type of material that must be submitted to demonstrate injury. E–Z Serve Petroleum Refining and Marketing (E–Z), a firm located in Abilene, Texas, believes that resellers and retailers attempting to demonstrate injury should only be required to submit information regarding their banks of unrecouped increased product costs. The firm alleges that it is unreasonably burdensome to require these claimants to show that market conditions forced them to absorb the alleged overcharges.

There are two reasons why the existence of cost banks, by themselves do not show injury. First, cost banks were not supplier specific. In other words, an applicant's cost banks could have resulted from increased product costs associated with products purchased from other suppliers, not from any alleged ARCO overcharges. In addition, an applicant could have accumulated cost banks as part of a marketing strategy emphasizing high sales volumes rather than profit margins. In the latter case, the claimant would not have been forced by market conditions to absorb its supplier's price increases, and thus would not have been injured by the alleged overcharges. In light of the foregoing considerations, we believe that the second aspect of our injury requirement is essential. We must therefore reject E–Z's comments.

The ARCO Distributors Group (Distributors) asks that we modify the proposed refund procedures to allow claimants attempting to demonstrate injury to submit only annual profit and loss statements. We cannot adopt this suggestion, because annual profit and loss statements are not probative of the relevant question. Data from such statements do not allow us to determine whether an applicant was forced to absorb any of ARCO's alleged overcharges. There are any number of factors other than increased cost of goods from one supplier that may produce lowered profitability for example, higher prices from other suppliers, higher salaries, additional financing requirements, etc. Because the information contained in annual profit and loss instatements does not allow us to determine whether any deteriorating

[10] Most of the commenters requested that we make changes in our proposed injury presumptions. The Northern Illinois Gas Company, however, expressed support for our proposal to presume that regulated utilities were injured by ARCO's alleged overcharges.

[11] If we followed the Controller's alternative suggestion and substituted the small claims presumption with an absorption presumption, we would still be effectively preventing small firms from seeking full volumetric refunds.

[12] Both the Distributors and Jobbers wish to base their definition of "avarage-sized reseller" on the results of a 1986 survey conducted by the Petroleum Marketers Association of America (PMAA) in which the organization requested information concerning its members' annual sales volumes of finished petroleum products. According to that survey, the mean annual sales volume figure was 8.4 million gallons; the median annual sales volume figure was 4.4 million gallons.

[13] Citing the 1986 NPN Factbook, the Jobbers state that the average service station in the United States sold approximately 61,000 gallons of petroleum products per month.

[14] *Van Vranken, et al. v. The Atlantic Richfield Company*, Civil No. C–79–0627–SW (N.D. Cal.) is a private damage action filed pursuant to Section 210 of the Economic Stabilization Act of 1970 alleging the same overcharges that were resolved by the Consent Order underlying the ARCO special refund proceeding. On March 25, 1986, the United States District Court for the Northern District of California certified a class of wholesale purchaser-resellers in that litigation pursuant to Rule 23 of the Federal Rules of Civil Procedure.

[15] In the PD&O, we stated that resellers of motor gasoline in two-tiered distribution systems experienced reduced profit margins in 45 percent of the studied months while those in three-tiered distribution systems suffered profit margin reductions in 40 percent of the studied months. We also indicated that retailers of motor gasoline in two-tiered distribution systems experienced reduced profit margins in 42 percent of the studied months while those in three-tiered systems suffered profit margin reductions in 37 percent of the studied months. Citing this information, the Distributors want us to raise the mid-level absorption fraction to 43 percent for claims filed by resellers. We will not adopt this suggestion since, as we stated in the PD&O, the use of a single, average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE.

[16] Zephyr, Inc. of Muskegon, Michigan suggests that applicants be permitted to employ both the 41-percent presumption for their motor gasoline purchases and the small claims presumption for their purchases of other refined covered products. The firm claims it would be inequitable to require an applicant to waive its right to receive a small claims refund for purchases of products such as middle distillates merely because it has used the 41-percent presumption with respect to its purchases of motor gasoline. Our extension of the 41-percent injury presumption to purchases of all ARCO refined covered products should eliminate Zephyr's concerns. There is, however, no basis for establishing separate small claims thresholds for separate products.

operating conditions result from a combination of market conditions and a single supplier's prices, such statements are insufficient to show injury and cannot alone form the basis for a refund.

Zephyr, Inc. (Zephyr) pointed out that although the consent order period begins on January 1, 1973, the refund period specified in the PD&O begins on March 6, 1973. Zephyr states that ARCO was subject to mandatory Cost of Living Council (CLC) price regulations during the period, January 1, 1973, through March 5, 1973, and that resellers and retailers were not similarly regulated until June 14, 1973. Therefore, Zephyr requests that claimants be allowed to seek refunds for ARCO purchases made during the period, January 1, 1973, through March 5, 1973, and that reseller and retailer claimants not be required to demonstrate injury or be subject to the 41-percent mid-level presumption with respect to purchases made prior to June 11, 1973.

ARCO was *not* subject to mandatory controls prior to March 6, 1973. As a result, we concluded that the refund period should begin on that date, rather than at the onset of the consent order period.

However, we generally agree with the second part of Zephyr's comments. Because resellers and retailers were not subject to mandatory price controls prior to June 14, 1973, they were not required to maintain records documenting their purchase costs. Therefore, it would difficult for them to provide the information necessary to demonstrate injury. *See Office of Special Counsel*, 11 DOE ¶ 85,226 at 88, 389–90 (1984). Accordingly, resellers and retailers will not be required to demonstrate injury or be subject to the 41 percent mid-level presumption with respect to their purchases of ARCO refined covered products prior to June 11, 1973. However, in order to receive full volumetric refunds for the gallons bought during that period, they will be required to submit accurate monthly purchase volume data.

In the ARCO PD&O, we did not propose procedures for disbursing residual petroleum product monies in the ARCO escrow account. In two sets of comments, the Commonwealth of Pennsylvania and the Attorneys General of the states of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia requested that these funds be distributed to state governments as a way of effecting indirect restitution to their citizens. On October 21, 1986, after the PD&O had been issued and after these comments had been filed, Congress enacted the Petroleum Overchange Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III (PODRA). *See* Fed. Energy Guidelines ¶ 11,702 *et seq.* PODRA requires the Secretary of Energy to determine annually the amount of petroleum product overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings, and to make those funds available to state governments for use in four energy conservation programs. PODRA, §§ 3003 (c) and (d). The Secretary has delegated these responsibilities to OHA, and any funds in the product portion of the ARCO escrow account that OHA determines will not be needed to effect direct restitution to injured parties will be distributed in accordance with the provisions of PODRA. [17] Because the PODRA monies will ultimately be distributed to the states, we are essentially adopting the commenters' suggestion.

After the PD&O had been issued, and after the comment period had expired, the DOE was approached by ARCO and counsel for Mr. Don Van Vranken, the class representative in *Van Vranken, et al. v. Atlantic Richfield Company*, Civil No. C–79–0627–SW (N.D. Cal.) (*Van Vranken*), a private action pending against ARCO in the United States District Court for the Northern District of California.

ARCO and counsel for the class in *Van Vranken* [18] informally sought to have the DOE select class counsel as sole representative for the "class" of persons involved in the lawsuit against ARCO, *i.e.* all resellers and retailers that purchased motor gasoline, middle distillates, propane, butane, and aviation fuels from ARCO during the period August 1, 1973, through January 28, 1981.[19] The DOE rejected the proposal, and stated that it was unacceptable because the Department could not relinquish a governmental decision-making function specifically delegated to DOE and OHA by statute, and because it would also divert Consent Order funds intended for restitution to injured parties to defer legal fees and administrative costs of counsel for the class. January 20, 1987 letter from Richard T. Tedrow, OHA Deputy Director, to Richard C. Morse, counsel for ARCO.

Notwithstanding the outright rejection of the ARCO/class counsel proposal, during July 1987, OHA became aware that the same scenario had been embodied in a Proposed Settlement of the *Van Vranken* litigation that had been formulated between ARCO and counsel for the class and tentatively approved by the Court. In addition to its other aspects that would preclude its adoption by DOE, the Proposed Settlement would appoint class counsel to be the *exclusive* representative of the entire class of first-purchaser resellers and retailers in the ARCO Subpart V proceeding. In other words, if the Proposed Settlement were finalized, any class member that did not file an "Election to Be Excluded" with the Court by August 21, 1987, would be barred from filing an individual refund claim with the DOE in the ARCO Subpart V proceeding. In view of the seriousness of this matter, the DOE filed an *amicus curiae* brief to inform the Court that because all similar refund applications submitted on behalf of "classes", such as that contemplated by the Proposed Settlement, had been rejected by the DOE, there was every reason to believe that the class application contemplated by the Proposed Settlement would also be rejected, thereby rendering the Proposed Settlement valueless to the class members. The DOE also pointed out that each member of the *Van Vranken* class would, in any event, be entitled to file a refund claim in the DOE's Subpart V proceeding without incurring any of the legal or other costs to be paid to class counsel under the Proposed Settlement. Thus, it is difficult to see how the Proposed Settlement could reasonably be expected to benefit the *Van Vranken* class. The Court has taken these matters under consultation. Because they remain unresolved, we are taking this opportunity to reiterate our opposition to the Proposed Settlement and to emphasize that any class refund application such as that contemplated by the Proposed Settlement would in all likelihood be rejected.

[17] Pursuant to PODRA, $11,596,993.63, plus interest, was disbursed from the ARCO refined product pool in 1986. 51 Fed. Reg. 43964. (December 5, 1986).

[18] Counsel for the Van Vranken class are:

Josef D. Cooper, Esq., Law Offices of Josef D. Cooper, 100 The Embarcadero, Penthouse, San Francisco, CA 94105.

and

Tracy R. Kirkham, Esq., Hennigan & Mercer, 611 W. Sixth Street, 28th Floor, Los Angeles, CA 90017.

[19] Under this scenario, class counsel would file a claim that would set forth on an aggregate basis the total volume of purchases of refined covered products during the refund period by all members of the class based on records to be provided by ARCO. In the event OHA accepted the class claim, the total refund for the class would be transferred to a Court-approved escrow agent. After compensating the class counsel with a portion of the refund monies, the Court would distribute the remaining funds to the individual class members that responded to the solicitation of class counsel. Monies to which non-responding members of the class would otherwise be entitled would be included in this distribution. This latter aspect of the proposal is inconsistent with DOE practice and Congressional intent, since it would provide inappropriate windfalls to responding members of the class at the expense of non-responding injured parties and of those entitled to indirect restitution. *See* Denny Klepper Oil Co. v. DOE, 598 F. Supp. 522, 527 (D.D.C. 1984).

IV. Distribution of the ARCO Crude Oil Funds

The ARCO crude oil monies, $21,647,540.36, plus interest, will be disbursed in accordance with the MSRP, using the procedures described in *A. Tarricone, Inc., et al.*, 15 DOE ¶ 85,495 (1987) (*Tarricone*). Up to 20 percent of those funds, $4,329,508.06, plus interest, will be distributed to injured parties in the DOE's Subpart V crude oil refund proceeding. Refunds to eligible purchasers in that proceeding will be based on a per-gallon refund amount derived by dividing the sum of all crude oil overcharge monies in escrow by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[20] The principal volumetric refund amount associated with the ARCO crude oil funds is $0.0000107 per gallon. For further information concerning application procedures in the Subpart V crude oil proceeding, *see Berry Holding Company, et al.*, 16 DOE ¶ 85,405 (1987).

The remaining 80 percent of the ARCO crude oil funds, $17,318,032.30, plus interest, as well as any portion of the above-mentioned 20-percent reserve that is not distributed, will be divided equally between the states and the federal government for indirect restitution. We will therefore direct the DOE's Office of the Controller to disburse immediately $8,659,016.15, plus interest, to the federal government and to transfer $8,659,016.15, plus interest, into a special interest-bearing subaccount from which we shortly will make disbursements to the individual states.[21] Each state's share of the funds is set forth in the Stripper Well Exemption Litigation Settlement Agreement, *see* 6 Fed. Energy Guidelines ¶ 90,509 at 90,687 (1988), and is based on each state's consumption of petroleum products during the period of federal price controls. These funds are subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement.

[20] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. Mountain Fuel Supply Company, 14 DOE ¶ 85,475 at 88,866 n. 4. (1986)

[21] As of December 31, 1987, the amount of accrued interest that the states and the federal government will each receive is $1,541,119.84.

V. Final Refund Procedures for the ARCO Refined Product Funds

We will use the monies in the ARCO refined product pool to provide refunds to claimants that demonstrate that they were injured by the regulatory violations allegedly committed by ARCO in its sales of refined covered products during the March 6, 1973, through January 27, 1981 refund period.[22] From our experience with Subpart V proceedings, we expect that most applicants will fall into the following categories of ARCO refined product purchasers: (1) Resellers and retailers; (2) end users, *i.e.*, ultimate consumers; and (3) regulated entities, such as public utilities, and cooperatives. Residual refined product funds in the ARCO escrow account will be distributed in accordance with PODRA.

A. Calculation of Refund Amounts

In order to determine the potential refund amounts for applicants in this proceeding, we are presuming that the alleged product overcharges were spread evenly over all of the gallons of refined covered products that ARCO sold during the refund period. Under this volumetric presumption, a claimant's maximum potential refund will generally be computed by multiplying $0.000735 per gallon, the per-gallon refund amount, by the number of gallons of ARCO refined covered products [23] that the applicant purchased during the refund period. The resulting figure is referred to as the claimant's "full volumetric share" of the ARCO consent order funds.[24] Successful applicants will also receive proportionate shares of the interest that has accrued on the ARCO escrow account.

The volumetric refund presumption is rebuttable. If an applicant believes that it incurred a disproportionate share of the alleged overcharges, it may submit evidence proving this claim in order to be potentially eligible for a larger refund. *See, e.g., Standard Oil Company (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

B. Determination of Injury

The assignment of potential refund amounts to claimants is only the first step in the distribution process. We must also determine whether these claimants were forced to absorb the alleged overcharges. As in many other refund proceedings, we are adopting several presumptions concerning injury. Applicants that are not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined below in Section 2.

1. *Injury Presumptions.* These injury presumptions are designed to allow claimants to participate in the refund process, without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible. Each of these presumptions is listed below along with the rationale underlying its use.

a. *End Users.* End users, *i.e.*, ultimate consumers, of ARCO covered products will be presumed to have been injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. Therefore, they were therefore not required to base their pricing decisions on cost increases or to keep records that would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services

[22] Because the Consent Order covers ARCO's compliance with all aspects of the federal petroleum price and allocation regulations, the refined product escrow funds will be used to provide restitution to firms that show that they were injured by ARCO's allocation of its refined covered products. For these claimants, we will use the procedures outlined in Power Pak Co., Inc., 14 DOE ¶ 85,001 (1986). The remainder of this section concerns the filing of refund claims involving ARCO's alleged refined product pricing violations.

[23] Purchases of deregulated products, *i.e.*, products that were no longer "covered" by the Mandatory Petroleum Price and Allocation Regulations, cannot be used in the calculation of an applicant's potential refund amount. Below is a list of products sold by ARCO and the dates on which they were deregulated:

Product	Date decontrolled
Motor Gasoline, Propane	Jan. 28, 1981.
Butane, Natural Gasoline	Jan. 1, 1980.
Aviation Gas, Jet Fuel	Feb. 26, 1979.
Naphtha-Based Jet Fuel	Oct. 1, 1976.
Naphthas, Lubricants, Lube Oil	Sept. 1, 1976.
Middle Distillates	July 1, 1976.
Residual Fuel	June 1, 1976.
Ethene, Asphalt	April 1, 1974.

[24] As in previous refund proceedings, claims for less than $15 in principal will not be processed because the cost of considering those claims outweighs the benefits of restitution in those situations. *See e.g.*, Uban Oil Company et al., 9 DOE ¶ 82,541 at 85,225 (1982). In this proceeding, this consideration precludes claims based upon purchases of less than 19,726 gallons of ARCO refined covered products.

that were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas*, at 88,209, and cases cited therein. Consequently, end users must only document the volume of ARCO refined covered products that they purchased during the refund period in order to receive a refund.

b. *Regulated Firms and Cooperatives.* Public utilities, agricultural cooperatives, and other firms whose prices are regulated by government entities or governed by cooperative agreements do not have to submit detailed proof of injury. These firms routinely would have passed through price increases to their customers, and will now pass on to their customers the benefits associated with refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,283 (1982) (*Tenneco*); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982). In order to ensure this result, in addition to documenting the volume of its ARCO purchases, a public utility or cooperative must submit a plan explaining both how its customers will benefit from a refund, and how it will alert the appropriate regulatory body or membership group to the moneys received. Purchases by a cooperative that were subsequently resold to nonmembers will not be covered by this presumption.

c. *Resellers and Retailers Filing Small Claims.* Resellers and retailers of ARCO refined covered products claiming refunds of $5,000 or less, excluding accrued interest, will be presumed to have been injured by ARCO's alleged overcharges. Without this presumption, such an applicant would have to sort through records dating as far back as 1973 to gather proof that it absorbed the alleged overcharges. The cost to the claimant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Under this injury presumption, a small claimant must only document the volume of ARCO refined covered products that it purchased during the refund period. *See Texas Oil & Gas*, at 88,210; *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984); and cases cited therein. Resellers and retailers that are seeking full volumetric refunds in excess of $5,000 must follow the non-presumption procedures outlined below in Section 2.

d. *Resellers and Retailers Filing Mid-Level Claims.* Resellers and retailers whose full volumetric shares of the ARCO consent order funds exceed $12,193, may elect to receive 41 percent of their full volumetric shares up to $50,000 without providing detailed demonstrations of injury.[16] As we stated above, this option is based on the presumption that mid-level resellers and retailers absorbed 41 percent of ARCO's alleged overcharges.[17] Resellers and retailers that wish to receive refunds in excess of $50,000 must follow the non-presumption procedures described in Section 2.

e. *Spot Purchasers.* Resellers and retailers that were spot purchasers of ARCO refined covered products, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed to have been injured by ARCO's pricing practices and therefore generally will be ineligible for refunds. The basis for this presumption is that spot purchasers tend to have considerable discretion as to where and when to make purchases and would therefore not have made spot market purchases at increased prices unless they considered those purchases to be beneficial. *See Tenneco*, at 85,201; *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981) (*Vickers*).

The spot purchaser presumption, however, is rebuttable; we will consider evidence that spot purchasers "were unable to recover the product prices they paid * * *" *Office of Special Counsel, 10 DOE ¶ 85,042 at 88,200 (1982). See also Marion Corp.*, 12 DOE ¶ 85,014 (1985); *Tenneco Oil Co./Imperial Oil Co.*, 10 DOE ¶ 85,002 (1982). In other proceedings, we have waived the presumption against injury for spot purchasers that demonstrate that: (1) they did not have discretion in making the spot purchases; and (2) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986). If a spot purchaser rebuts this presumption, its application will be evaluated according to the standards applicable to the refund claims of all other resellers and retailers.

f. *Consignees.* Finally, as in previous cases, we will presume that consignees of ARCO refined covered products were not injured by the alleged overcharges. *See e.g., Jay Oil Company*, 16 DOE ¶ 85,147 at 88,288 (1987). A consignee agent is an entity that distributed products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of ARCO's pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Non-Presumption Demonstrations of Injury.* A reseller or retailer with a full volumetric share in excess of $5,000 that does not elect to receive a refund under either the small claims presumption or the 41-percent mid-level presumption, will be required to document its injury. There are two aspects to such a demonstration. First, a firm is generally required to provide a monthly schedule of its banks of unrecouped increased product costs for each ARCO refined covered product that it purchased during the refund period. Cost banks for a product generally should cover the period between November 1, 1973,[27] and the date on which the product was decontrolled.[28] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product between November 1, 1973, and the date on which the product was decontrolled. Because cost banks were not supplier specific, the calculation of these monthly weighted average gross profit margins should be based on the claimant's purchases of the product from all of its suppliers; and

(3) A monthly schedule of the firm's sales of the product between November 1, 1973, and the date on which the product was decontrolled.[29]

[15] A reseller or retailer whose full volumetric share is $12,193 or less could receive a larger percentage refund under the small claims presumption than under the 41-percent mid-level injury presumption.

[16] Large resellers and retailers, *i.e.*, those whose full volumetric shares exceed $121,952 may elect to limit their claims to $50,000 and thereby qualify for a refund under the mid-level injury presumption.

[17] The regulations allowing resellers and retailers to bank unrecouped increased product costs did not take effect until November 1, 1973. *See* 10 CFR 212.93(e)(1)(i).

[28] Retailers and resellers of motor gasoline were only required to maintain cost bank data up through July 15, 1979, and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material up to the January 28, 1981 decontrol date of motor gasoline.

[29] For motor gasoline, retailers and resellers only have to submit the information detailed in Parts (2) and (3) through July 15, 1979, and April 30, 1980, respectively. *See supra* note 28.

In addition to showing that it maintained cost banks equal to our greater than the value of the refund claimed, a reseller or retailer attempting to prove injury must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid ARCO were higher than average market prices for the same level of distribution. Accordingly, a reseller or retailer attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid ARCO for each refined covered product that it purchased during the June 14, 1973, through January 27, 1981 portion of the refund period.[30] As previously stated, resellers and retailers need only submit monthly purchase volume data for the period March 6, 1973, through June 13, 1973.

A reseller or retailer that makes a detailed demonstration of injury will receive its full volumetric share of the ARCO consent order funds. On the other hand, an applicant that attempts to demonstrate injury, but instead conclusively shows that it passed through all of the alleged overcharges will receive no refund. If we conclude that a claimant attempting to demonstrate injury absorbed some of the alleged overcharges, we will grant a partial refund based on the extent of the injury shown and not on the small claims presumption or the 41-percent mid-level presumption. *See Union Texas Petroleum Corporation/Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co., Inc.*, 15 DOE ¶ 85,089 (1986).

VI. Applications for Refund

This determination announces that we will now accept Applications for Refund from purchasers of refined covered products sold by ARCO during the period, March 6, 1973, through January 27, 1981. There is no specific application form that must be used. We have, however, set forth a suggested format for filing an ARCO Application for Refund in the Appendix to this Decision and Order.[31] All Applications for Refund must contain the following information:

(1) A conspicuous reference to the "ARCO Refund Proceeding—Case No. HEF–0591", the applicant's present name and address, and the name and address of the applicant during the refund period;

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the application;

(3) An explanation of how the claimant used the ARCO products, *i.e.*, whether the applicant was a reseller, retailer, consignee, end user, public utility, cooperative, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that the applicant purchased from ARCO during the March 6, 1973, through January 27, 1981 refund period.[32] If an applicant received a computer printout of its ARCO purchases from OHA, it may submit that printout in lieu of monthly purchase volume schedules. If a claimant was an indirect purchaser of ARCO refined covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by ARCO;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above in Section V, Part B;

(6) If the applicant was or is in any way affiliated with ARCO, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the refund period. If there was such a change in ownership, the applicant must submit a detailed explanation as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceedings or private actions filed under §210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the ARCO proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the ARCO proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

All Applications for Refund should be sent to: ARCO Refund Proceeding, Case No. HEF–0591, Office of Hearings and Appeals, Department of Energy, 100 Independence Avenue SW., Washington, DC 20585.

All applications *must be filed in duplicate* and postmarked by August 31, 1988. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application in which the confidential information is deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Atlantic Richfield Company pursuant to the Consent Order finalized on June 27, 1985, may now be filed.

(2) Applications for Refund from the Atlantic Richfield Company refined product pool must be postmarked no later than August 31, 1988.

(3) The deadline for filing Applications for Refund from the Atlantic Richfield Company crude oil pool will be established by the Office of Hearings and Appeals in the final decision issued in *Ernest A. Allerkamp, et al.*, Case Nos. KFX–0033, *et al.*, and will be no earlier than June 30, 1988.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, as provided in Paragraphs (5), (6), and (7) below, the

[30] Because applicants are only eligible for refunds based on refined products that were "covered" by the federal price and allocation regulations, purchase price data for a particular product should only be submitted for the period between June 14, 1973, and the date on which the product was decontrolled. *See supra* note 23.

We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

[31] Note that gasoline retailers must file a separate application for each gasoline station for which a refund is claimed.

[32] Because we will not process claims for less than $15 in principal, *see supra* note 24, an applicant must have purchased at least 19,728 gallons of ARCO refined covered products during the refund period in order for us to consider its application.

If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

total net current crude oil equity from the Atlantic Richfield Company subaccount (Consent Order No. RARH00001Z) within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States.

(5) The Director of Special Accounts and Payroll shall transfer $10,200,135.99 ($8,659,016.15 in principal and $1,541,119.84 in interest), of the funds obtained pursuant to Paragraph (4) above, plus appropriate interest accrued since December 31, 1987, into a subaccount denominated "Crude Tracking-States," Number 999DOE003WO.

(6) The Director of Special Accounts and Payroll shall transfer $10,200,135.99 ($8,659,016.15 in principal and $1,541,119.84 in interest), of the funds obtained pursuant to Paragraph (4) above, plus appropriate interest accrued since December 31, 1987, into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002WO.

(7) The Director of Special Accounts and Payroll shall transfer $5,[illegible] ($4,379,508.08 in principal and $770,559.92 in interest), of the funds obtained pursuant to Paragraph (4) above, plus appropriate interest accrued since December 31, 1987, into a subaccount denominated "Crude Tracking-Claimants 1," Number 999DOE007Z.

(8) This is a final order of the Department of Energy.

George B. Breznay,
Director, Office of Hearings and Appeals.
January 28, 1988.

BILLING CODE 6450-01-M

Appendix

Suggested Format for Application for ARCO Refund -- HEF-0591

RF 304 -

DOE use only

1. Name of Applicant firm during the refund period (3/6/73 thru 1/27/81): _____

Address during refund period: _____

_____

_____

2. Person to whom refund check should be payable: _____

Address to which check should be sent: _____

_____

_____

Contact person: _____

Telephone No: ( ) _____

3. Type of Applicant:

Gas Station___ Other Retailer___ Reseller___ Consumer___ Public Utility___ Other___
(If you checked Other, please specify the nature of your business)

4. Total gallonage for which refund is requested: _____
5. Product(s) purchased (e.g., gasoline, propane, etc.): _____
6. Were the product(s) you bought ARCO-branded? Yes___ No___
7. If you are a reseller or retailer and you and your affiliates' full volumetric refund amount exceeds $5000, you may:

Submit a detailed demonstration of injury in support of your full volumetric refund amount. Yes___ No___
(Please refer to the ARCO Decision for a full discussion of a demonstration of injury)

-or-

Limit your request to $5,000. Yes___ No___

-or-

Limit your request to 41 percent of the full volumetric refund up to $50,000. Yes___ No___
(select one)

030

8. Were you supplied directly by ARCO? Yes___ No___

If you answered yes, please provide your Arco customer number (it is on the purchase volume printout): _____. If you answered no, please explain why you believe the product originated from ARCO and provide the name and address of the person or firm that sold the product to you.

9. Were you a consignee/agent of ARCO products?

(see question & answers) Yes___ No___

10. Is or was your business owned all or in part by ARCO? Yes___ No___

If you answered yes, please explain.

11. Did the ownership of your firm change during or since the refund period? Yes___ No___

If you answered yes, please provide an explanation that includes the names and addresses of any previous or subsequent owners.

12. Have you been or are you currently a party in a DOE enforcement action or a private Section 210 action? (see question & answers) Yes___ No___

If you answered yes, please explain.

13. Have you or any related or affiliated firm filed any other application for refund in this ARCO proceeding? Yes___ No___

If you answered yes, please attach an explanation.

14. Have you or any related or affiliated firm authorized any individual(s) other than those identified on this form to file a refund application on your behalf in this proceeding? Yes___ No___

If you answered yes, please attach an explanation.

I swear (or affirm) that the information contained in this application and its attachments is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. Sec. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the Public Reference Room of the Office of Hearings and Appeals.*

_____ Date

_____ Signature of Applicant

_____ Title

*A duplicate of this entire application must be provided.

DO NOT COMPLETE THIS SCHEDULE IF YOU RETURN THE PRINTOUT OF YOUR ARCO PURCHASES WITH YOUR REFUND APPLICATION. OTHERWISE, PLEASE COMPLETE AND RETURN A SEPARATE SCHEDULE FOR EACH PRODUCT PURCHASED. IF YOUR FIGURES ARE ESTIMATES, PLEASE PROVIDE A DETAILED EXPLANATION OF HOW YOU DERIVED THE ESTIMATED VOLUMES.

Name of Applicant: _____ RF304-

MONTHLY PURCHASE VOLUMES OF _____ (PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	********	_____	_____	_____	_____	_____	_____	_____	_____
February	********	_____	_____	_____	_____	_____	_____	_____	********
March	_____	_____	_____	_____	_____	_____	_____	_____	********
April	_____	_____	_____	_____	_____	_____	_____	_____	********
May	_____	_____	_____	_____	_____	_____	_____	_____	********
June	_____	_____	_____	_____	_____	_____	_____	_____	********
July	_____	_____	_____	_____	_____	_____	_____	_____	********
August	_____	_____	_____	_____	_____	_____	_____	_____	********
September	_____	_____	_____	_____	_____	_____	_____	_____	********
October	_____	_____	_____	_____	_____	_____	_____	_____	********
November	_____	_____	_____	_____	_____	_____	_____	_____	********
December	_____	_____	_____	_____	_____	_____	_____	_____	********
Yearly Total	_____	_____	_____	_____	_____	_____	_____	_____	_____

GRAND TOTAL FOR THIS PRODUCT: _____ GALLONS

Do not include any purchases of product on or after that product's date of decontrol.

Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981
Butane, Natural Gasoline	January 1, 1980
Aviation Gas, Jet Fuel	February 26, 1979
Naphtha-Based Jet Fuel	October 1, 1976
Naphthas, Lubricants, Lube Oil	September 1, 1976
Middle Distillates	July 1, 1976
Residual Fuel	June 1, 1976
Ethane, Asphalt	April 1, 1974

[FR Doc. 88-2285 Filed 2-3-88; 8:45 am]
BILLING CODE 6450-01-C

FEDERAL HOME LOAN BANK BOARD

[No. AC-690]

First Federal Savings and Loan Association of Livingston County; Final Action Approval of Conversion Application

Date: January 29, 1988.

In the matter of First Federal Savings and Loan Association of Livingston County, Howell, Michigan, FHLBB No. 6224, D&N Savings Bank, FSB, Detroit, Michigan, FHLBB No. 0787.

Notice is hereby given that on January 29, 1988, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, pursuant to section 5(i) of the Home Owner's Loan Act of 1933, as amended, approved the application of First Federal Savings and Loan Association of Livingston County, Howell, Michigan ("First Federal") and D&N Savings Bank, FSB, Detroit, Michigan, for permission to convert First Federal to the stock form of organization by merging the Association into D&N. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-2317 Filed 2-3-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-010720-004.

Title: Port of Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District ("Port")
CHO Properties, Inc. ("CHO")

Synopsis: The proposed agreement amends Agreement No. 224-010720, as amended, whereby the Port conditionally leased to CHO property for the construction of improvements and operation of a business related to the importation and exportation of bulk materials and for activities related to a foreign trade zone. Under the instant amendment, the parties propose to amend the provisions for payment of a substitute wharfage fee to the Port of $41,000.00 on or before September 15, 1988; provided CHO also pays quarterly on the wharfage an interest cost fee at a rate of a nine (9) percent per annum. In addition, the amendment provides for two additional periods to satisfy construction and operational requirements. CHO agrees to pay the Port a sum of $15,000 for each additional extension of the agreement.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: February 1, 1988.

[FR Doc. 88-2291 Filed 2-3-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 232-011167.

Title: AMB/AML/KMR/TRN Reciprocal Space Charter and Sailing Agreement.

Parties:

Americas Container Line, Ltd.
Americas Container Line (Liberia) Corp.
Kommar Companhia Maritima S.A.
Transroll Navegacao S.A.

Synopsis: The proposed agreement would permit the parties to charter space from one another and to agree upon the number, size and types of vessels to be operated and to agree upon the number of sailings, schedules and ports called in the trade between ports in the American Continent.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary

Dated: February 1, 1988.

[FR Doc. 88-2292 Filed 2-3-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0039]

Drug Export; 'CONTAC' C Sustained Release Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that SmithKline Consumer Products has filed an application requesting approval for the export of the human drug 'CONTAC' C Sustained Release Capsules to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that SmithKline Consumer Products, One Franklin Plaza, P.O. Box 8082, Philadelphia, PA 19101, has filed an application requesting approval for the export of the drug 'CONTAC' C Sustained Release Capsules to Canada. This product is indicated in the use for symptomatic relief of colds, hay fever, and sinusitis. The application was received and filed in the Center for Drug Evaluation and Research on January 15, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 16, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated 21 CFR 5.44.

Dated: January 25, 1988.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-2318 Filed 2-3-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Special Project Grants—Maternal and Child Health Services Federal Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of potential availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1988 funds are available for grants for the following activities: Special Maternal and Child Health (MCH) projects of regional and national significance (SFRANS) which contribute to the health of mothers, children, and children with special health care needs; MCH research; training in MCH; genetic disease testing, counseling and information services; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 502(a) of the Social Security Act (42 U.S.C. 702(a)), which is known as the MCH Federal set-aside program. HRSA, through this notice, invites potential applicants to request application packages for the particular grant category in which they are interested and then to submit their application for funding consideration. It is anticipated that approximately $20 million will be available to support new and competing renewal projects under the MCH Federal set-aside program.

DATE: Deadlines for receipt of applications differ for the several categories of grants; these deadlines are as follows:

(1) Research:
  (a) Cycle One: March 1, 1988;
  (b) Cycle Two: August 1, 1988;
(2) Training:
  (a) Long term training: March 23, 1988;
  (b) Continuing education: July 1, 1988;
(3) Genetic disease testing, counseling, and information: April 4, 1988;
(4) Hemophilia diagnostic and treatment centers: April 7, 1988;
(5) Special MCH improvement projects of regional and national significance (i.e., those which test or demonstrate the effectiveness of a given approach or technique) relevant to MCH care in three areas:
  (a) Children with special health care needs: April 21, 1988;
  (b) Maternal and infant health: April 11, 1988;
  (c) Child and adolescent health: April 25, 1988.

To receive consideration, applications must be sent to the Grants Management Officer at the address below, and must be received by the close of business on the dates indicated. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the Director, Office of Maternal and Child Health, BMCHRD, HRSA, Room 6-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Requests for grant application materials should be made in writing to the Grants Management Officer, Office of Program Support, BMCHRD, Room 11A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Requests should specify the grant category or categories for which an application is requested so that the appropriate materials may be provided. Applicants for research projects will use Form PHS 398 approved by the Office of Management and Budget (OMB) under control number 0915-0098. Training project applications will be made using Form PHS 6025-1 approved by OMB under control number 0915-0060. Applicants for all other projects will use application Form PHS 5161-1 with revised facesheet DHHS Form 424 approved by OMB under control number 0348-0006.

SUPPLEMENTARY INFORMATION: Under section 502(a) of the Social Security Act, between 10 and 15 percent of the funds appropriated for Title V of the Act in each fiscal year are to be retained by the Secretary for the award of grants for the purposes specified above. Historically, the Secretary has set aside the full 15 percent each year. Support for projects covered by this announcement will come from these funds.

Consistent with the statutory purpose of improving maternal and child health, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best promote improvements in maternal and child health care (for example, applications which enhance efforts to reduce the unacceptably high rates of infant

mortality, which increase the availability of and access to services for handicapped and chronically ill children and young adults, and which enhance the health and development of adolescents).

Eligible Applicants

The statute at section 502(a)(2) provides that training grants may be made only, to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit institutions of higher learning or to public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs. Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants for genetic disease testing, counseling and information; hemophilia diagnostic and treatment centers; and SPRANS.

The regulation implementing the Federal set-aside program was published in the March 5, 1986, issue of the **Federal Register** at 51 FR 7728 (42 CFR Part 51a).

Review Criteria

Applications for grants will be reviewed and evaluated according to:

1. The quality of the project plan or methodology.
2. The need for the services, research, or training.
3. The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefited, served or trained, taking into consideration, where relevant, whether the proposed project is urban or rural and the special circumstances associated with providing care or training in various areas.
4. The extent to which the project will contribute to the advancement of maternal and child health and children with special health care needs.
5. The extent to which rapid and effective use of grant funds will be made by the project.
6. The effectiveness of procedures to collect the cost of care and services from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payments for any service (including diagnostic, preventive and treatment services).
7. The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants and other block grants made to the appropriate State(s).
8. The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 13.110.

Date: January 8, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-2271 Filed 2-3-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-43-7122-10-DO17; CA-060-43-7122-10-DO46; and CA-060-43-7122-10-DO47]

Emergency Closure of Vehicle Routes in the East Mesa Known Geothermal Resource Area of Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Area and closure notice for vehicle routes of travel on public lands within the East Mesa Known Geothermal Resource Area, Imperial County, California.

SUMMARY: This closure notice affects newly constructed and/or recently upgraded roads in support of recent geothermal operations on East Mesa. These route closures were a prescribed mitigating measure in the decision documents for the following Geothermal Plans of Operation. All of these areas are located within Townships 15 and 16 North, Range 17 East, S.B.B.M. The following table summarizes these Plans and relevant data:

Plan No. POO-060-	Lease No. (CA-)	Operator's name	Approval date
85-03	966,967, 1903, 6217 and 17568.	Ormesa Geothermal.	06/06/85
86-04	17568	Ormesa Geothermal.	06/06/86
87-01	6218	East Mesa Partners.	05/06/87
87-02	Same as 85-03.	Ormesa Geothermal.	06/05/86
87-03	6219	GEO Operator Corporation.	04/14/87
87-04	6219	GEO Operator Corporation.	05/01/87
87-05	17568	Ormesa Geothermal.	06/05/87
87-07	6218	East Mesa Partners.	10/05/87
87-12	6219	GEO Operator Corporation.	08/27/87
87-13	6219	GEO Operator Corporation.	11/13/87

The purposes of this closure are:

to give protection to the habitat of the flat-tailed horned lizard (phrynosoma mcallii), a candidate species for inclusion on the list of threatened or endangered species, through controlling access where there was none before;

to protect other sensitive resources in or near the project areas;

to assist in revegetation of newly constructed roads that have been rehabilitated;

to minimize safety hazards to the public;

and, to minimize vandalism to geothermal facilities that has occurred.

For the same reasons, the following routes and wellsites associated therewith are also closed to all public camping.

The routes are described as follows:

1. From Evan Hughes Highway to wellsite 53-17;
2. From the main paved access to wellsite 42-16 (Federal lands only);
3. From wellsite 44-6 to route 2, above;
4. From the main paved access to wellsite 27-8;
5. From the main paved access to wellsites 18-5 and 58-5;
6. From the main paved access to wellsites 45-6, 84-1, 33-6, 21-6, inclusive;
7. From the main paved access to wellsites 14-5, 32-5 and 36-5, inclusive;
8. From a section line dirt road between sections 5 and 6 to wellsites 62-6, 21-6 and 71-1, inclusive;
9. From a section line dirt road between sections 31 and 32 to wellsite 88-31;
10. From the same section line road to wellsites 52-31, 74-31, 54-31, and 36-31;
11. From a section line road between section 29 and 32 to wellsite 18-28;

12. The west half of the section line road between sections 30 and 31;
13. An access road, west of the south entrance to the Ormesa I Power Plant to welsite 16-30;
14. An access road from north of the Ormesa I Power Plant to wellsites 74-30, 78-20, and 56-19;
15. An access road from the Ormesa I Power Plant to wellsite 52-29;
16. An access road from the southwest corner of section 30 to wellsite 16-30;
17. An access road from the center of the north section line of section 31 to wellsites 52-31, 54-31, 36-31, and 16-31.

The routes and area affected by this notice are being closed under the authority of 43 CFR 8364.1. This closure order was effective on January 16, 1988 and shall remain in effect until termination of the above referenced Plans of Operation, once removal of all facilities and acceptable rehabilitation of the surface has been completed.

Individual closed routes are signed closed. Gates on certain routes will be or have been installed. Vehicular access shall be permitted beyond the points of closure only to personnel operating under the authority of the above-referenced Plans of Operation; personnel associated with the geothermal lessee; public service, law enforcement officials or Bureau employees while acting on official duty and other specifically authorized persons. Maps showing the exact location of routes affected by this notice are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both under authority of 43 CFR 8364.2.

FOR FURTHER INFORMATION CONTACT: Area Manager, El Centro Resource Area, 333 South Waterman Avenue, El Centro, CA 92243, (619)-352-5842.

Date: January 27, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88-2256 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-08-4121-02]

Albuquerque District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Council meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Council will meet on Tuesday, March 1, 1988, at 10 a.m. in the BLM District Office Building located at 435 Montano N.E. in Albuquerque, New Mexico.

The purpose of this meeting is to allow the Council to be updated on several important issues in the Albuquerque District, including El Malpais National Conservation Area legislation, future management of Santa Cruz Lake Recreation Area, implementation of the Tri-Party Cooperative Agreement for Land Consolidation and Occupancy Resolution program with the Bureau of Indian Affairs and the Navajo Tribe, and the plans for a twenty-year celebration of the Wild and Scenic Rivers Act being planned at the Wild Rivers Recreation Area near Taos in June.

The Council will also take time to meet the new District Manager, Robert Dale, and discuss the future role of the District Advisory Council.

The meeting is open to the public and time will be provided for public comment. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 766-4504.

Michael F. Reitz,

Associate District Manager.

[FR Doc. 88-2257 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[AZ 020-41-5410-10-ZAED; A-23150]

Receipt of Conveyance of Mineral Interest Application; Albert J. Goulder

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Albert J.Goulder has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 3 W.,
Sec. 8, Lots 1, 10, N½NE¼, NE¼SW¼, E½SE¼;
Sec. 9, W½, W½SE¼;
Sec. 17, Lot 2, SW¼NW¼;
Sec. 19, E½;
Sec. 20, W½, SE¼;
Sec. 21, W½;
Sec. 29, NW¼;
Sec. 30, NE¼.

Containing 2,158.63 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 30, 1987, whichever occurs first.

Henri R. Bission,

District Manager.

Date: January 22, 1988.

[FR Doc. 88-2258 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-32-M

[OR-050-4410-10:GP8-058]

Prineville District Office; Limitations on Off-Road Vehicle Use on Public Lands Within Wilderness Study Areas

January 27, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

Use of motorized vehicles on the following lands under the administration of the Bureau of Land Management will be limited to existing roads and trails or closed in some instances under the Interim Management Policy and Guidelines for lands under wilderness review.

The area affected by the designations total 124,603 acres of public land in the Central Oregon and Deschutes Resource Areas located in Crook, Deschutes and Jefferson counties. Use by motorized vehicles on a total of 39,476 acres of public land in 4 additional WSAs in the northern portion of the Prineville District was previously designated as limited to existing roads and trails in the Two Rivers Resource Management Plan completed in June of 1986.

These designations are a result of conclusions reached in Environmental Assessment and Decision Record No. OR-050-7-39. Wilderness study areas totaling 124,603 acres will be managed in accordance with the nonimpairment criteria of the Wilderness Interim

Management Policy which allows off-road vehicle use to continue in the manner and degree on existing roads and trails where such use was occurring on October 21, 1976. The limited vehicle use designation will remain in effect until congressional release of WSAs, or if future use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made.

Public lands in the following wilderness study areas are designated as limited to existing roads and trails. In addition, there are some vehicle trails that are closed to motorized vehicle use (maps of these closures are available in the Prineville District Office):

WSA Unit No	WSA name	Public land acres limited to existing roads and trails	Miles of trails [1] closed to vehicle use
OR-5-19	Steelhead Falls	3,240	2
OR-5-21	Badlands	32,221	5
OR-5-31	North Fork	10,985	1
OR-5-33	South Fork	19,031	1.4
OR-5-34	Sand Hollow	8,791	0
OR-5-35	Gerry Mountain	20,700	0
OR-5-42	Hampton Butte	10,600	0
OR-5-43	Cougar Well	18,435	0
		124,603	9.4

[1] These trail locations will be signed.

Dated: January 28, 1988.

Donald L. Smith,

Acting District Manager.

[FR Doc. 88-2259 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-08-7122-10-1013; CA 20078]

Exchange of Public and Private Lands; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty, CA.

SUMMARY: The Notice of Realty Action for land exchange casefile CA 20078, published in the Friday, July 17, 1987 edition of the **Federal Register** (Vol. 52, No. 137, Page 27065), is hereby amended by adding the following stipulation:

Lands being transferred out of Federal ownership will be subject to an eastment for the Colorado River Aqueduct, granted to the Metropolitan Water District by the State of California in Grant of Easement recorded December 21, 1933, in Book 148, Page 577, of the Official Records of Riverside County, California, affecting Lots 2, 3, 5, 11, and 13 of Section 36, T. 2S., R. 5E., San Bernardino Meridian.

For further information contact John Sullivan, Indio Resource Area (619) 323-4421. Information relating to the exchange is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

Date: January 27, 1988.

H.W. Riecken,

Acting District Manager.

[FR Doc. 88-2260 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-40-M

[NM-060-8-4220-80]

New Mexico; Intention To Prepare a Planning Area Analysis for a Landfill Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning area analysis for a landfill site.

SUMMARY: The Bureau of Land Management announces that it will prepare a Planning Area Analysis to allow for the sale of approximately two and one-half (2.5) acres to the County of Guadalupe, State of New Mexico, for use as a landfill site.

The Planning Area Analysis will be prepared by an Interdisciplinary Team represented by Realty, Wildlife, Archeological, and Planning Specialists.

Adjacent land owners, county and state officials will be notified of this proposal and will be asked to participate in the preparation of the Planning Area Analysis.

Other interested parties can provide comment or their concerns to the Area Manager by March 7, 1988.

ADDRESS: Copies of the Planning Area Analysis/Environmental Assessment will be available from the Roswell Resource Area, Bureau of Land Management, P.O. Drawer 1857, Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Area Manager, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88220, Telephone (505) 887-6544.

SUPPLEMENTARY INFORMATION: The current landfill site for the Village of Pastrua, New Mexico was closed due to the expiration of the lease which was issued under the Recreation and Public Purposes Act (R&PP). Current BLM policy does not allow for leasing of public lands for landfill sites udner the R&PP Act. The Guadalupe County Commissioners upeon being notified of the site closure requested a replacement site be provided. The Roswell District BLM, using existing policy of the sale of small tracts of land for landfill sites, will prepare an Environmental Assesment and Planning Area Analysis for a replacement site. The replacement site will be in the vicinity of the Village of Pastura, Guadalupe County, State of New Mexico.

Monte G. Jordan,

Associate State Director.

Dated: January 29, 1988.

[FR Doc. 88-2296 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[UT-040-08-4830-12]

Cedar City District Advisory Council; Open Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held Saturday, March 12, 1988.

The meeting will begin at 9:30 a.m. in the BLM office at 225 North Bluff Street, St. George, Utah. The agenda will include: U.S. Fish and Wildlife Service proposal to build a barrier dam in the Virgin River to control the Red Shiner Minnow; domestic and Desert Bighorn Sheep disease transfer; North Creek Reservoir proposal; Dixie Resource Area land use planning; and National Public Lands Advisory Council tour. Those wishing to participate must provide their own transportation and lunch.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:45 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 by March 9, 1988. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: January 29, 1988.

Morgan S. Jensen,

District Manager.

[FR Doc. 88-2295 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-060-8-4410-90]

Availability of the Carlsbad Revised Proposed Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Revised Proposed Carlsbad Resource Management Plan (RMP) and Notification of a 30-day comment/protest period.

SUMMARY: The Bureau of Land Management has prepared a Revised Proposed RMP for the Carlsbad Resource Area. This revised RMP is being issued to allow public review of changes made to the Proposed RMP/Final Environmental Impact Statement (EIS) issued in September 1986, due to the settlement of several protests received on the proposed plan. The EIS issued in September 1986 analyzed a full range of alternatives and their effects. The changes presented in the Revised Proposed RMP are within the spectrum of alternatives addressed in the Final EIS and, therefore, no further assessment is required. Only those items changed may be commented on or protested.

DATES: Comments must be postmarked or received by the Area Manager on or before March 14, 1988. Protests must be sent to the Director (760) and postmarked on or before March 14, 1988.

ADDRESSES: Copies of the Draft RMP/EIS, Proposed RMP/Final EIS, Supplement to the Final EIS, Proposed RMP and Revised Proposed RMP are available from the Carlsbad Resource Area, Bureau of Land Management, P.O. Box 1778, Carlsbad, NM 88220.

FOR FURTHER INFORMATION CONTACT: Dick Manus, Area Manager, Carlsbad Resource Area, P.O. Box 1778, Carlsbad, NM 88220, (505) 887-6544.

SUPPLEMENTARY INFORMATION: Modifications to the Proposed RMP occurred during the process of settling 17 protests received on the proposed plan. As a result of those changes this Revised Proposed Plan is a modified version of the RMP published in the Proposed RMP/Final EIS in September 1986 and supplemented in December 1986. Comments on the modifications are to be sent to the Area Manager, P.O. Box 1778, Carlsbad, NM 88220.

Protests must be sent to the Director (760), Bureau of Land Management, 18th and C Streets NW, Washington, DC, 20240, and must be postmarked on or before March 14, 1988. Procedures for filing a protest are listed in 43 CFR 1610.5-3. Only the modifications to the plan as presented in the "Summary of Plan Modifications" may be protested.

At the end of the 30-day comment/protest period, the revised proposed plan, excluding any portion under protest, will become the approved plan.

Dated: January 28, 1988.

Larry L. Woodward,

State Director.

[FR Doc. 88-2299 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-10; NM NM 28428, NM NM 27417]

Cancellation of Withdrawal Applications; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation has cancelled two withdrawal applications for 120 acres of public lands in their entirety. All lands involved are in an existing Bureau of Reclamation withdrawal and will remain segregated from operation under the public land laws. The E½SE¼, sec. 16, T. 20 S., R. 26 E., NMPM, remains segregated from the mining laws, but has been and will remain open to applications and offers under the mineral leasing laws. The mineral estate on the remaining 40 acres is owned by the State of New Mexico.

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6589.

Withdrawal application NM NM 28428 for use in connection with the Brantley Dam and Reservoir Project was published in the **Federal Register** on August 6, 1976, page 32931, FR Doc. 76-22854, and republished on September 11, 1978, page 40320, FR Doc. 78-25351. The applicant agency has cancelled its application, in its entirety, for the following described lands:

New Mexico Principal Meridian

T. 20 S., R. 26 E.,
Sec. 16, E½SE¼.

The area described contains 80 acres in Eddy County.

Withdrawal application NM NM 27417 for use in connection with the Brantley Dam and Reservoir Project was published in the **Federal Register** on February 5, 1976, page 5325, FR Doc. 76-3442 and republished on July 21, 1977, page 37448, FR Doc. 77-20951. The applicant agency has cancelled its application, in its entirety, for the following described lands:

New Mexico Principal Meridian

T. 20 S., R. 26 E.,
Sec. 16, SW¼NW¼.

The area described contains 40 acres in Eddy County.

Larry L. Woodard,

State Director.

Dated: January 28, 1988.

[FR Doc. 88-2300 Filed 2-3-88; 8:45 am]

BILLING CODE 4310-FB-M

[ES-030-08-4212-14; ES-00157-009; BLM-090810-LB]

Realty Action; Conveyance of Certain Public Lands in Oconto and Marinette Counties, Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Conveyance of certain public lands on Oconto and Marinette Counties, Wisconsin.

SUMMARY: The following public land has been examined and found to be suitable for sale under Public Law 100-130, dated October 15, 1987, an Act to provide for the conveyance of certain public lands in Oconto and Marinette Counties, Wisconsin.

Fourth Principal Meridian, Wisconsin

T. 29 N., R. 21½ E.,

Marinette County

Sec. 1, (4.73 acres),
Sec. 12, (27.23 acres)

Oconto County

Sec. 13, (40.05 acres),
Sec. 24, (56.05 acres),
Sec. 25, (51.79 acres),
Sec. 36, (17.56 acres).

Containing approximately 197.41 acres more or less.

The above described lands were inadvertently omitted from conveyance or transfer out of Federal ownership due to surveying errors in the 19th century.

It has been determined that this conveyance is in the public interest and, will serve objectives which outweigh public objectives and values which would be served by retaining such lands in Federal ownership and, no other statutory authority exists whereby the Secretary may afford the appropriate relief.

The land is of no national significance and may be conveyed to any citizen of the United States who claims, and demonstrates possession of such portion of land. The land will be sold at its Fair Market Value less adjustment for equity values. This action is consistent with the policy of the Bureau of Land Management.

The patents(s) will be subject to all valid existing rights and reservations of record.

The publication of this Notice will segregate the subject lands from all appropriation except as to applications under the mineral leasing laws. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments: For a period of 45 days from the date of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

For Further Information: Detailed information concerning this classification and conveyance is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Paulette Francis at (414) 291–4416.

Bert Rodgers,

District Manager.

[FR Doc. 88–2298 Filed 2–3–88; 8:45 am]

BILLING CODE 4310–GJ–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Ferrous Metals Surveys.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Minerals Industry Surveys (MIS), Minerals Yearbook Volume I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6–1066–MA ET AL (14 Forms).

Frequency: Monthly and Annual.

Description of Respondents: Producers and Consumers of Ferrous Metals.

Annual Reponses: 8,006.

Annual Burden Hours: 4,173.

Bureau Clearance Officer: James T. Hereford (202) 634–1125.

January 26, 1988.

David S. Brown,

Deputy Director, Bureau of Mines.

[FR Doc. 88–2261 Filed 2–3–88; 8:45 am]

BILLING CODE 4310–43–M

Minerals Management Service

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held March 8–10, 1988, at the Gulf of Mexico OCS Regional Office, Rooms 111 and 115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana. Dates and times are as follows: March 8–9, 1988—9:00 a.m. to 4:30 p.m.; March 10, 1988—9:00 a.m. to 12:00 noon.

The RTWG business meeting will be held in conjunction with the Spring Ternary Studies Meeting. Tentative agenda items for the business meeting include:

Pipeline Regulations: Federal and State
Corps of Engineers Projects
Review of Draft Regional Studies Plan FY 90
Abondoned Well Sites in Eastern Gulf of Mexico

FOR FURTHER INFORMATION CONTACT: This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico OCS Regional Office at (504) 736–2959 by February 29, 1988. Written statements should be submitted by the same date to the Gulf of Mexico OCS Regional, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interest.

Dated: January 28, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–2301 Filed 2–3–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5739 and 7542, Blocks 22 and 34, Chandeleur Area, off-shore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 27, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanyng Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 28, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–2302 Filed 2–3–88; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Lodging of Second Amendment to Consent Decree Pursuant to the Clean Air Act; LTV Steel Company, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 14, 1988, a proposed Second Amendment to Consent Decree was lodged in *United States of America, et al. v. LTV Steel Company, Inc., et al.*, Civil Action Nos. 79–426–K, 79–1193–A, and 85–2333. The proposed Amendment concerns defendants' coke making facilities at their Pittsburgh Works, Pittsburgh, Pennsylvania, and Aliquippa Works, Aliquippa, Pennsylvania.

The Amendment requires defendants to demonstrate compliance at their Pittsburgh Works coke ovens with SIP limitations for coke oven doors, pushing operations, and combustion stacks. In addition, it requires defendants to install continuous emissions monitors on the combustion stacks. Finally, the Amendment requires that a detailed operating and maintenance program be implemented for the combustion stacks, and that strengthened air sampling and monitoring programs be instituted and the data retained.

As to defendants' Aliquippa Works, which is shut down, the Second Amendment prohibits the start-up of any of the coke oven batteries there without the use of a coke oven gas desulfurization unit. Finally, the Second Amendment requires defendants to pay $1,350,000 in civil penalties—$450,000 to the United States, and $450,000 to each of the intervening plaintiffs, the County of Allegheny and Commonwealth of Pennsylvania. Since defendants are now attempting to reorganize in bankruptcy, plaintiff and intervening plaintiffs have filed proofs of claim for the payment of these penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Second Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al. v. LTV Steel Company, Inc., et al.*, C.A. Nos. 79–426–K, 79–1193–A, and 85–2333 (W.D. Pa.), D.J. Ref. No. 90–5–2–1–161B and 90–5–2–1–851.

The proposed Second Amendment to Consent Decree may be examined at the Office of the United States Attorney, 633 U.S. Post Office and Courthouse Building, 7th & Grant Streets, Pittsburg, Pennsylvania 15219, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. Copies of the Second Amendment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Second Amendment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–2303 Filed 2–3–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Van Leer Containers, Inc. and Inland Steel Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 29, 1987, a proposed consent decree in *United States* v. *Van Leer Containers, Inc. and Inland Steel Company*, Civil Action No. C84–3136, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against Van Leer Containers, Inc. and Inland Steel Company for violations of the Clean Air Act.

The proposed consent decree requires Van Leer to achieve, demonstrate and maintain compliance with Ohio OAC Rule 3745–21–09(U)(1)(a)(v) for the steel drum interior spray booth and the drum parts coating station at Van Leer's steel drum manufacturing plant at 9612 Meech Avenue in Cleveland, Ohio. The proposed decree also requires Van Leer to pay a civil penalty of $12,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Van Leer Containers, Inc. and Inland Steel Company*, D.J. Ref. 90–5–2–1–718.

The proposed consent decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Cleveland, Ohio and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-2304 Filed 2-3-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Special Minimum Wages; Meeting

A meeting of the Advisory Committee on Special Minimum Wages will be held in the Frances Perkins Building, Department of Labor, 200 Constitution Avenue NW., Washington, DC, on February 22 starting at 9:00 a.m. in Rooms S4215 A, B, and C.

The mission of the Advisory Committee is to provide guidance to the Department regarding the administration and enforcement of the Fair Labor Standards Act (FLSA) and other Federal minimum wage laws as they relate to the employment of individuals with disabilities whose productivity is impaired to the extent that these individuals are employed under certificates issued pursuant to section 14(c) of FLSA. Such certificates allow for employment at wage rates below the statutory minimum in order to prevent the curtailment of opportunities for employment.

Agenda items to be considered by the Advisory Committee include the Washington State Pilot Project (which provides for on-the-job evaluation of individuals with disabilities in competitive industry at no pay), proposed regulations to implement the 1986 Amendments to section 14(c) of FLSA, and findings of investigations of facilities holding certificates under section 14(c). Other items may be included on the agenda or introduced during the meeting.

The public is invited to attend this meeting. Written data, views, or arguments pertaining to the business before the Advisory Committee are invited. Such data, views, or arguments may be forwarded to the Advisory Committee Secretariat prior to the meeting or presented at the meeting.

Any inquiries concerning the meeting of the Advisory Committee may be directed to: Ms. Corlis L. Sellers, Secretariat for the Advisory Committee on Special Minimum Wages, Department of Labor, Room C4316, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, telephone number (202) 523-8727. This is not a toll free telephone number.

Signed in Washington, DC, this 29th day of January, 1988.

Paula V. Smith,

Administrator, Wage and Hour Division.

[FR Doc. 88-2357 Filed 2-3-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-20,135 and TA-W-20, 245]

Adirondack Steel Casting Co., Inc. and Beth-Energy Mine Corp., Mine #78; Dismissal of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Adirondack Steel Casting Company, Inc., Watervliet, New York and Beth-Energy Mine Corporation, Mine #78 Ebensburg, Pennsylvania. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TA-W-20,135; Adirondack Steel Casting Company, Inc., Watervliet, New York (January 26, 1988)

TA-W-20,245; Beth-Energy Mine Corporation, Mine #78, Ebensburg, Pennsylvania (January 25, 1988)

Signed at Washington, DC this 27th day of January 1988

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-2365 Filed 2-3-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-118-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed an amendment to a petition for modification. On April 28, 1987, Jim Walter Resources, Inc., submitted a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. On May 27, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 19786), allowing interested parties 30 days to submit comments. On January 12, 1988, petitioner submitted a request to amend the originally submitted petition for modification. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner has dry type transformers which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these transformers.

3. As an alternate method, petitioner proposes that:

(a) The dry type transformers will be enclosed in a fireproof metal structure;

(b) The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(c) Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available fault current;

(d) No combustible materials will be stored or allowed to accumulate in the fireproof enclosure;

(e) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person;

(f) Fire-fighting equipment will be provided on the outside of the fireproof structure; and

(g) The electrical equipment will be examined weekly and maintained by a qualified electrician.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: January 26, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2362 Filed 2-3-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-175-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed an amendment to a petition for modification. On July 8, 1987, Jim Walter Resources, Inc., submitted a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 7 Mine (I.D. No. 01-01410) located in Tuscaloosa County, Alabama. On August 10, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 29597), allowing interested parties 30 days to submit comments. On January 21, 1988, petitioner submitted a request to amend the originally submitted petition for modification. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, an permanent pumps be housed in fireproof structures.

2. Petitioner has dry type transformers which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these transformers.

3. As an alternate method, petitioner proposes that:

(a) The dry type transformers will be enclosed in a fireproof metal structure;

(b) The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(c) Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available fault current;

(d) No combustible materials will be stored or allowed to accumulate in the fireproof enclosure;

(e) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person;

(f) Fire-fighting equipment will be provided on the outside of the fireproof structure; and

(g) The electrical equipment will be examined weekly and maintained by a qualified electrician.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: January 26, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2363 Filed 2-3-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-163-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed an amendment to a petition for modification. On June 19, 1987, Jim Walter Resources, Inc., submitted a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 3 Mine (I.D. No. 01-00758) located in Jefferson County, Alabama. On July 24, 1987, MSHA published notice of this petition in the **Federal Register** (52 FR 27877), allowing interested parties to submit. On January 21, 1988, petitioner submitted a request to amend the originally submitted petition for modification. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner has dry type transformers which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these transformers.

3. As an alternate method, petitioner proposes that:

(a) The dry type transformers will be enclosed in a fireproof metal structure;

(b) The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(c) Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available fault current;

(d) No combustible materials will be stored or allowed to accumulate in the fireproof enclosure;

(e) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person;

(f) Fire-fighting equipment will be provided on the outside of the fireproof structure; and

(g) The electrical equipment will be examined weekly and maintained by a qualified electrician.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: January 26, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2364 Filed 2-3-88; 8:45 am]

BILLING CODE 4510-43-M

BEST COPY AVAILABLE

[Docket No. M-87-270-C]

Great Western Coal (Kentucky) Inc.; Petition for Modification of Application of Mandatory Safety Standard

Great Western Coal (Kentucky) Inc., General Delivery, Coalgood, Kentucky 40818 has filed a petition to modify the application of 30 CFR 75.1101-1 (deluge-type water spray systems) to its No. 8 Mine (I.D. No. 15-14867) and its Soladay Mine (I.D. No. 15-15455) both located in Bell County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that deluge-type water spray systems consist of open nozzles attached to branch lines. The branch lines shall be connected to a waterline through a control valve operated by a fire sensor. Actuation of the control valve shall cause water to flow into the branch lines and discharge from the nozzles. Nozzles attached to the branch lines shall be full cone, corrosion resistant and provided with blow-off dust covers.

2. Petitioner states that each of the underground belt drives have a duel branch valve operated deluge-type water spray system. These systems are a part of the permanent belt installation and are affixed to the structure and ropes at the head belt drive locations. The belt drives are fully guarded and this enclosed the deluge systems as well. The deluge systems are activated at least weekly to ensure proper functioning. If the blow-off dust covers are in place during weekly testing the guards have to be removed which creates a hazard.

3. As an alternate method, petitioner proposes to perform weekly test of the deluge systems and record the results in lieu of installing and maintaining blow-off covers.

4. In support of this request, petitioner states that frequent operation and maintenance will prevent dust fouling and inhibit corrosion.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Dated: January 26, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 87-2858 Filed 2-3-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-272-C]

Mount Vernon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mount Vernon Coal Company, P.O. Box 566, Sesser, Illinois 15241 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug oil and gas wells using specific techniques and specific procedures as outlined in the petition.

3. In addition, petitioner proposes to mine through the plugged oil or gas well. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Drivage sites would be installed; firefighting equipment, roof support and ventilated materials would be available;

(b) The quantity of air would be not less than 9000 cubic feet per minute to ventilate the face;

(c) Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of coal dust and coal spillages, and rock-dusted to within 20 feet of the face;

(d) Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

(e) When the wellbore is intersected, all equipment would be deenergized and safety checks would be made before mining would be made before mining would continue in by the well a sufficient distance to permit adequate ventilation around the area of the wellbore.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 87-2359 Filed 2-3-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-283-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, of Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Bessie Mine (I.D. No. 01-00328) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps be housed in fireproof structures or areas.

2. Petitioner has electrical installations which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these installations.

3. As an alternate method, petitioner states that—

(a) The electric equipment consist of dry type transformers which will be enclosed in a fireproof metal structure;

(b) The electrical equipment will be protected with thermal devices designed to remove incoming power. Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available fault current;

(c) The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(d) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person;

(e) Firefighting equipment will be provided on the outside of the fireproof structure; and

(f) The electrical equipment will be examined, tested and maintained by a qualified electrician on a weekly basis. The examinations will include the early warning system.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: January 26, 1988.

[FR Doc. 88-2360 Filed 1-3-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Amended Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts to be held on February 5, 1988 from 9:00 a.m. to 5:45 p.m.; February 6, 1988, from 9:00 a.m.-6:00 p.m.; and on February 7, 1988, from 9:00 a.m.-1:00 p.m. in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 has been changed. This notice clarifies the previous notice published in 53 FR 1422, January 19, 1988.

The portions of the meeting that were to be open to the public on February 5, 1988 from 9:00 a.m.-5:45 p.m., and on February 6, 1988 from 9:00 a.m.-4:30 p.m. have been changed. The new times will be February 5, 1988 from 9:00 a.m.-4:45 p.m. and February 6, 1988 from 10:00 a.m.-5:45 p.m. The topics for discussion will include Program Review and Guidelines for: Opera-Musical Theater, Music Ensembles, Arts in Education, Inter-Arts and the Endowment Fellows Program; the Endowment's Five-Year Planning Document; a Report on Special Constituencies Self Evaluation; and a Report on the Recording Industry.

The remaining sessions on February 5, 1988 from 4:45-5:45 p.m., February 6, 1988 from 9:00-10:00 a.m. and February 7, 1988 from 9:00 a.m.-1:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

January 29, 1988.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-2265 Filed 2-3-88; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluatioin and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b Title 5, United States Code.

1. Date: February 22, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review Interpretive Research Project applications for History, (European and Third World), submitted to the Division of Research Programs, for projects beginning after July 1, 1988.
2. Date: February 23, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Tool and Access categories in the field of Music, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.
3. Date: February 25-26, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 316-B
   Program: This meeting will review Interpretive Research Projects applications for Social Sciences submitted to the Division of Research Programs, for projects beginning after July 1, 1988.
4. Date: February 28, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Access category in the field of Pre-Modern and Early Modern History, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.
5. Date: February 29, 1987.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review

applications submitted to the Tools category in the field of History, Social Sciences and Philosophy, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

6. *Date:* March 3–4, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Access category in the field of American History, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

7. *Date:* March 7–8, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Tools category in the field of Linguistics, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

8. *Date:* March 11, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Access category in the field of Modern History and Social Science, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

9. *Date:* March 14–15, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Tools and Access categories concerning the use of automation technology, submitted to the Division of Research Programs, for projects beginning after July 1, 1988.

10. *Date:* March 4, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications for the U.S. Newspaper Program, submitted to the Office of Preservation, for projects beginning after July 1, 1988.

11. *Date:* March 7–8, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications for Preservation Projects, submitted to the Office of Preservation, for projects beginning after July 1, 1988.

12. *Date:* February 29–March 1, 1988.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316–2
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after May 31, 1988.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 88–2350 Filed 2–3–88; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Arkansas Power & Light Co. and Arkansas Nuclear One, Unit 1; Order Imposing Civil Monetary Penalty

[Docket No. 50–313, License No. DPR–51, EA 87–62]

I

Arkansas Power and Light Company (licensee) is the holder of Operating License No. DRP–51 issued by the Nuclear Regulatory Commission (NRC/Commission) on May 21, 1974. The license authorizes the licensee to operate Arkansas Nuclear One, Unit 1 in accordance with the conditions specified therein.

II

A routine safety inspection of the licensee's activities was conducted during February 1–28, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 25, 1987. The Notice stated the nature of the violation, the provision of the NRC's requirement that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by Letter dated September 18, 1987 acknowledging the violation but requesting full mitigation of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty-five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, U.S Nuclear Regulatory Commission, Region IV, and a copy to the NRC Resident Inspector, Arkansas Nuclear One.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the proposed civil penalty should be imposed, in whole or in part.

Dated at Bethesda, Maryland, this 26th day of January 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Appendix—Evaluation and Conclusions

On June 25, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for the violation identified during an NRC inspection. Arkansas Power and Light Company responded to the Notice on September 18, 1987. In the response the licensee admits that the violation occurred as stated, but argues that certain factors provide a basis for full mitigation of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of Violation

Technical Specification 3.1.1.3 requires that both pressurizer code safety valves be operable when the reactor is critical. With one pressurizer code safety inoperable, either restore the valve to operable status within 15 minutes or be in Hot Shutdown within

12 hours. The associated basis for this technical specification states that the lift set point for the safety valve shall be set at 2500 psig ± 1 percent tolerance for error.

Contrary to the above, on December 21, 1986, pressurizer code safety valve PSV–1002 was found inoperable, a condition that likely existed since September 1985 and during which time the reactor was critical. The valve lift setpoint was at least 500 psi above the required 2500 psig ± 1 percent setpoint.

This is a Severity Level III violation (Supplement I).

Civil Penalty—$25,000.

Summary of Licensee's Response

The licensee concluded that the high lift setpoint likely occurred as a result of pressurizer code safety valve maintenance performed during an outage in September 1985, although its investigation of the activity did not identify specific personnel errors or procedural discrepancies.

The licensee presented background information in its response that each of the two pressurizer code safety valves is rated for total relief capacity of the system and that during the period from September 1985 to December 1986, reactor collant system overpressure protection was maintained with the one remaining operable pressurizer code safety valve. Background information was also provided describing the methods for testing the setpoints of the pressurizer code safety valves.

The licensee further described in its response a sequence of events that began on September 24, 1986, when ANO–2 experienced a reactor trip. During the post trip review of the transient, plant computer data indicated that one of the pressurizer code safety valves lifted prematurely. In-situ tests were conducted that confirmed that both ANO–2 pressurizer code safety valve setpoints were slightly below Technical Specification limits. Subsequently, in-situ testing of the recently installed Unit 1 pressurizer code safety valve was also conducted. Upon finding the setpoint on this Unit 1 valve to be slightly low, a test was performed on the other Unit 1 pressurizer code safety valve which had been in service since September 1985. This test revealed a very high setpoint, and the valve was adjusted and retested satisfactorily. The licensee indicated that this pressurizer code safety valve with the high setting had been refurbished and tested by the licensee onsite, while the other pressurizer code safety valves with the lower settings had been set and tested by an off site vendor. Because results of the preliminary investigation could not rule out mechanical failure, the licensee decided to replace the valve with the higher setting with a spare pressurizer code safety valve.

The licensee described the short-term root cause investigation, and because the results of the short-term investigation were inconclusive, the licensee contracted a third party to assist with the investigation efforts. After describing the detailed efforts of the third party investigation, the licensee concluded that no factor was identified which would have resulted in the anomalous condition. Therefore, the licensee stated that "the reason for the violation is unknown."

The licensee discussed the corrective steps that have been and will be taken. These included the replacement of the safety valve in December 1986, even though the valve setpoint had been adjusted within tolerance. The licensee also pointed to program improvements made prior to the finding of the inoperable valve and not as a result of the event. As a result of the event, procedure changes are being made to increase Quality Control involvement in safety valve testing and maintenance (pressurizer and main steam system code safety valves), development of management guidelines for handling safety-related equipment found to be in an abnormal condition, and an additional Quality Assurance program review based on the results of the root cause investigation.

NRC Evaluation of Licensee's Response

The licensee's response did not dispute the classification of the violation as a Severity Level III or the findings related to pressurizer code safety valve maintenance and testing documentation and procedural deficiencies discussed in NRC Inspection Report 50–313/87–05 and in the Notice of Violation and Proposed Imposition of Civil Penalty dated June 25, 1987. The licensee's root cause investigation, though extensive, did not identify a specific factor which would have resulted in the high lift setpoint.

Based on the licensee's description of the event, the licensee's actions appear to be acceptable. The actions include short-term corrective actions associated with the pressurizer code safety valve high setpoint condition, including plant cooldown to replace the pressurizer code safety valve in December 1986, safety valve disassembly for inspection, site records and industry experience review, specific site and vendor procedures review, review of work performed in September 1985, and discussions with personnel.

The licensee's description of the short-term and long-term corrective actions regarding the program and procedure improvements associated with the pressurizer code safety valves, the main steam system code safety valves, and other safety-related equipment to improve the overall performance of safety-related activities are acceptable, and were necessary to correct the identified problems.

Summary of Licensee's Request for Mitigation of Civil Penalty

The licensee requested full mitigation of the proposed civil penalty based on the facts that the condition was identified because of its initiative to investigate a maintenance problem, the condition was promptly reported, corrective actions had been taken to address related issues prior to identification of the condition, maintenance and quality program improvements were already underway due to management initiatives already in place, there was adequate margin of capacity with one safety valve operable, and the funds expended investigating possible generic implications have eliminated the need to impose a monetary penalty.

NRC Evaluation of Licensee's Request for Mitigation

In accordance with the NRC's General Statement of Policy and Procedure for Enforcement Actions, the following matters are appropriately considered in determining whether to mitigate (or escalate) a civil penalty:

1. Prompt Identification and Reporting

The NRC staff acknowledges that once the licensee became aware of the problem it was promptly reported. However, because of the duration of the problem and the fact that proper QC checks would have provided the licensee opportunities to identify the problem earlier mitigation under this factor is not appropriate.

2. Corrective Action to Prevent Recurrence

The licensee's corrective action to prevent recurrence is not considered extensive in view of the significance of the identified problems. The NRC expects its licensees to aggressively pursue correction or identified findings. These actions were particularly necessary because the licensee's previous corrective actions regarding similar problems (SALP Category 2 in maintenance during 1984–1985) were not fully effective. After readjustment of the pressurizer code safety valve to within

tolerance, the licensee elected to cool down the unit and replace the valve since the short-term investigation did not rule out mechanical failure as a cause for high setpoint. The NRC staff considers this action by the licensee to be prudent and conservative but expected, due to the importance of the reactor system code safety valves to protect the integrity of the reactor coolant system, a fission product boundary. Further, the expenditure of funds deemed appropriate by the licensee to investigate possible generic implications of such a significant problem is considered, by the NRC staff, to be part of the necessary corrective actions.

3. Past Performance

The base civil penalty was originally mitigated by 50% due to generally good past performance in the maintenance area as demonstrated by some improvement in the SALP ratings from Category 3 to Category 2. The NRC staff believes that further mitigation for improving performance would be inappropriate given that performance level is still categorized as satisfactory.

4. Prior Notice of Similar Events

Escalating factor only.

5. Multiple Occurrences

Escalating factor only.

NRC Conclusion

The NRC staff concludes that in order to emphasize the importance of providing appropriate controls during plant operations and maintenance including verification of safety valve operability, it is not appropriate to fully mitigate the civil penalty. Accordingly, the proposed civil penalty in the amount of Twenty-five Thousand Dollars ($25,000) should be imposed.

[FR Doc. 88–2312 Filed 2–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–324]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 2; Exemption

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR–62, which authorizes operation of the Brunswick Steam Electric Plant, Unit 2 (Brunswick or the facility). The license, provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Brunswick County, North Carolina.

II

By letter dated August 17, 1987, the licensee requested an exemption from the requirements of 10 CFR 50.62(c)(4), which establishes the minimum injection flow rate and the boron concentration for the standby liquid control system (SLCS).

Specifically, 10 CFR 50.62(c)(4) requires that each boiling water reactor must have a SLCS with minimum flow capacity equivalent in control capacity to 86 gallons per minute (gpm) with a boron concentration of 13 weight percent sodium pentaborate. The licensee requests an exemption from this requirement to permit use of a minimum flow rate of 66 gpm and a sodium pentaborate concentration of 13 weight percent.

The requirement established by the regulation was intended to provide for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an anticipated transient without scram (ATWS) event. The reactor vessel size used to establish the required flow rate of 86 gpm and the sodium pentaborate concentration of 13 weight percent was the large 251-inch diameter vessel used in the BWR/5 and BWR/6 designs. The Brunswick Unit 2 reactor has a much smaller, 218-inch diameter, vessel. For the Brunswick reactor, a lesser flow rate will provide adequate shutdown margin in an ATWS event, equivalent to that called for by the regulation for the larger 251-inch diameter boiling water reactor vessel. Refer to Generic Letter 85–03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," January 28, 1985.

III

In this case, the injection flow rate and boron concentration will provide the equivalent level of control capacity for the smaller Brunswick reactor pressure vessel as that called for by the rule based on larger reactor pressure vessels. Requiring Brunswick to provide the flow rate-boron concentration capacity specified by the rule would not, in these particular circumstances, serve the underlying purpose of the rule. The purpose of the rule is to reduce the risk from ATWS events by ensuring adequate shutdown margin. Thus the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii)

IV

The licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). As discussed above, the underlying purpose of the requirements of paragraph (c)(4) of 10 CFR 50.62 is to ensure adequate shutdown margin in an ATWS event. The underlying purpose is achieved and served by an injection rate of 66 gpm of 13 weight percent sodium pentaborate solution.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in Section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of 10 CFR 50.62(c)(4). Therefore, the Commission hereby grants the Exemption from paragraph (c)(4) of 10 CFR 50.62 to allow the use of an SLCS injection flow rate of 66 gpm of 13 weight percent sodium pentaborate solution.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 2551). This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 28th day of January 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–2313 Filed 2–3–88; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, February 11, 1988, from 9:00 a.m. to 5:00 p.m. and on Friday, February 12, 1988, from 8:30 a.m. to 1:00 p.m. The meeting will he held in the West End C and D rooms of the Washington Marriott Hotel, 1221—22nd Street NW. The agenda for the meeting will include the following topics: Geographic variation in fees, specialty differentials, fee schedules for

diagnostic services with little input by physicians, expenditure trends, practice guidelines, utilization review, expenditure targets, capitation and improvements in Medicare data. Other topics may be covered, if time permits.

ADDRESSES: The Commission Office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 88–2305 Filed 2–3–88; 8:45 am]

BILLING CODE 6820–BE–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for the Office of Management and Budget Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget (OMB) for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Reports.
(2) *Form(s) submitted:* G–88p.
(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) *Frequency of use:* On occasion.
(5) *Respondents:* Businesses or other for-profit.
(6) *Annual responses:* 3,300.
(7) *Annual reporting hours:* 440.
(8) *Collection description:* The RRA provides for payment of a supplemental annuity to a qualified retirement annuitant based on age, length of railroad service and a current connection with the railroad industry. The collection obtains information from the annuitant's employer to be used in determining entitlement to and the amount of annuity applied for.

Additional Information or Comments:

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–2306 Filed 2–3–88; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for the Office of Management and Budget Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget (OMB) for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Certification Regarding Rights to Unemployment Benefits.
(2) *Form(s) submitted:* UI–45.
(3) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(4) *Frequency of use:* On occasion.
(5) *Respondents:* Individuals or households, Businesses or other for-profit.
(6) *Annual responses:* 8,500.
(7) *Annual reporting hours:* 999.
(8) *Collection description:* In administering the disqualification for the voluntary leaving work provision of section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim indicating the claimant left work voluntarily. The certification obtains information needed to determine whether the leaving was with good cause.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–2307 Filed 2–3–88; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25295; File No. SR–NYSE–87–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange

The New York Stock Exchange, Inc. ("Exchange" or "NYSE") submitted on November 30, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. section 78(b)(1) and Rule 19(b)(4) thereunder to effect rate increases for initial and continuing equity listing fees, to be effective as of January 1, 1988.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25231, December 29, 1987) and by publication in the **Federal Register** (53 FR 192). No comments were received concerning the proposal.

The proposal would, among other things, increase the original listing fee for issuers from $33,200 to $34,700.[1] In its filing, the NYSE indicates that the fee increases are intended, in part, to offset increased costs of supplying services provided by the Exchange to list the shares of issuers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6. Specifically, we believe that the proposed increases are consistent with section 6(b)(4) of the Act which envisions the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of

[1] The other fee increases include increases in charges of initial listings, additional listings of shares, and continued listing fees. These fees are based on a graduated scale based on the number of shares issued.

publication of notice thereof, in that the NYSE needs to implement the fee increases as soon as possible in order to incorporate the changes into its next billing cycle. Accordingly, the Commission believes that the proposed rule change should be approved as submitted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is, hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 28, 1988.

[FR Doc. 88-2348 Filed 2-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25299; File No. SR-OCC-87-19]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice if hereby given that on November 19, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposal amends OCC's By-Laws to clarify the application of amended Article 8 of the Delaware Uniform Commercial Code ("Article 8") to non-equity options. A previous filing (File No. SR-OCC-83-20) approved by the Commission clarified the application of Article 8 to options issued by OCC. However, the filing did not make clear that this included non-equity as well as equity options. This filing amends OCC's By-Laws to clarify this.

OCC states that the proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, (the "Act") as amended, in that it would protect investors and the public interest by clarifying the applicability of Article 8 to non-equity options.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submission should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by February 25, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 29, 1988.

[FR Doc. 88-2347 Filed 2-3-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9171]

Issuer Delisting; Application to Withdraw From Listing and Registration; Moto-Photo, Inc.

January 29, 1988.

Moto-Photo, Inc. ("Company") (Common Stock, $.01 Par Value; $1.20 Cumulative Convertible Preferred Stock, Par Value $.01), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Board of Directors of the Company has determined that the annual listing fee and other filing and notification requirements are burdensome in light of the lack of trading activity of the Company's stock on the Phlx. Both of the Company's above specified securities are currently traded on the National Association of Securities Dealers Automated Quotations System ("NASDAQ"). In addition, the Company's Board of Directors has directed the Company's officers to apply for listing of the Company's stock on the NASDAQ/National Market System. The Company believes that holders and purchasers of its stock will not be adversely affected by the withdrawal of its listing from the Phlx.

Any interested person may, on or before February 22, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2348 Filed 2-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16243; 812-6818]

The Royal Bank of Scotland Group plc; Application

January 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940").

Applicant: The Royal Bank of Scotland Group plc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of the 1940 Act.

Summary of Application: Applicant seeks an order permitting it to issue and sell in the United States its debt and equity securities.

Filing Date: The application was filed on August 14, 1987, and amended on September 9, 1987, and January 19, 1988. A third amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, attorneys, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549 Applicant, c/o Bruce W. Nichols, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-3026, or Brion R. Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations and Undertakings

1. Applicant is a holding company, incorporated in Great Britain and registered in Scotland, which provides a comprehensive range of commercial banking and other financial services through its principal subsidiary and associated companies (together with Applicant, the "Group"). Applicant's principal subsidiary, The Royal Bank of Scotland plc (the "Bank"), maintains an extensive network of branches in the United Kingdom and also maintains branches, subsidiaries or representative offices in a number of other countries.

2. The Group constitutes the largest banking group based in Scotland, with total consolidated assets of approximately 16.6 billion pounds sterling and total consolidated deposits of approximately 14.3 billion pounds sterling at September 30, 1986. As of September 30, 1986, the rate of exchange was $1.4468 to one pound sterling. More than 72% of the Group's consolidated operating profits for the financial year ended September 30, 1986 were attributable to retail and commercial banking activities conducted by the Bank. Applicant states further that, like most United States banking groups, the Group's principal business consists of receiving deposits and making loans and its operating revenue is derived principally from interest on loans.

3. The Bank of England, the central bank of the United Kingdom, exercises general supervision over all deposit-taking institutions in the United Kingdom in a manner similar to the central banks of most European countries and the United States. The Bank is a "recognized bank" for purposes of the United Kingdom Banking Act 1979 (the "1979 Act"). The 1979 Act established a licensing and recognition system under which deposit-taking institutions in the United Kingdom must be licensed by the Bank of England, and must meet general statutory criteria of prudential management. The bank regulatory system currently existing in the United Kingdom will be significantly revised when the Banking Act 1987 (the "1987 Act") becomes effective and thereby replaces the 1979 Act. The 1987 Act will create a category of "authorized institutions" which must meet certain statutory criteria, including that directors, managers and controlling persons be "fit and proper persons", and which will be subject to extensive power by the Bank of England to make investigations into the business, ownership and control of such institutions. Applicant states that United Kingdom banks file regular, detailed reports and periodic statistical returns as prescribed by the Bank of England, and that Applicant's senior executives are in close consultation with the Bank of England.

4. The Bank's most significant presence outside the United Kingdom is in the United States, where it maintains a branch and representative office in New York City, an agency and representative office in San Francisco and representative offices in Chicago, Houston and Los Angeles. The Group's operations in the United States subject the Bank, and to a more limited extent, Applicant to supervisory authority of the Board of Governors of the Federal Reserve System ("Board") and subject the Bank to supervisory authority of the Banking departments of the states of New York and California, and to a more limited extent, Illinois and Texas. In addition, Applicant is subject to federal reporting requirements under the Bank Holding Company Act of 1956, and the United States branches, offices and agencies of the subsidiary are subject to reporting and examination requirements under the International Banking Act of 1978, which are similar to those imposed on domestic banks that are members of the Board.

5. Applicant requests an exemption from all provisions of the 1940 Act to issue and sell, in the United States, both its equity and debt securities. Applicant proposes to issue and sell its equity securities directly or in the form of American depositary shares represented by American depositary receipts ("ADRs"). Applicant further proposes to issue and sell debt securities, including commercial paper notes and other short and long term debt instruments. Applicant's principal subsidiary, the Bank, is currently operating under an SEC exemptive order permitting it to issue commercial paper and other debt securities in the United States (Investment Company Act Rel No. 13651, November 30, 1983).

6. Applicant undertakes that any public offering of its equity securities, or of ADRs representing its equity securities, in the United States, will take the form of a public offering registered under the Securities Act of 1933 ("1933 Act"). Applicant will, prior to any such public offering of its equity securities or ADRs file with the SEC a registration statement or registration statements with respect to such publicly offered securities. Applicant will not sell its equity securities or ADRs in any such public offering until such registration statements are declared effective by the SEC. Furthermore, Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with any such public offering.

7. Applicant undertakes that any private offering of its equity securities in the United States will be structured to comply with the exemption from registration afforded by section 4(2) of the 1933 Act or Regulation D thereunder. Applicant undertakes that it would not offer, issue or sell such equity securities unless it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such equity securities would be entitled to such exemption from registration. Such an offering would be made only to a limited number of sophisticated institutional investors or other investors as permitted by Regulation D, and would provide for the delivery to such investors of information concerning the Applicant, its business and the securities being offered.

8. Any offering of the Applicant's commercial paper or other debt securities with original maturities of less

than nine months ("Commercial Paper") in the United States would be structured to comply with either the exemption from registration afforded by section 3(a)(3) of the 1933 Act or the exemption afforded by section 4(2) of the 1933 Act or Regulation D thereunder. Applicant undertakes that it would not offer, issue or sell Commercial Paper in the United States unless it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such Commercial Paper would be entitled to one of such exemptions from registration. In the case of an offering in the United States by the Applicant of Commercial Paper, such offering would be made by one or more commercial paper dealers on behalf of the Applicant to a limited number of sophisticated institutional investors and other investors who ordinarily participate in the commercial paper market. While an announcement of the establishment of such a commercial paper facility may be made as a matter of record, such offerings will not be advertised or otherwise offered for sale to the general public.

9. Applicant undertakes to obtain from each such commercial paper dealer an undertaking that there will be provided by the dealer to each offeree who has indicated an interest in such Commercial Paper, and prior to the sale of any of such Commercial Paper, a memorandum that describes (i) the business of the Group and (ii) contains the audited financial statements of the Group of the type contemplated in connection with the Applicant's proposed public offering and sale in the United States of its equity securities. The memorandum would highlight the material differences between United Kingdom generally accepted accounting principles applicable to United Kingdom clearing banks and United States generally accepted accounting principles applicable to United States banks. The aforementioned memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States, and such memorandum will be updated periodically to reflect material changes in the Applicant's business and financial condition.

10. Any offering of Commercial Paper of the Applicant with maturities of nine months or longer ("long-term debt securities") would either (i) be structured as a private placement which complies with section 4(2) of the 1933 Act or Regulation D in the manner and which is accompanied by an offering memorandum of the type described above, or (ii) would be made in the form of one or more public offerings subject to all of the registration, prospectus delivery and other requirements of the 1933 Act described above in connection with a public offering in the United States of the Applicant's equity securities. In addition, any long-term debt securities offered to the public would be issued under an indenture complying with and qualified under the Trust Indenture Act of 1939.

11. In addition, the Applicant undertakes that any such offering of Commercial Paper and long-term debt securities shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization. Applicant's counsel confirmed that receipt of such ratings will be certified by Applicant's legal counsel in the United States.

12. Applicant undertakes to submit expressly to the jurisdiction of New York State and United States Federal courts sitting in New York City for the purpose of any suit, action or proceeding arising out of its securities in the United States, and, in that connection, will appoint a corporation with an office in New York City engaged in providing corporate services for lawyers as agent to accept service of process in any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable for as long as any of Applicant's securities issued in reliance upon being sought herein are outstanding in the United States. No such admission to jurisdiction or appointment of agent for service of process will affect the right of any holder of such securities to bring suit in any court which may have jurisdiction over Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process will not be a trustee for the holders of any securities or have any responsibilities or duties to act for such holders as would a trustee.

13. Applicant undertakes that it will not make any offering of its securities in the United States in reliance upon the proposed order of exemption if either: (1) The Bank ceases to be regulated as a commercial bank in the United Kingdom, or (2) the Bank ceases to be subject to banking regulation in the United States. Applicant also represents that (a) it has no present intention of causing the Bank to withdraw its presence in the United States that subjects the Bank and the Applicant to banking regulation in the United States and (b) it has no present intention of causing the Bank to limit its presence in the United Kingdom that subjects the Bank and the Applicant to regulation as a commercial bank in the United Kingdom.

Applicant's Legal Analysis

1. Applicant asserts that the proposed exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the exemption will advance the policies underlying certain United States laws of nondiscriminatory treatment of foreign banks in the United States. Applicant states that access to the United States investment market for its securities will provide Applicant with a new source of capital which constitutes an important element of any banking group's capital structure. Applicant also asserts that the proposed exemption will benefit the general public as well as institutional and other sophisticated investors in the United States by making Applicant's securities available to such investors.

2. Applicant also states that purchasers of Applicant's securities in the United States will have the benefit of the United States securities laws that provide for the protection of investors. Applicant specifically states that its securities either will be registered under the 1933 Act or will be offered pursuant to one of the exemptions contained therein. Applicant states further that the antifraud provisions of the Securities Exchange Act of 1934, as amended, will also apply to its proposed offering of securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-2349 Filed 2-3-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agreement on Government Procurement; Value of Special Drawing Rights

Under the authority delegated to the United States Trade Representative by sections 1-104 and 1-201 of Executive Order 12260, I hereby determine that effective on February 14, 1988, the amount of Special Drawing Right units referred to in the Agreement on Government Procurement and section 1-104 of Executive Order 12260 is 130,000, and that the dollar equivalent of such amount is $156,000. The $171,000 amount announced effective January 1, 1987, shall remain in effect through February 13, 1988.

This determination may be modified as appropriate.

Alan F. Holmer,

Acting United States Trade Representative.

[FR Doc. 88-2294 Filed 2-3-88; 8:45 am]

BILLING CODE 3190-01-M

Agreement on Government Procurement; Effective Date of Amendments

SUMMARY: For purposes of U.S. Government procurement that is covered by Title III of the Trade Agreements Act of 1979, the effective date of the amendments to the Agreement on Government Procurement, General Agreement on Tariffs and Trade, is February 14, 1988.

EFFECTIVE DATE: February 14, 1988.

FOR FURTHER INFORMATION CONTACT: Beverly Vaughan ((202) 395-3063), Director, International Government Procurement Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Executive Order 12260 (December 31, 1980) implemented the Agreement on Government Procurement pursuant to Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511-2518) and section 301 of Title 3 of the United States Code. Section 1-201 of Executive Order 12260 delegated to the United States Trade Representative the functions vested in the President by sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2518).

By November 16, 1987, final acceptance of certain amendments was notified by all the parties to the Agreement on Government Procurement. Effective February 14, 1988, all references in Title III of the Trade Agreements Act of 1979 and in Executive Order 12260 to the Agreement on Government Procurement shall refer to the Agreement as amended. Copies of the Protocol Amending the Agreement on Government Procurement may be obtained from the Office of Public Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506 ((202) 395-3230).

Alan F. Holmer,

Acting United States Trade Representative.

[FR Doc. 88-2293 Filed 2-3-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Walker County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Walker County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. W. R. Van Luchene, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104-4684, Telephone: (205) 832-7379. Mr. Royce G. King, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 281-8311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement for Alabama Project APD-471(3). The proposal is to construct, on new location, a modern highway from U.S. Route 78 approximately six miles west of Jasper to the Walker/Jefferson County line. The project will be a four-lane divided roadway with an approximate length of 28 miles.

The proposal is a segment of Corridor "X" in the Appalachian Development Highway Program. Corridor "X," a freeway-type facility, when completed will extend from near Fulton, Mississippi, to Birmingham, Alabama. The modern multi-lane highway will improve access and induce economic growth to this Appalachian area.

Alternatives under consideration include: (1) alternate route locations, (2) a no action alternative, and (3) postponing the action.

A Public Involvement Meeting has been held to acquire local input on the proposed projects. Written comments have been solicited from Federal, State and local agencies, officials and individuals who may have an interest in the proposal. A Scoping Meeting is to be held in the auditorium of the Jasper Chamber of Commerce Building, 1707 Second Avenue, Jasper, Alabama, at 1:30 p.m. Central Standard Time on March 2, 1988.

To ensure that the full range of issues related to this proposed action is addressed and all significant issue identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 22, 1988.

W. R. Van Luchene,

District Engineer, Montgomery, Alabama.

[FR Doc. 88-2308 Filed 2-3-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Announcing the Second Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The committee was established in accordance with the provisions of the Federal Advisory Committee Act to coordinate motor vehicle safety research and avoid duplication of effort. This meeting will seek to identify the specific research activities that the Committee will initially address.

DATE AND TIME: The meeting is scheduled to begin at 10:00 a.m., on February 23, 1988, and conclude on February 24.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

On September 30, 1987, 15 individuals were appointed to membership on the Committee.

This meeting will include a presentation of NHTSA's process of

setting motor vehicle research program priorities and NHTSA's Crash Avoidance Research Data (CARD) file.

The meeting will also include presenatations from industry on private sector research activities. The Committee will then consider the possibilities of creating subcommittees in one or more of the following subject areas:

- Biomechanics (research not considered by Task Force 3)
- Development of Long Term Priorities
- Occupant Protection
- Truck Safety
- Systems/Technology
- Rollover Crash Protection

The meeting is open to the public, and participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88-01) has been established to contain the products of the Committee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street SW., Room 6208, Washington, DC 20590, telephone: (202) 366-4862.

Issued on: February 1, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88-2367 Filed 2-3-88; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to exchange views on proposals relating to the development of international standards for the transport of dangerous goods that will be considered by the 37th session of the Group of Rapporteurs on the Transport of Dangerous Goods and by the International Civil Aviation Organization's Dangerous Goods Panel.

DATE: February 18, 1988, 10:00 a.m.

ADDRESS: Room 8236, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, U.S Department of Transportation, Washington, DC 20590 (202) 366-4545.

SUPPLEMENTARY INFORMATION: Particular topics to be reviewed at this meeting will include:

1. U.S. proposals on the definition of Class 2 Gases, the establishment of defining criteria and tests for the classification of liquid oxidizers, and classification and grouping criteria for mixtures constinaing Division 6.1 substances poisonous by inhalation and proposals received from other Rapporteurs.

2. Proposals to adopt provisions in the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air relating to the transportation of "limited quantities of dangerous goods".

Interested persons are invited to attend and participate in this meeting. Persons planning to attend are cautioned that this meeting is intended to exchange views on a number of proposals involving international standards for the transport of dangerous goods. Therefore, it is recommendeed attendees be familiar with these organizations, their functions and the standards issued by them.

Issued in Washington DC on February 1, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-2368 Filed 2-3-88; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act. Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
Los Angeles County Transportation Commission, Los Angeles, CA	CA-03-0322	$4,497,408	12/31/87
Greater Hartford Transit District, Hartford, CT	CT-03-0052	436,020	12/21/87
Maryland Department of Transportation, Baltimore, MD	MD-03-0036	9,813,750	12/23/87

SECTION 3 GRANTS—Continued

Transit property	Grant No.	Grant amount	Date obligated
New Hampshire Department of Transportation, Concord, NH	NH-03-0005-02	363,437	1/11/88

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
Mobile Transit Authority, Mobile, AL	AL-90-x029	$964,208	12/31/87
City of Montgomery, Montgomery, AL	AL-90-X026	1,465,249	12/31/87
Pine Bluff Transit, Pine Bluff, AR	AR-90-X011	560,644	12/31/87
City of Tucson, Tucson, AZ	AZ-90-X006-02	400,001	12/31/87
Sacramento Regional Transit District, Sacramento, CA	CA-90-X251	12,817,444	12/31/87
South Coast Area Transit, Oxnard, CA	CA-90-X253	1,855,941	12/31/87
Hub Area Transit Authority, Yuba City, CA	CA-90-X264	370,000	12/31/87
City of Simi Valley, Simi Valley, CA	CA-90-X257	778,630	12/31/87
Stockton Metropolitan Transit District, Stockton, CA	CA-90-X261	2,618,652	12/31/87
Regional Transportation District, Denver, CO	CO-90-X018-03	973,725	12/31/87
Regional Transportation District, Denver, CO	CO-90-X005-06	32,106	12/31/87
Mesa County, Grand Junction, CO	CO-90-X037	343,297	12/31/87
City of Pueblo, Pueblo, CO	CO-90-X038	441,920	12/31/87
Connecticut Department of Transportation, Hartford, CT	CT-90-X085-01	8,000,000	12/31/87
Greater Hartford Transit District, Hartford, CT	CT-90-X106	1,552,000	12/31/87
Connecticut Department of Transportation, Hartford, CT	CT-90-X107	1,102,805	12/31/87
Connecticut Department of Transportation, Hartford, CT	CT-90-X108	9,237,210	12/31/87
City of Stamford, Stamford, CT	CT-90-X103	118,310	12/31/87
Delaware Transportation Authority, Dover, DE	DE-90-X007	2,705,695	12/31/87
Orange-Osceola-Orlando Transit Authority, Orlando, FL	FL-90-X099	2,128,743	12/31/87
Lakeland Area Mass Transit Department, Lakeland, FL	FL-90-X103	1,294,912	12/31/87
East Volusia Transit Authority, Daytona Beach, FL	FL-90-X100	1,888,684	12/31/87
Consolidated Government of Columbus, Columbus, GA	GA-90-X025-01	25,954	12/31/87
Georgia Department of Transportation, Savannah, GA	GA-90-X039-01	912,000	12/31/87
Metropolitan Transit Authority, Waterloo, IA	IA-90-X080	497,373	12/31/87
Sioux City Board of Transit Trustees, Sioux City, IA	IA-90-X079-01	433,679	12/31/87
Iowa City, Transit, Iowa City, IA	IA-90-X082	12,000	12/31/87
City of Coralville, Iowa City, IA	IA-90-X081	16,000	12/31/87
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL-90-X109	555,566	01/08/88
Springfield Mass Transit District, Springfield, IL	IL-90-X110	715,100	01/08/88
Champaign Urbana Mass Transit District, Champaign-Urbana, IL	IL-90-X111	723,200	01/08/88
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL-90-X103	46,510	12/31/87
Fort Wayne Public Transportation Corporation, Fort Wayne, IN	IN-90-X098	1,481,996	01/08/88
Greater Lafayette Public Transportation Corporation, Lafayette, IN	IN-90-X099	870,586	01/15/88
Heart City Rider, Elkhart, IN	IN-90-X095	197,403	12/31/87
Metropolitan Evansville Transit System, Evansville, IN	IN-90-X094	1,026,425	12/31/87
City of Anderson Transit System, Anderson, IN	IN-90-X101	578,787	12/31/87
Muncie Indiana Transit System, Muncie, IN	IN-90-X100	1,018,800	12/31/87
Transit Authority of River City, Louisville, KY	KY-90-X035	8,830,638	01/15/88
City of Lafayette, Lafayette, LA	LA-90-X062	430,000	12/31/87
City of Monroe, Monroe, LA	LA-90-X072	485,113	12/31/87
City of Shreveport, Shreveport, LA	LA-90-X074	2,132,000	12/31/87
Lowell Regional Transit Authority, Lowell, MA	MA-90-X075	1,278,200	12/31/87
Worcester Regional Transit Authority, Worcester, MA	MA-90-X077	2,353,641	12/31/87
Greater Attleboro-Taunton Regional Transit Authority, Pawtucket, MA	MA-90-X056-03	1,440,000	12/31/87
Massachusetts Bay Transportation Authority, Boston, MA	MA-90-X073	16,809,832	12/31/87
Greater Portland Transit District, Portland, ME	ME-90-X032	119,692	12/31/87
Maine Department of Transportation, Augusta, ME	ME-90-X031-02	147,506	12/31/87
Greater Portland Transit District, Portland ME	ME-90-X022-02	75,060	12/31/87
Jackson Transportation Authority, Jackson, MI	MI-90-X089	429,812	01/08/88
Ann Arbor Transportation Authority, Ann Arbor, MI	MI-90-X086	1,397,290	01/08/88
Jackson Transportation Authority, Jackson, MI	MI-90-X077-01	23,402	12/31/87
Grand Rapids Area Transportation Authority, Grand Rapids, MI	MI-90-X090	2,301,917	01/08/88
City of Moorhead, Moorhead, MN	MN-90-X028	229,550	12/31/87
City Utilities of Springfield, Springfield, MO	MO-90-X045	958,518	12/31/87
City of Hattiesburg, Hattiesburg, MS	MS-90-X018	317,797	12/31/87
Mississippi Coast Transit Authority, Gulfport, MS	MS-90-X016	25,000	12/31/87
Missoula Urban Transportation District, Missoula, MT	MT-90-X020-01	287,389	12/31/87
Charlotte Transit System, Charlotte, NC	NC-90-X070	1,770,998	12/31/87
Wilmington Transit Authority, Wilmington, NC	NC-90-X071	27,840	12/31/87
Fayetteville Area System of Transit, Fayetteville, NC	NC-90-X065	607,415	12/31/87
City of Fargo, Fargo, ND	ND-90-X015	175,750	12/31/87
Metropolitan Transportation Authority, New York, NY	NY-90-X102-01	50,084,648	1/22/88
Metropolitan Transportation Authority, New York, NY	NY-90-X111-02	65,289,700	1/22/88
Putnam County, New York, NY	NY-90-X124	834,471	12/31/87
City of Glens Falls, Glens Falls, NY	NY-90-X126	232,222	12/31/87
Niagara Frontier Transportation Authority, Buffalo, NY	NY-90-X127	8,836,866	12/31/87
Central Ohio Transit Authority, Columbus, OH	OH-90-X095	1,254,788	1/14/88
Central Ohio Transit Authority, Columbus, OH	OH-90-X096	4,479,086	1/14/88
Portage Area Regional Transportation Authority, Akron, OH	OH-90-X091	354,800	12/31/87

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Date obligated
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X072-02	505,815	12/31/87
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X094	9,513,746	1/14/88
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X021	1,609,585	12/31/87
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X022	416,000	12/31/87
Salem Area Mass Transit District, Salem, OR	OR-90-X024	1,434,104	12/31/87
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X132	304,913	12/31/87
Luzerne County Transportation Authority, Scranton, PA	PA-90-X136	1,278,735	12/31/87
York Area Transportation Authority, York, PA	PA-90-X125	512,324	12/31/87
County of Lackawanna Transit System, Scranton, PA	PA-90-X129-01	490,126	12/31/87
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X127-01	71,851	12/31/87
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-90-X134	28,173,673	12/31/87
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X120-02	489,363	12/31/87
Centre Area Transportation Authority, State College, PA	PA-90-X138	400,000	12/31/87
Mid Mon Valley Transit Authority, Monessen, PA	PA-90-X135	263,942	12/31/87
York Area Transportation Authority, York, PA	PA-90-X126	1,509,104	12/31/87
Department of Transportation and Public Works, San Juan, PR	PR-90-X033	604,800	12/31/87
Rhode Island Department of Transportation, Providence, RI	RI-90-X010	5,015,886	12/31/87
Greenville Transit Authority, Greenville, SC	SC-90-X015-01	1,572,308	12/31/87
City of Sioux Falls, Sioux Falls, SD	SD-90-X005-01	55,480	12/31/87
City of Rapid City, Rapid City, SD	SD-90-X008-02	26,626	12/31/87
City of Knoxville, Knoxville, TN	TN-90-X057-01	528,000	12/31/87
Memphis Area Transit Authority, Memphis, TN	TN-90-X050	3,690,744	1/15/88
City of Knoxville, Knoxville, TN	TN-90-X060	988,513	1/15/88
Metropolitan Transit Authority, Nashville, TN	TN-90-X051	1,711,176	12/31/87
City of Knoxville, Knoxville, TN	TN-90-X055-01	28,000	12/31/87
Brownsville Urban System, Brownsville, TX	TX-90-X107	1,010,000	12/31/87
City of Laredo, Laredo, TX	TX-90-X115	762,000	12/31/87
Texoma Regional Planning Commission, Sherman-Denison, TX	TX-90-X113	169,638	12/31/87
City of Howe, Sherman-Denison, TX	TX-90-X112	12,140	12/31/87
City Amarillo, Amarillo, TX	TX-90-X108	663,642	12/31/87
Utah Transit Authority, Salt Lake City, UT	UT-90-X009	4,366,156	12/31/87
Greater Richmond Transit Company, Richmond, VA	VA-90-X047-01	1,977,018	12/31/87
Peninsula Transportation District Commission, Hampton, VA	VA-90-X045-01	1,771,451	12/31/87
Tidewater Transportation District Commission, Norfolk, VA	VA-90-X052	8,421,029	12/31/87
Pierce County Public Transportation Benefit Area, Tacoma, WA	WA-90-X060	2,926,045	12/31/87

SECTION 9 GRANTS READY FOR OBLIGATION: WAITING FOR 13(C) CERTIFICATION

Transit property	Grant No.	Grant amount
Regional Transportation District, Denver, CO	CO-90-X036	$5,685,292
Norwalk Transit District, Norwalk, CT	CT-90-X099	142,323
Metropolitan Dade County, Miami, FL	FL-90-X101	11,472,794
Greater Lafayette Public Transportation Corporation, Lafayette, IN	IN-90-X099-01	316,800
Montachusett Regional Transit Authority, Fitchburg, MA	MA-90-X076	370,748
Kansas City Area Transportation Authority, Kansas City, MO	MO-90-X043	1,696,040
Kansas City Area Transportation Authority, Kansas City, MO	MO-90-X044	5,027,299
New Jersey Transit Corporation, Northeastern, NJ	NJ-90-X023	38,823,595
City of Albany, Albany, NY	NY-90-X130	696,000
Capital District Transportation Authority, Albany, NY	NY-90-X128	3,047,250
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X092	7,731,320
Lane Transit District, Eugene, OR	OR-90-X023	1,387,988
Tri-County Metropolitan Transp. District of Oregon, Portland, OR	OR-90-X026	4,108,766
Port Authority of Allegheny County, Pittsburgh, PA	PA-90-X137	21,953,686
Chattanooga Area Regional Transportation Authority, Chattanooga, TN	TN-90-X052	1,701,084
Chittenden County Transit Authority, Burlington, VT	VT-90-X008	427,995
Snohomish County Transportation Authority, Everett, WA	WA-90-X079	170,000

Issued on: January 28, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-2369 Filed 2-3-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: February 1, 1988.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1008.

Form Number: 8582.

Type of Review: Resubmission.

Title: Passive Activity Loss Limitations.

Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Room 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Burden: 17,823,226 hours.

OMB Number: 1545-1021.

Form Number: 8594.

Type of Review: Resubmission.

Title: Special Allocation Rules for Certain Asset Acquisitions.

Description: Section 1060 of the Internal Revenue Code of 1986 requires the seller and the purchaser of a group of business assets to allocate the consideration for the assets among the assets pursuant to the residual method of allocation. The seller and the purchaser must report certain information concerning the allocation of the consideration.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 172,132 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2353 Filed 2-3-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: February 1, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0430.

Form Number: 4810.

Type of Review: Extension.

Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

Description: Form 4810 is used to request a prompt assessment under Internal Revenue Code section 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.

Estimated Burden: 2,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2354 Filed 2-3-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: February 1, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0106.

Form Number: F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-11, and F-20, Annual Report.

Type of Review: Reinstatement.

Title: Securities Exchange Act Disclosure Rules.

Description: Part II conforms regulations affecting securities transactions of nearly 330 national banks with those of the Securities and Exchange Commission as required by 15 U.S.C. 78 *et seq.*

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 36,879 hours.

Clearance Officer: Eric Thompson (202) 447-1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-2355 Filed 2-3-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 1-88]

Treasury Notes, Series W-1990

Washington, January 28, 1988.

The Secretary announced on January 27, 1988, that the interest rate on the notes designated Series W-1990, described in Department Circular—Public Debt Series—No. 1-88 dated January 21, 1988, will be 7⅜ percent. Interest on the notes will be payable at the rate of 7⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-2290 Filed 2-3-88; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 23
Thursday, February 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88–2420 Filed 2–2–88; 12:06 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 25, 1988.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Application of the Chicago Mercantile Exchange for contract market designation on the CME Treasury Index futures
2. Third Quarter FY 1988 Objectives

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88–2421 Filed 2–2–88; 12:06 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, February 25, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 88–2422 Filed 2–2–88; 12:06 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NO.: 88–1817.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 4, 1988, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

* * * * *

DATE AND TIME: Tuesday, February 9, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, February 11, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Notice of Inquiry—Allocations between Federal and Nonfederal Accounts.
Draft Advisory Opinion 1987–29—Jan W. Baran on behalf of Life Underwriters PAC and the National Association of Life Underwriters.
Discussion of Commission's DSR Procedures Prior to Consideration of Proposed Changes in Commission Regulations.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88–2457 Filed 2–2–88; 2:30 pm]
BILLING CODE 6715–01–M

federal register

Thursday
February 4, 1988

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations and Schedules of Controlled Substances; Table of Exempt Prescription Products; Proposed Rules

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends § 1308.24 of Title 21 of the Code of Federal Regulations. The below listed chemical preparations and mixtures which contain controlled substances replaces the list of exempt chemical preparations set forth in § 1308.24(i). This action is in response to DEA's periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA. Those preparations included in the list are exempted from the application of various provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

DATE: Comments must be submitted on or before March 7, 1988.

ADDRESS: Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General at 21 U.S.C. 811(g)(3)(B) to exempt from specific provisions of the Act a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

The Administrator of the Drug Enforcement Administration has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. These applications have been received by the Deputy Assistant Administrator, Office of Diversion Control. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industry, educational, or special research purposes; is not intended for general administration to man or animal; and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

The Office of Management and Budget (OMB) has determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(B) and delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i) the table is revised to read as follows:

§ 1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

EXEMPT CHEMICAL PREPARATIONS

Manufacturer or supplier	Product name/description	Form of product	Date of application
Abbott Laboratories			
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	125I-Thyroxine Reagent Solution	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution	Bottle:3.2 ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution	Bottle:3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No 9671-55)	Reagent Pack:50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack (No. 9670-55)	Reagent Pack: 50 tests	12/02/86
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution	Bottle, 3.2 ml	12/02/86
Abbott Laboratories	ADx Opiates Reagent Pack (No. 9673-55)	Reagent Pack.50 tests	12/02/86
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Flask. 2 liter	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask. 2 liter	12/09/85
Abbott Laboratories	Amphetamine Stock Standard, No 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	Amphetamine/ Metamphetamine QC Primary Bulk Control M, No. 9668-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Amphetamine/ Methamphetamine QC Primary Standard Control M, No. 9668-M.	Bottle:5 ml	11/10/87

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Abbott Laboratories	Barbital Buffer 0.05 Molar	Plastic Bottle: 25ml, 5ml	04/22/76
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669-M	Bottle:5 ml	11/10/87
Abbott Laboratories	Benzodiazepines Bulk Calibrators, A-F No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674	Flasks: 2 liter	04/21/86
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182	Bottle: 125ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F	Flasks:2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F	Flask:6 liter	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M, and H	Flask:6 liters	06/19/87
Abbott Laboratories	Cannabinoids Bulk Controls L,M,H	Flasks:2 liters	10/24/86
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Flasks:4 liters	10/27/86
Abbott Laboratories	Cannabinoids Stock Standard (94568)	Bottle: 125 ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No 94193)	Bottle:125 ml	10/24/86
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flask:5 ml	10/27/86
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B-F No. 9670	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670	Flask: 2 liter	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No 9670	Flask: 4 liter	10/29/85
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670-M.	Bottle:5 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 9670	Vial: 5ml	10/29/85
Abbott Laboratories	Digoxin I125 Imusay R Diagnostic Kit No.7649	Kit: 100 units	06/06/74
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Multiconstituent Bulk Controls L,M,H (No. 9687-L,M,H)	Flask: 10 liters	09/03/87
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B-F No. 9673	Flasks. 2 liter	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673	Flasks: 2 liter	05/07/86
Abbott Laboratories	Opiates Bulk Tracer, No. 97456	Flask: 4 liter	05/07/86
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673-M	Bottle:5 ml	11/10/87
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Bottle: 30ml	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B-F No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M No. 9672	Flask: 2 Liters	09/26/86
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672	Flask: 2 liter	03/21/86
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312	Plastic Bottle:125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313	Plastic Bottle:125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml	09/21/77
Abbott Laboratories	Secobarbital Bulk Calibrator, B-F No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669	Flask: 2 liter	03/21/86
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II-VI, Nos. 9755, 9757, 9759, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9676, 9678, 9680. (L,M,H).	Bottle: 4ml	10/03/85
Abbott Laboratories	T 4 RIA (PEG) Diagnostic Kit	Kit: 500 tests, 100 tests, 50 tests.	04/22/76
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9668-01.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9668-10.	Bottles: 4ml	08/23/85
Abbott Laboratories	TDx Barbiturates Calibrators, B-F No. 9669	Bottle: 4 ml	10/08/85
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669	Bottle: 4ml	10/08/85
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674-01	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674-10	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (9671-02)	Bottle:5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (No. 9671-01)	Bottles:5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L,M, and H (9671-11)	Bottle:5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L,M,H (No. 9671-10)	Bottles:5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671-T)	Bottle 5 ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671-20)	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B-F No 9670	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669	Bottle: 4ml	10/02/85
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5ml	10/02/85
Abbott Laboratories	TDx Multiconstituent Controls L,M,H (No. 9687-L,M,H)	Bottle:5 ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators, B-F No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 4ml	05/07/86
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673-20	Reagent Well: 5ml	05/07/86
Abbott Laboratories	TDx Phencyclidine Calibrators, B-F No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	08/31/81
Abbott Laboratories	TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10).	Kit: 6 Bottles	09/03/87
Abbott Laboratories	Thyroxine Antiserum (Sheep, Rabbit, or Goat)	Plastic Bottle: 200ml, 20ml	04/22/76
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Adri/Technam			
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial:10ml	04/18/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/03/85
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Vial: 6 ml	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/84
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/84
Adri/Technam	Drug Standards, Acid/Neutral Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial:10ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle:10ml	05/03/73
American Monitor Corporation			
American Monitor Corporation	Quality I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Quality II	Glass Vial: 10ml	10/09/75
Amersham Corporation			
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004	Kit: 50 tests, 100 tests, 400 tests	02/18/80
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091,IM 3094	Kit: 100 tests, 400 tests	06/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit:100 Tests 400 Tests	08/27/86
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit:100 Tests 400 Tests	08/27/86
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Custom Preparation	03/27/72
Amersham Corporation	Morphine (N-methyl-C14) Hydrochloride No. CFA-363	Vial:0.32 to 1.89mg	03/27/72
Amersham Corporation	Pheno [2-14C] barbital Catalog No. CFA 537	Vial:0.39 to 5.85mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5-95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002mg to 0.015mg	02/26/74
Amersham Corporation	[1(n)-3H]Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/26/74
Amersham Corporation	[1,7,8(n)-3H]Dihydromorphine, No. TRK-450	Vial: 0.0008 mg to 0.008 mg	02/26/74
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476	Vial:3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476	Vial:13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572	Multidose Glass Vial: 56mm x 25mm	09/28/77
Analytical Systems, Div. Marion Laboratories, Inc.			
Analytical Systems, Div. Marion Laboratories, Inc.	Proficiency Sample	Plastic Bottle Containing 40 ml	08/22/82
Analytical Systems, Div. Marion Laboratories, Inc.	Special Toxi-Discs	Plastic Vial or Bottle Containing 50 Standard Discs.	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc	Toxi-Control	Plastic Bottle Containing 50 ml	03/30/77
Analytical Systems, Div. Marion Laboratories, Inc	Toxi-Control THC	Plastic Bottle Containing 50 ml	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Disc A Series	Plastic Vial Containing 50 Standard Discs.	05/06/75
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Disc B Series	Plastic Vial Containing 50 Standard Discs.	05/06/75

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Discs THC	Plastic Vial Containing 50 Standard Discs.	10/05/83
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms.	09/24/80
Analytical Systems, Div. Marion Laboratories, Inc.	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/05/83
Applied Sciences Laboratories			
Applied Sciences Laboratories	Allylisobutylbarbituric Acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Alphenal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Alprazolam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Amobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Amphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Butabarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Butethal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clonazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Cocaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Codeine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diallylbarbituric acid	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Diazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Drug Mix Four	Ampoule: 1 ml	11/03/86
Applied Sciences Laboratories	Drug Mix One	Ampoule: 1 ml	10/21/86
Applied Sciences Laboratories	Drug Mix Three	Ampoule: 1 ml	11/03/86
Applied Sciences Laboratories	Drug Mix Two	Ampoule: 1 ml	10/21/86
Applied Sciences Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethinamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Fenfluramine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Fentanyl	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Flurazepam HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Glutethimide	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Halazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Levorphenol Tartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lorazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Lysergic Acid diethylamide	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mephobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Meprobamate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Mescaline	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methohexital	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Methyprylon	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Applied Sciences Laboratories	Morphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Nalorphine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Norcodeine HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Normorphine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Oxazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85

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EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Applied Sciences Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pemoline	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentazocine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phenazocine HBr	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Phentermine	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Prazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocybin	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Psilocyn	Vial: 1 ml	11/06/87
Applied Sciences Laboratories	Secobarbital	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Applied Sciences Laboratories	Temazepam	Vial: 1ml	04/16/85
Applied Sciences Laboratories	Thebaine	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Thiamylal	Vial: 1ml	01/24/73
Applied Sciences Laboratories	Triazolam	Vial: 1ml	04/16/85
Armed Forces Institute of Pathology			
Armed Forces Institute of Pathology	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems			
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
BHP Diagnostix			
BHP Diagnostix	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Baxter Healthcare Corporation, Dade Division			
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer (Lyophilized), Catalog No. CA-2691.	Glass Vial:10 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	(125I) Human TSH Tracer, Catalog No. CA-2611	Glass Vial:10 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit (Catalog No. B4233-2).	Kit:5 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Absorbed Plasma and Serum Reagents Kit B4233-2	Glass Vial: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Anticonvulsant Drug Controls, Levels I and II, Catalog No. CA-2419 and CA-2420.	Glass Vial:3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control I.X Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Healthcare Corporation, Dade Division.	Buffered Thrombin (Bovine) Catalog No. B4233-40	Bottle: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenobarbital Radioimmunoassay Kits Catalog No. CA-2545, CA-2565.	Kit:50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) Phenytoin Radioimmunoassay Kit Catalog No. CA-2537, CA-2557.	Kit:50 Assays, 500 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaCoat (125I) T3 Uptake Radioimmunoassay Kit Catalog No. CA-2539, CA-2539J, CA-2559, CA-2559J.	Kit:100 Assays, 100 Assays, 500 Assays, 500 Assays.	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HS-HTSH Radioimmunoassay Kit Catalog No. CA-1573.	Kit:125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Clinical Assays GammaDab (125I) HTSH Radioimmunoassay Kit Catalog No. CA-2591J.	Kit:125 Assays	09/09/86
Baxter Healthcare Corporation, Dade Division.	Dade Tri-Rac R Tri Level Immunoassay Controls	Bottle: 9ml 6 bottles per kit (Lyophilized Material).	04/11/85
Baxter Healthcare Corporation, Dade Division.	Data-Fi Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-38.	Glass Vial: 5ml (Lyophilized Material)	01/24/86
Baxter Healthcare Corporation, Dade Division.	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233-30).	Kit:10 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material)	05/18/81
Baxter Healthcare Corporation, Dade Division.	Data-Fi Thrombin Reagent	Bottle:9 ml (Lyophilized Material)	07/20/83
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2752	Glass Vial:3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	HTSH Non-Specific Binding Reagent, Catalog No. CA-2780	Glass Vial:3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Human TSH Controls Levels I and II, Catalog No. CA-2452 and CA-2453.	Glass Vial:3.5 ml	09/09/86
Baxter Healthcare Corporation, Dade Division	Mons-Trol Level I Chemistry Control, Assayed, Special Order Request B5103-XXX.	Bottle:9ml (Lyophilized Material)	01/20/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Baxter Healthcare Corporation, Dade Division.	Mons-Trol Level I.X Special Order Request B5106-5X	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Mons-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103-XXX, B5113-XXX.	Bottle: 9ml (Lyophilized Material)	01/20/84
Baxter Healthcare Corporation, Dade Division.	Mons-Trol Level II.X Special Order Request B5106-6X	Bottle: 18ml (Lyophilized Material)	06/30/83
Baxter Healthcare Corporation, Dade Division.	Mons-Trol. ES Level I Chemistry Control, Assayed	Bottles: 9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Mons-Trol. ES Level I.X Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Mons-Trol. ES Level II Chemistry Control, Assayed	Bottles:9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Healthcare Corporation, Dade Division.	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	06/27/86
Baxter Healthcare Corporation, Dade Division.	Owren's Veronal Buffer	Bottle: 18ml	08/16/71
Baxter Healthcare Corporation, Dade Division.	Rabbit Anti-Human TSH Serum, Catalog No. CA-2109	Glass Vial:20 ml	09/09/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level II-Intermediate	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Immunoassay Control, Level III-High	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Calibrators B, C, D, E, & F	Glass Vial: 3ml	06/27/83
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Conjugate	Glass Vial: 6ml	01/25/82
Baxter Healthcare Corporation, Dade Division.	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5700-22).	Kit:120 tests	03/10/87
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level I-Low B5700-2	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level II-Intermediate B5700-3	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus TDM Control Level III-High B5700-4	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Healthcare Corporation, Dade Division.	Stratus Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700-1).	Kit:9 Vials	03/10/87
Baxter Healthcare Corporation, Dade Division.	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material)	08/16/71
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level II Intermediate	Bottle: 9 ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri Rac R Immunoassay Control Level III High	Bottle: 9 ml (Lyophilized Material)	04/11/85
Baxter Healthcare Corporation, Dade Division.	Tri-Rac R Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/11/85
Beckman Instruments, Inc.			
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g	05/22/79
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g	04/24/71
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles	11/11/80
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86
Becton Dickinson & Company			
Becton Dickinson & Company	Antibody Coated Tubes	Metallized Plastic Bag: 50 Tubes/Bag	02/13/78
Becton Dickinson & Company	Barbital Buffer Solution, Catalog No. 246514	Bottle: 1 ounce	08/01/84
Becton Dickinson & Company	Euthyroid Reference Standard, Catalog No. 237418	Vial: 4ml	09/27/78
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I], Catalog No. 262984.	Kit: 200 tubes	09/04/86
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit [125I] Catalog No. 258423.	Kit: 250 tubes	08/01/84
Becton Dickinson & Company	IQ Immunochemistry System, Thyroid Stimulating Hormone Catalog No. 3010.	Kit: 25 tests	06/30/87
Becton Dickinson & Company	Neonatal TSH Antiserum, Catalog No. 244716	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Precipitating Antiserum, Catalog No. 247618	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Simul Trac Free T4/TSH Antiserum, No. 262641	Vial: 1 oz.	02/21/86
Becton Dickinson & Company	Simul Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625	Kit: 200 tubes	02/21/86
Becton Dickinson & Company	T3 Antibody Coated Tubes, Catalog No. 237213	Box containing 100 tubes	09/27/78
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125ml	09/27/78

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Becton Dickinson & Company	T4 Tracer Solution Catalog No. 232611	White NALGENE Polypropylene Bottle: 125 ml.	02/13/78
Becton Dickinson & Company	TSH (125I) Tracer, Catalog No. 243621	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Antiserum, Catalog No. 263001	Clear Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Antiserum, Catalog No. 258431	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Standard A, Catalog No. 259829	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard B, Catalog No. 259837	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard C, Catalog No. 259845	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard D, Catalog No. 259853	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard E, Catalog No. 263052	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Standard F, Catalog No. 263061	Amber Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259824	Clear Vial: 10ml	09/04/86
Behring Diagnostics			
Behring Diagnostics	IEP Buffer, 793001 pH 8.2	Foil Pouch: 6.5 g.	09/17/79
Behring Diagnostics	Immuno-tec II Agarose Plate, 839013, 850013	Foil Pouch: "5.35" x "5.25"	09/17/79
Bio-Rad Laboratories			
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	08/20/84
Bio-Rad Laboratories	Lypochek Immunoassay Control Levels I, II, III	Vial: 10 ml	09/24/87
Bio-Rad Laboratories	Lypochek Quantitative Urine Control Levels I and II	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine Immunobeads	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	09/24/82
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/ Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Urine Toxicology Control No. C-470-25	Amber Vial: 50ml	06/19/79
Bio-Rad Laboratories, (Chemical Division)			
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250 ml	09/09/77
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g.	05/09/74
Bio-Rad Laboratories, (Chemical Division)	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Electrophoresis Buffer, Dry-Pack	Package: 6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer I, pH 8.6	Dry-pack: 25.6 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer II, pH 8.6	Dry-pack: 15.61 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III, pH 8.6	Dry-pack: 6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III-a, pH 8.6	Dry-pack: 15.07 g.	08/06/75
Bio-Rad Laboratories, (Chemical Division)	Reagent No. 3	Bottle: 165 ml	12/14/72
Biodiagnostic International			
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Biodiagnostic International	Urine - Tox Control	Vial: 5 ml	04/01/85
Bioscientific, Corporation			
Bioscientific, Corporation	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box.	07/14/77
California Bionuclear Corporation			
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72182	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72078.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mependine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (aminomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-2-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-2-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
Cambridge Medical Diagnostics, Incorporated			
Cambridge Medical Diagnostics, Incorporated.	125I Human Parathyroid Hormone 44-68	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Tetraiodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	125I-Triodothyronine	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone (Human 1-84) Standard	6 Vials: 5ml each	03/29/85
Cambridge Medical Diagnostics, Incorporated.	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 AntiSerum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T3 Standard	Vial: 1ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Antiserum (Rabbit)	Vial: 11ml	03/29/85
Cambridge Medical Diagnostics, Incorporated.	T4 Standard	Vial: 1ml	03/29/85
Ciba Corning Diagnostics Corp.			
Ciba Corning Diagnostics Corp.	AACC Tox	Glass Vial: 30ml	01/20/86
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Anticonvulsant/ Antiasthmatic Control, Level I & II.	Vials:10ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control	Kit: Contains: 5 Vials each level	12/16/85
Ciba Corning Diagnostics Corp.	Gilford Bi-Level Toxicology Control,Level I & II	Vials:10ml	12/16/85
Ciba Corning Diagnostics Corp.	Gilford TDM Control Levels I-III	Vial:6ml	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Tri Level TDM Control	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Gilford Urine Control II	Vial:30ml	05/22/85
Ciba Corning Diagnostics Corp.	Gilford Urine Toxicology Control	Vial:30ml	12/16/85
Ciba Corning Diagnostics Corp.	Immophase Ferritin Controls	Glass Vial: 3 ml	01/19/87
Ciba Corning Diagnostics Corp.	Immophase Ferritin Standards	Glass Vial: 5 ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin 2000 Standard	Plastic Vial: 1 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Controls	Plastic Vial: 5 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Standards	Polypropylene Vial: 3 ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin Zero Standard	Plastic Vial: 50 ml	01/19/87
Ciba Corning Diagnostics Corp.	Reagent A- Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A- Alt 7	Vial:15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A-Ammonia 10	Vial:10 ml	03/24/79
Ciba Corning Diagnostics Corp.	Special Barbital Buffer Set, Catalog No. 470182	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal PHAB Buffer Set Catalog No. 470180	Kit: 3 vials per kit	09/26/79
Cone Biotech, Inc.			
Cone Biotech, Inc.	QCM-UTI	Vial: 20ml	03/07/85
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls	Vials: 8ml	02/27/84
Cone Biotech, Inc.	UDM-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle:60 ml	08/31/87
Diamedix Corporation			
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes-10.65 g. per envelope.	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730-274	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709-339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753-037	Bottle: 50ml	08/09/73
Diamedix Corporation	Glucose-GVB 1 Buffer, 753-036	Bottle: 50ml	08/09/73
Duo Research, Inc.			
Duo Research, Inc.	Drug Testing Assessment Program Quality Control Samples	Kit: 25 bottles	12/26/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample	Bottle: 65ml	02/27/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
E.I. duPont de Nemours & Co., Incorporated			
E.I. duPont de Nemours & Co., Incorporated	(1) PREP Sample Preparation and Analysis Kit	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(2a) PREP Liquid Chromatography Verifier	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(3a) PREP Calibrator-Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(3b) PREP Calibrator-Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(3c) PREP Calibrator-Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(3d) PREP Calibrator-Level 4	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(4a) PREP Control-Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	(4b) PREP Control-High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Incorporated	DuPont Drug Calibrators- Levels 1 through 5	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Incorporated	DuPont Phenobarbital Assay	Vial:6 ml	10/13/86
E.I. duPont de Nemours & Co., Incorporated	DuPont U Amp Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated	DuPont U Barb Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated	DuPont U Benz Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated	DuPont U COC Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Incorporated	DuPont U OPI Enzyme Pack Reagent	Bottle:1 liter	08/28/87
E.I. duPont de Nemours & Co., Incorporated	DuPont Urine Drugs-of-Abuse Calibrator (Levels 0,1,2)	Box:6 Vials,6ml Vial	07/27/87
E.I. duPont de Nemours & Co., Incorporated	DuPont Urine Drugs-of-Abuse Control	Vial:6 ml	08/03/87
E.I. duPont de Nemours & Co., Incorporated	DuPont aca Barbiturate Screen Analytical Test Pack	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Incorporated	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. duPont de Nemours & Co., Incorporated	DuPont aca Benzodiazepine Screen Analytical Test Pack	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 4	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Phenobarbital Calibrator- Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Incorporated	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co., Incorporated	Urine Amphetamine (U Amp) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated	Urine Barbiturate (U Barb) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated	Urine Benzodiazepine (U Benz) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated	Urine Cocaine (U COC) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Incorporated	Urine Opiate (U OPI) Test Pack	Carton:50 tests	07/08/87
E.I. duPont de Nemours & Co., Incorporated	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Incorporated	aca Thryonine Uptake Analytical Test Pack	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co., Inc., NEN Products			
E.I. duPont de Nemours & Co., Inc., NEN Products	(+)-DMBB NET 735	Combi-Vial: 0.250 millicuries, 1.0 millicune.	10/16/81
E.I. duPont de Nemours & Co., Inc., NEN Products	5-Cyclohexenyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial:250 microcuries, 1 millicune, and 5 millicunes.	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	5-Ethyl-5-Phenylbarbituric Acid (3H(G)), Catalog No. NET-401.	Combi-Vial: 250 microcunes, 5 millicunes	08/25/75
E.I. duPont de Nemours & Co., Inc., NEN Products	Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcunes, 1 millicune	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Cocaine, Levo-[Benzoyl] [3,4-3H(N)] Catalog No. NET-510	Combi-Vial: 100 microcunes, 250 microcunes.	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Cyclohexenyl-3,5-Dimethyl Barbituric Acid,5-[2-14C], Catalog No. NEC-653.	Combi-Vial: 0.050 millicunes, 0.250 millicunes.	08/25/75
E.I. duPont de Nemours & Co., Inc., NEN Products	DMBB [Butyl-2,3,4-3H(N)] Catalog No. NET690	Combi-Vial:0.250 millicunes, 1.0 millicune	02/04/81
E.I. duPont de Nemours & Co., Inc., NEN Products	Diazepam [Methyl-3H] Catalog No. NET-564	Combi-Vial: 0.250 millicunes, 1.0 millicune.	09/06/79
E.I. duPont de Nemours & Co., Inc., NEN Products	Dihydromorphine [7,8-3H(N)]	Combi-Vial: 250 microcunes, 1 millicune	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicunes, 1.0 millicune.	02/29/80
E.I. duPont de Nemours & Co., Inc., NEN Products	Ethyl-5-(1-Methylbutyl) Barbituric Acid 5-[ring-2-14C],Catalog No. NEC-389.	Combi-Vial: 0.100 millicunes, 0.500 millicunes.	08/25/75
E.I. duPont de Nemours & Co., Inc., NEN Products	Ethyl-5-Phenylbarbituric Acid 5-[ring-2-14C], Catalog No. NEC-337.	Combi-Vial: 0.050 millicunes, 0.250 millicunes.	08/25/75
E.I. duPont de Nemours & Co., Inc., NEN Products	Ethyl-5-Phenylbarbituric Acid,5-[3H(G)], Catalog No. NET401.	Combi-Vial:0.250 millicunes, 1.0 millicune	07/24/84
E.I. duPont de Nemours & Co., Inc., NEN Products	Glutethimide (3H(G)), Catalog No. NET-417	Combi-Vial:250 microcunes, 1 millicune, and 5 millicunes.	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicunes, 1.0 millicune.	11/06/79
E.I. duPont de Nemours & Co., Inc., NEN Products	Lysergic Acid Diethylamide (2-3H (N)) Catalog No. NET-447	Combi-Vial: 0.050 microcunes	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Mazindol (4'-3H) Catalog No.NET-816	Combi-Vial: 0.250 millicunes, 1.0 millicune.	05/17/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
E.I. duPont de Nemours & Co., Inc., NEN Products	Mescaline Hydrobromide, Catalog No. NEC-186	Combi-Vial: 0.050 millicunes, 0.250 millicunes.	08/25/75
E.I. duPont de Nemours & Co., Inc., NEN Products	Methadone Hydrobromide Dextro [1-3H] Catalog No. NET-488.	Combi-Vial: 1 millicune	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Methadone Hydrobromide Levo-[2-14C] Catalog No. NEC-696.	Combi-Vial: 0.050 millicune, 0.250 millicune.	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Methadone Hydrobromide, Levo[1-3H] Catalog No. NET-357.	Combi-Vial: 1 millicune	01/04/77
E.I. duPont de Nemours & Co., Inc., NEN Products	Methylphenidate, +/− threo[methyl-3H]NET-857	Combi-Vial: 0.250 millicunes, 1.0 millicune.	06/11/84
E.I. duPont de Nemours & Co., Inc., NEN Products	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicunes, 1.0 millicune.	02/29/80
E.I. duPont de Nemours & Co., Inc., NEN Products	N-[1-(2-Thienyl) Cyclohexyl]-3,4-Pipendine (Piperidyl-3,4-3H) NET-886.	Combi-Vial: 0.250 millicunes, 1.0 millicune.	06/11/84
E.I. duPont de Nemours & Co., Inc., NEN Products	Oxymorphone HCL [N-Methyl-3H] NET-666	Combi-Vial: 0.250 millicunes, 1.0 millicune.	04/11/80
E.I. duPont de Nemours & Co., Inc., NEN Products	Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No.NET-630	Combi-Vial: 0.250 millicune, 1.0 millicune	09/06/79
E.I. duPont de Nemours & Co., Inc., NEN Products	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140	Combi-Vial: 250 microcunes, 1 millicune, and 5 millicunes.	01/04/77
EM Diagnostic Systems, Inc.			
EM Diagnostic Systems, Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95	Box: 3 Vials, 5 ml each	06/11/86
EM Diagnostic Systems, Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67677/95.	Carton:48 Test Packs	09/09/86
EM Diagnostic Systems, Inc.	Easytest Phenobarbital Assay Item No. 67534/93	Cuvette:1.8ml (40 cuvettes /carton)	06/11/86
Eastman Kodak Company			
Eastman Kodak Company	Kodak Ektachem Specialty Calibrator	Vial:3ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control	Vial:3ml	09/13/85
Electro-Nucleonics Laboratories, Incorporated			
Electro-Nucleonics Laboratories, Incorporated.	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital	Kit	11/30/82
Endocrine Metabolic Center			
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle:2 liter	05/26/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle:2 liter	05/26/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle:3000 ml	05/26/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle:3000 ml	05/26/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle:1 or 2 liter	05/26/87
Environmental Diagnostics, Inc.			
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Enzyme Conjugate	Ampule:1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Kit Catalog No. 216-2BP	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Positive Control	Ampule:1 ml	02/03/87
Fisher Scientific			
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.60, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.60, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.18 g	10/27/72
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial:10 ml	08/18/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-38	Vial:25 ml	08/18/86
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level I No. 3110.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Clinical Chemistry Control Serum (Bovine), Unassayed Level II No. 3111.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5ml	04/16/82
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 Vials	11/26/86
Fisher Scientific	TDM Cal (B-F)	Vials: 5 ml	11/26/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58.	Kit: 6 vials	01/12/84
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2845-94.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2848-31	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846-31	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2847-31	Vial: 5ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935-80	Vial: 25ml	04/06/78
Fisher Scientific	Urine Toxicology Control No. 2950-61	Vial: 25ml	04/06/78

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Flow Laboratories			
Flow Laboratories	DGV No. 28-010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human "O" DGV (Dextrose Gelatin Veronal Buffer) No. 28-080.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories			
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1.	Bottle: 1 liter	01/25/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2.	Bottle:900 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No.815-0566-1 and No.815-0566-2.	Bottle: 100 and 900 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815-0246-1	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc.			
Gelman Sciences, Inc.	Drug Control Set No 51911	Set: 3 vials of 50 ml each	04/06/72
Gelman Sciences, Inc.	Drug Standard Set, No 51910	Set: 3 vials of 2 ml each	04/06/72
Gelman Sciences, Inc.	Hi-Phos Buffer	Glass Vial: 15 g.	02/11/82
Gelman Sciences, Inc.	High Resolution Buffer-Tris Barbital Buffer No 51104	Vial: 10 dr	12/22/71
Gumm Chem. Co.			
Gumm Chem. Co.	Nflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Nflow Maintenace Additive	Drums:5 Gallons	09/30/85
Hach Chemical Co.			
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No.898-98	Pillow: 1 g. each	11/30/71
Helena Laboratories			
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet:18.332 g., 10 packets/box	03/26/86
Helena Laboratories	Electra B1 Buffer, Catalog No.5016	Packet:12.14 g. 10 packets/box	12/28/73
Helena Laboratories	Electra B2 Buffer, Catalog No. 5017	Packet: 18.2 g. 10 packets/box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet:9.7 g.	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470)	Kit:3 Packages buffer 36 g.	01/24/86
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet:25.9 g.	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040	Kit:10 Plates (90mm X 75mm), 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate:(90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet:25.9 g.	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate:(90mm X 75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No.3046	Kit:10 Plates (90mm X 75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet:19.6 g.	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No.3062	Kit:10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet:21.5 g.	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle:10 ml	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g.	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial:2ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet:17.3 g.	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No.3045	Kit:1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90 x 75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095	Kit: 10 plates (81 x 143 mm) 1 packet buffer (21.6 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Plate	Plate: (81 x 143 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Kit Catalog No. 3091	Kit: 10 plates (81 x 143 mm) 1 packet buffer (29.1 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Plate	Plate: 81 x 143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet:29.1 g.	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041	Kit:10 Plates (90mm X 75mm), 1 Packet Buffer.	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet:25.9g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No.3085	Kit:10 Plates (90mm X 75mm), 2 Packets Buffer.	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate:(90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet:5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit:10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer.	12/28/73
Hoffman-LaRoche, Inc.			
Hoffman-LaRoche,Inc.	125I T3 (for T3 Uptake Radioassay)	Vial:15ml	07/22/81
Hoffman-LaRoche,Inc.	Abuscreen 125I Amphetamine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Benzoylecgonine Reagent	Vial: 30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Methaqualone Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Morphine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Oxazepam Reagent	Vial:30ml, 500ml	03/06/87
Hoffman-LaRoche, Inc.	Abuscreen 125I Phencyclidine Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Secobarbital Reagent	Vial:30ml, 500ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen 125I Tetrahydrocannabinol Reagent	Vial: 500ml, 30ml	08/14/81
Hoffman-LaRoche, Inc.	Abuscreen 125I-LSD Reagent	Vial:500ml, 30ml	01/28/84
Hoffman-LaRoche, Inc.	Abuscreen EIA Barbiturate Conjugate Reagent	Vial: 30 ml	10/02/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites.	Kit:100 Tests	10/02/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Barbiturate Negative Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Barbiturate Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Barbiturate Positive Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Cannabinoid Positive Calibrator 50-1200 (in increments of 50) ng of THC derivative/ml.	Vial: 4ml	08/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cannabinoid THC Conjugate Reagent	Vial: 30ml	08/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids.	Kit: 100 Tests	08/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cannabinoids Negative Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Cannabinoids Positive Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent.	Vial:30ml	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial:4ml	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine.	Kit:100 tests	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Cocaine Metabolite Negative Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Cocaine Metabolite Positive Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Morphine Conjugate Reagent	Vial:30ml	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites.	Kit:100 tests	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Morphine Negative Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen EIA Morphine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial:4ml	05/28/86
Hoffman-LaRoche, Inc.	Abuscreen EIA Morphine Positive Control	Vial:4 ml	04/15/87
Hoffman-LaRoche, Inc.	Abuscreen Positve Ref. Control (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 50) ng/ml.	Vial:5ml, 100ml	03/06/87
Hoffman-LaRoche, Inc.	Abuscreen Positive Ref. Control (LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial:5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 600, 750, 1000, or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Morphine) 40, 90, 100, 150, 200, 300, 500, 600,or 1000 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Control Cannabinoid 20, 25, 50, 100, 150, 200, 300, 400, or 500 ng/ml.	Vial:6.6ml, 100 ml	02/20/84
Hoffman-LaRoche, Inc.	Abuscreen Positive Reference Controls for Amphetamine (Single Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Amphetamine) 150, 500, 750, 1000, 1500, or 2000 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 750, 1000, or 2000 ng/ml.	Vial: 6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Methaqualone) 100, 900, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Morphine) 40, 50, 100, 200, 300, 500, 600, or 1000 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Standard (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200,or 500 ng/ml.	Vial:6.6ml, 2 oz.	02/15/83

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml.	Vial:5ml, 100ml	08/28/86
Hoffman-LaRoche, Inc.	Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml.	Vial:5ml, 60ml, & 100ml	01/28/86
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Amphetamine	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit:100 tests, 2500 tests	09/13/85
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Barbiturates	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Benzodiazepines	Kit:100 tests, 2500 tests	03/06/87
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Cannabinoids	Kit: 100 Tests 2, 500 Tests	08/14/81
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Cocaine Metabolite	Kit: 100 Tests, 2500 Tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	01/28/86
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Methaqualone	Kit: 100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Morphine	Kit:100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Radioimmunoassay for Phencyclidine (PCP)	Kit:100 tests, 2500 tests	02/15/83
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Amphetamine (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Barbiturate (Multi-Level)	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Barbiturate (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Benzodiazepines (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Cannabinoids (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Cannabinoids (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Cocaine (Multi-Level)	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Cocaine Metabolite (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Methaqualone (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Morphine (Multi-Level)	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Morphine (Single-Level)	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Multi-Level).	Kit: 3 Vials	10/12/87
Hoffman-LaRoche, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Single-Level).	Kit: 2 Vials	10/12/87
Hoffman-LaRoche, Inc.	Agglutex Amphetamine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Amphetamine Positive Human Urine Control	Vial:5ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	02/15/83
Hoffman-LaRoche, Inc.	Agglutex Barbiturate Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Barbiturate Positive Human Urine Control	Vial:5ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Barbiturate Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Methaqualone Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Methaqualone Positive Human Urine Control	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Methaqualone Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Morphine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Morphine Positive Human Urine Control	Vial: 5ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Morphine Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Phencyclidine (PCP) Test Kit	Kit:20 tests, 100 tests	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Phencyclidine Latex Reagent	Vial:2ml	06/27/83
Hoffman-LaRoche, Inc.	Agglutex Phencyclidine Positive Human Urine Control	Vial:5ml	06/27/83
Hoffman-LaRoche, Inc.	Amerifluor Florescent Immunoassay -Phenobarbital	Kit: 100 tests	04/30/82
Hoffman-LaRoche, Inc.	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay)	Vial:15ml	07/22/81
Hoffman-LaRoche, Inc.	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay)	Vial:15ml	07/22/81
Hoffman-LaRoche, Inc.	Barbiturate Roche EIA Positive Reference Standards 50-1200 (in increments of 50) ng Secobarbital/ml.	Vial: 4 ml	10/02/86
Hoffman-LaRoche, Inc.	COBAS FP Phenobarbital Calibrators	Kit:6 Vials	11/13/84
Hoffman-LaRoche, Inc.	COBAS FP Phenobarbital Calibrators B through F	Vials:5ml	11/13/84
Hoffman-LaRoche, Inc.	COBAS FP Phenobarbital Tracer Reagent	Vial:5ml	11/13/84
Hoffman-LaRoche, Inc.	COBAS FP Reagents for Phenobarbital	Kit:100 tests	11/13/84
Hoffman-LaRoche, Inc.	COBAS FP TDM Controls	Kit:6 Vials	11/13/84
Hoffman-LaRoche, Inc.	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8.	Vial:10, 20, 50, or 100ml	01/25/83
Hoffman-LaRoche, Inc.	Immunizing Preparation No. 9	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche, Inc.	Immunizing Preparation No. 9A	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Hoffman-LaRoche, Inc.	Immunizing Preparation No.10	Vial:10ml, 20ml, 50ml,or 100ml	04/02/86
Hoffman-LaRoche, Inc.	Immunizing Preparation No.10A	Vial:10ml, 20ml, 50ml, or 100ml	04/02/86
Hoffman-LaRoche, Inc.	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A,& 8A.	Vial:10ml, 20ml, 50ml,or 100ml	07/12/83
Hoffman-LaRoche, Inc.	NSB Reagent	Vial:2ml	07/22/81
Hoffman-LaRoche, Inc.	TDM Controls, Levels I through III	Vials:5ml	11/13/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
ICL Scientific			
ICL Scientific	Therapeutic Drug Control I, TDC I (High Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack	Glass Vials (12), 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level)	Glass Vial, 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level)	Glass Vial: 10ml	08/14/85
Industrial Analytical Laboratory, Inc.			
Industrial Analytical Laboratory, Inc.	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol	Ampule:1ml	09/04/85
Industrial Analytical Laboratory, Inc.	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule:1 ml	02/18/87
Industrial Optical			
Industrial Optical	Opti-Klean	Bottle:5 gallon	06/24/81
Innotron of Oregon, Inc.			
Innotron of Oregon, Inc.	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
Innotron of Oregon, Inc.	Phenobarbital Stock Tracer	Vial: 5 ml	09/23/87
Janssen Pharmaceutica, Inc.			
Janssen Pharmaceutica, Inc.	3H Alfentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	3H Fentanyl	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	3H Sufentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica, Inc.	Alfentanil Radioimmunoassay Kit	Kit:200 tests	05/13/85
Janssen Pharmaceutica, Inc.	Fentanyl Radioimmunoassay Kit	Kit:200 tests	05/13/85
Janssen Pharmaceutica, Inc.	Sufentanil Radioimmunoassay Kit	Kit:500 tests	05/13/85
Kallestad Diagnostics			
Kallestad Diagnostics	Barbital Buffer 901	Vial	05/19/81
Kallestad Diagnostics	IEP Buffer No. 900	Vial:7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilm Catalog No.910	1 Film Sealed in Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	Styrofoam Container: 25 film	06/22/87
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit Catalog No. 823	Kit:400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit, Catalog No. 833	Kit:100 tests	08/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent Catalog No. 785	Bottle:500ml	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent No.834	2 Glass Bottles: 110ml	08/24/81
LKB Instruments,Inc.			
LKB Instruments,Inc.	Tris-barbiturate Buffer pH 8.6	Packet: each 6.788 g. 20 packets/box	05/15/78
Lemmon Company			
Lemmon Company	Ethorphine Standard Solution	Plastic Carboy:1 Liter	10/31/83
MCI Biomedical			
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Package:6.510 grams	08/28/72
Mallinckrodt Inc.			
Mallinckrodt Inc.	(1) RIA-MAT Circulating T3 I125 Kit, Catalog No.501:	KIT CONTAINS THE FOLLOWING 8 ENTRIES:	01/28/74
Mallinckrodt Inc.	(2) RIA-MAT T3 Antiserum	Vial:2.5ml	01/28/74
Mallinckrodt Inc.	(3) RIA-MAT T3 Buffer	Bottle:100ml	01/28/74
Mallinckrodt Inc.	(4) RIA-MAT T3 Reaction Vial	Vial:1ml	01/28/74
Mallinckrodt Inc.	(5) RIA-MAT T3 Standard 0.5ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(6) RIA-MAT T3 Standard 0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(7) RIA-MAT T3 Standard 1.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(8) RIA-MAT T3 Standard 2.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	(9) RIA-MAT T3 Standard 5.0ng/ml	Vial:1.5ml	01/28/74
Mallinckrodt Inc.	RIA-MAT T4 I-125 Kit	Kit Containing: 100 Tests and 250 tests	04/03/75
Mallinckrodt Inc.	Res-O-Mat ETR Solution	Vial:1.5 dram	02/17/72
Mallinckrodt Inc.	Res-O-Mat ETR Solution	Bottle:16 oz and imperial gallon	08/28/74
Mallinckrodt Inc.	Res-O-Mat T4 Solution	Vial:1.5 dram	02/17/72
Mallinckrodt Inc.	Res-O-Mat T4 Solution	Bottle:16 oz and imperial gallon	08/28/74
Mallinckrodt Inc.	SPAC T4 RIA Kit	Kit:50 tests,100 tests	02/01/77
Mallinckrodt Inc.	SPAC T4 RIA Kit	Kit: 500 tests	09/15/77
Mallinckrodt Inc.	T4 I125 Reaction Solution	Screwcap Bottle:2 ounce	02/01/77
Mallinckrodt Inc.	T4 I125 Reaction Solution	Screwcap Bottle 8 ounce	09/15/77
Mallinckrodt Inc.	T4 Standard (10.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (10.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (2.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (2.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (20.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (20.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (40.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (40.0 ug%)	Screwcap Vial: 5ml	09/15/77
Mallinckrodt Inc.	T4 Standard (5.0 ug pct)	Screwcap Vial: 5ml	02/01/77
Mallinckrodt Inc.	T4 Standard (5.0 ug%)	Screwcap Vial: 5ml	09/15/77
Materials & Technology Systems			
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial:8ml	05/03/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Sensitized RBC.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Benzoyl Ecgonine	Screw Cap Vial:25mg and 100 mg	04/18/74
Materials & Technology Systems	Benzoylecgonine Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Carboxymethyl-Morphine	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems	Methadone Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Morphine Standard	Screw Cap Vial:10ml	07/17/73
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial:8ml, 10ml	05/03/73
Medi-Chem, Inc.			
Medi-Chem, Inc.	Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No.250.	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc.			
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 1	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 2	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 3	Glass Vial: 22 X 38mm, 5ml	08/07/86
Medical Analysis Systems, Inc.	ChemTrak Liquid Unassayed	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control Assayed, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Liquid Urine Calibrator Level 1 and 2	Vial:5 ml	04/03/87
Medical Analysis Systems, Inc.	Liquid Urine Control Level 1	Vial:5 ml	04/03/87
Medical Analysis Systems, Inc.	TD Control Level 1	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc.	TD Control Level 2	Vial: 5ml	10/08/86
Medical Analysis Systems, Inc.	TD Control Level 3	Vial: 5ml	10/08/86
Meloy Labs, Inc.			
Meloy Labs, Inc.	Counterelectrophoresis Plates, G-301	Plates:10 determinations	09/05/73
Meloy Labs, Inc.	Immunoelectrophoresis Plates, G-201	Plates:6 / unit	09/05/73
Micromedic Systems			
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution	Nalgene Bottle: 4 oz.	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz.	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce.	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle:8 ounce.	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce.	12/14/76
Miles Laboratories, Inc.			
Miles Laboratories, Inc.	Ames Phenobarbital Assay,Kit Contains: Phenobarbital Standards; 10, 20, 40,& 60mcg/ml.	6.1 ml Vials	03/01/79
Miles Laboratories, Inc.	Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml.	Vial:6.1ml	05/21/80
Miles Laboratories, Inc.	Clinma T-3 Uptake Test,Kit Contains: (1)125I T-3 Uptake Reagent & (2) Seperating Reagent.	200ml Bottles	11/10/78
Miles Laboratories, Inc.	Clinstat Calibrator Nos. 1 and 2	Vial:1ml	12/19/80
Miles Laboratories, Inc.	Clinstat Control B,C,D,and E	Vial:1ml	12/19/80
Miles Laboratories, Inc.	Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay Control	Vial:1ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay High Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Drug Assay Low Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories, Inc.	Seralyzer ARIS Phenyton Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories, Inc.	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories, Inc.	TDA Cross-Reactivity Cocktails	Glass Vial:1ml	02/01/83
Miles Laboratories, Inc.	TEK-CHEK Special Urine Control (supplemental)	Vial: 25ml	05/01/70
Miles Laboratories, Inc.	Tetralute	Bottle:4.9 g	07/29/70
Miles Laboratories, Inc.	Thyrolute I125, Reagent Kit, No.5250	Kit: 20 columns	12/02/74
Miles Laboratories, Inc.	Thyrolute I125, Reagent Kit, No.5252	Kit: 100 columns	12/02/74
Monobind, Inc.			
Monobind, Inc.	Monobind T3 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind, Inc.	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind, Inc.	Monobind T4 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind, Inc.	Monobind T4 Tracer Reagent	Wheaton Glass Container 55ml	11/08/77
Monobind, Inc.	Monobind TSH Antibody Reagent	Test Tube w/Cap:10.5ml	11/08/77
Monobind, Inc.	Monobind TSH Non-Specific Buffer	Wheaton Glass:1.05ml	11/08/77
Monobind, Inc.	Monobind TSH Precipitating Reagent	Plastic Container w/Cap :105ml	11/08/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Monobind, Inc.	Monobind TSH Tracer Reagent	Wheaton Glass Container:10.5ml	11/08/77
Monobind, Inc.	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle 260ml	05/15/78
Monobind, Inc.	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle 125ml.	05/15/78
Monobind, Inc.	TSH Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind, Inc.	Thyroxine Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind, Inc.	Triiodothyronine Radioimmunoassay Test System	Kit:100 tests	11/08/77
Monoclonal Antibodies, Inc.			
Monoclonal Antibodies, Inc.	Test Kit for Cocaine Metabolites in Urine	Kit:50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Opiates in Urine	Kit:50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Tetrahydrocannabinol (THC) in Urine	Kit:50 tests	10/17/86
New England Nuclear			
New England Nuclear	Flunitrazepam [Methyl-3H] NET 567	Combi-Vial: 25 mCi, 1 mCi	04/29/87
New England Nuclear	Methylenedioxymethamphetamine, (+)-3,4-[N-methyl-3H] NET 957.	Combi-Vial: 025 mCi, .25 mCi, 1 mCi	04/29/87
Nuclear Diagnostics, Inc.			
Nuclear Diagnostics, Inc.	SPINSEP-TBG Reagent Catalog No. 17100	Polypropylene Bottle: 105ml	12/15/77
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Antiserum Catalog No. 16100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Reagent Catalog No. 16100	Polypropylene Bottle: 105ml	07/06/77
Nuclear Diagnostics, Inc.	TETRIA P.E.G. Reagent Catalog No. 16100R	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics, Inc.	TRIA-P.E.G. Antiserum Catalog No. 12100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics, Inc.	TRIA-P.E.G. Reagent Catalog No.12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation			
OMI International Corporation	Compound N Solution	Steel Drum:55 gallon	10/01/75
Organon Teknika Corp.			
Organon Teknika Corp.	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp.	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/28/80
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle:16 ounce	01/20/76
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/16/79
Organon Teknika Corp.	Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials / kit	04/16/81
Organon Teknika Corp.	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp.	PACP I & II	Kit: 36 vials/kit	03/07/80
Organon Teknika Corp.	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp.	Platelin	Vial:7 3ml	03/13/72
Organon Teknika Corp.	Platelin Plus Activator	Vial:7 3ml	03/13/72
Organon Teknika Corp.	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp.	Profile General- Levels I & II	Vial:5 ml	02/22/82
Organon Teknika Corp.	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/ kit	08/17/78
Organon Teknika Corp.	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp.	Simplastin	Vial:4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp.	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr.	01/20/76
Organon Teknika Corp.	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr.	01/20/76
Organon Teknika Corp.	TETRA-TAB-RIA T4 Diagnostic Kit	Kit:40tests, 200tests	01/20/76
Organon Teknika Corp.	TETRA-TUBE RIA T4 Diagnostic Kit	Kit:100 tests, 500 tests	06/03/83
Organon Teknika Corp.	TGTR Set	Package:4 Tests per set	03/13/72
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/18/79
Organon Teknika Corp.	Unassayed Chemistry Serum Control, Levels I & II	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems, Inc.			
Ortho Diagnostic Systems, Inc.	Activated ThromboFAX No.721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems, Inc.	Ortho Abnormal Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems, Inc.	Ortho Abnormal Coagulation Control Level II	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems, Inc.	Ortho Abnormal Plasma Coagulation Control	Packet 96.5 mg	09/21/71
Ortho Diagnostic Systems, Inc.	Ortho Activated PTT Reagent	Glass Vial:30 determination size, 100	05/23/83
Pacific Hemostasis			
Pacific Hemostasis	Barbital Buffered Saline	Vial:100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial:90ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial:20ml	05/24/84
Pantex			
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml	01/04/79
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit:2nd Antiserum	Bottle:50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle:100ml, 1000ml	01/04/79
Perkin-Elmer Corporation			
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Opates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Princeton Separations, Inc.			
Princeton Separations, Inc.	Panagel 16	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Separations, Inc.	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Separations, Inc.	Panagel LD Isoenzyme Electrode Buffer	Pouch: 11.85 gms	06/29/87
Princeton Separations, Inc.	Panagel LD Isoenzyme Slide	Pouch: 1 slide	06/29/87
Quantimetrix			
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0305-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Urine Drugs of Abuse Control Catalog No. 12-2411-1	Dropper Bottle: 15 ml	02/23/87
Quin-Tec, Inc.			
Quin-Tec, Inc.	Additive S8-1	Drum:55 gals.	05/11/87
Quin-Tec, Inc.	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Quin-Tec, Inc.	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons.	10/13/81
Research Triangle Institute			
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul.	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26-1ml Ampuls; 2-20ml Vials, 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing:24-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC	Kit Containing:20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC	Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2- 250ml Bottles.	06/27/80
Rowley Biochemical Institute, Inc.			
Rowley Biochemical Institute, Inc.	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Aldehyde Thionin Solution	Bottle:Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute, Inc.	Mayer's Hematoxylin Solution	Bottle:Pint, Quart, Gallon	02/02/84
Schering Corp.			
Schering Corp.	Hepaquik	Vial:9 Dram and Plate	07/16/72
Serono Diagnostics, Inc.			
Serono Diagnostics, Inc.	rT3 Barbital Buffer	Glass Vial:120ml	10/26/84
Serono Diagnostics, Inc.	rT3-125I	Glass Vial:13ml	10/26/84
Serono Diagnostics, Inc.	rT3-Antiserum	Glass Vial:13ml	10/26/84
Sherwood Medical Company			
Sherwood Medical Company	Lancer Fibrinogen Determination,Reagent Kit Catalog No. 8889-007606.	Kit	04/17/75
Sigma Chemical Co.			
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Sealed Ampule: 1ml	06/30/77
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4764	Vial: 1ml	05/11/81
Sigma Chemical Co.	5,5-Diallylbarbituric Acid, Product No. D-8013	Sealed Ampule:1ml	06/30/77

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Sigma Chemical Co.	6-Tetrahydrocannabinol, Product No. T-4889	Vial: 1ml	05/11/81
Sigma Chemical Co.	ALT Reagent A, Stock No.57-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	ALT Reagent A, Stock No.57-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No.56-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No.56-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	Acid Hematoxylin Solution, No.285-2	Bottle:25ml, 100ml	08/06/73
Sigma Chemical Co.	Adenosine Phosphate Substrate, Product No. 675-1	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Allylisobutylbarbituric Acid (A-1038)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Alphaprodine Hydrochloride (A-1537)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Alphenal (A-1163)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Ammonia Reagent, Stock No. 170-10	Vial:10ml	02/17/77
Sigma Chemical Co.	Ammonia Reagent Kit:Stock No. 170-10	Kit:10 Vials	02/17/77
Sigma Chemical Co.	Ammonia Reagent Stock No. 170-10	Vial:30ml	12/13/77
Sigma Chemical Co.	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co.	Amobarbital, Product No. A-5142	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Antibody Sensitized Sheep Erythrocytes (EA7S)	Vials:2ml and 5X 2ml	04/02/86
Sigma Chemical Co.	Aprobarbital, Product No. A-7023	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Barbital Buffer, Product No. B-8632	Polyethylene Vial:30ml	05/11/77
Sigma Chemical Co.	Barbital Buffer with Albumin Stock No. 880-3	Vial: 20ml	07/11/80
Sigma Chemical Co.	Barbital,Product No. B-8632	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Benzphetamine Hydrochloride, Product No. B-8765	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Bufotenine Monooxalate,Product No. B-8757	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Butabarbital, Product No. B-8882	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Butalbital, Product No. B-5514	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Butethal (B-7516)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Sealed Ampule:1ml	08/29/79
Sigma Chemical Co.	Cannabidiol, Product No. C-6395	Vial: 1ml	05/11/81
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Sealed Ampule:1ml	08/29/79
Sigma Chemical Co.	Cannabinol, Product No. C-6520	Vial: 1ml	05/11/81
Sigma Chemical Co.	Chloral Hydrate, Product No. C-6516	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Chlorazepam Dipotassium Salt, (C-9531)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Chlordiazepoxide (C-4782)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Clonazepam, Product No. C-4404	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Cocaine Hydrochloride Product No. C-1528	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Codeine Product No. C-1653	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	D-Amphetamine Sulfate, Product No. A-3278	Vial: 1ml	05/11/81
Sigma Chemical Co.	DL-Amphetamine HCL, Product No. A-5017	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Dextropropoxyphene Hydrochloride (D-8901)	Ampule:1ml	09/27/84
Sigma Chemical Co.	Diazepam, Product No. D-9900	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Diethylpropion Hydrochloride, Product No. D-7274	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Diphenoxylate (D-0780)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Drug Standard Mix 1, D-3155	Ampule:2ml	04/18/86
Sigma Chemical Co.	Drug Standard Mix 2, D-3030	Ampule:2ml	04/18/86
Sigma Chemical Co.	Ethinamate (E-8508)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Fenfluramine Hydrochloride, Product No. F-1884	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Flunitrazepam No. F-8763	Vial:1 ml	06/30/87
Sigma Chemical Co.	Flurazepam Dihydrochloride, Product No. F-9134	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Gelatin Veronal Buffer (GVB2+) No. G-6514	Vial:50 ml,250ml	09/15/86
Sigma Chemical Co.	Glutethimide, Product No. G-3134	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 675-2	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 704-1	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Hexobarbital, Product No. H-2007	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Hydromorphone Hydrochloride No. H-7141	Vial:1 ml	06/30/87
Sigma Chemical Co.	Ibogaine HCL, Product No. I-4630	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	LDH Electrophoresis Buffer, Stock No. 705-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	LDH-P Reagent No. 125-10	Vial:30ml	05/29/73
Sigma Chemical Co.	LDH-P Reagent No. 125-100	Vial:100ml	05/29/73
Sigma Chemical Co.	Lorazepam (L-0140)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Lysergic Acid, Product No. L-5881	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Mayer's Hematoxylin Solution, No. MHS-1	Bottle:25ml, 100ml	08/06/73
Sigma Chemical Co.	Mebutamate (M-3772)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Medazepam (M-7646)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Meperidine Hydrochloride (M-1020)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co.	Meprobamate (M-0271)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Mescaline HCl, Product No. M-5153	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Methadone Hydrochloride, Product No. M-3268	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methamphetamine HCl, Product No. M-5260	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Methaqualone Hydrochloride, Product No. M-3393	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methylphenidate Hydrochloride (M-1145)	Ampule:1ml	10/31/84
Sigma Chemical Co.	Methyprylon, Product No. M-1769	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Morphine-3-B-D Glucuronide, Product No. M-4266	Ampule: 1ml	10/21/82
Sigma Chemical Co.	N,N-Diethyltryptamine, Product No. D-0392	Vial: 1ml	05/11/81
Sigma Chemical Co.	N,N-Dimethyltryptamine, Product No. D-6263	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Nalorphine Hydrochloride	Ampule:1ml	08/27/84
Sigma Chemical Co.	Oxazepam, No. O-1755	Vial:1 ml	06/30/87
Sigma Chemical Co.	Oxycodone Hydrochloride, Product No. O-2628	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Sigma Chemical Co.	Pemoline, Product No. P-3518	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Pentazocine Hydrochloride, Product No. P-7530	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Pentobarbital, Product No. P-3393	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Phencyclidine, No. P-7043	Vial:1 ml	06/30/87
Sigma Chemical Co.	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co.	Phenobarbital Prod. No.P-3643	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Phentermine Hydrochloride, Product No. P-7655	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Phenylacetone, Product No. P-2024	Vial: 1ml	05/11/81
Sigma Chemical Co.	Prazepam, No. P-7168	Vial:1 ml	06/30/87
Sigma Chemical Co.	SGOT 10 Assay Vial No. 55-10	Vial:30ml	05/29/73
Sigma Chemical Co.	SGOT Reagent No. 155-10	Vial:30ml	05/29/73
Sigma Chemical Co.	SGOT Reagent No. 155-100	Vial:100ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-1	Vial:3ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-5	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT 10 Assay Vial No. 55-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Assay Vial No. 55-5P	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-100P	Vial:100ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Single Assay Vial No. 55-1P	Vial:3ml	05/29/73
Sigma Chemical Co.	Secobarbital, Product No. S-4006	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Temazepam, No. T-4903	Vial:1 ml	06/30/87
Sigma Chemical Co.	Thebaine, Product No. T-5270	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Thiamylal Sodium, Product No. T-6896	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Thiopental (T-1022)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Tnzma-Barbital Buffer, Stock No. 710-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Smart Chemical Co.			
Smart Chemical Co	Regal 180XL	Plastic Drum:55 gallon	06/12/86
Supelco, Inc.			
Supelco, Inc.	Alk Mix No. 04-9210	Vial:1ml	08/26/73
Supelco, Inc.	Amobarbital, No.04-9170	Ampule: 1ml	12/22/72
Supelco, Inc.	Amph. Mix Catalog No. 4-9205	Glass Ampule:2ml	06/09/86
Supelco, Inc.	Amphetamine No.04-9165	Ampule: 1ml	12/22/72
Supelco, Inc.	Anticonvulsant Mixture No.1; No. 04-9202	Glass Serum Bottle:50ml	06/16/77
Supelco, Inc.	Antiepileptic Calibration Standard Kit, No.4-9259	Kit: 3 Ampules	05/21/80
Supelco, Inc.	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule:5ml	05/21/80
Supelco, Inc.	Aprobarbital No.04-9171	Ampule: 1ml	12/22/72
Supelco, Inc.	Barb. Mix 1, Catalog No. 4-9200	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barb. Mix 2, Catalog No. 4-9201	Glass Ampule: 2ml	06/09/86
Supelco, Inc.	Barbital, Catalog No. 4-9279	Glass Ampule: 10ml	06/09/86
Supelco, Inc.	Barbiturates Test Mix Catalog No. 4-9295	Ampule: 2 ml	02/25/87
Supelco, Inc.	Cannabidiol, No.04-9221	Ampule: 1ml	11/27/74
Supelco, Inc.	Cannabinol, No 04-9235	Ampule: 1ml	11/27/74
Supelco, Inc.	Cocaine, No.04-9188	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Codeine No.04-9161	Ampule: 1ml	12/22/72
Supelco, Inc.	Cyclobarbital No.04-9175	Ampule: 1ml	12/22/72
Supelco, Inc.	Delta-1 THC, No.04-9237	Ampule:1ml	11/27/74
Supelco, Inc.	Delta-6 THC, No.04-9238	Ampule:1ml	11/27/74
Supelco, Inc.	Dextroamphetamine, No.4-9185	Glass Ampule:1ml	05/21/80
Supelco, Inc.	Glutethimide No.04-9173	Ampule: 1ml	12/22/72
Supelco, Inc.	Heroin No.04-9162	Ampule: 1ml	12/22/72
Supelco, Inc.	Hexobarbital No.04-9177	Ampule: 1ml	12/22/72
Supelco, Inc.	Mephobarbital No.04-9178	Ampule: 1ml	12/22/72
Supelco, Inc.	Meprobamate, No.4-9184	Glass Ampule:1ml	05/21/80
Supelco, Inc.	Methadone No.04-9163	Ampule: 1ml	12/22/72
Supelco, Inc.	Methamphetamine No.04-9188	Ampule: 1ml	12/22/72
Supelco, Inc.	Methaqualone, No.04-9183	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Morphine No 04-9160	Glass Ampule:1000mcg	03/08/78
Supelco, Inc.	Pentobarbital No. 04-9179	Glass Ampule:1000mcg	03/08/78
Supelco, Inc.	Phenobarbital No. 04-9181	Glass Ampule:1000mcg	03/08/78
Supelco, Inc	Psilocybin, No 04-9191	1000 mcg /Glass Ampule	06/05/75
Supelco, Inc.	Secobarbital No. 04-9180	Glass Ampule:1000mcg	03/08/78
Syva Co.			
Syva Co.	AccuLevel Phenobarbital Test Control Stock Solution	Flask:50ml	10/31/85
Syva Co.	AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control (2)AccuLevel Reagent I.	(1)Glass Vial:8ml; (2)Glass Vial:9ml, 12 Vials per test kit.	01/24/86
Syva Co.	Advance T-3 Uptake Assay	Kit:100 tests	05/11/82
Syva Co.	Advance Thyroxin Assay	Kit:100 tests	05/11/82
Syva Co.	Antiepileptic Drug Control	Vial:10ml, Lyophilized	08/27/74
Syva Co.	Emit 700 Amphetamine Assay Catalog No. 3C919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Barbiturate Assay Catalog No.3D919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Calibrator A Catalog No. 3A919	Bottle:3ml	10/05/84
Syva Co.	Emit 700 Calibrator B Catalog No. 3A969	Bottle:3ml	10/05/84
Syva Co.	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M969	Bottle:3ml	10/09/84

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Syva Co.	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959	Plastic Bottle: 180ml	09/15/86
Syva Co.	Emit 700 Cannabinoid Control Set Catalog No. 3M969	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Control Set A Catalog No. 3A939	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Control Set B Catalog No. 3A969	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Methaqualone Assay Catalog No. 3Q919	Bottle:180ml	10/19/84
Syva Co.	Emit 700 Opiate Assay Catalog No.3B919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Phencyclidine Assay Catalog No. 3J919	Bottle:180ml	10/12/84
Syva Co.	Emit AED-No. 1 Calibrator	Vial:3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 2 Calibrator	Vial:3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 3 Calibrator	Vial:3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 4 Calibrator	Vial:3ml, Lyophilized	08/27/74
Syva Co.	Emit AED-No. 5 Calibrator	Vial:3ml, Lyophilized	08/27/74
Syva Co.	Emit Phenobarbital Enzyme Reagent B	Vial:6 ml, Lyophilized	08/27/74
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent	Steel Drum:7 gallon	06/05/86
Syva Co.	Emit Qst Primidone Assay Catalog No. 6D819	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	Emit Serum Barbiturate-Enzyme Reagent B	Bottle: 3ml	05/22/79
Syva Co.	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle:3ml	02/01/79
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 3F019, 3F119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119	Kit: 1000 tests	09/12/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M619	Kit:100 tests	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B	Vial:10ml Lyophilized Powder	02/10/86
Syva Co.	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019	Kit:100 tests	09/24/84
Syva Co.	Emit d.a.u. Cannabinoid Urine Calibrator Set	Kit:3 Vials, 3ml Each	01/03/80
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit:100 tests, 1000 tests.	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator A	Bottle:5ml	07/20/84
Syva Co.	Emit d.a.u. Medium Calibrator B	Bottle:5ml	08/03/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119	Kit:100 tests, 1000 tests	10/05/84
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B.	Bottle:6ml	02/01/79
Syva Co.	Emit d.a.u.Barbiturate Assay Catalog Nos. 3D019, 3D119	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u.Low Calibrator B	Bottle:5ml	08/03/84
Syva Co.	Emit d.a.u.Medium Calibrator A	Bottle:5ml	07/20/84
Syva Co.	Emit- Tox Serum Barbiturate Assay	Kit:50 tests	05/22/79
Syva Co.	Emit-Qst Phenobarbital Assay, Catalog Number 6D819	Kit:50 Vials	01/18/84
Syva Co.	Emit-Tox Serum Calibrators;Low and Medium	Bottle:3ml	02/01/79
Syva Co.	Emit-d.a.u. Methaqualone Assay	Kit:100 tests	04/27/82
Syva Co.	Emit-st Amphetamine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Barbiturate Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Benzodiazepine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Cannabinoid Assay Catalog No. 3M319	Vial:6ml, 80 Vials/Kit	09/27/84
Syva Co.	Emit-st Cannabinoid Calibrator	Vial:3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Cannabinoid Controls	Vial:3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-st Opiate Assay	Kit:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-st Phencyclidine Assay	Vial:3ml, 80 vials/kit	01/07/81
Syva Co.	Emit-st Serum Barbiturate Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Benzodiazepine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Serum Calibrator	Vial:3ml	02/16/81
Syva Co.	Emit-st Serum Controls	Vial:3ml, 2 vials/kit	02/16/81
Syva Co.	Emit-st Serum Phencyclidine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-st Urine Calibrator A	Vial:1ml, 3 vials/kit	10/03/80
Syva Co.	Emit-st Urine Cocaine Metabolite Assay	Vial:3 ml, 80 Vials/Kit	03/16/82
Syva Co.	Emit-st Urine Controls A	Vial:1ml, 6 vials/kit	10/03/80
Syva Co.	Emit-st Urine Methadone Assay	Vial:3ml, 80 vials/kit	03/22/82
Syva Co.	Emit-st Urine Methaqualone Assay	Kit:80 Vials	04/27/82
Syva Co.	Emit-st Urine Methaqualone Calibrator	Vial:3ml	04/27/82
Syva Co.	Emit-st Urine Methaqualone Controls	Vial:3ml	04/27/82
Technicon			
Technicon	Ammonium Sulfate Reagent No. T01-1139	Glass Bottle: 1 and 4 liters	01/31/80
Technicon	Set Point RA-1000 Systems T4 Standards Product No. T03-1481-01.	Glass Bottles:5ml (Standard 1 Fill Volume = 5ml) (Standards 2-6 Fill Volume = 1.5ml).	08/02/85
Technicon	T4 Agglutinator Reagent No.T11-1484	Glass Bottle:10ml	08/02/85
Technicon	TQC T.D.M. Calibrator 1, No. T13-1150	Glass Vial:15ml	01/31/80
Technicon	TQC T.D.M. Control A, No. T13-1115	Glass Vial:15ml	01/31/80
Technicon Instruments Corporation			
Technicon Instruments Corporation	Agar Gel Plates No. 8794	Plate: 25ml	08/01/72
Technicon Instruments Corporation	Agar Gel Plates, No. 7114	Plate: 15 ml	01/15/87
Technicon Instruments Corporation	Buffer No. 3017	Vial 250 ml	08/31/71
Technicon Instruments Corporation	Buffer No. 8793	Vial: 250ml	08/01/72
Technicon Instruments Corporation	Diluting Fluid No. 3400	Vial: 10ml	08/31/71

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
Technicon Instruments Corporation	Electrode Buffer, DR07172	Bulk	12/26/74
Technicon Instruments Corporation	LD Electrode Buffer, DR07173	Bulk	02/12/79
Technicon Instruments Corporation	Ligand Control I-No.4814, II-No.4824, and III-No.4834	Vials: 5ml	02/24/81
Technicon Instruments Corporation	Partial Thromboplastin (Dried), No.3491	Vial: 1ml and 5 ml	08/31/71
Technicon Instruments Corporation	Therapeutic Drug Monitoring Survey (Z Series)	Vials: 5 ml	09/24/86
Technicon Instruments Corporation	Therapeutic Monitor Level I No.4881	Vial:3ml	01/20/83
Technicon Instruments Corporation	Therapeutic Monitor Level II No.4882	Vial:3ml	01/20/83
Technicon Instruments Corporation	Therapeutic Monitor Level III No.4883	Vial:3ml	01/20/83
Technicon Instruments Corporation	Toxicology Survey (T Series)	Vials: 20 ml, 50 ml	09/24/86
Technicon Instruments Corporation	Toxicology Urine Control No. 0841	Vial: 10ml	06/11/82
Technicon Instruments Corporation	Toxicology Urine Control No. 0842	Vial: 3ml	06/11/82
Technicon Instruments Corporation	Urine Control No. 0277	Vial:25ml	04/14/81
Technicon Instruments Corporation	Urine Toxicology Survey (UT Series)	Vials: 50 ml	09/24/86
Tempil Division, Big Three Industries, Inc.			
Tempil Division, Big Three Industries, Inc.	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Theta Corp.			
The Theta Corp	Allobarbital No.FP305	Vial: 2ml	04/10/73
The Theta Corp	Amobarbital No. FP313	Vial:2ml	04/10/73
The Theta Corp	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp	Anilendine No. FP203	Vial:2ml	04/10/73
The Theta Corp	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp	Barbital No.FP314	Vial: 2ml	04/10/73
The Theta Corp	Benzoylecgonine FP-1001	Vial: 2 ml	01/24/87
The Theta Corp	Butabarbital No. FP315	Vial:2ml	04/10/73
The Theta Corp	Butalbital No. FP307	Vial:2ml	04/10/73
The Theta Corp	Chloral Betaine No. FP502	Vial 2ml	04/10/73
The Theta Corp	Chloral Hydrate No. FP501	Vial:2ml	04/10/73
The Theta Corp	Cocaine No. FP601	Vial 2ml	04/10/73
The Theta Corp	Codeine No. FP102	Vial:2ml	04/10/73
The Theta Corp	Cyclobarbital No. FP308	Vial:2ml	04/10/73
The Theta Corp	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73
The Theta Corp	Diphenoxylate No. FP205	Vial:2ml	04/10/73
The Theta Corp	Ethchlorvynol No. FP508	Vial:2ml	04/10/73
The Theta Corp	Ethylmorphine No. FP106	Vial:2ml	04/10/73
The Theta Corp	FP207	Vial:2ml	09/04/80
The Theta Corp	FP210	Vial:2ml	05/15/84
The Theta Corp	FP214	Vial:2ml	04/10/84
The Theta Corp	FP327	Vial:2ml	04/10/84
The Theta Corp	FP405	Vial:2ml	03/08/79
The Theta Corp	FP411	Vial:2ml	05/15/84
The Theta Corp	FP412	Vial:2ml	05/15/84
The Theta Corp	FP416	Vial:2ml	05/15/84
The Theta Corp	FP512	Vial:2ml	03/08/79
The Theta Corp	FP513	Vial:2ml	03/08/79
The Theta Corp	FP514	Vial:2ml	05/15/84
The Theta Corp	FP515	Vial:2ml	03/08/79
The Theta Corp	FP556	Vial:2ml	04/10/84
The Theta Corp	FP601A	Vial:2ml	05/15/84
The Theta Corp	FP607	Vial:2ml	05/15/84
The Theta Corp	FP609	Vial:2ml	05/15/84
The Theta Corp	Fentanyl No. FP211	Vial:2ml	04/10/73
The Theta Corp	Glutethimide No. FP404	Vial:2ml	04/10/73
The Theta Corp	Heptabarbital No. FP309	Vial:2ml	04/10/73
The Theta Corp	Hexabarbital No. FP303	Vial:2ml	04/10/73
The Theta Corp	Hydrocodone No. FP107	Vial:2ml	04/10/73
The Theta Corp	Hydromorphone No. FP103	Vial 2ml	04/10/73
The Theta Corp	Levorphanol No. FP208	Vial:2ml	04/10/73
The Theta Corp	Marker Mixture No. FPM-104	Vial:2ml	04/10/73
The Theta Corp	Marker Mixture No. FPM-201	Vial:2ml	04/10/73
The Theta Corp	Meperidine No.FP201	Vial:2ml	04/10/73
The Theta Corp	Mephobarbital No. FP301	Vial:2ml	04/10/73
The Theta Corp	Meprobamate No. FP402	Vial 2ml	04/10/73
The Theta Corp	Methadone No. FP206	Vial:2ml	04/10/73
The Theta Corp	Methamphetamine No. FP603	Vial:2ml	04/10/73
The Theta Corp	Metharbital No. FP302	Vial:2ml	04/10/73
The Theta Corp	Methohexital No. FP304	Vial:2ml	04/10/73
The Theta Corp	Methylphenidate No. FP605	Vial 2ml	04/10/73
The Theta Corp	Monthly Urine Test No. FPM-103	Vial:2ml	04/10/73
The Theta Corp	Morphine No. FP101	Vial:2ml	04/10/73
The Theta Corp	Oxycodone No. FP109	Vial 2ml	04/10/73
The Theta Corp	Oxymorphone No. FP104	Vial:2ml	04/10/73
The Theta Corp	Paraldehyde No.FP508	Vial:2ml	04/10/73
The Theta Corp	Pentobarbital No. FP318	Vial:2ml	04/10/73
The Theta Corp	Phenazocine No. FP213	Vial:2ml	04/10/73
The Theta Corp	Phenmetrazine No. FP606	Vial:2ml	04/10/73
The Theta Corp	Phenobarbital No. FP320	Vial:2ml	04/10/73

EXEMPT CHEMICAL PREPARATIONS—Continued

Manufacturer or supplier	Product name/description	Form of product	Date of application
The Theta Corp	Piminodine No. FP202	Vial:2ml	04/10/73
The Theta Corp	Probarbital No. FP319	Vial:2ml	04/10/73
The Theta Corp	Secobarbital No. FP310	Vial:2ml	04/10/73
The Theta Corp	Talbutal No. FP311	Vial:2ml	04/10/73
The Theta Corp	Test Mixture SM No. 1	Vial 2ml	06/19/74
The Theta Corp	Test Mixture SM No. 2	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SM No. 3	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SM No. 4	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SP No. 1	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SP No. 2	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SP No. 3	Vial:2ml	06/19/74
The Theta Corp	Test Mixture SP No. 4	Vial:2ml	06/19/74
The Theta Corp	Test Mixture TM No. 1	Vial:2ml	06/19/74
The Theta Corp	Test Mixture TM No. 2	Vial:2ml	06/19/74
The Theta Corp	Thiamylal No. FP322	Vial:2ml	04/10/73
The Theta Corp	Thiopental No. FP321	Vial:2ml	04/10/73
The Theta Corp	Vinbarbital No. FP312	Vial:2ml	04/10/73
The Theta Corp	Weekly Urine Test (FDA) No. FPM-101	Vial:2ml	04/10/73
The Theta Corp	Weekly Urine Test (States) No. FPM-102	Vial:2ml	04/10/73
Travenol Labs (Clinical Assays Division)			
Travenol Labs (Clinical Assays Division)	(125I) Human TSH Radioimmunoassay kit	Kit: 125 determinations	11/16/77
Travenol Labs (Clinical Assays Division)	(125I) Human TSH Tracer	Glass Vial: 6ml	11/16/77
Travenol Labs (Clinical Assays Division)	Anticonvulsant Drug Controls	Kit: 500 determinations, 50 determinations.	11/16/77
Travenol Labs (Clinical Assays Division)	Assay buffer CA-742	Polypropylene Bottle: 150ml	03/14/77
Travenol Labs (Clinical Assays Division)	CA-380 Phenobarbital Serum Standard 1:101 dilution of 1.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-381 Phenobarbital Serum Standard 1:101 dilution of 3.0 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-382 Phenobarbital Serum Standard 1:101 dilution of 10 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-383 Phenobarbital Serum Standard 1:101 dilution of 30 ug/ml.	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-384 Phenobarbital 1:101 dilution of 100 ug/ml	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-419 Anticonvulsant Drug Control, Level I	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	CA-420 Anticonvulsant Drug Control, Level II	Septem sealed glass vial: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	Human TSH standards, 2.0 uIU/ml, 5.0 uIU/ml, 10 uIU/ml, 20 uIU/ml, 50 uIU/ml.	Glass vials: 2ml	11/16/77
Travenol Labs (Clinical Assays Division)	Rabbit Anti-Human TSH Serum	Glass vial: 20ml	11/16/77
Utak Laboratories			
Utak Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Barbiturates No. 71916	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophem, No. 71918.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminophem, No. 71919.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle:10ml	04/14/80
Utak Laboratories	Toxicology Serum Control Dried u88112	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried u88113	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control Dried u88120	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44610, 44612, 44632, 44635, 44638, 44637, 44642, 44645, 44646, 44647, 44658..	In Bottles	05/24/76
Utak Laboratories	Toxicology Urine Control Dried u88100	Bottle:20ml	07/29/82
Utak Laboratories	Toxicology Urine Control Dried u88121	Bottle:10ml	07/29/82
Utak Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44650, 44651, 44652, 44653.	Bottle:1 oz.	05/24/76
Wescor, Inc.			
Wescor, Inc.	Osmocoll	Bottle:9 ml	12/05/86
Wien Laboratories,Inc.			
Wien Laboratories,Inc.	ANS Buffer pH 8.6 Catalog No. T-5144	Plastic Bottle:100ml	05/14/75
Wien Laboratories,Inc.	Buffer Reagent pH 8.6 Catalog No. T-5065	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	Coated Charcoal Suspension No. T-5077	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial:20ml	09/13/78
Windaer Laboratories, Inc.			
Windsor Laboratories, Inc.	Calibrators FPR Phenobarbital	Kit: 6 Vials	10/30/86
Windsor Laboratories, Inc.	Phenobarbital Fluorescence Polarization Immunoassay Kit	Kit:100 tests	11/20/86

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 20, 1988.

[FR Doc. 88-1479 Filed 2-3-88; 8:45 am]
BILLING CODE 4410-09-M

21 CFR Part 1308

Schedules of Controlled Substances; Table of Exempt Prescription Products

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would update the Table of Exempt Prescription Products found in § 1308.32 of the Code of Federal Regulations.

The current Table of Exempt Prescription Products found in 21 CFR Part 1308 lists those products that have been granted exempt status as of April 1, 1987 (47 FR 53728). Since that time a number of applications for exemptions have been received and reviewed by the Drug Enforcement Administration. This notice proposes to add those prescription products to the list that have been granted exempt status since April 1, 1987 (pursuant to 21 CFR 1308.31).

DATE: Comments must be submitted on or before March 7, 1988.

ADDRESS: Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt, from specific provisions of the Act, a preparation or mixture if that preparation or mixture: (1) Contains a nonnarcotic controlled substance; (2) is approved for prescription use; and (3) meets certain criteria. An exemption may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to the Drug Enforcement Administration per 21 CFR 1308.31.

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The addition of products to the list of exempt prescription products has the effect of exempting them from certain measures of control imposed by the Controlled Substances Act of 1970 and its implementing regulations.

The Office of Management and Budget has previously determined that these changes are internal agency matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby proposes that 21 CFR Part 1308 be amended as set forth below.

PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.32 the list of products found in the Table of Exempt Prescription Products is revised to read as follows:

§ 1308.32 Exempted Prescription Products.

* * * * *

Table of Exempt Prescription Products

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Adria Laboratories	Axotal	00013-1301	TB	Butalbital	50.00
Alpha Scnptics Inc	Butacet Capsules	53121-0133	CA	Butalbital	50.00
American Urologicals Inc	Butace	00539-0906	CA	Butalbital	50.00
Apotheca	Theophen	12634-0101	TB	Phenobarbital	8.00
Arco Pharmaceuticals	Arco-Lase Plus	00275-0045	TB	Phenobarbital	8.00
Arlo Interamerican	Espasmotex	11475-0835	TB	Phenobarbital	20.00
Ascher and Co	Anaspaz PB	00225-0300	TB	Phenobarbital	15.00
Ascot Pharmaceuticals	Antispasmodic Tablets	47679-0158	TB	Phenobarbital	16.20
Ascot Pharmaceuticals	Chlordiazepoxide Hydrochloride + Clidinium Bromide.	47679-0268	CA	Chlordiazepoxide HCl	5.00
Ayerst Laboratories	PMB-200	00046-0880	TB	Meprobamate	200.00
Ayerst Laboratories	PMB-400	00046-0881	TB	Meprobamate	400.00
Barre Drug Co	Barophen	00472-0981	EL	Phenobarbital	3.24
Barre Drug Co	Isolate Compound	00472-0929	EL	Phenobarbital	0.40
Beecham Laboratories	Hybephen	00029-2360	TB	Phenobarbital	15.00
Bioline Labs Inc	Chlordinium	00719-1208	CA	Chlordiazepoxide HCl	5.00
Blaine Co	Spaslin	00165-0029	TB	Phenobarbital	16.20
Blansett Pharm Co	Analor 300 Capsules	51674-0009	CA	Butalbital	50.00
Bock Pharmacal Co	Broncholate	00563-0277	CA	Phenobarbital	8.00
Bowman Pharmaceutical	Private Formula No 3095	00252-3095	TB	Phenobarbital Sodium	15.00
Breon Labs	Isuprel Compound	00057-0874	EL	Phenobarbital	0.40
Caldwell & Bloor Co	Hyosital White	00361-2131	TB	Phenobarbital	16.20
Carnrick Labs	Phrenilin New Formulation	00086-0050	TB	Butalbital	50.00
Chelsea Laboratories	Chlordiazepoxide with Clidinium Bromide.	46193-0948	CA	Chlordiazepoxide HCl	5.00

Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Columbia Drug Co	Isopap Capsules	11735-0400	CA	Butalbital	50.00
Consolidated Midland	Bellalphen	00223-0425	TB	Phenobarbital	16.20
Dorasol Laboratories	Donalbar	00471-0095	EL	Phenobarbital	3.24
Dunhall Pharmacal Inc	Triaprin	00217-2811	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Capsules	00642-0163	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Tablets	00642-0162	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 325 mg/Butalbital 50 mg.	00456-0674	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 500mg/Butalbital 50mg.	00456-0671	TB	Butalbital	50.00
Forest Pharmacal Inc	Bancap	00456-0546	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Capsules	00456-0631	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Forte Tablets	00456-0673	TB	Butalbital	50.00
Forest Pharmacal Inc	Esgic Tablets	00456-0630	TB	Butalbital	50.00
Forest Pharmacal Inc	G.B.S.	00456-0281	TB	Phenobarbital	8.00
Forest Pharmacal Inc	Soniphen	00456-0429	ET	Phenobarbital	16.00
Gen-King Products	Antispasmodic	03547-0777	TB	Phenobarbital	16.20
Genatnc Pharmacal Corp	Bilezyme Plus	00249-1112	TB	Phenobarbital	8.00
Genatnc Pharmacal Corp	Gustase Plus	00249-1121	TB	Phenobarbital	8.00
Glenlawn Laboratories	Chlordinium Sealets	00580-0084	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Butalbital and Acetaminophen Tablets	00879-0543	TB	Butalbital	50.00
Halsey Drug Co Inc	Butalbital, Acetaminophen and Caffeine Tablets.	00879-0567	TB	Butalbital	50.00
Halsey Drug Co Inc	Clinoxide	00879-0501	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Susano	00879-0059	EL	Phenobarbital	3.24
Halsey Drug Co Inc	Susano	00879-0058	TB	Phenobarbital	16.20
Horizon Products Co	Spastrin Tablets	54580-0124	TB	Phenobarbital	40.00
Hyrex Pharmaceutical	Panzyme	00314-0310	TB	Phenobarbital	8.10
Hyrex Pharmaceutical	Two-Dyne Revised	00314-2229	TB	Butalbital	50.00
Interstate Drug Exchange	IDE-Cet Tablets	00814-3820	TB	Butalbital	50.00
Interstate Drug Exchange	Spastolate	00814-7088	TB	Phenobarbital	16.20
Intetlab	CON-TEN	11584-1029	CA	Butalbital	50.00
Kaiser Foundation Hosp	Belladonna Alkaloids with Phenobarbital	00179-0045	EL	Phenobarbital	3.24
Keene Pharmacal Inc	Endolar	00588-7777	CA	Butalbital	50.00
Knoll Pharmaceutical	Quadrinal Suspension	00044-4580	SS	Phenobarbital	2.40
Knoll Pharmaceutical	Quadrinal Tablets	00044-4520	TB	Phenobarbital	24.00
Kraft Pharmacal Co Inc	Digestokraft	00796-0237	TB	Butabarbital Sodium	8.00
Kremers Urban Co	Levsin with Phenobarbital Elixir	00091-4530	EL	Phenobarbital	3.00
Kremers Urban Co	Levsin with Phenobarbital Tablets	00091-3534	TB	Phenobarbital	15.00
Kremers Urban Co	Levsin-DPB	00091-4536	DP	Phenobarbital	15.00
Kremers Urban Co	Levsinex with Phenobarbital	00091-3539	XC	Phenobarbital	45.00
Landry Pharmacal Inc	Febridyne Plain Capsules	05383-0001	CA	Butalbital	50.00
Lanpar Co	PB Phe-Bell	12908-7006	TB	Phenobarbital	16.20
Lasalle Laboratories	Pacaps Modified Formula	48534-0884	CA	Butalbital	50.00
Lemmon Pharmacal Co	Donphen	00093-0205	TB	Phenobarbital	15.00
Life Laboratories	Belladonna Alkaloids with Phenobarbital	00737-1283	EL	Phenobarbital	3.00
Lunsco Inc	Pacaps Capsules	10892-0116	CA	Butalbital	50.00
Major Pharmaceuticals	Fabophen Tablets	00904-3280	TB	Butalbital	50.00
Mallard Inc	Anoquan Modified Formula	00166-0881	CA	Butalbital	50.00
Mallard Inc	Malatal	00166-0748	TB	Phenobarbital	16.20
Marlop Pharmacal Inc	Broncomar	12939-0128	EL	Butabarbital	1.00
Marlop Pharmacal Inc	Dolmar	12939-0812	CA	Butalbital	50.00
Marnel Pharmacal Inc	Margesic Capsules	00682-0804	CA	Butalbital	50.00
Mayrand Pharmacal Inc	B-A-C Tablets	00259-1256	TB	Butalbital	50.00
Mayrand Pharmacal Inc	Sedapap-10 Tablets	00259-1278	TB	Butalbital	50.00
Mead Johnson Pharmacal	Quibron Plus Capsules	00087-0518	CA	Butabarbital	20.00
Mead Johnson Pharmacal	Quibron Plus Elixir	00087-0511	EL	Butabarbital	1.33
Medco Supply Co	Phenobarbital & Hyoscyamine Sulfate	00764-2057	TB	Phenobarbital	16.20
Mikart Inc	Butalbital and Acetaminophen Tablets 50/325.	46672-0099	TB	Butalbital	50.00
Mikart Inc	Butalbital and Acetaminophen Tablets 50/650.	46672-0098	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen, Caffeine Capsules.	46672-0103	CA	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen, and Caffeine Tablets II.	46672-0059	TB	Butalbital	50.00
Moore Drug Exchange	Antispasmodic Tablets	00839-5055	TB	Phenobarbital	16.00
Moore Drug Exchange	Theophenyllin	00839-5111	TB	Phenobarbital	8.00
Nejo Pharmaceutical	Spasmalones	00653-0002	TB	Phenobarbital	16.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/2	00071-0531	CA	Phenobarbital	32.00
Parke-Davis & Co	Dilantin with Phenobarbital 1/4	00071-0375	CA	Phenobarbital	16.00
Parke-Davis & Co	Tedral SA	00071-0231	XT	Phenobarbital	25.00

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Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Parmed Pharmaceutical	Sedapar Elixir	00349-4100	EL	Phenobarbital	3.24
Parmed Pharmaceutical	Sedapar Tablets	00349-2355	TB	Phenobarbital	16.20
Pasadena Research	Seds	00418-4072	TB	Phenobarbital	16.20
Pharmaceutical Basics Inc	Clinbrax Capsules	00832-1054	CA	Chlordiazepoxide HCl	5.00
Poythress & Co Inc	Antrocol	00095-0041	CA	Phenobarbital	16.00
Poythress & Co Inc	Antrocol Elixir	00095-0042	EL	Phenobarbital	3.00
Poythress & Co Inc	Antrocol Tablets	00095-0040	TB	Phenobarbital	16.00
Poythress & Co Inc	Mudrane	00095-0050	TB	Phenobarbital	8.00
Poythress & Co Inc	Mudrane GG Elixir	00095-0053	EL	Phenobarbital	0.50
Poythress & Co Inc	Mudrane GG Tablets	00095-0051	TB	Phenobarbital	8.00
Private Formula Inc	Sangesic	00511-1627	TB	Butalbital	30.00
Qualitest Products Inc	Chlordiazepoxide HCl 5 mg and Clidinium Br 2.5 mg.	52446-0096	CA	Chlordiazepoxide HCl	5.00
Redi-Med	Butalbital Compound Capsules	53506-0103	CA	Butalbital	50.00
Richlyn Laboratories	Aminophylline & Phenobarbital	00115-2156	ET	Phenobarbital	15.00
Richlyn Laboratories	Aminophylline & Phenobarbital Tablets	00115-2154	TB	Phenobarbital	15.00
Richlyn Laboratories	Bellophen	00115-2400	TB	Phenobarbital	16.20
Richlyn Laboratories	Spasmolin	00115-4652	TB	Phenobarbital	15.00
Robins A H Co Inc	Donnatal Capsules	00031-4207	CA	Phenobarbital	16.20
Robins A H Co Inc	Donnatal Elixir	00031-4221	EL	Phenobarbital	3.24
Robins A H Co Inc	Donnatal Extentabs	00031-4235	XT	Phenobarbital	48.60
Robins A H Co Inc	Donnatal No 2	00031-4264	TB	Phenobarbital	32.40
Robins A H Co Inc	Donnatal Tablets	00031-4250	TB	Phenobarbital	16.20
Robins A H Co Inc	Donnazyme	00031-4649	ET	Phenobarbital	8.10
Roche Labs	Librax	00140-0007	CA	Chlordiazepoxide HCl	5.00
Roche Labs	Menrium 10-4	00140-0025	TB	Chlordiazepoxide	10.00
Roche Labs	Menrium 5-2	00140-0023	TB	Chlordiazepoxide	5.00
Roche Labs	Menrium 5-4	00140-0024	TB	Chlordiazepoxide	5.00
Rondex Laboratories	Antispasmodic	00367-4118	TB	Phenobarbital	16.20
Rotex Pharmacal Inc	Rogesic Capsules	31190-0008	CA	Butalbital	50.00
Ruckstuhl Co	Sedarex No 3	00144-1575	TB	Phenobarbital	16.20
Rugby Laboratories	Clindex	00536-3490	CA	Chlordiazepoxide HCl	5.00
Rugby Laboratories	Hyosophen Capsules	00536-3926	CA	Phenobarbital	16.00
Rugby Laboratories	Hyosophen Tablets	00536-3920	TB	Phenobarbital	16.20
Rugby Laboratories	ISOCET Tablets	00536-3951	TB	Butalbital	50.00
Rugby Laboratories	Theodrine Tablets	00536-4648	TB	Phenobarbital	8.00
Russ Pharmacal Inc	Lorprn Capsules	50474-0702	CA	Butalbital	50.00
Sandoz Pharmacal Corp	Belladenal	00078-0028	TB	Phenobarbital	50.00
Sandoz Pharmacal Corp	Belladenal-S	00078-0027	XT	Phenobarbital	50.00
Sandoz Pharmacal Corp	Bellergal-S	00078-0031	XT	Phenobarbital	40.00
Sandoz Pharmacal Corp	Cafergot P-B Suppository	00078-0035	SU	Pentobarbital	60.00
Sandoz Pharmacal Corp	Cafergot P-B Tablets	00078-0036	TB	Pentobarbital Sodium	30.00
Sandoz Pharmacal Corp	Fioricet	00078-0084	CA	Butalbital	50.00
Schein Henry Inc	Antispasmodic	00364-0020	TB	Phenobarbital	16.00
Schein Henry Inc	Antispasmodic Elixir	00364-7002	EL	Phenobarbital	3.20
Schein Henry Inc	Isolate Compound Elixir	00364-7029	EL	Phenobarbital	0.40
Schein Henry Inc	T-E-P	00364-0266	TB	Phenobarbital	8.10
Shoals Pharmacal Co	Tencet	47649-0370	TB	Butalbital	50.00
Shoals Pharmacal Co	Tencet Capsules	47649-0560	CA	Butalbital	50.00
Stewart-Jackson Pharmacal	Ezol	45985-0578	CA	Butalbital	50.00
Stuart Pharmaceutical	Kinesed	00038-0220	TB	Phenobarbital	16.00
Towne Paulsen & Co	T. E. P.	00157-0980	TB	Phenobarbital	8.00
Trimen Labs	Amaphen Capsules (reformulated)	11311-0954	CA	Butalbital	50.00
Truxton Co Inc	Atropine Sulfate with Phenobarbital	00463-6035	TB	Phenobarbital	15.00
Truxton Co Inc	Ephedrine with Phenobarbital	00463-6066	TB	Phenobarbital	15.00
Truxton Co Inc	Spastemms Elixir	00463-8023	EL	Phenobarbital	3.24
Truxton Co Inc	Spastemms Tablets	00463-6181	TB	Phenobarbital	15.00
U.S. Pharmaceuticals Inc	Medigesic Plus	52747-0311	TB	Butalbital	50.00
UAD Laboratories Inc	Bucet Capsules	00785-2307	CA	Butalbital	50.00
UAD Laboratories Inc	Bucet Tablets	00785-2307	TB	Butalbital	50.00
UAD Laboratories Inc	Triad	00785-2306	TB	Butalbital	50.00
UAD Laboratories Inc	Triad Capsules	00785-2305	CA	Butalbital	50.00
UDL Laboratories	Belladonna Alkaloids with Phenobarbital	51079-0168	TB	Phenobarbital	16.20
University of Iowa	Bladder Mixture Plus Phenobarbital	11326-1624	LQ	Phenobarbital	2.92
Vale Chemical Co	Alkaloids of Belladonna and Phenobarbital.	00377-0527	TB	Phenobarbital	16.20
Vale Chemical Co	Antispas	00377-0622	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid (Revised) Green	00377-0365	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid Yellow	00377-0498	TB	Phenobarbital	16.20
Vale Chemical Co	Charspast	00377-0500	TB	Phenobarbital	16.20
Vale Chemical Co	Digestokraft	00377-0460	TB	Butabarbital Sodium	8.00

Table of Exempt Prescription Products—Continued

Company	Trade name	NDC Code	Form	Controlled Substance	(mg or mg/ml)
Vale Chemical Co	Ephedrine & Sodium Phenobarbital	00377-0109	TB	Phenobarbital Sodium	16.20
Vale Chemical Co	Panzyme	00377-0491	TB	Phenobarbital	8.10
Vale Chemical Co	Pulsaphen	00377-0652	TB	Phenobarbital	15.00
Vale Chemical Co	Truxaphen	00377-0541	TB	Phenobarbital	16.20
Vale Chemical Co	Wescophen S-II	00377-0628	TB	Phenobarbital	30.00
Vale Chemical Co	Wesmatic Forte	00377-0426	TB	Phenobarbital	8.10
Vortech Pharmacal Co	Donna-Sed	00298-5054	EL	Phenobarbital	3.24
Vortech Pharmacal Co	Hypnaldyne	00298-1778	TB	Phenobarbital	16.20
Vortech Pharmacal Co	Isophed	00298-5680	LQ	Phenobarbital	0.40
Vortech Pharmacal Co	Phedral C. T.	00298-1173	TB	Phenobarbital	8.10
Wallace Laboratories	Barbidonna Elixir	00037-0305	EL	Phenobarbital	3.20
Wallace Laboratories	Barbidonna No 2	00037-0311	TB	Phenobarbital	32.00
Wallace Laboratories	Barbidonna Tablets	00037-0301	TB	Phenobarbital	16.00
Wallace Laboratories	Butibel Elixir	00037-0044	EL	Butabarbital Sodium	3.00
Wallace Laboratories	Butibel Tablets	00037-0046	TB	Butabarbital Sodium	15.00
Wallace Laboratories	Lufyllin-EPG Elixir	00037-0565	EL	Phenobarbital	1.60
Wallace Laboratories	Lufyllin-EPG Tablets	00037-0561	TB	Phenobarbital	16.00
Wallace Laboratories	Milprem-200	00037-5501	TB	Meprobamate	200.00
Wallace Laboratories	Milprem-400	00037-5401	TB	Meprobamate	400.00
Wesley Pharmacal Co	Hytrophen	00917-0244	TB	Phenobarbital	16.20
Wesley Pharmacal Co	Pulsaphen Gray	00917-0113	TB	Phenobarbital	15.00
Wesley Pharmacal Co	Wescophen-S	00917-0135	TB	Phenobarbital	30.00
Wesley Pharmacal Co	Wesmatic Forte	00917-0845	TB	Phenobarbital	8.00
West-ward Inc	Belladonna Alkaloids & Phenobarbital	00143-1140	TB	Phenobarbital	16.20
West-ward Inc	Butalbital with Acetaminophen and Caffeine Tablets.	00143-1787	TB	Butalbital	50.00
West-ward Inc	Theophylline Ephedrine & Phenobarbital	00143-1695	TB	Phenobarbital	8.00
Winthrop Labs	Isuprel	00024-0874	EL	Phenobarbital	0.40
Zenith Labs Inc	Azpan	00172-3747	TB	Phenobarbital	8.00

Gene R. Haislip,

Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 6, 1988.

[FR Doc. 88-1478 Filed 2-3-88; 8:45 am]

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Federal Register

Thursday
February 4, 1988

Part III

Christopher Columbus Quincentenary Jubilee Commission

45 CFR Parts 2201 and 2202

Organization, Recognition, and Support of Projects and Use of Logo; and Recognition of Commercial Sponsors, Licenses, and Use of Logo; Interim Rules With Request for Comments

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

45 CFR Part 2201

Organization, Recognition and Support of Quincentenary Projects and Use of Logo

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Interim rule with request for comments.

SUMMARY: This notice announces amendments made by the Christopher Columbus Quincentenary Jubilee Commission to the Regulations for Recognition and Support of Quincentenary Projects which were published as an Interim Rule on April 3, 1987 (52 FR 10870). The enactment of Pub. L. 100–94, 101 Stat. 700, signed by the President on August 18, 1987, requires these amendments in order to implement the actions of Congress and conform the Commission's existing regulations with the new authority granted by Congress. The effect of these amendments is to clarify the procedure for requesting registration of a project with the Commission as it appears in the existing regulations and to authorize the commercial use of the Logo.

DATES: Interim rule effective February 4, 1988, except for § 2201.32(c). Section 2201.32(c) will become effective after the information collections requirements contained in that section have been submitted by the Commission and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. After approval is obtained from the Office of Management and Budget, an announcement of the effective date for § 2201.32(c) will be published in the **Federal Register**. Comments must be submitted on or before April 4, 1988.

ADDRESSES: Comments should be mailed or delivered to the Christopher Columbus Quincentenary Jubilee Commission at 1801 F Street NW., Third Floor, Washington, DC 20006. Comments received may also be inspected at this address between 9:00 a.m. and 5:00 p.m. A copy of any comments that concern information collection requirements should also be sent to the Office of Information and Regulatory Affairs (OMB) at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Francisco J. Martinez-Alvarez, Deputy Director. Telephone: (202) 632–1992.

SUPPLEMENTARY INFORMATION:

Background

The Commission published an interim rule with request for comments on April 3, 1987, 52 FR 10870. No public comments were received. These amendments, however, are intended to clarify the rules regarding the organization of the Commission and procedure for registration of projects. The regulations were approved in order to implement changes made by Pub. L. 100–94, 101 Stat. 700, to the statute which created the Commission, Pub. L. 98–375, 98 Stat. 1257. The new law, among other things, raised the annual limits on individual and corporate contributions to the Commission and authorized the Commission to use the Logo for commercial purposes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Statutory Authority

This regulation is authorized under Pub. L. 98–375, 98 Stat. 1257, as amended by Pub. L. 100–94, 101 Stat. 700. Regulations were previously published in the **Federal Register** on April 3, 1987, 52 FR 10870.

Request for Comments

A 60 day public comment period ending February 4, 1988, has been provided for the purpose of receiving comments and recommendations for improvement of the regulation prior to publication of a final rule. Comments should be mailed or delivered to the Commission at 1801 F Street NW., Third Floor, Washington, DC 20006.

Basis for Interim Rule

The Commission approved these regulations as an interim rule as a prompt response to the many inquiries concerning the procedure for registering a project with the Commission.

Paperwork Reduction Act of 1980

Section 2201.32(c) contains information collection requirements. As required by section 3540(h) of the Paperwork Reduction Act of 1980, the Commission will submit a copy of these regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Joseph Lackey.

All other comments regarding these regulations should be sent to the Commission's office.

The information collection requirements published in the **Federal Register** on April 3, 1987, 52 FR 10870, have been approved by the Office of Management and Budget, and have been assigned OMB control number 3312–0016.

List of Subjects in 45 CFR Part 2201

Organization and function (Government agencies), Seals and insignia.

Issued in Washington, DC, on January 28, 1988.

John Alexander Williams,
Director.

45 CFR Part 2201 is amended as follows:

PART 2201—[AMENDED]

1. The authority citation for Part 2201 is revised to read as follows:

Authority: Pub. L. 98–375, 98 Stat. 1257; as amended by Pub. L. 100–94, 101 Stat. 700.

2. Part 2201 is amended by changing the term "Official Quincentenary Logo" to read "Christopher Columbus Quincentenary Logo" everywhere it appears.

Subpart A—[Amended]

3. Subpart A is amended by adding a new § 2201.4 to read as follows:

§ 2201.4 Chairman and Vice Chairman.

Pursuant to the provisions of Pub. L. 98–375, Sections 3(b)(3) and 3(d), the Commission shall elect a Chairman and Vice Chairman from among the members.

Subpart F—[Redesignated as Subpart G]

4. Subpart F is redesignated as Subpart G and §§ 2201.51 through 2201.55 are redesignated as §§ 2201.01 through 2201.65, respectively.

Subpart E—[Redesignated as Subpart F]

5. Subpart E is redesignated as Subpart F, §§ 2201.41 through 2201.44 are redesignated as §§ 2201.51 through 2201.54, respectively, and newly designated § 2201.53 is revised to read as follows:

§ 2201.53 Commercial use of Logo.

Pub. L. 100–94 authorizes the Commission to make or permit commercial use of its Logo. The Commission reserves full authority over its Logo and permission for such commercial use shall be granted only by written authorization from the Commission and subject to these regulations governing commercial use of the Logo and any subsequent amendments thereto as may be promulgated by the Commission.

Subpart D—[Redesignated as Subpart E]

6. Subpart D is redesignated as Subpart E and §§ 2201.31 through 2201.33 are redesignated as §§ 2201.41 through 2201.43, respectively.

Subpart C—[Redesignated as Subpart D]

7. Subpart C is redesignated as Subpart D, §§ 2201.21 through 2201.23 are redesignated as §§ 2201.31 through 2201.33 respectively, and the introductory text of paragraph (c) of newly designated § 2201.32 is revised to read as follows:

§ 2201.32 Registered projects.

* * * * *

(c) Those interested in requesting that a project be included in the Commission's Register of Quincentenary Projects and Events should make such request in writing to the Commission. The request must include a description of the project, including its time, location and scope, and indicate how it is expected the project will contribute to increasing public awareness of the Quincentenary. The request must also include the signature of the person to be contacted by the Commission regarding the project and identify any individuals, institutions, entities, groups or organizations on whose behalf the signer has been authorized to make the request. Any project which is adequate for inclusion in the Register of Quincentenary Projects and Events may be proposed for registration as a registered project by one of the following:

* * * * *

Subpart B—[Redesignated as Subpart C]

8. Subpart B is redesignated as Subpart C, § 2201.11 is redesignated as § 2201.21 and a new Subpart B is added to read as follows:

Subpart B—Powers and Functions

Sec.
2201.11 Personnel.
2201.12 Facilities and services.
2201.13 Donations to the Commission.

Subpart B—Powers and Functions

§ 2201.11 Personnel.

(a) In carrying out the functions and responsibilities of the Commission:

(1) The Chairman, with the advice of the Commission, shall appoint a Director and a Deputy Director;

(2) The Commission may appoint and fix the compensation of such additional personnel to be paid out of appropriated funds to carry out the purposes of the Commission, not to exceed 20 staff members;

(3) The Commission may appoint and fix the compensation of additional personnel to be paid out of such other funds as may be available to it from donations, revenues or such other sources as are authorized by law;

(4) The Commission may request the head of any Federal agency to detail to the Commission, without reimbursement to the agency, such personnel as the Commission may require for carrying out its duties and functions.

(b) The Director has responsibility for administering the work of the Commission's staff under the oversight of the Chairman and the Commission.

§ 2201.12 Facilities and services.

(a) To accomplish its purposes, the Commission is authorized to procure supplies, services and property; make contracts; and expend in furtherance of its purposes funds appropriated, donated or received in pursuance of such contracts.

(b) The Commission may enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

(c) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

§ 2201.13 Donations to the Commission.

The Commission is authorized to accept, use, solicit, and dispose of donations of money, property or personal services, except that the Commission may not accept donations the aggregate value of which in any year exceed:

(a) $250,000 in the case of donations from an individual donor; and

(b) $1,000,000 in the case of donations from a foreign government, corporation, partnership, or other person (other than an individual).

9. Section 2201.52 is amended by adding the OMB Control Number at the end of the section to read as follows:

§ 2201.52 Requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 3312–0016.)

[FR Doc. 88–2208 Filed 2–3–88; 8:45 am]

BILLING CODE 6820–FB–M

45 CFR Part 2202

Recognition of Commercial Sponsors, Licenses, and Use of Logo

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations set forth general provisions and policies governing the procedure for recognition of commercial projects, corporate sponsors and commercial licensees of the Commission and for the use of the Logo.

These regulations are necessary because of the enactment of Pub. L. 100–94, 101 Stat. 700, signed by the President on August 18, 1987. This new statute amended Pub. L. 98–375, 98 Stat. 1257, which created the Commission, and substituted entirely new statutory provisions governing the Commission's authority over the use of the Christopher Columbus Quincentenary Logo.

The intended effect of these regulations is to implement the actions of Congress.

DATES: Interim rule effective February 4, 1988, except for § 2202.35(c). Section 2202.35(c) will become effective after the information collection requirements contained in that section have been submitted by the Commission and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. After approval is obtained from the Office of Management and Budget, an announcement of the effective date for § 2202.35(c) will be published in the **Federal Register**. Comments must be submitted on or before April 4, 1988.

ADDRESSES: Comments should be mailed or delivered to the Christopher Columbus Quincentenary Jubilee Commission at 1801 F Street NW., Third Floor, Washington, DC 20006. Comments received may also be inspected at this address between 9:00 a.m. to 5:00 p.m. A copy of any comments that concern information collection requirements should also be sent to the Office of Information and Regulatory Affairs

(OMB) at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT:
Francisco J. Martinez-Alvarez, Deputy Director. Telephone: (202) 632–1992.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1987, the Commission published regulations governing the Commission's recognition and support of Quincentenary projects and the use of the Logo for noncommercial projects. (52 FR 10870). On August 18, 1987, the President signed Pub. L. 100–94, 101 Stat. 700 which amended Pub. L. 98–375, 98 Stat. 1257, the law which created the Commission and authorized the Commission, among other things, to use, sell and distribute the Christopher Columbus Quincentenary Logo.

In order to conform with the new law, the Commission reviewed and approved this interim rule which governs the Commission's recognition of commercial projects, corporate sponsors and licensees and for the use of the Logo. The Commission will review all comments received. If changes to the rules are indicated by the comments received, these changes will be published in the **Federal Register**.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Classification

The Chairman of the Commission certifies that these regulations will not have a significant economic impact on a substantial number of small entities because they would impose minimal burden on proponents of projects. The regulations do not constitute a major Federal action significantly affecting the quality of the environment and, therefore, an environmental impact statement is not required.

Statutory Authority

This regulation is authorized under Pub. L. 98–375, 98 Stat. 1257, as amended by Pub. L. 100–94, 101 Stat. 700.

Request for Comments

A 60 day public comment period ending April 4, 1988, has been provided for the purpose of receiving comments and recommendations for improvement of these regulations prior to publication of a final rule. Comments should be mailed or delivered to the Commission at 1801 F Street NW., Third Floor, Washington, DC 20006.

Basis for Interim Rule

The Commission approved these Regulations as an interim rule as a prompt response to the many inquiries concerning the criteria for Commission recognition of commercial projects, sponsors, and licensees.

Paperwork Reduction Act of 1980

Section 2202.35 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Commission will submit a copy of these regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503. Attention: Joseph Lackey.

All other comments regarding these proposed regulations should be sent to the Commission's office.

List of Subjects in 45 CFR Part 2202

Seals and insignia.

Issued in Washington, DC, on January 28, 1988.

John Alexander Williams,
Director.

For the reasons set out in the preamble and under the authority of Pub. L. 98–375, 98 Stat. 1257, as amended by Pub. L. 100–94, 101 Stat. 700, a new Part 2202 is added to Chapter XXII of Title 45, Code of Federal Regulations, to read as follows:

CHAPTER XXII—CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

* * * * *

PART 2202—RECOGNITION OF COMMERCIAL QUINCENTENARY ACTIVITIES

Subpart A—General Policy on Commercial Involvement

Sec.
2202.11 Statement of policy.
2202.12 Financial support.
2202.13 Nonexclusive involvement.
2202.14 Definition.

Subpart B—Involvement With Commercial Activities

2202.21 Commission decisions.
2202.22 Withdrawal of involvement.
2202.23 Types of involvement.

Subpart C—Christopher Columbus Quincentenary Logo

2202.31 Design and identification.
2202.32 Authorized commercial use of Logo.
2202.33 Commercial use.
2202.34 Licensed usage.
2202.35 Licenses—Proposals, Committee on Licensing.
2202.36 Fees and royalties.
2202.37 Revocation.
2202.38 Termination.
2202.39 Place of manufacture and quality.
2202.40 Excluded products.

Authority: Pub. L. 98–375, 98 Stat. 1257; as amended by Pub. L. 100–94, 101 Stat. 700.

Subpart A—General Policy on Commercial Involvement

§ 2202.11 Statement of policy.

(a) The Commission is authorized to accept, use, solicit and dispose of donations of money, property or personal services from commercial entities, groups or organizations as well as individuals, or from other, non-commercial sources. In addition, the Commission seeks to encourage participation in and support for its commemorative program by commercial entities, groups and organizations. In determining whether and how to associate itself with activities conducted, sponsored or organized by commercial entities, groups and organizations or with any commercial activities of non-profit, charitable, public, educational, scholarly, governmental or other entities, groups and organizations not primarily or exclusively commercial in nature or purpose, the Commission shall give due consideration to the following:

(1) The extent to which involvement will serve to further the overall goals of the Commission's commemorative program;

(2) The appropriateness, as determined by the Commission, of any products, goods or services which may be identified with the Commission or its commemorative program through use of the Logo or other means;

(3) Whether identification or involvement with a particular commercial activity, product or organization is, in the Commission's judgment, in the best interests of the Commission and its commemorative program and goals;

(4) To the extent possible, the existence of any historical or other links between specific commercial activities, groups or organizations and the voyages or related personalities, events and activities which are the subject of the Commission's commemorative program;

(5) The extent to which the Commission's involvement with a particular commercial activity, group or organization will serve to promote public awareness of its commemorative program or educational and cultural activities planned and conducted in connection with the program; and

(6) The public benefit or interest served by involvement with a particular commercial activity, group or organization.

(b) The general criteria or considerations in paragraph (a) of this section are not exclusive or mandatory. The Commission's decisions whether or not to become involved with a particular commercial activity, entity, group or organization, are, subject to any limitations imposed by law, within the sole discretion of the Commission.

(c) The promulgation by the Commission of regulations governing its involvement with commercial activities shall not be construed as limiting or affecting the Commission's rights and authority with respect to non-commercial involvement.

§ 2202.12 Financial support.

Commission involvement with commercial activities, projects, entities, groups or organizations shall not obligate the Commission to provide financial support to any such activity, project, entity, group or organization.

§ 2202.13 Nonexclusive involvement.

Unless otherwise agreed to by the Commission or its designee for such purposes in advance and in writing, Commission involvement with any commercial activity, project, entity, group or organization will not in any way limit the Commission from involvement with other activities, projects, entities, groups or organizations of the same or a similar nature.

§ 2202.14 Definition.

(a) For purposes of these regulations, the general term "commercial" is normally understood to mean private, for profit activity and the individuals, entities, groups or organizations engaged in such activity.

(b) Nothing in this definition shall, however, be interpreted as precluding the Commission from permitting, granting, authorizing or licensing commercial and/or non-commercial use of its Logo by non-profit, non-commercial entities, groups or organizations; educational facilities or institutions; individuals, groups, institutions or organizations engaged in scholarly research; charitable or cultural groups or organizations; and local, state and federal government(s) or instrumentalities thereof.

Subpart B—Involvement With Commercial Activities

§ 2202.21 Commission decisions.

Unless delegated by vote of the Commission to a committee of the Commission, or to the Commission's Director, authority to decide Commission involvement with commercial activities remains with the full Commission. The Commission shall give notice in writing with respect to decisions regarding commercial involvement.

§ 2202.22 Withdrawal of involvement.

The Commission reserves the right at all times and with respect to any involvement with commercial activity to withdraw its involvement or recognition, or both, including any authorization for use of the Logo

§ 2202.23 Types of involvement.

Initially, the Commission contemplates there will be three forms of involvement with commercial activities:

(a) *Recognition of sponsorship.* In return for donations offered or solicited from commercial sources, the Commission may, on its own initiative, or upon request, recognize the contributions of specific donors by entering the name of such donors on a Register of Official Sponsors to be maintained at the Commission's offices. The Commission may also authorize a donor listed in the Register to identify itself to the general public as an "Official Sponsor of the Christopher Columbus Quincentenary Jubilee." Any conditions under which a donor may be permitted to identify itself to the general public as such an official sponsor shall be prescribed in writing by the Commission.

(b) *Recognized commercially sponsored projects.* As set forth in Part 2201 of the Commission's regulations, the Commission may designate projects originated by commercial sources as Official Quincentenary Projects. In connection with such inclusion or designation, the Commission may authorize a commercial sponsor or sponsors to identify themselves with the project or the Commission and/or to make use of the Logo. The conditions under which commercial sponsors of "Registered" or "Official" projects or events may be permitted to identify themselves with the project or the Commission and/or make use of the Logo shall be prescribed in writing by the Commission.

(c) *Licensing.* Subject to the requirements of applicable law, these regulations and any amendments thereto as may subsequently be required, the Commission may enter into agreements by which it will license commercial use of its Logo.

Subpart C—Christopher Columbus Quincentenary Logo

§ 2202.31 Design and identification.

Under the authority granted by Pub. L. 98–375, Sec. 10a, as amended, the Commission has designed and adopted the "Christopher Columbus Quincentenary Logo" as the official symbol or mark of the Quincentenary. This design has been depicted and described in Appendix A to Part 2201 of this chapter. Commercial use of the Logo, including any likeness of this Logo which, in whole or in part, is used in such manner as to suggest this Logo, shall be governed by these regulations.

§ 2202.32 Authorized commercial use of Logo.

Authorization for commercial use of the Christopher Columbus Quincentenary Logo (hereinafter the "Logo") shall be granted only at the sole discretion of the Commission and in accord with these regulations. Reproduction of the Logo is permitted only after written authorization of the Commission. Unless expressly authorized otherwise in writing by the Commission, authority to reproduce the Logo shall entail the obligation to reproduce it in its entirety, that is including both the number "500" in outline form as represented in the illustration in Appendix A to Part 2201 of this chapter and the complete accompanying legend above and below the numerical symbol, also according to the specifications set forth in Appendix A. Authorized users may not delegate use of the Logo to others unless authorized to do so in writing by the Commission or by these regulations.

§ 2202.33 Commecial use.

Pub. L. 100–94, Sec. 7(a), empowers the Commission, in accordance with these rules and regulations, and such other rules and regulations which the Commission may from time to time prescribe, to authorize the manufacture, reproduction, use, sale or distribution of the Logo. To this end, the Commission shall establish a licensing program to govern its authorization of commercial use of the Logo in connection with the production or manufacture of any commercial goods, as part of an advertisement promoting commercial goods or services, or as part of an endorsement of such goods and services. The Commission reserves the right to solicit individuals, entities, groups or

organizations regarding entry into licensing or commercial use authorization agreements.

§ 2202.34 Licensed usage.

(a) In general, licensed commercial usage of the Logo shall not involve any official endorsement of products. The purpose of licensing will be to authorize use of the Logo through a license agreement for its use in product design or packaging or in promotional activities or materials conducted or produced by the licensee.

(b) At a minimum, authorized use of the Logo shall be governed by these regulations, with any additional, specific terms of and conditions upon such authorized use to be determined by the specific license agreement between the Commission and the authorized user.

§ 2202.35 Licenses—Proposals, Committee on Licensing.

(a) The Commission may delegate authority to a committee on product licensing, to be organized and staffed as the Commission determines. The Commission reserves the right to publish any additional guidelines that may be necessary to carry out activities and functions related to licensing.

(b) The Commission may delegate its authority to accept, consider, review and solicit proposals for licenses and to decide whether to enter into licensing agreements with those seeking or interested in such agreements as well as all other responsibilities and functions necessary to carry out a licensing program, including negotiating the terms of licensing agreements.

(c) The Commission invites prospective licensees to submit proposals for license agreements. Each proposal for entering into a licensing agreement shall be addressed to the Christopher Columbus Quincentenary Jubilee Commission at 1801 F Street NW., Third Floor, Washington, DC 20006. Each proposal shall be accompanied by a summary or synopsis, not exceeding two single-spaced, typewritten pages in length, which shall include:

(1) The name, address and telephone number of the proposer; the date of the application and the name, address and telephone number of the person or persons responsible for negotiating and administering any license agreement on behalf of the proposer;

(2) A brief description of the product or use for which the license is sought;

(3) A summary of proposed terms of any licensing agreement;

(4) A statement to the effect that the party submitting the proposal agrees to be bound by all policies, requirements, regulations or other decisions that have been made or will be made by the Commission affecting any license agreement between the Commission and the submitting party;

(5) A brief description of the financial accounting that will be employed by the party submitting the proposal with respect to any royalty or fee obligations to the Commission in connection with the license;

(6) A designation, in the synopsis, of any business confidential or proprietary information or materials contained in the proposal, and a request that it be treated as such;

(7) The signature(s) of the person or persons authorized to make a proposal on behalf of the individual, entity, group or organization submitting the proposal.

(d) The proposal accompanying the synopsis shall also include the information required in paragraphs (c)(1)–(7) of this section and shall, as appropriate or necessary, provide more comprehensive or detailed descriptions, information or data. The Commission reserves the right to request such additional information from a party submitting a proposal as it may deem necessary.

(e) The Commission shall not be responsible for any materials that are not delivered personally or by certified mail, return receipt requested, to the address indicated above or to any other designated address.

(f) Although the Commission cannot guarantee confidentiality in its review of proposals, the Commission will make every possible effort to maintain the confidentiality of those proposals for projects which, in their synopsis, request confidentiality.

§ 2202.36 Fees and royalties.

(a) Pub. L. 100-94, Sec. 7(a)(3), authorizes the Commission to charge fees for any authorization of commercial use of its Logo. In general, the amount of any fee, royalty or other payment to be charged by the Commission in return for a license or authorization to make commercial use of the Logo shall be established by agreement between the parties.

(b) A non-refundable advance against future royalties will normally be required from the licensee.

(c) The Commission may, in its sole discretion, determine the circumstances under which it may choose to waive payment of fees, royalties or other charges for commercial use of the Logo.

§ 2202.37 Revocation.

The Commission reserves the right at all times and with respect to any license or authorization of commercial use of the Logo to withdraw, revoke or otherwise terminate such license or authorization.

§ 2202.38 Termination.

(a) Commercial use licenses for products will expire on the statutory termination date of the Commission with no residual rights to the manufacturer. Products manufactured on or before the termination date may be sold after such date subject to payment of applicable royalties to the Commission or its successor authorized to receive such payments.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission may by agreement permit non-profit, non-commercial entities, groups or organizations, or individuals, as defined in § 2202.14 of these regulations, to continue to identify themselves with the Quincentenary and/or to make non-commercial use of the Logo in connection with ongoing educational, cultural or scholarly activities or projects undertaken with the Commission's sponsorship, approval or recognition.

§ 2202.39 Place of manufacture and quality.

To the extent possible in light of the special international scope and character of the Quincentenary, products licensed by the Commission under these regulations must be made in the United States of America, its territories and possessions within the meaning of Federal Trade Commission "made in USA" designation guidelines. Any exceptions to this policy must be approved by the Commission or its designee for product licensing.

§ 2202.40 Excluded products.

As implied under Pub. L. 98-375, as amended, the Commission or its designee for such purposes has the discretion to exclude product areas from the licensing program. Any decision to exclude a product or product area from the licensing program shall be in writing and shall include a brief statement of the reason or reasons for such exclusion.

[FR Doc. 88-2209 Filed 2-3-88; 8:45 am]

BILLING CODE 6820-26-M

Reader Aids

Federal Register

Vol. 53, No. 23

Thursday, February 4, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data Base Services	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719–2816	1
2817–2994	2
2995–3182	3
3183–3324	4

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5763	2719
5764	2814
5765	3183
5766	3185

Executive Orders:

12301 (Revoked by EO 12625)	2812
12625	2812

Administrative Orders:

Memorandums:

January 28, 1988	2816

7 CFR

272	2817
932	2823
945	3187
947	2995
966	3189

Proposed Rules:

53	3025
54	3025
250	2846
318	3028
907	2849
908	2849
917	2851
925	2851
929	3036
948	3037
1421	2759
1823	2852
1930	2852
1933	2852
1942	2852
1944	2852
1948	2852
1980	2852
2054	3176

8 CFR

204	2824

9 CFR

92	2853

Proposed Rules:

51	2759
71	3146
78	3146
85	3146
309	3146
310	3146
320	3146

10 CFR

Proposed Rules:

31	2853

12 CFR

32	2997
207	2998
220	2998
221	2998
224	2998
614	2825, 3191
795	3000

14 CFR

21	2721-2733
23	2721-2733
39	2735-2737, 3001, 3002
71	3005-3008
73	3010
97	3011, 3012
1206	2738

Proposed Rules:

21	2761, 3040, 3042
23	2761
25	3040, 3042
39	2763-2765, 3044-3048
71	3049

15 CFR

Ch. III	3014

16 CFR

1500	3014

Proposed Rules:

13	3214
453	2767

17 CFR

239	3192
274	3192

Proposed Rules:

249	2854

18 CFR

271	3019

19 CFR

154	2826
270	2826
271	2826
273	2826
375	2826
381	2826
1310	2826

Proposed Rules:

101	2767

20 CFR

200	3198
346	3200
355	3200
359	3200

21 CFR

1	2827

Proposed Rules:

12	2767

1308.....3292, 3314

23 CFR
645.....2829

24 CFR
200.....3201

26 CFR
1.....3118
Proposed Rules:
1.....3118

27 CFR
9.....2834
Proposed Rules:
9.....3214

28 CFR
42.....3203

30 CFR
934.....2837
Proposed Rules:
936.....3050

32 CFR
Proposed Rules:
169.....3218
171.....3218

33 CFR
117.....3206
203.....2841
230.....3120
325.....3120
Proposed Rules:
100.....3221
117.....2789

34 CFR
777.....3020
Proposed Rules:
669.....2918

36 CFR
222.....2978

37 CFR
201.....3118

38 CFR
3.....3206
21.....3207
36.....3207
Proposed Rules:
21.....2855

40 CFR
60.....2914
180.....3021–3023
721.....2842, 2845
Proposed Rules:
52.....3052
721.....2857

41 CFR
101–1.....2738

42 CFR
59.....2922

43 CFR
4100.....2964

Proposed Rules:
3160.....3158, 3168

44 CFR
5.....2739
64.....2741, 3208
67.....2743

45 CFR
2201.....3320
2202.....3321

47 CFR
2.....3210
22.....3210
73.....3024
76.....3212
90.....3210
Proposed Rules:
25.....3056
69.....3057
80.....3058

48 CFR
Proposed Rules:
1246.....3222
5215.....3225
5252.....3225

49 CFR
Proposed Rules:
1041.....3058
1048.....3058
1049.....3058

50 CFR
301.....3213
Proposed Rules:
661.....3225
663.....3225

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 14, 1988

VOL
53
ISS
23
FE
4
988
UMI

VOL
53

ISS
24

FE
5

1988

UMI

2-5-88
Vol. 53 No. 24

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VOL
53

SS
24

FE
5

988

MI

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Guide to Record Retention Requirements in the CFR

A Supplement to the Guide, revised as of January 1, 1988, is published as Part II of this issue.

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Contents

Federal Register

Vol. 53, No. 24

Friday, February 5, 1988

ACTION
NOTICES
Grants; availability, etc.:
VISTA projects; Regions 3 and 9, 3408

Agency for International Development
NOTICES
Meetings:
Mediterranean fruitfly eradication program in Guatemala; correction, 3490

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 3330
Oranges (navel) grown in Arizona and California, 3329
PROPOSED RULES
Pickles; grade standards
Correction, 3403, 3490
(2 documents)

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 3421
(3 documents)

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Criminal and Violent Behavior Research Review Committee et al., 3458
Meetings; advisory committees:
February, 3458

Arctic Research Commission
NOTICES
Vacancy announcement, 3410

Army Department
NOTICES
Agency information collection activities under OMB review, 3421
Meetings:
Armed Forces Epidemiologial Board; correction, 3490
Science Board, 3422
(2 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Grant and cooperative agreement awards:
Louisiana Health and Human Resources Department, 3458
Morehouse School of Medicine, 3459
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—Prevention and surveillance projects, 3554

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 3489

Coast Guard
RULES
Waterfront facilities:
Liquefied natural gas, 3370

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Administration Office et al., 3410

Commercial Space Transportation Office
NOTICES
Environmental statements; availability, etc.:
Commercial expendable launch vehicle programs; Vandenburg Air Force Base, CA, 3479

Commission of Fine Arts
NOTICES
Meetings, 3420

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh; correction, 3420
Poland, 3420
Turkey; correction, 3420
Export visa requirements; certification, waivers, etc.:
Pakistan, 3420

Commodity Credit Corporation
RULES
Federal claims collection; tax refund offset, 3330

Commodity Futures Trading Commission
RULES
Foreign futures and options transactions, 3338
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange, Inc.—International Market Index, 3420

Defense Department
See Air Force Department; Army Department; Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Acosta Pharmacy, 3467
Clausing, Vernon D., D.O., 3468

Education Department
RULES
Special education and rehabilitation services:
Regional resource and federal centers, 3524

Employment and Training Administration
NOTICES
Adjustment assistance:
Babcock & Wilcox Co., 3471
True Form Foundations Corp., 3471

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 3471

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements, 3422, 3423
(2 documents)
Meetings:
National Petroleum Council, 3423

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 3424

Environmental Protection Agency
RULES
Toxic substances:
Testing requirements—
Methylcyclopentane; commercial hexane, 3382
NOTICES
Agency information collection activities under OMB review, 3444
Air pollution control:
Alternative fuels and fuel blends use, motor vehicle emission reductions; estimate guidance; report availability, 3445
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 3446
Weeky receipts, 3445
Hazardous waste:
Corrosive hazardous waste land disposal restrictions; effective date extension on case-by-case basis, 3446
Meetings:
Science Advisory Board, 3450
Toxic and hazardous substances control:
Premanufacture exemption applications, 3450
Water pollution control:
Clean Water Act violations; proposed administrative penalty assessment, 3450
Water pollution control; sole source aquifer designations:
Massachusetts, 3451

Equal Employment Opportunity Commission
RULES
Age discrimination in employment:
Private rights; supervised waivers and releases; suspension, 3370
Procedural regulations:
Directors, Determinations Review Program, Program Operations Office; authority delegation, 3369

Executive Office of the President
See Presidential Documents

Export Administration
See International Trade Administration

Farm Credit Administration
RULES
Farm credit system:
Disclosure to shareholders; accounting and reporting requirements—
Problem loans, etc., 3335
Disclosure to shareholders—
Problem loans, etc., 3334

Federal Aviation Administration
RULES
Noise standards; aircraft certification; helicopters, 3534
PROPOSED RULES
Airport radar service areas, 3528

Federal Bureau of Investigation
NOTICES
Meetings:
National Crime Information Center Advisory Policy Board, 3470

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Generic determination of rate of return on common equity for public utilities, 3339, 3342
(2 documents)
Natural Gas Policy Act, etc.:
Purchased gas adjustment regulations
Reporting and recordkeeping requirements, 3334
NOTICES
Natural gas certificate filings:
Penneast Gas Services Co. et al., 3425
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 3431
Mountain Fuel Resources, Inc., 3432
Overthrust Pipeline Co., 3432
Tarpon Transmission Co., 3433
Tennessee Gas Pipeline Co., 3432
Transcontinental Gas Pipe Line Corp., 3433
United Gas Pipe Line Co., 3434

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 3452
Agreements filed, etc., 3453
Freight forwarder licenses:
Mendoza International et al., 3453
Meetings; Sunshine Act, 3489
Tariffs, inactive; cancellation, 3453

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 3489

Federal Register Office
NOTICES
Guide to Record Retention Requirements in the CFR; supplement, 3492

Federal Register, Administrative Committee
See Federal Register Office

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Preemption determination, 3332
NOTICES
Applications, hearings, determinations, etc.:
First City Acquisition Corp., 3454
First Potomac Bancorp, Inc., et al., 3455
Fleet/Norstar Financial Group, Inc., et al., 3456
Trustmark National Bank Profit Sharing Plan, 3456

Federal Trade Commission
NOTICES
Meetings; Sunshine Act, 3489

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Bariaco, 3565
Black-spored quillwort, etc., 3560
Louisiana pearlshell, 3567
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc.:
Innoko National Wildlife Refuge, AK, 3464
Selawik National Wildlife Refuge, AK, 3464
Yukon Flats National Wildlife Refuge, AK, 3465

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico, 3411
Texas—
Harvey Industries Television Plant, 3411
Vermont—
Wyeth Nutritionals, Inc., Processing Plant, 3412

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Health Resources and Services Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 3456
Organization, functions, and authority delegations:
Assistant Secretary for Health, 3457

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 3459

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Decisions and orders, 3434
Special refund procedures; implementation, 3437, 3440
(2 documents)

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Interest rate changes, 3365
Maximum mortgage limits for high-cost areas, 3364
Termination of tenancy, 3366
NOTICES
Agency information collection activities under OMB review, 3461
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Minneapolis, 3463

Immigration and Naturalization Service
RULES
Immigration Reform and Control Act; implementation:
Nonimmigrant classification category for certain parents and children of special immigrants, 3331
PROPOSED RULES
Nonimmigrants; documentary requirements; waivers, etc.:
Admission of inadmissible aliens; parole—
Mentally retarded aliens accompanied by family member or guardian, 3403

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service
RULES
Trans-Alaska pipeline liability fund, 3395

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
RULES
Export licensing:
Commodity control list—
Electronic computers; COCOM review; correction, 3490
NOTICES
Antidumping:
Fabricated structural steel from Canada, 3412
Countervailing duties:
Carbon steel wire rod from Malaysia, 3413

Interstate Commerce Commission
RULES
Organization, functions, and authority delegations:
Proceedings Office, Director; rail abandonments, 3400
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 3466
Compensated intercorporate hauling operations, 3466
Railroad operation, acquisition, construction, etc.:
Abbeville-Grimes Railway Co., 3467
Housatonic Railroad Co., Inc., 3467

Justice Department
See Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 3470

Land Management Bureau
NOTICES
Closure of public lands:
California, 3463
Environmental statements; availability, etc.:
Idaho wilderness study areas, 3463

Recreation management restrictions, etc.:
Merced River Area, CA, 3464

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
M & F Coal Co., 3472
Riverside Cement Co., 3473

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Diamond Shamrock Offshore Partners Limited Partnership, 3465

Minority Business Development Agency
NOTICES
Business development center program applications:
California, 3417

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 3473
Meetings:
Aerospace Safety Advisory Panel, 3473
Space Applications Advisory Committee, 3473

National Archives and Records Administration
See Federal Register Office

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 3489

National Foundation on the Arts and the Humanities
PROPOSED RULES
Museum Services Institute:
Professional museum organizations; contracts and cooperative agreements, 3405

National Highway Traffic Safety Administration
NOTICES
New car assessment program:
Optional crash testing by motor vehicle manufacturers; eligibility criteria, 3479

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
General Clinical Research Centers Committee, 3460
National Cancer Institute, 3460
National Institute of Allergy and Infectious Diseases, 3460
National Institute of Environmental Health Sciences, 3460

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing—
Fee schedule; correction, 3401
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 3401
NOTICES
Meetings:
Western Pacific Fishery Management Council, 3417, 3418 (2 documents)
Permits:
Marine mammals, 3418, 3419 (6 documents)

National Park Service
NOTICES
Environmental statements; availability, etc.:
Servicewide integrated pest management program, 3465

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 3422
Naval Research Advisory Committee, 3422

Nuclear Regulatory Commission
PROPOSED RULES
Practice rules:
Domestic licensing proceedings—
Geologic repository for disposal of high-level radioactive waste; negotiated rulemaking advisory committee, 3404
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 3475
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 3475
General Public Utilities Nuclear Corp., 3475

Presidential Documents
PROCLAMATIONS
Special observances:
Prayer, National Day of (Proc. 5767), 3327
ADMINISTRATIVE ORDERS
Pakistan: nuclear devices; certification (Presidential Determination No. 88-5 of Jan. 15, 1988), 3325

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Health Resources and Services Administration; National Institutes of Health

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Big Sandy River, WY, 3410
Skalkaho Highline Wood Syphon, MT, 3410

State Department
NOTICES
Lebanon; U.S. passport travel restrictions extension, 3476
Meetings:
Inter-American Tropical Tuna Commission, United States National Section Advisory Committee, 3476
Private International Law Advisory Committee, 3476
North Korea; acts of international terrorism support determination, 3477

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Commercial Space Transportation Office; Federal Aviation Administration; National Highway Traffic Safety Administration
NOTICES
Agency information collection activities under OMB review, 3477
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 3478

Treasury Department
NOTICES
Bonds, Treasury:
2017 series, 3480
Notes, Treasury:
A-1998 series, 3482
R-1991 series, 3486

Veterans Administration
NOTICES
Agency information collection activities under OMB review; correction, 3487

Separate Parts In This Issue

Part II
National Archives and Records Administration, Office of the Federal Register, 3492

Part III
Department of Education, 3524

Part IV
Department of Transportation, Federal Aviation Administration, 3528

Part V
Department of Transportation, Federal Aviation Administration, 3534

Part VI
Department of Health and Human Services, Centers for Disease Control, 3554

Part VII
Department of the Interior, Fish and Wildlife Service, 3560

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5767.....3327
Administrative Orders:
Presidential Determinations:
No. 88-5 of January 15, 1988.....3325
7 CFR
907.....3329
910.....3330
1403.....3330
Proposed Rules:
52 (2 documents).....3403, 3490
8 CFR
214.....3331
Proposed Rules:
212.....3403
10 CFR
Proposed Rules:
2.....3404
12 CFR
226.....3332
620 (2 documents).....3334, 3335
621.....3335
14 CFR
21.....3534
36.....3534
Proposed Rules:
71.....3528
15 CFR
399.....3490
17 CFR
30.....3338
18 CFR
37 (2 documents).....3339, 3342
389.....3364
24 CFR
201.....3364
203.....3364
232.....3365
234.....3364
235.....3365
247.....3366
886.....3366
29 CFR
1601.....3369
1627.....3370
33 CFR
4.....3370
126.....3370
127.....3370
34 CFR
305.....3524
40 CFR
799.....3382
43 CFR
29.....3395
45 CFR
Proposed Rules:
1180.....3405
49 CFR
1011.....3400
1152.....3400
50 CFR
17 (3 documents).....3560-3567
611.....3401
642.....3401

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

Presidential Documents

Title 3—

The President

Presidential Determination No. 88–5 of January 15, 1988

Determination Pursuant to Section 670(a) and Section 620E(d) of the Foreign Assistance Act, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Sections 620E(d) and Section 670(a) of the Foreign Assistance Act of 1961, as amended ("the Act"), I hereby:

(1) determine pursuant to Section 670(a)(1) of the Act that material, equipment, or technology covered by that provision was to be used by Pakistan in the manufacture of a nuclear explosive device; and,

(2) determine and certify, as a result of the determination in paragraph (1) above and pursuant to Section 670(a)(2) of the Act, that not providing assistance referred to in Section 670(a)(1) of the Act to Pakistan would be seriously prejudicial to the achievement of United States nonproliferation objectives and otherwise jeopardize the common defense and security; and,

(3) determine, pursuant to Section 620E(d) of the Act, that the provision of assistance to Pakistan under the Act through April 1, 1990, is in the national interest of the United States and therefore waive the prohibitions of Section 669 of the Act with respect to that period.

You are hereby authorized and directed to report immediately this determination and certification, together with the statement setting forth specific reasons therefor, to the Speaker of the House of Representatives and to the Chairman of the Committee on Foreign Relations of the Senate.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, January 15, 1988.

[FR Doc. 88-2644
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VOL
53
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Presidential Documents

Proclamation 5767 of February 3, 1988

National Day of Prayer, 1988

By the President of the United States of America

A Proclamation

Americans in every generation have turned to their Maker in prayer. In adoration and in thanksgiving, in contrition and in supplication, we have acknowledged both our dependence on Almighty God and the help He offers us as individuals and as a Nation. In every circumstance, whether peril or plenty, whether war or peace, whether gladness or mourning, we have searched for and sought God's presence and His power, His blessings and His protection, His freedom and His peace, for ourselves, for our children, and for our beloved land.

That was surely so at the very beginning of our Nation, in the earliest days of our quest for independence and liberty. It could only be thus, for a people who recognized God as the Author of freedom; who cherished the ancient but ever new words of Leviticus, "Proclaim liberty throughout all the land unto all the inhabitants thereof" and who cast those words where they would ring out forever, on the Liberty Bell; who affirmed along with Thomas Jefferson that the God Who gave us life gave us liberty as well.

So did they believe, those who gathered in Carpenters' Hall in Philadelphia in 1774, the members of the First Continental Congress. They had come together, in times that tried men's souls, to deliberate in the united interests of America and for our "civil and religious liberties." John Adams later wrote his wife Abigail about what followed: "When Congress first met, Mr. Cushing made a motion that it should be opened with prayer." Some delegates opposed the motion, citing differences in belief among the members; but Sam Adams, that bold lover of liberty and our country, arose to utter words of healing and unity.

"I can hear the prayer," he said, of anyone "of piety and virtue who is . . . a friend to his country." He went on to suggest that a clergyman of a persuasion other than his own open the First Continental Congress with prayer.

And so it happened. Because Sam Adams gave voice to all the goodness, the genius, and the generosity that make up the American spirit, the First Continental Congress made its first act a prayer—the beginning of a great tradition.

We have, then, a lesson from the Founders of our land, those giants of soul and intellect whose courageous pledge of life and fortune and sacred honor, and whose "firm reliance on the protection of Divine Providence," have ever guided and inspired Americans and all who would fan freedom's mighty flames and live in "freedom's holy light." That lesson is clear—that in the winning of freedom and in the living of life, the first step is prayer.

Let us join together, Americans all, throughout our land. Let us join together, in factories and farms, in homes and offices, in places of governance and places of worship, and in outposts everywhere that service men and women defend us. Let us, young and old, join together, as did the First Continental Congress, in the first step—humble, heartfelt prayer. Let us do so for the love of God and His great goodness, in search of His guidance and the grace of repentance, in seeking His blessings, His peace, and the resting of His kind and holy hands

on ourselves, our Nation, our friends in the defense of freedom, and all mankind, now and always.

By joint resolution of the Congress approved April 17, 1952, the recognition of a particular day set aside each year as a National Day of Prayer has become a beloved national tradition.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 5, 1988, as a National Day of Prayer. I call upon the citizens of our great Nation to gather together on that day in homes and places of worship to pray, each after his or her own manner, for unity in the hearts of all mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-2645
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Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 671]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 671 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 5 through February 11, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 671 (§ 907.971) is effective for the period February 5 through February 11, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 2, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8 to 3 vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for naval oranges is improving.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.971 is added to read as follows: (This section will not appear in the Code of Federal Regulations.)

§ 907.971 Navel Orange Regulation 671.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 5, 1988, through February 11, 1988, are established as follows:

(a) *District 1*: 1,204,000 cartons;
(b) *District 2*: 196,000 cartons;
(c) *District 3*: Unlimited cartons;
(d) *District 4*: Unlimited cartons;

Dated: February 3, 1988.

Robert G. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-2556 Filed 2-4-88; 12:48 pm]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 599]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 599 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 215,000 cartons during the period February 7 through February 13, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 599 (§ 910.899) is effective for the period February 7 through February 13, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on February 2, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10-2 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is weak.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.899 is added to read as follows:

[This section will not appear in the Code of Federal Regulations.]

§ 910.899 Lemon Regulation 599.

The quantity of lemons grown in California and Arizona which may be handled during the period February 7, 1988, through February 13, 1988, is established at 215,000 cartons.

Dated: February 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-2555 Filed 2-4-88; 12:47 pm]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1403

Referral of Delinquent Debts to IRS for Tax Refund Offset

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: The interim rule set forth at 7 CFR 1403.46, (52 FR 2393, Jan. 22, 1987) which provides procedures under which Commodity Credit Corporation (CCC) may refer to the Secretary of the Treasury delinquent debts owed to CCC for collection by offset against Federal income tax refunds, is adopted as final with one minor change.

EFFECTIVE DATE: This regulation shall become effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Donaldson, Claims Specialist, (202) 447-4048.

SUPPLEMENTARY INFORMATION: This action has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Domestic Assistance Programs to which this final rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program, 10.067; as listed in the Catalog of Federal Domestic Assistance.

This action is not subject to the provisions of Executive Order 12372 which requires intergovernmental consulting with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V., published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this action because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

This regulation adopts as final, with one major change, the interim rule set forth at 7 CFR Part 1403.46 which established procedures to be followed by CCC in implementing 31 U.S.C. 3702A, the authority under which Federal agencies refer delinquent debts to the Department of the Treasury for collection by offset against tax refunds owed to named persons. Under 26 U.S.C. 6402(d), the Internal Revenue Service (IRS) may collect debts referred by Federal agencies by offset against refunds payable after December 31, 1985 and before July 1, 1988. The statute provides that a Federal agency furnish a debtor with notice of a proposed IRS offset and at least 60 days within which to present evidence regarding the debt.

The interim rule, published on January 22, 1987, in the **Federal Register** [52 FR 2393], provided a 60-day period for the public to submit comments. No comments were received with respect to the interim rule.

CCC is adopting the interim rule as a final rule with one minor change. The interim rule provided that for debts becoming delinquent on or after November 1, 1986, CCC would include the notice of intent to refer the debt for tax refund offset in the initial demand letter and the required notification. In the final rule, at § 1403.46(d), the wording is changed to require written notice either in the initial demand letter or in a separate written notification.

List of Subjects in 7 CFR Part 1403

Credit reporting procedures, Delinquent debts.

Accordingly, the interim rule amending 7 CFR Part 1403 which was published at 52 FR 2393 on January 22, 1987, is adopted as a final rule with the following change:

PART 1403—[AMENDED]

1. The authority citation for Part 1403 continues to read as follows:

Authority: Sec. 4, Pub.L. 80-89, 62 Stat. 1070, as amended, (15 U.S.C. 714b) and Sec. 2653(a)(1), Pub.L. 98-369, 98 Stat. 1153 (31 U.S.C. 3720A).

2. Section 1403.46(d) is revised to read as follows:

§ 1403.46 Referring delinquent debts to IRS for tax refund offset.

* * * * *

(d) A delinquent debtor will be sent written notification that CCC intends to refer the debt to IRS for tax refund offset. CCC shall include such notice of intent in the initial demand letter and notification of indebtedness required pursuant to the Federal Claims Collection Standards at 4 CFR Parts 101 through 105, and the Setoff and Withholding regulations at 7 CFR Part 13 or 1408, or in a separate written notification of such specific intent.

* * * * *

Signed at Washington, DC., on February 1, 1988.

Vera Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-2485 Filed 2-4-88; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1006-88]

8 CFR Part 214

Rule Revision To Add New Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This revision will add a new section to implement Pub. L. 99-603, which created a new nonimmigrant classification.

DATES: Interim rule effective November 6, 1986. Comments must be received on or before March 7, 1988.

ADDRESSES: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99-603, the Immigration Reform and Control Act of 1986. Section 312 of Pub. L. 99-603 amended section 101(a)(27)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, to add a new category of "special immigrants", covering certain officers and employees of international organizations and their immediate relatives. A new section 101(a)(15)(N), 8 U.S.C. 1101, was also added to create a nonimmigrant category for certain parents and children of section 101(a)(27)(I) special immigrants.

The new nonimmigrant classification was added to minimize any family separations caused by ineligibility for special immigrant status on behalf of certain parents and children of persons accorded section 101(a)(27)(I) status.

Compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the definition of section 1(b) of E.O. 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115-0053.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184; 8 CFR Part 2.

2. Section 214.2 is amended by redesignating paragraph (n) as paragraph (o) and adding a new paragraph (n) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants.*

(1) *Parent of special immigrant.* A parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may apply for and remain in status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility was derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants.* Children

of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I) (ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay.* A nonimmigrant granted (N) status shall be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status granted under this section shall terminate on the date the child as defined in section (n)(1) and (n)(2) no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment.* A nonimmigrant admitted in or granted (N) status may request authorization for employment pursuant to procedures in § 274a.12 of this chapter.

* * * * *

Dated: December 23, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-2498 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0612]

Truth in Lending; Determination of Effect on State Law; Indiana

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination that a provision in the law of Indiana is inconsistent with the Truth in Lending Act and Regulation Z and therefore preempted. This final determination that the provision is preempted has an effective date of October 1, 1988, although compliance may begin from the date of the Board's determination.

EFFECTIVE DATE: October 1, 1988, with compliance optional before that date.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Attorney, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the Federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. If the Board determines that a state-required disclosure is inconsistent with the Federal law, the state law is preempted to the extent of the inconsistency and disclosures using the inconsistent term or form may not be made.

The determination regarding Indiana law is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

Preemption determinations have an effective date of the October 1 that follows the determination by at least six months, as required by section 105(d) of the act. As a result, this determination has an effective date of October 1, 1988, although compliance may begin before that time.

(2) *Principles followed in preemption analysis.* In determining whether a state law is inconsistent with Federal provisions, § 226.28(a)(1) of Regulation Z, which implements section 111 of the act, provides that state requirements are inconsistent with, and therefore preempted by, the Federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the Federal law or interferes with the purposes of the Federal statute. Two examples of contradictory state laws are included in § 226.28(a)(1). They are (1) a law that requires the use of the same term to represent a different amount or a different meaning than the Federal law, or (2) a law that requires the use of a term different from the Federal term to describe the same item.

The following principles, which were developed in previous preemption determinations (48 FR 4454, February 1, 1983), were applied in making the current determinations:

- For purposes of making preemption determinations, state law is deemed to require the use of specific terminology in the state disclosures if the state statute uses certain terminology in the disclosure provision.
- A state disclosure does not "describe the same item," under § 226.28(a)(1), if it is not the functional equivalent of a Federal disclosure.
- Preemption occurs only in those transactions in which an actual inconsistency exists between the state law and the Federal law.
- A state law is not inconsistent merely because it requires more information than Federal law or requires disclosure in transactions where Federal law requires none.

In general, preemption determinations are limited to those provisions of state law identified in the request for a determination, and that is the case in the present determination. At the Board's discretion, however, other state provisions that may be affected by the Federal law also may be addressed.

(3) *Discussion of specific request and final determination.* The Board was asked to examine section 8(d) of the recently amended Indiana "Loan Broker" statute, Ind. Code section 23-2-5-1 *et seq.*, to determine whether that section of the state law requires certain disclosures that contradict the disclosures required under section 106(a) and § 226.4(a) of the Truth in Lending Act and Regulation Z, respectively.

The Board published a proposed determination on September 4, 1987 (52 FR 33596). In that proposal, the Board proposed to preempt the state disclosure requirement in those instances where the state law would call for inconsistent disclosures. Eight commenters addressed the proposal; commenters included banks, a Federal Reserve Bank, a Federal Home Loan Bank, the Secretary of State for the State of Indiana, the Indiana Securities Commissioner, and the Attorney General of Indiana. The majority of comments supported the Board's proposal, generally citing the state law's interference with the intent of the Federal scheme. The officials representing the State of Indiana, however, opposed the proposal, questioning the Board's authority to affect a law directed at a group that is not subject to the Truth in Lending Act, namely loan brokers. The final determination regarding the Indiana law at issue, together with the reasons for the Board's action, are set forth below.

The relevant provisions of the state statute (which has an effective date of September 1, 1987) are as follows:

23-2-5-8. *Disclosure statement.*

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure statement if the creditor would be required to deliver to the person a disclosure statement under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) for the transaction. The estimated disclosure statement:

(1) shall be delivered to the person before the person becomes contractually obligated on the loan; or

(2) shall be delivered or placed in the mail to the person not later than three (3) business days after the person enters into an agreement with the loan broker;

whichever occurs first. The estimated disclosure statement must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601-1667e) and regulations under the Act. However, the annual percentage rate, finance charge, total of payments, and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from a disclosure statement. The disclosure statement must state at the top in at least 10 point type: "The following is an estimated disclosure statement showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure statement is delivered to any person, the loan broker shall deliver to the person an additional statement rediscloising all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than one-eighth of one percent (0.125%). Any required additional disclosure statement shall be delivered or placed in the mail before consummation of the loan or the elapse of three (3) days after the information that requires rediscloisure becomes available, whichever occurs first.

The requesting party asked for a determination as to whether the requirement imposed by this section that loan brokers reflect all of their fees and charges in their calculation of, among other items, the finance charge and annual percentage rate that must be disclosed to potential borrowers is preempted by the Truth in Lending Act and Regulation Z. Section 106(a) and § 226.4(a) of the Federal statute and regulation, respectively, state that, in any consumer credit transaction, the finance charge includes charges paid by the consumer that are imposed by the creditor as an incident to the extension of credit. Under Regulation Z, charges imposed by third parties are not finance charges as long as the creditor does not require the parties services or retain the charges. Thus, fees charged by a loan broker are not finance charges provided that the creditor does not require the use of the broker. (See Official Staff Commentary, 12 CFR 226.4(a)-3.)

Since the state statute requires that loan brokers include their fees in calculating the finance charge and annual percentage rate in cases where the creditor would exclude such fees in calculating those same items for the Federal disclosures, the Board has determined that the state disclosure requirement is preempted in those instances where the state law would require the use of the same term to disclose a different amount than would be disclosed under Federal law. In such cases, the state disclosure would contradict the disclosures required under Federal law and interfere with the intent of the Federal scheme.

Although the Board, in the past, has made preemption determinations concerning laws whose coverage may extend to parties who are not considered creditors for purposes of Regulation Z (for example, Arizona in 1985 and South Carolina in 1983), the issue is raised directly in this instance. Specifically, one comment letter, representing the views of officials from the State of Indiana, questioned whether the Board's preemption authority extends to a law governing loan brokers, parties who are not subject to the requirements of the Truth in Lending Act and Regulation Z.

Section 111(a)(1) of the Federal act permits the Board to "annul, alter, or affect the laws of any state relating to the disclosure of information in connection with credit transactions * * * to the extent that those laws are inconsistent with the provisions of [the Federal law]." Although this section goes on to refer to "creditors" who may not make disclosures using an inconsistent term or form, the Board does not view this reference as limiting the scope of its authority to carry out the overall purpose of the Truth in Lending Act. The reference to creditors in this section is descriptive of parties who are directly covered by the act's provisions. The Board, however, in considering the impact of a state statute on the operation of the Federal law, believes that use of this term is not meant to exclude laws concerning other parties or classes of transactions that might undermine the purpose of the Federal law. Congress, in granting the Board broad authority to effectuate the purpose of the Truth in Lending Act, could not have foreseen every group or class of transactions that might interfere with this purpose. Because of this, the Board's authority at times may necessarily affect transactions that the act does not reach on its face, particularly when, as in this case, the state statute effectively interferes with the operation of the Federal scheme. For these reasons, the Board, in reviewing Indiana's statute for its overall effect on the purpose and operation of the Federal law, does not feel constrained by the fact that the state law is directed towards loan brokers, a group not itself subject to the Truth in Lending Act and Regulation Z.

In this instance, therefore, the Board has determined that, although the parties involved are not "creditors" under the Truth in Lending Act, this circumstance does not outweigh the fact that the effect of the state statute is clearly inconsistent with the purpose of the Federal law, which is to promote the informed use of consumer credit by requiring clear, uniform, and meaningful disclosures about its terms and costs. The Board believes that, in this instance, the approach chosen by the state will undermine the intent of the Federal scheme by confusing consumers who will receive two different sets of disclosures—both purporting to describe the cost of credit—that contain different figures described by the same terminology. Although the Board recognizes that the state disclosure is meant to inform consumers about costs that they may incur in certain credit transactions, this purpose should not be served in a manner that interferes with the operation of the Federal scheme. In such cases, where the state law requires the use of the same term to disclose a different amount than would be disclosed under Federal law, the state law clearly contradicts the requirements of the Federal law and is therefore preempted.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

(4) *Preemption determination.* The following order sets forth the preemption determination, which will also be reflected in the Official Staff Commentary on Regulation Z (Supplement I to Part 226).

Order

Pursuant to section 111 of the Federal Truth in Lending Act as revised in March 31, 1980 (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221), the Board has determined that a certain provision in the law of Indiana is inconsistent with and therefore preempted by the Federal law. The determination is as follows:

Preemption determination—Indiana. Effective October 1, 1988, the following provision in the State law of Indiana is preempted by the Federal law:

In section 23-2-5-8 of Indiana's "Loan Broker" statute, the inclusion of the loan broker's fees and charges in the calculation of, among other items, the finance charge and annual percentage rate disclosed to potential borrowers is inconsistent with sections 106(a) and

226.4(a) of the Truth in Lending Act and Regulation Z, respectively, and is preempted in those instances where the use of the same term would disclose a different amount than that required to be disclosed under Federal law.

Board of Governors of the Federal Reserve System, February 1, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-2382 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 620

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA) adopts an interim rule amending Part 620 relating to disclosure of the condition and classification of loans (problem loans) to senior officers and directors and their immediate families and affiliated organizations. The interim rule implements a provision of the Agricultural Credit Act of 1987 (Pub. L. 100-233), which amends section 5.17(a)(9) of the Farm Credit Act of 1971, 12 U.S.C. 2252(a)(9), by placing limitations on the disclosure the FCA can require in shareholder reports of problem loans to senior officers and directors and their immediate families. The new statute requires the amendment to be implemented within 30 days of enactment (January 6, 1988). To comply with the statute the FCA adopts an interim rule, effective one week from publication. The FCA invites comment on the amendment.

DATES: The interim rule shall become effective February 12, 1988. Comments must be received on or before March 7, 1988.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4483, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA held a public hearing in response to concern expressed by institutions in the Farm Credit System (System) with provisions of the FCA's regulations that required disclosure in shareholder reports of problem loans from the reporting institution to its senior officers, directors and their immediate families and affiliated organizations (12 CFR Part 620). In response to the testimony presented at that hearing, the FCA proposed amendments to Part 620 and 621 (52 FR 30374, August 14, 1987). The comment period closed October 15, 1987. During the comment period bills were introduced and considered in the United States Congress that, among other things, would limit disclosure that the FCA can require of problem loans to directors and their immediate families in a manner different from that which had been proposed on August 14, 1987. The limiting provision was enacted into law on January 6, 1988, as an amendment to section 5.17(a)(9) of the Farm Credit Act of 1971. (Section 424 of the Agricultural Credit Act of 1987, Pub. L. 100-233.)

Because the amendments to § 620.3(j)(2) and (3) proposed on August 14, 1987 relating to problem loans to senior officers and directors are inconsistent with the new statutory limitations, the FCA has withdrawn the proposed amendments (see Final Rule published elsewhere in today's **Federal Register**) and now adopts an interim rule implementing the new statutory limitation. This limitation prohibits the FCA from requiring in shareholder reports disclosure of the conditon or classification of a loan to a director of the institution who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the shareholder meeting to which the statement relates. The FCA interprets "resign" to mean that the officer or director has actually vacated office. In addition, the statute limits disclosure that can be required of members of immediate families of directors to those who reside with directors or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress also intends the limitations on disclosure to apply to senior officers. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 268.)

The statute requires the newly enacted limitation to be implemented within 30 days of enactment. To comply with the statutory mandate, the FCA adopts an interim rule, effective one week from publication, and invites comment on that rule. The amendment makes reporting and disclosure less burdensome for Farm Credit institutions, and adopting the interim rule will enable institutions to prepare their annual reports to shareholders for 1987 in accordance with the new statute. Because the statute requires immediate implementation and because the interim rule implements a straight-forward restriction contained in the statute, the FCA finds, pursuant to 5 U.S.C. 553(b)(B), that notice and comment prior to adoption are impracticable and contrary to the public interest. Comments received after the effective date of the interim rule will be considered and any necessary adjustments will be made in the final rule. For the reasons stated above, the FCA, pursuant to 5 U.S.C. 553(d)(1) and (2) and 12 U.S.C. 2252(b)(2), finds good cause to make this regulation effective in less than 30 days.

Section 620.3(j)(3) is revised by deleting paragraph (i)(C), substituting a new paragraph (ii), redesignating the current paragraph (ii) as (iii) and revising the introductory text to paragraph (iii). The effect of this revision is to require a separate statement with respect to the collectibility of loans to senior officers and directors that reflects the newly enacted statutory restrictions. The requirements of the regulation are unchanged with respect to loans that are not made in the ordinary course of business or are not made on substantially the same terms as those available to other persons for comparable transactions.

As stated above, the FCA interprets "resign" to mean that the officer or director has actually vacated the office. The FCA will monitor any resignations through its examination process to assure that they have been accomplished in good faith and not merely to circumvent the regulation.

List of Subjects in 12 CFR Part 620

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements

As stated in the preamble, Part 620 is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 is revised to read as follows:

Authority: Secs. 5.17(a)(9) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10); Sec. 424, Pub. L. 100-233.

2. In § 620.3, paragraphs (j)(3) introductory text and (j)(3)(i) are revised, paragraph (j)(3)(ii) is redesignated as (j)(3)(iii), a new paragraph (j)(3)(ii) is added, and newly redesignated (j)(3)(iii) introductory text is revised to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(j) *Transactions with senior officers and directors*

* * * * *

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectibility; *provided* that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration, or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (j)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans, state:

* * * * *

3. Newly redesignated (j)(3)(iii)(E) is amended by changing the reference "(j)(3)(i)(A) through (C)" to read "(j)(3)(i) and (j)(3)(ii)."

4. Newly redesignated (j)(3)(iii)(G) is amended by changing the reference "(j)(3)(i)(c)" to read "(j)(3)(ii)."

Dated: February 2, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-2483 Filed 2-4-88; 12:46 pm]

BILLING CODE 6705-01-M

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final amendments to Part 620 relating to disclosure of the condition or classification of loans to senior officers and directors and their immediate families and affiliated organizations and a final amendment to Part 621 relating to accounting and reporting requirements. The FCA withdraws proposed amendments to Part 620 that are either inconsistent with or that require further consideration in light of the Agricultural Credit Act of 1987, Pub. L. 100-233, and adopts minor substantive, technical and clarifying amendments to Part 620 that were proposed on August 14, 1987. The amendment to Part 621 deletes an obsolete examining classification from the definition of "other high risk loans."

EFFECTIVE DATE: This regulation shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress are in session. A document will be published in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT:

Dorothy J. Acosta, Senior Attorney, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020

or

James Thies, Assistant Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4483, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA held a public hearing in response to concerns expressed by institutions of the Farm Credit System (System) with provisions of the FCA's regulation that required disclosure in shareholder reports of problem loans from the reporting institution to its senior officers and directors and their immediate families and affiliated organizations (12 CFR Part 620). In response to the testimony presented at that hearing, the FCA proposed amendments to Parts 620 and 621 (52 FR 30374, August 14, 1987). The comment period closed October 15, 1987.

During the comment period, bills were introduced in the United States Congress that, among other things, would limit disclosure that the FCA can require of the condition and classification of loans (problem loans) to directors and their immediate families in a manner different from that which had been proposed on August 14, 1987. The limiting provision was enacted into law on January 6, 1988, as an amendment to section 5.17(a)(9) of the Farm Credit Act of 1971. (See section 424 Agricultural Credit Act of 1987, Pub. L. 100-233). The amendment prohibits the FCA from requiring in shareholder reports disclosure of the condition or classification of a loan to a director of the institution who has resigned before the time for filing the applicable report with the Farm Credit Administration or whose term of office will expire no later than the date of the meeting of stockholders to which the statement relates. In addition, the statute limits disclosure that can be required of members of a director's immediate family to those who reside with the director or those in whose loan or business operation the director has a material financial or legal interest. The legislative history of the section indicates that Congress also intends the limitations on disclosure to apply to senior officers. (See H.R. Rep. No. 490, 100th Cong., 1st Sess. 268.) The new statute requires the limitations to be implemented within 30 days of enactment.

A. Part 620—Disclosure to Shareholders

1. Transactions with Senior Officers and Directors

In response to the concerns expressed at the public hearing, the FCA proposed to amend § 620.3(j)(3) to require in shareholder reports disclosure of problem loans to relatives of senior officers and directors with which such officer or director has a business relationship, instead of immediate family members, as defined in § 620.1(c). The amendment would also have required problem loans to immediate family members not having a business relationship with the officer or director to be reported to the FCA. In addition, the institution would have been required to inform shareholders that this disclosure to the FCA was available

upon request. Similar amendments were proposed to § 620.3(j)(2)–Transactions other than loans. The FCA also proposed to amend § 620.3(j)(3) to allow a director or senior officer to avoid disclosure of a problem loan by resigning or by correcting the problem within 60 days of the identification of the problem, provided that if the director or officer ran for election or were reappointed or reemployed within two years, the disclosure that would have been required but for the resignation would have been required to be made to shareholders prior to election or in the next annual report, whichever came first.

Because these proposed amendments to § 620.3(j) (2) and (3) are inconsistent with the new statutory limitation, the FCA withdraws them. To comply with the statutory requirements, an interim rule implementing the new statutory limitation is also published today, effective one week from publication, with opportunity for comment. (See interim rule published elsewhere in today's **Federal Register**.)

The FCA also proposed an amendment to § 620.3(j)(3)(i) to clarify that Federal Land Bank Associations (FLBAs) must disclose loans from the Federal land bank (FLB) to the FLBA's senior officers and directors that do not meet the conditions of § 620.3(j)(3) (i) and (ii). (The amendment was inadvertently omitted from the actual text of the proposed regulation.) The clarification was proposed to reflect the fact that the FLB rather than the FLBA is the primary creditor. The FCA believed that the System had understood the regulation to require such disclosure and the comments confirmed that this was the case. The FCA adopts the proposed amendment as part of the final regulation.

2. Transactions With Other Farm Credit Institutions

The FCA proposed amendments that would require disclosure of loans to the reporting institution's senior officers and directors, their affiliated organizations and immediate family members from any Farm Credit institution having a supervisory relationship with the reporting institution if the loan did not meet the criteria of § 620.3(j)(3)(i). The FCA withdraws this proposed amendment pending further consideration of the impact of the restructuring provisions of the new statute on the issues addressed by the proposed amendment.

3. Definition of "business relationship"

The FCA proposed a definition of "business relationship," a term used in the proposed amendments to § 620.3(j) (2) and (3). The FCA withdraws the proposed definition, as the term is not used in the final regulation.

4. Other Changes

The FCA adopts the proposed amendment to § 620.1(a), which revises the definition of "affiliated organization" by substituting "partner" for the third "director" in the definition. This change would eliminate organizations in which the person's only role is to serve as director and would include within the definition organizations in which the person has a partnership interest. Comments received on this change were supportive.

The FCA adopts a number of other minor substantive and technical changes and corrections that were proposed.

Section 620.21(c) is amended to clarify that the most recent quarterly report need not be actually sent with the annual information statement if it has already been sent to shareholders, by inserting "preceded or" before "accompanied." However, persons who have become shareholders since the most recent quarterly report was disseminated should be provided with a copy of it, either at the time they become shareholders or with the annual information statement. Comments received on this proposed changed were supportive.

Section 620.3(c) is amended to clarify that the requirement to disclose material pending legal proceedings is not intended to require routine disclosure of pending enforcement proceedings before the FCA, by deleting the words "or agency." Rather, the reporting institution will need to consider whether the enforcement proceeding or the circumstances giving rise to it are so material that they should be disclosed. Comments received on this proposed change were supportive.

The FCA adopts the following proposed technical amendments and corrections:

Section 620.2(k) is amended by deleting the "s" in "reports" in the first sentence and inserting "also" before "include" in the third sentence.

Section 620.10(a) is amended by changing "reporting requirements" to "report" in the last sentence.

Section 620.11(b)(2) is amended by changing "that" to "than" in the first sentence.

Section 620.11(b)(4) is amended by changing the second "that" in sentence 2 to "and," and inserting "that" between "accounts" and "have" in sentence 3.

Section 620.20(b) is amended to correct the citation contained therein from 621.21 to 620.21.

B. Part 621—Accounting and Reporting Requirements

Part 621 is amended to delete all references to "vulnerable" loans, by deleting § 621.2(a)(18)(i) and redesignating §§ 621.2(a)(18) (ii), (iii), (iv), and (v). Section 621.2(24), which defines "vulnerable" is also deleted.

With this deletion, non-performing loans are defined without reference to examining classifications. This amendment was proposed by the FCA primarily because the examining classification set forth in the regulation is outdated and because the use of examining classifications to define "other high risk loans" introduces a more subjective judgment into the primarily objective criteria for determining loan performance categories. It was also believed that this change would respond in part to the concern expressed at the hearing that some loans would be required to be disclosed because of immaterial irregularities or lack of documentation that would cause the loan to be classified as "vulnerable," even though the borrower was current on his or her payments.

Comments received on this change were generally supportive, but some commenters believed it an insufficient response to their concern that disclosure might be required even though the loan is not contractually past due, but has suffered a decline in collateral value. The FCA reemphasizes that the collectibility of a loan must be evaluated on the basis of the likelihood that the institution will be able to collect all of the contractual principal and interest over the life of the loan in light of all current information available about the borrower's operations. This is especially important in view of the fact that many loans are annual payment loans. If the institution has information about the borrower's operations that indicates that the borrower will not be able to make such a payment when it becomes due, the loan may be deemed to involve a greater than normal risk of collectibility even though it is not yet contractually past due.

The heading of § 621.4 is amended to correct the spelling of "Accrual."

List of Subjects in 12 CFR Parts 620 and 621

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements, Accounting and reporting requirements, Report of condition and performance.

As stated in the preamble, Parts 620 and 621 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17(a) (9) and 10, Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10); Sec. 424, Pub. L. 100–233.

Subpart A—Annual Reports to Shareholders

2. Section 620.1 is amended by revising paragraph (a) to read as follows:

§ 620.1 Definitions.

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer or nominee for director of the reporting institution is a partner, officer, or majority shareholder.

* * * * *

3. Section 620.2 is amended by revising paragraph (k) to read as follows:

§ 620.2 Preparing, distributing, and filing the report.

* * * * *

(k) For purposes of this part, each annual and quarterly report of a Federal land bank shall present the financial statements of the Federal land bank and its District Federal land bank associations on a combined basis. The annual and quarterly reports of a Federal intermediate credit bank shall present the financial statements of the Federal intermediate credit bank and its district production credit associations on a combined basis. The respective reports shall also include at a minimum the statement of condition and statement of income for the bank only. These statements may be in a summary form and shall disclose the basis of presentation if different than the accounting policies of the combined bank and association statements.

4. Section 620.3 is amended by revising paragraphs (c) and (j)(3)(i) introductory text to read as follows:

* * * * *

§ 620.3 Contents of annual report to shareholders.

* * * * *

(c) *Legal proceedings.* Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involved claims that the institution may be required by contract or operation of law, to satisfy. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

* * * * *

(j) *Transactions With Senior Officers and Directors*

* * * * *

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution (or in the case of a Federal land bank association, its district Federal land bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

* * * * *

Subpart B—Quarterly Report to Shareholders

5. Section 620.10 is amended by revising paragraph (a) to read as follows:

§ 620.10 Preparing, distributing and filing the report.

(a) Each institution of the Farm Credit System except Federal land bank associations shall prepare a quarterly report for each fiscal quarter beginning with the quarter ending June 30, 1988, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution. The report shall conform to the requirements set forth in § 620.11.

* * * * *

6. Section 620.11 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b) * * *

(2) *Interim statements of income.* When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

* * * * *

(4) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispositions.

* * * * *

Subpart C—Association Annual Meeting Information Statement

7. Section 620.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 620.20 Preparing, distributing, and filing the information statement.

* * * * *

(b) The statement shall contain, at a minimum, the information specified in § 620.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be preceded or accompanied by the most

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recent quarterly statements required by Subpart B of this part.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

8. The authority citation for Part 621 continues to read as follows:

Authority: Sec. 5.17 (a) (9) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252(a) (9) and (10).

Subpart A—Accounting Requirements

§ 621.2 [Amended]

9. Section 621.2 is amended by removing paragraph (a)(18)(i) and redesignating paragraphs (a)(18) (ii), (iii), (iv) and (v) as paragraphs (a)(18) (i), (ii), (iii), and (iv); and by removing paragraph (a)(24).

10. Section 621.4 is amended by revising the heading to read as follows:

§ 621.4 Accrual basis of accounting.

Dated: February 2, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-2484 Filed 2-4-88; 12:50 pm]

BILLING CODE 6705-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim order regarding the application of foreign futures and option rules to certain persons located outside the United States.

SUMMARY: On August 5, 1987, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** final rules governing the offer and sale of foreign futures and option contracts in the United States. 52 FR 28980. By order dated December 21, 1987, the Commission postponed the effective date of the rules from January 4, 1988 to February 1, 1988. 52 FR 48811, December 28, 1987.

In promulgating such rules governing foreign futures and option transactions, the Commission adopted an exemptive provision in rule 30.10 which permits persons located outside the United States who solicit or accept orders from U.S. customers for foreign futures and options transactions, and who are subject to a comparable regulatory scheme in the jurisdiction in which they are situated, to apply for an exemption from the application of certain of the rules applicable to such transactions. 52 FR 28980 at 29001.

In that connection, several foreign exchanges and foreign regulators, on behalf of their members or persons whom they regulate, respectively, have either applied for the broad-based exemption in rule 30.10 of the foreign futures and options rules or have expressed their intent to do so. In large part because of the intervening market events of October, the Commission has been unable to fully consider the submissions made in this regard to date. For this reason, the Commission believes that it would not be inappropriate to adopt an interim measure which would permit the Commission to address these petitions without requiring such persons to cease sales of foreign futures products to customers located in the United States in the interim commencing February 1, 1988, when the rules become effective. The Commission believes that permitting persons who currently sell foreign futures products to clients in the United States to continue those relationships on or after February 1, 1988, subject to certain conditions, would avoid the unnecessary disruption of ongoing business relationships without sacrificing the purposes for which the rules were adopted. In the absence of an interim order, by February 1, 1988, such persons located outside the United States, among other requirements, would be required to register with the Commission as futures commission merchants and open offices in the United States pursuant to rule 30.4(a) or cease selling foreign futures products into the United States. In the alternative, such persons could carry all U.S. customer accounts through a U.S. futures commission merchant on a fully-disclosed basis as required by rule 30.3(b) of the foreign futures and options rules and act only in the capacity of introducing brokers pursuant to rule 30.5(a). 52 FR at 28998-28999.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

For the reasons discussed above, as a consequence, the Commission has determined to issue this interim order to permit persons located outside the United States selling foreign futures products to clients in the U.S. on whose behalf a foreign exchange and/or regulator has filed a petition for relief under rule 30.10 to continue such activities with existing foreign futures clients located in the United States, for a sixty-day period to April 4, 1988 provided the following conditions are satisfied:

(1) A petition for exemption under rule 30.10 was filed on behalf of such persons prior to February 1, 1988;

(2) Such persons actually were in the business of selling products which are the subject of the part 30 rules to customers located in the U.S. and defined in rule 30.1(c), 52 FR 28998, prior to January 4, 1988;

(3) Such persons: (a) agree not to solicit or attempt to solicit and (b) do not solicit or attempt to solicit transactions in respect of foreign futures products for or on behalf of any new customers located in the U.S. pending a final determination by the Commission on the above-referenced exemption request;

(4) Persons who are the subject of this interim order must have in effect a valid and binding appointment of an agent in the United States for service of process in accordance with the procedures set forth in rule 30.5(a), 52 FR at 28990, prior to accepting any new positions from or on behalf of existing customers located in the U.S. on or after February 1, 1988; [1] and

(5) The applicable foreign exchange or regulator notifies the National Futures Association of the persons on whose behalf it is requesting the relief addressed herein.

This order would temporarily defer only the registration, capital and separate account requirements of part 30, as well as the *specific* risk disclosure requirements in rule 30.6 and the requirement that all accounts subject to the provisions of part 30 be carried by or through a futures commission merchant (which must maintain an office in the U.S.) on a fully-disclosed basis, with respect to such persons. All other aspects of the Commodity Exchange Act ("Act") and regulations thereunder and, in particular, rule 30.9 relating to fraud would be effective. Specifically, all such sales must otherwise be consistent both with the Act and the regulations thereunder, as appropriate, and with any applicable requirements of the foreign jurisdiction. Further, the Commission notes that this interim relief will not extend to the offer or sale of any foreign option contract except pursuant to the trade-option exemption in Commission rule 32.4(a) or Commission order,[2] notwithstanding

[1] Thus, prior to, or in the absence of, an appointment of an agent for service of process, persons who are the subject of the relief herein may only accept orders to liquidate positions entered into before February 1, 1988 and continue to service any such positions, e.g., issue margin calls and/or accept maintenance margin deposits.

[2] This prohibition is subject to the trade-option exemption in Commission rule 32.4(a), 17 CFR

Continued

authorization of such product by the Commission pursuant to rule 30.3(a), 52 FR at 28998. Accordingly, a person who is the subject of this relief may not offer or sell such option products to customers located in the U.S. during the sixty-day period unless the Commission has actually granted the broad-based exemption in rule 30.10 based on comparability of regulation or the person otherwise registers and complies with the remaining rules in part 30 of the Commission's regulations. Finally, the Commission notes that the failure to comply with the conditions specified above may affect the Commission's determination to grant the foreign firm the exemption based on comparability of regulation or the ability of a foreign exchange and/or regulator to petition on behalf of their numbers or persons whom they regulate. Of course, any person selling products traded on or subject to the rules of a contract market to U.S. customers must register in the appropriate capacity and comply with the Act and the regulations thereunder.[3]

Accordingly, the Commission hereby orders that, notwithstanding the effective date of the foreign futures and options rules, for a sixty-day period to April 4, 1988, the Commission will not apply the registration, capital and separate account requirements of these rules as well as the *specific* risk disclosure requirements of rule 30.6 and the requirement that all transactions subject to the part 30 rules be carried by or through a futures commission merchant on a fully-disclosed basis, to certain persons located outside the U.S. with respect to whom the Commission and the National Futures Association have been given notice on or before February 1, 1988 consistent with the conditions set forth in this order.

Issued in Washington, DC on January 29, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-2323 Filed 2-4-88; 8:45 am]

BILLING CODE 6351-01-M

32.4(a) (1987), and the Commission's order dated April 9, 1986 authorizing banks located in the United States to grant options on foreign currencies traded on the Montreal Exchange as principals for business-related purposes, 51 FR 12866 (April 15, 1986), which continue in effect notwithstanding the effective date of the foreign futures and options rules.

[3] *See* 45 FR 18356, 18360 (March 20, 1980).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5, the Commission issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period February through April 1988. This rate is set at 12.42 percent.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

Issued January 29, 1988.

On January 29, 1988, the Commission issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this amended procedure, the Commission determines that the benchmark rate of return on common equity applicable to rate filings made during the period February 1 through April 30, 1988, is 12.42 percent.

According to the amended § 37.9, each quarterly benchmark rate of return is set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 100 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The median dividend yield for the sample of utilities for the third and fourth quarters of 1987 are 7.58 and 8.21 percent, respectively. The average is 7.90 percent. Using the latter yield produces an average cost of common equity of 12.42 percent. The attached appendix provides the supporting data for the latest quarter used in this update.

Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register**. A rule may become effective sooner if the agency finds that there is good cause to do so. 5 U.S.C. 553(d) (1982). The Commission finds good cause to make this rule effective February 1, 1988. Specifically, this notice is intended to supplement the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revises, Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective February 1, 1988.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act 16, U.S.C. 791-a-825r (1982); Department of Energy Organization Act 42 U.S.C. 7101-7352 (1982).

2. In paragraph (d) of § 37.9, the table is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) * * *

* * * * *

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, (Docket No. RM87-35-000) (Final Rule) (Order No. 489).

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_j)	Cost of common equity (k_j)	Benchmark rate of return ( )
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.75
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.80	12.42	12.42

Appendix

Note: The Appendix will not be published in *Code of Federal Regulations*

Exhibit No. and Title

1—Initial Sample of Utilities
2—Utilities Excluded from the sample for the Indicated Quarter due to either Zero Dividends or a cut in Dividends for this Quarter or the prior Three Quarters
3—Annualized Dividend Yields for the Indicated Quarter for Utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

Exhibit 1
Exhibit 2
Exhibit 3

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Service	CIP	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Citcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy System	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc-VA	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric Co	EDE	4911
Fitchburg Gas & Elec Light	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4931
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Gulf States Utilities Co	Hawaiian Electric Inds	4911
HE	Houston Industries Inc	4911
HOU	I E Industries Inc	IEL4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Middle South Utilities	MSU	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
NECO Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric System	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
Northeast Utilities	NU	4931
Northern Indiana Public Serv	NI	4931
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilities	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Corp	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
Public Service Co of Colo	PSR	4931
Public Service Co of Ind	PIN	4911
Public Service Co of N H	PNH	4911
Public Service Co of N Mex	PNM	4931
Public Service Enterprises	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Savannah Elec & Power	SAV	4911
Scana Corp	SCG	4931
Sierra Pacific Resources	SRP	4931
Southern Calif Edison Co	SCE	4911
Southern Co	SO	4911
Southern Indiana Gas & Elec	SIG	4931
St Joseph Light & Power	SAJ	4931
TECO Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utah Power & Light	UTP	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Power & Light	WPL	4931
Wisconsin Public Service	WPS	4931

N = 100

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year = 87; Quarter = 4]

Ticker symbol and Utility	Reason for exclusion
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 12/31/87
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 12/31/87
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 12/31/87
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 12/31/87
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 09/30/87
NMK—Niagara Mohawk Power.	Dividend rate was reduced in the quarter ending 09/30/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year = 87; Quarter = 4]

Ticker symbol and Utility	Reason for exclusion
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 12/31/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year = 87; Quarter = 4]

Ticker symbol and Utility	Reason for exclusion
PNH—Public Service Co of NH	Dividend rate was zero for the quarter ending 12/31/87

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUI IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

[Year = 87; Quarter = 4]

Ticker symbol and Utility	Reason for exclusion
RGS—Rochester Gas & Electric.	Dividend rate was reduced in the quarter ending 09/30/87

N = 10

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year = 87; Quarter = 4]

Ticker symbol	Price, 1st month of Qrtr-High	Price, 1st month of Qrtr-Low	Price, 2nd month of Qrtr-High	Price, 2nd month of Qrtr-Low	Price, 3rd month of Qrtr-High	Price, 3rd month of Qrtr-Low	Average price	Dividends annual rate	Annual dividend yield
AEP	29.125	23.125	27.250	24.125	26.625	24.375	25.771	2.260	8
ATE	35.500	30.000	33.500	29.750	31.250	28.750	31.458	2.680	8
AYP	39.500	31.375	38.750	36.000	37.750	35.250	36.438	3.000	8
BGE	33.625	22.250	34.000	28.750	30.625	28.750	29.667	1.900	6
BKH	23.875	19.500	24.500	20.875	23.375	21.000	22.188	1.280	5
BSE	22.000	16.750	20.250	18.875	19.625	17.875	19.229	1.820	9
CER	36.000	30.500	33.750	30.250	31.875	29.000	31.896	2.340	7
CES	32.000	25.250	29.875	26.500	28.750	26.250	28.104	2.800	9
CIN	27.125	23.125	25.250	23.750	25.250	23.275	24.646	2.200	8
CIP	23.875	19.500	22.125	19.625	21.750	19.875	21.125	1.720	8
CNH	24.500	20.500	22.875	21.000	21.625	16.500	21.167	2.960	13
CNL	32.875	28.500	32.375	29.625	31.250	29.500	30.688	2.200	7
CPL	35.625	30.250	33.750	32.000	33.750	32.125	32.917	2.760	8
CSR	33.625	27.000	32.250	28.000	30.250	28.000	29.854	2.280	7
CTP	15.375	12.500	16.000	14.375	16.875	14.000	14.854	1.400	9
CV	23.375	20.625	23.875	21.250	23.875	21.125	22.354	1.900	8
CWE	36.500	25.250	29.500	27.000	29.500	26.750	29.083	3.000	10
CX	18.500	14.875	17.750	15.375	17.375	16.000	16.646	2.560	15
D	45.750	36.625	44.500	39.375	42.375	40.000	41.438	3.080	7
DEW	19.875	16.250	19.000	18.750	18.000	16.875	17.792	1.413	7
DPL	27.125	22.125	24.750	23.000	24.250	22.500	23.958	2.080	8
DQU	12.750	10.625	12.250	10.875	11.875	11.250	11.604	1.200	10
DTE	14.875	12.500	14.750	13.625	14.625	13.125	13.917	1.680	12
DUK	50.250	40.125	48.375	42.000	43.750	42.500	44.500	2.800	6
EQ	46.125	37.500	45.625	41.375	43.875	41.500	42.667	2.960	6
EDE	28.125	27.375	30.875	27.875	31.000	29.625	29.146	2.120	7
EUA	30.250	24.000	29.375	26.000	28.250	25.250	27.188	2.300	8
FGE	25.125	20.875	21.500	20.375	21.625	20.750	21.708	1.600	7
FPC	36.750	29.375	35.875	32.375	33.875	31.625	33.313	2.480	7
FPL	32.875	24.375	31.250	27.375	29.750	27.750	28.896	2.120	7
GMP	24.000	20.500	22.750	20.500	26.000	22.125	22.646	1.860	8
HE	28.750	22.250	28.000	25.375	27.500	25.000	26.146	1.920	7
HOU	34.250	26.500	32.500	28.375	30.250	28.750	30.271	2.880	9
IDA	26.250	19.000	24.000	21.250	23.500	21.125	22.521	1.800	7
IEL	24.500	20.875	24.375	22.125	23.875	21.625	22.896	2.020	8
IOR	20.875	17.375	20.375	18.625	20.375	18.750	19.396	1.640	8
IPC	27.000	21.250	25.125	22.250	24.250	22.375	23.708	2.640	11
IPL	24.125	19.250	23.375	22.000	22.500	20.750	22.000	1.560	7
IPW	23.250	21.000	23.875	21.375	21.625	19.375	21.750	1.960	9
IWG	40.750	35.000	37.375	34.500	38.375	34.875	36.813	3.040	8
KAN	25.875	20.000	25.125	22.625	23.875	22.250	23.292	1.650	7
KGE	22.250	16.000	19.750	18.375	19.250	18.375	19.000	1.480	7
KLT	28.125	21.000	27.625	24.500	26.250	24.375	25.313	2.240	8
KU	19.625	15.000	18.875	17.875	18.500	17.000	17.813	1.300	7
LOU	35.500	30.500	33.625	31.875	32.625	30.125	32.375	2.660	8
MAP	26.500	23.000	27.625	23.375	27.125	25.000	25.438	1.800	7
MPI	25.625	19.500	23.875	20.125	22.250	20.500	21.979	1.660	7
MT	36.375	29.875	32.625	29.750	31.875	29.500	31.667	2.680	8
MWE	19.875	15.000	18.875	16.500	18.125	16.250	17.438	1.520	8
NES	26.750	20.000	25.250	22.750	23.750	21.125	23.271	2.040	8
NGE	28.125	22.500	26.000	23.125	24.750	20.125	24.104	2.640	10
NPT	20.125	16.750	19.750	18.500	20.500	18.125	18.958	1.500	7
NSP	33.500	26.250	32.500	29.125	31.500	28.500	30.229	2.020	6
NU	23.125	18.000	21.875	20.000	20.875	19.000	20.479	1.760	8
NVP	19.625	16.375	19.250	17.625	19.625	18.250	18.458	1.480	8
OEC	21.500	16.500	20.625	19.125	20.500	18.375	19.438	1.960	10

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year = 87; Quarter = 4]

Ticker symbol	Price, 1st month of Qrtr-High	Price, 1st month of Qrtr-Low	Price, 2nd month of Qrtr-High	Price, 2nd month of Qrtr-Low	Price, 3rd month of Qrtr-High	Price, 3rd month of Qrtr-Low	Average price	Dividends annual rate	Annual dividend yield
OGE	32.375	28.000	30.625	29.375	30.000	28.250	29.771	2.180	7
ORU	32.875	25.000	30.375	28.000	29.125	26.750	28.688	2.220	7
PCG	19.875	15.000	19.125	17.375	17.875	15.750	17.500	1.920	10
PE	20.625	16.750	20.500	19.000	19.375	18.125	19.063	2.200	11
PEG	26.750	20.000	25.625	22.750	24.000	21.750	23.479	2.000	8
PGN	26.750	20.750	24.375	21.625	22.625	20.625	22.792	1.960	8
PNM	25.000	20.000	24.125	20.625	21.500	17.375	21.438	2.920	13
PNW	31.500	26.375	28.625	26.750	28.625	26.500	28.063	2.800	9
POM	24.375	18.000	24.375	20.000	23.000	20.750	21.750	1.300	5
PPL	37.875	28.625	35.750	33.125	33.875	31.750	33.500	2.680	8
PPW	35.625	26.750	33.625	31.625	33.250	30.500	31.896	2.520	7
PSD	21.875	17.750	20.125	18.875	19.875	18.750	19.542	1.760	9
PSR	21.250	17.250	20.750	18.875	21.250	18.875	19.708	2.000	10
SAJ	21.750	17.750	20.875	17.625	20.000	18.000	19.333	1.320	
SAV	19.250	14.625	21.625	18.375	21.375	19.125	19.063	1.000	5
SCE	33.750	27.625	33.625	30.500	31.500	29.625	31.104	2.380	7
SCG	33.000	26.500	31.625	29.375	29.875	28.125	29.750	2.320	7
SDO	33.750	28.250	32.750	30.375	31.500	29.250	30.979	2.500	8
SIG	36.375	31.000	35.000	31.250	35.750	31.000	33.396	2.120	6
SO	23.625	17.875	22.750	21.000	22.750	20.750	21.458	2.140	9
SRP	23.375	18.000	21.500	19.875	21.750	19.750	20.708	1.760	8
TE	27.875	22.500	23.875	22.500	24.000	22.000	23.792	1.340	5
TEP	58.250	50.875	55.875	52.250	53.500	49.250	53.333	3.600	6
TNP	20.375	17.250	19.625	18.125	19.000	17.500	18.646	1.390	7
TXU	31.750	26.000	30.000	28.000	28.125	25.500	28.229	2.800	9
UCU	17.034	13.358	16.500	14.625	16.750	14.750	15.503	1.020	6
UEP	25.500	19.875	23.875	21.875	22.375	20.750	22.375	1.920	8
UIL	26.500	21.250	26.500	24.125	27.625	24.875	25.146	2.320	9
UTL	33.625	29.500	31.250	30.000	30.250	29.375	30.667	1.960	6
UTP	29.875	20.750	29.125	27.250	27.875	25.000	26.646	2.320	8
WEC	26.250	21.000	24.750	21.500	23.750	22.000	23.208	1.440	6
WPL	48.000	43.750	46.500	43.750	45.250	42.500	44.958	3.120	6
WPS	22.750	18.875	22.500	20.125	21.500	19.875	20.938	1.540	7
WWP	26.875	22.250	24.500	22.875	25.250	22.250	24.000	2.480	10

N - 90

[FR Doc. 88-2465 Filed 2-4-88; 8:45 am]

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18 CFR Part 37

[Docket No. RM87-35-000; Order No. 469]

Generic Determination of Rate of Return on Common Equity for Public Utilities

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts a procedure for determining and updating the benchmark rate of return on common equity for the jurisdictional operations of electric public utilities. The Commission determines that the average cost of common equity for those jurisdictional operations for the year ending June 30, 1987 was 11.21 percent. The benchmark rates of return will remain advisory only and are intended to provide guidance to companies and intervenors in individual rate cases and to serve as a reference point for the Commission in its deliberations.

The Commission also provides that the benchmark rate of return will be applied in proceedings under section 206 of the Federal Power Act (FPA) as well as in proceedings under FPA section 205. The benchmark rate of return to be applied in a section 206 proceeding is the benchmark rate in effect on the date the Commission sets a rate for investigation.

The Commission will hold another annual generic rate of return proceeding for the year ending June 30, 1988.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

FOR FURTHER LEGAL INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

Issued January 29, 1988.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this final rule estimating the average cost of common equity for the jurisdictional operations of public utilities [1] for the year ending June 30, 1987 (hereafter the "base year") and adopting a quarterly indexing procedure to establish benchmark rates of return on common equity for use in proceedings before the Commission. Benchmark rates of return determined through these procedures remain advisory, as were those resulting from the previous three annual proceedings.[2]

[1] The terms "public utilities" and "electric utilities" are used interchangeably.

[2] The annual proceedings were first established by Order No. 388, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (July 25, 1984) (Docket No. RM80-36-000) (final rule) (Issued July 18, 1984) and Order No. 388-A, 49 FR 46351 (Nov. 26, 1984) (order denying rehearing) (Issued Nov. 21, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21080 (May 23, 1985) (Docket No. RM84-15-000) (final rule) (Issued May 20, 1985) and Order No. 420-A, 50 FR 34086 (Aug. 23, 1985) (Docket Nos. RM85-15-001, *et al.*) (order denying rehearing) (Issued Aug. 20, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986) (Docket No. RM85-19-000) (final rule) (Issued Dec. 28, 1985) and Order No. 442-A, 51 FR 22505 (June 20, 1986) Docket No. RM85-19-001, *et al.*) (order granting in part and denying in part requests for rehearing) (Issued June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987) (Docket No. RM86-12-000) (final rule) (Issued Dec. 24, 1986) and Order 461-A, 52 FR 5757 (Feb. 26, 1987) (order denying rehearing) (Issued Feb. 19, 1987).

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [3] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both ratepayers and utility stockholders. The allowed rate of return on common equity is now determined individually for each utility on a case-by-case basis. In July 1984, the Commission adopted procedures for the generic determination of benchmark rates of return on common equity and for their application in individual cases.[4] The Commission has conducted three prior proceedings to determine benchmark rates of return and has made those rates advisory only. In that advisory only status, benchmark rates are intended to provide guidance to parties to rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return.[5]

As required by § 37.4 of the Commission's regulations, the Commission initiated a fourth proceeding to determine benchmark rates of return by issuing a Notice of Proposed Rulemaking (NOPR or Notice) on September 30, 1987.[6] The Commission received 14 timely comments.[7] Table 1 lists estimates of the average cost of common equity for the base year submitted by commenters, using the discounted cash flow methodology.

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[3] 16 U.S.C. 824d (1982).

[4] Order No. 388, 49 FR 29946.

[5] *Id.* at 29954.

[6] Generic Determination Rate of Return on Common Equity for Public Utilities, 52 FR 37328 (Oct. 6, 1987) (Docket No. RM87-35-000) (notice of proposed rulemaking) (Issued Sept. 30, 1987).

[7] The Commission refers to commenters by abbreviations in the text that follows. See Appendix A for a list of commenters and their abbreviations.

Table 1. Estimates of the Average Cost of Common Equity to Electric Utilities for the Year Ending June 30, 1987

Commenter 1/	Sample Size 2/	Model Used 4/	Current Dividend Yield	Quarterly Dividend Adjustment	Adjusted Dividend Yield	Constant Growth Rate	Required Rate of Return	Flotation Cost Adjustment	Cost of Common Equity
BEC	100	420	6.70	0.18	6.88	5.30	12.18	0.01	12.19
EEI	100	420	6.70	0.17	6.87	5.10	11.97	0.02	12.00
AUS	100	420	6.70	0.16	6.86	4.80	11.66	0.11	11.77
SWEP	100	420	7.14	0.15	7.29	4.32	11.61	0.02	11.63
NEP	100 3/	420	6.75	0.17	6.92	5.00	11.92	NR	11.92
	100 3/	420	6.75	0.15	6.90	4.50	11.40	NR	11.40
COMMISSION	100	420	6.70	0.15	6.85	4.34	11.19	0.02	11.21
FA STAFF	100	420	6.72	0.13	6.86	4.10	10.96	0.03	10.98
COOPERATIVES	100 3/	420	6.70	0.13	6.84	4.02	10.85	0.01	10.87
MINN	100	420	7.00	0.12	7.12	3.55	10.67	0.04	10.71

1/ See Appendix A for identification of commenters.
2/ Except as indicated, Commenter started with the Commission's sample of 100 utilities and made adjustments based on various criteria
3/ This sample begins with the 100 utilities in Salomon Brothers' Electric Utility Monthly publication.
4/ "420" refers to the Commission's "420 Model".
NR Not Reported

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III. Discussion

A. Overview

As discussed more fully below, the Commission adopts the procedure proposed in the NOPR for determining and updating the benchmark rate of return by relying on the discounted cash flow (DCF) method for estimating the rate of return on common equity.[8] The Commission estimates that the average cost of common equity for the jurisdictional operations of electric utilities during the base year was 11.21 percent. This is based on an unadjusted base year dividend yield of 6.70 percent, a growth rate of 4.34 percent, and a flotation cost adjustment of .02 percent.

The benchmark rates of return also become applicable to proceedings under FPA section 206. The benchmark rate of return in effect on the date the Commission sets a rate for investigation in the section 206 proceeding will generally be applied.

In the NOPR, the Commission expressed its concern that, despite numerous urgings in previous rulemaking proceedings, parties are not giving due consideration to the benchmark rate of return. Therefore, the Commission is specifically requesting that all rate case participants, including staff and administrative law judges, evaluate the reasonableness of the applicable benchmark rate of return. The Commission believes that the analyses it receives will enable the Commission Staff and participants in the proceeding to use the benchmark rates of return as points of departure in setting allowed rates of return.

B. The Applicability of the DCF Model

The Commission is relying on the discounted cash flow method for estimating the rate of return on common equity. Specifically, that formula is:

$$k = (1 + .5g)y + g$$

where:

- k = market required rate of return
- y = current dividend yield (current annual dividend rate divided by current market price)
- g = expected annual dividend growth rate
- (1 + .5g) = dividend adjustment factor for quarterly dividend payments

Several commenters assert that the price volatility experienced by the stock markets during October 1987 makes the DCF model unusable.[9] American Electric Power Service Corporation (AEP) states that "there have been large speculative forces operating in the market for a substantial period" [10] and that those forces are responsible for the price volatility.

The Commission's use of the dividend yields for six months in the quarterly indexing procedure is designed to smooth out short-term market fluctuations that might exist if it used spot yields. These fluctuations may or may not be due to what AEP terms "speculation". However, if a utility's stock price changes for a substantial period of time for whatever reason, that utility seeking to raise new equity would be faced with a changed cost of equity. Rather than misstating a utility's cost of equity, as AEP claims, the DCF model as applied by the Commission recognizes that price changes can reflect a changed cost of equity.

Consumers Power Company (CPC) states that the recent extraordinary volatility in stock prices has contributed to rapidly changing dividend yields. CPC then cites the wide variability of yields as reducing the continuity of calculated yields used in the DCF model, and claims that the DCF methodology is rendered inapplicable. In particular, CPC charges that the large fall in utility stock prices during October 1987 may have "reduced the continuity of the calculated yields in the DCF model."[11]

On October 19, 1987, the Standard and Poor's 500 Stock Price Index declined by more than 20 percent, while the Salomon Brothers' 100 Electric Utility Index declined by roughly half as much. By December 15, 1987, stock prices had recovered somewhat: the decline in the S&P 500 Index had been reduced to 14 percent and that of the Salomon Brothers' 100 to less than 6 percent.[12] During this period, dividend yields calculated on a daily basis were volatile. The smoothing process discussed above is designed to remove short-term fluctuations in dividend yields and to preserve changes due to longer term trends. Historically, utility dividend yields tend to move in the same direction as interest rates. Appendix B shows the smoothed dividend yields and smoothed 30-year Treasury bond yields for each of the quarterly benchmark periods since the first quarter of 1986. The yields for the most recent period, measured between July and December 1987, are circled. The most recent yield is in line with dividend yields and interest rates in other periods, indicating that the continuity of dividend yields is still intact. The Commission therefore finds that dividend yields, as calculated in the quarterly indexing procedure, have not become discontinuous.

Alfred Winchell Whittaker (AWW) argues that market inefficiencies render the DCF model useless and cites some recent studies in the economic literature.[13] He charges that for the market to be efficient, "all investors [must] have access to all publicly available information, understand all of its implications, and correctly use the information in making all their investment decisions." As the Commission stated in the previous proceeding, "[t]he efficient market theory is founded upon the proposition that 'all relevant information is widely and cheaply available to investors and that all relevant and ascertainable information is already reflected in security prices' ".[14] The efficient market literature cited by AWW claims that variations in stock market prices appear to be too large to be explained by variations in subsequent dividend payments. The Commission considered this argument and rejected it in the previous proceeding, essentially because the findings of the studies cited are not generally accepted as proven propositions.[15] In addition, the dividend yield "smoothing" process used in the benchmark quarterly indexing procedure reduces short-term price variations. Thus, if the theory of excessive stock price volatility cited by AWW[16] proves correct, that fact would further support the use of the Commission's current methodology since it already smoothes "excessive" price fluctuations.

AEP argues that the DCF model misstates the cost of common equity capital. AEP argues that the model assumes erroneously that the market price of a stock is primarily or exclusively determined by current dividends and expected future increases in dividends, and ignores other factors such as expectations about changes in stock prices, inflation rates and speculative considerations.[17]

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[8] The Commission notes that those procedures were also adopted in the third annual proceeding.

[9] American Electric Power Service Corporation (AEP) at 4–5. Associated Utility Services, Inc. (AUS) at 21. Consumers Power Company (CPC) at 3. Edison Electric Institute (EEI) at 32. Southern California Edison (SCE) at 2, and Alfred Winchell Whittaker (AWW) at 2–5.

[10] AEP at 4.

[11] CPC at 3.

[12] Calculated by Commission staff from raw data provided by Salomon Brothers.

[13] AWW at 4–7.

[14] 52 FR 30, quoting Brealey, R. and Myers, S. *Principles of Corporate Finance*, McGraw-Hill (1984) at 266.

[15] Order No. 461–A, 52 FR 5759

[16] AWW at 4–5, citing R. Shiller "The Volatility of Stock Market Prices," 235 *Science* 33 (Jan. 1987) and Shiller, "Stock Prices and Social Dynamics," *Brookings Papers on Economic Activity* 457, 490 (1984).

[17] AEP at 3.

AEP misinterprets the theory underlying the DCF model. The DCF model used by the Commission shows the relationship between stock prices and dividends, growth rate of dividends, and shareholders' required rate of return. It does not assume that price is primarily determined by dividends alone. The DCF model assumes that price, "P_0", is determined by a combination of factors:

$$P_0 = \frac{D_0(1+.5g)}{k-g}$$

Two of these factors relate to dividends. The indicated current dividend is represented by the "D_0" term and the expected growth rate of dividends is represented by the "g" term. The other factor, the shareholders' required return on equity, the "k" term, also influences price. This term has several components, including expectations about the real interest rates, the expected rate of inflation, and the "risks" associated with owning a particular stock. It is this term that is estimated by the DCF model. Contrary to AEP's claim, prices in the DCF model change in response to changes in expectations associated with the "g" and "k" terms.

Two commenters question the ability of the constant growth DCF model to forecast stock market prices.[19] Associated Utility Services, Inc. (AUS) claims that equity price behavior is quite different from the assumptions of the constant growth DCF model. AUS cites a study it commissioned which found the constant growth DCF model wanting in its ability to predict accurately one-period stock price changes. AEP criticizes the DCF formula for its "inability to anticipate or explain the large movements in stock prices during October 1987."

The Commission agrees that the DCF model is a poor method for predicting future stock prices. A simplifying assumption underlying the constant growth DCF model is that the firm will grow at a constant rate. This implies that book value and dividends can be thought of as growing at roughly the same rate. If there were no changes in expectations from one year to the next, prices could be expected to grow at the same rate as earnings, dividends, and book value. AUS tested the relationship between a percentage change in market price and percentage changes in per share earnings, dividends, and book value over a one-year period. Since expectations do change, it is not surprising that AUS found that the model did a poor job of explaining changes in stock prices. The DCF model is used to estimate the return required by investors at the time the analysis is performed. It is not intended to forecast price changes, changes in market conditions, or changes in expectations. A year later, expectations about interest rates, dividends, and growth rates will likely have changed. Prices change because expectations change. A test to determine whether a DCF model can forecast stock price changes is not a valid test of the model.

Several commenters question the size of the difference between the benchmark rate of return and bond yields.[19] The Commission finds problems with commenter studies measuring the premium between the quarterly benchmark rates of return and bond yields. Several commenters use spot bond yields in their analyses.[20] In the quarterly indexing procedure used to develop the benchmark rate, the Commission uses a six-month dividend yield to smooth short-term market fluctuations inherent in spot yields. A similar smoothing process should be used to remove short-term fluctuations from bond yields before any comparison is made.

In addition, some commenters mismatched the time periods for comparison between the benchmark rate and bond yields. While it is true that a benchmark rate of return is meant to apply to a particular period, it is calculated by the Commission using dividend yield data from a period prior to the applicability period. Therefore, a fair comparison should contrast the benchmark rate of return with contemporaneous smoothed bond yields.

AUS argues that the validity of the Commission's benchmark rate of return should be tested by analyzing the reasonableness of the quarterly DCF calculations. AUS compares each of the quarterly benchmark rates of return [21] with the yields of A-rated public utility bonds for the benchmark applicability period. The decline in the spread between those benchmark rates and bond yields from 4.12 percentage points for the February to April 1986 benchmark period to 0.74 percentage points for the August to October 1987 benchmark period demonstrates, in AUS's words, "the basic infirmity of the DCF approach."

Concerning AUS's test of the validity of the benchmark rate of return, the Commission notes that AUS's risk premiums were incorrectly calculated. The correct comparison contrasting the benchmark rate of return with contemporaneous yields on the A-rated bonds used by AUS appears in Table 2. This table presents data beginning with the results of the second annual proceeding, when the Commission adopted a six-month average dividend yield for use in updating the quarterly benchmarks through 1987.

TABLE 2.—COMPARISON OF THE DCF-CALCULATED RATE OF RETURN ON COMMON EQUITY AND A-RATED PUBLIC UTILITY BOND YIELDS

Benchmark applicability period	Dividend yield measurement period	Benchmark rate of return (percent)	A-rated public utility bond yields (percent)	Spread (implied risk premium) (percent)
February 1986 to April 1986	July 1985 to December 1985	13.75	11.80	1.95
May 1986 to July 1986	October 1985 to March 1986	13.08	10.83	2.25
August 1986 to October 1986	January 1986 to June 1986	12.18	9.81	2.37
November 1986 to January 1987	April 1986 to September 1986	11.43	9.42	2.01
February 1987 to April 1987	July 1986 to December 1986	11.20	9.35	1.85
May 1987 to July 1987	October 1986 to March 1987	11.30	9.13	2.17
August 1987 to October 1987	January 1987 to June 1987	11.74	9.37	2.37
November 1987 to January 1988	April 1987 to September 1987	12.27	10.19	2.08

[19] AEP at 4–5 and AUS at 26–27.

[19] AUS at 59, CPC at 2–3, and AWW at i–ii.

[20] AUS and CPC used spot yields. It could not be ascertained whether AWW used spot yields or smoothed yields.

[21] Calculated without regard to the cap initially used for indexing purposes.

In contrast with AUS's claim, the Commission finds the risk premiums implied by its quarterly benchmark rates of return are consistent: over the two-year period they varied by only 0.42 percentage points, and had an average value of 2.13 percentage points.

CPC claims that the DCF methodology produces benchmark equity returns without meaningful premiums over prevailing debt rate levels [22] (the benchmark rate of return for the November 1987 to January 1988 quarter was 12.24 percent, while the average yield of Baa utility bonds in September 1987 was 11.58 percent). CPC suggests that this situation falls short of the *Bluefield* standard that a utility should have an opportunity to earn returns comparable to unregulated companies of similar risk levels.[23]

CPC compares the benchmark rate applicable to the period November 1987 through January 1988 (12.24 percent), calculated based on dividend yields and growth rates from April through September 1987, to spot yields for September 1987 (11.58).[24] The difference in yields or risk premium, is 0.66 percentage points. The Commission disagrees with this analysis. As discussed above, bond yields must be smoothed to remove wide fluctuations in prices that may occur if spot yields are used. The smoothed bond yield is 10.19 percent. When the proper comparison is made, the premium is 2.05 percentage points.[25]

AWW finds a negative correlation between the Commission's DCF-produced cost of equity and 30-year U.S. Treasury bond yields—a result contrary to expectation since financial theory holds that the cost of equity reflects the current interest rate plus a constant premium for additional risk.[26]

AWW does not present sufficient data for the Commission to verify his results. He does not specify whether his data represent spot yields or smoothed yields and/or whether they are from the benchmark measurement period or the benchmark applicability period. In any event, a graph of the benchmark rates of return and smoothed 30-year Treasury bond yields is shown in Appendix C. The two rates can be seen to change in the same direction. The Commission's analysis shows that the correlation between the two rates is positive.[27]

Constant maturity 30-yr U.S. Treasury bond yields	Benchmark applicability period
10.30	2/86–4/86
9.40	5/86–7/86
8.13	8/86–10/86
7.45	11/86–1/87
7.47	2/87–4/87
7.51	5/87–7/87
8.01	8/87–10/87
8.80	11/87–1/88

Commenters suggest that the DCF formulation used by the Commission is wrong.[28] In particular, Edison Electric Institute (EEI) states that the Commission's DCF methodology systematically understates the cost of equity capital through its failure to distinguish properly between nominal and effective interest rates. EEI concludes that the DCF model fails to reflect the fact that utility dividends are generally paid quarterly.[29] This charge is incorrect.

The issue of the difference between nominal and effective interest rates has been addressed by the Commission in previous proceedings.[30] The derivation of the Commission's DCF model began with a model which measures the investors' effective required rate of return on common equity when dividends are paid quarterly.[31] The Commission described this formula as including "the benefits to investors of getting the dividends in four quarterly installments rather than in a lump sum at the end of the first year. These benefits are, of course, the additional return investors may obtain by reinvesting the dividends received quarterly in the same or another comparable investment until the end of the year."[32] Because the investor retains the quarterly payments and can reinvest them, the utility's cost should reflect only the (nominal) amount of the dividends received by the investors. A model which allows a utility to capture its investor's effective required rate of return on common equity would compensate the investor twice—once through the dividend actually paid by the utility and once through the investor's reinvestment of that dividend in some alternative investment. The model used by the Commission subtracts the return investors receive through the reinvestment of dividends from their required rate of return. The Commission finds that its DCF model does properly distinguish between nominal and effective interest rates and that it also properly reflects quarterly dividends paid by utilities.

AWW compares the DCF benchmark rates of return to book returns of unregulated companies an argues that the DCF results are too low.[33] AWW concludes that the DCF methodology cannot be squared with the governing legal standards on utility returns set out in *Federal Power Commission* v. *Hope Natural Gas. Co.*[34] He argues that it fails to meet either the comparable earnings standard ("the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks") or the attraction of capital standard ("the return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital") because it ignores actual developments in financial markets and the earnings of other companies with corresponding risks.

AWW raised the issue of comparable rates of return between unregulated companies and utilities in the previous annual proceeding and provides no new information. The Commission rejects this argument for the same reasons that it stated in the previous proceeding.[35] There is compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions. Furthermore, a market cost of capital approach addresses both the comparable earnings and attraction of capital standards of the *Hope* decision. In the Commission's judgment, the DCF method is the best available means of estimating the market cost of capital.

AUS and AWW claim that when a market-derived allowed return, such as that derived from the DCF model, is applied to a book value rate base, the result is an incorrect level of earnings.[36]

[22] CPC at 2–3.

[23] Citing *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923).

[24] CPC uses Moody's Baa-rated utility bonds.

[25] In computing the six-month bond yield the Commission used the A-rated Moody's bond yields submitted by AUS as Schedule 8 in its comments. Since bonds rated Baa are more risky than bonds rated A, the premium between Baa bond yields and the benchmark will be slightly smaller than that for A-rated bonds.

[26] AWW at i–ii.

[27] The coefficient of determination between the two rates R^2 is 0.97, indicating that 97 percent of the variation in the benchmark rate of return is explained by changes in 30-year Treasury bond yields. The following Treasury bond yields were used in the calculation:

[28] EEI at 34–35 and AWW at 7.

[29] EEI at 34–35, citing C.J. Cicchetti and J.D. Makholm, "The FERC's Discounted Cash Flow: A Compromise in the Wrong Direction," *Public Utilities Fortnightly* (July 9, 1987) pp. 11–15.

[30] 52 F.R. at 15–16.

[31] 51 F.R. at 348.

[32] *Id.*

[33] AWW at 2–3.

[34] 320 U.S. 591 (1944).

[35] 52 FR at 29–30, and 50 FR at 21,823.

[36] AUS at 25 and AWW at 10.

Specifically, they claim that when a utility's market-to-book ratio is above one, applying a DCF-based allowed rate of return to a book value rate base results in earnings that are too low. Conversely, when a utility's market-to-book ratio is below one, applying a DCF-based allowed rate of return to a book value rate base results in earnings that are too high. Both commenters argue that the allowed rate of return should be applied to a market value rate based rather than to book value.

The following example demonstrates the circularity of their claim. Equity capital costs generally rise as interest rates rise. Conversely, equity capital costs generally fall as interest rates fall. During periods of rising equity costs, utilities generally file for rate increases to cover these higher costs. This action protects utility shareholders from declines in the value of their stock. The result is a tendency to maintain a utility's existing market-to-book ratio during periods of rising equity costs.

During periods of falling capital costs, the revenue required to meet shareholder capital cost requirements also declines. Until a utility files for new rates at the lower capital cost, it continues to charge rates based on the higher equity capital costs that existed when the current rates were set. The result is a tendency for the utility to earn more than its shareholders currently require [37] and a concomitant increase in the price of the utility's common stock and market-to-book ratio.[38]

When capital costs are below those of the previous filing, applying the allowed rate of return to a market value rate base would perpetuate the unnecessarily high revenues at the expense of utility's customers. Applying the allowed rate of return to a book value rate base would reduce revenues to the level required by shareholders at the new lower cost of equity.[39] These revenues will provide the utility with an opportunity to recover all costs including the cost of capital.

The argument over the application of an allowed rate of return to a market value rate base is an old one and the problem of circularity inherent in that approach has been long and widely recognized. The Supreme Court's statement in *Federal Power Commission v. Hope Natural Gas Co.* that "rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated" reflects its recognition of that problem.[40] The market value of an enterprise or its common stock depends upon its earnings or anticipated earnings, which in turn depend upon the rates allowed. Thus, market value is a result of the ratemaking process and may not properly be the beginning of that process as well.[41]

For these reasons, and because commenters have failed to present convincing evidence that their approach is superior, the Commission finds that its policy of applying the allowed rate of return to a book value rate base is appropriate.[42]

C. Sample

As proposed, the Commission will use a sample of 100 electric utilities [43] based on the standards adopted in the prior annual proceedings. There are three bases for selection of this sample. First, the sample is representative of the electric utility industry as a whole. Second, the relevant price and dividend data are generally available for all of these companies. Finally, the data are readily accessible from more than one source.

The sample consists essentially of those publicly traded electric utilities or combination companies that meet the following explicit standards:

(1) The utility is predominantly electric; [44]

(2) The utility has its stock traded on either the New York or American Stock Exchanges;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[45]

The fourth standard provides the Commission the discretion to eliminate companies for which data may be unavailable or inappropriate.

The Commission will continue using the following screening criteria in each quarterly calculation to ensure that the data for each company is available and that it can reasonably be employed in a mechanical fashion without producing distorted or unreasonable statistics. Companies will be dropped from the sample for the following reasons:

(i) The company's common stock no longer is publicly traded due to merger or other action;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.[46]

The first screen ensures data availability. If a company is no longer publicly traded, it will not have a current market price (and yield). The second screen eliminates companies for which data would probably be inappropriate in a constant growth DCF model. The third screen provides the Commission the further discretion to eliminate atypical companies, if necessary.

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[37] Earnings above those required by the shareholders may be offset, to some extent, by an increase in other costs.

[38] The rise in the price of a utility's common stock under these conditions is roughly analogous to the rise in the price of a bond as interest rates decline, *i.e.*, the interest payments to investors are worth more as capital market rates decline.

[39] If a utility is slow to file during a period of rising equity costs or if the regulator is slow to act, the utility's revenues will fall below the level required by its shareholders. The utility's common stock price and its market-to-book ratio would also fall. If the allowed rate is applied to this lower market value, the resulting revenue will remain below that required by the stockholders and the lower stock price will be perpetuated.

[40] 320 U.S. at 601.

[41] *See* Kahn, Alfred E., *The Economics of Regulation: Principles and Institutions: Principles*, John Wiley & Sons (1970) at 37–38. Phillips, Charles F., Jr., *The Economics of Regulation*, Richard D. Irwin (1965) at 217–219.

[42] This issue has also been raised in previous proceedings. *See, e.g.* 52 FR at 29–30 and 50 FR at 21–829.

[43] 52 FR at 37,327. See Appendix D for a list of the utilities included in the sample.

[44] Operationally the Commission has selected all companies classified in the industry groupings "Electric Services" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. (Compustat). These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget's Standard Industry Classification Codes. The Compustat "Electric Services" industry grouping (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and/or distribution of electric energy for sale where these services constitute 90% or more of revenues. The industry grouping "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part though less than 90% of revenues (Utility Compustat II User Manual (1987)).

[45] Three companies which met the first three standards were eliminated from the sample. Southwestern Public Service Company was eliminated because it is the only utility that uses a non-standard fiscal year which does not end at the end of the calendar quarter. This causes its dividend yield to be out of time with the rest of the companies. CP National was deleted because, in spite of its being listed as a predominantly electric company, only 18 percent of its revenues in 1986 were derived from electric sales and only 13 percent of its assets as of the end of 1986 were electric. Compustat moved this company from its utility data base to its telecommunications data base in September 1987. Finally, Catalyst Energy Development Corporation was omitted because it has never paid common stock dividends.

[46] A list of the utilities excluded from calculation of the base year dividend yield appears in Appendix E.

EEI comments that the exclusion from the dividend yield computation of companies which reduced or omitted their dividend payments because of financial difficulties (the second screening criterion) causes the average cost of common equity to be understated because the sample is not representative of the entire industry.[47]

It is interesting to note that while EEI suggests that the elimination of the riskiest companies through the sampling procedure will lead to a downwardly biased result, Cooperatives argue that the potential exists for an upwardly biased result through exclusion of diversified firms, with assumed lower dividend yields, from the dividend yield calculation and inclusion of those same firms, with their assumed higher expected growth rates, in the growth rate sample. FA Staff makes a somewhat similar point in suggesting that a number of reputedly diversified companies be eliminated from the sample.

Although the Commission concurs in theory with EEI that all companies should be included in the sample, it finds that the effects of excluding some risky companies are mitigated by the other screens used by the Commission, as well as by the use of a median dividend yield.[48] Moreover, the number of companies excluded still represents a small segment of the industry. For the foregoing reasons, the Commission finds that the sampling procedure adopted will result in a group of companies that is reasonably representative of the electric utility industry.[49]

The North Carolina Electric Membership Corporation, *et al.* (Cooperatives) suggest that the sample of utilities used to estimate the dividend yield term be the same group of companies used to estimate the long-run expected growth rate in order to avoid potential mismatching of dividend yields and growth rates. They maintain that if this is not done, the rate of return would be upwardly biased by excluding diversified utilities (which typically have lower than average dividend yields and higher than average growth rates) from the calculation of the industry dividend yield but including them in the determination of the industry growth rate. CPC also criticizes the Commission's use of two independent samples to determine dividend yields and growth rates.[50]

The Commission is not persuaded that the potential magnitude of the bias alleged by Cooperatives and CPC warrants a change in the Commission's position that there should be no requirement that the sample of companies used to estimate the growth rate conform to the sample of companies used to calculate the dividend yield. The assumption, of course, is that the growth rate sample is sufficiently broad-based to be representative of the industry. Commenters should be able to rely on the best available industry data in conducting their analyses. If the Cooperatives believe that the approach they suggest will lead to more accurate results, they are, or course, free to submit such an analysis in future proceedings.

The Cooperatives would go further and eliminate those utilities which had been expected to reduce dividends during the prior twelve months on the ground that investors anticipate dividend reductions and bid down the prices of the stock prior to the official announcement of dividend reductions.[51]

The Commission believes that the exclusion from the sample of firms expected to reduce their dividends would be somewhat premature and speculative. It is the policy and practice of the Commission to exclude companies only when obvious error or bias would result from their inclusion. The existence of a high dividend yield may portend a short-term aberration, but it may also reflect high capital costs and the Commission would prefer to wait for actual adverse dividend actions before excluding a firm. In any event, concern for such outliers is mitigated by the use of the median as the measure of the average.[52]

The Financial Analysis Branch of the Commission's Office of Electric Power Regulation (FA Staff) proposes to eliminate from the industry sample an additional 29 companies which have begun to diversify into unregulated businesses. Its rationale is that diversified companies have a different risk profile than firms which are solely regulated utilities because diversified companies as a group have lower dividend yields, higher expected earned returns and, therefore, higher price-to-book ratios. It suggests that the lower dividend yields of diversified companies are due to increase retention ratios in order to put more money into diversification efforts. In the alternative, FA Staff suggests that, should the Commission choose not to address the diversification issue in this proceeding, it monitor the effects of diversification on the industry average cost of equity in future proceedings.[53]

Although FA Staff's data show some divergence between diversified and non-diversified utilities in dividend yields, expected earned returns, and price-to-book ratios, they also show that the costs of equity for the two groups currently remain very close.[54] Nonetheless, the Commission agrees that diversification is an increasingly important factor in the electric utility industry and the Commission intends to continue to monitor its effects on the industry average cost of equity in future proceedings. The Commission believes that its present sampling procedures regarding diversified firms are adequate.[55]

The Cooperatives also suggest that the electric utility industry is significantly segmented between nuclear and non-nuclear groups. It offers statistical data showing that the non-nuclear group has lower twelve-month average dividend yields (by 150 basis points during the period ended June 30, 1987), higher retention ratios and retention growth, higher median stock financing growth, and therefore a lower cost of equity (10.61 percent compared to 11.52 percent over the same period).[56]

The issue raised by the Cooperatives regarding the nuclear-nonnuclear segmentation has been raised before.[57] The Commission's response remains that benchmark rates of return are currently advisory only and there is no presumption that they are applicable to any segment of the industry. Moreover, despite the Cooperatives' statistical results,[58] the Commission believes that the industry-average benchmark is useful as a point of departure in individual rate cases.

D. Dividend Yield

The Commission adopts the dividend yield policy used in the earlier proceedings, as proposed. Under this policy, the dividend yield used in the DCF model is the median of the dividend yields of those companies that

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[47] EEI, Appendix A at 3.

[48] 52 FR at 17; 51 FR at 352.

[49] Those companies which were excluded from the sample because of a recent reduction or omission of their dividends presumably would not be subject to application of the benchmark rate of return.

[50] Cooperatives at 75–78, and CPC at 3.

[51] Cooperatives at 73–83.

[52] 50 FR at 21813.

[53] FA Staff at 1, 12.

[54] FA Staff at 12–14.

[55] 51 FR at 351 at fn. 65.

[56] Cooperatives at 107–115.

[57] See, *e.g.*, 52 FR 14 at fn. 32.

[58] As discused *infra*, the Commission modifies the growth rate analysis done by the Cooperatives so that these results can not be taken as conclusive on the issue of the distribution of costs in the electric utility industry.

remain in the sample after application of the screening criteria described above (median yield).[59] The quarterly dividend yield for each company will be computed by dividing the dividend rate by the price. The dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend times four. The price is the simple average of the three monthly high and low prices for the quarter.

The dividend yield for the base year is the average of four quarterly median yields. The dividend yield used in the quarterly indexing procedure will be the average of two quarterly median yields.

Most commenters use the method proposed by the Commission to compute the dividend yield and do not raise significant objections. EEI, however, identifies the use of the median dividend yield rather than the arithmetic mean as a technical problem with the Commission's methodology. Specifically, EEI observes that because the distribution of electric utility dividend yields has been consistently skewed to the right (*i.e.*, there are more "outliers" with high dividend yields than with low dividend yields), the arithmetic mean is higher than the median of the distribution. EEI claims that the Commission's use of the median dividend yield rather than the mean causes the resultant rates of return to be systematically understated. EEI's proposed alternative to the median is to eliminate "outliers" beyond three standard deviations from the arithmetic mean and to use the resulting arithmetic mean as a measure of the dividend yield for the average utility. In defense of its proposal, EEI argues that the Commission has instituted a "screening process" that should eliminate most, if not all, utilities with unusually high dividend yields based on special circumstances, particularly those utilities which have omitted or recently reduced their dividends. EEI suggests that because of the screening process the "need for control of the impact of extreme values by using the median dividend yield is substantially reduced."[60]

EEI further supports its proposed use of the arithmetic mean by arguing that the risk differential procedure the Commission proposes for individual rate cases depends on a comparison of the subject utility with the "average utility" based on the arithmetic mean of company-specific data for various measures of risk. EEI argues that to be consistent the Commission should also compute its benchmark rate of return on the basis of the arithmetic mean of the dividend yields.

In evaluating alternative measures of the average dividend yield in a previous proceeding the Commission found that: [61]

> * * * the appropriate measure of the average should be a rate that is reasonable for the greatest number of companies. Using such a measure should minimize the number of times a utility or its customers will argue for a rate other than the benchmark because the utility is significantly more or less risky than average.

The Commission found that, of the alternative measures proposed, including the arithmetic mean, the median best met this requirement.[62] It also found that the median was the measure least affected by the existence of extreme values in the data.[63] EEI has not convinced the Commission that these conclusion are wrong. Moreover, the Commission notes that the important property of the median is that there will be an equal number of companies above and below the median. The mean of a skewed distribution does not have either property. The Commission's "screening process" cited by EEI does not eliminate skewness. Truncating the distribution as EEI suggests, by eliminating all dividend yield "outliers" greater than three standard deviations from the mean would not guarantee the elimination of the skewness. The arithmetic mean remains a less appropriate measure than the median.

EEI is under the erroneous impression that the Commission would require the use of risk differential analyses containing measures for the "average utility" calculated as an arithmetic mean. The Commission is not requiring any specific form of risk differential analysis. If utilities believe that using the arithmetic mean in such analyses would lead to systematically understated awards, they need not use it. Since there is no requirement to use the arithmetic mean when measuring risk in a risk differential analysis, there is no problem of inconsistency.

Cooperatives suggest that, in computing the base year dividend yield, an averaging period of less than 12 months would better reflect changing market conditions. They state that the DCF model is a long-run expectations model. Cooperatives suggest that it is often necessary to smooth out short-term dividend yields to reduce the effects of variations which do not reflect investors' long-run expectations, but that care must be taken not to oversmooth the spot dividend yields and thereby miss fundamental changes.

The Commission believes that an averaging period of twelve months in computing the base year dividend yield better reflects market conditions. Cooperatives have previously proposed computing the base year dividend yield over a period of less than twelve months.[64] The Commission continues to reject the use of an averaging period of less than one year for computing the base year dividend yield, primarily because the use of a dividend yield over only half of the base year will not provide a reasonable estimate of the cost of common equity for the entire year since the cost during the first half of the year may be different than that for the second half.[65]

The base year dividend yield using the average of the four quarterly median yields for the year ended June 30, 1987, is 6.70 percent.[66]

E. Growth Rate

In the NOPR, the Commission proposed to rely on both a fundamental analysis approach and a two-stage growth model to estimate the expected growth rate in this proceeding.[67] In a fundamental analysis, the two underlying components of growth are evaluated—growth from retention of earnings (br) and growth from sales of new common stock (sv).[68] In a two-stage growth analysis, near-term and long-term growth expectations are evaluated separately. The Commission also proposed to consider other data and methods to estimate expected growth as a check on the reasonableness of the above analyses.

Eight commenters make growth rate recommendations. These growth rate recommendations range from 3.55 percent by the Minnesota Department of Public Service (MINN) to 5.3 percent by Boston Edison Company, *et al.* (BEC).

[59] *See*, Order No. 420, 50 Fed. Reg. at 21,812; Order No. 442, 51 FR at 352–353, Order No. 461, 52 FR at 17–18.

[60] EEI at 32–33.

[61] Order No. 420, 50 FR at 21,814.

[62] *Id.*

[63] *Id.*

[64] 52 FR at 17.

[65] 52 FR at 17–18.

[66] The median dividend yields for the third and fourth quarters of 1986 and for the first and second quarters of 1987 are 6.33, 6.54, 6.54, 7.40 percent, respectively. *See* Appendix B for a list of the companies included in the sample and the companies excluded in each of the four base year quarters.

[67] 52 FR at 37327.

[68] Growth from retained earnings, or internal growth, is a function of the expected return on common equity (r) and the expected retention ratio (b). Growth from sales of new common stock, or external growth, is a function of how much stock is expected to be sold (s) and at what price relative to book value (v). The formula for estimating the growth rate based on such a fundamental analysis is thus: g = br + sv.

See Table 3. The raw growth rate data relied on by the commenters is presented in Table 4. Based on a review and evaluation of the growth rate analyses submitted by the commenters in this proceeding, the Commission finds the expected growth rate during the base year to be 4.34 percent.

TABLE 3.—SUMMARY OF GROWTH RATE RECOMMENDATIONS

Commenter	Growth rate	Basis for recommendation
Utilities		
1. BEC	5.3	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
2. EEI	5.1	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Projected fundamental analysis. 4. Analyst forecasts. 5. Two-stage growth analysis.
3. AUS	4.8	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts. 4. Two-stage growth analysis.
4. NEP	4.5/5.0	1. Hist. DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts.
5. SWEP	4.32	1. Hist. EPS and DPS growth rates. 2. Base year fundamental analysis. 3. Analyst forecasts.
Customers		
6. Cooperatives	4.02	1. Base year fundamental analysis. 2. Hist. EPS, DPS, and BVPS growth rates.
Other Commenters		
7. FA Staff	4.10	1. Projected fundamental analysis.
8. MINN	3.55	1. Hist. EPS and DPS growth rates. 2. Analyst forecasts.

TABLE 4.—RAW GROWTH RATE DATA

Rate(s)	Type of rate	Commenter
Historical DPS Growth Rates		
5.00	5-year median	AUS.
4.80	5-year median	BEC.
3.91/4.26	5-year mean/median	EEI.
5.0	5-year median	NEP.
5.3/5.5	5-year mean/median	Cooperatives.
5.49	5-year average	SWEP.
5.4/5.0	10-year mean/median	Cooperatives.
5.00	10-year median	AUS.
3.2	10-year annual average	MINN.
5.30	10-year median	BEC.
5.16/5.15	10-year mean/median	EEI.
5.54	10-year median	NEP.
Historical EPS Growth Rates		
6.38	5-year median	AUS.
5.50	5-year median	BEC.
3.56/4.61	5-year mean/median	EEI.
6.8/6.5	5-year mean/median	Cooperatives.
7.83	5-year average	SWEP.
5.2/5.3	10-year mean/median	Cooperatives.
4.88	10-year median	AUS.
3.6	10-year annual average	MINN.
5.60	10-year median	BEC.
5.76/5.96	10-year mean/median	EEI.
Historical EPS Growth Rates		
3.3/3.0	5-year mean/median	Cooperatives.
2.9/2.5	10-year mean/median	Cooperatives.
Base Year Fundamental Growth Rates		
4.9	(b)(r) + (s)(v)	BEC.
5.1	4.2 + .7	EEI.
3.7	4.02 + 1.04	NEP.
4.02	3.6 + .1	Cooperatives.
4.77	3.85 + .17	AUS.
4.1	4.77 + (Not reported)	FA Staff.
3.14	3.7 + .4	SWEP.
	(Not reported)	
Projected Fundamental Growth Rates		
5.2	(b)(r) + (s)(v)	BEC.
5.2	5.1 + .1	EEI.
	5.1 + .1	
Analyst Near Term Forecasts		
4.05	I/B/E/S average	AUS.
4.0	I/B/E/S median	BEC.
3.5/4.0	I/B/E/S mean/median	EEI.
3.85	Zack's mean	MINN.
3.9/4.0	Zack's mean/median	NEP.
3.9/4.1	Zack's mean/median	Cooperatives.
4.2/3.5	Value Line DPS mean/median.	Cooperatives.
4.13	Value Line DPS median	AUS.
4.25	Value Line DPS median	BEC.
4.2/4.3	Value Line DPS mean/median.	EEI.
Analyst Near Term Forecasts		
3.8	Value Line EPS median	AUS.
3.62	Value Line EPS median	BEC.
3.5/3.7	Value Line EPS mean/median.	EEI.
3.2/3.0	Value Line EPS mean/median.	Cooperatives.
3.6/3.7	Merrill Lynch DPS median	BEC.
3.7/3.7	Merrill Lynch DPS mean/median.	EEI.
3.6/3.7	Merrill Lynch EPS mean/median.	BEC.
3.6/3.7	Merrill Lynch EPS mean/median.	EEI.
4.9/5.0	Salomon Brothers' Normalized Growth mean/median.	Cooperatives.
5.0/5.0	Salomon Brothers' Normalized Growth mean/median.	EEI.
5.0	Salomon Brothers' Normalized Growth median.	BEC.
4.25	Salomon Brothers	SWEP.

Both Cooperatives and FA Staff rely on similar fundamental growth analyses in making their recommendations. Cooperatives recommend 4.02 percent and FA Staff recommends 4.10 percent for its 91-company sample.[69] The difference in the results is a function of somewhat different estimates for the four factors: "b", "r", "s", and "v". Cooperatives use an expected return on common equity (r) of 13.89 percent, while FA Staff uses 13.7 percent. For the expected retention ratio (b), Cooperatives use 27.27 percent and FA Staff uses 27 percent. This leads to a "br" component of 3.85 percent for Cooperatives and 3.7 percent for FA Staff. Cooperatives estimate the expected growth rate in common equity due to new stock sales (s) to be 0.50 percent, while FA Staff estimates it to be 1.2 percent. Finally, Cooperatives use 33 percent for the accretion factor (v), and FA Staff uses 31.5 percent. Therefore, the "sv" component for Cooperatives is .17 percent and for FA Staff it is .4 percent.

The Commission's finding with respect to the expected growth rate gives considerable weight to the analyses submitted by Cooperatives and FA Staff. As noted above, both rely on a straightforward fundamental analysis and arrive at similar conclusions. The Commission believes that there is little basis for preferring one analysis over the other. Nonetheless, some modification of these analyses is appropriate to recognize that base year data or near-term estimates are not always the best proxies for investors' long-term expectations. While the Commission believes that the estimates

[69] Cooperatives at 92 and FA Staff at 12–14.

of "r" and "s", although somewhat different from one another, are reasonable, some comment is in order regarding the estimates of "b", the retention ratio, and "v", the accretion factor.

The Commission has previously noted that the selection of the retention ratio can have a substantial impact on the end result of a fundamental growth analysis.[70] In the last two proceedings, the Commission has found that 28–32 percent represented a reasonable range of projected retention rates and used 30 percent in its own calculations.[71] In this proceeding, evidence suggests that the dividend payout ratio has risen recently and that a ratio above 70 percent is projected for the near-term future. Indeed, the analyses of both Cooperatives and FA Staff incorporate retention rates lower than 28 percent. However, the Commission believes that, despite recent data and near-term expectations for the dividend payout ratio, the evidence is not persuasive that investors have long-term expectations that deviate significantly from the 70 percent ratio the Commission has adopted in the last two proceedings.[72] As a result, the Commission will continue to use 70 percent as its best estimate of investors' expectations of the industry average dividend payout ratio over the long-term.

The Commission's belief that it would not be reasonable for investors to expect a price-to-book ratio over the long-term to approximate the high level achieved during the base year has a similar, although offsetting, effect. Nonetheless, the analyses of both Cooperatives and FA Staff incorporate such an assumption in estimating the "v" factor. A more reasonable assumption is that the industry expects to earn a return on common equity above the cost of equity over the near-term, thus accounting for the relatively high market-book ratio, but that it expects that the market prices of electric utility securities should move closer to book value over the long-term as expected earned returns of electric utilities correspond more closely to the cost of capital. The best evidence that the Commission can find in the record regarding the expected price-to-book ratio is the 1.31 used by both BEC and EEI in performing their projected fundamental growth analyses.[73] That number is based on the product of Value Line's projections of a 9.5 price-earnings ratio and a 13.8 percent return on average common equity for the 1989-1991 period.[74] When the modified data is incorporated into the analyses done by Cooperatives and FA Staff and the two results are averaged, the average growth estimate is 4.34 percent.[75]

$g = b \times r + s \times v$

FA Staff: $g = (.30)(13.7) + (.012)(.237)$

$g = 4.11 + .28 = 4.39$

Cooperatives:

$g = (.30)(13.87) + (.0050)(.237)$

$g = 4.16 + .12 = 4.28$

In arriving at its growth rate recommendation of 5.3 percent, BEC uses a fundamental growth analysis, as well as historical and projected data. Based on a 90-company sample, BEC calculates that the median 5 and 10-year historical growth rates in earnings and dividends were from 4.8 percent to 5.6 percent.[76]

In its base year fundamental analysis, BEC calculates growth from retained earnings (br) to be 4.2 percent and growth from common stock sales (sv) to be .7 percent, giving a growth rate estimate of 4.9 percent.[77] The variables used in the analysis generally were calculated from data during the base year ending June 1987. BEC also did an analysis of projected fundamental growth. For the "br" component, BEC used 5.1 percent based on Value Line 1989–1991 projections of "percent retained to common equity" for the Electric Utility Industry Composite. For the "sv" component, BEC arrived at 0.1 percent, giving a projected growth estimate of 5.2 percent.[78]

The "s" factor used was 0.5, based on a judgmental adjustment of Value Line projections of 0.1 percent. The "v" factor (1–[1/(P/B)]) used was 0.237, based on a Value Line 1989–1991 projection of 1.31 for the price-book ratio (calculated by multiplying the projected return on average equity of 13.8 percent by the projected price-earnings ratio of 9.5.) Thus, $sv = .0050 \times 0.237$ or 0.1 percent.

BEC also looked at near-term growth rate forecasts of earnings and dividends made by various analysts and investment advisory services: Value Line (3.62–4.25 percent), Merrill Lynch (3.6–3.7 percent), I/B/E/S (4.0 percent) and Salomon Brothers (5.0 percent). BEC concludes that the low end of this range would produce an unreasonable cost of equity and that investors would not rely upon such projections.[79]

Given the relative comparability of its base year fundamental growth estimate of 4.9 percent and its projected fundamental growth estimate of 5.2 percent, BEC initially reasons that a two-stage growth analysis is unnecessary. However, for purposes of considering the more pessimistic outlook reflected in analyst forecasts, it computes a two-stage growth rate of 4.7 percent by assuming that investors expect growth to decline from a current 5.0 percent to 4.5 percent after five years and to remain at that level thereafter.[80]

Based on the data sources examined and growth analyses performed, BEC concludes that a range of 4.7–5.3 percent is reasonable for the electric utility industry.[81] Subsequently, however, BEC effectively recommends the upper end of this range because of three factors that it believes should be taken into account. First, some of the riskiest companies were excluded from the sample. Second, the use of a mean dividend yield, rather than the median, may have produced a higher result. And third, several companies in the sample were experiencing depressed growth periods because of dividend cuts and the prospect of dividend restorations had not been fully captured in its analysis.[82]

The Commission finds that BEC's growth rate recommendation is somewhat high for several reasons. More weight is given to historical growth rates than warranted. While historical growth rates do provide a reference point, the Commission agrees with Cooperatives that additional analyses are needed before it can be concluded that investors expect the future to replicate the past. Although BEC attempts to bolster the use of historical growth rates, its reasoning is not persuasive. For example, it points to a declining payout ratio as offsetting increasing returns on equity in past years. Recently, however, returns have declined and payout ratios have risen from 1988 levels. The Commission believes that these changes would cause investors to be very cautious about extrapolating past growth rates into the future.

The appropriations of such investor caution can be shown in another way. If

[70] 50 FR at 21,819.

[71] 52 FR at 22.

[72] *See, e.g.*, BEC at Appendix 6 and EEI at Appendix 6, showing dividend payout ratios that have moved above and below 70 percent over the last ten years.

[73] BEC at 22 and EEI at Attachment A13.

[74] The 13.8 percent return on average common equity used by BEC and EEI is also the average of the 13.7 percent used by FA Staff and the 13.87 percent used by Cooperatives.

[75] For purposes of calculating the flotation cost adjustment, *infra*, the Commission finds that an "s" factor of .85 percent, based on an average of the estimates made by Cooperatives and FA Staff, is reasonable.

[76] BEC at 7.

[77] *Id.* at 13–16.

[78] *Id.* at 16–23.

[79] *Id.* at 24–25.

[80] *Id.* at 25–28.

[81] *Id.* at 28–29

[82] *Id.* at 37–38.

investors were actually expecting a long-term growth rate of 5.3 percent, what rate of return on common equity would this imply? If the growth from new stock sales is expected to be relatively modest over the foreseeable future, as most commenters seem to agree, the industry would be expected to earn a return on common equity above 15 percent. In fact, assuming a dividend payout ration of 70 percent, the payout adopted by the Commission in this proceeding, the expected return on common equity would be 17 percent, *i.e.*, given $g = br$, (and assuming $sv = .2$, the average of the findings of Cooperatives and FA Staff) then $5.1 = 3r$ and $r = 17.0$ percent. Because earned returns and interest rates in general have declined since last year, the Commission does not find such investor expectations to be plausible for the long-term.

The Commission also has problems with BEC's dual analysis based first on base year and then on projected data. The attractiveness of the fundamental growth analysis is that it enables one to look individually at the components of expected growth: "b", "r", "s", and "v". For each component, the task is to make a best estimate of what investors expect the value to be. In some cases, that best estimate may be a function of base year data. In other cases, projected data may be more reasonable to use. Without explaining why, BEC goes about mechanically first applying base year data to obtain one estimate (4.9 percent) and then projected data to obtain another estimate (5.2 percent). It is unclear to the Commission why the factor inputs to those two analyses need to be kept separate. One fundamental growth analysis should be enough.

When computing the "sv" component in the first analysis, BEC merely extrapolates base year data on the market-book ratio and other primarily historical date from EEI and Value Line on the growth rate of aggregate common equity. When computing the "sv" component in the second analysis, BEC concedes that something more than mere extrapolation is required: "the sv term must not be mechanically input into the DCF equation but must be evaluated to determine to what extent investors expect external growth, either positive or negative, to continue in the future."[83] In its first analysis, BEC gets 0.7 percent and in the second analysis, it gets 0.1 percent. The Commission is unable to determine which estimate of "sv" BEC favors.

With respect to the "br" component, BEC computes 4.2 percent in its base year analysis by multiplying the realized returns on common equity during the base year by the actual retention ratios. Depending on the facts and circumstances, one might argue that the base year data for the industry is a best estimate of what investors expect in the future. Instead, BEC uses projected Value Line data for "br" and arrives at a 5.1 percent estimate. Again, the Commission cannot determine which estimate BEC considers the best. Based on the same kind of analysis it performed above regarding historical growth rates, the Commission is skeptical about the reliability of the 5.1 percent number, particularly when Value Line reports "br" data in the aggregate and it is not possible to discern what "b" and "r" terms were used.

Interestingly, the Value Line projected data can be used to derive the "br" component by looking at "b" and "r" separately, and BEC used most of this data in computing a projected price-to-book ratio.[84] BEC calculated a projected return on average equity of 13.8 percent from Value Line data and noted that Value Line projected the price-earnings ratio for the industry to be 9.5. Value Line also projects the dividend yield to be 7.5 percent.[85] The product of these two variables gives the dividend payout ratio, *i.e.*,

$P/E \times D/P = D/E,$

which turns out to be 71.25 percent ($9.5 \times .075$). Therefore, the retention ratio or "b" is .2875. Thus, "br" is $.2875 \times 13.8$ or 3.97 percent.

Which estimate is better, 5.1 percent or 3.97 percent? They are both based on projected Value Line data, although the latter estimate allows one to see the individual "b" or "r" terms and appraise their reasonableness. The latter estimate is also consistent with the preponderance of the analyst forecasts. As a result, if BEC used its projected "sv" of .1 percent, and the alternative projected "br" of 3.97 percent, it would have arrived at a growth estimate of 4.07 percent, significantly different from the 4.9 percent and 5.2 percent estimates it derived from its two separate fundamental growth analyses.

EEI recommends an expected growth rate of 5.1 percent based on a variety of approaches.[86] It leans most heavily on base year and projected fundamental analyses which yield 5.1 percent and 5.2 percent, respectively. The two fundamental analyses are very similar to those submitted by BEC and the projected fundamental analysis appears to be identical to BEC's comparable analysis.

EEI also presents 5 and 10-year historical growth rates in earnings and dividends. The 5-year growth rates range from 3.56–4.61 percent. The 10-year growth rates range from 5.15–5.96 percent. EEI notes, however, that if a number of utilities which reported negative growth rates were eliminated from the sample, the 5-year growth rates would be at the lower end of the range for 10-year growth rates.

EEI relies on analyst forecasts made by Value Line, Merrill Lynch, I/B/E/S, and Salomon Brothers. These range from 3.5 to 5.0 percent, but center generally around 4.0 percent. The two-stage growth analysis relied on by EEI used an initial growth rate of 5.1 percent, based on its fundamental analysis, and assumed that growth would decline to a constant rate of 4.0 percent after five years. Using this approach, EEI calculated a composite growth rate of 4.3 percent. EEI argues that both the analyst forecasts and the two-stage growth analysis reflect a downward bias since "analysts appear to have been unduly influenced" by temporary disruptions in earnings that have affected some utilities.[87]

AUS recommends an expected growth rate of 4.8 percent based on an equal weighing of its two-stage analysis (4.83 percent) and its fundamental analysis (4.77 percent).[88] The two-stage analysis used data derived from averaging seven historical and forecasted growth rates taken from Value Line and I/B/E/S. The mean of these rates (4.69 percent) was used for the first stage and the median (4.88 percent) was used for the long-run second stage beginning after five years. AUS's fundamental analysis was based entirely on retention growth rates projected by Value Line for 1987, 1988, and 1990–1992.[89] Although AUS does not attempt to specify a particular "sv" component in its fundamental analysis, it notes that with market-to-book ratios well above one, the "sv" component would be positive and thus produce additional growth.

New England Power Company (NEP) recommends a growth rate in the range of 4.50 to 5.00 percent.[90] Its analysis includes historical growth rates, a fundamental analysis, and earnings projections made by Zacks Investment Research in June 1987. The median 5 and 10-year growth rates in dividends (for

[83] BEC at 19.

[84] BEC at 22.

[85] See FA Staff at Attachment E

[86] EEI at Attachment A-5.

[87] EEI at 18.

[88] AUS at 41–42.

[89] *Id.* at 36–37.

[90] NEP at Appendix 6

periods ending in 1986) are shown as 5.0 percent and 5.54 percent, respectively. In its fundamental anaysis, NEP calculates the median retention growth rate to be 3.6 percent and the external growth rate to be 0.1 percent, or a composite growth rate of 3.7 percent. The median is 4.0 percent when total retention growth is calculated for each company separately. Finally, the projected 5-year earnings growth rates published by Zacks were 3.90 percent for the mean and 4.00 percent for the median.[91]

Southwestern Electric Power Service Company (SWEP) recommends a 4.318 percent growth rate based on a 60–40 weighing of future projections and historical data.[92] The historical data consists of a fundamental growth rate of 3.14 percent, which was derived from Compustat data for the base year, and 5-year historical growth rates in earnings and dividends published by E.F. Hutton of 5.49 percent and 7.83 percent, respectively. The future projections are based on 5-year forecasts of earnings and dividends made by E.F. Hutton of 3.54 percent and 2.84 percent, respectively, and by Salomon Brothers of 4.24 percent.[93] The criticism that the Commission directed at BEC's analyses is also partially applicable to the analyses submitted by EEI and AUS.[94] For example, both EEI and AUS draw on the same type of aggregate "br" data projected by Value Line. As the Commission has said before, the appeal of the fundamental growth analysis is that it allows an evaluation of the individual components that influence growth in earnings and dividends. If one's analysis uses data that precludes this evaluation, it tends to undercut the benefits of the fundamental growth analysis and is therefore deserving of less weight. This is particularly true when projected data available on an individual basis from the same source produces a much lower growth rate from retained earnings, as was demonstrated in the Commission's discussion of BEC's analysis.

EEI's fundamental growth analyses were very similar to these of BEC. Indeed, as Table 4 indicates, they both show the same results. Therefore, the Commission's reservations regarding the nature of BEC's dual fundamental analysis apply to EEI as well.

AUS's growth rate recommendation was also based on a simple average of four historical growth rates published by Value Line and three projections—two by Value Line and one by I/B/E/S. Although such a procedure may be used as a reference point in a growth rate analysis, the Commission is unable to give it much weight without some explanation of why the averaging of these selected numbers is likely to produce the growth rate expected by investors.

The Commission finds it difficult to square the underlying analysis with NEP's growth rate recommendation of 4.5–5.0 percent. NEP's fundamental analysis yields a growth rate of 3.7 percent or 4.0 percent, depending on the computational procedure used, and these results are essentially the same as the five-year earnings forecast made by Zack's Investment Research—3.90 percent for the mean and 4.0 percent for the median.[95] While the 5 and 10-year historical growth rates in dividends are stated to be 5.0 percent and 5.54 percent, respectively, such historical rates cannot carry as much weight as results that are the product of a more reasoned analysis. As a consequence, the Commission believes that NEP's analysis better supports a growth rate recommendation of approximately 4.0 percent than one of 4.5–5.0 percent.

The Commission also proposed in the Notice to make use of a two-stage growth analysis. However, the Commission agrees with Cooperatives that it is too difficult to differentiate meaningfully between the first and second stages of growth to confidently rely on a two-stage growth analysis in this proceeding.[96] The Commission notes, however, that this conclusion itself is derived from a finding that the expected growth rates for the first and second stages are too close to differentiate.[97] Therefore, despite NEP's general criticism that it is impractical to use a two-stage analysis,[98] the Commission continues to believe that the two-stage approach represents a useful analytic tool that can illuminate the growth rate implications of near-term and long-term forecasts.[99]

The 3.55 percent recommendation made by MINN is the lowest recommendation made by the remaining commenters. This estimate is based on a simple average of the ten-year historical growth rate in dividends (3.2 percent) and earnings (3.6 percent), as well as the mean five-year earnings growth rate of 3.85 percent projected by Zack's Investment Research in September 1987.[100] In addition to the general shortcoming of giving great weight to an extrapolation of historical growth rates without any explanation as to why investors would expect them to persist into the future, the historical growth rates offered by MINN also deviate significantly from those of all other commenters, as shown in Table 4. As a result, both the nature of the analysis and the unexplained and unusually low historical growth rates require that the Commission give little weight to MINN's growth rate recommendation.

If the growth rate estimates of BEC and MINN are excluded, the range of remaining growth rate recommendations narrows to 4.02 percent (Cooperatives) to 5.1 percent (EEI), or a bit over 100 basis points. Reasonable people may differ as to the weight to be given to particular analyses and results with this range. However, based on its evaluation of the analyses submitted in this proceeding, the Commission is persuaded that the growth rate expected by investors falls within the lower part of the 4.02–5.1 percent range. Specifically, as discussed above, the Commission finds the expected growth rate in this proceeding to be 4.34 percent, based primarily on a modified version of the fundamental growth analyses submitted by Cooperatives and FA Staff.

F. Corroborative Evidence

1. Introduction

Although few commenters offered corroborative evidence, most of those that did used some kind of risk premium approach. The Commission reviews this evidence and other publicly available data below.

2. Risk Premium Analyses

Three commenters offer the risk premium approach to cost of common equity determination for corroborative purposes.[101] AUS calculates that the yield on Moody's A-rated public utility bonds averaged 9.36 percent for the twelve months ended June 30, 1987. Noting the trend in interest rates since the end of the study period and projections made by economic forecasters, AUS concludes that a ten percent yield on long-term public utility bonds would be "conservative in the context of a risk premium calculated common equity cost rate."

Although AUS presents the results of seven risk premium studies, its conclusions are largely based upon an independent study of the risk premiums applicable only to electric utilities. For the period 1926–86, AUS calculates the risk premium (using annual holding period returns) of electric utility common equities over public utility bonds, to be 4.03 to 5.88 percentage points, depending on the measurement technique applied. For the 1952–86 subperiod, the risk premiums range from 5.60 to 7.01 percentage points. AUS concludes that the appropriate risk premium for electric utilities is at least four percentage points. When added to the 10 percent long-term debt attraction rate projected by AUS, a 14 percent cost of common equity is produced.

Whereas AUS utilizes risk premium data as much as sixty years old, BEC uses more contemporary data in its risk premium analyses. BEC calculates an equity risk premium as the average difference between the rate of return allowed electric utilities on common equity, as reported in Salomon Brothers and Value Line publications, and each utility's July 1987 bond yield. The median risk premiums are about 5.25 percentage points using the allowed returns on equity reported by Salomon Brothers, and about 5.3–5.5 percentage points, using Value Line data. Noting that some of the allowed returns on common equity were granted several years ago, when capital costs were higher, BEC arbitrarily reduced the equity risk premium to four percentage points, which, when added to the 9.36 percent average yield of A-rated public utility bonds over the base year, produces a risk premium-based cost of equity of 13.36 percent.

NEP uses the risk premium approach to calculate the cost of common equity in two ways. NEP first calculates for each electric utility, for each year from 1977 to 1986, a risk premium which is the difference between the yield to maturity of a selected bond in June of each year, and a DCF estimate of the cost of common equity. The DCF growth factor is the ten-year least squares growth rate in dividends declared per share. Adding the ten-year average 2.68 percentage point average risk premium so derived to the average of July 1986 and June 1987 yields to maturity for a bond of each company produces an average investors' return requirement of 12.20 percent.

NEP also performed a second risk premium analysis, identical to the first, except that yearly growth rate estimates were calculated using the "internal growth" rate methodology, which is the product of the earned rate of return on common equity and the earnings retention rate. Adding the ten-year 2.07 percentage point average risk premium so derived to the average of July 1986 and June 1987 yields to maturity for a bond of each company yields an average investors' return requirement of 11.47 percent.

The obvious problem with any risk premium approach is that it is very difficult to determine what the risk premium actually is. Not only is it unknown, but it is likely to vary over time as well. Whatever historical relationships existed between debt and equity securities during the past sixty years may no longer exist.

There are good reasons to question the stability of long-run risk premiums, especially as applied to recent years. First, electric utilities have experienced major upheavals in the recent past due to OPEC, Three Mile Island, Chernobyl and other phenomena. These developments have had an impact on the risk of all electric utility investments. The relationship between the risk of utility and all industry bonds has probably changed as well.

Second, as the Commission has stated in prior generic rate of return proceedings, the historical relationship between debt and equity securities changed in 1979 when the Federal Reserve Board changed its policies.[102] Since then, interest rates have been more volatile. The Commission believes that this change has affected the risks associated with long-term bonds more than it has those related to common stock. Therefore, current risk premiums are likely to be less than previous ones.

Third, both *ex post* and *ex ante* public utility common stock and bond returns comprise a variety of components, including: anticipated and unanticipated inflation; the risk of default; duration; interest rate risk; business risk; call protection (in the case of bonds); liquidity risk and purchasing power risk.[103] These risks directly affect capital costs for both common stocks and bonds. As economic conditions change, so does the impact of different risk components.[104] Therefore, in the Commission's opinion, long-term risk premium studies, which reflect an average distribution of the risks just enumerated, do not necessarily provide risk premiums which are applicable to the current environment.[105] The use of an equity risk premium which is based on realized holding period returns for an extended historical period cannot be accepted at face value.

In addressing the specifics of AUS's analyses, the Commission notes that the risk premiums were calculated over a sixty-year historical period. For this reason alone, they are suspect. Moreover, the Commission is comfortable with the notion that risk premiums generally tend to decline in periods of high interest rates, and *vice versa*. During that extended period, the average yield on A-rated public utility bonds was 6.09 percent,[106] which is significantly lower than the 9.63 percent yield for the base year. Therefore, it would be logical to conclude that, even were historical risk premiums applicable to contemporary times, an historical risk premium so derived is probably somewhat overstated because it corresponds to a lower level of interest rates than currently exist.

Even were AUS's risk premiums applicable to a contemporary period, it seems that further refinements are required. AUS's risk premiums are based on differences in holding period rates of return, which are effective annual rates, not nominal rates such as those on which the Commission's allowance on common equity is based. For proper comparison, the Commission believes that the stock and bond holding period rates of return should be

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[91] *Id.* at Appendix 2–6.

[92] SWEP at 3.

[93] *Id.* at Exhibit C.

[94] Although SWEP's growth rate recommendation (4.318 percent) is at the lower end of the range, the Commission cannot give much weight to it. As with MINN's recommendation, the recommendation made by SWEP is based on an analysis which is little more than a mechanical averaging of some historical and projected data, some of which is significantly different from similar data offered by most other commenters and which cannot be verified because the underlying computations were not made available.

[95] NEP at Appendix 2–3.

[96] Cooperatives at 96–97.

[97] 52 FR 22–23. Expected near-term growth rates have declined from those determined in recent proceedings. That decline is reflected in the analyst near-term forecasts in Table 3, *supra*, when compared with similar forecasts in last year's proceeding, 52 Fed. Reg. 21 at Table 3.

[98] As it did last year, NEP criticizes the use of a two-stage model to estimate growth rates. It believes that such an analysis is only useful when dealing with individual companies having special problems. It also believes that it is probably impossible to conduct accurately a two-stage analysis of a large group of utilities in a generic context because of the added imprecision of estimating first and second-stage growth rates for each individual company.

[99] *Id.* at in 103.

[100] MINN at 3.

[101] AUS at 43–54; IIEC at 40–43; NEP at 7.

[102] *See, e.g.*, Order No. 420, 50 FR at 21822.

[103] *Id.* at 21,821.

[104] For example, during recessionary periods investors become very concerned with default risk, often to the detriment of other risk factors. During difficult business periods, investors are quite sensitive to the fact that bond investors have priority over common shareholders in case of liquidation, and some bonds are more risky than others. During more prosperous times, these concerns may fade as investors concern themselves with the other risk components which impact their investment decisions. During stock market panics such as occurred on October 19 and 20, 1987, investors' most immediate concerns are with liquidity risk.

[105] In the Commission's view it is still an open question whether the yield on long-term bonds can ever exceed that of common stock; the Commission can only recognize that stock and bond investors shoulder different risks in different proportional amounts at various times.

[106] Moody's Public Utility Manual (1986) and Bond Guide (various issues).

converted to nominal rates so that the resulting difference may be added to the nominal rate in effect during the base period. It would appear that the risk premiums reported by AUS are overstated by approximately 0.31 percentage points due to this factor.[107]

The Commission is also not convinced that BEC's approach to the determination of a risk premium is useful. BEC's calculation of risk premiums relies primarily upon the reported allowances on common equity for individual electric utilities. The Commission notes the inherent circularity of BEC's analysis; *i.e.*, BEC would have the Commission base its equity allowance on previously-approved equity allowances. This would shift the Commission's responsibility for setting just and reasonable rates to the states, who are largely represented in BEC's analyses. Even were the analyses limited to Commission equity allowances, the results of such a study would remain inherently circular. For this reason, the Commission rejects BEC's risk premium analysis.

NEP's analyses are the best reasoned of the risk premium studies. Those analyses have as their basis an individual DCF calculation of the cost of common equity for each electric utility, for each of ten years. Therefore, acceptance of the validity of the risk premiums so derived (2.68 and 2.07 percentage points, an average value of 2.38) rests upon the reasonableness of NEP's estimates of the cost of common equity, as well as upon the appropriateness of using ten-year average risk premiums today. With respect to the latter issue, the Commission notes that A-rated public utility bond yields averaged 12.33 percent over the period 1977–86, whereas they averaged 9.36 percent for the base year.[108] Therefore, NEP's average risk premium of 2.38 percentage points might somewhat understate the current premium. Concerning the reasonableness of NEP's methodologies, the Commission notes that the ten-year least squares growth rate calculations were made during a period when industry averaged dividend payout ratios increased and then subsided; therefore the historical dividend growth rates may not have been sustainable. NEP's earnings retention growth rates also ignore the negative effects of common stock sales below book value, which have had the effect of inhibiting book value growth. For these reasons, the risk premiums calculated by NEP tend to be overstated. When both effects are considered, it would appear that NEP's average risk premium, 2.38 percentage points, represents a reasonable estimate of the current risk premium. When added to the yield on A-rated public utility bonds of 9.36 percent for the base-period, the estimated cost of common equity is 11.74 percent. This tends to corroborate the Commission's conclusion in this proceeding.

While the Commission has concerns with the quantification of specific risk premiums, it continues to believe that the ranking of securities based on relative risk provides useful information. Table 5, below, presents selected interest rates for the base year for this proceeding and for previous annual proceedings. A comparison of these rates to the industry average required rates of return shows premiums that the Commission believes are consistent over time and consistent across securities based on risk differences.

TABLE 5.—SELECTED INTEREST RATES AND RISK PREMIUMS

[In percent]

	Year ending June 30—			
	1984	1985	1986	1987
Selected Interest Rates [1]				
Treasury bills: 3 month (new)	9.24	8.76	6.82	5.54
Treasury bonds: 10 year constant matur	12.11	11.75	9.06	7.53
Moody's public utility bonds:				
Aaa	12.84	12.47	10.08	8.69
Aa	13.44	13.10	10.45	9.06
A	13.80	13.53	10.81	9.36
Baa	14.41	13.98	11.31	9.74
Market required ROE for electric utilities (using 420 model)	15.25	14.73	13.02	11.19
Selected Risk Premiums [2]				
Treasury bills	6.0	6.0	6.2	5.7
Treasury bonds	3.1	3.0	4.0	3.7
A-rated public utility bonds	1.5	1.2	2.2	1.8

[1] Rates are average of monthly rates.
[2] Risk premiums are determined by subtracting the average yield for the specified security from the nominal rate determined from the 420 model.

Sources: Federal Reserve Statistical Release G.13 and Federal Reserve Bulletin (various dates), Moody's Public Utility Manual and (1986) Moody's Bond Survey (various dates).

Generally, as one moves down the list of securities in Table 5, the greater the associated risks the higher the required rate of return. While there may be circumstances in which the relative position of one or more of these securities may change for short periods of time, such circumstances are not the norm. The relative positions depicted in Table 5 are consistent with the Commission's understanding of the relative risks of the referenced securities: *i.e.*, Federal government securities have lower default risk than public utility securities; short-term securities yield less than long-term securities; and lower bond ratings imply higher default risk and higher rates of return.

In conclusion, the Commission finds no inconsistency between its finding of a market cost of common equity for the base year of 11.21 percent and interest rates for the same time period. The implied risk premiums, while smaller than long-term historical data would suggest, appear very plausible, especially in light of the changed relationship between debt and common stock since 1979.

3. Market-to-Book and Earnings-Price Ratio Evidence

FA Staff evaluates the expected earned rate of return on common equity with reference to the price-to-book (P/B) ratio. When the P/B ratio is above one, FA Staff states that the expected earned rate of return on common equity overstates the cost of common equity, and *vice versa*. Using this reasoning, FA Staff argues that its estimate of the expected earned rate of return on common equity of 13.70 percent, together with the base-year P/B ratio in excess of unity (1.46), is consistent with its cost of common equity finding of 10.98 percent.[109]

FA Staff also looked at the relationship between the market cost of common equity and earnings-price (E/P) ratios. FA Staff states that when the price-to-book ratio is above one, the E/P ratio understates the market cost, and *vice versa*. FA Staff estimates that the E/P ratio is 9.38 percent for the base period, a finding which it claims is also consistent with its P/B ratio and its cost of common equity.

Cooperatives took the E/P ratio analysis one step further, arguing that the precise amount by which the E/P ratio overstates or understates the market cost of common equity is equal to:

$$\text{Growth rate in Total common. Common equity} \times \frac{1-\text{Price-to-Book Ratio}}{\text{Price-to-Book Ratio}}$$

Estimating the price-to-book ratio for the base period to be 1.49 and the growth rate in total common equity to be 4.76 percent, Cooperatives calculate the understatement to be 1.57 percentage points. Cooperatives then add this to their calculation of the industry average E/P ratio of 9.21 percent to obtain an adjusted yield of 10.78 percent, thereby corroborating their DCF cost of capital estimate of 10.85 percent.

FA Staff's presentation in this proceeding is substantially similar to those filed in the three earlier annual proceedings.[110] Its analysis is not entitled to great weight because of its lack of precision. If one were to accept FA Staff's presentations at face value, they would appear to support nearly any cost of common equity estimate in the range of 9.38 to 13.70 percent. And, the 11.21 percent cost of common equity found reasonable by the Commission is certainly within that range.

Cooperatives claim that an adjusted E/P ratio analysis corroborates its cost of capital estimate of 10.87 percent. However, the Commission notes that Cooperatives' adjusted E/P ratio is merely a derivative of the discounted cash flow model which uses book value growth, *i.e.*, the "k = D/P + br + sv" model. The presentation is a tautology in that a minor reformulation of the primary model has been used to demonstrate the validity of the model itself. Therefore, Cooperatives' adjusted E/P analysis is not useful as corroborative evidence in this proceeding.

4. Interest Coverage Analysis

AUS tests the fairness of the rate of return on common equity using an interest coverage test. AUS calculates that, using industry average capital structures outstanding on June 30, 1984, 1985, and 1986, and the generic rates of return in effect at those times, the pre-tax industry interest coverages were 3.8 times, 3.8 times, and 3.2 times, respectively. AUS also shows that, using an estimated equity cost rate of 11.94 percent and income tax rate of 34 percent, the industry average pre-tax interest coverage drops to 2.9 times on June 30, 1987. AUS argues that it is necessary to have a 14 percent rate of return on common equity in this proceeding because that return would produce a 3.25 times pre-tax interest coverage (which is the midpoint of the A bond rating criteria).[111]

The Commission notes that there are three factors which largely determine the interest coverage factor: (a) The rate of return on common equity; (b) the capital structure ratio; and (c) the income tax rate. Thus, coverage factor could be increased from 2.9 times to 3.25 times through one of three means, or a combination thereof: (a) Increasing the rate of return on common equity to 14.0 percent, as proposed by AUS; (b) increasing the tax rate from 34 percent to 43 percent (a change not within the control of the Commission or the parties); or (c) increasing the common equity ratio from 42.3 percent to 45.9 percent.

If the market perceives the reduction in interest coverages (which are primarily a consequence of the reduction in the federal income tax rate)[112] as increasing shareholder risk (as AUS's claims would appear to suggest), then an increase in capital costs should result, and the Commission's market-oriented rate of return techniques should capture this change. To make a second explicit adjustment to the allowance on common equity, as AUS suggests, might double-count the effects on such a fundamental change.[113] The Commission believes that it should continue to place primary reliance on market-oriented approaches to the determination of a public utility's allowance on common equity. Results-oriented analyses, such as the pre-tax interest coverage measure, are not dispositive of the determination of the rate of return on common equity. Neither are they useful for corroborative purposes.

G. Flotation Costs

The Commission adopts the technique used in prior annual proceedings to adjust the required rate of return for flotation costs. Thus, utilities are compensated only for issuance costs, such as underwriters' compensation and legal and printing fees, and those costs are reflected in an industry average adjustment to the market required rate of return.

The following formula determines an increment to the cost of common equity which reflects the average annualized amount of flotation cost incurred by the utility industry:[114]

$$k^* = \frac{fs}{(1+s)}$$

where:
k^* = flotation cost adjustment to required rate of return
f = industry average flotation cost as a percentage of offering price
s = proportion of new common equity expected to be issued annually to total common equity

Commenters' estimates for "f", average flotation cost as a percentage of offering price, range from 2.40 to 2.87 percent, with the exception of EEI's 3.66 percent.[115] EEI's estimate is atypical, largely due to the company sample used in its analysis. It was the only commenter to include in its sample Public Service Company of North Carolina, whose major source of revenue is the sale of natural gas rather than electricity.

The Commission finds the analyses of AUS, FA Staff and BEC, which include the same five new issues, to be the most complete and adopts their estimated 2.87 percent value of "f" in deriving the value of flotation cost "k^*".[116]

The expected proportion of new common equity issued annually, "s", was found in the growth rate section above to be 0.85 percent. Applying the 2.87 percent estimate of issuance costs, "f", and the 0.85 percent estimate of new equity financing, "s", to the above formula, the Commission finds a flotation cost adjustment of .02 percent, or 2 basis points.[117]

BEC used a methodology that perpetually amortizes flotation costs, applied it to all outstanding equity capital and arrived at an 18-basis point flotation cost adjustment. In this proceeding, as well as in previous proceedings, BEC and others have argued for a perpetual amortization of

[107] 1926–86 annual stock returns = 10.82 percent. 1926–82 annual bond returns = 5.16 percent. Estimated stock quarterly nominal yield = $4((1.1082)^{.25} - 1) = 10.41$ percent. Estimated bond semi-annual nominal yield = $2(1.0516)^{.5} - 1) = 5.06$ percent. The difference is 5.35 percent, which is .31 percentage points less than the 5.66 percent calculated by AUS.

[108] Moody's Public Utility Manual (1986) and Moody's Bond Survey (various issues).

[109] FA Staff's discussion used numbers from the 62-utility subgroup, which excluded diversified utilities. The Commission has here substituted data from its 91-utility group.

[110] *See, e.g.*, Order No. 461, 52 FR at 24.

[111] AUS at 19–20.

[112] The reduction in the corporate income tax rate alone accounts for a decline in the pre-tax interest coverage from 3.4 times to 2.9 times.

[113] Utilities could also elect to increase the common equity ratio, thereby increasing the pre-tax coverage factor.

[114] Order No. 461, 52 FR at 25–28.

[115] AUS at 40. BEC at 34. EEI Attachment A at 20. FA Staff at 11. Cooperatives at 92. and SWEP at Exhibit D.

[116] BEC derived the median issuance cost for year ending June 30, 1987 to be 2.87 percent but has used a 2.5 percent value for "f" in its estimate of K^*.

[117] Flotation cost adjustment—

$$= \frac{0.0287\ (0.0085)}{1.0085}$$

$$= 0.0002$$

AUS used the Commission's flotation cost adjustment formula and arrived at an 11-basis point adjustment. Its calculation was based on an estimate of "f" which reflected the proportion of new equity to be issued annually to the total common equity of the *issuing companies*. Its definition of "f" is not the one adopted by the Commission which is the proportion of new equity to be issued annually to the total common equity of the *industry*.

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flotation costs to be applied to *all* outstanding equity not just new issues. In the second annual proceeding, the Commission dealt with the same arguments in detail.[116] Basically, there are two methods of recovering flotation costs, amortization and current cost recovery. The Commission explained that for new companies the perpetual amortization method and current cost recovery methods lead to the same recovery of costs. Once the perpetual amortization method is adopted, it must be continued and entails recovery each year on all outstanding stock. Similarly, once the current recovery is adopted, it also must be continued. This method recovers costs as they occur and overrecovery would result if costs of past issues were recovered each year.

Once either method is adopted it should be continued. The Commission wished to start the generic proceedings with a clean slate. Thus, it adopted a policy of current cost recovery in the earlier proceedings and will continue this policy in the current proceeding.[117]

H. Quarterly Indexing Procedure

The Commission adopts the quarterly indexing procedure established in the third annual proceeding and proposed in the NOPR.[120] In that indexing procedure, quarterly changes in the cost of common equity are tied to changes in utility dividend yields. The average cost of common equity is indexed to the average of the median dividend yields for the two most recent calendar quarters for the company sample. The benchmark rate of return on common equity is set equal to the cost of common equity.

Most commenters accept the use of the proposed six-month dividend yield for quarterly indexing purposes. However, AUS recommended that a 12-month dividend yield be used. The issue of using twelve months of data rather than six has been discussed and rejected in earlier annual proceedings because the Commisson believes it would not provide a sufficiently current estimate of dividend yield.[121] The Commission reaffirms the use of a six-month dividend yield in the quarterly indexing procedure.

The growth rate/flotation cost parameter for the quarterly indexing procedure based on the findings of this proceeding is 4.36 percent. This parameter will remain fixed until the next proceeding.

I. Extension of the Generic Rate to Section 206 Proceedings

The Commission adopts the proposal to make the benchmark rate of return applicable to rate investigations under section 206 of the FPA. Under section 206, the Commission may on its own motion or upon complaint by a third party review jurisdictional rates or charges. If it determines that they are unjust, unreasonable, unduly discriminatory, or preferential, it may determine just and reasonable terms and fix the terms by order.[122]

Commenters in general oppose extending a generic rate of return to FPA section 206 proceedings. Several commenters argue that the Commission should not extend the rate of return concept to section 206 proceedings because of the differences between section 205 and section 206 proceedings.[123] Commenters argue application of a generic rate of return would shift the burden of proof,[124] abrogate existing contracts on insufficient grounds,[125] increase litigation expenses,[126] and heighten uncertainty over prevailing rates.[127] Commenters discuss whether the benchmark rate in section 206 proceedings should be a rebuttable presumption or advisory only.[128] Finally, commenters criticize the proposed use of the benchmark rate of return in effect at the time of the final Section 206 decision and offer various alternatives.[129]

Most of the comments on this issue are based on a misunderstanding of the proposal. The commenters' arguments reflect an erroneous presumption that the Commission intended the benchmark to be used as a rebuttable presumption. The list of disadvantages cited by commenters would be relevant concerns only if the generic rate were to be a rebuttable presumption. In fact, the Commission intended that the generic rate be advisory only. Therefore, in practice, a complainant in a section 206 proceeding will have to prove that the challenged rate is unjust, unreasonable, unduly discriminatory, or preferential in light of the circumstances of the particular utility. However, the participants in the proceeding may introduce the applicable generic rate of return as evidence of the industry average rate. The generic rate of return will not be conclusive evidence, but will merely supplement the specific showing now required. The Commission expects to apply the generic rate of return where appropriate, but is mindful that decisions in individual cases must be supported as if the generic rate of return had not been established.

The Commission believes that commenters have failed to identify significant differences between section 205 and 206 proceedings. In fact, the Commission believes that the similarities between section 205 and 206 proceedings outweigh the differences. Both proceedings involve a determination by the Commission of whether rates, changes, rules and regulations set by public utilities for jurisdictional transmission or sale of electric energy are or are not just and reasonable; and, in each, the availability of a generic rate would be useful as a indication of the industry average and as a device for narrowing differences among parties. Therefore, the Commission is convinced that it is appropriate to apply the generic rate of return to both proceedings on an advisory basis.

As to the particular benchmark rate to be used in FPA section 206 proceedings, the Commission is persuaded by the comments to apply the benchmark rate of return in effect on the date the Commission sets a rate for investigation under FPA section 206.

J. Frequency of Proceeding

In the NOPR, the Commission proposed to amend the existing regulation, which requires an annual proceeding to determine a benchmark rate of return on common equity for the jurisdicational operations of public utilities, to require that those proceedings be conducted as needed, but not more often than annually. The Commission expressed its belief that annual proceedings are unnecessary, since industry average growth rates and flotation cost adjustments appear to fluctuate over a very small range. However, the Commission also proposed to initiate proceedings to determine benchmark rates on its own motion or upon motion by any person that shows changed circumstances sufficient to warrant modification of one or more parameters of the quarterly indexing procedure in effect. Since the "parameters" of the DCF model consist of the dividend yield and growth rate (plus flotation costs) and the dividend yield is already adjusted automatically through the quarterly adjustment mechanism, "changed circumstances" would generally be a change in the sum of the expected growth rate and flotation costs.

Commenters focus on two principal issues, the continued need for an annual proceeding and implementation of the proposal.

Among the general justifications for continuing the annual proceedings are the benefits of greater accuracy in rate of return decisions because the benchmark cannot become "unduly stale," [130] closer attention to changes in security markets and the consequent ability to respond more quickly to those changes,[131] and the relatively minimal cost ("resources needed to keep the benchmark up to date on an annual basis would appear to be extremely small.") [132]

Several commenters suggest that recent volatility in capital markets generally strengthens the case for annual proceedings.[133] EEI suggests that the Commission's "premise of stability in industry average growth rates and flotation costs appears to be based on limited historical data with uncertain application to the future." [134]

The Commission continues to believe that the proposal to hold proceedings periodically, but less frequently than annually, may have merit because the triggering event for a new proceeding should be actual changed circumstances in the markets for utility shares rather than the mere passage of time. In this proceeding, the Commission has analyzed data for the year ending June 30, 1987 in determining the growth rate of 4.34 percent. However, since that data was collected, there has been a period of unusual stock market volatility, which has probably had an impact, although not yet quantifiable, on growth rate expectations. Therefore, in order to consider thoroughly the effects of these events on the cost of common equity and because the growth rate using pre-October 1987 data has moved to the margin of the narrow range is has occupied for the last several years, the Commission will hold another annual generic rate of return proceeding and in that proceeding will decide whether to hold subsequent annual proceedings or to convert to periodic proceedings as proposed in the NOPR in this docket. Also, the Commission notes that in the next proceeding, it may limit its proposal to a determination of the growth rate and flotation cost to be used in the quarterly indexing procedure.

K. Fixed Growth Rate/Flotation Cost Parameter

In the NOPR, the Commission proposed that the parameters of the quarterly indexing procedure be set based on a combined finding of an industry average growth rate and flotation cost adjustment of 4.6 percent so long as the sum of those two figures is within the range of 4.3 to 4.8 percent. However, the Commission also proposed that it would initiate a new proceeding if circumstances changed sufficiently to warrant a modification of those parameters.

Commenters criticized the proposal because: (1) The Commission had advanced no convincing rationale for the 4.6 percent figure; (2) the 4.6 percent adjustment is no longer reliable because extraordinarily volatile stock prices may lead to changes in the parameters of the constant growth DCF model; (3) use of the 4.6 percent parameter would further rigidify an already overly mechanical methodology for determining the benchmark rate of return; and (4) locking in a growth rate/flotation cost parameter would reduce the Commission's ability to establish benchmark rates which reflect market realities as closely as possible.[135]

Commenters have convinced the Commission that a mechanical test may not be the best method for determining whether to initiate a new proceeding. Since the Commission will initiate a new proceeding for the year ending June 30, 1988, the Commission is not establishing a definite growth rate/flotation cost parameter for initiating new proceedings.

L. Differential Risk Analysis

In the NOPR, the Commission reiterated its request that all rate case participants (including trial staff) evaluate the reasonableness of the applicable benchmark rate of return, in light of the special circumstances of the subject utility. Specifically, the Commission requested that litigants submit substantive analyses of the risks of individual utilities *vis-a-vis* the average utility represented through the benchmark rates of return.

Several firms comment on the issue of differential risk analysis. BEC expresses concern that the NOPR implies a Commission intention to rely on a rebuttable presumption in favor of the benchmark and to permit deviation from the benchmark only with a "significant risk differential" can be established between the subject utility and the average utility. BEC then cites numerous administrative and legal problems with this approach.[136]

Similarly, AUS comments that a requirement of case-by-case risk differential analysis defeats the purpose of establishing an advisory generic rate of return and that there is no consensus in the industry or at the Commission on the proper methodology for determining differential risks.[137] EEI also expresses doubts that adequately supportable methods of measuring risk differentials can be developed.

Commenters on the issue of differential risk analysis exaggerate the import of the Commission's request in the NOPR that they evaluate the reasonableness of the benchmark rate in light of the special circumstances of the subject utility. Individual utilities must, as always, calculate their rate of return based on their particular circumstances and the Commission will continue to determine just and reasonable rates based on the facts in each case. The benchmark rate merely serves as further evidence of the industry average rate and is not the equivalent of a rebuttable presumption. The Commission does not intend to require a specific risk analysis, but rather to state that some analysis of factors causing a particular utility's divergence from the industry average would be useful to both the Commission and the utility.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [138] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not impose any regulatory or administrative burdens on a significant number of small entities because nearly all the jurisdictional utilities subject to the rule are too large to be considered "small entities" within the meaning of the Act. No comments were received on this finding and the modifications adopted in the final rule do not materially affect the earlier conclusion.

Accordingly, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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[116] 51 FR at 364.
[117] Order No. 442, 51 FR 365.
[120] *See* 52 FR at 37 326.
[121] 51 FR at 357 and 52 FR at 27.
[122] 16 U.S.C. 824e(a) (1982)
[123] EEI at 23.
[124] BEC at 14, CGE at 4, EEI at 24, and NEP at 4–5.
[125] BEC at 15–16.
[126] Southern at 4.
[127] CGE at 4.
[128] NEP at 5
[129] BEC at 18, EEI at 25–28, and NEP at 5.
[130] BEC at 9, NEP at 6.
[131] BEC at 8.
[132] *Id.*
[133] EEI at 27, MINN at 4.
[134] *Id.* at 27.
[135] AUS at 57–58, EEI at 29–31, NEP at 8, Cooperatives at 105, SWEPCO at 4.
[136] BEC at 19–23.
[137] AUS at 56.
[138] 5 U.S.C. 601–12 (1982).

V. Timing of Quarterly Updates and Effective Date of Rule

The Commission establishes a procedure which will be used to establish quarterly updates. The benchmark rates of return will generally be published on or before the fifteenth of the month following the close of a calendar quarter.

The first quarter will run from February 1 to April 30, the second quarter from May 1 to July 31, the third quarter from August 1 to October 31, and the fourth quarter from November 1 to January 31.

This rule becomes effective February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. Section 37.4 is revised to read as follows:

§ 37.4 Annual proceedings.

Each year the Commission will establish the growth rate and flotation cost to be used in the quarterly indexing procedure through informal rulemaking procedures under 5 U.S.C. 553.

3. In § 37.6, paragraph (a) is revised to read as follows:

§ 37.6 Application of benchmark rate of return in individual rate proceedings.

(a) *General rule.* Except as provided in § 37.8 and paragraph (b) of this section, it will be presumed that the allowed rate of return on common equity in an individual rate proceeding is the benchmark rate of return in effect at the time a rate schedule is filed pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (1982), or at the time the Commission sets a rate for investigation pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982).

* * * * *

4. Section 37.8 is revised to read as follows:

§ 37.8 Transitional provision.

The benchmark rates of return under this part will be advisory only. The Commission may take official notice of the benchmark rates of return in individual rate proceedings if they are not otherwise made a part of the record.

5. In addition to the amendments set forth above in 18 CFR Part 37, remove the words "annual" or "annually" in the following places:

(a) Section 37.3 (a) and (c):

(b) Section 37.9 (a)(1), (a)(2), and (a)(3).

Note: These appendices will not appear in the Code of Federal Regulations.

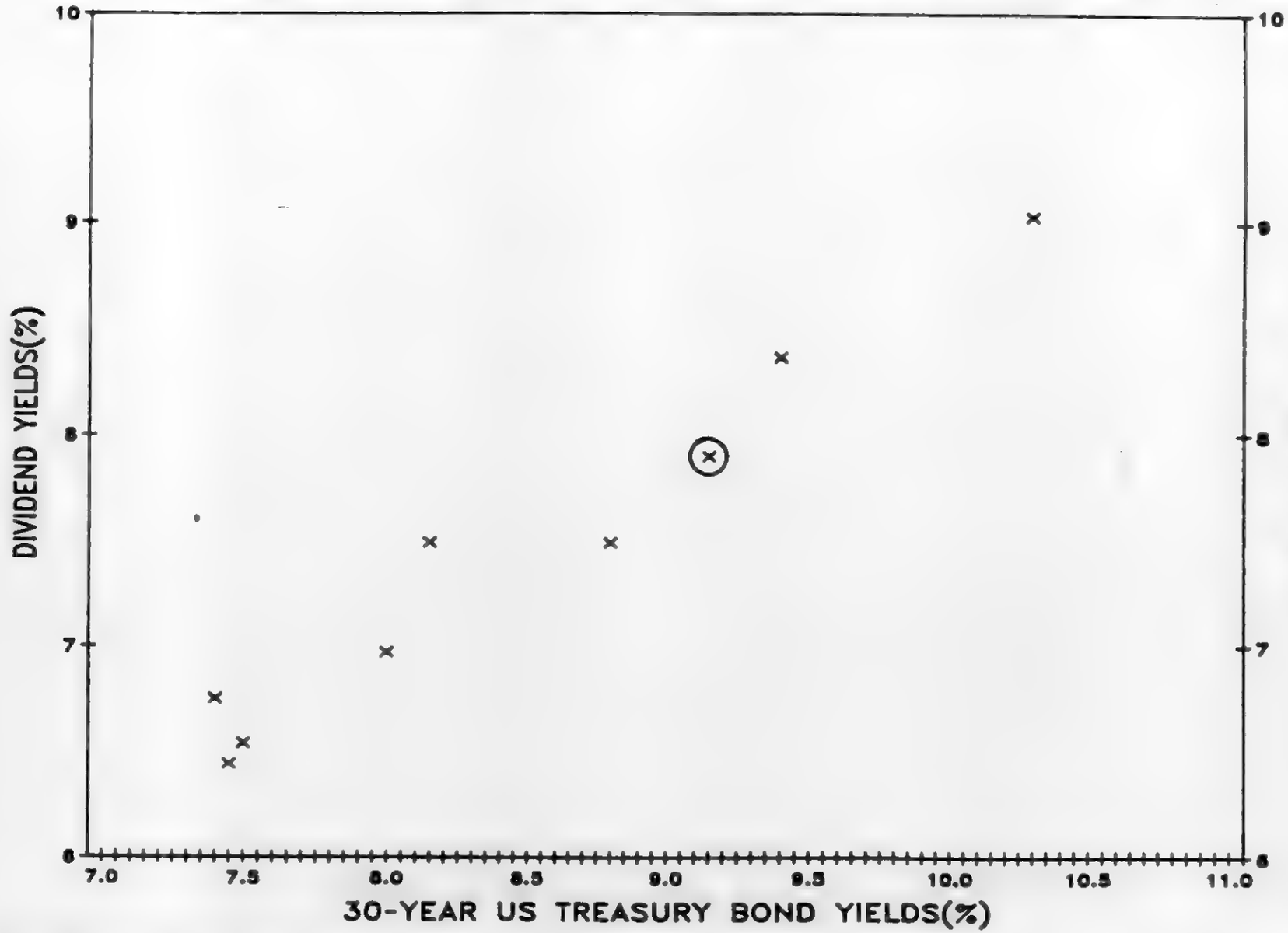
APPENDIX A—LIST OF COMMENTERS

Commenter	Abbreviation
Companies:	
1. American Electric Power Service Corporation.	AEP
2. Associated Utility Services, Inc	AUS
3. Boston Edison Company, et al	BEC
4. Cincinnati Gas & Electric Company.	CGE
5. Consumers Power Company	CPC
6. Edison Electric Institute	EEI
7. New England Power Company	NEP
8. Southern California Edison Company.	SCE
9. Southern Company	Southern
10. Southwestern Electric Power Service Company.	SWEP
Customer: North Carolina Electric Membership Cooperation, et al.	Cooperatives
Regulatory Commission Staff:	
1. Financial Analysis Branch, Office of Electric Power Regulation, Federal Energy Regulatory Commission.	FA Staff
2. Minnesota Department of Public Service.	MINN
Other: Alfred Winchell Whittaker	AWW

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APPENDIX B

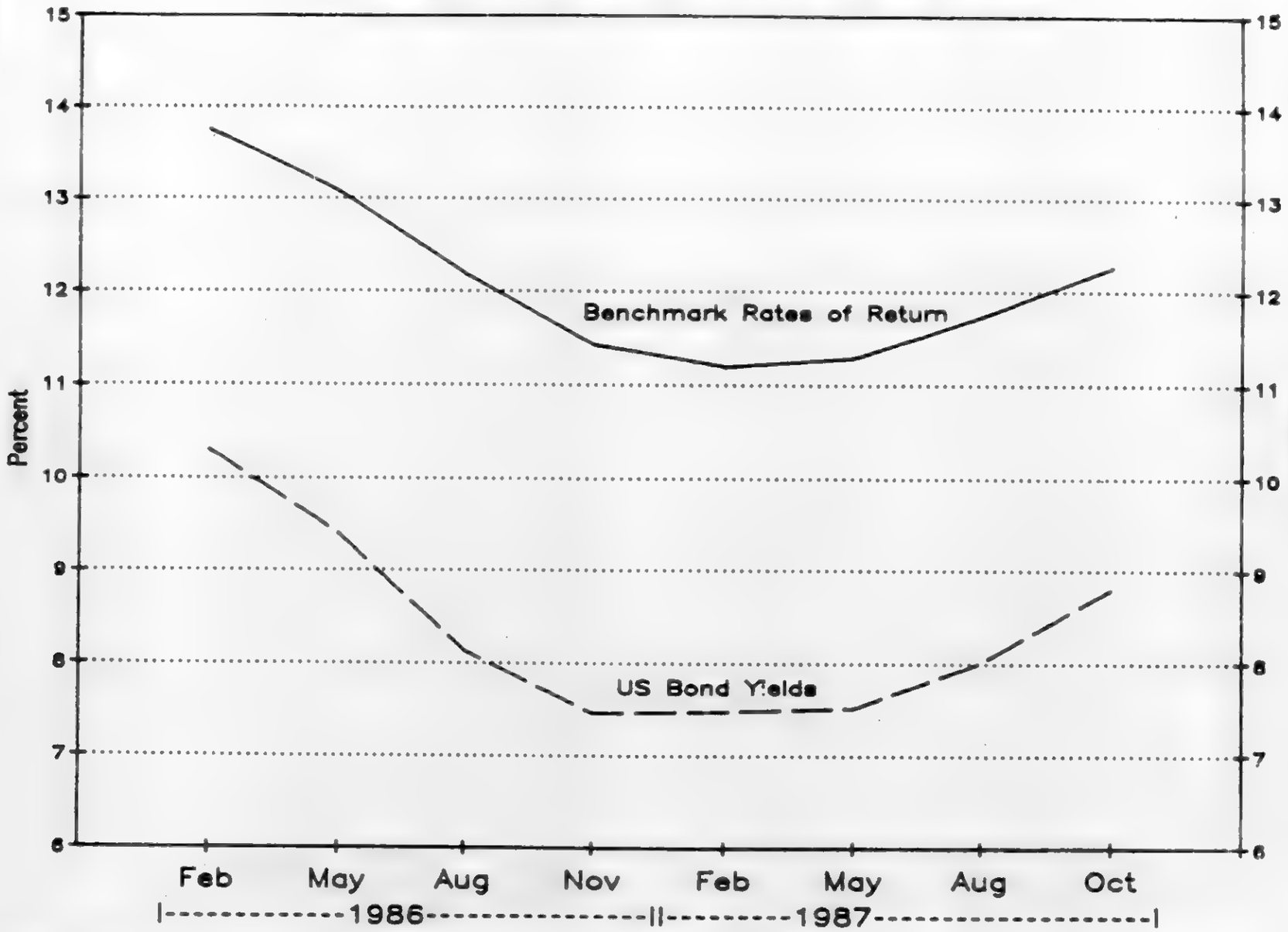
UTILITY DIVIDEND YIELDS vs. TREASURY BOND YIELDS
FOURTH QUARTER 1985 through FOURTH QUARTER 1987



Sources: Standard & Poor's Utility Compustat II, Federal Reserve Statistical Release G.13 (415)

APPENDIX C

QUARTERLY BENCHMARK RATES OF RETURN AND 30-YEAR US TREASURY BOND YIELDS



Sources: FERC data and Federal Reserve Statistical Release G.13 (415)

BILLING CODE 6717-01-C

Sample of Utilities Used for Base Year Dividend Yield Calculations and Quarterly Updates

1. Allegheny Power System
2. American Electric Power
3. Atlantic Energy Inc.
4. Baltimore Gas & Electric
5. Black Hills Corp.
6. Boston Edison Co.
7. Carolina Power & Light
8. Centerior Energy Corp.
9. Central & South West Corp.
10. Central Hudson Gas & Elec.
11. Central Ill Public Service
12. Central Louisiana Electric
13. Central Maine Power Co.
14. Central Vermont Pub. Serv.
15. Cilcorp Inc.
16. Cincinnati Gas & Electric
17. CMS Energy Corp.
18. Commonwealth Edison
19. Commonwealth Energy System
20. Consolidated Edison of NY
21. Delmarva Power & Light
22. Detroit Edison Co.
23. Dominion Resources Inc.-VA
24. DPL Inc.
25. Duke Power Co.
26. Duquesne Light Co.
27. Eastern Utilities Assoc.
28. Empire District Electric Co.
29. Fitchburg Gas & Elec. Light
30. Florida Progress Corp.
31. FPL Group Inc.
32. General Public Utilities
33. Green Mountain Power Corp.
34. Gulf States Utilities Co.
35. Hawaiian Electric Inds.
36. Houston Industries Inc.
37. I E Industries Inc.
38. Idaho Power Co.
39. Illinois Power Co
40. Interstate Power Co
41. Iowa Resources Inc.
42. Iowa-Illinois Gas & Elec
43. Ipalco Enterprises Inc.
44. Kansas City Power & Light
45. Kansas Gas & Electric
46. Kansas Power & Light
47. Kentucky Utilities Co.
48. Long Island Lighting
49. Louisville Gas & Electric
50. Maine Public Service
51. Middle South Utilities
52. Midwest Energy Co.
53. Minnesota Power & Light
54. Montana Power Co.
55. Neco Enterprises Inc
56. Nevada Power Co.
57. New England Electric System
58. New York State Elec. & Gas
59. Niagara Mohawk Power
60. Northeast Utilities
61. Northern Indiana Public Serv
62. Northern States Power-MN
63. Ohio Edison Co.
64. Oklahoma Gas & Electric
65. Orange & Rockland Utilities
66. Pacific Gas & Electric
67. Pacificorp
68. Pennsylvania Power & Light
69. Philadelphia Electric Co.
70. Pinnacle West Capital Corp.
71. Portland General Corp.
72. Potomac Electric Power
73. Public Service Co. of Colo
74. Public Service Co. of Ind.
75. Public Service Co. of NH
76. Public Service Co. of N Mex.
77. Public Service Enterprises
78. Puget Sound Power & Light
79. Rochester Gas & Electric
80. San Diego Gas & Electric
81. Savannah Elec. & Power
82. Scana Corp.
83. Sierra Pacific Resources
84. Southern Calif. Edison Co.
85. Southern Co.
86. Southern Indiana Gas & Elec.
87. St. Joseph Light & Power
88. TECO Energy Inc.
89. Texas Utilities Co.
90. TNP Enterprises Inc.
91. Tucson Electric Power Co.
92. Union Electric Co.
93. United Illuminating Co
94. Unitil Corp.
95. Utah Power & Light
96. Utilicorp United Inc.
97. Washington Water Power
98. Wisconsin Energy Corp.
99. Wisconsin Power & Light
100. Wisconsin Public Service

APPENDIX D.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and Utility	Reason for exclusion
Year = 86; quarter = 3	
CMS—CMS Energy Corp	Dividend rate has zero for the quarter ending 09/30/86.
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86.
FGE—Fitchburg Gas & Elec Light.	Dividend rate has zero for the quarter ending 09/30/86.
GPU—General Public Utilities.	Dividend rate has zero for the quarter ending 09/30/86.
GSU—Gulf States Utilities Co.	Dividend rate has zero for the quarter ending 09/30/86.
KGE—Kansas Gas & Electric.	Dividend rate reduced in the quarter ending 12/31/85.
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86
LIL—Long Island Lighting.	Dividend rate has zero for the quarter ending 09/30/86.
MAP—Maine Public Service.	Dividend rate has zero for the quarter ending 03/31/86.
MSU—Middle South Utilities.	Dividend rate has zero for the quarter ending 09/30/86
NI—Northern Indiana Public Serv	Dividend rate has zero for the quarter ending 09/30/86.

APPENDIX D.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

Ticker symbol and Utility	Reason for exclusion
PIN—Public Service Co of Ind.	Dividend rate has zero for the quarter ending 09/30/86.
PNH—Public Service Co of NH	Dividend rate has zero for the quarter ending 09/30/86.
Year = 86; quarter = 4	
CMS—CMS Energy Corp	Dividend rate has zero for the quarter ending 12/31/86
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86
FGE—Fitchburg Gas & Elec Light.	Dividend rate has zero for the quarter ending 09/30/86.
GPU—General Public Utilities.	Dividend rate has zero for the quarter ending 12/31/86
GSU—Gulf States Utilities Co.	Dividend rate has zero for the quarter ending 12/31/86.
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86.
LIL—Long Island Lighting.	Dividend rate has zero for the quarter ending 12/31/86.
MAP—Maine Public Service	Dividend rate has zero for the quarter ending 03/31/86
MSU—Middle South Utilities.	Dividend rate has zero for the quarter ending 12/31/86
NI—Northern Indiana Public Serv.	Dividend rate has zero for the quarter ending 12/31/86
PIN—Public Service Co of Ind	Dividend rate has zero for the quarter ending 12/31/86
PNH—Public Service Co of NH.	Dividend rate has zero for the quarter ending 12/31/86

N = 12
N = 13

APPENDIX E.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and utility	Reason for exclusion
Year = 87; Quarter = 1	
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 03/31/87
DQU—Duquesne Light Co.	Dividend rate reduced in the quarter ending 06/30/86
FGE—Fitchburg Gas & Light.	Dividend rate was zero for the quarter ending 09/30/86
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 03/31/87
KLT—Kansas City Power & Light.	Dividend rate reduced in the quarter ending 06/30/86
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 03/31/87
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 03/31/87

APPENDIX E.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS—Continued

Ticker symbol and utility	Reason for exclusion
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 03/31/87.
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 03/31/87.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending 03/31/87.
Year = 87; Quarter = 2	
CMS—CMS Energy Corp.	Dividend rate was zero for the quarter ending 06/30/87.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending 09/31/86.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending 03/31/87.
GSU—Gulf States Utilities Co.	Dividend rate was zero for the quarter ending 06/30/87.
LIL—Long Island Lighting.	Dividend rate was zero for the quarter ending 06/30/87.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending 06/30/87.
NI—Northern Indiana Public Serv.	Dividend rate was zero for the quarter ending 06/30/87.
PIN—Public Service Co of Ind.	Dividend rate was zero for the quarter ending 06/30/87.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending 06/30/87.

N = 9.
N = 11

18 CFR Part 389

[Docket No. RM86–14–000; Order No. 483]

Revisions to the Purchased Gas Adjustment Regulations

January 29, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Notice of OMB control number.

SUMMARY: The Federal Energy Regulatory Commission, on November 10, 1987, issued a final rule (Order No. 483) in Docket No. RM86–14–000, 52 FR 43854 (November 17, 1987). The rule revised the procedures by which an interstate natural gas pipeline company passes through the cost of purchased gas to its jurisdictional customers. This notice states that the Office of Management and Budget has approved the information collection requirements in Order No. 483.

EFFECTIVE DATE: The final rule in this docket is effective January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Phone: (202) 357–8020.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On December 16, 1987, the Commission issued a Notice of Suspension of Effective Date, which suspended the effective date of Order No. 483 until January 29, 1988, in order to give the OMB additional time to review the information collection provisions in the final rule. On January 25, 1988, the OMB approved the information collection requirements of 18 CFR Parts 154, 270, and 273 as amended by this rule under Control Number 1902–0070. Therefore, the final rule in Docket No. RM86–14–000 is effective January 29, 1988.

List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,
Acting Secretary.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "§ 154.52" in the Section Column and inserting "0070" in the corresponding OMB Control Number column.

3. In § 389.101(b), the Table of OMB Control Numbers is amended by adding the following entries to the table. These entries follow "§ 154.111(a)(3)".

§ 389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

* * * * *

154.301	0070
154.303	0070
154.304	0070
154.305	0070
154.306	0070
154.308	0070
154.309	0070
154.310	0070

* * * * *

4. The Table of OMB Control Numbers is amended by adding "§ 270.101" after "Part 270" and in the Section Column and inserting "0070" in the corresponding OMB Control Number Column and by revising the OMB Control Number Column corresponding to "§ 273.302" to read "0070, 0084".

[FR Doc. 88–2326 Filed 2–4–88; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 201, 203, and 234

[Docket No. N–88–1784; FR–2438]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the mortgage limits for St. Mary's County, Maryland; Bloomington, Indiana MSA; South Bend-Mishawaka, Indiana MSA and the Portsmouth-Dover-Rochester, New Hampshire/Maine MSA. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158; telephone (202) 755–5210; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On October 1, 1986 (51 FR 34961), the Department published its most recent annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and their applicable limits for each area.

This Document

Today's document increases the high-cost mortgage amounts for St. Mary's County, Maryland; Bloomington, Indiana MSA; South-Bend-Mishawaka, Indiana MSA and the Portsmouth-Dover-Rochester, New Hampshire/Maine MSA.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, St. Mary's County (Maryland) has a one-family limit of $81,900. The combination home and lot loan limit for St. Mary's County is $81,900 × .80, or $65,520.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, St. Mary's County (Maryland) has a one-family limit of $81,900. The lot-only loan limit for St. Mary's County is $81,900 × .20, or $16,380.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. (40,500 × 140%).

2. For combination manufactured homes and lots: 75,600. ($54,000 × 140%).

3. For lots only: $18,900. (13,500 × 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c), and 214 Area Wide Mortgage Limits

REGION I.—HUD FIELD OFFICE—MANCHESTER OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Portsmouth-Dover-Rochester, New Hampshire/Maine MSA, Rockingham County, NH, Strafford County, NH, York County, ME	$90,000	$101,300	$122,650	$142,650

REGION III.—HUD FIELD OFFICE—BALTIMORE, MD

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
St. Mary's County	$81,900	$87,600	$106,450	$122,850

REGION V.—HUD FIELD OFFICE—INDIANAPOLIS OFFICE

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
Bloomington, IN MSA, Monroe County	$71,800	$80,900	$98,250	$113,350
South Bend-Mishawaka, IN MSA, St. Joseph County	74,600	84,000	102,050	117,750

Date: January 26, 1988.

James E. Schoenberger,
General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88–2488 Filed 2–4–88; 8:45 am]
BILLING CODE 4210–27–M

24 CFR Parts 232 and 235

[Docket No. R–88–1373; FR–2483]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on certain Section 232 (Mortgage Insurance for Nursing Homes) loans and on all Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these

programs into line with competitive market rates.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under Section 232 (fire safety equipment) and Section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 232 (fire safety equipment) and Section 235 insurance programs has been lowered from 10.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (7) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d))

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before February 1, 1988, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before February 1, 1988, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after February 1, 1988, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Date: January 28, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88–2489 Filed 2–4–88; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Parts 247 and 886

[Docket No. R–88–1326; FR–1950]

Termination of Tenancy—Section 8 Housing Assistance Payments Program—Special Allocations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR Part 886, which governs policies and procedures for the Section 8 Loan Management Program (Subpart A) and the Section 8 Property Disposition Program (Subpart C). The rule: (1) Removes requirements for public housing agency (PHA) and HUD participation in terminations of tenancy; (2) removes provisions stating that public housing lease and grievance procedures are applicable to PHA-owned Section 8 projects under Subpart C; (3) deletes existing termination of tenancy requirements and applies 24 CFR Part 247—Evictions from Certain Subsidized and HUD-Owned Projects, to all terminations of tenancy under Part 886; and (4) modifies requirements governing lease provisions.

EFFECTIVE DATE: March 25, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Housing, (202) 426–3970, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 5, 1987, HUD published a proposed rule to revise 24 CFR Part 886 (52 FR 16403). This Part governs HUD's policies and procedures for the Section 8 Loan Management Program (Subpart A) and the Section 8 Property Disposition Program (Subpart C). HUD's rule proposed: (1) To remove requirements for public housing agency (PHA) and HUD participation in terminations of tenancy; (2) to remove provisions stating that public housing lease and grievance procedures are applicable to certain PHA-owned Section 8 projects under Subpart C; (3) to delete existing termination of tenancy requirements and apply 24 CFR Part 247—Evictions from Certain Subsidized and HUD-Owned Projects to all terminations of tenancy under Part 886; and (4) to modify requirements governing lease provisions. HUD received five comments in response to the proposed rule.

Two commenters argued against any Federal intervention in terminations of tenancy in HUD-assisted projects. These commenters argued that State laws adequately protect the interests of assisted families and that additional Federal procedures only complicate the termination process.

The termination of tenancy procedures contained in HUD regulations were imposed to ensure that landlords of federally subsidized housing do not act arbitrarily in evicting assisted families, and to ensure that such families are accorded due process in connection with evictions. HUD continues to believe that these requirements are desirable for the protection of the essential rights of assisted families.

Two commenters urged HUD to incorporate certain requirements contained in existing § 886.128(a) into Part 247. This section requires the project owner to give the family a written notice of the eviction, stating the grounds and advising the family that they have 10 days (or greater number, if any, that may be required by local law) within which to respond to the owner. These commenters argued that this provision is necessary to protect the rights of assisted families. They also argued that the 10-day response period provides an avenue to families to discuss the proposed eviction with the owner and encourages out of court settlements that reduce litigation costs, thus benefiting both owners and families. One commenter noted that this requirement is particularly helpful to families that are experiencing financial problems.

While HUD believes that families will be provided with an adequate opportunity to respond to a proposed termination through State judicial procedures, HUD has provided the family with an informal opportunity to respond to a proposed termination through provisions in the model lease As noted in the proposed rule, HUD Handbook 4350.3—Occupancy Requirements of Subsidized Multifamily Programs, Appendix 19a requires the project owner to advise the family that it has 10 days to discuss a proposed termination of tenancy with the project owner. HUD believes that this lease provision is sufficient to encourage the informal resolution of disputes that would otherwise be brought to court.

Commenters asserted that the Handbook is not legally binding or enforceable and argued that the failure to include this provision in the regulation may result in unnecessary litigation concerning the scope of HUD's termination of tenancy requirements.

Sections 886.127(b) and 886.327(b) of the final rule provide that the lease between the owner and the family must comply with HUD regulations and requirements, and must be on the form required by HUD. HUD believes that these sections are sufficient to ensure that leases will contain the described provision and that the lease will create a legally binding and enforceable obligation on the part of the project owner to provide families with a 10-day opportunity to respond to a termination notice.

One commenter objected to the revised definition of eligible project contained in § 886.102. This commenter believed that the proposed definition would subject any multifamily residential project that is subject to a mortgage insured under the National Housing Act to the provisions of Subpart A. This section has not been revised. The definition contained in § 886.102 identifies the types of projects that are eligible to apply for and receive Section 8 assistance under Subpart A. Eligible projects that do not receive assistance under Subpart A are not covered by the regulation. The proposed rule did not make any changes to the definition of eligible project, but merely moved this definition from existing § 886.101(a) to § 886.102.

Findings

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Changes included in this rule involve clarifications of eviction procedures. The proposed rule does not alter the goals of the programs covered under Part 886. Any effect on small entities should be minor.

This rule was listed as item 991 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40382) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

Accordingly, 24 CFR Parts 247 and 886 are revised to read as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR Part 247 is revised to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); Secs. 211, 221, and 236 National Housing Act (12 U.S.C. 1715b, 1715*l*, and 1715z–1); Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 247.1 [Amended]

2. In § 247.1, the word "occupacy" is removed and the word "occupancy" is added in its place.

3. Section 247.2(e) is revised to read as follows:

§ 247.2 Definitions.

* * * * *

(e) "Subsidized project" means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: (1) Below-market interest rates under section 221(d)(3) and (5), or interest reduction payments under section 236 of the National Housing Act; (2) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or (3) direct loans under section 202 of the Housing Act of 1959 (including a project assisted under 24 CFR Part 885). Subsidized project also includes a multifamily housing project that receives the benefit of subsidy in the form of housing assistance payments under the Section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) or housing assistance payments under the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

4. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 886.101, paragraph (b) is removed, paragraph (c) is redesignated as paragraph (b), and paragraph (a) is revised to read as follows:

§ 886.101 Applicability.

(a) The policies and procedures of this subpart apply to Housing Assistance Payments under Section 8 of the United States Housing Act of 1937 on behalf of Eligible Families in Eligible Projects (see definitions in § 886.102).

* * * * *

6. Section 886.102 is amended by revising the definitions for the terms "eligible project" and "lease" to read as follows:

§ 886.102 Definitions.

* * * * *

Eligible Project. Any existing subsidized or unsubsidized multifamily residential project that is subject to a mortgage insured or any section of the National Housing Act; any such project subject to a mortgage that has been assigned to the Secretary; any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; or a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR Part 885).

* * * * *

Lease. A written agreement between the owner and a family for leasing of a decent, safe and sanitary dwelling unit to the family.

* * * * *

§ 886.106 [Amended]

7. In § 886.106, paragraph (c) is removed.

8. Section 886.119(a)(5) is revised to read as follows:

§ 886.119 Responsibilities of owner.

(a) * * *

(5) Termination of tenancies, including evictions;

* * * * *

§ 886.122 [Removed and reserved]

9. Section 886.122 is removed and the section is reserved.

10. Section 886.127 is revised to read as follows:

§ 886.127 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the failure by the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate the lease on 30 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions

(1) *Admission of guilt.* Agreement by the family (i) to be sued, (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

(3) *Excusing owner from responsibility.* Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

(6) *Waiver of jury trial.* Agreement by the family to waive any right to a trial by jury.

(7) *Waiver of appeal.* Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

11. Section 886.128 is revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart.

12. Section 886.302 is amended by revising the definition for the term "lease" to read as follows:

§ 886.302 Definitions.

* * * * *

Lease. A written agreement between the owner and a family for leasing of decent, safe and sanitary dwelling unit to the family.

* * * * *

§ 886.305 [Removed and reserved]

13. Section 886.305 is removed and the section is reserved.

14. Section 886.306 is revised to read as follows:

§ 886.306 Notices.

Before a project is approved for sale in accordance with this subpart, and as a part of the process of preparing a disposition recommendation in accordance with 24 CFR Part 290, the field office manager must notify in writing the chief executive officer of the unit of general local government in which the project is located (or the designee of that officer) of the proposed sale with housing assistance, and must afford the unit of local government an opportunity to review and comment upon the proposed sale in accordance with 24 CFR Part 791. Local government review should address consistency with the housing needs and strategy of the community, rather than strict conformance to the limitations on variations from housing assistance plan goals which are contained in Part 791.

§ 886.309 [Amended]

15. In § 886.309(e), the reference to "§ 886.328" is removed and "§ 886.327 and Part 247 of this title" is added in its place.

§ 886.322 [Removed and reserved]

16. Section 886.322 is removed and the section is reserved.

17. Section 886.327 is revised to read as follows:

§ 886.327 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the failure of the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate on 30 days advance written notice to the owner. In this case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, and (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

(3) *Excusing owner from responsibility.* Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

(6) *Waiver of jury trial.* Agreement by the family to waive any right to a trial by jury.

(7) *Waiver of appeal.* Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

18. Section 886.328 is revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart.

Date: February 2, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88–2490 Filed 2–4–88; 8:45 am]

BILLING CODE 4210–27–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; Delegation of Authority

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is publishing this final rule amending its procedural regulation at 29 CFR 1601.21(d) to provide for delegation of authority from the Program Director, Office of Program Operations, to the Director, Determinations Review Program, Office of Program Operations to make determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties.

DATE: Effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Office of Legal Counsel (202) 634–6590.

SUPPLEMENTARY INFORMATION:

For the Commission.

Clarence Thomas,

Chairman.

Accordingly, Part 1601 is amended as follows:

PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–12(a), unless otherwise noted.

2. The first sentence of 29 CFR 1601.21(d) introductory text is revised as follows:

§ 1601.21 [Amended]

* * * * *

(d) The Commission hereby delegates to District Directors, or upon delegation, Area Directors or Local Directors; and the Program Director, Office of Program Operations, or upon delegation, the Director, Determinations Review Program, Office of Program Operations or the Directors, Regional Programs, Office of Program Operations, the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. * * *

[FR Doc. 88–2482 Filed 2–4–88; 8:45 am]

BILLING CODE 6570–06–M

29 CFR Part 1627

Congressional Action Concerning the Commission's Final Rule Allowing for Non-EEOC Supervised Waivers Under the Age Discrimination in Employment Act (ADEA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of congressional action regarding final rule on ADEA waivers.

SUMMARY: On July 30, 1987 the Equal Employment Opportunity Commission voted to approve a final rule creating a legislative regulation and administrative exemption allowing for non-EEOC supervised waivers of private rights under the Age Discrimination in Employment Act (under section 9 of the ADEA and 29 CFR 1627.15). This final rule was published in the **Federal Register** of Thursday, August 27, 1987 (52 FR 32293), effective thirty days thereafter.

On December 22, 1987 Congress passed and the President signed Public Law 100–202 (appropriations for fiscal year 1988) which includes the following language:

Provided, That the final rule regarding unsupervised waivers under the Age Discrimination in Employment Act, issued by the Commission on August 27, 1987 (29 CFR sections 1627.16(c)(1)–(3)), shall not have effect during fiscal year 1988. Provided further, That none of the funds may be obligated or expended by the Commission to give effect to any policy or practice pertaining to unsupervised waivers under the Age Discrimination in Employment Act.

EFFECTIVE DATE: December 22, 1987.

FOR FURTHER INFORMATION CONTACT: John K. Light, Attorney-Advisor, ADEA Division, Coordination and Guidance Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507, (202) 634–6423.

Signed this 25th day of January 1988 at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88–2518 Filed 2–4–88; 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4, 126, and 127

[CGD 78–038]

Liquefied Natural Gas Waterfront Facilities

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes safety standards for the design and construction, equipment, operations, maintenance, personnel training, firefighting, and security at liquefied natural gas waterfront facilities. It implements the Ports and Waterways Safety Act of 1972, as amended, and is necessary to prevent or mitigate the results of an accidental release of liquefied natural gas (LNG) at a LNG waterfront facility (facility). This rule will reduce the possibility that such an accident could occur, and will reduce the damage and injury to persons and property should an accident occur.

EFFECTIVE DATE: This regulation is effective June 2, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 2, 1988.

ADDRESSES: The Final Evaluation and the Final Environmental Assessment and Findings of No Significant Impact are available for inspection and copying at the Marine Safety Council (G–CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, 20593–0001, (202) 267–1477. Normal office hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Safety, Security and Environmental Protection (G–MPS–3), (202) 267–0493, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) (51 FR 18276) in the May 16, 1986 issue of the **Federal Register** and received over 300 comments on the proposal. No requests for a public hearing were received. The rule has been changed in light of the comments received.

The NPRM discussed the need and the regulatory history of this rule. The reader should refer back to this NPRM if he or she is interested in this information.

This rule applies only to that part of the facility between each vessel and the last manifold or valve immediately before the receiving tank, while the regulations promulgated by the Research and Special Programs Administration (RSPA), DOT, apply to that part of the facility beyond the last manifold or valve immediately before the receiving tank. The RSPA proposal revised regulations in a separate NPRM (51 FR 18007), published on the same day as the Coast Guard NPRM. The RSPA final rule (52 FR 674) was published on January 8, 1987.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Michael V. Franchini, Project Manager, and Stanley M. Colby, Project Counsel, Office of the Chief Counsel.

General Comments

Over 300 comments were received on the NPRM from 15 different commenters, the largest group (9) representing gas industry associations or facility operators. Government agencies, non-industry organizations, and individuals also commented. The Coast Guard has reviewed the comments and has adopted those which it deems appropriate.

Some commenters were confused over the applicability of the NPRM to inactive existing facilities. Most of these regulations do *not* apply to inactive existing facilities. The three exceptions will apply only if the inactive existing facility will become active. They are §§ 127.007 (c), (d), and (e), 127.019(b), and 127.701 and are listed in § 127.001(c). At least some of the confusion resulted from the use of the term, "existing structures", for inactive existing facilities in proposed §§ 127.001(c) and 127.007(c) of the NPRM. As five commenters recommended, this has been clarified in the final rule so that they are referred to as inactive existing facilities.

Seven different commenters recommended using the words, "active" or "inactive" to distinguish between existing facilities, while two of these commenters suggested definitions for these words. We agree with these comments and have based the definitions on criteria contained in proposed § 127.007(e)(2) of the NPRM. In that section the operator would be required to notify the Captain of the Port (COTP) when LNG transfer operations are not scheduled within the next 12 months. Therefore, "active" and "inactive" in the NPRM were based on activity within a 12 month period.

In the final rule, a facility that is transferring LNG or is scheduling a LNG transfer operation within 12 months of the most recent transfer operation is "active". The facility will remain "active", if a LNG transfer operation is scheduled within 12 months of the most recent transfer operation, so that it does not change status from active to inactive after each transfer. If a facility is not active, i.e. not transferring LNG or not scheduling a LNG transfer operation within 12 months, the facility is "inactive" and would be required under § 127.007(e)(2) to notify the COTP.

The term, "in the marine transfer area", has been deleted throughout the final rule (with two exceptions in §§ 127.613 and 127.615) because its use is repetitive and confusing. These regulations apply only to the marine transfer area of the facility and this is clearly stated in the first section of the regulations, § 127.001, Applicability. It does not need to be repeated in other sections. In the NPRM, the term, "in the marine transfer area", was not used in every section. It was also deleted in the final rule so that it cannot be inferred that the sections, that did not contain the term, applied beyond this area.

One comment concerned the proposed definition of marine transfer area and the last manifold or valve immediately before the receiving tanks on a facility which exports LNG. The commenter suggested that the last valve or manifold before the receiving tanks on an export facility would be the valve– on the landside of the tanks and would then include the receiving tanks in the marine transfer area. This would be true if you followed the flow of LNG from the process plant to the vessel and your perspective was from the process plant or landside. This overlooks the fact that in the definition in § 127.005 the boundaries of the marine transfer area begin at the vessel or where it moors and end before the receiving tanks. Therefore, the last manifold or valve is on the waterside of the tanks and the marine transfer area does *not* include the receiving tanks.

A few commenters suggested that these regulations would require existing facilities to make too many changes to their current operations. It is not our intent to place an undue burden on existing facilities or to attempt to make major changes to systems that already work. These regulations are meant to be, and are, minimum safety standards for the marine transfer area. If an existing facility cannot comply with these requirements, the operator has to change his operations, or submit a request for an alternative to the COTP. If this request is denied, the operator may appeal. No one set of regulations can be applied exactly to all existing facilities. The alternatives and appeals processes in §§ 127.015 and 127.017 allow existing facilities the flexibility that they need to operate without major changes to comply with these regulations.

Some commenters suggested that these regulations should contain more performance standards instead of prescriptive standards, and some additional performance standards have been included in the final rule, e.g. §§ 127.103 and 127.205. However, some proposed requirements were not suitable for formulation as performance standards. When the actual performance standards suggested by these commenters were evaluated, they were found to be too general and too vague and were not accepted.

Other commenters suggested that these regulations should be more like RSPA regulations. Every effort has been made to make these regulations are as similar as possible to the RSPA regulations, including consulting with RSPA during the rulemaking process. RSPA regulations apply to inland facilities and the landside of waterfront facilities, while Coast Guard regulations apply only to the waterside of waterfront facilities. The regulatory concerns are not the same, so the regulations cannot be identical. These regulations must also be as similar as possible to other Coast Guard regulations. If they are not similar to Coast Guard regulations, they will be difficult to enforce by Coast Guard personnel and difficult to comply with by facility owners and operators.

The following discusses the section-by-section comments to the NPRM, as well as changes to each section in this final rule.

Subpart A—General

Five commenters recommended adding the words, "for which a Letter of Intent under § 127.007 has been submitted", to the end of proposed § 127.001(b) so that inactive existing facilities are not required to comply with these regulations. It was never the intent of the Coast Guard that inactive existing facilities would have to comply with the proposed regulations. The proposed definition of "LNG waterfront facility" in the NPRM was such that a facility that did not transfer LNG was not a LNG waterfront facility and so did not have to comply with the regulations. We have clarified this point and satisfied the intent of these comments by adding the definition of the word, "active", and differentiating between active and inactive existing facilities in the regulations. The definition of "active" came from § 127.007(e)(2) in the NPRM and is discussed above with the general comments.

The same five commenters also recommended that the term, "existing structures" in § 127.001(c) be replaced with the word, "existing facilities". They reasoned that the word, "structure", was too generic and confusing. This confusion has been eliminated by referring to "existing structures" as "inactive existing facilities" in the final rule. Two sections, that apply to inactive existing facilities and were inadvertently left out in the NPRM, have also been added to § 127.001(c).

The Department of the Interior recommended a change to the definition of "environmentally sensitive areas" in § 127.005. Their change, to add the phrase, "other areas" deemed to be of high value to fish and wildlife resources", has been made.

Two commenters suggested a change to the proposed definition of "marine transfer area" in § 127.005. They recommended that the abbreviation, "(area)", be omitted to avoid any confusion with the other uses of the word, "area". This recommendation was accepted and the words, "marine transfer area", are used throughout the final rule instead of the word, "area". Three commenters recommended adding the words, "which is involved in the transfer of LNG", to the end of the definition of "marine transfer area" so that these regulations are not applied to process equipment or other areas under RSPA jurisdiction. This change was not made. These regulations address only those areas of the facility which are involved with the marine transfer of LNG. It would be inappropriate to apply them to areas beyond Coast Guard jurisdiction.

In § 127.007, Letter of Intent, the words, "active existing facilities" are now used to differentiate between

active and inactive facilities, as recommended by six commenters. Less information than that proposed in the NPRM is now required in the letter of intent, in response to many commenter's requests. The requirement for maps and charts in § 127.007(d)(6) has been restricted to only that waterway used by the LNG vessels enroute to the facility, and has been reduced to within 25 kilometers of the facility. The information requirement in proposed § 127.007(d)(7) has been omitted because it is information that can be obtained by the COTP from other sources. Finally, changes to information in the letter of intent in § 127.007(e)(1) have been limited to changes only to the information in sections (d) (1) through (5). All of these changes will reduce the information reporting burden on facility operators and are in accordance with federal objectives under the Paperwork Reduction Act.

Four commenters requested that a time limit be placed in § 127.009, requiring the COTP to draft the letter of recommendation within 30 days. They wanted time to revise construction or operation plans if the COTP did not issue a favorable letter of recommendation. We agree that the COTP should prepare the letter of recommendation promptly so that delay and costs are minimized. However, circumstances vary and the Coast Guard does not intend to restrict the COTP or establish a right to a response in a specified time. There has been no demonstrated need for such provisions. Two commenters thought that the letter of recommendation was not necessary for existing facilities since their construction and operations had already been subject to review. This change has been made. The information proposed in § 127.007(d)(7) in the NPRM for the letter of intent still needs to be considered by the COTP when issuing a letter of recommendation. Because of this, this information, i.e. depths of water, tidal range, etc., has been included as § 127.009(d) in the final rule.

Two comments were made concerning proposed § 127.015, Appeals. They were: Including time limits on the actions of the COTP and requiring that any order remain in effect pending the outcome of the process. However, this section was not changed because the recommended changes would make this appeal procedure incompatible with procedures found in other Coast Guard regulations in Title 33. One of the above commenters also suggested time limits on the actions of the COTP be included in proposed § 127.017. Alternatives Again, this change was not made. It is Coast Guard policy to complete the required correspondence promptly in order not to cause the operator undue delay and costs. There has been no demonstrated need for specified time limits.

The words, "active" and "inactive", are used again in §§ 127.019 (a) and (b) to differenuate between existing facilities, as recommended by five commenters. Three commenters were concerned that not enough time was allowed operators of active existing facilities to submit the *Operations Manual* and the *Emergency Manual* in § 127.019. They suggested that from 90–180 days be given to submit the manuals. In response to these comments, the effective date of these regulations has been set at June 2, 1988. This should allow enough time to implement any new requirements or changes that result from these regulations, without suspending transfer operations.

Four commenters recommended that the *Operations Manual* and *Emergency Manual* be maintained on-site and not submitted to the COTP. We disagree with this recommendation. The COTP needs to refer to these manuals during discussions with facility personnel, during examinations, and subsequent questions by Coast Guard personnel, and while responding to emergencies. Having copies at the COTP office will save the operator and the Coast Guard time when the COTP references the manuals instead of visiting the facility and examining systems and equipment there.

Subpart B—Design and Construction

Section 127.101(b) has been added in response to the comment that there are requirements in proposed § 127.103(a) that a facility be designed to resist earthquake forces, but no earthquake criteria were provided. One commenter pointed out the conflict in the NPRM between proposed § 127.615, which does not allow fires in the marine transfer area, and proposed § 127.103(c), which allowed direct combustion heating equipment in the marine transfer area of new facilities. Because it was never our intent to allow fires in the marine transfer area, and to make the requirements consistent with NFPA 59A, "Standards for the Production, Storage and Handling of LNG—1985 edition", § 127.103(c) has been deleted.

Section 127.103(d), concerning LNG and LPG storage tanks, has been rewritten in response to four comments, which recommended that the size limit be replaced with a performance standard. Section 127.103(d)(3) has been added in response to four comments, which stated there are other purposes for storage tanks in the marine transfer area.

Seven commenters recommended that "power systems" be changed to "power sources" in proposed § 127.107, Electrical power systems. These commenters argued that 100% redundant electrical systems are not necessary and not required in any other code or regulation. We agree and have made this change in the final rule. Five commenters expressed some confusion with the requirement in proposed § 127.107(b)(1) for emergency power for the control room. They questioned whether we intended that the emergency power source provide enough power for the operation of the control room itself or the systems operated from the control room. The emergency power source should not duplicate the operation of the electrical power source. It should provide power to only those systems necessary in an emergency. In order to eliminate this confusion and to be as specific as possible, § 127.107(b)(1) now requires emergency power only for the emergency shutdown system.

Six commenters made similar recommendations concerning the separate emergency lighting system in proposed § 127.109(a). This has been changed to "separate emergency lighting" so that there are not two redundant systems. Section 127.109(d)(1), one of the systems for which emergency lighting must be provided, has been changed to "emergency shutdown system" to be consistent with § 127.107(b)(1).

Six commenters recommended that, to be consistent, the proposed requirements in §§ 127.107 (d) and (e) for electrical equipment should be used in § 127.109(b)(1) for lighting equipment. Another commenter recommended in § 127.111(b)(1) that NFPA 70, the National Electric Code be used instead of Coast Guard regulations for intrinsic safety. We agree with both commenters that these paragraphs need to be consistent and that existing nationally-recognized codes should be used where possible. In order to eliminate the confusion of all three paragraphs referring to similar but different requirements in Coast Guard regulations and NFPA standards, and to make the electrical equipment requirements consistent throughout the regulations, §§ 127.107 (d) and (e), 127.109(b)(1), and 127.111(b) (1) and (2) have been omitted in the final rule in favor of § 127.101. In § 127.101 in the NPRM and in the final rule, the marine transfer area must meet NFPA 59A Chapter 7, Sections 7–6 and 7–7. These sections either refer to the NFPA 70 requirements or are based on them.

Subpart C—Equipment

One commenter recommended a change to proposed § 127.201(a), Sensing and alarm systems, so that placement of the audio alarm in accordance with this requirement did not restrict its sound. In response to this recommendation the words, "where the sensors are located" are replaced with the word, "nearby". The words, "enclosed or covered" have been added to § 127.201(c)(1) because two commenters stated that, as proposed in the NPRM, it would require an excessive number of sensors.

Concerning § 127.205, Emergency shutdown, four commenters stated that outdoor gas sensors are notoriously unreliable when measuring LNG concentrations. They also said that the transfer operation is so well-manned, that it would be better to rely on the judgment of a qualified operator to activate the system. We agree that outdoor gas sensors may be unreliable, but do not agree that the activation of the emergency shutdown system should rely solely on the judgment of an operator. Instead of relying on outdoor gas sensors, the requirement in the final rule relies on measurements from the fixed sensors in § 127.201, which are located in enclosed areas, to activate the system automatically. The requirement to provide a means to activate the system manually, has not been changed.

Four commenters suggested that proposed § 127.207, Warning alarms, be omitted. We do not agree. This requirement applies only to new facilities and is essentially the same as the requirement that now applies to existing waterfront facilities in 33 CFR 128.16.

Subpart D—Operations

One change was made to § 127.301, Person in charge of shoreside transfer operations: Qualifications and certification. A commenter recommended a person in charge be allowed to obtain the required previous transfer experience at an inland or waterfront facility, since there are few active "facilities" as defined. The words, "at any facility", have been ommited to remove the restriction that the experience required in § 127.301(a)(1) be obtained at a facility covered by these rules. Two commenters stated that it is difficult to ensure that a person in charge "knows", as required by proposed §§ 127.301(a) (2)–(4), the hazards of LNG, etc. They recommended that the person in charge either take a written test or show documented training to demonstrate the required knowledge. We have rejected this recommendation. The requirement is more flexible as written in the NPRM. It will be up to the facility operator to determine, by any appropriate means, that the person in charge complies with this requirement.

One commenter was concerned that transfer operations at active existing facilities would be suspended while the *Operations Manual* and the *Emergency Manual* were being examined, because of the proposed requirement in § 127.309(a). The effective date of the regulations has been set at June 2, 1988. This should allow more than enough time to submit the above manuals for examination and have a copy returned under the procedures in § 127.019.

The requirements in § 127.311 (b) and (c) for motor vehicles have been changed so that they apply only during transfer operations. Three commenters recommended this change so that maintenance vehicles may be allowed in other parts of the marine transfer area when transfer operations are not being conducted. Four other commenters recommended that proposed § 127.311(b) read "No person may leave unattended a motor vehicle in a space in the marine transfer area * * *". We do not agree. Including this criteria would remove all restrictions on where a motor vehicle stops or parks in the marine transfer area as long as it was "attended". This would not restrict ignition sources.

Four commenters recommended that the words, "flammable materials", be added after "the following" in proposed § 127.313, Bulk storage. This was done so that quantities of nitrogen, dry chemical, CO_2, and water could be stored in the marine transfer area.

In proposed § 127.315, Preliminary transfer inspection, paragraph (a) was clarified, as suggested by one commenter, so that only the transfer piping to be used during the transfer is inspected. It is not necessary to inspect transfer piping that is not being used. Two commenters recommended that the density not be noted in § 127.315(b) because it is usually calculated based on temperature and pressure. We accept this recommendation and have revised the section accordingly. Two commenters said that the facility should not be responsible for the ship's moorings, as suggested in proposed § 127.315(d). This is not the intent of the proposed requirement, which concerns the transfer connections and not the moorings. It is the responsibility of the facility to ensure that these connections do not unduly restrict the movement of the ship due to tides. This section has not been revised. As recommended by four commenters, the references to sections which apply only to new facilities, in proposed §§ 127.315 (f) and (i) which apply to new and active existing facilities, have been omitted.

Two comments were made concerning proposed § 127.317(c), Declaration of inspection. One recommended that the signature of the relief person in charge was not needed and the other recommended revised wording, both without supporting reasons. Without such support, other than implied preference, there was no reason to make any changes to this section.

Several comments were made concerning proposed § 127.319, LNG transfer. We agreed with the recommendation that vessels be allowed to moor outboard of an LNG vessel with the permission of the COTP, and revised § 127.319(a)(3). This is necessary to provide moorings for vessels which receive oily wastes and for tugs. Concerning proposed § 127.319(b)(3)(iii), two commenters recommended that we define "uncontrolled fires". This is not necessary. When the meaning of a word is not distinguished by a definition of it in the regulations, it has the every-day meaning found in a dictionary. This is true in this case; "uncontrolled" means lack of control. Seven commenters questioned the distance proposed in § 127.319(b)(3). The resulting revisions simplify the requirement so that transfer operations must be discontinued before electrical storms or uncontrolled fires are adjacent to the marine transfer area. The reference in proposed § 127.319(b)(4) to § 127.109, which only applies to new facilities, has been omitted, as recommended by six commenters.

Concerning proposed § 127.321, Release of LNG, two commenters recommended changes that would allow facilities to release small amounts of LNG during normal operations, but did not recommend what amount could be released safely. We do not believe that there is an amount of LNG that can be released into the water safely. LNG spilled on the water could not be contained and would spread and evaporate very quickly. This release could easily find an ignition source. This recommendation was rejected.

Subpart E—Maintenance

Five commenters recommended that, in order to be consistent with RSPA requirements, we change §§ 127.403, Inspections, and 127.407(a), Testing, to read, "each calendar year, but with intervals not exceeding 15 months".

These changes were made because we agree that one facility piping system should not have two different inspection and testing intervals. Section 127.405(a)(1), which applies to active existing facilities, references subparts that apply only to new facilities. It has been revised to read, "the applicable requirements", as recommended by five commenters.

Two other changes were made to this subpart, both in proposed § 127.407, Testing. In § 127.407(a)(4), seven commenters stated that piping that is constantly kept at cryogenic temperature does not undergo physical or thermal stress from expansion/contraction and is not susceptible to corrosion. For these reasons, this piping does not need to be tested, and this exception has been included in this section. Also, the requirement to test the transfer system to 1.5 times the Maximum Allowable Working Pressure (MAWP) in proposed § 127.407(b) has been changed to 1.1 times the MAWP. Nine commenters pointed out that to test to 1.5 times the MAWP was not consistent with nationally recognized codes and almost impossible to accomplish with LNG piping.

Subpart F—Personnel Training

Four commenters expressed concern about the effective date of the training requirements in proposed § 127.501 for inactive existing facilities. Inactive existing facilities are not required to meet the training requirements in this section while they are inactive. For this reason, the applicability of this subpart has been clarified and included in the final rule in a new section, § 127.501, Applicability. Because the effective date of these regulations has been set at January 2, 1988, this new section also allows sufficient time to complete the required training.

Five commenters were confused with the applicability of our training requirements to employees who do not work in the marine transfer area. Because the regulations only apply in the marine transfer area, these training requirements only apply to employees who work in this area. The training descriptions in proposed §§ 127.501 (a)(1) and (b)(2)–(4) were respecified, but the training remains the same. These descriptions were too general in the NPRM and some commenters were not sure what was required.

Two commenters recommended that refresher training in proposed § 127.501(c) be required every 2 years, as required by RSPA. However, refresher training every 5 years is consistent with Coast Guard regulations for merchant seaman. Our experience with that program does not support the need for more frequent refresher training.

Subpart G—Firefighting

Proposed § 127.605, Emergency outfits, was rewritten as recommended by three commenters, so that the storage of the outfits is not limited to the marine transfer area. The final rule requires that there be an emergency outfit for each person whose duties include fighting fires, instead of requiring that, "Each area must have an emergency outfit * * *" This will ensure that the outfits are also available for use in other portions of the facility and not isolated in the marine transfer area. Two commenters questioned the need for emergency outfits. Protective clothing, i.e. emergency outfits, is needed for two purposes. First, any person involved in firefighting must be protected with at least an emergency outfit. Second, emergency outfits are usually needed by members of a rescue team (minimum of two) to rescue an injured person. The requirements in § 127.605 are minimum requirements. If no person is assigned to firefighting duties, the facility is only required to maintain two outfits for rescue purposes. This section does not require the facility to develop an extensive firefighting and rescue capability.

The requirement in proposed § 127.607(a), Fire main systems, to provide two water streams to each part of the marine transfer area can be excessive on a marine transfer area that is very large and spread out. It is not our intent to require facility operators to protect large areas of the marine transfer area that do not contain LNG. Therefore, this section has been rewritten, as two commenters recommended, so that two water streams must only be provided for each part of the LNG transfer piping and connections. Two other commenters recommended that these requirements go one step further and that only the portion of the marine transfer area within 100 meters of the loading flange be protected by water streams. This recommended change has not been made because protecting only the loading flange area would not be enough to protect most marine transfer areas. There may be exceptions to this. An example is where there are miles of transfer pipeline that can easily be isolated in many places along the line, where the transfer pipeline is not located near other structures or equipment in the marine transfer area, and where there are sufficient water streams to protect the loading flange area and the receiving tanks. However, this type of marine transfer area is rare. Because of this and because these requirements are not intended to result in major refitting of existing facilities, this may be a requirement for which a facility would request an alternative under § 127.017. This request could then be evaluated by the COTP.

In the same section, Fire main systems, § 127.607(c)(2) was intended to stand alone and not be required at the same time as paragraph (c)(1). However six commenters interpreted these requirements so that the fire main system would provide the required pressure in paragraph (c)(2) while all the other hydrants were open as required in paragraph (c)(1). The words, "when only those two outlets are open", have been added to the end of § 127.607(c)(2) in order to clarify it. One commenter wanted to be able to use hoses that were greater than 1½ inches in diameter as required in § 127.607(f). This was accomplished by inserting the words "or more", after inches in this requirement.

The coverage of the dry chemical system in § 127.609(a) also concerned a few commenters. Two commenters recommended that the system not provide two dry chemical discharges to each part of the marine transfer area, but that it provide discharges only to that part along the LNG transfer piping and connections. Two other commenters recommended that it provide coverage to only the area around the loading flange. We agree that providing dry chemical discharges for the entire marine transfer area, which does not contain LNG, or for the transfer piping and connections, which may be very long, is unreasonable. Therefore, § 127.609(a) has been rewritten, as recommended by the comments, so that the dry chemical system provides discharges to only that area surrounding the loading arms. Two commenters suggested that this section be revised one step further, i.e. that only a dry chemical system be required, with no other requirements for number of discharges, coverage, etc. This comment was rejected because it would make the requirement too broad and too general. It would leave it completely up to the different COTPs and the facility operators to decide what dry chemical system should exist, without any guidance from the regulation.

Four comments were received concerning proposed § 127.613, Smoking, stating that smoking should be allowed in posted areas approved by the COTP. The requirement in the NPRM does not prohibit smoking in the marine transfer area. It only prohibits smoking when there is LNG in the marine transfer area. Therefore, this comment was not accepted.

Subpart H—Security

Proposed § 127.703, Access to the marine transfer area, has been rewritten to allow into the marine transfer area personnel authorized by the facility operator and visitors with temporary identifying badges. Seven commenters recommended these changes so that elected officials, corporate executives, foreign dignitaries, etc. could be allowed into the marine transfer area.

Evaluation

The Transportation Systems Center (TSC) prepared a report entitled, *Preliminary Impact Analysis of the U.S. Coast Guard's Proposed LNG Regulations*, which is included in the docket file and is available through the Project Manager listed under "For Further Information Contact". For the analysis, a composite baseline standard was used by which the types of incremental costs and benefits, as well as their distributional effects, were identified. The baseline consisted of: (1) Current Coast Guard Waterfront Facilities regulations (33 CFR 126); (2) USCG facility operations plans which are issued by the COTP for the port in which an LNG facility is located; and (3) National Fire Protection Association (NFPA) standards. The primary LNG standard is NFPA 59A, "Standards for the Production, Storage and Handling of LNG—1985 edition". NFPA standards are considered to be minimum industry standards voluntarily adopted by the LNG industry. The analysis determined the impacts of the Advance Notice of Proposed Rulemaking (ANPRM) by identifying where the proposed regulations exceed current practices and, therefore, where costs and benefits would accrue.

Of the 72 sections contained in the ANPRM, 54 were analyzed in the TSC report. Thirty-five or 65% of the 54 analyzed, introduced no change from the current baseline standards. Of the nineteen sections of the ANPRM that exceeded current requirements and standards, fifteen resulted in administrative costs, mostly for facility operators. Most of these costs would be minimal and not recurring. An example of an administrative cost would be the preparation and submission of an *Operations Manual* and an *Emergency Manual* to the COTP. The impact of this requirement would be minimal because facility operators already submit much of this information to the COTP or maintain it themselves.

The proposed fire protection and security regulations of the ANPRM and NPRM were not analyzed by TSC because the Coast Guard's proposed regulations are similar to the RSPA's final rules found in 49 CFR Part 193. A telephone survey of all facilities indicated that the proposed regulations in the NPRM did not exceed known current industry practices. However, some comments to the NPRM indicated that this was not true for some of the proposed regulations. Changes to the final rule, as a result of these comments, ensure that these regulations do not exceed current industry practices.

To ensure the currency and validity of the TSC report, requests for estimates of the compliance costs of this NPRM, were sent to two operating facilities. The results were the latest cost figures and confirmed that the TSC report could still be applied to the NPRM. The survey information and the TSC report were both used in the final cost/benefit analysis.

Of the 52 sections contained in the NPRM, 39 or 75% introduced no change from the current baseline requirements and standards. Of the thirteen sections of the NPRM that exceed current requirements, 8 would result in administrative costs. This is a 32% decrease from ANPRM to NPRM in the number of sections in the rulemaking that exceed current requirements. These figures also apply to the final rule.

These safety standards will result in low compliance costs. According to the analysis in the Final Evaluation, the total initial cost of these regulations to the LNG industry is $96,000.00 and the annual recurring cost is $44,000.00. These costs represent such a relatively small amount of money to the industry that it is believed that these regulations will have no perceptible impact on the industry.

The TSC analysis concluded that due to the low probability of an LNG accident occurring, the expected value of the quantifiable benefits of the NPRM were low. The benefits would be great if an accident occurred. A "maximum credible accident", as discussed in the Final Evaluation, involving a pool fire of 30,000 m^2 in an area with a population density of 10 people per km^2 at the dock site, could result in 21 fatalities with a cost to society in excess of $21 million in property damage, injury, and loss of life. If the same pool fire occurred in an area with a population 1000 persons per km^2, the result could be 3,810 fatalities with social costs of over $3.8 billion in property damage, injury, and loss of life.

Accidents involving small amounts of LNG have occurred in the past. The National Transportation Safety Board (NTSB) investigated one such accident that occurred at a facility on October 6, 1979. According to NTSB report No. NTSB–PAR–80–2, "About 3:35 a.m., e.d.t., an explosion caused by liquefied natural gas vapors destroyed a transformer building at the reception facility of the Columbia LNG Corporation, Cove Point, Maryland. Odorless liquefied natural gas leaked through an inadequately tightened LNG pump seal, vaporized, passed through approximately 210 ft. of underground electrical conduit, and entered the substation building. One person was killed and one person was seriously injured. Damage to the facility was estimated at about $3 million."

Despite the very large savings that would result from preventing a major LNG accident or mitigating the results of an accident if it occurred at an LNG facility, it is difficult to precisely quantify the benefits that will accrue. This is because of the extremely low probability of a major LNG accident occurring. The limited number of reported LNG facility accidents requires that probability estimates of accidents be based on the theoretical analysis of factors which might lead to their occurrence. There is large inherent uncertainty associated with such estimates, and hence of the cost/benefit values derived from them. Because of such uncertainties, prudence dictates an extra measure of caution where there is potential for a catastrophic accident. Such caution should be weighed along with other considerations when judging the need for safety standards that can reduce the possibility of a catastrophic LNG accident. This is true even when these measures may not be justified based on a theoretical risk analysis.

The benefits that cannot be quantified were discussed in the preamble of the NPRM. They include replacing outdated regulations, filling a gap in federal regulations, making industry standards and practices mandatory, and consolidating and better organizing the regulations.

These safety standards are considered to be non-major under Executive Order 12291 of February 17, 1981 (3 CFR, 1982 Comp., p. 127) and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The total cost to the industry of these LNG safety standards does not exceed the $100 million threshold to qualify as a major rulemaking, and so a Regulatory Impact Analysis is not required.

This rule contains information collection requirements in sections

127.007, 127.015, 127.017, 127.019, 127.301, 127.317, and 127.409. They have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and assigned control number 2115–0552. As a result of the comments received, the information collection requirements have been reduced in the final rule.

The Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is because few, if any, small entities are involved in these costly and highly technical operations. All the existing facilities are owned and operated by multimillion dollar corporations.

This regulatory project is not anticipated to have an adverse impact on the environment. It is intended to prevent or mitigate the results of a catastrophic accident at a facility.

The Final Evaluation and the Final Environmental Assessment and Finding of No Significant Impact have been placed in the rulemaking docket file and are available for inspection and copying from the Marine Safety Council (G–CMC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1477.

List of Subjects

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Natural gas, Security measures, Vessels

In accordance with the preceding, Subchapter L, Chapter I of Title 33, Code of Federal Regulations is amended as follows:

PART 4—[AMENDED]

1. The authority citation to Part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

§ 4.02 [Amended]

2. By amending § 4.02 by adding a new listing in proper chronological sequence to read as follows:

33 CFR part or section where identified and described	Current OMB control number
• • • • •	
Part 127	2115–0552
• • • • •	

PART 126—[AMENDED]

3. The authority citation to Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

§ 126.05 [Amended]

4. By amending § 126.05(a) by adding the words ", except methane" after the words "any flammable or combustible liquid in bulk".

§ 126.10 [Amended]

5. By removing the word "Methane" from the list in § 126.10(d).

6. By adding a new Part 127 to read as follows:

PART 127—LIQUEFIED NATURAL GAS WATERFRONT FACILITIES

Subpart A—General

Sec.
127.001 Applicability.
127.003 Incorporation by reference.
127.005 Definitions.
127.007 Letter of intent.
127.009 Letter of recommendation.
127.011 LNG waterfront facility inspections.
127.013 Suspension of transfer operations.
127.015 Appeals.
127.017 Alternatives.
127.019 *Operations Manual* and *Emergency Manual*: Procedures for examination.

Subpart B—Design and Construction

127.101 Design and construction: General.
127.103 Piers and wharves.
127.105 Marine transfer area layout and spacing.
127.107 Electrical power systems.
127.109 Lighting systems.
127.111 Communications systems.
127.113 Warning signs.

Subpart C—Equipment

127.201 Sensing and alarm systems.
127.203 Portable gas detectors.
127.205 Emergency shutdown.
127.207 Warning alarms.

Subpart D—Operations

127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.
127.303 Compliance with suspension order.
127.305 *Operations Manual*.
127.307 *Emergency Manual*.
127.309 *Operations Manual* and *Emergency Manual*: Use.
127.311 Motor vehicles.
127.313 Bulk storage.
127.315 Preliminary transfer inspection.
127.317 Declaration of inspection.
127.319 LNG transfer.
127.321 Release of LNG.

Subpart E—Maintenance

127.401 Maintenance: General.
127.403 Inspections.
127.405 Repairs.
127.407 Testing.
127.409 Records.

Subpart F—Personnel Training

127.501 Applicability.
127.503 Training: General.

Subpart G—Firefighting

Fire Equipment

127.601 Fire equipment: General.
127.603 Portable fire extinguishers.
127.605 Emergency outfits.
127.607 Fire main systems.
127.609 Dry chemical systems.
127.611 International shore connection.

Fire Protection

127.613 Smoking.
127.615 Fires.
127.617 Hotwork.

Subpart H—Security

127.701 Security on existing facilities.
127.703 Access to the marine transfer area.
127.705 Security systems.
127.707 Security personnel.
127.709 Protective enclosures.
127.711 Communications.

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

Subpart A—General

§ 127.001 Applicability.

(a) This part applies to the marine transfer area of new LNG waterfront facilities and to new construction in the marine transfer area of existing LNG waterfront facilities.

(b) Subparts A, D, E, F, and G and § 127.701 apply to the marine transfer area of active existing LNG waterfront facilities.

(c) Sections 127.007 (c), (d), and (e), 127.019(b), and 127.701 apply to the marine transfer area of inactive existing LNG waterfront facilities.

§ 127.003 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material may be obtained from the National Fire Protection Association at the address indicated in 33 CFR § 127.003(b) of this section.

(b) The materials approved for incorporation by reference in this part are:

"National Fire Protection Association" Batterymarch Park, Quincy MA 02269

NFPA 10 Portable Fire Extinguishers, 1984
NFPA 30 Flammable and Combustible Liquids Code, 1984
NFPA 51B Fire Prevention in Use of Cutting and Welding Processes, 1984
NFPA 59A Production, Storage and Handling of Liquefied Natural Gas (LNG), 1985
NFPA 70 National Electrical Code, 1987
NFPA 251 Fire Tests of Building Construction and Materials, 1985

§ 127.005 Definitions.

As used in this part:

"Active" means transferring LNG or scheduling a LNG transfer operation within 12 months of the most recent transfer operation.

"Captain of the Port" (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in Part 3 of this chapter, or an authorized representative.

"Commandant" means the Commandant of the U.S. Coast Guard or an authorized representative.

"Control room" means a space within the LNG waterfront facility from which facility operations are controlled.

"District Commander" means the Coast Guard officer designated by the Commandant to command a Coast Guard District as described in Part 3 of this chapter, or an authorized representative.

"Environmentally sensitive areas" include public parks and recreation areas, wildlife and waterfowl refuges, fishing grounds, wetlands, other areas deemed to be of high value to fish and wildlife resources, historic sites, and other protected areas.

"Existing" means constructed or being constructed under a contract awarded before (insert the effective date of these regulations).

"Fire endurance rating" means the duration for which an assembly or structural unit will contain a fire or retain structural integrity when exposed to the temperatures specified in the standard time-temperature curve in NFPA 251.

"Inactive" means not active.

"Impounding space" means a space formed by dikes and floors that confines a spill of LNG.

"Liquefied natural gas" (LNG) means a liquid or semisolid consisting mostly of methane and small quantities of ethane, propane, nitrogen, or other natural gases.

"Liquefied petroleum gas" (LPG) means a liquid consisting mostly of propane or butane or both.

"Loading flange" means the connection or group of connections in the cargo transfer pipeline on the facility that connects the facility pipeline to the vessel pipeline.

"LNG vessel" means a watercraft constructed or converted to carry LNG in bulk.

"LNG waterfront facility" (facility) means a waterfront facility, as defined in § 126.01, at which LNG transfer operations are conducted.

"Marine transfer area" means that portion of a facility between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tanks.

"Maximum allowable working pressure" (MAWP) means the maximum gauge pressure permissible at the top of equipment, containers, or pressure vessels while operating at design temperature.

"New" means constructed or being constructed under a contract awarded on or after (insert the effective date of these regulations).

"Person in charge of transfer operations on the vessel" is the person designated the person in charge of cargo transfer under 46 CFR 154.1831.

"Substructure" means the deck of a pier or wharf and the structural components below that deck.

§ 127.007 Letter of intent.

(a) An owner who intends to build a new facility or the owner or operator who plans new construction on an existing facility, must submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is or will be located, at least 60 days before construction begins.

(b) The owner or operator of an active existing facility shall submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is located.

(c) An owner or operator of an inactive existing facility shall submit a letter of intent that meets paragraph (d) of this section to the COTP of the zone in which the facility is located, at least 60 days before transferring LNG.

(d) Each letter of intent must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the facility;

(3) The physical location of the facility;

(4) A description of the facility;

(5) The LNG vessels' characteristics and the frequency of LNG shipments to or from the facility; and

(6) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility, within 25 kilometers (15.5 miles) of the facility.

(e) The owner or operator who submits a letter of intent under paragraph (a), (b), or (c), shall notify the COTP in writing within 15 days if—

(1) There is any change in the information submitted under paragraphs (d)(1) through (d)(5) of this section; or

(2) No LNG transfer operations are scheduled within the next 12 months.

§ 127.009 Letter of recommendation.

After the COTP receives the letter of intent under § 127.007 (a) or (c), the COTP issues a letter of recommendation to the owner or operator of the facility and to the state and local government agencies having jurisdiction, as to the suitability of the waterway for LNG marine traffic, based on the—

(a) Information submitted under §§ 127.007 (d)(3) through (d)(6);

(b) Density and character of marine traffic in the waterway;

(c) Locks, bridges, or other man-made obstructions in the waterway; and

(d) Following factors adjacent to the facility:

(1) Depths of the water.

(2) Tidal range.

(3) Protection from high seas.

(4) Natural hazards, including reefs, rocks, and sandbars.

(5) Underwater pipelines and cables.

(6) Distance of berthed vessel from the channel and the width of the channel.

Note.—The Coast Guard is authorized by law to establish water or waterfront safety zones, or other measures for limited, controlled, or conditional access and activity, when necessary for the protection of any vessel, structure, waters, or shore area.

§ 127.011 LNG waterfront facility inspections.

The operator shall ensure that the COTP or his representative is allowed to make reasonable examinations and inspections to determine whether the facility meets this part.

§ 127.013 Suspension of transfer operations.

(a) The COTP may issue an order to the operator to suspend LNG transfer

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operations if the COTP finds any condition requiring immediate action to—

(1) Prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) Protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss.

(b) Each order to suspend transfer operations issued under paragraph (a) of this section—

(1) Is effective immediately;

(2) Contains a statement of each condition requiring immediate action; and

(3) Is withdrawn by the COTP whenever each condition is corrected or no longer exists.

§ 127.015 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593–0001; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Chief, Office of Marine Safety, Security and Environmental Protection issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and

(2) Must be submitted in writing within five days after the oral presentation—

(i) With the basis for the appeal and a summary of the material presented orally; and

(ii) To the same Coast Guard official who heard the oral presentation.

§ 127.017 Alternatives.

(a) The COTP may allow alternative procedures, methods, or equipment standards to be used by an operator instead of any requirements in this part if—

(1) The operator submits a written request for the alternative at least 30 days before facility operations under the alternative would begin, unless the COTP authorizes a shorter time; and

(2) The alternative provides at least the same degree of safety provided by the regulations in this part.

(b) The COTP approves or disapproves any alternative requested under paragraph (a) of this section—

(1) In writing; or

(2) Orally, with subsequent written confirmation.

§ 127.019 Operations Manual and Emergency Manual: Procedures for examination.

(a) The owner or operator of an active existing facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* to the Captain of the Port of the zone in which the facility is located.

(b) At least 30 days before transferring LNG, the owner or operator of a new or an inactive existing facility shall submit two copies of the *Operations Manual* and of the *Emergency Manual* to the Captain of the Port of the zone in which the facility is located, unless the manuals have been examined and there have been no changes since that examination.

(c) If the COTP finds that the *Operations Manual* meets § 127.305 and the *Emergency Manual* meets § 127.307, the Captain of the Port returns a copy to the owner or operator marked "Examined by the Coast Guard".

(d) If the COTP finds that the *Operations Manual* or the *Emergency Manual* does not meet this part, the Captain of the Port returns the manual with an explanation of why it does not meet this part.

Subpart B—Design and Construction

§ 127.101 Design and construction: General.

The marine transfer area must meet the following criteria in NFPA 59A:

(a) Chapter 2, Sections 2–1.2 and 2–3.

(b) Chapter 4, Section 4–1.3.

(c) Chapter 6.

(d) Chapter 7, Sections 7–6 and 7–7.

(e) Chapter 8, except Sections 8–3, 8–5 and 8–7.2.

§ 127.103 Piers and wharves.

(a) If the facility is in a region subject to earthquakes, the piers and wharves must be designed to resist earthquake forces.

(b) Substructures, except moorings and breasting dolphins, that support or are within 5 meters (16.4 feet) of any pipe or equipment containing LNG, or are within 15 meters (49.2 feet) of a loading flange, must—

(1) Be made of concrete or steel; and

(2) Have a fire endurance rating of not less than two hours.

(c) LNG or LPG storage tanks must have the minimum volume necessary for—

(1) Surge protection;

(2) Pump suction supply; or

(3) Other process needs.

§ 127.105 Marine transfer area layout and spacing.

(a) LNG impounding spaces must be located so that the heat flux from a fire over the impounding spaces does not cause structural damage to an LNG vessel moored or berthed at the facility.

(b) Each LNG loading flange must be located at least 300 meters (984.3 feet) from the following which are primarily intended for the use of the general public or railways:

(1) Each bridge crossing a navigable waterway.

(2) Each entrance to any tunnel under a navigable waterway.

§ 127.107 Electrical power systems.

(a) The electrical power system must have a power source and a separate emergency power source, so that failure of one source does not affect the capability of the other source. The system must meet the National Electrical Code, NFPA 70.

(b) The emergency power source must provide enough power for the operation of the—

(1) Emergency shutdown system;

(2) Communications equipment;

(3) Firefighting equipment; and

(4) Emergency lighting.

(c) If an auxiliary generator is used as an emergency power source, it must meet Section 700–12 of NFPA 70.

§ 127.109 Lighting systems.

(a) The marine transfer area must have a lighting system and separate emergency lighting.

(b) All outdoor lighting must be located or shielded so that it is not confused with any aids to navigation and does not interfere with navigation on the adjacent waterways.

(c) The lighting system must provide an average illumination on a horizontal plane one meter (3.3 feet) above the deck that is—

(1) 54 lux (five foot-candles) at any loading flange; and

(2) 11 lux (one foot-candle) at each work area.

(d) The emergency lighting must provide lighting for the operation of the—

(1) Emergency shutdown system;

(2) Communications equipment; and

(3) Firefighting equipment.

§ 127.111 Communications systems.

(a) The marine transfer area must have a ship-to-shore communication system and a separate emergency ship-to-shore communication system.

(b) Each ship-to-shore communication system must be a dedicated system that allows voice communication between the person in charge of transfer operations on the vessel, the person in charge of shoreside transfer operations, and personnel in the control room.

§ 127.113 Warning signs.

(a) The marine transfer area must have warning signs that—

(1) Meet paragraph (b) of this section;

(2) Can be seen from the shore and the water; and

(3) Have the following text:

Warning
Dangerous Cargo
No Visitors
No Smoking
No Open Lights

(b) Each letter in the words on the sign must be—

(1) Block style;

(2) Black on a white background; and

(3) 7.6 centimeters (3 inches) high.

Subpart C—Equipment

§ 127.201 Sensing and alarm systems.

(a) Fixed sensors must have audio and visual alarms in the control room and audio alarms nearby.

(b) Fixed sensors that continuously monitor for LNG vapors must—

(1) Be in each enclosed area where vapor or gas may accumulate; and

(2) Meet Section 9–4 of NFPA 59A.

(c) Fixed sensors that continuously monitor for flame, heat, or products of combustion must—

(1) Be in each enclosed or covered Class I, Division 1, hazardous location defined in Section 500–5(a) of NFPA 70 and each area in which flammable or combustible material is stored; and

(2) Meet Section 9–4 of NFPA 59A.

§ 127.203 Portable gas detectors.

The marine transfer area must have at least two portable gas detectors capable of measuring 0–100% of the lower flammable limit of methane.

§ 127.205 Emergency shutdown.

Each transfer system must have an emergency shutdown system that—

(a) Can be activated manually; and

(b) Is activated automatically when the fixed sensors under § 127.201(b) measure LNG concentrations exceeding 40% of the lower flammable limit.

§ 127.207 Warning alarms.

(a) The marine transfer area must have a rotating or flashing amber light with a minimum effective flash intensity, in the horizontal plane, of 5000 candelas. At least 50% of the required effective flash intensity must be maintained in all directions from 1.0 degree above to 1.0 degree below the horizontal plane.

(b) The marine transfer area must have a siren with a minimum ⅓-octave band sound pressure level at 1 meter of 125 decibels referenced to 0.0002 microbars. The siren must be located so that the sound signal produced is audible over 360 degrees in a horizontal plane.

(c) Each light and siren must be located so that the warning alarm is not obstructed for a distance of 1.6 km (1 mile) in all directions.

Subpart D—Operations

§ 127.301 Persons in charge of shoreside transfer operations: Qualifications and certification.

(a) No person may serve, and the operator of the facility may not use the services of any person, as a person in charge of shoreside transfer operations, unless that person—

(1) Has at least 48 hours of LNG transfer experience;

(2) Knows the hazards of LNG;

(3) Knows the rules of this subpart; and

(4) Knows the procedures in the examined *Operations Manual* and the examined *Emergency Manual*.

(b) Before a person in charge of shoreside transfer operations supervises a transfer, the operator shall certify in writing that the criteria in paragraph (a) of this section are met. The operator shall maintain a copy of each current certification available for inspection at the facility.

§ 127.303 Compliance with suspension order.

If an order to suspend is given to the operator or owner of the facility, no LNG transfer operations may be conducted at the facility until the order is withdrawn by the COTP.

§ 127.305 Operations Manual.

Each *Operations Manual* must contain—

(a) A description of the transfer system including mooring areas, transfer connections, control rooms, and diagrams of the piping and electrical systems;

(b) The duties of each person assigned for transfer operations;

(c) The maximum relief valve setting or maximum allowable working pressure of the transfer system;

(d) The facility telephone numbers of facility supervisors, persons in charge of shoreside transfer operations, personnel on watch in the marine transfer area, and security personnel;

(e) A description of the security systems for the marine transfer area;

(f) The procedures for—

(1) Transfer operations including gauging, cool down, pumping, venting, and shutdown;

(2) Transfer operations start-up and shutdown;

(3) Security violations; and

(4) The communications systems; and

(g) A description of the training programs established under § 127.503.

§ 127.307 Emergency Manual.

Each *Emergency Manual* must contain—

(a) LNG release response procedures, including contacting local response organizations;

(b) Emergency shutdown procedures;

(c) A description of the fire equipment and systems and their operating procedures;

(d) A description of the emergency lighting and emergency power systems;

(e) The telephone numbers of local Coast Guard units, hospitals, fire departments, police departments, and other emergency response organizations;

(f) If the facility has personnel shelters, the location of and provisions in each shelter;

(g) First aid procedures and if there are first aid stations, the locations of each station; and

(h) Emergency procedures for mooring and unmooring a vessel.

§ 127.309 Operations Manual and Emergency Manual: Use.

The operator shall ensure that—

(a) LNG transfer operations are not conducted unless the facility has an examined *Operations Manual* and examined *Emergency Manual*;

(b) Each transfer operation is conducted in accordance with the examined *Operations Manual*; and

(c) Each emergency response is in accordance with the examined *Emergency Manual*.

§ 127.311 Motor vehicles.

(a) The operator shall designate and mark parking spaces that—

(1) Do not block fire lanes;

(2) Do not impede any exits;

(3) Are not located in any impounding space; and

(4) Are not within 15 meters (49.2 feet) of any storage tank or loading flange.

(b) During transfer operations, no person may—

(1) Stop or park a motor vehicle in a space that is not designated a parking space; or

(2) Refuel any motor vehicle.

§ 127.313 Bulk storage.

(a) The operator shall ensure that only the following flammable materials are stored in the marine transfer area:

(1) LNG.

(2) LPG.

(3) Vessel fuel.

(4) Oily waste from vessels.

(5) Solvents, lubricants, paints, and other fuels in the amount used for one day's operations and maintenance.

(b) Flammable liquids must be stored in accordance with Chapter 4 of NFPA 30.

§ 127.315 Preliminary transfer inspection.

Before transferring LNG, the person in charge of shoreside transfer operations shall—

(a) Inspect the transfer piping and equipment to be used during the transfer and replace any worn or inoperable parts;

(b) For each of the vessel's cargo tanks from which cargo will be transferred, note the pressure, temperature, and volume to ensure they are safe for transfer;

(c) Review and agree with the person in charge of cargo transfer on the vessel to—

(1) The sequence of transfer operations;

(2) The transfer rate;

(3) The duties, location, and watches of each person assigned for transfer operations; and

(4) Emergency procedures from the examined *Emergency Manual*;

(d) Ensure that transfer connections allow the vessel to move to the limits of its moorings without placing strain on the loading arm or transfer piping system;

(e) Ensure that each part of the transfer system is aligned to allow the flow of LNG to the desired location;

(f) Ensure that warning signs that warn that LNG is being transferred, are displayed;

(g) Eliminate all ignition sources in the marine transfer area;

(h) Ensure that personnel are on duty in accordance with the examined *Operations Manual*; and

(i) Test the following to determine that they are operable:

(1) The sensing and alarm systems.

(2) The emergency shutdown system.

(3) The communication systems.

§ 127.317 Declaration of inspection.

(a) After the preliminary transfer inspection under § 127.315 has been satisfactorily completed, the person in charge of shoreside transfer operations shall ensure that no person transfers LNG until a Declaration of Inspection that meets paragraph (c) of this section is executed and signed in duplicate.

(b) The person in charge of shoreside transfer operations shall give one signed copy of the Declaration of Inspection to the person in charge of transfer operations on the vessel, and shall retain one signed copy at the facility for 30 days after completion of the transfer.

(c) Each Declaration of Inspection must contain—

(1) The name of the vessel and the facility;

(2) The date and time that transfer operations begin;

(3) A list of the requirements in § 127.315 with the initials of the person in charge of shoreside transfer operations after each requirement, indicating that the requirement is met;

(4) The signature of the person in charge of shoreside transfer operations and the date and time of signing, indicating that he or she is ready to begin transfer operations; and

(5) The signature of each relief person in charge and the date and time of each relief.

§ 127.319 LNG transfer.

During LNG transfer operations, the following must be met:

(a) The operator of the facility shall ensure that—

(1) The marine transfer area is under the supervision of a person in charge, who has no other assigned duties during the transfer operation;

(2) Personnel transferring fuel or oily waste are not involved in LNG transfer; and

(3) No vessels are moored outboard of any LNG vessel without the permission of the COTP.

(b) The person in charge of shoreside transfer operations shall—

(1) Be in continuous communication with the person in charge of transfer operations on the vessel;

(2) Ensure that an inspection of the transfer piping and equipment for leaks, frost, defects, and other symptoms of safety and operational problems is conducted at least once every transfer;

(3) Ensure that transfer operations are discontinued—

(i) Before electrical storms or uncontrolled fires are adjacent to the marine transfer area; and

(ii) As soon as a fire is detected; and

(4) Ensure that the lighting systems are turned on between sunset and sunrise.

Note.—Vessel transfer requirements are published in 46 CFR Part 154.

§ 127.321 Release of LNG.

(a) The operator of the facility shall ensure that—

(1) No person releases LNG into the navigable waters of the United States; and

(2) If there is a release of LNG, vessels near the facility are notified of the release by the activation of the warning alarm.

(b) If there is a release of LNG, the person in charge of shoreside transfer operations shall—

(1) Immediately notify the person in charge of cargo transfer on the vessel of the intent to shutdown;

(2) Shutdown transfer operations;

(3) Notify the COTP of the release; and

(4) Not resume transfer operations until authorized by the COTP.

Subpart E—Maintenance

§ 127.401 Maintenance: General.

The operator of the facility shall ensure that the equipment required under this part is maintained in a safe condition so that it does not cause a release or ignition of LNG.

§ 127.403 Inspections.

The operator shall conduct a visual inspection for defects of each pressure-relief device not capable of being tested, at least once each calendar year, with intervals between inspections not exceeding 15 months, and make all repairs in accordance with § 127.405.

§ 127.405 Repairs.

The operator shall ensure that—

(a) Equipment repairs are made so that—

(1) The equipment continues to meet the applicable requirements in subparts B, C, G, and H of this part and in NFPA 59A; and

(2) Safety is not compromised; and

(b) Welding is done in accordance with NFPA 51B and NFPA 59A, Chapter 6, Section 6–3.4.

§ 127.407 Testing.

(a) The operator shall pressure test under paragraph (b) of this section the transfer system, including piping, hoses, and loading arms, and verify the set pressure of the safety and relief valves—

(1) After the system or the valves are altered;

(2) After the system or the valves are repaired;

(3) After any increase in the MAWP; or

(4) For those components that are not continuously kept at cryogenic temperature, at least once each calendar year, with intervals between testing not exceeding 15 months.

(b) The pressure for the transfer system test under paragraph (a) of this section must be at 1.1 times the MAWP and be held for a minimum of 30 minutes.

§ 127.409 Records.

(a) The operator shall keep on file the following information:

(1) A description of the components tested under § 127.407.

(2) The date and results of the test under § 127.407.

(3) A description of any corrective action taken after the test.

(b) The information required by this section must be retained for 24 months.

Subpart F—Personnel Training

§ 127.501 Applicability.

The training required by this subpart must be completed before LNG is transferred.

§ 127.503 Training: General.

The operator shall ensure that each of the following is met:

(a) All full-time employees have training in the following subjects:

(1) Basic LNG firefighting procedures.

(2) LNG properties and hazards.

(b) In addition to the training under paragraph (a) of this section, each person assigned for transfer operations has training in the following subjects:

(1) The examined *Operations Manual* and examined *Emergency Manual*.

(2) Advanced LNG firefighting procedures.

(3) Security violations.

(4) LNG vessel design and cargo transfer operations.

(5) LNG release response procedures.

(6) First aid procedures for—

(i) Frostbite;

(ii) Burns;

(iii) Cardio-pulminary resuscitation; and

(iv) Transporting injured personnel.

(c) The personnel who received training under paragraphs (a) and (b) of this section receive refresher training in the same subjects at least once every five years.

Subpart G—Firefighting

Fire Equipment

§ 127.601 Fire equipment: General.

(a) Fire equipment and systems provided in addition to the requirements in this subpart must meet the requirements of this subpart.

(b) The following must be red or some other conspicuous color and be in locations that are readily accessible:

(1) Hydrants and standpipes.

(2) Hose stations.

(3) Portable fire extinguishers.

(4) Fire monitors.

(c) Fire equipment, if applicable, must bear the approval of Underwriters Laboratories, Inc., the Factory Mutual Research Corp., or the Coast Guard.

§ 127.603 Portable fire extinguishers.

Each marine transfer area must have—

(a) Portable fire extinguishers that meet 9–6.1 of NFPA 59A and Chapter 3 of NFPA 10; and

(b) At least one portable fire extinguisher in each designated parking area.

§ 127.605 Emergency outfits.

(a) There must be an emergency outfit for each person whose duties include fighting fires, but there must be at least two emergency outfits. Each emergency outfit must include—

(1) One explosion-proof flashlight;

(2) Boots and gloves of rubber or other electrically nonconducting material;

(3) A rigid helmet that protects the head against impact;

(4) Water resistant clothing that also protects the body against fire; and

(5) U.S. Bureau of Mines approved self-contained breathing apparatus.

(b) Emergency outfits under paragraph (a) of this section must be in locations that are readily accessible and marked for easy recognition.

§ 127.607 Fire main systems.

(a) Each marine transfer area must have a fire main system that provides at least two water streams to each part of the LNG transfer piping and connections, one of which must be from a single length of hose or from a fire monitor.

(b) The fire main must have at least one isolation valve at each branch connection and at least one isolation valve downstream of each branch connection to isolate damaged sections.

(c) The fire main system must have the capacity to supply—

(1) Simultaneously all fire hydrants, standpipes, and fire monitors in the system; and

(2) At a Pitot tube pressure of 616 kilonewtons per square meter (75 p.s.i.), the two outlets having the greatest pressure drop between the source of water and the hose or monitor nozzle, when only those two outlets are open.

(d) If the source of water for the fire main system is capable of supplying a pressure greater than the system's design working pressure, the system must have at least one pressure relief device.

(e) Each fire hydrant or standpipe must have at least one length of hose of sufficient length to meet paragraph (a) of this section.

(f) Each length of hose must—

(1) Be 1½ inches or more in diameter and 30.5 meters (100 feet) or less in length;

(2) Be on a hose rack or reel;

(3) Be connected to the hydrant or standpipe at all times; and

(4) Have a Coast Guard approved combination solid stream and water spray fire hose nozzle.

§ 127.609 Dry chemical systems.

(a) Each marine transfer area must have a dry chemical system that provides at least two dry chemical discharges to the area surrounding the loading arms, one of which must be—

(1) From a monitor; and

(2) Actuated and, except for pre-aimed monitors, controlled from a location other than the monitor location.

(b) The dry chemical system must have the capacity to supply simultaneously or sequentially each hose or monitor in the system for 45 seconds.

(c) Each dry chemical hose station must have at least one length of hose that—

(1) Is on a hose rack or reel; and

(2) Has a nozzle with a valve that starts and stops the flow of dry chemical.

§ 127.611 International shore connection.

The marine transfer area must have an international shore connection meeting the requirements of 46 CFR 162.034, a 2½ inch fire hydrant, and sufficient 2½ inch hose to connect the fire hydrant to the international shore connection on the vessel.

Fire Protection

§ 127.613 Smoking.

In the marine transfer area, the operator shall ensure that no person smokes when there is LNG present.

§ 127.615 Fires.

In the marine transfer area, the operator shall ensure that there are no fires when there is LNG present.

§ 127.617 Hotwork.

The operator shall ensure that no person conducts welding, torch cutting, or other hotwork unless that person has a permit from the COTP.

Subpart H—Security

§ 127.701 Security on existing facilities.

The operator shall ensure that any security procedure and arrangement on existing facilities, that were in use when LNG transfer operations were last conducted, be continued and maintained, or upgraded, whenever LNG transfer operations are conducted.

§ 127.703 Access to the marine transfer area.

The operator shall ensure that—

(a) Access to the marine transfer area from the shoreside and the waterside is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel; and

(3) Other persons authorized by the operator; and

(b) No person is allowed into the marine transfer area unless that person is identified by a facility-issued identification card or other identification card displaying his or her photograph, or is an escorted visitor displaying an identifying badge.

§ 127.705 Security systems.

The operator shall ensure that security patrols of the marine transfer area are conducted once every hour, or that a manned television monitoring system is used, to detect—

(a) Unauthorized personnel;

(b) Fires; and

(c) LNG releases.

§ 127.707 Security personnel.

The operator shall ensure that no person is assigned security patrol duty unless that person has been instructed on security violation procedures.

§ 127.709 Protective enclosures.

The following must be within a fence or wall that prevents trespassing:

(a) Impounding spaces.

(b) Control rooms and stations.

(c) Electrical power sources.

§ 127.711 Communications.

The marine transfer area must have a means of direct communications between the security patrol and other operating or security personnel on duty on the facility.

Dated: September 3, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42084C; FRL-3325-1]

Commercial Hexane and Methycyclopentane; Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 4(a) of the Toxic Substances Control Act (TSCA), EPA is issuing a final test rule requiring manufacturers and processors of commercial hexane to perform testing for subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagencity, neurotoxicity, and inhalation and dermal pharmacokinetics and is terminating rulemaking under TSCA section 4(a) for subchronic toxicity, neurotoxicity, and inhalation and dermal pharmacokinetics testing of methylcyclopentane (MCP; CAS No. 96-37-7). Both actions follow EPA's proposed rule of May 15, 1986.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard" as appropriate) time on February 19, 1988. This rule shall become effective on March 21, 1988. The incorporation by reference in the rule is approved by the Director of the Federal Register as of March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of commercial hexane. This test rule is being promulgated under 40 CFR 799.2155. EPA also is terminating rulemaking under section 4(a) of TSCA for MCP because EPA believes testing of MCP is not necessary at this time.

I. Introduction

A. Test Rule Development Under TSCA

This document is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a) of TSCA, EPA must require testing of a chemical substance or mixture to develop appropriate health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the Agency's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300).

B. Regulatory History

As published in the **Federal Register** of May 21, 1985 (50 FR 20930), the Interagency Testing Committee (ITC) designated MCP for priority consideration for health effects testing, including neurotoxicity, cardiotoxicity, oncogenicity, genotoxicity, teratogenicity, and reproductive effects. The Agency responded to the ITC's recommendations for MCP by publishing in the **Federal Register** of May 15, 1986 (51 FR 17854) a proposed rule for neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, motor activity, and developmental neurotoxicity screen), subchronic toxicity, and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism, and excretion) testing of MCP. The Agency also proposed acute and subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, mutagencity, neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, and motor activity), and inhalation and dermal pharmacokinetics (absorption, distribution, metabolism, and excertion) testing for commercial hexane. The proposal contained information on chemical profiles, production, uses, human exposure, and health effects of MCP and commercial hexane; discussed ongoing testing of *n*-hexane and its metabolites; discussed EPA's TSCA section 4(a) findings; described the proposed tests, the test standards, and the test substances to be used; specified

who would be required to conduct the proposed testing; specified reporting requirements for data to be developed under the rule; discussed enforcement provisions; and presented issues for comment. On June 27, 1986 (51 FR 23440), EPA published corrections to the proposed rule.

Pursuant to a request by the American Petroleum Institute (API), EPA issued a notice (51 FR 26170; July 21, 1986) extending the comment period for an additional 60 days to September 15, 1986. API contended in its request that the composition of the commercial hexane identified in the proposed rule did not conform to the range of commercial hexanes in current production and commerce. The extension of time was granted to allow additional time for API and its member companies to develop a more representative definition of commercial hexane and to assist in determining manufacturers and processors subject to the rule.

On October 7, 1986, EPA held a public meeting to hear and discuss oral comments presented on various aspects of the proposed rule. The transcript of this meeting is part of the rulemaking record. Most of the discussion at this meeting focussed on whether testing both MCP and commercial hexane is necessary and on data submitted by API relating to the need for testing and the composition of the test substance.

II. Response to Public Comment

Written comments were submitted on behalf of industries and trade associations by the Exxon Co., U.S.A. (Exxon), the American Petroleum Institute (API), and the American Industrial Health Council (AIHC) and on behalf of public interest groups by the National Network to Prevent Birth Defects (NNPBD), the American Psychological Association (APA), and the Center for Science in the Public Interest (CSPI). These comments, as well as oral presentations made at the public meeting, dealt with the regulatory and legal authority of the Agency to make TSCA section 4 findings, the scientific rationale of the proposed testing, and the test methodologies. After the public meeting, the Agency, through its contractor, Syracuse Research Corp. (SRC), conducted a second literature review of commercial hexane. The Agency reevaluated these data and addressed all issues and comments, including additional comments submitted by API and APA after the close of the comment period and the public meeting. These comments have been addressed at length in a document entitled "Response to Public Comment on Methylcyclopentane and Commercial Hexane" and hereinafter called the "technical support document," which is part of the public record for this rulemaking (Ref. 1). Because of the number and the complexity of the comments as well as the length of the Agency's response to them, EPA is providing in this notice an overview of major concerns, a discussion of the issues raised in the proposed rule, and an explanation of changes in the final rule based on an analysis of the comments. The reader is referred to the technical support document (Ref. 1) for a more detailed discussion.

A. Overview of Industry's Major Comments and EPA's Response

1. Comment: *Data on commercial hexane for all endpoints are adequate.* The Agency requested comment on the availability of published and unpublished studies on commercial hexane A which would adequately describe its potential to cause any of the effects for which EPA had proposed testing (refer to the proposal for the definition of commercial hexane A, 51 FR 17864; May 15, 1986). EPA had a specific interest in obtaining data on the proposed test substance, commercial hexane A, because data (Ref. 2) available at the time of the proposal indicated that this type of hexane was responsible for the largest amount of human exposures and contained the largest amount of MCP. API clarified this matter with additional information and addressed all types of commercial hexanes in its comments (Refs. 3, 4 and 5). Therefore, the Agency has been able to evaluate the availability of health effects data related to all types of commercial hexane, rather than a specific type of commercial hexane.

In response to the issue of the availability of studies to characterize commercial hexane's health effects in humans, API (Ref. 3) and Exxon (Ref. 6) contended that there were sufficient data on commercial hexane to characterize all of the effects for which testing was proposed. They contended that existing studies of commercial hexane, mixtures of C_6 hydrocarbons, and individual components of commercial hexane provide adequate data from which to assess the potential health hazards from exposure to commercial hexane products. In support of this contention, API (Ref. 3) provided a review of the scientific data on commercial hexane and submitted a single-generation inhalation reproductive effects study which was completed after publication of the proposal. API (Ref. 3) and Exxon (Ref. 6) further contended that evaluation of these studies indicates that the proposed testing would not provide additional information relevant to assessing the risk from exposure to commercial hexane and that testing commercial hexane under TSCA section 4 is unnecessary.

The Agency reviewed the data provided in response to the proposal as well as those obtained from a literature review and concurs that the data are adequate to predict the acute toxicity of commercial hexane exposure to humans. However, the Agency has concluded that the data are inadequate to assess the risk of commercial hexane exposure to humans for all other health effects endpoints required by this rule.

Concerning the adequacy of health effects studies other than acute toxicity, industry commenters contend that the *n*-hexane component of the commercial hexane mixture is the driving variable in the hazard characterization of the mixture. For instance, Exxon (Ref. 6) stated that commercial hexane produces toxic responses which can be accounted for by its *n*-hexane content. In addition, in its supplemental comments, API (Ref. 4) claimed that EPA failed to consider all available information on commercial hexane and its constituents and that the data provide ample information to assess the adverse effects of exposure to commercial hexane. API, therefore, contended that a finding of data insufficiency could not be sustained.

EPA disagrees with the assumption that *n*-hexane is the only component of the mixture possessing potentially adverse toxicological properties and that commercial hexane will behave similarly to *n*-hexane. While EPA acknowledges the wealth of data on *n*-hexane, it is not willing to rely solely on those data to evaluate the health effects of the mixture at this time. Not only are the effects of the other constituents of commercial hexane unknown, but the interaction of *n*-hexane with the other components of commercial hexane is unknown. Moreover, these data also do not include all health effects endpoints required by this rule due to the widespread exposure to commercial hexane. Consequently, EPA believes that the data are inadequate to characterize the toxicity for health effects of commercial hexane other than for acute toxicity and that testing is necessary for the additional health endpoints. Industry comments on these data have been reviewed at length in the technical support document (Ref. 1). The following discussion is a brief overview of industry comments on data adequacy and modifications to the proposed

health effects testing in response to those comments:

a. *Acute toxicity.* EPA's initial evaluation indicated that there were no adequate acute toxicity data on commercial hexane. Specifically, there is no LC_{50} for commercial hexane. API (Refs. 3 and 4) commented that acute studies of commercial hexane show no mortality at 5 mg/1, the limit test in the TSCA test guidelines, and that testing to determine an LC_{50} is not necessary for chemicals whose acute toxicity is in excess of the limit test.

API (Ref. 3) and Exxon (Ref. 6) cited acute toxicity studies by Hine and Zuidema (Ref. 7) and Lazarew (Ref. 8) which reported exposures in animals between 39,000 and 73,000 ppm. They also cited API's single-generation inhalation reproductive effects study (Ref. 3, Att. I) in which no gross effects were observed at 1,500 ppm in rats exposed to commercial hexane for 6 hours per day, 7 days per week for 100 days. Exxon stated that API's study (Ref. 3, Att. I), although a subchronic study, demonstrated that rats could be exposed repeatedly to levels exceeding the EPA acute inhalation toxicity limit dose of 5 mg/1 without producing morbidity or mortality. Both API and Exxon also pointed out that not only was acute toxicity testing to determine an LC_{50} unnecessary, it was also dangerous because to produce mortality, it would be necessary to exceed commercial hexane's lower explosive limit (LEL) of approximately 11,000 ppm.

Having reviewed these studies along with additional acute studies, the Agency believes that requiring additional acute inhalation toxicity testing to determine an LC_{50} of commercial hexane will provide little additional information which will assist in characterizing the potential health risks to humans for several reasons: (1) While the studies cited by API and Exxon have deficiencies in that the test material was not always fully described, the concentration of the test material was not always determined, and the descriptions of the effects of exposure were minimal, taken together, they provide a strong indication that the LC_{50} for commercial hexane is above 30,000 ppm; and (2) it appears that the LC_{50} for commercial hexane is within its explosive limits (11,000 to 75,000 ppm), which would not only make testing hazardous but would also preclude such high occupational exposures because of the explosive hazard. Consequently, EPA believes that it can make reasonable predictions about the acute toxicity of commercial hexane, has concluded tha the proposed requirement for acute inhalation toxicity testing (section 798.1150) to determine an LC_{50} is unnecessary, and has not included it in the final rule. However, EPA is retaining the requirement for schedule-controlled operant behavior testing (section 798.6500) under acute neurotoxicity testing because of concerns for effects on the rate and pattern of behavioral responses to commercial hexane.

To accommodate API's concerns on the safety of the testing, however, EPA has modified all of the remaining required tests so that the highest dose should not exceed the lower explosive limit of commercial hexane.

b. *Subchronic toxicity.* EPA proposed that a subchronic inhalation toxicity test be conducted on commercial hexane because existing data submitted by Phillips Petroleum (Ref. 9, Att. IV) was considered inadequate to characterize the nephrotoxicity of commercial hexane. API (Refs. 3 and 4) commented that existing data are adequate to predict the subchronic toxicity of commercial hexane. API (Refs. 3 and 4) and Exxon (Ref. 6) maintain that the study submitted by Phillips Petroleum adequately addresses the nephrotoxicity of commercial hexane and cited additional studies that further characterize the subchronic toxicity of commercial hexane or similar products. API (Ref. 3) believes that existing data demonstrate that the components of commercial hexane produce hydrocarbon-induced nephrotoxicity and that it would be a waste of resources to require a 90-day study to demonstrate an adverse effect already known. However, Exxon (Ref. 6) believes that the induction of nephropathy in male rats has no human clinical significance.

EPA disagrees that these data adequately address the potential for commercial hexane to be nephrotoxic. These data are inadequate because each study had experimental limitations, such as short duration, which compromised the interpretation of the findings (Ref. 1). In addition, EPA believes that a comprehensive inhalation subchronic toxicity test for commercial hexane is necessary to determine whether endpoints other than neurotoxicity might be more sensitive indicators of commercial hexane's toxicity at lower doses. Consequently, EPA has retained the proposed requirement for subchronic toxicity teting by inhalation. For consistency with other test rules, the final rule requires that the animals be dosed for 6 hours per day, 5 days per week for 90 days.

c. *Oncogenicity.* API (Refs. 3 and 4) commented that the data are adequate to reasonably predict the oncogenicity of commercial hexane and that a chronic bioassay would not add significant information for a quantitative risk assessment. In support of this contention, API (Ref. 3) cited two negative cancer studies on *n*-hexane.

EPA disagrees with API that the studies conducted by Sice (Ref. 11) and by Ranadive et al. (Ref. 12) fulfill the requirement of an inhalation oncogenicity test on commercial hexane. These studies exposed animals dermally to only one dose level of *n*-hexane, tested only one species and one sex, and contained too few animals. Consequently, EPA has retained the requirement for oncogenicity testing. The Agency believes that existing data are inadequate and that testing is necessary to determine the oncogenic risk of exposure to commercial hexane.

d. *Reproductive toxicity.* API (Refs. 3 and 4) commented that its single-generation inhalation reproductive effects study of commercial hexane (Ref. 2, Att. I) is adequate for substances which do not bioaccumulate. EPA has reviewed this study and believes that it is inadequate to assess the potential reproductive toxicity of commercial hexane (Ref. 13). The highest dose level was too low, and the sample size for histopathological evaluation of male reproductive organs was too small, to assess any adverse effect. In addition, the paper by Christian (Ref. 14) which API used to support its contention that single-generation studies are sufficient to assess a chemical's reproductive toxicity requiring two-generation studies should be altered. EPA believes that a well-conducted, two-generation study is necessary to assess commercial hexane's potential reproductive effects and has retained the proposed requirement for a two-generation reproductive effects study of commercial hexane.

Concerning animal strains, EPA recommends the use of Sprague-Dawley rats in both the developmental and the reproductive toxicity studies for the following reasons: API's single-generation inhalation reproductive effects study (Ref. 3, Att. I) was conducted on commercial hexane in Sprague-Dawley rats; the data base on Sprague-Dawley rats for these two health effects is much greater than for Fischer 344 rats; and, in general, Fischer 344 rats are not good breeders and, therefore, are not a good choice of strain in developmental and reproductive effects testing.

e. *Developmental toxicity.* API (Refs. 3 and 4) commented that its single-generation reproductive effects study of commercial hexane (Ref. 3, Att. I) had a satellite teratology component in rats which was adequate to predict the developmental toxicity of commercial hexane. EPA, however, believes that this study was inadequate to assess the potential developmental toxicity of commercial hexane (Ref. 13). The study was inadequate because the highest dose level failed to elicit significant signs of maternal toxicity. In addition, only animals in the control and highest dose groups were analyzed, and restrictions in sample size of pregnant animals hampered meaningful interpretation of results. EPA believes that a well-conducted developmental toxicity study in two species, such as rats and rabbits, will provide needed data on commercial hexane's potential developmental toxicity and has retained the proposed requirement for a developmental toxicity study of commercial hexane.

f. *Mutagenicity.* API (Refs. 3 and 4) and Exxon (Ref. 6) commented that the data are adequate to evaluate the genotoxicity of the components of commercial hexane and are therefore adequate to predict its potential mutagenicity, and that further testing would provide no further information and would be a waste of resources. They further commented that the weight of available evidence suggests that commercial hexane poses no risk for the induction of heritable genetic effects.

EPA considers the data presented by API (Ref. 3) as suggestive of the effects anticipated for commercial hexane but not adequate to fully characterize its genotoxicity. Because the components of commercial hexane have undergone only limited genotoxicity testing and because the data base is insufficient to extrapolate from the individual components to the commercial hexane mixture, EPA disagrees with industry and has retained the proposed requirement for mutagenicity testing.

API (Ref. 3) requested an additional 4 weeks to conduct the *in vivo* mutagenicity testing because of the difficulty in administering the test substance by inhalation and an additional six months to conduct the pharmacokinetics testing because of its complexity. For upper-tier mutagenicity testing triggered by lower-tier test results in particular, API requested that the deadline for the final reports be based on the test trigger dates rather than on the effective date of the final rule.

Since issuing the proposal, EPA has reviewed the time periods that it will specify for conducting these health effects tests. For consistency with the other TSCA section 4 final test rules recently promulgated and pursuant to API's request, the final reporting requirements have been modified to allow additional time for conducting the following tests: *Salmonella typhimurium* assay—4 additional months; gene mutation in mammalian cells in culture—5 additional months; *in vitro* cytogenetics assay—5 additional months; *in vivo* cytogenetics assay—7 additional months; rodent dominant lethal assay—4 additional months; heritable translocation assay—1 additional month; and schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology—3 additional months. Although an acute test, the final report of schedule-controlled operant behavior has been increased to 15 months to coincide with the final reports of the 3 subchronic neurotoxicity tests.

EPA proposed a tiered testing approach to evaluate whether commercial hexane elicits heritable gene mutations. Positive results in certain lower-tier tests would trigger the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL is necessary, when certain lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the approach proposed, EPA would consider the positive results in lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to the Agency. If, after the review, EPA determined that the MVSL was still appropriate, EPA would notify the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA determined that the test was no longer necessary, EPA would propose to amend the rule to delete the test requirement.

The final test rule for commercial hexane includes requirements to conduct the lower-tier tests for gene mutations. However, EPA is not promulgating the requirement for the MVSL for commercial hexane at this time. EPA had based its proposal to require the MVSL, in part, on information and assumptions about the cost of conducting the test and the availability of laboratories capable of performing the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is in the process of reexamining the MVSL requirement for this test rule as well as those for other chemical substances. In particular EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA Good Laboratory Practice Standards at 40 CFR Part 792 and the cost of such testing. EPA is also reviewing possible alternative tests to the MVSL for which costs may be lower or laboratory availability may be more certain.

Once EPA completes its evaluation of this additional information, EPA will publish a notice in the **Federal Register** concerning the MVSL for commercial hexane and other substances subject to TSCA section 4 test rules. This notice will provide up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL together with their costs and laboratory availability. The notice will also address EPA's intentions about any changes to the MVSL requirements in the various test rules and will provide an opportunity for public comment. If, after this exercise, EPA concludes that the MVSL is still appropriate for commercial hexane, EPA will amend this final test rule for commercial hexane to add the MVSL requirements with any appropriate modifications.

Concerning upper-tier mutagenicity tests triggered by lower-tier test results, EPA agrees with API that the deadlines for the final reports should be based on the trigger dates rather than on the effective date of the final rule. For consistency with other TSCA section 4 final test rules, the heritable translocation assay is triggered from the date of notification that testing is required rather than from the effective date of the final rule. Public participation in this program review will be in the form of written public comments or a public meeting. Before the last tier mutagenicity testing is to begin, EPA will hold a public program review if the results of the previous tier tests are positive. If, after review of public comment, no change in the test sequence is deemed necessary, EPA will provide formal notification to the test sponsor that the final tier tests must be conducted. If, however, EPA believes that additional testing is no longer warranted as a result of review of earlier test results, public comments, scientific judgment, and other appropriate factors, EPA will issue a proposed amendment to rescind these requirements. Refer to the table in Unit IV.B. concerning other reporting requirements for commercial hexane testing.

g. *Neurotoxicity testing.* API (Refs. 3 and 4) and Exxon (Ref. 6) commented

that there are sufficient data on the neurotoxicity of *n*-hexane and other C_6 hydrocarbons to reasonably predict the neurotoxic potential of commercial hexane. They believe that the two API studies submitted by Phillips Petroleum (Ref. 9, Atts. II and III) adequately demonstrate that *n*-hexane is the only neurotoxic C_6 hydrocarbon.

EPA disagrees with API and Exxon that these studies adequately address the potential neurotoxicity of commercial hexane. In addition, EPA believes that these studies do not provide sufficient data to quantitatively predict the risk of human exposure to commercial hexane because it is necessary to test at the maximum tolerated doses (MTD) without exceeding the lower explosive limit of commercial hexane to determine whether C_6 hydrocarbons other than *n*-hexane are neurotoxic or potentiate the toxicity of *n*-hexane.

Consequently, EPA has retained the requirement for neurotoxicity testing. Existing studies neither address the potential neurotoxicity of commercial hexane nor provide sufficient data to predict human risk.

h. Pharmacokinetics. API (Refs. 3 and 4) commented that studies of *n*-hexane in animals and in humans have characterized its absorption, distribution, metabolism, and excretion and that *n*-hexane does not alter the pharmacokinetic behavior of the other C_6 constituents. API also stated that it has an ongoing study in rats to evaluate the absorption of hydrocarbon vapors. EPA disagrees with API and believes that neither existing data nor the ongoing API study will be adequate to characterize the absorption, distribution, metabolism, or excretion of commercial hexane.

However, following an internal review of the proposed pharmacokinetics guideline, EPA determined that there were sections which would preclude obtaining meaningful data (e.g., the absence of intravenous dosing). Consequently, EPA will repropose a revised test standard and reporting requirements for inhalation and dermal pharmacokinetics at a later date.

Concerning API's comments on the difficulty of conducting pharmacokinetics testing of the commercial hexane mixture, EPA agrees with API that isotopically labeling all components of commercial hexane would be burdensome. When EPA reproposes new methodology for the pharmacokinetics test standard, it will propose labeling MCP in commercial hexane and separately labeling *n*-hexane in commercial hexane as suggested by API (Ref. 3).

2. Comment: *Inaccurate characterization of production and use led to an undocumented finding of significant human exposure to commercial hexane.* While API (Ref. 3) recognizes the information-gathering function of TSCA section 4, it questioned the accuracy of EPA's characterization of commercial hexane's production and use in the proposal. API believes that the Agency's characterization of commercial hexane neither reflects current manufacturing processes nor accurately describes the composition of the majority of current commercial hexane products.

EPA has evaluated the data submitted by API and has concluded, nevertheless, that there may be widespread exposure to commercial hexane from its production and uses. EPA has made reasonable assumptions based on standard engineering principles that human exposure to commercial hexane will occur during its manufacture, processing, use, and disposal. The Agency's assumptions for exposure to commercial hexane were based upon its high volatility, high production, high number of potentially exposed workers, and potential consumer exposure through paints and solvents. The Agency believes that these assumptions support a finding under TSCA section 4(a)(1)(B) that there may be substantial human exposure to commercial hexane.

3. Comment: *Information on commercial hexane and similar C_6 products, including MCP, makes testing unnecessary.* API (Ref. 3) and Exxon (Ref. 6) believe that EPA failed to identify all relevant data on C_6 isomers. Exxon (Ref. 6) believes that existing data and experience with C_6-containing substances other than commercial hexane, e.g., motor fuels, are relevant to determining the effects of human exposure to C_6 isomers. Exxon further contends that a full analysis of all C_6 exposure data may allow a finding that exposure to C_6 isomers does not present an unreasonable health risk. Exxon also claimed that the data on commercial hexane are sufficient for a quantitative risk assessment and therefore for regulatory action under TSCA section 6. Because Exxon believes that EPA can make at this time a determination that there is no risk to human health or the environment, it believes that further testing under TSCA section 4 is unwarranted and requests that the proposal be withdrawn.

While there may be information on commercial hexane and similar C_6 products, EPA believes that such information is inadequate to evaluate the potential health effects from exposure to commercial hexane or similar C_6 products for all but acute effects, as discussed in Unit II.A.1 above. Other endpoints have not been tested adequately. In addition, the test methodologies specified in this rule are more sensitive and the tests more refined than were those used for existing studies. EPA believes that additional data are necessary to determine whether exposure to commercial hexane does not present an unreasonable risk of injury to human health.

B. Response to Issues Raised in the Proposed Rule

1. Issue: *How should commercial hexane be defined so as to determine who is subject to the rule?* EPA proposed to test a type of commercial hexane with the greatest MCP content to which humans are most likely exposed and at the same time assumed that this material would be representative of commercial hexanes produced by major manufacturers. API (Refs. 3 and 18), however, contended that this characterization neither reflected current manufacturing practices nor applied to a significant portion of currently produced commercial hexanes. Consequently, the Agency granted an additional 60 days for API and its member companies to develop a more representative definition of commercial hexane and to better determine manufacturers and processors subject to the rule. From the results of an API survey indicating that *n*-hexane comprised 40 to 86 liquid volume percent and MCP 5 to 15 liquid volume percent of commercial hexanes, API (Ref. 3) provided an alternative definition of commercial hexane, developed by the American Society for Testing and Materials (ASTM), ASTM D 1836 (Ref. 16).

Accordingly, EPA has revised the definition of commercial hexane to contain a minimum of 40 rather than 50 liquid volume percent *n*-hexane and a minimum of 5 liquid volume percent MCP and otherwise conform to the specifications prescribed in ASTM D 1836. API (Ref. 3) stated that this revised definition includes all identified products manufactured and used as commercial hexane. EPA interprets this to mean that the revised definition includes the products produced by all known manufacturers and processors of commercial hexane, making all of them subject to this test rule.

2. Issue: *Which substance should be tested to characterize the toxicity of commercial hexane: commercial hexane A or n-hexane-free C_6 isomers?* EPA proposed that the test substance consist of commercial hexane A, or solvent grade, derived from the fractionation of straight-run gasoline, consisting of no more than 64 liquid volume percent *n*-hexane and no less than 19 liquid volume percent MCP. The Agency believed that maximizing the MCP content of commercial hexane would provide more useful test data. Pursuant to comments from API (Ref. 3), EPA has deleted reference to the feedstock origin and the grade of commercial hexane in the final rule and defers to API's analysis that commercial hexane made according to the specifications of ASTM D 1836 is the one to which there is the greatest exposure. However, to assure that the full potential for MCP's toxicity might be expressed, EPA has modified API's recommendation by specifying that not less than 10 liquid volume percent MCP be present in the test substance. The Agency believes that this modification will accommodate API's concerns and yet will represent a worst-case exposure to MCP and C_6 isomers other than *n*-hexane.

3. Issue: *Should the subchronic test standards be modified to follow the 22 hours/day, 7 days/week, 6-month dosing regimen of the API and Egan et al. studies?* When comparing the toxicity of *n*-hexane with and without other C_6 isomers, Egan et al. (Ref. 23) and API (Ref. 9, Atts. II and III) used a dosing regimen of 22 hours/day, 7 days/week for 6 months. When determining the subchronic toxicity of *n*-hexane in rats, Cavender et al. (Ref. 24) of the Chemical Industry Institute of Technology (CIIT) used 6 hours/day, 5 days/week for 6 months. The National Toxicology Program (NTP) currently is using a dosing regimen of 6 hours/day, 5 days/week for 6 months to determine the subchronic toxicity of *n*-hexane in mice. Unless anticipating exposure of humans to a substance is continuous, under TSCA section 4, EPA typically specifies a dosing regimen of 6 hours/day, 5 days/week for a 90-day period in a subchronic toxicity test. Because of the differences in dosing regimens, EPA requested comment on whether the dosing regimen should be increased from 6 hours/day for 5 days/week to 22 hours/day for 7 days/week.

At the public meeting, Bus (Ref. 5), in discussing the importance of duration of daily exposure to study design, stated that for compounds such as *n*-hexane, 22-hour per day rather than 6-hour per day exposure durations give a more rapid onset at lower exposure concentrations.

The Agency has studied these comments but disagrees that the duration of exposure should be increased for subchronic toxicity testing of commercial hexane for several reasons. First, continuous inhalation exposure designs do not approximate conditions of human exposure to commercial hexane and therefore do not adequately define threshold levels of toxicity under expected exposure conditions. Compared to 6-hour per day, 5-day per week exposures, continuous exposure experiments use an exposure scenario not comparable to either workplace or consumer exposures. Second, the protocol required by the Agency is designed to mimic worker exposure, the population most likely to be exposed to commercial hexane. Third, the results from the study would be comparable to those from other subchronic testing required under TSCA section 4 by EPA for chemicals in the workplace. Chemicals primarily found in the home or other institutions in which humans may be continuously exposed would serve as better candidates for the continuous exposure regimen. Finally, continuous exposures do not permit a recovery period, potentially overloading metabolic systems.

An additional comment on the exposure regimen used in existing studies was provided by Wood (Ref. 25). Wood raised concerns that there could have been flaws in the exposure generation methods used by Egan et al. (Ref. 23) resulting in lower actual doses than specified in the experimental design. Wood contends that because of potential variations in exposure concentrations, Egan et al. were probably unsuccessful in maintaining the sustained exposure levels necessary for the identification of neurotoxicity comparable to that produced by *n*-hexane.

Consequently, because the composition of the atmosphere containing the test substance could change, the Agency recommends that there be sufficient monitoring of the concentrations of the test substance and its components to ensure that the composition of the atmosphere containing the test substance and its components do not vary significantly throughout the exposure period of each test.

III. Decision to Terminate Rulemaking for Health Effects Testing of MCP

Under TSCA section 4(a), EPA had proposed to require testing of MCP. Although isolated MCP has not been sold in the U.S. since 1982 (Ref. 9), the proposal noted that MCP is a substantial component of various hexane-containing refinery streams and products whose manufacture, processing, and use result in extensive, albeit indirect, exposure of workers, consumers, and the general population. EPA also recognized that MCP was isolated in the past and could be isolated either at present or in the future. In addition, the Agency's proposed findings for health effects testing of MCP were based upon positive hazard evidence to support a "may present an unreasonable risk" finding under section 4(a)(1)(A) for neurotoxicity (nerve functional deficits) and subchronic toxicity (nephrotoxicity) as well as potential exposure of 38,000 workers to MCP. Furthermore, in an EPA survey, MCP was detected in breast milk samples. However, because at this time MCP is not isolated and because all current exposure results from exposure to mixtures containing MCP, the Agency believes that testing MCP as a discrete substance is unnecessary and is terminating rulemaking under TSCA section 4(a) at this time.

The Agency reached this decision after reevaluating existing data in conjunction with comments from industry in response to the proposed rule. Consequently, the Agency has decided to terminate rulemaking on the health effects testing of MCP for the following reasons:

1. MCP currently is not isolated; it is not manufactured for direct sales; and its production as a discrete substance has not been reported under the TSCA Inventory Update Rule (Ref. 17). Furthermore, from industry's comments on the proposed test rule, the Agency does not anticipate any future isolated production of MCP.

2. There is a naphtha stream consisting of benzene and 60 to 80 percent MCP that is used to make cyclohexane. Although there may be the potential for greater exposure to MCP by virtue of its greater content in the naphtha stream compared to its content in commercial hexane, the process is limited to one manufacturer with only a few potentially exposed workers. Furthermore, this patented process is not expected to proliferate to other manufacturers after expiration of the patent in 12 years.

3. Because exposure to MCP almost always involves exposure to other C_6 isomers, and because the highest MCP concentration to which workers and consumers are typically exposed is in commercial hexane, EPA agrees with industry comments that commercial hexane is a more appropriate test substance than MCP. EPA believes that it is better first to test commercial hexane rather than each of its C_6 components individually. If health effects are positive for commercia

hexane, then EPA may consider testing the C_6 components individually.

IV. Final Test Rule for Commercial Hexane

A. Findings

EPA is basing its final health effects testing requirements for commercial hexane on the authority of section 4(a)(1)(B) of TSCA.

Under section 4(a)(1)(B), EPA finds that commercial hexane is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, distribution in commerce, and use. Approximately 500 million pounds of commercial hexane were produced in 1985 (Ref. 26). In addition, according to the National Occupational Exposure Survey of 1985 (NOES), 83,000 workers are estimated to have actual exposure to hexane solvents. Of these, 12,576 are women (Ref. 19). Commercial hexanes are used as components of lacquers, printing inks, and adhesives, and as seed oil extractants (Ref. 2). Such uses may result in widespread exposure to workers and consumers.

While EPA believes that there may be substantial human exposure to C_6 hydrocarbons in gasoline, EPA is not considering exposure to the C_6 fraction through exposure to gasoline as part of its basis for finding substantial human exposure to commercial hexane. The Agency believes that exposures associated with the manufacture and processing of commercial hexanes and use of solvents containing significant concentrations of C_6 isomers provide sufficient basis for a finding of substantial human exposure for commercial hexane under TSCA section 4(a)(1)(B)(i).

In the proposed rule, the Agency requested comments as to whether there existed studies in the published and unpublished literature that would adequately describe the potential health effects of commercial hexane. EPA's initial evaluation had indicated that there were inadequate data to predict commercial hexane's acute and subchronic toxicities, oncogenicity, reproductive toxicity, developmental toxicity, mutagenicity, neurotoxicity, and pharmacokinetics in humans exposed from its manufacture, processing, distribution in commerce, and use.

To determine the adequacy of health effects data on commercial hexane, EPA reviewed data submitted in response to the proposal by API (Refs. 3 and 4) and by Exxon (Ref. 6) as well as data from the scientific literature. Consequently, EPA finds that there are sufficient data by inhalation exposure to reasonably determine or predict the acute effects of human exposure to commercial hexane resulting from its manufacture, processing, distribution in commerce, and use. Therefore, the Agency has concluded that there is no need to require acute toxicity testing of commercial hexane. However, EPA finds that there are insufficient data to reasonably determine or predict the subchronic toxicity, the oncogenicity, the reproductive toxicity, the developmental toxicity, the mutagenicity, the neurotoxicity, and the pharmacokinetics in humans exposed to commercial hexane from its manufacture, processing, distribution in commerce, and use. EPA believes that the data resulting from these test requirements will be relevant to a determination that the manufacture, processing, distribution in commerce, and use of commercial hexane does or does not present an unreasonable risk of injury to human health. For these reasons, EPA finds that testing is necessary to develop such data.

B. Required Testing, Test Standards, and Reporting Requirements

On the basis of these findings, the Agency is requiring that health effects testing be conducted for commercial hexane in accordance with specific test guidelines set forth in 40 CFR Part 798 as enumerated in the following table.

REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR COMMERCIAL HEXANE

Test	40 CFR citation [1]	Reporting deadline for final report [2]	Number of interim (6-mo) reports required
Subchronic toxicity: Subchronic inhalation toxicity	§ 798.2450	15	2
Chronic toxicity: Oncogenicity	§ 798.3300	53	8
Specific organ/tissue toxicity:			
Reporduction and fertility effects	§ 798.4700	29	4
Inhalation developmental toxicity	§ 798.4350	12	1
Genetic toxicity:			
Gene Mutations:			
Salmonella typhimurium	§ 798.5265	8	0
Mammalian cells in culture	§ 798.5300	17	2
Drosophila sex-linked recessive lethal	§ 798.5275	24	3
Chromosomal Aberrations:			
In vitro cytogenetics	§ 798.5375	9	0
In vivo cytogenetics	§ 798.5385	19	3
Dominant lethal assay	§ 798.5450	28	4
Heritable translocation assay	§ 798.5460	[3] 25	4
Acute neurotoxicity: Schedule-controlled operant behavior	§ 798.6500	15	2
Subchronic neurotoxicity:			
Functional observation battery	§ 798.6050	15	2
Motor activity	§ 798.6200	15	2
Neuropathology	§ 798.6400	15	2

[1] As modified in § 799.2155.
[2] Number of months after the effective date of the final rule, except as indicated.
[3] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for commercial hexane, the Agency has determined that the required testing must be performed.

Revisions to these guidelines were proposed in the **Federal Register** of January 14, 1986 (51 FR 1522) and were promulgated in the **Federal Register** of May 20, 1987 (52 FR 19056).

The Agency is requiring that the above-referenced TSCA health effects test guidelines be the test standards for the purposes of the required tests for commercial hexane. The TSCA test guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects of substances like commercial hexane to which humans are expected to be exposed. The Agency believes that these test methods reflect the current state-of-the-art science and minimum requirements for the conduct of these tests. However, because of the high volatility and explosive properties of commercial hexane and because human exposure occurs primarily by inhalation, EPA is requiring chemical-specific modifications to all of the required test methods that take into account these factors.

All data developed under this rule must be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before the initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The rule specifies the reporting requirements for each of the required test standards for commercial hexane. Interim progress reports for certain studies must be provided to the Agency at 6-month intervals as indicated in the rule until the final report has been submitted to EPA.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of commercial hexane must report to EPA the first export or intended export of commercial hexane to a particular country in a calendar year. EPA will notify the foreign country concerning the test rule for the chemical.

C. Test Substance

Concerning the definition of commercial hexane so as to determine who is subject to the rule, the rule defines commercial hexane as containing a minimum of 40 liquid volume percent *n*-hexane, a minimum of 5 liquid volume percent MCP, and otherwise conforming to the specifications prescribed in ASTM D 1836. The requirement that commercial hexane contain at least 5 liquid volume percent MCP remains the same as in the proposed rule because API's survey indicated commercial hexanes currently produced contain at least 5 liquid volume percent MCP. This definition determines which manufacturers and processors are subject to the rule.

Concerning the composition of the actual test substance, EPA is specifying that the test substance contain no more than 40 liquid volume percent *n*-hexane, no less than 10 liquid volume percent MCP, and otherwise conform to the specifications prescribed in ASTM D 1836. EPA believes that the commercial hexane being tested should be defined in this manner to assure that the full potential for MCP toxicity may be expressed. In addition, such a test substance will be similar to the test material used in API's single-generation inhalation reproductive effects study (Ref. 3, Att. I). By specifying a commercial hexane test substance with no more than 40 percent *n*-hexane and no less than 10 percent MCP, EPA believes that the test substance will represent a worst-case exposure to MCP and C_6 isomers other than *n*-hexane and provide a complement to existing data on *n*-hexane.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposure giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that manufacturing, processing, distribution in commerce, and use of commercial hexane give rise to exposure that may lead to an unreasonable risk, persons who manufacture or process, or who intend to manufacture or process, commercial hexane, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790. Although EPA has not identified any individuals who manufacture commercial hexane as a byproduct, such persons will be subject to the requirements of this test rule.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for commercial hexane. As noted in Unit II.B., EPA is requiring a specific type of commercial hexane for testing and believes that testing such a substance will allow reasonable prediction of the potential of various commercial hexane

products to cause the effects to be studied. For the purposes of this rule, EPA assumes that all commercial hexanes are equivalent to the commercial hexane test substance.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for commercial hexane. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Final Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis (Ref. 26) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of commercial hexane: (1) Price sensitivity of demand; (2) industry cost charactertistics; (3) industry structure; and (4) market expectations. Because there was not any indication of adverse impact, no further economic analysis was performed. However, had the first level of analysis indicated a potential for significant economic impact, a more comprehensive and detailed analysis would have been conducted to more precisely predict the magnitude and distribution of the expected impact.

Testing costs for the final rule for commercial hexane are estimated to range from $2.2 to $2.9 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $250,000 to $320,000. Based on 1985 production of 480 million pounds, the unit test costs range from $0.0005 to $0.0007 per pound. In relation to the selling price of $0.20 per pound for commercial hexane, these costs are equivalent to 0.26 to 0.33 percent of price.

Based on these costs and the uses of commercial hexane, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are low, 0.33 percent of the current price in the upper-bound case.

2. The overall demand for commercial hexane appears relatively inelastic with respect to price in all of its major uses.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "* * * the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773).

AIHC (Ref. 10) commented that the Agency did not adequately address in the proposal the availability of facilities or personnel to conduct the neurotoxicity testing required by this rule. EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 20) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP standards. However, the barriers faced by testing laboratories to gear-up for these barriers are not formidable. Laboratories will have to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_8 aromatic hydrocarbon fraction test rule (50 FR 20675; May17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP standards.

VII. Rulemaking Record

EPA has established a record for this rulemaking, (docket number OPTS-42084C). This record contains the basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of MCP to the Priority List (50 FR 20930; May 21, 1985).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on MCP (50 FR 20909; May 21, 1985).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Notice of proposed rule on TSCA test guidelines revisions (51 FR 1522; January 14, 1986).

(g) Notice of final rule revising TSCA test guidelines (52 FR 19056; May 20, 1987).

(h) Notice of EPA's proposed test rule on MCP and commercial hexane (51 FR 17854; May 15, 1986).

(i) Notice of corrections to the proposed rule (51 FR 23440; June 27, 1986).

(j) Notice of extension of comment period on the proposed rule (51 FR 26170; July 21, 1986).

(k) Notice of EPA's final rule on the C_8 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

(2) Support documents consisting of:

(a) Technical support document for proposed rule.

(b) Economic impact analysis of NPRM for MCP and commercial hexane.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(5) Reports—published and unpublished factual materials, including: Chemical Testing Industry: Profile of Toxicological Testing (October 1981).

B. References

(1) US Environmental Protection Agency (USEPA). "Response to public comment on MCP and commercial hexane" (December 23, 1987).

(2) Grayson, M., ed. *Kirk-Othmer Encyclopedia of Chemical Technology*, 3rd ed., Volume 12, New York: John Wiley & Sons, pp. 926-937 (1980).

(3) American Petroleum Institute (API). Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (September 15, 1986).

(4) API. Letter from Steven M. Swanson, Director, Health and Environmental Affairs Department, to Gary E. Timm, Chief, Test Rules Development Branch, USEPA, transmitting supplemental submission in response to issues raised by USEPA at the public meeting (January 9, 1987).

(5) USEPA. Transcript of proceedings of the public meeting on proposed test rules for MCP and commercial hexane (October 7, 1986).

(6) Exxon Company, USA. Letter from Edward DiCorcia, Vice President, Refining Department, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (September 11, 1986).

(7) Hine, C.H., and Zuidema, H.H. "Toxicological properties of hydrocarbon solvents." *Industrial Medicine* 39: 39-44 (1970).

(8) Lazarew, N.W. "Effects of *n*-hexane in man and animals." *Archives of Experimental Pathology and Pharmacology* 143: 223-233 (1929).

(9) Phillips Petroleum Company. Letter from John J. Moon, Manager, Environment and Consumer Protection, to the Office of Toxic Substances, USEPA, transmitting comments on the ITC's 16th Report and three toxicity studies (June 26, 1985).

(10) American Industrial Health Council, Inc. (AIHC). Letter from John L. O'Donoghue, Chairman, AIHC Neurotoxicology Subcommittee, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (August 13, 1986).

(11) Srce, J. "Tumor-promoting activity of *n*-alkanes an 1-alkanols." *Toxicology and Applied Pharmacology* 9: 70-74 (1966).

(12) Ranadive, K.J., Gothoskar, S.V., and Texabwala, B.U. "Carcinogenicity of contaminants in indigenous edible oils." *International Journal on Concer* 10: 652-666 (1972).

(13) USEPA. Internal memorandum from Susan Vogt, Acting Director, Health and Environmental Review Division to Gary E. Timm, Chief, Test Rules Development Branch, transmitting a review by Elaine Z Francis of API's single-generation reproductive effects study of commercial hexane (April 13, 1987).

(14) Christian, M.S. "A critical review of multigenerational studies." *Journal of the American College of Toxicology* 5: 161-180 (1986).

(15) No reference.

(16) American Society for Testing and Materials (ASTM). "Standard specification for commercial hexanes." *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants*, ASTM D 1836-83, pp. 966-967 (1986).

(17) USEPA. Internal memorandum from Denise Devoe, Chief, Confidential Data Branch, to Gary E. Timm, Chief, Test Rules Development Branch, concerning the Chemical Update System (May 14, 1987).

(18) API. Letter from William F. O'Keefe, Vice President, to Edwin F. Tinsworth, Acting Director, Office of Toxic Substances, USEPA, requesting an extension of the comment period on the MCP and commercial hexane proposed test rules (June 24, 1986).

(19) National Institute for Occupational Safety and Health (NIOSH). National Occupational Exposure Survey Data Base (NOES). Washington, DC: US Department of Health and Human Services Computer Printout (June 1, 1985).

(20) Mathtech Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, USEPA (April 14, 1987).

(21) No reference.

(22) No reference.

(23) Egan, G., Spencer, P., Schaumburg, H., Murray, K.J., Bischoff, M., and Scala, R. "*n*-Hexane-'free' hexane mixture fails to produce nervous system damage." *Neurotoxicology* 2: 515-524 (1980).

(24) Cavender, F.L., Casey, H.W., Salem, H., Graham, D.G., Swenberg, J.A., and Gralla, E.J. "A 13-week vapor inhalation study of *n*-hexane in rats with emphasis on neurotoxic effects." *Fundamental and Applied Toxicology* 4: 191-201 (1984).

(25) American Psychological Association (APA). Letter from Ronald W. Wood, Chairman, Neurobehavioral Toxicity Test Standards Committee, to USEPA, transmitting comments on the MCP and commercial hexane proposed test rules (November 6, 1986).

(26) ICF Inc. "Analysis of economic impacts for a toxicity test of commercial hexane." Prepared for Regulatory Impacts Branch, USEPA (July 1987).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of US enterprises to compete with foreign enterprises. The economic analysis of the testing of commercial hexane is discussed in Unit V.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511, December 11, 1980), and has assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Incorporation by reference, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: January 28, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.2155 to read as follows:

§ 799.2155 Commercial hexane.

(a) *Identification of test substance.* (1) "Commercial hexane," for purposes of this section, is a product obtained from crude oil, natural gas liquids, or petroleum refinery processing in accordance with the American Society for Testing and Materials Designation D 1836–83 (ASTM D 1836), consists primarily of six-carbon alkanes or cycloalkanes, and contains at least 40 liquid volume percent *n*-hexane (CAS No. 110–54–3) and at least 5 liquid volume percent methylcyclopentane (MCP; CAS No. 96–37–7). ASTM D 1836, formally entitled "Standard Specification for Commercial Hexanes," is published in *1986 Annual Book of ASTM Standards: Petroleum Products and Lubricants*, ASTM D 1836–83, pp. 966–967, 1986, is incorporated by reference, and is available for public inspection at the Office of the Federal Register, Room. 8301, 1100 L Street NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. This material is incorporated as it exists on the date of approval, and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Room. NE–G004, 401 M Street SW., Washington, DC 20460.

(2) The commercial hexane test substance, for purposes of this section, is a product which conforms to the specifications of ASTM D 1836 and contains no more than 40 liquid volume percent *n*-hexane and no less than 10 liquid volume percent MCP.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process commercial hexane, as defined in paragraph (a)(1) of this section and order than as an impurity, from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data, or submit exemption applications, as specified in this section, Subpart A of this part, and Part 790 of this chapter for single-phase rulemaking. Persons who manufacture commercial hexane as a byproduct are covered by the requirements of this section.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* (A) A subchronic inhalation toxicity test shall be conducted with commercial hexane in accordance with § 798.2450 of this chapter except for the provisions in paragraphs (d)(4)(ii) and (5) of § 798.2450.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The highest concentration should result in toxic effects but neither produce an incidence of fatalities which would prevent a meaningful evaluation nor exceed the lower explosive limit of commercial hexane.

(*2*) *Exposure conditions.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the subchronic inhalation toxcity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(2) *Oncogenicity*—(i) *Required testing.* (A) An oncogenicity test shall be conducted with commercial hexane in accordance with § 798.3300 of this chapter except for the provisions in paragraphs (b)(3)(ii) and (6) of § 798.3300.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The high dose level should elicit signs of minimal toxicity without substantially altering the normal life span and should not exceed the lower explosive limit of commercial hexane.

(*2*) *Administration of test substance.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the oncogenicity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(3) *Reproduction and fertility effects.*—(i) *Required testing.* (A) A reproduction and fertility effects test shall be conducted with commercial hexane in accordance with § 798.4700 of this chapter except for the provisions in paragraphs (c)(3)(ii) and (5) of § 798.4700.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* The highest dose level should induce toxicity but not high levels of mortality in the parental (P) animals. In addition, the highest dose level should not exceed the lower explosive limit of commercial hexane.

(*2*) *Administration of test substance.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the reproduction and fertility effects test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(4) *Inhalation developmental toxicity*—(i) *Required testing.* (A) An inhalation developmental toxicity test shall be conducted with commercial hexane in accordance with § 795.4350 of this chapter except for the provisions in paragraph (e)(3)(iv) of § 798.4350.

(B) For the purposes of this section, the following provisions also apply:

(*1*) *High dose level.* Unless limited by the physical/chemical nature or biological properties of the test substance, the highest concentration level shall induce some overt maternal toxicity such as reduced body weight or body weight gain, but not more than 10 percent maternal deaths. In addition, the highest dose level should not exceed the lower explosive limit of commercial hexane.

(*2*) [Reserved]

(ii) *Reporting requirements.* (A) The inhalation developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA for the inhalation developmental toxicity test at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(5) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A)(*1*) A *Salmonella typhimurium* reverse mutation assay shall be conducted with commercial hexane in accordance with § 798.5265 of this chapter except for the provisions in paragraphs (d)(4) and (e) of § 798.5265.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Metabolic activation.* Bacteria shall be exposed to commercial hexane both in the presence and absence of an appropriate metabolic activation system.

(*ii*) *Test performance.* The assay shall be performed using the desiccator method described as follows: The agar overlay plates shall be placed uncovered in a 9-liter desiccator. A volume of the liquid test substance shall be added to the glass Petri dish suspended beneath the porcelain shelf of the desiccator. The highest exposure concentration should not result in a vapor concentration which exceeds the lower explosive limit of commerical hexane. A magnetic stirring bar to serve as a fan to assure rapid and even distribution of the vapor shall be placed on the bottom of the inside of the desiccator. The desiccator shall be placed on a magnetic stirrer within a 37°C room or chamber for 7 to 10 hours. The plates shall then be removed, their lids replaced, followed by incubation for an additional 40 hours at 37°C before counting. An appropriate selective medium with an adequate overlay agar shall be used. All plating should be done in at least triplicate.

(B)(*1*) A gene mutation test in mammalian cells shall be conducted with commercial hexane in accordance with § 798.5300 of this chapter except for the provisions in paragraphs (d)(3)(ii) and (4) of § 798.5300 if the results from the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(5)(i)(A) of this section are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Cell growth and maintenance.* Treatment flasks shall be incubated on a rocker panel to insure maximum contact between the cells and the test agent. Incubation shall be at 37°C for 18 hours for experiments without metabolic activation and for 5 hours for experiments with activation. Each flask shall be closed with a cap with a rubber septum. Headspace samples shall be taken at the beginning and the end of exposure period and analyzed to determine the amount of test substance in each flask. The vapor concentration should not exceed the lower explosive limit of commercial hexane.

(*ii*) [Reserved]

(C) (*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with commercial hexane in accordance with § 798.5275 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5275, unless the results of both the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(5)(i)(A) of this section and the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(5)(i)(B) of this section, if required, are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* For the initial assessment of mutagenicity, it is sufficient to test a single dose of the test substance for screening purposes. This dose should be the maximum tolerated dose, or that which produces some indication of toxicity or shall be the highest dose attainable and should not exceed the lower explosive limit of commercial hexane. For dose-response purposes, at least three additional dose levels should be used.

(*ii*) *Route of administration.* The route of administration shall be by exposure to commercial hexane vapors.

(D) [Reserved]

(*ii*) *Reporting requirements.* (A) The gene mutation tests shall be completed and final reports submitted to EPA as follows:

(*1*) The *Salmonella typhimurium* reverse mutation assay within 8 months of the effective date of the final rule.

(*2*) The gene mutation in mammalian cells assay within 17 months of the effective date of the final rule.

(*3*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 24 months of the effective date of the final rule.

(*3*) [Reserved]

(B) Interim progress reports for each test shall be submitted to EPA for the gene mutation in mammalian cells assay and *Drosophila* sex-linked recessive lethal test at 6-month intervals beginning 6 months after the effective date of the final rule, until the applicable final report is submitted to EPA.

(C) [Reserved]

(6) *Mutagenic effects—chromosomal aberrations*— (i) *Required testing.* (A)(*1*) An *in vitro* cytogenetics test shall be conducted with commercial hexane in accordance with § 798.5375 of this chapter except for the provisions in paragraph (e)(3) of § 798.5375.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Treatment with test substance.* The test shall be performed using flasks flushed with commercial hexane vapors, then closed with a cap with a rubber

septum. The highest exposure concentration should not result in a vapor concentration which exceeds the lower explosive limit of commercial hexane.

(*ii*) [Reserved]

(B)(*1*) An *in vivo* cytogenetics test shall be conducted with commercial hexane in accordance with § 798.5385 of this chapter except for the provisions in paragraphs (d)(5) (ii), (iii) and (iv) of § 798.5385, if the *in vitro* test conducted pursuant to paragraph (c)(6)(i)(A) of this section is negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* For an initial assessment, one dose level of the test substance may be used, the dose being the maximum tolerated dose (to a maximum of 5,000 mg/kg), or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis), or shall be the highest dose attainable (to a maximum of 5,000 mg/kg) and should not exceed the lower explosive limit of commercial hexane. Additional dose levels may be used. For determination of dose-response, at least three dose levels should be used.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(C) (*1*) A dominant lethal assay shall be conducted with commercial hexane in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5450, unless both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (c)(6)(i) (A) and (B) of this section are negative.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* Normally, three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility and slightly reduced body weight). The highest dose should not exceed the lower explosive limit of commercial hexane. However, in an initial assessment of dominant lethality, a single high dose may be sufficient. Nontoxic substances shall be tested at 5 g/kg or, if this is not practicable, then at the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(D)(*1*) A heritable translocation test shall be conducted with commercial hexane in accordance with § 798.5460 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii) of § 798.5460, if the results of the dominant lethal assay conducted pursuant to paragraph (c)(6)(i)(C) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* At least two dose levels shall be used. The highest dose level shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation) or shall be the highest dose attainable or 5 g/kg body weight and should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(*iii*) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The *in vitro* cytogenetics test within 9 months of the effective date of the final rule.

(*2*) The *in vivo* cytogenetics test within 19 months of the effective date of the final rule.

(*3*) The dominant lethal assay within 28 months of the effective date of the final rule.

(*4*) The heritable translocation test within 25 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Interim progress reports for each test shall be submitted to EPA for the *in vivo* cytogenetics and the dominant lethal assays at 6-month intervals beginning 6 months after the effective date of the final rule, until the applicable final report is submitted to EPA.

(C) Interim progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated, until the final report is submitted to EPA.

(7) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) A schedule-controlled operant behavior test shall be conducted with commercial hexane in accordance with § 798.6500 of this chapter except for the provisions in paragraphs (d)(5)(i), (6) and (7) of § 798.6500.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavioral effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed once for 4 to 6 hours.

(*iii*) *Route of administration.* Animals shall be exposed to commercial hexane by inhalation.

(B)(*1*) A functional observation battery shall be conducted with commercial hexane in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6050.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavioral effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(C)(*1*) A motor activity test shall be conducted with commercial hexane in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6200.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear effects on motor activity of life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(D)(*1*) A neuropathology test shall be conducted with commercial hexane in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(i), (5), and (6) of § 798.6400.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *High dose level.* The highest dose shall produce clear behavior effects or life-threatening toxicity. In addition, the highest dose should not exceed the lower explosive limit of commercial hexane.

(*ii*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours/day, 5 days/week for 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to commercial hexane by inhalation.

(ii) *Reporting requirements.* (A) The schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports submitted to EPA within 15 months of the effective date of the final rule.

(B) Interim progress reports for each test shall be submitted to EPA for the schedule-controlled operant behavior, functional observation battery, motor activity, and neuropathology tests at 6-month intervals beginning 6 months after the effective date of the applicable final rule, until the applicable final report is submitted to EPA.

(8) [Reserved]

(d) *Effective date.* The effective date of the final rule for commercial hexane is March 21, 1988.

[Information collection requirements have been approved by the Office of Managment and Budget under control number 2070–0033]

[FR Doc. 88–2439 Filed 2–4–88; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 29

Trans-Alaska Pipeline Liability Fund

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for supervision and administration of the Trans-Alaska Pipeline Liability Fund (Fund) provided for by section 204(c) of the Trans-Alaska Pipeline Authorization Act (Act). The final rule eliminates inconsistencies between the existing regulations and the Act, clarifies confusing language and deletes unnecessary provisions.

EFFECTIVE DATE: March 7, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Office of Environmental Project Review, Room 4256, Department of the Interior, Washington, DC 20240, telephone (202) 343–3891.

SUPPLEMENTARY INFORMATION: On June 29, 1987, the Department of the Interior published for comment in the **Federal Register** a proposed rule that would amend its regulations for supervision and administration of the Fund. This proposed rule was published in response to a petition from the Fund. The petition was published as part of the proposed rule. The petition and the preamble to the proposed rule described the bases for the proposed changes to the current regulations, and the Department's observations on the petition, respectively (52 FR 24181).

The Department of the Interior received three sets of comments from two sources. One commenter was the Environmental Protection Agency, which the Department of the Interior had specifically requested to comment (52 FR 24182). The other was the Fund, which on two separate occasions provided substantive comments and comments concerning typographical errors contained in the proposed rule.

A summary of the comments and the Department's responses to the comments follow.

1. Notification Requirements

EPA commented that the first sentence of proposed § 29.8(a) failed to make clear whether the discovery of an incident must be made by the person in charge of the vessel and whether the incident must involve the vessel. EPA then suggested language to clarify the meaning of the sentence. As the Department intended that the obligations of the person in charge of the vessel would begin as soon as he or she becomes aware of an incident involving his or her vessel, this comment has merit. Accordingly, the Department has revised the first sentence, although the specific language suggested by EPA has not been used.

EPA also suggested, concerning the same sentence, that the regulation specify that the notification of the incident be made to the National Response Center rather than the "Coast Guard." EPA's stated concern was that without the change a person in charge of a vessel might contact a Coast Guard unit rather than the National Response Center. As the Department's intent was that the person in charge of the vessel should contact the National Response Center, the EPA's suggestion is accepted with clarification to assure it is understood that the National Response Center is operated by the Coast Guard.

EPA also suggested that in the last sentence of proposed § 29.8(a) the citation to the Federal Water Pollution Control Act (FWPCA) be clarified, and that a reference be made to EPA's recently promulgated regulations implementing the notification requirements of the FWPCA. The citation clarification has been made. The Department also agrees to make reference to the EPA's notification requirements; the change is consistent with the Department's intent that the § 29.8 notification requirements are in addition to notification requirements under the FWCPA.

Finally, EPA suggested that in proposed § 29.8(b) the term "Coast Guard" be replaced with "National Response Center." This change has been made. To be consistent with the other changes in § 29.8 the reference to "Coast Guard" in § 29.8(c)(1) has also been changed to "National Response Center." A conforming change has also been made to § 29.1(d).

2. Definitions

EPA comments that the use of the term "spill" in proposed § 29.8(c)(1) and (d) could cause confusion as the term "spill" is not defined in proposed § 29.1. EPA suggests that the term "incident", which is defined in proposed § 29.1, be used instead of "spill". The Department agrees that without some reference to "spill" in § 29.1 some confusion could arise. Accordingly, the Department is amending § 29.1(h) to indicate that "incident" and "spill" can be used interchangeably.

EPA also commented that proposed § 29.1(h) (definition of "incident") would limit incidents to instances where there is a "discharge of TAPS oil". The Department recognizes that section 204(c)(1) of the Trans-Alaska Pipeline Authorization Act applies to "discharges of oil" from a vessel carrying TAPS oil, and did not intend to change the statutory application. Accordingly, the Department has amended § 29.1(h) to indicate that an incident "means a discharge of oil from a vessel which is carrying TAPS oil loaded on that vessel. . . ."

The Fund questioned in two respects the basis for the Department's disagreement with the Fund's rationale for the deletion of proposed § 29.1(e)(7) (numbered as § 29.1(d)(7) prior to the promulgation of this final rule), found at 52 FR 24181–82. First, the Fund questions the Department's observation that the current regulation could be read as making loss of tax revenue an element of damages without a showing of proximate cause; the Fund notes that proximate cause must be shown for all damages under the Act. The Fund is correct; under the current regulations and as amended, any claim may be paid only upon a showing that the economic loss arises out of or results directly from an incident. See § 29.1(e).

The Fund also asserts the Department states incorrectly in the preamble to the proposed rule that loss of tax revenues may constitute damages. The Department disagrees with this comment. The Department's intent is only that if a claimant is able to demonstrate that any economic loss arises out of or results directly from an

incident, that claim may be paid under the Act. If a claimant can make this showing for loss of tax revenues, the claim may be paid by the Fund.

3. Typographical and Clarifying Changes

The Department has made a number of minor changes of a typographical nature as the result of comments from the Fund and Departmental staff. The Department has also made several minor clarifying changes based on comments from Departmental staff.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291, because these regulations deal only with the administration of the Fund. Any economic effects should be very small, and any adverse effects on competition, employment, investigation, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets are expected to be insignificant. Because these regulations deal only with the administration of the Fund and it is not anticipated that these regulations will affect any small entities, the Department has certified that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

Paperwork Reduction Act

The information collection requirements contained in amended 43 CFR 29.9 have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and assigned approval No. 1084–0026.

Environmental Effects

This rule is categorically excluded from the National Environmental Protection Act (NEPA) process because it is of an administrative, financial, legal, technical and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4; 516 DM 2.3A).

Drafting Information

The primary authors of this document are Robert H. Moll and Timothy S. Elliott of the Office of the Solicitor, in consultation with Bruce Blanchard, Director, Office of Environmental Project Review.

List of Subjects in 43 CFR Part 29

Alaska, Oil pollution, Pipelines.

This final rule is issued under the authority of section 204(c) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c)(4), and sections 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p)(1), (2).

For the reasons set forth in the preamble, Title 43, Part 29 is revised to read as set forth below.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.

29.1 Definitions.
29.2 Creation of the Fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing, accounting and audit.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.
29.14 Information collection.

Authority: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653(c), Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 (p)(1), (2).

§ 29.1 Definitions.

As used in this part:

(a) "Act" means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93–153, 43 U.S.C. Secs. 1651, et seq.

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel Owner or Operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel Owner or Operator by—

(i) Stock interest, or

(ii) Representation on a board of directors or similar body, or

(iii) Contract or other agreement with other stockholders, or

(iv) Otherwise, or;

(3) Any person which is under common ownership or control with the vessel Owner or Operator.

(c) "Claim" means a demand in writing for payment for damage allegedly caused by an incident.

(d) "Contact person" means a person designated by the Owner or Operator and identified to the Fund Administrator and the National Response Center operated by the Coast Guard as the official responsible for coordinating with the Fund the resolution of claims filed as a result of a TAPS oil spill.

(e) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

(1) Removal costs;

(2) Injury to, or destruction of, real or personal property;

(3) Loss of use of real or personal property;

(4) Injury to, or destruction of, natural resources;

(5) Loss of use of natural resources; or

(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(f) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(g) "Guarantor" means the person, other than the Owner or Operator who provides evidence of financial responsibility for an Owner or Operator, and includes an underwriter, insurer or surety company.

(h) "Incident" (or "spill") means a discharge of oil from a vessel which is carrying TAPS oil loaded on that vessel at the terminal facilities of the Pipeline and which:

(1) Violates applicable water quality standards, or

(2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(i) "Operator of the Pipeline" means the common agent designated by the Permittees to operate the Pipeline.

(j) "Owner of the oil" means the Owner of TAPS oil at the time that such oil is loaded on a vessel at the terminal facilities of the Pipeline.

(k)(1) "Owner" means, in the case of a vessel, the person owning the vessel carrying TAPS oil at the time of an incident, and

(2) "Operator" means, in the case of a vessel, the person operating, or chartering by demise, the vessel carrying TAPS oil at the time of an incident.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge of the Vessel" means the individual on board the vessel with the ultimate responsibility for vessel navigation and operations.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System.

(o) "Pipeline" means any Pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or an authorized representative of the Secretary.

(q) "TAPS oil" means oil which was transported through the Trans-Alaska Pipeline and loaded on a vessel at the terminal facilities of the Pipeline.

(r) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the Pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(s) "Trans-Alaska Pipeline System" or "System" means any Pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(t) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(u) "Vessel" means any type of watercraft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and which is carrying TAPS oil.

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund (Fund) was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary. The vessel Owner and Operator are strictly liable for the first $14 million of claims for any one incident. The vessel Owner and Operator remain liable for claims over that amount whenever the damages involved were caused by the unseaworthiness of the vessel or by negligence and should the Fund pay any claims under those circumstances, the Fund retains the right of subrogation. The Fund's maximum liability for any one incident is the amount of the claims over $14 million but not to exceed $100 million.

(b) The Fund shall be subject to, and shall take all steps necessary to carry out its responsibilities under, the Act and these implementing regulations.

(c) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself or herself. Each member shall have the right to vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells the interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(d) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(e)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him or her in connection with any such claim or liability; *Provided*, however, That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his or her own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his or her actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident, the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including (1) receipt of fee collections pursuant to section 204(c)(6) of the Act; (2) payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund; (3) investment of all sums not needed for administration and the satisfaction of claims in income-producing securities as hereinafter

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provided, and (4) seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the Act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administrative functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of TAPS oil pursuant to section 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and consistent with these regulations, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the Pipeline shall notify each Permittee within a reasonable time as to the date of the tanker loadings and the volumes of TAPS oil loaded. The Permittee will send an invoice for transportation charges for TAPS oil (which includes five cents per barrel for the Fund) to the Owner of the oil. The Permittee will receive the five cents per barrel fee from the Owner of the oil in accordance with the terms of its particular pipeline tariff, filed with the appropriate governmental agency, and shall transfer the fee on or before the next business day to a Fund bank account designated by the Administrator. Collection of fees shall cease at the end of the month following the month in which $100 million has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below $100 million. The Administrator shall notify the Pipeline carriers by the fifteenth of the month if fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period.

(b) Costs of the administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with section 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month that fees are payable under the Act, or other agreed upon accounting period, the Operator of the Pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the Pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners of TAPS oil from whom such fees were or are due. The Administrator shall provide a copy of the statement to the Owners of the oil, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be subject to an annual audit by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and is carrying TAPS oil, the Owner and Operator (jointly and severally), and the Fund established by section 204(c) of the Act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of TAPS oil from such vessel. Strict liability under this section shall cease when the TAPS oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the Owner or Operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the Act with respect to the claim of a damaged party if the Owner or Operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c)(1) Strict liability for all claims arising out of any one incident shall not exceed $100 million. The Owner and Operator of the vessel shall be jointly and severally liable for the first $14 million of the claims that meet the definition of damages as provided for in these regulations. The Fund shall be liable for the balance of the claims that meet the same definition up to $100 million. If the total of these claims exceeds $100 million, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(2) The Fund shall establish uniform procedures to determine whether claims from a TAPS oil spill might exceed $14 million and $100 million. These procedures shall provide that when a determination is made that claims may exceed $100 million, payment of claims may be withheld in full or in part for a twenty-four month period so that claims may be proportionately reduced prior to payment.

(d)(1) Each Owner or Operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 311(p) of the Federal Water Polution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (33 CFR Part 131). Notwithstanding inconsistent language in such act, financial responsibility in the amount of $14 million for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel. No TAPS oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) As soon as the person in charge of a vessel has knowledge of an incident in which the vessel is involved, he shall immediately notify the Owner or Operator and the National Response Center, (800) 424-8802, of the incident. Notification under this section is in addition to any notification requirements under section 311(b)(5) of the Federal Water Pollution Control Act, as amended, and the regulations of the Coast Guard and the Environmental Protection Agency promulgated thereunder (33 CFR 153.203 and 40 CFR 110.10, respectively).

(b) Upon receiving notice of an incident, the National Response Center shall immediately notify the Fund.

(c)(1) At the time of a spill of TAPS oil, the vessel Owner and Operator shall consult with each other and identify a single contact person to both the Fund Administrator and the National Response Center as the official who is responsible for coordinating with the Fund the resolution of claims from a spill of TAPS oil. The National Response Center shall provide the identity of the contact person to appropriate officials of the Coast Guard.

(2) The Fund shall establish procedures for coordination of the handling of claims with the contact person.

(d) Pursuant to its procedures, the Fund shall ascertain if the spill may result in damage claims in excess of $14 million. If it concludes that that level may be reached, the Fund shall commence advertisement no later than 45 days from the date the Fund receives notice of the incident and shall continue advertising for a period of not less than thirty days.

(e) The advertisement must appear in one or more local newspapers of general circulation and the Fund shall establish procedures governing the format and the information to be included in the advertisement of an incident. All advertisements must include:

(1) The date and location of the incident;

(2) The name of the Owner or Operator;

(3) The name and address of the contact person or of the Fund Administrator to whom claims should be sent.

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his or her duly authorized agent, or his or her successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(e)), and including a monetary claim for each type of damage listed.

(iii) Documentation of all monetary claims asserted.

(b) The contact person must provide copies of all claims filed with the vessel Owner or Operator to the Fund Administrator upon request of the Administrator. Once such claims are paid, the contact person shall notify the Fund and upon request of the Administrator supply any adjuster's reports.

(c) Prior to reaching $14 million in claims filed, the contact person shall notify the Fund whether the vessel Owner or Operator will assume responsibility to pay damages over the $14 million level.

(d)(1) In the event the vessel Owner or Operator refuses to pay claims over the $14 million level, the Fund shall determine if the $14 million in claims already filed meet the definition of damage as established by this section. The Fund shall pay the claims, or portion of claims, over $14 million, which have been determined to meet that definition.

(2) The Fund shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund, including but not limited to procedures for appraising claims made to the vessel Owner or Operator to determine when $14 million of claims meeting the definition of damages has been reached; procedures to determine whether claims over the $14 million level which it receives meet the definition of damages; and procedures for determining when the services of a private insurance and claims adjuster shall be used.

(e) In the event the vessel Owner or Operator refuses payment of any claims up to $14 million, the injured parties have recourse to the district court for the Federal district in which the spill occurred or the appropriate State court for the State in which the spill occurred. The Fund only becomes liable after $14 million in claims meeting the definition of damages have been paid or have been acknowledged as payable by the vessel Owner or Operator.

(f) The Fund may settle or compromise any claim presented to it.

(g) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against the vessel Owner or Operator, or their guarantor, or against the Fund, as to their respective liabilities, within two years from the date of discovery of the damages caused by an incident, or of the date of the incident causing the damages, whichever is earlier.

(h)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to the Owner or Operator and such Owner or Operator has a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(i) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal district court.

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights, claims, and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations have a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as

another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA." *Provided*, however, That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either "A1" or "P1" or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time. *Provided*, however, That this restriction shall not apply to obligations of the United States or any of its agencies.

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is $500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds $500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the Pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

§ 29.14 Information collection.

The information collection requirements contained in 43 CFR 29.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned approval No. 1084–0026. The information being collected is the information required to substantiate claims submitted to the Fund. The information will be used to determine whether the claims are appropriate for payment by the Fund. Submission of this information is required of claimants before a claim can be considered.

Date: December 31, 1987.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 88–2491 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–RG–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1152

[Ex Parte No. 274 (Sub-No. 12B)]

Rail Abandonments; Environmental and Historic Preservation Conditions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is delegating to the Director of the Office of Proceedings authority to decide petitions partially to revoke and petitions to reopen abandonment exemptions granted under 49 U.S.C. 10505 and the Commission's class exemption procedures in 49 CFR Part 1152, Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights*, for the purpose of expediting Commission action on requests to impose conditions limiting salvage of the rail properties for environmental and historic preservation purposes. Appeals of these decisions will be acted on by the entire Commission.

EFFECTIVE DATE: March 2, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [Telephone Number for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The text of the rules is set forth below.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or energy conservation. It may improve both. Since public comment is not required under 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this proceeding. *See* 5 U.S.C. 603.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations.

49 CFR Part 1152

Abandonments and discontinuances, Investigations, Railroads.

Decided: January 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Lamboley and Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Title 49, Subtitle B, Chapter X, Parts 1011 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2 is amended by revising paragraph (a)(8) to read as follows:

§ 1011.2 The Commission.

(a) * * *

(8) All appeals of initial decisions determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d), for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR Part 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iv) The applicability and administration of the Trails Act (16 U.S.C. 1247(d)) in abandonment proceedings under 49 U.S.C. 10903–04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c) (4) and (5).

Appeals on these matters must be filed within 10 days of the date the action is taken, and responses must be filed within 10 days thereafter.

3. Section 1011.8 is amended by revising paragraph (c)(3) to read as follows:

§ 1011.8 Delegation of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(c) * * *

(3) Whether partially to revoke or to reopen abandonment exemptions authorized under 49 U.S.C. 10505, and 49 CFR Part 1152, Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes.

* * * * *

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

4. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

5. Section 1152.25 is amended by revising paragraph (e)(1) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

* * * * *

(e) *Appellate procedures*—(1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR Part 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining:

(i) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 and 49 CFR Part 1152 Subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iv) The applicability and administration of the Trails Act (16 U.S.C. 1247(d)) in abandonment proceedings under 49 U.S.C. 10903–04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c) (4) and (5) will be acted on by the entire Commission as set forth at 49 CFR 1011.2(a)(8).

An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

* * * * *

[FR Doc. 88–2402 Filed 2–4–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 71030–7277]

Foreign Fishing; Foreign Fee Schedule; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the preamble for the final rule which amends the fee schedule for foreign vessels fishing in the exclusive economic zone which was published January 5, 1988 (53 FR 134).

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5319, or telex 467856 U.S. COMM FISH CI.

In rule document 87–30204 on page 134 in the issue of January 5, 1988, under the **"SUMMARY"** heading, column 3, line 10, after "$13.467" insert "million".

Dated: February 2, 1988.

Carmen J. Blondin,

Special Associate for Trade, National Marine Fisheries Service.

[FR Doc. 88–2492 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 642

[Docket No. 70605–7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for Spanish mackerel from the Gulf of Mexico migratory group. The Acting Director, Southeast Region, NMFS, has determined that the commercial allocation of 1.42 million pounds will be reached on February 1, 1988. This closure is necessary to protect the overfished Spanish mackerel resource.

EFFECTIVE DATES: Closure is effective at 0001 hours, local time, February 2, 1988, until 2400 hours, local time, June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Amendment 2 to the FMP, which went into effect on June 30, 1987 (52 FR 23836, June 25, 1987), established separate allocations for the Gulf and Atlantic migratory groups of Spanish mackerel. Regulations effective June 30, 1987, implemented catch limits recommended by the Councils for the Gulf migratory group for the fishing year (July 1, 1987, through June 30, 1988). Those regulations set the commercial allocation at 1.42 million pounds (52 FR 25012, July 2, 1987). The management area for the Gulf migratory group of Spanish mackerel extends from the Mexico/United States border east and north to a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. latitude).

The Secretary is required under § 642.22 to close any segment of the Spanish mackerel fishery when its allocation has been reached or is projected to be reached by publishing a notice in the **Federal Register**. The Acting Regional Director had determined that the allocation of 1.42

million pounds for the Gulf migratory group of Spanish mackerel will be reached on February 1, 1988. Hence, the commercial fishery for Gulf migratory group Spanish mackerel is closed effective 0001 hours, local time, February 2, 1988. The closure will remain in effect through June 30, 1988, the end of the fishing year.

The Acting Regional Director previously determined that the recreational allocation of 1.08 million pounds for the Gulf migratory group of Spanish mackerel was reached on December 15, 1987. The recreational bag limit for this group was reduced to zero on December 16, 1987 [52 FR 47724, December 16, 1987].

With closure of the commercial fishery, all commercial and recreational fisheries in the EEZ for the Gulf migratory group of Spanish mackerel are closed through June 30, 1988. During the closure, Gulf migratory group Spanish mackerel may not be harvested from or possessed in the EEZ and may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 2, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 88-2373 Filed 2-2-88; 10:00 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pickles; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: AMS is correcting errors in references to Tables in § 52.1687(c) and § 52.1689(b) of the proposed U.S. grade standards for pickles which appeared in the **Federal Register** on December 8, 1987 (52 FR 46486). Please note an additional correction is published elsewhere in the CORRECTIONS section of this issue.

DATE: Comments must be received on or before February 8, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 447-6247.

SUPPLEMENTARY INFORMATION: AMS has proposed a revision of the U.S. Standards for Grades of Pickles published in the **Federal Register** on December 8, 1987 (52 CFR 46486). Errors in reference to tables are discussed briefly below and are corrected by this notice.

The following corrections are made in FR Doc. 87-28088, the U.S. Standards for Grades of Pickles published in the **Federal Register** on December 8, 1987 (52 FR 46486).

1. Beginning on page 46490, third column, § 52.1687(c) in line 3, reference to "Table III" should be changed to read "Table IV."

2. On page 46491, second column, § 52.1689(b) in line 3, remove the words "Table V and".

Dated: February 2, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-2423 Filed 2-4-88; 8:45am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1102-88]

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The proposed rule would expand the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants. Present regulations provide a blanket waiver for Canadian nationals and alien residents of Canada having a common nationality with Canadians. The revised regulation would confer this waiver on all nationalities.

DATE: Comments must be submitted on or before April 5, 1988.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW, Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Joanna London, Associate General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: The proposed revision to 8 CFR 212.4(e) would provide a blanket waiver of inadmissibility for mentally retarded aliens seeking admission as nonimmigrants, if accompanied by a family member or guardian who would be responsible for the individual. Under section 212(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(1), a mentally retarded alien is inadmissible to the United States. This inadmissibility may be waived and the alien admitted by the Attorney General, in the exercise of discretion, under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3).

Presently, a blanket waiver is provided in the case of Canadian nationals and alien residents of Canada having a common nationality with Canadians. It is the Service's view that the same blanket procedure should be made available to all other nationalities. This procedure would facilitate the travel of mentally retarded individuals and their families without harm to the public interest, based on Service experience in administering the present limited Canadian waiver.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Discretionary relief, Health.

For the reasons set out in the preamble, Title 8, Chapter I, Subchapter B, of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1252, 48 FR 8039, 8 C.F.R. 2, unless otherwise noted.

2. Section 212.4 is amended by revising paragraph (e) as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d) (3).

* * * * *

(e) *Inadmissibility under section 212(a)(1) or 212(a)(24)*—(1) *Section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized

notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

(2) *Section 212(a)(24).* The temporary admission of any nonimmigrant inadmissible solely under section 212(a)(24) of the Act is authorized.

* * * * *

Dated: January 21, 1988.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 88-3499 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Change in Composition of Advisory Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the change in composition of the High-Level Waste Licensing Support System Advisory Committee and notice of next meeting.

SUMMARY: The Nuclear Regulatory Commission is changing the composition of the High-Level Waste Licensing Support System Advisory Committee. This advisory committee was established to develop recommendations for revision of the Commission's Rules of Practice (10 CFR Part 2) related to the ajudicatory proceeding for issuance of a license for the disposal of high-level waste (HLW) in a geologic repository. Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. Recent amendments to the Nuclear Waste Policy Act have changed the site selection process for a HLW repository, narrowing the parties that may be affected by this rulemaking. Consequently, the Commission has revised the composition of the committee to reflect this change.

DATE: The next meeting of the revised HLW Licensing Support System Advisory Committee will be held on March 22, 23, and 24, 1988, beginning at 9:00 a.m., in Reno, Nevada. The location of this meeting in Reno, Nevada, will be announced at a later date. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

NRC Staff

Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1623.

Kenneth L. Kalman, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301-492-0428.

Facilitators

Howard S. Bellman
Timothy J. Mealey
Matthew A. Low
Kirk Balcom
Conservation Foundation, 1250 24th Street, Washington, DC 20037, 202-293-4800

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987 (52 FR 29024), the Commission announced the formation of an advisory committee ("negotiating committee") to develop recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. These revisions relate to the development of an information management system (the "Licensing Support System" or "LSS") that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding. Implementation of this system was intended to accomplish the following objectives—

- To facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- To establish the information base for the licensing proceeding, to the extent practicable, before the DOE license application is submitted and the three year statutory time period begins;
- To facilitate review of the relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability;
- To reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for the electronic transmission of these documents;

As stated in the August 5, 1987 **Federal Register** Notice, the Commission considered parties for membership on the negotiating committee on the basis of: (1) Whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. The Commission also noted its concern that the negotiating committee be kept to a manageable size in order to maximize the potential for arriving at a consensus.

Based on the above criteria, the Commission invited the following groups to participate on the negotiating committee—

(1) State of Nevada
(2) State of Washington
(3) State of Texas
(4) Yakima Indian Nation
(5) Nez Perce Indian Tribe
(6) Confederated Tribes of the Umatilla Indian Reservation
(7) Department of Energy
(8) National Congress of American Indians
(9) Utah, Oregon, and Mississippi (jointly)
(10) Minnesota and Wisconsin (jointly)
(11) The Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly)
(12) Nuclear Waste Task Force, representing a coalition of local Texas nongovernmental groups
(13) Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly)
(14) Nuclear Regulatory Commission
(15) U.S. Council for Energy Awareness
(16) National Conference of State Legislatures
(17) National Association of Regulatory Utility Commissioners
(18) State of Tennessee
(19) Penobscot Indian Nation

A coalition of local governments from the State of Nevada was added at a later date. The negotiating committee has met monthly since September 1987. Considerable progress has been made in defining and prioritizing the relevant rulemaking issues, and in developing a consensus on those issues.

The Nuclear Waste Policy Amendments Act of 1987

On December 22, 1987, the President signed into law a bill amending the Nuclear Waste Policy Act (the Nuclear Waste Policy Amendments Act of 1987, Pub. L. No. 100-203). The new law provides for a phase-out of site-specific activities at all first round candidate sites other than the Yucca Mountain site in Nevada within ninety days of enactment. If the Yucca Mountain site is found to be unsuitable for a geologic repository, new legislative authority would be needed to begin characterization of any other site. In regard to the second geologic repository, no site-specific activity can be conducted unless specifically authorized by Congress. Such authorization cannot be considered until the Secretary of Energy reports to Congress. This report will not be submitted until January 1, 2007, at the earliest. The legislation nullifies the Department of Energy (DOE) proposal to locate a Monitored Retrievable Storage facility (MRS) on the Clinch River in Oak Ridge, Tennessee, as well as any of the alternative sites in the proposal. The Secretary of Energy is authorized to site, construct, and operate an MRS. However, the Secretary may not select a site for an MRS until after a number of conditions are met, including—

- After the report and recommendation of the independent MRS Review Commission is submitted to Congress on June 1, 1989;
- After the Secretary evaluates potentially suitable MRS sites;
- After the Secretary recommends to the President the approval of a site for the development of a geologic repository.

The primary effect of the legislation is to focus the Department of Energy's site characterization efforts on a single site in Nevada to determine its suitability as a site for a geologic repository. Efforts in regard to other first round sites for a geologic repository, and the search for a second geologic repository, have been terminated. The Commission's selection of the participants for the original negotiating committee was based upon the wide range of first and second round sites that were possible candidates for the location of a geologic repository under the existing statutory framework. With the change in the statutory framework, the Commission now believes it is appropriate to revise the composition of the negotiating committee to reflect the focus on characterizing the Nevada site. The members of the revised committee are—

- State of Nevada;
- a coalition of Nevada local governments;
- Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly), representing a coalition of nonprofit environmental groups;
- Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly);
- Department of Energy;
- Nuclear Regulatory Commission.

Additional membership on the new committee will be governed by committee protocols. The Commission expresses its appreciation to all former participants for their service on the negotiating committee. Their participation has provided a solid foundation for the continuing work of the new committee. In addition, the Commission would welcome any former committee members to convey any remaining concerns on the rulemaking issues to the committee at future meetings.

Federal Advisory Committee Act

In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, the Commission has submitted an amended charter for the negotiating committee to the General Services Administration that reflects the change in committee composition. In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the **Federal Register**, the meetings of the full negotiating committee will be open to the public, members of the public will be able to submit written or oral statements to the committee, and detailed minutes of each meeting will be made available for public review and copying.

The next meeting of the negotiating committee is scheduled for March 22, 23, and 24, 1988. The previously scheduled meeting on February 11 and 12, 1988, has been cancelled.

Dated at Bethesda, Maryland, this 1st day of February 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 88-2429 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Regulations Under Section 206(b) of the Museum Services Act

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Institute of Museum Services issues proposed regulations under section 206(b) of the Museum Services Act relating to award of contracts and cooperative agreements to professional museum organizations. Language in the fiscal year 1988 appropriation for IMS provides the necessary appropriations act authority under this section.

DATE: Comments will be received until March 7, 1988.

ADDRESS: Comments should be addressed to Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave. NW., Washington, DC 20506 (202-786-0536).

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Director of Programs, Institute of Museum Services, Room 510, 1100 Pennsylvania Ave. NW., Washington, D.C. 20506 (202-786-0536).

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and has been amended and extended.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

> It is the purpose of the [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (Board) and a Director.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 97-100, December 23, 1981; Pub. L. 97-394, December 30, 1982.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During Fiscal Year 1988 IMS provides three types of grant assistance to museums: (1) General operating support; (2) conservation assistance; and (3) museum assessment assistance.

2. Purpose and Scope of Proposed Regulations

Section 206(b) of the Museum Services Act, 20 U.S.C. 965(b), provides for

financial assistance to professional museum organizations in the following terms:

(b) *Contracts and cooperative agreements: professional museum organization*

(1) The Director, subject to the policy direction of the National Museum Services Board, is authorized to enter into contracts and cooperative agreements with professional museum organizations to provide financial assistance to such organizations in order to enable such organizations to undertake projects designed to strengthen museum services, except that any contract or cooperative agreements entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in appropriations Acts.

(2)(A) No financial assistance may be provided under this subsection for any project for a period in excess of one year.

(B) No financial assistance may be provided under this subsection for the operational expenses of any professional museum organization.

(3) The aggregate amount of financial assistance made under this subsection to professional museum organizations shall not exceed 5 percent of the amount appropriated under [the Act] for such fiscal year.

(4) For purposes of this subsection, the term "professional museum organization" means a private, nonprofit professional museum-related organization, institution, or association which engages in activities designed to advance the well-being of museums and the museum profession.

Language in the fiscal year 1988 appropriation for IMS provides the necessary appropriations act authority to provide the assistance described in section 206(b) of the Museum Services Act in fiscal year 1988. Because IMS has no regulations or guidelines governing applications for such assistance or post-award conditions, the Institute, after receiving the policy direction of the Board, is issuing proposed regulations for public comment. These regulations, after final publication, are expected to govern the award of contracts or cooperative agreements under section 206(b) for this fiscal year and future fiscal years.

The proposed regulations closely track section 206(b) with respect to those matters for which there is statutory language. Provision is made in the regulations regarding eligibility, applications, activities for which assistance will be made available, and conditions for receipt of funds. It is anticipated that, in view of the limited time frame that is available within fiscal year 1988 for receipt and processing of applications, that applications, for fiscal year 1988 will be invited in light of the proposed regulations. However, applicants will be given additional time to revise proposals *if* the final regulations differ materially from the proposed.

3. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

4. Regulatory Flexibility Act Certification

The Director certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain organizations receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

5. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 30th day after publication of this document will be considered in developing in the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510, 1100 Pennsylvania Avenue NW, Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: January 29, 1988.

Lois Burke Shepard,

Director, Institute of Museum Services.

PART 1180—[AMENDED]

1. The authority citation for 45 CFR Part 1180 continues to read as follows.

Authority: 20 U.S.C. 961 et seq.

Part 1180 of Title 45 CFR is amended by adding a new subpart E consisting of § 1180.77 to read as follows:

Subpart E—Assistance To Professional Museum Organizations

§ 1180.77 Contracts and cooperative agreements with professional museum organizations.

(a) *Scope.* The guidelines and standards in this document apply to all aspects of the Institute's program to provide financial assistance, through contracts and cooperative agreements, to professional museum organizations for the carrying out of certain projects pursuant to section 206(b) of the Act.

(b) *Definitions.* For the purposes of this subpart the term "professional museum organization" means a private, nonprofit professional museum services related organization, institution, or association which engages in activities designed to advance the well-being of museums eligible for assistance under this part and the museum profession through such activities as technical assistance, dissemination of information, professional development activities, and professional services.

(c) *Applicability of other regulations.* The following IMS regulations apply to assistance under this subpart:

(1) § 1180.3; § 1180.4; and § 1180.5(e) of Subpart A, and

(2) § 1180.30–1180.33 and § 1180.36–1180.39 of Subpart B; and

(3) § 1180.44 and § 1180.46 and § 1180.51–1180.59 of Subpart C.

(d) *Applicants.* (1) A professional museum organization may apply for assistance under this subpart by contract or cooperative agreement.

(2) A professional museum organization that serves museums or museum professionals at the national, regional, state, or local level may apply.

(e) *Types of projects.* The Institute considers applications under this subpart to carry out projects designed to strengthen museum services such as:

(1) Programs to educate museum professionals in improved or innovative standards of museum operations or other matters relating to museum management;

(2) Research or surveys to determine effective and innovative methods to provide museum services or conduct operations;

(3) Projects to investigate the feasibility of cooperative methods for the carrying out by museums of management, storage, and information gathering and sharing or other museum functions; or

(4) Research projects to help museums and museum associations serve their publics more effectively.

(f) *Limitation.* No financial assistance may be provided under this subpart to pay for the operational expenses of any professional museum organization.

(g) *Amount of contract or cooperative agreement.* A professional museum organization should not expect to receive a contract or cooperative agreement under this subpart in excess of $100,000. It is anticipated that most contracts or cooperative agreements under this subpart will be in an amount smaller than $50,000.

(h) *Matching.* A contract or cooperative agreement under this subpart for any fiscal year may not normally exceed 50 per centum of the cost of the project for which the contract or cooperative agreement is made. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive this requirement pursuant to section 206(c) of the Act.

(i) *Application requirements.* (1) An applicant under this subpart must submit an application containing the information requested by the Institute.

(2) An applicant must submit with its application its financial statements for the two most recent fiscal years for which information is available. For applications requesting in excess of $20,000, the Institute requests that one of those statements be audited.

(j) *Procedures for review of applications.* To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the applicable criteria stated in paragraph (k). Normally, these applications are evaluated by field reviewers, panels of experts, or both. The Director may also use technical experts in the review of applications. Final determinations as to the award of contracts are made by the Director after consultation with the Board with respect to policy matters.

(k) *Criteria.* This paragraph sets forth the criteria that the Institute uses in evaluating and reviewing applications for contracts or cooperative agreements under this subpart. Panelists and field reviewers are instructed to use only these criteria in the evaluation and review of these applications:

(1) To what extent is the project likely to strengthen museum services?

(2) To what extent does the project hold promise of exploring or developing effective and innovative solutions to problems affecting the provision of museum services or operations?

(3) Has the need for the project been adequately documented?

(4) What is quality of the project design?

(5) Does the project have an adequate budget to achieve its purpose?

(6) What are the qualifications of the personnel the applicant plans to utilize in the project?

(7) What are the anticipated long-term benefits of the project?

(l) *Duration.* No financial assistance may be provided under this subpart for any project for a period in excess of one year.

(m) *Limitation of Application.* An applicant may submit only one application with respect to each deadline.

[FR Doc. 88-2309 Filed 2-4-88; 8:45 am]

BILLING CODE 7036-01-M

Notices

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects in Kentucky, Pennsylvania & California; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Projects.

SUMMARY: ACTION announces the availability of funds for fiscal year 1988 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the States of Kentucky, Pennsylvania, and California. The deadline for receipt of applications is 5PM local time, April 8, 1988. Applications not approved by ACTION for fiscal year 1988 may at the discretion of the agency be retained for consideration for fiscal year 1989. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation for Kentucky and Pennsylvania are available from: Helen Griffin, ACTION Region 3, U.S. Customs House, 2d and Chestnut Street, Room 108, Philadelphia, PA 19106, 215–597–0741.

Application packages for California are available from Patrick Twohig, ACTION Region 9, 211 Main Street, Room 530, San Francisco, CA 94105, 415–974–0675. Technical Assistance on grant preparation is available in Southern California from Lowell Brinson, ACTION, 11000 Wilshire Boulevard, Room 14218, Los Angeles, CA 90024, 213–209–7421, and in Northern California from Peter Heinau, ACTION, 211 Main Street, Room 534, San Francisco, CA 94105, 415–974–0690.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons affected with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunters and for the absorption of the Volunteers' functions by other facets of the community.

B. Objectives

ACTION will be awarding grants for the placement of VISTA volunteers in Kentucky, Pennsylvania, and California in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. *Homelessness*—development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. *Drug & Alcohol Abuse*—prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. *Economic Development*—appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are private nonprofit organizations, or Federal, State, or local agencies.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by total number of VISTA volunteers, cannot exceed $8,000 nor may the amount of Federal funding for a grant exceed $120,000. Grants of 10–15 volunteers may range from $80,000–$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. In particular, there should be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on a full-time basis. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria for Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new VISTA program grants. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies;

2. Comply with applicable financial and fiscal requirements established by ACTION or other relements of the Federal Government;

3. Show that the goals, objectives, and volunteer task are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project;

5. Have evidence of local public and private sector support in the form of endorsement letters from those organizations, government entities, and institutions that are aware of, and will be involved in supporting, the VISTA project efforts;

6. Be designed to generate private sector resources and encourage local, part-time volunteer service;

7. Provide for frequent and effective supervision of the volunteers;

8. Identify resources needed and make them available to volunteers to perform their tasks;

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignments(s)?

(d) Are the volunteer assignments designed to use the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 3 will review and evaluate all eligible applications from Kentucky and Pennsylvania, and ACTION Region 9 will review and evaluate all eligible applications from California, prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications from Kentucky and Pennsylvania must be submitted to Helen Griffin, ACTION Region 3, U.S. Customs House, 2d and Chestnut Streets, Philadelphia, PA 19106, 215–597–0741. One signed original and two copies of all completed applications from California must be submitted to: Patrick Twohig, ACTION, Region 9, 211 Main Street, Room 530, San Francisco, CA 94105, 415–974–0675. The deadline for receipt of applications is 5 P.M. local time, April 8, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

(a) VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421B) with a detailed budget justification.

(b) CPA certification of accounting capability.

(c) Copy of recent Articles of Incorporation.

(d) Proof of non-profit status or an application for non-profit status, and related documentation.

(e) Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

(f) Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

(g) A list of the Board of Director Members which includes their professional affiliations.

Signed at Washington, DC, this 2d day of February, 1988.

Donna M. Alvarado,

Director.

[FR Doc. 88-2540 Filed 2-4-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Colorado River Basin Salinity Control Project, Big Sandy River Unit, Wyoming

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of an amended record of decision.

SUMMARY: Frank S. Dickson, responsible Federal official for projects administered under the provisions of Pub. L. 93-320, as amended in 1984, in the State of Wyoming, is hereby providing notification that an amended record of decision to proceed with the installation of the Colorado River Basin Salinity Control Project, Big Sandy River Unit, Wyoming, is available. Single copies of this amended record of decision may be obtained from Frank S. Dickson at the address shown below.

FOR FURTHER INFORMATION CONTACT: Frank S. Dickson, State Conservationist, Soil Conservation Service, Federal Building, Room 3124, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.906 River Basin Surveys and Investigations and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Frank S. Dickson,

State Conservationist.

Date: January 28, 1988.

[FR Doc. 88-2424 Filed 2-4-88; 8:45 am]

BILLING CODE 3410-16-M

Skalkaho Highline Wooden Syphon, RC&D Measure Plan, Montana; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Skalkaho Highline Wooden Syphon RC&D Measure Plan, Hamilton, Montana.

FOR FURTHER INFORMATION CONTACT: Glen H. Loomis, State Conservationist, Soil Conservation Service, 10 East Babcock, Bozeman, Montana, 59715, telephone (406) 587-6813.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Glen H. Loomis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the replacement of an existing wooden syphon with another syphon.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Wallace A. Jolly.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials.)

Glen H. Loomis,

State Conservationist.

[FR Doc. 88-2410 Filed 2-4-88; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Vacancy Announcement

In accordance with the Arctic Research and Policy Act of 1984 (Title I of Pub. L. 98-373), notification is hereby given of a vacancy on the Arctic Research Commission. This five member Commission is appointed by the President. The vacancy occurs among one of the "... three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences."

FOR FURTHER INFORMATION CONTACT: Mr. W. Timothy Hushen, (213) 743-0970.

Mr. W. Timothy Hushen,

Executive Director, U.S. Arctic Research Commission

[FR Doc. 88-2316 Filed 2-4-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Changes in Organization and Functions During Calendar Year 1987

AGENCY: Office of the Secretary, Commerce.

SUMMARY: Following is a summary of Department of Commerce units and officals affected by organizational and functional changes during the past calendar year. Complete information on each change may be obtained by requesting a copy of the appropriate Department Organization Order (DOO) listed below:

Office of the Assistant Secretary for Administration

DOO 10-5, Amendment 4 dated 2/5/87, "Assistant Secretary for Administration."
DOO 10-5, Amendment 5 dated 4/7/87.
DOO 10-5, Amendment 6 dated 9/28/87.
DOO 20-1, Amendment 1 dated 4/4/87, "Office of Real Property Programs."
DOO 20-3, Amendment 1 dated 10/1/87, "Office of Budget."
DOO 20-4, Amendment 1 dated 10/1/87, "Office of Program Planning and Evaluation."
DOO 20-5, Revision dated 5/12/87, "Office of Finance and Federal Assistance."
DOO 20-7, Revision dated 1/18/87, "Office of Management and Organization."
DOO 20-7, Amendment 1 dated 10/1/87.
DOO 20-14, Revision dated 1/18/87, "Office of Information Resources Management."
DOO 20-25, New DOO dated 5/7/87, "Office of Library and Information Services".

Assistant Secretary for Productivity, Technology and Innovation

DOO 10-1, Amendment 2 dated 3/5/87, (title above).

Under Secretary for Economic Affiors

DOO 10-9, Amendment 1 dated 3/5/87, (title above).
DOO 10-9, Amendment 2 dated 6/24/87, (title above).

Bureau of the Census

DOO 35-2B, Revision dated 1/6/87, (title above).
DOO 35-2A, Revision dated 7/22/87, (title above).

Economic Development Administration

DOO 45-1, Amendment 1 dated 12/14/87, (title above).

International Trade Administration

DOO 10-3, Amendment 4 dated 2/5/87, "Under Secretary for International Trade."
DOO 40-1, Amendment 5 dated 2/5/87, (title above).

National Bureau of Standards

DOO 30-2B, Revision dated 4/30/87, (title above).
DOO 30-2B, Amendment 1 dated 6/16/87.

National Oceanic and Atmospheric Administration

DOO 25-5A, Amendment 2 dated 6/18/87, (title above).
DOO 25-5A, Amendment 3 dated 11/2/87.
DOO 25-5B, Amendment 1 dated 5/11/87, (title above).
DOO 25-5B, Amendment 2 dated 6/18/87.

Patent and Trademark Office

DOO 10-14, Amendment 2 dated 9/28/87, "Assistant Secretary and Commissioner of Patents and Trademarks".
DOO 30-3, Revision 1 dated 5/26/87, (title above).
DOO 30-3, Amendment 1 dated 9/15/87.

FOR FURTHER INFORMATION CONTACT: Robert L. Ingram, Office of Management and Organization, Department of Commerce Room 5317,Washington, DC 20230, Telpphone (202) 377-5481.

Stephen C. Browning,

Acting Director, Office of Management and Organization.

[FR Doc. 88-2381 filed 2-4-88; 8:45 am]

BILLING CODE 3510-DK-M

Foreign-Trade Zones Board

[Docket No. 4-88]

Proposed Foreign-Trade Zone, Ponce, PR; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico International Distribution Center and Free Zone, Inc. (PFZ), a non-profit corporation involving the City of Ponce and the Ponce Chamber of Commerce, requesting authority to establish a general-purpose foreign-trade zone in Ponce, Puerto Rico, within the Ponce Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the board (15 CFR Part 400). It was formally filed on January 20, 1988. PFZ is authorized to make the proposal under Joint Resolution 1406 of the Puerto Rico Legislative Assembly (approved 6/2/86).

The proposed zone is located on a 168-acre industrial park site east of Avenida Malecon (State Board No. 14) at the Port of Ponce. The site, owned by the City, is being developed as a trade and distribution center. Plans call for the construction of 180,000 square feet of warehouse to be utilized for general-purpose zone activity.

The application contains evidence of the need for zone services in the Ponce area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of ceramics, food products, wearing apparel and machinery parts. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 409 Brickell Place, Room 7322, Miami, Florida 33130; and Colonel Charles T. Myers III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232-0019.

As part of its investigation, the examiners committee will hold a public hearing on March 9, 1988, beginning at 9:30 a.m., at the Casa Alcadia, Salon Asamblea on the Plaza Degetau in Ponce.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202) 377-2862 by March 2. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 11, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Area/Port Director's Office, U.S. Customs Service, P.O. Box 127, Ponce, Puerto Rico 00731
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: January 27, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2504 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 32-87]

Foreign-Trade Zone 39, Dallas/Fort Worth, TX; Application for Subzone and Harvey Industries Television Plant, Athens, TX; Amendment of Application

Notice is hereby given that the application submitted to the Foreign-Trade Zones (FTZ) Board by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, for special-purpose subzone status at the television assembly plant of Harvey Industries, Inc., in Athens, Texas (52 FR 44620, 11-20-87) has been amended. The original application indicated that zone procedures would be used for the assembly of television receivers. The company now indicates it plans to include radio receivers in some of the units. Zone procedures would allow the company to elect the duty rate applicable to televisions (5 percent) for

the entire unit, whereas the rate on radio receivers is 6 percent. The application remains otherwise unchanged.

The comments period is reopened until February 26, 1988.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, 1100 Commerce Street, Room 7A5, Dallas, TX 75242

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

Dated: January 29, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2505 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 5-88]

Foreign-Trade Zone 55, Burlington VT; Application for Subzone, Wyeth Nutritionals, Inc., Processing Plant (Food Products/Sugar/Milk), Georgia, VT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Burlington Industrial Corporation, grantee of FTZ 55, requesting special-purpose subzone status for the food products/sugar/milk processing plant of Wyeth Nutritionals, Inc. (subsidiary of American Home Products Corporation), located in the Town of Georgia, Vermont, adjacent to the St. Albans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 22, 1988.

The Wyeth plant (16 acres) is located off Town Road 31, within the Georgia Industrial Park, Georgia, Vermont, some 25 miles north of Burlington. The facility employs 220 persons and is used to produce infant milk formula and other children's foods for export. The ingredients, including milk and sugar, are sourced abroad.

The facility currently operates under U.S. Customs Class 6 bonded manufacturing warehouse procedures, which do not allow either the mixing of domestic and foreign ingredients or production for the domestic market. Zone procedures would allow Wyeth to use both domestic and foreign milk and sugar in its export operations. It would also allow the facility to be used for production for the domestic market. The company has agreed to use only domestic ingredients in the products sold in the U.S. market.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Deputy Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, Massachusetts 02110; and Colonel Thomas A. Rhen, District Engineer, U.S. Army Engineer Division New England, 424 Trapelo Road, Waltham, Massachusetts 02254.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 17, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Main and Stebbins Streets, P.O. Box 111, St. Albans, Vermont 05478

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 27, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-2506 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-601]

Initiation of Antidumping Duty Investigation; Fabricated Structural Steel From Canada

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 25, 1988. If that determination is affirmative, we will make a preliminary determination on or before June 20, 1988.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 377-3464 or 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On January 11, 1988, we received a petition in proper form filed by the American Institute of Steel Construction, Inc. (AISC) on behalf of U.S. producers of fabricated structural steel. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on the winning bid made by Canadian fabricators. Petitioner deducted, where appropriate, the cost of erection and any extras, U.S. Customs duties, inland freight, city taxes, and erection and port bonds.

Petitioner based foreign market value on the constructed value of Canadian fabricated structural steel which was derived form U.S. fabricated structural steel industry cost experience with adjustments for differences in inputs.

Based upon a comparison of United States price and foreign market value, petitioner alleges dumping margins of between 12.00 percent and 19.2 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on fabricated structural steel from Canada and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fabricated structural steel from Canada are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 20, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is fabricated structural steel curently provided for under TSUSA items numbers 609.8400, 609.8600, 652.9400, 652.9500, 652.9600, and 653.0000, and currently classifiable under HS item numbers 7216.90.0000, 7222.40.6000, 7228.70.6000, 7301.20.1000, 7301.20.5000, 7308.90.3000, 7308.90.6000, 7308.90.9090.

Fabricated structural steel (FSS) consists of steel plates, angles, beams and related steel mill products that have been fabricated into articles suitable for erection or assembly into buildings which include industrial, utility, commercial, office, parking decks, assembly, multi-residential, medical, public and transportation facilities. Types of steel products include, but are not limited to, columns (vertical support), beams (floor support), girders (connect beams), base plates (laid over a concrete foundation to assist in distributing a building's load), and trusses (a series of welded or bolted steel sections used in place of conventional beams to span large areas such as lobbies or atriums). FSS also includes entireties or "kits" of fabricated structural shapes. This investigation does not include FSS that is used in the construction of bridges, fabricated reinforcing bars, bar joists, fabricated metal buildings, steel flooring or roof decks.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 25, 1988 whether there is a reasonable indication that imports of FSS from Canada materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 1, 1988.

[FR Doc. 88-2507 Filed 2-4-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Preliminary Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Malaysia of carbon steel wire rod (wire rod) as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 0.45 percent *ad valorem*. Since this rate is *de minimis*, our preliminary countervailing duty determination is negative. If this investigation proceeds normally, we will make a final determination on or before April 18, 1988.

EFFECTIVE DATE: February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189, 377-3534, or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that *de minimis* countervailable benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Malaysia of wire rod. For purposes of this investigation, the program on export credit refinancing is preliminarily found to be countervailable. We preliminarily determine the estimated net bounty or grant to be 0.45 percent *ad valorem*. Although we have determined this program to be countervailable, the respondents received *de minimis* benefits during the review period, calendar year 1986. Therefore, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided to manufacturers, producers or exporters in Malaysia of wire rod.

Case History

Since the Federal Register publication pertaining to this investigation [the Notice of Initiation (52 FR 36601, September 30, 1987)], the following events have occurred. On October 15, 1987, we presented a questionnaire to the government of Malaysia in Washington, DC, concerning petitioner's allegations. On November 30, 1987, we received a response from the government of Malaysia and a response from Amalgamated Steel Mills Bhd. (ASM), Perdama Corporation Sdn. Bhd. (Perdama), and Tejana Trading Corporation Sdn. Bhd. (Tejana), the respondents identified by the government of Malaysia. ASM is the sole manufacturer of wire rod in this

investigation; Perdama and Tejana are trading companies.

On December 24, 1987, and January 7, 1988, we delivered supplemental/deficiency questionnaires to the government and the respondent companies, and received responses on January 7, 13, 22, and 25, 1988.

On November 2, 1987, the petitioners filed a request that the preliminary determination be postponed for 49 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than January 15, 1988 (52 FR 43633, November 13, 1987). On January 4, 1988, petitioners requested that we further postpone the preliminary determination by an additional 16 days. Accordingly, we extended the period for the preliminary determination to February 1, 1988 (53 FR 942, January 14, 1988).

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classified under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under items 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the Harmonized System.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Program Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of wire rod under the following program:

Export Credit Refinancing

According to the responses, the Bank Negara Malaysia, the central bank of Malaysia, administers programs to provide export credit refinancing through commercial banks. The Export Credit Refinancing (ECR) programs, as revised in January 1986, provide pre- and post-shipment financing of exports for periods of up to 92 days. In December 1986, the maximum periods for financing under these programs was extended to 120 and 180 days, respectively.

The eligibility criteria for financing under these programs require that the product either include 30 percent value added or use 60 percent local materials or employ lesser amounts of value added in combination with fewer local materials. The revised ECR program limits financing to a specific percentage of the value of each purchase order or export bill.

A new pilot program for pre-shipment financing was introduced in October 1986 to co-exist with the revised pre-shipment program. The pilot program was not used by the respondent companies for exports of wire rod to the United States during the review period.

According to the responses, all three respondent companies received short-term financing under the ECR loan programs. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. As a benchmark for short-term loans, we use the national average short-term commercial rate or the most comparable, predominant commercial rate for short-term financing. According to the government response, the Bankers' Acceptance (BA) is the most comparable and commonly used alternative source of short-term financing for imports and exports. The government response lists the monthly average BA rates for 1986. Based on this comparison, we found that ECR loans are provided on terms more favorable than are available for conventional commercial financing. Therefore, we preliminarily determine that ECR loans are countervailable.

To calculate the benefit from the ECR loans in 1986, we used our short-term loan methodology, as set forth in the Subsidies Appendix. Because the ECR loans were shipment specific, we included only those loans which financed exports of wire rod to the United States. We calculated the amount of interest that would have been paid using the BA benchmark and subtracted the amount of interest that was reported as paid. We cumulated the interest saved by ASM and the respondent trading companies. We divided total interest saved on ECR loans by wire rod exports to the United States. We calculated an estimated net bounty or grant of 0.45 percent *ad valorem*.

II. Program Preliminarily Determined Not to Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers or exporters in Malaysia of wire rod under the following program:

Loans From Malaysian Industrial Development Finance (MIDF)

MIDF was established in 1960 by the Malaysian government and several private investors. The original purpose of MIDF was to provide a source of long-term financing for industrial development in Malaysia. The government of Malaysia originally provided funding and some direction to MIDF, but it currently has no direct ownership in MIDF nor does it provide any funding for MIDF loans. It does, however, indirectly own shares in MIDF through the National Equity Corporation for the Bumiputra (native Malaysians).

MIDF is not a bank; rather, it borrows money from other sources and then lends this money at a fixed rate above its own cost of borrowing. One respondent, ASM, had long-term loans from MIDF that were outstanding during the review period.

According to the government response, MIDF provides long-term loans for purchasing machinery, building factories, and expanding existing manufacturing facilities. The government of Malaysia has provided the Department with a list of industries receiving MIDF loans with the number of enterprises in each industry receiving such loans and the aggregate value of MIDF loans disbursed by industry. These industries include, among others, the food, steel, non-ferrous metals, machinery, wood products, textile, rubber, chemical and paper industries. Because MIDF loans are available to virtually all Malaysian industries, we preliminarily determine that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers or exporters in Malaysia of wire rod during the review period:

A. Export Tax Incentives

1. *Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and of Five Percent of the Value of Indigenous Materials Used in Exports.* Section 36 of the Promotion of Investments Act of 1986, as amended by section 19 of the Promotion of Investments (Amendment) Act of 1986, allows abatement of adjusted income equal to (a) 50 percent of the ratio of export sales to total sales and (b) five percent of the value of indigenous Malaysian materials that are incorporated into the manufacture of the exported product. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

2. *Abatement of Net Taxable Income Under Section 29 of the Investment Incentives Act of 1968.* Section 29 of the Investment Incentives Act of 1968 provided for an export allowance of eight percent of the increase in the gross income derived from the export of products incorporating more than 50 percent local content, or an allowance of five percent if local content was less than 50 percent. This provision applied to income in tax years prior to 1979. Section 29 was amended in 1980 by the Investment Incentives Act of 1980. Section 29, as amended by this Act, allowed for a deduction of two percent of the ex-factory value of exports from taxable income and a deduction of ten percent of the increase in export value from the preceding year. According to the responses, none of the respondent companies claimed benefits under either version of this program on the tax return filed during the period of review. The further evolution of section 29, as amended in 1983, is discussed in the program immediately below.

3. *Abatement of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products.* Effective in 1984, the government of Malaysia again amended section 29 of the Investment Incentives Act of 1968, (*see* section III.A.2. of this notice) to provide a flat deduction of five percent of the f.o.b. value of export revenues from taxable income to most manufacturing companies. This amendment applied to tax returns filed in assessment years 1985 and 1986. The Promotion of Investments Act of 1986 repealed the Investment Incentives Act of 1968, effective January 1, 1986. The Promotion of Investments Act of 1986, as amended, allows the same five percent of export sales as an abatement of taxable income, but limits use in this provision to resident trading companies and agricultural companies. According to the responses, none of the respondent companies claimed benefits under either version of this program on the tax return filed during the review period.

4. *Double Deduction For Export Credit Insurance.* Beginning in 1985, the Income Tax Rules provided for an additional tax deduction of the cost of premiums for export credit insurance in addition to the deduction allowed from the company income statement, *i.e.*, the starting point for determining taxable income. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

5. *Double Deduction For Export Promotion.* The Promotion of Investments Act of 1986 authorizes the Minister of Finance to establish tax rules allowing the deduction of expenses incurred in the promotion of exports for such activities as market research, overseas advertising, participation in foreign trade exhibitions, overseas sales offices, and other specified activities. The Income Tax Rules allow eligible export-related expenses to be deducted twice. According to the responses, none of the respondent companies claimed benefits on the tax return filed during the review period.

6. *Industrial Building Allowance.* The Income Tax Act of 1967 established a depreciation allowance of ten percent initially and two percent annually thereafter, for buildings constructed or purchased for manufacturing. In 1984, the government of Malaysia extended the Industrial Building Allowance to warehouses and bulk storage installations used for storing goods either finished and ready for export or for imported goods to be incorporated into finished goods for export. According to the responses, none of the respondent companies claimed benefits under this program on the tax return filed during the review period.

B. Other Export Incentives

Export Insurance Program. The Malaysian Export Credit Insurance Bhd. provides export insurance to cover commercial and political risks at premium rates allegedly inadequate to cover the long-term operating costs and losses of the insurance program. Commercial insurance includes coverage of bankruptcy of the foreign buyer, protracted default of the foreign buyer, and non-acceptance of goods by the foreign buyer after the goods have been shipped. According to the responses, none of the respondent companies used this program during the review period.

C. Government Financial Assistance

1. *Long-Term Loans—a. Industrial Development Bank of Malaysia (IDBM).* IDBM provides long-term financing to all sectors of the Malaysian economy, particularly for the expansion of the productive capacity of capital-intensive and high technology industries. According to the responses, none of the respondent companies had IDBM long-term loans on which principal or interest was outstanding during the review period.

b. *Development Bank of Malaysia (DBM).* DBM's purpose is to meet the financing needs of Bumiputra entrepreneurs and to promote Bumiputra equity participation in commerce and industry. According to the responses, none of the respondent companies had DMB long-term loans on which principal or interest was outstanding during the review period.

D. Other Tax Incentives

1. *Pioneer Status Under the Promotion of Investments Act of 1986.* According to the government response, there are two pioneer status programs, one under the Investment Incentives Act of 1968 and the other under the Promotion of Investments Act of 1986.

The responses indicate that ASM participated in the pioneer status program of the Investment Incentives Act of 1968 during the period of review (*see* Section V.C. of this notice); no respondent used pioneer status under the 1968 Act.

2. *Investment Tax Credit/Investment Tax Allowance.* The Investment Tax Credit (ITC) program, now rescinded, was provided for under the Investment Incentives Act of 1968. It provided tax benefits, ranging from 25 to 100 percent, for qualifying capital expenditures. In 1986, a new program, the Investment Tax Allowance (ITA), replaced the ITC. The ITA retains many ITC provisions, but does not have supplemental tax

credits allowed by the ITC for location in development areas, for priority products, and for the amount of Malaysian content in the product. According to the responses, none of the companies under investigation have participated in this program.

IV. Programs Determined not to Exist

We preliminarily determine that the following programs do not exist:

A. Abatement of Taxable Income of Five Percent of the Value of Malaysian Made Inputs Incorporated Into Exports

As originally enacted, section 36 of the Promotion of Investments Act of 1986 allowed an abatement equal to a percentage of the value of the Malaysian inputs incorporated into the exported product. The response of the government of Malaysia states that this provision was never implemented and was subsequently eliminated under section 19 of the Promotion of Investments (Amendment) Act of 1986.

B. Abatement of Taxable Income Based on a Percentage of the Value-Added of Exported Products

As originally enacted, section 36 of the Promotion of Investments Act of 1986 allowed an abatement based on a percentage of the value-added of exported products. The response of the government of Malaysia states that this provision was never implemented and was subsequently eliminated under section 19 of the Promotion of Investments (Amendments) Act of 1986.

V. Programs for Which Additional Information is Needed

We preliminarily determine that we need additional information to determine whether the following programs confer bounties or grants on the manufacture, production, or exportation of wire rod from Malaysia:

A. New Investments Fund

According to the responses, the government of Malaysia provides long-term loans under the New Investments Fund (NIF). This program is administered by the Bank Negara Malaysia and has been in effect since September 1985. NIF loans are provided to companies that have qualified for financing from commercial lending institutions. The response states that NIF's purpose is to promote further investment in, and development of, new productive capacity in the manufacturing, agriculture, tourism, and mining sectors. However, the petition included a recent publication of the Malaysian Industrial Development Authority, which states that funds under NIF are also available for working capital for export industries.

ASM has reported in its response that it obtained an NIF loan in 1986. This NIF loan was made by a consortium of banks in connection with several other long-term loans from commercial banks. ASM's response did not indicate the purpose of the NIF loan.

To determine the purpose of the loan under NIF to ASM, we are requesting all loan application documents to the commercial banks, MIDF, and the Bank Negara Malaysia made in connection with the extension of credit from the NIF and the commercial portions of ASM's 1986 long-term loan. Further, to determine if benefits granted under the NIF are limited in any way, it is necessary for use to receive previously requested information including: (1) The eligibility criteria for receiving NIF loans; (2) a translated copy of all provisions of laws and regulations applicable to NIF; and (3) the loan application documents.

B. Duty Drawback and Duty Exemptions

According to the responses, the government of Malaysia allows for duty drawback and duty exemption/waiver on imported materials physically incorporated into exported products, and for duty exemption on certain imported machinery. ASM reported that it did receive duty drawback and duty exemption on imported scrap and billets, but did not receive any duty exemption for machinery ASM imported into Malaysia in 1986.

Duty drawback for imported materials physically incorporated into the exported product is not countervailable under U.S. law if it is not excessive. To determine if excessive duty drawback was given, to determine if the imported materials with duty exemption were physically incorporated into exported products, and to determine whether or not imported materials receiving a duty exemption also received duty drawback upon exporation, the Department is requesting information concerning:

(1) The control system used by the government to assure that duty drawback is not excessive; (2) the control system used by the government to assure that materials with duty exemption are not diverted for domestic use nor receive duty drawback; and (3) machinery and/or raw materials acquired or used by ASM in 1986, which was imported by others, and was exempt from any duty.

C. Pioneer Status Under the Investment Incentives Act of 1968

According to the government response, there are two pioneer status programs, one under the Investment Incentives Act of 1968 and the other under the Promotion of Investments Act of 1986 (*see* Section III.D.1. of this notice). Benefits granted under the pioneer status of 1968 include exemption from the 40 percent company income tax on pioneer status product income, exemption from the five percent development tax on the portion of the net taxable company income derived from pioneer production, exemption from excess profits tax, and exemption to shareholders on dividend income derived from pioneer status profits. Under the 1968 Act, pioneer status may have been granted to increase export capacity.

Pioneer status was granted to ASM for wire rod production for a five year period, July 1, 1979 to June 30, 1984. The response of the government of Malaysia in this investigation states that one-year extensions for pioneer status were available for each of the following criteria met by a company: (1) The production of a "priority product;" (2) the Malaysian content of the product is at least fifty percent; or (3) location in a designated area. The government reported that ASM's initial tax return, filed in April 1986, did not claim pioneer status. However, ASM filed a tax return in 1987 amending the tax return filed in 1986, based on a claim of pioneer status. According to the responses, ASM received a two-year extension based upon the status of wire rod as a priority product and the percentage of Malaysian content in the product. The respones also state that neither of the trading companies received pioneer status under the 1968 Act.

We are not able, with information now available, to conclude whether the original designation of ASM as a pioneer company was granted based on export considerations, or whether extensions of pioneer status are limited to a specific industry or enterprise, or group of industries or enterprises, or are tied to exporting activities.

To determine why ASM received pioneer status in 1979 and priority status in 1986, we are requesting all applications and approvals for these benefits. To determine whether extensions of priority status are limited, we are requesting a breakdown by industry and location of the companies receiving priority status for other than an export purpose. Further, we will request quantitative information on the increase, if any, in deductions carried forward due to ASM's claiming pioneer status on the amended tax return filed in 1987.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on March 18, 1988, at 2:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by March 11, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 1, 1988.

[FR Doc. 88–2508 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Program Applications; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of July 1, 1988 to June 30, 1989. The MBDC will operate in the Stockton Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–88009–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirement included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105
March 1, 1988 to 10:00 A.M.

Proposals Are to be Mailed to the Following Address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

CLOSING DATE: The closing date for applications is March 14, 1988. Applications must be postmarked by midnight March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1988.

[FR Doc. 88–2390 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council, its standing committees, and its Scientific and Statistical Committee will convene public meetings at the Ala Moana Hotel, 410 Atkinson Drive/ Honolulu, HI, as follows:

Council's Standing Committees—Bottomfish and Executive Committee meetings will convene February 24, 1988, at 9:30 a.m.; Budget, and Precious Corals Committee meetings will convene at 1 p.m.; Ecosystems, Habitat, and Crustaceans Committee meetings at 3 p.m., and Pelagics, and Native Rights Committee meetings at 4 p.m., in the Gardenia and Ilima Rooms, respectively.

Council—Its 61st public meeting will convene February 25, 1988, at 9 a.m., and will adjourn February 26 at 1 p.m., in the Hibiscus Room II, to discuss routine fisheries reports from State, Territorial, and Federal Government Council representatives, as well as reports from private sector Council members from Hawaii, Guam, American Samoa, and the observer from the Commonwealth of the Northern Mariana Islands. The status of crustaceans, bottomfish, precious corals, and pelagics fishery management plans (FMPs) will also be discussed. Council action is anticipated to approve an amendment to the Bottomfish FMP which will be discussed beginning February 25, at 1:30 p.m.:

BEST COPY AVAILABLE

immediately following. Council action is anticipated to approve an amendment to the Precious Corals FMP. On February 26 the Council will discuss program planning, administrative matters, meetings, conferences, and other appropriate business.

Scientific and Statistical Committee (SSC)—Its 42nd public meeting will convene February 16, 1988, at 9 a.m., in the Anthurium Room, to begin work on the Council's 1989–90 data and research needs document; review amendment #2 limiting access to the bottomfish fishery of the NWHI, to the Bottomfish FMP, and make recommendations to the Council; review amendment #1, including the U.S. Possessions and establishing an experimental permit system to the Precious Corals FMP, and make recommendations to the Council; hear a report from SSC representatives on the National Marine Fisheries Service/Regional Fishery Management Councils' joint meeting (February 5, 1988), regarding proposed revisions to the Code of Federal Regulations, Guidelines for FMPs, as well as discuss other SSC business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS 541–1974.

Date: February 1, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2436 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish Plan Monitoring Team and its Bottomfish Advisory Panel (Hawaii members only) will convene separate public meetings, February 10, 1988, and February 15, 1988, respectively, both at 1:30 p.m., at the Council's office (address below), to discuss access management for the Bottomfish Fishery Management Plan.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Date: February 1, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–2437 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Marine Animal Productions (P108i)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Marine Animal Productions, P.O. Box 4078, Gulfport, Mississippi 39502
2. Type of Permit: Public Display
3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*)—6
4. Type of Take: Capture/maintain
5. Location of Activity: Mobile Bay and Mississippi Management area
6. Period of Activity: 3 years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2493 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification, Dr. Hermann Gucinski (P362); Modification No. 1 to Permit No. 534

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 220.24 of the regulations governing endangered species (50 CFR Parts 217–222), Scientific Research Permit No. 534 issued to Dr. Hermann Gucinski, Professor of Physics, Anne Arundel Community College, Arnold, Maryland 21012, on April 11, 1986 (51 FR 13548) is modified in the following manner:

Section B.7. is replaced with

7. This Permit is valid with respect to the taking authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2431 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Permit Modification; James T. Harvey (P368); Modification No. 1 to Permit 531

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 531 issued to James T. Harvey, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115–0070, December 9, 1985 (50 FR 51281), is modified as follows:

Section B.5 is replaced by:

5. The take authority of this permit is valid with respect to the taking authorized herein until December 31, 1988.

The effective date of this modification is December 31, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115–0070

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2432 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2431 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammal; Permit Modification; Northwest and Alaska Fisheries Center (P77#9); Modification No. 4 to Permit 464

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115, on April 19, 1984 (49 FR 17795) as modified on April 18, 1985 (50 FR 18283), May 2, 1986 (51 FR 17506), and December 31, 1986 (FR 3691) is further modified as follows:

Section B.7 is replaced by:

7. The permit is valid with respect to the activities authorized herein until December 31, 1988.

The effective date of this modification is December 31, 1987.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115–0070.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2433 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Southwest Fisheries Center, National Marine Fisheries Service (P77Y); Modification No. 2 to Permit No. 372

Notice is hereby given that pursuant to the provisions of 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR Part 222), Permit No. 372 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on March 12, 1982 (47 FR 11755) as modified on December 31, 1986 (52 FR 2251) is further modified as follows:

Section B.6 is replaced by:

6. This permit is valid with respect to the activities authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2434 Filed 2–4–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Southwest Fisheries Center, National Marine Fisheries Service (P77#17); Modification No. 540

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR Part 222), Permit No. 540 issued to the Southwest Fisheries Center, National Marine Fisheries Services, P.O. Box 271, La Jolla, California 92038, on February 13, 1986 (51 FR 7485) is modified as follows:

Section B.5 is replaced with:

5. This permit is valid with respect to the activities authorized herein until December 31, 1988.

This modification became effective on December 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–2435 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 18 February 1988 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 2006, to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, January 27, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–2425 Filed 2–4–88; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh; Correction

February 2, 1988.

In footnote 2 of the letter to the Commissioner of Customs published in the **Federal Register** on January 12, 1988 (53 FR 752), TSUSA number 384.4787 should be corrected to 384.4788 for Category 341 pt.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2500 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic, Correction

February 2, 1988.

In the table in the letter to the Commissioner of Customs published in the **Federal Register** on January 4, 1988 (53 FR 59), the TSUSA numbers for Category 634pt. (knit) should be changed from 381.1902, 381.1906 and 381.1911 to 384.1902, 384.1906, 384.1911. TSUSA number 384.8217 should also be added to this part category.

The sublevel for Category 634pt. (not knit) should be 57,888 dozen instead of 75,888 dozen. The TSUSA numbers for Category 634pt. (not knit) should be changed from 381.2321 and 381.9132 to 384.2321 and 384.9132.

The TSUSA numbers for Category 647 should be changed from 381.2341, 381.2351, 381.9168 and 381.9174 to 384.2341, 384.2351, 384.9168 and 384.9174.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2501 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey; Correction

February 2, 1988.

In footnote 3 of the letter to the Commissioner of Customs published in the **Federal Register** on January 5, 1988 (53 FR 165), add TSUSA numbers 384.0262, 384.0266, 384.0614, 384.0726, 384.0734, 384.3026, 384.3042, 384.4648, 384.4740, 384.4755 and 384.4770 to the TSUSA's for Category 347–T.

In footnote 4, delete TSUSA numbers 384. 0262, 384.0266, 384.0614, 384.0726, 384.0734, 384.3026, 384.3042, 384.4648, 384.4740, 384.4755 and 384.4770 from the TSUSA's for Category 348–T.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2502 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

Change in Officials of the Government of Pakistan Authorized To Issue Export Visas From Pakistan

February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, the Government of Pakistan has notified the Government of the United States that Messrs. Mansoor Alam, Research Officer, and Ali Ahmad, Research Officer, Export Promotion Bureau, are now authorized to issue export visas for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products exported to the United States from Pakistan.

The purpose of this notice is to advise the public of this change.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–2503 Filed 2–4–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Coffee, Sugar & Cocoa Exchange ("CSCE") for designation as a futures contract market in the International Market Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before March 7, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CSCE International Market Index futures contract.

FOR FUTHER INFORMATION CONTRACT: Naomi Jaffee, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 200581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CSCE's proposed terms and conditions for the International Market Index futures contract (52 FR 39555). In a January 27, 1988 letter to the Commission, the CSCE requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have the opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, as additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CSCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581, by the specified date.

Issued in Washington, DC, on February 1, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–2417 filed 2–4–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 27, 1988.

The USAF Scientific Advisory Board Study on Integrated Avionics will meet on 22–26 February 1988, from 8:00 a.m. to 5:00 p.m., at the Pentagon, Room 5D982, Washington, DC.

The purpose of this meeting is to discuss the program plan for conducting the study and to obtain orientation briefings.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–2387 Filed 2–4–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

January 22, 1988.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group will meet on February 25, 1988, from 8:00 A.M. to 5:00 P.M. and on February 26, 1988, from 8:00 A.M. to 3:30 P.M. at Headquarters, Foreign Technology Division (FTD), Building 856, Wright Patterson Air Force Base, Ohio.

The purpose of this meeting is to receive briefings on and to advise the Commander, FTD, on selected topics involving directed energy weapons.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–2388 Filed 2–4–88; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

February 1, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Future Undergraduate Pilot Training will meet at Air Training Command Headquarters, Randolph Air Force Base, Texas, on February 23 and 24, 1988.

The purpose of this meeting is to indoctrinate the committee on current and planned pilot training programs and methodology, pilot production rates, and pilot qualification requirements for futute weapon systems.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–2389 Filed 2–4–88; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Agency Information Collection Activities Under Review by the Office of Management and Budget

Reasons for this Notice: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Lock Performance Monitoring System (PMS) Waterway Traffic Report: ENG Forms 3102C and 3102d; and OMB No. 0702–0001.

Type Of Request: Revision.

Annual Burden Hours: 34,010.

Annual Responses: 753,600.

Needs and Uses: Title 33, Code of Federal Regulations, Part 207, (26 Stat 766) requires that statistics be gathered from users of navigable waters.

Statistics gathered relate to vessels, passengers, freight and tonnage. The data are used to conduct system-wide planning and management of navigable waterways.

Affected Public: Business or other for profit.

Frequency: On Occasion and at Selected Vessel Lockages.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1988.

[FR Doc. 88-2516 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-01-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 23 and 24 February 1988

Time: 0930-1600 hours, both days

Place: Menlo Park, California

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to gather facts for the study. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administative Officer, Army Science Board.

[FR Doc. 88-2459 Filed 2-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 22 February 1988

Time: 1200-1600 hours

Place: Aberdeen Proving Ground, Aberdeen, Maryland

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to provide a classified briefing to an Army Materiel Command seminar. Following the briefing there will be a discussion period. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administative Officer, Army Science Board.

[FR Doc. 88-2458 Filed 2-4-88; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee - Mine Warfare Capabilities Task Force will meet February 17-18, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Viriginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretarly of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-2475 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Cancellation of Meeting

Notice was published January 21, 1988, at 53 FR 1659 that the Naval Research Advisory Committee Panel on Laser Weapons will meet on February 2-3, 1988. The meeting has been cancelled.

Date: February 2, 1988.

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 88-2474 Filed 2-4-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-IA-147, for the sale of 0.02 grams of plutonium, and 74.975 grams of uranium enriched to 93.12 percent in the isotope uranium-235, for use as standard reference materials at the IAEA Safeguards Analytical Laboratory, Vienna, Austria.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: February 1, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-2415 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above-mentioned agreements, for the transfer of special nuclear material of United States origin from Japan to France or to the United Kingdom for the purpose of reprocessing.

The proposed transfers are as follows:

(1) 1,058 irradiated fuel assemblies containing 194,700 kilograms or uranium, enriched to 0.93 percent in U-235 and 1,511 kilograms of plutonium from the Fukushima No. 1, Units 2, 3, 5 and 6, and Fukushima No. 2, Units 1, 2 and 3 of the Tokyo Electric Power Co., Inc., to France;

(2) 120 irradiated fuel assemblies concerning 47,085 kilograms of uranium, enriched to 1.15 percent in U-235 and 457 kilograms of plutonium from Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to France;

(3) 187 irradiated fuel assemblies containing 37,000 kilograms of uranium, enriched to 1.11 percent in U-235 and 370 kilograms of plutonium from Tokai No. 2 of the Japan Atomic Power Co., to France;

(4) 68 irradiated fuel assemblies containing 12,163 kilograms of uranium, enriched to 0.96 percent in U-235 and 108 kilograms of plutonium from Shimane Unit 1 of the Chugoku Electric Power Co., Inc., to France;

(5) 323 irradiated fuel assemblies containing 59,270 kilograms of uranium, enriched to 1.47 percent in U-235 and 549 kilograms of plutonium from Hamaoka Units 1 and 2 of the Chubu Electric Power Co., Inc., to France;

(6) 216 irradiated fuel assemblies containing 96,000 kilograms of uranium, enriched to 1.10 percent in U-235 and 895 kilograms of plutonium from Mihama Units 1, 2 and 3, Ohi Units 1 and 2, and Takahama Units 1, 2 and 3 of the Kansai Electric Power Co., Inc., to France;

(7) 896 irradiated fuel assemblies containing 161,800 kilograms of uranium, enriched to 1.07 percent in U-235 and 1,376 kilograms of plutonium from Fukushima Units 1, 2, 3, 4, 5 and 6 of the Tokyo Electric Power Co., to the United Kingdom;

(8) 147 irradiated fuel assemblies containing 57,676 kilograms of uranium, enriched to 1.23 percent in U-235 and 508 kilograms of plutonium from Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to the United Kingdom;

(9) 70 irradiated fuel assemblies containing 14,000 kilograms of uranium, enriched to 1.36 percent in U-235 and 130 kilograms of plutonium from Tsuruga Unit 1 of the Japan Atomic Power Co., to the United Kingdom;

(10) 212 irradiated fuel elements containing 2,440 kilograms of uranium, containing 0.49 percent U-235 and 8 kilograms of plutonium from the Tokai Unit of the Japan Atomic Power Co., to the United Kingdom;

(11) 140 irradiated fuel assemblies containing 25,880 kilograms of uranium, enriched to 1.47 percent in U-235 and 238 kilograms of plutonium from the Hamaoka Units 1 and 2 of the Chubu Electric Power Co., Inc., to the United Kingdom;

(12) 84 irradiated fuel assemblies containing 15,524 kilograms of uranium, enriched to 0.99 percent in U-235 and 129 kilograms of Plutonium from Shimane Unit 1 of the Chugoku Electric Power Co., Inc., to the United Kingdom;

(13) 273 irradiated fuel assemblies containing 120,600 kilograms of uranium, enriched to 1.04 percent in U-235 and 987 kilograms of plutonium from Mihama Units 1, 2 and 3 Ohi Units 1 and 2 and Takahama Units 1, 2 and 3 of the Kansai Electric Power Co., Inc., to the United Kingdom; and

(14) 70 irradiated fuel assemblies containing 27,240 kilograms of uranium, enriched to 1.25 percent in U-235 and 260 kilograms of plutonium from Ikata Unit 1 of the Shikoku Electric Power Co., Inc., to the United Kingdom.

The foregoing proposed transfers are designated as RTD/EU(JA) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, and 109 respectively.

The Department of Energy has received a letter of assurance from the Government of Japan that the recovered uranium and plutonium will not be transferred from the reprocessing sites, nor put to any use, without the prior approval of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen (15) days after the date of publication of this notice, and after fifteen (15) days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Date: February 1, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-2416 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories & Storage Task Group of the Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council

Date and Time: Wednesday, February 24, 1988, 10 a.m.

Place: The New York Helmsley Hotel, Murray Hill Room, 212 East 42nd Street New York, New York

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of

Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss surveys and progress on assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88–2413 Filed 2–4–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate or the number of respondents per report period; (10) An estimate of the number of respondents annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before March 7, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For Further Information and Copies of Relevant Materials Contact: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–580
3. 1902–0137
4. Fuel Purchase Practices
5. Revision
6. Biennially
7. Mandatory
8. Businesses or other for profit
9. 67 respondents
10. 67 responses
11. 6,030 hours
12. The information requested is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently that every two years" of "practices * * * to ensure efficient use of resources."

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–505
3. 1902–0115
4. Application for License, Projects 5 Megawatts or less
5. Extension
6. On Occasion
7. Mandatory
8. Businesses or other for profit; State or local governments; Non-profit institutions; Small businesses or organizations; Individuals or households
9. 37 respondents
10. 37 responses
11. 4,833 hours
12. The FERC 505 is used to carry out the requirements of section 4(e) and 9 of the Federal Power Act. These sections direct the Commission to issue licenses for the purpose of constructing, operating and maintaining hydropower projects as defined in the Act.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–541
3. 1902–0066
4. Gas Pipeline Certificate: Curtailment Plan
5. Extension
6. On occasion; Annual
7. Mandatory
8. Businesses or other for profit
9. 65 respondents
10. 65 responses
11. 63,600 hours
12. The filings are required by section 4(d) of the NGA for changes in service occasioned by a pipeline company's inability to meet its existing certificates or contact obligation, and to meet the requirements of Title IV of the NGPA.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a) 764(b), 772(b), and 790(a)).

Issued in Washington, DC, January 31, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–2414 Filed 2–4–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–197–000 et al.]

PennEast Gas Services Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. PennEast Gas Services Company

[Docket No. CP88–197–000]

January 27, 1988.

Take notice that on January 15, 1988, PennEast Gas Services Company (PennEast), a general partnership, PennEast, applied in abbreviated form to the Federal Energy Regulatory Commission (Commission) pursuant to section 7(c) of the Natural Gas Act, as amended (15 U.S.C. 717f), and the Rules and Regulations of the Commission issued thereunder for Certificates of Public Convenience and Necessity authorizing PennEast to provide long-term firm storage and firm transportation services for Northeast Energy Associates, A Limited Partnership (North Jersey), (hereinafter together referred to as Buyers) all as herein more fully set forth. In support of its application PennEast filed with the FERC at Docket No. CP87–312–000 an application to render a firm storage and transportation service under a new Rate Schedule PSS.

In an application in Docket No. CP87–92–002 filed concurrently on January 15, 1988, PennEast requested the FERC approve implementation of such PSS service commencing November of 1989, as more fully discussed in the application.

Buyers have requested storage service from PennEast under PennEast's proposed Rate Schedule PSS, it is stated. Each Buyer has indicated a desire to execute separate precedent agreements with PennEast with the Maximum Daily Withdrawal Quantity for both agreements totalling 24,508 dth, the storage capacity currently available. The storage service will be used by Northeast to provide gas to a cogeneration plant to be constructed for Northeast in Bellingham, Massachusetts and by North Jersey for a cogeneration plant to be constructed for North Jersey in Sayreville, New Jersey, it is stated.

In addition to the firm storage service contracted for by the Buyers as outlined above, it is stated that PennEast will offer and proposes to render to Buyers the opportunity to contract for long-term firm transportation service. This firm transportation service will be rendered in accordance with PennEast's firm transportation Rate Schedule T–1, it is further stated. Under Rate Schedule T–1, PennEast states that it will transport natural gas for the Buyers on a daily basis to Contract Demand Quality of 24,148 dth commencing November 15, 1989.

It is further stated that a copy of PennEast's Pro Forma FERC Gas Tariff including Rate Schedules PSS and T–1 is set forth in Exhibit P of PennEast's application in Docket No. CP87–312–000.

PennEast states that it will charge Buyers pursuant to Rate Schedules PSS and T–1 such rates to be derived and charged as proposed in Docket No. CP87–312–000.

Comment date: February 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. MIGC, Inc.

[Docket No. CP88–166–000]

January 27, 1988.

Take notice that on January 14, 1988, MIGC, Inc. (MIGC), 10701 Melody Drive, Denver, Colorado 80234, filed in Docket No. CP88–166–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 4,000 horsepower of compression facilities located at MISC's Hilight Compressor Station (Hilight Station) in Campbell County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC states that it had been brought to its attention that certain certificated compressor facilities at the Hilight Station had physically deteriorated to the point of being inoperable by 1984, and that certain other compressor facilities at the same location were destroyed by fire in May, 1985, yet authorization to abandon these facilities had not been previously sought (MIGC states that it was acquired by its present owners in November, 1985). Accordingly, MIGC states that it is hereby seeking authorization to abandon these facilities, retroactively, to the times such facilities were taken out of service in 1984 and 1985. MIGC further states that the proposed abandonment would have no impact on its system capacity or rendition of system services due to the fact that replacement compression has previously been installed and is operable.

Comment date: February 17, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP86–631–001]

January 28, 1988.

Take notice that on January 4, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–631–001 [1] an application pursuant to section 7(c) of the Natural Gas Act so as to revise an earlier proposal to become an open-access pipeline under Order No. 436 which was filed in Docket No. CP86–631–000, all as more fully set forth in the application which is no file with the Commission and open to public inspection.

Williams states that its proposal in Docket No. CP86–631–000 was filed in conjunction with and predicated on a proposed Stipulation and Agreement filed in Docket No. RP86–32–000. Williams further states that it has now filed a revised Stipulation and Agreement in Docket No. RP86–32–000 *et al.* which would involve a number of changes in the manner in which it would restructure its services to enable it to become an open access transporter. Consistent with the revised settlement proposal, Williams explains, it has filed the instant application to revise its certificate proposal.

Specifically, Williams requests (1)(a) certificate authorization under section7 of the NGA to provide partial requirements sales service under new Rate Schedule PR(A); (b) certificate authorization under Section 7 of the NGA to modify its requirements service obligations under existing Rate Schedules F, G and I to provide revised requirements service under a new Rate Schedule F in conjunction with partial requirements service to certain former C and I Rate Schedule consumers under new Rate Schedule PR(B); (c) certificate authorization under section 7 of the NGA for a new, experimental interruptible deferred delivery service under Rate Schedule IDDS for shippers under Rate Schedules FTS and ITS; (d) blanket authorization under section 7 of the NGA, with pre-granted abandonment, for shippers under Rate Schedules FTS and ITS to utilize such service under Rate Schedule IDDS; (e) blanket authorization under Section 7 of the NGA for all existing sales customers from time to time to elect or convert to service under new Rate Schedule PR(A) or new Rate Schedules F and PR(B), as appropriate, and to convert and/or

[1] On January 21, 1988, the Commission erroneously issued a Notice of Amendment in the subject docket wherein a due date of February 11 1988, was provided.

reduce the level of service under those rate schedules, as provided under the new sales service agreements executed under those rate schedules; and (f) pregranted abandonment of its presently authorized service levels under the NGA to the extent of such conversions and/or reductions under Rate Schedules PR(A), F, or PR(B); and (g) authority to abandon service under Rate Schedule P to the level of any reduced contract demand under any new sales service agreement under Rate Schedule P; and (2) blanket certificate authorization for the transportation of gas on behalf of others with pre-granted abandonment authorization, pursuant to Section 7 of the NGA and Order Nos. 436 and 500 under new Rate Schedules FTS and ITS.

Williams states that it would provide blanket transportation for others in compliance with the conditions in § 284.221(c) of the Commission's Regulations on the basis of its Order Nos. 436 and 500 transportation proposal as described in the amended application and in Article II and Appendix C of the Revised Stipulation in Docket Nos. RP86–32, *et al.* Williams further states that it would provide firm and interruptible transportation under proposed Rate Schedules FTS and ITS as set forth in the tariff sheets in Appendix C of such Revised Stipulation and that the rates for such service would be in full compliance with the provisions of § 284.7 of the Commission's Regulations.

Comment date: February 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP88–180–000]

January 29, 1988.

Take notice that on January 15, 1988, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252 (Applicant), filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant, among other things, to render a firm sales and firm transportation service to PennEast Gas Services Company (PennEast); to render a compression and metering service to PennEast; and to render a new firm sales and firm transportation service to CNG Transmission Corporation (CNG) and Columbia Gas Transmission Corporation (Columbia) in lieu of Applicant's existing firm sales obligations to CNG and Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to:

(1) Restructure its contract obligations with CNG and Columbia pursuant to Rate Schedule DCQ [2] to render firm sales and firm transportation pursuant to Applicant's proposed Rate Schedules PLD and FTS–3 commencing November 1, 1988, for a primary term of ten years;

(2) Render firm sales and firm transportation to PennEast pursuant to proposed Rate Schedules PLD and FTS–3 commencing November 1, 1989, for a primary term of ten years;

(3) Sell to PennEast pursuant to Rate Schedule PLD, pending completion of facilities by PennEast, up to 75,000 dth of natural gas per day (dth/d) to be released by Columbia;

(4) Render a compression and metering service to PennEast; and

(5) Render a firm transportation service to three customers of PennEast (Cairo, Illinois; Huntingburg, Indiana; and Smyrna, Tennessee) of gas purchased from or transported by PennEast and delivered to Applicant by displacement by PennEast.

Applicant indicates that deliveries of natural gas would be made to CNG and Columbia at the existing points specified in Applicant's currently effective service agreements under Rate Schedule DCQ and that deliveries would be made to PennEast at Applicant's Compressor Station No. 21–A in Fayette County, Pennsylvania.

Applicant states that a buyer under proposed Rate Schedule PLD would have the right to convert, on a permanent basis, from firm sales under Rate Schedule PLD to firm transportation under Rate Schedule FTS–3. Applicant requests abandonment authorization to implement the proposed conversion, as well as waiver of the Commission filing fee regulations with respect to filings made to implement the agreements for which authorization is requested herein. Applicant avers that firm standby service on a daily basis in a contract year would be available under proposed Rate Schedule PLD.

With regard to the proposed transportation for PennEast of the 75,000 dth/d to be released by Columbia, Applicant states that Applicant and Columbia would amend the exchange agreement under Applicant's Rate Schedule X–128 to increase the maximum daily obligation to 155,000 dth in order to implement the release of such volumes.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88–173–000]

January 29, 1988

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–173–000 an application pursuant to Section 7(c) of the Natural Gas Act and the rules and regulations of the Federal Energy Regulatory Commission for a certificate of public convenience and necessity authorizing Tennessee: (1) To provide firm natural gas transportation to eight cogeneration plants and three local distribution companies in Connecticut, Massachusetts, Rhode Island and New York in an aggregate daily maximum quantity of 146,943 Dth; and (2) to construct and operate the facilities necessary to transport and deliver the proposed quantities. Tennessee further requests authorization pursuant to Executive Order No. 10485 (18 FR 5397 (1953)) and Section 153.10 of the Commission's Regulations for an amended Presidential permit to construct and operate pipeline facilities at the international boundary between the United States and Canada; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The project proposed in Docket No. CP88–173–000 is referred to as the "NORTRAN Project". The specific shippers, quantities and delivery points for which firm transportation authorization is sought are listed below.

[2] Or pursuant to Rate Schedule CD–1 in the event that, prior to the approval of this application, Texas Eastern enters into new service agreements under Rate Schedule CD–1 as currently proposed in Docket No. RP85–177, *et al.*

	Transportation quantity (Dth/day)	Delivery point
Shipper		
Pepperell Power Associates	9,795	Tewksbury, MA
Pawtucket Power Associates	12,696	Pawtucket, RI
Gas Alternative Systems, Inc	24,000	Syracuse, NY
ANR Venture Management, Inc./Capital District Energy Cogeneration Associates	13,900	New Britain/Bloomfield, CT
ANR Venture Management, Inc./Flagg Energy Development Corp	3,900	New Britain/Bloomfield, CT
Cogen Energy Technology Inc	11,626	Brookview, NY
O'Brien Cogeneration (Hartford) Inc	12,800	New Britain/Bloomfield, CT
The Dexter Corporation	13,800	E. Granby, CT
Connecticut Light & Power Company	1,000	Stamford, CT
	5,000	Wallingford, CT
	3,000	E. Granby, CT
Central Hudson Gas & Electric Corporation	10,000	Cedar Hill, NY
Southern Connecticut Gas Co	25,426	North Haven, CT

In order to effectuate the proposed transporation services Tennessee proposes to construct and operate (1) 82.2 miles of 30" mainline loop, including a 0.5 mile section looping Tennessee's existing Niagara River crossing; (2) 6.5 miles of 12" lateral line consisting of 4.5 miles of loop and 2.0 miles of replacement pipeline; (3) 11.5 miles of 16" pipeline extension from Tennessee's milepost 344 + 8.5 to Southern Connecticut Gas' North Haven Gate Station in New Haven County, Connecticut; (4) three high pressure gas filtration facilities; (5) 18,800 HP of compression, including 1650 HP of replacement compression; and (6) four measurement stations. The total project cost, Tennessee states, is estimated to be $131,611,000.

Tennessee proposes to render the firm transportation service pursuant to two new proposed incremental rate schedules, NET–EU and NET–LD which were filed for service proposed under Tennessee's "open season" gas transportation projects. Rate Schedule NET–EU would apply to all cogeneration and electric power end users and Rate Schedule NET–LD would apply to all local distribution companies.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Champlain Pipeline Company

[Docket No. CP88–168–000]

January 29, 1988

Take notice that on January 15, 1988, Champlain Pipeline Company (Applicant), 69 Swift Street, South Burlington, Vermont 05403, filed in Docket No. CP88–168–000 an application pursuant to §§ 153.10 and 153.11 of the Commission's Regulations and Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential Permit to authorize the construction, operation and maintenance of facilities at the International Border between the United States and Canada near Highgate Springs, Vermont and Phillipsburg, Quebec, for the importation of natural gas from Canada into the United States, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it requires such facilities to transport natural gas for its shippers in the United States who have entered, or will enter into, gas purchase contracts with suppliers of natural gas located in Western Canada. Such natural gas, Applicant continues, will be transported in Canada through the system of TransCanada Pipelines Limited for delivery to Applicant at the International Border near Phillipsburg, Quebec and Highgate Springs, Vermont. Applicant further states that its shippers have or will obtain, Economic Regulatory Administration authorization required to import natural gas from Canada pursuant to section 3 of the Natural Gas Act.

Concurrently with the filing of the above-described application for a Presidential Permit, Applicant has filed with the Commission an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, (Docket No. CP88–169–000), for authority to construct and operate natural gas pipeline facilities to enable Applicant to transport natural gas purchased by its shippers in Canada and to deliver to such shippers in the States of Vermont, New Hampshire and Massachusetts.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Algonquin Gas Transmission Company

[Docket No. CP88–167–000]

January 29, 1988

Take notice that on January 15, 1988, Algonquin Gas Transmission company ("Algonquin"), a Delaware corporation with its principal place of business in Boston, Massachusetts, filed, pursuant to section 7 of the Natural Gas Act and the rules and regulations of the Federal Energy Regulatory Commission ("Commission"), an application for a certificate of public convenience and necessity authorizing Algonquin to provide a firm transportation service for the Town of Braintree, Massachusetts, Electric Light Department ("Braintree"), which will be designated as Rate Schedule X–34 and contained in Algonquin's FERC Gas Tariff Original Volume No. 2. Such transportation service would be available for a primary term of twenty years starting upon the commencement date which is contemplated to be December 1, 1988. Algonquin's proposal is described more fully in its application which is on file with the Commission and open to public inspection.

Algonquin states the proposed service would involve receipt, firm tranportation and delivery of up to 21,660 MMBtu per day of natural gas. Algonquin stated that such deliveries would be subject to fuel reimbursement in accordance with the provisions of section 29 of the General Terms and Conditions of Algonquin's FERC Gas Tariff Second Revised Volume No. 1. It is further stated that the gas would be received from Connecticut Natural Gas Corporation at Glastonbury, Mansfield, Cromwell and Farmington, Connecticut; transported through the Algonquin

system, and redelivered at a new point of delivery between Algonquin and Braintree located in East Braintree, Norfolk County, Massachusetts, referred to as the Potter Station. To render such service, Algonquin proposes to construct and operate certain facilities including 2.2 miles of 16-inch pipeline connecting its existing 10-inches mainline located in Braintree, Norfolk County, Massachusetts to the new Potter Station delivery point in East Braintree, Massachusets. Algonquin's proposal would also include two lateral system loops consisting of 3.6 miles of 16-inch pipeline looping Algonguin's I-3 system in Norfolk County, Massachusetts, and 0.6 miles of 16-inch pipeline looping Algonquin's G–5 system in Seekonk, Bristol County, Rhode Island.

It is noted that Algonquin (applicant) filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

8. Champlain Pipeline Company

[Docket No. CP88–169–000]

January 29, 1988

Take notice that on January 15, 1988, Champlain Pipeline Company (Applicant), 69 Swift Street, Burlington, Vermont 05403, filed in Docket No. CP88–169–000 an application pursuant to section 7(c) of the Natural Gas Act and the Commission's "Notice Inviting Applications to provide new gas service to the Northeast U.S.", issued July 24, 1987, as amended September 25, 1987, in Docket No. CP88–451–000, for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and the transportation in interstate commerce of up to 325,000 Mcf of natural gas per day on behalf of contract shippers in New England for use in serving incremental distribution company load and electric generation load, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it is a general partnership organized under the laws of the State of Vermont, and is made up of the following partners: Northern New England Investment Company, Inc., Noverco, Inc., CV Champlain Investments, Inc. and Resource Monitors, Inc.

Applicant requests authorization to render a transportation service for shippers to serve what it terms an urgent need for natural gas in the New England region. Applicant states it would provide that service less expensively than alternative routes, while affording long-term benefits to the region in the form of new competition for gas transportation services. Applicant explains that its proposed pipeline, which would serve as an eastern link between the major gas transportation facilities in the U.S. and Canada, would increase supply options to customers in the New England area, including previously unserved areas, and would afford substantial transportation efficiencies for service throughout the Northeast U.S. and Canada. Applicant states that it is applying to serve a market area in Vermont, New Hampshire, Massachusetts and Rhode Island, but that it stands ready to serve Connecticut, New York and New Jersey if, as its preliminary studies indicate, Applicant can do so for a smaller incremental cost than competing projects.

Applicant proposes to construct and operate pipeline facilities consisting of: (1) a 24-inch mainline pipeline, extending approximately 249 miles from the U.S.-Canadian border in Vermont through New Hampshire to a point southwest of Boston, Massachusetts, (2) a 14-inch branch pipeline, extending approximately 36 miles from a point on the mainline in northeast Massachusetts to a point in southeast New Hampshire, and (3) necessary appurtenant facilities. It is stated that the estimated cost of the completed project is approximately $268.8 million. The planned in-service date is November 1990, or earlier.

Applicant states that its proposed facilities are designed to transport initially up to 325,000 Mcf of gas per day, without compression. Applicant further states that the pipeline would provide an opportunity for economic expansion of throughput capability, should that prove necessary in the future.

Applicant explains that it would perform a transportation service only; it would not own any of the gas it transports. Applicant further explains that arrangements for gas supplies would be the responsibility of the shippers. Applicant expressed its belief that sufficient Canadian gas supplies exist to meet the needs of prospective shippers, and that applicant is prepared to provide gas purchasing assistance if so requested by a shipper.

Applicant proposes to provide firm and interruptible transportation service on an open-access, non-discriminatory basis in two service zones. Firm service is proposed by Applicant to be sold under a two-part [reservation charge and commodity charge) rate, based on the Commission's modified fixed-variable formula. Interruptible service is proposed to be sold under a one-part (commodity) rate, based on the firm rate at 100 percent load factor. Applicant states that, based on an illustrative cost-of-service outlined in its application, the 100 percent load factor unit throughput cost for transportation the length of Applicant's system is 54 cents per Mcf.

Applicant states that, although precise financing for its project has not been determined, for purposes of this application such financing is based upon a capitalization of approximately 25 percent equity contribution by the partners and 75 percent limited or non-recourse debt. Applicant proposes that its initial rate provide a return on equity investment of 16.5 percent.

It is noted that Applicant filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

9. Indiana Ohio Pipeline Company

[Docket No. CP88–178–000]

January 29, 1988

Take notice that on January 15, 1988, Indiana Ohio Pipeline Company (Indiana Ohio), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP88–178–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity under the Optional Expedited Procedures authorizing Indiana Ohio to render 200 MMcf per day (MMcf/d) firm transportation service for others, and to construct and operate the necessary facilities to provide this service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Indiana Ohio is a newly formed, wholly owned subsidiary of Panhandle Eastern Corporation. Indiana Ohio will become a natural gas company, as defined in the NGA, incorporated under the laws of the State of Delaware.

Specifically, Indiana Ohio proposes to construct, own and operate approximately 110 miles of 20-inch pipeline, a 6,000 horsepower compressor, and appurtenant facilities necessary to transport natural gas from a point on the Panhandle Eastern Pipe Line Company (Panhandle) mainline located in Grant County, Indiana, to interconnect at a point on Texas Eastern Gas Pipeline Company's (TETCO) facilities in Warren County, Ohio, at a cost of approximately $50,000,000. Indiana Ohio proposes to transport for others a quantity of gas up to its maximum daily capacity of 200 MMcf. Indiana Ohio states that this proposed system will transport gas from Panhandle mainline to the TETCO system.

Indiana Ohio proposes in its *Pro-Forma* Tariff new Rate Schedule FTS for firm transportation service and Rate Schedule ITS for interruptible transporation service as follows:

Transportation rates		Maximum rate	Minimum rate
FTS Reservation Charge per Dth per Month	$3.29		0
FTS Commodity Charge per Dth Transported	$0.0591		$0.0036
ITS Commodity Charge per Dth Transported	$0.1673		$0.0036
Fuel Reimbursement		0.5%	

It is noted that Indiana Ohio in filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

10. Northeastern Gas Transmission Company

[Docket No. CP88–175–000]

January 29, 1988

Take notice that on January 15, 1988, Northeastern Gas Transmission Company, (Northeastern) a wholly-owned subsidiary of Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–175–000, an application pursuant to section 7(c) of the Natural Gas Act to transport gas on behalf of New England Power Company (NEPCO) and to construct facilities necessary to perform such transporation service all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Specifically, Northeastern requests authorization to transport for NEPCO, on a firm basis, 120,000 Mcf of natural gas per day from a receipt point (proposed currently in Docket No. CP88–174–000) with the facilities of Tennessee Gas Pipeline Company (Tennessee) downstream of Tennessee's Station No. 267 near Hopkinton, Massachusetts (Hopkinton), to a delivery point with NEPCO at its Brayton Point Plant in Somerset, Massachusetts (Somerset). In order to perform this transporation service, Northeastern also requests authorization to construct and operate a 45.9 mile, 36-inch pipeline from Hopkinton to Somerset. In addition, Northeastern proposes to construct a 2,000 hp compression facility at Hopkinton, a measuring station at Somereset and other appurtenant facilities. The gas transporated by Northeastern for NEPCO will be used to substitute for the residual fuel oil presently being used in Unit No. 4 of NEPCO's Brayton Point Plant. According to the filing, this will enable NEPCO to comply with the Massachusetts Acid Rain Law requiring, *inter alia*, the reduction of sulphur dioxide emissions. The estimated projected cost is $86.8 million. Northeastern states that it intends to charge a one-part demand rate based upon the total cost of service of the new facility.

It is noted that Northeastern filed this application within the time frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard paragraph F at the end of this notice.

11. PennEast Gas Services Company CNG Transmission Corporation

[Docket No. CP88–183–000]

January 29, 1988.

Take notice that on January 15, 1988, PennEast Gas Services Company (PennEast), P.O. Box 2521, Houston, Texas 77252, and CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, herein referred to as "Applicants," filed in Docket No. CP88–183–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities to render a firm transportation service on behalf of Transcontinental Gas Pipe Line Corporation (Transco) and National Fuel Gas Supply Corporation (National Fuel); CNG Transmission to render related gas compression and related metering services for PennEast; and a single blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221 authorizing open-access nondiscriminatory transportation of natural gas, all as more fully set forth in the application on file with the Commission and open for public inspection.

Specifically, PennEast seeks authorization to construct and operate the facilities described below to provide long-term firm transportation service of up to 225,000 Mcf per day of natural gas (Mcfd) from Ellisburg to Leidy, Pennsylvania, under proposed Rate Schedule T–6 for the Canadian gas service project. PennEast further seeks a single blanket certificate of public convenience and necessity pursuant to 18 CFR 284.221 authorizing open-access non-discriminatory transportation of natural gas. Lastly, CNG Transmission seeks authorization to render related gas compression and metering services which would enable PennEast to perform the requested transportation service. Applicants state that the proposed transportation service would eliminate the need for a 40–mile pipeline segment proposed for construction by National Fuel under Docket No. CP88–194–000.

PennEast states that it would render the long-term firm transportation service for Transco and National Fuel of up to 225,000 Mcfd under the terms and conditions of Rate Schedule T–6 and a separate service agreement. Rate Schedule T–6 would also provide, that to the extent additional capacity exists on the proposed facilities, PennEast would render open-access non-discriminatory firm and interruptible transportation services to any party requesting such service. Under its requested blanket certificate, PennEast proposes to provide firm transportation pursuant to Rate Schedule T–6 and interruptible transportation pursuant to Rate Schedule T–2.

PennEast states that it would receive the gas from National Fuel at an interconnection to be established between the facilities of National Fuel and CNG Transmission at the Ellisburg Storage Pool in Potter County, Pennsylvania, and redeliver the gas to Transco at the existing interconnection between the facilities of Transco and CNG Transmission at the Leidy Storage Pool in Clinton County, Pennsylvania. PennEast proposes to construct and operate 27 miles of 24-inch-diameter pipeline in Potter County, Pennsylvania.

and Stueben County, New York. Additionally, PennEast proposes to add 4,000 horsepower of compression to CNG Transmission's Greenlick Compressor Station and associated metering and regulating facilities at the Leidy Compressor Station in Clinton County, Pennsylvania. The total estimated cost of the proposed facilities is $21,900,000.

PennEast states that although the facilities would be operated in conjunction with CNG Transmission's existing facilities to render the proposed services, no existing capacity on CNG Transmission's existing facilities would be committed to this project, nor would anyone other than PennEast or its customers bear any costs associated with the proposed facilities. PennEast states that it would own the proposed facilities which would be constructed and operated pursuant to a compression and metering agreement between PennEast and CNG Transmission. It is indicated that the agreement provides that CNG Transmission would be responsible for gas compression and metering services at these facilities. CNG Transmission has requested authorization to render such services and to charge PennEast to cost-based rate for the incremental operation and maintenance expenses incurred. CNG Transmission has also requested that the rate set forth in the agreement be accepted as an initial rate for such services as of the date indicated in the agreement.

It is noted that Applicants filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

12. Tennessee Gas Pipeline Company

[Docket No. CP88–172–000]

January 29, 1988.

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP88–172–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for (1) authority to abandon 15,000 dekatherms per day (Dth/d) of firm sales service to North Penn Gas Company (North Penn); and (2) a certificate of public convenience and necessity authorizing (a) the sale for resale of up to 40,000 Dth/d, on a firm basis, to Public Service Electric and Gas Company (Public Service); (b) the replacement of Public Service's July 1, 1970, storage service agreement under Tennessee's SS-E Rate Schedule with a new one extending the term of service and adding a proposed new delivery point to Public service; (c) the amendment of Public Service's November 1, 1968, sales service agreement under Tennessee's CD–5 Rate Schedule to add a proposed new delivery point; and (d) the construction and operation of facilities necessary to effectuate the sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it requests authority to abandon 15,000 Dth/d of firm sales service to North Penn, at North Penn's request. Tennessee asserts that the proposed abandonment would be subject to authorization of the proposed new sales to Public Service with the effective date of the proposed abandonment to be the same as the commencement of new service to Public Service.

Tennessee further states that due to the need to more efficiently integrate the northern portion of Public Service's service area, as well as to serve projected increases in market demand in its service area, Public Service requested Tennessee to enter into a new gas sales contract for the purchase of up to 40,000 Dth/d, over and above deliveries under existing contracts, and (2) to construct necessary facilities to effectuate the proposed new deliveries, as well as portions of existing contractual entitlements at a new delivery point near Northvale, New Jersey.

Tennessee proposes to construct 20.1 miles of 30–inch O.D. mainline looping in the counties of Wyoming and Livingston, New York and Susquehanna, Pennsylvania, install 3,165 horse power of additional compression at the existing Bradford County, Pennsylvania compressor station, 8.6 miles of 24-inch O.D. sales lateral and related metering facilities in Bergen County, New Jersey. Tennessee estimates the total cost of these facilities at $38,698,000.

Additionally, Tennessee notes that it would upgrade the maximum allowable operating pressures (MAOP) of portions of its existing mainline system from the existing level of 975 psig to 1170 psig, a process that requires hydrostatic testing of existing facilities and potentially the replacement of two to three miles of existing pipeline. Tennessee alleges that these procedures may be performed under § 2.55 of the Commission's Regulations without Commission authority.

Tennessee would amend Public Service's existing CD–5 Rate Schedule service agreement, dated November 1, 1968, to add the new delivery point near Northvale, New Jersey. Further Tennessee would replace the existing SS–E Rate Schedule service agreement, dated July 1, 1970, with Public Service to extend the term of service and to add the new delivery point. The new SS–E service agreement would commence on November 1, 1988, with a primary term lasting until November 1, 2000, and then from year to year thereafter.

Tennessee proposes to charge Public Service under the new gas sales contract which provides for delivery of an additional 40,000 Dth/d at the effective CD–5 rate. However, Tennessee states that Public Service has agreed to pay an annual incremental facilities charge, if the revenues received by Tennessee under the new sales agreement fails to recover the cost of service associated with the Bergen County, New Jersey sales lateral. Under these provisions, Tennessee asserts, Public Service has agreed to assume the risk of any underrecovery of revenues attributable to the costs of the new sales lateral Tennessee might experience, while Tennessee assumes the risk of underrecovery attributable to the mainline expansion.

Tennessee also states that, while the new Rate Schedule CD–5 service agreement will not be an "eligible firm sales service agreement" as that term is defined in § 284.10 of the Commission's Regulations, it has agreed to include provisions which give Public Service the option, in any year, to convert up to 20 percent of the original maximum daily quantity and annual quantity to firm transportation. This conversion option is said to be subject to Tennessee's receipt of the appropriate abandonment and certificate authority in a separate proceeding, and to the availability of receipt point capacity and comparable rates.

Tennessee requests that its application be considered under the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88–174–000]

January 29, 1988.

Take notice that on January 15, 1988, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–174–000, an application pursuant to section 7(c) of the Natural Gas Act seeking a certificate of public convenience and necessity to transport gas on behalf of New England Power Company (NEPCO), to construct facilities necessary to perform such transportation service and establish, in conjunction with other concurrently filed Tennessee applications, a new Rate Schedule NET–EU, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authorization to transport for NEPCO, on a firm basis, 95,556 Mcf of natural gas per day from receipt points on its system at the Canadian border and south of its Station 87 near Kinder, Louisiana to a delivery point at Station 267 on its system near Hopkinton, Massachusetts. In order to provide this service, Tennessee requests authorization to construct and operate 55.2 miles of 30-inch and 36-inch pipeline looping on its system in Allen County, Kentucky; Berkshire, Hampden and Worcester Counties, Massachusetts; Columbia, Erie and Wyoming Counties, New York; and Forest and Mercer Counties, Pennsylvania. Also, Tennessee requests authorization to install an additional 29,500 hp of compression on its system in Greenup County, Kentucky; Columbia, Herkimer, Onadaga, Ontario and Schoharie Counties, New York; Buernsey County, Ohio; Mercer County, Pennsylvania; and Sumner County, Tennessee. Other appurtenant facilities are also proposed to be installed. Further, Tennessee requests authorization to establish a new delivery point to Northeastern Gas Transmission Company (Northeastern) downstream of Tennessee's Station 267. Northeastern will receive NEPCO's volumes at this proposed delivery point for ultimate delivery to NEPCO at its Brayton Point Plant in Somerset, Massachusetts. The gas transported by Tennessee for NEPCO will be used to substitute for the residual fuel oil presently being used in Unit No. 4 of NEPCO's Brayton Point Plant. According to the filing, this will enable NEPCO to comply with the Massachusetts Acid Rain Law requiring, *inter alia*, the reduction of sulphur dioxide emissions. The total estimated project cost is $149.2 million.

Tennessee states that it intends to charge NEPCO under its proposed Rate Schedule NET–EU. This rate schedule, according to Tennessee, has been developed for service to NEPCO and all cogeneration and electric end users in the aforementioned concurrently-filed projects. Tennessee proposes to charge a one-part monthly demand rate under Rate Schedule NET–EU based upon the incremental cost of service.

It is noted that Tennessee filed this application within the time frame of the open season announced by the Commission in Docket No. CP87–451–000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: February 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2407 Filed 2–4–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA88–2–33–001]

El Paso Natural Gas Co.; Tariff Filing

February 1, 1988.

Take notice that on January 25, 1988, El Paso Natural Gas Company ("El Paso"), filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in accordance with ordering paragraphs (B) and (C) of the Commission's Opinion No. 283 issued September 29, 1987 at *Gas Research Institute*, Docket No. RP87–71–000, the following revised tariff sheets to its FERC Gas Tariff to be effective January 1, 1988:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Sixteenth Revised Sheet No. 100
	Fourth Revised Sheet No. 100–A
Original Volume No. 1–A	Fifth Revised Sheet No. 20
Third Revised Volume No. 2	Fortieth Revised Sheet No. 1–D
	Twentieth Revised Sheet No. 1–D.2
Original Volume No. 2A	Forty-second Revised Sheet No. 1–C.

El Paso states that on December 1, 1987, it filed revised tariff sheets reflecting the decrease in the Gas Research Institute's ("GRI") funding unit, as approved by said Opinion No. 283, along with a change in the base tariff rates made pursuant to El Paso's June 30, 1987 filing at Docket No. RP85–58–000, *et al.*,[1] both to be effective January 1, 1988. Subsequently, by order issued December 16, 1987 at Docket No. RP85–58–000, *et al.*, which issued in response to El Paso's June 30, 1987 filing regarding the impact of said Federal tax legislation on its rates, the Commission directed El Paso to file revised tariff sheets to be effective July 1, 1987. Further, by letter order dated January 7, 1988 issued by the Director of the Office of Pipeline and Producer Regulation at Docket Nos. TA88–2–33–000 and RP85–58–000, *et al.*, the Commission rejected the revised tariff sheets filed on December 1, 1987 for non-compliance with the Commission's December 16, 1987 order.

[1] El Paso's filing of June 30, 1987 at Docket No. RP85–58–000, *et al.*, set forth, *inter alia*, the workpapers, explanation and *pro forma* tariff sheets reflecting the impact of the 1986 Tax Reform Act as required by Article XII, *Tracking of Changes in Federal Taxes*, of the "Stipulation and Agreement in Settlement of Rate Proceedings" approved by Commission letter order dated August 14, 1985 at said docket.

El Paso further states that such rejection was issued without prejudice to El Paso filing, *inter alia*, revised tariff sheets to be effective January 1, 1988 to reflect the new GRI surcharge in compliance with Opinion No. 283. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will decrease the GRI funding unit adjustment component of El Paso's rates for certain sales and transportation services from the currently effective 1.44 cents per dth (1.52 cents per Mcf) to the 1.43 cents per dth (1.51 cents per Mcf) approved by the Commission in Opinion No. 283.

El Paso requested, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations and any other of the Commission's applicable rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective on January 1, 1988.

El Paso states that copies of the filing have been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2460 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-100-001]

Mountain Fuel Resources, Inc.; Proposed Changes in FERC Gas Tariff

February 1, 1988.

Take notice that Mountain Fuel Resources, Inc. (MFR) on January 26, 1988, pursuant to 18 CFR 154.63(a)(1) and as directed by the Commission's September 29, 1987, Order issued to Algonquin Gas Transmission Company, et al. in Docket No. RP87-109-000, et al., tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff as follows:

First Revised Volume No. 1

Substitute Orignial Sheet No. 70-A

Orignial Volume No. 1-A

Substitute First Revised Sheet No. 111

MFR explains that the purpose of this filing is to incorporate language into its FERC Gas Tariff that complies with specific Annual Charge Adjustment (ACA) tariff provisions, 18 CFR 154.38(d)(ii)(a), as established by Order No. 472-B issued by the Commission September 16, 1987, in Docket Nos. RM87-3-002, et al. In addition, MFR addresses its contract storage service as it relates to the ACA mechanism.

MFR requests waiver of 18 CFR 154.22 and special permission under 18 CFR 154.51 so that the tendered tariff sheets may become effective October 1, 1987, as proposed.

Copies of this filing were served upon MFR's jurisdictional customers and the Utah and Wyoming Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2461 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-101-001]

Overthrust Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 1, 1988.

Take notice that Overthrust Pipeline Company (Overthrust) on January 26, 1988, pursuant to 18 CFR 154.63(a)(1) and as directed by the Commission's September 29, 1987, Order issued to Algonquin Gas Transmission Company, et al. in Docket Nos. RP87-109-000, et al., tendered for filing and acceptance Substitute Original Sheet No. 54-A to Original Volume No. 1 of its FERC Gas Tariff.

Overthrust explains that the purpose of this filing is to incorporate language into its FERC Gas Tariff that complies with specific Annual Charge Adjustment (ACA) tariff provisions, 18 CFR 154.38(d)(ii)(a), as established by Order No. 472-B issued by the Commission September 16, 1987, in Docket Nos. RM87-3-002, et al.

Overthrust requests waiver of 18 CFR 154.22 and special permission under 18 CFR 154.51 so that the tendered tariff sheet may become effective October 1, 1987, as proposed.

Copies of this filing were served upon Overthrust's jurisdiction customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2408 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-296-014]

Tennessee Gas Pipeline Co.; Tariff Filing

February 1, 1988.

Take notice that on January 26, 1988, Tennessee Gas Pipeline Company (Tennessee), tendered for filing ten copies of the following tariff sheets to its FERC Gas Tariff to be effective January 15, 1988:

Second Revised Volume No. 1

Substitute First Revised Sheet No. 22A

Original Volume No. 2

Substitute Fifth Revised Sheet No. 8

Tennessee states that the purpose of the filing is to revise the rate for its transportation of Boundary Phase II volumes under Rate Schedules CGT-NY, CGT-NE and T-143 in compliance with the Commission's approval for Tennessee to use year-one rate base per its December 31, 1987 "Order Partially Granting and Partially Denying Rehearing and Amending Prior Order" in Docket Nos. CP81-296-010 *et al.*

Tennessee states that copies of the filing have been mailed to all of its affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-2409 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-29-001]

Tarpon Transmission Co.; Filing of Revised Tariff Sheets

February 1, 1988.

Take Notice that on January 22, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing, pursuant to Section 311 of the Natural Gas Policy Act of 1978 and section 4 of the Natural Gas Act, the revised tariff sheets to its FERC Gas Tariff Original Volume No. 1, identified on Appendix A, with a proposed effective date of December 1, 1987.

Tarpon states that the substitute original tariff sheets, consisting of revised tariff sheets in Rate Schedules FTS and ITS and related service agreements, are intended to comply with the Commission's December 23, 1987 Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, and Convening Technical Conference" in Docket No. RP88-29-000. In addition, Tarpon states that the alternate and revised alternate substitute original tariff sheets are being filed to make revisions necessary to correct typographical errors and to clarify the intent of Tarpon relative to various provisions which may not have been specifically addressed by the Commission in its December 23, 1987 order, all as more fully discussed in the application. Tarpon requests the Commission's waiver of such Regulations as may be applicable to permit the revised tariff sheets identified with an asterisk on Appendix A to become effective on December 1, 1987. Acceptance of these revised tariff sheets will render the other tariff sheets submitted by Tarpon as moot.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). Such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must fule a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Substitute Original Sheets

*Substitute Original Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 32
Substitute Original Sheet No. 33
Substitute Original Sheet No. 34
*Substitute Original Sheet No. 35
*Substitute Original Sheet No. 36
*Substitute Original Sheet No. 37
Substitute Original Sheet No. 38
Substitute Original Sheet No. 40
*Substitute Original Sheet No. 41
*Substitute Original Sheet No. 42
*Substitute Original Sheet No. 43
*Substitute Original Sheet No. 45
Substitute Original Sheet No. 46
Substitute Original Sheet No. 47
Substitute Original Sheet No. 48
Substitute Original Sheet No. 49
*Substitute Original Sheet No. 50
*Substitute Original Sheet No. 51
*Substitute Original Sheet No. 52
Substitute Original Sheet No. 53
Substitute Original Sheet No. 55
*Substitute Original Sheet No. 56
*Substitute Original Sheet No. 57
*Substitute Original Sheet No. 58
Substitute Original Sheet No. 80
*Substitute Original Sheet No. 82
Substitute Original Sheet No. 89
*Substitute Original Sheet No. 91

Alternate Substitute Original Sheets

*Alternate Substitute Original Sheet No. 31
*Alternate Substitute Original Sheet No. 32
*Alternate Substitute Original Sheet No. 33
*Alternate Substitute Original Sheet No. 34
Alternate Substitute Original Sheet No. 38
*Alternate Substitute Original Sheet No. 40
*Alternate Substitute Original Sheet No. 46
*Alternate Substitute Original Sheet No. 47
*Alternate Substitute Original Sheet No. 48
*Alternate Substitute Original Sheet No. 49
Alternate Substitute Original Sheet No. 53
*Alternate Substitute Original Sheet No. 55
*Alternate Substitute Original Sheet No. 80
*Alternate Substitute Original Sheet No. 89

Alternate Original Sheets

*Alternate Original Sheet No. 39
*Alternate Original Sheet No. 54
*Alternate Original Sheet No. 81
*Alternate Original Sheet No. 90

Revised Alternate Substitute Original Sheets

*Revised Alternate Substitute Original Sheet No. 38
*Revised Alternate Substitute Original sheet No. 53

[FR Doc. 88-2472 Filed 2-4-88; 8:45 am]

BILLING CODE 6717-01-M

* Tariff Sheets requested to be effective on December 1, 1987.

[Docket No. CP87-188-002]

Transcontinental Gas Pipe Line, Corp.; Corrected Tariff Sheet in FERC Gas Tariff

February 1, 1988.

Take notice that on January 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a revised Second Substitute Sixth Revised Sheet No. 41-A, Superseding Revised Fifth Revised Sheet No. 41-A to its FERC Gas Tariff, Original Volume No. 2.

Transco states that on November 13, 1987, it submitted tariff sheets revising its Rate Schedule X-11 to reflect the reduction in the firm demand quantity in

such rate schedule as authorized by the Commission's September 17, 1987 order in Docket No. CP87–188–000, 40 FERC 61,264. Transco further states that by letter order issued December 15, 1987, the Commission accepted those certain tariff sheets for filing.

Transco states that as a result of the Commission's rejection of Transco's November 3, 1987 compliance tariff filing in Docket No. RP82–55–030, the rates reflected on Second Substitute Sixth Revised Sheet No. 41–A accepted by the Commission's December 15, 1987 letter order in Docket No. CP87–188–000 are not Transco's currently effective rates. Transco submits the revised Second Substitute Sixth Revised Sheet No. 41–A proposed to become effective October 1, 1987, to correct this error. The revised Second Substitute Sixth Revised Sheet No. 41–A reflects rates based on Transco's August 31, 1987 Annual Charge Adjustment filing in Docket No. RP87–117–000 accepted by the Commission to become effective October 1, 1987 by order issued on September 29, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2463 Filed 2–4–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket NO. RP88–8–004]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

February 1, 1988

Take notice that on January 22, 1988, United Gas Pipe Line Company (United) tendered for filing, pursuant to Section 4 of the Natural Gas Act, the following substitute revised tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 with a proposed effective date of November 1, 1987.

Rate Schedule FTS

Substitute Revised Substitute First Revised Sheet No. 48–C1
Revised Substitute First Revised Sheet No. 48–C3
Revised Substitute First Revised Sheet No. 48–C9
Substitute Original Sheet No. 48–C14
Substitute Second Revised Sheet No. 98–A
Substitute Second Revised Sheet No. 98–B

Rate Schedule ITS

Revised Substitute Original Sheet No. 48–E3
Substitute First Revised Sheet No. 98–L

General Terms and Conditions

Substitute First Revised Sheet No. 74–Y9

United states that while the Commission has already accepted for filing certain revised tariff sheets filed by United in compliance with the October 29, 1987 order in this proceeding, the substitute revised tariff sheets filed on January 22, 1988 are intended to accommodate certain concerns raised by parties at the Technical Conference held in this proceeding on December 11, 1987.

Any person desiring to be heard or to protest this filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commision's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1987). Such motions or protests should be filed on or before Feb. 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–2464 Filed 2–4–88; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 7 Through December 11, 1987

During the week of December 7 through December 11, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Coalition for Safe Power, 12/11/87, KFA–0141

The Coalition for Safe Power (Coalition) filed an Appeal from a denial of a Request for Information submitted by the Coalition under the Freedom of Information Act (FOIA). The Coalition had sought a copy of a report from Battelle Pacific Northwest Laboratories regarding the feasibility of converting a partially completed commercial nuclear reactor to a federally owned reactor which would produce weapons grade nuclear material. The Assistant Manager for Information of the Richland Operations Office withheld the report in its entirety as a deliberative document under Exemption 5 of the FOIA. In considering the Appeal, the DOE found that the report was part of the deliberative process, even though it had been prepared by attorneys outside the government. The DOE also found that sharing the document with Congressmen and state officials, or possible limited unauthorized dissemination did not extinguish the privilege of withholding under Exemption 5. Finally, the DOE found that the report contained segregable factual material which the Assistant Manager had improperly failed to release. Accordingly, the Appeal was granted in part and remanded to the Assistant Manager to release any segregable factual material.

Judith M. Gibbs, 12/8/87, KFA–0139

Judith M. Gibbs filed an Appeal from a denial by the Assistant Manager for Administration, Richland Operations Office (Authorizing Official) of a Request for Information which she had submitted under the Freedom of Information Act (FOIA). Ms. Gibbs sought sections of a policy guide prepared by a DOE contractor (Battelle Memorial Institute) dealing with the termination of employees. The DOE found that the Authorizing Official had properly determined that the materials sought were not "agency records" subject to the FOIA and that Ms. Gibbs' Appeal accordingly should be denied. Important issues considered in the Decision and Order were whether the Battelle Memorial Institute is an "agency" for purposes of the FOIA and whether the requested materials had been acquired by the DOE and thereby had become "agency records."

Refund Applications

B.A. Mehmert, et al., 12/10/87, RF272–1031, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the applicants used the products for various agricultural activities, and each determined its claim by consulting purchase records or by estimating its consumption based on the acres it farmed. Each was an end-user of the products it claimed, and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $854.

Charles G. Fowler, et al., 12/10/87, RF272–657, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 49 applicants who claimed a total of 12,117,124 gallons of refined petroleum product consumption. Each of the applicants determined its claim by consulting purchase records or by estimating its consumption. Since all the applicants were end-users of the products, their claims were granted without proof of injury. The total amount of refunds granted in this Decision and Order was $2,419.

Conoco Inc./Morris Oil Co. et al., 12/7/87, RF220–151, et al.

The DOE issued a Decision and Order granting Applications for Refund from the Conoco Inc. consent order fund. In considering the Applications, the DOE found that each of the applicants, resellers or retailers of Conoco refined products, had submitted sufficient information to support its refund claim. The DOE granted refunds to the five claimants totalling $6,121, including $4,406 in principal and $1,715 in interest.

Frank C. McCready, et al., 12/10/87, RF272–2017, et al.

The DOE issued a Decision and Order approving thirty Applications for Refund from crude oil overcharge funds. The thirty claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $349 was approved in this Decision and Order.

George Whipple, et al., 12/10/87, RF272–1391, et al.

The DOE issued a Decision and Order approving the Applications for Refund submitted by 26 claimants from crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their agricultural activities. The DOE granted the claimants a total refund amount of $1,474 based on purchases of 7,374,919 gallons of refined petroleum products from August 19, 1973 through January 27, 1981.

Getty Oil Company/Davidson Oil Company, et al., 12/8/87, RF265–370, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In seven of these cases, the applicants elected to received refunds on the basis of the applicable percentage presumptions of injury and were eligible for a claim below the $50,000 maximum. In the remaining case, the applicant elected to limit its claim to $50,000, in accordance with the $50,000 limitation on refunds based on the percentage presumption of injury. The sum of refunds approved in this Decision is $231,436, representing $114,890 in principal and $116,546 in accrued interest.

Getty Oil Company/Mayetta Oil Company and Girton Propane Service, Inc., 12/11/87, RF265–1095, RF265–1097.

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In both of these cases, the applicants elected to limit their claims on the basis of the level-of-distribution presumption of injury for propane. The sum of refunds approved in this Decision is $29,159, representing $14,475 in principal and $14,684 in accrued interest.

Getty Oil Company/The Farmer's Exchange, 12/11/87, RF265–714, RF265–715, RF265–716.

The DOE issued a Decision and Order concering three Applications for Refund filed by an end-user of products covered by a consent order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of Getty products that were purchased. As an end-user, the applicant was entitled to receive the full volumetric refund. The sum of the refunds approved in this Decision is $6,770, representing $3,354 in principal and $3,416 in accrued interest.

Getty Oil Company/Wade Sales & Service, Inc., et al., 12/10/87, RF265–1, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. All of the applicants elected to limit their claims on the basis of the percentage presumptions of injury methodology and were eligible for a claim below the $50,000 maximum. The sum of refunds approved in this Decision is $299,831, representing $148,553 in principal and $151,278 in accrued interest.

Goldfawn Farms and Dairy, et al., 12/10/87 RF272–1325, et al.

The DOE issued a Decision and Order approving the Applications for Refund submitted by 50 claimants from crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their agricultural activities. The DOE granted the claimants a total refund amount of $2,081 based on purchases of 10,418,048 gallons of refined petroleum products from August 19, 1973 through January 27, 1981.

Good Hope Refineries/Tenneco Oil Company, 12/7/87, RF189–10

The DOE issued a Decision and Order granting a refund from the Good Hope Refineries consent order fund to Tenneco Oil Company. The DOE stated that since Tenneco was a spot purchaser of Good Hope petroluem products, the firm was required to overcome the presumption that it was not injured by those Good Hope spot purchases. For a majority of its purchases, Tenneco failed to rebut that presumption. In fact, the DOE found that Tenneco sold at a profit a majority of the motor gasoline which it purchased from Good Hope. However, the DOE found that during two months of the consent order period, Tenneco sold Good Hope motor gasoline at less

than its purchase price. The DOE also found that during those same two months, Tenneco had imposed allocation fractions of less than 100 percent. Based on those findings, the DOE concluded that Tenneco had overcome the spot purchaser presumption for its purchases of Good Hope motor gasoline during those two months. Accordingly, the firm was granted a refund of its full allocable share of the Good Hope refund pool for those purchases. The refund equals $3,420, representing $2,082 in principal and $1,338 in interest.

Kenneth O. Dickey, et al. 12/8/87, RF272–3067 et al.

The DOE issued a Decision and Order granting 30 Applications for Refund filed in connection with the crude oil refund proceeding. Each applicant purchased refined petroleum products during the period Agusut 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $647.

Marathon Petroleum Company/Leonard A. Marshand, 12/9/87, RF 250–2739

The DOE issued a decision and Order concerning the Application for Refund filed by Leonard A. Marshand (Marshand), an indirect purchaser and retailer of products covered by a consent order that the agency entered into with Marathon Petroleum Company. In a previous Decision, Sines & Sons, Inc., Marshand's supplier, was granted a refund under the small claims presumption of injury. Under these circumstances, the DOE determined that it would be most equitable to presume that Marshand, a small claims applicant, was overcharged by its full volumetric amount. Accordingly, Marshand was granted a refund of $399, representing $352 in principal, and $47 in accrued interest.

McCleary Oil Company, Inc./ Greencastle-Antrim School District and Shippensburg Area School District, 12/7/87, RF297–5, RF297–6

The DOE issued a Decision and Order granting two Applications for Refund filed in the McCleary Oil Company, Inc. special refund proceeding. *McCleary Oil Company*, 16 DOE ¶ 85,128 (1987). Each applicant was an end user of McCleary covered products that was assigned a specific share of the McCleary consent order funds by the Economic Regulatory Administration. As end users, each applicant was presumed to have been injured by McCleary's alleged overcharges. Based upon the applicants' submissions, the DOE granted total refunds of $1,155, representing $573 in principal and $582 in accrued interest.

Melton Truck Lines, Inc., 12/7/87, RF270–2501

The DOE issued a Decision and Order revising a previous Decision which granted refunds to several applicants in the Surface Transporters refund proceeding. *J.C. Trucking, Inc.*, 16 DOE ¶ 85,356 (1987) (*J.C.*). Subsequently, one of the applicants, Melton Truck Lines, Inc. (Melton) (Case No. RF270–635), informed the DOE that the purchase volume approved for it in the *J.C.* Decision was incorrect. Specifically, Melton informed the DOE that it had included in its claimed purchase volumes petroleum product purchased by owner-operators hired by the firm during the Settlement Period. Since Melton did not actually purchase the fuel used by its owner-operators, it is ineligible to receive a refund based upon these volumes. *See Aero Trucking Inc.*, 16 DOE ¶ 85,239, *reconsideration denied*, 16 DOE ¶ 85,418 (1987). The DOE therefore modified *J.C.* to reduce the volume approved for Melton.

Mobile Oil Corporation/Terminal Freight Handling Company, 12/11/87, RF225–3496

The DOE issued a Decision and Order concerning an Application filed by Terminal Freight Handling (Terminal) for a refund from the Mobil Oil Corporation consent order refund. Terminal applied for a refund as an end-user of diesel fuel which it purchased directly from Mobil during the Mobil consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Terminal was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. After adjusting the firm's gallonage claim to exclude gallons purchased in January and February 1973 the DOE approved a refund of $1,531, representing $1,236 in principal and $295 in interest.

Sububran Propane Gas Corporation and W.S. Carpenter & Sons, Inc., 12/11/87, RF299–1

The DOE issued a Decision and Order granting an Application for Refund from the Suburban Propane Gas Corporation escrow account filed by W.S Carpenter & Sons, Inc., A reseller/retailer of Suburban propane during the period November 1, 1973 through October 31, 1978. Carpenter applied for a refund based upon the small claims presumption set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987). The DOE granted Carpenter a refund of $1,849, representing $1,668 in principal and $181 in interest.

The Youngstown Cartage Co., 12/11/87, RF270–1553, RF270–1558

The DOE issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption litigation. The DOE first determined that, for equity reasons, the application filed by a representative of a court receiver on behalf of Youngstown, Case No. RF270–1553, be recognized as the properly authorized claim. Therefore, the claim filed by another party, Case No. RF270–1558, was dismissed. Next, the DOE approved the application filed under Case No. RF270–1553 after deducting gallonage attributable to miles travelled by owner-operators. The DOE will determine a per gallon refund amount and establish the amount of Youngstown's refund after it completes its analysis of all Surface Transporter claims. The number of gallons approved in this Decision is 32,939,462.

Tood Cornwell, et al., 12/10/87, RF272–811, et al.

The DOE issued a Decision and Order granting 50 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases by using the USDA estimated of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,820.

Vern E. Wedeking, et al., 12/8/87, RF272–3437, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 39 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim by consulting actual purchase records. Since each applicant was an end-user of the products, each was presumed injured. The sum of the refunds granted in this Decision is $660.

William H. Wyatt, et al., 12/9/87, RF272–600, et al.

The DOE issued a Decision and Order granting Applications for Refund involving a total of 38,564,838 gallons of petroleum product consumption. Since all the applicants were end-users of the products, their claims were granted without proof of injury. The total amount of refund granted in this Decision and Order was $7,707.

Dismissals

The following submissions were dismissed:

Name:
Ball Marketing, Inc.
Case No.:
HRO–0268
KRD–0028
KRH–0028
KRD–0027
KRD–0027

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 29, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88–2452 Filed 2–4–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $475,000 (plus accrued interest) obtained as a result of a settlement agreement which the DOE entered into with Plaquemines Oil Sales Corporation of Belle Chasse, Louisiana (Case No. KEF–0039). The fund will be available to customers who purchased No. 2 diesel fuel from Plaquemines during the settlement period.

DATE AND ADDRESS: Applications for Refund of a portion of the settlement fund must be filed no later than 90 days after publication of this notice in the **Federal Register** and should be addressed to: Plaquemines Oil Sales Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF–0039.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.202(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a settlement agreement entered into by the DOE and Plaquemines Oil Sales Corporation of Belle Chasse, Louisiana. The settlement agreement settled possible pricing violations with respect to the firm's sales of No. 2 diesel fuel to customers during the period November 1, 1973 through August 31, 1975.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the settlement fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on April 24, 1987, 52 FR 16436 (May 5, 1987).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are filed no later than 90 days after publication of this Decision and Order in the **Federal Register.** Applications will be accepted from customers who purchased No. 2 diesel fuel from Plaquemines during the Settlement Agreement period. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: January 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals

January 28, 1988.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Plaquemines Oil Sales Corporation

Date of Filing: May 21, 1986

Case Number: KEF–0039

In accordance with the procedural regulations for the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on May 21, 1986. In the Petition, the ERA requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a final settlement between the DOE and Plaquemines Oil Sales Corporation (POSC).

I. Background

POSC was a "reseller-retailer" of No. 2 diesel fuel as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an audit of the firm's pricing practices during the period November 1, 1973 through August 31, 1975 (the audit period), the Federal Energy Administration (FEA), a predecessor of the DOE, determined that POSC had violated the price regulations in sales of No. 2 diesel fuel.[1]

[1] The underlying enforcement proceeding began on June 7, 1976, when the FEA had issued a Remedial Order to POSC which found that the firm overcharged certain No. 2 diesel fuel customers in the amount of $344,559.82. POSC's appeal of the Remedial Order was denied by FEA Region VI on January 20, 1977. Subsequently, the United States District Court for the Eastern District of Louisiana remanded the order to the DOE for consideration of several issues. *Plaquemines Oil Sales Corp. v. FEA*, 461 F. Supp. 276 (E.D. La. 1978).

On September 19, 1980, the ERA issued a Proposed Remedial Order (PRO) in response to the court's remand order, affirming the essential allegations of the original Remedial Order but reducing the amount of the alleged overcharges to $331,572.44. POSC contested the changes, and OHA affirmed and issued a Remedial Order on February 16, 1982. OHA finalized the 1980 PRO, but reduced the overcharge amount to $331,473.44. *Plaquemines Oil Sales Corp.*, 9 DOE ¶ 83,017 (1982). On April 16, 1982 POSC filed a petition for judicial review of the final order, and the DOE counterclaimed seeking enforcement of the order.

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Subsequently, the DOE and POSC agreed to settle all claims and disputes between the agency and the firm regarding the latter's pricing practices during the audit period, and signed a Joint Motion to Dismiss the pending civil action (*see* n. 1). The settlement was approved by the court on October 31, 1983. *Plaquemines Oil Sales Corp. v. DOE*, No. 82–1541 (E.D. La.). As part of the settlement, POSC remitted $475,000 (the settlement fund) to the DOE for deposit in an interest bearing escrow account maintained by the Department of the Treasury. This amount consists of the $331,473.44 of overcharges found in the 1982 Remedial Order plus $143,526.56 in accrued interest on those overcharges.

On April 24, 1987, the OHA issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the settlement fund. In the PDO we proposed to establish a claims procedure whereby Applications for Refund would be accepted from No. 2 diesel fuel customers of Plaquemines who could show that they were injured as a result of POSC's pricing practices during the audit period. We noted that the Attachment to the PRO issued to the firm on September 19, 1980 includes a schedule of 29 identified customers together with the amount of POSC's alleged overcharges to each of those customers. In addition, the PRO Attachment refers to "Other End-users," unidentified end-user customers of POSC who were subject to the alleged overcharges. Although we have determined from the ERA audit papers that there were five members of this class, we have been unable to identify them. We stated that we would accept refund applications from any applicant who could demonstrate that it was a member of one of these two groups.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. 52 FR 16436 (May 5, 1987). In addition, copies of the PDO were mailed to potential claimants identified in the PRO attachment whose addresses were available. We received comments from two firms identified in the PRO Attachment, Mobil Oil Corporation (Mobil) and Penrod Drilling Company (Penrod). These comments will be addressed in our discussion of the final refund procedures to be adopted in this proceeding.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have reviewed the record in the present case, and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the POSC settlement fund. We will therefore grant the ERA's Petition and assume jurisdiction over this fund.

III. Refund Procedures

The settlement fund will be distributed to customers of POSC who were injured by the firm's alleged overcharges. As noted above, 29 firms were identified in the PRO Attachment as being subject to the alleged overcharges. These firms and their maximum potential refunds based upon the alleged overcharge amounts attributable to them are listed in the Appendix to this Decision.[2] In addition, a firm which establishes that it is one of the five "Other End-users" referenced in the PRO Attachment is eligible for a refund in this proceeding.[3]

A. *Showing of Injury.* As an initial matter, each claimant will be required to document that it purchased No. 2 diesel fuel from POSC on a regular basis during the settlement period. Secondly, as stated in the PDO, resellers (including retailers and refiners) of POSC No. 2 diesel fuel must demonstrate that they obsorbed the alleged overcharges rather than passing them on to their own customers. This showing generally consists of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed. *See* 10 CFR 212.83(e) (refiners) and 212.93(e) (resellers and retailers). Second, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges.[4] *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985) (Atlantic Richfield). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from POSC.

In its comments, Mobil contends that a reseller should not be required to show that the prices at which it purchased POSC No. 2 diesel fuel exceeded average market prices, as would normally be required in a showing that the firm suffered a competitive disadvantage as a result of its purchases from POSC. Mobil argues that because such purchase price data may be unavailable, a showing of banks alone should be sufficient to establish injury. We are unpersuaded by this argument. We have stated on numerous occasions that a showing of banked costs along is not sufficient to establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.* 10 DOE ¶ 85,014 (1982). Our position on this matter was upheld by the Court in the *Atlantic Richfield* case. Furthermore, while the competitive disadvantage showing is the most common method of demonstrating that market conditions rendered a firm unable to increase its prices in order to pass through the alleged overcharges, it is by no means the only such showing. For instance, in order to show that it was unable to pass through the alleged overcharges, a claimant may also provide evidence that the alleged overcharges forced it to lose customers or experience a decline in market share. *See Inland U.S.A., Inc./Site Oil Co.*, 14 DOE ¶ 85,257 at 88,487 (1986). We have also stated that an applicant is always free to suggest reasonable alternative methods for establishing injury and provide appropriate data for the application of its methodology. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,512 (1986) (*Marathon*).

1. *Small Claims Presumption.* As we stated in the PDO, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of diesel fuel from POSC. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banked costs, or that they did not pass through the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In past proceedings we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marion Corp.*, 12 DOE ¶85, 014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, as in other Subpart V proceedings, any reseller claiming a refund of $5,000 or less need only document its purchase volumes in order to be eligible to receive a refund.[5]

2. *End-users.* As in many other refund proceedings, we adopt the presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the POSC settlement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion; Office of Enforcement*, 10 DOE ¶85,072 (1983). We will therefore adopt our proposal in the PDO that end-users of POSC products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

3. *Spot Purchasers.* We also adopt the rebuttable presumption that resellers which made only spot purchases of POSC diesel fuel, even those claiming refunds below the small claims threshold, were not injured by the alleged overcharges. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of POSC products at increased prices unless they were able to pass through the full amount of the overcharges to their own customers. *See Vickers*, 8 DOE at 88,396–7. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured by the spot purchase(s).

4. *$15 Minimum.* We will also establish a minimum refund amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982).

B. *Calculation of Refund Amounts.* In the PDO we discussed the appropriate methods for effecting restitution to POSC diesel fuel customers whose claims are meritorious. For those 29 customers listed in the Appendix to this Decision, we proposed to rely upon the "Schedule of Refunds Due Purchasers" in the Attachment to the September 19, 1980 PRO in order to calculate potential refunds.[6] We therefore proposed that the maximum potential refund for each identified POSC purchaser would be that firm's percentage of the total alleged overcharge amount multiplied by the total settlement amount.[7] In addition, we stated that successful applicants will receive a pro-rata share of the interest which has accrued since the deposit of the funds into the escrow account. We have decided to adopt this proposed allocation of the settlement funds to identified purchasers.

As proposed in the PDO, we will adopt a volumetric refund presumption for the five unidentified firms referenced in the PRO Attachment as "Other End-Users."[8] Under this volumetric approach, each claimant in this category will be eligible to receive a refund equal to the number of gallons of No. 2 diesel fuel purchased from POSC between November 1, 1973 and August 31, 1975, times the volumetric factor of $0.023772 per gallon.[9] In addition, successful claimants from this refund pool will receive a proportionate share of the interest which has accrued since the deposit of the funds into the escrow account.

In its comments, Penrod, one of the identified purchasers, argues that its refund should be calculated using the volumetric refund amount adopted for the unidentified POSC customers. Penrod misunderstands the function of the volumetric approach. In those cases where we use the volumetric methodology we assume that the overcharges were spread equally over all gallons of product marketed by the firm. *See, e.g., Marathon*, 14 DOE at 88,057. In this case, with respect to Penrod and the other identified purchasers, we need not rely upon this assumption because we possess detailed information which sets forth the specific amounts by which Penrod and the other identified purchasers were allegedly overcharged. The use of this detailed information ensures that Penrod's pro-rata share of the settlement fund corresponds closely to the amount of the overcharges it likely experienced plus interest on those overcharges from the date of violation. We will employ the volumetric approach in determining the potential refunds of unidentified end-users only because we do not possess similar detailed information for those customers.

C. *Application for Refund Procedures.* We have determined that the procedures described in the PDO are the most equitable and efficacious means of distributing the POSC settlement fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased No. 2 diesel fuel from POSC during the period November 1, 1973 through August 31, 1975. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationary. The following information should be included in all Applications for Refund:

1. The name of the settlement agreement firm, Plaquemines Oil Sales

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[2] The calculation of these maximum potential refund amounts is described below in the section entitled "Calculation of Refund Amounts."

[3] In the PDO, we stated that we would accept refund applications from other unidentified POSC customers who were injured as a result of the alleged overcharges. However, in view of the specificity of the information in the PRO Attachment and supporting workpapers and its correlation with the amount of the settlement fund, we have determined that the 34 customers referred to in the PRO Attachment are the only direct purchasers of POSC diesel fuel eligible for refunds in this proceeding.

[4] According to the record of this proceeding, one identified POSC customer, Shell Oil Company (Shell), purchased all of its POSC diesel fuel under a contract in which Shell supplied POSC with the product and bought back a portion at a mark-up. In its Application, Shell should provide a detailed explanation of this arrangement and explain why it was injured as a result of it.

[5] As in prior special refund proceedings, reseller applicants whose potential refund is for a larger amount may choose to limit their claims to $5,000 in lieu of making a detailed showing of injury.

[6] The total overcharge amount alleged in the PRO was $331,572.44. However, as indicated above, the settlement amount was $475,000, consisting of $331,473.44 of overcharges plus accrued interest of $143,526.56. The potential refunds have therefore been adjusted proportionally to account for the larger settlement amount. *See* n.7, *infra*.

[7] In its comments, Mobil requests clarification of manner in which the potential refunds of identified purchasers were calculated. We cannot identify the reason for Mobil's confusion. As stated above, Mobil's potential refund, like those of the other identified purchasers, is derived from the alleged overcharge amounts specified in the PRO Attachment. The amount assigned to Mobil in that Attachment, $18,920.41, is approximately 5.7 percent of POSC's total alleged overcharges. Mobil's potential refund is therefore $27,105.46, approximately 5.7 percent of the $475,000 total settlement amount.

[8] A claimant which believes that it suffered a disproportionate share of the alleged overcharges attributable to POSC's sales to unidentified end-users may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984).

[9] As stated in the PDO, the $0.023772 volumetric factor was derived by dividing the proportionate share of the settlement fund attributable to "Other End-Users" ($39,921.44) by 1,679,311, the total number of gallons of No. 2 diesel fuel sold by POSC to the unidentified end-user purchasers during the audit period.

Corporation, the case number, KEF–0039, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the POSC No. 2 diesel fuel, i.e., whether it was a reseller (including refiner or retailer), end-user, or public utility.

4. The volume of POSC No. 2 diesel fuel that the applicant purchased in each month of the settlement period (November 1, 1973–August 31, 1975) in which it claims that it was injured by the alleged overcharges. If the applicant is one of the 29 firms listed in the Appendix to this Decision and is either an end-user or a reseller claiming less than $5,000, it may instead submit a certification that it purchased POSC No. 2 diesel fuel from POSC on a regular basis during the settlement period.

5. If the applicant is a reseller claiming a refund in excess of $5,000, it should also:

(a) state whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for POSC No. 2 diesel fuel with average prices in the firm's market area for each month for which it seeks a refund. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in *Platt's Oil Price Handbook and Oilmanac.*)

6. If the applicant is a regulated firm, e.g., a public utility, it must:

(a) certify that it will pass through any refund received to its customers, and provide the OHA with a full explanation of how it plans to accomplish this restitution, and

(b) certify that it will notify the appropriate regulatory authority of the receipt of the refund money.

7. A statement of whether the applicant was in any way affiliated with POSC. If so, the applicant should explain the nature of the affiliation.

8. A statement of whether there has been any change in ownership of the entity that purchased the POSC No. 2 diesel fuel since the settlement period. If so, the name and address of the current (or former) owner should be provided.

9. A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. *See* 10 CFR 205.9(d).

10. The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed *in duplicate* and must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the informatin is alleged to be privileged or confidential.

All Applications should be sent to: Plaquemines Oil Sales Corporation Special Refund Proceeding, Case No. KEF–0039, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

D. *Distribution of Funds Remaining after First Stage.* Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See Fed. Energy Guidelines* ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODA section 3003(c) and (d). The Secretary has deleted these responsibilities to the OHA, and any funds in the POSC settlement escrow account that the OHA determines will not be needed to effect direct restitution to injured POSC customers will be distributed in accordance with the provisions of PODRA.

It is Therefore Ordered That: (1) Applications for Refund from the funds remitted to the Department of Energy by Plaquemines Oil Sales Corporation pursuant to the Joint Motion to Dismiss approved by the United States District Court for the Eastern District of Louisiana on October 31, 1973 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: January 28, 1988.

APPENDIX

Identified purchasers	Potential refund
Ayers Company	$32,684.80
Brown & Root	5,963.63
Canal Workover	402.33
Celotex Corporation	13,523.25
Coastal Tugs	2,026.83
De Felice Marine	3,467.03
Dockside Floating Elevator	9,885.23
Dowell Div. of the Dow Chemical Co	656.93
Exxon, USA	2,308.03
Harris Well Service	3,668.90
Latex Drilling	1,499.10
J. Ray McDermott	4,140.58
Mobil Oil Corporation	27,105.46
Nicklos Drilling	1,517.63
ODECO	1,510.03
Pennzoil Producing	484.50
Penrod Drilling Company	9,847.70
Sanders Drilling Company	1,669.63
Shell Oil Company	133,015.26
Storm Drilling Company	2,997.73
Strachan Shipping	21,329.40
Corps of Engineers	5,415.95
Gulf Coast Service Stations	5,736.58
Buras Fuel Dock	52,473.30
Crais Oil Company	42,648.40
Delta Marine	32,225.95
Gulf Seafood	1,611.68
Little Lake Oyster	13,397.38
Peppo Oil Works	1,865.33
Other End-Users [1]	39,921.44
Total	$475,000.00

[1] Volumetric refund amount of $0.023772 per gallon.

[FR Doc. 88–2411 Filed 2–4–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in disbursing $7,104,217.29 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Murphy Oil Corporation. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Murphy, a major integrated refiner marketing crude oil and refined petroleum products throughout the United States.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Comments should be filed in duplicate and display a conspicuous reference to Case Number KEF–0095.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director or Jonathan Rees, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 [Mann], (202) 586–2383 [Rees].

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $7,104,217.29, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Murphy Oil Corporation on February 9, 1987. The funds were paid by Murphy towards the settlement of possible violations of the DOE price and allocation regulations relating to transactions by Murphy involving the marketing of refined petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period).

We propose to distribute these funds in two stages. In the first stage, we will accept claims from identifiable purchasers of Murphy refined petroleum products who may have been injured by Murphy's pricing practices during the consent order period. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of refined petroleum products which they purchased from Murphy. Applications for Refund should *not* be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. If any funds remain after meritorious claims are paid in the first stage, they may be used for indirect restitution in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, 1 Fed. Energy Guidelines ¶ 11,702.

Any member of the public may submit written comments regardig the proposed refund procedures. Commenting parties are requested to submit two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Date: January 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 28, 1988.

Name of Firm: Murphy Oil Corporation.

Date of Filing: June 10, 1987.

Case Number: KEF–0095.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on June 10, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Murphy Oil Corporation (Murphy) under the terms of a February 9, 1987 consent order with Murphy. In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Murphy Consent Order.

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, 212. During the course of controls, the ERA conducted an extensive audit of Murphy's operations and, as a result of the audit, alleged that Murphy had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on February 9, 1987, the ERA and Murphy finalized a consent order (Consent Order No. RMUH01983Z) that resolved issues pertaining to Murphy's refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period). Pursuant to the terms of the consent order, Murphy remitted a total of $7,104,217.9 (the consent order fund) [1] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution. With interest, the amount in the Murphy consent order escrow account had grown to $7,438,602.94 as of December 31, 1987.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Murphy consent order fund and have determined that such a proceeding is appropriate. We will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

We propose to implement a two-stage refund process by which firms and individuals who purchased Murphy

[1] This amount consists of the principal consent order amount of $7,000,000 plus $104,217.29 in interest which accrued prior to Murphy's payment to the DOE. For accounting purposes, the interest remitted by Murphy shall be considered as additional principal

refined petroleum products during the consent order period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Murphy refined product purchasers: (i) end-users, i.e. ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers, and refiners that resold Murphy products.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Murphy refined petroleum products during the consent order period. If the product was not purchased directly from Murphy, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Murphy.

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[2] Second, because a showing of banks alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199, (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Murphy. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶85,186 (1986).

1. *Presumptions for Claims Based Upon Refined Product Purchases.* Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Company*, 14 DOE ¶85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Murphy's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the refined product pool is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the Murphy consent order fund).[3] In the present case, the per gallon refund amount is $0.000817. We derived this figure by dividing the consent order funds ($7,104,217.29) by the approximate number of gallons of refined products subject to price and allocation controls sold by Murphy during the consent order period (8,695,987,648 gallons). As in previous cases, we will establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶85,339 (1985).

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

a. *End-users.* In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Murphy petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of Murphy refined petroleum products need only document their purchase volumes from Murphy during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members.[4] However, a regulated firm or cooperative will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

c. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* We propose to adopt a presumption that a firm who resold Murphy products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest (i.e. who purchased less than 6,119,951 gallons of Murphy refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Murphy covered products it purchased during the consent order period. *See TOGCO.* As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[5]

d. *Medium-Range Refiner, Reseller and Retailer Claimants.* In lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[6] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In a number of prior special refund proceedings, we performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987) we determined that it was most efficient to adopt a single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the results of our analyses in prior proceedings. We therefore propose to adopt the 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Murphy refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share.[7]

e. *Spot Purchasers.* We propose to adopt a rebuttable presumption that a refiner, reseller or retailer that made only spot purchases from Murphy did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as result of its spot purchases from Murphy.[8]

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractural agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). As in previous decisions, we propose to adopt the rebuttable presumption that consignees of Murphy refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). However, we also propose that a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Allocation Claims.* We also recognize that we may receive claims based upon Murphy's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Amoco*, 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, it should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury.

3. *Distribution of Product Funds Remaining After First Stage.* We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1988 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, Sections 3003 (c) and (d). The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Murphy consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Murphy customers will be distributed in accordance with the provisions of PODRA.

IV. Applications for Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before

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[2] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶85,090 at 88,179 (1987).

[3] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984).

[4] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Marathon*, 14 DOE at 88,515.

[5] Claimants who attempt to make a detailed showing of injury in order to support a large refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims threshold refund. *See Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co.*, 15 DOE ¶ 85,089 (1986).

[6] That is, claimants who purchased between 6,119,951 gallons and 152,998,776 gallons of Murphy refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 152,998,776 gallons may elect to limit their claim to $50,000.

[7] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, as with the small claims presumption, the 40 percent presumption will not be available to medium-range claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share. *See n.5 infra*

[8] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

disposing of any of the funds received as a result of the Murphy consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the Federal Register.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Murphy Oil Company pursuant to Consent Order No. RMUH01983Z, finalized on February 9, 1987, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-2412 Filed 2-4-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3324-1]

Agency Paperwork Reduction Act (PRA) Requests Completed by OMB

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the PRA (44 U.S.C. 3501 et. seq.), this notice announces that the Information Collection Requests (ICRs) listed below have been approved/not approved by OMB.

EPA ICR #1232; Information Requirements for Importation of Non-conforming Vehicles; OMB action: approved 12/15/87 (OMB #2060-0095; expires 05/31/88).

EPA ICR #1434; Section 114 Information Collection for Protection of Stratospheric Ozone; OMB action: approved 12/1/87 (OMB #2060-0158; expires 05/31/88).

EPA ICR #1430; Community Right to Know—Emergency System Review Sec. 305(b); OMB action: approved 11/2/87 (OMB #2050-0079 expires 04/30/88).

EPA ICR #1428; Community Right to Know—Trade Secret Claims; OMB action: approved 12/7/87 (OMB #2050-0078; expires 10/31/90).

EPA ICR #1425; Application for Reimbursement to Local Government; OMB action: approved 12/7/87 (OMB #2050-0077; expires 12/31/90).

EPA ICR #1422; Hazardous Waste Generator Survey; OMB action: approved 10/6/87 (OMB #2050-0075; expires 11/30/89).

EPA ICR #1383; National Tapwater Consumption Survey (Pilot Study); OMB action: approved 12/14/87 OMB #2040-0108; expires 12/31/88).

EPA ICR #1383; Community Right to Know—Toxic Chemical Release Inventory Form; OMB action: approved 8/3/87 (OMB #2070-0093; expires 6/30/90).

EPA ICR #1352; Community Right to Know—Emergency and Hazardous Chemical Inventory Forms—Reporting Requirements; OMB action: approved 11/20/87 (OMB #2050-0072; expires 10/31/90).

EPA ICR #1303; Miscellaneous Hazardous Waste Management Units; OMB action: approved 9/2/87 (OMB #2050-0074; expires 9/30/90).

EPA ICR #1200; Household Survey of Chemical Product Usage; OMB action: approved 9/15/87 (OMB #2070-0068; expires 9/30/90).

EPA ICR #1191; National Survey of Pesticides in Drinking Water Wells (Pilot Study—extension); OMB action: approved 12/10/87 (OMB #2040-0107; expires 3/31/88).

EPA ICR #1167; NSPS for Lime Manufacturing Plants (Subpart HH); OMB action: approved 10/6/87 (OMB #2060-0083; expires 10/31/90).

EPA ICR #1161; NSPS Opacity Reporting and Recordkeeping Requirements; OMB action: approved 9/1/87 (OMB #2060-0153; expires 3/31/90).

EPA ICR #1158; NSPS for Rubber Tire Manufacturing Industry—Reporting and Recordkeeping; OMB action: approved 9/9/87 (OMB #2060-0156; expires 9/30/90).

EPA ICR #1157; NSPS for Flexible Vinyl and Urethane Coating and Printing—Reporting and Recordkeeping (Subpart FFF); OMB action: approved 10/2/87 (OMB #2060-0073; expires 10/31/90).

EPA ICR #1156; NSPS for Synthetic Fiber Production Facilities—Reporting and Recordkeeping; OMB action: approved 10/28/87 (OMB #2060-0050; expires 10/31/90).

EPA ICR #1153; NESHAP for Benzene Fugitive Emissions; OMB action: approved 9/16/87 (OMB #2060-0068; expires 9/30/89).

EPA ICR #1150; NSPS for Polymer Manufacturing Industry; OMB action: approved 6/22/87 (OMB #2060-0145; expires 6/30/90).

EPA ICR #1129; NSPS Recordkeeping and Reporting Requirements for Secondary Brass and Bronze Ingot Production Plants (Subpart M); OMB action: approved 12/15/87 (OMB #2060-0110; expires 12/31/90).

EPA ICR #1064; NSPS for Automobile and Light Duty Truck Surface Coating (Subpart MM); Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0034; expires 10/31/90).

EPA ICR #1060; NSPS for Steel Plants: Electric Air Furnaces and Argon-Oxygen Decarburization Vessels (Subparts AA and AAA) Information Requirements; OMB action: approved 10/13/87 (OMB #2060-0038; expires 11/30/88).

EPA ICR #1001; PCB Exclusions, Exemptions and Use Authorization; OMB action: approved 9/11/87 (OMB #2070-0008; expires 9/30/90).

EPA ICR #0997; NSPS for Petroleum Dry Cleaners—Reporting and Recordkeeping; OMB action: approved 10/6/87 (OMB #2060-0079; expires 10/31/90).

EPA ICR #0995; Land Disposal Permitting Standards; OMB action: approved 10/13/87 (OMB #2050-0007; expires 9/30/88).

EPA ICR #0994; Survey Report on Great Lakes Beach Closing; OMB action: approved 10/14/87 (OMB #2090-0003; expires 10/31/90).

EPA ICR #0959; Reporting, Recordkeeping and Planning Requirements for Ground-Water Monitoring; OMB action: approved 11/4/87 (OMB #2050-0033; expires 10/31/88).

EPA ICR #0940; Ambient Air Quality Networks—Monitoring and Quality/Precision Data; OMB action: approved 8/12/87 (OMB #2060-0084; expires 8/31/90).

EPA ICR #0874; Application for Federal Assistance (Construction); OMB action: approved 10/7/87 (OMB #2030-0018; expires 9/30/90).

EPA ICR #0801; Uniform Hazardous Waste Manifest for Generators and Transporters; OMB action: approved 9/2/87 (OMB #2050-0039; expires 9/30/88).

EPA ICR #0663; NSPS for Beverage Can Surface Coating (Subpart WW)—Information Requirements; OMB action: approved 11/10/87 (OMB #2060-0001; expires 10/31/90).

EPA ICR #0660; NSPS for Metal Coil Surface Coating (Subpart TT) Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0107; expires 10/31/90).

EPA ICR #0659; NSPS for Industrial Surface Coating of Large Appliances (Subpart SS)—Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0108; expires 10/30/90).

EPA ICR #0658; NSPS for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)—Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0004; expires 10/31/90).

EPA ICR #0649; NSPS for Metal Furniture Surface Coating (Subpart EE)—Information Requirements; OMB action: approved 10/28/87 (OMB #2060-0106; expires 10/31/90).

EPA ICR #0613; Trade Secrets Clearance Justification for Pesticides; OMB action: approved 9/11/87 OMB #2070-0053; expires 6/30/90).

EPA ICR #0612; Affirmation of Non-Multinational Status for Pesticide Information; OMB action: approved 9/29/87 (OMB #2070-0047; expires 2/29/90).

EPA ICR #0601; FIFRA Annual Report on Conditional Registrations; OMB action: approved 11/13/87 (OMB #2070-0026; expires 12/31/89).

EPA ICR #0550; Application for Reference and Equivalent Method Determinations; OMB action: approved 12/8/87 (OMB #2060-0005; expires 1/31/89).

EPA ICR #0390; Underground Injection Control Program Information (renewal of existing requirements); OMB action: approved 8/12/87 (OMB #2040-0042; expires 7/3/88).

EPA ICR #0310; Estimate of Municipal Wastewater Treatment Facility Requirements—Needs Survey; OMB action: approved 10/9/87 (OMB #2040-0050; expires 2/29/89).

EPA ICR #0277; Application for New or Amended Pesticide Registration; OMB action: approved 10/23/87 (OMB #2070-0060; expires 9/30/90).

EPA ICR #0270; Public Water System Program Information (Public Notification/Final Rule); OMB action: approved 10/9/87 (OMB #2040-0090; expires 9/30/90).

EPA ICR #0270; Public Water System Program Information (renewal of existing requirements); OMB action: approved 9/9/87 (OMB #2040-0090; expires 9/30/90).

EPA ICR #0011; Selective Enforcement Auditing Reporting Requirements—Light Duty Trucks and Heavy-Duty Engines; OMB action: approved 11/3/87 (OMB #2060-0064; expires 11/30/88).

Not Approved

EPA ICR #0370; Underground Injection Control Program Information (Hazardous Waste Injection Disposal Restrictions/Proposed Rule); OMB action: not approved 12/22/87.

Approved Expired

EPA ICR #1406; Information Request for Conference on Continuous Emission Monitoring; OMB action: approved 8/11/87 (OMB #2060-0155; expired 10/31/87).

FOR FURTHER INFORMATION CONTACT: Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460, Telephone No. (202) 382-2740

and

Marcus Peacock, Tim Hunt, Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503, Telephone No. (202) 395-3084

Date: January 29, 1988.

Daniel Fiesina,

Director, Information Regulatory Systems Division.

[FR Doc. 88-2442 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3324-6]

Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a study.

SUMMARY: As part of the efforts of the President's Task Force on Regulatory Relief, EPA is releasing a report entitled "Guidance on Estimating Motor Vehicle Emission Reductions from the Use of Alternative Fuels and Fuel Blends."

This report concludes that substantial reductions in ozone-forming precursor emissions are possible with the use of pure methanol or natural gas as motor vehicle fuels in place of gasoline. These fuels cannot be used in current technology gasoline-fueled vehicles without some degree of mechanical modification to the vehicles. Therefore, these fuels would more likely be used initially in fleet applications with new vehicles rather than in area-wide applications with typical current vehicles. A vehicle which incorporates engine design features optimized to take full advantage of pure methanol's excellent combustion characteristics may achieve ozone reduction credits of over 80 percent compared to a comparable gasoline-fueled vehicle. A vehicle designed and built to operate on compressed natural gas may achieve ozone reduction credits of 40 percent compared to a gasoline-fueled vehicle.

The report concludes that there are also substantial carbon monoxide (CO) benefits with the use of gasoline-oxygenate blends, such as gasoline blended with ethanol (a mixture commonly referred as gasohol), methanol or methyl tertiary butyl ether (MTBE). These blends result in CO reductions of up to 35 percent compared to use of straight gasoline (no oxygen). The report also provides data on potential increase in evaporative hydrocarbon emissions which can occur with blends, specifically those that raise the volatility of the blended fuel.

This report provides estimates of the per-vehicle emission effects of various alternative fuels. These estimates are based on a compilation of low and high altitude test data for hydrocarbons, carbon monoxide, and nitrogen oxides. These per-vehicle effects are then used to project fleetwide effects for each model year from 1975 and earlier vehicles to 1990 and later vehicles. Instructions are given on how to use these projections in conjunction with MOBILE3 (or MOBILE4) and calculate fleet average emissions by calendar year. This procedure allows states to estimate the State Implementation Plan credits expected from any likely alternative fuels program they may wish to implement.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, U.S. EPA, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4321. Copies of the study may be requested at this number.

Dated: January 29, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88-2443 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3324-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 25, 1988 Through January 29, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880027, Draft, FHW, LA, 1-10 at College Drive Interchange Modifications and College Drive Widening, just north of Bawell Drive to just north of Concord Avenue, Funding, Baton Rouge, East Baton Rouge Parish, LA, Due: March 21, 1988, Contact: Kenneth A Perret (504) 389-0466.

EIS No. 880028, Final, FHW, WI, North Corridor Arterial and Chippewa River Crossing, Construction, US 12 to US 53, Funding and 404 Permit, Eau Claire County, WI, Due: March 7, 1988, Contact: James Wenning (608) 264-5986.

EIS No. 880029, DSuppl, DOI, LEG, ME, RI, CT, MA, NY, MS, VA, AL, NC, TX, SC, LA, GA, DE, FL, Undeveloped Coastal Barriers, Coastal Barrier

Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, TX, LA, DE, VA, NC, SC, GA and FL, Due: March 21, 1988, Contact: Audrey L. Dixon (202) 343–8115.

EIS No. 880030, Final, SFW, AK, Yukon Delta National Wildlife Refuge, Long Term Management Plan and Wilderness Review, Implementation, Due: March 7, 1988, Contact: William Knauer (907) 786–3399.

EIS No. 880031, Final, FHW, AR, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant Street Intersection to US 65/US 65B Interchange, Funding and 404 Permit, Pine Bluff, Jefferson County, AR, Due: March 7, 1988, Contact: Edward C. Lydick (501) 378–5625.

Amended Notices

EIS No. 870106, Draft, COE, Shorelands Commercial/Industrial Park Development and Construction, Section 10 and 404 Permits, Hayward City, Alameda County, CA, Due: May 18, 1987, Contact: Scott Miner (415) 974–0448.

Published FR 4–3–87—The COE has Officially Withdrawn this draft EIS.

Dated: February 2, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–2476 Filed 2–4–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3324–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 18, 1988 through January 22, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–BLM–K61088–00, Rating LO, Arizona Mohave Wilderness Study Areas, Wilderness Recommendations, Designation, Greenlee, Maricopa, Mohave, Pinal, Pima, and Yavapai Counties, AZ and Grant County, NM, SUMMARY: EPA expressed a lack of objections to this project, but requested that BLM coordinate nonpoint source water pollution planning with the State of Arizona.

ERP No. D–FHW–H40137–NB, Rating LO2, Van Dorn Street Connection, NB–2/10th Street to US–77/West Bypass, Construction, Funding, City of Lincoln, Lancaster County, NB, SUMMARY: EPA has no objections to the project as proposed, but believes that insufficient information is presented on which to adequately assess indirect impacts. Accordingly, EPA requests that additional information on indirect impacts be presented in the final EIS.

Final EISs

ERP No. F–FHW–H40108–IA, Central Business District Loop Arterial Construction, Harding Road and I–235 to US 65 at Scott Avenue, Funding and 404 Permit, Polk County, IA, SUMMARY: EPA's comments on the draft EIS was generally responded to concerning air quality, noise and water quality in this project.

Dated: February 2, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–2477 Filed 2–4–88; 8:45 am]

BILLING CODE 6560–50–M

[SWH–FRL–3324–2]

Petition for Case-By-Case Extension of the Effective Date of the Land Disposal Restrictions on Certain Corrosive Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of petition.

SUMMARY: EPA is proposing to grant the Department of Energy's (DOE) Savannah River Plant's request for an extension of the July 8, 1987, effective date of the land disposal restrictions applicable to liquid hazardous wastes having a pH of less than or equal to two. This action responds to a petition submitted under 40 CFR 268.5 which allows any person to request the Administrator to grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the person's control and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. If this proposed action is finalized, DOE can continue to dispose its corrosive hazardous waste at the Savannah River Plant until July 8, 1988, without being subject to the restrictions applicable to such wastes.

DATE: Comments on this notice must be received on or before March 7, 1988.

ADDRESSES: The original and two copies of any comments must be sent to EPA RCRA Docket (S–212), Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F–87–LDPP–FFFFF on all copies of the comments. The public docket is in Room S–212 at the above address and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact RCRA Hotline, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 toll-free or (202) 382–3000 in the Washington, DC, metropolitan area.

For information on specific aspects of this notice contact Lisa E. Faeth or Stephen R. Weil, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). HSWA imposes additional responsibilities on persons managing hazardous wastes. Sections 3004(d) through (g) prohibit the land disposal of certain untreated hazardous wastes by specified dates in order to protect both human health and the environment for as long as the wastes remain hazardous. In particular, section 3004(d) prohibits the land disposal of liquid hazardous wastes having a pH of less than or equal to two effective 32 months after the enactment of HSWA. These wastes can be land disposed after this date if the treatment residual does not exhibit a pH of two or less. Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to set effective date variances based on the earliest dates that such capacity will be available. Under section 3004(h)(3), EPA can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year. On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program, including the framework for the petition process, and promulgated regulations enacting the first phase of the program as well as the procedures for submitting case-by-case extension petitions.

B. Demonstrations Evaluated During Petition Review

Case-by-case extension petitions must satisfy the requirements outlined in 40 CFR 268.5. The applicant must demonstrate that adequate alternative treatment, recovery, or disposal capacity will not be available by the applicable effective date of the land disposal restrictions by showing that he has made a good-faith effort to locate and contract with facilities nationwide to manage his waste. This demonstration also requires that the petitioner investigate the availability of adequate alternative on-site capacity for his waste (40 CFR 268.5(a)(1)). Case-by-case extension petitions must show that the applicant has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for all his waste, but due to circumstances beyond the applicant's control this capacity cannot reasonably be made available by the applicable effective date of the land disposal restrictions (40 CFR 268.5(a)(2), (3), and (4)). The petitioner must submit a schedule showing the progress which will be made towards completing the project to provide adequate alternative capacity by including dates for obtaining required operating and construction permits and dates for completing key phases of the project (40 CFR 268.5(a)(5)). The applicant also is required to show that he has arranged for sufficient capacity to manage the entire quantity of waste which is the subject of his petition during the requested extension period and to document in his application the location of all sites at which the waste will be managed (40 CFR 268.5(a)(6)). During an extension period the restricted waste can be managed in a surface impoundment or landfill provided that each new surface impoundment or landfill unit, each replacement of an existing surface impoundment or landfill unit, and each lateral expansion of an existing surface impoundment or landfill unit at the facility meets the applicable requirements of 40 CFR 268.5(h)(2) which pertain to ground water monitoring and the installation of two or more liners and leachate collection systems (40 CFR 268.5(a)(7)).

After an applicant has been granted a case-by-case extension, EPA is kept informed of the progress being made towards obtaining adequate alternative treatment, recovery, or disposal capacity. Any change in the demonstrations made in the petition must be immediately reported to the Agency (40 CFR 268.5(f)). Progress reports also have to be submitted which describe the progress being made towards obtaining adequate alternative capacity, identify any delay or possible delay in developing the capacity, and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)).

II. Petition

DOE has petitioned EPA to grant an extension of the July 8, 1987, effective date of the land disposal restrictions applicable to certain corrosive hazardous wastes generated and managed at its Savannah River Plant near Aiken, South Carolina. The Department is presently constructing an Effluent Treatment Facility (ETF) consisting of wastewater treatment tanks to treat the radioactively contaminated wastewater currently disposed of in the surface impoundments. EPA is proposing to grant a one-year extension of the effective date of the restrictions to July 8, 1988, for the wastewater having a pH of less than or equal to two. DOE's petition request and supporting documentation are available in the public docket for this rulemaking. Interested persons are invited to submit written data, criticisms, or opinions on the petition. All comments will be considered by EPA and addressed in a Federal Register notice stating the Agency's final decision to grant or deny the petition. A summary of the DOE petition, Petition Number 003, follows below.

A. Petition Summary

The DOE facility reprocesses nuclear fuels to be used for national defense. The recovery and purification of transuranic products and unburned fissionable material from spent reactor fuel elements generate radioactive liquid waste. Its chemical separations process and waste volume reduction program generate low-level radioactively contaminated wastewater consisting of evaporator overheads and high-level radioactively contaminated hazardous waste consisting of evaporator bottoms. The wastewater can be a hazardous waste when the pH is two or less and/or the concentrations of mercury and chromium exceed the concentrations for the characteristic of EP toxicity. The concentrations of these metals never exceed the land disposal prohibition levels specified by Congress in RCRA section 3004(d). This wastewater is being disposed in six surface impoundments, all of which currently operate under interim status. The surface impoundments are unlined; monitoring wells are used to detect any radioactive and chemical constituent migration to ground water. As wastewater passes through the underlying soils, most of the radionuclides are held in the soil by natural filtration, adsorption, and ion exchange while radioactive decay takes place. Waste with a pH of 2.0 to 4.0 seeps optimally, and seepage efficiency decreases as the pH rises until no seepage is possible for waste in a pH range of 10 to 12 due to peptizing of the clay. If the pH rises to this level, the impoundments are permanently plugged. Occasional diversions of low-level radioactively contaminated cooling water and stormwater runoff, which are not hazardous wastes, are collected in two 4 million gallon earthen retention basins having a single synthetic liner. This wastewater is being pumped to the surface impoundments for disposal. In 1986 the impoundments received approximately 250,000 gallons per day of wastewater consisting of evaporator overheads and contaminated cooling water and stormwater. Uncontaminated cooling water and stormwater is discharged to surface water. The high-level radioactively contaminated hazardous waste is being stored in tank farms until the waste can be treated at the Defense Waste Processing Facility (DWPF) which is under construction and expected to be operational within the next seven years. The waste will be mixed with borosilicate glass and fill stainless steel canisters for ultimate disposal in a repository or mixed with cement and set in concrete vaults.

DOE is currently constructing the ETF to replace the surface impoundments and to treat the process wastewater and the low-level radioactively contaminated cooling water and stormwater runoff. These wastewaters will flow to two lift stations, each consisting of a corrosion resistant in-ground tank and having secondary containment capable of holding more than the entire contents of the tank. The tank system will be equipped with leak detection systems. The lift station tanks are sized to provide volume for surge, normal operation, and alarm conditions. Waste will be pumped to the aboveground, corrosion resistant wastewater feed tanks in a dike capable of containing one full tank volume and

rainfall. The tanks are sized to provide capacity for normal operation plus the greatest predicted flow surge. Wastewater leaving the feed tanks will be sent to the treatment facility for pH adjustment (which minimizes the solubility of certain constituents in the acidic and basic overheads), submicron filtration (which removes suspended solids), treatment by reverse osmosis (which eliminates dissolved ionic nonradioactive species), and polishing using ion exchange (which removes dissolved ionic radioactive species). Filter backwash, reject from reverse osmosis, and regeneration waste from ion exchange will be sent to evaporators for further volume reduction. Until start-up of the DWPF, there is sufficient capacity in the tank farms to store the concentrate from the evaporators. Evaporator overheads and effluent from the ion exchange system will be pumped to aboveground treated effluent hold tanks for analysis. Contaminated effluent, indicating a process upset in the treatment plant, will be sent to the wastewater feed tanks for recycling. Treated effluent will be discharged to a new outfall. DOE will also construct two 2.0 million gallon, below and above grade, earthen collection basins having a double synthetic liner with interstitial leak detection to accomodate diversions of low-level radioactively contaminated cooling water from the ETF. The existing retention basins will continue to be used to hold low-level radioactively contaminated cooling water and stormwater. Contaminated wastewater from the new and existing basins will be pumped to the lift station tanks for treatment. Uncontaminated cooling water and stormwater will continue to be discharged to the existing outfalls. Once the ETF is operational, the surface impoundments will be closed in accordance with relevant RCRA Subtitle C regulatory standards.

B. Petitioner's Demonstrations

DOE's application for an extension of the effective date of the land disposal restrictions applicable to its corrosive hazardous waste must include a showing that it has made a good-faith effort to locate and contract for adequate alternative nationwide treatment, recovery, or disposal capacity off-site, or to establish such capacity on-site, by the effective date of the restrictions. In determining the availability of off-site capacity to manage the waste, the Department contacted wastewater treatment facilities. To accommodate a worst case situation, DOE specified that 250,000 to 400,000 gallons per day of its radioactively contaminated corrosive waste requires treatment. The Department asked nine privately owned wastewater treatment facilities and one publicly owned treatment facility which are located throughout the nation to treat, though not necessarily neutralize, the waste. All privately owned facilities did not have the technology to treat radioactively contaminated waste. The publicly owned facility, DOE's plant in Oak Ridge, Tennessee, could treat the waste but did not have sufficient capacity for the large volume which is generated. Hence, EPA is presently of the opinion that the Department is correct in stating that adequate alternative treatment, recovery, or disposal capacity off-site throughout the nation did not exist by the effective date of the land disposal restrictions.

DOE has investigated the feasibility of two alternatives which could provide on-site treatment capacity that would enable the pH of the wastewater to be adjusted to greater than two and yet stay within the optimal seepage range of 2.0 to 4.0. The treated wastewater, which would no longer be prohibited from land disposal, could then be disposed in the surface impoundments. However, it appears that neither of these alternatives could be implemented by the effective date of the land disposal restrictions. One alternative would be constructing a large tank for neutralization of the wastewater to a pH greater than 2.0 and less than or equal to 4.0 prior to land disposal. The tank would need to be of sufficient size to accommodate and mix the large volume of wastewater being rapidly discharged and the neutralizing reagents. DOE found that it could not obtain or design and construct such a tank—which would require a pH monitoring system, secondary containment, a leak detection system, piping, and other additions — prior to the effective date. Hence, the Department does not consider this alternative a means for providing on-site treatment capacity.

The other alternative for providing on-site treatment capacity evaluated by DOE would involve raising the pH of the wastewater so that it would no longer be a restricted hazardous waste before placing it into any of the facility's surface impoundment units for further treatment and disposal. First, sufficient base would be added to the corrosive wastewater while the waste would be in the pipes in order to raise the pH above two. The wastewater would then not be prohibited from placement on the land and could flow into the treatment surface impoundment. A continuous pH monitoring system at the tap would assure that the prohibition would not be violated. DOE would then use one of its six surface impoundments for further treatment of the wastewater. Acid would be added to the wastewater in this imooundment to adjust the pH to within the optimal seepage range of 2.0 to 4.0 and yet exceed the prohibition level of two. Finally, this treated wastewater would be disposed in the remaining five impoundments. DOE, however, was unable to obtain and install a continuous pH monitoring system before the land disposal restrictions became effective. Furthermore, the large volume of acid and wastewater in the treatment surface impoundment would prevent complete mixing of the constituents, and therefore the pH of the treated wastewater would not be uniform. Thus, wastewater taken from the treatment impoundment for disposal in the other surface impoundments might have a pH less than or equal to two, and then DOE would be operating in violation of the land disposal prohibition. In addition, South Carolina recuires a permit to treat the wastewater in the surface impoundment, and such a permit could not be issued until after the effective date of the land disposal restrictions. Therefore, EPA is tentatively of the view that DOE was legitimately unable to establish on-site treatment capacity by the effective date of the land disposal restrictions.

In addition to demonstrating that a good-faith effort has been made to establish or locate and contract for adequate alternative capacity to manage its waste by the effective date, DOE must show that it has entered into a binding contractual commitment to construct or otherwise provide such capacity. Construction of the ETF began in early 1987. DOE's petition includes three contracts signed by the operator of the facility and the builders of the lift stations, wastewater feed tanks, treatment plant, cooling water collection basins, and miscellaneous buildings needed to operate the treatment facility. These units constitute the entire facility. It is highly likely that all the contracts will be satisfied. The funds for constructing the ETF, which is expected to cost $45 to $50 million, have already been appropriated to this project. In addition, section 3005(j) of RCRA, which requires surface impoundments to have two or more liners, leachate collection systems, and ground water monitoring by November 8, 1988, creates an inflexible deadline for completion of the treatment facility and closure of its impoundments which do not meet these requirements. Hence, the three contracts which will most likely cover

construction of the ETF over the duration of the extension period appear to show that DOE has entered into a binding contractual commitment to build the facility.

DOE is required to prove that adequate alternative treatment, recovery, or disposal capacity, which is either off-site or on-site, could not reasonably be made available by the effective date of the land disposal restrictions due to circumstances beyond the Department's control. Assuming that adequate alternative off-site capacity does exist (which appears doubtful, as explained above), DOE considers transport of the large volume of corrosive waste generated daily impractical if not impossible. To support its assertion, DOE claims that it generates an average daily volume of 261,100 gallons of wastewater (consisting of evaporator overheads and contaminated cooling water and stormwater runoff). Contaminated cooling water and stormwater is generated only intermittently, and therefore need not be considered in determining the volume of restricted waste for shipment. In a worst case situation where the evaporator overheads are always a restricted corrosive waste, approximately 261,100 gallons of restricted waste would have to be shipped daily to an off-site facility. Since an average size truck can hold 5,000 gallons of waste, approximately 52 trucks would be needed to haul wastewater from the site each day. DOE claims that using a large number of trucks is logistically difficult and, hence, off-site management of the waste cannot reasonably be made available by the effective date of the land disposal restrictions. In addition, there can be state regulatory activities which can delay the packaging and transportation of radioactively contaminated waste off-site.

DOE maintains there were circumstances, which were beyond its control, that prove the on-site capacity under construction could not reasonably be made available by the effective date of the land disposal restrictions. The Department's consideration of draft legislation leading to the passage of HSWA was a contributing factor in the decision to construct a treatment facility to replace the surface impoundments. After completing research and development the initial budget estimate for the project was prepared and sent to DOE headquarters in August, 1983. DOE then submitted the budget request to Congress on May 4, 1984, prior to passage of HSWA in November, 1984. Therefore, the Department initiated activities which would phase out dependence on land disposal in anticipation of the passage of future regulations restricting the land disposal of hazardous wastes by the earliest possible date, the date HSWA was enacted. Despite quickly acting to obtain the necessary funding to begin construction of the ETF, DOE found that the enormous facility needed to treat the large volume of wastewater could not be constructed prior to the effective date. Furthermore, the radioactivity of the wastewater has caused front-end engineering design of the ETF to take considerably more time than a conventional wastewater treatment facility.

DOE supports its claim that the capacity of the ETF will be sufficient to manage all the waste which is the subject of its application by comparing the volume of wastewater the Department expects to generate with the design requirements of the facility. DOE states in its petition that the ETF is sized to treat up to 237,600 gallons per day of process wastewater. There is additional capacity to allow treatment on a nonroutine basis of 100,800 gallons per day of radioactively contaminated cooling water and stormwater runoff. Therefore, the facility can treat up to 338,400 gallons per day of wastewater which is generated at an average rate of 261,100 gallons per day. DOE acknowledges that process wastewater flow can exceed 237,600 gallons per day to peak at 1,440,000 gallons per day since the wastewater is usually generated on a batch discharge basis. The two 50,000 gallon lift station tanks and the two 450,000 gallon feed tanks provide surge capacity for equalizing the incoming flow. The tanks are sized to hold more than the sum of all the individual batch discharges which could be sent simultaneously to the ETF and to give plant personnel time to react to the surge condition and to allow cooling time for the pump motors. Thus, the ETF apparently has sufficient capacity to treat the entire quantity of waste currently being disposed in the surface impoundments.

The ETF construction schedule submitted with the application spans a 22-month period from January, 1987, to November, 1988. The schedule shows two construction permits covering the entire facility were issued by the South Carolina Department of Health and Environmental Control. Milestone dates for completion of the various items that make up the ETF are also given.

DOE states in its application that there is adequate capacity to manage its waste during the extension period in the surface impoundments and that these impoundments meet the requirements of 40 CFR 268.5(h)(2). The Department included in its application a map documenting the location of the surface impoundments. The entire quantity of waste generated over the extension period can be disposed in the impoundments provided the units continue to seep optimally. The surface impoundments have insufficient freeboard to accommodate both rainwater and wastewater which would accumulate in plugged units. The impoundments will seep optimally if only the corrosive hazardous waste which is the subject of this petition is disposed in the units or if other waste codisposed with the corrosive waste has a pH greater than 2.0 and less than or equal to 4.0. The facility is in compliance with the provisions of 40 CFR 268.5(h)(2), stipulating that each new, replaced, and laterally expanded surface impoundment or landfill at the disposal facility meet requirements relating to ground water monitoring and the installation of two or more liners and leachate collection systems. DOE states in its petition that all surface impoundments or landfills at the facility were constructed, replaced, and laterally expanded prior to November 19, 1980, the date hazardous waste managers had to begin complying with the first regulations to establish a Federal hazardous waste management system under 40 CFR Parts 260 through 265. Hence, these units are not new, replaced, and laterally expanded surface impoundments or landfills that must meet the ground water monitoring, liner, and leachate collection requirements.

C. EPA's Proposed Action

For the reasons discussed above it appears that DOE's demonstrations have satisfied all the requirements for a case-by-case extension of the effective date of the land disposal restrictions on a designated group of hazardous wastes. Therefore, EPA is proposing to grant an extension of the July 8, 1987, effective date of the restrictions on certain corrosive hazardous wastes to DOE's Savannah River Plant for the radioactively contaminated wastewater having a pH of less than or equal to two which is the subject of its petition. If the extension is granted, the wastewater, which would not be prohibited from land disposal, could be disposed in the surface impoundments over a one-year period ending July 8, 1988, the maximum allowable extension period under HSWA. Since DOE expects the ETF to be in operation by November 8, 1988, the

petitioner will probably request a renewal of the extension which will allow additional time to complete construction of the facility.

If DOE obtains a case-by-case extension, it would have to submit a progress report six months after the date the extension is granted. The Agency must also be notified of any change in the conditions specified in the petition. The extension would remain in effect unless DOE failed to make a good-faith effort to meet the schedule for completion, the Agency denied or revoked any required permit, conditions certified in the application changed, or DOE violated any laws promulgated by EPA.

(Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924))

Dated: January 28, 1988.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 88-2444 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3325-4]

Science Advisory Board; Radiation Advisory Committee, Radon Measurement Proficiency Program Subcommittee; Two Open Meetings—February 16-17, 1988 and February 25, 1988

Under Pub. L. 92-463, notice is hereby given that a meeting of the Radon Measurement Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, Region I Headquarters in Boston, Massachusetts on February 16-17, 1988. The meeting will be held in Room 1507 of the John F. Kennedy Building at Government Center. The meeting will begin at 10:00 a.m. Tuesday and adjourn no later than 4:00 p.m. Wednesday.

The purpose of the meeting is to continue the review of the *Radon Measurement Proficiency Program* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Michael Mardis of the Office of Radiation Programs at (202) 475-9605, ANR-464, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Science Advisory Board's Radiation Advisory Committee will meet Thursday, February 25, 1988 in the South Conference Area, Room #2, Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9:00 a.m. and adjourn no later than 1:00 p.m.

The Committee will hear the report of the Radon Measurements Subcommittee and discuss other radiation related topics.

Both meetings are open to the public; however, seating is limited. Any member of the public wishing to attend, obtain further information, or submit written comments to the Subcommittee, should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on February 10, 1988 for the meeting in Boston and by February 20, 1988 for the Committee meeting in Washington, DC. The telephone number is (202) 382-2552.

Date: February 1, 1988.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 88-2557 Filed 2-4-88; 12:49 pm]

BILLING CODE 6560-50-M

[OPTS-59255; FRL-3324-9]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacture notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption. Written comments will be received until February 21, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-59255)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, RM. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays

T 88-3

Close of Review Period. February 21, 1988.

Importer. Confidential.

Chemical. C.B.I.

Use/Import. Confidential. Import Range: Confidential

Date: January 28, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-2446 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3324-4]

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's "Guidance on Class I Clean Water Act Administrative Penalty Procedures". The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the "Guidance on Class I Water Act Administrative Penalty Procedures". The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Wickenburg Concrete Sand and Gravel, Wickenburg, Arizona; EPA Docket No. IX-FY88-13; filed on January 28, 1988, with Barbara Dimanlig, Acting Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-0718; proposed penalty up to $25,000 for discharging without a permit as detected during an Arizona Department of Environmental Quality inspection on June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to February 29, 1988.

Dated: January 28, 1988.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 88-2447 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3324-5]

Sole Source Aquifer Designation for the Aquifer System of Martha's Vineyard, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to a petition from the Martha's Vineyard Commission, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Martha's Vineyard Regional Aquifer satisfies all determination criteria for designation as a Sole Source Aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: the Martha's Vineyard Regional Aquifer is the sole source of drinking water for the Island's residents and visitors; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the Island's residents. As a result of this action, all Federal financially assisted projects proposed for construction on Martha's Vineyard will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the **Federal Register.**

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Water Management Division, WGP-2113, Boston, MA 02203. The designation petition submitted may also be inspected during normal business hours at the Martha's Vineyard Commission office in Oak Bluffs or at the Public Library in Edgartown, MA 02557.

FOR FURTHER INFORMATION CONTACT: Robert E. Adler, Groundwater Management Section, EPA Region I, John F. Kennedy Federal Building, WGP-2113, Boston MA 02203, (617) 565-3601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h-3(e), Pub. L. 93-523) states:

If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, shall publish notice of that determination in the **Federal Register.** After publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 16, 1987, EPA received a petition from Martha's Vineyard Commission (MVC) requesting designation of the Martha's Vineyard Regional Aquifer as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information from the MVC on August 28, 1987, fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on September 23, 1987, on Martha's Vineyard, in accordance with all applicable notification and procedural requirements. Unanimously favorable comments were received during the 30-day public comment period.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area and streamflow source area(s), the project designation area, and the project review area are appropriate. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating Marth's Vineyard as a sole source aquifer:

1. The Martha's Vineyard Regional Aquifer is the sole source of drinking water to all of the residents of, and visitors to, the Island of Martha's Vineyard.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area, nor is there any cost-effective future source or combination of future sources available to serve Martha's Vineyard due to its physical separation from the mainland.

3. EPA has found that the MVC has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is rated as good to excellent (refer to Appendix D of Petition), it is highly vulnerable to contamination due to the Island's geological characteristics and land-use patterns. The silica sands of the outwash plain, comprising the dominant medium through which percolating precipitation infiltrates in the primary recharge area, are of particular concern due to their low cation exchange capacity, low organic content and high permeability. For these reasons, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from chemical spills, highway, urban and rural runoff, septic systems, leaking storage tanks, both above and underground, road salting operations, saltwater intrusion, and landfill leachate. Already in the past four years, there have been three separate instances of contamination of sources of drinking water on Martha's Vineyard: the Up-Island Gasoline Station spill in Tisbury; the Barnes Road leak from an abandoned underground storage tank in Oak Bluffs; and the precautionary closing of the Machaket well due to a leak from an above-ground heating fuel tank at the Edgartown Water Company. Since all Island residents and visitor trade are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the Island's residents.

III. Description of the Martha's Vineyard Regional Aquifer System, Designated Area and Project Review Area

Due to its geologic characteristics and the fact that it is an oceanic island, the entire land area of Martha's Vineyard constitutes the recharge area to the island's aquifer system. The island consists of two distinct geologic deposits: the terminal moraines (Gay Head Moraine and Martha's Vineyard Moraine), and the outwash plain. The terminal moraines occupy approximately 40% of the Island's land area and are composed of a variety of soils with perched water tables, springs and brooks. The outwash plain comprises the primary recharge area and consists of layered sands and silts in one continuous, unconfined aquifer and it encompasses the remaining 60% of the Island. Thus, the designated area is coterminous with the entire land area of the Island (including Chappaquiddick) landward of mean low tide. This area is also fully coincident with the proposed project review area, in which federal financially assisted projects will be subject to review to determine if, by contaminating the aquifer, they pose a significant hazard to public health.

IV. Information Utilized in Determination

The information utilized in this determination included the Martha's Vineyard Commission's petition, which included field analyses and technical hydrogeologic maps in the petition's appendices, U.S. Geological Survey's hydrologic map, and written and verbal comments submitted by the public. These materials are available to the public and may be inspected during normal business hours at the addresses listed previously.

V. Project Review

EPA Region I is working with the Federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the Martha's Vineyard Regional Aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection mechanisms. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control mechanisms to protect the quality of ground water in the Martha's Vineyard Regional Aquifer.

VI. Summary and Discussion of Public Comments

None of the issues expressed during the public comment period developed into controversial issues. All of the mail received during the public comment period was unanimously in favor of the Island's designation as a sole source aquifer. The comments and questions raised at the public hearing were primarily attributable to unfamiliarity among Island residents with the implications of such a designation. Information was sought concerning the following general questions: (1) What types of land development projects would fall under Federal review, (2) would FHA-supported mortgages for private homes be subject to review, and (3) would Federal review jurisdiction be applied to state financed or constructed projects? In general, all the comments favored designation.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-2458 Filed 2-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 540

FMC requests an extension of clearance for 46 CFR Part 540 which implements sections 2 and 3 of Pub. L. 89-777 (46 U.S.C. 817 (d) and (e)). That law requires vessel owners, charterers, and operators of American and foreign passenger vessels having 50 or more berth or stateroom accommodations and embarking passengers at United States ports, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of a voyage or cruise. The Commission estimates an annual respondent universe of 60 reporting steamship operators who possess approximately 110 certificates. Total estimated respondent burden is 939 manhours: 639 manhours for complying with the regulation and 300 manhours for completion of the form. Total cost to the Federal Government is estimated at $60,000; total cost to respondents is estimated at $70,000.

46 CFR Part 572

FMC requests an extension of clearance for 46 CFR Part 572 which implements the Shipping Act of 1984 agreement provisions. The Act specifies the mandatory content of certain kinds of agreements, sets forth procedures governing the Commission's disposition of such agreements, and defines the Commission's authorities and responsibilities. The Commission estimates a respondent universe of 1310, which is comprised of 60 conferences, 800 carriers, and 450 terminal operators. Annual respondent burden for complying with the regulation is 21,814 manhours; annual recordkeeping requirement is estimated at 8786 manhours. Estimated annual cost to the Federal Government is $300,000; estimated annual cost to respondents is $997,000.

Joseph C. Polking,

Secretary.

[FR Doc. 88-2453 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 001-000081-003
Title: ILWU-PMA Program Fund
Parties: International Longshoremen's and Warehousemen's Union Pacific Maritime Association
Synopsis: The agreement amends the CFS Program Fund Agreement to reflect incorporation of walking bosses' and foremen's fringe benefit costs into the cost allocation method.

Agreement No.: 224-200087
Title: Port of Oakland Terminal Agreement
Parties: Port of Oakland (Port) Maersk Line Pacific, Ltd. (Maersk)
Synopsis: The proposed agreement provides for a nonexclusive preferential assignment whereby Maersk will use certain Port premises including two container cranes (Port of Oakland Cranes Nos. X-409 and X-410) situated in the Outer Harbor Terminal area, Port of Oakland.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 2, 1988.

[FR Doc. 88-2454 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Mendoza International et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2103R
Name: Hermilo Mendoza dba Mendoza International
Address: 4825 N. Scott St., Suite 77-2, Schiller Park, Illinois 60176
Date Revoked: November 4, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2888
Name: First Union Export Trading Company
Address: First Union Plaza, Corp-18, Charlotte, NC 28288
Date Revoked: December 14, 1987
Reason: Surrendered license voluntarily

License Number: 2839R
Name: Dominicana Freight Forwarders
Address: 1257 Saint Nicholas Avenue, New York, NY 10032
Date Revoked: December 19, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1249
Name: W. Mercer & Co., Inc.
Address: P.O. Box 885, J.F.K. International Airport Jamaica, New York 11430-0885
Date Revoked: December 23, 1987
Reason: Surrendered license voluntarily

License Number: 2486
Name: Fabius & Co. Customs Brokers Inc. dba Atlantic Forwarding Co.
Address: 90 West Street, Rm. 2017, New York, NY 10006
Date Revoked: December 28, 1987
Reason: Voluntarily requested revocation

License Number: 1584
Name: Winair Freight Inc.
Address: 7700 NW., 54th Street, Miami, FL 33166
Date Revoked: December 29, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2500
Name: Ohio Midwest Exports, Inc.
Address: 7026 Corporate Way, Suite 207, Centerville, OH 45459
Date Revoked: December 29, 1987
Reason: Failed to maintain a valid surety bond

License Number: 32R
Name: Severin Goldstein, Inc.
Address: 1818 Ramona Ave., # 307 So. Pasadena, CA 91030
Date Revoked: January 4, 1988
Reason: Voluntarily requested revocation

License Number: 2028R
Name: ACM International, Inc.
Address: 12866 Reeveston, Houston, TX 77039
Date Revoked: January 8, 1988
Reason: Surrendered license voluntarily

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 88-2456 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Tariffs

By notice served November 2, 1987, and published in the **Federal Register** on

November 9, 1987, the Federal Maritime Commission notified 100 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled.

Thirteen carriers replied to the notice, requesting that their tariffs remain active. Accordingly, the tariffs of these 13 carriers, as listed in Attachment A, will be retained in the Commission's active files.

The remaining 87 carriers did not respond to the notice. It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of these 87 carriers, or listed in Attachment B to this notice, will be cancelled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now Therefore, It Is Ordered, That the tariffs of the 87 carriers listed on Attachment B be cancelled.

It Is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed in Attachment B to this Order.

It Is Further Ordered, That this notice be published in the **Federal Register.**

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation, by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A—Federal Maritime Commission, Bureau of Domestic Regulation, Offie of Carrier Tariffs and Servcie Contract Operations

[Carriers that responded to the notice of intent to cancel inactive tariffs]

AFI Worldwide Forwarders	000148
American Vanpac Carriers, Inc.	000245
Arrowpac, Inc.	000274
Aurora International Forwarding, Inc.	000317
Bekins International Lines, Inc	000358
Crescent City Marine Ways & Dry Dock Co., Inc.	000839
Monti Moving & Storage, Inc	001735
Movers' & Warehousemen's Assoc. of AM., Inc	003014
Pan American Express, Inc	000985
Perfect Pak Company	001006
Sause Bros. Ocean Towing Co., Inc	001076
Trans-Caribbean Moving & Shipping, Inc	002233
Tucor Services, Inc	000630

Attachment B—Federal Maritime Commission Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations

[Carriers that failed to respond to the notice of intent to cancel inactive tariffs]

American Kings, Inc	006768
American Marine Lines Co., Inc	000232
Americargo International, Inc	000244
Bekins Wide World	000359
Bestway Ocean Express Transport, Inc	000374
Calif., Hawaii & Samoa Trans. Company, Inc	000665
California Manufacturers Freight Association	000668
Cambridge International Incorporated	001610
Cargomatic Express, Inc	006825
Caribbean Bulk Services, Inc	000704
Caribbean Express Inc	002604
Caribbean Trailer Transport Corporation	000713
Central Alaska Marine Lines, Inc	000732
Centurion Consolidation Company	000733
Century Marine, Inc	000742
Combined Hawaiian Express	000773
Container Marine Transport Inc	000814
Container Moving International, Inc	000815
Continental Forwarders, Inc	000818
Coral Freight Consolidators of Guam	002605
Crossroads Freight Systems, Inc	000843
Dansk Steamship Lines	000912
Dean Forwarding Company, Inc	000920
Dewitt Freight Forwarding	000932
Durion Freight Lines, Inc	005701
Eastern Forwarding International, Inc	001223
Express Forwarding and Storage Co., Inc	001270
General Transpac Systems	008831
Global Marine, Inc	002606
Hawaiian-Pacific Freight Forwarding	002600
Higa Fast Pac, Inc	001441
Home-Pack Transport, Inc	001448
Imperal Van Lines International, Inc	001325
Imperal Van Lines, Inc. of California	006838
Inter-American Moving Services, Inc	002770
International Export Packers, Inc	001361
Island Freight Lines	006839
Ivaran Lines	005940
Ivory Forwarding, Inc	001394
Jensen Associates Inc	001411
Karevan, Inc	001484
Kingpak, Inc	006843
La Rosta Del Monte Express, Inc	001588
Maritime Company of the Pacific	001671
Medina Shipping Co., Inc	001698
Mercantile Freight Service, Inc	001703
Merchants International, Inc	001704
Mercury International Forwarders Inc	001816
Merit Container Express, Inc	001707
Meteoro Express, Inc	001716
Mighal International Inc	001723
Milne International, Inc	001725

Attachment B—Federal Maritime Commission Bureau of Domestic Regulation Office of Carrier Tariffs and Service Contract Operations—Continued

[Carriers that failed to respond to the notice of intent to cancel inactive tariffs]

Mudanza Boulevard & Storage, Inc	001742
Mundanzas Sierra Inc	001743
Nauru Pacific Line	001503
Negron Moving Express	001534
P.R.V.I. Consolidators Corp	000862
Pacific Marine Lines, Inc	006854
Poppy Food Company	001028
Puerto Rico Express, Inc	002599
Puget Sound Freight Lines	001044
Pyramid International Forwarding, Inc	001045
Rainbow Express Inc	000856
Reliance Forwarding Corporation	000867
Republic Shipping Line	000869
Richardson Forwarding Co	000874
Rivergate Shipping, Inc	006857
Robert Harbin	001574
Royal Hawaiian Forwarding	000885
Sail Puerto Rico	001049
San Lorenzo Express Corporation	001069
Sea Fast Shipping, Inc	001092
Sea Trailers Express, Inc	001137
Seafreight Inc	001106
Security Forwarders, Inc	001126
Senko Container Line	001129
Star Freight	001181
Star Line, Inc	001183
Storage & Consolidators, Inc	001192
Thru-Container International, Inc	006862
Towne International Forwarding, Inc	000544
Transcaribbean Consolidated Transport, Inc	000574
Transconex, Inc	006861
West India Industries, Inc	000098
World Wide Forwarding, Inc	000128
Worldwide Transport Inc	000129
Y. Higa Enterprises, Ltd	000133

[FR Doc. 88-2455 Filed 2-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First City Acquisition Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immdediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of the fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First City Acquisition Corporation,* Houston, Texas; to become a bank holding company by acqiring at least 80 percent of the voting shares of First City Bancorporation of Texas, Inc., Houston, Texas, and thereby indirectly acquire First City Bank-Sioux Falls, N.A., Sioux Falls, South Dakota; First City Bank of Alice, Alice, Texas; First City Aransas Pass, Aransas Pass, Texas; First City Bank-Central Arlington, N.A., Arlington, Texas; First City National Bank of Arlington, Arlington, Texas; First City Bank-Northwest Hills, N.A., Austin, Texas; First City National Bank of Austin, Austin, Texas; First City Bank-Central, Beaumont, Texas; First City National Bank of Beaumont, Beaumont, Texas; First City Bank-Gateway, N.A., Beaumont, Texas; First City Bank-Bellaire, N.A., Bellaire, Texas; First City National Bank of Bryan, Bryan, Texas; First City National Bank of Colleyville, Colleyville, Texas; First City Bank-Corpus Christi, Corpus Christi, Texas; First City Bank-East Dallas, Dallas, Texas; First City Bank of Dallas, Dallas, Texas; First City Bank-Market Center, N.A., Dallas, Texas; First City Bank-Valley View, Dallas, Texas; First City National Bank of El Paso, El Paso, Texas; First City Bank-Farmers Branch, Farmers Branch, Texas; First City Bank-Forest Hill, Fort Worth, Texas; First City National Bank of Fort Worth, Fort Worth, Texas; First City Bank of Garland, N.A., Garland, Texas; The Graham National Bank, Graham, Texas; First City National Bank in Grand Prairie, Grand Prairie, Texas; First City Bank-Westheimer, N.A., Houston, Texas; First City Bank-Bear Creek, Houston, Texas; First City Bank-Almeda Genoa, Houston, Texas; First City Bank-Inwood Forest, N.A., Houston, Texas; First City National Bank of Houston, Houston, Texas; First City Bank-Medical Center, N.A., Houston Texas; First City Bank-Gulfgate, Houston, Texas; First City Bank of Highland Vallage, Houston, Texas; First City Bank of Northline, Houston, Texas; First City Bank-Fondren South, Houston, Texas; First City Bank of Clear Lake, Houston, Texas; First City Bank-Northeast, N.A., Houston, Texas; First City Bank-North Belt, N.A., Houston, Texas; First City Bank-Northcase, N.A., Houston, Texas; First City Bank-Wetheimer Plaza, N.A., Houston, Texas; First City Bank-Westwood, N.A., Houston, Texas; First City Bank of Humble, Humble, Texas; First City Bank of Kountze, Kountze, Texas; First City Bank-Lake Jackson, Lake Jackson, Texas; First City Bank of Lancaster, Lancaster, Texas; First City Bank of Lewisville, Lewisville, Texas; First City National Bank of Lufkin, Lufkin, Texas; Mc Allen State Bank, Mc Allen, Texas; First City National Bank of Madisonville, Madisonville, Texas; First City National Bank of Midland, Midland, Texas; First City National Bank of Orange, Orange, Texas; First City Bank of Plano, N.A., Plano, Texas; First City Bank of Richardson, Richardson, Texas; First City National Bank of Richmond, Richmond, Texas; First City National Bank of San Angelo, San Angelo, Texas; First City Bank-Central Park, San Antonio, Texas; First City Bank-Forum, N.A., San Antonio, Texas; First City Bank-Windson Park, San Antonio, Texas; Citizens State Bank, Sealy, Texas; First City Bank of Sour Lake, Sour Lake, Texas; and First City National Bank of Tyler, Tyler, Texas.

In connection with this application, Applicant also proposes to acquire First City Life Insurance Company, Houston, Texas, and thereby engage in underwriting credit life and credit accident and health insurance directly related to extensions of credit by its credit-granting subsidiaries pursuant to § 225.25(b)(8)(i); First City Financial Corporation, Houston, Texas, a currently inactive corporation, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) and leasing personal or real property pursuant to § 225.25(b)(5); Central Texas Insurance Agency, Houston, Texas, and thereby engage in acting as managing general agent with respect to insurance for Applicant's banking subsidiaries pursuant to § 225.25(b)(8)(v) and acting as managing agent with repsect to credit-related life, health, property and casualty insurance pursuant to § 225.25(b)(8)(iv); and First City Energy Finance Company, Houston, Texas, and thereby engage in making loans to oil and gas concerns pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2383 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

First Potomac Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 26, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond Virginia 23261:

1. *First Potomac Bancorp, Inc.*, McLean, Virginia; to become a bank holding company by acquiring 43.9 percent of the voting shares of Sailors & Merchants Bank and Trust, Vienna, Virginia.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.*, Granbury, Texas; to acquire 100 percent of the voting shares of Farmers & Merchants State Bank, Burleson, Texas.

2. *Cooper Lake Financial Corporation*, Cooper, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of the First National Bank in Cooper, Copper, Texas.

3. *First McAllen International Bancshares, Inc.*, McAllen, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Inter National Bank of McAllen, McAllen, Texas.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2384 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to engage *de novo* through its subsidiary, Fleet Mezzanine Capital, Inc., Providence, Rhode Island, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *WM Bancorp*, Cumberland, Maryland; to engage *de novo* through its subsidiary WM Data Center Inc., Cumberland, Maryland, in providing data processing services to non-subsidiary financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *County Bancorporation, Inc.*, Jackson, Missiouri; to engage *de novo* in real estate banking and providing student loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Jackson, Sikeston, Perryville, and Cape Girardeau, Missouri, and adjoining geographic areas.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2385 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

Trustmark National Bank Profit Sharing Plan; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Trustmark National Bank Profit Sharing Plan*, Jackson, Mississippi, and Trustmark National Trust Department, Jackson, Mississippi; to acquire up to 24.99 percent of the voting shares of First Capital Corporation, Jackson, Mississippi, and thereby indirectly acquire Trustmark National Bank, Jackson, Mississippi.

Board of Governors of the Federal Reserve System, February 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-2386 Filed 2-4-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 15, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Marital Relationship Questionnaire—NEW—The information collected by use of form SSA-4178 is needed to determine whether correct payment is being made to SSI individuals of the opposite sex who live together and are unrelated. The affected public is comprised of applicants for and recipients of SSI benefits.

Respondents: Individuals or households.
Number of Respondents: 5,100;
Frequency of Response: Occasionally;
Estimated Annual Burden: 425 hours.

2. Application for Special Age 72-or over Payments—0960-0096—The information collected by this form is used by the Social Security Administration to determine if an individual (and spouse) is entitled to special age 72 payments.

Respondents: Individuals or households.
Number of Respondents: 1,200;
Frequency of Response: Occasionally;
Estimated Annual Burden: 200 hours.
OMB Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Information Collection Requirements in the System Performance Review—NEW—The System Performance Review (SPR) is a vehicle used to evaluate State Medicaid Management Information System (MMIS) to determine whether or not a State system complies with the functional requirements and statistical levels of output.

Respondents: State or local governments.
Number of Respondents: 22;
Frequency of Response: Occasionally;
Estimated Annual Burden: 44,000 hours.

2. Medicare Program Carrier Performance Report—0938-0399—This form summarizes Medicare carrier performance in processing claims under Supplemental Security Insurance. Information provides HCFA with a current assessment or key aspects of carrier claims processing activities.

Respondents: Businesses or other for-profit.
Number of Respondents: 81;
Frequency of Response: Monthly;
Estimated Annual Burden: 1,464 hours.

3. Information Collection Requirements in HSQ-127-F, 42 CFR 442.114, 442.115, and 442.116—NEW—This information collection provides options to the State Medicaid agency to either written plans to correct deficiencies or to reduce the number of beds in certified units rather than be excluded from the Medicaid program.

Respondents: State or local governments.
Number of Respondents: 15;
Frequency of Response: One-time;
Estimated Annual Burden: 263 hours.
OMB Desk Officer:
Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. OHDS Program Instruction: Children Justice Act—NEW—To assist States in developing, establishing, and operating program designed to improve (1) the handling of child abuse in a manner which limits additional trauma to the child victim and (2) the investigation and prosecution of cases of child abuse particularly child sexual abuse.

Respondents: State or local government.
Number of Respondents: 157;
Frequency of Response: One-time;
Estimated Annual Burden: 4,560 hours.
OMB Desk Officer: Allison Herron

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. National Occupational Health Survey of Mining—0920-0143—This data collection is a survey of mining industries to measure potential health and safety exposures of mine workers to chemical and physical agents. The data will be used to prioritize research to minimize mining health and safety risks.

Respondents: Businesses or other for-profit.
Number of Respondents: 84;
Frequency of Response: One-time;
Estimated Annual Burden: 525 hours.

Office of the Assistant Secretary for Health

1. 1987 National Medical Expenditure Survey (NMES) (Round 5 of Household Survey of American Indians and Alaska Natives: Phase III of Institutional Population Component)—0937-0179—NMES will survey the civilian noninstitutionalized population and population in nursing homes and facilities for the mentally retarded, providing national estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions.

Respondents: Individuals or households.
Number of Respondents: 14,800;
Frequency of Response: Occasionally;
Estimated Annual Burden: 3,770 hours.
OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
SSA: 301-965-4149
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Buiding, Room 3208, Washington, DC 20503. ATTN: (name of OMB Desk Officer).

Date: February 2, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-2478 Filed 2-4-88; 8:45 am]

BILLING CODE 4150-04-M

Delegation Authority

Notice is hereby given that on January 20, 1988, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health the following authorities:

A. Pursuant to the authority of Sections 1 and 4 of Executive Order 11140 of January 30, 1964, I hereby delegate to the Assistant Secretary for Health the authorities to:

1. Appoint individuals in the Reserve Corps of the PHS Commissioned Corps pursuant to 42 U.S.C. 204;

2. Terminate commissions of Reserve Corps officers without the consent of the officers concerned pursuant to 42 U.S.C. 209 (a)(2);

3. Make or terminate temporary promotions of regular and Reserve Corps officers pursuant to 42 U.S.C. 211(a), (k), and (l); and

4. Prescribe titles, appropriate to the several grades, for PHS commissioned officers, other than medical officers, pursuant to 42 U.S.C. 207(b).

These authorities may be exercised by and redelegated to only those officials of the Public Health Service who are required to be appointed by the President, by and with the advice and consent of the Senate.

B. With the exception of the authority to issue regulations pertaining to the PHS Commissioned Corps, I also delegate to the Assistant Secretary for Health, with authority to redelegate except as noted below, those authorities vested in the Secretary which are

BEST COPY AVAILABLE

necessary to administer the PHS Commissioned Corps Personnel System, including, but not limited to, authorities contained in Titles 5, 10, 37, and 42 of the United States Code; regulations issued pursuant thereto; and Reorganization Plan 3 of 1966. Special conditions apply to the exercise of the following authorities:

1. The authority to create special temporary positions in the grade of Assistant Surgeon General may not be redelegated. Further, I retain the authority to approve the selection of persons to all such positions.

2. The authority to determine the numerical requirements of the Commissioned Corps must be made within the available funding and any FTE ceiling which may be established for the Public Health Service.

3. The authority to request the Office of Personnel Management to initiate investigations of commissioned officers in the interest of national security must be exercised in accordance with the provisions of Federal Personnel Manual Chapter 736. I retain the authority to suspend or separate any employee on grounds of disloyalty or subversion; restore to duty an employee who has been suspended on such grounds; or reemploy any person who has been separated from any Federal position on such grounds.

Authorities B–2 and B–3 may be redelegated only to the Surgeon General or officials who report to the Surgeon General.

All delegations heretofore issued by the Secretary for Health and Human Services pertaining to the PHS Commissioned Corps are hereby superseded. However, redelegations of these authorities may continue until new delegations are made.

These delegations of authority were effective on January 20, 1988.

Date: February 1, 1988.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 88–2479 Filed 2–4–88; 8:45 am]

BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776) and the Anti-Drug Abuse Act of 1988 (Pub. L. 99–570, Section 501 (j), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, on January 31, 1988, of the following committees:

Criminal and Violent Behavior Research Review Committee, NIMH
Mental Health Behavioral Sciences Research Review Committee, NIMH

The duration of these committees is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Date: February 1, 1988

Donald Ian Macdonald,

Administrator Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–2472 Filed 2–4–88; 8:45 am]

BILLING CODE 4160–20–M

Cancellation of Meeting

The following meeting announced in the **Federal Register** Volume #53, Number 12, published January 20, 1988, page 1518, has been cancelled: Basic Behavioral Processes Research Review Committee, NIMH.

Date: February 1, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88–2473 Filed 2–4–88; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Investigation of Spontaneous Abortions in Louisiana; Availability of Funds for Fiscal Year 1988 To Provide Support by Grant to the Louisiana Department of Health and Human Resources

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 to support the Louisiana Department of Health and Human Resources (DHHR) in an investigation of spontaneous abortions potentially related to toxic chemicals in the St. Gabriel vicinity.

Assistance will be provided only to the State of Louisiana Department of Health and Human Resources; no other applications are solicited or will be accepted.

Authority: The authority for this project is section 301 of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 13.283.

Background for Grant

Residents of St. Gabriel, Iberville Parish, Louisiana, have expressed concern over the number of miscarriages and stillbirths that have occurred in their community. Many residents believe that the miscarriages and stillbirths are linked to the release of airborne toxic contaminants from industrial sources in the area. This community is located in the industrial corridor along the Mississippi River south of Baton Rouge, Louisiana.

A large number of chemical plants, hazardous waste disposal sites, and chemical storage facilities exist in the area, which heightens the residents' apprehension of possible health effects from chemical agents. Both the Secretaries of the Louisiana Department of Environmental Quality (DEQ) and the DHHR have made investigation of the issue a priority. Representatives of DHHR have contacted the DEQ, the Agency for Toxic Substances and Disease Registry, and the Centers for Disease Control for assistance in handling the problem. On August 21, 1987, DHHR asked the Tulane School of Public Health and Tropical Medicine to assist with an investigation of the possibility of an increased rate of miscarriages in the east Iberville Parish. Although preliminary reviews of vital health records have been initiated, a formal study is needed to ascertain whether the incidence of miscarriages and stillbirths in east Iberville Parish is elevated.

Reasons for Proposing the State of Louisiana Department of Health and Human Resources as the Recipient of This Grant Award

This grant award to the State of Louisiana Department of Health and Human Resources is proposed for the following reasons:

A. The Louisiana Department of Health and Human Resources has the ultimate responsibility for protecting the public health in the State of Louisiana and, therefore, has a vested interest in determining the impact of the environment on the health of residents of the St. Gabriel area. The DHHR has approached CDC about assistance and support to undertake this project.

B. The Louisiana Department of Health and Human Resources has unique access to vital records and the population statistics data which are important components of the proposed project.

C. The Louisiana Department of Health and Human Resources has ongoing working relationships with numerous local health care providers, and extensive medical research community, and the Tulane School of Public Health and Tropical Medicine, who will most likely be involved with the project.

D. The Louisiana Department of Health and Human Resources has qualified personnel experienced in environmental health, in conducting epidemiologic investigations, and in relating this scientific expertise to the local city and county levels of government.

Availability of Funds

Approximately $100,000 will be available in Fiscal Year 1988 to fund this grant award. The grant is expected be begin on or about March 1, 1988, and it will be funded in 12-month budget periods within a 2-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives, the availability of funds, and the need for further study. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Karen Reeves, Grants Management Specialist, Procurement and Grants Office, Centers For Disease Control, 255 East Paces Ferry Road, NE. Room 321, Atlanta, Georgia 30305, telephone (404) 842–6575. Technical information may be obtained from Cynthia J. Berg, Project Officer, Perinatal Environmental Epidemiology Branch, Division of Birth Defects and Developmental Disabilities, Center for Environmental Health and Injury Control, Centers for Disease Control, MS–F37, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 488–4751.

Dated: February 1, 1988

Glenda S. Cowart,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88–2392 Filed 2–4–88; 8:45 am]

BILLING CODE 4160–18–M

Grant With Morehouse School of Medicine; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a grant to support the Morehouse School of Medicine for the Second Annual Symposium on Career Opportunities in the Biomedical Sciences, Atlanta, Georgia. This is not a formal request for applications. Assistance will be provided only to Morehouse School of Medicine for the support of this project. No other applications are solicited or will be acccepted.

Authority: This grant is authorized under section 301(a)[42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

Minorities are strikingly underrepresented in the biomedical sciences. The annual summary of data on Graduate Record Exam-takers published by the Educational Testing Services revealed that in 1985, the number of black Graduate Record Exam-takers planning graduate study in the biosciences was 327, up by only 14 from the previous year. The October 1986 and December 1986 rosters of Educational Testing Services Minority Graduate Student Locator Service revealed that only 12 blacks indicated interest in starting graduate study in Biochemistry in the Fall of 1987.

The goal of the Symposium is to encourage minority undergraduate students to pursue careers in the biomedical sciences. The objectives of the Symposium are to:

- Provide information to students and science advisors concerning science careers in government, academia, and industry.
- Provide information to students and science advisors about training activities necessary to pursue a science career and the fiscal support which one can obtain for such training.
- Discuss the structure and mechanics of science advisement of minority colleges and universities.
- Provide opportunities for scientists to interact with students.

Reasons for Single Source Award

The Morehouse School of Medicine is a part of the Atlanta University Center (AUC), a cluster of four undergraduate colleges, two graduate schools, and medical school, which is the largest association of private historically black colleges and universities in the United States. Morehouse is thus a unique organization to conduct the conference since the Symposium is designed to impact minority students and faculty on a national basis. The impetus of the conference is to encourage more minorities into careers in biomedical sciences as teachers, researchers and administrators. This Symposium is being held in association with the Association of Minority Health Professions Schools. Morehouse has been designated as the School to host the conference in 1988.

Review Requirements

This program is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Availability of Funds

A total of $59,000 will be available in FY 1988 to implement this project. It is estimated that this grant will begin on or before March 1, 1988, for a period not to exceed 12 months.

Information

Information on the program may be obtained from Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305.

Dated: February 1, 1988.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–2393 Filed 2–4–88; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room C–400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245–6792. Copies may be obtained from: Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5796.

Date: February 1, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-2471 Filed 2-4-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

General Clinical Research Centers Committee, Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 24-25, 1988, Montrose and Great Falls Room, Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

The meeting will be open to the public on February 25 from 1:00 p.m. to 2:30 p.m., during which time there will be comments by the Director, DRR; and an update on the GCRC Program. Attendance by the public will be limited to space.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 24, from 9:00 a.m. to 5:00 p.m. and from 8:30 a.m. February 25 to 12:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and any personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Stanley L. Slater, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B-51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2494 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 18-19, 1988, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on February 18 from 8:30 a.m. to approximately 5:30 p.m., and again on February 19 from 9:00 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 19 from 8:00 a.m. until 9:00 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52, National Institutes of Health, Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2495 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Allergy and Infectious Diseases; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on May 23, 24, and 25. The meeting will be held in Conference Room 427, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on May 23 from 9 a.m. until 12 noon and on May 24 from 8 a.m. until 9:30 a.m. During this open session, the permanent staff of the Laboratory of Parasitic Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on May 23 from 6:30 a.m. until 9 a.m. and from 12 noon until recess, on May 24 from 9:30 a.m. until recess and on May 25 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301-496-3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2496 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, March 9-10, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 5 p.m. on March 9, for the purpose of presenting an overview of the organization and conduct of the Statistics and Biomathematics Branch. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 10 from approximately 9 a.m. to adjournment, for the evaluation of the programs of the Statistics and Biomathematics Branch, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David G. Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541-3441, FTS 629-3441 will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: January 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-2497 Filed 2-4-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1772]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Office, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Approval as Direct Endorsement Mortgagee Underwriter/Mortgagee Certification.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The HUD/FHA single family Direct Endorsement program permits mortgage lenders to underwrite applications for mortgage insurance and close mortgage loans without prior HUD review. The forms are used by the mortgagees certifying that the mortgage complies with statutory and regulatory requirements.
Form Number: HUD-54112 and 54113.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 301,900.
Status: Revision.
Contact: Dorothy L. Kelley, HUD, (202) 755-5876; John Allison, OMB, (202) 395-6880.
Date: January 21, 1988.

Proposal: Application for Approval as a 232 Coinsuring Lender—Category A Documentation.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This information is submitted to HUD by lenders so that they can be approved as a coinsuring lender. HUD reviews their financial, technical, and organizational capacity to carry out the programs to avoid fraud, waste, and mismanagement.
Form Number: Various.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 3,200.
Status: New.
Contact: James L. Hamernick, HUD, (202) 755-6500; John Allison, OMB, (202) 395-6880.
Date: January 15, 1988.

Proposal: Project Applications and Review of Applications; Closing Documents, 232 Coinsurance Category B Documentation.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This information will be used by HUD to review the approved coinsuring lender's processing of project applications. It is needed to see if approved coinsuring lenders are adhering to the underwriting and processing guidelines and also to monitor their compliance with program standards.
Form Number: Various.
Respondents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 132,000.
Status: Revision.
Contact: James L. Hamernick, HUD, (202) 755-6500; John Allison, OMB, (202) 395-6880.
Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—Administrative Controls.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Respondents: Single-Time.
Estimated Burden Hours: 19,800
Status: New.

Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.
Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—PHA Certification.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Respondents: Single-Time.
Estimated Burden Hours: 247.
Status: New.
Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.
Date: January 15, 1988.

Proposal: Increase in the Single Person Occupancy Limitation—Notification.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Section 3(b)(3) of the U.S. Housing Act of 1937, as amended, increases the 15 percent single person occupancy limitation to a total of not more than 30 percent. Public housing agencies/Indian housing authorities (PHAs/IHAs) are required to notify HUD when a particular project does exceed the 15 percent limitation, and they can request HUD's approval to exceed the 15 percent limitation. This can be done so the units will be made available to single persons and not be vacant for long periods of time.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Respondents: Single-Time.
Estimated Burden Hours: 1,000.
Status: New.
Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.
Date: January 15, 1988.

Proposal: Preference Rule.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: This information will be used by PHAs to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily displaced, or paying more than 50 percent of family income for rent. The information is needed by HUD to determine if PHAs are properly administering the program.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 431,318.
Status: New.
Contact: Edward C. Whipple, HUD, (202) 426–0744; John Allison, OMB, (202) 395–6880.
Date: January 12, 1988.

Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Section 227 of the Housing and Urban-Rural Recovery Act of 1983 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 14,916.
Status: Extension.
Contact: James J. Tahash, HUD, (202) 426–3944; John Allison, OMB, (202) 395–6880.
Date: January 22, 1988.

Proposal: Wood Destroying Insect Information—Existing Construction.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This form is used and needed by HUD as evidence that a property to be financed with FHA insurance is free of wood destroying insects. A mortgage will not be insured until HUD is satisified that the property has been inspected and found free of infestation.
Form Number: HUD–92053.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 1.
Status: Extension.
Contact: Robert J. Rankin, HUD, (202) 755–6720; John Allison, OMB, (202) 395–6880.
Date: January 22, 1988.

Proposal: Tenant Participation in Multifamily Housing Projects.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This rule provides an opportunity for tenants in certain types of subsidized multifamily housing projects to comment on requests by project owners for HUD approval of certain specified actions, including the continuation of the requirement for tenants' participation in project rent increases. These comments must be taken into consideration by HUD when making approval decisions.
Form Number: None.
Respondents: Individuals or Households, State or Local Governments, and Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 14,880.
Status: Extension.
Contact: James J. Tahash, HUD, (202) 426–3970; John Allison, OMB, (202) 395–6880.
Date: January 26, 1988.

Proposal: Notice of Job Change and Changes in Family Composition.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This form is submitted by mortgagors, under section 235(f) of the National Housing Act, to notify the mortgagee job changes and changes in adult family income and composition. This information is used by HUD in determining the amount of assistance a mortgagor is entitled.
Form Number: HUD–93115.
Respondents: Individuals or Households.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 16,408.
Status: Extension.
Contact: Florence B. Brooks, HUD, (202) 755–7330; John Allison, OMB, (202) 395–6880.
Date: January 25, 1988.

[FR Doc. 88–2486 Filed 2–4–88; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–88–873]

Minneapolis-St. Paul Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession, Minneapolis-St. Paul Office.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective as of February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis M. Nixon, Regional Counsel, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606–6765, 312–353–4681 (This is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all employees whose titles precede his/hers in this designation are unavailable to act by reason of absence.

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Housing Management Division
4. Chief Counsel
5. Director, Community Planning and Development Division
6. Deputy Director, Housing Development Division
7. Director, Administrative Division

This designation supersedes the designation published at Docket No. D–84–757, **Federal Register**, Vol. 49, No. 95, dated May 15, 1984.

Authority: Delegation of Authority, by the Secretary, 50 FR 18742, May 2, 1985.

Thomas T. Feeney,
Manager, Minneapolis/St. Paul Office.

Gertrude W. Jordan,
Regional Administrator, Regional Housing Commissioner, Region V, Chicago.

[FR Doc. 88–2487 Filed 2–4–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–08–4333–02]

Closure Order North Fork American Wild River

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of all public lands administered by the Bureau of Land Management within the boundaries of the North Fork of the American River Wild and Scenic River Corridor to the operation of motorized vehicles and equipment.

SUMMARY: Use of motorized vehicles and equipment within the Wild and Scenic River Corridor is prohibited, indefinitely, to insure management of public lands consistent with the rivers "wild" classification in accordance with the Wild and Scenic River Act as amended (Pub. L. 95–625, November 10, 1978) and in accordance with the North Fork American Wild River Management Plan of October 3, 1979.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630. Telephone: 916–985–4474.

SUPPLEMENTARY INFORMATION: Authority for this closure order is contained in CFR Title 43, Chapter II, Part 8350, Subpart 8351.2–1. Any person who fails to comply with a closure order may be subject to a fine not to exceed $500 and/or imprisonment not to exceed six months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Date: January 29, 1988.

D.K. Swickard,
Area Manager.

[FR Doc. 88–2426 Filed 2–4–88; 8:45 am]
BILLING CODE 4310–40–M

[ID–930–88–4332–08]

Availability of Draft Environmental Impact Statement; Idaho Wilderness Study Areas

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a draft Environmental Impact Statement (EIS) for wilderness proposals for nine Wilderness Study Areas (WSAs) in southern and central Idaho.

SUMMARY: This EIS documents the expected effects of managing nine WSAs as wilderness or nonwilderness. These WSAs range in size from 40 acres to 4,265 acres. They were deleted from the wilderness study process in 1982 by Secretary of the Interior James Watt, along with all other WSAs under 5,000 acres identifed under section 603 of the Federal Land Policy and Management Act. In 1985, a U.S. District Court decision reinstated these small units as WSAs.

This EIS assesses the environmental consequences of managing each of the nine WSAs as wilderness or nonwilderness, of managing one WSA as part wilderness and part nonwilderness, and of managing one WSA as wilderness including additional acreage outside the WSA boundary. The alternatives assessed include: (1) A "no wilderness" alternative for each WSA; (2) an "all wilderness" alternative for each WSA; (3) a partial wilderness alternative for the Henry's Lake WSA; and (4) an "all wilderness plus additional acreage" alternative for the Borah Peak WSA. The names of the WSAs, the total acreage of each, and the proposed action for each are as follows:

Box Creek WSA: 440 acres; recommended nonsuitable for designation as wilderness.

Lower Solmon Falls Creek WSA: 3,500 acres; recommended nonsuitable for designation as wilderness.

Henry's Lake WSA: 350 acres; 340 acres recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Lion's Head Roadless Area; 10 acres recommended nonsuitable for wilderness designation.

Worm Creek WSA: 40 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Worm Creek Roadless Area.

Goldberg WSA: 3,290 acres; recommended nonsuitable for designation as wilderness.

Boulder Creek WSA: 1,930 acres; recommended nonsuitable for designation as wilderness.

Borah Peak WSA: 3,100 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Borah Peak proposed wilderness.

Little Wood River WSA: 4,265 acres; recommended suitable for designation as wilderness in conjunction with the adjacent U.S. Forest Service's Pioneer Mountains Roadless Area.

Black Butte WSA: 4,068 acres; recommended nonsuitable for designation as wilderness.

Bureau of Land Management wilderness proposals ultimately will be forwarded by the Secretary of Interior and President to Congress. The decision

on wilderness designation rests with Congress.

SUPPLEMENTARY INFORMATION: A limited number of copies of this EIS may be obtained from the Project Manager, Idaho State Office, 3380 Americana Terrace Boise, Idaho, 83706. Copies are available for inspection at the following location: Department of the Interior, Bureau of Land Management, 18th & "C" Streets, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Wyke, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706, Telephone: (208) 334–1952.

Date: February 1, 1988.

Delmar Vail,

State Director, Bureau of Land Management.

[FR Doc. 88–2418 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–GG–M

[CA–010–08–4333–02]

Supplementary Rules for The Merced River Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplemental rules for the management of public lands along the Merced River of the Folsom Resource Area, Bakersfield District, California.

SUMMARY: On public lands along the Merced River the following special regulations apply:

1. Parking upon any portion of the traffic lanes of the Merced River access road is prohibited.

2. Overnight parking between Briceburg, California and McCabe Flat campground upon the road bed and associated pull out areas of the Merced River access road is prohibited.

3. Overnight camping upon the road bed, associated pullout areas, and on the upslope side of the Merced River access road is prohibited.

4. Motor vehicles not licensed for highway use are prohibited unless authorized by special permit.

DATE: These supplemental rules to take effect on May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. Telephone: (916) 985–4474.

SUPPLEMENTARY INFORMATION: The purpose of these supplemental rules is to eliminate camping and illegal parking and to control the usage of all terrain vehicles (ATV) on the Merced River access road below, or downstream, from Briceburg, California on public lands. The rules are designed to control and reduce congestion along the road in order to protect persons and property and to provide for maximum usage by the visiting public without jeopardizing the natural values to be protected.

Authority for these supplemental rules is contained in Title 43 of the CFR, Chapter II, Part 8365, Subpart 8365.1–6.

Any person who fails to comply with these supplemental rules may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Dated: January 29, 1988.

D.K. Swickard,

Area Manager.

[FR Doc. 88–2430 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Innoko National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review (Plan) for the Innoko National Wildlife Refuge (Refuge), Alaska, pursuant to section 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, with certain changes, for implementation. Alternative A is the current situation and the alternative preferred by the Service. The alternative does not contain a wilderness proposal.

Alternative A provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Dated: February 1, 1988.

David L. Olsen,

Deputy Regional Director.

[FR Doc. 88–2394 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Selawik National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Selawik National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative A, with certain changes, for implementation. Alternative A is the current situation and the alternative preferred by the Service. The alternative does not contain a wilderness proposal. Furthermore, Appendix O is dropped from the Plan, and discussion of Oil and Gas Leasing is revised to state that the Service will obtain additional information from the Bureau of Land Management about the hydrocarbon potential. Following receipt of a national interest determination from the Department of Energy, the Service will consider revising the Plan if a need is identified.

Alternative A, with this modification, provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

David L. Olsen,

Deputy Regional Director.

Date: February 1, 1988.

[FR Doc. 88–2395 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Yukon Flats National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Yukon Flats National Wildlife Refuge (Refuge), Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative D, the preferred alternative, for implementation. As a result, the Service is recommending that approximately 650,000 acres in the White-Crazy Mountains of the Refuge be added to the National Wilderness Preservation System.

Alternative D provides a high degree of resource protection and the greatest opportunity for achieving the purposes set forth in the Alaska Lands Act including conservation of fish and wildlife populations and habitats.

Date: February 1, 1988.

David L. Olsen,

Deputy Regional Director.

[FR Doc. 88–2396 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock Offshore Partners Limited Partnership has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5286, Block 178, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 29, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 29, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–2427 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Environmental Assessment of the Servicewide Integrated Pest Management Program

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given, in accordance with 40 CFR 1506.6, that the National Park Service (NPS) is planning to prepare an environmental assessment (EA) on the Servicewide Integrated Pest Management (IPM) program. Public comments are solicited regarding the scope of the EA.

DATE: Written comments must be received up to and including March 21, 1988.

ADDRESSES: Submit written comments by mail to: Department of the Interior, National Park Service, Science Support Staff (473), P.O. Box 37127, Washington, DC 20013–7127. Attn: Assistant IPM Coordinator. In person, bring comments to: Room 3317–D, 1100 "L" St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Johnston, Integrated Pest Management Coordinator, at the above address, telephone (202) 343–8130, or Mr. Gerald McCrea, Assistant Integrated Pest Management Coordinator, at the above address, telephone (202) 343–8127.

SUPPLEMENTARY INFORMATION: The NPS conducts an IPM program to ensure that its management of pest species of plants and animals uses techniques that are least disruptive to the environment. Management methods are selected on a case-by-case basis, after consideration of available technology. Techniques are selected from physical, mechanical, cultural, biological and chemical methods.

The Service last published an EA on this subject in 1977. New data and changes in regulations and techniques concerning NPS pesticide uses necessitate a program reassessment. Four alternatives are being considered. They are: (1) Continue the existing Integrated Pest Management program, (2) conduct no pest management, (3) conduct pest management with complete avoidance of pesticides, or (4) conduct

pest management with total reliance on pesticides.

The planned scope of the EA includes, but is not limited to: (1) Description of the current program by management zone, (2) environmental consequences of the alterantives, (3) risks to human health from the alternatives and (4) mitigating measures. (Item four will include guidelines, organizational structure, and program management.)

William Penn Mott, Jr.,

Director.

[FR Doc. 88-2379 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: February 2, 1988.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and coorespondence should be addressed (4), are publsihed here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A.

(1) Dairylea Cooperative Inc.,
(2) 831 James Street,
Syracuse, NY 13203
(3) P.O. Box 395,
Seneca Street,
Vernon, NY 13476
(4) Ron Shuster,
P.O. Box 395, Seneca Street,
Vernon, NY 13476.

B.

(1) Dairymen, Inc.,
(2) 10140 Linn Station Road,
Louisville, KY 40223
(3) Dairymen, Inc.—Kyana Division,
P.O. Box 18810, 3941 Buechel Bank Road,
Louisville, KY 40218
(4) Beverly L. Williams,
10140 Linn Station Road,
Louisville, KY 40223.

C.

(1) FLAV-O-RICH, INC.,
(2) 10140 Linn Station Road,
Louisville, KY 40223.
(3) P.O. Box 18810, 3941 Buechel Bank Road,
Louisville, KY 40218.
(4) Beverly L. Williams,
10140 Linn Station Road,
Louisville, KY 40223.

Noreta R. McGee,

Secretary.

[FR Doc. 88-2403 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Getty Petroleum Corp., a Delaware corporation, 125 Jericho Turnpike, Jericho, New York 11753.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: (i) PT Petro Corp., a New York corporation.

B. 1. Parent corporation and address of principal office: Great Lakes Chemical Corporation, P.O. Box 1878, El Dorado, AR 71730.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Subsidiary	State of incorporation
E/M Corporation, P.O. Box 2200, West Lafayette, IN 47906.	Delaware
Enzyme Technology Corporation, 783 U.S. 250 East, Route 2, Ashland, OH 44805.	Illinois
Hydrotech Chemical Corporation, 1850 Airport Industrial Park Drive, Marietta, GA 30062.	Georgia
Inland Specialty Chemical Corporation, 3151 Airway Ave., Suite J3, Costa Mesa, CA 92626.	Indiana
Oilfield Service Corporation of America, P.O. Box 53095, OCS, Lafayette, LA 70505.	Delaware
Pentech Chemicals, Inc., 823 Commerce Drive, Oak Brook, IL 60521.	Delaware
QO Chemicals, Inc., 823 Commerce Drive, Oak Brook, IL 60521.	Delaware
WR Research Laboratories, Inc., 1407 Montgomery Township Road 905, Ashland, OH 44805.	Indiana

C. 1. Parent corporation and address of principal office: Interco Incorporated, 101 South Hanley Rd., St. Louis, Missouri 63105.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

Subsidiary	State of incorporation
Delmar Sportswear, Inc	Maryland
Big Yank Corporation	Delaware
Patriot Investment Company	Missouri
Fine's Men's Shops, Inc	Virginia
Converse Inc	Delaware
Converse Star I, Inc	Massachusetts
Converse Star II, Inc	Massachusetts
United Shirt Distributors, Inc	Delaware
Golde's Department Stores, Inc	Missouri
QCS, Inc	Missouri
Stuffed Shirt, Inc	Delaware
Queen Casuals, Inc	Delaware
Northeast Factory Outlet	Pennsylvania
Londontown Corporation	Delaware
Matthew Manufacturing Company	Maryland
Star Sportswear Manufacturing Corp	Delaware
The Scranton Outlet Corporation	Delaware
Washington Holding Company	Georgia
Milford Sportswear, Inc	Delaware
Sky City Stores, Inc	Delaware
Broyhill Furniture Industries, Inc	North Carolina
Highland House, Inc	North Carolina
Highland Transport, Inc	North Carolina
The Lane Company, Incorporated	Virginia
Action Industries, Inc	Virginia
Lane Advertising, Inc	Virginia
Grand Entry Hat Corp	New York
Central Hardware Company	Missouri
Wittle Hardware Corporation	Missouri
INTERCO Export, Ltd	Missouri
Lease Management, Inc	Missouri
America's Tradesmen, Inc	Missouri
Abe Schrader Corporation	Delaware
SS Advertising Associates, Inc	New York
The Bittwell Company, Inc	Missouri
Ace Sweater Mills, Inc	South Carolina
Campus Sweater & Sportswear Export Company	Ohio
Carolina Sportswear Company	North Carolina
Central Sportswear Company	North Carolina
Chester Sportswear Company	South Carolina
Creedmoor Sportswear Company	South Carolina
Ellwood Knitting Mills, Inc	Pennsylvania
Warren Shirt Company	Pennsylvania
St. Paul Sportswear Company	Virginia
Label Corp	South Carolina
Kenbridge Sportswear Company	Virginia
H & H Manufacturing Corp	Georgia
Nationwide-Penncraft, Inc	Georgia
Rogen, Inc	Georgia
LaCrosse Sportswear Corporation	Virginia
Factory Outlet Company	Delaware
Lexington Sportswear Company	South Caroline
Lousburg Sportswear Company	North Carolina
Morgan Sportswear Company	Georgia
Olympic Sweater & Sportswear Company	Ohio
Southampton Sportswear Corporation	Ohio
Swainsboro Sportswear Company	Georgia
Campus Far East Company	Ohio
Flat Rock Manufacturing Company	Georgia
The Florsheim Shoe Store Company—Midwest	Delaware
The Florsheim Shoe Store Company—West	Delaware
The Florsheim Shoe Store Company—Northeast	Delaware
The Florsheim Shoe Store Company—South	Delaware
L. J. O'Neill Shoe Company	Missouri
Thompson, Boland & Lee, Inc	Delaware
The Florsheim Shoe Store Company of Hawaii	Delaware
Senack Shoes, Inc	Missouri
Keith O'Brien Investment Company	Idaho
Ethan Allen, Inc	Delaware
Andover Wood Products, Inc	Maine
EA Enterprises, Inc	Florida
Ethan Allen Adco, Inc	New York
Lake Avenue Associates, Inc	Connecticut
Northeast Consolidated, Inc	Vermont
Riverside Water Works, Inc	Vermont
KEA International, Inc	New York

Noreta R. McGee,

Secretary.

[FR Doc. 88-2404 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31208]

Railroad Operation; Abbeville-Grimes Railway Co.—Acquisition and Operation Exemption; CSX Transporation, Inc.

Abbeville-Grimes Railway Company has filed a notice of exemption to purchaser and operate certain properties of CSX Transportation, Inc. (CSXT). The properties consist of the CSXT rail line between milepost ANF 789.00 at Grimes, AL and milepost ANF 816.00 at Abbeville, AL, a distance of approximately 27 miles; and 6 miles of trackage rights over CSXT's track from Grimes to Dothan, AL. The transaction is expected to be consummated on or about January 15, 1988. Any comments must be filed with the Commission and served on Ronald S. Flagg, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 15, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-1919 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31212]

Railroad Operation; Housatonic Railroad Co., Inc., Operation Exemption; Lines of The State of Connecticut

Housatonic Railroad Company, Inc., filed a notice of exemption to operate approximately 34.16 miles of rail line (known as USRA Line 60) owned by the State of Connecticut, extending from milepost 13.65 near New Milford, CT, to milepost 47.81 near North Canaan, CT, in Litchfield County, CT. Consummation of the transaction is to occur on or before February 7, 1988. Comments must be filed with the Commission and served on Edward J. Rodriguez, P.O. Box 537, Old Saybrook, CT 06475.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void under *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secertary.

[FR Doc. 88-1921 Filed 2-4-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-97]

22nd Avenue Drugs, Inc., t/a Acosta Pharmacy; Revocation of Registration

On December 8, 1986, the Administrator of the Drug Enforcement Administration issued an Order To Show Cause to 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy (Respondent), of 1131 NW. 22nd Avenue, Miami, Florida 33125, proposing to revoke DEA Certificate of Registration A90103692, and deny any pending applications for renewal of that registration as a retail pharmacy under 21 U.S.C. 823(f). Additionally, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration A90103692 during the pending of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and, following the completion of prehearing procedures, the hearing in this matter was held in Miami, Florida on February 11 and 12, 1987. On November 10, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On December 15, 1987, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Carlos Acosta, Jr. was the president of Respondent pharmacy. In April 1984, law enforcement agents followed a large shipment of ether, a substance used by clandestine laboratory operators in the illicit manufacture of controlled substances, from a chemical company to a marina located directly behind Respondent pharmacy. There, Carlos Acosta was observed unloading containers of ether into a warehouse. On the tailgate of the truck transporting the ether, a radio frequency detector was found.

The warehouse into which Carlos Acosta was observed unloading the shipment of ether was subsequently raided. Officers found hydrochloric acid, acetone, garbage pails and filter papers of a size that fits such garbage pails. These chemicles, although they have legitimate uses, are used in the clandestine manufacture of cocaine. The chemicals and equipment found in the warehouse were all that was required to process cocaine; only the cocaine base itself was lacking.

Following the seizure of ether and other materials at the marina, the investigators began to focus their attention on Carlos Acosta and the two owners of the marina. The preliminary investigation revealed that all three individuals had prior criminal histories.

The investigation revealed that Carlos Acosta, operating out of Respondent pharmacy, purchased chemicals, including ether, acetone and hydrochloric acid, from legitimate

chemical industry sources. These materials were stored in either Respondent pharmacy or a storage facility belonging to the marina. Persons engaged in the clandestine manufacture of cocaine purchased ether, acetone, hydrochloric acid and other chemicals or items used in the cocaine manufacturing process from Carlos Acosta. Between March 1979 and December 1986, Carlos Acosta received amounts of money in excess of six million dollars for these chemicals and other supplies. During this period of time, Carlos Acosta utilized Respondent pharmacy as a location to negotiate the sale of these chemicals to clandestine laboratory operators; used the pharmacy's ongoing business as a means to order large amounts of chemicals and other items from chemical industry suppliers; used the premises of Acosta Pharmacy for storage of the chemicals and other supplies; distributed the chemicals and other items from the pharmacy; and, used the premises to receive payment for the chemicals and other supplies.

The Administrator also finds, as did the Administrative Law Judge, that although Carlos Acosta was at one time an informant for DEA and its predecessor agency, Mr. Acosta was never directed or authorized to sell chemicals to clandestine laboratories, nor was he authorized to violate the law in any manner.

As a result of the above-described investigation, Carlos Acosta was arrested on December 10, 1986. On that date, the Order to Show Cause/Immediate Suspension Order was served on the Respondent pharmacy. In conjunction with the service of the Order, all controlled substances possessed by the Respondent were inventoried. The DEA Diversion Investigator conducting the inventory found that a very large percentage of the drugs on hand at the pharmacy were outdated, having expiration dates of 1976, 1977 and 1978.

Having considered the foregoing facts, the Administrator concludes that there are lawful grounds for the revocation of the Respondent's registration and for the denial of any pending application for renewal of such registration. 21 U.S.C. 823(f) and 824(a)(4).

Pharmacy is a profession dedicated to promoting the public health. A pharmacist has knowledge of the terrible consequences of drug abuse. For a pharmacy owner to participate in a scheme to facilitate the illicit manufacture of drugs is unconscionable. The evidence clearly shows that Carlos Acosta used the Respondent pharmacy to further a large scale effort to supply clandestine laboratory operators with essential chemicals and other supplies necessary for the conversion of cocaine. While this activity had nothing to do with legitimate pharmaceuticals or medicines dispensed by the pharmacy, and while no diversion of such substances has shown, the Administrator has consistently revoked the registrations of registrants whose criminal activities relating to controlled substances did not involve diversion or misuse of their registrations. See, *Aaron Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980), a dentist smuggling cocaine; *Reymond H. Wood, D.D.S.*, Docket No. 82-32, 48 FR 48727 (1983), a dentist engaged in marijuana trafficking; *Tilman J. Bently, D.O.*, Docket No. 82-22, 49 FR 35049 (1984), a physician engaged in counterfeiting Quaalude (methaqualone); and, *Preston McCown, D.D.S.*, Docket No. 82-28, 49 FR 45818 (1984), a dentist selling street cocaine.

Based on the foregoing, the Administrator concludes that the continued registration of 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy would be contrary to the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration A9010368Z, previously issued to Respondent pharmacy be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied.

This order is effective March 7, 1988.

Dated: February 1, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-2378 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-28]

Vernon D. Clausing, D.O.; Denial of Application

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to deny an application for registration as a practitioner under 21 U.S.C. 823(f) submitted by Vernon D. Clausing, D.O. (Respondent), 13624 1st South, Seattle, Washington 98168. The statutory bases for the proposed action were that: (1) On March 7, 1981, the State of Washington Board of Osteopathic Medicine & Surgery suspended Respondent's authority to possess, prescribe and dispense controlled substances, said suspension being abated as to certain Schedule IV and all Schedule V controlled substances on August 8, 1985; and, (2) Respondent prescribed excessive quantities of controlled substances to individuals he knew, or should have known, were addicted to such controlled substances and whom Respondent knew, or should have known, were diverting controlled substances into illegitimate channels.

By letter dated April 8, 1986, Respondent requested a hearing on the issues raised in the Order to Show Cause. On August 26, 27, 28 and September 16, 1986, a hearing was held in Seattle, Washington. By January 9, 1987, all post-hearing pleadings were filed by Respondent and Government Counsel. On October 16, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, and on December 3, 1987, transmitted the record of these proceedings to the Administrator.

The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that the Washington Board of Pharmacy began an investigation into Respondent's prescribing practices in the Fall of 1978 when a pharmacist complained that Respondent appeared at his pharmacy and wrote prescriptions for Dexedrine and Percodan, Schedule II controlled substances, on the spot, for an individual.

In 1979, the Washington State Division Investigation Unit (DIU) also investigated Respondent's prescribing practices. The DIU investigators found 825 prescriptions written by Respondent for Schedule II controlled substances between January and May 1979. This investigation also revealed that between May 1978 and April 1979, Respondent issued the following: 24 prescriptions for Demerol, Valium and Percodan, totalling 1,536 dosage units, to one individual; 25 prescriptions for Demerol and Dexedrine, totalling 1,312 dosage units, to another individual; and, 27 prescriptions for Demerol and Perodan, totalling 2,074 dosage units, to a third individual. Additionally, the DIU investigators found 47 prescriptions written by Respondent for one individual between March 1977 and January 1979, totalling 2,690 dosage units. The prescriptions were for Demerol, Percodan, Quaalude and Dexedrine. With the exception of Valium, each of the above-named drugs are brand names for Schedule II controlled substances.

The Administrator further finds that in November 1979, a hospital with which Respondent was once affiliated, barred Respondent from prescribing Schedule II and III controlled substances and also required Respondent to submit to psychiatric counselling. Respondent subsequently lost his admitting privileges and was under admonition not to enter the hospital.

On July 9, 1980, the Medical Director of a hospital pain clinic in Seattle, Washington, wrote to the Washington Board of Pharmacy to complain about Respondent's overprescribing of controlled substances for one of his patients. This hospital has a national reputation for excellence in medical care and in the treatment of pain.

In December 1980, the Washington Board of Osteopathic Medicine and Surgery brought charges against Respondent for overprescribing of controlled substances. A hearing was held by the Board in January 1981. In an order dated March 7, 1981, the Board revoked Respondent's license to practice osteopathic medicine and surgery. The Board's action was based on its finding that Respondent ignored the extensive potential for harm inherent in the course of treatment he pursued, which involved prescribing large quantities of narcotic drugs on a recurring basis over extended periods of time. The Board found that by his prescribing practices Respondent exhibited total disregard for the substantial harm likely to be caused individual patients by such large amounts of dependency-producing narcotics. The Board further found that Respondent's conduct in continuing to prescribe large amounts of addictive and dependency-producing drugs showed a disregard on his part for the serious adverse consequences caused to individuals who are addicted to narcotics by increasing the availability of drugs to them.

With respect to one of Respondent's patients, the Board found that Respondent prescribed at least 443 Percodan and 1,100 Valium 10 mg. to this patient in the eight months preceding the birth of the patient's child. The Board found that by ignoring her pregnancy, and by continuing to prescribe large amounts of addictive and dependency-producing drugs, Respondent totally ignored the potential adverse harmful effects on the health of the patient and her unborn baby. During May 1980, the two physicians who delivered the child of this patient, told Washington Board of Pharmacy investigators that this child was born depressed and exhibited signs of controlled substances dependency.

The March 7, 1981, order issued by the Washington Board of Osteopathic Medicine and Surgery revoking Respondent's license was subsequently stayed on certain conditions. The conditions included that Respondent undergo a psychiatric examination; that he not prescribe, administer, dispense or possess any controlled substances; that he surrender for cancellation his Drug Enforcement Administration registration; that he be prohibited from the practice of osteopathic medicine and surgery until he provided documentary proof of that surrender to the Board; and that he not reapply for a DEA registration until he received written permission to do so from the Board.

In October 1982, Respondent applied for permission to reapply for his DEA registration. The Board declined to give its permission.

The Administrator further finds that since 1981 and his becoming unable to prescribe controlled substances, Respondent has often prescribed Nubian (nalbuphine), a non-controlled analgesic substance, in such quantities and under such conditions as to provoke criticism from another Seattle physician.

The Administrator also notes that the Washington State Department of Labor and Industries barred Respondent from participation in the workers' compensation program in 1984. Following a hearing, the Board of Industrial Appeals found, *inter alia*, that Respondent repeatedly treated injured workers in a manner detrimental to their recovery and overprescribed and administered dependency-inducing drugs and medications to workers in quantities excessive for therapeutic purposes.

The Administrator finds that on October 20, 1983, Respondent was convicted in the Superior Court of the State of Washington for the County of King for violating the Washington State Mandatory Reporting Law which mandates the reporting of suspected child abuse or neglect cases by physicians who have reasonable cause to believe such child abuse or neglect is taking place. During the trial for this violation, it was established that a 22 month old infant died on December 13, 1982, from injuries inflicted by her mother's boyfriend. An autopsy revealed that the child had suffered seven broken bones at various ages and had more than 20 bruises on various parts of her body. Such evidence of abuse should have been clear to Respondent who saw the child in his office on October 25, 1982, November 1, 1982, and December 10, 1982. Respondent was fined $1,500 for his offense of failing to report. Following this conviction, the Osteopathic Board agains suspended Respondent's license to practice. The suspension was stayed provided that Respondent comply with certain restrictions, principally that he not treat any patients under ten years of age.

The Administrator also finds that Respondent was hospitalized in 1962 for psychiatric treatment following his ingestion of LSD and was treated by a psychiatrist for four years thereafter. In 1981, a psychiatrist testified before the Osteopathic Board that Respondent was then suffering from a paranoid personality disorder.

In an order dated August 8, 1985, the Washington State Board of Osteopathic Medicine and Surgery granted Respondent permission to apply for a DEA registration as a practitioner with respect to Schedules IV and V, except for substances in the benzodiazepine drug class. Respondent applied for such registration on September 25, 1985.

Based on the foregoing, the Administrator concludes that the registration of Respondent, in any Schedule, would be inconsistent with the public interest. Respondent's prescribing practices led to a child being born in a drug dependent state. Another child died after Respondent failed to report clear evidence of child abuse to the proper authorities. Respondent's dangerous prescribing practices have been condemned by his profession's licensing board in Washington State and by other members of the medical and osteopathic professions. The Board refused to permit Respondent to reapply for a DEA registration in 1982, although they did agree to allow him to apply for a restricted registration in 1985. Respondent has made absolutely no showing that his unacceptable professional judgment, well-established in this record and previously condemned by the State Board, has improved one iota since 1981. Additionally, while Respondent was diagnosed in 1981 as suffering from a paranoid personality disorder, he has produced no evidence in this record that his conditions has improved.

The instances of wrongdoing, diversion and professional dereliction set forth above are but a small part of a voluminous record. Similar instances contained in the entire record are too numerous to recount in this order. After considering Respondent's past conduct in light of the factors set forth in 21 U.S.C. 823(f), the Administrator concludes that the public interest cannot be served by granting this individual

access to controlled substances. Indeed, the Administrator's responsibility for protecting the public from individuals who abuse their registrations and place their patients and the public in jeopardy mandates that he deny this application. The Administrative Law Judge recommended that Respondent's application should be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration, executed by Respondent on September 25, 1985, be, and it hereby is, denied. This order is effective March 7, 1988.

Dated: February 1, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-2467 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-09-M

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center: Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on March 1, 1988 from 9 a.m. until 5 p.m. at The Monteleone Hotel, 214 Rue Royale, New Orleans, Louisiana 70140.

The major topics to be discussed will be the evaluation of the test for noncriminal justice use of the Interstate Identification Index (III) and access to III by agencies covered under the Security Clearance Information Act of 1985, Pub. L. 99-169.

The meeting will be open to the public with approximately 25 seats available for the seating on a first-come, first-serve basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-342-2606.

Date: February 2, 1988.

William S. Sessions,

Director.

[FR Doc. 88-2401 Filed 2-4-88; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total numbers of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

Nonmonentary Determination Report
1205-0150; ETA 207
Quarterly
State and local governments
53 respondents; 898 hours; 1 form

Data are used to monitor the impact of disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Occupational Safety and Health Administration

Initial and renewal New Directions application for training and education grants, OSHA-177
#1218-0020
Annually
Non-Profit Institutions
76 respondents; 4,811 burden hours; 1 form

The application is submitted by nonprofit organizations interested in participating or continuing in the New Directions grant program. It is used by OSHA staff to select organzations which can effectively carry out the objectives of the program. The application becomes part of the grant award, document for successful applicants.

Extension

Mine Safety and Health Administration

Examinations and Test of Electrical Equipment 1219-0067
Weekly, monthly; semi-annually
Business and other for profit; small businesses or organizations

5,115 respondents; 1,966,190 hours

Requires coal mine operators to keep records of the results or required test and examinations of electrical equipment.

Mine Safety and Health Administration

Record of Preshift and Onshift Inspections of Slope and Shaft Areas
1219-0082
Preshift and onshift
Businesses and other for profit; small businesses or organizations
40 respondents; 18,040 hours

Requires coal mine operators to keep records of the results of required examinations for hazardous conditions, including tests for methane and oxygen deficiency, of slope and shaft areas during development.

Extension

Mine Safety and Health Administration

Escapeways and Escape Facilities
1219-0052
Weekly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 153,041 hours

Requires that underground coal mine operators keep records of results of weekly examinations of emergency escapeways.

Mine Safety and Health Administration

Permissible Equipment Testing
1219-0066
On occasion
Businesses and other for profit; small businesses or organizations
3,175 respondents; 191,176 hours

Contains procedures by which manufacturers of mining equipment and components, material, instruments, and explosives may apply for, and have their products approved as permissible for use in mines.

Signed at Washington, DC, this 2nd day of February, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-2397 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

Babcock and Wilcox Co.; Affirmed Determination Regarding Application for Reconsideration

In the matter of Babcock and Wilcox Company at the following locations:

TA-W-20,111
Beaver Falls, Pennsylvania
TA-W-20,112
Ambridge, Pennsylvania
TA-W-20,113
Koppel, Pennsylvania

By an application dated January 8, 1988, the United Steelworkers of America (USWA) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of the Babcock and Wilcox Company at the subject locations. The determination was published in the **Federal Register** on December 15, 1987 (52 FR 47645).

The union claims, among other things, that the U.S. aggregate import test was too general and that the Department should have considered imports of mechanical pipe, structural pipe, pressure tubing and stainless steel pipe and tube. A significant portion of Babcock and Wilcox production was mechanical pipe.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted. Signed at Washington, DC, this 29th day of January 1988.

Robert of Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-2398 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,234]

True Form Foundations Corp., Darby, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 7, 1987 in response to a worker petition received on December 7, 1987 which was filed on behalf of workers at the Darby, Pennsylvania plant of True Form Foundations Corp.

All workers were separated from the subject plant more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of January 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-2399 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to the prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitlted "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page numbers(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL88-26 (Jan. 8, 1988)—p. 53
Kentucky:
KY88-2 (Jan. 8, 1988)—p. 291
KY88-4 (Jan. 8, 1988)—p. 298
Massachusetts:
MA88-3 (Jan. 8, 1988)—p. 406
Mississippi:
MS88-21 (Jan. 8, 1988)—p. 514
MS88-23 (Jan. 8, 1988)—p. 516
MS88-24 (Jan. 8, 1988)—p. 520
New Jersey:
NJ88-3 (Jan. 8, 1988)—pp. 634-635, p. 640
New Jersey:
NJ88-4 (Jan. 8, 1988)—p. 658
Tennessee:
TN88-16 (Jan. 8, 1988)—p. 1114
Virginia:
VA88-15 (Jan. 8, 1988)—pp. 1154-1155

Volume II

Michigan:
MI88-2 (Jan. 8, 1988)—p. 426
MI88-3 (Jan. 8, 1988)—p. 450
MI88-4 (Jan. 8, 1988)—pp. 457, 459
MI88-5 (Jan. 8, 1988)—pp. 464-465, p. 472
New Mexico:
NM88-1 (Jan. 8, 1988)—pp. 699-700
Texas:
TX88-10 (Jan. 8, 1988)—pp. 960

Volume III

Alaska:
AK88-1 (Jan. 8, 1988)—p. 3
Idaho:
ID88-1 (Jan. 8, 1988)—p. 143
Montana:
MT88-1 (Jan. 8, 1988)—p. 169
MT88-2 (Jan. 8, 1988)—pp. 186-187
Oregon:
OR88-1 (Jan. 8, 1988)—pp. 302-304
Utah:
UT88-3 (Jan. 8, 1988)—p. 348
Washington:
WA88-1 (Jan. 8, 1988)—pp. 362-363
WA88-2 (Jan. 8, 1988)—pp. 387-388
WA88-6 (Jan. 8, 1988)—p. 412
WA88-7 (Jan. 8, 1988)—p. 414
WA88-8 (Jan. 8, 1988)—p. 420

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th Day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-2252 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-296-C]

M & F Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

M & F Coal Company, Route 5, Box 234, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-16078), and its Mine No. 4 (I.D. No. 15-16191) both located in Whitley County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize the battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this peition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Dete: February 1, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2509 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-42-M]

Riverside Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Riverside Cement Company, P.O. Box L, Oro Grande, California 92368 has filed a petition to modify the application of 30 CFR 56.13020 (use of compressed air) to its Oro Grande Plant (I.D. No. 04-04348), its Oro Grande Quarry (I.D. No. 04-00011), both located in San Bernardino County, California; and its Crestmore Cement Plant (I.D. No. 04-00010) located in Riverside County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressed air not be directed towards a person.

2. Petitioner states that the raw products mined are milled and processed to a fine consistency which clings to employees' clothing and is difficult to remove. The semi-refined material contains various amounts of alkaline and potash. If the right conditions exist, e.g. sensitivity of skin and/or wetness, it will cause mild to severe burns to the skin.

3. As an alternate method, petitioner proposes to establish blow-off stations at various places in the plant where employees can clean their clothing with compressed air that has an OSHA approved nozzle that will not have pressure greater than 2-6 PSI at normal average line pressure. Tamper proof airline regulators will be installed at each station to ensure consistent primary operating air pressure.

4. There will be sign with specific rules and guidelines posted at each blow-off station.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 7, 1988. Copies of the petition are available for inspection at that address.

Date: January 28, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-2510 Filed 2-4-88; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-14]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 7, 1988. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: John F. Duggan, NASA Agency Clearance Officer, Code NPN, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: STS Request for Flight Assignment.
OMB Number: 2700-0040.
Type of Request: Reinstatement.
Frequency of Report: As Required.
Type of Respondent: State and local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.
Annual Responses: 20.
Annual Burden Hours: 10.
Abstract-Need/Uses: The NASA Form 1628 details the users Shuttle launch request. This information incudes: Payload Title, Principal Contact, Requested Launch Date, Payload Weight and Length, and Orbital requirements.

January 28, 1988.

John F. Duggan,

Director, General Management Division.

[FR Doc. 88-2375 Filed 2-4-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-21)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATE AND TIME: March 16, 1988, 2:30 p.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue SW., Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Roth, Code Q-1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8971).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Joseph F. Sutter and composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.

Agenda

Wednesday, March 16, 1988

2:30 p.m.—Presentation of findings and recommendations of the Aerospace Safety Advisory Panel.
4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

January 29, 1988.

[FR Doc. 88-2376 Filed 2-4-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-13)]

Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcomming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: February 23, 1988, 8:30 a.m. to 5:30 p.m., February 24, 1988, 8:30 a.m. to 5:30 p.m., and February 25, 1988, 8 a.m. to 3 p.m.

ADDRESS: As listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space Applications Advisory Committee consults with and advises the Council and NASA on plans for work in progress on, and accomplishments for NASA's Space Applictions programs. The Committee will meet to discuss the Office of Space Science and Applictions (OSSA) FY 1988 and FY 1989 budgets, Ossa strategic planning, and future committee activities. The group is chaired by Mr. Leonard Jaffe and is composed of 32 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all Committee and subcommittee sessions. The meetings will be open to the public up to the seating capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

February 23, 1988

Communications Subcommittee, National Council on the Aging, 600 Maryland Avenue, SW., West Wing, Suite 100, Conference Room C, Washington, DC 20024:
8:30 a.m.—Review Communication and Information Systems Division goals, organization, programs and activities.
1 p.m.—Review strategic plan, and new thrust areas.
5:30 p.m.—Adjourn.

Information Systems Subcommittee, NASA Headquarters Building, Room 226B, 600 Independence Avenue, SW., Washington, DC 20546:
8:30 a.m.—Discussion of the Communication and Information Systems Division draft five year plan.
1 p.m.—Committe planning for 1988.
5:30 p.m.—Adjourn.

Microgravity Subcommittee, National Council on the Aging, Conference Room B:
9 a.m.—Chairman's Remarks.
9:30 a.m.—NASA update on microgravity programs and plans, including discipline strategic plans, space station facilities, United States Microgravity Laboratory and Industrial Space Facility plans.
5 p.m.—Adjourn.

Remote Sensing Subcommittee, National Council on the Aging, Conference Room A:
1 p.m.—Briefing on the Earth Observing System (EOS) Announcement of Opportunity (AO) status, current launch status, platform configuration, and proposals for investigation.
2:30 p.m.—Review of long range plan within Earth Science and Applications Division.
3:30 p.m.—Update on Land Remote-Sensing Satellite (LANDSAT) Program status.
4 p.m.—Status of NASA Research Announcements (NRA).
5 p.m.—Adjourn.

February 24, 1988.

Full Committee, National Council on the Aging, Suite 100 9:30 a.m.—Remarks by the Committee Chairman.

OSSA Program Update:
10 a.m.—Overview of FY 1988 and FY 1989 Budgets.
10:30 a.m.—OSSA Program Status.
11:30 a.m.—Advisory Committee Restructuring.
1:30 p.m.—OSSA Strategic Plan.
3:30 p.m.—Adjourn Full Committee.

Reconvene Subcommittee Meetings

Communications Subcommittee, SAIC, 400 Virginia Avenue, SW., Suite 810, Washington, DC 20024. *Information Systems Subcommittee, Microgravity Subcommittee, Remote Sensing Subcommittee,* same location as February 23, 1988:
5:30 p.m.—Adjourn.

February 25, 1988

Communications Subcommittee, same location as February 23, 1988:
8:30 a.m.—Subcommittee continued discussion.

Information Systems Subcommittee, same location as February 23, 1988:
8:30 a.m.—Subcommittee discussion on Committee recommendations.

Microgravity Subcommittee, same location as February 23, 1988 8:30 a.m.—Subcommittee discussion and workshop planninmg.

Remote Sensing Subcommittee, same location as February 1988 8 a.m.—Preparation of draft recommendations for SAAC.

Reconvene Full Committee, National Council on the Aging, Suite 100:
11 a.m.- -Recent activities in the Office of Commercial Programs.
11:30 a.m.—SAAC Subcommittee Reports.
1:15 p.m.—SAAC discussion: Recommendations and position statements.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 1, 1988.

[FR Doc. 88-2377 Filed 2-4-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Diablo Canyon; Meeting

The ACRS Subcommittee on Diablo Canyon will hold a meeting on February 23 and 24, 1988, at the Sheraton International (5 minutes from the San Francisco airport), 1177 Airport Boulevard, Burlingam, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 23, 1988—8:30 a.m. until the conclusion of business
Wednesday, February 24, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants why may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpido Igne (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: February 2, 1988.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 88-2515 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440-OLA; ASLBP No. 88-562-02-LA]

The Cleveland Electric Illuminating Co., et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

The Cleveland Electric Illuminating Company, et al.; Perry Nuclear Power Plant, Unit No. 1, Facility Operating License No. NPF-58

This Board is being established pursuant to a notice published by the Commission on December 11, 1987, in the **Federal Register** (52 FR 47064-65) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." The proposed amendment would delete the provisions in the Technical Specifications relating to the Main Steam Isolation Valve (MSIV) Leakage Control System (LCS), and also revise the leakage criteria for primary containment allowable leakage through the main steam lines.

The Board is comprised of the following Administrative Judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

James H. Carpenter, Atomic safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Gustave H. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Bethesda, Maryland, this 28th day of January 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-2513 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219-OM; ASLBP No. 88-563-01-M]

General Public Utilities Nuclear Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

General Public Utilities Nuclear Corporation; Oyster Creek Nuclear Generating Station; Facility Operating License No. DPR-16

This Licensing Board is being established pursuant to a request for a hearing by Frank Aller regarding an order issued by the Deputy Executive Director for Regional Operations, dated November 5, 1987, entitled "Confirmatory Order (Effective Immediately)," 52 FR 43813 (November 16, 1987).

The Board is comprised of the following administrative judges:

Helen F. Hoyt, Chairperson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Frank F. Hooper, 4155 Clark Road, Ann Arbor, Michigan 48104

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 29th day of January 1988.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 88-2514 Filed 2-4-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice 1049]

Extension of the Restriction on the Use of United States Passport for Travel To, In, or Through Lebanon

On January 28, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports with the exception of two categories, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was required because the situation in Lebanon, and in West Beirut in particular, was so chaotic that I did not believe that any American citizen could be considered safe from terrorist acts.

Review of the situation in Lebanon has led me to conclude that conditions there have not improved by any measurable degree.

Therefore, in light of these circumstances, I have determined that Lebanon continues to be an area "* * * where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations.

Accordingly, all United States passports, except for those passport holders who are immediate family members of hostages in Lebanon, shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: February 1, 1988.

George P. Shultz,

Secretary of State.

[FR Doc. 88-2526 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice CM-8/1152]

Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission, Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that an open meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on February 23, 1988 from 9:30 a.m. to 12:30 p.m. in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California.

The meeting will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chairman. Subjects to be discussed include an evaluation of the 1987 fishery experience, a preliminary outlook for the 1988 fishery, U.S. views on the overall quota, and other aspect of the management program.

Requests for further information on the meeting should be directed to Brian Hallman, OES/OFA, Room 5806, Department of State, Washington, DC 20520. Mr. Hallman may be reached by telephone on (202) 647-2335.

Date: January 25, 1988.

B.S. Hallman,

Deputy Director for Oceans and Fisheries Affairs.

[FR Doc. 88-2344 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/1163]

Secretary of State's Advisory Committee on Private International Law, Study Group on Electronic Funds Transfers, Meeting

The first meeting of the Study Group will be held on Friday, February 26, 1988 at 10 a.m. at the United States Mission to the United Nations, 12th floor conference room, located at 799 United Nations Plaza, New York City, NY. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chair.

The purpose of the meeting is to review the progress of the United Nations Commission on International trade Law (UNCITRAL project to develop model rules on electronic funds transfers. The Study Group will formulate guidance for United States representatives to UNCITRAL's Working Group on International Payments. The Study Group's report will be considered by the Advisory Committee on Private International Law.

The agenda of the Study Group will include the following issues: Whether any proposed UNCITRAL rules should apply only to international transactions or should include domestic transactions as well; whether they should apply to electronic transactions only or also to paper-based transactions; whether they should cover all financial institutions; whether they should cover both debit and credit transfers; whether they should avoid or be based upon particular technologies or particular national financial systems; whether consumer electronic transfers should be excluded; whether the rules should cover conflicts of laws; what definitions should be applied; whether particular forms and authentication should be required; what would be the obligations, rights and liabilities of the various parties involved; and how should finality of a transaction be determined? The Study Groupp will also consider whether model rules, if adopted by UNCITRAL, would be appropriate for subsequent adoption in an international treaty.

Additional information on the meeting may be obtained by contacting the Office of the Assistant Legal Adviser for Private International Law, L/PIL, Room 6417, Department of State, Washington, DC 20520, or by calling Harold S. Burman at (202) 653-0852. Further information on the UNCITRAL project may be obtained by contacting the Sales Section, United Nations, New York, NY (212) 963-8302 and ordering the "UNCITRAL Legal Guide on Electronic Funds Transfers" (refer to document no. A/CN.9/SER.B/1 or to Sale no. E.87.V.9), and related reports of the UNCITRAL Secretariat and Working Group on International Law.

Access to the United States Mission is controlled. Members of the general public planning to attend should notify the above office in advance of their name, affilation, address and telephone number. Persons interested but unable to attend the meeting request information from and submit comments or proposals to the Office of the Department of State indicated above.

Porter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88-2380 filed 2-4-88; 8:45 am]

BILLING CODE 4710-08-M

Office of the Secretary

[Public Notice 1048]

Determination Pursuant to Section 6(j) of the Export Administration Act of 1979; North Korea

In accordance with Section 6(j) of the Export Administration Act (50 U.S.C. App. 2405(j)), I hereby determine that North Korea is a country which has repeatedly provided support for acts of international terrorism.

George P. Shultz,

Secretary of State.

[FR Doc. 88-2428 Filed 2-4-88; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB On January 29, 1988

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on January 29, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annettee Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 29, 1988.

DOT No: 3011.
OMB No: 2127-0518.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR 571.218, Motorcycle Helmets (labeling).
Need for Information: To identify the manufacturers in case of defects.
Proposed Use of Information: The DOT symbol label signifies the manufacturer's certification that the helmet meets the minimum requirements.
Frequency: On occasion.
Burden Estimate: 5,940.
Respondents: Businesses.
Form(s): None.

DOT No: 3012.
OMB No: 2125-0092.
Administration: Federal Highway Administration.
Title: The 1989 Estimate of the Cost of Completing the Interstate System.
Need for Information: To provide Congress with a detailed estimate of the cost of completing the Interstate system.
Proposed Use of Information: The information is used by the Congress in evaluating system and route cost and in establishing authorization levels to assure completion of the Interstate System.
Frequency: Biennially.
Burden Estimate: 39,950.
Respondents: State highway agencies.
Form(s): None.

DOT No: 3013.
OMB No: New.
Administration: U.S. Coast Guard.
Title: Delegation of Authority to Measure Vessels.
Need for Information: This information collection requirement is necessary to determine, as required by law, that delegates are qualified to perform tonnage measurement services on behalf of the U.S. Government.
Proposed Use of Information: Coast Guard will use this information to delegate the authority for measuring vessels to qualified classification societies.
Frequency: One time per applicant.
Burden Estimate: 160.
Respondents: International classification societies.
Form(s): None.

DOT No: 3014.
OMB No: 2115-0030.
Administration: U.S. Coast Guard.
Title: Application for Port Security Card.
Need for Information: This information collection requirement is needed to ensure that individuals who require access to waterfront facilities or vessels do not pose a threat to national security. This requirement is particularly applicable to those ports that are vital to the military defense or that support military operations or where explosive cargo is loaded and unloaded.
Proposed Use of Information: Coast Guard uses the information to do a national agency check for criminal history of civilians requiring access to certain areas by virtue of their employment as longshoremen, dock workers, construction workers, etc. It is an integral part of the Security Program which provides protection and security of vessels, harbors, etc., from sabotage and subversive activities.
Frequency: On occasion.
Burden Estimate: 1,000.
Respondents: Civilian workers requiring access to vessels/ports facilities.
Form(s): CG-3825, CG-2685.
DOT No.: 3015.

BEST COPY AVAILABLE

OMB No.: 2115–0544.
Administration: U.S. Coast Guard.
Title: Advance Notice of Need for Reception Facilities.
Need for Information: This information collection requirement is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It is also used to establish procedures whereby persons in charge of ports and terminals may request the Secretary to certify the adequacy of facilities. The reception facilities are needed to receive waste not discharged at sea.
Proposed Use of Information: The information will be used to determine when ships require reception facilities.
Frequency: On occasion.
Burden Estimate: 5012.5.
Respondents: Oceangoing ships requiring oil or NLS facilities at U.S. ports.
Form(s): None.

DOT No.: 3016.
OMB No.: 2138–0009.
Administration: Research and Special Programs.
Title: Form 298–C Report of Financial and Operating Statistics for Small Aircraft Operations.
Need for Information: Establish Essential Air Service (EAS) Levels, EAS Subsidy rates, Alaskan mail rate, allocate funds for airport development and monitor carriers fitness.
Proposed Use of Information: To help manage the EAS program, the Mail Rate Program and allocate funds for airport development.
Frequency: Quarterly.
Burden Estimate: 6,808 hours.
Respondents: Small certificated and commuter air carriers.
Form(s): RSPA Form 298–C.

DOT No: 3017.
OMB No: 2115–0036.
Administration: U.S. Coast Guard.
Title: Applications for Enlistment (CG–2520).
Need for Information: This information collection requirement is needed to allow interested persons an opportunity to apply for enlistment in the Coast Guard.
Proposed Use of Information: The Coast Guard uses the information to conduct required personal and character reference checks and to determine the applicant's eligibility for enlistment.
Frequency: Once per applicant.
Burden Estimate: 10,500.
Respondents: Individuals.
Form(s): CG–2520.

DOT No.: 3018.
OMB No.: 2120–0008
Administration: Federal Aviation Administration.
Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft—FAR 121.
Need for Information: Any air carrier wishing to obtain an air carrier operating certificate must comply with the requirements of FAR Part 121. The FAA needs and uses the information it collects to verify compliance and issue operating certificates.
Proposed Use of Information: The FAA needs and uses the information it collects to verify compliance and issue operating certificates.
Frequency: On occasion.
Burden Estimate: 3,158,949.
Respondents: Air carriers.
Form(s): FAA Forms 8400–6, and 8070–1.

DOT No.: 3019.
OMB No.: 2127–0541.
Administration: National Highway Traffic Safety Administration.
Title: Owner's Manual Requirements—Motor Vehicles and Motor Vehicle Equipment, 49 CFR 571.126, .205, .208, .210, 575.102 and .105.
Need for Information: To inform vehicle owners and passengers about proper use of the vehicle or equipment.
Proposed Use of Information: Certain safety information which could benefit the vehicle owner or operator by reducing the risk of harm must be included in the vehicle owner's manual to provide for safe operation by users.
Frequency: On occasion.
Burden Estimate: 696 hours.
Respondents: Businesses/small businesses.
Form(s): None.

DOT No.: 3020.
OMB No.: 2120–0026.
Administration: Federal Aviation Administration.
Title: Flight Plans (Domestic/International).
Need/Use of Information: The information is needed by air traffic control personnel so they are aware of specific flight activity and can initiate timely search and rescue actions whenever an aircraft is determined to be overdue at the filed destination.
Frequency: On occasion.
Burden Estimate: 563,112.
Respondents: Pilots.
Form(s): FAA Forms 7233–1, 7233–4.

DOT No.: 3021.
OMB No.: 2125–0080.
Administration: Federal Highway Administration.
Title: Medical Qualification Requirements.
Need for Information: To assure the compliance in 49 CFR Part 391 and 398 that only those persons who are physically and mentally fit may drive in interstate and foreign commerce.
Proposed Use of Information: To meet FHWA's requirement that a driver employed by a motor carrier have in his or her possession, while driving, a physician's medical certificate or a waiver issued by FHWA.
Frequency: Recordkeeping/3 years.
Burden Estimate: 14,340.
Respondents: Motor Carriers.
Form(s): None.

Issued in Washington, DC on January 29, 1988.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 88–2449 Filed 2–4–88; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 29, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45410

Date Filed: January 27, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 24, 1988.
Description: Application of Air Ontario Inc. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to authorize it to engage in foreign scheduled air transportation of persons, property and mail between Toronto, Ontario and Syracuse and Albany, New York.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 88–2450 Filed 2–4–88; 8:45 am]
BILLING CODE 4910–62–M

Office of Commercial Space Transportation

Finding of No Significant Impact; Vandenberg Air Force Base, CA

AGENCY: Office of Commercial Space Transportation, Department of Transportation.

ACTION: DOT Notice of Finding of No Significant Impact (FONSI).

SUMMARY: DOT is issuing this notice to advise the public that a FONSI has been made on the expendable launch vehicle program at Vandenberg Air Force Base (VAFB), California.

SUPPLEMENTARY INFORMATION: In February 1986, the Office of Commercial Space Transportation published the Programmatic Environmental Assessment for Commercial Expendable Launch Vehicle Programs (51 FR 6870) February 26, 1986). In cooperation with the U.S. Air Force, the Office has completed an environmental assessment of the commercial space transportation program at VAFB. DOT licenses commercial space launches from the National Ranges, one of which is VAFB. This programmatic assessment addresses the impact of commercial launches from VAFB, California.

The FONSI is based on an environmental assessment of the commercial space transportation program at VAFB. This programmatic assessment identified the impacts that the conduct of commercial launch activities would have on the environment. None of these were significant. However, certain factors associated with individual launch proposals were not addressed in the assessment and may require further review when a company proposes to conduct a new activity at VAFB. These include use of new launch vehicles, new propellants, new site development, or environmental effects associated with some payloads in the events of a launch accident.

Copies of the FONSI and assessment may be requested from Office of Commercial Space Transportation, S–52, 400 Seventh Street, SW., Room 10330, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Norman Bowles, Associate Director for Licensing Programs, Office of Commercial Space Transportation, (202) 366–2929 or Gerald Musarra, Office of the General Counsel, (202) 366–3905, Department of Transportation, Washington, DC 20590.

Dated: February 1, 1988.

Courtney A. Stadd,
Director, Office of Commercial Space Transportation.

[FR Doc. 88–2451 Filed 2–4–88; 8:45 am]
BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 36]

New Car Assessment Program; Optional Testing by Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Amendment to Optional New Car Assessment Program (Optional NCAP).

SUMMARY: This notice amends the vehicle eligibility criteria for the Optional NCAP test program for motor vehicle manufacturers. Before this notice, vehicles were eligible to be tested under Optional NCAP if production design changes were made to the vehicles at some time after the original NCAP results for the vehicle were publicly released. By this amendment, vehicles are eligible to be tested under Optional NCAP if production design changes were made at any date after the production date of the vehicle that was tested in NCAP.

EFFECTIVE DATE: This amendment becomes effective February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4805).

SUPPLEMENTARY INFORMATION: On August 21, 1987, the agency published criteria for an Optional NCAP test program for motor vehicle manufacturers (52 FR 31691). The program was instituted to provide manufacturers with an opportunity to retest any of their vehicles that have been tested in the NCAP program and subsequently modified with production changes to improve occupant protection. The testing was designed to be conducted at the manufacturers' expense, but under criteria established by NHTSA. These criteria require that the testing be conducted at the same test facilities and according to the same controls and procedures used for the agency's NCAP testing. The Optional NCAP test results would be published by the agency in its NCAP press releases.

In the November 19, 1986, **Federal Register** notice seeking comment on the proposed criteria for Optional NCAP (51 FR 41888), and in the August 21, 1987, **Federal Register** notice announcing the final Optional NCAP criteria, the agency described the rationale for the program. Specifically, "the agency [has] concluded that it would be helpful to both consumers and the vehicle manufacturers if the information about improved NCAP test results for the modified vehicles were made public as soon as possible."

The intent of the program was that, as vehicles changed from the ones originally tested in NCAP, manufacturers could request retesting under Optional NCAP. It was assumed that the changes would be made after the NCAP results were announced. However, based on information received from Volkswagen of America, Inc., (Volkswagen), it is clear that limiting eligibility for Optional NCAP to only those vehicles that have had a change made after the NCAP results are announced is not consistent with the intent of the program.

As previously discussed, Optional NCAP was designed to give information to consumers on vehicles that have had changes made to improve their NCAP crash test performance, and, therefore, are different from the vehicles originally tested in NCAP. That is the case with the Volkswagen Fox. Volkswagen Fox vehicles currently available in dealer showrooms are different from the one tested by NHTSA. Thus, the agency believes that the current NCAP test data available to the public on some vehicles may not be indicative of the crash test performance of the vehicle a consumer may actually be considering for purchase.

In order to correct this type of situation, the agency published a notice on December 10, 1987, seeking comments on proposed changes to the Optional NCAP eligibility Criteria Nos. 1.a. and 1.b. (52 FR 46880).

The eligibility criteria were proposed to be changed to allow vehicles to be tested in Optional NCAP as long as the production design changes were made after the production date of the vehicle tested in NCAP.

The agency received comments to the notice from Chrysler Corporation (Chrysler), Ford Motor Company, General Motors Corporation, and Volkswagen of America, Inc. (Volkswagen). All commenters concurred with the agency's proposed changes to the test vehicle eligibility criteria for Optional NCAP as presented. Chrysler and Volkswagen also provided comments which concerned NCAP in general and the need for several of the Optional NCAP criteria. However, those

were unrelated to the proposed amendment to Optional NCAP. These comments are discussed below.

The NCAP Program in General

Chrysler comented that NCAP is misleading to consumers and that the results do not provide useful, real-world comparative ratings of the crashworthiness of passenger cars and light-duty vehicles. These comments are not relevant to the agency's notice requesting comments on an amendment to Optional NCAP. However, the agency's position on NCAP and its usefulness to consumers can be found in the August 21, 1987, notice establishing the criteria for the Optional NCAP test program for motor vehicle manufacturers (52 FR 31691).

Vehicles Eligible To Be Included in the Optional NCAP

Volkswagen stated that the agency should allow manufacturers to retest any vehicles they wish under Optional NCAP, without the need to demonstrate to the agency that an improvement has been made. This argument is based on Volkswagen's belief that a manufacturer is unlikely to underwrite the expense of Optional NCAP testing unless it is confident that the results will demonstrate improvement. The need for Optional NCAP requirements specifying vehicle eligibility and supporting data criteria (Criteria No. 1 and No. 2) were discussed at length in the August 21, 1987, notice establishing the Optional NCAP test program for motor vehicle manufacturers (52 FR 31691). To briefly reiterate, the agency is not going to use Optional NCAP to disseminate information about essentially repetitive testing of unchanged vehicle models. Without the controls established by the Optional NCAP criteria, a manufacturer could use this program to publish different crash test results for unchanged vehicles. Such actions would not benefit consumers or further any purpose of NCAP. Accordingly, the agency is not persuaded by the Volkswagen comment.

Amendment to the Criteria for Optional NCAP Testing

After considering all comments, NHTSA is amending the vehicle eligibility criteria in Optional NCAP for the reasons set forth in the proposal and repeated above. Therefore, Optional NCAP Criteria Nos. 1.a. and 1.b. are amended as follows:

1. The following vehicles are eligible for testing under this program:

a. Any model that has previously been tested under the NCAP program, and at some time after the production date of the vehicle tested in NCAP, the manufacturer has made production design changes to the models that are likely to significantly improve its NCAP test results.

b. A model selected by NHTSA that is in the same line as a model that was previously tested under the NCAP program, but the tested model is no longer in production, and, at some time after the production date of the vehicle tested in NCAP, the manufacturer has made production design changes to the line of vehicles that are likely to significantly improve the NCAP test results.

The agency will implement these amended criteria for Optional NCAP testing on the day this notice is published in the **Federal Register**. Thus, any manufacturer requests for optional testing that are received on or after that date will be evaluated under these amended criteria.

Issued on February 2, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-2419 Filed 2-4-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular—Public Debt Series—No. 4-88]

8-3/4 Percent Treasury Bonds of 2017

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,750,000,000 of United States securities, designated 8-3/4% Treasury Bonds of 2017 (CUSIP No. 912810 DY 1), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Bonds will be issued February 16, 1988, and are offered as a additional amount of 8-3/4% Treasury Bonds of 2017 (CUSIP No. 912810 DY 1) dated May 15, 1987. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1987, to February 16, 1988. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on May 15, 1988, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature may 15, 2017, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1 through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of The Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 4, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 3, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 9.48% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1987, to February 16, 1988, in the amount of $22.35577 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying

designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum par amount required to obtain the separate components for this offering is $160,000. Par amounts greater than the minimum amount must be in multiples of that amount.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of 8¾% Treasury Bonds of May 15, 2017, CUSIP No. 912810 DY 1

The Principal Component is designated 8¾% Treasury Principal (TPRN) 2017 due May 15, 2017, CUSIP No. 912803 AL 7

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5
May 15, 2002	FQ 8	May 15, 2017	KM 1
Nov. 15, 2002	FR 6		

[FR Doc. 88-2535 Filed 2-3-88; 10:23 am]

BILLING CODE 4810-40-M

[Dept. Circular—Public Debt Series—No. 3-88]

Treasury Notes of February 15, 1998, Series A-1998

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of February 15, 1998, Series A-1998 (CUSIP No. 912827 VW 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1988, and issued February 16, 1988. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1988, to February 16, 1988. Interest on the Notes is payable on a semiannual basis on August 15, 1988, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 3, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 2, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the dealine for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interst rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from February 15, 1988, to February 16, 1988. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in

cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3 The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 1998, Series A–1998, CUSIP No. 912827 VW 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A–1998 due February 15, 1998, CUSIP No. 912820 AM 9.

INTEREST COMPONENTS

DESIGNATION	CUSIP No. 912833	DESIGNATION	CUSIP No. 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
Aug. 15, 1988	BC 3	Aug. 15, 1993	BN 9
Feb. 15, 1989	BD 1	Feb. 15, 1994	BP 4
Aug. 15, 1989	BE 9	Aug. 15, 1994	BQ 2
Feb. 15, 1990	BF 6	Feb. 15, 1995	BR 0
Aug. 15, 1990	BG 4	Aug. 15, 1995	BS 8
Feb. 15, 1991	BH 2	Feb. 15, 1996	BT 6
Aug. 15, 1991	BJ 8	Aug. 15, 1996	BU 3
Feb. 15, 1992	BK 5	Feb. 15, 1997	BV 1
Aug. 15, 1992	BL 3	Aug. 15, 1997	BW 9
Feb. 15, 1993	BM 1	Feb. 15, 1998	BX 7

BILLING CODE 4810-40-M

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

ATTACHMENT B

[FR Doc. 88-2534 Filed 2-3-88; 10:22 am]
BILLING CODE 4810-40-C

[Department Circular—Public Debt Series—No. 2–88]

Treasury Notes of February 15, 1991, Series R–1991

Washington, January 28, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of February 15, 1991, Series R–1991 (CUSIP No. 912827 VV 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 16, 1988, and will accrue interest from that date, payable on a semiannual basis on August 15, 1988, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 2, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 1, 1988, and received no later than Tuesday, February 16, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primarily dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations.

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5 must be made or completed on or before Tuesday, February 16, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 11, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 16, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88–2533 Filed 2–3–88; 10:22 am]

BILLING CODE 4810–40–M

VETERANS ADMINISTRATION

Agency Survey of Disabled Veterans Under OMB Review; Correction

AGENCY: Veterans Administration.

ACTION: Notice; Correction.

SUMMARY: On page 1977 of the **Federal Register** of January 25, 1988, (53 FR 1977), the Veterans Administration (VA) published a notice entitled Agency Survey of Disabled Veterans Under OMB Review. Inadvertently, two separate documents under review at OMB were combined and published as one survey. This notice corrects that error by publishing a document entitled Agency Surveys Under OMB Review which contains information about both new collections, Survey of Disabled Veterans and Survey of VA Medical System Users, as set forth below.

FOR FURTHER INFORMATION CONTACT: Petti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20240, (202) 233–2146.

Dated: February 1, 1988.

Priscilla B. Carey,

Chief, Directives Management Division.

The Veterans Administration has submitted to OMB for review the following surveys for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). These documents lists the following information: (1) the department sponsoring the survey, (2) survey title, (3) the agency form number, (4) a description of the need and its use, (5) frequency of survey, (6) who will be required or asked to respond, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to complete the survey and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the surveys and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2146. Comments and quetions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 18, 1988.

By direction of the Administrator:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Survey of Disabled Veterans

New collection

1. Office of Information Management and Statistics.
2. Survey of Disabled Veterans (SDV).
3. VA Form SDV–1.
4. This survey will assist VA in policy and planning decisions concerning disabled veterans.
5. One time.
6. Individuals or households
7. 11,000 responses.
8. 11,000 hours.
9. Not applicable.

Survey of VA Medical Systems Users

New Collection

1. Office of Information Management and Statistics.
2. Survey of VA Medical System Users.
3. VA Form SMSU–1.
4. This survey will assist VA in policy and planning for VA medical facilities, programs, and services.
5. One time.
6. Individuals or households.
7. 3,000 responses.
8. 3,500 hours.
9. Not applicable.

[FR Doc. 88–2374 Filed 2–4–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

February 3, 1988.

PLACE: 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, February 12, 1988, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSOLIDATED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Panel Presentation: Innovative Approaches to Integration and Education
IV. SAC Report: "Collecting Data on Bias-Related Incidents in Connecticut"
V. SAC Recharters
VI. Report on Indian Subcommittee Hearing
VII. Discussion: Recent Media Reports on Bias-Related Incidents

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8105.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 88–2519 Filed 2–3–88; 9:48 am]
BILLING CODE 6335–01–M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 29, 1988, 53 FR 2668.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 3, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The Commission meeting scheduled for February 3, 1988 at 10:00 a.m. has been canceled.

Joseph C. Polking,
Secretary.

[FR Doc. 88–2520 Filed 2–3–88; 9:48 am]
BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 2, 1988

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Rushton Mining Company*, Docket No. PENN 86–44–R, etc. (Issues include whether Rushton violated 30 C.F.R. § 75.1434(a)(2), and, if so, whether the violation was the result of Rushton's unwarrantable failure.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 C.F.R. § 2706.150(a)(2) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Rushton Mining Company*, Docket No. PENN 86–44–R, etc. (see oral argument listing).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88–2593 Filed 2–3–88; 4:00 p.m.]
BILLING CODE 6735–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 10, 1988.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED:

Commission Consideration of Proposed Ophthalmic Practices Rule ("Eyeglasses II")

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,
Secretary.

[FR Doc. 88–2541 Filed 2–3–88; 10:54 am]
BILLING CODE 6750–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:30 a.m., Wednesday, February 10, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Revision of NCUA's Procurement Policy. Closed pursuant to exemption (2).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

RECESS: 11:15 a.m.

TIME AND DATE: 1:30 p.m., Wednesday, February 10, 1988.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Final Amendment of Part 703 of NCUA Rules and Regulations, Investments and Deposits: Authority for FCU's to Invest in Mortgage Related Securities.
6. Semi-Annual Agenda of Regulations.
7. Review of NCUA's Regulations:
   a. Repeal of § 701.10, Establishment of a Cash Fund.
   b. Proposed Amendment of sections 790 and 791, Rules of NCUA Board Procedure.
   c. Proposed Amendment of § 701.33, Compensation of Officials.
   d. Proposed Repeal of Part 761, Operational Procedures for Share Draft Programs.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
Secretary of the Board.

[FR Doc. 88–2554 Filed 2–3–88; 2:05 pm]
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Corrections

Federal Register
Vol. 53, No. 24
Friday, February 5, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pickles

Correction

In proposed rule document 87-28088 beginning on page 46486 in the issue of Tuesday, December 8, 1987, make the following corrections:

1. On page 46486, in the first column, under **SUMMARY**, in the sixth line, "proposed" should read "proposes".

2. On the same page, in the third column, in the third complete paragraph, in the 14th line, "to" should read "of".

§ 52.1685 [Corrected]

3. On page 46490, in the second column, in § 52.1685(n), in the first line, "pickle" was misspelled.

§ 52.1687 [Corrected]

4. On the same page, in the third column, in § 52.1687(a), in the first line, "recommendation" should read "recommended"

§ 52.1690 [Corrected]

5. On page 46493, in § 52.1690, in Table X, the table headings should read the same as those in Table IX.

For an Agricultural Marketing Service correction to this document, see the Proposed Rules section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71268-7268]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Computers

Correction

In rule document 88-1648 beginning on page 2582 in the issue of Friday, January 29, 1988, make the following corrections:

§ 399.1 Supplement No.1 [Corrected]

1. On page 2588, in Advisory Note 12, in the second column, paragraph (c)(3)(i), in the first line, "proceeding" should read "processing".

2. On page 2592, in Advisory Note 16, in the third column, in paragraph (b) of the definition of "total transfer rate"(which begins in the second column of the same page), in the second line, "R_{ttto}" should read "R_{ttlot}".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

Correction

In notice document 88-1186 appearing on page 1816 in the issue of Friday, January 22, 1988, make the following correction:

In the first column, in the 11th line from the bottom, the date should read "February 26, 1988".

BILLING CODE 1505-01-D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Mediterranean Fruitfly Eradication Program in Guatemala; Public Meeting

Correction

In notice document 88-2164 appearing on page 2892 in the issue of Tuesday, February 2, 1988, make the following correction:

In the third column, in the sixth line, "February 26, 1988" should read "February 16, 1988".

BILLING CODE 1505-01-D

federal register

Friday
February 5, 1988

Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1988

SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

Published by the Office of the Federal Register, this Supplement updates the 1986 Guide and the 1987 Supplement.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It provides information on (1) what records must be kept (2) who must keep them, (3) how long they must be kept, and (4) where the full provisions can be found in the Code of Federal Regulations.

The Guide published in 1986 was revised as of January 1, 1986. This Supplement updates the Guide as of January 1, 1988, and contains all changes to the Guide that have occurred since January 1, 1986. The changes indicated in brackets occurred in 1987, unless otherwise noted.

The Supplement is derived from the regulations published by the various agencies in the **Federal Register** from January 1, 1986 through December 31, 1987. It was prepared under the direction of Richard L. Claypoole. Gladys Queen Ramey was chief editor. Inquiries, telephone 202–523–3187. Suggestions concerning this publication may be sent to John E. Byrne, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to stay within the intended purpose. The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in Federal regulations.

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of business.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

Notice

The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1988.

List of Agencies and CFR Titles Appearing in This Supplement [1]

Agency	CFR Title
Agriculture Department	7, 9, 36
Commerce Department	15, 48, 50
Commodity Futures Trading Commission	17
Defense Department	48
Education Department	34
Energy Department	10, 18, 48
Environmental Protection Agency	40
Farm Credit Administration	12
Federal Communications Commission	47
Federal Emergency Management Agency	44
Federal Home Loan Bank Board	12
Federal Reserve System	12
Federal Trade Commission	16
General Services Administration	48
Health and Human Services Department	21, 42, 45
Housing and Urban Development Department	24
Interior Department	30, 43
Interstate Commerce Commission	49
Justice Department	8
Labor Department	20, 29
National Aeronautics and Space Administration	14, 48
National Archives and Records Administration	36
Nuclear Regulatory Commission	10
Postal Service	39
Small Business Administration	13
Transportation Department	14, 49
Treasury Department	19, 26, 27, 31
Veterans Administration	38

[1] Agencies appear in this Supplement in CFR title numerical order.

AGRICULTURE DEPARTMENT

Office of the Secretary

7 CFR

17.6 Importers and suppliers involved in sales of agricultural commodities.

To maintain a record of all offers received from suppliers as a result of public tenders or negotiation.

Retention period: Until expiration of 3 years after final payment under the purchase authorization.

17.22 Importers and suppliers involved in sales of agricultural commodities.

See 17.6.

Food and Nutrition Service

7 CFR

210.9 Cooperating State agencies, school food authorities, and food service management companies participating in the National School Lunch Program.

To maintain (a) records and accounts pertaining to its school food service; (b) files of currently approved and denied, free and reduced price applications; and (c) individual applications for free and reduced price lunches submitted by families.

Retention period: (a) 3 years after date of final Claim for Reimbursement for the fiscal year to which they pertain, or beyond 3 years until, resolution of any, audit questions; (b) not specified; and (c) 3 years after end of the fiscal year to which they pertain or beyond 3 years until resolution of any audit questions.

210.10 School food authorities participating in the National School Lunch Program.

To maintain production and participation records to demonstrate positive action toward providing one reimbursable lunch per child per day.

Retention period: 3 years after submission of final Claim for Reimbursement for the fiscal year, or beyond 3 years period until resolution of any audit issues.

210.14 School food authorities participating in the National School Lunch Program.

To maintain records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis including net cash resources, or the information necessary for the State to compute net cash resources through a review or audit.

Retention period: 3 years after submission of the final Claim for Reimbursement for the fiscal year or beyond 3 years until resolution of any audit issues.

210.15 School food authorities participating in the National School Lunch Program.

See 210.10 and 210.14.

210.16 Food service management companies participating in the National School Lunch Program.

To maintain such records as the school food authorities will need to support Claims for Reimbursements.

Retention period: 3 years after date of submission of the final Financial Status for fiscal year or until resolution of any audit issues.

210.18 State agencies participating in the National School Lunch Program. (Amended)

To maintain records which document the details of all Assessment, Improvement and Monitoring System (AIMS) review or audits and which demonstrate the degree of compliance with AIMS performance standards. When necessary, the records must include a corrective action plan as described in section cited.

Retention period: 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later.

210.19 State agencies participating in the National School Lunch Program.

To maintain all records pertaining to fiscal actions against school food authorities for Claims for Reimbursement that are not properly payable under 7 CFR Part 210.

Retention period: 3 years.

210.20 State agencies participating in the National School Lunch Program.

To maintain records to demonstrate compliance with Program requirements.

Retention period: 3 years after date of submission of final Financial Status Report for fiscal year or beyond 3 years until resolution of any audit issues.

210.23 State agencies and food authorities participating in the National School Lunch Program.

To keep necessary records as specified in 7 CFR 210.18 through 210.20.

Retention period: State agencies records—3 years after date of submission of final Financial Status Report for the fiscal year. School food authorities records—3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, records shall be retained until resolution of any audit issues.

210.27 State educational agencies participating in the National School Lunch Program.

To maintain records concerning the survey of school food authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

Retention period: 3 years.

225.10 State agencies participating in the Summer Food Service Program.

(a) To maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs.

(b) To maintain record for each review or audit conducted.

(c) To maintain complete record of each review or appeal.

Retention period: (a) 3 years after date of the submission of the final Program Operations and Financial Status Report or until resolution of any audit or appeal questions; (b) 3 years.

250.4 Distributing agencies and state agencies participating in the Temporary Food Assistance Program. (Added)

To maintain documentation of the transfers of donated food between emergency feeding organizations and recipient agencies.

Retention period: In accordance with 7 CFR 250.6(r) and 251.10(a).

250.6 Distributing, subdistributing, and recipient agencies to which food commodities are donated for use in school lunch programs, for training students in home economics, in summer camps for children, by needy Indians on reservations, in charitable institutions, and management companies pertaining to the feeding operations of the institutions, in State correctional institutions for minors, in nutrition programs for the elderly, and in assistance of other needy persons.

(a) To maintain records relating to receipt, disposal, and inventory of donated foods including records with respect to the receipt, and disbursement of funds arising from, or federally disbursed for, operation of the distributing program; (b) also, to maintain records with respect to (1) the receipt and disbursement of cash received in lieu of donated foods for nutrition programs for elderly, and (2) refusal of commodities by school food authorities.

Retention period: 3 years from the close of the Federal fiscal year to which the records pertain.

251.4 Distributing agencies and state agencies responsible for administering Temporary Emergency Food Assistance Program. [Added]

To maintain documentation of the transfers of any donated commodities between emergency feeding organizations and recipient agencies.

Retention period: In accordance with 7 CFR 250.6(r) and 251.10(a).

251.9 State agencies and emergency feeding organizations. [Redesignated as 251.10 and amended]

(a) See 250.6.

(b) Each distribution site shall keep accurate and complete records showing the date and method used to determine the number of eligible households served at the site.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

252.4 Food processors participating in the National Commodity Processing Program.

To maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food. To also keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

252.5 Recipient agencies participating in the National Commodity Processing Program.

To maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any foods which arise from the operation of the distribution program.

Retention period: Not specified.

Federal Crop Insurance Corporation

7 CFR

401.8 Insured under FCIC. [Added]

To keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage.

Retention period: 3 years from the end of the crop year to which they pertain.

401.11 Insured under FCIC. [Removed]

401.101 Insured under FCIC (Wheat). [Added]

To maintain written verifiabe records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.103 Insured under FCIC (Barley). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.105 Insured under FCIC (Oat). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.106 Insured under FCIC (Rye). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.109 Insured under FCIC (hybrid sorghum seed). [Added]

To maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.110 Insured under FCIC (Almond). [Added]

To maintain written verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

401.111 Insured under FCIC (Corn). [Added]

To maintain for each proposed unit, written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.113 Insured under FCIC (Grain sorghum). [Added]

To maintain for each proposed unit, written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.114 Insured under FCIC (Canning and processing tomato). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.117 Insured under FCIC (Soybean). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.123 Insured under FCIC (Safflower seed crop). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.124 Insured under FCIC (Sunflower seed crop). [Added]

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.135 Insured under FCIC (Malting barley). [Added]

To maintain records of acreage and production by type or variety for the last three years in which malting barley was produced.

417.7 Insured under FCIC (Sugarcane).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugarcane produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

430.7 Insured under FCIC (Sugar beet).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

436.7 Insured under FCIC (Tobacco-guaranteed production plan).

To keep records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

440.7 Insured under FCIC (Texas citrus tree).

To keep records of the trees destroyed and damaged on each unit including separate records showing the same information for any uninsured acreage.

Retention period: 2 years after the time of loss.

441.7 Insured under FCIC (Table grape).

To keep records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

443.7 Insured under FCIC (Hybrid seed).

To keep records of the harvesting, storage, shipment, sale or other disposition of all the crop production on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

444.7 Insured under FCIC (Fresh tomato).

To keep records of the harvesting, storage, shipment, sale or other disposition of all tomatoes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

445.7 Insured under FCIC (Pepper).

To keep records of the harvesting, storage, shipment, sale or other disposition of all peppers produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

447.7 Insured under FCIC (Popcorn).

To keep records of the harvesting, storage, shipment, sale or other disposition of all popcorn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

449.7 Insured under FCIC (Fresh market sweet corn).

To keep records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

451.7 Insured under FCIC (Canning and processing peach).

To keep records of the harvesting, storage, shipment, sale or other disposition of all peaches produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

452.7 Insured under FCIC (Safflower). [Added]

To maintain records of the harvesting, storage, shipment, sale, or other disposition of all safflowers produced on each unit, including separate records showing the same information for production from any uninsured acreage.

Retention period: For three years after the time of loss.

453.7 Insured under FCIC (Cranberry). [Added]

To maintain records of the harvesting, storage, shipment, sale or other disposition of all the insured crop produced on each unit, including the same information for production of the crop from any uninsured acreage.

Retention period: For three years from the end of the crop year to which they pertain.

454.7 Insured under FCIC (Fresh market tomato-guaranteed production plan). [Added]

To maintain records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage.

Retention period: 3 years after the time of loss.

Agricultural Stabilization and Conservation Service

7 CFR

729.426 Persons engaged in more than one business of shelling or crushing peanuts.

See 729.186.

729.429 Persons engaged in more than one business of shelling or crushing peanuts.

See 729.198.

Federal Grain Inspection Service

7 CFR

806.25 Grain elevator owners and merchandisers.

To keep such accounts, records, and memoranda that fully and correctly disclosed all transactions concerning the lots of grain for which the elevator or merchandiser received official services.

Retention period: 3 years from date of the official services; 3-year period may be extended if notified by the Administrator that specific records should be retained for a longer period.

Agricultural Marketing Service

7 CFR

907.173 Orange handlers.

See 907.73.

908.73 Orange handlers.

See 907.73.

908.173 Orange handlers.

See 907.73.

930.63 Cherry handlers. [Removed, 1986]

991.61 Hops handlers.

To maintain such records of all hops handled as will substantiate the required reports.

Retention period: At least 2 years after end of marketing year.

1230.58 Contracting parties under the pork promotion, research and consumer information order.

To keep accurate records of all relevant transactions.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1230.81 Persons subject to the pork promotion, research, and consumer information order.

To maintain such books and records as are necessary to carry out the provisions of the regulations including such records as are necessary to verify any required reports.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1240.114 First handlers under the Honey Research, Promotion, and Consumer Information Order. [Added]

To maintain records showing the exemptee's name and address along with their certificate numbers assigned by the Honey Board.

Retention period: 2 years beyond the marketing year of their applicability.

1240.120 First handlers, producer-packers, and importers under the Honey, Research Promotion, and Consumer Information Order. [Added]

To maintain one copy of each report made to the Board; records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of each exempt producer, producer-packer, and importer and such records as are necessary to verify such reports.

Retention period: 2 years beyond the marketing year of their applicability.

1280.161 Wheat and wheat food manufacturers. [Removed, 1986]

1280.330 Wheat and wheat food manufacturers. [Removed, 1986]

Commodity Credit Corporation

7 CFR

1425.17 Cooperative marketing associations participating in the price support program. [Revised, 1986; new amendment contained no record retention requirements]

1425.18 Cooperative marketing associations participating in the price support program. [Revised, 1986; new amendment contained no record retention requirements]

1425.20 Approved cooperative marketing associations participating in the price support program.

To maintain records showing quantity of commodity received from members and nonmembers, the date received, the eligibility status for price support of each quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable factor applies.

Retention period: 5 years.

1425.21 Approved cooperative marketing association participating in the price support program.

See 1425.20.

1430.344 Responsible persons or producers of milk produced in the US that is marketed for commercial use beginning Apr. 1, 1986 and ending Sept. 30, 1987.

To maintain such records pertaining to operations that are necessary to determine compliance with regulations.

Retention period: 3 years or for such longer periods as Dairy Division or CCC may require.

1430.468 Participating producers or knowing purchasers of dairy cattles sold pursuant to a DIP contract.

To maintain all records which CCC may require to enforce provisions of the contract, as well as any records necessary to establish compliance with the terms and conditions of the contract.

Retention period: 3 years from date of the nonproduction period under the contract.

1435.12 Sugar processors. [Removed, 1986]

1435.24 Sugar processors. [Removed, 1986]

1435.33 Sugar producers. [Removed, 1986]

1435.43 Sugar processors. [Removed, 1986]

1435.85 Sugar processors.

To maintain books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with price support purchase program requirements.

Retention period: Not less than 3 years.

1435.106 Sugar processors.

See 1435.85.

1435.121 Sugar processors.

See 1435.85.

1435.205 Sugar producers.

To maintain the books and records pertaining to the benefit payments and the applicable contracts with the processors.

Retention period: 3 years following the producer's demand for payment.

1446.83 Peanut handlers.

To maintain marketing, sales and disposal records.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

1446.84 Peanut handlers.

To keep records on inspected and noninspected peanuts; peanuts shelled or milled for a producer; peanuts from which LSKs or pods were removed for a producer; and green peanuts purchased from producer.

Retention period: 3 years following end of marketing year in which peanuts were produced.

1446.86 Peanut handlers.

See 1446.83 and 1446.84.

1446.93 Peanut handlers.

To keep records for each lot of quota and/or additional peanuts commingled in storage.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.114 Peanut handlers.

To keep such records on the disposition for all contract additional peanuts.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.146 Peanut area marketing associates.

To maintain a debt record for all handlers indicating the amounts due from each handler.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

Farmers Home Administration

7 CFR

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very-low- and low-income rural residents.

To maintain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after submission of the final Project Performance report or until all litigations, claims, audit or investigation findings involving records have been resolved.

1948.93 Rural development grantees-growth management and housing planning for approved designated energy impacted areas.

To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after grant closing or until audit findings have been resolved.

1980.646 Grantees under the Nonprofit Corporations Loan and Grant Program.

To maintain records to substantiate certification stating that all technical services have been completed.

Retention period: 3 years after grant closing or beyond 3 years until resolution of any audit questions.

1980.647 Grantees under the Nonprofit Corporations Loan and Grant Program. [Added]

To maintain financial records in accordance with standards prescribed in OMB Circular 102, Attachments P, G, and C, or OMB Circular A-110, Attachments F and C, as appropriate, in accordance with terms and conditions of the grant.

Retention period: 3 years after grant closing or beyond 3 years period until resolution of any audit questions.

Office of Transportation

7 CFR

3300.19 Agreement on the International Carriage Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing stations.

To maintain records of basic data developed in each testing of equipment.

Retention period: 3 years.

3300.43 Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing laboratories.

To maintain records of basic data in each testing of mechanical refrigerating appliances.

Retention period: 3 years.

JUSTICE DEPARTMENT

Immigration and Naturalization Service

8 CFR

274a.2 Employers or recruiters or referrers for a fee of workers in the U.S. [Added]

To retain Form I-9.

Retention period: (a) In the case of an employer—3 years after the date of the hire or one year after the individual's employment is terminated, whichever is later. (b) In the case of a recruiter or referrer for a fee—3 years after the date of the referral. (c) In the case of hiring an individual who was previously employed—3 years commencing from the date of the initial execution of the Form I-9 or one year after the individual's employment is terminated, whichever is later. (d) In the case of recruiting or referring for a fee an individual who was previously recruited or referred—for a period of 3 years commencing from the date of the initial execution of the Form I-9.

274a.6 State employment agencies. [Added]

(a) To retain the certification verifying identity and employment eligibility of individuals referred for employment by the agencies in the same manner prescribed for Form I-9 in 8 CFR 274a.2(b)(2).

Retention period: 3 years after the date of the hire or one year after the date the individual's employment is terminated, whichever is later.

(b) To retain the Form I-9 used to verify the identity and employment eligibility of an individual pursuant to 8 CFR 274a.2(b).

Retention period: For a period of 3 years from the date the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I-9 either in its original form, or on microfilm or microfiche.

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

9 CFR

107.1 Veterinary practitioners and animal owners. [Added]

To maintain records as are necessary to establish that a valid veterinarian-client-patient relationship exists and that there is a valid basis for the exemption from preparation pursuant to an unsuspended and unrevoked license.

Retention period: Not specified.

166.9 Licensees of treatment facility for garbage that is to be treated and fed to swine. [Amended]

To keep record of the destination and date of removal of all treated or untreated garbage removed from licensee's premise.

Retention period: 1 year from date made.

Food Safety and Inspection Service

9 CFR

318.21 Owners or operators of a non-Federal analytical chemical laboratories accredited to analyze official meat and poultry samples. [Added]

To maintain (a) laboratory quality control records; (b) complete records of the receipt, analysis and disposition of official samples; and (c) a standard book containing all readings and calculations for standardization of solution, determination of recoveries, and calibration of instruments.

Retention period: 3 years that samples have been analyzed under the Meat and Poultry Inspection Accredited Laboratory Program.

318.302 Producers of canned meat and poultry products.

To maintain complete records concerning all aspects of the development or determination of a process schedule, including any associated incubation tests and letters or other written communications from a processing authority recommending all thermal process schedules.

Retention period: Not specified.

318.305 Producers of canned meat and poultry products.

To maintain records on equipment and procedures for heat processing systems.

Retention period: Not specified.

318.307 Producers of canned meat and poultry products.

To maintain processing, production, container closure and distribution of product records.

Retention period: Not less than 1 year at the establishment and for an additional 2 years at the establishment or other location from which records can be made available to Program employees within 3 working days.

318.308 Producers of canned meat and poultry products.

To maintain full records regarding the handling of each deviation in processing.

Retention period: See 318.307.

320.1 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food.

To keep records as specified in section cited or by the Administrator.

Retention period: 2 years after end of year in which the transaction occurred, or longer if directed by the Administrator.

320.3 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food.

See 320.1.

381.153 Owners or operators of non-Federal analytical chemical laboratories accredited to analyze official meat and poultry samples. [Added]

See 318.21.

381.175 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce, or holding such products.

To maintain detailed records of such transactions as specified in the regulations.

Retention period: 2 years.

381.177 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce or holding such products.

See 381.175.

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381.305 Producers of canned meat and poultry products.

See 318.305.

381.306 Producers of canned meat and poultry products.

To maintain processing and production records which contain the date of production; product name and style; container code; container size and type; and the process schedule, including the minimum initial temperature.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.307 Producers of canned meat and poultry products.

To maintain process, container closure, and distribution of products records.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.308 Producers of canned meat and poultry products.

To maintain full records regarding the handling of each process deviation. Such records shall include, at a minimum, the appropriate processing and production records, a full description of the corrective actions taken, the evaluation procedures and results, and the disposition of the affected product.

Retention period: See 381.307.

381.309 Producers of canned meat and poultry products.

To maintain records on incubation checks.

Retention period: See 381.307.

NUCLEAR REGULATORY COMMISSION

10 CFR

25.23 Licensees or requesting organizations employing individual approved for personnel security access authorization.

To maintain records of grant of access authorization notification.

Retention period: One year after the access authorization has been terminated by the NRC Division of Security.

34.11 Licensees utilizing sealed sources of byproduct material for radiography.

To maintain (a) records of performance of internal inspections at intervals not to exceed three months; (b) records of the results of dates of calibration for each radiation survey instrument possessed by the licensee; (c) records of the results of leak tests of sealed sources; (d) records of quarterly physical inventories of all sealed sources received and possessed under the license; (e) current utilization logs showing for each sealed source a description of the radiographer exposure device or storage container, the identity of the radiographer to whom assigned, and the plant or site where used and dates of use; (f) records of inspection and maintenance of radiographic exposure devices, storage containers and source changers at intervals not to exceed three months prior to first use thereafter; (g) records of alarm system tested at intervals not to exceed three months prior to first use thereafter; (h) records radiographers and radiographers assistants of training, including copies of written tests, dates of oral tests and field examinations; (i) records of daily pocket dosimeter exposure readings and reports of periodic check (not to exceed one year) of film badge of thermoluminescence dosimeter; (j) records of physical radiation storage surveys.

Retention period: (a) For two years; (b) for two years after the date of each calibration; (c) for six months after performance of the required leak test or until transfer or disposal of the sealed source; (d) for two years after the date of each inventory; (e) for two years after the date of each recorded event; (f) for two years; (g) for two years; (h) for three years; (i) until disposal is authorized by the Commission; (j) 3 years when that survey is the last one performed in the work day.

34.43 Licensees utilizing sealed sources of byproduct material for radiography.

See 34.11.

35.14 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.21 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.22 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.23 Licensees for certain groups of medical uses of byproduct material. [Revised, 1986; new amendment contained no record retention requirements]

35.24 Licensees for certain groups of medical uses of byproduct material. [Removed, 1986]

35.25 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the individual's use of byproduct material.

Retention period: Not specified.

35.26 Licensees for certain groups of medical uses of byproduct material. [Removed, 1986]

35.27 Licensees for certain groups of medical uses of byproduct material.

To maintain records on visiting authorized user documentation.

Retention period: 2 years.

35.29 Licensees for mobile nuclear medicine services using byproduct material.

To retain letters signed by the management of each client for which services were rendered that authorized use of byproduct material at the client's address of use.

Retention period: 2 years after the last provision of service.

35.31 Licensees for certain groups of medical uses of byproduct material.

To maintain records of radiation safety program changes.

Retention period: Until the license has been renewed or terminated.

35.33 Licensees for certain groups of medical uses of byproduct material.

To maintain records of misadministrations involving any therapy procedures.

Retention period: 10 years.

35.44 Licensees reporting misadministration of byproduct material under general license. [Removed, 1986]

35.50 Licensees for certain groups of medical uses of byproduct material.

To retain a record of each check of and test of dose calibrators.

Retention period: 2 years unless directed otherwise.

35.51 Licensees for certain groups of medical uses of byproduct material.

To retain a record of each survey instrument calibration.

Retention period: 2 years.

35.59 Licensees in possession of any sealed source or brochytherapy source.

(a) To maintain records on leakage test and quarterly physical inventory of all sources in its possession.

Retention period: 5 years.

(b) To maintain records of the survey measuring the ambient dose rates quarterly in all areas where sources are stored.

Retention period: 2 years.

35.70 Licensees for certain groups of medical uses of byproduct material.

To keep records on the surveys for contamination and ambient radiation exposure rate.

Retention period: 2 years.

35.80 Licensees providing mobile nuclear medicine services.

To retain records of each survey of all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed.

Retention period: 2 years.

35.92 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each disposal of byproduct material as ordinary trash.

Retention period: 2 years.

35.204 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each measurement of molybdenum concentration.

Retention period: 2 years.

35.205 Licensees for certain groups of medical uses of byproduct material.

To maintain records on the controls of aerosols and gases, including the assumptions, measurements and calculations made of the amount of time needed after a radioactive gas spill to reduce the concentration in the room to the occupational limit listed in Appendix B to Part 20 of this chapter.

Retention period: Duration of use of the area.

35.310 Licensees for certain groups of medical uses of byproduct material.

To maintain a list of individuals receiving radiation safety instructions.

Retention period: 2 years.

35.315 Licensees for certain groups of medical uses of byproduct material.

To maintain record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured and the initials of the individual who made the measurements.

Retention period: Until the Commission authorizes disposition.

35.404 Licensees for certain groups of medical use of byproduct material.

To maintain a record of the radiation survey of patients.

Retention period: 2 years.

35.408 Licensees for certain groups of medical uses of byproduct material.

To maintain records of brachytherapy source use and radiation survey of the patients and the areas use to confirm that no sources have been misplaced.

Retention period: 2 years.

35.410 Licensees for certain groups of medical uses of byproduct material.

To maintain records of personnel caring for the patient undergoing implant therapy receiving radiation safety instruction.

Retention period: 2 years.

35.610 Licensees for certain groups of medical uses of byproduct material.

To maintain records of individuals who operate teletherapy units receiving safety instruction.

Retention period: 2 years.

35.615 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the radiation monitor check for proper opertion each day before the teletherapy unit is used for treatment of patients.

Retention period: 2 years.

35.620 Licensees for certain groups of medical uses of byproduct material.

To maintain a record of each calibration, intercomparison, and comparison of dosimetry equipment.

Retention period: Duration of the license.

35.632 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each full calibration measurements on each teletherapy unit.

Retention period: Duration of use of the teletherapy unit source.

35.634 Licensees for certain groups of medical uses of byproduct material.

To maintain records of each spot-check on each teletherapy unit and a copy of each notification of the results of each spot-check.

Retention period: 2 years.

35.636 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the safety checks for teletherapy facilities.

Retention period: 2 years.

35.641 Licensees for certain groups of medical uses of byproduct material.

To maintain records of the radiation measurements made following installation of a teletherapy source.

Retention period: Duration of the license.

35.647 Licensees for certain groups of medical uses of byproduct material.

To keep records of the inspection and servicing of each teletherapy unit during replacement.

Retention period: Duration of the license.

39.35 Licensees using licensed radioactive materials in well logging. [Added]

If using a sealed source, to keep a record of leak test results in units of microcuries.

Retention period: 3 years after the leak test is performed.

39.37 Licensees using licensed radioactive materials in well logging. [Added]

To maintain physical inventory records which indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of the individual conducting the inventory.

Retention period: 3 years from the date of the inventory for inspection by the Commission.

39.39 Licensees using licensed radioactive materials in well logging. [Added]

To maintain records for each use of licensed material showing (a) the make, model number, and a serial number or a description of each sealed source used; (b) the identity of the logging supervisor who is responsible for the licensed material and the identity of logging assistants present; (c) the location and date of use of the licensed material; and (d) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer material.

Retention period: 3 years from date of the recorded event.

39.61 Licensees using licensed radioactive materials in well logging. [Added]

To maintain a record of each logging supervisor's and logging assistant's training and annual safety review. The training records must include copies of written tests and the annual safety reviews must list the topics discussed.

Retention period: Training records—Until 3 years following termination of employment; annual safety review records—3 years.

39.65 Licensees using licensed radioactive materials in well logging. [Added]

To retain records of film badge, TLD and bioassay results of inspection.

Retention period: Until the Commission authorizes disposition of the records.

39.67 Licensees using licensed radioactive materials in well logging. [Added]

To retain radiation survey records.

Retention period: 3 years after they are made.

39.73 Licensees using licensed radioactive materials in well logging. [Added]

To maintain at the field station: (a) a copy of 10 CFR Parts 19, 20, and 39; (b) the license authorizing the use of licensed material; (c) operating and emergency procedures required by 10 CFR 39.63; (d) records of radioactive survey instrument calibrations; (e) records of leak test results; (f) physical inventory records; (g) utilization records; (h) records of inspection and maintenance; (i) training records; and (j) survey records.

Retention period: Not specified.

39.75 Licensees using licensed radioactive materials in well logging. [Added]

When conducting operations at a temporary jobsite, to maintain (a) operating and emergency procedures; (b) evidence of latest calibration of the radiation survey instruments in use at the site; (c) latest survey records; (d) shipping papers for the transportation of radioactive materials; and (e) when operating under reciprocity pursuant to 10 CFR 150.20, a copy of the Agreement State license authorizing use of licensed materials.

Retention period: Until the well logging operation is completed.

50.54 Licensees authorized to operate nuclear production and utilization facilities.

To maintain (a) records of changes to physical security plan made without prior Commission approval; (b) records of changes to safeguard contingency plan made without prior Commission approval; (c) records of periodic review and audit of safeguards contingency plan; (d) records of changes in the production or utilization facility as described in the safety analysis report made without prior Commission approval; (e) records of changes in facility procedures as described in the safety analysis report made without prior Commission approval; (f) records of tests or experiments not described in the safety analysis report and made without prior Commission approval; (g) records showing the results of a review of development, implementation, and revision of an emergency preparedness program. The records described in paragraphs (d), (e), and (f) of this section shall include written safety evaluations which provide the bases for the determination that the change, test or experiment does not involve an unreviewed safety question.

Retention period: (a) and (b) for 2 years after date of change; (c) for two years after each review and audit; (d) until date of termination of license; (e) for five years after each change in facility procedures; (f) for five years after each test or experiment; (g) for 5 years.

50.59 Licensees authorized to operate nuclear production and utilization facilities.

See 50.54.

50.71 Licensees and holders of construction permits.

To maintain (a) such records as may be required by conditions of the license or permit or by rules, regulations, and orders of the Commission including records of fracture toughness test results, qualifications of test personnel, and calibration of test equipment; (b) records of design, fabrication, erection, and testing of structures, systems, and components important to safety of a production or utilization facility; (c) quality assurance records sufficient to furnish evidence of activities affecting quality, including operating logs, records showing results of reviews, inspections, tests, audits, work performance monitoring and materials analyses, and records containing closely related data such as qualifications of personnel, procedures and equipment; (d) individual records of training of each brigade member, including drill critiques, which ensure that each member receives training in all parts of the training program.

Retention period: (a) If not otherwise specified by regulation, license condition or technical specification, until disposal is authorized by the Commission; (b) throughout life of facility; (c) not specified—to be established by applicant consistent with applicable regulatory requirements; (d) 3 years.

55.27 Individuals licensed as operators of production and utilization facilities. [Added]

To maintain the results of medical qualifications data, test results, and each operator's or senior operator's medical history for the current license period.

Retention period: While an individual performs the functions of an operator or senior operator.

55.45 Individuals licensed as operators or production and utilization facilities. [Added]

To maintain the results of the performance tests for approval and certification of simulation facilities.

Retention period: 4 years after submittal of application for and certification of simulation facilities.

55.59 Individuals licensed as operators of production and utilization facilities. [Added]

To maintain records documenting the participation of each licensed operator and senior operator in the requalification program.

Retention period: Until the operator's or senior operator's license is renewed.

61.80 Persons licensed to perform land disposal of radioactive waste activities. [Amended]

To keep records which are required by this part or by license condition.

Retention period: Until license termination.

70.58 Licensees acquiring, delivering, receiving, possessing, using, or transferring title to own special nuclear material. [Amended]

See 70.32.

73.57 Power reactor licensees granting individuals unescorted access to a nuclear power facility or access to safeguards information. [Added]

To maintain files and procedures for protection of the criminal history records and the personal information from unauthorized disclosure.

Retention period: 1 year after termination or denial of unescorted access to the nuclear power facility or access to safeguards information.

73.70 Licensees required to provide physical protection or safeguards for special nuclear material in transit and at fixed sites.

To maintain (a) records of names and addresses of all authorized personnel, records of visitors, vendors and other individuals not employed by the licensee pursuant to 10 CFR 73.46(d)(10), 73.55(d)(6), or 73.60 records of results of tests maintenance and inspections of protected areas and security-related material, record of each alarm intrusion or other security incident, record of shipments of special nuclear material including information to comply with requirements of this part, procedures for controlling access to protected areas; (b) records of results of review and audit of licensee safeguards contingency plan for special nuclear material at fixed sites; (c) records of results of qualification and requalification of armed escorts and physical security personnel; (d) records documenting liaison with law enforcement authorities; (e) records of escort log and communications center personnel, for each spent fuel shipment, describing shipment and significant events that occur during the shipment.

Retention period: (a) Not specified; (b) two years from date of review and audit; (c) not specified; (d) not specified, 73.46(h)(2), (e) 1 year.

73.71 Licensees required to provide physical protection or safeguards for special nuclear material in transit and at fixed sites. [Added]

To maintain a current log of safeguard events recoded.

Retention period: 3 years after the last entry is made in each log.

95.33 Licensees and others who may require access to National Security Information and Restricted Data related to a license or application for a license.

To maintain records reflecting an individual's initial and refresher security orientations and security terminations.

Retention period: Not specified.

ENERGY DEPARTMENT

10 CFR

456.316 Covered utilities and home heating suppliers participating in the Residential Conservation Service Program. [Revised]

To maintain a copy of the data collected during each audit and a copy of the costs and savings presented to the customer receiving the audit.

Retention period: 5 years from the date of the audit.

456.1020 Covered utilities and home heating suppliers participating in the Residential Conservation Service Federal Standby Plan. [Revised]

To maintain a copy of the audit report.

Retention period: 5 years from the date of the audit.

458.314 Covered utilities and home heating suppliers participating in the commercial and apartment conservation service program. [Removed]

458.715 Covered utilities and home heating suppliers participating in the Commerical and Apartment Conservation Service Federal Standby Plan. [Removed]

FEDERAL ELECTION COMMISSION

11 CFR

102.9 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Amended]

To maintain records of contributions, expenditures and other receipts and transfers and other such records as are required to qualify for primary matching payments.

Retention period: 3 years from date report filed.

102.9 National committee of any political party entitled to convention financing. [Amended]

To maintain records of expenditures and accounts payable and other records required to be reported.

Retention period: 3 years from date report filed.

102.9 Political committees and other persons required to file reports or statements with the Commission. [Amended]

To maintain records with respect to receipts and disbursements required to be reported and to retain copies of the reports and statements.

Retention period: 3 years from date report filed.

106.2 Authorized committees of Presidential Primary Candidates seeking primary matching funds and general election public financing. [Added]

To retain records of all assumptions and supporting calculations for state allocation of expenditures for matching funds.

Retention period: 3 years.

9003.1 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required to be maintained under 11 CFR 9003.5, and other information as the Commission may request.

Retention period: 3 years.

9003.3 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To keep records on allowable contributions.

Retention period: 3 years.

9003.5 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements.

Retention period: 3 years.

9033.1 Authorized committees of Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by section cited including those required to be maintained under 11 CFR 9033.11 and other information that the Commission may request.

Retention period: 3 years.

9033.11 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Revised]

To maintain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation materials, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements and other information as specified in section cited.

Retention period: 3 years.

9034.2 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records on matching contributions.

Retention period: 3 years.

9034.5 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain a list of all capital assets in accordance with 11 CFR 9033.11(d).

Retention period: 3 years.

9034.8 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records required under 11 CFR 9033.11 regarding fundraising disbursements.

Retention period: 3 years.

9035.1 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general public financing. [Added]

To maintain campaign expenditure limitation records.

Retention period: 3 years.

Part 9036 Authorized committees of Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To maintain records required for review of submission and certification of matching fund payments.

Retention period: 3 years.

9039.1 Presidential/Vice Presidential candidates seeking primary matching funds and general election public financing. [Added]

To keep all books, records, and other information required under 11 CFR 9033.11, 9034.2 and Part 9036.

Retention period: 3 years.

TREASURY DEPARTMENT

Comptroller of the Currency

12 CFR

21.5 Security devices required in national banks. [Amended]

To maintain records of each robbery, burglary or nonemployee larceny committed or attempted at a banking office.

Retention period: As long as the bank continues to use security devices.

FEDERAL RESERVE SYSTEM

12 CFR

208.15 State members agricultural banks. [Added]

To maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations with respect to each asset subject to loss deferral under the program.

Retention period: Not specified.

FEDERAL HOME LOAN BANK BOARD

12 CFR

563.23-2 Institutions insured by the Federal Savings and Loan Insurance Corporation. [Removed]

564.2 Institutions insured by the Federal Savings and Loan Insurance Corporation.

The account records shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are invested and on which a claim for insurance coverage is founded.

Retention period: Not specified.

FARM CREDIT ADMINISTRATION

12 CFR

614.4442 Farm credit associations and banks. [Revised, 1986; record retention requirements now in 614.4444]

614.4444 Farm credit associations and banks.

To maintain complete file on all written requests for reviews, including the disposition of the review by the credit review committee, and other written inquiries concerning adverse credit actions.

Retention period: Not specified.

621.3 Farm credit associations and banks.

To maintain accurate and complete records of all business transactions as necessary to prepare financial statements in accordance with generally accepted accounting principles.

Retention period: Not specified.

SMALL BUSINESS ADMINISTRATION

13 CFR

Part 107 Small Business Investment Companies (SBICs) licensed by SBA including 301(d) licensees.

To maintain books and records including books of account, other records, and memoranda which support the entries in its books of accounts.

Retention period: At least 20 years.

108.5 Small business development companies.

To maintain financial records including books of accounts in accordance with generally accepted accounting principles.

Retention period: For the periods required by the Internal Revenue Service and generally accepted accounting practices.

108.5 State and local development companies.

To maintain, at the principal office, financial records including books of accounts, minutes of meetings of members, stockholders, directors, executive committees or other officials, and all documents and supporting material relating to a development copmpany's transactions.

Retention period: For the periods required by the IRS and generally accepted accounting practices.

108.503-3 503 companies.

To maintain records of all documents and materials relating to the loan applications submitted to SBA.

Retention period: Not specified.

108.505 Fiscal agents, transfer agents and selling groups issuing or selling debenture pool certificates (505 certificates).

To maintain all books, records and related materials associated with 504 Debentures or 505 Certificates.

Retention period: Not specified.

120.5 Subsection (b) lenders. [Removed, 1986]

120.5 Business loan policy. [Removed, 1986]

120.302-1 Small business lending companies.

(a)To maintain accurate and current financial records, including books of account. All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to the said Lender's transactions shall be maintained at the principal business office, provided, however, that securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) To preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by section 120.303 (and of the accompanying independent public accountant's opinion), and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes, books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Preserve for a least six years following final disposition of the related loan—

(i) All applications for financing;

(ii) Lending, participation, and escrow agreements;

(iii) Financing instruments;

(iv) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents referred to in paragraph (1)(i) may be preserved by reproduction; provided, however, that said Lender shall cause a duplicate to be made on a current basis and stored separately from the original fot the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

124.1-3 The Small Business and Capital Ownership Development Program. [Removed, 1986; record retention requirements now in 124.401]

124.401 Minority Small Business and Capital Ownership Development Program.

8(a) Concerns—advance payments. The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds.

124.403 Minority Small Business and Capital Ownership Development Program.

Section 8(a) Concerns—letter of credit. See 124.401.

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

14 CFR

91.173 Registered owners or operators of civil aircraft. [Amended]

To keep (a) records of maintenance, alterations, 100-hour, annual, and progressive inspections, and other required or approved inspections for each aircraft, and for each airframe, engine, propeller, rotor, and appliance of an aircraft including a description of the work performed, the date the work was completed, and signature and certificate number of the persons approving the aircraft for return to service and (b) records of total time in service of airframe; current status of life limited parts of each airframe, engine, propeller, rotor, and appliance; time since last overhaul of all items required to be overhauled on a specified time basis; identification of current inspection status of aircraft, including time since last inspection required by inspection program under which aircraft and its appliances are maintained, current status of applicable airworthiness directives, including method of compliance; and a list of current major alterations to each airframe, engine, propeller, rotor, and appliance.

Retention period: (a) Until the work is repeated or superseded by other work or for 1 year after the work is performed; (b) transferred with the aircraft at the time the aircraft is sold.

139.91 Operators of certificated airports. [Removed; record retention requirements now in 139.327]

139.207 Holders of airport operating certificates. [Added]

To maintain at least one complete and current copy of approved airport certification manual on the airport.

Retention period: Not specified.

139.215 Holders of limited airport certification specifications. [Added]

To maintain at least one complete and current copy of approved airport certification specifications.

Retention period: Not specified.

139.321 Airport certificate holders acting as cargo handling agents. [Added]

(a) To establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR Part 171, et seq.), that is, or is intended to be, transported by air.

(b) To establish and maintain standards acceptable to the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are or are intended to be, aircraft cargo) on the airport.

(c) To maintain records of the inspection of the physical facilities of each airport tenant fueling agent.

Retention period: (a) and (b) Not specified; (c) At least 12 months.

139.327 Airport certificate holders. [Added]

To prepare and maintain inspection records showing the conditions found and all corrective actions taken.

Retention period: At least 6 months.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR

1260.304 Grantees; cost-sharing.

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

1260.406 NASA grants awarded to educational institutions or nonprofit agencies.

To maintain books and accounting records in accordance with the principles set forth in the documents listed in paragraph 405 of the NASA Grant and Cooperative Agreement Handbook.

Retention period: Financial records, supporting documents statistical records—3 years, or until all litigation, claims, or audit findings involving the records have been resolved. Nonexpendable property records—3 years.

1260.413 Grantees.

To maintain records of any accident involving death, disability injury, or substantial loss of property.

Retention period: Not specified.

1260.509 Grantees—property management.

To maintain property records accurately.

Retention period: Not specified.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

373.5 Exporters of donations for humanitarian projects under the Humanitarian license.

To maintain records of all shipments, the values of said shipments, the countries and beneficiaries to which the donations are sent, the validated Dept. of Commerce letter and narrative statement, and any other party charged with distributing the donations to the beneficiaries.

Retention period: 2 years.

Economic Analysis Bureau

15 CFR

801.2 Persons subject to the jurisdiction of the U.S. engaged in international trade in services.

To maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the International Investment and Trade in Services Act.

Retention period: Not specified.

National Oceanic and Atmospheric Administration

15 CFR

908.8 Persons engaged in weather modification or related activities. [Amended]

To maintain daily records of activities, name and address of person operating weather modification apparatus, and such other records as required by section cited.

Retention period: 3 years.

908.9 Persons engaged in weather modification or related activities. [Amended]

See 908.8.

908.11 Persons engaged in weather modification or related activities. [Amended]

To maintain records concerning the identities of purchasers or users of weather apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases.

Retention period: 3 years.

931.95 Recipients of financial assistance under section 308 of the Coastal Zone Management Act of 1972, relating to the Coastal Energy Impact Program.

To keep detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. To also keep full written financial records.

Retention period: 3 years after completion of the project, program, or other undertaking and submission of the final Financial Status Report, whichever is sooner and until an audit is completed and all questions arising from it are resolved.

FEDERAL TRADE COMMISSION

16 CFR

305.15 Manufacturers of a covered products. [Added]

To maintain test data records.

Retention period: 2 years after production of model has been terminated.

COMMODITY FUTURES TRADING COMMISSION

17 CFR

1.35 Contract markets.

To maintain a single record showing for each future or option trade the transaction date, time quantity, and as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floorbroker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer or option customer types.

Retention period: 5 years.[1]

1.35 Futures commission merchants, introducing brokers and clearing members.

To maintain trading card or other record showing purchases and sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market.

Retention period: 5 years.[1]

404.2 Registered government securities brokers and dealers. [Added]

To maintain records of non–resident registered government securities brokers and dealers with modifications. See also 17 CFR 240.17a–3.

404.3 Registered government securities brokers and dealers. [Added]

To maintain records in compliance with 17 CFR 240.17a–4.

404.4 Government securities brokers and dealers which are financial institutions. [Added]

(a) To maintain records required by 17 CFR 404.2 and 404.3 with exceptions.

(b) To maintain and keep current securities records or ledgers reflecting separately for each government security as of the settlement date all 'long' or 'short' positions (including government securities that are the subject of repurchase or reverse repurchase agreements) carried by such financial institutions for its own account or for the account of its customers or others and other such information as specified in section cited.

Retention period: Various.

405.2 Registered government securities brokers and dealers. [Added]

To maintain records to comply with the requirements of 17 CFR 240.17a–5 with modifications.

405.3 Certain registered government securities brokers and dealers. [Added]

To maintain records to comply with the requirements of 17 CFR 240.17a–11 with modifications.

405.4 Registered government securities brokers and dealers reporting currency and foreign transactions. [Added]

To maintain records in compliance with 31 CFR Part 103.

Retention period: Where 31 CFR Part 103 and 17 CFR 404.3 require the same records to be preserve for different periods of time, such records or reports shall be preserved for the longer period of time.

450.4 Depository institutions with custodial holdings of government securities. [Added]

To maintain separately and distinctly from other records, records of government securities held for customers.

Retention period: Not less than six years, the first two years in an easily accessible place.

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

18 CFR

225.3 Natural gas companies.

To maintain records as indicated in 18 CFR Part 225—Preservation of Records of Natural Gas Companies.

Retention period: Various.

277.210 Sellers and purchasers of natural gas.

To maintain all other documents created in the ordinary course of business which relate to the bona fide offers; right of first refusal provision.

Retention period: 3 years.

282.204 Owners or operators of an industrial boiler fuel facility. [Removed]

282.207 Natural gas suppliers. [Removed]

282.207 Owners or operators of industrial facilities. [Removed]

TREASURY DEPARTMENT

Customs Service

19 CFR

10.173 Importers of products from Caribbean and Central American designated as beneficiary countries.

To maintain in the files of the party which prepared and signed the Certificate of Origin, the information necessary for preparation of the declaration.

Retention period: 5 years.

24.24 Importers, exporters, applicants for admission of cargo into foreign trade zone, shippers and cruise vessel operators subject to harbor maintenance fees. [Added]

To maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance with the law.

Retention period: 5 years from the date of the calculation.

111.21 Licensed customs brokers.

To keep current records of account reflecting all their financial transactions as customhouse brokers, including a copy of each entry made with all supporting papers, except those documents they are required to file with Customs, powers of attorney, copies of all correspondence and other papers relating to customs business and, except for certain specified limitations, a record of transactions of licensed customhouse broker (Customs Form 3079) in addition to the regular records of account.

Retention period: At least 5 years after the date of entry. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall be retained for 5 years after the date of revocation. Records may be retained on microfilm pursuant to section cited.

111.22 Licensed customs brokers.

See 111.21.

111.23 Licensed customs brokers.

See 111.21.

151.13 Commercial gaugers and commercial laboratories. [Added]

To maintain records of the type normally kept in the ordinary cause of business. In addition, to maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, records on transaction, major instrument, gauging and analytical procedures, and gauging and laboratory analysis.

Retention period: 5 years in accordance with 19 CFR 162.1a through 162.1c.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

602.21 States administering the Unemployment Insurance Program. [Added]

To maintain records pertaining to the Quality Control (QC) Program and to make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law.

617.57 State agencies administering trade adjustment assistance for workers under the Trade Act of 1974.

To maintain records pertaining to the administration of the Act as the Secretary requires.

Retention period: Not specified.

655.102 Employers granted labor certifications for temporary employment of aliens in the United States (HA Workers) in agricultural and logging occupations. [Added]

To keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of work performed; the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly); if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages.

Retention period: Not less than 3 years after the completion of the work contract.

655.111 Employers granted labor certifications for temporary employment of aliens in the United States (H–2A workers) in agricultural and logging occupations. [Added]

To retain receipts and other cost records of meal charges for a representative pay period.

Retention period: 1 year.

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

58.35 Quality assurance unit monitoring nonclinical laboratory studies. [Added]

To maintain a copy of a master schedule sheet of all nonclinical laboratory studies conducted at the testing facility indexed by test article and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of study director.

Retention period: See 21 CFR 58.195(a) and (b).

58.195 Persons who conduct nonclinical laboratory studies. [Amended]

To maintain records specified in section which concern conduct and results of studies submitted to FDA in support of an application for a research or marketing permit.

Retention period: Not superseding other record retention requirements of 21 CFR, as applicable, either (a) 2 years after approval of application or (b) 5 years after submission of study results, or (c) 2 years after study is completed, terminated, or discontinued, whichever is shortest.

110.80 Manufacturers, processors, packers, and repackers of human foods. [Removed, 1986]

179.24 Persons treating food with low dose electron beam radiation. [Removed, 1986]

211.165 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain documentation on the accuracy, sensitivity, specificity and reproducibility of test methods employed by the firm.

Retention period: See 21 CFR 211.170.

211.182 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain equipment cleaning and use log.

Retention period: See 21 CFR 211.170.

211.184 Persons manufacturing, processing, or holding finished pharmaceuticals. [Added]

To maintain component, drug product container, closure, and labeling records.

Retention period: See 21 CFR 211.170.

211.186 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain production and control records.

Retention period: See 21 CFR 211.170.

211.188 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain batch production and control records.

Retention period: See 21 CFR 211.170.

211.196 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Added]

To maintain disclosure records.

Retention period: See 21 CFR 211.170.

211.198 Persons manufacturing, processing, packing, or holding finished pharmaceuticals. [Revised]

To maintain records on the written procedures describing the handling of all written and oral complaints regarding a drug product.

Retention period: See 21 CFR 211.170.

225.202 Manufacturers of medicated feed.

To maintain records identifying the formulation, date of mixing, and if not for own use, date of shipment.

Retention period: 1 year following date of last distribution.

[1] After 3 years the person required to keep such books and records may at his option substitute photographic reproductions thereof on film, together with facilities for the projection of such film in a manner which will permit it to be readily inspected or examined. Under certain conditions, microfilm reproductions may immediately be substituted for hard copy.

310.305 Manufacturers, packers, and distributors of marketed prescription drugs for human use without approved new drug applications.

To establish and maintain records of all serious, unexpected adverse drug experiences and any significant increase in the frequency of a serious expected adverse drug experience.

Retention period: 10 years.

312.1 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review committees. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.9 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review casualties. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.10 Sponsors, investigators, and shippers of new drugs and antibiotic drugs for investigational use; and investigational review casualties. [Revised; record retention requirements now in 312.57, 312.58, and 312.62]

312.57 Sponsors of new drugs and antibiotic drugs for investigational use. [Added]

To maintain adequate records showing the receipt, shipment, or other disposition of the investigational drug. These records are required to include, as appropriate, the name of the investigator to whom the drug is shipped, and the date, quantity, and batch or code mark of each such shipment.

Retention period: 2 years after a marketing application is approved; or if an application is not approved for the drug, until 2 years after shipment and delivery is discontinued and FDA has been so notified.

312.58 Sponsors of investigational drugs. [Added]

See 21 CFR 312.57.

312.59 Sponsors of investigational drugs. [Added]

See 21 CFR 312.57.

312.62 Investigators of new drugs and antibiotic drugs for investigational use. [Added]

To maintain adequate records of the disposition of the drug, including dates, quantity, and use by subjects. To also maintain adequate and accurate case histories designated to record all observations and other data pertinent to the investigation on each individual treated with the investigational drug or employed as a control in the investigation.

Retention period: For a period of 2 years following the date a marketing application is approved for the drug for the indication for which it is being investigated; or if no application is to be filed or if the application is not approved for such indication, until 2 years after the investigation is discontinued and FDA is notified.

312.68 Investigators of new drugs and antibiotic drugs for investigational use. [Added]

See 21 CFR 312.62.

312.160 Shippers of drugs for investigational use in laboratory research animals or in vitro tests. [Added]

To maintain adequate records showing the name and post office address of the expert to whom the drug is shipped and the date, quantity, and batch or code mark of each shipment and delivery. To also maintain records of any alternative disposition of unused drugs.

Retention period: (a) Records of shipments of drugs intended solely for tests *in vitro* or in animals used only for laboratory research purposes—2 years after shipment. (b) Records and reports of shipments of biological products for investigational in vitro diagnostic use–In accordance with 21 CFR 312.57(b).

610.12 Manufacturers performing sterility tests on biological products.

To maintain records as required by 21 CFR 211.167, 211.194 and 600.12.

Retention period: Not specified.

680.3 Manufacturers of allergenic products. [Added]

To maintain records related to testing requirements in accordance with 21 CFR 211.165, 211.167, 211.188 and 211.194.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act.

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

201.19 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain in the loan file for the refinanced loan, copies of all documents pertaining to the original loan.

Retention period: Not specified.

201.50 Lenders of Title I Property Improvement and Manufactured Home Loans. [Added]

To maintain documentation of its efforts to cure default before acceleration and foreclosure of repossession including placing in the file a copy of any modification agreements or any letter to the borrower reflecting an acceptable repayment plan.

Retention period: Not specified.

207.27 Project mortgagors under the National Housing Act.

To maintain records of all cost of any construction or other costs items not representing work under general contract.

Retention period: Not specified.

Office of Assistant Secretary for Community Planning and Development

24 CFR

510.52 Localities administering Section 312 Rehabilitation Loan Program. [Added]

To maintain records in sufficient detail to demonstrate compliance with the requirements of relocation displacement regulations.

Retention period: Not specified.

510.410 Local agencies participating in the Section 312 Rehabilitation Loan Program. [Added]

To keep copies of each lead-based paint inspection and/or test report.

Retention period: 3 years.

511.11 Grantees under the Rental Rehabilitation Grant Program. [Added]

To keep copies of each lead-based paint inspection and/or test report.

Retention period: 3 years.

570.457 Persons displaced by HUD-assisted community development projects who are not covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Added]

See 510.52.

570.608 Grantees under the Community Development Block Grant Programs. [Added]

To keep a copy of each lead-based inpsection and/or test report.

Retention period: 3 years.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

812.5 Assisted housing responsible entities.

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

905.204 Indian Housing Authorities (IHAS).

To maintain documentation in its files for HUD review a copy of the determination where the provision of preference in Indian contracting, employment, and training is infeasible.

Retention period: 3 years.

912.5 Public housing agents (PHAs).

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.179–4 Persons electing additional first-year depreciation allowance for section 179 property. [Revised]

To maintain records which permit specific identification of each piece of "section 179 property" and reflect how and from whom such property was acquired and when such property was placed in service.

1.924(d)–1 Foreign Sales Corporations; foreign management and foreign economic possesses requirements. [Added]

To maintain records adequate to establish, with respect to each transaction or group of transactions, that the sale activity was performed and that the performance of such activity took place outside the United States if the FCS does not perform the activity itself. To also maintain records adequate to establish that the activities were actually performed and where the activities were performed.

1.144–5 Transferor of a U.S. property who is not a foreign person.

To retain a certificate of non-foreign status informing the transferee that withholding is not required.

Retention period: Until the end of the fifth taxable year following the taxable year in which the transfer takes place.

31.6053–4 Tipped employees; substantiation requirements.

To maintain sufficient evidence to establish the amount of tip income received during a taxable year. If the employee does not maintain a daily record, other evidence of the amount of tip income received during the year, such as documentary evidence shall constitute sufficient evidence, but only if such other evidence is as credible and as reliable as a daily record.

Retention period: At all time available for inspection by authorized Internal Revenue Officers of employees, and shall be retained so long as the contents thereof may become material in the administration of any Internal Revenue law.

31.6053–4T Tipped employees; substantiation requirements. [Removed; record retention requirements now in 31.6053–4]

48.4041–7 Allocation of diesel and special fuel from common tank for use in special equipment.

To maintain records that will support the allocation of liquid drawn from the same tank as the one supplying fuel for propulsion of a vehicle, and sold for use or used in a separate motor to operate special equipment.

48.4041–11 Persons registered to sell or purchase tax-free fuel for use in non-commercial aviation.

To maintain exemption certificates and proper supporting records such as invoices, order, etc. relative to tax-free sales.

48.4041–16 Liquid retailers.

To maintain adequate records and documentary evidence showing that article was so sold to establish exemption from tax in the case of a taxable article for export.

48.6421(a)–1 Allocation of gasoline for use in special equipment. [Removed, 1986]

TREASURY DEPARTMENT

Buresu of Alcohol, Tobacco and Firearms

27 CFR

19.750 Proprietors of distilled spirits plants.

To maintain records on the results of all alcohol contents and fill tests conducted.

Retention period: 3 years.

19.778 Proprietors of distilled spirits plants.

(a) To maintain separate accountings, in proof gallons, of Puerto Rican rum, other Puerto Rican spirits, and Virgin Island spirits received in the processing account for nonindustrial use.

(b) To maintain monthly reports on ATF Form 5110.28, showing separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in processing.

Retention period: 3 years.

25.42 Brewers.

To keep records of testing of beer measuring devices.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.252 Brewers.

To keep records of the production of malt syrup, wort, and the removals of brewer's yeast, malt and other articles from the brewery.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.276 Operators of pilot brewing plants.

To maintain records which include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.284 Brewers.

To keep records to support adjustments on the excise tax return in lieu of filing a claim.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.291 Brewers.

To maintain individual transaction forms, records, summaries, supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims, and copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.292 Brewers.

To maintain daily records of operations.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.293 Brewers.

To maintain records of ballings and alcohol content.

Retention period: 3 years. The regional director (compliance) may

require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.294 Brewers.

To maintain records of inventories of beer or cereal beverage.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.295 Brewers.

To maintain records of unsalable beer.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.296 Brewers producing concentrate or reconstitute beer.

To maintain daily records of beer concentrate.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.300 Brewers.

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

25.301 Brewers.

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

178.100 Licensed firearms manufacturers, importers, dealers, and collectors conducting business at gun shows.

To maintain firearms and armor-piercing ammunition records in the form and manner prescribed by 27 CFR Part 178, Subpart H.

Retention period: See 27 CFR 178.129.

178.122 Licensed importers of firearms.

To maintain records on importation or other acquisition; records on firearms and armor-piercing ammunition transferred to another licensee; and records on the sales or other disposition made of firearms and armor-piercing ammunition to nonlicensees.

Retention period: See 27 CFR 178.129.

178.123 Manufacturers of firearms.

See 178.122.

178.124 Licensed firearms importers, manufacturers, or dealers.

To maintain firearms transaction records.

Retention period: See 27 CFR 178.129.

178.125 Licensed firearms dealers and collectors.

To maintain (a) records on armor-piercing ammunition sales to nonlicensees and licensees; (b) commercial records of armor-piercing ammunition transactions; (c) records on firearms receipt and disposition by dealers and licensed collectors; (d) commercial records of firearms received; and (e) other such records as specified in section cited.

Retention period: See 27 CFR 178.129.

178.127 Licensed firearms manufacturers, importers, dealers, and collectors.

See 178.129.

178.171 Licensed manufacturers, licensed importers, and licensed dealers exporting firearms and armor-piercing ammunition.

(a) To maintain records showing the manufacture or acquisition of the firearms; the name and address of the foreign consignee of the firearms and armor-piercing ammunition; and the date the firearms and armor-piercing ammunition were exported.

Retention period: See 27 CFR 178.129.

245.110C Brewers. [Removed, 1986]

245.135 Brewers. [Removed, 1986]

245.136 Brewers. [Removed, 1986]

245.145 Brewers. [Removed, 1986]

245.146 Brewers. [Removed, 1986]

245.147 Brewers. [Removed, 1986]

245.148 Brewers. [Removed, 1986]

245.152 Brewers. [Removed, 1986]

245.153 Brewers. [Removed, 1986]

245.155 Brewers. [Removed, 1986]

245.156 Brewers. [Removed, 1986]

245.157 Brewers. [Removed, 1986]

245.158 Brewers. [Removed, 1986]

245.161 Brewers. [Removed, 1986]

245.205 Brewers. [Removed, 1986]

245.206 Brewers. [Removed, 1986]

245.207 Brewers. [Removed, 1986]

245.208 Brewers. [Removed, 1986]

245.215 Brewers. [Removed, 1986]

245.217 Brewers. [Removed, 1986]

245.225 Brewers. [Removed, 1986]

245.226 Brewers. [Removed, 1986]

245.227 Brewers. [Removed, 1986]

245.232 Brewers. [Removed, 1986]

245.245 Brewers. [Removed, 1986]

245.256 Proprietors of pilot brewing plants. [Removed, 1986]

250.174 Persons intending to file claims for drawback on eligible articles brought into the United States from Puerto Rico. [Added]

To maintain permanent records showing (a) the name, description, quantity, and formula number of each such article; (b) the alcohol content of each such article; (c) the name and address of the manufacturer and shipper, and the date of entry into the United States; and (d) evidence of taxpayment of distilled spirits.

Retention period: (a) All commercial invoices or shipping document and all bills of lading received evidencing receipt and tax determinations of the spirits—for a period of not less than 3 years. (b) A copy of each approved formula returned to the manufacturer of eligible articles—not less than 3 years from date last claim for drawback under formula was filed.

250.310 Persons intending to file claims for drawback on eligible articles brought into the United States from Puerto Rico. [Added]

See 27 CFR 250.174.

252.145 Brewers. [Revised, 1986; record retention requirements now in 252.146]

252.146 Brewers.

To keep copies of Form 1689 covering beer and beer concentrate withdrawn without payment of tax for exportation, use as supplies on vessels and aircraft, or transfer to a foreign-trade zone.

Retention period: 2 years.

252.150f Brewers. [Removed, 1986]

252.150g Brewers. [Removed, 1986]

252.150h Brewers. [Removed, 1986]

LABOR DEPARTMENT

Office of the Secretary

29 CFR

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts covering federally financed and assisted construction (see 29 CFR 6.1 and 5.5).

(a) To keep payroll and basic records including name, address, and social security number of each laborer or mechanic, correct classification, rate of pay (including rates of contributions or costs anticipated for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship programs, or for other bona fide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid to all laborers and mechanics.

(b) In the case of unfunded plans or programs for fringe benefits listed in the Davis-Bacon Act, which are approved by the Department of Labor, to maintain records showing: (1) That the contractor's commitment is enforceable, (2) that it has been communicated in writing to laborers or mechanics employed by him, (3) that it is financially responsible, and (4) the costs anticipated or the actual cost incurred in providing such benefits.

(c) To furnish evidence of registration of an apprenticeship program and certification of trainee programs, the registration of apprentices and trainees, together with evidence of the appropriate ratios and wage rates prescribed in the applicable program.

Retention period: 3 years after termination of contract.

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts subject only to the Contract Work Hours and Safety Standards Act.

To keep payrolls and records including name, address, social security number, correct classification, hourly rate of pay, daily and weekly number of hours worked, and deductions made and actual wages paid.

Retention period: 3 years from completion of contract.

Wage and Hour Division

29 CFR

Part 516 Employers subject to the Fair Labor Standards Act including special recordkeeping rules that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. [Revised]

To maintain records as indicated in 29 CFR Part 516.

Retention period: Various.

516.1 Employers subject to any provisions of the Fair Labor Standards Act of 1938, as amended. [Added]

To maintain records containing the information and data required by specific sections of 29 CFR Part 516.

Retention period: Various.

516.2 Employers subject to Fair Labor Standards Act whose employees are subject to minimum wages and overtime provisions pursuant to section 6 or 7(a) of the Fair Labor Standards Act. [Revised]

To maintain and preserve payroll records; records of retroactive payments of wages; records on employees working on fixed schedules; and other such records as specified in section cited.

Retention period: (a) Payroll records and certificates, agreements, plans, notices, etc.—3 years; (b) basic employment and earning records and wage rate tables, order, shipping, and billing records and records of additions to or deductions from wages paid—2 years.

516.3 Employers subject to Fair Labor Standards Act employing bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2(a) except paragraphs (a)(6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.

Retention period: 3 years.

516.5–516.9 Employers subject to Fair Labor Standards Act. [Revised]

See 29 CFR Part 516.

516.11 Employers subject to Fair Labor Standards Act whose employees are exempt from both minimum wage and overtime requirements under section 13(a)(2), (3), (4), (4), (8), (10), (12), or (13)(d) of the Act. [Revised]

See 29 CFR 516.2.

516.12 Employers subject to Fair Labor Standards Act whose employees are exempt from overtime pay requirements. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.)

Retention period: (a) 3 years; (b) 2 years.

516.13 Employers subject to Fair Labor Standards Act employing livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing employment and earning information for each workweek in which the employee is employed both in agriculture and in connection with livestock operations.

Retention period: (a) 3 years; (b) 2 years.

516.14 Employers subject to Fair Labor Standards Act employing country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and information demonstrating that 'area of production' requirements of 29 CFR Part 536 are met.

Retention period: (a) 3 years; (b) 2 years.

516.15 Employers subject to Fair Labor Standards Act employing local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain records containing information and data on the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases delivered and other such information as required in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.16 Retail or service establishment subject to Fair Labor Standards Act employing Commission employees exempt from overtime pay requirements pursuant to section 7(i). [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To also maintain other information as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.17 Employers subject to Fair Labor Standards Act employing seamen exempt from overtime pay requirements pursuant to section 13 (b)(6) of the Act. [Revised]

(a) See 29 CFR 516.2 with exceptions.

(b) To maintain other information as specified in section cited.

(a) 3 years; (b) 2 years.

516.18 Employers subject to Fair Labor Standards Act employing employees in certain tobacco, cotton, sugar care, or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act. [Revised]

(a) See 516.2.

(b) To maintain and preserve a record of the daily and weekly overtime compensation paid. Also to note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

Retention period: (a) 3 years; (b) 2 years.

516.19 Employers subject to Fair Labor Standards Act. [Removed]

516.20 Employers subject to Fair Labor Standards Act employing employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act. [Revised]

(a) See 516.2.

(b) To keep copies of collective bargaining agreement and National Labor Relations Board certifications as part of the record and a copy of each amendment or addition thereto. To also keep other records as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.21 Employers subject to Fair Labor Standards Act employing bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act. [Revised]

(a) See 516.2(a).

(b) To maintain daily as well as the weekly overtime compensation records.

Retention period: (a) 3 years; (b) 2 years.

516.22 Employers subject to Fair Labor Standards Act employing employees engaged in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act. [Revised]

(a) See 516.2(a).

(b) In addition, to maintain records of the hours worked each workweek in charter activities and a copy of the employment agreement or understanding.

Retention period: (a) 3 years; (b) 2 years.

516.23 Employers subject to Fair Labor Standards Act employing employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act. [Revised]

(a) See 516.2 with exceptions.

(b) To maintain records on time of day and day of week on which the employee's 14-day work period begins; hours worked each workday and total hours worked each 14-day work period; total straight-time wages paid for hours worked during the 14-day period; total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period; a copy of the agreement or understanding with respect to using the 14 day period for overtime pay computations and other such records as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.24 Employers subject to Fair Labor Standards Act hiring employees under section 7(f) 'Belo' contracts. [Revised]

(a) To maintain and preserve payroll or other records containing all the information and data required by 29 CFR 516.2(a) with exceptions.

(b) To also maintain records on the total weekly guaranteed earning; total weekly compensation in excess of weekly guaranty; and a copy of the bona fide individual contract or the agreement made as a result of collective bargaining or where such contract or agreement is not in writing, a written memorandum summarizing its term.

Retention period: (a) 3 years; (b) 2 years.

516.25 Employers subject to Fair Labor Standards Act employing employees paid for overtime on the basis of 'applicable' rates provided in sections 7(g)(1) and 7 (g)(2) of the Act. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2(a) with some exceptions, and other such records as specified in section cited.

Retention period: 2 and 3 years.

516.26 Employers subject to Fair Labor Standards Act employing employees paid for overtime at premium rates computed on a 'basic' rate authorized in accordance with section 7(g)(3) of the Act. [Revised]

To maintain and preserve records containing all the information and data required by 29 CFR 516.2 with exceptions and other information as specified in section cited.

Retention period: 2 and 3 years.

516.27 Employers subject to Fair Labor Standards Act who make deductions from the wages of employees for 'board, lodging, or other facilities' under section 3 (m) of the Act. [Revised]

(a) See 29 CFR Part 516.

(b) To maintain and preserve records substantiating the cost of furnishing each class of facility with exceptions.

(c) To keep records on additional information as specified in cited section.

Retention period: 2 and 3 years.

516.28 Employers subject to Fair Labor Standards Act employing tipped employees. [Revised]

(a) To maintain and preserve payroll or other records containing all the information and data required in 29 CFR 516.2(a).

(b) To maintain records on additional information as specified in section cited.

Retention period: (a) 3 years; (b) 2 years.

516.29 Private entities operating amusements or recreational establishments located in national parks or national forests or on lands in National Wildlife Systems employing employees who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act. [Revised]

To maintain and preserve records required in 29 CFR 516.2, except that the records of regular hourly rate of pay in 29 CFR 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

Retention period: 2 and 3 years.

516.30 Employers of learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Fair Labor Standards Act. [Revised]

To maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations. In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students employed under Special Certificates.

Retention period: 2 and 3 years.

516.31 Employers of industrial homeworkers. [Revised]

To maintain and preserve payroll or other records containing the name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work or payroll records; home address, including zip code; date of birth if under 19; date on which work is given out to worker, and amount of such work; and other information as specified in section cited.

Retention period: 2 and 3 years.

516.33 Employers subject to Fair Labor Standards Act employing employees in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act. [Revised]

(a) To maintain and preserve all the information and data required by 29 CFR 516.2(a) with exceptions.

Retention period: For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calender year.

(b) To maintain and preserve records containing name in full, place where minor lives while employed. If the minor's permanent address is elsewhere, give both address; and date of birth if employing in agriculture any minor under 18 years of age on days where school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary.

Retention period: 2 and 3 years.

516.34 Employers of domestic service employees. [Removed]

553.21 Public agencies engaged in fire protection and law enforcement activities. [Revised; new provisions contained no record retention requirements]

553.50 Public agencies employees subject to the compensatory time and compensatory time off provisions of section 7(o) of the Fair Labor Standards Act. [Added]

To maintain and preserve records containing the basic information and data required in 29 CFR 516.2 and in addition, records on compensatory time.

Retention period: Not specified.

553.51 Public agencies employees paid pursuant to section 7(k) of the Fair Labor Standards Act. [Added]

To maintain and preserve records containing the information and data required by 29 CFR 553.50.

Retention period: Not specified.

800.165 Employers subject to Fair Labor Standards Act. [Removed]

Occupational Safety and Health Administration

29 CFR

1910.68 Employers subject to manlifts standards.

To maintain certification records of findings of manlift inspections.

Retention period: Not specified.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et seq.).

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1910.157 Employers subject to fire protection standards.

To maintain evidence of the required hydrostatic testing or portable fire extinguishers.

Retention period: The lesser of until hydrostatically retesting at stated intervals or until taken out of service.

1910.179 Employers subject to materials handling and storage standards.

To maintain monthly maintenance and test inspection reports concerning rated load test results and ropes idle for a month or more.

Retention period: Not specified.

1910.180 Employers subject to crawler locomotive and truck cranes.

To maintain monthly certification inspection reports and records on critical items such as brakes, crane hooks, and ropes.

Ropes shall be kept readily available.

Retention period: Not specified.

1910.181 Employers subject to derrick standards.

To maintain monthly written report readily available on inspections of all running and idle ropes.

Retention period: Not specified.

1910.218 Employers subject to forging machine standards.

To maintain certification records of the periodic and regular maintenance safety checks.

Retention period: Not specified.

1910.252 Employers subject to welding, cutting and brazing standards.

To maintain periodic certification records of maintenance inspections.

Retention period: Not specified.

1910.268 Employers, telecommunications. [Amended]

To maintain on file certification records which include the identity of the person trained, the signature of the employer, or the person who conducted the training, and the date the training was completed.

Retention period: Duration of the employee's employment.

1910.272 Employers in grain handling facilities. [Added]

(a) To maintain on file hot work and entry into bins, silos, and tanks permits.

Retention period: Until completion of the hot work and entry operations.

(b) To maintain certification record of each equipment inspection containing the date of the inspection, the name of the person who performed the inspection and the serial number, or other identifier of the equipment inspected.

Retention period: Not specified.

1910.1001 Employers subject to asbestos, tremolite, anthophyllite, or actinolite standards.

(a) To keep accurate records of all employees exposure measurements.

Retention period: 30 years.

(b) To maintain accurate record of objective data reasonably relied upon in support of exempted operations.

Retention period: Duration of employer's reliance upon objective data.

(c) To maintain accurate record for each employee subject to medical surveillance.

Retention period: Duration of employment plus thirty years.

(d) To maintain all employee training records.

Retention period: 1 year beyond last date of employment of the employee.

1910.1028 Employers subject to benzene standards. [Added]

To maintain accurate employee exposure monitoring, measurement, and medical records.

Retention period: 30 years in accordance with 29 CFR 1910.20. All records shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

1910.1048 Employers subject to formaldehyde standards. [Added]

To maintain accurate employee medical surveillance records and accurate records for employees subject to negative pressure respirator fit testing.

Retention period: (a) Exposure records and determinations shall be kept for at least 30 years; (b) Medical records shall be kept for the duration of employment plus 30 years; (c) Respirator fit testing records shall be kept until replaced by a more recent record.

1910.1100 Employers subject to the asbestos standards.

To maintain medical records and records of any personal or environmental monitoring required by cited section.

Retention period: 20 years.

1910.1200 Employers subject to hazard communication standards. [Revised]

To maintain (a) a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals as well as of containers being shipped to other workplaces; (b) material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and (c) copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work areas. Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.20(e). The Director shall also be given access to material safety data sheets in the same manner.

1915.99 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1915.113 Employers subject to shackles and hooks standards.

To maintain certification records of tests on all hooks for which no applicable manufacturer's recommendations are available before use.

Retention period: Not specified.

1915.172 Employers of maritime employees.

To maintain certification records of the hydrostatic pressure tests on portable unfired pressure vessels.

Retention period: Not specified.

1917.28 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1918.90 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1926.58 Employers subject to asbestos, tremolite, anthophyllite and actinolite standards.

See 1910.1001.

1926.59 Employers subject to hazard communication standards. [Added]

See 29 CFR 1910.1200.

1926.550 Employers subject to crane and derrick standards. [Amended]

To maintain on file the most recent certification records which include date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number or other identifier, for the crane inspected.

Retention period: Until a new certification is prepared.

1926.552 Employers subject to material hoists, personnel hoists and elevators standards. [Amended]

To maintain on file the most recent certification records which include the date of the inspection and test of all functions and safety devices were performed; the signature of the person who performed the inspection and test; and a serial number, or other identifier, for the hoist that was inspected and tested.

Retention period: Not specified.

1926.903 Owners of trucks used for underground transportation of explosives. [Added]

To maintain on file the most recent certification records which include the date of the inspection; the signature of the person who performed the inspection; and a serial number or other identifier, of the truck inspected.

Retention period: Not specified.

Mine Safety and Health Administration

30 CFR

46.13 States receiving grants for advancement of health and safety in coal and other mines. [Removed]

57.22204 Operators of metal and nonmetal mines. [Added]

To maintain certifications of inspections and pressure recordings of main fan operations.

Retention period: 1 year.

57.22229 Operators of metal and nonmetal mines. [Added]

To maintain certifications of weekly examinations for methane and carbon monoxide and measurements of volume of air velocity in Subcategory 1–A mines.

Retention period: At least one year.

57.22301 Operators of metal and nonmetal mines. [Added]

To maintain certification of calibration tests on atmospheric monitoring systems.

Retention period: At least one year.

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

211.43 Prospectors or operators mining on Indian lands (except oil, gas, and geothermal). [Added]

To maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Records shall be available for examination by the Secretary upon request and shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

Retention period: Not specified.

212.51 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases. [Removed]

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases.

See 212.51.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.22 Financial institutions granting exemptions from the Bank Secrecy Act reporting requirements. [Added]

To keep a record of each transaction granted and the reason therefore in a centralized list.

Retention period: 5 years.

103.32 Financial institutions granting exemptions from the Bank Secrecy Act reporting requirements. [Amended]

To retain statements signed by customer that describe the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption.

Retention period: As long as the customer is on the exempt list and for a period of 5 years following removal of the customer from the bank's exempt list.

103.33 All financial institutions. [Amended]

To maintain either the original or a copy of records of (a) extensions of credit exceeding $10,000, except those

secured by real property; and (b) advice, request, or instruction, received or given to another financial institution or person, regarding a transaction resulting in the transfer of more than $10,000 to a person, account, or place outside the United States.

Retention period: 5 years.

103.34 Banks. [Amended]

To maintain a record of the taxpayer identification number or social security number of persons who open deposit or share accounts after June 30, 1972 where a person is a nonresident alien, the bank shall also record the person's passport number, or a description of some other government document used to vherify identity; and to maintain such other records as indicated in section cited.

Retention period: 2 years for records needed to reconstruct a demand deposit account, or trace a check through the domestic processing system or to supply a description of a deposited check over $100; 5 years for all other records.

103.36 Casinos subject to the Bank Secrecy Act. [Added]

To maintain a record of social security number of the person involved when funds are deposited; account is opened or credit is extended; and other such records as specified in section cited.

Retention period: 5 years.

103.37 Currency dealers or exchangers subject to the Bank Secrecy Act. [Added]

To maintain a record of the tax payer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended and other records as specified in cited section.

Retention period: 5 years.

103.38 All financial institutions. [Added]

To keep records as specified in 31 CFR Part 103.

Retention period: 5 years.

Office of Foreign Assets Control

31 CFR

545.601 Persons engaged in transactions subject to the South Africa Transactions Regulations.

To keep a full record of each transaction subject to the provisions of 31 CFR Part 545, whether effected pursuant to license or not.

Retention period: 2 years after date of transaction.

550.601 Persons engaged in transactions subject to Libyan Sanctions Regulations.

To keep a full and accurate record of each transaction including any transaction effected pursuant to license or otherwise.

Retention period: 2 years after date of such transaction.

560.601 Persons engaged in transactions subject to Iranian Transactions Regulations. [Added]

To maintain full and accurate records of each transaction, regardless of whether such transaction is effected pursuant to license or otherwise.

Retention period: 2 years after the date of transaction.

EDUCATION DEPARTMENT

34 CFR

222.40 Assistance to local educational agencies in federally impacted areas receiving Federal assistance.

To maintain adequate written records to prove its entitlement to whatever amount of payment the LEA received for any fiscal year.

Retention period: Five years after end of each fiscal year for which funds were received or until resolution of all Federal audit or review and necessary adjustments to payments have been made.

222.41 Assistance to local educational agencies in federally impacted areas receiving Federal payment.

See 222.40.

668.12 Institutions of higher education or vocational schools participating in Title IV student financial assistance programs. [Revised; record retention requirements now in 668.18 and 668.23]

668.18 Institutions of higher education participating in Title IV, HEA programs. [Added]

To maintain all records regarding the student's eligibility for and receipt of Title IV, HEA program assistance.

Retention period: 5 years.

668.23 Institutions of higher education participating in Title IV, HEA programs. [Added]

(a) In addition to the records required under appropriate program regulations for each recipient of Title IV HEA Program assistance, and institution shall maintain on a current basis, records regarding:

(1) The student's admission to and enrollment status at, the institution; (2) the program and courses in which the student is enrolled; (3) whether the student is maintaining satisfactory progress in his or her course of study; (4) refunds due or paid the student; (5) job placement if the institution provides a placement service; and (6) student's receipt of financial aid; and (7) verification data.

(b) An institution shall maintain records regarding the educational qualifications of each regular student, whether or not the student receives Title IV HEA Program assistance.

(c) An institution at which only certain programs are eligible shall maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s) whether or not the student received Title IV HEA Program assistance.

Retention period: 5 years.

673.32 Institutions of higher education participating in the Income Contingent Loan Program. [Added]

(a) To maintain on a current basis financial records that reflect all program transaction; general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. (b) To maintain on file all ICL applications for those students it reports on the program and fiscal report. (c) To keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, includingall accounting records and original and supporting documents necessary to document how the funds are spent.

Retention period: (a) For an award year—5 years after it submits its program and fiscal report except for loan records and audit questions. (b) Loan records—repayment history for each borrower including cancellation and deferment requests for at least 5 years from the date of the loan's final repayment or cancellation. (c) Original promissory notes and repayment of schedules in a locked, fireproof container until the loan obligations are satisfied. (d) Audit questions—until resolution.

Note: An institutions may keep records on microfilm or in computer imput.

674.19 Institutions of higher education participating in the Perkins Loan Program. [Revised]

(a) To establish and maintain on a current basis (a) financial records that reflect all program transactions; (b) general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity; (c) program and fiscal records that (1) are reconciled at least monthly; (2) identify each student's account and status; (3) show the eligibility of each student

aided under the program; and (4) show how the need was met for each student; (d) to maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP); and (e) to maintain all records supporting its application for funds.

Retention period: (a) Except for loan, records and records of expenditures questioned in audits or Departmental program reviews, for an award year—5 years after it submits its FISAP. (b) Repayment records including cancellation and deferment requests—For at least 5 years from the date on which a loan is assigned to the Department of Education, cancelled or repaid. (c) Records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

674.47 Institutions of higher education participating in the Perkins Loan Program. [Added]

To maintain in files appropriate documentation to support the amount of collection costs charged to the Fund. The documentation must be maintained in accordance with 42 CFR 674.19.

676.19 Institutions of higher education participating in the Supplemental Educational Opportunity Grants (SEOG) Program. [Revised]

(a) To establish and maintain on a current basis financial records that reflect all program transactions. (b) To maintain general ledger control accounts and related subsidiary accounts that identify program transaction and separate those transactions from all other insitutional financial activity. (c) To maintain program and fiscal records that (1) are reconciled at least monthly; (2) identify each student's account and status; and (3) show how the need was met for each student. (d) To maintain all records supporting applications for funds.

Retention period: (a) Keep intact and accessible records of the application, the receipt,and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent. (b) Except for audit questions, keep records for an award year for five year after submittal of FISAP for that year. (c) Keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

682.211 Lenders participating in the Guaranteed Student Loan and Plus Programs.

To maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures.

682.405 Guarantee agencies having a reinsurance agreement for PLUS loans and GSLP loans under section 682.404 entering into a supplemental reinsurance agreement for one of the programs.

To maintain separate records for each program sufficient to enable the Secretary to determine the reinsurance percentage payable by the Secretary on reinsurance claims and the Secretary's equitable share of borrower payments.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures.

682.406 Guarantee agencies. [Revised, 1986; new amendment contained no record retention requirements]

682.408 Guarantee agencies and participating lenders of low interest loans to students in post secondary schools. [Revised, 1986; new amendment contained no record retention requirements]

682.414 Guarantee agencies and participating lenders in the Guaranteed Student Loan and Plus Programs.

(a) *Guarantee Agencies.* To keep records required by cited section and such other records as are necessary to document fully the accuracy of reports and the right of the agency to receive or retain payment made by the Secretary.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable is accordance with the agency's write-off procedures.

(b) *Participating agencies.* To keep complete and accurate records of each loan that it holds permitting readily identification of the current status of each loan.

Retention period: Not less that 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

682.515 Lenders under the FISLP and Federal Plus Programs.

To keep complete and accurate records of each loan that it holds, including but not limited to the records described in section 682.414(a)(3)(ii).

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary may require the retention of records beyond this minimum period.

682.519 Lenders under the Federal Insured Student Loan Program. [Revised, 1986; record retention requirements now in 682.515].

682.610 Schools participating in the Guaranteed Student Loan and Plus Program.

To maintain all necessary records as set forth in 34 CFR Parts 668 and 682.

Retention period: 5 years following the last day of the period for which the loan was intended.

682.612 Institutions of higher education participating in the Guarantee Student Loan Program. [Revised, 1986; record retention requirements now in 682.610]

683.35 Guarantee agencies participating in the PLUS program. [Removed, 1986]

683.37 Guarantee agencies. [Removed, 1986]

683.66 Lenders participating in the Federal PLUS Program. [Removed, 1986]

683.91 Participating schools in the Federal PLUS Program. [Removed, 1986]

690.82 Institutions of higher education participating in the Pell Grant Program. [Amended]

To maintain adequate records (including those related to verification) which include fiscal and accounting procedures, audits, Student Aid Reports, eligibility of each student, amount and date of each payment/overpayment, cost of attendance, enrollment status and enrollment period.

Retention period: 5 years after the award year has ended.

AGRICULTURE DEPARTMENT

Forest Service

36 CFR

215.5 Grantees operating Youth Adult Conservation Corps (YACC) Programs. [Removed]

223.48 Timber purchasers.

To maintain records of such transactions involving unprocessed timber.

Retention period: 3 years after the sale is terminated.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR

1206.92 Recipients of Federal grants for collecting and publishing historical documents.

To maintain accounting records relating to all expenditures for each projects in accordance with general accepted accounting practices.

Retention period: During grant period and for 3 years thereafter in accordance with OMB Circular A–110 and Federal Management Circular 74–7.

VETERANS ADMINISTRATION

38 CFR

17.51e Public or private institutions furnishing adult day health care. [Added]

To maintain individual client records which include a treatment plan, periodic reevaluation progress notes, discharges summaries, and other usual and customary information normally included in a client records.

Retention period: Not specified.

POSTAL SERVICE

39 CFR

Part 111 Second-class mailers.

To maintain records of requests for a publication which are obtained in conjunction with subscriptions or requests for another publication or other publications in such a manner that individual requests for the publications, by titles, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.6).

Part 111 Second-class mailers.

To maintain records for subscriptions to publications which are obtained in conjunction with subscriptions to another publication or other publications in such a manner that individual subscriptions to each publication, by title, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.221).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR

4.9 State agencies participating in relocation assistance program.

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this Part 4.

Retention period: 3 years after each owner of a property and each person displaced from the property receives final payment.

4.105 State agencies participating in relocation assistance programs. [Revised, 1986; record retention requirements now in 4.9].

51.102 States conducting public hearings on air pollution control implementation plans.

To maintain a record of each hearing. The record must contain, at a minimum, a list of witnesses together with the text of each presentation.

Retention period: Not specified.

60.49b Owners or operators of industrial-commercial-institutional steam generating facilities.

(a) If monitoring of steam generating unit operating condition plan is approved, to maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan

(b) To maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for each calendar year.

(c) To maintain records of the nitrogen content of the oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis.

(d) To maintain records of opacity for facilities subject to the opacity standard under 40 CFR 60.43b.

(e) To maintain records on the calendar date, the average hourly nitrogen oxides emission rates measured or predicted and other information as specified in section cited for each steam generating unit operating day for facilities subject to nitrogen oxide standards under 40 CFR 60.44(b).

Retention period: 2 years following date of record.

60.113a Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels). [Added]

To maintain records of each gap measurement at the plant.

Retention period: At least 2 years following the date of measurement.

60.115b Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels.) [Added]

(a) To maintain a record of each inspection performed identifying the storage vessel on which the inspection was performed; the date the vessel was inspected; and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

Retention period: At least 2 years.

(b) To keep a record of each gap measurement performed as required by 40 CFR 60.113(b).

Retention period: 2 years.

(c) After installing control equipment in accordance with 40 CFR 60.112b(a)(3) or (b)(1) (closed vent system and control device other than a flare), to keep a copy of the operating plan and record of the measured values of the parameters monitored in accordance with 40 CFR 60.113b(c)(2).

60.116b Owners or operators of volatile organic liquid storage vessels (including petroleum liquid storage vessels). [Added]

(a) To keep readily accessible records showing the dimension of the storage vessel and an analysis showing the capacity of the storage vessel.

Retention period: For the life of the source.

(b) To maintain a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period.

Retention period: At least 2 years.

60.343 Owners or operators of lime manufacturing plants. [Added]

To maintain records of any 6-month average that is in excess of the emissions specified in 40 CFR 60.342.

Retention period: Not specified.

60.344 Owners or operators of lime manufacturing plants. [Added]

See 40 CFR 60.343.

60.545 Owners or operators of undertread cementing operations, sidewall cementing operations, green tire spraying operations where organic solvent-sprays are used or Michelin-B operations that use carbon adsorbers. [Added]

To maintain continuous records of the organic concentration level of the carbon bed exhaust.

Retention period: 2 years.

60.545 Owners or operators of affected facilities that use catalytic incinerators in the rubber tire manufacturing industries. [Added]

To maintain continuous records of the temperature before and after the catalyst bed for catalytic incinerators.

Retention period: 2 years.

60.545 Owners or operators of affected facilities that use thermal incinerators in the rubber tire manufacturing industries. [Added]

To maintain continuous records of the thermal incinerator combustion temperature.

Retention period: 2 years.

60.545 Owners or operators of undertread cementing operations, sidewall cementing operations, green tires spraying operations where organic solvent-based sprays are used, Michelin-A operations, Michelin-B operations, or Michelin-C automatic operations seeking to comply with specified kg/mo uncontrolled VOC use limit. [Added]

To maintain records of monthly VOC use and the number of days in each compliance period.

Retention period: 2 years.

60.545 Owners or operators of affected facilities in the rubber tire manufacturing industries required to conduct monthly performance tests as required by 40 CFR 60.543(b)(1). [Added]

To maintain records of the results of the monthly tests.

Retention period: 2 years.

Part 60, Appendix F Owners or operators of any building, structure, facility, or installation emitting air pollutants. [Added]

To retain records of all measurements from the CEM as required by 40 CFR 60.7.

Retention period: At least 2 years.

61.55 Owners or operators of mercury-cell chlor-alkali plants. [Added]

(a) To maintain records of the results of the emission monitoring.

Retention period: 2 years.

(b) To maintain at the chlor-alkali plant records of the certifications and calibrations.

Retention period: Certification—For as long as the device is used for this purpose. Calibration—For a minimum of 2 years.

(c) To maintain daily records of all leaks and spills of mercury.

61.67 Owners or operators of plants which produce vinyl chloride.

To maintain records of emission test results and other data needed to determine emissions.

Retention period: 3 years.

61.70 Owners or operators of plants which produce vinyl chloride.

To maintain records of all data needed to determine average emissions.

Retention period: 3 years.

61.71 Owners or operators of plants which produce vinyl chloride.

To maintain records of: (a) The leaks detected by the vinyl chloride monitoring system; (b) leaks detected during routine monitoring with the portable hydrocarbon detector and the action taken to repair the leaks; and (c) emission monitoring. To also keep a daily operating record for each polyvinyl chloride reactor, including pressures and temperatures.

Retention period: 3 years.

61.165 Owners or operators of glass melting furnances that use commercial arsenic as raw materials.

To maintain records to meet the emission limit requirements.

Retention period: 2 years.

61.176 Owners or operators of copper converters.

To maintain records of the visual inspections, maintenance, and repairs performed on each secondary hood systems.

Retention period: 2 years.

61.185 Owners or operators of arsenic trioxide and metal arsenic production facilities.

To maintain records of all measurements, maintenance and repairs made to the continuous monitoring system or monitoring device, ambient concentrations at all sampling sites, other data needed to determine such concentrations and other information as specified in section cited.

Retention period: 2 years.

85.1507 Certificate holders importing nonconforming motor vehicles and motor vehicle engines into the U.S. [Added]

To maintain adequately organized and index records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of that vehicle or engine, including but not limited to specified information required in section cited.

Retention period: 6 years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder.

104.25 Manufacturers, importers and processors of 11-aminoun-decanoic acid. [Added]

To retain documentation of information contained in significant new use reports.

Retention period: 5 years from date of submission of the report.

157.36 Registrants of pesticide products required to be in child-resistant packaginge.

To maintain records on description of the packages, copies of certification statements required by section 157.34, and other information as specified in the section.

Retention period: As long as the child-resistant packaging is in effect.

262.57 Primary exporters of hazardous waste.

To maintain copies of each notification of intent to export; each EPA Acknowledgement of Consent; each confirmation of delivery of the hazardous waste from consignee; and each annual report.

Retention period: 3 years.

264.71 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities (hazardous waste from a rail or water bulk shipment) transporter.

To keep a copy of each shipping paper and manifest signed by the owner or operator for shipments delivered by rail or water (bulk shipment).

Retention period: 3 years from date of delivery.

264.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities.

To keep a written operating record of the facility.

Retention period: Until at least closure of the facility; monitoring data at disposal facilities: Throughout the post-closure period; records for inspections: 3 years.

265.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities.

See 264.73.

704.33 Persons who manufacture, import or process P-tert-butylbenzoic acid (P-TBBA), p-tert-butyltoluene (P-TBT) and p-tert-butylbenzaldehyde (P-TBB).

To maintain documentation of information contained in report on data under section 8(a), including information on chemical identity and structure, production, use, exposure, disposal, and health and environmental effects.

Retention period: 5 years from the date of submission of the report.

704.105 Persons who propose to manufacture, import, or process hexafluoropropylene oxide (HFPO) for use as an intermediate in the manufacture of fluorinated substances in an enclosed process after Dec. 10, 1987. [Added]

To retain documentation of information in the Preliminary Assessment Information Manufacturer's Report.

Retention period: 5 years from date of submission of the reports.

710.37 Manufacturers and importers of certain substances included in the Toxic Substances Control Act (TSCA) Inventory.

To maintain records that document any information reported to EPA. For substances that are manufactured or imported at less than 10,000 pounds annually, volume records must be maintained as evidence to support a decision not to submit a report.

Retention period: 4 years beginning with effective date of that reporting period.

720.78 Manufacturers and importers of new chemical substances subject to the provisions of the Toxic Substances Control Act.

(a) To maintain documentation of information reviewed and evaluated to determine the need to make any notification of risk.

Retention period: 5 years.

(b) To maintain documentation of the nature and method of notification concerning the health and environmental effect of a substance including copies of any labels or written notices used.

Retention period: 5 years.

(c) To maintain documentation of prudent laboratory practices used instead of notification and evaluation.

Retention period: 5 years.

(d) To maintain the names and addresses of any persons other than the manufacturer or importer to whom the substance is distributed, the identity of the substance to the extent known, the amount distributed and copies of notification required under section 720.36(c)(2).

Retention period: 5 years.

(e) Persons manufacturing or importing substance in quantities greater than 100 kilograms per year must maintain records of the identity of the substance to the extent known, the production volume of the substance, and the disposition of the substance.

Retention period: 5 years.

761.60 Processors and distributors of PCBs and PCB items.

To maintain records of activities.

Retention period: 5 years.

761.80 Processors and distributors of PCB in small quantities for research and development having class exemption.

To maintain records of PCB activities.

Retention period: 5 years.

761.125 Owners of spilled PCB's. [Added]

(a) At the completion of cleanup, to document the cleanup with records and certification of decontamination.

Retention period: 5 years.

(b) If cleanup is delayed because of adverse weather conditions, lack of access due to physical impossibility or emergency operating conditions, to maintain records documenting the fact that circumstances precluded rapid response.

Retention period: Not specified.

763.93 Local educational agencies identifying asbestos-containing materials in schools. [Added]

To maintain in its administrative office a complete updated copy of the management plan. In addition, to maintain records on response actions, operations and maintenance, and training and periodic surveillance as part of the management plan.

Retention period: 3 years.

763.94 Local educational agencies identifying asbestos-containing materials in schools. [Added]

To maintain records on response actions, operations and maintenance, training and periodic surveillance, and management plans.

Retention period: 3 years.

763.121 Employers of employees covered by the EPA asbestos abatement worker protection rule. [Revised]

(a) To maintain records of objective data for exempted data when relying on objective data that demonstrate that products made from or containing asbestos are not capable of releasing fibers of asbestos in concentrations at or above the action level under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements.

Retention period: Duration of the employer's reliance upon such objective data.

(b) To maintain records of all measurements taken to monitor employee exposure to asbestos.

Retention period: At least 30 years.

(c) To maintain employee medical surveillance records.

Retention period: Duration of employee employment plus 30 years.

(d) To maintain all employee training records.

Retention period: 1 year beyond the last date of employment.

763.121 Appendix C Employers of employees covered by the EPA asbestos abatement worker protection rule. [Added]

To maintain summary of all qualitative fit test results.

Retention period: 3 years.

Part 763, Appendix A to Subpart E Laboratories which analyze asbestos bulk samples and asbestos air samples. [Added]

To maintain log of all pertinent sampling information and appropriate logs or records verifying compliance with the mandatory quality insurance procedures.

Retention period: Not specified.

Part 763, Appendix D to Subpart E Transporters of asbestos waste. [Added]

To maintain as evidence of receipt at the disposal site a copy of the chain of custody form signed by the disposal site operator.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

57.712 Public or nonprofit private schools of medicine or osteopathy receiving grants for physician assistance training programs. [Redesignated as 57.511 and amended]

To maintain records to meet the requirements of 45 CFR Part 74 and section 705 of the Public Health Service Act, as amended, concerning recordkeeping, audit, and inspection.

Retention period: 3 years or until resolution of all issues arising from claim, negotiation, audit, or other action.

60.35 Health Education Assistance Loan (HEAL) Program lenders. [Added]

In loan collection, to maintain in the borrower's file a record of each attempt to contact and each actual contact. To also maintain written documentation of all skip-tracing activities.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases the Secretary may require the retention of records beyond the minimum period.

60.42 Health Education Assistance Loan (HEAL) Program lenders. [Amended]

To maintain complete and accurate records of each HEAL loan, organized in a way to permit ready identification of the current status of each loan. The required records include the loan application; the original promissory note; the repayment schedule agreement; evidence of each disbursement of loan proceeds; notices of changes in a borrower's address and status as a full-time student; evidence of the borrower's eligibility for a deferment; the borrower's signed statement describing his or her rights and responsibilities in connection with a HEAL loan; the documents required for the exercise of forbearance; documentation of the assignment of the loan; and other records as specified in the section cited.

Retention period: 5 years following the date the loan is repaid in full by the

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borrower. In particular cases, the Secretary may require the retention of records beyond this minimum period.

60.51 HEAL schools. [Added]

To maintain in its general office records the criteria used to develop each standard student budget. To also maintain documentation in the borrower's record to support the basis for any adjustments to the standard student budget and the need analysis information.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases, the Secretary may require the retention of records beyond the minimum period.

60.56 Schools participating in the HEAL program. [Amended]

To maintain an easily retrievable record on each student who has a HEAL loan containing the following information: Student's name, address, academic standing and period of attendance; name of the HEAL lender, amount of the loan, and the period for which the HEAL loan was intended; if a noncitizen, documentation of the student's alien registration status; amount and source of other financial assistance received by the student for the period for which the HEAL loan was made; date the school receives the HEAL check or draft and the date it either gives it to the student or returns it to the lender; date the school disburses the loan to a student; date the school signs the loan check or draft; amount of tuition, fees, and other charges paid by the student to the school for the academic period covered by the loan, the dates of payment and other records as specified in the cited section.

Retention period: 5 years following the date the student graduates, withdraws or fails to enroll as a full-time student.

60.61 HEAL schools. [Added]

To maintain documentation of the criteria used to develop the school's standard student budgets in the school's general records readily available for audit purposes. Also to maintain in each HEAL borrower's record a copy of the standard budget which was actually used in the determination of the maximum loan amount approved for the student as described in 42 CFR 60.51.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower. In particular cases the Secretary may require the retention of records beyond the minimum period.

122.114 Grants to Health Systems Agencies. [Removed]

122.211 Grants to Health Systems Agencies. [Removed]

123.109 State Health Planning and Development Agencies. [Removed]

123.206 State Health Planning and Development Agencies receiving grants to assist in meeting operation costs. [Removed]

124.510 Certain public and private nonprofit health care facilities receiving Federal assistance under Title VI or XVI of PHS complying with reasonable volume of uncompensated services to persons unable to pay assurance. [Revised]

To maintain and make available for public inspection consistent with personal privacy and provide to the Secretary on request, any records necessary to document its compliance with the reasonable volume of uncompensated services to persons unable to pay requirements in any fiscal year including any documents from which the information required to be reported was obtained; accounts which clearly segregate uncompensated services from other accounts; and copies of written determinations of eligibility.

Retention period: 3 years after submission of the report required by 42 CFR 124.509(a)(1), except where a longer period is required by the Secretary, or until 180 days following the close of the Secretary's assessment investigation under 42 CFR 124.511(b), whichever is less.

Health Care Financing Administration

42 CFR

405.406 All providers of services (hospitals, skilled nursing facilities, home health agencies, and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed, 1986]

405.2133–405.2160 Suppliers of End-Stage Renal Disease (ESRD) services. [Amended]

To maintain the following: Personnel records on all employees including health status reports, resumé of training and experience, and job descriptions; records reflecting the content of, and attendance at, employee training sessions; written long-term programs and patient care plans for each patient; medical records on all patients (i.e., those receiving care within the facility and those self-care or home dialysis patients for whom the facility has assumed responsibility); records of equipment test results and maintenance; an emergency preparedness plan; and, in the case of renal dialysis facilities, documentation from a renal dialysis center to the effect that patients from the facility will be accepted and treated in emergencies.

Retention period: Medical records, for a period of time not less than that determined by the State statute governing records retention or statute of limitations; or in the absence of a State statute, 5 years from the date of discharge, or, in the case of a minor, 3 years after the patient becomes of age under State law, whichever is longer.

413.20 All providers of services (hospitals, skilled nursing facilities, home health agencies and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program.

To maintain sufficient financial records and statistical data for proper determination of costs payable under the program. Such records shall include but not be limited to matters of provider ownership, organization, and operation; fiscal, medical, and other recordkeeping systems; Federal income tax status; asset acquisition, lease, sale or other actions; franchise or management arrangements; patient service charge schedules; matters pertaining to costs of operation; amounts of income received by source and purpose; and flow of funds and working capital.

Retention period: Not specified.

413.174 End-Stage Renal Disease (ESRD) facilities.

To keep adequate cost data and cost finding for outpatient maintenance dialysis.

Retention period: Not specified.

441.208 Medicaid agencies; limitation on Federal funds for abortions. [Added]

To maintain copies of the certifications and documentation as specified in 42 CFR 441.203.

Retention period: For 3 years under the recordkeeping requirements at 45 CFR 74.20.

447.333 State agencies administering plans for medical assistance. [Added]

To maintain data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances concerning payment methodology for prescription drugs.

Retention period: Not specified.

482.24 Hospitals participating in Medicare.

To maintain a medical record for each inpatient and outpatient.

Retention period: 5 years.

482.26 Hospitals participating in Medicare.

To maintain records of radiologic services.

Retention period: 5 years.

482.53 Hospitals participating in Medicare.

To maintain records on nuclear medicine services including copies of nuclear medicine reports and records of the receipt and disposition of radiopharmaceuticals.

Retention period: 5 years.

482.61 Psychiatric hospitals participating in Medicare.

To maintain special medical records which include development of assessment/diagnostic data, treatment plan, recording progress and discharge planning and discharge summary.

Retention period: 5 years.

491.10 Rural health clinics qualifying for reimbursement under Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Act). [Added]

For each patient receiving health care services to maintain records which include, as applicable, identification and social data, evidence of consent forms, pertinent medical history, assessment of the health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient; and other such records as specified in section cited.

Retention period: For at least 6 years from date of last entry and longer if required by State statute.

INTERIOR DEPARTMENT

Bureau of Land Management

43 CFR

3162.7–4 Operators on Federal and Indian (except Osage) oil and gas leases. [Amended]

(a) To maintain records of seal numbers used and which valves or connections, seals were used on as well as when seals were installed and removed during production and sale phases.

(b) To retain records of inspection of all leases, units, and communitized areas to determine site security and production volumes.

Retention period: (a) and (b) 6 years.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR

222.6 States implementing superfund cost sharing associated with the administration of temporary and permanent relocation activities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). [Added]

(a) To maintain documentation for all items related to the relocation that it plans to use as a matching contributions.

(b) To maintain documentation of the basis, by which the state determines the value of the match as part of the official record.

Retention period: 10 years.

361.8 States participating in the Earthquake Hazards Reduction Assistance Program. [Added]

(a) To maintain as part of the official record, a copy of the documentation of the basis by which the value of an in-kind was determined.

(b) To maintain all records pertaining to matching contributions.

Retention period: For a 3 year period after the date of submission of the final financial report required by the CCA or date of audit, whichever comes first.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

205.60 State agencies administering medical assistance programs.

(a) To maintain records on applicants and recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.

Retention period: As prescribed by the Secretary.

(b) To maintain records on applicants and Office of Family Assistance recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.

Retention period: As prescribed by the Secretary.

LEGAL SERVICES CORPORATION

45 CFR

1612.11 Recipients of LSC funds. [Added]

To maintain separate records documenting the expenditure of funds for legislative activities. These records shall document the direct and indirect expenses, and the sources of the funds supporting all legislative activities, regardless of the sources of the funds employed.

Retention period: Not specified.

FEDERAL MARITIME COMMISSION

46 CFR

581.10 Ocean common carriers or conferences. [Added]

To maintain service contract records in an organized, readily accessible or retrievable manner.

Retention period: For a period of five years from the termination of each contract.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

15.312 Holders of grants of authorization of perimeter protection system. [Added]

To maintain a list of all installations and records of measurements.

Retention period: Not specified.

21.201 Licensees of radio stations in the domestic public-fixed radio services. [Revised]

To maintain at the station the name, address and telephone number of the custodian of the station license if such license or authorization is not maintained at the station.

Retention period: Not specified.

22.117 Licensees in the public mobile radio services. [Added]

To retain as part of the records a copy of a completed table MOB III found in FCC Form 401.

Retention period: Not specified.

42.4 Communication common carriers.

To maintain at its operating company headquarters a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained.

Retention period: Various.

42.6 Communication common carriers.

To maintain telephone toll records.

Retention period: 18 months.

42.7 Communication common carriers.

To prepare, maintain and preserve records cited in 42.4 and 42.6 in such a manner that they are easily accessible, identified, located, and reproduced in readable form without loss of clarity.

Retention period: Various.

42.8 Communication common carriers. [Removed, 1986]

42.9 Communication common carriers. [Removed, 1986]

73.1225 Licensees of TV broadcast stations.

(a) All broadcast stations: Equipment performance measurements required by sections 73.1590 and 73.1690; written designations for chief operators and when applicable, the contracts for chief operators engaged on a contract basis; applications for modification of the transmissions systems; informal statements or drawings depicting any transmitter modifications; and stations logs and special technical records.

(b) Commercial and noncommercial AM stations: Copy of the most recent antenna or commonpoint impedance measurements; copy of the most recent field strength measurement made to establish performance of directional antennas; and copy of the partial directional antennas.

Retention period: Not specified.

73.3526 Permittees or licensees of AM, FM, or TV stations in the commercial broadcast services.

(a) To maintain copies of every application tendered for filing all exhibits, letters, and all amendments, all correspondence between FCC and applicants, every ownership report or supplemental ownership report and every annual employment record.

Retention period: Various.

(b) To maintain records concerning broadcasts by candidates for public office as required by section 73.1940.

Retention period: 2 years.

(c) To maintain a copy of the Public and Broadcasting—A Procedure Manual (see FCC 74–942, 39 FR 32288, September 5, 1974).

Retention period: Indefinitely.

(d) To maintain letters received from members of the public as required by section 73.1202.

Retention period: 3 years.

(e) To maintain a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period.

Retention period: Term of the license—5 and 7 years for TV and radio, respectively.

(f) To place in the station's local public inspection file a statement certifying compliance when applying for renewal of license.

Retention period: As long as the application to which it refers.

76.311 Operators of cable television systems. [Removed, 1986]

80.405 Licensees of radio stations in the maritime services.

To retain the most recently expired ship station license in the station records.

Retention period: Until the first Commission inspection after the expiration date.

80.409 Licensees of radio stations in the maritime services.

To maintain station logs.

Retention period: (1) 1 year from date of entry and when applicable for such additional periods as required by the following: (a) Logs relating to distress situation or disaster—3 years from date of entry; (b) logs involving an investigation by the Commission—until the licensee is specifically authorized in writing to destroy them; (c) logs relating to any claim or complaint—until the claim or complaint has been satisfied or barred by statute limiting the time for filing suits upon such claim; and (d) ship radiotelephone logs and applicable radiotelephone log entries—in their original form for at least 30 days from date of entry.

80.413 Licensee of on–board station in the maritime services.

To maintain equipment records which show the ship name and identification of the on—board station; the number and type of repeater and mobile units used on—board the vessel; and the date and type of equipment which is added or removed from the on—board station.

Retention period: Not specified.

81.115 Licensees of radio stations on land in the maritime services and Alaska fixed service. [Removed, 1986]

81.194 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.224 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.314 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed, 1986]

81.352 Licensees of limited coast stations or marine-utility stations used on shore. [Removed, 1986]

81.352 Licensees of limited coast stations and marine-utility stations. [Removed, 1986]

81.603 Licensees of fixed stations associated with the maritime mobile service marine fixed stations. [Removed, 1986]

81.704 Licensees of Alaska public fixed stations. [Removed, 1986]

83.111 Licensees of radio stations on shipboard in the maritime services. [Removed, 1986]

83.115 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.184 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.368 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.405 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.457 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.459 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed, 1986]

83.462 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed, 1986]

83.463 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.473 Licensees of radio stations on shipboard on the maritime services. [Removed, 1986]

83.548 Licensed operators; radiotelephone installations provided for compliance with the Great Lakes Radio Agreement. [Removed, 1986]

83.819 Licensees of radio stations on shipboard on the maritime services authorized for use-of-on-board communications. [Removed, 1986]

GENERAL SERVICES ADMINISTRATION

48 CFR

52.222–4 Contractors subject to the Contract Work Hours and Safety Standards Act—Overtime Compensation—General contracts clause.

To maintain payroll and basic payroll records during the course of contract work.

Retention period: 3 years from contract completion.

DEFENSE DEPARTMENT

48 CFR

252.208–7000 Contractors with contracts containing the required sources for miniature and instrument ball bearings clause.

To maintain compliance records.

Retention period: 3 years from date of final payment.

252.208–7001 Contractors with contracts containing required sources for precision components for mechanical time devices clause.

To maintain compliance records.

Retention period: 3 years from the date of final payment.

252.208–7003 Contractors with contracts containing required sources for high carbon ferrochrome.

See 252.208–7000.

252.208–7005 Contractors with contracts containing required sources for forging and welded shipboard anchor chain items.

See 252.208–7000.

252.217–7103 Contractors with contracts containing the job orders and compensation clause.

To keep records showing the cost of performing work on a vessel.

Retention period: Not specified.

252.217–7104 Contractors with contracts containing inspection and manner of doing work clause.

To keep records of all inspection work.

Retention period: 90 days after completion of all work required by the job order.

252.222.7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause.

To maintain pertinent books, documents, papers, and records.

Retention period: 3 years after final payment

252.236–7005 Contractors subject to the salvage materials and equipment contracts clause.

To maintain adequate property control records for all materials or equipment specified to be salvaged.

Retention period: Not specified.

252.237–7415 Contractors subject to provisions of cost or pricing data—common carrier contracts clause.

To maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect cost which were the basis for the pricing of the CSA.

Retention period: 3 years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge or until the expiration of the period of contingent liability.

ENERGY DEPARTMENT

48 CFR

970.3102–7 Management and operating contractors–lobbying costs. [Revised]

To maintain and make available to the Government records and documents sufficient to identify the costs and clearly established the nature and purpose of the legislative liaison activity to which the costs relate.

Retention period: Not specified.

COMMERCE DEPARTMENT

48 CFR

1352.217–90 Contractors subject to the inspection and manner of doing work clause. [Added]

To maintain complete records of all inspection work.

Retention period: During the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222–4 Contractors having contracts with Contract Work Hour and Safety Standards Act–overtime compensation clause.

To maintain payroll and basic payroll records during the course of the contract work for all laborers and mechanics, including guards and watchmen, working on the contract work.

Retention period: 3 years from completion of the contract.

TRANSPORTATION DEPARTMENT

Office of the Secretary

49 CFR

24.9 State and local agencies participating in the uniform relocation assistance and real property acquisition Federal and federally assisted programs. [Added]

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with applicable regulations.

Retention period: For at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled.

Research and Special Programs Administration

49 CFR

192.225 Welders of steel materials to be used in pipelines.

To keep records of welding procedures that have been qualified under either section IX of the ASME Boiler and Pressure Vessel Code or section 2 of API Standard 1104.

Retention period: As long as procedure is used

195.214 Welders.

To maintain records in detail of the welding procedures, including the results of the qualifying tests.

Retention period: As long as procedures are used.

Coast Guard

49 CFR

421.30 Nonprofit firms or associations designated to certify containers for international transport under Customs seal. [Removed, 1986]

National Highway Traffic Safety Administration

49 CFR

585.6 Passenger car manufacturers.

To maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car which is reported under section 585.5.

Retention period: Until December 31, 1991.

INTERSTATE COMMERCE COMMISSION

49 CFR

1249.5 Motor carriers of property. [Added]

To retain books, records, and carrier operating documents as prescribed in 49 CFR Part 1220, Preservation of Records.

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

50 CFR

301.13 Operators of vessels five (5) net tons or greater engaged in fishing for Pacific halibut. [Revised]

To keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

Retention period: 2 years.

301.14 Persons purchasing or receiving Pacific halibut. [Added]

To maintain records of each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

Retention period: 2 years from the date the fish tickets are made.

611.70 Operators of foreign fishing vessels.

To maintain such records as daily catch, daily receipt, transfer, and daily cumulative receipts logs and/or any other reports required in this section.

Retention period: Not specified.

611.80 Operators of foreign fishing vessels. [Amended]

In addition to maintaining records as required by 50 CFR 611.4 and 611.9, to maintain accurate data relating to fishing operations as specified in cited section.

611.81 Operators of foreign fishing vessels.

In addition to the recordkeeping requirements of 611.9, to keep a daily log containing following information: The number of each species caught and retained, the number of each species caught and released, the number of each species released alive, and the number of hooks set by type of bait.

Retention: See 611.9.

611.82 Operators of foreign fishing vessels. [Amended]

See 611.80.

611.90 Operators of foreign fishing vessels. [Revised]

In addition to maintaining records as required by 50 CFR 611.9, to maintain records on catch and effort statistics.

Retention period: See 611.9.

611.92 Operators of foreign fishing vessels. [Amended]

See 611.4 and 611.9.

630.5 Owners or operators of vessels of the United States who have been issued a permit to fish for or land swordfish.

To maintain daily fishing records on forms provided by the Center Director according to instructions.

Retention period: Monthly.

641.5 Headboat owners and operators fishing for or landing reef fish in the Gulf of Mexico EEZ or in adjoining States waters. [Added]

To maintain fishing records for each trip, or a portion of such trips as specified by the Centeer Director, on forms provided by the Center Director or his designee.

Retention period: Not specified.

651.22 Persons holding Federal groundfish permits in the Northwest Atlantic participating in the optional settlement program. [Revised]

To record all fish landed during the participation period.

Retention period: Throughout the participation period.

653.5 Owners or operators of vessels fishing in the non-directed commercial red drum fisheries.

To maintain logbook containing the name and address of owner or operator; name and official number of vessel and vessel's home port; port and time of departure and arrival; pounds of red drum landed; and other information as specified in cited section.

Retention period: Not specified.

681.5 Operators of vessels engaged in commercial fishing for Western Pacific spiny lobsters. [Amended]

To maintain an accurate and complete NMFS Daily Lobster Catch Report in English and NMFS Trip Processing and Sales Report.

Retention period: Not specified.

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federal register

Friday
February 5, 1988

Part III

Department of Education

34 CFR Part 305

Regional Resource and Federal Centers; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 305

Regional Resource and Federal Centers

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Regional Resource and Federal Centers program. These final regulations are needed to implement the amendments to section 621 of Part C of the Education of the Handicapped Act made by the Education of the Handicapped Act Amendments of 1986. As currently authorized, section 621 supports Regional Resource Centers that assist State educational agencies, and through those agencies, other State agencies and local educational agencies in developing quality programs and services for children with handicapping conditions. These final regulations include provisions describing who is eligible to apply under the program and what new services are to be provided by Regional Resource Centers.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Gardner, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3618—MES 3511–2313), Washington, DC 20202; Telephone: (202) 732–1026.

SUPPLEMENTARY INFORMATION: The Regional Resource and Federal Centers program was established under Pub. L. 91–230 on April 13, 1970, and is currently authorized by section 621 of Part C of the Education of the Handicapped Act (20 U.S.C. 1421; 34 CFR Part 305).

These final regulations implement the amendments to section 621 of the Act made by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457, which chiefly expanded eligibility for awards to include public agencies, and require Regional Resource Centers to: (1) Disseminate information to and train agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under Parts C through G of the Act; (2) provide assistance to State agencies through State educational agencies for early intervention services; and (3) provide services that are consistent with the priority needs identified by the States and with the Department's findings in monitoring reports.

Section 305.12 has been deleted from the regulations. The focus of the new Federal coordinating technical assistance center in the statutory amendments (*see* § 305.1(a) of these proposed amendments to the regulations) is different from the current coordinating center which provides direct technical assistance to any combination of the regions, States, or territories. The functions of the new coordinating technical assistance center will be carried out through a single contract awarded in accordance with the Federal Acquisition Regulation (*see* Title 48 of the Code of Federal Regulations).

Section 305.11(f) has been amended to reflect changes in the status of the entities formerly constituting the Trust Territory of the Pacific Islands. These changes are made by the Compact of Free Association Act of 1985, Pub L. 99–239, administered by the Department of the Interior. Pursuant to their approval of the compact, the Federated States of Micronesia and the Republic of the Marshall Islands became freely associated States. The Republic of Palau remains subject to a trusteeship agreement with the United States pending implementation of its compact. These three entities are substituted for the Trust Territory for Federal grant purposes.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

These regulations affect only institutions of higher education that compete for awards under this program and State educational agencies. State educational agencies are not defined as "small entities" in the Regulatory Flexibility Act, and there are very few institutions of higher education that submit applications under this program. Therefore, there would not be a substantial number of small entities that would be affected. Furthermore, these regulations impose a minimal burden and would not have a significant economic impact on any of the small entities participating in the program.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the changes made in these regulations merely incorporate statutory changes into existing regulations and do not themselves establish new substantive policy, public comment could have no effect on the contents of these amendments. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amendments is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on its review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 305

Education, Education of handicapped, Grant programs—education.

(Catalog of Federal Domestic Assistance Number 84.028; Handicapped Regional Resource and Federal Centers)

Dated: December 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 305 of Title 34 of the Code of Federal Regulations as follows:

1. The part heading, Regional Resource Centers, is revised to read as follows:

PART 305—REGIONAL RESOURCE AND FEDERAL CENTERS

2. The authority citation for Part 305 is revised to read as follows:

Authority: 20 U.S.C. 1421, unless otherwise noted.

3. Section 305.1 is revised to read as follows:

§ 305.1 What are the Regional Resource and Federal Centers?

(a) This program supports the establishment and operation of Regional Resource Centers that provide consultation, technical assistance, and training to State educational agencies, and through those State educational agencies, to local educational agencies and to other State agencies providing early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to handicapped infants, toddlers, children, and youth, and their families.

(b) This program also supports the establishment and operation of a Federal Center that provides assistance to the Regional Resource Centers in the delivery of technical assistance focusing on national priorities established by the Secretary.

(Authority: 20 U.S.C. 1421)

4. Section 305.2 is revised to read as follows:

§ 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;
(b) Private nonprofit organizations;
(c) State educational agencies;
(d) Public agencies; or
(e) Combinations of these agencies and institutions, such as combinations including one or more local educational agencies within particular regions of the United States.

(Authority: 20 U.S.C. 1421)

5. Section 305.3 is revised to read as follows:

§ 305.3 What regulations apply to this program?

(a) The following regulations apply to grants and cooperative agreements for Regional Resource Centers:

(1) The regulations in this Part 305.

(2) The Education Department General Administrative Regulations (EDGAR) at Title 34 of the Code of Federal Regulations in—

(i) Part 74 (Administration of Grants);
(ii) Part 75 (Direct Grant Programs);
(iii) Part 77 (Definitions that Apply to Department Regulations);
(iv) Part 78 (Education Appeal Board); and
(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 apply to contracts for Regional Resource and Federal Centers.

(Authority: 20 U.S.C. 1421)

6. Section 305.10 is revised to read as follows:

§ 305.10 What kinds of services are required under this part?

Each Regional Resource Center shall—

(a) Assist State educational agencies, through services such as consultation, technical assistance, and training, to provide more effectively special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(b) Assist in identifying and solving persistent problems in providing quality special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(c) Assist in developing, identifying, and replicating successful programs and practices that will improve special education, related services, and early intervention services to handicapped infants, toddlers, children, and youth, and their families;

(d) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant projects conducted by the Department;

(e) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of handicapped infants, toddlers, children, and youth; and

(f) Provide information to and training for agencies, institutions, and organizations regarding techniques and approaches for submitting applications for grants and cooperative agreements under this part and Parts D through G of the Act.

(Authority: 20 U.S.C. 1421)

* * * * *

7. Section 305.11 is amended by revising paragraph (f) to read as follows:

§ 305.11 What is the composition of the regions?

* * * * *

(f) *Region 6:* Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Republic of Palau, the Republic of the Marhsall Islands, the Federated States of Micronesia, Guam, American Samoa, Hawaii, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1421)

§ 305.12 [Removed]

8. Section 305.12 is removed.

9. The heading of Subpart E is revised to read as follows:

Subpart E—What Conditions Must Be Met by the Recipient of an Award?

10. In § 305.40, the introductory text is revised, paragraph (c) is added, and the authority citation for the section is revised to read as follows:

§ 305.40 What additional activities must each Regional Resource Center perform?

Each Regional Resource Center shall—

* * * * *

(c) Assure that the services provided are consistent with the priority needs identified by the States served by the center, and with the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Act.

(Authority: 20 U.S.C. 1421)

[FR Doc. 88–2325 Filed 2–4–88; 8:45 am]

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VOL
53

ISS
24

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federal register

Friday
February 5, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of an Airport Radar Service Area; Nebraska; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-1]

Proposed Establishment of an Airport Radar Service Area; Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before May 6, 1988. The informal airspace meeting date is April 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 88-AWA-1, 800 Independence Avenue SW., Washington, DC 20591.

The informal airspace meeting place is as follows:

Lincoln Municipal Airport, NE, ARSA.

Time: 7:00 p.m.

Location: Duncan Aviation Inc., Second Floor Meeting Room, Lincoln Municipal Airport, Lincoln, NE 68524

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves one location. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting for the proposed ARSA location in order to receive additional input with respect to the proposal. The date, time, and place for this meeting is listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures.
FAA Presentation of Proposal.
Public Presentations and Discussion.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-6 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 98 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's. This notice proposes ARSA designation at one of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register**.

The Current Situation at the Proposed ARSA Location

A TRSA is currently in effect at Lincoln Municipal Airport. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to operate within those restrictions. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR 91.87 highlight potential inadequacies of the TRSA identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of this additional ARSA site. The major findings of that evaluation are summarized below. The evaluation is available in the regulatory docket.

a. *Costs*

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA site proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation in radar services at this location is already quite high, and the separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and this facility already operates the necessary radar equipment, the FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA site in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA site proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiency and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of an ARSA at the site proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA location proposed in this notice will only be temporary, and that once established, the ARSA will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA site proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish an ARSA at Lincoln Municipal Airport, NE. The above location is a public airport at which a nonregulatory TRSA is currently in effect. The proposed location is depicted on the chart to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from that primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

The FAA has determined that this proposed regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, for the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Lincoln Municipal Airport, NE [Added]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Municipal Airport (lat. 40°51'03"N., long. 96°45'32"W.) and that airspace extending upward from 2,700 feet MSL to 5,200 feet MSL within a 10-mile radius of the Lincoln Municipal Airport.

Issued in Washington, DC, on February 1, 1988.

Shelomo Wugalter,

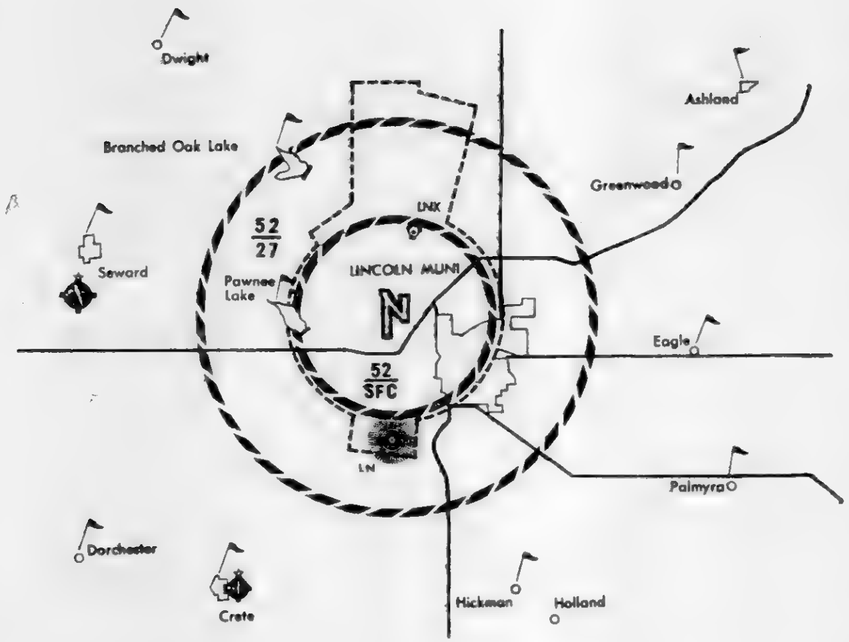
Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

LINCOLN, NEBRASKA
LINCOLN MUNI AIRPORT
FIELD ELEV. 1214' MSL



LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-239

[FR Doc. 88-2372 Filed 2-4-88 8:45 am]
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Friday
February 5, 1988

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36
Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 24929; Amdt. Nos. 21–61 and 36–14]

Final Rule for Noise Standards for Helicopters in the Normal, Transport and Restricted Categories

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: This final rule adds to the Federal Aviation Regulations noise certification standards applicable to helicopters. This rule applies to civil helicopters in the normal, transport, and restricted categories and provides noise level limits and test procedures for the issuance of original and amended type certificates. The rule prohibits changes in type design of helicopters that may increase noise levels beyond certain limits. This rule does not limit further manufacturing of existing helicopter types. This rule provides for commonality between U.S. standards and those adopted by the International Civil Aviation Organization (ICAO). In addition, the rule contains the technical noise measurement and procedures for conducting and evaluating helicopter noise tests. This rule is necessary to provide current and future relief and protection of the public health and welfare from helicopter noise.

DATES: Effective date of this amendment is February 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3553.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend portions of the Federal Aviation Regulations (14 CFR Part 36) and amend references to specific rules of Part 36 in other parts (14 CFR Parts 21 and 25). This amendment is based on Notice No. 86–3 (51 FR 7878; March 6, 1986; Docket No. 24929) in which comments were invited. All comments received were fully considered in the issuance of this Final Rule.

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. As the Part is currently organized, Subparts B and C and Appendices A, B, and C apply to transport category, large airplanes and subsonic turbojet powered airplanes regardless of type certification category. Appendix F contains the provisions applicable to propeller-driven small airplanes. This amendment prescribes noise levels and test procedures for civil helicopters certificated in the normal, transport, and restricted categories; included are rules governing the issuance of original and amended type certificates for helicopters for which application is made on or after the adoption date of this amendment. The rule prohibits certain growth, or other design changes, if the changes are likely to result in noise levels above prescribed limits. The rule prescribes test conditions and procedures for conducting helicopter noise tests to demonstrate compliance with the prescribed noise levels, including the technical noise measurement and evaluation specifications, employing Effective Perceived Noise Level (EPNL) as the evaluation unit. The helicopter noise standards have the following effects:

A. Certification Procedures Provisions

FAR Part 21, as amended, prescribes the procedural requirements for noise certification of civil helicopters certificated in the normal, transport, and restricted categories. These amendments apply to issuance of new type certificates in the normal, transport, or restricted categories for which application was made on or after the publication date of Notice 86–3. The effect of these provisions is to prohibit issuance of the affected certificates after the effective date of the amendments for helicopters which have not been shown to comply with the applicable noise requirements of Part 36. Thus, newly type certificated helicopters (except those for which application was made before the publication date of Notice 86–3) are required to comply with Part 36 noise standards. Further, the "acoustical change" provisions prescribe requirements that must be met to obtain approval of certain changes in type design of helicopters that may increase noise levels.

Appropriate references to Part 36 acoustical change requirements are contained in Part 21. The acoustical change rules for helicopters apply to any type design change, including operational limitations, that the Administrator determines may increase noise levels of that helicopter, such as changes in rotor size or trim, rpm, number of blades, weight or power. Under this amendment to Part 36, test procedures, conditions, and noise limits for acoustical changes are now prescribed.

B. Noise Standard Provisions

FAR Part 36 is amended to prescribe noise standards for civil helicopters certificated in the normal, transport, and restricted categories. These provisions are similar to those currently applicable to other aircraft under Part 36 and are summarized as follows:

1. General

The general provisions of Part 36, Subpart A, are amended to provide applicability, definitional, and acoustical change provisions covering civil helicopter noise certification. For example, the work "aircraft" is substituted for "airplane" in those provisions where the applicability simply would be expanded to include helicopters. Under this proposal, definitions identify two "stages" or levels of helicopter noise, "Stage 1" and "Stage 2". Stage 2 helicopters are those which have been shown to comply with the State 2 noise levels. Stage 1 helicopters are those which have not been shown to comply with Stage 2 levels.

A new section is added to prescribe noise requirements for those changes in type design defined as "acoustical changes" under FAR Part 21. Those provisions apply to acoustical change approvals applied for on and after the publication date of Notice 86–3. Specifically, no increase in any noise level (takeoff, flyover, or approach) is allowed after a change in the type design of a Stage 1 helicopter. For acoustical changes of Stage 1 helicopters, the tradeoff provisions can not be used to increase any Stage 1 notice level. A Stage 2 helicopter before a change in type design may not be a Stage 1 helicopter after the design change. It should be noted that the ICAO Annex 16 accoustical change standards applicable to Stage 1 helicopters are more stringent than those proposed herein that all helicopters must meet the complete Stage 2 limits after such a change.

The helicopter noise standards apply to all helicopters, as defined under FAR Part 1, except those configurations designated *exclusively* for agricultural operations, the dispensing of fire fighting materials, or the transport of external loads. This exception is similar to the one for small propeller-driven airplanes, but is especially important for helicopters since nearly every type has provisions for at least occasionally carrying external loads. Such loads would make it extremely difficult to meet either the weight or performance requirements; thus, the noise standards only apply to internal load configurations. On the other hand, an exclusion of all helicopters with external load capability would defeat the entire purpose of the regulation. It should be noted that these standards are applicable to type certification actions for which applications are received on or after the publication date of Notice 86–3.

2. Manuals, Markings, and Placards

The Part 36 provisions regarding requirements for operating limitations in manuals, marking, and placards under current Subpart C is redesignated as Subpart O and amended to extend their applicability by including approved Rotorcraft Flight Manuals, manual materials, or placards, as appropriate.

3. Helicopter Noise Rule

A new Subpart H to Part 36 prescribes the basic requirements for demonstrating compliance with the helicopter noise rules. The technical standards, conditions, and procedures for conducting noise tests and the helicopter noise limits are presented in the Appendix H.

4. Noise Measurement and Evaluation

The new Subpart H to Part 36 is a stand-alone document containing, among other things, the technical specifications for conducting and evaluating helicopter noise tests. With exceptions necessary to account for the unique operating characteristics of helicopters, the rule applies the specifications currently applicable to tests of transport category large airplanes and turbojet-powered airplanes under Appendices A and B of Part 36 (as amended by FAR Amendment 36–9; 43 FR 873, March 2, 1978, and as proposed in Notice 85–2, 50 FR 4172, January 29, 1985).

Highlights of the differences for helicopter noise test under Appendix H and the requirements of Appendices A and B are summarized as follows:

a. Three noise test series are used: takeoff, flyover, and approach. Simultaneous noise measurements are made for each test series at a measuring station under the flight track and at two sideline measuring stations with one on each side of the flight track.

b. Helicopter height and lateral position from the noise measuring station are measured relative to the referenced flight path.

c. The approach angle for the helicopter approach noise test is 6°(±0.5°) rather than the 3.0° ±0.5° used for fixed wing aircraft.

d. Symbols and units appropriate to helicopter noise certification have been substituted for fixed wing aircraft noise symbols in § A36.7 "Flight Profile Identification Positions" and "Distance-Unit-Meaning" descriptors used in Part 36.

5. Noise Levels

The new Appendix H to Part 36 contains helicopter noise levels for which compliance must be shown by actual flight tests. These levels include:

(1) "Stage 1" and "Stage 2" noise limits for each test series which are related to the maximum certificated takeoff weight of the helicopter;

(2) Tradeoff provisions which govern limited "exceedances" of noise levels for one or two tests series when such exceedances are offset by reductions in the noise levels of the other test series; and

(3) Separate test conditions for each of the three noise test series including airspeed, altitude, and operational profile over the noise measuring station, power, and helicopter position relative to the flight-track noise measuring station.

"Stage 1" noise limits include prohibition of noise level increases prescribed for "acoustical changes" of those helicopters which cannot achieve Stage 2 noise limits. These limits are prescribed separately for the takeoff, flyover, and approach tests series. Depending upon maximum certificated weights of the helicopter, maximum allowable noise levels are between 88 and 108 EPNdB for flyover, 90 and 100 EPNdB for approaches and 89 and 109 EPNdB for takeoff. The highest noise limit applies to maximum weights of 176,370 pounds or more. The noise limit is then reduced by 3.01 EPNdB for each halving of the maximum weight down to a maximum weight of 1,764 pounds.

Tradeoffs of any "exceedances" are limited to a sum not greater than 4 EPNdB with no single exceedances greater than 3 EPNdB; this is consistent with the ICAO standard. (For turbojet powered airplanes, the numbers are 3 and 2 EPNdB respectively.) The exceedances must be completely offset by noise levels below those required at the other two points.

The noise level limits apply to helicopters of all weights, just as the noise level limits for other categories of aircraft are applied. However, no United States civil helicopters currently have maximum weights above 50,000 pounds.

This rule allows the first civil derivative of a military helicopter, including those operated by the U.S. Coast Guard, to be treated as though the military "parent" were a Stage 1 civil helicopter the noise levels of which are more than two dB decibels above the Stage 2 noise level limit. This has the effect of removing noise data requirement from the parent aircraft. Among the reasons for instituting this area: (1) lack of availability of noise level data for military aircraft and; (2) the costs associated with performing test on both versions.

6. Applicability to current production types

As noted earlier, the rule is not applicable to helicopter types currently in production as long as an "acoustical change" is not made that may increase noise levels.

Regulatory History

On December 28, 1973, the FAA published an Advanced Notice of Proposed Rulemaking (ANPRM) (Notice No. 73–32; 38 FR 35487) in which it announced that it was considering proposing noise standards for aircraft that were expected to be developed for efficient short stage length operations. It was anticipated that such a class of aircraft, referred to as "short-haul", would include aircraft having short, reduced, vertical or near vertical takeoff and landing capabilities. Since the noise technologies appropriate to those aircraft as a separate class required further study, original FAR Part 36 in 1969 did not prescribe separate rules for those aircraft; some, such as helicopters, were not covered by any regulation. Notice No. 73–32 (ANPRM) was issued as part of an additional study to invite early public participation in the identification and selection of a course, or alternative courses, of action to develop noise standards which would provide additional relief and protection to the public health and welfare from aircraft noise. On July 9, 1979, a Notice of Proposed Rulemaking (NPRM) Notice No. 79–13; (44 FR 42410) was published by the FAA. This notice proposed helicopter noise certification standards and limits on further production of older, noisier helicopter types. The procedures proposed for noise testing in NPRM 79–13 were similar, although not identical, to those proposed in Notice 86–3; however, the proposed noise level limits were significantly more stringent. Information submitted to the Docket indicated that the economic impact on the industry of limiting future production of existing helicopter types might be several hundred million dollars, due to the general unavailability of the noise abatement technology needed to meet

the specified noise levels. After careful consideration of the economic impacts of the proposed rule and of the Docket comments on the effects of those impacts, Notice No. 79–13 was withdrawn (December 17, 1981; 46 FR 61486). At the time of withdrawal, the FAA stated that the action neither precluded consideration of similar proposals in the future nor committed the agency to any further or future course of action on this subject.

During the time since Notice No. 79–13 was withdrawn, the FAA has continued to study issues surrounding noise level certification of helicopters. One of such issue is the ICAO rule, contained in Annex 16, Chapter 8. The United States has been an active participant in modifications to that rule, including raising the allowable noise levels, with the aim of better balancing costs and environmental benefits.

As noted before the FAA has been studying issues surrounding noise level certification of helicopters since 1973. On March 6, 1986, a Notice of Proposed Rulemaking (NPRM) [Notice No. 86–3, 51 FR 7878] was published by the FAA, based on the comments and issues raised during this period. In addition, the NPRM provided for a commonality between U.S. standards and those adopted by ICAO. This rule revises portions of FAR 14 CFR Part 36 and amends references to Part 36 in other parts (14 CFR Part 21 and 25) with the purpose of better balancing the economic costs and the environmental benefits.

Aircraft Noise Rules

Public Laws 90–411 and 92–574 were enacted to provide the statutory basis, under the Federal Aviation Act of 1958 (the Act), for relief and protection of the public health and welfare from noise and sonic boom from civil aircraft. Under the Act, the Administrator of the Federal Aviation Administration, after consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, is responsible for the adoption and amendment of rules which prescribe the necessary standards and regulations. On November 3, 1969, the Administrator adopted FAR Part 36 entitled "Noise Standards: Aircraft Type Certification" (34 FR 18355; November 18, 1969). That regulation initiated the FAA noise abatement regulatory program under the new statutory authority by prescribing noise type certification standards for subsonic turbojet powered airplanes regardless of category. Part 36 also prescribed the technical specifications for illustrating compliance with the noise level limits.

In promulgating proposals and amendments under the authority of § 611 of the Act, factors which the FAA must consider include the following:

1. Available data relating to aircraft noise, including results of research, development, testing, and related evaluation activities.

2. The appropriate views and position of other Federal, state and interstate agencies.

3. Whether the proposed regulations are consistent with safety in air commerce and air transportation and the public interest.

4. Whether proposed regulations are:

a. Economically reasonable;

b. Technologically practicable; and

c. Appropriate for the particular type of aircraft, aircraft engines, appliances, or certificates to which they would apply.

5. The extent to which the proposed regulations contribute to providing protection to the public health and welfare by carrying out the purposes of § 611 of the Act. The overall environmental impacts of the regulations including environmental factors other than noise must be addressed in accordance with the National Environmental Policy Act of 1969, and implementing Federal guidelines and directives.

Need For Regulation

FAA data of the active rotorcraft fleet for 1985 shows 2,221 U.S. helicopter operators in the United States utilizing an active fleet of 8,412 helicopters. U.S. corporate/executive use of helicopters accounted for 1,391 aircraft and U.S. commercial helicopters accounted for 4,244 aircraft. The remainder of the fleet are comprised of emergency service aircraft. In 1984, there were 4,020 public use heliports and helistops in the United States. Approximately 9 percent of these heliports are rooftop facilities located in noise sensitive areas. The usage of helicopters is fully recognized in today's society.

For example, city ordinances in Chicago and Los Angeles require that buildings above a certain height be provided with rooftop emergency landing facilities for helicopters because modern fire-fighting apparatus cannot reach above eight floors. As other municipal governments recognize the need to provide increased protection for high-rise inhabitants, the number of heliports for both routine and emergency uses may increase significantly.

The growth of the civil helicopter fleet caused by the increased and more diversified use of helicopters, has intensified the demand for additional heliports. However, environmental concerns are imposing restrictions on heliport operations at an increasing rate. Environmental pressure has also forced closing of heliports with the resultant loss of helicopter services at those locations. The FAA believes that the adoption of appropriate helicopter noise standards will help protect the public by reducing helicopter noise and thereby maintain the benefits of their services in the air transportation system.

One of the key issues in the withdrawal of Notice 79–13 was the lack of effective noise abatement technology. To develop this technology, an accelerated joint research program was set up in 1982 by the National Aeronautics and Space Administration (NASA), the FAA, and American helicopter manufacturers. This National Rotorcraft Noise Research Program is a multi-year twenty-million dollar cooperative effort under the technical guidance of NASA and has two major goals: (1) development of noise abatement technology for reducing helicopter external noise levels and (2) the development of detailed parametric noise prediction techniques. This program is expected to furnish the techological basis for helicopter noise reduction into the twenty-first century and could significantly lower the cost of applications of that technology. At the conclusion of the program, the FAA will consider the appropriateness of lowering the certification noise levels for the helicopters; however, the FAA does not consider it appropriate, in light of the considerations listed in section 611 of the Act, to delay all rulemaking on noise standards for helicopters until the cooperative research program is completed.

The FAA has evaluated the helicopter as a noise source which affects persons and property and as a result concluded that it is now appropriate to adopt helicopter noise regulations necessary to protect the public health and welfare according to section 611 of the Act. This rule achieves that objective by preventing further escalation of helicopter noise levels and by laying the regulatory foundation for assuring that future helicopter types and eventually all newly produced helicopters of older type designs comply with realistic noise standards. The FAA has determined that sufficient noise control technology exists to meet the considerations of section 611(d) of the Act.

Economic aspects of this regulation are discussed in more detail in the rulemaking assessment prepared in conjunction with this rulemaking, and placed in the Docket. However, it should be noted that U.S. manufacturers of rotorcraft are already subject to the ICAO noise certification standards for each helicopter type that they wish to export. Since exports account for approximately 40 percent of the civil sales of U.S. helicopter manufacturers and, since the standards in this rule (except for "acoustical changes" of older, State 1 aircraft) are nearly identical to those of ICAO, only minimal cost impacts are expected from this standard. Offsetting these minimal costs are savings which will accrue to American manufacturers by one-time certification in the U.S. rather than certificating in each foreign country as necessary.

Rule Structure

As part of this rulemaking, certain portions of the current Part 36 were recognized and restructed without any changes in their substance to improve their usefulness and understandability. The technical provisions of Appendices A & B, governing the measurement and evaluation of aircraft noise test data, which were referenced in Notice 86–3, were brought into Appendix H where appropriate. This was done in answer to several comments to the Docket citing confusion over the number and length of referenced sections.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket and also reviews the changes to Parts 21 and 36. The FAA determined that the rule is consistent with the objectives of Executive Order 12291 and does not impose an unnecessary or unreasonable regulatory burden on the private sector or on the public.

These amendments provide benefits that outweigh the costs of compliance. Specifically, the benefits are the greater acceptability of helicopters and heliports in urban environments and the attendant increased market for helicopters and helicopter their services. Thus, the economic benefits accrue not only to the manufacturers and operators, but to the general public as well. The environmental benefits would accrue mainly to those working or residing near heliports, although some noise level improvements can be expected near helicopter flight corridors.

Costs result from increased development and certification expenses and are originally borne by the manufacturers but are expected to be passed on to helicopter operators and eventually to the public. These costs are mitigated by two factors: (1) the National Aeronautics and Space Administration has underway a joint helicopter noise reduction technology program with U.S. manufacturers and the FAA to improve the state-of-the-art and to lower the cost of application and (2) all helicopter models for export are required to comply with ICAO noise standards even if the U.S. were not to adopt the requirements contained in this rule.

Regulatory Flexibility Determination

As detailed in the evaluation, the only cost associated with the changes to FAR Part 36 will be the cost to manufacturers related to the noise certification test. However, no domestic helicopter manufacturer is considered a small entity as is currently defined. Therefore, it is certified that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. The amendment has the effect of limiting the growth of noise from new helicopter types and derivatives of existing types. This will reduce noise levels around heliports and, to some extent, under helicopter flight corridors, when compared to unconstrained growth. Little noticeable short-term general effect is expected, since it is estimated that it will take at least five years after adoption of the rule before a significant number of affected aircraft enter the nation's fleets. However, some helicopter operations and heliports are expected to be designed based upon the lower noise capabilities of newer aircraft, making site-specific improvements in the noise environment. Therefore, no environmental assessment or environmental impact statement was prepared.

Trade Impact Analysis

There will be little or no impact on U.S. or foreign trade from this rulemaking. Absent the rule, U.S. helicopter exports would have been placed at comparative cost disadvantage since each helicopter model still would be required to meet ICAO standards. The cost of multiple certifications would have resulted in either higher selling prices or lower profits to U.S. manufacturers.

Discussion of Comments

Interested persons were afforded the opportunity to participate in development of this rulemaking by submitting written comments to the public regulatory docket on or before June 5, 1986. All comments received have been reviewed and duly considered in promulgating this amendment.

Sixteen public comments were received in response to the notice (Docket No. 24929). All of the commenters supported promulgation of noise certification standards for helicopters; however, each commenter also had specific suggestions about one or more of the FAA's proposed amendments.

The comments received in public Docket No. 24929 are discussed below. They are grouped by broad categories of issues.

1. Flight Procedures

Notice 86–3 proposed both flight test procedures and flight reference procedures. The first of these procedures gives instructions to the pilots so that the helicopters can be flown allowing realistic variations in weather, piloting techniques, and aircraft performance. The second specifies uniform flight path profiles so that the measured data may be compared to the standard. Several comments were received concerning the amount of variation in flight test techniques that the regulation should allow. Commenters explicitly stated that the rule should allow the helicopter operator to use a "normal" approach during the noise certification test. In addition, some comments claimed that noise data measured during normal approach differs significantly from noise measured under the constant six degree glide slope approach. They further stated that the certification flight test procedures should be used based upon practical "real-world" flight procedures rather than rigidly-prescribed procedures which are seldom used in service.

Much of the concern with flight procedures lies with their effect on the generation of the distinctive helicopter blade slap. Helicopter noise levels vary between models for different glide slopes. In 1979, the ICAO Committee on Aircraft Noise considered adding a blade slap correction to the calculation of EPNdB for helicopters. However, after extensive investigation, it was determined that the six degree approach would not unduly penalize any particular helicopter type.

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Regarding the commenters' position, the development of alternative procedures was pursued by the FAA and the Helicopter Association International which was represented by both operators and manufacturers. However, experience showed that the versatility of helicopters was so great that there was often no single "real-world" approach procedure. Conversely, redefining the procedures to allow applicants to choose any normal approach between three and nine degrees would result in an undesirable decrease in the stringency of the standard, unless the noise level limits were adjusted.

Further, it is noted that § 36.801 specifically allows certification noise measurements to be made using an FAA-approved equivalent procedure. This provision is intended to prevent hardships occuring as the result of the application of an inappropriate certification process.

Lastly, the FAA notes that the six degree approach glide slope has been adopted by ICAO in its helicopter noise certification standard and that both foreign and domestic manufacturers will have to certificate using six degrees, whether or not the United States adopts that procedure. The economic costs of developing and using a separate flight procedure specification that does not conform to the international standard are unjustified.

For the above mentioned reasons, the FAA is adopting the test and reference flight procedures as proposed.

2. No-Correction Window

The FAA solicited comments on the need for a "no-correction window", i.e., combinations of test and weather conditions that are so close to the standard reference conditions that no corrections to the measured test data are necessary. In response, several commenters expressed the opinion that the rule should have a "no correction window". Their opinion was that a practical test "window" would limit the cost and complexity of the helicopter certification process.

The FAA believes that since most of the measurements have to be made either to make the corrections or to determine which measurements are inside the "window", it serves little purpose to avoid making appropriate corrections. Cost savings, if any, would be negligible and would be far outweighed by the quality of the data available to the applicant. However, it is noted that the ICAO standard does not require corrections of reported noise levels for small variations from the reference conditions of flight path, airspeed, weight, ambient temperature, relative humidity, and rotor rpm for the takeoff and approach tests. Only the level flyover test does not have such a no-correction window. Because it would be unfair to require American helicopter manufacturers to bear disproportionately high costs, the FAA has determined to follow the lead of ICAO and allow small no-correction windows for takeoff and approach tests.

3. Upper Bound Weight Limit

The FAA requested comments with regard to establishing an appropriate upper bound to the noise versus weight standards. There are currently no American civil helicopters which have maximum weights above 50,000 pounds. Under Notice 86-3, the noise level limits for takeoff, approach, and sideline would vary with maximum takeoff gross weight. An earlier industry proposal would have the noise limits end at an upper weight of 56,000 pounds.

There were no comments in support of the 56,000 lb. limit. The manufacturers reported that there was no need for such a restriction at this time. One commenter objected to the proposal on the basis that it violated the ICAO agreements. The FAA has determined that there is no valid reason to enact a rule which would have the effect of creating a unique class of unregulated helicopters that would be at a distinct disadvantage on the export market. Therefore, this rule does not contain an upper weight limitation.

4. Applicability to Current Production

Notice 86-3 proposed establishing noise limits for new and derivative helicopter types, but did not propose to require compliance with the new noise standards as a condition for further production of current helicopter types. The FAA solicited comments on the appropriateness of this exclusion.

One commenter indicated that the industry had over seven years of notice of this rule. The commenter further indicated that industry consistently opposed the rule, even to the point of successfully arguing for the withdrawal of the original NPRM in 1982. He observed that all helicopters now in production meet the Stage 2 noise limit and, therefore, there is reason to establish a Stage 2 rule for all helicopters in production. This would assure that no Stage 1 helicopters would be produced. Another commenter recommended that the regulation be revised to set a date beyond which Stage 1 helicopters may no longer be introduced into the U.S. fleet. He was concerned that the rule almost ensures that excessively noisy helicopters will continue to be introduced into the fleet.

The FAA recognizes that most, if not all, the civil helicopters in production were derived from military aircraft. The FAA believes that it would create an undue economic burden on the industry for requiring lower noise levels for which the military helicopters were originally designed. However, the FAA has a statutory responsibility to ensure that economically reasonable and technologically practicable noise limits are applied fairly and uniformly. The rules prohibit noise level increases from those helicopters which already cannot achieve Stage 2 noise levels before a change in type design. The rule would not allow a Stage 1 helicopter the noise levels of which exceed the Stage 2 noise limits by more than 2 EPNdB to grow in noise after the change in type design. Those Stage 1 helicopters the noise levels of which do not exceed the Stage 2 noise limits by more than 2 EPNdB may "grow up" to the plus 2 EPNdB limit. The FAA believes that this limited growth does not place undue restrictions on industry, but provides a realistic "cap" on the growth of helicopter noise impacts. Even though the rule allows helicopters currently in production to continue to be produced and added to the fleet, the fact still remains that all of the helicopters currently being produced meet Stage 2 limits. The FAA reserves the right to propose a new production rule that would restrict production to Stage 2 helicopters if and when it is warranted.

5. Stringency

One of the key issues in the public Docket was the stringency of the proposed noise level standards. Several commenters stated their belief that the noise level limits were not stringent enough and noted that the noise level standards were higher than those proposed in Notice 79-13 for both new helicopter types and derivatives. It was also noted that all helicopters currently in production would meet the standard, even though little or no effort had been made by their manufacturers to lower their noise levels. The opinion was expressed that the proposed rule would provide no real protection to the public.

The FAA generally agrees with the comments as far as they go. However, there is more to the issue of stringency than just the noise levels of current helicopters. After all, a certification regulation is actually applied to future aircraft types and to changes in existing types, not to aircraft already in service. In this case, the helicopters for which the regulation is intended are the next generation of high speed, high performance aircraft that will be introduced into service in the late 1980's and beyond. Current civil helicopters are largely derived from military versions. Accordingly, the missions for which they were designed have limited civilian application. However, the new helicopters are being designed for the speed and productivity demanded by a business-oriented economy.

From a technical point of view, new helicopters pose a greater noise control design challenge because the characteristics that would make a helicopter successful in the open market will also make it noisier. For instance, the increased speed and payload capabilities are largely the result of modern, high speed rotor design. As the rotor speed increases, the noise increases even more. As the payload increases, the rotor loading also increases and so does noise. Thus, the noise level limits will cap the noise to ensure that helicopters do not get noisier as new technology is introduced.

Some have suggested that the FAA should now place a cap on the noise levels with the intention to lower the permissible noise by 3 to 5 decibels in a specific time, possibly five years. The FAA believes that such a suggestion is premature, as NASA and the U.S. industry have an extensive research program under way to provide the tools needed to design and evaluate effective noise abatement technology for new type design helicopters. At the conclusion of the NASA program, the FAA will consider the appropriateness of lowering the noise certification levels of helicopters. Lastly, the standards in this rule are identical to ICAO's standards which industry must meet to maintain its export market and which foreign-made helicopters must also meet.

6. Test Costs

Several commenters were of the opinion that the complexity of the rule, especially the requirement for correcting the data if the test is performed outside of the "no correction window," is too costly. For certain helicopter models, the sales are in such small quantities and at such irregular intervals, that a requirement to perform extensive and costly noise certification testing could lead to discontinuing the sales, despite the fact that the helicopter as measured by the FAA meets the noise limits. A commenter stated that because fewer commercial helicopters are being manufactured, the cost of any design modification must be absorbed by these few, increasing the per-unit cost, which is ultimately passed on to the consumer. If sales decrease substantially, the per unit cost becomes so high as to be totally impractical and the design is no longer profitable. One commenter indicated that the cost of certificating a helicopter to the noise standards in the rule would be approximately $500,000, which exceeds the costs of some helicopters by as much as a factor of ten.

The cost as cited above is unsubstantiated and the FAA estimates the costs to range between $5,000 to $50,000, depending largely on the manner in which the helicopter flight time was billed. Standardization of the FAA and ICAO test procedures should provide further savings. The issue of the complexity of the rule regarding a "no correction window" resulting in extra cost is not supported. As indicated previously, the manufacturer would be required to make most of the measurements anyway to determine whether the data had to be corrected. The extra cost to adjust the data to a given standard is negligible with today's microcomputers.

7. Other Issues

Commenters to the Docket raised a number of other technical and editorial issues. One industry group observed that the rule as proposed in Notice 86-3 was difficult to follow because it repeatedly referenced other sections of FAR Part 36. This was especially noted in those sections which specified acoustical and meteorological instrumentation and correction procedures. Several comments were also received about the organization of Appendix H and about the perceived need to reorganize it more along functional lines. The FAA agrees with these suggestions and has brought into Appendix H most of the materials that were referenced in the Notice. The one major exception to this process is that the definition of the noise metric, Effective Perceived Noise Level (EPNL) and the procedures for computing it, remain solely in Appendix B. This arrangement will ensure that the EPNL used for each aircraft category remains consistent with that used for any other category. Any modifications to the basic formulations will automatically apply to all categories.

The contents of Appendix H have been reorganized to make them clearer and easier to follow. The new Table of Contents is at the beginning of the appendix. Typographical mistakes that appeared in the Notice have been corrected. In addition, several minor changes to the test specifications have been made to incorporate test tolerances that correspond to ICAO values and to incorporate metric equivalents where they had been inadvertently omitted.

List of Subjects

14 CFR Part 21

Aircraft certification, Helicopters, Accoustical change.

14 CFR Part 36

Noise standards, Noise limits, Aircraft noise measurement, Test conditions, Helicopters.

The Amendment

Accordingly, the Federal Aviation Administration amends Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. In § 21.93 the introductory text of paragraph (b) is revised, and a new paragraph (b)(4) is added:

§ 21.93 Classification of changes in type design.

* * * * *

(b) For the purpose of complying with Part 36 of this chapter, and except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any voluntary change in the type design of an aircraft that may increase the noise levels of that aircraft is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following aircraft:

* * * * *

(4) Helicopters, (except for those helicopters that are designated exclusively for "agricultural aircraft operations", as defined in § 137.3 of this chapter, as effective on January 1, 1966, for dispensing fire fighting materials, or for carrying external loads, as defined in § 133.1(b) of this chapter, as effective on December 20, 1976). For helicopters to which this paragraph applies, "acoustical changes" include the following type design changes:

(i) Any changes to, or removal of, a muffler or other component designed for noise control.

(ii) Any other design or configuration change (including a change in the operating limitations of the aircraft) that, based on FAA-approved analytical or test data, the Administrator determines may result in an increase in noise level.

3. Section 21.115(a) is amended by removing "§§ 36.7 and 36.9 of this chapter" and substituting "§§ 36.7, 36.9, or 36.11 of this chapter".

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 98-473; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 36.1 [Amended]

2. Section 36.1 Applicability and definitions is amended as follows:

a. By adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) Type certificates, and changes to those certificates, for helicopters except those helicopters that are designated exclusively for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966), for dispensing fire fighting materials, or for carrying external loads (as defined in § 133.1(b) of this chapter, as effective on December 20, 1976).

* * * * *

b. By amending paragraph (c):

(1) By removing the word "airplane" and substituting for it the word "aircraft"; and

(2) By removing "the applicable provisions of § 36.7 or § 36.9 of this part" and substituting "the applicable provisions of § 36.7, 36.9, or 36.11 of this part".

c. By adding a new paragraph (g) to read as follows:

* * * * *

(g) For the purpose of showing compliance with this part, of helicopters in the normal, transport, and restricted categories, the following terms have the specified meanings:

(1) A "Stage 1 noise level" means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(2) A "Stage 1 helicopter" means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters.

(3) A "Stage 2 noise level" means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(4) A "Stage 2 helicopter" means a helicopter that has been shown under this part to comply with Stage 2 noise levels (including applicable tradeoffs) prescribed in § H36.305 of Appendix H of this part.

§ 36.2 [Amended]

3. Section 36.2(a) is revised to read as follows:

(a) Notwithstanding § 21.17 of this chapter, each person who applies for a type certificate:

(1) For an airplane covered by this part, irrespective of the date of application for the type certificate, or

(2) For a helicopter covered by this part, on or after March 6, 1986,

must show compliance with the applicable provisions of this part.

§ 36.3 [Amended]

4. Section 36.3 is amended by removing the word "airplane" wherever it appears and substituting for it the word "aircraft".

5. Subpart A is amended by adding a new § 36.11 to read as follows:

§ 36.11 Acoustical change: helicopters.

This section applies to all helicopters in the normal, transport, and restricted categories for which an acoustical change approval is applied under § 21.93(b) of this chapter on or after March 6, 1986.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in Parts B and C of Appendix H of this Part.

(2) Compliance with the noise levels prescribed in Section H36.305 of Appendix H must be shown in accordance with the applicable provisions of Part D of Appendix H of this part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to the change in type design, the helicopter noise levels may not, after the change in type design, exceed the noise levels specified in Section H36.305(a)(1). The tradeoff provisions under § H36.305(b) may not be used to increase any Stage 1 noise level beyond these limits.

(c) *Stage 2 helicopters.* For each Stage 2 helicopter prior to the change in type design, the helicopter must be a Stage 2 helicopter after the change in type design.

Subpart G—[Redesignated as Subpart O]

6. Subpart G is redesignated as "Subpart O—Operating Limitations and Information" and Subparts G, I, J, K, L, M, and N are reserved.

§ 36.1581 [Amended]

a. By amending paragraph (a) after the words "Airplane Flight Manual" in each place where those words appear by adding the words "or Rotorcraft Flight Manual."

b. By amending paragraph (b) in the prescribed statement by deleting the word "airplane" and substituting for it the word "aircraft."

c. By redesignating paragraph (e) as "paragraph (f)" and revising it to read as follows:

* * * * *

(f) Except as provided in paragraph (c), (d), and (e) of this section, no operating limitations are furnished under this part.

d. By adding a new paragraph (e) to read as follows:

* * * * *

(e) For normal, transport, and restricted category helicopters, if the weight used in meeting the takeoff, flyover, or approach noise requirements of this part is less than the certificated maximum takeoff weight, established under either § 27.25(a) or 29.25(a) of this chapter, that lesser weight must be furnished, as an operating limitation, in the operating limitations section of the Rotorcraft Flight Manual, in FAA-approved manual material, or on an FAA-approved placard.

* * * * *

8. A new Subpart H is added to read as follows:

Subpart H—Helicopters

Sec.

36.801 Noise Measurement.
36.803 Noise evaluation and calculation.
36.805 Noise limits.

Subpart H—Helicopters

§ 36.801 Noise measurement.

For normal, transport, and restricted category helicopters, the noise generated by the helicopter must be measured at the noise measuring points and under the test conditions prescribed in Part B of Appendix H of this part or under an FAA-FAA-approved equivalent procedure.

§ 36.803 Noise evaluation and calculation.

The noise measurement data obtained under § 36.801 must be corrected to the reference conditions and evaluated under Part C of Appendix H of this part or an FAA-FAA-approved equivalent procedure.

§ 36.805 Noise limits.

(a) Compliance with the noise levels prescribed under Part D of Appendix H of this part must be shown for helicopters for which application for issuance of a type certificate in the normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph (c), it must be shown, in accordance with this subpart, that the noise levels of the helicopter are no greater than the applicable limits prescribed under § H36.305 of Appendix H of this part.

(c) For helicopters for which application for issuance of an original type certificate in the normal, transport or restricted category is made on or after March 6, 1986, and which the FAA finds to be the first civil version of a helicopter which was designed and constructed for, and accepted for operational use by, an Armed Force of the U.S. or the U.S. Coast Guard on or before March 6, 1986, it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in § H36.305(a)(1)(ii). Subsequent civil versions must meet the Stage 2 requirements.

9. By amending Appendix B of Part 36, section B36.1 at the end of the first sentence by removing "under § 36.103" and substituting "under §§ 36.103 and 36.803".

10. By adding a new Appendix G and marking it reserved.

11. By adding a new Appendix H to read as follows:

Appendix H—Noise Requirements For Helicopters Under Subpart H

Sec.

Part A—Reference Conditions

H36.1 *General.*
H36.3 *Reference Test Conditions.*
H36.5 *Symbols and Units.*

Part B—Noise Measurement Under § 36.801

H36.101 *Noise certification test and measurement conditions.*
H36.103 *Takeoff test conditions.*
H36.105 *Flyover test conditions.*
H36.107 *Approach test conditions.*
H36.109 *Measurement of helicopter noise received on the ground.*
H36.111 *Reporting and correcting measured data.*
H36.113 *Atmospheric attenuation of sound.*

Part C—Noise Evaluation and Calculation Under § 36.803

H36.201 *Noise evaluation in EPNdB.*
H36.203 *Calculation of noise levels.*
H36.205 *Detailed data correction procedures.*

Part D—Noise Limits Under § 36.805

H36.303 *Noise measurement, evaluation, and calculation.*
H36.303 *(Reserved).*
H36.305 *Noise levels.*

Part A—Reference Conditions

Section H36.1 *General.* This appendix prescribes noise requirements for helicopters specified under § 36.1, including:

(a) The conditions under which helicopter noise certification tests under Part H must be conducted and the measurement procedures that must be used under § 36.801 to measure helicopter noise during each test;

(b) The procedures which must be used under § 36.803 to correct the measured data to the reference conditions and to calculate the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL); and

(c) The noise limits for which compliance must be shown under § 36.805.

Section H36.3 *Reference Test Conditions.*

(a) *Meteorological conditions.* Aircraft position, performance data and noise measurements must be corrected to the following noise certification reference atmospheric conditions which shall be assumed to exist from the surface to the aircraft altitude:

(i) Sea level pressure of 2116 psf (76 cm mercury).

(ii) Ambient temperature of 77 degrees F (25 degrees C).

(iii) Relative humidity of 70 percent.

(iv) Zero wind.

(b) *Reference test site.* The reference test site is flat and without line-of-sight obstructions across the flight path that encompasses the 10 dB down points.

(c) *Takeoff reference profile.* (1) Figure H1 illustrates a typical takeoff profile, including reference conditions.

(2) The reference flight path is defined as a straight line segment inclined from the starting point (1640 feet prior to the center microphone location at 65 feet above ground level) at an angle β defined by the certificated best rate of climb and V_y for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (FAA-approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C, and continues, crossing over station A, to the position corresponding to the end of the type certification takeoff path represented by position L.

(d) *Level flyover reference profile.* The beginning of the level flyover reference profile is represented by helicopter position D (Figure H2). The helicopter approaches position D in level flight 492 feet above ground level as measured at station A. Airspeed is stabilized at either 0.9 V_H or 0.45 V_H + 65 knots (0.45 V_H + 120 km/hr), whichever speed is less. Rotor speed is stabilized at the maximum continuous RPM throughout the 10 dB down time period. The helicopter crosses station A in level flight and proceeds to position I.

(e) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the maximum specification engine torque corresponding to maximum continuous power available for sea level, 25° C ambient conditions at the relevant maximum certificated weight. The value of V_H thus defined must be listed in the Rotorcraft Flight Manual.

(e) *Approach reference profile.* (1) Figure H3 illustrates approach profile, including reference conditions.

(i) The beginning of the approach profile is represented by helicopter position E. The position of the helicopter is recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of Maximum Tone Corrected Perceived Noise Level (PNLTM), as required. EK represents a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° ± 0.5° approach angle.

(ii) The approach profile is defined by the approach angle β passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile.

(2) The helicopter approaches position H along a constant 6° approach slope throughout the 10 dB down time period. The helicopter crosses position E and proceeds along the approach slope crossing over station A until it reaches position K.

Section H36.5 *Symbols and units.* The following symbols and units as used in this appendix for helicopter noise certification have the following meanings.

FLIGHT PROFILE IDENTIFICATION—POSITIONS

Position	Description
A	Location of the noise measuring point at the flight-track noise measuring station vertically below the reference (takeoff, flyover, or approach) flight path.
C	Start of noise certification takeoff flight path.
C_1	Start of noise certification reference takeoff flight path.
D	Start of noise certification flyover flight path.
D_1	Start of noise certification reference flyover path.
E	Start of noise certification approach flight path.
E_1	Start of noise certification reference approach flight path.
F	Position on takeoff flight path directly above noise measuring station A.
G	Position on flyover flight path directly above noise measuring station A.
H	Position on approach flight path directly above noise measuring station A.
I	End of noise type certification takeoff flight path.
I_1	End of noise type certification reference takeoff flight path.
J	End of noise type certification flyover flight path.
J_1	End of noise type certification reference flyover flight path.
K	End of noise certification approach type flight path.
K_1	End of noise type certification reference approach flight path.
L	Position on measured takeoff flight path corresponding to PNLTM at station A.

FLIGHT PROFILE IDENTIFICATION—POSITIONS—Continued

Position	Description
L_r	Position on reference takeoff flight path corresponding to PNLTM of station A.
M	Position on measured flyover flight path corresponding to PNLTM of station A.
M_r	Position on reference flyover flight path corresponding to PNLTM of station A.
N	Position on measured approach flight path corresponding to PNLTM at station A.
N_r	Position on reference approach flight path corresponding to PNLTM at station A.
S	Position on measured approach path nearest to station A.
S_r	Position on reference approach path nearest to station A.
T	Position on measured takeoff path nearest to station A.
T_r	Position on reference takeoff path nearest to station A.

FLIGHT PROFILE DISTANCES

Distance	Unit	Meaning
AF	Feet	*Takeoff Height.* The vertical distance between helicopter and station A.
AG	Feet	*Flyover Height.* The vertical distance between the helicopter and station A.
AH	Feet	*Approach Height.* The vertical distance between the helicopter and station A.
AL	Feet	*Measured Takeoff Noise Path.* The distance from station A to the measured helicopter position L_r.
AL_r	Feet	*Reference Takeoff Noise Path.* The distance from station A to the reference helicopter position L_r.
AM	Feet	*Measured Flyover Noise Path.* The distance from station A to the measured helicopter position M.
AM_r	Feet	*Reference Flyover Noise Path.* The distance from station A to helicopter position M_r on the reference flyover flight path.
AN	Feet	*Measured Approach Noise Path.* The distance from station A to the measured helicopter noise position N.
AN_r	Feet	*Reference Approach Noise Path.* The distance from station A to the reference helicopter position N_r.
AS	Feet	*Measured Approach Minimum Distance.* The distance from station A to the position S on the measured approach flight path.
AS_r	Feet	*Reference Approach Minimum Distance.* The distance from station A to the position S_r on the reference approach flight path.

FLIGHT PROFILE DISTANCES—Continued

Distance	Unit	Meaning
AT	Feet	*Measured Takeoff Minimum Distance.* The distance from station A to the position T on the measured takeoff flight path.
AT_r	Feet	*Reference Takeoff Minimum Distance.* The distance from station A to the position T_r on the reference takeoff flight path.
CI	Feet	*Takeoff Flight Path Distance.* The distance from position C at which the helicopter establishes a constant climb angle on the takeoff flight path passing over station A and continuing to position I at which the position of the helicopter need no longer be recorded.
DJ	Feet	*Flyover Flight Path Distance.* The distance from position D at which the helicopter is established on the flyover flight path passing over station A and continuing to position J at which the position of the helicopter need no longer be recorded.
EK	Feet	*Approach Flight Path Distance.* The distance from position E at which the helicopter establishes a constant angle on the approach flight path passing over station A and continuing to position K at which the position of the helicopter need no longer be recorded.

Part B—Noise Measurement Under § 36.801

Section H36.101 *Noise certification test and measurement conditions.*

(a) *General.* This section prescribes the conditions under which aircraft noise certification tests must be conducted and the measurement procedures that must be used to measure helicopter noise during each test.

(b) *Test site requirements.* (1) Tests to show compliance with established helicopter noise certification levels must consist of a series of takeoffs, level flyovers, and approaches during which measurement must be taken at noise measuring station located at the measuring points prescribed in this section.

(2) Each takeoff test, flyover test, and approach test includes simultaneous measurements at the flight-track noise measuring station vertically below the reference flight path and at two sideline noise measuring stations, one on each side of the reference flight track 492 feet (150m) from, and on a line perpendicular to, the flight track of the noise measuring station.

(3) The difference between the elevation of either sideline noise measuring station may not differ from the flight-track noise measuring station by more than 20 feet.

(4) Each noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(5) During the period when the takeoff, flyover, or approach noise/time record indicates the noise measurement is within 10 dB of PNLTM, no obstruction that significantly influences the sound field from the aircraft may exist—

(i) For any flight-track or sideline noise measuring station, within a conical space above the measuring position (the point on the ground vertically below the microphone) the cone being defined by an axis normal to the ground and by half-angle 80° from this axis; and

(ii) For any sideline noise measuring station, above the line of sight between the microphone and the helicopter.

(6) If a takeoff or flyover test series is conducted at weights other than the maximum takeoff weight for which noise certification is requested, the following additional requirements apply:

(i) At least one takeoff test must be conducted at a weight at, or above, the maximum certification weight.

(ii) Each test weight must be within +5 percent or −10 percent of the maximum certification weight.

(iii) FAA-approved data must be used to determine the variation of EPNL with weight for takeoff test conditions.

(7) Each approach test must be conducted with the aircraft stabilized and following a 6.0 degree ±0.5 degree approach angle and must meet the requirements of § H36.107 of this Part.

(8) If an approach test series is conducted at weights other than the maximum landing weight for which certification is requested, the following additional requirements apply:

(i) At least one approach test must be conducted at a weight at, or above, the maximum landing weight.

(ii) Each test weight must exceed 90 percent of the maximum landing weight.

(iii) FAA-approved data must be used to determine the variation of EPNL with weight for approach test conditions.

(9) Aircraft performance data sufficient to make the corrections required under § H36.205 of this appendix must be recorded at a FAA-approved sampling rate using FAA approved equipment.

(c) *Weather restrictions.* The test must be conducted under the following atmospheric conditions:

(1) No rain or other precipitation.

(2) Ambient air temperature between 36 F and 95 F (2.2 C and 35 C), inclusively, over that portion of the sound propagation path between the aircraft and a point 10 meters above the ground at the noise measuring station. The temperature and relative humidity measured at aircraft altitude and at 10 meters above ground shall be averaged and used to adjust for propagation path absorption.

(3) Relative humidity and ambient temperature over the portion of the sound propagation path between the aircraft and a point 10 meters above the ground at the noise measuring station is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 percent and 95 percent, inclusively.

(4) Wind velocity as measured at 10 meters above ground does not exceed 10 knots (19 km/h) and the crosswind component does not exceed 5 knots (9 km/h). The wind shall be determined using a continuous thirty-second averaging period spanning the 10dB down time interval.

(5) No anomalous wind conditions (including turbulence) which will significantly affect the noise level of the aircraft when the noise is recorded at each noise measuring station.

(6) The wind velocity, temperature, and relative humidity measurements required under the appendix must be measured in the vicinity of noise measuring stations 10 meters above the ground. The location of the meterological measurements must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geographical area which aircraft noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(7) Temperature and relative humidity measurements must be obtained within 25 minutes of each noise test measurement. Meteorological data must be interpolated to actual times of each noise measurement.

(d) *Aircraft testing procedures.* (1) The aircraft testing procedures and noise measurements must be conducted and processed in a manner which yields the noise evaluation measure designated as Effective Perceived Noise Level (EPNL) in units of EPNdB, as prescribed in Appendix B of this Part.

(2) The aircraft height and lateral position relative to the centerline of the reference flight-track (which passes through the noise measuring point) must be determined by an FAA approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(3) The aircraft position along the flight path must be related to the noise recorded at the noise measuring stations by means of synchronizing signals at an approved sampling rate. The position of the aircraft must be recorded relative to the runway during the entire time period in which the recorded signal is within 10 dB of PNLTM. Measuring and sampling equipment must be approved by the FAA.

Section H36.103 *Takeoff test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.205(b) of this appendix, applies to all takeoff noise tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations) as follows:

(1) An airspeed of either V_y ±5 knots or the lowest approved speed ±5 knots for the climb after takeoff, whichever speed is greater, must be established during the horizontal portion of each test flight and maintained during the remainder of the test flight.

(2) The horizontal portion of each test flight must be conducted at an altitude of 65 feet (20 meters) above the ground level at the flight-track noise measuring station.

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter shall be stabilized at:

(i) The torque used to establish the takeoff distance for an ambient temperature at sea level of 25° C for helicopters for which the determination of takeoff performance is required by airworthiness regulations; or

(ii) The torque corresponding to minimum installed power available for an ambient temperature at sea level of 25° C for all other helicopters.

(4) The helicopter shall be maintained throughout the takeoff reference procedure at:

(i) The speed used ±5 knots to establish takeoff distance for an ambient temperature at sea level of 25° C for helicopters for which the determination of takeoff performance is required by airworthiness regulations; or

(ii) The best rate of climb speed V_y ±5 knots, or the lowest approved speed for climb after takeoff, whichever is greater, for an ambient temperature at sea level of 25° C for all other helicopters.

(5) The rotor speed must be stabilized at the normal operating RPM (±1%) during the entire period of the test flight when the measured helicopter noise level is within 10 dB of PNLTM.

(6) The helicopter must pass over the flight-track noise measuring station within ±10° from the zenith.

Section H36.105 *Flyover test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.205(c) of this appendix, applies to all flyover noise tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights (three in each direction) over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

(1) In level flight;

(2) At a height of 492 feet ±30 feet (150±9 meters) above the ground level at the flight-track noise measuring station; and

(3) Within ±5° from the zenith.

(c) Each flyover noise test must be conducted—

(1) At a speed of 0.9 V_H or 0.45 V_H+129 km/hr (0.45 V_H+65 kt), whichever is less, maintained throughout the measured portion of the flyover;

(2) At rotor speed stabilized at the normal operating rotor RPM (±1 percent); and

(3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of PNLTM.

(d) The airspeed shall not vary from the reference airspeed by more than ±5 knots (9 km/hr).

Section H36.107 *Approach test conditions.*

(a) This section, in addition to the requirements of sections H36.101 and H36.205(d) of this appendix, applies to all approach tests conducted under this appendix to show compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at the three noise measuring stations)—

(1) On an approach slope of 6° ±0.5°;

(2) At a height of 394±30 feet (120±9 meters) above the ground level at the flight-track noise measuring station;

(3) Within ±10° of the zenith;

(4) At stabilized airspeed equal to the certificated best rate of climb V_y, or the lowest approved speed for approach, whichever is greater, with power stabilized during the approach and over the flight path reference point, and continued to a normal touchdown; and

(5) At rotor speed stabilized at the maximum normal operating rotor RPM (±1 percent).

(c) The airspeed shall not vary from the reference airspeed by more than ±5 knots (±9 km/hr).

Section H36.109 *Measurement of helicopter noise received on the ground.*

(a) *General.* (1) The measurements prescribed in this section provide the data needed to determine the one-third octave band noise produced by an aircraft during testing, at specific noise measuring stations, as a function of time.

(2) Sound pressure level data for aircraft noise certification purposes must be obtained with FAA-approved acoustical equipment and measurement practices.

(3) Paragraphs (b), (c), and (d) of this section prescribe the required equipment specifications. Paragraphs (e) and (f) prescribe the calibration and measurement procedures required for each certification test series.

(b) *Measurement system.* The acoustical measurement system must consist of FAA-approved equipment equivalent to the following:

(1) A microphone system with frequency response and directivity which are compatible with the measurement and analysis system accuracy prescribed in paragraph (c) of this section.

(2) Tripods or similar microphone mountings that minimize interference with the sound energy being measured.

(3) Recording and reproducing equipment the characteristics, frequency response, and dynamic range of which are compatible with the response and accuracy requirements of paragraph (c) of this section.

(4) Calibrators using sine wave, or pink noise, of known levels. When pink noise (defined in paragraph (e)(1) of this section) is used, the signal must be described in terms of its root-mean-square (rms) value.

(5) Analysis equipment with the response and accuracy which meets or exceeds the requirements of paragraph (d) of this section.

(6) Attenuators used for range changing in sensing, recording, reproducing, or analyzing aircraft sound must be capable of being operated in equal-interval decibel steps with no error between any two settings which exceeds 0.2 dB.

(c) *Sensing, recording, and reproducing equipment.* (1) The sound produced by the aircraft must be recorded in such a way that the complete information, including time history, is retained. A magnetic tape recorder is acceptable.

(2) The microphone must be a pressure-sensitive capacitive type, or its FAA-

approved equivalent, such as a free-field type with incidence corrector.

(i) The variation of microphone and preamplifier system sensitivity within an angle of ±30 degrees of grazing (60–120 degrees from the normal to the diaphragm) must not exceed the following values:

Frequency (Hz)	Change in sensitivity (dB)
45 to 1,120	1
1,120 to 2,240	1.5
2,240 to 4,500	2.5
4,500 to 7,100	4
7,100 to 11,200	5

With the windscreen in place, the sensitivity variation in the plane of the microphone diaphragm shall not exceed 1.0 dB over the frequency range 45 to 11,200 Hz.

(ii) The overall free-field frequency response at 90 degrees (grazing incidence) of the combined microphone (including incidence corrector, if applicable) preamplifier, and windscreen must be determined by using either (A) an electrostatic calibrator in combination with manufacturer-provided corrections, or (B) an anechoic free-field facility. The calibration unit must include pure tones at each preferred one-third octave frequency from 50 Hz to 10,000 Hz. The frequency response (after corrections based on that determination) must be flat and within the following tolerances:

44–3,549 Hz	±0.25 dB
3,550–7,099 Hz	±0.5 dB
7,100–11,200 Hz	±1.0 dB

(iii) Specifications concerning sensitivity to environmental factors such as temperature, relative humidity, and vibration must be in conformity with the recommendations of International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters", as incorporated by reference under § 36.6 of this Part.

(iv) If the wind speed exceeds 6 knots, a windscreen must be employed with the microphone during each measurement of aircraft noise. Correction for any insertion loss produced by the windscreen, as a function of frequency, must be applied to the measured data and any correction applied must be reported.

(3) If a magnetic tape recorder is used to store data for subsequent analysis, the record/replay system (including tape) must conform to the following:

(i) The electric background noise produced by the system in each one-third octave must be at least 35 dB below the standard recording level, which is defined as the level that is either 10 dB below the 3 percent harmonic distortion level for direct recording or ±40 percent deviation for frequency modulation (FM) recording.

(ii) At the standard recording level, the corrected frequency response in each selected one-third octave band between 44 Hz and 180 Hz must be flat and within ±0.75 dB, and in each band between 180 Hz and 11,200 Hz must be flat and within ±0.25 dB.

(iii) If the overall system satisfies the requirements of paragraph (c)(2)(ii) of this section, and if the limitations of the dynamic range of the equipment are insufficient to obtain adequate spectral information, high frequency pre-emphasis may be added to the recording channel with the converse de-emphasis on playback. If pre-emphasis is added, the instantaneously recorded sound-pressure level between 600 Hz and 11,200 Hz of the maximum measured noise signal must not vary more than 20 dB between the levels of the maximum and minimum one-third octave bands.

(d) *Analysis equipment.* (1) A frequency analysis of the acoustic signal must be performed using one-third octave filters which conform to the recommendations of International Electrotechnical Commission (IEC) Publication No. 225, entitled "Octave, Half-Octave, and Third-Octave Band Filters Intended for Analysis of Sound and Vibrations," as incorporated by reference under §36.6 of this Part.

(2) A set of 24 consecutive one-third octave filters must be used. The first filter of the set must be centered at a geometric mean frequency of 50 Hz and the last filter at 10,000 Hz. The output of each filter must contain less than 0.5 dB ripple.

(3) The analyzer indicating device may be either analog or digital, or a combination of both. The preferred sequence of signal processing is:

(i) Squaring the one-third octave filter outputs;

(ii) Averaging or integrating; and

(iii) Converting linear formulation to logarithmic.

(4) Each detector must operate over a minimum dynamic range of 60 dB and perform as a root-mean-square device for sinusoidal tone bursts having crest factors of at least 3 over the following dynamic range:

(i) Up to 30 dB below full-scale reading must be accurate within ±0.5 dB;

(ii) Between 30 dB and 40 dB below full-scale reading must be accurate within ±1.0 dB; and

(iii) In excess of 40 dB below full-scale reading must be accurate within ±2.5 dB.

(5) The averaging properties of the integrator must be tested as follows:

(i) White noise must be passed through the 200 Hz one-third octave band filter and the output fed in turn to each detector/integrator. The standard deviation of the measured levels must then be determined from a statistically significant number of samples of the filtered white noise taken at intervals of not less than 5 seconds. The value of the standard deviation must be within the interval 0.48±0.06 dB for a probability limit of 95 percent. An approved equivalent method may be substituted for this test on those analyzers where the test signal cannot readily be fed directly to each detector/integrator.

(ii) For each detector/integrator, the response to a sudden onset or interruption of a constant amplitude sinusoidal signal at the respective one-third octave band center frequency must be measured at sampling times 0.5, 1.0, 1.5, and 2.0 seconds after the onset or interruption. The rising responses must be in the following amounts before the steady-state level:

0.5 seconds, 4.0±1.0 dB
1.0 seconds, 1.75±0.5 dB
1.5 seconds, 1.0±0.5 dB
2.0 seconds, 0.6±0.25 dB

(iii) The falling response must be such that the sum of the decibel readings below the initial steady-state level, and the corresponding rising response reading is 6.5± 1.0 dB, at both 0.5 and 1.0 seconds and, on subsequent records, the sum of the onset plus decay must be greater than 7.5 decibels.

Note 1.—For analyzers with linear detection, an approximation of this response would be given by:

$$SPL(i,k) = 10\log\ldots[0.17(10^{0.1(L_i - L_k)}) + 0.21(10^{0.1(L_{i-1} - L_k)}) + 0.24(10^{0.1(L_{i+1} - L_k)}) + 0.33(10^{0.1(L_{i-2} - L_k)})]$$

When this approximation is used, the calibration signal should be established without this weighting.

Note 2.—Some analyzers have been shown to have signal sampling rates that are insufficiently accurate to detect signals with crest factor ratios greater than three which is common to helicopter noise. Preferably, such analyzers should not be used for helicopter certification. Use of analysis systems with high signal sampling rates (greater than 40KHz) or those with analog detectors prior to digitization at the output of each one-third octave filter is encouraged.

(iv) Analyzers using true integration cannot meet the requirements of (i), (ii), and (iii) directly, because their overall average time is greater than the sampling interval. For these analyzers, compliance must be demonstrated in terms of the equivalent output of the data processor. Further, in cases where readout and resetting require a dead-time during acquisition, the percentage loss of the total data must not exceed one percent.

(6) The sampling interval between successive readouts shall not exceed 500 milliseconds and its precise value must be known to within ±1 one percent. The instant in time by which a readout is characterized shall be the midpoint of the average period where the averaging period is defined as twice the effective time constant of the analyzer.

(7) The amplitude resolution of the analyzer must be at least 0.25 dB.

(8) After all systematic errors have been eliminated, each output level from the analyzer must be accurate within ±1.0 dB of the level of the input signal. The total systematic errors for each of the output levels must not exceed ±3.0 dB. For contiguous filter systems, the systematic corrections between adjacent one-third octave channels must not exceed 4.0 dB.

(9) The dynamic range capability of the analyzer to display a single aircraft noise event, in terms of the difference between full-scale output level and the maximum noise level of the analyzer equipment, must be at least 60 dB.

(e) *Calibrations.* (1) Within five days prior to beginning each test series, the complete electronic system, as installed in field including cables, must be electronically calibrated for frequency and amplitude by the use of a pink noise signal of known amplitudes covering the range of signal levels furnished by the microphone. For purposes of this section, "pink noise" means a noise whose noise-power/unit-frequency is inversely proportional to frequency at frequencies within the range of 44 Hz to 11,200 Hz. The signal used must be described in terms of its average root-mean-square (rms) values for a nonoverload signal level. This system calibration must be repeated within five days of the end of each test series, or as required by the FAA.

(2) Immediately before and after each day's testing, a recorded acoustic calibration of the system must be made in the field with an acoustic calibrator to check the system sensitivity and provide an acoustic reference level for the sound level data analysis. The performance of equipment in the system will be considered satisfactory if, during each day's testing, the variation in the calibration value does not exceed 0.5 dB.

(3) A normal incidence pressure calibration of the combined microphone/preamplifier must be performed with pure tones at each preferred one-third octave frequency from 50 Hz to 10,000 Hz. This calibration must be completed within 90 days prior to the beginning of each test series.

(4) Each reel of magnetic tape must:

(i) Be pistonphone calibrated; and

(ii) At its beginning and end, carry a calibration signal consisting of at least a 15 second burst of pink noise, as defined in paragraph (e)(1) of this section.

(5) Data obtained from tape recorded signals are not considered reliable if the difference between the pink noise signal levels, before and after the tests in each one-third octave band, exceeds 0.75 dB.

(6) The one-third octave filters must have been demonstrated to be in conformity with the recommendations of IEC Publication 225 as incorporated by reference under § 36.6 of this Part, during the six calendar months preceding the beginning of each test series. However, the correction for effective bandwidth relative to the center frequency response may be determined for each filter by:

(i) Measuring the filter response to sinusoidal signals at a minimum of twenty frequencies equally spaced between the two adjacent preferred one-third octave frequencies; or

(ii) Using an FAA approved equivalent technique.

(7) A performance calibration analysis of each piece of calibration equipment, including pistonphones, reference microphones, and voltage insert devices, must have been made during the six calendar months preceding the beginning of each day's test series. Each calibration must be traceable to the National Bureau of Standards.

(f) *Noise measurement procedures.* (1) Each microphone must be oriented so that the diaphragm is substantially in the plane defined by the flight path of the aircraft and the measuring station. The microphone located at each noise measuring station must be placed so that its sensing element is approximately 4 feet above ground.

(2) Immediately before and immediately after each series of test runs and each day's testing, acoustic calibrations of the system prescribed in this section of this appendix must be recorded in the field to check the acoustic reference level for the analysis of the sound level data. Ambient noise must be recorded for at least 10 seconds and be representative of the acoustical background, including system noise, that exists during the flyover test run. During that recorded period, each component of the system must be set at the gain-levels used for aircraft noise measurement.

(3) The mean background noise spectrum must contain the sound pressure levels, which, in each preferred third octave band in the range of 50 Hz to 10,000 Hz, are the averages of the energy of the sound pressure levels in every preferred third octave. When analyzed in PNL, the resulting mean background noise level must be at least 20 PNdB below the maximum PNL of the helicopter.

(4) Corrections for recorded levels of background noise are allowed, within the limits prescribed in § H36.111(c)(3) of this appendix.

Section H36.111 Reporting and correcting measured data

(a) *General.* Data representing physical measurements, and corrections to measured data, including corrections to measurements for equipment response deviations, must be recorded in permanent form and appended to the record. Each correction must be reported and is subject to FAA approval. An estimate must be made of each individual error inherent in each of the operations employed in obtaining the final data.

(b) *Data reporting.* (1) Measured and corrected sound pressure levels must be presented in one-third octave band levels obtained with equipment conforming to the standards prescribed in § H36.109 of this appendix.

(2) The type of equipment used for measurement and analysis of all acoustic, aircraft performance, and meteorological data must be reported.

(3) The atmospheric environmental data required to demonstrate compliance with this appendix, measured throughout the test period, must be reported.

(4) Conditions of local topography, ground cover, or events which may interfere with sound recording must be reported.

(5) The following aircraft information must be reported:

(i) Type, model, and serial numbers, if any, of aircraft engines and rotors

(ii) Gross dimensions of aircraft and location of engines.

(iii) Aircraft gross weight for each test run.

(iv) Aircraft configuration, including landing gear positions.

(v) Airspeed in knots.

(vi) Helicopter engine performance as determined from aircraft instruments and manufacturer's data.

(vii) Aircraft flight path, above ground level in feet, determined by an FAA approved method which is independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, or photographic scaling techniques.

(6) Aircraft speed, and position, and engine performance parameters must be recorded at an approved sampling rate sufficient to correct to the noise certification reference test conditions prescribed in § H36.3 of this appendix. Lateral position relative to the reference flight-track must be reported.

(c) *Data corrections.* (1) Aircraft position, performance data and noise measurement must be corrected to the noise certification reference conditions as prescribed in sections H36.3 and H36.205 Appendix.

(2) The measured flight path must be corrected by an amount equal to the difference between the applicant's predicted flight path for the certification reference conditions and the measured flight path at the test conditions. Necessary corrections relating to aircraft flight path or performance may be derived from FAA-approved data for the difference between measured and reference engine conditions, together with appropriate allowances for sound attenuation with distance. The Effective Perceived Noise Level (EPNL) correction must be less than 2.0 EPNdB for any combination of the following:

(i) The aircraft's not passing vertically above the measuring station.

(ii) Any difference between the reference flight-track and the actual minimum distance of the aircraft's ILS antenna from the approach measuring station.

(iii) Any difference between the actual approach angle and the noise certification reference approach flight path.

(iv) Any correction of the measured level flyover noise levels which accounts for any difference between the test engine thrust or power and the reference engine thrust or power.

Detailed correction requirements are prescribed in § H36.205 of this appendix.

(3) Aircraft sound pressure levels within the 10 dB-down points must exceed the mean background sound pressure levels determined under § A36.3(f)(3) by at least 5 dB in each one-third octave band or be corrected under an FAA approved method to be included in the computation of the overall noise level of the aircraft. An EPNL may not be computed or reported from data from which more than four one-third octave bands in any spectrum within the 10 dB-down points have been excluded under this paragraph.

(d) *Validity of results.* (1) The test results must produce three average EPNL values within the 90 percent confidence limits, each value consisting of the arithmetic average of the corrected noise measurements for all valid test runs at the takeoff, level flyovers, and approach conditions. The 90 percent confidence limit applies separately to takeoff, flyover, and approach.

(2) The minimum sample size acceptable for each takeoff, approach, and flyover certification measurements is six. The number of samples must be large enough to establish statistically for each of the three average noise certification levels a 90 percent confidence limit which does not exceed ±1.5 EPNdB. No test result may be omitted from the averaging process, unless otherwise specified by the FAA.

(3) To comply with this appendix, a minimum of six takeoffs, six approaches, and six level flyovers is required. To be counted toward this requirement, each flight event

must be validly recorded at all three noise measuring stations.

(4) The approved values of V_R and V_y used in calculating test and reference conditions and flight profiles must be reported along with measured and corrected sound pressure levels.

Section H36.113 Atmospheric attenuation of sound.

(a) The values of the one-third octave band spectra measured during helicopter noise certification tests under this appendix must conform, or be corrected, to the reference conditions prescribed in section H36.3(a). Each correction must account for any differences in the atmospheric attenuation of sound between the test-day conditions and the reference-day conditions along the sound propagation path between the aircraft and the microphone. Unless the meteorological conditions are within the test window prescribed in this appendix, the test data are not acceptable.

(b) *Attenuation rates.* The atmospheric attenuation rates of sound with distance for each one-third octave band from 50 Hz to 10,000 Hz must be determined in accordance with the formulations and tabulations of SAE ARP 866A, entitled "Standard Values of Atmospheric Absorption as a Function of Temperatures and Humidity for Use in Evaluating Aircraft Flyover Noise", as incorporated by reference under § 36.6 of this Part.

(c) *Correction for atmospheric attenuation.* (1) EPNL values calculated for measured data must be corrected whenever—

(i) The ambient atmospheric conditions of temperature and relative humidity do not conform to the reference conditions, 77 °F and 70%, respectively, or

(ii) The measured flight paths do not conform to the reference flight paths.

(2) The temperature and relative humidity measured at aircraft altitude and at 10 meters above the ground shall be averaged and used to adjust for propagation path absorption.

(iii) The mean attenuation rate over the complete sound propagation path from the aircraft to the microphone must be computed for each one-third octave band from 50 Hz to 10,000 Hz. These rates must be used in computing the corrections required in section H36.111(d) of this appendix.

PART C—NOISE EVALUATION AND CALCULATION UNDER § 36.803

Section H36.201 Noise Evaluation in EPNdB.

(a) Effective Perceived Noise Level (EPNL), in units of effective perceived noise decibels (EPNdB), shall be used for evaluating noise level values under § 36.803 of Part 36. Except as provided in paragraph (b) of this section, the procedures in Appendix B of Part 36 must be used for computing EPNL. Appendix B includes requirements governing determination of noise values, including calculations of:

(1) Instantaneous perceived noise levels;
(2) Corrections for spectral irregularities;
(3) Tone corrections;
(4) Duration corrections;
(5) Effective perceived noise levels; and
(6) Mathematical formulation of noy tables.

(b) Notwithstanding the provisions of section B36.5(a), for helicopter noise certification, corrections for spectral irregularities shall start with the corrected sound pressure level in the 50 Hz one-third octave band.

Section H36.203 Calculation of noise levels.

(a) To demonstrate compliance with the noise level limits of section H36.305, the noise values measured simultaneously at the three noise measuring points must be arithmetically averaged to obtain a single EPNdB value for each flight.

(b) The calculated noise level for each noise test series, i.e., takeoff, flyover, or approach must be the numerical average of at least six separate flight EPNdB values. The 90 percent confidence limit for all valid test runs under section H36.111(d) of this appendix applies separately to the EPNdB values for each noise test series.

Section H36.205 Detailed data correction procedures

(a) *General.* If the test conditions do not conform to those prescribed as noise certification reference conditions under § H36.305 of this appendix, the following correction procedure shall apply:

(1) If a positive value results from any difference between reference and test conditions, an appropriate positive correction must be made to the EPNL calculated from the measured data. Conditions which can result in a positive value include:

(i) Atmospheric absorption of sound under test conditions which is greater than the reference;

(ii) Test flight path at an altitude which is higher than the reference; or

(iii) Test weight which is less than maximum certification weight.

(2) If a negative value results from any difference between reference and test conditions, no correction may be made to the EPNL calculated from the measured data, unless the difference results from:

(i) An atmospheric absorption of sound under test conditions which is less than the reference; or

(ii) A test flight path at an altitude which is lower than the reference.

(3) The following correction procedures may produce one or more possible correction values which must be added algebraically to the calculated EPNL to bring it to reference conditions:

(i) The flight profiles must be determined for both reference and test conditions. The procedures require noise and flight path recording with a synchronized time signal from which the test profile can be delineated, including the aircraft position for which PNLTM is observed at the noise measuring station. For takeoff, the flight profile corrected to reference conditions may be derived from FAA approved manufacturer's data.

(ii) The sound propagation paths to the microphone from the aircraft position corresponding to PNLTM are determined for both the test and reference profiles. The SPL values in the spectrum of PNLTM must then be corrected for the effects of—

(A) Change in atmospheric sound absorption;

(B) Atmospheric sound absorption on the linear difference between the two sound path lengths; and

(C) Inverse square law on the difference in sound propagation path length. The corrected values of SPL are then converted to PNLTM from which PNLTM must be substracted. The resulting difference represents the correction which must be added algebraically to the EPNL calculated from the measured data.

(iii) The minimum distances from both the test and reference profiles to the noise measuring station must be calculated and used to determine a noise duration correction due to any change in the altitude of aircraft flyover. The duration correction must be added algebraically to the EPNL calculated from the measured data.

(iv) From FAA approved data in the form of curves or tables giving the variation of EPNL with rotor rpm and test speed, corrections are determined and must be added to the EPNL, which is calculated from the measured data to account for noise level changes due to differences between test conditions and reference conditions.

(v) From FAA approved data in the form of curves or tables giving the variation of EPNL with approach angle, corrections are determined and must be added algebraically to the EPNL, which is calculated from measured data, to account for noise level changes due to differences between the 6 degree and the test approach angle.

(b) *Takeoff profiles.* (1) Figure H1 illustrates a typical takeoff profile, including reference conditions.

(i) The reference takeoff flight path is described in § H36.3(c).

(ii) The test parameters are functions of the helicopter's performance and weight and the atmospheric conditions of temperature, pressure, wind velocity and direction.

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either $V_y \pm 5$ knots (± 9 km/hr) or the maximum speed of the curve tangential at the ordinate of the height-speed envelope plus 3.0 knots (± 5 knots), whichever speed is greater. Rotor speed is stabilized at the normal operating RPM (± 1 percent), specified in the flight manual. The helicopter is stabilized in level flight at the speed for best rate of climb using minimum engine specifications (power or torque and rpm) along a path starting from a point located 1640 feet (500 meters) forward of the flight-track noise measuring station and 65 feet (20 meters) above the ground. Starting at point B, the helicopter climbs through point C to the end of the noise certification takeoff flight path represented by position I. The position of point C may vary within limits allowed by the FAA. The position of the helicopter shall be recorded for a distance (CI) sufficient to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of PNLTM, as requird by this rule. Station A is the flight-track noise measuring station. The relationships between the measured and corrected takeoff flight profiles can be used to determine the corrections

which must be applied to the EPNL calculated from the measured data.

(3) Figure H1 also illustrates the significant geometrical relationships influencing sound propagation. Position L represents the helicopter location on the measured takeoff flight path from which PNLTM is observed at station A and L_r is the corresponding position on the reference sound propagation path AL and AL_r, both form the angle Θ with their respective flight paths. Position T represents the point on the measured takeoff flight path nearest station A, and T_r is the corresponding position on the reference flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AT and AT_r, respectively, which are normal to their flight paths.

(c) *Level flyover profiles.* (1) The noise type certification level flyover profile is shown in Figure H2. Airspeed must be stabilized within ± 5 knots of the reference airspeed given in H36.3(d). For each run, the difference between airspeed and ground speed shall not exceed 10 knots between the 10 dB down points. Rotor speed must be stabilized at the maximum continuous RPM within one percent, throughout the 10 dB down time period. If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

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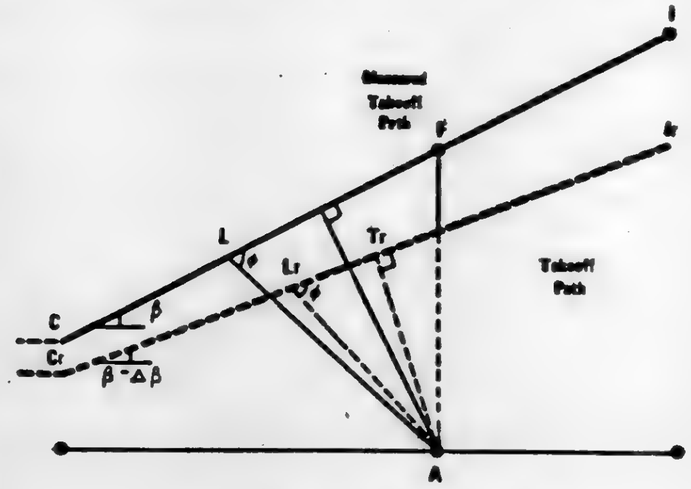


Figure H1. COMPARISON OF MEASURED AND CORRECTED TAKEOFF PROFILES

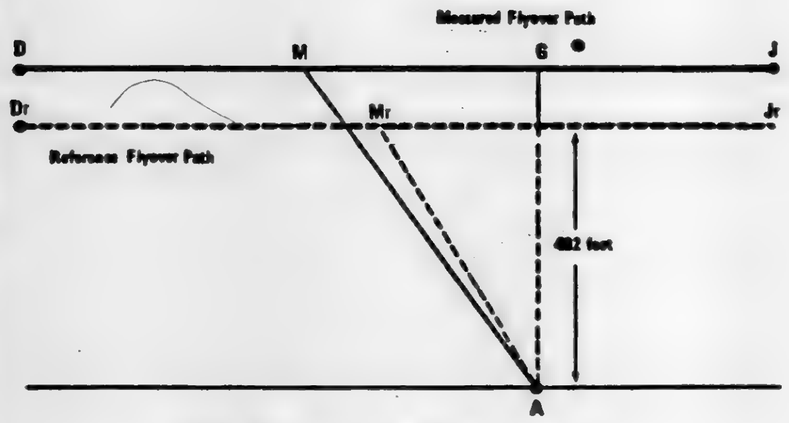


Figure H2. COMPARISON OF MEASURED AND CORRECTED FLYOVER PROFILES

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(2) Figure H2 illustrates comparative flyover profiles when test conditions do not conform to prescribed reference conditions. The position of the helicopter shall be recorded for a distance (DJ) sufficient to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of PNLTM, as required. The flyover profile is defined by the height AG which is a function of the operating conditions controlled by the pilot. Position M represents the helicopter location on the measured flyover flight path for which PNLTM is observed at station A and M, is the corresponding position on the reference flight path.

(d) *Approach profiles.* (1) Figure H3 illustrates a typical approach profile, including reference conditions.

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10 dB down period. The approach procedure shall be acceptable to the FAA and shall be included in the Flight Manual.

(3) Figure H3 illustrates portions of the measured and reference approach flight paths including the significant geometrical relationships influencing sound propagation. EK represents the measured approach path with approach angle η and E_r and K_r represent the reference approach angle of 6°. Position N represents the helicopter location on the measured approach flight path for which PNLTM is observed at station

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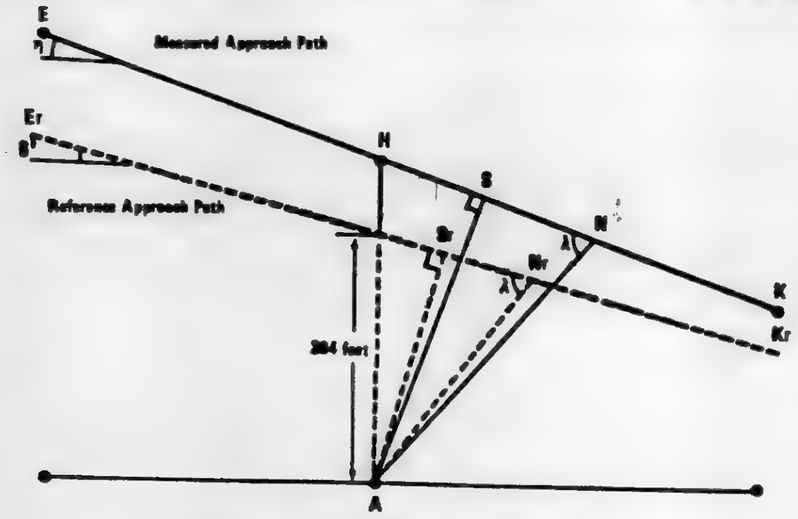


Figure H3. COMPARISON OF MEASURED AND CORRECTED APPROACH PROFILES

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A and N, corresponding position on the reference approach flight path. The measured and corrected noise propagation paths are AN and A_rN_r, respectively, both of which form the same angle with their flight paths. Position S represents the point on the measured approach flight path nearest station A and S_r is the corresponding point on the reference approach flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AS and AS_r, respectively, which are normal to their flight paths.

(e) *Correction of noise at source during level flyover.* (1) For level overflight, if any combination of the following three factors, 1) airspeed deviation from reference, 2) rotor speed deviation from reference, and 3) temperature deviation from reference, results in an advancing blade tip Mach number which deviates from the reference Mach value, then source noise adjustments shall be determined. This adjustment shall be determined from the manufacturer supplied data approved by the FAA.

(2) Off-reference tip Mach number adjustments shall be based upon a sensitivity curve of PNLTM versus advancing blade tip Mach number, deduced from overflights carried out at different airspeeds around the reference airspeed. If the test aircraft is unable to attain the reference value, then an extrapolation of the sensitivity curve is permitted if data cover at least a range of 0.3 Mach units. The advancing blade tip Mach number shall be computed using true airspeed, onboard outside air temperature, and rotor speed. A separate PNLTM versus advancing blade tip Mach number function shall be derived for each of the three certification microphone locations, i.e., centerline, sideline left, and sideline right. Sideline left and right are defined relative to the direction of the flight on each run. PNLTM adjustments are to be applied to each microphone datum using the appropriate PNLTM function.

f. *PNLT corrections.* If the ambient atmospheric conditions of temperature and relative humidity are not those prescribed as reference conditions under this appendix (77 degrees F and 70 percent, respectively), corrections to the EPNL values must be calculated from the measured data under paragraph (a) of this section as follows:

(1) *Takeoff flight path.* For the takeoff flight path shown in Figure H1, the spectrum of PNLTM observed at station A for the aircraft at position L_1 is decomposed into its individual SPLi values.

(i) Step 1. A set of corrected values are then computed as follows:

$$SPLic = SPLi + (\alpha_i - \alpha_{io})AL + (\alpha_{io})AL - ALr) + 20\log(AL/ALr)$$

where SPLi and SPLic are the measured and corrected sound pressure levels, respectively, in the i-th one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where α_i and α_{io} are the sound absorption coefficients for the test and reference atmospheric conditions, respectively, for the i-th one-third octave band and L,A is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where L_rA_r is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

(ii) Step 2. The corrected values of the SPLic are then converted to PNLT and a correction term calculated as follows:

$$\Delta_6 = PNLT - PNLTM$$

which represents the correction to be added algebraically to the EPNL calculated from the measured data.

(2) *Approach flight path.*

(i) The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the approach flight path, except that the values for SPLic relate to the approach sound propagation paths shown in Figure H3 as follows:

$$SPLic = SPLi + (\alpha - \alpha io)\,AM + \alpha(AM - AMr) + 20\log(AM/AMr)$$

where the lines NS and N_rS_r are the measured and referenced approach sound propagation paths, respectively.

(ii) The remainder of the procedure is the same as that prescribed in paragraph (d)(1)(ii) of this section, regarding takeoff flight path.

(3) *Sideline microphones.* The procedure prescribed in paragraph (f)(1) of this section for takeoff flight paths is also used for the propagation to the sideline microphones, except that the values of SPLic relate only in the measured sideline sound propagation path as follows:

$$SPLic\text{-}SPLi + (\alpha io - \alpha + io)KX + \alpha io\,(KX - KXr) + 20\log(KX/KXr)$$

K is the sideline measuring station where

X = L and Xr = Ln for take off
X = M and Xr = Mn for approach
X = N and Xr = Nr for fly-over

(4) *Level flyover flight path.* The procedure prescribed in paragraph (f)(i) of this section for takeoff flight paths is also used for the level flyover flight path, except that the values of SPLic relate only to the flyover sound propagation paths as follows:

$$SPLic = SPLi + (\alpha - \alpha io)\,AN + \alpha io\,(AN - ANr) + 20\log(AN/ANr)$$

(g) *Duration corrections.*

(1) If the measured takeoff and approach flight paths do not conform to those prescribed as the corrected and reference flight paths, respectively, under § A36.5(d)(2) it will be necessary to apply duration corrections to the EPNL values calculated from the measured data. Such corrections must be calculated as follows:

(a) Takeoff flight path. For the takeoff flight path shown in Figure H1, the correction term is calculated using the formula—

$$\Delta_5 = -10\log(AT/ATr) + 10\log(V/Vr)$$

which represents the correction which must be added algebraically to the EPNL calculated from the measured data. The lengths AT and ATr are the measured and corrected takeoff minimum distances from the noise measuring station A to the measured and the corrected flight paths, respectively. A negative sign indicates that, for the particular case of a duration correction, the EPNL calculated from the measured data must be reduced if the measured flight path is at greater altitude than the corrected flight path.

(b) Approach flight path. For the approach flight path shown in Figure H3, the correction term is calculated using the formula—

$$\Delta_2 = -10\log(AS/ASr) + 10\log(V/Vr)$$

where AS is the measured approach minimum distance from the noise measuring station A to the measured flight path and 394 feet is the minimum distance from station A to the reference flight path.

(c) Sideline microphones. For the sideline flight path, the correction term is calculated using formula—

$$\Delta_3 = -10\log(KX/KXr) + 10\log(V/Vr)$$

K is the sideline measuring station
where X = T and Xr = Tr for takeoff
where X = S and Xr = Sr for approach
where X = G and Xr = Gr for flyover

(d) *Level flyover flight paths.* For the level flyover flight path, the correction term is calculated using the formula—

$$\Delta_4 = -10\log(AG/AGr) + 10\log(V/Vr)$$

where AG is the measured flyover altitude over the noise measuring station A.

(2) The adjustment procedure described in this section shall apply to the sideline microphones in the take-off, overflight, and approach cases. Although the noise emission is strongly dependent on the directivity pattern, variable from one helicopter type to another, the propagation angle θ shall be the same for test and reference flight paths. The elevation angle ψ shall not be constrained but must be determined and reported. The certification authority shall specify the acceptable limitations on ψ. Corrections to data obtained when these limits are exceeded shall be applied using FAA approved procedures.

PART D—NOISE LIMITS UNDER § 36.805

Section H36.301 Noise measurement, evaluation, and calculation

Compliance with this part of this appendix must be shown with noise levels measured, evaluated, and calculated as prescribed under Parts B and C of this appendix.

Section H36.303 [Reserved]

Section H36.305 Noise levels

(a) *Limits.* For compliance with this appendix, it must be shown by flight test that the calculated noise levels of the helicopter, at the measuring points described in § H36.101 of this appendix, do not exceed the following, with appropriate interpolation between weights:

(1) *Stage 1* noise limits for acoustical changes for helicopters are as follows:

(i) For takeoff, flyover, and approach calculated noise levels, the noise levels of each Stage 1 helicopter that exceed the Stage 2 noise limits plus 2 EPNdB may not, after a change in type design, exceed the noise levels created prior to the change in type design.

(ii) For takeoff, flyover, and approach calculated noise levels, the noise levels of each Stage 1 helicopter that do not exceed the Stage 2 noise limits plus 2 EPNdB may not, after the change in type design, exceed the Stage 2 noise limits plus 2 EPNdB.

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of

176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down to 89 EPNdB for maximum weights of 1,764 pounds or less.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down to 88 EPNdB for maximum weights of 1,764 pounds or less.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the weight down 90 EPNdB for maximum weight of 1,764 pounds or less.

(b) *Tradeoffs.* Except to the extent limited under § 36.11(b) of Part 36, the noise limits prescribed in paragraph (a) of this section may be exceeded by one or two of the takeoff, flyover, or approach calculated noise levels determined under § H36.203 of this appendix if

(1) The sum of the exceedances is not greater than 4 EPNdB;

(2) No exceedance is greater than 3 EPNdB; and

(3) The exceedances are completely offset by reduction in the other required calculated noise levels.

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) involves a proposed regulation which is not major under Executive Order 12291, (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, as promulgated, will not have a significant impact on a substantial number of small entities. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Issued in Washington, DC, on January 21, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–2118 Filed 2–4–88; 8:45 am]

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federal register

Friday
February 5, 1988

Part VI

Department of Health and Human Services

Centers for Disease Control

Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects Program Announcement and Availability of Funds for Fiscal Year 1988; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 for cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention and Surveillance Projects. This announcement consolidates the surveillance program with the prevention program for current recipients of funds for both activities.

Authority

These projects are authorized under the Public Health Service Act: section 301(a) [42 U.S.C. 241(a)], as amended; section 304(a) [42 U.S.C. 242b(a)]; section 306(b) [42 U.S.C. 242k(b)]; section 308(d) [42 U.S.C. 242m(d)]; section 311(b) [42 U.S.C. 243(b)]; and section 318 [42 U.S.C. 247c], as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Eligible Applicants

Eligible applicants are the official public health agencies of States, and the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Local public health agencies which are current AIDS prevention project recipients (Los Angeles, New York City, and San Francisco) are eligible for AIDS Prevention and Surveillance Projects. Other local public health agencies which are current surveillance project recipients (Baltimore, Boston, Chicago, Denver, and Philadelphia) will be eligible for only surveillance assistance. Eligibility for the ongoing seroprevalence studies is limited to State/local public health agencies representing the 30 Standard Metropolitan Statistical Areas (SMSA) now participating as follows: Albuquerque, NM; Atlanta, GA; Baltimore, MD; Boston, MA; Chicago, IL; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; Honolulu, HI; Houston, TX; Jacksonville, FL; Kansas City, MO; Los Angeles, CA; Memphis, TN; Miami, FL; Minneapolis, MN; New Haven, CT; New Orleans, LA; Newark, NJ; New York City, NY; Phoenix, AZ; Richmond, VA; Rochester, NY; Salt Lake City, UT; San Francisco, CA; San Juan, PR; Seattle, WA; St. Louis, MO; and Washington, DC. Eligibility for statewide neonatal screening is limited to the District of Columbia, the Commonwealth of Puerto Rico and the 23 State public health agencies representing the 30 SMSA identified above.

Purpose

The purpose of these awards is to assist State and local public health departments in detecting and preventing the further spread of Human Immunodeficiency Virus (HIV) infection through (1) resource assessment; (2) active surveillance and selected epidemiologic investigations; (3) seroprevalence survey; (4) laboratory services; (5) knowledge, attitudes, and behavior (KAB) studies/assessments; (6) public information campaigns; (7) health education and risk reduction (HE/RR) activities; (8) counseling, testing, and partner notification; (9) involvement and participation of community based organizations, particularly those representing or serving minorities; (10) school health education collaboration; and (11) evaluation of all activities. Throughout all these program activities, a special emphasis will be placed on active surveillance and prevention of AIDS and HIV infection in minority populations, particularly black, Hispanic, Asian, and American Indian/Alaskan Native minority populations; and other populations in which the risk of AIDS is especially high.

National Program Goals

1. To establish and strengthen effective AIDS prevention and surveillance programs at all levels throughout the United States and its territories.

2. To effect, maintain, and measure behavioral change among members of the general population and specific groups (e.g., homosexual and bisexual men, IV drug abusers, women of reproductive age, etc.) which will reduce their risk of HIV infection.

3. To develop effective and culturally relevant programs to inform and educate the general public, particularly members of minority communities, in order to gain broad support for reasonable and effective AIDS prevention program efforts throughout the United States and its territories.

Cooperative Activities

1. *Required Recipient Activities*—The following activities should be planned and conducted in collaboration and coordination with local health departments and with the participation of AIDS service organizations; community groups/organizations, especially those with a minority membership and focus; and service delivery programs, institutions diagnosing and treating patients with AIDS, and organizations that serve persons at increased risk of AIDS (e.g., drug abuse treatment, family planning, and maternal and infant care projects; hemophilia treatment centers; State and local medical associations, etc.). Evidence of collaboration, such as AIDS prevention plans submitted by local health departments in major metropolitan areas, AIDS service associations, minority groups, and service delivery programs, should be included.

A. Resource Assessment

Establish an on-going assessment process to examine current and projected resource requirements for all AIDS prevention and active surveillance activities, including laboratory services and activities directed at minority populations, and determine areas and/or population groups where there is need for additional program effort.

B. Surveillance and Epidemiologic Investigations

Design, implement, and maintain active surveillance programs for AIDS cases meeting the national surveillance definition and conduct associated epidemiologic investigations to determine trends in incidence of AIDS and to identify risk groups and risk factors in accordance with CDC guidelines and recommendations. In those jurisdictions which encourage or require reporting of diseases other than AIDS associated with HIV infection, the CDC classification system for HIV infection for such reporting should be used (MMWR, Vol. 35, #20, pp.334–339, 5/23/86). Special emphasis should be placed on conducting activities which will define more clearly the extent of the problem of HIV infection and AIDS among minority populations and on disseminating surveillance information at the local level as a means of gaining support for local prevention efforts, for identifying patterns of infection, for formulating and targeting prevention strategies, and for projecting trends and health care costs.

Specific surveillance components to be addressed:

(1) Design and conduct surveillance activities directed at improving the reporting of all AIDS cases (including pediatric cases) diagnosed in the public health agency's geographic jurisdiction

(2) Establish systems with physicians, hospitals or clinics, cancer registries, laboratories, hemophilia treatment centers, death certificate registries, and other public health agencies for identifying and reporting cases.

(3) Develop and maintain a central registry of all reported cases which includes epidemiologic and clinical information for individual cases, and which allows for rapid, uniform updates and retrieval of case information for regular and special tabulations of data for analysis. The case registry must be of limited access and have procedures in existence to insure confidentiality of patient records.

(4) Conduct epidemiologic investigations of cases that have no identified risk factors, including possible blood transfusion-related cases and their donors (as indicated) and other cases of epidemiologic importance.

(5) Evaluate the effectiveness of surveillance approaches through at least one ongoing survey to validate overall reporting completeness and timeliness.

(6) Analyze, present, and publish the results of surveillance activities and epidemiologic investigations in consultation with CDC.

C. Seroprevalence Surveys and Studies

Conduct ongoing sentinel surveillance, in 30 selected SMSA, of target populations, including newborns and individuals in selected hospitals and in STD, IV drug treatment, family planning, and TB clinics, to determine prevalence and incidence of HIV infection in these groups, to help target prevention activities, and to further assist in measuring progress toward reaching program outcome objectives. Also, pending availability of funds, conduct other seroprevalence surveys jointly agreed upon in order to measure the extent of the HIV problem or to measure the effectiveness of prevention programs.

Funds applied for should not be duplicative of HIV seroprevalence activities funded by other Federal agencies such as National Institutes of Health (neonatal screening) or National Institute on Drug Abuse (NIDA) (drug treatment centers).

D. Laboratory Services

Provide laboratory services, including screening, definitive procedures, and training of personnel necessary to support surveillance, seroprevalence surveys, and testing for HIV infection. Participate in a laboratory performance evaluation program for HIV testing. For consistency of HIV surveillance data from State to State, applicants should use a licensed Western Blot kit for supplemental testing of repeatedly reactive serum specimens which are part of the serologic surveys and studies supported by these agreements.

E. Knowledge, Attitude, and Behavior Studies/Assessments

Conduct periodic assessments of knowledge, attitudes, and behavior (KAB) that monitor changes among the general public, racial/ethnic minorities, health workers, and selected groups whose behaviors may put them at risk, to measure the success of program efforts toward meeting program objectives and for setting new objectives for future budget periods. Sampling methodologies and instruments should be culturally sensitive.

F. Public Information Campaigns

Based upon KAB assessments, conduct State and/or community-wide public information campaigns designed: to increase the awareness of all segments of the population, including minority communities, of the need to take action to eliminate or reduce the transmission of HIV; to stimulate individual and organization commitment to preventive action; and, to develop culturally sensitive media campaigns which reach diverse population and age groups. Plans should include use of electronic and print media and other channels for getting information to subpopulations, including minorities that are disproportionately affected by AIDS and HIV infection and minorities in whom the incidence and prevalence of infection is currently low. Plans should also address coordination with the CDC National Media Campaign.

G. Health Education/Risk Reduction (HE/RR)

In addition to public information campaigns and based upon KAB assessments, deliver basic AIDS education and risk reduction messages and/or services among the following groups to increase awareness of the risks of HIV infection and enlist their support in prevention activities:

(1) Groups whose behavior may place them at increased risk (e.g. homosexual/bisexual men, prostitutes, IV drug abusers, persons with sexually transmissible diseases, heterosexuals with multiple sex partners, and sex and needle-sharing partners of all individuals listed above); wherever they obtain medical or other professional services; prevention and education programs should be established at STD, drug treatment, and tuberculosis clinics; physicians' offices; hospitals and community clinics; and other service providers.

(2) All segments of minority communities (by establishing linkages with community-based or statewide, health and non-health related organizations);

(3) All sexually active women, especially minorities and teenagers, by establishing linkages with family planning, prenatal, and obstetric service providers and maternal and infant care projects;

(4) Health professionals (e.g., medical and dental health providers, mental health professionals, minority health and dental chapters and associations);

(5) School educators and administrators; and

(6) Administrators of correctional and other institutional facilities.

H. Counseling, Testing, and Partner Notification

(1) Routinely offer, on a voluntary basis, HIV counseling and laboratory testing services statewide in STD clinics, drug treatment centers, tuberculosis treatment clinics, and designated counseling and testing sites. Also, where appropriate, routinely offer HIV counseling and testing services to women of childbearing age at increased risk for HIV infection seen in family planning, obstetric, and prenatal clinics. Services should be offered at times and places convenient and accessible to target populations. In addition, laboratory testing services should be offered only in conjunction with pre- and post-test counseling.

(2) Establish standards and implement procedures for confidential notification of sex and needle-sharing partners of AIDS cases and HIV seropositive individuals.

(3) Establish and maintain a system for the referral of HIV seropositive individuals for additional counseling, medical evaluation, and, in the case of seropositive women, for counseling on contraceptive services.

(4) Determine the extent of HIV counseling and testing services offered by private practicing physicians, hospitals, and other private care providers; provide appropriate training in pretest and posttest counseling to such providers.

(5) Demonstrate coordination with the State/Territorial Drug Abuse Authority through the joint development of a program plan (which avoids duplicate funding by other Federal agencies such as NIDA) to establish HIV counseling, testing, and partner notification activities in all public drug treatment

facilities within the recipient's jurisdiction.

Counseling, testing, and partner notification should be conducted in a manner consistent with guidelines published in Morbidity and Mortality Weekly Report (MMWR) August 14, 1987, 36, 509–515.

I. Reaching Minorities at Risk

Develop systematic efforts in minority communities to engage individuals and organizations in activities to provide AIDS prevention education to minorities who may be at risk of HIV infection, including:

(1) Regular consultation with the leadership and/or representatives of community-based groups to discuss local AIDS-related issues, problems, strategies, and program plans, implementation, and evaluation;

(2) Providing direct financial assistance to community-based organizations, particularly those representing or serving minorities, through the dissemination of Requests for Contract Proposals, which includes detailed information and assistance on application procedures, to a wide range of eligible applicants;

(3) Providing technical assistance to community-based organizations in gathering baseline data to define the AIDS problem, establishing measurable education objectives, and designing activities. Assistance may include sponsoring various workshops at the local level on program planning and other relevant topics of interest for representatives of community-based organizations.

J. School Health Education Collaboration

Collaborate with State and local education agencies in conducting School Health Education to Prevent the Spread of AIDS programs. Participate in planning, implementing, and evaluating these programs, including (1) providing consultation and technical assistance during the planning and development phases of the program; (2) developing, selecting, and reviewing educational materials and curricula used by the program; (3) providing logistical and technical support to facilitate implementation and evaluation of the program (e.g., by arranging to have AIDS, sexually transmitted diseases, and substance abuse technical experts available for program workshops, meetings and conferences); and, (4) ensuring close coordination of this initiative with the State and local education agencies.

K. Evaluation

Monitor and evaluate the effectiveness of program activities, including special provisions to determine how these programs impact on minority communities, to ensure that State, local, and national goals will be achieved. Measures must be established to evaluate the achievement of all project objectives and elements under Required Recipient Activities.

Additional guidance on these activities can be obtained from the following documents:

Guidelines for AIDS Prevention Program Operations.

Public Health Service Guidelines for Counseling and Antibody Testing to Prevent HIV Infection and AIDS, MMWR 1987, 36, 509–515.

Revision of the CDC Surveillance Case Definition for Acquired Immunodeficiency Syndrome, MMWR 1987, 36, No. 1S.

Guidelines for Surveillance of Acquired Immunodeficiency Syndrome (AIDS), (August 1986, Draft).

Performance Evaluation Program: Testing for Human Immunodeficiency Virus Infection, MMWR 1987, 36, 614.

Protocol and Guidelines for Seroprevalence Surveys.

2. *Centers for Disease Control Activities:*

A. Provide consultation and technical assistance in planning, operating, and evaluating prevention and surveillance activities:

B. Provide training in program planning and management, the organization of community resources, pre- and posttest counseling, sex partner notification, and surveillance.

C. Provide up-to-date scientific information regarding the risk/protective factors for AIDS and HIV infection, and the program strategies for the prevention of HIV infection.

D. Provide a national performance evaluation system for laboratory procedures related to the ELISA and Western blot or other appropriate testing procedures and laboratory training that includes current scientific/technical information about the practical as well as the theoretical sensitivity and specificity of the different serological tests.

E. Develop, refine, and disseminate AIDS prevention and surveillance program information which describes effective methods to carry out activities or monitor progress.

F. Provide criteria for the surveillance definition of AIDS cases and case report forms, and assistance in establishing and maintaining the computerized AIDS Reporting System (ARS).

G. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all States and communities.

H. Assist in the evaluation of the overall effectiveness of program operations.

Availability of Funds

Approximately $120,000,000 is available in Fiscal Year 1988 for these awards. It is expected that the initial budget period for the AIDS Prevention and Surveillance Cooperative Agreements will be for 9 months beginning on May 1, 1988, and ending January 31, 1989, in a 1 to 5 year project period. Priority consideration will be given to areas with comparatively large numbers of reported AIDS cases, and/or evidence of increased risk among minorities. Funding estimates for the six components listed below may vary and are subject to change.

1. *Surveillance:* On a competitive basis, approximately $6,000,000 is available for up to 30 new programs and 37 existing programs ranging from $25,000 to $750,000 with an average award of $80,000.

2. *Seroprevalence Surveys:* On a competitive basis, approximately $27,000,000 is available to fund ongoing seroprevalence surveys in 30 SMSA and neonatal seroprevalence surveys in the District of Columbia, the Commonwealth of Puerto Rico, and the 23 States representing these SMSA.

3. *Public Information:* On a competitive basis, approximately $6,000,000 is available for up to 3 new programs and for expansion of 39 existing programs ranging from $10,000 to $325,000 with an average award of $95,000.

4. *HE/RR:* On a competitive basis, approximately $19,000,000 is available for up to 3 new programs and 59 existing programs from $25,000 to $1,500,000 with an average award of $300,000.

5. *Counseling, Testing, and Partner Notification:* On a competitive basis, approximately $50,000,000 is available for up to 3 new programs and 59 existing programs ranging from $80,000 to $4,500,000 with an average award of $800,000.

6. *Minority Initiative:* On a competitive basis, approximately $12,000,000 is available for up to 62 programs ranging from $10,000 to $500,000 with an average award of $190,000 to enhance ongoing prevention program activities for minority populations at risk of infection.

Use of Funds

Priority will be given to funding personnel, their training and travel, and supplies and services, including contractual services (i.e., contracts with community organizations) directly related to planning, organizing, and conducting the AIDS prevention and surveillance project described in this announcement.

Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaries or survey instruments, and educational group sessions related to AIDS risk reduction education efforts if approved in accordance with the guidance document titled *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988).* Funds from the project may not be spent for research activities, for surveys, or for questionnaires except as may be needed to meet the required recipient activities of this announcement.

This program has no statutory cost participation formula. Funds may not be used to supplant existing AIDS operations and services provided by a State or locality.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or treatment provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to the individual or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

Reporting Requirements

Subject to OMB clearance, summary statistical reports of counseling and testing activities which include demographic variables, type of site and risk variables, and quarterly progress reports for surveillance and prevention activities will be required. Annual financial status and performance reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Other Requirements

Recipients must comply with the document titled: *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988).*

Applications

1. *Special Guidelines for Application Format*—A single application shall be submitted for the six components listed under the availability of funds section of this announcement. A separate narrative is required for requests for AIDS surveillance activities (includes seroprevalence surveys) and a separate narrative for requests for all prevention activities (includes public information; HE/RR; counseling, testing and partner notification; and special minority initiatives). Narratives should be concise (e.g., approximately 10 to 20 single spaced typewritten pages) and describe: (1) Background and need; (2) proposed objectives; (3) methods of operation; and (4) plan of evaluation. A separate budget and budget justification for the nine month budget period is required for each of the six components for which support is requested. A combined budget that delineates all components for which support is requested should also be submitted. Projected funding needs for the next four years should also be included; however, no details or justifications are required. Applications which do not contain separate narratives and budget requests as outlined above will not be evaluated and will be returned to the applicant. Award of funds will be on a consolidated basis.

2. *Compliance with Program Review Panel Requirement*—Applications which include support for written materials, pictorials, audiovisuals, or other activities governed by the guidance document titled *Content of AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (January 1988),* must comply with paragraph 2 of the document. Applicants for continued AIDS Prevention funding that have previously complied with this requirement need only include an assurance that the role of the Program Review Panel continues to be in accordance with paragraph 2.a of the document.

Review and Evaluation Criteria

Each component for which assistance is requested will be reviewed and evaluated on an individual basis according to the following criteria:

1. The need for support as documented in the background and need section of the narrative, including the extent to which progress has been made toward accomplishing the objectives of the previous budget period. (20 points)

2. The extent to which short term (budget period) and long term (project period) objectives are provided, and the extent to which they are realistic, measurable, time-phased, and related to the National Program Goals and Required Recipient Activities, and, with respect to the AIDS prevention and minority education components, reflect expected changes that program efforts will produce in relation to baseline levels of knowledge, attitudes, and behaviors among risk groups and the population as a whole. (15 points)

3. The quality of the applicant's plan for conducting appropriate Required Recipient Activities, and the overall potential effectiveness of the proposed methods in meeting the stated objectives. (20 points)

4. The extent to which groups disproportionately impacted by AIDS, including minority and other affected populations, have been involved in an assessment of program needs and in program planning; and the extent to which the applicant proposes, as evidenced by letters of support, to involve minority and other community groups in implementing and evaluating all program activities. (30 points—this criterion applies to prevention components only.)

5. The extent to which the evaluation plan clearly specifies the methods and instruments of measurement to be used and will evaluate accomplishments of objectives and activities. (15 points)

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable. Requests for computers, office equipment and furniture, and renting, leasing or renovating office space will be evaluated based on the extent to which they are justified as essential to program success.

Application and Submission Deadline

The original and two copies of the application must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces

BEST COPY AVAILABLE

Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, on or before February 29, 1988.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1. A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Technical assistance for prevention and minority activities may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-2552 or FTS 236-2552.

Technial assistance for surveillance activities may be obtained from David Collie, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639-3352 or FTS 236-3352.

Dated: February 1, 1988.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-4160-18 Filed 2-4-88; 8:45 am]

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Friday
February 5, 1988

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered or Threatened Status for Three Granite Outcrop Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines two plants, *Isoetes melanospora* (black-spored quillwort) and *Isoetes tegetiformans* (mat-forming quillwort), to be endangered species and one plant, *Amphianthus pusillus* (little amphianthus) to be threatened under the authority contained in the Endangered Species Act (Act) of 1973, as amended. These three species are restricted to granite outcrops in the Piedmont physiographic region in the Southeast and all have their center of distribution in Georgia. These species are jeopardized by the continuing destruction of granite outcrops from quarry operations, and habitat modification from dumping, their inclusion in pasture, and heavy recreational use. All three species have lost populations through such activities. This action will extend the Act's protection to these three granite outcrop endemics.

EFFECTIVE DATE: March 7, 1988.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell A. Neal at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Amphianthus pusillus, *Isoetes melanospora*, and *Isoetes tegetiformans* are endemic to granite outcrops in the Piedmont physiographic region of the southeastern U.S. *Amphianthus* is known from Alabama, Georgia, and South Carolina. *Isoetes melanospora* and *Isoetes tegetiformans* occur only in Georgia. These three taxa are the most restricted of the granite outcrop species (Bridges 1986a). Granite outcrops superficially resemble one another but may differ geologically as igneous, quartzitic, gneissic or porphyritic granite (Lester 1938, McVaugh 1943, Wharton 1978). Outcrops supporting populations of all three taxa occur as large isolated domes or as gently rolling "flatrocks." These communities are believed to have long served as active sites for speciation, as evidenced by a high degree of endemism. Speciation is accelerated on outcrops due to the scattered distribution of rock exposures and the harsh environmental conditions (high light intensities, extreme wet/dry periods) to which the species have become adapted (Murdy 1968). *Amphianthus* is the most common associate of *Isoetes melanospora* and *Isoetes tegetiformans*. Other plants which may occur in and around the pools include lichens (*Cladonia* sp.), *Diamorpha smallii*, *Arenaria uniflora*, *Arenaria glabra*, *Polytrichum commune*, *Isoetes piedmontana*, *Juncus georgianus*, *Agrostis* sp., *Lindernia monticola*, *Cyperus granitophilus*, *Andropogon scoparius*, and *Selaginella tortipila* (Garris 1980, Kral 1983, Rayner 1986). Two Federal candidate plant species (*Sedum pusillum* and *Draba aprica*) occur with *Amphianthus* and *Isoetes tegetiformans* at several sites in eastern Georgia.

A discussion of the three species proposed for listing herein follows:

Amphianthus pusillus is a diminutive fibrous-rooted annual. It has both floating and submerged leaves. The submerged leaves are lanceolate, less than 1 centimeter (cm) (0.4 inch) in length and appear to be arranged in a basal rosette. The floating leaves are ovate, 4–8 millimeters (mm)).16–0.32 inch) long, 3–5 mm (0.12–0.20 inch) wide, oppositely arranged, and attached to the stem near the submerged leaves by long, delicate stems. Its flowers are white, 4–4 mm (0.16–0.20 inch) in length, and borne in the axils of both types of leaves. Floating flowers are chasmogamous (open) and submerged flowers are cleistogamous (closed) except when exposed to air (Lunsford 1938, Rayner 1986). *Amphianthus* usually flowers in March or April (depending upon environmental conditions) and produces a capsule, 2–3 mm (0.08–0.12 inch) broad and 1 mm (0.04 inch) long. *Amphianthus* is ephemeral, usually completing its life cycle in a 3-to-4 week period (Garris 1980, Kral 1983, Rayner 1986).

This species was first collected by M.C. Leavenworth in 1836 in Newton County, Georgia (present-day Rockdale County) and later described by John Torrey in 1839 (Pennell 1935). *Amphianthus pusillus* is thought to be a relict species, representing a monotypic genus of doubtful placement in the family Scrophulariaceae (Pennell 1935, McVaugh 1943, Murdy 1968). It is most similar in flower morphology to *Gratiola* and *Bacopa* but differs from all other southern Scrophulariaceae by its dimorphic leaves and flowers (Pennell 1935, Kral 1983).

Optimal habitat for *Amphianthus* has been consistently described as pools surrounded by a rock rim several centimeters in height and sandy-silty soils 2–5 cm (0.8–2.0 inches) in depth with a low organic matter content (Lunsford 1938, McVaugh 1943, Garris 1980, Miller 1985, Rayner 1986). Most populations occur in such typical pools; however, Garris (1980) and Rayner (1986) have reported several populations from atypical habitats. Most of these atypical pools lacked an intact rim, others were in ecotonal zones or seepage areas.

Amphianthus primarily occurs in Georgia with peripheral populations in Alabama and South Carolina. Status surveys have been conducted throughout its range by Miller (1985) in Alabama, Garris (1980) in Georgia, and Rayner (1981, 1986) in South Carolina. Extensive surveys of granite outcrops in the Piedmont have been conducted by J. Allison since the 1970's (University of Georgia, pers. comm. 1986).

The acutal number of individual plants is difficult to determine since *Amphianthus* is an ephemeral annual whose population size and vigor is dependent upon weather conditions (sufficient moisture). This is further complicated by a seed bank of undetermined size and dormancy period (Rayner 1986).

Amphianthus was first reported from Alabama by Harper (1939) in Randolph County. However, this population has not been relocated in years and is believed extirpated. Currently, there are three extant populations in two counties of the State (Randolph and Chambers). All three areas contain limited populations of *Amphianthus*. Two of the sites have fewer than 50 plants confined to a single vernal pool, while the third population consists of several hundred plants in two to three pools (Miller 1985, Allison pers. comm. 1986).

Amphianthus is historically known from 50 sites in Georgia (McVaugh and Pyron 1937, Lunsford 1938, McVaugh 1943, Burbanck and Platt 1964); however, 11 of these populations have been destroyed (Garris 1980, Allison pers. comm. 1986, Jones, University of Georgia pers. comm., 1986). Currently, 39 populations are thought extant; 74 percent are "limited" populations (1–5 pools), with 45 percent of these limited to a single vernal pool; 13 percent are "moderate" populations (6–14 pools); and 13 percent are "extensive" populations (15–25 pools). Even though

Amphianthus is known from 17 counties, 12 of these counties (Rockdale, Walton, Douglas, Butts, Putnam, Oglethorpe, Harris, Meriwether, Henry, Pike, Newton, Gwinnett) support only limited populations of *Amphianthus* with eight of these county records confined to single sites. The remaining counties support one to two extensive populations of *Amphianthus* (DeKalb, Greene, Heard, Hancock, and Columbia). The number of individuals in the pools range from as few as a dozen to several thousand, with most pools containing several hundred plants when rainfall is adequate.

Amphianthus occurs at three sites in South Carolina, with seven pools in Lancaster County, one in Saluda County, and four in York County (Rayner 1981, 1986). According to Rayner (1986), during the 1983 or 1984 growing season, six pools supported extensive populations (>200 plants) and six has limited populations (<25 plants) of *Amphianthus*.

Isoetes melanospora was discovered on Stone Mountain in DeKalb County, Georgia, and later described by Englemann (1877). Distinguishing characters include a complete velum coverage, dark tuberculate megaspores and short (2–7 cm (0.8–2.8 inches) long), spiraled leaves (Boom 1979, 1982). Immature plants of *Isoetes melanospora* may have distichous leaves (Boom 1979, Rury 1978). It frequently hybridizes with *Isoetes piedmontana*, a more common granite outcrop quillwort, which has an incomplete velum coverage, white megaspores and longer leaves (7–15 cm (2.8–5.9 inches) long), in habitats which are ecologically intermediate between the two species' typical habitats. Hybrids are intermediate in the above characters (Matthews and Murdy 1969, Boom 1982). Rury (1978) proposed that *Isoetes melanospora* represented an arrested developmental stage of one polymorphic species encompassing *Isoetes melanospora* and *Isoetes piedmontana*. According to Boom (1982), such confusion regarding the taxonomic status of *Isoetes melanospora* stems from the above mentioned hybridization of the two *Isoetes* species and subsequent introgression. C. Taylor and N. Luebke (Milwaukee Public Museum, pers. comm. 1986) maintain that *Isoetes melanospora* and *Isoetes piedmontana* are distinct species. Both species have maintained their morphological distinctiveness while growing in uniform conditions for the last 6 years, and preliminary electrophoretic data determined the two *Isoetes* to have distinct enzyme profiles. Research by Boom (1980) and Luebke (pers. comm. 1986) demonstrates that reproductive barriers are weak in *Isoetes* and interspecific hybrids are produced readily. *Isoetes melanospora* has been maintained as a distinct taxon in all monographic treatments of the genus (Pfeiffer 1922, Reed 1965, Boom 1979, 1982). Although Evans (1978) synonymized *Isoetes melanospora* he now states that *Isoetes melanospora* will be maintained as a distinct taxon in his treatment of the pteridophytes for the upcoming "Vascular Flora of the Southeastern States" (Evans, University of Tennessee, pers. comm. 1988).

Isoetes melanospora is historically known from 12 sites in central Georgia and one site in South Carolina (Johnson 1938, McVaugh 1943, Lammers 1958, Burbanck and Platt 1964, Matthews and Murdy 1969, Allison, pers. comm. 1986). Currently, it is thought extant at only five sites in Georgia (DeKalb, Rockdale, and Gwinnett Counties) due to a 54 percent loss of Georgia populations from habitat destruction. Its status at the South Carolina site is unkown since it has not been observed there since its collection in 1969 (Boom 1979, Rayner, pers. comm. 1986).

Isoetes melanospora occurs with *Amphianthus* at four of its six extant sites in typical habitat as described for *Amphianthus*. At the sixth site, *Isoetes melanospora* is located in several remnant quarry pools. The largest population of *Isoetes melanospora* comprises plants in an estimated 12 pools. Other Georgia populations are confined to one to five pools each.

Isoetes tegetiformans is perhaps the most distinctive species in this genus (Boom 1982). A detailed description of its morphology and anatomy is given by Rury (1978). Distingulshing characters include its distichous, mat-forming growth habit (plants are "rhizomatously" connected), non-dichotomizing roots, and formation of numerous, cauline, adventious buds (Rury 1978, Boom 1979, 1982). Individual plants are most similar to distichous plants of *Isoetes melanospora* with respect to plant size, leaf arrangement and reproductive features (Rury 1978).

Isoetes tegetiformans was described by Rury (1978) from material he collected at Heggie's Rock Preserve in Columbia County, Georgia, from a single vernal pool. Since then, searches of over 120 granite outcrops by J. Allison have resulted in only 10 additional locations (Rury 1985, Allison, pers. comm. 1986). Ten of these 11 populations are extant in four Georgia counties (Columbia, Hancock, Greene and Putnam) and are confined to porphyritic granite outcrops (Allison, pers. comm. 1986, Rury 1986). Seventy percent of the extant sites have only one or two pools with *Isoetes tegetiformans*. At the remaining sites, it has been observed in four to eight pools. Individual pools may contain very few genetic individuals since *Isoetes tegetiformans* is a colony-forming species (Bridges 1986a).

Many of the sites harboring populations of these three granite outcrop endemics have been adversely impacted or destroyed through quarrying, eutrophication from cattle, ORV's, trash dumping, and various forms of vandalism (Garris 1980, Miller 1985, Rayner 1986).

Most populations are on privately-owned lands, including one site managed by The Nature Conservancy. Four sites are located on public lands, including one owned by the State of Georgia and administered by the Stone Mountain Memorial Association, two owned by DeKalb County, Georgia, and one by the State of South Carolina (South Carolina Wildlife and Marine Resources Department).

Federal actions involving these species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Amphianthus pusillus* and *Isoetes melanospora* were included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. On December 15, 1980, the Service

published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Isoetes melanospora* was included as a Category-2 species (species for which data in the Service's possession indicate listing is probably appropriate, but for which additional biological information is needed to support a proposed rule); *Isoetes tegetiformans* and *Amphianthus pusillus* were included as Category-1 species (species for which data in the Service's possession indicate listing is warranted). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *Isoetes tegetiformans* as a Category-2 species. All three species were included in Category 2 in the September 27, 1985, revised notice of review of plants (50 FR 39526). Status survey reports compiled by Garris (1980), Miller (1985), and Rayner (1986), as well as extensive field searches by Allison (pers. comm. 1986), and pertinent literature (see "Reference Cited" below), now support all three species being listed as endangered or threatened. The data demonstrate low numbers of plants and continuing threats to the species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Isoetes melanospora* and *Amphianthus pusillus* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, and 1986, the Service found that the petitioned listing of these species was warranted, but that listing these species was precluded due to other higher priority listing actions. On February 19, 1987, the Service published in the **Federal Register** (52 FR 5150), a proposal to list *Isoetes melanospora* and *Isoetes tegetiformans* as endangered species and *Amphianthus pusillus* as a threatened species. The Service now determines *Isoetes melanospora* and *Isoetes tegetiformans* to be endangered species and *Amphianthus pusillus* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the February 19, 1987, proposed rule (52 FR 5150) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Atlanta Constitution*, Atlanta Georgia, and in the *Columbia Record*, Columbia, South Carolina, on March 16, 1987. Three comments were received from private organizations and all expressed support for the proposal. No public hearing was requested or held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available the Service has determined that *Isoetes melanospora* and *Isoetes tegetiformans* should be classified as endangered species and *Amphianthus pusillus* as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.* and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amphianthus pusillus* Torrey (little amphianthus), *Isoetes melanospora* Engelmann (black-spored quillwort), and *Isoetes tegetiformans* Rury (mat-forming quillwort) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Amphianthus pusillus*, *Isoetes tegetiformans*, and *Isoetes melanospora* are restricted to granite outcrops in the Piedmont physiographic region (see "Background" section for specific distributions). The major threat to these species is the destruction and adverse modification of their habitat. Populations of all three taxa have been lost through quarrying (38 percent for *Isoetes melanospora*, 17 percent for *Amphianthus*, 9 percent for *Isoetes tegetiformans*) and the fate of several extant populations is tenuous since several areas are active quarry sites. Georgia is the world's largest granite producer (Wharton 1978), so the destruction of outcrops from quarrying is expected to continue. Quarrying companies owned 17.4 percent of those granite outcrops investigated for *Amphianthus* in Georgia (Garris 1980).

Granite outcrops are popular recreational sites and unfortunately such attention and overuse have resulted in damage to the geologic structures and vegetation (Garris 1980). Many of the pools supporting populations of these three taxa have been directly damaged by vehicular traffic. Vehicular traffic during these species' growing seasons poses a serious threat by uprooting/crushing live plants, hastening the erosion of the pools' rims and displacing soil from the pools (Bridges 1986a, Rayner 1986). ORV's have decreased the vigor of all the South Carolina *Amphianthus* populations (Rayner 1986) and destroyed one Alabama population (Miller 1986). Pools have been further impacted by such activities as fire building and littering (Rayner 1986, Garris 1980). Rearrangement of stones in two pools has caused a decline in two populations of *Amphianthus* and *Isoetes melanospora*.

Granite outcrops are often enclosed in pasture. A concentration of grazing animals on these areas has caused damage to vernal pool vegetation through trampling and has added nutrients to the water, which favors the growth of more competitive aquatics (Garris 1980, Bridges 1986b). Such eutrophication of vernal pools has eliminated *Amphianthus* from several pools at one site and caused the decline of *Amphianthus* and *Isoetes tegetiformans* at a second area.

Many of the smaller outcrops are used as local dumps or for storing equipment, and such land use has destroyed two populations of *Amphianthus* and one population of *Isoetes melanospora* in Georgia (Garris 1980, Allison, pers. comm. 1986). Flatrocks in the Southeast are being examined as possible repositories for nuclear waste, and this poses a potential threat to their habitat (Rayner 1986). Long term monitoring of all three taxa should be initiated in order to measure fluctuations in populations size and vigor. Such data would be helpful in determining the stability of populations as related to weather conditions and disturbance (Bridges 1986a, Rayner 1986).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Taking for these purposes may pose a threat to these species, especially *Isoetes melanospora* and *Isoetes tegetiformans*, which are extremely restricted in range and low in numbers. Publicity surrounding the listing of these species could increase interest in all three of these unique species, and the sites are easily accessible.

C. *Disease or predation.* These taxa are not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* *Amphianthus pusillus* and *Isoetes melanospora* are officially listed as endangered by the Georgia Department of Natural Resources and are thereby afforded legal protection in the State under the Wildflower Preservation Act of 1973. *Isoetes tegetiformans* is not protected by Georgia law at the present time. Georgia legislation prohibits taking of plants from public lands (without a permit) and regulates the sale and transport of plants within the State. However, Georgia law does not provide protection against habitat destruction, the major threat to these species, and has been inadequate in preventing the further decline of *Isoetes melanospora* and *Amphianthus pusillus* populations at two publicly-owned sites in DeKalb County (Stone Mountain State Park and Mt. Arabia County Park).

Although these species are unofficially recognized as endangered or threatened components of their flora, South Carolina and Alabama have no State laws protecting them. The Nature Conservancy owns and manages Heggie's Rock Preserve in Columbia County, Georgia, which supports a moderate population (ten pools) of *Amphianthus* and a limited population (one pool) of *Isoetes tegetiformans*. *Amphianthus pusillus* is also protected at Forty-Acre Rock Preserve in Lancaster County, South Carolina, which is owned by the South Carolina Wildlife and Marine Resources Department. Both preserves have regulations restricting collecting and motorized vehicles. However, these regulations are difficult to enforce and the areas continue to be disturbed. The Act would enhance the existing protection, provide Federal protection (see "Available Conservation Measures" below), and encourage active management for these species.

E. *Other natural or manmade factors affecting its continued existence.* These taxa are rare and vulnerable due to the limited amount of potential habitat and specialized microhabitat requirements. Many of the populations consist of small numbers of individuals confined to only one or two pools (see "Background" section), so local extinction through natural causes is possible. *Amphianthus pusillus*, *Isoetes melanospora*, and *Isoetes tegetiformans* are susceptible to inadvertent destruction because the pools in which they occur are exposed, and thus unprotected from vehicular traffic. These outcrop endemics are not vigorous competitors (Rayner 1986, Luebke, pers. comm. 1986) and could be eliminated by overcrowding and shading (Lammers 1958, Kral 1983). One population of *Amphianthus* and one of *Isoetes melanospora* have been lost through succession (Allison, pers. comm. 1986); however, natural succession is usually too slow to be a significant problem, and new habitat is constantly being created (Burbanck and Platt 1964). A more serious threat is from accelerated succession caused by excessive siltation from disturbance upslope or from eutrophication of the pools from cattle droppings (Bridges 1986b).

Amphianthus is vulnerable due to its requirements for special environmental conditions (moisture, light) for germination and growth and an unknown dormancy period for the seeds (Lunsford 1938, Garris 1980, Rayner 1986). One factor believed to contribute to the rarity of *Amphianthus* is the lack of adaptation for seed dispersal (Lunsford 1938). Preliminary research by Randall (1986) suggests that the principal mode of reproduction in *Amphianthus* is agamospermy (production of seeds by asexual means) and that this asexual reproduction threatens its adaptive potential. The genetic integrity of *Isoetes melanospora* is threatened due to its frequent hybridization with *Isoetes piedmontana* and subsequent introgression. Hybrids may competitively displace *Isoetes melanospora*, which requires a more specialized type of microhabitat (Boom, pers. comm. 1986).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Isoetes tegetiformans* and *Isoetes melanospora* as endangered species and to list *Amphianthus pusillus* as a threatened species. *Isoetes melanospora* has been extirpated over most of its historic range (54 percent of populations destroyed). Furthermore, populations at four of the five remaining sites are confined to five or fewer pools and have significantly decreased in numbers and vigor at severeal of these areas. *Isoetes tegetiformans* is restricted to a particular type of outcrop (porphyritic granite) and presently receives no protection under Georgia's Wildflower Preservation Act of 1973. At most sites (80 percent), *Isoetes tegetiformans* occurs in only one or two pools and two of these areas are active quarry sites. These two plants are in danger of extinction throughout all or significant portions of their ranges and therefore qualify as endangered species under the Act.

Threatened status seems appropriate for *Amphianthus pusillus*, which has a wider geographic range and two populations in designated Nature Preserves. However, 21 percent of the populations of *Amphianthus* have been destroyed and 76 percent of the extant sites support only a limited population of this genus. Many of the populations face severe threats and *Amphianthus* could become endangered within the foreseeable future; thus it is a threatened species as defined by the Act. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional threats for these species from collecting and vandalism (see threat factor "B" above). Distinctiveness of the outcrops increases their vulnerability since they tower above the surrounding vegetation and most are easily accessible. No benefit can be identified through critical habitat designation that would outweigh these potential threats. All State agencies and counties will be notified of the general location of the sites and of the importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for these species at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species

that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All presently known sites for these species are on private, State-owned, or county-owned land. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known that would affect these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 (for endangered), and 17.71 and 17.72 (for threatened) set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered and 50 CFR 17.71 for threatened apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered or threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since these species are unknown in cultivation and are uncommon in the wild. Requests for copies of the regulations of plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section) (601/965–4900 or FTS 490–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Isoetaceae—Quillwort family:							
Isoetes melanospora	Black-spearsed quillwort	U.S.A. (GA,SC)	E	382	NA	NA
Isoetes tegetiformans	Mat-forming quillwort	U.S.A. (GA)	E	382	NA	NA
Scrophulariaceae—Snapdragon family:							
Amphianthus pusillus	Little amphianthus	U.S.A. (AL, GA, SC)	T	382	NA	NA

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–2888 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant "Trichilia triacantha" (Bariaco)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant *Trichilia triacantha* (common name: Bariaco) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Trichilia triacantha* is endemic to semideciduous dry forests on limestone in southwestern Puerto Rico. This small tree is threatened by woodcutting, flash-flooding, and its extremely low population size. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Trichilia triacantha*.

EFFECTIVE DATE: March 7, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Pace at the Caribbean Field Office address (809/851–7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/321–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Trichilia triacantha was described in 1899 by Ignatius Urban, who based his description on material collected several years earlier near Penuelas and Guanica in southwestern Puerto Rico. The species was not seen or collected again until the 1960's, when R.O. Woodbury found it in Guanica Commonwealth Forest and at Punta Guaniquilla, near Boqueron (Vivaldi and Woodbury 1981). In 1978, Woodbury located a single plant in the Guayanilla Hills near Penuelas. Since 1978, four additional populations have been found in Guanica Forest, but the Punta Guaniquilla and Guayanilla Hills plants have been extirpated by woodcutting and road construction. Presently, 18 individuals are known to exist at five sites within Guanica Commonwealth Forest (Fish and Wildlife Service, unpublished field data).

Trichilia triacantha is an evergreen shrub or small tree reaching 30 feet (9 meters) in height and 3 inches (8 centimeters) in diameter. The alternate leaves are shiny dark green, leathery, and clustered at the ends of twigs. Each compound leaf is 3- to 7-parted, with the leaflets appearing to be arranged palmately and bearing 3 stiff, sharp spines at their apex. The white flowers are symmetrical and bisexual; the fruit has not been described yet.

The species is endemic to low elevation semideciduous dry forests occurring on limestone in southwestern Puerto Rico. Within these forests, *Trichilia triacantha* is generally found along dry streambeds which carry water only during periodic torrential rains.

Deforestation for agriculture, grazing, and charcoal production has had a significant effect on the native flora of Puerto Rico. Some species have traditionally been selected for removal because of their utility (fenceposts, handicrafts, etc.). The wood of *Trichilia triacantha* has been sought (Hernandez Aquino 1977) for its hardness, durability, and color, factors which have undoubtedly contributed to the species' rarity. In addition, the species' presence in ravine habitats makes it vulnerable to destruction by flash-flooding during seasonally heavy rains.

Trichilia triacantha was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered for endangered or threatened status by the Fish and Wildlife Service as identified in the December 15, 1980, notice published in the Federal Register (45 FR 82479). The species was placed in category 1 (species for which the Service

has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and was retained in this category in the November 28, 1983 (48 FR 53640), update of the 1980 notice and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)), as amended in 1982. The Service subsequently found on October 13, 1983; October 12, 1984; October 11, 1985; and October 10, 1986, that listing *Trichilia triacantha* was warranted but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Trichilia triacantha* as endangered on April 24, 1987 (52 FR 13790–13792).

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *San Juan Star* on May 23, 1987. Five letters of comment were received and are discussed below. A public hearing was neither requested nor held.

Comments were received from the Secretary of the Puerto Rico Department of Natural Resources, the Environmental Protection Agency, U.S. Corps of Engineers, U.S. Forest Service, and the Natural History Society of Puerto Rico.

The Secretary of the Puerto Rico Department of Natural Resources supported the proposed listing of *Trichilia triacantha* stating that the Guanica Commonwealth Forest is being managed strictly from a conservation standpoint. Administrators of the Environmental Protection Agency and the Corps of Engineers stated that they knew of no ongoing or proposed actions that would impact the species and that they had no information on its status. The Forest Service stated that the species does not occur in the Caribbean National Forest and that no action was anticipated that might affect the species. The Natural History Society of Puerto Rico supported the proposed listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Trichilia triacantha* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Trichilia triacantha* Urban are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Most of the island of Puerto Rico has been deforested, and the forests where *Trichilia triacantha* is presently found are largely second growth. However, the species has traditionally been, and apparently continues to be, selectively taken for its wood. The known remaining plants are widely scattered and confined to Commonwealth Forest lands, and, thus, they are largely protected from cutting. The areas where additional individuals or populations are most likely to be extant are in the Guayanilla Hills, which are being rapidly developed. Undiscovered plants in these areas most likely will be destroyed before being discovered.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The taking of these trees for their wood (for use in fenceposts, home furniture, etc.) has undoubtedly contributed to the decline of this species, but it is not known to what extent this practice continues. The extreme rarity of *Trichilia triacantha* lessens susceptibility to woodcutting, but the possibility of extirpation by this means remains.

C. *Disease or predation.* Disease and predation from herbivores have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Trichilia triacantha* is not yet on the Commonwealth list. Federal listing would apply the recovery and protection provisions of the Act to this species.

E. *Other natural or manmade factors affecting its continued existence.* The known populations of *Trichilia triacantha* are confined to geographically small areas and thus are vulnerable to natural disturbance, particularly flash-flooding. In addition, with only 18 plants known to exist and little evidence of successful reproduction, the risk of extinction of this species is very high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, the preferred action is to list *Trichilia triacantha* as endangered. Since there are few individuals remaining and a continuing risk of damage to the plants and/or their habitat, endangered status seems an accurate assessment of the species' condition. It is not prudent to designate critical habitat because doing so would increase the risk to this species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The distribution of *Trichilia triacantha* is sufficiently restricted that collecting or vandalism could seriously damage or eliminate the remaining individuals. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and known landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Trichilia triacantha* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Trichilia triacantha*, as discussed above, and no Federal involvement is known or expected to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329, U.S. Fish and Wildlife Service, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Inc., Washington, D.C. xv + 408 pp.

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Vivaldi, J.L., and R.G. Woodbury. 1981. Status report on *Trichilia triacantha* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 34 pp.

Author

The primary author of this final rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order by the name of the family Meliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Meliaceae—Mahogany family:						
Trichilia triacantha	Baracoa	U.S.A. (PR)	E	393	NA	NA

Dated: January 12, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-2469 Filed 2-4-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Endangered Status for the Louisiana Pearlshell "*Margaritifera hembeli*"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Louisiana pearlshell (*Margaritifera hembeli*) to be an endangered species under the Endangered Species Act of 1973, as amended. This freshwater mussel is known to occur in 11 headwater streams of the Bayou Boeuf drainage in Rapides Parish, Louisiana. The preferred habitat is stable sand and gravel substrate in small, clear flowing

streams. The historic range of this species probably included most of the Bayou Boeuf headwater streams. The Louisiana pearlshell has been impacted by reservoir construction, silviculture practices, sedimentation, and domestic runoff. This determination implements the protection of the Endangered Species Act of 1973, as amended, for this freshwater mollusk.

EFFECTIVE DATE: March 7, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The Louisiana pearlshell was described as *Unio hembeli* by Conrad in 1838. This species was placed in the genus *Margaron* by Lea (1870), then in *Margaritana* by Simpson (1900), and finally in *Margaritifera* by Athearn (1970). This mussel is about 100 millimeters (mm) (3.9 inches) long, 50 mm (2.0 inches) high, and 30 mm (1.2 inches) wide. The shell is generally elliptical with an angular posterior margin, obtuse undulations on the posterior slope, a dark brown to black periostracum, and white nacre. The species has been collected from only the Bayou Boeuf drainage in Rapides Parish, Louisiana. The Alabama population of earlier records is now considered a different species, the Alabama pearlshell, which was described as *Margaritifera marrianae* by Johnson in 1983. An extensive search of 39 streams in Rapides Parish by biologists from the Louisiana Natural Heritage Program (Louisiana Heritage 1985) found the Louisiana pearlshell in 11 streams. Nearly 90 percent of the population was in four streams: Long Branch, Bayou Clear, Loving Creek, and Little Loving Creek. Most individuals were in flowing water at depths ranging from 31 to 61 centimeters (12–20 inches) on sand and gravel substrates. The surrounding forest community is mixed hardwood-loblolly pine with a typical canopy closure of 75–100 percent (Louisiana Heritage 1985). Almost the entire known population of the Louisiana pearlshell occurs within areas administered by the U.S. Forest Service. The remaining range is within lands administered by the U.S. Air Force or is in private ownership.

The scattered occurrence of the Louisiana pearlshell in headwater streams of the Bayou Boeuf drainage suggests that the species once occurred throughout the drainage, if not in other drainages. The Heritage survey estimated a total population at approximately 10,000 individuals. Since the survey, at least one bed of mussels has been inundated by a beaver pond and apparently eliminated. The Service published a proposed rule to list this species as endangered in the **Federal Register** (52 FR13794) on April 24, 1987.

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule (52 FR 13794) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited public comment were published in the *Baton Rouge State Times* and the *Baton Rouge Advocate* on May 20, 1987, and in the *Alexandria Daily Town Talk* on May 24, 1987. Comments were received from two Federal agencies, one State agency, and one professional biologist. In commenting on the proposed rule, the U.S. Forest Service described actions it is taking to protect this species, but did not take a position on the proposed rule. In earlier correspondence, this agency had requested the Service to expedite the listing to help it in protecting the species. On this basis it is evident that the Forest Service also supported the proposed rule. The U.S. Air Force and the other two commenters supported the proposed rule.

One commenter suggested that the Louisiana pearlshell historically occurred in drainages other than Bayou Boeuf based on information contained in museum notes but did not provide the information. The available data supports the current restriction of the Louisiana pearlshell to the Bayou Boeuf drainage. The historic occurrence of this species in other drainages would indicate an even greater range loss for the species and a more urgent need for this determination. Evidence of such historic occurrences is important to the recovery planning process.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Louisiana pearlshell (*Margaritifera hembeli*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Louisiana pearlshell (*Margaritifera hembeli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The scattered occurrence of the species in headwater streams of the drainage suggests a historic range including most, if not all, of the Bayou Boeuf headwater systems, and that impoundments have eliminated populations in intervening areas. This suggested range is supported by a small population in Brown's Creek of the Bayou Rapides drainage. Bayou Rapides enters Bayou Boeuf several miles below any other known population of the Louisiana pearlshell. The species presently occurs in Mack Branch above Kincaid Reservoir but not in other streams contributing to this impoundment. Kincaid Reservoir impounds the uppermost headwaters of Bayou Boeuf. The known good populations occur in the unimpounded Caster Creek and Bayou Clear drainages, tributaries to Bayou Boeuf. Other impoundments of the Bayou Boeuf system that may have affected this species are Indian Creek Reservoir, Oden Lake, and Cotile Lake.

Inundation by beaver dams appears to be a significant threat. One population of about 1,000 individuals found in 1985 by the Louisiana Heritage survey was later inundated by a beaver pond. A 1986 Service survey of the site determined that this particular population of the Louisiana pearlshell had been eliminated. The small localized populations of this species are especially susceptible to beaver impoundments.

Freshwater mussels are adversely impacted by sediment and by unstable substrate. The Bayou Boeuf drainage includes a number of gravel pits on private lands that contribute to sedimentation, especially in the Indian Creek drainage. The sedimentation likely contributed to the elimination of Louisiana pearlshell populations that could have occurred in this drainage. Habitat within the Kisatchie National Forest is impacted by silviculture practices. Clear cutting, especially up to stream banks, increases erosion and runoff. In addition to the impacts of sedimentation from erosion, there are impacts from scouring of the substrate resulting from increased water velocity. This scouring causes the substrate to shift and the mussels to be displaced. The known populations of this species occur in small, localized areas of stable sand and gravel substrate. Some adults are found in loose shifting sand, probably because of displacement. A field survey by a Service biologist found recruitment only in populations located in stable substrate containing some gravel. Adults may be able to survive a temporary shifting of the substrate where immature individuals cannot survive.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collecting poses a significant threat to this species. This mussel occurs in very shallow, clear streams and generally has about one inch of the shell protruding from the substrate. The entire population of a small stream may occur in only several yards of stream length. This restricted distribution and high visibility makes collection of the species very easy. A single overzealous recreational or scientific collector could drastically reduce the population of any given stream in a few hours. The collecting impacts could easily reduce the population below levels necessary for reproduction.

C. *Disease or predation.* There is no evidence of threats from disease. The shallow stream habitat of this species makes it very vulnerable to predation by raccoons and muskrats.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations specifically covering this species. Although U.S. Forest Service regulations prohibit the taking of sensitive species, such prohibitions are difficult to enforce.

E. *Other natural or manmade factors affecting its continued existence.* The fish host for the juvenile stage of this species is unknown; therefore, impacts on this aspect of the mussel's life cycle cannot be evaluated. There is some evidence that the Brown's Creek population is affected by domestic pollution from upstream houses and farms. The Louisiana pearlshell is threatened by its limited range and low numbers. Many of the streams where this species occurs are isolated from each other. This creates isolated gene pools that are vulnerable to loss of genetic variability. Because this species depends upon water currents to transport gametes from one individual to another, isolation and reduced density of populations decreases the likelihood of successful reproduction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Louisiana pearlshell as endangered. Endangered status was chosen because of the very limited range, small population size, and vulnerability owing to small stream habitat of the species. Threatened status is not appropriate because the species is restricted to a few small streams in a single drainage and occurs in small areas within each stream. An entire stream's population is therefore vulnerable to a single catastrophic event. Critical habitat is not proposed for this species for reasons given in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Louisiana pearlshell is the most southerly occurring member of the family *Margaritiferidae*. As such, it is sought by both scientific and amateur collectors. Publication of the exact location of populations could lead to excessive collection of this easily observed species. The U.S. Forest Service is the Federal agency most involved with this species and is already aware of the existing populations. All other involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Precise locality data are available to appropriate Federal agencies through the Service office described in **ADDRESSES** section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include U.S. Forest Service silviculture practices and U.S. Air Force activities on a practice bombing range. The U.S. Forest Service prepares sites, plants seedling trees, and harvests timber within the range of this species. The U.S. Air Force conducts combat training exercises for pilots on Claiborne Range. The above agencies may be required to consult with the Service on such activities to ensure that they are not likely to jeopardize the continued existence of this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Louisiana Natural Heritage Program. 1985. Status of *Margaritifera hembeli* (Unionacea: Margaritiferidae) in Kisatchie National Forest, Evangeline Ranger District, Rapides Parish, Louisiana, November 1985. An unpublished report to the U.S. Forest Service, 20 pp.

Simpson, C.T. 1900. Synopsis of the naiades, or pearly fresh-water mussels. Proc. U.S. Natl. Mus. 22–679.

Author

The primary author of this final rule is James H. Stewart (see **ADDRESSES** section). Contact by telephone at 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Pearlshell, Louisiana	*Margaritifera hembeli*	U.S.A. (LA)	NA	E	304	NA	NA

Dated: January 12, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–2470 Filed 2–4–88; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 53, No. 24

Friday, February 5, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–5237
Machine readable documents	523–5237

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data Base Services	523–3408
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Library	523–5240
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the deaf	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

2719–2816	1
2817–2994	2
2995–3182	3
3183–3324	4
3325–3570	5

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5763	2719
5764	2814
5765	3183
5766	3185
5767	3327

Executive Orders:

12301 (Revoked by EO 12625)	2812
12625	2812

Administrative Orders:

Memorandums:

January 28, 1988	2816

Presidential Determinations:

No. 88–5 of January 15, 1988	3325

7 CFR

272	2817
907	3329
910	3330
932	2823
945	3187
947	2995
966	3189
1403	3330

Proposed Rules:

52	3403, 3490
53	3025
54	3025
250	2846
318	3028
907	2849
908	2849
917	2851
925	2851
929	3036
948	3037
1421	2759
1823	2852
1930	2852
1933	2852
1942	2852
1944	2852
1948	2852
1980	2852
2054	3176

8 CFR

204	2824
214	3331

Proposed Rules:

212	3403

9 CFR

92	2853

Proposed Rules:

51	2759
71	3146
78	3146
85	3146
309	3146
310	3146
320	3146

10 CFR

Proposed Rules:

2	3404
31	2853

12 CFR

32	2997
207	2998
220	2998
221	2998
224	2998
226	3332
614	2825, 3191
620	3334, 3335
621	3335
795	3000

14 CFR

21	2721–2733, 3534
23	2721–2733
36	3534
39	2735–2737, 3001, 3002
71	3005–3008
73	3010
97	3011, 3012
1206	2738

Proposed Rules:

21	2761, 3040, 3042
23	2761
25	3040, 3042
39	2763–2765, 3044–3048
71	3049, 3528

15 CFR

Ch. III	3014
399	3490

16 CFR

1500	3014

Proposed Rules:

13	3214
453	2767

17 CFR

30	3338
239	3192
274	3192

Proposed Rules:

249	2854

18 CFR

37	3339, 3342
271	3019
389	3364

19 CFR

154	2826

270.....2826
271.....2826
273.....2826
375.....2826
381.....2826
1310.....2826
Proposed Rules:
101.....2767

20 CFR

200.....3198
348.....3200
355.....3200
359.....3200

21 CFR

1.....2827
Proposed Rules:
12.....2767
1308.....3292, 3314

23 CFR

645.....2829

24 CFR

200.....3201
201.....3364
203.....3364
232.....3365
234.....3364
235.....3365
247.....3366
886.....3366

26 CFR

1.....3118
Proposed Rules:
1.....3118

27 CFR

9.....2834
Proposed Rules:
9.....3214

28 CFR

42.....3203

29 CFR

1601.....3369
1627.....3370

30 CFR

934.....2837
Proposed Rules:
936.....3050

32 CFR

Proposed Rules:
169.....3218
171.....3218

33 CFR

4.....3370
117.....3206
126.....3370
127.....3370
203.....2841
230.....3120
325.....3120
Proposed Rules:
100.....3221
117.....2769

34 CFR

305.....3524
777.....3020
Proposed Rules:
669.....2918

36 CFR

222.....2978

37 CFR

201.....3118

38 CFR

3.....3206
21.....3207
36.....3207
Proposed Rules:
21.....2855

40 CFR

60.....2914
180.....3021–3023
721.....2842, 2845
799.....3382
Proposed Rules:
52.....3052
721.....2857

41 CFR

101–1.....2738

42 CFR

59.....2922

43 CFR

29.....3395
4100.....2984
Proposed Rules:
3160.....3158, 3168

44 CFR

5.....2739
64.....2741, 3208
67.....2743

45 CFR

2201.....3320
2202.....3321
Proposed Rules:
1180.....3405

47 CFR

2.....3210
22.....3210
73.....3024
76.....3212
90.....3210
Proposed Rules:
25.....3056
69.....3057
80.....3058

48 CFR

Proposed Rules:
1246.....3222
5215.....3225
5252.....3225

49 CFR

1011.....3400
1152.....3400
Proposed Rules:
1041.....3058
1048.....3058
1049.....3058

50 CFR

17.....3560–3567
301.....3213
611.....3401
642.....3401
Proposed Rules:
661.....3225
663.....3225

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1988

VOL
53
ISS
24
FE
5
988
UMI